

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Roger L. Couch, Circuit Court Judge

RECEIVED

NOV 14 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TAPPIA DANGELO GREEN,

APPELLANT

APPELLATE CASE NO. 2017-001296

RECORD ON APPEAL

JOANNA K. DELANY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

WILLIAM F. SCHUMACHER
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting Street, Suite 400
Charleston, SC 29401

ATTORNEYS FOR RESPONDENT

PAGES 1 – 500

INDEX

INDEX	i
TRIAL TRANSCRIPT (MAY 22 – 23, 2017)	1
MOTION IN LIMINE	2
COURT’S RULING	5
JURY SELECTION	16
MOTION TO SUPPRESS IDENTIFICATION	43
MOTION TO SEQUESTER WITNESSES.....	44
COURT’S RULING	45
<u>NEIL V. BIGGERS</u> HEARING	45
PHILIP MONROE	
Direct Examination by Mr. Cooper	45
Cross Examination by Mr. Archer	53
Redirect Examination by Mr. Cooper	54
KEITH LEE	
Direct Examination by Mr. Cooper	55
Cross Examination by Mr. Archer	78
Redirect Examination by Mr. Cooper	81
Re-Cross Examination by Mr. Archer	83
Examination by the Court	85
COURT’S RULING	90
OPENING STATEMENT BY MR. COOPER.....	105
OPENING STATEMENT BY MR. ARCHER	111
TESTIMONY	
KEITH LEE	
Direct Examination by Mr. Cooper	116
Cross Examination by Mr. Archer	156
Redirect Examination by Mr. Cooper	165
Re-Cross Examination by Mr. Archer	173

TRACEY WILLIAMS	
Direct Examination by Mr. Wetmore	183
Cross Examination by Mr. Archer	194
JENNIFER BUTLER	
Direct Examination by Mr. Wetmore	197
Cross Examination by Mr. Archer	208
MICHAEL COOK	
Direct Examination by Mr. Wetmore	212
Cross Examination by Mr. Archer	220
Redirect Examination by Mr. Wetmore	221
Re-Cross Examination by Mr. Archer	222
LISA KUBICKO	
Direct Examination by Mr. Cooper	223
Cross Examination by Mr. Archer	255
Redirect Examination by Mr. Cooper	240
Re-Cross Examination by Mr. Archer	244
OBJECTION TO FINGERPRINT EVIDENCE	244
COURT'S RULING	245
TESTIMONY	
LISA KUBICKO (CONTINUED)	
Redirect Examination by Mr. Cooper	248
Re-Cross Examination by Mr. Archer	261
TRIAL TRANSCRIPT (MAY 24, 2017)	278
TESTIMONY	
PHILLIP MONROE	
Direct Examination by Mr. Cooper	280
Cross Examination by Mr. Archer	288
Redirect Examination by Mr. Cooper	288
KEVIN SHERBINE	
Direct Examination by Mr. Cooper	290
Cross Examination by Mr. Archer	294

ALEXANDER KAUFMAN	
Direct Examination by Mr. Cooper	295
Cross Examination by Mr. Archer	309
Redirect Examination by Mr. Cooper	324
Re-Cross Examination by Mr. Archer	332
SAM RIEDEL	
Direct Examination by Mr. Cooper	335
Cross Examination by Mr. Archer	342
RAYMOND HAUPT	
Direct Examination by Mr. Cooper	344
Cross Examination by Mr. Archer	359
COLLOQUY RE: DEFENDANT'S RIGHT TO TESTIFY	363
TESTIMONY	
JONATHAN JOHNSON	
Direct Examination by Mr. Archer	368
OBJECTION TO TESTIMONY	380
COURT'S RULING	384
TESTIMONY	
JONATHAN JOHNSON	
Direct Examination by Mr. Archer (continued)	386
Cross Examination by Mr. Cooper	388
Redirect Examination by Mr. Archer	472
TAPPIA GREEN	
Direct Examination by Mr. Archer	487
Cross Examination by Mr. Cooper	499
Redirect Examination by Mr. Archer	521
Re-Cross Examination by Mr. Cooper	523
TRIAL TRANSCRIPT (MAY 25, 2017)	539
TESTIMONY	
TAPPIA GREEN (IN-CAMERA)	
Direct Examination by Mr. Archer	546
Cross Examination by Mr. Cooper	548
Redirect Examination by Mr. Archer	555

COURT’S RULING	565
TESTIMONY	
TAPPIA GREEN	
Re-Cross Examination by Mr. Cooper (continued)	570
SHANIA BURDEN	
Direct Examination by Mr. Archer	582
Cross Examination by Mr. Wetmore	587
Redirect Examination by Mr. Archer.....	593
Re-Cross Examination by Mr. Wetmore	594
DANIELLE SMOAK (IN-CAMERA)	
Direct Examination by Mr. Wetmore	598
Cross Examination by Mr. Archer.....	602
Redirect Examination by Mr. Wetmore.....	606
Re-Cross Examination by Mr. Archer	607
BRANDON VANAUSDAL (IN-CAMERA)	
Direct Examination by Mr. Wetmore	610
Cross Examination by Mr. Archer	613
CLOSING ARGUMENT BY MR. COOPER	623
CLOSING ARGUMENT BY MR. ARCHER.....	653
REPLY ARGUMENT BY MR. COOPER.....	671
CHARGE ON THE LAW	382
DECLARATION OF A MISTRIAL	711
VERDICT	713
COURT’S RULING RE: MISTRIAL	718
SENTENCING	724
COURT’S EXHIBIT 1 (JURY NOTE)	727
COURT’S EXHIBIT 2 (JURY NOTE)	728
COURT’S EXHIBIT 3 (POLICE REPORT)	729

COURT’S EXHIBIT 4 (ALTERNATE JUROR PICKED)	735
STATE’S EXHIBIT 31 (CHECK STUB)	736
STATE’S EXHIBIT 37 (REPORT OF PHOTOGRAPHIC LINEUP)	737
INDICTMENTS	739
SENTENCE SHEETS	745
CERTIFICATE OF COUNSEL	748

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**State’s Exhibits 32-36 (Pos. Print); State’s Exhibit 38 (Video of Lineup); State’s Exhibit 45
(Audio Recording); State’s Exhibit 46 (Video Recording)**

State of South Carolina)
)
 County of Charleston)

In Circuit Court of the
 Tenth Judicial Circuit
 2015-GS-10-05982; 05983;
 05984

THE STATE,

Plaintiff,

vs.

TAPPIA DEANGELO GREEN,

Defendant.

Transcript of Record

Charleston, South Carolina
 May 22-23, 2017

B E F O R E:

The Honorable Roger L. Couch

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

Mr. Daniel W. Cooper, Esquire
 Mr. Burns Wetmore, Esquire
 Attorneys for Plaintiff

Mr. Mark Archer, Esquire
 Attorney for Defendant

Lisa Carter
 Circuit Court Reporter

1 Monday, May 22, 2017 11:55 a.m.

2 THE COURT: All right. We're on the record in the
3 case of the State of South Carolina versus Tappia Green. I
4 have been presented with three indictments. The first
5 indictment is for armed robbery, case 2015-5983, was true
6 billed by the grand jury. Next, is the case number 2015-
7 5982, true billed indictment for kidnapping. And, the
8 third indictment is case number 2015-5984, while
9 possession, it's for possession of a weapon during the
10 commission of a violent crime.

11 Mr. Green is present in the courtroom and I have been
12 presented with a motion from his attorney, Mr. Archer, the
13 motion is a motion in limine to determine the admissibility
14 of any prior convictions that Mr. Green may have on the
15 question of his credibility. I'll hear from the State in
16 regards to that motion.

17 MR. COOPER: Thank you, Your Honor.
18 May it please, the Court?

19 THE COURT: Yes, sir.

20 MOTIONS:

21 MR. COOPER: The only conviction I think pertinent
22 in this case that Mr. Green has that would be an issue to
23 the State would seek to impeach him on cross-examination
24 would be a 2013 conviction for strong armed robbery. The
25 time frame of that, judge, of that conviction in 2013, I

1 think he was released from custody in 2014, the incident
2 occurred in 2011. So it really falls within the ten years
3 outline in Rule 609 and it does carry more than one year
4 given that it's a strong armed robbery. I know that with
5 him being accused the law has to consider probative values
6 and prejudicial effect. I know our Supreme Court has come
7 down and said that armed robbery is not necessarily a
8 crime. Dishonestly, the only thing I was say, judge, in
9 this hearing is that the facts of that conviction did
10 involve dishonesty where the defendant called the victim,
11 asked the victim to come and jump his car off, his car
12 needed a jump, as a pretense to get the victim to the
13 vehicle and then once at the vehicle, the defendant did rob
14 the victim. Your Honor, I would say with that I think that
15 and the fact that would go to his credibility and the jury
16 should be able to see the credibility of who's going to be
17 testifying if he does take the stand. I think that
18 culpable with the facts of that conviction make it a
19 special situation where the probative value would
20 outweighed the prejudicial effect. Thank you.

21 THE COURT: And I'll hear from the defense.

22 MR. ARCHER: Well, Your Honor. I think, one it's
23 entirely prejudicial since it's a robbery conviction, okay.
24 And, you know, I don't think that saying, "I need a jump to
25 my car" is necessarily being dishonest. All right. So I

1 would ---

2 THE COURT: So you're saying he may have needed his
3 car jumped.

4 MR. ARCHER: May have needed it, yeah. You know,
5 so, I mean, I really think that the prejudicial effect far
6 outweighs the probative value of the matter so we would ask
7 that not be admissible to impeach him.

8 THE COURT: All right. Well, in this particular
9 case and in our discussions in chambers, I was informed
10 that the victim of that prior crime is not available to
11 testify in this matter, is that correct?

12 MR. COOPER: Currently, that is correct, judge.

13 THE COURT: And that prior case was that resolved
14 by trial or was that resolved by a plea?

15 MR. COOPER: That was resolved by a guilty plea in
16 which the charge was lessened for armed robbery, to strong
17 armed robbery.

18 THE COURT: I see.

19 MR. COOPER: And that was in Charleston County too,
20 Judge.

21 THE COURT: What I was trying to determine is
22 whether there was any testimony on a record somewhere given
23 by that victim that would indicate that, that's what
24 happened and that there was an element of deception that
25 occurred. I realize that may have been what the facts were

1 that were related at the plea but there's no testimony from
2 the victim, firsthand testimony, in a court record at the
3 present time.

4 MR. COOPER: Not to my knowledge, Judge. No, sir.

5 THE COURT: All right. Well, given with that
6 factor along with the fact that I do find that it would be
7 a highly prejudicial conviction to come in given the nature
8 of the charges I just outlined, I will find that the
9 prejudicial effect would outweigh it's probative value on
10 his credibility and I deny the use of that ---

11 MR. COOPER: Would the Court be okay with the State
12 asking about just a felony conviction, not mentioning the
13 nature of the conviction?

14 MR. ARCHER: No ---

15 THE COURT: Yes, sir?

16 MR. ARCHER: Well, there's all sorts of felony
17 convictions some many of which are not considered crimes.

18 THE COURT: I'm not going let you go there. Let's
19 just leave it out.

20 MR. COOPER: Yes, sir. Thank you, Judge.

21 THE COURT: All right. Now, I don't believe
22 there's any other pretrial motions from the State, is that
23 correct?

24 MR. COOPER: No, sir.

25 THE COURT: Any from the defense other than that

1 one?

2 MR. ARCHER: Not at this time.

3 THE COURT: Okay. My understanding is the jury
4 will be available after lunch for us to select the jury so
5 is my intention to do that after lunch. Let me ask one
6 other question before we break at this time, I assume Mr.
7 Green was arraigned on these charges?

8 MR. ARCHER: No, he was not, Judge.

9 THE COURT: He was not. Are you asking that I
10 arraign him in front of the jury?

11 MR. ARCHER: I would like for you to arraign him and
12 I'd ask you this ---

13 THE COURT: Yes, sir.

14 MR. ARCHER: How do you arraign, do you use the old
15 traditional arraignment of how you plead or how you choose
16 to be tried by God and my country?

17 THE COURT: Yes, sir. We go through that and I'll
18 assume we'll do that in front of the jury before they're
19 sworn?

20 MR. ARCHER: Yes, sir.

21 THE COURT: Any objection?

22 MR. ARCHER: But you do use the traditional?

23 THE COURT: Yes, sir. Any objections to that?

24 MR. COOPER: No, Your Honor. And I just want to
25 clarify one thing with regard to any pretrial motions, I

1 just want to make sure, I think, Mr. Archer does want a
2 pretrial hearing Neil v. Biggers for the lineup ---

3 MR. ARCHER: Right.

4 MR. COOPER: --- is that still correct?

5 MR. ARCHER: Mmm, hmm.

6 THE COURT: Okay.

7 MR. COOPER: I just want to have the right people at
8 the right time. I want to make sure it's still accurate.

9 THE COURT: All right. Well, we probably won't
10 swear the jury til in the morning. It is my understanding
11 the actual trial of the case because of witness
12 availability will probably be delayed until in the morning.
13 So we can take care of that at that point in time.

14 THE CLERK: Your Honor, we actually -- they've kind
15 of switched up a few things. She heard a motion to dismiss
16 one of the cases downstairs so if you are ready, we do have
17 jurors that can come up right now for jury selection?

18 THE COURT: Oh, really we can do that now?

19 THE CLERK: Yes, sir.

20 MR. ARCHER: That would be great.

21 THE COURT: You ready to go forward?

22 MR. COOPER: Yes, sir.

23 THE COURT: Now, I understand that there was some
24 released for tomorrow, perhaps, do you have that
25 information?

1 THE CLERK: I'm sorry.

2 THE COURT: The solicitor indicated that during
3 qualification ---

4 THE CLERK: Yes, sir. Don does have my docket but
5 when I go downstairs to bring the jurors I'll -- we'll
6 swap. Yes, sir.

7 THE COURT: All right. Let's go forward with the
8 jury selection then. We can do that right now.

9 MR. COOPER: Thank you, judge.

10 THE COURT: If you have voir dire and witness
11 lists, pass them up now.

12 MR. COOPER: May I approach?

13 THE COURT: Yes, you may.

14 (Whereupon, the solicitor gave his list of witnesses and
15 voir dire questions to the judge and court reporter)

16 THE COURT: Mr. Archer, do you have any specific
17 voir dire you're requesting?

18 MR. ARCHER: No, I do not, Judge.

19 THE COURT: And do you any witness list other than
20 the one submitted by the State?

21 MR. ARCHER: Well, no -- I would say my client and -
22 --

23 THE COURT: Well, I'll have you introduce your
24 client separately. We'll go over him separately.

25 MR. ARCHER: And my witnesses are listed on their

1 list too.

2 THE COURT: Okay. All right.

3 (Whereupon, the jury pool enters the courtroom at 11:55
4 a.m.)

5 THE CLERK: All the jurors are present.

6 THE COURT: Thank you. Good afternoon, ladies and
7 gentlemen. I haven't had the pleasure of meeting you yet.
8 Let me introduce myself to you. My name is Roger Couch. I
9 am a circuit court judge from Spartanburg, South Carolina.
10 My normal circuit that I operate in Spartanburg is the
11 Seventh Judicial Circuit. Of course, circuit judges do
12 ride circuits. We move around the state and it's my
13 pleasure to be serving this week in Charleston County at a
14 one-week term of General Sessions Court. Now, I believe
15 you were involved in some type of jury selection earlier
16 for Common Pleas Court and I'll explain, and it may have
17 already been explained to you, but our circuit court is
18 divided into two divisions. One is the Court of Common
19 Pleas which involves civil matters where people are seeking
20 monetary damages for various reasons. The other division
21 of the circuit court is the Court of General Sessions,
22 that's court that I'm involved in. Those involved, those
23 cases involve situations where a citizen has been accused
24 of a commission of a crime. So the matters that will come
25 before me this week involve criminal matters, primarily. I

1 want to thank you very much for your willingness to come
2 forward and serve on the jury this week. I know you didn't
3 have much choice. You got a subpoena to be here and you
4 felt compelled to be here, but you did appear voluntarily.
5 We didn't have to send the sheriff out to find you or force
6 you to be here and I will tell you that if it weren't for
7 good citizens such as yourselves who are willing to come
8 forward and serve on juries, our system could not function
9 as it was designed to function by forefathers both in the
10 Constitution of this State and of the United States. Every
11 citizen in this state is guaranteed the right to a trial by
12 a jury and your presence allows us to afford that right to
13 the people involved in this court this week. So again
14 thank you for your service. I believe that service on a
15 jury is the second highest service a citizen could render
16 to one's government. Of course, the highest level would be
17 service in the military. We're not asking anyone to serve
18 with a weapon this week, but, again any time you do service
19 for your government it's an inconvenience in your personal
20 life. I appreciate that. I'll do everything that I can do
21 to lessen that inconvenience, but the nature of the beast
22 is that you will be inconvenience somewhat. So, again,
23 thank you for your appearance and your willingness to
24 serve.

25 Now, we're going to begin jury selection in the case

1 of the State of South Carolina versus Tapioca Dangelo
2 Green. Before we do that I'm going to give you some
3 information that perhaps will assist you in answering some
4 questions that I'm going to ask that applies specifically
5 to this case. It's very important that the information
6 that you provide during this time is truthful, accurate and
7 complete information because you see later on, I'll be
8 making some decisions as to your qualifications to serve on
9 the jury and, of course, the attorneys later on will be
10 making decisions concerning the exercise of their right to
11 strike a jury, to strike people from the jury list, that
12 right is guaranteed by law and, of course, they will be
13 basing their decisions somewhat on the information you give
14 us at this time. So it's important that you give us
15 truthful, accurate, and complete information. I'll do what
16 I can to assist you in that regard.

17 The first thing I'm going to do is I'm going to go
18 over with you the documents that have brought this case
19 into this court. The documents that bring a criminal
20 matter before the court of general sessions are what we
21 refer to as indictments. The indictments informed this
22 court of the charges to be tried, they inform the defendant
23 of the charges lodged against the defendant. They are not
24 evidence in a case. They can't be used by jury in any
25 manner, whatsoever, in determining the guilt or the

1 innocence of someone named in those documents, but they do
2 provide us with the information concerning the allegations.
3 This may assist you in responding to my questions once I've
4 given this information to you.

5 The first indictment, and they're three of them in
6 this case, the first indictment I'll discuss is case number
7 2015-GS-10-5983. This indictment is for the offense of
8 armed robbery. The indictment states, "that on or about
9 April 14, 2015 in Charleston County, South Carolina, the
10 defendant, Tappia Dangelo Green, by use of force, threats,
11 or intimidation and while armed with a deadly weapon or
12 while alleging either by action or words, he was armed
13 while using a representation of a deadly weapon or any
14 object which a person present during the commission of a
15 robbery reasonably believed to be a deadly weapon, did take
16 and carry away goods and/or monies from the person or
17 immediate possessions, possession or immediate presence of,
18 Keith DeShawn Lee, with the intent to permanently deprive
19 the victim of the possession thereof in Violation of Code
20 Section 16-11-330 (a) of the Code of Laws of South
21 Carolina, 1976, as amended, against the peace and dignity
22 of the state and contrary to the statutes in such case made
23 and provided."

24 The second indictment is case 15-5982. This
25 indictment is for the offense of kidnapping. The

1 indictment states, "that in Charleston County, South
2 Carolina, on or about April 14, 2015 the defendant, Tappia
3 Dangelo Green, unlawfully did seize, confined, inveiled
4 decoyed, kidnap, abduct or carried away the victim, Keith
5 DeShawn Lee, without authority of law all in Violation of
6 Code Section 16-3-910 of the Code of Laws of South
7 Carolina, 1976, as amended, against the peace and dignity
8 of the state and contrary to the statue in such case made
9 and provide."

10 The last indictment is case 15-5984. This is for the
11 possession of a weapon during the commission of a violent
12 crime. And it states, "that in Charleston County, South
13 Carolina, on or about April 14, 2015 the defendant, Tappia
14 Dangelo Green, did possess a firearm or did visibly
15 displayed what appeared to be a firearm or did visibly
16 displayed a knife during the commission of or attempted of
17 commission of a violent crime to wit: kidnapping and/or
18 armed robbery in Violation of Code Section 16-23-490 of the
19 Code of Laws of South Carolina, 1976, as amended, against
20 the peace and dignity of the state and contrary to the
21 statue in such case made and provided."

22 Again, those are the charges that are before the
23 Court. I give you that information so that you'll
24 understand what the case is about, what's alleged, and
25 perhaps that will help you answer the questions I'm about

1 to ask.

2 Also I want the parties who are involved in the case
3 to introduce themselves to you. Of course, prosecuting the
4 case is the State of South Carolina so I'll ask that the
5 prosecution introduce themselves to you, first.

6 MR. COOPER: Thank you, Judge. Good afternoon my
7 name is Daniel Cooper, with me is assistant solicitor Burns
8 Wetmore. We both work for your elected solicitor in
9 Charleston County, Scarlett Wilson. You also may seen my
10 investigator, Ray Haupt, also coming back and forth
11 throughout the trial. Thank you.

12 THE COURT: Thank you very much. And if the
13 defense attorney would introduce himself and then introduce
14 his client to the jury?

15 MR. ARCHER: Yes, ma'am. Yes, sir. I am Mark
16 Archer. I'm an old timer. I've been practicing law forty-
17 six years. This is my client, would you stand up,
18 Tappia Green. All right.

19 (Whereupon, the defendant complies)

20 THE COURT: All right. Thank you very much. You
21 can be seated.

22 THE COURT: Now, ladies and gentlemen, I indicated
23 to you that it's important that you provide truthful
24 information to us during this jury selection process. I
25 realize that you were sworn earlier during qualification

1 concerning your responses but we're starting this trial,
2 I'll all asked that you take the oath in this trial as
3 well. Madam, Clerk, if you'll place a jury under oath?

4 THE CLERK: Ladies and gentlemen, if you would
5 please stand, raise your right hands.

6 (Whereupon, the jury pool complies)

7 THE CLERK: Do y'all swear or affirm to answer
8 truthfully all questions asked you by this Court so help
9 you God? Please indicate by saying, "I do."
10 (Whereupon, the jury was sworn and all indicated they
11 would)

12 THE CLERK: If you accepted this oath please have a
13 seat, if not just remain standing.
14 (Whereupon, no one is standing)

15 THE COURT: All right. The record will reflect
16 that all jurors have been sworn concerning their responses
17 they're about to give. We'll follow the same process that
18 you probably followed during qualification. I'll ask
19 questions. I'll ask you if you have a response to the
20 questions to please stand. I'll call on you individually
21 to receive whatever responses you have to the question.
22 I'll need your name and juror number from you before I
23 discuss any response you might have to the questions that
24 I'm about to ask. That allows us later on if we read the
25 transcript to identify exactly who I am talking to at any

1 given time. So I will need your name and number as we
2 proceed with any responses.

3 **JURY SELECTION:**

4 THE COURT: Now, the first question I have, is
5 there any member of the jury panel who has ever been
6 related by marriage or related by blood to either the
7 defendant in this case, Tappia Dangelo Green, or the
8 alleged victim, Keith DeShawn Lee so, if you are related in
9 that fashion to either of them please stand?
10 (Whereupon, no one is standing)

11 THE COURT: Is there any member of the jury panel
12 who has ever had a close personal, social, or any type of
13 business relationship with either the defendant, Tappia
14 Green, or the alleged victim, Keith DeShawn Lee, if you had
15 such a relationship, please stand?
16 (Whereupon, no one is standing)

17 THE COURT: Now, as to the attorneys that are
18 involved in this case as any member of the jury panel ever
19 been represented by any of the attorneys involved in this
20 case or have they ever appeared on the other side of a
21 legal matter from you, if that has occurred, please stand?
22 (Whereupon, no one is standing)

23 THE COURT: Now, is there any member of the jury
24 panel who has ever been related by marriage or are you
25 related by blood or have you ever had a close personal,

1 social or business relationship with any of the attorneys
2 involved in this trial, if that is true, please stand?

3 (Whereupon, a juror stood up)

4 THE COURT: Ma'am, I need your name and number?

5 POTENTIAL JUROR #137: Melissa Fried.

6 THE COURT: Yes, ma'am.

7 POTENTIAL JUROR #137: Your Honor, I'm an attorney
8 with Nexsen Pruet, but besides that my fiancé has a close
9 relationship with the solicitor's office and I know him in
10 passing ---

11 THE COURT: All right. Well, let me ask you, with
12 those facts if you were seated on the jury, would those
13 relationships affect your ability to be fair and impartial
14 to both the State and the defense?

15 POTENTIAL JUROR #137: No, sir, Your Honor.

16 THE COURT: Okay. Thank you very much. You can be
17 seated. Anyone else?

18 (Whereupon, no one else is standing)

19 THE COURT: I'm now going to go over a list of
20 people who have been identified to me as potential
21 witnesses in the case. There's about fourteen names on
22 there so listen carefully as I go along. I'll be asking
23 about them as a group once I finish going over the possible
24 witnesses in the case. Of course, they've identified the
25 alleged victim, Keith Lee; Karissa Aiken; Johnathan

1 Johnson, Anthony Moore, and if there's any identifying
2 information I'll give you that. Next is, Jackie Smart, who
3 is an employee of Hardee's at Houston Northcutt Boulevard;
4 Alex Kaufman with progressive insurance; Office Tracey
5 Williams with the North Charleston Police Department;
6 Detective Jennifer Butler with the North Charleston Police
7 Department; MPO Michael Cook with the North Charleston
8 Police Department; CST Lisa Kubicsko, K-u-b-I-c-s-k-o, with
9 the North Charleston Police Department; Office Kevan
10 Sherbine with the Sheriff's Office, it's the Sheriff Al
11 Cannon Detention Center; Investigator Ray Haupt, H-a-u-p-t,
12 with the Ninth Circuit Solicitor's Office; Danny Conyers
13 with Wells Fargo; Jason Monroe, is that last name ---

14 MR. COOPER: Monroe, Judge.

15 THE COURT: --- Monroe, I'm sorry I didn't read it
16 properly and he's with the North Charleston Police
17 Department. Now, as to those ---

18 MR. ARCHER: I might have one other, Your Honor, and
19 that's Shania Burden?

20 THE COURT: Shania Byrd?

21 MR. ARCHER: Burden.

22 THE COURT: Burden.

23 MR. ARCHER: Burden, B-u-r-d-e-n.

24 THE COURT: Burden.

25 MR. ARCHER: Yeah.

1 THE COURT: B-u-r-d-e-n. All right. As to those
2 people that I've called, the names that I've given you, is
3 there any member of the jury panel who has ever been
4 related by marriage, or you related by blood or have you
5 ever had a close, personal, social or business relationship
6 with anyone that I have identified as a possible witness in
7 this trial, if that applies to you, please stand?

8 (Whereupon, no one is standing)

9 THE COURT: Has any member of the jury panel or a
10 member of your immediate family or a close personal friend
11 of yours ever had any criminal charges which were
12 adjudicated by the Ninth Circuit Solicitor's Office.
13 That's the circuit solicitor's office in this circuit, the
14 Ninth Circuit, if that applies to you, please stand?

15 (Whereupon, jurors stands up)

16 THE COURT: Yes, sir, name and number?

17 POTENTIAL JUROR #33: Sam Boyle.

18 THE COURT: Yes, sir.

19 POTENTIAL JUROR #33: My son was charged with
20 possession with intent to distribute in Mount Pleasant.

21 THE COURT: I see.

22 POTENTIAL JUROR #33: His case was handled here.

23 THE COURT: Now, would that fact affect her ability
24 to be fair and impartial if you were seated on the jury?

25 POTENTIAL JUROR #33: I don't know.

1 THE COURT: Well, sir, if it would have some
2 affect, you need to tell me. Apparently, you think it
3 would. Or can you be impartial to both sides in this
4 trial?

5 POTENTIAL JUROR #33: I would be extremely skeptical.

6 THE COURT: All right, sir, then I'm going to ask
7 you to have a seat and I'm going to excuse you from the
8 trial of the case. You no longer have to answer my
9 questions in this matter. Ma'am, name and number?

10 POTENTIAL JUROR #23: Carroll Belser, sir. Number
11 32. (sic)

12 (Whereupon, the juror reserved the numbers)

13 THE COURT: Yes, ma'am.

14 POTENTIAL JUROR #23: I'm not sure whether this has
15 any effect but my brother was arrested thirty-two (32)
16 years ago or thirty years ago ---

17 THE COURT: It's been a while.

18 POTENTIAL JUROR #23: --- for -- pot ---

19 THE COURT: Now, would that fact affect your
20 impartiality in this case?

21 POTENTIAL JUROR #23: Not at all.

22 THE COURT: Thank you. You can be seated. Anyone
23 else?

24 (Whereupon, no one is standing)

25 THE COURT: Has any member of the jury panel ever

1 served as a witness in either a civil or a criminal case,
2 if that's true, please stand?

3 (Whereupon, no one is standing)

4 THE COURT: Has any member of the jury panel or a
5 member of your immediate family or a close personal friend
6 of yours ever been charged with a commission of a crime, if
7 that's true, please stand?

8 (Whereupon, jurors stand up)

9 THE COURT: Yes, sir. Name and number?

10 POTENTIAL JUROR #100: Wesley Delancey, number 100.

11 THE COURT: Yes, sir.

12 POTENTIAL JUROR #100: I was charged like two and half
13 years ago on New Year's Eve for disorderly conduct.

14 THE COURT: Has the case been ended now?

15 POTENTIAL JUROR #100: Yeah. They dropped it.

16 THE COURT: Okay. Now, would that fact affect your
17 impartiality in this trial?

18 POTENTIAL JUROR #100: No.

19 THE COURT: Thank you, sir. Ma'am, name and
20 number?

21 POTENTIAL JUROR #315: My name is Monica Sallisnelson.
22 My number is 315. My brother-in-law has been charged with,
23 I'm not sure what he's charged with but he's serving time n
24 now.

25 THE COURT: I see. Now, ma'am, would that fact

1 affect your impartiality in this case?

2 POTENTIAL JUROR #315: No.

3 THE COURT: Thank you, ma'am. You can be seated.

4 Has any member of the jury panel or a member of your

5 immediate family or a close personal friend of yours ever

6 been incarcerated, in other words, been placed in a

7 detention facility, if that's true, please stand?

8 (Whereupon, jurors stand)

9 THE COURT: Name and number, ma'am?

10 POTENTIAL JUROR #23: Carol Belser, number 32. (sic)

11 (Whereupon, the juror reserved the number)

12 THE COURT: Same case that we were talking about
13 earlier?

14 POTENTIAL JUROR #23: Yeah.

15 THE COURT: Would that affect your impartiality,
16 ma'am?

17 POTENTIAL JUROR #23: No.

18 THE COURT: Thank you. Sir, name and number
19 please?

20 POTENTIAL JUROR #100: Wesley Delancey, just for the
21 night.

22 THE COURT: Same case we're talking about earlier?

23 POTENTIAL JUROR #100: Yeah.

24 THE COURT: Would it affect your impartiality?

25 POTENTIAL JUROR #100: No.

1 THE COURT: Thank you, sir. Ma'am, name and
2 number?

3 POTENTIAL JUROR #137: Melissa Fried.

4 THE COURT: Yes, ma'am.

5 POTENTIAL JUROR #137: One night, my brother, DUI.

6 THE COURT: Would that affect your impartiality in
7 this matter?

8 POTENTIAL JUROR #137: No, it would not.

9 THE COURT: Thank you. Ma'am, name and number?

10 POTENTIAL JUROR #185: Cindy Hope, 185. My brother-
11 in-law was incarcerated in California. He's deceased.

12 THE COURT: I see. Would that affect your
13 impartiality in this matter?

14 POTENTIAL JUROR #185: No, it would not.

15 THE COURT: Thank you. Ma'am, name and number?

16 POTENTIAL JUROR #179: 179, Kathleen Hill. My sister
17 is at the detention.

18 THE COURT: All right. Would that affect your
19 impartiality, ma'am?

20 POTENTIAL JUROR #179: No, sir.

21 THE COURT: Thank you. Ma'am, name the number?

22 POTENTIAL JUROR #176: Michelle Hewitt, 176. I have a
23 cousin who was incarcerated. He was drinking and driving
24 and killed someone.

25 THE COURT: I see. Now, would that affect your

1 impartiality in this trial?

2 POTENTIAL JUROR #176: No.

3 THE COURT: Thank you. I had someone standing over
4 here, they sat back down. Do you need to respond or you
5 don't have a response?

6 POTENTIAL JUROR #344: I think ---

7 THE COURT: Stand up for me please. You were
8 standing earlier?

9 POTENTIAL JUROR #344: Correct.

10 THE COURT: All right. Do you have a response to
11 the question?

12 POTENTIAL JUROR #344 #: No.

13 THE COURT: Okay. Thank you very much.

14 COURT REPORTER: What's your number?

15 THE COURT: What's your number, ma'am?

16 POTENTIAL JUROR #344: 344.

17 THE COURT: Okay. Thank you.

18 COURT REPORTER: She said 344?

19 THE COURT: I think she said 344. Is that right?

20 POTENTIAL JUROR #344: Yes, sir, 344.

21 THE COURT: All right. Thank you, ma'am. Is there
22 any member of the jury panel or a member of your immediate
23 family or a close personal friend of yours who lives on or
24 Near Orangeburg Street in North Charleston, if that's true
25 please stand?

1 (Whereupon, no one is standing)

2 THE COURT: Is there any member of the jury panel
3 or a member of your immediate family or a close personal
4 friend of yours who works at the Hardee's on Houston
5 Northcutt Boulevard in Mount Pleasant, if that's true
6 please stand?

7 (Whereupon, no one is standing)

8 THE COURT: Is there any member of the jury panel
9 who would have any problem with following the law as
10 charged to you by me during the trial even if you feel that
11 the law is inappropriate or unfair? So, I guess the
12 question is, would you have any difficulty in applying the
13 law as charged to you by the judge even though you may
14 disagree with the law, if anyone has a problem with doing
15 that please stand?

16 (Whereupon, no one is standing)

17 THE COURT: Is there any member of the jury panel
18 who has a political or a religious belief that would make
19 it difficult for you to sit in judgment or on a jury in a
20 criminal case, if that's true please stand?

21 (Whereupon, no one is standing)

22 THE COURT: Has any member of the jury panel either
23 gathered or received any information about the issues that
24 might be involved in the trial of the case such that it
25 might have caused you to either form or express an opinion

1 concerning those issues? So if you've gathered any
2 information that may have caused you to have an opinion or
3 a belief about the issues in this case please stand?

4 (Whereupon, no one is standing)

5 THE COURT: Is there any member of the jury panel
6 who is aware of any bias or prejudice that you might have,
7 either for or against either the state or the defense in
8 this case, so if you are aware of such a bias or prejudice
9 to please stand.

10 (Whereupon, no one is standing)

11 THE COURT: Is there any member of the jury panel
12 who may have served as a member of the grand jury that
13 issued the indictments in this case, those indictments were
14 issued on November 3, 2015, so if you were a member of that
15 grand jury please stand?

16 (Whereupon, no one is standing)

17 THE COURT: Is there a member of the jury panel who
18 is a member of or a contributor to any group which has as
19 its primary concern or focus either the promotion of law
20 enforcement and/or victims rights, these groups would
21 include but not be limited to groups like mothers against
22 drunk drivers, students against drunk driving, citizens
23 against violent crime, the South Carolina Sheriff's
24 Association's, the South Carolina Troopers Association or
25 any similar oriented organizations, so if you are a member

1 of or a contributor of such a group please stand?

2 (Whereupon, jurors stand)

3 THE COURT: Name and number, sir?

4 POTENTIAL JUROR 237 #: Sir, my name is Richard Mabe
5 and my number is 237.

6 THE COURT: Yes, sir. And you are?

7 POTENTIAL JUROR 237#: I am a contributor to the ACLU.

8 THE COURT: I see. Now, would that fact affect
9 her ability to be fair and impartial in the trial?

10 POTENTIAL JUROR #237: No, sir, it would not.

11 THE COURT: Thank you very much. Ma'am, name and
12 number?

13 POTENTIAL JUROR #185: Cynthia Hope, 185.

14 THE COURT: Yes, ma'am.

15 POTENTIAL JUROR #185: ACLU and ---

16 THE COURT: I see. Now, would those facts affect
17 your ability to be fair and impartial to this trial?

18 POTENTIAL JUROR #185: No, it wouldn't, sir.

19 THE COURT: Okay. Thank you.

20 MR. ARCHER: What was that jurors number, Your
21 Honor?

22 THE COURT: Your number, ma'am?

23 POTENTIAL JUROR #185: 185.

24 THE COURT: 185.

25 MR. ARCHER: 185.

1 THE COURT: All right. Thank you. Anyone else?
2 (Whereupon, no one is standing)

3 THE COURT: Now, does any member of the jury panel
4 know of any reason whatsoever why he or she should not
5 serve as a juror in this case with particular emphasis
6 being placed upon your ability to be both fair and
7 impartial to both the state and the defense, so if you are
8 aware of any such reason please stand?
9 (Whereupon, no one is standing)

10 THE COURT: Does the State request any additional
11 questions?

12 MR. COOPER: No, sir.

13 THE COURT: Any from the defense?

14 MR. ARCHER: No, Your Honor.

15 THE COURT: All right. I'll declare the remaining
16 members of the jury panel to be qualified to serve as
17 jurors in this case.

18 Now, ladies and gentlemen the clerk is at this time
19 going over and using a computer program approved by the
20 court system to select a number of people from your group.
21 We're going to call the names on that list in the order in
22 which they are placed on the list by the computer. So it's
23 a random selection from your group. Later on, we're going
24 to call your name and when your name is called I'm going to
25 ask that you stand up, come forward, come to this lectern

1 here in the center of the courtroom, turned and faced the
2 back door of the courtroom and at that time the lawyers
3 will be in the position to exercise their strikes.

4 In this case the State gets five strikes and the
5 defense gets ten. We'll pick one alternate. The State
6 having one strike. The defense having two strikes.

7 Now, if you have any personal belongings in your
8 possession, a purse, pocketbook, a book, or a jacket, bring
9 that with you when you come forward. If you're selected to
10 serve on the jury you're going to have a seat right over
11 here in the box across the courtroom as a member of the
12 jury panel, you won't be returning to your seat. So bring
13 anything you brought in the courtroom with you so that you
14 can maintain your possession of those items so don't leave
15 them back at your seat.

16 (Whereupon, the clerk conforms a jury list)

17 THE COURT: All right, Ms. Davey, you can begin the
18 jury selection process.

19 THE CLERK: Juror number 249, Octagious Mazyck.

20 POTENTIAL JUROR #249: Octagious.

21 THE CLERK: Octagious, sorry.

22 (Whereupon, a black female comes forward)

23 THE COURT: Right up here on the lecture, ma'am, if
24 you'll stand there and face the back door of the courtroom
25 for me. Thank you very much. That's where I want you to

1 be.

2 MR. ARCHER: Please seat, Ms. Mazyck please

3 THE COURT: The State goes first.

4 MR. ARCHER: Oh, I'm sorry.

5 THE CLERK: What say you for the State?

6 MR. COOPER: Please seat this juror.

7 THE CLERK: What say you for the Defendant?

8 MR. ARCHER: Please seat Ms. Mazyck.

9 THE CLERK: Ma'am, if you would please head up the
10 ramp and have a seat in the jury box. You have been
11 selected for a juror for the trial of this case. Juror
12 number 23, Carroll Belser.

13 (Whereupon, a white female comes forward)

14 THE CLERK: What say you for the State?

15 MR. COOPER: Please seat this juror.

16 THE CLERK: What ---

17 MR. ARCHER: Please excuse the juror.

18 THE CLERK: Ma'am, you may have a seat back in the
19 audience. You've been excused from the trial in this case.
20 Juror number 275, Sandy Ogden.

21 (Whereupon, a white male come forward)

22 THE CLERK: What say you for the State?

23 MR. COOPER: Please seat this juror.

24 THE CLERK: What say you for the Defendant?

25 MR. ARCHER: Please excuse this juror.

1 THE CLERK: Sir, you can have a seat back in the
2 audience. You have an excuse from the trial in this case.
3 Juror number 298, Daniel Raymond.

4 (Whereupon, a white male come forward)

5 THE CLERK: What say you for the State?

6 MR. COOPER: Please seat the juror.

7 THE CLERK: What say you for the Defendant?

8 MR. ARCHER: Seat the juror please.

9 THE CLERK: Sir, please head up the ramp. Have a
10 seat in the jury box. You have been selected as a juror
11 for the trial of this case. Juror number 170, Ashley
12 Hawkins.

13 (Whereupon, a white female comes forward)

14 THE CLERK: What say you for the State?

15 MR. COOPER: Please seat this juror.

16 THE CLERK: What say you for the Defendant?

17 MR. ARCHER: Please excuse the juror.

18 THE CLERK: Ma'am, if you'll have a seat back in
19 the audience. You are excused from the trial in this case.
20 Juror number 215, Ewa Kotlowski.

21 (Whereupon, a white female comes forward)

22 THE CLERK: What say you for the State?

23 MR. COOPER: Please seat this juror.

24 THE CLERK: What say you for the Defendant?

25 MR. ARCHER: Strike the juror please.

1 THE CLERK: Ma'am, have a seat back in the
2 audience. You been excused from the trial in this case.
3 Juror number 210, Carol Kilpatrick.

4 (Whereupon, a white female comes forward)

5 THE CLERK: What say you for the State?

6 MR. COOPER: Please seat this juror.

7 THE CLERK: What say you for the Defendant?

8 MR. ARCHER: Please strike the juror.

9 THE CLERK: Ma'am, you may have a seat back in the
10 audience. You been excused from the trial in this case.
11 Juror number 235, Carol Lucas.

12 (Whereupon, a white male come forward)

13 THE CLERK: What say you for the State?

14 MR. COOPER: Please seat this juror.

15 THE CLERK: What say you for the Defendant?

16 MR. ARCHER: Please seat Ms. Lucas.

17 THE CLERK: Ma'am, would you please head up the
18 ramp and have a seat in the jury box. You have been
19 selected as a juror for the trial in this case. Juror
20 number 359, Lyndsey Walker.

21 (Whereupon, a white female comes forward)

22 THE CLERK: What say you for the State?

23 MR. COOPER: Please excuse this juror.

24 THE CLERK: Ma'am, you can have a seat back in the
25 audience. You have been excused from the trial in this

1 case. Juror number 228, Jessica Lilly.

2 (Whereupon, a white female comes forward)

3 THE CLERK: What say you for the State?

4 MR. COOPER: Please seat this juror.

5 THE CLERK: What say you for the Defendant?

6 MR. ARCHER: Please seat the juror.

7 THE CLERK: Ma'am, please head to the ramp and have
8 a seat in the jury box. You've been selected as a juror
9 for the trial of this case. Juror number, 270, Loretta
10 Nethercot.

11 THE CLERK: What say you for the State?

12 MR. COOPER: Please seat this juror.

13 THE CLERK: What say you for the Defendant?

14 MR. ARCHER: Please excuse the juror.

15 THE CLERK: Ma'am, you can have a seat back in the
16 audience. You have been excused for trial in this case.
17 The defendant has now used six of the ten strikes. Juror
18 number 303, Linda Reiter.

19 (Whereupon, a white female comes forward)

20 MR. ARCHER: What was that number?

21 THE CLERK: 303.

22 MR. ARCHER: 303.

23 THE CLERK: What say you for the State?

24 MR. COOPER: Please seat this juror.

25 THE CLERK: What say you for the Defendant?

1 MR. ARCHER: Please seat the juror.

2 THE CLERK: Ma'am, you have a seat in the jury box.

3 You been selected as a juror for the trial of this case.

4 Juror number 309, Albertha Rivers.

5 (Whereupon, a black female comes forward)

6 THE CLERK: What say you for the State?

7 MR. COOPER: Please seat this juror.

8 THE CLERK: What say you for the Defendant?

9 MR. ARCHER: Please seat Ms. Rivers.

10 THE CLERK: Ma'am, would you please have a seat in

11 the jury box. You have been selected as a juror for the

12 trial of this case. Juror number 29, Derick Blakey.

13 THE CLERK: What say you for the State?

14 MR. COOPER: Please seat this juror.

15 THE CLERK: What say you for the Defendant?

16 MR. ARCHER: Please seat Mr. Blakey.

17 THE CLERK: Sir, if you'll walk up the ramp and

18 have a seat in the jury box. You been selected as a juror

19 for the trial of this case. Juror number 280, Laura

20 Pavlides.

21 (Whereupon, a white female comes forward)

22 THE CLERK: What say you for the State?

23 MR. COOPER: Please seat this juror.

24 THE CLERK: What say you for the Defendant?

25 MR. ARCHER: Please seat the juror.

1 THE CLERK: Ma'am, if you would please have a seat
2 in the jury box. You have been selected as a juror for the
3 trial of this case. Juror number 176, Michelle Hewitt.

4 (Whereupon, a white female comes forward)

5 THE CLERK: What say you for the State?

6 MR. COOPER: Please seat this juror.

7 THE CLERK: What say you for the Defendant?

8 MR. ARCHER: Please seat Ms. Hewitt.

9 THE CLERK: Ma'am, please have a seat in the jury
10 box. You have been selected as a juror for the trial of
11 this case. Juror number 124, Ashley Fazio.

12 (Whereupon, a white female comes forward)

13 THE CLERK: What say you for the State?

14 MR. COOPER: Please seat this juror.

15 THE CLERK: What say you for the Defendant?

16 MR. ARCHER: Please excuse Ms. Fazio.

17 THE CLERK: Ma'am, you may have a seat back in the
18 audience. You been excused from the trial of this case.
19 Juror number 16, Aaron Barney.

20 (Whereupon, a white male come forward)

21 THE CLERK: What say you for the State?

22 MR. COOPER: Please seat this juror.

23 THE CLERK: What say you for the Defendant?

24 MR. ARCHER: Please seat the juror.

25 THE CLERK: Sir, would you please have a seat in

1 the jury box. You have been selected as a juror for the
2 trial of this case. Juror number 179, Kathleen Hill.

3 (Whereupon, a white female comes forward)

4 THE CLERK: What say you for the State?

5 MR. COOPER: Please seat this juror.

6 THE CLERK: What say you for the Defendant?

7 MR. ARCHER: Please excuse Ms. Hill.

8 THE CLERK: Ma'am, you may have a seat back in the
9 audience. You been excused from the trial in this case.
10 The defendant has now two strikes remaining. Juror Number
11 344, Anne Sullivan.

12 (Whereupon, a white female comes forward)

13 THE CLERK: What say you for the State?

14 MR. COOPER: Please excuse this juror.

15 THE CLERK: Ma'am, you may have a seat back in the
16 audience. You have been excused from the trial in this
17 case. Juror number 226, Joseph Lenihan.

18 (Whereupon, a white male come forward)

19 THE CLERK: What say you for the State?

20 MR. COOPER: Please seat this juror.

21 THE CLERK: What say you for the Defendant?

22 MR. ARCHER: Please strike Mr. Lenihan.

23 THE CLERK: Sir, you can have a seat back in the
24 audience. You been excused from the trial in this case.
25 The defendant now has one strike remaining. Juror number

1 2, Christopher Adams.

2 (Whereupon, a white male come forward)

3 THE CLERK: What say you for the State?

4 MR. COOPER: Please excuse this juror.

5 THE CLERK: Sir, you may have a seat back in the
6 audience. You have been excused from the trial in this
7 case. Juror number 100, Wesley Delancey.

8 (Whereupon, a white male come forward)

9 THE CLERK: What say you for the State?

10 MR. COOPER: Please seat this juror.

11 THE CLERK: What say you for the Defendant?

12 MR. ARCHER: Please seat Mr. Delancey.

13 THE CLERK: Sir, please have a seat in the jury
14 box. You been selected as a juror for the trial in this
15 case. Juror number 197, Ann Johnson.

16 (Whereupon, a white female comes forward)

17 THE CLERK: What say you for the State?

18 MR. COOPER: Please seat this juror.

19 THE CLERK: What say you for the Defendant?

20 MR. ARCHER: Please seat the juror.

21 THE CLERK: Ma'am, please have a seat in the jury
22 box. You been selected as a juror for the trial of this
23 case.

24 THE COURT: We are now selecting the alternates.

25 MR. COOPER: Your Honor, can I ask that we have two

1 alternates? Would that be okay with the Court ?

2 THE COURT: I don't have any problem with the
3 seating of two. Any objection?

4 MR. ARCHER: No objection, Your Honor.

5 THE COURT: All right. One strike the state, two
6 from the defense on each.

7 MR. COOPER: Thank you, judge.

8 THE CLERK: Juror number 211, Patrick King.

9 (Whereupon, a white male come forward)

10 THE CLERK: What say you for the State?

11 MR. COOPER: Please seat this juror.

12 THE CLERK: What ---

13 MR. ARCHER: Please excuse the juror.

14 THE CLERK: Sir, please have a seat back in the
15 audience. You have been excused from the trial in this
16 case. Juror number 106, Chade Devereese.

17 (Whereupon, a white male come forward)

18 THE CLERK: What say you for the State?

19 MR. COOPER: Please seat this juror.

20 THE CLERK: What say you for the Defendant?

21 MR. ARCHER: Please seat the juror.

22 THE CLERK: Sir, please have a seat in the jury
23 box. You have been selected for the trial in this case.
24 Juror number 2233, Isaiah Lowman.

25 (Whereupon, a white male come forward)

1 THE CLERK: What say you for the State?

2 MR. COOPER: Please seat this juror.

3 THE CLERK: What say you for the Defendant?

4 MR. ARCHER: Please excuse the juror.

5 THE CLERK: Sir, have a seat back in the audience.

6 You have been excused from the trial of this case. Juror
7 number 334, Christine Skope.

8 (Whereupon, a white female comes forward)

9 THE CLERK: What say you for the State?

10 MR. COOPER: Please seat this juror.

11 THE CLERK: What say you for the Defendant?

12 MR. ARCHER: Please seat the juror.

13 THE COURT: Ma'am, please have a seat in the jury
14 box. You've been selected for the trial of this case.

15 THE COURT: Thank you, Madam, Clerk. Any objection
16 to the jury selection process from, the State?

17 MR. COOPER: None from the State, judge.

18 THE COURT: Any from the defense?

19 MR. ARCHER: None from the defense, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, those
21 of you who have not been selected, what are we going to do
22 with them?

23 THE CLERK: Ladies and gentlemen, you have been
24 released for today. Please call that number, the jury
25 information line, on the card tonight after 6 PM and it

1 will give you your instructions for tomorrow. Thank y'all
2 so much for your patience this morning.

3 THE COURT: Thank you very much. Please leave
4 quietly please. Thank you.

5 (Whereupon, the remaining jury pool has been released for
6 today)

7 THE COURT: All right. Ladies and gentlemen, you
8 have been selected as members of the jury in this case.
9 There are some things I'd like to go over with you before
10 we break. We're going to be starting the actual trial of
11 the case involving you in the case in the morning so I am
12 releasing you for the rest of the afternoon. As far as the
13 Court is concerned I'll ask you to be back in the morning
14 in your jury room by 9:30. We should be in the position to
15 start shortly thereafter with the trial of the case.

16 Now, let me caution you about a few things. When you
17 return to the courtroom in this case you'll be taking an
18 oath concerning your responsibilities as juror. You'll
19 find that among the things that are in that oath that you
20 would be swearing, that you will decide this case based
21 solely upon the law and the evidence. Now, the only place
22 you're going to hear any law or any evidence that pertains
23 to this case is in this courtroom during this trial. In
24 other words, the evidence will be made up of the testimony
25 of witnesses that will testify from the witness stand, that

1 Don't discuss the case with anyone. Don't allow anyone to
2 discuss it with you. Should someone try to contact you
3 about your service on this jury please report that to the
4 Court as soon as possible.

5 Now, again I hope you have a great evening. We'll see
6 you at 9:30 in the morning. The bailiffs will show you how
7 to get back in here to the jury room in use for the trial.
8 You will report there in the morning at 9:30. Again we
9 should be in a position to start shortly, thereafter.
10 Again, I want to thank you very much for your willingness
11 to come forward and serve in the case. I look forward to
12 working with you on the case. We'll see you at 9:30 in the
13 morning. Thank you very much. By the way, I'll be asking
14 you about those instructions when you come back, please
15 follow them.

16 (Whereupon, the jury exits the courtroom at 1:03 p.m.)

17 THE COURT: All right. I'm going to instruct the
18 lawyers to have the witnesses available for the Neil vs.
19 Bigger hearing at 9:00 in the morning.

20 MR. COOPER: Yes, sir.

21 THE COURT: I'll be here ready to start that at
22 9:00.

23 MR. COOPER: Yes, sir.

24 THE COURT: Yes, sir.

25 MR. ARCHER: I don't know whether to make it now or

1 later but I will be making a motion to sequester their
2 witnesses to the trial.

3 THE COURT: Okay. And I normally do grant that but
4 I grant it both ways so if there's anyone you have here.
5 Now, do you have a chief investigator in the case?

6 MR. COOPER: I do, judge.

7 THE COURT: Who is that going to be?

8 MR. COOPER: Mr. Ray Haupt. He was on the witness
9 list. He's just handling another matter right now.

10 THE COURT: Okay. I understand but he will be
11 allowed to be in the courtroom.

12 MR. COOPER: Yeah, thank you. And the State has no
13 objection as to the sequestering ---

14 THE COURT: And the victim, the gentleman who was
15 allegedly kidnapped, he's allowed to be here as well.

16 MR. COOPER: And I've instructed my witnesses. We
17 usually try to do that for precaution, anyway.

18 THE COURT: Okay. All right. Nine o'clock in the
19 morning, we'll begin at that time with that hearing. Thank
20 you very much.

21 MR. COOPER: Thank you, judge.

22 (Whereupon, court was adjourned for day one of the trial
23 on May 22, 2017)

24

25

1 Tuesday, May 23, 2017 9:03 a.m.

2 Neil vs. Biggers Hearing

3 THE COURT: All right. Mr. Cooper, are you ready
4 to proceed?

5 MR. COOPER: Yes, sir, I am. I've got the video for
6 the hearing where it's showing the line-up ---

7 THE COURT: All right. Let me ask the defense, if
8 you would, you have a motion, I believe, concerning
9 identification, is that correct?

10 MR. ARCHER: Notification?

11 THE COURT: A motion.

12 MR. ARCHER: A motion.

13 THE COURT: Yes, sir. Are you moving to suppress
14 the identification or not?

15 MR. ARCHER: Yes, sir. Suppress.

16 THE COURT: Okay. All right. Thank you. You may
17 proceed, Mr. Cooper.

18 MR. COOPER: With it being Mr. Archer's motion,
19 would you like for him to call the witnesses since it's his
20 burden, his motion or would you like the State to call ---

21 THE COURT: I'm going to let you do that.

22 MR. COOPER: Okay. Yes, sir.

23 THE COURT: I don't know who you intend to use to
24 establish the efficacy of the ID.

25 MR. COOPER: Yes, sir. For the Court's information

Philip Monroe- Direct Examination by Mr. Cooper:

51

1 I have the sergeant who administered the line-up. I have
2 the victim who picked Mr. Green out of the line-up.

3 THE COURT: You may proceed.

4 MR. COOPER: Thank you. The State calls Sergeant
5 Jason Monroe.

6 THE COURT: All right. Sergeant Monroe, please.

7 (Whereupon, the witness was called to the courtroom)

8 THE COURT: Come forward, sir, to be sworn please.

9 THE CLERK: Good morning. If you want to head up
10 the ramp and meet me at the Bible please.

11 MR. ARCHER: Your Honor, I think we should sequester
12 the witnesses. I'm not sure who all these people are.

13 THE COURT: Let's find out, just one moment. Let's
14 get him sworn.

15 THE CLERK: If you would raise your right -- do you
16 swear or affirm the testimony you shall give shall be the
17 truth, the whole truth, and nothing but the truth so help
18 you God?

19 MR. MONROE: I do.

20 THE CLERK: Thank you. Please have a seat. And
21 once seated, if you can just state your first and last name
22 and spell your last name please.

23 MR. MONROE: Yes, ma'am. My name is Philip Monroe,
24 M-o-n-r-o-e.

25 THE COURT: All right. I have granted a defense

Philip Monroe- Direct Examination by Mr. Cooper:

52

1 motion to sequester witnesses so if there is anyone in the
2 courtroom who is a witness and is not a victim or the chief
3 investigator, you should leave the courtroom at this time.
4 (Whereupon, no one stands)

5 THE COURT: All right. You may proceed, counsel.

6 MR. COOPER: Thank you, Judge. May it please, the
7 Court?

8 THE COURT: Yes, sir.

9 MR. COOPER: And just for the Court's information
10 that is the victim and his fiancée, who will not testify.
11 The other three are law clerks with my office.

12 THE COURT: All right.

13 PHILIP MONROE, first being
14 duly sworn, testified as follows:

15 Direct Examination by Mr. Cooper:

16 Q. Sergeant Monroe, good morning?

17 A. Morning.

18 Q. Would you tell the Court where you're currently
19 employed?

20 A. I am currently employed with the City of North
21 Charleston Police Department.

22 Q. And how long have you been there?

23 A. Thirteen years, four months and some change.

24 Q. And what is your current job title?

25 A. I am the north bureau night supervisor.

1 Q. Back in April of 2015, what was your role at North
2 Charleston?

3 A. I was assigned as a detective in the white-collar
4 division of the detective bureau.

5 Q. How did you become involved in this case?

6 A. Detective Kaufman came to my desk and ask me if I
7 would show the victim of his crime a line-up.

8 Q. Okay. And did you know at this time who the victim
9 was?

10 A. No, I didn't.

11 Q. Did you know at this time who any of the suspects in
12 the case were?

13 A. No.

14 Q. Did you know, at all at that point, who was involved
15 in the line-up?

16 A. No.

17 MR. COOPER: May I approach the witness, Your Honor?

18 THE COURT: You may.

19 Q. If you'll look that and see if you recognize that for
20 me?

21 A. I do.

22 Q. What is that?

23 A. This is a North Charleston Police Department recorded
24 photographic line-up that was shown on 4/16/2015 at 4:20 in
25 the afternoon by me at city hall to a Keith Lee.

1 Q. How do you know that, that's the line-up that you
2 showed him?

3 A. Because my signature is affixed in the bottom left-
4 hand corner.

5 Q. And you have been trained how to administer the line-
6 ups?

7 A. Yes, I have.

8 Q. If you will explain to the Court, what is your
9 procedure when you administer a photo line-up to an
10 individual?

11 A. We do what is called a double-blind show up. So, in
12 other words, I have no idea who the suspect is. I have no
13 involvement in the case. So, therefore, I am completely
14 blind to who's in the line-up, what the result would be,
15 who I'm showing it to. I can't influence them in any way
16 because I know absolutely nothing about what's going on in
17 the case.

18 Q. The first sheet, the admonition form, what information
19 do you advise the person that you are showing the line-up
20 to?

21 A. So we read this series of instructions to them while
22 being videotaped inside the room. Would you like me to
23 read them out loud?

24 Q. Sure.

25 A. So the first (1) it says, "I'm going to show you a

1 series of photographs of individuals or an array of six
2 photographs of individuals circle the appropriate one,"
3 it's in parentheses. "These photographs may or may not be
4 the person who committed the crime. It is just important
5 to clear innocent people as it is to identify possible
6 suspects. Whether or not you identify someone the police
7 will continue to investigate." Number (3) is, "are you
8 done? I will not be -- after you are done, I will not be
9 able to provide you with any feedback or comment on the
10 results of the process." Number (4), "do not discuss this
11 identification procedure or the results with other
12 witnesses in this case." Number (5), focus on the event,
13 the place, view, the lighting, your frame of mind, etc.,
14 take as much time you need." Number (6), "people may not
15 appear exactly as they did at the time of the event because
16 of future, such clothing, style, hair color, hairstyle,
17 etc., may change even in a short period of time." Number
18 (7), "as you look at the photographs, tell me if you
19 recognize the person in them. If you do please tell me how
20 you know the person and in your own words, how sure you are
21 of the identification." And then at the bottom there's a
22 place where we write out what they tell us.

23 Q. So how do you ensure the individual you're showing the
24 line-up to understands that information?

25 A. We have them placed their initials to the right on the

1 blank to each one of them.

2 Q. And, in this case, did the individual put his initials
3 beside each of the information?

4 A. He did.

5 Q. Did he seem to you like he was alert and attentive of
6 understanding that information?

7 A. Yes.

8 Q. Okay. Was there anyone else in the room when you
9 administered the line-up to that individual?

10 A. No, it was just me.

11 Q. The pictures in the line-up, were they color or black
12 or white?

13 A. They're color.

14 Q. And are they face pictures or full life photos?

15 A. They're full on face photos.

16 Q. And is that form that you just went over for the
17 Court, the standard admonition form y'all use for photo
18 line-ups?

19 A. Yes, it is.

20 Q. When you administered the line-up to an individual, do
21 you do that one at a time? Do you do at all six? How do
22 you administer the photos?

23 A. I actually hand them the entire packet so that there
24 can be no question as to influencing it. I slide it over
25 to them and let them push them around, do whatever they

1 want to and look at them how they desire.

2 Q. In this situation, did the individual pick someone out
3 of the line-up?

4 A. Yes, they did.

5 Q. What number did he -- well, what individual did he
6 pick out of that line-up?

7 A. He said the person in number four.

8 Q. Were you are aware of who that individual was?

9 A. I have no idea who it is.

10 Q. Okay. And then you said before that you ask the
11 individual how sure they are of that identification?

12 A. Yes.

13 Q. What did he indicate to you?

14 A. He said he was seventy-five percent sure this is the
15 person who committed the crime.

16 Q. Do you remember him explaining to you why seventy-five
17 percent?

18 A. I want to say and I'll have to watch the video for the
19 exact wordage but it has something to do with, if he could
20 see the gold teeth then he would be hundred percent.

21 MR. COOPER: I beg the Court's indulgence for just
22 one second.

23 THE COURT: Yes, sir..

24 (Whereupon, the solicitor was setting up for video to be
25 seen)

1 Q. I believe the video will come up behind you. I'm just
2 going to ask you to identify the room that you and ---
3 (whereupon, they had a little difficulty with the
4 projector)

5 Q. Can you identify that room, sergeant?

6 A. That is an interview room at the North Charleston
7 Police Department in the detective bay.

8 Q. And is that you in the video?

9 A. That is me wearing the green shirt and a Clemson ---

10 Q. And is that the individual you showed the line-up to?

11 A. Yes.

12 Q. Did you know his name?

13 A. I did not know his name -- oh, I knew his name because
14 I wrote it on the sheet.

15 Q. And what was the name on the sheet?

16 A. Keith Lee.

17 Q. Okay. Now, when, I know you don't know when you were
18 doing a double line who's in the line-up, but when a line-
19 up is created is it created to have six individuals of
20 comparable size, proportion, color and things of that
21 nature?

22 A. Yes, it is. Sometimes are they're actually too close.
23 They're created by the jail or sled. Both use a form of
24 facial recognition software that creates said line-up so
25 all the facial features will be similar, we just have to

1 check for facial hair, complexion, stuff like that.

2 Q. Now, you testified earlier that at the time you did
3 not know who the individual was that the victim picked out,
4 do you now know who the individual number four is?

5 A. I still have no idea.

6 Q. All right. I'm going to play the video for you.

7 (Whereupon, the video was played)

8 Q. All right, sergeant, just a couple of more questions.
9 You said he picked out number four?

10 A. Yeah.

11 Q. Is that the one he signed and did on the video?

12 A. That is exactly what he was doing.

13 Q. And just to clarify again, you don't know who the
14 parties involved in the case at all?

15 A. No.

16 Q. So there couldn't be a chance for you to be able to
17 suggest somebody because you don't know the facts or the
18 parties?

19 A. Absolutely not.

20 Q. Sergeant, that's all the questions I have of you.
21 Would you please answer any the defense may have for you?

22 A. Yes, sir.

23 THE COURT: You may cross-examine.

24 MR. ARCHER: Okay.

25 Cross Examination by Mr. Archer:

Philip Monroe- Redirect Examination by Mr. Cooper:

60

1 Q. So he pick number four, right?

2 A. Yes, sir.

3 Q. And you don't know who that is?

4 A. No idea.

5 Q. Who knows who that is? Who, in the department, would
6 know who number four was?

7 A. Alex Kaufman, who is the lead detective on the case
8 and I can't remember who was his assistant, they would
9 know.

10 Q. Okay. And Mr. Kaufman is no longer with the
11 department?

12 A. No. He works for Geico.

13 Q. Geico, okay. And Mr. Lee said he would know -- he was
14 seventy-five sure?

15 A. Yes, sir, seventy-five sure.

16 Q. And that he would be sure if he could see gold teeth?

17 A. Yeah, he said if you can make and smiled in this
18 picture I could tell you it was hundred percent.

19 Q. Okay. A smile would ---

20 A. Yes.

21 Q. --- clarified everything.

22 MR. ARCHER: Okay. No questions.

23 THE COURT: Redirect?

24 MR. COOPER: Just briefly.

25 Redirect Examination by Mr. Cooper:

Philip Monroe- Redirect Examination by Mr. Cooper:

61

1 Q. You said that Alex Kaufman and his assistant may have
2 known who the individual in the line-up was?

3 A. Yes.

4 Q. Were they in the room at the time?

5 A. No.

6 MR. COOPER: No further questions, Your Honor.

7 THE COURT: Anything to follow up on that?

8 MR. ARCHER: No.

9 THE COURT: Sir, you may step down. Thank you very
10 much.

11 MR. MONROE: Thank you.

12 MR. COOPER: Your Honor, at this time the State
13 would call Keith Lee.

14 THE COURT: Sir, we were sequestering the witnesses
15 say you'll need to step out.

16 MR. MONROE: Yes, sir.

17 THE COURT: Thank you.

18 THE CLERK: Good morning. If you could head to the
19 ramp for me. If you would raise your right hand, left on
20 the Bible. Do you swear or affirm the testimony you shall
21 give will be the truth, the whole truth, and nothing but
22 the truth so help you God?

23 MR. LEE: Yes, ma'am.

24 THE CLERK: Please have a seat. And once seated,
25 if you can state your first and last name and spell us your

Keith Lee- Direct Examination by Mr. Cooper:

62

1 last name please.

2 MR. LEE: My name is Keith, last name Lee, L-e-e.

3 THE COURT: Your witness, counsel.

4 MR. COOPER: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 KEITH LEE, first being
7 duly sworn, testified as follows:

8 Direct Examination by Mr. Cooper:

9 Q. Good morning, Mr. Lee?

10 A. Good morning.

11 Q. How are you this morning?

12 A. I'm all right.

13 Q. Would you tell the Court how old you are, Mr. Lee?

14 A. The twenty-five years old.

15 Q. And Where do you currently live?

16 A. I live in Allendale, South Carolina.

17 Q. About how far is that away from Charleston?

18 A. That's about two hours and a half.

19 Q. Are you from there?

20 A. Yes, sir.

21 Q. You lived there your whole life?

22 A. Yes, sir.

23 Q. At some point, did you live in Charleston, South
24 Carolina?

25 A. Yes, sir.

1 Q. When was that?

2 A. February of 2015.

3 Q. When did you move back to Allendale?

4 A. August.

5 Q. Of the same year?

6 A. Yes, sir.

7 Q. What brought you down to Charleston?

8 A. I met a young lady.

9 Q. And who is that young lady?

10 A. Karissa Aiken.

11 Q. Were y'all in a relationship?

12 A. Yes, sir.

13 Q. Are y'all anymore?

14 A. No, sir.

15 Q. Where were you working when you lived in Charleston?

16 A. I was working in Hardee's in Mount Pleasant.

17 Q. How did you end up getting that job?

18 A. Through Karissa.

19 Q. Where did y'all live when you lived in Charleston?

20 A. I was living on Orangeburg Street right off of Rivers
21 in North Charleston.

22 Q. Did y'all have one car or two cars?

23 A. We had one car, sir.

24 Q. How would y'all, each of you get to work?

25 A. Sometimes she'll drive and sometimes I'd drive.

Keith Lee- Direct Examination by Mr. Cooper:

64

1 Q. You would drive her and take the car back?

2 A. Yes, sir.

3 Q. Do you remember the day of April 14, 2015?

4 A. Yes, sir.

5 Q. Why do you remember that day?

6 A. That's the day I was kidnapped and robbed.

7 Q. Okay. I want to take you just a little bit back
8 before that incident, what were you doing during the
9 morning of April 14, 2015?

10 A. I was getting ready to take Karissa to work.

11 Q. She had to work that day?

12 A. Yes, sir.

13 Q. Do you remember when she had to work?

14 A. It was that afternoon.

15 Q. In the afternoon?

16 A. Yes, sir.

17 Q. Did you have to work that day?

18 A. No, sir.

19 Q. Was that also payday?

20 A. Yes, sir.

21 Q. Did you have a check that you were going to pick up?

22 A. Yes, sir.

23 Q. Were you going to take her to work?

24 A. Yes, sir.

25 Q. You were going to drop her off and bring the car back?

1 A. Yes, sir.

2 Q. Did y'all make a stop on the way to taking her to
3 work?

4 A. Yes, sir.

5 Q. Where did y'all stop?

6 A. We stopped at Wells Fargo.

7 Q. Where is that Wells Fargo located?

8 A. I want to say Demont Road.

9 Q. Do you mean Dorchester Road?

10 A. Dorchester Road.

11 Q. Why did y'all have to stop at the bank?

12 A. She had to deposit a paycheck.

13 Q. Did you go in the bank with her?

14 A. No, sir.

15 Q. Did you stay in the car?

16 A. Yes, sir.

17 Q. Would you describe for the jury or for the judge what
18 you observed while you are waiting in the car for her?

19 A. Well, while I was waiting in the car, I observed a
20 gold PT Cruiser was on the right side of the car.

21 Q. Right beside the next spot?

22 A. Yes, sir.

23 Q. A young man was walking into the bank with a red shirt
24 on and two more individuals was in the car.

25 Q. What was that young man in the red shirt doing?

1 A. He was walking into the bank.

2 Q. What happened when he came back out?

3 A. He came back out and acted like he was starting the
4 car and he ask me, tapped on the window and ask me for a
5 boost.

6 Q. So he would get in the driver's side of the gold PT
7 Cruiser?

8 A. Yes, sir.

9 Q. Once he got out what did he do?

10 A. He tapped on the passenger window and ask me did I
11 have any jumper cables?

12 Q. Did you have jumper cables?

13 A. Yes, sir.

14 Q. Did he want you to help him jump the car off?

15 A. Yes, sir.

16 Q. Did you do that?

17 A. Yes, sir.

18 Q. What happened after you did that?

19 A. After I jumped the car off, I shut my hood. Went to
20 walk around to the back of the car just to put my jumper
21 cables back into the trunk. Walked around to the driver
22 seat, put my right foot in to the car and went to sit down,
23 soon as I sit down, I felt something press against the left
24 side of my head above my hair.

25 Q. What was it?

- 1 A. It was a revolver. It was a gun.
- 2 Q. Who had the gun to your head?
- 3 A. It was Johnathan.
- 4 Q. Is that the same guy that was in the red shirt?
- 5 A. Yes, sir.
- 6 Q. It was the person that got into the driver seat?
- 7 A. Yes, sir.
- 8 Q. The person that asked you to jump the car off?
- 9 A. Yes, sir.
- 10 Q. What did he do at that point?
- 11 A. After he put the gun to my head, he grabbed me around
- 12 my neck and pulled out the car.
- 13 Q. Where did he take you?
- 14 A. He walked me around to the back of my car to the
- 15 passenger seat of the gold PT Cruiser behind the driver
- 16 seat.
- 17 Q. The backseat of the PT Cruiser?
- 18 A. Yes, sir.
- 19 Q. Did you get in the car?
- 20 A. Yes, sir.
- 21 Q. Was there anybody else in the car when you got in?
- 22 A. Yes, sir.
- 23 Q. How many other people?
- 24 A. It was two individuals.
- 25 Q. Describe for the judge where the individuals were

1 sitting?

2 A. One individual, he was in the passenger seat and there
3 was another young man in the back seat beside me.

4 Q. What was the gentleman in the white, in the seat, in
5 the backseat with you, wearing?

6 A. He was wearing a white T-shirt and it looked like
7 black jeans.

8 Q. What was the gentleman in the front passenger seat
9 wearing?

10 A. A black T-shirt and some black shorts.

11 Q. Where did the individual that had the gun to your head
12 go?

13 A. He got back in the driver seat.

14 Q. And what happened once all three of those guys were in
15 the car?

16 A. The backseat man pressed a revolver to my right side.
17 The passenger turned around and pointed a black Hi-Point
18 gun to my face. The driver turned around and put one in my
19 mouth.

20 Q. Now, you seem pretty specific about the guns, are you
21 familiar with weapons?

22 A. Yes, sir.

23 Q. Do you own your own weapons?

24 A. Yes, sir.

25 Q. What happened or what did they do once they had the

1 guns drawn on you?

2 A. After they had the guns drawn on me the driver took
3 his gun out of my mouth, he backed up to the parking lot
4 right behind Wells Fargo.

5 Q. Okay. And what do they mean for you at that point?

6 A. They was wanting my money and some jewelry.

7 Q. Did you have very much money on you?

8 A. No, sir.

9 Q. Did you give them what you had?

10 A. Yes, sir.

11 Q. Did you give them the jewelry that you had?

12 A. Yes, sir.

13 Q. Was that enough for them?

14 A. No, sir.

15 Q. What happened then?

16 A. Well, the passenger front man told he was going to
17 kill me if I didn't come up with any more cash.

18 Q. And that was the guy wearing the black?

19 A. Yes, sir.

20 Q. What happened next?

21 A. The driver said I know you work at Hardee's, you get
22 paid today, I just took my girlfriend up there to pick up
23 her paycheck.

24 Q. Now, did you know who any of those three individuals
25 were at that time?

Keith Lee- Direct Examination by Mr. Cooper:

70

1 A. No, sir.

2 Q. Had you ever seen them before ---

3 THE COURT: Repeat that last answer about what the
4 gentleman said?

5 A. He said I know that you work at Hardee's and I know
6 you get your paycheck today. I just dropped -- I just took
7 my girlfriend to pick up her paycheck.

8 THE COURT: Thank you. Go ahead.

9 MR. COOPER: Thank you, Judge.

10 Q. And that was the guy wearing the red shirt?

11 A. Yes, sir.

12 Q. At that time, did you know who that individual was?

13 A. No, sir.

14 Q. Were you surprised that he knew you worked at
15 Hardee's?

16 A. Yes, sir.

17 Q. Since that moment, have you come to find out who that
18 individual was?

19 A. No, sir.

20 Q. Since then, do you now know who the guy in the red
21 shirt is?

22 A. Yes, sir.

23 Q. What is his name?

24 A. His name is Johnathan.

25 Q. How did he know you worked at Hardee's?

1 A. All right. His mother worked in the back line kitchen
2 with me also.

3 Q. What was her name?

4 A. Ms. Iva.

5 Q. And you worked with Ms. Iva at the Hardee's?

6 A. Yes, sir.

7 Q. Once Mr. Johnson said that you had a check waiting for
8 you, what happened next?

9 A. All right. They had my cell phone along with my
10 jewelry. The front passenger gave me my cell phone back so
11 I could call the job and to see if I could pick my paycheck
12 up.

13 Q. Did you call Hardee's?

14 A. Yes, sir.

15 Q. Who did you speak with?

16 A. Shania, the manager at that time.

17 Q. Did you ask -- did she say you had a check ready?

18 A. Yes, sir.

19 Q. Were you able to pick it up?

20 A. Yes, sir.

21 Q. What happened after you spoke to Ms. Burden?

22 A. All right. She told me I could pick my paycheck up.
23 All right. They tied my hands and my feets (sic). We went
24 towards Mount Pleasant to pick my paycheck up.

25 Q. What did they tie your hands and feet with?

Keith Lee- Direct Examination by Mr. Cooper:

72

1 A. It look like a tie, sir.

2 Q. Okay. And then who was driving the car as y'all
3 headed to Mount Pleasant?

4 A. It was Johnathan.

5 Q. The people were still in their same seats?

6 A. Yes, sir.

7 Q. What happened once y'all got to Hardee's in Mount
8 Pleasant?

9 A. After we got to Hardee's in Mount Pleasant we parked.
10 Before getting out, the front seat passenger told me if I
11 go in there and try anything he was going to come in there
12 and kill me and everybody who was into the store.

13 Q. Did you know who that guy in the front passenger seat
14 was at that time?

15 A. No, sir.

16 Q. Have you since learned who he is?

17 A. Yes, sir.

18 Q. Is he in the courtroom today?

19 A. Yes, sir.

20 Q. Would you identify him for the Court by identifying
21 what he is wearing?

22 A. A blue shirt, black pants, and some white shoes.

23 MR. COOPER: Let the record reflect that the witness
24 has identified the defendant.

25 Q. Do you now ---

1 THE COURT: The record will so reflect. You may
2 proceed.

3 MR. ARCHER: I object.

4 THE COURT: I understand your objection. said the
5 record reflects that he described the defendant.

6 MR. ARCHER: Thank you, Judge.

7 MR. COOPER: Thank you.

8 THE COURT: You may proceed.

9 Q. Have you since learned his name?

10 A. Yes, sir.

11 Q. What is his name?

12 A. His name is Tappia.

13 Q. Okay. So once Mr. Green said that to you in the car,
14 what happened after that?

15 A. The driver, he got out and push the revolver, the gun,
16 in the front of his pants. The passenger in the backseat,
17 I mean, the front passenger in the back seat man, untied my
18 hands. I got out the car and walked into Hardee's.

19 Q. Who walked into Hardee's with the?

20 A. It was the driver.

21 Q. That's the guy in the red shirt?

22 A. Yes, sir.

23 Q. Johnathan Johnson?

24 A. Yes, sir.

25 Q. Mr. Green and the other individual stayed in the

1 vehicle?

2 A. Stayed in the car. Yes, sir.

3 Q. What happened once you got into Hardee's?

4 A. After I got into Hardee's between the front door and
5 the lobby, Mr. Johnathan put his hand on my shoulder and he
6 said, "I do not want to do this but if I tell you who my
7 mama is, you know me." And I was steady asking him
8 questions and he told me who he was and he assured me that
9 he would make sure I wouldn't got killed.

10 Q. And after that what happened?

11 A. Walked into the lobby and went to go meet Shania so I
12 could sign for my check.

13 Q. Did you end up getting your check from her?

14 A. Yes, sir.

15 Q. At any point, did you try to communicate to her what
16 was going on?

17 A. Yes, sir.

18 Q. How did you try to do that?

19 A. When she came to give me the sign in sheet and she
20 looked at me, I did mouth signs like, "help me," "help me,"
21 but she did not indicate that to help me ---

22 Q. When she got the check, what happened next?

23 A. After I got the check, on the way walking out of
24 Hardee's, we heard some sirens was passing by -- heard some
25 sires was passing by when we walking out the door. As soon

1 as we made it to the outside of Hardee's that's when the
2 front passenger and the back passenger already made it out
3 the PT Cruiser on their way coming into the store.

4 Q. Why were they coming into the store?

5 A. They thought I pressed the panic button or I alarm
6 somebody of what was going on.

7 Q. Because of the sirens?

8 A. Yes, sir.

9 Q. Were there panic buttons in the Hardee's?

10 A. Yes, sir.

11 Q. What did they say to you when you and Mr. Johnson met
12 them in the parking lot?

13 A. I thought that you tried something and was going to
14 come in there and kill you and everybody inside Hardee's.

15 Q. was that Mr. Green or the other, the backseat
16 passenger ---

17 A. That was Mr. Green.

18 Q. Okay. What happened at that point?

19 A. At that point, went back to the car, they bound my
20 hands and feets (sic) and the backseat man snatched the
21 check and give it to Mr. Green.

22 Q. So you walked into Hardee's with Mr. Johnson. You
23 were in Hardee's. You testified that there were panic
24 buttons in there, why did you not, at any point, attempt to
25 get away?

1 A. At that time, I was thinking it was, there were some
2 kids in there in the lobby and I was thinking about all the
3 older people who working in the back, I wouldn't want to
4 put their life in jeopardy.

5 Q. Did you think that the three individuals who were in
6 the car was serious about hurting somebody?

7 A. Yes, sir.

8 Q. And you -- were they all -- all three were armed,
9 correct?

10 A. Yes, sir.

11 Q. Once shall got back in the car with the check, where
12 did y'all go?

13 A. We went back across the Ravenel Bridge back to North
14 Charleston. I went to Ace Cash Place to cash my check.

15 Q. Were you able to cash the check?

16 A. Yes, sir.

17 Q. Who went in with you to cash the check?

18 A. It was Johnathan.

19 Q. And the other two stayed in the car?

20 A. Yes, sir.

21 Q. What happened when y'all got back to the car with the
22 cash?

23 A. We got back to the car. They put me back in the car.
24 They tied me back up. The backseat man got the check and
25 handed it to the passenger front man.

1 Q. Okay. And then once Mr. Green had the cash, what
2 happened?

3 A. After he had the cash he's like, okay, let's go kill
4 him.

5 Q. And what was going through your head when he said
6 that?

7 A. I was scared I thought that would have been my last
8 ride.

9 Q. Did you think he was serious?

10 A. He was dead serious.

11 Q. How do you know that?

12 A. From the threats that he was giving me on the way
13 going and coming back.

14 Q. What happened after Mr. Green said that?

15 A. After Mr. Green he said that the driver, Mr.
16 Johnathan, was arguing with him and said he combative, he
17 did everything like we asked him and plus he looked out for
18 my mama on giving her a ride back and forth to work.

19 Q. His mom, mean, Ms. Iva?

20 A. Yes, sir.

21 Q. Do you and Karissa take Ms. Iva to and from work on
22 occasion?

23 A. Yes, sir.

24 Q. And that was Johnathan's mother?

25 A. Yes, sir.

Keith Lee- Direct Examination by Mr. Cooper:

78

1 Q. Did Tappia relent and decide not to kill you?

2 A. Yes, sir.

3 Q. Where did they -- how did you get out of their
4 custody? How did you get out of the vehicle?

5 A. All right. After we was at the red light at that time
6 that bust a left and went to Tiger Express. At that time,
7 I seen my ride across the street. I was begging to them to
8 let me go. I'm not going to go to the police. I'm not
9 from around here.

10 Q. You said Tiger Express, was it a gas station that
11 y'all stopped?

12 A. Yes, sir.

13 Q. And you said that you saw your ride across the street,
14 who was across the street?

15 A. It was Karissa.

16 Q. What was she doing?

17 A. She was in the drive through line, sir.

18 THE COURT: Counsel, were not trying the case right
19 now. I'm just trying to determine whether or not he's made
20 a good identification?

21 MR. COOPER: Yes, sir.

22 THE COURT: So ---

23 Q. Once you got ---

24 THE COURT: --- I know you are concerned about his
25 ability to observe the defendant and how long he had,

1 things of that nature but you're not trying to prove your
2 case at this point in time.

3 MR. COOPER: Yes, sir.

4 THE COURT: Go ahead.

5 MR. COOPER: Yes, sir.

6 Q. After you got out of the vehicle, did you get in
7 contact with North Charleston Police Department?

8 A. Yes, sir.

9 Q. Did you speak with the detective regarding the case?

10 A. Yes, sir.

11 Q. Who is that detective, do you remember?

12 A. I think it was Mr. Kaufman if I ain't mistaken.

13 Q. Did you inform him of what had, had happened?

14 A. Yes, sir.

15 Q. And the accounts that you told the Court today?

16 A. Yes, sir.

17 Q. Did he -- did you do several line-up, photo line-ups
18 with North Charleston?

19 A. Yes, sir.

20 Q. If I were to show you one of those, would you
21 recognize it?

22 A. Yes, sir.

23 MR. COOPER: Your Honor, May I approach the witness?

24 THE COURT: You may.

25 Q. Would you look through this document and let me know

Keith Lee- Direct Examination by Mr. Cooper:

80

1 if you recognize it?

2 A. Yes, sir.

3 Q. What is it?

4 A. That's the date they gave me after the line-up, the
5 documentation.

6 Q. Is the top document, does that I have -- how do you
7 know that's the line-up that you were shown?

8 A. Because of my signature.

9 Q. Okay. Did you -- did the officer that went over the
10 line-up with you, did he go over the information on the
11 front sheet, on the front sheet?

12 A. Yes, sir.

13 Q. Are those your initials besides each of the lines?

14 A. Yes, sir.

15 Q. Did you understand the information he read to you?

16 A. Yes, sir.

17 Q. Would you read through that information for the Court?

18 A. The one that he read to me?

19 Q. Yes.

20 A. "I am going to show you a separate picture graphs of
21 individuals who are not in the case" -- I don't have my
22 glasses with me, sir.

23 Q. All right. That's fine. And he advised you that --
24 has he read through these with you, correct?

25 A. Yes, sir.

1 Q. When he advised you that the line-up may or may not
2 contain people that were in the crime, did you understand
3 that?

4 A. Yes, sir.

5 Q. Did you understand all of his instructions regarding
6 the administration of the line-up?

7 A. Yes, sir.

8 Q. And you initialed beside each one of them?

9 A. Yes, sir.

10 Q. Okay. Were you able to identify someone in this line-
11 up?

12 A. Yes, sir.

13 Q. Who was the individual that you identified in the
14 line-up?

15 A. It was Mr. Tappia Green.

16 Q. Who was that in relation to the crime? What person
17 was that in the car?

18 A. He was the front passenger in the car, sir.

19 Q. Okay. Once you picked that individual out of the
20 line-up, did you indicate to the officer how sure you were?

21 A. Yes, sir.

22 Q. How sure were you?

23 A. I was seventy-five sure.

24 Q. Why were you not a hundred percent sure?

25 A. Because the time that I had been with him he had gold

Keith Lee- Direct Examination by Mr. Cooper:

82

1 teeths (sic) in his mouth and he had facial hair and on the
2 line-up he was clean-cut.

3 Q. And was his mouth open or closed in the line-up?

4 A. It was closed, sir.

5 Q. But you were still able to tell that, that was the
6 individual in the front seat?

7 A. Yes, sir.

8 Q. What was the date on the front page that you did that
9 line-up?

10 A. It was the 4/16/2015.

11 Q. How long after the crime was that line-up done?

12 A. It was two days later, sir.

13 Q. And then you testified that y'all drove from North
14 Charleston to Mount Pleasant?

15 A. Yes, sir.

16 Q. Correct? And you were in the car with Mr. Green?

17 A. Yes, sir.

18 Q. From Mount Pleasant back to North Charleston with Mr.
19 Green?

20 A. Yes, sir.

21 Q. Did Mr. Green make several statements to you?

22 A. Yes, sir.

23 Q. Was he wearing anything to cover his face up?

24 A. No, sir.

25 Q. Was he wearing a mask?

1 A. No, sir.

2 Q. Was he wearing a hat?

3 A. No, sir.

4 Q. Are you sure of your identification of him?

5 A. Yes, sir.

6 Q. Is that the same person you see in the courtroom
7 today?

8 A. Yes, sir.

9 MR. COOPER: Beg the Court's indulgence just one
10 second.

11 THE COURT: Yes, sir.

12 Q. Now, you mentioned that you didn't have your glasses
13 with you just a minute ago, were you wearing glasses on the
14 day in question?

15 A. No, sir.

16 Q. How are you sure of your identification of the
17 individual?

18 A. I took my time and I scanned the picture at the same
19 time putting his face together.

20 Q. Do you wear glasses all the time?

21 A. I just started, sir.

22 Q. Were you -- but you're not wearing any today?

23 A. No, sir.

24 Q. When do you usually wear them, then?

25 A. When I'm driving, sir.

1 Q. Do you wear them when you read?

2 A. Yes, sir.

3 Q. Do you need them full-time?

4 A. I need them full-time. Yes, sir.

5 Q. Were you wearing contacts or anything in 2015?

6 A. No, sir.

7 Q. Were you wearing glasses previously?

8 A. Yes, sir.

9 Q. The time of day, was it -- what time of day did this
10 incident occur?

11 A. Between 3 and 4 o'clock that afternoon, sir.

12 Q. So it was light outside?

13 A. Yes, sir.

14 Q. So it was light inside the vehicle?

15 A. Yes, sir.

16 Q. Were you scared during this incident?

17 A. Yes, sir.

18 Q. Were you scared of what Mr. Green was telling you?

19 A. Yes, sir.

20 Q. Did that make you focus more on him?

21 A. Yes, sir.

22 Q. Were you paying attention to him more than the others?

23 A. Yes, sir.

24 Q. Why?

25 A. Because he seemed like he was the one who was in

1 charge and he was the one more serious than the other two
2 individuals.

3 Q. Did the person in the backseat communicate with you as
4 much as Mr. Green?

5 A. No, sir.

6 Q. Did the individual in the front seat communicate with
7 you as much as Mr. Green?

8 A. Not as much.

9 Q. Okay.

10 MR. COOPER: All right. Mr. Lee, Thank you. I have
11 no further questions for you. If you would like to answer
12 any the defense may have.

13 MR. LEE: Yes, sir.

14 THE COURT: All right, counsel, your witness.

15 **Cross Examination by Mr. Archer:**

16 Q. Now, what did you say that the fellow in the backseat
17 did?

18 A. The fellow in the backseat?

19 Q. Mmm, hmm.

20 A. He had a gun too, sir.

21 Q. Yeah, but, I mean, what was he doing to you?

22 A. Nothing, he wasn't really doing that much talking,
23 sir. Really he did no talking at all.

24 Q. Wasn't doing any talking. Did he threaten you?

25 A. No, sir.

1 Q. Never threatened you. How did you know he had a gun?

2 A. He pushed it in my side, sir.

3 Q. Okay. Now, the fellow that you identified as Tappia
4 Green, you said you were seventy-five percent certain, right?

5 A. Yes, sir.

6 Q. And you said if you can see his gold teeth you would
7 be hundred percent certain?

8 A. Yes, sir.

9 Q. Now, the fellow that you, that you're identifying, did
10 you see the gold teeth when you were in the PT Cruiser?

11 A. Yes, sir.

12 Q. You're absolutely certain you saw the gold teeth?

13 A. Hundred percent.

14 Q. Okay. Now, if Mr. Green doesn't have gold teeth,
15 would that effect your identification of him?

16 A. Not really, sir.

17 Q. Why not?

18 A. Because you never forget a face once you go through
19 something like that, you never forget a face.

20 Q. But you didn't forget the gold teeth, did you?

21 A. No, sir.

22 Q. Huh?

23 A. No, sir.

24 Q. All right. So, whoever you were identifying, even
25 though you couldn't see it in the picture, had gold teeth,

1 right?

2 A. Yes, sir.

3 Q. All right. So wouldn't it be, if Mr. Green doesn't
4 have gold teeth, wouldn't it be that you were identifying
5 or the person you were identifying, was not Mr. Green?

6 A. Gold teeth or no gold teeth, I still remember his
7 face, sir.

8 Q. But you also distinctly remembered the gold teeth?

9 A. Yes, sir, along with his face.

10 Q. Along with his face?

11 A. Yes, sir.

12 Q. All right. And there's no question in your mind that
13 the person you are identifying had gold teeth?

14 A. Yes, he had gold teeth.

15 Q. Okay.

16 MR. ARCHER: I got no other questions -- oh wait a
17 minute.

18 Q. And you said you didn't know Johnathan Johnson before
19 that day?

20 A. No, sir.

21 Q. Even though his mother worked with you?

22 A. Yes, sir.

23 Q. And you never seen him come into the restaurant?

24 A. No, sir.

25 Q. Okay. All right. And where did you say that Mr.

Keith Lee- Redirect Examination by Mr. Cooper:

88

1 Tappia was sitting in the car?

2 A. The front passenger seat, sir.

3 Q. Front passenger seat, okay. All right.

4 MR. ARCHER: I have no other questions, Your Honor.

5 THE COURT: Redirect?

6 MR. COOPER: Yes, Your Honor.

7 Redirect Examination by Mr. Cooper?

8 Q. Mr. Lee, as far as gold teeth, are you familiar with
9 gold teeth?

10 A. Yes, sir.

11 Q. Are they always permanent?

12 A. No, sir.

13 Q. Can they be removed?

14 A. Yes, sir.

15 Q. The individual that you identified out of the line-up,
16 his mouth was closed, correct?

17 A. Correct.

18 Q. Can you explain to the Court how you were still
19 confident of who that was?

20 A. From his eyes. From his demeanor. When a person that
21 want to do harm to you, you focus on that one person. My
22 focus wasn't in on the driver. My focus wasn't in on the
23 backseat man beside me. My focus was on the man who wanted
24 to do harm to me and my life.

25 Q. So I know that you said he made various threats to you

1 ---

2 A. Yes, sir.

3 Q. --- were you looking at him in the face?

4 A. Yes, sir.

5 Q. Several times?

6 A. Several times.

7 Q. So you're confident who that individual was?

8 A. Yes, sir.

9 Q. At any time during the line-up procedure, did North
10 Charleston tried to suggest anybody to you?

11 A. No, sir.

12 Q. Did he tell you that he knew who anybody was?

13 A. No, sir.

14 Q. That at any time, did he try to point a specific
15 picture to you?

16 A. No, sir.

17 Q. Did he hand all the pictures to you at one time?

18 A. Yes, sir.

19 Q. Was it you that went through the pictures?

20 A. Yes, sir.

21 Q. You were here when we watched the video, weren't you?

22 A. Yes, sir.

23 Q. Were there to that you were deciding over for a little
24 bit?

25 A. Yes, sir.

Keith Lee- Re-cross Examination by Mr. Archer:

90

1 Q. Why were you taking that amount of time?

2 A. Because I wouldn't want to pick the wrong person. The
3 reason I took that amount of time, I close my eyes and I
4 pictured the front seat passenger at the same time I open
5 my eyes to look at the picture on the face.

6 Q. You said you didn't want to pick the wrong person?

7 A. Yes, sir.

8 Q. Did you pick the wrong person?

9 A. No, sir.

10 Q. Is the person that you identified at that table, is
11 the person that was in the front passenger seat of that car
12 on that day?

13 A. Yes, sir.

14 MR. COOPER: Your Honor, I have no further
15 questions.

16 THE COURT: Re-cross?

17 **Re-cross Examination by Mr. Archer:**

18 Q. Regardless of the gold teeth or no gold teeth, when
19 you looked at the pictures, you were not certain of who you
20 were identifying, were you?

21 A. In a way, yes, sir, I was, sir.

22 Q. Well, you said -- you didn't say you were hundred
23 percent certain, you said you were seventy-five certain?

24 A. Yes, sir.

25 Q. That means there's a one in four chance you were

1 wrong, right?

2 A. Right.

3 Q. Okay. And -- but to you the critical factor was to be
4 hundred percent sure, was whether or not the defendant had
5 gold teeth, right?

6 A. Right.

7 Q. All right. And -- but you say whether he has -- now
8 you say whether he has gold teeth or not, doesn't matter?

9 A. It doesn't.

10 Q. Huh?

11 A. It does not, sir.

12 Q. But it did at the time you did the photo line-up,
13 didn't it?

14 A. Yes, sir.

15 Q. What's changed between then and now that mattered at
16 the time of the photo line-up and doesn't matter now?

17 A. Well, it really didn't matter then. The line-ups that
18 they give me it was three individuals that looked like Mr.
19 Tappia. The reason I took so long to identify him, like I
20 told him, I closed my eyes and picture Mr. Tappia, the man
21 who been given me threats and who would want to take my
22 life away, he was talking and he had gold teeth (sic) in
23 his mouth. But at the same time with the gold teeth (sic)
24 or without the gold teeth (sic), I would've still know who
25 he was, sir.

Keith Lee- Questioned by the Court:

92

1 Q. Okay. But you saw three people that looked liked,
2 initially looked like the person who robbed you, right?

3 A. Right.

4 Q. So you started off with three and then you worked it
5 down to one, right?

6 A. Right.

7 Q. Okay.

8 MR. ARCHER: I got no other questions.

9 QUESTIONED BY THE COURT:

10 Q. Sir, you say you observed this gentleman for so long
11 and you mentioned the gold teeth. The gold teeth that you
12 observed, do you have a belief or do you believe that they
13 were permanent or removable? I know they have things
14 called grillz and stuff like that ---

15 A. Yes, sir.

16 Q. --- that people put in their mouths.

17 A. Mmm, hmm.

18 Q. What you observed, could you tell whether it was
19 permanent or not?

20 A. No, sir. I couldn't tell at that time, sir.

21 Q. Okay.

22 THE COURT: Follow-up on any question I ask?

23 MR. COOPER: No follow-up with the witness, Your
24 Honor.

25 THE COURT: Anything from the defense?

1 MR. ARCHER: Not from this witness, Your Honor.

2 THE COURT: Okay. You may step down, sir. Thank
3 you.

4 (Whereupon, the witness complies)

5 MR. COOPER: Your Honor, the State has no further
6 witnesses.

7 THE COURT: All right. The defense may call
8 witnesses?

9 MR. ARCHER: Excuse me?

10 THE COURT: You may call a witness if you wish to.

11 MR. ARCHER: Well, Your Honor I like my client to
12 come up and show you his mouth.

13 THE COURT: Well, he can come show me his mouth if
14 he wants to, I suppose.

15 MR. ARCHER: And if I can reflect, he's got no gold
16 teeth. Do you want him to come ---

17 THE COURT: Sure. Right there is good.

18 MR. ARCHER: Give us a big smile. Big smile. Open
19 your mouth as wide as you can.

20 (Whereupon, the defendant complies)

21 THE COURT: Okay. Thank you.

22 MR. ARCHER: I would like the record to reflect
23 there's no gold teeth in his mouth.

24 THE COURT: I didn't see any. All right. Anything
25 further from the defense?

1 MR. ARCHER: No, Your Honor.

2 THE COURT: Your motion. You may argue it, Mr.
3 Archer.

4 MR. ARCHER: Well, Your Honor, first off the victim
5 says, he didn't say I'm sure this is who it is. He says
6 I'm seventy-five percent sure which means there's one,
7 seventy-five percent, there's at least a one and four
8 chance he's wrong, okay. He further says that when he
9 looked at it there were three individuals that looked like
10 the person and he gets it down to one so, you know -- and
11 the third thing he told them was that to him at the time he
12 identified him that what was critical was the gold teeth,
13 you know, if he could see his teeth he could tell for sure
14 who it was. Okay. And yet ---

15 THE COURT: What he was saying that's the
16 difference between being absolutely certain and perhaps not
17 being absolutely certain.

18 MR. ARCHER: And not being sure. And I think that
19 we would have to have a certain, a degree of certainty, to
20 the ID before we can admit it and one in four is pretty
21 large probability of being wrong I would say, that's almost
22 reasonable doubt by law. There's a one in four chance he's
23 wrong, almost as a matter of law there's reasonable doubt
24 here so that would be my argument.

25 THE COURT: All right. I'll hear from the State?

1 MR. COOPER: Thank you, Your Honor. May it please,
2 the Court?

3 THE COURT: Yes, sir.

4 MR. COOPER: I understand Mr. Archer's arguing
5 regarding reasonable doubt. The Supremes Court's decision
6 in Neil v. Biggers the inquiry is not whether the strength
7 of the ID, that's something for the jury to consider. The
8 inquiry under Neil v. Biggers as whether the line-up
9 process was unduly suggested. I think after Sergeant
10 Monroe's testimony, with the double-blind process they
11 followed, that he didn't know the victim, that he didn't
12 know the parties, didn't know who was in the line-up, I
13 think, you know, Your Honor, we saw the video, there was
14 nothing suggestive about the way the line-up was done. Mr.
15 Archer hadn't even argued anything suggestive was done.
16 Your Honor, and if there was no undue suggestion then we
17 don't even get to the second prong about a
18 misidentification or anything like that. The strength of
19 the identification, the seventy-five percent, the gold
20 teeth, those things are for the jury to consider as for as
21 the credibility of identification and the credibility of
22 the witness. Your Honor, if I may approach, I do want to
23 show you the picture of Mr. Green in his DMV record, I
24 believe, you can see gold teeth in that picture.

25 MR. ARCHER: I can't tell whether there is gold

1 teeth or not. I object. What's the date of this?

2 MR. COOPER: I don't -- I'd have to contact the DMV,
3 I don't know.

4 THE COURT: This is not in evidence, is it?

5 MR. COOPER: No, Your Honor, and I -- I just wanted
6 Mr. Green ---

7 THE COURT: Just hold onto that, I can't look at
8 it. It's not in evidence.

9 MR. COOPER: But again, Your Honor, I think that the
10 whether or not there's gold teeth I think Mr. Archer's
11 question about that, again, that all goes toward the
12 credibility of the witness to the jury. The inquiry that
13 this Court is concerned about at this hearing is whether or
14 not the process was suggestive. Again, you heard from the
15 officer that did the line-up. You heard from the victim
16 who understood the admonition of the officer that explained
17 how he was able to identify the individual. Then explained
18 that there was nothing done by North Charleston to indicate
19 who he should pick. I think there is zero evidence that's
20 been presented that anything about this line-up was
21 suggestive and as a result I think it is admissible at
22 trial.

23 THE COURT: Last bite at the apple, Mr. Archer.

24 MR. ARCHER: Excuse me?

25 THE COURT: This is your last bite at this apple.

1 MR. ARCHER: Well, Your Honor, I mean, to be honest
2 with you I might have a motion to dismiss this. Okay. In
3 that ---

4 THE COURT: That's not the inquiry in front of me.
5 The question is whether I'm going to admit the
6 identification ---.

7 MR. ARCHER: Well, I think ---

8 THE COURT: We haven't tried the case yet, I don't
9 know what all the evidence will be.

10 MR. ARCHER: I don't think that it's been shown that
11 the line-up was reliable.

12 THE COURT: Okay. Well, again, Neil v. Biggers,
13 inquiry is whether or not the identification was overly
14 suggestive and on suggestiveness, I don't find that there
15 was anything suggestive about the line-up and the way it
16 was conducted. It was conducted by a police officer who
17 knew nothing about the investigation or the people in the
18 line-up and who might have been or might not have been a
19 target of the investigation and it was done with adequate
20 warnings to the person doing the identification. So I
21 don't find that there was anything suggestive about the
22 process that was followed. In determining whether the
23 identification is independent, if that's one of the
24 factors, of course, I'm looking at the victim's prior
25 opportunity to observe the individual. I also won't

1 consider any discrepancies between the description given at
2 pretrial in the description, at this point in time, and his
3 actual description. I don't believe there's been any
4 identification by the victim of some other person as being
5 the individual in this matter. There was not a prior
6 physical line-up. The only line-up I believe was this
7 photo line-up and it was done in a non-suggestive manner.
8 The victim did not fail to identify the defendant on any
9 prior occasion and it was done fairly contemporaneously
10 with the event within three days. He had ample opportunity
11 to observe this individual. I do know that the presence or
12 lack of presence of gold teeth, you know, some people have
13 devices they put in their mouth, bridges or whatever, they
14 call them grillz, sometimes to put in their mouth to make
15 it look like they're wearing gold teeth. The witness
16 specifically in answering my questions said that he
17 couldn't tell whether the gold teeth he observed on that
18 occasion were permanent or removable from what he observed
19 so it is possible they were removable at that time as well.
20 That all goes to the weight of the identification not to
21 suggestiveness or that there was anything improperly done
22 in this case to suggest the results. So at this point in
23 time, I'm going to find that the identification is
24 admissible but, of course, that doesn't prevent the defense
25 from fully cross-examining the victim on that issue

1 presenting those issues concerning the identification to
2 the jury, but I will allow it to be presented. All right.
3 Any other motions before we begin the trial of the case
4 from the State?

5 MR. COOPER: Not from the State, Judge.

6 THE COURT: Any other matters we need to consider
7 from the defense?

8 MR. ARCHER: No, Your Honor.

9 THE COURT: All right. Well, we've been going for
10 almost an hour, we'll take about a five minute break. I
11 will tell you I received an inquiry from Albertha Rivers on
12 jury number, 309. She indicates she's got an appointment
13 on the 25th at 2 o'clock and want's to be excused. Well,
14 that's a couple of days from now. We'll see how that works
15 out and I'll suggest she rearrange her appointment. I will
16 call her in at the end of our break and discuss that with
17 her.

18 MR. ARCHER: There's a good chance we'll be through
19 by then.

20 THE COURT: I think there is. So we'll see how
21 that works. All right. Now, we'll take about a five
22 minute break. I'll stay on the bench. Court is in recess.
23 (Whereupon, the Court took at break at 9:57 a.m.)
24 (Whereupon, Court is in session at 10:06 a.m.)

25 THE COURT: Ma'am, if you would bring juror 309,

1 Albertha Rivers, down please. Thank you.

2 BAILIFF: Okay.

3 (Whereupon, the juror was summoned to the courtroom)

4 THE COURT: Ma'am, have a seat please.

5 MS. RIVERS: Okay.

6 THE COURT: I believe your name is Albertha Rivers

7 ---

8 MS. RIVERS: Yes.

9 THE COURT: --- is that right?

10 MS. RIVERS: Yes.

11 THE COURT: Ms. Rivers, I got a note indicating
12 that you might have an appointment on the 25th at 2 PM.

13 MS. RIVERS: Yes.

14 THE COURT: Now, my understanding is when you were
15 qualified yesterday, at the end of the qualification Judge
16 Jefferson inquired if anybody had any appointments or
17 problems during the week and apparently you didn't identify
18 this as a problem at that time.

19 MS. RIVERS: Yes, exactly. I checked my email on
20 yesterday.

21 THE COURT: Yes, ma'am.

22 MS. RIVERS: And it's from my loan company ---

23 THE COURT: I see.

24 MS. RIVERS: It's not confirmed. They just wanted
25 me to, you know, kinda be available.

1 THE COURT: Okay. Well, ma'am, I'm going to -- and
2 I'll indicate to you I don't anticipate this case taking
3 that long.

4 MS. RIVERS: Mmm, hmm.

5 THE COURT: And so I don't think it's going to be a
6 problem. If you want to call them and maybe rearrange it -
7 --

8 MS. RIVERS: Yes.

9 THE COURT: --- that would be a good idea, but I'm
10 aware that you have the appointment. I don't think we'll
11 interfere with it, but I can't guarantee that. I don't
12 control exactly how long cases last.

13 MS. RIVERS: Yes.

14 THE COURT: so you may want to let them know that.

15 MS. RIVERS: Okay.

16 THE COURT: since this wasn't identified yesterday
17 you may have to rearrange that.

18 MS. RIVERS: Okay.

19 THE COURT: Okay. Thank you, ma'am.

20 MS. RIVERS: Thank you.

21 THE COURT: Yes, ma'am.

22 (Whereupon, the juror returns to the jury room)

23 THE COURT: I'm going to have the communication
24 with Ms. Rivers marked as a Court's Exhibit made a part of
25 the record.

1 (Whereupon, the Note from Juror has been marked and entered
2 into evidence as Court's Exhibit No. 1)

3 MR. COOPER: Your Honor?

4 THE COURT: Yes, sir.

5 MR. COOPER: If I may I have 28 photos that I have
6 showed to Mr. Archer. I don't believe prior to, he has an
7 objection, I was going to go ahead and admit those without
8 objection before the jury ---

9 THE COURT: Are they already marked?

10 MR. COOPER: No, Your Honor. I will do that.

11 THE COURT: Any objection to these ---

12 MR. ARCHER: I have -- he showed me the photos. I
13 have no objection to them.

14 THE COURT: Okay. If you'll pass those up to the
15 court reporter maybe and mark them if you would. We'll
16 admit them as they have been marked.

17 MR. ARCHER: I'd like ---

18 THE COURT: I'll remind you that you've asked that
19 your client be arraigned on the charges ---

20 MR. ARCHER: Yes, sir.

21 THE COURT: --- when the jury comes in, we're going
22 to do that the first thing?

23 MR. ARCHER: Yes, sir.

24 THE COURT: Make him aware it's coming.

25 MR. COOPER: Your Honor, I can have these --

1 eventually, I have these marked into the record, if we're
2 ready to go?

3 THE COURT: Why don't we do it that way then we'll
4 discuss it at that time.

5 MR. COOPER: Yes, sir.

6 MR. ARCHER: Once these are admitted I'd like to get
7 them and let my client look at them, the photos.

8 THE COURT: He's having them marked ---

9 MR. ARCHER: Right.

10 THE COURT: --- and before they're put in then I'll
11 let you look at them. All right. Is the State ready to
12 proceed?

13 MR. COOPER: Yes, Your Honor.

14 THE COURT: Is the defense ready to proceed?

15 MR. ARCHER: Yes, Your Honor.

16 THE COURT: Let's bring the jury in, ma'am.

17 (Whereupon, the jury enters the courtroom at 10:12 a.m.)

18 BAILIFF: All jurors are present and seated, Your
19 Honor.

20 THE COURT: Thank you, ma'am. Ladies and
21 gentlemen, yesterday when you left the courthouse I gave
22 you some instructions concerning your behavior while you
23 were away from the courthouse. Now, if there were any of
24 you who had any problems in following my directions please
25 stand.

1 (Whereupon, no one is standing)

2 THE COURT: The record will reflect then that all
3 jurors have been able to comply with my instructions thus
4 far in this case. Now, ladies and gentlemen of the jury,
5 at this point in time I'm going to arraigned the defendant
6 on the charges that are before the Court. Sir, if you
7 would please stand.

8 (Whereupon, the defendant complies)

9 **DEFENDANT'S ARRAIGNMENT:**

10 THE COURT: And place the defendant under oath for
11 me.

12 THE CLERK: Raise your right hand please. Do you
13 swear or affirm the answers you shall give will be the
14 truth, the whole truth, and nothing but the truth so help
15 you God?

16 MR. GREEN: Yes, ma'am. Yes, ma'am.

17 THE COURT: All right. Sir, your name is Tappia
18 Dangelo Green, is that right?

19 MR. GREEN: Yes, sir.

20 THE COURT: Mr. Green, I have here three
21 indictments I'm going to go over the indictments with you
22 and when I complete my review of each indictment I'll be
23 asking you how you wish to plead to this charge. The first
24 case that I will discuss with you is case number 15-GS-10-
25 5982, the charge is kidnapping. The indictment states,

1 "that in Charleston County on or about April 14, 2015, the
2 defendant, Tappia Dangelo Green, unlawfully did seize,
3 confined, inveiled, decoyed, kidnap, abduct or carried away
4 the victim, Keith DeShawn Lee, without authority of law all
5 in Violation of Section 16-3-910 of the Code of Laws of
6 South Carolina, 1976, as amended, against the peace and
7 dignity of the state and contrary to the statue in such
8 case made and provide." Sir, do you understand that
9 indictment?

10 MR. GREEN: Yes, sir.

11 THE COURT: How are you pleading?

12 MR. GREEN: Not guilty, sir.

13 THE COURT: How do you wish to be tried, sir?

14 MR. GREEN: By God and my country.

15 THE COURT: May God grant you a speedy delivery,
16 sir. Next is case number 2015-GS-10-5983. This
17 indictment is for the offense of armed robbery. This
18 indictment states, "that on or about April 14, 2015 in
19 Charleston County, South Carolina, the defendant, Tappia
20 Dangelo Green, by use of force, threats, or intimidation
21 and while armed with a deadly weapon or while alleging
22 either by action or words, he was armed while using a
23 representation of a deadly weapon or any object which a
24 person present during the commission of the robbery
25 reasonably believed to be a deadly weapon, did take and

1 carry away goods and/or monies from the person or immediate
2 presence of, Keith DeShawn Lee, with the intent to
3 permanently deprive the victim of possession, thereof, in
4 Violation of Code Section 16-11-330 (a) of the Code of Laws
5 of South Carolina, 1976, as amended, against the peace and
6 dignity of the state and contrary to the statute in such
7 case made and provided." Did you understand that
8 indictment?

9 MR. GREEN: Yes, sir.

10 THE COURT: How are you pleading to that
11 indictment?

12 MR. GREEN: Not guilty, sir.

13 THE COURT: How do you wish to be tried?

14 MR. GREEN: By God and my country, sir.

15 THE COURT: May God grant you a speedy delivery on
16 that charge. The final case is 2015-GS-10-5984, possession
17 of a weapon during the commission of a violent crime. This
18 indictment states, "that in Charleston County, South
19 Carolina, on or about April 14, 2015 the defendant, Tappia
20 Dangelo Green, did possess a firearm or did visibly
21 displayed what appeared to be a firearm or did visibly
22 displayed a knife during the commission or the attempted
23 commission of a violent crime to wit: kidnapping and/or
24 armed robbery in Violation of Section 16-23-490 of the Code
25 of Laws of South Carolina, 1976, as amended, against the

1 peace and dignity of the state and contrary to the statute
2 in such case made and provided." Did you understand that
3 indictment?

4 MR. GREEN: Yes, sir.

5 THE COURT: How are you pleading to that
6 indictment?

7 MR. GREEN: Not guilty, sir.

8 THE COURT: How do you wish to be tried?

9 MR. GREEN: By God and my country, sir.

10 THE COURT: May God grant you a speedy delivery,
11 sir. You may be seated. Thank you very much.

12 MR. COOPER: Your Honor?

13 THE COURT: Yes, sir.

14 MR. COOPER: May we approach briefly?

15 THE COURT: Certainly.

16 (Whereupon, a bench conference was held off the record)

17 THE COURT: Mr. Raymond, I believe that's you
18 seated in the center there, is that right?

19 MR. RAYMOND: Yes, sir.

20 THE COURT: One thing, I have been informed by the
21 State that perhaps you have some connection with a
22 gentleman by the name of, Ray Haupt, who is the, one of the
23 investigators for the solicitor's office that was
24 identified yesterday. This gentleman right here.

25 (Whereupon, the investigator stood up)

1 MR. RAYMOND: Yes, sir.

2 THE COURT: Are you familiar with him?

3 MR. RAYMOND: I am now that I see him.

4 THE COURT: Can you tell me how you have some
5 relationship with him?

6 MR. RAYMOND: I work for his wife and we went to the
7 same college together.

8 THE COURT: Oh, I see. That's been a couple of
9 years ago.

10 MR. RAYMOND: It's been a long time.

11 THE COURT: All right. Would the fact that you had
12 that prior connection with him, the fact that he's just
13 investigator for the State, would effect your ability to be
14 fair and impartial?

15 MR. RAYMOND: No, Your Honor.

16 THE COURT: So you feel you can sit fairly in this
17 case?

18 MR. RAYMOND: Yes, sir.

19 THE COURT: All right. Thank you very much. They
20 wanted to make sure we cleared that up before we went
21 forward. Thank you. All right.

22 Now, ladies and gentlemen of the jury, I'd indicated
23 to you that when you returned to the courtroom you would be
24 taken an oath concerning your responsibilities as jurors --

25 -

1 MR. ARCHER: Your Honor, in abundance of caution I
2 would ask that this juror be dismissed and the alternate
3 seated.

4 THE COURT: And for what reason?

5 MR. ARCHER: That he knows the investigator for the
6 solicitor's office out of abundance of caution.

7 THE COURT: Okay. I did inquire him and he
8 indicated that it would not affect his impartiality ---

9 MR. ARCHER: I -- I ---

10 THE COURT: I'll allow him to serve.

11 MR. ARCHER: Okay.

12 THE COURT: Thank you. Okay. I was explaining to
13 you that I told you when you came back to the courtroom
14 that you would be taken an oath concerning your
15 responsibilities as jurors in the trial of this case so at
16 this time the clerk is going to administer that oath.

17 THE CLERK: Ladies and gentlemen, if you would
18 please stand and raise your right hands. Do you swear or
19 affirm that you shall well and truly try, any true
20 deliverance make, between the State of South Carolina, and
21 the defendant at bar, whom you shall have in charge, and a
22 true verdict render according to the evidence and the law
23 so help you God? Please indicate by saying, "I do".

24 (Whereupon, the jury indicates they do)

25 THE CLERK: If you've accepted this oath please

1 have a seat, if not, please remain standing.

2 (Whereupon, no one is standing)

3 THE COURT: All right. The record will reflect
4 that, all jurors have been sworn concerning their
5 responsibilities in this case.

6 OPENING COMMENTS BY THE JUDGE:

7 Now, before we begin the actual trial of the case
8 there some things that I would like to discuss with you.
9 I'm doing this primarily because it's my belief that for
10 most of you this is your first experience in actually
11 serving on a jury in a trial of a case of this nature and
12 as such I want to be sure that we have a discussion
13 concerning responsibilities and roles that we have here,
14 what you'll be called upon to do as the trial moves forward
15 so we'll have an understanding as to how those things are
16 going to work. What I'm telling you now is not intended to
17 be a charge concerning the law that you will apply in this
18 case. At the close of the trial once all the arguments
19 have been made and all the evidence has been introduced at
20 that time I will give you a charge concerning the law which
21 would be considered by you in this matter. You know, if
22 this is your first experience in serving on a jury probably
23 up to this point in time in your life what you know about
24 what goes on in juries I would suspect you would've learned
25 from maybe television shows you've watch, movies you've

1 that you have a problem or an issue and I certainly will
2 deal with it directly with you, you don't have to go
3 through a foreperson to do that.

4 I want to be sure that I haven't violated any of the
5 parties rights in what I've told you, thus far, does the
6 State have an objection to my opening comments?

7 MR. COOPER: No objection, Judge.

8 THE COURT: Any from the defense?

9 MR. ARCHER: No objection, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, let
11 me point out one thing to you, I told you the State has the
12 burden of proof, the only burden of proof in the trial, for
13 that reason the State gets to go first with their arguments
14 followed by the defense. The State then also goes first
15 with the presentation of evidence. This is their burden to
16 prove those allegations followed by any evidence that the
17 defense wishes to put up. Once all the evidence in the
18 case has been presented, at that time, we'll do closing
19 arguments. After closing arguments, I will charge you
20 concerning the law to be applied. Once I complete the
21 charge on the law, the case will be turned over to you for
22 your verdict. So we'll go statements, recitation of
23 evidence, closing statements, charge on the law, and then
24 deliberations for the verdict. So those are the steps
25 we're going to go through as the trial moves forward. So

1 at this time the State may begin the trial and let's start
2 with the State.

3 MR. COOPER: Thank you, Your Honor. May it please,
4 the Court?

5 THE COURT: Yes, sir.

6 MR. COOPER: Mr. Archer?

7 **OPENING STATEMENTS BY MR. COOPER:**

8 Ladies and gentlemen of the jury, good morning. There
9 is a saying that no good deed goes unpunished. And that's
10 based on the sad truth that all too often when somebody
11 lends a helping hand, helps out a stranger, does something
12 nice for somebody, all too often there could be negative
13 consequences for them. On April 14, 2015, Keith Lee
14 learned that firsthand. Keith lived in North Charleston
15 with his girlfriend Karissa Aiken. They both worked at
16 Hardee's in Mount Pleasant. Karissa had to be at work that
17 day. Keith was with her in the car and was going to drop
18 her off and take the car back. They had to stop at Wells
19 Fargo on Dorchester Road on the way there. Karissa went
20 inside the bank and Keith stayed in the car. While Keith
21 was in the car the vehicle right next to him was a gold PT
22 Cruiser. The driver of that vehicle came out and asked
23 Keith if he could, if he had jumper cables and if he would
24 help jump the car off. Keith, happy to help, got his
25 cables and jump the car. Once he got done went back to get

1 back in the car to wait for his girlfriend. At that time,
2 the driver of the vehicle came around the vehicle up behind
3 Keith. Instead of saying thank you, instead of shaking a
4 hand, show him appreciation, he put a gun to Keith's head.
5 Now Keith is twenty-five years old. He's from Allendale.
6 A rural area about two hours from here. He's just a good
7 old country boy. In October, 2014, he met Karissa Aiken
8 and the two began to date. Karissa lived in Charleston.
9 So the beginning of 2015, Keith moved to Charleston to be
10 with her. Like I said, Karissa was a manager at Hardee's
11 in Mount Pleasant on Houston Northcutt Boulevard right off
12 of Highway 17. She was able to get Keith a job there as a
13 cook. They both worked at the same place. They lived on
14 Orangeburg Street which is right near the old Navy base in
15 North Charleston. They have one car so they would share
16 that as they went to work.

17 Now, like I said back in April 14, 2015 that was a
18 Tuesday, Karissa had to go to the bank on the way to work
19 so Keith was there waiting for her. The driver of the
20 vehicle, a gentleman wearing a red shirt, you'll hear from
21 Keith and Keith will describe in detail to you Keith didn't
22 know who that individual was. Never met him before his
23 life. When he came around with a gun he escorted Keith
24 back around his car to the back seat of that gold PT
25 Cruiser. When he got into that PT Cruiser he realized that

1 he was outnumbered. There were two other individuals in
2 that vehicle. The individual with the guy with the red
3 shirt was a driver. There was an individual in the front
4 passenger seat wearing all black. And there was an
5 individual in the back seat across from Keith wearing a
6 white T-shirt. Now, Keith didn't know any of these guys.
7 Remember Keith was from Allendale. Until a few months
8 before he had never been, never lived in Charleston. He
9 didn't know anybody here. He didn't know who any of these
10 three people were. As he got in the car that's when guns
11 came out. The gentleman in the backseat in the white shirt
12 pulled out a revolver and stuck it in his right side. The
13 guy in the front passenger seat turned around, had a black
14 pistol, pointed it at Keith's forehead. And then the
15 driver turned around with that same gun he got Keith out of
16 his car, cocked the hammer, and put it in his mouth and
17 you'll hear this from Keith. He will tell you how he felt
18 when that was going on. They demanded money. They
19 demanded him to give over whatever he had. Keith didn't
20 have much on him. A little bit of cash and some jewelry so
21 you handed that over. But that wasn't good enough for them
22 and you'll hear that from him. They wanted more. The
23 driver of the vehicle knew Keith. Keith didn't know him.
24 He knew Keith worked at Hardee's. He knew that, that day
25 was payday because he had been there previously to pick up

1 the check for somebody else. So he said why don't you call
2 Hardee's and see if you got a check waiting on you. He
3 calls. Come to find out there was a check waiting for him.
4 So they take Keith from North Charleston to Hardee's in
5 Mount Pleasant to pick up the check. They get the check.
6 They drive back to North Charleston to cash that check.
7 They get the cash. And then they leave Keith on the side
8 of the road.

9 Now, you'll hear from Keith. He's going to testify.
10 He's going to explain to you everything that went down and
11 all the detail that he has. Pay attention as he describes
12 to you the dynamic of the car. Who he thought was in
13 charge and how he knew that. The description he gives of
14 the individuals, of the weapons. The threats that they
15 make against him. The things they say. You're hear that
16 the driver of vehicle is a guy named Johnathan Johnson.
17 Keith didn't know him at the time but his mom, Johnson's
18 mom, works at Hardee's with Keith and Keith's girlfriend.
19 You'll hear how they identify Johnathan Johnson. You'll
20 also hear how the guy in the front passenger seat, the one
21 wearing all black, one that seemed to be in charge as Keith
22 will tell you. The one that made the threats time and time
23 again to kill Keith or if he didn't cooperate or if he made
24 a show at Hardee's or the check cashing place, he'll kill
25 everybody involved. You'll hear who that was. That man,

1 Tappia Green. And you'll hear how they were be able to
2 identify him. You'll hear from several members of the law
3 enforcement as they detail you their investigation. How
4 they were able to determine who the suspects were. How
5 they where able to get to the part where they filed
6 charges. You'll hear how they developed Johnson and Tappia
7 as suspects. You'll hear how they found the gold PT
8 Cruiser that Keith describes the car that he was
9 transported in. You'll hear what they found in that car.
10 Keith's check stub from that day. You'll also hear whose
11 fingerprints they found on that check stub, Tappia Green.
12 And you'll also hear how Keith was able to pick Tappia
13 Green out of the line-up. They'll explain all that to you
14 during the trial so give them your undivided attention as
15 they explain all that to you.

16 Now, as the judge just stated at the end of the trial,
17 he'll 'go over the law with you. Once you've heard all the
18 witnesses and testimony, I'll come back up here and go over
19 the law as well. But as of right now, Tappia is charged
20 three crimes. Armed robbery, kidnapping and possession of
21 the weapon during the commission of a violent crime.
22 You've heard the judge read the indictments of the
23 defendant and we'll go over the law in more detail at the
24 end of the trial.

25 Judge Couch also told you that while he's the judge of

1 the law, you are the judge of the facts. All I can do, all
2 Mr. Archer can do is put people on that stand and elicit
3 testimony. What you do with that testimony is up to you.
4 Do you believe it? Do you not? Who seems credible? Who
5 doesn't seem credible? Who has motive to lie? As the
6 judge said, who has the stake in the outcome of this trial?
7 That's for you to determine. That's your job, is the judge
8 of the facts.

9 Now, as Judge Couch also told you, you do that every
10 day, we all do. We determine who's credible, who may not
11 be telling the truth, who may be dishonest, who may not be
12 authentic. When we determined whether we're going to give
13 money to the guy on the street asking for it, you're
14 determining credibility. When you're trying to figure out
15 if your child is telling you the truth about who ate the
16 last piece of the cake, your determining credibility. When
17 you're trying to figure out if your co-worker is honest
18 about the gossip they brought you from the break room, your
19 determining credibility. You're doing the same thing here.
20 You have a lifetime of experience doing in that and that's
21 what you're doing here. So all I ask is that you use that
22 experience. You use that common sense. You use your good
23 judgment and try to determine who's sitting in that chair
24 has a reason to lie. Who has the motive to walk in here
25 and be dishonest. Who has the stake in the outcome of this

1 trial to either tell the truth or not tell the truth.

2 Now, like I said in the beginning, no good deed goes
3 unpunished. Keith, believed that day he tried to help
4 somebody out. It's kosher just to help somebody out. Be
5 friendly. That's what you do and so instead of a thank you
6 or a handshake, he got a gun to his head. It cost him his
7 paycheck and it could have cost him his life.

8 Now, you've heard me mention the name Johnathan
9 Johnson, that was one of the three guys that North
10 Charleston identified, was charged in this case. The third
11 guy, don't know who he is. Still don't know. But
12 Johnathan Johnson has had his day in court. He pled guilty
13 to these charges. He had his day in court. Today, this
14 trial, Tappia Green, it's his day in court. Once you've
15 heard all the testimony from that stand, once you've seen
16 all the evidence been admitted to, once you've heard
17 everything the witnesses have to say, I'm going to come
18 back up here and ask that you find Tappia Green guilty of
19 armed robbery, kidnapping, and possession of a weapon
20 during the commission of a violent crime.

21 Thank you.

22 THE COURT: Mr. Archer, your opportunity, sir?

23 MR. ARCHER: Yes, Your Honor.

24 OPENING STATEMENT- MR. ARCHER:

25 Ladies and gentlemen, this is really an unusual case

1 with an odd set of circumstances. Before you is the
2 State's case. My client and Johnathan Johnson meet up with
3 the alleged victim, Mr. Lee, okay, and say, "give me your
4 money", and Mr. Lee says, "I don't have any money." "Well,
5 you don't, what are we gonna to do?" "Oh, I've got an
6 idea," said Mr. Lee, "let's go to Hardee's and get my check
7 and go cash my check then I'll give you some money." So
8 they go to Hardee's, and it just so happens that the
9 Hardee's they go to, Mr. Johnathan Johnson's, the co-
10 defendant in this matter, his mama works there. Okay. So
11 they go to the Hardee's where his mama works. They pick up
12 a check, that's owed and Mr. Lee works at that Hardee's
13 too. Okay. So we're asked first to believe that Mr. Lee
14 is going to go to a Hardee's where he is likely known and
15 recognized immediately because his mama works there and
16 that's unlikely. Okay. While there, there's no indication
17 by anybody at Hardee's that Mr. Lee is acting unusual,
18 worried, nervous or trying to really say anything, "hey I'm
19 being held at gunpoint." Okay. So they pick up a check,
20 you know, and I think you're going to see by the evidence
21 who he claims that he was in danger but that he had plenty
22 of opportunities at Hardee's to say, "hey, I'm being held
23 at gunpoint," but he didn't. Okay. From there, that ain't
24 just the end of it, they go to a check cashing place where
25 the people know him. Okay. They cashed the check. The

1 testimony is going to be that you go to a check cashing
2 place and it's going to be that he didn't do anything. He
3 didn't seem to be nervous. Didn't seem to be anything
4 unusual going on. Okay.

5 Now, we're going to call Mr. Johnathan Johnson, the
6 co-defendant, and the prosecution has said, well you need
7 to see who's got a stake in this matter. Well as the
8 prosecution told you Mr. Johnson has already pled to some
9 charges so he's been sentenced and he no longer has a stake
10 in anything because his case is over with. He's pled.
11 Okay. And been sentenced. All right. He's going to come
12 in and tell you that number one, -- and the State said
13 Johnathan Johnson knew Mr. Lee but Mr. Lee didn't know Mr.
14 Johnson. Well that's a little bit strange because Mr.
15 Johnson's mother works with Mr. Lee. They work together.
16 So you think they would know each other. All right. But
17 more than that Mr. Johnson's is going to come here and he's
18 going to testify that they did know each other and they
19 knew each other for couple of months and that Mr. Lee owed
20 him money and he owed him money because Mr. Johnson had
21 been selling drugs to Mr. Lee that he is sold him
22 marijuana. He sold him cocaine and he owed him money and
23 that's what this was all about. He wanted to get his money
24 that Mr. Lee owed him for the drugs he bought from him.
25 All right. He's going to tell you there wasn't much guns

1 out there. He's going to tell you, specifically, that Mr.
2 Green had nothing to do with this, nothing to do with it.
3 Okay. In fact, we'll introduce three letters that Mr.
4 Johnson wrote to the solicitor saying, "hey, Mr. Green had
5 nothing to do with this." Okay. Mr. Green is going to
6 testify that during the most of the day he was stoned drunk
7 and high so he wasn't really getting involved in anything.
8 He's going to testify that he didn't have a gun. All
9 right. And so I think y'all are going to have to find at
10 least three things beyond a reasonable doubt. And number
11 one is, you're going to have to find that a robbery, armed
12 robbery, that a robbery occurred as opposed to somebody
13 paying a drug debt. Okay. And secondly, and that if a
14 robbery occurred, people were armed and Mr. Johnathan is
15 going to say, nobody was armed. Okay. And thirdly, that
16 Mr. Green had something material to do with what happened,
17 it wasn't just there sitting, basically, drunk in the back
18 of the car. Okay.

19 So quite honestly when it comes to credibility, the
20 story is so unusual almost to the point of being
21 outrageously unusual that the credibility factor falls on
22 Mr. Lee. And Mr. Lee does have a reason not to tell the
23 truth. First of all, he doesn't want to go telling the
24 cops, "yeah, I owed him money because I was buying drugs
25 from, illegal drugs from him." He doesn't want to tell

1 them that. And I would submit that he probably didn't want
2 to tell his girlfriend that his whole paycheck had gone to
3 pay for drugs. All right.

4 So it's not for us to convince you that Mr. Green is
5 innocent is for the State to prove it and prove it beyond a
6 reasonable doubt. And I, frankly, feel that once you hear
7 the facts, you're going to have some doubts, you're going
8 to have doubts as to who's telling the truth. Is Mr. Lee
9 telling the truth or is Mr. Johnson and Mr. Green telling
10 the truth. You're going to have some question as to
11 whether this was really a robbery or attempted to collect a
12 drug debt. You're going to have some question as to
13 whether it was, even though it's a robbery, you've got two
14 types of robbery. You've got a armed robbery and you've
15 got stronger robbery. Strong -- armed robbery is armed
16 robbery with a deadly weapon. Strong armed robbery is
17 robbery without a deadly weapon. "Hey, give me your money
18 or I'm going to beat you up," "Give me your money or I'm
19 going to hurt you." That's strong armed robbery when
20 there's no weapon involved. So on each three of those
21 counts was there a robbery? Was he armed? Two, you need,
22 you've got -- was Mr. Green involved? You're going to have
23 to find those three things beyond a reasonable doubt and,
24 frankly, I think it's going to be difficult particularly
25 given the strange nature of the story you're being asked to

1 accept and bind.

2 Thank you very much.

3 THE COURT: The State may call its first witness.

4 MR. COOPER: The State calls Mr. Keith Lee.

5 THE COURT: Come forward and be sworn, sir.

6 THE CLERK: If you can raise your right hand and
7 your left on the Bible. Do you swear or affirm the
8 testimony you shall give to be the truth, the whole truth,
9 and nothing but the truth of God?

10 MR. LEE: Yes, ma'am.

11 THE CLERK: Please have a seat. And once you are
12 seated, if you would please state your first and last name
13 and spell your last name.

14 MR. LEE: Yes, ma'am. My name is Keith Lee.
15 Last name L-e-e.

16 THE COURT: All right. Counselor, your witness.

17 MR. COOPER: Thank you, Your Honor. May it please,
18 the Court?

19 THE COURT: Yes, sir.

20 KEITH LEE, first being
21 duly sworn, testified as follows:

22 Direct Examination by Mr. Cooper:

23 Q. Good morning, Mr. Lee.

24 A. Good morning.

25 Q. How are you this morning?

1 A. Nervous.

2 Q. Why are you nervous?

3 A. Because I see the man who wanted to take my life.

4 Q. Are you also nervous because you've got a bunch of
5 people here that you don't know who they are?

6 A. Yes, sir.

7 Q. Is it hard to get up in front of a bunch of people and
8 tell a story?

9 A. No, sir.

10 Q. Will you tell the jury how old you are?

11 A. I'm twenty-five of age.

12 Q. And where do you currently live?

13 A. I live in Olar.

14 Q. Olar?

15 A. Yes, sir.

16 Q. Where's that?

17 A. That's between Barnwell, South Carolina and Denmark.

18 Q. About how far is that from here?

19 A. Two hours and a half.

20 Q. Were you born there?

21 A. No, sir.

22 Q. Where were you born?

23 A. I was born in Allendale, South Carolina.

24 Q. Is that close by to Olar?

25 A. Yes, sir.

1 Q. Where do you currently work?

2 A. I currently work at Hardee's in Bamberg, South
3 Carolina.

4 Q. How long have you been working there?

5 A. Just started about two weeks now?

6 Q. What you do there?

7 A. I'm a back line cook?

8 Q. Where did you were before you worked at Hardee's?

9 A. I was working on a milk dairy.

10 Q. A what?

11 A. A milk dairy.

12 Q. What were you doing there?

13 A. Milking cows.

14 Q. Did you graduate from high school?

15 A. Yes, sir.

16 Q. What year?

17 A. '09.

18 Q. Did you do any kind of education after that?

19 A. I went to Denmark Tech to get my plumbing license.

20 Q. Did you have --- did you graduate, you have a plumbing
21 license?

22 A. Yes, sir.

23 Q. What you want to do that in the future?

24 A. I want to start my own business.

25 Q. Doing plumbing?

Keith Lee- Direct Examination by Mr. Cooper:

136

1 A. Yes, sir.

2 Q. Are you married?

3 A. No, sir.

4 Q. Are you in a relationship?

5 A. Yes, sir.

6 Q. With who?

7 A. Lisa.

8 Q. Is that your fiancée?

9 A. Yes, sir.

10 Q. Is she in the courtroom with you today?

11 A. Yes, sir.

12 Q. Do you have any kids?

13 A. Yes, sir.

14 Q. How many?

15 A. I've got one, she's five years old. And I got one on
16 the way.

17 Q. What's the name of the one that's five years old?

18 A. Her name is Madison Lee.

19 Q. Now, I want to focus your attention back to April of
20 2015. Where were you living in April of 2015?

21 A. I was living in North Charleston on Orangeburg Street.

22 Q. When did you move to Charleston?

23 A. In February.

24 Q. Of 2015?

25 A. Yes, sir.

1 Q. Why did you move down to Charleston?

2 A. I met a young lady.

3 Q. Who did you meet?

4 A. Her name was Karissa Aiken.

5 Q. And were y'all in a relationship?

6 A. Yes, sir.

7 Q. Did you move down to be closer to her?

8 A. Yes, sir.

9 Q. Were you living with her?

10 A. Yes, sir.

11 Q. Where were y'all living?

12 A. We was living right there on Orangeburg Street off of
13 Rivers in North Charleston.

14 Q. Did you have a job in Charleston?

15 A. Yes, sir.

16 Q. Where were you working?

17 A. At Hardee's in Mount Pleasant.

18 Q. How did you get that job?

19 A. Through Karissa, she was the manager.

20 Q. When did you start working at that Hardee's?

21 A. About the middle of February.

22 Q. Of 2015?

23 A. Yes, sir.

24 Q. I want to focus your attention now to April 14, 2015,
25 do you remember that day?

1 A. Yes, sir.

2 Q. Why?

3 A. That's the day I been kidnapped and robbed.

4 Q. Now, I want to talk to you just a little bit about
5 before that incident happened, what were you doing earlier
6 that day?

7 A. I was going with Karissa to take her to deposit her
8 paycheck at Wells Fargo.

9 Q. Did Karissa have -- did you have to work that night?

10 A. No, sir.

11 Q. Did Karissa?

12 A. Yes, sir.

13 Q. Do you remember when she had to go into work?

14 A. It was that afternoon.

15 Q. And then y'all stopped at Wells Fargo on the way?

16 A. Yes, sir.

17 Q. Did you have one car or did you have multiple cars?

18 A. We just had one car.

19 Q. Would you take her and drop her off?

20 A. Yes, sir.

21 Q. So you can have the car?

22 A. Yes, sir.

23 Q. So why -- you said you mentioned you stopped at Wells
24 Fargo, was at the one on Dorchester Road?

25 A. Yes, sir.

1 Q. Why did you -- why did y'all have to stop there on the
2 way?

3 A. She had to deposit a paycheck that she had, sir.

4 Q. Did you go into the bank with her?

5 A. No, sir.

6 Q. Did you stay in the car?

7 A. Yes, sir.

8 Q. Can you tell the jury what you observed while you were
9 sitting in the car waiting for Ms. Aiken?

10 A. While I'm sitting in the car waiting on Ms. Aiken, I
11 see an individual with a red shirt, the driver of the gold
12 PT Cruiser, went into the bank and I watched him come out
13 the bank.

14 Q. You mentioned a gold PT Cruiser, where was that
15 parked?

16 A. It was parked right there on the right side of the
17 vehicle that I had been in.

18 Q. Right next to you?

19 A. Yes, sir.

20 Q. What happened when he, that individual in the red
21 shirt, came back out?

22 A. When he came back out his car must be couldn't crank
23 so he tapped on the passenger side door, ask me did I had
24 some jumper cables and can I give him a boost.

25 Q. And did you have jumper cables?

Keith Lee- Direct Examination by Mr. Cooper:

140

1 A. Yes, sir.

2 Q. Now, did you know who this individual was?

3 A. No, sir.

4 Q. Did you decide to help them out?

5 A. Yes, sir.

6 Q. Why?

7 A. Because where I'm from one hand washes the other. We
8 all look out for each other in small towns.

9 Q. And you had jumper cables in your car?

10 A. Yes, sir.

11 Q. So did you get those out and help jump him off?

12 A. Yes, sir.

13 Q. Did you get the cars cranked?

14 A. Yes, sir.

15 Q. What did you do after you got the cars cranked?

16 A. After we got the car cranked, I shut the hood to the
17 vehicle. I then walked to the trunk to put the jumper
18 cables in the trunk. After I shut the trunk and open the
19 drivers door, went to get in the driver door, put my right
20 foot inside of the car, as soon as I set down I felt
21 something press against the left side of my head. I slowly
22 looked around and it was a silver revolver, a handgun, to
23 my head.

24 Q. Who was holding that gun?

25 A. That was the driver, Johnathan.

Keith Lee- Direct Examination by Mr. Cooper:

141

1 Q. Did you know his name at that point?

2 A. No, sir.

3 Q. You've since learned it?

4 A. Yes, sir.

5 Q. What did Johnathan do then?

6 A. After he put the gun to my head, he grabbed me around
7 my neck with the other, pulled me out of the car, walked me
8 behind my car and throw me in the backseat of the gold PT
9 Cruiser behind the driver door.

10 Q. So you were sitting in the back seat behind the driver
11 door?

12 A. Yes, sir.

13 MR. COOPER: I beg the Court's indulgence just one
14 second.

15 THE COURT: Yes, sir.

16 MR. COOPER: Your Honor, at this time I believe I
17 have exhibits one through twenty-eight pictures and I
18 showed them to Mr. Archer and I believe he has no objection
19 to me admitting them, putting them into evidence at this
20 point.

21 THE COURT: Any objections?

22 MR. ARCHER: No objections.

23 THE COURT: Without objections. Those photographs
24 will be made part of the record.

25 MR. COOPER: Thank you, Your Honor.

Keith Lee- Direct Examination by Mr. Cooper:

142

1 THE COURT: You may proceed.

2 (Whereupon, the Photos 1 through 28 has been marked and
3 entered into evidence as State's Exhibit's Nos. 1-28)

4 Q. I'm going to show you what is entered into evidence as
5 State's Exhibit 17, it should show up on that screen in
6 front of you.

7 (Whereupon, it took at moment for the solicitor's office to
8 get photo available)

9 MR. COOPER: Sorry about that, Judge.

10 Q. I'm going to show you what's been marked State's
11 Exhibit 17, do you recognize that?

12 A. Yes, sir.

13 Q. What is that?

14 A. That's the gold PT Cruiser that they threw me in.

15 Q. Okay. When you got into that PT Cruiser, how many
16 other people was in there?

17 A. There was two more individuals.

18 Q. Where were they sitting?

19 A. Mr. Green was sitting in the passenger seat in the
20 front and there was a man sitting in the back.

21 Q. The man sitting in the back seat beside you, what was
22 he wearing?

23 A. He was wearing a white T-shirt and, like, black pants.

24 Q. And you had indicated that Mr. Green was sitting in
25 the front passenger seat?

1 A. Yes, sir.

2 Q. What was he wearing?

3 A. He was wearing a black shirt and black shorts.

4 Q. Okay. And then Mr. Johnson, the one who had the gun,
5 where did he go?

6 A. He went in the driver seat.

7 Q. I'm showing you State's Exhibit 22, do you recognize
8 that?

9 A. Yes, sir.

10 Q. And what is that?

11 A. Right there behind the driver seat, that is where I
12 was sitting.

13 Q. So you were sitting on the driver side in the
14 backseat?

15 A. Yes, sir.

16 Q. Was that pink child seat there?

17 A. No, sir.

18 Q. Who was sitting where that child seat was?

19 A. That was the man in the back with the white T-shirt
20 and black pants.

21 Q. Now, did you know any of those three people?

22 A. No, sir.

23 Q. You since -- since then have you learn of two of those
24 are?

25 A. Yes, sir.

Keith Lee- Direct Examination by Mr. Cooper:

144

1 Q. The name of the gentleman in the red shirt, who was
2 that?

3 A. That was Johnathan Johnson.

4 Q. And who was the individual in the black shirt in the
5 front passenger seat?

6 A. That was Mr. Tappia Green.

7 Q. The gentleman who is in court today?

8 A. Yes, sir.

9 Q. Can you describe what he's wearing for the record?

10 A. He's wearing a blue dress up shirt, black pants, with
11 white sneakers.

12 MR. COOPER: Let the record reflect that the witness
13 has identified the defendant.

14 THE COURT: The record will so reflect. You may
15 proceed.

16 Q. I'm going to show you State's Exhibit, State's Exhibit
17 1, do you recognize this?

18 A. Yes, sir.

19 Q. Who is that individual?

20 A. That's Mr. Johnathan Johnson.

21 Q. Is that the shirt -- is that the dude in the red
22 shirt?

23 A. Yes, sir.

24 Q. Driving the car?

25 A. Yes, sir.

1 Q. I'm showing you State's Exhibit 2, do you recognize
2 this?

3 A. Yes, sir.

4 Q. Who is in this picture?

5 A. That was the driver and the backseat passenger.

6 Q. The driver, again, is which one?

7 A. The driver is the red shirt.

8 Q. Okay.

9 A. Back seat passenger is white T-shirt.

10 Q. And I'm showing you State's Exhibit 3, do you
11 recognize this?

12 A. That's the driver in the red shirt. That's Mr. Tappia
13 Green in the black T-shirt with black pants.

14 Q. And where's there -- where would your car have been in
15 this picture?

16 A. Right there where the driver walking at.

17 Q. Now, I want to focus your attention to when you first
18 got in the back seat of that PT Cruiser, what happened?

19 A. After I got in the back seat, the back seat man put a
20 .38 revolver, pressed it in my right side. Mr. Green turn
21 around and put a black Hi-Point .45 in my face. They
22 backed up to the parking lot right behind where they was
23 parked at. The driver turned around and put the revolver
24 into my mouth and asked me to give up my money and jewelry.

25 Q. Now, you're awfully specific about the types of guns,

1 are you familiar with weapons?

2 A. Yes, sir.

3 Q. Do you have your own?

4 A. Yes, sir.

5 Q. Did you have one on you that day?

6 A. No, sir.

7 Q. Now, who mentioned to you about getting your items up?

8 A. That was Mr. Green and Mr. Johnathan.

9 Q. That was the driver ---

10 A. And the passager ---

11 Q. --- and the passenger in the front?

12 A. Yes, sir.

13 Q. What did you have on you to give to them?

14 A. I ain't had nothing but a ring, necklace, and maybe
15 two or three dollars.

16 Q. Did you give that to them?

17 A. Yes, sir.

18 Q. Were they satisfied with those?

19 A. No, sir.

20 Q. What happened once you indicated that's all you had?

21 A. Mr. Green and Johnathan, Mr. Green told Johnathan
22 we're going to kill him right here if he don't come up with
23 nothing else.

24 Q. And then what happened after that?

25 A. Then Mr. -- the driver, Johnathan, he said you know

1 what, I know you work at Hardee's, I just took my
2 girlfriend to pick up her paycheck.

3 Q. Did you know, at that point, who Mr. Johnson was?

4 A. No, sir.

5 Q. What was going through your head when Mr. Green
6 mentioning wanting to kill you?

7 A. I was scared. My heart beating fast. I thought that
8 would have been my last moment of breathing.

9 Q. Did you believe that they were serious?

10 A. They were serious, yes, sir.

11 Q. How do you know?

12 A. From their demeanors and the way they was looking.

13 Q. Did you have a check ready for you at Hardee's?

14 A. Yes, sir.

15 Q. Was -- when do you usually get -- when do you usually
16 get paid at Hardee's?

17 A. Well, it was on a Tuesday, every other Tuesday, after
18 five.

19 Q. And was April 14th a Tuesday?

20 A. Yes, sir.

21 Q. Was it payday?

22 A. Yes, sir.

23 Q. How did you confirm that you had a check waiting on
24 you?

25 A. After he told me that he just took his girlfriend up

Keith Lee- Direct Examination by Mr. Cooper:

148

1 there to pick up her check and all that time they had my
2 jewelry and my phone. Mr. Green give me my phone back so I
3 could call Hardee's. I called Hardee's, the manager,
4 Shania, been on duty that day. She told me I could pick my
5 check up early.

6 Q. So was this before 5 o'clock in the afternoon?

7 A. Yes, sir.

8 Q. What happened once you indicated to them that you
9 could pick that check up?

10 A. After I told them I could pick my check up, they tied
11 my hands and they tied my feet. We left Wells Fargo Bank
12 headed towards Mount Pleasant.

13 Q. What did they tie your hands and feet with?

14 A. Like a tie. Like a necktie.

15 Q. And then -- so Mr. Johnson was driving the car?

16 A. Yes, sir.

17 Q. And where were y'all headed?

18 A. We was headed to Mount Pleasant.

19 Q. Can you describe for the jury the dynamic in that car
20 as y'all were headed to Mount Pleasant, what's going on?

21 A. Well, in the car, before we got crossed Mount Pleasant
22 bridge, the driver with the big revolver he stick the gun
23 out the window, the hammer was still cocked, he stick the
24 gun at the window as we was driving and fired off a shot.

25 Q. Why did he do that, do you know?

1 A. I guess, to let me know he was serious, he wasn't
2 playing no games.

3 Q. Did you ever see when he cocked the hammer?

4 A. I seen it when he cocked that hammer when they backed
5 up behind Wells Fargo and he put the gun in my mouth, he
6 cocked the hammer before he put the gun in my mouth and I'm
7 looking at the balls in the revolver and looking down at
8 the barrel at the green ball in the barrel.

9 Q. Did anything else happen as you were headed to Mount
10 Pleasant?

11 A. When we was going to Mount Pleasant the front seat
12 passenger had, had a dollar bill rolled up and he was put
13 in something under his nose.

14 Q. What happened, um, I'm gonna show you State's Exhibit
15 4, do you recognize this?

16 A. Yes, sir.

17 Q. What is this?

18 A. That's the route that we took to went to my job.

19 Q. Do you see Hardee's on that map?

20 A. Yes, sir.

21 Q. You should be able to touch that screen, can you
22 indicate on the screen where Hardee's is?

23 (Whereupon, the witness complies)

24 A. Right there, sir.

25 Q. Where that red circle is?

Keith Lee- Direct Examination by Mr. Cooper:

150

1 A. Yes, sir.

2 Q. Now, is the bridge on the left, is that how y'all came
3 into Mount Pleasant?

4 A. Yes, sir.

5 Q. I'm showing you State's Exhibit 5, what is this?

6 A. That's the parking lot at Hardee's, sir.

7 Q. Now, if you will help me orient the jury on where this
8 Hardee's is, what road is at the top of the screen?

9 A. That's Highway 17.

10 Q. Okay. So y'all were coming from the left side off the
11 bridge?

12 A. Yes, sir.

13 Q. Where, in this parking lot, did they park when y'all
14 got to Hardee's?

15 A. We parked right here, sir.

16 Q. Where that red circle appeared?

17 A. Yes, sir.

18 Q. When you came to work would you usually park on that
19 side?

20 A. No, sir. Always part on the drive-through side,
21 always.

22 Q. Is that the side you would enter the restaurant
23 through?

24 A. Enter and go out.

25 Q. Can you explain to the jury what happened once y'all

1 got to Hardee's?

2 A. After we got to Hardee's, they untied my hands. The
3 driver got out, stuck the silver revolver into his pants.
4 The front seat passenger, Mr. Green, told me if you go in
5 there signal for help or try anything I'mma come in there
6 and kill you and everybody who is in Hardee's.

7 Q. Let me show you State's Exhibit 7 -- State's Exhibit
8 7, what does this picture show?

9 A. That's the gold PT Cruiser with me in it pulling up at
10 Hardee's.

11 Q. Showing you State's Exhibit 8, what does this picture
12 show?

13 A. That's the driver, Mr. Johnathan, escorting me into
14 Hardee's.

15 Q. Is Mr. Johnson is the one in the red?

16 A. Yes, sir.

17 Q. What are you wearing?

18 A. I'm wearing the black shirt, the shorts, with a black
19 tank top, with the writing on it.

20 Q. Where was Mr. Green and the other individual?

21 A. Mr. Green was in the front passenger seat and the back
22 seat man was sitting behind Mr. Green sitting in the car.

23 Q. So they stayed in the car while you went inside?

24 A. Yes, sir.

25 Q. What happened as y'all were walking inside the

Keith Lee- Direct Examination by Mr. Cooper:

152

1 restaurant?

2 A. Between the outside and the lobby Mr. Johnathan stop
3 me and put his hand on my shoulder, he said, "Keith I don't
4 want to do this, it's a gang initiation. If I tell you who
5 my mama is, you know me." And I'm in like a state of shock
6 trying to find out what he talking about. So I took one or
7 two steps, he put his hand on my shoulder again, he said,
8 "my mama work in the back line cook with you and her name
9 is Ms. Iva." And he guarantee me that he wouldn't let the
10 back seat man or Mr. Green kill me or do any harm to me.

11 Q. Who is Ms. Iva?

12 A. Ms. Iva is Johnathan's mother.

13 Q. And she worked with you at that Hardee's?

14 A. Yes, sir.

15 Q. Did you know that she had kids?

16 A. No, sir.

17 Q. Would you and Karissa help give her rides, take her
18 home, that kind of thing?

19 A. Yes, sir.

20 Q. But you didn't know she had a son?

21 A. No, sir.

22 Q. You had never met Mr. Johnson?

23 A. No, sir.

24 Q. What happened once you got inside the restaurant?

25 A. After we got into Hardee's, I had to wait on the

1 manager, Shania, to wait on the customers. After she
2 waited on the customers, I walk up to the counter she had
3 to give me a sign in sheet to get my paycheck. While she
4 was looking at me I'm doing lip movements because I know
5 Mr. Johnathan is right there looking at me like, "help".
6 She didn't heard me. So as I'm signing the paper I'm
7 looking to the left Mr. Johnathan came from the corner and
8 stand exactly against me.

9 Q. Were you able to get the check ---

10 A. Yes, sir.

11 Q. --- from Shania?

12 A. Yes, sir.

13 Q. What happened after you got your check?

14 A. After I got the check, on the way walking out of
15 Hardee's, we heard some sirens, like, fire trucks and
16 polices. (sic) Mr. Green and the back seat man was on the
17 way coming into Hardee's. They thought that I alert the
18 authorities or press the panic button. They said they was
19 coming in there to kill me and everybody else that been in
20 there.

21 Q. Let me show you State's Exhibit 12, what does this
22 picture show?

23 A. That's Mr. Green and the back seat passenger coming
24 into the store after they heard the sirens.

25 Q. And Mr. Green is, again, which one?

Keith Lee- Direct Examination by Mr. Cooper:

154

1 A. The black shirt and the black shorts.

2 Q. In the other -- the guy that was in the back seat with
3 you is wearing, white?

4 A. Yes, sir.

5 Q. I'm showing you State's Exhibit 13, what does this
6 picture show?

7 A. After we coming out, Mr. Green and Johnathan escort me
8 back to the car. The back seat man making sure that I
9 didn't press the panic button and he's checking and make
10 sure no polices (sic) or nothing is coming at that time.

11 Q. What did they say when you walked outside?

12 A. Oh, if you would have pressed the panic button we was
13 going to come in there and kill you and everybody else in
14 the store.

15 Q. Were there panic buttons at the Hardee's?

16 A. Yes, sir.

17 Q. And you knew where they were located?

18 A. Yes, sir.

19 Q. Had you ever had use one before?

20 A. No, sir.

21 Q. Had you ever known of anybody that had used it before?

22 A. No, sir.

23 Q. Did you know if they worked?

24 A. No, sir. I didn't know if they worked.

25 Q. So one of the things I want you to explain to the jury

1 if you can, is it, you were in there in front of the
2 manager ---

3 A. Yes, sir.

4 Q. You were outside in the open, why did you give them
5 your check, get back in the car and do what they told you
6 to?

7 A. Because I'm afraid my life would have been in jeopardy
8 and if I did would've got away, I feel like they would have
9 killed the older people that had been in the back, the back
10 cooks and everything. There inside the lobby there was a
11 woman with some little infant kids. I ain't want to put
12 nobody else's life in jeopardy.

13 Q. Did you see -- did you believe that they were serious?

14 A. Dead serious.

15 Q. How did you -- how did you know that? What made you
16 believe that if you didn't do what they told you to do
17 that, that was going to happen?

18 A. Well, besides the substance that I see Mr. Green put
19 up his nose and the threats that they kept making to me.

20 Q. And all three of them, you had seen guns with all
21 three of them?

22 A. Yes, sir.

23 Q. Now, I want to show you State's Exhibit 6, what does
24 this show?

25 A. That's my pay -- my paystub.

Keith Lee- Direct Examination by Mr. Cooper:

156

1 Q. How do you know it's yours?

2 A. My name is on it.

3 Q. Would you circle where your name appears?

4 A. Yes, sir.

5 (Whereupon, the witness complies)

6 Q. And how do you know it was the check from that day?

7 A. Because that's the day I was working -- no, that's the
8 day I was supposed to pick my check up. The date is right
9 here.

10 Q. That's April 14, 2015?

11 A. Yes, sir.

12 Q. And then what was the amount this check was for?

13 A. The amount was for \$242.91.

14 Q. Once you had the check and you were leaving, what
15 happened when y'all got back in the car?

16 A. After we got back in the car, they tied my hands, tied
17 my feet, we went back across the Mount Pleasant bridge.

18 Q. Who took the check from you?

19 A. The back seat man give it to Mr. Green.

20 Q. Did Mr. Green ask for?

21 A. No, sir.

22 Q. He just gave it to him?

23 A. Just give it to him.

24 Q. Did Mr. Green take the check stub, the check and the
25 check stub out of the envelope?

1 A. Yes, sir.

2 Q. When y'all got back in the car, where did y'all head?

3 A. We headed back towards North Charleston. We went to
4 cash the check. They asked me if there was any place that
5 I go to cash my check. I told him, yes, but I didn't have
6 my ID. And the place I went was Ace Check Cashing Place.
7 So they let me cash my check without my ID.

8 Q. I'm going to show you State's Exhibit 15, what does
9 that picture show?

10 A. That's showing we leaving Hardee's parking lot.

11 Q. And can you read the timestamp at the bottom?

12 A. 15:46:47.

13 Q. You know what 15 is in military time?

14 A. No, sir.

15 Q. What happened once she got to the check cashing place?

16 A. Got to the check cashing place. They parked. They
17 untied my hands. Untie my feet. Mr. Green stated again
18 if you go in there and try anything I'm going to come in
19 there and kill you and whoever else in there.

20 Q. I going to show you State's Exhibit ---

21 A. The driver went in there with me.

22 Q. Just like Hardee's?

23 A. Yes, sir.

24 Q. I show you State's Exhibit 26, what does that show?

25 A. That's the picture of the check cashing place.

Keith Lee- Direct Examination by Mr. Cooper:

158

1 Q. Can you circle where on the picture where the check
2 cashing places?

3 (Whereupon, the witness complies)

4 A. Right there, sir.

5 Q. Okay. And you said Mr. Johnson went in with you like
6 he did at Hardee's?

7 A. Yes, sir.

8 Q. And Mr. Green and the other individual stayed in the
9 vehicle?

10 A. Yes, sir.

11 Q. Were you able to cash the check?

12 A. Yes, sir.

13 Q. Who took the cash from you?

14 A. After I cashed the check we went back to the car just
15 let me before. The back seat man had got the check, I
16 mean, the envelope, passed it to Mr. Green.

17 Q. What happened once they had the money?

18 A. After they had the money Mr. Green cocked back the
19 black gun and said he done seen our face, we done got his
20 money, let's take them to John's Island and kill him.

21 Q. And what were you thinking at that point?

22 A. My life was over. I wasn't going to see my child no
23 more. I wasn't going to see my family. My mama. My whole
24 life is over.

25 Q. What happened after he said that?

1 A. After he said that, Mr. Johnathan, the driver told him
2 he was combative, he give us the money, he ain't give us no
3 trouble and plus him and his girlfriend takes my mama to
4 work, back and forth, they look out for my mother.

5 Q. How was Johnathan acting when he told Mr. Green that?

6 A. The whole time I've been with him, that's the first
7 time I actually heard Mr. Johnathan talk with authority.

8 Q. Before then, who did it seem like was in charge?

9 A. Mr. Green was in charge the whole time.

10 Q. What made you think that?

11 A. When it was time to get the money, they give
12 everything to Mr. Green. Mr. Green was the one making the
13 threat. They ain't made no moves without Mr. Green.

14 Q. All right. Even though he was staying in the car?

15 A. Even though he was saying in the car.

16 Q. Did Mr. Green relent and decide to let you go?

17 A. Yes, sir.

18 Q. Where did they let you go at?

19 A. We stopped at the Tiger Express right beside Churches.

20 Q. I want to show you real quick, State's Exhibit 27,
21 what does this show?

22 A. This show right there where they stop the car, right
23 there, on the right side of Tiger express. The back seat
24 man got out. After he got out I looked to the right at Big
25 Chik's I seen my girlfriend. At that time, she was in the

Keith Lee- Direct Examination by Mr. Cooper:

160

1 line at the drive-through line. I begged them to let me
2 go. I don't know y'all. I'm not from around here. If you
3 let me go I'm not going to the police. I just want my
4 life. I've got a child. I just want to live.

5 Q. Did Karissa try to get in touch with you ---

6 A. Yes.

7 Q. --- while -- after you got out of the car?

8 A. After I got out of the car, no, sir.

9 Q. Did she try, I mean, did she try to call you while you
10 with ---

11 A. Yes, sir.

12 Q. --- Mr. Green and all of them?

13 A. Yes, sir.

14 Q. Were you able to answer the phone?

15 A. No, sir.

16 Q. And what kind of car did she drive?

17 A. It was a purple Nissan Sentra.

18 Q. What happened once y'all got to the Tiger Mart Gas
19 Station?

20 A. After we got to the Tiger Mart Gas Station the back
21 seat dude, he got out. Before he got out, Mr. Green had
22 opened the envelope and told, turn around and told me it
23 ain't nothing personal it's just business. We not going to
24 leave you straight broke. He told Mr. Green, um, Mr.
25 Johnathan and the back seat man, take our dollars out your

1 pockets and give it to him.

2 Q. And then did you get out of the vehicle?

3 A. Yes, sir.

4 Q. Where did you go?

5 A. I got out of the vehicle, I ran straight to Churches
6 where I seen my girlfriend at the time in the drive-
7 through, ran to it and got into the car.

8 Q. How did she act when she saw you?

9 A. She asked what happened to me. I've been hysterical
10 and scared. I told her I just got robbed and kidnapped. I
11 just got robbed and kidnapped.

12 Q. Did you believe you?

13 A. Not at first.

14 Q. What was her response?

15 A. Her response, she thought I was joking. She was like
16 a shock, I mean, shocked.

17 Q. Where did y'all go after Churches?

18 A. After we left Churches we went to the house.

19 Q. On Orangeburg Street where y'all lived?

20 A. Yes, sir.

21 Q. Is that close by that area?

22 A. Yes, sir.

23 Q. When did she believe you?

24 A. After we got to the house I had a firearm in the
25 house. I was going to grab the firearm and go back and try

Keith Lee- Direct Examination by Mr. Cooper:

162

1 to do a citizens arrest, hold them there went to the police
2 got there. On my way walking down the highway, after she
3 realized I was serious, she called North Charleston Police
4 Department and told them I was walking down with a firearm
5 on me. He just got robbed and kidnapped. He was going to
6 where one of the dude, he allegedly got dropped off at.

7 Q. Now, you didn't know these people?

8 A. No, sir.

9 Q. You didn't know where they lived?

10 A. No, sir.

11 Q. Where were you going with the gun?

12 A. The back -- before they let me out, the man in the
13 back seat sitting beside me, he got out at Tiger Express
14 and had been standing up there beside Tiger Express.

15 Q. What were you going to do the gun?

16 A. I wasn't gonna do nutt'in. I was just gonna try to
17 hold him there until authorities got there.

18 Q. Were you angry? Upset? Mad? What was going through
19 your mind at that point?

20 A. I was scared. I was angry. I was upset. I was
21 nervous. I was confused.

22 Q. Were you going to try and shoot them?

23 A. No, sir.

24 Q. Why?

25 A. I don't have that in me to hurt nobody.

1 Q. What were you going to do with the gun, then?

2 A. I was going to hold him there until authorities came.

3 Q. Did you eventually run into North Charleston Police?

4 A. Yes, sir.

5 Q. Explain -- if you can explain for the jury how that
6 went down?

7 A. Before I made it to the end of my street, before I
8 seen the police, I seen the smoke from the tires. It was
9 like five or six officers came in front with the cars
10 parked sideways. I went to look behind me it was probably
11 ten or eleven behind me with guns drawn out.

12 Q. What happened at that point?

13 A. At that point they asked me to drop my firearm. I was
14 scared to drop it. I didn't want make no sudden moves. So
15 I'd been like this right here and I beg one of them to come
16 and take it out of my hand because I ain't want to get shot
17 or get hurt.

18 Q. Were you able to explain to him what happened?

19 A. Yes, sir.

20 Q. What happened after that?

21 A. After I told them that, two of the officers went
22 scanning the neighborhood. Like five or six minutes after
23 that, they did a report and made sure the firearm I had was
24 in my name, make sure it was registered. Once I ---

25 Q. Was ---

1 A. Sir?

2 Q. Was it legally yours?

3 A. Yes, sir. Like five minutes later, got a call and
4 said they got a man fitting the description in the back
5 seat of one of the police cars. The detective put me in
6 the back seat of his car and took me down there but it
7 wasn't the man who was in the back seat it was someone
8 else.

9 Q. So you were able to get a good look at the guy they
10 had in custody?

11 A. Yes, sir.

12 Q. And it wasn't any of the three?

13 A. No, sir.

14 Q. What happened after they did that drive-by?

15 A. After the drive-by they took me to North Charleston
16 Police Department.

17 Q. What did you do there?

18 A. They asked me some questions and she give me a bunch
19 of pictures. I had to make, ah, I had to do a line-up.

20 Q. Who did you speak with?

21 A. Detective Kaufman.

22 Q. Now, did you come back a few days later and do a line-
23 up?

24 A. Yes, sir.

25 MR. COOPER: I beg the Court's indulgence for just

1 one second.

2 THE COURT: Yes, sir.

3 Q. If I were to show you a copy blind that you did, would
4 you recognize it?

5 A. Yes, sir.

6 MR. COOPER: Your Honor, may I approach the witness?

7 THE COURT: You may.

8 Q. Would you look at this document and just tell me if
9 you recognize it?

10 A. Yes, sir.

11 Q. What is that?

12 A. After I have had picked the line-up, the person that I
13 know was involved, this is the picture they give me to make
14 sure everything was all right, was straight.

15 Q. How do you know that, that's the line-up that you did?

16 A. Because my signature and my handwriting is on it.

17 Q. What's the date on that line-up?

18 A. It's the 4/16/2015.

19 Q. April 16, 2015?

20 A. Yes, sir.

21 Q. And the crime happened on what day?

22 A. The 14th.

23 Q. So just two days afterwards?

24 A. Yes, sir.

25 Q. Were you able to identify somebody or identify one of

Keith Lee- Direct Examination by Mr. Cooper:

166

1 those pictures as being involved in the incident?

2 A. Yes, sir.

3 Q. What picture were you able to identify?

4 A. I identified, page 4, Mr. Tappia Green.

5 Q. Is his -- is his name on there?

6 A. No, sir.

7 Q. When you were shown the line-up, did the officer that
8 showed you, was he involved in the case at all?

9 A. Yes, sir.

10 Q. Was he involved in the case other than showing you the
11 line-up?

12 A. No, sir.

13 Q. Okay. Did he go over the admonition on the front of
14 the document?

15 A. Yes, sir.

16 Q. Did he explain to you that the person may or may not
17 be the one?

18 A. Yes, sir.

19 Q. How many pictures total were in there?

20 A. If I ain't mistaken, six, sir.

21 Q. And did he hand you all six at one time?

22 A. Yes, sir.

23 Q. Did he let you go through them?

24 A. Yes, sir.

25 Q. And you identified which one?

1 A. Page 4.

2 Q. Okay. And then how do you know that, that's the one
3 you identified?

4 A. Because I sign my name and I dated it.

5 Q. Did the officer that gave you the line-up, did he do
6 anything to suggest to you who to pick?

7 A. No, sir. Not at all.

8 Q. Did he indicate who, if anybody, was in that line-up?

9 A. No, sir.

10 Q. Did you indicate to him how sure you were who was in
11 that line-up?

12 A. Yes, sir.

13 Q. Okay. And how sure were you?

14 A. I was seventy-five percent sure.

15 Q. And how -- and why not hundred percent sure?

16 A. Because when I been with Mr. Green he had gold fronts
17 in his mouth and he was, like he ain't had a hair cut or
18 shaved in about weeks and then on the line-up he clean-cut
19 and his mouth is closed.

20 Q. Then how are you able to know that, that was the
21 individual who was in the front seat?

22 A. When I close my eyes, even now when I close my eyes,
23 and sleep at night his face is all I see when I close my
24 eyes every night. So that's the face I'll never forget as
25 long as I live I'll never forget that face right there.

1 Q. When he would talk to you or make threats against you,
2 were you looking at him in the face?

3 A. Directly.

4 Q. And about what time of day did this incident occur?
5 Not the line-up but the actual incident? Was it the
6 afternoon? Was it at night?

7 A. It was that afternoon, sir.

8 Q. So it was light outside?

9 A. Yes, sir.

10 Q. So you can see Mr. Green?

11 A. Yes, sir.

12 Q. You can see all three of them?

13 A. Yes, sir.

14 Q. Now, I just want to ask you a couple more questions,
15 Mr. Lee.

16 A. Yes, sir.

17 Q. Can you explain for the jury what effect this
18 incident's had on you since then, the last two years?

19 A. The last two years it changed me. It made me
20 paranoid. I can't sleep. I can't rest. My judgment of
21 people is different. I'm looking at people sideways.
22 It's, even when I'm sleep now, I have to take a sleeping
23 pill just to go to sleep. I can't, like when it is time to
24 help somebody, I have to second judge it before I just jump
25 up and be a good Samaritan.

1 Q. Are you still dating Ms. Aiken?

2 A. No, sir.

3 Q. When did y'all end y'all's relationship?

4 A. I left Charleston in October.

5 Q. Of 2015?

6 A. Yes, sir.

7 Q. Did this play a role in that at all?

8 A. Yes, sir.

9 Q. How so?

10 A. She say I started acting paranoid. I started acting
11 different, like I was shell shocked. I was talking and
12 screaming in my sleep and jumping in my sleep.

13 Q. Now, you mentioned that you just started working at a
14 Hardee's in Bamberg ---

15 A. Yes, sir.

16 Q. --- a week or so ago? Are you missing work to be here
17 today?

18 A. Yes, sir.

19 Q. When did you come down to Charleston?

20 A. I came down Sunday.

21 Q. And you've been here since then?

22 A. Yes, sir.

23 Q. And can you afford to miss work?

24 A. No, sir.

25 Q. Then will you tell the jury why you're here?

Keith Lee- Direct Examination by Mr. Cooper:

170

1 A. It's important to me. I don't want this to happen to
2 nobody else. A dog don't deserve to go through what I went
3 through.

4 Q. Now, did you make this up?

5 A. No, sir.

6 Q. Are you lying now?

7 A. No, sir.

8 Q. Were you lying then?

9 A. No, sir.

10 MR. COOPER: Beg the Court's indulgence for just one
11 second.

12 THE COURT: Yes, sir.

13 Q. Now, I just want to ask you just a couple more
14 questions, Mr. Lee. When Mr. Johnson got out of Hardee's
15 before y'all went in, did you see him have his weapon?

16 A. Yes, sir.

17 Q. Where did he put it?

18 A. He put it in the front of his pants and put his shirt
19 over it.

20 Q. So you couldn't see it on the video or the pictures?

21 A. No, sir.

22 Q. Did Mr. Green have his weapon with him?

23 A. Yes, sir.

24 Q. When you were leaving Hardee's, where was Mr. Green
25 and the other guy?

1 A. They was inside the car. Mr. Green was in the front
2 seat passenger in the other guy was the back seat passenger
3 sitting behind Mr. Green.

4 Q. When y'all walked out of the Hardee's, where were
5 they?

6 A. They was standing outside in the parking lot.

7 Q. And what did they say to you about why they were out
8 there?

9 A. When they heard the sirens they thought I pressed the
10 panic button, um, to give some kind of signal. They was
11 going to come in there and kill me and everybody else who
12 is in Hardee's ---

13 Q. That's what Mr. Green ---

14 A. --- at that time.

15 Q. --- told you before ---

16 A. That's what he told ---

17 Q. --- you got out of the car, right?

18 A. Yes, sir.

19 Q. How many different times did Mr. Green threatened you?

20 A. Honestly, the whole time I've been in the car. The
21 whole time I had been with them.

22 Q. And he told you not to try anything at the Hardee's,
23 right?

24 A. Yes, sir.

25 Q. And at the check cashing place?

Keith Lee- Direct Examination by Mr. Cooper:

172

1 A. Yes, sir.

2 Q. And you believe their threats to be serious?

3 A. Yes, sir.

4 Q. What, after looking back on this, what made you
5 believe that they would actually carry out their threats?

6 A. Besides seeing Mr. Green doing substance and the
7 threats he keep saying, looking at him in his eye I could
8 have seen the evil in his eye, that let me know he was
9 serious. He wasn't playing a game. He wasn't joking.
10 This man was serious as a heart attack. If the driver was
11 not in the car talking up for me at that time, I strongly
12 believe I would not be in here testifying right now.

13 Q. So Mr. Johnson is the one that put the gun to your
14 head and got you in the car?

15 A. Yes, sir.

16 Q. Do you think he's the one that allowed you to get out
17 of the situation?

18 A. Honestly, yes, sir.

19 Q. Have you ever been arrested?

20 A. No, sir.

21 MR. COOPER: Mr. Lee, I have no further questions
22 for you. I appreciate your time. If you'll answer any
23 questions that Mr. Archer may have for you?

24 MR. LEE: Yes, sir.

25 THE COURT: Sir, you may cross-examine.

Cross Examination by Mr. Archer:

Q. All right. Now, you say today you're just hundred percent sure that Mr. Green was the fella in the front seat?

A. Yes, sir.

Q. But when you talked to the police you were not hundred percent certain, were you?

A. No, sir. I was seventy-five percent.

Q. You said you were seventy-five percent. So between -- well, that would've been what on April 14th, the day of the robbery?

A. Yes, sir.

Q. So on the day of the robbery you were seventy-five percent certain and today you're hundred percent certain?

A. No, sir. The day of the robbery I was hundred percent sure. When they showed me his line-up it was on the 16th, two days later.

Q. It was on the 16th, ---

A. Yes, sir.

Q. --- two days later? Okay. Well, two days later you were seventy-five percent certain, is that right?

A. Yes, sir.

Q. And now a year or so later you're hundred percent certain?

A. Yes, sir. Like I said every time I close my eyes

Keith Lee- Cross Examination by Mr. Archer:

174

1 that's the face I see right there.

2 Q. Okay. But it wasn't the face you saw when you saw the
3 line-up for sure, right?

4 A. It's still the same face. The only thing different is
5 he didn't have facial hair on this line-up. On this line-
6 up he's looking like he's looking right now.

7 Q. And you told the police that the person who you
8 identified as Mr. Green had gold teeth, right?

9 A. Right.

10 Q. And you said if you could see is gold teeth, you would
11 be certain?

12 A. Yes, sir.

13 Q. So the gold teeth were important to you, right?

14 A. Really, it wasn't.

15 Q. It wasn't. Okay. But that's why you're only seventy-
16 five percent certain as opposed to hundred percent certain,
17 right?

18 A. Yes, sir.

19 Q. Okay. Now, you say that on the way to Hardee's Mr.
20 Johnson fired a gun out of the window, is that correct?

21 A. Yes, sir.

22 Q. Did you tell the police about that?

23 A. Yes, sir.

24 Q. You did?

25 A. Yes, sir.

1 Q. Who did you tell?

2 A. I told Mr., Detective Kaufman that.

3 Q. Detective Kaufman?

4 A. Yes, sir.

5 Q. Okay. So it should be in one of his reports, right?

6 A. Sir, it should, but I did told him about it.

7 Q. Okay. And you claim you didn't know Mr. Johnson
8 before the day in question?

9 A. That's right.

10 Q. But you knew his mama?

11 A. Yes, sir.

12 Q. And you claimed you never saw him there at the place
13 coming to see mom?

14 A. That's correct.

15 Q. All right. Now, isn't it true that you knew him prior
16 to the date in question?

17 A. No, sir.

18 Q. Isn't it true that you owe him money ---

19 A. No, sir.

20 Q. --- prior to the date in question?

21 A. No, sir.

22 Q. Isn't it true that you bought drugs from him?

23 A. No, sir.

24 Q. Okay. So you actually deny those things?

25 A. I cannot buy something that I never met these fellows,

Keith Lee- Cross Examination by Mr. Archer:

176

1 sir.

2 Q. Never, what now?

3 A. I could not interact with somebody I never met.

4 Q. Okay. Do you do drugs?

5 A. No, sir.

6 Q. None at all?

7 A. Everybody has tried a little bit of marijuana. I tried
8 it one time but never did it.

9 Q. You did ---

10 A. It wasn't for me.

11 Q. --- other than marijuana once. Smoked it once. Did
12 you inhale?

13 A. No, sir.

14 Q. You smoked it once but you didn't inhale?

15 A. No, sir.

16 Q. Okay. Now, you told Naesha (sic), that' your
17 girlfriend at the time, right, that it was the son of a co-
18 worker?

19 A. The son of a co ---

20 Q. The son of a co-worker who was robbery you?

21 A. Yes, sir.

22 Q. And how did you know that?

23 A. On the way walking into Hardee's before we got into
24 the lobby, Mr. Johnathan Johnson put his hand on my
25 shoulder, at that time, he told me who he was. I guess,

1 to make me feel safe to let me know that he wouldn't let
2 Mr. Green and the other man do any harm to me. He assured
3 me of that.

4 Q. Okay. That he identified himself?

5 A. Yes, sir.

6 Q. You didn't know him before then, he made a point of
7 identifying himself to you and letting you know who he was
8 ---

9 A. Yes, sir.

10 Q. --- so that you could tell the police who he was when
11 it was all over?

12 A. I guess, he wasn't doing no thinking but, yes, sir.

13 Q. Okay. And he told you that?

14 A. Yes, sir.

15 Q. Directly?

16 A. Directly.

17 Q. All right. Not somebody else?

18 A. Just like I'm talking to you, sir.

19 Q. Okay. Oh, you say your hands and feet got tied?

20 A. Yes, sir.

21 Q. What was -- what were they tied with?

22 A. It looked like a tie that go around your neck like you
23 got around ---

24 Q. A tie?

25 A. Yes, sir.

Keith Lee- Cross Examination by Mr. Archer:

178

1 Q. Did -- which one tied -- what tied your hands, a tie?

2 A. Yes, sir.

3 Q. What tied your feet?

4 A. Like some kind of tie or something, sir.

5 Q. Both -- two ties ---

6 A. Yes, sir.

7 Q. --- two separate ties?

8 A. Two separate ties, sir.

9 Q. One tied your hands, one tied your feet.

10 A. Tied your feet.

11 Q. What happened to the ties when you got to Hardee's?

12 A. Like I told you, they took the ties off, the back seat
13 man took the ties off my hands and my feet so I could have
14 got out with Mr. Johnathan ---

15 Q. Okay.

16 A. --- to walk in to get my check.

17 Q. And, hold on a minute here, I'm showing you what's
18 been marked as State's Exhibit 10.

19 A. All right.

20 Q. Do you see that?

21 A. Yes, sir.

22 Q. Is that you in that picture?

23 A. Yes, sir.

24 Q. Okay. And you're talking to Shania, right?

25 A. Yes, sir.

1 Q. And that's Ms. Burden?

2 A. Yes, sir.

3 Q. She's the manager?

4 A. Yes, sir.

5 Q. Okay. And where is Johnathan Johnson in that picture?

6 A. Just like I had stated he was over there talking to a
7 young man. When I started to sign my check Mr. Johnathan
8 came right against me.

9 Q. When you started to get the check?

10 A. Yes, sir.

11 Q. Okay. Now, but there's no -- let me show you what's
12 marked as Exhibit 10, is that the young man that he was
13 talking to?

14 A. I don't know that, that's his face, but he was talking
15 to a young man, yes, sir.

16 Q. Okay. But that's a fair ways away from where you are
17 there?

18 A. Sir, when I got my check he moved from that spot and
19 came against me, sir.

20 Q. When after you got your check?

21 A. No, while I was getting my check. This first picture
22 that you showed me was when I was about to sign my check.
23 This is the picture he was talking to the dude before I
24 signed it.

25 Q. Okay. Let me get this straight, this picture is when

Keith Lee- Cross Examination by Mr. Archer:

180

1 now, this is number, this is number 10, that I'm showing
2 you?

3 A. All right. That picture there I just walked -- she
4 just got finished with her customers. She came over there
5 and brought me the sign-in sheet.

6 Q. Brought you the sign in sheet?

7 A. Yes, sir. That picture there, before I signed the
8 sheet, he was over there talking to that fellow.

9 Q. Huh, huh.

10 A. He looked, I guess, the fellow walked off, he came
11 over there where I was.

12 Q. But after you had signed for the check?

13 A. Yes, sir.

14 Q. Okay. So is it fair to say he's a good ten feet away
15 from you in this picture, number 9?

16 A. It wasn't ten. I'd say at least a good four five. It
17 was not ten feet.

18 Q. Four or five, okay. But this picture number 10, is
19 you and Ms. Burden?

20 A. Yes, sir.

21 Q. And that's when you're signing for your check?

22 A. Yes, sir.

23 MR. ARCHER: I'd like to publish these to the jury,
24 Your Honor?

25 THE COURT: You may do so. By publishing I'm going

1 to allow him to pass them among you. We'll continue with
2 the testimony. Try to pay attention to what's going on.
3 But you're welcome to look at them as he passes them among
4 you.

5 (Whereupon, Mr. Archer publishes the photos to the jury)

6 THE COURT: You may proceed, sir.

7 Q. Okay. Why didn't you tell Ms. Burden that you were
8 being held captive?

9 A. Because I feel if Johnathan would've heard me, he
10 would've shot me and everybody been in there.

11 Q. Everybody in there -- shot every -- kill multiple
12 people? Multiple murders?

13 A. Yes, sir.

14 Q. All right. And the same thing at the check cashing
15 place?

16 A. Yes, sir.

17 Q. Okay. And you didn't think about trying to stay there
18 and not go back out to the car?

19 A. Like I told you, sir, Johnathan - one was in the place
20 with me and one was outside of the check cashing place.
21 They was in the car.

22 Q. Okay.

23 A. So, basically, if I would've came out that check
24 cashing place without the driver, your passenger, I mean,
25 the passenger and the back seat passenger would have seen

Keith Lee- Redirect Examination by Mr. Cooper:

182

1 me came out without Johnathan and they'd already know that
2 I would try to escape.

3 Q. Okay. And where did he keep his gun, put the gun?

4 A. The driver kept the gun in the front, yes, sir.

5 Q. In front of his pants?

6 A. Yes, sir.

7 Q. Okay. So it should be showing through his shirt?

8 A. His shirt was down over it, sir.

9 Q. Okay. But it wouldn't have made a lump in the shirt?

10 A. No, sir, not all the time.

11 Q. Okay. Well, you're in a public place which is
12 Hardee's, you've got people in the back and you've got, I
13 guess, were the customers out front?

14 A. Yes, sir.

15 Q. All right. Why, if you're being held hostage, would
16 you leave a public place?

17 A. The threats that they were given me, sir, I didn't
18 want nobody else to get hurt as well as I didn't myself to
19 get hurt.

20 Q. Okay.

21 MR. ARCHER: I have no other questions, Your Honor.

22 THE COURT: Redirect?

23 MR. COOPER: Thank you, Your Honor.

24 Redirect Examination by Mr. Cooper:

25 Q. Keith, will you explain to the jury what's going on in

1 your head while you're inside Hardee's?

2 A. What was going on in my head, I was scared. I was
3 nervous. Never went through nothing like this. A lot of
4 people holler about what they'll do, what if this, what if
5 that. I'm here to tell y'all in a situation like that you
6 can throw, what if, out the window. You got a split second
7 of a decision to make. What you say, how you act,
8 determine how you going to live, all your consequences. I
9 was nervous. I was scared. I was discombobulated. Always
10 thought stuff like that it could never happen to me. I
11 seen stuff like that on TV, movies, but it's my first time
12 ever experiencing anything like that.

13 Q. Is -- and Mr. Johnson was armed inside Hardee's?

14 A. Yes, sir.

15 Q. And, I have a picture, when he was with that
16 individual he was talking to in the lobby ---

17 A. Yes, sir.

18 Q. --- about how far away was he from you?

19 A. About from here to that corner right there from where
20 they're sitting.

21 Q. So just a few feet?

22 A. Just a few feet. At any given time if I would have
23 made a move he was close enough to rush me before I ---

24 Q. He had a gun too, right?

25 A. Yes, sir.

1 Q. Can you outrun a bullet?

2 A. Can't out run a bullet.

3 Q. Let me show you State's Exhibit 8, what was -- what
4 does this picture show us?

5 A. This picture shows we was walking into Hardee's and he
6 got his right hand in the front of him like he's trying to
7 keep it from falling or shifting.

8 Q. But he's right beside you?

9 A. He's right beside me.

10 Q. And then what did Mr. Green tell you before you got
11 out of the car at the Hardee's?

12 A. If you try anything I'm going to kill you and
13 everybody in to Hardee's.

14 Q. Showing you State's 12, is that Mr. Green and the
15 other guy walking towards the Hardee's?

16 A. Yes, sir. That's correct.

17 Q. What did they tell you when you got outside?

18 A. We thought you made -- we thought you had alert
19 authorities. We thought you hit the panic button. We was
20 coming in there to kill you and everybody inside the store.

21 Q. Did they walk past you and go buy food?

22 A. No, sir.

23 Q. Get anything to drink?

24 A. No, sir.

25 Q. Did they go into Hardee's?

1 A. No, sir.

2 Q. Were did y'all go?

3 A. When they got to that point, the dude in the white
4 shirt, the back seat passenger, he went to peek beside the
5 store to try to see where them sirens went at. Mr. Green
6 was watching Johnathan and I as we was coming out.

7 Q. I'm showing you State's 13, and that's y'all walking
8 back to the car?

9 A. Yes, sir.

10 Q. Who's to your left?

11 A. That's Johnathan to my left and Mr. Green to my right.

12 Q. Mr. Archer asked you about seventy-five percent and
13 hundred percent, where was the individual in the black
14 sitting?

15 A. He was sitting in the front passenger seat.

16 Q. And you are hundred percent certain of that?

17 A. Yes, sir.

18 Q. That's what you told North Charleston?

19 A. Yes, sir.

20 Q. And that's what you told us today?

21 A. Yes, sir.

22 Q. Two days later when you look at the line-up, how sure
23 were you that was the person in the front seat?

24 A. The reason I, um, in the line-up seventy-five percent,
25 on the line-up he's clean cut and his mouth was closed.

1 The reason it took me so long to pick his picture out I
2 closed my eyes, like I said every time I go to sleep until
3 today that's the face right there I see. It haunts me in
4 my sleep.

5 Q. So he has some facial hair?

6 A. Yes, sir.

7 Q. Wasn't clean shaved?

8 A. No, sir.

9 Q. People shave?

10 A. Yes, sir.

11 Q. Do you know the gold teeth or those gold fronts or
12 grillz or whatever they are called, they can sometime be
13 removed?

14 A. Yes, sir.

15 Q. Okay. When you were doing your line-up, did you take
16 your time?

17 A. Yes, sir.

18 Q. Did you know who -- did the name Tappia Green mean
19 anything to at that point?

20 A. At that point when I'm been doing the line-up I ain't
21 know his name from a can of paint, sir.

22 Q. So you weren't trying to pick out Tappia Green, were
23 you?

24 A. No, sir.

25 Q. Who were you trying to pick out?

1 A. I been trying to pick out whoever that was in that
2 front seat, passenger seat.

3 Q. When you were looking at the pictures, did you take
4 your time between two of them?

5 A. Yes, sir.

6 Q. What were you taking your time for??

7 A. I was looking at the eyes. When I looked into his
8 eyes we been in there, when I been in the car with him, I
9 seen the deepest, the evilness in his eyes. It's a set
10 eyes you looked at when you're going through what I went
11 through, you would never forget.

12 Q. Why not just say you were hundred percent certain?

13 A. Because I wasn't sure with the clean shaved on this
14 picture and how he looked now. When he been with me he
15 wasn't clean shaved. I was still looking for him to be
16 nappy up in here.

17 Q. So you wanted to be right?

18 A. Yes, sir.

19 Q. And honest?

20 A. Yes, sir.

21 Q. And get the right person?

22 A. Get the right person, yes, sir.

23 Q. As you don't live in Charleston anymore, do you?

24 A. No, sir.

25 Q. Do you know --you didn't know Tappia Green then?

Keith Lee- Redirect Examination by Mr. Cooper:

188

1 A. No, sir.

2 Q. And you don't live here now?

3 A. No, sir.

4 Q. Don't have a stake in anybody down here?

5 A. No, sir.

6 Q. Mr. Archer, asked you about telling Detective Kaufman
7 about Johnson firing a shot out the window, why do you
8 think he fired that shot?

9 A. Honestly, I think he did it to scare me.

10 MR. ARCHER: Objection. This is projector on his
11 part.

12 THE COURT: I'm going to limit him to what his
13 belief was, not what the persons state of mind was. He has
14 no way of knowing the state of mind of another person.

15 MR. COOPER: Yes, sir.

16 THE COURT: So I sustain the objection to the
17 extent of that he talks about someone else's state of mind.
18 He can say what his state of mind was.

19 Q. What was going through your mind when Mr. Johnson
20 fired that shot out the window?

21 A. That was my warning to let me know that he wasn't
22 playing no games.

23 Q. What was going through your mind when you saw Mr.
24 Green with a dollar bill and white powder?

25 A. That let me know that he's not in a state, in a right

1 state of mind.

2 Q. Did that scare you?

3 A. Yes, sir.

4 Q. I think I asked you about panic buttons and you
5 mentioned that there were some at Hardee's, you know where
6 they were?

7 A. Yes, sir.

8 Q. Where were they?

9 A. There's one in the middle of each cash register, and
10 one in the refrigerator, and one in the cooler.

11 Q. So you could have run to the cooler?

12 A. If I would have dashed behind the counter, like I
13 said, he was too close.

14 Q. What were you worried about happening?

15 A. I was worried about the kids that this, a young lady
16 had into the lobby and there was a lot of older female
17 cooks in the back. A lot of people didn't know what was
18 going on.

19 Q. So -- and Mr. Johnson was armed inside the Hardee's
20 with you?

21 A. Yes, sir.

22 Q. And Mr. Green and the other guy were outside of
23 Hardee's waiting for you?

24 A. Yes, sir.

25 Q. So there -- was there anywhere you could go to get

1 away?

2 A. It wasn't because I had to come pass him and the back
3 seat passenger if I was going to get out. Then if I ran
4 towards the drive-through entrance, Mr. Green, I mean,
5 Johnathan is standing behind me, I had to knock him down.
6 If I would have ran towards the cooler or behind the
7 counter, I can't out run a bullet.

8 Q. Is it easy, honestly any day since then, to second
9 guess what you did?

10 A. No, sir.

11 Q. Could you have done things differently?

12 A. If I would have done anything differently, I strongly
13 believe I would not be sitting up here now and sitting in
14 front of y'all.

15 Q. So myself and Mr. Archer are the ones that are asking
16 you about all the action you take, no one is pointing a gun
17 at us right now, are they?

18 A. No, sir.

19 MR. COOPER: No further questions, Your Honor.

20 Thank you.

21 THE COURT: You may re-cross.

22 **Re-cross Examination by Mr. Archer?**

23 Q. When you first looked at the photographs, there were
24 three that you thought, initially, might be the person,
25 were they not?

1 A. Well, really there was two.

2 Q. Two?

3 A. Two.

4 Q. Two, not three. Didn't you to you testified earlier
5 that there was three ---

6 A. There was two there that's for sure. There was three
7 but I give a second thought on two.

8 Q. On two ---

9 A. The third one I just pushed it to the side. It was
10 two.

11 Q. Okay. So there were two people who, initially, you
12 thought might be the person, right?

13 A. Yes, sir.

14 Q. It's that why maybe you were figuring why you were
15 only seventy-five percent sure?

16 A. No, sir, that ain't had nothing to do with it, sir.

17 Q. Okay.

18 A. I just wanted to make sure I got the right man.

19 Q. Now, did you testify earlier that Mr. Green had
20 threaten to kill everybody in Hardee's?

21 A. Yes, sir.

22 Q. Mr. Green never came into Hardee's, did he?

23 A. That's what Mr. Green told me. He was going to kill
24 me and everybody in Hardee's, sir.

25 Q. Where was he when he supposedly said this?

1 A. He was in the front seat passenger seat of the gold PT
2 Cruiser.

3 Q. Okay. But he never came into Hardee's, correct?

4 A. No, sir.

5 Q. All right.

6 MR. ARCHER: No further questions.

7 THE COURT: All right, sir, you may step down.
8 Thank you very much.

9 MR. LEE: Yes, sir.

10 (Whereupon, the witness complies)

11 THE COURT: Ladies and gentlemen of the jury, we've
12 reached the point where we're going to break for lunch at
13 this point in time. You'll be leaving the courthouse. You
14 know my instructions as you leave the courthouse that would
15 be not to attempt to gather any information about this on
16 your own, not to listen to, watch or read any media
17 reports. Don't discuss the case with anyone even among
18 yourselves and don't allow anyone to discuss it with you.
19 If anybody tries to contact you about this case please
20 report that upon your return. Take a little longer because
21 we've got some other things that are unrelated to this
22 trial that I have to deal with. We'll start back at 2
23 o'clock this afternoon so we'll give you a little extra
24 time for lunch today but be back in the jury room at that
25 time. We should start immediately, thereafter. You're

1 free to go to lunch at this time. Thank you very much.

2 (Whereupon, the jury exits the courtroom at 12:01 p.m.)

3 THE COURT: We're in recess to 2 o'clock. Thank you
4 very much.

5 MR. COOPER: Thank you, Judge.

6 (Whereupon, court is adjourned for lunch until 2:00 p.m.)

7 (Whereupon, back on the record at 2:00 p.m.)

8 THE COURT: Is the State ready to proceed?

9 MR. COOPER: Yes, sir, Your Honor. I'm sorry.

10 THE COURT: Is the defense ready?

11 MR. ARCHER: I'm ready, Your Honor.

12 THE COURT: You want to wire back up. Okay.

13 MR. COOPER: I will say, Judge, I will have to, I
14 will provide the Court with an updated witness list. We
15 have -- we were looking over some pictures and some cell
16 phone records during lunch and came to find a call that was
17 made between the defendant and the co-defendant twice. So
18 I have added an officer from the jail who can testify to
19 the jail call as well as the individual from North
20 Charleston who dumped the cell phone. So I -- this stuff
21 has been sent in the Rule 5. I had to have the right
22 people to testify.

23 THE COURT: Were those individual identified to the
24 jury?

25 MR. COOPER: I don't believe either one of them

1 were.

2 MR. ARCHER: I ---

3 MR. COOPER: I believe -- no, actually, I think you
4 did put Kevan Sherbine from the jail. Just Sam Rodell from
5 North Charleston Police Department who dumps the phones, he
6 wasn't on the list.

7 MR. ARCHER: I think this is something sprung a
8 little late on me. We're right in the middle of the trial.

9 THE COURT: Well, he said they were identified
10 under Rule 5.

11 MR. COOPER: The only things that's not in Rule 5,
12 is the picture of his Facebook page, but Mr. Archer has the
13 jail calls. I'm going to inform him of exactly which jail
14 call the defendant says, "I did find his Facebook page."
15 The phone records of Jonathan Johnson are already in Rule
16 5. The pictures are in Rule 5. It's just the only thing I
17 don't have is his Facebook page but I've got that and I've
18 got the people who will testify to that. It should
19 reconnect the dots.

20 MR. ARCHER: I don't have any more to say other than
21 this is the first time I've heard we're going to introduce
22 the phone calls.

23 THE COURT: But they were identified to you as
24 possible -- it's in your discovery.

25 MR. ARCHER: Well, there is a list of some calls,

1 you know, several pages ---

2 THE COURT: No. No. No. You're gonna go look at
3 what he's talking about and let me know if he identified it
4 to you.

5 MR. ARCHER: Yeah. Okay.

6 THE COURT: So let's look at it.

7 (Whereupon, defense and the solicitor looks at material)

8 MR. ARCHER: I had his call, his phone back at the
9 office. I can identify to Mr. Archer these two specific
10 calls but they're in the Rule 5. I can tell him which two
11 specific calls I plan to show.

12 THE COURT: I want -- before I let that come in, I
13 want to be sure that he was notified in his discovery that,
14 that evidence existed and it was evidence that you thought
15 was pertinent to this case so that he had a chance to
16 review it, look at it.

17 MR. COOPER: Well, it is pertinent. It identifies
18 and is pertinent to the case. It's was sent in the Rule 5.

19 THE COURT: Well, anything in discovery I don't
20 question what it says but it's in the information you feel
21 that is relevant to the case.

22 MR. COOPER: Mr. Archer has the phone number of the
23 co-defendant which was actually ---

24 THE COURT: He's claiming surprised. So if he's
25 surprised then he's asking me to exclude it.

1 MR. COOPER: And my response is judge, Mr. Archer
2 has the information he's had the phone number, I can get it
3 today ---

4 THE COURT: That's what I'm trying to confirm and
5 when I asked him if he had gotten it, he started saying,
6 well, he didn't know, he wasn't sure and I said, we're
7 going to find out if you'd got it. I'm not going to let
8 them pull stuff out that you haven't been made aware of.

9 MR. ARCHER: And I certainly had no notice of the
10 significance of what would be ---

11 THE COURT: Well, I don't know that Rule 5 or
12 anything requires that they tell you what significance it
13 has.

14 MR. ARCHER: Right.

15 MR. COOPER: And my experience is ---

16 THE COURT: I am not aware of that requirements
17 so....

18 MR. COOPER: He's going to pull a list of when we
19 sent him the phone number ---

20 THE COURT: Are you getting ready to put that in
21 right now?

22 MR. COOPER: Tomorrow.

23 THE COURT: Tomorrow.

24 MR. COOPER: Yes, sir.

25 THE COURT: We'll deal with that -- we'll deal

1 later on this afternoon.

2 MR. COOPER: I just wanted to let Mr. Archer know as
3 soon as I found we were going to be using that.

4 THE COURT: Okay. And the other, the witness
5 that's not on the list, you plan to call that one tomorrow?

6 MR. COOPER: Yes, sir.

7 THE COURT: Okay. We'll deal with that ---

8 MR. COOPER: I think will have one or two left over
9 for tomorrow anyway.

10 THE COURT: Okay.

11 MR. COOPER: Yes, sir.

12 THE COURT: We'll deal with that later on.

13 MR. COOPER: Okay.

14 MR. ARCHER: I just have a housekeeping matter.

15 THE COURT: Yes, sir.

16 MR. ARCHER: He's going to call some witnesses
17 tomorrow. I've got one witness which is from Hardee's
18 who's on standby and I'd kinda like to know when to have
19 her report down here.

20 THE COURT: Well, we'll know more about that if we
21 can get started here and see how far we go.

22 MR. COOPER: Yes, sir.

23 MR. ARCHER: Yeah. Okay. But somewhere before the
24 end of the day, I'd like to get an idea when to tell her to
25 come down.

1 THE COURT: I'm sure we'll know more about that
2 shortly.

3 MR. COOPER: Thank you, Judge.

4 THE COURT: All right. Now, again my question is,
5 is the State ready to proceed?

6 MR. COOPER: Yes, sir.

7 THE COURT: Is the defense ready to proceed?

8 MR. ARCHER: We're ready to proceed.

9 THE COURT: All right. Let's bring the jury in.
10 (Whereupon, the jury enters the courtroom at 2:07 p.m.)

11 THE COURT: Ladies and gentlemen, I gave you some
12 instructions concerning your behavior during the lunch
13 break, if any of you had any problems in complying with my
14 instructions, please stand?

15 (Whereupon, no one from the jury stood up)

16 THE COURT: It appears all jurors have been able to
17 comply with my instructions thus far. I see that you've
18 requested notebooks to take notes. Let me caution you
19 about a couple of things. You didn't have those notebooks
20 for the first witness so I hope you paid very good
21 attention and have made mental notes of what that witness
22 testified to because I don't want you to favor one witness
23 over another by the use of notebooks. Secondly, I pointed
24 out to you one of the important functions of jurors is to
25 observe what's going on in the courtroom. The way things

Tracey Williams- Direct Examination by Mr. Wetmore: 199

1 are being said. How they're being said. People's
2 demeanor. That's an important part of what a juror does.
3 If you're staring at a notebook page you're probably not
4 watching the people on the witness stand. So while I don't
5 mind you taking notes don't let that take away from your
6 observation of what goes on in the courtroom and how it's
7 being said and what's being done. That's the important
8 part of that function as well. And I would urge you, as I
9 said, try to treat all witnesses equally in your note
10 taking.

11 All right. At this time the State may call it's next
12 witness.

13 MR. WETMORE: Judge, I am going to fill in a few
14 witnesses if that's okay with you?

15 THE COURT: Yes, sir.

16 MR. WETMORE: Tracey Williams with North Charleston
17 Police Department.

18 THE COURT: Come forward please.

19 THE CLERK: If you can raise right hand and left on
20 the Bible. Do you swear or affirm the testimony you shall
21 give will be the truth, the whole truth, and nothing but
22 the truth so help you God?

23 MR. WILLIAMS: Yes, I do.

24 THE CLERK: Please have a seat. And once seated if
25 you can state your first and last name and spell us your

Tracey Williams- Direct Examination by Mr. Wetmore: 200

1 last name please.

2 MR. WILLIAMS: My name is Tracey Williams. Last name
3 W-I-l-l-I-a--s.

4 THE COURT: Thank you. Counselor, your witness.

5 MR. WETMORE: Thank you, Judge.

6 THE COURT: Yes, sir.

7 TRACEY WILLIAMS, first being
8 duly sworn, testified as follows:

9 Direct Examination by Mr. Wetmore:

10 Q. Officer Williams, how long have you been with North
11 Charleston?

12 A. Eight years.

13 Q. And what are your duties and responsibilities with
14 that Police Department?

15 A. I'm currently in the role of NRO unit, a Neighborhood
16 Resource Officer. We, basically, our unit is focused on
17 community impact, community investigations. We're the
18 liaison between the community and the department.

19 Q. So NRO stands for Neighborhood Resource Officer?

20 A. Yes, sir.

21 Q. Were you fulfilling that duty back in April 2015 when
22 this case happened?

23 A. Yes.

24 Q. Okay. I know that the neighborhood contacts report to
25 North Charleston?

Tracey Williams- Direct Examination by Mr. Wetmore: 201

1 A. Yes, it is.

2 Q. Something that they work on. Any training or
3 experience that helps you do your job?

4 A. The training, I have plenty of experience in the
5 training. We've done courses. Some classes we've done
6 with community impact and community relationships
7 throughout the course of my career. We've done several
8 meetings. I hold meetings every month to two four meetings
9 with the community presidents and speaking with council men
10 and council women.

11 Q. And your goal is to improve the relations between the
12 department and the community?

13 A. Yes, sir.

14 Q. What specifically is your neighborhood?

15 A. Dorchester Wayland and Dorchester Terrorist area in
16 North Charleston, lower end of Charleston.

17 Q. All right. Now, I'm going to bring your attention
18 back to April 14, 2015 when this case happened. How did
19 you become involved in this case involving Mr. Green and
20 others?

21 A. I initially overheard a call from the radio that was
22 given, that provided a description of a subject and address
23 of the subject that was located in Dorchester Wayland,
24 Dorchester Terrorist area.

25 Q. Okay. So the call was for what kind of crime?

Tracey Williams- Direct Examination by Mr. Wetmore: 202

1 A. Armed robbery and kidnapping.

2 Q. Okay. And where did the armed robbery and kidnapping
3 take place, do you know?

4 A. I heard approximately at 4400 Dorchester Road at the
5 Wells Fargo.

6 Q. It started at the Wells Fargo?

7 A. Yes, sir.

8 Q. And is that location within the City of North
9 Charleston?

10 A. It is.

11 Q. Is it within Charleston County?

12 A. It is.

13 Q. And you mentioned another address within your
14 neighborhood?

15 A. Yes, sir.

16 Q. What was that address?

17 A. [REDACTED].

18 Q. That was the -- what was the significance of that
19 address?

20 A. That address was the address provided over the radio
21 that I've heard the suspect or possible suspect would
22 reside along with his grandparents, grandfather.

23 Q. So you had information that was tied to a suspect?

24 A. Yes.

25 Q. Were you familiar with that address?

1 A. I was.

2 Q. How so?

3 A. I've, over the course of my career, I've had several
4 contacts with them on various different occasions where
5 there would be investigative follow-ups, even just stopping
6 by and speaking with the subject who lived there and
7 previous run-ins with them with the subject that lived
8 there that matches the description.

9 Q. So in various contacts, good, bad, just contacts?

10 A. Yes.

11 Q. And who did you know to live there at [REDACTED] Suffolk?

12 A. Johnathan Johnson.

13 Q. Johnson?

14 A. Yes.

15 Q. And you know that from your dealings with that house?

16 A. That's correct.

17 Q. Anybody else lived there?

18 A. The grandfather -- his grandfather, Samuel Jackson.

19 Q. So the grandfather was Samuel Jackson?

20 A. Yes.

21 Q. And his grandson ---

22 A. Johnathan ---

23 Q. --- was Johnson?

24 A. Correct.

25 Q. Who is involved in this case?

Tracey Williams- Direct Examination by Mr. Wetmore: 204

1 A. Yes, sir.

2 Q. Now, did you have an idea that they were looking for
3 the younger Johnson, the son or the grandson?

4 A. According to the description that came over the radio
5 he matched the description.

6 Q. So you were suspicion it was Johnathan Johnson?

7 A. That's correct.

8 Q. Did you reach out to other officers and confirm that
9 or denied that?

10 A. I did.

11 Q. How did you do that?

12 A. I contacted another NRO which is another officer
13 that's in my unit and he was also familiar with them and he
14 gave an address that he was hanging out with or he would
15 hang out with a female subject. We tried to make contact
16 with them there.

17 Q. Okay. As your agency's investigation focused on
18 Johnson, tell me what you did, you said you went to a
19 potential girlfriend's house?

20 A. Yes, a girl -- his girlfriend, possibly girlfriend's
21 house at the time but we could make contact there.

22 Q. Was he there at girlfriend's house?

23 A. No.

24 Q. Okay. Did you ever try that house he shared with his
25 grandfather?

1 A. Yes, we did.

2 Q. Okay. Well, tell me what happened when you went
3 there?

4 A. We attempted to knock on the door to get someone. No
5 one answered the door. So I left my contact information
6 and I also tried to let Mr. Jackson know that if he did
7 come across or speak with Mr. Johnson to have him give me a
8 call personally.

9 Q. So when you responded to that house, the grandfather
10 was there or was not there?

11 A. No, he wasn't.

12 Q. He wasn't. Okay. And Johnson was not there either?

13 A. No, he was not.

14 Q. Did you eventually talk to either one of them?

15 A. I did.

16 Q. Who called you?

17 A. Mr. Johnson, he called me.

18 Q. Johnson did?

19 A. Yes, he did.

20 Q. Okay. And when Johnson called you, did y'all talk
21 about the incident?

22 A. Yeah, we talked about the incident.

23 Q. Now, did he admit to you being involved?

24 A. He stated that he was, basically, under duress and
25 that he was a victim.

Tracey Williams- Direct Examination by Mr. Wetmore: 206

1 Q. So he indicated he thought he was the victim?

2 A. Yes.

3 Q. Did he admit to you that armed robbery had taken
4 place?

5 A. Yes.

6 Q. So he didn't describe it just a friendly, just guys
7 hanging out in the county?

8 A. No.

9 Q. He did or he didn't?

10 A. Can you rephrase that question?

11 MR. ARCHER: Objection. This is all hearsay, Your
12 Honor.

13 THE COURT: I'll sustain the objection.

14 Q. Did he describe a friendly encounter or armed robbery?

15 A. It was not friendly.

16 MR. ARCHER: It's hearsay.

17 THE COURT: All right. He can't be quoting what
18 this gentleman told him.

19 MR. WETMORE: Judge, I would offer this not for the
20 truth, it's to show the course of their investigation.

21 THE COURT: It's an awful lot of facts to show the
22 course of an investigation. He can state that he had
23 interviewed witnesses and what he learned as a result of it
24 but he can't be quoting what people said. That's the
25 hearsay rule.

Tracey Williams- Direct Examination by Mr. Wetmore: 207

1 MR. WETMORE: Yes, sir.

2 Q. Officer, and please don't quote anybody, I'm just
3 trying to find how your investigation developed.

4 A. Yes, sir.

5 Q. So, kind of general questions, is my attempt. How did
6 your investigation develop as your conversation, basically,
7 conversation with Johnson?

8 A. As we conversed, once he called me on the phone, we
9 talked. He began to explain to me how he was, it said, "in
10 the blind" and he began to tell me he was victimized. He
11 was part of it, he didn't know that was going to happen.

12 MR. ARCHER: Objection. It still hearsay, Your
13 Honor.

14 THE COURT: I'm going to caution the witness, you
15 can state what you learn as a result of a conversation but
16 you can't quote what he saying. The way you are expressing
17 this, you're saying this is what he told me. That violates
18 the rule as the attorney is pointing out and I've ruled in
19 his favor so let's move on. The witness doesn't have
20 anything else to testify but hearsay we'll stand him down.

21 A. Yes, sir.

22 Q. Officer Williams, did you advise Johnson that he
23 needed to come in and talk to you or your agency?

24 A. I did.

25 Q. Okay. And did you tell him to come meet you at the

Tracey Williams- Direct Examination by Mr. Wetmore: 208

1 police department?

2 A. Yes, I did.

3 Q. Did you, yourself, go there and wait for him?

4 A. I did. I went with him.

5 Q. Who else, if anybody, was with you?

6 A. Detective, I met with Detective Butler. I also met
7 with his grandfather, Jackson. They were all at City Hall.

8 Q. So his grandfather also came out to wait for him?

9 A. Yes, sir.

10 Q. And did Johnson come right away as soon as you told
11 him to or did he wait around or what?

12 A. He hesitated. We waited a bit.

13 Q. How long do you think he waited before he came in?

14 A. I can't recall.

15 Q. Now, describe how he arrives finally at the North
16 Charleston Police Department?

17 A. He pulled up in a golden color PT Cruiser.

18 Q. And based on your understanding is this the same car
19 that was used in the kidnapping and armed robbery?

20 A. I believe so.

21 Q. I want to show you a couple pictures on the screen if
22 I could just to make sure we're thinking about the same
23 car, I'm going to show you what's been marked ---

24 MR. ARCHER: No objection.

25 THE COURT: Are those already in evidence?

Tracey Williams- Direct Examination by Mr. Wetmore: 209

1 MR. ARCHER: They are.

2 MR. WETMORE: They are already in evidence. I just
3 wanted to show them ---

4 THE COURT: I thought they were. You may publish?

5 Q. I show you what's marked State's Number 17, is that
6 the vehicle he arrived in?

7 A. It is.

8 Q. And that location is at the police department?

9 A. It is.

10 Q. This is, obviously, suspect Johnson?

11 A. Yes, sir.

12 Q. Okay. Showing you State's Number 18, that's the same
13 vehicle, same parking spot, right?

14 A. It is.

15 Q. Nineteen, that's a view, you can actually see the
16 police station in the background, correct?

17 A. That's correct.

18 Q. And State's 25, this is just the passenger side of
19 that same vehicle?

20 A. That's correct.

21 Q. I see a few of your fellow officers standing behind
22 there. So suspect Johnson arrived in this vehicle?

23 A. Yes, he did.

24 Q. Was he driving or was he in the back or the passenger
25 seat or what?

Tracey Williams- Direct Examination by Mr. Wetmore: 210

1 A. I wasn't sure.

2 Q. Did you make contact with him when he arrived?

3 A. I did.

4 Q. Okay. But you didn't know where he was sitting when
5 the car pulled up?

6 A. Not exactly sure.

7 Q. Okay. Did you -- were you able to determine whose car
8 it was, was it Johnson's car or was it somebody else's car?

9 A. I wasn't able to determine that until another
10 investigator took over.

11 Q. Okay. But Johnson arrived in that car?

12 A. Yes.

13 Q. And were you able to make contact with him once he
14 arrived there? Did you come out and meet him, initially,
15 or did you send him to meet with somebody else?

16 A. No, we came out to meet him.

17 Q. And like I said, don't go into any kind of quotes or
18 anything, but when he first got there, did just come right
19 in with or was he reluctant?

20 A. No, he was reluctant. He appeared to be kind of
21 nervous, very, kinda of, not wanting to go and talk for a
22 little while. So I had to talk to him a little bit, kind
23 of maybe calm him down.

24 Q. Okay. But you talked to him into going in and
25 discussing the case?

Tracey Williams- Cross Examination by Mr. Archer: 211

1 A. Yeah, after some time talking with him, he cooperated.
2 Went and talked with the investigators.

3 Q. And did he give you any other versions of the event
4 other than what he told you initially?

5 A. Not at that time.

6 MR. WETMORE: All right. I don't have anything else
7 for you, Officer Williams. If you would listen to the
8 defense.

9 THE COURT: Your witness, counselor.

10 Cross Examination by Mr. Archer:

11 Q. Officer Williams, how are you doing?

12 A. Good, sir.

13 Q. I'm a little confused or maybe I heard but it didn't
14 register with me, you got a phone call that mentioned [REDACTED]
15 Suffolk Street, how did you start to zero in on Mr.
16 Johnson?

17 A. From the description that came across the radio.

18 Q. It was on the radio?

19 A. On the radio, yes, sir, and another officer responded
20 to the call.

21 Q. Okay. Now, do you know, remember which officer it was
22 that would've sent that radio call?

23 A. I heard a Officer Jamison.

24 Q. Officer Jamison?

25 A. Yes.

Tracey Williams- Cross Examination by Mr. Archer:

212

1 Q. Okay. And he had an address?

2 A. I believe he had obtained an address from the possible
3 victim.

4 Q. From where?

5 A. From the possible victim. Once he mentioned the
6 address I knew where the address was because I've been
7 there several times.

8 Q. Okay. And what time -- what time -- and this was on
9 the 14th, right?

10 A. Yes, sir.

11 Q. And what time on the 14th, approximately, was it?

12 A. I can't remember of the time.

13 Q. Well, I mean, was it ---

14 A. In the afternoon.

15 Q. Afternoon?

16 A. Yes, sir.

17 Q. Was it nighttime yet?

18 A. No, it was not nighttime yet.

19 Q. Okay. So it was still -- and this is April so sometime
20 before 6:30 or 7 o'clock it would've come across, probably?

21 A. Yeah. I'm not sure. I'm not exactly sure.

22 Q. Yeah. But somewhere in that area?

23 A. In the afternoon.

24 Q. So, like around 6:30 or 7 o'clock, somebody has passed
25 to the North Charleston Police Department an address

1 associated with Johnathan Johnson, right?

2 A. Yes, sir.

3 Q. And you don't know who that was?

4 A. Not sure where he got the information from ---

5 Q. Okay.

6 A. It was information off the radio.

7 Q. You said that was detective who?

8 A. Officer Jamison.

9 Q. Officer Jamison. And you're sure it's Officer Jamison
10 that passed you and address where Johnathan Johnson may
11 live?

12 A. Yes, sir.

13 Q. Okay.

14 MR. ARCHER: I have no other questions.

15 THE COURT: Anything on redirect?

16 MR. WETMORE: No, sir.

17 THE COURT: You may step down, sir. Thank you.

18 MR. WILLIAMS: Thank you.

19 THE COURT: Do you wish to excuse the witness?

20 MR. WETMORE: Please, Your Honor.

21 THE COURT: Any objection to his leaving?

22 MR. ARCHER: No, no objection.

23 THE COURT: You're free to go if you like, sir.

24 MR. WILLIAMS: Thank you.

25 THE COURT: The State may call its next witness?

Jennifer Butler- Direct Examination by Mr. Wetmore: 214

1 MR. WETMORE: The State call Detective Jennifer
2 Butler from the North Charleston Police Department.

3 THE COURT: Come forward, ma'am and be sworn.

4 THE CLERK: Good afternoon. If you would raise
5 your right hand, left on the Bible. Do you swear or affirm
6 the testimony you shall give will be the truth, the whole
7 truth, and nothing but the truth so help you God?

8 MS. BUTLER: Yes, ma'am.

9 THE COURT: Thank you. Please have a seat. And
10 once seated if you can state your first and last name and
11 spell us your last name please.

12 MS. BUTLER: My name is Jennifer Butler. Last name
13 B-u-t-l-e-r.

14 THE COURT: Counsel, your witness.

15 MR. WETMORE: Thank you, Judge.

16 JENNIFER BUTLER, first being
17 duly sworn, testified as follows:

18 **Direct Examination by Mr. Wetmore:**

19 Q. Detective Butler, how long have you been with North
20 Charleston Police Department?

21 A. I been with North Charleston since 2008.

22 Q. 2008?

23 A. Yes, sir.

24 Q. You currently have another employer as of today?

25 A. Yes, sir. I'm active duty service in the South

1 Carolina Army National Guard.

2 Q. Okay. What is your position with North Charleston?

3 A. Currently I'm a persons crime detective.

4 Q. And how long have you been at that post?

5 A. Since February of 2015.

6 Q. So just a few months before this incident happened?

7 A. Yes, sir.

8 Q. Now, were you employed as a police officer or military
9 officer or something before becoming a detective in early
10 2015?

11 A. Yes, sir. I've been in the military since 2006.

12 Q. Okay. And how long as a law enforcement officer?

13 A. Since 2010.

14 Q. All right. Now, your current job as a detective, what
15 sorts of things do you -- what are your responsibilities as
16 a detective?

17 A. As a persons crime detective, work assaults, major
18 assaults, minor assaults, robberies, burglaries, homicides,
19 shootings, that's shootings of persons and shootings in
20 dwellings, and we respond to the initial scene. We
21 interview witnesses. We do line-ups and, of course, after
22 that we follow-up doing all the case notes and whatever
23 comes thereafter.

24 Q. Okay. And I assume that the police department
25 provides some sort of training on job experience that helps

Jennifer Butler- Direct Examination by Mr. Wetmore: 216

1 you perform those duties?

2 A. Yes, sir. I went to the South Carolina Criminal
3 Justice Academy for detective basic.

4 Q. All right. Let's get right to the case in hand.
5 April 14, 2015, how did you, initially, become involved in
6 this case against Mr. Green?

7 A. We heard the call go out over the radio of someone
8 that had been kidnapped, allegedly kidnapped and robbed and
9 they were -- the victim and his girlfriend were coming up
10 to detectives for interviews so I was working.

11 Q. Okay. So you were on duty?

12 A. Yes, sir.

13 Q. Okay. And did you have an opportunity to speak with
14 either the victim or the girlfriend?

15 A. I did speak with the victim -- the victim's
16 girlfriend. I did an interview with her.

17 Q. So you met with the victim's girlfriend?

18 A. Yes, sir.

19 Q. How did your investigation develop after that meeting?

20 A. During the investigation, I mean, during the interview
21 with her it was learned that while she was in the bank she
22 saw a gentleman that she works with at Hardee's and she was
23 able to identify him as Johnathan Johnson and she also
24 provided like her calling her boyfriend at the time when he
25 was not there when she came out of the bank.

1 Q. Okay. So spoke with the girlfriend but you didn't
2 speak with the actual victim who is here as well?

3 A. Correct. Not initially.

4 Q. That afternoon, early evening, did you have any
5 further interactions with the victim then or his
6 girlfriend?

7 A. After we were done with their interviews, I
8 transported both of them home to their house, I think it's
9 the girlfriend's house, on Orangeburg.

10 Q. So you drove from the police department to their home?

11 A. Yes, sir.

12 Q. How far did they live from the police department?

13 A. A couple miles. It wasn't very far at all.

14 Q. Okay. It was just you and the two of them?

15 A. Yes, sir.

16 Q. What was there emotional state while you were driving
17 them?

18 A. Both of them appeared very shook'en up. Like they
19 were very disturbed. They were very concerned about
20 retaliation. They asked me about if we do any, like we
21 call it special patrol request, but they did ask me about
22 any, like I guess, victim services that we had and I did
23 tell them I would put the address, their address on SPR
24 which is a special patrol request.

25 Q. So you detected which you considered to be pretty

Jennifer Butler- Direct Examination by Mr. Wetmore: 218

1 genuine fear?

2 A. Yes, sir.

3 Q. And is that, in your experience as a persons
4 detective, is that pretty common?

5 A. Honestly, no, sir.

6 Q. Okay. So they appeared to be more concerned, more
7 shaken up than some of your average victims?

8 A. Correct.

9 Q. Based on what you perceived as a very real fear, did
10 you believe their story?

11 A. Yes, sir.

12 MR. ARCHER: I would object. Whether she believes
13 it or not ---

14 THE COURT: Sir, you have stand up and you have to
15 make an objection

16 MR. ARCHER: Yes, sir, Your Honor. He's asking her
17 did she believe they're story and I think that's irrelevant
18 whether she believes it that she heard the story.

19 THE COURT: Well, she can state whether or not she
20 gave credibility or not, so I'm going to let her testify as
21 to how she viewed it. You may proceed.

22 MR. WETMORE: Thank you, Judge.

23 Q. I assume you met with a lot of victims?

24 A. Yes, sir.

25 Q. And you told me that you perceive these victims to be

Jennifer Butler- Direct Examination by Mr. Wetmore: 219

1 more shaken up and more fearful?

2 A. Compared to our, the average victims that I work with
3 especially in persons crimes, yes, sir, they were visibly
4 shaken up compared to most people just having very
5 nonchalant attitude.

6 Q. And their attitude, the fear, caused you to give their
7 story credibility, is that correct?

8 A. Yes, sir.

9 Q. All right. After you had taken the victim's home, did
10 you have any contact with any potential suspects in working
11 this case?

12 A. No, sir. We got -- I got a call from Tracy, Officer
13 Williams, that he had got Mr. Johnson on the phone and he
14 was coming up to the detective bay. So myself and
15 Detective Bailey sit outside while he came, as he came to
16 city hall.

17 Q. And we just heard about that, Officer Williams, he was
18 able to get the suspect Johnson to come in?

19 A. Yes, sir.

20 Q. Okay. And you were there when he came in?

21 A. We were at -- myself and Detective Bailey were in the
22 parking lot when he pulled up.

23 Q. So you had some contact with the suspect, Johnson?

24 A. Yes, sir. Just the initial contact, yes, sir.

25 Q. And you said, you and Detective Bailey were there

Jennifer Butler- Direct Examination by Mr. Wetmore: 220

1 waiting for him?

2 A. Yes, sir.

3 Q. Anybody else waited for him?

4 A. No, sir.

5 Q. What about Officer Williams, was he out there waiting
6 on him?

7 A. I honestly don't recall at the top of my head. I know
8 myself and Bailey were standing, like, right where they
9 ended up pulling in at.

10 Q. Okay. Do you remember if the guys grandfather was
11 there?

12 A. Mmm, hmm. I do remember that, yes, sir.

13 Q. And so did the suspect Johnson, in fact, show up at
14 the police department?

15 A. He did, yes.

16 Q. Okay. And how did he arrive at the police department?

17 A. In a vehicle, beige -- him and a female -- a female was
18 driving, he was in the passenger seat and a gold PT
19 Cruiser.

20 Q. Okay. So he showed up in a gold PT Cruiser, Chrysler,
21 is that the make?

22 A. Mmm, hmm. I think that's the make of the PT Cruiser.

23 Q. I think so too. You indicated you thought a female
24 was driving?

25 A. Yes, sir.

Jennifer Butler- Direct Examination by Mr. Wetmore: 221

1 Q. And you believe Mr. Johnson, suspect Johnson, was in
2 the passenger seat?

3 A. Yes, sir.

4 Q. In what particular -- what was -- what was unusual
5 about the gold PT Cruiser? What was the significance of
6 that vehicle?

7 A. During the investigation prior to Mr. Johnson showing
8 up to city hall, we had learned that the suspect vehicle,
9 the vehicle that he was detained was a gold PT Cruiser.

10 Q. And were you able to determine who the owner of that
11 car was?

12 A. Yes, sir. Jasmine Brown.

13 Q. What is Jasmines Brown's relationship to anybody in
14 this case?

15 A. I believe she was the girlfriend of the suspect at the
16 time.

17 Q. The suspect, Johnson?

18 A. Yes, sir.

19 Q. So her PT Cruiser?

20 A. Yes, sir.

21 Q. She drove Johnson to the police department?

22 A. Yes, sir.

23 Q. So did you have any in the interview discussions with
24 either the suspect, Johnson or the girlfriend, Jasmine
25 Brown?

Jennifer Butler- Direct Examination by Mr. Wetmore: 222

1 A. Once they got to city hall we walked them upstairs.
2 I want them upstairs and they both were placed into
3 interview rooms, Mr. Johnson and Ms. Jasmine. And I spoke
4 to Jasmine and got a statement from her and also got a
5 consent to search the vehicle from her. While I'm pretty
6 sure Detective Kaufman spoke with Mr. Johnson. I'm not
7 hundred percent sure.

8 Q. Okay. So just like, previously, in the day you spoke
9 to the female, the girlfriend?

10 A. Yes, sir.

11 Q. And her name was Jasmine Brown?

12 A. The....

13 Q. The girlfriend of Johnson?

14 A. Yes.

15 Q. She was the owner of the vehicle?

16 A. The gold PT Cruiser, yes, sir.

17 Q. And so based on your interaction with her, tell me
18 what you did, specifically, to investigate this case?

19 A. I learned through the interview with her that she was
20 at work and that she had lent, I guess, Johnson the car and
21 then we got a consent to search the vehicle from her on our
22 standardized form.

23 Q. So you learn Johnson had her car?

24 A. Correct.

25 Q. And did you search her car? This car was involved in

Jennifer Butler- Direct Examination by Mr. Wetmore: 223

1 the case, did you ---

2 A. I personally did not, but Detective Bailey and Cook,
3 our crime scene guy, Cook did.

4 Q. Okay.

5 A. I stood there with her and the baby.

6 Q. Now did the owner, Ms. Jasmine Brown, did she give you
7 permission to search that car?

8 A. Yes, sir.

9 MR. WETMORE: If I May approach, Your Honor?

10 THE COURT: You may.

11 Q. Detective Butler, I'm gonna pass you these, two page
12 document, see if you can identify that?

13 A. This is our consent to search form that we use in
14 North Charleston and this is what I got Ms. Brown to fill
15 out.

16 MR. WETMORE: Okay. Let me show it to defense to
17 make sure....

18 MR. ARCHER: No objection.

19 MR. WETMORE: All right. Judge, I'd like to admit
20 State's Number 29.

21 THE COURT: Without objection. It will be admitted
22 as marked. You may proceed.

23 (Whereupon, the Consent Form has been marked and entered
24 into evidence as State's Exhibit No. 29)

25 Q. And Detective Butler, just briefly describe how that

Jennifer Butler- Direct Examination by Mr. Wetmore: 224

1 form is used to verify consent of an owner to search a
2 vehicle?

3 A. We explained to them the entire form. This one is
4 particular for the vehicle. So we put the vehicle model,
5 the VIN, and the tag number in. And then depending on what
6 item it is, like I said, this is a vehicle so there's a box
7 that they have to initial that says, "these officers are
8 authorized by me to take from my, and we circle vehicle,
9 any letters papers, materials, or other property of
10 interest in reference to this investigation which they may
11 desire." And then they've been advised of their
12 constitutional right and they signed the form and also
13 witnessed the form.

14 Q. Okay. So you signed it after explaining it to them?

15 A. Correct. After she signs it and then I sign it as a
16 witness, yes, sir.

17 Q. And she signed as the owner ---

18 A. Yes, sir.

19 Q. --- giving you permission to search or getting your
20 agency to search?

21 A. Yes, sir.

22 Q. You're not the one who actually search the car?

23 A. No, sir.

24 Q. And you said that was Officer Cook?

25 A. Cook, and Bailey was down there assisting also.

Jennifer Butler- Cross Examination by Mr. Archer:

225

1 Q. Okay.

2 A. Crime scene, Cook.

3 Q. All right.

4 MR. WETMORE: I have no further questions right now.
5 Detective, if would answer for Mr. Archer.

6 THE COURT: Counsel, your witness.

7 Cross Examination by Mr. Archer:

8 Q. I believe you said that at some point in time you talk
9 to Aisha (sic) Aiken?

10 A. That's the girlfriend of the victim at the time?

11 Q. Yes.

12 A. Yes, sir.

13 Q. And she told you something about Johnathan Johnson?

14 A. Yes, sir.

15 Q. She gave you his name?

16 A. I don't recall if she gave us his exact name. During
17 the investigation we were able to develop him and I know we
18 did a line-up with her and she positively identified him of
19 the person she saw in the bank.

20 Q. In the bank. Okay. Now, she didn't say anything
21 about seeing him in Hardee's, does she? She's just saying
22 that she saw him in the bank?

23 A. Yes, sir.

24 Q. Okay. But she knew who he was?

25 A. Yes, sir.

Jennifer Butler- Cross Examination by Mr. Archer:

226

1 Q. Okay. No question that she knew he had some
2 connection with Hardee's, is that right?

3 A. Well, she knew who he was because she works with his
4 mom, I believe ---

5 Q. Okay.

6 A. --- at Hardee's.

7 Q. All right. But -- but she knew, specifically, who
8 that he was her son ---

9 A. Correct.

10 Q. And you said -- do you remember him, her mentioning
11 him by name?

12 A. I don't recall at the top of my head. I know I believe
13 she gave us his name in the interview and that's how we
14 were able to develop a line-up. But I know she positively
15 identified from a line-up as the Johnathan that she was
16 talking about.

17 Q. Okay. So you're not absolutely certain but you
18 believe she did identify him?

19 A. I believe so, yes, sir.

20 Q. Okay. Now, you state she and Mr. Lee were visibly
21 upset. Now, how does somebody look when they're visibly
22 upset?

23 A. I mean, they're just generally concerned. There
24 shaking like visibly shaking. You can see ---

25 Q. Now, when you say shaking, do you mean body shaking or

1 ---

2 A. Yeah. Like their bodies were shaking a little bit and
3 I'm like, the closer we got to the house they were, like I
4 said, visibly shaken. Not like shaking all over the place
5 but just, you know, they're stirred. You can see the
6 disturbance on their face. You could see the fear in their
7 face, also.

8 Q. Mmm, hmm. And by that time, they had already given
9 some sort of statement implicating Johnathan Johnson,
10 right?

11 A. They had already given us their statements, yes, sir.

12 Q. Right. So they could've been worried about the fact
13 that they had implicated somebody to the police and then
14 maybe afraid that, that person might be upset because they
15 gave the police a name, is that correct?

16 A. I can't tell you why they were scared. I can only
17 tell you they were visibly shook'en (sic) up.

18 Q. Aisha (sic) was scared, right?

19 A. Who?

20 Q. The girlfriend? The victim's girlfriend? You said
21 she was shaken up?

22 A. Yes. And the victim was.

23 Q. And the victim but the victim's girlfriend was never a
24 part of the robbery or kidnapping, was she?

25 A. Correct.

Jennifer Butler- Cross Examination by Mr. Archer:

228

1 Q. So the only reason she could be shaken up was because
2 she had given some sort of statement against Mr. Johnson,
3 right?

4 A. I mean, she could still be shaken up because her
5 boyfriend was just involved in an incident such as that and
6 they knew that he lived with her, I mean, I can't speculate
7 why ---

8 Q. Right.

9 A. --- she was visibly shook'en up.

10 Q. Right.

11 A. But she was visibly shook'en up.

12 Q. Okay. All right.

13 MR. ARCHER: I have no other questions.

14 THE COURT: Redirect?

15 MR. WETMORE: No, Your Honor.

16 THE COURT: You may step down. Do you wish to
17 excuse the witness?

18 MR. WETMORE: Yes, Your Honor.

19 THE COURT: Any objections?

20 MR. ARCHER: No.

21 THE COURT: Ma'am, you're free to go. Thank you
22 very much. State may call its next witness.

23 MR. WETMORE: Judge, the State calls Michael Cook
24 with the North Charleston Police Department.

25 THE COURT: Come forward and be sworn, sir.

Michael Cook- Direct Examination by Mr. Wetmore:

229

1 MR. COOK: Yes, sir.

2 THE CLERK: Good afternoon. If you want to have
3 the ramp and put your hand on the Bible please. Do you
4 swear or affirm the testimony you shall give will be the
5 truth, the whole truth is God?

6 MR. COOK: I do.

7 THE CLERK: Thank you. Please have a seat. Once
8 seated is that your first and last name and spell is your
9 last name please.

10 MR. COOK: Sure. Michael Cook, C-o-o-k.

11 THE COURT: Counselor, your witness.

12 MR. WETMORE: Thank you, Judge.

13 MICHAEL COOK, first being
14 duly sworn, testified as follows:

15 Direct Examination by Mr. Wetmore:

16 Q. Officer Cook how long have you been with North
17 Charleston Police Department?

18 A. Almost 16 years.

19 Q. Sixteen years?

20 A. Yes, sir.

21 Q. What are your duties, responsibilities with the
22 police?

23 A. I'm currently assigned to the crime scene unit. My
24 responsibilities in that unit are documentation,
25 collecting, photographing, certain cases video graphing,

Michael Cook- Direct Examination by Mr. Wetmore:

230

1 collecting and packaging and preserving evidence.

2 Q. And were you doing this same sort of job back in April
3 of 2015 when this happened?

4 A. Yes, I was.

5 Q. Briefly, training and experience that helps you do a
6 good job of your responsibilities?

7 A. A lot of on-the-job training. I've attended the
8 Federal Law Enforcement Training Center in Glynco, Georgia
9 for advance crime scene techniques. I've also attended the
10 South Carolina Criminal Justice crime scene class.

11 Q. Okay. Going straight to the case at hand against Mr.
12 Green, April 14, 2015, how did you become involved in this
13 case?

14 A. I was contacted by Detective Robert Bailey in
15 reference to them doing an interview and a gold PT Cruiser
16 that was involved being at the station that they wanted
17 processed.

18 Q. So they wanted you to process the crime scene?

19 A. Yes, sir.

20 Q. Which in this case was the car?

21 A. Yes, sir.

22 Q. A PT Cruiser?

23 A. Yes, sir.

24 Q. You are confident that your Police Department had
25 permission by the owner to search the car?

1 A. When I got down there Detective Bailey and Detective
2 Butler were there and Detective Butler had the consent to
3 search that was signed so I photographed it.

4 Q. Okay. And what and based on your, it sounds like,
5 they're asking you to perform some testing?

6 A. Yes, sir. Fingerprinting and DNA swab to the door
7 handles and fingerprinting the vehicle.

8 Q. Okay. So when you process or examine the vehicle,
9 basically, what sorts of things do you do?

10 A. I start out with photographing the vehicle. At this
11 point, for this case I started out with photographing the
12 consent to search. And then I photographed the vehicle
13 exterior from all sides. And then photographed the
14 interior from all sides.

15 Q. Okay. And then, these have already been admitted,
16 I'm just gonna show you them a few times just to make sure,
17 State's Number 20, that's the vehicle in question that you
18 processed?

19 A. Yes, sir.

20 Q. Okay. I believe State's Number 17, has a police
21 vehicle, is that your ---

22 A. That was my vehicle at the time, yes, sir.

23 Q. That's you again, it has all your gear in it?

24 A. Yes, sir.

25 Q. So did you do everything right there in the

Michael Cook- Direct Examination by Mr. Wetmore:

232

1 handicapped spot at the police department or did you take
2 it somewhere or....

3 A. It was all done right there.

4 Q. Okay. So you said, generally, what you do, what did
5 you do, specifically, on this vehicle right here that
6 night?

7 A. After photographing, I swabbed the exterior of the
8 door handles, basically, for touching anything.

9 Q. Okay.

10 A. After swabbing the exterior of the door handles, I
11 swabbed the interior of the door handles.

12 Q. Okay.

13 A. And then I went to fingerprint, using black
14 fingerprint dust, powder, to process the exterior of the
15 doors.

16 Q. Okay. Did you find any pieces of evidence that were
17 of any importance to the case?

18 A. I lifted ten latent print cards and then I located a
19 paycheck and an envelope in between the front passenger and
20 front driver seat.

21 MR. WETMORE: Your Honor, May I approach?

22 THE COURT: Yes, sir, you may approach.

23 Q. I'm going to show you what's been marked Number 30 and
24 31, can you identify these documents?

25 A. This is the envelope and the paycheck stub that I

1 located inside the vehicle.

2 Q. Okay. And what was the significance of those
3 documents?

4 A. I later found out that it was the victim's paystub.

5 Q. The victim's paystub?

6 A. Yes, sir.

7 Q. And that other document, what is that besides the
8 actual stub, the earnings statement, the paystub, what is
9 that other thing?

10 A. It's an envelope that the stub was in.

11 Q. So the envelope contained the stub?

12 A. Yes. Yes.

13 Q. And they both were contributed to the victim?

14 A. Yes, sir.

15 Q. And you learn that through the detectives in your
16 agency?

17 A. Yes, sir, from the detectives.

18 Q. And tell me again where that was?

19 A. In between that front passenger and front driver seat.

20 Q. I'll show you State's Exhibit Number 25, it's already
21 been admitted. When you came upon the front passenger area
22 of the vehicle, show us where you found these items?

23 A. Right here.

24 (Whereupon, the witness circles on screen in courtroom)

25 Q. So that's what that is right there?

Michael Cook- Direct Examination by Mr. Wetmore:

234

1 A. Yes, sir.

2 Q. That other piece of paper in front, that's not ---

3 A. That's not related.

4 Q. --- anything related?

5 A. No, sir.

6 Q. And that's how you found it?

7 A. Yes, sir.

8 Q. You took the photograph, obviously, before you
9 collected it?

10 A. Yes, sir.

11 Q. So what were you asked to do with those two documents,
12 envelope and the paystub inside?

13 A. I was asked to see if I can locate any latent prints
14 on the envelope and the paystub. At which time, I went
15 back to our lab and I use what's called Ninhydrin, that's a
16 liquid, um, fingerprint powder, basically.

17 Q. Okay.

18 A. So you fill up a little Pyrex dish with the liquid.
19 You put the item that you want, the paper that you want it
20 processed in it. Let it soak for a couple of seconds.
21 Pull it out. And I used an iron over the top with the
22 steam to speed the process up to make the prints pop.

23 Q. Okay. So who asked you to process those papers?

24 A. I'm not sure which Detective but one of the detectives
25 did.

1 Q. So one of the assigned detectives said, "hey this is
2 an important, process it?"

3 A. Yes, sir.

4 Q. And you were looking for fingerprints of suspects?

5 A. Yes.

6 Q. And you described the process of the chemical process,
7 how long does it take to prints to appear?

8 A. Using the iron technique, a couple of seconds.

9 Q. Okay.

10 A. It doesn't take long at all.

11 Q. So that very night when you pulled it out of the
12 console, you treated it, upon testing, you found what you
13 have?

14 A. Yes, sir.

15 Q. Did you preserve it? Did you seal it? Did you store
16 it anywhere? Saved it?

17 A. I did. I placed it into a clear sleeved envelope. I
18 heat sealed it shut. And then put the warning label on it.
19 And then sent it to our latent print examiner.

20 Q. Okay. And that packaging that you're holding in your
21 hands that's the package that you use or is that....

22 A. Yes, sir.

23 Q. So as you are holding those pieces of evidence other
24 than whatever analysis has been done, it's, essentially,
25 the same?

Michael Cook- Direct Examination by Mr. Wetmore:

236

1 A. Yes, sir.

2 Q. And you were able to find some potential fingerprints
3 on those important items?

4 A. Yes, sir.

5 Q. Okay. After you sealed it what did you do with those
6 two crucial pieces of evidence?

7 A. I, basically, stuck them in an envelope or folder, I'm
8 sorry, and submitted it to our latent print examiner to
9 make sure they were quality to be examined.

10 Q. Okay. So it goes to the examiner from there?

11 A. Yes, sir.

12 Q. And it's kept in a secured area?

13 A. Yes, sir.

14 Q. Who has access to it?

15 A. Just the members of our unit.

16 Q. Okay.

17 A. That can actually get back there and submit the prints
18 to her.

19 Q. Just other crime scene officers?

20 A. Yes, sir.

21 Q. But you didn't actually identify the prints any
22 prints, you just, basically, gather them?

23 A. Correct.

24 Q. Off of the items that were the subject of the robbery?

25 A. Yes, sir.

1 Q. All right. I want to show you one more picture I
2 think I'm probably done, State's Number 23, already
3 admitted, did you process the rear cargo area of the car?

4 A. I did. I photographed it.

5 Q. Okay. And what are those black and red cable items?

6 A. Jumper cables.

7 Q. And those were in the suspect vehicle?

8 A. Yes, sir.

9 Q. Okay. So they had jumper cables in the vehicle?

10 A. Yes, sir.

11 Q. So you would have no reason to believe that they
12 needed to borrow jumper cables or anything?

13 A. No, sir.

14 Q. Because they already had them?

15 A. Yes, sir.

16 MR. WETMORE: I have no further questions.

17 THE COURT: Your witness, counselor. Your witness.

18 MR. ARCHER: Do you want to what, Your Honor.

19 THE COURT: It's your witness.

20 MR. ARCHER: Oh, my witness, okay.

21 Cross Examination by Mr. Archer:

22 Q. Okay. Can I see that?

23 A. Sure.

24 Q. Okay. Now, this envelope got all sorts of purple
25 things on it?

Michael Cook- Redirect Examination by Mr. Wetmore:

238

1 A. Yes, sir.

2 Q. What's that? What is all that purple stuff?

3 A. The purple -- the purple stuff is the Ninhydrin but
4 there's detail that would be consistent with fingerprints.

5 Q. Are the purple areas fingerprints, is that what you're
6 saying?

7 A. Yes, sir.

8 Q. Okay. And this is the paystub, right?

9 A. Yes, sir.

10 Q. Does it -- you were able, obviously, to identify a
11 bunch of fingerprints on this?

12 A. The latent print examiner was, yes.

13 Q. The latent print examiner. How about this?

14 A. I believe, each number that's marked is where she's
15 located prints.

16 Q. Okay. And you don't know who those prints belong to?

17 A. No, sir. I didn't run them. No, sir.

18 Q. Okay.

19 MR. ARCHER: I have no other questions.

20 THE COURT: Redirect?

21 MR. WETMORE: Just briefly.

22 Redirect Examination by Mr. Wetmore:

23 Q. Officer Cook, so the markings on there, the chemical
24 markings are something you did in your processing of the
25 envelope?

1 A. Yes, sir. Those are what popped up.

2 Q. Okay.

3 A. When the chemical inactive with the paper.

4 Q. Okay. So that doesn't surprise you when you see that,
5 you, basically, agree to that fact?

6 A. Correct.

7 Q. But in terms of interpreting fingerprints on that,
8 that was done by somebody else?

9 A. Yes. I'm not certified to do that.

10 Q. Okay. Do you know who actually compared fingerprints,
11 determine who it was that put the prints?

12 A. That would've been Crime Scene Investigator Kubicsko.

13 Q. Kubiscko?

14 A. Yes, sir.

15 Q. Okay.

16 MR. WETMORE: Thank you.

17 MR. ARCHER: I've got one question I forgot to ask
18 you.

19 THE COURT: Yes, sir.

20 Re-cross Examination by Mr. Archer:

21 Q. Did you find any neckties in the car?

22 A. I don't believe so.

23 Q. Okay.

24 THE COURT: You may step down, sir.

25 MR. COOK: Thank you.

Lisa Kubicsko- Direct Examination by Mr. Cooper:

240

1 THE COURT: Do you wish to excuse the witness?

2 MR. WETMORE: Yes, Your Honor. Thank you.

3 THE COURT: Any objections?

4 MR. ARCHER: No objections.

5 THE COURT: You're free to go. Thank you, sir.

6 MR. COOK: Thank you.

7 THE COURT: You may call your next witness.

8 MR. COOPER: The State calls Lisa Kubicsko.

9 THE COURT: Come forward to be sworn, ma'am.

10 THE CLERK: Good afternoon. Head up the ramp. And
11 if you can raise your right hand, left on the Bible. Do
12 you swear or affirm the testimony you shall give be the
13 truth, the whole truth, and nothing but the truth so help
14 you God?

15 MS. KUBICKSKO: I do.

16 THE CLERK: Thank you. Please have a seat and once
17 seated if you can state your first and last name and spell
18 us your last name please.

19 MS. KUBICKSKO: My name Lisa Kubicsko, K-u-b-i-c-s-k-o.

20 THE COURT: All right. Your witness, counsel.

21 MR. COOPER: Thank you, Your Honor.

22 LISA KUBICKSKO, first being
23 duly sworn, testified as follows:

24 Direct Examination by Mr. Cooper:

25 Q. Officer Kubicsko, would you tell the jury where you're

1 currently employed please?

2 A. I work for the North Charleston Police Department.

3 Q. And what is your current position?

4 A. I'm a civilian crime scene technician and latent print
5 examiner.

6 Q. How long have you been in that position?

7 A. Six and a half years.

8 Q. Can you explain for the jury what that position
9 entails?

10 A. Yes. As a crime scene technician our responsibilities
11 are to respond to a variety of crime scene, whether it be
12 car break-ins, robberies, shootings, homicides. And we're
13 responsible for documenting the scene, taking photographs,
14 locating evidence, documenting that evidence, collecting
15 it, also processing for fingerprints, DNA, trace evidence.
16 Then we must collect that evidence. Preserve it.
17 Complete the proper documentation to have that evidence
18 tested. As a latent print examiner, I am responsible for
19 determining the quality of the latent prints that are
20 submitted to our office. I'm also running those
21 fingerprints through a database as well as completing
22 direct comparisons to individuals who are identified during
23 the course of the investigation.

24 Q. Will you elaborate for the jury on what training or
25 certifications you may hold in the fingerprint analysis or

Lisa Kubicsko- Direct Examination by Mr. Cooper:

242

1 latent print examination?

2 A. Yes. I have a Bachelors in Forensic and Investigative
3 Science from West Virginia University. While there I
4 completed ninety hours of classroom that is taught by the
5 FBI. Once hired at North Charleston, I worked under the
6 senior latent print examiner for probably six months. Then
7 I went to the South Carolina Law Enforcement Division where
8 I took a certification test and received a certificate for
9 Demonstrating Competency in Automated Fingerprint
10 Identification System and their system operations. Since
11 then I have attended two track conferences, which are the
12 people who, the company who does the AFIS system and there
13 they do a lot of hands on exercises and best practices for
14 operating the database and the machinery. I've also
15 completed a complex latent print fingerprint course by Ron
16 Smith and Associates as well as in advance palm print
17 comparison course by Sirchie.

18 Q. Approximately, how many latent print examinations have
19 you done your career?

20 A. I've done over ten thousand. So far in 2017 I've done
21 about nine hundred.

22 Q. And have you been previously qualified as an expert in
23 the field of latent print examination before?

24 A. Yes.

25 MR. COOPER: Your Honor, at this time I would offer

1 Ms. Kubicsko as an expert in the field of latent print
2 examination.

3 THE COURT: Any objection ---

4 MR. ARCHER: No objection, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, let
6 me take a moment to explain to you what we're doing right
7 now. Under the rules of evidence, I refer to those
8 earlier, witnesses are generally allowed, layman's are
9 allowed to testify about matters within their knowledge.
10 They're not allowed to give their opinions about matters.
11 The exception to that rule is made for witnesses who are
12 designated as experts within some field or science or
13 profession and as to someone who is designated by the Court
14 as an expert they are allowed to state their opinions
15 within their field of expertise and also give you the
16 reasons why they hold those opinions. Later on when I
17 charge you on the law, I will go over with you expert
18 testimony and how you have the right to view that
19 testimony. But at this time, the witness is being offered
20 as an expert within the field of latent fingerprint
21 examination. Without objection, I'll find that she is an
22 expert within that field. That will allow her to give her
23 opinions within the field and state the reasons why she
24 holds them. You may proceed, counsel.

25 MR. COOPER: Thank you, Judge.

Lisa Kubicsko- Direct Examination by Mr. Cooper:

244

1 Q. Ms. Kubicsko, would explain to the jury why
2 fingerprints are important to criminal investigations?

3 A. Fingerprints are very important in investigations
4 because they are a way of identifying a specific
5 individual.

6 Q. Are they unique to an individual?

7 A. Yes.

8 Q. Are fingerprints left on every surface that we touch?

9 A. No.

10 Q. What are some reasons why fingerprints may not be left
11 behind on various things that we touch?

12 A. So the reason why we leave fingerprints on a surface
13 is because the sweat glands in our fingertips will coat the
14 ridges of our fingertips. So when we touch a surface we're
15 depositing that oil residue in the pattern of the
16 fingerprint ridges. So depending on how much or how little
17 you may secrete those oils, can determine how well a print
18 is left. For example, if you are very nervous and have
19 sort of clammy hands, you may touch a surface and just
20 leave a complete smudge of oil versus if you do not secrete
21 a lot of oil you may not leave a pattern, a fingerprint
22 pattern at all. It also depends on what surfaces touch.
23 For example, we have a lot of, like, residential
24 burglaries, we may respond and process some electronics.
25 If those surfaces have not been dusted for a while what

1 ends up happening is when a suspect may touch that surface,
2 he is taken away the dust versus leaving his fingerprint.
3 So the most conducive services would be your smooth non-
4 coarse such as glass and, of course, poor surfaces,
5 clothing that you're not going to get fingerprints from.

6 Q. So surfaces like, for example, exterior of a vehicle,
7 would you anticipate in being able to find fingerprints or
8 not?

9 A. I would anticipate, yes, being able to find
10 fingerprints. The quality of those fingerprints would
11 depend on possibly the weather and whether the vehicle is
12 clean.

13 Q. The longer they are in the elements or dirtier the
14 vehicle the less likely you'll expect to find fingerprints?

15 A. Correct.

16 Q. How about, for example, the interior of a vehicle say,
17 leather seat versus cloth seats?

18 A. Right. So cloth seats, no, we would not be able to
19 get fingerprints. A leather is very difficult depending on
20 how smooth that leather is. Sometimes they're very, they
21 have a lot of creases in them so sometimes that can affect
22 that as well. But when we process the interior of the
23 vehicle a lot of times we focus on things like the rearview
24 mirror, or the seat belt buckles, any type of -- the radio
25 head, maybe, the buttons on the gearshift or anything

Lisa Kubicsko- Direct Examination by Mr. Cooper:

246

1 that's non-coarse, hard, smooth surface.

2 Q. So showing you State's Exhibit 21, for example, seats
3 like that, you wouldn't anticipate being able to find any
4 fingerprints on cloth material?

5 A. No, not at all.

6 Q. Now, focusing your attention to the case at hand, how
7 did you first become involved?

8 A. I became involved when Officer Cook submitted latent
9 fingerprints for examination.

10 Q. Can you explain to the jury how latent prints
11 collected by crime scene technician are stored and secured
12 at North Charleston Police Department?

13 A. Yes. So currently there's two latent examiners, myself
14 and another individual, and so any latent prints that are
15 collected by any member of the crime scene are given to
16 either her or myself. So once we complete the case
17 completely, the latent's are stored in case file which is
18 labeled by the case number. It is then filed in a file
19 cabinet by that case number in a locked room which is only
20 key access by members of crime scene.

21 Q. Were you provided the names of the individuals in this
22 case to compare prints to?

23 A. Yes.

24 Q. Who were the individuals in which you were provided
25 prints?

1 A. Tappia Green, Johnathan Johnson, and Davin Middleton.

2 Q. Okay. Would you explain to the jury what your first
3 step is in examining latent prints?

4 A. Yes. The first step that we would do is determine
5 it's quality and whether it even is sufficient enough to do
6 a comparison to.

7 Q. We you describe to the jury how you go about
8 determining quality and sufficiency for each print?

9 A. Yes. So the first thing we want to do is look at what
10 they call, a Level I detail, which is basically just a
11 pattern type and the general ridge flow. By looking at
12 that we can look at specific clues that will help us make
13 sure we have the correct orientation for that print. For
14 example, if we are looking at a whorl we would know that a
15 whorl would have two enter recurving ridges and two deltas.
16 And so by looking at that fingerprint I may, I would always
17 want to orientate those deltas at the bottom of the print.
18 So little clues like that will help us determine the
19 correct orientation. Then we want to look at the Level II
20 detail which is the, what we call minutiae, which are
21 specific characteristics of each individual ridge. For
22 example, you may have one ridge that goes around your
23 finger and just ends. That ending point would be what we
24 called an ending bridge and that specific point would be a
25 minutiae point. Another example, would be, you might have

Lisa Kubicsko- Direct Examination by Mr. Cooper:

248

1 one ridge that then splits into two. Right at that fork is
2 what we call bifurcation and that is a specific minutiae
3 point as well. So we want to look and make sure the print
4 has enough of those points for us to be able to either make
5 identification or exclusion and that, there's no statewide
6 standard for how many minutiae points you need in order to
7 make identification. So it's kind of up to each individual
8 examiner and what they are comfortable with to make that,
9 that conclusion. So once I find that the print has enough
10 of those points to then do a comparison, I then determined
11 that the print is of quality to be examined further.

12 Q. You mentioned there's a statewide standard, what you
13 mean by if an examiner becomes comfortable enough with the
14 number of minutiae points?

15 A. Right. So that's with any career path, you know, you
16 have people who have been there for five years, people who
17 have been there for ten years and they have different
18 experience levels. So each latent examiner is also gonna
19 follow that as well. So for you to make an identification
20 you have to be hundred percent confident that, that is an
21 identification. Now, someone who has been there ten years
22 may be okay finding eight points and make an
23 identification. Someone who has been there, you know,
24 doing work maybe one year or, you know, they may require
25 maybe twelve more points that makes them confident in their

1 decision. But the bottom line is that, that latent
2 examiner must be hundred percent confident in what they're
3 reporting because that is your reputation and your
4 certification on the line.

5 Q. Were you able to make a positive identification in
6 this case ---

7 A. Yes.

8 Q. --- when the prints were submitted?

9 MR. ARCHER: Your Honor, before we get the positive
10 identification, I think we need to delve into the chain of
11 custody for these samples that were examined by this
12 officer.

13 THE COURT: I don't know if he's going to be
14 introducing samples yet or not.

15 MR. COOPER: Your Honor, the items that were tested
16 they've already been admitted into evidence.

17 THE COURT: Mmm, hmm. Why don't we do this, ladies
18 and gentlemen of the jury, want you step back to the jury
19 room for just a minute. I need to discuss something with
20 the attorneys. As always don't discuss anything about the
21 case while you're outside the courtroom.

22 (Whereupon, the jury exits the courtroom at 3:10 p.m.)

23 THE COURT: All right. Now, your objection again
24 is what?

25 MR. ARCHER: My objection, Your Honor, is that they

Lisa Kubicsko- Direct Examination by Mr. Cooper:

250

1 need to be able to show a chain of custody for this, from
2 Officer Cook, to the examination and I don't think they've
3 done that. Normally, when you have items of physical
4 evidence you have a chain of custody.

5 THE COURT: Well fungible items, things ---

6 MR. ARCHER: Huh?

7 THE COURT: Fungible items, things that can't be
8 identified in-and-of themselves, but, now those, I think,
9 are fingerprints that have been listed. There's numbers,
10 dates, let me see to see what they look like.

11 MR. ARCHER: I think that ---

12 THE COURT: All right. I see what this is now.

13 MR. ARCHER: This is something -- I think you have -
14 -- to get it into evidence, I think you've got to show what
15 left the cars, the same thing that made it to her. And
16 normally my experience over the years is you have signed
17 sheets where you sign the chain of custody. You went from
18 this person to this person to that person and so forth.
19 And I know they used to establish ---

20 THE COURT: But you said they're already in
21 evidence?

22 MR. COOPER: That would be my first argument is that
23 Mr. Archer didn't not object to them coming into evidence.
24 That would be my first point to this. So I think that's
25 already in evidence. Regarding the chain of custody, North

1 Charleston does not do a chain of custody for items that
2 are examined like this where they're heat sealed for
3 fingerprints. The items, as the previous witness
4 testified, put them in the heat sealed, they're submitted
5 in a container for the latent print examiners to take them
6 out of, and then secured back in crime scene, people with
7 crime ---

8 THE COURT: So she's the person who took them out
9 of the evidence room?

10 MR. COOPER: Took them out of the bucket of the
11 container to do the examination and then ---

12 THE COURT: Well she's the chain of custody then.

13 MR. COOPER: --- they were kept in crime scene.

14 THE COURT: She's the chain of custody.

15 MR. ARCHER: All right.

16 THE COURT: If that's what he's saying. Have you
17 ask her that question?

18 MR. COOPER: I was -- I asked her how they were
19 stored and secured. I haven't, specifically, ask her how
20 she got them out ---

21 THE COURT: You haven't ask her if she took them
22 out?

23 MR. COOPER: I will. Yes, sir.

24 THE COURT: I suggest you do that.

25 MR. COOPER: Yes, sir..

Lisa Kubicko- Direct Examination by Mr. Cooper:

252

1 THE COURT: But you're telling me that they're put
2 in the evidence bind and then she checks them out directly
3 and examines them?

4 MR. COOPER: They're -- and I can ask her but
5 probably let her answer it better than me, but they're not
6 logged into evidence per se, they're back in the crime
7 scene area where only crime scene technicians and the like
8 have access to them, but they're not bolted to a chain of
9 custody sheet. They don't do it that way. That's the only
10 way North Charleston does it. But again I would point out
11 that Mr. Archer did not object to them coming into evidence
12 in this case.

13 MR. ARCHER: It came into evidence as something
14 taken out of the car.

15 MR. COOPER: Well, Mr. Cook testified to taking them
16 out of the vehicle.

17 MR. ARCHER: Yeah.

18 MR. COOPER: I realize he's ---

19 MR. ARCHER: It's something he took out of the
20 vehicle. That doesn't mean it's stipulations as to the
21 chain of custody.

22 THE COURT: But he's telling me they were sealed in
23 a plastic bag and then she took them out of the bag. They
24 stayed in the bag the whole time other than that, is what
25 you're telling me?

1 MR. COOPER: I believe -- I believe what I'm saying
2 is that their examiner, so I can ask the witness and have
3 her clear it up as well ---

4 THE COURT: Go ahead.

5 Q. Let me show you what has been admitted into evidence
6 as State's 30 and 31, those items, when they are collected
7 from a vehicle or collected from anywhere and they are
8 submitted for latent prints examination, how do they get to
9 a latent print examiner?

10 A. So what CSD Cook, would have done he processed these
11 items with Ninhydrin. He then placed them in these clear
12 envelopes and sealed them as well as placing the sticker on
13 here saying they have been chemically processed, not to
14 touch them. These, as well as the physical white backer
15 cards, are then placed into a folder, a case folder. Those
16 then go into a bind in our office. At which point, we
17 periodically take a stack of them, we do intake on them,
18 determine the quality and move from there. So when we then
19 analyze these prints, we take the case file with us, we do
20 them all at the same time. Once we're done with the case
21 file, it then gets put into a file cabinet in the locked
22 room and it stays there until court or maybe a detective
23 would ask for additional comparison or if we need it again,
24 it's in that locked room.

25 Q. The office where they initially are placed, in that

Lisa Kubicsko- Direct Examination by Mr. Cooper:

254

1 container, is that a restricted access room?

2 A. Yes.

3 Q. Okay. Once ---

4 A. That is restricted to, yes. The police Department,
5 crime scene detectives, that area, that investigations
6 area.

7 Q. Okay.

8 A. The evidence room, the property evidence room, is a
9 different location within the building. That's where we do
10 submit evidence from cases with the chain of custody. In
11 this case, at this time in our office, we kept everything
12 with the latent's in the case file. That was our procedure
13 at the time.

14 Q. With the items that Officer Cook would've placed in
15 the heat sealed, once they are sealed in that clear
16 package, are they removed from that package?

17 A. No.

18 Q. So they can't be altered other than -- they can't be
19 altered once they're placed in that sealed package?

20 A. No. This would have been exactly how I would've
21 received it from him. And then I just mark on here the
22 numbers as well as identify it, date it, and initial it,
23 when I receive it.

24 Q. Upon the inspection of the items, are there any rips,
25 tears, holes in the heat sealed plastic?

1 A. No.

2 Q. So based on your understanding from the policy and
3 from how Officer Cook would have done the work, once
4 they're placed in that heat sealed envelope there's no
5 further possible contamination of the items once they've
6 been chemically tested?

7 A. Correct.

8 THE COURT: Do you wish to ask her any questions?

9 Cross Examination by Mr. Archer:

10 Q. Is there anything on these documents that says who
11 submitted them?

12 A. No.

13 Q. Okay. So you don't know whether they're submitted by
14 Detective Cook or not?

15 A. I know that they were in this case, yes, because he
16 collected them from the scene. I have his report, in the
17 case file, I have the incident report, his case report, and
18 so I know that by his report and everything, how many
19 latent backer cards he's submitting and what else he's
20 submitting.

21 Q. Okay. But didn't -- in the chain of custody, don't
22 you have when it passes from one hand to another, one
23 person signs and then the next person who gets it, signs
24 for custody of it?

25 A. Yes. For example, if I were to submit a bottle into

Lisa Kubicsko- Cross Examination by Mr. Archer:

256

1 evidence, yes, I would create a chain of custody and submit
2 that to the evidence room. Because this was collected by
3 crime scene and it is held within crime scene we do not do
4 chain of custody. Just as similar as if I were to submit
5 the bottle to the evidence room whether there it be a chain
6 of custody, one of the evidence technicians would sign for
7 it. Now, if in five years that specific evidence
8 technician is not there, any other member of that evidence
9 technician can release it and sign it out. So because it's
10 within evidence they kind of have their people
11 interchangeable like that. And that's kind of how we view,
12 it is well in crime scene at this time when this case ---

13 Q. Okay. Well, you -- you assume that this was submitted
14 by Detective Cook because of some report he made, is that
15 the deal?

16 A. Because of his crimes scene report was stated exactly
17 what he did and what he collected.

18 Q. Okay. But not because of any sign in or sign out
19 signature?

20 A. No.

21 Q. Okay.

22 MR. ARCHER: No other questions, Your Honor.

23 MR. COOPER: Your Honor, the State would just submit
24 that the chain of custody is Officer Cook, and this
25 particular witness who is currently testifying. There's no

Lisa Kubicsko- Redirect Examination by Mr. Cooper: 257

1 form. That's how North Charleston Police Department does
2 it. Mr. -- Officer Cook put them in the bind, she
3 collected them from the bind. Her, I believe, ---

4 THE COURT: Is the bind in a secure location?

5 MR. COOPER: It is in secure crime scene location in
6 the crime scene ---

7 THE COURT: How many people have access to it?

8 **Redirect Examination by Mr. Cooper:**

9 Q. How many people have access to the crime scene area
10 where the bind is kept?

11 A. It is the crime scene of the detectives that would
12 have access to it but anybody beyond that, no.

13 Q. Would those people also have access to the evidence
14 room?

15 A. No, just the evidence, the evidence people.

16 Q. Again, the items that have the actual fingerprints on
17 them, they are protected in a heat sealed bag?

18 A. Yes.

19 Q. The actual fingerprints themselves are not exposed?

20 A. No. Everything is in an individual case file.

21 THE COURT: Well, is there something on that bag
22 that would indicate who put it in the bag? And when it was
23 put in the bag?

24 MR. COOPER: May I approach?

25 THE COURT: Yes.

Lisa Kubicsko- Redirect Examination by Mr. Cooper: 258

1 Q. Is this what comes with the container or is that what
2 y'all just keep it in storage?

3 A. No. That's just what I ---

4 Q. It stays in the case file?

5 A. This wasn't even -- this was ---

6 Q. Okay.

7 A. --- just what I put the stuff into give you.

8 MR. COOPER: Your Honor, North Charleston Police
9 Department does not put them into evidence. They do not
10 have a ---

11 THE COURT: Well, that doesn't make it proper
12 procedure.

13 A. We treat these just as we do the latent backer cards.

14 THE COURT: I'm sorry, what did you say?

15 MR. COOPER: We treat these just as we do the latent
16 backer cards which are also kept in the case file and still
17 are today.

18 MR. COOPER: And I think Officer Cook's report
19 serves, as notice of placing those in the bind. They were
20 in the bind as they are removed either by you or by Mr., or
21 the other latent print examiner. The fact that Ms.
22 Kubiscko removed and examined them means the latent print
23 examiner did not, she has her report while there's no
24 specific signed log, the report indicates and conveys that
25 specific information and as she's testified that with the

1 plastic wrapping, it's not for example, something that
2 could have been tampered with and hidden back, it's in a
3 plastic wrap, heat sealed, non anti-tampered bag.

4 THE COURT: I don't recall ever requiring anyone to
5 have a chain of custody or print evidence. Have you got a
6 case?

7 MR. ARCHER: Well, I think the idea of chain of
8 custody guarantees the appropriateness of a piece of
9 evidence.

10 THE COURT: Well, I understand that. I'm asking
11 you have you got a case that says when they lift the print,
12 she says that when they lift prints on backer cards, that's
13 where you put the tape, right?

14 A. Correct.

15 THE COURT: That's the tape that comes -- when you
16 lift the print off of something, you put the thing on the
17 backer card. I've never seen or I've never had a case
18 where we had prints where we had to do a chain of custody
19 through backer cards.

20 MR. ARCHER: I don't know why ---

21 THE COURT: If you have a case that says that
22 they're treated like drugs in a drug bust or something like
23 that, I'll be glad to look at it. You raise the issue, I
24 assume you have some law on it.

25 MR. ARCHER: I don't have a specific case for you,

Lisa Kubicsko- Re-cross Examination by Mr. Archer: 260

1 Judge to be honest with you.

2 THE COURT: Well, that's part of your
3 responsibility.

4 MR. ARCHER: I understand.

5 THE COURT: So I'm asking you for some authority.

6 MR. ARCHER: I don't have any to give you at this
7 point.

8 THE COURT: So you're suppose to throw it on the
9 wall and see if it sticks?

10 MR. ARCHER: Throw it on the wall and see if it
11 sticks.

12 THE COURT: All right. What's the State got. The
13 only thing I would just -- I have some latent print cards,
14 they were fingerprints that were, matched the co-defendant
15 while I'm introducing them, but just for the Court's
16 knowledge so they have information on the back of these.
17 Obviously, this is they're print cards they can do that
18 because of the type of evidence. They can't write on the
19 back of the stub and all of that. All of these print cards
20 and that type of evidence are in the same container
21 together, in the same individual wrap container for this
22 specific case. So while that piece of evidence, that piece
23 might not have the information, the latent print cards do
24 because they can write on them. But I also, I don't know
25 that I can do the research. I don't know the case where

1 they require this type of chain of custody for a chain of
2 custody.

3 Re-cross Examination by Mr. Archer:

4 Q. Is there any way a print can be transferred from one
5 of these cards to something else?

6 A. No. No.

7 MR. ARCHER: All right.

8 MR. COOPER: And again I go back to, Mr. Archer did
9 not object to them being admitted into evidence.

10 THE COURT: I beg your pardon?

11 MR. COOPER: Mr. Archer did not object when we
12 admitted into evidence, he had no objection at that point
13 in time.

14 MR. ARCHER: I think I admitted them as something
15 found in the vehicle.

16 THE COURT: But still though ---

17 MR. ARCHER: But the evidence stipulated to ---

18 THE COURT: --- presented today ---

19 MR. ARCHER: --- appropriateness of the fingerprint
20 examiner.

21 THE COURT: Well, again if you got a case that says
22 fingerprint evidence requires the chain of custody, I'd
23 like to see that case.

24 MR. ARCHER: Yes, Your Honor. I don't have one.

25 THE COURT: I'm not -- it's never come up before.

1 I've been doing this for long time.

2 MR. ARCHER: Right.

3 THE COURT: First time I've heard this.

4 MR. ARCHER: Question I was ---

5 THE COURT: Well, it might be and then it doesn't
6 mean you're wrong.

7 MR. ARCHER: Yeah.

8 THE COURT: What it means is that I will assume
9 that you're going to raise a mute issue, you might be
10 prepared on that. Just give me a moment, gentlemen. Have
11 a seat.

12 MR. COOPER: Yes, sir.

13 THE COURT: We'll take a look.

14 (Whereupon, the judge looks up the case law)

15 THE COURT: All right. I'm going to refer to the
16 case of State v. Rogers. The cite is 361 SC 178. In that
17 particular case, there was a fingerprint found on a slip of
18 paper inside of the victim's purse and the results of that
19 fingerprint analysis was submitted into evidence. They
20 noted the purse is a non-fungible item, a piece of
21 evidence, and that chain of custody is not required for its
22 submission. They were talking about the purse that
23 contained the piece of paper. Here we had an automobile
24 which was identify, is non-fungible, we don't put those in
25 evidence and keep the chain of custody on an automobile.

1 The piece of paper was found inside of that. And they said
2 in that case that even if the chain needed to be
3 established where it's shown that every individual who had
4 possession of the slip of paper and testified to having it
5 and denied having tampered with it, that is sufficient for
6 that document to come in. You don't have to have a written
7 chain of custody for that item to come in according to
8 State v. Rogers. It says South Carolina law does not
9 require testimony to the exclusion of any possibility of
10 tampering rather where the identity of the persons handling
11 the specimen is established. Evidence regarding its care
12 goes only to the weight of the specimen as credible
13 evidence, not to its admissibility of the evidence.
14 Accordingly, they found no error in allowing the admission
15 of the fingerprints results in that case. So your
16 testimony, your position is that the officer who collected
17 it has testified, he stated that he put it in the plastic
18 bag, is that your position?

19 MR. COOPER: Yes, sir.

20 THE COURT: She stated she retrieved it from the
21 location, the bind where it was placed ---

22 MR. COOPER: Yes, sir.

23 THE COURT: --- and it does not appear to have been
24 tampered with and she then did the testing?

25 MR. COOPER: Yes, sir. And the document being an

Lisa Kubicsko- Redirect Examination by Mr. Cooper: 264

1 individual paystub with the victim's name, any information
2 would be non-fungible and found again, as the Court noted,
3 non-fungible item, an automobile.

4 THE COURT: I need for you -- when you begin again
5 I want you to elicit the testimony in front of the jury as
6 to where she came into possession of it. That it had not
7 been tampered with. The bag was still intact. Where it
8 was located. Where it had been left by the other officer
9 and that she did testing herself. Took it out of the bag
10 and I assume put it back in the back when she finished.

11 MR. COOPER: Well, she examines it ---

12 THE COURT: Through the bag?

13 MR. COOPER: Yes, sir./

14 THE COURT: Okay. Well, then that's fine. She
15 never opened it. It's still in the sealed condition.

16 MR. COOPER: Correct.

17 THE COURT: All right.

18 MR. COOPER: But, yes, I will elicit that testimony.

19 THE COURT: All right. So the objection is
20 overruled.

21 MR. ARCHER: Yes, Your Honor.

22 THE COURT: Why don't we take about a five minute
23 break while we've got the jury out so will everybody in the
24 courtroom. So we'll have about a five minute break. Court
25 is in recess for a short period of time. Ma'am, you gonna

Lisa Kubicsko- Redirect Examination by Mr. Cooper: 265

1 step down. You cannot discuss your testimony with anyone
2 during the break. Thank you very much.

3 MR. COOPER: Thank you, Judge.

4 (Whereupon, the Court was in recess for a break)

5 THE COURT: Bring the jury in.

6 (Whereupon the jury enters the courtroom at 3:42 p.m.)

7 THE COURT: Let the record reflect the jury has
8 returned to the courtroom. I've overruled an objection.
9 You may proceed.

10 MR. COOPER: Thank you, Your Honor.

11 Redirect Examination by Mr. Cooper:

12 Q. Ms. Kubicsko, I believe you still have State's Exhibit
13 30 and 31, the envelope and the check stub?

14 A. Yes.

15 Q. Would you explain to the jury how you became in
16 possession of those items?

17 A. Yes. CSD Cook had recovered two pieces of paper one
18 being a check stub and one being an envelope from a PT
19 Cruiser. He then processed those items with Ninhydrin and
20 formulate a case file which usually contains the incident
21 report, his report documenting everything he did, as well
22 as any fingerprints that he recovered in this case,
23 including white backer cards, we call them, and the two
24 pieces of paper that were processed and contain latent
25 prints on them. Those -- that case file is then placed

Lisa Kubicsko- Redirect Examination by Mr. Cooper: 266

1 into a bind in which we put all of the cases that need to
2 go to a latent examiner in. Either me or my co-worker will
3 then take cases that need to be examined out of that bind.
4 In this case it happened to be me. I then will look at the
5 prints and make sure they have enough detail and there of
6 quality to examine. So I did in this case determined there
7 were prints of quality to be examined. I am in possession
8 of that case file until I am done working the case. And
9 then -- so you collected those prints from that bind?

10 A. Correct.

11 Q. Where they were deposited by Officer Cook?

12 A. Yes.

13 Q. And you know that because of his report?

14 A. Yes.

15 Q. And then as part of Officer Cook using the chemical
16 analysis, he placed them in them heat sealed bags?

17 A. Correct.

18 Q. Do you remove them from the heat sealed bags to do
19 your analysis?

20 A. No. I examine them through the clear heat sealed bag.

21 Q. Once they are put in those heat sealed bags, are they
22 ever taken out?

23 A. No.

24 Q. Is there, upon inspection of those two items of
25 evidence, is there anything, any evidence of any tampering

1 with that heat sealed package?

2 A. No.

3 Q. So as you have them now they are intact as they were
4 when they were sealed by Officer Cook?

5 A. Yes.

6 Q. To the best of your knowledge?

7 A. Yes.

8 Q. In this case regarding the check stub, were you able
9 to get any positive identifications?

10 A. Yes.

11 Q. For who?

12 A. Four Tappia Green and Johnathan Johnson.

13 Q. How many positive identifications did you have for
14 Tappia Green on that check stub?

15 A. I had five positive identification.

16 Q. Okay. Did you prepare a diagram of each of the
17 positive identification for Mr. Green for court today?

18 A. Yes.

19 Q. If I were to show those to you, would you recognize
20 them?

21 A. Yes.

22 MR. COOPER: May I approach the witness?

23 THE COURT: You may.

24 Q. Showing you what's been marked as State's Exhibit's
25 32, 33, 34, 35, and 36 for identification purposes only,

Lisa Kubicsko- Redirect Examination by Mr. Cooper: 268

1 can you see if you recognize these five items?

2 A. Yes.

3 Q. And what are they?

4 A. These are the direct comparisons between the unknown
5 fingerprints from the earnings statement showing the direct
6 comparison to the known fingerprints of Tappia Green.

7 Q. So they are diagrams that show the prints as you found
8 the item of evidence with the print that you matched it to
9 from a known print?

10 A. Yes, sir.

11 Q. And you created this document?

12 A. Yes.

13 MR. COOPER: Your Honor, at this time I would admit
14 State's 32 through 36 into evidence.

15 THE COURT: Any Objections?

16 MR. ARCHER: I'd like to voir dire her, if I can?

17 THE COURT: Oh what point?

18 MR. ARCHER: Where she got his fingerprints from.
19 My clients fingerprints.

20 THE COURT: I'll let you cross examine her later on

21 ---

22 MR. ARCHER: Okay. Then ---

23 THE COURT: Because it's not voir dire at this
24 point.

25 MR. ARCHER: All right.

Lisa Kubicsko- Redirect Examination by Mr. Cooper: 269

1 THE COURT: Any objections to the documents?

2 MR. ARCHER: Well, and this point, I don't know
3 where the fingerprints came from so I will object but I
4 know they'll be admitted.

5 THE COURT: What is the basis of the objection? I
6 have to have something to rule on.

7 MR. ARCHER: Yeah. I'll withdraw the objection.

8 THE COURT: Thank you. They'll be admitted as
9 marked. You may proceed.

10 (Whereupon, the Pos. Prints has been marked and entered
11 into evidence as State's Exhibits No. 32 through 36)

12 Q. Showing you State's 32, will you explain to the jury
13 what this, State's 32, is?

14 A. Yes. So here on the left side I have L7.1 which was
15 one fingerprints found on the earnings statement. On the
16 earnings statement the fingerprints are a pink purple color
17 because that's the color they look when the chemical
18 reaction occurs. With taking of the picture of the print
19 to be able to do this, it took it in black-and-white so
20 that's why there is a clarity between that. But -- so this
21 is the unknown fingerprints from the earnings statement and
22 this is the known fingerprint of Tappia Green's left thumb
23 which we numbered number six. The fingers go number one is
24 the right thumb. Number five the right little. Number six
25 the left thumb. Number ten the left little. So there

Lisa Kubicsko- Redirect Examination by Mr. Cooper: 270

1 numbered accordingly. So here this is showing the correct
2 orientation of the print in which I was able to determine
3 based on the clues that the print gave me, for example, the
4 triangle that you're seen in the unknown, that's what we
5 call delta and in the innermost point of that is the delta
6 specifically. So ---

7 Q. And, Ms. Kubicsko, you can draw on the screen if
8 that's helpful.

9 A. Oh, okay. So this would be the delta area right
10 there. Now, with the general ridge flow and just
11 experiencing, I am able to determine that this is the
12 correct orientation for this fingerprint. So then the next
13 step is, I had mentioned finding those specific minutiae
14 points that we want to compare. So here I've marked and
15 ending ridge a ridge that is flowing and comes to an end.
16 That point at the end is the minutiae point.

17 Q. If I need to slide it over I can.

18 A. You're okay. I was seeing if I could find a
19 bifurcation to demonstrate to you. So right here I talked
20 about how one ridge may split in to two that would be a
21 bifurcation point. So what I've done is I've found all of
22 these points. In order to compare to a known individual
23 I'm, basically, looking for those same points in the known.
24 Say I may find a little grouping and use that as what I'm
25 searching for. So once I locate that in the known print, I

1 then began to search around that point and count ridges to
2 make sure that those points have the same spatial
3 arrangement. For example, number seven is an ending ridge.
4 And then I am able to count one ridge which leads to that
5 ending ridge. Then I will go over to the known print, if
6 you can move it over just a little, and I have number
7 seven, the ending ridge, right there, down one ridge,
8 ending ridge. So I will continue to do that to each of
9 those points to make sure that they have the same ridge
10 count between them. Once I have found enough points that
11 are there and have the same spatial arrangement that's when
12 I'll make my conclusion and in this case I made the
13 conclusion that it was identification to the left thumb of
14 Tappia Green.

15 Q. And that is I believe ten points that you identified?
16 Is that ---

17 A. Yes. This I did ten just to demonstrate to you.
18 There are multiple other ones I could point out. I just
19 did ten just to demonstrate.

20 Q. Okay. And I show you State's 33, if you will explain
21 to the jury your identification on this one?

22 A. Okay. This is L7.2, which is another print on the
23 earnings statement. Again I was able to orientate the
24 print based on the ridge flow. When I originally was
25 looking at this print, I had it facing the other direction

Lisa Kubicsko- Redirect Examination by Mr. Cooper: 272

1 was thinking it was the top of a whorl and then I realized
2 if I flipped it around it could be the bottom of the whorl
3 and that's when I made the identification. So again I just
4 looked for similar points here. So here we have this
5 grouping of three points. Right below, this is what we
6 call, a recurving ridge, the innermost recurving ridge. So
7 I would look at the known fingerprints of Tappia Green and
8 look in this area for those three specific points. I know
9 it's directly down from the innermost recurving ridge. So
10 again I located that here, looked down from it, and I found
11 these three points. At which point, I may pick one like
12 number three and I may say okay let me follow this ridge up
13 and there's a bifurcation. Let me follow this up -- let me
14 follow this one up and there's a bifurcation right there.

15 Q. All right. Showing you State's 34, if I need to move
16 that over just let me know, if you'll explain that to the
17 jury as well.

18 A. Okay. So this is L7.3 another print from the earnings
19 statement. Same steps as last time. This one I was able
20 to orientate because it has a delta over here and a
21 recurving ridge over here which for me I would say okay
22 that's consistent with a left loop or if this were to
23 recurve down here, it could possibly be a whorl. So then
24 I'll know when looking at the known fingerprints that I
25 need to look at all of the left loop's and the whorls first

1 and look for those points. So again I did the same thing,
2 I found a grouping of points to focus on, and located them
3 in the known. Continue doing the ridge counts until I was
4 confident in making a decision that this was hundred
5 percent an identification. So this print was identified to
6 the left middle finger, number eight, of Tappia Green.

7 Q. Showing you State's Exhibit 35, would you do the same?

8 A. Yes. This is L7.4 another print from the earnings
9 statement. Again just looking at the clues and the
10 recurving ridge I know that I'm looking at either right or
11 left loop and possibly a whorl. So I'll usually try to go
12 for either, you know, the recurving ridges or the delta to
13 start from. So I located a few points and then located
14 those same points in the known fingerprint. So here again
15 I have marked the corresponding points. They are more, I
16 just marked ten for demonstration purposes. So this was an
17 identification made to the right thumb, number one, of
18 Tappia Green.

19 Q. You mentioned this, another time you mentioned that
20 there were more than ten points, at a certain point, do you
21 not, do you stop identifying every single match or point
22 once you've decide it is a positive identification?

23 A. Yes.

24 Q. And then finally showing you the last one State's
25 Exhibit 36, if you'll explain that to the jury?

Lisa Kubicsko- Redirect Examination by Mr. Cooper:

274

1 A. This is L7.6, another print from the earnings
2 statement. And again the same procedures. Looking at
3 this, I have the delta here and following, I know I have
4 the ridge flow going down this way around the delta like
5 that so I know that I am looking at either a right loop
6 meaning it's going to have a recurve somewhere over here
7 and go down or I could be looking at a possible whorl if
8 this were to loop around like that. So I determined this
9 was the orientation, began looking for a specific points,
10 and then looked for them in the known fingerprints. And in
11 this case I was able to identify this as the right middle
12 finger, number three, of Tappia Green.

13 Q. And then do you have the check stub? I'm showing
14 what's been marked as State's Exhibit 31, that's the check
15 stub that you analyze, correct?

16 A. Yes.

17 Q. And then these red numbers, are these where you
18 indicated where you found the prints that corresponded to
19 the analysis you did?

20 A. Yes.

21 Q. And were you able to make an identification on every
22 single one of the prints you that found on the document?

23 A. No.

24 Q. Can you explain to the jury why sometimes some prints
25 may not be sufficient?

Lisa Kubicsko- Redirect Examination by Mr. Cooper: 275

1 A. Yes. Some prints may not be sufficient for comparison
2 because they do not have enough of those minutiae points to
3 make a definitive answer. As you can see these prints are
4 partial prints. They're not perfect. So you're only
5 getting a small portion of the fingerprint. So once you
6 locate those points you may only have five points. I know
7 I'm not confident in identifying with only five points in a
8 fingerprint. So I need to make sure the print has enough
9 points in which I can either make my identification or an
10 exclusion. So with this check since it is in Ninhydrin,
11 you're counting on the chemical process to bring out the
12 prints so you're able to see it. Sometimes they're not as
13 bright so you simply just can't see it. There's not enough
14 contrast to be able to examine it. Other times they're the
15 partial prints and there's not enough there. So that's why
16 a print may be not suitable for a comparison to be done.

17 Q. Did you also identify fingerprint on this document to
18 somebody other than Tappia?

19 A. Yes.

20 Q. Who did you identify that print to?

21 A. Johnathan Johnson.

22 Q. Other than those two individuals, were you able to
23 identify prints of anybody else?

24 A. No.

25 Q. Were there several for various reasons were

Lisa Kubicsko- Redirect Examination by Mr. Cooper:

276

1 insufficient?

2 A. Yes.

3 Q. And did you also process the different prints that
4 were collected from around the vehicle by Officer Cook?

5 A. Yes.

6 Q. Now, were you able to have make any positive
7 identification regarding prints around the vehicle?

8 A. Yes.

9 Q. Who were you going to make positive identifications to
10 for the prints around the car?

11 A. Johnathan Johnson and Naucita Ford. Can I refer to my
12 report?

13 Q. Yes, please. I have a copy if you need one.

14 A. I've got one.

15 Q. Yes, please.

16 A. So identifications from the car were made to Naucita
17 Ford, Johnathan Johnson, yeah, those are the only two
18 individuals.

19 Q. So no prints of Tappia Green that were from, collected
20 off the vehicle, itself?

21 A. No.

22 Q. And then you are aware that the check stub and
23 envelope were found inside the vehicle?

24 A. Yes.

25 Q. Okay. Now, if you'll explain to the jury what checks

1 or procedure are in place to ensure your analysis and
2 identifications and results are correct?

3 A. Yes. Any case in which we make an identification on,
4 then goes to a second latent examiner who will then do the
5 exact same comparisons and reach their own conclusions.
6 Our conclusion are then compared and they have to be the
7 same in order for that to go on to the official report. So
8 that's the check. One she's checking my report for
9 completeness and errors and anything, she's also checking
10 to make sure my ID's are ID's; my exclusions are
11 exclusions, and that prints that I determined to be not
12 suitable for comparison are not suitable for comparison.
13 So that's how we check that our work is accurate. Now, if
14 for some reason she had a different conclusion on something
15 that I did, we would then do a consultation but we must be
16 in total agreement before anything to be reported.

17 Q. And then in this case you and that second examiner
18 reached the same conclusions?

19 A. Yes.

20 Q. And then I know you talked about it before hand, but
21 given your analysis you are hundred percent confident
22 behind your identifications?

23 A. Yes.

24 MR. COOPER: I beg the Court's indulgence one
25 second.

Lisa Kubicsko- Re-cross Examination by Mr. Archer: 278

1 THE COURT: Yes, sir.

2 Q. And just so to clarify at the end, you found one, one
3 hundred percent match of Johnathan Johnson on that paystub?

4 A. Yes.

5 Q. And then you found five, one hundred percent matches
6 to Tappia Green on that paystub?

7 A. Yes.

8 MR. COOPER: The State has no further questions.
9 Thank you. Please answer any questions the defense may
10 have for you.

11 THE COURT: Counselor, your witness.

12 **Re-cross Examination by Mr. Archer:**

13 Q. This, this seems to have a whole bunch of prints on
14 it.

15 A. Yes.

16 Q. Did you examine that?

17 A. Yes.

18 Q. Were you able to find any matches from that to
19 anybody?

20 A. May I look at that?

21 Q. Sure. And ---

22 A. So this is what have labeled as L12 and then each
23 individual point on there will label like 12.1, 12.2, and
24 as such so I just wanted to check on. So on that
25 particular one I've labeled six individual prints. One is

1 a joint in which I said was inconclusive and to submit
2 complete exemplars for comparison. What that, basically,
3 means is that the known standards that I'm looking at do
4 not have that specific location in which I'm trying to
5 compare it to so in that case I would need more complete
6 exemplars to complete that comparison. And then three of
7 them were insufficient for identification which to us means
8 that they do not have enough, they're not of quality to
9 examine at all. And then two of them are insufficient for
10 AFIS search. One of which was inconclusive, meaning we
11 could not reach a conclusive decision one way or the other
12 to ID or exclude. And one was unable to orientate
13 inconclusive. If it doesn't have those clues we can't
14 orientate it, then we cannot, you know, make the
15 identification.

16 Q. So, in short, you didn't find anything despite all the
17 purple stuff on there, you didn't find anything to match up
18 off of that envelope?

19 A. Correct. The purple is just reacting to the amino
20 acids we deposit with her fingers.

21 Q. Mmm, hmm. Okay.

22 MR. ARCHER: No other questions.

23 THE COURT: Redirect?

24 MR. COOPER: No redirect, Your Honor.

25 THE COURT: You may step down, ma'am. Thank you

1 very much. You wish to excuse the witness?

2 MR. COOPER: No objection from the State?

3 THE COURT: No objection?

4 MR. ARCHER: No objection.

5 THE COURT: You're free to go, ma'am. Thank you.

6 You may call your next witness.

7 MR. COOPER: May we approach real quickly?

8 THE COURT: Yes, sir.

9 (Whereupon, a bench conference was held off the record)

10 THE COURT: All right. Ladies and gentlemen of the
11 jury there is a question about the next witness that I have
12 to deal with before we present that witness to you so I'm
13 going to ask you to step back to the jury room while I deal
14 with that issue and as you are aware I'm going to ask you
15 not talk about the case until I ask you to do that in your
16 deliberations. You may retire to the jury room.

17 (Whereupon, the jury exits the courtroom at 4:07 p.m.)

18 THE COURT: All right. Mr. Cooper, I believe
19 you're going to call one of your investigators, is that
20 correct?

21 MR. COOPER: Yeah. He's the only witness that I
22 have available that would be here to do that would be, Mr.
23 Haupt. The issue, the only issue there is that there would
24 be with this new found information I would have to
25 establish things with another witness beforehand. So I can

1 put him up but they would be out of order. I can go
2 through with the Court and explain what information is I'd
3 be trying to elicit.

4 THE COURT: Well, let's do that. I said we would
5 try to rule on that question to see and perhaps take
6 testimony from him.

7 MR. ARCHER: My only objection ---

8 THE COURT: We've got about an hour of court left.
9 Go ahead.

10 MR. ARCHER: This has to do with identifying phone
11 calls, right?

12 MR. COOPER: Multi -- yes. Some, yes.

13 MR. ARCHER: Okay. I admit I've got a list of phone
14 calls.

15 THE COURT: Yes, sir.

16 MR. ARCHER: But what your matching it to are some
17 Facebook pages which I never got a copy of.

18 MR. COOPER: You just -- well, one th State has
19 already admitted, that's your copy.

20 MR. ARCHER: Well, I just got it today in court.
21 And I still think there is an issue of surprises here that
22 I don't have anything to match ---

23 THE COURT: You refer to some Facebook pages, is
24 that the defendant's Facebook page?

25 MR. COOPER: It is so, Judge. I can explain to the

1 Court what the -- so they are two photographs, one that's
2 been admitted into evidence ---

3 THE COURT: Gentlemen, go back to counsel table why
4 we discussed motions. There we go. Now, don't get on top
5 of the judge. There we go. Now, let's talk about it.

6 MR. COOPER: So, Your Honor, there are two pictures,
7 one the State has already admitted into evidence that shows
8 Mr. Green outside of Hardee's on the phone. There's a
9 timestamp. We have the co-defendants phone records. The
10 timestamps on that picture were Mr. Green is on the phone
11 correlates to a phone call that the co-defendant Johnson
12 who's inside the Hardee's had it at the exact time to the
13 second. In searching to find out who that photo belongs to
14 you can enter a phone number into Facebook and if you have
15 registered that phone number with your account it will link
16 to your account the same way you search for name. So we
17 searched that phone number. It comes up to a Facebook
18 account of a Glitzy Gang (sic) who the picture, you know,
19 identifies Tappia Green. We also have someone witnessed a
20 call, Mr. Green on his jail calls admits that his Facebook
21 profile it is Glitzy Gang. (sic) So the State would be
22 seeking to introduce evidence that on that occasion and
23 another one that we have a picture that I have not put into
24 evidence but Mr. Archer's has had since he's been in the
25 case, it shows Mr. Johnson on a call that correlates that

1 same number. We would be seeking to introduce the evidence
2 to get to a point of Mr. Green and Mr. Johnson communicated
3 via phone during these events.

4 MR. ARCHER: Well, all I'm saying is he's matched up
5 this phone number to a list of calls and this phone number
6 I never had to match up with anybody, one on this ---

7 THE COURT: When did you get a copy of that
8 Facebook page?

9 MR. ARCHER: Today.

10 THE COURT: Have you gone over it with your client?

11 MR. ARCHER: No, sir.

12 THE COURT: You haven't shown it to him?

13 MR. ARCHER: Well, he seen it.

14 THE COURT: Well, you went over it with him then.

15 MR. ARCHER: Yes, sir.

16 THE COURT: Do you feel like that you need
17 additional time in which to examine the Facebook page or
18 discuss it with your client?

19 MR. ARCHER: Well, he's not sure that this, who's
20 number it is, Your Honor.

21 THE COURT: Well, we can always stop right now and
22 give you all night to look into it.

23 MR. ARCHER: Yeah. I've said all I can say.

24 THE COURT: No, I'm asking you if you are -- I take
25 it you're claiming that you're somewhat surprised ---

1 MR. ARCHER: Yeah.

2 THE COURT: --- about the fact your client has a
3 Facebook page that apparently is under some different name?

4 MR. ARCHER: Right.

5 THE COURT: Okay. And so you're just saying you
6 saw that today?

7 MR. ARCHER: Yes, sir.

8 THE COURT: Okay. And when evidence like that
9 comes up, I normally would give you whatever time you feel
10 is necessary to discuss it with your client and be able to
11 be prepare for it. So if we need to stop right now, give
12 you overnight to be prepared with your client to look at it
13 and discuss it and tell me what problems there might be
14 with it.

15 MR. ARCHER: Give me a minute to discuss it with
16 him.

17 THE COURT: Absolutely.

18 (Whereupon, defense counsel took a moment with his client)

19 MR. ARCHER: Judge, I don't think we need overnight.

20 THE COURT: I beg your pardon?

21 MR. ARCHER: I don't think we need an overnight.

22 THE COURT: Are you prepared to go forward
23 concerning that?

24 MR. ARCHER: Yes, sir. Ready to go forward.

25 THE COURT: So you no longer object to him going

1 forward on that?

2 MR. ARCHER: Not on the bases of surprise.

3 THE COURT: Okay. What objection is there, let's
4 deal ---

5 MR. ARCHER: I I don't -- we may be explained ---

6 THE COURT: Stand up, if you're going to talk to
7 me. That's the way we work around here.

8 MR. ARCHER: Yes, sir.

9 THE COURT: All right.

10 MR. ARCHER: We may put him on the stand to testify
11 about this but that's a matter of ---

12 THE COURT: I'm not trying to force him to testify.

13 MR. ARCHER: Right.

14 THE COURT: What I just want to know is there an
15 objection ---

16 MR. ARCHER: No, Your Honor.

17 THE COURT: --- that we need to deal with while the
18 jury is out?

19 MR. ARCHER: No. There's no objection.

20 MR. COOPER: The only thing with this witness's
21 testimony, judge, is that I may have to call other
22 witnesses in advance to establish connection. The only
23 reason that they're not here is because this is something
24 we found out two or three hours ago. Now, I can go out of
25 order and I hate to take time away from court before five.

1 THE COURT: Well, now this is Tuesday, we've only
2 got a few witnesses done.

3 MR. COOPER: Now, I will say this, with the except
4 of the case agent, who may be a decent lengthy witness,
5 prior to this situation, the State has the witness who
6 testified this morning at the hearing, it will take just a
7 couple of minutes. And then the rest of the witnesses that
8 will be testifying, my investigator, the person who dumped
9 the phone for North Charleston, and Sherbine from the jail
10 collectively are not lengthy at all. They're just -- they
11 just have to be established in every single piece.

12 THE COURT: I understand.

13 MR. COOPER: The State would rest for lunch
14 tomorrow.

15 MR. ARCHER: Well did you, I mean, you've got a list
16 of phone numbers, are you going to be able to verify that
17 list with a witness?

18 MR. COOPER: The witness dumps Johnathan Johnson's
19 phone it's already established. One number is Johnson.
20 The second number comes from a call on ---

21 MR. ARCHER: Who can verify the list of phone calls?
22 Who are you -- how are you -- who are you going to use ---

23 MR. COOPER: Sam Rodell, the person who dumped the
24 phone will establish he extracted information from the
25 phone.

1 MR. ARCHER: Somebody by the name of Rodell?

2 MR. COOPER: Yes.

3 MR. ARCHER: Who's not on the witness list?

4 MR. COOPER: When Johnathan Johnson pled, I had no
5 intention of calling him until the evidence came forward.
6 Until I made this connection. Johnathan Johnson pled
7 guilty, we're not gonna call as a witness. I apologize to
8 any inconvenience to the Court but I didn't make this
9 connection until lunchtime.

10 THE COURT: All right. There is a witness you
11 intend to call that is not on the witness list.

12 MR. COOPER: Yes, Your Honor.

13 THE COURT: And so I need to inquire the jury if
14 there's any connection with that witness?

15 MR. COOPER: Yes, Your Honor.

16 THE COURT: Now, let's go ahead and take care of
17 that. I'll excuse the jury for the evening. And we'll
18 start back at 9 o'clock in the morning.

19 MR. ARCHER: Okay.

20 THE COURT: Bring the jury in, ma'am.

21 MR. COOPER: Judge, I can give you the names.

22 THE COURT: I beg your pardon?

23 MR. COOPER: I can give you the names for ---

24 THE COURT: Please do. Why don't I ask you just to
25 identify the witness?

1 MR. COOPER: Yes, Your Honor. And I can go and
2 tell, Sergeant Jason Monroe, who may testify.

3 THE COURT: All right. Now, is there more than
4 one?

5 MR. COOPER: Out of abundance of caution, yes, Your
6 Honor, I think there would, I would be calling all of them.
7 The reason I am doing that is that Officer Kevan Sherbine
8 is usually the individual who comes and testifies from the
9 jail. There are two people in his office just in case he
10 can't make it for whatever reason. The other person will
11 come just, to in abundance of caution, I would do that to
12 the jury.

13 THE COURT: All right. I'm going to ask you to
14 identify any witnesses that you feel might be called ---

15 MR. COOPER: Yes, sir.

16 THE COURT: --- that are not on the witness list,
17 I'll ask you to identify them.

18 MR. COOPER: Yes, sir.

19 THE COURT: Then I'll question the jury about it.

20 MR. COOPER: Yes, sir. Thank you.

21 MR. ARCHER: I'm not sure why all this is necessary
22 because it's going to be clear before the case is over with
23 Mr. Green was present at the Hardee's. There's going to be
24 testimony ---

25 THE COURT: Just one second. My goodness. If

1 you'll step outside please for just a moment.

2 (Whereupon, the jury was instructed to step outside)

3 THE COURT: All right. Now, Mr. Archer, what he's
4 telling me is that there are witnesses that he intends to
5 call that he did not identify ---

6 THE COURT: Yes.

7 THE COURT: --- in his witness list at the
8 beginning of the trial.

9 MR. ARCHER: Mmm, hmm.

10 THE COURT: My intention is to be sure that, that
11 does not, in some way, disqualify some juror ---

12 MR. ARCHER: Right.

13 THE COURT: --- or if there is some conflict or it
14 affects their impartiality. Are you telling me that you do
15 not want me to make that inquiry?

16 MR. ARCHER: No. I want you to make the inquiry,
17 I'm just saying to him we're not going to be denying that
18 my client was present at the scene so maybe he doesn't need
19 to put that in.

20 MR. COOPER: I wanting to establish more than his
21 mere presence at the scene. I'm establishing the contact
22 with the co-defendant that I think goes to dispute some of
23 the arguments that I think you have made and I think both
24 we'll make on the stand.

25 MR. ARCHER: Okay.

1 THE COURT: All right. So I'm going to go ahead
2 and check with the jury and see if these other witnesses
3 would in any way affect their impartiality if they were to
4 be called. All right. Now, let's bring the jury in,
5 ma'am.

6 MR. COOPER: Thank you, Judge.
7 (Whereupon, the jury enters the courtroom at 4:20 p.m.)

8 THE COURT: All right. The record will reflect the
9 jury has returned to the courtroom. I've had a discussion
10 with the attorneys about evidence that they intend to
11 introduce from the next few witnesses and it's come to my
12 attention that there, perhaps, will be required that some
13 other witnesses might testify that were not on the list
14 that I went over with you when the jury was selected. And
15 I want to be sure that by the additions of any new
16 witnesses that it somehow would not affect your ability to
17 serve on this jury. So at this time I'm going to ask
18 State's attorney to identify anyone who might be a
19 potential witness in the case that has not yet been named
20 to the jury.

21 MR. COOPER: Thank you, Judge. The State
22 potentially may call Sergeant Mark Lipsey (sic) from the
23 Sheriff Al Cannon Detention Center. Detective Sam Rodell
24 of the North Charleston Police Department. And Sergeant
25 Jason Monroe also of the North Charleston Police

1 Department.

2 THE COURT: Now, as to the individuals that the
3 State has identified as possible witnesses in the case, is
4 there any member of this jury panel who has ever been
5 related by marriage or you related by blood or have you
6 ever had a close, social, personal, or business
7 relationship with any of the individuals that he just name,
8 if that's true, would you please stand?

9 (Whereupon, no one is standing)

10 THE COURT: It appears that none of the jurors are
11 acquainted with those individuals or related to those
12 individuals. Now, at this point in time, I have not been
13 outside and I guess you were outside during lunch and you
14 were aware about the storms and things. Apparently, the
15 next witness in line is away from Charleston and is having
16 difficulty in getting here because of that whether is what
17 I've been informed. So we are going to stop at this point
18 in time, start back at 9 o'clock in the morning, hope the
19 weather will improve and that person will be able to get
20 here without any difficulty. Now, you know my instructions
21 when you leave. Don't attempt to gather any information.
22 Don't listen to, watch or read any media reports about the
23 case. Don't discuss the case with anyone. Don't allow
24 anyone to discuss it with you. Please report anyone who
25 might contact you concerning the case. Nine o'clock in the

1 morning, back in the jury room. Thank you for your
2 cooperation today. You're free to go at this time. You
3 can leave your notebooks right there in the seats, nobody
4 is going to bother them.

5 (Whereupon, the jury exits the courtroom at 4:20 p.m.)

6 THE COURT: All right. We're in recess until 9
7 o'clock. Thank you very much.

8 MR. COOPER: Thank you, Judge.

9 MR. ARCHER: Can I get some sort of estimation from
10 him as to how long tomorrow, his case is going to take? So
11 I can -- I don't like to have witnesses to come down and
12 sit.

13 THE COURT: Give us some clue where we are?

14 MR. COOPER: Your Honor, my anticipation for
15 tomorrow would be calling the case agent, Agent Kaufman,
16 Sergeant Monroe who testified this morning at the Biggers
17 hearing regarding that line-up admonition. Investigator
18 Ray Haupt regarding Facebook. Detective Sam Rodell
19 regarding the phone number, co-defendant Johnathan Johnson,
20 and either Office Sherbine or Sergeant Lipsey (sic)
21 regarding the defendant's admission to the jail call. I
22 anticipate I can handle all of that and the State would
23 rest by lunch. I think that's a fair assumption.

24 THE COURT: I would suspect they'll be through by
25 12 o'clock.

1 MR. ARCHER: One o'clock.

2 THE COURT: Twelve o'clock. By 12 o'clock.

3 MR. ARCHER: By 12 o'clock. So I can have a
4 witness, if I have one, I should have them down here 12
5 o'clock.

6 THE COURT: I'd so by 1 o'clock.

7 MR. ARCHER: One o'clock.

8 THE COURT: We're going to stop and get a sandwich
9 or something so ---

10 MR. ARCHER: Right. I'll have them ---

11 THE COURT: --- we'll say 1 o'clock.

12 MR. ARCHER: --- come in at 12, 1 o'clock.

13 THE COURT: Very good. Thank you very much.

14 MR. COOPER: Thank you, Judge.

15 THE COURT: Hope everyone has a good evening.

16 (Whereupon, court was adjourned for day two of the trial
17 on May 23, 2017)

18

19

20

21

22

23

24

25

CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Ninth Circuit Court for Charleston County, South Carolina, on the 22nd and 23rd day of May, 2017.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

August 30, 2017

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF CHARLESTON) CASE NO. 2015-GS-10-05982,
05983, 05984

3

4

5 STATE OF SOUTH ()
CAROLINA,)

6 Plaintiff,)

7 vs.)

8 TAPPIA DEANGELO GREEN,)

9 Defendant.)

10

* * * * *

11

12

13 B E F O R E:

14 The Honorable ROGER L. COUCH

15

16

17

18

19

20

21

22 * * * * *

23 Denise J. Lauder, RPR

24 Ninth Judicial Circuit

25

08:44:24AM 1 (The following proceedings were held
08:44:24AM 2 May 24, 2017, in re: State v. Green, Charleston
08:56:08AM 3 County Circuit Court, at 9:01 a.m.)

09:01:12AM 4 THE COURT: Mr. Cooper, is the State
09:07:24AM 5 ready to go forward?

09:07:25AM 6 MR. COOPER: Yes, sir, we are, Your
09:07:26AM 7 Honor.

09:07:26AM 8 THE COURT: Defense ready to go
09:07:28AM 9 forward?

09:07:29AM 10 Sir, is the defense ready to go
09:07:33AM 11 forward?

09:07:33AM 12 MR. ARCHER: We are ready, Your Honor.

09:07:35AM 13 THE COURT: All right. Let's bring the
09:07:36AM 14 jury in.

09:08:02AM 15 (Jury in, 9:05 a.m.)

09:09:55AM 16 THE BAILIFF: Jurors are all present.

09:09:57AM 17 THE COURT: Good morning, ladies and
09:09:58AM 18 gentlemen. I hope everyone had a good evening
09:10:03AM 19 despite the storms and everything that was rolling
09:10:07AM 20 around. If you had any difficulty in complying
09:10:10AM 21 with my instructions, please stand.

09:10:12AM 22 It appears that everyone has been able
09:10:14AM 23 to comply with my instructions thus far.

09:10:17AM 24 The State was in the process of
09:10:19AM 25 presenting its evidence. You may call your next

09:10:22AM 1 witness.

09:10:23AM 2 MR. COOPER: Thank you, Judge. The

09:10:24AM 3 State calls Sergeant Jason Monroe.

09:10:28AM 4 THE COURT: Come forward, sir, to be

09:10:47AM 5 sworn.

09:10:50AM 6 PHILLIP MONROE,

09:10:51AM 7 being first duly sworn, testified as follows:

09:10:51AM 8 THE CLERK: Please have a seat. Please

09:10:56AM 9 state your full name and spell your last.

09:10:56AM 10 THE WITNESS: Phillip Monroe,

09:11:09AM 11 M-O-N-R-O-E.

09:11:09AM 12 THE COURT REPORTER: Can you pull that

09:11:09AM 13 microphone down? Thank you.

09:11:13AM 14 THE COURT: Mr. Cooper, your witness.

09:11:15AM 15 MR. COOPER: Thank you, Judge.

09:11:16AM 16 THE COURT: Yes, sir.

09:11:16AM 17 DIRECT EXAMINATION

09:11:16AM 18 BY MR. COOPER:

09:11:16AM 19 Q. Morning, Sergeant Monroe. How are you?

09:11:19AM 20 A. Morning.

09:11:19AM 21 Q. Will you tell the jury where you're

09:11:19AM 22 currently employed?

09:11:22AM 23 A. I'm employed with the North Charleston

09:11:23AM 24 Police Department.

09:11:23AM 25 Q. What is your role with the North

09:11:26AM 1 Charleston Police Department?

09:11:26AM 2 A. I'm the north patrol supervisor, so I'm
09:11:29AM 3 a sergeant on the road.

09:11:30AM 4 Q. How long have you been in that
09:11:32AM 5 position?

09:11:32AM 6 A. Since November.

09:11:33AM 7 Q. Okay. And back in April 2015, what was
09:11:36AM 8 your position?

09:11:36AM 9 A. I was a detective in the white car
09:11:39AM 10 unit.

09:11:39AM 11 Q. Focussing your attention to this case,
09:11:42AM 12 how did you become involved?

09:11:43AM 13 A. Detective Kaufman came up and asked me
09:11:46AM 14 to show a lineup.

09:11:47AM 15 Q. Did you know -- who did you show the
09:11:50AM 16 lineup to?

09:11:51AM 17 A. The victim, Keith Lee.

09:11:53AM 18 Q. Okay. Did you know anybody involved in
09:11:56AM 19 the case at that time?

09:11:57AM 20 A. Absolutely not.

09:11:58AM 21 Q. Why is that important?

09:11:59AM 22 A. When we show lineups, it's important
09:12:02AM 23 that the detective showing it does not know anyone
09:12:05AM 24 involved so they cannot influence the person
09:12:09AM 25 viewing the lineups decision on whether they

09:12:12AM 1 identify a person or not.

09:12:13AM 2 Q. When you show -- can you explain the
09:12:17AM 3 procedure that you follow to the jury?

09:12:20AM 4 A. I can. So when a detective asks you to
09:12:22AM 5 show a lineup, you do what is called the
09:12:25AM 6 double-blind process. So I am blind in one way
09:12:28AM 7 because I don't know anyone involved, and they give
09:12:31AM 8 me the pictures. There's no way for me to present
09:12:34AM 9 them to the person and say, this person; because I
09:12:37AM 10 have no idea who is in the lineup or what the case
09:12:40AM 11 is about or any of that.

09:12:41AM 12 I would enter the room and, first, I
09:12:44AM 13 would read off the photographic lineup form, which
09:12:48AM 14 has a series of instructions telling them I'm going
09:12:51AM 15 to show you pictures. I don't know who these
09:12:54AM 16 people are. Please look at them and tell me -- and
09:12:56AM 17 at the end it says, please tell me in our own words
09:13:00AM 18 how you know the person that you picked out of the
09:13:02AM 19 lineup, and then tell me between 0 and 100 what is
09:13:07AM 20 your certainty factor.

09:13:09AM 21 If you don't know them, it's a zero,
09:13:12AM 22 absolutely 100 percent, that's him, and then you
09:13:14AM 23 write that down.

09:13:14AM 24 Q. And there would have been six
09:13:16AM 25 individual pictures in the lineup?

09:13:18AM 1 A. Yes. There would have been six full
09:13:20AM 2 face on colored photographs.

09:13:21AM 3 Q. With the State, is it important that
09:13:23AM 4 they are of similar build and physical
09:13:27AM 5 characteristics and things like that?

09:13:27AM 6 A. Yes, it is.

09:13:28AM 7 Q. Was that the case in this situation?

09:13:30AM 8 A. Yes, it was.

09:13:31AM 9 MR. COOPER: May I approach the
09:13:32AM 10 witness, Your Honor?

09:13:32AM 11 THE COURT: You may.

09:13:32AM 12 BY MR. COOPER:

09:13:34AM 13 Q. I'm showing you what was marked for
09:13:36AM 14 identification purposes only as State's 37. Let me
09:13:39AM 15 know if you recognize that.

09:13:41AM 16 A. I do.

09:13:41AM 17 Q. What is that?

09:13:42AM 18 A. This is the North Charleston Police
09:13:44AM 19 Department report of photographic lineup that I
09:13:46AM 20 showed to Keith Lee on 4/16 of 2015 at 4:20 p.m.

09:13:52AM 21 Q. And how do you know that's what it is?

09:13:53AM 22 A. Because it has my signature affixed to
09:13:55AM 23 it right here.

09:13:56AM 24 Q. And then with that lineup, did the
09:13:58AM 25 victim, Keith Lee, identify any individual out of

09:14:02AM 1 the lineup?

09:14:02AM 2 A. Yes, he did.

09:14:03AM 3 Q. What number individual?

09:14:03AM 4 A. Four.

09:14:04AM 5 Q. Did you have the victim sign and date
09:14:09AM 6 that specific picture?

09:14:10AM 7 A. Yes, I did.

09:14:11AM 8 Q. Is that there as well?

09:14:12AM 9 A. Yes, right there.

09:14:13AM 10 MR. COOPER: Okay. Your Honor, at this
09:14:14AM 11 time I would offer State's Exhibit 37 into
09:14:17AM 12 evidence.

09:14:17AM 13 THE COURT: Objection?

09:14:24AM 14 MR. ARCHER: No objection. I would
09:14:26AM 15 like to see it.

09:14:27AM 16 THE COURT: Show it to him please.

09:14:35AM 17 MR. ARCHER: Okay.

09:14:36AM 18 THE COURT: All right. Without
09:14:37AM 19 objection that document will be made a part of the
09:14:39AM 20 record as it's been marked.

09:14:41AM 21 You may proceed.

09:14:41AM 22 (PLF. EXH. 37 in evidence.)

09:14:41AM 23 BY MR. COOPER:

09:14:48AM 24 Q. I will put it up on the screen. Is
09:14:57AM 25 that the individual that Mr. Lee picked out of the

09:14:58AM 1 lineup?

09:14:59AM 2 A. Yes, it is.

09:15:00AM 3 Q. At the time of the lineup, did you know
09:15:02AM 4 who that individual was?

09:15:03AM 5 A. I did not.

09:15:03AM 6 Q. As of today, do you know who that
09:15:06AM 7 individual is?

09:15:06AM 8 A. I do.

09:15:06AM 9 Q. What's his name.

09:15:07AM 10 A. Tappia Green?

09:15:08AM 11 Q. Was your interaction with Mr. Lee
09:15:14AM 12 showing him the lineup, was that audio and video
09:15:17AM 13 recorded?

09:15:18AM 14 A. Yes, it was.

09:15:18AM 15 Q. And then with the admonition and the
09:15:22AM 16 instructions you gave him, did he seem to be alert
09:15:25AM 17 and attentive when you were explaining those?

09:15:26AM 18 A. He did.

09:15:26AM 19 Q. Did he indicate that he understood
09:15:30AM 20 those, that information?

09:15:30AM 21 A. Yes, he did.

09:15:30AM 22 Q. And then did he sign the admonition
09:15:32AM 23 form indicating that?

09:15:33AM 24 A. Yes, he did.

25 (PLF. EXH. 38, DVD, was marked for

1 identification.)

2 BY MR. COOPER:

3 Q. I'm showing you what has been marked
4 for identification purposes only as State's 38. Do
09:15:51AM 5 you recognize what this is?

09:15:51AM 6 A. I do.

09:15:53AM 7 Q. And what is that?

09:15:53AM 8 A. This is the digital video disk
09:15:55AM 9 recording of the lineup that I showed Keith Lee.

09:15:58AM 10 Q. And how do you know what it is?

09:15:59AM 11 A. That's my signature affixed to it.

09:16:01AM 12 Q. Have you reviewed the video on that
09:16:03AM 13 disk?

09:16:03AM 14 A. I have.

09:16:04AM 15 MR. COOPER: Your Honor, at this time I
09:16:05AM 16 would offer State's Exhibit 38 into evidence.

09:16:10AM 17 MR. ARCHER: No objection.

09:16:11AM 18 THE COURT: Without objection, it would
09:16:13AM 19 be admitted as it's been marked.

09:16:15AM 20 Do you wish to publish that?

09:16:17AM 21 MR. COOPER: Yes, Your Honor.

09:16:18AM 22 THE COURT: You may do so.

09:21:55AM 23 (Video played in open court.)

09:21:56AM 24 MR. COOPER: For the record, the State
09:23:00AM 25 stopped the video recording at 13:07.

09:23:02AM 1 THE COURT: Thank you.

09:23:02AM 2 BY MR. COOPER:

09:23:04AM 3 Q. So Sergeant Monroe, just watching the
09:23:06AM 4 video -- I believe you heard on the video, but did
09:23:09AM 5 Mr. Lee indicate to you how confident he was in the
09:23:12AM 6 selection of number four?

09:23:13AM 7 A. Yes. He said he was 75 percent sure;
09:23:16AM 8 if he was smiling and he could see his teeth, he
09:23:20AM 9 would be 100 percent.

09:23:21AM 10 Q. Because he was looking for something
09:23:24AM 11 gold?

09:23:24AM 12 A. Yes.

09:23:24AM 13 Q. Did it appear that he was taking his
09:23:26AM 14 time to be deliberate in picking somebody out of
09:23:30AM 15 that lineup?

09:23:30AM 16 A. Yes, he was.

09:23:37AM 17 MR. COOPER: Beg the Court's
09:23:42AM 18 indulgence? Just one second.

09:23:57AM 19 I have no further questions for you,
09:23:58AM 20 Sergeant. Thank you for your time. Please answer
09:24:01AM 21 any questions that the defense may have for you?

09:24:02AM 22 THE COURT: You may cross-examine,
09:24:05AM 23 Counsel.

09:24:05AM 24 MR. ARCHER: Yeah, one moment.

09:24:05AM 25 CROSS-EXAMINATION

09:24:05AM 1 BY MR. ARCHER:

09:24:45AM 2 Q. He didn't say, I'm 100 percent, did he?

09:24:48AM 3 A. No. He said, I'm 75 percent sure. If

09:24:51AM 4 I could see him smiling, I would be 100.

09:24:53AM 5 Q. And that's because he said the fellow

09:24:54AM 6 that he was identifying had gold teeth?

09:24:57AM 7 A. Yes, sir.

09:24:57AM 8 Q. Did he say anything about whether they

09:25:00AM 9 were permanent gold teeth or --

09:25:02AM 10 A. I think -- I don't remember. I would

09:25:05AM 11 have to re-watch it, but I think he said he had

09:25:08AM 12 permanent gold teeth at the top.

09:25:10AM 13 MR. ARCHER: I got you. Okay. Good

09:25:13AM 14 enough. No other questions.

09:25:17AM 15 MR. COOPER: Briefly, Your Honor.

09:25:19AM 16 THE COURT: Yes, sir.

09:25:19AM 17 REDIRECT EXAMINATION

09:25:19AM 18 BY MR. COOPER:

09:25:20AM 19 Q. Sergeant Monroe, in your experience, is

09:25:23AM 20 it common for some people to wear gold in their

09:25:26AM 21 mouth that may be removable?

09:25:26AM 22 A. Yes, sir.

09:25:28AM 23 Q. And some people do have permanent gold

09:25:31AM 24 teeth?

09:25:31AM 25 A. Yes, sir.

09:25:31AM 1 Q. Does that typically look the same at a
09:25:34AM 2 glance, or is it hard to tell?

09:25:35AM 3 A. In 13 years I couldn't tell you whether
09:25:38AM 4 someone's was removable or not.

09:25:41AM 5 MR. COOPER: No further questions.
09:25:43AM 6 Thank you, Your Honor.

09:25:43AM 7 THE COURT: Mr. Archer, you may
09:25:45AM 8 re-cross.

09:25:45AM 9 MR. ARCHER: Nothing further, Your
09:25:46AM 10 Honor.

09:25:46AM 11 THE COURT: You may step down. Thank
09:25:48AM 12 you very much.

09:25:49AM 13 Do you wish to excuse the witness?

09:25:50AM 14 MR. COOPER: No objection from the
09:25:52AM 15 State.

09:25:52AM 16 THE COURT: Any objection?

09:25:53AM 17 MR. ARCHER: No objection.

09:25:54AM 18 THE COURT: You're free to leave if you
09:25:56AM 19 would like.

09:25:57AM 20 All right. Counsel, the State may call
09:25:58AM 21 its next witness.

09:26:03AM 22 MR. COOPER: The State calls Officer
09:26:06AM 23 Kevin Sherbine.

09:26:20AM 24 THE COURT: Come forward to be sworn,
09:26:22AM 25 sir.

09:26:25AM 1

KEVIN SHERBINE,

09:26:28AM 2

being first duly sworn, testified as follows:

09:26:28AM 3

THE CLERK: Once seated, if you would

09:26:43AM 4

please state your full name and spell your last.

09:26:43AM 5

THE WITNESS: Kevin Sherbine,

09:26:50AM 6

S-H-E-R-B-I-N-E.

09:26:51AM 7

THE COURT: Thank you, sir.

09:26:53AM 8

Mr. Cooper, your witness.

09:26:54AM 9

MR. COOPER: Thank you, Your Honor.

09:26:54AM 10

DIRECT EXAMINATION

09:26:54AM 11

BY MR. COOPER:

09:26:56AM 12

Q. Morning, Officer Sherbine. Would you

09:26:59AM 13

please tell the jury where you're employed?

09:27:00AM 14

A. I'm employed at the Sheriff Al Cannon

09:27:04AM 15

Detention Center.

09:27:04AM 16

Q. What is your position there?

09:27:05AM 17

A. I am the professional visitation

09:27:08AM 18

deputy; I'm one of them.

09:27:09AM 19

Q. Can you explain for the jury what your

09:27:11AM 20

role is?

09:27:12AM 21

A. I'm the main point of contact between

09:27:14AM 22

the inmate and their lawyers, public defenders, law

09:27:17AM 23

enforcement agencies, other non-law enforcement

09:27:21AM 24

agencies, or any professional visitor that wishes

09:27:24AM 25

to have contact with the inmate.

09:27:25AM 1 Q. Do you also handle in response
09:27:28AM 2 subpoenas that may be submitted to the jail for
09:27:29AM 3 jail calls?

09:27:30AM 4 A. I do, yes.

09:27:31AM 5 Q. Will you explain to the jury how the
09:27:33AM 6 system of jail calls is maintained?

09:27:35AM 7 A. It's maintained on a secure database
09:27:37AM 8 with limited access in the jail.

09:27:39AM 9 Q. Can you explain to the jury how inmates
09:27:42AM 10 will use that jail call system?

09:27:45AM 11 A. When they make a phone call, they have
09:27:50AM 12 to enter a unique pin number, that pin number is
09:27:50AM 13 used to tract all of their calls associated with
09:27:50AM 14 their inmate number.

09:27:52AM 15 Q. And no two inmates have the same pin
09:27:55AM 16 number?

09:27:55AM 17 A. That's correct.

09:27:56AM 18 Q. When you get subpoenas for jail calls,
09:28:01AM 19 how do you respond to those?

09:28:03AM 20 A. I take a look at what the request is
09:28:05AM 21 asking for, whether it's phone calls, mail logs,
09:28:09AM 22 visitation logs. I enter the date range into our
09:28:12AM 23 database and it returns whatever results there are.
09:28:15AM 24 I print out a hard log, which is just -- in the
09:28:18AM 25 case of phone calls it's the date and time the call

09:28:21AM 1 was made, who made the call, the duration. I burn
09:28:24AM 2 the audio onto a disk, label the disk, put it in a
09:28:29AM 3 sealed envelope and then contact the agency that
09:28:31AM 4 requested it.

09:28:32AM 5 Q. Would you recognize one of the disks in
09:28:34AM 6 which you responded to a subpoena if I were to show
09:28:38AM 7 it to you?

09:28:39AM 8 A. I would, yes.

09:28:40AM 9 MR. COOPER: May I approach the
09:28:42AM 10 witness?

09:28:42AM 11 THE COURT: You may.

09:28:42AM 12 BY MR. COOPER:

09:28:42AM 13 Q. Officer Sherbine, I'm showing you what
09:28:43AM 14 was marked as State's 39 for identification
09:28:46AM 15 purposes only. Do you recognize this?

09:28:46AM 16 A. I do, yes.

09:28:47AM 17 Q. Can you tell the jury what it is?

09:28:49AM 18 A. It is an audio CD of an inmate's phone
09:28:53AM 19 calls.

09:28:53AM 20 Q. And the name at the top, what inmate is
09:28:57AM 21 it concerning?

09:28:57AM 22 A. Tappia Green.

09:28:59AM 23 Q. And what is the date range?

09:29:00AM 24 A. March 6, 2017, through May, 9th 2017.

09:29:09AM 25 MR. COOPER: Your Honor, the State

09:29:09AM 1 would offer State's 39.

09:29:11AM 2 MR. A: No objection.

09:29:11AM 3 THE COURT: Without objection it will
09:29:13AM 4 be admitted as it's been marked.

09:29:18AM 5 THE COURT: Your Honor, may the State
09:29:18AM 6 also publish an excerpt to the.

09:29:18AM 7 THE COURT: You may do so.

09:29:26AM 8 And this is an audio recording; is that
09:29:28AM 9 right?

09:29:28AM 10 MR. COOPER: Yes.

09:29:29AM 11 (PLF. EXH. 39 in evidence.)

09:29:29AM 12 THE COURT: And for the record, the
09:30:02AM 13 State will be playing an excerpt from the call on
09:30:05AM 14 April 28, 2017, at 22:10:24 in the evening.

09:30:07AM 15 The State will be beginning the excerpt
09:30:51AM 16 at 18 seconds and ending at 31 seconds for the
09:30:53AM 17 record.

09:30:53AM 18 THE COURT: Okay.

09:31:22AM 19 (Audio recording played in open court.)

09:32:18AM 20 MR. COOPER: Officer Sherbine, I have
09:32:19AM 21 no further questions for you. I appreciate your
09:32:22AM 22 time. Please answer any that the defense may have
09:32:24AM 23 for you.

09:32:25AM 24 THE COURT: Mr. Archer, your witness.

09:32:25AM 25 CROSS-EXAMINATION

09:32:25AM 1 BY MR. ARCHER:

09:32:27AM 2 Q. Hey, Officer Sherbine. How are you
09:32:29AM 3 doing?

09:32:31AM 4 A. Fine, Mr. Archer. How are you?

09:32:31AM 5 Q. You fellows let me in and out of the
09:32:31AM 6 jail most of the time when I come down there, don't
09:32:35AM 7 you?

09:32:35AM 8 A. Yes, sir.

09:32:35AM 9 Q. Well, I appreciate that. And I have no
09:32:39AM 10 more questions for you. And I have no objection to
09:32:42AM 11 you being released so you can you can go back to
09:32:45AM 12 work.

09:32:46AM 13 A. Thank you.

09:32:46AM 14 THE COURT: Do you wish to excuse the
09:32:48AM 15 witness?

09:32:48AM 16 MR. COOPER: Yes, sir.

09:32:49AM 17 THE COURT: You may step down. You're
09:32:50AM 18 free to go.

09:32:51AM 19 THE WITNESS: Thank you. Your Honor.

09:32:58AM 20 THE COURT: The State may call its next
09:32:59AM 21 witness.

09:33:00AM 22 MR. COOPER: The State calls Alexander
09:33:03AM 23 Kaufman.

09:33:04AM 24 THE COURT: Come forward and be sworn,
09:33:32AM 25 please.

09:33:34AM 1 ALEXANDER KAUFMAN,
09:33:35AM 2 being first duly sworn, testified as follows:
09:33:35AM 3 THE CLERK: Please state your full name
09:33:51AM 4 and spell your last.
09:33:51AM 5 THE WITNESS: I apologize, just off the
09:33:51AM 6 elevator.
09:33:56AM 7 Alexander Kaufman, and K-A-U-F-M-A-N.
09:34:01AM 8 THE COURT: Thank you.
09:34:01AM 9 Mr. Cooper, your witness.
09:34:02AM 10 MR. COOPER: Thank you, Your Honor.
09:34:02AM 11 DIRECT EXAMINATION
09:34:02AM 12 BY MR. COOPER:
09:34:04AM 13 Q. Mr. Kaufman, how are you this morning?
09:34:07AM 14 A. Just made it through traffic.
09:34:09AM 15 Q. Will you please tell the jury where you
09:34:13AM 16 are employed?
09:34:13AM 17 A. I'm with Progressive Casualty Insurance
09:34:15AM 18 Company.
09:34:15AM 19 Q. How long have you been with
09:34:17AM 20 Progressive?
09:34:17AM 21 A. September of last year, so
09:34:19AM 22 approximately nine months.
09:34:20AM 23 Q. Where were you employed before
09:34:22AM 24 Progressive?
09:34:22AM 25 A. With the City of North Charleston

J

09:34:24AM 1 Police Department.

09:34:24AM 2 Q. How long had you been at the police
09:34:27AM 3 department?

09:34:27AM 4 A. Four years.

09:34:28AM 5 Q. What was your -- in April 2015, what
09:34:31AM 6 was your position with North Charleston?

09:34:33AM 7 A. I was with the persons crime division.

09:34:37AM 8 Q. Would you describe for the jury what
09:34:39AM 9 that position entails?

09:34:40AM 10 A. Yes. So part of it was, I was a
09:34:44AM 11 detective involved in homicide and robbery,
09:34:47AM 12 kidnapping, other violent crimes, interviewing
09:34:51AM 13 witnesses, interviewing victims, suspects,
09:34:54AM 14 obtaining video evidence, directing other officers
09:34:58AM 15 to, I apologize, to achieve the goals of the
09:35:02AM 16 department to provide better services to the
09:35:07AM 17 citizens of the city.

09:35:07AM 18 Q. Focusing your attention to this case,
09:35:10AM 19 how did you become involved?

09:35:12AM 20 A. I got a -- I responded to the address,
09:35:14AM 21 I believe it's [REDACTED] Orangeburg Drive in North
09:35:20AM 22 Charleston. On the radio, they called for a
09:35:21AM 23 detective to respond to the address. I was on duty
09:35:23AM 24 at the time, so I responded.

09:35:26AM 25 Q. Was that in reference to a 911 call?

09:35:29AM 1 A. It was in reference to a 911 call, and
09:35:32AM 2 the call was for an armed robbery was the report.
09:35:34AM 3 Q. Do you know what time the 911 call came
09:35:38AM 4 in?
09:35:38AM 5 A. I think it was --
09:35:39AM 6 Q. And I can show you a report if that
09:35:42AM 7 would --
09:35:42AM 8 A. That would help refresh my memory.
09:35:46AM 9 MR. COOPER: May I approach?
09:35:47AM 10 THE COURT: You may.
09:35:47AM 11 THE WITNESS: Thank you. So, yeah.
09:35:53AM 12 This is saying 1615 is the incident date, and then
09:35:56AM 13 I believe this is the --
09:35:56AM 14 BY MR. COOPER:
09:35:58AM 15 Q. 1615 is the incident --
09:36:00AM 16 A. Or time, that's correct. It was around
09:36:03AM 17 4:15.
09:36:05AM 18 Q. Thank you. Would you describe for the
09:36:11AM 19 jury who you met with once you arrived on scene?
09:36:14AM 20 A. I met with a couple of officers from
09:36:18AM 21 patrol, also the victim and his girlfriend, Keith
09:36:24AM 22 Lee and Karissa Aiken. They were on-scene as well.
09:36:24AM 23 Q. What did you learn from them at that
09:36:27AM 24 time?
09:36:27AM 25 A. They -- the patrol officers briefed me

09:36:29AM 1 on what they had obtained so far, that the victim
09:36:31AM 2 and his girlfriend had been at Wells Fargo on
09:36:35AM 3 Dorchester Road. The victim then informed them
09:36:37AM 4 that he had been taken at gunpoint from that
09:36:42AM 5 location, from the Wells Fargo. He was then taken
09:36:44AM 6 over to the Hardee's in Mount Pleasant on Houston
09:36:47AM 7 Northcut where he was forced to obtain his check
09:36:50AM 8 from that place where he works.

09:36:51AM 9 And from there they brought him back
09:36:53AM 10 into North Charleston I believe to the Ace Cash
09:36:56AM 11 Express on McMillan where he was forced to cash the
09:37:00AM 12 check as well. And then after that, they -- he
09:37:05AM 13 re-entered the vehicle and he was deposited on I
09:37:08AM 14 want to say near the gas station near Church's
09:37:12AM 15 Chicken on Rivers and Reynolds in that area.
09:37:16AM 16 That's the approximate area.

09:37:17AM 17 Q. Did he advise how many perpetrators
09:37:20AM 18 there were?

09:37:20AM 19 A. Yes, he said there were three. Three
09:37:20AM 20 males.

09:37:22AM 21 Q. Did he advise whether or not he knew
09:37:24AM 22 any of them?

09:37:26AM 23 A. He recognized -- or not recognized, but
09:37:28AM 24 he -- through the course of the investigation, we
09:37:30AM 25 learned that he mentioned one of the suspects said

09:37:35AM 1 they knew the victim and his girlfriend from his
09:37:38AM 2 place of employment.

09:37:40AM 3 Q. Do you know which suspect that was?

09:37:43AM 4 A. That was Jonathan Johnson.

09:37:43AM 5 Q. How were you able to initially identify
09:37:46AM 6 Mr. Johnson as a suspect?

09:37:48AM 7 A. The -- so when the statement from the
09:37:51AM 8 victim and his girlfriend saying that he worked
09:37:53AM 9 with -- with them at Hardee's, prior to my arrival
09:37:58AM 10 -- patrol had learned of that identification before
09:38:02AM 11 my arrival. And the neighborhood resource officer,
09:38:06AM 12 Tracy Williams, he works in the community, had
09:38:09AM 13 already initiated contact with Jonathan Johnson's
09:38:13AM 14 grandfather and was attempting to get him to come
09:38:15AM 15 in and speak with us.

09:38:16AM 16 Q. Did he eventually come into North
09:38:16AM 17 Charleston?

09:38:20AM 18 A. Yes, he did.

09:38:20AM 19 Q. How did he arrive to the police
09:38:23AM 20 department?

09:38:23AM 21 A. He was driven in by his girlfriend in
09:38:28AM 22 the P. T. Cruiser which is the vehicle we had the
09:38:29AM 23 description on.

09:38:29AM 24 Q. And you-all were able to process and
09:38:32AM 25 search that vehicle?

09:38:33AM 1 A. Yes. Yes, we were.

09:38:33AM 2 Q. Were you able to interview Mr. Johnson?

09:38:35AM 3 A. Yes, I was.

09:38:36AM 4 Q. What did you determine through the

09:38:39AM 5 interview with Mr. Johnson?

09:38:39AM 6 A. Mr. Johnson, he came in. He admitted

09:38:42AM 7 to being at Wells Fargo and he admitted to being

09:38:47AM 8 present during the incident; however, he minimized

09:38:51AM 9 his involvement. He stated that he was a victim

09:38:54AM 10 and he was being held at gunpoint by the other

09:38:57AM 11 suspects.

09:38:57AM 12 Q. Did he advise who either one of the

09:39:03AM 13 other suspects were?

09:39:03AM 14 A. He stated that the main suspect that

09:39:05AM 15 was involved, his name -- he knew him by Tampa.

09:39:08AM 16 Q. Were you able to identify who Tampa

09:39:12AM 17 was?

09:39:12AM 18 A. Yes, I was.

09:39:13AM 19 Q. How were you able to do that?

09:39:14AM 20 A. Entering the name Tampa as a moniker

09:39:20AM 21 through our Charleston County jail database system

09:39:24AM 22 that tracks monikers and/or nicknames and

09:39:25AM 23 associates them with their real names. I was able

09:39:27AM 24 to identify the suspect as Tampa as Tappia Green.

09:39:30AM 25 Q. Was there another nickname listed for

09:39:32AM 1 Mr. Green?

09:39:32AM 2 A. Trap was another name on there.

09:39:34AM 3 Q. Did you see if the victim could

09:39:41AM 4 identify Mr. Green?

09:39:42AM 5 A. I did, yes.

09:39:45AM 6 Q. Did you have Sergeant Monroe do a

09:39:46AM 7 lineup with him?

09:39:47AM 8 A. I did, yes, sir.

09:39:49AM 9 Q. Was Mr. Lee able to identify Mr. Green?

09:39:52AM 10 A. Yes, he was.

09:39:53AM 11 Q. Did you also go through and collect

09:39:57AM 12 surveillance footage?

09:39:59AM 13 A. Yes, I did.

09:40:01AM 14 Q. Where were you able to collect

09:40:05AM 15 surveillance footage from?

09:40:05AM 16 A. Initially, we attempted to get the
09:40:08AM 17 Hardee's video from Mount Pleasant. The video
09:40:10AM 18 system had some technical difficulties. I was
09:40:13AM 19 unable to get it; another officer was unable to get
09:40:15AM 20 it. I did obtain still photographs with my cell
09:40:19AM 21 phone of the victim and the suspects inside and
09:40:22AM 22 outside of the Hardee's. We obtained still
09:40:26AM 23 photographs from Wells Fargo from one of their
09:40:29AM 24 investigators. The Ace Cash Express, I believe we
09:40:33AM 25 attempted that, however, they don't have an active

09:40:36AM 1 video system and the -- they normally don't
09:40:40AM 2 photograph regulars. So if a regular comes into
09:40:44AM 3 the business, someone they know, they don't take a
09:40:47AM 4 photograph of that person because they know that
09:40:50AM 5 person. And then at the Tiger Mart I believe we
09:40:53AM 6 also obtained video or stills from that as well.

09:40:55AM 7 Q. With regards to the Wells Fargo
09:40:58AM 8 pictures, who did you receive those from?

09:41:02AM 9 A. One of the investigators. I would have
09:41:03AM 10 to look at my notes.

09:41:04AM 11 Q. One of Wells Fargo's investigators?

09:41:06AM 12 A. Correct.

09:41:07AM 13 Q. Okay. And I'm going to show you on the
09:41:09AM 14 screen State's Exhibit 1. Was this one of the
09:41:18AM 15 pictures that you received through the Wells
09:41:21AM 16 Fargo's investigation?

09:41:22AM 17 A. Yes, it is.

09:41:22AM 18 Q. And what does that show?

09:41:23AM 19 A. That's Jonathan Johnson inside Wells
09:41:29AM 20 Fargo.

09:41:29AM 21 Q. Would you recognize another one of the
09:41:30AM 22 pictures that was sent from Wells Fargo?

09:41:32AM 23 A. Sure, yes.

09:42:01AM 24 MR. COOPER: Your Honor, if I may
09:42:04AM 25 approach the witness?

09:42:04AM 1 THE COURT: You may.

09:42:04AM 2 BY MR. COOPER:

09:42:06AM 3 Q. Mr. Kaufman, I'm going to show you what
09:42:10AM 4 was marked for identification purposes only as
09:42:14AM 5 State's 40. Can you tell me if you recognize that?

09:42:21AM 6 A. That is also Jonathan Johnson walking
09:42:22AM 7 out of the Wells Fargo, walking towards the exit.

09:42:25AM 8 Q. Is that one of the picture you received
09:42:27AM 9 from Wells Fargo?

09:42:27AM 10 A. Yes.

09:42:28AM 11 MR. COOPER: Okay. Your Honor, at this
09:42:29AM 12 time I would offer State's 40 into evidence.

09:42:31AM 13 MR. ARCHER: No objection.

09:42:33AM 14 THE C: Without objection, this will be
09:42:34AM 15 received into evidence as it's been marked.

09:42:36AM 16 You may publish if you like.

09:42:38AM 17 (PLF. EXH. 40 in evidence.)

09:42:38AM 18 MR. COOPER: Thank you.

09:42:38AM 19 BY THE COURT:

09:42:42AM 20 Q. I'm showing you State's 40. And you
09:42:46AM 21 said that was Mr. Johnson inside the bank?

09:42:46AM 22 A. Yes.

09:42:49AM 23 Q. Would you indicate for the jury the
09:42:50AM 24 date and time stamp listed on there?

09:42:52AM 25 A. April 14, 2015, at 3:12 p.m.

09:42:54AM 1 Q. Okay. And then did you say the 911
09:42:58AM 2 call came in at 4:15?

09:43:01AM 3 A. Approximately yes.

09:43:02AM 4 Q. I'm going to show you -- showing you
09:43:36AM 5 State's Exhibit 7. Is that one of the pictures you
09:43:43AM 6 were able to take a screenshot from at Hardee's?

09:43:45AM 7 A. Yes, it is.

09:43:46AM 8 Q. What does that show?

09:43:47AM 9 A. It's the P. T. Cruiser entering the
09:43:50AM 10 parking lot and I believe that's the Houston
09:43:53AM 11 Northcut side.

09:43:54AM 12 Q. And then at the bottom, can you read
09:43:58AM 13 the date and time stamp?

09:44:00AM 14 A. Yes, I can. It's April 14, 2015,
09:44:04AM 15 15:42 hours.

09:44:04AM 16 Q. Did Mr. Lee indicate to you the
09:44:14AM 17 clothing that the three individuals were wearing?

09:44:16AM 18 A. I believe --

09:44:18AM 19 Q. And I have the report if you would like
09:44:20AM 20 to look at the report.

09:44:20AM 21 A. That would help refresh my memory. I
09:44:25AM 22 know from the photograph I saw of Jonathan than it
09:44:28AM 23 appeared to be a red T-shirt.

09:44:45AM 24 Yes. So the victim described one of
09:44:49AM 25 the suspects which identified as Jonathan Johnson

09:44:52AM 1 wearing the red shirt was in the Wells Fargo on
09:44:55AM 2 that photograph you showed me.

09:44:57AM 3 Q. Did he describe you what the other two
09:45:01AM 4 individuals were wearing?

09:45:02AM 5 A. Bear with me, I'm trying to find that
09:45:04AM 6 in my notes. I found it. So the other suspect
09:46:50AM 7 involved was seen wearing a white v-neck T-shirt
09:46:54AM 8 with dark pants and facial hair.

09:46:57AM 9 Q. That would have been the one that
09:46:59AM 10 you-all were unable to identify even to this day?

09:47:02AM 11 A. I believe so, I would need to see a
09:47:04AM 12 photograph to exclude him if possible.

09:47:07AM 13 Q. I will show you State's 12.

09:47:11AM 14 A. Okay.

09:47:12AM 15 Q. The one wearing the white, is that the
09:47:17AM 16 one you're talking about you were unable to
09:47:18AM 17 identify?

09:47:19AM 18 A. That's correct.

09:47:19AM 19 Q. And the one in black, is that the one
09:47:21AM 20 that was identified as Mr. Green?

09:47:22AM 21 A. Correct.

09:47:24AM 22 Q. And the one in the red is Mr. Johnson?

09:47:25AM 23 A. Correct.

09:47:26AM 24 Q. And in this picture does it appear that
09:47:29AM 25 Mr. Green is on the phone?

09:47:31AM 1 A. Yes. That's definitely consistent with
09:47:34AM 2 someone holding a phone up to their head.

09:47:37AM 3 Q. Can you identify the time stamp on this
09:47:40AM 4 picture?

09:47:41AM 5 A. April 14, 2015, 15:45 or 46. It's kind
09:47:51AM 6 of hard to see.

09:47:51AM 7 Q. With your investigation, what did it
09:47:54AM 8 appear that Mr. Green and the other individual were
09:47:57AM 9 doing at this point?

09:47:57AM 10 A. Well, Mr. Green, are you referring to?

09:48:02AM 11 Q. Yes.

09:48:02AM 12 A. He was on the phone. They had just
09:48:05AM 13 exited the P. T. Cruiser I remember from watching
09:48:07AM 14 the video. At that point, I believe Jonathan and
09:48:11AM 15 Keith had been inside the Hardee's for
09:48:13AM 16 approximately two to three minutes. So that it
09:48:16AM 17 appeared they were getting out of the car to check
09:48:19AM 18 and see what was going on.

09:48:22AM 19 Q. And then with Mr. Lee picking Mr. Green
09:48:40AM 20 out of a lineup, did he indicate how certain he was
09:48:45AM 21 of the identification?

09:48:47AM 22 A. I recall him saying that it was -- he
09:48:50AM 23 was -- he was 75 percent. He mentioned something
09:48:55AM 24 about, had he been able to see Mr. Green's gold
09:48:59AM 25 teeth, he would have been 100 percent certain.

09:49:02AM 1 Q. Are you familiar that people sometimes
09:49:05AM 2 wear those gold teeth and removal gold in their
09:49:10AM 3 mouth?

09:49:10AM 4 A. Yes, sir.

09:49:11AM 5 Q. When you interviewed Mr. Johnson, did
09:49:18AM 6 you eventually collect a phone from Mr. Johnson?

09:49:21AM 7 A. I did.

09:49:24AM 8 Q. What did you do with that phone?

09:49:26AM 9 A. Conducted a search warrant on it. It
09:49:27AM 10 was executed by Detective Sam Riedel with the -- he
09:49:33AM 11 specializes in cell phone forensics.

09:49:36AM 12 Q. And you had him do an extraction on the
09:49:39AM 13 phone?

09:49:39AM 14 A. Correct.

09:49:39AM 15 Q. And that was Detective Sam Reidel?

09:49:43AM 16 A. Yes.

09:49:44AM 17 Q. Now, with your experience as a
09:49:51AM 18 detective in dealing with these kind of cases, will
09:49:56AM 19 you explain to the jury why you found the victim
09:49:59AM 20 and the victim's girlfriend statement to be
09:50:00AM 21 credible?

09:50:00AM 22 A. When I responded to the scene, it was
09:50:04AM 23 -- it was a very unusual set of circumstances, but
09:50:08AM 24 over time, they were very cooperative, they gave
09:50:10AM 25 consistent statements, they cooperated with the

09:50:13AM 1 investigation, they returned the calls, they made
09:50:16AM 2 calls to me. I found no other reason to doubt them
09:50:20AM 3 -- or no reason to doubt them.

09:50:22AM 4 They weren't from the area, they aren't
09:50:26AM 5 from Charleston, so I didn't have any known
09:50:27AM 6 associates. It didn't appear that they were
09:50:30AM 7 involved in any criminal activity or gang activity
09:50:33AM 8 or drug activity. Their credibility continued to
09:50:35AM 9 be established throughout the investigation.

09:50:37AM 10 Q. Was it unusual when you work for North
09:50:40AM 11 Charleston for the victims of crimes to be so
09:50:43AM 12 cooperative?

09:50:43AM 13 A. It's very unusual. More often than
09:50:46AM 14 not, our victims do not cooperate with us.

09:50:48AM 15 Q. Now, when you responded to the scene at
09:50:54AM 16 Orangeburg Street, was that in regards to the
09:50:58AM 17 victim having a gun at that point?

09:51:00AM 18 A. At that time it had already been
09:51:03AM 19 resolved prior to my arrival.

09:51:05AM 20 Q. In your experience in dealing with
09:51:06AM 21 these types of crimes, a victim going and getting a
09:51:09AM 22 weapon after the fact, is that something that is
09:51:11AM 23 unusual or uncommon in your experience?

09:51:13AM 24 A. It's typically common if someone is --
09:51:17AM 25 and in this set of circumstances, he was taken from

09:51:20AM 1 a place where he was unexpectedly at gunpoint by
09:51:24AM 2 three, you know, subjects, three suspects that
09:51:27AM 3 threatened his life, held him captive the entire
09:51:30AM 4 time. And that's very intense emotional
09:51:35AM 5 experience.

09:51:35AM 6 Some may project it visibly and some
09:51:38AM 7 may hold it within. Oftentimes, the victims, they
09:51:41AM 8 experience this and then they have to let it out.
09:51:45AM 9 They want retribution, they want revenge. Yeah,
09:51:49AM 10 you will see victims obtain baseball bats, guns,
09:51:53AM 11 any weapon of opportunity after the event.

09:51:55AM 12 Sometimes for safety and security, we
09:51:57AM 13 get that on our 911 calls. Often the dispatch will
09:52:01AM 14 say that the victim has a firearm or weapon. It's
09:52:05AM 15 a very common call that we have after an incident
09:52:08AM 16 with this type of severity.

09:52:12AM 17 MR. COOPER: Beg the Court's
09:52:12AM 18 indulgence?

09:52:22AM 19 Mr. Kaufman, I appreciate your time. I
09:52:24AM 20 have no further questions for you. If you will
09:52:26AM 21 answer any that Mr. Archer has for you.

09:52:26AM 22 THE COURT: Mr. Archer, your witness.

09:52:26AM 23 CROSS-EXAMINATION

09:52:26AM 24 BY MR. ARCHER:

09:52:38AM 25 Q. Detective, did you go out to Hardee's?

09:52:47AM 1 A. Yes, sir, I did.

09:52:49AM 2 Q. Did you talk to a Ms. Burden who was
09:52:51AM 3 the manager there?

09:52:52AM 4 A. I may have. I would have to look in my
09:52:56AM 5 notes to refresh my memory. I do have my notes in
09:52:59AM 6 front of me.

09:53:00AM 7 Q. Okay. Let me ask you, does this appear
09:53:09AM 8 to be a report that you would have done?

09:53:14AM 9 A. It does not have my name on it, it's
09:53:23AM 10 not consistent with my -- my style of the date on
09:53:26AM 11 here is different. I still have the exhibit here.
09:53:29AM 12 It indicates my style of writing. My date, I
09:53:33AM 13 typically utilize digits and this one has 15 April
09:53:39AM 14 comma 2015. And, typically, with mine I would
09:53:42AM 15 write in a 04 -- I wrote 04-142015.

09:53:50AM 16 Unfortunately there is no name
09:53:52AM 17 associated with it. Honestly, I can't say. In
09:53:55AM 18 this sentence it says, I obtained surveillance
09:53:58AM 19 footage from the Wells Fargo at 4400 Dorchester
09:53:58AM 20 Road (reading) Investigator Conyers via email that
09:54:04AM 21 forwarded the email to Detective Kaufman.

09:54:04AM 22 Q. Who else would have been out there with
09:54:05AM 23 you that may have talked to Ms. Burden? There's a
09:54:08AM 24 reference in there talking to Ms. Burden.

09:54:18AM 25 A. There's a reference to the manager.

09:54:20AM 1 Q. The manager?

09:54:21AM 2 A. Uh-huh.

09:54:22AM 3 Q. Right. Did you talk to the manager?

09:54:25AM 4 A. I don't recall if I did.

09:54:28AM 5 Q. You don't remember -- that says that

09:54:31AM 6 the manager did not recognize anything unusual. Do

09:54:36AM 7 you remember getting any information like that when

09:54:38AM 8 you were at Hardee's?

09:54:39AM 9 A. I would have to look at my notes again.

09:54:41AM 10 You're asking me to refer to this. I'm just not

09:54:42AM 11 sure.

09:54:43AM 12 Q. Well, look at your notes and see if you

09:54:46AM 13 have any information to the effect that the manager

09:54:50AM 14 recognized nothing unusual.

09:54:54AM 15 A. Absolutely.

09:54:55AM 16 Q. Any information that reflected the

09:55:00AM 17 manager?

09:55:12AM 18 A. In -- in my supplement that was

09:55:17AM 19 provided me by the Solicitor, I see in my notes

09:55:21AM 20 where it says, I spoke to Jackie Smart, the general

09:55:25AM 21 manager, who had give me permission and the

09:55:28AM 22 password to the surveillance computer. So I will

09:55:32AM 23 review to see what else I put in here. Again, it

09:55:37AM 24 was some time ago.

09:56:15AM 25 I do not see it in these notes.

09:56:17AM 1 Q. And you were the lead case officer;
09:56:19AM 2 were you not?
09:56:20AM 3 A. Yes, I was.
09:56:21AM 4 Q. Would you have reviewed other officers'
09:56:23AM 5 reports in the matter?
09:56:24AM 6 A. Yes, I would have.
09:56:26AM 7 Q. So in all likelihood you would have
09:56:28AM 8 reviewed the report I just -- at least, if you
09:56:31AM 9 didn't write it, you would have reviewed the report
09:56:33AM 10 I just gave you?
09:56:35AM 11 A. Yes.
09:56:35AM 12 Q. Okay. And now did you ever talk to a
09:56:42AM 13 Ms. Dashone at Ace Check Cash?
09:56:46AM 14 A. Not directly, no.
09:56:47AM 15 Q. Do you recall reviewing this report
09:56:50AM 16 which indicates that the manager at Hardee's
09:56:55AM 17 advised me that the victim appeared calm and did
09:56:57AM 18 not act unusual?
09:56:59AM 19 A. I do recall reading that.
09:57:01AM 20 Q. Okay. Do you recall reading below
09:57:04AM 21 that, that I then went to Ace Check Cashing and
09:57:09AM 22 spoke to the manager Dashone. She stated that the
09:57:12AM 23 victim is a regular and had been cashing checks
09:57:15AM 24 since March. She stated the check was for \$200.
09:57:18AM 25 She stated that they cashed a check for the victim

09:57:22AM 1 and he appeared as he normally is. Do you remember
09:57:25AM 2 that?

09:57:26AM 3 A. Yes, sir.

09:57:27AM 4 Q. Okay. So both the managers of Hardee's
09:57:32AM 5 and the manager of the check cashing business, they
09:57:36AM 6 didn't notice anything unusual about the victim,
09:57:41AM 7 right?

09:57:41AM 8 A. From what the notes were saying, yes.

09:57:44AM 9 Q. Did you ever have any question in your
09:57:46AM 10 mind as to whether this robbery and kidnapping had
09:57:49AM 11 actually occurred?

09:57:50AM 12 A. Yes, sir.

09:57:51AM 13 Q. You did have a question?

09:57:53AM 14 A. Yes, sir.

09:57:53AM 15 Q. That's -- one of the reasons you had a
09:57:55AM 16 question is because it was such unusual facts; is
09:57:58AM 17 it not?

09:57:58AM 18 A. Yes, sir.

09:57:58AM 19 Q. And you also had information that
09:58:05AM 20 neither place that the victim was taken indicated
09:58:09AM 21 he acted in any way unusual or different; did you
09:58:12AM 22 not?

09:58:12AM 23 A. Yes.

09:58:12AM 24 Q. And did you -- you took a statement
09:58:15AM 25 from him I believe. Did you?

09:58:18AM 1 A. Yes, I did.

09:58:21AM 2 Q. And in that statement you asked him --
09:58:26AM 3 after a general statement, did you ask him, do you
09:58:29AM 4 wish to prosecute in this matter?

09:58:32AM 5 A. I would have to see my statement to
09:58:35AM 6 recall that, but, yes, sir, if that's what was in
09:58:38AM 7 the statement then, yes. That question was written
09:58:43AM 8 and, yes.

09:58:44AM 9 Q. Well, is that kind of an unusual
09:58:50AM 10 question to ask somebody who's telling you he's
09:58:52AM 11 been the victim of an armed robbery and a
09:58:55AM 12 kidnapping, isn't it? Do you want to prosecute?

09:58:58AM 13 A. Sorry, is that a question?

09:59:02AM 14 Q. Isn't that an unusual question to be
09:59:04AM 15 asking somebody; do you want to prosecute this
09:59:07AM 16 case? When they have just told you in a statement
09:59:09AM 17 that they were a victim of an armed robbery and a
09:59:11AM 18 kidnapping?

09:59:13AM 19 A. No, sir, it's not unusual.

09:59:14AM 20 Q. Okay. So you have people that come in
09:59:17AM 21 and tell you that they are victims of armed robbery
09:59:20AM 22 and kidnapping and then they say, we don't want to
09:59:23AM 23 prosecute?

09:59:24AM 24 A. Yes, sir.

09:59:24AM 25 Q. Okay. I'm just wondering if maybe you

09:59:27AM 1 didn't ask him that because you had a question in
09:59:30AM 2 your mind as to whether -- that things he was
09:59:32AM 3 alleging had actually occurred. Is that a
09:59:37AM 4 possibility as to why you asked him that question?

09:59:39AM 5 A. I believe I would need you to rephrase
09:59:44AM 6 it.

09:59:45AM 7 Q. You said that earlier, that one time
09:59:48AM 8 you had some question in your mind as to whether
09:59:50AM 9 the facts -- this thing had actually occurred; did
09:59:53AM 10 you not?

09:59:53AM 11 A. Yes, sir.

09:59:53AM 12 Q. Is that why you asked him did he want
09:59:58AM 13 to prosecute? Because when you took this statement
10:00:00AM 14 you still had a question in your mind as to whether
10:00:03AM 15 this actually occurred?

10:00:04AM 16 A. No, sir, that's not why I asked him
10:00:06AM 17 that question.

10:00:06AM 18 Q. Okay. Now, do you recall him telling
10:00:13AM 19 you that his hands had been tied up with a tie?

10:00:18AM 20 A. Yes, sir, I do recall that.

10:00:19AM 21 Q. Okay. Did he ever tell you that his
10:00:22AM 22 feet were also tied up?

10:00:24AM 23 A. I don't recall if that was the case in
10:00:26AM 24 this or not.

10:00:27AM 25 Q. He didn't tell you that, did he?

10:00:30AM 1 A. Again, I don't recall that being part
10:00:32AM 2 of the case.

10:00:33AM 3 Q. Can you look at your notes to see if he
10:00:35AM 4 ever said that to you?

10:00:36AM 5 A. Yes, sir. I am not seeing it in my
10:02:10AM 6 supplement in here.

10:02:12AM 7 Q. Okay. Do you see where he said he tied
10:02:14AM 8 his hands up?

10:02:18AM 9 A. It's not in these notes that I have in
10:03:18AM 10 front of me. It might be in some other case notes
10:03:22AM 11 in the case, but I do recall that the hands were
10:03:27AM 12 bound.

10:03:27AM 13 Q. Hands were bound?

10:03:28AM 14 A. Yeah.

10:03:28AM 15 Q. But you don't specifically remember him
10:03:29AM 16 saying that his feet were bound, do you?

10:03:31AM 17 A. I don't recall that, sir.

10:03:32AM 18 Q. Okay. You don't recall him saying that
10:03:34AM 19 his feet were bound.

10:03:37AM 20 Now, you searched the car that evening;
10:03:39AM 21 did you not?

10:03:40AM 22 A. Yes, sir.

10:03:41AM 23 Q. Did you find any -- when he said his
10:03:44AM 24 hands were tied, he said it was with a neck tie,
10:03:48AM 25 right?

10:03:48AM 1 A. I believe it was, yes.

10:03:49AM 2 Q. Okay. And you believe -- you're not
10:03:51AM 3 sure?

10:03:52AM 4 A. Sir, this was two years ago. If my
10:03:56AM 5 notes indicated there was a statement in the case,
10:03:57AM 6 then I could say with a definitive answer, yes.

10:04:01AM 7 Q. Okay. Well, I'm not going to ask you
10:04:05AM 8 to look at all these notes and see -- but, anyway,
10:04:08AM 9 did you find when -- you searched his vehicle that
10:04:11AM 10 night, right? The vehicle that he was driving in?

10:04:15AM 11 A. Yes.

10:04:15AM 12 Q. Did you find any neck ties in there?

10:04:17AM 13 A. I would have to look at the evidence
10:04:19AM 14 list. We collected a lot of evidence in the case.

10:04:22AM 15 Q. Okay. Well --

10:04:25AM 16 A. I do not have it, sir.

10:04:27AM 17 Q. You don't have that? So you can't say
10:04:32AM 18 whether anybody found a tie in there?

10:04:35AM 19 A. Sir, I was not involved in the
10:04:38AM 20 searching of the vehicle --

10:04:38AM 21 Q. Well, if he told you his hands were
10:04:41AM 22 tied up, isn't it a fairly significant fact that
10:04:45AM 23 you find in the victim -- you find in the car that
10:04:49AM 24 he was transported in something that he could
10:04:51AM 25 have --

10:04:51AM 1 THE COURT: His testimony is he wasn't
10:04:53AM 2 involved in the search of the car. You cut him off
10:04:56AM 3 on his last answer.

10:04:58AM 4 Finish your last answer, sir.

10:04:59AM 5 THE WITNESS: Thank you, Your Honor. I
10:05:00AM 6 was not involved in the search of the vehicle. I
10:05:04AM 7 was inside of the detective bureau interviewing the
10:05:09AM 8 suspect at that time Jonathan Johnson.

10:05:09AM 9 BY MR. ARCHER:

10:05:10AM 10 Q. But you found out at some time later
10:05:13AM 11 what the results of the search of the car were,
10:05:16AM 12 didn't you? As the chief investigative officer?

10:05:19AM 13 A. Yes, I was informed of the results. I
10:05:23AM 14 just, unfortunately, can't recall what exactly was
10:05:26AM 15 taken from the vehicle or an itemized list of what
10:05:29AM 16 we obtained of what was inside.

10:05:31AM 17 Q. Wouldn't it have been fairly
10:05:35AM 18 significant if he claimed that he was tied up that
10:05:38AM 19 you would have found something that --

10:05:39AM 20 MR. COOPER: Objection. I think the
10:05:42AM 21 witness has -- one, asked and answered and, two, he
10:05:44AM 22 said he did not search the vehicle.

10:05:46AM 23 MR. ARCHER: He is the chief
10:05:48AM 24 investigator officer. He can say whether or not
10:05:50AM 25 it's significant whether or not they found

10:05:52AM 1 something in the car to tie u the victim. I think
10:05:56AM 2 it's perfectly --

10:05:56AM 3 THE COURT: That wasn't your question,
10:05:58AM 4 but I'll let you ask that one.

10:05:58AM 5 BY MR. ARCHER:

10:06:01AM 6 Q. Wouldn't it be significant as to
10:06:03AM 7 whether you-all found something in the car that
10:06:05AM 8 could have been used to tie up the victim if he
10:06:07AM 9 said he had been tied up?

10:06:10AM 10 A. It could be significant if we had found
10:06:12AM 11 it, correct, yes.

10:06:13AM 12 Q. Okay. And you don't remember it -- you
10:06:15AM 13 don't specifically remember anything like that
10:06:17AM 14 being found; is that right?

10:06:19AM 15 MR. COOPER: Objection, Your Honor.
10:06:20AM 16 That has been asked and answered several times.

10:06:22AM 17 THE COURT: We have been over that and
10:06:23AM 18 he has already indicated that he was not directly
10:06:25AM 19 involved and he can't remember exactly what was
10:06:28AM 20 taken.

10:06:28AM 21 BY MR. ARCHER:

10:06:29AM 22 Q. Okay. Let me ask you this: Did the
10:06:35AM 23 victim, did he ever state to you that Jonathan
10:06:39AM 24 Johnson, when he was transporting him from where he
10:06:45AM 25 picked him up at the Wells Fargo Bank to Hardee's,

10:06:49AM 1 that Jonathan Johnson fired a pistol out the window
10:06:53AM 2 of the car?

10:06:54AM 3 A. I don't recall that either.

10:06:56AM 4 Q. You don't recall him ever saying that?

10:06:58AM 5 A. No, I don't.

10:06:59AM 6 Q. When you say, you don't recall, is that
10:07:01AM 7 that you have nothing in your head about that or
10:07:04AM 8 you've forgotten or it didn't happen?

10:07:07AM 9 A. It was never told to me.

10:07:09AM 10 Q. That was never told to you. Wouldn't
10:07:12AM 11 that have been a significant fact, if it had been
10:07:16AM 12 told to you?

10:07:18AM 13 A. I believe it would have been a
10:07:19AM 14 significant fact, yes.

10:07:20AM 15 Q. And it might have led you to -- you all
10:07:25AM 16 had Jonathan Johnson that evening after the
10:07:28AM 17 robbery, right?

10:07:29AM 18 A. Yes.

10:07:30AM 19 Q. And if anybody had been told that, you
10:07:33AM 20 may have done a gunshot residue test on him to see
10:07:36AM 21 if he had ever fired a gun, right?

10:07:39AM 22 A. Possibly, yes.

10:07:40AM 23 Q. Okay. But the fact that he fired a gun
10:07:46AM 24 out the window would have been a significant fact?

10:07:51AM 25 A. Yes, it would have been a significant

10:07:53AM 1 fact. I'm not sure if it's relevant to the case
10:07:57AM 2 though.

10:07:57AM 3 Q. Well, you never remember being told
10:08:01AM 4 that by the victim, Mr. Lee?

10:08:04AM 5 MR. COOPER: Again, Your Honor, I
10:08:06AM 6 object. I think the witness has answered this
10:08:09AM 7 question several times.

10:08:09AM 8 MR. ARCHER: Okay.

10:08:11AM 9 THE COURT: It's been asked and
10:08:14AM 10 answered, you need to move on.

10:08:16AM 11 MR. ARCHER: Okay.

10:08:16AM 12 BY MR. ARCHER:

10:08:20AM 13 Q. Let me ask you this: You went to their
10:08:23AM 14 house that afternoon of the robbery, correct?

10:08:23AM 15 A. Yes.

10:08:27AM 16 Q. And if I heard you correctly, somebody
10:08:29AM 17 there, even Mr. Lee or his girlfriend, identified
10:08:36AM 18 Jonathan Johnson as a suspect; is that correct?

10:08:40AM 19 A. They identified him as Miss Iva
10:08:44AM 20 Johnson's son.

10:08:47AM 21 Q. And they gave you his name?

10:08:47AM 22 A. I don't recall them giving me his name.
10:08:50AM 23 I believe it was a patrol officer that gave me a
10:08:53AM 24 name.

10:08:53AM 25 Q. You don't remember who gave you the

10:08:55AM 1 name, but you remember them -- in what context did
10:09:00AM 2 they identify Iva Johnson's son? What was the
10:09:05AM 3 context that he was telling you about Iva Johnson's
10:09:08AM 4 son?

10:09:08AM 5 A. In my statement with Mr. Lee, the
10:09:10AM 6 victim, he indicated, and also Chris indicated,
10:09:13AM 7 that -- well, first, Keith had mentioned that
10:09:18AM 8 during the course of the robbery while it was
10:09:20AM 9 ongoing, Jonathan Johnson made reference to him
10:09:26AM 10 working the -- him and Chris working with his
10:09:30AM 11 mother and that he was Ms. Iva Johnson's son.

10:09:32AM 12 Chris also identified Jonathan Johnson
10:09:34AM 13 as being present at the bank prior to all of this
10:09:37AM 14 occurring and saw him there attempting to cash a
10:09:40AM 15 check.

10:09:40AM 16 Q. Did Chris -- Chris knew him, right?

10:09:43AM 17 A. I can't speak to her knowledge of him.

10:09:47AM 18 Q. Well, in some way she identified him as
10:09:50AM 19 being at the bank, right?

10:09:51AM 20 A. Correct.

10:09:52AM 21 Q. So, obviously, she knew him if she
10:09:57AM 22 could identify him?

10:09:58AM 23 MR. COOPER: Your Honor, objection.

10:09:59AM 24 Again, that would be speculation on his part.

10:10:01AM 25 THE COURT: You're asking him to state

10:10:03AM 1 the state of mind of somebody else. Unless there's
10:10:06AM 2 some specific reason why he would know that --
10:10:14AM 3 you're asking him to speculate about someone else's
10:10:17AM 4 state of mind. To that extent, I would sustain the
10:10:20AM 5 objection.

10:10:20AM 6 If you can lay a better foundation for
10:10:23AM 7 his knowledge, we'll consider.

10:10:23AM 8 BY MR. ARCHER:

10:10:25AM 9 Q. All right. Did she ever indicate that
10:10:26AM 10 she had seen him before at the Hardee's?

10:10:30AM 11 A. I don't recall if I obtained that
10:10:31AM 12 statement from her or not.

10:10:32AM 13 Q. You don't recall. Well, I mean, if she
10:10:41AM 14 identifies him, wouldn't it have been reasonable
10:10:44AM 15 for you to ask her the circumstances of how she
10:10:47AM 16 recognized him?

10:10:49AM 17 A. Yes, and I believe that she had -- she
10:10:53AM 18 had given me that by saying that he was Miss Iva
10:10:59AM 19 Johnson's son. To be able to state that personal
10:11:03AM 20 knowledge of somebody they worked with and that
10:11:05AM 21 statement, I would say that shows that they have an
10:11:09AM 22 understanding or at least recognize them. Now, to
10:11:11AM 23 see that they have firsthand knowledge, I can't say
10:11:14AM 24 that would be something that is -- that would need
10:11:16AM 25 to come from Miss Aiken.

10:11:18AM 1 Q. Well, and you don't know how she knew
10:11:28AM 2 he was involved; is that correct?

10:11:32AM 3 A. As involved in what, sir? I apologize.

10:11:35AM 4 Q. Involved in the robbery and kidnapping.
10:11:40AM 5 Do you know what the basis of her knowledge to say
10:11:44AM 6 he was involved?

10:11:46AM 7 A. I believe she -- her basis of her
10:11:49AM 8 knowledge was what was provided to her from Keith,
10:11:51AM 9 her boyfriend.

10:11:53AM 10 MR. ARCHER: Okay. I have no further
10:11:57AM 11 questions of this witness.

10:12:01AM 12 THE COURT: Redirect.

10:12:02AM 13 MR. COOPER: Yes, Your Honor.

10:12:02AM 14 REDIRECT EXAMINATION

10:12:02AM 15 BY MR. COOPER:

10:12:11AM 16 Q. Mr. Kaufman, so just to clarify your
10:12:14AM 17 role with the case, you were case agent?

10:12:16AM 18 A. Correct.

10:12:16AM 19 Q. What does that mean in regards to being
10:12:22AM 20 just a detective, assisting in the case or being
10:12:23AM 21 the case agent?

10:12:23AM 22 A. Collaborating with the other detectives
10:12:27AM 23 involved in the case, review evidence, review the
10:12:32AM 24 statutes, the applicable statutes to develop the
10:12:35AM 25 appropriate charges, obtaining statements from the

10:12:37AM 1 appropriate witness, and overall making the
10:12:39AM 2 decision to charge or not charge somebody.

10:12:42AM 3 Q. So you didn't conduct every single
10:12:46AM 4 lineup. You were the one that reviewed the
10:12:47AM 5 evidence and then made a decision to charge?

10:12:49AM 6 A. Correct.

10:12:49AM 7 Q. Now, I want to clarify a couple of
10:12:52AM 8 things with you. First, the incident started at
10:12:54AM 9 the Wells Fargo on Dorchester Road?

10:12:56AM 10 A. Yes.

10:12:57AM 11 Q. An then went to Hardee's in Mount
10:12:59AM 12 Pleasant?

10:12:59AM 13 A. Yes.

10:12:59AM 14 Q. And then back to the Cash Advance on
10:13:02AM 15 McMillan?

10:13:02AM 16 A. Yes, sir.

10:13:03AM 17 Q. And then the Tiger Mart and the
10:13:05AM 18 Church's right there on Rivers?

10:13:06AM 19 A. Yes.

10:13:06AM 20 Q. Is all of that in Charleston County?

10:13:09AM 21 A. Yes.

10:13:09AM 22 Q. I know Mr. Archer touched on it a
10:13:12AM 23 little bit, the victim identified Mr. Green out of
10:13:16AM 24 the lineup, correct?

10:13:17AM 25 A. Yes, sir.

10:13:17AM 1 Q. Ms. Aiken, the girlfriend, identified
10:13:20AM 2 Mr. Johnson out of a lineup as a person she saw in
10:13:24AM 3 the bank?

10:13:25AM 4 A. Yes.

10:13:25AM 5 Q. Was Mr. -- was Mr. Lee able to identify
10:13:29AM 6 Mr. Johnson out of a lineup?

10:13:31AM 7 A. I believe when we showed him the
10:13:34AM 8 lineup, and I don't recall who actually showed him
10:13:37AM 9 that lineup, I believe that he did not pick
10:13:40AM 10 Jonathan out of the lineup.

10:13:42AM 11 If I was able to see it, I might be
10:13:44AM 12 able to -- or review my notes. I might be able to
10:13:47AM 13 if I have my case notes in front of me.

10:13:49AM 14 Q. Do you have your report up here?

10:13:50AM 15 A. I have my supplement that is listed in
10:13:52AM 16 here. If I may review that.

10:13:55AM 17 Q. Sure, please.

10:14:13AM 18 A. So, yes, Mr. Lee was unable to identify
10:14:16AM 19 Jonathan in the lineup.

10:14:17AM 20 Q. And he indicated to you that Mr.
10:14:20AM 21 Johnson informed him during the robbery he was Ms.
10:14:24AM 22 Iva's son?

10:14:24AM 23 A. Yes.

10:14:24AM 24 Q. When you were -- Mr. Archer asked you
10:14:27AM 25 about speaking to some people at Hardee's and the

10:14:31AM 1 Cash Advance. At Hardee's, did you speak with two
10:14:33AM 2 individuals who knew Tampa?

10:14:35AM 3 A. I believe I did. They were employees
10:14:43AM 4 of Hardee's, yes.

10:14:43AM 5 Q. And they knew who Tampa was?

10:14:43AM 6 A. Yes, they did.

10:14:43AM 7 Q. And were they able to identify to you
10:14:45AM 8 that Tampa was Tappia Green?

10:14:49AM 9 A. When I spoke to them, I showed them a
10:14:51AM 10 single photograph from my phone that I had of
10:14:55AM 11 Tappia Green and I asked them -- I showed them the
10:15:04AM 12 photograph, and they said that that was the person
10:15:08AM 13 they know as Tampa.

10:15:09AM 14 Q. And that's the name that Mr. Johnson
10:15:11AM 15 gave you when you interviewed him as the person
10:15:14AM 16 that held him under duress, Mr. Johnson said?

10:15:17AM 17 A. Yes.

10:15:17AM 18 Q. Let me show you your handwritten notes
10:15:31AM 19 at the bottom. Do you remember -- were you able to
10:15:34AM 20 confirm whether Mr. Lee called Hardee's that
10:15:38AM 21 afternoon?

10:15:38AM 22 A. According to my notes, yes.

10:15:38AM 23 Q. What time did he call Hardee's that
10:15:39AM 24 afternoon?

10:15:39AM 25 A. Approximately, 3:30 p.m.

10:15:42AM 1 Q. The still shot at Wells Fargo, that was
10:15:47AM 2 at 3:12 in the afternoon?

10:15:49AM 3 A. I believe so. I would have to look at
10:15:52AM 4 it.

10:16:10AM 5 Q. Showing you State's Exhibit 40. Is
10:16:14AM 6 that the picture of Mr. Johnson at the Wells Fargo?

10:16:16AM 7 A. Yes, it is.

10:16:17AM 8 Q. And what's the time stamp on that?

10:16:19AM 9 A. 4/14/2015 at 3:12 p.m.

10:16:23AM 10 Q. Okay. Showing you State's 13. Is the
10:16:30AM 11 -- is this the picture of all four of them outside
10:16:32AM 12 the Hardee's?

10:16:33AM 13 A. Yes, it is.

10:16:33AM 14 Q. What's the date and time stamp on that?

10:16:35AM 15 A. April 14, 2015, 15:46.

10:16:38AM 16 Q. 15:46 is military time for what time?

10:16:41AM 17 A. 3:46 p.m.

10:16:43AM 18 Q. And you had information -- or you
10:16:45AM 19 confirmed that Mr. Lee called Hardee's at what
10:16:49AM 20 time?

10:16:49AM 21 A. At 3:30 p.m. on the 14th.

10:16:53AM 22 Q. Now, you initially had questions about
10:17:02AM 23 the veracity of the victims' claims?

10:17:07AM 24 A. Yes, sir.

10:17:07AM 25 Q. How were you able to resolve those

10:17:09AM 1 questions that you had?

10:17:10AM 2 A. By speaking with them. Normally, our
10:17:16AM 3 victims don't cooperate as much as Keith and
10:17:22AM 4 Karissa did. They continued to follow up with us
10:17:25AM 5 and came in for lineups. We showed them lineups
10:17:29AM 6 for approximately a week trying to identify the
10:17:31AM 7 third subject. Within that week it was abundantly
10:17:36AM 8 clear they were real victims of a real crime.

10:17:42AM 9 MR. ARCHER: Judge, I'm actually --
10:17:44AM 10 he's making some assumptions; they were real
10:17:47AM 11 victims of a real crime. How he can do that is
10:17:49AM 12 simply --

10:17:50AM 13 THE COURT: Well, you asked --

10:17:51AM 14 MR. ARCHER: No, that's -- he's not an
10:17:54AM 15 expert.

10:17:54AM 16 THE COURT: Well, let me talk for a
10:17:55AM 17 second.

10:17:55AM 18 MR. ARCHER: Yes, sir.

10:17:56AM 19 THE COURT: You asked those questions
10:17:57AM 20 on cross. You opened that line of inquiry.

10:18:00AM 21 MR. ARCHER: Whatever.

10:18:01AM 22 THE COURT: I'm going to allow him to
10:18:03AM 23 explore it if he can state his own state of mind,
10:18:06AM 24 which I will allow him to do.

10:18:08AM 25 MR. COOPER: Thank you, Judge.

10:18:09AM 1 THE COURT: You may proceed.

10:18:10AM 2 MR. COOPER: Thank you, sir.

10:18:10AM 3 BY MR. COOPER:

10:18:11AM 4 Q. If you will give your answer as far as
10:18:15AM 5 -- let me ask you this. How were you able to
10:18:23AM 6 differentiate the way they were acting versus
10:18:27AM 7 somebody that would be making something up or that
10:18:30AM 8 would be trying to frame somebody for something?

10:18:33AM 9 A. Well, one of the main things is the
10:18:35AM 10 minimization of their action or the minimization of
10:18:40AM 11 the severity of the crime. He did not minimize any
10:18:44AM 12 of it. He provided a very consistent statement as
10:18:48AM 13 to what happened. Oftentimes, those that are
10:18:52AM 14 victims of crimes in my experience in North
10:18:56AM 15 Charleston, they would attempt to minimize the
10:19:00AM 16 activities of the defendants or themselves in order
10:19:03AM 17 to make themselves look less culpable.

10:19:07AM 18 He was -- he was consistently able to
10:19:12AM 19 be in touch with us. He responded, you know, to
10:19:17AM 20 our questioning and answered everything without any
10:19:22AM 21 -- he didn't take any offense to the questioning,
10:19:27AM 22 and I even asked him, you know, multiple times if
10:19:28AM 23 this was a legitimate case, was there anything he
10:19:34AM 24 was withholding from me? And he told me there was
10:19:37AM 25 not.

10:19:38AM 1 The majority of the time the victims
10:19:41AM 2 refuse to cooperate. They -- after a subject is
10:19:43AM 3 identified, they disappear and they don't
10:19:46AM 4 cooperate. They don't come back for follow-ups,
10:19:49AM 5 they don't participate in court appearances. It
10:19:54AM 6 becomes almost impossible to find them.

10:19:58AM 7 They change their numbers, they don't
10:20:00AM 8 respond to calls or letters or anything, and in
10:20:02AM 9 this case both Keith and Karissa maintained contact
10:20:06AM 10 with us.

10:20:06AM 11 Q. So you've had cases where the victims
10:20:10AM 12 have been uncooperative or not kept in touch to
10:20:14AM 13 help the case?

10:20:15AM 14 A. Yes.

10:20:15AM 15 Q. You've had victims decline to prosecute
10:20:19AM 16 the case?

10:20:19AM 17 A. Yes.

10:20:19AM 18 Q. With your work in North Charleston, are
10:20:21AM 19 you aware of cases involving the solicitor's office
10:20:24AM 20 not being able to prosecute because of the victims
10:20:27AM 21 being uncooperative or not keeping in touch?

10:20:30AM 22 A. Absolutely.

10:20:31AM 23 Q. So given all the evidence in the case,
10:20:33AM 24 you talked to the witnesses, all the information
10:20:35AM 25 that Mr. Archer brought up about the statements at

10:20:39AM 1 Hardee's and things like that, at the end of the
10:20:40AM 2 day what did you decide to do with this case?

10:20:43AM 3 A. On reviewing, I decided to charge
10:20:45AM 4 Jonathan Johnson for the kidnapping and armed
10:20:48AM 5 robbery and possession of a weapon during a violent
10:20:51AM 6 crime. Then, of course, with the lineup with
10:20:55AM 7 Tappia Green and his identification in there, and
10:20:58AM 8 also Jonathan Johnson indicating he was involved in
10:21:01AM 9 the crime, I pursued an arrest warrant for him as
10:21:06AM 10 well.

10:21:06AM 11 Q. Did you seek warrants for Mr. Green
10:21:10AM 12 before the fingerprint results came back?

10:21:12AM 13 A. Yes, I did.

10:21:12AM 14 Q. So at that time you did not know about
10:21:13AM 15 the fingerprint results?

10:21:13AM 16 A. They had not come back.

10:21:14AM 17 Q. That only serves to strengthen your
10:21:18AM 18 belief in the case?

10:21:19AM 19 A. Absolutely.

10:21:19AM 20 MR. COOPER: Your Honor, I have no
10:21:20AM 21 further questions for the witness at this time.

10:21:21AM 22 THE COURT: Re-cross.

10:21:21AM 23 RECROSS-EXAMINATION

10:21:21AM 24 BY MR. ARCHER:

10:21:31AM 25 Q. The solicitor just showed you some

10:21:33AM 1 pictures of the defendant at Hardee's. Okay. Is
10:21:54AM 2 this a picture of Jonathan Johnson at the Hardee's?

10:22:00AM 3 A. The subject on the right is Jonathan
10:22:02AM 4 Johnson I believe.

10:22:04AM 5 Q. Okay. And this person here,
10:22:11AM 6 (Indicating) that's Mr. Lee?

10:22:13AM 7 A. I believe it is. It looks like him,
10:22:16AM 8 yes.

10:22:16AM 9 Q. So in the picture of Mr. Lee, Mr.
10:22:22AM 10 Johnson is nowhere in that picture, is he?

10:22:24AM 11 A. Correct.

10:22:24AM 12 Q. So Mr. Lee had an opportunity to tell
10:22:32AM 13 the lady at the register, I'm being -- I'm here at
10:22:37AM 14 gunpoint, did he not?

10:22:41AM 15 A. Yes, he did.

10:22:41AM 16 Q. But he didn't?

10:22:42AM 17 A. No, he didn't.

10:22:47AM 18 MR. ARCHER: No other questions.

10:22:48AM 19 THE COURT: I believe that was a new
10:22:51AM 20 matter raised on recross. I will allow you to
10:22:54AM 21 follow up if you would like to.

10:22:56AM 22 MR. COOPER: Thank you, Judge.

10:22:57AM 23 THE C: I normally wouldn't, but that's
10:22:59AM 24 new.

10:22:59AM 25 MR. COOPER: I appreciate that.

10:22:59AM 1

DIRECT EXAMINATION

10:22:59AM 2

BY MR. COOPER:

10:23:18AM 3

Q. I'm showing you State's Exhibit 10.

10:23:22AM 4

That's a picture Mr. Archer showed you with the

10:23:26AM 5

victim trying to cash his check, right?

10:23:26AM 6

A. Yes.

10:23:29AM 7

Q. Will you look at the bottom? What is

10:23:30AM 8

the date and time stamp on that?

10:23:31AM 9

A. April 14, 2015, 15:44 hours.

10:23:35AM 10

Q. And I think you testified earlier that

10:23:37AM 11

you weren't able to download the video, but you

10:23:40AM 12

were able to take screenshots?

10:23:42AM 13

A. Yes.

10:23:42AM 14

Q. So that captures one second in time?

10:23:45AM 15

A. Yes.

10:23:45AM 16

Q. And they were in there, approximately,

10:23:48AM 17

how long?

10:23:48AM 18

A. I would say around three minutes.

10:23:53AM 19

MR. COOPER: Okay. I have no further

10:23:54AM 20

questions of the witness.

10:23:55AM 21

Thank you, Your Honor.

10:23:56AM 22

THE COURT: You may step down.

10:23:59AM 23

Do you wish to excuse this witness,

10:24:04AM 24

Counsel?

10:24:04AM 25

MR. COOPER: Yes, sir.

10:24:04AM 1 THE COURT: Any objection.

10:24:06AM 2 MR. ARCHER: No, sir.

10:24:07AM 3 THE COURT: You are free to leave, sir.

10:24:10AM 4 Thank you for coming today.

10:24:28AM 5 State may call their next witness.

10:24:30AM 6 MR. COOPER: The State calls Detective

10:24:32AM 7 Sam Riedel.

10:24:58AM 8 SAM RIEDEL,

10:24:59AM 9 being first duly sworn, testified as follows:

10:24:59AM 10 THE CLERK: Please state your full name

10:25:01AM 11 and spell your last.

10:25:01AM 12 THE WITNESS: Same Riedel, R-I-E-D-E-L.

10:25:19AM 13 THE COURT: All right. Counsel, your

10:25:21AM 14 witness.

10:25:22AM 15 MR. COOPER: Thank you, Your Honor.

10:25:22AM 16 DIRECT EXAMINATION

10:25:22AM 17 BY MR. COOPER:

10:25:24AM 18 Q. Detective, will you tell the jury where

10:25:26AM 19 you're currently employed?

10:25:27AM 20 A. I work for the City of North Charleston

10:25:27AM 21 Police Department.

10:25:28AM 22 Q. What is your current position?

10:25:30AM 23 A. I'm assigned to the investigations

10:25:31AM 24 bureau, white collar, with an attachment to the

10:25:36AM 25 secret service electronic crimes task force.

10:25:39AM 1 Q. How long have you been in that
10:25:41AM 2 position?

10:25:41AM 3 A. I've been a white collar investigator
10:25:44AM 4 for, approximately, nine years and I've been
10:25:47AM 5 attached to the secret service for the last five.

10:25:52AM 6 Q. And as a part of that position, do you
10:25:55AM 7 also get involved in extractions or dumping a cell
10:25:59AM 8 phone?

10:26:00AM 9 A. I do.

10:26:01AM 10 Q. Would you explain to the jury that what
10:26:03AM 11 process entails?

10:26:04AM 12 A. The process of cell phone extraction is
10:26:07AM 13 the use of computer programming to access the data
10:26:12AM 14 contained on the cell phone itself. It's similar
10:26:15AM 15 to computer forensics as the cell phone is
10:26:19AM 16 essentially a miniature computer. The difference
10:26:22AM 17 between a phone and a computer is, there are
10:26:25AM 18 different levels of information acquisition you can
10:26:30AM 19 obtain. And this is based on programming equipment
10:26:36AM 20 specifics to the device itself.

10:26:39AM 21 I know that you're all familiar with
10:26:42AM 22 the Apple iPhone and the issues they have with
10:26:45AM 23 that, much as other devices depending on all the
10:26:51AM 24 programs or equipment can present the same issues.
10:26:53AM 25 The levels vary from a physical acquisition, which

10:26:58AM 1 is a bit by bit copy of all the data on the phone
10:27:02AM 2 from the very beginning to the very end. Even that
10:27:08AM 3 does not use blank space, if you will, or
10:27:11AM 4 unallocated space.

10:27:11AM 5 The second is a step lower than that
10:27:13AM 6 which is called a file system. And if you're
10:27:17AM 7 familiar with a computer or any Windows or Mac
10:27:20AM 8 operating system, when you look at the screen and
10:27:23AM 9 you see everything on the side and your drives and
10:27:27AM 10 the drop-down folders that you can pick, that
10:27:30AM 11 essentially is your file system.

10:27:30AM 12 So the file system acquisition obtains
10:27:34AM 13 that from the phone and all the data within those
10:27:38AM 14 folders. Thus you miss unallocated or the free
10:27:43AM 15 space so you don't get deleted information as much
10:27:48AM 16 as you would with the physical.

10:27:51AM 17 The lowest level acquisition is called
10:27:58AM 18 illogical extraction which essentially is two
10:28:00AM 19 computers that meet each other, talk to each other,
10:28:04AM 20 and one asks the other, can I have this? And the
10:28:06AM 21 other decides yes or no. It's based on the
10:28:10AM 22 programming of the chip which is why you may get a
10:28:16AM 23 call log on one phone but not on another.

10:28:19AM 24 The process is achieved by what's
10:28:23AM 25 called a client which is loaded onto the source

10:28:29AM 1 device. That client is what carries on the
10:28:32AM 2 conversation between the two computers, that says
10:28:35AM 3 can I have this? Yes or no? If it says, yes, it
10:28:43AM 4 brings it out. If it says, no, it's just skipped
10:28:46AM 5 over.

10:28:46AM 6 Q. Were you asked to do an extraction on a
10:28:50AM 7 phone in this case?

10:28:51AM 8 A. Yes.

10:28:52AM 9 Q. When you do an extraction, is a report
10:28:56AM 10 produced that contains information about the case
10:28:59AM 11 and the phone?

10:28:59AM 12 A. Yes. The logical extraction produces
10:29:02AM 13 an automatic report. The other two, physical and
10:29:05AM 14 file system, have to be analyzed through a separate
10:29:09AM 15 program that decodes or decrypts that information;
10:29:13AM 16 however, the logical report can be analyzed and it
10:29:16AM 17 says, well, if you would like to remove certain
10:29:19AM 18 items or dive deeper and look a little bit more.

10:29:25AM 19 Q. Were you asked by Detective Kaufman to
10:29:28AM 20 do an extraction in this case?

10:29:29AM 21 A. Yes.

10:29:30AM 22 Q. If I were to show you a copy of the
10:29:31AM 23 report of that, would you be able to recognize it?

10:29:33AM 24 A. Yes.

10:29:34AM 25 MR. COOPER: May I approach the

10:29:34AM 1 witness?

10:29:35AM 2 THE COURT: You may.

10:29:35AM 3 BY MR. COOPER:

10:29:40AM 4 Q. Do you recognize that document,
10:29:42AM 5 Detective?

10:29:42AM 6 A. Yes. This is a printed version of a
10:29:47AM 7 portion of the PDF report that I supplied in
10:29:51AM 8 digital format.

10:29:52AM 9 Q. And, obviously, those reports tend to
10:29:55AM 10 be rather large.

10:29:55AM 11 A. They can be a couple pages to several
10:29:59AM 12 thousand pages.

10:30:00AM 13 Q. Okay. Are you able to tell that that
10:30:03AM 14 report pertains to this case?

10:30:05AM 15 A. Yes.

10:30:06AM 16 Q. Okay. I'm sorry, continue.

10:30:09AM 17 A. When I placed it into the analytics
10:30:12AM 18 program to generate my reports, I placed not only
10:30:16AM 19 our agency case number, but my name and contact
10:30:21AM 20 number on the report, too.

10:30:24AM 21 Q. And both your name and case number is
10:30:26AM 22 on that report?

10:30:27AM 23 A. Yes.

10:30:27AM 24 Q. In that report, are you able to
10:30:28AM 25 determine the phone number of the phone that you

10:30:32AM 1 extracted?

10:30:32AM 2 A. Yes.

10:30:32AM 3 Q. What was the phone number?

10:30:33AM 4 A. It is [REDACTED]-0206.

10:30:39AM 5 Q. And then as a part of an extraction of
10:30:42AM 6 the phone, are you sometimes able to have call
10:30:44AM 7 logs?

10:30:44AM 8 A. Yes. That's one of the things that may
10:30:48AM 9 vary from phone to phone, but the second page of
10:30:51AM 10 the report generally shows what is included, which
10:30:56AM 11 we were able to acquire from the device.

10:30:58AM 12 Q. And in the call log on that report,
10:31:02AM 13 would you be able tell the jury if there were any
10:31:06AM 14 calls with a phone number [REDACTED] 9439, on April
10:31:14AM 15 14th?

10:31:14AM 16 A. There is several.

10:31:18AM 17 Q. Were there any between the hours of
10:31:21AM 18 3:00 an 4:00 p.m.?

10:31:22AM 19 A. Yes. There is three listed between 3
10:31:31AM 20 -- between 3:04 and 4:03.

10:31:35AM 21 Q. Could you describe each of these three
10:31:38AM 22 call events for the jury?

10:31:38AM 23 A. The first was an incoming call at
10:31:46AM 24 approximate 12:00 p.m. for 57 seconds.

10:31:52AM 25 Q. When you say, incoming, that's incoming

10:31:54AM 1 to the phone that you dumped?

10:31:55AM 2 A. Yes.

10:31:55AM 3 Q. You extracted?

10:31:57AM 4 A. The program essentially pulls it out.

10:32:00AM 5 It's on your phone. You have a red arrow or a

10:32:02AM 6 green arrow or the missed symbol. It interprets

10:32:06AM 7 that and verbalizes that on the report. So an

10:32:09AM 8 incoming call would be a received call by the

10:32:13AM 9 source device, which in this case is the Z phone.

10:32:17AM 10 Q. And then the other two?

10:32:18AM 11 A. The second is a missed phone call at

10:32:23AM 12 3:18 p.m., 3:18 and 11 seconds, and the third is

10:32:31AM 13 another missed call at 3:46 and 12 seconds.

10:32:35AM 14 Q. And that phone number, your report

10:32:38AM 15 indicates, is not listed as a contact?

10:32:40AM 16 A. No. On here it's listed as a phone

10:32:44AM 17 number. It's not listed as a contact.

10:32:47AM 18 Q. And other than doing an extraction on

10:32:50AM 19 this specific phone, did you have any further

10:32:52AM 20 involvement in this case?

10:32:54AM 21 A. No.

10:32:55AM 22 MR. COOPER: Beg the Court's

10:32:56AM 23 indulgence?

10:32:56AM 24 THE COURT: Yes, sir.

10:33:22AM 25 MR. COOPER: I have no further

10:33:23AM 1 questions. If you will answer anything that the
10:33:25AM 2 defense has. I appreciate your time.

10:33:28AM 3 THE COURT: Mr. Archer, your witness.

10:33:28AM 4 CROSS-EXAMINATION

10:33:28AM 5 BY MR. ARCHER:

10:33:35AM 6 Q. Okay. Do you have any -- you have
10:33:40AM 7 three calls from 0439, correct?

10:33:47AM 8 A. I have three calls from 9439 as the
10:33:52AM 9 last four --

10:33:53AM 10 Q. 9439?

10:33:54AM 11 A. Yes, sir.

10:33:54AM 12 Q. One at 3:12, one at 3:18 which is a
10:33:59AM 13 missed call, and one at 3:46 which is a missed
10:34:04AM 14 call?

10:34:04AM 15 A. Correct.

10:34:05AM 16 Q. So the only one that connects is the
10:34:09AM 17 one at 3:12, right?

10:34:14AM 18 A. Yes.

10:34:14AM 19 Q. And you have an indication what number
10:34:20AM 20 [REDACTED]-9439 is?

10:34:25AM 21 A. No idea.

10:34:26AM 22 Q. No idea. Okay.

10:34:30AM 23 MR. ARCHER: All right. No more
10:34:34AM 24 questions.

10:34:39AM 25 THE COURT: Redirect?

10:34:40AM 1 MR. COOPER: Nothing further. The
10:34:42AM 2 State would ask that the witness be excused.
10:34:44AM 3 THE COURT: Any objection?
10:34:45AM 4 MR. ARCHER: Do what?
10:34:46AM 5 THE COURT: He asked for the witness to
10:34:48AM 6 be excused.
10:34:49AM 7 MR. ARCHER: No objection.
10:34:49AM 8 THE COURT: You may step down. You're
10:34:51AM 9 free to go.
10:34:57AM 10 THE WITNESS: Thank you, sir.
10:34:57AM 11 THE COURT: Ladies and gentlemen, we
10:34:59AM 12 have been going for about an hour and a half. It's
10:35:03AM 13 time to take a short break. I will let you step
10:35:06AM 14 back to the jury room and refresh your yourself.
10:35:10AM 15 Please don't discuss anything about the case while
10:35:12AM 16 you're outside of the courtroom. Thank you very
10:35:14AM 17 much.
10:35:14AM 18 (Jury out, 10:31 a.m.)
10:35:41AM 19 THE COURT: All right. We'll be in
10:35:42AM 20 recess about ten minutes.
10:35:43AM 21 (A recess transpired.)
10:35:43AM 22 THE COURT: State ready to proceed?
10:35:43AM 23 MR. COOPER: Yes, Your Honor.
10:51:19AM 24 THE COURT: Defense ready?
10:51:19AM 25 MR. ARCHER: Defense is ready.

10:51:20AM 1 THE COURT: Bring the jury in please.

10:51:22AM 2 (Jury in, 10:48 a.m.)

10:53:06AM 3 THE BAILIFF: Jurors are all seated.

10:53:07AM 4 THE COURT: Thank you very much. The

10:53:08AM 5 State may call its next witness.

10:53:10AM 6 MR. COOPER: State calls Investigator

10:53:26AM 7 Ray Haupt.

10:53:26AM 8 RAYMOND HAUPT,

10:53:27AM 9 being first duly sworn, testified as follows:

10:53:27AM 10 THE CLERK: Please state your full name

10:53:27AM 11 and spell your last.

10:53:36AM 12 THE WITNESS: Raymond Haupt, H-A-U-P-T.

10:53:37AM 13 THE COURT: Mr. Cooper, your witness.

10:53:40AM 14 MR. COOPER: Thank you.

10:53:40AM 15 DIRECT EXAMINATION

10:53:40AM 16 BY MR. COOPER:

10:53:41AM 17 Q. Morning, Investigator Haupt.

10:53:41AM 18 A. Morning.

10:53:43AM 19 Q. Where are you currently employed?

10:53:47AM 20 A. Ninth Circuit Solicitor's Office.

10:53:47AM 21 Q. Tell the jury what you do with the

10:53:51AM 22 Ninth Circuit Solicitor's Office?

10:53:51AM 23 A. I'm an investigator for the solicitor's

10:53:54AM 24 office and then actually Mr. Cooper's investigator.

10:53:58AM 25 Some of things we do is, once an agency delivers a

10:54:01AM 1 case to us, they would investigate it, we prepare
10:54:07AM 2 it for trial, like we're in here today. So that
10:54:12AM 3 could be going back through interviews, going back
10:54:15AM 4 through jail calls, requesting jail calls, getting
10:54:19AM 5 medical records, finding new witnesses and
10:54:22AM 6 interviewing them, and just tying up loose ends.

10:54:27AM 7 Q. And how long have you been with the
10:54:28AM 8 solicitor's office?

10:54:29AM 9 A. Two and a half years.

10:54:30AM 10 Q. Where were you employed before you came
10:54:32AM 11 to the solicitor's office?

10:54:34AM 12 A. Mount Pleasant Police Department.

10:54:36AM 13 Q. What was your role in Mount Pleasant?

10:54:38AM 14 A. I was there for 11 and a half years. I
10:54:41AM 15 was a sworn police officer, crime scene
10:54:44AM 16 investigator, detective, evidence technician,
10:54:48AM 17 marijuana analyst.

10:54:48AM 18 Q. Focussing on this case specifically,
10:54:51AM 19 did you happen to take a look at the call logs from
10:54:55AM 20 Jonathan Johnson's cell phone?

10:54:56AM 21 A. Yes, I did.

10:54:59AM 22 Q. Did you happen to find something of
10:55:01AM 23 interest?

10:55:01AM 24 A. Yes.

10:55:01AM 25 Q. Could you indicate for the jury, I can

10:55:05AM 1 give you your report if you need that, what you
10:55:08AM 2 found in the call logs?

10:55:11AM 3 A. Doing the call log, it's the whole
10:55:14AM 4 history of all the calls that were placed. I
10:55:17AM 5 started looking around the day and the time the
10:55:19AM 6 incident took place. I believe it was 4/14/15 at
10:55:26AM 7 3:46 in the afternoon there was a call that came
10:55:29AM 8 from an [REDACTED]-9439.

10:55:33AM 9 Q. And came to Mr. Johnson's cell phone or
10:55:36AM 10 to the phone that was associated with Mr. Johnson?

10:55:38AM 11 A. Yes.

10:55:39AM 12 Q. Why did that stand out to you?

10:55:41AM 13 A. We had a still image from the Hardee's
10:55:46AM 14 Restaurant that had the exact same time stamp of
10:55:50AM 15 3:46 p.m., and on that still image it showed Tappia
10:55:58AM 16 Green and another unknown individual walking around
10:56:02AM 17 outside the front entrance of the Hardee's.

10:56:06AM 18 Q. Showing you State's Exhibit 12. Is
10:56:10AM 19 that the image you were referring to?

10:56:12AM 20 A. Yes.

10:56:12AM 21 Q. And the time stamp at the bottom lists
10:56:15AM 22 what time again?

10:56:15AM 23 A. 4/14/2015, at 15:46 and 12 seconds.

10:56:21AM 24 Q. And then who is the individual with the
10:56:23AM 25 phone to his ear?

10:56:24AM 1 A. That was Tappia Green.

10:56:26AM 2 Q. Okay. And then did you -- were you
10:56:35AM 3 able to find out who the phone number listed in the
10:56:39AM 4 call records was associated with?

10:56:40AM 5 A. Yes.

10:56:40AM 6 Q. How did you go about determining that?

10:56:45AM 7 A. Once I found the phone number that the
10:56:47AM 8 call came in to Mr. Johnson's phone coincided with
10:56:52AM 9 this image, with the still frame and the time, I --
10:56:57AM 10 we have a couple of databases we can use in which
10:57:01AM 11 we search -- we can put any number of items in
10:57:03AM 12 there to search. I didn't find anything that way,
10:57:08AM 13 but I put the number into Facebook and it came back
10:57:12AM 14 to a Glizzy Gang I believe was the name on the
10:57:18AM 15 Facebook page.

10:57:19AM 16 Q. If I were to show you the search you
10:57:23AM 17 did, would you be able to recognize it?

10:57:25AM 18 A. Yes.

10:57:26AM 19 MR. COOPER: May I approach the
10:57:26AM 20 witness?

10:57:27AM 21 THE COURT: You may.

10:57:28AM 22 BY MR. COOPER:

10:57:45AM 23 Q. I'm showing you what was premarked for
10:57:48AM 24 identification purposes only States 41. What is
10:58:02AM 25 this?

10:58:02AM 1 A. This is the capture of the search that
10:58:04AM 2 I did where I put the phone number in --
10:58:07AM 3 [REDACTED]-9439 into a Facebook search. If a Facebook
10:58:13AM 4 page is established using a phone number, and you
10:58:19AM 5 put that phone number in on the search bar, it will
10:58:23AM 6 show you all Facebook pages associated with that
10:58:27AM 7 phone number. And, in this case, the only result
10:58:30AM 8 that came back, came back to a Glizzy Gang.

10:58:35AM 9 Q. And then showing you what was premarked
10:58:47AM 10 as State's 42 and 43. Do you recognize those?

10:58:56AM 11 A. Yes, I do.

10:58:56AM 12 Q. What are those?

10:58:57AM 13 A. So once I had the only result that came
10:58:59AM 14 back under that phone number as Glizzy Gang, I then
10:59:04AM 15 clicked on Glizzy Gang to see what came up. When I
10:59:07AM 16 opened that, it came back to a public profile,
10:59:11AM 17 again, Glizzy Gang. And it had several images on
10:59:16AM 18 it of which matched Tappia Green.

10:59:19AM 19 Q. And then 44?

10:59:19AM 20 (PLF. EXH. 44, Photograph, was marked
21 for identification.)

22 BY MR. COOPER:

10:59:36AM 23 Q. And then showing you what was marked as
10:59:40AM 24 State's 44 for ID only. Do you recognize that?

10:59:40AM 25 A. Yes.

10:59:40AM 1 Q. And what is that?

10:59:42AM 2 A. It's an enlarged image of the main
10:59:47AM 3 photo that shows up for the profile for Glizzy
10:59:51AM 4 Gang.

10:59:51AM 5 Q. And that is a part of the search that
10:59:53AM 6 you yourself conducted?

10:59:54AM 7 A. Yes.

10:59:55AM 8 MR. COOPER: Your Honor, at this time I
10:59:56AM 9 would offer State's 41, 42, 43, and 44 into
10:59:59AM 10 evidence.

11:00:00AM 11 THE COURT: Any objection?

11:00:01AM 12 MR. ARCHER: I would like to see them,
11:00:03AM 13 Judge.

11:00:03AM 14 THE COURT: Certainly. Let him see
11:00:05AM 15 them please.

11:00:06AM 16 MR. COOPER: Yes, sir.

11:00:07AM 17 MR. ARCHER: No objection.

11:00:29AM 18 THE COURT: Without obligation they
11:00:30AM 19 will be submitted into record as they were marked.

11:00:33AM 20 MR. COOPER: Thank you, Judge.

11:00:34AM 21 THE COURT: You may publish if you
11:00:36AM 22 wish.

11:00:36AM 23 (PLF. EXH. 41 in evidence.)

11:00:36AM 24 (PLF. EXH. 42 in evidence.)

11:00:36AM 25 (PLF. EXH. 43 in evidence.)

11:00:36AM 1 (PLF. EXH. 44 in evidence.)

11:00:36AM 2 BY MR. COOPER:

11:00:41AM 3 Q. I want to show you State's Exhibit 41.

11:00:46AM 4 Would you tell the jury what this is?

11:00:48AM 5 A. That's the capture of the search I did
11:00:52AM 6 on Facebook. You can see right there that's the
11:00:56AM 7 number that we saw on Mr. Johnson's call log,
11:01:03AM 8 [REDACTED]-9439. That was, again, a call came in from
11:01:05AM 9 that number while at Hardee's with Mr. Green
11:01:12AM 10 standing outside of Hardee's. Inside of Hardee's
11:01:16AM 11 at that time would have been Jonathan Johnson and
11:01:18AM 12 Keith Lee.

11:01:18AM 13 So I put that in the search bar, and
11:01:20AM 14 the only result that you can see right here in the
11:01:23AM 15 results, the only thing that came up was Glizzy
11:01:36AM 16 Gang that matched that phone.

11:01:40AM 17 Q. Showing you State's Exhibit 42. What
11:01:53AM 18 does this picture show?

11:01:55AM 19 A. That's the overall profile. Once you
11:01:58AM 20 click on Glizzy Gang from search results, this is
11:02:03AM 21 what comes up under Facebook profile.

11:02:06AM 22 Q. Showing you State's Exhibit 43. What
11:02:10AM 23 is that?

11:02:10AM 24 A. That's the picture that you click on
11:02:13AM 25 from the Facebook profile. You actually scroll

11:02:16AM 1 down and it shows when this picture was posted and
11:02:19AM 2 it was May 15, 2015.

11:02:22AM 3 Q. Showing you State's Exhibit 44.

11:02:26AM 4 A. And that's an enlarged photo of the
11:02:30AM 5 defendant on his profile for Glizzy Gang.

11:02:31AM 6 Q. Were you able to notice anything about
11:02:34AM 7 Mr. Green in that picture?

11:02:36AM 8 A. Yes.

11:02:36AM 9 Q. What were you able to notice?

11:02:38AM 10 A. Right there it looks like he has gold
11:02:42AM 11 teeth.

11:02:48AM 12 Q. Looking at the phone logs did you find
11:02:51AM 13 any other calls of importance?

11:02:53AM 14 A. Yes.

11:02:54AM 15 Q. Will you tell the jury about the other
11:02:57AM 16 two calls that you found?

11:02:58AM 17 A. So the first call that spurred all this
11:03:01AM 18 from the [REDACTED]-9439, that was at 13:46. I then
11:03:09AM 19 wanted to see what other calls were placed using
11:03:12AM 20 that -- or coming from that number. Earlier in
11:03:15AM 21 that day or that afternoon, I believe it was 3:12
11:03:21AM 22 in the afternoon and 3:18 in the afternoon, there
11:03:24AM 23 were two more calls that were placed to Mr.
11:03:29AM 24 Johnson's phone from [REDACTED]-9439. That's the
11:03:34AM 25 number that is associated with Glizzy Gang.

11:03:38AM 1 The call that was at 3:12 coincides
11:03:44AM 2 with a surveillance still image from the Wells
11:03:48AM 3 Fargo Bank in which Jonathan Johnson is seen on
11:03:51AM 4 surveillance still on the phone.

11:03:55AM 5 Q. I'm showing you State's Exhibit 40. Is
11:04:00AM 6 this the surveillance picture that you were talking
11:04:02AM 7 about?

11:04:03AM 8 A. Yes, it is.

11:04:03AM 9 Q. And the date and time stamp is what?

11:04:06AM 10 A. 4/14/2015, and the time is 3:12:43.

11:04:11AM 11 Q. So in this picture, he's on the phone
11:04:15AM 12 on a call with that number you identified with
11:04:17AM 13 Mr. Green?

11:04:18AM 14 A. Correct. The number that called Mr.
11:04:22AM 15 Johnson, the [REDACTED]-9439, the call was placed at
11:04:30AM 16 3:12:00 seconds.

11:04:30AM 17 Q. Do you know how long -- please,
11:04:33AM 18 continue.

11:04:33AM 19 A. The call was 57 seconds long which
11:04:38AM 20 would definitely put Mr. Johnson on the phone with
11:04:40AM 21 that [REDACTED]-9439 during the time this was
11:04:46AM 22 captured.

11:04:46AM 23 Q. And the call at 3:18, there's not a
11:04:51AM 24 picture of the date stamp on that one, is there?

11:04:54AM 25 A. No, there is not.

11:04:54AM 1 Q. Were you able to determine whether that
11:05:10AM 2 Facebook page belonged to Mr. Green?

11:05:15AM 3 A. Yes.

11:05:16AM 4 Q. How were you able to do that?

11:05:20AM 5 A. From jail calls that were under
11:05:25AM 6 Mr. Green's inmate number, there was a call that
11:05:29AM 7 was placed from Mr. Green to an unknown individual
11:05:34AM 8 on 4/28/2017.

11:05:39AM 9 That call -- during that call he tells
11:05:42AM 10 the person on the other end of the line, to look me
11:05:45AM 11 up on Facebook, and that his Facebook name is
11:05:49AM 12 Glizzy Gang. And he actually spelled it out to
11:05:53AM 13 him.

11:05:53AM 14 Q. Okay.

11:05:55AM 15 A. He also says that his name is not on
11:05:59AM 16 the Facebook page, but it is Glizzy Gang.

11:06:03AM 17 Q. And then showing you again state's 12.
11:06:08AM 18 The time stamp on that is 15:46:12. Do you
11:06:12AM 19 remember whether that was a missed call or incoming
11:06:15AM 20 call?

11:06:16AM 21 A. It was a missed call.

11:06:17AM 22 Q. And do you know the exact minute, time,
11:06:20AM 23 and second of that missed call on the call log? If
11:06:24AM 24 you need --

11:06:25AM 25 A. I would have to see the report to get

11:06:27AM 1 the seconds. I know it was 3.46, but -- it's the
11:06:35AM 2 exact same time; 3:46:12 from the call log, 3:46:12
11:06:43AM 3 on the still image.

11:06:44AM 4 Q. From the missed call from the phone
11:06:47AM 5 associated with Mr. Green to the phone associated
11:06:47AM 6 with Mr. Johnson?

11:06:48AM 7 A. Correct.

11:06:48AM 8 Q. And at that time where is Mr. Johnson?

11:06:50AM 9 A. Inside the Hardee's with the victim,
11:06:53AM 10 Keith Lee.

11:06:54AM 11 Q. And now you testified earlier that you
11:06:57AM 12 worked for 11 years in Mount Pleasant Police
11:07:00AM 13 Department; is that correct?

11:07:00AM 14 A. Yes.

11:07:00AM 15 Q. Do you have experience with that
11:07:03AM 16 Hardee's location?

11:07:04AM 17 A. I do, yes.

11:07:05AM 18 Q. Would you help orient the jury to where
11:07:10AM 19 exactly Mr. Green and the other individual are in
11:07:12AM 20 relation to Hardee's in this picture?

11:07:14AM 21 A. Okay.

11:07:17AM 22 Q. And if it helps, I can show you State's
11:07:25AM 23 5.

11:07:29AM 24 A. Yes. Okay. So up here is Highway 17.
11:07:36AM 25 As you can see, right there is Houston Northcut

11:07:39AM 1 Boulevard, and right here is the frontage road. So
11:07:43AM 2 the vehicle, the PT Cruiser, is around this area.
11:07:47AM 3 And at 3:46:12, Mr. Green is seen right here
11:07:53AM 4 (Indicating) and the other unknown individual is in
11:07:57AM 5 this area here, walking. They were walking past
11:08:00AM 6 the front entrance, which is right there.

11:08:03AM 7 (Indicating)

11:08:03AM 8 Q. Based on your experience with both law
11:08:07AM 9 enforcement in Mount Pleasant and with
11:08:08AM 10 investigations in our office, what was your
11:08:10AM 11 impression of what they were doing out there in the
11:08:13AM 12 parking lot?

11:08:14AM 13 MR. ARCHER: Objection. I think the
11:08:16AM 14 picture speaks for themselves. It's not for him to
11:08:19AM 15 speculate what they were doing in the parking lot.

11:08:21AM 16 THE COURT: He asked what his
11:08:23AM 17 impressions are. I assume you're asking for what
11:08:26AM 18 his state of mind is --

11:08:27AM 19 MR. COOPER: Yes, sir. His experience
11:08:29AM 20 in law enforcement, kind of understand what is
11:08:31AM 21 going out there --

11:08:32AM 22 THE COURT: I'll overrule the
11:08:34AM 23 objection.

11:08:34AM 24 MR. ARCHER: Excuse me?

11:08:35AM 25 THE COURT: Overrule the objection.

11:08:36AM 1 THE WITNESS: Based on the call log, we
11:08:38AM 2 know that Mr. Green is seen on surveillance video
11:08:44AM 3 13:46 in that area, is calling Mr. Johnson's phone.
11:08:47AM 4 When you walk inside the Hardee's to order, you're
11:08:52AM 5 in this area here, you're at the front desk to
11:08:55AM 6 order, place your order.

11:08:58AM 7 When you're walking in Hardee's, it's
11:09:01AM 8 almost like a box right there. From the doors
11:09:05AM 9 where you're accessing the inside of that Hardee's.
11:09:08AM 10 So where Mr. Green is seen holding the phone at
11:09:13AM 11 3:46, the only one you can get line of sight into
11:09:16AM 12 that store to see what is going on is to be where
11:09:19AM 13 he's at to see that way.

11:09:23AM 14 So he's walking by while calling
11:09:26AM 15 Mr. Johnson on the phone to see what is going on.
11:09:30AM 16 And according to Mr. Lee's statement, there were
11:09:36AM 17 sirens in the area. So Mr. Green was looking to
11:09:41AM 18 see what was going on in the store, to see if
11:09:45AM 19 Mr. Lee told that he needed help.

11:09:48AM 20 Q. Showing you State's 11, is that a
11:09:57AM 21 picture of Mr. Lee at the counter inside the
11:10:01AM 22 Hardee's?

11:10:01AM 23 A. Yes, it is.

11:10:01AM 24 Q. Would you orient the jury now facing
11:10:05AM 25 the counter, where the parking lot and the PT

11:10:11AM 1 Cruiser and the individuals were in relation to
11:10:12AM 2 this picture?

11:10:13AM 3 A. Mr. Green would have been about in this
11:10:16AM 4 area, PT Cruiser would have been back here, because
11:10:21AM 5 this door -- that's that box I was telling you
11:10:24AM 6 about, and that's the sidewalk going around. So in
11:10:29AM 7 order for Mr. Green to be able to see in, he would
11:10:32AM 8 have to be looking that way, which is the way he
11:10:37AM 9 was walking.

11:10:46AM 10 MR. COOPER: Beg the Court's
11:10:47AM 11 indulgence?

11:10:47AM 12 THE COURT: Yes, sir.

11:10:47AM 13 BY MR. COOPER:

11:11:02AM 14 Q. So Mr. Haupt, to clarify, based on the
11:11:06AM 15 three calls that you found on the call log between
11:11:09AM 16 three and four, what is your understanding of the
11:11:10AM 17 parties on each end of the phone call?

11:11:15AM 18 A. Ask that again.

11:11:15AM 19 Q. With the three calls that you
11:11:16AM 20 identified on the call logs, the phone that -- the
11:11:20AM 21 phone that we have the dump, that's been associated
11:11:22AM 22 with Mr. Johnson; is that correct?

11:11:23AM 23 A. Correct.

11:11:24AM 24 Q. And based on what you just testified to
11:11:25AM 25 the jury, is it your understanding that the other

11:11:28AM 1 phone belongs to Mr. Green?

11:11:31AM 2 A. Correct.

11:11:31AM 3 Q. And that in all three situations

11:11:34AM 4 Mr. Green is calling Mr. Johnson?

11:11:35AM 5 A. Yes.

11:11:36AM 6 Q. Even though the two are missed calls?

11:11:39AM 7 A. Yes.

11:11:39AM 8 Q. But the one with the Wells Fargo

11:11:42AM 9 screenshot, that is an actual conversation where

11:11:44AM 10 Mr. Johnson is seen on the phone with Mr. Green?

11:11:46AM 11 A. Yes.

11:11:46AM 12 Q. And the last thing, based on your

11:11:49AM 13 experience with law enforcement and as an

11:11:51AM 14 investigator in our office, when individuals are

11:11:53AM 15 arrested and booked at the jail, would the jail

11:11:57AM 16 typically remove things like jewelry or gold teeth

11:12:00AM 17 or things like that?

11:12:01AM 18 A. Yes.

11:12:01AM 19 Q. Why would they do that?

11:12:02AM 20 A. Well, it's considered contraband in the

11:12:06AM 21 jail. Anytime you book someone in and -- in my

11:12:11AM 22 past experience when I have booked someone into the

11:12:13AM 23 jail, the jail will remove anything that is

11:12:16AM 24 removable from you. So if it's not a permanent

11:12:20AM 25 fixture to your body, they have to remove it. That

11:12:23AM 1 is part of the policy. So -- and I've seen it
11:12:27AM 2 before, a grill, or gold teeth, that are not
11:12:30AM 3 attached to your body that can be removed, will be
11:12:32AM 4 removed.

11:12:34AM 5 MR. COOPER: Mr. Haupt, I appreciate
11:12:35AM 6 your time. I have no further questions for you.
11:12:37AM 7 Please answer any that Mr. Archer has for you.

11:12:41AM 8 THE COURT: Mr. Archer, your witness.

11:12:42AM 9 MR. ARCHER: Thank you.

11:12:42AM 10 CROSS-EXAMINATION

11:12:42AM 11 BY MR. ARCHER:

11:12:48AM 12 Q. Did you check the jail to see what
11:12:50AM 13 property had been taken from Mr. Green?

11:12:52AM 14 A. No, I did not.

11:12:54AM 15 Q. So you can't say that there were gold
11:12:57AM 16 teeth taken from him at the jail?

11:13:00AM 17 A. No, I cannot.

11:13:01AM 18 Q. Okay. Do you have any information that
11:13:08AM 19 would tend to show that gold teeth were taken from
11:13:14AM 20 him at the jail?

11:13:15AM 21 A. No. I mean, if it was something that
11:13:18AM 22 he was wearing beforehand and removed it and he
11:13:21AM 23 didn't have it on him, it would not be taken from
11:13:24AM 24 him.

11:13:24AM 25 Q. Okay. Now, this is the picture that

11:13:36AM 1 you were shown, is it not, of supposedly Tappia
11:13:41AM 2 Green walking towards the Hardee's, right?

11:13:48AM 3 A. He's not walking towards the Hardee's.
11:13:50AM 4 He's walking past it.

11:13:52AM 5 Q. But he hasn't passed the door entrance
11:13:55AM 6 yet, has he?

11:13:55AM 7 A. Yes, he has.

11:13:56AM 8 Q. Where do you see the door?

11:13:59AM 9 A. You can see right here the little
11:14:03AM 10 curving -- I'll remove that, and try to draw it
11:14:07AM 11 better. All right. So that's the curve leading
11:14:12AM 12 into the Hardee's. There is actually another one.
11:14:15AM 13 This plant is blocking it. If you show the
11:14:17AM 14 overheard, you can see that he is past it. You also
11:14:22AM 15 have this individual here who is out in the parking
11:14:27AM 16 lot. He's clearly not walking this way. He's
11:14:30AM 17 walking that way. Just like Mr. Green is not
11:14:32AM 18 walking this way, he's walking this way.

11:14:35AM 19 (Indicating)

11:14:35AM 20 Q. Okay. But where he is -- let's see how
11:14:41AM 21 we can put this -- is really about right here --

11:14:50AM 22 A. No. No.

11:14:51AM 23 Q. -- is it not?

11:14:52AM 24 A. All right. So move your finger for me.
11:14:55AM 25 He's definitely not there.

11:14:57AM 1 Q. Where do you put him?

11:14:58AM 2 A. That's the curving. This thing is kind
11:15:03AM 3 of hard to draw objects. See the manhole cover
11:15:07AM 4 right there? There is a curving right after it.
11:15:11AM 5 It's right there leading in. Right there leading
11:15:14AM 6 in. (Indicating) And then you can see this bush,
11:15:19AM 7 Mr. Green is across from it. That bush is right
11:15:23AM 8 here. Mr. Green is across from it. So he has
11:15:26AM 9 clearly passed the entrance to the Hardee's.

11:15:28AM 10 Q. Well, I beg to differ with you. It
11:15:32AM 11 looks like in this picture he has not reached the
11:15:35AM 12 bush yet.

11:15:35AM 13 A. Okay. Well, you asked me.

11:15:40AM 14 MR. ARCHER: Okay. I have no other
11:15:41AM 15 questions, Your Honor.

11:15:41AM 16 THE COURT: Redirect?

11:15:45AM 17 MR. COOPER: No, Your Honor.

11:15:46AM 18 THE COURT: You may step down. Thank
11:15:49AM 19 you very much.

11:15:50AM 20 MR. COOPER: May the witness be
11:15:52AM 21 excused, Your Honor?

11:15:55AM 22 MR. COOPER: He's the lead investigator

11:15:58AM 23 --

11:15:58AM 24 THE WITNESS: Yes.

11:16:00AM 25 THE COURT: Any objection to his

11:16:03AM 1 leaving if he wishes to do?

11:16:03AM 2 MR. ARCHER: No, Your Honor.

11:16:04AM 3 THE COURT: You may leave if you would
11:16:05AM 4 like to, sir.

11:16:11AM 5 The State may call its next witness.

11:16:12AM 6 MR. COOPER: Your Honor, at this time
11:16:13AM 7 the State would rest.

11:16:14AM 8 THE COURT: Ladies and gentlemen of the
11:16:16AM 9 jury, that completes the presentation of evidence
11:16:18AM 10 from the State. There is some matters I have to
11:16:20AM 11 take up with the lawyers outside of your presence
11:16:23AM 12 when that occurs. So I will ask you to step back
11:16:23AM 13 into your jury room again. You know what my
11:16:30AM 14 instructions are, not to discuss anything about the
11:16:33AM 15 case until you begin your deliberations. You may
11:16:36AM 16 retire to your jury room.

11:16:38AM 17 (Jury out, page 11:12 a.m.)

11:16:42AM 18 THE COURT: All right. Any motions at
11:17:04AM 19 this time?

11:17:04AM 20 MR. ARCHER: Excuse me?

11:17:05AM 21 THE COURT: Are there any motions at
11:17:07AM 22 this time?

11:17:07AM 23 MR. ARCHER: Just to preserve the
11:17:11AM 24 record I move for a directed verdict, Your Honor.

11:17:16AM 25 THE COURT: The motion is noted. I do

11:17:20AM 1 find that there is sufficient evidence on the
11:17:22AM 2 indictment presented to have it go to the jury so
11:17:25AM 3 I'm denying the directed verdict.

11:17:27AM 4 I do want to discuss with your client
11:17:29AM 5 his right to remain silent at this point in time,
11:17:32AM 6 so I will ask that the clerk place the defendant
11:17:36AM 7 under oath. Please place Mr. Green under oath.

11:17:41AM 8 TAPPIA GREEN,
11:17:41AM 9 being first duly sworn, testified as follows:

11:17:41AM 10 EXAMINATION

11:17:41AM 11 BY THE COURT:

11:17:49AM 12 Q. Mr. Green, you can have a seat while I
11:17:50AM 13 discuss this with you.

11:17:53AM 14 Mr. Green, we have reached the stage of
11:17:56AM 15 this trial where you have the right now to present
11:17:59AM 16 your defense. There's some matters that I want to
11:18:02AM 17 go over with you to explain to you certain of your
11:18:06AM 18 constitutional rights.

11:18:07AM 19 I'm going to explain this to you, and
11:18:11AM 20 when I finish I will give you an opportunity to ask
11:18:15AM 21 questions if you wish to do so. You certainly
11:18:17AM 22 would have the right to ask me about what I've told
11:18:19AM 23 you. You also have the right to discuss this
11:18:22AM 24 matter with your lawyer if you would like to do, or
11:18:25AM 25 consult with him about this. So do you understand

11:18:27AM 1 what I'm doing at this time?

11:18:27AM 2 A. Yes, sir.

11:18:29AM 3 Q. All right. Now, as I said, we've

11:18:33AM 4 reached the point where you have a right to present

11:18:36AM 5 your defense and as such you have the right in this

11:18:39AM 6 case to testify if you wish to do so, but you also

11:18:43AM 7 have the right to claim protections given to you by

11:18:47AM 8 the Fifth Amendment to the United States

11:18:50AM 9 Constitution.

11:18:50AM 10 That amendment reads in part that no

11:18:52AM 11 person can be compelled in any criminal case to be

11:18:56AM 12 a witness against himself.

11:18:59AM 13 Now what that's been interpreted to

11:19:02AM 14 mean is that while you have right to testify, you

11:19:05AM 15 also have the right not to testify and no one can

11:19:10AM 16 force you or make you testify in this case.

11:19:13AM 17 I will tell you that the decision as to

11:19:16AM 18 whether or not to testify is left up to you and you

11:19:19AM 19 alone. I will advise you that if you decide to

11:19:23AM 20 testify, your testimony will be subject to the same

11:19:26AM 21 rules that govern any other witness's testimony.

11:19:30AM 22 You would be examined by your lawyers and you'd be

11:19:33AM 23 cross-examined by the State's attorneys.

11:19:36AM 24 At the beginning of the trial we

11:19:38AM 25 discussed whether or not there were any convictions

11:19:40AM 1 on your record that could be used to attack your
11:19:44AM 2 credibility and I have already made a ruling that
11:19:47AM 3 the only conviction the State intended to use
11:19:50AM 4 cannot be used in that fashion.

11:19:52AM 5 But there are other consequences that
11:19:55AM 6 can result from your decision to testify, and so
11:19:58AM 7 you need to be aware of the consequences that can
11:20:03AM 8 be -- that can result and any affects that it may
11:20:11AM 9 have on your case.

11:20:11AM 10 If you decide not to testify, I will
11:20:14AM 11 advise you that I will instruct the jury that the
11:20:17AM 12 fact that you did not testify cannot be discussed
11:20:20AM 13 by them in any manner in reaching a decision in the
11:20:24AM 14 case. In fact, my instructions to the jury would
11:20:27AM 15 be that they cannot even discuss during their
11:20:30AM 16 deliberations the fact that you did not testify and
11:20:33AM 17 there should be absolutely no prejudice to you for
11:20:37AM 18 not having testified in the case.

11:20:40AM 19 Now, the decision as to whether or not
11:20:43AM 20 to testify has to be made freely and voluntarily
11:20:46AM 21 and intelligently by you. That means with
11:20:50AM 22 knowledge of the protections given to you by the
11:20:54AM 23 Fifth Amendment and any consequences that might
11:20:56AM 24 result should you decide to testify. Now the
11:20:59AM 25 decision as to whether or not to testify is

11:21:02AM 1 entirely up to you. So do you understand the

11:21:05AM 2 rights that I have explained to you?

11:21:06AM 3 A. Yes, sir.

11:21:07AM 4 Q. And have you had an opportunity to

11:21:09AM 5 discuss this decision with your lawyer?

11:21:12AM 6 A. Yes, sir.

11:21:12AM 7 Q. Have you had an opportunity to discuss

11:21:15AM 8 the decision with anyone else you feel that you

11:21:17AM 9 need to discuss it with?

11:21:19AM 10 A. No, sir.

11:21:20AM 11 Q. Is there someone you would like to

11:21:22AM 12 discuss it with?

11:21:23AM 13 A. No. I mean, I don't -- no, sir.

11:21:33AM 14 Q. Okay. Do you need to talk with your

11:21:36AM 15 lawyer any further at this time?

11:21:37AM 16 A. Yes, sir.

11:21:39AM 17 THE COURT: All right. We will take a

11:21:40AM 18 short recess and give you an opportunity to consult

11:21:45AM 19 with your lawyer and we'll step back in. If you

11:21:50AM 20 need to step somewhere else into the room there,

11:21:52AM 21 whatever you would like to do, you have a right to

11:21:55AM 22 consult with your lawyer at this time.

11:21:57AM 23 We're in recess for a short period.

11:23:21AM 24 (A recess transpired.)

11:23:21AM 25 THE COURT: Come to order please.

11:23:21AM 1 BY THE COURT:

11:25:56AM 2 Q. Mr. Green, I remind you that you remain
11:25:59AM 3 under oath at this time. Have you had an
11:26:01AM 4 opportunity to discuss your decision with your
11:26:01AM 5 lawyer?

11:26:01AM 6 A. Yes, sir.

11:26:05AM 7 Q. And do you need to talk to him any
11:26:07AM 8 further at this time?

11:26:07AM 9 A. No.

11:26:08AM 10 Q. As to your decision as to whether or
11:26:10AM 11 not to testify, do you intend to testify in this
11:26:13AM 12 case?

11:26:13AM 13 A. Yes, sir.

11:26:14AM 14 Q. Is that yes, sir?

11:26:15AM 15 A. Yes, sir.

11:26:15AM 16 Q. Okay. Very good.

11:26:16AM 17 THE COURT: All right. Any other
11:26:18AM 18 matters from the State before we proceed in the
11:26:21AM 19 case?

11:26:21AM 20 MR. COOPER: I don't believe so, sir.

11:26:23AM 21 THE COURT: Any other matters from the
11:26:26AM 22 defense?

11:26:26AM 23 MR. ARCHER: No other matters.

11:26:28AM 24 THE COURT: Let's bring the jury back.

11:26:30AM 25 (Jury in, 11:23 a.m.)

11:28:03AM 1 THE BAILIFF: Jurors are present.

11:28:04AM 2 THE COURT: The record will reflect

11:28:05AM 3 that the jury has returned to the courtroom.

11:28:07AM 4 When you left the State had completed
11:28:09AM 5 the presentation of its evidence. At this time the
11:28:12AM 6 defense has the right to call witnesses.

11:28:14AM 7 You may call your first witness.

11:28:16AM 8 MR. ARCHER: Yes, sir, Your Honor. I
11:28:17AM 9 call Mr. Jonathan Johnson to the stand.

11:28:21AM 10 He's downstairs.

11:32:26AM 11 JONATHAN JOHNSON,

11:32:26AM 12 being first duly sworn, testified as follows:

11:32:26AM 13 THE CLERK: Please state your full name
11:32:39AM 14 and spell your last.

11:32:39AM 15 THE WITNESS: My name is Jonathan
11:32:47AM 16 Johnson. My last name is J-O-H-N-S-O-N.

11:32:51AM 17 THE COURT: Counselor, your witness.

11:32:51AM 18 DIRECT EXAMINATION

11:32:51AM 19 BY MR. ARCHER:

11:32:54AM 20 Q. Okay. Mr. Johnson, you were at one
11:32:56AM 21 time a defendant in this case, were you not?

11:32:59AM 22 A. Yes, sir. Yes, sir.

11:32:59AM 23 Q. And you have at this point in time
11:33:03AM 24 entered a plea of guilty to certain charges,
11:33:06AM 25 correct?

11:33:07AM 1 A. Yes, sir.

11:33:07AM 2 Q. Related to these --

11:33:09AM 3 A. Yes, sir.

11:33:09AM 4 Q. -- these charges. And you have already
11:33:11AM 5 been sentenced; have you not?

11:33:13AM 6 A. Yes, sir.

11:33:14AM 7 Q. Let me direct your attention to
11:33:21AM 8 April 14, 2015. Tell me how you met up with
11:33:25AM 9 Mr. Lee that day.

11:33:26AM 10 A. Well, I happened to go to the bank to
11:33:30AM 11 cash a check, and I saw him in the parking lot
11:33:33AM 12 sitting in his girlfriend's car. A while back, I
11:33:36AM 13 sold him some drugs, and he owed me some money.
11:33:41AM 14 When I saw him that day he give me a jump for my
11:33:42AM 15 car and I asked him, do you have my money?

11:33:44AM 16 And he said, no, he has to go pick up
11:33:46AM 17 his paycheck from his job's store. I took him to
11:33:47AM 18 pick his paycheck up from his job and he give me my
11:33:47AM 19 money at the check cashing place. Know what I'm
11:33:51AM 20 saying? And then I let him go about his business.
11:33:54AM 21 So after that he go and make up a whole story, he
11:33:57AM 22 got robbed, he got kidnapped.

23 He never got kidnapped or robbed. If
24 you-all look at the video at the bank, you done see
25 he --

1 THE COURT REPORTER: Wait a minute.

2 THE COURT: You need to slow down a
3 little bit.

4 THE WITNESS: My bad. My bad. My bad.

5 THE COURT REPORTER: Go back to the
6 bank, when you were in the bank.

11:34:12AM 7 THE WITNESS: While I was at the bank,
11:34:12AM 8 with the victim.

11:34:12AM 9 THE COURT REPORTER: Yes.

11:34:13AM 10 THE WITNESS: He got in my car after he
11:34:16AM 11 give me a jump. I had taken him to get his
11:34:17AM 12 paycheck because he owed me money for drugs. And
11:34:19AM 13 after that, we went to his job and the check
11:34:23AM 14 cashing place and let I him go about his business.
11:34:23AM 15 Know what I mean?

11:34:26AM 16 There was never no robbery, no gun
11:34:31AM 17 involved or none of that. Nobody had no gun or
11:34:31AM 18 nothing.

11:34:32AM 19 Q. All right. All right. You wrote some
11:34:33AM 20 letters to the prosector about this; did you not?

11:34:33AM 21 A. Yes, sir.

11:34:37AM 22 Q. Okay. Let me show some of them to you.

11:35:35AM 23 (DFT. EXH. 1, Letter, was marked for
11:35:35AM 24 identification.)

11:35:35AM 25 (DFT. EXH. 2, Letter, was marked for

11:35:36AM 1 identification.)

11:35:36AM 2 (DFT. EXH. 3, Letter, was marked for

11:35:36AM 3 identification.)

11:35:36AM 4 BY MR. ARCHER:

11:35:37AM 5 Q. When you first got arrested you told

11:35:40AM 6 the police officers that Tappia was involved in

11:35:43AM 7 this case; did you not?

11:35:43AM 8 A. Uh-huh.

11:35:44AM 9 Q. Why did you do that?

11:35:45AM 10 A. I was under pressure, scared. They was

11:35:48AM 11 telling me I'm getting a whole lot of time. You

11:35:52AM 12 know what I'm saying? I feel like I have an

11:35:54AM 13 innocent person locked up. Do you understand what

11:35:57AM 14 I'm saying?

11:35:58AM 15 Q. Okay. Let me show you what is

11:36:00AM 16 Defendant's Exhibit 1. Do you recognize that?

11:36:03AM 17 A. Yes, sir.

11:36:04AM 18 Q. What is that?

11:36:05AM 19 A. It's a letter to the solicitor.

11:36:08AM 20 Q. And written by whom?

11:36:09AM 21 A. Me.

11:36:10AM 22 Q. By you. Okay. Now, would you read

11:36:18AM 23 starting at the beginning there and read about

11:36:21AM 24 halfway down the page if you could read it?

11:36:23AM 25 MR. COOPER: Can I see the letter

11:36:25AM 1 before we begin?

11:36:26AM 2 THE COURT: Yes, sir.

11:36:26AM 3 BY MR. ARCHER:

11:36:38AM 4 Q. All right.

11:36:38AM 5 A. Go ahead?

11:36:38AM 6 Q. Yes.

11:36:41AM 7 A. My name is Jonathan Johnson and I

11:36:44AM 8 hereby writing this letter on behalf of Tappia

11:36:47AM 9 Green. It's been eating me up alive. I want to

11:36:50AM 10 clear his name of the situation by stating he had

11:36:52AM 11 nothing to do with anything I had gone on -- that

11:36:55AM 12 had gone on that day. I was giving him a ride home

11:36:55AM 13 that day.

11:36:57AM 14 I lied in the past -- in the past

11:37:00AM 15 during the interview with the detectives. They had

11:37:01AM 16 me under pressure. I was also drinking alcohol so

11:37:04AM 17 -- at that time, I wasn't in my clear mind so

11:37:08AM 18 that's why I called Mr. Green's name. Also, I want

11:37:09AM 19 to clear the whole situation up because it has

11:37:12AM 20 gotten out of hand.

11:37:14AM 21 First of all, Keith Lee had owed me

11:37:15AM 22 money. I sold him weed and cocaine on a daily

11:37:18AM 23 basis. He owed me \$150. He told me to meet him at

11:37:22AM 24 the bank because he didn't want his girlfriend to

11:37:25AM 25 find out about his drug habit.

11:37:27AM 1 So that's why I did drove him -- I did
11:37:29AM 2 drove -- drove him to pick up his paycheck, and he
11:37:32AM 3 asked me to -- I can't understand that.

11:37:35AM 4 He asked me -- he was willing to get
11:37:38AM 5 back into my car. I didn't have no gun put in his
11:37:40AM 6 face. I didn't force him or anything. We went to
11:37:43AM 7 his job in Mount Pleasant where my mom works at
11:37:46AM 8 that I know him from. We went in the job together
11:37:48AM 9 and he went to get his paycheck. I went to talk to
11:37:51AM 10 a girl I knew that works there.

11:37:53AM 11 Q. Okay. That's enough. Okay. So did
11:37:59AM 12 anybody point -- did -- to your knowledge, to what
11:38:02AM 13 you saw that day, did anybody point a gun at him?

11:38:06AM 14 A. No.

11:38:06AM 15 Q. You didn't?

11:38:06AM 16 A. No. I didn't have no gun.

11:38:08AM 17 Q. Tappia didn't?

11:38:09AM 18 A. Nobody had no gun.

11:38:09AM 19 Q. No gun in the car?

11:38:09AM 20 A. No.

11:38:14AM 21 Q. Nobody had a gun?

11:38:14AM 22 A. Nobody had a gun.

11:38:15AM 23 Q. All right. When you told him -- when
11:38:18AM 24 did you first say, hey, you owe me money?

11:38:21AM 25 A. Huh?

11:38:22AM 1 Q. That day? When is the first time that
11:38:23AM 2 you said to him, hey, you owe me money?
11:38:25AM 3 A. The victim?
11:38:26AM 4 Q. Yes.
11:38:26AM 5 A. When I saw him at this bank.
11:38:27AM 6 Q. And when you said that, what did he
11:38:30AM 7 say?
11:38:30AM 8 A. He said he didn't have no money on him.
11:38:33AM 9 He has to pick up his paycheck.
11:38:36AM 10 Q. Okay. And that's why you drove him to
11:38:38AM 11 Hardee's?
11:38:38AM 12 A. Uh-huh.
11:38:38AM 13 Q. So he could pick up his paycheck?
11:38:39AM 14 A. He was never forced to no car or
11:38:42AM 15 nothing.
11:38:42AM 16 Q. He never was what?
11:38:43AM 17 A. He never was forced into no car or
11:38:46AM 18 nothing.
11:38:46AM 19 Q. Okay. Now, look at the screen. Is
11:39:13AM 20 this you?
11:39:13AM 21 A. Uh-huh.
11:39:14AM 22 Q. Okay.
11:39:15AM 23 THE COURT: You have to answer yes or
11:39:16AM 24 no.
11:39:17AM 25 THE WITNESS: Yes, sir.

11:39:18AM 1 THE COURT: Thank you.

11:39:18AM 2 BY MR. ARCHER:

11:39:19AM 3 Q. All right. And is this Mr. Lee?

11:39:19AM 4 A. Yes, sir.

11:39:28AM 5 Q. How close are you to Mr. Lee?

11:39:30AM 6 A. I'm by the soda machine and he's like

11:39:34AM 7 close by the desk. We were about to walk in the

11:39:37AM 8 back.

11:39:37AM 9 Q. Uh-huh.

11:39:38AM 10 A. That's where he was at.

11:39:39AM 11 Q. Now, I want to start walking towards

11:39:41AM 12 you and I want you to say stop when I'm about the

11:39:46AM 13 same distance you were from him.

11:39:49AM 14 (Walking)

11:39:49AM 15 A. That's good right there.

11:39:51AM 16 Q. Right here?

11:39:51AM 17 A. Yes, sir.

11:39:52AM 18 Q. So you were at least this far away from

11:39:55AM 19 him at the time?

11:39:55AM 20 A. Yes, sir.

11:39:56AM 21 Q. You were far enough away from him, were

11:40:00AM 22 you not, if he had wanted to say to the lady he was

11:40:03AM 23 dealing with, hey, I'm here at gunpoint, help me,

11:40:08AM 24 he could've done that, right?

11:40:09AM 25 A. Yes, sir.

11:40:09AM 1 Q. Would you have heard --

11:40:11AM 2 A. You said what?

11:40:12AM 3 Q. And he could have done that without you

11:40:16AM 4 even hearing him; could he not?

11:40:18AM 5 A. Yes, sir.

11:40:19AM 6 Q. Now, did you -- how long had you known

11:40:35AM 7 him at the time this happened?

11:40:36AM 8 A. About two months.

11:40:38AM 9 Q. Okay. And you dealt with him how often

11:40:40AM 10 during that time?

11:40:41AM 11 A. Couple of times. He knew my mother.

11:40:45AM 12 He be taking my mom back and forth to work and

11:40:49AM 13 home, you know. She didn't have no transportation.

11:40:50AM 14 Q. But you knew him specifically?

11:40:52AM 15 A. Yes, sir.

11:40:52AM 16 Q. You know him by name?

11:40:54AM 17 A. Keith?

11:40:55AM 18 Q. Yes.

11:40:57AM 19 A. Keith.

11:40:57AM 20 Q. Okay. All right. I want to show you

11:41:14AM 21 number 2, Defendant's Exhibit Number 2. Can you

11:41:20AM 22 tell me what that is?

11:41:24AM 23 A. It's another letter.

11:41:27AM 24 Q. Okay. And what does it say?

11:41:30AM 25 A. You want me to read it?

11:41:31AM 1 Q. Yeah.

11:41:32AM 2 A. I am writing you once again to clear
11:41:35AM 3 things up. Mr. Green had nothing to do with this
11:41:38AM 4 situation I had anything going on that day.

11:41:41AM 5 Q. Okay.

11:41:42AM 6 A. Go ahead.

11:41:43AM 7 Q. Go ahead.

11:41:43AM 8 A. There was never no robbery or
11:41:46AM 9 kidnapping. Keith Lee made the whole story up. He
11:41:49AM 10 thinks it's funny he got me and Mr. Green locked up
11:41:52AM 11 for no reason in a crime that didn't -- that never
11:41:54AM 12 happened if he wouldn't got -- if Keith Lee
11:41:59AM 13 wouldn't even have got in my car.

11:42:01AM 14 I never forced him to do anything that
11:42:03AM 15 day. Mr. Green didn't have a gun or nothing and
11:42:06AM 16 his daddy didn't have no gun. Keith owed me money
11:42:08AM 17 and he called me to come and pick him up. There
11:42:11AM 18 was never no robbery. We went -- we went to
11:42:14AM 19 several places in public together. He could have
11:42:17AM 20 called for help if he feels he was under -- hold
11:42:17AM 21 up.

11:42:21AM 22 If he feel -- he could have called for
11:42:23AM 23 help while in his job the whole time. The check
11:42:27AM 24 cashing -- and also the check cashing place where
11:42:29AM 25 he had -- he could have called for help also too.

11:42:31AM 1 And why would he come back to the car if he knows
11:42:35AM 2 that people have so-called loaded guns in the car
11:42:38AM 3 and come back into the car? You know what I'm
11:42:41AM 4 saying?

11:42:43AM 5 Q. Okay. All right. That's enough. Let
11:42:45AM 6 me show you one more letter. And this letter was
11:42:49AM 7 to who?

11:42:49AM 8 A. The solicitor.

11:42:50AM 9 Q. Solicitor. Let me show you what's been
11:42:54AM 10 marked as Defendant's Exhibit 3.

11:42:56AM 11 MR. COOPER: Your Honor, may we
11:42:58AM 12 approach?

11:42:59AM 13 THE COURT: Yes, you may.

11:42:59AM 14 (Bench conference.)

11:42:59AM 15 BY MR. ARCHER:

11:43:48AM 16 Q. This letter that I just handed you.
11:43:50AM 17 That's to a Megan Ehrlich, is that correct?

11:43:50AM 18 A. That's my lawyer.

11:43:50AM 19 Q. She was your lawyer. She wasn't the
11:43:50AM 20 solicitor, she was your lawyer.

11:43:57AM 21 A. Only these two first letters were to
11:43:59AM 22 the solicitor.

11:44:00AM 23 Q. Okay. And number 3 was to your lawyer?

11:44:03AM 24 A. Uh-huh.

11:44:03AM 25 Q. What does the one to your lawyer say?

11:44:07AM 1 A. I want to say that Mr. Green didn't had
11:44:09AM 2 nothing to do with nothing in my case. I was
11:44:11AM 3 giving him a ride. He didn't know what was going
11:44:14AM 4 on and I didn't know --

11:44:14AM 5 THE COURT: Sir, you have to sit up.
11:44:16AM 6 If you can hold that up -- I'm not sure, I'm having
11:44:20AM 7 trouble hearing you if you're talking into the
11:44:22AM 8 table.

11:44:22AM 9 THE WITNESS: I want to say that
11:44:24AM 10 Mr. Green had nothing to do with nothing in my
11:44:26AM 11 case. I was giving him a ride and he didn't know
11:44:28AM 12 what was going on, and I don't know why the
11:44:31AM 13 detectives would be talking to him. I was under
11:44:34AM 14 peer pressure. That's why I just called any name
11:44:36AM 15 out. I was scared for my life.

11:44:37AM 16 Also, I was under the influence of
11:44:38AM 17 alcohol when I got interviewed by the Detective
11:44:40AM 18 Riedel. I don't know what happened and I want to
11:44:42AM 19 -- I want to let you know that Mr. Green didn't
11:44:44AM 20 have nothing to do with this.

11:44:44AM 21 BY MR. ARCHER:

11:44:48AM 22 Q. Okay. So you wrote three letters, two
11:44:53AM 23 to the prosecutor?

11:44:53AM 24 A. Yes, sir.

11:44:54AM 25 Q. And one to your lawyer?

11:44:55AM 1 A. Yes, sir.

11:44:55AM 2 Q. All of which you said Mr. Green didn't

11:44:58AM 3 have anything to do with --

11:44:59AM 4 A. Yes, sir.

11:44:59AM 5 Q. All right. Is that true?

11:45:01AM 6 A. Positive.

11:45:02AM 7 Q. Huh?

11:45:02AM 8 A. That's true.

11:45:03AM 9 Q. Okay. Now, if there was no -- you pled

11:45:09AM 10 -- you entered a plea of guilty to this, right?

11:45:11AM 11 A. Yes, sir.

11:45:11AM 12 Q. If you didn't -- if there was no

11:45:13AM 13 robbery, why did you enter a plea of guilt?

11:45:16AM 14 A. Because I feel if I pleaded guilty --

11:45:18AM 15 and they were telling me I was going to get a lot

11:45:22AM 16 of time. I feel if I plead guilty --

11:45:25AM 17 MR. COOPER: Your Honor, objection.

11:45:27AM 18 May we approach?

11:45:28AM 19 THE COURT: You may.

11:45:28AM 20 (Bench conference)

11:45:30AM 21 THE COURT: Ladies and gentlemen this

11:45:48AM 22 is a matter that I'm going to take up with the

11:45:51AM 23 attorneys outside of your hearing. So I'm going to

11:45:54AM 24 ask you to step back into your jury room while I do

11:45:56AM 25 that. Don't discuss anything about the case.

11:46:00AM 1 (Jury out, 11:41 a.m.)

11:46:28AM 2 THE COURT: All right. You may put it
11:46:29AM 3 on the record, Mr. Cooper.

11:46:31AM 4 MR. COOPER: Your Honor, my concern is
11:46:32AM 5 that just out of an abundance of caution, that --
11:46:35AM 6 with the questions Mr. Archer is asking and the
11:46:38AM 7 speed to which Mr. Johnson is asking (sic) I don't
11:46:40AM 8 want him to elicit testimony that discusses the
11:46:42AM 9 sentence or any of the three charges that he pled
11:46:45AM 10 to.

11:46:46AM 11 And the reason, one, sentencing is not
11:46:48AM 12 for the purview of the jury, but since Mr. Johnson
11:46:49AM 13 pled guilty to the same three charges which
11:46:51AM 14 Mr. Green is charged with, I don't want the jury to
11:46:53AM 15 get that understanding of what the sentence is and
11:46:56AM 16 potentially have a verdict come out one way or the
11:47:00AM 17 other with Mr. Green based on their understanding
11:47:02AM 18 of what the sentence may be.

11:47:04AM 19 MR. ARCHER: I would say this, Judge.
11:47:05AM 20 I can hold off at this point, but if he
11:47:08AM 21 cross-examines him on why did he plead guilty, I
11:47:11AM 22 think he's opening the door for me to ask him about
11:47:14AM 23 what we're looking at.

11:47:17AM 24 THE COURT: I wouldn't go that far
11:47:19AM 25 because I think he can ask him why he pled guilty.

11:47:23AM 1 Now, sentencing though is not a matter for the jury
11:47:26AM 2 to consider, and it's not something that should be
11:47:30AM 3 placed in front of them.

11:47:32AM 4 So I will caution this witness that you
11:47:34AM 5 should not put on the record the sentence you
11:47:38AM 6 received or even the potential penalty that you
11:47:42AM 7 were exposed to. I realize that sentencing was a
11:47:44AM 8 consideration.

11:47:46AM 9 That's all you can say, sentencing was
11:47:48AM 10 a consideration. Not talk about the years you've
11:47:51AM 11 got -- I don't know what you got. It doesn't
11:47:53AM 12 matter. That's not something for the jury to
11:47:55AM 13 consider.

11:47:57AM 14 But you can say that the sentencing was
11:47:59AM 15 a consideration that you did go over when you
11:48:03AM 16 entered the plea.

11:48:04AM 17 THE WITNESS: Yes, sir.

11:48:05AM 18 THE COURT: Do you understand what I'm
11:48:06AM 19 saying?

11:48:06AM 20 THE WITNESS: Yes, sir.

11:48:07AM 21 THE COURT: So I'm instructing you not
11:48:08AM 22 to discuss the potential sentence you're facing or
11:48:12AM 23 the sentence that you got in the plea.

11:48:16AM 24 THE WITNESS: Can I say I took it into
11:48:17AM 25 consideration, that's why I pleaded guilty?

11:48:20AM 1 THE COURT: Well, you can say one of
11:48:21AM 2 the factors I considered was sentencing --

11:48:23AM 3 THE WITNESS: Right.

11:48:23AM 4 THE COURT: -- which it was, without
11:48:25AM 5 mentioning how many years you were exposed to or
11:48:28AM 6 how many years you got.

11:48:30AM 7 THE WITNESS: Yes, sir.

11:48:31AM 8 THE COURT: Because this jury is not
11:48:32AM 9 supposed to consider the length of any sentences,
11:48:35AM 10 potential sentences. They're deciding whether or
11:48:39AM 11 not this defendant is guilty or innocent of the
11:48:41AM 12 crime. That's all they're deciding. They
11:48:44AM 13 shouldn't be influenced by how much time he might
11:48:48AM 14 get or how much time you got. That's not an issue
11:48:51AM 15 as to whether he's guilty or not.

11:48:53AM 16 THE WITNESS: Yes, sir.

11:48:53AM 17 THE COURT: Do you follow me?

11:48:55AM 18 THE WITNESS: Yes, sir.

11:48:55AM 19 THE COURT: Okay. That's the reason
11:48:56AM 20 for my instruction.

11:48:57AM 21 MR. ARCHER: I would like to ask him
11:48:58AM 22 without referring to any specific sentence, as a
11:49:01AM 23 result of your plea, did you get a lot less than
11:49:04AM 24 what you could have got?

11:49:06AM 25 MR. COOPER: That's not even factual,

11:49:08AM 1 Judge. It's not even --

11:49:09AM 2 MR. ARCHER: It is.

11:49:10AM 3 THE COURT: Well, I don't know the
11:49:14AM 4 factors that went into what he got and how he got
11:49:16AM 5 it. If you do that, you're opening the door. And
11:49:20AM 6 then the State has to explore as to whether or not
11:49:21AM 7 he has a long record or doesn't have a long record,
11:49:24AM 8 whether this gentleman has a long record or not,
11:49:26AM 9 whether there's some other aggravating
11:49:28AM 10 circumstances that the judge considered. Do you
11:49:31AM 11 follow me?

11:49:31AM 12 MR. ARCHER: All right. All right.

11:49:32AM 13 THE COURT: So I'm not opening that
11:49:33AM 14 door.

11:49:33AM 15 MR. ARCHER: Okay.

11:49:34AM 16 THE COURT: And I'm not going to let
11:49:35AM 17 you open it. Okay. Let's don't get into what
11:49:40AM 18 factors may have entered into -- I don't know if he
11:49:41AM 19 pled straight up. I don't know if he pled
11:49:45AM 20 negotiated. I don't know what the circumstances
11:49:46AM 21 were under his plea, so I'm not going to go into
11:49:49AM 22 that. That's not an issue for us to decide.

11:49:53AM 23 He can state that he considered the
11:49:57AM 24 sentencing factors in making his decision. That's
11:49:59AM 25 as far as we go. We don't talk about anything

11:50:02AM 1 about what he was offered, what he negotiated.

11:50:04AM 2 Again, that's -- we start trying a whole other case

11:50:06AM 3 if we do that.

11:50:07AM 4 Okay. And we're not going to go there.

11:50:07AM 5 MR. COOPER: Thank you, Judge.

11:50:11AM 6 THE COURT: All right. Thank you.

11:50:16AM 7 Try to slow down just a little bit now

11:50:18AM 8 if you want to be heard. I'm having a hard time

11:50:22AM 9 keeping up with you. This lady tells me she's

11:50:24AM 10 having a hard time keeping up with you. So we're

11:50:24AM 11 not making that up.

11:50:27AM 12 THE WITNESS: I just --

11:50:28AM 13 THE COURT: I know you're nervous and

11:50:30AM 14 excited, but if you want to be heard, slow down a

11:50:33AM 15 little bit.

11:50:33AM 16 THE WITNESS: Yes, sir.

11:50:34AM 17 THE COURT: And speak into the

11:50:35AM 18 microphone more. When you talk into the table, I

11:50:39AM 19 couldn't hear you over here. And I noticed that

11:50:40AM 20 juror in the back corner was looking at me like she

11:50:45AM 21 couldn't hear a thing you were saying. That's the

11:50:46AM 22 reason I said what I said.

11:50:47AM 23 THE WITNESS: Yes, sir.

11:50:47AM 24 THE COURT REPORTER: Thank you, Judge.

11:50:51AM 25 THE COURT: Let's bring the jury back.

11:50:51AM 1 I will go until about 12:30, then we're going to
11:50:55AM 2 break for lunch.

11:50:55AM 3 MR. ARCHER: I would like to break
11:50:56AM 4 after this witness.

11:50:57AM 5 THE COURT: I'm just -- for your
11:50:59AM 6 planning, that's where we are.

11:50:59AM 7 MR. ARCHER: Okay.

11:51:20AM 8 (Jury in 11:47 a.m.)

11:52:27AM 9 THE BAILIFF: Jurors are all present.

11:52:29AM 10 THE COURT: Thank you. You may proceed
11:52:31AM 11 pursuant to my instructions.

11:52:33AM 12 MR. ARCHER: Yes, sir.

11:52:33AM 13 BY MR. ARCHER:

11:52:34AM 14 Q. I'm showing you Exhibit Number 1. I
11:52:36AM 15 would like you to start right here, the whole time.
11:52:48AM 16 Can you see where I'm talking about, starting
11:52:50AM 17 there?

11:52:55AM 18 A. The whole time we was in the car, he
11:52:58AM 19 begged me not to tell his manager, which is my mom,
11:53:02AM 20 about him owing me money or his drug use. He
11:53:05AM 21 didn't want to get fired. So I said, okay. He was
11:53:10AM 22 never tied up. If he was so-called getting robbed,
11:53:13AM 23 why didn't he call for help the whole time he was
11:53:16AM 24 in his job? Why would he come back to the car with
11:53:20AM 25 the guns -- with the guys with the so-called loaded

11:53:22AM 1 guns. He was already in a public place. He could
11:53:24AM 2 have called for help. Why didn't he if he was
11:53:27AM 3 getting robbed?

11:53:27AM 4 I drove him to the check cashing place.
11:53:30AM 5 He paid me my money, then he bought more weed from
11:53:30AM 6 me.

11:53:30AM 7 I can't read --

11:53:37AM 8 Q. You can't read the rest of it?

11:53:39AM 9 A. It's written right there. The word
11:53:43AM 10 is --

11:53:43AM 11 Q. That's okay. You read it.

11:53:54AM 12 Oh you have the other one. Let me have
11:53:55AM 13 that one.

11:53:59AM 14 Now, was he ever tied up with neck
11:53:59AM 15 ties?

11:54:05AM 16 A. No, sir. No, sir.

11:54:05AM 17 Q. Did you have neck ties in the car?

11:54:08AM 18 A. No, sir. No, sir.

11:54:08AM 19 Q. Whose -- that wasn't your car, was it?

11:54:13AM 20 A. My girlfriend's car.

11:54:15AM 21 Q. Girlfriend's car. She doesn't wear
11:54:18AM 22 ties, does she?

11:54:18AM 23 A. Huh-uh.

11:54:20AM 24 Q. Do you wear ties?

11:54:22AM 25 A. No, sir.

11:54:22AM 1 Q. Now, Mr. Lee testified that on the way
11:54:30AM 2 from North Charleston to Hardee's you fired a gun
11:54:35AM 3 out of the window of the car.

11:54:39AM 4 A. Like I told you, there was never no gun
11:54:42AM 5 involved. There was no gun at all.

11:54:44AM 6 Q. Okay. All right. So that's not true?

11:54:47AM 7 A. No, sir.

11:54:48AM 8 Q. Okay. What -- what was Mr. Green's
11:55:00AM 9 state of intoxication that day?

11:55:02AM 10 A. Yeah, he had alcohol, like drunk. You
11:55:06AM 11 know what I mean?

11:55:07AM 12 Q. Drunk?

11:55:07AM 13 A. He was drunk.

11:55:08AM 14 Q. Real drunk or a little drunk?

11:55:10AM 15 A. He been drunk, like he messed up.

11:55:13AM 16 Q. Okay. Was he getting in and out of the
11:55:17AM 17 car a bunch?

11:55:17AM 18 A. No, not really.

11:55:19AM 19 Q. Not really? Okay.

11:55:22AM 20 MR. ARCHER: All right. I have no
11:55:25AM 21 other questions at this time.

11:55:28AM 22 THE COURT: State may cross-examine.

11:55:30AM 23 MR. COOPER: Thank you, Judge.

11:55:30AM 24 CROSS-EXAMINATION

11:55:30AM 25 BY MR. COOPER:

11:55:42AM 1 Q. Mr. Johnson, good morning. It's still
11:55:45AM 2 morning. How are you?
11:55:46AM 3 A. Fine.
11:55:47AM 4 Q. How old are you?
11:55:48AM 5 A. 22.
11:55:49AM 6 Q. Where are you from?
11:55:51AM 7 A. Downtown.
11:55:52AM 8 Q. Downtown Charleston?
11:55:53AM 9 A. Yes, sir.
11:55:53AM 10 Q. Where about?
11:55:55AM 11 A. Around Romney Street.
11:55:58AM 12 Q. And your mom, where does she work?
11:56:01AM 13 A. Hardee's in Mount Pleasant.
11:56:03AM 14 Q. Did you ever work over there with her?
11:56:05AM 15 A. No, sir.
11:56:06AM 16 Q. So as I understand your testimony to
11:56:18AM 17 Mr. Archer now, Keith Lee owed you money?
11:56:23AM 18 A. Yes, sir.
11:56:23AM 19 Q. You had sold drugs to him in the past?
11:56:27AM 20 A. Yes, sir.
11:56:28AM 21 Q. And you saw him at the bank and thought
11:56:31AM 22 you would collect?
11:56:31AM 23 A. Huh?
11:56:32AM 24 Q. You saw him at the bank and thought you
11:56:35AM 25 could collect your money?

11:56:36AM 1 A. Yeah. I thought he had it.

11:56:37AM 2 Q. Is that what he told you?

11:56:39AM 3 A. No. He was looking for his girlfriend

11:56:42AM 4 to come out of the bank.

11:56:44AM 5 Q. Didn't you testify that he told you to

11:56:47AM 6 meet him at the bank so his girlfriend wouldn't

11:56:47AM 7 know?

11:56:48AM 8 A. Yes, sir.

11:56:48AM 9 Q. How did he tell you that?

11:56:50AM 10 A. Like I had his, like, phone number.

11:56:53AM 11 You know what I mean?

11:56:54AM 12 Q. So he would called or texted you?

11:56:57AM 13 A. Yeah; when he wanted drugs.

11:56:59AM 14 Q. Okay. Good thing I have the phone docs

11:57:05AM 15 here. I want you to take a look at it for me.

11:57:10AM 16 Your phone number, [REDACTED]-0206.

11:57:14AM 17 A. Uh-huh.

11:57:15AM 18 Q. Right? When did you talk to Keith

11:57:19AM 19 about meeting him at the bank for the drugs?

11:57:20AM 20 A. Earlier that day.

11:57:21AM 21 Q. Earlier. So on the 14th, the same day.

11:57:25AM 22 What was his phone number?

11:57:25AM 23 A. He called me private.

11:57:26AM 24 Q. Okay. So you didn't have him as a

11:57:29AM 25 contact?

11:57:30AM 1 A. No. I didn't give people the number I
11:57:34AM 2 sell drugs to.

11:57:36AM 3 Q. Okay. And when did he call you?

11:57:38AM 4 A. That was around, I think, 12 that
11:58:05AM 5 morning.

11:58:06AM 6 Q. I'm going to hand you -- are you going
11:58:09AM 7 to be able --

11:58:10AM 8 MR. COOPER: May I give this to the
11:58:11AM 9 witness, Your Honor?

11:58:12AM 10 THE COURT: Yes, sir.

11:58:12AM 11 BY MR. COOPER:

11:58:17AM 12 Q. So this first page is going to be from
11:58:22AM 13 April 14th at 1:45 in the morning, all the way to
11:58:27AM 14 12:27 in the afternoon. All right? And it goes
11:58:30AM 15 from 1:00 a.m. up to 12 noon.

11:58:33AM 16 You said no number.

11:58:35AM 17 A. No.

11:58:36AM 18 Q. Show me on there where you have one
11:58:37AM 19 phone call from a private, blocked, no number,
11:58:42AM 20 something like that.

11:58:42AM 21 A. I don't think it's going to show.

11:58:45AM 22 Q. Why wouldn't it show?

11:58:47AM 23 A. I don't know. I know like the regular
11:58:50AM 24 numbers that call me show. You know what I mean?

11:58:53AM 25 Q. So those calls just -- let's see.

11:58:57AM 1 Well, here, I'm showing you your phone records.
11:59:01AM 2 There is a call at 9:13 p.m. afterwards. And it
11:59:05AM 3 says, no number, right?
11:59:06AM 4 A. Yes, sir.
11:59:07AM 5 Q. Okay. So if Mr. Lee called you from --
11:59:09AM 6 as you testified and told this jury that he called
11:59:12AM 7 you from a private number, show me where on there
11:59:15AM 8 that you got a call from a private number that
11:59:18AM 9 morning or before the incident to let you know he
11:59:21AM 10 was there?
11:59:22AM 11 A. I don't guess it received. You know?
11:59:27AM 12 Q. It's not there? Because he didn't call
11:59:28AM 13 you, right?
11:59:29AM 14 A. He called me, but it's not showing.
11:59:32AM 15 Q. That's the one call on a 300, or
11:59:35AM 16 400-page phone dump that is just miraculously
11:59:37AM 17 missing? Is that what you want the jury to
11:59:40AM 18 believe?
11:59:40AM 19 A. Yes.
11:59:41AM 20 Q. So you said in the call that we can't
11:59:44AM 21 find, that Keith wanted you to meet him at the bank
11:59:46AM 22 so his girlfriend wouldn't know about the drugs?
11:59:49AM 23 A. Yeah. I didn't know she was coming to
11:59:52AM 24 the bank with him.
11:59:52AM 25 Q. Well, that doesn't make sense then.

11:59:53AM 1 A. How you mean?

11:59:54AM 2 Q. If he doesn't want his girlfriend to

11:59:57AM 3 not know what's going on, why would he tell you to

11:59:58AM 4 meet you somewhere where his girlfriend is going to

12:00:00PM 5 be? You saw her in the bank, didn't you?

12:00:02PM 6 A. She ain't got to know what's going on.

12:00:04PM 7 Q. You saw Karissa in the bank that day --

12:00:06PM 8 A. I didn't know how she looked.

12:00:09PM 9 Q. Okay. Are you aware that she saw you

12:00:12PM 10 in the bank that day?

12:00:12PM 11 A. If she knew that I was in the bank.

12:00:16PM 12 Q. So what happened after you came out of

12:00:20PM 13 the bank? I just have to keep your story straight.

12:00:22PM 14 What happened when you came out of the bank?

12:00:22PM 15 A. He gave me a jump.

12:00:24PM 16 Q. Did you ask him for the jump?

12:00:26PM 17 A. Yeah.

12:00:26PM 18 Q. Did you use your cables or his cables?

12:00:28PM 19 A. My cables.

12:00:29PM 20 Q. Where were the cables in the car?

12:00:29PM 21 A. In the back, in the trunk.

12:00:31PM 22 Q. Okay.

12:00:31PM 23 A. It was a P. T. Cruiser it doesn't have

12:00:37PM 24 no trunk like. You know?

12:00:37PM 25 Q. And that was your girlfriend's car?

12:00:39PM 1 A. Yes, sir.

12:00:39PM 2 Q. Jasmine?

12:00:40PM 3 A. Uh-huh.

12:00:41PM 4 Q. And she was working during that time?

12:00:42PM 5 A. Yes, sir.

12:00:42PM 6 Q. Does she have a kid?

12:00:44PM 7 A. She has a daughter.

12:00:45PM 8 Q. Is it your daughter too?

12:00:46PM 9 A. No, sir.

12:00:47PM 10 Q. How old is the daughter?

12:00:48PM 11 A. She's four.

12:00:49PM 12 Q. Where was she at the time of all this?

12:00:51PM 13 A. She was with my mother.

12:00:52PM 14 Q. You-all just dropped her off to your

12:00:56PM 15 mother?

12:00:56PM 16 A. Early that morning before she went to

12:00:58PM 17 work.

12:00:58PM 18 Q. Where does Jasmine work?

12:01:01PM 19 A. Kmart on Otranto and at King's.

12:01:06PM 20 Q. When did she get off; do you remember?

12:01:07PM 21 A. She get off around 4 or 5.

12:01:09PM 22 Q. So after this whole --

12:01:11PM 23 A. Yeah.

12:01:11PM 24 Q. And would you-all have gone to pick up

12:01:13PM 25 the girl then?

12:01:14PM 1 A. Yes.

12:01:14PM 2 Q. Would that be why there wouldn't be a

12:01:17PM 3 car seat in the car at the time of the incident?

12:01:19PM 4 A. There was a car seat.

12:01:21PM 5 Q. Well, where did the third guy sit?

12:01:24PM 6 A. In the back seat.

12:01:26PM 7 Q. Showing you State's 22. That car seat

12:01:38PM 8 wasn't in there when you were running around to

12:01:41PM 9 Hardee's and Wells Fargo, was it?

12:01:42PM 10 A. Yeah, it was in there the whole time.

12:01:42PM 11 Q. How did you get four people in the car?

12:01:45PM 12 A. There wasn't no four people.

12:01:47PM 13 Q. Who's the third -- who is the person --

12:01:49PM 14 let's do this one at a time. I'm showing you

12:02:17PM 15 State's 13 -- actually, showing you State's 12. So

12:02:24PM 16 you have Mr. Green in the black. Who is the guy in

12:02:27PM 17 the white?

12:02:28PM 18 A. Mr. Green never had no black shirt.

12:02:28PM 19 Q. What was he wearing?

12:02:32PM 20 A. He had on a white shirt.

12:02:33PM 21 Q. So you're saying the guy in the white

12:02:35PM 22 shirt is Mr. Green?

12:02:36PM 23 A. (Nodding head)

12:02:37PM 24 Q. You have to answer. You have to see

12:02:39PM 25 yes or no.

12:02:40PM 1 A. I mean, yeah.

12:02:42PM 2 Q. So you don't know?

12:02:43PM 3 A. No.

12:02:44PM 4 Q. Okay. You don't know what shirt or who

12:02:49PM 5 it is. Okay.

12:02:53PM 6 So you say you talked to him at the

12:02:56PM 7 Wells Fargo, he owes you drugs and --

12:02:59PM 8 A. He owed me money.

12:03:00PM 9 Q. He owed you money, sorry. Who came up

12:03:03PM 10 with the idea about getting a check?

12:03:05PM 11 A. A paycheck?

12:03:06PM 12 Q. Yeah.

12:03:07PM 13 A. Him.

12:03:07PM 14 Q. Him. Did your mom -- when did she pick

12:03:12PM 15 up her paycheck that day?

12:03:13PM 16 A. Earlier that morning.

12:03:14PM 17 Q. Were you there with her?

12:03:15PM 18 A. Uh-huh.

12:03:15PM 19 Q. So you knew the checks were getting

12:03:18PM 20 picked up that day?

12:03:19PM 21 A. Yeah, I took her up.

12:03:20PM 22 Q. Now, how much -- so you sold what kind

12:03:24PM 23 of drugs to Keith?

12:03:25PM 24 A. Marijuana and cocaine.

12:03:26PM 25 Q. How long?

12:03:27PM 1 A. Like I sold him a couple of times, like
12:03:30PM 2 three or four times.

12:03:30PM 3 Q. How much?

12:03:31PM 4 A. Two grams. Two grams of cocaine --
12:03:35PM 5 gram of cocaine was a hundred dollars.

12:03:36PM 6 Q. So two grams is \$200. Marijuana?

12:03:39PM 7 A. Yeah a lot.

12:03:40PM 8 Q. How much?

12:03:41PM 9 A. Like \$40 worth.

12:03:44PM 10 Q. How much was the weight for \$40?

12:03:48PM 11 A. Gram and a half.

12:03:49PM 12 Q. Do you remember telling my investigator
12:03:52PM 13 last week -- or two weeks ago it was four grams of
12:03:56PM 14 marijuana and that that was worth 200?

12:03:58PM 15 A. No.

12:03:58PM 16 Q. You don't?

12:03:59PM 17 A. No.

12:03:59PM 18 Q. Okay. So he owed you \$200 for the
12:04:02PM 19 cocaine, the two grams for \$100 each. And how much
12:04:06PM 20 for the marijuana?

12:04:07PM 21 A. The marijuana for a gram and a half, I
12:04:10PM 22 charged him 40.

12:04:11PM 23 Q. So what he owed you was the perfect
12:04:13PM 24 amount for how much his check was?

12:04:15PM 25 A. I didn't know how much the check was

12:04:17PM 1 now, but that's how much the check came out was.

12:04:22PM 2 Q. So he said -- you asked him to get in
12:04:24PM 3 the car and get the check?

12:04:26PM 4 A. Yeah, I asked him.

12:04:26PM 5 Q. You asked him --

12:04:27PM 6 A. He get in the car on his own.

12:04:28PM 7 Q. But you asked him to?

12:04:29PM 8 A. I said, I'll take you to get your
12:04:32PM 9 paycheck.

12:04:32PM 10 Q. Did he tell you where he was going that
12:04:34PM 11 day?

12:04:35PM 12 A. No.

12:04:35PM 13 Q. Why would he just leave the car where
12:04:39PM 14 his girlfriend was in the bank and get in your car?

12:04:41PM 15 A. I don't know.

12:04:41PM 16 Q. Where were you going to go before you
12:04:43PM 17 saw Keith? What was your plan for the day?

12:04:43PM 18 A. I was going to cash a check and I
12:04:45PM 19 happened to see him.

12:04:46PM 20 Q. Did they not let you cash a check at
12:04:49PM 21 the Wells Fargo?

12:04:49PM 22 A. No.

12:04:49PM 23 Q. Why?

12:04:50PM 24 A. Because I didn't have a Social Security
12:04:51PM 25 card.

12:04:51PM 1 Q. How much was that check for?

12:04:52PM 2 A. \$600.

12:04:53PM 3 Q. Was it from -- where were you working?

12:04:55PM 4 A. I was working with my father.

12:04:56PM 5 Q. What does he do?

12:04:58PM 6 A. Landscaping and construction.

12:05:00PM 7 Q. So you were going to cash the check

12:05:02PM 8 from --

12:05:02PM 9 A. Yeah.

12:05:02PM 10 Q. Why couldn't you cash it again?

12:05:03PM 11 A. Because I didn't have no Social

12:05:06PM 12 Security card. You had to have two forms of

12:05:10PM 13 identification.

12:05:11PM 14 Q. So you were supposed to have \$600 cash

12:05:13PM 15 and you didn't?

12:05:14PM 16 A. Uh-huh.

12:05:15PM 17 Q. So you had to find some money

12:05:17PM 18 somewhere?

12:05:17PM 19 A. I had money. I didn't have to find

12:05:20PM 20 money.

12:05:21PM 21 Q. So you-all get in the car. Where is

12:05:23PM 22 Tappia Green?

12:05:23PM 23 A. In the front seat.

12:05:26PM 24 Q. Front passenger seat?

12:05:27PM 25 A. (Nodding)

12:05:28PM 1 Q. And wearing a white shirt? '

12:05:29PM 2 A. Uh-huh.

12:05:30PM 3 Q. Are you sure about that?

12:05:31PM 4 A. Positive.

12:05:32PM 5 Q. And then -- so there wasn't a third gay

12:05:34PM 6 in the back seat is what you're telling me? There

12:05:37PM 7 was nobody in the back seat with Keith Lee?

12:05:37PM 8 A. There was an older dude.

12:05:39PM 9 Q. What's his name?

12:05:40PM 10 A. L. B.

12:05:41PM 11 Q. Where was he sitting?

12:05:43PM 12 A. Next to Keith.

12:05:44PM 13 Q. How big is he?

12:05:45PM 14 A. Probably about my height, a little

12:05:48PM 15 taller than me.

12:05:48PM 16 Q. A little taller than you. Bulky?

12:05:50PM 17 A. Yeah.

12:05:51PM 18 Q. So those two guys crammed in the back

12:05:54PM 19 seat of that PT Cruiser --

12:05:55PM 20 A. The car seat was back there.

12:05:56PM 21 Q. With the car seat in the back?

12:05:58PM 22 A. Yeah.

12:05:58PM 23 Q. What was L. B. doing?

12:06:00PM 24 A. He was doing nothing, but sitting by

12:06:02PM 25 Keith Lee.

12:06:03PM 1 Q. What were you doing with Tappia and
12:06:06PM 2 L. B. that day?

12:06:06PM 3 A. Tappia -- we are going to do some work
12:06:09PM 4 with my father. L. B. --

12:06:09PM 5 Q. So you-all were heading to work?

12:06:11PM 6 A. No, we jut came from work.

12:06:12PM 7 Q. What were you doing -- what kind of
12:06:14PM 8 work?

12:06:14PM 9 A. Construction with my dad.

12:06:15PM 10 Q. Like -- so the jury knows, were you
12:06:18PM 11 building a house --

12:06:19PM 12 A. No. Like drywall and stuff. You know
12:06:21PM 13 what I mean?

12:06:21PM 14 Q. Were you using a nail gun?

12:06:23PM 15 A. Yes, sir.

12:06:23PM 16 Q. And when did you get off work?

12:06:25PM 17 A. That was around probably 12.

12:06:28PM 18 Q. Okay. Because that was -- I have a lot
12:06:40PM 19 of pictures here. One second. I will have to find
12:07:09PM 20 the picture. Do you remember when you were at the
12:07:11PM 21 bank that afternoon?

12:07:11PM 22 A. Uh-huh.

12:07:13PM 23 Q. Huh?

12:07:13PM 24 A. Uh-huh.

12:07:14PM 25 Q. When?

12:07:15PM 1 A. What time?

12:07:16PM 2 Q. Yeah.

12:07:16PM 3 A. Like around three or four.

12:07:18PM 4 Q. Around three?

12:07:19PM 5 A. I went to the bank two times now.

12:07:22PM 6 Q. The time you were with Keith, if I were

12:07:25PM 7 to say 3:07 or 3:10, does that sound right?

12:07:28PM 8 A. Yeah.

12:07:30PM 9 Q. Thereabouts?

12:07:30PM 10 A. Yeah.

12:07:30PM 11 Q. What was the other deal with the bank?

12:07:32PM 12 A. I had went to try and cash a check, but

12:07:37PM 13 I had to get my ID. So I went to get my ID and I

12:07:41PM 14 found out I needed a Social Security card. When I

12:07:42PM 15 came back I needed a Social Security card.

12:07:42PM 16 Q. So what time did you and Tappia get to

12:07:46PM 17 work with your dad?

12:07:47PM 18 A. About 8, 8:30, 8:30ish.

12:07:50PM 19 Q. Drywall for about four hours?

12:07:52PM 20 A. Yeah.

12:07:52PM 21 Q. So you do that, then you go to cash the

12:07:54PM 22 check. Did he get a check too?

12:07:56PM 23 A. Yeah. He didn't have it on him though.

12:07:59PM 24 Q. He didn't have the check on him?

12:07:59PM 25 A. No.

12:08:00PM 1 Q. So you did that. You get off around
12:08:02PM 2 lunchtime?
12:08:03PM 3 A. Yeah.
12:08:03PM 4 Q. You go to the bank, they don't have
12:08:05PM 5 your ID, go back to the bank, all that. Where did
12:08:08PM 6 you find the time to get so drunk as you say? If
12:08:08PM 7 he's that drunk, you-all let him hang drywall like
12:08:08PM 8 that?
12:08:13PM 9 A. No. We got drunk after we was
12:08:15PM 10 finished.
12:08:15PM 11 Q. Where did you go?
12:08:16PM 12 A. We went to the liquor store right there
12:08:18PM 13 on Spruill.
12:08:18PM 14 Q. You get off around lunch, you go to the
12:08:23PM 15 liquor store?
12:08:24PM 16 A. Yes.
12:08:25PM 17 Q. You get wasted?
12:08:25PM 18 A. Yeah.
12:08:25PM 19 Q. You too?
12:08:26PM 20 A. I didn't get wasted. He got wasted.
12:08:30PM 21 Q. Because you're driving, you couldn't
12:08:31PM 22 be. And then you go to cash the check, and you do
12:08:34PM 23 all of that in a couple of hours and he's wasted in
12:08:36PM 24 the front seat?
12:08:37PM 25 A. Yeah.

12:08:37PM 1 Q. Were you going to take him home?

12:08:39PM 2 A. Yeah, after I leave the bank.

12:08:41PM 3 Q. Were you going to help him get in his

12:08:43PM 4 house? I mean, as drunk as you say he was.

12:08:43PM 5 A. He could make it in his house.

12:08:45PM 6 Q. He could?

12:08:46PM 7 A. (Nodding) He have a mother who would

12:08:49PM 8 help him in the house. I would help him in the

12:08:52PM 9 house too. You know what I mean?

12:08:53PM 10 Q. But he was stumbling. He couldn't have

12:08:56PM 11 been involved because he was --

12:08:57PM 12 A. (Nodding head)

12:08:58PM 13 Q. Okay. So if I told you that this

12:09:09PM 14 person right here in the black has been identified

12:09:11PM 15 as Tappia Green --

12:09:13PM 16 A. It's not him.

12:09:13PM 17 Q. -- how could that be if he's so drunk?

12:09:17PM 18 A. That's not him.

12:09:33PM 19 MR. COOPER: Beg the Court's indulgence

12:09:34PM 20 while I'm looking for these photos.

12:09:35PM 21 THE COURT: Yes, sir.

12:09:37PM 22 BY MR. COOPER:

12:10:00PM 23 Q. So back at the Wells Fargo -- I'm

12:10:04PM 24 showing you State's 2 -- that's you in the red

12:10:08PM 25 shirt?

12:10:08PM 1 A. Yes, sir.

12:10:08PM 2 Q. Who is the guy in the white?

12:10:11PM 3 A. L. B.

12:10:12PM 4 Q. That's L. P. Okay. So the next

12:10:16PM 5 picture?

12:10:19PM 6 A. That's me.

12:10:19PM 7 Q. Okay. And then who is the guy in the

12:10:22PM 8 black getting into the P. T. Cruiser?

12:10:25PM 9 A. I don't know.

12:10:25PM 10 Q. You don't know who got in your car?

12:10:27PM 11 A. (Shaking head)

12:10:29PM 12 Q. Wouldn't that be good information to

12:10:30PM 13 know before you drive?

12:10:30PM 14 A. I know who it was but I ain't about to

12:10:34PM 15 say who it was. But it ain't tappia.

12:10:36PM 16 Q. But you won't tell the jury who it is?

12:10:38PM 17 A. No.

12:10:39PM 18 Q. Why not? Are you scared?

12:10:39PM 19 A. No, I ain't scared of nobody.

12:10:42PM 20 Q. Then why won't you tell us?

12:10:44PM 21 A. (No answer)

12:10:45PM 22 Q. Okay. So you have L. P. and you have

12:10:49PM 23 this guy that you don't want to tell the jury who

12:10:52PM 24 it is in your car, and then Keith Lee as well?

12:10:54PM 25 A. (Nodding head)

12:10:56PM 1 Q. Then where's Tappia Green? If you said
12:10:57PM 2 that he's in the front seat, and you have L. P. in
12:10:59PM 3 the car, and you've got the victim in the car, and
12:11:00PM 4 you have whoever that guy is that you don't want to
12:11:04PM 5 tell us who it is, and you. So now there's five
12:11:05PM 6 people in the P. T. Cruiser?

12:11:06PM 7 A. There was four.

12:11:07PM 8 Q. So there was Tappia?

12:11:08PM 9 A. In the white shirt.

12:11:10PM 10 Q. You just said L. P. wore a white shirt.

12:11:12PM 11 A. Tappia had on a white shirt, too.

12:11:16PM 12 Q. So there's five people in the P. T.
12:11:18PM 13 Cruiser then?

12:11:18PM 14 A. There's four.

12:11:19PM 15 Q. Keith; yes, sir or no?

12:11:21PM 16 A. Yes.

12:11:21PM 17 Q. L. P.; yes or no?

12:11:22PM 18 A. Yes.

12:11:22PM 19 Q. You?

12:11:23PM 20 A. Yes, sir.

12:11:25PM 21 Q. Tappia?

12:11:25PM 22 A. Uh-huh.

12:11:26PM 23 Q. And then this mysterious guy that you
12:11:29PM 24 for some reason don't want to tell the jury who it
12:11:33PM 25 is. He's getting in there too, that's what he's

12:11:35PM 1 doing. The door is open. How are you fitting five
12:11:39PM 2 people in there? That was Tappia, wasn't it?

12:11:41PM 3 A. No, man. Tappia had on a white shirt.
12:11:46PM 4 I don't want to tell you L. B. had on a black shirt
12:11:50PM 5 and he get charged with something, you know what
12:11:55PM 6 I'm saying, that he didn't do. I don't want to --

12:11:56PM 7 Q. What you need to be worried about when
12:11:58PM 8 they put you under oath is to tell the truth. That
12:12:01PM 9 should be your concern. Now, I know it gets
12:12:04PM 10 complicated because as we go through it you've got
12:12:04PM 11 four stories. You need to tell the truth. This
12:12:07PM 12 isn't about charging somebody.

12:12:09PM 13 This is about figuring what's going on
12:12:11PM 14 in Tappia Green's case. If you know who it is,
12:12:15PM 15 with the oath that you have taken, you need to tell
12:12:17PM 16 the jury. Do you want to tell the jury?

12:12:18PM 17 A. L. B. was in the black shirt.

12:12:22PM 18 Q. Is that you want to say to them? That
12:12:24PM 19 was L. P?

12:12:24PM 20 A. L. B. I said L. B. Not L. P.

12:12:27PM 21 Q. Like ball?

12:12:29PM 22 A. Yes.

12:12:29PM 23 Q. Who is L. B.?

12:12:30PM 24 A. He's an old friend, old school.

12:12:33PM 25 Q. What's his name? What's his given

12:12:35PM 1 name?

12:12:35PM 2 A. I call him L. B. I don't know his

12:12:37PM 3 name.

12:12:38PM 4 Q. How old is he?

12:12:39PM 5 A. 38.

12:12:40PM 6 Q. How do you know him?

12:12:40PM 7 A. From the streets and the hood.

12:12:43PM 8 Q. How do you know Tappia?

12:12:45PM 9 A. How I know Tappia?

12:12:50PM 10 Q. Yeah.

12:12:50PM 11 A. I met him through my cousin a while

12:12:53PM 12 back.

12:12:53PM 13 Q. Who is your cousin?

12:12:54PM 14 A. He's dead.

12:12:56PM 15 Q. Okay. I'm sorry to hear that. What

12:12:58PM 16 did you call Tappia? Tampa?

12:13:00PM 17 A. (Nodding)

12:13:01PM 18 Q. Did you call him Trap, too?

12:13:03PM 19 A. No.

12:13:03PM 20 Q. Just Tampa?

12:13:04PM 21 A. (Nodding head)

12:13:06PM 22 Q. So then at the Hardee's, you have you

12:13:18PM 23 in the red shirt, Keith Lee beside you in the black

12:13:23PM 24 shirt?

12:13:23PM 25 A. Yes.

12:13:23PM 1 Q. And then L. B. now in the black?

12:13:25PM 2 A. Yes.

12:13:25PM 3 Q. And then Tappia in the white?

12:13:28PM 4 A. Yeah.

12:13:28PM 5 Q. So he's walking around. He's looking

12:13:30PM 6 like he's doing pretty good. He must not be that

12:13:34PM 7 drunk.

12:13:35PM 8 A. He's drunk.

12:13:35PM 9 Q. He is, but you just can't tell? He's

12:13:39PM 10 Making it across the parking lot pretty well,

12:13:43PM 11 though.

12:13:43PM 12 A. Alcohol make you do things, like --

12:13:47PM 13 Q. Like rob people?

12:13:49PM 14 A. No, I ain't talking about robbing

12:13:51PM 15 things. I ain't say all that.

12:13:51PM 16 Q. So what do you -- you say do things?

12:13:53PM 17 A. Like, he can't keep still when he's

12:13:57PM 18 drunk.

12:13:57PM 19 Q. So he can't keep still, but he ain't

12:14:00PM 20 going to rob nobody?

12:14:01PM 21 A. He ain't going to rob nobody. I ain't

12:14:04PM 22 never robbed nobody.

12:14:04PM 23 Q. And we'll get to that in a minute.

12:14:05PM 24 So you go to Hardee's. Why do you go

12:14:09PM 25 in with him when you -- when he cashed the check?

12:14:11PM 1 A. Because I know the people in there.

12:14:13PM 2 Q. Who is -- did you meet somebody you

12:14:25PM 3 knew at the Hardee's?

12:14:25PM 4 A. Yeah. I saw somebody that know me.

12:14:28PM 5 But they didn't work in here.

12:14:30PM 6 Q. This guy? (Indicating)

12:14:30PM 7 A. Yes.

12:14:32PM 8 Q. Who is that?

12:14:32PM 9 A. I met him a while back.

12:14:35PM 10 Q. What's his name?

12:14:35PM 11 A. I don't know his name.

12:14:36PM 12 Q. You met him, but you don't know his

12:14:37PM 13 name?

12:14:37PM 14 A. No. That's not a person that I know

12:14:41PM 15 like on a daily basis. I went to school with him a

12:14:44PM 16 while back.

12:14:44PM 17 Q. But you don't know his name?

12:14:47PM 18 A. I don't know his name.

12:14:51PM 19 Q. And is that where you had the gun?

12:14:54PM 20 A. I didn't have no gun.

12:14:56PM 21 Q. You didn't have a gun?

12:14:57PM 22 A. No.

12:14:57PM 23 Q. Did you ever own a gun?

12:15:00PM 24 A. No.

12:15:00PM 25 Q. You never played with gun?

12:15:01PM 1 A. I've had one in my lifetime, but I
12:15:04PM 2 didn't have one on me that day.
12:15:06PM 3 Q. What kind of gun did you have?
12:15:08PM 4 A. What kind of gun did I have.
12:15:08PM 5 Q. Uh-huh?
12:15:08PM 6 A. Talking about --
12:15:09PM 7 Q. Didn't you say -- I thought you said
12:15:10PM 8 you had a gun?
12:15:11PM 9 A. Not on me that day, no.
12:15:13PM 10 Q. Okay. Other than that, did you have
12:15:14PM 11 guns prior to that?
12:15:16PM 12 A. Yeah.
12:15:16PM 13 Q. Did you own a gun? Did you keep a gun
12:15:18PM 14 in your possession?
12:15:19PM 15 A. Yeah, sometimes.
12:15:20PM 16 Q. What kind of gun?
12:15:20PM 17 A. It's a 44 magnum.
12:15:22PM 18 Q. What color?
12:15:23PM 19 A. Silver.
12:15:24PM 20 Q. Okay. And there would be pictures of
12:15:26PM 21 you with that gun on your phone?
12:15:28PM 22 A. Yeah.
12:15:29PM 23 Q. Did you take it with you that day?
12:15:31PM 24 A. I ain't got no picture holding the gun.
12:15:36PM 25 Q. I'm sorry, what?

12:15:36PM 1 A. I ain't got no picture holding a gun.

12:15:36PM 2 Q. Okay.

12:15:38PM 3 A. But I have a picture on my phone.

12:15:40PM 4 Q. Of the gun?

12:15:41PM 5 A. Yeah.

12:15:42PM 6 Q. So what did you use the gun for?

12:15:49PM 7 A. Protection. What do you mean?

12:15:51PM 8 Q. From?

12:15:52PM 9 A. I sell drugs, so you have people that

12:15:55PM 10 jack boys, try to rob you when you're doing better

12:16:00PM 11 than them.

12:16:00PM 12 Q. So why didn't you have the gun with you

12:16:02PM 13 that day?

12:16:02PM 14 A. Because I didn't need no gun. I been

12:16:03PM 15 working with my father that morning.

12:16:06PM 16 Q. What if somebody calls up and says,

12:16:28PM 17 hey, give me a gram, and you want to make a quick

12:16:31PM 18 \$100?

12:16:31PM 19 A. I ain't doing it.

12:16:36PM 20 MR. COOPER: Beg the Court's

12:16:36PM 21 indulgence?

12:16:36PM 22 BY MR. COOPER:

12:17:11PM 23 Q. You told this jury a minute ago that

12:17:13PM 24 you got pictures of guns, but not a picture of you

12:17:16PM 25 with a gun.

12:17:17PM 1 A. Yes, sir.

12:17:18PM 2 Q. Okay. Would you put the laptop up for

12:17:21PM 3 me? Who is that in that picture?

12:17:24PM 4 A. That's me in the picture.

12:17:25PM 5 Q. And is that a phone?

12:17:27PM 6 A. Is that a phone?

12:17:28PM 7 Q. Is it? What's in your hand?

12:17:30PM 8 A. That's a gun.

12:17:31PM 9 Q. That's a gun. I thought you told them

12:17:33PM 10 you didn't have a picture of you with the gun?

12:17:35PM 11 A. No. The gun that you said I had.

12:17:36PM 12 Q. Oh, I said any gun.

12:17:37PM 13 A. Yeah, but --

12:17:40PM 14 Q. So that's you with the gun?

12:17:41PM 15 A. Uh-huh.

12:17:42PM 16 Q. Okay. You can remove that now. Thank

12:17:46PM 17 you.

12:17:46PM 18 Okay. So let's see. So you were at

12:17:51PM 19 Hardee's getting the check and then where do

12:17:53PM 20 you-all go after Hardee's?

12:17:54PM 21 A. Check cashing place.

12:17:56PM 22 Q. And do you go in with Keith at that

12:17:58PM 23 time?

12:17:58PM 24 A. Uh-huh.

12:17:59PM 25 Q. Why do you go in with him?

12:18:00PM 1 A. I didn't just like going with him.

12:18:03PM 2 Q. Did you go in with him?

12:18:05PM 3 A. Yes, sir.

12:18:06PM 4 Q. Why did you do that?

12:18:07PM 5 A. I just felt like going in there with

12:18:09PM 6 him.

12:18:10PM 7 Q. Were you scared that he was going to

12:18:12PM 8 run off and not give you your money?

12:18:14PM 9 A. No, not really.

12:18:15PM 10 Q. Not really. Were you concerned that he

12:18:17PM 11 was going to run off and not pay you? I mean, I

12:18:20PM 12 don't want to give up my whole check.

12:18:22PM 13 A. I mean, you owe me. Know what I mean?

12:18:25PM 14 Q. So he was going to pay?

12:18:27PM 15 A. Yeah.

12:18:27PM 16 Q. Okay. And then how much was that check

12:18:31PM 17 for?

12:18:31PM 18 A. I think it was two something.

12:18:33PM 19 Q. And so he picked up the check from

12:18:41PM 20 Hardee's. You didn't pick it up, he picked it up?

12:18:44PM 21 A. He picked it up.

12:18:44PM 22 Q. When did he give it to you?

12:18:47PM 23 A. Like, when we got back into the car at

12:18:51PM 24 the check cashing -- he never hand it to me.

12:18:53PM 25 Q. He didn't?

12:18:53PM 1 A. No.

12:18:54PM 2 Q. So the fingerprint of yours that they
12:18:56PM 3 found on the check stub, that's another Jonathan
12:19:00PM 4 Johnson?

12:19:00PM 5 A. That's me.

12:19:00PM 6 Q. So you just told us -- I thought you
12:19:00PM 7 just said --

12:19:01PM 8 A. Listen, when we got back in the car, he
12:19:06PM 9 handed the check to and I told the friend to hold
12:19:09PM 10 it and he got out and we dropped him off and the
12:19:12PM 11 girl said my fingerprints are on it.

12:19:13PM 12 THE COURT: The co-defendant gave you
12:19:13PM 13 the check.

12:19:13PM 14 A. Yeah.

12:19:16PM 15 Q. Why did he have the check?

12:19:17PM 16 A. Because I was driving. I told him to
12:19:19PM 17 hold it.

12:19:19PM 18 Q. Why wouldn't he hold the check stub?

12:19:21PM 19 A. Because he owe me money. I told him to
12:19:23PM 20 hold it.

12:19:23PM 21 Q. So he lent you the money and the check
12:19:23PM 22 stub?

12:19:25PM 23 A. Yeah. The check stub was in the
12:19:26PM 24 envelope.

12:19:27PM 25 Q. Okay. Yeah. And the money was too?

12:19:28PM 1 A. Yeah.

12:19:28PM 2 Q. So he just left all of that with you?

12:19:31PM 3 A. Yeah.

12:19:31PM 4 Q. Because you took it from him?

12:19:33PM 5 A. I ain't never took nothing from the

12:19:35PM 6 boy.

12:19:35PM 7 Q. He gave it to you voluntarily?

12:19:37PM 8 A. Yeah.

12:19:37PM 9 Q. He just said, hey, here's my check, you

12:19:39PM 10 can have it all?

12:19:39PM 11 A. No, he owed me that, so...

12:19:41PM 12 Q. He owed you the check stub too?

12:19:43PM 13 A. No. I guess he forgot the check stub

12:19:46PM 14 was in there.

12:19:47PM 15 Q. But Tappia handed it to you, that's how

12:19:50PM 16 his fingerprints are on it?

12:19:52PM 17 A. Yeah.

12:19:52PM 18 Q. And so why drop him off at the Tiger

12:19:57PM 19 Mart?

12:19:57PM 20 A. Because he saw his girlfriend in there.

12:20:00PM 21 She was at Church's in the drive.

12:20:02PM 22 Q. And he said, hey, pull over?

12:20:04PM 23 A. Yeah.

12:20:05PM 24 Q. I thought that he didn't want his

12:20:07PM 25 girlfriend to know what was going on?

12:20:08PM 1 A. She didn't know what was going on. I
12:20:10PM 2 was going to drop him off back at the bank.
12:20:12PM 3 Q. But doesn't it seem kind of sketchy if
12:20:15PM 4 he walks up to her car in the drive-thru line and
12:20:19PM 5 she's like, where were you? What's going on?
12:20:19PM 6 A. Yeah.
12:20:20PM 7 Q. So that wouldn't really mesh with the
12:20:22PM 8 whole don't want the girlfriend to know.
12:20:24PM 9 A. Yeah.
12:20:24PM 10 Q. Okay. And then where did you go?
12:20:28PM 11 A. Where did who go?
12:20:30PM 12 Q. You, Tappia, and L. B.?
12:20:32PM 13 A. L. B. got out the car.
12:20:34PM 14 Q. At the Tiger Mart?
12:20:35PM 15 A. (Nodding)
12:20:36PM 16 Q. Did he live in that area?
12:20:38PM 17 A. Yeah.
12:20:38PM 18 Q. So where did you and Tappia go?
12:20:40PM 19 A. I took Tappia home and I had to get my
12:20:43PM 20 girl from home.
12:20:44PM 21 Q. And you had to help him and his mom had
12:20:47PM 22 to help him upstairs because he was so intoxicated?
12:20:50PM 23 A. Yes.
12:20:50PM 24 Q. He lives with his mom still?
12:20:52PM 25 A. (Nodding)

12:20:53PM 1 Q. Where did he live?

12:20:55PM 2 A. They lived on hood.

12:21:00PM 3 Q. When you were in Wells Fargo, did you

12:21:03PM 4 talk to Tappia?

12:21:04PM 5 A. How you mean?

12:21:05PM 6 Q. On the phone.,

12:21:06PM 7 A. Like, he be with me.

12:21:09PM 8 Q. Huh?

12:21:10PM 9 A. He be with me.

12:21:11PM 10 Q. When you were in the Wells Fargo, were

12:21:12PM 11 you by yourself inside the bank?

12:21:14PM 12 A. I was by myself.

12:21:15PM 13 Q. And why would he have a need to call

12:21:17PM 14 you while you were in the bank?

12:21:18PM 15 A. I guess I was taking too long.

12:21:21PM 16 Q. Did you have somewhere to be?

12:21:34PM 17 A. I had to pick my girl up.

12:21:36PM 18 Q. Well, she didn't get off work until

12:21:41PM 19 12:30. You-all had time to run to Hardee's.

12:21:42PM 20 A. Yes.

12:21:43PM 21 Q. You do what you have to do to get that

12:21:45PM 22 money, right?

12:21:45PM 23 A. I don't know what you're talking about,

12:21:47PM 24 man. I had money.

12:21:48PM 25 Q. Then why was it so important that Keith

12:21:53PM 1 paid you that day?

12:21:54PM 2 A. Because he owed it. Somebody owe you,
12:21:58PM 3 you want it.

12:21:59PM 4 Q. And they're going to pay, aren't they?

12:22:01PM 5 A. Yeah.

12:22:02PM 6 Q. Uh-huh?

12:22:03PM 7 A. I don't know how you mean in your terms
12:22:05PM 8 how they're going to pay.

12:22:07PM 9 Q. I'm just asking you. I'd be in a
12:22:09PM 10 pretty bad position if I dealt drugs. I don't do
12:22:11PM 11 that, I'd be in a bad place. They won't let me do
12:22:13PM 12 that. So I'm asking you because I don't know.

12:22:16PM 13 So Tappia Green would have called you
12:22:19PM 14 at the Wells Fargo because you were taking too
12:22:21PM 15 long?

12:22:21PM 16 A. Uh-huh.

12:22:21PM 17 Q. How about at the Hardee's?

12:22:23PM 18 A. What do you mean?

12:22:24PM 19 Q. He called you while you were in the
12:22:25PM 20 Hardee's with Keith? Do you remember that?

12:22:29PM 21 A. Yes.

12:22:30PM 22 Q. I'm showing you State's 12.

12:22:41PM 23 A. I see it.

12:22:41PM 24 Q. So there's a phone call in your call
12:22:46PM 25 records that comes from Tappia's phone. Did L. B.

12:22:49PM 1 have Tappia's phone?

12:22:51PM 2 A. Uh-huh.

12:22:51PM 3 Q. Why?

12:22:51PM 4 A. I don't know. I guess he was using it

12:22:54PM 5 to call his people. I don't know.

12:22:55PM 6 Q. Did he have his own people?

12:22:57PM 7 A. L. B. called and said he wanted

12:22:59PM 8 something to drink.

12:23:00PM 9 Q. He called and said, do you want

12:23:02PM 10 something to drink? What did he want?

12:23:02PM 11 A. He wanted a soda.

12:23:04PM 12 Q. What kind?

12:23:05PM 13 A. I got him Mountain Dew that day.

12:23:11PM 14 Q. Okay. One second. Did you get you a

12:23:19PM 15 soda too while you were getting him one?

12:23:20PM 16 A. No.

12:23:21PM 17 Q. So the time stamp on this picture, can

12:23:28PM 18 you read that at the bottom? I know it's kind of

12:23:31PM 19 hard to read. It's kind of --

12:23:35PM 20 A. It looks like it says 15 something.

12:23:36PM 21 Q. 15:46:12. Does that look right?

12:23:41PM 22 That's military time. 15 would be 3:00 in the

12:23:45PM 23 afternoon, so that would be 3:46:12.

12:23:54PM 24 I want to ask you a question about the

12:23:56PM 25 call history. So I've highlighted a call that's at

12:24:04PM 1 3:46:12. Do you see that?

12:24:04PM 2 A. Yes.

12:24:05PM 3 Q. What's that word?

12:24:06PM 4 A. (Inaudible)

12:24:06PM 5 THE COURT REPORTER: I can't hear him.

12:24:06PM 6 I didn't hear his answer.

12:24:11PM 7 BY MR. COOPER:

12:24:11PM 8 Q. Will you say what's that word again for

12:24:12PM 9 me?

12:24:12PM 10 A. Missed.

12:24:13PM 11 Q. Missed call. So at what point during

12:24:18PM 12 the conversation on that missed call did he ask for

12:24:20PM 13 a Mountain Dew? He didn't, did he? Because you

12:24:24PM 14 didn't answer the phone.

12:24:26PM 15 A. He did. He did.

12:24:28PM 16 Q. Okay. So that's the truth about what

12:24:33PM 17 happened that day?

12:24:34PM 18 A. What?

12:24:35PM 19 Q. What you told the jury today, that's

12:24:37PM 20 what actually happened?

12:24:37PM 21 A. Yes, sir.

12:24:38PM 22 Q. Not what Keith said?

12:24:40PM 23 A. Yes, sir.

12:24:40PM 24 Q. Not what anybody else has said, not

12:24:42PM 25 what you said?

12:24:43PM 1 A. What I said was right.

12:24:45PM 2 Q. Which time?

12:24:46PM 3 A. How do you mean which time?

12:24:48PM 4 Q. Okay. We'll go there now. So do you

12:24:52PM 5 remember -- do you remember talking to Officer

12:24:55PM 6 Tracy Williams?

12:24:56PM 7 A. The detective?

12:24:57PM 8 Q. No. The resource officer that was in

12:25:01PM 9 the area that knew -- lies on Suffolk like where

12:25:04PM 10 your grandfather lived and all that.

12:25:05PM 11 A. He called my phone.

12:25:07PM 12 Q. He called you?

12:25:08PM 13 A. Yes.

12:25:08PM 14 Q. That evening?

12:25:09PM 15 A. Uh-huh.

12:25:10PM 16 Q. Do you remember what you told him?

12:25:11PM 17 A. No.

12:25:12PM 18 Q. You don't remember. Do you remember

12:25:15PM 19 telling him my life was in danger too? You don't

12:25:21PM 20 remember that?

12:25:22PM 21 A. Huh-uh.

12:25:22PM 22 Q. I was trying to get away, he had a gun

12:25:25PM 23 pointed at both of us. Do you remember that?

12:25:27PM 24 A. No.

12:25:28PM 25 Q. I tell you the truth, bro. Do you

12:25:31PM 1 remember that?

12:25:32PM 2 A. No.

12:25:32PM 3 Q. You said in response to a question, did
12:25:32PM 4 he take anything from you? You said, they take,
12:25:41PM 5 you know, they take the phone, they take
12:25:43PM 6 everything. Do you remember that?

12:25:44PM 7 A. No.

12:25:45PM 8 Q. You said, they tried to take my stuff
12:25:47PM 9 too. Do you remember that?

12:25:48PM 10 A. No.

12:25:50PM 11 Q. You said -- Tracy Williams asked you,
12:26:04PM 12 tell me what happened again at Wells Fargo. And
12:26:06PM 13 you said you were with your homeboy and homeboy's
12:26:09PM 14 friend. Do you remember that?

12:26:09PM 15 A. Huh-uh.

12:26:10PM 16 Q. You said, I go to cash my check, you
12:26:13PM 17 know what I mean? I got paid. I have a job. You
12:26:17PM 18 know what I mean? I came out, my homeboy was
12:26:17PM 19 talking to a black dude with dreads in a car parked
12:26:21PM 20 next to us. Do you remember that?

12:26:21PM 21 A. No.

12:26:22PM 22 Q. You told the jury that you were the one
12:26:24PM 23 that talked to Keith, right?

12:26:25PM 24 A. I did talk to him.

12:26:27PM 25 Q. And after that my homeboy said he asked

12:26:29PM 1 him for lots of weed. Weed, man. I'm in the
12:26:30PM 2 blind. He tell me to get in the car and I got the
12:26:34PM 3 car up to a motorcycle trailer. I backed right up
12:26:36PM 4 and before I left, he gave me a jump. Do you
12:26:40PM 5 remember that?

12:26:40PM 6 A. No. He gave me a jump, I remember
12:26:42PM 7 that.

12:26:42PM 8 Q. Did you have to move the car before he
12:26:44PM 9 gave you a jump?

12:26:44PM 10 A. The car wouldn't crank. How can I move
12:26:46PM 11 it if it won't crank.

12:26:48PM 12 Q. Then he said, homeboy said, well, get
12:26:49PM 13 in, I got weed in here. And when he get in, I back
12:26:51PM 14 up and they pull a gun on me and all of us in the
12:26:51PM 15 car. Do you remember that?

12:26:51PM 16 A. No, no, sir.

12:26:51PM 17 Q. He said, he pulled a gun on me and
12:26:58PM 18 brought a dude with dreads in the car. Said, give
12:26:59PM 19 me everything. Do you remember that?

12:26:59PM 20 A. No.

12:27:01PM 21 Q. He said, I ain't got nothing, but I get
12:27:04PM 22 my paycheck today. And he made me drive to get his
12:27:04PM 23 paycheck. He tell me I don't drive, he'll shoot
12:27:04PM 24 me. Do you remember that?

12:27:04PM 25 A. No.

12:27:20PM 1 Q. All right. Let's play it then.

12:27:20PM 2 MR. COOPER: Beg the Court's indulgence
12:27:40PM 3 one moment?

12:27:40PM 4 THE COURT: Yes, sir.

12:27:41PM 5 THE COURT: Your Honor, may Mr. Archer
12:28:58PM 6 and I approach briefly?

12:28:59PM 7 THE COURT: Certainly.

12:29:25PM 8 (Bench conference.)

12:29:25PM 9 THE COURT: Ladies and gentlemen of the
12:29:26PM 10 jury, we are going to -- he's having some
12:29:29PM 11 difficulty locating the disk, so we're going to --
12:29:32PM 12 it's 12:30, so we'll break for lunch and then come
12:29:34PM 13 back and pick up with the remainder of the
12:29:37PM 14 questioning after lunch.

12:29:39PM 15 You will be leaving the courthouse
12:29:40PM 16 again, and by now you probably know what I'm going
12:29:43PM 17 to tell you, don't attempt to gather any
12:29:45PM 18 information on your own during break. Don't listen
12:29:49PM 19 to, watch or read any media reports, don't discuss
12:29:52PM 20 the case with anyone, and don't allow anyone to
12:29:54PM 21 discuss it with you. Please report anyone who
12:29:56PM 22 might try to contact you about your service on the
12:29:59PM 23 jury.

12:30:00PM 24 I would ask you to be back into your
12:30:02PM 25 jury room at 2:00. We should be in a position to

12:30:08PM 1 get started then.

12:30:10PM 2 Thank you very much. You're free to go
12:30:11PM 3 to lunch now.

12:30:13PM 4 (Jury out 12:30 p.m.)

12:30:14PM 5 THE COURT: Mr. Johnson, during the
12:30:43PM 6 break you're not allowed to discuss your testimony,
12:30:46PM 7 either what you've already testified to, what
12:30:50PM 8 you're testifying to now, or what you might testify
12:30:51PM 9 to in the future. You're not allowed to discuss
12:30:54PM 10 that with anyone. Do you understand that?

12:30:56PM 11 THE WITNESS: Yes, sir.

12:30:56PM 12 THE COURT: We will be in recess until
12:30:58PM 13 2:00. Thank you very much.

12:31:01PM 14 MR. COOPER: Thank you, Judge.

12:31:02PM 15 (A luncheon recess transpired.)

12:31:02PM 16 MR. COOPER: So there is a 21-second
02:07:36PM 17 clip on that audio recording that I'm going to use
02:07:39PM 18 to impeach Mr. Johnson where the officer asked Mr.
02:07:43PM 19 Johnson where he knows his homeboy from. And he
02:07:45PM 20 talks about knowing him from jail. Obviously, the
02:07:48PM 21 State is going to mute that and I will alert the
02:07:51PM 22 Court as to what time I stop and what time I start
02:07:51PM 23 so we don't play that to the jury.

02:07:54PM 24 THE COURT: So you don't intent to
02:07:56PM 25 introduce that portion of that conversation?

02:07:58PM 1 MR. COOPER: No, sir.

02:07:58PM 2 THE COURT: I understand.

02:07:59PM 3 Is that your understanding of how it

02:08:01PM 4 will be handled, Mr. Archer?

02:08:02PM 5 MR. ARCHER: Yes, sir. He's not going

02:08:04PM 6 to introduce that.

02:08:05PM 7 THE COURT: Okay. Is the State ready

02:08:14PM 8 to proceed?

02:08:15PM 9 MR. COOPER: Yes, Your Honor.

02:08:15PM 10 THE COURT: Is the defense ready to

02:08:15PM 11 proceed?

02:08:15PM 12 MR. ARCHER: Yes, sir, Your Honor.

02:08:16PM 13 THE COURT: Let's bring the witness

02:08:18PM 14 back in please.

02:08:19PM 15 Bring the jury in, please.

02:11:19PM 16 THE COURT: Mr. Johnson, I remind you

02:11:42PM 17 that you were still under oath. Do you understand

02:11:44PM 18 that?

02:11:44PM 19 THE WITNESS: What that mean?

02:11:46PM 20 THE COURT: You acknowledge that you're

02:11:47PM 21 still under oath to tell the truth.

02:11:49PM 22 THE WITNESS: Oh, yes, sir.

02:11:49PM 23 THE COURT: Okay. Very good.

02:12:11PM 24 (Jury in, 2:10 p.m.)

02:13:23PM 25 THE BAILIFF: Jurors are all present.

02:13:25PM 1 THE COURT: The record will reflect
02:13:27PM 2 that the jury has returned to the courtroom. If
02:13:30PM 3 any of you had any difficulty in complying with my
02:13:32PM 4 instructions during your absence from the
02:13:35PM 5 courtroom, please stand.

02:13:35PM 6 It appears that all jurors have been
02:13:38PM 7 able to comply with my instructions thus far. When
02:13:42PM 8 we took our break, the State was in the process of
02:13:45PM 9 cross-examining this witness.

02:13:46PM 10 You may resume your cross-examination.

02:13:48PM 11 MR. COOPER: Thank you, Judge.

02:13:49PM 12 THE COURT: Yes, sir.

02:13:49PM 13 BY MR. COOPER:

02:13:51PM 14 Q. Mr. Johnson, when we left off I believe
02:13:58PM 15 you had denied giving the statement that I read to
02:13:59PM 16 you to Officer Williams. So at this time I have a
02:14:03PM 17 recording of that statement and I'm going to play
02:14:06PM 18 that for the court.

02:14:06PM 19 (Audio tape played in open court.)

02:14:27PM 20 MR. COOPER: The State is pausing it at
02:15:58PM 21 one minute, 40 seconds, for the record.

02:16:02PM 22 THE COURT: Yes, sir.

02:16:26PM 23 MR. COOPER: Starting it at
02:16:27PM 24 two minutes, one second, for the record.

02:16:27PM 25 (Audio tape played in open court.)

02:16:27PM 1 BY THE COURT:

02:21:13PM 2 Q. So, Mr. Johnson, that's your voice,
02:21:16PM 3 right?

02:21:16PM 4 A. Uh-huh.

02:21:18PM 5 Q. That was you?

02:21:18PM 6 A. (Nodding)

02:21:19PM 7 THE COURT: Sir, you have to answer yes
02:21:20PM 8 or no.

02:21:21PM 9 THE WITNESS: Yes, sir.

02:21:21PM 10 BY MR. COOPER:

02:21:21PM 11 Q. She's taking down everything that you
02:21:23PM 12 say. She has to write it down.

02:21:26PM 13 MR. COOPER: Well, Your Honor, at this
02:21:28PM 14 time with his admission that's him, I would offer
02:21:32PM 15 the recording, State's Exhibit 45 into evidence.

02:21:33PM 16 THE COURT: Any objection.

02:21:36PM 17 MR. ARCHER: No objection.

02:21:36PM 18 THE COURT: Without objection it will
02:21:36PM 19 be admitted, with the exception of the part that
02:21:38PM 20 was excluded earlier.

02:21:40PM 21 MR. COOPER: Yes, sir. Thank
02:21:40PM 22 you.

02:21:40PM 23 (PLF. EXH. 45 in evidence.)

02:21:40PM 24 BY MR. COOPER:

02:21:51PM 25 Q. So, Mr. Johnson, we heard from your own

02:21:52PM 1 mouth a different story than you told today?

02:21:52PM 2 A. Right.

02:21:55PM 3 Q. You said that your homeboy pulled a gun
02:22:00PM 4 and had it on you and the victim, right? Is that
02:22:08PM 5 right.

02:22:08PM 6 A. That's not true.

02:22:11PM 7 Q. I'm sorry, say that again.

02:22:12PM 8 A. That's not true.

02:22:14PM 9 Q. That's not true? You said they tried
02:22:16PM 10 to take your stuff and his stuff. And that's not
02:22:19PM 11 true either.

02:22:19PM 12 A. No. I had been drunk when I talked to
02:22:24PM 13 the officer, you know.

02:22:25PM 14 Q. You were drunk on the phone?

02:22:26PM 15 A. When I was talking to the officer?

02:22:27PM 16 Q. This phone call with Officer Williams.

02:22:30PM 17 A. Uh-huh. Yes, sir.

02:22:32PM 18 Q. Now, this phone call, that phone number
02:22:49PM 19 that Officer Williams lists on the recording
02:22:54PM 20 [REDACTED]-1091, what time did that call start?

02:22:55PM 21 A. (Inaudible)

02:22:55PM 22 THE COURT REPORTER: I can't hear you.

02:22:55PM 23 THE WITNESS: 6:22.

02:22:58PM 24 THE COURT: Sir, if you will sit up a
02:23:00PM 25 little more and talk into the microphone, please.

02:23:03PM 1 Thank you.

02:23:03PM 2 BY MR. COOPER:

02:23:03PM 3 Q. Say it again.

02:23:03PM 4 A. 6:22 p.m.

02:23:08PM 5 Q. So you weren't intoxicated at the Wells
02:23:14PM 6 Fargo and Hardee's?

02:23:14PM 7 A. No. No, sir.

02:23:15PM 8 Q. And that ended at 4:00, 4:15?

02:23:17PM 9 A. Yes, sir.

02:23:18PM 10 Q. So what did you do after the Wells
02:23:21PM 11 Fargo and the Hardee's?

02:23:23PM 12 A. I went and picked my girlfriend up from
02:23:23PM 13 work.

02:23:26PM 14 Q. After you dropped Mr. Green home?

02:23:26PM 15 A. Yes, sir.

02:23:28PM 16 Q. Where did you-all go?

02:23:30PM 17 A. Where did who go?

02:23:30PM 18 Q. You and your girlfriend.

02:23:31PM 19 A. I took her home. After I picked her
02:23:33PM 20 child up from my mother's house, I took her home.

02:23:36PM 21 Q. So you got drunk at home?

02:23:37PM 22 A. Huh?

02:23:39PM 23 Q. You got drunk then?

02:23:39PM 24 A. Yeah.

02:23:41PM 25 Q. And then you called Officer Williams?

02:23:42PM 1 A. Yes, sir. My granddaddy called me and
02:23:45PM 2 told me to call Officer Williams.

02:23:47PM 3 Q. Why did you call Officer Williams?

02:23:47PM 4 A. Because my granddaddy said he needed to
02:23:49PM 5 talk to me.

02:23:51PM 6 Q. So what you're telling the jury today
02:23:53PM 7 that everything you said to Officer Williams was a
02:23:56PM 8 lie.

02:23:56PM 9 A. Yes, sir.

02:23:57PM 10 Q. Didn't you know Officer Williams?

02:23:59PM 11 A. I seen him around in the neighborhood
02:24:01PM 12 before, but I don't know him personally.

02:24:03PM 13 Q. But you had met him a couple of times?

02:24:05PM 14 A. Met him a couple of times.

02:24:06PM 15 Q. So you're saying that everything you
02:24:08PM 16 told Officer Williams --

02:24:10PM 17 A. Yes, sir.

02:24:10PM 18 Q. -- is a lie?

02:24:11PM 19 A. Yes, sir.

02:24:12PM 20 Q. Okay. Did you -- do you remember
02:24:17PM 21 driving over to North Charleston later that
02:24:19PM 22 evening?

02:24:19PM 23 A. Like when?

02:24:20PM 24 Q. Going to -- I'm sorry. Riding in the
02:24:24PM 25 car over to North Charleston that evening, North

02:24:27PM 1 Charleston Police Department?

02:24:27PM 2 A. Yes, sir. My girlfriend, she was

02:24:29PM 3 driving.

02:24:30PM 4 Q. She drove you?

02:24:31PM 5 A. (Nodding)

02:24:32PM 6 Q. And you-all arrived in that gold P. T.

02:24:34PM 7 Cruiser?

02:24:34PM 8 A. Yes, sir.

02:24:34PM 9 Q. Why did you go to North Charleston

02:24:37PM 10 Police Department that night?

02:24:37PM 11 A. Because my granddaddy told me they

02:24:40PM 12 wanted to question me.

02:24:41PM 13 Q. Did you have any idea what they were

02:24:43PM 14 going to question you about?

02:24:43PM 15 A. No, sir.

02:24:43PM 16 Q. You didn't think it was about what you

02:24:47PM 17 told Officer Williams?

02:24:48PM 18 A. I guess not.

02:24:50PM 19 Q. If that's not the truth, then where did

02:24:54PM 20 you get that whole story from?

02:24:56PM 21 A. I must have made it up. I was drunk

02:24:59PM 22 from the alcohol.

02:25:00PM 23 Q. So because you were drunk. You made up

02:25:02PM 24 a story about an armed robbery involving Mr. Green?

02:25:06PM 25 A. Yes, sir.

02:25:06PM 1 Q. That doesn't -- explain that to the
02:25:09PM 2 jury. How are we supposed to believe that?

02:25:11PM 3 A. I guess I called him nigger, he was
02:25:17PM 4 laughing, and I dropped him off, you know.

02:25:19PM 5 Q. Okay. Do you remember what you told
02:25:22PM 6 Detective Kaufman in North Charleston?

02:25:25PM 7 A. No, sir.

02:25:25PM 8 Q. You don't remember? You don't remember
02:25:42PM 9 him asking you, do you know why you were at the
02:25:43PM 10 bank? Or excuse me, why you're here. And your
02:25:46PM 11 answer was, what happened at the bank. Do you
02:25:49PM 12 remember that?

02:25:49PM 13 A. No.

02:25:51PM 14 Q. Investigator -- Detective Kaufman asked
02:25:55PM 15 you what happened at the bank and you talked about
02:25:57PM 16 kidnapping and robing somebody. You don't remember
02:25:59PM 17 that?

02:25:59PM 18 A. Huh-uh.

02:26:00PM 19 Q. And he asked you, did you have anything
02:26:03PM 20 to do with this armed robbery? And your response
02:26:05PM 21 was, the gun was pointed at me, too. They made me
02:26:08PM 22 drive.

02:26:09PM 23 The same thing you told Officer
02:26:11PM 24 Williams.

02:26:11PM 25 A. Yes.

02:26:11PM 1 Q. You don't remember that?

02:26:12PM 2 A. I probably did if was under alcohol
02:26:15PM 3 under influence.

02:26:16PM 4 Q. Alcohol makes you make up outlandish
02:26:20PM 5 stories?

02:26:20PM 6 A. It makes you lie.

02:26:21PM 7 Q. There's a difference between lying and
02:26:23PM 8 making up such a ridiculous story.

02:26:34PM 9 You talk to the detective about going
02:26:35PM 10 to the bank, getting a jump from the victim, which
02:26:38PM 11 you said several times, your homeboys being there
02:26:41PM 12 and having guns. You don't remember any of that?

02:26:44PM 13 A. I never said my homeboys had any guns
02:26:48PM 14 because we didn't --

02:26:48PM 15 Q. We just heard you say on the recording.

02:26:50PM 16 A. I probably said it under alcohol
02:26:55PM 17 influence.

02:26:55PM 18 Q. And then you remember when the
02:26:57PM 19 detective asked who did it, in response about your
02:27:00PM 20 homeboys having guns, that you said Tampa?

02:27:02PM 21 A. Right.

02:27:03PM 22 Q. The same guy you testified earlier is
02:27:06PM 23 Tappia Green?

02:27:06PM 24 A. Yes.

02:27:07PM 25 Q. So you're saying that you were drunk

02:27:09PM 1 too and made that up?

02:27:10PM 2 A. (Nodding)

02:27:11PM 3 Q. Okay. Do you remember telling the
02:27:15PM 4 detective that -- describing Tampa, or Mr. Green's
02:27:20PM 5 physical appearance, that he had all black on,
02:27:22PM 6 black jacket, black shirt, and that the third guy
02:27:25PM 7 the unknown guy, which I think we're going with is
02:27:27PM 8 L. B. now, had a white shirt and hat on? Do you
02:27:30PM 9 remember that?

02:27:30PM 10 A. I don't remember that. They -- they
02:27:31PM 11 said -- the victims said at that time he had on a
02:27:36PM 12 black coat and black shirt.

02:27:36PM 13 Q. You don't remember saying that?

02:27:38PM 14 A. I don't remember saying that.

02:27:39PM 15 Q. Okay. We'll get to that. You talked
02:27:43PM 16 about your mom working at Hardee's. That is true?

02:27:47PM 17 A. Yes, sir.

02:27:48PM 18 Q. And then Detective Kaufman asked about
02:27:57PM 19 a gun. If you had a gun or anybody else had a gun,
02:27:59PM 20 and you respond by shaking your head and saying,
02:28:03PM 21 they put it on both of us, they told me to drive,
02:28:06PM 22 drive, drive. You don't remember that?

02:28:06PM 23 A. No, sir.

02:28:07PM 24 Q. Nobody put a gun to you?

02:28:08PM 25 A. No.

02:28:09PM 1 Q. Nobody made you drive to Mount
02:28:11PM 2 Pleasant?
02:28:11PM 3 A. No.
02:28:11PM 4 Q. Nobody had you under duress?
02:28:14PM 5 A. No, sir.
02:28:14PM 6 Q. You just made it up?
02:28:15PM 7 A. I made it up.
02:28:15PM 8 Q. You don't remember telling Detective
02:28:33PM 9 Kaufman that you were scared that Mr. Green and the
02:28:36PM 10 third guy knows where your mom lives and works and
02:28:41PM 11 they might shoot her?
02:28:41PM 12 A. No.
02:28:41PM 13 Q. You're not scared about that?
02:28:44PM 14 A. No, sir. I'm not scared.
02:28:45PM 15 Q. That's not why you gave different
02:28:45PM 16 stories?
02:28:48PM 17 A. No, sir.
02:28:48PM 18 Q. I mean, at the end of the day, Mr.
02:28:51PM 19 Johnson, to be honest with you, if you were
02:28:53PM 20 concerned about the wellbeing of your mother, I
02:28:58PM 21 think people would understand that, if that's why
02:28:58PM 22 you told different stories. Is that the case?
02:29:01PM 23 A. No, sir.
02:29:01PM 24 Q. Okay. You tell Officer Williams in the
02:29:21PM 25 recording that we just heard, to ask the guy with

02:29:25PM 1 the dreads, who would be Keith Lee, that you saved
02:29:28PM 2 his life?

02:29:30PM 3 A. Right.

02:29:30PM 4 Q. Would you be surprised if Keith Lee
02:29:34PM 5 said the same thing, that you saved his life, gave
02:29:38PM 6 you credit for that?

02:29:38PM 7 A. I don't know.

02:29:39PM 8 Q. If you were drunk and making up a
02:29:41PM 9 story, why would somebody else who didn't know you,
02:29:46PM 10 corroborate that, give the same facts if that was a
02:29:48PM 11 made-up story?

02:29:49PM 12 A. I don't know, sir.

02:29:50PM 13 Q. But you're saying nothing happened
02:29:52PM 14 where you had to step in and save his life?

02:29:55PM 15 A. No, sir.

02:29:56PM 16 Q. And you remember telling Detective
02:30:11PM 17 Kaufman that exactly what you told Tracy Williams
02:30:13PM 18 is what you were telling him was the truth?

02:30:15PM 19 A. No, sir.

02:30:22PM 20 MR. COOPER: Beg the Court's indulgence
02:30:23PM 21 one second?

02:30:23PM 22 THE COURT: Yes, sir.

02:30:23PM 23 BY MR. COOPER:

02:31:10PM 24 Q. Mr. Johnson, is it your testimony
02:31:11PM 25 before the Court today and this jury that your --

02:31:16PM 1 that you're denying making those statements or you
02:31:18PM 2 don't remember making those statements?

02:31:20PM 3 A. I don't remember.

02:31:24PM 4 MR. COOPER: Your Honor, may Mr. Archer
02:31:25PM 5 and I approach?

02:31:26PM 6 THE COURT: You may.

02:31:27PM 7 (Bench conference)

02:31:27PM 8 BY MR. COOPER:

02:32:26PM 9 Q. We're going to pull up your statement
02:32:27PM 10 that you gave to Detective Kaufman.

02:33:40PM 11 So, Mr. Johnson, you don't remember
02:33:43PM 12 telling Detective Kaufman, answering his questions,
02:33:44PM 13 when he asked you about what happened at the bank?

02:33:44PM 14 A. No, sir.

02:34:17PM 15 (Video recording played in open court.)

02:34:17PM 16 BY MR. COOPER:

02:36:36PM 17 Q. Mr. Johnson, you don't remember
02:36:39PM 18 responding that it was Tampa, who was identified as
02:36:42PM 19 Tappia, when he asked you the question, who did it?

02:36:46PM 20 A. No, sir.

02:36:48PM 21 (Video recording played in open court.)

02:36:48PM 22 BY MR. COOPER:

02:39:04PM 23 Q. You don't remember describing to
02:39:06PM 24 Detective Kaufman where everybody was sitting in
02:39:08PM 25 the vehicle.

02:39:09PM 1 A. No, sir.

02:39:09PM 2 (Video recording played in open court.)

02:39:09PM 3 BY MR. COOPER:

02:41:08PM 4 Q. Do you remember telling Detective

02:41:10PM 5 Kaufman the victim would bring your mom home?

02:41:13PM 6 A. No. No, sir.

02:41:14PM 7 Q. The victim and his girlfriend would

02:41:16PM 8 bring your mom home?

02:41:16PM 9 A. No, sir.

02:41:16PM 10 (Video recording played in open court.)

02:41:16PM 11 BY MR. COOPER:

02:43:22PM 12 Q. You don't remember telling Detective

02:43:25PM 13 Kaufman that -- asking about what the victim was

02:43:28PM 14 saying and you being in the car at the time, you

02:43:32PM 15 don't remember that?

02:43:32PM 16 A. No, sir.

02:43:36PM 17 Q. And you don't remember him asking if

02:43:39PM 18 there was anybody that would come and vouch for you

02:43:43PM 19 that was not involved in this, and you weren't able

02:43:47PM 20 to provide him anybody?

02:43:49PM 21 A. No, sir.

02:43:49PM 22 Q. That is you -- this is you talking to

02:44:09PM 23 Detective Kaufman, right?

02:44:10PM 24 A. Uh-huh.

02:44:10PM 25 Q. She need to take it down. Yes or no?

02:44:16PM 1 A. Yes, sir.

02:44:18PM 2 MR. COOPER: Your Honor, based on his
02:44:19PM 3 admission, at this time I would admit the two
02:44:22PM 4 excerpts that the State played, from 17:32 to 23:50
02:44:25PM 5 and then 25:08 to 26:48 as I believe the State's
02:44:25PM 6 46.

02:44:41PM 7 THE COURT: Any objection?

02:44:42PM 8 MR. ARCHER: He wants to take excerpt
02:44:45PM 9 out of what has been played?

02:44:48PM 10 MR. COOPER: Seeking to move in the
02:44:49PM 11 parts we just played.

02:44:50PM 12 MR. ARCHER: Huh?

02:44:50PM 13 THE COURT: Just moving what's been
02:44:52PM 14 played into evidence.

02:44:53PM 15 MR. ARCHER: Just the parts that have
02:44:56PM 16 been played. Okay. No objection.

02:44:56PM 17 THE COURT: No objection. They'll be
02:44:59PM 18 admitted.

02:45:01PM 19 MR. COOPER: Thank you,
02:45:01PM 20 Judge.

02:45:02PM 21 (PLF. EXH. 46 in evidence.)

02:45:02PM 22 THE COURT: 46 in evidence.

02:45:10PM 23 MR. ARCHER: Your Honor, may we
02:45:15PM 24 approach?

02:45:16PM 25 THE COURT: Yes, sir.

02:45:17PM 1 (Bench conference.)

02:46:21PM 2 THE COURT: Ladies and gentlemen,
02:46:23PM 3 there's something I have to take up with the
02:46:25PM 4 attorneys outside of your hearing. I told you we
02:46:29PM 5 would do this from time to time. I would ask you
02:46:31PM 6 to step back to the jury room and don't discuss the
02:46:35PM 7 case until I advised you to do so.

02:46:37PM 8 (Jury out 2:42 p.m.)

02:47:04PM 9 THE COURT: Yes, sir, Mr. Archer. You
02:47:06PM 10 said you have a motion.

02:47:07PM 11 MR. ARCHER: Yes, sir. My client tells
02:47:09PM 12 me that on the -- what was just played, that there
02:47:12PM 13 was a part where Mr. Johnson said that he met
02:47:18PM 14 Tappia in jail. And we think that's not proper
02:47:23PM 15 before the jury. We would move for a mistrial
02:47:27PM 16 because it was an indication of prior bad acts on
02:47:29PM 17 my client's part.

02:47:31PM 18 THE COURT: All right. Yes, sir.

02:47:34PM 19 MR. COOPER: Your Honor, first of all,
02:47:35PM 20 I would say I'm not aware of. I've watched it
02:47:39PM 21 before, I did not hear both prior to or in that
02:47:39PM 22 excerpt.

02:47:43PM 23 THE COURT: On which recording are we
02:47:44PM 24 talking about that he heard that?

02:47:46PM 25 MR. ARCHER: The one that just finished

02:47:48PM 1 playing.

02:47:48PM 2 THE COURT: The last one that was
02:47:50PM 3 played. All right.

02:47:52PM 4 MR. ARCHER: The one of the detective
02:47:54PM 5 questioning him.

02:47:55PM 6 MR. COOPER: And, certainly, Judge,
02:47:55PM 7 with the recording I put in of Officer Williams, we
02:47:57PM 8 made a point to keep that kind of thing out. We
02:48:00PM 9 know to do that. I don't know of that being in
02:48:02PM 10 there. I have not heard that. I would venture to
02:48:06PM 11 say that -- I don't even know if it exists, to be
02:48:08PM 12 honest with you, Judge.

02:48:09PM 13 And even if it does, testimony has come
02:48:12PM 14 in from the officer who works at the jail. We know
02:48:18PM 15 there has been some jail calls, so the jury has
02:48:18PM 16 some understanding that the defendant has been in
02:48:20PM 17 trouble before. I would think this argument of
02:48:23PM 18 prior bad acts -- I think it's still not enough for
02:48:27PM 19 a mistrial because nothing has come out of that
02:48:27PM 20 that happened.

02:48:32PM 21 Officer Sherbine testified more about
02:48:32PM 22 the defendant being in jail than whatever was heard
02:48:38PM 23 in that recording, and yet, I don't have proof that
02:48:38PM 24 that's in the recording. I have not heard it.

02:48:40PM 25 THE COURT: All right.

02:48:42PM 1 Anything further, Mr. Archer?

02:48:43PM 2 MR. ARCHER: I have nothing further.

02:48:44PM 3 THE COURT: Here's what I will do. If
02:48:49PM 4 you would like to review the tape, I will let you
02:48:52PM 5 do that, and see if you can find it in the tape,
02:48:56PM 6 number one. Number two, I will be glad to -- it
02:49:00PM 7 does seem to me that there is evidence in the
02:49:03PM 8 record that your client has been incarcerated
02:49:06PM 9 before because there is jail calls have been
02:49:11PM 10 admitted, the fact that he's under arrest now, or
02:49:14PM 11 indicted now, he's had to have gone to jail at that
02:49:18PM 12 time. So he's been to jail before. There is
02:49:21PM 13 nothing specific about any prior bad acts. What
02:49:23PM 14 you're arguing, I haven't heard that. So I will
02:49:27PM 15 not grant a mistrial.

02:49:29PM 16 What I will do, if it is in the tape, I
02:49:31PM 17 will be happy to strike that from the record and
02:49:35PM 18 give a limiting instruction to the jury that they
02:49:38PM 19 are not to consider that statement at all in
02:49:40PM 20 reaching a verdict in the case, if you wish for me
02:49:42PM 21 to do that; otherwise, I won't because you may not
02:49:47PM 22 want me to call attention to that. So it's between
02:49:49PM 23 you and your client as to how you want me to handle
02:49:52PM 24 that.

02:49:52PM 25 MR. ARCHER: Yeah. I think we can do

02:49:54PM 1 this when we break for the evening probably, Your
02:49:59PM 2 Honor, because that's a long tape.

02:50:01PM 3 THE COURT: I don't know when we're
02:50:04PM 4 going to rest. Maybe we'll still be taking
02:50:06PM 5 evidence by 5:00, I don't know.

02:50:08PM 6 MR. COOPER: Judge, I would venture to
02:50:09PM 7 say that if Mr. Archer has the intention of going
02:50:13PM 8 through the recording, I mean, I think at the most
02:50:17PM 9 its five to seven minutes, I would ask that he do
02:50:19PM 10 that now.

02:50:19PM 11 THE COURT: Let's take a five-minute
02:50:21PM 12 break and you gentlemen get together and see if you
02:50:24PM 13 can find it. Court's in recess while you review
02:50:29PM 14 the tape.

02:50:30PM 15 MR. ARCHER: I would like my client to
02:50:34PM 16 stay here to help me.

02:50:36PM 17 THE COURT: Absolutely, no problem.

02:50:37PM 18 (A recess transpired.)

02:50:37PM 19 THE COURT: Let's go back on the
02:57:54PM 20 record.

02:57:54PM 21 MR. COOPER: Judge, I heard it there
02:57:56PM 22 too. I think my office heard it. Again, for the
02:58:00PM 23 Court, that's certainly not --

02:58:00PM 24 THE COURT: Play that for me one more
02:58:04PM 25 time and let me hear it. Just that part.

02:58:20PM 1 (Video played)

02:58:23PM 2 MR. ARCHER: He says his name is Tampa
02:58:32PM 3 and he knows him from jail.

02:58:34PM 4 THE COURT: Okay. He says he knows him
02:58:38PM 5 from jail. All right. Yes, sir.

02:58:43PM 6 THE D: He said he meet me --

02:58:46PM 7 THE COURT: Sir, I'm not calling on
02:58:47PM 8 you. I'm calling on your lawyer.

02:58:47PM 9 MR. ARCHER: Yes, sir. Well, it does
02:58:52PM 10 -- it's a jail that isn't related to the current
02:58:57PM 11 charge. So it implies that he's been in trouble
02:59:00PM 12 before and -- not related to this charge. And
02:59:06PM 13 that's why I think it's prejudicial.

02:59:08PM 14 THE COURT: I understand that, but,
02:59:09PM 15 again, there's maybe some prejudice from it, but
02:59:13PM 16 I'm willing to put in a curative instruction for
02:59:16PM 17 that.

02:59:16PM 18 MR. ARCHER: Right.

02:59:17PM 19 THE COURT: Because there has been
02:59:19PM 20 testimony in evidence put into the record that your
02:59:21PM 21 client has been in jail. It's not that he's never
02:59:24PM 22 been in jail or doesn't have a record, so I will be
02:59:28PM 23 happy to strike that from the record and instruct
02:59:30PM 24 the jury not to consider that at all in reaching a
02:59:33PM 25 verdict in the case and it should not even be

02:59:36PM 1 discussed by them in their deliberations.

02:59:40PM 2 MR. ARCHER: Okay.

02:59:41PM 3 THE COURT: Do you want me to do that
02:59:42PM 4 or not? That's your call.

03:00:12PM 5 If you're talking to me, you have to
03:00:14PM 6 stand up and talk to me.

03:00:15PM 7 MR. ARCHER: My client wants to file a
03:00:18PM 8 mistrial motion, and I said that you have denied
03:00:21PM 9 that.

03:00:21PM 10 THE COURT: I've denied a motion for
03:00:23PM 11 the mistrial.

03:00:26PM 12 (Off-the-record conference.)

03:00:26PM 13 MR. ARCHER: Judge, he thinks if they
03:00:55PM 14 hear it again, it will still be denied --

03:00:56PM 15 THE COURT: If you're not going to
03:00:58PM 16 stand up --

03:00:58PM 17 MR. ARCHER: I'm sorry, Judge. He's
03:01:00PM 18 ready to let it pass because he's afraid it may
03:01:03PM 19 just reinforce --

03:01:04PM 20 THE COURT: Well, I understand his
03:01:06PM 21 concern, but I will be more than happy to give a
03:01:08PM 22 limiting instruction and strike it from the -- I'm
03:01:11PM 23 going to strike it from the record anyway, but I
03:01:14PM 24 will be glad to give a limiting instruction if he
03:01:17PM 25 wishes me to do so. I take it he has decided he

03:01:20PM 1 does not want me to do that.

03:01:22PM 2 MR. ARCHER: Yes, sir.

03:01:23PM 3 THE COURT: All right. Bring the jury
03:01:28PM 4 back.

03:01:28PM 5 One second. We have to get the witness
03:01:30PM 6 back first.

03:01:33PM 7 MR. COOPER: Judge, I can play it again
03:01:35PM 8 and get the time stamps and exclude it from the
03:01:39PM 9 record.

03:01:39PM 10 For the record, the part that is
03:02:09PM 11 stricken is 1942 to 1947. That excludes the part
03:02:13PM 12 about knowing him from jail. I, again, apologize
03:02:16PM 13 to the Court for that coming in.

03:02:18PM 14 THE COURT: That's been stricken from
03:02:21PM 15 the record. The defendant does not wish a limiting
03:02:24PM 16 instruction.

03:02:29PM 17 Let's bring the jury in.

03:02:30PM 18 (Jury in, 2:59 p.m.)

03:04:10PM 19 THE BAILIFF: Jurors all present.

03:04:11PM 20 THE COURT: Ladies and gentlemen, I
03:04:12PM 21 have granted a defense motion to strike during your
03:04:16PM 22 absence; and, at this time, the State may proceed.

03:04:19PM 23 MR. COOPER: Thank you, Judge.

03:04:19PM 24 BY MR. COOPER:

03:04:22PM 25 Q. So, Mr. Johnson, we have listened to

03:04:26PM 1 two recordings of you talking to law enforcement on
03:04:30PM 2 the 14th of April 2015. And your testimony to this
03:04:35PM 3 jury is that the entirety of both of those stories
03:04:39PM 4 are not true?

03:04:39PM 5 A. Yes, sir.

03:04:42PM 6 Q. Now that was in April 2015. I know Mr.
03:04:46PM 7 Archer went over some letters with you that you
03:04:51PM 8 think you wrote. The first one that you sent to my
03:04:57PM 9 office was December 11th of 2015. Does that sound
03:05:01PM 10 right to you?

03:05:02PM 11 A. Yes, sir.

03:05:03PM 12 Q. So that was about eight months after
03:05:06PM 13 this incident?

03:05:07PM 14 A. Yes, sir.

03:05:07PM 15 Q. If you were drunk, as you claim you
03:05:12PM 16 were and which somehow led you to make up these
03:05:16PM 17 stories, why would you wait eight months to tell
03:05:19PM 18 the real story?

03:05:20PM 19 A. Because I didn't know how serious it
03:05:22PM 20 was until, like, later on I realized I got some
03:05:25PM 21 innocent person locked up, and it was eating me up.

03:05:33PM 22 MR. COOPER: Beg the Court's
03:05:34PM 23 indulgence?

03:05:34PM 24 THE COURT: Yes, sir.

03:05:34PM 25 BY MR. COOPER:

03:05:43PM 1 Q. So, you said you didn't know how
03:05:45PM 2 serious it was. With that happening on the 14th,
03:05:49PM 3 you were booked into the detention center that
03:05:52PM 4 night, right?

03:05:52PM 5 A. Uh-huh.

03:05:52PM 6 Q. And you sat in jail --

03:05:54PM 7 THE COURT: Was that a yes that you
03:05:55PM 8 were?

03:05:55PM 9 THE WITNESS: Yes, sir.

03:05:56PM 10 THE COURT: Thank you.

03:05:56PM 11 BY MR. COOPER:

03:05:58PM 12 Q. You sat in jail until you pled guilty
03:06:00PM 13 back in -- early this month, right?

03:06:00PM 14 A. Yes, sir.

03:06:02PM 15 Q. Did that not give you an indication of
03:06:04PM 16 how serious this was?

03:06:05PM 17 A. Sir?

03:06:05PM 18 Q. The fact that you were sitting in jail
03:06:07PM 19 for eight months before you wrote that letter --
03:06:10PM 20 your testimony was that you didn't know how serious
03:06:12PM 21 it was?

03:06:13PM 22 A. Yes, sir.

03:06:13PM 23 Q. So the fact that you were in jail for
03:06:15PM 24 eight months, did that not give you some indication
03:06:18PM 25 of how serious the situation was?

03:06:19PM 1 A. Yes, sir.

03:06:20PM 2 Q. So why did it take you eight months to
03:06:22PM 3 tell the story that you told in the letters?

03:06:24PM 4 A. I don't know.

03:06:26PM 5 Q. Took you eight months to come up with a
03:06:29PM 6 story?

03:06:29PM 7 A. No, I ain't come up with no story.

03:06:31PM 8 Q. Well, then, why didn't you tell the
03:06:33PM 9 police when they took you to jail that night? If
03:06:36PM 10 you're drunk, wouldn't you sober up if someone is
03:06:38PM 11 taking you to jail?

03:06:38PM 12 A. I didn't have a feeling I was going to
03:06:41PM 13 jail, so I got drunk.

03:06:42PM 14 Q. Why would you -- your testimony to the
03:06:46PM 15 Court today is that it was a consensual thing where
03:06:50PM 16 the victim owed you money, right?

03:06:51PM 17 A. Yes, sir.

03:06:51PM 18 Q. And you-all went and got it, right?

03:06:53PM 19 A. Yes, sir.

03:06:53PM 20 Q. So why in the world would you think you
03:06:56PM 21 were going to jail?

03:06:56PM 22 A. Because the police said something about
03:06:59PM 23 questioning about some kind of armed robbery.

03:07:01PM 24 Q. So if it's not the truth, why would you
03:07:04PM 25 agree to it? Why would you admit to it?

03:07:06PM 1 A. I don't know.

03:07:07PM 2 Q. You don't have an explanation for that?

03:07:09PM 3 A. No.

03:07:09PM 4 Q. You don't have an explanation why it

03:07:10PM 5 took you eight months to come up with this story?

03:07:12PM 6 A. Yeah.

03:07:15PM 7 Q. What is it?

03:07:16PM 8 A. Like I told you, I didn't know how

03:07:18PM 9 serious it was, and I had to sit and think about

03:07:22PM 10 it. You know what I'm saying?

03:07:24PM 11 Q. So in that letter Mr. Archer had you

03:07:31PM 12 read before the jury, you talk about writing on

03:07:36PM 13 behalf of Tappia Green.

03:07:38PM 14 A. Yes, sir.

03:07:38PM 15 Q. Did he get you to write the letter?

03:07:41PM 16 A. No, sir.

03:07:41PM 17 Q. Why did you decide to write the letter

03:07:44PM 18 for him?

03:07:44PM 19 A. Because I feel I had an innocent person

03:07:49PM 20 locked up, and he didn't do nothing.

03:07:52PM 21 Q. You said you want to clear him out of

03:08:01PM 22 the situation, right?

03:08:02PM 23 A. Yes, sir.

03:08:02PM 24 Q. By saying he had nothing to do with --

03:08:07PM 25 he had nothing to do with anything I had going on

03:08:08PM 1 that day?

03:08:08PM 2 A. Yes, sir.

03:08:09PM 3 Q. But he was in the car with you?

03:08:12PM 4 A. I know.

03:08:12PM 5 Q. You said that he had the check stub,
03:08:17PM 6 right?

03:08:17PM 7 A. Yes, sir.

03:08:17PM 8 Q. If he was so drunk in the front seat of
03:08:21PM 9 the car, why would he have the check stub in the
03:08:25PM 10 first place?

03:08:25PM 11 A. Because the victim give it to him. He
03:08:29PM 12 was holding the check for me while I'm driving.

03:08:30PM 13 Q. The victim gave Tappia the check stub?

03:08:30PM 14 A. Yes, sir.

03:08:30PM 15 Q. When?

03:08:34PM 16 A. After the check cashing place.

03:08:35PM 17 Q. So instead of giving -- he owed you the
03:08:39PM 18 money, right? That's your story?

03:08:39PM 19 A. Yes, sir.

03:08:39PM 20 Q. And so why did the victim give the
03:08:44PM 21 check stub to Tappia if he owed you the money?

03:08:46PM 22 A. I told him to give it to Tappia.

03:08:48PM 23 Q. To give the cash Tappia too?

03:08:50PM 24 A. Give him the whole envelope. The check
03:08:53PM 25 stub was in the envelope. I guess he forget the

03:08:55PM 1 check stub was in the envelope.

03:08:57PM 2 Q. With the cash, though? Because you
03:08:59PM 3 said that was after cashing the check?

03:08:59PM 4 A. Yes, sir.

03:09:01PM 5 Q. So if he was so drunk that his mother
03:09:06PM 6 had to help him in his house, why would you give
03:09:07PM 7 him \$242? Why would you give him all that?

03:09:07PM 8 A. He ain't going to do nothing with it.

03:09:11PM 9 Q. You said that you lied in that post
03:09:20PM 10 Miranda statement to the detectives because they
03:09:21PM 11 had you under pressure?

03:09:22PM 12 A. Yes, sir.

03:09:23PM 13 Q. We watched the video. What kind of
03:09:27PM 14 pressure did Detective Kaufman have you under?

03:09:28PM 15 A. I was under the influence of alcohol.

03:09:29PM 16 Q. But your letter says -- I'll let you
03:09:33PM 17 read it.

03:09:34PM 18 A. I know what it says.

03:09:36PM 19 Q. Read it for the jury. Start there.

03:09:37PM 20 A. How far?

03:09:39PM 21 Q. Just to the end of that sentence.

03:09:41PM 22 A. I lied in the past -- (inaudible)

03:09:41PM 23 THE COURT REPORTER: I can't understand
03:09:41PM 24 him.

03:09:41PM 25 BY MR. COOPER:

03:09:41PM 1 Q. Start here. (Indicating)

03:09:50PM 2 A. I lied in the post-Miranda rule because
03:09:55PM 3 the detectives, they had me under pressure. I was
03:09:55PM 4 --

03:09:59PM 5 Q. That's good. So you lied in your
03:10:01PM 6 post-Miranda statement because they had you under
03:10:02PM 7 pressure?

03:10:02PM 8 A. Yes.

03:10:03PM 9 Q. And you told the jury that you were
03:10:04PM 10 under the influence?

03:10:05PM 11 A. Yes, sir. That's on the paper too.

03:10:07PM 12 Q. No, so you said that. You just said
03:10:08PM 13 that now that you were under the influence?

03:10:11PM 14 A. Because I was.

03:10:11PM 15 Q. Were you under the influence when you
03:10:15PM 16 wrote this letter?

03:10:15PM 17 A. I was in jail. How can I be --

03:10:17PM 18 Q. I'm asking you.

03:10:18PM 19 A. No, sir.

03:10:19PM 20 Q. So what do you mean by under pressure?

03:10:21PM 21 A. I was under the alcohol and they were
03:10:25PM 22 questioning me.

03:10:26PM 23 Q. They were asking you questions but it
03:10:28PM 24 said the detectives had you under pressure. We saw
03:10:30PM 25 the video. I don't see under pressure. So if

03:10:33PM 1 you're writing this in jail and you just said
03:10:35PM 2 there's no alcohol and you're of sober mind and
03:10:36PM 3 clear mind, what do you mean by that? What were
03:10:38PM 4 they doing to you that --

03:10:38PM 5 A. -- see me under pressure. I was under
03:10:43PM 6 the alcohol and I was acting how alcohol made me
03:10:47PM 7 react.

03:10:47PM 8 Q. How does the alcohol make you act?

03:10:49PM 9 A. Made me act wild..

03:10:51PM 10 Q. I mean, you're moving your hands, but I
03:10:53PM 11 move my hands so I --

03:10:54PM 12 A. If you listen to the -- the -- the
03:10:56PM 13 video, you can hear it in my voice the way I'm
03:11:02PM 14 talking.

03:11:02PM 15 Q. That's what you meant by under
03:11:05PM 16 pressure?

03:11:05PM 17 A. Yes, sir.

03:11:05PM 18 Q. And that lasted from 6:30, when you
03:11:14PM 19 spoke to Officer Williams on the phone, until 9:00,
03:11:18PM 20 when you were interviewing with Detective Kaufman?

03:11:20PM 21 A. Yes.

03:11:21PM 22 Q. You were in there about an hour?

03:11:22PM 23 A. Yes.

03:11:22PM 24 Q. More or less? And you were drunk when
03:11:25PM 25 you came in and drunk when you left?

03:11:27PM 1 A. Yes, sir. Alcohol ain't wear off of me
03:11:30PM 2 until I got to the jail.

03:11:31PM 3 Q. Say what?

03:11:32PM 4 A. Alcohol didn't wear off until I got to
03:11:34PM 5 the jail.

03:11:34PM 6 Q. Okay. What did you drink?

03:11:37PM 7 A. I had Hennessy.

03:11:38PM 8 Q. How much?

03:11:39PM 9 A. About -- I probably drank close to a
03:11:45PM 10 half bottle.

03:11:46PM 11 Q. And it had you drunk from 6:00 p.m. to
03:11:49PM 12 close to midnight?

03:11:51PM 13 A. Yes, sir. It wasn't midnight.

03:11:52PM 14 Q. So you say in her in this letter
03:12:15PM 15 several times, the one that Mr. Archer had you read
03:12:18PM 16 to the jury, about wanting to clear Mr. Green out
03:12:20PM 17 of it, not meaning to involve him at all, that this
03:12:25PM 18 situation never happened?

03:12:26PM 19 A. Yes, sir.

03:12:26PM 20 Q. You don't mention until the end about
03:12:34PM 21 yourself?

03:12:35PM 22 A. How you mean?

03:12:36PM 23 Q. Weren't you upset that if that's not
03:12:39PM 24 what happened, that you were in jail? You had been
03:12:41PM 25 there for eight months at that point.

03:12:43PM 1 A. Yes, sir.

03:12:43PM 2 Q. Why weren't you worried about that?

03:12:45PM 3 You write this whole letter about Mr. Green. What
03:12:49PM 4 about you?

03:12:49PM 5 A. I didn't write about myself. Like I
03:12:50PM 6 said, I had an innocent person locked up.

03:12:52PM 7 Q. With the story that you're telling the
03:12:54PM 8 jury today, it's true, then, you would be locked up
03:12:57PM 9 innocent too, right?

03:12:57PM 10 A. Yeah.

03:12:58PM 11 Q. That's not how you look at it?

03:13:00PM 12 A. No, sir.

03:13:00PM 13 Q. How do you look at it?

03:13:03PM 14 A. I looked at it as I had an innocent
03:13:04PM 15 person locked up. So I'm going to plead guilty and
03:13:07PM 16 get it over with.

03:13:08PM 17 Q. And we'll get to your plea in a second,
03:13:11PM 18 but I just want to understand and want the jury to
03:13:12PM 19 understand, if you're saying what happened was that
03:13:14PM 20 he owed you money, it's like, I've got a check, pay
03:13:19PM 21 you, let's go get it, and it was all consensual,
03:13:20PM 22 there was no robbery, there was no crime, whatever,
03:13:23PM 23 why were you not trying -- why were you not wanting
03:13:26PM 24 to get out of jail? Why were you not trying to get
03:13:28PM 25 yourself out? If you're innocent, why are you

03:13:32PM 1 sitting in jail? Why are you not trying to beat
03:13:34PM 2 down the doors and tell people, hey, that's not
03:13:35PM 3 what happened?

03:13:35PM 4 A. I can't control what -- when he locked
03:13:38PM 5 me up, I can't control that.

03:13:40PM 6 Q. You can control what you tell the
03:13:42PM 7 police.

03:13:42PM 8 A. Yeah. But at the time I was talking to
03:13:45PM 9 them I was under the influence of alcohol.

03:13:48PM 10 Q. So you talk about in this letter --
03:14:12PM 11 it's a little hard to read. Essentially, what it
03:14:20PM 12 is, is that you say if he was being robbed, why
03:14:23PM 13 would he come back to a car with people that were
03:14:27PM 14 robbing him? If he was in a public place, why
03:14:30PM 15 didn't he call out?

03:14:31PM 16 A. Yes.

03:14:31PM 17 Q. If the story you're telling this jury
03:14:32PM 18 today is true, there was no robbery, that kind of
03:14:35PM 19 thing, he wouldn't need to do that, would he?

03:14:37PM 20 A. Do what?

03:14:38PM 21 Q. Call out for help.

03:14:40PM 22 A. No, sir.

03:14:40PM 23 Q. You're saying if he could have called
03:14:43PM 24 out all day long, he was in Hardee's, there were
03:14:46PM 25 people, we were in a parking lot, he could have

03:14:48PM 1 ran, he could have gotten away.

03:14:48PM 2 A. I only say that because he said he got
03:14:51PM 3 robbed. We took him several places. He could have
03:14:54PM 4 screamed for help if he feel like he be getting
03:14:58PM 5 robbed and under danger.

03:14:59PM 6 Q. If that didn't happen, shouldn't you be
03:15:02PM 7 saying there was no need for it?

03:15:03PM 8 A. Yeah.

03:15:04PM 9 Q. You weren't?

03:15:05PM 10 A. Right.

03:15:05PM 11 Q. Looking at your second letter, which is
03:15:43PM 12 Defendant's Exhibit Number 2. There is not a date
03:15:48PM 13 on this. Do you remember when you wrote this
03:15:50PM 14 letter?

03:15:52PM 15 The one that you wrote on
03:15:54PM 16 December 15th, is that the first one?

03:15:55PM 17 A. That's the first one.

03:15:57PM 18 Q. So this would have been sometime in
03:15:59PM 19 2016?

03:16:00PM 20 A. Yes, sir.

03:16:01PM 21 Q. And then the third one --

03:16:02PM 22 A. I write the second one because I didn't
03:16:05PM 23 get no response back from the first one.

03:16:07PM 24 Q. So sometime in early 2016?

03:16:09PM 25 A. Yes.

03:16:09PM 1 Q. And the third one, when did you write
03:16:12PM 2 that one; do you remember?

03:16:12PM 3 A. I write that after the second one.

03:16:15PM 4 Q. Okay. So we have them in the right
03:16:17PM 5 order?

03:16:18PM 6 A. Yes, sir.

03:16:18PM 7 Q. Okay. You have in the letter that you
03:16:38PM 8 think the victim thinks it's funny that he has
03:16:41PM 9 Mr. Green locked up for a crime he didn't commit.
03:16:45PM 10 Had you thought about, I mean, it's what you told
03:16:47PM 11 the police?

03:16:47PM 12 A. Uh-huh.

03:16:48PM 13 Q. You gave his name. You told them
03:16:51PM 14 exactly who it was and we're now supposed to
03:16:54PM 15 believe that wasn't the case?

03:16:54PM 16 A. I mean, the name I give them, that
03:16:58PM 17 wasn't his name.

03:16:59PM 18 Q. It was Tampa?

03:17:00PM 19 A. No, they got that -- I guess he's an
03:17:04PM 20 alias. And I give him an alias and that happened
03:17:07PM 21 to be -- got his real name off of it. I didn't
03:17:07PM 22 give them a nickname.

03:17:10PM 23 Q. We all saw in the video just a few
03:17:12PM 24 minutes ago when you said Tampa.

03:17:14PM 25 A. That's not his real name.

03:17:14PM 1 Q. Well, I know that. He has a nickname?

03:17:14PM 2 A. That's not his nickname either.

03:17:19PM 3 Q. What's his nickname?

03:17:20PM 4 A. His name is Trap.

03:17:21PM 5 Q. Okay. Well -- okay. So you don't know

03:17:23PM 6 him as Tampa? You know him as Trap.

03:17:24PM 7 A. (Nodding)

03:17:26PM 8 Q. So when you were telling Detective

03:17:27PM 9 Kaufman, who -- who were you talking about?

03:17:27PM 10 A. I guess, I made that person up.

03:17:29PM 11 Q. Well, you were writing letters saying

03:17:31PM 12 that you gave up Tappia, and you didn't mean to?

03:17:33PM 13 A. Tappia is his real name. Not Tampa.

03:17:37PM 14 Q. Or Trap?

03:17:38PM 15 A. Or Trap.

03:17:39PM 16 Q. But you obviously identified Tappia

03:17:41PM 17 Green because that's who you're writing this about

03:17:43PM 18 and trying to say --

03:17:43PM 19 A. I got his real name on that, bro, but I

03:17:47PM 20 felt like -- I write that because I felt like that

03:17:50PM 21 Tampa -- actually, Tampa was Tampa, that they got

03:17:53PM 22 his real name off of that, and I didn't know that

03:17:55PM 23 was going to lead them to that.

03:17:57PM 24 Q. Okay. So when you said Tampa, you

03:18:06PM 25 didn't mean Tappia Green?

03:18:07PM 1 A. I didn't mean Tappia Green. I had no
03:18:11PM 2 intention of calling him that.

03:18:12PM 3 Q. Well, every letter that you've written
03:18:12PM 4 and all the things you've said today meant to say,
03:18:16PM 5 I said it, but it's not what I meant, and he wasn't
03:18:19PM 6 involved? I'm trying to understand your position
03:18:21PM 7 now. So when you said Tampa, what did you mean?

03:18:24PM 8 A. I didn't call his real name or nickname
03:18:27PM 9 or anything. You know what I mean? I said Tampa
03:18:32PM 10 because that name got him locked up. That's the
03:18:38PM 11 name they locked him up under and that's the
03:18:38PM 12 picture of him.

03:18:39PM 13 Q. But he was in the car that day?

03:18:41PM 14 A. He was in the car.

03:18:41PM 15 Q. And he held the check stub which is why
03:18:44PM 16 his fingerprints are on it?

03:18:44PM 17 A. Yeah. He handed the check stub to me,
03:18:47PM 18 that's how me and his fingerprints got on it.

03:18:50PM 19 Q. Okay. How long have you known
03:19:09PM 20 Mr. Green? Or how long have you known him?

03:19:14PM 21 A. Couple of -- couple of years probably.

03:19:20PM 22 Q. And you always called him Tappia?

03:19:23PM 23 A. I don't call him Tappia.

03:19:25PM 24 Q. You call him Trap?

03:19:27PM 25 A. (Nodding)

03:19:27PM 1 Q. How long had you known the victim?

03:19:29PM 2 A. About two months, two or three months.

03:19:31PM 3 Q. What did you call him?

03:19:33PM 4 A. Keith, his real name.

03:19:35PM 5 Q. And how did you first meet him?

03:19:37PM 6 A. Through my momma.

03:19:39PM 7 Q. How?

03:19:40PM 8 A. He dropped my mom off home one day.

03:19:44PM 9 Q. Okay. And then how did you meet?

03:19:46PM 10 A. I went and talked to him. He asked if

03:19:51PM 11 I had drugs. You know what I'm saying? There was

03:19:52PM 12 a need for that.

03:19:53PM 13 Q. So you go and talk to this guy that

03:19:56PM 14 dropped your mom off. This is the first time that

03:19:57PM 15 you've ever met him and he's like, hey, can I buy

03:19:59PM 16 some drugs?

03:19:59PM 17 A. Uh-huh.

03:20:00PM 18 Q. That's --

03:20:01PM 19 A. Yes, sir.

03:20:01PM 20 Q. Okay. And then you started dealing

03:20:06PM 21 drugs to or him buying drugs from you?

03:20:09PM 22 A. Yes, sir.

03:20:10PM 23 Q. Did your mom know?

03:20:11PM 24 A. No. I don't put my mom in my business.

03:20:15PM 25 Q. Did you live with your mom?

03:20:22PM 1 A. I mean, off and on.

03:20:24PM 2 Q. You love your mom?

03:20:27PM 3 A. Yeah, I love my mom.

03:20:29PM 4 Q. You'd do anything for her?

03:20:30PM 5 A. Yeah, protect her.

03:20:32PM 6 Q. Huh?

03:20:33PM 7 A. To protect her.

03:20:34PM 8 Q. I'm sorry, say it again.

03:20:35PM 9 A. To protect her.

03:20:36PM 10 Q. To protect her?

03:20:38PM 11 A. (Nodding)

03:20:41PM 12 Q. And so you would even say things that

03:20:50PM 13 weren't true to protect her?

03:20:52PM 14 A. Sure.

03:20:53PM 15 Q. So after you wrote the letters, you

03:21:04PM 16 came to court here in Charleston this month?

03:21:08PM 17 A. Yes, sir.

03:21:10PM 18 Q. Pled guilty?

03:21:11PM 19 A. Yes, sir.

03:21:11PM 20 Q. Took responsibility?

03:21:13PM 21 A. Yes, sir. I ain't took no

03:21:16PM 22 responsibility. I just plead guilty to free him,

03:21:20PM 23 Mr. Green.

03:21:22PM 24 Q. Well, one, that's not how it works.

03:21:25PM 25 Two, when you plead guilty, you do take

03:21:31PM 1 responsibility. They ask you about that. I have
03:21:39PM 2 the transcript of your hearing with the judge. The
03:22:03PM 3 judge asked you if you understood that you were
03:22:06PM 4 charged with armed robbery. And you said you did,
03:22:08PM 5 right?

03:22:08PM 6 A. Yes, sir.

03:22:09PM 7 Q. And the judge asked you if you
03:22:10PM 8 understood that you were charged with kidnapping?

03:22:12PM 9 A. Yes.

03:22:12PM 10 Q. And you understood that, right?

03:22:14PM 11 A. Yes, sir.

03:22:14PM 12 Q. Also possession of a weapon during the
03:22:16PM 13 commission of a violent crime; you understood that
03:22:18PM 14 crime?

03:22:18PM 15 A. Yes, sir.

03:22:19PM 16 Q. The judge told you that the State would
03:22:24PM 17 have to prove those charges to a jury, right?

03:22:27PM 18 A. Yes, sir.

03:22:28PM 19 Q. And you understood that?

03:22:31PM 20 A. Yes, sir.

03:22:31PM 21 Q. That until the -- the judge advised you
03:22:45PM 22 that if he accepted your plea, that I would no
03:22:47PM 23 longer be required to prove you guilty beyond a
03:22:51PM 24 reasonable doubt; you understood that?

03:22:52PM 25 A. Yes.

03:22:52PM 1 Q. You understood in this hearing that
03:22:54PM 2 that's my burden, the State?

03:22:56PM 3 A. How you mean?

03:22:57PM 4 Q. Go to trial -- if somebody goes to
03:22:58PM 5 trial, you have to prove them guilty beyond a
03:23:01PM 6 reasonable doubt, put up evidence, that kind of
03:23:02PM 7 thing.

03:23:03PM 8 A. Yes.

03:23:03PM 9 Q. You understood that?

03:23:12PM 10 A. Yes, sir.

03:23:32PM 11 Q. And the judge went through your rights
03:23:34PM 12 about when you plead guilty you give up your right
03:23:36PM 13 to remain silent; and you understood that?

03:23:39PM 14 A. Yes, sir.

03:23:39PM 15 Q. Your right to a jury trial; you
03:23:41PM 16 understood that?

03:23:41PM 17 A. Yes, sir.

03:23:42PM 18 Q. The judge asked you if the answers you
03:24:06PM 19 gave him were truthful. You understood that?

03:24:10PM 20 A. Yes.

03:24:10PM 21 Q. Were they truthful?

03:24:12PM 22 A. I guess.

03:24:15PM 23 Q. The judge asked about whether or not
03:24:21PM 24 what you were saying was something that somebody
03:24:22PM 25 told you, your lawyer, somebody at the jail said,

03:24:25PM 1 you know, if you want to quote those things to get
03:24:28PM 2 through the proceeding, just say these things; and
03:24:31PM 3 you told him that's not the case. Do you remember
03:24:33PM 4 that?

03:24:33PM 5 A. Yes, sir. Nobody forced me to plead
03:24:40PM 6 guilty?

03:24:40PM 7 Q. Say what?

03:24:40PM 8 A. Said nobody forced me to plead guilty.

03:24:40PM 9 Q. You pled guilty on your own free will?

03:24:43PM 10 A. Yes, sir.

03:24:43PM 11 Q. And you also know that when you plead
03:24:49PM 12 guilty the Court has to have the facts, right?

03:24:52PM 13 A. Yes, sir.

03:24:52PM 14 Q. And I read the facts to the judge?

03:24:57PM 15 A. (No response)

03:24:58PM 16 Q. I read the fact that you pulled out a
03:25:00PM 17 gun and ordered the victim to get inside the back
03:25:03PM 18 of a P. T. Cruiser, right? I said that?

03:25:05PM 19 A. You said that.

03:25:06PM 20 Q. Uh-huh. Because at the end of the
03:25:08PM 21 facts, the judge asks you if you agree with them,
03:25:11PM 22 right?

03:25:12PM 23 A. Yes, sir.

03:25:12PM 24 Q. And then so at the end the judge says,
03:25:25PM 25 Mr. Johnson, you've heard the solicitor's

03:25:27PM 1 recitation of the facts. Are they correct? And
03:25:29PM 2 your response was, yes, sir?

03:25:30PM 3 A. Yes, sir.

03:25:31PM 4 Q. Were you being truthful?

03:25:33PM 5 A. Yes, sir.

03:25:33PM 6 Q. So when I said that you had a weapon
03:25:42PM 7 under the driver's seat, that was truthful?

03:25:42PM 8 A. No, sir.

03:25:46PM 9 Q. It wasn't? You told the judge it was.

03:25:48PM 10 A. I just plead -- like I said, I plead
03:25:51PM 11 guilty -- like I tell you, I had an innocent person
03:25:54PM 12 locked up and I wanted to get this over with. I
03:25:57PM 13 knew it wasn't true. I know the charge I plead to
03:26:00PM 14 wasn't true.

03:26:02PM 15 Q. That's what I don't understand. And I
03:26:04PM 16 want you to somehow explain, if it didn't happen
03:26:07PM 17 why would you walk into a courtroom and plead
03:26:10PM 18 guilty to armed robbery, to kidnapping, and
03:26:12PM 19 possession of a weapon?

03:26:14PM 20 A. I was tired of sitting in county, ready
03:26:18PM 21 to get it over with.

03:26:19PM 22 Q. And so instead of admitting that it was
03:26:29PM 23 a drug deal or going to trial or somehow trying to
03:26:33PM 24 do something else to clear your name, you just
03:26:35PM 25 wanted to plead guilty, you accepted

03:26:37PM 1 responsibility?

03:26:38PM 2 A. I ain't messing with no trial. Most
03:26:40PM 3 people that go to trial and they don't win, whether
03:26:44PM 4 they're innocent or guilty. I ain't playing with
03:26:47PM 5 you-all people. I ain't about to be locked up for
03:26:52PM 6 no life. Know what I mean?

03:26:54PM 7 Q. But you plead guilty though?

03:26:55PM 8 A. Yes, sir.

03:27:02PM 9 MR. COOPER: Your Honor, may we
03:27:02PM 10 approach?

03:27:03PM 11 THE COURT: Yes, sir.

03:27:04PM 12 (Bench conference)

03:27:06PM 13 MR. COOPER: Your Honor, I think the
03:28:24PM 14 State will continue with the testimony.

03:28:25PM 15 THE COURT: Beg your pardon?

03:28:26PM 16 MR. COOPER: The State will continue
03:28:28PM 17 with the testimony. I withdraw my previous
03:28:31PM 18 statement.

03:28:32PM 19 THE COURT: Okay.

03:28:33PM 20 MR. COOPER: Beg the Court's
03:28:35PM 21 indulgence?

03:28:35PM 22 THE COURT: Yes, sir.

03:28:35PM 23 BY MR. COOPER:

03:30:36PM 24 Q. Mr. Johnson, how many times have you
03:30:37PM 25 met with Mr. Archer regarding this case?

03:30:42PM 1 A. I think two times.

03:30:47PM 2 Q. Two times?

03:30:48PM 3 A. Nodding.

03:30:49PM 4 Q. To go over testimony today?

03:30:51PM 5 A. Yes, sir.

03:30:51PM 6 Q. So the story that you told Officer

03:31:13PM 7 Williams on that recording that we heard is the

03:31:15PM 8 same exact story that you told Detective Kaufman

03:31:19PM 9 later that night, it's the same exact story that I

03:31:21PM 10 told the judge when you pled guilty, right?

03:31:24PM 11 A. I guess so.

03:31:25PM 12 Q. So when the judge asked you if the

03:31:27PM 13 facts were correct, what was your response?

03:31:32PM 14 A. I think I said, yeah. I don't know.

03:31:34PM 15 Q. Your response was, yes, sir, wasn't it?

03:31:38PM 16 A. Yeah.

03:31:39PM 17 Q. That for a supposed consensual

03:31:42PM 18 collecting of money, you walked in and pled guilty

03:31:46PM 19 to armed robbery, kidnapping, and possession of a

03:31:49PM 20 weapon, right?

03:31:50PM 21 A. Yes, sir.

03:31:55PM 22 MR. COOPER: Your Honor, at this time I

03:31:56PM 23 have no further questions for this witness.

03:31:58PM 24 THE COURT: Redirect?

03:31:59PM 25 MR. ARCHER: Thank you.

REDIRECT EXAMINATION

03:31:59PM 1

03:31:59PM 2 BY MR. ARCHER:

03:32:08PM 3 Q. Okay. The story you told Detective

03:32:13PM 4 Kaufman and Detective Williams was that Tampa held

03:32:15PM 5 a gun on you, right?

03:32:15PM 6 A. Yes, sir.

03:32:17PM 7 Q. And at that time you were trying to

03:32:20PM 8 convince him you had nothing to do with this,

03:32:23PM 9 right?

03:32:24PM 10 A. Yes, sir.

03:32:25PM 11 Q. And if the police and prosecutor had

03:32:31PM 12 believed that story, you wouldn't be sitting here

03:32:35PM 13 in handcuffs, would you?

03:32:38PM 14 A. I don't know. I don't know.

03:32:40PM 15 Q. If they believed that Tampa -- that you

03:32:43PM 16 were a victim of Tampa's as well as Keith Lee, you

03:32:50PM 17 wouldn't be a defendant, you would be a victim,

03:32:53PM 18 right?

03:32:54PM 19 A. I guess so.

03:32:55PM 20 Q. So it was in your interest to tell them

03:32:59PM 21 at that time that Tampa had you under a gun as well

03:33:07PM 22 as Mr. Lee, right?

03:33:08PM 23 A. I guess so.

03:33:09PM 24 Q. And if they believed that, you wouldn't

03:33:11PM 25 have been in trouble, right?

03:33:15PM 1 A. (Indicating)

03:33:16PM 2 Q. It was in your interest that they

03:33:20PM 3 believe the story, right?

03:33:21PM 4 A. I guess so, I don't know.

03:33:22PM 5 Q. And then you, but you came back. Your

03:33:26PM 6 conscience bothered you, didn't it?

03:33:27PM 7 A. Yes, sir.

03:33:27PM 8 Q. And you wrote several letters. You

03:33:30PM 9 wrote --

03:33:30PM 10 THE COURT: Now, this is on direct.

03:33:33PM 11 MR. ARCHER: Huh?

03:33:34PM 12 THE COURT: This is on direct. You're

03:33:36PM 13 leading the witness. There needs to be a question

03:33:38PM 14 in this.

03:33:40PM 15 MR. ARCHER: Okay. Okay.

03:33:40PM 16 THE COURT: Do you follow me?

03:33:41PM 17 MR. ARCHER: Yes, sir.

03:33:42PM 18 THE COURT: Okay.

03:33:42PM 19 BY MR. ARCHER:

03:33:45PM 20 Q. Did you not write letters -- you wrote

03:33:49PM 21 letters to your lawyer and the prosecutor telling

03:33:51PM 22 them that the original story you told was untrue;

03:33:56PM 23 did you not?

03:33:57PM 24 MR. COOPER: I would object to leading

03:33:59PM 25 at this time.

03:33:59PM 1 THE COURT: That's leading; sustained.

03:34:01PM 2 BY MR. ARCHER: All right.

03:34:08PM 3 Q. Where is the other one? Number 1 is to

03:34:08PM 4 Shannon Elliott, correct?

03:34:08PM 5 A. Uh-huh.

03:34:28PM 6 Q. And who is Shannon Elliott, to your

03:34:30PM 7 knowledge?

03:34:30PM 8 A. That was the solicitor at the time.

03:34:31PM 9 Q. Prosecutor at the time. And you're

03:34:33PM 10 telling her what?

03:34:35PM 11 A. Do you want me to read it?

03:34:35PM 12 Q. Go ahead and read it, yeah?

03:34:41PM 13 A. I, Jonathan Johnson, am here writing --

03:34:44PM 14 by writing this on behalf of Tampa Green. It's

03:34:47PM 15 eating me alive. I want to clear his name from

03:34:49PM 16 this situation by stating that he had nothing to do

03:34:51PM 17 with what I had going on that day. I was giving

03:34:53PM 18 him a ride home that day. I allowed him to pass --

03:34:53PM 19 THE COURT REPORTER: I need you to go

03:34:53PM 20 back. You need to slow down and speak into the

03:34:57PM 21 microphone.

03:34:57PM 22 THE WITNESS: I, Jonathan Johnson,

03:35:08PM 23 writing this -- hereby writing this -- writing you

03:35:11PM 24 on behalf of Tampa Green. It's eating me up alive.

03:35:17PM 25 I want to clear his name of the situation. He had

03:35:18PM 1 nothing to do with anything that I had going on
03:35:20PM 2 that day. I was giving him a ride home that day.

03:35:22PM 3 I lied in the post-Miranda interview.
03:35:25PM 4 The detective that they had me under pressure. I
03:35:29PM 5 was also drinking alcohol at that time. I wasn't
03:35:31PM 6 in my clear mind. That's why I called his name.

03:35:34PM 7 I -- also, I want to clear this whole
03:35:36PM 8 situation up because it's gotten out of hand.
03:35:39PM 9 First of all, Keith Lee owed me money. I saw him
03:35:42PM 10 -- I sold him weed and cocaine on a weekly basis.
03:35:45PM 11 He owed me \$150. He told me to meet him at the
03:35:48PM 12 bank because he didn't want his girl to find out
03:35:51PM 13 about his drug habit. So that why I did drove him
03:35:53PM 14 to pick up his paycheck like he asked me to -- like
03:35:56PM 15 he asked me to. And he was willing to -- he was
03:35:59PM 16 willing to get in my car. I didn't have no gun. I
03:36:04PM 17 didn't force him or anything.

03:36:05PM 18 We went to his job in Mount Pleasant
03:36:06PM 19 where my mom work at that I knew -- there where my
03:36:12PM 20 mom work at. That's how I knew him. We went to
03:36:13PM 21 his job together. We went to get his check. I
03:36:16PM 22 went to talk to a girl I knew who worked there. He
03:36:18PM 23 got his check and we left.

03:36:19PM 24 The whole time we was in the car he was
03:36:22PM 25 begging me not to tell his manager, which is my

03:36:24PM 1 mom, about him owing me money, about his drug deals
03:36:26PM 2 so he wouldn't get fired. I said, okay.

03:36:30PM 3 He was never tied up. If he was
03:36:32PM 4 getting robbed, why didn't he call for help while
03:36:35PM 5 he was in his job. Why would he come back to the
03:36:39PM 6 car with guys with so-called loaded guns. He was
03:36:42PM 7 already in a public place so he could have called
03:36:44PM 8 for help. Why didn't he, if he was getting robbed?

03:36:47PM 9 I drove him to the check cashing place.
03:36:49PM 10 He paid me, then bought more weed from me and I let
03:36:55PM 11 him go -- I think -- huh?

03:36:59PM 12 I can't understand this part.

03:37:00PM 13 Q. Okay. The part that you can't read --

03:37:02PM 14 A. It's blurry.

03:37:04PM 15 Q. Where are you? Just skip over that.

03:37:05PM 16 A. That was the end of the deal. This is
03:37:06PM 17 the real story that would happen that day. He got
03:37:10PM 18 home with his girlfriend to come up with this lie
03:37:12PM 19 that we -- that got me and Mr. Green locked up for
03:37:16PM 20 no reason because of his drugging habit. This is
03:37:19PM 21 the reason I got my -- this situation has gotten
03:37:22PM 22 out of hand and I don't want Mr. Green locked up
03:37:25PM 23 for the crime he didn't do.

03:37:27PM 24 Q. All right. And Number 3, Defendant's
03:37:32PM 25 Number 3 is to Megan Ehrlich, right?

03:37:32PM 1 A. Yes, sir.

03:37:36PM 2 Q. That was who, your lawyer?

03:37:37PM 3 A. Yes, sir.

03:37:40PM 4 Q. What do you tell her?

03:37:41PM 5 THE COURT: Aren't these already in

03:37:45PM 6 evidence?

03:37:47PM 7 MR. ARCHER: Well, I don't know that

03:37:50PM 8 this one's been published to the jury.

03:37:50PM 9 THE COURT: They speak for themselves.

03:37:53PM 10 MR. ARCHER: Well, okay. That's fine.

03:37:54PM 11 THE COURT: Do you want him to just --

03:37:54PM 12 BY MR. ARCHER:

03:37:56PM 13 Q. Basically, Ms. Ehrlich -- you tell her

03:37:58PM 14 -- you tell her also that Mr. Green was not

03:38:01PM 15 involved, right?

03:38:02PM 16 A. Yes, sir.

03:38:03PM 17 Q. Okay. So you told the prosecutor and

03:38:05PM 18 you told your lawyer?

03:38:06PM 19 A. Yes, sir.

03:38:07PM 20 MR. COOPER: Objection, Your Honor. I

03:38:08PM 21 object to the leading at this time.

03:38:09PM 22 MR. ARCHER: Okay. I withdraw the

03:38:11PM 23 question.

03:38:13PM 24 THE COURT: This is all already in the

03:38:15PM 25 record.

03:38:15PM 1 MR. ARCHER: Okay, Your Honor.

03:38:15PM 2 BY MR. ARCHER:

03:38:17PM 3 Q. And I assumed from your answers to the
03:38:22PM 4 prosecutor that you are saying now you pled guilty
03:38:24PM 5 for two reasons; one, was to clear Mr. Green
03:38:29PM 6 correct?

03:38:29PM 7 A. Yes, sir.

03:38:30PM 8 Q. And the other was because you were
03:38:32PM 9 afraid if it went to trial, you would get a lot
03:38:35PM 10 more time; is that true?

03:38:36PM 11 A. Yes, sir.

03:38:36PM 12 Q. All right. Is your statement true or
03:38:42PM 13 false?

03:38:43PM 14 A. It's true.

03:38:44PM 15 Q. That Mr. Green had nothing to do with
03:38:47PM 16 this?

03:38:48PM 17 A. That's true.

03:38:49PM 18 MR. ARCHER: That's true. Okay. No
03:38:51PM 19 other questions.

03:38:52PM 20 THE COURT: Re-cross.

03:38:53PM 21 MR. COOPER: Thank you, Judge.

03:38:53PM 22 RECROSS-EXAMINATION

03:38:53PM 23 BY MR. COOPER:

03:38:57PM 24 Q. Mr. Archer, just asked you if the
03:38:58PM 25 statement that you just gave this jury about

03:39:01PM 1 Mr. Green not being involved was true, and your
03:39:05PM 2 answer was yes, right?

03:39:05PM 3 A. Yes, sir.

03:39:06PM 4 Q. Is it the same kind of true and yes
03:39:08PM 5 that when Officer Williams asked you on the phone
03:39:11PM 6 and said, tell me the truth, is this the truth, and
03:39:14PM 7 you said, I tell you the truth, bro, I tell you the
03:39:17PM 8 truth? Is that it that kind of truth?

03:39:19PM 9 A. Like I tell him that Mr. Green had
03:39:22PM 10 nothing to do with it?

03:39:22PM 11 Q. I mean, the truth. All we want is the
03:39:24PM 12 truth.

03:39:25PM 13 A. The part that Mr. -- Tampa had a gun
03:39:29PM 14 pointed at me.

03:39:32PM 15 Q. Is that the truth?

03:39:33PM 16 A. That's not true. That didn't happen.

03:39:34PM 17 Q. You told Officer Williams it was the
03:39:36PM 18 truth, didn't you?

03:39:37PM 19 A. I told him the truth.

03:39:38PM 20 Q. You told Detective Kaufman that that
03:39:40PM 21 was the truth, didn't you?

03:39:41PM 22 A. Yes, sir; I lied.

03:39:42PM 23 Q. And then when you came before the judge
03:39:46PM 24 -- you said that you were scared with the police.
03:39:50PM 25 That's why you told the story that you did, to try

03:39:52PM 1 to keep yourself --

03:39:52PM 2 A. Also, I was under alcohol.

03:39:54PM 3 Q. I remember that part. So you said that
03:39:59PM 4 you were scared?

03:40:01PM 5 A. Yes.

03:40:01PM 6 Q. When you came into court you told the
03:40:04PM 7 judge that the facts that I gave him, the facts
03:40:07PM 8 that I went over with you, were true? You said
03:40:11PM 9 that, right?

03:40:12PM 10 A. Yes, sir.

03:40:12PM 11 Q. So you told everybody everything was
03:40:17PM 12 true. How are we supposed to believe anything
03:40:20PM 13 you've said? How do you expect these people to
03:40:24PM 14 believe you? You've lied to two officers, you lied
03:40:27PM 15 to the judge that --

03:40:28PM 16 A. I just pled guilty to get it over with.
03:40:31PM 17 Know what I'm saying? I didn't sit up here and
03:40:38PM 18 make up a whole story. Know what I mean?

03:40:41PM 19 MR. COOPER: I have no further
03:40:42PM 20 questions.

03:40:44PM 21 THE COURT: You may step down. Thank
03:40:50PM 22 you, sir.

03:40:52PM 23 MR. ARCHER: Judge, I -- at this time.
03:40:54PM 24 I've got three letters that have been identified.
03:40:57PM 25 They've only been identified and I would like to

03:41:00PM 1 offer them into evidence at this time.

03:41:02PM 2 MR. COOPER: Your Honor, I would
03:41:03PM 3 object. I think that Mr. Johnson was able to read
03:41:06PM 4 from them and refresh his memory. I think his
03:41:09PM 5 testimony serves as evidence and I don't think we
03:41:13PM 6 need to admit them evidence.

03:41:15PM 7 MR. ARCHER: Well, that stops me from
03:41:18PM 8 asking him some stuff because he said that they're
03:41:19PM 9 going to be in evidence. And I think he's
03:41:22PM 10 identified the letters, we've properly laid the
03:41:25PM 11 grounds work for it, and they are entitled to be
03:41:28PM 12 admitted. The witness is no longer on the stand.

03:41:29PM 13 THE COURT: Ladies and gentlemen, I
03:41:30PM 14 will ask you to step back to the jury room. Don't
03:41:33PM 15 discuss anything about the case while you're out of
03:41:34PM 16 the courtroom.

03:41:34PM 17 (Jury out, 3:41 p.m.)

03:42:02PM 18 THE COURT: As I recall, Mr. Archer,
03:42:11PM 19 all three of those letters were read verbatim on
03:42:16PM 20 direct testimony.

03:42:17PM 21 MR. ARCHER: I remember reading one
03:42:22PM 22 verbatim, Your Honor. I know I never read the
03:42:23PM 23 short one.

03:42:23PM 24 THE COURT: Were parts of them were
03:42:26PM 25 read I'm sure.

03:42:26PM 1 MR. ARCHER: What?

03:42:28PM 2 THE COURT: You asked him about it.

03:42:29PM 3 MR. ARCHER: Well, I think I'm entitled
03:42:31PM 4 to have them admitted. They were properly
03:42:31PM 5 authenticated --

03:42:35PM 6 THE COURT: Let me talk.

03:42:35PM 7 MR. ARCHER: Yeah.

03:42:36PM 8 THE COURT: If it's a prior statement
03:42:38PM 9 by your client and he admits having made that
03:42:43PM 10 statement, you don't enter it as extrinsic evidence
03:42:49PM 11 to prove he made it because he admitted he made it.

03:42:51PM 12 MR. ARCHER: I think it is relevant for
03:42:54PM 13 various reasons, Your Honor.

03:42:55PM 14 THE COURT: That's not a question of
03:42:57PM 15 relevance. It's whether or not you can use -- when
03:42:59PM 16 he's here testifying, it's whether you can
03:43:02PM 17 introduce prior statements. And you can only
03:43:05PM 18 introduce them for the purpose of somehow
03:43:09PM 19 impeaching his current statement. If he's in court
03:43:13PM 20 testifying consistently with what he said
03:43:16PM 21 previously, then there is no controversy.

03:43:20PM 22 I can read the Rule to you if you'd
03:43:21PM 23 like me to.

03:43:21PM 24 MR. ARCHER: No. No. No, Your Honor.
03:43:24PM 25 I'm --

03:43:25PM 1 THE COURT: I'm trying to figure out
03:43:27PM 2 why they're admissible if he said, I made the
03:43:29PM 3 statement, I wrote that letter, that's what I said,
03:43:32PM 4 I admit I made that statement. It's not what I'm
03:43:36PM 5 testifying to today. What I'm tell you today is
03:43:39PM 6 the truth. That was false. Isn't that he
03:43:43PM 7 testified to?

03:43:43PM 8 MR. ARCHER: Well, I think so, but I
03:43:43PM 9 think it also insures when he sends it to the
03:43:46PM 10 prosecutor, he's making a statement against his
03:43:49PM 11 interest which tends to say that it's true.

03:43:55PM 12 THE COURT: Well, yes, sir.

03:43:58PM 13 MR. COOPER: I think that the statement
03:44:00PM 14 is --

03:44:01PM 15 THE COURT: I thought he put them into
03:44:04PM 16 evidence because I heard them read at least
03:44:05PM 17 portions of each one.

03:44:05PM 18 MR. COOPER: I think the statement
03:44:06PM 19 against interest is something that they should
03:44:08PM 20 hear. I think that Your Honor is correct, the
03:44:11PM 21 reason why I was able to admit them in my pieces of
03:44:13PM 22 the recording is because Mr. Johnson did not -- he
03:44:15PM 23 denied making those statement. The statement that
03:44:17PM 24 Mr. Arrest directed him to and had him read the
03:44:21PM 25 letters, he admitted and claimed those were true.

03:44:22PM 1 THE COURT: Well, the ruling on your
03:44:24PM 2 statements was, he said he couldn't remember. That
03:44:26PM 3 was the statement. The law requires he has to
03:44:29PM 4 admit it or he has not admitted it. The Rule
03:44:33PM 5 reads, does he admit the prior statement? And if
03:44:35PM 6 he doesn't admit it, then those prior statements
03:44:38PM 7 become admissible to prove that he did make it.

03:44:41PM 8 MR. A: Yes, sir.

03:44:41PM 9 MR. COOPER: And since he did admit
03:44:42PM 10 them, the State would object, as well as not only
03:44:44PM 11 did he admit them, he essentially read the majority
03:44:47PM 12 of them. I think they are in the record, I think
03:44:48PM 13 the jury heard them, and I think that serves every
03:44:50PM 14 possible --

03:44:50PM 15 THE COURT: My question, though,
03:44:53PM 16 Counselor, I'm talking to the State now, they're
03:44:55PM 17 already in pretty much. He's read them. Talking
03:44:58PM 18 about he read them to the jury.

03:45:02PM 19 MR. COOPER: Your Honor, I don't think
03:45:02PM 20 its admissible for the reasons you just stated,
03:45:05PM 21 that there was no denial of the statement. He was
03:45:08PM 22 asked the statement. He admitted those. He
03:45:10PM 23 adopted those as true --

03:45:10PM 24 THE COURT: Counsel approach the bench.
03:45:51PM 25 (Bench conference)

03:45:51PM 1 THE COURT: All right. I understand
03:45:53PM 2 the State withdraws the objection.

03:45:55PM 3 MR. COOPER: That's correct, Judge.

03:45:56PM 4 THE COURT: All right. Those will be
03:45:56PM 5 admitted and marked into the record.

03:45:56PM 6 (DFT. EXH. 1 in evidence.)

03:45:56PM 7 (DFT. EXH. 2 in evidence.)

03:45:56PM 8 (DFT. EXH. 3 in evidence.)

03:46:08PM 9 THE COURT: We're going to take a
03:46:09PM 10 little break. The courtroom personnel hasn't had
03:46:13PM 11 one. And you folks have to a certain degree.

03:46:15PM 12 We'll take a short break for the
03:46:15PM 13 courtroom personnel.

03:46:16PM 14 (A recess transpired.)

03:46:16PM 15 THE COURT: All right. State ready to
04:00:40PM 16 proceed?

04:00:41PM 17 MR. COOPER: Yes, Your Honor.

04:00:43PM 18 THE COURT: Is the defense ready.

04:00:44PM 19 MR. ARCHER: I had a witness under
04:00:46PM 20 Subpoena. She disappeared on me. She was right
04:00:50PM 21 outside. I just got through to her by telephone
04:00:54PM 22 after about six tries. She said she had to take
04:00:58PM 23 her daughter to a doctor's appointment, she would
04:01:01PM 24 be available tomorrow morning.

04:01:03PM 25 THE COURT: Well, your client is going

04:01:05PM 1 to -- doesn't your client intend to testify?

04:01:09PM 2 MR. ARCHER: Yes, he does.

04:01:11PM 3 THE COURT: Well, you can call him

04:01:13PM 4 next.

04:01:13PM 5 MR. ARCHER: Okay. I guess I'll have

04:01:14PM 6 to.

04:01:15PM 7 THE COURT: He indicated he was going

04:01:16PM 8 to testify.

04:01:17PM 9 MR. ARCHER: Okay.

04:01:17PM 10 THE COURT: We're going to stop at

04:01:19PM 11 5:00, though, because it will probably take longer

04:01:22PM 12 than an hour. So he'll still be testifying in the

04:01:26PM 13 morning.

04:01:26PM 14 Bring the jury in.

04:01:27PM 15 (Jury in, 3:58 p.m.)

04:02:50PM 16 THE COURT: The record will reflect

04:03:17PM 17 that the jury has returned to the courtroom.

04:03:19PM 18 Defendant's Exhibits 1, 2 and 3 have been admitted.

04:03:22PM 19 Defense may call your next witness.

04:03:23PM 20 MR. ARCHER: Excuse me?

04:03:24PM 21 THE COURT: You may call your next

04:03:26PM 22 witness.

04:03:26PM 23 MR. ARCHER: I call Tappia Green to the

04:03:28PM 24 stand.

04:03:28PM 25 THE COURT: Sir, come forward to be

04:03:31PM 1 sworn please.

04:03:31PM 2 TAPPIA GREEN,

04:03:31PM 3 being first duly sworn, testified as follows:

04:03:31PM 4 THE CLERK: Please state your full
04:03:31PM 5 name and spell your last.

04:03:50PM 6 THE DEFENDANT: Tappia Green,
04:03:52PM 7 G-R-E-E-N.

04:03:52PM 8 THE COURT: Thank you.
04:03:53PM 9 Counselor, your witness.

04:03:53PM 10 DIRECT EXAMINATION

04:03:53PM 11 BY MR. ARCHER:

04:03:54PM 12 Q. Okay. Mr. Green, where are you from
04:03:58PM 13 originally?

04:04:00PM 14 A. North Charleston.

04:04:00PM 15 Q. North Charleston?

04:04:00PM 16 A. Yes, sir.

04:04:01PM 17 Q. Have you lived here all your life?

04:04:03PM 18 A. Yes, sir.

04:04:04PM 19 Q. Are you married?

04:04:05PM 20 A. No, sir.

04:04:05PM 21 Q. You got any kids?

04:04:08PM 22 A. Yes, sir.

04:04:08PM 23 Q. You do?

04:04:09PM 24 A. Yes, sir.

04:04:10PM 25 Q. How many kids you got?

04:04:10PM 1 A. One daughter, two years old.

04:04:14PM 2 Q. Two days old?

04:04:14PM 3 A. Two years old.

04:04:14PM 4 THE COURT: Pull that microphone over

04:04:14PM 5 in front of you and then you won't have to lean

04:04:14PM 6 over each time you answer. Just speak into it.

04:04:34PM 7 Just speak up, that will pick you up.

04:04:34PM 8 BY MR. ARCHER:

04:04:36PM 9 Q. I direct your attention to April 14,

04:04:41PM 10 2015. Were you with Jonathan Johnson that day?

04:04:41PM 11 A. Yes, sir.

04:04:46PM 12 Q. Tell me what -- what had you been doing

04:04:49PM 13 that day?

04:04:50PM 14 A. Well, we had went to go to work with

04:04:54PM 15 his dad that day. His dad got like construction,

04:04:56PM 16 and he be painting just a lot of side stuff, and we

04:05:01PM 17 went to work with him. And we got off and we was

04:05:06PM 18 just chilling.

04:05:07PM 19 Q. Okay. What were you doing when you

04:05:09PM 20 were chilling when you got off?

04:05:10PM 21 A. Smoking.

04:05:12PM 22 Q. Smoking what?

04:05:13PM 23 A. Weed, sir.

04:05:14PM 24 Q. Weed?

04:05:15PM 25 A. Yes, sir.

04:05:16PM 1 Q. Okay. How about any alcohol, were you
04:05:18PM 2 doing any alcohol?

04:05:19PM 3 A. Yes, sir.

04:05:19PM 4 Q. Okay. Now, do you remember going to
04:05:25PM 5 Wells Fargo?

04:05:26PM 6 A. Yes, sir.

04:05:26PM 7 Q. Did you go in?

04:05:30PM 8 A. No, sir.

04:05:30PM 9 Q. Who went in?

04:05:31PM 10 A. Jonathan Johnson.

04:05:32PM 11 Q. And when he came back, did you-all meet
04:05:41PM 12 up with Keith Lee in any way?

04:05:44PM 13 A. We met up with Keith Lee when we were
04:05:47PM 14 at Wells Fargo.

04:05:49PM 15 Q. Tell me what happened there.

04:05:50PM 16 A. We had pulled up to Wells Fargo, and he
04:05:53PM 17 went there to do something about a check his dad
04:05:56PM 18 gave him. I don't know, I think he went to cash
04:05:59PM 19 the check. I was in the car, and he was taking a
04:06:02PM 20 little minute. He was taking a good little minute,
04:06:05PM 21 so I called him. This car is hot, come on, man.

04:06:07PM 22 And he was like, hold on. He think
04:06:09PM 23 they ain't going to let him cash the check because
04:06:13PM 24 he doesn't have his Social Security card. That's
04:06:15PM 25 when he saw Keith Lee.

04:06:17PM 1 Hè was like, that brother owe me some
04:06:19PM 2 money, and he started talking to him. And Keith
04:06:23PM 3 got in the car and we rode out to Mount Pleasant.
04:06:27PM 4 They went in there.

04:06:28PM 5 Q. Okay. Did you see Jonathan Johnson do
04:06:34PM 6 anything to force Mr. Lee into the car?

04:06:36PM 7 A. No. No, sir.

04:06:37PM 8 Q. Okay. Was there any conversation
04:06:41PM 9 between them after he got in the car?

04:06:44PM 10 A. Yeah. Like -- he be like, damn, you be
04:06:46PM 11 ducking me for a little minute. And that's when
04:06:49PM 12 the Lee dude, the dude with the dreads, he was
04:06:52PM 13 like, yeah, like he been working and he just
04:06:54PM 14 started a new job and things been kind of rough.
04:06:58PM 15 But he was like, I got.

04:07:01PM 16 Q. Who said things had been kind of rough?

04:07:01PM 17 A. That Lee dude. That was part of their
04:07:04PM 18 conversation.

04:07:04PM 19 Q. Okay. Did Mr. Johnson in any way
04:07:11PM 20 threaten Mr. Lee?

04:07:13PM 21 A. No, sir.

04:07:13PM 22 Q. So you-all take off from Mount
04:07:20PM 23 Pleasant?

04:07:20PM 24 A. Yes, sir.

04:07:21PM 25 Q. Are you doing anything on the trip over

04:07:23PM 1 there?

04:07:23PM 2 A. Yeah. We was smoking the whole time.

04:07:26PM 3 Q. Smoking. Again, is this weed we're

04:07:28PM 4 talking about?

04:07:29PM 5 A. Yes, sir, weed.

04:07:29PM 6 Q. Okay. Who is smoking weed?

04:07:32PM 7 A. Everybody in the car, me, Jonathan,

04:07:35PM 8 Keith, and a dude, L. P. or L. B, I don't know his

04:07:38PM 9 name. But all four of us was smoking and passing

04:07:44PM 10 blunts.

04:07:44PM 11 Q. So Mr. Lee was smoking weed, too?

04:07:46PM 12 A. Oh, yes, sir, he had some too.

04:07:48PM 13 Q. Was he complaining about being forced

04:07:51PM 14 to go?

04:07:52PM 15 A. No, sir, not at all.

04:07:53PM 16 Q. Okay. Did anybody -- did you have a

04:07:57PM 17 gun that day?

04:07:58PM 18 A. No, sir.

04:07:58PM 19 Q. Did you see Jonathan Johnson with a gun

04:08:01PM 20 that day?

04:08:02PM 21 A. No, sir.

04:08:05PM 22 Q. How about the other fellow who was in

04:08:09PM 23 the car, did you see a gun --

04:08:10PM 24 A. No, sir, he never pull it out. I don't.

04:08:13PM 25 know if he had it on his person, but, like, he

04:08:15PM 1 never presented a weapon.

04:08:17PM 2 Q. Okay. Did anybody in the car ever
04:08:19PM 3 point a weapon at Keith Lee?

04:08:22PM 4 A. No, sir, ain't no need.

04:08:24PM 5 Q. All right. So did you know why you-all
04:08:28PM 6 were going to Mount Pleasant?

04:08:32PM 7 A. Not really. I mean, he didn't say. He
04:08:37PM 8 said the dog owe me some money. And he got out of
04:08:40PM 9 the car and started talking to him.

04:08:41PM 10 Q. Who got out of the car?

04:08:42PM 11 A. My co-defendant, Jonathan.

04:08:44PM 12 Q. Okay.

04:08:45PM 13 A. He was like, dog owe me some money.

04:08:47PM 14 Q. Mr. Lee owed him some money?

04:08:50PM 15 A. Yes, sir.

04:08:51PM 16 Q. Okay.

04:08:51PM 17 A. And they was talking. I really didn't
04:08:54PM 18 know why or where we was going or why we were
04:08:57PM 19 going. I was just riding, chilling.

04:09:01PM 20 Q. What sort of condition were you in from
04:09:04PM 21 the weed and whatever else you had been doing?

04:09:08PM 22 A. Messed up. I had a little -- couple
04:09:11PM 23 little dollar -- little dollar vodkas. I was fully
04:09:18PM 24 constantly aware of everything that was going on,
04:09:20PM 25 but at the same time I was little -- a little tipsy

04:09:24PM 1 too. I was drinking and smoking. I was just
04:09:26PM 2 feeling nice and just chilling.

04:09:31PM 3 Q. Okay. Did you ever -- did anybody in
04:09:33PM 4 the car ever threaten to kill Mr. Lee?

04:09:37PM 5 A. No, sir. There wasn't no need, sir.

04:09:39PM 6 Q. Okay. Why wasn't there a need?

04:09:42PM 7 A. Kill him for what?

04:09:45PM 8 Q. Okay. So where did you-all go?

04:09:49PM 9 A. Well, Lee and Jonathan went in the
04:09:54PM 10 Hardee's to do whatever they were going to do, but
04:09:57PM 11 I really didn't know at this point. I'm not really
04:09:59PM 12 asking no questions. I just know I was sitting in
04:10:01PM 13 the car. I was probably sitting in the car a
04:10:05PM 14 minute and a half, or two minutes, but it was hot
04:10:05PM 15 outside.

04:10:07PM 16 And it looked like a little wreck or
04:10:09PM 17 something was going on, like, around the building
04:10:12PM 18 at Hardee's. So me and the other dude got out of
04:10:16PM 19 the car. Like, I was walking around Hardee's to
04:10:20PM 20 see what was going on because there was some type
04:10:22PM 21 of wreck, or whatever was going on. It was like
04:10:24PM 22 two years ago.

04:10:28PM 23 As we were walking back, Lee and my
04:10:32PM 24 co-defendant was coming out of the place.

04:10:36PM 25 Q. Okay. Did you ever try to call him

04:10:37PM 1 when you were there at Hardee's?

04:10:39PM 2 A. Yes, sir, I called him. He's my
04:10:41PM 3 friend. I call him all the time, yes, sir.

04:10:44PM 4 Q. Okay. All right. On the way to
04:10:49PM 5 Hardee's, did Mr. Johnson ever fire a pistol out
04:10:55PM 6 the window of the car?

04:10:57PM 7 A. No, sir.

04:10:57PM 8 Q. Huh?

04:10:58PM 9 A. No, sir.

04:10:59PM 10 Q. Oh, okay. Did you ever see Mr. Johnson
04:11:03PM 11 with a pistol?

04:11:04PM 12 A. Not that day in particular, no.

04:11:07PM 13 Q. Not that day?

04:11:08PM 14 A. No, sir, not that day.

04:11:09PM 15 Q. Okay. So what time -- when did he and
04:11:17PM 16 Mr. Lee come back? How long were they gone
04:11:22PM 17 basically?

04:11:22PM 18 A. It was like pretty -- pretty fast. I
04:11:27PM 19 really don't know what time. I know they wasn't in
04:11:31PM 20 there for a long time, or nothing like that, not
04:11:34PM 21 too, too, too long. But it was a brief little
04:11:38PM 22 five-minute period at the max. Five minutes or
04:11:42PM 23 something like that.

04:11:42PM 24 Q. Okay. On the way there or on the way
04:11:48PM 25 from there was Mr. Lee ever tied up with neck ties?

04:11:55PM 1 A. No, sir.

04:11:55PM 2 Q. How about his hands?

04:11:58PM 3 A. Not at all. Not at all.

04:12:00PM 4 Q. His feet?

04:12:01PM 5 A. No, sir.

04:12:02PM 6 Q. Okay. So he was never tied up?

04:12:04PM 7 A. No, sir.

04:12:04PM 8 Q. Okay. You went from Hardee's to where?

04:12:08PM 9 A. We went from Hardee's to just a little

04:12:16PM 10 check cashing place in North Charleston. We went

04:12:17PM 11 from Mount Pleasant to North Charleston to a check

04:12:20PM 12 cashing place.

04:12:20PM 13 Q. And what happened there?

04:12:21PM 14 A. I was sitting in the car and them two

04:12:28PM 15 walked inside the check cashing place. And by now

04:12:35PM 16 I kind of, like, figured out what was going on. He

04:12:38PM 17 was basically going to get his money, or whatever,

04:12:40PM 18 and those two went inside the place. He got his

04:12:44PM 19 check, they came out and we pulled off.

04:12:44PM 20 Q. What now?

04:12:45PM 21 A. He got his check, they came out, and we

04:12:48PM 22 pulled off.

04:12:49PM 23 Q. Did you ever touch the check or the

04:12:51PM 24 envelope with the money in it?

04:12:51PM 25 A. Yes, sir, I did. He gave it to me,

04:12:54PM 1 like --

04:12:54PM 2 Q. Who gave it to you?

04:12:56PM 3 A. Lee.

04:12:56PM 4 Q. Okay. He handed it to you?

04:12:59PM 5 A. Yes, sir.

04:12:59PM 6 Q. And what did you do with it?

04:13:01PM 7 A. I gave it to Jonathan -- I hold onto it

04:13:05PM 8 for a little bit and I -- then I gave it to

04:13:07PM 9 Jonathan.

04:13:08PM 10 Q. Okay. Did you count the money in

04:13:10PM 11 there?

04:13:10PM 12 A. Yeah, I did.

04:13:10PM 13 Q. You did?

04:13:12PM 14 A. Yeah. I said, man, let me hold \$30

04:13:14PM 15 just because I know he got money. I said, let me

04:13:18PM 16 hold \$30.

04:13:19PM 17 Q. He owed you \$30?

04:13:20PM 18 A. No, that's what I told John Johnson.

04:13:22PM 19 Q. Yeah.

04:13:22PM 20 A. Once he give him the money, Lee give

04:13:25PM 21 him the money, I said, let me hold \$30. He was,

04:13:27PM 22 like, no, you got money. I just was being

04:13:30PM 23 sarcastic about the situation because I know he

04:13:32PM 24 just got a little piece of money.

04:13:34PM 25 Q. Oh, okay. Now, do you ever remember

04:13:40PM 1 anybody saying anything to Mr. Lee about when you
04:13:45PM 2 go into Hardee's you better not say anything or
04:13:48PM 3 we'll kill you and everybody in Hardee's?

04:13:52PM 4 A. No, sir.

04:13:52PM 5 Q. That didn't happen?

04:13:54PM 6 A. There was no -- no, there was no need.

04:13:58PM 7 Q. Okay. Why was there no need?

04:14:02PM 8 A. Because nothing going on.

04:14:06PM 9 Q. Okay. Was Mr. Lee cooperating with
04:14:11PM 10 you, or was he --

04:14:11PM 11 A. He was smoking, talking. We was
04:14:14PM 12 listening to the radio, just chilling like.

04:14:17PM 13 Q. Okay. So you-all were smoking a little
04:14:21PM 14 weed and going to get the check cashed; is that it?

04:14:24PM 15 A. Yes, sir, to my knowledge, that's it.
04:14:26PM 16 That's the only thing that was going on.

04:14:28PM 17 Q. Okay. Were you ever aware of Mr. Lee
04:14:39PM 18 being forced into doing anything?

04:14:44PM 19 A. No, sir. He had plenty of opportunity
04:14:47PM 20 -- no, he wasn't forced to do anything.

04:14:51PM 21 Q. Did you ever point a gun at him?

04:14:54PM 22 A. No, sir. I had no gun.

04:14:55PM 23 Q. Did you see anybody in the car point a
04:14:58PM 24 gun at him?

04:14:59PM 25 A. No, sir.

04:14:59PM 1 Q. Okay. Did he seem to be upset at any
04:15:11PM 2 time during the drive?

04:15:14PM 3 A. He -- he was upset, but he made a
04:15:18PM 4 comment, like, damn, my gal gonna trip.

04:15:22PM 5 Q. He said what?

04:15:22PM 6 A. He was, like, my gal gonna trip.

04:15:25PM 7 Q. His gal is going to trip?

04:15:26PM 8 A. Yes, sir.

04:15:27PM 9 Q. About what was he referring?

04:15:28PM 10 A. I don't know who he was referring to.
04:15:30PM 11 I just -- he was like, damn, my gal is going to
04:15:33PM 12 trip.

04:15:34PM 13 Q. Going to trip?

04:15:35PM 14 A. Uh-huh.

04:15:35PM 15 Q. How was -- how has this affected your
04:15:45PM 16 life?

04:15:45PM 17 A. This affected I've been locked up for
04:15:52PM 18 two years. I'm facing the rest of my life in jail.
04:15:57PM 19 I mean, like, this has a toll --

04:16:02PM 20 MR. COOPER: Your Honor, at this time I
04:16:04PM 21 would object and ask if we can approach.

04:16:08PM 22 THE COURT: Yes, sir.

04:16:08PM 23 (Bench conference)

04:16:45PM 24 MR. ARCHER: I withdraw that question.

04:16:46PM 25 THE COURT: No, I'm going to strike the

04:16:47PM 1 last answer from the record. I will inform the
04:16:49PM 2 jury later on what I mean by making that statement
04:16:53PM 3 and explain it to them in my charge my position.

04:16:56PM 4 You may proceed.

04:16:56PM 5 BY MR. ARCHER:

04:16:57PM 6 Q. Okay. Was there any conversation that
04:17:01PM 7 went on between Mr. Lee and Mr. Johnson between the
04:17:05PM 8 trip over or the trip to the check cashing place?

04:17:07PM 9 A. No. I really wasn't paying that much
04:17:11PM 10 detail. I was listening to the radio and just -- I
04:17:14PM 11 really -- not that I really know of.

04:17:16PM 12 Q. You just weren't paying attention?

04:17:19PM 13 A. Not that much.

04:17:20PM 14 Q. Was there any animosity, any anger or
04:17:25PM 15 bad feelings that you could sense between the two?

04:17:27PM 16 A. No, sir.

04:17:35PM 17 MR. ARCHER: Okay. I have no other
04:17:36PM 18 questions, Your Honor.

04:17:36PM 19 THE COURT: All right.

04:17:38PM 20 State may cross-examine.

04:17:38PM 21 MR. COOPER: Thank you, Judge.

04:17:38PM 22 CROSS-EXAMINATION

04:17:38PM 23 BY MR. COOPER:

04:17:49PM 24 Q. So, Mr. Green, for somebody who has
04:17:50PM 25 been said to have been so terribly drunk, you have

04:17:53PM 1 a pretty good recollection of what happened that
04:17:53PM 2 day?

04:17:56PM 3 A. I never said I was terribly drunk.

04:17:58PM 4 Q. So Mr. Johnson was lying when he said
04:18:00PM 5 he was drunk?

04:18:00PM 6 A. I don't know. I don't know about Mr.
04:18:05PM 7 Johnson's statement. I'm up here for myself.

04:18:05PM 8 Q. So you were drunk?

04:18:07PM 9 A. I was drinking. I wasn't drunk, really
04:18:10PM 10 drunk. I stated earlier that I was cautiously
04:18:12PM 11 aware of what was going on in my surroundings. I
04:18:12PM 12 said that.

04:18:28PM 13 Q. I'm showing you State's Exhibit 12. Is
04:18:32PM 14 that you outside of the Hardee's?

04:18:34PM 15 A. Yes, sir.

04:18:34PM 16 Q. In the black?

04:18:35PM 17 A. Yes, sir.

04:18:35PM 18 Q. On the phone?

04:18:36PM 19 A. Yes, sir.

04:18:36PM 20 Q. Calling Mr. Johnson?

04:18:37PM 21 A. Yes, sir.

04:18:38PM 22 Q. Because he's taking too long?

04:18:40PM 23 A. Yes, sir.

04:18:40PM 24 Q. Because it got hot in the car?

04:18:43PM 25 A. That, and I was wanting to know what he