

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge

KEENAN COAKLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002156

APPENDIX

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1 Q. And what would have been in the
2 mirror?

3 A. The Cricket store.

4 Q. Did something draw your attention
5 from the Cricket store area?

6 A. No, ma'am.

7 Q. At some point do you hear anybody
8 screaming?

9 A. Yes, ma'am.

10 Q. Tell us about that.

11 A. Probably like -- I'd say like five
12 minutes after we parked and all of that went
13 down, he adjusted the mirrors and whatnot, I
14 heard a scream -- a guy scream out, "Help,
15 we've been robbed!" So when I looked back,
16 he ran out of his store and I think he ran to
17 the Jersey Mike's next door to his store. He
18 said, 'somebody call the cops.'

19 So the female on the side of the car, she
20 was like, 'What happened?' He was like, 'We
21 just got robbed! Call the cops.'

22 So as she said to call the cops, I got my
23 cell phone out and Mr. Smalls told me don't
24 get involved.

25 Q. When you saw the woman run out, did

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1 you say that you also saw a man run out of
2 the Cricket store?

3 A. No, I saw a guy run out.

4 Q. Did you recognize him?

5 A. Yes, ma'am.

6 Q. Where did you recognize him from?

7 A. From that store.

8 Q. Had you been in that store
9 previously?

10 A. Yes, ma'am.

11 Q. So when you took your cell phone
12 out, what did Kevin Smalls say?

13 A. He told me, "don't get involved."

14 Q. What happened next?

15 A. After that, we backed up and we
16 pulled off.

17 Q. You pulled off which way?

18 A. As we backed out, we turned and when
19 we came to the stop sign we made that right
20 and that put us right in front of Walmart.
21 When we're riding through the front side of
22 Walmart and we got to the lawn and garden,
23 that's when we made that left. That's going
24 to bring you out on the tire and lube express
25 side on the back side of Walmart.

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1 Q. Go ahead.

2 A. From there, that takes you to
3 Porchers Bluff where we made that right and
4 got on 17.

5 Well, we made a right and then we made a
6 left onto 17.

7 Q. When y'all were traveling through
8 the parking lot, could you describe for the
9 jury how quickly or how slowly that y'all
10 were traveling?

11 A. We were going at a nice pace, a nice
12 little speed.

13 Q. When you got to the stop light on
14 Porchers Bluff, you said that y'all turned
15 left.

16 A. Yes.

17 Q. What happened after you turned left?

18 A. When we turned left -- it was before
19 they torn Highway 17 up to where it is now.
20 There was a median that you could turn in.
21 So when we got on 17, we dipped through the
22 median and went down Sam Edwards Road.

23 Q. Let me interrupt you for a second.

24 A. Okay.

25 Q. When you got on 17, before you

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1 turned on Sam Edwards Road, ---

2 A. Yes, ma'am.

3 Q. --- did y'all travel down to Jarrett
4 Graddick's house and pick him up?

5 A. No, ma'am.

6 Q. So when you turned left onto Sam
7 Edwards Road, tell the jury what happened at
8 that point.

9 A. As we turned left on Sam Edwards
10 Road, we went to the end of the road and he
11 turned around.

12 Q. Let me show you what has been marked
13 as State's Exhibit 13. Is that a photograph
14 of Sam Edwards Road?

15 A. Yes, ma'am.

16 Q. Are you familiar with that road?

17 A. Yes, ma'am.

18 Q. And could you tell the jury whether
19 you have ever used any cut-throughs on that
20 road.

21 A. Yes, ma'am.

22 Q. So as y'all were driving down the
23 road, tell the jury again what happened.

24 A. Okay. To the back side, as you can
25 see, we turned around to the back. As we

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1 were approaching coming forward, off the road
2 like up in this area right here ---

3 Q. Hang tight for just a second. I'm
4 going to get you a pointer -- (tendering).
5 And you can stand up.

6 THE COURT: You need to keep your voice
7 up.

8 SOLICITOR SHEALY: You're soft-spoken and
9 you're going to have your back turned to
10 them. So speak up. Okay?

11 WITNESS BRIAN MAZYCK: Okay.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR SHEALY:

14 Q. Okay, you may continue.

15 A. Yes, ma'am. As we approached coming
16 back up this side -- like it's not on this
17 (indicating_) but up like closer to the
18 highway part, a little inbetween, that's when
19 he hit the brakes. When he hit the brakes, I
20 saw him look in the mirror -- once he looked
21 in the mirror and backed up, I saw Coakley
22 and Graddick -- there is a path over here,
23 (indicating). You can't see it. But they
24 were coming out waving, so ---

25 Q. Let me show you another photograph

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1 and see if that helps us a little bit.

2 Showing you State's Exhibit 14. That is
3 turned the other way, going towards 17.

4 A. Yes, ma'am.

5 Q. Does that show you the area of the
6 pathway?

7 A. Still -- it's up in this area right
8 here.

9 Q. Okay. We will go back to State's
10 Exhibit 13. Y'all had already turned around?

11 A. Yes, ma'am.

12 Q. And -- go ahead, continue describing
13 what happened.

14 A. Like I said, we turned and were
15 going back up. As we were going back up Sam
16 Edwards Road, they came out of the path
17 flagging him down. When he backed up, they
18 got in the car.

19 After they got in the car, that's when we
20 went back to the head of Sam Edwards Road and
21 made a right.

22 Q. Go ahead and take your seat again.

23 A. (Complies).

24 Q. Let's slow down just a little bit.

25 Could you see from where -- and when you say

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1 "they", who are you talking about?

2 A. Coakley and Graddick.

3 Q. When you say that they came out,
4 where -- y'all had already turned around and
5 were heading back towards the front?

6 A. Yes, ma'am.

7 Q. And then you say that Kevin Smalls
8 did what with his rearview mirror?

9 A. Oh, he looked in his rearview mirror
10 as he was riding back out of that road. He
11 was looking in the mirror.

12 Q. And what did he do with his car at
13 that point?

14 A. He stopped. He stopped and put in
15 reverse, I guess. That's when they came out
16 flagging, so he backed up towards them.

17 Q. Okay. Did you see them at that
18 point?

19 A. Yes, ma'am.

20 Q. Could you tell that it was Graddick
21 and Coakley?

22 A. Yes, ma'am.

23 Q. Can you remember how they appeared?
24 What they had on?

25 A. Not quite but I know that they had

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1 gloves and shades on, and I think hats.

2 Q. Okay. And they then get where --
3 where did they go once y'all flagged them
4 down and Kevin has backed up?

5 A. Oh, they got in the car.

6 Q. Where did they get in the car, who
7 got on what side?

8 A. Coakley got in behind me and
9 Graddick got in behind Smalls.

10 Q. Prior to their getting in the car,
11 did you see any type weapon?

12 A. I saw a black gun.

13 Q. Okay. Who had the weapon as they
14 were getting in the car?

15 A. I can't remember.

16 Q. Was there anything covering their
17 faces when you saw them come out of the path?

18 A. Yes, ma'am.

19 Q. What was that?

20 A. Shades. And I don't know whether it
21 was a shirt pulled up over the faces or a
22 bandanna.

23 Q. What part of the face whatever it
24 was covering?

25 A. Oh, it was covering like the nose

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1 piece, that piece (indicating).

2 Q. When they got in the car, can you
3 tell the jury whether or not anyone said
4 anything?

5 A. No one said anything right then, at
6 that moment.

7 Q. What happened then?

8 A. After that we headed out to Sam
9 Edwards Road and -- we got on 17. Once we
10 got on 17, we went to the far left lane.

11 Q. Let me interrupt you again. Sorry.
12 But when they got in the back seat, do you
13 know if the windows were up or down?

14 A. I don't remember.

15 Q. Did you see anything be thrown
16 anywhere before they got in the car?

17 A. The cash register.

18 Q. Where do you think that the cash
19 register was thrown? You can stand up and
20 point it out to us -- or is it not in that
21 photograph?

22 A. It is not in that photograph but
23 it's like ---

24 Q. Showing you State's Exhibit 14, ----

25 A. --- over in that area. There's a

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1 gate over there, but you can't see it -- off
2 screen.

3 Q. So as y'all approached 17 again, was
4 there any discussion in the car about how
5 quickly y'all should go?

6 A. Yes, ma'am. Well, after we made
7 that turn, the U-turn at the light, coming
8 back up 17, uh, they were like, 'Okay, take
9 Clements Ferry Road...' ---

10 ANDREW GRIMES: Objection. Hearsay.

11 WILLIAM RUNYON: Your Honor, may we
12 take up a matter of law at this time?

13 THE COURT: All right. Ladies and
14 gentlemen, I will let you go to your jury
15 room. There is a matter that I need to
16 discuss out of your presence. Do not begin
17 your deliberations.

18 (JURY OUT @ 10:03 A.M.)

19 THE COURT: All right. What is your
20 objection or matter of law?

21 ANDREW GRIMES: I will let Mr. Runyon
22 got first.

23 WILLIAM RUNYON: Your Honor, what she's
24 on the threshold of doing is -- I don't mean
25 to object prematurely but it's better

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1 prematurely than too late. She's now going
2 to have this witness start testifying about
3 what people have said.

4 All three of these people are on trial.
5 There's no way for us to cross examine,
6 necessarily, and we're getting into the area
7 of *Bruton*, Judge.

8 THE COURT: *Bruton*?

9 WILLIAM RUNYON: *Bruton* and hearsay.

10 THE COURT: Well, first of all, it's
11 not *Bruton*, because it's not a statement
12 being offered. I would agree with you that
13 if it was a statement that you couldn't
14 challenge that, but the witness is here.

15 Tell me why 801(d)(2) doesn't apply.

16 WILLIAM RUNYON: Well, Your Honor,
17 quite frankly it doesn't apply because we
18 don't -- Mr. Coakley doesn't have the ability
19 to cross examine Mr. Graddick or Mr. Smalls.

20 THE COURT: He does if they take the
21 stand, but he's got the ability to cross
22 examine this witness as to whether those
23 statements are current.

24 801(d)(2) says that if it is a statement
25 of someone that's adverse to that person,

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1 being offered against them, which is it, and
2 that person is a defendant in this case, then
3 -- then why is it not admitted? And the
4 witness is available to testify.

5 WILLIAM RUNYON: Judge, he is
6 available.

7 THE COURT: I understand that. He's
8 testifying as to the statement attributed to
9 your -- which is classic 801(d)(2) talks
10 about.

11 WILLIAM RUNYON: Well, Judge, I am not
12 going to argue with the Court.

13 THE COURT: No, I'm just saying that --
14 801(d)(2) says that it is not hearsay.
15 That's what it says. So I disagree with your
16 argument that it is hearsay.

17 WILLIAM RUNYON: We've made the record,
18 Judge. Thank you.

19 THE COURT: Thank you, sir.

20 ANDREW GRIMES: Your Honor, if I may
21 put on the record, ---

22 THE COURT: Sure.

23 ANDREW GRIMES: It is our position
24 that Mr. Coakley may have been saying 'Go,
25 Go, Go!' but that's a statement that we

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1 cannot cross Mr. Coakley on that. We don't
2 believe that he ---

3 THE COURT: But he is saying that
4 Coakley said that. You can challenge him
5 that Coakley said that. You don't have to
6 cross examine Coakley. And Coakley can
7 testify if he wants to, that's up to him.

8 I mean, Folks, this is really nothing
9 more than -- there are no statements being
10 offered. But if you can offer the statement
11 of a person -- and we know that we have to go
12 through a *Jackson v. Denno* hearing for that;
13 for obvious reasons, because they have
14 Constitutional rights not to testify.

15 But this is not an interrogation. This
16 is a conversation with a citizen. This is
17 nothing more than anything that comes into
18 court. The fact that it is a trial for a
19 criminal case doesn't change the evidentiary
20 application.

21 So I appreciate your position. You can
22 argue that up the road and maybe we will make
23 some new law.

24 I don't think that 801(d)(2) makes this
25 hearsay and, therefore, none of that applies.

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1 The witness who is saying these things is
2 here to be challenged. That is precisely
3 what (d)(1) talks about. It says that you
4 can offer it if they've been present and have
5 testified. The whole purpose of that is so
6 that you can challenge that testimony itself.
7 That's the challenge. That's the
8 confrontation. You're confronting the
9 witness.

10 It's not a *Bruton* issue, it has nothing
11 to do with *Bruton*. It's not -- now, I would
12 agree with you that if we're talking about a
13 statement that this person made that is being
14 offered against that person and that -- that
15 has to pass muster concerning the *Jackson v.*
16 *Denno* hearing and now -- now we've got a
17 different ballgame.

18 But that's not what this is. This is a
19 witness who was present, who heard the
20 conversation and he's testifying, which is
21 adverse to your party. That's clearly that.

22 The distinction -- for instance, to give
23 you the distinction, I sustained an objection
24 -- you want to offer a statement which your
25 client made that was beneficial. Clearly it

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1 says that it has to be offered again. Years
2 ago when I went to law school, it had to be
3 an adverse party -- you could throw it in, it
4 didn't matter. A statement against interest
5 by a party or -- you could offer anything
6 that a party said. They changed the Rule and
7 said that it has to be offered against a
8 person. Clearly that's what we do.

9 So, Solicitor, is there anything else
10 that you'd like to supplement the record as
11 being your basis for ---

12 SOLICITOR SHEALY: No, Your Honor.

13 THE COURT: --- being able to ask the
14 question.

15 SOLICITOR SHEALY: No, Your Honor.

16 THE COURT: Thank you. The record has
17 been made. Thank you very much. I overrule
18 the objection, but I appreciate ---

19 ANDREW GRIMES: Thank you, Your Honor.

20 THE COURT: And, Mr. Runyon, thank you
21 for raising it. You say prematurely, I think
22 that it needed to be raised and arrested.
23 Thank you very much.

24 All right, let's bring in the jury.

25 And the objection will continue through

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1 out and it is protected for the purposes of
2 review so that we don't have to interrupt.
3 Each time that a statement is made by a
4 defendant, it is noted that your objection
5 continues for each individual. The State
6 agrees with that approach ---

7 SOLICITOR SHEALY: Yes, sir.

8 THE COURT: --- for purposes of review?

9 SOLICITOR SHEALY: Yes, Your Honor.

10 THE COURT: And the defendants, each is
11 comfortable with that for protecting the
12 record?

13 ANDREW GRIMES: Yes, sir.

14 WILLIAM RUNYON: For Defendant Coakley,
15 that's fine.

16 THE COURT: Okay.

17 JIM SMILEY: Yes, sir.

18 THE COURT: Thank you. Invite the jury
19 to return.

20 (JURY IN @ 10:10 A.M.)

21 THE COURT: Thank you, ladies and
22 gentlemen. As you know, as I mentioned to
23 you that our Rules are well-defined, that
24 they don't overlap. You have the
25 responsibility of determining the facts and

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1 it is my responsibility to determine the law.
2 Occasionally we don't have to have a matter
3 -- and you've heard me tell an attorney that
4 'we will place that on the record at the next
5 recess.' The reason for that is that that is
6 not a matter for your concern.

7 So in order to facilitate those
8 discussions, sometimes we need to excuse you.
9 Please understand that's the normal process.
10 Also please understand that as officers of
11 the Court that the attorneys are entitled to,
12 and should, raise those matters as they
13 occur. It is very important that they do
14 that during the process. That's very normal
15 and very proper as well. So don't read
16 anything into that either. Thank you.

17 You may continue, Ms. Shealy.

18 SOLICITOR SHEALY: Thank you, Your
19 Honor.

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR SHEALY:

22 Q. Brian, I believe that we were
23 talking about that y'all were heading back
24 down Sam Edwards Road towards 17.

25 A. Yes, ma'am.

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1 Q. If you would, please tell the jury
2 if anyone was saying anything.

3 A. When they got in the car, they were
4 like, 'Go, Go, Go!' That's when we went --
5 we were on 17, now we're U-turning, now we're
6 going up 17, ---

7 Q. Let me slow you down there just so
8 they will understand what you mean by a U-
9 turn. When y'all got to the end of the
10 street here (indicating Sam Edwards Road),
11 which way did Mr. Smalls turn?

12 A. He turned right.

13 Q. When you say that y'all U-turned it,
14 where was that?

15 A. Actually when you come off this
16 road, there's a light like right there. He
17 went to the far left lane and he U-turned at
18 the light.

19 Q. So when you U-turned, were you still
20 on Highway 17?

21 A. Yes, ma'am.

22 Q. You were heading back towards the
23 bridge?

24 A. Yes, ma'am.

25 Q. If you would, describe to the jury,

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1 please, what was going on in the backseat as
2 y'all were traveling back down 17 South.

3 A. As we were traveling back down 17,
4 they were in the back seat trying to take the
5 clothes off that they had on during the
6 robbery and put the clothes that were in the
7 car on.

8 Q. And when you say that's what they
9 were doing, could you see them doing that?

10 A. Yes, ma'am.

11 Q. How were you feeling about that?

12 A. I was scared and nervous. I wanted
13 to get out of the car.

14 Q. Okay. Tell the jury -- they were
15 changing clothes?

16 A. Yes, ma'am.

17 Q. At any point did you see a weapon?

18 A. Yes, ma'am. The gun was under the
19 armrest in the back seat.

20 Q. Tell the jury what other behavior
21 was happening in the back of the car.

22 A. Nothing at that moment. But when we
23 got pulled over by the heat car, -- Mr.
24 Smalls brought it to the attention of
25 everyone that the heat car was behind us.

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1 When he said the heat car was behind us, I
2 looked back in the rearview I saw the heat
3 car that had came out of nowhere. So we were
4 just sitting at the light now, no one is
5 moving.

6 He just threw on the lights. Once he
7 threw on the lights, he told us to put our
8 hands up. So now we have our hands up in the
9 car.

10 You know, as he started telling us to
11 turn the car off, don't move, I think that it
12 was Mr. Coakley said, "Go! I'm not going
13 back to jail. Go!"

14 When I looked at the passenger side --
15 any movement to your left side, you can see.
16 So, you know, as I glanced over he had the
17 gun to the back of Mr. Smalls seat.

18 Q. Who had the gun?

19 A. Mr. Coakley.

20 Q. And when you say that he had it to
21 the back of Mr. Smalls' seat, are you talking
22 about the back of Mr. Smalls' seat?

23 A. Yes, ma'am.

24 Q. And what was Mr. Coakley saying?

25 A. He was like, 'Drive! I'm not going

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1 back to jail.'

2 WILLIAM RUNYON: Your Honor, may I ---

3 THE COURT: What is the objection?

4 WILLIAM RUNYON: To the statement that
5 he just made that he said was said by Mr.
6 Coakley.

7 THE COURT: All right. Thank you, sir.
8 Your objection is overruled.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR SHEALY:

11 Q. Let's go back just a little bit,

12 A. Yes, ma'am.

13 Q. --- did anyone in the car indicate
14 where y'all should travel?

15 A. Yes, ma'am.

16 Q. Who did that?

17 A. They both said that we should take
18 Clements Ferry.

19 Q. And when you say "they both", you
20 mean who?

21 A. Coakley and Graddick.

22 Q. And for those on the jury who aren't
23 familiar with Clements Ferry, do you have to
24 go down 41 to get to Clements Ferry?

25 A. Yes, ma'am.

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1 Q. Are you familiar with whether or not
2 41 is a two-land road?

3 A. It's a one.

4 Q. When you say one, it's one going
5 this way and one going that way?

6 A. Yeah.

7 Q. Okay. So describe -- you were
8 telling us that y'all initially put your
9 hands up?

10 A. Yes, ma'am.

11 Q. And then Mr. Coakley initially put
12 the gun to the back of Mr. Smalls' seat?

13 A. Yes, ma'am.

14 Q. And he said what?

15 A. He was, like, 'Drive, boy, drive!
16 I'm not going back to jail.'

17 Q. Then what started happening in the
18 back seat?

19 A. After that, I really don't know. I
20 had my hands up and I didn't look back. I
21 could feel movement in the back seat.

22 Q. You could what?

23 A. I could feel the movement of them in
24 the back seat.

25 Q. Now, at any time when you were in

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1 the vehicle, did you see any money?

2 A. When I took a glance back, there was
3 money in the armrest.

4 Q. Okay. Could you tell what was going
5 on with the money?

6 A. No, ma'am. They just had it sitting
7 there.

8 Q. Showing you State's Exhibit 28, can
9 you see -- that is the armrest that you're
10 talking about? In the middle, with the cup
11 holders?

12 A. Yes, ma'am.

13 Q. And when you saw the money, where
14 was it when you saw it?

15 A. It was right here.

16 Q. Was the seat divider, the armrest,
17 up?

18 A. No, it was down.

19 Q. What was going on in that area?

20 A. They just had the money setting
21 right there and the gun was underneath the
22 arm, the console.

23 Q. It was underneath at the time that
24 you saw it?

25 A. Yes, ma'am.

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1 Q. And then you later saw it again with
2 Mr. Coakley?

3 A. Yes, ma'am.

4 Q. When you were at the stopping point,
5 could you describe what happened when the
6 police was directing you all to get in and
7 out of -- I mean out of the vehicle?

8 A. As they told us to get out, I
9 believe that they told Smalls to get out
10 first.

11 Once Smalls got out, Mr. Coakley was
12 trying to go across the middle of the seat to
13 drive the car off. Mr. Smalls had already
14 turned the car off. Mr. Coakley was coming
15 through the middle of the two front seats.
16 He had his legs coming across. They was
17 like, 'Don't move! Don't move! Keep still.'
18 After that, he stopped.

19 That's when they took out Mr. Graddick.

20 Then from Mr. Graddick exiting the
21 vehicle, Mr. Coakley was after him.

22 I was the last to get out.

23 Q. When you got out of the vehicle,
24 would you describe to the jury what the
25 police were doing with the four of you?

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1 A. Separating us by putting us in
2 different vehicles.

3 Q. Putting you all in different police
4 vehicles?

5 A. Yes, ma'am.

6 Q. And could you tell the jury what you
7 told the police the first time that you had a
8 chance to tell them anything?

9 A. Once I got in the police cruiser, I
10 told them what happened; that I didn't know
11 that he was going on. He told me, 'Well,
12 just tell the truth.' So that's what I did.

13 Q. Were you arrested?

14 A. Yes, ma'am.

15 Q. And charged with armed robbery?

16 A. Yes, ma'am.

17 Q. Are you still charged with armed
18 robbery?

19 A. Yes, ma'am.

20 Q. When you went to the police station,
21 did you give a statement to the police?

22 A. Yes, ma'am.

23 Q. Okay. And did you try to give them
24 as many details as you could at that time?

25 A. Yes, ma'am.

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1 Q. Did you write your statement?

2 A. No, ma'am.

3 Q. Who wrote the statement?

4 A. The detective.

5 Q. After writing your statement, did
6 the police ask you to do something else?

7 A. Yes, ma'am.

8 Q. What did they ask you to do?

9 A. Well, they took me back to the crime
10 to where they'd threw the register till at
11 and -- they said that there was another gun,
12 which there wasn't. So I walked the fence
13 line with them, searching for another gun --
14 which we didn't find. But we found the
15 register tossed in the woods.

16 Q. Okay. Let me ask you something, did
17 you go down -- and you know that you're here
18 to tell the truth.

19 A. Yes, ma'am.

20 Q. You've been sworn to tell the truth?

21 A. Yes, ma'am.

22 Q. Did you go down Sam Edwards Road to
23 drop off Graddick and Coakley?

24 A. No, ma'am.

25 Q. You did not go down there with that

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1 intention?

2 A. No, ma'am.

3 Q. Have you had an opportunity to
4 review your statement that you gave to the
5 police?

6 A. Yes, ma'am.

7 Q. Could you describe to the jury
8 whether it's in the right sequence of events?

9 A. No, ma'am.

10 Q. It is not?

11 A. No, ma'am.

12 Q. Okay. What are you talking about?

13 A. The way that it is written it sounds
14 like I was down there more than once. But it
15 wasn't more than once. It was the way that
16 the detective interviewed it, he was jumping
17 from place to place. So once he's going to
18 one spot, I'm thinking about the next spot.
19 That's how it got twisted.

20 Q. Okay. The next day -- were you put
21 in jail that night?

22 A. Yes, ma'am.

23 Q. And the next day, did Sergeant
24 Tyrone Simmons come and get you from the
25 jail?

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1 A. Yes, ma'am.

2 Q. What did -- tell us what you told
3 Sergeant Simmons that had happened when you
4 all got down to the jail.

5 A. Oh, when we got to the jail and he
6 came and took me for another interview, I
7 told him what was going on. I told him about
8 the suspects were -- I didn't talk to Smalls
9 since I was there, but I'd talked to Graddick
10 and Coakley when they had us in a place where
11 we could see each other, like at the desk and
12 whatnot.

13 Q. Let's slow that down, because
14 everyone is not going to be familiar with
15 that. When they took you to the jail, did
16 they put all four of you together in a cell?

17 A. No, ma'am.

18 Q. Describe for the jury whether or not
19 they separated you all?

20 A. Yes, they separated us.

21 Q. So when would you have had the
22 occasion to speak to Mr. Graddick or to Mr.
23 Coakley?

24 A. When they -- the cell that I was,
25 the holding cell that I was in, when they

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1 went to the desk it was like they was right
2 in front -- right in front of the desk, like
3 from me to you right there.

4 Q. Okay. Tell the jury, if you would,
5 what you were told by Mr. Coakley and Mr.
6 Graddick.

7 A. Mr. Coakley told me to tell them
8 that we picked him up from his cousin Jamie's
9 house, that he was lifting weights.

10 Q. That he was lifting weights?

11 A. Yes, ma'am.

12 Q. And did he say anything about money
13 that was taken?

14 A. It was like that it was four
15 thousand dollars (\$4,000).

16 Q. That is what Mr. Coakley told you?

17 A. Yes, ma'am.

18 Q. What about Mr. Graddick, did he say
19 anything?

20 A. He said that we picked him up from
21 the park near his house.

22 Q. He said that that's what happened,
23 or he asked you to say something?

24 A. He told me to say that we picked him
25 up from the park near his house.

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1 Q. What did you tell Keenan Coakley and
2 Jarrett Graddick when they asked you to tell
3 a lie?

4 A. That 'I'm not lying, I'm going to
5 tell the truth.'

6 Q. So we talked about that you were
7 charged that evening?

8 A. Yes, ma'am.

9 Q. And you agree that night to
10 cooperate with the police immediately?

11 A. Yes, ma'am.

12 Q. Did you give a statement on the 15th,
13 the night of the incident?

14 A. Yes, ma'am.

15 Q. On the 16th, you gave a statement?

16 A. Yes, ma'am.

17 Q. And can you tell the jury whether
18 you told your lawyer that you also wanted to
19 cooperate with the State?

20 A. Yes, ma'am.

21 Q. And, again, -- I will ask you again,
22 Brian, did you go down Coakley (sic) Road
23 before those two guys got dropped off?

24 A. No, ma'am.

25 SOLICITOR SHEALY: Beg the court's

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1 indulgence just a moment.

2 THE COURT: All right.

3 SOLICITOR SHEALY: (Sidebar with Mr.
4 Ferguson).

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR SHEALY:

7 Q. Mr. Mazyck, have you been promised
8 anything to come in and testify?

9 A. No, ma'am.

10 Q. Has the State in any way indicated
11 to you what might happen with your charges?

12 A. No, ma'am.

13 Q. Thank you. Please answer any
14 questions that the defense may have.

15 THE COURT: Cross examine?

16 ANDREW GRIMES: Yes, sir. Thank you,
17 Your Honor.

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 BY ANDREW GRIMES:

21 Q. Good morning, Mr. Mazyck.

22 A. Good morning.

23 Q. I want to clarify a few things first
24 about your background. If for some reason
25 you don't understand one of my questions or

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1 -- sometimes I have a habit of mumbling, just
2 ask me to speak up or to repeat myself.
3 Okay?

4 A. Yes, sir.

5 Q. You were born [REDACTED], 1985?

6 A. Yes, sir.

7 Q. And the last four numbers of your
8 Social Security Number are [REDACTED] or ---

9 SOLICITOR SHEALY: Objection, Your Honor.

10 THE COURT: What is the purpose of
11 that? Asking his Social Security number?
12 You can show it to him, but there is no need
13 to do that.

14 ANDREW GRIMES: Thank you, Your Honor.
15 May I approach the witness?

16 THE COURT: You may. Let the record
17 reflect that you are going to show him his
18 Social Security number?

19 ANDREW GRIMES: Yes, sir. (Upon
20 review of file), it doesn't seem that I have
21 that part, so I will skip that question.

22 THE COURT: Very well.

23 ANDREW GRIMES: Thank you.

24 CROSS EXAMINATION CONTINUED

25 BY ANDREW GRIMES:

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1 Q. You have a nickname, you go by
2 "Bezel"; right?

3 A. Yes, sir.

4 Q. What exactly does Bezel mean?

5 A. It means nothing.

6 Q. I want to ask you a little bit about
7 your prior record. Ms. Shealy brought out
8 that you were convicted in 2006 of a burglary
9 in the third degree?

10 A. Yes, sir

11 Q. And I think on that same day that
12 you were convicted of, I believe, eight
13 counts of breaking into fuel tanks?

14 A. Fuel tanks?

15 Q. Gas tanks.

16 A. I don't recall that, sir.

17 Q. But you had eight breaking-and-
18 enterings?

19 A. Yes, sir

20 Q. And those carried five years each.

21 SOLICITOR SHEALY: Objection, Your Honor.

22 THE COURT: Sustained. Conform your
23 questions pursuant to the Rules. Thank you,
24 sir.

25 ANDREW GRIMES: Thank you, Your Honor.

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1 CROSS EXAMINATION CONTINUED

2 BY ANDREW GRIMES:

3 Q. Now I want to ask you about the
4 pending charge here, the armed robbery. That
5 carries a minimum of ten years in prison;
6 correct?

7 A. Yes, sir.

8 Q. Up to thirty years?

9 A. Yes, sir.

10 Q. If you're convicted of that, you
11 could do anything between that time?

12 A. Yes, sir.

13 Q. If you cooperate, you could get less
14 than ten years if convicted of armed robbery;
15 right?

16 A. Yes, sir.

17 Q. And armed robbery is what they call
18 a no parole offense?

19 A. Yes, sir.

20 Q. Which means that you do eighty-five
21 percent of your time; correct?

22 A. Yes, sir.

23 Q. If you did get ten years, you'd do
24 at least eight and a half years?

25 A. Yes, sir.

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1 Q. You are twenty-eight now?

2 A. Yes, sir.

3 Q. So you wouldn't be able to get out
4 until you were thirty-six?

5 A. Yes, sir.

6 Q. And it is what they call a strike or
7 a most serious offense; correct?

8 A. Yes, sir.

9 Q. If you get two of those, you'd be
10 looking at life without parole?

11 A. Yes, sir.

12 Q. Now, at the end, I think Ms. Shealy
13 asked you if anyone had made you any promises
14 or given you any benefits for your testimony
15 here today.

16 A. Yes, sir.

17 Q. And has anyone -- when you say -- by
18 "benefits", I mean has anyone dropped any
19 charges for you?

20 A. No, sir.

21 Q. Has anyone reduced any charges
22 against you?

23 A. No, sir.

24 Q. Give you any special considerations
25 as to bond?

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1 A. No, sir.

2 Q. Now, you were arrested on September
3 15th, 2010; correct?

4 A. Yes, sir.

5 Q. At that time you gave a statement to
6 Detective Byrd and ---

7 A. Yes, sir.

8 Q. --- then the next day to Detective
9 Simmons?

10 A. Yes, sir.

11 Q. About two years later, you signed
12 what's called a proffer agreement; correct?

13 A. Yes, sir.

14 Q. And during that time, did you
15 receive any promises or benefits from the
16 State?

17 A. No, sir.

18 Q. None at all?

19 A. No, sir.

20 Q. Are you sure about that?

21 A. No, I don't really know of ---

22 Q. What's that?

23 A. I can't answer that one but none that
24 I know of. Not that I know of.

25 Q. I'll try to make it simple, okay?

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1 Because it's important.

2 A. Okay.

3 Q. Between the time that you gave your
4 statement and the time that you signed the
5 proffer agreement, did the State drop any
6 charges for you?

7 A. Yes. When I went to court, yes,
8 sir.

9 Q. And what charges did they drop?

10 SOLICITOR SHEALY: Your Honor, I have
11 an objection and a matter of law.

12 THE COURT: All right. Ladies and
13 gentlemen, I need for you to go out and go
14 to your jury room. We will be with you as
15 quickly as we can.

16 (JURY OUT @ 10:26 A.M.)

17 THE COURT: Before -- Mr. Runyon, you
18 made an objection concerning the statement
19 about the jail. You want to go ahead and
20 supplement your objection?

21 WILLIAM RUNYON: Your Honor, I would
22 like to supplement that by not only objection
23 but that in his identification he said Mr.
24 Coakley said 'I don't want to go back to
25 jail' or 'I'm not going back to jail.' That

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1 indicates that there was some prior
2 conviction or some prior offense. That
3 introduces the defendant's record. And,
4 therefore, not only do I object to that,
5 Judge, but I would append to that objection
6 a Motion for a mistrial as to Mr. Coakley.

7 THE COURT: What is the State's
8 response?

9 SOLICITOR SHEALY: Your Honor, I think
10 that statement was so minimal that it
11 probably didn't draw the jury's attention.

12 THE COURT: Oh, I think that it drew it
13 several times. What is your position
14 concerning the admissibility?

15 SOLICITOR SHEALY: I think if that's
16 what he said, that's what he said. It
17 doesn't in any way indicate that he's been
18 convicted of a crime. He said 'I don't want
19 to go back to jail.'

20 THE COURT: Well, it does imply that
21 he was convicted of a crime.

22 SOLICITOR SHEALY: I don't think that
23 it implies that he was convicted of one, just
24 that he was in jail. He didn't say, 'I don't
25 want to go back to prison.' I think that if

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1 you'd like to make a curative instruction of
2 some, sort that the State certainly would be
3 agreeable to that.

4 THE COURT: How do you cure that?

5 SOLICITOR SHEALY: If the defense wants
6 to highlight it in a curative instruction, I
7 think you could indicate that ---

8 THE COURT: Mr. Runyon's defendant
9 wants a mistrial.

10 SOLICITOR SHEALY: I don't think that a
11 mistrial is in order, Your Honor. I think
12 that it can be cured by saying "Any reference
13 of back to jail should not be entered into
14 your consideration at all. There is no
15 evidence in this record that Mr. Coakley has
16 been to jail."

17 THE COURT: I understand that. That's
18 why the statement is just -- that's the
19 problem with the statement, is it not?

20 SOLICITOR SHEALY: I think that it can
21 be cured, Judge.

22 THE COURT: Again, I don't understand.
23 How do you cure that that is not what he
24 said.

25 SOLICITOR SHEALY: Well, I think ---

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1 THE COURT: The problem that I have,
2 Solicitor, is that this is -- my thought is
3 that this is why he was trying to escape, all
4 of these things. That's a rationale basis.
5 But to inject into the framework and then --
6 the first little mention, I would agree that
7 maybe it was insignificant. But he repeated
8 it several times.

9 SOLICITOR SHEALY: Judge, I still
10 think though that if you were to instruct the
11 jury that they ---

12 THE COURT: Well, I appreciate your
13 suggestion that I instruct the jury. That
14 bell has been rung loudly and clearly, so I
15 would -- with all due respect, I don't think
16 that you can undo that. What am I going to
17 tell them? 'You disregard the statement that
18 he was in jail'?

19 SOLICITOR SHEALY: I ---

20 THE COURT: How do you suggest that I
21 cure that? What language would you suggest
22 that could be offered to cure it?

23 SOLICITOR SHEALY: I think that you
24 can instruct the jury that, 'There was
25 mention by Mr. Mazyck that Mr. Coakley said

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1 that he did not want to go back to jail.
2 I instruct you that that should not be
3 considered by you at all, that it should
4 be struck from the record. In your
5 deliberations, you should not consider that
6 statement at all.'

7 THE COURT: I see. Forget the bell
8 that was rung, ladies and gentlemen. Forget
9 the bell.

10 SOLICITOR SHEALY: I mean, I -- we have
11 to ---

12 THE COURT: Just ignore the bell.

13 SOLICITOR SHEALY: Well, we often
14 have that when we have curative instructions.

15 THE COURT: No, we don't. Not
16 something as significant as that. And you
17 obviously think it's significant. You're not
18 arguing that it's proper.

19 SOLICITOR SHEALY: Well, it ---

20 THE COURT: I don't understand why you
21 even allowed the witness to even do that.

22 SOLICITOR SHEALY: I didn't ---

23 THE COURT: That doesn't make any sense
24 to me.

25 SOLICITOR SHEALY: Well, I had instructed

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1 him previously ---

2 THE COURT: Ma'am, I appreciate that.
3 That's all preparation. I understand that
4 you can't control them when they get on the
5 stand. All right.

6 What's our position -- let me hear that
7 and then we will take a recess. I am going
8 to have to think about this one.

9 SOLICITOR SHEALY: What is my posi-
10 tion as to?

11 THE COURT: As to the question concern-
12 ing his benefits.

13 SOLICITOR SHEALY: I don't know -- I
14 think that Mr. Grimes is getting ready to
15 attempt to introduce through Mr. Mazyck that
16 some charges have been dismissed against him.

17 THE COURT: Have they?

18 SOLICITOR SHEALY: I don't know the
19 sequence of that ---

20 THE COURT: Ma'am, just answer. Have
21 they been dismissed?

22 SOLICITOR SHEALY: There have been
23 charges that ---

24 THE COURT: All right. They have been
25 dismissed after his arrest?

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1 SOLICITOR SHEALY: I would have to check
2 that.

3 THE COURT: Well, you better go check
4 it because -- you're argued that there
5 haven't been, and that's significant,
6 Solicitor. Don't make an objection when you
7 don't even know the basis of your objection.

8 SOLICITOR SHEALY: No, that's why --
9 I do know the basis, so that we can find out
10 if ---

11 SOLICITOR SHEALY: Okay.

12 ANDREW GRIMES: Your Honor, I have the
13 disposition sheets, if that will help.

14 THE COURT: Well, you may want to show
15 them to the Solicitor so that she can argue
16 with them, if she wants to.

17 We'll be at-ease for a few minutes, take
18 a break.

19 (BRIEF RECESS)

20 (DEFENDANT GRADDICK PRESENT)

21 (DEFENDANT COAKLEY PRESENT)

22 (DEFENDANT SMALLS PRESENT)

23 THE COURT: Okay, let the record
24 reflect that all the defendants are present.
25 Yes, Ms. Shealy?

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1 SOLICITOR SHEALY: Your Honor, could I
2 ask for a few moments to further research?
3 I was also looking at the prior charges.

4 THE COURT: Well, you can -- I'm
5 prepared to rule on the prior charges, if
6 you'll just tell me whether or not it was
7 done after his arrest?

8 SOLICITOR SHEALY: It was absolutely done
9 after his arrest.

10 THE COURT: That's fine. I'm prepared
11 to rule on that. That's not the problem.
12 The other one, I'm not going to -- I am going
13 to take that under advisement at this point.
14 You can do further research on that issue.

15 SOLICITOR SHEALY: Okay.

16 THE COURT: You want a curative
17 instruction?

18 WILLIAM RUNYON: I'd have an objection
19 to ---

20 THE COURT: I know you want a mistrial.
21 I understand that.

22 WILLIAM RUNYON: I want a mistrial. I
23 do not want -- all a curative instruction
24 would do is call attention to all of that.

25 THE COURT: So yours is not an either/

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1 or. You want a mistrial, no curative
2 instruction?

3 WILLIAM RUNYON: I am relying on what I
4 learned in handset. Yes, Judge.

5 THE COURT: That's why I asked you
6 that. There is no question but that that
7 would call attention to it. There's no
8 question that I could say the curative
9 instruction -- and I'm not the least bit
10 concerned that the jury would follow that
11 instruction. But yours is for a mistrial
12 only?

13 WILLIAM RUNYON: Yes, Your Honor.

14 THE COURT: And if I decline that,
15 you're willing to -- you'll just let the
16 record speak for itself. You don't want it
17 to be reinforced.

18 WILLIAM RUNYON: That's correct, Your
19 Honor, and let me state my basis for that.

20 THE COURT: All right.

21 WILLIAM RUNYON: Judge, when that was
22 elicited the first time, I entered my
23 objection.

24 THE COURT: Yes.

25 WILLIAM RUNYON: Then in spite of my

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1 objection, the State proceeded to elicit that
2 response at least two more times, if not
3 three times.

4 THE COURT: It was several times.

5 WILLIAM RUNYON: If you give a curative
6 instruction, that's just going to be piled on
7 and -- that's my basis for not asking for a
8 curative instruction.

9 THE COURT: There is no question that
10 those are factors that I'm weighing in the
11 moment, the fact that it followed and the
12 fact that the State did not argue that it was
13 proper in the first place.

14 SOLICITOR SHEALY: Well, Your Honor, I
15 do want to ---

16 THE COURT: I understand. I'm going to
17 give you a chance to argue that.

18 SOLICITOR SHEALY: Okay.

19 THE COURT: Thank you.

20 SOLICITOR SHEALY: And just so that the
21 record is clear, when he objected to that
22 language, it was not granted.

23 THE COURT: Ma'am?

24 SOLICITOR SHEALY: When he objected to
25 that, made his objection, it was not granted.

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1 THE COURT: That's correct. I over-
2 ruled the objection primarily to simply state
3 that -- the one mention of it is fine, but
4 the reinforcement of it is what bothers me.
5 The one time, sure, that gives an
6 explanation. But to continue it, and you're
7 not arguing that is proper, then I am
8 concerned.

9 SOLICITOR SHEALY: I do think that it
10 is proper for ---

11 THE COURT: Well, you didn't argue
12 that, Solicitor.

13 SOLICITOR SHEALY: But I'm asking --

14 THE COURT: Ms. Shealy, I'll -- I have
15 not ruled yet. Thank you.

16 SOLICITOR SHEALY: Yes, sir.

17 THE COURT: Thank you very much.
18 Let's don't argue about whether you did or
19 didn't.

20 SOLICITOR SHEALY: Yes, sir. Thank
21 you.

22 THE COURT: Thank you.

23 SOLICITOR SHEALY: Okay.

24 THE COURT: I will allow you to explore
25 any benefit that he has received since his

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1 arrest. I think that's legitimate. I think
2 that's perfect as to why he may be motivated,
3 the extent of it. I think that's something
4 that the jury can hear. But any benefit that
5 he's received, that you can explain it on
6 redirect but that clearly it's a proper
7 examination. Thank you very much.

8 ANDREW GRIMES: Thank you, Your Honor.

9 THE COURT: Because it goes to support
10 the way that he is testifying, why he might
11 be testifying for his own benefit. Okay.

12 SOLICITOR SHEALY: Thank you, Your Honor.

13 THE COURT: Okay. Let's bring in our
14 jury.

15 (JURY IN @ 10:54 A.M.)

16 THE COURT: Thank you, ladies and
17 gentlemen. We appreciate your patience. We
18 are ready to continue. Mr. Grimes, you may
19 resume your examination.

20 ANDREW GRIMES: Thank you, Your Honor.

21 CROSS EXAMINATION RESUMED

22 BY ANDREW GRIMES:

23 Q. Mr. Mazyck, on September 15th, 2010,
24 you were charged with this armed robbery;
25 correct?

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1 A. Yes, sir.

2 Q. Now I want to ask you a few
3 questions about an armed robbery charged that
4 you had in 2009.

5 A. Yes, sir.

6 Q. Do you recall being arrested for
7 that in December for an incident that was
8 alleged to have happened at Jack's Cosmic
9 Dogs?

10 A. Yes, sir.

11 Q. That charge was pending when you
12 were arrested for this armed robbery,
13 correct?

14 A. Yes, sir.

15 Q. And in October of 2011, Ms. Shealy
16 dismissed that 2009 armed robbery charge;
17 correct?

18 A. Right.

19 Q. At the time that she dismissed it,
20 you would have been looking at life without
21 parole. Not one strike but two strikes.

22 A. Yes, sir.

23 THE COURT: Wait a minute. Rephrase
24 your question because that's not an accurate
25 statement of the law. It's possible -- not

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1 that he would have been but that he could
2 have been.

3 ANDREW GRIMES: I'm sorry

4 THE COURT: Rephrase the question.

5 ANDREW GRIMES: Yes, sir.

6 THE COURT: That would be misleading.,
7 Thank you, sir.

8 CROSS EXAMINATION CONTINUED

9 BY ANDREW GRIMES:

10 Q. I apologize, Mr. Mazyck. In 2009
11 when you were arrested on -- or in 2011, when
12 this first armed robbery was dismissed, ---

13 A. Yes, sir.

14 Q. --- right before that you -- you
15 were facing two armed robberies; correct?

16 A. I -- I'm not quite sure. I believe
17 one.

18 Q. There was one from Jack's Cosmic
19 Dogs and this one?

20 A. Yes, sir.

21 Q. And if you had been convicted of
22 both of them, there's the possibility that
23 you could have ended up with life without
24 parole?

25 A. Correct.

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1 Q. And if that happened, the only time
2 that you'd see your family again would be
3 visits at the jail -- or prison. Correct?

4 A. Correct.

5 Q. And you wanted her to dismiss that
6 first armed robbery charge, correct?

7 A. Yes, sir.

8 Q. And you know Ms. Shealy to do you
9 right and dismiss that first armed robbery
10 charge; correct?

11 A. Repeat that one more time, sir?

12 Q. You wanted Ms. Shealy to dismiss
13 that first armed robbery charge, the one
14 involved in Jack's Cosmic Dogs; correct?

15 A. Correct.

16 Q. And you wanted her to dismiss this
17 one, too; correct?

18 A. I didn't say that but -- yeah.

19 Q. Can you speak up a little bit?

20 A. Correct.

21 Q. Now, at that time you were also
22 facing another charge, weren't you? A third
23 charge?

24 A. Uh, -- (pause).

25 Q. At the time that you got arrested on

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1 this, you had a total of three felony charges
2 pending, didn't you?

3 A. (No verbal response).

4 Q. Jack's Cosmic Dog robbery, this
5 armed robbery, and a criminal sexual conduct
6 in the third degree?

7 A. Yes, sir.

8 Q. And if you were convicted of that,
9 it could require you to go to prison for up
10 to ten years; correct?

11 A. Yes, sir.

12 Q. And it could have required that you
13 register as a sex offender, for the rest of
14 your life?

15 A. Yes, sir.

16 Q. And you are grateful to her for
17 doing that, aren't you?

18 A. Yes, sir.

19 Q. Now, you've talked a lot today about
20 September 15th, 2010. I don't want to go into
21 all the details because I think the jury can
22 compare your testimony with everyone else's.
23 But just to clarify, it is your testimony
24 today under oath that you never went down Sam
25 Edwards Lane and dropped off Jarrett and

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1 Keenan?

2 A. Correct.

3 Q. That the only time that you went
4 down Sam Edwards Lane is ---

5 A. To pick up.

6 Q. --- when you said that Kevin drove
7 down there to pick up Jarrett and Keenan?

8 A. Yes, sir.

9 Q. And that is your testimony today,
10 under oath?

11 A. Yes, sir.

12 Q. Again, your testimony under oath
13 today is that while you guys were out that
14 you went to Walmart, you went to McDonalds,
15 then you went back and then parked near the
16 Cricket store and the liquor store. Then Mr.
17 Smalls was sort in the car leaning back a
18 little and looking in his mirror watching
19 towards the Cricket store?

20 A. Yes, sir.

21 Q. He was never out of the car?

22 A. I don't recall him being out of the
23 car.

24 Q. Standing?

25 A. (Negative gesture).

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1 Q. Locking eyes with anybody?

2 A. No, sir.

3 Q. He never did that?

4 A. No, sir.

5 Q. Now, I think that you told Ms.

6 Shealy that when you talked to Detective
7 Byrd, the first detective that you talked to,
8 that you knew that it was important to give
9 him all the details of what y'all did that
10 day.

11 A. Yes, sir.

12 Q. Correct?

13 A. Yes, sir.

14 Q. But there was mix-up where he
15 misunderstood what you were saying of you
16 misunderstood what he was saying?

17 A. Yes, sir.

18 Q. But in your statement you never talk
19 about going to Trident Tech looking for
20 girls, do you?

21 A. No, sir.

22 Q. And I think that you said that you
23 went to C&W after Trident Tech?

24 A. Yes, sir.

25 Q. That's not in your statement either,

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1 is it?

2 A. No, sir.

3 Q. Is that the first time that you've
4 told that to anybody?

5 A. Yes, sir. No. I mean no, sir.
6 When he interviewed me, he -- he said from
7 that point on, in the car. He didn't ask me
8 like about earlier that day. Like way that
9 morning part. He was asking about what
10 happened since he'd picked me up and all.

11 Q. Okay. But is that the first time
12 that you've told anybody about Trident Tech,
13 is today?

14 A. (Negative gesture).

15 Q. Or have you told that to Ms. Shealy
16 or anyone else?

17 A. That's not the first time.

18 Q. When was the first time?

19 A. I told my attorney and I told Ms.
20 Shealy.

21 Q. When was that?

22 A. When I first talked to her. I
23 wouldn't remember the date.

24 Q. That's fair. You don't happen to
25 remember which movie was returned, do you?

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1 A. No, sir.

2 Q. Now I want to ask you a couple of
3 questions about what happened at the jail
4 that night. The night that you got arrested.

5 A. Okay.

6 Q. I think you told Ms. Shealy that it
7 was -- I won't say a common booking area but
8 you're -- when you're first arrested, your
9 taken to processing; right?

10 A. Yeah.

11 Q. Sort of a big area where everyone is
12 kinda put in together, but codefendants are
13 supposed to be separated; correct?

14 A. Yes, sir.

15 Q. Sir?

16 A. Yes, sir.

17 Q. And you said that you guys were
18 separated to some degree.

19 A. Yes, sir.

20 Q. But that your holding cell was right
21 across from the desk where they'd do some
22 paperwork or make phone calls?

23 A. No, no, we weren't that far in. But
24 we were booked in at that point.

25 Q. Okay. And the jail obviously has

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1 correctional officers there?

2 A. Yes, sir.

3 Q. To make sure that there is security.

4 A. Yes, sir.

5 Q. There's cameras in the jail, too;
6 right?

7 A. Yes, sir.

8 Q. And in your statement you talk about
9 a corrections officer, and he telling Jarrett
10 to move away. Correct?

11 A. Yes, sir.

12 Q. Do you remember the name of the
13 corrections officer?

14 A. No, sir.

15 Q. I think that I may have misspoke but
16 -- I want to ask you a couple more questions
17 about that day. You said that you went to
18 McDonald's?

19 A. Yes, sir.

20 Q. What time did you go there?

21 A. I don't know the time.

22 Q. You think it was 5:30? 6:00?

23 THE COURT: He said that he didn't know
24 the time. So he can't answer the question.

25 ANDREW GRIMES: Yes, sir.

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1 THE COURT: He can't answer the
2 question. He would be speculating. Move on
3 to something else.

4 ANDREW GRIMES: Yes, sir.

5 CROSS EXAMINATION CONTINUED

6 BY ANDREW GRIMES:

7 Q. Do you recall that there is a camera
8 at the McDonald's?

9 A. Yes, sir.

10 Q. And you told the detective about
11 that?

12 A. Yes, sir.

13 Q. And you're up here telling the
14 truth, supporting your story?

15 A. Yes, sir.

16 Q. And you're not just saying this just
17 to avoid going to prison?

18 A. No, sir.

19 Q. If you did something wrong, you
20 would own up and take responsibility?

21 A. Yes, sir.

22 Q. Even though you've had a bunch of
23 charges dismissed in the past?

24 A. Yes, sir.

25 ANDREW GRIMES: May I have one moment,

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1 Your Honor?

2 THE COURT: Yes, sir.

3 ANDREW GRIMES: (Sidebar with Mr.
4 Kowelski).

5 CROSS EXAMINATION CONTINUED

6 BY ANDREW GRIMES:

7 Q. Just a couple more questions. The
8 gun that was found in the car was found under
9 your seat. Correct?

10 A. Correct.

11 Q. And any deals that you made with Ms.
12 Shealy wouldn't cover a Federal prosecution,
13 would it?

14 A. No, sir.

15 Q. And given your prior record, it is
16 illegal for you to have a gun; isn't it?

17 A. Yes, sir.

18 ANDREW GRIMES: Thank you.

19 THE COURT: Cross examine, Mr. Runyon.

20 CROSS EXAMINATION

21 BY MR. RUNYON:

22 Q. Good afternoon, Mr. Mazyck.

23 A. Good afternoon.

24 Q. Mr. Mazyck, I need to clarify a few
25 things because I am a little confused. It's

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1 easy for me to get confused, so bear with me.

2 Okay?

3 A. Yes, sir -- sir.

4 Q. Now, I understand that earlier in
5 the day that you'd had a problem with your
6 insulin?

7 A. Yes, sir.

8 Q. Well, actually it was not a problem
9 with your insulin. You felt like your blood
10 sugar was high?

11 A. Yes, sir.

12 Q. And so you needed to get some
13 insulin?

14 A. Yes, sir.

15 Q. So you had Mr. Smalls take you home?

16 A. Yes, sir.

17 Q. All right. Now, do you -- does your
18 insulin -- do you -- does you keep insulin in
19 the refrigerator or do you use the pen?

20 A. At the time I was using the syringes
21 that had to be refrigerated.

22 Q. Has to be refrigerated?

23 A. Yes, sir.

24 Q. And you ordinarily take your insulin
25 prior to eating?

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1 A. Yes, sir.

2 Q. So -- and there's a reason for that,
3 isn't there?

4 A. Yes, sir.

5 Q. Because you need to control the
6 sugar in your blood; right?

7 A. Yes, sir.

8 Q. So when you went to McDonald's that
9 afternoon, you don't remember what time it
10 was?

11 A. No, sir.

12 Q. You would have had Mr. Smalls take
13 you back by the house so that you could have
14 gotten your shot before you ate, wouldn't
15 have you?

16 A. No, sir. I mean, I had already took
17 my insulin. After he dropped me off, I took
18 my insulin before I went to my brother's
19 house. So we went to McDonald's after I'd
20 already took my insulin. By then, you know,
21 my sugar was already like normal range.

22 Q. You only need to take one shot a
23 day?

24 A. No, I take three to four.

25 Q. You take three or four?

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1 A. (Affirmative nod).

2 Q. How do you know how to take three or
3 four?

4 A. Test my blood sugar and all. It's
5 on a sliding scale. Before meals, I take my
6 dosage. Right after I take my dosage I have
7 to eat. But back then the insulin that I'm
8 on now, I wasn't on.

9 Q. Okay. So you didn't do any checking
10 of your insulin before you went to McDonald's
11 or anything like that?

12 A. No, sir.

13 Q. And you didn't have your insulin
14 before you went to McDonald's?

15 A. No, sir.

16 Q. And your blood sugar wasn't giving
17 you any trouble?

18 A. (No verbal response).

19 Q. But you had low blood sugar before
20 it happened?

21 A. Yes, sir.

22 Q. And real low blood sugar kind of
23 makes you confused; doesn't it?

24 A. Yes, sir.

25 Q. And as a matter of fact, if it gets

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1 real low you could even pass out; can't you?

2 A. Yes, sir.

3 Q. So you have to be real careful about
4 that?

5 A. Yes, sir.

6 Q. Because if it gets low, confusion is
7 one thing but passing out is quite another;
8 isn't it?

9 A. Yes, sir.

10 Q. Okay. Now, -- but you're absolutely
11 positive that there was no confusion on the
12 afternoon of the 15th?

13 A. Yes sir.

14 Q. And there was no confusion to the
15 fact that you didn't go down Sam Edwards Road
16 twice.

17 A. Yes, sir.

18 Q. And there is no confusion -- excuse
19 me.

20 WILLIAM RUNYON: Could you please pull
21 up State's Exhibit 13 -- or the one with the
22 car.

23 CROSS EXAMINATION CONTINUED

24 BY WILLIAM RUNYON:

25 Q. Now, who previously identified this

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1 clothes as belonging to, I take it, to Mr.
2 Coakley?

3 A. Yes, sir.

4 Q. And they were in the car when you
5 got in the car with Mr. Smalls to go to he
6 shopping center that afternoon?

7 A. Yes, sir.

8 Q. And these were the same clothes that
9 he supposedly had over his face when he came
10 out of the woods?

11 A. Not these clothes, sir.

12 Q. Not those clothes?

13 A. (Negative gesture), not those
14 clothes.

15 Q. What clothes did he have over his
16 face when he got out of the shopping center
17 -- I mean when he came out of the woods?

18 A. I believe that it was khaki,
19 something khaki.

20 Q. Something khaki?

21 A. Yes, sir.

22 Q. Now, so -- those clothes were in the
23 car, but Mr. Coakley wasn't in the car before
24 you went to Walmart?

25 A. No, sir.

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1 Q. And you didn't see Mr. Coakley that
2 afternoon until he, quote, came out of the
3 woods?

4 A. Yes, sir.

5 Q. And when he came out of the woods,
6 you knew who it was; didn't you?

7 A. I mean, not at the moment. When
8 they got in the car and started talking, yes.

9 Q. Well, when they came out of the
10 woods was they all covered with masks and
11 what-have-you?

12 A. Yes, sir.

13 Q. And when did he take off the mask?

14 A. When they got off Sam Edwards.

15 Q. He didn't take off his mask until he
16 got in the car?

17 A. No, sir, because I noticed that
18 there were some people outside.

19 Q. There were people outside?

20 A. Yes, sir.

21 Q. What people were outside?

22 A. Two guys that live on that road.

23 Q. A fellow with dreadlocks?

24 A. Yes, sir.

25 Q. Mr. Davis?

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1 A. Yes, sir.

2 Q. He could see everything that was
3 happening out there, couldn't he?

4 A. Yes, sir.

5 Q. Mr. Davis could see you in the car?

6 A. Yes, sir.

7 Q. Okay. Now, you knew about the
8 Cricket store, didn't you?

9 A. No, sir.

10 Q. You'd never been in the Cricket
11 store before?

12 A. Oh, yeah, I'd been in it before.

13 Q. You were a customer of the Cricket
14 store, weren't you?

15 A. No, I wasn't a customer.

16 Q. You weren't a customer?

17 A. No, sir.

18 Q. What did you go in the Cricket store
19 for?

20 A. I used to go in there to pay my
21 little brother's phone bill, and my older
22 brother's. They had accounts with Cricket.

23 Q. So your little brother was a
24 customer of the Cricket store?

25 A. Yes, sir.

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1 Q. You said that the gun was under the
2 armrest in the back seat?

3 A. Yes, sir.

4 Q. Then it somehow got mysteriously
5 under your seat?

6 A. Yes, sir.

7 Q. Okay. You didn't put it under
8 there?

9 A. No, sir.

10 Q. And the armrest where you see the
11 money, that was up, wasn't it, at the time of
12 the stop?

13 A. No, sir.

14 Q. It was just open and the money was
15 just kind of laying there for everybody to
16 see?

17 A. Yes, sir. They were trying to close
18 it.

19 Q. They tried to close it?

20 A. (Affirmative nod)).

21 Q. So we're very sure -- we understand
22 that the armrest was open like it was there,
23 right?

24 A. Yes, sir.

25 Q. There is no confusion about that?

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1 A. No, sir.

2 Q. So at the time that you got out of
3 the car, you could look in the back seat and
4 see that money in there, couldn't you?

5 A. No, sir.

6 Q. You couldn't?

7 A. (No verbal response).

8 Q. Why not?

9 A. I mean, when I got out of the car, I
10 didn't look. But when we got pulled over --
11 I took a glance back when he said the heat
12 car was behind us, and the armrest was open
13 with the money in it and the gun was
14 underneath.

15 Q. So how many times had you been in
16 the Cricket store before?

17 A. I wouldn't remember.

18 Q. You don't remember?

19 A. (Negative gesture).

20 Q. As a practical matter, it's real
21 convenient ---

22 A. Not that much, sir.

23 Q. You paid your brother's phone bill,
24 what? At least a half a dozen times?

25 A. No, sir.

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1 Q. At least one time?

2 A. Yes, sir.

3 Q. Did you pay it with a check?

4 A. No, sir.

5 Q. Did you pay it with cash?

6 A. Yes, sir.

7 Q. You walked in and gave the man cash
8 or the lady cash, ---

9 A. Yes, sir.

10 Q. --- they'd give you a receipt and
11 change?

12 A. Yes, sir.

13 Q. And you'd stand there at the service
14 counter and you'd see how it worked?

15 A. You could say that. Yes, sir.

16 Q. I can't say that because I wasn't
17 there. I haven't been to the Cricket store.
18 But you have, haven't you?

19 A. Yeah. Yes, sir.

20 Q. Now, let's talk about the jail that
21 evening on the 15th when you were there.

22 A. Okay.

23 Q. Try to explain to the jury how these
24 holding cells are laid out.

25 A. Okay. - Like where you are, there's a

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1 desk there. Then this side across from the
2 desk, over here, there's holding cells.

3 That evening when they put me in the
4 holding cell, they had someone on the bench
5 and they had someone on the bench and they
6 had someone in the cell next to me. They
7 opened my cell door when one of the other
8 guys went out, when Coakley and Graddick was
9 up there. So, like I said, when they was at
10 the desk -- the guards weren't really doing
11 their job, they were walking off, so that
12 gave them a chance to talk to me.

13 Q. The guards weren't paying attention?

14 A. No, sir.

15 Q. The man doing the paperwork wasn't
16 paying attention?

17 A. No, sir.

18 Q. And y'all just had this big 'ole
19 conversation just right there about how you
20 were going to fool the State?

21 A. It was no conversation.

22 Q. No conversation?

23 A. No, it was like -- you know, he
24 wasn't really saying nothing. It was like
25 I was reading his lips.

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1 Q. All right. So what you're saying
2 then to the jury is that Mr. Coakley never
3 told you what to say or not to say?

4 A. Yes, sir.

5 Q. He just kinda looked at you?

6 A. No, he told me what to say.

7 Q. Well, did he tell you what to say or
8 did he just look at you?

9 A. Let me explain. You know, after we
10 -- you know, after the processing, that's
11 when you get to go use the phones. So when
12 we got to the phone side, I sat by him and he
13 told me -- he was, like, he said, 'yeah, lie
14 and tell them that y'all picked me up from
15 Jamie's house, I was lifting weight.'

16 That's when I told him, 'I cannot lie for
17 you. If you were lifting weight, how were
18 you in the car? How did you get arrested?

19 Q. So there was nobody by the phones?

20 A. No, sir.

21 Q. They just turned codefendants loose
22 to go over and use the phone?

23 A. Basically, (affirmative nod).

24 Q. Basically?

25 A. (Affirmative nod).

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1 Q. Now, what time of the evening was
2 this? Roughly? If you know.

3 A. In the jailhouse?

4 Q. Yeah.

5 A. It probably was night. Nighttime.
6 I don't recall what time.

7 Q. You hadn't had your medicine, had
8 you?

9 A. No, sir.

10 Q. You weren't confused at that time by
11 your blood sugar going down, were you?

12 A. No, sir.

13 Q. Was your blood sugar going down or
14 going up?

15 A. It hadn't been going anywhere
16 because I -- I mean, I didn't eat. So you
17 don't really do too much movement, you know.

18 Q. You didn't eat, but you went to
19 McDonald's?

20 A. I didn't get the McDonald's, sir.

21 Q. You didn't get the McDonald's?

22 A. No, sir.

23 Q. So you had nothing to eat?

24 A. Nothing to eat.

25 Q. Nothing to eat from lunchtime?

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1 A. Not from lunchtime, sir.

2 Q. And you didn't eat anything until
3 the next morning when you got the sumptuous
4 breakfast that they serve at the jail; right?

5 A. No. Actually when we got to the
6 jail, they gave us a bag lunch.

7 Q. When you got to the jail, they gave
8 you a bag lunch?

9 A. Yes, sir.

10 Q. Did you get the bag lunch before or
11 after the conversation with Mr. Coakley?

12 A. That was -- I don't recall. I can't
13 remember.

14 Q. You're not confused this morning,
15 are you?

16 A. No, sir.

17 Q. You've had your insulin today,
18 right?

19 A. Yes, sir.

20 Q. Now, you were in the car with Mr.
21 Smalls and you hadn't been in contact with
22 Mr. Coakley since -- when? Since lunchtime?

23 A. You could say that, yes, sir.

24 Q. You hadn't seen them?

25 A. No.

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1 Q. You hadn't spoken to him?

2 A. No, sir.

3 Q. No mention of him?

4 A. No, sir.

5 Q. And just all of a sudden,

6 mysteriously, you ride with someone down Sam
7 Edwards Road, in front of Mr. Davis', and you
8 pick up Mr. Coakley and Mr. Graddick?

9 A. Yes, sir. Like I say, when I got in
10 the car, the vehicle, I asked Mr. Smalls
11 where were they. He said that they were
12 home, getting ready because we were going to
13 the mall. That was it.

14 Q. So actually, as a practical matter,
15 you really shouldn't be charged with armed
16 robbery, should you?

17 A. No, sir.

18 Q. Because you didn't know anything
19 about it, did you?

20 A. No, sir.

21 Q. No one had discussed it with you,
22 did they?

23 A. No, sir.

24 Q. As a matter of fact, when the blue
25 lights came at the stop and the people told

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1 you to get out, 'I didn't do anything.'

2 Right?

3 A. Yes, sir.

4 Q. So you really shouldn't be charged
5 at all, should you?

6 A. No, sir.

7 Q. And you didn't even have time to
8 call the police after you found out that
9 something had happened, right?

10 A. Right.

11 Q. Because it was just a matter of
12 minutes and there was the policeman behind
13 you?

14 A. Right.

15 Q. Okay. So in this situation -- in
16 this situation, you were totally innocent?

17 A. Yes, sir.

18 Q. And you don't expect that anything
19 is going to be done for you?

20 A. No, sir.

21 WILLIAM RUNYON: I have nothing
22 further for the witness at this time.

23 THE COURT: Very well. Cross examine,
24 Mr. Smiley?

25 CROSS EXAMINATION

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1 BY JIM SMILEY:

2 Q. Hey, Brian.

3 A. Hey.

4 Q. I'm Jim Smiley and I represent
5 Kevin. You've known Kevin a pretty good
6 while, right?

7 A. Yes, sir.

8 Q. Y'all are pretty close friends?

9 A. Yes, sir.

10 Q. All right. Kevin, he drove people
11 around a good bit; didn't he?

12 A. Yes, sir.

13 Q. Because he had a car?

14 A. Yes, sir.

15 Q. He actually had two of them, didn't
16 he?

17 A. Yes, sir.

18 Q. Kevin was always working, wasn't he?

19 A. Yes, sir.

20 Q. And he was going to school, too,
21 wasn't he?

22 A. I don't know, sir.

23 Q. You didn't know that he was going to
24 school as an auto mechanic?

25 A. No, sir.

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1 Q. You hung out with Kevin a good bit,
2 though?

3 A. Yes, sir.

4 Q. Let's be real clear as we get
5 started. Kevin never said anything to you
6 about being involved in an armed robbery, did
7 he?

8 A. No, sir.

9 Q. When you were in front of -- when
10 you were in the Walmart parking lot with
11 Kevin and that robbery was going on in the
12 Cricket phone store, you didn't go 'Oh, my
13 gosh, that's got to be Graddick and Coakley';
14 did you?

15 A. No, sir.

16 Q. Did you know Jamie Coakley?

17 A. Yes, sir.

18 Q. You knew that he lived down at the
19 end of Sam Edwards Road?

20 A. Yes, sir.

21 Q. You'd been there before?

22 A. I've never been to his house.

23 Q. Okay. But you knew that he lived
24 down that road?

25 A. Yes, sir.

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1 Q. That was like a Wednesday, right?

2 A. The day of the incident?

3 Q. Yeah.

4 A. I don't remember what day it was.

5 Q. But it wasn't a weekend, was it?

6 A. No, sir.

7 Q. It was a week day?

8 A. Yes, sir.

9 Q. And about -- that morning of the
10 15th, you were at your grandmama's house,
11 where you lived?

12 A. Yes, sir.

13 Q. Let's start with the morning.

14 A. Yes, sir.

15 Q. Kevin came and picked you up?

16 A. Yes, sir.

17 Q. When he came and picked you up, it
18 was just the two of you starting the day?

19 A. Yes, sir.

20 Q. Then later you went and picked up --
21 picked you up and then he picked up Keenan?

22 A. Yes, sir.

23 Q. Then he swung around and picked up
24 Jarrett?

25 A. Yes, sir.

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1 Q. About what time do you think that
2 would have been?

3 A. I don't really remember. It was
4 years ago. I don't remember all the times.

5 Q. It was before lunchtime?

6 A. Yes, sir.

7 Q. So it was in the morning?

8 A. Um-humm, (affirmative nod).

9 Q. And the four of you drove out to
10 Trident Tech, right?

11 A. Um-humm.

12 Q. That's where your day began, out
13 that way?

14 A. Yes, sir.

15 Q. So the four of you walked around out
16 there, just scoping out women if you could?

17 A. (Affirmative nod).

18 Q. Just sort of checking it out, right?

19 A. Yes, sir.

20 Q. About how long do you think that you
21 were out there?

22 A. I would say maybe an hour.

23 Q. By then it'd gotten close to lunch,
24 right?

25 A. Yes, sir.

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1 Q. So it is your testimony that the
2 four of you went to the Chinese restaurant?

3 A. Yes, sir.

4 Q. And you all four ate?

5 A. Yes, sir.

6 Q. You paid for yours?

7 A. Yes, sir.

8 Q. Kevin paid for his?

9 A. Yes, sir.

10 Q. And then after you made that --
11 during that time, all four of you are in the
12 car and you didn't hear any discussion about
13 an armed robbery; right?

14 A. Yes, sir.

15 Q. When you were driving around, you
16 didn't hear any discussion about an armed
17 robbery, did you?

18 A. It was a regular day.

19 Q. On a regular normal day, Kevin would
20 pick y'all up and you would go places when he
21 wasn't working. Right?

22 A. Yes, sir.

23 Q. Because y'all hang out together?

24 A. Yes, sir.

25 Q. You've known him since, gosh, middle

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1 school?

2 A. (Affirmative nod).

3 Q. So you all sort of grew up together,
4 as buddies; right?

5 A. Right.

6 Q. Right?

7 A. Yes, sir.

8 Q. When you got to -- after the four of
9 you ate lunch, you went back to Kevin's
10 house?

11 A. Yes, sir.

12 Q. Was there anybody else home at
13 Kevin's house?

14 A. Yes, sir.

15 Q. So the four of y'all hung out there?

16 A. Yes, sir.

17 Q. And that's when you -- you felt like
18 your sugar was getting high?

19 A. Yes, sir.

20 Q. How do you feel when your sugar gets
21 high? The same way as when it gets low, or
22 is it different?

23 A. No, it's different. When my sugar
24 gets high, I can feel like tension, feel
25 stiffness and like I am drying out inside,

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1 dehydration.

2 Q. It doesn't feel good?

3 A. (Negative gesture).

4 Q. Sort of like you have a bad headache
5 all over?

6 A. (Affirmative nod).

7 Q. I am just trying to get -- I don't
8 have diabetes, but I want to make sure that
9 we understand.

10 A. Exactly.

11 Q. You weren't feeling good?

12 A. No, sir.

13 Q. All right. As a matter of fact,
14 according to you, Kevin and Keenan were
15 playing the ---

16 A. --- PlayStation.

17 Q. PlayStation, (affirmative nod). I
18 was going to say X-Box. But PlayStation.

19 A. (Affirmative nod).

20 Q. And you asked Kevin if he would take
21 you home?

22 A. Yes, sir.

23 Q. That's sort of what Kevin does, he
24 drives people around a lot; doesn't he?

25 A. Yes, sir.

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1 Q. So he took you to -- help he
2 pronounce it, the road that you live on. I'm
3 bad with --

4 A. Yough Hall.

5 Q. "Yo"?

6 A. Yeah.

7 Q. Yough Hall?

8 A. (Affirmative nod).

9 Q. Yough Hall. It looks funny and I
10 can't ever get it right. So he took you to
11 Yough Hall?

12 A. (Affirmative nod).

13 Q. To get there, you go up on 17?

14 A. Yes, sir.

15 Q. You actually live pretty close to
16 Keenan, don't you?

17 A. Yes, sir.

18 Q. And Jarrett lives a little further
19 away but you all live within a fairly close
20 proximity to each other; right?

21 A. Yes, sir.

22 Q. So you got home midafternoon?

23 A. Probably.

24 Q. Because you had gone to lunch, you'd
25 been at Kevin's for a bit and then you get to

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1 your house; right?

2 A. Yes, sir.

3 Q. So as soon as you got home, you took
4 your insulin; right?

5 A. Yes, sir.

6 Q. Does it make you feel better
7 immediately?

8 A. No, sir.

9 Q. It takes a little while?

10 A. Yes, sir.

11 Q. And after you take your insulin, you
12 usually try to eat right after?

13 A. No, sir.

14 Q. No?

15 A. No, sir.

16 Q. See, I -- I'm not trying to trick
17 you. I'm just trying to make sure that I
18 understand. So it's not necessary to eat
19 right after?

20 A. No, sir.

21 Q. I thought I'd hear testimony that
22 you had to take your insulin right before you
23 ate. I'm sorry.

24 A. No, sir.

25 Q. Okay. So you're hanging out at your

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1 house. Did Kevin tell you where he was going
2 when he left?

3 A. Back home.

4 Q. Back home?

5 A. (Affirmative nod).

6 Q. At some point in time after that,
7 you'd gotten home, gotten your insulin, and
8 started feeling better, a little bit, and --
9 was it your sister that took you out to your
10 brother's house?

11 A. Cousin.

12 Q. Your cousin, (affirmative nod).

13 Excuse me. She drove you out to Ten Mile?

14 A. Right.

15 Q. Right?

16 A. Yes, sir.

17 Q. That's a pretty decent ways past
18 Oakland Shopping Center; right?

19 A. (No verbal response).

20 Q. It's not close like the other places
21 were. Right?

22 A. Right.

23 Q. And you said that your brother,
24 Quinton, sold dogs?

25 A. Yes, sir.

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1 Q. And that Kevin had bought a couple
2 of dogs from him -- right?

3 A. Yes, sir.

4 Q. And that he owed Quinton. Right?

5 A. Yes, sir.

6 Q. So when y'all talked, he was like,
7 'Yeah, I will come get you because I've got
8 to come out there anyway.' Right?

9 A. Right. Well, since he was coming
10 over there, he paid my brother. He didn't
11 have to come over there that day, but he --
12 you know, since 'I'm coming, I will pay him
13 off today.'

14 Q. I gotcha. Since he was off and he
15 was coming over to get you and he'd pay for
16 the days. Right?

17 A. Yes, sir.

18 Q. You weren't working nowhere, were
19 you?

20 A. (No verbal response).

21 Q. Were you working then?

22 A. Yes, sir.

23 Q. Where?

24 A. No, sir -- I don't remember. I
25 can't remember.

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1 Q. You don't believe that you were
2 working at a job at that time?

3 A. I can't remember.

4 Q. You weren't working that day, for
5 sure?

6 A. No.

7 Q. So he came out and paid your brother
8 some money?

9 A. Yes, sir.

10 Q. And you got in the car with them?

11 A. Yes, sir.

12 Q. And you're thinking that this was
13 about 5:00 o'clock in the afternoon by now?

14 A. No, sir.

15 Q. No?

16 A. It was still early. I'd say maybe
17 around 4:00, maybe around 4:00.

18 Q. So about 4:00 o'clock, he picked you
19 up?

20 A. (Affirmative nod).

21 JIM SMILEY: If I may beg the Court's
22 indulgence.

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION CONTINUED

25 BY JIM SMILEY:

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1 Q. And it is your testimony that from
2 there y'all went straight to the Oakland
3 Shopping Center

4 A. Yes, sir.

5 Q. And when Kevin came into Oakland and
6 parked, he parked on the grocery side of
7 Walmart.

8 A. Not exactly on the side but in the
9 front -- where the little walkway is?

10 Q. Yeah.

11 A. Not in the parking lot.

12 Q. And he returned a Redbox movie?

13 A. Yes, sir.

14 Q. So you're saying that that happened
15 somewhere after 4:00?

16 A. I can't remember exactly but it was
17 probably somewhere around that time, because
18 my brother's wife gets off at, I think, 4:30
19 or 5:00 o'clock.

20 Q. If I told you that the night that
21 you gave the statement to Detective Byrd that
22 you said that it was about 5:00-something
23 when Kevin came to get you, would that be --
24 you aren't disputing that?

25 A. (No verbal response).

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1 Q. It was 4:00 or 5:00, something like
2 that?

3 A. (Affirmative nod), yes.

4 Q. So you get to the Oakland Shopping
5 Center, he parks, he goes inside and returns
6 a Redbox movie?

7 A. Yes, sir.

8 Q. Did he talk to the girl at that
9 time? Do you know?

10 A. I don't know. I was in (sic) the
11 phone (sic). I mean, I was on -- I was in
12 the car. I was on my phone texting until he
13 came out.

14 Q. All right. So he went into the
15 Walmart and was in there for a bit?

16 A. (Affirmative nod).

17 Q. So he didn't see the girl?

18 A. (Negative gesture).

19 COURT REPORTER: Is that a "no"?

20 THE COURT: Was that a "no"?

21 WITNESS MYZCK: Oh, no, sir.

22 JIM SMILEY: We've got to say "yes" or
23 "no" because ---

24 THE COURT: The court reporter needs to
25 take down what you're saying. So it helps

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1 her know to know, when you say "yes" or "no."

2 WITNESS MAYZCK: Okay. Yes, sir.

3 THE COURT: Thank you.

4 CROSS EXAMINATION CONTINUED

5 BY JIM SMILEY:

6 Q. I do the same thing. I've got to
7 learn how -- just like I talk on top of you,
8 so we've got to do things slower for Ms.
9 Garrison (court reporter). All right?

10 A. All right.

11 Q. So

12 THE COURT: To do things that makes it
13 easier for her. She can handle the speed,
14 but there's no need to make it difficult.

15 JIM SMILEY: Absolutely.

16 CROSS EXAMINATION CONTINUED

17 BY JIM SMILEY:

18 Q. You saw, you said, clothes in the
19 back seat when you got picked up at your
20 brother's house?

21 A. Yes, sir.

22 Q. You asked Kevin about that?

23 A. Yes, sir.

24 Q. It's your testimony that he said the
25 fellows are at the house getting ready?

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1 A. (Affirmative nod), to go to the
2 mall.

3 Q. Did y'all go out to the mall
4 occasionally?

5 A. No, sir.

6 Q. So that would have been unusual?

7 A. (No verbal response).

8 Q. That would have been a new thing,
9 for the four of you to go out to the mall?

10 A. No, we've gone to the mall.

11 Q. That was a bad question. I'm sorry.
12 The four of you had gone out to the mall
13 before?

14 A. Yes, sir.

15 Q. You ride shotgun with Kevin a lot;
16 right?

17 A. Yes, sir.

18 Q. Okay. And after you got there --
19 after he had gone into the Walmart -- first,
20 you said that you wanted something to eat?

21 A. Yes, sir.

22 Q. And after he'd gone into the
23 Walmart, you went inside the McDonald's?

24 A. Right.

25 Q. Not through the drive-through but

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1 inside; right?

2 A. Yes, sir.

3 Q. Then you had to come out and tell
4 him that it was okay for him to come in, that
5 the girl that worked there wasn't working
6 then?

7 A. Yes, sir.

8 Q. And supposedly he got out and came
9 in with you?

10 A. Yes, sir.

11 Q. You didn't have no money?

12 A. No, sir.

13 Q. You'd spent it all at lunch?

14 A. Yes, sir.

15 Q. Okay. So you ordered food, then was
16 like 'hey, I need some money.' He did not
17 have any money?

18 A. Yes, sir.

19 Q. So you sort of got stuck?

20 A. (Affirmative nod).

21 Q. That's a little embarrassing, right?

22 A. Yes, sir.

23 Q. Then you get back in the car and
24 it's your testimony that y'all didn't leave
25 but went back around to the Walmart parking

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1 lot, close to the strip of stores on that
2 side; right?

3 A. Not right then.

4 Q. No?

5 A. Once we left the Walmart, we went to
6 McDonald's, then we went back in the Walmart
7 parking lot and that's when we pulled by the
8 truck and he was texting.

9 Q. Okay.

10 A. That's ---

11 Q. Let me make sure that I understand
12 this, so I am going to slow you down a little
13 bit.

14 A. Okay.

15 Q. So you go back into the Walmart
16 parking lot?

17 A. Yes, sir.

18 Q. And that's the part of Walmart that
19 is on the grocery side, that you were in
20 then?

21 A. It was basically around in the same
22 area as when he took the Redbox in.

23 Q. Okay. And then he got out and went
24 inside there, from there?

25 A. (No verbal response).

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1 Q. To see the girl?

2 A. No, sir. He didn't go in and see
3 the girl at all. He was texting the female
4 -- it was a female that he knew that worked
5 there, and she was on her way to work. I
6 guess he supposedly had gotten some money
7 from her.

8 Q. Uh-huh.

9 A. And then he was texting the other
10 girls that we met at C&W's about what type of
11 liquor or get, some crabs and whatnot, ---

12 Q. Okay.

13 A. --- a movie.

14 Q. Okay. So he was going to buy crabs
15 and liquor?

16 A. Yes, sir.

17 Q. So you thought that you were going
18 to the liquor store next?

19 A. Yes, sir.

20 Q. Okay. So you pull around to that
21 Walmart parking lot, the one that's over near
22 the stores?

23 A. Um-humm.

24 Q. The strip of stores?

25 A. Yes, sir.

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1 Q. And since he'd picked you up and had
2 come back to the Oakland Plantation shopping
3 center, y'all hadn't left?

4 A. No, sir.

5 Q. Okay. And the latest that he would
6 have picked you up was about 5:00'ish; right?

7 A. Yes, sir.

8 Q. And from Tasha Road, which is about
9 ten miles over, it was maybe -- ten minutes,
10 maybe?

11 A. Yes, sir.

12 Q. So you had been at the shopping
13 center -- you got to the shopping center no
14 later than 5:15, 5:20 or something like that?

15 A. Yes, sir.

16 Q. And Kevin didn't leave the shopping
17 center with the red-and-black car, with you
18 in it, until after the robbery?

19 A. Yes, sir.

20 Q. Okay. When you looked in the back
21 seat and saw their clothes, you saw their
22 cell phones too?

23 A. Right.

24 Q. They didn't have multiple cell
25 phones?

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1 A. (No verbal response).

2 Q. They each just had a cell phone?

3 A. That's right.

4 Q. The entire time that Kevin was with
5 you in the car, he obviously did not talk to
6 Jarrett Graddick or Keenan Coakley because
7 their phones were in the car and you were
8 right next to them; right?

9 A. Correct. They were in the back
10 seat.

11 Q. The phones were in the back seat?

12 A. Yes, sir.

13 Q. Before I forget, let me skip around
14 a bit. I know that I am not going in order,
15 but -- let's go to the jail, all right?

16 A. Yes, sir.

17 Q. You said that Keenan told you to
18 lie, right?

19 A. Yes, sir.

20 Q. And Keenan also told you that Kevin
21 was already cooperating with the police;
22 right?

23 A. Yes, sir.

24 Q. Sort of like you did, right?

25 A. Yes, sir.

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1 Q. That he was already telling them
2 things?

3 A. Yes, sir.

4 Q. Sort of like you did, right?

5 A. Yes, sir.

6 Q. And he told you a lie, to tell a lie
7 about ---

8 A. Yes, sir.

9 Q. --- that they went to Jamie's to
10 weight lift; right?

11 A. Yes, sir.

12 Q. And you knew -- did you know that
13 Keenan and Jarrett was friends with Jamie?

14 A. Yes, sir.

15 Q. So it wouldn't be unusual for them
16 to go to Jamie's house, would it?

17 A. No, sir.

18 Q. And you know them that you ain't
19 lying for anybody. Right?

20 A. Yes, sir.

21 Q. Then Jarrett got a chance to talk to
22 you, right?

23 A. Yes, sir.

24 Q. And he basically said, 'hey, buddy,
25 I need you to help me out here. I need you

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1 to lie.'

2 A. Yes, sir.

3 Q. You told him the same thing?

4 A. Yes, sir.

5 Q. And Kevin was close by to you during
6 those times, too, wasn't he?

7 A. No, sir.

8 Q. He never had an opportunity to look
9 at you or talk to you?

10 A. No, sir.

11 Q. All right. So he wasn't an
12 opportunity to say, 'hey, I'm telling the
13 truth' or anything like that to you; was he?

14 A. No, sir.

15 Q. All right. Get to Sam Edwards Road
16 back then, you had to go a little past it and
17 do a U-turn to go into Sam Edwards Road

18 A. Yes, sir, then.

19 Q. And it's changed now?

20 A. (Affirmative nod).

21 Q. Okay. And, so Kevin after he left
22 the Walmart pulled in Sam Edwards and drove
23 back towards Jamie's house; right?

24 A. Yes, sir.

25 Q. Jamie's is back in the back, isn't

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1 it?

2 A. I don't know where he lives.

3 Q. All right. Fair enough. Went down,
4 turned around, didn't see anybody, didn't see
5 Keenan or Jarrett at that point in time.

6 A. (No verbal response).

7 Q. Turned around and came back up the
8 road, right?

9 A. Yes, sir.

10 Q. Then he stopped the car because he
11 saw them?

12 A. Yes, sir.

13 Q. And you at that point noticed two
14 guys, Jarrett and thingamajig -- excuse me,
15 Mr. Coakley -- coming out of the woods?

16 A. Yes, sir.

17 Q. Was something on their face, the
18 register till and the whole thing?

19 A. Yes, sir.

20 Q. At that time you knew that something
21 was up?

22 A. Yes, sir.

23 Q. Right.

24 A. Yes, sir.

25 Q. You might have thought about stuff

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1 before but that's when you got worried,
2 right?

3 A. Yes, sir.

4 Q. They quickly got in the car?

5 A. Yes, sir, by the time we stopped
6 they'd jumped in the car.

7 Q. So there wasn't a chance for Kevin
8 -- there wasn't an opportunity to Kevin to
9 say, 'I don't want you in my car'? As soon
10 as that car stopped, they were in the car?

11 A. Yes, sir.

12 Q. And then they said, "Go, Go, Go!"
13 right?

14 A. Yes, sir.

15 Q. You weren't feeling good about
16 things right then, were you?

17 A. No, sir.

18 Q. It was sort of a bad situation once
19 they got in the car but you didn't know what
20 to do; right?

21 A. Yes, sir.

22 Q. Did you want to go home?

23 A. Yes, sir.

24 Q. So you get up there and he takes a
25 right, does a U-turn at Porchers Bluff, that

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1 light there?

2 A. Yes, sir.

3 Q. And when he turned around and
4 started going, he was like 'there's a cop
5 behind us.'

6 A. As we approached the light, as they
7 was saying 'take Clements Ferry', I said,
8 'Well, y'all can drop me off at the gas
9 station. I'll get out and walk home.'

10 Q. I gotcha.

11 A. That's when we got pulled, that when
12 he said that the heat car was behind us.

13 Q. All right. When the lights come on
14 it was boom, boom, boom, boom, boom.

15 A. Yes, sir.

16 Q. Kevin didn't try to drive off
17 anywhere, did he?

18 A. No, sir.

19 Q. You're sitting next to him and when
20 that PA system said to put your hands up, you
21 and Kevin both ---

22 A. Yes, sir.

23 Q. --- boom (demonstrating hands up);
24 right?

25 A. Yes, sir.

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1 Q. And that's when you heard the stuff,
2 felt and saw the movement in the back seat?

3 A. As we were driving, I saw movement
4 in the back.

5 Q. I gotcha. And so at that point
6 you've got your hands up and Kevin has got
7 his hands up, hasn't he?

8 A. Yes, sir.

9 Q. Kevin isn't saying anything, is he?

10 A. No, sir.

11 Q. He's sort of like you, like 'what in
12 the world is going on?' Right?

13 A. (No verbal response).

14 Q. He sort of had that look on his
15 face?

16 A. Yes, sir.

17 Q. He followed what the police said
18 when they said to turn off the car. Right?

19 A. Yes, sir.

20 Q. Now, the fellows in the back were
21 going "Go", right?

22 A. Yes, sir.

23 Q. As a matter of fact, I think you
24 said -- and I want to make sure that I am
25 clear on this -- that you saw Keenan pointing

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1 a gun at Kevin; right?

2 A. Yes, sir.

3 Q. Like, "Go" with a gun in his back?

4 A. Yes, sir.

5 Q. He didn't know, though (indicating
6 Defendant Kevin Smalls)?

7 A. I don't think Kevin did, (negative
8 gesture).

9 Q. He didn't know that there was a gun
10 at his back?

11 A. No, sir.

12 Q. Kevin got out of the car and then
13 you saw the money and all that stuff; right?

14 A. Yes, sir.

15 Q. Okay. Now, they took you back out
16 to the scene that night. Right?

17 A. Correct.

18 Q. Because you were in custody, it was
19 not you chose to go out there. You didn't
20 get to choose to go out there, because you
21 were in custody; right?

22 A. Yes, sir.

23 Q. Now, that tray, the cash tray, it
24 was in a ditch across from Mr. Davis' house,
25 basically, where that cut is?

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1 A. Yes, sir.

2 Q. It wasn't down at the end of the
3 road?

4 A. No, sir.

5 Q. And the cut that you saw them come
6 out of is right across from Mr. Davis' house?

7 A. Yes, sir.

8 Q. And Mr. Davis' house is sort of in
9 the middle of that street?

10 A. Yes, sir.

11 Q. It's a pretty decent way down to the
12 end where that fence is, right?

13 A. No, sir.

14 Q. About a hundred yards?

15 A. It's not that far from the beginning
16 of the road, maybe like three houses down.

17 Q. Okay. Three houses down from where
18 y'all were?

19 A. Well, from the beginning of the road
20 -- the head of the road.

21 Q. Okay. Gotcha. It's not unusual for
22 Kevin to drop somebody off and come back and
23 then come back to pick them up, is it?

24 A. No, sir.

25 Q. He's done that for you, hasn't he?

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1 A. Yes, sir.

2 Q. So it is not unusual, is it?

3 A. No. Not if there is gas money
4 involved.

5 Q. I know. He'll take you somewhere
6 for gas money, right?

7 A. Yes, sir.

8 Q. But my point is, if you say, 'Hey,
9 can you take me to my brother's house and
10 then pick me up in a couple hours?' If he's
11 off that day and you give him some gas money,
12 he'll say 'sure.

13 A. Yes, sir.

14 Q. Now, I know that you are charged
15 with armed robbery and I know that you feel
16 like you probably shouldn't be. Right?

17 A. Yes, sir.

18 Q. While you haven't been promised
19 anything, you don't expect to go on trial for
20 armed robbery, do you?

21 A. No, sir.

22 Q. No, sir. Actually you're hoping and
23 you're expecting that you're not going to
24 have to plead guilty to armed robbery?

25 A. Yes, sir.

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1 Q. You're expecting that by
2 cooperating, coming in here and testifying,
3 that when this is all over with that you
4 won't be convicted of armed robbery?

5 A. No, sir.

6 Q. That is your expectation, isn't it?

7 A. No, sir.

8 Q. Do you expect to appear and get
9 convicted?

10 A. Oh, no, sir.

11 Q. Okay. I just wanted to make sure
12 we're -- okay. It was probably a bad
13 question. So you don't expect to get
14 convicted of armed robbery, do you?

15 A. No, sir.

16 Q. All right.

17 JIM SMILEY: I beg the court's
18 indulgence.

19 THE COURT: Certainly.

20 JIM SMILEY: No further questions.

21 THE COURT: Redirect?

22 SOLICITOR SHEALY: Yes, sir. Thank you,
23 Your Honor.

24 THE COURT: Yes, ma'am.

25 REDIRECT EXAMINATION

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1 BY MS. SHEALY:

2 Q. Mr. Mazyck, I just have a few follow
3 up questions. Pulling up State's Exhibit 28
4 again, one of the defense attorneys asked you
5 about that shirt in the back seat that has a
6 cartoon.

7 A. Yes, ma'am.

8 Q. Could you tell the jury whether or
9 not that was in the car when Brian Mazyck
10 (sic) first picked you up?

11 A. Uh, --

12 Q. First picked you up -- sorry, that's
13 not very clear. When he picked you up from
14 your brother's house?

15 A. Yes, ma'am.

16 Q. And also one of the gentlemen asked
17 you about the shirts that were over there
18 face. Do you remember what color the shirts
19 were that were over the face of Mr. Graddick
20 and Mr. Coakley?

21 A. No. I think that one was khaki and
22 one was black. I don't know who had on what.

23 Q. Who had what?

24 A. Who had on what.

25 Q. Okay. But you remember seeing a

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1 khaki shirt at some point?

2 A. Yes, ma'am.

3 Q. They've asked you a lot about what
4 you expect. When you're testifying, you're
5 hoping that I am going to help you out. Is
6 that right?

7 A. Yes, ma'am.

8 Q. Okay. Now, tell the jury, though,
9 whether I have promised you anything at any
10 point?

11 A. She hasn't.

12 Q. When you -- when they were asking
13 you about two older charges, one in 2006 and
14 one in 2009 that were dismissed, have you and
15 I ever talked about those two cases?

16 A. No, ma'am.

17 Q. Did I ever indicate to you that I
18 would drop these if you helped me in this
19 case?

20 A. No, ma'am.

21 Q. In fact, when you came to meet with
22 me the first time, you signed an agreement,
23 did you not?

24 A. Yes.

25 SOLICITOR SHEALY: If I could have

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1 this marked for ID.

2 THE COURT: Sure.

3 COURT REPORTER: It will be State's
4 Exhibit 114 for identification.

5 THE COURT: ID Only.

6 (SO MARKED AS STATE'S 114 - ID ONLY)

7 REDIRECT EXAMINATION CONTINUED

8 SOLICITOR SHEALY:

9 Q. I am showing you what has been
10 marked as State's Exhibit 14 (sic) and ask if
11 you can identify that?

12 A. (Reviewing).

13 Q. Go ahead and flip through to the
14 back page, as well.

15 A. (Upon review), yes.

16 Q. I think you've got one more page.

17 A. (Upon review), Yes, ma'am.

18 Q. Okay. Could you tell the jury
19 whether or not that is the document that you
20 signed when you agreed to cooperate with the
21 State?

22 A. Yes, ma'am.

23 Q. Is your signature on the back page
24 of that document?

25 A. Yes, ma'am.

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1 Q. Would you tell the jury, please, the
2 date of that document?

3 A. It is August 20th, 2012.

4 Q. 2012?

5 A. (Affirmative nod).

6 Q. Mr. Smiley was asking you about what
7 time everything happened.

8 A. Yes, ma'am.

9 Q. Do you remember the exact times of
10 everything that happened that day?

11 A. Not the exact times.

12 Q. Okay. You remember that it was
13 sometime near the time that your brother's
14 girlfriend or wife would be getting off work?

15 A. Yes, ma'am.

16 Q. And she got off work at what time?

17 A. I believe 5:30.

18 Q. Okay. Had you seen her get home by
19 the time that Mr. Smalls picked you up?

20 A. No, ma'am.

21 Q. So she hadn't made it home from
22 work?

23 A. No, ma'am.

24 SOLICITOR SHEALY: I beg the court's
25 indulgence just a moment.

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1 THE COURT: Certainly. Take your time.

2 SOLICITOR SHEALY: Okay.

3 REDIRECT EXAMINATION CONTINUED

4 BY SOLICITOR SHEALY:

5 Q. Again regarding the questions that
6 you were asked about what happened between
7 Mr. Graddick, Mr. Coakley and you at the
8 jail, it was on that day -- the next day --
9 that you told Sergeant Simmons about that,
10 correct?

11 A. Yes, ma'am.

12 Q. And that would have been September
13 16th?

14 A. Yes, ma'am.

15 SOLICITOR SHEALY: I have no further
16 questions. Thank you.

17 THE COURT: Recross?

18 ANDREW GRIMES: Yes, Your Honor. Just
19 a few questions.

20 THE COURT: Sure.

21 RECROSS EXAMINATION

22 BY ANDREW GRIMES:

23 Q. Mr. Mazyck, I just want to ask you a
24 few questions about some of the things that
25 these other attorneys may have asked you

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1 about. I think you told Mr. Runyon that you
2 were -- that's you've been to that Sprint
3 (sic) store several times? I believe that it
4 was a Cricket store.

5 A. A couple.

6 Q. And you knew the general procedure
7 there of how they took money, where they kept
8 the money?

9 A. No, sir.

10 Q. But you went there and you'd paid
11 bills there?

12 A. Yes, sir.

13 Q. Do you know Mr. Davis?

14 A. Yes, sir.

15 Q. And he knows you?

16 A. Yes, sir.

17 Q. And you know the cuts, you've been
18 through those cuts before.

19 A. Uh, -- a couple of times, yes, sir.

20 Q. And I believe that you said that you
21 don't recall if you were working at this
22 time?

23 A. I don't recall.

24 Q. You couldn't afford to pay for your
25 meal at McDonald's that day, could you?

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1 A. No, sir.

2 Q. You talked about your brother named
3 Clinton?

4 A. Yes, sir.

5 Q. And you have another brother,
6 Kelvin?

7 A. Yes, sir.

8 Q. He is kinda tall?

9 A. No, sir.

10 Q. Is he taller or shorter than you?

11 A. About the same height.

12 Q. And you haven't said anything about
13 where he was that day, have you?

14 A. No, sir.

15 ANDREW GRIMES: May I have one moment,
16 Your Honor?

17 THE COURT: Yes, sir.

18 ANDREW GRIMES: (Sidebar with Mr.
19 Kowelski), -- thank you, Judge.

20 THE COURT: Recross?

21 WILLIAM RUNYON: Briefly.

22 THE COURT: Yes, sir.

23 RECCROSS EXAMINATION

24 BY WILLIAM RUNYON:

25 Q. You rode with Mr. Smalls quite a

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1 bit, didn't you?

2 A. Yes, sir

3 Q. Because he gave you rides?

4 A. (Affirmative nod).

5 Q. I believe that you testified to
6 that.

7 A. (Affirmative nod).

8 Q. And it was not unusual for him to
9 pick up and drop off people, was it?

10 A. No, sir.

11 Q. But that afternoon, from the time
12 that you all got back together after you went
13 home, the only two people that you're saying
14 that he picked up were Mr. Coakley and Mr.
15 Graddick?

16 A. Yes, sir.

17 Q. He didn't pick up anybody else?

18 A. No, sir.

19 Q. No, sir?

20 A. No, sir.

21 Q. And on August 20th, 2012, you signed
22 the agreement?

23 A. Yes, sir

24 Q. That is when you decided what the
25 truth was going to be in this case?

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1 A. No, sir.

2 Q. When did you decide what the truth
3 was going to be in this case?

4 A. The day of the arrest.

5 Q. The day of the arrest?

6 A. Yes, sir.

7 Q. And as a practical matter, you have
8 no explanation for how Mr. Smalls
9 communicated with Mr. Graddick or Mr. Coakley
10 that afternoon, would you?

11 A. No, sir

12 Q. You have no explanation for why he
13 would have gone down Sam Edwards Road to pick
14 up somebody?

15 A. No, sir.

16 Q. Nobody every explained that to you?

17 A. No, sir

18 Q. And you don't expect any rewards?

19 A. No, sir.

20 Q. Because you're totally innocent?

21 A. Yes, sir.

22 WILLIAM RUNYON: No further questions.

23 THE COURT: Mr. Smiley? Recross?

24 JIM SMILEY: Thank you, Your Honor.

25 THE COURT: Yes, sir.

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1 RECROSS EXAMINATION

2 BY JIM SMILEY:

3 Q. Now, your statement to the police
4 the next day, you said that Kevin came and
5 got you about 5:00 o'clock; correct?

6 A. I am not quire sure.

7 Q. If I showed you your statement,
8 would it refresh your memory?

9 A. Yes, sir.

10 Q. Let me get it for you. Okay?

11 A. Yes, sir.

12 JIM SMILEY: If I could mark this.

13 COURT REPORTER: Defendant Small's
14 Exhibit 1 for identification.

15 JIM SMILEY: For identification only.

16 (SO ENTERED AS DEFENDANT SMALLS 1)

17 THE COURT: Defendant Smalls' Exhibit 1
18 for identification only.

19 JIM SMILEY: Thank you.

20 RECROSS EXAMINATION CONTINUED

21 BY JIM SMILEY:

22 Q. (Tendering), I am going to show you
23 what has been marked as Defendant Smalls
24 Exhibit 1, for ID purposes only and ask if
25 you recognize that?

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1 A. (No verbal response).

2 Q. Is that your statement?

3 A. Yes, sir.

4 Q. I'll give you a chance to read that
5 first page -- or all of it if you need to, to
6 refresh your memory about what time that you
7 told the police the day of that Kevin came
8 out to pick you up.

9 A. (Reviewing).

10 Q. I direct your attention to the first
11 line.

12 A. I said that it was about 5:00-
13 something that day.

14 Q. Okay. Does that refresh your
15 memory?

16 A. Yes, sir.

17 Q. Okay. And I think that you
18 testified when I was asking you questions
19 that you thought that his wife got off at
20 4:30. But it could have been maybe 5:30?

21 A. No, I'd say 4:00-something to 5:30
22 be home.

23 Q. So she could have gotten off as
24 early as 4:30 or as late as 5:30?

25 A. (Affirmative nod).

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1 Q. Okay. When you left ---

2 A. Yes, sir.

3 Q. --- with Kevin from your brother's
4 house, she wasn't at home yet?

5 A. No, sir.

6 JIM SMILEY: That's all that I have.

7 THE COURT: Thank you, sir. You may
8 step down.

9 (WITNESS STEPS DOWN)

10 THE COURT: Any objection to this
11 witness being excused?

12 SOLICITOR SHEALY: No, sir.

13 ANDREW GRIMES: No, sir.

14 WILLIAM RUNYON: No objection from
15 Defendant Coakley.

16 THE COURT: Mr. Smiley?

17 JIM SMILEY: No, sir.

18 THE COURT: You are free to leave.

19 SOLICITOR SHEALY: Beg the Court's
20 indulgence just one moment.

21 THE COURT: Oka.

22 SOLICITOR SHEALY: Your Honor, at this
23 time we would call Sara Lippi.

24 THE COURT: Okay. How long do you
25 anticipate this testimony to be?

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1 SOLICITOR SHEALY: Like two minutes.

2 THE COURT: That's fine. Given the
3 hour, I just wanted to check so we have a
4 timeline for --

5 SOLICITOR SHEALY: Yes, sir. Very brief.

6 (WITNESS TAKES STAND)

7 SOLICITOR SHEALY: (Tenders documents to
8 be marked as exhibits).

9 COURT REPORTER: These will be marked
10 as State's Exhibits 112 and 113.

11 SARA LIPPI, having been sworn to tell the
12 truth, and nothing but the truth, testified
13 as follows:

14 DIRECT EXAMINATION

15 BY SOLICITOR SHEALY:

16 Q. Ms. Lippi, would you please tell the
17 jury where you are employed?

18 A. Charleston County Clerk of Court.

19 Q. And where is your office located?

20 A. Just downstairs on the first floor.

21 Q. Okay. Just a few minutes ago, did
22 you get a request from my investigator to
23 pull the status chain forms regarding Brian
24 Mazyck ---

25 A. I did.

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1 Q. --- signed by Jennifer Shealy?

2 A. Yes.

3 Q. In fact, did you provide those to
4 us?

5 A. Yes.

6 Q. Showing you what has been marked as
7 State's Exhibits 112 and 113, I ask if that
8 is what you provided me with?

9 A. (Upon review), yes.

10 SOLICITOR SHEALY: Your Honor, at this
11 time I would move these into evidence without
12 objection.

13 THE COURT: State's Exhibit 112 and 113
14 are admitted, without objection.

15 (SO ENTERED AS STATE'S EXHIBIT 112)

16 (SO ENTERED AS STATE'S EXHIBIT 113)

17 DIRECT EXAMINATION

18 BY SOLICITOR SHEALY:

19 Q. Ms. Lippi, if you would, regarding
20 State's Exhibit 112, could you tell the jury
21 the Indictment number?

22 A. It's 2006-GS-10-1169.

23 Q. What does this form reflect? Does
24 it reflect when the charge was *not* proessed?

25 A. It does.

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1 Q. And does that in essence mean
2 dismissed?

3 A. Not prosecuted, yes.

4 Q. Tell the jury, please, what the date
5 of that was -- that I signed it?

6 A. The date it was signed was September
7 9th, 2011.

8 Q. Regarding State's Exhibit 113,
9 similarly, would you tell us the Indictment
10 number?

11 A. Indictment number is 2009-GS-10-
12 04112.

13 Q. When was that signed by me?

14 A. This was signed October 13th, 2011.

15 Q. 2011?

16 A. (Affirmative nod).

17 Q. And these pieces of paper reflect
18 that those two charges were dismissed by my
19 office?

20 A. Yes.

21 Q. By me individually?

22 A. Yes.

23 Q. Okay.

24 SOLICITOR SHEALY: I have no further
25 questions.

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1 THE COURT: Cross examine? Any
2 questions?

3 ANDREW GRIMES: I have no questions,
4 Your Honor.

5 THE COURT: Mr. Runyon?

6 WILLIAM RUNYON: Thank you.

7 CROSS EXAMINATION

8 BY WILLIAM RUNYON:

9 Q. Ms. Lippi, you really have no idea
10 why you were asked to bring those papers up.
11 Right?

12 A. No, sir.

13 WILLIAM RUNYON: No further questions,
14 Judge.

15 THE COURT: Mr. Smiley?

16 JIM SMILEY: Nothing, Your Honor.

17 THE COURT: Thank you. Any redirect?

18 SOLICITOR SHEALY: No, sir.

19 THE COURT: Thank you, you may step
20 down.

21 (WITNESS STEPS DOWN)

22 THE COURT: At this point we will
23 recess or do you have another witness to
24 call?

25 SOLICITOR SHEALY: We have a brief chain

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1 witness.

2 THE COURT: That's fine. Proceed.

3 SOLICITOR FERGUSON: The State calls
4 Doris Yarbrough.

5 (WITNESS TAKES STAND)

6 DORIS YARBROUGH, having been sworn to
7 tell the truth, and nothing but the truth,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR FERGUSON:

11 Q. Good afternoon, Ms. Yarbrough.

12 A. Good afternoon.

13 Q. Where do you work?

14 A. I am employed with the South
15 Carolina Law Enforcement Division, commonly
16 known as SLED.

17 Q. What do you do for SLED?

18 A. I am a forensics technician in the
19 Evidence Control department.

20 Q. How long have you been a forensics
21 technician?

22 A. For five and a half years.

23 Q. And what are your duties as a
24 forensics technician?

25 A. We receive evidence throughout the

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1 state of South Carolina, from law enforcement
2 divisions. We receive it, package it and
3 distribute it throughout the lab for forensic
4 analyses.

5 SOLICITOR FERGUSON: Your Honor, may I
6 approach?

7 THE COURT: You may.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR FERGUSON:

10 Q. I am showing you what has been
11 marked as State's Exhibits 61 and 68, that's
12 already in evidence. Do you recognize those
13 two things?

14 A. I would recognize the plastic
15 package that I would have packaged them into.

16 Q. If you would open those -- well, I
17 will open them for you here.

18 SOLICITOR FERGUSON: Beg the Court's
19 indulgence.

20 THE COURT: Okay.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR FERGUSON:

23 Q. Let's see. Would you recognize the
24 bar code that is on those packages?

25 A. I would.

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1 Q. Do you have your form in front of
2 you there?

3 A. I have what we call a packing slip
4 when it was received when it was submitted to
5 our lab, indicating what the items were. On
6 the package, I would have written a number
7 and a letter to indicate which package they
8 were packaged into.

9 Q. Do you have the bar code B002626?

10 A. No. The ---

11 ANDREW GRIMES: Objection, Your Honor.
12 He has not laid a proper foundation.

13 THE COURT: He's just asked the
14 question -- overruled. The question he asked
15 was whether she had that bar code number in
16 her package. I don't know how you ask that
17 without doing so. There is no foundation
18 required.

19 WITNESS YARBROUGH: I would recognize
20 the yellow bar code that we put on our items
21 when ---

22 THE COURT: Just answer yes or no, do
23 you have that in your package?

24 WITNESS YARBROUGH: No.

25 THE COURT: Your answer was no, then --

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1 that's as far as it is necessary to answer
2 the question. Thank you.

3 SOLICITOR FERGUSON: Court's
4 indulgence.

5 THE COURT: Yes, sir.

6 SOLICITOR FERGUSON: Can we take a
7 brief recess?

8 THE COURT: We will take our lunch
9 break at this time, ladies and gentlemen.

10 Please -- I will allow you to go to
11 lunch. Do not begin your deliberations, do
12 not discuss the case, certainly not among
13 yourselves, or permit anyone to talk about
14 the case in your presence.

15 Have a good lunch. Please be back in
16 your jury room by 2:00 o'clock. There are
17 some matters that we are going to take up
18 outside of your presence, so you'll get a
19 little bit longer. Thank you.

20 (JURY OUT @ 12:10 P.M.)

21 THE COURT: I'm sorry to hold you up,
22 Ms. Yarbrough. You'll get to have lunch in
23 Charleston now.

24 I'll let you step down at this point.
25 During the lunch recess, please do not have

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1 any discussion with any of the counsel.

2 Thank you.

3 Ms. Shealy, you indicated that you wanted
4 to make further argument concerning the issue
5 of the Motion by Mr. Runyon for a mistrial.

6 SOLICITOR SHEALY: Yes, Your Honor. Is
7 there any way that I could have over the
8 lunch hour to look at the case law that we
9 have pulled.

10 THE COURT: Let me go ahead and rule
11 then. I appreciate it.

12 I've done some research during the
13 examination as well. There are two cases
14 that I find interesting on the issue, both of
15 which deal with the fact that the error, if
16 it is, is harmless. But I am not even sure
17 that it is error in this case because --
18 there's nothing in the testimony that suggest
19 any type of conviction, first of all. He
20 could have been in jail for traffic
21 violation(s), Family Court, could have been
22 anything under the sun. We don't know. So
23 it is very, very vague. The Court, in one of
24 the cases, noted vagueness of the testimony.

25 *State v. Thompson* at 352 South Carolina

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1 552, the Court of Appeals 2003.

2 State v. Singleton, 284 South Carolina
3 388, a 1985 case. That one was Judge
4 Moore's, a death penalty case. The Court
5 found the error to be harmless, considering
6 all the other efforts.

7 But one of the factors that we have here
8 is that he simply said 'I am not going back.'
9 It was a motivation factor, but he didn't
10 move this car forward.

11 It also goes, and I have to -- this is
12 something that I was thinking about as I
13 heard more testimony. It has significant
14 probative value as to Mr. Smalls' involvement
15 in this case. That he is saying -- and
16 therefore it lends some credibility to his
17 statement that, 'I want out of here. You
18 need to go, because I've got some involvement
19 though you may not.'

20 There are all sorts of inferences that
21 can be drawn from the statement.

22 Furthermore, and this is noted in the
23 Thompson case and in several cases cited in
24 the Thompson case, the State never attempted
25 to prove any other prior bad acts concerning

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1 this defendant. The only mention is from
2 this person.

3 And we go back then to the original
4 objection of hearsay. He's here to be
5 challenged. I understand that you don't
6 challenge him on the statement. I wouldn't
7 either.

8 The record is protected because,
9 obviously, there's post-conviction relief
10 cases that I've read that failure to raise
11 that issue creates a potential problem. So
12 that's preserved for -- not that you did it
13 for that reason. You did it because, as you
14 said in your Motion, you believe that there
15 is undue prejudice.

16 I don't think that the prejudice is that
17 significant, if there is prejudice.
18 Certainly it's not -- it doesn't change or in
19 any way, I think, render this an unfair
20 proceeding, overly, from the standpoint of
21 violating Mr. Coakley's situation.

22 For those reasons, I decline your Motion.

23 Certainly there is a case -- notwith-
24 standing your request, I could cure it with
25 a curative instruction. But given the fact

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1 that it is a matter that you don't want the
2 jury to hear, that you didn't want the jury
3 to hear in the first place, I believe that a
4 curative instruction would be -- first of
5 all, it would be inconsistent with what I
6 just said. So I will stand by that. It will
7 rise or fall on that basis, unless the State
8 demands a curative instruction.

9 I will allow you to look at it over
10 lunch, should you consider it to be an error.
11 There are cases where, notwithstanding your
12 strenuous objection to it, went and ahead and
13 granted it -- went ahead and gave a curative
14 instruction. The Court in review said that
15 it corrected the wrong. So -- (pause).

16 WILLIAM RUNYON: Judge, I am not
17 arguing with that. I'd never argue with the
18 Court.

19 THE COURT: No, you can certainly --
20 that's my -- I am now at the point where you
21 can supplement or further argue your
22 position.

23 WILLIAM RUNYON: As a practical matter
24 -- I haven't read too many hand's decisions
25 but a curative instruction and -- and I would

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1 vigorously suggest to the Court that if the
2 State suggests it and the Court considers it,
3 that it not be done. It merely would
4 reinforce what -- frankly we could, in all
5 candor to the Court, you know, it could get
6 lost in this morass of exhibits, what-have
7 you. But if you're going to give a curative
8 instruction, it'd just reinforce it.

9 THE COURT: You've stated precisely
10 what has been observed, was observed by Judge
11 Moore and observed by Judge -- in fact, my
12 classmate and colleague -- Tommy Cooper in
13 trying the *Thompson* case. It was just an
14 incidental comment that was -- granted, it
15 was repeated. It was a single mention in
16 that. I mentioned to you that that was my
17 concern.

18 But, again, it was -- the witness who is
19 not a sophisticated witness is not -- you
20 have law enforcement and -- in I think both
21 cases. I know that there was in the *Thompson*
22 case because there was talk about warrants.
23 That was the suggestion, that he had other
24 warrants, which certainly talks about -- that
25 suggests a crime. We don't even know if this

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1 was a crime. It could have been a civil
2 matter. It could have been anything. It
3 could have been, 'I just don't want to go to
4 jail', period.

5 The statement itself, I don't believe
6 rises to the level required for a mistrial.
7 So I am denying your Motion on that basis.
8 The rationale for my allowing the testimony,
9 I think that I have fully stated that.
10 Thank you.

11 SOLICITOR SHEALY: Your Honor, one
12 scheduling matter that I want to see how you
13 want to handle it. When we get back, we will
14 finish up with her (Yarbrough), I can read
15 the two stipulations into the record and then
16 we will need a minute to test up the Skype.

17 THE COURT: Why don't we do this?
18 Let's -- you can't have the Skype set up and
19 then ready to go?

20 SOLICITOR SHEALY: I don't know.

21 THE COURT: Well, let's look at that.

22 SOLICITOR SHEALY: I think that they
23 were putting it on the podium. I don't know
24 if that makes a big difference but ---

25 THE COURT: It doesn't bother me that

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1 it's on the podium but we -- we'll take a
2 break or whatever we have to do.

3 SOLICITOR SHEALY: Great. If we can
4 get it set up, we will do that, get it ready
5 ahead of time.

6 THE COURT: Why can't we do that first?

7 SOLICITOR SHEALY: We can.

8 THE COURT: Well, let's do that ---

9 SOLICITOR SHEALY: Well, sequentially,
10 I don't ---

11 THE COURT: Sequential doesn't make any
12 difference. If you -- what do you mean,
13 sequentially?

14 SOLICITOR SHEALY: I will try to -- he
15 only had an objection as to the gun's trigger
16 guard ---

17 THE COURT: Let me tell you something.
18 If you want to talk about sequential, we
19 don't have to worry because I've heard
20 sequential issues throughout this trial, it
21 being out of order, so that's neither here
22 nor there.

23 SOLICITOR SHEALY: We will do that.
24 That's great then. We will get set up before
25 we start.

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1 THE COURT: To me, it makes sense that
2 we do that first thing when we come back. We
3 simply get that done, out of the way, and
4 then we bring this witness back up.

5 SOLICITOR SHEALY: Okay. Thank you.

6 THE COURT: That way we can have it all
7 set, ready to roll.

8 SOLICITOR SHEALY: Yes, sir.

9 THE COURT: Be back at 2:00 o'clock.

10 (LUNCH RECESS)

11 (DEFENDANT GRADDICK PRESENT)

12 (DEFENDANT COAKLEY PRESENT)

13 (DEFENDANT SMALLS PRESENT)

14 THE COURT: Let the record reflect that
15 all the defendants are present. All right.

16 Anything from the defendants before we
17 bring the jury in?

18 ANDREW GRIMES: No, Your Honor.

19 THE COURT: I believe that the next
20 witness is going to appear, that we are going
21 to call her and she will be appearing by
22 Skype. Is that correct?

23 SOLICITOR FERGUSON: Yes, Your Honor.

24 THE COURT: Is there any objection from
25 any of the defendants?

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1 ANDREW GRIMES: No, sir, none from
2 Graddick.

3 WILLIAM RUNYON: Your Honor, I believe
4 that I was the one that originally -- who
5 made the original objection. I'd have to
6 acknowledge for the record that my objection
7 is primarily because the jury would not be
8 able to see the witness, among other things.
9 But that this process electronically allows
10 the jury to see the witness, so == I'm not
11 withdrawing my original objection.

12 THE COURT: I understand. It was
13 founded on the fact that the telephone would
14 not permit the jurors to view the witness and
15 their response.

16 WILLIAM RUNYON: That's correct.

17 THE COURT: And you are still preserv-
18 ing your -- because the witness is not
19 physically present in the courtroom.

20 WILLIAM RUNYON: That's correct, Your
21 Honor. I am preserving my original objection
22 but I am not objecting to this process at
23 this point in time.

24 THE COURT: Very well.

25 JIM SMILEY: No objection.

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1 THE COURT: Okay. The Court notes the
2 objection. I think that this process affords
3 the only real -- just trying to think it
4 through -- the confrontation issue, with the
5 jury being able to observe the witness. I
6 think that that is accomplished by this. I
7 think that is a very practical solution to a
8 problem and it certainly protects the witness
9 who, as I understand, has some physical
10 problems and medical issues that restrict her
11 ability to travel. Is that correct?

12 SOLICITOR SHEALY: That is correct,
13 Your Honor. Thank you.

14 THE COURT: And we are in agreement
15 that that is the primary reason for the
16 witness not being present in the courtroom?

17 ANDREW GRIMES: Yes, Your Honor.

18 THE COURT: No challenge to that?

19 WILLIAM RUNYON: Your Honor, there is
20 absolutely no challenge to that. That is an
21 absolutely accurate statement of the facts of
22 the case as it relates to this particular
23 witness.

24 THE COURT: Thank you so much. All
25 right. Let's bring in our jury, invite the

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1 jury to return. Can she hear us now?

2 SOLICITOR FERGUSON: Ms. Butler, did
3 you hear that?

4 MS. BUTLER: I did, (Skype displaying
5 witness).

6 THE COURT: Very good. It's nice to be
7 able to see you. It's nice to be able to do
8 this this way, we're into the twenty-first
9 century and I -- I want to say before the
10 jury comes that I hopes all works out well
11 for you, ma'am.

12 MS. BUTLER: Thank you.

13 THE COURT: You are very welcome. We
14 will try not to delay you too long.

15 (JURY IN @ 2:10 P.M.)

16 THE COURT: Good afternoon, ladies and
17 gentlemen. I hope that you had a good lunch.
18 We are ready to proceed. You may notice that
19 there is a screen with a person who is
20 present. That person can hear what I am
21 saying to you.

22 When I first started practicing law,
23 Skype wasn't even anybody's imagination.
24 We didn't even have video depositions when I
25 first started. Then they added video

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1 depositions where you take the testimony,
2 videoed, and then it is played for a jury.

3 We've had telephone presentations before
4 but the witness is not physically present in
5 the courtroom.

6 Today you're going to have the oppor-
7 tunity to -- the witness is not physically
8 present for a number of reasons, all of which
9 are proper. But this is a way to present her
10 testimony and still work through that
11 situation. Unlike just hearing on the phone,
12 you will have the opportunity to hear (sic)
13 the witness as she testifies. So, please
14 know that the fact that she is not physically
15 present in this courtroom should not be
16 considered by you at all. You'll make the
17 same decisions on her testimony that you make
18 on any other witness, and that is that at the
19 appropriate time you will judge the
20 credibility and the believability of each
21 witness, including any witness that may
22 appear by the way of Skype or -- in this
23 fashion. Thank you very much.

24 THE COURT: Solicitor, you may call
25 this witness and we will administer the oath

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1 over the phone.

2 SOLICITOR FERGUSON: Thank you, Your
3 Honor. The State calls Betty Butler.

4 (WITNESS APPEARING BY SKYPE CONNECTION)

5 BETTY BUTLER, having been to tell the
6 truth, and nothing but the truth, testified
7 as follows:

8 DIRECT EXAMINATION

9 BY SOLICITOR FERGUSON:

10 Q. Ms. Butler, spell your last name.

11 A. B-u-t-l-e-r.

12 Q. Give me that one more time?

13 A. Butler, B-u-t-l-e-r.

14 Q. Thank you. I just want to make sure
15 that we can hear you accurately. I felt like
16 it was going in and out.

17 A. Okay.

18 Q. I am Emanuel Ferguson. I am an
19 attorney for the State of South Carolina.
20 We're going to do your questions through this
21 Skype process.

22 A. Okay.

23 Q. I just want to let you know that if
24 I look over here or if I look up at this, I
25 am actually looking at the large television

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1 screen but that I'm still talking to you.

2 Okay?

3 A. Okay.

4 Q. Where do you work?

5 A. I work for the South Carolina Law
6 Enforcement Division, also known as SLED.

7 Q. What do you do for SLED?

8 A. I am a forensic technician in the
9 DNA department.

10 Q. What are your duties as a forensics
11 technician?

12 A. As a forensic technician in the DNA
13 department, I do tests for blood or semen.
14 I look for hair, fibers, and I do various
15 things that may be of value for a particular
16 case.

17 Q. Do you also look for touch DNA?

18 A. Yes, I look -- yes, I do.

19 Q. Explain to the jury what touch DNA
20 is.

21 A. Touch DNA is actually the sweat from
22 where you actually -- when you touch
23 something, you leave body fluids behind. We
24 scrap that and swab that to get touch DNA off
25 of it.

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1 Q. So if I understand you correctly,
2 touch DNA is where you swab an item, looking
3 for something that a person may have left
4 behind that would produce their DNA?

5 ANDREW GRIMES: Objection, leading.

6 THE COURT: I will allow it.

7 WITNESS: That is correct.

8 THE COURT: Given the situation, I'm
9 going to allow it.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR FERGUSON:

12 Q. Ms. Butler, I am going to show you
13 on the screen what has been marked as State's
14 Exhibit 60. Can you see that?

15 A. Yes, I can.

16 Q. Do you recognize the writing on this
17 bag?

18 A. Yes, I do. Item 78, that is my
19 initial, BWB, and the lab number, 12-9555 and
20 I processed it on 10/2/12.

21 SOLICITOR FERGUSON: Your Honor, at
22 this time I would like to admit State's
23 Exhibit 60 into evidence.

24 THE COURT: Is there any objection.
25 (No verbal response from any defendants),

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1 okay. Without objection, it is admitted.

2 (SO ENTERED AS STATE'S EXHIBIT 60)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR FERGUSON:

5 Q. Ms. Butler, you testified that
6 what's in these bags -- what was in this bag?

7 A. The bag -- in the bag is seven and
8 eight. Number 7 is a plastic glove and
9 Number 8 is also a plastic glove.

10 Q. That says items seven and eight on
11 this package?

12 A. Yes, it does.

13 Q. I am going to open this package, Ms.
14 Butler. (Displaying plastic gloves), are
15 there the plastic globes that you were
16 referencing?

17 A. Yes. If you look at them, you will
18 see 7, 7.2, 8 and 8.1 and you'll see my
19 initials. You also will see the lab number
20 on that particular item.

21 Q. Is that the writing?

22 THE COURT: It's already been admitted.

23 SOLICITOR FERGUSON: Thank you, Your
24 Honor.

25 THE COURT: It has already been

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1 identified. You don't need to go into all
2 that detail with her.

3 SOLICITOR FERGUSON: Thank you, Your
4 Honor.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR FERGUSON:

7 Q. What were you tasked to do with
8 these gloves, Ms. Butler.

9 A. State's Exhibit 60, items numbered 7
10 and 8, it was for touch DNA.

11 Q. How did you collect touch DNA from
12 these gloves?

13 A. Number 7, I swabbed -- I made one
14 swab from the outside of the item, that's the
15 outside of the item as submitted from the
16 agency as it came in.

17 And I did one swab from the inside of the
18 item as it was received from the agency.

19 Q. As to Number 7, do you have 7.1 as
20 the swab of the inside and 7.2 as the swab
21 from the outside?

22 A. Item 7.1 is from the outside and 7.2
23 is the swab from the inside.

24 Q. Showing you what has been marked as
25 State's Exhibit 82. Do you recognize this?

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1 A. Yes, I do. That's my initials and
2 the date that I dated it 10/16/12.

3 Q. And State's Exhibit 83, do you
4 recognize that?

5 A. Yes, I do. That's my initials and
6 the date of 10/16/12.

7 Q. Showing you State's Exhibit 84, do
8 you recognize that?

9 A. Yes, I do. That is my initials and
10 the date of 10/16/12.

11 Q. And State's Exhibit 85, do you
12 recognize that?

13 A. Yes, I do. That is my initials and
14 the date of 10/16/12.

15 Q. And what are these?

16 A. These are the swabs that I took from
17 the plastic gloves.

18 SOLICITOR FERGUSON: Your Honor, at
19 this time I would like to admit State's
20 Exhibits 82, 83, 84 and 85 into evidence.

21 THE COURT: Any objection?

22 ANDREW GRIMES: No, sir.

23 WILLIAM RUNYON: No, Your Honor.

24 JIM SMILEY: (Negative gesture).

25 THE COURT: Very well. State's Exhibits

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1 82, 83, 84 and 85 are admitted without
2 objection.

3 (SO ENTERED AS STATE'S EXHIBIT 82)

4 (SO ENTERED AS STATE'S EXHIBIT 83)

5 (SO ENTERED AS STATE'S EXHIBIT 84)

6 (SO ENTERED AS STATE'S EXHIBIT 85)

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR FERGUSON:

9 Q. Ms. Butler, I show you what has been
10 marked as State's Exhibit 63. Do you recog-
11 nize that?

12 A. Yes, I do. That is Items 9 through
13 12. That's my initials and the lab number of
14 12-9569 and the date of 10/16/12.

15 Q. Did you handle the contents of this
16 bag?

17 A. (glitch with Skype connection).

18 THE COURT: Hold on a second.

19 MS. BUTLER: Are you still there?

20 SOLICITOR FERGUSON: Yes, ma'am.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR FERGUSON:

23 Q. Did you recognize this bag?

24 A. Yes, I did. Those are SLED Items 9
25 through 12. That's my initial and the ---

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1 Q. What is inside this bag?

2 A. Item 9. Item 9 is plastic gloves.

3 Item 10 is plastic gloves.

4 Item 11 is a plastic glove.

5 Item 12 is a plastic glove.

6 SOLICITOR FERGUSON: Your Honor, at
7 this time I would move State's Exhibit 63
8 into evidence.

9 THE COURT: Without objection, State's
10 Exhibit 63 is admitted.

11 (SO ENTERED AS STATE'S EXHIBIT 63)

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR FERGUSON:

14 Q. Did you take swabs from those four
15 plastic gloves?

16 A. Yes, I did. SLED Items 9, 9.1, 9.2,
17 10, 10.1 and 10.2 and Item 11, I created 11.1
18 and 11.2. Then from SLED Item 12, I created
19 12.1 and 12.2.

20 Q. Okay. Showing you what has been
21 marked as State's Exhibit 86. Can you read
22 that?

23 A. Yes, I can. That is SLED 9.1 and
24 9.2 that I created from Item 9.

25 Q Okay. Are those your initials on

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1 the back?

2 A. Yes, that is my initials, BWB, and
3 the date.

4 Q. Showing you State's Exhibit 70, do
5 you recognize that?

6 A. Yes, that's Item 9.2 from SLED 9.

7 Q. Are those your initials on the back?

8 A. Those are my initials, yes.

9 Q. Showing you State's Exhibit 88, do
10 you recognize that?

11 A. Yes, that's Item 10.1 that I created
12 from Item 10. Those are my initials and the
13 date.

14 Q. Those are your initials on the back?

15 A. (Affirmative nod).

16 Q. Yes. Do you recognize this?

17 A. That's Item 10.2 that I swabbed from
18 Item 10.

19 Q. Do you recognize that?

20 A. Those are my initials and the date,
21 yes.

22 Q. Showing you State's Exhibit 90, do
23 you recognize that?

24 A. State's Exhibit 90 is Item 11.1,
25 that I created from Item 11.

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1 Q. Are those your initials on the back?

2 A. Yes, they are my initials and the
3 date.

4 Q. Showing you State's Exhibit 91, do
5 you recognize that?

6 A. State's Exhibit 91 is SLED 11.2, and
7 that is the swab from Item 11.

8 Q. Do you ---

9 A. Those are my initials and the date.

10 Q. Those are your initials?

11 A. Yes.

12 Q. State's Exhibit 92, I'm showing you.
13 Do you recognize that?

14 A. State's Exhibit 92 is SLED 12.1 and
15 that is a swab that I took from SLED 12.

16 Q. Are those your initials on the back?

17 A. Yes, those are my initials and the
18 date.

19 Q. Showing you State's Exhibit 93, do
20 you recognize that?

21 a. State's Exhibit 93 is SLED 12.2,
22 that's a swab that I took from SLED 12.

23 Q. Are those your initials on the back?

24 A. Yes, those are my initials and the
25 date.

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1 SOLICITOR FERGUSON: Your Honor, at
2 this time I would like to enter State's
3 Exhibits 86, 87, 88, 89, 90, 91, 92, and 93
4 into evidence.

5 THE COURT: State's Exhibits 86 through
6 93 are admitted without objection.

7 (SO ENTERED AS STATE'S EXHIBIT 86-93)

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR FERGUSON:

10 Q. Moving on, Ms. Butler, I want to
11 show you what has been marked as State's
12 Exhibit 58. It's a bag. Do you recognize
13 that?

14 A. State's Exhibit 58 is SLED Item 13.
15 Those are my initials, the lab number and the
16 date.

17 Q. What are the contents of this bag?

18 A. Item 13 is a black t-shirt, a Basics
19 Edition t-shirt.

20 Q. Is this the t-shirt that you are
21 referencing?

22 A. If you look on the inside, by the
23 tag, you'll see my initials.

24 Q. (Displaying).

25 A. Yes, and you see the item number,

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1 which is 13, and those are my initials and
2 that's the lab number.

3 SOLICITOR FERGUSON: Your Honor, at
4 this time I would like to admit State's
5 Exhibit 58 into evidence.

6 THE COURT: Without objection, South
7 Carolina 58 is admitted.

8 (SO ENTERED AS STATE'S EXHIBIT 58)

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR FERGUSON:

11 Q. Ms. Butler, did you test for DNA or
12 take a swab from this t-shirt?

13 A. On this particular shirt, I did
14 scrapings from the inside collar and the
15 outside collar. Most of the time when you
16 wear a t-shirt, you are going to get the skin
17 cells where it rubs against your neck. I
18 scape the inside of the neck are and the
19 outside of the neck/collar area. From that I
20 created Item 13.1.

21 Q. So you did not swab directly, you
22 scraped off the inside collar?

23 A. First what I did was I scraped
24 inside the collar to get the skin cells from
25 there. Then after you do that, you swab the

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1 inside of the collar and you also swab the
2 scrapings that you get, then you get a
3 profile of it.

4 Q. I'm showing you what has been marked
5 as State's Exhibit 95. Do you recognize
6 that?

7 A. State's Exhibit 95 is SLED Item 13.1
8 and that's what I created. Those are my
9 initials and the date.

10 Q. So Item 13.1 is the swabbing from
11 Item 13, which is this shirt?

12 A. Yeah, that's correct.

13 SOLICITOR FERGUSON: Your Honor, at
14 this time I would like to submit State's
15 Exhibit 95 into evidence.

16 THE COURT: Without object, it is
17 admitted.

18 (SO ENTERED AS STATE'S EXHIBIT 95)

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR FERGUSON:

21 Q. I'm showing you what has been marked
22 as State's Exhibit 81. Do you recognize
23 that?

24 A. State's Exhibit 81 is SLED 13. It's
25 a black t-shirt. Those are my initials, the

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1 lab number and the date.

2 SOLICITOR FERGUSON: Your Honor, at
3 this time I would like to admit State's
4 Exhibit 81 into evidence.

5 THE COURT: State's Exhibit 81 is
6 admitted, without objection.

7 (SO ENTERED AS STATE'S EXHIBIT 81)

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR FERGUSON:

10 Q. Did you swab this t-shirt for DNA?

11 A. SLED Item 14, I did some scraping
12 from the inside and outside of the collar,
13 because it rubs against the neck and you get
14 skin cells. From that I swabbed the
15 scrapings and I swabbed the inside of the t-
16 shirt.

17 Q. Showing you what has been marked as
18 State's Exhibit 96. Do you recognize this?

19 A. Exhibit 96 is SLED Item 14.1, that's
20 the scraping and the swabbing I did from SLED
21 14. That's my initials and the date.

22

23 SOLICITOR FERGUSON: Your Honor, at
24 this time we would move State's Exhibits 95
25 and 96 into evidence, without objection.

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1 THE COURT: Without objection, State's
2 Exhibits 95 and 96 are admitted.

3 (SO ENTERED AS STATE'S EXHIBIT 95)

4 (SO ENTERED AS STATE'S EXHIBIT 96)

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR FERGUSON:

7 Q. Showing you what has been marked as
8 State's Exhibit 57, do you recognize that?

9 A. State's Exhibit 57 is SLED Items 15
10 and 16, which is a black short sleeve shirt
11 and blue long-sleeved shirt.

12 SOLICITOR FERGUSON: Your Honor, at
13 this time I would like to admit State's
14 Exhibit 57 into evidence.

15 THE COURT: Without object, it is
16 admitted.

17 (SO ENTERED AS STATE'S EXHIBIT 57)

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR FERGUSON:

20 Q. Did you collect DNA or swab for DNA
21 from these items?

22 A. Yes. I created Item 15.1, which is
23 the scrapings from the inside of the collar.

24 Q. There appear to be two shirts in
25 here.

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1 A. Yes.

2 Q. Did you swab both of these shirts?

3 A. Yes, I did, because the blue shirt
4 -- the blue long-sleeved shirt and the short-
5 sleeved black shirt was together.

6 Q. Showing you what has been marked as
7 State's Exhibit 97, do you recognize this?

8 A. State's Exhibit 97 is SLED Item
9 15.1. That is from the scrapings from the
10 inside collars of the short -- of the black,
11 short-sleeved shirt.

12 Q. And I'm showing you State's Exhibit
13 98, do you recognize that?

14 A. State's Exhibit 98 is SLED 15.1 and
15 that's from the long-sleeved shirt.

16 SOLICITOR FERGUSON: Your Honor, at
17 this time I would like to admit State's
18 Exhibits 97 and 98 into evidence.

19 THE COURT: Without objection, State's
20 Exhibits 97 and 98 are admitted.

21 (SO ENTERED AS STATE'S EXHIBIT 97)

22 (SO ENTERED AS STATE'S EXHIBIT 98)

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR FERGUSON:

25 Q. Showing you what has been marked as

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1 State's Exhibit 59. Do you recognize that?

2 A. State's Exhibit 59 is SLED Item 17.
3 That's my initials, the date, the lab number
4 and the date -- it's a part of black pants
5 with a belt.

6 SOLICITOR FERGUSON: Your Honor, at
7 this time I would like to admit State's
8 Exhibit 59 into evidence.

9 THE COURT: Without objection, State's
10 59 is admitted, being a part of black pants
11 and a belt.

12 (SO ENTERED AS STATE'S EXHIBIT 59)

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR FERGUSON:

15 Q. Did you collect swabs from this
16 item?

17 A. Yes. I created Item 17.1, swabs
18 from the scraping inside the front pocket,
19 the waistband and also from the zipper of
20 the pants.

21 Q. Could you tell the jury again where
22 you swabbed?

23 A. I did scrapings from the inside
24 pocket, because when you put your hands in
25 your pocket there's ---

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1 Q. Oh, okay.

2 A. --- a tendency to leave skin cells.
3 So I scrape the inside of the pocket and I
4 also did the front band -- the front of --
5 because this is for, I believe this is where
6 you touch. Also from the button where you
7 touch that button, and the zipper.

8 Q. Showing you what has been marked as
9 State's Exhibit 99, do you recognize that?

10 A. State's Exhibit 99 is SLED Item
11 17.1, this is the swab from the scrapings of
12 the front pocket, the band, the button and
13 the zipper. That's my initials and the date.

14 SOLICITOR FERGUSON: Your Honor, at
15 this time I would move State's Exhibit 99
16 into evidence.

17 THE COURT: Without objection, State's
18 Exhibit 99 is admitted.

19 (SO ENTERED AS STATE'S EXHIBIT 99)

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR FERGUSON:

22 Q. Ms. Butler, I show you what has been
23 marked as State's Exhibit 80, do you
24 recognize this?

25 A. State's Exhibit 80 is SLED Items 18

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1 and 19. Those are my initials on this items
2 numbers and the date.

3 Q. What is in here?

4 A. SLED Item 18 is a plastic glove.
5 SLED Item 19 is also a plastic glove.

6 SOLICITOR FERGUSON: Your Honor, at
7 this time I would like to admit State's
8 Exhibit 80 into evidence.

9 THE COURT: State's Exhibit 80 is
10 admitted, without objection.

11 (SO ENTERED AS STATE'S EXHIBIT 80)

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR FERGUSON:

14 Q. I'm showing you what has been marked
15 as State's Exhibit 100. Do you recognize
16 this?

17 A. State's Exhibit 100 is SLED Item
18 18.1; and Item 18.1 is a swabbing from the
19 inside and the outside of the plastic gloves.
20 Those are my initials and the date.

21 Q. I am showing you State's Exhibit
22 101, do you recognize that?

23 A. State's Exhibit 101 is SLED Item
24 19.1, and is a swab from the inside and the
25 outside of the plastic glove. Those are my

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1 initials and the date.

2 SOLICITOR FERGUSON: Your Honor, at
3 this time I would like to admit State's
4 Exhibits 100 and 101 into evidence.

5 THE COURT: Without objection, State's
6 Exhibits 100 and 101 are admitted.

7 (SO ENTERED AS STATE'S EXHIBIT 100)

8 (SO ENTERED AS STATE'S EXHIBIT 101)

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR FERGUSON:

11 Q. Now, Ms. Butler, we went through a
12 lot of evidence there. Just to review, you
13 took swabs of all the items and that's what
14 is in each of these little brown packages;
15 right?

16 A. That's correct.

17 Q. And what did you do after you took
18 the swabs from each of these items?

19 A. I took a swab from each of these
20 items, then I put it up. I put it in the
21 envelope after it dried -- it has to dry
22 first. Then I put into -- on that gold coin
23 envelope, I put my initials and the date.
24 After that, I put the swab in the envelope.
25 Then I put the envelopes into a sealed pouch

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1 on which I've put the lab number, the item
2 number, my initials and the date -- and the
3 tracking number.

4 Q. Now, when you received thee items,
5 did any of them appear to have been tampered
6 with?

7 A. No, because I would have noted that
8 on my worksheet and stopped the process.

9 Q. When you finish with your collecting
10 and your packaging, where did you take these
11 items?

12 A. The swabs or the other items?

13 Q. Okay, let me separate it. Where did
14 you take all the swabs?

15 A. Some of the swabs -- 7.1, 7.2, 8.1,
16 8.2, 9.1, 9.2, 10.1, 10.2, 11.1, 11.2, 12.1,
17 12.2, 13.1, 13.2, 14.1, 14.2 -- went to the
18 evidence control department where I gave it
19 to Nikki Hughes.

20 But Items 15.1, 15.2, 16.1, 16.2, 17.1,
21 17.2, 18.1, 18.2, 19.1 and 19.2, I gave those
22 directly to Paul Meeh because they was on
23 different dates. They were supplemental to
24 what I gave directly to the analyst that
25 analyzed the case.

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1 Q. What is Paul Meeh's job?

2 A. He was the DNA analyst on the case.

3 Q. Would Paul Need be the one who
4 analyzes the swabs that you create?

5 A. That's correct.

6 SOLICITOR FERGUSON: If I -- Court's
7 indulgence, please.

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR FERGUSON:

11 Q. I ant to go back to the plastic
12 gloves very briefly. You -- the process that
13 you described when you swab each of the
14 plastic gloves, did you do that for all of
15 the plastic gloves?

16 A. Some of them. Certain gloves, I did
17 a swab of the inside and a swab on the
18 outside. And on two of them I did one swab
19 on the inside and outside.

20 Q. Which gloves did you swab the inside
21 and the outside with one swab?

22 A. SLED Item 18, I did 18.1; which was
23 a swab of the inside and the outside. And
24 then SLED Item 19, I did a swab from the
25 inside and the outside. This was to analyze

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1 for one person, and that's why I did that.

2 Q. Could you repeat that?

3 A. I believe that the request was for
4 ownership, so I went to get a better -- I'd
5 say get all the skin cells on one swab.

6 That's why I did that.

7 Q. Okay. Thank you, Ms. Butler.

8 Please answer any questions that the defense
9 may have.

10 THE COURT: You may cross examine, Mr.
11 Grimes.

12 ANDREW GRIMES: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY ANDREW GRIMES:

15 Q. Good afternoon, Ms. Butler. I want
16 to thank you for appearing this afternoon.
17 We don't have any questions on behalf of
18 Defendant Jarrett Graddick.

19 A. Thank you.

20 THE COURT: Cross examine, Mr. Runyon
21 for Defendant Coakley.

22 WILLIAM RUNYON: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY WILLIAM RUNYON:

25 Q. Good afternoon, Ms. Butler.

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1 A. Good afternoon, sir.

2 Q. You have a protocol at SLED
3 laboratory, do you not, ma'am?

4 A. Yes, we do.

5 Q. And you followed that protocol with
6 regards to these items that you were given,
7 to prepare the swabs?

8 A. Yes, I did.

9 Q. Now, -- and there's no question
10 about that. However, my question is, as it
11 relates to the items, they came to you in
12 separate bags, did they not? They were
13 separated?

14 A. Certain ones came separate and
15 certain ones came together.

16 Q. Why would things come to you
17 separated or separately, so to speak?

18 A. Sometimes it is admitted separately.

19 Q. Well, I understand but is there --
20 is it better to have things separated or is
21 it better to have things together?

22 A. It depends on which ones -- what do
23 you mean? Sometimes they are together, they
24 are collected together. And sometimes they
25 are not collected together, so that's how I

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1 would keep it.

2 Q. Okay. Let me get more to the point.
3 It took me three semesters to get through two
4 semesters of freshman biology in college.
5 That was almost fifty years ago, so I'm kinda
6 vague on this. As a practical matter, you
7 swabbed for touch DNA, did you not?

8 A. Either for touch DNA or for owner-
9 ship.

10 Q. Ownership?

11 A. (Affirmative nod).

12 Q. Now, touch DNA is precisely what it
13 means? That someone has touched an item in
14 some fashion?

15 A. Yes.

16 Q. And that item then, as long as it
17 doesn't touch another item, may still contain
18 the DNA of the one person who touched it.

19 A. Well, whoever touch it, it is a
20 possibility to get bodily fluids from where
21 they touched an item.

22 Q. And if it is comingled with any
23 other item, touch DNA can be transferred, can
24 it not?

25 A. That's not my expertise, but to my

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1 knowledge if it goes in the same container --
2 well, not the same container, but if it is
3 packaged together, it is a possibility.

4 WILLIAM RUNYON: No further questions,
5 Your Honor. Thank you, Ms. Butler.

6 JIM SMILEY: No questions, Your Honor.

7 THE COURT: Redirect, Mr. Ferguson?

8 SOLICITOR FERGUSON: No redirect, Your
9 Honor.

10 THE COURT: Ms. Butler, thank you very
11 much. We will now disconnect. Hope you have
12 a good afternoon.

13 MS. BUTLER: Thank you, you too.

14 (SKYPE CONNECTION TERMINATED)

15 SOLICITOR FERGUSON: Your Honor, would
16 you like for me to remove this computer at
17 this time.

18 THE COURT: That would be fine.

19 SOLICITOR SHEALY: Do you mind if I
20 assist him?

21 THE COURT: That would be fine.

22 (EXHIBITS RETURNED TO COURT REPORTER)

23 SOLICITOR FERGUSON: Thank you, Your
24 Honor. The State recalls Doris Yarbrough.

25 THE COURT: Recalls?

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1 SOLICITOR FERGUSON: Yes, sir.

2 THE COURT: Ms. Yarbrough, as you come
3 around to take the witness stand, I would
4 remain you that you are still under oath.

5 WITNESS: Yes, sir.

6 THE COURT: Thank you for your patience
7 as well.

8 (WITNESS TAKES STAND)

9 DORIS YARBROUGH, having been previously
10 sworn, testified as follows:

11 DIRECT EXAMINATION RESUMED

12 BY SOLICITOR FERGUSON:

13 Q. Good afternoon, Ms. Yarbrough.

14 A. Good afternoon.

15 Q. You previously testified that you
16 are a forensic technician with the South
17 Carolina Law Enforcement Division; is that
18 correct?

19 A. That is correct.

20 Q. I'm showing you a bag that we opened
21 in court that contained State's Exhibits 101
22 -- excuse me -- State's Exhibits 61 and 68.
23 Do you recognize that bag?

24 A. I recognize it by the yellow label
25 that I would put on it when receiving it.,

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1 Q. And what do your notes tell you that
2 that yellow bag contained?

3 A. This package is labeled Container A.
4 Container A is two swabs taken from the
5 trigger and trigger guard of a Glock handgun.
6 The other one is from the handle.

7 Q. Two swabs?

8 A. Right.

9 Q. One from the Glock's trigger guard
10 and trigger?

11 A. That's correct.

12 Q. And one from a Glock handle?

13 A. That's correct.

14 Q. Is there a serial number associated
15 with that gun?

16 A. Yes, sir. It would be KFP668.

17 Q. And that bag, as it appears right
18 now, is that how the bag came to you?

19 A. No, sir, these two items I placed
20 into -- this is a SLED evidence bag. When I
21 receive these, I would put them in this kind
22 of bag, heat-seal the top, and had the
23 submitting officer to sign and date, then I
24 sign and date this package.

25 Q. When you did that, where did you

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1 next place that page?

2 A. I would put it in what we call a DNA
3 storage bin in our secure Evidence room,
4 located in our Evidence department.

5 Q. Is that recorded on a computer
6 system?

7 A. It is. Once this bar code is
8 generated, it is tracked from that point on.

9 Q. According to your notes, who was the
10 next person who would have manipulated that
11 bag after you?

12 A. That would have been me also.

13 Q. After you -- who?

14 A. I put it in -- after I logged it in,
15 put it in storage, then I happened to be one
16 who retrieved it and transferred it to the
17 forensic scientist.

18 Q. Who was that forensic scientist?

19 A. That would have been Paul Meeh.

20 Q. What was the date that you
21 transferred that to him?

22 A. On 11/15 of 2012.

23 SOLICITOR FERGUSON: Thank you so much.
24 Please answer any questions that the defense
25 may have.

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1 THE COURT: Cross examine.

2 WILLIAM RUNYON: No questions, Your
3 Honor.

4 JIM SMILEY: No questions.

5 WILLIAM RUNYON: None, Your Honor.

6 THE COURT: Thank you. You may step
7 down, you're free to leave.

8 (WITNESS STEPS DOWN)

9 THE COURT: Call your next witness,
10 please.

11 SOLICITOR SHEALY: Your Honor, at this
12 time, may I read the two stipulations in?

13 THE COURT: You may. Stipulations,
14 ladies and gentlemen, is common in the
15 presentation of cases. The parties, through
16 their attorney, and they will -- rather than
17 call witnesses who will testify to certain
18 things, they have agreed that this is what
19 these persons would testify to.

20 You're to consider these stipulations
21 and evaluate those the same as you will any
22 witness who has testified when you are
23 instructed to begin your deliberations.

24 SOLICITOR SHEALY: Thank you. Your
25 Honor, (reading):

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1 The attorneys for the State and the
2 defendants agree that Alexander Kaufman of
3 the Mount Pleasant Police Department began to
4 inventory the red and black Impala while it
5 was parked in the Seel's parking lot. He
6 began by moving the seat divider in the back
7 seat. He moved it from the Up position to
8 the Down position. When he did so, currency
9 spilled into the seat. He advised his
10 supervisor and he decision was made to wait
11 for crime scene tech Ray Haupt to arrive to
12 inventory the car.

13 (Reading):

14 The attorneys for the State and the
15 defendants agree that appropriate measures
16 took place in transporting evidence, and that
17 Exhibits 60, 62, and Item 76 through 101
18 while at the South Carolina Law Enforcement
19 Division, the exhibits were not tampered
20 with.

21 THE COURT: Okay.

22 SOLICITOR SHEALY: We would call Paul
23 Meeh.

24 THE COURT: The Stipulations will be
25 Court's Exhibits 1 and 2?

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1 (SO ENTERED AS COURT'S EXHIBIT 1)

2 (SO ENTERED AS COURT'S EXHIBIT 2)

3 THE COURT: You may call your next
4 witness, Solicitor.

5 SOLICITOR SHEALY: The State calls Paul
6 Meeh.

7 (WITNESS TAKES STAND)

8 PAUL MEEH, having been sworn to tell the
9 truth, and nothing but the truth, testified
10 as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR SHEALY:

13 Q. Mr. Meeh, if you would, please tell
14 the jury where you are currently employed?

15 A. I am currently employed at SLED in
16 Columbia as a forensic scientist in the DNA
17 department.

18 Q. Tell us about your educational
19 background.

20 A. I got my bachelors degree in 2001
21 from the University of South Carolina in
22 Biology. In 2003, I got my masters in
23 molecular biology. I was doing Ph.D. work
24 there for three years, but I was hired away
25 by SLED. I guess that was in 2007.

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1 Then I did a year and a half of training
2 inside of SLED to learn their procedures and
3 protocols for DNA processing. Since then, I
4 been working with SLED as a DNA analyst on my
5 own as a forensic scientist.

6 Q. How long have you been working at
7 SLED in that capacity?

8 A. Six years now, six and a half years.

9 Q. During that six to six and a half
10 year period, do you continue to get training?

11 A. I do. Of course, annually we have
12 to keep up on our training. Every year.

13 Q. Have you ever been asked to testify
14 in court before?

15 A. I have.

16 Q. Have you qualified as an expert
17 previously?

18 A. Yes.

19 SOLICITOR SHEALY: Your Honor, at
20 this time we would offer Mr. Meeh as an
21 expert in the field of DNA analyst.

22 THE COURT: Do you care to examine him
23 as to his qualifications?

24 ANDREW GRIMES: No, sir.

25 WILLIAM RUNYON: No questions from

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1 Defendant Coakley.

2 JIM SMILEY: No, sir.

3 THE COURT: Very well, he will be
4 permitted to render opinions in that area.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR SHEALY:

7 Q. Mr. Meeh, if we could start by your
8 giving the jury a brief explanation of what
9 DNA is.

10 A. DNA is how you inherit all of your
11 traits from your parents. You get half from
12 your father and half from your mother. It is
13 in every cell in your body except your red
14 blood cells.

15 It is unique to you. That's what is
16 important about it for our purposes, is that
17 each person has their own. Except for twins.
18 Those are the only people who share DNA.
19 Theirs would look exactly the same in
20 testing. But our, those who do not have a
21 twin, it would look completely than anyone
22 else.

23 It allows us to see who has touched
24 things, who has left body fluids, things like
25 that.

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1 Q. My next question was going to be,
2 how do you find DNA from people if it is not
3 currently on their body?

4 A. Well, there is ---

5 Q. There are various ways that people
6 can leave their DNA behind?

7 A. Sure. So a -- a really common way
8 is body fluids. That is sort of the serology
9 portion of what we do, to identify body
10 fluids: saliva, semen, blood, those things.

11 In this case I was asked to do touch DNA,
12 which is a little bit different. It is the
13 skin cells off your body that are constantly
14 shedding. The dust in your house is made up
15 mostly of shed skin cells. So, you know,
16 it's pretty common for your shirts or
17 anything that you've touched, leave a pen at
18 the bank or something like that, it's going
19 to have skin cells on it.

20 Q. When examining for DNA, what is the
21 role of having buccal swabs?

22 A. Buccal swabs Sam serve as a
23 standard. That's a known standard.

24 So if we were to generate a DNA profile,
25 say off of this pointer, we could tell who

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1 has touched that pointer in the past only by
2 comparing it to known standards from each
3 person. That's the cheek -- the cheek cells
4 in your mouth are called buccal epithelial
5 cells. You just take a little swab, a
6 sterile cotton swab, and isolate DNA from
7 those. Then we can compare that profile to
8 what we generate from evidence and say 'is
9 it possible that this person, whoever we got
10 the buccal swab from, contribution to this
11 instrument or item?'

12 Q. Okay. And then you're given swabs
13 to make the comparison with the buccal swabs?

14 A. Correct.

15 Q. Okay. In this case, showing you
16 what's been previously marked as State's
17 Exhibits 76, 77, 78 and 79, could you tell
18 the jury whether those are the buccal swabs
19 that you were provided with.

20 A. Well, you can see -- most
21 importantly -- first, you can see that my
22 initials are on there, so I've worked with
23 these in the past. So, yeah.

24 It's labeled buccal swab and then it's
25 got someone's name. Each one would have an

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1 individual's name that would tell me, you
2 know, who to assign to that standard. It's
3 also got the numbers on the outside and I
4 have to cross check the names with the
5 number. If we had the wrong standard,
6 obviously that be an incorrect analysis.

7 Q. Showing you State's Exhibit 61 and
8 68, could you tell the jury whether or not
9 these were swabs provided to you from
10 evidence?

11 A. Again, I see my initials on the
12 packaging. So, yes, I would say that I
13 worked with these.

14 Q. Okay. Then showing ---

15 A. If I might just double check them.

16 Q. Sure.

17 A. (Upon review), yes. I worked with
18 these.

19 Q. I am going to show you a handful,
20 just to try to make things move smoothly

21 A. Okay.

22 Q. Showing you what has been previously
23 marked as State's Exhibits 82 through 96 and
24 93, and 95 through 101, I ask you whether or
25 not you were provided with these?

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1 A. (Upon review), yes. I would have
2 received these from Betty Butler. I see her
3 initials on these. She was the evidence
4 processing person that would generate and
5 give me these for comparison.

6 Q. Now, tell the jury what you do once
7 you have buccal swabs and once you have swabs
8 generated either by law enforcement or by
9 SLED personnel.

10 A. The first thing that we do is
11 isolate DNA. To give an example, there were
12 some swabs from the trigger of a gun. We
13 take that swab, we put it some specials
14 solutions and get the DNA. We quantify and
15 we amplify that so that we can see it on the
16 instrumentation. The only way that we can
17 see it is that we make many copies of it.

18 Once we see that on the instrumentation,
19 then we have to work with the buccal swabs.
20 It is important to keep those things in two
21 different areas and keep them in sequence.
22 You don't want to work with the buccal swabs,
23 your standards, before you work with evidence
24 because it could contaminate -- make it
25 possible to contaminate. Especially with

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1 touch DNA because touch DNA is -- there is
2 not very much of it. Usually we are working
3 with smaller amounts, so you have to be
4 careful.

5 The A to B strategy is just to isolate
6 the DNA, amplify it and view it on the
7 instrumentation.

8 Q. Okay. And regarding the analyses
9 that you did in this case, did you prepare
10 actually two reports?

11 A. I did. There were some extra
12 samples sent in later on, so I did a supple-
13 mental report.

14 Q. Okay. Focusing your attention on
15 your earlier report, that being January 22nd,
16 2013, could you explain to the jury your
17 findings by telling us what item that you
18 were looking at, comparing to the buccal
19 swabs?

20 A. Yes. No problem. There were
21 several items submitted -- many items,
22 actually.

23 There were some swabs from a trigger,
24 like I mentioned.

25 There was a swab from the handle of a

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1 handgun.

2 Some swabs from plastic gloves.

3 Some swabs from t-shirts.

4 And also some debris from a t-shirt. To
5 there were a number of swabs submitted for
6 comparison with four buccal swabs.

7 Q. Regarding the debris from the t-
8 shirt, did that have any human DNA?

9 A. No, it didn't.

10 Q. Of the items that I have given you,
11 I have not given you the debris.

12 A. Okay.

13 Q. So if you could, take those items
14 one by one for us and tell us your con-
15 clusions.

16 A. Item 14.1 would be the first. That
17 is a swab from a t-shirt. The DNA ---

18 Q. I'm sorry. Item what?

19 A. Item 14.1 -- would you like for me
20 to go in numerical order or the order that
21 they were reported on the report.

22 Q. On the report.

23 A. Okay. So Items 14.1 is the first
24 one and that's a swab from a t-shirt.

25 Q. Wait, I just need to double check

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1 that with you. Which report are you looking
2 at?

3 A. The January 22nd, 2013.

4 Q. Okay. If you could just go down
5 your list.

6 A. Sure. If I could have something to
7 check them off.

8 Q. You mean a pen?

9 A. Yes.

10 Q. Oh, sure, (tenders pen to witness).

11 A. Beginning with number five. That
12 was the partial DNA profile developed from
13 Item 5 -- see, that's the trouble, because it
14 is an "also matches", we've got a little bit
15 of trouble here.

16 The first Item 14.1 was a match. In that
17 case, I can give a stat.,

18 Item 5 is an "also matches", so -- I'll
19 just have to clear that up in a minute.

20 Q. Okay. Well, handle it however you
21 wish to handle it if you'll just reference
22 the SLED number for me.

23 A. I just don't want the "also matches"
24 to be confused ---

25 Q. Okay.

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1 A. The partial DNA profile developed
2 from Item 5 also matches the DNA profile of
3 Jarrett Graddick. The probability of
4 randomly selecting an unrelated individual
5 having a DNA profile matching this item is
6 approximately one in ninety-six thousand (1
7 in 96,000).

8 Q. Okay. Could you tell us what that
9 swab is from?

10 A. That was a swab from the trigger and
11 trigger guard of a Glock handgun.

12 Q. Okay.

13 A. Moving on, Item 6 did not contain
14 any DNA. That was a swab from the handle of
15 the Glock handgun.

16 Item 7.1 is a mixture of at least -- or
17 the DNA profile developed from Item 7.1 is a
18 mixture of at least two individuals. Kevin
19 Smalls, Keenan Coakley, Jarrett Graddick and
20 Brian Mazyck are excluded as possible
21 contributors to that mixture.

22 Q. Okay. Again, that was from what
23 type of evidence?

24 A. Item 7.1 is a plastic glove.

25 Q. Okay. If you will, explain what you

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1 mean by a mixture of two people but that the
2 other four were excluded.

3 A. Right The DNA profile is developed
4 from standards, the buccal swabs from the
5 cheek. There is only one person -- and you
6 only have two alleles at each location; you
7 could only have, because you get one from
8 your mother and one from your father.

9 We know sometimes that there is a
10 mixture, that multiple people have touched a
11 glove or multiple people touched the steering
12 wheel on a car. You'd get three, or more,
13 alleles at each of those locations. So you
14 know that more than one person has
15 contributed to that.

16 So whenever you have to go in and -- it
17 changes the way that you calculate the
18 statistics, number one. And you have to
19 compare those buccals to -- the buccal swab
20 controls -- to those mixtures.

21 That was Item 7.1

22 Item 7.2, I did not develop a profile
23 form Item 7.2

24 Q. What does that mean when you say 'I
25 did not develop a profile'?

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1 A. We may have gotten some DNA but it
2 was just too little to work with or it just
3 didn't generate enough data for us to compare
4 to the standard -- or to any data at all in
5 that example.

6 Item 8.1, also a swab from a plastic
7 glove, the DNA profile developed was a
8 mixture of at least two individuals. Keenan
9 Coakley could not be excluded as a possible
10 contributor to the mixture.

11 The probability of randomly selecting an
12 unrelated individual who could have
13 contributed to this mixture is approximately
14 one in eighty (one in 80).

15 Q. What does that mean?

16 A. That's to say -- that is how sure we
17 are that someone could or could not have
18 contributed to this mixture. When we compare
19 the buccal swabs, we have to measure how
20 confident that we are that that person could
21 or could not have contributed.

22 What a stat of one in eighty means is
23 that you were to go out into the general
24 population, go to the mall or go anywhere in
25 a city, and just recruit people and do this

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1 same testing, you would have to test
2 approximately -- you'd hypothesize that you
3 would have to test eighty people until you
4 found someone who could have contributed to
5 that mixture on Item 8.1 -- so that's -- in
6 our business, that is not a very strong stat.
7 We test so many locations that we get very,
8 very big stats usually. So this one is not
9 that confident. I'll show one later that we
10 super confident of.

11 Q. Okay. 8.2?

12 A. Item 8.2, no human DNA was detected
13 on Item 8.2, which was a swab from a plastic
14 glove.

15 Q. Okay. Then 9.1?

16 A. Item 9.1, the DNA profile is that it
17 was a mixture of at least three individuals.
18 So this had one more individual.

19 Jarrett Graddick cannot be excluded as
20 a possible contributor to this mixture.
21 The probability of randomly selecting an
22 unrelated individual who could have con-
23 tributed to this mixture is approximately
24 one in six (1 in 6). So that's a low stat.
25 One in six, that would be -- you know,

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1 several people in this courtroom probably
2 could have contributed to that one. That
3 was 9.1?

4 Q. Yes. And 9.2? Well, regarding 9.1,
5 Mr. Coakley, Mr. Mazyck and Mr. Smalls, were
6 they excluded?

7 A. They were excluded. Correct.

8 Q. Okay.

9 A. Item 9.2 is the mixture of at least
10 two individuals.

11 Jarrett Graddick cannot be excluded as a
12 possible contributor to this mixture.

13 The probability of randomly selecting an
14 unrelated individual who could have con-
15 tributed to this mixture is one in seventy-
16 six thousand (1 in 76,000).

17 Keenan Coakley, Kevin Smalls and Brian
18 Mazyck are excluded as possible contributors.

19 That was 9.2, one in seventy-six thousand
20 on that one.

21 Q. That also was a swab from a plastic
22 glove?

23 A. Yes.

24 Q. 10.1?

25 A. That was also a mixture of at least

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1 two individuals.

2 Keenan Coakley cannot be excluded as a
3 possible contributor to this mixture.

4 The probability of randomly selecting an
5 unrelated individual who could have
6 contributed to this mixture is approximately
7 one in twenty (1 in 20).

8 Kevin Smalls, Jarrett Graddick and Brian
9 Mazyck are excluded as possible contributors
10 to 10.1 and ---

11 Q. Okay.

12 A. Okay.

13 Q. Then 10.2, that was a swab from
14 what?

15 A. A plastic glove also.

16 Q. Would you tell the jury your
17 findings on that one?

18 A. The DNA profile developed from Item
19 10.2 matches the DNA profile of Keenan
20 Coakley. The probability of randomly
21 selecting an unrelated individual having a
22 DNA profile matching this item is
23 approximately one in two hundred and forty
24 quadrillion (1 in 240,000,000,000,000,000). So
25 that's a much better stat. That one you can

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1 be very confident in.

2 Q. Okay. And 11.1?

3 A. Item 11.1, the partial DNA profile
4 developed from Item 11.1 is insufficient for
5 reliable interpretation.

6 Q. What does that mean?

7 A. That means it generated a few
8 alleles, it generated a few spots as far as
9 the data goes but it just -- there wasn't
10 enough that you could be confident in any
11 kind of measurement. You don't want to --
12 you don't want to try to make measurement on
13 too small a data. It gets messy, it doesn't
14 work well.

15 Q. Okay, that was 11.1. And 11.2?

16 A. The DNA profile developed from
17 Item 11.2 is a mixture of at least two
18 individuals.

19 No conclusive statement can be made as to
20 the inclusion or exclusion of Keenan Coakley
21 as a possible contributor to this item.

22 Kevin Smalls, Jarrett Graddick and Brian
23 Mazyck are excluded as possible contributors.

24 Q. Explain to the jury, if you would,
25 how three people can be excluded and one

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1 person there can be no conclusive results.

2 A. The way that you are excluded on a
3 mixture is -- when your alleles specifically
4 don't compare at a location where there is
5 full representation. So if we have a
6 location that has everything that we are
7 looking for as far as this mixture goes, we
8 think we know how people were there, we think
9 we can tell -- that you've got everyone who
10 was going to contribute, at that location.
11 If your alleles aren't present, then you are
12 excluded. Let's say that you have a thirty-
13 one (31) and there is no thirty-one at this
14 location -- it's got twenty-five, twenty-six,
15 twenty-seven, twenty-eight, -- that means
16 that you're excluded. You did not contribute
17 to the mixture.

18 But "no conclusive statement", which is
19 also in this result, means that at some
20 places you were there, at some places you
21 weren't and we can't put any weight behind it
22 and we can't measure it, so I -- you're
23 unwilling to commit to someone being excluded
24 or not at that point.

25 Q. Okay. And -- then Item 12.1, being

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1 a swab from a plastic glove?

2 A. Item 12.1 is a mixture of at least
3 two individuals.

4 Keenan Coakley cannot be excluded as a
5 possible contributor to this mixture.

6 The probability of randomly selecting an
7 unrelated individual who could have
8 contributed to this mixture is approximately
9 one in two hundred eighty (1 in 280).

10 No conclusive statement can be made as
11 to the inclusion or exclusion of Jarrett
12 Graddick as a possible contributor to this
13 mixture.

14 Kevin Smalls and Brian Mazyck are
15 excluded as possible contributors.

16 Q. Item 12.2, being a swab from a
17 plastic glove?

18 A. Is a mixture of at least three
19 individuals.

20 Keenan Coakley cannot be excluded as a
21 possible contributor to this mixture.

22 The probability of randomly selecting an
23 unrelated individual who could have
24 contributed to this mixture is approximately
25 one in two (1 in 2).

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1 No conclusive statement can be made as to
2 the inclusion or exclusion of Jarrett
3 Graddick as a possible contributor.

4 Kevin Smalls and Brian Mazyck are
5 excluded.

6 SOLICITOR SHEALY: I beg the Court's
7 indulgence just a moment.

8 THE COURT: Yes, ma'am.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR FERGUSON:

11 Q. We are now on 13.1 -- tell us first,
12 if you would, where that swab came from.

13 A. Item 13.1 is a swab from a t-shirt.

14 Q. What were the results of that.

15 A. The DNA profile developed from Item
16 13.1 is a mixture of at least two
17 individuals.

18 Keenan Coakley cannot be excluded as a
19 possible contributor to this mixture.

20 The probability of randomly selecting an
21 unrelated individual who could have
22 contributed to this mixture is approximately
23 one in ninety (1 in 90).

24 Kevin Smalls, Jarrett Graddick and Brian
25 Mazyck are excluded as possible contributors.

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1 Q. So not Graddick, not Smalls and not
2 Mazyck but Coakley cannot be excluded?

3 A. Correct.

4 Q. Okay. Now tell us about Item 14.1,
5 a swab from a t-shirt.

6 A. The DNA profile developed from Item
7 14.1 is a mixture of at least two
8 individuals. The DNA profile of the major
9 contributor to this mixtures matches the
10 profile of Jarrett Graddick.

11 The probability of randomly selecting an
12 unrelated individual having a DNA profile
13 matching the major contributor to this item
14 is one in one hundred and ninety quadrillion
15 (1 in 1990,000,0000,000,000,000).

16 Kevin Smalls, Keenan Coakley and Brian
17 Mazyck are excluded as possible minor
18 contributors to this mixture.

19 Q. Okay. Then that's the conclusion of
20 the first set of items that you analyzed; is
21 that correct

22 A. Yeah. Yes.

23 Q. After analyzing them, do you then
24 memorialize it into a report?

25 A. (No verbal response).

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1 Q. That we talked about earlier?

2 A. Yes.

3 Q. And that has your conclusion and a
4 list of the items that you'd received?

5 A. Correct.

6 Q. Could you give us the date of your
7 next analysis?

8 A. It was May 31st of 2013. That's the
9 report date of the supplemental report.

10 Q. Okay. If you would, please, go over
11 what your analyses included that day.

12 A. Five more items were submitted for
13 analysis. They were swabs from a black
14 shirt, a swab from a blue shirt, a swab from
15 black knit pants with a belt -- or pants, no
16 knit. Excuse me. Pants with a belt. Swabs
17 from the plastic gloves from the sleeves of
18 the blue shirt. That's 18.1 and 19.1, same
19 description, both swabs from plastic gloves.

20 Q. Okay. If you would, go over item by
21 item what your conclusions were that day.

22 A. Item 15.1 is a swab from a black
23 shirt. The DNA profile developed from Item
24 15.1 is a mixture of at least two
25 individuals.

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1 The DNA profile of the major contributor
2 to this mixture matches the profile of
3 Jarrett Graddick.

4 The probability of randomly selecting an
5 unrelated individual having a DNA profile
6 matching the major contributor to this item
7 is approximately one in four point four
8 quintillion (1 in 4,400,000,000,000,000,-
9 000,000).

10 Brian Mazyck, Keenan Coakley and Kevin
11 Smalls are excluded as possible contributors
12 to this mixture.

13 Q. Okay.

14 A. Item ---

15 Q. The terminology that you used for
16 the shirt is that it was a match as to
17 Graddick? Given that percentage.

18 A. To the major contributor. Sometimes
19 in a mixture if one person -- if one person
20 contributes much more DNA than another, then
21 -- let's say that someone contributes ten
22 times the amount of DNA of the other, it
23 stands out on our data and you can pick out
24 who that major contributor is.

25 In this case, Item 15.1 was that way.

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1 Q. Item 16.1?

2 A. That is a swab from a blue shirt.

3 The DNA profile developed from Item 16.1 is
4 a mixture of at least three individuals.

5 Jarrett Graddick cannot be excluded as a
6 possible contributor to this mixture.

7 The probability of randomly selecting an
8 unrelated individual who could have
9 contributed to this mixture is approximately
10 one in a hundred and sixty thousand (1 in
11 160,000).

12 No conclusive statement can be made as to
13 the inclusion or exclusive of Kevin Smalls as
14 a possible contributor to this mixture.

15 Keenan Coakley and Brian Mazyck are
16 excluded as possible contributor.

17 Q. Item 17.1? That is a swab from the
18 black pants with belt.

19 A. The DNA profile developed from 17.1
20 is a mixture of at least three individuals.

21 Jarrett Graddick cannot be excluded as a
22 possible contributor to this mixture.

23 The probability of randomly selecting
24 an unrelated individual who could have
25 contributed to this mixture is one in twelve

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1 (1 in 12).

2 Kevin Smalls, Keenan Coakley and Brian
3 Mazyck are excluded as possible contributors.

4 Q. And 18.1? A swab from the plastic
5 glove found in the left sleeve of a blue
6 shirt and black shirt.

7 A. The profile developed from Item 18.1
8 is a mixture of at least two individuals.

9 Jarrett Graddick cannot be excluded as a
10 possible contributor to this mixture.

11 The probability of randomly selecting an
12 unrelated individual who could have
13 contributed to this mixture is approximately
14 one in twelve hundred (1 in 1,200).

15 Kevin Smalls, Keenan Coakley and Brian
16 Mazyck are excluded.

17 Q. 19.1?

18 A. The DNA profile developed from Item
19 19.1 is a mixture of at least three
20 individuals.

21 Jarrett Graddick cannot be excluded as a
22 possible contributor to this mixture.

23 The probability of randomly selecting an
24 unrelated individual who could contributed to
25 this mixture is approximately one in two

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1 hundred and twenty thousand (1 in 220,000).

2 Kevin Smalls, Keenan Coakley and Brian
3 Mazyck are excluded as possible contributors.

4 Q. And, if you could, again for the
5 jury, define what the term "match" means?

6 A. A match is when at a certain
7 position your alleles, what you got from your
8 mother and father matches what was on the
9 evidence, vice-versa.

10 Our reports have just numbers in them.
11 It is just a table of numbers. If your
12 numbers match what is on the evidence, then
13 you were a match. That can be at every
14 position and you'd get a big stat, like that
15 two hundred and sixty quadrillion or whatever
16 stat that I mentioned. If you match at every
17 position you will get a massive stat like
18 that. The less positions you match at, the
19 stat decreases with each position. Each one
20 is an individual test.

21 So if you match at every position, you
22 get a huge stat. If you don't match at every
23 position you get a small stat or you are
24 excluded.

25 Q. That table that you were talking

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1 about, is that included in your report?

2 A. It is, on both.

3 Q. I'm going to ask you regarding your
4 report dated January 22nd, is this an accurate
5 copy of that report?

6 A. (Upon review), yes, it is.

7 SOLICITOR SHEALY: Your Honor, I would
8 offer it into evidence at this time.

9 THE COURT: What is the exhibit number?

10 SOLICITOR SHEALY: I have not marked
11 this one.

12 COURT REPORTER: State's Exhibit 111.

13 SOLICITOR SHEALY: I believe without
14 objection.

15 ANDREW GRIMES: No objection, Your
16 Honor.

17 WILLIAM RUNYON: No objection, Your
18 Honor.

19 JIM SMILEY: No objection.

20 THE COURT: Without objection, State's
21 Exhibit 111 is admitted.

22 (SO ENTERED AS STATE'S EXHIBIT 111)

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR SHEALY:

25 Q. Then also I show you this and ask if

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1 that is an accurate copy of your report?

2 That was dated, what?

3 A. May 31st. Yes, it is.

4 SOLICITOR SHEALY: And, Your Honor, if I
5 could offer this as State's Exhibit 112.

6 COURT REPORTER: State's Exhibit 110.

7 SOLICITOR SHEALY: Okay, 110.

8 COURT REPORTER: We are backing up to
9 use the numbers that were skipping during the
10 premarking of exhibits.

11 SOLICITOR SHEALY: Right.

12 THE COURT: State's Exhibit 110 is
13 admitted without objection.

14 (SO ENTERED AS STATE'S EXHIBIT 110)

15 SOLICITOR SHEALY: Beg the Court's
16 indulgence just a moment.

17 THE COURT: All right.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR SHEALY:

20 Q. And you -- thank you, Mr. Meeh. I
21 have no further questions.

22 A. You're welcome.

23 SOLICITOR SHEALY: No further questions.
24 Please answer any questions that the defense
25 counsel has.

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1 THE COURT: You may cross examine, Mr.
2 Grimes?

3 ANDREW GRIMES: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. GRIMES:

6 Q. Good afternoon, Mr. Meeh.

7 A. Good afternoon.

8 Q. Bear with me a little bit. I am
9 sure that you will correct me if I am wrong
10 on something. Now, I believe that you stated
11 earlier that only identical twins have the
12 same DNA.

13 A. Correct.

14 Q. That is true when a hundred percent
15 of the DNA is analyzed. Correct?

16 I don't believe that be true for twins,
17 no. There are small areas that have single
18 nuclei repeats that would randomly change and
19 I think that there would small differences
20 even in twins. The way that we test, it
21 wouldn't be different.

22 Q. All right. In a forensics situation
23 that we have here, I think that it is SLED's
24 protocol that they analyze fifteen loci. Is
25 that correct?

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1 A. Correct.

2 Q. And that fifteen represent less than
3 one percent of cellular DNA; correct?

4 A. Much less than one percent. It's
5 tiny, the amount that we test.

6 Q. And I want to ask you a couple of
7 things about maybe the underlying science or
8 maybe the background for that. There are two
9 subspecialties that are incorporated for
10 forensic analysis for DNA, correct?

11 A. Correct.

12 Q. There are molecular genetics and
13 population genetics?

14 A. Correct.

15 Q. Molecular genetics incorporates the
16 actual laboratory work leading to the
17 generation of the DNA profile?

18 A. Correct.

19 Q. And once there is the so-called
20 match between a suspect's profile and the DNA
21 that is collected, you have to do a
22 statistical analysis as to how many people in
23 the world match that evidentiary material?

24 A. Correct.

25 Q. And the need for population genetics

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1 analyze a hundred percent of the DNA?

2 A. (No verbal response).

3 Q. Because you can never be a hundred
4 percent certain that that a particular
5 individual matches the individual sample.

6 A. Correct.

7 Q. And the DNA technology used in this
8 case is called polymer-based chain reaction?

9 A. Not exactly. Polymerized-based
10 chain reaction is the underlying science
11 behind what we do, but this testing is called
12 STR testing, short tandem repeat testing.

13 Q. Okay. Help me on that a little
14 bit. Is that kind of where you take copies
15 and keep repeating ---

16 A. Yes, that's the amplification. What
17 you refer to polymerase chain reactions,
18 that's the amplification. So you can't see,
19 you can't visualize DNA, you can't measure it
20 unless you amplify it.

21 Q. And that's very sensitive technology
22 that allows DNA testing, just a few cells;
23 isn't it?

24 A. Correct, it's very sensitive.

25 Q. And obviously because of the

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1 sensitivity, you wear gloves when you're
2 working in the laboratory?

3 A. Correct.

4

5 Q. Because you don't want to leave your
6 DNA on the sample?

7 A. That's correct.

8 Q. And you don't want to transfer
9 someone else's samples?

10 A. Absolutely.

11 Q. How often do you change gloves while
12 you are working on ---

13 A. Very frequently. As best we can, we
14 maintain an antiseptic technician. I mean,
15 we try to keep everything clean. I mean, we
16 try to make sure that there is separation
17 between cases, clean in between each case and
18 we have to document that we cleaned in
19 between each case. So very often.

20 Q. That's because the DNA technology
21 that you use in testing could incorporate
22 any DNA testing that was -- or any DNA that
23 was left over, or was in the area?

24 A. It could.

25 Q. I want to ask you about mixed

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1 samples. Mixed samples is when you find DNA
2 profiles of more than one person on a
3 particular sample?

4 A. Correct.

5 Q. For example, the pointer that you
6 talked about, you -- if every witness used
7 it, there might be more than one DNA sample
8 on there?

9 A. Correct.

10 Q. From that, you couldn't tell who
11 touched it first or who touched it last.

12 A. No. That's correct.

13 Q. Or how long they touched it for?

14 A. Correct.

15 Q. In this case you found -- there were
16 several DNA samples that had mixed samples;
17 correct?

18 A. Correct. Yeah, there were many.

19 Q. And the DNA results in this case do
20 not indicate the order in which DNA was
21 placed on the sample, does it?

22 A. Correct.

23 Q. They don't indicate who last wore a
24 shirt, for example?

25 A. That's correct.

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1 Q. I want to ask you about Item 15.1,
2 the black shirt?

3 A. A DNA mixture was found on that
4 item, correct?

5 A. Correct.

6 Q. And the DNA sample doesn't indicate
7 that Mr. Graddick wore or touched that shirt,
8 does it?

9 A. (No verbal response).

10 Q. Excuse me. Does it indicate when
11 Mr. Graddick touched or wore that shirt?

12 A. Yeah, no. There is no way that it
13 could ever tell me when someone did some-
14 thing. Right.

15 Q. Same for Item 16.1?

16 A. Correct. It was a mixture. I also
17 couldn't tell at what time it would have been
18 worn by anyone.

19 Q. Okay. Now, I want to ask you, in
20 addition to the buccal swabs that you
21 collect, SLED keeps a data base of DNA;
22 doesn't it?

23 A. Yes.

24 Q. That's what they call CODIS?

25 A. Correct.

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1 Q. So it's not unusual if you have a
2 sexual assault case, an unknown suspect, if
3 you get a DNA sample from the suspect, you
4 can run it through CODIS and find out who the
5 person was, if they are in the system; right?

6 A. Right.

7 Q. Do you know if any of the DNA that
8 was run here match anybody? Was it ran
9 through CODIS?

10 A. No, it wouldn't have been. I would
11 have been the person to put it into CODIS.

12 Q. Some of these questions -- give me a
13 couple of minutes here, that may save some
14 time.

15 A. I can extrapolate on my last answer,
16 too, if you don't mind, while you are doing
17 that.

18 Q. Sir?

19 A. I can go further on my last answer.
20 I was thinking why nothing was put into
21 CODIS. We have limitations on what we can
22 and can't put in. It has to be directly
23 attributable to the crime. It has to be
24 directly attributable to a suspect. So, say
25 a subject broke into your house and left a t-

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1 shirt there and you could definitively say
2 that wasn't your shirt, then -- and law
3 enforcement gathered it from there, that
4 could go into CODIS. But certain things
5 can't go into there. We have limitation on
6 what we can and can't put it. So that's
7 probably ---

8 Q. Now, I want to ask you a little bit
9 about population genetics for a minute. You
10 said that it indicated on Item 9.1 --

11 A. Sir? What was that number, please?

12 Q. Item 9.1, one in six individuals.

13 A. Yeah.

14 Q. That could amount to tens of
15 thousand of people in South Carolina;
16 correct?

17 A. Yeah. That's not a strong stat at
18 all.

19 Q. Now, I asked you a little about the
20 gun, the trigger and trigger guard. I think
21 that is Item 5.

22 A. Yes.

23 Q. That contained a mixed DNA sample,
24 correct?

25 A. Item 5?

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1 Q. Yes.

2 A. (Upon review), it's a partial DNA
3 profile but not a mixture.

4 Q. So an example, when you talked about
5 Item 14.1 you used DNA profile of Item 5 --
6 it was a partial DNA profile. What is the
7 difference between that and ---

8 A. Between a partial and a mixture?

9 Q. (Affirmative nod).

10 A. A partial is when there is just not
11 that much DNA there and you missed some of
12 the spots that you're testing, because some
13 of the spots are larger -- that is one thing
14 that happens. Some of the places that we
15 test are larger than others. So they will be
16 longer. It's more difficult to get them
17 resolved just because they are larger. You
18 know, when the DNA degrades from nature, sun
19 and weather, the bigger ones go first. So a
20 lot of times what we will see is that the
21 smaller ones at the beginning of this
22 positions will test. That's where we get our
23 stat from.

24 We actually have a new technology now.
25 It's called mini fiber. It's a smaller one.

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1 It's a system based on amplification, so we
2 can test things that are degraded. This case
3 would probably have benefitted from that.

4 Q. So if something is out in the sun
5 and weather it's possible that it could
6 degrade?

7 A. That's right.

8 Q. And if it was found in the car,
9 found by the police right, you wouldn't have
10 had any degradation, probably?

11 A. Well, yeah, but it depends on how
12 they stored it too. It depends on what the
13 conditions were in the car. Was it summer?
14 How long had it been in the car? All those
15 factors. Humidity. So everything you can
16 imagine degrades DNA. Nothing is really good
17 for it once it is on something.

18 Q. All right. Not like a park where it
19 may stay out there for billions of years;
20 right?

21 A. Well, no. You know, that's funny.
22 We just got DNA from a scientific community,
23 got DNA from three hundred thousand year old
24 people.

25 Q. Okay. So under the right

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1 circumstances, DNA could be hundreds of
2 thousands of years old?

3 A. It can be.

4 Q. Since DNA on the gun is consistent
5 with Mr. Graddick, it seemed like less than
6 half the loci analyzed in this case. Right?

7 A. Yeah, that's the drop that I was
8 talking about. As you can see in the table,
9 for item five a statistic would have to be
10 generated just for the ones reported there.

11 Q. That's why it's called a partial
12 profile?

13 A. Correct. That's also why that
14 number is less. You can see the statistic on
15 that one, for item five, is one in ninety-six
16 thousand (1 in 96,000) as opposed to the one
17 in one hundred ninety quadrillion for the
18 others.

19 Q. Let me ask you a couple of other
20 questions. Just because you touch something,
21 that doesn't mean that you always leave your
22 DNA on it; correct?

23 A. Yeah. You don't have to leave DNA.

24 Q. So in your expert opinion, if
25 someone held the gun to someone and said "Go,

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1 Go, Go!", would you expect to find their DNA
2 on the gun?

3 A. It's possible. You know, it's
4 really hit and miss with touch DNA. What you
5 find is that some people really shed their
6 DNA, they put it onto everything and you can
7 find it very easily. Some people just don't
8 seem to shed at all. You can test their
9 clothing, you can test their steering wheel
10 in their car and it's like they never touched
11 it. It's amazing. Touch DNA is very finicky
12 about these things.

13 Q. And in your experience, say someone
14 is in a car and they always ride around with
15 someone who gives rides to them, they go and
16 see girls and they leave clothes in there,
17 could it leave touch DNA on their clothes.

18 A. Yes, certainly.

19 Q. Just laying there?

20 A. Yeah.

21 Q. Even though they never wore the
22 clothes?

23 A. It's possible. The places that we
24 test, we try to avoid some of that with the
25 scraping of the neck band or the armpits or

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1 something that would hopefully rub on the
2 person's skin more of the person who was
3 wearing it.

4 But, frankly, almost all clothing that I
5 have ever done is a mixture, at least. I've
6 never done -- even my own clothing when I was
7 doing training. I don't let anyone borrow my
8 clothing but it was a mixture. So -- I don't
9 know. But I'd be the major, usually.

10 Q. Now, you didn't find any DNA on the
11 Glock handle, did you?

12 A. That was Item 6?

13 Q. I believe so.

14 A. That's correct, I did not.

15 Q. And if someone -- never mind, I
16 think that you have already answered that
17 question. You don't know if Mr. Graddick
18 used a gun during that robbery or not, do
19 you?

20 A. No.

21 Q. There is no way that DNA could tell
22 you that?

23 A. It could not.

24 Q. And it can't tell you anything about
25 the circumstances of how his DNA got on the

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1 gun, can it?

2 A. It could not.

3 ANDREW GRIMES: May I have a moment,
4 Your Honor?

5 THE COURT: Yes.

6 ANDREW GRIMES: Thank you, (sidebar
7 with Mr. Kowelski). Thank you, Mr. Meeh.

8 THE COURT: Cross examine, Mr. Runyon.

9 CROSS EXAMINATION

10 BY WILLIAM RUNYON:

11 Q. Good afternoon, sir.

12 A. Good afternoon.

13 Q. I am going to try not to be too
14 redundant of my friend, Mr. Grimes. I hope
15 that my questions are not too simplistic.
16 Fifty-three years ago I spent three torturous
17 semesters to get two credits in -- semester
18 credits for freshman biology.

19 A. I understand completely.

20 Q. Okay?

21 A. Yeah.

22 Q. Now, as I understand your testimony,
23 you're just testifying there were some items
24 that you tested where Keenan Coakley could
25 not be excluded as having contributed or come

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1 into contact with that item?

2 A. That's a fair assessment. Some he
3 came into contact with, yes.

4 Q. I am dumbing it down for me.

5 A. Okay.

6 Q. If I make it too dumb, you correct
7 me?

8 A. Sure.

9 Q. Now, -- as you told Mr. Grimes, you
10 can't say when someone touched?

11 A. Correct, I could never say when.

12 Q. But someone was obviously -- strike
13 that. One of the nightmares for you to test
14 DNA would be if someone -- if someone took a
15 family's dirty clothes hamper and said, 'Test
16 the DNA on these clothes.' You would get all
17 sorts of mixtures, wouldn't you?

18 A. You would.

19 Q. Possibly?

20 A. Yes.

21 Q. Depending on how they shed? Some
22 members of the family shed, some members of
23 the family don't. Things of that sort.

24 A. Correct.

25 Q. And then we can -- when you start

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1 comparing it to the buccal swab is when you
2 start trying to get it narrowed down.

3 A. Correct.

4 Q. As it relates to those items that
5 you excluded, say Keenan Coakley in this
6 case, that doesn't necessarily mean that he
7 did not come in contact with those items;
8 isn't that correct?

9 A. It doesn't mean that, no.

10 Q. It just means that there is no DNA
11 there.

12 A. It just means of the DNA tested --
13 it could mean that -- it could mean that
14 there was no DNA there or it could mean that
15 of the DNA that was tested that he didn't
16 submit any of that for that item.

17 Q. And as it relates to Item -- and you
18 said that you can't tell when it was placed
19 on the, say the shirt or the belt or
20 whatever, ---

21 A. Correct.

22 Q. And, so, uh, -- now, I was
23 interested in the fact that some of these
24 items that you tested, some of these samples
25 that you tested, showed multiple

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1 contributors. Is that correct, sir?

2 A. Yes, sir.

3 Q. Of those multiple contributors, of
4 course if you didn't have a buccal swab, you
5 couldn't identify them.

6 A. That's right. That's how you
7 identify them is using that standard.

8 Q. So on the items that had multiple
9 contributors without buccal swabs, is there
10 any way -- strike that. Again, you've got to
11 bear with me.

12 A. Take your time.

13 Q. I am not as erudite as my friend,
14 Mr. Grimes. As it relates to multiple
15 contributors, that likewise doesn't mean --
16 that likewise doesn't indicate when those
17 contributors made that contribution to that
18 item?

19 A. Right. I could never tell when
20 anyone contributed DNA to an item.

21 Q. Could you go back and review your
22 report, sir?

23 A. Which one?

24 Q. The two reports.

25 A. Yes, sir?

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1 Q. Tell me how many items there were
2 that had multiple contributors in this case?

3 A. Oh, gosh. I'm going to go to the
4 table to count them, (reviewing). On the
5 first report, dated January 22nd, that one
6 appears to have ten items of multiple
7 contributors. On the second report, it
8 appears to have five. I would approximate
9 fifteen, total.

10 Q. So you have fifteen multiple
11 contributors who -- for which we don't know
12 who they are? Or you didn't have a sample, a
13 buccal swab?

14 A. Correct.

15 WILLIAM RUNYON: No further questions,
16 Your Honor.

17 THE COURT: Mr. Smiley?

18 JIM SMILEY: Very quickly.

19 CROSS EXAMINATION

20 BY JIM SMILEY:

21 Q. You talk about your probabilities,
22 you say that's a good match, then what number
23 does it move to where you think that it is a
24 match?

25 A. Yeah, you -- that's a good question.

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1 You feel more confident the higher it gets,
2 obviously. So you start to feel -- I mean,
3 one in two, one in six, that is not very
4 good. You can't put a lot of weight on that.
5 Uh, one in twelve, again, it is not that
6 good. But when you get to one in a hundred,
7 if you think about what that means, that
8 eliminates ninety-nine percent of the people.
9 So you start to feel pretty good then.

10 You get one to one thousand, that
11 eliminates ninety-nine point nine percent and
12 you start to feel really good.

13 If you have one of those quadrillion,
14 quintillion, you are extremely confident at
15 that point. No worries at all.

16 Q. But you concede that it is a
17 probability?

18 A. Correct.

19 Q. Let's use one in a thousand and you
20 say that there is one in a thousand chances
21 -- I'm sorry. I am Jim Smiley and I
22 represent Kevin Smalls.

23 A. Good to meet you.

24 Q. Just want to be sure that you know
25 who I am talking about.

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1 A. Yes, sir.

2 Q. But when you get one in a thousand,
3 that doesn't mean that it is that person.
4 Even when you've got a nine hundred and
5 ninety-nine point nine percent chance, it
6 could be somebody ---

7 A. It never means that it is that
8 person, correct.

9 Q. You are only looking at fifteen
10 places on the DNA, right?

11 A. Yeah, and that's not exactly what
12 limits it. What you can't tell is,
13 especially with a partial profile or
14 something, what you're saying in the stat is
15 that if you were to go out in the population
16 and just select random people, it would take
17 you approximately a thousand. What you don't
18 know is if you've got -- you could select
19 them first, you could select them second.
20 It could be at any one of those positions of
21 a thousand. It's just an approximation of
22 how sure you are.

23 Q. Okay. DNA, by its very nature, is
24 the excluder; right?

25 A. Right, it's strong in both

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1 directions. Yeah.

2 Q. I guess what I'm saying about that
3 -- you exclude an individual, you've saying
4 that it isn't him, definitely?

5 A. Yes, it's very strong in that
6 regard. It's very strong in that regard,
7 yes.

8 Q. Okay. We will leave it at that one.
9 As to Kevin Smalls, only, it comes back and
10 says that he is a possible. I don't know if
11 -- let me correct myself.

12 In your second report, I believe that it
13 is Item 16.1, ---

14 A. That was that no conclusive
15 statement would be made as to the inclusion
16 or exclusion. That's even weaker than a weak
17 stat. That's not even a one in two. That
18 means as you go position by position that it
19 is a mixture and that there is nothing there
20 that definitely says 'no, it is not him.'
21 But -- you can't -- you couldn't ever make a
22 measurement, so you couldn't put any weight
23 behind that statement, to say that he
24 wouldn't be included.

25 Q. So at the end of the scale, we've

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1 got Excluded.

2 A. Right.

3 Q. And I think the biggest number that
4 you got in this one is quintrillion or
5 quintillion or ---

6 A. Right.

7 Q. A really big number, that's like the
8 most positive that you can get.

9 A. Right.

10 Q. Well, the -- let me choose the right
11 words here. The "not conclusive" is right
12 next to the "excluded".

13 A. It really is. Right.

14 Q. And, so, -- all right. By the way,
15 you did a great job. I understood DNA today.

16 A. Thank you. Excuse my voice. I've
17 been sick.

18 Q. I've been so lost in DNA before, so
19 I really do appreciate it.

20 JIM SMILEY: Your Honor, that's all that
21 I have got.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY SOLICITOR SHEALY:

25 Q. There were questions asked of you,

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1 Mr. Meeh, about multiple contributors.

2 A. (Affirmative nod).

3 Q. Could you tell the jury whether or
4 not it is unusual to find multiple
5 contributors on items of evidence?

6 A. It is not at all unusual to find
7 multiple contributors. Items of clothing are
8 almost always multiple contributors. I don't
9 know why.

10 SOLICITOR SHEALY: Thank you, Your
11 Honor. I have no further questions.

12 THE COURT: Recross?

13 ANDREW GRIMES: No questions, Your
14 Honor.

15 THE COURT: Recross?

16 WILLIAM RUNYON: No questions.

17 THE COURT: Recross?

18 JIM SMILEY: No, sir.

19 THE COURT: Mr. Meeh, thank you very
20 much. You may step down.

21 (WITNESS STEPS DOWN)

22 THE COURT: Is there any objection to
23 this witness being excused?

24 SOLICITOR SHEALY: No objection.

25 ANDREW GRIMES: No, sir.

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1 WILLIAM RUNYON: No objection, Your
2 Honor.

3 JIM SMILEY: No objection.

4 THE COURT: Hearing none, you are also
5 free to leave, sir.

6 THE COURT: Any additional witnesses?

7 SOLICITOR SHEALY: No, sir, Your Honor.
8 At this time the State rests.

9 THE COURT: Very well. There are
10 matters of law now that I have to take up out
11 of your presence. It's good timing for us to
12 take a break.

13 I will let you go to your jury room.
14 Please do not begin your deliberations. Do
15 not discuss the case among yourselves. We
16 will be with you as quickly as possible.
17 Thank you.

18 (JURY OUT @ 3:45 P.M.)

19 THE COURT: Any Motions from the State
20 at this point?

21 SOLICITOR SHEALY: No, Your Honor.

22 THE COURT: Mr. Grimes?

23 ANDREW GRIMES: Thank you, Your Honor.
24 On behalf of Jarrett Graddick we respectfully
25 move for a directed verdict. I believe that

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1 the evidence is sufficient to establish that
2 he was involved in the robbery. The State
3 has a circumstantial case and there is no
4 evidence that there was an actual armed
5 robbery, because Mr. Blain and Ms. Harlee
6 were outside the store at the time and the
7 robbery wasn't necessarily viewed. The
8 property wasn't under immediate control, so
9 therefore it would be more larceny than armed
10 robbery. Thank you, Your Honor.

11 THE COURT: Considering the evidence in
12 the light most favorable to the State, there
13 is substantial circumstantial evidence to
14 suggest his involvement. The fact that they
15 were not in the store, that they had ran for
16 their safety, which probably makes it more
17 one of the strongest things, that they were
18 in fear. They did a prudent and practical
19 thing, went and called the police. They
20 protected themselves and said, 'take it.'
21 They proceeded to take it. So I disagree
22 with you wholeheartedly that all the evidence
23 does not reflect an armed robbery. But,
24 thank you. Mr. Runyon?

25 WILLIAM RUNYON: Your Honor, I would

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1 more for a directed verdict at this point on
2 behalf of Keenan Coakley. I move for that on
3 the grounds that at this point in time -- and
4 I realize that there was testimony of Mr.
5 Mazyck that Mr. Coakley came out of the
6 woods, that that is circumstantial. But at
7 this point in time we don't think that the
8 circumstantial evidence rises to the level
9 that requires the court to place the burden
10 on the jury. We'd ask the Court to direct a
11 verdict of not guilty.

12 Prior to the Court ruling on that,
13 anticipating the Court's ruling, I -- and I
14 don't mean to be pessimistic about that, but
15 at this point in time I'd renew my Motion for
16 a mistrial, Judge, based on the statements
17 previously discussed on the record. I would
18 suggest to the Court that, yes, it could be
19 harmless error with one statement. But the
20 State proceeded to elicit the statement from
21 their witness, on more than one occasion. So
22 therefore, we would respectfully renewed our
23 Motion for mistrial on the grounds previously
24 stated on the record, Judge.

25 THE COURT: Again, I want -- because

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1 you have stated something that we were in
2 agreement on, we disagreed on what I said we
3 were to do. But we were in agreement that it
4 was so remote that it may be, I think you
5 said, succumbed by all the other evidence --
6 or something to that effect, that is would be
7 lost in the shuffle, so to speak.

8 I would be happy to -- I don't believe
9 that it is error, but out of an abundance of
10 caution, if persist in it being in error, I
11 will be delighted to give, over your
12 objection, an instruction that they are to
13 disregard that in its entirety. There's a
14 case that has been cited over and over again
15 and the Court has said that if there is
16 error, the Court by giving that instruction
17 believes the jury will follow that
18 instruction to the T. I will be delighted to
19 do that, if that's what you wish me to do.

20 WILLIAM RUNYON: Judge, you know I'm
21 not going to ask you to do that.

22 THE COURT: I understand. Thank you,
23 sir. In fact, I don't think you want me to
24 do that.

25 WILLIAM RUNYON: You're absolutely

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1 right, Judge.

2 THE COURT: The State's position is
3 still the same? I don't think it's error,
4 frankly.

5 SOLICITOR SHEALY: I don't either, Your
6 Honor. We are not asking for a curative.

7 THE COURT: Thank you very much. I do
8 respectfully deny your Motion. Obviously --
9 the obvious thing is, of course, the
10 involvement of everybody being present, the
11 stop with all the items being found, all ties
12 in with the timing of everything.. It's
13 substantial circumstantial evidence. I
14 respectfully deny your Motion as to those
15 two, because they were the ones in the back
16 seat moving around and doing things --
17 allegedly.

18 JIM SMILEY: Your Honor, on behalf of
19 Mr. Smalls, I also would move for a directed
20 verdict, Your Honor.

21 Looking at the evidence in the light most
22 favorable to the State, they are relying on
23 the hand of one is the hand of all to
24 establish that my client's involvement; which
25 shows that they had to present some evidence

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1 of a preplan or that they were acting in
2 concert, Your Honor. I don't believe that
3 there has been any direct evidence, at all,
4 as to a preplan or acting in concert. We have
5 mere presence, at the most. I think that --
6 I don't have the case law but I think that it
7 must rise above mere presence to get to the
8 jury.

9 My client, from the facts presented, may
10 be guilty of another crime but I don't
11 believe that it rises to armed robbery in
12 this case even when looking at it in the
13 light most favorable to the State.
14 Therefore, I would make a Motion for a
15 directed verdict on those basis.

16 While standing, I will renew the
17 objection that I made -- I am not going to go
18 back into the details ---

19 THE COURT: About the juror?

20 JIM SMILEY: Yes, sir. That's all that
21 I have.

22 THE COURT: And the Court continues --
23 the alternate, I think is proper under the
24 law as we have it and I am not concerned.

25 Without the testimony of Mr. Mazyck, we

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1 probably have enough. But Mr. Mazyck's
2 testimony is quite interesting, because he
3 provided additional circumstantial evidence
4 from which the jury could infer.

5 Let me state that I found it extremely
6 unusual. His presence there was to shop,
7 allegedly. Then he was sitting there and he
8 said that he was scooted down in the seat. I
9 think that this was after the visit to
10 McDonald's. The visit to McDonald's is
11 something that I find extremely interesting.
12 As I recall Mr. Mazyck, the conversation, and
13 you can correct me, but I thought that he
14 attributed it to what was going on -- the
15 texting by Kevin Smalls about what the plans
16 were for the evening. Something about
17 getting some alcohol and that's why they went
18 to the store, to get something for the
19 evening. That's interesting because if you
20 take his testimony, he went and ordered
21 something form McDonald's at the insistence
22 of Mr. Smalls, who was willing to buy him
23 something at McDonald's, yet when he came to
24 ask for the money he said, 'I don't have any
25 money.' Well, how in the world do you plan

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1 on buying any alcohol for a party? Without
2 money? So clearly there is an abundance of
3 evidence that logically connects as being
4 there for something other than what is
5 suggested of just taking somebody for a ride.
6 We really don't know what it is at this
7 stage.

8 Given that, given the testimony of the
9 witness who called in -- the citizen -- which
10 was amazing, which is a credit to herself
11 and, I think, a statement of society of being
12 observant, of erring on the side of caution,
13 not reaching any conclusions but looking at
14 something and saying, 'this appears be out of
15 the norm, I want to give this information.'
16 Lo and behold, not only was her intuition
17 correct but she was absolutely correct.
18 Because we found, if the jury chooses to so
19 conclude -- we ended up finding the cash box
20 that supposedly came from the store in the
21 location that, surprisingly, was attributed
22 to the location of all four persons in the
23 car. We find the money, which had the unique
24 bill, in the car; which certainly would lead
25 the jury to believe that the four people were

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1 there.

2 Now, I agree that they've got to prove
3 and I will charge it but from the standpoint
4 of this, the court's perspective, -- I deny
5 the Motion.

6 JIM SMILEY: Thank you, Your Honor.

7 THE COURT: Thank you so much. All
8 right. Do you intend to offer witness?

9 ANDREW GRIMES: Yes, sir.

10 THE COURT: Are those witnesses
11 present?

12 ANDREW GRIMES: Yes, sir.

13 THE COURT: And after that, does -- at
14 this point, you're not held to it, but does
15 Mr. Coakley intend to offer any additional
16 witnesses?

17 WILLIAM RUNYON: Not at the point.

18 THE COURT: That's fine. You're not
19 held to that. I understand that. That would
20 be an assessment based on all the testimony
21 and I understand that.

22 WILLIAM RUNYON: Yes, sir, based on the
23 time, if we were, it wouldn't be before the
24 first thing in the morning.

25 THE COURT: I don't know. I might want

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1 to go late and complete all the evidentiary
2 portion. We'll see.

3 WILLIAM RUNYON: Yes, sir.

4 THE COURT: Because you are going to be
5 next. Just bear that in mind.

6 WILLIAM RUNYON: Well, I never knew
7 you to be like the Honorable Rodney Peeples,
8 Your Honor.

9 THE COURT: Well, I am suggesting that
10 those folks need to have this matter
11 concluded in a reasonable time and that if
12 all we have is some testimony of some
13 witnesses, who I doubt very seriously would
14 be that lengthy -- not to say that they
15 wouldn't be, but generally they're not a lot
16 of fact witnesses that can add a lot more
17 than what is already here, that's already
18 been testified to. But, anyway, we will deal
19 with that.

20 Does Mr. Smalls intend to offer any
21 testimony at this point?

22 JIM SMILEY: Mr. Smalls and I are still
23 discussing that. We will ---

24 THE COURT: No problem.

25 JIM SMILEY: It's fifty/fifty at this

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1 point.

2 THE COURT: Okay, let me do this
3 at this point. I'll do these separately so
4 that we -- so I won't ask you to make that
5 commitment because y'all may still be talking
6 about -- well, first of all, does Mr.
7 Graddick anticipate testifying?

8 ANDREW GRIMES: We are like fifty/
9 fifty. We would like to see how our next two
10 witnesses do.

11 THE COURT: Okay. Then we probably are
12 going to not get it until in the morning, Mr.
13 Runyon. Your strategy. But that's okay.
14 All right. We will take about a ten-minute
15 break and then we will call your first
16 witness.

17 But before you rest, I will need to
18 excuse the jury. Thank you.

19 ANDREW GRIMES: Thank you, Your Honor.

20 (BRIEF RECESS)

21 (DEFENDANT GRADDICK PRESENT)

22 (DEFENDANT COAKLEY PRESENT)

23 (DEFENDANT SMALLS PRESENT)

24 THE COURT: Are we ready to proceed.

25 SOLICITOR SHEALY: Your Honor, Mr.

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1 Ferguson has stepped out to get the date of
2 birth of one Mr. Grimes' witnesses. Can we
3 wait just a moment for him?

4 THE COURT: No, he can come when he
5 comes. We are going to proceed.

6 THE COURT: Is the defendant ready to
7 proceed?

8 ANDREW GRIMES: Yes, Your Honor.

9 THE COURT: Have you talked to him
10 about -- are you going to still make that
11 decision after the conclusion of the
12 presentation of his witnesses.

13 ANDREW GRIMES: Yes, sir.

14 THE COURT: That's fine. Let's bring
15 in our jury then. Okay, Mr. Ferguson is
16 returning. Bring in the jury.

17 (JURY IN @ 4:09 P.M.)

18 THE COURT: Thank you, ladies and
19 gentlemen. You will recall that when we
20 started that I mentioned to you that
21 ultimately when you begin your deliberations
22 what you will decide is whether or not the
23 State has met its burden of proof. As I
24 mentioned to you, no one accused of
25 committing criminal offenses in this state or

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1 in this country has the burden to prove
2 anything or disprove anything whatsoever. In
3 fact, I mentioned that persons so accused are
4 not even required to present evidence,
5 testify or anything else. That's never be
6 considered against the person so accused.
7 The same applies for all the defendants in
8 this case.

9 But they still have the right, if they
10 choose to, to present testimony for your
11 consideration.

12 So we've reached that point. Mr. Grimes
13 -- we've been going in this order, -- does
14 Mr. Graddick wish to present any witnesses
15 for the jury's consideration?

16 ANDREW GRIMES: Yes, Your Honor.

17 THE COURT: You may call your first
18 witness.

19 ANDREW GRIMES: Thank you, Your Honor.
20 Defendant Graddick calls Rebecca Graddick.

21 (WITNESS TAKES STAND)

22 REBECCA GRADDICK, having been sworn to
23 tell the truth, and nothing but the truth,
24 testified as follows:

25 DIRECT EXAMINATION

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1 BY ANDREW GRIMES:

2 Q. Good afternoon, Ms. Graddick.

3 A. Beg?

4 Q. Good afternoon.

5 A. How you doing?

6 Q. I'm good. How you doing today?

7 A. I am doing a little better.

8 Q. How you been feeling lately?

9 A. I was sick, I went to the doctor.

10 I have a cold.

11 Q. Was that the flu going around?

12 A. Yeah, allergy, a cold.

13 Q. I'm glad to hear that you are
14 feeling a little better.

15 A. Thank you.

16 Q. If you need me to speak up, just ask
17 me to. Okay?

18 A. Okay.

19 Q. Now, I want to get straight to the
20 point of why you're here today. Okay?

21 A. Um-humm.

22 Q. Do you recall the date of September
23 15th, 2010?

24 A. Yes.

25 Q. How well do you remember that day?

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1 A. I remember it was on the 15th, that's
2 when Jarred had been in the house.

3 Q. All right.

4 A. And about 5:00 -- about 6:00, 6:34,
5 a car come and picked up Jarrett. It was a
6 red car that come and picked up Jarrett.

7 Q. How do you know that it was 6:34
8 when that red car came to pick up Jarrett.

9 A. Well, it was after 5:00. It was
10 after we done looked at Dr. Oz, 5:00 o'clock.
11 We leave outside -- we look at him for a
12 little while, then we got and sit on the
13 porch. Then after that, we went outside to
14 my garden. That's what happened.

15 Q. And when you went outside with your
16 flowers in the garden, you said that a red
17 car came up?

18 A. Yes.

19 Q. What time did that car come up at?

20 A. About 6:34.

21 Q. Did you have your watch on or how
22 did you ---

23 A. I have a cell phone with the time.

24 Q. Where do you keep your cell phone
25 at?

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1 A. In my housecoat pocket.

2 Q. All right. Was there anyone else
3 there besides you and Jarrett?

4 A. Yes.

5 Q. Who else was there?

6 A. Melvin.

7 Q. Who is Melvin?

8 A. Melvin is a cousin. We cousins.

9 Q. Okay. Now, Ms. Graddick, I want to
10 ask you some questions about your background.
11 Okay?

12 A. (Affirmative nod).

13 Q. Where are you from?

14 A. Mount Pleasant.

15 Q. How long have you lived in Mount
16 Pleasant?

17 a. All my life.

18 Q. I don't mean to pry, but how old are
19 you?

20 A. Seventy-five.

21 Q. How old were you when you got
22 married?

23 A. About twenty-five.

24 Q. Who did you marry?

25 A. Fred Graddick.

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- 1 Q. What did Fred do?
- 2 A. He worked as a longshoreman.
- 3 Q. Okay. What kind of work did you do?
- 4 A. Nursing.
- 5 Q. Where did you work at?
- 6 A. Charleston Nursing Center.
- 7 Q. How long did you work there?
- 8 A. About four years.
- 9 Q. Do you have any children?
- 10 A. Yes.
- 11 Q. Are any of them in the courtroom
- 12 today?
- 13 A. Yes.
- 14 Q. Do you see your daughter in court?
- 15 A. Yes, my daughter.
- 16 Q. She's on the front row in the red
- 17 sweater?
- 18 A. Yeah, Bridgett.
- 19 Q. Do you have any grandchildren?
- 20 A. Yes.
- 21 Q. How many grandchildren do you have?
- 22 A. Six.
- 23 Q. Is Jarrett one of your
- 24 grandchildren?
- 25 A. Yes, Jarrett.

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1 Q. I don't want to pry too much but we
2 need to talk a little bit about it. Tell the
3 jury if you have any medical issues or
4 problems that might affect your memory, being
5 seventy-five years old.

6 A. Memory, (negative gesture). I have
7 allergies. Can I get some water?

8 Q. Yes, ma'am.

9 A. Thank you.

10 Q. I think that you were telling the
11 jury that you have allergies?

12 A. Yeah, and hypertension.

13 Q. Any problems with your memory, like
14 you turn the stove on and forget about it?

15 A. Arthritis, a little arthritis.

16 Q. All right. I want to ask you a
17 couple of questions about after Jarrett got
18 arrested. Do you remember Detective Simmons
19 coming to talk to you?

20 A. Who?

21 Q. Detective Simmons -- the officer in
22 the back, right here?

23 A. No.

24 Q. Do you recall any police officer
25 coming to talk to you?

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1 A. No.

2 Q. Okay. Now, I want to go back to
3 September 15th, 2010 and ask you some
4 questions about that day. Okay?

5 A. All right.

6 Q. Just kind of starting in the
7 morning, what did you do that morning?

8 A. I get up, I take a shower, I cook
9 breakfast.

10 Q. Where was Jarrett at while you were
11 cooking breakfast?

12 A. In the bed, sleeping.

13 Q. He wasn't out with any of these
14 other fellows in the courtroom?

15 A. No.

16 Q. What did you do the rest of that
17 morning?

18 A. We eat. After we eat, we sit down
19 and finish looking at television.

20 Q. Okay. What kind of TV shows were
21 you two watching?

22 A. Good Morning America.

23 Q. Now I want to talk a little bit
24 about the afternoon. By afternoon I mean
25 like between 12:00 to 6:00. Okay?

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1 A. Watched the soap operas.

2 Q. Is that Jarrett's choice to watch
3 the soap operas or is that your choice?

4 A. Well, we look at it together.

5 Q. Was he really into soaps or was he
6 into sports?

7 A. Sports, but he sit there with me.

8 Q. Okay. Were you watching the shows
9 during the afternoon or in the morning?

10 A. I'd say about 5:00 o'clock, we went
11 on the porch. We always watch Dr. Oz at 5:00
12 o'clock.

13 Q. Then sometime during Dr. Oz you went
14 out on the porch?

15 A. Yeah, after we done see half of it,
16 we went on the porch.

17 Q. During this timeframe, when did
18 Melvin come? Did he come before you went on
19 the porch or after you went on the porch?

20 A. Well, Melvin came and we went in the
21 house, so we was looking at Dr. Oz at the
22 same time.

23 Q. Okay. Then -- what was Jarrett
24 doing while you guys went outside?

25 A. Well, he was on the porch with us

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1 because we was fixing the flower garden.

2 Q. I am going to show you some
3 pictures. Okay?

4 A. Okay.

5 ANDREW GRIMES: May I approach, Your
6 Honor?

7 THE COURT: You may.

8 ANDREW GRIMES: These are to be marked
9 as Defendant Graddick Exhibits 2 through 7.

10 DIRECT EXAMINATION CONTINUED

11 BY ANDREW GRIMES:

12 Q. Do you recognize these pictures,
13 what area that they are of?

14 A. Linnen Lane is my road, and Hamlin
15 is this way.

16 Q. Okay.

17 A. This is the number on my mobile
18 home.

19 Q. All right.

20 A. This my mobile home.

21 These are my trees, you know.

22 This is my porch.

23 Q. All right.

24 A. This is -- I don't know what part
25 that is.

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1 Q. You're not sure what this picture
2 is?

3 A. (Negative gesture).

4 Q. You are not sure what this last
5 picture is?

6 A. Yeah, on the side of my house.
7 Yeah.

8 ANDREW GRIMES: Your Honor, I believe
9 without objection that I move to move these
10 in.

11 THE COURT: Defendant Graddick's
12 Exhibits 2 through 7 are admitted, without
13 objection.

14 (SO ENTERED AS GRADDICK EXHIBITS 2-7)

15 DIRECT EXAMINATION CONTINUED

16 BY ANDREW GRIMES:

17 Q. I am going to show you Exhibit 6, is
18 this sort of the garden area that you were
19 talking about?

20 A. Yeah. It's -- there are some ferns
21 and flowers right in here by the step part.
22 Go down from that is my -- I've got flowers.

23 Q. Ms. Graddick, may I see it for a
24 minute.

25 A. (Tenders).

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1 Q. You say that this is the ferns and
2 flowers right here?

3 A. Yeah, and from that, over down ---

4 Q. Is this a better picture, Exhibit 4?

5 A. Yeah, go down that way.

6 Q. Can you show the jury where Jarrett
7 was at?

8 A. Me and Jarrett, we was on the porch
9 and we was fixing the flowers in the garden.

10 Q. When this red car came, what did you
11 tell Jarrett?

12 A. I said, 'Jarrett, don't leave from
13 here.' And he said, 'Grandmama, I will be
14 right back.'

15 Q. Did he come back that night?

16 A. Not until that night when somebody
17 made a call, a phone call saying that he was
18 in jail.

19 Q. Please answer any questions that Ms.
20 Shealy and the other defendants may have.
21 Okay, Ms. Graddick?

22 A. Okay.

23 THE COURT: Cross examine, Mr. Runyon?

24 WILLIAM RUNYON: No questions, Your
25 Honor.

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1 THE COURT: Mr. Smiley?

2 JIM SMILEY: Briefly.

3 CROSS EXAMINATION

4 BY JIM SMILEY:

5 Q. Do you know this gentlemen here --
6 stand up, Kevin.

7 A. (No verbal response).

8 Q. Can you see him?

9 A. Yeah, but I don't know him.

10 Q. Okay. You don't know Kevin Smalls?

11 A. No.

12 JIM SMILEY: Thank you. Nothing
13 further.

14 THE COURT: Cross examine, Ms. Shealy.

15 SOLICITOR FERGUSON: Yes, sir.

16 THE COURT: Excuse me, Mr. Ferguson.

17 CROSS EXAMINATION

18 BY SOLICITOR FERGUSON:

19 Q. Ms. Graddick, good evening.

20 A. Hi, how are you doing?

21 Q. I'm well. You said that you are
22 seventy-five years old?

23 A. Um-humm.

24 THE COURT: Ma'am, was that a "yes"?

25 WITNESS: Yes.

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1 THE COURT: And the reason you need to,
2 the lady seated next to you is taking down
3 what we are saying and it helps her to make
4 sure what you're saying.

5 WITNESS: Okay. Thank you.

6 CROSS EXAMINATION CONTINUED

7 BY SOLICITOR FERGUSON:

8 Q. You've got six grandchildren?

9 A. Yeah.

10 Q. And Jarrett Graddick right there is
11 one of them?

12 A. Right.

13 Q. Do you know how old Jarrett was when
14 he was arrested for this on September 15th?

15 A. He was twenty-four, I think.

16 Q. Twenty-four?

17 A. Um-humm.

18 Q. And he is your grandson, right?

19 A. Yes.

20 Q. Forgive me for asking, but you don't
21 want him to go to jail, do you?

22 A. No.

23 Q. Did you have any hand in raising
24 Jarrett?

25 A. Hand in raising him.

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1 Q. Yes, did you help raise Jarrett?

2 A. Yes.

3 Q. Where did he spend most of his time?

4 A. Working.

5 Q. Where did he live?

6 A. He lived in Seven Mile. We call it
7 Seven Mile but the whole strip as you're
8 coming up 17 is Hamlin Road. But we live on
9 Linnen Road.

10 Q. So he lives with you?

11 A. Yeah.

12 Q. I didn't quite hear your answer.

13 Mr. Grimes asked if you have any condition
14 that may affect your memory. What was your
15 answer to that question?

16 A. About hypertension and all of that.

17 Q. Does that affect your memory?

18 A. Not bad.

19 Q. But it does to some degree?

20 A. Some.

21 Q. Would that kind of confuse times,
22 dates?

23 A. No.

24 Q. But it does affect your memory?

25 A. Not, no. Not bad.

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1 Q. You said that Jarrett was with you
2 on September 15th all day?

3 A. All day.

4 Q. He was with you in the morning,
5 watching Good Morning America?

6 A. (Affirmative nod).

7 Q. He was with you in the afternoon,
8 watching soap operas?

9 A. Yes.

10 Q. And he was with you at 5:00 when you
11 were watching Dr. Oz?

12 A. Oz, (affirmative nod). And we
13 didn't finish watching Dr. Oz. We went out
14 in the garden and Melvin, Melvin was out
15 there with us and sat on the porch.

16 Q. And what time did Jarrett leave?

17 A. 6:34.

18 Q. How do you remember that it was 6:34
19 exactly?

20 A. Because I have housecoat. See, I
21 usually wear my housecoat over my pants over
22 my pants and put my cell phone in my pocket.
23 I looked at the time he leave.

24 Q. So Jarrett left, you flipped open
25 your cell phone and said, 'Oh, it's 6:34.'

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1 A. Um-humm.

2 Q. And what kind of car did he get in?

3 A. A red car.

4 Q. A red car?

5 A. Yes.

6 Q. Did it have black on it?

7 A. I just noticed the red. I didn't
8 remember ---

9 Q. You don't remember?

10 A. I don't remember. I just know that
11 it is red.

12 Q. Had you seen that car before?

13 A. No.

14 Q. That was the first time that you saw
15 that red ---

16 A. That was the first time that I seen
17 it.

18 Q. And you let your grandson get into a
19 stranger's car?

20 A. Well, he say he's coming right back
21 and I know him to be true to his word.

22 Q. And you are absolutely sure that
23 that was at 6:34?

24 A. Yes.

25 Q. How did you come to know that

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1 Jarrett had been arrested that day?

2 A. Somebody called me that night and
3 said that Jarrett was arrested.

4 Q. Do you remember what time that you
5 got that call?

6 A. No, I don't remember the time but it
7 was at night. I know that it was that night.

8 Q. You don't remember that time?

9 A. I don't remember.

10 Q. Do you remember what time that it
11 was that you sat on the porch?

12 A. It was 5:00 or after, about -- about
13 5:15.

14 Q. About 5:15?

15 A. (Affirmative nod).

16 Q. Did you open up your cell phone and
17 look and see that it was 5:15 when ---

18 A. (Affirmative nod), um-humm.

19 Q. --- you walked on the porch?

20 A. Um-humm.

21 THE COURT: Is that a "yes", ma'am?

22 WITNESS: "Yes."

23 CROSS EXAMINATION CONTINUED

24 BY SOLICITOR FERGUSON:

25 Q. And is there -- you said you live on

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1 Lennen Lane. How long have you lived there?

2 A. Fifteen, -- many years.

3 Q. And is there a park near there, on
4 Hamlin Road?

5 A. Yes.

6 Q. It's got a playground set on it?

7 A. Yes.

8 Q. Is it a very big park?

9 A. Yeah.

10 Q. Did you ever talk to Detective
11 Simmons?

12 A. No.

13 Q. But you knew Jarrett was with you
14 all day?

15 A. That's right.

16 Q. And when you found out that he was
17 arrested, you were upset?

18 A. Um-humm.

19 Q. But you didn't go tell the officer,
20 'that couldn't have been my grandbaby'?

21 A. I couldn't tell the officer he was
22 my grandbaby because he wasn't there. I
23 couldn't tell him nothing because he wasn't
24 even there.

25 Q. You could have told him that Jarrett

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1 was with you all day?

2 A. Yeah, but he wasn't there to talk
3 to.

4 Q You didn't contact the police and
5 say, 'Jarrett was with me all day on
6 September 15th.'

7 A. No, I didn't do that.

8 Q. You know who some of Jarrett's
9 friends are, don't you?

10 A. Yes. Some. There's -- I can't
11 remember his name. There's this Jefferson
12 boy but I can't remember his name.

13 Q. You can't remember his friends
14 names?

15 A. Not right now.

16 Q. Do you remember if Jarrett had a
17 cell phone on him?

18 A. Who?

19 Q. Jarrett. Do you remember if he had
20 a cell phone on him on September 15th, the day
21 that he got arrested?

22 A. No, I don't remember that.

23 Q. You don't remember if he had a cell
24 phone?

25 A. No.

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1 Q. Jarrett was good friends with Keenan
2 Coakley, wasn't it?

3 a. I don't know.

4 Q. Do you know who Keenan Coakley is?

5 a. Yeah, I know Keenan Coakley.

6 Q. Is that Keenan Coakley?

7 A. I don't know. I ain't seen them
8 children for a long time, so I don't know ---

9 Q. This gentleman here in the blue
10 shirt -- and you can stand up, if you like,
11 is that Keenan Coakley?

12 A. I don't know.

13 THE COURT: Mr. Coakley, please stand
14 up.

15 DEFENDANT COAKELY: (Complies).

16 CROSS EXAMINATION CONTINUED

17 BY SOLICITOR FERGUSON:

18 Q. Is that Keenan Coakley?

19 A. No, I -- I don't know.

20 Q. You don't know?

21 A. No.

22 Q. Thank you. Please answer any
23 questions that the defendants may have.

24 THE COURT: Redirect?

25 ANDREW GRIMES: No, sir.

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1 THE COURT: Okay. You may come down,
2 ma'am. Thank you.

3 WITNESS: Thank y'all.

4 (WITNESS STEPS DOWN)

5 THE COURT: Any additional witnesses?

6 ANDREW GRIMES: Yes, sir. One
7 additional witness.

8 THE COURT: Call your next witness.

9 MR. KOWELSKI: Yes, Your Honor. The
10 defense calls Melvin White to the stand.

11 (WITNESS TAKES STAND)

12 MELVIN WHITE, having been sworn to tell
13 the truth, and nothing but the truth,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. KOWELSKI:

17 Q. Mr. White, how you doing today?

18 A. I'm fine.

19 Q. Before I introduce you, I'd like for
20 you to just briefly tell the jury what you're
21 doing here today?

22 A. I am here -- I was at the house, at
23 Ms. Graddick's house on September 18th (sic)
24 2010, with Jarrett and his grandmother.

25 Q. You said September 18th. Is that -

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1 are you sure about that date?

2 A. Yeah, I'm sure it was September 18th.
3 It was 2010.

4 Q. Was Jarrett there when you were at
5 the house?

6 A. Yes, sir.

7 Q. Did you see Jarrett leave the house?

8 A. Yes, sir.

9 Q. Now, I want to talk to you a little
10 bit about you. How old are you?

11 A. I am forty-seven (47) years old.

12 Q. Are you married?

13 A. Yes, I am.

14 Q. How long have you been married?

15 A. January will be going on twenty-
16 three years, I believe.

17 Q. Where are you living?

18 A. I live out in Eutawville.

19 Q. How long have you lived out in
20 Eutawville?

21 A. I've lived there going on thirteen
22 years.

23 Q. Where were you born and raised?

24 A. Born and raised in the Mount
25 Pleasant area.

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1 Q. So do you still keep contact with
2 people in Mount Pleasant?

3 A. Yes, sir.

4 Q. The Graddicks?

5 A. Graddicks is a family I've known
6 through the generations, I've been knowing
7 them all my life. My grandmother and her --
8 my granddaddy, they all grew up in the same
9 community.

10 Q. Do you know Jarrett Graddick?

11 A. Yes, I do.

12 Q. How do you know him?

13 A. I've known him since he was born to
14 his mother. And, uh, he also calls me Uncle.

15 Q. He calls you Uncle?

16 A. (Affirmative nod).

17 Q. Why does he call you Uncle?

18 A. We've got that relationship.

19 Q. Were you over at the Graddick house
20 that day?

21 A. Yes, I was.

22 ANDREW GRIMES: Your Honor, I object.

23 THE COURT: Overruled.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. KOWELSKI:

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1 Q. When did you get there?

2 A. I got there at 5:15.

3 Q. How do you know that it was 5:15?

4 A. They were watching Dr. Oz.

5 Q. When you say "they", who are you
6 talking about?

7 A. Ms. Rebecca Graddick, which is the
8 grandmother, and Jarrett Graddick.

9 Q. Were you watching Dr. Oz with them?

10 A. I joined them because they were in
11 the house watching that when I got over
12 there.

13 Q. Do you remember what Dr. Oz was
14 talking about?

15 A. It was somewhat medical, but I
16 really can't say that I remember that far
17 back.

18 Q. What happened after watching Dr. Oz?

19 A. After watching Dr. Oz, his grand-
20 mother and I, we went outside. Jarrett, his
21 grandmother and I went out on the porch.

22 He was asked by his grandmother to pull
23 the weeds because she wanted to put down
24 mulch in the garden in front of the house.
25 So we were sitting on the porch -- me and the

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1 grandmother. And Jarrett was doing the
2 gardening.

3 Q. You didn't want to help with the
4 gardening?

5 A. I don't stand too good on my legs
6 and my back.

7 Q. You have some back issues?

8 A. Yes, I do.

9 Q. Do you have any other health issues?

10 A. Yes, I am diabetic. I got -- I've
11 had back surgery, I've had neck surgery, I'm
12 a diabetic, Type II, and I also have some
13 other issues.

14 Q. Type II, that's the adult onset? Do
15 you take shots or do you take pills?

16 A. I take pills and I also take a shot
17 every month (sic).

18 Q. Do you take the pills twice a day?

19 A. Twice a day and some of them once a
20 day.

21 Q. Do those pills affect your memory in
22 any way?

23 A. No, sir.

24 Q. Do you take any other medications?

25 A. Yes, I do.

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1 Q. Do any of those medications that you
2 take affect your memory in any way?

3 A. No, sir.

4 Q. Were you taking medication on this
5 day?

6 A. Yes, sir.

7 Q. Do you know what time you were
8 taking the medications?

9 A. Yes. I took it at 6:00 o'clock.

10 Q. How do you know?

11 A. My medication is on like a schedule,
12 every four to six hours.

13 Q. So after you took your medication,
14 did you see Jarrett leave the house?

15 A. Yes, I did.

16 Q. About what time was that?

17 A. 6:35.

18 Q. 6:35?

19 A. Yes, sir.

20 Q. You're sure about that?

21 A. Yes, sir.

22 Q. How do you know it was 6:35?

23 A. By my watch time and also I was at
24 the house on the porch with his grandmother,
25 waiting on his mother to come home.

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1 Q. Did you see what kind of car that he
2 got into?

3 A. Yes. At the time that I was there,
4 there was a red and black car that came in
5 there, in the driveway.

6 Q. Now, when did you find out that
7 Jarrett had been arrested?

8 A. Later on that night.

9 Q. Did you ever involve yourself with
10 that situation?

11 A. No, sir.

12 Q. Why are you coming forth today?

13 A. Because I was there at the house at
14 the time, which is 6:35, when he left.

15 MR. KOWELSKI: No further questions
16 at this time. Please answer any questions
17 that these other fine attorneys may ask you.

18 THE COURT: Cross examine, Mr. Runyon?

19 WILLIAM RUNYON: No questions, Your
20 Honor.

21 THE COURT: Mr. Smiley?

22 JIM SMILEY: No questions.

23 THE COURT: Mr. Ferguson?

24 SOLICITOR FERGUSON: Yes, Your Honor.

25 CROSS EXAMINATION

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1 BY MR. FERGUSON:

2 Q. Good evening, Mr. White. How are
3 you?

4 A. I'm fine. How are you doing?

5 Q. I'm doing well. You testified that
6 you were watching Dr. Oz with Mr. Graddicks'
7 grandmother on September 18th. Is that right?

8 A. Yes, sir.

9 Q. And you said, you testified that you
10 were sure that it was September 18th.

11 A. Yes, sir.

12 Q. So you knew where Jarrett was on
13 September 18th?

14 A. Yes, sir. He was in the house with
15 his grandmother.

16 Q. Do you know where Jarrett was the
17 day before?

18 A. No. I wasn't over there the day
19 before.

20 Q. Do you know where he was three days
21 before?

22 A. No, sir.

23 Q. So you don't know where he was on
24 the 15th, September 15th?

25 A. No, I can't say.

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1 SOLICITOR FERGUSON: No further questions,
2 Your Honor.

3 THE COURT: Redirect?

4 MR. KOWELSKI: Beg the Court's
5 indulgence, (sidebar with Mr. Grimes). No,
6 no further questions, Your Honor.

7 THE COURT: Thank you. You may come
8 down, sir.

9 (WITNESS STEPS DOWN)

10 THE COURT: Any additional witnesses?

11 ANDREW GRIMES: No, sir, but we need
12 to take up a matter of law.

13 THE COURT: All right, ladies and
14 gentlemen. I am going to let you go to your
15 jury room.

16 Do not begin your deliberations, don't
17 discuss the case. We will be with you very
18 quickly.

19 (JURY OUT @ 4:25 P.M.)

20 THE COURT: All right. Have you talked
21 with your clients as to whether they wish to
22 testify or not testify?

23 ANDREW GRIMES: We would ask for at
24 least five minutes to talk with him, because
25 he ---

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1 THE COURT: Okay. Y'all talk because
2 we're now -- we're playing with the jury's
3 time. Y'all could have made this decision a
4 long time before today, so y'all talk very
5 quickly.

6 ANDREW GRIMES: Thank you, Your Honor.
7 We will be at-ease for about five minutes.
8 You can talk to him outside, if you want to.

9 (DEFENDANT COAKLEY PRESENT)

10 (DEFENDANT SMALLS PRESENT)

11 THE COURT: Let me go ahead and deal
12 with Mr. Runyon's client then. Have you
13 discussed with your client his right to
14 testify?

15 WILLIAM RUNYON: Yes, Your Honor, and
16 Mr. Coakley has indicated that he wishes to
17 available himself of his Constitutional right
18 not to testify.

19 THE COURT: Absolutely. Mr. Coakley,
20 -- and you can stand or remain seated. Your
21 pleasure.

22 You have had the opportunity to talk to
23 your lawyer about your right to testify or
24 not to testify, sir?

25 DEFENDANT COAKLEY: Yes, sir.

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1 THE COURT: Okay. And you've had time
2 to reflect on his advice and discussion
3 concerning that issue?

4 DEFENDANT COAKLEY: Yes, sir.

5 THE COURT: And you've made a decision
6 for yourself that you want to exercise that
7 right not to testify?

8 DEFENDANT COAKLEY: Yes, sir.

9 THE COURT: You've already heard me
10 throughout this trial explain that they are
11 not to look to you to prove or disprove
12 anything. I will further instruct them that
13 they can't even consider that in the jury's
14 deliberations. Do you understand that?

15 DEFENDANT COAKLEY: Yes, sir.

16 THE COURT: But it is your right to
17 testify, if you want to. You understand that
18 as well?

19 DEFENDANT COAKLEY: Yes, sir.

20 THE COURT: Considering it all, it is
21 your decision to stand by your right and
22 enforce your right not to testify; is that
23 correct, sir?

24 DEFENDANT COAKLEY: Yes, sir.

25 THE COURT: Are you under the influence

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1 of any alcohol or any type of medication here
2 today, sir?

3 DEFENDANT COAKLEY: No, sir.

4 THE COURT: Are you comfortable with
5 your decision?

6 DEFENDANT COAKLEY: Yes, sir.

7 THE COURT: Any complaints about the
8 way that your lawyer has advised you
9 concerning this issue?

10 DEFENDANT COAKLEY: No, sir.

11 THE COURT: If at any point between now
12 and when I ask Mr. Runyon, as you heard Mr.
13 Grimes, 'does Mr. Coakley wish to present any
14 additional testimony', or any additional
15 witnesses or the jury's consideration, if you
16 should change your mind, let me know and then
17 I will excuse the jury and we would revisit
18 that. If not, I will assume that you stand
19 by your decision. Okay?

20 DEFENDANT COAKLEY: Yes, sir.

21 THE COURT: Is that fair, sir?

22 DEFENDANT COAKLEY: Yes, sir.

23 THE COURT: Thank you, sir. I find
24 that Mr. Coakley certainly has had the
25 benefit of very competent counsel. He's had

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1 an opportunity to talk with him about his
2 right to testify or not to testify. It's
3 very obvious by his responses and his body
4 language, with emphases on his responses,
5 that he has made a conscious decision for
6 himself not to testify. That is his
7 absolutely right. I find that he makes the
8 decision freely, voluntarily, knowingly and
9 intelligently. Thank you so much.

10 Mr. Smiley, have you talked with your
11 client?

12 JIM SMILEY: I have, Your Honor. After
13 discussing it with Mr. Smalls, he has elected
14 not to testify.

15 THE COURT: Mr. Smalls -- and you can
16 remain seated, sir, if you wish to. You've
17 discussed with your lawyer your right to
18 testify or to not testify, sir?

19 DEFENDANT SMALLS: Yes, sir.

20 THE COURT: And you've had time to
21 reflect on his advice and those discussions?

22 DEFENDANT SMALLS: Yes, sir.

23 THE COURT: After reflection and upon
24 reflection, it is your decision not to
25 testify, sir?

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1 DEFENDANT SMALLS: Yes, sir.

2 THE COURT: And as you just heard me
3 explain to Mr. Coakley, you understand that
4 that is your right and I've reinforced that,
5 I think at least twice already, and will
6 charge the jury that they cannot consider
7 that against you. Do you understand?

8 DEFENDANT SMALLS: Yes, sir.

9 THE COURT: But notwithstanding your
10 right to not testify, you have the right to
11 testify or offer testimony if you want to.
12 Do you understand that?

13 DEFENDANT SMALLS: Yes, sir.

14 THE COURT: And that's not what you
15 wish to do?

16 DEFENDANT SMALLS: No, sir.

17 THE COURT: Are you under the influence
18 of any alcohol or medication here today?

19 DEFENDANT SMALLS: I am not.

20 THE COURT: Are you comfortable with
21 your decision not to testify?

22 DEFENDANT SMALLS: Yes, sir.

23 THE COURT: Thank you so much, Mr.
24 Smalls. I find that Mr. Smalls has certainly
25 had the benefit of very competent counsel.

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1 He's indicated that he has had an opportunity
2 to reflect on his decision and I find by his
3 response that he has made a conscious
4 decision for himself not to testify, to
5 exercise his Constitution right to not
6 testify. I find that to be a decision that
7 he makes freely, voluntarily, knowingly and
8 intelligently.

9 Mr. Smalls, just as I indicated to Mr.
10 Coakley, I will do the same thing at the same
11 time, in the same order. If between now and
12 when I ask Mr. Smiley if you wish to present
13 any further witnesses for the jury's
14 consideration, -- until that point, if you
15 should change your mind, let me know. We
16 would excuse the jury and revisit this issue.
17 But if I don't hear from you, I will assume
18 that you stand by your decision. Okay?

19 DEFENDANT SMALLS: Yes, sir. Okay.

20 THE COURT: Thank you, sir. Okay.

21 (MR. GRIMES RETURNS TO JURY ROOM)

22 ANDREW GRIMES: Thank you, Your Honor.

23 (DEFENDANT GRADDICK PRESENT)

24 THE COURT: Very well. Let the record
25 reflect that Mr. Graddick is present. You've

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1 had sufficient opportunity to talk with
2 Mr. Graddick about his decision to testify or
3 not to testify?

4 ANDREW GRIMES: Yes, sir.

5 THE COURT: Has he made a decision?

6 ANDREW GRIMES: Yes, sir.

7 THE COURT: What is that decision?

8 ANDREW GRIMES: He will exercise his
9 right to remain silent.

10 THE COURT: All right. Mr. Graddick,
11 good afternoon.

12 DEFENDANT GRADDICK: Good afternoon.

13 THE COURT: You've had the opportunity
14 to discuss this matter further with your
15 lawyers, is that correct?

16 DEFENDANT GRADDICK: Yes, sir.

17 THE COURT: And they've explained to
18 you your rights, that you have the right to
19 testify or not to testify?

20 DEFENDANT GRADDICK: Yes, sir.

21 THE COURT: And you've already heard me
22 explain to the jury, at least twice, that you
23 don't have to prove or disprove anything at
24 all. They can't look to you or expect you to
25 do so. You do understand that it is your

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1 right to testify if you want to, do you
2 understand that?

3 DEFENDANT GRADDICK: Yes, sir.

4 THE COURT: After considering, after --
5 and you've had time to reflect and consider
6 what their advice and discussions have been.
7 Is that correct?

8 DEFENDANT GRADDICK: Yes, sir.

9 THE COURT: And you have made the
10 decision for yourself not to testify?

11 DEFENDANT GRADDICK: Yes, sir.

12 THE COURT: And your lawyers have
13 explained that I will instruct the jury that
14 they cannot use that against it, and that if
15 they do then -- I add that it would violate
16 their oath. Do you understand?

17 DEFENDANT GRADDICK: Yes, sir.

18 THE COURT: Are you under the influence
19 of any alcohol or any medication here today,
20 sir?

21 DEFENDANT GRADDICK: No, sir.

22 THE COURT: Are you comfortable with
23 your decision?

24 DEFENDANT GRADDICK: Yes, sir.

25 THE COURT: I find that Mr. Graddick

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1 was had the benefit of competent counsel in
2 this matter and that he has indicated that he
3 is satisfied with the manner in which they
4 have advised him. I find that he is
5 satisfied -- I find that he has made a
6 conscious decision for himself to exercise
7 his Constitutional rights. I find that his
8 decision is one that he makes freely,
9 voluntarily, knowingly and intelligently.

10 Again, you are not under the influence of
11 any type medication or drugs?

12 DEFENDANT GRADDICK: No, sir.

13 THE COURT: If at any point between now
14 and I bring this jury in and ask your lawyer
15 if there are any further witnesses, and he's
16 going to say 'no, Mr. Graddick rests.' If
17 up that point you should change your mind,
18 let me know. We'll send the jury back out
19 and have additional conversation.

20 If I don't hear from you, I assume that
21 you will stand by your decision. Okay?

22 DEFENDANT GRADDICK: Yes sir.

23 THE COURT: Thank you so much, Mr.
24 Graddick. Let's bring in our jury, please.

25 (JURY IN @ 4:53 P.M.)

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1 THE COURT: Ladies and gentlemen, thank
2 you very much. We are ready to continue now.
3 Mr. Grimes, does Mr. Graddick wish to present
4 any additional witnesses for the jury's
5 consideration?

6 ANDREW GRIMES: No, Your Honor.
7 Defendant Graddick rests at this time.

8 THE COURT: Thank you. Mr. Runyon,
9 does Mr. Coakley wish to present any
10 additional witnesses?

11 WILLIAM RUNYON: Mr. Coakley rests,
12 Your Honor.

13 THE COURT: Very well. Mr. Smiley,
14 does Mr. Smalls wish to present any
15 additional witnesses?

16 JIM SMILEY: No, Your Honor.

17 THE COURT: Thank you very much. Is
18 there any reply testimony?

19 SOLICITOR SHEALY: No, Your Honor.

20 THE COURT: That would conclude the
21 evidentiary portions of this process. While
22 you will not hear any more evidence in the
23 remaining portions, there are still some
24 portions very critical to this process.

25 One of course is when the attorneys have

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1 their second opportunity to speak to you.

2 Now they can, of course, talk about the
3 evidence and reasonable inferences.

4 Probably as important, you haven't heard
5 the law that you will apply to the facts that
6 you will ultimately decide.

7 So it still would be inappropriate for
8 you to resolve anything, no individual or
9 collective resolution.

10 At this stage, given the hour, you
11 wouldn't get this case before probably 6:30
12 or 7:00. I'm not going to allow them to do
13 that to you. We'll start back tomorrow,
14 fresh. You will hear from the attorneys and
15 then I will charge you with the law.

16 Until then, please remember your
17 commitment to the parties to maintain that
18 open mind that we talked about when we
19 started, that you professed to have when you
20 were selected.

21 Again, I will ask you not to talk with
22 anyone outside the courtroom or among
23 yourselves. If there is somebody at home, I
24 know that they are anxious to hear something
25 about this and you probably have been

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1 questioned about it. I appreciate your
2 persistence in saying 'I can't talk to you
3 now.' I promise you tomorrow that you will
4 be able to talk to them, because we will
5 conclude this tomorrow -- most probably.

6 Have a good evening. I'd ask you to be
7 in your jury room, please, at 9:30. Thank
8 you so much.

9 (JURY OUT @ 5:02 P.M.)

10 THE COURT: Any Motions from the State?

11 SOLICITOR SHEALY: No, sir.

12 THE COURT: Mr. Grimes?

13 ANDREW GRIMES: Yes, sir. Thank you,
14 Your Honor, may it please the Court.

15 THE COURT: Yes, sir.

16 ANDREW GRIMES: We would renew our
17 Motion on the -- also that the State has not
18 proven that Jarrett was one of the robbers.
19 Thank you.

20 THE COURT: Thank you. Based on my --
21 I think that my recitation and ruling on it,
22 even considering the additional evidence,
23 there are obviously some inconsistencies that
24 could lead the jury to conclude that the
25 State has not met its burden of proof, not-

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1 withstanding his alibi. So clearly, in that
2 situation, I would respectfully your request.

3 Mr. Runyon?

4 WILLIAM RUNYON: Your Honor, I would
5 renew the Motions previously made for a
6 directed verdict and I would fervently renew
7 the Motion for a mistrial, as previously
8 made, for the reasons stated previously on
9 the record.

10 THE COURT: Thank you, sir. I
11 appreciate that and I think that we have
12 certainly articulated our various positions
13 with respect to both sides of that. I deny
14 your Motions. Thank you, sir.

15 Yes, Mr. Smiley?

16 JIM SMILEY: Just for the record, Your
17 Honor, I renew my Motions.

18 THE COURT: I agree that there are some
19 issues that would -- and I will certainly
20 charge the hand of one is the hand of all.
21 Certainly that applies to all the defendants.
22 So the jury will have that instruction. I
23 appreciate that, but I respectfully deny
24 that.

25 Any other requests to charge?

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1 WILLIAM RUNYON: Your Honor, just since
2 the court -- in directing you comments to Mr.
3 Smiley, will the Court be charging mere
4 presence?

5 THE COURT: I will charge mere
6 presence. I think that it is appropriate.

7 WILLIAM RUNYON: Thank you.

8 THE COURT: I think that it is
9 incorporated in my hand of one is the hand of
10 all. It says that it has to be more than
11 merely being present at the scene of a crime.
12 So I -- yes. I think that will cover what
13 you would like to have said.

14 WILLIAM RUNYON: I will take it
15 whatever way that you would like to do it.
16 Thank you.

17 THE COURT: Yes, sir. Thank you, sir.
18 Any other specific requests to charge?

19 JIM SMILEY: I don't know what to call
20 the charge, but I ---

21 THE COURT: Well, if you want to think
22 about it overnight.

23 JIM SMILEY: I'm going to tell you what
24 I am asking for, though I don't know exactly
25 how to put it. I think that the jury could

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1 find that my client was guilty of conduct
2 other than armed robbery because of the
3 events after. I am trying to think of the
4 right terms ---

5 THE COURT: You can argue that they
6 could find him guilty of something else.
7 That is not going to be submitted.

8 JIM SMILEY: I'm just trying to ---

9 THE COURT: I would love to charge that
10 but we -- I think that we'd have to change
11 the Constitution for me to do that. I'd be
12 charging on the facts, telling them what they
13 should do if they don't find that the State
14 has met its burden of proof.

15 I will be telling them -- not that they
16 can find him guilty of another. But I will
17 tell them that if the State fails on its
18 burden of proof, they've got to return a
19 verdict of not guilty.

20 JIM SMILEY: Yes, sir, thank you. If
21 you don't ask, you don't get it.

22 THE COURT: I understand. If you want
23 to give me a charge that this state has
24 recognized given our -- you know, the Federal
25 judges have a great opportunity to give some,

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1 I think, clarity to some of these legal
2 principles, because they can charge on the
3 facts. They can bring it to a case-specific
4 charge.

5 Ours is -- I think that we've gone a lot
6 better than we did when I first started
7 practicing, to be candid with you. Maybe I'm
8 being -- not mine, per se, but we still have
9 that Constitutional restrictions about
10 charging on the facts.

11 JIM SMILEY: I will do some ---

12 THE COURT: Look at it and see.

13 JIM SMILEY: Yes, sir. I'd be happy to
14 receive but -- I understand what you're
15 asking for.

16 JIM SMILEY: Yes, sir.

17 SOLICITOR SHEALY: Your Honor, could we
18 possibly get a copy of your hand of one is
19 the hand of all charge, because I may want to
20 incorporate some of the language in my
21 closing?

22 THE COURT: I will send it to you.

23 SOLICITOR SHEALY: Thank you.

24 THE COURT: I will send it to
25 everybody. Okay?

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1 SOLICITOR SHEALY: Yes, sir. Thank you.

2 JIM SMILEY: There is another issue that
3 I think that we could go ahead and deal with
4 before in the morning, and that is the order
5 of closings.

6 THE COURT: Well, I'm going to follow
7 the same order. You can make a Motion that
8 you want to be the last speaker.

9 JIM SMILEY: Yes, sir. Mr. Smalls ---

10 THE COURT: But ---

11 JIM SMILEY: --- has not presented any
12 evidence.

13 THE COURT: No, he hasn't.

14 JIM SMILEY: Mr. Smalls, if he was being
15 tried alone, would be afforded the last
16 argument in this case. It's because a co-
17 defendant in this case, Mr. Graddick,
18 presented evidence -- now is Mr. Smalls being
19 denied the opportunity for last close.

20 As I understand the case law, it says
21 that -- paraphrasing -- it is not a
22 substantial right that he is losing. I would
23 argue that it's been a long practice in South
24 Carolina and a very important consideration
25 that every defense lawyer and his defendant

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1 may, when they decide to put up evidence or
2 not to put up evidence, can ---

3 THE COURT: I understand.

4 JIM SMILEY: --- have the last argument.

5 In this case, because of the multiple
6 defendants and one has presented evidence,
7 that is -- I respectfully understand what the
8 court has decided, but that Mr. Smalls would
9 be denied that right. Therefore, I think
10 that it keeps him from getting a fair and
11 impartial trial as if he were being tried
12 alone.

13 Therefore, I would make a Motion to be
14 allowed to make the last argument. I
15 understand the current status of the rulings
16 of the Court, but I just would like to make
17 that Motion because I do believe that my
18 client is substantially -- affects my
19 client's Constitutional rights, Your Honor.

20 THE COURT: I understand.

21 WILLIAM RUNYON: And, Your Honor,
22 Defendant Coakley would join in that same
23 Motion, Judge, because we're in the same
24 position.

25 THE COURT: Yeah.

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1 WILLIAM RUNYON: We've presented no
2 evidence. Uh, -- if the Court would rule
3 that we are entitled to the last argument, I
4 would be more than happy to flip a coin with
5 Mr. Smiley.

6 THE COURT: I appreciate it. We can
7 deal with that. The problem is that we've
8 got to get around -- I mean you've got to get
9 around. I keep dropping back on the other
10 side of this bench here sometimes.

11 Notwithstanding -- and I think that I
12 even said it on the record, so they'll review
13 it, they can look at it. I hear you. I
14 understand. But whether I agree with it or
15 not is not important, because as I told that
16 jury on Monday, I took an oath to follow and
17 apply the law. The Court revisited this
18 issues as -- and it may have been even since
19 then, but certainly in the *State v. Smith*
20 case, an authority I previously cited, in
21 2010. It references *State v. Crowe*, a 1982
22 case which cites the controlling case of
23 *State v. Huckee*, which is an 1885 or 1887
24 case, something that has been around.
25 Somebody can say that it needs to be

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1 revisited, that it is old/archaic. Or
2 another way of looking at it is that it is
3 tried and true. It's worked in the past, has
4 passed all the tests of time and therefore it
5 is good law. So I'll let those up the street
6 deal with that -- "up the street" being up I-
7 26, in Columbia.

8 WILLIAM RUNYON: Judge, can I just
9 vouch for the record -- not arguing with the
10 court's ruling, but I'd like to vouch for the
11 record and point out that if my -- if we are
12 separately indicted in this case and ---

13 THE COURT: Listen, ---

14 WILLIAM RUNYON: The only reason I am
15 doing this is for the record, Judge. I think
16 that if the Solicitor can indict co-
17 conspirators in a joint indictment, that we
18 would be -- that that would be applicable.
19 But I think for the record ---

20 THE COURT: These cases talk about the
21 independent cases, that you have to prove it.
22 But it is still -- it acknowledges that, but
23 says that it doesn't matter. So you can --
24 you don't have to state it on the record.
25 It's there. There are three separate

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1 indictments. I think that I said it, I think
2 that you have a substantial right. I think
3 that it is a strategy. They' recognized that
4 but the Court has consistently said 'sorry',
5 'tough', basically 'such it up', 'go on',
6 'too bad.

7 WILLIAM RUNYON: All right. I
8 understand.

9 THE COURT: You know, to me it is a
10 first cousin to -- I was reading in some of
11 the convictions. The one that has always
12 bothered me and still does, about you can't
13 agree -- that you can't, as you can in a DUI
14 say that we agree we have a prior DUI and you
15 can't put that in evidence. Not so with a
16 burg. If you have a Burg 1st, you have prior
17 burglaries, you don't get to put it in
18 notwithstanding that you'd stipulate to it
19 that it's a Burg 1st. I think that's kind of
20 interesting. But it's tried and true and
21 it's still the law. I imagine that it will
22 still be the law for the next twenty years.

23 WILLIAM RUNYON: Just putting that on
24 the record, Judge.

25 THE COURT: Thank you, sir. All

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1 right. All right, I will send you that
2 charge tonight at some point so that you all
3 will have it. See you in the morning by
4 9:15. Anything before we recess?

5 SOLICITOR SHEALY: No, Your Honor.

6 ANDREW GRIMES: No, sir.

7 WILLIAM RUNYON: Thank you, Judge.

8 JIM SMILEY: Nothing.

9 THE COURT: We will be in recess until
10 in the morning.

11 (COURT IN RECESS)

12 (TRANSCRIPT CONTINUED NEXT PAGE)

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1 DECEMBER 6, 2013 9:30 A.M.

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3 (DEFENDANT GRADDICK PRESENT)

4 (DEFENDANT COAKLEY PRESENT)

5 (DEFENDANT SMALLS PRESENT)

6 (OFF RECORD BENCH CONFERENCE)

7 THE COURT: Good morning, gentlemen.

8 Mr. Runyon, you just asked about mere
9 presence. The charge says that mere presence
10 is more than just simply being present when a
11 charge is committed. Do you want more than
12 that?

13 WILLIAM RUNYON: No, Judge, that was my
14 question.

15 THE COURT: Any responses that -- there
16 are two. Everybody -- of course, I will
17 charge the alibi charge. I have another
18 paragraph as part of mine, but the paragraph
19 that you requested is also a part of mine.

20 The first one, I don't have any problem
21 with the logic of that charge and it goes to
22 what I said earlier. It's a Federal charge.
23 The problem that we have is that I think that
24 it is a borderline charge on the facts. I
25 think that it is covered when I tell them

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1 that you consider what a person had to
2 gain out of it, in general. I think that you
3 can argue that. I mean, I don't have any
4 problem with that. But I'm not inclined to
5 charge it.

6 So, in conclusion, after my charge, if
7 you want that specific charge, just hand it
8 up and I will make it a court's exhibit and
9 the record will be protected.

10 ANDREW GRIMES: Thank you, Your Honor.
11 For the record -- and every time that I've
12 asked for this charge, I've gotten the same
13 response. But where it has like the charge,
14 it's really Judge McDonald ---

15 THE COURT: Right, but there was a
16 distinction in that case. She said that
17 there was a specific deal that had been
18 struck. To be honest with you, she had
19 concerns about charging it then, too.

20 ANDREW GRIMES: That's what I under-
21 stand. It was a sort of unique situation.

22 JIM SMILEY: It just dawned on me that I
23 haven't asked, but do you have a part of your
24 charge that each defendant is to be
25 considered separately?

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1 THE COURT: Yes, and there are three
2 verdict forms, one for each. That's not a
3 charge but I will -- I think you will argue
4 and I will certainly explain that they have
5 to analyze the evidence as to each person.
6 Yes.

7 JIM SMILEY: Thank you.

8 THE COURT: All right. We have all the
9 jurors. Is the State ready to proceed?

10 SOLICITOR SHEALY: Yes, Your Honor.
11 Thank you.

12 THE COURT: Let the record reflect that
13 the defendants are present. Are the
14 defendants ready to proceed?

15 ANDREW GRIMES: Yes, Your Honor.

16 WILLIAM RUNYON: Yes, sir.

17 JIM SMILEY: Yes, sir.

18 THE COURT: Let's bring in our jury.

19 (JURY IN @ 9:36 A.M.)

20 THE COURT: Good morning, ladies
21 and gentlemen. I trust that you had a good
22 evening. We are now ready to continue.

23 Let me state before we start, as I
24 indicated on Monday, I believe so strongly in
25 this system -- I am not asking for any reward

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1 or anything back from this, it's just that
2 you deserve it. You're a classic example of
3 why I believe so strongly in the system.
4 You're punctual, you've paid close attention
5 throughout the trial. You're exactly what I
6 believe that a jury is all about. I just
7 thank you for that on behalf of the parties
8 and the whole process. It has been a
9 pleasure to serve with each one of you.

10 You're almost there. It's close. There
11 still remains two very important parts of
12 this process: closing arguments where the
13 attorneys will have their change to speak
14 with you and suggest reasonable inferences
15 that you may draw from the evidence. I am
16 sure that when you begin the process of
17 analyzing the evidence that you will find
18 their remarks extremely beneficial to you

19 While important, their remarks are not to
20 be considered evidence. The evidence comes
21 from the testimony of the witnesses, as we
22 know.

23 Following the closing arguments, I will
24 then give you instruction on the law. That's
25 another part that -- we put them all together

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1 and we develop, by combination we get a
2 result which is -- which speaks the truth in
3 this controversy.

4 Please remember that while the law, of
5 course, is important that my remarks likewise
6 should never be considered evidence.

7 Give your attention now to the attorneys
8 as they give their closing remarks.

9 Solicitor? Do you want to waive on the
10 opening on ---

11 SOLICITOR SHEALY: I'll waive.

12 THE COURT: Okay. Mr. Grimes?

13 ANDREW GRIMES: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 ANDREW GRIMES: Good morning. Do you
16 remember back on Tuesday afternoon, in my
17 opening statement that I basically said that
18 this case is about, 'where was Jarrett about
19 6:30 on September 15th, 2010?'

20 The answer to that question is -- listen
21 to his grandmother, Ms. Graddick. As you
22 heard her testify, she saw this car pull up,
23 a red car. She said that it was about 6:34.
24 The boys called to Jarrett, Jarrett ran over
25 there and got in with his buddies. "Don't

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1 get in that car." But Jarrett didn't listen
2 to her. If he had, we would know with a
3 hundred percent certainty where he was. But
4 we know that he was there at her house with
5 her, helping out in the yard, and with Mr.
6 White.

7 There is no one that anyone will be able
8 to come in here, such as Brian Mazyck, who
9 probably should be at a fourth table, and
10 make up a story about Jarrett running through
11 some cuts and all this stuff. Or somebody
12 like Kevin Smalls coming in and saying,
13 'Yeah, I dropped him off, picked him up.'

14 We would have known for sure if he had
15 listened to his grandmother. But he was a
16 young man. As young men tend to do, they
17 have other things on their mind. On his mind
18 was girls. You heard a lot of talk about
19 texting girls, going out to Trident, talk
20 about girls getting some crabs, liquor,
21 meeting with girls that night.

22 Anyone who is a parent knows that kids,
23 young men, teenagers, they are liable to
24 sneak out the windows to go meet girls.

25 We heard Mr. Smiley, in his opening

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1 statement, go through the role of everybody
2 in here, what their jobs are and everything.
3 The job of the police is to investigate the
4 crime. If they get a report of a crime, they
5 go out and they find a video, talk to
6 witnesses. Listen to what the witnesses
7 said.

8 Now, Detective Simmons was busy and he
9 can delegate. He can say, 'Sergeant Wills,
10 you go do this.' 'Sergeant Smith, you do
11 this.' 'Officer so-and-so, you do this.'

12 We heard that Sergeant Wills talked to
13 Jarrett after he was arrested. Jarrett told
14 him that he wasn't in the car at 6:30, that
15 they picked him up at his home.

16 Well, how hard is it to drive from the
17 Mount Pleasant police station down 17 to
18 Linnen Avenue, walk into the driveway,
19 'Hello, Ms. Graddick. Do you have a few
20 minutes of your time? We have a few
21 questions about where Jarrett was.' Ten or
22 fifteen minutes.

23 How hard would it be for him to make a
24 phone call, dial the number, 'Hello, Ms.
25 Graddick' -- ten or fifteen seconds?

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1 And he's too busy to do that himself, how
2 hard is it to send someone else down there?

3 The reason that I make a big deal about
4 that is because it is important to have full
5 investigations. You want to be fair, have an
6 accurate and complete investigation. We've
7 all seen stories of people being in prison
8 ten, twenty, thirty years, who have been
9 cleared.

10 Everything isn't always what it first
11 appears to be. Something may look suspicious
12 and -- no doubt, Jarrett looked suspicious.
13 He was sitting in the car shortly after a
14 robbery, there was a gun, money, shirts. If
15 I sued the police for wrongful arrest, I'd
16 probably get sanctioned and disbarred to
17 bring such a silly suit.

18 But when you try to deprive someone of
19 their liberty on an armed robbery charge, you
20 better do all your work and not make
21 assumptions, just assume that someone is
22 guilty.

23 The last people who spoke to Ms. Graddick
24 are you. As Judge Dennis noted, you have
25 been on time, we've seen you take notes,

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1 you've been listening, watching. These are
2 all things that you will consider when you
3 determine a witness' credibility.

4 If for some reason, you missed something,
5 Miss Deborah (court reporter) can play it
6 back or answer that question. Sometimes we
7 will get a question about 'can we get a
8 transcript of the testimony', and that's not
9 possible at this point. It takes time to
10 type it and everything but we do have and
11 audiotape where you can listen, we can play
12 it back..

13 Speaking of credibility, I want to talk a
14 little bit about the witness' credibility.
15 In this case we have a whole stack of
16 evidence over here. You didn't hear much
17 objection about all of this (indicating
18 exhibits). Like I said in my opening, we are
19 not arguing about what happened. We're
20 arguing over who did it.

21 There's only been three witnesses who
22 have testified to direct knowledge of where
23 Jarrett was around 6:30 on September 15th,
24 2010. One is Brian Mazyck, Ms. Graddick and
25 Mr. White. Compare Ms. Graddick with Brian

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1 Mazyck, who is looking at jail time. Ms.
2 Graddick may be concerned about Jarrett going
3 to jail. They may have equal concerns there.

4 Then there may be the argument about who
5 came forward. Brian Mazyck was caught dead-
6 to-rights. His only way out was to make a
7 deal. So obviously you can't totally believe
8 his version.

9 You heard Judge Dennis at the beginning
10 of the trial say that we don't have to come
11 forward with any evidence. It's the police's
12 job to investigate.

13 Ms. Graddick was seventy-two at the time,
14 I doubt that she was walking down to the
15 police station but it wouldn't have been that
16 hard for them to have come out and talked to
17 her.

18 Who was forthright? For example, I asked
19 him what Bezel meant, and he had no idea. I
20 don't know if anyone ever had a nickname that
21 didn't have a story behind, a meaning, some-
22 thing to it. Maybe it meant embezzle, he was
23 embezzling Ms. Shealy, trying to get all
24 these deals -- get the armed robbery
25 dismissed, got a criminal sexual conduct

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1 dismissed. He's probably trying to get this
2 one dismissed.

3 And who was contradicted by other
4 witnesses. The only witness who contradicts
5 what Ms. Graddick says was Mr. Pants-on-Fire.

6 There was no reason for Mr. Davis to take
7 sides in this case. He said that there were
8 four people in that car, both times. He got
9 a good view, talked about gloves, masks,
10 shirts. He seemed fine to me.

11 Then we have Ms. Lyons. She was very
12 specific about what Kevin Smalls was doing.
13 Well, I disagree with some of her -- while I
14 might be judging her myself, relying on a lot
15 of assumptions, she obviously was right. She
16 was so sure that the persons outside,
17 standing by a car, Brian Mazyck, was so sure
18 that he was involved in that.

19 Then they talk about what testimony was
20 corroborated. Ms. Graddick talks about that
21 Melvin was there. Melvin came in and
22 testified.

23 Brian Mazyck said that he was at his
24 brother's house, then they went to
25 McDonald's. There was a video there but we

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1 never saw that video.

2 We heard the manager of Walmart testify
3 that there are thirty-six outside cameras
4 there. We saw three angles. If they have
5 been there from 5:30 to 6:30, they would have
6 shown up more than three times.

7 And he was a convicted fellow. Mr.
8 Graddick didn't have a record. Obviously his
9 charges are being dismissed. He's looking
10 for a deal.

11 Now, also talking about credibility,
12 someone will make mistakes. Mr. Davis, I
13 think made a mistake. He said that he saw
14 the car between ten and twelve. If I got up
15 here and argued that the whole case was wrong
16 because he said ten to twelve, that would
17 have been what you call unreasonable doubt
18 and I would be laughed out of the courtroom
19 or the jury room. It was almost three years
20 ago and he thinks that it was between ten and
21 twelve but all the facts that he talked about
22 were consistent with everyone else.

23 Like Mr. White, when we asked him what
24 day it was, he said that it was September
25 18th. Obviously it wasn't September 18th. But

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1 obviously there wasn't a red-and-black car
2 that picked him up on September 18th either.
3 He described the events, just like Mr. Davis.
4 If someone makes a big deal out of the fact
5 that he said September 18th, 'well, he must be
6 lying', then why wouldn't that same rationale
7 apply to Mr. Davis?

8 I also want to talk a little bit about
9 memory. It's out -- how can you be sure that
10 Ms. Graddick and Mr. White are correct about
11 the time? It's been a long time ago. She's
12 older, has some health problems. But
13 sometimes maybe something stands out that
14 you're going to remember. Her grandson gets
15 arrested, how hard is that to remember.
16 Remember, it was only a few hours at that
17 point. For example, 6:34 and he was arrested,
18 -- if she got a call by, say, 9:30, that's
19 only three or four hours. That's why I asked
20 a lot of questions about her background, to
21 show that she knows her history and I wanted
22 you to get to know her a little bit more. I
23 know that my grandmother has all her memory,
24 she would recognize me. She talked about her
25 career, her husband, his jobs. She might not

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1 know all of Jarrett's friends but when
2 you're seventy-two, you're probably not
3 going to hang out around her -- not when
4 you're out looking for girls. She wouldn't
5 know all of his friends. Again, it's been
6 three or three and a half years and people
7 change. You can see how they were dressed
8 that day. Sometimes you may see people that
9 you know but they are dressed differently and
10 you might not recognize them.

11 Talking about stuff that remains in your
12 memory, there are events that stand out. Who
13 in here know what we were doing on September
14 11th, 2010. Who knows what we were doing on
15 September 11th, 2001. Some things you
16 remember.

17 Now I want to talk a little bit about the
18 DNA and the car stop. You heard that this is
19 a high risk car stop. You heard that the
20 officer decided to bring them out one at a
21 time.

22 If someone had just gotten in that car
23 and the next thing they knew they were being
24 pulled over, guns are pointed at them, it's
25 easy to say how you should act but it hard to

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1 say how you actually would act under the
2 stress of that event. If you look at some of
3 the pictures, I think that there is a speaker
4 box in the trunk of that car. That speaker
5 box might deflect a bullet and that might be
6 way they got down there. Or maybe it was
7 because you're trying to sit, as you're
8 supposed to.

9 You heard testimony that he's taking the
10 gun and pointing it at Mr. Smalls, that he
11 tried to jump in that front seat and drive
12 off. But when the police surrounded them and
13 he couldn't do anything, he didn't want to
14 get shot, so he picks the gun up and throws
15 it away. I mean, if the police out there had
16 seen a gun near somebody, who knows what
17 would have happened.

18 As to the clothes, I think that Mr. Meeh
19 testified that there is no way to tell whose
20 DNA got on there, how it got on there, when
21 it got on there, stuff like that.

22 Officer Zeitner, he testified that he
23 didn't see anyone trying to change clothes.
24 It was only Ms. Alfaro who testified to that.
25 You can watch the video yourself -- I think

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1 at most you see the shoes. You can't really
2 see anybody taking their shirt off. I don't
3 believe the video shows that. Obviously the
4 clothes that Jarrett was wearing when they
5 got out of the car do not match the
6 description of the people who did the
7 robbery. No one from the store -- nobody
8 ever ID's any of these shirts as being the
9 shirts that the robbers wore before.

10 I want to talk a little bit about
11 circumstantial evidence. The reason that we
12 want to talk about that is because we only
13 had three witnesses who had direct knowledge.
14 I believe Judge Dennis is going to advise you
15 on the law on circumstantial evidence and
16 direct evidence.

17 Circumstantial evidence is treated as
18 direct evidence but it is a little different.
19 I hate to read but I want to make sure that I
20 get this right, *"To the extent that the State
21 relies on circumstantial evidence, all
22 circumstances must be consistent with each
23 other and when taken together point
24 conclusively to the guilt of the accused
25 beyond a reasonable doubt. If these*

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1 *circumstances merely portray the defendant's*
2 *behavior as suspicious, the proof has*
3 *failed."* There is more language there but
4 that is sort of it in a nutshell.

5 As I said in the beginning, obviously
6 Jarrett's circumstances are suspicious. I
7 would be insulting your intelligence if I
8 said otherwise. But do all of the
9 circumstances taken together point
10 conclusively to his guilt. By "all", that
11 includes Mr. Pants-on-Fire. How do you
12 reconcile his testimony with the other
13 testimony in the case and say that he is not
14 involved? I haven't quite figured that out
15 yet. I'm sure that Ms. Shealy will give you
16 her explanation.

17 But there might be another explanation
18 that could easily explain what happened here.
19 I ask that you consider that, that you can't
20 rule it out. It could have happened that Mr.
21 Smalls, Brian Mazyck were at the Walmart
22 around 5:30, that Brian Mazyck realizes that
23 he doesn't have any money for girls, crabs,
24 liquor. He knows how the Cricket store
25 works, he's paid bills there before. He

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1 knows where they keep the money at. He is
2 the only one among all the ones there that
3 has been identified as a customer of someone
4 who has been in the store.

5 He discussed the situation with Kevin.
6 They leave. Meet Keenan. Then they get a
7 fourth person, maybe it's a friend of Keenan,
8 maybe it is Brian Mazyck's brother, a friend
9 of Brian Mazyck. We don't know who it is.
10 Then they go back to Sam Edwards Road, drop
11 off Keenan and this fourth person. They go
12 do the robbery, come back, they pick them up.
13 The fourth person, maybe he gets freaked out
14 because he knows that Mr. Blain was sort of
15 following them. He said, 'I'm going to cut
16 my losses and just run through these woods.'
17 There's a lot of woods out there.

18 Mr. Davis never saw anyone get in the car
19 but you can assume that they did. Then they
20 go back to their original plan: crabs,
21 girls, liquor. They roll by Jarrett's house,
22 pick him up, come back out, head where they
23 are going, they get stopped. Arrested.

24 Maybe you will say, 'Mr. Grimes, you're
25 just trying to trick us with this fourth

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1 person. You're trying to muddy the waters,
2 play games with us.' Well, we know from the
3 DNA reports that there is this unidentified
4 contributor to the shirts, gloves, and we
5 don't know those people are. Mr. Meeh said,
6 'Well, I didn't run them through CODIS'
7 thought he didn't say exactly why. Said that
8 it wasn't like a homeowner in a burglary
9 could say 'that shirt yours, not mine.' I am
10 not sure if I understand that difference. We
11 know that the shirt there was involved, it's
12 evidentiary. That's why they were testing
13 it, took the swabs. It can't be that hard to
14 take a swab and run it through CODIS just to
15 check it out. Do a fair, accurate and
16 complete investigation.

17 I want to thank you for your time, your
18 considerations. We probably won't see each
19 other again. I hope you have a good holiday
20 season, a good Christmas. The last thing
21 that I would ask is that you help Jarrett,
22 his mother and his family, to have a safe and
23 wonderful Christmas by giving them one of the
24 best presents that you could, finding him
25 innocent. Thank you.

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1 THE COURT: Mr. Runyon.

2 WILLIAM RUNYON: Ladies and gentlemen
3 of the jury, in my experience in all these
4 case, it's the little things that kind of
5 bring everything together. What struck me
6 when I first got in this case, a long time
7 ago, was --- while back in my family we had
8 horses. We had them for twenty-one years and
9 it took me twenty-one years to figure out
10 that something that ate while I slept was not
11 an investment. But the simple fact of the
12 matter is that you, uh, got kind of messy
13 walking around barnyards, horse stalls, have
14 you.

15 That reminded me of Detective DeCamp.
16 Remember Detective DeCamp? He was the young
17 police officer who arrived on the scene, who
18 was just a few minutes ago. Later on, after
19 securing the scene, what have you, he
20 actually walked through the field, what have
21 you. Remember, I asked him -- I said, 'That
22 messed up your uniform, didn't it?' 'No, it
23 didn't really mess my uniform', he said
24 nothing snagged or anything like that. Said
25 'but it did mess up my shoes, my shoes got

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1 all muddy.'

2 Brian Mazyck identified State's Exhibit
3 62 as my client's shoes. They haven't been
4 in any barnyards and they haven't been in any
5 muddy fields, haven't been in any muddy
6 woods. It's that simple.

7 It's little details like that that -- the
8 State just throws these things up against the
9 wall, they throw it up against the wall to
10 see what sticks.

11 They picked up Mr. Graddick later.
12 Keenan was in the car. Keenan Coakley was in
13 that car and there's no question about that.
14 The question is when he got in that car.
15 That's the question. What did the State
16 prove to you, unless they tell you that the
17 State's witness totally is lying, was Mr.
18 Davis -- remember Mr. Davis? He's the --
19 this guy who worked hard his life, lives
20 there in Mount Pleasant, has got a child.
21 The child was playing out in the yard. It's
22 totally believable. He's out there -- and I
23 believe that he was two or three years old,
24 so he was going to be out there with the
25 child, watching the child because he didn't

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1 want the child to be out in the street.

2 This car comes down the street. Two guys
3 get out, went in the woods. Then the car
4 leaves. That is his testimony. That is the
5 theory of the State's case, by the way. That
6 is what Ms., Shealy told you that she was
7 going to prove to you, that the car came down
8 the street once and then it came back again
9 later. Then the car comes later and two guys
10 got in the car.

11 'Q. Mr. Davis, did you see any Coakleys
12 go in the woods that day?

13 A. No, sir.

14 Q. Did you see any Coakleys come out of
15 the woods that day?

16 A. No, sir.'

17 Well, Mr. Davis was asked by Ms. Shealy,

18 'Q. There are a lot of Coakleys out in
19 Mount Pleasant, aren't there?

20 A. Sure are.'

21 I get up and I say,

22 'Q. Mr. Davis, do you know Keenan
23 Coakley?

24 A. Sure do.

25 Q. Did you see him go in the woods that

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1 *day?*

2 A. *Sure didn't.*

3 Q. *Did you see him come out of the*
4 *woods that day?*

5 A. *No, sir.'*

6 Which means that at some point in time,
7 after that car left Sam Edwards Road, Keenan
8 Coakley got in the car.

9 And what do we find out about Mr. Smalls?
10 Mr. Smalls is always giving people rides and
11 Mr. Smalls knows Keenan Coakley. And Keenan
12 Coakley -- and all these people know each
13 other. Keenan Coakley was in the car.

14 By the way, the only person who said that
15 Keenan Coakley grabbed the gun was -- the DNA
16 test guy didn't say it, but we'll talk about
17 touch DNA in just a minute -- was Brian
18 Mazyck.

19 And Mr. Mazyck is the fellow that I know
20 you want to have your back. I've sure you've
21 reached that conclusion. If you're applying
22 for a loan, you want Mr. Mazyck saying -- you
23 can go the bank and rely on Mr. Mazyck.

24 Mr. Mazyck said the car only went down
25 the road one time. Okay. Either Brian

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1 Mazyck is wrong or Mr. Davis is wrong.

2 And Brian Mazyck said, *'Oh, yeah, I could*
3 *see that money in the back.'* Remember that?

4 And it's the little things, the little
5 things, the little things. *'I can see the*
6 *money in the back.'*

7 Well,, there is a picture of the money in
8 the back. Remember that? Those pictures?
9 You remember that. The console was open in
10 the back, the money was spilling out.
11 Anybody sitting in the back seat would see
12 it. Wouldn't they? They must have guilty
13 knowledge. Those people sitting in the back
14 seat must know what's going on.

15 Once again, it's the little things. The
16 little things.

17 The State and the defense agreed not to
18 call a witness. That agreement was that the
19 officer started the inventory search of the
20 car, that he opens the console of the car and
21 the money spills out. No one sitting in that
22 back seat could have seen the money the way
23 that Brian Mazyck said. It just didn't
24 happen that way. The little things. Little
25 things.

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1 I think that there was a song about
2 little things mean a lot. Maybe I am dating
3 myself, but there is a little song about
4 that.

5 Now, the fact of the matter is that the
6 Court is going to tell you -- and if I say
7 anything about what the law is and it should
8 be different than what the judge tells you,
9 which would be inadvertent on my part, then
10 take what the judge tells you. I assure that
11 it would be totally inadvertent on my part.

12 The Court is going to tell you that
13 merely being present at the scene of a car
14 (sic) -- merely being present at the scene of
15 a crime, at that car, doesn't make you guilty
16 of the crime. The circumstances must all
17 come together to say that Keenan Coakley was
18 one of those people that ran up to that
19 store, ran back through the field, ran back
20 through the muddy woods -- with clean shoes
21 (displaying shoes).

22 I guarantee you that if there was a trace
23 of mud from Keenan Coakley that could be
24 related to those woods, -- you heard the
25 expert from SLED, -- they would have been

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1 able to identify it.

2 The other thing is, and remember this.
3 They took them out of the car with a routine
4 police procedure. They took them out of the
5 car and put them in a different patrol car
6 and we didn't hear any police officer saying,
7 *'Well, Keenan Coakley was in my car and, boy,*
8 *there was all a bunch of mud down in the*
9 *floorboard.'* None of that. Keenan Coakley
10 didn't run through no woods.

11 Mr. Grimes told you that circumstances
12 have got to come together and point
13 conclusively to the question of guilt.

14 Now, there's no way that Keenan Coakley
15 can prove that the wasn't in that car that
16 day, because he was. You know, Brian Mazyck
17 told you about Mr. Smalls gives rides to
18 everybody, picks them up, drops them off;
19 that, that is the way that he does things.

20 There is absolutely no evidence that Mr.
21 Coakley was one of that got in that car on
22 Sam Edwards Road. There just isn't. As a
23 matter of fact, there's affirmative evidence,
24 unless they don't want you to believe Mr.
25 Davis, there is no evidence that he got in

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1 the car on Sam Edwards Road. If he didn't
2 get in the car on Sam Edwards Road, then he
3 wasn't one of the robbers. It's just that
4 simple.

5 Now, there is a hundred and some-odd
6 exhibits in this case, a hundred and some-odd
7 exhibits. Let's boil it down a little bit.

8 Was Mr. Coakley in the car? Sure.

9 Remember the discussion about DNA? The
10 gentleman from SLED and the lady who appeared
11 by Skype, they talked about how you've got to
12 be careful when you're doing touch DNA
13 because -- you know, as a practical matter,
14 maybe my DNA is on those shoes right now
15 because I picked them up. I didn't wear them
16 but I picked them up. If they were to swab
17 them now -- because it's real easy to get DNA
18 on things. If you get in the car -- and I
19 still don't understand this whole thing about
20 these clothes that were in the car, but these
21 people were wearing clothes. Mr. Coakley was
22 wearing clothes when they got out of the car
23 and they didn't bring any clothes in here to
24 say '*oh, these pants are muddy*', none of
25 that.

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1 Now, little things.

2 If Ms. Lyons had been big on the Pig,
3 maybe there wouldn't have been a phone call.
4 But she went to Walmart for groceries and she
5 made the phone call, which led ultimately to
6 the traffic stop. But at no time -- and by
7 the way, what did Mr. Blain of the phone
8 store tell you? He said, 'You know, it's not
9 a secret how we do the money in our store.
10 Anybody who is a customer of our store knows
11 how the money is done.'

12 Q. Was Kennan Coakley one of your
13 customers?

14 A. No.

15 Q. Mr. Mazyck, have you ever been in
16 that store?

17 A. No, I don't think so. Oh, maybe I
18 paid my brother's bill once or twice.'

19 Brian Mazyck is at the center of this
20 situation and he's got every reason to want
21 you to believe that Mr. Coakley was involved
22 in this versus maybe one of his friends that
23 he talked into it.

24 Now, Brian Mazyck -- as a matter of fact,
25 Mr. Mazyck tells you that he didn't do

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1 anything. He's as pure as the wind-driven
2 snow as it would relate to anything involved
3 in this crime. He didn't go to the liquor
4 store, he didn't buy crabs, he didn't have
5 any money. I mean, he couldn't even buy
6 something at McDonald's. Mr. Smalls didn't
7 have any money to give him anything either.
8 Maybe he was confused because he's on insulin
9 and he was wacky. As he said, sometime he
10 gets confused when his insulin is low and his
11 sugar is high. But the simple fact of the
12 matter is that it is the little things.

13 Another little thing -- remember the
14 picture, the list of evidence about cell
15 phones? Brian Mazyck said, 'Oh, Mr.
16 Coakley's cell phone was in the back seat.'
17 Mr. Mazyck was testing back and forth to
18 somebody. He said that Mr. Smalls was
19 testing back and forth to somebody, some
20 girls. If there was any evidence that Mr.
21 Coakley had been in touch with Mr. Mazyck or
22 Mr. Smalls that afternoon, this fine lady
23 (indicating Solicitor) would have brought in
24 here and put a witness on the stand and said,
25 'You tell us about those cell phones.' There

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1 are all records. There was no connection.

2 Now, DNA means that Mr. Coakley was -- to
3 the extent that he was around, some of the
4 things may have had his DNA on them.

5 Remember, there is what they call touch DNA.
6 That's because we all -- you know, you take a
7 shower in the morning, shave and what have
8 you, you think you're all clean but after we
9 heard the SLED expert it's more that we're
10 all walking around kinda of just shedding
11 this "cloud" of DNA as we walk down the hall.
12 That's what it sounds like. And I guess to a
13 certain extent -- and he said that some
14 people do, some people don't.

15 But the simple fact is that he was in the
16 car. He's probably been in the car before.
17 He knew Mr. Smalls, ridden with him before.

18 You can go in and you can say, 'Well,
19 it's Friday. Let's go home. Let's just go
20 ahead and -- here's the indictment on Keenan
21 Coakley, let's go ahead and vote.'

22 But the Court is going to tell you what
23 you've got to do. You've got to decide
24 whether the State has proven its case beyond
25 a reasonable doubt. You know, that's the

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1 toughest part of this whole thing. That's
2 the toughest part because you want to believe
3 the State's case, you want to believe
4 everything that the State has said. You want
5 to believe that the State is right, that
6 there are people in here that should be found
7 guilty.

8 But in order to do that, the little
9 things -- the little things have to all add
10 up. That's what a circumstantial evidence
11 case is all about.

12 What struck me at the beginning of this
13 case was the mud on the shoes of Officer
14 DeCamp. It just didn't -- it wasn't there,
15 associated with Mr. Coakley. For years I
16 heard, 'take the boots off if you're coming
17 in the house.' Take your boots off, on the
18 farm. I've heard that more times than I can
19 shake a stick at.

20 Or, 'You've got mud in the back of my
21 car.' But the police didn't have to vacuum
22 out the back of the car that Mr. Coakley rode
23 in. His shoes are right there. Any shoes
24 that he had that day, they would have been
25 able to take them from him and prove that he

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1 went through the muddy field. They're not
2 here. Which means that if Mr. Davis says
3 that he didn't get in the car, he didn't go
4 in the woods, he didn't come out of the
5 woods, that he got in the car later. It was
6 a short period of time, but he got in the car
7 later. That's why I am going to ask you to
8 find Mr. Coakley not guilty. Not because it
9 is some specious thing but because the little
10 things are not there. He didn't have muddy
11 shoes, those shoes aren't muddy. The shoes
12 that he was wearing when the got of the car
13 weren't muddy, because they would have
14 brought them in here, too.

15 I want to thank you for your attention.
16 It's been a long case and it's been trying on
17 you. If there is anything that I've said or
18 done during the course of this trial, that
19 has offended you or made you mad, by all
20 means I apologize for it. In forty-six years
21 of practicing law, I don't believe that I've
22 had a jury or juror that has held anything
23 against a litigant that I've represented
24 because of something that I've said or done.
25 If I have said or done something that has

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1 made you upset or mad during this trial -
2 - well, if I have really made you mad, after
3 this whole thing is over with, regardless of
4 your decision is, call my office and give me
5 down the road for it. That's what this is
6 all about. They call it practicing law,
7 because we never get it right. That's kind
8 of humorous except doctors practice medicine
9 and -- I told my doctor that and he didn't
10 appreciate that, because he thinks he gets it
11 right all the time. I think he does. But I
12 thank you for the attention that you have
13 given this matter, allowing us this time. I
14 want to thank you on behalf of Mr. Coakley
15 and I ask that you find Mr. Coakley not
16 guilty.

17 THE COURT: Mr. Smiley?

18 JIM SMILEY: Good morning. I certainly
19 had a sleepless night last night. I stand in
20 front of you with twenty years of practice,
21 terrified. I've represented Kevin Smalls to
22 the best of my ability but I'm scared that I
23 am not doing a good enough job to portray my
24 client. It's easy to represent a guilty
25 person. It's hard to represent an innocent

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1 person.

2 In this case it's been my pleasure to
3 represent Kevin. What I asked you from the
4 very start, during my closing, I ask you
5 again before I start my closing. While this,
6 case has three codefendants in the room, each
7 defendant is to have a separate trial.

8 Mr. Graddick, Mr. Coakley, y'all have to
9 make the decision whether they robbed that
10 store.

11 Mr. Smalls, we know that he did not rob
12 that store but you have to make the decision
13 whether he was part of a preplan, acted in
14 concert with the others. We base that on the
15 evidence that we have.

16 Y'all have a really tough job. There are
17 certain things that you are sit back there
18 and say, 'We know this. We know this.' This
19 is where the problem comes, they are going to
20 ask you, and they have to, to assume, to
21 guess -- and that, by its very definition, is
22 not beyond a reasonable doubt. When you say,
23 'you know what, this may be what happened.'
24 That's reasonable doubt right there, when you
25 say "may be." If you sit there and you

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1 hesitate about what went on, that's
2 reasonable doubt.

3 I am going to try to stick to the few
4 things that we know. We know that two black
5 men with masks came in -- well, we are not
6 sure that we know that they were black men.
7 We heard some testimony about that but -- we
8 know that two men came in. Miss Lynn said
9 that they broke through the field, through
10 those trees -- and you can see those trees.
11 While they say that this field has changed,
12 you can look at the overhead photograph and
13 you've be able to see the wood line, the tree
14 in the field. Two men broke out of the
15 field, towards the door of the phone store.

16 Miss Lynn and Mr. Blain exit the store,
17 and I would have probably done the same
18 thing, yelling 'robbery, robbery, call 911.'

19 We know from Ms. Lyons and we know from
20 Brian Mazyck that Kevin was there.

21 Now, we know that.

22 But I -- and I can't use "but", but -- I
23 don't understand how Kevin was -- was part of
24 this preplan that he was the get-away driver,
25 or the lookout, or both? So I am going to

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1 break it down and look at each one.

2 It doesn't make sense that he was a
3 lookout, if that was his role, because the
4 cell phones that supposedly belonged to
5 Keenan and Jarrett were on the backseat.
6 So if he was the lookout, he had no way to
7 communicate. And if he was supposedly the
8 lookout, would he have been right in front of
9 the store, standing out there?

10 You'd have to think that he was part of
11 The Apple Dumpling Gang to sit right there.
12 I keep using that. Don Knox and Tim Conway
13 are funny and they were dufusces. But I hope
14 you don't think Kevin is so stupid that he
15 would go where there is thirty-six camera
16 watching him. I mean, every time I pull into
17 a Walmart, I see cameras everywhere. So if
18 you're the, quote, unquote, "lookout", I
19 guess that you're communicating by --
20 yelling? I don't know. But they weren't
21 communicating by cell phones. We would have
22 heard about that. If they had cell phone
23 records, they would have brought them in here
24 to show you.

25 So I hope that you will agree that in

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1 trying to make their case the hand of one is
2 the hand of all that they certainly haven't
3 proved that Kevin Smalls was a lookout. It
4 just doesn't make sense.

5 Now, as the get-away driver? That makes
6 even less sense. Kevin Smalls to act as the
7 get-away driver in this case -- I mean, a
8 get-away driver wouldn't have parked in the
9 Walmart parking lot. A get-away driver would
10 have been parked back on that back road, Sam
11 Edwards Road, or somewhere else so the guys
12 could jump in the car. They weren't going to
13 jump in the car in the Walmart parking lot.
14 It just doesn't make sense.

15 Or if you were the get-away driver, if
16 they want to tell you that he was going to
17 pick up somebody on Sam Edwards Road, why
18 would he go over and sit in front of the
19 place robbed where he'd be seen by everybody
20 and then drive around to this -- it's not an
21 easy place to get to. As you've already
22 heard, they had to make U-turns and
23 everything else to get there. That just
24 doesn't make sense.

25 I ask that you use common sense.

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1 Now, Ms. Lyons hunch that that car was
2 involved, that was right. The way that she
3 came to her hunch, I don't agree with. But
4 she told you what she did, and I appreciate
5 that. She said that Kevin Smalls -- even
6 though she never identified him. Who knows
7 that was even Kevin, but -- she identified a
8 man standing outside the car, leaning on it,
9 in front of that area that is part of Walmart
10 in the general vicinity of the Cricket store,
11 the liquor store.

12 She said that he was standing there. I
13 tried to pin her down about 'why did you pick
14 this guy?' I'd ask her before about that,
15 about how she was. She said that she was
16 nervous, that she was looking around. I
17 asked her what it was about Kevin that showed
18 that he was nervous and looking around. I
19 don't think that shows -- well, I hope that
20 you don't think that that "evidence" is
21 beyond reasonable doubt, that somehow he was
22 part of the preplan, that he was somehow
23 acting in concert.

24 And I did ask Brian Mazyck -- and you all
25 are going to have to decide what to do with

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1 Brian. But I asked him:

2 Q. When that robbery was going on, did
3 you think that it was Jarrett and Keenan?

4 A. No.

5 Q. The two guys that you had been with
6 earlier that day?

7 A. No.

8 You decide whether there was a preplan
9 that included Kevin or not in this case.

10 Now, Mr. Davis. Mr. Davis, he had no dog
11 in this fight. He saw a red car come down
12 the road. That's important, that it went to
13 the end of the road. Jamie Coakley, who
14 Brian says he knew, lived down at that end of
15 the road. It's been established that Jamie
16 knew these fellows, that Kevin went down to
17 that end where his house was and that he
18 dropped two guys off. That would make sense.
19 Then he left.

20 Now, when I first got this case, in
21 looking at it, Mr. Davis said that he saw
22 white gloves. That worried me a little bit.
23 If my guy dropped two guys off at Jamie's
24 house and they've got white gloves on,
25 something -- it's something that you've got

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1 to think about. And I didn't get it until
2 Mr. Davis testified. Those guys got out but
3 they didn't go in the woods back there, they
4 out and then they walked up the road -- and I
5 tried to help you with the distance there,
6 but -- they walked up three houses, towards
7 Mr. Davis' house, and went into the cut
8 across from his house. That's when he saw
9 the white gloves. I will submit to you that
10 made sense, because when they got out of the
11 car that's when they prepared for the
12 robbery. That's when Mr. Davis saw them.

13 Now, if I'd been Mr. Davis, I would have
14 been thinking that something was up right
15 then. But -- okay. And I certainly am not
16 casting any aspersions on Mr. Davis, please
17 understand that.

18 This cut -- it makes it sound like this
19 cut is a paved highway through to the
20 Walmart. It's woods. If you've been in that
21 area, you may be familiar with it. It's a
22 pretty good bit to get through there -- down
23 the road, through the field, into the trees,
24 across the highway and into the phone store.
25 That is a pretty good ways, it's not like

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1 it's right next to it. I think that's pretty
2 important in Kevin's mind as this was going
3 on.

4 Mr. Davis got the time wrong and while
5 that's -- as time goes, memories fade and
6 change. That doesn't mean that anybody is
7 not telling the truth. But as you replay
8 things in your mind, as you're telling it, it
9 grows. I think that's what it shows, that it
10 grows.

11 Then Mr. Davis said that the red car came
12 down, went to the end of the road, and
13 dropped two people off. Four people in the
14 car when it went down, two in the car when it
15 came back.

16 Then when it came back down the road, the
17 second time, third time he's seen it as it
18 went in and out, it went to the end of the
19 road, turned around, it came up and it
20 stopped after the fellows walked out of the
21 woods by his house, where that cut was.

22 What does that show? It shows that Kevin
23 picked up the fellows. That's all that it
24 shows.

25 Now, I'm trying to stick to the things

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1 that we know.

2 We've got the Walmart video, and we could
3 start with that first video that has the
4 strip on the side -- starting about 6:28.
5 Thank you. They showed you the car as it was
6 leaving the Walmart area. This is all in
7 evidence, you're going to have it. Starting
8 the video at 6:28, -- if you don't mind.
9 (Video playing), -- that's fine. Thank you.

10 Now, if you'll watch, in about five
11 seconds -- if I've got my times right --
12 there it is, 6:28:29, there he is pulling in.
13 Now, I want you to watch the speed because
14 there was a big deal made about how it was
15 flying out, like that was some evidence of
16 guilt.

17 (Video playing), first of all we see them
18 pulling in. At 6:35:30, just a little
19 before. Then five minutes later, (video
20 playing), you see him coming out. So they
21 were in that area for about five minutes.

22 Then if you would go to the center camera
23 of the Walmart -- and I do appreciate Ms.
24 Shealy's help. The State doesn't have to
25 assist me in trying to get all that done, but

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1 it's very nice that they are cooperative and
2 we appreciate their help. I'm not any good
3 with computers. If I had to do this
4 technology, we'd be at this all day.

5 At 6:35 -- if you want to just let it run
6 from there, (video playing), you can see some
7 people moving around. I just want it to run
8 for a minute.

9 Actually, could you back it up about two
10 more minutes -- (video playing). Right there
11 is good. Thank you. We'll just watch from
12 here, (video playing). See this gentleman
13 (indicating), watch him. He doesn't have
14 anything to do with this case but I just want
15 you to watch for a minute, (video playing).
16 See what time it is. I'm guessing the
17 robbery is going on. What is he doing? He's
18 looking around. He's trying to see what is
19 going on.

20 See the young lady, she's looking.

21 Everybody's looking.

22 Does he look suspicious? He's just
23 standing there, looking around, trying to see
24 what's -- now he's going towards it. All
25 right.

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1 Keep letting it run, please, (video
2 playing).

3 I asked about the timing of the video,
4 was it real time. The gentleman told me that
5 it was but I think that you can tell that it
6 is a little choppy. I don't think that we're
7 getting all the frames on this, but y'all can
8 make that decision.

9 I kept looking for Ms. Lyons to come out
10 of the store, or for Kevin to come out of the
11 store. Unfortunately, while they've got
12 thirty-eight or thirty-six video cameras, we
13 don't have that angle.

14 (Video playing), there goes his car. You
15 can see the other cars moving around. You,
16 as the judges of the facts, can decide
17 whether it is peeling out, going fast.

18 I asked her about the screeching tires
19 because, you know, that concerned me too.
20 She never saw it. I will tell you that I've
21 gone over those bricks in front of the
22 Walmart, turned onto those bricks and my
23 tires have screeched before. But I'll let
24 y'all decide on that.

25 But I think what is important is that

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1 back at 6:36, 6:37, (video playing), see that
2 car going out? You can see it's speed.
3 There you can see that car and you see its
4 speed.

5 Now, if you're the get-away driver, I
6 asked these questions -- if you're the get-
7 away driver, first of all there are a lot
8 quicker ways to get out of the Walmart
9 parking lot. When you first look at it, you
10 think 'what is he doing.' But the security
11 fellow told you that is a normal way that
12 people go out.

13 But if you're leaving so fast -- and it
14 took him over a minute and ten seconds to
15 where you see him. That's driving time. You
16 first see him at 6:35:30 and he is pulling
17 out and taking a right at 6:36:40.

18 Now, let's talk about the police stop.

19 I'm just trying to tell you what I see
20 and trying to show you the facts that are
21 reasonable doubt. I'm trying to stick to
22 things that we know.

23 The car stop on Kevin's car. The first
24 thing, he doesn't try to flee. All right.
25 If you're an armed robber, part of an armed

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1 robbery, we see it every day that people try
2 to evade the police. He didn't try to do
3 that.

4 When he was told to put his hands up, you
5 see them go up immediately. Now, armed
6 robbers, they try to get away.

7 I found that very interesting and I think
8 that it shows you the difference in the
9 defendants. Coakley tries to get over the
10 seat into the driver's seat. The two of
11 them in the back, the car is bouncing, things
12 are moving. Y'all got to see the car and
13 there was stuff everywhere at that point and
14 they yelling, "Go! Go! Go!." Kevin ain't
15 going anywhere. He stops, puts his hands up
16 immediately.

17 As they're saying "Go, go, go", he
18 doesn't know it but Brian Mazyck see that he
19 has a gun stuck in his back, the back of his
20 seat. He's not part of any plan.

21 Fortunately, Kevin's kindness of his lack
22 of being assertive, by being the guy who
23 worked hard and had a car, was getting him
24 sucked into an armed robbery.

25 Kevin Smalls dropped off his "friends" at

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1 Jamie Coakley's house, then he ran to Walmart
2 to do some errands, return a movie. He
3 dropped off the movie at the Redbox, got back
4 in his car.

5 He saw a robbery, watched it. He got out
6 of there. That woman they were locking eyes
7 with, was giving him the eye, jumping in her
8 car, closing the door, -- I bet that he did
9 get out of there. I probably would have
10 gotten out of there, too, with an armed
11 robbery going on, some woman looking at me,
12 then getting in her car and getting on the
13 phone. 'Let's get out of here.'

14 Now, I guess that I do have to talk to
15 you about Brian. Brian Mazyck says that they
16 were in that parking lot a minimum, if you
17 take the shortest period of time, forty
18 minutes -- and I'm being generous here, 6:00
19 o'clock to 6:35. There are thirty-six
20 cameras.

21 The other thing that makes no sense is
22 this McDonald's thing. First of all, you've
23 got to understand that Kevin has been driving
24 people around. He works for his money. He
25 went and got Brian, paid his brother for

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1 dogs. Then Brian goes into McDonald's,
2 orders food and then turns to my guy and
3 says, 'Give me some money.'

4 Kevin supposedly doesn't have any money,
5 but according to Brian what is going on with
6 him in the parking lot over there is that he
7 was going to buy liquor. With what?
8 According to Brian, he doesn't have any
9 money. It doesn't make sense.

10 So we really have to drop back to not
11 filling in holes, but we really have to drop
12 back to what y'all know beyond a reasonable
13 doubt. When you sit back there, please, I
14 beg of you, to deal with these individuals
15 separately. They are separately indicted.

16 Kevin Smalls did not participate in a
17 robbery, he was not of a part knowingly -- he
18 might have been a part of a plan, according
19 to the other two fellows, by being someone
20 who was kind enough to drop people off and
21 pick them up, for gas money or whatever. He
22 is getting pounded for it. He didn't choose
23 to be with these fellows.

24 Kevin Smalls is innocent. He is not just
25 not guilty, but innocent.

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1 The State must prove that he was a part
2 of a preplan, that he acted in concert. Now,
3 Brian said that when the fellows got out of
4 the woods and got in the car that he knew
5 that something was up. I'm sure Kevin did,
6 too. But at that point you're stuck. That
7 is not part of a preplan, that's not part of
8 the crime. It might be accessory-after-the-
9 fact but it certainly is not armed robbery,
10 doesn't show that he was part of the plan.
11 They've got to show that he was acting in
12 concert, that he assisted those two gentlemen
13 knowingly in committing an armed robbery.
14 The evidence does not, does not come close.

15 I'm been doing this for about twenty
16 years, not nearly as long as the esteemed Mr.
17 Runyon. To get up here and to try to convey
18 to you all the things that I want you to
19 know, it's hard. It's really hard for me.
20 Your stomach is in knots because you want
21 truth done in this courtroom.

22 If you think these guys need to be
23 convicted when you look at the evidence.

24 But when it comes to Kevin Smalls, he is
25 not guilty. I beg that you give him a fair

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1 and open trial, to stick with what you
2 know, not to make assumptions.

3 Y'all have been a wonderful jury. It's
4 been a pleasure to present you this case.
5 Please. He's not guilty.

6 THE COURT: Thank you, Mr. Smiley. Ms.
7 Shealy?

8 SOLICITOR SHEALY: May it please the
9 Court?

10 THE COURT: Yes, ma'am.

11 SOLICITOR SHEALY: Good morning. Let's
12 start with Sam Edwards Road.

13 Joseph Davis, who has been living over
14 there for forty years, knows his cut-
15 throughs. He saw an unfamiliar car. He saw
16 it go to the end of the road, not to Jamie
17 Coakleys' but to the fence that is tucked
18 away in the back, at the end of that road.

19 He sees two people get out. They are
20 dressed in dark clothing and white gloves.
21 They aren't going to Jamie Coakley's.

22 He sees that vehicle leave.

23 Let's go to the Cricket store. I didn't
24 realize until she testified that she's just
25 come out of high school, working at the phone

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1 store with Mr. Blain. She looks out that
2 door and see two guys dressed in dark
3 clothing, with sunglasses on, faces covered,
4 come barreling into her store. What does she
5 do? She says, "Jim!"

6 What does Mr. Blain tell you? He tells
7 you that he saw one of them with a gun.

8 You couldn't see the bottom of their
9 faces. And he tells you something else, they
10 were tall, they weren't chunky they weren't
11 overweight, they had an athletic build.

12 What did they do? They did the right
13 thing. They got the heck out of there and
14 they start yelling, 'We've been robbed. Call
15 911.'

16 They seek shelter. They try the Sprint
17 store, it's closed. They try the next place,
18 it's unoccupied. They retreat into Jersey
19 Mike's.

20 The moment that Harlee Lynn gets into
21 Jersey Mike's, she gets on that phone that
22 someone else has already begun calling 911
23 and tells them what she saw.

24 Now, what does Mr. Blain do? He gets in
25 his vehicle and tries to go follow them.

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1 What had been going on in the parking lot
2 at that time. Well, let's look at what Brian
3 Mazyck tells us. He told you about earlier
4 when they went to the Walmart. Then they
5 went over to the McDonald's, he orders food
6 and then Mr. Smalls tells him 'I don't have
7 any money.'

8 Well, what does he tell you about when he
9 gets in that car initially when Kevin Smalls
10 goes to pick him up at his brother's? He
11 tells you that things were weird in there.
12 He saw Keenan Coakley's, Southfork-whatever
13 the emblem is, shirt in the backseat.

14 Mr. Runyon has missed the point on
15 something. What else did Brian Mazyck tell
16 you? He told you that Keenan Coakley's new
17 shoes were in the car. Where were Keenan
18 Coakley and Jarrett Graddick, he asked. What
19 does Kevin Smalls tell him, 'Oh, they're
20 getting ready.'

21 When you get back into the jury room,
22 look at State's Exhibit 35, a photograph.
23 It's the backseat of the car where the gun
24 was ultimately found, where Keenan Coakley
25 was sitting, there's a pair of shoes. Those

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1 are the shoes that he took off after the
2 incident. They're not the shiny new ones
3 that Brian Mazyck told you were in the car.

4 Mr. Runyon has gotten up here and he has
5 said, 'Oh, Detective DeCamp said that it was
6 muddy, muddy, muddy, muddy.' I believe what
7 Detective DeCamp said was, 'I had some dirt
8 on my shoes.

9 Those (indicating State's Exhibit 35) are
10 the shoes that were used for the robbery.

11 Brian Mazyck also thought that it was
12 weird that their cell phones were in the car.
13 After Keenan Coakley does not buy Brian
14 Mazyck the meal that he ordered at the
15 McDonald's, they first go and park by a
16 truck. Remember?

17 Then they move the car. They move the
18 car not near the liquor store that Kevin
19 Smalls is talking about buying liquor,
20 getting crabs, meeting up with girls,
21 watching movies. Ladies and gentlemen, Brian
22 Mazyck told you that that made him
23 suspicious. 'If you don't have money to buy
24 my lunch at McDonald's, he's thinking, 'well,
25 how are we doing to get crabs? How are we

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1 going to get liquor? Why are we going to the
2 mall and how are we going to watch a movie?'

3 So can't you just picture it? red-and-
4 black car driving up, positioning itself so
5 that in that rearview mirror that Kevin
6 Smalls can watch what is going down in the
7 Cricket store. He's got the seat back just a
8 little bit so that he can watch what is going
9 on.

10 And then what does Jessica Lyons tell us?
11 These men -- these gentlemen, the attorneys,
12 are trying to suggest to you that Jessica
13 Lyons was looking at Kevin Smalls because he
14 was black. She told you that was ridiculous.
15 What drew him to her attention was not the
16 color of his skin but was his behavior. He
17 was outside the car at that point. He's
18 looking at the Cricket, he's looking around,
19 he's nervous. He's looking at the Cricket,
20 he's looking around, he's nervous. That's
21 what he did to draw her attention.

22 And isn't it interesting that she was
23 spot on?

24 The get-away man? Look at him. She
25 thought enough of his odd behavior that when

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1 she calls 911, she tells them. And she takes
2 time out of her day to look at the license
3 tag, to help police. Aren't we glad that she
4 did?

5 People were yelling as they were running,
6 'Call 911!' It's interesting -- just as the
7 Walmart video, -- what is interesting about
8 the path that Kevin Smalls took out of the
9 parking lot is this. When he makes that turn
10 out of the Walmart parking lot, in front of
11 where the stores are, when you get to that
12 intersection before you turn right in front
13 of Walmart, what's to your left? The field.
14 You can see people running.

15 What does he do? He gets right back on
16 Sam Edwards Road. Why? Why in the world
17 would he go back up to Sam Edwards Road at
18 that time except to pick up his buddies.
19 Jarrett Graddick and Keenan Coakley were
20 going to have money for a good night tonight.
21 There was absolutely no other reason for him
22 to go down Sam Edwards Road at that point but
23 to pick up his friends. No other reason.

24 And Jessica Lyons told you that when she
25 hears that car going out, when she sees the

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1 car going out, that she hears spinning tires,
2 tires squealing.

3 Now, Mr. Davis tells us that while he is
4 still out on the road, the one that he is
5 familiar with, that this time, unlike the
6 first time, when that red-and-black car turns
7 down Sam Edwards Road that it is not going at
8 a normal pace, that he is going fast. He is
9 looking for them, 'Where is Keenan Coakley,
10 where is Jarrett Graddick.' The way that
11 Joseph Davis described it was that he saw
12 them coming out of the woods, and all of a
13 sudden they were gone. They got in the car.

14 What does Brian Mazyck tell you -- oh,
15 what is most important about what Joseph
16 Davis tells you is that Kevin Smalls, before
17 Joseph Davis sees them coming out of the
18 woods, Kevin Smalls stops right in the area
19 where they would typically come out. Brian
20 Mazyck tells you, no, that he stopped and
21 backed up when they started 'waving us down.'

22 When that car leaves with the two guys
23 that had just robbed the Cricket store,
24 robbed it at gunpoint, it flies out of there.
25 It makes a U-turn on Porchers Bluff to head

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1 back down Highway 17 South.

2 Now, what does Brian Mazyck tells us
3 happens in the car when they get in there?
4 One gets in with a gun. He can't tell you
5 which one that it was. He doesn't remember.
6 But one of them gets in with a gun.

7 They had those masks on their face.
8 Well, let's think about it, get the image,
9 (demonstrating with shirt over lower part of
10 face). The knot goes on the back of the
11 head. This part is covering the nose and the
12 mouth. Picture the image of that.

13 Sunglasses. Sunglasses found in the car.

14 They've got their eyes covered, they've
15 got their mouths covered, they've got their
16 noses covered. Joseph Davis can't say that
17 Keenan Coakley went into those woods or that
18 he came out. He couldn't see him. Eyes
19 covered, mouths covered, nose covered.

20 So Brian Mazyck tells us what is being
21 said in the car. Keenan Coakley, 'Let's go
22 up Clement Ferry Road.' The testimony that
23 you have heard is that if you turn right on
24 40, it leads out to Clement's Ferry Road.
25 What does it lead away from? It leads away

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1 from Highway 17 that all the Mount Pleasant
2 police officers patrol. Keenan Coakley is,
3 like 'Let's get out of here, let's do down
4 Clement's Ferry Road.' He is ready to flee.

5 What else does Brian Mazyck tell us?
6 They are changing their clothes. They are
7 taking off their clothes in the backseat.

8 What else are they doing? They are
9 stuffing their money in the car seat, in the
10 divider, the seat divider. They are stuffing
11 it in there at that point.

12 What else does he see? He sees a gun.
13 Let's talk about that gun for a second.
14 Ladies and gentlemen, this (displaying gun)
15 isn't a play gun, this isn't a BB gun, this
16 is a Glock. This is the Glock that Jarrett
17 Graddick, Keenan Coakley and Kevin Smalls
18 thought would do the job.

19 And, what else? It wasn't an unloaded
20 Glock. It was loaded. These guys, they
21 weren't playing.

22 Brian Mazyck sees the gun in the back
23 seat. Now, you will remember when Officer
24 Zeitner that he is getting the information
25 about the robbery and that when he does so he

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1 sees the red-and-black car, that he gets the
2 tag information and that he follows
3 immediately behind them.

4 Let me talk to you a second about Brian
5 Mazyck. They want to make a deal about the
6 fact that he had two charges that have been
7 dismissed previously by me. We got the lady
8 to come upstairs from the Clerk's office to
9 tell you when those items -- when those
10 charges were dismissed. One was dismissed in
11 September of 2011, one was dismissed in
12 October of 2011. And Brian Mazyck told you
13 that the first time that he comes in and
14 signs the agreement was a year later. Just
15 about a year later.

16 What else did Brian Mazyck tell you? He
17 told you -- he told us, and they didn't have
18 to elicit this from him. 'When I saw that
19 guy running out of the store, I recognized
20 him. He was the guy from the Boost store.'
21 They want you to believe that he went in and
22 robbed it.

23 What else do we know about Brian Mazyck?
24 That evening after those police officers got
25 them out of the car -- and isn't it

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1 interesting that they took them out in order
2 of danger? They took the driver first.

3 ANDREW GRIMES: Objection.

4 THE COURT: Sustained.

5 SOLICITOR SHEALY: They take the driver
6 first.

7 ANDREW GRIMES: Objection.

8 THE COURT: Sustained. That's an
9 unreasonable inference.

10 SOLICITOR SHEALY: They indicated to
11 you that because of what had been going on in
12 the car that they decided to take them out
13 individually.

14 Who did they take out first? Kevin
15 Smalls, the driver.

16 Because of the behavior in the back seat,
17 they take the passengers in the back seat out
18 next. Remember, that Jarrett Graddick is
19 behind Mr. Smalls and Coakley is behind Mr.
20 Mazyck.

21 And who comes out last? Who do the
22 police chose to take out last? Brian Mazyck.

23 And what does he tell the police
24 immediately? 'I had nothing to do with
25 this.' They take him down to the police

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1 station to get a statement from him. They
2 believe enough of what he said to take him
3 back down to Sam Edwards Road to help them
4 look for stuff.

5 The next day, when Tyrone Simmons goes to
6 pick him up from the jail, he lets them know
7 what Keenan Coakley and Jarrett Graddick had
8 asked him to do for them. He asked them to
9 lie, gave him stories to tell. He told them
10 that, 'I am not doing it, I'm not doing it.'

11 So Jarrett Graddick that evening, on
12 September 15th, learned from Brian Mazyck, 'I
13 am not lying for you.' Remember how he
14 wanted him to lie about the park? Remember
15 how Mr. Graddick told you that there was a
16 park right at the corner of Linnen and
17 Hamlin. Brian said, 'I am not lying for
18 you.'

19 Now, let's talk about the times involved
20 in this case. Well, actually before we do
21 that, let's look at the report. I'm sorry.
22 Let's look at the report -- (pause it for
23 just a second). If we could get the lights
24 dimmed a little bit, I think that we could
25 see it better.

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1 As you're looking at this, remember what
2 Officer Zeitner was telling you, that heads
3 were disappearing in the back, there was a
4 lot of bending over, hands not in the air
5 when they were asked to put their hands in
6 the air. And remember as you're looking what
7 Brian Mazyck told you. They were changing
8 clothes and that at one point that Coakley
9 tried to get into the front seat and put his
10 foot on the gas pedal, still trying to flee.
11 Still trying to flee. He tried to flee with
12 an officer behind them, tried to flee when
13 all these officers are approaching the scene.

14 As you also look at the recording, look
15 at the intersection itself. There is
16 testimony about how traffic is. Look as this
17 is happening at all the cars turning onto 40.
18 So you can get an idea of what the traffic
19 was like on Highway 17 at 6:30 on a Wednesday
20 night, -- (video playing).

21 Look at the heads going down, (video
22 playing).

23 'Do you have any guns?', Zeitner asks,
24 (video playing).

25 Notice the undershirt, (video playing).

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1 No belt, (video playing).

2 Ladies and gentlemen, what was signify-
3 cant about the fact that they had undershirts
4 on is because the overshirts that they had on
5 were found by the police in the car inside-
6 out. They'd just taken off of their heads.

7 What was tucked in this one was the
8 plastic glove.

9 That's why they had their undershirts on.
10 They were doing exactly what Brian Mazyck
11 said that they were doing. They were taking
12 off their clothes.

13 And Mr. Graddick? Jarrett Graddick, who
14 couldn't keep his pants up when he was
15 getting out the car. He didn't have on a
16 belt. It was with the shirt that he took
17 off. He didn't have a belt.

18 Let's look at the times involved. The
19 times are crucial here, (video playing):

20 6:35, Dispatch called out that we've
21 had an armed robbery at Oakland Plantation,
22 South Morgans Point Road.

23 6:35:29, we see Smalls on the move.

24 6:35:59, in front of Walmart.

25 6:36:40, going around, heading

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1 towards Sam Edwards Road

2 Officer DeCamp got there by 6:37.

3 Officer Zeitner stopped that vehicle at
4 6:41.

5 We're talking about six minutes. Six
6 minutes between the dispatch of the robbery
7 -- and, remember that 911 was called
8 immediately as they got into Jersey Mike's.

9 At 6:35 the robbery happens and then six
10 minutes later Officer Zeitner stops the car
11 with Kevin Smalls, Jarrett Graddick, Keenan
12 Coakley and Brian Mazyck. Stopped.

13 Let's think about Ms. Graddick's
14 testimony for a minute. What she tells us is
15 that she was certain that Jarrett was at her
16 house at 6:34.

17 At 6:34, Kevin Smalls was over in the
18 parking lot. He could not be both in the
19 Walmart parking lot and down 17, down Hamlin
20 Road, down Linnen Lane. Kevin Smalls can't
21 be two places at one time. Does any of that
22 makes sense?

23 Does it even make sense that Kevin Smalls
24 had Jarrett Graddick and Keenan Coakley in
25 that vehicle? Had that Glock? Had all the

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1 money, including the bill that Mr. Blain told
2 the police about? That they had the clothes?
3 The gloves?

4 That he was traveling down 17 where
5 Brickyard Plantation is and Hamlin Road --
6 Hamlin Road, be entering a neighborhood and
7 pick up Jarrett Graddick? Then travel right
8 back down 17, towards the armed robbery?

9 Then make a U-turn?

10 Then go back to 17 and 41?

11 It didn't happen. It didn't happen.

12 Six minutes was enough time for Mr.
13 Smalls to get in that vehicle, get the heck
14 out of there, get down Sam Edwards Road, get
15 those guys in his car and then get stopped.

16 Mr. Grimes was asking, 'Well, why didn't
17 Tyrone Simmons go talk to Ms. Graddick?'
18 Well, if you were Ms. Graddick and you knew
19 that your grandson had been arrested but that
20 you saw him at 6:34, wouldn't you go down
21 there? Wouldn't you get somebody to drive
22 you down there? Wouldn't you be pounding on
23 somebody's desk, 'It couldn't have been my
24 grandson.'

25 Let's talk about the DNA. And I'll tell

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1 you, y'all were patient while I was trying to
2 get that evidence in. That is the worse part
3 for a jury, having to sit through that. But
4 it is important because we have items of
5 evidence that we needed to have in.

6 The gun trigger and the guard, Officer
7 Haupt told us how he swabbed it. Whose DNA
8 is on the trigger and the guard? Jarrett
9 Graddick's. A match. One in ninety-six
10 thousand (1 in 96,000). Jarrett Graddick,
11 trigger, gun.

12 The plastic glove underneath the driver's
13 seat, Keenan Coakley could not be excluded.

14 Now, keep in mind as we are going through
15 this that there are no matches for Kevin
16 Smalls and there are no matches to Brian
17 Mazyck.

18 A plastic glove from the back of the
19 front passenger seat, there's a photograph of
20 it, one of the gloves from there, Graddick
21 cannot be excluded.

22 Next glove, Graddick cannot be excluded;
23 this time, one in seventy-six thousand (1 in
24 76,000).

25 Another glove, Keenan Coakley cannot be

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1 excluded.

2 Jarrett Graddick.

3 Keenan Coakley.

4 Jarrett Graddick.

5 Another glove in that area, Coakley, a
6 match, one in two hundred and forty
7 quadrillion. Keenan Coakley had that glove.

8 There's another plastic gloves on which
9 Jarrett Graddick cannot be excluded. There
10 is just no exclusive result.

11 And Coakley, one in two hundred eighty (1
12 in 280) cannot be excluded.

13 One of these knotted t-shirts, the
14 makeshift masks, the kind that some kids use
15 when they're playing cops-and-robbers when
16 they are young, one of them Keenan Coakley
17 cannot be excluded.

18 The other one Jarrett Graddick matched,
19 one in one hundred ninety quadrillion. He
20 wore this mask. He shielded himself. He
21 tried to protect his identity when he walked
22 into a place where Mr. Blain and that young
23 girl were working, with a loaded gun.

24 Black shirt, that was inside out. Inside
25 out. He was hot from adrenalin rush, he was

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1 taking his clothes off. Match. One in four
2 point four quintillion.

3 Blue shirt, which is inside the black
4 shirt. Cannot be excluded. One in one
5 hundred sixty thousand.

6 The pants with the belt that at least
7 kept these up -- so that there was no chance
8 of them falling as he was running through
9 that field, one in twelve, Graddick.

10 The plastic gloves found inside of those
11 shirts, Graddick couldn't be excluded.

12 And another glove that was found inside
13 the shirt, Graddick couldn't be excluded.

14 The DNA slams them. It slams all three
15 because it shows you that these two men went
16 into that store and robbed it, wearing gloves
17 to protect themselves from leaving
18 fingerprints, wearing masks to protect their
19 identity, carrying a loaded gun.

20 Carrying a loaded gun in a store where
21 there is a super Walmart, at 6:30 at night.
22 Can you imagine the patrons there?

23 They thought of all kinds of ways to
24 protect themselves. A loaded Glock. That
25 wasn't just to protect themselves. That was

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1 to make someone give them -- give them the
2 money so that they could have a big night.

3 Each of my colleagues have thanked you
4 for your service. I certainly thank you, as
5 well. I know that's been a week that took
6 you away from your families, it took you away
7 from fun, it took you away from work. And I
8 appreciate it, and I thank you.

9 But there are some other people that I
10 would like to thank, though. I'd like to
11 thank Jim Blain and Harlee Lynn for being as
12 observant as they were when such a traumatic
13 thing happened to them. That young girl, to
14 see them rushing in there. Mr. Blain told
15 you, 'I couldn't even dial 911.' They did a
16 remarkable job in making observations in a
17 very, very panicky situation.

18 I would also like to especially thank
19 Jessica Lyons because she, her instincts were
20 right. Her instincts were exactly right.
21 And but for her, they may never have been
22 arrested. They may have hit Clement's Ferry
23 Road, had those crabs, wine and dined those
24 girls and left everybody else behind. Left
25 Jim Blain and Harlee Lynn to deal with it.

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1 I am thankful that Walmart had the
2 security cameras that they did, because it
3 shows us the time. It shows us the critical
4 time that Kevin Smalls left the Walmart
5 parking lot. It shows us his path. It
6 corroborates what Ms. Lyons said, it
7 corroborates what Brian Mazyck said.

8 One of those attorneys asked why would
9 they be driving around Walmart with all those
10 cameras, why didn't he just wait on Sam
11 Edwards Road. He just wanted to know when to
12 go back and get them. Kevin Smalls knew that
13 he wasn't going to get away with staying
14 parked on Sam Edwards. But if you adjust
15 that seat, you adjust that mirror, you know
16 when the heck to get out of there.

17 I would like to thank Joseph Davis
18 because he was observant that day as well.
19 He told you both times coming down Sam
20 Edwards Road. He even knew where they had
21 thrown an item and helped Debi Alfaro find it
22 and helped Investigator Haupt retrieve it.
23 But he did.

24 Now, you're not to worry about
25 punishment. You're here to worry about

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1 responsibility. What the judge will instruct
2 you is the law of hand of one is the hand of
3 all.

4 That's going to be difficult (screen) for
5 y'all to see there. Y'all listen to the
6 judge and he will instruct you. What it
7 essentially means is that even though we
8 don't know which of these two guys had the
9 loaded Glock, and even though Kevin Smalls
10 doesn't go into the store, when you combine
11 it -- when you get three people to commit an
12 armed robbery, one, two, three (indicating
13 defendants) are guilty.

14 The hand of one is if the crime was
15 committed by two or more people who are
16 acting together to commit a crime. The act
17 of one is the act of all. A person who joins
18 with another to accomplish an illegal purpose
19 is criminally responsible for everything done
20 by the other person which occurs as a natural
21 consequence of the act done in carrying out
22 the common plan and purpose. If two or more
23 people are together, acting together,
24 assisting each other in committing the
25 offense, the act of one is the act of hand.

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1 Or as it is sometimes said, the hand of one
2 is the hand of all.

3 A principal in a crime is either one who
4 actually commits the crime or who is present
5 aiding, abetting or assisting in committing
6 the crime. When a person does an act in the
7 presence of and with the assistance of
8 another, the act of one is the act of the
9 other.

10 Where two or more are acting with a
11 common plan or intent, are present at the
12 commission of a crime, it doesn't matter who
13 actually commits the crime. This is
14 important. Present at the commission of a
15 crime means to be sufficiently near to aid
16 and abet and assist in the commission of the
17 crime. Kevin Smalls, right outside.
18 Graddick and Coakley, in the Cricket.

19 Ladies and gentlemen, one of the
20 attorneys used the language "caught dead to
21 right", these guys were caught dead to right.

22 One of them said, I believe that it was
23 Mr. Grimes, would you give Jarrett Graddick
24 and his family a Christmas present by finding
25 him not guilty. That's not your role. It's

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1 not your role to give presents. Your job is
2 to decide the issues in this case, the facts
3 in this case and whether we have met our
4 burden.

5 Ladies and gentlemen, what the State asks
6 is that you return a verdict of guilty of
7 armed robbery as to Jarrett Graddick, Keenan
8 Coakley and Kevin Smalls.

9 Jim Blain and Harlee Lynn, the didn't
10 deserve what happened. These guys don't
11 deserve to get away with it.

12 THE COURT: Ladies and gentlemen, at
13 this point I will let you take a break. I'll
14 let you retire to your jury room for about
15 ten minutes.

16 Do not begin your deliberations, however.
17 It would still be inappropriate to discuss
18 this case among yourselves. Thank you.

19 (JURY OUT @ 11:35 A.M.)

20 THE COURT: Anything from the State
21 before recessing?

22 SOLICITOR SHEALY: No, Your Honor.

23 THE COURT: Anything from any of the
24 defendants before recessing?

25 WILLIAM RUNYON: No, Your Honor.

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1 ANDREW GRIMES: No, sir.

2 JIM SMILEY: (Negative gesture).

3 THE COURT: Very well. We will be at
4 ease for about ten minutes.

5 COURT REPORTER: Counsel, please check
6 your exhibits during this recess.

7 (COUNSEL APPROVAL OF EXHIBITS)

8 WILLIAM RUNYON: Your Honor, I noticed
9 when they were packing the evidence on the
10 cart, I noticed that the Clerk, the Honorable
11 Clerk, was providing a box of rubber gloves
12 for the jury to maybe use in handling the --
13 and I just am not sure that unless they ask
14 for those to handle things with, whether or
15 not those should be provided, since rubber
16 gloves are so prominent in this case. And
17 it's a semi-objection, Judge, and I just
18 don't think unless they ask for them you
19 should just automatically give them to them.

20 THE COURT: Thank you, sir.

21 MR. RUNYON: Yes, sir. And that's said
22 for whatever it is worth, Your Honor.

23 THE COURT: Thank you. Anything else?

24 MR. RUNYON: No.

25 THE COURT: Thank you. Then let's bring

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1 in our jury.

2 (JURY IN @ 11:50 A.M.)

3 THE BAILIFF: All the jurors are
4 seated, Judge.

5 THE COURT: Thank you very much, Mr.
6 Pryor (bailiff). And thank you, ladies and
7 gentlemen. We've now reached the final
8 portion and you're almost ready to begin the
9 process of resolving this case. Now it
10 becomes my responsibility to give you the
11 law, as I indicated to you that I would give
12 to, that you, of course, promised to accept
13 and apply fairly and impartially to those
14 facts that you will determine when you are
15 instructed to retire and evaluate the
16 evidence.

17 And you will evaluate each piece of
18 evidence and decide what you find to be
19 credible and believable. And in so doing,
20 you will determine the truth of the evidence
21 in that both the State, Mr. Graddick, Mr.
22 Coakley and Mr. Smalls, the attorneys expect
23 that you will perform that consistent with
24 your oath and I'm confident that you will.

25 And once you've done that, the parties to

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1 this dispute will have obtained a fair and
2 impartial determination. And that's what
3 everyone expects.

4 As you have heard me use from time to
5 time the term "defendants", as I've mentioned
6 to you when I basically identified this case,
7 defendants is a term used to designate the
8 party against whom some claim is made. As we
9 have here where the State has claimed that
10 these individuals, each individual, committed
11 the crime of armed robbery. So if you hear
12 the term of defendants, that is another way
13 of referring to them collectively.

14 But it's important also to realize that
15 there are three separate indictments, three
16 separate defendants and three separate
17 determinations that you will have to make.
18 And each party is entitled to a fair and
19 impartial determination based on your
20 assessment of the evidence.

21 Each defendant was brought into this
22 Court by virtue of the documents, that I
23 showed you when I started -- they're called
24 indictments. They will not accompany you to
25 the jury room. They're not evidence. They

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1 merely contain the accusations against the
2 defendant.

3 Each defendant has entered a plea of not
4 guilty to the indictment pertaining to him,
5 which places then upon the State the burden
6 of proving his guilt. Because as I mentioned
7 to you, persons accused of criminal offenses
8 are never required to prove or disprove or
9 explain anything at all. And they certainly
10 are not required to prove their innocence.

11 In fact, persons in this state and in
12 this country who are accused of committing
13 criminal offenses are presumed to be
14 innocent. And those aren't just words.
15 That's a mental process that each of you has
16 to maintain. Because you see, that
17 presumption of innocence is so strong it's
18 sufficient for a verdict of not guilty unless
19 you, collectively upon your evaluation, have
20 been satisfied beyond a reasonable doubt of
21 each element of the crime alleged against
22 that particular defendant. And only then may
23 you remove that presumption of innocence from
24 your mind. So that's what it is.

25 And each of you, under your oath, must

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1 actively presume that each of these
2 defendants are innocent and can only change
3 that when and if you are persuaded beyond a
4 reasonable doubt of his guilt.

5 As I mentioned also to you, persons
6 accused are not required to prove or disprove
7 anything. They don't have to present any
8 testimony. They do not have to testify.
9 That, in fact, if a person accused of an
10 offense does not testify, that can never be
11 considered against that particular person. A
12 defendant has a Constitutional right to
13 remain silent and the assertion of that right
14 cannot and must not be considered against
15 them. Therefore, and in this case and under
16 your oath, you are to reach no inference and
17 to draw no conclusion whatsoever from the
18 fact that each defendant did not testify in
19 this case.

20 The failure of the defendant to testify
21 should not even be discussed in your jury
22 room. If it is, you will have violated your
23 oath.

24 No, you will look to the party that has
25 the burden of proof and that's the State.

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1 And the State has to prove each defendant's
2 guilt beyond a reasonable doubt. And the
3 failure of the defendant to testify is not a
4 factor to be considered in that regard.

5 What is a reasonable doubt? A reasonable
6 doubt is a doubt that would make an honest,
7 sincere, conscientious juror, who's searching
8 for the truth in the case to hesitate to act
9 or to take some action. Proof beyond a
10 reasonable doubt is proof that leaves you
11 firmly convinced of a defendant's guilt.

12 Now, there are very few things in this
13 world and in this life that we know with
14 absolutely certainty. And in criminal
15 disputes such as this, the law does not
16 require proof that overcomes every possible
17 doubt. If, based upon your consideration of
18 the evidence, you're firmly convinced that
19 that defendant is guilty of the crime
20 charged, then you must return a verdict of
21 guilty.

22 If, on the other hand, you think there is
23 a real possibility that he's not guilty, then
24 you must give him the benefit of that doubt
25 and return a verdict of not guilty.

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1 A reasonable doubt, ladies and gentlemen,
2 may arise from the evidence which is in the
3 case or from the lack or absence of evidence
4 in the case. And it's up to you to determine
5 whether or not a reasonable doubt exist as to
6 the guilt of any of these defendants. I
7 charge you that the defendant is entitled to
8 every reasonable doubt arising in the whole
9 case. That means simply this -- if, upon any
10 issue of fact, which would be essential for
11 your returning a verdict of guilty against
12 that defendant, you should have a reasonable
13 doubt as to how that particular issue should
14 be resolved, I would instruct you that it
15 would be your duty to resolve that reasonable
16 doubt in that defendant's favor.

17 Now, the evidence which you are to
18 consider consists of the testimony of the
19 witnesses and the exhibits that were
20 introduced through their testimony and
21 nothing else.

22 During the trial you noticed we excused
23 you on several occasions to take up matters
24 of the law. And I mentioned to you at that
25 time, that that was very proper. That's the

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1 way that that's handled. I take up matters
2 of law out of your presence, just as you take
3 up matters of facts out of our presence.
4 That'll be done in your jury room and we will
5 not be party to that and will not here that.
6 Because why? Because you're the sole judge
7 of those facts and it's my responsibility to
8 be the sole judge of the law.

9 I would also instruct you that the fact
10 that an attorney made an objection, that
11 should never be considered whatsoever in your
12 deliberations. You shouldn't consider that
13 against the attorney. Likewise, my ruling
14 should not be considered. And, in fact,
15 probably -- oddly enough, one of the rulings
16 that can be made really demonstrates probably
17 as clearly as I can state it, how we work
18 together in resolving this dispute. You
19 heard and will recall there were generally
20 two rulings to objections, sustained or
21 overruled. Now, if I overruled it, you heard
22 the answer to the question. And certainly
23 you should consider that and evaluate that.

24 If I sustained the objection, then you
25 did not hear the answer to the question and

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1 you shouldn't consider that whatsoever.
2 Frankly, if I overruled it, it's at that
3 moment, that's exactly how we work together.
4 I said as a matter of law, typically it's a
5 rule of evidence, that I was going to permit
6 the answer. But then it's given to you. You
7 have to decide whether you believe it or not.
8 And if so, how strongly do you believe it.
9 The fact that I overruled it and allowed it,
10 that shouldn't be considered. If you put any
11 weight on that and therefore say, 'well,
12 therefore, I must believe this', then you've
13 let me invade your providence. That is not
14 the purpose. You decide the truth and you
15 decide how strongly you believe that
16 particular testimony.

17 Now, during this trial if it appears to
18 you by anything that I've said or done, that
19 I'm indicating or suggesting to you that I'm
20 here to resolve a factual issue, please
21 remember again you're to disregard that in
22 its entirety.

23 Also, the remarks of the attorneys, as
24 I've told you throughout, that they're very
25 important. They're Officers of this Court

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1 and have an extremely important
2 responsibility. They have duties to present
3 the evidence, present arguments that will
4 assist us. You certainly have given them
5 your attention and I appreciate that. And
6 you certainly are expected to consider their
7 arguments when you begin the process of
8 evaluating this case, but I will remind you
9 that their remarks are not evidence.

10 If in their discussions they stated what
11 a witnesses said or didn't say, and that
12 differs from your collective recollection,
13 you're instructed to disregard those remarks
14 of the attorneys. Why? Because you're the
15 sole judge of the facts. You decide what a
16 witness said.

17 And I would remind you, each have been
18 taking notes and I thank you for that, I
19 thank you for your attentiveness. Those are
20 your notes, of course, and if we have a
21 difference that can't be resolved among
22 yourselves, Ms. Garrison (court reporter) can
23 replay any particular testimony that you may
24 need. So just remember that. But your
25 collective determination is what controls in

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1 what a witness said or didn't say. Also, if
2 any attorney in their arguments gave you a
3 statement of what the law is and it differs
4 from what I tell you the law is, you're
5 instructed to disregard that attorney's
6 statement because it's my responsibility.
7 And for the purposes of this proceeding
8 today, I'm the sole judge of the law in this
9 case.

10 Now, evidence in a case such as this,
11 there are two types of evidence, which you
12 generally consider. Quite frequently, they
13 consist of both types. Sometimes one more
14 than the other, but it really doesn't matter
15 because it's customary to use both types of
16 evidence.

17 One would be direct evidence. And direct
18 evidence is typically testimony regarding a
19 sensory perception. I saw something, I heard
20 something, I felt something or the like. And
21 if you are firmly convinced as to the
22 truthfulness of that testimony, then it would
23 establish that particular fact and
24 circumstance.

25 The other would be circumstantial

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1 evidence. And that, unlike direct evidence,
2 is when a person testifies of a number of
3 facts. And if you're firmly convinced as to
4 the reliability and the truthfulness of each
5 of those facts and you link them, then either
6 through deductively, deductive reasoning, you
7 reach another conclusion, you reach another
8 conclusion, that, likewise, if you're firmly
9 convinced of that conclusion, it would
10 establish that particular fact or conclusion.

11 I will tell you that it is quite common
12 to use both and the law makes absolutely no
13 distinction between the value or the weight
14 to be given either to direct or circum-
15 stantial evidence. Nor is there any greater
16 degree of certainty required of circum-
17 stantial evidence and direct evidence.
18 Rather, you should weigh all of the evidence
19 and decide what you find to be credible and
20 believable.

21 I would instruct you in that regard,
22 however, that the mere fact that the
23 circumstances brought out in a case are
24 strongly suspicious of guilt, or that the
25 circumstances are such that a defendant's

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1 guilt is probable, that that would not be
2 enough to sustain a conviction. Why?
3 Because the proof offered by the State has to
4 be more than mere suspicion. It has to be
5 more than somebody being probably guilty. It
6 has to be proof that satisfies you or
7 convinces you beyond a reasonable doubt.

8 Now, how do you decide credibility and
9 believability of witnesses? As I told you on
10 Monday, you have been doing this all your
11 life and this is not going to be foreign to
12 you when you begin this process. If you hear
13 something or you read something, you decide
14 every day of your life whether you believe it
15 or not and, if so, how strongly.

16 The tools and the factors that you would
17 have used in your life, I would urge you to
18 use them when you begin this process. I'm
19 going to discuss some of them with you now,
20 but we know that it's a commonsense exercise,
21 simply applying your life's experience, your
22 sense of logic, and then deciding what you
23 believe to be true. Now, some of the factors
24 that you may want to consider would be the
25 demeanor of the witness.

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1 How did they appear to you,
2 straightforward or hesitant in answering the
3 questions?

4 Was the testimony of a witness consistent
5 or was it inconsistent?

6 Was it strengthened or weakened by other
7 evidence in the case?

8 How did the witness come to know the
9 facts he or she testified to, and what was
10 the ability of that witness to know those
11 particular facts or circumstances?

12 Is there a reason for a witness to give
13 testimony, which may be helpful or beneficial
14 to one or side or detrimental or damaging to
15 one side. In other words, was the witness
16 biased or prejudiced in any fashion?

17 In determining the credibility and
18 believability of the witnesses, you're given
19 very wide latitude and broad discretion. You
20 have a right to believe many witnesses
21 against one, one witness against many. You
22 have the right to believe 'all the witnesses'
23 testimony, part of the witnesses' testimony,
24 or none of the witnesses' testimony.

25 Now, of course you don't make these

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1 decisions arbitrarily. You have that right
2 and that prerogative because your objective
3 has been, since you took the oath, to
4 determine the truth regardless of the source
5 of the evidence.

6 Now, while you enjoy the very wide
7 latitude and broad discretion when it comes
8 to determining the facts, please remember
9 that you don't enjoy the same with the law.
10 As I stated to you I think when you started,
11 you may hear some principles of law that you
12 believe -- number one, you didn't believe
13 they were that way or that particular manner
14 or, even moreso, that it should be changed.
15 I respect your right to differ with any
16 principle of the law as a duty of this
17 country. But for the purposes of this
18 proceeding today, if you should have any
19 differences or if you believe the law should
20 be different or changed, you must set that
21 aside and take the law and apply the law
22 fairly and impartially.

23 Again, the fact that I give you an
24 instruction on particular issue of the law
25 should not be considered by you in any way to

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1 be a suggestion of how you're to resolve the
2 factual issue.

3 You also should consider the charge as a
4 whole and not put any greater inferences or
5 weight on any one aspect of the charge and
6 apply this charge and the law fairly and
7 impartial to the facts as you will determine
8 them.

9 I read to you when I qualified you,
10 they're accused of committing the offense --
11 each defendant is accused of committing the
12 offense of armed robbery. Allegedly, it
13 occurred on September the 15th, 2010 at 3014
14 South Morgan's Point Road in Mount Pleasant.

15 In order to be entitled to a verdict of
16 guilty as to the defendants, any and all of
17 them, the State must prove beyond a reason-
18 able doubt that that particular defendant
19 took personal property from the person or
20 presence of another.

21 Property is in the presence of a person
22 if it's within that person's reach, inspec-
23 tion, observation or control, so that the
24 person could, if not overcome with violence
25 or prevented by fear, keep possession of the

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1 property.

2 The State must also prove beyond a
3 reasonable doubt that the defendant carried
4 the property away intending to permanently
5 deprive the owner of the property and to keep
6 the property for the defendant's own use.

7 The slightest removal of the property or the
8 complete possession of the property, even for
9 an instant by the defendant, is sufficient to
10 show a taking and carrying away of the
11 property. Furthermore, the taking and
12 carrying away of the property must have been
13 done with violence or by putting the owner of
14 the property in fear of violence.

15 Finally, the State must prove beyond a
16 reasonable doubt that the defendant was armed
17 with a deadly weapon during the robbery. A
18 deadly weapon is any article, instrument or
19 substance which is likely to cause death or
20 great bodily harm. Whether an instrument has
21 been used as a deadly weapon depends on the
22 facts and circumstances of each case. I
23 would instruct you in that regard that a
24 pistol may be a deadly weapon. Also, ladies
25 and gentlemen, I would charge you in the

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1 principle of law known as the hand of one is
2 the hand of all. If a crime is committed by
3 two or more people who are acting together in
4 committing a crime, the act of one is the act
5 of all. A person who joins with another to
6 accomplish an illegal purpose is criminally
7 responsible for everything done by the other
8 person, which occurred as a natural
9 consequence of the acts done in carrying out
10 their common plan or purpose. If two people
11 are acting together, assisting each other in
12 committing the offense, two or more people,
13 the act of one is the act of all. Or as it's
14 sometimes said, the hand of one is the hand
15 of all.

16 Prior knowledge that a crime is going to
17 be committed without more would not be
18 sufficient to make a person guilty of the
19 crime. Mere knowledge that another person is
20 going to commit a crime, even if the
21 defendant is present when the crime is
22 committed, is not sufficient to convict the
23 defendant as a principal. Nor is mere
24 presence at the scene of a crime or mere
25 association with a person who commits a crime

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1 make a defendant an accomplice or an aider or
2 abettor of that person committing the crime.

3 Guilt, as a principle, is shown by actual
4 and constructive presence at the scene as a
5 result of prior arrangement. Therefore, a
6 finding of a prior arranged plan or common
7 scheme is necessary for a finding of guilt --
8 a finding of guilt as a principal. The State
9 must prove beyond a reasonable doubt by
10 competent evidence this theory of the hand of
11 one is the hand of all.

12 A principal in a crime is one who either
13 actually commits the crime or who is present,
14 aiding, abetting, or assisting in committing
15 that crime. When a person does an act in the
16 presence of and with the assistance of
17 another, the act is done by both. Where two
18 or more acting with a common plan or intent
19 are present at the commission of a crime, it
20 does not matter who actually commits the
21 crime itself.

22 Present at the commission of a crime,
23 that term, means to be sufficiently near to
24 aid and abet and assist in the commission of
25 a crime.

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1 The burden of proof to prove every
2 element of the crime charged, if you find
3 after reviewing all the evidence that the
4 State has proven the defendant was only
5 present at the scene but was not participat-
6 ing, then you must not find that defendant
7 guilty, of course. It has to be involved in
8 some fashion.

9 Intent is also a necessary element, for
10 there must have been a common design or
11 intent to commit the crime and then the crime
12 must have been committed pursuant thereto.
13 Intent means intending the result which
14 actually occurs, not accidentally or
15 involuntarily. Intent may be shown by the
16 action and conduct of the person and other
17 circumstances from which you may naturally
18 and reasonably infer intent. The State must
19 prove the element of intent beyond a reason-
20 able doubt.

21 I would also instruct you, ladies and
22 gentlemen, that a defendant, Mr. Graddick,
23 has raised a defense of alibi. In order to
24 establish an alibi, it must be shown that
25 that defendant was at another specified place

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1 at the time the crime was committed. And
2 that it was, therefore, impossible for the
3 defendant to have been at the scene of the
4 crime.

5 Mere denial of presence at the scene of a
6 crime does not constitute an alibi.

7 Now, there is no burden on that defen-
8 dant, Mr. Graddick, to prove an alibi. The
9 burden is on the State to prove beyond a
10 reasonable doubt that Mr. Graddick was
11 actually present at the scene of the crime
12 and actually participated in it, and was not
13 somewhere else. In other words, the State
14 has the burden of disproving the Defendant's
15 alibi defense.

16 Now, ladies and gentlemen, you took an
17 oath, just -- similar to the oath that I took
18 when we started this process. And basically
19 what you have promised to do is to set aside
20 all human emotion, which is not easy
21 sometimes. Because human emotion has no
22 presence, and really no purpose in performing
23 the act of judging. And that's not always
24 easy for us because we are human. But you
25 have to consciously do that and I'm confident

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1 that you will.

2 And you must remember something, you're
3 not advocates for either side. You have no
4 friends to reward nor do you have any enemies
5 to punish. You're here to consciously,
6 conscientiously apply your commonsense, your
7 sense of logic to the case. Perform the task
8 that has been assigned to you, and that's
9 analyzing the evidence, and decide what you
10 believe to be the true facts.

11 Then once you've decided those true
12 facts, you take the law as I gave it to you,
13 apply that fairly and impartially to those
14 facts and report your decision. When you've
15 done that, you will have honored the oath in
16 every respect.

17 To assist you, Mr. Wachter, in recording
18 the verdict, I've prepared three verdict
19 forms. That is necessary because there are
20 three separate cases, as we have discussed.
21 They are similar -- and I'll just explain one
22 -- but there are two choices that appear.
23 You have two options. The order in which
24 they appear absolutely means nothing at all.
25 I had to put them in some order. This one

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1 happens to be Mr. Graddick's. And you will
2 note that each one is captioned -- and the
3 caption is simply to facilitate the file. It
4 doesn't have any other significance or
5 purpose, other than that. And the body reads
6 the same. The only difference is you have
7 one for Mr. Coakley and one for Mr. Smalls.
8 And this one just happens to be Mr.
9 Graddick's.

10 It says, (reading): "We, the jury, by
11 unanimous consent..." -- what does that mean?
12 It means all twelve of you have to agree.
13 Eleven to one is not sufficient. It has to
14 be twelve to zero. -- "...find the Defendant,
15 Jarrett Graddick, on the charge of armed
16 robbery..." -- the first choice guilty, second
17 choice not guilty.

18 What will you be saying if guilty is your
19 first choice? You'll be saying that you've
20 analyzed the evidence in this case, applied
21 the law, and you believe the State has met
22 its burden of proof as to each of those
23 elements that we've discussed, beyond a
24 reasonable doubt. And, therefore, consistent
25 with my instruction, you're returning a

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1 verdict of guilty.

2 Not Guilty, you'll be saying that you've
3 analyzed it and you're not convinced beyond a
4 reasonable doubt of one or more. Because if
5 the State fails on one, then you must return
6 a verdict of not guilty. The State has must
7 prove each element beyond a reasonable doubt.

8 Whichever your choice, you'll note
9 there's a line that proceeds it, if you'll
10 place a check in that and circle it. Then
11 sig where it says "Presiding Juror," sign it.
12 Once you've done that, you will have
13 completed that particular verdict form, and
14 then you'll go to the next and so on until
15 you've completed three verdict forms.

16 I know you're anxious to get to the
17 process of doing what you've taken an oath to
18 do. And I've told you, you're almost there.
19 I need to talk with the attorneys now out of
20 your presence and see if there's any
21 additional instruction that I need to give
22 and I'll have to excuse you, of course, to do
23 that.

24 But if there aren't any additional
25 instructions, then we will deliver the

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1 exhibits to you. And when you receive the
2 exhibits, then you may commence your
3 deliberations.

4 Now, once the deliberations start, the
5 only restriction that I place on delibera-
6 tions is if any juror has to leave the table
7 for any reason, you must stop deliberating
8 until all twelve of you are together.

9 Also, we're going to keep here some of
10 the exhibits. You have photographs. If you
11 want to view the firearm and the cartridges,
12 we will bring you back in and make that
13 available to you to inspect, but we're not
14 going to send those back to you. It's not
15 that we don't trust you, it's just no reason
16 to send that back. You have seen it. You
17 have photographs of it but if you do need to
18 view it further, please feel free to send me
19 a note.

20 Should you want to send me a note, if
21 you'll just write it on one page, we'll make
22 it an exhibit, and we'll respond to that.

23 Also, obviously, the videos, if you need
24 to watch any of the videos that have been
25 played, we'll have to bring you in in order

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1 to accomplish that. So just let me know
2 which or all. If you want to watch them all,
3 that's fine.

4 The clothing, as you've noticed during
5 the process, most people have placed on
6 gloves. That's not to say there's anything
7 contaminating there, but it's just a safety
8 precaution -- many of us know that. I will
9 send that clothing if you ask for it. But
10 unless you do, we're not going to send back
11 any of the clothing exhibits. You have
12 photographs of some, but if you want to
13 inspect them, please just let me know and
14 we'll be happy to send them back.

15 Thank you for your attention. I'm going
16 to ask you to retire to your jury room. Do
17 not commence your deliberations until you
18 receive the exhibits. Thank you.

19 (JURY OUT @ 12:20 P.M.)

20 THE COURT: Exceptions or additions from
21 the State?

22 MS. SHEALY: None, Your Honor.

23 THE COURT: Exceptions or additions from
24 Mr. Graddick?

25 MR. GRIMES: Just subject to our request

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1 number one, on the ---

2 THE COURT: On the ---

3 MR. GRIMES: Yes sir.

4 THE COURT: We'll make that Court's
5 Exhibit Number 3.

6 (SO ENTERED AS COURT'S EXHIBIT NUMBER 3)

7 THE COURT: And I declined to charge
8 request number one for reasons stated. I
9 think it's covered by my general charge on if
10 somebody had something to gain from that or
11 not, which was covered. But you can
12 scrutinize it. The words that I have
13 problems with is the -- when you really look
14 at this more closely with a witness, I think
15 that it is more a factual problem. But it's
16 noted in the record and you're protected for
17 that. Anything else, other than that, Mr.
18 Grimes?

19 MR. GRIMES: No, sir.

20 THE COURT: Any objection or exceptions
21 from Defendant Coakley?

22 MR. RUNYON: No problems with Defendant
23 Coakley. No additions or exceptions. And
24 just for the record, since I put something on
25 the record before, I don't want to leave

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1 dangling participles, I think that the
2 circumstances or the conditions that the
3 Court laid out for the jury insofar as
4 handling the exhibits answers my quasi
5 objection to the rubber gloves.

6 THE COURT: Okay. And for that, -- okay.
7 I don't have any problem, I just feel like
8 it's better because of all of the potential
9 that's there. To be honest with you, I'd
10 already planned to do that. That's just my
11 custom.

12 MR. RUNYON: I just wanted to clarify for
13 the Court that I no longer have an objection.

14 THE COURT: Thank you, sir. Thank you
15 all. Appreciate it. It's always a pleasure
16 to work with you. We will be at-ease until
17 we hear from the jury.

18 (JURY IN DELIBERATIONS @ 12:25 P.M.)

19 (NOTIFIED OF JURY QUESTION @ 1:30 P.M.)

20 THE COURT: Let's get the attorneys in
21 here, and the defendants.

22 (DEFENDANT GRADDICK PRESENT)

23 (DEFENDANT COAKLEY PRESENT)

24 (DEFENDANT SMALLS PRESENT)

25 THE COURT: We have received a note

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1 from the jury, asking -- and this will be
2 Court's Exhibit 4.

3 (SO ENTERED AS COURT'S EXHIBIT 4)

4 THE COURT: Court's Exhibit 4 says,
5 basically, "What is the definition of the
6 hand of one, the definition of reasonable
7 doubt, definition of intent."

8 I've copied the three portions of my
9 charge that deals with those three issues.
10 I'll give a copy to each one of you. I'll
11 attach it to it.

12 My response is, (reading): *"I've attached*
13 *portions of my charge which you've requested.*
14 *If additional portions are needed, please let*
15 *me know."* Signed by me. Okay. Y'all can
16 look at it.

17 ANDREW GRIMES: Thank you, Your Honor

18 WILLIAM RUNYON: I take it, Judge, that
19 you're saying that they wanted your charges?

20 THE COURT: That is what they are
21 asking for.

22 WILLIAM RUNYON: I just wanted to
23 clarify that.

24 THE COURT: That is what they are
25 asking. That is what the note says, "the

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1 hand of one, definition of reasonable doubt,
2 definition of intent." I interpret that as
3 he wants an explanation of that. I can send
4 back my charge. That's how I explained it to
5 them.

6 WILLIAM RUNYON: Your Honor, we have no
7 objection if this is what you charged them.

8 THE COURT: That's correct.

9 ANDREW GRIMES: On behalf of Defendant
10 Jarrett Graddick, we have no objection.

11 SOLICITOR SHEALY: And we have no
12 objection.

13 THE COURT: Okay. If they need
14 additional, that's why I asked. I don't want
15 to preclude them if they want additional
16 portions. I think that Judge Newman has
17 started giving his entire charge. I'm close
18 to that but since they haven't really signed
19 off on it, *per se*, I wait for them to ask for
20 something. This is a simple way of dealing
21 with it.

22 JIM SMILEY: No objection.

23 THE COURT: Okay, you can take this
24 back to the jury.

25 (COURT'S EXHIBIT 4 TO JURY @ 1:51 P.M.)

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1 THE COURT: All right, we'll be at-ease
2 until we hear from the jury.

3 (NOTIFIED OF JURY QUESTION @ 2:08 P.M.)

4 THE COURT: This will be Court's
5 Exhibit 5.

6 (SO ENTERED AS COURT'S EXHIBIT 5)

7 THE COURT: Bring the defendants in.

8 (DEFENDANT GRADDICK PRESENT)

9 (DEFENDANT COAKLEY PRESENT)

10 (DEFENDANT SMALLS PRESENT)

11 THE COURT: If I may can see counsel
12 for a minute.

13 (OFF RECORD BENCH CONFERENCE)

14 THE COURT: They want to hear the
15 testimony of Mr. Davis.

16 I usually tell them that we will replay
17 the testimony, and I tell them that we will
18 continue to play it until I see your hand go
19 up. I explain that there is generally
20 direct, cross, redirect and recross. I let
21 them determine how much that they want to
22 hear.

23 This is Court's Exhibit 5. Bring the
24 jury in, please.

25 (JURY IN @ 2:10 P.M.)

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1 THE COURT: Mr. Presiding Juror, we
2 have received your note, which has now been
3 marked as Court's Exhibit 5. Your note
4 indicates that you would like to hear the
5 audio or video testimony of Mr. Davis.

6 I would love to give you the video.
7 Maybe one day we will have it. We're not
8 there yet. But we do have the audio.

9 I was just telling the lawyers that over
10 the years what I typically do -- I don't need
11 to know what it is that you need to hear,
12 what portions of it or what you are looking
13 for. Sometimes a juror hears it early,
14 sometimes it is later. What I do is that I
15 look to you -- we'll play it until you raise
16 your hand. If the juror resolves whatever
17 issue it is, they hear it, you -- if the
18 entire jury does not need to hear any more of
19 it, just make that known and I'll stop.
20 Until I see that, I will continue to play
21 that.

22 I will also remind you, though you are
23 probably well aware, but testimony of a
24 witness generally consists of direct
25 examination, cross examination, redirect

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1 examination and, lastly, recross examination.
2 Sometimes what is said in direct may be
3 revisited in cross. I just remind you of
4 that insofar as when you seek to stop the
5 playing. But we are prepared to go -- Ms.
6 Garrison, I will turn it over to you.

7 FOREMAN: So should I ask the juror ---

8 THE COURT: No, if that juror or jurors
9 hear what they need to hear, if they will
10 make that known to you, you can indicate that
11 to me and we will stop. I say "you"
12 collectively, not just you.

13 COURT REPORTER: This is the testimony
14 of Joseph Davis, duly sworn, direct
15 examination by Solicitor Shealy:

16 Q. If you would, please tell the
17 jury where you live.

18 A. I live at ■ Sam Edwards Road,
19 Mount Pleasant, South Carolina.

20 Q. And, if you would, tell the
21 jury how long you have lived there?

22 A. I'm forty-three now. I'd say
23 I've lived there about -- I'd say about forty
24 years.

25 Q. Forty years?

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1 A. About.

2 Q. Are you working right now?

3 A. No, ma'am.

4 Q. What work did you previously
5 do?

6 A. Everything from -- Firecracker,
7 Bo's Shem Creek Bar & Grill, Sullivan's
8 Island, about everything, anything.

9 Q. Okay. Let me ask you about
10 some trouble that you got into in the past.

11 A. Okay.

12 Q. Did you have some forgeries
13 that you were convicted of?

14 A. Yes, ma'am.

15 Q. And those were back in the
16 '90s?

17 A. Yes, ma'am.

18 Q. And those were back in the
19 '90s?

20 A. Yes, ma'am.

21 Q. Now I'm going to show you what
22 has been previously marked as State's
23 Exhibits 14 -- 13, 14 and 17, and ask if you
24 recognize the areas depicted.

25 A. This is down my street.

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1 This is the beginning ---

2 COURT REPORTER: Exhibit number?

3 SOLICITOR SHEALY: I'm sorry.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR SHEALY:

6 Q. State's Exhibit -- as to
7 State's Exhibit 13, that's -- you indicated
8 that's what?

9 A. This is Sam Edwards Road. This
10 is going back to the back gate.

11 Q. Okay.

12 A. This is going back to the back
13 gate, the dead end.

14 Q. Okay, we will go over that a
15 little bit more fully in just a minute.

16 State's Exhibit 17?

17 A. That is my house.

18 Q. And State's Exhibit 14?

19 A. That's the same road, Sam
20 Edwards Road.

21 S OLICITOR SHEALY: Your Honor, I
22 believe without objection that I would at
23 this time move State's Exhibits 13, 14 and 17
24 into evidence.

25 THE COURT: Exhibits 13, 14 and 17

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1 are admitted without objection.

2 (SO ENTERED AS STATE'S EXHIBIT 13)

3 (SO ENTERED AS STATE'S EXHIBIT 14)

4 (SO ENTERED AS STATE'S EXHIBIT 17)

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR SHEALY:

7 Q. In just a second, Mr. Davis,
8 you'll be able to look at these pictures on
9 that screen right there.

10 A. Okay. That's my road.

11 Q. Now, let me ask you something
12 about the road. If you're standing looking
13 at that photograph, are you looking at the
14 end of the road?

15 A. I'm looking at the dead end.

16 Q. Showing you State's Exhibit 14,
17 which way are you looking here?

18 A. You are looking towards the
19 highway.

20 Q. Towards 17?

21 A. Yes, ma'am.

22 Q. And State's Exhibit 17, what is
23 that?

24 A. You're looking at my house, the
25 front.

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1 Q. So let's go back to the one
2 with the dead-end. State's Exhibit 13. Do
3 you see an antenna-looking thing up there
4 with you?

5 A. (No verbal response).

6 Q. If you could stand up, Mr.
7 Davis, using this pointer -- you're almost
8 tall enough, but using this pointer show the
9 jury on that photo where your house is.

10 A. My house is right here at the
11 mailbox.

12 Q. Okay.

13 A. That black mailbox right there.

14 This is another house.

15 There is a house right there.

16 This is a dead-end.

17 This is a private property that has no
18 way out except one way that's coming down
19 this road, Sam Edwards Road.

20 Q. Okay. Now, you've told you
21 that you have lived over there for forty-one
22 years?

23 A. Yes, ma'am.

24 Q. Can you show us whether there
25 are some cut-throughs over to Porchers Bluff?

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1 A. You've got to come back.

2 You've got to turn back around.

3 Q. In my photo?

4 A. Yes, ma'am. This right here is
5 a dead end. You can't get no way through
6 there.

7 Q. So going back to State's
8 Exhibit 14, where ---

9 A. This is my house.
10 This is my next-door neighbor's
11 house.

12 This is my yard.

13 There is a telephone pole in the
14 area right here and you can see a little path
15 -- if you look at the road, you can see that
16 there is a little path where you can get in
17 there.

18 Q. Showing you State's Exhibit 12
19 -- pull that up. Can you show us on here --
20 can you find your road and the Walmart?

21 A. Yeah. If you put it up on the
22 screen, I can show you.

23 Q. Okay. Showing you State's Exhibit
24 12, ---

25 A. This is Sam Edwards Road right

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1 here.

2 This is the dead end.

3 Excuse me, I'm kinda blind so it
4 will take a minute.

5 Porchers Bluff is right here.

6 Walmart is right here.

7 This is an electricity fence.

8 There is a shortcut to Sam Edwards
9 Road, there's a shortcut right here.

10 You can go around here and move all
11 the way through to Porchers Bluff.

12 You cross over and you can get to
13 Walmart.

14 Q. You can be seated now.

15 A. (Complies).

16 Q. I would like for you to focus
17 your attention back to September 15th, 2010.
18 Would you tell the jury whether or not
19 something drew your attention that evening?

20 A. Yeah, a red and black car. My
21 little son was sitting in the front car,
22 playing in the dirt.

23 Q. What about the red-and-black
24 struck your attention?

25 A. It's a dead-end. Why you

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1 coming down that road if you know that it's a
2 dead-end. And the sign that was there before
3 that sign was there, the sign was at the head
4 of the road.

5 Q. Telling you that it was a dead
6 end?

7 A. Yes.

8 Q. Well, let's talk about the head
9 of the road just a second. Is it different
10 now than it was in 2010?

11 A. No, it's still the same.

12 Q. Up on 17?

13 A. Except that they got sidewalks
14 and trees, that's it.

15 Q. What about the entrance to Sam
16 Edwards Road?

17 A. It's still about the same.

18 Q. So what did you see the red and
19 black car do?

20 A. Go to the back area and into
21 the fence.

22 Q. When you say the fence, can you
23 point to us where the fence is?

24 A. Okay. You can see that this is
25 a brick here and a brick here, and there's a

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1 fence. This was supposed to be closed off.
2 You can't see it, but on the brick wall it
3 says "Private Property, Do Not Enter."

4 Q. Okay.

5 A. And they had it closed off.

6 Q. Who lives in that residence at
7 the end of that street?

8 A. The Coakleys, Jamie Coakley.

9 Q. The Coakleys?

10 A. (No verbal response).

11 Q. At that fence, what did the car
12 go?

13 A. The car went in, went halfway
14 in, disappeared, then it turned around and
15 came back down that road.

16 Q. Can you tell the jury how many
17 people were in that car when it came down
18 that road?

19 A. At first there was four of
20 them.

21 Then when they turned around and
22 came back out, there was two and two of them
23 was then on foot.

24 Q. The two that were on foot, can
25 you describe to us what they did?

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1 A. *They were walking. They went*
2 *through the path like they was going to the*
3 *store.*

4 Q. *What do you remember about*
5 *their appearance?*

6 A. *They had on jeans, a hoodie cap*
7 *-- both of them had on cap hoodies, and white*
8 *gloves.*

9 Q. *They had on gloves?*

10 A. *Yes.*

11 Q. *What did the red-and-black car*
12 *do..."*

13 (PLAY BACK CONCLUDED)

14 THE COURT: You have signaled that you
15 have heard all you need to hear?

16 PRESIDING JUROR: Yes, sir.

17 THE COURT: Very well. You may retire
18 and resume your deliberations.

19 (JURY OUT @ 2:21 P.M.)

20 THE COURT: Any exceptions or additions
21 from the State?

22 SOLICITOR SHEALY: No, Your Honor.

23 THE COURT: From Mr. Graddick?

24 ANDREW GRIMES: No, sir.

25 THE COURT: From Mr. Coakley?

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1 WILLIAM RUNYON: No, Your Honor.

2 THE COURT: From Mr. Smalls?

3 JIM SMILEY: No, sir.

4 THE COURT: Thank you. We will be at-
5 ease.

6 (JURY IN DELIBERATIONS)

7 (NOTIFIED OF VERDICT @ 3:20)

8 THE COURT: Let me see the attorneys.

9 (OFF RECORD BENCH CONFERENCE)

10 (DEFENDANT GRADDICK PRESENT)

11 (DEFENDANT COAKLEY PRESENT)

12 (DEFENDANT SMALLS PRESENT)

13 THE COURT: This will be ---

14 COURT REPORTER: Court's Exhibit 6.

15 (SO ENTERED AS COURT'S EXHIBIT 6)

16 THE COURT: We just discussed off the
17 record what has been marked as Court's
18 Exhibit 6. The jury has advised that they
19 have reached a verdict on two cases. We
20 discussed whether or not to go ahead and
21 receive the two. They are unanimous
22 decisions.

23 Mr. Grimes, Mr. Graddick would request
24 that the jury continue to deliberate on the
25 third case before receiving any verdict; is

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1 that correct?

2 ANDREW GRIMES: Yes, sir.

3 THE COURT: And the basis for that
4 request is, what?

5 ANDREW GRIMES: Your Honor, I believe
6 that he is entitled to a full and complete
7 consideration of the facts. Some of my
8 argument involved Mr. Smalls and as they
9 continue to discuss Mr. Smalls, they may
10 reconsider their decision.

11 THE COURT: What decision? They've
12 already reached a verdict as to Mr. Graddick.

13 ANDREW GRIMES: They were tried
14 together and the verdicts should be announced
15 together, Your Honor.

16 THE COURT: Thank you, sir. I don't
17 think that there is any logical reason not to
18 receive the verdicts. At least the Court
19 can't think of any right now.

20 The jury has decided two cases. I need
21 to find out first of all if it is a decision
22 by the jury. We need, first of all, to have
23 that resolved. Then the Court may tell them
24 to retire and continue their deliberations as
25 to the third defendant or we may just simply

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1 -- there doesn't seem any reason, to me, to
2 not go ahead and resolve those.

3 Of course, I don't know what the verdicts
4 are. If the verdict is guilty, we can go
5 ahead and take care of that defendant, those
6 defendants. If it is not guilty, then they
7 don't have to sit in this court any longer.
8 If it is a guilty verdict, we can resolve
9 that while they continue to deliberate in the
10 other.

11 From a judicial standpoint, it seems to
12 be expedient for everybody here. We don't
13 need to sit around and wait when we have a
14 way to resolve it.

15 As I've stated on numerous occasions, as
16 has Mr. Smiley and each of you, they are
17 three separate cases. So we're not talking
18 about a package deal here. They are
19 individual cases. I've so instructed that
20 there are three armed robbery trials.
21 They've advised that they have resolved two
22 of the three cases.

23 So noting your objection, the Court is
24 still going to receive the verdict.

25 ANDREW GRIMES: Thank you.

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1 THE COURT: Bring in the jury panel.

2 While the jury is coming, let me tell you
3 that I appreciate the courtesies extended by
4 the audience, your decorum throughout this
5 trial. I know that it is a very trying time
6 -- that's what trials really are. I under-
7 stand that emotionally, it's a draining time.

8 But one thing that I will not tolerate is
9 any reaction to the verdict. If there is any
10 reaction -- if you feel like you are not
11 going to be able to control your emotions,
12 you need to go ahead and exit the courtroom
13 now. If you remain, everyone here will have
14 to honor that. If you don't, then that would
15 be direct contempt and I would deal with it
16 as quickly as the jury is released from the
17 courtroom. Direct contempt is punishable by
18 up to a year in prison. Just keep that in
19 mind. I am not trying to be harsh but we are
20 going to maintain proper decorum in the
21 courtroom.

22 (BAILIFF TENDERS NOTE TO JUDGE)

23 THE COURT: Okay, we have a note that
24 they want to rehear the testimony of Mr.
25 Davis in its entirety.

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1 We will bring them in and, Mr. Grimes, I
2 will inquire if that changes the previous
3 note wherein they advised they have reached a
4 verdict on two of the cases.

5 ANDREW GRIMES: Thank you, Your Honor.

6 THE COURT: Yes, sir. Before I answer
7 that question.

8 ANDREW GRIMES: Yes, sir.

9 THE COURT: Let the record reflect that
10 the defendants are present, Mr. Graddick, Mr.
11 Coakley and Mr. Smalls.

12 COURT REPORTER: Marking that jury note
13 as Court's Exhibit 6.

14 THE COURT: Yes. Thank you. And they
15 say that they want to see all videos of the
16 Walmart. I am not sure what that is, but
17 I'll ask about that, too. Bring in the
18 jury.

19 (SO ENTERED AS COURT'S EXHIBIT 6)

20 COURT REPORTER: And Court's Exhibit
21 Number 7.

22 (SO ENTERED AS COURT'S EXHIBIT 7)

23 (JURY IN @ 3:32 P.M.)

24 THE COURT: Thank you, ladies and
25 gentlemen. I have your notes, which we have

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1 marked as Court's Exhibits 6 and 7.

2 In Court's Exhibit 6, you indicated that
3 you have reached a decision in two of the
4 three cases. Is that correct, sir?

5 FOREMAN: That is correct, Your
6 Honor.

7 THE COURT: All right. Then Exhibit 7,
8 your note, requests the replaying of the
9 testimony of Mr. Davis, Joseph Davis, and all
10 of the videos. Do you want the arrest video
11 and the Walmart videos or ---

12 FOREMAN: Just the Walmart videos,
13 the one at 6:28 through the last one, which
14 was ---

15 THE COURT: I think that there were
16 three cameras.

17 FOREMAN: Four.

18 THE COURT: Four cameras. Okay.
19 That has nothing to do with your decision?
20 That has to do with you resolving the third
21 case?

22 FOREMAN: Yes, sir. Both of those.

23 THE COURT: Do you have the verdict
24 forms that you have decided on.

25 FOREMAN: Yes, sir.

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1 THE COURT: Very well. If you will
2 pass the verdict forms to Mr. Pryor
3 (bailiff). We will be in the process of
4 resolving that -- and we'll get the videos
5 cued up for your review.

6 BAILIFF: (Tenders forms to Judge
7 Dennis).

8 THE COURT: (Upon review), the verdict
9 forms have been properly completed. If you
10 would, please publish the verdicts.

11 I would ask the defendants Mr. Coakley
12 and Mr. Graddick to please rise.

13 DEFENDANT GRADDICK: (Complies)

14 DEFENDANT COAKLEY: (Complies)

15 CLERK: Case Number 2011-GS-10-02078,
16 the State of South Carolina versus Keenan
17 Coakley, "We, they jury, by unanimous consent
18 find the Defendant, Keenan Coakley, on the
19 charge of armed robbery, Guilty." Signed by
20 David Watcher, December 6th, 2013.

21 Case Number 2011-GS-10-02074, State of
22 South Carolina versus Jarrett Graddick, "We,
23 the jury, by unanimous consent find the
24 Defendant, Jarrett Graddick, on the charge of
25 armed robbery, Guilty." Signed David

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1 Watcher, dated December 6th, 2013.

2 Mr. Foreman, ladies and gentlemen of the
3 jury, if these are your verdicts, please
4 raise your right hand -- (unanimous response
5 by jurors raising rights hands). Let the
6 record reflect that all jurors have raised
7 their hand.

8 THE COURT: Thank you very much.

9 Anything further from the jury on the
10 issues of the verdicts, from the State?

11 SOLICITOR SHEALY: No, Your Honor.

12 THE COURT: From the defendants?

13 ANDREW GRIMES: On behalf of Defendant
14 Graddick, we would request that the jury be
15 polled.

16 THE COURT: Very well. Ladies and
17 gentlemen, then we will -- go ahead and poll
18 then as to each verdict.

19 I assume you join in that ---

20 WILLIAM RUNYON: We would make that
21 same request, Your Honor.

22 THE COURT: Very well. What is going
23 to happen -- is it all right with each of you
24 that we simply lump them into, 'has the court
25 published your verdicts' in the plural rather

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1 than do it separately on each case? May we
2 just simply say, 'is this your verdicts' on
3 both?

4 ANDREW GRIMES: Yes, sir.

5 WILLIAM RUNYON: I -- yes, Your Honor.

6 THE COURT: What is going to happen is
7 that polling the jury simply states that --
8 you have already technically done that by
9 raising your right hand. But there is a
10 process that's been around as long as I have
11 been practicing law, and long before. The
12 Clerk is going to call your name and ask
13 whether that was your verdict. When you
14 respond, please understand that you will be
15 responding in each case. If it is not your
16 verdict in both cases, you can say that it is
17 'my verdict' in one but not the other. Okay.
18 If it is your verdict, simple say yes.

19 Then he will ask, 'Is it still your
20 verdict(s)?' Then you'll respond
21 accordingly.

22 If you would please assist us.

23 CLERK: Yes, sir. Starting with the
24 foreman, Juror Number 273, David Wachter.

25 JUROR NUMBER 273: Yes, it is my verdict.

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1 CLERK: Sir, is this your verdict?
2 Juror number 273: Yes, sir.
3 CLERK: Sir, are these still your
4 verdicts.
5 JUROR NUMBER 273: Yes. Yes, sir.
6 CLERK: Juror Number 118, are these
7 your verdicts?
8 JUROR NUMBER 118: Yes.
9 CLERK: Are they still your verdicts?
10 JUROR NUMBER 118: Yes.
11 CLERK: Thank you, ma'am. Juror
12 Number 255, are these your verdicts?
13 JUROR NUMBER 255: Yes.
14 CLERK: Are these still your verdicts?
15 JUROR NUMBER 255: Yes.
16 CLERK: Juror Number 176, are these
17 your verdicts?
18 JUROR NUMBER 176: Yes.
19 CLERK: Are these still your verdicts?
20 JUROR NUMBER 176: Yes.
21 CLERK: Juror Number 58, are these your
22 verdicts?
23 JUROR NUMBER 58: Yes.
24 CLERK: Are these still your verdicts?
25 JUROR NUMBER 58: Yes.

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1 CLERK: Juror Number 108, are these
2 your verdicts?

3 JUROR NUMBER 108: Yes.

4 CLERK: Are these still your verdicts?

5 JUROR NUMBER 108: Yes.

6 CLERK: Thank you, sir. Juror Number
7 26, are these your verdicts?

8 JUROR NUMBER 26: Yes.

9 THE COURT: Are these still your
10 verdicts?

11 JUROR NUMBER 26: Yes.

12 CLERK: Juror Number 148, are these
13 your verdicts?

14 JUROR NUMBER 148: Yes.

15 CLERK: Are these still your verdicts?

16 JUROR NUMBER 148: Yes.

17 CLERK: Juror Number 221, are these
18 your verdicts?

19 JUROR NUMBER 221: Yes.

20 CLERK: Are these still your verdicts?

21 JUROR NUMBER 221: Yes.

22 CLERK: Juror Number 22, are these your
23 verdicts?

24 JUROR NUMBER 221: Yes.

25 CLERK: Are these still your verdicts?

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1 JUROR NUMBER 222: Yes.

2 CLERK: Juror Number 98, are these your
3 verdicts?

4 JUROR NUMBER 98: Yes.

5 CLERK: Are these still your verdicts?

6 JUROR NUMBER 98: Yes.

7 CLERK: Thank you, ma'am. Juror Number
8 152, are these your verdicts?

9 JUROR NUMBER 152: Yes.

10 CLERK: Are these still your verdicts?

11 JUROR NUMBER 152: Yes.

12 CLERK: Your Honor, the jury has been
13 polled and the verdicts stand.

14 THE COURT: Yes, the jury has been
15 polled and the verdict does stand. Thank you
16 very much. Anything further from the jury
17 before I return them to their jury room to
18 resume their deliberations?

19 ANDREW GRIMES: Not on behalf of
20 Defendant Graddick.

21 WILLIAM RUNYON: Not on behalf of
22 Defendant Coakley, Your Honor.

23 THE COURT: Any other requests, Mr.
24 Smiley, at this point?

25 JIM SMILEY: No, sir.

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1 THE COURT: Thank you very much, ladies
2 and gentlemen.

3 COURT REPORTER: Testimony of Joseph
4 Davis, duly sworn:

5 JOSEPH DAVIS, having been sworn to
6 tell the truth, and nothing but the truth,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY SOLICITOR SHEALY:

10 Q. If you would, please tell the jury
11 where you live.

12 A. I live at ■ Sam Edwards Road, Mount
13 Pleasant, South Carolina.

14 Q. And, if you would, tell the jury how
15 long you have lived there?

16 A. I'm forty-three now. I'd say I've
17 lived there about -- I'd say about forty
18 years.

19 Q. Forty years?

20 A. About.

21 Q. Are you working right now?

22 A. No, ma'am.

23 Q. What work did you previously do?

24 A. Everything from -- Firecracker, Bo's
25 Shem Creek Bar & Grill, Sullivan's Island,

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1 about everything, anything.

2 Q. Okay. Let me ask you about some
3 trouble that you got into in the past.

4 A. Okay.

5 Q. Did you have some forgeries that you
6 were convicted of?

7 A. Yes, ma'am.

8 Q. And those were back in the '90s?

9 A. Yes, ma'am.

10 Q. And those were back in the '90s?

11 A. Yes, ma'am.

12 Q. Now I'm going to show you what has
13 been previously marked as State's Exhibits 14
14 -- 13, 14 and 17, and ask if you recognize
15 the areas depicted.

16 A. This is down my street.

17 This is the beginning ---

18 COURT REPORTER: Exhibit number?

19 SOLICITOR SHEALY: I'm sorry.

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR SHEALY:

22 Q. State's Exhibit -- as to State's
23 Exhibit 13, that's -- you indicated that's
24 what?

25 A. This is Sam Edwards Road. This is

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1 going back to the back gate.

2 Q. Okay. #

3 A. This is going back to the back gate,
4 the dead end.

5 Q. Okay, we will go over that a little
6 bit more fully in just a minute.

7 State's Exhibit 17?

8 A. That is my house.

9 Q. And State's Exhibit 14?

10 A. That's the same road, Sam Edwards
11 Road.

12 SOLICITOR SHEALY: Your Honor, I believe
13 without objection that I would at this time
14 move State's Exhibits 13, 14 and 17 into
15 evidence.

16 THE COURT: Exhibits 13, 14 and 17 are
17 admitted without objection.

18 (SO ENTERED AS STATE'S EXHIBIT 13)

19 (SO ENTERED AS STATE'S EXHIBIT 14)

20 (SO ENTERED AS STATE'S EXHIBIT 17)

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR SHEALY:

23 Q. In just a second, Mr. Davis, you'll
24 be able to look at these pictures on that
25 screen right there.

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1 A. Okay. That's my road.

2 Q. Now, let me ask you something about
3 the road. If you're standing looking at that
4 photograph, are you looking at the end of the
5 road?

6 A. I'm looking at the dead end.

7 Q. Showing you State's Exhibit 14,
8 which way are you looking here?

9 A. You are looking towards the highway.

10 Q. Towards 17?

11 A. Yes, ma'am.

12 Q. And State's Exhibit 17, what is
13 that?

14 A. You're looking at my house, the
15 front.

16 Q. So let's go back to the one with the
17 dead-end. State's Exhibit 13. Do you see an
18 antenna-looking thing up there with you?

19 A. (Negative gesture).

20 Q. (Tenders pointer to witness). If
21 you could stand up, Mr. Davis, using this
22 pointer -- you're almost tall enough, but
23 using this pointer show the jury on that
24 photo where your house is.

25 A. My house is right here at the

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1 mailbox.

2 Q. Okay.

3 A. That black mailbox right there.

4 This is another house.

5 There is a house right there.

6 This is a dead-end.

7 This is a private property that has no
8 way out except one way that's coming down
9 this road, Sam Edwards Road.

10 Q. Okay. Now, you've told you that you
11 have lived over there for forty-one years?

12 A. Yes, ma'am.

13 Q. Can you show us whether there are
14 some cut-throughs over to Porchers Bluff?

15 A. You've got to come back. You've got
16 to turn back around.

17 Q. In my photo?

18 A. Yes, ma'am. This right here is a
19 dead end. You can't get no way through
20 there.

21 Q. So going back to State's Exhibit 14,
22 where ---

23 A. This is my house.

24 This is my next-door neighbor's house.

25 This is my yard.

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1 There is a telephone pole in the area
2 right here and you can see a little path --
3 if you look at the road, you can see that
4 there is a little path where you can get in
5 there.

6 Q. Showing you State's Exhibit 12 --
7 pull that up. Can you show us on here -- can
8 you find your road and the Walmart?

9 A. Yeah. If you put it up on the
10 screen, I can show you.

11 Q. Okay. Showing you State's Exhibit
12 12, ---

13 A. This is Sam Edwards Road right here.
14 This is the dead end.

15 Excuse me, I'm kinda blind so it will
16 take a minute.

17 Porchers Bluff is right here.

18 Walmart is right here.

19 This is an electricity fence.

20 There is a shortcut to Sam Edwards Road,
21 there's a shortcut right here.

22 You can go around here and move all the
23 way through to Porchers Bluff.

24 You cross over and you can get to
25 Walmart.

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1 Q. You can be seated now.

2 A. (Complies).

3 Q. I would like for you to focus your
4 attention back to September 15th, 2010. Would
5 you tell the jury whether or not something
6 drew your attention that evening?

7 A. Yeah, a red and black car. My
8 little son was sitting in the front car,
9 playing in the dirt.

10 Q. What about the red-and-black struck
11 your attention?

12 A. It's a dead-end. Why you coming
13 down that road if you know that it's a dead-
14 end. And the sign that was there before that
15 sign was there, the sign was at the head of
16 the road.

17 Q. Telling you that it was a dead end?

18 A. Yes.

19 Q. Well, let's talk about the head of
20 the road just a second. Is it different now
21 than it was in 2010?

22 A. No, it's still the same.

23 Q. Up on 17?

24 A. Except that they got sidewalks and
25 trees, that's it.

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1 Q. What about the entrance to Sam
2 Edwards Road?

3 A. It's still about the same.

4 Q. So what did you see the red and
5 black car do?

6 A. Go to the back area and into the
7 fence.

8 Q. When you say the fence, can you
9 point to us where the fence is?

10 A. Okay. You can see that this is a
11 brick here and a brick here, and there's a
12 fence. This was supposed to be closed off.
13 You can't see it, but on the brick wall it
14 says "Private Property, Do Not Enter."

15 Q. Okay.

16 A. And they had it closed off.

17 Q. Who lives in that residence at the
18 end of that street?

19 A. The Coakleys, Jamie Coakley.

20 Q. The Coakleys?

21 A. (Affirmative nod).

22 Q. At that fence, what did the car go?

23 A. The car went in, went halfway in,
24 disappeared, then it turned around and came
25 back down that road.

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1 Q. Can you tell the jury how many
2 people were in that car when it came down
3 that road?

4 A. At first there was four of them.
5 Then when they turned around and came
6 back out, there was two and two of them was
7 then on foot.

8 Q. The two that were on foot, can you
9 describe to us what they did?

10 A. They were walking. They went
11 through the path like they was going to the
12 store.

13 Q. What do you remember about their
14 appearance?

15 A. They had on jeans, a hoodie cap --
16 both of them had on hoodies, and white
17 gloves.

18 Q. They had on gloves?

19 A. Yes.

20 Q. What did the red-and-black car do
21 after those two got out?

22 A. It left right off.

23 Q. Did you have the occasion later that
24 evening to see that vehicle?

25 A. It came back down, I'd say about

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1 *twenty to thirty-five minutes later,*
2 *speeding.*

3 Q. You know what? Could you put your
4 hands down from your mouth, just so that
5 everybody can hear you?

6 A. Oh, sorry, (complies).

7 Q. When they went -- when they came in
8 first -- they came in slow at first.

9 Then they went back out like how you
10 drive normally to leave out.

11 But I'd say about twenty-five to thirty-
12 five minutes later that the car back flying
13 through.

14 Q. Where were you when it came back
15 flying through?

16 A. I been in the front yard with my
17 son.

18 Q. What did you see happen at that
19 point?

20 A. I saw the two fellas coming running
21 out of the woods. The same spot that they
22 went in through, they came back out the same
23 area.

24 Q. Can you show us on this picture --
25 can you see it on this picture, or do you

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1 have to have the other picture?

2 A. No, you gotta go on back.

3 Q. Gotta go back?

4 A. Yeah, you gotta go back to where you
5 show all the Walmart and everything. Back to
6 Number 12.

7 Q. Okay, State's Exhibit 12.

8 A. Okay, this area right here
9 (indicating). The same spot that they went
10 into, this area right here, they came back
11 flying -- they came back through the same
12 area, went right back down the road to the
13 fence that is cut off, which you can't get
14 through.

15 Q. The one that you showed us earlier
16 at the dead-end?

17 A. Uh-huh, (affirmative nod).

18 Q. At any point is there any connection
19 between those two guys and the red-and-black
20 car again?

21 A. No.

22 Q. So when they're coming back through
23 the shortcut, what happened to the car with
24 the two guys?

25 A. They went inside the fence. The two

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1 fellows immediately followed after then, and
2 then the car came back flying.

3 Q. When they came back of the woods,
4 can you tell the jury how they appeared?

5 A. Okay, they was like -- they was in a
6 hurry. It looked like one of them was
7 tucking something like a football.

8 Q. Can you show us what you mean?

9 A. Like they was tucking something
10 under their coat and they was running very
11 quickly.

12 Q. Did you see anything be thrown at
13 any point?

14 A. Yes. It was -- they right here,
15 there's a ditch right there and they threw
16 something in the ditch.

17 Q. Going back to State's Exhibit 13.

18 A. The ditch is right here by the
19 fence. You can't tell where that's at right
20 now because it's grew up so much.

21 Q. Okay. But you saw what? What
22 exactly happened there?

23 A. I saw somebody toss something. I
24 don't know what it was, it was something
25 shiny like. But after the policeman came

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1 down the road, they showed me what it was.

2 Q. The police did?

3 A. Yes.

4 Q. So did you have the occasion to talk
5 to the police that night?

6 A. Yes, I did.

7 Q. Did you call them or were you out
8 there when they ---

9 A. I was out there when they came down
10 the road.

11 Q. Did you in fact give a statement to
12 the police that evening?

13 A. Yes, I talked to them.

14 Q. So that would have been on September
15 15th?

16 A. Yes.

17 Q. And it was a written statement?

18 A. Yes.

19 SOLICITOR SHEALY: Beg the court's
20 indulgence just a moment.

21 THE COURT: Okay.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR SHEALY:

24 Q. The two guys that you saw come out
25 of the woods, did you see where they went in

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1 connection with the car?

2 A. They went to the back area, right
3 where the car had went to but I didn't see
4 anybody after they tossed the thing.

5 Q. That was the last thing -- the last
6 part that you saw of them?

7 A. Yes, ma'am.

8 SOLICITOR SHEALY: Beg the court's
9 indulgence just a moment, (sidebar with Mr.
10 Ferguson).

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR SHEALY:

13 Q. You told us, Mr. Davis, how the car
14 comes down Sam Edwards Road the second time?

15 A. The first time it went in, turned
16 and came back out.

17 The second time they came back
18 speeding.

19 Q. Speeding?

20 A. Yes.

21 Q. Then did the car stay at the end of
22 Sam Edwards Road or did it go back towards
23 17?

24 A. It went back towards 17. It didn't
25 stay back there. It just went in real fast

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1 and went right back out, as quick as it went
2 in it went out.

3 Q. Thank you very much. Answer any
4 questions that the defense might have.

5 SOLICITOR SHEALY: Thank you.

6 THE COURT: Cross examine?

7 ANDREW GRIMES: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY ANDREW GRIMES:

10 Q. Good afternoon, Mr. Davis.

11 A. How you doing?

12 Q. Doing pretty good. How you doing
13 today?

14 A. Alright.

15 Q. You said that what caught your
16 attention back on September 15th of 2010 was
17 that the red car came down ---

18 A. It was a red-and-black car. It was
19 black ---

20 Q. Thank you.

21 A. --- at the bottom and red on the
22 top.

23 Q. So this red-and-black car came down
24 a one-way street.

25 A. Uh-huh.

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1 Q. Does it normally get your attention
2 when a car comes down that way?

3 A. Yeah. Why you coming down to a
4 dead-end when there's a sign up at the head
5 of the road that says that there it is a dead
6 end.

7 Q. All right. Did you see us out there
8 on Saturday?

9 A. Sir?

10 Q. Did you see us out there on
11 Saturday? A white car?

12 A. No, I didn't see a white car
13 Saturday.

14 Q. Now, you talked a little bit about
15 the private property. That is sort of -- you
16 said that there a sign marking it private
17 property?

18 A. Yes.

19 Q. And there's a big field out here,
20 right?

21 A. It's a whole fenced-off property.

22 Q. When you say fenced off -- maybe
23 back then it was a little different, but now
24 are there a bunch of holes in the fence that
25 people can go through?

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1 A. No.

2 Q. I want to ask you a couple of
3 questions about what you saw that day, that
4 afternoon. Okay?

5 A. Okay.

6 Q. First, do you know what time that
7 you saw this car come down?

8 A. It was early. I would say about --
9 it was early, because I was outside playing
10 with my child in the front yard.

11 Q. Your child is Jamie?

12 A. No, my child is Javon.

13 Q. I'm sorry. So you and Javon were
14 outside playing?

15 A. Yes.

16 Q. And when you say early, what do you
17 mean by that? Four o'clock, five o'clock?

18 A. No, it was early that morning. I'd
19 say between ten and eleven o'clock, maybe
20 twelve o'clock. It was early.

21 Q. Ten in the morning until 12:00
22 o'clock in the afternoon?

23 A. Yes.

24 Q. That's when you saw this car?

25 A. Yes.

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1 Q. And then you said that you saw two
2 people get out of the car?

3 A. I saw four people that was in the
4 car. The car came back and there was two
5 people in the car and the other two fellas
6 was on foot.

7 Q. Let's talk a little bit about that.
8 I'm not following you as well as I probably
9 should.

10 When you saw this red-and-black car,
11 there were four people in the car?

12 A. Yes. There were four people in the
13 car. The back windows were down when the car
14 came through.

15 Q. Okay.

16 A. But when the car came out, the back
17 windows were up and the ---

18 Q. All right.

19 A. --- two fellows were on foot.

20 Q. When you're talking about it going
21 out, you're talking about the first time or
22 the ----

23 A. Went out towards Highway 17.

24 Q. --- second time?

25 A. Went back towards Highway 17.

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1 Q. The car came down there twice,
2 right?

3 A. Yes.

4 Q. And you said -- when you said that
5 it just came out, are you talking about the
6 first time or the second time?

7 A. No, the first time it went down
8 slow. That's the first time that it came
9 down. And it went back out. So that's the
10 two times that it was in there.

11 The third time, it came by speeding.

12 The fourth time, it went out and that's
13 when I heard the sirens.

14 So it was on Sam Edwards Road four times,
15 you could say.

16 Q. Just to make sure that we're on the
17 same page, when you say "down", you're
18 talking about one trip down, two trips down
19 or are you talking about sort of a roundtrip.

20 A. It was a roundtrip.

21 Q. So that makes it four?

22 A. Four times, (affirmative nod).

23 Q. I just wanted to make sure that we
24 were on the same page. Thank you.

25 A. (Affirmative nod).

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1 Q. You said that it was about ten to
2 twelve o'clock.

3 A. Yes, it was hot. So I know.

4 Q. You have a pretty good memory of
5 that?

6 A. It was hot.

7 Q. When did that car come back down, I
8 guess that was the third time?

9 A. The came back down the third time,
10 I'd say about twenty-five to thirty-five
11 minutes later, speeding.

12 Q. So perhaps 10:30 to 12:30?

13 A. I'd say 12:30, somewhere inbetween
14 then 'cause it was early when they went in.
15 When they came down the road, it was early.

16 Q. You and Javon were still playing
17 outside at that time?

18 A. Yes.

19 Q. And that's how you remember the time
20 so well?

21 A. Um-humm.

22 THE COURT: Is that a "yes"?

23 WITNESS: Yes, sir.

24 THE COURT: Thank you.

25 CROSS EXAMINATION CONTINUED

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1 BY ANDREW GRIMES:

2 Q. So the last couple of questions that
3 I want to ask you, just to clarify.

4 A. Okay.

5 Q. After the car was leaving, I guess
6 the fourth time, did you see where those
7 other two guys went?

8 A. No, it disappeared.

9 Q. They ran through the woods?

10 A. No, they disappeared. Like they was
11 nowhere in sight. But the car left, so they
12 have to be in the backseat or something
13 because the windows were up.

14 Q. Okay. You didn't actually see them
15 get in the car?

16 A. No, I didn't.

17 Q. They disappeared kind of like
18 ghosts?

19 A. You could say that; yes, sir.

20 ANDREW GRIMES: May I have a moment,
21 Your Honor?

22 THE COURT: Yes, sir.

23 ANDREW GRIMES: (Sidebar with Mr.
24 Kowelski and Defendant Graddick). Thank you,
25 Your Honor, I have no further questions.

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1 THE COURT: Mr. Runyon.

2 WILLIAM RUNYON: Yes, sir.

3 CROSS EXAMINATION

4 BY WILLIAM RUNYON:

5 Q., Good afternoon, Mr. Davis.

6 A. How you doing, sir?

7 Q. Just fine. You've down there for,
8 what?

9 A. I'd say forty-something years,
10 because I'm forty-three now.

11 Q. And at the end of that road -- the
12 Coakleys live at that end of that road, don't
13 they?

14 A. Yes, sir.

15 Q. So you know most of the Coakleys?

16 A. Yes, sir.

17 Q. Did you see any of the Coakleys get
18 out of the car and go into the woods and go
19 towards the store?

20 A. No, sir.

21 Q. Did you see any of the Coakleys come
22 back out of the woods?

23 A. No, sir.

24 WILLIAM RUNYON: No further questions.

25 THE COURT: Cross examine, Mr. ---

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1 JIM SMILEY: Yes, sir.

2 THE COURT: --- Smiley?

3 CROSS EXAMINATION

4 BY JIM SMILEY:

5 Q. My name is Jim Smiley.

6 A. How you doing?

7 Q. I represent Kevin Smalls.

8 A. Yes, sir. Pleased to meet you. How
9 you doing?

10 Q. I have State's Exhibit 13 ---

11 JIM SMILEY: Can we put State's Exhibit
12 13 up. Thank you.

13 CROSS EXAMINATION CONTINDUED

14 BY JIM SMILEY:

15 Q. Mr. Davis, I've been out there
16 trying to get ready for this trial, but
17 you're going to know this area a lot better,
18 so let me ask you some questions.

19 A. Go ahead.

20 Q. I'm going to come over here just
21 because I don't want to be on top of you.
22 All right?

23 A. All right.

24 Q. This mailbox on the edge ---

25 A. That's mine.

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1 Q That is yours?

2 A. Yes, sir.

3 Q. So there is two more houses between
4 yours and the end of the road?

5 A. Yes, sir.

6 Q. About a football field and a half
7 down to the end of the road?

8 A. (No verbal response).

9 Q. About a hundred and fifty yards?

10 A. I wouldn't say that, that far.

11 Q. A hundred yards?

12 A. Something like that.

13 Q. And in your front yard there is a
14 tree house?

15 A. Yes, now there is.

16 Q. Was it -- that was my next question.
17 Was it there back then?

18 A. No. I just started building it for
19 myself.

20 Q. Okay. But there was -- certainly
21 that big tree was there?

22 A. Uh-huh, yes.

23 Q. And between your property and the
24 end of the road, between -- I am going to ask
25 it a different way.

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1 A. Okay.

2 Q. Between your house and the house net
3 door, there's like a hedgerow; right?

4 A. No. Between my house and this
5 house -- this house and this house, -- before
6 then that hedges was not there. It just was,
7 a fence.

8 Q. Okay. So the growth that is there
9 now wasn't there then?

10 A. No.

11 Q. Your son was playing in the front
12 yard?

13 A. Yes.

14 Q. And you were on the front porch?

15 A. No, I was in the yard.

16 Q. You were ---

17 A. I was in the yard.

18 Q. --- in the yard?

19 A. Yes.

20 Q. And this was about ten o'clock, you
21 said?

22 A. Ten or eleven o'clock.

23 Q. Like I said, I know -- I'm not
24 trying to pin you to a time, I'm just asking
25 the time of day.

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1 A. Yeah.

2 Q. When you saw the red-and-black car
3 cruising down?

4 A. Um-humm, (affirmative nod).

5 Q. And it went to the end of the road?

6 A. Yes, sir.

7 Q. All right. That is where Jamie
8 Coakley lives with?

9 A. Well, yeah, Jamie Coakley but they
10 passed his house and went into the fence.
11 That was an irrigation plant back there, but
12 right now they are trying to develop it, turn
13 it into condos and stuff, but you can't get
14 no -- it's called dead water.

15 Q. Yeah.

16 A. That fence was closed before
17 someone, whoever the guys were, opened the
18 fence.

19 Q. I gotcha. Jamie Coakley lives down
20 further?

21 A. Yeah.

22 Q. So you saw the car go down there.

23 A. Yes, sir.

24 Q. And you saw two fellows get out?

25 A. Yes, sir.

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1 Q. And you were seeing this while you
2 were in your front yard ---

3 A. --- playing with my son, yeah.

4 Q. You saw the car do a three-point
5 turn?

6 A. I didn't see it do a three-point
7 turn. I know that it went into the gate.
8 When they opened the gate, I went back to my
9 son to tend to him. Then I saw the car
10 coming back out.

11 Q. There is nothing back there, right?

12 A. No.

13 Q. It's fenced in?

14 A. It's fenced in -- but can you put it
15 on the Walmart. I think that it is (State's
16 Exhibit) 13 or 14.

17 Q. State's Exhibit 12.

18 A. Okay.

19 Q. We will put it up there for you.

20 A. All right.

21 Q. What were you going to tell us ---

22 A. If you can -- can it scroll up?

23 It can't scroll up?

24 There's an old house right inside that
25 irrigation center. That's where they had

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1 that irrigation center at. That place is
2 still there now but it's torn up and
3 abandoned.

4 Q. In fact, there are a couple of
5 buildings back in there?

6 A. Yeah, you could say that.

7 Q. But going into that area, there is
8 no way out?

9 A. No, that's a dead-end. You can't
10 get through there.

11 Q. Right.

12 A. Unless you jump the fence.

13 Q. And that fence is locked, isn't it?

14 A. No. After someone broke ---

15 Q. Excuse me. The gate.

16 A. The gate, (affirmative nod). After
17 someone broke the gate, ---

18 Q. Yeah.

19 A. --- they decided to leave it alone.

20 Q. All right. So that area, while it's
21 got a gate across it, it opens; right?

22 A. Yeah.

23 Q. You saw the car leave after a couple
24 of minutes of being down there?

25 A. Uh-huh, (affirmative nod).

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1 Q. At a normal speed?

2 THE COURT: Sir, you need to say words.

3 WITNESS: All right. Okay.

4 THE COURT: Thank you.

5 WITNESS: Yes, normal speed.

6 CROSS EXAMINATION CONTINUED

7 BY JIM SMILEY:

8 Q. And you saw the car drive out at
9 after a couple of minutes?

10 A. Yes.

11 Q. At a normal speed?

12 A. Yes, sir.

13 Q. Then you saw it coming back in this
14 way twenty-five to thirty minutes ---

15 A. In about twenty-five to thirty-five
16 minutes, they was coming back speeding after
17 the two fellows went -- after the two fellows
18 got out of the car and went through the cut.

19 Q. Okay. So the car comes back about
20 thirty minutes later and comes down fast?

21 A. Speeding, sir.

22 Q. And that would have been somewhere
23 at 10:30 or 11:00 in the morning?

24 A. I'd say 11:30, 12:00 o'clock or
25 something like that.

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1 Q. Before we stop, I'm going to ask a
2 couple of more questions about the layout
3 before we go to the next step.

4 A. All right.

5 Q. Now, the cut-through that you saw
6 them go in, is that across the street from
7 your house?

8 A. (Affirmative nod).

9 Q. Is that the one that you're talking
10 about?

11 A. Yes, sir.

12 Q. So if I -- let me make sure that I
13 follow you, all right?

14 A. Okay.

15 Q. So the two fellows got out of the
16 car, into the road, and the car turned around
17 or something down there and left?

18 A. Yes, sir.

19 Q. Then you saw the two fellows walking
20 up the road?

21 A. Yes, sir.

22 Q. So they came up towards your house?

23 A. They came pass my house.

24 Q. That's what I mean.

25 A. Yes, sir.

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1 Q. So you could see them from your
2 yard?

3 A. I could see them from my yard, but
4 they was fully clothed and I couldn't tell
5 who they was.

6 Q. I understand that. But my point
7 being, they came -- while they had on gloves
8 and hoodies and all that, they ---

9 A. Yes, sir.

10 Q. --- just walked down the road, right
11 across from you, to get to that cut?

12 A. Yes, sir, the same cut that just
13 about everybody takes.

14 Q. There are cuts all through back
15 there, isn't there?

16 A. Not no more. Not after they done
17 tear all the trees off.

18 Q. I gotcha. But the main cut is that
19 one by the telephone pole that is across from
20 --- you?

21 A. Yes, sir.

22 Q. So while they were dropped off at
23 the end of the road, they had to walk up to
24 your house or they chose to walk up to your
25 house ---

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1 A. Past.

2 Q. Past your house?

3 A. (Affirmative nod).

4 Q. Excuse me, you're right. So they
5 would have been walking back up the road
6 towards 17?

7 A. Yes.

8 Q. They go into that cut.

9 They stay playing with your son.

10 About thirty-five minutes later,
11 that red-and-black car comes speeding down,
12 all ---

13 A. Yes, sir.

14 Q. --- the way back to the end?

15 A. Yes, sir.

16 Q. It turned around?

17 A. I'm pretty sure. It went in the
18 fence. I really didn't pay much attention
19 until I saw the fellows come running down the
20 road real fast.

21 Q. So the two fellows pop out of the
22 cut right across the street from you?

23 A. Yes.

24 Q. They turned and ran down the road
25 towards ---

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1 A. Yes.

2 Q. --- Jamie Coakley's?

3 A. Yes.

4 Q. All right. I think that you
5 testified that you didn't actually see them
6 get in the car?

7 A. (Negative gesture), no.

8 Q. Okay. But that's when you saw the
9 shiny thing?

10 A. I saw when they -- when they threw
11 something in the ditch?

12 Q. Yeah. Here's my question, that was
13 -- but the first question is, that was the
14 time when you saw them toss something?

15 A. Yeah. Right.

16 Q. When you saw them toss that shiny
17 thing, was it down at the end of the road or
18 at the cut across from you?

19 A. No, it was down at the end of the
20 road in the ditch.

21 Q. I am just trying to make sure that
22 we are clear.

23 A. Right.

24 Q. And at that point, you said that you
25 didn't see them get in the car but ---

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1 A. No.

2 Q. --- that the car turned around and
3 left quickly?

4 A. Yeah.

5 Q. Left quickly?

6 A. Yes.

7 Q. And that unless they were ghosts,
8 that you assume that they got in the car?

9 A. Yes.

10 Q. And that was thirty minutes after
11 the first time you'd seen the car that day?

12 A. Yes, sir.

13 Q. So by about noon or so, they were
14 gone?

15 A. You could say that. They were down
16 the road by noon. They were out of my
17 sights.

18 Q. Right, out of your sight?

19 A. Yes.

20 Q. You saw them go up to 17?

21 A. Yes.

22 Q. And you didn't pay no mind until the
23 police came shortly thereafter?

24 A. Yes, sir.

25 Q. Okay, a couple of more questions

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1 about 17.

2 A. Okay.

3 Q. Going back to when this allegedly
4 happened in 2010, because they've did that
5 big construction project out there on 17
6 since then. Right?

7 A. Yes, sir.

8 Q. If you were coming down 17 to go to
9 Sam Edwards Road, coming down going towards
10 the bride, you can't turn directly onto Sam
11 Edwards Road. You have to go past it and do
12 a U-turn; right?

13 A. Now you've got to but before then
14 there was a cut -- there was like a little
15 divider before they closed it off.

16 Q. Back then you could make a U-turn
17 closer to Sam Edwards Road. Now, you've got
18 to go down to almost Dingle Road to turn
19 around.

20 A. Yes, sir.

21 Q. Then coming out of Sam Edwards Road,
22 back then if you wanted to go to the bridge,
23 south on 17, you had to go to the right when
24 you first came out?

25 A. You could have gone to the right or

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1 you could have gone straight out and taken
2 Porchers Bluff Road.

3 Q. Right. But my point is that you
4 couldn't go straight across to 17 South.

5 A. No.

6 Q. You had to go to the right and then
7 make ---

8 A. Yes.

9 Q. --- a U-turn?

10 A. Yes, at the light.

11 Q. Okay. Mr. Davis, I appreciate it.
12 That's all that I have got for you.

13 THE COURT: Redirect?

14 SOLICITOR SHEALY: Yes, sir.

15 REDIRECT EXAMINATION

16 BY SOLICITOR SHEALY:

17 Q. Mr. Davis, just to make sure that
18 we're straight, when we're talking about one,
19 two, three, four times, you're talking about:
20 one time down the street?

21 A. Yes.

22 Q. The second time was out the street?

23 A. Yes.

24 Q. Third time down the street?

25 A. Yes.

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1 Q. Fourth time out the street?

2 A. Yes.

3 Q. So the vehicle came down Sam Edwards
4 Road twice?

5 A. Twice. The first one they came in
6 slowly, came back out slowly -- and was the
7 second time.

8 The third time, they come speeding down
9 the road. The fourth time, they were
10 speeding out the road.

11 Q. Okay. And I think that you have
12 indicated to the defense attorneys that you
13 think that it was in the early part of the
14 day because it was hot and you were playing
15 outside with your child?

16 A. Yes, ma'am.

17 Q. You also mentioned hearing a siren?

18 A. Yes, ma'am.

19 Q. All right. When did you hear the
20 siren in connection with the red-and-black
21 car being on Sam Edwards Road?

22 A. After it had disappeared -- come
23 back out Sam Edwards Road.

24 Q. That's when you heard the siren?

25 A. Yes, ma'am.

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1 Q. And you indicated that it was
2 approximately thirty to thirty-five after the
3 car had left the first time that the car came
4 back?

5 A. Yes, ma'am.

6 Q. Do you remember talking to Detective
7 DeCamp that night?

8 A. (Negative gesture).

9 Q. Do you remember the officer who took
10 your statement?

11 A. There was a bunch of them. Sorry.

12 Q. How many officers do you remember
13 seeing on Sam Edwards Road?

14 A. I'd say at least about ten of them,
15 because they -- the whole road was blocked
16 off out there with deputy sheriffs and by the
17 boys in blue.

18 Q. Okay. Did you approach the police
19 about what you knew, or did they approach
20 you?

21 A. I saw them down the road and asked
22 them what was going on. They told me that
23 there was a robbery and asked had I seen a
24 red-and-black car? I told them that I saw
25 somebody, some fellows and saw somebody throw

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1 something in the bush.

2 Q. All right.

3 A. They asked me where and I told them
4 down at the dead end. They took me down to
5 the dead end and I said, 'somewhere over
6 there.' So they shined a light and they saw
7 something in the bush.

8 Q. So you are the one that led them
9 down the street?

10 A. Yes.

11 Q. And you told us that Jamie Coakley
12 lives at the end of Sam Edwards Road?

13 A. Yes, ma'am.

14 Q. Would you tell the jury whether
15 there are a lot of Coakleys in Mount
16 Pleasant?

17 A. To tell you the truth, I just really
18 know Jamie and Josh Coakley and their mama
19 and them.

20 Q. You just know Jamie, Josh and their
21 mom?

22 A. Yes.

23 Q. Is that who lives at the end of the
24 street?

25 A. Yes, ma'am.

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1 Q. Are you familiar with there being a
2 Coakley Road in Mount Pleasant?

3 A. That's a little past the Cosmic Dog.

4 Q. Past the Cosmic Dog?

5 A. Yes.

6 Q. So a good ways down from Sam Edwards
7 Road?

8 A. Yes.

9 Q. Okay. I have nothing further.
10 Thank you very much.

11 THE COURT: Recross, Mr. Grimes?

12 ANDREW GRIMES: No questions, Your
13 Honor.

14 THE COURT: Mr. Runyon.

15 RECROSS EXAMINATION

16 BY WILLIAM RUNYON:

17 Q. Do you know Keenan Coakley?

18 A. I know him but I don't know -- I
19 don't know if he family. I don't know that
20 he's kin to anyone in my area.

21 Q. Did you see Keenan Coakley go into
22 the woods that day?

23 A. No.

24 Q. Did you see Keenan Coakley come out
25 of the woods that day?

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1 A. No.

2 WILLIAM RUNYON: No further questions.

3 THE COURT: Recross, Mr. Smiley?

4 JIM SMILEY: Just ---

5 RECROSS EXAMINATION

6 BY MR. SMILEY:

7 Q. So when the police got there and
8 talked to you, they asked you first did you
9 see a red-and-black car out there?

10 A. Yes, sir.

11 THE COURT: We have the videos cued up.

12 (WALMART VIDEOS REPLAYED BEFORE JURY)

13 THE COURT: Thank you. If you would
14 return to your jury room and resume your
15 deliberations, we will be in the process of
16 getting those things for you. Thank you very
17 much.

18 (JURY OUT @ 3:43 P.M.)

19 THE COURT: With respect to the
20 verdict, anything further from the State?
21 Any Motions?

22 SOLICITOR SHEALY: No, Your Honor.

23 THE COURT: Any Motions from Defendant
24 Graddick?

25 ANDREW GRIMES: We just renew our

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1 Motion for a directed verdict.

2 THE COURT: Very well, I believe that
3 the court has responded to all the issues.
4 Certainly the evidence supports the verdict
5 and I would deny the Motion.

6 WILLIAM RUNYON: On behalf of Defendant
7 Coakley, Your Honor, we would renew our
8 Motion for a directed verdict and move for a
9 mistrial -- excuse me, move for a new trial.
10 We also renew our Motions for a mistrial as
11 we previously stated on the record.

12 THE COURT: Thank you, sir. Those
13 Motions are noted and preserved. The Court
14 again, as to Mr. Coakley, finds the evidence
15 adequate to support the verdict and would
16 respectfully deny your Motions, for a new
17 trial and for a mistrial.

18 All right. Are we ready for sentencing
19 or do you want to wait? Whatever your
20 pleasure.

21 SOLICITOR SHEALY: We are ready to go
22 forward with sentencing.

23 THE COURT: Do you have sentencing
24 sheets?

25 SOLICITOR SHEALY: I do.

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1 THE COURT: Okay. Anything further
2 from the State?

3 SOLICITOR SHEALY: Your Honor, regard-
4 ing Jarrett Graddick, he does have a 2006
5 conviction for criminal conspiracy.

6 Keenan Coakley does not have an adult
7 record. He does, however, have a juvenile
8 record for simple assault and battery, a drug
9 possession, assault and battery by a student
10 upon a school employee, malicious injury to a
11 treehouse -- "tree, house" -- and a
12 disturbing schools.

13 THE COURT: All right. Be glad to hear
14 from us -- we will do it in the order that we
15 have been doing it.

16 ANDREW GRIMES: Thank you, Your Honor.
17 I spoke with Mr. Runyon and that's the first
18 time I've ever seen a judge come down and
19 shake hands with the clients. We appreciate
20 that. It's been a little while since I've
21 tried a case in front of you, so I don't know
22 if that is new or ---

23 THE COURT: I've been trying to do that
24 my entire career -- at least once I started
25 doing it. I'm sure security doesn't

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1 necessarily always like for me to do that.
2 But -- by the same token, I respect that.
3 But it's something that I try to do because I
4 -- we are all human beings, God created it.
5 I do that out of the same respect that I'd
6 have for anybody else. They're entitled to
7 the same respect as anybody else, as far as I
8 am concerned.

9 ANDREW GRIMES: And I told Jarrett
10 about what Your Honor said, that you would
11 give us a fair trial, that if we do lose,
12 then we would get fair sentence. That's all
13 that we're seeking in this case is a fair
14 sentence.

15 Jarrett now is twenty-six years old. I
16 think that he was close to turning twenty-
17 three at the time of this offense.

18 He has been in jail eight hundred and
19 ninety-one (891) days.

20 THE COURT: Okay.

21 ANDREW GRIMES: He bonded out November
22 16th, 2013. He was out for the holidays with
23 his family. Quite frankly, there have been
24 no issues. I have a lot of respect for
25 Jarrett coming to court, being a man, for

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1 showing up, facing the jury and showing the
2 charges. I think that speaks highly of him.

3 He was born and raised in Mount Pleasant.
4 He has a daughter that is a year and a half
5 one out in the lobby.

6 He's worked on and off as an electrician
7 with his father since he's been fifteen.

8 His mother and father have an autistic
9 child and Jarrett helps out with him. They
10 have a close relationship.

11 Jarrett also helps his grandmother. You
12 saw her testify. Obviously the jury did not
13 believe her on her sequence of the times.
14 But there is no doubt that he was, that he
15 visited with her. That was confirmed when we
16 talked with her before trial. We were a
17 little bit concerned about her health. I
18 asked him, 'are you sure that your grand-
19 mother can go through this, do you want her
20 to do this.' If she can't go through this, I
21 didn't want to call her. His grandmother was
22 quite adamant, she said 'I'll be there to
23 testify.' I met with her several time.
24 She's always said that right about 6:30 these
25 other kids picked him up.

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1 You know, me and Jarrett have kind of an
2 odd relationship. I read the arrest warrants
3 and stuff and said, 'there's not much that I
4 can do for you here, other than to talk with
5 Ms. Shealy.' You know, I contacted her and
6 -- there wasn't much that we could do.

7 As we prepared for trial, he seemed to
8 pick up on a lot of the points. We had a lot
9 of jokes. He knew some about my medical
10 issue and he would ask about that. A lot of
11 clients don't' do that. He's a very caring
12 person.

13 When I talked to him, I think Wednesday
14 night -- or, excuse me, Tuesday night, trying
15 to see what would cause him -- you know, he
16 seems so friendly, outgoing, so smart, to be
17 turning through stores robbing stuff. I just
18 can't picture that. He's young, maybe he was
19 caught up with the wrong influences but
20 everyone was close to the same age. I don't
21 know if it was the adrenalin, the high or
22 something. I am just at a complete loss.
23 It's as if there are two Jarretts.

24 To me, if he was sentenced to maybe
25 around fifteen years, I'm certain that he'd

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1 learn his lesson, would come out as a mature
2 Jarrett. More like his father.

3 His mother, I think quite frankly, may
4 have let him get away with too much stuff.
5 His father is more of a disciplinarian. When
6 I talked to him briefly, you know, he talked
7 about some stuff. He's kind of at a loss to
8 explain what happened, how this happened.

9 One of the deputies that has been here,
10 Ms. Pryor, has been very supportive. She's
11 e-mailed me a lot in the case, has called,
12 helped with the three-ways at the jail, to
13 coordinate some stuff. She obviously cares
14 about him.

15 I think that his mother would like to
16 briefly address the Court.

17 THE COURT: I'll be happy to hear from
18 her. I just need you to give me your full
19 name for the record.

20 BRIDGETT GRADDICK: I just --
21 (emotional).

22 THE COURT: Ma'am?

23 BRIDGETT GRADDICK: I -- that's my
24 son. He's always -- he's a kind-like person.
25 He'd do anything in the community and he was

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1 in church. All the time, everybody in the
2 community loves Jarrett and he takes time to
3 do things -- he takes out the trash, he
4 cleans the yard, he -- (emotional). I love
5 my son -- (emotional) -- he's my son.

6 COURT REPORTER: And her name?

7 ANDREW GRIMES: Bridgett Graddick.

8 THE COURT: Thank you. I don't believe
9 that Ms. Pryor wishes to address the Court.
10 Thank you.

11 THE COURT: Thank you, Mr. Grimes.
12 Anything from the State concerning Mr.
13 Graddick?

14 SOLICITOR SHEALY: Nothing further,
15 Your Honor. Thank you.

16 THE COURT: Mr. Runyon?

17 WILLIAM RUNYON: Your Honor, you've
18 heard that the Coakleys ----

19 THE COURT: I'm sorry. There is one
20 thing that I need to ask about Mr. Graddick.
21 What happened with the criminal conspiracy?
22 Did he get time served? Probation?

23 ANDREW GRIMES: I believe that it was
24 probation, Your Honor.

25 THE COURT: How long was he on proba-

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1 tion?

2 DEFENDANT GRADDICK: Two years.

3 ANDREW GRIMES: Two years.

4 THE COURT: And he successfully
5 completed that?

6 DEFENDANT GRADDICK: Yes, sir.

7 THE COURT: So that would have put it
8 to 2008, when you finished probation?

9 DEFENDANT GRADDICK: Yes, sir.

10 THE COURT: Excuse me, Mr. Runyon.
11 I'm sorry.

12 WILLIAM RUNYON: No problem. Your
13 Honor, has heard even during the jury
14 selection where Mr. Coakley is from. He's
15 from Mount Pleasant. He lives on Coakley
16 Road. The Coakleys are an extensive family
17 in the Mount Pleasant area. He went so
18 school in Mount Pleasant, Judge.

19 His mother and father are in the
20 courtroom today and his pastor is here with
21 him. Judge, he's got an older brother who
22 has been very attentive to this case. He
23 lives and works out of state.

24 Mr. Coakley has been in custody since
25 July 5, 2011, Judge. We'd ask the court to

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1 take that into consideration.

2 Of course, Mr. Coakley -- we heard the
3 verdict. I don't argue with jury verdicts,
4 Judge. I haven't done that since I started
5 practicing and there is no sense to start
6 now. The verdict is the verdict and we have
7 to deal with it.

8 I think as a practical matter, that we've
9 got a young man -- you heard the juvenile
10 record.

11 THE COURT: Yes.

12 WILLIAM RUNYON: And I have to tell you
13 that he did have some problems at school.
14 Most of those items that you heard about were
15 significant but not disturbing situations --
16 like the treehouse situation, things of that
17 sort. He successfully addressed those issues
18 in the juvenile process.

19 We are where we are now, Judge. I'd ask
20 the Court to be as lenient as possible
21 considering the circumstance and, as I asked,
22 to take into consideration that he's been in
23 jail since July 5th.

24 THE COURT: Anything else?

25 WILLIAM RUNYON: Nothing else at this

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1 time, Judge.

2 THE COURT: I don't understand it
3 either.

4 WILLIAM RUNYON: Judge, if ---

5 THE COURT: Good afternoon, sir. If
6 you would, give me full name, please, sir.

7 JAMES COAKLEY: I'm James Michael
8 Coakley. I am Keenan Coakley's father.

9 THE COURT: Yes, sir.

10 JAMES COAKLEY: This is my baby. I
11 love him to death.

12 THE COURT: I know that you did.

13 JAMES COAKLEY: And I tried to bring
14 him up the best way that I could. But, you
15 know, kids are going to be kids. He's not a
16 bad person, Your Honor.

17 Very seldom do you see -- I am a father,
18 I'm up here. It's not always that you have
19 someone to come and stand behind their kids
20 like this, because most families don't have a
21 mother and a father in the home. Our kids
22 had a mother and father in the home.

23 This is my wife right here.

24 This is our pastor. We are church-going
25 people.

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1 I don't believe in foolishness and stuff
2 like that, Your Honor. And I teach my kids
3 not to believe in foolishness. But, you
4 know, things happen and we can't watch our
5 kids twenty-four/seven.

6 THE COURT: No, sir.

7 JAMES COAKLEY: I have to work, I've
8 got to feed them. I'm a State employee, a
9 Citadel coach. I work around a whole lot of
10 kids. I speak to them every morning and
11 foolishness and getting in trouble, bad stuff
12 like that. You know, I see a lot of them
13 jail and stuff like that. But me being a
14 truthful man, and I don't try to put myself
15 on a pedestal but I speak to them and I tell
16 them, you know, 'your father and mother
17 didn't send you to school for four years to
18 get in trouble, man.'

19 It's my heart and my goal to do that at
20 The Citadel. I've been working there, next
21 year will be twenty-eight years. I've seen a
22 lot of things happen around there.

23 I'm asking you this afternoon, Your
24 Honor, to please show mercy, to lighten his
25 sentence, because he was gone for three years

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1 -- he's got a young child and he couldn't
2 even make his birthday last Saturday. He
3 loves him to death. He always asks about his
4 daddy. As a matter of fact, I take him with
5 me, I always keep him with me. I have him on
6 the riding mower with me, cutting grass. He
7 calls he dad. He calls me daddy because he
8 really didn't get to see his dad when he was
9 a baby when Keenan got locked up.

10 I'm asking you, to please, lighten the
11 sentence for him so that he can come home and
12 be with us.

13 His mama, we almost lost her last year.
14 She had toxic shock. I went home to find her
15 in the bathroom unconscious. The only thing
16 that he could do on the phone was to cry for
17 his mama, because he can't be there for his
18 mother.

19 I am asking you for your mercy today.

20 THE COURT: Thank you, sir. I don't
21 know what the answer is, Mr. Coakley. Yes,
22 sir? I'm sorry. Give me your name, please.

23 BURNETT JACQUES: The first name is
24 Burnett, B-u-r-n-e-t-t and the last name is
25 Jacques, J-a-c-q-u-e-s.

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1 I been in youth pastoring for many, many
2 years and I've been in youth counseling for
3 many years. I am from the island of Haiti,
4 and I've been here in ministerial school for
5 many years.

6 I've been dealing personally, one-to-one,
7 with Keenan for quite a while. Especially
8 since he's been in jail, I've been visiting
9 with him and talking to him. I've seen quite
10 a lot of improvement in terms of behavior and
11 commitment.

12 It's amazing in these days of modern days
13 -- people are recycling papers, recycling
14 leaves. I believe that there should be a way
15 also where we can recycle our wayward people.

16 It is true that the Bible says that a
17 soul without sin shall truly die. But also I
18 believe in the vow of redemption. Not only
19 should we recycle paper but we should recycle
20 people, redeem them as with this young man.
21 I believe that with proper counseling, proper
22 talk, proper teaching that people -- I've
23 made mistakes myself, but eventually I've
24 been redeemed. So if I have been redeemed
25 and -- and I don't believe that I'm one bit

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1 better than those young people, these young
2 men, so I cry for redemption. I believe that
3 -- I don't have any say so in that but I
4 believe that should try for all out young
5 people.

6 THE COURT: Unfortunately, sir, I don't
7 have anything to do with that.

8 BURNETT JACQUES: Yes, sir, but I would
9 say a prayer for your mercy and ask if you
10 can do less, not only towards them where they
11 go away but to try to find a some way that
12 they reduce their sentences and get them back
13 home in the proper environment and teachings
14 and -- so, please, mercy.

15 THE COURT: This is something that --
16 we've all talked about some things, and the
17 things that we all know about -- I'm a
18 parent, too. I'm a grandparent. I thank
19 God every day, I don't think my children are
20 immune from doing exactly what is before me
21 today. We as human beings are capable of
22 making mistakes, and a mistake was made here.

23 There is no question that there are lots
24 of people -- there are people that come in
25 here, and I see a lot of them, that don't

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1 even have any family. They've never known
2 their parents. Then I see some that have
3 parents, have a community, have a church
4 community. The Bible talks about that, too:
5 *To whom much is given, much is expected.*

6 I think that's a fair request.

7 It also talks about the consequences of
8 our sins, our actions and that we have to
9 suffer for that.

10 That's -- redemption, I don't have
11 anything to do with that. There is a judge
12 much greater than me that is going to take
13 care of that one. I don't deal with that.

14 Mine is to try to do, as best I can, to
15 mete out the punishment that I think is
16 appropriate for the actions that were taken.
17 These were serious, serious actions. How
18 they go from what we saw to carrying,
19 literally a canon -- a .45 -- a gun holding a
20 .45 caliber cartridge. Had that gone off in
21 that store? It's just lucky that we aren't
22 talking about a robbery -- an armed robbery
23 with murder. It would have been horrible.

24 The troubling thing about an armed
25 robbery, why it is so serious and why the

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1 State takes it so seriously is that those
2 folks didn't know what was going to happen to
3 them. They thought that they were dead. I
4 can't think of any greater nightmare.

5 I don't know the answer, Reverend. It's
6 a puzzling thing. I ponder it every day that
7 I get up. I open the newspapers, I see
8 another story. On the news this week there
9 was a family, a community where they were
10 going -- talking about going to Columbia to
11 try to change some image, to try to get
12 people to understand that 'we've got to stop
13 doing what's going on.'

14 I don't know where the answer is, I'll
15 confess that. But I do know this, I excused
16 one person. Do you know what his reason was?
17 'I live in this community. I'm sorry, but I
18 already have an opinion based on what we see
19 every day about young people.'

20 That's a sad statement.

21 Is it fair? No, it is not.

22 Is it reality? Yes, it is.

23 Can it be changed? Sure, it can.

24 But you know where it's got to start?

25 With people your age. It's got to start.

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1 You're right, we can't be with them
2 twenty-four/seven, we can't walk with them
3 every day.

4 They've got to start making decisions.
5 I've been doing this for twenty years and I
6 have people, all the time, who -- I had a
7 young man, I'll never forget him. He was
8 eighteen years old, he shot a person in the
9 chest with a .40 caliber pistol. I asked
10 him, I said, 'What did you think was going to
11 happen when you pulled that trigger?'

12 He looked at me like, 'What?'

13 I said, 'What did you think was going to
14 happen?'

15 'Well, I didn't think.'

16 You shoot somebody and you don't even
17 think about what is going to happen? That
18 just doesn't make any sense. We've got to
19 start thinking before.

20 I don't know what causes people to go
21 from where he went, to do what was done.

22 The jury has passed on it.

23 But you will have a chance -- and I'm
24 sure that the victims would love to see you
25 in jail for thirty years. I understand their

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1 feelings, I really do. You put them
2 through hell that day.

3 I'll take into consideration the lack of
4 record or the type of record that you have.

5 I will also take into consideration the
6 ages.

7 I believe Mr. Graddick, that the firearm
8 was tied to you. I understand that you don't
9 have to say -- but that was the evidence in
10 this case.

11 And you were on probation for two years.

12 You are the older. I am going to hold
13 you accountable.

14 The sentence of the Court in Mr.
15 Graddick's case is twenty (20) years, and he
16 is to be given credit for eight hundred and
17 ninety-one (891) days.

18 The sentence for Mr. Coakley is sixteen
19 (16) years and he is to be given credit for
20 time served since July 5th, 2011.

21 God bless you, good luck to both of you.

22 (DEFENDANT GRADDICK IN CUSTODY)

23 (DEFENDANT COAKLEY IN CUSTODY)

24 THE COURT: Gentleman, we have another
25 note. I think that this is where this case

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1 is going to be resolved -- it's what we
2 talked about. Let me see the attorneys.

3 (SO ENTERED AS COURT'S EXHIBIT 7)

4 (OFF RECORD BENCH CONFERENCE)

5 JIM SMILEY: Can I have a minute to talk
6 with him?

7 THE COURT: Certainly.

8 (BRIEF RECESS)

9 (DEFENDANT SMALLS PRESENT)

10 JIM SMILEY: Your Honor, may we --

11 (OFF RECORD BENCH CONFERENCE)

12 JIM SMILEY: We're almost there, Your
13 Honor.

14 THE COURT: That's fine.

15 JIM SMILEY: They are doing the sentenc-
16 ing sheet now.

17 THE COURT: All right. Okay, why don't
18 we do this? I don't need the sentencing
19 sheet to take his guilty plea.

20 JIM SMILEY: No, sir, we can sign it
21 afterwards.

22 SOLICITOR SHEALY: That's fine.

23 THE COURT: Let's do that and then I
24 can go back and deal with the jury.

25 JIM SMILEY: That's fine. Kevin, let's

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1 move up here. Do you want to talk to me?

2 THE COURT: Jim, go ahead and talk.

3 There's no rush. I tell you what, why don't

4 I answer this question and tell them that we

5 are in the process of -- let's bring them in

6 so that they don't think that we have

7 forgotten about them.

8 JIM SMILEY: Yes, sir.

9 THE COURT: Bring in the jury.

10 (JURY IN @ 4:17 P.M.)

11 THE COURT: Thank you, ladies and

12 gentlemen. I have what has now been marked

13 as Court's Exhibit 8 (sic). It says, "At

14 what time is someone considered as aiding and

15 abetting in a crime?"

16 There is no specific law that defines

17 that other than what you already have. You

18 have the law that pertains to this case as to

19 what the State has to prove beyond a

20 reasonable doubt to find someone guilty of a

21 crime, being a principle or assisting in that

22 crime. That's a factual determination that

23 is left to the jury. The jury has to make

24 that determination. Of course, that

25 determination has to be made beyond a

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1 reasonable doubt, that you conclude that that
2 has been established by the evidence.

3 I would love to answer it but I am not at
4 liberty to do so under the restrictions that
5 I have. That would cause me to be commenting
6 on the facts of this particular case. I
7 cannot do so. Thank you, sir.

8 Please retire and resume your delibera-
9 tions. Thank you so much.

10 (JURY OUT @ 4:23 P.M.)

11 THE COURT: Exceptions or additions
12 from the State?

13 SOLICITOR SHEALY: No, Your Honor.

14 THE COURT: Exceptions or additions
15 from Mr. Smalls?

16 JIM SMILEY: No, Your Honor.

17 THE COURT: Thank you.

18 (SIDEBAR DEFENDANT SMALLS AND COUNSEL)

19 JIM SMILEY: Your Honor, I need a quick
20 break to run to the restroom and then we are
21 ready.

22 THE COURT: Yes, sir.

23 (BRIEF RECESS)

24 (DEFENDANT SMALLS PRESENT)

25 JIM SMILEY: There's one thing that I

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1 forgot to tell him, (sidebar with
2 Defendant Smalls). I think that he
3 understands his rights, Your Honor.

4 THE COURT: Mr. Smalls, good afternoon,
5 sir.

6 DEFENDANT SMALLS: Good afternoon.

7 THE COURT: I have been handed a
8 sentencing sheet, Mr. Smalls, that bears your
9 signature on Indictment 11-GS-10-2079, which
10 is an indictment charging you with the
11 offense of armed robbery; which we have spent
12 the last four days or so trying. According
13 to this sentencing sheet you're now desirous
14 of pleading guilty to accessory after the
15 fact of a felony A, B,C; is that correct,
16 sir?

17 JIM SMILEY: (Sidebar with Defendant).

18 DEFENDANT SMALLS: Yes, sir.

19 THE COURT: Your lawyer has explained
20 to you the difference between the indicted
21 offense and the offense of accessory after
22 the fact?

23 DEFENDANT SMALLS: Yes, sir.

24 THE COURT: What does that carry?

25 SOLICITOR SHEALY: Zero to fifteen.

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1 THE COURT: Do you understand that,
2 sir?

3 DEFENDANT SMALLS: Yes, sir.

4 THE COURT: Do you understand that
5 charge is not a lesser-included offense of
6 armed robbery?

7 DEFENDANT SMALLS: Yes, sir.

8 THE COURT: Your lawyer has explained
9 your right to have that charge of accessory
10 after the fact presented to the grand jury
11 before being asked to answer to that charge.
12 Is that true, sir?

13 DEFENDANT SMALLS: Yes, sir.

14 THE COURT: You have checked this box
15 and initialed it, indicating your desire to
16 waive presenting it to the grand jury and go
17 forward with this plea today; is that true,
18 sir?

19 DEFENDANT SMALLS: Yes, sir.

20 THE COURT: Do you fully understand
21 that right?

22 DEFENDANT SMALLS: I do.

23 THE COURT: Understanding, Mr. Smalls,
24 that I could sentence you up to fifteen years
25 in jail, what is your plea? Guilty or not

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1 guilty?

2 DEFENDANT SMALLS: Guilty.

3 THE COURT: Are you totally satisfied
4 with the manner in which your attorney has
5 represented you throughout this matter?

6 DEFENDANT SMALLS: Yes, sir.

7 THE COURT: Have you had sufficient
8 opportunity to talk with him about the
9 consequences of changing your plea?

10 DEFENDANT SMALLS: Yes, sir.

11 THE COURT: And you understand the
12 rights that you're giving up?

13 DEFENDANT SMALLS: Yes, sir.

14 THE COURT: Mr. Smiley, you obviously
15 has demonstrated those rights for the last
16 several days, but you've also discussed with
17 him again your right to exercise those same
18 rights at a trial on this charge?

19 JIM SMILEY: I have, Your Honor.

20 THE COURT: And he fully understands
21 and appreciates what he is doing?

22 JIM SMILEY: He does.

23 THE COURT: Based on your assessment of
24 the evidence, do you concur with his decision
25 to enter a guilty plea?

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1 JIM SMILEY: To accessory after the
2 fact; yes, sir.

3 THE COURT: I think that we talked
4 about that.

5 JIM SMILEY: Yes, sir.

6 THE COURT: And it appears to be more
7 of what the factual situation -- obviously
8 the jury has been deliberating for quite a
9 while, so there certainly is -- not to be
10 critical to the State for indicating it as an
11 armed robbery.

12 JIM SMILEY: Yes, sir.

13 THE COURT: Do you understand that,
14 sir?

15 DEFENDANT SMALLS: I do.

16 THE COURT: It would be your right to
17 have a jury trial, your right to confront the
18 witnesses against you on this charge. Do you
19 understand that?

20 DEFENDANT SMALLS: Yes, sir.

21 THE COURT: That means that the
22 witnesses would come forward and testify to
23 basically the same thing that we did today,
24 the only thing is that you'd be charged with
25 being an accessory; which would probably pick

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1 up from the time that you left and picked
2 them up and -- and you were stopped, because
3 that's where the majority of the evidence
4 was. There is some before that indirectly is
5 there. Cleary there is evidence of that
6 because there was the money and everything
7 else in the car, the money. Do you
8 understand that?

9 DEFENDANT SMALLS: Yes, sir.

10 THE COURT: But it would be your right
11 to challenge those witnesses again; do you
12 understand that?

13 DEFENDANT SMALLS: I understand.

14 THE COURT: You want to give up those
15 rights?

16 DEFENDANT SMALLS: Yes, sir.

17 THE COURT: You understand that you're
18 giving up the right to remain silent by
19 talking with me?

20 DEFENDANT SMALLS: Yes, sir.

21 THE COURT: It is your decision to give
22 up that right, as well?

23 DEFENDANT SMALLS: Yes, sir.

24 THE COURT: Nobody has threatened you
25 in any way or promised you anything?

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1 DEFENDANT SMALLS: No, sir.

2 THE COURT: I think that I know the
3 facts. Is there anything else that you want
4 to tell me, Solicitor?

5 SOLICITOR SHEALY: No, sir, Your Honor.
6 Mr. Smiley and I -- other than this, that
7 when Mr. Smiley and I were talking about the
8 possibility of a plea, he indicated that he
9 would be requesting probation. It's the
10 State's position that due to Mr. Smalls'
11 involvement that probation would not be
12 appropriate to the State.

13 THE COURT: Thank you very much. Does
14 he have a record of any type?

15 SOLICITOR SHEALY: He does, Your Honor.
16 He has seven breaking-and-entering motor
17 vehicle convictions back from 2006. Sorry,
18 just a second -- and one drug charge and a
19 2008 shoplifting.

20 JIM SMILEY: The drug charge was
21 resolved at the same time as the B&E's.

22 SOLICITOR SHEALY: That's correct. I
23 think that it was a suspended Y.

24 JIM SMILEY: Yes. That's correct.

25 THE COURT: A suspended Y, and he did

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1 the probation?

2 JIM SMILEY: I've -- you got off that
3 after two years of good behavior. Yes, sir.

4 THE COURT: Okay.

5 JIM SMILEY: Yes, sir.

6 DEFENDANT SMALLS: (Sidebar to Counsel).

7 JIM SMILEY: I am going to tell him a
8 whole of stuff -- just hang on.

9 THE COURT: I believe that there are
10 facts to support what I have heard, and I'll
11 be happy to hear from you.

12 JIM SMILEY: Yes, sir. I thank Ms.
13 Shealy very much for making this offer.

14 Your Honor, you can tell from what I've
15 said that I think highly of Kevin Smalls. I
16 still do right now.

17 Kevin Smalls made a mistake that day. He
18 has tried to rectify it. We were hoping to
19 be a witness in this case. We proffered and
20 came in and sat down with Mr. Ferguson and
21 Ms. Shealy, on three different occasions I
22 believe. There were some problems that just
23 couldn't be fixed.

24 The biggest problem was that when Kevin
25 would tell a story of what happened, it

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1 didn't match Brian's by any means. It didn't
2 match just about anybody's.

3 But the one thing that was really a hang-
4 up for Ms. Shealy, and I understood, is that
5 Kevin kept saying, 'I saw them out on 17, at
6 the head of the road' and witnesses say that
7 he drove back down Sam Edwards. I really do
8 believe during those conversations that in
9 his head that's what he believed.

10 I took him out to the scene, Kevin, and I
11 walked the scene. As we walked, he said 'I
12 drove into here but not back where they
13 said.' Ms. Shealy said, 'I can't use him as
14 witness.' I understood that. I wasn't happy
15 about it but I understood what -- and Kevin
16 actually understood it, too. It wasn't as if
17 Ms. Shealy was calling him a liar, back and
18 forth. We just couldn't get on the same
19 page.

20 That's why we kept coming back, trying to
21 do everything that we could to fix it. I
22 didn't want to be in this courtroom because I
23 knew what was going to happen, in my mind, to
24 the other two fellows.

25 But it is what it is. I can't put words

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1 in his mouth. Neither can Ms. Shealy. So he
2 had to be tried. I understand that.

3 Kevin Smalls exemplifies to me a lot of
4 the things that Mr. Coakley talked about, a
5 lot of things that Your Honor talked about.

6 But he works eighty hours a week, sixty
7 to eighty hours. In fact, when I need to
8 visit with him I have to go to Jiffy Lube in
9 Mount Pleasant and wait until they close at
10 6:00. Not because he wouldn't come to my
11 office after that, but he has to be at his
12 job at Wild Dunes at 7:30. So he's only got
13 an hour and a half to get changed, get
14 cleaned up and get to Wild Dunes.

15 He's a mechanic, too. He's used that.
16 The reason that -- at the time of this
17 incident, Your Honor, he didn't have one car.
18 He had two cars that he had rebuilt and put
19 together himself.

20 He did drive people around. He was the
21 fellow in the neighborhood that had a car.
22 He worked. He didn't hurt for money. He had
23 money. He was working at the time of his
24 arrest.

25 Part of what Brian said in the beginning,

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1 that matches up -- being at the Chinese
2 restaurant, being in the house, playing the
3 PlayStation. A lot of it did not make sense.

4 So in this case it was real difficult for
5 me, on the basis of what I have talked to
6 Kevin about, I thought that I had a pretty
7 good grasp on this case as far as what I
8 thought the facts would be. Then I heard
9 what Brian was saying, that didn't match.
10 What Mr. Davis said didn't match either, but
11 he was certainly trying to be helpful to the
12 State.

13 Kevin Smalls got arrested in those B&E
14 motor vehicle with Brian Mazyck back in 2004.
15 They've been friends a good part of their
16 life. There is a story behind that, but the
17 bottom line is that he stood up and he stood
18 up and pled guilty to those charges. He got
19 put on a YOA, did two years of it, was
20 successful and released early. He did not do
21 the whole probationary sentence.

22 His mother, Kathy Williamson, and his
23 brother is in the court.

24 Kevin Smalls made a mistake but he is
25 good people. I am sure of that. I think

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1 that -- this choice to plea wasn't at my
2 advice. I sat down and said to him, 'I think
3 that they are going to hang or they are going
4 to come back in your favor, you just never
5 know.'

6 He said, 'Mr. Smiley, I am not going to
7 prison for something that I didn't do. I
8 agree that I screwed up afterwards.' Those
9 were his words. And I want to explain that
10 to you, Your Honor, because it made sense
11 when he explained it to me.

12 He said when he was at Walmart, he goes
13 and drop his Redbox off -- regardless of what
14 anybody else says -- and comes back out to
15 his car. He said that he saw Ms. Lyons, as
16 he was walking out that she was out. That's
17 why I searched the video.

18 THE COURT: Not to cut you off, but do
19 you intend to have other persons speak on his
20 behalf?

21 JIM SMILEY: No, I think that they hired
22 you to be the mouthpiece.

23 THE COURT: Okay. I will accept the
24 plea.

25 JIM SMILEY: You want to get rid of the

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1 jury?

2 THE COURT: I want to hear you fully
3 but ---

4 JIM SMILEY: Then I would like to sit
5 down and let you do that.

6 THE COURT: I don't want to hold the
7 jury up but those folks deserve to be let go
8 if we're not going to need them.

9 JIM SMILEY: Absolutely, Your Honor. We
10 will be glad to sit and wait.

11 THE COURT: Thank you very much.

12 (BRIEF RECESS)

13 (DEFENDANT SMALLS PRESENT)

14 (JURY DISMISSED FROM JURY ROOM)

15 THE COURT: You made a good decision.
16 When I told them what we were doing, they all
17 said that makes sense.

18 I said that it is a separate crime and
19 we're dealing with it, and they said that
20 that makes perfect sense. So, thank you.
21 But it was going to be hung. It was going to
22 be a retrial. There was no decision, it was
23 going to be -- Jim is right, it was going to
24 be a hung jury.

25 SOLICITOR SHEALY: So we made the right

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1 decision?

2 THE COURT: Right, you make the right
3 decision. - Y'all made the correct decision
4 across the board.

5 JIM SMILEY: That makes me feel better,
6 and it should make you (Defendant Smalls)
7 feel better.

8 DEFENDANT: (Affirmative nod).

9 JIM SMILEY: Back to where I was, Your
10 Honor, ---

11 THE COURT: Yes, sir.

12 JIM SMILEY: Something that I think is
13 real important that Kevin and I talked about.
14 He tells me, and he will maintain it to this
15 moment, that when they got out of that car at
16 the end of Sam Edwards Road, he did not know
17 that those fellows were going to commit an
18 armed robbery. He went to the Walmart to
19 return the Redbox movie.

20 THE COURT: Well, let me ask a silly
21 question. What did he think that they were
22 going to do?

23 JIM SMILEY: Jamie Coakley lived back
24 there, which is what he believed at the
25 moment ---

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1 THE COURT: But that really wasn't
2 where he lived?

3 JIM SMILEY: No, Jamie does live back
4 there. No doubt about that.

5 THE COURT: Okay. Keenan didn't ---

6 JIM SMILEY: Whether those fellows were
7 ever really intending to go to Jamie's or
8 not, he -- he didn't care, I guess. He was
9 dropping them off and said, 'I will pick you
10 up when I'm done.' He went and did his thing
11 and came back.

12 He said that when the robbery took place,
13 and he was out there in the parking lot, he
14 went 'Ohhhh', because Jarrett -- Jarrett had
15 a reputation. I don't know how else to say
16 it. He went, 'Oh, I hope those guys didn't
17 do that.'

18 Driving back, he didn't want to go to Sam
19 Edwards Road -- but this was his dilemma, and
20 he made the wrong choice. He was, like, 'I
21 don't want to go back to Sam Edwards Road.
22 But if it is not them, they're going to be
23 mad at me, think I'm --' -- it's the kind of
24 situation that was a mistake. He should have
25 taken off and gone home right then. Or he

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1 should have just stayed in the parking lot,
2 said 'it might be my buddies.' That is most
3 likely what he should have done. It's easy
4 for me to say here today, but that's what
5 should have happened.

6 He said that when they got in the car
7 that he knew that he was in trouble. When
8 they got in the car, as they were coming out
9 of Sam Edwards Road, he knew that he was in
10 trouble. I asked him, 'At that point, why
11 didn't you stop?' He said, 'I just wanted to
12 get home. That's all that I could think of,
13 I just wanted to get home.'

14 And that's what Brian was saying. Brian
15 was saying, 'Just drop me off at the gas
16 station and I'll walk home.'

17 'I just want to get away from the guys.'
18 That's what Kevin was thinking. That's why
19 I believe that this is the proper charge in
20 this forum, Your Honor, accessory after the
21 fact.

22 He had some knowledge beforehand, it
23 certainly was confirmed. Kevin made a
24 terrible mistake.

25 Kevin has got a daughter -- how old is

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1 your daughter?

2 DEFENDANT SMALLS: Five.

3 JIM SMILEY: She is five years old. She
4 does not live with him but he spends every
5 free moment that he has with her.

6 Kevin is a very articulate young man.
7 I haven't tried a case without my right hand
8 in about ten years -- Ms. Hensley. I put her
9 beside me for a reason, because a lot of
10 times I don't want to know what my guys are
11 writing on their piece of paper, what have
12 you, because I've got my eyes on the case. I
13 will tell you that he wrote down everything
14 that was -- everything he wrote down was very
15 pertinent and very relevant to this case. He
16 was my second chair and it was very nice to
17 have that.

18 Your Honor, I am asking you for
19 probation. He did two weeks in jail --
20 nearly three weeks. I am asking you for that
21 for a couple of reasons. I believe in Kevin.
22 He's going to get a new felony -- he got
23 arrested in 2004. He hasn't been in trouble
24 since he got on probation other than a
25 shoplifting -- one shop lifting.

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1 Tyrone Simmons, when this case first
2 started he and I spoke. He spoke -- I don't
3 know if the word is "highly" but he thought
4 of the four, that Kevin was the less
5 culpable. He thought so so much that he
6 asked the Town of Mount Pleasant if they'd
7 hire him. They couldn't unfortunately
8 because of the pending armed robbery charge.
9 But he helped Kevin get his car back, he's
10 talked to him about the situation -- because
11 there were repercussions, indirectly, in that
12 community about Kevin talking to the police.

13 In the warrant it says Kevin Smalls
14 admits to dropping the gentlemen off and
15 picking them up. It's -- so there were some
16 concerns there that Tyrone, as I know him,
17 Sergeant Simmons, was very helpful with in
18 this case.

19 The community from Hamlin through Six
20 Mile or Ten Mile has been encroached upon but
21 it has a core of really good people in it
22 that have some children who have gotten
23 "lost". I guess that's the best way to put
24 it. It's people like Sergeant Simmons and
25 Mr. Coakley and others that are going to help

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1 that community to continue thrive. I think
2 that it is an important community in Mount
3 Pleasant. I want Kevin to be a part of that
4 recovery and not part of its destruction.

5 I would invite him to my house to stay
6 with me. I can't say that for very many of
7 my clients.

8 So I'm begging of you -- I know that you
9 have to do what you think is best. You and I
10 think a lot alike about a lot of things. He
11 is not going to disappoint us.

12 Ms. Kathy, do you want to talk to the
13 Judge or are we done? If you need to say
14 something, go ahead.

15 THE COURT: Ms. Williamson, appreciate
16 you being here. If you will, give me your
17 full name.

18 KATHY WILLIAMSON: Twelve hours, Judge.
19 I'm tired.

20 THE COURT: I know you are, bless your
21 heart. Your full name?

22 KATHY WILLIAMSON: Kathy Williamson.

23 THE COURT: Ms. Williamson, thank you.

24 KATHY WILLIAMSON: Most of the time that
25 Kevin get in trouble it was on account of

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1 somebody else. He'd pass curfew dropping
2 somebody else off and then pay for it rushing
3 home afterhours. He's always doing something
4 to help somebody else. He's so loyal to
5 friends. I often said, 'Be careful with your
6 friends, Kevin, 'cause you can't have but so
7 many friends. Come home.' He was helping
8 somebody every night, always helping.

9 Kevin was supposed to graduate from
10 Trident Tech this month, December. I don't
11 know if he will or not -- (emotional) -- this
12 month, but he's got all his classes --
13 (emotional).

14 JIM SMILEY: It's okay, Ms. Kathy. It's
15 okay.

16 KATHY WILLIAMSON: I have two boys.
17 He's my youngest son. I'd like to see some
18 good come out of this. Maybe he can tell
19 some other young fellows, 'I've been to
20 court, with lawyers and the judge, three days
21 of trial, twelve hours a day. It's no good.
22 Stay away from lawyers, judges and police.'
23 I hope that he can encourage, you know, other
24 young men his age. You know, be mindful.
25 That would help him more than anything right

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1 now. I think he'd be worse off in jail than
2 he would on the streets, with people in jail
3 who have done all kinds of stuff.

4 If Kevin could get back in school, finish
5 his degree in December, become an auto
6 mechanic, air-conditioner repair, because
7 he's taking both. He's working two jobs, and
8 helping to raise his daughter.

9 I know that there is no excuse for
10 wrongness. You still have to do right in
11 life.

12 God is merciful, I know that you have
13 heart and I am asking you to use that heart
14 -- you said that you have children -- and
15 today. Thank you.

16 JIM SMILEY: And, lastly, Your Honor, is
17 that I don't think that he wants to address
18 to the court -- but, do you want to address
19 the court? This is his older brother.

20 And I know that we are taking a long
21 time, Judge.

22 THE COURT: That's quite all right.

23 JIM SMILEY: I didn't meet his brother
24 until this week. He thinks of his brother as
25 a rock. He is. He is very intelligent,

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1 insightful young man that I've talked to a
2 good deal. You're Kevin's older brother?

3 MARCUS SMITH: Yes, sir.

4 JIM SMILEY: And he feels responsible.
5 I've told him, 'You can't.' He said, 'Well,
6 I went away when this happened.' Give the
7 Judge your name.

8 MARCUS SMITH: My name is Marcus
9 Smith. I'm not Kevin's biological brother.
10 I was born in New York. I came down here and
11 I've been down here for twenty-five years.
12 Kevin is -- I feel a little guilty because
13 when I got divorced, I'd moved to Columbia
14 and this happened. Kevin is a smart young
15 man. Like his mom said, he has heart and he
16 doesn't want to say no to other people. It's
17 not a stereotype in our society. Peer
18 pressure is something that is really harsh.

19 I understand that you've got to pay for
20 your crimes, that there is punishment. But
21 his heart is pure. He goes to school he
22 works, he works very hard, he is a family
23 man. There is not enough that I can say good
24 about him, because even though he is my young
25 brother, I -- I was impressed that -- he's

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1 taught me a lot about life and he's set
2 examples for me. Good examples.

3 I just recently got out of the military,
4 about seven years ago. I was really
5 depressed about that and Kevin was a real
6 positive part of my life. I was suicidal,
7 tried to commit suicide and he talked me out
8 of it. That changed my life.

9 I asked for your leniency and your
10 compassion. Like I said I understand that he
11 has to face punishment. But he's not a
12 number, he's not 'another case', he's a
13 person. I know that you have a job to do but
14 I ask God to move your heart and to help him
15 stay on the right path, even though he's made
16 this mistake.,

17 JIM SMILEY: That's all that we have,
18 Your Honor.

19 THE COURT: Sergeant Simmons, I am not
20 going to put you on the spot but I want to
21 ask you, what I have heard about this young
22 man, from what I perceive of what he's doing,
23 is that show or is that the person that you
24 believe him to be?

25 TYRONE SIMMONS: It's real.

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1 THE COURT: That's -- he is -- what I
2 have heard about him is the man that you
3 know?

4 TYRONE SIMMONS: Yes, sir, I believe
5 so.

6 THE COURT: Thank you, sir. Thank you,
7 sir, for all that you do. I appreciate that.

8 Mr. Smalls, anything that you want to
9 tell me?

10 DEFENDANT SMALLS: They've said it
11 all.

12 JIM SMILEY: That smile is relief ---

13 THE COURT: I understand.

14 JIM SMILEY: --- from the charge of
15 armed robbery, Your Honor, to ---

16 THE COURT: One vote away from a
17 minimum of ten years. That's where you were.

18 The peer pressure, the decision making,
19 we were just talking about it back in the
20 jury room. Basically the same thing that
21 we've been talking about in here all -- that
22 something has got to be done. I don't know
23 where or how, but it's got to start.

24 I agree with what your mama said, I agree
25 wholeheartedly. It starts with you. You

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1 convince some of your friends that 'you need
2 to rethink what you doing, Bro, because
3 you're about to put yourself in a situation
4 where you don't want to go.' It's that
5 simple. It's that easy.

6 I remember the first time in my career
7 that I'd really deal with any hand of one is
8 the hand of all. I guess I dealt with only
9 the bad guys that were doing it, that I
10 represented, but the hand of one is the hand
11 of all ought to be taught in high school. It
12 ought to be taught all the time, it ought to
13 be discussed at length. My mother used to
14 tell me, 'Be careful of the people that you
15 hang around with. Something they do might
16 come back on you, you may get caught up in
17 something.' I see it every day. Every
18 single day.

19 When they got in the car, I agree -- I
20 agree that you should have stayed there at
21 the Walmart. But when they got in the car,
22 you should have said "out."

23 I have a dear friend who called my house
24 last night, he -- he has a restaurant and a
25 catering service. He's about to go crazy,

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1 literally almost having a breakdown because
2 he's stretched himself so thin taking jobs.
3 He said, 'People are coming to me saying 'I
4 need your help' and I -- and there's no way
5 that I can do it.' My comment to him was
6 that one of the most difficult words to say
7 in the English language is "no." "No" is a
8 word that you need to learn.,

9 I understand your position, Solicitor.
10 I don't blame you one bit. This was serious
11 business. But I'm going to take into
12 consider that this was taken after something
13 was done.

14 I would have -- I will just tell you
15 this, based on what I heard, if I'd been
16 sitting on that jury I would have found you
17 guilty of armed robbery. It was enough to
18 make you guilty of the hand of one is the
19 hand of all. It was just there.

20 I just want you to know -- not to be
21 critical of you, but to tell you that that is
22 how close you came.

23 The sentence of the Court is that you be
24 sentenced to the Department of Corrections --
25 and we don't have a Probations person here,

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1 but we ---

2 JIM SMILEY: We will return tomorrow,
3 Your Honor.

4 THE COURT: The sentence of fifteen
5 (15) years, and I'm going to suspend that
6 sentence in its entirety. You served two
7 weeks?

8 DEFENDANT SMALLS: Yes, sir.

9 JIM SMILEY: Two weeks, Your Honor,
10 (affirmative nod).

11 THE COURT: Let me do this, -- what is
12 the first weekend in January?

13 CLERK: Your Honor, the first weekend
14 in January is Saturday, January the 4th.

15 THE COURT: Friday the 3rd?

16 CLERK: Yes, sir.

17 THE COURT: I am going to sentence you
18 to serve sixty (60) days, give you credit for
19 two weeks of jail time, and place you on
20 probation for five (5) years. I am going to
21 let you serve your time on the weekends, if
22 you choose to. You'll be finished with your
23 -- you going to try to finish your school?

24 DEFENDANT SMALLS: Yes, sir.

25 THE COURT: Okay. That will give you

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1 a chance to get that finished without
2 interruption. I want you to be able to get
3 that. You need to pursue that. You need to
4 do that.

5 DEFENDANT SMALLS: Yes, sir.

6 THE COURT: You are to report January
7 3rd, 2014. It is a privilege to serve your
8 time on the weekends until you have completed
9 your sixty-day sentence.

10 Conditions of your probation are sub-
11 stance abuse counseling if you test positive,
12 random drug and alcohol testing.

13 Good luck to you, sir.

14 (TRANSCRIPT CONCLUDED)

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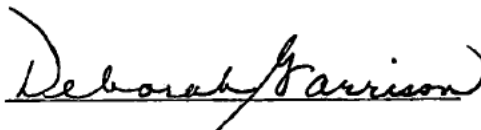
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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the jury trial held in the within action heard on December 2nd through December 6th, 2013, before The Honorable R. Markley Dennis, Jr.;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.



Deborah Garrison

Charleston, South Carolina
June 4, 2014