

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Beaufort County
Jennifer B. McCoy, Circuit Court Judge

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S.C. SUPREME COURT

PHILENZA PRITCHETT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001255

APPENDIX

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1 In the Court of General Sessions for the
2 State of South Carolina, County of Beaufort

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4 Case No.: 2012-GS-07-00872+

5 State of South Carolina,

6 Plaintiff(s),

7 vs. Transcript of Record

8 Philenza Pritchett,

9 Defendant(s) .

10

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14

15 August 25, 2014

16 Beaufort, South Carolina

17

18

19

20

21 BEFORE:

22 The Honorable Judge Brooks Goldsmith

23

24

25

APPEARANCE PAGE

1

APPEARANCES

2

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PLAINTIFF'S ATTORNEY:

4

Lynnor Musser, Assistant Solicitor

5

Fourteenth Circuit Solicitor's Office

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Beaufort, SC 29901

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DEFENDANT'S ATTORNEY:

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Jessica Saxon, Public Defender

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Helen Novell, Public Defender

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Beaufort, SC 29901

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APPEARANCE PAGE

1 PROCEEDINGS

2 THE COURT: Good afternoon, ladies and gentlemen.
3 I apologize for keeping you waiting. Earlier each of
4 you were required to give some information in the other
5 courtroom to another judge about who you were, what you
6 did for a living and/or your spouse did.

7 As you heard, my name is Brooks Goldsmith. About
8 a year ago I retired as a circuit judge. At that time
9 I was living in Lancaster, South Carolina where there's
10 another Sun City. I retired and have now gone to work
11 part-time, about three weeks a month. And I have moved
12 to Edisto Island, South Carolina.

13 And having said all of that, I believe that we are
14 getting ready to pick a jury in a case. Is that
15 correct, Solicitor?

16 MS. SAXON: Yes, sir.

17 THE COURT: If you would.

18 MS. SAXON: Thank you, Your Honor. May it please
19 the Court, Lynnor Musser on behalf of the State. Your
20 Honor, the State calls State of South Carolina versus
21 Philenza Pritchett under Indictment 2010GS0700872,
22 charging armed robbery. Indictment number
23 2010GS0700873, charging possession of a weapon during
24 the commission of a violent crime. Indictment
25 2010GS070875 charging kidnapping. 2010GS0700876

JURY SELECTION

1 charging unlawful carrying of a pistol. And finally
2 2010GS0700977 charging criminal conspiracy. With that,
3 Your Honor, again I'll hand up the indictment.

4 THE COURT: Thank you, Solicitor. And Ms. Saxon,
5 is the Defense ready to proceed?

6 MS. SAXON: We are, Your Honor.

7 MS. MUSSER: Your Honor, just confirming that you
8 have the State's witness list as well as proposed voir
9 dire?

10 THE COURT: No.

11 MS. SAXON: And the same for the Defense.

12 THE COURT: No, I do not. I have Defendant's
13 witness list and proposed voir dire, which is the only
14 thing Ms. Saxon cares about.

15 MS. SAXON: Your Honor, may I hand these up?

16 THE COURT: Please. Ladies and gentlemen, in just
17 a moment I'm going to ask you some questions -- let me
18 find this, I'm sorry -- concerning the allegations that
19 have been made in this case. As you heard a moment ago
20 the Defendant is charged with, among other things,
21 armed robbery, kidnapping, possession of a weapon
22 during commission of a violent crime, criminal
23 conspiracy, unlawful carrying of a pistol. These
24 events allegedly occurred on or about April the 1st,
25 2010, at the Kangaroo Pantry located at 610 Fording

JURY SELECTION

1 Island Road in Bluffton. And involved one Makia
2 Fulton, if I'm pronouncing these names correctly, who
3 is designated as a victim and -- I'm sorry.

4 I tell you that because the attorneys, in just a
5 minute, are going to identify themselves to you and
6 then I am going to ask them to give you the names of
7 any witnesses that could be called to testify in the
8 case. And then I'm going to ask you about your
9 relationship with the attorneys, the Defendant himself,
10 with witnesses, and ask you about your familiarity if
11 at all with the allegations that have been made in the
12 case.

13 And we will begin with the Solicitor, if you
14 would.

15 MS. MUSSER: Thank you, Your Honor. Once again,
16 Laura Musser on behalf of the State. Also at the
17 State's table is Ms. Callette McNeal. (phonetic) She
18 is also a assistant solicitor. As well as Investigator
19 Brandon Cooler with the Beaufort County Sheriff's
20 Office. As well as Investigator Steve Bazzle from the
21 14th Circuit Solicitor's Office.

22 THE COURT: Are there additional witnesses the
23 State may call, or is that it?

24 MS. SAXON: Yes, sir. Would you like me -- okay.
25 Additional witnesses that the State may call are

JURY SELECTION

1 Melanie Smith from Beaufort County dispatch. William
2 Pat Murphy from the Beaufort County Sheriff's Office,
3 Jason Crewsnowski from the Sheriff's Office, Trey
4 Simmons, Beaufort County Sheriff's Office, William
5 Polites, Sheriff's Office, Mark Thomas, Sheriff's
6 Office, Laurel Albertin, Sheriff's Office; Robert
7 DiCarlo, Sheriff's Office; Paul Swarson, Sheriff's
8 Office; Ana Colinbau, I apologize, Sheriff's Office;
9 Angela Viens, Sheriff's Office; Brandon Cooler,
10 Sheriff's Office; Brian Chapman, Sheriff's Office;
11 Jeremiah Frazier, Sheriff's Office; Ramona Cooper,
12 Sheriff's Office; Eileen Rios, Sheriff's Office; Jean
13 Roberts, Sheriff's Office; Mike Riley, Sheriff's
14 Office; Adrienne Hefney from the State Law Enforcement
15 Division; Verona Gibson, also from SLED. Makia Fulton
16 of Whigham, Georgia. And Jennifer Sesmas from Newnan,
17 Georgia.

18 THE COURT: Thank you. For the Defense?

19 MS. SAXON: Thank you, Your Honor. Hello, my name
20 is Jessica Saxon, I'm assistant Public Defender here in
21 Beaufort. At the table with me is Ms. Helen Novell.
22 She is also a public defender and we represent the
23 accused, Mr. Philenza Pritchett. In addition to the
24 State's possible witnesses, we might possibly call Lee
25 Connelly. She is a private investigator with Info Inc.

JURY SELECTION

1 Investigation out of Columbia, South Carolina; Brandon
2 Rolt; and Mr. Pritchett himself. Thank you.

3 THE COURT: Thank you, Ms. Saxon. First question,
4 ladies and gentlemen: Has any member of the jury panel
5 ever been related by blood or related by marriage to
6 any of the attorneys involved in the case? To any of
7 the witnesses that have been identified to you? Or to
8 the Defendant himself? If so, please stand.

9 If you have ever been related by blood or marriage
10 to any of those individuals, please stand.

11 Next question: Has any member of the jury panel
12 ever had a close, personal or social relationship with
13 any of the attorneys involved in the case, any of the
14 witnesses identified to you, or to the Defendant
15 himself? If so, please stand.

16 All right. Now then, let's get your juror number
17 and your name, and then tell us why you stood.

18 JUROR 262: Thomas Pike. My number is 262 and I'm
19 friends with two of the witnesses with the Sheriff's
20 Department.

21 THE COURT: With all of the witnesses or --

22 JUROR 262: No, with two of the gentlemen with the
23 Sheriff's Department.

24 THE COURT: And that would be?

25 JUROR 262: Frazier and Chapman, sir.

JURY SELECTION

1 THE COURT: Is your friendship based on the line
2 of work that you might be in and they might be in, or
3 something else?

4 JUROR 262: Yes, and no. Sometimes I see them at
5 family events of a good friend of mine that they are
6 invited, so I'll see them at a cookout here or there or
7 something as well.

8 THE COURT: Okay. Have they ever been guests in
9 your home?

10 JUROR 262: No, sir.

11 THE COURT: Have you ever been a guest in their
12 home?

13 JUROR 262: Yes, sir. And actually, I am sorry,
14 one was a guest in my home, one of the gentlemen, yes.

15 THE COURT: Approximately how long ago?

16 JUROR 262: It's been a while. Probably about two
17 to three years, sir.

18 THE COURT: Now, would those facts that you have
19 just disclosed to us interfere with your ability to be
20 a fair and impartial juror in this case?

21 JUROR 262: No, sir, they would not.

22 THE COURT: You think that you could listen to the
23 evidence and be fair to both the State and the Defense?

24 JUROR 262: Yes, sir.

25 THE COURT: Thank you, sir. Yes, sir.

JURY SELECTION

1 JUROR 242: Tim Obrien, Number 242.

2 THE COURT: 242. And you stood because?

3 JUROR 242: Friends with Robert DiCarlo.

4 THE COURT: Is this because of your profession?

5 JUROR 242: No, sir.

6 THE COURT: All right. How long have you known
7 each other?

8 JUROR 242: Oh, going on 8, 9 years at least.

9 THE COURT: Have you visited in --

10 JUROR 242: Yes, sir, both.

11 THE COURT: Each other's homes?

12 JUROR 242: His family in our home, my family in
13 his home.

14 THE COURT: Over those years, often or just
15 casually?

16 JUROR 242: A lot more -- we haven't been as close
17 in the last couple of years, but, yeah, between
18 holidays and -- yes, we used to see quite of bit of
19 each other. We both hail from Massachusetts, so we
20 became friends over the years here.

21 THE COURT: And the last time that either of you
22 would have visited in the home of the other would have
23 been approximately how long ago?

24 JUROR 242: A couple of years.

25 THE COURT: A couple of years?

JURY SELECTION

1 JUROR 242: Yes, sir.

2 THE COURT: Well, would that fact that you have
3 just disclosed to us interfere with your ability to be
4 a fair and impartial juror in the case?

5 JUROR 242: No, sir.

6 THE COURT: You could listen to the evidence and
7 be fair to both the State and the Defense?

8 JUROR 242: Yes, sir.

9 THE COURT: Thank you, sir. Has any member of the
10 jury panel or any member of your immediate family ever
11 been represented by any of the attorneys involved in
12 this case? If so, please stand.

13 Has any member of the jury panel or member of your
14 immediate family ever been the victim of an armed
15 robbery, kidnapping, or a violent crime? If so, please
16 stand.

17 If you or a member of your immediate family have
18 ever been the victim of an armed robbery, kidnapping,
19 or a violent crime, please stand. Okay.

20 Has any member of the jury panel or member of your
21 immediate family ever been employed by any law
22 enforcement agency? If so, please stand. That means
23 now or in the past.

24 All right. And give us your name and number.

25 JUROR 122: Daniel Gooding, 122. Did you say

JURY SELECTION

1 employed by them? I'm not a police officer, but I
2 worked for a law enforcement agency in Colorado for 12.

3 THE COURT: Sorry, say it again.

4 JUROR 122: I worked for a law enforcement agency
5 for 12 years prior to moving here.

6 THE COURT: Okay. The last time that you worked
7 in that capacity was how long ago?

8 JUROR 122: Three years ago.

9 THE COURT: Three years, okay. Thank you, sir.
10 Has any member of the jury panel or member of your
11 immediate family ever been employed at a gas station or
12 quick mart or convenience store? If so, please stand.

13 And the lady on my right stood first. Yes, ma'am?

14 JUROR 103: April Fletcher Clark, number 103. My
15 son, when he was 19, he's 20 now, was employed at a
16 convenience store/gas station for about four months.

17 THE COURT: All right. Thank you, ma'am. Yes,
18 sir. I have forgot your number already.

19 JUROR 122: 122, Jerry Gooding. I worked for two
20 convenience stores in college, 20 years ago.

21 THE COURT: All right. Thank you. Yes, sir?

22 JUROR 122: Angelo Guagliano, Juror 130. I was
23 employed at a gas station approximately 45 years ago,
24 for two years.

25 THE COURT: That is when they were really called

JURY SELECTION

1 gas stations.

2 JUROR 314: Ross Curt, 314, my daughter at the
3 Kangaroo on Ross Point Parkway two years ago.

4 THE COURT: Say the last thing again.

5 JUROR 314: My daughter on Ross Point Parkway two
6 years ago.

7 THE COURT: All right. Thank you, sir. Yes,
8 ma'am.

9 JUROR 208: Brenda May, Juror 208. My father
10 managed a gasoline station. Well, he's been dead 30
11 years, so 30 years ago.

12 THE COURT: Thank you, ma'am.

13 Has any member of the jury panel formed or
14 expressed an opinion about any issue or any matter
15 involved in this case? If so, please stand.

16 Any member of the jury panel read, seen, or heard
17 about any of the allegations in this case before today?
18 If so, please stand.

19 Is there any member of the jury panel who is aware
20 of any bias or any prejudices that they may have
21 towards either the State or towards the Defendant? If
22 so, please stand.

23 Is there any member of the jury panel who was a
24 member of the grand jury that issued the indictments in
25 this case? If so, please stand.

JURY SELECTION

1 Is there any member of the jury panel who is a
2 member of or contributor to any group which has as its
3 primary concern the promotion of law enforcement or
4 victims' rights, and these groups would include but
5 would not be limited to MADD, SADD, or CAPE, or such
6 similar organizations? If so, please stand.

7 I have forgotten your number already.

8 JUROR 130: Angelo Guagliano, Juror 130. I have
9 contributed to organizations that support victims'
10 rights, several.

11 THE COURT: You do or did?

12 JUROR 130: Do.

13 THE COURT: Do, all right. Thank you, sir.

14 And yes, sir, your name and number.

15 JUROR 258: Robert Peterson, 258, I have also
16 contributed to organizations like MADD.

17 THE COURT: Now, would that be recently or --

18 JUROR 258: Recently.

19 THE COURT: Okay. Thank you, sir.

20 Does any member of the jury panel know of any
21 reason whatever why he or she shouldn't serve as a
22 juror in this case, with particular emphasis being
23 placed on your ability to be fair and impartial to both
24 the State and to the Defendant? If so, please stand.

25 Additional questions not already requested from

JURY SELECTION

1 the State?

2 MS. MUSSER: No, Your Honor. Thank you.

3 THE COURT: From the Defendant?

4 MS. SAXON: No, Your Honor.

5 THE COURT: State ready to select a jury?

6 MS. MUSSER: Yes, sir.

7 THE COURT: Is Defense ready to select a jury?

8 MS. SAXON: Yes, Your Honor.

9 THE COURT: Madam Clerk, please give us a jury.

10 THE CLERK: Strikes five and ten and one
11 alternate?

12 THE COURT: Yes. And one alternate.

13 THE CLERK: Thank you, Judge.

14 THE COURT: Ladies and gentlemen, the computer is
15 randomly selecting names to be randomly drawn. It is a
16 very quick and efficient method usually. Each side in
17 the case has an opportunity to -- a certain number of
18 opportunities to refuse or excuse jurors. They don't
19 have to tell you or us why they do it, they just decide
20 they prefer not to have certain individuals on the
21 jury. Could be where you worked or you live, could be
22 what you wore to court today, whether you have long
23 hair or no hair, it could be any kind of reason. We
24 may never know. But in just a moment we will have --
25 we will be ready to start selecting the jury.

JURY SELECTION

1 THE CLERK: Juror 358, Gina Warner, what says the
2 State?

3 MS. MUSSER: Please present the juror.

4 THE CLERK: What says the Defense?

5 MS. SAXON: Please seat the juror.

6 THE CLERK: Juror number 57, Vera Collins. What
7 says the State?

8 MS. MUSSER: Please present the juror.

9 THE CLERK: What says the Defense?

10 MS. SAXON: Please seat the juror.

11 THE CLERK: Juror number 143, Sharon Heisey. What
12 says the State?

13 MS. MUSSER: Please present the juror.

14 THE CLERK: What says the Defense?

15 MS. SAXON: Please excuse the juror.

16 THE CLERK: Juror 211, William McCoy. What says
17 the State?

18 MS. MUSSER: Please present the juror.

19 THE CLERK: What says the Defense?

20 MS. SAXON: Please seat the juror.

21 THE CLERK: Juror number 43, Maureen Butler. What
22 says the State?

23 MS. MUSSER: Please present the juror.

24 THE CLERK: What says the Defense?

25 MS. SAXON: Please seat the juror.

JURY SELECTION

1 THE CLERK: Juror number 286, Mary Ruegamer. What
2 says the State?

3 MS. MUSSER: Please present the juror.

4 THE CLERK: What says the Defense?

5 MS. SAXON: Please seat the juror.

6 THE CLERK: Juror 347, James Wright. What says
7 the State?

8 MS. MUSSER: Please excuse the juror.

9 THE CLERK: Juror number 258, Robert Peterson.
10 What says the State?

11 MS. MUSSER: Please present the juror.

12 THE CLERK: What says the Defense?

13 MS. SAXON: Please excuse the juror.

14 THE CLERK: Juror number 169, Debra Jones. What
15 says the State?

16 MS. MUSSER: Please present the juror.

17 THE CLERK: What says the Defense?

18 MS. SAXON: Please excuse the juror.

19 THE CLERK: Juror number 276, Michaelene Roberts.
20 What says the State?

21 MS. MUSSER: Please present the juror.

22 THE CLERK: What says the Defense?

23 MS. SAXON: Please excuse the juror.

24 THE CLERK: Juror 160, Andrew Jackson. What says
25 the State?

JURY SELECTION

1 MS. MUSSER: Please excuse the juror.

2 THE CLERK: Juror 208, Brenda C. May. What says
3 the State?

4 MS. MUSSER: Please present the juror.

5 THE CLERK: What says the Defense?

6 MS. SAXON: Please excuse the juror.

7 THE CLERK: Juror 122, Daniel Gooding. What says
8 the State?

9 MS. MUSSER: Please present the juror.

10 THE CLERK: What says the Defense?

11 MS. SAXON: Please excuse the juror.

12 THE CLERK: Juror 257, Patricia Perry. What says
13 the State?

14 MS. MUSSER: Please present the juror.

15 THE CLERK: What says the Defense?

16 MS. SAXON: Please seat the juror.

17 THE CLERK: Juror 103, April Fletcher-Clark. What
18 says the State?

19 MS. MUSSER: Please excuse the juror.

20 THE CLERK: Juror number 141, Joan Hayes. What
21 Says the State?

22 MS. MUSSER: Please present the juror.

23 THE CLERK: What says the Defense?

24 MS. SAXON: Please seat the juror.

25 THE CLERK: Juror number 19, Gary Bert. What says

JURY SELECTION

1 the State?

2 MS. MUSSER: Please present the juror.

3 THE CLERK: What says the Defense?

4 MS. SAXON: Please seat the juror.

5 THE CLERK: Juror number 101, Tommy Fields. What
6 says the State?

7 MS. MUSSER: Please present the juror.

8 THE CLERK: What says the Defense?

9 MS. SAXON: Please seat the juror.

10 THE CLERK: Juror 297, Linda Shumacher. What says
11 the State?

12 MS. MUSSER: Please present the juror.

13 THE CLERK: What says the Defense?

14 MS. SAXON: Please seat the juror.

15 THE CLERK: Juror 22 Blake Bishop. What says the
16 State?

17 MS. MUSSER: Please present the juror.

18 THE CLERK: What says the Defense?

19 MS. SAXON: Please seat the juror.

20 THE CLERK: Juror number 126, Carol Griffin. What
21 says the State?

22 MS. MUSSER: Please present the juror.

23 THE CLERK: What says the Defense?

24 MS. SAXON: Could you repeat the juror number?

25 THE CLERK: Juror number 126.

JURY SELECTION

1 MS. SAXON: Please excuse the juror.

2 THE CLERK: Juror 103, Monica Singleton. What
3 says the State?

4 MS. MUSSER: Please excuse the juror.

5 THE CLERK: Juror number 130, Angelo Guagliano.
6 What says the State?

7 MS. MUSSER: Please present the juror.

8 THE CLERK: What says the Defense?

9 MS. SAXON: Please excuse the juror.

10 THE CLERK: Juror number 337, Marsha Williams.
11 What says the State?

12 MS. MUSSER: Please present the juror.

13 THE CLERK: What says the Defense?

14 MS. SAXON: Please excuse the juror.

15 THE CLERK: Juror 59, Sherry Conrad. What says
16 the State?

17 MS. MUSSER: Please present the juror.

18 THE CLERK: What says the Defense?

19 MS. SAXON: Please seat the juror.

20 THE CLERK: Now we are striking for alternate.
21 Juror 63, John Cross. What says the State?

22 MS. MUSSER: Please present the juror.

23 THE CLERK: What says the Defense?

24 MS. SAXON: Please excuse the juror.

25 THE CLERK: Juror 352 Deborah Turturro. What says

JURY SELECTION

1 the State?

2 MS. MUSSER: Please present the juror.

3 THE CLERK: What says the Defense?

4 MS. SAXON: Please seat the juror. Any matters of
5 law the Court needs to consider concerning the
6 composition of the jury on behalf of the State?

7 MS. MUSSER: None from the State, Your Honor.

8 THE COURT: From the Defense?

9 MS. SAXON: None from the Defense, Your Honor.

10 THE COURT: Ladies and gentlemen, I'm getting
11 ready to let you go for the day and for tomorrow. I'm
12 going to ask you to call back tomorrow evening after 6
13 p.m. for further instructions. Instructions could say,
14 Thank you very much or it could say, you know, come in
15 tomorrow -- the following morning.

16 Does anybody have a question about what to do?
17 Anybody have a problem with doing it? Ladies and
18 gentlemen, you are excused until 6 p.m. tomorrow when
19 you have got to call. Thank you.

20 Let me see the attorneys in a quick sidebar.

21 (Off-the-record discussion.)

22 THE COURT: Ladies and gentlemen, I'm going to let
23 you go for the day also. We have some matters that we
24 must take up before we can actually begin the trial of
25 the case. We have to take these matters up this

JURY SELECTION

1 afternoon and first thing in the morning, but we are
2 going to ask you to be back in the jury room, which the
3 bailiff will show you, at 10:15 in the morning.

4 Between now and then though I need to ask you to do a
5 couple of things, or not do several things. Don't talk
6 to anybody about this case. Don't let anybody talk to
7 you about this case. And I know that you don't know
8 much about it at all, but also don't do any research
9 about this case. Don't get on the Internet and see if
10 you can find what somebody said on a blog about this
11 case two years ago or whenever it was.

12 You are going to be required to make a decision in
13 this case based on what happens here in this courtroom,
14 not what somebody else said they heard or thought that
15 they heard about this. If somebody knew something
16 about this case they would be testifying about this
17 case from the witness stand. You are going to make a
18 decision based on evidence presented in the courtroom.
19 Most of it I suspect will be testimony from witnesses.
20 It could be from exhibits introduced in the trial of
21 the case. And what I tell you about the law that
22 applies to the case.

23 So, once again, I ask you, please don't talk to
24 anybody about the case, don't let anybody talk to you
25 about the case. Is anybody going to have a problem

JURY SELECTION

1 being here at 10:15 in the morning? Ladies and
2 gentlemen, you are excused. Thank you so much.

3 (Jury exits the courtroom.)

4 THE BAILIFF: The jury is clear, Your Honor.

5 THE COURT: Do you want to take a break, or are
6 you ready to move forward?

7 MS. MUSSER: Judge, I just need to find
8 Ms. Fulton.

9 THE COURT: Let's take five.

10 MS. MUSSER: Thank you, Your Honor.

11 THE COURT: We will be in recess for five minutes.

12 (Brief recess.)

13 THE COURT: All right. Whenever you are ready,
14 Solicitor.

15 MS. MUSSER: Thank you, your Honor. At this time,
16 Your Honor, the State would call Makia Fulton.

17 THE CLERK: Have a seat and state your name for
18 the Court.

19 THE WITNESS: Makia Fulton.

20 **Thereupon,**

21 MAKIA FULTON

22 was called as a witness, having been first duly sworn,
23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MS. MUSSER:

WITNESS - MAKIA FULTON

1 Q Ms. Fulton, how old are you?

2 A Twenty-nine.

3 Q And I want to direct your attention back to 2010.

4 Where were you working then?

5 A At the Kangaroo gas station in Bluffton.

6 Q And where is that locate -- what road is that on?

7 A It is on Fording Island Road.

8 Q Are there any landmarks; what is it near?

9 A It is near, I think, the restaurant called the Sea
10 Trotter now.

11 Q Okay. How far is it from Hilton Head Island?

12 A I don't know exactly. But it's right before you
13 go over the bridges before you cross to get to the island.

14 Q And you are aware of the incident that brings you
15 to court today, right?

16 A Yes, ma'am.

17 Q From April 1st, 2010?

18 A Yes, ma'am.

19 Q Just for the purposes of, since Judge Goldsmith
20 doesn't know anything about that case, ma'am, would you
21 briefly describe to him what happened in the early morning
22 hours around 10 of 3, again, on April 1st of 2010. Were you
23 working that day?

24 A Yes, ma'am.

25 Q What was your job capacity at that point?

WITNESS - MAKIA FULTON

1 A At that time of morning I was getting ready to put
2 up the stock that I just received off the truck.

3 Q Were you a clerk at the Kangaroo Express?

4 A Yes, ma'am.

5 Q Was anyone else there working with you or were you
6 by yourself?

7 A I was by myself.

8 Q What kind of lighting was in the store?

9 A It was good lighting.

10 Q Okay. So, what happened at around 10 of 3?

11 A Well, I was coming back in from smoking my
12 cigarette. And when I came in, as soon as I came around the
13 corner, that's when I noticed the door open. And when I
14 turned around and looked I saw two people approaching me
15 with a gun telling me to get down on the floor.

16 Q And you indicated that you saw a gun. Who had the
17 gun or were there multiple guns?

18 A There were multiple guns.

19 Q Okay. How many individuals entered the store?

20 A Two.

21 Q Okay. What were you able to observe about them?

22 A I noticed that they were wearing black, all black
23 and they had on blue bandanas around their faces and they
24 had on gloves. And I just saw black and silver guns, but I
25 don't know what guns.

WITNESS - MAKIA FULTON

1 Q Okay. Were you able to describe what race were
2 there?

3 A One was African American and one Caucasian.

4 Q And what happened once they came in the store?

5 A When they came in the store, they just told me to
6 get down. And they changed their mind and told me to get
7 up. They kept saying that they wasn't going to hurt me and
8 told me -- giving me different instructions about opening up
9 the register and get money out of the register and put in
10 the bag. And they also told me to try to open the safe but
11 I couldn't open the safe.

12 Q Okay. When you say that they were talking -- did
13 both of them speak to you?

14 A Not at first. The African American was doing most
15 of the talking until when it switched to like the end part,
16 that is when --

17 Q Sorry, the end part?

18 A The close to the end part of the robbery, that is
19 when the Caucasian was speaking mostly.

20 Q Okay. Approximately how long was it when they
21 came into the store and while you were speaking, when they
22 were speaking to you, about how long -- about how many
23 minutes was that?

24 A I would say about anywhere from five to ten
25 minutes.

WITNESS - MAKIA FULTON

1 Q Okay. And was the store lit the whole time?

2 A Yes, ma'am.

3 Q Okay. About how far away from you -- how far were
4 you from those men, starting with the black male?

5 A The black male was to my left side. And at first
6 when they first came in. Then they switch up, the white
7 male was behind me and they switch up and the white male got
8 in front of me and the black male got behind me.

9 Q What happened -- was there a point in time when
10 you had to come around from behind the cash register?

11 A Yes, ma'am.

12 Q And how did that happen?

13 A They told me to get in the bathroom and they
14 walked me to the bathroom.

15 Q Where was the bathroom in relation to the counter?

16 A It was all the way around the corner like going
17 back towards the door, but going opposite to the door.

18 Q Did one or both of them continue to speak with
19 you?

20 A Just the black male.

21 Q Okay. At some point what happened after you were
22 put in the restroom?

23 A Well, I used the restroom and I waited for like
24 maybe a minute or two and then I came out and I locked the
25 door and called 911 like I was supposed to do.

WITNESS - MAKIA FULTON

1 Q Okay. And did the officers arrive?

2 A Yes, they did.

3 Q About how long did it take for them to get there?

4 A I would say about a minute. It didn't take that
5 long.

6 Q Okay. After the officers got there, did you speak
7 with the officers?

8 A Yes, ma'am, I remember speaking to the officer.
9 He asked me if I wanted to write a statement down saying
10 what happened. And I wrote it down. And then about maybe
11 like five or ten minutes into me and him having a
12 conversation, he asked me if I would take a ride with him
13 because they think that they may have somebody. And I got
14 in the car with him and we pulled up to another Kangaroo
15 which is on the island, the Gum Tree store, and that is when
16 he -- they pulled out the white male, but I didn't recognize
17 him. I told them that I didn't know who that was. And they
18 pulled out another African American and I told him that that
19 wasn't who I thought that it was. And then they pulled out
20 a third person, another African American, and that is who I
21 recognized.

22 Q Now, going back, when you spoke with the officers
23 when you were at your store?

24 A Uh-huh. (Indicating affirmatively.)

25 Q Did you -- what if anything did you indicate to

WITNESS - MAKIA FULTON

1 them with respect to potentially recognizing one of the
2 subjects?

3 A I told them that the more and more the African
4 American kept talking I caught on to his voice.

5 Q Did you recognize his voice?

6 A Yes, ma'am.

7 Q And who did you recognize that voice to belong to?

8 A Well, I know him as Lenny.

9 Q Okay. And how did you meet Lenny?

10 A I met Lenny through his son's mother because we
11 work together and I used to braid her hair and I started
12 braiding his, Lenny's mother's hair.

13 Q Okay. When did you first meet Lenny?

14 A Back in 2007, I think the first time that I went
15 to his mother's house to braid her hair.

16 Q When you went to his mother's house to braid her
17 hair, how often would you go?

18 A Like maybe every month or two. She wouldn't get
19 it done every so often, like maybe two months or a month.

20 Q To your knowledge who was living at that house?

21 A I know it was Lenny's mother, the stepdad, his
22 sister, and the brother and him.

23 Q And "him" meaning Lenny?

24 A Yes, ma'am.

25 Q Where was this house?

WITNESS - MAKIA FULTON

1 A It was off of Chelsea Lane in Ridgeland.

2 Q So, approximately -- would you ever see Lenny when
3 you went to do his mother's hair?

4 A Every -- on occasion. Not all of the times, but
5 on occasion I would.

6 Q When you went there would you speak with him?

7 A Yes, ma'am.

8 Q And what kind of -- did you just have like social
9 interaction with him?

10 A Yeah, just small talk.

11 Q Did you indicate to the officers on the night in
12 question, or the morning in question that you were familiar
13 with the voice?

14 A Yes, ma'am.

15 Q Did you provide them with the name Lenny?

16 A Yes, ma'am.

17 Q Did you also describe, physically describe him
18 prior to going to the other store?

19 A I told him that he was shorter than me and that he
20 really didn't have any hair, he had a low hair cut, and that
21 he was not big in frame. He had a small stature.

22 Q When you went -- about how long was it from the
23 time that the store was robbed to the time you went to the
24 secondary store?

25 A I say about maybe 20 minutes. Because right after

WITNESS - MAKIA FULTON

1 I wrote my statement that is when they got the phone call
2 that they had them at the other store, and he asked me to
3 ride with him.

4 Q And where was that second store?

5 A It was located on Gum Tree.

6 Q Gum Tree. Is that on Hilton Head Island?

7 A Yes, ma'am.

8 Q And about how long does it take to get from your
9 store, which is at the bridge, to that store on Gum Tree?

10 A Maybe seven minutes because it's as soon as you
11 get in Hilton Head.

12 Q At the time -- so, when you went to the second
13 store you indicated that the first two subjects that you saw
14 you weren't able to recognize them?

15 A Yes, ma'am.

16 Q And then you did recognize Lenny, correct?

17 A Yes, ma'am.

18 Q Was Lenny wearing the same clothes at the time?

19 A Yes, ma'am.

20 Q Do you recall what kind of pants he was wearing?

21 A I remember just dark pants. It was black. I know
22 that he had a dark hoodie. I can't remember if it was dark
23 blue jeans or dark black, but I remember I think that he had
24 on blue shoes.

25 MS. MUSSER: Your Honor, may I have a moment?

WITNESS - MAKIA FULTON

1 THE COURT: You may.

2 (Pause.)

3 BY MS. MUSSER:

4 Q At the time that the suspects came into the store,
5 were there any other customers in the store?

6 A No, I was in there myself when they entered.

7 Q Is it fair to say, being they had guns, you were
8 paying attention to them and what they were doing?

9 A Yes, ma'am.

10 Q When you went to the second -- to the Gum Tree
11 location, how sure were you that the person that you picked
12 out was the person that had robbed the store?

13 A I was very sure.

14 Q The individual that you identified as Lenny, is he
15 sitting here today?

16 A Yes, ma'am.

17 Q Would you describe what he's wearing for the
18 Court?

19 A He has on a green shirt, button down shirt. I
20 really didn't look at the pants.

21 MS. MUSSER: Your Honor, let the record reflect an
22 in-court identification of the Defendant.

23 THE COURT: So noted.

24 MS. MUSSER: Your Honor, no further questions.

25 THE COURT: Cross examination.

WITNESS - MAKIA FULTON

1 MS. SAXON: Beg the Court's indulgence, Your
2 Honor.

3 CROSS EXAMINATION

4 BY MS. SAXON:

5 Q Hello, Ms. Fulton. The night of this incident,
6 you produced a written statement, correct?

7 A Yes, ma'am.

8 Q Have you reviewed that since producing it?

9 A Yes, ma'am. Every time it was time to go to court
10 I saw the statement and they asked me did I want to change
11 anything.

12 Q So you are familiar with it?

13 A Uh-huh. (Indicating affirmatively.)

14 MS. SAXON: May I approach, Your Honor.

15 THE COURT: You may.

16 BY MS. SAXON:

17 Q Ms. Fulton, ignoring the highlighting, is this the
18 statement that you wrote on that evening?

19 A Uh-huh. (Indicating affirmatively.)

20 Q All right. Ms. Fulton, when the gentlemen entered
21 the store where you were working, per your statement, you
22 say, All I could see were their eyes -- was their eyes, so
23 their face was covered; is that correct?

24 A Yes, ma'am.

25 Q They had a bandana across it?

WITNESS - MAKIA FULTON

1 A They had a blue bandana across it.

2 Q And they had hoodies on, so their head was
3 covered?

4 A Yes, ma'am.

5 Q And Long sleeves?

6 A Uh-huh.

7 Q So you couldn't see any identifying features?

8 A Nothing but their eyes.

9 Q You also say in your statement that the black --
10 you are 5' 7" according to your statement, correct?

11 A Yes, ma'am.

12 Q You say that the black male is shorter than you;
13 is that correct?

14 A Uh-huh. (Indicating affirmatively.)

15 Q Okay. And in your -- when you enter the store,
16 and it's on the surveillance video, you are on the cell
17 phone?

18 A Yes, ma'am.

19 Q And you are talking, I assume, to a friend?

20 A To my cousin.

21 Q To your cousin, so you are on the phone when two
22 gentlemen come into the store with guns, correct?

23 A Yes, ma'am.

24 Q And they are both talking at you, correct, giving
25 orders?

WITNESS - MAKIA FULTON

1 A Yes, ma'am.

2 Q And you are still on the phone?

3 A Yes, ma'am.

4 Q And you said in your direct that you think that
5 they were in the store approximately ten minutes; is that
6 correct?

7 A Yes, ma'am.

8 Q You said in your statement that they came in at
9 about a quarter of 3 in the morning?

10 A Yes, ma'am.

11 Q Okay. And then you said that you were in the
12 bathroom for about a minute; is that correct?

13 A Yes, ma'am.

14 Q Before you called the police. Do you know what
15 time it was that you called the police?

16 A No, ma'am, I never looked at the clock, I just got
17 out of the bathroom, locked the door, and called the police.

18 Q Would you be surprised if I told you that it was
19 about 2:48, about three minutes after everything started
20 that the alarm was sounded to dispatch?

21 A No, when you are like in that situation, I was
22 just petrified. It felt like it was taking forever.

23 Q Okay. So, but it didn't take ten minutes, it only
24 took about maybe two?

25 A Uh-huh. (Indicating affirmatively.)

WITNESS - MAKIA FULTON

1 Q Okay. You said when the officer -- you were
2 speaking with the officer, that he told you that they might
3 have somebody, those were his words when he asked to you go
4 to the show-up ID?

5 A Yes, he came to me and said they might have
6 somebody, because they had somebody to the other gas station
7 that was looking kind of suspicious.

8 Q And in the statement that you wrote, and if you
9 need to review it just let me know, you don't ever mention
10 anything about recognizing anyone's voice, did you?

11 A I thought that I did wrote that down in that
12 paper, the fact of me recognizing somebody's voice. I'm not
13 sure.

14 Q Thank you. You also said, when you came up to the
15 Gum Tree store that Mr. Pritchett was wearing the same
16 clothes as the person who had robbed you; is that correct?

17 A Yes, ma'am.

18 Q You identified the gentleman that robbed the store
19 as wearing long sleeves, a hoodie?

20 A Well, he didn't have the hoodie on.

21 Q He didn't have the hoodie on. So, he had a tank
22 top on?

23 A Yes, ma'am.

24 Q Okay. Now, based on your statement and what the
25 police report reads, the first time that you said it's Lenny

WITNESS - MAKIA FULTON

1 is when you saw him; is that correct?

2 A No. Well, I told them that in the store, that I
3 recognized his voice. I guess that I didn't put it on the
4 statement because I was just writing really fast. I'm still
5 scared at this point. But I told him that I recognized one
6 of the guys who robbed me. I did tell the officer that.

7 Q Okay. So, according to the police report, and
8 again I'm more than happy to let you review this as well,
9 according to Officer Polites you reported to him that both
10 men's voices sounded familiar to you but that the black
11 male's voice sounded more familiar?

12 A Uh-huh. (Indicating affirmatively.)

13 Q And then it says that you verified that one of the
14 four being detained was a height/weight and partial clothing
15 match and that you knew him as Lenny and that you believed
16 that was the voice; is that correct?

17 A Yes, ma'am.

18 Q And you did that at the show-up identification?

19 A I did that at my store, the store I was working
20 at.

21 Q You did that at your store?

22 A Uh-huh.

23 Q Because this says that, I transported her to the
24 Kangaroo Express on Gum Tree Road so that she may identify
25 the suspects, but your recollection is that you did it prior

WITNESS - MAKIA FULTON

1 to then?

2 A I told him that one of the voices sounded
3 familiar, that's why he asked me to ride with him to the
4 other store. And once we got to the other store and I told
5 him that's who I thought it was, Lenny Pritchett, that's
6 when he did his report.

7 Q Okay. And you said that during the robbery
8 Mr. Pritchett was wearing, the black male excuse me, was
9 wearing a black hoodie; is that correct?

10 A Yes, ma'am.

11 MS. SAXON: The Court's indulgence for a moment.

12 (Pause.)

13 BY MS. SAXON:

14 Q Ms. Fulton, you said that you met Mr. Pritchett;
15 is that correct?

16 A Yes.

17 Q And you had occasional conversations with him when
18 you were doing his mother's hair; did I hear you correctly?

19 A Yes, ma'am.

20 Q Do you know the last time that you talked to him
21 in a social setting?

22 A I actually saw him maybe like two months before I
23 got robbed.

24 Q Okay.

25 A He came in there with some kids that lived behind

WITNESS - MAKIA FULTON

1 the store.

2 Q Okay. I just wanted to review again. The hoodies
3 that the gentlemen were wearing, you said that they were
4 black; correct?

5 A Yes.

6 MS. MUSSER: Objection, Your Honor. This has been
7 answered about three times.

8 BY MS. SAXON:

9 Q Ms. Fulton, when you arrive at the Gum Tree
10 Pantry, do you recall if there were other police officers
11 there?

12 A Yes, ma'am. Because they had -- I think all of
13 the guys were in different cars.

14 Q Okay. Do you have any idea roughly how many
15 police officers were there?

16 A No, ma'am, I can't remember that.

17 Q Would you say -- you can't guess?

18 A I know that it was at least three because they had
19 all three of the guys in different cars.

20 Q Okay, at least three. Were there blue lights
21 flashing, do you remember?

22 A I can't remember.

23 Q Do you recall if the suspects were in handcuffs?

24 A Yes, ma'am.

25 Q Where were -- you said that they brought the

WITNESS - MAKIA FULTON

1 suspects out, they brought them out one at a time; where
2 were they being held do you recall?

3 A In the back of the police car.

4 Q They were in the back of a police car?

5 A Uh-huh. (Indicating affirmatively.)

6 Q Okay. And you stayed in Polites' car, Officer
7 Polites' car for the ID?

8 A Yes, ma'am.

9 Q Okay. And where were you, in the front or the
10 back?

11 A I was in the front.

12 Q Would you say that you had a pretty clear line of
13 site, or was there anything in the way?

14 A I was looking out the window, so I had a clear.

15 Q And do you know about how far away you were from
16 each suspect?

17 A I would say maybe 5 feet. He parked where I could
18 see them but they couldn't see me.

19 Q Okay.

20 A It was at an angle where I could see them getting
21 out each window, because they had the cars lined up like
22 that. And his car was parked at an angle like that where I
23 could see them and they couldn't see me sitting in the back.
24 That is why I sat in the back.

25 Q You saw them face-on?

WITNESS - MAKIA FULTON

1 A Uh-huh. (Indicating affirmatively.)

2 Q Did you do any walk-arounds or did you just see
3 them face-on?

4 A No, I saw them face-on because when they got out
5 of the car they shined the light in their face so I could
6 see who everybody was.

7 MS. SAXON: That is all I have, Your Honor.

8 THE COURT: Anything further?

9 MS. MUSSER: No, Your Honor. Thank you. That is
10 all that we would have for today. With your
11 permission, we would resume tomorrow with the testimony
12 of Deputy Polites.

13 THE COURT: We decided that we were going to do
14 that at what time?

15 MS. MUSSER: As soon as Your Honor would like to
16 start.

17 MS. SAXON: 9:30. But if you say 9, we will be
18 here with bells on.

19 THE COURT: 9:15. Will that work?

20 MS. MUSSER: Yes, sir. Thank you.

21 THE COURT: There are no other issues; that is it?

22 MS. SAXON: The only other thing that I would ask,
23 Your Honor, just to sequester the witnesses once we get
24 underway.

25 MS. MUSSER: We have no objection to that, except

COLLOQUY

1 that we would just ask that --

2 THE COURT: How could you object?

3 MS. MUSSER: We just ask that the case officer be
4 allowed to stay and Ms. Fulton if she chooses.

5 THE COURT: Okay. What is your guess for
6 tomorrow?

7 MS. MUSSER: As far as how many witnesses we could
8 get through? I would say that we would be able to get
9 through at least half. And I'm hoping that once
10 Ms. Saxon and I have an opportunity to look at the
11 evidence maybe we can eliminate some of the chain, but
12 if not it'll -- under when we originally had the
13 schedule starting Tuesday morning without the pretrial
14 motions, my best guess was that we would be finished
15 around lunchtime on Wednesday. So, I don't think that
16 this hearing will drastically change that. I think
17 that we are still looking at midday on Wednesday.

18 THE COURT: All right. If there's nothing else
19 that we can do, the Court is recess until 9:15 tomorrow
20 morning.

21 (Court adjourned for the day at 3:30 p.m.)

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CERTIFICATE PAGE

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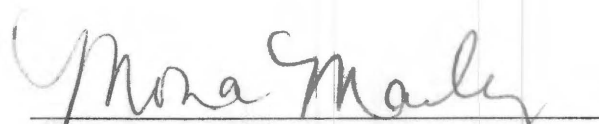
CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 5th day of December, 2014.


MONA L. MANLEY
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25

APPEARANCE PAGE

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APPEARANCE PAGE

1 PROCEEDINGS

2 THE COURT: Whenever you are ready, Solicitor.

3 MS. MUSSER: Good morning, Your Honor. How are
4 you?

5 THE COURT: I'm doing great.

6 MS. MUSSER: Your Honor, the State would call
7 Officer -- sorry, Corporal Polites.

8 THE CLERK: Please have a seat and state your full
9 name for the record.

10 MS. MUSSER: May I proceed, Your Honor?

11 THE COURT: Yes.

12 Thereupon,

13 WILLIAM POLITES

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MUSSER:

18 Q Good morning, Corporal Polites. Sir, by whom are
19 you employed?

20 A The Beaufort County Sheriff's Office.

21 Q How long have you been so employed?

22 A Since 2008.

23 Q What is your current rank?

24 A Corporal.

25 Q How long have you held that rank?

WITNESS - WILLIAM POLITES

1 A Approximately one year.

2 Q I'm going to direct your attention back to April
3 1st of 2010. Do you recall if you were working that day?

4 A Yes, ma'am.

5 Q What was your shift?

6 A Night shift.

7 Q What does -- what time does the night shift start?

8 A 6:45 p.m.

9 Q Okay. So, is that traditionally the 7 p.m. to 7
10 a.m.?

11 A Yes, ma'am.

12 Q At approximately 2:48 did you have occasion to
13 receive a call and be dispatched to the Kangaroo Express
14 located at 1610 Fording Island Road in Beaufort County?

15 A Yes, ma'am.

16 Q What was the nature of that call?

17 A It came out as an armed robbery.

18 Q As a result of receiving that call, did you
19 proceed to the Kangaroo Express?

20 A Yes, ma'am.

21 Q Upon your arrival who else was there?

22 A I saw Corporal Simmons and Sergeant Lauver.

23 Q Did you speak with anyone that wasn't law
24 enforcement?

25 A I did ma'am.

WITNESS - WILLIAM POLITES

1 Q Who did you speak with?

2 A Ms. Makia Fulton, she was the night clerk at the
3 pantry.

4 Q What was her role in this event?

5 A She was working at the store and she was a
6 witness, obviously.

7 Q So, the victim?

8 A Victim, yes, ma'am.

9 Q Okay. When you spoke with her, where did you
10 speak with her?

11 A I spoke to her initially in the parking lot. And
12 then I spoke to her in the store afterwards.

13 Q Okay. Was the store lit?

14 A The store was lit, yes.

15 Q Okay. Were all of the lights on?

16 A Yes, ma'am.

17 Q When you spoke with her, what if any information
18 did she provide with respect to the armed robbery?

19 A She said that she clearly recognized the voice of
20 one of the robbers. She believed that it was someone she
21 referred to as Lenny. She was able to give a description of
22 the two robbers.

23 Q What type of description did she give? Did she
24 give male, female?

25 A She said two males.

WITNESS - WILLIAM POLITES

1 Q Did she give ethnicity?

2 A She did.

3 Q What did she say?

4 A She said she believed it was one white male and
5 one black male.

6 Q Did she describe the clothing for you?

7 A She did. She did, but she didn't have so clear of
8 a description of the clothing, but she did give an
9 approximate, yes.

10 Q Did she write out a statement?

11 A She did, ma'am.

12 Q Did she indicate what color the clothing was?

13 A I don't recall.

14 Q Would reviewing her statement refresh your
15 recollection as to what was said?

16 A Yes, ma'am.

17 MS. MUSSER: Beg the Court's indulgence. May I
18 approach?

19 THE COURT: You may.

20 BY MS. MUSSER:

21 Q Read this and see if that refreshes your
22 recollection as to what color clothing she told you they
23 were wearing?

24 A Thank you.

25 Q Does that the refresh your recollection as to what

WITNESS - WILLIAM POLITES

1 color clothing she described?

2 A Yes, it does.

3 Q What does she describe the white male as having
4 worn?

5 A She said he was wearing a black hoodie and a blue
6 bandana.

7 Q Okay. And what about the black male?

8 A Also like a -- he was shorter and he also was
9 wearing a blue bandana and a black hooded sweatshirt.

10 Q You indicated shorter, shorter than whom?

11 A Shorter than the white suspect.

12 Q Did she also indicate that the black male suspect
13 was --

14 MS. SAXON: Objection. Leading, Your Honor.

15 THE COURT: Overruled, go ahead.

16 BY MS. MUSSER:

17 Q Did she also indicate to you that the black male
18 suspect was shorter than she was?

19 A I believe she said that.

20 Q As a result -- after you spoke with Ms. Fulton,
21 approximately how long did you speak with her?

22 A I spoke with her for about five minutes when I
23 first arrived.

24 Q Did -- I am sorry, did she complete the written
25 statement for you at that point?

WITNESS - WILLIAM POLITES

1 A No, she completed it when we got in the store.

2 Q When you got into the store?

3 A Yes, ma'am.

4 Q Okay. At some point when she was writing her
5 written statement or after she had completed it, did you
6 receive information regarding a second call at the Gum Tree
7 Pantry on Hilton Head Island?

8 A Yes, ma'am.

9 Q As a result of that call, what did you do?

10 A I stayed at the Gum Tree Pantry. I know other
11 officers responded to -- excuse me, I'm sorry, I stayed at
12 the Buckingham Pantry, and other officers responded to the
13 Gum Tree Pantry.

14 Q That was -- what was the nature of the call at the
15 Gum Tree Pantry?

16 A There was another officer, Lieutenant Murphy, he
17 had been on the look-out for possible suspects. He went out
18 with a vehicle that he believed could be the suspects. He
19 saw a weapon in the car and he asked for a 103, which is a
20 clear channel. So, other officers responded to his location
21 and I stayed to secure the scene at the Buckingham Pantry.

22 Q Is the Buckingham Pantry also what we have been
23 referring to as the Kangaroo Express at 1610 Fording Island
24 Road?

25 A Yes, ma'am.

WITNESS - WILLIAM POLITES

1 Q At some point did you transport Ms. Fulton to that
2 secondary location?

3 A Yes, ma'am.

4 Q Approximately how much time passed -- let me back
5 up a little bit. Do you recall approximately what time you
6 were dispatched to the Kangaroo Express?

7 A 0248, 2:48 a.m.

8 Q How long approximately did it take you to get
9 there after receiving the call?

10 A About four minutes.

11 Q Approximately how long did you speak with
12 Ms. Fulton prior to receiving information with respect to
13 what was going on at the Gum Tree Pantry?

14 A I spoke with her for about five minutes initially.

15 Q As a result of what was going on at the Gum Tree
16 Pantry, was Ms. Fulton transported by you to that location?

17 A Yes, ma'am.

18 Q How long approximately did it take you to get from
19 the Kangaroo Express to the Gum Tree Pantry?

20 A Five minutes.

21 Q What happened once you arrived with Ms. Fulton at
22 the Gum Tree Pantry; where did you park your vehicle?

23 A I parked -- there is a road, so I am coming up and
24 I parked right in front of the pumps where the suspect
25 vehicle was and the other patrol cars.

WITNESS - WILLIAM POLITES

1 Q Were there other officers on site at that point?

2 A Yes, ma'am.

3 Q Was there lighting from the area where the gas
4 pumps were?

5 A Yes.

6 Q At that point was Ms. Fulton shown anyone?

7 A Yes.

8 Q Who was shown to her, like who was presented and
9 how were they presented to her?

10 A There was a white male suspect and a black male
11 suspect that were presented.

12 Q Where was she when the white male -- where was the
13 white male suspect when he was shown to Ms. Fulton?

14 A He was outside of a police cruiser.

15 Q Where was Ms. Fulton?

16 A She was inside my vehicle.

17 Q Did she identify that individual?

18 A No.

19 Q Who was presented to her next?

20 A A black male.

21 Q And who was that black male?

22 A Repeat the question.

23 Q Who was that black male? How many total suspects
24 were there that were presented to her?

25 A There were two.

WITNESS - WILLIAM POLITES

1 Q Would it refresh your recollection to look at the
2 report? Weren't there three suspects?

3 MS. SAXON: Objection, Your Honor, leading.

4 MS. MUSSER: It is foundational, Your Honor, and
5 he can look at his report.

6 THE COURT: Overruled, go ahead.

7 BY MS. MUSSER:

8 Q Sir, were there three total, one white male and
9 two black males?

10 A For the Buckingham Pantry?

11 Q For -- at the Gum Tree where you took Ms. Fulton.

12 A Yes, ma'am.

13 Q Okay. Did she identify the white male?

14 A No, she did not.

15 Q Did she identify Mr. Lockett?

16 A She did not.

17 Q Okay.

18 A I'm sorry, repeat the question. Are you asking if
19 she identified him as one of the suspects?

20 Q Right. Did she say like I know -- like when
21 Mr. Lockett was presented to her, did she say, That is the
22 guy?

23 A I believe she did.

24 Q Did she not as well identify Mr. Pritchett, the
25 Defendant?

WITNESS - WILLIAM POLITES

1 A She did.

2 Q Okay.

3 A She did.

4 Q She identified one male?

5 A Yes.

6 Q Would it refresh your recollection to review your
7 report?

8 A Yes, ma'am.

9 MS. MUSSER: May I approach again, Your Honor?

10 THE COURT: Certainly.

11 BY MS. MUSSER:

12 Q Okay, I'm going to ask you to take a look at your
13 report and see if that refreshes your recollection as to who
14 she identified?

15 A Okay.

16 Q Does that refresh your recollection?

17 A It does.

18 Q For Judge Goldsmith, how many individuals were at
19 the Gum Tree Pantry that were originally in the car as
20 described by Officer Murphy?

21 A There was four individuals in the car.

22 Q Okay. Of that, how many females were there?

23 A One.

24 Q How many males were there?

25 A Three.

WITNESS - WILLIAM POLITES

1 Q What was the ethnicity of the three males?

2 A There was one white male and two black males.

3 Q Of those four people who did Ms. Fulton identify?

4 A She clearly identified Mr. Pritchett.

5 Q Okay. Prior to arriving to the Gum Tree Pantry,

6 what information did Ms. Fulton give you about the

7 individuals that had robbed the store, with respect to her

8 ability to identify them?

9 A She said that she recognized the voice immediately
10 of one of the people, the black male suspect. Then she said
11 something, I don't recall exactly, but she said there was
12 like a familiar connection, like he was her cousin. She
13 said, I know exactly who it is, it is Lenny.

14 Q After you took her to the Gum Tree Pantry, did she
15 identify Mr. Pritchett as being Lenny?

16 A Yes.

17 Q Did she identify Mr. Pritchett as the individual
18 that had robbed the store?

19 A Yes.

20 Q When she observed the Defendant at the Gum Tree
21 Pantry and identified him, was there anything obstructing
22 her view?

23 A She was in the back of my car so there are some
24 bars in the window, that is for officer safety reasons and
25 also to contain --

WITNESS - WILLIAM POLITES

1 Q There wasn't a gas pump or anything like that in
2 front of her, correct, because you would have moved your
3 car?

4 A Yes, ma'am, she had a clear view.

5 Q And again, was there any additional lighting other
6 than the lighting from the gas pump area?

7 A Well, there was the store lighting and the
8 lighting from our vehicles and I used my spotlight to
9 highlight the suspect.

10 Q Okay. When Ms. Fulton identified the Defendant,
11 Mr. Pritchett, did she hesitate in any way?

12 A No.

13 Q What level of certainty did she suppress to you?

14 A She was absolutely confident.

15 Q Okay.

16 MS. MUSSER: Your Honor, once I retrieve Corporal
17 Polites' report I have nothing further. Thank you.

18 THE COURT: Cross examination.

19 MS. SAXON: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MS. SAXON:

22 Q Good morning, Corporal Polites. Did I say that
23 right?

24 A Yes, ma'am.

25 Q I have been butchering it all yesterday, so I want

WITNESS - WILLIAM POLITES

1 to make sure that I get it. Let me see here.

2 Okay. So, when you arrived at the Kangaroo
3 Pantry you spoke to Ms. Fulton and she described the
4 suspects to you, correct?

5 A Yes.

6 Q As to the black male, she described him as being
7 shorter than she was, correct?

8 A Yes.

9 Q And did she say her height?

10 A She wrote down her height as like 5'7". She
11 didn't tell me her height, except later when I wrote it
12 down.

13 Q What you wrote down, okay. So, she said she was
14 5'7", correct, and black male was shorter than she was. She
15 also said that the black male had a bandana covering the
16 majority of his face, correct?

17 A Yes.

18 Q So, she couldn't give you any identifying
19 features, could she?

20 A She could tell he was a black male.

21 Q I mean, as far as specific features, tattoos,
22 scars, hair cut, anything of that nature?

23 A No.

24 Q Okay. Now, per your report it says that when you
25 first spoke to her she said that the voices of both men were

WITNESS - WILLIAM POLITES

1 familiar to her, correct?

2 A No.

3 MS. SAXON: Well, may I approach Your Honor?

4 BY MS. SAXON:

5 Q Sorry, I am going to direct your attention right
6 there.

7 A Okay. But she did say that the black male suspect
8 was --

9 Q More familiar?

10 A Yes.

11 Q Certainly. But she said that the voices were
12 familiar to her?

13 A I think I recall because she was so absolutely
14 certain about the black male's voice.

15 Q Okay. And then you got a call over the radio.
16 Ms. Fulton testified yesterday that you told her, We might
17 have somebody, we need to go take you to see them. Do you
18 remember saying that to her?

19 A Yes.

20 Q Okay. So, you take her to the Gum Tree Pantry,
21 you told her you might have somebody. Up to this point,
22 she's told you kind of what they look like -- do you want
23 some water?

24 A Yes, please.

25 Q She's told you kind of what they look like, what

WITNESS - WILLIAM POLITES

1 they are wearing and that the voices are familiar to her,
2 correct.

3 A Yes.

4 Q You get to the Gum Tree and there are four -- at
5 least four patrol cars on scene at that time, correct?

6 A Yes.

7 Q And your car would make five, correct?

8 A Yes.

9 Q Were there any other patrol cars or deputies or
10 detective cars on scene, do you recall?

11 A Yes.

12 Q Okay. So, there was a lot?

13 A But they were coming -- they weren't all there at
14 the same time.

15 Q Okay. Do you have an idea of roughly how many
16 deputies or officers of BCSO staff would have been on scene
17 at the time?

18 A I don't know the exact number.

19 Q Okay. When you got there, you did the ID, you
20 pulled I believe Mr. Rolt out of the car, was the first
21 person presented, is that correct, the white male?

22 A Yes.

23 Q Okay. And then, to your recollection, who was
24 presented next?

25 A I believe Mr. Lockett was presented. I don't

WITNESS - WILLIAM POLITES

1 recall the exact order.

2 Q Okay.

3 A But I do recall, you know, so clearly because she
4 was just confident about Mr. Pritchett.

5 Q Right. And then when Mr. Pritchett was produced
6 and she said, I know him, that's Lenny?

7 A Yes.

8 Q That is the first time that she gave you his name,
9 correct?

10 A She said Lenny previously -- previous to that.

11 Q Why is that not reflected prior to her
12 identification of the suspect then?

13 A I don't recall why I didn't write that in the
14 report, but she did say that to me at the Buckingham Pantry.

15 Q Okay. Corporal Polites, are you familiar --

16 MS. SAXON: And may I approach Your Honor?

17 THE COURT: Sure.

18 BY MS. SAXON:

19 Q With the Beaufort County Sheriff's Office general
20 orders manual?

21 A Yes, ma'am.

22 Q And I had showed that to Ms. Musser yesterday.
23 Can you explain what that is for the Court?

24 A This is basically a standard operating procedure.
25 It gives us guidelines to go by, you know, what is allowed

WITNESS - WILLIAM POLITES

1 and what is disallowed according to the State and Federal
2 law.

3 Q What is that particular order number about?

4 A This is the general order regarding eye witness
5 identifications.

6 Q And can you tell us, for the Court, when it became
7 effective?

8 A It became effective May 21st, 2009.

9 Q So it was in effect at the time of this incident?

10 A Yes.

11 Q Does that -- that general order addresses show-up
12 IDs, correct?

13 A Repeat the question.

14 Q It addresses how to conduct or if and when to
15 conduct show-up IDs?

16 A Yes, it regards eye witness identification, that
17 is how we refer to it.

18 Q Okay. If I could have you flip to the second
19 page. If you could read from just what this says right
20 there? What is that, the show-up?

21 A Okay. "Show-ups are typically justified when
22 other means of identification are either impractical or
23 unavailable and no other evidence exists to hold the
24 suspect."

25 Q Okay. When you received a call that there might

WITNESS - WILLIAM POLITES

1 be some suspects involved?

2 A Uh-huh. (Indicating affirmatively.)

3 Q Corporal or Officer Murphy stated on air that
4 there was a gun in plain view, correct?

5 A Correct.

6 Q So, would that be considered evidence to hold
7 suspects?

8 A Because of the way that the robbery was occurring,
9 you know, he headed towards the direction of the next open
10 24-hour store and, you know, he saw a white male and black
11 male suspect.

12 Q Right.

13 A He, I believe, went to the vehicle just to see,
14 you know, to talk and then clearly saw a weapon.

15 Q Certainly. But I'm saying, when he saw the weapon
16 that would have been enough to hold the suspects, correct?

17 A Absolutely.

18 Q And they could have been arrested on that charge
19 alone?

20 A Yes.

21 Q So, at that point once there was enough evidence
22 to hold the suspects, per the regulations wouldn't it have
23 made more sense to later do a live line-up or a -- even a
24 vocal line-up considering the lack of physical detail that
25 had been given to you by Ms. Fulton?

WITNESS - WILLIAM POLITES

1 A I don't believe so because this is all unfolding
2 within, you know, minutes. An armed robbery had just
3 occured and we have done, you know, what you referred to as
4 show-ups. There was definitely enough lighting. No
5 obstructive views. It was actually a pretty good
6 environment for her to identify Mr. Pritchett.

7 Q Okay. There's a couple of other points on that
8 document that talk about what deputies should and should not
9 do specifically?

10 A Okay.

11 Q These two speak -- they speak to what you should
12 or shouldn't say or do when transporting a witness to a
13 suspect; is that correct?

14 A Okay. Yes, I mean, that is correct.

15 Q Okay. And does it say that you should not use
16 words that suggest that a person may or may not be involved
17 in the incident at hand?

18 A You are asking me if --

19 Q If that's what the document says?

20 A That's what it says.

21 Q Okay. So when you say you might have someone,
22 that would go against policy right?

23 A No, because at that point we don't -- they are not
24 suspects yet. You know, they are being detained for safety
25 reasons, you know, just because there is a weapon. At that

WITNESS - WILLIAM POLITES

1 point, you know, we didn't -- you know, they weren't like
2 interlinked yet. It is a field investigation, you know,
3 evidence is being gathered as we go. So I don't think
4 saying, you know, we might have somebody, it's not like I
5 said, I think that we have your suspect.

6 Q Just a couple more questions. You drive a BCSO
7 issued vehicle, correct?

8 A I do.

9 Q Is that equipped with an in-car camera?

10 A Yes.

11 Q Is that in-car camera turned on at the activation
12 of the blue lights?

13 A It is.

14 Q Did you activate your blue lights at all that
15 evening?

16 A I did.

17 Q So was your camera recording?

18 A At that time we had an older camera system. It
19 was a little bit glitchy. It definitely would have
20 recorded, you know, the blue lights arriving there. I don't
21 know if it recorded -- I don't think so, we don't have a
22 recording. But, you know, the way that we operate now is a
23 little bit different. I don't believe that it was recording
24 when I took her to the Gum Tree Pantry.

25 Q But you are not 100 percent sure?

WITNESS - WILLIAM POLITES

1 A I'm not 100 percent sure.

2 Q And you never presented anything from an in-car
3 camera into evidence?

4 A I didn't.

5 MS. SAXON: Okay. I beg the Court's indulgence.

6 (Pause.)

7 MS. SAXON: That is all I have, thank you.

8 MS. MUSSER: Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. MUSSER:

11 Q At the time that you took Ms. Fulton to Gum Tree
12 Pantry, do you know how many suspects exactly that there
13 were in the car?

14 A I heard on the radio that there was four people in
15 the car.

16 Q Did you know exactly which of the four that the
17 gun that was seen by Officer Murphy would be -- it would be
18 attributable to? In other words, at that point did you know
19 anything other -- about the gun other than there was a gun
20 on scene?

21 A No.

22 Q So with that -- was it your decision to take
23 Ms. Fulton there, or was that something that you would have
24 received from a supervisor?

25 A I would have received it from a supervisor.

WITNESS - WILLIAM POLITES

1 Q If Ms. Fulton's identification had been recorded,
2 would you have put that in evidence?

3 A Yes.

4 MS. MUSSER: Nothing further, Your Honor.

5 MS. SAXON: Just one question.

6 RE-CROSS EXAMINATION

7 BY MS. SAXON:

8 Q When you come across something like that in your
9 line -- a gun, an unclaimed gun in a vehicle of suspects, is
10 it policy to assign the gun to one person or arrest every
11 suspect for the gun?

12 A Repeat the question please.

13 Q When you are at -- when you pull someone over and
14 there's a gun in the vehicle in plain view and there are
15 numerous people in the car is it the policy, if no one
16 claims that gun, to arrest all of the individuals in the car
17 that have access to it?

18 A I mean, potentially. It all depends on where it's
19 located within the vehicle. You know, there's rules and
20 guidelines.

21 Q Certainly.

22 A Certain possession, and all of that kind of stuff.
23 I mean, it depends; it's all situational.

24 MS. SAXON: Thank you, that's all.

25 THE COURT: Thank you. You may step down.

WITNESS - WILLIAM POLITES

1 WITNESS: Thank you, sir.

2 THE COURT: Anything else from the State?

3 MS. MUSSER: No, Your Honor, thank you. Just
4 argument.

5 THE COURT: Argue.

6 MS. MUSSER: So, the State does have case law, and
7 I know that the Court is familiar with the standard
8 regarding Zeigers, that it is a two-prong test. I have
9 copies of State versus Liverman. I have a copy for the
10 Court as well as a copy for counsel. Basically
11 indicating that a full hearing, the Zeigers hearing
12 isn't even necessary when a victim or witness has a
13 basis and knowledge of the particular individual
14 involved. So, with the Court's permission, I would
15 hand that up.

16 I also have copies of State versus Johnson, as
17 well as State versus Brown outlining the various
18 standards. And I believe that it is the Johnson case
19 that indicates that a voice identification does carry
20 weight. There's nothing to indicate that there's
21 something wrong with a voice identification. So, if I
22 may hand those up.

23 THE COURT: Sure.

24 MS. MUSSER: With respect to the factors involved
25 to see if a show-up is inherently suggestive, the State

COLLOQUY

1 would just offer that, with respect to the prong,
2 clearly Ms. Fulton had an opportunity to view the two
3 suspects. They came in when she was working in a
4 clearly lit convenience store. She was the only person
5 there. She wasn't distracted. She testified that she
6 was focused on them because they were brandishing
7 firearms. I know that South Carolina does recognize
8 that a victim can have a heightened awareness when they
9 are being threatened with a weapon. So, that would go
10 to, obviously, her degree of attention.

11 She also testified that she did speak with both
12 individuals, that they were in close proximity to her
13 with the Defendant being to her left and Mr. Rolt being
14 behind her. Once again she laid out for the Court the
15 foundation for how she knows the Defendant.

16 That being that she met him in approximately 2007
17 when she would frequently do his mother's hair. In the
18 Defendant's mother's home which he was living at the
19 time, she indicated that she would speak with him when
20 she was there. So, clearly she has the ability to
21 recognize him, his characteristics, as well as his
22 voice. And again, one of the cases that I handed up
23 specifically deals with voice identification in more
24 remote circumstances than even in this case.

25 Both Corporal Polites as well as Ms. Fulton

COLLOQUY

1 indicated that when she saw the Defendant, that is the
2 individual that she recognized as Lenny, as well as
3 that she didn't hesitate in any way when she went to
4 the Gum Tree Pantry and observed him.

5 That area was also clearly lit. There was police
6 lighting. There was regular lighting from the
7 convenience store. She had ample opportunity to view
8 him. In fact, the reliability of this identification
9 is bolstered by the fact that the two other individuals
10 that were in the same circumstance, having just been
11 pulled out of a police car, that she said, I don't know
12 them. So, the Court can also take that into
13 consideration for the totality of circumstances to,
14 once again, indicate that her identification of
15 Mr. Pritchett is clearly reliable. Because if it was
16 suggested she would have said, Oh yeah, you know, that
17 is the other -- that white male is the other person in
18 question, but she didn't make that identification.

19 Lastly, the last factor being the length of time
20 between the crime and the confrontation. It's well
21 established in the record that the period of time from
22 the robbery to the identification was relatively short.
23 I think if we do the math it was maybe 20, 25 minutes
24 in between two. Additionally, very close proximity
25 physically to what -- from one location to the other.

COLLOQUY

1 So based on that the State is respectfully
2 requesting that you deny the Defense motion to suppress
3 the identification.

4 THE COURT: All right. Thank you.

5 MS. SAXON: Thank you, Your Honor. In regards to
6 the first point that counsel made in State V Liverman.
7 The copy of that case, Your Honor, my copy is a little
8 different, but Page 427 of the opinion actually reads
9 that after the Supreme Court case of Perry v. New
10 Hampshire, that a preliminary additional inquiry is
11 required once it's contended that an identification is
12 obtained under unnecessarily suggestive circumstances
13 arranged by State action, regardless of the witness'
14 prior knowledge of the accused.

15 So, Your Honor, we are entitled to this hearing
16 and we do contend that the show-up ID was extremely
17 suggestive. We know that there were five BCSO
18 deputies, patrol cars on scene and any number of BCSO
19 staff. I know, based on the reports there was Corporal
20 Murphy, Corporal Simmons, who is a K-9 officer, and
21 Slauson were on scene. We know that all of the
22 suspects were in handcuffs in the back seats of police
23 cars and were pulled out one by one from the back to be
24 viewed.

25 The report, if Your Honor would like to take

COLLOQUY

1 judicial notice of it, I'm more than happy to pass it
2 up to you. The report doesn't even discuss the view of
3 Mr. Rolt or Mr. Lockett. It clearly, it just says that
4 only Mr. Pritchett was pulled out for review. So, that
5 contradicts the testimony that we have heard so far.

6 Further, Your Honor, we have the BCSO standard
7 operating procedures, which as many persons have ruled,
8 frown on show-up IDs because of their inherent
9 suggestibility. And within that report it tells you
10 that if you have other reasons to hold a suspect, such
11 as a gun unlawfully being carried in a car not claimed
12 by anyone, and that -- and there are other means to do
13 an ID, you certainly should. And in this case we would
14 argue, Your Honor, there was no visual identification
15 of the suspects, there couldn't have been, faces were
16 covered, hoodies were on, clothing up and down. You
17 couldn't see anything identifiable.

18 So, the only way to do a proper ID would be to do
19 some sort of blind voice line up where then Ms. Fulton
20 could have picked out the voice of her assailants. At
21 that point it would have been proper.

22 As to the facts of a Neal v. Ziggers hearing, Your
23 Honor, as you are aware, reliability is the linchpin in
24 admitting any sort of ID. As far as the opportunity to
25 view the suspects, I disagree with the State. Sure she

COLLOQUY

1 saw them, but she saw masked intruders. She was also
2 on her cell phone at the time, Your Honor. If you
3 would like to take judicial notice of the actual video
4 you will see that she was on her cell phone throughout
5 the duration of the video and that both suspects are
6 talking to her. The white male actually quite a bit
7 more than the black male on that video.

8 They are never really face to face, they are
9 either always to the side or behind her, so there's not
10 much view there. Again, as to the degree of attention
11 of Ms. Fulton during this, again I submit she was on
12 her cell phone for the entire robbery talking or having
13 a cousin talking into her ear, and yet she is claiming
14 she recognized the voice of a casual acquaintance who
15 she saw randomly and had short conversations with while
16 she did his mother's hair.

17 Her prior descriptions do not match. She
18 describes a heavier, shorter black male than Mr.
19 Pritchett is. She describes a man in different
20 clothing, a black hoodie. Mr. Pritchett was found in a
21 black T-shirt. And, again, her own statement, the
22 words that she wrote would have to, in my opinion,
23 carry the most weight, do not say that she recognized
24 the voice of any suspect. And I feel that her
25 statement, her words are the most accurate reflection

COLLOQUY

1 of her memory that night.

2 When you come to the level of certainty, Your
3 Honor, she says that it's definitely Lenny. Well, I
4 don't contest -- the Defense doesn't contest that she
5 knew him. And, of course, if you see someone that you
6 recognize you would be definitely sure that you knew
7 who that person was. But again, to then say that she
8 knows him and knows his voice after a casual
9 acquaintance and is completely certain that that is the
10 person who robbed her, in my opinion, falls short
11 considering she never saw hair, face, identifying
12 features and describes someone who doesn't physically
13 match Mr. Pritchett.

14 I think that the only real element that the State
15 catches is the amount of time. There was a short
16 amount of time between the alleged robbery and the
17 show-up ID. The case law that I would pass up in
18 support, Your Honor, is a South Carolina case called
19 State V Lawrence Moore. And in that case it is one
20 where show-up ID was actually admitted and then
21 overturned by both the Supreme Court -- or both the
22 appellate court and the Supreme Court when they
23 reviewed the facts and saw that these -- the witness
24 did not have a chance to view the actual face of the
25 Defendants and the suggestibility of the show-up ID.

COLLOQUY

1 So, I pass it up for your review, Your Honor. I think
2 it's on point in this matter.

3 I would say that, you know, they did a generic
4 show-up ID on an non-existent physical description and
5 said they got their man. I don't think that it's
6 reliable in any way, and I certainly don't think that
7 it's reliable to the manner that it needs to go in
8 front of a jury. I think it is highly tainted and I
9 think that it would be a grave violation of my client's
10 due process rights if it was brought in. So, we
11 respectfully request to suppress that, Your Honor. And
12 we would like that to cover both out of court and
13 in-court identifications.

14 THE COURT: Do you want to respond at all?

15 MS. MUSSER: No, Your Honor.

16 THE COURT: Okay. All right.

17 MS. SAXON: I apologize, Your Honor, did you want
18 to take -- did you want to see anything, the video or
19 the police reports or anything of that nature?

20 MS. MUSSER: I would object. We are in the
21 argument stage. And, you know, I would object to you
22 trying to introduce something that is not actually part
23 of the record.

24 MS. SAXON: I just asked him to take judicial
25 notice of it, which he's allowed to under the rule.

COLLOQUY

1 THE COURT: Did I want to see the video?

2 MS. SAXON: Did you want to see any of the things
3 that we discussed?

4 THE COURT: No, I'm fine. All right. Ms. Saxon,
5 I'm going to deny your motion to suppress. I agree
6 with the argument made by the State in this case. I
7 don't find that the show-up was unduly suggestive.
8 Even if it was, the difference in this case and the
9 case that you were relying on more, as I see it, is
10 that she says, and the officer says, that before they
11 went to the second site she said that she knew who the
12 Defendant was based on her recognition of his voice.
13 And that the show-p -- she -- excuse me. When she saw
14 the first black male she said, That is not him. She
15 was positive in her identification before and then
16 positive in her identification after.

17 She had, as stated by the Solicitor, she had a
18 good opportunity to see him but also to hear him at the
19 Kangaroo Express where she worked. For all of those
20 reasons, I'm going to deny your motion.

21 MS. SAXON: Thank you, Your Honor.

22 THE COURT: Anything else we need to do before the
23 jury comes in 15 minutes?

24 MS. MUSSER: No, Your Honor. Thank you.

25 THE COURT: All right. We will be at ease.

COLLOQUY

1 (Brief recess.)

2 MS. MUSSER: I think that there's a pretrial issue
3 with some of the State's photographs.

4 THE COURT: Will those photographs be coming up
5 this morning?

6 MS. SAXON: Your Honor, I just want to put on the
7 record that there's a photograph of Mr. Pritchett after
8 his arrest and the State altered it to remove
9 handcuffs. And I wanted that on the record, that it
10 has actually been altered.

11 MS. MUSSER: Judge, we took -- recognizing that
12 most Defense counsel would argue that a Defendant after
13 arrest in handcuffs would be prejudicial if the jury
14 should see him handcuffed. We did like we always do
15 where we just removed the handcuffs. Which I am
16 surprised that counsel is making this argument. I can
17 use the original where he is in handcuffs.

18 THE COURT: I'm not sure what she is doing.

19 MS. SAXON: I was just putting it on the record to
20 note that the picture has just been altered. It is not
21 the original picture that was taken. I think it's
22 important for the record that it's been changed. Yes,
23 the handcuffs have been removed. Does that make sense?

24 THE COURT: I'm not sure. Are you going to object
25 to the introduction?

COLLOQUY

1 MS. SAXON: No, I just want to put that on the
2 record that it has been altered.

3 THE COURT: Okay. All right.

4 MS. MUSSER: We are ready.

5 THE COURT: Ready for the jury? Let's bring the
6 jury in.

7 THE BAILIFF: Yes, Your Honor.

8 THE COURT: Good morning, ladies and gentlemen.
9 I'll have the clerk administer your oath as jurors.

10 (Whereupon, the jury was given the oath by the
11 Clerk.)

12 THE COURT: Just a few things before we begin. As
13 you know, the Defendant in this case has been charged
14 by way of the indictments with possession of a weapon
15 during the commission of a violent crime with
16 kidnapping, unlawful carrying of a pistol, criminal
17 conspiracy and armed robbery. The elements of these
18 crimes will be explained to you later. But I tell you
19 that the indictment is simply the vehicle that brings
20 the case into the courtroom. And it is not evidence
21 for you to consider.

22 The Defendant has pled not guilty to each of these
23 indictments and this, therefore, puts the burden upon
24 the State to prove each of the elements of the
25 indictments beyond a reasonable doubt. And it'll be

COLLOQUY

1 your duty, ladies and gentlemen, to determine at the
2 end of the day, or when the case is all over with,
3 whether or not the State meets that burden of proof.

4 Your purpose as jurors is to determine the facts
5 of this case. You are the sole judges of the facts of
6 the case. And if at any time I make any remark to
7 cause you to believe that I have an opinion about the
8 facts of the case, you must disregard that. The law
9 does not permit me to express an opinion about facts of
10 the case in your presence.

11 The same law, though, that makes you the judge of
12 the facts of the case makes me the judge of the law of
13 the case. My duty is to preside over the trial, rule
14 on admissibility of evidence and ultimately tell you
15 about the law that applies to the case. And until the
16 case is completely over you are not to let anybody
17 discuss the case with you. You are not to discuss the
18 case with anyone else. And believe it or not, even in
19 the jury room you can't discuss the case, even among
20 yourselves, not until the case is completely over and
21 you begin your final deliberations.

22 In just a moment the attorneys will make to you
23 their opening statements where they tell you what they
24 think the evidence is going to show and not show. And
25 then you typically would hear witnesses that testify

COLLOQUY

1 from the witness stand here. There may be documents
2 introduced into evidence. You may view a video. I'm
3 just not sure exactly what is going to transpire during
4 the trial of the case. After all of that is done the
5 attorneys make their closing arguments to you where
6 they try to convince you to see the case the way they
7 see it. I then tell you about the law that applies in
8 the case. Then is when you begin your deliberations.

9 One other thing, from time to time you may see the
10 attorneys ask to approach me or to have a sidebar and
11 we whisper things where we assume you can't hear us,
12 and the reason for that is not necessarily to keep
13 secrets from you but it's because most of the time the
14 attorneys are bringing or discussing with me a matter
15 of law and in doing that I may be required to discuss
16 with them the facts of the case. And as I have already
17 told you, I can't discuss the facts of the case in your
18 presence. It may even require us to ask you to step
19 out to the jury room while we discuss matters of law
20 outside of your presence. Having said all of that,
21 ladies and gentlemen, I believe that we are ready to
22 begin the trial of the case. Solicitor, call your
23 first witness.

24 STATE'S OPENING STATEMENT

25 MS. MUSSER: Thank you. Make good morning, Judge

STATE'S OPENING STATEMENT

1 Goldsmith, Ms. Saxon. Good morning, ladies and
2 gentlemen. In the early morning hours of April 1st,
3 2010 Makia Fulton was working at her job as a clerk at
4 the Kangaroo Express at 1610 Fording Island Road, which
5 is commonly known as 278. Now, that particular
6 Kangaroo Express is located right before you go over
7 the bridge to Hilton Head Island. She was working her
8 usual shift, which was ten p.m. to 7 a.m. But she
9 didn't know when she was working that particular
10 morning that April Fools Day would not be a joke for
11 her, it wouldn't leave her amused. Instead it would
12 leave her traumatized and scared. Because, you see,
13 about 2:45, approximately at that time, maybe a little
14 bit before, the Defendant Philenza Pritchett and
15 Brandon Rolt charged as coconspirators came to the
16 store where she was working by herself when the
17 Defendant Philenza Pritchett came in and brandished a
18 gun.

19 And the evidence will show that was a silver and
20 black handgun. He was wearing a blue and black bandana
21 to cover his face. The next person to come in the
22 store, as the evidence will show, is Mr. Rolt. Now
23 Mr. Rolt was wearing stone-washed jeans, black hoodie
24 and carrying a black backpack. He was holding a
25 revolver. As the two men entered the store, again,

STATE'S OPENING STATEMENT

1 this is captured on video and you will see stills
2 captured from that video. As the men brandished the
3 gun, she swooped behind the counter after being
4 demanded that she take the money from both registers,
5 tried to open the safe. Which she wasn't able to do.
6 So, as they are yelling at her and demanding the money
7 you will hear testimony that Ms. Fulton recognized his
8 voice, his voice that she identifies to Corporal
9 Polites as Lenny.

10 So, once the two men have come in, they have taken
11 some money, they have taken cartons of cigarettes and
12 things called Cigarillos, they make her go into the
13 restroom and then they leave. Immediately Ms. Fulton
14 comes out of the restroom and she calls 911. And the
15 officers get there shortly thereafter.

16 You will hear, once again, that she gives
17 information to Corporal Polites identifying the
18 Defendant, that she recognized the voice and that it
19 was familiar to her, that she knew the Defendant
20 through a relationship that she had with his mother.
21 With that, with the information from the armed robbery
22 coming out, they put -- the sheriffs put information
23 over the radio indicating that she's identified one
24 white male and one black male that have committed this
25 armed robbery.

STATE'S OPENING STATEMENT

1 The evidence will show that as Corporal Polites
2 was getting information from Ms. Fulton, within a
3 couple of minutes Deputy Murphy had gone from the next
4 convenience store down the line toward Hilton Head
5 Island, which would be the Gum Tree Pantry and he was
6 looking for suspects that matched the descriptions that
7 were provided with respect to the robbery at the
8 Kangaroo Express.

9 Now, once Officer Murphy pulls into the Gum Tree
10 Pantry he observed one car at the pump that is a dark
11 blue Volkswagen Jetta. He sees that there's three
12 individuals in the car and he pulls his car around.
13 And he sees a woman by the name of Ms. Major come out
14 of the Gum Tree Pantry and get in the car. But he
15 noticed as he pulled the car around, the white male,
16 Brandon Rolt, slumped down, looked away, looked
17 nervous.

18 With that Deputy Murphy alerts his supervisors.
19 One is Trey, or official name, Arthur Simmons. And he
20 approaches the car, he activates his blue lights. You
21 will hear the testimony of how Officer Murphy looks
22 into the car and in plain view he sees wedged between
23 the driver's and passenger's seat there's a black butt
24 of a gun that he can see. So, he puts that information
25 out over the radio and other officers arrive.

STATE'S OPENING STATEMENT

1 You will hear the testimony from various officers
2 that Brandon Rolt, the white male, was the driver.
3 There was another black male, Harry Lockett, that was a
4 passenger. Ms. Major was in the driver's side
5 passenger. And that on the passenger's side, rear
6 seat, was the Defendant. You will also hear testimony
7 and see the gun that was recovered at his feet shoved
8 underneath the passenger's seat that was right in front
9 of him, a silver and black handgun that matches the
10 description of what Ms. Fulton identified as the
11 handgun carried by the black male and clearly seen on
12 the video.

13 Furthermore you will hear that Corporal Polites
14 takes Ms. Fulton to the Gum Tree Pantry within a very
15 short amount of time. She doesn't identify Mr. Rolt,
16 but when Mr. Pritchett is taken out of the car she
17 says, That's him, that is Lenny. That is who robbed
18 me. You will also hear that the blue Volkswagen Jetta,
19 it was secured, towed, and the officers got a search
20 warrant and searched it the very next day.

21 The other thing that is important when you watch
22 the video and see the stills, you will see what the
23 Defendant is wearing at the time. He's wearing a very
24 distinctive bright blue colored hoodie with a black
25 T-shirt over it. He is wearing black sneakers with a

STATE'S OPENING STATEMENT

1 bright blue Nike swoosh on top of a big gray swipe.
2 He's wearing those same clothes when he is stopped at
3 the Gum Tree Pantry and identified by Ms. Fulton
4 moments later. Now, when the car was examined the next
5 day there is a hatch from the passenger area to where
6 you can turnaround and access the trunk, low and behold
7 you will hear testimony when they searched the trunk,
8 you will hear that they found a bright blue sweatshirt
9 with a T-shirt behind it.

10 And they find stolen cigarettes that match the
11 description of the ones taken from the robbery, as well
12 as the Cigarillos. She also finds the black backpack
13 that Mr. Rolt was carrying. And it had money in it.
14 So, ladies and gentlemen, there's various evidence in
15 this case, Ms. Fulton's identification and knowledge of
16 the Defendant, her saying, He is the one, he is the one
17 who robbed me. There's a description of what you will
18 be able to see on the video of the suspect and what
19 he's wearing.

20 Also, when the Defendant is pulled out of the car,
21 there are two blue and white bandana on the passenger's
22 seat like right next to him. So, you will see all of
23 this evidence. So, you will have the directing
24 testimony of Ms. Fulton, her identification. You will
25 have -- you will be able to view the video as well as

STATE'S OPENING STATEMENT

1 the stills. You will be able to see the clothing that
2 Mr. Pritchett was wearing when he was taken out of the
3 car, including a bright blue doo rag. And you will see
4 the firearm in question. And you will hear in total
5 from between -- from what the officers find at the Gum
6 Tree Pantry that morning and then when they search the
7 car later that day, how in total we have the black
8 backpack, the blue sweatshirt, the blue sneakers with
9 the blue shoe laces, the blue bandana, and the stolen
10 merchandise.

11 Ladies and gentlemen, I'll ask you to listen to
12 the evidence and do so with the common sense, logic and
13 life experience that you brought here today. Those
14 don't fly out of the window just because you have the
15 badges on. I suggest, after you listen to the evidence
16 and in that common sense logic and life experience,
17 that this conclusion will be a simple case with simple
18 facts and simple conclusion. And that is that Philenza
19 Pritchett is guilty of all of the charges. Thank you.

20 THE COURT: Thank you, Ms. Musser. Ms. Saxon.

21 DEFENSE'S OPENING STATEMENT

22 MS. SAXON: May it please the Court. Good morning
23 everyone. One of my all-time favorite legal movies is
24 My Cousin Vinny. And if by chance you haven't seen it,
25 it's about two young men who are out looking at

DEFENSE'S OPENING STATEMENT

1 colleges, and they are in a small town in Louisiana
2 when a terrible crime is committed and by coincidence
3 they are charged with it. And they are completely
4 innocent of the crime. The State's case in that movie
5 is based on very weak circumstantial evidence and some
6 coincidences and some quite honest confessions that
7 they manage to get out.

8 And I hate to ruin the ending if you haven't seen
9 it, but I have to tell you that justice prevails and
10 the young men are found innocent, the truth comes out.
11 It is a great movie all around, but my favorite part is
12 that there aren't any grand speeches or any smoking
13 guns or da-dah moments in the case, it is about the
14 facts and it looks at the finest, littlest detail about
15 who saw what, what kind of evidence there is. And when
16 they look at the facts they find the truth. And ladies
17 and gentlemen, that is what you are going to do today.

18
19 So, you are probably thinking, why am I talking
20 about this movie? Well, it is because we have a very
21 similar circumstance Philenza Pritchett is accused of
22 crimes he did not commit. And when you look at the
23 facts and you look at those little details about
24 everything that happened on that day I believe you will
25 come to the same conclusion.

DEFENSE'S OPENING STATEMENT

1 In order for the State to prove its case it has to
2 prove beyond a reasonable doubt that Philenza is guilty
3 of all of the charges that were already listed, so they
4 have to put the gun in his hand, they have to put him
5 in that store, they have to put him threatening that
6 clerk, her fearing her life, him stealing the
7 merchandise, fleeing and planning all of it with his
8 co-conspirators. They have to prove each and every one
9 of those things beyond a reasonable doubt. And that's
10 not just a term of art. And the Judge will instruct
11 you later on about what reasonable doubt really is, but
12 it is an extremely high burden. It is a very difficult
13 burden to meet. And when you go through the evidence
14 you will see that it does not meet that burden.

15 The State mentioned that Ms. Fulton was
16 traumatized and scared, but the evidence will show that
17 she actually seems quite relaxed and she is on her cell
18 phone throughout the length of the robbery. They will
19 say that they can put the gun in Mr. Pritchett's hand,
20 but the DNA clears him. They say that this is a simple
21 case, but it's not. If it was a simple case it
22 wouldn't be four and a half years later down the road
23 that we are finally getting to it. Now I believe that
24 when you hear the testimony and see the evidence over
25 the course of the next few days you will realize that

DEFENSE'S OPENING STATEMENT

1 none of it put Philenza with a gun in his hand robbing
2 a store beyond a reasonable doubt.

3 Ladies and gentlemen, for Mr. Pritchett's this day
4 has been a long time coming. He's waited almost four
5 and a half years to get here to clear his name. He's
6 waited to get here so that 12 citizens, not lawyers, or
7 officers, or judges, but individuals from this
8 community can hear the facts about what happened that
9 night and make a decision on those facts and on those
10 details. You are the only people in the room who have
11 the power to do what is right. You are the only people
12 in the room who can decide guilt or innocence.

13 And so what I respectfully request of you is that
14 you do listen to evidence and you pay attention to the
15 little facts, the little details that will come out
16 throughout the course of this. Listen for what is in
17 the police report or what is left out. Listen for when
18 something was said or when something was not said. Pay
19 attention to the little things you will realize that
20 Mr. Pritchett is innocent. And then you, as the only
21 people who can, can get him back to his family and back
22 to his future by finding him not guilty.

23 THE COURT: Thank you, Ms. Saxon.

24 MS. MUSSER: The State calls Trey Simmons.

25 THE CLERK: Please be seated. State and spell

DEFENSE'S OPENING STATEMENT

1 your name for the Court.

2 **Thereupon,**

3 TREY SIMMONS

4 was called as a witness, having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. MUSSER:

8 Q Officer Simmons, your current rank, sir?

9 A Sergeant.

10 Q By whom are you employed?

11 A Beaufort County Sheriff's Office.

12 Q How long have you worked for the Sheriff's Office?

13 A Ten years.

14 Q In what capacity?

15 A As a road patrol officer and a sergeant for the
16 enforcement division.

17 Q Okay. I'm going to direct your attention back to
18 April 1st of 2010, what rank did you have then?

19 A I was a corporal.

20 Q Okay. What were some of your job responsibilities
21 for a given shift working as a corporal?

22 A Just routine patrol, respond to calls for service
23 and conducting investigations.

24 Q Okay. Again, with respect to April 1st of 2010 at
25 approximately 2:48, did you have occasion to receive a call

WITNESS - TREY SIMMONS

1 that dispatched you to 1610 Fording Island Road?

2 A Yes, I was.

3 Q What is at that location, sir?

4 A It is a Kangaroo Express. It is a convenient
5 store within the County of Beaufort.

6 Q Okay. And when you were -- what was the nature of
7 the call?

8 A I was dispatched to an armed robbery that night.

9 Q Okay. At the time that the call was dispatched,
10 do you recall what exact time that was?

11 A I believe it was approximately 2:48, 2:50.

12 Q Okay. About how long did it take you to get
13 there?

14 A A couple of minutes.

15 Q Do you recall where you were coming from?

16 A I was coming from the area of Simmonsville Road.

17 Q Okay. When you arrived at the Kangaroo Express
18 were any other officers there?

19 A I was the first one on the scene.

20 Q Okay. Were there any civilians there? Did you
21 speak with anyone?

22 A The clerk that was at the store.

23 Q What was her name?

24 A Makia Fulton.

25 Q When you spoke with her, did she provide you

WITNESS - TREY SIMMONS

1 information?

2 A Yes, ma'am, she said that she was working there
3 and she was just the victim of an armed robbery.

4 Q Was she able to tell you how many suspects there
5 were?

6 MS. SAXON: Objection, Your Honor, may we
7 approach?

8 THE COURT: Certainly.

9 (Off-the-record discussion held.)

10 BY MS. MUSSER:

11 Q I apologize. Where were we? So, you interview
12 Ms. Fulton, correct?

13 A Yes, ma'am.

14 Q Was she able to tell you how many suspects were
15 involved?

16 A She did. She said two.

17 Q Did she describe their ethnicity?

18 A One was a white male and one was a black male.

19 Q As a result of receiving that information, did you
20 broadcast it in any way?

21 A I did, I gave that information and asked for a
22 clear channel when I gave that information.

23 Q When you say that you gave that, what method do
24 you use to convey that information to other deputies?

25 A Over the hand-held radio.

WITNESS - TREY SIMMONS

1 Q Like the one that you are wearing today?

2 A Yes, ma'am.

3 Q When you respond to the scene, were you in full
4 uniform like you are today?

5 A Yes, ma'am.

6 Q When information is put out over the radio, can
7 all of the officers hear it?

8 A Yes, ma'am.

9 Q After you spoke -- about how long did you speak
10 with Ms. Fulton?

11 A Just a few minutes, it wasn't very long in
12 duration.

13 Q What if anything happened that caused you to go to
14 a second location?

15 A At the point, given where that happened I called
16 Corporal Murphy over the phone and told him that he might
17 want to go to some of the other convenient stores located on
18 Hilton Head that are opened 24 hours.

19 Q Okay. And at that particular time, without
20 getting into specifics, did your investigation focus on
21 going towards Bluffton or towards Hilton Head?

22 A Towards Hilton Head.

23 Q Okay. And did you make a determination to go to
24 subsequent pantries that were between that part of Bluffton
25 towards Hilton Head down the line on 278?

WITNESS - TREY SIMMONS

1 A Yes, ma'am, the pattern suggested to deploy
2 resources that way.

3 Q Okay. And to your knowledge did Deputy Murphy go
4 there?

5 A Yes, he did.

6 Q At some point did you receive additional
7 information related to the Gum Tree Pantry?

8 A He stated that he did locate a vehicle at the Gum
9 Tree Pantry and he had reasonable suspicion that that
10 vehicle and its suspects were suspicious in nature and may
11 be involved.

12 Q Now, the Gum Tree Pantry, where is that located?

13 A That is at Number 1 Gum Tree Road, Hilton Head
14 Island, Beaufort County, South Carolina.

15 Q As a result of the information that you received
16 from Officer Murphy, do you recall if that was on cell phone
17 or on the radio, if you recall?

18 A The information that he provided me from the Gum
19 Tree Pantry was over the cell phone.

20 Q As a result of receiving that information, did you
21 make a determination to go from the Kangaroo Express to the
22 Gum Tree Pantry?

23 A Yes, ma'am, I immediately left there and went to
24 the Gum Tree Pantry.

25 Q Approximately how far is it from the Kangaroo

WITNESS - TREY SIMMONS

1 Express to the Gum Tree Pantry?

2 A I think that it's a little short of 5 miles.

3 Q About how long did it take you to get there?

4 A Probably about two and a half minutes.

5 Q Okay. When you arrived at the Gum Tree Pantry,
6 were there any other officers on site?

7 A Corporal Murphy and Corporal Slauson were already
8 present.

9 Q Okay. Did you observe any other vehicles?

10 A There was a vehicle, I believe a Volkswagen Jetta
11 parked at the pumps.

12 Q Parked at the pumps. Was the car facing the store
13 or away from the store?

14 A The hood was facing the store.

15 Q What was office -- where was Officer Murphy or, I
16 am sorry, Deputy Murphy in relation to the blue Volkswagen
17 Jetta?

18 A Corporal Murphy was standing at the rear left side
19 of the vehicle.

20 Q Okay. And what rank is Slauson?

21 A He is a corporal now.

22 Q Okay. Where was corporal Slauson?

23 A Corporal Slauson was standing to the rear right.

24 Q Okay. So, rear right. Okay, if this is the car
25 and you are facing the car, so Corporal Slauson would be on

WITNESS - TREY SIMMONS

1 the passenger's side?

2 A Correct.

3 Q And Deputy -- I am sorry, Corporal Murphy would be
4 on the left-hand or the driver's side, right?

5 A Yes, ma'am.

6 Q Okay. When you arrived at that location, what was
7 your function; what were you seeking to do?

8 A Corporal Murphy had already put out over the air
9 that he had the subjects in the vehicle at gun point and
10 there was a vehicle or a gun in plain view. When I arrived
11 Slauson and Murphy had everybody at gun point and I started
12 to remove the occupants of the vehicle and detain them.

13 Q Okay. Did you remove anyone from the vehicle?

14 A I did.

15 Q Who was the first individual that you removed?

16 A Ms. Major.

17 Q Where was she located in the car?

18 A Rear driver's side passenger.

19 Q Rear driver's side passenger, okay. And was she
20 handcuffed?

21 A She was.

22 Q Okay. Did you remove anyone else from the car?

23 A I did.

24 Q Who did you remove?

25 A Mr. Pritchett.

WITNESS - TREY SIMMONS

1 Q Do you see Mr. Pritchett in the courtroom today?

2 A Yes, ma'am.

3 Q Would you describe what he's wearing?

4 A Gray shirt.

5 MS. MUSSER: Your Honor, may the record reflect
6 the in-court identification of the Defendant, Philenza
7 Pritchett?

8 THE COURT: So noted.

9 BY MS. MUSSER:

10 Q What did you do with respect to the Defendant?

11 A I removed him from the vehicle, detained him and
12 Terry frisked him for weapons.

13 Q Did he have any weapons on him?

14 A He did not have any on his person.

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

16 THE COURT: Certainly.

17 BY MS. MUSSER:

18 Q I'm handing you what's marked as State's
19 Exhibit 27. Sir, what is depicted in that picture?

20 A Mr. Pritchett wearing a blue -- it looks like
21 bandana, some type of head wear, black shirt, black pants
22 and black and blue tennis shoes with some white on them.

23 Q Does that fairly and accurately depict the
24 Defendant and how he appeared when you removed him from the
25 vehicle?

WITNESS - TREY SIMMONS

1 A Yes, ma'am.

2 MS. MUSSER: With that, we would move Exhibit 27
3 and publish it to the jury?

4 THE COURT: Without objection.

5 MS. SAXON: No objection.

6 *(Whereupon, State's Exhibit No(s). 27 marked for*
7 *identification and received in evidence.)*

8 BY MS. MUSSER:

9 Q With respect to location, meaning to the Kangaroo
10 Express and Gum Tree Pantry, about how far -- you testified
11 already that they are -- sorry, what did you say?

12 A Less than 5 miles.

13 Q Okay. And which way does Highway 278 or Fording
14 Island Road, which direction do they run?

15 A East west.

16 Q Okay. And if you travel east on 278, what town do
17 you go to?

18 A East on 278 is headed to the Island from Bluffton.

19 Q Are you familiar with that area by virtue of your
20 job responsibilities and patrol?

21 A Yes, ma'am.

22 Q Okay. I'll show you what's marked as State's
23 Exhibit 1, which is a map. Sir, does that fairly and
24 accurately depict the locations?

25 A Yes, ma'am.

WITNESS - TREY SIMMONS

1 Q Okay.

2 MS. MUSSER: Your Honor, with that, we would ask
3 to publish State's Exhibit 1.

4 MS. SAXON: May I see it?

5 MS. MUSSER: No further questions.

6 THE COURT: Cross examination?

7 MS. SAXON: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MS. SAXON:

10 Q You said that you called for a clear channel; what
11 does that actually mean?

12 A That means the actual ten code is 310. That stops
13 everybody from making radio transmissions and gives me the
14 sole responsibility on the radio and allows me to relay
15 information that is important at the time.

16 Q So, essentially, clears the air waves?

17 A Yes, ma'am.

18 Q So, when you said that you spoke to Corporal
19 Murphy, you did that over your cell phone?

20 A Yes, ma'am.

21 Q Was there a reason that you didn't use the radio
22 that you just cleared?

23 A At that point I was also trying to set up a
24 perimeter for a K9 track.

25 Q You said that you were the first to arrive on

WITNESS - TREY SIMMONS

1 scene, the first responding officer, correct?

2 A Yes, ma'am.

3 Q And that you did speak with Ms. Fulton?

4 A Yes, ma'am.

5 Q You did, okay. But you didn't prepare a report in
6 this case?

7 A No, ma'am.

8 Q Is there any particular reason that you didn't
9 prepare a report?

10 A My contact with Ms. Fulton was extremely limited.

11 Q But she gave you a description of her assailants?

12 A She described them as two males, one being white,
13 one being black.

14 Q That is all that she said?

15 A Yes.

16 MS. SAXON: Beg the Court's indulgence.

17 BY MS. SAXON:

18 Q Were you driving a BCSO vehicle?

19 A I was.

20 Q Was that equipped with a camera?

21 A Yes, it was.

22 Q Was that camera activated by blue lights?

23 A Yes, it was.

24 Q So, the camera would have been recording that
25 evening?

WITNESS - TREY SIMMONS

1 A Yes, it was.

2 Q Did you download that recording and turn it in for
3 evidence?

4 A I didn't download it and turn it in for evidence.

5 MS. SAXON: No further questions.

6 MS. MUSSER: Your Honor, may Sergeant Simmons be
7 excused?

8 MS. SAXON: No objections.

9 THE COURT: You may be excused.

10 THE COURT: You may call your next witness.

11 MS. MUSSER: The State calls Pat Murphy.

12 Thereupon,

13 WILLIAM "PAT" MURPHY

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MUSSER:

18 Q May I inquire, Your Honor? Good morning, Corporal
19 Murphy. By whom are you employed?

20 A Beaufort County Sheriff's Departmet.

21 Q How long have you been with the Sheriff's Office?

22 A Since 2005. Reservist for two years and then full
23 time 2007. So, roughly, nine years.

24 Q Okay. I'm going to direct your attention back to
25 April 1st, 2010. Do you recall if you were working that

WITNESS - WILLIAM MURPHY

1 day?

2 A Yes, I was.

3 Q What was your rank, sir?

4 A I believe I was a private first class then.

5 Q What were some of your job responsibilities?

6 A Answer calls for service and extra patrol.

7 Q At approximately 2:48 did you have occasion to
8 be -- sorry, were you aware of any information over the
9 radio with respect to an armed robbery?

10 A Yes, I was.

11 Q As a result of that where did you go?

12 A I was working the north side of the Island.

13 Q Would that be Hilton Head Island?

14 A That is Hilton Head Island, I am sorry. It is
15 called 5 Bravo is what we call it for the Sheriff's Office.

16 Q Okay.

17 A I was working the north side of the Island. We
18 had got word that the armed robbery had just occurred at
19 Buckingham Plantation, which is the last gas station on the
20 right, at 1610 Fording Island Road.

21 Q Is that the Kangaroo Express?

22 A That is Kangaroo Express, yes.

23 Q Located at 1610 Fording Island Road?

24 A Correct.

25 Q Okay.

WITNESS - WILLIAM MURPHY

1 A From there the next gas station that was opened
2 was Gum Tree Pantry, so I went ahead and headed that way
3 just to see if anything was going on there.

4 Q Okay. And about how long from the original -- had
5 you heard the original call for the armed robbery on the
6 radio?

7 A Yes, I did.

8 Q About how long after you heard that call did you
9 go to the Gum Tree Pantry?

10 A Probably I would say within five to ten minutes.

11 Q Okay. What did you observe -- well, how is the
12 Gum Tree Pantry set up, as far as what roads intersect it,
13 where is it located?

14 A William Hilton Parkway is the main road, is on one
15 side, and then you have Gum Tree Road. And it's right at
16 that intersection, William Hilton Parkway, 278 and Gum Tree
17 Road.

18 Q Were there any vehicles at that Gum Tree Pantry?

19 A There was a vehicle.

20 Q What kind of vehicle was it?

21 A There was a dark blue Volkswagen. I believe it
22 was a Jetta.

23 Q Where was it parked?

24 A It was parked at the gas pumps on the far right
25 facing towards the store.

WITNESS - WILLIAM MURPHY

1 Q Okay. And what if anything drew your attention to
2 that vehicle?

3 A Just that there's nobody pumping gas at the
4 vehicle and it was just sitting there facing towards the
5 store.

6 Q When you entered, which road did you come off of;
7 did you come off of Gum Tree Road or 278?

8 A We came off of Gum Tree Road and pulled into the
9 parking lot. There is a little entrance right off Gum Tree
10 Road.

11 Q So, when you pulled in the lot, where is the
12 vehicle? Was it to your front, left, right?

13 A As I pulled in it was almost like straight,
14 basically, straight.

15 Q As a result of your initial observations, where
16 did you take your patrol car?

17 A I drove around towards the front of the car, so I
18 went kind of approached it from the rear, went to the right
19 around the pumps like in between the vehicle and the gas
20 station.

21 Q So, in between the store and the pumps?

22 A Yes.

23 Q Okay. So you -- would that put you at, like,
24 towards the hood of the car?

25 A Yes.

WITNESS - WILLIAM MURPHY

1 Q All right. And then what observations, if any,
2 did you make?

3 A As I looked at the vehicle I observed a black male
4 in the front passenger seat along with a white male driver.

5 Q What description, if any, had been put out over
6 the radio with respect to suspects involved in the armed
7 robbery?

8 A Officer Simmons had relayed that a -- the previous
9 armed robbery that had just occurred in Bluffton was a white
10 and black male.

11 Q As a result of seeing the white male driver and
12 the black male in the passenger's seat, where did you go and
13 what did you do?

14 A Once I drove past the vehicle I kind of went
15 towards the 278 part of the parking lot. Still remained in
16 the parking lot. I was talking to Officer Simmons on the
17 phone. I just kind of observed the car to see what was
18 going on and why there's occupants sitting in the car and
19 still nobody is pumping gas. I was waiting to see if
20 somebody was going to come out of the store or not.

21 Q Did somebody come out of the store?

22 A Someone eventually did come out of the store.

23 Q Okay.

24 A A black female came out of the store carrying a
25 bottle of water.

WITNESS - WILLIAM MURPHY

1 Q Did you continue to make observations of the
2 driver or other occupants?

3 A Yes.

4 Q What observation did you make?

5 A Everybody remained in the car. When I drove by,
6 though, I did make eye contact with the driver who was later
7 identified as Brandon Rolt.

8 Q Okay. What if anything drew your attention to
9 him?

10 A He looked at me real fast and then kind of looked
11 away real quick as I was driving by and just kind of slumped
12 down in his seat.

13 Q Okay. As a result of that, what action did you
14 decide to take?

15 A I just sat there and waited to see what was going
16 to happen next. I waited for -- once Tiffany Major got in
17 the rear passenger of the vehicle I then advised Officer
18 Simmons that I was going to approach the vehicle. He said,
19 Be careful. We didn't know at that point in time if it was
20 the vehicle or not.

21 Q Why were you going to get out of the vehicle?

22 A Just to initiate a stop, just to see where they
23 were headed and what they were up to.

24 Q At that point were there any other officers on
25 site?

WITNESS - WILLIAM MURPHY

1 A No, I was the only officer.

2 Q Did you approach the car?

3 A Yes, I did. I pulled to the side of the vehicle
4 form the side of the parking lot.

5 Q Were you in a marked car?

6 A I was in a marked car.

7 Q Were you in full uniform like you are today?

8 A Yes.

9 Q Okay. What happened when you approached the car?

10 A As I approached the vehicle I pulled behind it, I
11 initiated my lights to turn my camera on. I exited the
12 vehicle and made a driver's-side approach.

13 Q Okay.

14 A As I got up to the driver's side I made contact
15 with the driver, Brandon Rolt.

16 Q Did you have conversation with him?

17 A I did speak with him briefly.

18 Q What was the nature of that conversation?

19 A I just asked him where he was headed to. He
20 replied he was headed home.

21 Q What if any observations did you make about his
22 demeanor?

23 A He was real nervous, avoided eye contact with me.
24 At that point, while I was still speaking with him, I was
25 scanning the inside of the vehicle.

WITNESS - WILLIAM MURPHY

1 Q When you say you were scanning it, how was the
2 area lit?

3 A It was a little dark in the vehicle, but they did
4 have lights around the pump so you could still see inside of
5 it.

6 Q Did you have your flashlight?

7 A I don't recall -- yes, I had my flashlight.

8 Q Was it on?

9 A Yes, it was on.

10 Q Okay. Did you look into the car?

11 A I did.

12 Q What did you see when you looked into the car?

13 A As I glance in as he was speaking to me I happen
14 to see the butt of a pistol wedged in between the driver's
15 seat and the center console sticking up.

16 Q And by virtue of your occupation are you familiar
17 with what firearms look like?

18 A Yes.

19 Q When you saw the butt of the gun coming up -- at
20 that point how many individuals were in the car?

21 A There were four in the vehicle.

22 Q Okay. So, could you describe -- we already
23 determined, white male, later identified as Brandon Rolt was
24 in the driver's side?

25 A Yes.

WITNESS - WILLIAM MURPHY

1 Q Who was next to him; what was their gender?

2 A Next to him, front passenger, was Harry Lockett.

3 He was a black male.

4 Q Okay. Okay. And then behind Mr. Rolt, behind the
5 driver's seat?

6 A Was a female, Tiffany Major, a black female.

7 Q And then was there another subject in the car?

8 A There was. The rear passenger behind Harry
9 Lockett and next to Tiffany Major was Philenza Pritchett.

10 Q Do you see him in the courtroom today?

11 A Yes, I do see him.

12 Q What color shirt is he wearing?

13 A He is wearing a gray shirt.

14 MS. MUSSER: Your Honor, may the record reflect
15 the in-court identification of the Defendant?

16 THE COURT: So noted.

17 BY MS. MUSSER:

18 Q Could you tell what kind of gun it was?

19 A It it looked like a semi-automatic pistol of some
20 sort.

21 Q What color was it?

22 A Black in color.

23 Q What if any action did you take upon seeing the
24 gun in the car?

25 A I immediately drew my firearm and told everybody

WITNESS - WILLIAM MURPHY

1 to put their hands up.

2 Q And did they comply?

3 A Everbody in the vehicle complied. They all put
4 their hands up. I then radioed for radio silence that I had
5 a gun.

6 Q Why do you -- what is the distinction for radio
7 silence?

8 A Basically say a 103 is what it is called for our
9 codes. Radio silence so nobody else will try and talk on
10 the radio so if anything happens I'm able to use my radio
11 because only one can talk at a time.

12 Q Okay. So only one can talk at a time. All right.
13 So, you asked for radio silence?

14 A I said, I have a gun. Give me a 310.

15 Q At that point, how many other officers were on
16 site?

17 A There was still -- I was still by myself.

18 Q Okay. At some point did back-up officers arrive?

19 A Yes.

20 Q Who arrived?

21 A Officer Slauson was the next deputy to arrive on
22 scene.

23 Q At the time that he arrived where were you in
24 relationship to the car? Were you still on the driver's
25 side?

WITNESS - WILLIAM MURPHY

1 A I was still on the front side, closest toward the
2 front pillar, the driver pillar, like basically the front
3 fender of the vehicle where I could keep an eye on all of
4 the occupants in the car with my gun pointed toward that
5 car.

6 Q Where did Corporal, I am saying it wrong.

7 A Corporal now, yes, Corporal Swasson.

8 Q Corporal Swasson, he arrives?

9 A Yes.

10 Q Which side did he approach from, driver's side or
11 passenger's side?

12 A He came on the passenger's side.

13 Q What did he do when he arrived?

14 A Once he got there we wanted to take the front two
15 occupants inside of the vehicle away from the gun. So he
16 then, while I covered everyone in the vehicle he took the
17 front passenger, who would have been Harris Lockett, out of
18 the vehicle and handcuffed him.

19 Q Okay. Who was the next officer on site?

20 A Next officer would have been Sergeant Simmons, who
21 was a Corporal at the time.

22 Q And which direction did he pull in from? Like,
23 where was his car?

24 A He came from behind the vehicle. He came behind.
25 And before, though, he got there I had taken Brandon Rolt

WITNESS - WILLIAM MURPHY

1 out of the vehicle.

2 Q So, at that point there was just the Defendant and
3 Ms. Major, the female?

4 A Yes.

5 Q What did Sergeant Simmons do when he got there?

6 A Once Sergeant Simmons got there he made a
7 passenger side approach to the rear occupants. He removed
8 Tiffany Major from the vehicle and handcuffed her. Then he
9 went around the rear of the vehicle and took the Defendant
10 out of the vehicle, Philenza Pritchett, and handcuffed him.

11 Q You were still there and watching?

12 A Yes, we were still covering the vehicle.

13 Q Okay.

14 MS. MUSSER: Your Honor, I beg the Court's
15 indulgence.

16 THE COURT: All right.

17 MS. MUSSER: May I approach?

18 THE COURT: You may.

19 BY MS. MUSSER:

20 Q Sir, I'll hand you two photographs marked as
21 State's Exhibit 25 and 26. Starting at 25, please, are you
22 familiar with items depicted in that photograph?

23 A Yes.

24 Q What is it?

25 A It is the vehicle that I went out with that night.

WITNESS - WILLIAM MURPHY

1 Q Okay. What is 26?

2 A Twenty-six is a side-view of the vehicle and I
3 guess the water bottle underneath it that Tiffany Major had
4 when she was removed from the vehicle.

5 Q Same car, different views?

6 A Yes, side-view.

7 Q Did it fairly and accurately depict the vehicle in
8 question?

9 A Yes?

10 MS. MUSSER: Your Honor, with that, the State
11 would move for admission of 25 and 26.

12 MS. SAXON: No objection.

13 THE COURT: Admitted without objection.

14 *(Whereupon, State's Exhibit No(s). 25, 26 marked*
15 *for identification and received in evidence.)*

16 MS. MUSSER: May we publish them to the jury?

17 THE COURT: Certainly.

18 BY MS. MUSSER:

19 Q Okay. So, when you approached, this being State
20 Exhibit 25, which side of the vehicle are you on?

21 A I approached from the driver's side.

22 Q With the Court's permission, may Corporal --

23 A Corporal.

24 Q -- Murphy step down and describe for the ladies
25 and gentlemen where everybody was?

WITNESS - WILLIAM MURPHY

1 THE COURT: Certainly.

2 THE WITNESS: Made a driver's side approach from
3 this side.

4 BY MS. MUSSER:

5 Q Who was in the driver's seat?

6 A Brandon Rolt, white male.

7 Q And who was in the front passenger's seat?

8 A That was Harry Lockett, black male.

9 Q Can we go to 26, please. Okay, now with respect
10 to State's 26 who was on this side, which would be the
11 driver's side?

12 A That would have been Tiffany Major. Like I say,
13 that is her water bottle.

14 Q Who would be on the other side closest to the
15 pole?

16 A The Defendant.

17 Q Sir, I'm handing you what's marked as State's 19.
18 What is depicted in that diagram?

19 A It looks like the interior of the vehicle.

20 Q Does it fairly and accurately describe the set-up
21 of the vehicle?

22 A Yes, it does.

23 Q Is the center console area depicted?

24 A Yes.

25 Q Is the trunk depicted?

WITNESS - WILLIAM MURPHY

1 A Yes, it is.

2 MS. MUSSER: Your Honor, with that the State would
3 just ask to publish a bigger version of number 19?

4 THE COURT: Show it to Defense counsel.

5 BY MS. MUSSER:

6 Q Sir, using this diagram and this marker, would you
7 indicate the person's name as identified in the driver's
8 seat?

9 A Spelling of Rolt, R-O-U-L-T?

10 Q Right, R-O-L-T. Okay. The stand is a little
11 wobbly. I don't know if everyone can see.

12 A I write small.

13 Q The gun that you found, was that subsequently
14 recovered?

15 A Yes.

16 Q Did you have an opportunity to view it?

17 A Yes.

18 Q What type of gun was it?

19 A It was a high point firearm, nine millimeter.

20 Q What color was it?

21 A It was black in color.

22 Q Was there any other color on it or was it all
23 black?

24 A From what I remember it was just basically all
25 black, it wasn't any other -- chrome or anything.

WITNESS - WILLIAM MURPHY

1 Q Is the area where the gun was recovered depicted
2 on the diagram?

3 A I can show you where it was.

4 Q Yes, please.

5 A It was approximately right here next to -- wedged
6 in between the seat and the center console. It is a lot
7 closer.

8 Q Would you write "nine millimeter black" on there,
9 on that diagram?

10 A (Witness complies.)

11 Q Who was sitting in the passenger's seat?

12 A Harry Lockett.

13 Q Okay. Would you write that name for us please?
14 Sorry.

15 A (Witness complies.)

16 Q Okay. And then who was in the driver's side rear
17 passenger seat?

18 A Tiffany Major.

19 Q You can just write her last name. And then
20 finally, who was in the passenger's side rear passenger's
21 seat?

22 A The Defendant Philenza Pritchett. I don't know
23 how to spell it. P-R-I?

24 MS. SAXON: P-R-I-T-C-H-E-T-T.

25 MS. MUSSER: All right. Thank you.

WITNESS - WILLIAM MURPHY

1 BY MS. MUSSER:

2 Q While you -- did you remain on site?

3 A Yes.

4 Q Okay. And were there other -- were there any
5 other weapon recovered in the vehicle?

6 A There was another weapon while I was on site in
7 the vehicle.

8 Q And who recovered that?

9 A That would have been Sergeant Thomas recovered ir.

10 Q Where was it recovered from?

11 A That weapon was recovered in front of the
12 Defendant underneath the seat.

13 Q What color was that weapon?

14 A It was two-toned, it was black and like a brushed
15 aluminum.

16 Q Okay. And what caliber?

17 A That was a 40 caliber Smith and Wesson.

18 Q Would you just write 40 caliber Smith and Wesson,
19 silver and black?

20 Were you present when it was recovered?

21 A Yes, I was.

22 Q Okay. You may have a seat. Which way was the
23 butt of the gun facing when it was recovered?

24 A I didn't recover it, Sergeant Thomas did. But he
25 said that the butt was facing towards the Defendant though.

WITNESS - WILLIAM MURPHY

1 Q Okay. Thank you.

2 I'm handing you what's marked as State's

3 Exhibit 2.

4 A Okay.

5 Q Would you open that up for me?

6 A Yes. Okay.

7 Q Okay. Is it open?

8 A Yes.

9 Q Are you familiar with that item, sir?

10 A Yes, ma'am.

11 Q How are you familiar with it?

12 A That was the weapon that was wedged in between the
13 front occupant, Brandon Rolt and Harry Lockett.

14 Q And is it in substantially similar condition as
15 you observed it that night shoved between the driver's side
16 and passenger's seat?

17 A Yes.

18 MS. MUSSER: Your Honor, with that we would move
19 for the admission of No. 2.

20 MS. SAXON: I would like to see it.

21 MS. MUSSER: At the this time we ask to publish it
22 to the jury as well.

23 MS. SAXON: No objection, Your Honor.

24 THE COURT: Admitted without objection.

25 *(Whereupon, State's Exhibit No(s). 2 marked for*

WITNESS - WILLIAM MURPHY

1 *identification and received in evidence.)*

2 BY MS. MUSSER:

3 Q What color is that weapon?

4 A It is black in color.

5 Q Is there any silver on it?

6 A Except for --

7 Q I am sorry, on the barrel?

8 A No, there's no silver on the barrel whatsoever,
9 just the serial number has a little silver plate underneath
10 it.

11 THE COURT: Did you ask about the weapon being
12 disabled.

13 MS. MUSSER: Yes, I believe that there's a gun
14 lock on there.

15 THE WITNESS: It is tied.

16 THE COURT: I want the jury to know that.

17 BY MS. MUSSER:

18 Q At the time was there a magazine, was there a
19 magazine in it or did it have the big hole that ti has in
20 it?

21 A I don't recall.

22 Q Which portion -- if you could hold the gun up and
23 show how -- like what part you were able to see, and hold
24 it nice and tall so even the ladies and gentlemen --

25 A If this was the the center console, it was wedged

WITNESS - WILLIAM MURPHY

1 like that between the seat and the center console by the
2 front driver.

3 Q Okay. Sir, I'm handing you what's already been
4 admitted as State's 27.

5 A Okay.

6 Q Sir, does that fairly and accurately depict
7 Mr. Pritchett that evening?

8 A Yes, it does.

9 Q Is that what he was wearing when he was taken out
10 of the vehicle?

11 A Yes.

12 Q Other than once everyone was taken out of the
13 vehicle and secured, those weapons were secured as well?

14 A Yes.

15 Q What else did you do there, at that scene? Did
16 you ever go to the Kangaroo Express?

17 A No, I never did.

18 Q Okay. Did you collect any evidence while you were
19 at the Gum Tree Pantry?

20 A I did. I collected on the center console where
21 the gun was located, right in the middle there, was also a
22 uniform ticket, UTT that had suspected marijuana on it as
23 well that was collected that I handed in.

24 Q That was handled in magistrate court?

25 A Municipal court.

WITNESS - WILLIAM MURPHY

1 MS. MUSSER: Okay. Nothing further, Your Honor,
2 thank you.

3 THE COURT: Cross examination?

4 CROSS EXAMINATION

5 BY MS. SAXON:

6 Q Good morning, I think, Corporal Murphy, correct?
7 I'm the same way, I went an entire trial calling a corporal
8 a trooper.

9 A Okay.

10 Q So, forgive me if I mess up. You were on routine
11 patrol when this occurred?

12 A Yes, ma'am.

13 Q Okay. And when you drove by -- per your report,
14 sorry, when you drove by the Gum Tree Pantry you said you
15 observed a blue in color Volkswagen Jetta?

16 A Yes.

17 Q And that drew your attention?

18 A Yes.

19 Q But over the radio no call had gone out about a
20 dark vehicle, had there?

21 A No.

22 Q Okay. And so when you got a little bit closer you
23 noticed there were three individuals in the car, correct?

24 A At first I noticed two. I couldn't really tell
25 that a rear occupant was in there until I went around behind

WITNESS - WILLIAM MURPHY

1 the vehicle, I noticed three people.

2 Q Okay. And was the interior of the vehicle lit?

3 A They didn't have their light on.

4 Q Okay.

5 A But you could still see because of the lighting
6 around the gas pumps.

7 Q Right. And you could tell that there was a white
8 male and a black male?

9 A Yes.

10 Q But could you tell anything else about them?

11 A Other than I made a contact with the driver. I
12 wasn't that far -- I mean, I drove right in front of the
13 vehicle when I went by.

14 Q You mostly just noticed their race and their sex?

15 A Yes.

16 Q Okay. And when you -- you approached the car and
17 you saw the gun in plain view?

18 A Yes.

19 Q And that gun was in the front seat?

20 A In between the center console and the front seat,
21 driver's seat.

22 Q Within arm's reach of Harry Lockett and Brandon
23 Rolt, right?

24 A On the Brandon Rolt's side of the console.

25 Q Closest to the drive?

WITNESS - WILLIAM MURPHY

1 A Yes.

2 Q It was butt up?

3 A Yes.

4 Q Almost like you carry your gun, where you can pull
5 it up?

6 A Yes.

7 Q I wanted to make sure that I got all of that?

8 A At a slight angle, cantered backwards slightly.

9 All right.

10 Q All right. And now you said what caught your
11 attention is that nobody was pumping gas, right?

12 A Yes.

13 Q Have you ever pumped gas and then gone into the
14 store to get something?

15 A I have.

16 Q So, not that crazy?

17 A Right.

18 Q Okay. And then you said that Mr. Rolt was
19 nervous?

20 A Yes.

21 Q Would you say that generally when you stop someone
22 or approach someone they are nervous?

23 A Sometimes they are.

24 Q Okay. When you saw the gun in the car the way
25 that it was placed, did that give you enough at that moment

WITNESS - WILLIAM MURPHY

1 to detain all four subjects that were in the car?

2 A Yes.

3 Q And then to search the car at that point?

4 A I didn't search the car at that point.

5 Q I'm asking, it gave you -- when you saw the gun,
6 it gives you the ability to then search the car?

7 A And the green leafy substance.

8 A That nobody claimed in the vehicle.

9 Q When you have a chance to search the car,
10 essentially at that point everyone is in custody?

11 A Yes.

12 Q Okay. When you were recovering the items from the
13 car, the gun that you -- were you wearing gloves?

14 A No.

15 Q You collected it bear-handed?

16 A The gun was taken out of the vehicle once the
17 occupants were out by Corporal Slauson I believe.

18 Q Okay. Do we know if Corporal Slauson was wearing
19 gloves?

20 A I don't believe he was.

21 Q And once the gun was collected, what was done with
22 it?

23 A It would have been cleared and --

24 Q That was cleared?

25 A Yes, make sure that there's no round in the

WITNESS - WILLIAM MURPHY

1 chamber.

2 Q And placed in an evidence bag and sealed?

3 A Yes.

4 Q And then do you know what happened to that gun
5 after it was sealed?

6 A An evidence bag would have been filled out and
7 then it was turned over to Investigator Cooler.

8 Q Okay. Do you know if any tests were run on that
9 gun?

10 A I don't know. Investigators assume the
11 investigation after that.

12 Q Okay. At the time that Mr. Pritchett was
13 arrested, do you recall what he was wearing?

14 A Mr. Pritchett?

15 Q Mr. Pritchett, the Defendant.

16 A What he was wearing that night?

17 Q When you pulled him out of the car that we just
18 saw.

19 A The blue bandana, I remember the bright blue shoe
20 laces, or whatever he had, and the black T-shirt.

21 Q It was a T-shirt, correct, it wasn't long sleeves?

22 A Yes.

23 MS. SAXON: Okay, beg the Court's indulgence.

24 (Pause.)

25 MS. SAXON: That is all that I have. Thank you.

WITNESS - WILLIAM MURPHY

1 THE COURT: Any redirect?

2 MS. MUSSER: No, Your Honor. May Corporal Murphy
3 be excused?

4 THE COURT: You may be excused. You may step
5 down. Next witness.

6 MS. MUSSER: Your Honor, the State calls Master
7 Sergeant Thomas.

8 THE WITNESS: He is still sergeant.

9 MS. MUSSER: Sergeant Martin Thomas.

10 Thereupon,

11 SERGEANT MARTIN THOMAS

12 was called as a witness, having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. MUSSER:

16 Q Good morning.

17 A Good morning.

18 Q Sergeant, right? Did I get the rank right?

19 A That's correct.

20 Q Sergeant Thomas, good morning. How long have you
21 been with the Sheriff's Office?

22 A Since April of 2000.

23 Q In what capacity? Have you always -- back in
24 2010, what was your rank and what were some of your job
25 responsibilities?

WITNESS - SERGEANT MARTIN THOMAS

1 A In 2010 I was a sergeant and I was a road
2 supervisor.

3 Q Okay. Do you recall if you were working in the
4 early morning hours, specifically around 2:49 a.m.? Do you
5 recall if you were working that morning?

6 A I was.

7 Q Okay. And once again, was that in a supervisory
8 capacity?

9 A It was, yes.

10 Q Did you have occasion to learn of an armed robbery
11 that had happened to the -- happened at the Kangaroo
12 Express, also called the Buckingham Pantry?

13 A Yes, ma'am, I had.

14 Q As a result of receiving that information and that
15 call, where did you go originally?

16 A Originally I went to the Buckingham call.

17 Q I'm sorry, to the --

18 A To the Buckingham call, to the Kangaroo Express.

19 Q Okay. And did something cause you to go to a
20 second location?

21 A Yes.

22 Q What caused you to go -- where was that other
23 location that you went to?

24 A The Gum Tree Pantry, 1 Gum Tree Road, I believe it
25 is.

WITNESS - SERGEANT MARTIN THOMAS

1 Q Is that on Hilton Head Island, Beaufort County?

2 A It is.

3 Q What prompted you to go to that location?

4 A Pat Murphy, another road officer, was at the
5 pantry with what we believed or what he believed was a
6 suspect vehicle.

7 Q Okay. About how long from the time that you were
8 at the Kangaroo Express, how long did it take you to get to
9 the Gum Tree Pantry?

10 A Just a matter of minutes, I'm sure.

11 Q Okay. What was going on when you arrived at the
12 Gum Tree Pantry? Who was there?

13 A Pat Murphy was there. I believe Paul Slauson was
14 there. I'm not sure exactly the order in which people
15 started arriving. Because there was a lot of people
16 arriving, like, right on top of each other. Trey Simmons
17 was there. I don't remember if he was there at the exact
18 same time or before.

19 Q What did you do when you arrived; what was your
20 primary focus as a supervisor going in?

21 A Well, one of my duties is to ensure officer
22 safety, to make sure that we are following protocol.

23 Q Go ahead.

24 A Just to make sure that we are doing things by
25 policy.

WITNESS - SERGEANT MARTIN THOMAS

1 Q Okay. And when you arrived, was the Gum Tree
2 Pantry still open for business? Like, had it been, like,
3 roped off or anything like that, or was it still open to the
4 public?

5 A No, it was still open to the public.

6 Q Okay. When you arrived, do you recall which way
7 you pulled in, if you remember? I know that it was a few
8 years ago.

9 A Well, there's two entrances into the Gum Tree
10 Pantry. One is directly off of Gum Tree, and the other one
11 is off of, I think, it's maybe March Point. And I came in
12 off of Gum Tree into that convenience store.

13 Q Did you see any vehicles in question, like that
14 was the subject of the investigation at that point?

15 A Yes, but it was pretty obvious. I mean, there
16 were officers there surrounding the car.

17 Q Okay. What kind of car was it, sir?

18 A Ma'am, I don't remember what kind or what color
19 the car is. I think that it was blue maybe.

20 Q Would seeing a picture refresh your recollection?

21 A Sure.

22 Q Sir, I'm handing you State's Exhibit 26. Does
23 that refresh your recollection as to what color the car was?

24 A Yes. Blue, like a royal or Navy. Not Navy, I
25 would say maybe royal blue.

WITNESS - SERGEANT MARTIN THOMAS

1 Q Is that the car -- does that fairly and accurately
2 depict the car that you approached?

3 A Yes, ma'am, I believe it is.

4 Q Okay, what did you do when you approached the
5 vehicle, where did you go? To the driver's side or the
6 passenger's side?

7 A Well, I believe that the situation was intense, so
8 I was probably walking around the general area.

9 Q At some point, did you have occasion to look in
10 the vehicle to determine whether or not there were any
11 additional weapons in there?

12 A Yes, I did.

13 Q What weapons, if any, did you find?

14 A I saw a silver in color, I believe it was a Smith
15 and Wesson, maybe a nine 40 -- nine mill maybe.

16 Q Okay, where was that?

17 A It was on the right rear passenger side
18 floorboard, kind of up under -- what would be the front
19 passenger seat right there.

20 MS. MUSSER: With Your Honor's permission, I would
21 ask Sergeant Thomas to come down and verify the
22 information that is on the diagram.

23 THE COURT: Certainly.

24 BY MS. MUSSER:

25 Q Okay. Sir, with respect to the State's diagram, a

WITNESS - SERGEANT MARTIN THOMAS

1 smaller version has been marked as number 19. Does that
2 diagram fairly and accurately depict where you recovered the
3 Smith and Wesson?

4 A Yes, right about -- as I was standing right up
5 under -- right here in the front of -- which would be the
6 front if you are sitting in the back, the back if you are
7 sitting in the front.

8 Q Would you put a checkmark next to where it says 40
9 caliber, if that's the vicinity of where you found it.
10 Indicating -- okay, thank you. You may have a seat again.

11 Sir, I'm going to hand you what's been marked
12 as State's Exhibit 3. Would you open up the items, and
13 before showing them, can you just see if you are familiar
14 with them.

15 And what items are contained in that bag,
16 sir?

17 A Can I pull it out actually?

18 No?

19 This is going to be a Smith and Wesson 40, 40
20 caliber.

21 Q Is that the firearm that you recovered that
22 evening?

23 A Yes, ma'am, I believe it is.

24 Q Okay. And what other items are in there?

25 A Do you want me to unwrap this? I guess it is a

WITNESS - SERGEANT MARTIN THOMAS

1 magazine.

2 Q Was the firearm that you recovered under -- in
3 front of Mr. Pritchett, was that loaded?

4 A I believe it was, yes.

5 Q What measures did you take to secure it and render
6 it safe?

7 A Well, when I pulled the weapon out the first thing
8 that I did was to render it safe. Eject the magazine and
9 clear any ammo that would have been in the chamber.

10 Q Were you wearing gloves or anything at that point?

11 A No.

12 Q What was your focus when you were recovering the
13 gun from the car?

14 A My focus is to take that gun out of play so that
15 it's no longer a threat to officers or anybody else.

16 Q Okay. When you recovered it from the vehicle, who
17 did you turn it over to?

18 A Later I believe that I turned it over to Brandon
19 Cooler, the investigator.

20 MS. MUSSER: With that, Your Honor, we would ask
21 to publish and admit State's 3.

22 MS. SAXON: No objection.

23 THE COURT: Without Objection, motion granted.

24 *(Whereupon, State's Exhibit No(s). 3 marked for*
25 *identification and received in evidence.)*

WITNESS - SERGEANT MARTIN THOMAS

1 BY MS. MUSSER:

2 Q Would you show the ladies and gentlemen of the
3 jury what item three is with respect to what you just
4 described as a silver Smith and Wesson?

5 A It is safe because there's a zip tie in it.

6 Do you want me to show them the magazine as
7 well, ma'am?

8 Q Yes.

9 A All of the rounds have been pulled out of the
10 magazine, so -- the magazine for this weapon.

11 Q When you unwrapped it, is that what they call a
12 best bag, an evidence bag?

13 A No, ma'am. A best bag is for narcotics.

14 Q Is that the standard evidence bag, though?

15 A Yes.

16 Q In other words, was that marked and labeled
17 somehow? What was the writing that was on the bag?

18 A On this bag, ma'am?

19 Q Yes.

20 A Clearly, my -- where I received -- I picked it up
21 and then turned it over to whoever I turned it over to. It
22 looks like I gave it to Murphy instead of Cooler. So, the
23 chain of custody would have been from me to Murphy and then
24 from Murphy to Cooler.

25 Q Yes, sir. Okay, with that could you hold the

WITNESS - SERGEANT MARTIN THOMAS

1 magazine up to -- was it loaded; were there bullets in that
2 package as well that were sealed?

3 A Yes. Do you want me to, like, show them
4 individually?

5 Q I mean, I just want to know -- let me ask a
6 specific question. Are the items up there what you
7 recovered from the car?

8 A Yes.

9 Q How far would you say this Smith and Wesson was
10 from Mr. Pritchett's feet?

11 A It would have been right there in the immediate
12 area.

13 Q So, within, reaching down, arms', hands' length?

14 A Yes, absolutely.

15 Q And do you recall which way the gun was facing?

16 I apologize if I asked you that already.

17 A You didn't. The barrel would have been facing
18 toward the front of the vehicle. If you were sitting in the
19 back, the butt would have been towards you if you laid it
20 down on the ground.

21 Q So, if you were sitting where Mr. Pritchett was
22 sitting in the seat, would you hold up that weapon and show
23 us how it was under the seat?

24 A It is clear.

25 Q I'll stand over here, just in case.

WITNESS - SERGEANT MARTIN THOMAS

1 A So, if it was sitting on the floorboard, it would
2 have been where the barrel is facing toward the front of the
3 vehicle. If you are sitting in the back looking out the
4 front windshield.

5 Q So, handle closest to his body?

6 A Yes.

7 Q Thank you.

8 MS. MUSSER: I have nothing further, Your Honor,
9 thank you.

10 THE COURT: Cross examination?

11 MS. SAXON: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MS. SAXON:

14 Q I'm going to start at the back and go forward.

15 A Sure.

16 Q When you had the gun just displayed right now,
17 could you put it back where you had it?

18 A Sure. Again, it's still safe.

19 Q I trust you.

20 A Sorry, guys.

21 Q That is how you found it under the seat?

22 A Yes. I mean, it wasn't tucked all the way under
23 the seat.

24 Q Right, but handle facing towards the right like
25 that?

WITNESS - SERGEANT MARTIN THOMAS

1 A Yes, I believe so.

2 Q Okay.

3 A I am not a hundred percent positive if the handle
4 was this way or this way, but the butt of the gun was laying
5 at the feet and the barrel was pointing that way.

6 Q Okay. I heard you say that you weren't wearing
7 gloves when you collected the gun?

8 A No.

9 Q Did you collect anything else from the car,
10 outside of the gun?

11 A No.

12 Q Do you know if other individuals were wearing
13 gloves when they were searching the car?

14 A I'm sure at some point later on maybe.

15 Q Okay. But not at the beginning?

16 A I really don't remember, ma'am.

17 Q It's been a long time?

18 A A long time, yes.

19 Q Now, you turned the gun over to, I believe that
20 you said, Corporal Murphy; is that correct?

21 A I'm not -- I don't think that he was a corporal
22 back then, but today he is.

23 The way this evidence bag reads is that I
24 collected the evidence, I turned it over to Murphy and then
25 Murphy turned it over to Cooler.

WITNESS - SERGEANT MARTIN THOMAS

1 Q Okay. And so that would have been in that
2 evidence bag once you found it, and then sealed and --
3 unless taken out for testing; is that your understanding of
4 it?

5 A Well, the only difference would have been is if
6 the magazine and the bullets would have all been in one bag
7 and not packaged in this.

8 Q Until taken maybe for testing?

9 A Until whoever -- once I signed it over --
10 everything was in one bag.

11 Q Okay. That is the general procedure when you find
12 an item such -- that could be evidence in a case?

13 A If I get an item and I turn it over to you, then
14 the chain of custody has to be signed. So, if I collect it,
15 my name is on here, and then you sign your name on there,
16 and if it's one bag or two bags, then however it is divided,
17 whatever is in that bag is how I handed it to you.

18 And sealed, when you mentioned sealed, it is
19 a zip-lock bag, I would have just done it like this.

20 Q The point of that is to preserve the evidence,
21 correct?

22 A To bag it so it's -- well, yes, to preserve it and
23 to -- because then you have somebody -- usually would be the
24 case officer possibly, and take it to wherever this evidence
25 was taken from.

WITNESS - SERGEANT MARTIN THOMAS

1 Q Okay. Do you remember about what time you arrived
2 on scene at One Gum Tree Road, or how quickly after the
3 call?

4 A Well, the distance isn't that great from the
5 Buckingham Pantry to the Gum Tree Pantry, and I am sure that
6 I was moving fairly quickly, going lights and sirens over
7 the bridges.

8 Q Right. Do you know how long you stayed on scene?

9 A No, ma'am. I was there a while. I don't remember
10 the exact minutes or time.

11 Q Do you recall if you were there when Ms. Fulton
12 arrived?

13 A I do not recall that, no, ma'am, I'm sorry.

14 Q That's okay. Is there a particular reason you
15 didn't prepare a report after this incident?

16 A I was not the case officer, and probably in
17 hindsight and in a perfect world maybe a supplemental
18 submittal report to say that I picked the gun up and then
19 just oversaw things, along with the other people there.

20 MS. SAXON: Beg the Court's indulgence.

21 That is all that I have, Your Honor.

22 MS. MUSSER: May Sergeant Thomas be excused?

23 MS. SAXON: No objection.

24 THE COURT: Without objection, yes, sir, you may
25 be excused from your subpoena.

WITNESS - SERGEANT MARTIN THOMAS

1 I believe that we are getting ready to call
2 another witness, unless the jury needs a break. If
3 anybody needs a break, otherwise -- otherwise you may
4 call your next witness.

5 MS. MUSSER: Thank you, Your Honor. At this time
6 the State calls Deputy William Polites.

7 Thereupon,

8 WILLIAM POLITES

9 was called as a witness, having been first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 MS. MUSSER: Your Honor, I apologize. I have a
13 question for Ms. Mona.

14 (Pause.)

15 BY MS. MUSSER:

16 Q Good morning, Deputy Polites. I know that you had
17 tooth surgery yesterday, so we'll ask you to keep your voice
18 up as much as you can.

19 How long have you worked for the Sheriff's
20 Office?

21 A Since 2008.

22 Q What is your current rank?

23 A Corporal.

24 Q I'm going to draw your attention to back in 2010.
25 Were you working in the early morning hours, approximately

WITNESS - WILLIAM POLITES

1 2:48?

2 A Yes.

3 Q And what was some of your job responsibilities
4 that evening?

5 A Well, as a road patrol officer, random patrol of
6 businesses, respond to calls as they come in, and patrolling
7 neighborhoods and stuff like that.

8 Q Okay. Did you have occasion to respond to a call
9 for an armed robbery at the Kangaroo Express, located at
10 1610 Fording Island Road?

11 A I did.

12 Q Do you recall where you were when you received
13 that call?

14 A I was driving on May River Road.

15 Q Approximately how long did it take you from the
16 time that the call came out to the time that you arrived?

17 A I would say that it took about seven minutes.

18 Q When you arrived was there any other officer on
19 site already?

20 A There was.

21 Q Who was there?

22 A Corporal Simmons was there.

23 Q Were there any civilians present?

24 A There was.

25 Q Who was present?

WITNESS - WILLIAM POLITES

1 A There was a victim, the store clerk, Makia Fulton.

2 Q Did you have occasion to speak with Ms. Fulton?

3 A I did.

4 Q As a result of speaking with her, did you receive
5 details as to what had happened during the armed robbery?

6 A I did. Initially, we spoke for a few minutes in
7 the parking lot. We went over, you know, what had happened.
8 And then later on I did a more in-depth field interview.

9 Q Did she indicate to you how many individuals had
10 been involved in the armed robbery?

11 A Yes.

12 Q Did she give a basic description as to gender,
13 race, things of that nature?

14 A Yes.

15 Q How many people did she say were involved?

16 A Two.

17 Q What did she tell you about those individuals as
18 far as race?

19 A One white male and one black male.

20 Q Did she give you any indication as far as the
21 height of the individuals?

22 A Yes.

23 Q What did she tell you?

24 A She said that the white suspect was a little bit
25 taller, like maybe around 6-foot, and she said that the

WITNESS - WILLIAM POLITES

1 black male suspect was, you know, shorter build, shorter
2 than her.

3 Q Approximately how tall was Ms. Fulton, if you
4 remember?

5 A I believe she was five, seven.

6 Q What did you do after you received information
7 from her, did you ask her to provide any kind of written
8 statement?

9 A Yes.

10 Q Did she provide a written statement?

11 A Yes.

12 Q In that, did she describe the clothing of the
13 individuals?

14 A Yes.

15 Q Did she indicate what the white male had been
16 wearing?

17 A Yes.

18 Q And what did she indicate as far as his clothing?

19 A She said he was wearing like a black hooded
20 sweatshirt and a blue bandana.

21 Q Did she indicate whether the black male was
22 wearing a bandana?

23 A Yes.

24 Q What -- sorry, that was a poorly phrased question.

25 You indicated that she told you -- was the

WITNESS - WILLIAM POLITES

1 black male wearing a bandana at the time, as far as what she
2 indicated to you?

3 A Yes, she did say that.

4 Q At some point, did you receive information
5 regarding events that were happening at another location at
6 the Gum Tree Pantry?

7 A Yes. While I was there with Ms. Fulton, you know,
8 basically setting up my field interview, Corporal Murphy
9 came over the radio and he said, you know, he had a car with
10 two potential suspects matching, you know, our description.
11 And after a few seconds he said on the radio, I have a gun,
12 and he asked for a clear channel.

13 Q Now, prior to receiving that information what, if
14 any, information did Ms. Fulton provide you in addition to
15 the physical description of what they were wearing?

16 A She said that one of the suspects in particular,
17 she was very, very confident and adamant about, you know,
18 she recognized one of the voices.

19 Q Would that have been the voice of the white male
20 or the black male?

21 A The black male suspect.

22 Q Did she provide a name?

23 A Yes, she said Lenny.

24 Q At that point in time did she indicate how she
25 knew?

WITNESS - WILLIAM POLITES

1 A I don't recall exactly, but I think that it was
2 something about like a cousin or, you know, maybe somebody
3 distant. You know, somehow family.

4 Q Okay. So, did you receive the information that
5 she recognized the voice and she gave you the name Lenny,
6 were you still at the Kangaroo Express?

7 A I think that I remember her saying that, you know,
8 before -- you know, at the pantry, but she said it, for
9 certain, you know, absolutely when we arrived later on.

10 Q Okay, let's get to that point then.

11 A Okay.

12 Q So, you talked to her at the Kangaroo Express, you
13 receive a general description of the individuals, she
14 indicates the additional information as far as her knowledge
15 of Lenny, do I have it right?

16 A Yes.

17 Q Okay. Then at some point you hear information
18 with respect to Corporal Murphy and what he has going on at
19 the Gum Tree Pantry?

20 A Yes.

21 Q Okay. And at the time that you heard that, you
22 were still at the Kangaroo Express?

23 A Yes.

24 Q Okay. After you hear the information from
25 Corporal Murphy, did something cause you to go to another

WITNESS - WILLIAM POLITES

1 location?

2 A Yes.

3 Q What was that?

4 A My supervisor instructed me to bring Ms. Fulton
5 from my location, the Buckingham Pantry, to the Gum Tree
6 Pantry to identify the suspects.

7 Q Is the Buckingham Pantry the Kangaroo Express? Is
8 the Buckingham Pantry that you just referred to the Kangaroo
9 Express?

10 A Yes.

11 Q People call it different things?

12 A Yeah, it is just like a local thing. Yeah,
13 Buckingham Pantry and Gum Tree Pantry.

14 Q I didn't want the jury to get confused and think
15 that we are dealing with a third spot.

16 A Okay.

17 Q Do you take Ms. Fulton to the Gum Tree Pantry?

18 A Yes.

19 Q About how long does it take you to go from the
20 Kangaroo Express, also known as the Buckingham Pantry, to
21 the Gum Tree Pantry?

22 A Five minutes.

23 Q Okay. And about how far is it -- how would you
24 get there, what road do you take?

25 A You take 278.

WITNESS - WILLIAM POLITES

1 Q Okay. All right. And can you approximate how
2 many miles it is?

3 A Probably three.

4 Q All right. Now, what happens when you go to the
5 Gum Tree Pantry, are there other officers on site there?

6 A Yes, I -- you know, through radio contact, you
7 know, we set it up so I'll park in a spot that's a lot of
8 lighting, clear for her to see.

9 Q Where was she in your vehicle?

10 A She was in the rear of my vehicle, the driver's
11 side.

12 Q Was there anyone else in the vehicle besides you
13 and Ms. Fulton?

14 A No.

15 Q Okay, so, do you pull up to the Gum Tree Pantry?
16 Where in relation to the gas pumps and the car in question
17 do you pull up?

18 A I pull up in like a lighted spot right behind all
19 the other vehicles where she could clearly see each person.

20 Q What was the purpose of taking Ms. Fulton there?

21 A So she could identify the suspects.

22 Q Let's start with who we determined was the driver,
23 Brandon Rolt, the white male. Did she have an opportunity
24 to see Mr. Rolt?

25 A She did.

WITNESS - WILLIAM POLITES

1 Q Did she identify him?

2 A She did not.

3 Q Was Mr. Lockett presented to Ms. Fulton?

4 A Yes.

5 Q Did she identify him?

6 A No.

7 Q Was the Defendant, Mr. Pritchett, was he presented
8 to her?

9 A Yes.

10 Q Do you see him in court today?

11 A I do.

12 Q Can you describe what color shirt he's wearing?

13 A Yes, he's wearing a gray shirt.

14 MS. MUSSER: Your Honor, may the record reflect an
15 in-court identification of Defendant?

16 THE COURT: So noted.

17 BY MS. MUSSER:

18 Q Where was Mr. Pritchett when he was presented to
19 Ms. Fulton?

20 A He was placed outside of one of the patrol
21 vehicles.

22 Q And was that area lit?

23 A Yes.

24 Q Was there any additional lighting that was
25 provided?

WITNESS - WILLIAM POLITES

1 A Yes, my spotlight was used as well.

2 Q Now, tell the ladies and gentlemen of the jury
3 what happened and what Ms. Fulton said when she saw the
4 Defendant.

5 A Almost at --

6 MS. SAXON: Objection, Your Honor, same as prior.

7 THE COURT: I'm sorry.

8 MS. SAXON: Same objection as before, just on the
9 record.

10 MS. MUSSER: I'm not sure what that objection is,
11 Judge.

12 THE COURT: Do you need a sidebar? I'm lost.

13 (Off-the-record discussion held.)

14 THE COURT: Objection noted, and overruled.

15 BY MS. MUSSER:

16 Q Sorry. Ms. Fulton, she's still in your patrol
17 car, right?

18 A Yes.

19 Q Mr. Pritchett is by the police car, right?

20 A Yes.

21 Q You already described that it was well-lit. Tell
22 the ladies and gentlemen of the jury what happened when
23 Ms. Fulton saw the Defendant, Mr. Philenza Pritchett?

24 A She almost immediately said, that's Lenny. She
25 identified him. You know, she said, that's one of the

WITNESS - WILLIAM POLITES

1 suspects and it's Lenny, a person I know.

2 Q Was there any hesitation?

3 A No.

4 Q Did you have any doubts of her certainty?

5 A No, no. Her demeanor was like totally confident.

6 Q Okay. After that, did you transport Ms. Fulton
7 back to the Kangaroo Express?

8 A Yes.

9 Q What did you do when you got -- again, about how
10 long did it take to get her back there?

11 A About five minutes.

12 Q I lied.

13 What did you do when you went back to the
14 Kangaroo Express, did you continue the investigation in any
15 way?

16 A Yes, yes.

17 Q What did you do?

18 A In addition to, like, continuing to gather
19 information, we watched the surveillance video. I forget
20 exactly everything that we did but I know, you know, we
21 captured as much information as possible, got the
22 surveillance video. I know two of the investigators
23 responded and we just started getting everything in order
24 for our field investigation.

25 Q Did Ms. Fulton complete her written statement?

WITNESS - WILLIAM POLITES

1 A Yes, ma'am.

2 Q Did she do that prior to going to the Gum Tree,
3 or -- if you recall?

4 A I don't recall but, you know, she did complete
5 one.

6 Q Did you have an opportunity to speak with a woman
7 by the name of Jennifer Sesmas, the manager of the Kangaroo
8 Express?

9 A Yes, we had her respond so we could watch the
10 video and have a copy burned and have a copy of the video
11 placed on a CD for evidence.

12 Q By copy of the video, do you mean like an in-store
13 surveillance?

14 A Yes, in-store video surveillance.

15 Q Did that depict what Ms. Fulton identified as the
16 robbery as it happened?

17 A Yes.

18 Q Since then have you had occasion to review the
19 video again?

20 A Yes.

21 Q Did the State provide you two discs to watch?

22 A Yes.

23 Q Okay.

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

25 THE COURT: Certainly.

WITNESS - WILLIAM POLITES

1 MS. MUSSER: These have been labeled as State's
2 Exhibit 5, but there are two discs. So, at some point
3 I ask that one be labeled as 5A and 5B. But we will
4 take care of that.

5 BY MS. MUSSER:

6 Q Sir, after you watched the discs, did you sign the
7 discs that you watched?

8 A Yes.

9 Q Can you look at the two discs marked State's 5.
10 Does your initials appear on that disc?

11 A Yes.

12 Q Did you date it?

13 A Yes.

14 Q How about the other disc? Again, did you sign it
15 and date it?

16 A Yes.

17 Q Did it fairly and accurately depict the video that
18 you watched that evening?

19 A Yes.

20 MS. MUSSER: Your Honor, with that the State would
21 ask for admission of 5A and 5B, the video.

22 MS. SAXON: Object on foundation, Your Honor,
23 improper foundation.

24 We object on improper foundation. It hasn't been
25 authenticated.

WITNESS - WILLIAM POLITES

1 MS. MUSSER: We can do that with Ms. Sesmas. We
2 are just laying a foundation for the officer. We can
3 go through that further, even though he's said it is a
4 fair and accurate description.

5 THE COURT: Okay.

6 BY MS. MUSSER:

7 Q Did Ms. Sesmas provide a receipt for the video?

8 A I believe so.

9 Q Sir, I'm handing you what's been marked as State's
10 Exhibit 6. If you could take a look and see if your
11 signature appears on that document.

12 A Yes, it does.

13 Q What type of document is that?

14 A This is one of our Sheriff's Office receipt for
15 property. If somebody gives you a CD or any kind of piece
16 of evidence, then you give them a receipt of the property.

17 Q What is that particular receipt for?

18 A This is for one CD containing in-store video
19 footage of armed robbery incident.

20 Q Was that provided by Ms. Sesmas?

21 A Yes.

22 Q Okay. Thank you.

23 MS. MUSSER: Your Honor, may State's Exhibit 6 be
24 admitted?

25 MS. SAXON: Objection, Your Honor. Again, I don't

WITNESS - WILLIAM POLITES

1 believe this is the proper foundation for that item.

2 MS. MUSSER: Judge, it is a receipt, he
3 indicated -- sorry, if I may.

4 BY MS. MUSSER:

5 Q Sir, does your signature appear on that receipt?

6 A Yes.

7 Q Is that the same receipt that you received that
8 evening?

9 A Yes.

10 Q Who did you receive that receipt from?

11 A Ms. Makia Fulton. Ms. Fulton.

12 Q Sorry, I thought that you said that it was
13 Ms. Sesmas.

14 A I'm sorry, yes.

15 Q This is the one that you got that night when you
16 got -- when you obtained the video that is contained in
17 five?

18 A Yes.

19 MS. MUSSER: Once again, the State would move for
20 just the receipt of the video.

21 MS. SAXON: The Defense just feels that if
22 Ms. Sesmas is here to testify to these things, she
23 should be the one that it comes in under, Your Honor.

24 MS. MUSSER: I would certainly be happy to have
25 Ms. Sesmas authenticate her signature. However, I

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1 think that Corporal Polites is capable of saying this
2 is a Sheriff's Office form. It's the one he submitted
3 to Ms. Sesmas. She signed it. He received it back and
4 then turned over the video.

5 MS. SAXON: Your Honor, without Ms. Sesmas here to
6 verify it, I believe that it would be a hearsay
7 document.

8 THE WITNESS: She did produce a South Carolina
9 driver's license so I could get her information.

10 MS. MUSSER: Judge, we will be calling her so I
11 don't want to belabor the point, but it is just the
12 receipt.

13 THE COURT: I'll sustain the objection at this
14 time.

15 MS. MUSSER: Okay.

16 BY MS. MUSSER:

17 Q Did you -- as far as collection of evidence from
18 the Gum Tree Pantry, not the Kangaroo Express, you didn't
19 collect any evidence, correct?

20 A No.

21 Q What did you do with the video once you got it
22 from Ms. Sesmas?

23 A I turned it over to Staff Sergeant Viens, she was
24 the investigator.

25 Q Was it placed in evidence?

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1 A Yes.

2 Q Okay.

3 MS. MUSSER: Nothing further.

4 THE COURT: Cross examination.

5 MS. SAXON: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MS. SAXON:

8 Q Good morning, still, or afternoon. Getting close.

9 A Good morning.

10 Q In your report, in your report you said that
11 Ms. Fulton described the suspects to you, correct?

12 A Yes.

13 Q And that they were described -- the black male was
14 described at approximately 5-foot, six, is that correct?

15 A Yes.

16 MS. SAXON: May I approach, Your Honor?

17 THE COURT: Sure.

18 BY MS. SAXON:

19 Q I'm handing you --

20 MS. MUSSER: Judge, I would ask to see what copies
21 she's handing the officer.

22 MS. SAXON: My bad.

23 MS. MUSSER: And I'm going to object because he
24 didn't write this.

25 MS. SAXON: Well, I'm not entering it.

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1 MS. MUSSER: But again, because he didn't write
2 it, so the witness wouldn't have a proper foundation
3 that he knows anything about that document.

4 MS. SAXON: I can bring it in through something
5 else, Your Honor.

6 BY MS. SAXON:

7 Q But she described the black male as 5-foot 6,
8 correct?

9 A Correct.

10 Q She also said that both suspects were wearing
11 bandanas over their faces, correct?

12 A Correct.

13 Q So she could see their eyes only?

14 A Correct.

15 Q Hoodies up as well?

16 A Yes.

17 Q So, she couldn't see any identifying features,
18 could she?

19 A She said she could see the color of their skin
20 through a break in the coats. And the face wasn't totally
21 covered.

22 Q Right, but you would say from right about there,
23 just the eyes were visible, correct?

24 When you spoke with Ms. Fulton, she said that
25 the voices of both suspects were familiar to you, but that

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1 the black male's was more familiar, correct?

2 A She said voices were both familiar. One was
3 vaguely familiar but one was like really, really familiar.

4 Q At the time, did Ms. Fulton report to you that she
5 was on her cell phone throughout the duration of the
6 robbery?

7 A You are asking me if she told me that she was on
8 her cell phone?

9 Q I am.

10 A I don't recall if she said that to me initially.

11 Q Now, per your report, it says that once you had
12 transported Ms. Fulton from the Kangaroo Express to the Gum
13 Tree Road, then during the identification of the suspect is
14 when she gave you a name for the first time; is that your
15 recollection?

16 A That is not what it says. It says that once we
17 arrived there and he came out of the vehicle she, you know,
18 said, That's Lenny.

19 Q But per your report, that is not -- that is the
20 first time in the report --

21 A It is the first time in the report, but the report
22 doesn't say that is the first time she said he is Lenny.

23 Q You also had her write a statement that night,
24 correct?

25 A I did.

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1 Q In that statement, was it her own words?

2 A It was. It was completed by her.

3 Q Now -- now, when you got the call over the radio
4 to take her to the Gum Tree Road, that came from your
5 supervisor, correct?

6 A Yes.

7 Q And who was your supervisor?

8 A That evening it would have been Staff Sergeant
9 Carlos.

10 Q Okay. And they called you for the specific
11 purpose as an attempt to I.D., correct?

12 A Yes. I mean, I was there, so it was logical for
13 me to bring her.

14 Q At that point you spoke to Ms. Fulton and told her
15 that we, being BCSO, have somebody, that she needed to go
16 see them, correct?

17 A Yes.

18 Q Okay. When you arrived all -- there were four
19 various, at least, patrol cars on scene, correct?

20 A Yes.

21 Q And each person that had been in a car, Mr. Rolt,
22 Mr. Lockett, Ms. Major and Mr. Pritchett, they were all
23 handcuffed in separate patrol cars at that time, correct?

24 A You are asking if they were handcuffed and in
25 patrol cars when I arrived?

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1 Q Yes.

2 A No.

3 Q Where were they?

4 A The first person was already out of a vehicle when
5 I arrived.

6 Q That would have been?

7 A It would have been Mr. Rolt, the white suspect.

8 Q He was outside of a vehicle --

9 A Yes.

10 Q -- in cuffs?

11 A Yes.

12 Q The other three were inside, in the back of a
13 patrol car?

14 A They were out of view. I know that they were not
15 there, but Ms. Fulton probably wouldn't have been able to
16 see them, you know, in the car.

17 Q Okay. Now, per your report, it doesn't say
18 anything about Ms. Fulton not identifying the other
19 suspects; is that correct? That is on your report?

20 A Repeat the question.

21 Q There's nothing in your report that says
22 Ms. Fulton negatively identified the other suspects?

23 A I think that you are asking if she did identify
24 any other suspects than Mr. Philenza Pritchett; is that
25 correct?

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1 Q I'm asking if in the report that you submitted in
2 this case, if you wrote down that Ms. Fulton was shown
3 Brandon Rolt and reported that she didn't recognize him, and
4 then was shown Harry Lockett and reported that she did
5 recognize him?

6 A Yes, that is correct.

7 Q But that is not in your report?

8 Would you like --

9 MS. MUSSER: I am confused.

10 THE WITNESS: I don't understand, Your Honor. I
11 don't --

12 BY MS. SAXON:

13 Q Okay, there is a portion of your report here at
14 the bottom --

15 A Yes.

16 Q -- that talks about the identification?

17 A Okay, can you show me the exact sentence?

18 Q This right here.

19 A Okay.

20 Q Is there anything in there reporting Ms. Fulton
21 either positively identifying or negatively identifying a
22 white subject, Brandon Rolt?

23 A I mean, it says that, you know, she positively
24 identified Mr. Pritchett. It doesn't say if she positively
25 identified Rolt, but I recall her, you know, not recognizing

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1 him. Not, you know.

2 Q And the same is true of Mr. Lockett?

3 A Yes.

4 Q Corporal Polites, did I say that right?

5 A It is Polites, but that is fine.

6 Q You do drive a standard issue BCSO vehicle,
7 correct?

8 A Correct.

9 Q That's equipped with an in-car camera?

10 A Correct.

11 Q That in-car camera turns on at the activation of
12 your blue lights?

13 A Correct.

14 Q You activated your blue lights the night of
15 April 1, 2010 when you responded to the scene of Fording
16 Island Road?

17 A Correct.

18 Q So it's safe to assume that at least at some point
19 your camera was running?

20 A Yes.

21 Q That video is not in evidence, is it?

22 A It's not.

23 Q Do you know if your camera was running when you
24 pulled up to the Gum Tree Road store?

25 A I don't believe it was running.

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1 MS. MUSSER: Judge, may we approach for a sidebar?

2 THE COURT: You certainly may.

3 If you would like to stand and stretch, ladies and
4 gentlemen. If you do, please feel free to do so.

5 MS. SAXON: May I approach the witness, Your
6 Honor?

7 THE COURT: You may, certainly.

8 MS. SAXON: Okay, thank you.

9 BY MS. SAXON:

10 Q Can you please tell me what this is.

11 A Sure, this is a copy of the Sheriff's Office
12 general orders manual. It's basically a standard operating
13 procedure. It's rules and guidelines, and this one deals
14 with eyewitness identification.

15 Q When was that put into effect?

16 A May 21st, 2009.

17 Q If you flip to the second page, what form of IDs
18 are we talking about on the second page here?

19 A It refers to show-ups, which is, you know, you
20 drive up with a witness or a victim. You know, it goes on
21 about the different types.

22 Q And when -- what exactly does it say about doing
23 show-up IDs, as department policy?

24 A Can you be more specific, like what you want --

25 Q Certainly. Just this.

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1 A Just the highlighted part?

2 Q Well, the sentence, show-ups.

3 A It says, show-ups are typically justified when
4 other means of identification are either impractical or
5 unavailable and no other evidence exists to hold the
6 suspect.

7 Q Okay. You can hold that.

8 Does that document also state that show-up
9 IDs are inherently suggestible?

10 A Sorry, repeat the question.

11 Q Does it state that show-up IDs are inherently
12 suggestible?

13 A I don't know if it says that. It gives guidelines
14 of how to do, you know, what the parameters are to do them.
15 I don't think that it suggests that they are suggestible.

16 Q When it says that they are justified when there's
17 no other means of holding the suspect, correct?

18 A It says -- you know, I can read it specifically.
19 It says when, you know, other means of identification are
20 either impracticable or unavailable and no other evidence
21 exists to hold a suspect.

22 Q Right. Now, when Corporal Murphy arrived on
23 scene, there was -- he saw a gun in plain view, correct?

24 MS. MUSSER: Objection to what Corporal Murphy

25 saw. I mean, clearly Corporal Polites can say what he

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1 saw and he heard, but I would object to questions that
2 call for what someone else knew.

3 MS. SAXON: I can rephrase the question, Your
4 Honor.

5 BY MS. SAXON:

6 Q Did a call come out over the radio saying that
7 there was a gun in plain view in the suspect's car?

8 A It initially came out he was just field
9 investigating. You know, going up to a car with a black
10 male and white male. That was not the first thing that he
11 said, but absolutely, that is what came out on the radio.

12 Q Right, eventually it came out?

13 A Correct.

14 Q He was referring to this gun -- the radio
15 transmission was referring to a gun in plain view in the
16 center console, correct, or near the center console?

17 A He only said he had a gun in plain view. He
18 didn't say exactly where.

19 Q At that point, that would be evidence that you
20 could hold suspects on, correct?

21 A I mean, that is definitely evidence. If it's, you
22 know, you just had a robbery with a gun and here's two
23 people with a gun.

24 Q It's something to hold them on?

25 A I don't know if it's evidence yet, but it's enough

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1 to start an immediate field investigation that later on,
2 when you develop probable cause, it definitely could be
3 evidence, of course.

4 Q And when you did the show-up ID, when you brought
5 Ms. Fulton, did you have any of the men say anything to her?

6 A No.

7 Q So it was purely visual?

8 A Purely visual.

9 Q So she looked at him and said, I know that person,
10 he's Lenny?

11 A She did.

12 Q Prior to that, though, she said she didn't see
13 anybody's face when they were robbing her, it was covered?

14 A I don't think she said I didn't see anyone's face,
15 but she said they were masked. She may have said it was
16 hard to see anyone's features. I don't know if she used
17 those exact words.

18 Q Thank you.

19 Did you or any other officer involved in this
20 investigation attempt a voice line-up with Ms. Fulton and
21 any of the defendants?

22 A I know I didn't. I can't speak to what any other
23 officer did if I don't know.

24 MS. SAXON: That is all that I have.

25 THE COURT: Redirect?

WITNESS - WILLIAM POLITES

1 MS. MUSSER: Thank you.

2 REDIRECT EXAMINATION

3 BY MS. MUSSER:

4 Q Going back to that procedure that's in front of
5 you, that is not a court document, correct?

6 A It's not. It is not State law or Federal law, it
7 is our policies and procedures.

8 Q Through your experience with the Sheriff's Office,
9 you know that it's for the judge to decide what comes into
10 evidence and what doesn't, correct?

11 A Correct.

12 Q Not the Sheriff's Office policy?

13 A Correct.

14 Q So, if the jury is hearing about the
15 identification, it means the Judge hasn't suppressed it,
16 correct?

17 A Correct.

18 MS. SAXON: Objection, Your Honor.

19 THE COURT: I'll sustain the objection.

20 BY MS. MUSSER:

21 Q So, with respect to that, you indicated also that
22 you were following orders from your supervisor, correct?

23 A Yes.

24 Q Based on your experience, you know that there was
25 ample opportunity for lighting for Ms. Fulton to view --

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1 view the Defendant, correct?

2 A Yeah, yeah, we made sure that there was lighting,
3 and there was a really well-lit area, as most gas stations
4 are at night.

5 Q I guess what I'm getting at is, just because
6 something isn't by the book that policy doesn't forbid
7 show-ups, correct?

8 A No. You know, I don't think that any parts of the
9 incident were even against anything in that policy. It just
10 says that when other means aren't necessary, you know.

11 Q So nowhere in this document does it say that you
12 can't take a witness to a line-up -- or to what we call a
13 show-up, correct?

14 A Correct, it doesn't say that.

15 Q Now, moving on to -- moving on to your report, I
16 was a little confused when Ms. Saxon was asking you
17 questions.

18 Sir -- sorry, I'll stay here.

19 Did you prepare an incident report with
20 respect to this?

21 A Yes.

22 Q And does your information appear on there when you
23 prepared it and your name?

24 A Yes.

25 MS. MUSSER: Your Honor, for identification

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1 purposes, we have marked State's Exhibit 56.

2 BY MS. MUSSER:

3 Q Sir, I'm handing you State's 56 for identification
4 purposes. Is that page three of three on your report?

5 A Yes.

6 Q In that, did you document Ms. Fulton's
7 identification of the Defendant, Philenza Pritchett?

8 A Yes.

9 Q Would you please read the highlighted portion to
10 clarify that.

11 A Of course. It says exactly, "I transported Fulton
12 to the Kangaroo Express on Gum Tree Road so that she may
13 identify the suspects detained by PFC Murphy." That just
14 stands for patrolman first class.

15 "Fulton verified that one of the four
16 detained by PFC Murphy, a black male matching the height,
17 weight and partial clothing description she provided
18 earlier, was definitely the black male that had robbed her
19 store. In addition, Fulton stated that the black male she
20 identified was an acquaintance she knew that went by the
21 name Lenny. Fulton again referenced that she had recognized
22 the voice during the robbery."

23 MS. MUSSER: Nothing further, Your Honor.

24 THE COURT: Any recross?

25 MS. SAXON: One moment, Your Honor. Beg the

WITNESS - WILLIAM POLITES

1 Court's indulgence.

2 (Pause.)

3 No recross, Your Honor.

4 THE COURT: Thank you. You may step down.

5 Okay. Let's -- I believe that it is a good time
6 for us to take a lunch break, ladies and gentlemen. I
7 noticed a couple of jurors are getting a little drowsy
8 here. During the lunch break if you feel like you are
9 having trouble staying awake, I ask you to try to get
10 some caffeine in you. And let's come back at 15
11 minutes until two, and that will give you plenty of
12 time to get lunch.

13 I'll remind you, ladies and gentlemen, during the
14 lunch break don't let anybody talk to you about the
15 case and you don't talk to anybody about the case. See
16 you back at 15 until two.

17 (Jury exits at 12:25.)

18 THE BAILIFF: The jury is clear, Your Honor.

19 THE COURT: We need to put a couple of things on
20 the record about some objections. I know that the
21 Defense had an objection that we heard in a sidebar and
22 I overruled it.

23 Ms. Saxon.

24 MS. SAXON: Yes, Your Honor, thank you. It was
25 with regard to the testimony of Trey Simmons, who is

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1 currently a sergeant at Beaufort County Sheriff's
2 Office. We objected to that testimony on the grounds
3 of a discovery violation.

4 He is mentioned in one sentence in the incident
5 report, and he testified to a number of things of which
6 we had no forewarning about on, and we felt that
7 knowing that that cross examination -- excuse me.
8 Knowing that that direct testimony was coming, that the
9 State had prepared that witness, we feel that they
10 should have turned over to us that information of what
11 he was going to testify to.

12 THE COURT: It is my understanding that the State
13 said they didn't have a statement from this witness, at
14 least not on this subject.

15 MS. MUSSER: Correct, Your Honor. Trey Simmons
16 did not do any kind of report. He is referenced --
17 Corporal -- talking about how Corporal Simmons was one
18 of -- like the order in which they arrived at the Gum
19 Tree Pantry, and it specifically does mention Corporal
20 Simmons.

21 Also, the CAD reports that were turned over to
22 Ms. Saxon indicate each and every officer that was
23 present. Again, there was no written report. He was
24 on the State's witness list. Certainly, you know,
25 Ms. Saxon could have picked up the phone and called

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1 him.

2 But I'm unaware of any discovery rule anywhere
3 that says that we have to provide an outline for each
4 and every witness. We just have an obligation to turn
5 over who is going to be testifying, where they were,
6 where they are located, and of course any written
7 material that we received, and there isn't any.

8 THE COURT: Ms. Saxon.

9 MS. SAXON: Thank you, Your Honor. The problem
10 that I have is that Corporal Simmons, or Sergeant
11 Simmons, was in fact interviewed prior to today's
12 testimony. There must have been some sort of record of
13 that interview for Ms. Musser to prepare her
14 questioning against, and that is Brady material in my
15 opinion considering that it's directly related to the
16 case, what he saw, sensed, felt, and everything of that
17 nature.

18 THE COURT: The Solicitor's notes would not be.

19 MS. SAXON: And he also interviewed the witness.
20 I'm not saying any work product notes, that's not what
21 I'm talking about. I'm talking about the fact that
22 there was specific testimony that he interviewed the
23 victim, that he did very specific things. And that
24 should have been provided, in my opinion.

25 MS. MUSSER: Judge, I didn't know what Ms. Saxon

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1 is asking of the Solicitors. So, in other words, what
2 she just reported to the Court is that she expects me,
3 when I interview a witness in the course of my trial
4 preparation, that I'm supposed to provide her an
5 outline, or is she suggesting that I have audio
6 recorded it? Because certainly I'm entitled to some
7 work product that's not discoverable.

8 She was given a CAD report that says that Officer
9 Simmons was dispatched at 2:50 and 2:52, certainly --
10 you know, I wholeheartedly agree, I take discovery very
11 personally, of course I would turn it over. But there
12 is nothing in that rule book that I suggest that
13 Ms. Saxon can point to that says that I have to provide
14 a report of my witness preparation and my trial
15 preparation. I'm entitled to some work product.

16 THE COURT: Ms. Saxon, I will be glad to hear you
17 further on it, but as I indicated in the sidebar I
18 agree with the Solicitor, I can't find that Rule 5 on
19 Brady. Either one would require this. I'm not sure.

20 MS. SAXON: It is just, Your Honor, in my opinion,
21 in my experience when there's testimony from officers
22 or members -- or key witnesses in a case, that when
23 they are interviewed pretrial about what they are
24 testifying about, not case theory or strategy or plan,
25 but what they are going to say on the record, that's

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1 happened, that I have received at least some summary of
2 the fact that they were going to testify to the events
3 that occurred that evening.

4 MS. MUSSER: Judge, respectfully, if that were the
5 case, then I think that the appropriate remedy is for
6 Ms. Saxon to, pretrial, ask the State for an offer of
7 proof on a witness that she's feeling she hasn't
8 received any information on. In which case, certainly
9 pretrial I would have been happy to outline, you know,
10 what Trey Simmons was going to testify to. And an
11 offer of proof would have been appropriate under the
12 circumstances. But there's no Rule 5 violation here,
13 Judge.

14 MS. SAXON: Your Honor, that to me sounds like the
15 shifting of the duty to provide the continuing
16 discovery duty from the State on to the Defense.

17 THE COURT: Who has Rule 5 in front of them? I
18 had it earlier and now I left that page.

19 Tell me, does Rule 5 actually require the names of
20 every witness to be divulged?

21 MS. MUSSER: Judge, I have a summary that contains
22 in the prosec -- it says, Defendant's written or
23 recorded statements, Defendant's oral statements,
24 documents in the possession, custody and control of the
25 State material to the preparation of the Defense

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1 intended to be offered into evidence in the State's
2 case-in-chief or came from -- but work product is
3 specifically excluded from rule five.

4 THE COURT: It god on in the next section to talk
5 about disclosure of witnesses. Or nondisclosure of
6 witnesses.

7 MS. MUSSER: That moves on to Brady, Judge. "Not
8 subject to disclosure: Includes reports, memoranda or
9 other internal prosecution documents made by the
10 prosecutor or his agents in connection with the
11 investigation or prosecution with the State."

12 Witness list -- Brady and rule five do not allow
13 for the discovery of witness lists.

14 THE COURT: That is what I was saying.

15 MS. MUSSER: Right. I have a page from the desk
16 book, but I can get an actual copy of rule five.

17 THE COURT: That indicates that you don't have to
18 give them the name of any witnesses, period. But I
19 can't find anything that says that you are required to
20 give a summary of what each witness is going to say,
21 like you do in civil cases. I think that the rules of
22 civil procedure are completely different than the rules
23 of criminal procedure.

24 At any rate, that is the ruling of the Court in
25 the sidebar and it is still the ruling of the Court

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1 today. Anything else that we need to take care of or
2 do?

3 MS. MUSSER: Judge, I think Ms. Saxon wanted to
4 put on the record that the juror, I don't know his
5 number, he's the young man wearing the purple shirt
6 that was here at the end, he did for like 60 seconds, I
7 think, fall sleep. But I think that the Court's remedy
8 of that was obviously the appropriate instruction at
9 lunch. But he was not dozing off for any prolonged
10 period. But I think that Ms. Saxon wanted to make a
11 record, but I'll defer to her.

12 MS. SAXON: We noticed him dozing, and there was a
13 very loud snore at one point. I don't know how to
14 record that.

15 THE BAILIFF: I'll speak to the bailiff to make
16 sure she watches him a little more closely.

17 THE COURT: If it happens again --

18 THE BAILIFF: We have means to keep them awake,
19 Judge.

20 THE COURT: I'm trying to figure out. It may be
21 Juror 101, Tommy Fields.

22 MS. MUSSER: Yes, it is. He was the guy that was
23 in construction and painting.

24 THE COURT: Born in '64, all right.

25 At any rate -- well, I am asking the bailiffs to

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1 help keep an eye on him, and maybe he will do what I
2 suggested and get some caffeine, but you all let me
3 know if you see any further indication that that's
4 happening and we will -- we will have to either talk to
5 him or replace him. But I kept watching him after you
6 all brought that to my attention, and he did seem to
7 close his eyes very briefly. But when I was watching
8 him he was getting them back open.

9 MS. SAXON: Some people just aren't morning
10 people.

11 THE COURT: What?

12 MS. SAXON: Some people just aren't morning
13 people, Your Honor.

14 THE COURT: Well, he only closed them when I was
15 watching him for two or three seconds at a time. But
16 he did look like he was having trouble keeping his eyes
17 open.

18 THE BAILIFF: I never noticed that he was sound
19 asleep, but --

20 THE COURT: All right. Anything else that we need
21 to do during the break?

22 MS. MUSSER: No, Your Honor, thank you.

23 THE COURT: Recess until 15 til 2:00.

24 (Lunch recess taken at 12:37 p.m.)
25

CERTIFICATE PAGE

1

2 CERTIFICATE

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4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

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DATED this 5th day of December, 2014.

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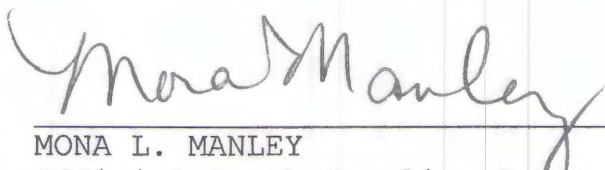
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1 In the Court of General Sessions for the
2 State of South Carolina, County of Beaufort

3

4 Case No.: 2012-GS-07-00872+

5 State of South Carolina,

6 Plaintiff(s),

7 vs. Transcript of Record

8 Philenza Pritchett,

9 Defendant(s) .

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15 August 26, 2014

16 Beaufort, South Carolina

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21 BEFORE:

22 The Honorable Judge Brooks P. Goldsmith

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APPEARANCES

PLAINTIFF'S ATTORNEY:

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Beaufort, SC 29901

DEFENDANT'S ATTORNEY:

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COLLOQUY

1 PROCEEDINGS

2 THE COURT: All right. Let's continue with our
3 sidebar.

4 (Off-the-record discussion held.).

5 THE COURT: An issue that we need to take up?

6 MS. MUSSER: Yes, sir, for expediency, and to the
7 run smoothly. In reference to the A individual,
8 obviously, that is an important part of the State's
9 case. My position is A that just like a photograph,
10 the proper foundation for a photograph would be to
11 show it to April person, what is this imagine, how you
12 familiar with it and is does it fairly and accurately
13 depict what you observed.

14 My understanding is that photographs and video
15 work the same way. The State had intended to call
16 Ms. Fulton and play the video through her after --
17 because she's had a chance to review it, she's had a
18 chance to sign the disc and date it. So she would be
19 able to testify it fairly and accurately depicts what
20 happened in the Kangaroo Express.

21 When I mentioned that to counsel, Ms. Saxon, I
22 don't want to speak for her, but my understanding was
23 that it would be more akin to something -- I always get
24 them confused, fungible/non-fungible, like blood or DNA
25 swab, which is not readily identifiable, where the

COLLOQUY

1 State would have to put on all of the chain evidence
2 and that would affect the order in which I call
3 witnesses.

4 So, I guess I'm just looking for guidance from the
5 Court, because if you are -- and I know with the items
6 that are, I believe, non-fungible, readily
7 identifiable, you just have to have the person that --
8 or collected and/or is familiar with it, and then ask
9 them. I just don't want to attempt to publish
10 something in front of the jury and then have -- because
11 I can switch -- I would prefer not to, because there
12 was a specific strategy with respect to my witness
13 order. I'd rather not have to call them out of order,
14 so I just wanted some guidance from the Court.

15 THE COURT: Ms. Saxon.

16 MS. SAXON: Thank you, Your Honor. It is our
17 position that with any piece of evidence, when you're
18 trying to publish something to the jury, especially
19 when it's taken off of a hard drive like that, that it
20 needs to come in through the person who did the
21 retrieval, which would be Ms. Sesmas. It is -- we, you
22 know, I under -- I had talked, as counsel stated, we
23 had spoken before lunch about the video. The original
24 video was downloaded by Ms. Sesmas onto one disc. It
25 was then split into two, which is what the discovery

COLLOQUY

1 is. I have no problem with that, but I think the
2 proper foundation is that it comes in through the
3 person who downloaded it off of that system, who is the
4 only person who could access it, and the only person
5 who can testify to its authenticity.

6 THE COURT: That is who?

7 MS. SAXON: Ms. Sesmas.

8 THE COURT: All right. And you want Ms. Fulton?

9 MS. MUSSER: Right. The State's position is that
10 it's akin to a photograph. Just like you don't have to
11 have the person that actually took the picket, you can
12 have the person say it's a fair and accurate
13 representation.

14 THE COURT: I agree. I don't think this is a
15 fungible item. I don't think it's -- as long as
16 Ms. Fulton -- because she's in a unique position to say
17 this is what happened. Nobody else can put it up.
18 She's the one who was there, and this is what happened.
19 She's looked at it, she's saying it's accurate. And
20 it's as though somebody else took a photograph of the
21 scene and gave it to her. And she says, yeah, that's
22 it. You know, that's where I live, or that's where I
23 work.

24 MS. MUSSER: Thank you.

25 THE COURT: So I would overrule the objection.

COLLOQUY

1 MS. MUSSER: Okay.

2 MS. SAXON: Thank you, Your Honor.

3 THE COURT: And I believe we're ready for the
4 jury.

5 MS. MUSSER: We are, Your Honor. Thank you.

6 THE BAILIFF: The jury is entering the courtroom,
7 Your Honor.

8 (Jury enters the courtroom at
9 2:02 p.m.)

10 THE BAILIFF: The jury is seated, Your Honor.

11 THE COURT: Thank you.

12 Welcome back, ladies and gentlemen. I believe we
13 are ready to resume the presentation of evidence by the
14 State.

15 MS. MUSSER: Thank you, Your Honor.

16 The State calls Makia Fulton.

17 Thereupon,

18 MAKIA FULTON

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

21 MS. MUSSER: May I inquire, Your Honor? Thank
22 you.

23 DIRECT EXAMINATION

24 BY MS. MUSSER:

25 Q Good afternoon, Ms. Fulton.

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 A Good afternoon.

2 Q I'm going to ask you to speak way up, up very
3 loudly. Okay? So everybody can hear you. And that's why
4 I'm going to stand back here, because I figure if I can hear
5 you then everybody on the jury can hear you as well.

6 Ma'am, how old are you?

7 A I'm 29.

8 Q And, oh, do you currently live in South Carolina,
9 or do you live somewhere else?

10 A I live somewhere else.

11 Q Okay. What state do you live in?

12 A In Georgia.

13 Q And do you work or what do you -- how do you
14 occupy your time?

15 A I work, and I go to school.

16 Q Where do you go to school?

17 A I go to school online at University of Phoenix.

18 Q Where do you work?

19 A I work at Lowe's in the morning, and I work at
20 Dollar General at night.

21 Q Okay. I'm going to ask you to think back to April
22 Fool's Day of 2010. Do you remember that evening that
23 brings you to Court today?

24 A Yes, ma'am.

25 Q Or -- I'm sorry, the morning.

WITNESS - MAKE FULTON

WITNESS - MAKIA FULTON

1 Where were you working then?

2 A I was working at the Kangaroo, the Pantry, off of
3 Fording Island Road in Bluffton.

4 Q Okay. Is that the one on 278?

5 A Yes, ma'am.

6 Q Okay. So if you're 29 now, how old were you,
7 about 25 then?

8 A Yes, ma'am.

9 Q What was your regular -- what was your job
10 capacity? What was your job title?

11 A I was a sales associate.

12 Q And what did that entail; what were some of your
13 daily duties?

14 A Just to make sure that the coffee was made, hot
15 dog grill was done, clean the restrooms, clean the parking
16 lot, stock the cooler, and just basically ring up customers.

17 Q And did you usually work the same shift, or did
18 your shift vary from day to day? What were your common
19 shifts?

20 A My normal shift was from 10:00 to 7:00, or 11:00
21 to 8:00.

22 Q Okay. So 10:00 to 7:00, would that be 10:00 a.m.?
23

24 A 10:00 p.m. to 7:00 a.m.

25 Q So graveyard shift, kind of, overnight?

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 A Yes, ma'am.

2 Q Now, again, I'm going to ask you to think back to
3 April 1st of 2010. Were you working that day?

4 A Yes, ma'am.

5 Q Was anyone working in the store with you?

6 A No, ma'am.

7 Q At approximately -- how do you get truck
8 deliveries; is there a certain day that you would get a
9 truck delivery?

10 A We would get a truck every Wednesday morning.
11 It'll come like between 2:00, sometimes it'll stay to 4:00.
12 It just depends on how many pieces on a truck we have.

13 Q On this particular day do you remember if there
14 was a truck delivery?

15 A Yes, ma'am, it was.

16 Q And what were you doing as the truck was getting
17 ready to leave?

18 A I was outside finishing up my cigarette because
19 they wanted to wait while I was smoking. And right when
20 they was getting ready to leave, I out my cigarette and went
21 back into the store.

22 Q So did the truck delivery leave at that point?

23 A Yes, ma'am.

24 Q Was anyone else in the store when you came back
25 in?

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 A No, ma'am.

2 Q What were you doing when you came back into the
3 store?

4 A I was on the phone with my cousin, getting ready
5 to get off and get started on the shipment, get it put out.

6 Q And what does that mean?

7 A Like unload the truck, like take all the stuff out
8 the totes and put them on the shelf.

9 Q Was there a process, like after the truck
10 delivered something, did you have to scan it in for
11 inventory purposes or anything --

12 A No. I just have to check the paper and make sure
13 that everything is on there. Whenever I put a piece off,
14 just check it off of the list.

15 Q Okay. So when you came back in, and you were
16 still on the phone, what happened that brings you to Court
17 today?

18 A When I came in, and I was going around the corner
19 to the back room where we keep the stock after we get the
20 truck, the doorbell went off. As I turn around to come back
21 around the corner, that's when I seen two guys in the store
22 with guns.

23 Q Okay. And let's break it down step by step.

24 Okay. You say there were two men?

25 A Uh-huh. (Indicating affirmatively.)

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 Q What did you observe about them at first? Could
2 you tell what ethnicity they were?

3 A First off, I saw the black male, the
4 African-American male, and then I saw the Caucasian male.

5 Q Okay. What were they wearing, to the best that
6 you can remember?

7 A They had on --

8 Q And let's start with -- I'm sorry. I didn't mean
9 to interrupt you. I'm sorry. Let's just keep -- okay.
10 Let's start with the black male, what was he wearing?

11 A The black male had on a black hoodie with a blue
12 bandanna covering this part of his face, and he had on dark
13 jeans. I can't remember if it was dark blue or black.

14 Q Okay. And then do you recall what kind of gun he
15 had?

16 A All I remember was seeing it was silver and black.
17 I don't know what kind of gun, just saw it was silver and
18 black.

19 Q What did you think when you first saw these two
20 men coming in with -- did they both have guns or just one?

21 A Both.

22 Q What was your initial thought when that happened?

23 A When I first came around the corner and I could
24 see them with the masks on, like being that it was April
25 Fool's, I thought it was a joke until that's when I looked

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 and I saw the gun and I realized it wasn't a joke.

2 Q Okay. When they came into the store, do you
3 remember if they came -- did they come in about the same
4 time, or was there a lapse in time between one entered and
5 then the other, if you remember?

6 A No, ma'am. It just -- when they came in it just
7 caught me off guard so fast, I don't remember if they came
8 in at the same time. But it -- both of them, all I seen was
9 the two guns basically. That's how I got caught off guard.

10 Q Okay. Did they say anything to you?

11 A They entered the store. The African-American, he
12 first told me to get down on the ground. That was the first
13 thing he said when he came in.

14 Q Okay. And the person that said to you, the black
15 male that you described, that said, Get down on the ground;
16 do you see him in the courtroom today?

17 A Yes, ma'am.

18 Q Would you say what color shirt he's wearing and
19 where he's seated?

20 A He has on a like mostly black and white shirt, and
21 he's seated to my left.

22 Q Okay.

23 MS. MUSSER: Your Honor, may the record reflect
24 that in-court identification of the Defendant, Mr.
25 Pritchett.

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 THE COURT: So noted.

2 BY MS. MUSSER:

3 Q And -- okay. So after he told you to get on the
4 ground, did you get on the ground?

5 A I was going to get on the ground. And right after
6 I got halfway to the ground, he was like, No, no, no, get
7 up, get up.

8 Q Where was -- could you describe the layout of the
9 store? Were the lights on at that time?

10 A Yes, ma'am. All the lights were on.

11 Q Was the store open for business at that time?

12 A Yes, ma'am, it was open.

13 Q Where were you in relation to the counter when you
14 first saw them?

15 A When I first saw them, I was maybe like five feet
16 away from the counter. I was where you come in to go into
17 the counter part. We have like -- like how this is, and I
18 was right there on the side before you get to the actual
19 counter.

20 Q Okay. So when the defendant told you to get on
21 the ground, where was he? Where was he in relation to the
22 counter, meaning in front of it, behind it, beside it?

23 A He was making his way around the counter, coming
24 back where I was at.

25 Q Okay. After he said that to you, you said you

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 didn't get on the ground. What was the next thing that
2 happened?

3 A I was halfway on the ground when he changed his
4 mind and said get up.

5 Q And what was the white male doing at that point?

6 A He was making his way around the counter because
7 he was behind -- actually behind the African-American.

8 Q And what -- do you recall what the white male was
9 wearing?

10 A All I remember was they both had on black hoodies
11 and blue bandannas.

12 Q Okay. Do you remember what the white male's gun
13 looked like?

14 A No, ma'am.

15 Q So after they -- after they come in, have you had
16 occasion to watch a video today?

17 A Not today.

18 Q Was it yesterday?

19 A Yes, ma'am.

20 Q Okay. And did you sign that video and date it?

21 A Yes, ma'am.

22 Q Okay. And you're familiar with the images that
23 were depicted in that video, correct?

24 A Yes, ma'am.

25 MS. MUSSER: Your Honor, may I approach?

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 THE COURT: You may.

2 BY MS. MUSSER:

3 Q Ma'am, I'm going to hand you a series of
4 photographs. Okay. Let's start with -- and then once we go
5 through them all, then I'll ask Mr. Bazzle to show them.

6 All right. Starting with No. 34, do you
7 recognize what's depicted in that image?

8 A Yes, ma'am.

9 Q And what's depicted in there, tell us what that
10 describes?

11 A This was when they first came in the store, the
12 African-American first came in the store. And that's when I
13 was around that corner to the -- further off in the picture,
14 that's where I was standing at. That's why he was pointing
15 it that way.

16 MS. MUSSER: I think it's better to go one at a
17 time.

18 Your Honor, with that, may we publish -- admit and
19 publish No. 34?

20 BY MS. MUSSER:

21 Q Does that fairly and accurately describe what
22 happened to you that evening?

23 A Yes, ma'am.

24 MS. MUSSER: Do you have any objection to
25 publishing 34?

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 MS. SAXON: No.

2 THE COURT: Without objection.

3 *(Whereupon, State's Exhibit No(s). 34 marked for*
4 *identification and received in evidence.)*

5 BY MS. MUSSER:

6 Q And, ma'am, is this the same photograph that you
7 have in front of you?

8 A Yes, ma'am.

9 MS. MUSSER: Your Honor, may I push this forward
10 to show the jury?

11 THE COURT: Sure. Sure.

12 BY MS. MUSSER:

13 Q And, ma'am, you described for us there were two
14 individuals. The person wearing this, was that the white
15 male or the black male?

16 A The black male.

17 Q Okay. And is that consistent with your
18 recollection of the firearm that you described to the
19 officers that night?

20 A Yes, ma'am.

21 Q Okay. I'm going to hand you State's 35, which is
22 another image. Does that fairly and accurately represent
23 the same scene?

24 A Yes, ma'am.

25 MS. MUSSER: With that, Judge, may we publish 35?

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 THE COURT: Without objection?

2 MS. SAXON: No objection.

3 *(Whereupon, State's Exhibit No(s). 35 marked for*
4 *identification and received in evidence.)*

5 MS. MUSSER: And actually, to speed things along,
6 I don't think you have any objection to any of the
7 stills.

8 MS. SAXON: Can I see them for a moment?

9 (Pause.)

10 No objections.

11 MS. MUSSER: Judge, counsel has indicated she
12 doesn't have any objection to 36, 37, or 38, and their
13 admission.

14 THE COURT: All right.

15 *(Whereupon, State's Exhibit No(s). 36-38 marked*
16 *for identification and received in evidence.)*

17 BY MS. MUSSER:

18 Q Does this depict the same thing, this is No. 35?

19 A Yes, ma'am.

20 Q How about No. 36, what does that show? Is this
21 the second -- who is entering the door; do you recognize
22 that person?

23 A That's the Caucasian male.

24 Q Okay. And does that fairly and accurately depict
25 what you observed of him?

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 A Yes, ma'am.

2 Q Okay. How about 37?

3 37, there you go.

4 And does that fairly and accurately depict
5 the white male that you have described?

6 A Yes, ma'am.

7 Q And now, No. 38.

8 Okay. Is that at the beginning or when the
9 Defendants were -- I'm sorry, when the suspects were
10 leaving?

11 A That's when they were leaving.

12 MS. MUSSER: Your Honor, I beg the Court's
13 indulgence.

14 (Pause.)

15 BY MS. MUSSER:

16 Q So, ma'am, after the individuals told you to get
17 on the ground, and then you said the Defendant changed his
18 mind, where did -- where were you? Were you in front of the
19 counter, behind the counter, or to the side of the counter?

20 A To the side of the counter.

21 Q At some point did you go behind the counter?

22 A Yes, ma'am.

23 Q What happened when you were behind the counter?

24 A He told me, the black -- the African-American guy,
25 he asked me to open up my register, and I opened it up and

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 he told me to put the cash into a bag. And I did that.

2 Q Okay. Do you recall what kind of bag it was?

3 A I think that it was a black book bag. I can't
4 remember.

5 Q Okay. And then what was the white male doing when
6 you were opening that register?

7 A When I was opening that register I think he was
8 getting cigarettes, or maybe cigarillos, from behind me.

9 Q Okay. So you're behind the counter. How much --
10 what was your primary focus when that is happening?

11 In other words, we understand that today
12 you're in a courtroom, but what -- explain for us what you
13 were thinking and what was going through your mind as you
14 were emptying the cash register?

15 A As I was emptying the cash register I still was
16 like -- I was trying to remain calm, but in the inside, I
17 was like -- I was nervous. Still thinking, Is this real,
18 and trying not to like -- you know, I said I was on the
19 phone, I tried not to alert her so I wouldn't get hurt.

20 Q Were you necessarily paying specific attention to
21 who was where in anticipation of testifying today? Was that
22 your focus?

23 A My focus, yeah. I was paying attention to
24 details, trying to get everything I could, because that's
25 what we were trained to do in that case if that happened.

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 Like pay attention to details and just do whatever they are
2 told -- we are told.

3 Q At any point, did they put the guns down, or did
4 they always -- meaning both of them, did they both have guns
5 the whole time or --

6 A Yes, ma'am. They both had guns the whole time.

7 Q Okay. May I have No. 3?

8 While they're getting that out, if you --
9 after you emptied the register, were there any demands made
10 of you from either man?

11 A That's when the Caucasian male, he was telling me
12 about opening the safe, and I told him that I couldn't open
13 the safe. I didn't have a key for the safe.

14 Q How did the safe work? Was it like a -- like a
15 spinny dial, or a punch code, or did it just open with a
16 key? How did that open?

17 A If we needed change throughout the night we could
18 punch to get cash. But to open it we would need like a key.
19 And only managers have keys.

20 Q So when you say punch, you mean punch in a code?

21 A No. You just push the button on it that has the
22 dollar amount on it.

23 Q Okay. So the safe is set up so there's different
24 -- is that in different denominations of money or --

25 A Yes, ma'am.

WITNESS - MAKE FULTON

WITNESS - MAKIA FULTON

1 Q Okay. So you would push a button. Did you have
2 to turn a key or anything like that?

3 A No, ma'am.

4 Q So after the white male made that demand of you,
5 did you open the safe?

6 A No, ma'am.

7 Q What did you do?

8 A When he made that demand of me and -- I told him
9 that I couldn't open the safe, and he was like, Well, what
10 can you do? And I told him the only thing I could do is
11 push the button where he could get money, but it would take
12 up to three minutes before it would be ready to push again.

13 Q So explain that for us. Was it always a
14 three-minute -- in other words, could I get, say -- what
15 were the different denominations, 50s, 20s?

16 A It started off with nickels, dimes, quarters,
17 dollars, that were -- it was \$20 to every time you pushed
18 it. Fives was \$20, tens was 30, and I think it was 20s that
19 was only \$60 worth in there.

20 Q Okay. So if you want to get some 20s out, would
21 you push a button that was labeled 20?

22 A Yes, ma'am.

23 Q And then how much time would have to go by before
24 you could say, oh, I'd like some 10s now?

25 A It would take three minutes before the safe resets

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 itself.

2 Q So after you explained to the men that there was a
3 three-minute delay between pushing of the buttons, what
4 happened after that?

5 A The Caucasian male said they didn't have any time
6 for that, so they asked me to open up the other register.

7 Q Okay. And did you open the other register?

8 A Yes, ma'am.

9 Q And was any money taken out of that register?

10 A Yes, ma'am. The Caucasian male said he wanted
11 everything, change and all. And I took the money out the
12 register, and they -- and I put that in one of our plastic
13 bags that we have in the store.

14 Q Do you remember if you were able to get any money
15 from the safe, or did it all come from the cash -- if you
16 remember?

17 A I know when they asked me to press the button,
18 they -- I think I pressed like the change, so it did get
19 some change. But I didn't press like any bills. It was
20 change that came out the safe.

21 Q Okay. Now, were you still on the phone at this
22 point?

23 A Yes, ma'am. I still had a phone to my head.

24 Q Okay. And what was the nature of your
25 conversation, like what's going on?

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 A She was just talking basically about getting her
2 hair done, so she never realized what was going on.

3 Q Okay. And was there a specific reason why you
4 didn't alert her to what was going on in that?

5 A Oh, yes. Because I had a gun in front of me and
6 one behind me, and I didn't know if I let her what would
7 happen.

8 Q How did you -- how were you holding the phone?

9 A With my shoulder.

10 Q Okay. Wow. You must be very well coordinated.

11 Okay. So after -- were there any -- other
12 than the money that you were able to give the men from the
13 register, were there any other items that were from the
14 Kangaroo Express that night?

15 A I know that it was cartons of cigarettes; it was
16 Cigarillos.

17 Q What's a Cigarillos? Is that a brand or --

18 A Swisher Sweet Cigarillos. Like, it's a cigar.

19 Q Okay. And that was something placed out by the
20 store for retail sale?

21 A Yes, ma'am.

22 Q So what happened after -- after you tell them that
23 there's a three-minute delay on the safe and you open the
24 second register, what happens at that point?

25 A I empty out all of the cash in the register and

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 put it into a plastic bag, and I gave it to the Caucasian
2 male. And they were putting the cigarettes and the
3 Cigarillos into another plastic bag, and that's when they
4 asked me to come around and go to the restroom.

5 Q Would it be that plastic bag that's depicted on
6 State's 38?

7 A Yes, ma'am.

8 Q And, again, the black male you described, which
9 one is he, the one in the front or the one in the back?

10 A The one in the front. The one in the front.

11 Q Okay. So what happened -- at some point did you
12 come out from behind the counter?

13 A Yes, ma'am.

14 Q Why did you do that?

15 A Because they told me to get in the bathroom.

16 Q Okay. And where was the bathroom in relation to
17 the counter?

18 A Um --

19 Q In other words, if you were going to come out from
20 the counter, where is the front door -- in other words,
21 where is this door in relation to the counter? Would it be
22 off to the left, the right, or further back, like in front?

23 A The counter is off to the right. Right there
24 where that the -- the end of the picture is, that's the top
25 part of the counter.

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 Q Oh, where it looks like --

2 A That is where it starts.

3 Q -- like bananas?

4 A Yeah. That is where it starts at.

5 Q Okay. So the counter is off to the right here.

6 So when you came out from the counter, did
7 you come by towards the bananas?

8 A Yes, ma'am.

9 Q And then which way is the bathroom? Looking at
10 the picture as it's displayed here, to go to the bathroom
11 would you go to the left or to the right?

12 A To the right.

13 Q Okay. And then where was it in the store as far
14 as -- was it like in the middle of the store, along the
15 sides of the store?

16 A The bathroom, it's off on the side.

17 Q Okay. So, at that point they told you to go to
18 the bathroom, right? What specifically did they say, and
19 who said it?

20 A The African-American told me to get up, let's go
21 to the bathroom, let's go to the bathroom. So, I walked
22 around the counter and that's when he asked me, Where is my
23 phone? And I said, It's right here. And he said, Let me
24 have it. And I said, Someone's on it. And he took it, and
25 that's when I went into the bathroom.

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 Q Okay. So the Defendant that you've identified
2 here is the one that said, Give me your phone?

3 A Yes, ma'am.

4 Q When you went to the bathroom, where were you in
5 relation to where they were? Were they in front of you, to
6 the side of you, to the back of you, when you walked?

7 A When I walked to the bathroom they were behind me.

8 Q Did you go to the bathroom?

9 A Yes, ma'am.

10 Q And what did you do once you got to the
11 bathroom -- at that point, did you have your phone?

12 A No, ma'am.

13 Q You didn't have your phone, right, because he had
14 taken it?

15 A He took it.

16 Q What did you do when you got in the bathroom?

17 A I locked the door once I got in the bathroom. I
18 used it. That was the main thing, trying not to use it
19 while they were in the store robbing me. And I came out of
20 the restroom, and I locked the front door of the store and I
21 got the phone and called 911.

22 Q Now, which phone did you use to call 911?

23 A The store phone.

24 Q After you called 911, did you make any other
25 calls?

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 A After I made the call to 911, I called my manager,
2 and she called the district manager.

3 Q Okay. What was your manager's name?

4 A Jennifer Sesmas.

5 MS. MUSSER: Sir, may I approach?

6 THE COURT: Sure.

7 BY MS. MUSSER:

8 Q Ma'am, I'm handing you what has been marked as
9 State's Exhibit 3. Do you recognize that firearm?

10 A Yes, ma'am.

11 Q And who had that during this whole incident?

12 A The African-American.

13 Q About how long did it take for the officers to
14 arrive?

15 A It wasn't that long. It felt like it was like two
16 to three minutes when they arrived. I stayed on the phone
17 with an operator from 911 until they pulled up.

18 Q How were you feeling emotionally at that point?

19 A Oh, at that point I just was ready to go home. I
20 was not wanting to work any more, not that time.

21 Q Have you worked the night shift since?

22 A No, ma'am.

23 Q Okay. Did you work -- so when the officers got
24 there, do you remember if you spoke with them?

25 A Yes, ma'am.

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 Q Did you tell them what happened?

2 A Yes, ma'am.

3 Q At some point were you asked to go to another
4 location?

5 A Yes, ma'am.

6 Q Where were you asked to go?

7 A I was asked to go to the other Kangaroo off on
8 Hilton Head, up Gum Tree.

9 Q Okay. And do you remember the name of the officer
10 that took you there, or no?

11 A I can't remember his name.

12 Q Okay. About how -- had you -- prior to -- did you
13 eventually go with him?

14 A Yes, ma'am.

15 Q Had you given him information before you left?

16 A Yes, ma'am.

17 Q Okay. Do you recall what you told the officer as
18 far as identifying information about the men?

19 A I told them about how tall he was, his stature and
20 build, and I also told him before we left that I think that
21 I recognized one of the guy's voices.

22 Q Okay. Of the guy's voices that you recognized,
23 was it the white male or the black male?

24 A It was the black male.

25 Q How did you recognize the voice? Like, do you

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 know the Defendant?

2 A Yes, ma'am.

3 Q How do you know the Defendant?

4 A I knew him from working with his son's mother. We
5 worked together for about a year, and I started braiding her
6 hair.

7 Q Okay. So you braid hair on the side as well?

8 A Yes, ma'am.

9 Q Okay. And when did you -- when did you -- what
10 was her name?

11 A Her name is Juanita Goodman.

12 Q And when did you meet Juanita, about what year?

13 A I met Juanita in -- I think that it was 2005 I met
14 Juanita.

15 Q And tell us again how you met her.

16 A I met her -- we both worked at the Waterford
17 Wedgewood in the Tanger outlet.

18 Q Okay. And did she introduce you to anyone else?

19 A Yes, ma'am.

20 Q Who did she introduce you to?

21 A She introduced me to his mother.

22 Q His, being the Defendant?

23 A Yes, ma'am.

24 Q Okay. And do you recall his mother's name?

25 A I remember her first name was Annette.

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 Q And what was your relationship with Annette?

2 A I started braiding her hair.

3 Q Where would you braid her hair?

4 A At her house.

5 Q Where was her house?

6 A It was off of Chelsea Lane in Ridgeland.

7 Q Okay. In the town of Ridgeland?

8 A Yes, ma'am.

9 Q To your knowledge, who did Annette live with?

10 A It was Annette, her husband, the daughter, and her
11 son, and the Defendant.

12 Q Okay. And about how often would you see Annette
13 at her house in Ridgeland?

14 A Maybe every two months.

15 Q And when you went did you have occasion to see the
16 Defendant there?

17 A Yes, ma'am.

18 Q Would you ever speak with him?

19 A Yes, ma'am.

20 Q What was the nature of your interaction when you
21 would see him?

22 A Just small talk. How you doing, I haven't seen
23 you in a while, what's going on, stuff like that.

24 Q At some -- at some point, when you were still at
25 the store, did you provide a name to anyone?

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 A Yes, ma'am.

2 Q Who did you tell, was it a sheriff -- or did you
3 provide a sheriff deputy a name?

4 A Yes, ma'am.

5 Q What name did you provide?

6 A I told him I didn't know what his real name was, I
7 know it was kind of a funny name, but they call him Lenny.

8 Q Okay. And so after you provide -- you tell the
9 deputy that the voice sounds familiar to you, and you
10 provide the name Lenny, at some point do you go -- you say
11 you went to the location of the Gum Tree Pantry?

12 A Yes, ma'am.

13 Q And what was the purpose of going to the Gum Tree
14 Pantry?

15 A To see if one of the men they had was the person
16 that I thought it was.

17 Q How did you get there?

18 A I rode in the car with the officer.

19 Q Okay. Were you in the front seat, back seat?

20 A I was in the back seat.

21 Q Okay. About how long did it take you to get from
22 the Kangaroo Express, where you were, to the Gum Tree
23 Pantry?

24 A It took maybe like three to five minutes to get
25 over there.

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 Q Okay. And what happened when you got there; what
2 did you see going on? Describe for us what was going on as
3 the police car pulled up.

4 A When I got there, the officer that I was riding
5 with told me that they were going to pull the guys out one
6 by one and see if it was the person that I told them I
7 thought it was. And they had all of the cars lined up in a
8 row. And he was like, They can't see you, but you will see
9 them. So they pulled out the first guy, and it was the
10 Caucasian male, and they shined the light in his face, and I
11 told them I didn't recognize him.

12 So they pulled out the second guy. And it
13 was another African-American, and I told them that's not
14 him. Then they pulled out the third African-American, and I
15 saw -- they shined a light in his face, and I told them that
16 was Lenny.

17 Q All right. And did you identify Lenny as the one
18 that was depicted in that photograph?

19 A Yes, ma'am.

20 Q How sure were you when you told that to the
21 deputy?

22 A About when they pulled him out of the car?

23 Q Right. Did you hesitate?

24 A No, ma'am.

25 Q How sure were you? Like on a scale of one to a

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 hundred, a hundred being like I know that --

2 A A hundred. I was sure. A hundred.

3 Q Was there anything -- was it good lighting? How
4 were you able to see the face when you were asked to
5 identify the men?

6 A They shined flashlights in their faces.

7 Q Was there anything obstructing your view? Did you
8 have to ask the officer to move his car or anything?

9 A No, ma'am.

10 Q After you identified the Defendant as the one
11 that's in that picture, and that had committed the armed
12 robbery, where did you go? Did you stay at that store, or
13 did you go back to your home store at the Pantry?

14 A We went back to my home store.

15 Q At some point, did you see Jennifer Sesmas there
16 that night?

17 A Yes, ma'am.

18 Q Okay. Did the store have a recording system?

19 A Yes, ma'am.

20 Q And to your knowledge, did she give a copy to the
21 officers?

22 A Yes, ma'am.

23 Q She did. Okay.

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

25 THE COURT: Sure.

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 BY MS. MUSSER:

2 Q Ma'am, I'm handing you two discs. They've been
3 collectively labeled State's 5A and 5B. Do your initials
4 appear anywhere on that disc?

5 A Yes, ma'am.

6 Q And is it dated?

7 A Yes, ma'am.

8 Q What's the date on there?

9 A It's August 25th, 2014.

10 Q Is that the video that you watched?

11 A Yes, ma'am.

12 Q All right. How about the one from 5B, did you
13 initial that?

14 A Yes, ma'am.

15 Q And what's the date on it?

16 A It's August 25th, 2014.

17 Q Okay. Now, after watching these did the images
18 depicted on these discs, did that fairly and accurately
19 depict what happened to you that night?

20 A Yes, ma'am.

21 Q And is that the video that is from the store
22 surveillance?

23 A Yes, ma'am.

24 Q While that's loading, did the system have an
25 audio?

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 A Yes, ma'am.

2 Q Okay. And -- okay.

3 But it was only the one camera, right, that
4 had the --

5 A I think it's the one that's behind the register
6 that has the audio.

7 MS. MUSSER: Your Honor, with the Court's
8 permission we'll publish the video depicted in 5A.

9 THE COURT: All right.

10 (Video playing.)

11 MS. MUSSER: Would the Court inquire to make sure
12 the jurors can see?

13 THE COURT: If anybody has any trouble seeing,
14 please raise your right hand, or your left hand.

15 I think we're good.

16 MS. MUSSER: Thank Your Honor.

17 Ms. Fulton, can you see the video as well?

18 THE WITNESS: Yes, ma'am.

19 BY MS. MUSSER:

20 Q We're just going to try and fast forward to the --
21 Okay. What is happening there?

22 A That's me walking in back from my cigarette break.

23 Q Okay. Uh-huh. (Indicating affirmatively.)

24 Is that when you mean you were on the phone
25 with the phone nestled in your --

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 A Yes, ma'am.

2 Q And is that the parking lot -- I guess out there,
3 is that facing -- what road is that facing? Do you
4 remember, does that face 278 or --

5 A Yes, ma'am.

6 Q Okay. Now, what is -- where were you when this
7 was happening?

8 A I was around the corner.

9 Q Okay. Go ahead, please.

10 Okay. All right. Now, obviously, that is
11 the white male coming in?

12 A Yes, ma'am.

13 Q All right. Now, is -- obviously, behind the
14 register isn't captured on this particular camera.

15 A No, ma'am.

16 Q Okay. And what's happening there?

17 A That's when they were taking my phone.

18 Q And I think we fast forwarded a little bit.

19 MS. MUSSER: All right. Go ahead. Stop it.

20 BY MS. MUSSER:

21 Q Okay. Now, does that fairly and accurately
22 depict -- well, I guess -- at that point, were you in the
23 restroom?

24 A Yes, ma'am.

25 Q Okay. But the bags that you saw them loading, is

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 that consistent with your recollection of what was being
2 loaded with the money and the cigarettes at the time you
3 observed it?

4 A Yes, ma'am.

5 Q Okay. Okay. All right.

6 MS. MUSSER: And that was 5B, right, that we just
7 watched? The video from the -- showing the front door?
8 And then this will be 5A.

9 (Video playing.)

10 BY MS. MUSSER:

11 Q Is that your voice?

12 A Yes, ma'am.

13 MS. MUSSER: Okay. Could you pause it for a
14 minute?

15 (Pause.)

16 BY MS. MUSSER:

17 Q Is there a sound delay, because in that case we
18 heard the voices before the images were coming through the
19 door?

20 A Yes, ma'am.

21 Q So I guess the sound comes first and then the
22 images are behind it?

23 A Yes, ma'am.

24 MS. MUSSER: Pause it there for a minute.

25 BY MS. MUSSER:

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 Q Now, you just said you couldn't have opened it up.
2 Is that because -- you weren't referring to the register?

3 A The safe.

4 Q Is that because the sound, the timing is off?
5 Were you referring to the safe?

6 A Uh-huh. (Indicating affirmatively.) I was
7 referring to the safe.

8 (Video playing in background.)

9 BY MS. MUSSER:

10 Q Is that you locking the door?

11 A Yes, ma'am.

12 Q Is it at that point that you called 911?

13 A Yes, ma'am.

14 Q Okay. All right.

15 MS. MUSSER: Beg the Court's indulgence.

16 THE COURT: All right.

17 (Pause.)

18 BY MS. MUSSER:

19 Q Did you ever get your cell phone back?

20 A No, ma'am.

21 Q And having watched that, did -- on a scale of one
22 to ten, how scared were you?

23 A I was about, say, a nine and a half, but I was
24 trying not to show it at all.

25 Q Okay. And, again, how long after that did you

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 stop working for the Kangaroo Express?

2 A Did I stop working?

3 Q Uh-huh. (Indicating affirmatively.)

4 A Well, that one, I stopped working there like two
5 months, and I actually started working to the one at Gum
6 Tree, the one where they took me to, to identify --

7 Q Did you ever work the night shift again?

8 A No, ma'am.

9 Q And why was that?

10 A I was not going to work overnight anymore.

11 Q Okay.

12 MS. MUSSER: Your Honor, I don't have anything
13 further. Thank you.

14 At this point -- I'm sorry, I do. May we admit?
15 I guess it's already been published, so, 5A and B are
16 admitted?

17 THE COURT: Over objection, yes.

18 *(Whereupon, State's Exhibit No(s). 5A, 5B marked*
19 *for identification and received in evidence.)*

20 MS. SAXON: Yes, Your Honor. Thank you.

21 CROSS EXAMINATION

22 BY MS. SAXON:

23 Q Good afternoon, Ms. Fulton.

24 A Hi.

25 Q You've been up there for a while. I just want to

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 make sure that you're okay right now.

2 A Yes, ma'am.

3 Q Okay. The night that this occurred law
4 enforcement had you write a statement out, correct?

5 A Yes, ma'am.

6 MS. SAXON: May I approach the witness, Your
7 Honor?

8 THE COURT: You may.

9 BY MS. SAXON:

10 Q And is this a copy of the statement that you
11 wrote, ma'am?

12 A Yes, ma'am.

13 Q And would you say that this is a accurate
14 reflection of that evening, as it was fresh in your mind
15 when it was written?

16 A Yes, ma'am.

17 Q You described in your statement that both of the
18 assailants were wearing blue bandannas around their faces,
19 correct?

20 A Yes, ma'am.

21 Q But it was covering their nose and mouth?

22 A Yes, ma'am.

23 Q And that you could only see their eyes?

24 A Yes, ma'am.

25 Q You also said that they were both wearing hoodies?

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 A Yes, ma'am.

2 Q So outside of being able to see their eyes and
3 maybe their hands, there was nothing identifiable about them
4 to you visually?

5 A No, ma'am.

6 Q As far as their physical characteristic, you
7 described the black male as shorter than you, correct?

8 A Yes, ma'am.

9 Q And how tall are you?

10 A Well, at that time I was 5'7", but I went to the
11 doctor and I'm now 5'9".

12 Q Okay. Now, in this statement that you wrote, you
13 don't mention recognizing anyone's voices, do you?

14 A No, not in that statement.

15 Q Right. But you do tell the officer that you
16 recognize a voice, correct?

17 A Yes, ma'am.

18 Q And you -- it's your testimony that you did that
19 prior to ever viewing anyone, right? That you did it at the
20 Kangaroo store, but not at the Gum Tree store?

21 A I told him that before -- right after I wrote the
22 statement, when I was just waiting. Waiting, and I was like
23 I think I recognized one of the males that robbed me.

24 Q Uh-huh. (Indicating affirmatively.)

25 A And that's when I told him who I thought it was.

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 Q Right. Now, you said that you met Mr. Pritchett
2 in 2007 while you were doing his mother's hair; is that
3 correct?

4 A Yes, ma'am.

5 Q And you said that you did his mother's hair, maybe
6 once every two months?

7 A Yes, ma'am.

8 Q For about how long?

9 A I did it for maybe like a year --

10 Q Okay.

11 A -- or more. I stopped going over there because I
12 would have to go to her house all the time, and I like doing
13 hair at my house.

14 Q Okay. So we'll estimate, you're saying about six
15 times that you did her hair in a year, if you were doing it
16 every two months?

17 A Yes, ma'am.

18 Q Okay. And at those appointments you would
19 sometimes see Mr. Pritchett, is your statement; correct?

20 A Yes, ma'am.

21 Q And when you sometimes saw him, you would
22 sometimes have a conversation with him, correct?

23 A Yes, ma'am.

24 Q And that conversation was very casual?

25 A Yes, ma'am.

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 Q Were you doing anything else during the
2 conversation?

3 A I was braiding her hair while I was having
4 conversation with him.

5 Q Okay. Was anyone else involved in the
6 conversation?

7 A Just me, him, his mother, or -- and his sister, or
8 if Juanita was over there, her.

9 Q Now, you testified that -- about who was saying
10 what to you during the armed robbery, correct? And you said
11 that the black male asked you where your phone was and asked
12 you to open the safe, correct?

13 A No. The -- I said the Caucasian male asked me to
14 open up the safe. The black male asked me where my phone --
15 where my phone was.

16 Q Okay. And going back to your phone, you know, we
17 saw in the video that you were on it, correct?

18 A Yes, ma'am.

19 Q And you were talking to whom?

20 A My cousin.

21 Q And she continued to talk to you throughout the
22 robbery?

23 A Yes, ma'am.

24 Q Because she was blissfully unaware of what was
25 occurring, correct?

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 A Yes, ma'am.

2 Q Okay. So you had her in one ear, correct?

3 A Yes, ma'am.

4 Q And you had the white male giving you
5 instructions, correct?

6 A Yes, ma'am.

7 Q As well as the black male giving you instructions?

8 A Yes, ma'am.

9 Q Okay. When you identified Mr. Pritchett here in
10 Court today you said he's wearing a mostly black and white
11 shirt?

12 A Yes, ma'am.

13 Q Can you -- his shirt -- can you tell that his
14 shirt is actually gray?

15 A It looks black from where I'm sitting.

16 Q Okay. You also identified that they were -- both
17 assailants were wearing black hoodies; is that correct?

18 A Yes, ma'am.

19 Q And -- but the video we just saw shows clearly
20 that one of them had on a blue hoodie, correct?

21 A But -- yeah, the head part was blue, but this part
22 was black.

23 Q This part being?

24 A The chest part was black.

25 Q Okay. When you described the suspects and what

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 they were wearing, you didn't describe them as having
2 anything on their hands, did you?

3 A Not that I remember.

4 MS. SAXON: The Court's indulgence. I'm just
5 reviewing my notes.

6 (Pause.)

7 BY MS. SAXON:

8 Q When -- and I know you don't remember the
9 officer's name, but when officer -- when -- and I'm going to
10 say this wrong, Polites, took you to the identification you
11 testified that he said they had someone and they wanted you
12 to see if it was who you thought it was, or something to
13 that effect? I probably didn't say it exactly right.

14 A Yes, ma'am.

15 Q So he indicated to you that they had a suspect in
16 custody?

17 A Yes, ma'am.

18 Q Now, when the white male was pulled out of the car
19 you said that you didn't recognize him, correct?

20 A Yes, ma'am.

21 Q Because you had never seen his face or anything
22 about him, correct?

23 A Yes, ma'am.

24 Q But, you know -- you know, you've met
25 Mr. Pritchett before, so when he was pulled out of the car

WITNESS - MAKE FULTON
WITNESS - MAKIA FULTON

1 you said, Oh, that's Lenny, correct?

2 A Yes, ma'am.

3 Q Okay.

4 MS. SAXON: That's all I have, Your Honor. Thank
5 you.

6 THE COURT: Any redirect?

7 MS. MUSSER: Nothing further, Your Honor. Thank
8 you.

9 THE COURT: Thank you, ma'am. You may step down.

10

11 MS. MUSSER: May Ms. Fulton be excused?

12 THE COURT: You may be excused from your subpoena.
13 Call your next witness.

14 MS. MUSSER: The State calls Jennifer Sesmas.

15 Thereupon,

16 JENNIFER SESMAS

17 was called as a witness, having been first duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 MS. MUSSER: Thank Your Honor. May I inquire?

21 BY MS. MUSSER:

22 Q Good afternoon, Ms. Sesmas -- am I pronouncing
23 that correctly?

24 A Yes, ma'am.

25 Q Ma'am, I'm going to -- back in 2010 where were you

WITNESS - JENNIFER SESMAS

WITNESS - JENNIFER SESMAS

1 working?

2 A I was the store manager at the Kangaroo Express.

3 Q I'm sorry?

4 A I was the store manager at the Kangaroo Express.

5 Q And where was that Kangaroo Express?

6 A At the foot of the bridge, going from Bluffton
7 into Hilton Head.

8 Q How long had you worked there? And I want to ask
9 you to keep your voice up pretty loud so everybody can hear
10 you. Okay?

11 A Well, I had been working for the company since
12 April of '08. I had worked at numerous locations, but that
13 particular store, I had been there, I think, four or five
14 months.

15 Q And what was your job title?

16 A I was the store manager.

17 Q What did some of the -- your daily
18 responsibilities being the store manager, what did they
19 include?

20 A Okay. When I came in, it was checks and balances
21 with the money in and out everyday. We also -- I also did
22 checks and balances for cigarettes, and I also reviewed
23 videotape as in like if incidents occurred, you know, things
24 of that nature. And then pretty much just maintain customer
25 service and that type of nature of stuff.

WITNESS - JENNIFER SESMAS

WITNESS - JENNIFER SESMAS

1 Q How would the store keep track of, for example,
2 like nightly deposits? Was there a system in place to -- I
3 guess it's like loss prevention, to make sure people weren't
4 either selling things at a discounted price. What -- tell
5 us about the money aspect first. How would you keep track
6 of how much money the store brought in?

7 A Okay. With the company they have what they call a
8 back office computer, and then you have the two front
9 registers/computers, and they intertwine with each other.

10 So basically every morning I would start with
11 a certain amount of money in the safe with the two
12 registers, and then basically at a point of sale, as they
13 rang up things or charged, you know -- or gas of this
14 nature, items in the store or either gas, it would calculate
15 the cash intake and the cash outtake. And then as --
16 because it was a 24-hour store we didn't do deposits until
17 the next morning.

18 So every morning I came in at 6:00, and
19 basically what happens is we count down the registers. And
20 then I count down the money in the safe. And then it checks
21 and balances with the back office computer.

22 And as in, too, like on the register, as it
23 would only allow them to keep a -- I think it was \$200 in
24 the till at all times. So if they went over that amount, it
25 was prompted for them to drop the money, and it would be

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1 dropped into the bottom of the safe.

2 Q Okay. You also described part of your
3 responsibilities as, I guess, inventory -- inventorying the
4 -- I guess tobacco products; is that fair to say?

5 A Uh-huh, yeah.

6 Q What kind of system did you have for that?

7 A It's pretty much the same thing. As cigarettes
8 were rang throughout the day the system would generate, you
9 know, whether a carton was sold versus a pack. And then
10 every morning I would actually have to hand count either the
11 cartons in the back, all the cartons and the single packs in
12 the front, and then do a checks and balances. So basically
13 if I started with 5,000 one day and we sold 250, then I
14 should have counted the 4750 the next morning, so that it
15 would balance.

16 Q Okay. And you said that's something that you did
17 everyday as part of your job?

18 A We did it everyday, uh-huh.

19 Q All right. I'm going to direct your attention
20 back to April 1st of 2010, and the incident that brings you
21 to Court today.

22 At that time where were you living; what town
23 were you living in?

24 A I was living in Bluffton.

25 Q Was there a particular like intersection that was

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1 close to you or --

2 A I lived right off of Buckwalter Parkway.

3 Q All right. And at some point in the early morning
4 hours, were you -- were you called to go to the Kangaroo
5 Express?

6 A Yes. After the police arrived, Kia was directed
7 to call me because I had the access to the back office where
8 the security surveillance and all that stuff was. So I was
9 called in to obviously, one, she has to report it to me, and
10 then the checks and balances for counting the cash, you
11 know, the cigarettes, and then we let the officers in so
12 that they could view the video.

13 Q Okay. And by Kia, do you mean, is that a nickname
14 for Makia Fulton?

15 A Makia, I'm sorry. That is what we called --
16 definitely called her for short. Sorry. I noticed I said
17 that. But Makia.

18 Q Okay. Do you remember what you were -- I mean, at
19 that time, it was fair to say you were probably sleeping
20 when you got the call?

21 A Yes, because I was supposed to be there at
22 6:00 the next morning.

23 Q About how far away, like how many minutes would it
24 take you to get to work?

25 A Probably five minutes at the most.

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1 Q When -- did you go -- did you go to the Kangaroo
2 Express after you got the call?

3 A Yes. I got up and went straight there.

4 Q Okay. Were there any officers there when you
5 arrived?

6 A At that point in time I believe there was three or
7 four officers there on the scene.

8 Q And did you speak with them?

9 A Yes. I spoke with -- I believe it was Pilot --
10 Polite -- okay.

11 Q Polites. Now I can't pronounce it. Polites.

12 A That was the main person that I remember speaking
13 with at that point and moment.

14 Q In your capacity as the store manager, were you
15 familiar with the surveillance system?

16 A Yes.

17 Q Let me back up. Did the store have a surveillance
18 system?

19 A Yes.

20 Q And was it old school, VHS, digital?

21 A No. It was all -- at that point in time the
22 company had upgraded, and it was digital.

23 Q It was part of your responsibilities to be
24 familiar with that system, because I believe you said that
25 you would sometimes download --

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1 A Yes. We did a training session once they
2 installed the new system. It was a training session on
3 actually how to go back and view certain points of times or
4 days, because it kept a certain amount of time linked before
5 it like dropped and went to, I guess, computer space.
6 However that works.

7 And then, you know, being able to, so that I
8 could view daily, you know, like if there's discrepancies
9 that I had to -- like there's missing money or internal like
10 things or nature that happened, that I could always go back
11 and view an incident that happened.

12 Q And did you have the ability to copy it in a
13 format that the officers could take with them?

14 A Yes.

15 Q Okay. And would that be on disc?

16 A Yes, that was on -- yeah.

17 Q And with respect to how it records, does it record
18 simultaneously?

19 In other words, it wouldn't be -- it wouldn't
20 record something that happened like 24 hours in advance, it
21 was like a live recording?

22 A Yes. It was a live recording.

23 Q Now, we just watched the video and there was a
24 sound delay. Is that something that was normal, or as part
25 of the audio and the camera?

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1 A That was normal, because being at a few other
2 stores and having to dub stuff for officers, too, that
3 sometimes it would do -- it would do the same sound delay,
4 and I think it was just our system.

5 Q Okay. When you met with Corporal Polites, did you
6 burn a copy of the DVD for him?

7 A Yes.

8 Q Okay. And then did you also give a copy to
9 Investigator Cooler, or allow him access to your system?

10 A Yes.

11 Q At the officers' request, were you able to go back
12 and determine approximately what items were taken from the
13 store?

14 A Yes. Well, on the video you could actually see
15 where they were taking the cigarettes and the -- I guess you
16 call them the Cigarillos/blunts and that, because that's
17 actually on the video.

18 Q Okay.

19 A I couldn't necessarily account for how many of
20 those were taken because we didn't count those, besides the
21 cigarettes. So based on, you know, like I said earlier, you
22 know, I had a point, a count of what we started with that
23 previous morning with cigarettes, and then minus what we had
24 sold during the day, and then what I accounted for. So we
25 were able to account for a difference that was missing, just

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1 like the same thing with the cash.

2 Q Okay. Were you able to determine what brand of
3 cigarettes were taken?

4 A Yes. They were Newports. You could see that
5 actually on the video.

6 Q Were you able to determine how many cartons?

7 A Well, besides what I saw on the video, like when
8 we counted, a carton counted for ten packs. So we didn't
9 necessarily, you know, when we counted it, it was a per pack
10 thing. So I couldn't necessarily -- I could tell you that,
11 you know, there was 30 packs, so it could be three cartons.
12 Or it could have been two cartons and ten packs off the
13 shelf. So I couldn't tell you the variety, but could just
14 tell you the amount.

15 Q Okay. Do you recall meeting with Investigator
16 Angela Viens and giving her a specific number of cartons
17 that were missing of Newport cigarettes?

18 A Uh-huh. (Indicating affirmatively.)

19 Q And do you recall the number?

20 A I believe that I want to say I think that it was
21 four or five.

22 Q Okay. And then were you able to determine how
23 many -- if there were any other brands of cigarettes or
24 Cigarillos?

25 A Yeah. I couldn't tell you like the amount of

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1 packs of the Cigarillos, the blunts that were taken just by
2 guestimate. It was like, I guess, the shelf holds ten, so
3 there was four left, so approximately six could have been
4 taken.

5 Q What brand were those, if you remember?

6 A I believe they were Swishers. Swisher Sweets, I
7 think. I believe that's what they called them.

8 Q Okay. And do you recall the amount that you
9 indicated to Officer Viens was missing from the cash
10 registers?

11 A Yes.

12 Q And what was that amount?

13 A I believe it was \$181 and some change.

14 Q Okay. And of that, some of the money was returned
15 to the store, correct?

16 A The what?

17 Q Some of the money was returned to the store?

18 A Everything except the actual change, change like
19 the quarters and like that stuff. It was returned to the
20 store.

21 Q Some of the bills, you mean?

22 A Some of the bills. Yeah, the -- yeah.

23 MS. MUSSER: Your Honor, may I have a moment?

24 THE COURT: You may. Certainly.

25 MS. MUSSER: Your Honor, nothing further. Thank

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1 you.

2 THE COURT: Cross examination.

3 MS. SAXON: Thank you.

4 CROSS EXAMINATION

5 BY MS. SAXON:

6 Q You said -- could you remind me where you used to
7 live again at the time and date of this incident?

8 A I lived in -- off of Buckwalter Parkway.

9 Q Okay. And just to clarify, you would say from
10 your place on Buckwalter, it would take you about five
11 minutes to get to work?

12 A Approximately five minutes. It could have been
13 less because I normally took the Bluffton Parkway straight
14 down.

15 Q Okay. But do you know about how many miles that
16 was that you were traveling?

17 A No.

18 Q Okay.

19 MS. SAXON: That's all that I have, Your Honor.

20 THE COURT: Thank you, ma'am. You may step down.

21 You may call your next witness.

22 MS. MUSSER: Your Honor, may this witness be
23 excused?

24 THE COURT: She may be.

25 MS. MUSSER: Your Honor, may we approach about

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1 scheduling?

2 THE COURT: You may.

3 Would you all like to stand and stretch again
4 while I talk to them on sidebar?

5 (Pause.)

6 THE COURT: We're getting ready to take a short
7 ten-minute recess, ladies and gentlemen. I'll ask you
8 to retire to the jury room, and remind you that it's
9 too early to begin discussing the case.

10 (The jury exits the courtroom at
11 3:00 p.m.)

12 THE BAILIFF: The jury is clear, Your Honor.

13 THE COURT: All right. Let's take a five-minute
14 recess.

15 (Brief recess.)

16 THE COURT: Welcome back, ladies and gentlemen. I
17 believe that there's still evidence from the State.
18 Solicitor, call your next witness.

19 MS. MUSSER: Thank you, Your Honor. At this time
20 we would call Master Sergeant Angela Viens.

21 Thereupon,

22 ANGELA VIENS

23 was called as a witness, having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

WITNESS - ANGELA VIENS

1 BY MS. MUSSER:

2 Q Good afternoon, ma'am.

3 A Good afternoon.

4 Q Ma'am, by whom are you employed?

5 A I currently work for the Beaufort County Sheriff's
6 Office.

7 Q How long have you worked for the Sheriff's Office?

8 A This is my 18th year anniversary this week so . .
9 .

10 Q Happy anniversary.

11 A Thank you.

12 Q Your title is master sergeant. What is some of
13 your responsibilities, job duties with holding that rank?

14 A Previously I was the master sergeant in Criminal
15 Investigation. I worked in that section for about 15 years.
16 In February of this year I transferred back to the patrol
17 section; so currently my job duties entail supervising the
18 patrol shift south of the Broad River in an administrative
19 capacity.

20 Q Back in 2010 were you still a master sergeant?

21 A I was a staff sergeant.

22 Q Okay. As being staff sergeant what was your role
23 with respect to investigations into, for example this case,
24 which is an armed robbery?

25 A In 2010, as a staff sergeant in Investigations I

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1 was the assistant supervisor over the investigative section
2 south of the Broad River. I carried a caseload as an
3 investigator and also supervised the daily operations of the
4 team of investigators in my office.

5 Q And south of the Broad River would encompass
6 Bluffton and Hilton Head --

7 A Bluffton, Hilton Head, Pritchardville areas.

8 Q What was the protocol for patrol deputies when
9 there was a case, such as this armed robbery that you did, I
10 guess, input in here by the Investigations unit?

11 A In an after-hours situation if the patrol deputies
12 responded to a violent crime or a situation that was beyond
13 their means or capabilities of handling, we had an on-call
14 rotation list where our team of investigators works, you
15 know, just like any job. You would have an on-call person
16 subject to being called in at any time during the night. In
17 2010, Investigator Cooler and myself were the on-call
18 detectives for the night in question.

19 Q Okay. So, in the early morning hours of April 1st
20 of 2010, did you receive such a call requiring your
21 on-call -- you know, detective on -- being on call?

22 A Yes, ma'am.

23 Q And what was the nature of that call?

24 A We responded to investigate the armed robbery at
25 Kangaroo gas station at the -- I'll call it the Pantry by

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1 the bridges because that's kind of what I know it as.

2 Q All right. Were you -- were you at the station
3 when you received the call or were you somewhere else?

4 A No, I was at home sleeping.

5 Q All right. Do you recall what time -- did you go
6 to what we have been referring to as the Kangaroo Express at
7 1610 Fording Island Road?

8 A Yes, ma'am. My original response was to that gas
9 station. While I was there I met with the clerk that was
10 working and photographed the scene itself, took a gander at
11 the video surveillance that was available, met with the
12 district manager and kind of got an understanding of what
13 happened in the store, what items were stolen. At that
14 point I departed there and went to the Kangaroo on Gum Tree
15 Road which is on Hilton Head and met with Investigator
16 Cooler and the patrol officers that had a vehicle detained
17 at that point.

18 Q Okay. Were you, after watching the video did you
19 have -- you said you had a basic understanding of what had
20 transpired in the store. Did you know the general
21 description of the two individuals involved?

22 A I knew from watching that video that you had an
23 African American male subject and a white male subject, at
24 least from what you could see, the parts of their skin that
25 was displayed. Both subjects were armed with firearms,

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1 handguns, and their basic clothing description.

2 Q Okay. Did you meet with a woman by the name of
3 Jennifer Sesmas with respect to the video?

4 A I did. She was, I believe, the district manager
5 or the store manager for that Kangaroo gas station.

6 Q And from her were you able to determine what items
7 had been taken?

8 A Yes. They had just recently during the nighttime
9 had a delivery from their supply person. There were a
10 couple of cartons of Newport cigarettes, some mini
11 Cigarillos, which I think are like little cigars, and if --
12 and Swisher Sweet cigarettes, and then cash, I think, which
13 was like a \$181 or something close to that.

14 MS. SAXON: Do you have any objection if we let
15 Master Sergeant Viens look through her report?

16 MS. MUSSER: Your Honor, I did speak to Ms. Saxon.
17 She has no objection to the master sergeant reviewing
18 her notes as she testifies as long as the Court is
19 acceptable with that?

20 THE COURT: Certainly.

21 BY MS. MUSSER:

22 Q Okay. Ma'am, did you have occasion to interview
23 Makia Fulton?

24 A I did.

25 Q Did she indicate -- did she provide any names to

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1 the Sheriff's Office with respect to either of the
2 individuals that had robbed the store?

3 A She knew the African American male subject as a
4 person named Lenny. I don't know if it was a -- a family
5 acquaintance or someone that she knew, you know, she had
6 friends with in the past but she knew him as Lenny.

7 Q Okay. You indicated that you went to the Gum Tree
8 location. Is that the same location where, was it Corporal
9 Murphy at the time or Deputy Corporal Murphy?

10 A He was probably a lance corporal or something.
11 That's been a couple of years ago.

12 Q Okay. What action did you take after you -- did
13 Ms. Sesmas provide -- you said she provided you with the
14 inventory of the -- the stolen items, correct?

15 A Yes.

16 Q And then what further action, after you met with
17 Investigator Cooler at the Gum Tree location, then what did
18 you -- did you have an opportunity to view the individuals
19 that had been detained by Corporal Murphy?

20 A I did. They were all detained and transported
21 back to our office, which at that point was at 7 Lagoon Road
22 down on the south end of Hilton Head.

23 Q Were they photographed?

24 A They were photographed at that time prior to being
25 transported to the detention center.

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1 MS. MUSSER: And, Your Honor, once again,
2 Ms. Saxon and I did speak. She has no objection to the
3 introduction of the following pictures. So, we may
4 publish as we go -- admit and publish as we go along.

5 THE COURT: Okay. They will be all admitted.

6 MS. MUSSER: Okay.

7 *(Whereupon, State's Exhibit No(s). 27-33 marked*
8 *for identification and received in evidence.)*

9 BY MS. MUSSER:

10 Q Ma'am, I'm handing you State's Exhibit 27 which
11 was previously been admitted. Do you recognize that
12 individual, 27, please?

13 A This is a photograph taken in our holding room,
14 our interview room, of Mr. Philenza Pritchett.

15 Q Okay. And is that what he was wearing at the time
16 he was detained?

17 A Yes, ma'am.

18 Q Okay. And is this just another view? This is
19 State 28.

20 A Yes, ma'am.

21 Q Okay. And were those the sneakers he was wearing?

22 A Yes, ma'am.

23 Q Okay. With respect to the other individual, was
24 Brandon Rolt photographed?

25 A He was.

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1 Q And is that who is depicted in State 29?

2 A Yes, ma'am.

3 Q Okay. And does that fairly -- and does this
4 fairly and accurately depict Mr. Rolt?

5 A Yes, ma'am.

6 Q Okay. And specifically the jeans that he was
7 wearing at the time he was detained?

8 A Yes.

9 Q All right. Now, I'm handing you State's
10 Exhibit 30. What's depicted in this -- actually 30 and 31.
11 What's depicted in State's 30?

12 A I believe these are the shoes and the bandana or
13 do-rag that was taken off of Mr. Pritchett at the detention
14 center.

15 Q Okay. And what is the do-rag?

16 A That is the thing, if you go back to the previous
17 picture of him in the interview room or the holding room,
18 the -- the thing that's on his head.

19 Q Okay. The bright blue?

20 A Yes, ma'am.

21 Q Okay. All right. Okay. And once again, were
22 these the sneakers that were -- where were the sneakers
23 taken from the Defendant?

24 A I believe they were taken at the detention center
25 when he was booked into the jail.

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1 Q Okay. All right. And number 32 and then we will
2 follow that up with 33. Okay. And what does this shirt
3 depict?

4 A That is the black T-shirt that was taken from him
5 at the detention center. And State's 33 is the black pants.

6 Q Okay, with the Dickies label right here?

7 A Yes, ma'am.

8 Q Okay. That -- following -- what's the
9 individual -- the four individuals were detained and
10 photographed. Did you have occasion to obtain a search
11 warrant for any vehicles?

12 A Yes, ma'am. Later that afternoon I met with the
13 magistrate judge over here in Beaufort. We had towed the
14 vehicle that they were occupying at the Gum Tree Pantry to a
15 secure impound lot over on Shanklin Road. I obtained a
16 search warrant to search the contents of the vehicle at that
17 point and we executed it that afternoon.

18 Q Okay. And I'm showing you State's 39. Are you
19 familiar with that? Is that -- what is 39?

20 A Thirty-nine is the vehicle that was impounded from
21 the Gum Tree Pantry that, that the -- Mr. Pritchett was an
22 occupant of the night of the robbery.

23 *(Whereupon, State's Exhibit No(s). 39 marked for*
24 *identification and received in evidence.)*

25 Q Okay. So, that was the vehicle that was searched,

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1 okay. So. When you went to do the search, were there items
2 recovered within the car?

3 A Yes.

4 Q Were there items recovered in the front of the
5 car?

6 A There were items recovered in the passenger
7 compartment of the car, which is obviously the four-seat car
8 as well as the trunk.

9 Q Okay. So let's just see if we can do this
10 systematically. Did you -- did you do an inventory of -- of
11 the search of the car?

12 A Yes, ma'am.

13 Q Okay.

14 A When we execute a search warrant depending on the
15 number of items that are going to be taken it is our
16 obligation to provide a copy of or a receipt for what we
17 have taken from the premise. And we basically make a list
18 of the items in the location from which it was recovered so
19 . . .

20 Q I'm just trying to think of the easiest way to do
21 this. We will start with the pictures and then we'll do all
22 the physical items.

23 A Okay.

24 Q All right. So, I'm handing you back pictures.
25 Would you just say what that number is, what it is, and then

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1 we'll pull it up on the screen and we'll go that way and
2 then we'll go from there.

3 A Okay, it is State's Exhibit 14. Fourteen?

4 Q Forty?

5 A I'm sorry, 40, yes.

6 Q Okay. And first of all, what is this item?
7 What's it -- what is depicted?

8 A A pack of Newport cigarettes and it looks like a
9 CD case.

10 MS. MUSSER: Your Honor, with the Court's
11 permission, may we have Ms. McNeal, as the master
12 sergeant is testifying, do you mind if she writes on
13 the easel?

14 THE COURT: Certainly.

15 BY MS. MUSSER:

16 Q All right. Let's try and do this systematically.

17 A Okay.

18 Q All right. So, all right, we're just going to
19 start with a fresh piece of paper.

20 A Okay.

21 *(Whereupon, State's Exhibit No(s). 40 marked for*
22 *identification and received in evidence.)*

23 Q And once again, this is State's Exhibit 40. And
24 what -- what does this depict and where in the car is it?

25 A That is an unopened pack of Newport cigarettes and

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1 it's on the front passenger floorboard.

2 Q Okay. Were any items, okay, what's the next
3 picture?

4 A The next picture is State Exhibit 41.

5 Q Okay. And what is depicted in 41?

6 A That is a box of Swisher Sweet cigars.

7 Q Okay. And is that of the same type that was taken
8 from the Kangaroo Express?

9 A Yes.

10 *(Whereupon, State's Exhibit No(s). 41 marked for*
11 *identification and received in evidence.)*

12 Q Next picture?

13 A That is a revolver. I believe it's going to be a
14 Charter Arms revolver. If you will give me just a minute.
15 It was a Charter Arms revolver. It was found in the glove
16 compartment of the vehicle.

17 Q Okay. So the glove compartment, is that the one
18 that would be right in the front of the passenger's seat?

19 A In front of the passenger's seat, that is correct.

20 Q And as for the evidence, did you secure each and
21 every one of the items and put them into evidence, like, for
22 example, the firearm?

23 A Yes.

24 Q Okay. And the next picture that you have?

25 A The next picture is State's Exhibit 43.

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1 Q And what area of the car does this -- is reflected
2 here?

3 A This is an image of the rear passenger's
4 compartment taken from the -- I'm sorry, yes, taken from the
5 passenger's side.

6 Q So, the Newport, the pack of Newport cigarettes
7 that we saw in the first picture, they would have been up
8 here in this area?

9 A Yeah, in the front.

10 Q Okay. And then the Swisher?

11 A In the -- in the door pocket.

12 Q In this -- in this doorway, okay. So, probably
13 this door right here?

14 A Yes, ma'am.

15 Q Okay. All right. Obviously that's the rear seat.
16 Okay. And is -- are these photographs taken at the time the
17 car was searched?

18 A Yes.

19 Q And do they fairly and accurately depict how the
20 items appeared when you first saw them?

21 A When I first started searching the vehicle, yes.

22 Q Was the vehicle towed from the scene of the Gum
23 Tree Pantry?

24 A To our impound lot, yes.

25 Q Is that a secure lot?

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1 A It is.

2 Q Did anyone else have access to the vehicle prior
3 to the search other than law enforcement?

4 A Not to my knowledge, no.

5 Q Okay. All right. But it is a secure facility.
6 In other words, civilians can't just walk up and --

7 A No.

8 Q -- help themselves to whatever is in the cars?

9 A No, ma'am.

10 *(Whereupon, State's Exhibit No(s). 43 marked for*
11 *identification and received in evidence.)*

12 Q Okay. How about the next picture, please?

13 A After 43 is State's 44, also an image of the rear
14 compartment of the vehicle from the driver's side-view.

15 Q Okay. All right.

16 A Forty-five are two of the rear passenger seat.

17 Q Is that a close-up?

18 A Yes.

19 Q Okay. Now, did you view -- you had already seen
20 the video, correct, when you found -- when you -- when you
21 located these?

22 A Yes.

23 Q And they were consistent with each other?

24 A Yes, ma'am.

25 Q Okay.

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1 A All right. State's Exhibit 46 is -- when we
2 opened the trunk of the vehicle, that their, obviously,
3 personal items that are inside of the trunk. I think it was
4 pretty full.

5 Q And is that how it appeared -- had you manipulated
6 anything in the trunk or rearranged any of those items?

7 A No, I had not.

8 Q Okay. So, it was photographed as soon as the --
9 the trunk was popped open?

10 A Yes, ma'am.

11 Q Okay. Okay.

12 A State's 47.

13 Q What was the next process with respect to
14 searching the trunk?

15 A Okay. We had discovered when you opened the
16 passenger doors that there was an access to the trunk from
17 the passenger compartment of the vehicle behind the seats.
18 Obviously you can tell from State's 46 that there were, it
19 looks like, garment bags and laundry bags that were neatly
20 placed. Those were eventually taken out, but we also opened
21 the trunk compartment from the interior of the vehicle.

22 *(Whereupon, State's Exhibit No(s). 46 marked for*
23 *identification and received in evidence.)*

24 Q Okay. So, at what -- with respect to 40 --
25 State's Exhibit 47, where was this, like, chronologically

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1 when you were doing this search? In other words, did I put
2 the -- the pictures out of sequence as to opposed to how you
3 searched it?

4 A I -- I don't believe so. I think we open all four
5 doors. We take a -- the overall pictures and then we kind
6 of move in as normal.

7 Q Okay. And why did you take -- why was this
8 photograph taken? What was -- what were you capturing?

9 *(Whereupon, State's Exhibit No(s). 47 marked for*
10 *identification and received in evidence.)*

11 A That photograph is actually State's Exhibit 48 and
12 49, or this is the -- the overall view of when the seat was
13 actually first, 48, when the seat was first peeled down.

14 Q Wait. Forty-eight?

15 A Forty-eight, yes, when we first opened the seat.
16 You can see the carton of Newport cigarettes in the back and
17 then the -- the black bag there.

18 Q Is this the portion -- which portion of the car is
19 depicted here?

20 A That is the passenger's seat rear.

21 Q Okay. And was there a mechanism that moved the
22 seat?

23 A There is a little release.

24 Q Is that depicted on the photograph?

25 A I think that's the button there.

WITNESS - ANGELA VIENS

1 Q Okay. This button right here?

2 A No. No.

3 Q Up here?

4 A No. No. Right there.

5 Q That right there?

6 A Yeah.

7 Q Okay. Now, once again, when this photograph was
8 taken had anything been manipulated?

9 A No.

10 Q Would this area have been accessible prior to the
11 person, like, sitting in that seat?

12 A Could you have accessed that while you were a
13 passenger in the vehicle?

14 Q No, like before. In other words, is this -- for
15 the seat to come forward would it still move or did it --
16 the seat have to be empty, if you know?

17 A No, I'm thinking -- I'm assuming or thinking that
18 you -- you can still sit down and move the seat forward. I
19 didn't test that.

20 Q Okay. And then was this item here in the blue and
21 the black collected?

22 A Yes, it was.

23 Q Was the cigarette carton collected in that plastic
24 bag?

25 A Yes.

WITNESS - ANGELA VIENS

1 Q And was the black backpack?

2 A I do believe so.

3 *(Whereupon, State's Exhibit No(s). 48 marked for*
4 *identification and received in evidence.)*

5 Q Okay. If we can go to 49. Is that just a
6 close-up?

7 A Forty-nine is -- is a closer view of 48.

8 Q Now, had the items been manipulated in any way
9 prior to taking the picture?

10 A Not at that point.

11 Q Okay.

12 A Forty-seven, you can see that they have been
13 pulled out a little bit.

14 *(Whereupon, State's Exhibit No(s). 49 marked for*
15 *identification and received in evidence.)*

16 Q Okay. All right. What's the next picture,
17 number, please?

18 A Fifty.

19 Q Okay. What is depicted in that item?

20 A That is the --

21 Q Or --

22 A -- backpack that is basically either on top of
23 the -- or right beside the Newport cigarettes in the trunk.

24 Q Okay.

25 A It's after it's been pulled out of the trunk.

WITNESS - ANGELA VIENS

1 Q Fifty-one?

2 A Fifty-one is the inside contents of the backpack.

3 Q Okay. And just so -- what's the process, like,
4 when you're -- when you're photographing and conducting a
5 search warrant; they're photographed and the items are taken
6 out and more photographs?

7 A Yes.

8 Q Okay. And what's depicted here?

9 A That is, it looks like a quarter coin wrapper and
10 cash money.

11 Q And is that the same backpack that was depicted in
12 the prior pictures?

13 A Yes, ma'am.

14 Q Okay.

15 A And 52 is a close-up of that as well.

16 Fifty-three is an image of a black
17 sweatshirt.

18 Q Okay.

19 A That was taken out of the trunk. And 54 is a --
20 it looks like a royal blue sweatshirt with a black T-shirt
21 over it.

22 Q Okay. And did you personally collect that from
23 the trunk?

24 A Yes, I did.

25 *(Whereupon, State's Exhibit No(s). 50-54 marked*

WITNESS - ANGELA VIENS

1 *for identification and received in evidence.)*

2 Q And was that the -- was it accessible in that pull
3 down, when the seat pulled down?

4 A Yes, ma'am. I think if you go back to 49, we can
5 actually see it in that image behind the cigarettes there.

6 Q Okay. So, is this blue the same blue sweatshirt
7 that you pulled out of the --

8 A Yes, ma'am. Yes, ma'am.

9 Q Okay. And were all of those items retrieved from
10 the rear passenger side access panel?

11 A Yes, ma'am, with the exception of the -- that
12 single pack of Newport cigarettes and the Swisher Sweet
13 cigars.

14 Q Okay. Did you collect the dark blue bandanas that
15 were found in the rear passenger compartment?

16 A Yes, ma'am.

17 Q If we can go back.

18 With respect to -- if we can pull up 54
19 first. With -- did you have an opportunity to inspect this
20 item when you pulled it out and looked at it as far as -- is
21 this all one garment?

22 A No.

23 Q Okay.

24 A No. That's a sweatshirt with a T-shirt on top of
25 it.

WITNESS - ANGELA VIENS

1 Q Okay. And what is depicted, I'm sorry, in 55?

2 A Fifty-five is just a close-up of that sweatshirt
3 and T-shirt.

4 *(Whereupon, State's Exhibit No(s). 55 marked for*
5 *identification and received in evidence.)*

6 Q Okay. And would that -- has long sleeves, all
7 right.

8 Ma'am, I'm handing you what has been marked
9 as State's Exhibit 4. Will you look at that item and see
10 how you're familiar with it? You can take it out of the bag
11 to look at it to see if you're familiar with that item.

12 A Well, my name and -- and badge number are on the
13 outside of the bag, written as a Charter Arms off duty .38
14 Special revolver with a serial number. And my signature
15 signing it into our evidence locker.

16 Q And then who did it go to? Is there -- is there a
17 subsequent signature on there that would indicate who you
18 turned it over to?

19 A I turned it into Ms. Eileen Rios. She's our
20 evidence custodian.

21 Q Okay. So, that went from you at the time of the
22 search -- did you put -- did you retrieve it from the car?

23 A Yes, ma'am.

24 Q Did you secure it? I'm assuming it was secured?

25 A Yes, ma'am. It's rendered safe, if that's what

WITNESS - ANGELA VIENS

1 you're asking.

2 Q That was what I was asking.

3 A Okay.

4 Q If that was rendered safe?

5 A Yes, ma'am.

6 Q And what type of firearm is that again?

7 A It's a revolver, .38 Special.

8 Q And that was from the glove compartment, correct?

9 A Yes, ma'am.

10 Q Okay.

11 MS. MUSSER: Your Honor, we start -- I don't know
12 if the Court would prefer that I just seek to admit
13 everything once I'm done or. With that, may the State
14 admit and publish to the jury Number 7, which is the
15 firearm?

16 THE COURT: Yes. That motion is granted.

17 *(Whereupon, State's Exhibit No(s). 4 marked for*
18 *identification and received in evidence.)*

19 MS. MUSSER: Just so you know, there is a
20 mechanism; there is a zip tie in there that would
21 prevent it from firing and it's not loaded. So don't
22 freak out.

23 (Gun is shown to the jury.)

24 MS. MUSSER: Okay. All right. Thank you. And
25 then I'll take that back so you have some room up

WITNESS - ANGELA VIENS

1 there.

2 BY MS. MUSSER:

3 Q Were there bullets in it when it was recall --
4 when you made it secure? Did you have to take bullets out?

5 A Three.

6 Q Okay. And is that -- the revolver is with the
7 spin cartridge, correct --

8 A Yes, ma'am.

9 Q -- as opposed to a magazine?

10 A Yes, ma'am.

11 Q All right. Now, this has been marked as State's
12 7. Now, in the condition that I'm handing it to you, it's
13 sealed, correct?

14 A Um.

15 Q What's the process when -- that as an investigator
16 and the deputies use it -- when you're placing an item into
17 evidence and you bag it like that, what information do you
18 write on that outside bag that you can see?

19 A The date and time of recovery, who the collecting
20 officer was, the time that you collected it, and what is
21 contained in the bag. From there usually the collecting
22 officer will sign it over via what we call a chain of
23 custody so there's a record of who actually had possession
24 of the items during certain points.

25 Q Okay. From looking at State's Exhibit 7, can you

WITNESS - ANGELA VIENS

1 tell who obtained those items?

2 A Jason Perusnowski obtained them while he was at
3 the detention center on 4-1-2010 at 12:30. From there they
4 were signed over to Laura Albertin who in turn signed them
5 over to me.

6 Q Okay. And at this point, Your Honor, we would
7 move to admit Number 7. It's -- it's --

8 THE COURT: Without objection.

9 MS. SAXON: I might have my numbers confused. Is
10 7 the bag of clothing?

11 MS. MUSSER: Yes, ma'am.

12 MS. SAXON: Okay. No objection.

13 *(Whereupon, State's Exhibit No(s). 7 marked for*
14 *identification and received in evidence.)*

15 BY MS. MUSSER:

16 Q Does the bag indicate who these items were taken
17 from?

18 A Item, State's Exhibit 7 came from Brandon Rolt.

19 Q Rolt, okay. Would you open that, please? I think
20 I left you with a pair of scissors.

21 A Yes. (Witness complying.)

22 Q While you are opening it, these were collected at
23 the detention center, correct?

24 A Yes, ma'am. Two black sneakers.

25 Q And just for the record, what color are they?

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1 A Black.

2 Q Now, are these the same items of clothing that
3 were depicted in State's Exhibit, I forget what number, that
4 you showed up with -- with Brandon Rolt?

5 A Yes.

6 Q Okay. Are these the exact same clothes?

7 A These are the pants.

8 Q Okay. And are these the clothes that he was
9 wearing when he was detained?

10 A Yes, ma'am.

11 MS. MUSSER: Do you have any objection if I put
12 them on the floor so --

13 THE COURT: I do not. Just keep track of them.

14 BY MS. MUSSER:

15 Q Ma'am, I'm handing you what has been marked as
16 State's Exhibit 8. Could you say what that is, if -- if it
17 was in your custody, it was turned over to you, and then
18 we'll open it.

19 A This bag is labeled as Nike sneakers, a black
20 belt, black pants, blue do-rag from Philenza Pritchett. The
21 location is 106 Ribaut Road, and again, it was taken by
22 Jason Perusnowski.

23 Q Okay. And what's at the 106 Ribaut; is that the
24 detention center?

25 A That's the detention center.

WITNESS - ANGELA VIENS

1 Q Okay.

2 MS. MUSSER: At this time we would move to admit
3 State's Exhibit 8.

4 THE COURT: Without objection.

5 *(Whereupon, State's Exhibit No(s). 8 marked for*
6 *identification and received in evidence.)*

7 BY MS. MUSSER:

8 Q Were those the sneakers that were collected off
9 the defendant, Mr. Pritchett?

10 A Yes.

11 Q And do you see Mr. Pritchett in the courtroom
12 today, the individual that you photographed with respect to
13 this incident?

14 A He's seated at the table with the two young
15 ladies.

16 MS. MUSSER: Your Honor, may the record reflect
17 the identification of the Defendant?

18 THE COURT: So noted.

19 BY MS. MUSSER:

20 Q And, ma'am, what is that?

21 A That is the blue do-rag that he had on his head.
22 A belt. Black Dickie trousers.

23 Q I'm sorry, can you -- that same, that Dickie's
24 emblem, can you turn that around? What pocket is that?
25 Would you -- how would you describe that pocket; is that on

WITNESS - ANGELA VIENS

1 the front or the back?

2 A There are actually two. I would consider that
3 like a -- I don't know that that's a pocket. Like a cargo
4 pocket maybe.

5 Q Okay.

6 A There's one on the hip and one on the front left
7 side.

8 Q Okay. Front, right, knee length?

9 A Uh-huh. (Indicating affirmatively.) Okay. And
10 black T-shirt. That's it.

11 Q Okay. And once again, were they subsequently
12 turned over to Ms. Rios as the evidence custodian?

13 A Yes.

14 Q Thank you.

15 Did you have occasion to obtain any swabs
16 from any individuals? Did you have occasion to obtain a DNA
17 swab from Mr. Rolt?

18 A A DNA standard, yes. It was collected from his
19 mouth on the night or the early morning that he was
20 arrested.

21 Q Okay. Is that about the same time the photograph
22 was taken?

23 A Yes.

24 Q Ma'am, I'm handing you what's been marked as
25 State's Exhibit 9.

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1 MS. MUSSER: And, Your Honor, I have spoken with
2 Ms. Saxon. I don't believe there's any objection to
3 that evidence.

4 BY MS. MUSSER:

5 Q Do you mind breaking that seal and telling the
6 jury if you're familiar with that?

7 A (Witness complied.) Again, the description of the
8 items is the DNA buccal swab from Brandon Rolt that was
9 taken in our office at 7 Lagoon Road on the morning of April
10 the 1st at 7:30 in the morning. It was sealed with my
11 signature on the end.

12 Q And who did you turn it over to?

13 A I turned that over to Ms. Eileen Rios.

14 Q Does the bag indicate who she turned it over to?

15 A No, it does not.

16 Q Okay. On the outer bag are there any additional
17 names from --

18 A It --

19 Q -- as part --

20 A It would show like a transfer sheet where it went
21 to SLED. This is a SLED evidence bag, not ours.

22 Q Okay. Okay. So, as you packaged it, it was in
23 the brown bag?

24 A Yes, ma'am.

25 Q I'm handing you what's been marked as State's

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1 Exhibit 10. What is that item?

2 A State's Exhibit 10 is a box of Newport 100s
3 cigarettes and a box of Cigarillos.

4 Q And did you collect those items?

5 A I did.

6 Q And where were they recovered from?

7 A From the passenger side compartment of the
8 Volkswagen.

9 MS. MUSSER: And, Your Honor, at this point I ask
10 to pub -- admit and publish them to the jury?

11 THE COURT: Without objection. Motion granted.

12 *(Whereupon, State's Exhibit No(s). 10 marked for*
13 *identification and received in evidence.)*

14 BY MS. MUSSER:

15 Q If you don't mind, can you just kind of hold them
16 up for the jury?

17 Okay. Are they opened or unopened?

18 A This is opened.

19 Q And what is that?

20 A When I say "opened," it says it's a mini
21 Cigarillo.

22 Q What brand is it?

23 A Swisher Sweet.

24 Q Okay.

25 A And I'd say it's opened, the plastic cellophane is

WITNESS - ANGELA VIENS

1 not there.

2 Q Okay. And what's the other item you're holding in
3 your hand?

4 A It is one of these.

5 Q Okay. Is that what a mini Cigarillo is?

6 A Yes, ma'am. And the pack says it contains six but
7 there are five in here and one loose.

8 Q Okay. And then the packet of Newport cigarettes?

9 A Are unopened.

10 Q Okay. And is that consistent with the brand that
11 was taken from the Kangaroo Express?

12 A Yes, ma'am.

13 Q Were those the ones that were depicted in, I
14 forget the number, that were in the front compartment?

15 A I believe so, yes, ma'am.

16 Q Okay. Go ahead.

17 A No, go ahead.

18 Q No, can you find it in the picture real quick?

19 A (Witness complies.)

20 Q Okay. What number was that, 41?

21 A 41 and 40.

22 Q Okay. Thank you.

23 A Uh-huh. (Indicating affirmatively.)

24 Q Moving on to State's Exhibit 11, is that an item
25 that you've collected?

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1 A Yes, it is a sealed evidence bag with blue
2 bandanas.

3 Q And whose -- whose writing appears on the outside
4 of that bag?

5 A Mine.

6 Q And where did you collect that item from?

7 A The back seat of the Volkswagen.

8 Q Okay. Would you open that for us, please? Do you
9 still have your scissors up there?

10 A Yes, ma'am. (Witness complies.)

11 Q Are those in the same condition as you recovered
12 them? In other words, did you place them and seal them in
13 that bag?

14 A Yes.

15 Q Okay. And could you actually -- can you kind of
16 take them out and, like, kind of spread them out a little?

17 A (Witness complies.)

18 Q And is that how they were folded?

19 A I -- I think they've been balled up in this bag
20 for -- and there are actually three not two.

21 Q Okay. Thank you, ma'am.

22 A They have been balled up in this bag for a while.

23 Q Since the time you sealed it?

24 A Yes, ma'am.

25 MS. MUSSER: And, Your Honor, that was number 11

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1 that was admitted.

2 THE COURT: Without objection.

3 *(Whereupon, State's Exhibit No(s). 11 marked for*
4 *identification and received in evidence.)*

5 BY MS. MUSSER:

6 Q I'll trade you number 12. All right. That is
7 State's Exhibit 12. Once again, does that -- does your
8 writing appear on the outside of that bag?

9 A Yes.

10 Q Okay. With respect to these items that you've
11 been testifying to, did you give them all to Ms. Rios, the
12 evidence custodian?

13 A Yes, ma'am.

14 Q Okay.

15 A This is the black backpack that was in the trunk.

16 Q And is there still money in there?

17 A No, ma'am. The money was removed and returned to
18 the manager at the Pantry. There are the quarter wraps, the
19 money wraps.

20 Q The quarter wrappers?

21 A Uh-huh. (Indicating affirmatively.)

22 Q Okay. And again, that item has remained sealed?

23 A No, this bag was not sealed.

24 Q Okay. Has that been in the care and custody of
25 the Sheriff's Office since --

WITNESS - ANGELA VIENS

1 A Yes.

2 Q -- the time you collected it?

3 A It's been in the evidence locker.

4 MS. MUSSER: And, Judge, for admission purposes,
5 that was number 12.

6 THE COURT: Without objection.

7 *(Whereupon, State's Exhibit No(s). 12 marked for*
8 *identification and received in evidence.)*

9 BY MS. MUSSER:

10 Q All right. This is number 13.

11 A Item 13 is a black, hooded sweatshirt that was
12 found in the trunk of the Volkswagen. It was sealed by me.
13 The seal has been open and there is a SLED lab number on
14 here, so I'm assuming it was transferred to SLED at some
15 point for analysis purposes.

16 Q Okay. Is that how you would have packaged it, or
17 is that repackaging from SLED?

18 A No. This has been repackaged.

19 Q And what -- for purposes of the record, what is
20 SLED?

21 A SLED is the State Law Enforcement Division.

22 Q And once again, is this an item that you turned
23 over to Ms. Rios?

24 A Yes.

25 Q Now is that the same black sweatshirt that was

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1 depicted in one of the State's exhibits of you holding a
2 black sweatshirt?

3 A Yes.

4 Q Okay. Do you recall where that was recovered from
5 in the car?

6 A I can look at my inventory. I believe that came
7 from the trunk of the car.

8 Q And, once again, you turned that over to Ms. Rios?

9 A Yes.

10 Q And did it -- does it appear today as it appeared
11 in substantially the same?

12 A Depending on what testing they did with it, it may
13 have some cuts in it. I'm not sure. But the overall
14 appearance is the same, yes.

15 Q Thank you.

16 This is State's 14.

17 And, again, Your Honor, Ms. Saxon has no
18 objection to admitting 13.

19 THE COURT: Admitted without objection.

20 *(Whereupon, State's Exhibit No(s). 13 marked for*
21 *identification and received in evidence.)*

22 A This is the -- the hooded sweatshirt with the
23 black colored T-shirt over it that was collected by me from
24 the trunk of the vehicle, packaged and sealed, my signature
25 on the evidence tape and has been repackaged by SLED.

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1 BY MS. MUSSER:

2 Q And, again, you turned that over to Ms. Rios?

3 A Yes.

4 Q Thank you. Sorry for interrupting.

5 Now, when you first recovered that, is that
6 how it appears?

7 A No.

8 Q How did it appear?

9 A It is a sweatshirt that's a SLED item with a
10 T-shirt on top of it, and I would not have separated it
11 prior to turning it in.

12 Q Okay. Were they packaged under the same -- you
13 said that you would not have taken them apart like that?

14 A No.

15 Q So, they were put in the same evidence bag?

16 A They were put in the bag as they were collected
17 with the T-shirt over the sweatshirt.

18 Q And then you sealed it?

19 A Yes, ma'am.

20 Q Okay. And turned it over to Ms. Rios?

21 A Yes, ma'am.

22 MS. MUSSER: Your Honor, that was number 14. I
23 don't believe there was an objection to its admission.

24 MS. SAXON: No objection.

25 THE COURT: Admitted without objection.

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1 *(Whereupon, State's Exhibit No(s). 14 marked for*
2 *identification and received in evidence.)*

3 BY MS. MUSSER:

4 Q And is that -- is that the blue sweatshirt that
5 was recovered in that access panel?

6 A Yes, ma'am.

7 Q Directly behind the rear passenger seat --

8 A Uh-huh.

9 Q -- passenger side?

10 A (Indicating affirmatively.)

11 Q Okay. I'll hand you State's 15.

12 A These are the items which were taken from the
13 trunk compartment of the truck -- of the vehicle that were
14 seen in the images where you pulled the seat down.

15 Q Were they in the plastic bag when you took them
16 out of the trunk?

17 A I would have to look at the image to be certain.

18 Q And, once again, once you recovered them, those
19 items, did you put them in that evidence bag?

20 A Yes, ma'am.

21 Q And was it turned over to Ms. Rios?

22 A Yes.

23 Q Okay. Can you describe for the -- the jury, we
24 can kind of see it, but how many cartons of Newports are
25 there up there?

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1 A There are four cartons of Newport 100s.

2 Q And is that consistent with the information that
3 you've received from Ms. Sesmas --

4 A Yes.

5 Q -- with respect to what was took?

6 A Yes.

7 Q Taken. Are some of the boxes opened or are they
8 all still sealed, if you can tell?

9 A This one looks like it's still sealed. This one
10 appears to be taped shut, but there's nothing missing from
11 it. This is still sealed and new. This one's got a piece
12 of tape on it as well. And without opening it, actually it
13 feels like there are two packs missing from there, which is
14 probably these. Two more packs of the mini Cigarillos that
15 are unopened.

16 Q And, again, are they the Swisher Sweets?

17 A Swisher Sweets, yes, ma'am. And one more carton
18 of Newports that are unopened.

19 Q And one -- how many plastic bags are there?

20 A One.

21 Q Okay.

22 MS. MUSSER: Beg the Court's indulgence.

23 No further questions, Your Honor. Thank you.

24 MS. SAXON: Your Honor, may we approach, please?

25 *(Whereupon, State's Exhibit No(s). 15 marked for*

WITNESS - ANGELA VIENS

1 *identification and received in evidence.)*

2 (Off-the-record discussion held.)

3 CROSS EXAMINATION

4 BY MS. SAXON:

5 Q Good afternoon. How are you doing?

6 A Okay.

7 Q Viens?

8 A Viens.

9 Q Okay. Just wanted to make sure. Master Sergeant
10 Viens.

11 When you -- we're going to go back to the
12 very beginning, and I know we've gone through everything.
13 But when you responded initially you went to the Kangaroo --
14

15 A First.

16 Q -- first, which is -- what you referred to, I
17 believe, as the --

18 A Pantry by the bridges.

19 Q Pantry by the bridges. Okay. When you arrived,
20 who was there?

21 A I believe Ms. Sesmas and Fulton were there.

22 Q Okay. And --

23 A And I believe Corporal Polites may have been
24 there. I can't recall specifically.

25 Q Okay. And do you know what had happened up to

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1 that point as far as --

2 A Prior to me getting there?

3 Q Yes.

4 A I only know from what was told to me via telephone
5 or radio is that -- obviously after the call came out,
6 within a minimal amount of time, there was a vehicle
7 detained at the Gum Tree Pantry with four occupants in it.

8 Q Okay. And when you spoke with Ms. Fulton, had she
9 already been transported to and from the Gum Tree?

10 A I don't remember.

11 Q Okay.

12 A I don't -- I don't know how fast that happened.

13 Q Right. When -- when she described them to you, it
14 was at -- it was one white male and one black male subject,
15 both armed, and she gave you basic clothing descriptions,
16 correct?

17 A I do believe so, yes, ma'am.

18 Q And, let's see. And the -- what were those
19 clothing descriptions if -- if you can recall?

20 A I believe the original BOLO that we had was a dark
21 sweatshirt and dark pants. We went back and reviewed the
22 video and, of course, it was a dark T-shirt over the
23 sweatshirt and dark pants.

24 Q Okay. So you altered the BOLO after you had seen
25 the evidence?

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1 A Right. I -- I don't know that we altered the
2 BOLO. They had been detained --

3 Q Okay.

4 A -- already prior to me getting there. Once we
5 were able to view the video in its entirety and were able to
6 gain an accurate description we knew at that point what type
7 of evidence we were looking for as far as a search warrant
8 goes.

9 Q When you -- you observed each suspect as they were
10 brought in as -- at arrest, what they were wearing head to
11 toe, right?

12 A Yes, ma'am.

13 Q Okay. And just to clarify, when you saw
14 Mr. Pritchett he was wearing a black T-shirt?

15 A Yes, ma'am.

16 Q And black Dickies?

17 A Yes, ma'am.

18 Q And do -- are you familiar with Dickies?

19 A They give them to us to wear at the academy. I
20 mean, I --

21 Q It's a pretty common brand?

22 A Yes, ma'am. I think they sell them at like maybe
23 Target or Wal-Mart --

24 Q Wal-Mart, okay.

25 A -- or something, or uniform stores.

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1 Q And then he had on the Nike shoes that we've seen?

2 A Yes, ma'am.

3 Q And a do-rag?

4 A Yes.

5 Q And there had been no mention of -- of anyone with
6 the do-rag on in the robbery, had there?

7 A Not at that point, I don't believe so.

8 Q You initiated a search warrant the next -- or that
9 same day?

10 A No. It was the same day, later in the day, yes.

11 Q Later in the afternoon?

12 A Uh-huh.

13 Q And when you initiated the search warrant there's
14 certain protocols that you follow, correct?

15 A Yes, ma'am.

16 Q You wore gloves?

17 A Yes, ma'am.

18 Q And you took pictures of what you were doing?

19 A Yes, ma'am.

20 Q And you videotaped it?

21 A We did not videotape it. We photographed it. We
22 didn't videotape it.

23 Q Okay. But -- but you documented what you were
24 doing?

25 A Yes, ma'am.

WITNESS - ANGELA VIENS

1 Q And is that standard procedure?

2 A Yes, ma'am.

3 Q Would you say that's standard procedure whenever
4 you're collecting evidence?

5 A It depends on the situation. I mean, if it's a
6 controlled evidence collection, i.e., a search warrant or a
7 consent search where you have time to -- to do all of those
8 things, yes. If you're on the roadside and you're searching
9 the vehicle, a traffic stop or searching a person, incident
10 to arrest or a detention, for what -- we don't photograph.
11 There is no time for that.

12 Q Okay. A number of -- of the items that have been
13 presented today through you, those were items that were
14 eventually sent off for DNA testing; is that correct?

15 A I do believe so, yes.

16 Q Who makes that determination?

17 A As far as what is --

18 Q What gets tested?

19 A We look at the -- the case in totality and decide
20 at that point what items would have probative value if they
21 were tested for DNA or, you know, ballistics or gunshot
22 residue or anything like that. It's kind of looking at the
23 case in totality with the case officer, manager or unit
24 supervisor.

25 Q Okay. So it's a kind of a group decision?

WITNESS - ANGELA VIENS

1 A I -- it's, you know, we discuss it. I wouldn't
2 say it's a group decision. But the case officer is
3 responsible for submitting the lab request --

4 Q Okay.

5 A -- to either our lab or SLED or --

6 Q Okay.

7 A -- or whatever else is tested.

8 Q Do you remember what all you submitted for
9 testing?

10 A I do not.

11 Q Okay.

12 A Did I -- did I do the lab submittal or did
13 somebody else do the lab submittal? I will look at my copy
14 of that. I apologize.

15 Q Moving on. In the -- we talked a lot already
16 about the trunk access through the passenger or through the
17 passenger compartment. It was -- the seat would have to --
18 it would fold down?

19 A Yes, ma'am.

20 Q Okay. And was that -- was it a bench seat, like
21 the whole back would have to fold down?

22 A No. I think if you can look at the -- wherever
23 the photographs are -- I think the seats are separated by
24 it. So, each side would be able to fold down, I think.

25 Q So, to reach -- so if you're sitting in, just for

WITNESS - ANGELA VIENS

1 reference, this is State's 43, if you're sitting in the back
2 passenger seat, this part of the seat would fold down, the
3 top part?

4 A Yes, ma'am.

5 Q But it wasn't like there was a reach-through where
6 the center console would be in the back seat?

7 A I'm not following you.

8 Q Some cars have those installed where you can pull
9 down just like --

10 A Like an armrest.

11 Q And they could reach through there. It wasn't
12 like that?

13 A No, the actual seat folded down.

14 Q Right. Okay. So -- and it would have to fold all
15 the way forward. And so in --

16 A It doesn't even have to fold all the way forward.
17 I think the release is right here.

18 Q Okay.

19 A And if you lean up.

20 Q And so -- and this is, again, State's 48. And
21 this shows the seat leaned forward, correct?

22 A Yes, ma'am.

23 Q And this -- and this would have been the back
24 passenger's seat?

25 A Yes.

WITNESS - ANGELA VIENS

1 Q And so, all the way reach behind, is that where
2 that thing is?

3 A Yes, ma'am.

4 Q Okay. You -- I mentioned -- and these are -- you
5 mentioned a number -- almost all of the evidence bags were
6 sealed. But the black backpack, bag, that was not sealed.
7 Is there a specific reason for that?

8 A The reason that the bags are sealed is there may
9 be a potential for DNA testing.

10 Q Okay.

11 A But we do not. Our lab doesn't test without the
12 submitting officer sealing it to ensure that it can't be
13 tampered with. There was no DNA testing going to be done on
14 the backpack so it was submitted the way that it was.

15 Q Okay. And so the things that were sealed then,
16 they were sealed to take those precautions?

17 A Potentially.

18 Q Okay. And that way when you submitted them to DNA
19 testing, there wasn't any chance of outside --

20 A Right. Because my signature actually goes across
21 the whole piece of tape from bag to bag.

22 Q And so we know, yeah, once it's in there --

23 A Uh-huh.

24 Q -- they're not messing with it until SLED gets it?

25 A That's correct.

WITNESS - ANGELA VIENS

1 Q Okay.

2 MS. SAXON: The Court's indulgence, Your Honor.

3 (Pause.)

4 MS. SAXON: That's all I have, Your Honor. Thank
5 you.

6 MS. MUSSER: Sir, with that, may Master Sergeant
7 Viens be excused?

8 THE COURT: You certainly may be excused from your
9 subpoena. Thank you, ma'am.

10 MS. MUSSER: Just for recordkeeping, I think we
11 should have four -- State's Exhibit 4, 7, 8, 9, 10, 11,
12 12, 13, 14, 15 and then 28 through 33 and then 39
13 through 55 all admitted.

14 THE COURT: All admitted without objection, I
15 believe.

16 MS. SAXON: Yes.

17 MS. MUSSER: And, Your Honor, with respect to
18 scheduling, I'm happy -- we are right on schedule. So,
19 perhaps it might be a good time to break for the day
20 with starting again tomorrow morning, if the Court is
21 so inclined.

22 THE COURT: Unless you have a short witness.

23 MS. MUSSER: I don't, Your Honor. But for the
24 most part, the rest are all relatively short.

25 THE COURT: Okay.

COLLOQUY

1 MS. MUSSER: So, we'll still be able to finish.

2 THE COURT: Well, ladies and gentlemen, we're
3 going to call it a day. And I'll ask you to be back in
4 the jury room at 9:30 in the morning. I'll remind you
5 not to let anybody talk to you about the case and you
6 don't talk to anybody about the case. See you back in
7 the morning, ladies and gentlemen, 9:30.

8 (The jury exits the courtroom.)

9 THE COURT: Is there anything we need to do or
10 take up or discuss before tomorrow?

11 MS. MUSSER: Your Honor, just for the Court
12 though, we have chosen -- we have Investigator Cooler
13 tomorrow and then we have some chain witnesses and then
14 wrap it up with two people from SLED.

15 MS. SAXON: And in -- in -- with respect to our
16 possible witness list, Your Honor, the -- the witness
17 that we are potentially planning to call is Brandon
18 Rolt who is in custody with the Department of
19 Corrections. In trying to plan for it. I requested
20 that he be here Thursday morning at 9:00 a.m. I didn't
21 know how long the case was going to take. I can
22 attempt to -- and I'm certainly willing to be in touch
23 with -- with SCDC.

24 THE COURT: But I thought -- I thought we had
25 anticipated we were going to be -- you'd be through by

COLLOQUY

1 lunch tomorrow?

2 MS. MUSSER: Well, Judge, and I -- I don't
3 remember because I would have, I think, suggested to
4 Ms. Saxon, well, have him transported and have him here
5 at least by Tuesday so that he was available. So . . .

6 THE COURT: But you have an order already
7 directing transport?

8 MS. SAXON: Yes, Your Honor. It was just that
9 I -- when we -- and by no fault of her own Caroline had
10 accidentally left Ms. Musser off the original email
11 about how long do you think it will take and things of
12 that nature. And so, when I requested it I was doing
13 it off of my best estimation of how long things would
14 go, and so it's a surprise to anyone that that was
15 wrong. And so I -- the best guess is, would be, you
16 know, I would absolutely need him. And, like I said, I
17 am happy to contact SCDC. I know they'll -- they'll
18 work with us as best they can to see if we can get him
19 here earlier.

20 THE COURT: Yes, I would think that we'd need him
21 by lunch tomorrow potentially.

22 (Trial adjourned for the day.)

23

24

25

CERTIFICATE PAGE

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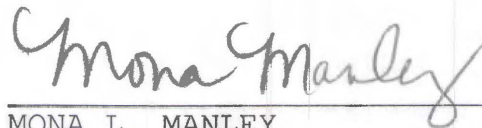
CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 5th day of December, 2014.



MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 2010-GS-07-872
	)	CASE NO. 2010-GS-07-873
	)	CASE NO. 2010-GS-07-875
	)	CASE NO. 2010-GS-07-876
	)	CASE NO. 2010-GS-07-977
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
	)	
PHILENZA PRITCHETT,	)	
	)	
Defendant.	)	
	)	

August 27-28, 2014
Beaufort, South Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, Judge; and a jury

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

LYNORR MUSSER, Esquire
Attorney for the Plaintiff

JESSICA M. SAXON, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

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1				
2				
3	S-1	Aerial Map		
4	S-2	Gun in Box		
5	S-3	Gun n Bag		
6	S-4	.38 Special Gun		
7	S-5A	CD		
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11	S-8	Bag of Clothing		
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13	S-10	Newport Cigarettes/Cigarillos		
14	S-11	Two (2) Blue Bandannas		
15	S-12	Backpack		
16	S-13	Black Hoodie		
17	S-14	Blue Hoodie & T-shirt		
18	S-15	Newport Cigarettes/Cigarillos		
19	S-16	(none presented)		
20	S-17	(none presented)		
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22	S-19	Car Diagram		
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2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-22	(none presented)		
4	S-23	(none presented)		
5	S-24	(none presented)		
6	S-25	Car Tag Photograph		
7	S-26	Car Photograph		
8	S-27	Defendant Photograph		
9	S-28	Defendant Profile Photograph		
10	S-29	Suspect Photograph		
11	S-30	Tennis Shoes Photograph		
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21	S-40	CD Photograph w/Newports		
22	S-41	Swishers		
23	S-42	Gun Photograph		
24	S-43	Seat Photograph		
25	S-44	Rear Seat Photograph		

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3	S-45	Two Bandannas Photograph		
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1 AUGUST 27, 2014

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record. The
4 trial resumed for the day at 9:39 a.m.)

5 THE COURT: Anything we need to take up?

6 MS. SAXON: Just in regards to scheduling, Your Honor.
7 We had discussed the possibility that we would be calling Mr.
8 Rolt. In talking further with my client, as well as co-
9 counsel, we have decided that we will not call him and,
10 therefore, his timing of arriving here in Beaufort County no
11 longer concerns the Court.

12 THE COURT: It's no longer an issue. Okay. Are you
13 ready to proceed?

14 MS. MUSSER: Yes, Your Honor. Thank you.

15 THE COURT: All right. Let's find our jury.

16 THE BAILIFF: Yes, Your Honor.

17 (Whereupon, the jury enters the courtroom at 9:40 a.m.)

18 THE BAILIFF: The jury is entering the courtroom, Your
19 Honor.

20 THE COURT: Welcome back. Good morning, ladies and
21 gentlemen. I believe we're ready to continue with
22 presentation of evidence by the State. Solicitor?

23 MR. MUSSER: Thank you, Your Honor. Your Honor, the
24 State calls Investigator Brandon Cooler.

25 THE CLERK: Do you solemnly swear or affirm to truthfully

1 answer all of the questions asked of you by this court, so
2 help you God?

3 THE WITNESS: I do.

4 THE CLERK: Please be seated.

5 MS. MUSSER: Thank you, Your Honor.

6 BRANDON COOLER, being first duly sworn,
7 testifies as follows?

8 DIRECT EXAMINATION

9 BY MS. MUSSER:

10 Q: Good morning, Investigator Cooler. By whom are you
11 currently employed?

12 A: The Beaufort County Sheriff's Office.

13 Q: And in what capacity?

14 A: I am currently a sergeant for southern investigations.

15 Q: How long have you held that position?

16 A: I was promoted to sergeant in February of this year.

17 I've been in investigations for the past five years.

18 Q: Okay. So back in 2010, were you an investigator?

19 A: I was.

20 Q: Were you assigned to the northern division or the
21 southern division?

22 A: The southern division.

23 Q: I'm going to direct your attention back to April 1st of
24 2010. Sir, do you recall if you were on duty at that time or
25 if you were on call?

1 A: I was on call that day.

2 Q: And did you receive a call in the early morning hours of
3 that day with respect to an armed robbery that had occurred at
4 the Kangaroo Express?

5 A: I did.

6 Q: And what did you do as a result of receiving that call?

7 A: I received a call from Master Sergeant Viens. She
8 advised me if I could respond to the Gumtree Pantry and meet
9 with deputies in reference to having a possible suspect
10 stopped at that location for the armed robbery.

11 Q: Okay. Approximately what time did you arrive?

12 A: Approximately 3:15 I want to say. I'd have to refer to
13 my report to be exact.

14 Q: Okay.

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

16 THE COURT: Certainly.

17 Q: If you just want to take a look at that --

18 A: Thank you.

19 Q: -- and see if that refreshes your recollection as to the
20 time?

21 MS. MUSSER: Ms. Saxon, do you have any objection if
22 Investigator Cooler uses his notes up there?

23 MS. SAXON: No. None. No objection.

24 MS. MUSSER: Okay.

25 BY MS. MUSSER:

1 A: Yes, ma'am, 3:15 in the morning.

2 Q: Okay. And what was your function when you got there?
3 What -- first of all, who was there? Were there other law
4 enforcement officers there when you arrived?

5 A: There were a few other law enforcement there. I recall
6 Corporal Murphy, Staff Sergeant Martin, Corporal Slawson.
7 There are a few I can recall off the top of my head.

8 Q: And what was going on? What did you see when you got
9 there?

10 A: At that time when I arrived, there were -- there was a
11 blue Volkswagen Jetta parked in the first pump. If you're
12 facing the Gumtree Pantry, first pump on your right with
13 patrol cars parked behind it. They had suspects detained in
14 the back of patrol cars at that point. I arrived on scene and
15 kind of assessed the situation, gathered information on what
16 was going on and what they had.

17 Q: And as an investigator, what's your function when you're
18 called to a scene like that? What -- what's your job? What
19 do you do?

20 A: My primary function is to take control of the
21 investigation. When we're called out, it's because either the
22 road is just beyond their means to investigate or it's an
23 incident that calls for more detailed investigation with. At
24 that time, I photographed the vehicle, documented the license
25 plate, VIN number, things of that nature, and then secured the

1 vehicle. We had decided that we were going to do a search
2 warrant; so I contacted Duke's Towing and had them respond and
3 tow the vehicle back over to our secure impound lot on
4 Shanklin Road.

5 Q: When you arrived, was the scene secure, meaning were
6 there any civilians mingling around the car or who had access
7 to the car when you arrived?

8 A: When I arrived, the deputies had the car secured. They
9 were blocking both sides of it by that time and they weren't
10 letting any civilians around the car.

11 Q: And some of the pictures that we've seen during the trial
12 with respect to the car -- did you take those?

13 A: I did.

14 Q: Okay. And once -- are part of your responsibilities to
15 collect evidence turned over by officers?

16 A: Yes. When we arrive, any evidence collected I usually
17 take possession of. That way, I can turn it into evidence and
18 we can decide what we're going to do with it as far as sending
19 it to a lab for testing, things of that nature.

20 Q: And do you inventory things that are turned over to you?

21 A: I do.

22 Q: And how do you keep a record of who turned over what?

23 A: On the evidence bags, there's a chain of custody log, if
24 you will. I believe you all saw it earlier this week. That's
25 how we keep track of everything.

1 Q: Okay. And did you have occasion to receive items with
2 respect to this case?

3 A: I did.

4 Q: Sir, I'm handing you State's -- what's already been
5 marked and admitted as State's Exhibit 2. Are you familiar
6 with -- what is that item?

7 A: This item is the Hi-Point 9mm handgun.

8 Q: Okay. And can you just kind of hold that up to refresh
9 the jury's recollection as to which firearm that is?

10 A: Again, it's made safe. The black 9mm Hi-Point handgun.

11 Q: Okay.

12 A: This was the one recovered in-between the driver's seat
13 and center console.

14 Q: As seen by Corporal Murphy?

15 A: Yes.

16 Q: Okay. And do you -- does the evidence bag indicate that
17 you received it at some point?

18 A: It did. Corporal Murphy signed it over to me on April 1st
19 at 7:20 in the morning.

20 Q: Does your signature appear on that bag?

21 A: It does.

22 Q: And what did you do with it? Does it appear in
23 substantially the same condition as when you first received
24 it?

25 A: It is.

1 Q: Other than being secured for court with a lock, of
2 course?

3 A: Yes.

4 Q: What did you do with it once you got it?

5 A: Once I got it, I put it in a temporary storage that we
6 have until I was able to on Feb -- excuse me -- on April 2nd at
7 2:30 in the afternoon turn it into our temp -- the evidence
8 temp storage.

9 Q: Where is the -- what -- where is the temp storage? Does
10 it -- did -- who has access to the temporary storage once
11 something is in there?

12 A: Once it's logged, only evidence technicians have access
13 to it.

14 Q: Okay. And then who did you turn the gun over to? After
15 it went from temp storage, who does it go?

16 A: From temp storage, according to the chain of custody,
17 Sergeant Cooper took possession of the gun from the temp
18 storage locker, and she's one -- at the time was one of our
19 evidence technicians.

20 Q: Thank you. And did you receive any other firearms on
21 April 1st?

22 A: I did. I also received the silver and black Smith &
23 Wesson .40 caliber handgun that was located underneath the
24 passenger seat in the vehicle.

25 Q: Okay. Sir, I'm handing you what's been admitted as

1 State's Exhibit 3. Take that out and show it to the jury and
2 say if you received that in the process of your evidence
3 collection?

4 A: Again, this one is made safe as well. This is the black
5 and silver .40 caliber Smith & Wesson that I received from
6 Corporal Murphy.

7 Q: Okay. And is that the one that Sergeant Thomas recovered
8 from the area under the passenger seat in front of Mr.
9 Pritchett?

10 A: It is.

11 Q: When you say that the car -- after the car was secured at
12 the Gumtree Pantry, you indicated it was towed. Who was it
13 towed by?

14 A: Duke's Towing. The Sheriff's Office -- anytime we
15 impound a vehicle, we use Duke's Towing to impound it and take
16 it to Beaufort to our impound lot.

17 Q: And is that a secure location?

18 A: It is secure.

19 Q: It's my understanding that all four individuals, meaning
20 Miss Major, Mr. Lockett, the defendant, as well as Mr. Rolt,
21 were transported back to the substation on Hilton Head Island
22 of the Sheriff's Department; correct?

23 A: They were.

24 Q: Did you have an opportunity to view all four individuals?

25 A: I did.

1 MS. MUSSER: May I approach, Your Honor?

2 THE COURT: Certainly.

3 Q: I'm going to hand you what has been marked as 57 --
4 State's Exhibit 57 and 58. Are you familiar with what is
5 depicted in photograph 57?

6 A: I am.

7 Q: And how are you familiar with it?

8 A: This is Mr. Harry Lockett, one of the individuals that
9 was in the Volkswagen. He was the front passenger I believe
10 in the vehicle.

11 Q: And does that fairly and accurately depict what he was
12 wearing and what he looked like when he was detained at the
13 Gumtree Pantry?

14 A: It is.

15 Q: And when you had occasion to view him at the substation?

16 A: It is.

17 Q: Okay.

18 MS. MUSSER: With that, Your Honor, I would move --

19 Q: What about 58? Let's lay that foundation as well. Does
20 that also depict Mr. Lockett?

21 A: Yes. It's just an up closer view of the pants he was
22 wearing, a pair of blue jean pants with -- it looks like
23 several NBA basketball team logos on them.

24 Q: Okay.

25 MS. MUSSER: With that, Judge, I don't believe there's

1 any objection to the admission of 57 and 58.

2 MS. SAXON: No objection.

3 THE COURT: They'll be admitted without objection.

4 (Whereupon, State's Exhibit Number 57 and State's Exhibit
5 Number 58, both color photographs, are admitted into
6 evidence. The photographs are then displayed on a screen
7 in open court for the jury.)

8 BY MS. MUSSER:

9 Q: If we can go back to -- I guess this is -- I'm sorry.
10 This -- this is actually 57.

11 A: Yes.

12 Q: And again, who does that depict?

13 A: Mr. Harry Lockett.

14 Q: Okay. What color sneakers is he wearing?

15 A: White.

16 Q: Okay. What kind of identifying information is on his
17 pants?

18 A: They are NBA professional basketball team logos.

19 Q: Okay.

20 MS. MUSSER: May we have 57? Thanks.

21 Q: Again, is that a close-up view of Mr. Lockett's white
22 sneakers and the patches on his pants?

23 A: It is.

24 Q: And, sir, are you familiar with the Sheriff's Office
25 booking sheets?

1 A: I am.

2 MS. MUSSER: May I have stickers 59, 60, and 61?

3 Q: Sir, I'm handing you three booking reports and, again,
4 are booking reports kept in the ordinary course of business
5 with the Sheriff's Office?

6 A: They are.

7 Q: With respect to what's been marked for identification
8 actually as State's Exhibit 59, whose booking report is that?

9 A: This is a booking report for Bluffton City Police
10 Department and it's for Harry Jamielle or Jamielle Lockette.

11 Q: Okay. And does it indicate his height on there?

12 A: It does. It says he's 5'5".

13 Q: 5'5"? Okay. And State's Exhibit 60?

14 A: State's Exhibit 60 is a Beaufort County Sheriff's Office
15 booking report created by me for a Brandon Paul Rolt.

16 Q: And -- okay. And then what about 61? Whose booking
17 report is that?

18 A: I apologize. This is not mine. This is Corporal
19 Murphy's booking report.

20 Q: Okay.

21 A: And 61 is a Beaufort County Sheriff's Office booking
22 report for Philenza Joe Pritchett II created by Corporal
23 Murphy.

24 Q: Okay. And did you have occasion to see Mr. Pritchett on
25 the evening in question?

1 A: I did.

2 Q: And do you see him in court today?

3 A: I do.

4 Q: And would you describe what color shirt he's wearing?

5 A: It's a black and white checkered shirt I would say.

6 MS. MUSSER: Your Honor, may the record reflect the
7 party's identification of the defendant.

8 THE COURT: So noted.

9 BY MS. MUSSER:

10 Q: With respect to the defendant's booking report, what is
11 his height listed as?

12 A: 5'8".

13 Q: 5'8"?

14 A: Yes.

15 Q: And what is the address that he provided at the time he
16 was booked?

17 A: [REDACTED] Chelsea Lane, Ridgeland, South Carolina 29936.

18 Q: Okay. Thank you.

19 MS. MUSSER: Judge, at this time we would just move for
20 the admission of 59, 60, and 61.

21 THE COURT: Okay. Admitted without objection.

22 MS. SAXON: Yes, Your Honor.

23 (Whereupon, State's Exhibit 59, State's Exhibit 60, and
24 State's Exhibit 61, all booking reports, are admitted
25 into evidence.)

1 MS. MUSSER: Your Honor, I don't have anything further.
2 Thank you. Actually, I'll take the exhibits back. Thank you.

3 THE COURT: And you may have cross examination.

4 MS. SAXON: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MS. SAXON:

7 Q: Good morning. Good afternoon? Good morning,
8 Investigator Cooler. How are you?

9 A: Good morning.

10 MS. SAXON: May I approach the witness, Your Honor.

11 THE COURT: Certainly.

12 Q: You prepared a -- arrest warrants in this case; correct?

13 A: I did.

14 Q: And is this one of those arrest warrants for Mr.
15 Pritchett?

16 A: This is.

17 Q: And what height do you have listed on that arrest
18 warrant?

19 A: 5'9".

20 Q: Thank you. You are the lead investigator on this case;
21 is that correct?

22 A: I am.

23 Q: And as the lead investigator, you testified at a
24 preliminary hearing in this case?

25 A: I did.

1 Q: And to your recollection, at that preliminary hearing you
2 discussed the probable cause of the arrest; correct?

3 A: I did.

4 Q: Do you recall at that hearing that the criminal
5 conspiracy charge had actually been dismissed for lack of
6 probable cause?

7 A: I do.

8 Q: Okay. Now -- and you prepared a report in this case;
9 correct?

10 A: I did.

11 Q: And could you please read the highlighted portion of that
12 report for the jury, please?

13 A: It says the complainant/victim from the Kangaroo Express
14 was transported to the Gumtree Pantry and positively
15 identified Rolt and Pritchett as individuals that robbed the
16 convenience store.

17 Q: So per your report, Ms. Fulton was able to identify Mr.
18 Rolt as well?

19 A: According to that report, yes.

20 Q: You also interviewed Mr. Pritchett as part of this
21 investigation, did you not?

22 A: I did.

23 MS. MUSSER: Objection, Your Honor. May we see you at
24 sidebar?

25 THE COURT: All right.

1 (Whereupon, a bench conference is held in the presence of
2 the jury but out of the hearing of the jury off the
3 record.)

4 BY MS. SAXON:

5 Q: Okay. Not saying what was said during the interview, but
6 you did interview Mr. Pritchett; correct?

7 A: I did.

8 Q: Did you do anything as a result of that interview or the
9 information that was given?

10 A: I -- what do you mean did I do anything?

11 Q: Did you -- did you follow up on it in any way? Do you
12 recall?

13 A: No.

14 Q: Okay. Investigator Cooler, you said that part of your
15 duties is deciding what items get tested as the -- is that
16 true?

17 A: Yes. Well, a collaboration of myself and my supervisors.

18 Q: Okay. So -- so a number of you would review the items
19 and decide what got tested?

20 A: Yes.

21 Q: Was there any particular reason certain items did not get
22 tested?

23 A: Looking back, if you pick a specific item, I might be
24 able to tell you better, but --

25 Q: The bandannas.

1 A: The bandannas? At that time, they just -- the probative
2 value they decided wasn't sufficient to send off to SLED.

3 Q: Okay. You also interviewed the other suspects in this
4 case; correct?

5 A: I did.

6 Q: And they gave you -- without saying what it is, they gave
7 you information in this case; correct?

8 A: Some of them, yes.

9 Q: Some of them. Did you follow up on any of the
10 information that Ms. Major gave you?

11 A: I did not.

12 Q: What about information that Mr. Lockett gave you?

13 A: I did not.

14 MS. SAXON: That's all I have, Your Honor.

15 MS. MUSSER: Nothing further, Your Honor. Thank you.

16 THE COURT: Thank you, sir. You may step down. You may
17 call your next witness.

18 MS. MUSSER: Thank you, Your Honor. The State calls
19 Jason Prusinowski.

20 THE BAILIFF: Step forward, please, and be sworn, sir.

21 THE CLERK: Please raise your right hand for me. Do you
22 solemnly swear or affirm to truthfully answer all of the
23 questions asked of you by this court, so help you God?

24 THE WITNESS: Yes, ma'am.

25 THE CLERK: Thank you. Please be seated.

1 JASON PRUSINOWSKI, being first duly
2 sworn, testifies as follows:

3 DIRECT EXAMINATION

4 BY MS. MUSSER:

5 Q: Sir, by whom are you employed?

6 A: I'm sorry, ma'am?

7 Q: By whom are you employed?

8 A: Beaufort County Sheriff's Office.

9 Q: And how long have you been so employed?

10 A: Eight years.

11 Q: And what is your current job title?

12 A: I'm a corporal for the southern division.

13 Q: What does that entail?

14 A: Road patrol.

15 Q: Okay. Are there times when you're called on to transport
16 individuals to the Beaufort County Detention Center?

17 A: Yes, ma'am.

18 Q: And, sir, I'm going to direct your attention back to the
19 morning hours of April 1st of 2010. Do you recall if you
20 transported anyone with respect to this case?

21 A: Yes, ma'am, I did.

22 Q: Who did you transport?

23 A: Pritchett and Rolt were the two defendants that I
24 transported.

25 Q: And did you also transport Mr. Lockett?

1 A: Yes.

2 Q: And at the time that you did the transport, what is the
3 process when as a -- as a deputy you are dropping off someone
4 that is -- is going to be booked and be put in the detention
5 center? What happens with respect to their clothing?

6 A: It's placed either in a -- the detention center's bag or,
7 if we need it for evidence, then I bring in an evidence bag
8 and collect it as they are changing out their clothes.

9 Q: Okay. And have you had occasion to look at the evidence
10 bag related to this case?

11 A: Yes.

12 Q: Okay. All right. Let me get you the right evidence.

13 All right.

14 MS. MUSSER: If you can, pull out Number 7. Is that 7 or
15 8?

16 Q: Sir, I'm showing you what's been marked in evidence as
17 State's Exhibit 7. Sir, did that -- is that the bag that you
18 transported the clothes in?

19 A: Yes, ma'am.

20 Q: And whose clothes are they?

21 A: Brandon Rolt.

22 Q: And where were they recovered from?

23 A: From the Beaufort County Detention Center.

24 Q: Okay. Would you take them out and just show them to the
25 jury?

1 A: A black belt. Black sneakers. Stone-washed blue jeans.

2 Q: Okay. And do those clothes appear in substantially
3 similar condition as when you received them?

4 A: Yes, ma'am.

5 Q: Okay. And what did you do with them once the detention
6 center turned them over to you?

7 A: I placed them in this evidence bag and returned it to the
8 Hilton Head office and handed it over to the investigator.

9 Q: Okay. And there's -- is there a form on the front of the
10 bag?

11 A: Yes, with a chain of custody.

12 Q: Okay. Does your signature appear on that, sir?

13 A: Yes, it does.

14 Q: With respect to State's Exhibit 8, once you get that
15 packaged --

16 (Whereupon, there is a pause in the proceedings for the
17 witness to repackage State's Exhibit Number 7.)

18 Q: Did you use the same process as far as bagging and
19 marking the bag with respect to State's 8?

20 A: Yes, I did.

21 Q: Okay. And whose clothes are these?

22 A: Pritchett.

23 Q: Okay. And were they also recovered at the detention
24 center?

25 A: They were. Black leather belt. Black Nike sneakers with

1 blue shoelaces. A blue rag that goes over the head for hair.
2 Black slacks. And a black t-shirt.

3 Q: Okay. And again, do those appear in substantially the
4 same condition as when you observed them?

5 A: Yes.

6 Q: Okay.

7 MS. MUSSER: I don't have anything further, Your Honor.
8 Thank you. I was just waiting for -- or do you need the
9 clothes?

10 THE WITNESS: Keep them out or --

11 MS. MUSSER: No. You can put them back. Thank you.

12 (Whereupon, there is a pause in the proceedings as the
13 witness complies.)

14 MS. MUSSER: Thank you.

15 THE COURT: Cross examination.

16 MS. SAXON: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MS. SAXON:

19 Q: Good morning, Corporal Prusinowski.

20 A: Good morning.

21 Q: When you took these clothes into custody, you did
22 everything according to protocol and procedure; is that
23 correct?

24 A: Yes.

25 Q: And you feel that you made no errors in the handling of

1 that evidence; correct?

2 A: No.

3 MS. SAXON: That's all I have. Thank you.

4 THE COURT: Thank you, sir. You may step down.

5 THE WITNESS: Thank you, sir.

6 THE COURT: You may call your next witness.

7 MS. MUSSER: Thank you, Your Honor. The State calls
8 Staff Sergeant Brian Chapman.

9 THE BAILIFF: Come forward and be sworn, please, sir.

10 THE CLERK: Do you solemnly swear or affirm to truthfully
11 answer all the questions asked of you by this court, so help
12 you God?

13 THE WITNESS: I do.

14 THE CLERK: Thank you. Please be seated.

15 THE WITNESS: Master Sergeant Brian Chapman. B-r-i-a-n
16 C-h-a-p-m-a-n.

17 THE COURT: Thank you.

18 BRIAN CHAPMAN, being first duly
19 sworn, testifies as follows:

20 DIRECT EXAMINATION

21 BY MS. MUSSER:

22 Q: Good morning, Staff Sergeant.

23 A: Good morning.

24 Q: Sir, by whom are you employed?

25 A: Beaufort County Sheriff's Office.

1 Q: How long have you worked for the Sheriff's Office?

2 A: I've been employed since November of 2002.

3 Q: What are some of your responsibilities as a staff
4 sergeant?

5 A: I'm a master sergeant.

6 Q: I'm sorry.

7 A: I am in charge of the northern investigation section. I
8 supervise eight investigators, various administrative duties,
9 reviewing reports, also working cases.

10 Q: Back in 2010, is that when you were a staff sergeant?

11 A: Yes.

12 Q: Okay. Did you have occasion to receive any buccal swab
13 from Philenza Pritchett?

14 A: Yes, ma'am.

15 Q: Okay. And, sir, I'm going to hand to you what has been
16 marked as State's Exhibit 18, along with Mr. Hightower's knife
17 to open that. Will you please open that?

18 (Whereupon, the witness complies.)

19 A: Yes, ma'am.

20 Q: Sir, can you tell us what date that sample was obtained?

21 A: This was obtained on 6/29 of 2011.

22 Q: Okay. And what is a buccal swab?

23 A: Basically, it's a Q-tip that we take and we obtain a
24 sample from inside of a subject's mouth to collect saliva and
25 skin cells.

1 Q: Okay. And whose sample are you holding?

2 A: This is a buccal swab from Philenza Pritchett.

3 Q: Okay. And what is the process that you would use after
4 you swab it? Do you have to handle it in a certain way to
5 prevent I guess contamination? What's the process that you
6 use?

7 A: Prior to collection, I put on latex or rubber gloves and
8 then I tell the person I'm taking the sample for that I'm
9 going to rub the Q-tips against their cheeks using two swabs,
10 one on each cheek. I rub the inside and then I take that Q-
11 tip and I place it inside a box and I close the box up and put
12 certain information on that box. Then that box is then placed
13 into a paper evidence bag and then sealed up.

14 Q: Okay. And is that -- whose writing appears on that bag?
15 Can you tell? After you took the sample, who did it go to?
16 Who did you turn it over to?

17 A: After I collected it, I filled out the evidence bag with
18 my information and then I signed it over to Investigator
19 Fraser.

20 Q: Was it sealed at the time you turned it over to
21 Investigator Fraser?

22 A: Yes, it was. I sealed it myself.

23 Q: Okay. And is that still sealed the same way or I'm
24 assuming SLED had to repackage it?

25 A: Right. It's originally how I sealed it, but it has been

1 opened up by State Law Enforcement Division.

2 Q: Okay. And then who was the next person on the chain
3 after Investigator Fraser?

4 A: Eileen Rios. She was an evidence custodian at the time.

5 MS. MUSSER: Your Honor, with that, the State would seek
6 the admission of 18, which is the buccal swab from the
7 defendant.

8 MS. SAXON: No objection, Your Honor.

9 THE COURT: Without objection.

10 (Whereupon, State's Exhibit Number 18, the buccal swab
11 taken from the defendant, is admitted into evidence.)

12 MS. MUSSER: Thank you.

13 THE WITNESS: Yes, ma'am.

14 MS. MUSSER: Nothing further, Your Honor. Thank you.

15 THE COURT: Cross examination.

16 MS. SAXON: Thank you.

17 CROSS EXAMINATION

18 BY MS. SAXON:

19 Q: Master Sergeant Chapman, you went through the process in
20 how you collect DNA; correct?

21 A: Yes, ma'am.

22 Q: And that is how you collected the DNA of Mr. Pritchett?

23 A: Correct.

24 Q: And you followed that procedure exactly?

25 A: Correct.

1 Q: And that is BCSO protocol; correct?

2 A: Yes, ma'am.

3 Q: And you did not make any errors in the taking or handling
4 of that DNA; correct?

5 A: No, ma'am.

6 Q: Okay.

7 MS. SAXON: Thank you. That's all I have.

8 THE COURT: Thank you. You may step down.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: You may call your next witness.

11 MS. MUSSER: Your Honor, I believe that when I spoke with
12 Ms. Saxon yesterday, she is stipulating that if Investigator
13 Jeremiah Fraser would come into court to testify, he would
14 testify that he obtained State's Exhibit 18, it was sealed,
15 and he received it from Master Sergeant Chapman.

16 MS. SAXON: That's correct, Your Honor.

17 MS. MUSSER: With that --

18 THE COURT: The stipulation is noted.

19 MS. MUSSER: Thank you. Sorry. The State would call
20 Eileen Rios.

21 THE BAILIFF: Come forward and be sworn, please, ma'am.

22 THE CLERK: Raise your right hand. Do you solemnly swear
23 or affirm to truthfully answer all of the questions asked of
24 you by this court, so help you God?

25 THE WITNESS: I do.

1 THE CLERK: Thank you, ma'am. Please be seated.

2 EILEEN RIOS, being first duly sworn,
3 testifies as follows:

4 DIRECT EXAMINATION

5 BY MS. MUSSER:

6 Q: Good morning, Ms. Rios.

7 A: Good morning.

8 Q: Ma'am, who did you used to work for?

9 A: I was employed as an evidence technician for the Beaufort
10 County Sheriff's Office.

11 Q: And what did you do as an evidence custodian?

12 A: I received and maintained evidence for the Sheriff's
13 Office.

14 Q: How long did you hold that position?

15 A: About 18 years.

16 Q: What were some of your responsibilities? Like, what were
17 some of your daily duties as being the evidence custodian for
18 the Sheriff's Department?

19 A: The officer, once he brought evidence in, he fulfilled --
20 he filled out the evidence submittal. At that time, he would
21 sign and he would -- basically, it would be the case number,
22 if there was a suspect, a victim, the charge. He would list
23 his evidence. He'd print and sign it. I too would print and
24 sign my name. Once we -- once he had left, I'd log it into
25 our computer system and place it in the evidence lock-up until

1 such time it was either needed for court or for further
2 testing.

3 Q: And, ma'am, have you had occasion to look at a --
4 evidence submittal forms with respect to this case?

5 A: Correct. Yes.

6 Q: Ma'am, I'm handing you what has been marked as State's
7 Exhibit 62. It's a three-page document. Would you take a
8 look at those for me, please? And what -- what are those?

9 A: This is our evidence submittal. It's a copy of our
10 evidence submittal form in which the officer filled out once
11 he turned the items in.

12 Q: Okay. And who -- I believe that the first two pages --
13 who were -- who were those items turned in by?

14 A: The submitting officer was Angela Viens and on the third
15 one Jeremiah Fraser.

16 Q: Okay. So with respect to Mr. Fraser -- so it would be
17 page 3 -- what did he turn over to you?

18 A: That particular item was buccal swabs for Pritchett.

19 Q: Okay.

20 A: Two buccal swabs.

21 Q: Okay. I'm handing you State's Exhibit 18 and, if you
22 could, take that out and look at it.

23 A: Mm-hmm. All right. This is -- it came in as a sealed
24 evidence bag. I see it was that Jeremiah Fraser turned it in
25 to myself on June the 30th, 2011, at 9:02.

1 Q: Okay. And what is the process when you would receive
2 evidence? Where would you put it?

3 A: This particular item would be secured with the item --
4 any item that was turned in beforehand in the evidence lock-
5 up.

6 Q: Okay. Would you manipulate it in any way? Unseal it or
7 --

8 A: No.

9 Q: Okay. All right. I'm going to hand you some various
10 items and see if these are items that you received during the
11 course of your employment there. This is State's Exhibit 8.
12 Would you please say what the item is and whether or not you
13 received it?

14 A: This came in as a sealed brown evidence bag. I took it
15 -- it looks like April 5th, 2010. It was turned in by
16 Investigator Angela Viens.

17 Q: And was it sealed when you received it?

18 A: Correct. Yes.

19 Q: Was that part of your function to make sure that items
20 were sealed before they were officially put away?

21 A: If -- the officer would seal them prior to turning them
22 in.

23 Q: Okay. This is State's 4. Again, if you could, describe
24 the item and if you received it?

25 A: This too was turned in as a sealed brown evidence bag by

1 Investigator Angela Viens again on September [sic.] the 5th.

2 Q: And what is the item?

3 A: According to the -- it was a Charter Arms .38 Special,
4 serial number 1093797. Also, it said that it contained three
5 .38 Special rounds.

6 Q: Okay. So that's a revolver; right?

7 A: Correct.

8 Q: State's 7. Again, just tell us what it is -- thank you
9 -- and if you received it?

10 A: Again, a sealed evidence bag. It came in saying that it
11 contained clothing. Again, it was turned in by Investigator
12 Angela Viens.

13 Q: And is that also indicated on the evidence form on
14 State's 62?

15 A: Yes.

16 Q: Okay. And would you take a look and see if this is an
17 item that you received? I'm sorry. That was Number 9.

18 A: These -- yes. Also turned in brown evidence bag with
19 buccal swabs from Brandon Rolt.

20 Q: And was that something that you took into your care and
21 custody?

22 A: Yes. Again, from Investigator Angela Viens.

23 Q: Okay. Did these -- did all these items come in on the
24 same day at the same time?

25 A: Yes, these items that I've looked at so far.

1 Q: Okay. How about Number -- State's Exhibit 12?

2 A: This came in. This is a -- this was not sealed and it's
3 a black-colored Nike backpack. It also came in by Angela
4 Viens that I took in.

5 Q: Okay. This is Number 14. And, again, what is that item
6 description?

7 A: It's a blue hooded sweatshirt. Let me find it here.
8 Blue -- I've got here a blue hooded sweatshirt under black-
9 colored t-shirt. This was turned in by Angela Viens, again,
10 and I took it in.

11 Q: Okay. Again, we're still on the same day?

12 A: Yes. I've got here April the 5th.

13 Q: Okay. Thank you. That's Number 13.

14 A: Mm-hmm. This is one black hooded sweatshirt, also turned
15 in on April the 5th by Angela Viens.

16 Q: All right. This is Number 15, please.

17 A: This is four cartons of Newport cigarettes, a plastic
18 shopping bag, three bags of the Swisher Sweets mini
19 cigarillos, also by Angela Viens to me on the 4th of April --
20 5th of April. April the 5th.

21 Q: Okay. And how about Number 10?

22 A: Also from Angela Viens, a box of Newport 100 cigarettes
23 and the -- the box of mini cigarillos.

24 Q: And then last one, Number 11?

25 A: Two blue bandannas from Angela Viens to me on April the

1 5th.

2 Q: Okay. And all these items that we just went through one
3 by one, they've all been in the care and custody of the
4 Sheriff's Department?

5 A: Yes.

6 Q: Since that time?

7 A: Yes.

8 Q: Thank you.

9 MS. MUSSER: No further questions.

10 CROSS EXAMINATION

11 BY MS. SAXON:

12 Q: Good morning, Ms. Rios.

13 A: Good morning.

14 Q: How long have you been retired?

15 A: Since July of this year.

16 Q: So you're just now starting to enjoy it?

17 A: Yes.

18 Q: Okay. And before that, you were 18 years as an evidence
19 technician; correct?

20 A: Approximately, yes.

21 Q: And your job didn't change as far as what you would do
22 when taking evidence in over those 18 years?

23 A: No.

24 Q: In 2010, you had been doing in roughly 14 years by that
25 time?

1 A: Approximately.

2 Q: So you did everything by protocol?

3 A: Yes. I hope so. Yes.

4 Q: And to your recollection you made no errors in the
5 handling of evidence in this case?

6 A: I noticed on the bags --

7 Q: Mm-hmm.

8 A: -- that it says 9/5, but this was in April.

9 Q: Okay.

10 A: So that was -- that was my mistake.

11 Q: But other than that?

12 A: Yes. No mistakes.

13 MS. SAXON: Thank you.

14 THE COURT: Thank you, ma'am. You may step down. You
15 may call your next witness, Solicitor.

16 MS. MUSSER: Thank you, Your Honor. The State calls Jean
17 Roberts.

18 THE BAILIFF: Come forward to be sworn, please, ma'am.

19 THE CLERK: Do you solemnly swear or affirm to truthfully
20 answer all of the questions asked of you by this court, so
21 help you God?

22 THE WITNESS: Yes, ma'am.

23 THE CLERK: Thank you. Please be seated.

24 JEAN ROBERTS, being first duly sworn,
25 testifies as follows:

DIRECT EXAMINATION

1
2 BY MS. MUSSER:

3 Q: Good morning, ma'am. Who do you work for?

4 A: I work for Beaufort County Sheriff's Office.

5 Q: How long have you worked there?

6 A: Fourteen years.

7 Q: Back in 2010, what was your job title?

8 A: I was the evidence technician in Hilton Head office.

9 Q: What does the -- what is an evidence technician
10 responsible for?

11 A: We receive the evidence that the officers turn in and we
12 store it until they use it for whatever they're going to,
13 whether they send it to SLED or bring it to court.

14 Q: And what is SLED?

15 A: SLED is the South Carolina Law Enforcement Division.

16 Q: Where is that located?

17 A: In Columbia, South Carolina.

18 Q: As part of your job description back in 2010, sometimes
19 was it your responsibility to transport certain items to SLED
20 for testing?

21 A: Yes, ma'am, it was.

22 Q: Okay. And have you had occasion to review the
23 documentation with respect to the case that brings you to
24 court today?

25 A: Yes, ma'am.

1 Q: Okay. Ma'am, I'm handing you what is -- it's a three-
2 page document labeled State's Exhibit 63.

3 MS. MUSSER: Just for record-keeping purposes, may we
4 admit, if I didn't formally do it, 59, 60, 61, and 62?

5 MS. SAXON: No objection.

6 THE COURT: Admitted without objection.

7 (Whereupon, State's Exhibit Number 62, an evidence
8 submittal form, is admitted into evidence. State's
9 Exhibit Number 59, a booking report, State's Exhibit
10 Number 60, a booking report, State's Exhibit Number 61, a
11 booking report, were previously admitted into evidence.)

12 BY MS. MUSSER:

13 Q: And, ma'am, does that -- what does that document depict?
14 What is it?

15 A: This -- this would be the items that I picked up from the
16 main evidence office here in Hilton Head and transported to
17 SLED.

18 Q: Okay. Sorry. Starting with -- let's see. Before we
19 actually get into the evidence, what -- what -- what would
20 happen -- what was the process once you would arrive at SLED
21 with boxes of evidence? What was the process? How did they
22 receive it from you?

23 A: You would set down at their desk and they would go
24 through -- they would pick up one item, they would verify --
25 they wouldn't open the bag that was sealed, but whatever was

1 written on the bag they would type into their computer. Then
2 they would put it into one of their plastic bags, seal it, and
3 have me sign it.

4 Q: Okay. So once your signature appeared on it, did that
5 mean you were relinquishing custody of an item and turning it
6 over to them?

7 A: Yes.

8 Q: And that was part of the chain of custody?

9 A: Yes, ma'am.

10 Q: Okay. And did they give you print-outs when you -- as a
11 receipt?

12 A: Yes, ma'am, they did.

13 Q: Okay. And is that part of what is State's Exhibit 63?

14 A: Yes, ma'am, it is.

15 Q: Okay. With respect to State's Exhibit 3, can you
16 determine whether or not you transported that to SLED?

17 A: No, ma'am, not -- not this way I can't because we didn't
18 -- we do not sign -- didn't sign the individual bags.

19 Q: Okay.

20 A: They were on our list --

21 Q: Okay.

22 A: -- that said I received these items from the evidence
23 room.

24 Q: All right.

25 A: And then I would have SLED's signature on this piece of

1 paper saying I -- that they took it, but the only place my
2 signature would have been would be on the plastic bag that
3 SLED put it in.

4 Q: Okay. So it's already been tested by SLED and returned,
5 but does the form -- State's Exhibit 63 -- that's the official
6 document that you would receive to document that what you had
7 given them; correct?

8 A: Correct.

9 Q: Would you please read us the items 1 through 6 that you
10 delivered to SLED?

11 A: Item Number 1 was a handgun, one Smith & Wesson .45 --
12 .40 caliber handgun with a serial number of D-T-L-2-0-0-4.

13 Q: Item 2, please?

14 A: A handgun, one Charters Arms revolver, a .38 Special.
15 Serial number was 7-0-9-3-7-9-7.

16 Q: How about Item 3?

17 A: Clothing, one black hooded sweatshirt.

18 Q: Item 4?

19 A: Would have been clothing, one blue hooded sweatshirt.

20 Q: Item 5?

21 A: Clothing, one black-colored t-shirt.

22 Q: And Item 6?

23 A: A buccal swab from Brandon Rolt -- Rolt.

24 Q: And what was the date that you delivered those items to
25 SLED for testing?

1 A: On -- on 7/26.

2 Q: Does it show anywhere where it says submission 8/2 of '10
3 at the top?

4 A: Okay. Hold on. Yes, ma'am. That was my mistake. It's
5 8/2/10 at 10:13.

6 MS. MUSSER: Your Honor, at this point we would just ask
7 for the admission of State's 63.

8 MS. SAXON: No objection.

9 THE COURT: Without objection.

10 (Whereupon, State's Exhibit Number 63, an evidence
11 submittal form, is admitted into evidence.)

12 MS. MUSSER: Thank you, Your Honor. I have no further
13 questions.

14 THE COURT: Cross examination.

15 MS. SAXON: Thank you.

16 CROSS EXAMINATION

17 BY MS. SAXON:

18 Q: Ms. Roberts, you handled -- in your transportation, you
19 handled the evidence according to BCSO protocol?

20 A: Yes, ma'am.

21 Q: And do you recall making any errors in your handling of
22 this evidence?

23 A: No, ma'am.

24 MS. SAXON: Thank you. That's all I have.

25 THE COURT: Thank you, ma'am. You may step down.

1 MS. MUSSER: Your Honor, we respectfully request a
2 moment.

3 (Whereupon, counsel confer.)

4 MS. MUSSER: Judge, with respect to State's Exhibit 18,
5 which is the buccal swab from the defendant, we have a
6 stipulation that if Ramona Cooper Kuhn were called to testify,
7 she would -- she would testify that she transported that item
8 to SLED for testing. Obviously, it was in her care and
9 control until it was delivered to SLED.

10 MS. SAXON: That's correct, Your Honor.

11 THE COURT: That is correct? Okay. Stipulation is so
12 noted.

13 MS. MUSSER: Thank you, Your Honor. Your Honor, may we
14 approach about scheduling?

15 THE COURT: Certainly.

16 (Whereupon, a bench conference is held in the presence of
17 the jury but out of the hearing of the jury off the
18 record.)

19 THE COURT: Due to scheduling, ladies and gentlemen,
20 we're going to take a ten-minute recess. I ask you to step in
21 the jury room and remind you it's too early to begin
22 discussing the case. We should be ready to resume I believe
23 though when you return.

24 Could you try and do one thing for me? I forgot about
25 this. Could you see if you could agree on a foreperson to

1 represent the jury? If you can, that would be great. If you
2 can't, I don't want you to get to fussing and fighting. I can
3 appoint somebody, but if y'all can, I'd appreciate it. Thank
4 you.

5 (Whereupon, the jury exits the courtroom at 10:35 a.m.)

6 THE BAILIFF: The jury is clear, Your Honor.

7 THE COURT: All right. We'll be in recess for ten
8 minutes.

9 (Whereupon, there is a break in the proceedings from
10 10:36 a.m. until 10:49 a.m.)

11 (Whereupon, a bench conference is held regarding
12 scheduling off the record.)

13 THE COURT: All right. I believe we're ready for the
14 jury.

15 THE BAILIFF: Yes, sir.

16 THE COURT: And, Solicitor, I guess you could get your
17 next witness lined up.

18 MS. MUSSER: We do -- we have a stipulation as well, but
19 --

20 THE COURT: Okay.

21 MS. MUSSER: Verona Gibson.

22 THE COURT: But we're still ready for the jury.

23 (Whereupon, the jury enters the courtroom at 11:02 a.m.)

24 THE BAILIFF: The jury is entering the courtroom, Your
25 Honor. The jury is seated, Your Honor.

1 THE COURT: Welcome back, ladies and gentlemen. The --
2 the bailiff tells me that the fight that I was afraid of might
3 occur in the jury room over the position of foreperson did not
4 occur and that the jury has selected, nominated, and the Court
5 approves Juror 297, Linda Shumaker.

6 THE FOREPERSON: Yes.

7 THE COURT: Would that be you?

8 THE FOREPERSON: Yes.

9 THE COURT: It was a wise decision the jury made, Ms.
10 Shumaker. I agree. I believe the State is ready to resume
11 with the presentation of witnesses.

12 MS. MUSSER: Your Honor, thank you. First though, we
13 have a stipulation with respect to the testimony of Melanie
14 Smith, who works at the Beaufort County Dispatch Center. She
15 is the custodian of records for the 9-1-1 center. She would
16 testify consistent to the -- how the records are kept, meaning
17 that they're recorded, they're typed in by the dispatcher, and
18 that they're able to generate reports indicating exact times.

19 Specifically as it relates to this case, we have a
20 stipulation that Ms. Smith would tell the ladies and gentlemen
21 of the jury that the original call time with respect to the
22 Kangaroo Express armed robbery occurred at 2:48 a.m. That the
23 description put out by Sergeant Trey Simmons occurred at 2:54
24 with a description of one WM for white male and one BM for
25 black male and that, again, occurred at 2:54. That the

1 records indicate that Corporal Polites or Deputy Polites
2 transported -- it says one female to Gumtree Pantry at 3:12
3 a.m. and that they called out that they were on their way back
4 to the Buckingham Pantry or Kangaroo Express at 3:20 a.m.

5 And have I correctly stated that?

6 MS. SAXON: That is correct, Your Honor.

7 THE COURT: That is a stipulation?

8 MS. SAXON: Yes, Your Honor.

9 THE COURT: All right. Thank you.

10 MS. MUSSER: And, again, that's the testimony of Melanie
11 Smith. With that, Your Honor, the State would call Verona
12 Gibson.

13 THE BAILIFF: Come forward to be sworn, please, ma'am,
14 right over there.

15 THE CLERK: Good morning. Do you solemnly swear or
16 affirm to truthfully answer all of the questions asked of you
17 by this court, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Thank you. Please be seated, ma'am.

20 VERONA GIBSON, being first duly
21 sworn, testifies as follows:

22 DIRECT EXAMINATION

23 BY MS. MUSSER:

24 Q: Good morning, ma'am.

25 A: Good morning.

1 Q: Where do you work?

2 A: The South Carolina Law Enforcement Division, which we
3 also refer to as SLED.

4 Q: What is -- what do you do there? What department do you
5 work in?

6 A: I am a forensic technician in the evidence processing
7 section of the DNA casework department.

8 Q: And what kind of education and training did you have to
9 hold that position?

10 A: I have an Associate's of Science degree from Tri-County
11 Technical College. I also have an Associate's of Public
12 Service with a certificate in forensics from Greenville
13 Technical College, and I went through an in-house training
14 program at SLED.

15 Q: What are some of your daily job responsibilities?

16 A: We receive larger pieces of evidence such as clothing,
17 car parts, guns, just anything that's larger than a basic
18 sheet of paper. We process that for body fluids such as
19 blood, saliva, semen. We also do what's called touch DNA or
20 ownership, which is attempting to collect skin cells on a swab
21 and send those up to DNA.

22 Q: Okay. So when -- say, for example, the Beaufort County
23 Sheriff's Office drops off evidence to SLED and then would it
24 get logged in through another department? Is it -- in other
25 words, is there a receiving department and then it gets

1 transferred to your department?

2 A: That's correct. We have an area called our evidence
3 control department. They are a long-term storage department
4 of all evidence. They log evidence or cases in as they come
5 in the door. They give them a specific lab number that's
6 different for every case. All the items in that case are
7 given a unique item number. They keep up with that and assign
8 those. They also are in charge of returning evidence when the
9 agencies come back to pick it up.

10 Q: So when you receive a piece of evidence, is it in a SLED
11 -- you said it's in a SLED bag. Is it sealed?

12 A: It isn't necessarily in a SLED bag. It can be in any
13 kind of packaging, but the people in evidence control insure
14 that the agency that brought it -- their representative seals
15 it, signs it, and dates it, whatever the package could be. If
16 it's a box, it's taped and then there's special tape that goes
17 on top of that, or if it's one of our clear plastic envelopes,
18 those are sealed and then they initial and date that.

19 Q: Okay. So have you had occasion to review the documents
20 associated with the case that brings you to court today?

21 A: Yes, ma'am.

22 Q: Okay. And did you receive certain items from I guess
23 your evidence -- I'm sorry -- your evidence --

24 A: Control department.

25 Q: -- control department?

1 A: Yes, ma'am, I did.

2 Q: Okay. All right. We're going to start you -- let's
3 start with Number 3. If you could -- this is State's Exhibit
4 3. Do you have gloves?

5 A: I do, yes.

6 MS. MUSSER: And, Ms. Saxon, do you have any objection if
7 she refers to her notes?

8 MS. SAXON: No.

9 Q: Okay. This is State's Exhibit 3. Would you take the
10 items out of the bag?

11 (Whereupon, the witness complies.)

12 Q: Okay. And what is it?

13 A: It is our Item 1, which was a handgun with a magazine and
14 rounds.

15 Q: Okay. And can you just hold it up for the ladies and
16 gentlemen? Could you describe it a little bit? Is it the
17 silver -- silver and black Smith & Wesson?

18 A: Yes, ma'am, it is.

19 Q: Okay. Now, when you received it, how would it have been
20 packaged?

21 A: It would have been in this package --

22 Q: Okay.

23 A: -- inside the brown paper bag and possibly inside -- or
24 probably inside of a box of some sort.

25 Q: Okay. Now, when you -- when that was dropped off to your

1 department, what was your responsibility as to that piece of
2 evidence and that firearm?

3 A: The -- sorry. The request for this item was for touch
4 DNA. So I would have checked the seals before I opened the
5 container, laid it out on the white paper that is in here with
6 the gun and the rounds, swabbed the areas that I noted with a
7 swab, and then those swabs would have been sealed in an
8 envelope and forwarded to the DNA department.

9 Q: Okay. All right. And then this is Exhibit 13. Is that
10 also with wrapping paper?

11 A: This is. This is the butcher paper we lay down over the
12 table every time we process an item.

13 Q: And why do you do that? Is there a reason you use
14 special paper?

15 A: It's not so much the paper. It's more the barrier
16 between the table and the item. It's a clean piece of paper
17 that's not been touched by anything else and it prevents
18 contamination between other things that could have been on the
19 table or, if the cleaning wasn't good enough, it would protect
20 the item.

21 Q: And what types of measures do you take to make sure
22 things aren't contaminated when you open them since that was
23 part of your function? Obviously, like the gloves that you're
24 wearing today? Do you wear gloves and have other measures
25 like that other than the paper?

1 A: Correct. We wear lab coats. We change gloves between
2 every item of evidence. We clean between every container of
3 evidence. Usually, containers have related items in them,
4 like all the clothes off of one person would be in one
5 container. So we would clean between that container and doing
6 an -- opening another container. All of our instruments are
7 cleaned between items: pens, scissors, forceps or tweezers,
8 that type of thing.

9 Q: Okay. And -- I'm sorry. What is that item that -- I
10 know that's State's 13.

11 A: This is our Item 3, which is a sweatshirt, a black
12 sweatshirt.

13 Q: A black sweatshirt? Would you hold that up?

14 (Whereupon, the witness complies.)

15 Q: Now, what did you do to prepare that for testing? In
16 other words, could you explain what -- what is your function
17 as far as when you're processing it? Do you then turn it over
18 to someone else?

19 A: No. Well, I turn over the swab from the item for the
20 testing. For t-shirts, sweatshirts, if they're long-sleeved,
21 we scrape and swab the neck and the cuff areas. If they're
22 short-sleeved, we scrape and swab the neck and the underarm
23 areas. Those are usually areas that impact the body the most,
24 the skin the most. Those swabs are then forwarded for
25 analysis in DNA.

1 Q: Okay. So it's not like some type -- just so I'm
2 understanding the DNA testing process. It's not like on TV
3 where they spray it with a fluid and then it, like, lights up.
4 You have to take a swab from the shirt and then it's the swab
5 that's tested. Do I have that right?

6 A: Correct. The -- the fluid that's sprayed on an item is
7 usually for blood testing.

8 Q: Okay.

9 A: Usually, blood that can't be visualized with the human
10 eye, it reacts with it and forms a chemical reaction. But for
11 ownership or touch DNA, there's -- there's nothing really to
12 visualize. You're just scraping an area that's known to touch
13 the skin to try to collect skin cells.

14 Q: So when we say that the sweatshirt was tested, really it
15 was something that was swiped on from the shirt and then that
16 -- like, say -- is it, like, a Q-tip that you use to --

17 A: It looks like a one-sided Q-tip. It has a longer wooden
18 handle, but basically it's a one-sided Q-tip.

19 Q: And it's actually the Q-tip that gets tested?

20 A: Correct.

21 Q: Okay. All right. All right. Thank you. Sorry. And
22 then how about Number 14? What item is that?

23 A: This would be our Item Number 4 and 5, which is a
24 sweatshirt and a t-shirt.

25 Q: And again, is that the butcher paper that you make sure

1 it's not contaminated?

2 A: Yes, ma'am, it is.

3 Q: Okay.

4 A: Would you like for me to hold these up as well?

5 Q: Yes, ma'am.

6 (Whereupon, the witness complies.)

7 Q: So when you received them, was it -- the shirt separate
8 from the sweatshirt or was it all one?

9 A: Actually, when I received them, the t-shirt was over the
10 sweatshirt.

11 Q: Okay. So what process did -- is it the same process that
12 you just described for us with the Q-tip stick --

13 A: Yes, ma'am.

14 Q: -- that would have been forwarded to Ms. Hefney for
15 testing?

16 A: Correct. Yes.

17 Q: Okay. And what was that item number on the SLED
18 paperwork?

19 A: Four is the sweatshirt. Number 5 is the t-shirt.

20 Q: Okay.

21 MS. MUSSER: Your Honor, since we presented chain of
22 custody, I'm going to have to ask Ms. Gibson to open the bag
23 and then I can put exhibit tags on because there's multiple
24 items in here, if that's okay with the Court.

25 THE COURT: Certainly.

1 MS. MUSSER: Thank you.

2 BY MS. MUSSER:

3 Q: Now, ma'am, I'm handing you a bag. That's still sealed
4 from SLED; correct?

5 A: Yes, ma'am, it is.

6 Q: Okay. And is that how you would have returned it to your
7 evidence control? Like, once it's tested, does it get
8 repackaged like that?

9 A: This is the envelope I created from the swabs and other
10 items I was forwarding to DNA. You can see my initials and
11 the date at the top. Then this would have gone to the DNA
12 department to go to Ms. Hefney.

13 Q: Okay.

14 A: And then she would have sealed it and returned it.

15 Q: Okay. She would seal it?

16 A: Mm-hmm.

17 Q: Okay. Do you mind opening that for us? I know there are
18 several items in there.

19 (Whereupon, the witness complies.)

20 A: Yes, ma'am.

21 Q: Thank you.

22 A: Mm-hmm.

23 MS. MUSSER: Judge, with respect to -- since there's
24 actually two different swabs for the blue sweatshirt and the
25 t-shirt, may I do a 20-A and a 20-B because I have them

1 labeled just as 20?

2 THE COURT: Certainly.

3 MS. SAXON: No objection, Your Honor.

4 BY MS. MUSSER:

5 Q: Ma'am, I'm handing you what's been labeled as 20-A and
6 20-B. Are you familiar with those items?

7 A: Yes, ma'am. These are the swabs that I took from the
8 sweatshirt and from the t-shirt.

9 Q: Okay. And what did you -- who did you forward them to?

10 A: They went to the DNA department. There was a secure
11 evidence room at that time in the DNA department.

12 Q: Okay. What is the item -- the SLED item number for the
13 sweatshirt?

14 A: The swab from the sweatshirt or the sweatshirt?

15 Q: The swab from the sweatshirt.

16 A: That's going to be 4.1.

17 Q: And that's the swab? Okay. And then the swab from the
18 black t-shirt?

19 A: It's 5.1.

20 Q: That's all under State's 20-A and B. Okay. All right.
21 Then I'm going to hand you State's 21. Did -- is that another
22 swab that you collected?

23 A: This is the swab from the black sweatshirt.

24 Q: Okay. And what is that -- the SLED number for that swab?

25 A: 3.1.

1 Q: Okay. And, again, the swab is the sample on a Q-tip?

2 A: Correct.

3 Q: Okay.

4 MS. MUSSER: With that, Your Honor, we would move for the
5 admission of 20 and 21.

6 THE COURT: Without objection?

7 MS. SAXON: Without objection.

8 (Whereupon, State's Exhibit Number 20-A, State's Exhibit
9 Number 20-B, and State's Exhibit Number 21, all swabs,
10 are admitted into evidence.)

11 BY MS. MUSSER:

12 Q: I'm getting there. I'm sorry. This is State's Exhibit
13 9. Do your initials appear on that bag?

14 A: No, ma'am, they do not.

15 Q: Okay. Okay. So if something -- if there's a known
16 sample that is -- in other words, if they take a known sample
17 from a buccal swab, does that just go right to Ms. Hefney?

18 A: Correct.

19 Q: Okay. I'll leave these for her. And all the items that
20 you just -- that we've just gone over, did you turn those over
21 to Ms. Hefney for testing?

22 A: The swabs taken from those items were turned over to a
23 secure location in DNA where she retrieved them. The items
24 that I processed were returned to our evidence control to
25 return to the agency.

1 Q: Okay. So the actual sweatshirt goes back to evidence
2 control; the swab goes to Ms. Hefney?

3 A: Correct.

4 Q: All right. Great. Thank you.

5 MS. MUSSER: Your Honor, I have no further questions.

6 THE COURT: Cross examination.

7 CROSS EXAMINATION

8 BY MS. SAXON:

9 Q: Good morning, Ms. Gibson.

10 A: Good morning.

11 Q: How are you doing?

12 A: Good. And you?

13 Q: Good. Thank you. You swabbed a number of items in this
14 case; correct?

15 A: Correct.

16 Q: More than just the two sweatshirts and t-shirts that the
17 State has actually revealed?

18 A: Yes, ma'am.

19 Q: Do you have a list of the items that you swabbed?

20 A: Yes, ma'am.

21 Q: Could you read that for me, please?

22 A: There was the handgun that was shown. Then there was
23 another handgun and then the two sweatshirts and the t-shirt.

24 Q: I'll hand this up to you, ma'am, which has been marked as
25 Defendant's 1 on the back. Can you tell me what that is?

1 A: That is a swab from the first handgun or the first item I
2 was handed, the handgun.

3 Q: And what's that labeled as?

4 A: 1.1 is SLED's item number.

5 Q: And what is the description written on that gun?

6 A: The description is handgun because that's what it came
7 from.

8 Q: Okay. And that is a swab that you took?

9 A: Yes, ma'am.

10 Q: After you took that swab, where did it go?

11 A: It went to the DNA department as well.

12 Q: Okay.

13 MS. SAXON: Your Honor, at this time we would move
14 Defense 1 into evidence.

15 MS. MUSSER: No objection, Your Honor. Thank you.

16 THE COURT: Admitted without objection.

17 (Whereupon, Defendant's Exhibit Number 1, a swab, is
18 admitted into evidence.)

19 BY MS. SAXON:

20 Q: Just to review, when you take a swab for something like
21 touch DNA or trace DNA or however it's called, that -- the
22 common technique is with that Q-tip; correct?

23 A: Correct. Yes, ma'am.

24 Q: That's how it's done everywhere?

25 A: As far as I know, yes, ma'am.

1 Q: Now, you don't know of any other way to do it?

2 A: Not that I'm aware of, no, ma'am.

3 Q: And when you swab an item such as the sweatshirt, you
4 said you swabbed the neck area and the underarm area?

5 A: Or the cuffs if there are cuffs.

6 Q: Or cuffs. Okay. What about when you're dealing with a
7 gun?

8 A: A gun? It depends on what it's for. If it's for touch
9 DNA, I would swab the areas that you most likely handle on the
10 gun, such as the grips, the trigger, the trigger guard, the
11 hammer if there is one, the back part of a slide if there is
12 one, the back strap, those areas.

13 Q: And in this case, the items that you swabbed -- once you
14 swabbed them, you sealed them; correct?

15 A: Correct. Yes, ma'am.

16 Q: And they go to your evidence -- no, your DNA department;
17 correct?

18 A: They did then, yes, ma'am.

19 Q: And that's the process that you would follow?

20 A: Yes, ma'am.

21 Q: Anytime a case came in?

22 A: Yes, ma'am.

23 MS. SAXON: I beg the Court's indulgence for one moment.

24 THE COURT: All right.

25 MS. SAXON: That's all I have, Your Honor. Thank you.

1 THE COURT: Anything?

2 MS. MUSSER: Nothing further, Your Honor. Thank you.

3 THE COURT: Thank you, ma'am. You may step down and you
4 may be excused from your subpoena. And you may call your next
5 witness, Solicitor.

6 MS. MUSSER: Thank you, Your Honor. Your Honor, the
7 State calls Adrienne Hefney.

8 THE BAILIFF: Ma'am, come forward and be sworn, please.

9 THE CLERK: Do you solemnly swear or affirm to truthfully
10 answer all of the questions asked of you by this court, so
11 help you God?

12 THE WITNESS: I will.

13 THE CLERK: Thank you. Please be seated, ma'am.

14 THE WITNESS: Thanks.

15 ADRIENNE HEFNEY, being first duly
16 sworn, testifies as follows:

17 DIRECT EXAMINATION

18 BY MS. MUSSER:

19 Q: Good morning, Ms. Hefney.

20 A: Good morning.

21 Q: Ma'am, where do you work?

22 A: With the South Carolina Law Enforcement Division, more
23 commonly known as SLED.

24 Q: What is your job title?

25 A: Forensic DNA analyst.

1 Q: And what kind of -- if you could, summarize for the
2 ladies and gentlemen of the jury what kind of training and
3 education you would have to hold that position with SLED?

4 A: Sure. I have a Bachelor of Science degree in biology
5 from the University of South Carolina in Columbia. I also
6 have taken post-graduate courses in the field of genetics and
7 population statistics and molecular biology. I was trained on
8 the job by a court-qualified examiner, and each year we are
9 required to attend at least an eight-hour course of continuing
10 education, whether that be a conference or symposium, to stay
11 abreast of any change in the field of DNA analysis. I also
12 have a Master's degree in business administration from
13 Winthrop University, and I am a FBI DNA qualified auditor of
14 other DNA labs as well.

15 Q: And what does that mean to be an auditor of DNA labs?

16 A: I go to other labs and check their procedures, make sure
17 they are following protocols as they should.

18 Q: So in laymen's terms, you're making sure that the other
19 labs are doing it correctly?

20 A: That is correct.

21 Q: Okay.

22 MS. MUSSER: Your Honor, at this time the State would
23 offer Ms. Hefney as an expert in forensics and DNA testing.

24 MS. SAXON: No objection.

25 THE COURT: The witness will be so qualified.

1 MS. MUSSER: Thank you, Your Honor.

2 BY MS. MUSSER:

3 Q: Ms. Hefney, in laymen's terms can you explain what DNA
4 testing is?

5 A: Sure. DNA stands for -- the scientific name is
6 deoxyribonucleic acid and what that is -- it's a chemical
7 that's found in some of the cells of our bodies that makes us
8 who we are. This is genetic information that we pass from
9 generation to generation. We received our DNA half of it from
10 our mother and half of it from our father, but a lot of our
11 DNA is the same. It's the DNA that codes for us being human.
12 It codes for us having two eyes and two arms and two legs.
13 But, of course, as we look around the courtroom, everyone
14 looks different; so everyone has different DNA. No two people
15 have the same DNA with the exception of identical twins.

16 How we use that in forensics is we make comparisons. We
17 compare unknowns, which are evidence items that were left
18 behind at a crime scene, to knowns, which are blood standards
19 or buccal swab standards which is a swab from the inside of
20 your cheek, from known individuals, and we make comparisons
21 there.

22 We get DNA from several different sources, whether it be
23 blood, semen, saliva. Those are our most common, but we also
24 can get DNA from bone, teeth, sweat, skin cells, as well as
25 what's known as touch DNA. Now, primarily the blood, semen,

1 saliva will give us our best sample of DNA. We ownership DNA,
2 which is the skin cells and sweat what we get off of clothing
3 can give us some DNA, as well as touch can also give us some
4 DNA. Maybe not a pristine sample like blood will be, but we
5 can oftentimes get DNA from it and oftentimes we cannot.

6 Q: Okay. So for an everyday example -- okay. This is my
7 pen.

8 A: Mm-hmm.

9 Q: If I spit on my pen -- I'm sorry. That's a little gross
10 but if I were to spit on my pen and there was actually saliva
11 on there, would that provide, in your experience, a good DNA
12 sample?

13 A: Yes, it would.

14 Q: Okay. Now, if I'm touching it, is that what you -- and I
15 pick it up and I'm holding it, but I exclusively use it all
16 the time, no one else has touched it, how -- would you get the
17 same quality of DNA or only if I left skin cells on it?

18 A: Most likely if you left skin cells on it, but if you were
19 touching the item just by yourself constantly day in, day out,
20 then the likelihood of us getting touch DNA from that item is
21 greater.

22 Q: Now, if you were to pick up my pen -- if I had it, I use
23 it, and then you pick it up and then manipulate it, say for
24 example a gun, and you manipulate it like without gloves or
25 without necessarily swabbing it first, how does that affect

1 how often you would get DNA or touch DNA? I'm sorry. Touch
2 DNA.

3 A: I could possibly leave my DNA behind, but that would
4 depend on several factors, how much I handled it, whether my
5 hands were sweaty, whether I was exfoliating skin and leaving
6 it behind on there.

7 Q: Do we -- do all of us leave the same amount of skin cells
8 as we go? In other words, would what I leave on my pen be the
9 same as what you might leave on my pen or someone else?

10 A: Absolutely not. Just the way that our skin is different
11 -- some of us may have oily skin and some of us may have dry
12 skin -- the amount of DNA that we leave behind could differ
13 from person to person.

14 Q: Okay. So would someone else -- like we said with the
15 example with my pen because it's one that I can follow. If
16 you were to use my pen, would that -- and maneuver it and then
17 say put it in an evidence bag, would that increase or decrease
18 the chances of my DNA being on it?

19 A: The more I manipulate it, the more I handle it, it would
20 increase it. If I was simply just picking it up and put it
21 right back down, the chance of me leaving something behind
22 would lessen, but if I'm doing something with the pen, then it
23 could possibly leave my DNA behind as well.

24 Q: Okay. Now, if -- would that increase or decrease it that
25 my DNA would still be on it?

1 A: Your DNA may be underneath it or I could rub off your DNA
2 onto my hand at that point.

3 Q: Is there an approximation, like, statistically that you
4 could give us like more likely/less likely after it's been
5 extensively handled whether the original person's DNA would
6 still be on it?

7 A: If it's been extensively handled, then no, the original
8 person's DNA would be rubbed off or masked by the next person
9 who handled it when you're talking of touch DNA.

10 Q: Okay. What type of analysis -- is the analysis different
11 for purposes of DNA testing whether you know that you're
12 testing for saliva or touch DNA? Is it all the same? Is it a
13 machine that tests for DNA?

14 A: There's not necessarily a machine that tests for DNA.
15 What it is -- when we get DNA, we will add certain chemicals
16 that will light the cells that contains the DNA. From there,
17 we will do a quantification procedure to see how much DNA we
18 have and, from there, we will amplify it. That's -- that's
19 with the type of DNA testing we do known as PCR testing.

20 That's theoretically we can have a small amount of sample
21 and put it on -- if you think about it like a Xerox copier.
22 If you put a piece of paper down and multiply it a million
23 times, you still have that same piece of paper, but you have
24 what you can use now. That's basically how we do DNA with the
25 type of testing that we do at SLED. So theoretically after

1 that we put it on an instrument to get our DNA profiles so we
2 can make comparisons.

3 Q: And as best you can, can you describe for us in laymen's
4 terms what -- what kind of output -- like, does the test --
5 what kind of numbers or -- do you get numbers from the test or
6 how does -- what kind of result pops out of the machine? Does
7 that make sense? I'm trying to understand -- like, because
8 I'm assuming the machine doesn't just -- you -- you put the
9 swab in a machine and then it pops out with a name. What
10 types of information do you get that helps you determine
11 someone's identity or who an item may belong to?

12 A: Okay. Once we've developed a DNA profile through the
13 machine that she's mentioning, it gives us a DNA profile that
14 we look at. It's a series of numbers. The type of kit that
15 we use to do our analysis has 16 different genetic locations
16 and what I mean by that -- we have 23 pairs of chromosomes in
17 a human body. We look at 16 of those chromosomes and 16
18 locations on those chromosomes to get our DNA pattern. That
19 is what -- you know, what's used commonly in the forensic
20 community because that is what differ from person to person.
21 There are more markers and there are less markers, but the
22 national standard is that we use the 16 markers.

23 All right. Now -- and so we look at that and that will
24 comprise -- those 16 samples will comprise both our known and
25 unknown. We'll develop a profile from our known samples.

1 That's, you know, what we know came from the victim and/or the
2 suspect, and we'll make a profile or develop a profile from
3 our unknowns, which is what was left behind at a crime scene,
4 and we'll make comparisons there.

5 Q: Okay.

6 A: I think I answered that.

7 Q: Oh, yes. So if I understand it right, the machine
8 basically pops out numbers and those numbers indicate the
9 marker. And does each individual have their unique set of
10 numbers?

11 A: Yes.

12 Q: Okay. So the 16 numbers would just -- it would pop out a
13 different number for each sample -- for each sample; right?
14 Like a -- not a -- almost like a lottery ticket; right? It
15 would be a combination of numbers?

16 A: It can be a combination --

17 Q: Is that what you mean by a profile?

18 A: A DNA profile is a combination of numbers and what it is
19 -- you will see at most locations two numbers what she's
20 mentioning. In that number, you got one number from your mom
21 and one number from your dad. And in certain locations, you
22 may have one number. That means you got the same one from
23 your mom and your dad. And what I mean by locations is those
24 chromosome markers that we look at, the 16. And so that
25 comprises a DNA profile that we use to make the visual

1 comparison.

2 Once we make a visual comparison, then we'll add a
3 statistic to it. What the statistic says is, if we were to
4 look at a certain number of people, how many times we should
5 expect to see that DNA profile.

6 Q: Thank you. So with respect -- have you had an
7 opportunity to review the report that you generated for this
8 case?

9 A: Yes, ma'am.

10 Q: Okay. And I'm going to hand you a -- I'm going to hand
11 you State's 9, which has already been opened, and this is
12 open, but it's on the side. It's State's 18. Starting with
13 Number 9, is that an item that you're familiar with?

14 A: Yes. This is a buccal swab standard from Brandon Rolt.
15 There is my initials and the date on this seal right here.

16 Q: Okay. So with respect to Number 9 that's in front of
17 you, that is a buccal -- is that called a buccal swab as well?

18 A: Yes.

19 Q: Okay. So that's the known?

20 A: Mm-hmm.

21 Q: That's the one where somebody comes and they would
22 actually swab Mr. Rolt's mouth --

23 A: That is correct.

24 Q: -- to get that sample? So we know that came from him.
25 So that's a known sample; right?

1 A: Yes, it is.

2 Q: Okay. Now, how about Number 18?

3 A: Okay. State's Exhibit Number 18 is SLED Item Number 7.

4 This is also buccal or buccal swabs from Philenza Pritchett.

5 Q: Okay. And, again, that's a known sample. We know that
6 came from Mr. Pritchett?

7 A: That's correct.

8 Q: Okay. I'm going to hand you Defense Exhibit 1. Can you
9 tell if that's a swab that you analyzed?

10 A: Yes. My initials and the date are on the back of the
11 seal, and it's our Item 1.1, swab from a Smith & Wesson .40
12 caliber handgun.

13 Q: Now, this is Number 13. You don't have to pull it out,
14 but is there a way you can determine -- actually, where did I
15 put that? I'm sorry. Because you wouldn't actually look at
16 the items; you look at the swab. I'm sorry. I'm going to
17 hand you what has been marked State's 20-A and 20-B. What are
18 those items?

19 A: Okay. State's Exhibit 20-A is our Item Number 4.1, which
20 is a sweatshirt.

21 Q: The swab from the sweatshirt; right?

22 A: The swab from the sweatshirt.

23 Q: Just want to be technically correct.

24 A: Yes. And State's Exhibit 20-B is Item 5.1, swabs from
25 the t-shirt.

1 Q: Okay. And then one last swab is 21.

2 A: Okay. This is our Item Number 3.1, swabs from another
3 sweatshirt.

4 Q: Okay. And -- and those were the swabs in the little
5 brown envelopes. That was the unknown; correct?

6 A: Yes.

7 Q: So is it part of your job responsibility when you do the
8 comparison to take the known sample and see if it matches the
9 unknown or the swabs that are -- that you just identified for
10 us?

11 A: That is correct.

12 Q: Okay. And did you perform such an analysis?

13 A: I did.

14 Q: And are your findings -- were they documented in a
15 report?

16 A: Yes, ma'am, they were.

17 Q: And do you have that report in front of you?

18 A: Yes, ma'am, I do.

19 Q: What is that lab number, please?

20 A: Our lab number is L-1-0-0-8-5-2-8.

21 Q: Okay. And would you please explain your findings with
22 respect to -- let's start -- let's just go in order.

23 Actually, this is D-1. What were your findings on that?

24 A: Okay. This is our Item 1.1, which was the swab from the
25 Smith & Wesson .40 caliber handgun, and I'm going to read

1 directly from my report. The partial DNA profile developed
2 from Item 1.1 is a mixture of at least two individuals and it
3 is not suitable for entry into CODIS. Brandon Rolt and
4 Philenza Pritchett are excluded as possible contributors to
5 this mixture.

6 Q: Okay. So, again, if testimony has already shown that
7 that -- the original firearm from where the swab was generated
8 -- so the original -- the Smith & Wesson. If we -- we already
9 know that Sergeant Thomas took it out of the car with gloves
10 -- with no gloves on and then secured it, does -- would that
11 account for why Mr. Pritchett is excluded?

12 MS. SAXON: Objection, Your Honor. That's speculation.
13 It's not something that was in testimony.

14 MS. MUSSER: She is an expert, Judge.

15 MS. SAXON: Not on who handled the gun.

16 MS. MUSSER: No, I said -- it's like a hypothetical. If
17 we know that someone else -- which we know is Sergeant Thomas
18 -- but if some -- someone else touched the gun and secured it,
19 would that -- would that account for why Mr. Pritchett is
20 excluded?

21 MS. SAXON: Also, Judge, counsel is --

22 THE COURT: I'll overrule the objection.

23 MS. SAXON: Yes, sir.

24 THE COURT: You may -- you may answer the question.

25 THE WITNESS: Okay.

1 THE COURT: You may ask the question again.

2 THE WITNESS: Thank you.

3 MS. MUSSER: I'll see if I can remember it.

4 BY MS. MUSSER:

5 Q: So, again in your expert opinion, if the gun was handled
6 and manipulated and secured by someone else, would that
7 account for, one, only a partial DNA sample?

8 A: Yes, it could.

9 Q: Okay. And could that also explain why Mr. Pritchett was
10 excluded?

11 A: Mr. Pritchett could have been -- if he had any DNA there
12 in the first place, it could have been sloughed off while that
13 gun was being manipulated by another person with no gloves on.

14 Q: And then with respect to the swabs marked 20-A and 20-B,
15 which are clothing items --

16 A: Mm-hmm.

17 Q: Would you tell the ladies and gentlemen of the jury what
18 your findings are with that respect?

19 A: Okay. I'm going to -- this is Item 4.1, which was a swab
20 from a sweatshirt. The DNA profile developed from Item 4.1 is
21 a mixture of at least four individuals. Brandon Rolt and
22 Philenza Pritchett cannot be excluded as possible contributors
23 to this mixture. The probability of randomly selecting an
24 unrelated individual who could have contributed to this
25 mixture is approximately 1 in 14.

1 Item 5.1, which was a t-shirt, the DNA profile developed
2 from Item 5.1 is a mixture of at least four individuals.
3 Brandon Rolt cannot be excluded as a possible contributor to
4 this mixture. The probability of randomly selecting an
5 unrelated individual who could have contributed to this
6 mixture is approximately 1 in 2. Philenza Pritchett is
7 excluded as a possible contributor to this mixture.

8 Q: Okay. Does your lab report indicate the color -- I just
9 want to make sure I have the color of the clothing right. So
10 for the blue sweatshirt --

11 A: The blue?

12 Q: Which -- the blue sweatshirt?

13 A: Is Item 4.1.

14 Q: Okay. And that was the one that Brandon Rolt and
15 Philenza Pritchett could not be excluded; correct?

16 A: That is correct.

17 Q: Okay. So let's talk about what that means. So they
18 could not be excluded. Is there -- and again in laymen's
19 terms -- a percentage or could you describe it to us in a
20 percentage? You already said that there -- it's 1 in 14.

21 A: Mm-hmm.

22 Q: What -- what does that mean? About what percentage of
23 the population would you expect to be included?

24 A: If you -- if you divide 1 into 14 and then you subtract
25 it from a whole, we'll get about 92 percent. So that means 92

1 percent of the people are essentially excluded while eight
2 percent of the people would be essentially included.

3 Q: Okay. So approximately eight percent of the people would
4 have -- would be in the -- not excluded. So does not excluded
5 mean included?

6 A: It means there is nothing in the DNA profile that I
7 developed from the unknown that's saying that they're not
8 there. So that essentially means included.

9 Q: Okay. So about eight percent of us would have that same
10 result?

11 A: Yes. But it's such a mixture that I could not say it's a
12 definite match. It's just that they cannot be excluded.
13 There is nothing in that profile that would exclude them.

14 Q: Okay. And then what was the result for the black t-shirt
15 that was associated with the blue sweatshirt?

16 A: The black t-shirt is Item 5.1 and it's also a mixture of
17 four individuals at least and Brandon Rolt cannot be excluded
18 as a possible contributor. The probability of randomly
19 selecting an unrelated individual who could have contributed
20 to this mixture is approximately 1 in 2. Philenza Pritchett
21 is excluded as a possible contributor to this mixture.

22 Q: Okay. And then moving on to the last sample -- the last
23 swab, it should be I think 20. Did you already do 3.1?

24 A: I have not done 3.1.

25 Q: Okay. Would you tell us about 3.1?

1 A: Sure. Item 3.1 is a black sweatshirt. The DNA profile
2 that I developed from Item 3.1 is a mixture of at least three
3 individuals. The DNA profile of the major contributor to this
4 mixture matches the DNA profile of Brandon Rolt. The
5 probability of randomly selecting an unrelated individual
6 having a DNA profile matching the major contributor to this
7 item is approximately 1 in 1 quadrillion. The DNA profile
8 developed from the minor contributors to this mixture is not
9 suitable for entry into CODIS and Philenza Pritchett is
10 excluded as a possible contributor to this mixture.

11 Q: And that was the black sweatshirt?

12 A: Yes, ma'am.

13 Q: Black sweatshirt. Okay.

14 MS. MUSSER: Your Honor, may I have a moment?

15 THE COURT: Sure.

16 MS. MUSSER: Your Honor, I don't have anything further.

17 Thank you.

18 THE COURT: Cross examination.

19 MS. SAXON: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MS. SAXON:

22 Q: How are you doing, Ms. Hefney?

23 A: Okay. How are you?

24 Q: Good. Thank you. Will you just look at this and make
25 sure that that's the same report that you're working off of so

1 that I know we're working off the same thing?

2 A: Yes, ma'am, it is. It's dated December 14th, 2011, and my
3 signature is right there.

4 Q: Right. Now, the back page of this report -- these pages?

5 A: Mm-hmm.

6 Q: This is a chart that's generated; correct?

7 A: Correct.

8 Q: And the numbers on this -- are those typically called
9 alleles?

10 A: Yes.

11 Q: Explain what an allele is?

12 A: An allele is an alternate form of DNA. That's
13 essentially what she just said, the numbers that represent our
14 -- are represented in our DNA profile.

15 Q: And when you're doing a DNA test, you're essentially
16 comparing alleles?

17 A: That is correct?

18 Q: Okay. So you're looking to see from a known set of
19 alleles on those 16 markers whether an unknown set of alleles
20 matches; is that correct?

21 A: Well, I compare the alleles that were in an -- in an
22 unknown to the alleles in a known standard.

23 Q: Now, some alleles everyone has in common; is that
24 correct?

25 A: The combination of it is what differs from person to

1 person.

2 Q: Okay. So we won't have exactly the same thing going on,
3 but there would be, like you said, some things that just make
4 us human?

5 A: We don't look at those type, like, the DNA that makes us
6 human. We look at the DNA that differs from person to person.

7 Q: Okay.

8 A: Because no two people have the same DNA with the
9 exception of identical twins.

10 Q: Okay. Perfect. Now, we -- Ms. Musser was talking about
11 her pen. I want to talk about the actual gun in the case.

12 A: Okay.

13 Q: How does -- how does something like adrenaline or nerves
14 affect the human body?

15 A: Well, that's a little bit outside of my area of
16 expertise, but I mean just if you're nervous about something,
17 you could be sweaty and you could leave behind DNA there from
18 your sweat from your skin cells there --

19 Q: Okay.

20 A: -- or you could not.

21 Q: Okay.

22 A: I'm sorry.

23 Q: And if you're, again, holding something, manipulating it,
24 and you're sweating, at least at some point your DNA is going
25 to get on here; correct?

1 A: Potentially.

2 Q: Okay. Now, just because someone else handles it, does
3 that automatically erase any other DNA that can be on there?

4 A: Well, when you're talking about touch DNA, it actually
5 could because you're only talking about a very small amount of
6 DNA anyway from what you've left by touching an object. Now,
7 if -- it depends on how you -- whether how long that person
8 handled the object. If you're talking about a gun, how long a
9 person before handled the gun, you know, whether they were
10 sweaty, whether they sloughed off skin cells. There's so many
11 factors that can go in. Now, if somebody comes behind you and
12 manipulates the same gun, the possibility does remain that
13 they could remove what small amount of DNA was there
14 underneath or it could be masked by that.

15 Q: And so there's -- there's a lot that could go into it?

16 A: Exactly.

17 Q: Okay. Going back to your report now, in -- in the
18 results of Item 3.1, which is the black hooded sweatshirt --

19 A: Okay.

20 Q: You reference a ratio. I went to law school because I'm
21 terrible at math. So what does the ratio of 1 in 1
22 quadrillion mean?

23 A: Essentially, a quadrillion is one followed by 15 zeros.

24 Q: That's a lot.

25 A: So that's a lot.

1 Q: Okay.

2 A: And especially considering there's only seven billion
3 people in the world, that is more than a billion.

4 Q: Okay. So that quadrillion number is actually larger than
5 the amount of known individuals on earth?

6 A: That is correct.

7 Q: Okay. So when something is 1 in 1 quadrillion, it's a
8 match?

9 A: Pretty much so.

10 Q: Okay. Now, go to Item 4.1.

11 A: Okay.

12 Q: Now, you have a ratio there that is 1 in 14?

13 A: Mm-hmm.

14 Q: That's significantly smaller?

15 A: Yes.

16 Q: So that ratio means that one of any 14 people could be a
17 contributor to this?

18 A: Or basically if you were to look at 14 people, you should
19 only see that profile one time. So yes.

20 Q: Okay. So --

21 A: If you don't expect --

22 Q: Hypothetically speaking, out of the twelve members here
23 in the jury, myself, and yourself, one of us is probably --
24 might have that same match?

25 A: May have some of the alleles that are in that profile --

1 Q: Okay.

2 A: -- simply because it's a mixture of at least four people.

3 Q: Right.

4 A: And like on that first sample, I was able to pull out a
5 major and minor contributor. That means somebody is there,
6 for lack of a better word, more than another person, a major
7 contributor to that mixture.

8 Q: Okay.

9 A: Versus with the others, I could not pull out a major or
10 minor contributor; so it's just a mixture of people or a
11 mixture of DNA on that sample.

12 Q: Okay. As to the -- the gun, the Smith & Wesson .40
13 caliber that's Item 1.1 --

14 A: Mm-hmm.

15 Q: -- of your testing, there was DNA on that gun; correct?

16 A: Correct. There was a partial DNA profile developed from
17 that gun.

18 Q: And when you tested that gun against the known standards
19 of Mr. Pritchett, it excluded him; correct? Or compared it,
20 I'm sorry.

21 A: I compared against Mr. Pritchett and yes, he was excluded
22 as a possible contributor.

23 Q: Okay. Meaning his DNA was not on that gun?

24 A: From that partial DNA I developed, that's correct.

25 MS. SAXON: Court's indulgence for just a second.

1 THE COURT: All right.

2 MS. SAXON: That's all I have. Thank you, Your Honor.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY MS. MUSSER:

6 Q: Ma'am, you mentioned a partial profile. Is there
7 something called a full profile?

8 A: Yes.

9 Q: Okay. What's the difference between a partial profile
10 and a full profile?

11 A: A partial profile is where we get a certain -- like, a
12 less than the 16 markers that we normally get. A full profile
13 is we get all of them, all 16.

14 Q: Okay.

15 A: And that can deal with the amount of DNA that was
16 present.

17 Q: Okay. So with respect to the gun, it was only a partial
18 profile to begin with?

19 A: That is correct.

20 Q: Okay. And then -- so just so I understand. So just
21 because the defendant's DNA is not on the gun, it doesn't mean
22 that he didn't handle the gun. It just means that somebody
23 else left touch DNA on it?

24 MS. SAXON: Objection, Your Honor. Speculation.

25 THE COURT: I'll sustain that objection.

1 MS. SAXON: Thank you.

2 THE COURT: To the form of the question.

3 MS. MUSSER: Okay.

4 BY MS. MUSSER:

5 Q: So, ma'am, you would have no way of knowing whether
6 somebody touched something outside of your presence; correct?

7 A: That is correct.

8 Q: You can only say scientifically what was on the gun;
9 correct? As far as the DNA?

10 A: That is correct.

11 Q: So at this point, you have someone other than the
12 defendant's DNA on the gun?

13 A: That is correct.

14 Q: Okay. And you don't -- that could have been an officer
15 or it could have been anybody else?

16 MS. SAXON: Objection. Speculation.

17 THE COURT: Overruled. Go ahead.

18 BY MS. MUSSER:

19 Q: That could have been the officer that handled the gun
20 before -- after the defendant handled it, if he allegedly
21 handled it; correct?

22 A: That is correct.

23 Q: Okay.

24 MS. MUSSER: Nothing further, Your Honor.

25 THE COURT: Recross?

1 MS. SAXON: Just briefly, Your Honor.

2 RECROSS EXAMINATION

3 BY MS. SAXON:

4 Q: When there is a partial profile of DNA, you -- you can
5 still compare it to something; correct?

6 A: That is correct.

7 Q: And in your professional capacity, if you have a partial
8 profile that is not enough, you don't compare it; is that
9 correct?

10 A: That is correct.

11 Q: And if you look at your report, you actually had that
12 occur; correct?

13 A: I did.

14 Q: So when you have something that you're reporting, it's
15 because do you feel it rises to a level of reliability?

16 A: Yes, ma'am.

17 MS. SAXON: Thank you. Nothing further, Your Honor.

18 THE COURT: All right. Thank you, ma'am. You may step
19 down.

20 THE WITNESS: Okay.

21 THE COURT: May the witness be excused from her subpoena?

22 MS. MUSSER: Yes. Thank you, Your Honor.

23 MS. SAXON: No objections.

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

25 THE WITNESS: Thank you.

1 MS. MUSSER: Sir, with that, the State would rest.

2 THE COURT: The State rests, which is a good time for us
3 to go to lunch, ladies and gentlemen. I need to talk to the
4 attorneys about some matters of law outside of your presence.

5 Let's take a lunch break until 1:30. I remind you it's
6 too early to begin discussing the case. Don't let anybody
7 talk to you about the case. See you back at 1:30.

8 (Whereupon, the jury exits the courtroom at 11:59 a.m.)

9 THE BAILIFF: The jury is clear, Your Honor.

10 THE COURT: Do you want me to talk to your client now
11 about his right to testify or do you want me to wait until
12 after the break?

13 MS. SAXON: You can do it now. That's fine.

14 THE COURT: All right. Mr. Pritchett? Well, you might
15 want to make your motions first I guess.

16 MS. SAXON: Well, Your Honor --

17 THE COURT: I guess theoretically we ought to hear your
18 motions first. I'm sorry. And then I'll talk to him.

19 MS. SAXON: All right. Your Honor, at this time, the
20 defense would move for a directed verdict in the favor of Mr.
21 Pritchett and find him not guilty on all counts.

22 As to -- well, I'm going to kind of do this piece by
23 piece. I would say I'll start with the most, in my opinion,
24 obvious, the criminal conspiracy charge. There's been
25 absolutely no evidence offered on that charge to support it

1 going to the jury. There's been nothing of relation to any
2 sort of planning or conspiracy that occurred and, as you
3 heard, it was actually dismissed by a prior judge at the
4 probable cause hearing.

5 As to the remaining charges, the -- it is the opinion of
6 the defense that there has been no direct or circumstantial --
7 or substantial circumstantial -- substantial circumstantial
8 evidence presented in this case that could tend to prove the
9 guilt of Mr. Pritchett. What has been heard has been -- the
10 majority -- all of it, in my opinion, is circumstantial
11 evidence and most of it tends to only prove that he was in the
12 car at the time that he was arrested. I have yet to see
13 anything to prove that the gun was in his hand or put him in
14 that store outside of the alleged voice ID.

15 In this state, Your Honor, we do abide by the rule that
16 there must be a substantial amount of circumstantial evidence
17 that reasonably tends to prove the guilt of the accused to be
18 submitted to a jury. We would respectfully say that that is
19 not what has been presented so far and we request that you
20 direct a verdict of not guilty on all charges.

21 THE COURT: All right. Thank you. Solicitor?

22 MS. MUSSER: Thank you, Your Honor. Your Honor, the
23 State would respectfully request that you deny the motion for
24 a directed verdict. Clearly, we've presented both direct and
25 circumstantial evidence. It's overwhelming in this case and

1 it's certainly enough to send to the jury.

2 Specifically with respect to the conspiracy charge,
3 certainly evidence of two individuals coming into a store
4 together, jointly taking items that were stolen, and then
5 being found in the car at the same time with the stolen
6 merchandise would be evidence of an agreement between the two
7 and thus establishing the overt act required for a conspiracy
8 charge. So we would ask that all charges be sent out to the
9 jury. Thank you.

10 THE COURT: All right. I -- I believe there is
11 sufficient -- albeit some of it may be circumstantial, but I
12 believe that there is sufficient evidence for these matters to
13 be considered by the jury and, therefore, I am compelled to
14 deny the defendant's motion. Any other motions?

15 MS. SAXON: We would just renew any and all previous
16 objections and motions for the record, Your Honor.

17 THE COURT: Certainly. Now, let me go back and talk to
18 Mr. Pritchett. Mr. Pritchett, at this time I'm going to
19 explain to you certain of your rights and, if at any time you
20 don't understand what I'm saying or you ask me -- or if I'm
21 not speaking clearly enough, just let me know.

22 We've apparently now reached the stage in this trial
23 where you have the right to present your defense. I'll tell
24 you that you have the right to claim the protections given to
25 you by the Fifth Amendment to the Constitution of the United

1 States of America, which states in part as follows.

2 No person shall be compelled in any criminal case to be a
3 witness against himself, and this means you cannot be required
4 to testify. You have the right to testify. However, no one
5 can make you testify. This is a personal right that you have
6 and no one can waive this right except you.

7 If you decide to testify, you would be subject to the
8 same rules that govern other witnesses and you may be examined
9 and cross examined on any relevant issue in this case. In
10 addition, if you have any convictions involving dishonesty or
11 false statement or for crimes punishable by imprisonment for
12 more than one year and the Court determines that the probative
13 value of admitting this evidence outweighs its prejudicial
14 effect to you, the solicitor would be able to introduce your
15 record to attack your credibility.

16 And while we are talking about that, it's my
17 understanding based on a sidebar we had that there is no
18 record that could be used. Is that correct, Solicitor?

19 MS. MUSSER: Judge, it's my recollection that the
20 defendant only has an assault and battery charge. So he
21 doesn't have a crime of falsity that I'm aware of.

22 THE COURT: Okay. All right.

23 MS. SAXON: And it's also my understanding -- and we
24 might have two versions -- that that charge is from when he
25 was a juvenile.

1 THE COURT: I thought y'all mentioned a juvenile charge,
2 but nevertheless, it was an assault and battery?

3 MS. SAXON: I mean it's my understanding it's juvenile.
4 So I want it clarified for the Court and the record that Mr.
5 Pritchett has no adult record.

6 THE COURT: If it's something different than that,
7 Solicitor, we need to know about it before the -- before we
8 come back.

9 MS. MUSSER: I'll continue to look, Your Honor --

10 THE COURT: Okay.

11 MS. MUSSER: -- when we finish the colloquy.

12 THE COURT: Going back, Mr. Pritchett, if you decide to
13 testify, the decision on your part must be made freely and
14 voluntarily with the knowledge of the protections given to you
15 by the Fifth Amendment and the consequences of your decision
16 to testify. If you decide not to testify, I will instruct the
17 jury that they cannot give that fact that you did not testify
18 any consideration whatsoever because there is to be no --
19 absolutely no prejudice to you because you did not testify.

20 It's left entirely up to you as to whether or not you
21 testify and you may discuss this with family, friends, your
22 attorney, or anyone, but the final decision is left up to you.
23 Do you understand thus far what I've said?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have any questions about anything?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you had a chance to discuss with your
3 attorney whether or not you should testify?

4 THE DEFENDANT: No.

5 MS. SAXON: We would request some more time to discuss
6 it, Your Honor.

7 THE COURT: Okay. All right. We will re-examine that
8 issue after a while.

9 MS. MUSSER: And, Judge, I can clarify. The defendant
10 was convicted of simple assault and battery on December 16th of
11 2003, but again that's not a crime of falsity. He does have a
12 record from Georgia as well, but that -- where he received
13 probation for three years, but that looked like it was a first
14 offender program. I'm sorry. I'm having a little trouble
15 reading the Georgia rap sheet. Perhaps, Mr. Hightower can
16 tell me about it.

17 THE DEFENDANT: Excuse me, Your Honor. Would you like me
18 to explain the first offenders --

19 THE COURT: Talk to your attorney.

20 THE DEFENDANT: Okay.

21 (Whereupon, there is a pause in the proceedings.)

22 MS. MUSSEER: Okay. Judge, just to clarify, it looks
23 like the Georgia case -- he had charges of possession of
24 cocaine, possession of marijuana less than one ounce, and then
25 possession of a firearm or a knife during the commission of

1 attempt to commit certain felonies, and he was given a First
2 Offender Act and he was given probation for three years.

3 So -- and then it looks like there was a confinement
4 period of 235 days. So potentially the possession of a weapon
5 during the commission of a violent crime would be relevant if
6 he opens that door. I'm sorry. A felony -- during the
7 commission of a felony.

8 MS. SAXON: We would strenuously object to that as we
9 don't feel it would be relevant at all. The -- the charge, if
10 I am understanding correctly, arose because there were drugs
11 in the car and possession is automatically a felony in
12 Georgia, a violent felony for drugs. So it would not relate
13 to being involved in any sort of violent crime as what he's
14 accused of now. And it's also I would argue much more
15 prejudicial than probative. Thank you.

16 MS. MUSSER: And, Judge, I guess there's a distinction
17 between the State using that information in its case in chief
18 versus for impeachment purposes if he -- if the defendant
19 opens the door thus based on his testimony.

20 THE COURT: Well, I don't know how you could use it in
21 your case in chief. I could see how you could potentially use
22 it if he testifies, but now let's think about it. The -- this
23 event in Georgia occurred when?

24 MS. MUSSER: It looks like 2013.

25 THE COURT: And --

1 MS. MUSSER: To be exact, the arrest date reflected on
2 the rap sheet is March 12th of 2013.

3 THE COURT: All right. And so is the penalty -- is the
4 penalty for it more than a year?

5 MS. MUSSER: Yes, sir. He received probation for three
6 and it looks like -- I don't know if there was a violation.
7 He received confinement for 235 days and then there's another
8 -- I guess there was a resentencing or it says he got
9 probation for five years.

10 THE COURT: Well, if he were convicted of that in this
11 state, the penalty would be potentially more than a year. Do
12 you agree, Solicitor? I'm sorry. Solicitor? I'm sorry.

13 Ms. Saxon, if he were convicted of that offense in this
14 state --

15 MS. SAXON: Of the gun offense in this state, yes, Your
16 Honor, I would. And I believe it would come down to a 403
17 argument, a balancing test between probative and prejudicial
18 value.

19 MS. MUSSER: I would say not for impeachment purposes.

20 THE COURT: Well, yeah.

21 MS. SAXON: Actually, it is for the purpose of -- I'm
22 looking at Rule 609 right now.

23 THE COURT: That's the reason -- that's the reason you
24 would use it would be to attack his credibility. Tell me
25 again the offense is called what in Georgia?

1 MS. MUSSER: Okay. Okay. Judge, the first offense
2 that's listed is possession of cocaine. The second offense is
3 --

4 THE COURT: All right. Well, hold on. So he has a
5 conviction for possession of cocaine; is that correct?

6 MS. MUSSER: Yes. That's -- yes.

7 THE COURT: Okay. Possession of cocaine would carry more
8 than a year.

9 MS. MUSSER: And, again, it's listed as First Offender
10 Act. So all of these offenses are showing up on the rap
11 sheet. They're listed and then it says First Offender Act,
12 and then the next one on the list is marijuana possession less
13 than one ounce.

14 THE COURT: All right.

15 MS. MUSSER: And, again, it says he received a First
16 Offender Act on November 1st of 2013.

17 THE COURT: Well, the marijuana wouldn't be an issue
18 then.

19 MS. MUSSER: And then the next one is possession of a
20 firearm or knife during the commission of or attempt to commit
21 certain felonies and that --- my understanding that's related
22 back to the possession of cocaine because that's listed as a
23 felony. That's the only other felony under this section.
24 Obviously, the marijuana possession is a misdemeanor.

25 THE COURT: All right. Which is a charge similar to what

1 he's charged with here, isn't it?

2 MS. SAXON: I would disagree with that, Your Honor,
3 saying that what he's charged with here is possession of a
4 weapon in the commission of a violent crime versus possession
5 of a weapon in regards to possession of a drug. It --

6 THE COURT: Well --

7 MS. SAXON: To me, it sounds more akin to unlawful
8 carrying than it does to the possession of a weapon during a
9 violent crime as possession of cocaine is not a violent
10 felony.

11 THE COURT: But the question really is whether that's
12 punishable by more than one year. Isn't that -- isn't that
13 the question?

14 MS. SAXON: Well, the question is if it's punishable by
15 more than one year, then it's even more prejudicial or
16 probative to the defendant to submit something about it to the
17 jury. It has to go back to 403, and I don't see any probative
18 value in a gun charge related to drugs trying to compare that
19 to a gun charge related to an armed robbery.

20 MR. MUSSER: But, Judge I think it's going to depend on
21 what -- I mean obviously Ms. Saxon is privy to what her -- if
22 -- if Mr. Pritchett decides to testify, she would be privy to
23 what he's going to say. Not knowing that, my position is that
24 it's going to depend on what he testifies to to see if he
25 opens that door. In other words, it's just going to depend on

1 what he says that's going to either be rebuttable -- in other
2 words, if he were to take the stand and said, oh, I've never
3 held a gun in my life, I don't -- I don't like weapons of any
4 kind, well, then clearly this would come in because he's
5 opened that door. I'm not saying that -- that the charge
6 inherently allows me that he gets on the stand, I get to ask
7 him about them. I'm more comfortable with -- it's just going
8 to depend on what he says.

9 MS. SAXON: Right.

10 MS. MUSSER: Right.

11 THE COURT: All right. So you're -- you're saying that
12 you don't intend to use the prior convictions unless he opens
13 the door?

14 MS. MUSSER: Judge, may I -- do I have time to give it a
15 little bit more thought? Do a little bit of research on it?

16 THE COURT: All right. Okay.

17 MS. MUSSER: Because certainly I don't want to create an
18 issue -- I mean I don't want any of us to be in that position.
19 Of course, if I -- you know, if there's a clear channel that I
20 can use it, then, you know, I would certainly try to avail
21 myself to it, but I want to make sure that I'm right first
22 before I would attempt to do that.

23 THE COURT: All right. Here's my recollection, and y'all
24 look at -- y'all -- y'all can look at this during the break.
25 But my recollection is that you, in fact, can use convictions

1 if they are within ten years as long as they carry a penalty
2 more than a year. However, saying that, I'm now looking for
3 my file on this subject.

4 That's if he testifies, period, end of discussion. But
5 the courts have said on a couple of occasions that the reason
6 that you do this is to -- and the defendant would be entitled
7 a charge on this -- is not to show that he's guilty of this
8 charge, but it's to attack his credibility if he -- so that's
9 the only time you can use it is if he testifies.

10 But y'all are going to check on this for me and make sure
11 I'm right, but then the -- you do have to do a balancing test,
12 but the courts have said I believe that drug charges generally
13 are not indicative of credibility. The fact that somebody who
14 has -- has been convicted of a drug charge doesn't really
15 relate to credibility.

16 Then the other thing that I recall -- y'all can -- y'all
17 might not get any lunch -- is that the -- that there's a
18 general rule you should not be permitted to tell the jury that
19 he has a conviction for a crime that is almost identical to
20 this because of the prejudice -- potential prejudice to him
21 that might cause a jury to think, well, if he was guilty of
22 that then, he might be guilty of this now, meaning the
23 possession of a weapon during the commission of a crime or
24 attempt to commit a crime.

25 And so what at least one court has said in this state --

1 and that is a way to evolve to solve that problem is you don't
2 tell the jury what crime he was convicted of, just that he was
3 convicted of a crime for which he could have received more
4 than a year in jail. Those are my brief thoughts on the
5 matter.

6 Let me tell you what else my thoughts are and y'all -- we
7 can talk about it again in an hour, but in addition to
8 charging kidnapping and the specific charges that he has
9 pending here, I would need to -- I would have a charge on
10 expert's testimony. I would have a charge on identification.
11 Potentially a charge on possession of recently stolen goods.
12 All of those are in the website that I gave y'all earlier.

13 Hand of one I guess would be a potential charge. I'd be
14 glad to hear y'all on that. I'm not sure about mere presence
15 though. Those are my thoughts. Now, we need to go to lunch
16 for an hour.

17 MS. MUSSER: Judge, would you also mind giving -- I think
18 -- is there a charge for stipulations of counsel?

19 THE COURT: Ah, there it is. Thank you. I forgot about
20 that. Anything else?

21 MS. MUSSER: No, Your Honor, nothing from the State.
22 Thank you.

23 MS. SAXON: Not at this time, Your Honor.

24 THE COURT: All right. Let's come back at twenty after
25 one.

1 (Whereupon, there is a break in the proceedings from
2 12:20 p.m. until 1:25 p.m.)

3 THE COURT: Have we made a decision yet? Has the
4 defendant decided yet what he wishes to do about testifying or
5 do we need to have a ruling on the other matters first?

6 MS. SAXON: I apologize, Your Honor. I was trying to
7 take up too many things at once.

8 THE COURT: Sure.

9 MS. SAXON: After we side-barred about this a little
10 while ago, Your Honor, and we had spoken about it some more,
11 we are at this point planning to have Mr. Rolt testify. His
12 -- I am working with SCDC. The transport isn't in place to
13 get him here. I'm trying to see how early they can get him
14 here in the morning. That's --

15 THE COURT: I thought he was supposed to be here at
16 twelve o'clock today.

17 MS. SAXON: They would not do that. SCDC would not allow
18 it. They said they cannot do same day transportation.

19 THE COURT: Well, what are we going to do?

20 MS. SAXON: So --

21 THE COURT: Did you say your -- that your client is going
22 to testify?

23 MS. SAXON: No, not -- no. No. This is --

24 THE COURT: Well, what are we going to tell the jury?

25 MS. SAXON: That we just have a witness problem and he'll

1 be here in the morning and I'm really sorry.

2 THE COURT: All right. Tell me again why the witness
3 isn't here today.

4 MS. SAXON: That was an error on my part, Your Honor. I
5 -- as I said before, I have only been in this job a year and
6 in doing -- in trial prep, there are still things that I
7 forget to do. It's a complete error on my part that I did not
8 have the transport order prepared for an earlier time. I was
9 thinking in terms of with SCDC it was easiest, instead of
10 having them stay overnight, that they could come the morning
11 that I would need him to testify. It was under my impression
12 I thought we would -- that the State wouldn't rest until
13 Wednesday afternoon and, therefore, he would testify first
14 thing Thursday morning, which is when I had him scheduled to
15 be here, and then he could go directly back to McCormick
16 Prison instead of SCDC and him having to stay the night over
17 in Beaufort. I have since learned my lesson and it will never
18 happen again. I am --

19 THE COURT: What -- and so they're telling you now that
20 they can get him here or they're not telling you yet?

21 MS. SAXON: They're saying the transport is set up. I'm
22 trying to find out right now -- that's exactly what I was
23 getting ready to do -- if they can get him here, when the
24 earliest they can get him here is. But we're -- the original
25 order I did was to say he had to be here by nine. I'm trying

1 to see if they can get him here prior to that. That way we
2 could bring the jury back -- I mean once he's here, you know,
3 it would take maybe ten -- 15 minutes just to confirm again
4 what we've talked about before and make sure that we're still
5 on the same page and then we would go from there.

6 MS. MUSSER: I have nothing to offer. I am -- whatever
7 Your Honor is inclined to do. Judge, may we approach off the
8 record perhaps?

9 THE COURT: Sure.

10 (Whereupon, a bench conference is held off the record.)

11 MS. MUSSER: And with Your Honor's permission, since we
12 have a little bit of a break, I'll do a proposed verdict slip.

13 MS. SAXON: I'm sorry. I had asked Judge Mullen's law
14 clerk to email the standard verdict form that she uses in her
15 courtroom and I was going to suggest to you that we just model
16 it off of that.

17 MS. MUSSER: Okay. And you'll email it to me?

18 MS. SAXON: Yes. Yes. She just sent it to me. So I'll
19 email it over to you --

20 MS. MUSSER: Perfect.

21 MS. SAXON: -- as well and I figured that way we can have
22 something to present to Your Honor. Teamwork.

23 THE COURT: Give me one second.

24 (Whereupon, there is a pause in the proceedings.)

25 THE COURT: All right. Go ahead and bring the jury in

1 and we'll let them go until tomorrow morning.

2 THE BAILIFF: Are you ready for them, Judge?

3 THE COURT: Yeah. We're ready for the jury.

4 THE BAILIFF: The jury is entering the courtroom, Your
5 Honor.

6 (Whereupon, the jury enters the courtroom at 1:36 p.m.)

7 THE COURT: Welcome back, ladies and gentlemen. Don't
8 get too comfortable. I've got some bad -- well, I say bad
9 news. I think that depends on your point of view.

10 We have a witness problem. It's my understanding that
11 there may be only one witness left to testify in the trial of
12 the case. That could change, but for reasons which you will
13 probably become aware of, the witness can't be here until
14 tomorrow morning, which means we don't have anything to do.
15 If we had known that before lunch, we wouldn't have asked you
16 to come back.

17 So does anybody have a problem being here at 9:30
18 tomorrow morning? I'll remind you don't let anybody talk to
19 you about the case. Don't talk to anybody about the case.
20 Ladies and gentlemen, see you at 9:30 in the morning. Thank
21 you for your patience.

22 (Whereupon, the jury exits the courtroom at 1:39 p.m.)

23 THE BAILIFF: The jury is clear and the door is closed,
24 Your Honor.

25 THE COURT: Apparently, our alternate juror has a

1 conflict of some kind tomorrow afternoon. She's getting ready
2 to tell the bailiff what it is.

3 MS. SAXON: It's a good thing it's the alternate.

4 THE COURT: Do what?

5 MS. SAXON: It's a good thing it's the alternate.

6 THE COURT: Yeah.

7 (Whereupon, there is a pause in the proceedings.)

8 THE COURT: All right. This hearing that I've got
9 tomorrow morning is at 9:30.

10 THE BAILIFF: I started to bring that up a while ago.

11 THE COURT: Somebody told me it was just tomorrow
12 morning.

13 MS. SAXON: I thought it was. I apologize.

14 THE BAILIFF: And, Your Honor, the alternate jury person
15 -- her conflict tomorrow is she has a meeting in Hilton Head
16 tomorrow at 2:30. She is the alternate.

17 MS. SAXON: I have just received an email from the
18 coordinator of the transport telling -- I asked her if they
19 could have him here by eight and she said she would ask the
20 institution to get him here by that time.

21 THE COURT: Give me one second. I have a problem with
22 this thing. I'm looking at an email that I just received
23 about tomorrow.

24 (Whereupon, there is a pause in the proceedings.)

25 THE COURT: We may not have to worry about that hearing.

1 THE BAILIFF: I have her in the jury room. I just put
2 her aside. I didn't want her to ask me anything when any of
3 the others were present.

4 THE COURT: Tell me what y'all think about this. What if
5 I bring the alternate in and tell the alternate something like
6 this? If everybody shows up tomorrow, all of the jurors show
7 up, we should have this case to the jury -- since I'm going to
8 limit both sides to 30 minutes' argument -- before twelve, and
9 if it -- if that happens, she'll be excused automatically.

10 If something happens to one of the other jurors, we
11 should know it by first thing in the morning, although I don't
12 know if y'all have heard me tell this story. I had a juror
13 once upon a time and as she was exiting the jury box to begin
14 final deliberations, stumbled, fell, missed a step, hit her
15 head on the floor, and had to call EMS and she couldn't
16 participate.

17 MS. SAXON: How awful.

18 THE COURT: So we had to bring the alternate in. Well,
19 the alternate was still there, but so it can happen at the
20 very, very last moment. What do you think about if I tell her
21 something along those lines, Solicitor?

22 MS. MUSSER: Your Honor, I have no objection to that.

23 THE COURT: Ms. Saxon?

24 MS. SAXON: No objection, Your Honor.

25 THE COURT: Bring her in. Let me speak to her for just a

1 minute and see what we can do.

2 (Whereupon, the alternate juror enters the courtroom at
3 1:45 p.m.)

4 THE COURT: Hey. How are you doing?

5 THE JUROR: Yes, sir.

6 THE COURT: Here's what's going to happen we think.

7 THE JUROR: Okay.

8 THE COURT: We think there will be one more witness to
9 testify in the morning. We think that that ought to be
10 through by 10:30.

11 THE JUROR: Okay.

12 THE COURT: We think then the attorneys will make their
13 closing arguments to you and I'll tell you about the law that
14 applies in the case. I'll tell the jury about the law that
15 applies in the case and we think that will all occur before
16 twelve. Do you follow that now? And if all of the jurors are
17 here, then you'll be excused and you won't be needed.

18 THE JUROR: All right.

19 THE COURT: If something happens tonight and somebody
20 goes to the hospital, we're going to need you, but you'll know
21 first thing in the morning.

22 THE JUROR: Okay.

23 THE COURT: So the odds are if anything is going to cause
24 you a problem with your schedule, we'll know first thing in
25 the morning.

1 THE JUROR: Very good.

2 THE COURT: Is that going to work?

3 THE JUROR: That works for me perfect.

4 THE COURT: Good.

5 THE JUROR: Thank you, sir.

6 THE COURT: See you in the morning.

7 THE JUROR: Thanks for your time.

8 (Whereupon, the alternate juror exits the courtroom at
9 1:46 p.m.)

10 THE COURT: Now, let me go back to what we were talking
11 about before lunch. I indicated I would charge -- and now
12 I've heard all the motions. Kidnapping, possession of a
13 weapon during a violent crime, unlawful carrying, criminal
14 conspiracy, armed robbery.

15 In addition to that, a charge on experts and their
16 testimony, identification, possession of recently stolen
17 goods, failure of the defendant to testify, stipulations of
18 the attorneys, and maybe prior record I guess if this other
19 witness testifies and has a prior record, which is another
20 issue y'all need to talk about. I'm just not sure that I see
21 mere presence as being an issue in this case.

22 MS. SAXON: Your Honor, I think you covered it with the
23 being in possession of recently stolen goods one.

24 THE COURT: Okay.

25 MS. SAXON: That's kind of where my mind was. I just

1 couldn't formulate the words.

2 THE COURT: Okay. Anybody else have any other thoughts
3 about charges?

4 MS. MUSSER: Not on behalf of the State, Your Honor.

5 THE COURT: Okay. And remember what I told you. If you
6 have -- if you really are concerned, then you can go to the
7 website and see word for word.

8 MS. SAXON: Did you say identifications as well, Your
9 Honor?

10 THE COURT: Yeah, I did.

11 MS. SAXON: I was trying to write and listen.

12 THE COURT: Have y'all studied and agreed upon the record
13 of this witness that might testify and what part of that
14 record, if any, could be used to impeach him?

15 MS. SAXON: We can definitely do that.

16 MR. MUSSER: We can. I now -- I believe that -- I
17 believe all that information was turned over, but we'll --
18 we'll work that out, Judge.

19 THE COURT: Okay. All right.

20 MS. SAXON: I promise, Your Honor.

21 THE COURT: So let's try to be ready at 9:15 in case
22 there's something that's come up about that record that we
23 need to take care of. Anything else we need to do? Anything
24 else?

25 MS. MUSSER: No, Your Honor. Thank you.

1 MS. SAXON: No, Your Honor. Thank you.

2 THE COURT: In this case, we will continue then until
3 9:15 tomorrow morning.

4 (Whereupon, the proceedings adjourn for the day at 1:49
5 p.m.)

6 AUGUST 28, 2014

7 (Whereupon, the proceedings resume at 9:36 a.m.)

8 THE COURT: All right. Before we bring the jury in, we
9 probably need to go over a couple of things. Did anybody
10 prepare a verdict form?

11 MS. MUSSER: I --

12 MS. SAXON: I meant to email it to you and I probably
13 forgot because I am just all over the place. I have one that
14 I can have prepared in about -- relatively quickly. It's
15 already -- I can change the name and indictment numbers pretty
16 much.

17 MS. MUSSER: Well, if you email it to me, then, like I
18 said, I can get access to it because we've got the computer --

19 MS. SAXON: Okay.

20 MS. MUSSER: -- right here and I already have a caption
21 ready.

22 THE COURT: All right. And have we ever formally
23 addressed the issue of whether Mr. Pritchett is going to
24 testify or not?

25 MS. SAXON: Mr. Pritchett is not going to testify, Your

1 Honor, and --

2 THE COURT: Mr. Pritchett, is that correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you decided that you do not wish to
5 testify?

6 THE DEFENDANT: Yes, sir. That's correct.

7 THE COURT: Okay. All right. Thank you very much. And
8 one other matter that comes to mind is -- is there a -- does
9 the defense plan on calling a witness?

10 MS. SAXON: Your Honor, after more -- well, no, Your
11 Honor, we are not. We will -- we would like to bring the jury
12 back in and rest and go straight to argument and --

13 THE COURT: Okay.

14 MS. SAXON: -- charging.

15 THE COURT: Anything else then?

16 MS. MUSSER: Judge, there was just one other issue that I
17 -- we should have probably put on the record prior to the jury
18 selection, but now is as good a time as any. I just wanted
19 the record to reflect and Ms. Saxon to confirm that the State
20 had made an offer to the defendant for a plea to strong-armed
21 robbery with a cap of -- just remind me what the cap was?
22 Eight or ten?

23 MS. SAXON: Ten.

24 MS. MUSSER: And, Your Honor, that was rejected. That
25 offer expired the -- I believe it was August --

1 MS. SAXON: 16th.

2 MS. MUSSER: Which would have been the week of the August
3 11th court term. It's my understanding and I just wanted Ms.
4 Saxon to confirm on the record that she did review that offer
5 with her client and that it was rejected.

6 MS. SAXON: We did, Your Honor. We had talked about
7 that, as well as the other plea offers that we had -- that had
8 come over the course of this case and --

9 THE COURT: Okay.

10 MS. SAXON: -- Mr. Pritchett has consistently wanted to
11 assert his right to trial.

12 THE COURT: Okay.

13 MS. MUSSER: And, Judge, before we -- before then, since
14 I guess we're going to move right into -- into closing
15 argument, it's my understanding that because Ms. Saxon put in
16 evidence, then the State would be allowed to argue last;
17 correct?

18 THE COURT: Okay.

19 MS. SAXON: That's -- that's correct.

20 THE COURT: Correct.

21 MS. MUSSER: And that I'm permitted to waive opening on
22 the law and then just do one closing in general.

23 THE COURT: Any objection to that, Ms. Saxon?

24 MS. SAXON: None, Your Honor.

25 THE COURT: Okay.

1 MS. MUSSER: And then do -- are you going to email me the
2 verdict form?

3 MS. SAXON: I just did.

4 MS. MUSSER: Okay.

5 MS. SAXON: It hopefully will pop up here momentarily.

6 MS. MUSSER: Okay. And the only problem is going to be
7 -- the only problem is going to be that it's now hooked up to
8 the screen.

9 MS. SAXON: Do you want to do it on my laptop?

10 THE COURT: Well, we don't actually have to do that.
11 Remember? We can ask them to write the verdict on each of the
12 indictments.

13 MS. SAXON: Your Honor, I -- Ms. Novell can do it. I
14 already have it on my computer. I have a caption as well in
15 this matter.

16 THE COURT: I don't see anything. I'm looking at the
17 indictments to see if there's any aggravating language in it
18 that might pose a problem and I don't see it myself.

19 (Whereupon, there is a pause in the proceedings.)

20 THE COURT: All right. Well, the bailiff indicates all
21 of the jurors are present. Is the State ready for the jury?

22 MS. MUSSER: Yes, Your Honor.

23 THE COURT: Is the defense ready for the jury?

24 MS. SAXON: Yes, Your Honor.

25 THE COURT: Okay. Bring the jury.

1 THE BAILIFF: Yes, Your Honor.

2 (Whereupon, the jury enters the courtroom at 9:43 a.m.)

3 THE BAILIFF: the jury is entering the courtroom, Your
4 Honor.

5 THE COURT: Good morning and welcome, ladies and
6 gentlemen. If you recall yesterday, the State had rested,
7 which means the State presented to you all of the evidence the
8 State intended to present in the presentation of the State's
9 case. The defense now has the opportunity to submit evidence
10 if the defense chooses to do so, although the defendant is not
11 required to do so. Ms. Saxon?

12 MS. SAXON: Thank you, Your Honor. At this time, the
13 defense rests.

14 THE COURT: The defense rests. This means, ladies and
15 gentlemen, that you have heard and received all of the
16 evidence that will be presented to you for your consideration.
17 There will be no more documents, no more testimony. You will
18 decide the case based on what you have heard and seen. The
19 attorneys are getting ready to make to you their closing
20 arguments and then I will tell you about the law that applies
21 and then you'll begin your deliberations. The State has the
22 right to open on the law.

23 MS. MUSSER: Judge, we'll waive that.

24 THE COURT: The State waives that right, which -- Ms.
25 Saxon.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

MS. SAXON: Thank you, Your Honor. When I talked to you all a few days ago, I told you about my favorite legal movie being "My Cousin Vinny" and I told you that my favorite part of that movie is that there weren't dramatic speeches and "Law and Order" moments because it was about facts and the little details about what happens in trials and in cases.

But my other favorite part about that movie is that there's not a bad guy in the story. The defendants are innocent and there's no one in the courtroom that's corrupt. Everyone is doing their job. The only thing that anyone has to fear would be a miscarriage of justice if those two young men went to prison. Ladies and gentlemen, just like in "My Cousin Vinny", there is no bad guy in the courtroom today.

Now, the State very much wants you to believe that Philenza Pritchett is a bad guy. They very much want you to believe that and in a few minutes they'll be able to stand up here and tell you why you should believe that, but I want to talk about what the evidence has shown you over the past couple of days.

First, I want to talk about this identification. Now, why if Ms. Fulton knew the person who robbed her did she not immediately tell the officer and that name immediately go out over the airwaves? Because she didn't know.

Why if she recognized the voices and told that to the

1 officer when the corporal was writing his report did he not
2 make that clear? Because she didn't give them a name until
3 she saw him and recognized an acquaintance.

4 How can we trust that she said that she knew who was
5 robbing her when he's sitting 15 feet away and she can't tell
6 us what color shirt he was wearing? In the courtroom, you
7 heard him describe a shirt of black and white when we all
8 clearly saw he was wearing a gray mossy green-colored shirt.

9 And then think about this. She said she recognized the
10 voices of her assailants. She's on her cell phone during the
11 robbery. You saw the video. You heard her testify to that.
12 She's talking to her cousin. She testified that she had her
13 own internal monologue occurring telling her to keep calm.
14 Plus she has two people with guns giving her various
15 directions and yelling at her, talking through bandannas, and
16 yet she recognizes the voice of a supremely casual
17 acquaintance that she had met a handful of times a number of
18 years ago while she was doing his mother's hair?

19 Ladies and gentlemen, if she had known who had robbed her
20 and if that person had been Mr. Pritchett, she would have said
21 so immediately to the officers when they arrived on the scene
22 and not when she got to the Gumtree Pantry. She didn't make
23 an ID. She recognized an acquaintance. She got the wrong
24 guy.

25 I also want you to talk and think about what we have

1 heard that the officers did not do in this case. Every BCSO
2 patrol car is equipped with an in-car camera that activates at
3 blue lights. Those are equipped to create direct evidence so
4 that we know what's happening on the scene or in a car so that
5 we can hear and see. We don't have any of that and we know
6 that no fewer than five patrol cars were on scene. Why don't
7 we have those videos? We know that blue lights were turned
8 on. Why don't they have those? Why didn't you get to watch
9 any of them?

10 I also want you to know that you heard Investigator
11 Cooler testify that Philenza gave him some information about
12 what happened that night, as did other individuals who were
13 arrested, but he sat on the stand and told you he didn't
14 follow up on that information. He didn't investigate it. He
15 made an assumption.

16 Also, think about the fact that numerous officers
17 testified that they didn't take the time to write a report on
18 a serious crime and now four-and-a-half years later what are
19 we to rely on? Their memory? How many cases have occurred
20 since then? How many defendants? How many times have they
21 had to testify in the past four-and-a-half years? And we're
22 supposed to believe that everything that they've said during
23 the past week is spot on when they didn't even take the time
24 to write it down.

25 One officer testified that when he found the gun that it

1 was shoved under the seat and it was facing a certain way.

2 How do we know? He didn't write it down.

3 I also really want you to think about DNA evidence. We
4 went through every single person in that chain and they all
5 testified that they did their jobs and they handled it
6 correctly, that they didn't make any mistakes, and that they
7 preserved that evidence for testing. They all said it from
8 that stand under sworn testimony.

9 And then it gets to the SLED lab and they test it. And
10 on the blue sweatshirt, the one that Mr. Pritchett is alleged
11 to have worn, they say there is a 1 in 14 chance that that
12 could be his DNA. One in 14. There are 170,000 people in
13 Beaufort County. I'm not good at math, but 1 in 14 I have a
14 feeling that's a pretty big number of people who might match
15 it.

16 Like I said and like Ms. Hefney confirms, out of the
17 twelve of you, me, and one of the bailiffs, one of us is
18 probably going to match it, and that's in opposition to the
19 black sweatshirt, which was a 1 in 1 quadrillion match.
20 Quadrillion -- a number so massive that it obliterates the
21 number of people that are on earth. That's a DNA match. That
22 is forensic science saying that Mr. Rolt was wearing that
23 shirt during the robbery.

24 Also, think about the gun. The State didn't want to put
25 the gun into evidence; so I did. I put those swabs into

1 evidence and why did I do that? Because the stills, the
2 video, the pictures show the black male robber holding in an
3 ungloved hand a silver and black pistol. Holding it in an
4 ungloved hand, you can bet that he's -- whoever that robber
5 is, his adrenaline is going. He's sweating. He's handling
6 that gun. He probably touched the trigger. He's loaded the
7 magazine. He's pulled off the safety. His DNA is on that gun
8 somewhere, whether it's on the butt, the handle, the trigger,
9 the safety, the slide, the magazine. It's on there.

10 The State wants you to believe that when BCSO was
11 handling this evidence, the DNA got swabbed off, but think
12 about what they're doing when they handle evidence. Their job
13 is to preserve it, not to destroy it. They're taking
14 evidence, they're handling it carefully, they're sealing it in
15 bags, and they're putting it away so that it can be tested.
16 And what the test says is that absolutely no DNA from Philenza
17 Pritchett is on the gun, the gun from the robbery. None.
18 Zero. And that's not a fluke; that is science, ladies and
19 gentlemen.

20 As I said, they've got the wrong guy. Sitting here in
21 this courtroom today, there are no bad guys. And despite what
22 the State says the evidence shows you, that Philenza is not
23 the young man who was involved in that robbery on April 1st.

24 The only thing to fear in this courtroom is a miscarriage
25 of justice, and the only people who can prevent that are the

1 twelve of you. The people with the power, the people who can
2 do what is right and what is just are the twelve of you
3 sitting in the box right now. You are the only ones who can
4 remove Philenza from the four-and-a-half year pause his life
5 has been on, give him back to his family and his future, and
6 let him continue. You are the only ones that can do that.

7 You are the only ones who can serve justice today and, to
8 do that, you have to go back into the deliberations room and
9 look at this evidence, look at what the DNA says, question the
10 reliability of this ID, consider what hadn't been done in the
11 investigation, and realize that they got the wrong guy. He's
12 not guilty of any of this, and I think you will find that and
13 you'll come back out and deliver that verdict. Thank you.

14 THE COURT: Thank you, Ms. Saxon. Ms. Musser?

15 MS. MUSSER: Thank you, Judge.

16 (Whereupon, there is a pause in the proceedings as a
17 Powerpoint presentation is set up in open court.)

18 CLOSING ARGUMENT ON BEHALF OF THE STATE

19 MS. MUSSER: Good morning, ladies and gentlemen. At
20 this point, you have heard all the evidence and, in a few
21 minutes, Judge Goldsmith will be instructing you on the law.
22 And before I start, I'll say whatever the judge says about the
23 law -- he is the boss; so honestly you're -- you would need to
24 listen to his instruction.

25 But before I start as well, this case isn't about

1 Hollywood. This case isn't about a comedic movie. This is
2 real evidence that has been presented to you and it's about a
3 real person, the defendant, as well as Makia Fulton, who was
4 working two jobs and is a college student.

5 So at this point, when you go back to the jury
6 deliberation room, I would suggest to you that it will be your
7 job to figure out what you believe the true facts to be. The
8 true facts meaning who you believe, if you weigh the
9 credibility, whether -- and when you've made it be, like, what
10 you believe happened, then you would apply those facts to the
11 law as Judge Goldsmith gives it to you.

12 So at this time, we just want to go through and just kind
13 of recap what we've seen and what we've heard and why the
14 State is telling you that little boy blue is that defendant
15 right there, Philenza Pritchett.

16 First of all, just to touch briefly on the law -- and
17 again, it's how Judge Goldsmith gives it to you, but an armed
18 robbery is defined as a person who commits robbery while armed
19 with a pistol or any object which a person presents during the
20 commission of the robbery reasonably believed to be a deadly
21 weapon is guilty. Again, this case is more of a whodunit, not
22 what they did, but this is the law.

23 Conspiracy is an agreement between two or more persons
24 for the purpose of accomplishing an unlawful object or lawful
25 object by unlawful means. It's when two people get together

1 and they say, hey, let's rob a convenience store and one
2 brings in the bag, one -- each has a handgun, they go in
3 together at the same time. It's the agreement that is the
4 crime. It is the union of "let's do something together" that
5 is unlawful and that's what the charge of conspiracy means.

6 Obviously, unlawful carrying of a handgun -- it's
7 unlawful for anyone to carry about a person any handgun
8 whether concealed or not. So clearly publicly displaying it
9 in a convenience store using it in a crime would meet the
10 definition of unlawful carrying of a handgun.

11 Now, ladies and gentlemen, like I said, this case is a
12 whodunit. What's depicted here and what Ms. Fulton described
13 for you -- clearly, these two individuals, Mr. Rolt and Mr.
14 Pritchett, if you believe that that's who, in fact, it is,
15 these individuals depicted clearly commit an armed robbery
16 because we have the gun. We have them walking away with the
17 goods.

18 It's a conspiracy because the two individuals come in
19 together, they leave together, and they carry away stolen
20 goods together.

21 Kidnapping can mean that in the traditional Hollywood
22 sense where somebody is taken and they're tied up, they're
23 bound, and they're held in a room, but it also means -- it's
24 defined here by the South Carolina Code. Whoever shall
25 unlawfully seize, confine, inveigle, decoy, kidnap, abduct or

1 carry away any person by any means whatsoever without
2 authority of law is guilty.

3 So in that case, if you believe that the defendant was
4 one of the men carrying the gun and that with Brandon Rolt,
5 the other man, forcibly tells someone to go into the bathroom,
6 Ms. Fulton, where she doesn't want to go, that is kidnapping.
7 She does not need to be duct-taped or locked in the room.
8 It's their telling -- they're making her go somewhere she did
9 not intend to go at gunpoint.

10 Now, Judge Goldsmith will probably give you the
11 instruction about direct and circumstantial evidence.
12 Sometimes on TV, they say, oh, it's just a circumstantial
13 case. Well, as the law will tell you, there are two types of
14 evidence, direct and circumstantial. They are both given
15 equal weight. One isn't favored or disfavored. They are both
16 equal.

17 But direct evidence is the testimony of a person who
18 claims to have actual knowledge of a fact, such as an
19 eyewitness. In this case, that would be Ms. Fulton. It is
20 evidence which immediately establishes the fact.

21 Circumstantial evidence is defined as proof of a chain of
22 facts and circumstances indicating the existence of a fact.
23 Circumstantial evidence is based on inference and not on
24 personal knowledge or observation.

25 An everyday example that everyone can relate to -- you

1 decide to go to the movies in the afternoon and you take your
2 car and you park it and, when you go into the movie theater,
3 the sun is out, but when you come out of the movie theater,
4 it's not raining but yet you see puddles on the ground and
5 water on the car and everything is covered. So you would know
6 that it had rained. You knew the sun was -- you didn't see it
7 rain, but you know that it rained.

8 Direct evidence of rain would be if somebody said, oh,
9 yeah, while you were in the movies, it was raining. Either
10 way, you know. If you believe the person that told you it
11 rained while you were in the movies. Either way, you know
12 that it rained.

13 Proof beyond a reasonable doubt is the kind of doubt that
14 would cause a reasonable person to hesitate to act, not to
15 hesitate to think. It's not a hundred percent certainty.
16 It's not a mathematical certainty. It's not beyond every
17 other possibility. And when you say hesitate to act, Judge
18 Goldsmith may use language like in a matter of importance to a
19 reason -- a reasonable person hesitating in a manner of
20 importance in their own affairs.

21 So say, for example, you want to buy a new house or a new
22 car. Some of the things that you might consider when you're
23 doing that would be, well, what are my finances? How much can
24 I afford a month?

25 Now, after thinking of those things, you say, okay, well,

1 I have a steady income. My job is secure. Yes, something
2 could happen unforeseen down the road, but with all the
3 knowledge that you have, it's reasonable to conclude that
4 you're -- you're safe to make that purchase. As opposed to
5 maybe somebody says to you the day before you're about to buy
6 the car, oh, layoffs are coming on Monday, and that would
7 hesitate.

8 So it's not that we don't want you to think about the
9 evidence. That is your function. This evidence is here, it
10 will go back with you, but again, reasonable doubt is not
11 beyond all doubt.

12 Ladies and gentlemen, as I said before, this case is
13 actually a whodunit, but the things that we know that will
14 help you determine that the defendant, Philenza Pritchett, is
15 the guy wearing the blue sweatshirt with the black t-shirt
16 over it, all these things come together.

17 Now, it's not that one piece in and of itself would be
18 enough. In other words, you could believe Makia Fulton and if
19 she got on the stand and you believed her and she said that
20 guy is the guy, that in and of itself would be enough. But in
21 this case, you have more. You have a lot more.

22 You have -- we went over the car, who was in it, what was
23 found. Again, we have Ms. Fulton's testimony, if you believe
24 that she is credible when she had the basis, the
25 understanding, and the knowledge to recognize his voice. That

1 she provided the name, Lenny, and that identified him. While
2 not identifying the two others, identified Mr. Pritchett.

3 We have the proximity of the time and the place that we
4 know that between the Kangaroo Express and the Gumtree is a
5 short distance between three and five miles. We know that the
6 times it happened that ten minutes after the call comes out,
7 the 9-1-1 call, that the defendant is stopped in the car. We
8 have the video, which is a simultaneous reporting depicting
9 the events that happened that night consistent with what Ms.
10 Fulton told you.

11 We have the gun that's used, the one -- the same gun that
12 matches Ms. Fulton's description in her statement where she
13 told Deputy Polites it was a silver and black handgun. And we
14 have the stolen goods, where they're located, when they're
15 found, along with the black backpack that Mr. Rolt is
16 carrying, as well as all the items of clothing worn by the
17 defendant.

18 So starting with the car, we have pictures of the car
19 outlining who was where. We know that in total ten minutes
20 after the robbery at the Kangaroo Express, this car is
21 stopped. It has the one white male, the two black males, a
22 total of three handguns, those of which are depicted in the
23 stills from the robbery. We have bandannas, which obviously
24 the masked men were wearing little white bandannas, along with
25 a black backpack containing money, the blue hoodie with the

1 black t-shirt over it, the stolen cigarettes, all right behind
2 Mr. Pritchett.

3 Again, with respect to Ms. Fulton's identification, I
4 want to ask that you review that in the context of your common
5 sense. This woman -- as you heard, she works two jobs. She's
6 a student. She's young. She's working there by herself. She
7 was scared. She was so scared that after she was put in the
8 restroom, she actually had to use it. She said that she
9 maintained her composure because she didn't want them to see
10 the fear.

11 She provides the description, one white male, one black
12 male. The black male was shorter than the white male, but
13 also shorter than she was. We know that the defendant is 5'8"
14 or 5'9". She recognizes his voice. She tells -- she told you
15 how she recognized it and she associated a name with that
16 recognition of the voice.

17 She also told you that she had met the defendant in
18 Ridgeland. You may have been asking yourself why I went
19 through the trouble of putting in the booking reports and the
20 information contained in that. Well, the address that the
21 defendant gave after he was arrested was a Ridgeland address.

22 The identification takes place with -- within a half an
23 -- actually less than a half an hour of the actual event and,
24 again, she didn't identify Mr. Rolt or Mr. Lockett. She
25 identified the defendant and you heard her testimony, as well

1 as Deputy Polites. She did not hesitate in any way.

2 We have the time line. We know that the call came in for
3 the armed robbery at 2:48. We know that as of 2:54, Sergeant
4 Simmons had already talked to Ms. Fulton and put out the
5 description of one white male and one black male. We know
6 that at 2:58, that is when Corporal Murphy located the blue
7 Volkswagen containing the defendant and the other individuals,
8 and that from that point forward that car was detained. It
9 was secured. There was nobody going in or out.

10 At 3:12 -- so Deputy Polites was already on his way back
11 to the Gumtree Pantry with Ms. Fulton for the identification.
12 So he left the Kangaroo Express at 3:12 and by 3:20 Ms. Fulton
13 had already viewed everyone. So that is -- I'm not good at
14 math, but by my math that's 32 minutes. The defendant is
15 identified.

16 We had the video that was placed in evidence, as well as
17 all the stills. That captures the robbery so that in addition
18 to Ms. Fulton telling you what happened, you have those images
19 that you can look at for yourself. They tell you exactly what
20 the suspects were wearing, what items were stolen, and it
21 corroborates what Ms. Fulton has already told you as to what
22 happened to her and who did it.

23 Looking at some of the stills, we know that this black
24 and silver gun -- the State has presented and given you that
25 gun. It was described in Ms. Fulton's statement. She

1 describes it as a silver and black handgun carried by the
2 defendant, and it's the same firearm that Sergeant Thomas
3 took. Remember how he told you that his focus when he got
4 there was making sure that all the officers were safe and the
5 public was safe; so he took the gun out of the car. I asked
6 him, "Were you wearing gloves?" He said, "No." My focus was
7 on securing it, making sure that everyone -- all the guns had
8 been contained. The individuals were detained. He said --
9 and he made the guns secure before turning it over. And that
10 is this gun that he took out right in front of where the
11 defendant was sitting. Again, each piece in and of itself,
12 but when you put them together, it's starting to build like
13 pieces of a puzzle.

14 Again, we know that the car was secured from the time
15 Corporal Murphy got there. So -- and we know that in that car
16 we had the stolen goods and the black backpack that when you
17 look at the stills you can see Brandon Rolt carrying it. We
18 have the blue sweatshirt, the stolen cigarettes, the backpack,
19 and we have the backpack containing the money and the quarter
20 wrappers. We also have the recovered mini cigarillos.

21 So let's talk about the co-conspirator, Brandon Rolt. So
22 Mr. Rolt, again, is the driver of the car. So with him, we
23 have white male, matches the description white male depicted
24 in the video. We have the stone-washed jeans that he's
25 wearing with the stone-washed jeans depicted in the video. We

1 have the black backpack that's recovered at the car. We have
2 in evidence also his all-black sneakers. We have his DNA on
3 the black sweatshirt and we have the revolver depicted in this
4 picture in the glove compartment in the car driven by Mr.
5 Rolt. We have the stolen -- pictures of the stolen cigarettes
6 being carried out in the plastic bag.

7 So that brings us to the defendant. It's almost like
8 connect the dots, but, again, little boy blue. We know for a
9 fact that he's wearing these items when he's photographed
10 after he was found in the car. We have the blue doo-rag and
11 we have the sneakers. Now, the sneakers are important
12 because, one, the theme of blue is everywhere. We have the
13 big stripe and, in the video, you see a big stripe.

14 You have the blue bandanna that he's wearing found where?
15 Right next to where he was sitting in the car. When you look
16 at this picture, you say what's that on his knee? Well, let's
17 see. It's the Dickey's label on his pants that you can see on
18 the photograph from when he's arrested. And once again, we
19 have the blue sweatshirt, and where is the blue sweatshirt
20 found? Tucked right behind him in the trunk along with the
21 stolen goods.

22 Ladies and gentlemen, in summary, there's overwhelming
23 evidence in this case to convict the defendant and find him
24 guilty of all charges. We have Ms. Fulton's identification.
25 We have the time and put in the proximity from the -- where

1 the robbery happened to when they're detained. We have the
2 location of the three guns and the stolen merchandise where
3 Mr. Pritchett was sitting, where the gun used was, and all of
4 -- the blue sweatshirt with the stolen items right behind him.
5 We have the gun, which again, that gun from the car is in that
6 hand wearing that blue shirt.

7 We have Brandon Rolt. All his identifiers are consistent
8 with him being the co-conspirator. We have, once again, the
9 stolen cigarettes, the blue sweatshirt, the backpack, and then
10 we have the total picture, the final piece of the puzzle that
11 this defendant is guilty. Thank you, ladies and gentlemen.

12 CHARGE ON THE LAW BY THE COURT

13 THE COURT: Thank you, Solicitor. Ladies and gentlemen,
14 I remind you that the defendant -- the fact that the defendant
15 was arrested, charged, and indicted in this case is not
16 evidence. It cannot be considered by you as evidence, nor do
17 these facts create any presumption or inference of guilt.
18 These documents are simply the formal written instruments that
19 bring the case into the court.

20 The defendant has pled not guilty to these indictments,
21 and that plea puts the burden upon the State to prove the
22 defendant guilty. A person charged with a criminal offense in
23 South Carolina is never required to prove himself innocent. I
24 charge you and tell you that it is an important rule of law
25 that the defendant in a criminal trial, no matter what the

1 seriousness of the charge may be, will always be presumed to
2 be innocent of the crime for which an indictment was issued
3 unless guilt has been proven by evidence that satisfies you of
4 that guilt beyond a reasonable doubt.

5 This presumption of innocence does not end when you begin
6 your deliberations, but it accompanies the defendant
7 throughout the trial until you reach a verdict of guilt based
8 on the evidence that satisfies you of that guilt beyond a
9 reasonable doubt. The presumption of innocence is like a robe
10 of righteousness placed about the shoulders of a defendant
11 which remains with the defendant until it has been stripped
12 from the defendant by evidence that satisfies you of that
13 guilt beyond a reasonable doubt.

14 The presumption of innocence is not mere legal theory.
15 It is not just a legal phrase. It is a substantial right to
16 which every defendant is entitled unless you, the jury, are
17 satisfied from the evidence of the defendant's guilt beyond a
18 reasonable doubt.

19 A reasonable doubt is the kind of doubt that would cause
20 a reasonable person to hesitate to act. Some of you may have
21 served on juries in civil cases where you were told that it
22 was only necessary to prove a fact that's more likely true
23 than not true, such as by a greater weight or preponderance of
24 the evidence, but in criminal cases the State's must be --
25 State's proof must be more powerful than that. It must be

1 beyond a reasonable doubt.

2 Proof beyond a reasonable doubt is proof that leaves you
3 firmly convinced of the defendant's guilt. Of course, there
4 are very few things in this world that we know of with
5 absolute certainty, and in criminal cases the law does not
6 require proof that overcomes every possible doubt.

7 If based on your consideration of the evidence you are
8 firmly convinced that the defendant is guilty of the crime
9 charged, you must find the defendant guilty. On the other
10 hand, if you think that there is a real possibility that the
11 defendant is not guilty, you must give the defendant the
12 benefit of the doubt.

13 During the trial of this case, you and I have had
14 different responsibilities. I have been required to rule on
15 the admissibility of evidence during this trial, and I tell
16 you to consider only the competent evidence before you.
17 You're to consider only testimony which has been presented
18 from this witness stand and any exhibits that have been made
19 part of the record in this case and any stipulations of the
20 attorneys.

21 And stipulations of the attorneys are agreements made by
22 the attorneys. If you recall, several were made in this case
23 where the attorneys agreed to certain facts, and that
24 agreement by the attorneys means that neither side is required
25 to offer any additional proof regarding those facts.

1 But I also have the additional duty to charge you as to
2 the law that applies in this case and, as the presiding judge,
3 I am the sole judge of the law of the case and it's your duty,
4 ladies and gentlemen, as jurors to accept the law as I now
5 state it to you. And if you have any idea that the law is
6 different than I tell you or should be different than I tell
7 you or you don't agree with the law, you must -- I tell you
8 you must abandon those ideas because you must accept the law
9 as I give it to you and apply it as I tell you.

10 In every case tried before a jury, the jury becomes the
11 sole and exclusive judge of the facts in the case and, as I've
12 told you before, a judge such as myself cannot comment on or
13 make any statement to a trial jury about the facts of the
14 case. You are not to infer from anything I have said or any
15 rulings that I have made that I have an opinion about the
16 facts of the case.

17 As I told you before, the law does not permit me to have
18 an opinion about the facts of the case. This is a matter
19 solely for you. It is your duty, ladies and gentlemen, to
20 determine the effect, the value, the weight, and the truth of
21 the evidence presented during the trial.

22 Generally speaking, there are two types of evidence
23 presented during a trial: direct evidence and circumstantial
24 evidence. Direct evidence, of course, is evidence by a person
25 who claims to have actual knowledge of a fact, such as an

1 eyewitness. It is evidence which immediately establishes the
2 main fact to be proved.

3 But circumstantial evidence is proof of a chain of facts
4 and circumstances indicating the existence of a fact. It is
5 evidence which immediately establishes collateral facts from
6 which the main fact may be inferred. Circumstantial evidence
7 is based on inference and not on personal knowledge or
8 observation, but the law makes no distinction between the
9 weight or the value to be given to either direct or
10 circumstantial evidence, nor is a greater degree of certainty
11 required of circumstantial evidence than of direct evidence.

12 You should weigh all of the evidence in this case. After
13 weighing all of the evidence, if you're not convinced of the
14 guilt of the defendant beyond a reasonable doubt, you must
15 find the defendant not guilty.

16 Necessarily, ladies and gentlemen, you must determine the
17 credibility of the witnesses who have testified, and this
18 simply means the believability. It becomes your duty as
19 jurors to analyze and to evaluate the evidence and determine
20 which evidence convinces you of its truth.

21 In determining the believabilities of -- believability of
22 witnesses who have testified, you may believe one witness over
23 several witnesses or several witnesses over one witness. You
24 may believe part of the testimony of a witness and reject the
25 remaining part of the testimony of the very same witness. You

1 may believe the testimony of a witness in its entirety or
2 reject the testimony of a witness in its entirety. And you
3 may consider whether the witness has exhibited to you any
4 interest, any bias, any prejudice or any motive in the case,
5 and you may also consider the appearance and manner of a
6 witness while on the witness stand.

7 The rules of evidence normally or ordinarily do not
8 permit witnesses to testify about their opinions or
9 conclusions, but an exception to that rule exists for
10 witnesses that are called expert witnesses. This is a witness
11 who by education and experience has become in some expert --
12 become an expert in some art, science or profession and may
13 state their opinion as to relevant and material matter in
14 which the witness claims to be an expert and may state the --
15 and the witness may also state the reasons for the opinion.

16 You should consider any expert opinion received as
17 evidence in this case and like other evidence you give it the
18 weight that you think it deserves. If you decide that the
19 opinion of an expert is not based on sufficient education or
20 experience or if you conclude that the reasons given in
21 support of the opinion are not sound or that the opinion is
22 outweighed by other evidence, you may disregard the opinion
23 entirely. An expert witness's testimony is to be given no
24 greater weight than that of other witnesses simply because the
25 witness is an expert. And you are not required to accept an

1 expert's opinion even though it may not be contradicted.

2 I instruct you and emphasize that the fact that the
3 defendant in this case did not testify is not a fact to be
4 considered by you in any way in your deliberation and in your
5 consideration on the question of the guilt or innocence of the
6 defendant. It must not be considered by you in any manner
7 whatsoever. A defendant has the constitutional right to
8 remain silent, and the assertion of this right must not be
9 considered by you in your deliberations.

10 I repeat -- under your oath, you are to draw no
11 conclusion whatsoever from the defendant -- from the fact that
12 the defendant in this case did not testify. The fact that the
13 defendant did not testify should not even be discussed in the
14 jury room. The burden of proof, as I have stated to you
15 before, is on the State. The defendant is not required to
16 prove his innocence. The burden of proof remains on the State
17 to prove guilt beyond a reasonable doubt.

18 I tell you that if a crime is committed by two or more
19 people who are acting together in committing a crime, the act
20 of one is said to be the act of all. A person who joins with
21 another to accomplish an illegal purpose is criminally
22 responsible for everything done by the other person which
23 occurs as a natural consequence of the acts in carrying out
24 the common plan or purpose.

25 One issue in this case is the identification of the

1 defendant as the person who committed the crime charged. The
2 State has the burden of proving identity beyond a reasonable
3 doubt. You must be satisfied beyond a reasonable doubt of the
4 accuracy of the identification of the defendant before you may
5 convict the defendant.

6 Identification testimony is an expression of belief or
7 impression by a witness. You must determine the accuracy of
8 the identification of the defendant. You must consider the
9 believability of each identification witness in the same way
10 as any other witness. You may consider whether the witness
11 had an adequate opportunity to observe the offender at the
12 time of the offense. This may be affected by things such as
13 how long or how short a time were available and how far or
14 close the witness was, the lighting, the conditions, and
15 whether the witness had a chance to see or know the person in
16 the past.

17 Once again, I tell you that the burden of proof is upon
18 the State and extends to every element of the crime charged
19 and this specifically includes the burden of proving beyond a
20 reasonable doubt the identity of the defendant as the -- the
21 identity of the defendant as the person who committed the
22 crime. If after examining the evidence you have a reasonable
23 doubt as to the accuracy of the identification, you would find
24 the defendant not guilty.

25 If a defendant is found possessing recently stolen goods,

1 this may be used as evidence that the defendant stole the
2 goods. This would simply be an evidentiary fact to be taken
3 into consideration by you along with all the other evidence in
4 this case and you give it the weight that you decide it should
5 have.

6 The defendant is charged with armed robbery. In order to
7 prove this offense, the State must first prove beyond a
8 reasonable doubt that the defendant took personal property
9 from the person or presence of another person, and property I
10 tell you is in the -- is in the presence of a person if it's
11 within the person's reach, inspection, observation, or control
12 so that the person could -- if not overcome with violence or
13 prevented by fear, that person could have kept possession of
14 the property.

15 The State must also prove that the defendant carried away
16 the property with intent to permanently deprive the owner of
17 the property and to keep the property for the defendant's own
18 use. The taking and carrying away of the property must have
19 been done with violence or by putting the owner of the
20 property in fear of violence.

21 Finally, the State must prove beyond a reasonable doubt
22 that the defendant was armed with a deadly weapon during the
23 robbery. I tell you a deadly weapon is any article,
24 instrument or substance which is likely to cause death or
25 great bodily harm.

1 The defendant is also charged with conspiracy. The State
2 must prove beyond a reasonable doubt that the defendant
3 combined with one or more persons for the purpose of
4 committing an unlawful act or of committing a lawful act by an
5 unlawful means. It must be a mutual understanding or common
6 intention and plan. It is not necessary though that an
7 agreement be a formal one or that it be in writing or that the
8 persons hold a meeting and expressly state the terms of the
9 common plan.

10 In order to convict the defendant of conspiracy, the
11 State must prove beyond a reasonable doubt not only the
12 defendant knew of the unlawful conduct, but that the defendant
13 agreed to combine with the other person for the purpose of
14 accomplishing the unlawful conduct.

15 The defendant is charged with kidnapping. The State must
16 prove beyond a reasonable doubt that the defendant knowingly
17 and unlawfully either seized or kidnapped, abducted or carried
18 away another person without the authority of law.

19 And to do anything unlawfully is to do it willfully
20 against the law. Knowingly means with knowledge, consciously,
21 and not accidentally. Seize means to take hold of suddenly or
22 by force, and confine means to limit, restrict or enclose
23 within bounds or imprison or shut or keep in.

24 Kidnapping is to remove a person against his will by
25 unlawful force or by fraud. Abduct means to carry off

1 secretly or by force for an illegal purpose, and carry means
2 to remove.

3 The State does not have to prove that the defendant did
4 all of these things. Instead, if you find that beyond a
5 reasonable doubt that the defendant did any of these things,
6 you may find that the defendant is guilty of kidnapping.
7 Kidnapping does not have to be done for any personal or
8 monetary gain or for any illegal purpose, but can be done for
9 any reason whatsoever.

10 As you know, the defendant is also charged with
11 possession of a weapon during the commission of or attempting
12 to commit a violent crime. The State must prove beyond a
13 reasonable doubt that the defendant was in possession of a
14 firearm or displayed what appeared to be a firearm during the
15 commission of a violent crime. And, of course, a firearm
16 could mean a machine gun, an automatic rifle, a pistol, or any
17 weapon designed or it may be readily converted to expel any
18 projectile.

19 In order to find the defendant guilty of possession of a
20 weapon during the commission of a violent crime, you must
21 first find the defendant guilty of either committing the
22 violent crime or attempting to commit the violent crime. In
23 other words, the defendant cannot be guilty of possession of a
24 weapon during the commission of a violent crime unless the
25 defendant is also guilty of committing or attempting to commit

1 the violent crime, and I tell you that under South Carolina
2 law armed robbery is considered a violent crime, as is the
3 offense of kidnapping.

4 So once again so there's not any question about it, the
5 defendant would have to be also found guilty of either
6 kidnapping or armed robbery before he could be found guilty of
7 possession of a weapon during the commission of a violent
8 crime.

9 The defendant is also charged with carrying an --
10 unlawfully carrying a pistol. The State must prove beyond a
11 reasonable doubt that the defendant carried a pistol about his
12 person, whether it was concealed or not. The weapon is about
13 the defendant's person if it is readily accessible and
14 convenient for the immediate use. A pistol though does not
15 have to be actually touching the person of the defendant.

16 The indictments in this case allege different offenses.
17 I tell you that each indictment charges a separate and
18 distinct offense. You must decide each indictment separately
19 on the evidence and the law that applies to it uninfluenced by
20 your decision as to any other indictment except as I've
21 already told you. The defendant may be convicted or acquitted
22 on all or any of the offenses charged, and you will be asked
23 to make a decision and record it regarding each offense.

24 For there to be a verdict in the case, ladies and
25 gentlemen, the verdict must be unanimous, which, of course,

1 means all of -- all twelve of you must agree. Now, I'm going
2 to ask our foreperson, Ms. Shumaker, if she will record the
3 verdict of the jury as to each of these charges and sign her
4 name. And once you reach a verdict on all of the charges, if
5 you would, knock on the door and let us know.

6 I am going to send to the jury room -- I'm sorry. The
7 first thing I'm going to do is ask all of you to retire to the
8 jury room, but don't yet begin your deliberations until I send
9 to the jury room all of the exhibits and either the
10 indictments or a separate verdict form. The separate verdict
11 form, if I send that to you, will ask you to check off or
12 circle guilty or not guilty as to each of the offenses.

13 If I send the indictments, you will note on the back of
14 each of the indictments' bottom left corner there's a place
15 that has verdict, and underneath the verdict there's a place
16 to write in guilty or not guilty and for the foreperson to
17 sign and date. And I would ask you on behalf of the jury to
18 do that as to each of the indictments.

19 Once again, for there to be any verdict, the verdict must
20 be unanimous. All of you must agree.

21 Now, I'm going to ask you to step into the jury room, all
22 of you, and when I send the verdict form in with the exhibits,
23 that will be the cue to begin deliberations and for our
24 alternate juror to step back in the courtroom. Ladies and
25 gentlemen, will you please retire to the jury room?

1 (Whereupon, the jury exits the courtroom at 10:33 a.m.)

2 THE BAILIFF: The jury is clear, Your Honor.

3 THE COURT: Exceptions to the jury charge from the State?

4 MS. MUSSER: No, none from the State, Your Honor.

5 MS. SAXON: Your Honor, we would just ask that you would
6 charge mere presence as it appears that the first half of hand
7 of one and the hand of all was charged and mere presence makes
8 up the second half of that charge. We respectfully request
9 that that be charged to the jury.

10 THE COURT: Let me think about that. Tell me why --
11 explain to me why mere presence actually applies in this case.

12 MS. SAXON: Your Honor, it is the position of the defense
13 that Mr. Pritchett was merely present at the time of the
14 arrest when the goods were found in the car. That you charged
15 the jury that with the goods that can be evidence of the fact
16 that he committed the crime.

17 You also charged the jury that the hand of one is hand of
18 all, but part of that charge -- inherent I believe in that
19 charge is that mere presence to a -- to a crime, whether it is
20 in a car or at a store or wherever it is, is not enough to
21 place a conviction. There has to be more than just mere
22 presence. So there has to be more than just mere presence for
23 it to proceed forward.

24 THE COURT: Solicitor?

25 MS. MUSSER: Your Honor, obviously the State -- you know,

1 we agree with it or I agree with the charge that you gave. I
2 don't think that mere presence applies. It's not a situation
3 where the only evidence is found at the time he's arrested in
4 the car because of the identification. So I would just submit
5 that mere presence doesn't apply. I'm trying to find the mere
6 presence charge.

7 THE COURT: And this -- I'm trying to figure out --
8 you're talking about the -- as it relate -- you're not talking
9 about as it relates to the armed robbery or kidnapping, are
10 you? You're talking about as it relates to the unlawful
11 carrying? That's what I'm trying to figure out. Which --
12 which offense are you saying it --

13 MS. SAXON: Well, I would say with -- especially with the
14 unlawful carrying, Your Honor, and at -- as -- because of the
15 evidence that's been put forward about the gun and all, that
16 mere presence is -- his mere presence near that gun does not
17 make him guilty of carrying that gun at that time.

18 I would also say, Your Honor, that the State has alleged
19 that he is a principle actor in this crime; so hand of one and
20 hand of all doesn't really seem to be what would fit. They're
21 not saying that he was an accomplice. They're saying he
22 actually did it. But since hand of one, hand of all has been
23 charged, we would believe that we are entitled to the mere
24 presence charge as well for the mere presence of the gun as a
25 factor that they would consider.

1 MS. MUSSER: Judge, to be honest, I'm kind of -- I'm
2 somewhat confused because mere presence -- I'm not really
3 seeing any connection to a mere presence because we're saying
4 he's -- yes, he's present at the Kangaroo Express and he's
5 present because he's committing the armed robbery. It's not
6 like this is a case where we have three guys standing around
7 some drugs where just standing there isn't the crime, which I
8 would say, okay, in that I don't -- I would just ask the Court
9 to deny that request to charge that.

10 THE COURT: Well, I think the -- I think the defense is
11 saying that it -- that this request to charge mere presence
12 doesn't relate to the armed robbery or kidnapping offenses,
13 but only --

14 MS. SAXON: To --

15 THE COURT: -- as to the possession of the pistol charge.

16 MS. MUSSER: But I don't think that that charge can be
17 separated because he unlawfully carried the pistol at the
18 convenience store at the time of the armed robbery and the
19 kidnapping that --

20 THE COURT: Allegedly.

21 MS. MUSSER: Allegedly.

22 THE COURT: I think that --

23 MS. MUSSER: But -- thank you.

24 THE COURT: -- the defendant -- I think the defense is
25 saying that --

1 MS. MUSSER: But I think her reasoning would call for the
2 jury to only find that the unlawful carry was charged merely
3 for him allegedly having --

4 MS. SAXON: That's --

5 MS. MUSSER: -- the gun in front of him.

6 MS. SAXON: But --

7 MS. MUSSER: I don't know that you -- that that is the
8 theory -- that that's consistent with the case because even in
9 my closing I said, well, he's carrying it in the store.

10 MS. SAXON: But, Your Honor, that's the exact point of
11 the jury. That's what they're here to decide.

12 THE COURT: I think the defense is saying that the jury
13 could find him not guilty of kidnapping, not guilty of armed
14 robbery -- this is where I think she's headed with this -- not
15 guilty of conspiracy, and therefore -- and not guilty of
16 possession of a weapon during the commission of a violent
17 crime, and being left with having to decide whether he's
18 guilty of unlawful carrying at the second store. Isn't that
19 it?

20 MS. SAXON: Yes, Your Honor.

21 THE COURT: I think -- all right. Refresh my memory on
22 the evidence relating to the pistols at the second store and
23 the defendant. Who remembers it?

24 MS. MUSSER: Okay. With respect to the Gumtree Pantry in
25 the car? Okay. So there were three guns total in the car.

1 There was the .38 revolver in the glove compartment.

2 THE COURT: Right.

3 MS. MUSSER: There was the butt of the all-black 9mm in
4 the center console.

5 THE COURT: And let's just stop right there. The one in
6 the glove compartment is not an issue, is it?

7 MS. MUSSER: No.

8 THE COURT: For -- as to this charge?

9 MS. MUSSER: No. I don't think so.

10 THE COURT: Isn't that right? And we can't --

11 MS. MUSSER: Right. I'm not -- I'm not -- yeah. I'm
12 still getting up to speed on that charge, but no. It wasn't
13 -- the theory of the case was not about the .38 revolver.

14 THE COURT: All right.

15 MS. MUSSER: It was evidence of the robbery that --

16 THE COURT: So you've got one between the seat?

17 MS. MUSSER: Yes. And open -- in plain view where the
18 officer saw it.

19 THE COURT: And one under a seat?

20 MS. MUSSER: Right. So I mean --

21 THE COURT: Yeah.

22 MS. MUSSER: -- I didn't really argue that he was in
23 constructive possession of the one in the center console
24 because that's not the theory of the case, but the one under
25 the seat -- the testimony was that the officer couldn't

1 remember whether it was --

2 THE COURT: This way or that way.

3 MS. MUSSER: -- face up --

4 THE COURT: Right.

5 MS. MUSSER: -- face down.

6 THE COURT: Right.

7 MS. MUSSER: But that the butt of the gun was shoved --
8 that the butt of the gun was closest and the handle was
9 closest to the defendant at his feet. Part of it was shoved
10 under the seat in front of him.

11 THE COURT: All right.

12 MS. MUSSER: In other words, it wasn't the nose or the
13 barrel of the gun facing the defendant. It was facing away.

14 THE COURT: All right. Is that your recollection?

15 MS. MUSSER: And I think I even asked him a question
16 about how far it was from his feet.

17 MS. SAXON: I'm sorry, Your Honor. What was --

18 THE COURT: Is that your recollection?

19 MS. SAXON: Of the evidence? Yes, Your Honor.

20 THE COURT: Okay. All right. Well, I think -- I think
21 the charge on possession -- unlawful carrying covers that
22 because it says -- the unlawful carrying says that he doesn't
23 have to -- isn't that right? He doesn't have to have it in
24 his hand. It is -- he carried the pistol about him or about
25 his person, readily accessible, convenient for immediate use.

1 And that's what the State is saying is that the pistol was
2 there and it was convenient for immediate use.

3 For those reasons, I'm denying your motion.

4 MS. SAXON: Thank you, Your Honor.

5 THE COURT: Now, do we have a separate verdict form?

6 MS. MUSSER: I didn't --

7 THE COURT: Do you want me to get -- I can --

8 MS. MUSSER: Judge, I prefer -- I would just prefer that
9 you do it your way with the -- just because I think that's
10 simple. They -- there's no suggestion because then we always
11 get the argument whether guilty goes first or second, on top
12 or on bottom, and it was -- I thought it was a little
13 confusing.

14 THE COURT: And I've already told them how to do this.

15 MS. SAXON: I mean -- Your Honor, we -- the defense would
16 prefer a verdict form and the indictments I don't believe are
17 evidence in the case and I don't want the jury to look at them
18 and read the backs of them and use that as some sort of form
19 or evidence --

20 THE COURT: Well, I --

21 MS. SAXON: -- in the case.

22 THE COURT: Well, I've already told them they can't
23 consider the indictments.

24 MS. SAXON: I understand that. Just for the record, Your
25 Honor, if that's the way we're going to go, I just want to --

1 THE COURT: I know. I was -- and I've looked at them and
2 I don't see anything in the indictments that's different or --

3 MS. SAXON: And, Your Honor, I can email you the verdict
4 form that I've -- that Ms. Novell prepared if you would like
5 to see it or consider it.

6 THE COURT: Who's going to print it?

7 MS. SAXON: Ms. Winston will print it for me.

8 THE COURT: Is she printing it as we speak?

9 MS. SAXON: She certainly can. Can I email it to you to
10 print?

11 MS. WINSTON: Send it on over.

12 MS. SAXON: Thanks.

13 (Whereupon, there is a pause in the proceedings as
14 counsel confer regarding a verdict form.)

15 THE COURT: We're going to give them the indictments.
16 Y'all -- have y'all got the evidence already looked at and
17 ready to go?

18 (Whereupon, there is a pause in the proceedings as
19 counsel review the evidence.)

20 THE COURT: Ms. Saxon, do you agree with all this that
21 all the exhibits are here?

22 MS. SAXON: I'm listening as she does it, Your Honor.

23 THE COURT: Okay.

24 MS. SAXON: Would it be acceptable if -- that we hold the
25 indictments back until the jury has reached a verdict and then

1 they are passed in for signing?

2 THE COURT: No, no, no, no. Because they may be reaching
3 one verdict at a time so they'd need the verdict forms.

4 (Whereupon, there is a pause in the proceedings as
5 counsel continue checking the evidence.)

6 THE COURT: What are we missing?

7 MS. MUSSER: Judge, with respect to 62, State's Exhibit
8 62 was a three-page document of evidence submittal forms that
9 Ms. Eileen testified to. I had made -- I had extra copies and
10 I had given it to her on the stand. It was already
11 highlighted. So I don't believe counsel has any -- she's had
12 a chance to review --

13 MS. SAXON: This is the same document that was already in
14 evidence. I'm aware of that and --

15 THE COURT: All right.

16 MS. SAXON: -- we can't find the one that we originally
17 admitted. So I'm fine with using that.

18 THE COURT: All right.

19 (Whereupon, there is a pause in the proceedings as
20 counsel continue checking the evidence.)

21 THE BAILIFF: All right. What did we decide about the
22 jury form? Are we going to use those?

23 THE COURT: We're going to use these.

24 THE BAILIFF: Okay.

25 (Whereupon, the evidence and indictment forms are

1 delivered to the jury.)

2 (Whereupon, jury deliberations begin at 10:56 a.m.)

3 (Whereupon, the alternate juror enters the courtroom.)

4 THE BAILIFF: Your Honor?

5 THE COURT: Ms. Futura [phonetic]?

6 THE JUROR: Hello, sir.

7 THE COURT: I want to thank you for staying with us. I
8 couldn't tell. I thought you might actually be hoping that
9 somebody fell out and you would have an opportunity to stay on
10 the jury. I'm getting ready to let you go. You can -- but
11 you can stay if you want to. Some -- some jurors --
12 alternates like to stay and see what happens.

13 THE JUROR: All right.

14 THE COURT: Others don't. Others want to get on with
15 their life. You don't have to even tell us what you want to
16 do. You just can't stay there.

17 THE JUROR: Gotcha.

18 THE COURT: You can go back there.

19 THE JUROR: Thank you, sir.

20 THE COURT: If you go back there, you can leave anytime
21 you want to. You can probably call the Clerk's Office later
22 or whenever or tomorrow if you just feel like you need to go
23 before they reach a verdict.

24 THE JUROR: Okay. Thank you, sir.

25 THE COURT: Thank you for your service.

1 THE JUROR: Thank you. Bye.

2 (Whereupon, the alternate juror is discharged.)

3 THE COURT: All right. We'll be at ease waiting on the
4 jury and court is in recess for ten minutes.

5 MS. MUSSER: Thanks, Your Honor.

6 (Whereupon, there is a break in the proceedings from
7 10:58 a.m. until 11:38 a.m.)

8 THE COURT: There's a note from the jury. What is the
9 definition of the word inveigle?

10 MS. MUSSER: Okay.

11 THE COURT: Well, I have it. I just didn't -- I didn't
12 charge them on inveigle. You're the one who put inveigle up
13 on the board.

14 MS. MUSSER: Who knew? If I can't -- if I can't say it,
15 I probably shouldn't put it up there, but it was part of the
16 -- you know.

17 THE COURT: I know. I know. I know. But the other one
18 is -- and I did give them this definition -- confine. And I
19 did tell them what confine meant, but they want to know it
20 again.

21 MS. MUSSER: Is it inveigle? Inveigle?

22 THE COURT: Did you pronounce it when you put it on the
23 board?

24 MS. MUSSER: Kind of.

25 MS. SAXON: I think it -- Your Honor, I think it means to

1 kind of coerce or trick someone to go somewhere by, like, use
2 of trickery or certain means.

3 THE COURT: It means to lure, entice or lead astray by
4 false representations, promises or other deceitful means. I
5 didn't think it applied; so I didn't charge it.

6 Well, as I always do, does the State have any thoughts or
7 positions on what we should do about this?

8 MS. MUSSER: Your Honor, I'm just -- I assumed that the
9 Court would just tell them the definition and reread the
10 charge, but I would leave that obviously to your discretion.

11 THE COURT: How about the defense?

12 MS. SAXON: Your Honor, I believe we would just give them
13 the definitions they've asked for.

14 THE COURT: All right. I think what I'm going to do
15 actually is give them the entire charge on the kidnapping as
16 opposed to just part of it and then -- but I'm going to go
17 ahead and remind them about the presumption of innocence. I
18 think there's a case that says you should not just merely
19 charge if they ask for further instructions and not just
20 merely charge the statute that he's charged with. So having
21 said all that, let's bring the jury back in.

22 THE BAILIFF: Yes, Your Honor.

23 (Whereupon, the jury enters the courtroom at 11:43 a.m.)

24 THE BAILIFF: The jury is present, Your Honor.

25 THE COURT: Welcome back, ladies and gentlemen. I have a

1 note from the jury. The note reads in -- well, the note says
2 what is the definition of the word inveigle? The second --
3 what is the definition of confined? I'm going to attempt to
4 answer that for you, but probably more -- tell you more than
5 you asked for. Those are both words used in the definition of
6 kidnapping and I'm going to recharge kidnapping.

7 The defendant is charged with kidnapping. The State must
8 prove beyond a reasonable doubt that the defendant knowingly
9 and unlawfully seized, confined, inveigled, decoyed,
10 kidnapped, abducted or carried away another person without
11 authority of law.

12 To do a thing unlawfully is to do it willfully and
13 against the law. Knowingly means with knowledge, consciously,
14 and not accidentally. Seize means to take hold of suddenly or
15 forcibly. Confine means to limit, restrict or enclose within
16 bounds, imprison or shut in or keep in. Inveigle means to
17 lure, entice or lead astray by false representations, promises
18 or other deceitful means. Decoy means to lure by or as if by
19 decoy. A decoy is something to entice a person into a trap.
20 Kidnapping is to remove a person against his will by unlawful
21 force or by fraud. And abduct means to carry off secretly or
22 by force for an illegal purpose, and carry away means to
23 remove.

24 The State does not have to prove that the defendant did
25 all of these things, but, instead, if you find beyond a

1 reasonable doubt that the defendant did any of these things,
2 you may find the defendant guilty of kidnapping. A kidnapping
3 does not have to be done for any personal or monetary gain or
4 for any illegal purpose, but can be done for any reason
5 whatsoever.

6 Having said all that, ladies and gentlemen, I remind you
7 that the defendant has pled not guilty to these charges and
8 that plea puts the burden upon the State to prove the
9 defendant guilty. I remind you that a person charged of a
10 criminal offense is not required to prove himself innocent.

11 I further tell you and remind you that it's an important
12 rule of law that the defendant in a criminal trial, no matter
13 what the seriousness of the charge may be, will always be
14 presumed to be innocent of the crime for which the indictment
15 was issued unless guilt has been proven by the evidence that
16 satisfies you of that guilt beyond a reasonable doubt.

17 As I told you before, the presumption of innocence is
18 like a robe of righteousness placed about the shoulders of a
19 defendant which remains with the defendant until it has been
20 stripped from the defendant by evidence that satisfies you of
21 that guilt beyond a reasonable doubt.

22 And I tell you that the presumption of innocence is not
23 mere legal theory. It is not just a legal phrase. It is a
24 substantial right to which every defendant is entitled unless
25 you, the jury, are satisfied from the evidence of the

1 defendant's guilt beyond a reasonable doubt.

2 I hope that answers your question. If it does not,
3 please let me know and we'll try again. Thank you, ladies and
4 gentlemen. I ask you to retire to the jury room and resume
5 deliberations.

6 (Whereupon, the jury exits the courtroom at 11:46 a.m.)

7 THE BAILIFF: The jury is clear, Your Honor.

8 THE COURT: Once again, we'll be at ease.

9 (Whereupon, the jury note is marked as Court's Exhibit
10 Number 1.)

11 (Whereupon, there is a break in the proceedings from
12 11:47 a.m. until 11:53 a.m.)

13 THE COURT: Solicitor, are you ready for the jury?

14 MS. MUSSER: Yes, sir.

15 THE COURT: Is defense counsel ready for the jury?

16 MS. SAXON: Yes, Your Honor.

17 THE COURT: Apparently, they have reached a verdict or at
18 least that's the word; so let's bring the jury in.

19 (Whereupon, the jury enters the courtroom at 11:54 a.m.)

20 THE BAILIFF: The jury is entering the courtroom, Your
21 Honor.

22 THE COURT: Welcome back, ladies and gentlemen. The
23 bailiff indicates she believes the jury has reached a verdict
24 in this case. Is that correct, Ms. Shumaker?

25 THE FOREPERSON: Yes, it is.

1 THE COURT: Did you complete the portion of the
2 indictment that gives you a place to put guilty or not guilty
3 on each of the indictments?

4 THE FOREPERSON: Yes, sir, I did.

5 THE COURT: And did you sign each of them?

6 THE FOREPERSON: Yes, sir, I did.

7 THE COURT: Would you please pass them forward?

8 (Whereupon, the foreperson complies.)

9 THE COURT: And, Madam Clerk, would you please publish
10 the verdicts?

11 VERDICTS BY THE JURY

12 THE CLERK: All right. State of South Carolina, County
13 of Beaufort, Docket Number 2010-GS-07-00873, the State versus
14 Philenza Pritchett. The verdict is guilty.

15 State of South Carolina, County of Beaufort, Docket
16 Number 2010-GS-07-00876, the State versus Philenza Pritchett.
17 The verdict is guilty.

18 State of South Carolina, County of Beaufort, Docket
19 Number 2010-GS-07-00977, the State versus Philenza Pritchett.
20 The verdict is guilty.

21 State of South Carolina, County of Beaufort, Docket
22 Number 2010-GS-07-00872, the State versus Philenza Pritchett.
23 The verdict is guilty.

24 State of South Carolina, County of Beaufort, Docket
25 Number 2010-GS-07-00875, the State versus Philenza Pritchett.

1 The verdict is guilty.

2 Madam Foreperson, was this, in fact, your verdict?

3 THE FOREPERSON: Yes, it was.

4 THE CLERK: Okay. If all agree, please raise your right
5 hand.

6 (Whereupon, all jurors comply.)

7 THE CLERK: Thank you.

8 THE COURT: All right. Thank you, Madam Clerk. Anything
9 before the jury is discharged from the State?

10 MS. MUSSER: No, Your Honor. Thank you.

11 THE COURT: From the defense?

12 MS. SAXON: May we poll the jury, Your Honor?

13 THE COURT: Madam Clerk? By numbers.

14 THE CLERK: Yes, sir. Juror Number 328, was this, in
15 fact, your verdict?

16 THE JUROR: Yes, ma'am.

17 THE CLERK: Is this still your verdict?

18 THE JUROR: Yes, ma'am.

19 THE CLERK: Thank you. Juror Number 57, was this your
20 verdict?

21 THE JUROR: Yes.

22 THE CLERK: Is this still, in fact, your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Thank you. Juror Number 211, was this your
25 verdict?

1 THE JUROR: Yes.

2 THE CLERK: Is this still, in fact, your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Thank you. Juror Number 43, was this your
5 verdict?

6 THE JUROR: Yes.

7 THE CLERK: Is this still, in fact, your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Thank you. Juror Number 286, was this your
10 verdict?

11 THE JUROR: Yes.

12 THE CLERK: Is this still, in fact, your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Thank you. Juror Number 257, was this your
15 verdict?

16 THE JUROR: Yes.

17 THE CLERK: Is this still, in fact, your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Thank you. Juror Number 141, was this your
20 verdict?

21 THE JUROR: Yes.

22 THE CLERK: Is this still, in fact, your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Thank you. Juror Number 19, was this your
25 verdict?

1 THE JUROR: Yes.

2 THE CLERK: Is this still, in fact, your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Thank you. Juror Number 101, was this your
5 verdict?

6 THE JUROR: Yes.

7 THE CLERK: Is this still, in fact, your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Thank you. Juror Number 297, was this your
10 verdict?

11 THE JUROR: Yes.

12 THE CLERK: Is this still, in fact, your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Thank you. Juror Number 22, was this your
15 verdict?

16 THE JUROR: Yes.

17 THE CLERK: Is this still, in fact, your verdict?

18 THE JUROR: Yes, ma'am.

19 THE CLERK: Thank you. Juror Number 59, was this your
20 verdict?

21 THE JUROR: Yes.

22 THE CLERK: Is this still, in fact, your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Thank you.

25 THE COURT: All right. Anything else before the jury is

1 discharged from the defense?

2 MS. SAXON: No, Your Honor.

3 THE COURT: Ladies and gentlemen, I want to thank you for
4 your service and tell you a couple of things before you are
5 discharged. I previously told you you could not discuss the
6 case with anybody. You are now free to talk to anybody about
7 the case, not only what happened here in the courtroom, but
8 what happened in the jury room, if you choose to do so.

9 You also have the right not to discuss the case. I don't
10 have any reason to think anybody is going to bother you about
11 your verdict or bug you, but we just tell every jury the same
12 thing. You have the right to talk about it or not talk about
13 it.

14 If anybody approaches you and wants to talk to you about
15 it and you don't want to talk to them about it, you tell them
16 you don't want to. If they persist, tell them the judge told
17 you you don't have to, and if they further persist, report
18 them to the Clerk of Court, but once again, I don't have any
19 reason to think that's going to happen. I just wanted to let
20 you know you have that right.

21 Another thing I wanted to tell you is this. Nobody is in
22 a position to criticize your verdict and I say that because of
23 this. Only the twelve of you sat there, listened to all of
24 the witnesses testify, looked at the evidence, heard the
25 attorneys make their opening and closing statements to you,

1 and then had me tell you about the law, then go to your jury
2 room and sat down and discussed what all had occurred during
3 the trial of the case with your fellow jurors. Only the
4 twelve of you did that and I say for that reason there's
5 nobody in the position to criticize your verdict.

6 I don't know for sure, but I believe the next thing that
7 will happen more likely than not is that the Court will be
8 obligated to impose sentence. I invite you to stay and
9 observe or not. That's totally up to you as to whether you
10 want to do that. Some jurors want to go about their business;
11 some jurors are interested. If you don't want to stay, you
12 could certainly find out by calling the Clerk's Office later,
13 but if you wish to stay, you can.

14 What I'm going to do is try not to put pressure on you.
15 I'll let you all leave the courtroom. It will be a couple of
16 minutes before that occurs and, if you wish to be here for
17 sentencing, the bailiffs will arrange for you to come in the
18 back of the courtroom. So you'll make a decision as to
19 whether you want to stay or not after you leave here.

20 Ladies and gentlemen, I want to thank you. Does anybody
21 have a question? Anybody have an issue that we need to take
22 care of?

23 (Whereupon, there is no response.)

24 THE COURT: And, of course, this concludes your jury duty
25 obligation. Thank you, ladies and gentlemen. You're excused.

1 (Whereupon, the jury exits the courtroom at 12:02 p.m.)

2 THE BAILIFF: The jury is clear, Your Honor.

3 THE COURT: Now, is there any reason the Court should not
4 go ahead and impose sentencing at this time?

5 MS. SAXON: Your Honor, all we would do is renew all
6 prior objections that were made throughout the course of this
7 trial.

8 THE COURT: And -- and motions?

9 MS. SAXON: And motion for a new trial as well.

10 THE COURT: The Court notes the motions. I'll be glad to
11 hear you further on them if you wish. If you wish to make
12 additional arguments on those motions, I'll be glad to hear
13 those.

14 MS. SAXON: No, Your Honor. I've made extensive
15 arguments on those I feel for the record and I just wanted to
16 preserve them.

17 THE COURT: All right. The Court notes those motions and
18 denies them for reasons previously stated. All right. It
19 will be -- the solicitor is going to have to prepare sentence
20 sheets; so we'll be at ease for a couple of minutes.

21 MS. MUSSER: Yes, sir. Thank you.

22 THE COURT: And I guess technically the defendant is now
23 in custody pending conclusion of sentencing.

24 THE DEPUTY: Yes, sir.

25 (Whereupon, there is a break in the proceedings from

1 12:03 p.m. until 12:12 p.m.)

2 MS. MUSSER: Your Honor, I'm handing up the sentencing
3 sheets.

4 THE COURT: All right. Then, Ms. Saxon, are you ready to
5 proceed?

6 MS. SAXON: Yes, Your Honor.

7 THE COURT: Madam Solicitor, I'd be glad to hear from you
8 on the issue of sentencing.

9 MS. MUSSER: Thank you, Your Honor. With respect to the
10 penalties, as the Court is well aware, armed robbery with a
11 deadly weapon is a felony. There is a mandatory minimum of
12 ten years that is required. The maximum sentence is 30 years,
13 of which no part can be suspended, and probation is not an
14 option. This is a violent, most serious offense.

15 With respect to the possessing a weapon during the
16 commission of a violent crime, there's a mandatory minimum of
17 five years in addition to the principle crime, which may be
18 run consecutively or concurrently.

19 With respect to kidnapping, that, once again, is a felony
20 with a 30-year maximum. On the conspiracy charge, that's a
21 felony with a five-year maximum. And on the unlawful carrying
22 of a handgun, that is a -- that's a one-year maximum sentence.

23 Judge, with respect to the defendant's prior criminal
24 history, the defendant has been before the system. He has
25 cases in both South Carolina as well as Georgia.

1 With respect to his history in South Carolina, he has
2 from 2003 a simple assault and battery, as we've discussed
3 yesterday at least in part. And then while he was out on bond
4 on this case in 2013, actually November 1st of 2013, he was
5 sentenced in Henry County, Georgia, for three criminal
6 offenses: for possession of cocaine, which he received a
7 three-year probationary sentence; possession of marijuana less
8 than one ounce, and he received time served, which was 235
9 days; and last and probably most important, he was convicted
10 of possessing a firearm during the commission of a felony,
11 which he received, according to the official documents, five
12 years' probation running consecutive to the three years
13 imposed on the cocaine possession.

14 I know the Court is obviously aware of the facts of this
15 case and due to the seriousness of the offense, the State is
16 looking for sentencing towards the higher end of the maximum,
17 given the effect on the community, the danger that he put not
18 only Ms. Fulton in, but as well as other individuals that may
19 have entered the convenience store.

20 Clearly, Ms. Fulton was traumatized by this. She's
21 indicated that she was working two jobs, was going to school.
22 She had been at that -- employed with that employer for quite
23 a while and had continuously worked the night shift. However,
24 as she indicated during the trial, she was so afraid that she
25 never worked the night shift again.

1 It's my understanding that our victim advocate spoke with
2 Ms. Fulton, who returned to where she was residing in Georgia,
3 and she was -- she did not wish to be here today, again due to
4 the fact that she was going home, but on her behalf we would
5 just ask the Court to recognize what this crime and its impact
6 had on Ms. Fulton. Of course, we would ask for as part of any
7 incarceration a stay-away order with respect to that store, as
8 well as Ms. Fulton.

9 Your Honor, may I have a moment? Your Honor, may we just
10 have a moment?

11 (Whereupon, there is a pause in the proceedings.)

12 MS. MUSSER: Your Honor, with that, nothing further on
13 behalf of the State.

14 THE COURT: All right. Thank you. And I'll be glad to
15 hear from you.

16 MS. SAXON: Thank you, Your Honor. Mr. Pritchett today
17 is 28 years old. He on this charge already -- just for a few
18 housekeeping matters, he has served roughly 568 days by my
19 last count already. We would ask that that be credited to any
20 sentence that is imposed on him.

21 As to his past record, Your Honor, the 2013 [sic.] simple
22 assault and battery was when he was 17 years old. He was an
23 extremely young man. Other than that, the only adult charges
24 he had he did just recently pick up within the past twelve
25 months. He is by no means a career criminal.

1 He has two children, ages eight and six, and he realizes
2 that he will now miss a large part of their life because there
3 is a ten-year mandatory minimum, and that prior to today he
4 has been working two jobs. He's been at Seacoast Paving and
5 Annette's Cleaning. He has degrees in graphic computer arts
6 and design from a college and he was actually pursuing another
7 degree in medical administrative assistant. He is also a very
8 talented artist, which I had not known about him until
9 recently, and he -- there's so much.

10 When we were preparing for these cases, as you had heard,
11 there were plea negotiations that occurred. The cap in those
12 offered -- the offer during the plea negotiations was ten
13 years, Your Honor, and we do think that that is a fair
14 sentence. The career criminal in this case was sentenced to
15 13 years on his charges and I think that should be taken into
16 account by the Court.

17 I would also ask that a finding be made on the record in
18 regards to the kidnapping charge that there was no sexual
19 component and, therefore, there is no need for a sex offender
20 registry. It is required that I ask for that. Otherwise, the
21 Department of Corrections would make that -- can impose that
22 if there's not a finding on the record, as well as on the
23 sentencing sheet.

24 His family is here. His mother has been here for the
25 majority of the trial. She's not here today.

1 THE DEFENDANT: She is here.

2 MS. SAXON: Oh, she is. I'm sorry. I didn't see you
3 come in. I'm sorry.

4 His mother is here in the courtroom, as well as friends
5 and family that have been here to support him. He is an
6 extremely pleasant young man and the verdict is what the
7 verdict is and that's where we're left, Your Honor, but I do
8 not believe that he deserves a high, heavy sentence in this
9 matter. I believe that the ten-year minimum is sufficient and
10 that any sentences that you do hand down be all run
11 concurrently.

12 THE COURT: All right. Thank you, ma'am.

13 MS. SAXON: And Mr. Pritchett would like to address the
14 Court if he may.

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

16 THE DEFENDANT: Yes, sir. Your Honor, I apologize for
17 being in these circumstances, but while I'm here I just want
18 to let you know that, you know, no matter what they assume,
19 you know, I am a good man. I have a good family. My family
20 raised me right and I'll continue to stand on what I believe
21 as -- you know, as far as my innocence. They only assume, you
22 know, me to be this career criminal or violent person in
23 society, but they're only going by paperwork. And in the end
24 I forgive you all. I forgive all of you no matter what, but
25 God will judge you all. That's all.

1 THE COURT: Thank you, Mr. Pritchett. All right.
2 Anything else, Solicitor?

3 MS. MUSSER: No, nothing from the State, Your Honor.
4 Thank you.

5 SENTENCE

6 THE COURT: All right. Mr. Pritchett, on the charge of
7 unlawful carrying of a pistol, I sentence you to the
8 Department of Corrections for a period of one year. That will
9 be concurrent with the other sentences and you will get credit
10 for time served.

11 On the crime of conspiracy, I sentence you to the
12 Department of Corrections for a period of five years, once
13 again concurrent with credit for time served.

14 On the possession of a weapon during the commission of a
15 violent crime, I sentence you to the Department of Corrections
16 for a period of five years to be concurrent and you will get
17 credit for time served.

18 On the remaining two charges, the armed robbery and the
19 kidnapping, I sentence you to the Department of Corrections
20 for a period of 15 years. It will be concurrent and you get
21 credit for time served.

22 I do find there was no sexual component and, therefore,
23 no sex offender registry required.

24 Good luck to you. Court is in recess until 1:30.

25 (Whereupon, the trial ends at 12:21 p.m.)

1	STATE OF SOUTH CAROLINA	)	
2		)	CERTIFICATE
3	COUNTY OF FLORENCE	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 168 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Beaufort County, South Carolina, on the 4th and 5th days of August, 2014.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

17 S/ Krystal J. Smith

18	Court Reporter

20	Florence, South Carolina

21 | January 14, 2015

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

DEC 17 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PHILENZA PRITCHETT,

APPELLANT

APPELLATE CASE NO. 2014-001920

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by admitting a witness's out-of-court and in-court identification of Appellant in violation of his due process rights since the show up procedure used by law enforcement was unduly suggestive and the identification was so unreliable that a substantial likelihood of misidentification existed?

2.

Whether the court erred by refusing to charge mere presence in reference to the unlawful carrying of a pistol charge when the hand of one is the hand of all theory of accomplice liability was charged to the jury and the evidence presented supported giving a mere presence charge?

STATEMENT OF THE CASE

A Beaufort County Grand Jury indicted Appellant at the May 20, 2010 term of General Sessions for armed robbery, kidnapping, conspiracy, unlawful carrying of a pistol, and possession of a weapon during the commission of a violent crime. R. 376. His case was called to trial on August 25, 2014 before the Honorable Brooks P. Goldsmith, and a jury. R. 1. Assistant Solicitor Lynorr Musser represented the state, and Jessica Saxon represented Appellant. R. 2.

At the conclusion of the trial on August 28, 2014, the jury found Appellant guilty. R. 373, l. 11 – 374, l. 6. Judge Goldsmith sentenced him to fifteen years imprisonment for armed robbery, fifteen years concurrent for kidnapping, five years concurrent for conspiracy, one year concurrent for unlawful carrying of a pistol, and five years concurrent for possession of a weapon during the commission of a violent crime. R. 375, ll. 5-23.

This appeal follows.

STATEMENT OF FACTS

Around 2:45 am on the morning of April 1, 2010, two armed men entered the Kangaroo Express located at 1610 Fording Island Road in Bluffton, forced the clerk, Makia Fulton, to empty the registers of all cash, and fled not only with the cash, but also with several cartons of Newport cigarettes and Swisher Sweets cigarillos.¹ Before leaving the store, the men forced Fulton into the bathroom. After waiting a few minutes, Fulton left the bathroom, locked the door to the store, and called 911. Officers arrived several minutes later. See R. 149, l. 21 – 169, l. 17.

Fulton told the officers that both robbers were wearing dark pants, dark hooded sweatshirts with the hoods raised, and blue bandanas covering their faces with only their eyes visible. She claimed that one of the males was white and approximately six feet tall, while the other was black and shorter than five feet, seven inches tall. R. 119, l. 25 – 122, l. 3; R. 135, ll. 7-21. Moreover, Fulton allegedly told the officers that she recognized the black male's voice. R. 122, ll. 13 – 123, l. 3; R. 135, l. 24 – 136, l. 3; R. 170, ll. 17-24.

Sergeant Trey Simmons of the Beaufort County Sheriff's Office immediately conveyed the description of the two suspects Fulton had given him to other officers over his "hand-held radio." He also called Corporal William Murphy, who was a uniformed patrol officer, and asked him to check other convenience stores on Hilton Head Island that were open twenty-four hours for the suspects. R. 71, l. 11 – 72, l. 18.

Corporal Murphy travelled to the closest convenience store that was opened to the one that was robbed. It was also a Kangaroo Express, but was commonly referred to in the

¹ This Kangaroo Express is located in Bluffton at the base of the bridge leading to Hilton Head Island. The store was also referred to in the record as the "Buckingham Pantry," which is a local name for the convenience store.

record as the "Gum Tree Pantry," which is a local name for the store.² R. 81, l. 17 – 82, l. 3. Upon arriving at the Gum Tree Pantry, Murphy noticed a dark blue Volkswagen Jetta parked at one of the gas pumps, but no one was pumping gas. As he drove by the car, he noticed the driver was a white male and the front seat passenger was a black male. There was also a black male and a black female sitting in the back of the car. Murphy eventually approached the car and briefly spoke to the driver. As he was speaking to the driver, he noticed "the butt of a pistol wedged in between the driver's seat and the center console." Murphy immediately drew his service weapon and demanded everyone put their hands up. Everyone in the car complied. R. 82, l. 18 – 89, l. 4.

Eventually back up officers arrived and each occupant of the car was removed and placed in the back of a separate patrol car. Brandon Holt was identified as the white male driver, Harry Lockett was identified as the black male front passenger, and Appellant was identified as the black male back passenger. The black female passenger was identified as Tiffany Major. R. 89, l. 15 – 91, l. 13; R. 95, ll. 11-24. In addition to the pistol located in between the driver's seat and the center console, the officers also discovered a second pistol under the front passenger seat located directly in front of Appellant's feet while they were removing the occupants of the car. R. 96, ll. 4-25; R. 109, l. 9 – 113, l. 14.

Fulton gave a written statement at the scene. R. 121, ll. 6-11. After she completed her statement, Corporal William Polites drove Fulton to the Gum Tree Pantry to see if she could identify the suspects. R. 124, ll. 4-22; R. 173, ll. 8-18. Fulton remained in the backseat of Polites' patrol car during the show up and each of the three males discovered in

² The "Gum Tree Pantry" is located on Gumtree Road in Hilton Head Island. R. 82, ll. 11-17.

the dark blue Jetta was removed from the back of a patrol car in handcuffs and shown to Fulton one by one. Brandon Rolt, the white male, was shown to Fulton first. She did not identify him as one of the robbers who entered the store. Harry Lockett, the black male who was sitting in the front seat, was shown to Fulton next. She also did not identify Lockett. Appellant was shown to Fulton last. She identified him as the man she knew as "Lenny" and claimed it was his voice she recognized during the robbery. R. 125, l. 4 – 128, l. 5; R. 174, l. 1 – 175, l. 12.

Appellant, Rolt, Lockett, and Major were subsequently arrested and transported to the sheriff's office on Hilton Head where they were photographed and interviewed. They were then booked at the Beaufort County Detention Center where their clothes were seized. R. 204, ll. 16-25; R. 3, l. 18 – 6, l. 5. Law enforcement had the dark blue Jetta towed to a secure impound lot owned by the sheriff's office and obtained a search warrant for the car. R. 207, ll. 10-17. During a search of the car, investigators found an unopened pack of Newport cigarettes on the front passenger seat floorboard, a pack of Swisher Sweets cigarillos in the front passenger seat door pocket, and three blue bandanas on the backseat. In the trunk, officers found four cartons of Newport cigarettes in a plastic bag, a black backpack with cash inside, a royal blue hooded sweatshirt with a black t-shirt over it, and a black hooded sweatshirt. See R. 208, l. 1 – 235, l. 20.

Based on information provided by the store manager, Jennifer Sesmas, four or five cartons of Newport cigarettes were stolen from the Kangaroo Express as well as approximately six packs of Swisher Sweets cigarillos, and a little over one hundred eighty one dollars. R. 195, l. 11 – 197, l. 13. Sesmas also provided the police with a copy of the store's video surveillance footage. R. 193, l. 14 – 195, l. 10.

The clothing and firearms recovered from the dark blue Jetta were analyzed for touch DNA. Appellant's DNA was not found on either of the weapons or on any of the clothing with the exception of the royal blue sweatshirt where a mixture of four individuals' DNA was found and neither Appellant *nor* Rolt could be excluded as possible contributors to the mixture. R. 51, l. 7 – 54, l. 15.

The jury convicted Appellant of all charges including armed robbery, kidnapping, conspiracy, possession of a weapon during the commission of a violent crime, and unlawful carrying of a pistol. R. 134, l. 12 – 135, l. 6.

ARGUMENT

1.

The court erred by admitting a witness's out-of-court and in-court identification of Appellant in violation of his due process rights since the show up procedure used by law enforcement was unduly suggestive and the identification was so unreliable that a substantial likelihood of misidentification existed.

Relevant Facts

Makia Fulton testified during the Neil v. Biggers³ hearing that two individuals entered the store during the robbery and that each was armed with a gun. She explained that the only identifying features of the individuals she observed were their gender and race because they were dressed in all black with hooded sweatshirts covering their heads, blue bandanas covering their faces except for their eyes, and gloves covering their hands. She claimed that both of the individuals were males and that one was black and the other was white. Fulton further maintained that both men were in close proximity to her throughout the robbery, that both spoke to her, and that the store was well lit. R. 5, l. 3 – 7, l. 20; R. 13, l. 20 – 14, l. 8.

Fulton testified that she told the responding officers she recognized the black male's voice during the robbery. She claimed she recognized the voice as belonging to a man she knew as "Lenny." She said she met "Lenny" in 2007 through his mother. She used to go to his house every other month to braid his mother's hair and would occasionally engage in "small talk" with him. It is unclear from Fulton's direct testimony whether she provided the

³ 409 U.S. 188 (1992)

officers with the name "Lenny" before the show up or after she identified Appellant at the Gum Tree Pantry. R. 8, l. 25 – 10, l. 16.

Fulton maintained that about twenty minutes after the robbery, one of the responding officers told her "they think that they may have somebody" and she agreed to travel with the officer to the Gum Tree Pantry to attempt to identify the individuals. R. 8, ll. 6-15; R. 10, ll. 22-25. She maintained that it took about seven minutes to drive from the store where she worked in Bluffton to the Gum Tree Pantry on Hilton Head. R. 11, ll. 4-11. She further explained that the officers first showed her a white male who she did not identify, then a black male who she also did not identify, and then lastly a black male who she recognized as "Lenny." R. 8, ll. 15-21; R. 11, ll. 12-17. Fulton identified Appellant in the courtroom as the man she knew as "Lenny." R. 12, ll. 14-23.

On cross-examination, Fulton admitted that while she had initially testified that the robbery lasted about ten minutes, it really only took about two minutes. R. 15, ll. 18-25. Fulton also explained that when the officer told her that "they might have somebody" and asked her whether she would travel with him to attempt to make an identification, he also told her several individuals who were "looking kind of suspicious" were detained at another gas station. R. 16, ll. 1-7.

While her testimony was still slightly confusing on cross-examination, it appears Fulton admitted that she did not provide the officers with the name "Lenny" until after viewing Appellant at the Gum Tree Pantry. She acknowledged she did not write in her written statement (that was completed before the show up) that she recognized the black male's voice and that she knew him as "Lenny." She also agreed that in his incident report, Corporal Polites did not write that she identified the black male as "Lenny" until after the

show up. Rather, Polites wrote that before the show up, Fulton simply indicated she thought she recognized the black male's voice. R. 16, l. 8 – 18, l. 6.

Additionally, Fulton testified that when she arrived at the Gum Tree Pantry, there were several other marked police cars there and that "all of the guys were in different cars." While she could not remember whether any blue lights were flashing, she did recall that all of the "suspects" were in handcuffs and that each was removed from the back of a separate police car and shown to her individually while she remained in the back of Corporal Polites' patrol car. R. 19, ll. 9 – 20, l. 11. Fulton claimed she had a clear view of each man because she was "looking out the window" and they were each about five feet from her. She also explained that the officers "shined the light in their eyes so I could see who everybody was." R. 20, l. 12 – 21, l. 6.

Corporal Polites testified that he was working the "night shift" on the morning of April 1, 2010 and that he responded to the Kangaroo Express after dispatch received a call at 2:48 am in reference to an armed robbery. He met with Makia Fulton upon arrival. Fulton told him that two males, one black and one white, robbed the store and that each was wearing a black hooded sweatshirt and a blue bandana over his face. R. 28, l. 2 – 31, l. 9.

Polites testified that Fulton gave a written statement detailing her account of the robbery and, after she completed her statement, he received notice that possible "suspects" were detained at the Gum Tree Panty. He drove Fulton to the Gum Tree Pantry in his patrol car to conduct a show up. Polites maintained that he parked his vehicle in the area where the gas pumps were located and that it was well lit. R. 32, l. 4 – 34, l. 5. He also said there were several other patrol vehicles on scene and that these vehicles, along with his own, provided additional lighting. R. 38, ll. 5-9.

After they arrived, each of the three males discovered in the dark blue Jetta were shown to Fulton individually. Polites maintained that Fulton had a clear view of each man. R. 37, l. 20 – 38, l. 4. She did not identify Rolt, the white male, or Lockett, one of the black males. However, Polites maintained that Fulton identified Appellant as one of the individuals who robbed the store and claimed it was his voice she recognized. She further identified him as the person she knew as “Lenny.” R. 34, l. 6 – 37, l. 19. Additionally, Polites claimed Fulton told him at the Kangaroo Express in Bluffton *before* the show up that she recognized the black male’s voice as belonging to someone she knew as “Lenny.” R. 29, ll. 17-22; R. 37, ll. 5-13.

On cross-examination, Polites admitted that he told Fulton law enforcement “might have somebody” and that he needed to take her to conduct a possible identification. R. 40, ll. 15-19. He testified that when they arrived at the Gum Tree Panty, there were at least four patrol cars on scene in addition to his own and that as soon as Fulton was shown Appellant, she said, “That’s Lenny.” R. 41, ll. 4-8. Polites claimed that Fulton had given him the name “Lenny” before the show up and he did not know why he did not reflect that fact in his incident report. R. 42, ll. 5-14.

Defense counsel also questioned Polites about the Beaufort County Sheriff’s Office standard operating procedures contained in the “general orders manual.” Polites testified the manual provides officers with “guidelines to go by, you know, what is allowed and what is disallowed according to State and federal law.” R. 43, l. 15 – 44, l. 2. There is a specific section in the manual regarding eye witness identification. The manual states, “Show-ups are typically justified when other means of identification are either impractical or unavailable and no other evidence exists to hold the suspect.” R. 43, ll. 4-24.

Polites admitted that Corporal Murphy observed a pistol in plain view in the dark blue Jetta and that this was sufficient evidence to hold all of the occupants of the car. However, he maintained that conducting a show up was better in this case due to the timing rather than waiting to later conduct a photographic line up or a vocal line up even though the officers had other evidence to hold the "suspects." R. 44, l. 3 – 45, l. 6.

Defense counsel also pointed out that the manual indicates what officers should and should not say when transporting a witness to view a suspect. Specifically, an officer should not use words that suggest a person may "be involved in the incident at hand." R. 45, ll. 7-20. Polites disagreed that his statement to Fulton that law enforcement "might have somebody" was against policy. He testified, "[I]t's not like I said, I think that we have your suspect." R. 45, l. 21 – 46, l. 5.

Arguments of Counsel

At the conclusion of the testimony, the assistant solicitor argued that Fulton's out-of-court identification of Appellant should be admissible despite law enforcement's use of a show up. She maintained that Fulton had a sufficient opportunity to view the two robbers, that the convenience store was well lit during the robbery, that Fulton was focused on the men because they were brandishing weapons, and that each man was in close proximity to Fulton while they were in the store. Additionally, the solicitor stressed the fact that Fulton recognized the black male's voice and testified that she knew Appellant through his mother. Moreover, the solicitor emphasized the length of time between when the robbery occurred and the identification arguing that only twenty to twenty-five minutes had passed between the two events and maintained that Fulton did not hesitate when she identified Appellant as "Lenny" at the Gum Tree Pantry. R. 49, l. 6 – 52, l. 3.

Defense counsel argued that the show up procedure used by law enforcement was “extremely suggestive.” She stressed the number of marked patrol cars and police officers on scene during the identification and the fact that each of the suspects was in handcuffs and removed from the back of a patrol car before being shown to Fulton. Defense counsel also discussed the Beaufort County Sheriff’s Office manual and argued that since law enforcement in this case had other evidence to hold the occupants of the car, namely the unlawfully carried firearm found in plain view, they should have simply detained the individuals and later used a less suggestive identification procedure.

Counsel argued there could be no visual identification of the suspects in this case because Fulton was unable to observe any identifiable characteristics besides gender and race. She argued, “So, the only way to do a proper ID would be to do some sort of blind voice line up where Ms. Fulton could have picked out the voice of her assailants.” R. 52, l. 5 – 53, l. 21.

Moreover, defense counsel argued that under Neil v. Biggers, “reliability is the linchpin in admitting any sort of ID.” She said, “As far as the opportunity to view the suspects, I disagree with the State. Sure she [Fulton] saw them, but she saw masked intruders. She was also on her cell phone at the time, Your Honor.” Counsel also stressed that Fulton was “never really face to face” with either of the robbers and that the men were “either always to the side and behind her, so there’s not much view there.” Also, she pointed out that Fulton’s height description of the black male robber did not match Appellant’s height.

Defense counsel also stressed the fact that Fulton did not write in her written statement that she recognized the voice of the black male who robbed the store or identify

the voice as belonging to the person she knew as “Lenny.” She concluded that to admit the unreliable out-of-court identification of Appellant would violate his due process rights and thus requested both the out-of-court identification and any in court identification be suppressed. R. 53, l. 22 – 56, l. 13.

Court’s Ruling

The court denied Appellant’s motion to suppress. Judge Goldsmith found the show up procedure used in this case was not “unduly suggestive.” He stated that Fulton had a “good opportunity” not only to view the black male robber at the Kangaroo Express, but also to hear him. The court further emphasized that Fulton indicated she recognized the black male’s voice before the show up, that she did not identify the first black male that she was shown, and that she was confident in her identification of Appellant. R. 57, ll. 4-20.

Discussion

The trial court erred by failing to suppress Fulton’s out-of-court and in-court identification of Appellant in violation of his due process rights because the show up procedure used by law enforcement in this case was unduly suggestive and Fulton’s identification was so unreliable that a substantial likelihood of misidentification existed.

“A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification.” State v. Moore, 343 S.C. 282, 286, 540 S.E.2d 445, 447 (2000) (citing Stovall v. Denno, 388 U.S. 293 (1967)). “An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification.” Moore, 343 S.C. at 286, 540 S.E.2d at 447 (Manson v. Brathwaite, 432 U.S. 98 (1977)).

In Neil v. Biggers, 409 U.S. 188 (1992), the United States Supreme Court created a two-prong inquiry to determine the admissibility of out-of-court identifications. First, the trial court must ascertain whether the identification process was unduly suggestive. Next, the trial court must determine whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. Id. at 198. The central issue is whether the identification was reliable even though the confrontation procedure was suggestive under the totality of the circumstances. Id.

The following factors should be considered when evaluating the totality of the circumstances: (1) the witness's opportunity to view the perpetrator at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the perpetrator; (4) the level of certainty demonstrated by the witness; and (5) the length of time between the crime and the confrontation. Id. at 199; see also State v. Stewart, 275 S.C. 447, 450, 272 S.E.2d 628, 629 (1980).

Our courts have found some identification procedures patently suggestive. For example, in State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004), our Supreme Court held a line-up procedure wherein three victims were in the same room, sitting within feet of each other, while observing photographic line-ups was "blatantly unacceptable." Id. at 81-82, 600 S.E.2d at 527. Nevertheless, the Court found the identification was admissible based upon the totality of the circumstances. Those circumstances included the victims not conversing while viewing the photographic line-up and not being aware of whom the other victims selected, if anyone. The victims testified they observed the assailant from one minute to ten minutes and their prior descriptions generally matched that of the person

identified. Additionally, all testified they were certain of their identifications, which were made two days after the incident. Id. at 83, 600 S.E.2d at 527.

Our Supreme Court held a show up identification was unduly suggestive in Moore, supra. A witness observed two people exiting her neighbor's home when she knew the neighbor was not home. She called the police and provided a general description of the men, primarily focused on their clothing. Id. at 285, 540 S.E.2d at 447. Ninety minutes later, officers took the witness to an area where the defendants were being detained. The witness positively identified the two men as the perpetrators. Her identification was based upon the clothing she observed. She admitted she had not really seen their faces. Id. at 285-286, 540 S.E.2d at 447.

As explained by the Court, "[s]ingle person show-ups are particularly disfavored in the law." Id. at 287, 540 S.E.2d at 448 (citing Stovall, 388 U.S. at 302 and State v. Johnson, 311 S.C. 132, 134, 427 S.E.2d 718, 719 (Ct. App. 1993)). The Court found the show up procedure in Moore was unduly suggestive and the witness's identification unreliable as a matter of law. Id. Specifically, the Court found the only factor with any reliability was the amount of time between the crime and the confrontation, which was ninety minutes. The other factors clearly outweighed that one where the witness observed the two perpetrators for a brief time at a significant distance, the degree of attention was not great, and the accuracy of her description was tenuous. Id. at 290, 540 S.E.2d at 449.

Here, it is clear that the show up procedure used by law enforcement in this case was unduly suggestive. Fulton was brought to a location where at least five patrol vehicles were parked and numerous uniformed police officers were present. Appellant and his co-defendants were detained in the back of separate marked patrol cars and shown to Fulton

one by one in handcuffs. Moreover, Corporal Polites told Fulton “they might have somebody” and explained that officers had detained several individuals who were “looking kind of suspicious” at another gas station. See R. 16, ll. 1-7.

Additionally, Fulton’s identification of Appellant was unreliable as a matter of law. As defense counsel argued below, the only factor that established any degree of reliability in this case was the amount of time between the robbery and Fulton’s identification, which was approximately twenty-five minutes. This factor, however, is outweighed by the other factors. See Moore, 343 S.C. at 289, 540 S.E.2d at 449. Fulton’s opportunity to view the robbers was minimal due to their clothing. Both were wearing long pants, long sleeve sweatshirts with the hoods raised covering their heads, gloves, and a bandana covering their faces except for their eyes. The only identifiable characteristics Fulton was able to observe were the men’s gender, race, and height. Moreover, her description of the black male’s height did not match Appellant’s height. Fulton maintained that the black male was shorter than she was and that she was 5’7”. However, it was undisputed that Appellant was 5’9”.

Also significant is the fact that Fulton did not say she recognized the black male’s voice in her written statement given before the show up nor did she indicate that she recognized the voice as belonging to a man she knew as “Lenny.” Moreover, while Polites claimed during his testimony that Fulton told him she recognized the black male’s voice and identified him as “Lenny” before the show up, he did not record this information in his incident report, which he relied on heavily during his in camera testimony because he had little recollection of the incident that occurred over four years before trial. Based on the evidence presented, it appears Fulton did not provide the name “Lenny” until after she viewed Appellant during the show up.

Because of the unduly suggestive identification procedure used by law enforcement in this case and the unreliability of Fulton's identification of Appellant, the trial court erred by failing to suppress both Fulton's out-of-court and in-court identification of Appellant. Based on this error, this Court respectfully should reverse his convictions and sentence and remand for a new trial.

2.

The court erred by refusing to charge mere presence in reference to the unlawful carrying of a pistol charge when the hand of one is the hand of all theory of accomplice liability was charged to the jury and the evidence presented supported giving a mere presence charge.

Relevant Facts

After the court charged the jury, defense counsel took exception to the charge and argued the court should have instructed the jury on mere presence since the court charged the hand of one is the hand of all principle of accomplice liability. She argued that mere presence "makes up the second half of that charge" and requested the court bring the jury back out and charge mere presence. She explained, "Your Honor, it is the position of the defense that Mr. Pritchett [Appellant] was merely present at the time of the arrest when the goods were found in the car. That you charged the jury that . . . the goods . . . can be evidence of the fact that he committed the crime. You also charged the jury that hand of one is hand of all, but part of that charge - - inherent I believe in that charge is that mere presence to a . . . crime, whether it is in a car or at a store or wherever it is, is not enough to place a conviction." R. 119, ll. 3-23.

The solicitor argued that mere presence does not apply because "[i]t's not a situation where the only evidence is found at the time he's arrested in the car because of the identification." R. 120, ll. 1-5.

Defense counsel later clarified that she was only requesting a mere presence charge as it relates to the charge of unlawful carrying of a pistol. She argued, "[H]is mere presence

near that gun [found in the car] does not make him guilty of carrying that gun at that time.”

R. 120, ll. 13-17.

For further clarification, the court said, “I think the defense is saying that the jury could find him [Appellant] not guilty of kidnapping, not guilty of armed robbery . . . not guilty of conspiracy, . . . and not guilty of possession of a weapon during the commission of a violent crime, and being left with having to decide whether he’s guilty of unlawful carrying at the second store.” Defense counsel agreed that this was her position. R. 122, ll. 12-20.

The court ultimately denied Appellant’s request to charge mere presence as it relates to the unlawful carrying of a pistol offense. Judge Goldsmith found that the charge on unlawful carrying of a pistol “covers that because it says - - unlawful carrying says that he doesn’t have . . . to have it in his hand. It is - - he carried the pistol about him or about his person, readily accessible, convenient for immediate use. And that’s what the State is saying is that the pistol was there and it was convenient for immediate use.” R. 124, l. 20 – 125, l. 3. Thus, the court denied the motion.

Discussion

The court erred by refusing to charge mere presence in reference to the unlawful carrying of a pistol charge when the hand of one is the hand of all theory of accomplice liability was charged to the jury and the jury could have found that Appellant was merely present in the dark blue Jetta when it was stopped by law enforcement.

“In reviewing jury charges for error, [an appellate court] must consider the court’s jury charge as a whole in light of the evidence and issues presented at trial.” State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (citing State v. Adkins, 353 S.C.

312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003)). “A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.” Id. (citing Adkins, 353 S.C. at 318, 577 S.E.2d at 464 and State v. Jackson, 297 S.C. 523, 377 S.E.2d 570 (1989)).

“The trial court is required to charge only the current and correct law of South Carolina.” Id. at 479, 698 S.E.2d at 583 (citing Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004)). “The law to be charged must be determined from the evidence presented at trial.” Id. (citing State v. Kroten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001)). “A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused.” Id. (citing State v. Austin, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989)). “To warrant reversal, a trial judge’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” Id. (citing State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002)).

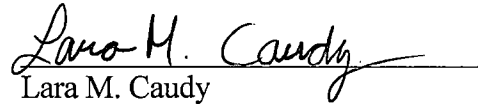
“Under accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.” Id. at 479, 697 S.E.2d at 584 (citing State v. Langley, 334 S.C. 643, 648-649, 515 S.E.2d 98, 101 (1999) and Austin, 299 S.C. at 459, 385 S.E.2d at 832)) (internal quotation marks omitted). “In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal’s criminal conduct.” Id. at 480, 697 S.E.2d at 584 (citing State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987)) (internal quotations marks omitted). “Mere presence at the scene is not sufficient to establish guilt as an aider or abettor.” Id. (citing Leonard, 292 S.C. at 137, 355 S.E.2d at 272) (internal quotation marks omitted).

The court in this case should have charged the jury on mere presence as it relates to the unlawful carrying of a pistol offense because the jury could have found Appellant not guilty of the offenses related to the robbery of the Kangaroo Express (specifically, armed robbery, kidnapping, conspiracy, and possession of a weapon during the commission of a violent crime) and simply found he was present in the car where the firearms and stolen goods were located. If the jury found Appellant was merely present in the car with the unlawfully carried firearms, then they could have found him not guilty of that specific charge. Because there was evidence presented at trial that supported the mere presence charge, the trial court erred by refusing to charge it. As a result, this Court respectfully should reverse Appellant conviction for unlawful carrying of a pistol and his related sentence.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of December, 2015

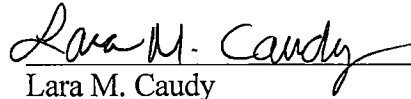
CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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December 17, 2015

DEC 17 2015



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SC Court of Appeals

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Brooks P. Goldsmith, Circuit Court Judge

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THE STATE,

RESPONDENT,

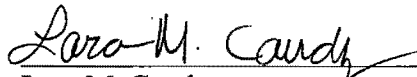
V.

PHILENZA PRITCHETT,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of December, 2015



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
This 17th day of December, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal From Beaufort County
The Honorable Brooks P. Goldsmith, Circuit Court Judge
Appellate Case No. 2014-001920

THE STATE,

Respondent,

v.

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Appellant.

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STATEMENT OF ISSUES ON APPEAL

I. The circuit court properly admitted a witness' testimony identifying Appellant as one of the robbers.

II. The circuit court properly denied Appellant's request for a mere presence jury charge because the evidence did not support the requested charge.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In May 2010, the Beaufort County Grand Jury indicted Appellant Philenza Pritchett on one count of armed robbery, one count of kidnapping, one count of conspiracy, one count of unlawful carrying of a pistol, and one count of possession of a weapon during the commission of a violent crime, arising from the April 1, 2010, armed robbery of a convenience store in Beaufort County. The case was called for a jury trial on August 25, 2014, before the Honorable Brooks P. Goldsmith, Circuit Court Judge.

Prior to trial, Appellant moved to suppress the convenience store clerk's out-of-court and in-court identification of him as one of the men who robbed the store, arguing it resulted from an unduly suggestive show-up by police. The circuit court conducted a hearing under Neil v. Biggers, 409 U.S. 188 (1992), to determine admissibility of the identifications.

Makia Fulton, the convenience store clerk, testified she was working at the Kangaroo gas station in Bluffton, SC, on April 1, 2010. At approximately 2:50 a.m., a black male and a white male entered the store, wearing black clothes, with blue bandanas over their faces, and carrying guns. The store was well lit at the time. (Trial Transcript 1 [TT1], pp. 23-27; Record on Appeal [R.], pp. 3-7).

During the robbery, both men spoke to Fulton, and she recognized the black male's voice as a man she knew by the name "Lenny." After getting money from the cash register, the men put Fulton in the restroom. Fulton waited a few minutes, came out of the restroom and called police, who arrived at the store very quickly. (TT1, pp. 26-28; R., pp. 6-8.

Fulton testified she told the responding officer what happened, including the fact she recognized the black man's voice. While she was writing a statement, the officer asked her if she would ride with him to another location because they might have someone, and he then drove her to another convenience store. (TT1, p. 28; R., pp. 8).

After they arrived at the second store, Fulton saw a white male standing by a car, and told the officers she did not know him. Officers then showed her a black male, and Fulton told them she did not know him. When the officers showed her a second black male (Appellant), Fulton told them he was the one whose voice she recognized during the robbery. (TT1, pp. 28-41; R., pp. 8-21).

Corporal William Polites of the Beaufort County Sheriff's Department testified he responded to the armed robbery dispatch at the convenience store, and spoke with Fulton about what happened. She gave a description of the two robbers, and stated she clearly recognized the black male's voice as a man she knew as Lenny. He subsequently drove Fulton to the second convenience store, where she positively identified Appellant as the black male who robbed her earlier. Cpl. Polities testified Fulton was "absolutely confident" of the identification. (Trial Transcript 2 [TT2] pp. 47-58; R., pp. 27-38).

After hearing argument, the circuit court denied Appellant's motion to suppress Fulton's identification testimony. The court found the show-up was not unduly suggestive, Fulton testified she recognized Appellant's voice during the robbery, and she was positive in her identification of Appellant. (TT2, pp. 69-77; R., pp. 49-57).

Corporal William Murphy of the Beaufort County Sheriff's Department testified he participated in the response to the convenience store robbery by checking other convenience stores in the area. He saw a car at the gas pumps of a store approximately

five minutes away from the robbed store, but no one was pumping gas. He observed a white male in the driver's seat and a black male in the front passenger seat, and a black female came out of the store and got into the back seat. (TT2, pp. 102-107; R., pp. 80-85).

Cpl. Murphy approached the car, and saw a second black male sitting in the back seat. He also saw the butt of a gun sticking up between the center console and the driver's seat, so he drew his weapon, ordered the four occupants to raise their hands, and radioed for back-up. When others officers arrived, they removed the four occupants from the car. Appellant was seated in the back passenger side seat, and another officer found a gun under the front passenger seat directly in front of where Appellant was sitting, with the butt of the gun closest to Appellant. (TT2, pp. 107-118, 127-136; R., pp. 85-96, 105-114).

Cpl. Polites and Fulton testified before the jury consistent with their testimony during the Biggers hearing. Fulton testified that after getting the money from the cash register, the robbers took cartons of cigarettes. The convenience store manager testified the robbers took \$181 and some change from the cash register, several cartons of Newport cigarettes, and approximately six cartons of Swisher Sweets cigarettos/blunts. (TT2, pp. 140-235; R., pp. 118-198).

Master Sergeant Angela Viers of the Beaufort County Sheriff's Office testified Appellant was arrested after Fulton identified him, and transported to the Detention Center. Pursuant to a search warrant, officers found another pistol in the car glove compartment, and a pack of Swishers in the passenger side back door pocket. Via a back passenger seat access door to the trunk, they also found Newport cigarettes, Swisher

Sweet cigarettos, and clothing, including dark blue bandanas, matching Fulton's description of the robbers' clothing. (TT2, pp. 237-272; R., pp. 200-235).

Prior to closing arguments, the circuit court indicated it intended to charge the jury on the elements of each individual charge, expert testimony, identification testimony, and potentially on "the hand of one is the hand of all" (accomplice liability). When the court questioned the applicability of a mere presence charge, Appellant's counsel stated she thought the court "covered it with the being in possession of recently stolen goods" charge. Appellant did not object to the accomplice liability charge without the mere presence charge. (TT2, pp. 97, 105-106; R., pp. 75, 83-84).

The court charged the jury in accordance with the previous discussions, including the accomplice liability charge. Before deliberations started, Appellant asked for a mere presence instruction as to the unlawful carrying of a pistol charge, arguing it was inherent in the accomplice liability charge, and his mere presence near the gun found in the car was insufficient to convict him of unlawfully carrying that gun. Appellant also noted the State alleged he was a principal in the crimes, rather than an accomplice, so the accomplice liability charge did not apply. The State argued the evidence indicated Appellant "unlawfully carried the pistol at the convenience store at the time of the armed robbery and kidnapping," which would support the unlawful carrying charge. (TT2, pp. 128-144; R., pp. 106-122).

The court found the unlawful carrying of a pistol charge also applied to the gun found under the seat in front of Appellant because the evidence indicated the gun was readily accessible to him and convenient for immediate use. Based on that evidence, the

court denied Appellant's request for a mere presence instruction. (TT2, pp. 144-147; R., pp. 122-125).

The jury convicted Appellant on all charges, and the circuit court sentenced him to concurrent sentences totaling fifteen years incarceration. (TT2, pp. 156-157, 168; R., pp. 134-135, 146). This appeal followed.

ARGUMENT

I. The circuit court properly admitted a witness' testimony identifying Appellant as one of the robbers.

Appellant contends the circuit court erred in admitting Fulton's identification testimony because her identification was based on an unduly suggestive show-up, and so unreliable it created a substantial likelihood of misidentification. In support of this contention, Appellant cites purported inconsistencies between Fulton's written statement, the police incident report and the trial testimony, while minimizing and/or ignoring critical evidence indicating Fulton's identification of Appellant was highly reliable in light of her pre-robbery, personal knowledge of Appellant, as well as the totality of the circumstances surrounding the show-up.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827, 829 (2001); State v. Govan, 372 S.C. 552, 643 S.E.2d 92, 94 (Ct. App. 2007). Admissibility of eyewitness identification testimony is committed to the trial judge's discretion, and the trial court's ruling will not be disturbed on appeal absent an abuse of that discretion, or the commission of prejudicial legal error. Govan, 643 S.E.2d at 94; State v. Brown, 356 S.C. 496, 589 S.E.2d 781, 784 (Ct. App. 2003).

A criminal defendant may be deprived of due process of law through an identification procedure that is unnecessarily suggestive and conducive to irreparable mistaken identification. Govan, 643 S.E.2d at 94. The in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a significantly substantial likelihood of irreparable misidentification. *Id.*

There is a two-prong inquiry to determine the admissibility of an out-of-court identification. The court must first ascertain whether the identification process was unduly suggestive, and if so, next decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. *Id.* “The query posited is whether under the totality of the circumstances the identification was reliable even though the confrontation procedure may have been suggestive.” State v. Carlson, 363 S.C. 586, 611 S.E.2d 283, 290 (Ct. App. 2005) (*quoting State v. Patterson*, 337 S.C. 215, 522 S.E.2d 845 [Ct. App. 1999]).

One-on-one identifications are inherently suggestive and generally disfavored, but may be proper when they occur shortly after, and near the scene of, the alleged crime, as the witness’ memory is still fresh, the suspect has not had time to alter his looks or dispose of evidence, and a show-up may expedite the release of innocent suspects and enable the police to determine whether to continue searching. State v. Hoyte, 306 S.C. 561, 413 S.E.2d 806, 807 (1992); Govan, 643 S.E.2d at 95-96; Brown, 589 S.E.2d at 785; 22A C.J.S. Criminal Law §803. Factors to consider in “evaluating the likelihood of a misidentification” include: “[t]he opportunity of the witness to view the criminal at the time of the crime, the witness[s] degree of attention, the accuracy of the witness[s] prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.” Biggers, 409 U.S. at 199–200. An identification witness’ prior knowledge of the suspect is a significant factor in determining reliability, and mitigates the suggestive nature of a show-up, making it merely confirmatory. State v. Liverman, 398 S.C. 130, 727 S.E.2d 422, 427 (2012).

In this case, rather than any physical characteristic such as height, gender or race, Fulton identified Appellant based on her recognition of his voice from encounters with him at his mother's house. Both Fulton and Cpl. Polites testified Fulton told responding officers she recognized the black robber's voice, and said his name was "Lenny." The absence of that fact from Fulton's written statement and Cpl. Polities' incident report presented an issue for the jury to consider, rather than a basis to exclude the identification as a matter of law.

Further, the reliability and certainty of Fulton's identification is amply demonstrated by what actually happened at the show-up. If her identification was based on the suggestive nature of the procedure, or any prior statements made to her by law enforcement, it is likely Fulton would have identified the white male she observed first, and then the first black male she saw. To the contrary, however, she truthfully stated she did not know them, and immediately identified Appellant (the second black man she saw) as the one who robbed the convenience store that night. It is undisputed she identified Appellant without hesitation, and was absolutely certain of her identification, both at the show-up and at trial.

Fulton had ample opportunity to hear Appellant's voice during the robbery, her degree of attention was heightened by the fact both men had guns, she told police she recognized the black robber's voice, the identification occurred within twenty minutes of the robbery, and she was absolutely certain Appellant was the man who robbed the store. While her physical description of the black male may have been slightly off as to height, all other factors weigh heavily toward reliability. Accordingly, the circuit court did not abuse its discretion in admitting her out-of-court and in-court identification testimony.

II. The circuit court properly denied Appellant's request for an mere presence jury charge because the evidence did not support the requested charge.

Appellant asserts the circuit court erred in denying his request for a mere presence jury charge as to the unlawful possession of a pistol charge, because the jury could have acquitted him of the armed robbery, kidnapping, conspiracy and possession of a weapon during a crime of violence charges relating to the convenience store robbery, but found he was merely present inside the car where the pistol was found. On its face, this contention is logically nonsensical, assumes the only basis for conviction on the unlawfully carrying charge was the gun found in front of him in the car, and ignores the jury charge as a whole.

“The law to be charged to the jury is to be determined by the evidence presented at trial.” State v. Lee, 398 S.C. 362, 364, 380 S.E.2d 834, 835 (1989); State v. Stokes, 339 S.C. 154, 528 S.E.2d 430, 434-435 (Ct. App. 2000). In reviewing jury charges for error, the appellate court must consider the jury charge as a whole in light of the evidence and issues presented at trial. State v. Adkins, 353 S.C. 312, 577 S.E.2d 460, 463-463 (Ct. App. 2003).

““To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.”” State v. Brandt, 393 S.C. 526, 713 S.E.2d 591, 603 (2011) (*quoting* State v. Mattison, 388 S.C. 469, 697 S.E.2d 578, 583 [2010]). Failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues, and the appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. *Id.* at 583-584.

A mere presence charge is generally appropriate under two circumstances: 1) if there is a doubt over whether the defendant is guilty as an accomplice to a crime; and 2) the defendant is charged with possession of contraband as a result of being present where contraband was found. Stokes, 528 S.E.2d at 434-435. Neither circumstance applies in this case.

Even viewing the evidence in the light most favorable to Appellant, the circuit court properly refused to charge mere presence. As a threshold matter, none of the charges against Appellant, including the unlawfully carrying a pistol charge, were premised on a theory of accomplice liability.¹ Rather, the State contended, and the evidence showed, Appellant participated as a principal in the armed robbery, kidnapping, conspiracy and carrying a pistol during a crime of violence charges, and one of the guns found in the car was located right at Appellant's feet.

Pursuant to S.C. Code Ann. §16-23-20 (2003), subject to certain enumerated exceptions not applicable in this case, it "is unlawful for anyone to carry about the person any pistol whether concealed or not." For purposes of this statute, an unlawful weapon is "about the person" if it is readily accessible and convenient for immediate use, and need not be actually touching the person of the defendant. *See* 1963-64 Op. Atty Gen, No. 1704, p. 164. The unlawfully carrying a pistol charge in this case related to both the gun Appellant carried during the robbery, and the gun found at his feet in the car, which was

¹Appellant did not object to the accomplice liability jury charge, even in the face of the circuit court's hesitation regarding the mere presence charge. Further, knowing the court intended to give the accomplice liability charge, Appellant did not draw any connection between that charge and the mere presence charge until after the jury charges were given. At that point, it would have been almost impossible to give a mere presence charge without confusing the jury.

clearly more easily accessible to him than to any other occupant of the car, and convenient for his immediate use.²

Finally, Appellant's argument ignores the fact the jury convicted him on all the other charges. Thus, the jury obviously found Appellant was an active participant in the criminal activity on April 1, 2010, and it is more than highly unlikely the jury would then conclude he was "merely present" in the car at the second convenience store, with a pistol right at his feet, for purposes of the unlawfully carrying a pistol charge.

There simply was no evidence presented to support a mere presence charge relating to the unlawfully carrying of a pistol offense. Therefore, the circuit court properly denied Appellant's request for such a charge, and its ruling should be affirmed.

²Prosecution for both unlawfully carrying a pistol and possession of a firearm during a crime of violence does not constitute double jeopardy clause because the charges have different elements. *Cf. State v. Kirby*, 325 S.C. 390, 481 S.E.2d 150, 153-154 (Ct. App. 1996) (unlawfully carrying a pistol is not a lesser included offense of possession of a firearm during a crime of violence).

CONCLUSION

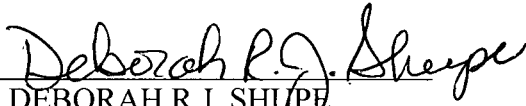
Based on the foregoing, Respondent submits Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

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December 17, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal From Beaufort County
The Honorable Brooks P. Goldsmith, Circuit Court Judge
Appellate Case No. 2014-001920

THE STATE,

Respondent,

v.

PHILENZA PRITCHETT,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,
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