

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Kristi Lea Harrington, Circuit Court Judge

RECEIVED

JUN 28 2013

S.C. Supreme Court

JOY MACK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212481

APPENDIX

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON 08-GS-10-5695
08-GS-10-5696
08-GS-10-5697

STATE OF SOUTH CAROLINA)

-VS-

JOY MACK,

Defendant.)

TRANSCRIPT OF RECORD

February 23-26, 2009

Charleston, South Carolina

B E F O R E:

The Honorable J.C. Nicholson, Judge, and a Jury.

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

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Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1	I N D E X				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Aytekin Ayazgok	93 165	103 190 209	-- -- --	-- -- --
4		--			
5	David Singletary	120 411	122 415 417	-- -- --	-- -- --
6		--			
7	O.J. Faison	137 360	140 367 378	386 -- --	387 -- --
8		--			
9	Lisa Bousquet	258	262	--	--
10	James Green	268	273	--	--
11	Selena Kinard	275	280	--	--
12	Amy Stephens	283	287	--	--
13	Sheree Brown	288	291	--	--
14	Angela Bunker	292 --	302 308	-- --	-- --
15					
16	Al Hallman	310 --	328 341	344 --	347 347
17	James Hill	348	351	--	--
18	Angela Watts	353 --	356 357	-- --	-- --
19					
20	Ebony Johnson	357	--	--	--
21	Paula Davis	388	393	--	--
22	Catherine Leisy	395 --	407 411	-- --	-- --
23	Tansa Ayazgok	425	431	--	--
24	Thomasina Goss	462	471	476	476
25					

E X H I B I T S

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State's 1	Photograph	6	295
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State's 3	Photograph	6	295
State's 4	Photograph	6	295
State's 5	Photograph	6	--
State's 6	Photograph	6	296
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State's 12	Photograph	6	300
State's 13	Photograph	6	300
State's 14	Photograph	6	300
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State's 16	Photograph	6	300
State's 17	Photograph	6	300
State's 18	Photograph	6	300
State's 19	Photograph	6	300
State's 20	Photograph	6	300
State's 21	Photograph	6	300
State's 22	Photograph	6	300
State's 23	Photograph	6	300

1	E X H I B I T S			
2	NO.	DESCRIPTION	ID.	EV.
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1 (February 23, 2009.)

2 (Photographs marked for identification as
3 State's Exhibit Nos. 1-52.)

4 (Witness statements marked for identification
5 as Defendant's Exhibit Nos. 1 and 2.)

6 (Defendant's voir dire request marked for
7 identification as Court's Exhibit No. 1.)

8 (Six photographs marked for identification as
9 Court's Exhibit No. 2.)

10 THE COURT: All right. Before we get the
11 jury in, have y'all looked at the state's request for
12 voir dire? Either one of you have a problem with it?

13 MR. APOSTOLOU: No, Your Honor.

14 MR. SMILEY: The defense and Mr. Goss does
15 not, Your Honor.

16 MR. LAWTON: We have looked over
17 Mr. Smiley's. We have no problem with it. We're still
18 objecting to Mr. Apostolou's voir dire.

19 THE COURT: How about Mr. Goss?

20 MR. LAWTON: I don't have a problem with Mr.
21 Goss.

22 THE COURT: I don't seen any voir dire
23 questions.

24 MR. SMILEY: I gave you some, Your Honor.

25 THE COURT: Let me find them. I know you

1 gave them to me.

2 All right. Anything else before we bring
3 the jury? Dependent on what the situation is, I may
4 bring the jurors up here in front of the court reporter
5 and ask the jurors to come up for what I have to ask in
6 private.

7 After I have asked them questions, I'll give
8 each respective party the opportunity to ask them a
9 question, and then any motions that you want to offer or
10 discuss, let's do it up at the bench on those individual
11 jurors. Okay? I don't know if everybody else does it.
12 I'm not saying I'm going to do it on every juror. It
13 depends on what they say and what the issue is. I find
14 you can get a lot more information from them in private
15 than you can standing up in front of the jury.

16 MR. SMILEY: Yes, sir.

17 THE COURT: And it has cut both ways for the
18 state and the defense. All right.

19 Anything before we get the jury in this room?

20 MR. LAWTON: No, Your Honor.

21 THE COURT: While we're waiting for the jury,
22 you said there was something you wanted to put on the
23 record.

24 MR. SMILEY: Yes, sir. It's very brief, but
25 I wanted to make the Court aware and put on the record

1 that the time that we're picking this jury, Mr. Goss has
2 filed a complaint with Chief Justice Toal that both
3 Mr. Lawton and myself have responded to in a timely
4 fashion; however, we have received no response from Chief
5 Justice Toal in regard to that matter, and I thought we
6 should make the Court aware and put it on the record that
7 there is a matter pending with her.

8 I don't know how to classify it, since it's
9 not through the normal channels, but there has been some
10 correspondence with the chief justice regarding this
11 case, and my client complained to me about a couple of
12 issues he thought his constitutional rights had been
13 violated prior to this, one of which is a speedy trial,
14 so he's getting a trial today, Your Honor, and I think
15 that will resolve that for sure.

16 THE COURT: All right. Mr. Goss, is there
17 anything that you would like to say concerning whatever
18 you had filed with the Supreme Court?

19 DEFENDANT GOSS: My Fourteenth Amendment
20 right, due process, I was concerned about that right
21 being violated.

22 THE COURT: What specifically about the
23 Fourteenth Amendment were you concerned with?

24 DEFENDANT GOSS: Sir?

25 THE COURT: What specifically in the

1 Fourteenth Amendment are you concerned with?

2 DEFENDANT GOSS: A motion of discovery.

3 MR. SMILEY: I didn't provide him one at the
4 jail, Your Honor.

5 THE COURT: Let me listen to him, and I'll
6 allow you to respond. What specifically are you
7 complaining about?

8 DEFENDANT GOSS: I wasn't provided my motion
9 for discovery to go over for myself so I could see where
10 it had to do with my case.

11 THE COURT: What else were you concerned
12 about?

13 DEFENDANT GOSS: That's it.

14 THE COURT: That's it?

15 DEFENDANT GOSS: Yes, sir.

16 THE COURT: All right. Mr. Smiley, you want
17 to address it?

18 MR. SMILEY: Your Honor, I addressed it with
19 Chief Justice Toal. I don't provide any of my clients in
20 the jail a copy of the discovery because of their
21 inability to safeguard that. I've gone over and
22 explained my defense and how I expect to defend the case
23 with Mr. Goss without any objection by him.

24 I understand his concern. I just have a
25 larger concern, not to make the case more complicated,

1 and it's been my standard policy and it's been upheld in
2 the past by disciplinary counsel.

3 THE COURT: All right. Anything else, Mr.
4 Goss, you want to say along those lines?

5 DEFENDANT GOSS: No, sir.

6 THE COURT: All right. Thank you. Anything
7 else.

8 (Recess taken.)

9 THE COURT: All right. If everybody could
10 scrunch in together. If everybody could move to their
11 right. All right.

12 Ladies and gentlemen of the jury panel: I'm
13 Judge Nicholson. I'm from the Tenth Circuit, which is
14 Andersen County Oconee, and I have the pleasure this week
15 of holding general sessions in Charleston County. I look
16 forward to working with you this week, and I believe we
17 also have a term of civil court going on, and the
18 solicitor is ready to call a criminal case.

19 Solicitor, if you'll call your case, please.

20 MR. LAWTON: State calls State vs. Darrell
21 Goss and State vs. Joy Mack. They've been charged with
22 armed robbery, possession of a firearm during a violent
23 crime, assault and battery with intent to kill, and
24 kidnapping.

25 THE COURT: Thank you very much. Ladies and

1 gentlemen of the jury, the state has called the case of
2 State vs. Darrell Lee Goss and Joy Mack.

3 These are separate cases two defendants are
4 being called together and the solicitor has addressed the
5 indictment against the individual. The indictment is not
6 evidence, it is merely the procedure which the defendants
7 are brought before the Court and it's not evidence, and,
8 as I said, its not for your consideration as evidence.

9 First thing I'm going to do is call out a
10 list of names. I'm going to ask you the same question
11 about each name. I'm going to ask if you are related by
12 blood or marriage, have you had any contact or do you
13 know the individual from any relationship or business or
14 any type of relationship, and when I say married, I'm
15 talking about past marriages, divorces, present marriages
16 and any future marriages, if you are aware of future
17 marriages to any particular witness whose name I call
18 out. If the witness is in the courtroom, would you
19 please stand, and if you do stand, I'll call your
20 attention, not much room for them to actually be in the
21 courtroom. The first name is Andy Ayazgok. Will you
22 please stand, sir.

23 Thank you have you ever. Is anybody related
24 by blood or marriage to Andy Ayazgok? Does anybody know
25 him? Have any contact with him? If so, please stand.

1 Thank you, sir.

2 The next name is Tansa Ayazgok. Is anybody
3 related by blood or marriage or does anybody know her or
4 have any contact with her? If so, please stand. Thank
5 you, ma'am.

6 The next name is Lorenza L. Johnson. They
7 are not in the courtroom. Is anybody related by blood or
8 marriage to Lorenza L. Johnson? Does anybody know
9 Lorenza L. Johnson? If so, please stand.

10 The next name is Tracy Sullivan. Is anybody
11 related by blood or marriage? If so, please stand.

12 Next name is Ronell R. Brown. Does anybody
13 know Ronnell R. Brown, anybody related by blood or
14 marriage? If so, please stand.

15 Next name is Angela Bunker of the North
16 Charleston police department. Does anybody know Angela
17 Bunker, or related by blood or marriage? If so, please
18 stand. Next name -- what does the K stand for,
19 Solicitor, on Murphy?

20 MR. LAWTON: I don't know, Your Honor. I
21 apologize.

22 THE COURT: The next name is a K. Murphy. Is
23 it male or female?

24 MR. LAWTON: I believe it's male, Your Honor.

25 THE COURT: Mr. K. Murphy, North Charleston

1 police department? Anybody related by blood or marriage
2 or does anybody know Mr. Murphy? If so, please stand.
3 The next name is Sergeant A. Hallman of North Charleston
4 police department. Does anybody know Sergeant Hallman,
5 related by blood or marriage? If so, please stand.

6 Next name is Detective O. Faison, North
7 Charleston police department. Does anybody know
8 Detective Faison? If so, please stand. Anybody related
9 by blood or marriage, please stand.

10 Next name is Lisa Bousquet, North Charleston
11 police department. Does anybody know Lisa Bousquet? Is
12 anybody related by blood or marriage? If so, please
13 stand.

14 Next name is Deborah Reinhart, North
15 Charleston police department. Is anybody related by
16 blood or marriage or know Deborah Reinhart? If so,
17 please stand. Next name is Sergeant Singletary of North
18 Charleston police department. Does anybody know Sergeant
19 Singletary, anybody related by blood or marriage? If so,
20 please stand.

21 Next name is Keith Elmore, North Charleston
22 police department. Is anybody related by blood or
23 marriage or does anybody know Keith Elmore? If so,
24 please stand.

25 Next name is Paula Davis, North Charleston

1 police department. Does anybody know Paula Davis or
2 related by blood or marriage to Paula Davis? If so,
3 please stand. Next name is Alex Teachy, North Charleston
4 police department. Anybody related by blood or marriage,
5 anybody know Alex Teachy? If so, please stand. Next
6 name is Katherine Leisy of SLED, South Carolina law
7 enforcement division. Is anybody related by blood or
8 marriage? Does anybody know Katherine Leisy? If so,
9 please stand.

10 Next name is James W. Green of SLED. Does
11 anybody know James W. Green? Is anybody related by blood
12 or marriage? If so, please stand. Next name is Jonathan
13 Burnham of North Charleston police department. Anybody
14 related by blood or marriage to Jonathan Burnham? If so,
15 please stand.

16 Next name is Lucas Cummins. Is anybody
17 related by blood or marriage or does anybody know Lucas
18 Cummins of North Charleston police department? If so,
19 please stand. Next name is Lieutenant Jefferson of North
20 Charleston police department. Is anybody related by
21 blood or marriage? Does anybody know Lieutenant
22 Jefferson?

23 If so, please stand. Next name is Selena
24 Kinard, SLED. Anybody know Selena Kinard of SLED?
25 Anybody related by blood or marriage? If so, please

1 stand.

2 Next name is Sergeant Harry Muldan, North
3 Charleston police department. Is anybody related by
4 blood or marriage or does anybody know Sergeant Harry
5 Muldan? If so, please stand.

6 Next name is Scott Perry, North Charleston
7 police department. Anybody related by blood or marriage,
8 anybody know Scott Perry? If so, please stand. Next
9 name is Amy Stephens of SLED. Anybody related by blood
10 or marriage? Does anybody know Amy Stephens? If so
11 please, please stand. Next name is Caronda Williams of
12 SLED. Anybody related by blood or marriage? Anybody
13 know Caronda Williams? If so, please stand.

14 Next name is Scott Wyant, North Charleston
15 police department. Anybody know Scott Wyant? Anybody
16 related by blood or marriage? If so, please stand. Next
17 name is Sheree Brown of SLED. Anybody related I blood or
18 marriage, does anybody know Sheree Brown? If so, please
19 stand.

20 Next name is Jim Nesmith, Ninth Circuit
21 circuit solicitor investigator. Anybody know Jim
22 Nesmith, anybody related by blood or marriage? If so,
23 please stand. Next name is D. Dingle. North Charleston
24 police department. Is that a male or female?

25 MR. LAWTON: Male, Your Honor.

1 THE COURT: Anybody know Mr. D. Dingle of
2 North Charleston police department, anybody related by
3 blood or marriage? If so, please stand.

4 Next name is Ebony Johnson. Anybody related
5 by blood or marriage to Ebony Johnson? Does anybody know
6 Ebony Johnson?

7 Next name is Pierre Smalls? Anybody related
8 by blood or marriage to Pierre Smalls? Does anybody know
9 Pierre Smalls? If so, please stand. Next name is
10 Keshia --

11 MR. APOSTOLOU: Brown.

12 THE COURT: Next name is Keshia Brown. Is
13 anybody related by blood or marriage to Keshia Brown?
14 Does anybody know Keshia Brown? If so, please stand.
15 The next name is Deontre Bellman. Is anybody related by
16 blood or marriage to Deontre Bellman? Does anybody know
17 Deontre Bellman? If so, please stand. Next name is Joy
18 Mack. Mr. Mack, would you stand, please. Thank you very
19 much, Mr. Mack. Anybody related by blood or marriage to
20 Joy Mack? Does anybody know Joy Mack? If so, please
21 stand. Next name is Leonard Smith. Is anybody related
22 by blood or marriage to Leonard Smith? Does anybody know
23 Leonard Smith? If so, please stand.

24 Next name is Scott Yurman is anybody related
25 by blood or marriage to Scott Yurman? If so, please

1 stand. Next name is Clifford Harwell. Does anybody know
2 Clifford Harwell? Is anybody related by blood or
3 marriage? If so, please stand.

4 Next name is Thomasina Goss. Anybody related
5 by blood or marriage? Does anybody know Thomasina Goss?
6 If so, please stand. Next name is Angela Gadsden.
7 Anybody related by blood or marriage to Angela Gadsden.

8 Yes, ma'am, your name?

9 A PROSPECTIVE JUROR: Janet Gadsden.

10 THE COURT: Do you know your number?

11 A PROSPECTIVE JUROR: 90.

12 THE COURT: 90?

13 A PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Yes, ma'am, Ms. Gadsden, how do
15 you know Angelina? Excuse me.

16 A PROSPECTIVE JUROR: My sister.

17 THE COURT: Your sister?

18 MR. SMILEY: It's pronounced Angelique.

19 A PROSPECTIVE JUROR: That's not the same
20 person.

21 THE COURT: All right. Thank you very much.

22 A PROSPECTIVE JUROR: I know Thomasina Goss.

23 THE COURT: You know what?

24 A PROSPECTIVE JUROR: I know Thomasina Goss
25 and Ben Goss.

1 THE COURT: Mr. Goss, will you stand and face
2 the jury. Thank you, sir. Anybody related by blood or
3 marriage to Ben Goss? Does anybody know Ben Goss? If
4 so, please stand. Ma'am, you can stand now. What is
5 your name?

6 A PROSPECTIVE JUROR: Shameitha Foster.

7 THE COURT: Do you know your number?

8 A PROSPECTIVE JUROR: 82.

9 MR. SMILEY: This is actually Darrell. Ben
10 is his brother.

11 THE COURT: Okay. I'm sorry. Darrell Lee
12 Goss is the one that stood. You know both of them; is
13 that correct?

14 A PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: Is anybody related to Darrell Lee
16 Goss? Does anybody know Darrell Lee Goss other than
17 Mrs. Foster, who is standing? If so, please stand.
18 Ms. Foster, you want to come around up front please,
19 ma'am.

20 Ms. Foster, come right over here and stand
21 where this lady can hear you, if you would. I want her
22 to hear what you're saying, and I'm going to ask you a
23 couple questions, and I may give the attorneys an
24 opportunity to ask you some questions, okay? How you
25 been doing today?

1 A PROSPECTIVE JUROR: Fine.

2 THE COURT: Tell me how you know the two Goss
3 brothers.

4 A PROSPECTIVE JUROR: They live down the
5 street from my mother, and I went to school with them.

6 THE COURT: Did you go to high school with
7 them?

8 A PROSPECTIVE JUROR: High school and middle
9 school.

10 THE COURT: How long ago?

11 A PROSPECTIVE JUROR: About four years ago.

12 THE COURT: Were you friends with them in
13 school or did you just know them?

14 A PROSPECTIVE JUROR: Like, friends.

15 THE COURT: Were you close friends?

16 A PROSPECTIVE JUROR: His whole family stayed
17 down the street from my parents and from the same
18 neighborhood.

19 THE COURT: Are you good friends with the
20 mother?

21 A PROSPECTIVE JUROR: Yeah.

22 THE COURT: How long has the mother lived
23 down the street from you?

24 A PROSPECTIVE JUROR: Like, six years.

25 THE COURT: How often do you see them?

1 A PROSPECTIVE JUROR: Before they get in
2 trouble, like every other day.

3 THE COURT: Every other day, before they got
4 in trouble?

5 A PROSPECTIVE JUROR: Yeah.

6 THE COURT: So you would see them every day.

7 A PROSPECTIVE JUROR: Yeah.

8 THE COURT: At their mother's house?

9 A PROSPECTIVE JUROR: Yeah.

10 THE COURT: Would you see them in passing
11 when they come up and down the street or would you
12 actually visit with them?

13 A PROSPECTIVE JUROR: No, passing.

14 THE COURT: Just passing?

15 A PROSPECTIVE JUROR: Yeah, conversating with
16 them.

17 THE COURT: Would you classify them as
18 friends of yours or acquaintances?

19 A PROSPECTIVE JUROR: Acquaintances. We
20 speak when we see each other.

21 THE COURT: Let me explain this to you, what
22 we're trying to do is draw a jury that is going to be
23 fair to both the state and the defendant, and what I need
24 to know is how it would affect you, assuming the two will
25 testify, how will it affect you sitting on this jury.

1 A PROSPECTIVE JUROR: A lot, because I know
2 his --

3 THE COURT: You know what?

4 A PROSPECTIVE JUROR: I know his mama, his
5 brothers, the whole family, because they still stay down
6 the street.

7 THE COURT: But think you would have a hard
8 time sitting on the jury?

9 A PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: You don't want to sit on the
11 jury?

12 A PROSPECTIVE JUROR: No, sir.

13 THE COURT: Does the defense have any
14 questions?

15 MR. APOSTOLOU: No, Your Honor.

16 THE COURT: Do you have any questions?

17 MR. SMILEY: No, sir, I don't have any
18 questions.

19 THE COURT: Thank you very much. You may go
20 have a seat.

21 MR. LAWTON: I just ask to be struck for
22 cause.

23 THE COURT: Any motions? Any arguments
24 against it?

25 MR. APOSTOLOU: No.

1 THE COURT: All right. I'm going to strike
2 juror number 82 for cause in this case.

3 Has anybody from the jury panel or a member
4 of any family been prosecuted by the Charleston County
5 solicitor's office, either here or in Berkeley County?
6 If so, please stand.

7 Has anybody on the jury panel previously been
8 a witness in a civil or a criminal case? If so, please
9 stand. Would any member of the jury panel have any
10 problem following the law as the judge cites it to you,
11 even if you believe it's inappropriate or unfair? If you
12 believe that, please stand.

13 Does anybody on the jury panel have any
14 religious convictions, philosophical or moral beliefs, or
15 political orientations that would make it difficult for
16 to you sit in judgment of another person? If so, please
17 stand.

18 Does any member of the jury panel know of any
19 reason why you cannot render this defendant a fair and
20 impartial trial? If so, please stand. Does any member
21 of the jury panel have any relative or close friend in
22 prison? If so, please stand.

23 Does any member of the jury panel -- I'm
24 sorry. Jesse. The gentleman in front, what is your
25 name?

1 A PROSPECTIVE JUROR: My name is Robert
2 Rankin, 321.

3 THE COURT: You want to talk to me in
4 private?

5 A PROSPECTIVE JUROR: I can.

6 THE COURT: Or I can talk to you right there.
7 Who is in prison?

8 A PROSPECTIVE JUROR: I have three uncles in
9 prison, all in the state of North Carolina. Two are for
10 assault, one is assault with a deadly weapon, and the
11 other one, I just know it's assault, and the other one is
12 drug charges.

13 THE COURT: How often do you see them?

14 A PROSPECTIVE JUROR: I see the one who is in
15 there for assault with a deadly weapon about once or
16 twice a year.

17 THE COURT: By going to North Carolina?

18 A PROSPECTIVE JUROR: My family still live
19 there.

20 THE COURT: Where do they live in North
21 Carolina?

22 A PROSPECTIVE JUROR: They live in
23 Rockingham, North Carolina, and I go to Raleigh.

24 THE COURT: Were you involved in the
25 prosecution at all?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: You just knew it happened?

3 A PROSPECTIVE JUROR: Yeah.

4 THE COURT: Would that cause you any
5 difficulty sitting on this jury?

6 A PROSPECTIVE JUROR: I guess it probably
7 could, because I'm a little partial.

8 THE COURT: You're a little partial --

9 A PROSPECTIVE JUROR: I'm a little partial to
10 him.

11 THE COURT: The question I have is, would it
12 affect you in this trial?

13 A PROSPECTIVE JUROR: I guess it wouldn't. I
14 would say no.

15 THE COURT: You want to come around?

16 A PROSPECTIVE JUROR: Yeah, I'll come around.

17 THE COURT: We'll talk about it a little bit
18 more. Sir, you can just come around. Since we've
19 already started, you can come around also.

20 All right. What I'm trying to determine is
21 whether or not that would prejudice you against the state
22 or for the state, either one. And since it is -- you
23 said it was your close relative, if you said it would
24 affect you, I wonder how it would affect you.

25 A PROSPECTIVE JUROR: He's definitely my

1 favorite. I have a very good relationship with him, and
2 he's changed a lot. Because of what he did he's trapped
3 in there, so it's kind of hard for me.

4 THE COURT: Do you think he was wrongfully
5 convicted?

6 A PROSPECTIVE JUROR: No. He definitely was
7 rightfully convicted, but he's definitely changed. I
8 think his crime was a little rough. He got a pretty big
9 sentence, and his brother, who did a worse crime, got a
10 less sentence.

11 THE COURT: What is he in jail for?

12 A PROSPECTIVE JUROR: He robbed somebody and
13 beat him up pretty bad.

14 THE COURT: How much time did he get?

15 A PROSPECTIVE JUROR: I think he got 40
16 years.

17 THE COURT: And he beat him up pretty bad.

18 A PROSPECTIVE JUROR: Yeah, he did beat him
19 up pretty bad.

20 THE COURT: My question is, how is that going
21 to affect you sitting on this jury? You understand in
22 South Carolina juries don't sentence. They just find
23 defendants innocent or guilty. The Court sentences.

24 A PROSPECTIVE JUROR: Absolutely. Well, I
25 guess I won't have a problem with it. You asked the

1 question, so --

2 THE COURT: I asked the question, and my
3 problem is this: If you have to guess and you don't
4 know, how am I supposed to now?

5 A PROSPECTIVE JUROR: I could be pretty
6 impartial about it.

7 THE COURT: Why?

8 A PROSPECTIVE JUROR: Because I don't know
9 these guys, for one thing.

10 THE COURT: Okay.

11 A PROSPECTIVE JUROR: And he definitely
12 deserved to go to prison. I just thought it was a little
13 rough, but I'm not the one that sentences him, just like
14 you said, so I think I could be impartial.

15 THE COURT: You think you could be fair to
16 both the state and the defendant?

17 A PROSPECTIVE JUROR: I think I could.

18 THE COURT: Based on the testimony you hear
19 in the courtroom?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: Does the defense have any
22 questions.

23 MR. APOSTOLOU: No, Your Honor.

24 MR. SMILEY: Not from Mr. Goss.

25 THE COURT: Anything from the state?

1 MR. LAWTON: No, Your Honor.

2 THE COURT: All right. Thank you very much.
3 You may go have a seat. Any motions?

4 MR. SMILEY: Not from Mr. Goss.

5 MR. LAWTON: The only problem I had is he
6 said he could be pretty impartial. I don't think that's
7 our standard. There is no adjective in front.

8 THE COURT: He said he could be fair and
9 impartial, but if you've got a motion, I'll rule on it.

10 MR. LAWTON: Obviously, with the nature of
11 these crimes, even though the jury doesn't know the
12 defense, it's obvious these aren't minor stuff, and if he
13 has to choose to convict somebody and they're going to
14 prison, I think that would affect people.

15 THE COURT: Your motion is denied. You want
16 to come around, please. Your name?

17 A PROSPECTIVE JUROR: William Carducci, juror
18 number 50.

19 THE COURT: Who do you know that is in
20 prison?

21 A PROSPECTIVE JUROR: My uncle is in prison
22 in New Jersey.

23 THE COURT: What is he in for?

24 A PROSPECTIVE JUROR: I'm not exactly sure,
25 some kind of gambling thing.

1 THE COURT: Do you know how long he was in
2 prison?

3 A PROSPECTIVE JUROR: A couple years maybe.

4 THE COURT: Do you ever see him or visit him?

5 A PROSPECTIVE JUROR: No, I haven't seen him
6 in maybe five years.

7 THE COURT: Did you have a good relationship
8 with him prior to going to jail?

9 A PROSPECTIVE JUROR: Yeah.

10 THE COURT: How would that affect your
11 sitting on this jury?

12 A PROSPECTIVE JUROR: Not at all, I don't
13 think.

14 THE COURT: Why not?

15 A PROSPECTIVE JUROR: It don't seem related.
16 I wasn't that close to him, not related, different
17 people.

18 THE COURT: You think you can be fair to both
19 state and the defendant in this case?

20 A PROSPECTIVE JUROR: Yeah. I don't see why
21 not.

22 THE COURT: Can you base your decision on
23 what you hear in the courtroom?

24 A PROSPECTIVE JUROR: Yes.

25 THE COURT: And you set that relationship

1 aside with your uncle?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: Any question from the defense?

4 MR. SMILEY: Not from the defense.

5 THE COURT: Anything from the state?

6 MR. LAWTON: No, Your Honor.

7 THE COURT: Thank you. You can have a seat.

8 Any motions?

9 MR. APOSTOLOU: No, Your Honor.

10 MR. SMILEY: Not from Mr. Goss.

11 THE COURT: Thank you, sir. Yes, sir, your
12 name?

13 A PROSPECTIVE JUROR: Juror number 107,
14 Armand Green.

15 THE COURT: Who do you have in prison?

16 A PROSPECTIVE JUROR: Early this morning --

17 MR. LAWTON: He was supposed to be protected.
18 He's a detention officer.

19 THE COURT: All right. What is your number?

20 A PROSPECTIVE JUROR: 107.

21 THE COURT: 107. Okay. Go have a seat.

22 THE BAILIFF: Number 214.

23 THE COURT: What is your name?

24 A PROSPECTIVE JUROR: My name is Frances
25 Parker.

1 THE COURT: Who do you know?

2 A PROSPECTIVE JUROR: I have one brother, but
3 he is out on parole right now, but he has been arrested
4 since, and he has to come back to court.

5 THE COURT: So he's been arrested for parole
6 violation?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: Is he older brother, younger
9 brother?

10 A PROSPECTIVE JUROR: Older brother.

11 THE COURT: What was he in prison for?

12 A PROSPECTIVE JUROR: Drug trafficking.

13 THE COURT: How long did he serve, do you
14 know?

15 A PROSPECTIVE JUROR: He has served eight
16 years. Ten years.

17 THE COURT: He served ten years. Do you feel
18 like he was wrongfully convicted or what?

19 A PROSPECTIVE JUROR: No, I don't think he's
20 been wrongfully convicted, but the way he was arrested in
21 front of my mother was a bit harrowing.

22 THE COURT: You didn't like the fact they
23 arrested him in front of his mother. I'm sure it caused
24 her a lot of consternation and heartache. How would that
25 affect you sitting on this jury?

1 A PROSPECTIVE JUROR: I guess it wouldn't
2 affect me, except that, you know -- I guess it would not
3 affect me.

4 THE COURT: Well, my problem is, I don't
5 know. I don't know you, and we all have our biases and
6 our prejudices. I've got mine, these attorneys have it,
7 and you do too, so I'm trying to determine -- I'm trying
8 to get a fair hearing for the state and the defendant.
9 If you think this would affect you, I would need to know
10 it.

11 A PROSPECTIVE JUROR: Well, yes.

12 THE COURT: Yes what?

13 A PROSPECTIVE JUROR: It would affect me.

14 THE COURT: How would it affect you?

15 A PROSPECTIVE JUROR: He has to come to
16 Court, and he's been trying to do everything that he can,
17 but he is still being -- I don't know, looked at or
18 harassed or whatever, so --

19 THE COURT: The probation department may very
20 well be doing that. But you think that would affect you
21 in this?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: You couldn't be fair; is that
24 correct?

25 A PROSPECTIVE JUROR: Yes.

1 THE COURT: Thank you so very much. I
2 appreciate your honesty. Any motions?

3 MR. APOSTOLOU: Not from the defense.

4 MR. LAWTON: I would ask for her to be struck
5 for cause.

6 THE COURT: Granted. What number?

7 MR. APOSTOLOU: 214.

8 THE BAILIFF: 160.

9 THE COURT: How are you doing? What is your
10 name?

11 A PROSPECTIVE JUROR: Angela Lavigne.

12 THE COURT: Who do you know in prison?

13 A PROSPECTIVE JUROR: I have an uncle in
14 federal penitentiary.

15 THE COURT: Do you know where?

16 A PROSPECTIVE JUROR: No.

17 THE COURT: You just know you have an uncle?

18 A PROSPECTIVE JUROR: I haven't talked to him
19 in 15 years.

20 THE COURT: You haven't had any contact with
21 him in 15 years?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Did you have a relationship with
24 him before he went to jail?

25 A PROSPECTIVE JUROR: Yes.

1 THE COURT: Do you know why he went to jail?

2 A PROSPECTIVE JUROR: Sex crimes on a minor.

3 THE COURT: Were you involved in the
4 prosecution at all?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Do you know anything at all about
7 it?

8 A PROSPECTIVE JUROR: I know what I was told
9 happened.

10 THE COURT: Did your mother tell you or
11 something?

12 A PROSPECTIVE JUROR: My father, and my
13 father does have a relationship with him.

14 THE COURT: And this is your father's
15 brother?

16 A PROSPECTIVE JUROR: Yeah.

17 THE COURT: Would this affect you sitting on
18 this juror?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: You think you could be fair to
21 both the state and defendant?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: Yes or no?

24 A PROSPECTIVE JUROR: Yes.

25 THE COURT: Okay. How do you feel about the

1 fact that he was convicted of a sex crime?

2 A PROSPECTIVE JUROR: The same as I would if
3 any other man were.

4 THE COURT: Same thing, doesn't make any
5 difference since it was your uncle.

6 A PROSPECTIVE JUROR: Right.

7 THE COURT: You think you could sit there and
8 be fair? Any questions from the defendant?

9 MR. SMILEY: Not from Mr. Goss.

10 MR. LAWTON: No, Your Honor.

11 MR. APOSTOLOU: No, Your Honor.

12 THE COURT: Any motions?

13 MR. LAWTON: No, Your Honor.

14 MR. APOSTOLOU: No, Your Honor.

15 MR. SMILEY: No, Your Honor.

16 THE BAILIFF: Number 318. Yes, ma'am. What
17 is your name?

18 A PROSPECTIVE JUROR: Susan Maloney.

19 THE COURT: 318, is that correct?

20 A PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Who do you know in prison?

22 A PROSPECTIVE JUROR: My sister is
23 incarcerated in West Virginia.

24 THE COURT: Your sister is incarcerated. Is
25 she younger than you or older?

1 A PROSPECTIVE JUROR: Younger.

2 THE COURT: And do you know what she's in
3 jail for?

4 A PROSPECTIVE JUROR: I think it was felony
5 possession of a firearm.

6 THE COURT: Do you know how much time she
7 received?

8 A PROSPECTIVE JUROR: I'm not sure. I don't
9 remember the exact time.

10 THE COURT: How long has she been in jail?

11 A PROSPECTIVE JUROR: She's due to get out
12 any time now.

13 THE COURT: How long did she serve?

14 A PROSPECTIVE JUROR: I think she's been -- I
15 think it's three years.

16 THE COURT: Three years? Okay. Did you ever
17 visit her in West Virginia?

18 A PROSPECTIVE JUROR: No, sir.

19 THE COURT: Do you have any relationship with
20 her?

21 A PROSPECTIVE JUROR: I correspond with her,
22 by writing.

23 THE COURT: How would that affect you sitting
24 on this jury?

25 A PROSPECTIVE JUROR: It wouldn't affect me

1 whatsoever.

2 THE COURT: You don't think she was
3 wrongfully convicted, do you?

4 A PROSPECTIVE JUROR: No, I don't.

5 THE COURT: You don't?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: And you don't think it would
8 affect you at all in this case?

9 A PROSPECTIVE JUROR: No, sir.

10 THE COURT: Why not?

11 A PROSPECTIVE JUROR: I think the system
12 served -- I think justice was served with her case. She
13 was guilty, and she broke the law.

14 THE COURT: And how is she doing now?

15 A PROSPECTIVE JUROR: I think she's doing
16 okay. She has some other mental health issues, but I
17 think she's working through all that.

18 THE COURT: I hope she can get on some
19 medication and can do all right when she gets out. Can
20 you be fair and impartial in this case?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: And be fair to both the state and
23 the defendant?

24 A PROSPECTIVE JUROR: Without a doubt.

25 THE COURT: Any questions from the state?

1 MR. LAWTON: No, Judge.

2 THE COURT: From Mr. Goss?

3 MR. SMILEY: No.

4 THE COURT: Any questions?

5 MR. APOSTOLOU: No.

6 THE BAILIFF: Number 90.

7 THE COURT: Ms. Gadsden?

8 A PROSPECTIVE JUROR: My sister's -- my
9 family, at the moment they're in the middle of a
10 malpractice lawsuit.

11 THE COURT: Civil case?

12 A PROSPECTIVE JUROR: It's a mediation right
13 now. I'm one of the witnesses, but I'm not on the --

14 THE COURT: As one of the executors of your
15 mom's estate? Your mom died and there is a lawsuit
16 pending?

17 A PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Who got sued?

19 THE WITNESS: MUSC.

20 THE COURT: You're a witness in the case?

21 A PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: When is it coming up for trial?

23 A PROSPECTIVE JUROR: They haven't said
24 anything about trial right now. They just did
25 depositions.

1 THE COURT: Well, you understand that is in
2 civil court, and this is criminal court. Do you know the
3 difference?

4 A PROSPECTIVE JUROR: Yes, sir. That's what
5 I was asking.

6 THE COURT: How would that affect you sitting
7 on this case?

8 A PROSPECTIVE JUROR: It wouldn't.

9 THE COURT: It wouldn't affect you at all?
10 You think you would be fair to both the state and the
11 defendant?

12 A PROSPECTIVE JUROR: Yeah.

13 THE COURT: And you base your decision on the
14 testimony here in the courtroom?

15 A PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Any questions from the state?

17 MR. LAWTON: No.

18 THE COURT: From the defendants?

19 MR. APOSTOLOU: No, Your Honor.

20 THE COURT: All right. Thank you. You may
21 have a seat.

22 MR. LAWTON: Your Honor, this may be coming
23 next. I was just wondering if you could introduce the
24 attorneys.

25 THE COURT: I'm about to do that.

1 MR. LAWTON: Just make sure nobody --

2 THE COURT: I'll do that. I just hadn't got
3 to it yet.

4 Has any member of the jury panel had an
5 unpleasant experience with law enforcement officer? And
6 I understand receiving a speeding ticket is unpleasant.
7 I'm not talking about receiving speeding tickets. Has
8 anybody had a bad experience with a police officer where
9 they could not set that aside and be fair and impartial
10 in this case? If so, please stand.

11 Has anybody on the jury panel or a member of
12 your immediate family ever been wrongfully accused of a
13 crime, in your opinion? If you have that opinion, please
14 stand.

15 Yes, ma'am. You want to come around?

16 THE BAILIFF: Number 147. Is it Mary Jones?
17 How are you doing?

18 A PROSPECTIVE JUROR: I'm fine. I'm just
19 having serious qualms and questions about whether I could
20 function without bias in this.

21 THE COURT: Tell me what your concerns are.

22 A PROSPECTIVE JUROR: Well, currently I have
23 criminal charges pending against me.

24 THE COURT: What are the criminal charges
25 pending?

1 A PROSPECTIVE JUROR: Manufacturing
2 marijuana. It was my husband's doing, and I'm informed
3 that the solicitor intends to drop the charges against
4 me.

5 THE COURT: Okay. And so how do you think
6 that would affect you?

7 A PROSPECTIVE JUROR: Well, I don't know.

8 THE COURT: If you don't think you could be
9 fair, that's fine. We all have biases or prejudices.
10 I'm not going to question your thoughts on that, I just
11 want to know what your thoughts are, if you don't think
12 you could be fair.

13 A PROSPECTIVE JUROR: I just wanted to be
14 completely honest --

15 THE COURT: I appreciate you coming forward.
16 I appreciate you telling me that. I'm just concerned
17 whether or not being arrested for the manufacture of
18 marijuana would cause you to be unfair.

19 A PROSPECTIVE JUROR: Okay.

20 THE COURT: And that is my concern.

21 A PROSPECTIVE JUROR: Okay.

22 THE COURT: Not whether you're guilty or not
23 guilty of it. That is up to another date in court, okay?

24 A PROSPECTIVE JUROR: Okay.

25 THE COURT: My concern is whether you could

1 be fair in this case. Do you think you can?

2 A PROSPECTIVE JUROR: In these particular
3 charges, I guess since they are so different, then yes,
4 it's very different set of charges.

5 THE COURT: I understand, but the question
6 is, because you are charged with these crimes, whether
7 you're guilty or innocent -- I'm not trying to pass
8 judgment on that one way or the other. Will that affect
9 you in this jury, and, if so, how will it affect you? If
10 so, I need to know.

11 A PROSPECTIVE JUROR: I guess it goes to the
12 previous question you asked about being treated by law
13 enforcement.

14 THE COURT: You felt like you were treated
15 unfairly?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: And I understand that. So
18 because of that, you don't think you could be fair?

19 A PROSPECTIVE JUROR: I kind of have a bias,
20 in general.

21 THE COURT: It may be justifiably so. I'm
22 not saying it's right or wrong bias. I'm just trying to
23 figure out what your bias would be, all right?

24 A PROSPECTIVE JUROR: You want me to explain
25 it?

1 THE COURT: No, I don't want you to go into
2 your case. I don't want you to go into your case at all.
3 I appreciate it. Thank you so very much. Okay.

4 MR. APOSTOLOU: No motions from the
5 defendant?

6 THE COURT: Any motions?

7 MR. LAWTON: Yes, sir. I ask that she be
8 struck.

9 THE COURT: Do y'all have any arguments?

10 MR. APOSTOLOU: No.

11 THE COURT: I'm going to grant it for cause
12 on her.

13 MR. SMILEY: 147?

14 THE COURT: 147.

15 THE BAILIFF: Number 75.

16 THE COURT: Hey, Mr. Evans, how are you
17 doing?

18 A PROSPECTIVE JUROR: I was actually arrested
19 myself for sexual misconduct several years back. It
20 never went to Court, but I was taken to jail. I spent
21 the night in jail. They arrested me in front of the jail
22 because of some girl from Walterboro accused me of sexual
23 conduct, and they arrested me in front of my family so I
24 do partial --

25 THE COURT: You've got a lot of built up

1 animosity towards the police?

2 A PROSPECTIVE JUROR: I wouldn't say that. I
3 try to be a good citizen, and I know I didn't do any
4 wrong in my heart, but for somebody to be able to come up
5 and say he did that and next thing I knew, police were
6 knocking on my door, putting handcuffs on me. It was
7 quite embarrassing, and Mr. Goss, how do I know the same
8 thing didn't happen to him?

9 THE COURT: So you think you would have
10 difficulty sitting on this jury?

11 A PROSPECTIVE JUROR: I think so yes, sir.

12 THE COURT: All right. Thank you so very
13 much. Do you have a question?

14 MR. SMILEY: Yes. If I could inquire, if
15 it's a blanket statement, whether he could be impartial
16 in any case, or, in fact --

17 THE COURT: Ask him a question. You can ask
18 him. I want you to ask him a question. I'll let you do
19 that.

20 MR. SMILEY: Could you be impartial in a case
21 that doesn't involve the same allegations?

22 A PROSPECTIVE JUROR: Considering the fact
23 that the same law enforcement --

24 MR. SMILEY: That was my next question. It
25 was Charleston?

1 A PROSPECTIVE JUROR: Yes.

2 MR. SMILEY: And so you have a general bias
3 against North Charleston?

4 A PROSPECTIVE JUROR: I think law
5 enforcement, in my mind -- like I said, it happened to
6 me.

7 THE COURT: I want to thank you for your
8 honesty in coming forward.

9 A PROSPECTIVE JUROR: It's embarrassing.

10 THE COURT: I'm sure it is. I think it would
11 be very embarrassing for everybody, and I'm sorry it
12 happened to you.

13 MR. APOSTOLOU: No motions.

14 MR. LAWTON: Yes, sir, we would ask to strike
15 him for cause.

16 THE COURT: I'll strike him for cause. What
17 is his number?

18 MR. SMILEY: 75.

19 THE COURT: 75. Okay.

20 All right. Mr. Smiley, if you'll introduce
21 yourself, please.

22 MR. SMILEY: My name is Jim Smiley. I'm a
23 member of the Charleston County bar, work for the South
24 Carolina Bar Association. I'm in private practice here
25 in the Charleston area, both in state and federal court.

1 I practice exclusively in criminal defense for the last
2 17 years, I guess it is now.

3 Sitting with me, starting tomorrow, will be a
4 female attorney by the name of Marie Hensley. I'm a sole
5 practitioner, as she is, and she helps me out. I want to
6 make sure I don't miss anything, so the two of us will be
7 sitting here tomorrow. And this, of course, is my honor
8 to represent Mr. Goss.

9 THE COURT: Is anybody member of the jury
10 panel related by blood or marriage to Mr. Smiley or been
11 represented by Mr. Smiley in the past or present being
12 represented by Mr. Smiley? If so, please stand.

13 Mr. Apostolou, if you would please stand and
14 introduce yourself.

15 MR. APOSTOLOU: My name is Alex Apostolou.
16 I'm a criminal defense attorney. I also do some personal
17 injury work. I'm a solo practitioner. I have my own
18 office downtown here in Charleston, and this is Joy Mack.

19 THE COURT: Has any member of the jury panel
20 been represented either in the past or presently being
21 represented by Mr. Apostolou or close personal friends of
22 Mr. Apostolou? If so, please stand.

23 Solicitor, if you would stand and introduce
24 yourself.

25 MR. LAWTON: Good afternoon. My name is Trip

1 Lawton, and I'm an assistant solicitor here in Charleston
2 County. I'm joined by assistant solicitor Kevin Hales.
3 Our boss is the elected solicitor Scarlett Wilson.

4 THE COURT: Anybody have close personal
5 friends in solicitor's office or close personal friends
6 with the solicitor herself? If so, please stand. Yes,
7 ma'am. Your name?

8 A PROSPECTIVE JUROR: My name is Clair Webb,
9 and I'm friends with Marian Askins in the solicitor's
10 office.

11 THE COURT: Is she a prosecutor?

12 A PROSPECTIVE JUROR: She's a prosecutor.

13 THE COURT: Prosecutor in the solicitor's
14 office?

15 A PROSPECTIVE JUROR: Yes.

16 THE COURT: What is your number, do you know?

17 A PROSPECTIVE JUROR: 329. And then I'm also
18 friends with Scarlett, but not really close.

19 THE COURT: How do you know -- I'm sorry, I
20 don't remember the lady's --

21 A PROSPECTIVE JUROR: Marian Askins. She was
22 my best friend in law school.

23 THE COURT: Okay. How often do you see her?

24 A PROSPECTIVE JUROR: Once a week.

25 THE COURT: Once a week?

1 A PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: How would that affect you sitting
3 on this jury?

4 A PROSPECTIVE JUROR: No problem on this
5 jury.

6 THE COURT: You think you could be fair to
7 both state and the defendants?

8 A PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: Base your decision on what you
10 hear in court?

11 A PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Put your personal relationship
13 aside.

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: All right. Thank you so very
16 much.

17 THE BAILIFF: Juror number 253.

18 THE COURT: 253? Yes, ma'am.

19 A PROSPECTIVE JUROR: My sister-in-law works
20 in the solicitor's office.

21 THE COURT: And what is her name?

22 A PROSPECTIVE JUROR: Tasha Lafayette.

23 THE COURT: What does she do in the
24 solicitor's office?

25 A PROSPECTIVE JUROR: She's an investigator.

1 THE COURT: Would that cause you any
2 difficulty in sitting on this jury?

3 A PROSPECTIVE JUROR: No.

4 THE COURT: Can you be fair to both the state
5 and the defendant?

6 A PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Can you set the relationship
8 aside and be fair?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: And what was your number again?

11 A PROSPECTIVE JUROR: 253.

12 THE COURT: 253. Mrs. Georgette Smith? All
13 right. Thank you, Mrs. Smith. Yes, ma'am, your name and
14 number?

15 A PROSPECTIVE JUROR: Vanessa McFadden, 187.

16 THE COURT: Yes, ma'am, Ms. McFadden?

17 A PROSPECTIVE JUROR: My sister, Wanda
18 Middleton, works for the solicitor's office but I don't
19 know what she does.

20 THE COURT: She what?

21 A PROSPECTIVE JUROR: She works for the
22 solicitor's office, but I don't know what she does.

23 THE COURT: Have you ever had any
24 conversations with what she does in the solicitor's
25 office?

1 A PROSPECTIVE JUROR: I don't know. When she
2 started here, I was in Germany, and I don't see her,
3 except Wanda is -- like my daughter even said, like you
4 don't even act like a member of the family because
5 everybody else talks, and I didn't know her for the
6 longest time, and I said I thought she was adopted. So I
7 have no idea what she does. Just to put it out there, I
8 have no idea.

9 THE COURT: Would that cause you any
10 difficulty in sitting on this jury?

11 A PROSPECTIVE JUROR: No, sir.

12 THE COURT: Could you set that relationship
13 aside and be fair to both the state and the defendant?

14 A PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: All right. Thank you,
16 Ms. McFadden.

17 Is any member of the jury panel a former law
18 enforcement employee? If so, please stand, or presently
19 employed by law enforcement? If so, please stand. Is
20 any member or their immediate family employed by the law
21 enforcement agency? If so, please stand.

22 A PROSPECTIVE JUROR: Does that include Leeds
23 Avenue?

24 THE COURT: We already covered her just a
25 minute ago.

1 A PROSPECTIVE JUROR: My brother works at the
2 jail.

3 THE COURT: Okay, Miss Vanessa. Stand up and
4 tell me about your brother. Do you know him better than
5 you know your sister?

6 A PROSPECTIVE JUROR: I know them equally
7 well.

8 THE COURT: And he works at the jail?

9 A PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: How long has he worked at the
11 jail?

12 A PROSPECTIVE JUROR: Once he retired out of
13 the military. I honestly can't tell you. I don't know,
14 to be honest with you. Probably as long as he's had his
15 stuff stored in my garage. It was supposed to be two
16 years, and it was way past that.

17 THE COURT: Would that cause you any
18 difficulty in sitting on this jury?

19 A PROSPECTIVE JUROR: No, sir.

20 THE COURT: Can you be fair to both state and
21 defendant?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: All right. Thank you so very
24 much. All right.

25 As the solicitor said, the defendants, these

1 are two separate trials, but they're joined together for
2 trial. And this is concerning an assault and battery
3 that occurred on June 14, 2007, and a kidnapping that
4 occurred on the same day and an armed robbery that
5 occurred on the same day.

6 Has anybody heard anything about this case
7 other than what has been said in the courtroom today?
8 And I mean by anyone talking, have you heard anybody
9 talking in the courthouse about it, have you read
10 anything in the paper about it, have you heard anything
11 on TV about it or on the radio? If you heard anything at
12 all about this case or these two cases, please stand.

13 Has any member of the jury panel formed an
14 opinion about these type of cases, opinion to the extent
15 that you could not be a fair juror? If so, please stand.

16 Is any member of the jury panel aware of any
17 bias, prejudice as to why they could not serve on this
18 jury? If so, please stand.

19 Has any member of the jury panel or an
20 immediate member of your family or close personal friends
21 been a victim of a violent act? If so, please stand.

22 Let me start on the left.

23 THE BAILIFF: Juror 272.

24 THE COURT: Ms. Tumbleston? You want to talk
25 about it in private? Okay. You may come around.

1 A PROSPECTIVE JUROR: Tumbleston. My brother
2 is married to JonBenet Ramsey's sister.

3 THE COURT: That is the violent crime? So
4 your brother is married to --

5 A PROSPECTIVE JUROR: Melinda Ramsey.

6 THE COURT: Do you know anything at all about
7 it?

8 A PROSPECTIVE JUROR: Yeah, I know everything
9 about it.

10 THE COURT: All right. Everything about it.
11 How would that affect you in this case, or would it?

12 A PROSPECTIVE JUROR: I don't think it would.

13 THE COURT: Why not?

14 A PROSPECTIVE JUROR: Well, I don't think it
15 was a young black male who killed her.

16 THE COURT: Do you have any bias or prejudice
17 toward --

18 A PROSPECTIVE JUROR: The police department
19 and how they handled it?

20 THE COURT: As a result of how it was
21 handled?

22 A PROSPECTIVE JUROR: I do.

23 THE COURT: How would that bias and prejudice
24 go towards Charleston police department?

25 A PROSPECTIVE JUROR: I don't think it would.

1 THE COURT: Why not?

2 A PROSPECTIVE JUROR: I would hope that it
3 wouldn't. I mean --

4 THE COURT: I understand. We all hope.

5 A PROSPECTIVE JUROR: I know everything about
6 it. I mean, we're very close friends with Lou Dobbs.

7 THE COURT: And I understand you would hope
8 that and we all have our hopes and biases, I just want
9 you to tell me whether you can be fair in this case.

10 A PROSPECTIVE JUROR: Well, overall, I side
11 on the side of the law.

12 THE COURT: Okay.

13 A PROSPECTIVE JUROR: John has been cleared.

14 THE COURT: Where was it referred back to?

15 A PROSPECTIVE JUROR: Boulder, Colorado.

16 THE COURT: All right. Well, let's talk
17 about the criminal aspect of it. Do you have any biases
18 or prejudice?

19 A PROSPECTIVE JUROR: Pedophiles, and I'm a
20 teacher, yes.

21 THE COURT: Pedophiles, you got a bias and
22 prejudice?

23 A PROSPECTIVE JUROR: Yes. I'm just being
24 honest.

25 THE COURT: Okay. How long have you been a

1 teacher?

2 A PROSPECTIVE JUROR: Fifteen years.

3 THE COURT: You think you could be fair in
4 this case?

5 A PROSPECTIVE JUROR: I do.

6 THE COURT: You think you could sit your
7 prejudice aside about the Boulder police department? I
8 said Denver. I'm sorry. I didn't mean to slam the
9 Denver police department. It's the Boulder police
10 department.

11 A PROSPECTIVE JUROR: Uh-huh.

12 THE COURT: Any questions from the defendant?

13 MR. APOSTOLOU: Yes. If I could, you said in
14 general --

15 A PROSPECTIVE JUROR: I think every man has a
16 mistake every once in a while.

17 MR. APOSTOLOU: When you said that you side
18 with law enforcement, do you give the benefit of the
19 doubt to law enforcement?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: Any questions from the state?

22 MR. LAWTON: No, Your Honor. I'm sorry hold
23 on a second.

24 MR. SMILEY: Based on that question, when you
25 say you would give the benefit of the doubt to the police

1 officers, if the judge gave you an instruction that a
2 police officer is just like any other witness, could you
3 set aside that and treat them just like any other
4 witness?

5 A PROSPECTIVE JUROR: Yes.

6 MR. SMILEY: Nothing further.

7 THE COURT: Thank you so very much. Any
8 motions?

9 MR. SMILEY: Not for Mr. Goss.

10 MR. APOSTOLOU: Not from Mr. Mack.

11 MR. LAWTON: Not from the state.

12 THE BAILIFF: Number 330.

13 THE COURT: Yes, ma'am. What is your name?

14 A PROSPECTIVE JUROR: Jennifer Williams.

15 THE COURT: What number?

16 A PROSPECTIVE JUROR: 330.

17 THE COURT: Who was the victim of violent
18 crime?

19 A PROSPECTIVE JUROR: My stepfather was shot
20 by my first fiance.

21 THE COURT: And what happened to that case?
22 Was it prosecuted?

23 A PROSPECTIVE JUROR: First it was a jury
24 trial and he pleaded guilty.

25 THE COURT: He pled guilty? He served time?

1 A PROSPECTIVE JUROR: Eight months.

2 THE COURT: Eight months. Okay. And I
3 assume y'all broke up?

4 A PROSPECTIVE JUROR: Yeah.

5 THE COURT: Okay. Do you have any bias or
6 prejudice as a result of that experience?

7 A PROSPECTIVE JUROR: (Shakes head.)

8 THE COURT: Not at all? You don't think it
9 would affect you in this case?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Do have you any hard feelings
12 toward the police or the --

13 A PROSPECTIVE JUROR: Do I think it was
14 right? No. I think he should have got more time.

15 THE COURT: You think he should have got more
16 time?

17 A PROSPECTIVE JUROR: Right.

18 THE COURT: You felt like he should have gone
19 to jail longer? Do have you any prejudice toward the
20 Court in general --

21 A PROSPECTIVE JUROR: No.

22 THE COURT: -- as a result of your
23 experience?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Do you think you could be fair

1 and impartial in this case?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: Questions?

4 MR. SMILEY: If I could, was that prosecuted
5 here in Charleston?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: It was outside of this area?

8 A PROSPECTIVE JUROR: Uh-huh.

9 THE COURT: Where was it?

10 A PROSPECTIVE JUROR: It was Concord, North
11 Carolina.

12 THE COURT: Anything else?

13 MR. APOSTOLOU: No, Your Honor.

14 THE COURT: From the state?

15 MR. LAWTON: Yeah, briefly, did you have any
16 problems with the prosecutor as far as the sentence? Was
17 it anything that was worked out?

18 A PROSPECTIVE JUROR: Huh-uh.

19 THE COURT: You understand the prosecutor
20 presents the evidence, and the Court actually does the
21 sentencing. You understand that?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: All right. Thank you very much.

24 MR. SMILEY: No motion.

25 MR. APOSTOLOU: No motion, Judge.

1 THE BAILIFF: Number 126.

2 A PROSPECTIVE JUROR: Mrs. Hilton, how are
3 you doing today?

4 My uncle, my mother's brother, was a victim
5 in an armed robbery and was murdered during the armed
6 robbery.

7 THE COURT: How long ago was this?

8 A PROSPECTIVE JUROR: It was 30 something
9 years ago.

10 THE COURT: Thirty something years ago?

11 A PROSPECTIVE JUROR: Right in Charleston.

12 THE COURT: Here in Charleston?

13 A PROSPECTIVE JUROR: Yes.

14 THE COURT: Were you involved in the
15 prosecution?

16 A PROSPECTIVE JUROR: I was at the trial
17 every day.

18 THE COURT: Okay. Do you remember it
19 vividly?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: And how would that affect you in
22 this armed robbery?

23 A PROSPECTIVE JUROR: Well, to begin with,
24 the man that killed my uncle, his last name is Mack, if
25 this guy has been tried for armed robbery, any time I

1 hear the name Mack, that is what I think of. It took a
2 big toll on my family, and we fought paroles. There were
3 four of them we were involved, and we fought paroles for
4 years and years.

5 THE COURT: Did he ever make parole?

6 A PROSPECTIVE JUROR: Yeah. The last one was
7 just sent back to prison. He had broken his parole, and
8 we fought to have him put back in prison.

9 THE COURT: How would that affect you in this
10 case, especially with one of them having the same last
11 name?

12 A PROSPECTIVE JUROR: I just don't know that
13 I could be unbiased.

14 THE COURT: Okay. I appreciate that. I'm
15 sorry about your uncle.

16 A PROSPECTIVE JUROR: Thank you. I think the
17 next year they did life without parole.

18 THE COURT: Life right now means without
19 parole.

20 A PROSPECTIVE JUROR: That was in December of
21 '72.

22 THE COURT: He would have been eligible after
23 ten years.

24 A PROSPECTIVE JUROR: Right, exactly.

25 THE COURT: I'm sorry about your uncle.

1 Thank you for coming forward. What was her number?

2 MR. APOSTOLOU: 126, Judge.

3 THE COURT: You got a motion?

4 MR. SMILEY: Both of us.

5 THE COURT: Any arguments against that?

6 MR. LAWTON: No.

7 THE BAILIFF: Number 320.

8 THE COURT: Yes, sir?

9 A PROSPECTIVE JUROR: I got robbed at
10 knifepoint in 1984.

11 THE COURT: You were what?

12 A PROSPECTIVE JUROR: I was robbed at
13 knifepoint and beaten pretty badly in 1984.

14 THE COURT: Whereabouts?

15 A PROSPECTIVE JUROR: South end of Boston in
16 Massachusetts.

17 THE COURT: Was anybody ever arrested?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: They never did catch anybody?

20 A PROSPECTIVE JUROR: No, and then last year
21 ago my business was robbed.

22 THE COURT: Here in Charleston?

23 A PROSPECTIVE JUROR: In Charleston, yeah.

24 THE COURT: It was robbed? Charleston.

25 A PROSPECTIVE JUROR: Yes. I own a

1 restaurant in West Ashley.

2 THE COURT: What was the name of the
3 restaurant?

4 A PROSPECTIVE JUROR: The Blue Rose.

5 THE COURT: How would that affect you sitting
6 on this jury?

7 A PROSPECTIVE JUROR: I don't know. I have a
8 problem with people robbing, abusing people at gunpoint
9 or knifepoint. I think I'm just one of those people that
10 think you should go to prison, period.

11 THE COURT: So you think it would affect you
12 to the point where you couldn't be fair?

13 A PROSPECTIVE JUROR: Perhaps. I guess it
14 depends on the case and how it plays out in court.

15 THE COURT: Any question from the state?

16 MR. LAWTON: (Shakes head.)

17 THE COURT: Any from the defendants?

18 MR. SMILEY: No, sir.

19 MR. APOSTOLOU: No, Your Honor.

20 THE COURT: I appreciate it. Thank you. You
21 may go have a seat.

22 MR. SMILEY: I make a motion to exclude
23 number 320.

24 THE COURT: Any arguments? 320.

25 THE BAILIFF: Number 316.

1 A PROSPECTIVE JUROR: My nephew was hit with
2 a pistol and robbed at one point in front of my house,
3 stole the car.

4 THE COURT: When was this?

5 A PROSPECTIVE JUROR: Thanksgiving a couple
6 years ago. Day after Thanksgiving.

7 THE COURT: Did you see it?

8 A PROSPECTIVE JUROR: No, I didn't.

9 THE COURT: Was anybody ever arrested?

10 A PROSPECTIVE JUROR: They did arrest
11 somebody, but we never heard anything about it.

12 THE COURT: You never heard anything about
13 it?

14 A PROSPECTIVE JUROR: And then I was punched
15 and dragged down the street for my pocketbook one time.

16 THE COURT: How long was that?

17 A PROSPECTIVE JUROR: Five years.

18 THE COURT: Was anybody ever arrested for
19 that?

20 A PROSPECTIVE JUROR: No.

21 THE COURT: How has that affected you?

22 A PROSPECTIVE JUROR: It hasn't.

23 THE COURT: Pardon me?

24 A PROSPECTIVE JUROR: It hasn't.

25 THE COURT: Do you think you could be fair in

1 this case?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: You don't think it would affect
4 you in this case?

5 A PROSPECTIVE JUROR: I don't know what the
6 case is about, but probably not.

7 THE COURT: Can you be fair to both state and
8 the defendant in this case?

9 A PROSPECTIVE JUROR: Yes, probably.

10 THE COURT: Well, my problem is, I don't
11 know. Only you know, and probably -- it's got to be a
12 little bit better than probably, so tell me why you say
13 probably.

14 I mean, let me explain this to you. Okay?
15 I've got my biases and prejudices. I'm a Carolina fan,
16 and I don't like the Clemson Tigers, so we all got bias
17 or prejudice, and there is nothing wrong with having
18 that, it's just a question of recognizing it and saying,
19 I'm prejudiced. I can't do this, and so this is why I'm
20 trying to determine if your experience with your nephew
21 and you being dragged down street by your purse, I
22 probably would be biased too, so I just need to know.

23 A PROSPECTIVE JUROR: Yes. I'm biased.

24 THE COURT: Thank you very much. I
25 appreciate it.

1 MR. SMILEY: Make a motion to excuse 316.

2 THE COURT: Any argument?

3 MR. LAWTON: No, Your Honor.

4 MR. APOSTOLOU: Concur.

5 THE COURT: 316.

6 THE BAILIFF: 301.

7 A PROSPECTIVE JUROR: Caroline Bailey, 301.

8 THE COURT: How you doing, Ms. Bailey? Tell
9 me who had a violent crime in your family?

10 A PROSPECTIVE JUROR: Myself.

11 THE COURT: What happened?

12 A PROSPECTIVE JUROR: Well, let's see here.
13 Do I need to be specific?

14 THE COURT: If you would. I don't mean to
15 embarrass you. You don't have to embarrass yourself, but
16 just tell me generally what happened.

17 A PROSPECTIVE JUROR: I was assaulted 19
18 years ago.

19 THE COURT: Was anybody ever arrested and
20 prosecuted?

21 A PROSPECTIVE JUROR: Yes, yes.

22 THE COURT: When were they arrested and
23 prosecuted, how long ago?

24 A PROSPECTIVE JUROR: It was, like, 19 years
25 ago.

1 THE COURT: How would that affect you today,
2 sitting on this jury?

3 A PROSPECTIVE JUROR: I didn't have to go
4 serve --

5 THE COURT: To trial?

6 A PROSPECTIVE JUROR: I didn't have to go to
7 trial because he was proven guilty prior, and it was a
8 black person, so I don't know how detailed this would get
9 into any of that, but it was a sexual assault.

10 THE COURT: Okay. Well, there are no sexual
11 assault allegations in this case, I don't think.

12 A PROSPECTIVE JUROR: Okay.

13 THE COURT: Do you think you could set aside
14 your experience 19 years ago and be fair in this case?

15 A PROSPECTIVE JUROR: If there was no sexual
16 assault.

17 THE COURT: There is no allegations of sexual
18 assault in this case. All right. Any questions from the
19 defendants?

20 MR. APOSTOLOU: There is no sexual assault,
21 but there is an allegation of assault. Can you make the
22 distinction between the sexual assault?

23 A PROSPECTIVE JUROR: Yes, yes. I mean, it's
24 a tough thing, because it brings back a lot of flashbacks
25 so I don't know that -- it might be an uncomfortable

1 setting, yes, but I can't -- I just don't know.

2 THE COURT: Well, the problem I have is if
3 you don't know, I don't know.

4 A PROSPECTIVE JUROR: It's a tough situation.
5 It depends on how detailed it got.

6 THE COURT: I'm sure it will get extremely
7 detailed. Now, I don't know the facts, but I'm sure it
8 will get very detailed as to what happened.

9 A PROSPECTIVE JUROR: I feel that if there
10 was no sexual assault, if it wasn't into that aspect of
11 it, I could probably handle it.

12 THE COURT: Can you be fair?

13 A PROSPECTIVE JUROR: I can be fair.

14 THE COURT: Any questions?

15 MR. SMILEY: Jesse. And you might have
16 answered it. Was your assailant black?

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: Was the fact that there is a
19 young black man on trial here have an effect on your
20 ability --

21 A PROSPECTIVE JUROR: It didn't until I heard
22 the victim of a crime.

23 MR. SMILEY: My next question would be, in
24 this case, there is going to be an allegation made by the
25 state of a violent assault inside of a business. Based

1 on your experience, the fact that you're accusing a young
2 black male, would that allow you to be impartial? That's
3 my question.

4 A PROSPECTIVE JUROR: I don't know.

5 THE COURT: What did you say?

6 A PROSPECTIVE JUROR: I don't know.

7 MR. SMILEY: She doesn't know.

8 THE COURT: Any question from the state?

9 MR. SMILEY: I have one more question. Of
10 course, the constitution presumes that one's innocent to
11 begin with. Given that, and your past experiences, could
12 you extend the presumption of innocence to these young
13 men?

14 A PROSPECTIVE JUROR: Yes.

15 MR. SMILEY: And only remove it if and only
16 if the state proved their case beyond a reasonable doubt,
17 regardless of the fact of the allegations against them?

18 A PROSPECTIVE JUROR: Yes.

19 MR. SMILEY: I have nothing further.

20 THE COURT: All right. Thank you very much.
21 Any motions?

22 MR. SMILEY: For Mr. Goss, no, Your Honor,
23 based on her responses. I think she has been very
24 forthright.

25 MR. APOSTOLOU: No, Your Honor.

1 MR. LAWTON: No, Your Honor.

2 THE BAILIFF: Number 68.

3 A PROSPECTIVE JUROR: Maria Delcioppo. Well,
4 my judgment would definitely be affected.

5 THE COURT: Tell me what happened.

6 A PROSPECTIVE JUROR: I am -- was a victim of
7 rape.

8 THE COURT: How long ago?

9 A PROSPECTIVE JUROR: 15 years ago, and my
10 best friend, who is now my sister-in-law, her mother
11 owned a store on James Island and was robbed, had her
12 head slammed against the bathroom sink, and has major,
13 major brain damage as a result. She's not even the same
14 person. So I believe in a fair trial, but I have no
15 tolerance for violence, I just don't.

16 THE COURT: You don't think you could be fair
17 in this case?

18 A PROSPECTIVE JUROR: As fair as I would want
19 to be, I can't.

20 THE COURT: You can't do it?

21 A PROSPECTIVE JUROR: I just can't.

22 THE COURT: What is your number again?

23 A PROSPECTIVE JUROR: 68.

24 THE COURT: Thank you so very much.

25 MR. SMILEY: Motion to excuse number 68.

1 THE COURT: 68.

2 THE BAILIFF: Linda government /HREUPB,
3 number 94.

4 THE COURT: Yes, ma'am? I need to know what
5 happened first. Who was the victim?

6 A PROSPECTIVE JUROR: Me and my family were
7 victims of robbery.

8 THE COURT: Of armed robbery? Whereabouts
9 and when?

10 A PROSPECTIVE JUROR: It was 1974, three days
11 before Thanksgiving, in Walterboro.

12 THE COURT: In Walterboro. Were you at home
13 when it happened?

14 A PROSPECTIVE JUROR: Yes. I was asleep, and
15 I woke up to figures hanging over my sister and me, and
16 we were both bound and gagged.

17 THE COURT: I'm sorry it happened to you.
18 Was anybody ever arrested, prosecuted?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: No. How would it affect you in
21 this trial? I know you're almost in tears, and I
22 apologize for putting you through this and reliving that.
23 It happened 30 some years ago.

24 A PROSPECTIVE JUROR: I can't -- I'm okay,
25 but it brings out feelings that have been bottled because

1 I haven't thought about it.

2 THE COURT: You haven't thought about it in
3 years.

4 A PROSPECTIVE JUROR: I'm okay with it.

5 THE COURT: The question I have is because of
6 the anger, and I think anger is justified -- if it
7 happened to me I probably would be angry too.

8 A PROSPECTIVE JUROR: To this day, I can tell
9 you what they looked like and what they were wearing.

10 THE COURT: My question is, how would it
11 affect you in this case? You would be prejudiced against
12 the defendants, primarily because of the charges?

13 A PROSPECTIVE JUROR: Well, I don't consider
14 myself a prejudiced person.

15 THE COURT: None of us do. We all like to
16 think we don't have prejudice, but we all do. My
17 question is, how would that trauma that you experienced
18 affect you in this trial?

19 A PROSPECTIVE JUROR: I guess it would be
20 evidence. That is what we have to look at, right?

21 THE COURT: Yeah, right. Do you think you
22 could be fair?

23 A PROSPECTIVE JUROR: Yes, Your Honor.

24 THE COURT: Do you think you could set your
25 experience aside and be fair in this case?

1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: Do you have any questions from
3 the state and from the defendant?

4 MR. SMILEY: Yes, Your Honor.

5 THE COURT: Mr. Smiley?

6 MR. SMILEY: In this case, the allegations
7 are against two young black men. In your case, did they
8 involve black men?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: Would that affect your ability to
11 be fair and impartial?

12 A PROSPECTIVE JUROR: No.

13 MR. SMILEY: If in this case evidence was
14 presented at trial of someone being bound during an
15 assault and robbery, would that affect your ability to be
16 impartial, since that apparently happened to you?

17 A PROSPECTIVE JUROR: No, I don't think it
18 would. I just thought it would be fair to bring it up,
19 but I don't think it would be -- I don't think -- I could
20 be impartial.

21 MR. SMILEY: The last question is, as you
22 know, the constitution guarantees someone to be presumed
23 innocent, right?

24 A PROSPECTIVE JUROR: Right.

25 MR. SMILEY: Knowing that fact, could you

1 extend that -- and your experiences, could you extend
2 that presumption of innocence to each of the clients
3 until and if the state can prove them guilty beyond a
4 reasonable doubt? Could you start off with they're
5 innocent, is the question, be fair and impartial?

6 A PROSPECTIVE JUROR: I could.

7 MR. SMILEY: I have no further questions.

8 THE COURT: Thank you. You may have a seat.
9 Any motions?

10 MR. APOSTOLOU: I would make a motion to
11 excuse. I heard her words, but her body language was not
12 suggesting to me --

13 MR. LAWTON: I didn't hear everything, but it
14 seemed the emotions thinking about her father, not so
15 much --

16 THE COURT: Well, her emotions are the fact
17 that she woke up during the armed robbery when they broke
18 into her house and tied her up and gagged her, and they
19 never prosecuted anybody. I think it's extremely -- she
20 said she never did think about it for ten years until
21 today, that is why she was upset and almost in tears.

22 That is what she basically said. I'm going
23 to deny her motion. I'm going to strike her for cause.

24 THE BAILIFF: Number 323.

25 THE COURT: Yes, ma'am. Mrs. Robinson, how

1 are you doing? Who was the victim?

2 A PROSPECTIVE JUROR: My cousin. We grew up
3 together?

4 THE COURT: What happened?

5 A PROSPECTIVE JUROR: She was murdered.

6 THE COURT: She was murdered? How long ago?

7 A PROSPECTIVE JUROR: Five years ago.

8 THE COURT: Was anybody ever arrested?

9 A PROSPECTIVE JUROR: The guy that did it
10 killed himself.

11 THE COURT: The guy that did it killed her
12 and himself?

13 A PROSPECTIVE JUROR: Shot her three times
14 and then killed himself.

15 THE COURT: How would that affect you in this
16 case, or would it?

17 A PROSPECTIVE JUROR: I don't know how
18 partial I would be -- I thought it was a senseless crime,
19 and I'm very partial to senseless crime or kidnapping or
20 armed robbery. I don't want to be biassed one way or the
21 other, but I feel it's a senseless crime.

22 THE COURT: Well, any crime is senseless.
23 What I'm trying to determine is whether you can listen to
24 the facts in this case and see if the state has met their
25 burden of convicting the defendant and be fair and

1 impartial to both parties, is I'm trying to find out.

2 A PROSPECTIVE JUROR: I can try.

3 THE COURT: Pardon?

4 A PROSPECTIVE JUROR: I can try.

5 THE COURT: I understand you can try, but --

6 A PROSPECTIVE JUROR: I'm just being honest.

7 I don't know how partial I would be in knowing all that I

8 know about my cousin and her mother, and I just seem to

9 be a little more partial to victims than to people who
10 are accused of a crime.

11 THE COURT: I understand. You would be more
12 partial to the victim than to the defendants in this.

13 A PROSPECTIVE JUROR: Yes.

14 THE COURT: And the victims would take
15 priority. Okay. Ma'am, I appreciate your honesty.
16 Thank you so very much. I'm sorry. Do y'all have any
17 questions?

18 MR. APOSTOLOU: No, Your Honor.

19 MR. SMILEY: No, sir.

20 THE COURT: Thank you.

21 MR. SMILEY: Based on her responses, I would
22 ask she be excused.

23 THE COURT: 323. We got a big crowd in here
24 and we're getting close to finishing, I hope. Does
25 anybody need to take a very quick break?

1 MR. SMILEY: We withdraw number eight.

2 THE COURT: Okay. All right.

3 MR. SMILEY: And, actually, nine and ten have
4 been covered.

5 THE COURT: I think all of yours have been
6 covered except number eight.

7 MR. SMILEY: Based on all the responses we
8 have, Your Honor, I think it's position I'm trying to
9 make sure was covered has been thoroughly covered, so I
10 withdraw number eight.

11 THE COURT: All right. Is there anybody on
12 the jury panel that knows of any reason as to they can't
13 serve on this jury? If so, please stand.

14 Is there anybody on the jury panel that has
15 any bias or prejudice towards these charges or the
16 defendants as to why they couldn't be fair jurors? If
17 so, please stand.

18 Any further questions from the state?

19 MR. LAWTON: No, Your Honor.

20 THE COURT: Any from the defendant?

21 MR. SMILEY: Not from Mr. Goss.

22 MR. APOSTOLOU: Nor from Mr. Mack.

23 THE COURT: As far as Mr. Mack is concerned,
24 Mr. Apostolou, I'm not going to ask the request that's
25 been marked Court's Exhibit 1, but I'm going to

1 acknowledge you requested it and I will presume that
2 you've reviewed that request and it's denied. Okay?

3 MR. APOSTOLOU: Thank you, Your Honor.

4 THE COURT: All right. State ready to
5 strike?

6 MR. LAWTON: State is ready to strike.

7 THE CLERK: As I call your juror number and
8 name, please gather your personal belongings and please
9 come and stand in front of the podium, please.

10 Juror number 241, Katherine Saunders. What
11 say you for the state?

12 MR. LAWTON: Please present Ms. Saunders.

13 THE CLERK: What say you for Defendant Goss?

14 MR. SMILEY: Please seat Ms. Saunders.

15 THE CLERK: What say you for Defendant Mack?

16 MR. APOSTOLOU: Please seat Ms. Saunders.

17 THE CLERK: You've been selected as a juror
18 in this case. Please have a seat in the jury box.

19 Juror number 50, William Carducci. What say
20 you for the state?

21 MR. LAWTON: Please present Mr. Carducci.

22 THE CLERK: What say you for the defendant?

23 MR. SMILEY: Please excuse Mr. Carducci.

24 THE CLERK: You've been excused from the
25 trial of this case. Please have a seat back in the

1 audience. Juror number 98, Reamy Gilliard. What say you
2 for the state?

3 MR. LAWTON: Please present Mr. Gilliard.

4 THE CLERK: What say you for Defendant Goss?

5 MR. SMILEY: Please excuse the juror.

6 THE CLERK: You've been excused from the
7 trial of this case. Have a seat back in the audience.
8 Juror number 40, Michael Budan. Juror number 40, 40.
9 What say you for the state?

10 MR. LAWTON: Please excuse Mr. Budan.

11 THE CLERK: Sir, you've been excused from the
12 trial of this case. Please have a seat back in the
13 audience.

14 Juror number 43, Helen Burkett. What say you
15 for the state?

16 MR. LAWTON: Please present Ms. Burkett.

17 THE CLERK: What say you for Defendant Goss?

18 MR. SMILEY: Please seat Ms. Burkett.

19 THE CLERK: What say you for Defendant Mack?

20 MR. APOSTOLOU: Please excuse Ms. Burkett.

21 THE CLERK: You've been excused from the
22 trial of this case. Please have a seat back in the
23 audience.

24 Juror number 184, Brandi McCrea. What say
25 you for the state?

1 MR. LAWTON: Please present Ms. McCrea.

2 THE CLERK: What say you for Defendant Goss?

3 MR. SMILEY: Please seat Ms. McCrea.

4 THE CLERK: What say you for Defendant Mack?

5 MR. APOSTOLOU: Please seat the juror.

6 THE CLERK: Ma'am, you've been selected for

7 the trial of this case. Please have a seat in the jury

8 box the jury.

9 Juror number 291, Michael Woods? What say

10 you for the state?

11 MR. LAWTON: Please excuse Mr. Woods.

12 THE CLERK: You've been excused from the

13 trial of this case. Please have a seat back in the

14 audience.

15 Juror 296, Tiwana Wright. What say you for

16 the state?

17 MR. LAWTON: Please excuse Ms. Wright.

18 THE CLERK: You've been excused from the

19 trial of this case.

20 Juror number 12, Michael Biechner. What say

21 you for the state?

22 MR. LAWTON: Please seat Mr. Biechner.

23 THE CLERK: What say you for Defendant Goss?

24 MR. SMILEY: Please excuse the juror.

25 THE CLERK: You've been excused from the

1 trial of this case. Please have a seat back in the
2 audience.

3 Juror number 94, Linda Garvin. What say you
4 for the state?

5 MR. LAWTON: Please present Ms. Garvin.

6 THE CLERK: What say you for Defendant Goss?

7 MR. SMILEY: Please excuse Ms. Garvin.

8 THE CLERK: Ma'am, you've been excused from
9 the trial of this case. Please have a seat back in the
10 audience.

11 Juror 160, Angela Lavigne. What say you for
12 the state?

13 MR. LAWTON: Please present Ms. Lavigne.

14 THE CLERK: What say you for Defendant Goss?

15 MR. SMILEY: Please seat Ms. Lavigne.

16 THE CLERK: What say you for Defendant Mack?

17 MR. APOSTOLOU: Please seat the juror.

18 THE CLERK: Ma'am, you've been selected as
19 for the trial of this case. Please have a seat in the
20 jury box.

21 Juror number 96, Andrew Gerken. What say you
22 for the state?

23 MR. LAWTON: Please seat Mr. Gurten.

24 THE CLERK: What say you for Defendant Goss?

25 MR. SMILEY: Please excuse the juror.

1 THE CLERK: Sir, you've been excused from the
2 trial in this case. Please have a seat back in the
3 audience. Juror number 190, Harriett McKinnie. What say
4 you for the state?

5 MR. LAWTON: Please present Ms. McKinnie.

6 THE CLERK: What say you for Defendant Goss?

7 MR. SMILEY: Please seat the juror.

8 THE CLERK: What say you for Defendant Mack?

9 MR. APOSTOLOU: Please seat the juror.

10 THE CLERK: Ma'am, you've been selected for
11 the trial of this case. Please have a seat in the jury
12 box.

13 Juror number 217, David Bender. What say you
14 for the state?

15 MR. LAWTON: Please present Mr. Bender.

16 THE CLERK: What say you for Defendant Goss?

17 MR. SMILEY: Please excuse the juror.

18 THE CLERK: Sir, you've been excused from the
19 trial of this case.

20 Juror number 154, Lawrence Kitchell, Junior?
21 What say you for the state?

22 MR. LAWTON: Please present Mr. Kitchell.

23 THE CLERK: What say you for Defendant Goss?

24 MR. SMILEY: Please excuse the juror.

25 THE CLERK: You've been excused from the

1 trial of the case. Have a seat back in the audience.

2 Juror number 116, Anthony Harris. What say
3 you for the state?

4 MR. LAWTON: Please present Mr. Harris.

5 THE CLERK: What say you for Defendant Goss?

6 MR. SMILEY: Please excuse the juror.

7 THE CLERK: Sir, you're excused from the
8 trial of this case. Please have a seat back in the
9 audience.

10 Juror number 312, Joel Henry. What say you
11 for the state?

12 MR. LAWTON: Please present Mr. Henry.

13 THE CLERK: What say you for Defendant Goss?

14 MR. SMILEY: Please present the juror.

15 THE CLERK: What say you for Defendant Mack?

16 MR. APOSTOLOU: Please seat the juror.

17 THE CLERK: Sir, you've been selected for the
18 trial of this case. Please have a seat in the jury box.

19 Juror number 254, Ronald Smith. What say you
20 for the state?

21 MR. LAWTON: I apologize. Could I get the
22 number?

23 THE CLERK: 254.

24 MR. LAWTON: Please present Mr. Smith.

25 THE CLERK: What say you for Defendant Goss?

1 MR. SMILEY: Please present the juror.

2 THE CLERK: What say you for Defendant Mack?

3 MR. APOSTOLOU: Please seat the juror.

4 THE CLERK: Sir, you've been selected for the
5 trial of this case. Please have a seat in the jury box.

6 Juror number 112, William Haltiwanger. What
7 say you for the state?

8 MR. LAWTON: Please excuse the juror.

9 THE CLERK: Sir, you've been excused from the
10 trial of this case. Plead have a seat back in the
11 audience.

12 Juror number 304, Alanson Bowen, Junior.
13 What say you for the state?

14 MR. LAWTON: Please present Mr. Bowen.

15 THE CLERK: What say you for Defendant Goss?

16 MR. SMILEY: Please present the juror.

17 THE CLERK: What say you for Defendant Mack?

18 MR. APOSTOLOU: Please seat the juror.

19 THE CLERK: Sir, you've been selected for the
20 trial in this case. Please have a seat in the jury box.

21 Juror number 283, Denzel Williams. What say
22 you for the state?

23 MR. LAWTON: Please present the juror.

24 THE CLERK: What say you for Defendant Goss?

25 MR. SMILEY: Please seat the juror.

1 THE CLERK: What say you for Defendant Mack?

2 MR. APOSTOLOU: Please seat the juror.

3 THE CLERK: You've been selected as a juror
4 in this case. Please have a seat in the jury box.

5 Juror number 21, George Bolton. What say you
6 for the state?

7 MR. LAWTON: Please present Mr. Bolton.

8 THE CLERK: What say you for Mr. Goss?

9 MR. SMILEY: Please excuse the juror.

10 THE CLERK: You've been excused from the
11 trial of this case. Defendant Goss has one strike

12 remaining. Juror number 208, Jane O'Donnell. What say
13 you for the state?

14 MR. LAWTON: Please present Ms. O'Donnell.

15 THE CLERK: What say you for Defendant Goss?

16 MR. SMILEY: Please seat the juror.

17 THE CLERK: What say you for Defendant Mack?

18 MR. APOSTOLOU: Please seat the juror.

19 THE CLERK: Ma'am, you've been selected for
20 the trial in tis case. Please have a seat in the jury
21 box.

22 Juror number 10, Marianne Bannwart. What say
23 you for the state?

24 MR. LAWTON: Please present the juror.

25 THE CLERK: What say you for Defendant Goss?

1 MR. SMILEY: Please excuse the juror.

2 THE CLERK: You've been excused from the
3 trial of this case. Defendant Goss has exhausted all his
4 strikes. Juror number 195, David Miller. What say you
5 for the state?

6 MR. LAWTON: Please excuse the juror.

7 THE CLERK: Sir, you've been excused from the
8 trial of this case. Please have a seat back in the
9 audience.

10 Juror number 272, Michelle Tumbleston. What
11 say you for the state?

12 MR. LAWTON: Please present Mrs. Tumbleston.

13 THE CLERK: Any challenge from Defendant
14 Goss?

15 MR. SMILEY: No challenge.

16 THE CLERK: What say you for Defendant Mack?

17 MR. APOSTOLOU: Please excuse the juror.

18 THE CLERK: You've been excused from the
19 trial of this case. Please have a seat back in the
20 audience.

21 Juror number 301, Caroline Bailey. What say
22 you for the state?

23 MR. LAWTON: Please present Ms. Bailey.

24 THE CLERK: Any challenge from Defendant
25 Goss?

1 MR. SMILEY: No challenge.

2 THE CLERK: What say you for Defendant Mack?

3 MR. APOSTOLOU: Please excuse the juror.

4 THE CLERK: You've been excused from the
5 trial of this case. Please have a seat back in the
6 audience.

7 Juror number 230, Harry Richburg. What say
8 you for the state?

9 MR. LAWTON: Please present Mr. Richburg.

10 THE CLERK: Any challenge from Defendant
11 Goss?

12 MR. SMILEY: No challenge.

13 THE CLERK: What say you for Defendant Mack?

14 MR. APOSTOLOU: Please seat the juror.

15 THE CLERK: You've been selected for the
16 trial of this case. Please have a seat in the jury box.

17 Juror number 164, Barbara Lesieur. What say
18 you for the state?

19 MR. LAWTON: Please present the juror.

20 THE CLERK: Any challenge from the defendant
21 for cause?

22 MR. SMILEY: No challenge.

23 THE COURT: What say you for Defendant Mack?

24 MR. APOSTOLOU: Please seat the juror.

25 THE CLERK: You've been selected as a juror

1 in this case. Please have a seat in the jury box.

2 Juror number 90, Janet Gadsden. What say you
3 for the state?

4 MR. LAWTON: Please excuse Ms. Gadsden.

5 THE CLERK: You've been excused from the
6 trial of this case. Please have a seat back in the
7 audience.

8 Juror number 169, Stefan Lovelace. What say
9 you for the state?

10 MR. LAWTON: Please excuse Mr. Lovelace.

11 THE CLERK: You've been excused from the
12 trial of this case. Please have a seat back in the
13 audience.

14 Juror number 303, Robert Barteet. What say
15 you for the state?

16 MR. LAWTON: Please present Mr. Barteet.

17 THE CLERK: Any challenge from Defendant
18 Goss?

19 MR. SMILEY: No challenge.

20 THE CLERK: What say you for Defendant Mack?

21 MR. APOSTOLOU: Please excuse Mr. Barteet.

22 THE CLERK: You've been excused from the
23 trial of this case. Please have a seat back in the
24 audience.

25 Juror number 158, Jack Kusmits. What say you

1 for the state?

2 MR. LAWTON: Please excuse the juror.

3 THE CLERK: Sir, you've been excused from the
4 trial of this case. Please have a seat back in the
5 audience. Juror number 11, Gillian Beach? What say you
6 for the state?

7 MR. LAWTON: Please present Ms. Beach.

8 THE CLERK: Any challenge from Defendant
9 Goss?

10 MR. SMILEY: No challenge.

11 THE CLERK: What say you for Defendant Mack?

12 MR. APOSTOLOU: Please seat the juror.

13 THE CLERK: Ma'am, you've been selected for
14 the trial of this case. Please have a seat in the jury
15 box.

16 Those are our 12 jurors.

17 THE COURT: We got, what, two alternates?
18 All right. Two alternates, two apiece for the defendant.

19 THE CLERK: Juror 100, Joseph Glover. What
20 say you for the state?

21 MR. LAWTON: Please present the juror.

22 THE CLERK: What say you for Defendant Goss?

23 MR. SMILEY: Please excuse the juror.

24 THE CLERK: You have been excused from the
25 trial of this case. Please have a seat back in the

1 audience. Juror number 178, Jess Martin. What say you
2 for the state?

3 MR. LAWTON: Please present Mr. Martin.

4 THE CLERK: What say you for Defendant Goss?

5 MR. SMILEY: Please excuse the juror.

6 THE CLERK: You've been excused from the
7 trial of this case. Please have a seat back in the
8 audience. Defendant Goss has exhausted his strikes.

9 Juror number 148, Susana Jones. What say you
10 for state?

11 MR. LAWTON: Please present Ms. Jones.

12 THE CLERK: Any challenge from Defendant
13 Goss?

14 MR. SMILEY: None.

15 THE CLERK: What say you for Defendant Mack?

16 MR. APOSTOLOU: Please excuse Ms. Jones.

17 THE CLERK: You've been excused from the
18 trial of this case. Please have a seat back in the
19 audience.

20 Juror number 194, Chicquetta Mikell. What
21 say you for the state?

22 MR. LAWTON: Please present the juror.

23 THE CLERK: Any challenge from Defendant
24 Goss?

25 MR. SMILEY: None.

1 THE CLERK: What say you for Defendant Mack?

2 MR. APOSTOLOU: Please seat the juror.

3 THE CLERK: You've been selected as a juror
4 in this case. Please have a seat in the jury box.

5 Juror number 139, Donna Jarrell. What say
6 you for the state?

7 MR. LAWTON: Please present Ms. Jarrell.

8 THE CLERK: What say you for Defendant Goss?

9 MR. SMILEY: No cause.

10 THE CLERK: What say you for Defendant Mack?

11 MR. APOSTOLOU: Please seat the juror.

12 THE CLERK: You've been selected for the
13 trial of this case. Your Honor, our jury has been
14 selected.

15 THE COURT: All right. Thank you very much.

16 Ladies and gentlemen of the jury: What I'm
17 going to ask you to do is go to the jury room and elect
18 either a forelady or foreman. You may elect anybody but
19 the two alternates, Ms. Mikell or Ms. Jarrell, anyone but
20 those two. After you do that, write the name down, give
21 it to the bailiff. I'll get you back in the courtroom
22 very shortly thereafter. If you follow the bailiff,
23 he'll take you to the jury room.

24 (In open court, jury not present.)

25 THE COURT: Other than the motions that have

1 been previously made at the bench concerning individual
2 jurors, is there any motions from the state, as far as
3 drawing the jury?

4 MR. LAWTON: No, Your Honor.

5 THE COURT: Any motions from the defendants
6 other than previous motions that have already been made?

7 MR. SMILEY: Not from Mr. Goss.

8 THE COURT: Mr. Mack?

9 MR. APOSTOLOU: Not from Mr. Mack.

10 THE COURT: Could I see the attorneys up
11 here?

12 Remaining members of the jury panel, I want
13 to thank you. I enjoyed spending the afternoon with you
14 probably, not as much as you did, but call back after
15 6:00, and the instructions for the jury panel -- just
16 follow those instructions. They are probably going to
17 have you report tomorrow, what, 9:30? If a civil case
18 materializes, they'll draw a civil jury, but just call in
19 the number and follow those instructions. I might see
20 you later on this week. Have a good afternoon.

21 Our forelady is juror 208, Jeanne O'Donnell.
22 Can you bring the jury in, if you would, please.

23 (In open court, jury present.)

24 THE COURT: All right. Ladies and gentlemen
25 of the jury: What we're going to do is I've got to hear

1 certain motions in the case. We're going to start with
2 those this afternoon and finish them up in the morning,
3 so I want you to be in the jury room at 10:00 in the
4 morning and we'll get started at that time. Please don't
5 discuss the case with anyone. If you see anything on
6 TV or in the paper, don't listen to it, or don't read
7 about it. I want you to make a decision about you what
8 hear in the courtroom, not what someone tells you at home
9 on the streets. So I'll see you in the morning at 10:00.
10 See you at that time. If you follow the bailiff, he'll
11 show you where to come. If you come to the courthouse,
12 come straight to the jury room.

13 (In open court, jury present.)

14 THE COURT: I understand that you want to do
15 a Biggers hearing first.

16 MR. APOSTOLOU: Judge, this is a Biggers
17 hearing. There was an identification made on my client.
18 It was made two and a half weeks after the incident
19 occurred. It was made under some dubious circumstances.
20 I would challenge -- there is also a lineup as a result
21 of this that I would challenge as well, and I would make
22 a motion to suppress --

23 THE COURT: Specifically, what is your
24 challenge?

25 MR. APOSTOLOU: My challenge to the line-up

1 specifically, Judge, is it was not an impartial lineup.

2 THE COURT: Why was it not impartial?

3 MR. APOSTOLOU: It was not impartial, Judge,
4 because this individual, Andy, saw Mr. Goss drive a
5 vehicle that resembled the get-away car. He called the
6 police, the police were talking to Andy when Joy Mack was
7 in another store in the mall and walked out. The three
8 of them were standing within a couple of feet from each
9 other.

10 After that, they let Mr. Goss and Mr. Mack
11 leave, put them on trespass notice. Thereafter they did
12 a line-up, and he made an identification but who knows
13 whether he made an identification from seeing him in
14 front of the store that day or the next day, I don't know
15 exactly when the lineup was done.

16 Additionally, Your Honor, there has been some
17 talk -- and I don't see this in any of the police
18 reports, but there has been some talk that Mr. Mack may
19 have been inside the store of the victim prior to that,
20 so there is multiple encounters from the two individuals
21 so we don't know whether the identification results from
22 which of those encounters.

23 THE COURT: All right. I wanted to know what
24 his primary objections were.

25 MR. LAWTON: I call the victim, Your Honor,

1 Andy Ayazgok.

2 AYTEKIN AYAZGOK,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LAWTON:

7 Q. Mr. Ayazgok, what name do you go by, in the
8 states?

9 A. A lot of people calls me Andy.

10 Q. Is it okay if I call you Andy?

11 A. No, sir, I don't mind.

12 Q. Do you own a store in Charleston County?

13 A. Yes, sir, I do.

14 Q. What is the name of the store?

15 A. Urban Gear.

16 Q. Where is it located?

17 A. It's located the [REDACTED]

18 Q. Do you remember what day y'all officially opened?

19 A. Yes, sir. It was 8 July -- 8 June, I'm sorry.

20 Q. Of what year?

21 A. 2007.

22 Q. Okay. Do you remember the afternoon of June 14,
23 2007?

24 A. Yes, sir, I do.

25 Q. Okay. Tell the judge what happened that

1 afternoon.

2 A. That afternoon, it was around about 7:30. It was
3 close time. I just took a vacuum cleaner out and was
4 ready to do the vacuum cleaner, basically, so we getting
5 ready to close to go home, and there was about five
6 people walked in.

7 Q. Do you know their race?

8 A. Excuse me?

9 Q. Do you know their race?

10 A. They were all black male.

11 Q. All right. All black males, and what happened
12 after that?

13 A. And they -- which is the gentleman sitting over
14 there, is the one person that walked in.

15 Q. Could you please tell the judge what he's wearing
16 today, what he's wearing?

17 A. He got the white shirt on.

18 Q. Okay. And does he have a tie on?

19 A. Yes, sir. He do have a tie on.

20 Q. Can you briefly describe the tie.

21 A. The tie is white with black stripe and navy blue
22 stripe.

23 Q. So you're in the store. Who is in the store with
24 you?

25 A. It was my cousin David.

1 Q. Okay. And what is he doing in the store that day?

2 A. He was right by the cash register. He was just
3 helping me. I don't exactly remember what he was doing
4 because we were closing the cash register already, but he
5 was right behind the cash register.

6 Q. And you referenced the individual you just pointed
7 out. What happened after that? What did he do?

8 A. He walked in to me, he straight -- because I was
9 right on the other side of store.

10 Q. How far apart -- and we'll just do it by me
11 walking back. Say I'm you, and then just tell me how far
12 when you first saw him.

13 A. When I first saw him, it's -- I know my store is
14 73 feet.

15 Q. Seventy-three feet?

16 A. Yes, sir. It's about 73 feet.

17 Q. About right here?

18 A. Yes, a little farther down.

19 Q. Okay.

20 A. About somewhere right there.

21 Q. What is the weather like right now, on June 14,
22 2007?

23 A. It was daylight.

24 Q. Daylight. Was it cloudy?

25 A. No, sir, it was sunny.

1 Q. So it wasn't raining?

2 A. No, it was sunshine.

3 Q. He's the first one in. What does he do when he
4 comes in?

5 A. He took the AK47, or rifle, whatever you want to
6 call it. It was just some machine gun.

7 Q. How far away, roughly -- and I'll walk to you --
8 when he pulled gun out?

9 A. He was very close to me about -- about five feet,
10 about four to five feet, the max.

11 Q. Tell me when to stop. Tell me when to stop when
12 you think the distance --

13 A. You can come a little more. About right there.

14 Q. Okay. And tell us what kind of look he got out on
15 his face when this happened? Was he wearing a mask?

16 A. No, he didn't have no mask on.

17 Q. Was he wearing anything that covered up his eyes
18 or any mouth or his nose?

19 A. No, he did not.

20 Q. Did he have a hat on?

21 A. Yes.

22 Q. What kind of hat?

23 A. It was a ski kind of mask, it was like a black ski
24 mask.

25 Q. So it didn't come up -- it wasn't like a baseball

1 hat?

2 A. No, no, nobody's face was covered.

3 Q. And what happened after -- and you got a clear
4 look at his face, correct?

5 A. Yes, sir, I did.

6 Q. Then what happened after that?

7 A. After that, he took the gun out and he told me to
8 get down and get down, and I got down, basically, and he
9 started hitting me with the AK47, with the bottom part,
10 started hitting me on the head.

11 Q. So you're on your stomach?

12 A. He was keep hitting me on my back and my head.

13 Q. Okay. What happened after that?

14 A. Then he hold my leg, or my feet, and pulled me to
15 the back.

16 Q. So where is your stomach? Is it on the ground
17 this time you're getting dragged?

18 A. I was on the ground. He keep hitting me when I
19 was on the ground.

20 Q. And what happened when you get in the back?

21 A. Him, and actually one of his friends, came out and
22 helped to tie us up. They brought David over there and
23 tied us up on the bed and told us do not move, do not
24 move, do not look at it, and that is when we was on the
25 ground, of course. We will shoot, we will shoot. They

1 keep trying to put the gun on our head, but they came --
2 the other guy had a handgun.

3 Q. Okay. So he's telling you not to look. Are your
4 eyes closed at this point?

5 A. No, no. I was just looking at the ground.

6 Q. Looking at the ground?

7 A. Yes, sir, because we was on the ground already.

8 Q. Okay. All right. Once you went to the ground,
9 you weren't able to see these guys? Were you able to see
10 their feet?

11 A. That's all, feet.

12 Q. But you clearly got a good look at his face as
13 he's walking towards you?

14 A. Yes. First when he did walk, yes, I did.

15 Q. And that individual is in this courtroom today,
16 correct?

17 A. Yes, sir.

18 Q. Okay. I want to fast forward to June 30th and this
19 is at the Sport Shot. Do you recall an encounter with
20 the defendant that day?

21 A. I don't understand the question.

22 Q. Did you see the defendant that day, on June 30th,
23 2007?

24 A. I don't remember exactly the day. What I did when
25 I saw him, I called police.

1 Q. You called the police, and did the police show up?

2 A. Yes, he did.

3 Q. Okay. And where was the defendant when the police
4 got there?

5 A. They were was in the burgundy car. It was waiting
6 in the parking lot. There was another short guy with
7 him, another short gentleman. My wife was in the store
8 that day.

9 Q. So this is the day of the 29th, the day before?
10 Is that what you're referring to?

11 A. Yeah.

12 Q. Okay. We'll talk about June 29th then. So your
13 wife is working, correct?

14 A. Yes. She was just there. She got a full time
15 job. She was just helping me that day. I just got
16 robbed. She was kind of worrying about me.

17 Q. And did you see the defendant come in your store?

18 A. Yes, sir.

19 Q. And he had an individual with him?

20 A. Yes, sir.

21 Q. Okay. And --

22 A. And then I told my wife that I think that's the
23 guy who robbed me, and that is him right there, and I'm
24 almost sure -- it's just some face you don't forget.
25 That's him right there.

1 Q. No question that is the man that robbed you?

2 A. That is the man who robbed me.

3 Q. And did he eventually leave?

4 A. Yes, he leave, and I called the police.

5 Q. Did the police arrive?

6 A. Yes, they did.

7 Q. Okay. And where did the defendant go? Did he
8 stay there?

9 A. No, because when -- he didn't know I had called
10 the police, of course, and he left already.

11 Q. All right.

12 A. And we left already, and once the police show up
13 and I did describe the car and what it looked like, he
14 was driving some kind of Pontiac, I believe burgundy or
15 maroon, something like that.

16 Q. Okay. Did you see the defendant again that day?

17 A. Oh, yeah. Once the police arrived, then he left
18 already. He was gone, and then we went to the police
19 officer and he told us, Okay, if he comes back, just give
20 us a call again, basically, is what happened.

21 So this police officer left. It was about two
22 minutes -- between two to five minutes later he showed up
23 again. He parked his car in the parking lot.

24 Q. And what did you do then?

25 A. And we call the police again.

1 Q. And what did the defendant do?

2 A. Defendant was gone again. Once we called the
3 police, he left again.

4 Q. All right. Now, tell us about the next day, June
5 30th. Did you have an opportunity to see the defendant
6 again, Joy Mack?

7 A. Yes, I did.

8 Q. Where did you see him?

9 A. I see him at the shopping center. There was a
10 place called 31 Sports.

11 Q. And what did you do once you saw the defendant?

12 A. I called police again.

13 Q. Okay. And did they show up?

14 A. Yes, they did.

15 Q. And what happened when the police got there? What
16 did they do?

17 A. So we explained to the police officer again what
18 happened, and then while we was explaining to him, and he
19 told me where he's at, and I told him, He's right there,
20 over there, at that store, place called 31 Sports,
21 and while I was explaining to the police officer, he
22 walked on our side, and once he walked in our side and
23 police officer told him, you know, basically this guy is
24 saying that you were the one who robbed him and asked him
25 identifications, and that is -- once we pulled back, and

1 me and my wife, we just let the police officer do his job
2 basically.

3 Q. Did you tell the police that's the guy?

4 A. Yes, I did.

5 Q. No question in your mind?

6 A. No question in my mind.

7 Q. And you're basing this on what happened on June
8 14th in your store? There was a robbery?

9 A. Yes, sir.

10 Q. I know you met with O. J. Faison, who is out in
11 the audience, on July 17th, and I'm going to show you
12 what's been marked as Court's Exhibit No. 1. Mr. Smiley,
13 see if you recognize that. Right here. (He meant
14 Court's Exhibit 2.)

15 BY MR. LAWTON:

16 Q. Do you remember when you were with O. J. Faison?

17 A. Yes.

18 Q. What did he tell you when he presented you the
19 photo lineup?

20 A. He asked me, are you sure that's the guy.
21 Actually, he didn't point me to the guy. He bring me the
22 photo lineup. He show me which one it is, and I told him
23 that is the one, and so he told me, are you sure? And I
24 said, Yes, I'm sure.

25 Q. All right. So he gives you this. Does he

1 indicate anybody is on there, any defendants or anybody
2 involved with this thing? Did he just ask you to
3 identify if there is anybody you recognize?

4 A. That is all he asked me, to identify anybody who
5 you know over there. He didn't point me --

6 Q. He didn't tell you Joy Mack is in that photo line
7 up?

8 A. No, he didn't.

9 Q. All right.

10 MR. LAWTON: Please answer any questions Mr.
11 Apostolou has for you.

12 CROSS-EXAMINATION

13 BY MR. APOSTOLOU:

14 Q. For the record, can I call you Andy as well?

15 A. Yes, sir.

16 Q. You just testified that about five people walked
17 into the store when the robbery happened.

18 A. Yes, sir.

19 Q. And Mr. Mack was the first one through the door?

20 A. Yes, sir. He was the first one.

21 Q. Can you describe him for me, based on your memory
22 at the time?

23 A. Based on memory -- what? I didn't get the
24 question.

25 Q. On June 14th, 2007?

1 A. Yes, sir.

2 Q. Can you describe him? What was he wearing?

3 A. Yeah. He had a black jeans, a black hoody, and
4 black skully hat. My memory is fresh. He had a black
5 outfit. Almost everything he had on was black.

6 Q. Black jeans?

7 A. Yeah.

8 Q. Black hoody?

9 A. Yeah.

10 Q. And black what?

11 A. Black skully hat. Like a snow hat.

12 Q. Snow hat?

13 A. Yes, a black snow hat. I can bring one in
14 tomorrow.

15 Q. That's okay. But that is basically -- it's not
16 like a stocking cap. It's like a real hat, right?

17 A. Yes, that's right. Yes, sir.

18 Q. And that was black?

19 A. Yes, sir.

20 Q. Nothing covered his face?

21 A. No, sir.

22 Q. Okay. And what about his hair? Could you see his
23 hair?

24 A. No, I could not see his hair, sir.

25 Q. Could you see whether he had dreadlocks, long

1 hair, short hair?

2 A. He had a hat on.

3 Q. So it looked like he had short hair?

4 A. Yes, but I couldn't pay attention what kind of
5 hair he had. He had a hat on.

6 Q. But he was wearing black jeans, black hoody,
7 sweatshirt?

8 A. Yes, sir.

9 Q. Was the hood up?

10 A. I don't remember that part.

11 Q. Okay. But then you saw the black hat as well?

12 A. Yes, sir.

13 Q. Okay. And were you able to describe anybody else
14 out of that group?

15 A. No, sir, that's the only one.

16 Q. Only one?

17 A. Yes, sir. And that was another one, light, I
18 remember, of course, but I call the police on that.

19 Q. So there was another guy that was light skinned?

20 A. Yes, short guy.

21 Q. You called police on him as well?

22 A. Yes, sir, I did.

23 Q. When did you call the police on him?

24 A. This was day after my robbery.

25 Q. Where did you see him?

1 A. It's the shame shopping center. They think I
2 don't remember them. That's what they think.

3 Q. Saw him in your store?

4 A. I saw him at the same store.

5 Q. Okay. So had you ever seen Mr. Mack before that
6 day?

7 A. Before the robbery, no.

8 Q. And you've seen him a couple times since then; is
9 that correct?

10 A. After that, I called police on them about three or
11 four times.

12 Q. You called the police on them three or four times?

13 A. I forget. It's so many times.

14 Q. Okay. When do you think the next time you saw him
15 was?

16 A. What --

17 Q. The robbery was on the 14th of June. When do you
18 think the next time you saw Mr. Mack was?

19 A. I don't remember exactly the day.

20 Q. Ball park.

21 A. Ball --

22 Q. B?

23 A. Park --

24 Q. Just ball park? When do you think?

25 A. About ten days.

1 Q. Next time was ten days?

2 A. Yeah.

3 Q. So that is the first time you saw him afterwards?

4 A. Yes, sir.

5 Q. And did you call the police that day?

6 A. No, sir, I did not.

7 Q. And why is that?

8 A. Of course, I was a little nervous, because I just
9 moved over there. I was over there for about, like, 20
10 days. I'm in a new neighborhood. The person almost
11 killed me.

12 Q. And where did you see him? Was he in your store?

13 A. No, sir. I did not see him in the store. I saw
14 him outside the store, 31 Sports, the front of the store,
15 not inside the store.

16 Q. So that is the second time you've seen him?

17 A. And the second time I see him, I called police on
18 him. I know that was him, because I have no doubt about
19 it.

20 Q. Second time you saw him was the 29th, the day
21 before?

22 A. Yes, sir, whatever day is over there. I don't
23 remember the day. I call the police.

24 Q. And was he in your store?

25 A. Yes, he was in my store.

1 Q. So he was inside your store?

2 A. Excuse me?

3 Q. I'm asking whether he was inside the store.

4 A. Yeah, he was inside the store with the same guy,
5 with the short guy.

6 Q. So that is the first time he came inside the store
7 since the robbery?

8 A. My memory, yes.

9 Q. And so -- the third time that you saw him, he came
10 a couple of times. Is there any indication that Joy knew
11 you had called police on the 29th?

12 A. I don't have no idea because I didn't call the
13 police right in front of him. I just called police
14 without knowing him. He will just -- like, he knew
15 something because -- I mean, I'm not saying he didn't
16 know because all I know, I call the police and he was
17 leaving, and once I call, the police showed up, he was
18 gone already, and once police leave then, he comes back
19 again.

20 Q. Okay. And the gun -- was Joy wearing gloves that
21 day?

22 A. No, he didn't wear no gloves. Nobody had a glove.
23 Because they were -- I saw a few of them, they was trying
24 to turn the light off, and they was using their T shirt
25 to turn the light off too so he wouldn't get no

1 fingerprint.

2 Q. So that is -- the third time you saw him was on
3 the 30th, and you saw him inside your store or you saw
4 him outside?

5 A. Outside.

6 Q. He said he was with the same guy before. Who are
7 you referring to as the same guy? You said the second
8 time, on 29th, he was with the same guy. Who was that
9 same guy?

10 A. I don't know the gentleman. He was not involved
11 in the robbery. I know that. It's the same -- his
12 friend, I guess, a short guy with him. I know he's not
13 involved in robbery.

14 Q. He's not involved in the robbery?

15 A. No, he's not involved in the robbery either,
16 because he was hanging around with him. I say, you're
17 hanging around with people like that.

18 Q. When did you have that conversation with that guy?

19 A. The day after we got robbed.

20 Q. The day after --

21 A. I'm sorry. The day after they arrested him.

22 Q. The day after they arrested Joy?

23 A. The day after they arrest him, or warrant -- the
24 day after he had a warrant arrest for him, the -- what he
25 had on the newspaper, they said basically he was in the

1 newspaper.

2 Q. Okay. So when they actually took the warrants out
3 for him?

4 A. No, the day after when they got him on a
5 newspaper.

6 Q. The day after the newspaper, you saw the other
7 individual?

8 A. Yeah, individual.

9 Q. How did you see the other individual?

10 A. He came to the store.

11 Q. He came to the store?

12 A. Yeah, it's like a public store. Everybody can
13 walk in, and I told them not to come into the store
14 again.

15 Q. Did you ever have any conversations with Joy Mack?

16 A. No.

17 Q. Never?

18 A. No. You mean conversation in the store?

19 Q. Any conversation.

20 A. Some friends came to my store the day when he saw
21 the newspaper. He had an arrest warrant for him. He had
22 two friends came to my store, and that morning, it was --

23 Q. His friend or cousin?

24 A. I don't know which one. They told me that he was
25 not the one, he was not the one, and you got the wrong

1 guy and I told him no, it's not the wrong guy. That's
2 him right there. They even told me how much was your
3 damage? We'll pay for it.

4 I said it's not the money. I said, Life don't
5 come back with money. I said, he's the one that did it.

6 And then Joy Mack calls his cousin because he want
7 to talk to me, and I refused to talk to him, and then he
8 was keep want to talk to me, trying to say he's not the
9 one, and then I grabbed the phone, I talked to him and he
10 keep saying, I'm not the one that did it.

11 I said, I know you're the one. I know you did it,
12 and I said, I knew you were the one who did it. I said
13 you're the only one. You got to tell me who was
14 arrested, and that was it.

15 That was all the conversation I had. And then
16 they keep coming again, and I called Detective Faison.
17 And I talked to him, and I said, These people's families
18 keep coming over here trying to tell me he's not the one.

19 And Detective Faison say, If they have any problem
20 and they have any question, they can just call me, and
21 that is what I did. I give them advice and numbers.

22 Q. So in that rather lengthy discourse, you said if
23 you said something like if you didn't -- what did you
24 just -- you said something about if you didn't do it, you
25 know who did or something?

1 A. Yeah. He was saying that.

2 Q. He was saying that he didn't do it?

3 A. Yeah, he was saying it, and his friends were
4 coming over there, trying say they didn't do it.

5 Q. He was trying to say he didn't do it.

6 A. Yes.

7 Q. And then you said, I told you, if you didn't do
8 it, do you know who did?

9 A. No. He said he's the one that did it. I said, I
10 know it's you. He said I have a son, I have a son, and I
11 said, I have a son too. Did you care about when I had my
12 son? Why I should care about you?

13 Q. Okay. Did you ever say anything to him about if
14 you didn't do it, do you know who did?

15 A. Excuse me?

16 Q. Did you ever say to him on the telephone in that
17 conversation, that if he didn't do it, then --

18 A. Yes, I did. I said, No, you did it. I say, I
19 know you did it, and if you tell me who was the rest of
20 the people, and then I can help you maybe.

21 That's all I told him. I didn't say I said he did
22 it. I said if you tell the police officer who did the
23 rest, that is it. That is the only conversation we had.

24 Q. How far away was Joy Mack? Was he the first one
25 through the door? He had an AK47?

1 A. When he take it out of his pants.

2 Q. He had the gun in his pants?

3 A. Yes, sir.

4 Q. And you didn't see it up until that point?

5 A. No.

6 Q. Until, I think, Mr. Lawton was about five feet
7 from you?

8 A. Yeah, yeah. That is when he took the gun out.

9 Q. And then he took it out of his pants?

10 A. Yes, sir, he did.

11 Q. Okay. How tall is he?

12 A. I'm not going on the inch, all I know, he was
13 taller than me.

14 Q. You said that his picture was in the newspaper.

15 A. Yes.

16 Q. When was that?

17 A. I recognized them. I don't remember -- the 30th,
18 I guess, or 31st. I don't remember the date.

19 Q. Okay.

20 A. And they said they were looking for him,
21 basically, for armed robbery.

22 Q. And they put his picture in the paper?

23 A. Yes, they did, newspaper. I got it, you know. I
24 can bring it.

25 Q. That would be helpful.

1 A. Okay.

2 Q. Okay. So you saw him on the 29th and then on the
3 30th. I hadn't heard you mention the car at all.

4 A. Yeah.

5 Q. Tell us about the car.

6 A. What car? The car he was driving?

7 Q. Yes, sir.

8 A. It was a Pontiac. I know it was I a Pontiac, and
9 it was like a maroon color.

10 Q. Uh-huh.

11 A. That's all I know.

12 Q. Okay. And that got your attention because that
13 was the get-away car?

14 A. On armed robbery?

15 Q. Yes.

16 A. I didn't see the car on armed robbery. I'm just
17 saying the car he was driving.

18 Q. Does the car play any role in your identification
19 of Mr. Mack?

20 A. I didn't get the question.

21 Q. Is your identification of Mr. Mack based solely
22 off of seeing him in the area of your store, or is it
23 related to seeing him driving that vehicle, or that
24 vehicle?

25 A. No. By the vehicle, I never seen the vehicle

1 armed robbery. It's by him.

2 Q. So solely by him. There is no connection to the
3 car at all?

4 A. No, not at all. I didn't see the car when I was
5 robbed.

6 Q. Did you ever see the car on any of his visits to
7 your store?

8 A. Yes, the car he was driving. That's all.

9 Q. But you saw him driving the car?

10 A. Yes, I did.

11 Q. But that didn't have anything to do with your
12 identification?

13 A. No, it did not.

14 Q. Okay. And the first time you recognized him was
15 the 29th, is that --

16 A. Yes.

17 Q. All right. And so you said when Officer
18 Singletary showed up -- is that correct, on the 30th,
19 Officer Singletary showed up?

20 A. I don't remember -- yes, yes.

21 Q. So he showed up, and you were talking to him in
22 front of the store?

23 A. Excuse me? Yes, from the store. We was talking
24 when I told him the story, basically, and that is when he
25 walked us outside.

1 Q. He walked out?

2 A. Yeah, he walked out.

3 Q. And then what happened at that point?

4 A. At that point the officer told him that basically
5 this gentleman was saying he was involved in an armed
6 robbery, and we need to see identification. He asked for
7 his ID card, and that is when I went back to the inside.
8 I let the police officer do his job.

9 Q. So Singletary explained to Joy Mack he was wanted
10 for armed robbery?

11 A. No, no.

12 Q. There was an investigation of an armed robbery?

13 A. No. I mean, it is an investigation, but it was
14 nothing to do with him at that moment so they got my
15 statement. They were waiting to call Detective Faison,
16 and when he did connection with Detective Faison, and
17 then they told me Detective Faison say, Let him go right
18 now.

19 He said, we'll get it was that Friday or Saturday.
20 I don't remember exactly the day, but that Monday
21 Detective Faison said, Let him go right now. We'll get
22 arrest warrant for him for Monday.

23 Q. But my question was, while were you standing there
24 did Officer Singletary explain to Mr. Mack that this was
25 an investigation of an armed robbery?

1 A. Yeah, he did. He said basically -- I mean, the
2 gentleman is saying you robbed him. That is what he told
3 people. He said that is why we need your identification.

4 Q. Did you hear what Mr. Mack said?

5 A. No, I didn't hear that. I went back inside.

6 Q. You went back inside?

7 A. Yes, I did.

8 Q. So you had three encounters with him before you
9 picked him out of the lineup?

10 A. That was the first time. The second time I call
11 the police -- it is the fourth time.

12 Q. Fourth time?

13 A. Yes. Every time I call the police, and the police
14 officer arrives and he's gone already.

15 Q. Did you tell any of the police that you had seen
16 him at the store several times?

17 A. No, I did not.

18 Q. Okay. Did you put it in any of your statements?

19 A. Oh, I mean I told the police officer. I told the
20 police officer, that we call the police officer, before
21 but they never even catch him.

22 Q. They never caught him?

23 A. No.

24 Q. But you did tell the police that you had seen the
25 person that had robbed you coming into your store?

1 A. Yes, sir.

2 Q. Okay. And did you put that in any of your
3 statements that you wrote to the police?

4 A. I cannot write in English the -- the police
5 officer write my statement. I told him what happened
6 though.

7 Q. Okay.

8 A. I write my name.

9 Q. I understand that you didn't write it, but did you
10 tell him about it?

11 A. Yes, I did.

12 Q. You did tell him about that?

13 A. Yeah.

14 Q. That you had seen him several times in the store
15 on and off?

16 A. I don't remember that part, but I --

17 Q. What part don't you remember?

18 A. That I told him I saw him several times or that I
19 called the police officer on him. I think I remember I
20 called police officer on him. I did tell him that part.
21 I explained the statement story basically.

22 Q. While he was writing your statement?

23 A. Yeah.

24 Q. Okay.

25 A. He wrote the same story, exactly what I'm telling

1 him right now, how many times I call police on him.
2 Every time police officer arrived that he would be gone
3 already.

4 Q. Okay. Was -- the publication in the newspaper,
5 was that before you picked out -- I think Mr. Lawton used
6 the dates of -- for the lineup, July 17th?

7 A. Yes.

8 Q. For the lineup?

9 A. Yes.

10 Q. Was the publication in the paper before the
11 lineup?

12 A. Yeah. It was after the lineup.

13 Q. The publication in the paper was after the lineup?

14 A. Yes, sir.

15 Q. Okay. And the car didn't play any import in your
16 identification?

17 A. No, sir, no.

18 MR. APOSTOLOU: That's all I have, Judge.

19 THE COURT: Redirect?

20 MR. LAWTON: No, Your Honor.

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

22 All right. It's quarter to 6:00. We'll
23 reconvene at 9:00 on this hearing in the morning. I'll
24 hear all the motions. The jury is coming back at 10:00.
25 We'll adjourn and reconvene at 9:00 in the morning on

1 these motions. See you in the morning at 9:00. Have a
2 good evening.

3 (Recess taken.)

4 (Tuesday, February 24, 2009.)

5 (In open court, jury not present.)

6 THE COURT: Call your next witness.

7 MR. LAWTON: Officer Singletary.

8 DAVID SINGLETARY,

9 having been first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. LAWTON:

13 Q. We're here for a Biggers motion by defendant's
14 attorney, Alex Apostolou. Can you tell the judge where
15 you're currently employed?

16 A. North Charleston police department.

17 Q. How long have you been there?

18 A. A little over 15 years.

19 Q. Where were you working in June of '07? Were you
20 in North Charleston?

21 A. North Charleston.

22 Q. Do you recall the afternoon of June 30th, 2007?

23 A. Yes, sir.

24 Q. Okay. Were you called out to an incident?

25 A. Yes, sir, I was.

1 Q. Okay. Where was that located?

2 A. It was at the Urban Gear, which is located [REDACTED]

3 [REDACTED] unit 105.

4 Q. Okay. Who did you meet with when you got there?

5 A. The victim. I can't pronounce his last name.

6 Q. Was it Andy?

7 A. The gentleman that was up here yesterday.

8 Q. What did he tell you when you got there?

9 A. He advised me that he observed a male subject that
10 was involved in an armed robbery couple weeks prior of
11 his store.

12 Q. Okay. And what happened after that? Did he say
13 where the guy was?

14 A. He told me that he went into the 31 Sports store
15 which is a store a couple doors down from his store,
16 and --

17 Q. Did the guy ever come out?

18 A. He did.

19 Q. What did Andy do? Did he indicate anything to
20 you?

21 A. He said that that was him right there, something
22 to that effect. I'm not sure verbatim what his words
23 were.

24 Q. How sure was he? Was he hesitant?

25 A. No, no, sir. He was 100 positive.

1 Q. And he was referring to this guy involved in the
2 armed robbery of his store?

3 A. Yes, sir.

4 Q. Okay. One moment, Your Honor.

5 MR. LAWTON: Your witness.

6 CROSS-EXAMINATION

7 BY MR. APOSTOLOU:

8 Q. Andy, when he called you, did you go and meet with
9 him before you saw the defendant?

10 A. I believe so, yes, sir.

11 Q. And where did that conversation take place first?

12 A. I want to say it was either right in front of the
13 store or right in the parking lot.

14 Q. But it wasn't inside Andy's store?

15 A. I don't think so, no, sir. I believe it was
16 outside.

17 Q. He met you outside the store?

18 A. I believe so.

19 Q. And at that point could you see Joy Mack at all?

20 A. No, sir. Not that I recall.

21 Q. Okay. And so he was -- having conversation with
22 you, Andy and you were having a conversation about the
23 incident, and he was telling you about the robbery?

24 A. That's right.

25 Q. Had you heard anything about the robbery?

1 A. I may have seen something in the daily reports
2 that we did a couple weeks prior to this happening, but I
3 don't -- it didn't stick out in my mind.

4 Q. So you basically didn't know anything about the
5 robbery at that time?

6 A. No.

7 Q. And so he was explaining that Mr. Mack was one of
8 the people involved in the robbery?

9 A. That's correct.

10 Q. Did he tell you which one it was?

11 A. I can't recall if he said which and in what order
12 he came in the store, and I don't recall anything like
13 that.

14 Q. Did he tell you whether he was the one that struck
15 him with a rifle or anything to that effect?

16 A. Eventually he did. I think I got a written
17 statement from him, and he indicated that in the
18 statement.

19 Q. And so y'all are out there talking. Did you
20 finish your conversation or did Joy Mack exit the store?

21 A. I believe he may have exited the store while we
22 were speaking, and I can't recall. It's been two years
23 ago.

24 Q. And when Mr. Mack walked up, did Mr. Mack turn and
25 run or anything like that?

1 A. No, sir. I asked for his identification, he gave
2 it over, all that kind of -- very cooperative.

3 Q. And at that point did Andy stick around or did he
4 go inside his own store? Do you remember?

5 A. I can't remember. I'm sorry.

6 Q. Did you ever explain --

7 A. I can't remember. I remember speaking with
8 Mr. Mack for a little bit, and then I don't remember what
9 happened after that. I just can't recall.

10 Q. Did you explain to Mr. Mack that he was being
11 investigated for an armed robbery, or did you just talk
12 to him and generally just get his identification?

13 A. I think we just generally was getting his
14 identification. I can't recall exactly what I said to
15 him.

16 Q. Okay. Did Andy -- when he was having that
17 conversation with you, did he ever say, This is the third
18 or fourth time that I've run into this individual?

19 A. I think he did. I noticed in my notes here that
20 we placed the store on what we call our SPR list, and
21 something -- I believe he said that, you know, he had
22 seen him there before that, before that date, and he
23 wanted the -- you know, some extra patrol for the store
24 that weekend.

25 Q. Okay. And after you talked to Andy, after you

1 talked to Joy, you just put him on trespass notice?

2 A. Yes, sir.

3 Q. Why didn't you just arrest him?

4 A. I spoke with detective sergeant or detective
5 sergeant at the time, Perry, now it's Lieutenant Perry
6 with us. Gave him the information, what we had and
7 everything. Sergeant Perry at the time advised me to
8 just get his information, positively identify him, get a
9 written statement from the victim, Andy, and forward it
10 to the office.

11 Q. And Andy at that time -- I don't want to go back
12 over, but briefly he did say he had seen him multiple
13 times, or at least one time prior, between the robbery
14 and that day, he told you that he had seen him before?

15 A. I believe so, yes, sir.

16 Q. Did he tell you he had called police the day
17 before on him?

18 A. I can't remember that. I don't remember.

19 Q. And there is -- the car, the vehicle, does that
20 play any relevance in the identification?

21 A. I don't recall. I know -- I read a copy of the
22 statement, and it's in the statement, in his statement,
23 the car that is owned. I don't recall what the relevance
24 was at the time. I just don't remember.

25 Q. Okay.

1 A. I apologize.

2 Q. And did you have any input in putting together
3 that lineup?

4 A. No, sir, I didn't.

5 Q. Did you have any input in putting out the warrants
6 or anything?

7 A. No, sir. I just took the statement, positively
8 identified Mr. Mack, and forwarded that to the office
9 and --

10 Q. When you took the statement, you wrote the
11 statement for him, but you just wrote down what he said?

12 A. That's right.

13 Q. He didn't put any words into his mouth or anything
14 like that?

15 A. Not at all.

16 Q. And so you just got the ID, took it, left, never
17 really talked to Joy about whether this was an armed
18 robbery or what this was about?

19 A. That's right, yes, sir.

20 Q. And just put him on trespass notice?

21 A. Yes.

22 Q. What was Joy's reaction when you put him on
23 trespass notice?

24 A. He was a little miffed, but, you know, he was --
25 like I said, he was cooperative with us.

1 Q. Okay. And Joy didn't make any inculpatory
2 statements there, did he?

3 A. No, sir, he didn't. Court's indulgence.

4 MR. APOSTOLOU: We have nothing further,
5 Judge.

6 THE COURT: Thank you. Any redirect?

7 MR. LAWTON: No, sir.

8 THE COURT: You may step down. You may be
9 excused.

10 MR. LAWTON: Your Honor, can we go to the
11 other motion Mr. Smiley has.

12 MR. SMILEY: My first motion, Your Honor,
13 deals with the admissibility of any prior convictions of
14 my client if he were to testify for impeachment purposes.
15 I don't know which one --

16 THE COURT: Does he have a prior record?

17 MR. SMILEY: Yes, sir, he does.

18 THE COURT: What charges would qualify, in
19 your opinion, or do any of them qualify?

20 MR. SMILEY: Hold on just a second, Your
21 Honor. Let me grab his record.

22 THE COURT: Which ones do you plan on using?
23 How about that.

24 MR. LAWTON: Your Honor, he has an '03
25 possession of a stolen motor vehicle; he has a '03 B and

1 E of a motor vehicle; he has an additional '03 possession
2 of stolen motor vehicle; and he has an '04 ABHAN, and he
3 has an unlawful operator of a chop shop, '03.

4 MR. SMILEY: My understanding -- and I don't
5 have any objections to those, is there would be three B
6 and Es, 1, 2, 3.

7 THE COURT: This has possession of stolen
8 vehicle, two possession and one breaking and entering.

9 MR. LAWTON: And ABHAN and a chop shop.

10 THE COURT: And have you got some more?

11 MR. SMILEY: The only thing I might have
12 objection to is the chop shop. I don't know if that is a
13 crime of -- I guess you could argue it is. I don't have
14 any objections to those.

15 THE COURT: I think he's probably saying
16 that's over a year.

17 MR. SMILEY: Yes, sir, yes, sir. We're good,
18 if those are the ones you're going to use.

19 My next motion is pretty standard. I would
20 ask you to sequester the witnesses in this case during
21 the pendency of the trial, other than the officer and
22 allow the victim to be present.

23 THE COURT: What is the state's position on
24 sequestering witnesses?

25 MR. LAWTON: Your Honor, we're fine with

1 that.. Of course we would like O.J. Faison, the lead
2 detective, to be present in the courtroom at all times,
3 and then Andy, of course.

4 MR. SMILEY: I can't argue with him about
5 that.

6 THE COURT: I want you to tell your
7 witnesses, After you get off the witness stand, don't go
8 out in the hall and tell the other witnesses what
9 transpired. Okay?

10 MR. LAWTON: Yes, sir. Also, I would add
11 that -- I guess it works both ways, to preclude Mr.
12 Goss's family from being inside the courtroom as well,
13 since they're on witness list.

14 THE COURT: Whoever he's going to use as a
15 witness will stay out. If he's got family members, he's
16 not going to be using --

17 MR. SMILEY: I understand completely, and
18 we'll make the proper instruction.

19 Your Honor, my next motion is Jackson v.
20 Denham. I do not believe that the state intends to
21 introduce any in custody interrogation statements of my
22 client.

23 MR. LAWTON: That's correct, and as far as
24 our case in chief, I would say that if he does take the
25 stand, we have the right --

1 MR. SMILEY: I understand that, but the case
2 in chief.

3 MR. LAWTON: Correct.

4 MR. SMILEY: Next thing is, I don't believe a
5 Biggers hearing is going to be necessary for my client,
6 but just for the record, I would make a vigorous motion
7 to make sure there is no ID being offered of my client.

8 MR. LAWTON: Your Honor, the only
9 identification, for your client, would be prior to the
10 armed robbery, and I think, as far as, you know, your guy
11 acknowledged he had been in there earlier that week --

12 MR. SMILEY: But as far as photo lineups.

13 MR. LAWTON: No photo lineups as far as that,
14 Your Honor.

15 MR. SMILEY: All right. Just is making my
16 record, Your Honor. Any prior bad acts, I would make a
17 motion in limine to exclude any prior bad acts unless
18 they're being -- unless we hear about them now.

19 MR. LAWTON: Your Honor, if it opens door to
20 his character, then of course I think we can get in --

21 THE COURT: I think he's talking about your
22 case in chief.

23 MR. LAWTON: Yes, sir.

24 THE COURT: He's not talking about any
25 rebuttal or cross-examination. Are you planning on

1 offering anything?

2 MR. LAWTON: No, sir, no, sir, no, sir.

3 THE COURT: He said he's not planning on
4 doing that.

5 MR. SMILEY: I'm just making my record ahead
6 of time, Your Honor, and I believe that covers my
7 motions.

8 THE COURT: Okay. Mr. Apostolou you have any
9 motions?

10 MR. APOSTOLOU: I do, Your Honor. My first
11 motion, Your Honor, in the investigation of this matter,
12 Joy Mack submitted to a polygraph that was administered
13 by a polygrapher of the state's choosing.

14 The state's polygrapher determined Joy Mack
15 did not pass that polygraph. I would make a motion to
16 exclude any reference to the polygraph or any results of
17 the polygraph from being entered into.

18 THE COURT: I assume the state is not going
19 to do that.

20 MR. APOSTOLOU: I would assume so also.

21 THE COURT: That's correct?

22 MR. LAWTON: Of course nothing to do with the
23 results, but I believe if Mr. Joy Mack does take the
24 stand, then if something does come out as far as what he
25 says, then I think the comments he made not regarding the

1 results could possibly come in.

2 THE COURT: Well, what kind of comments did
3 he make?

4 MR. LAWTON: I believe he indicated he knew
5 who Darrell Goss was.

6 THE COURT: Okay.

7 MR. LAWTON: And so that is just --

8 THE COURT: What else?

9 MR. LAWTON: Nothing of any other
10 significance that I'm aware of.

11 THE COURT: Well, we'll make it real clear.
12 I don't want any indications whatsoever that the lie
13 detector was taken. I expect you to cover that with the
14 officers, okay? Anything he said is relevant for
15 impeachment purposes. If he takes the witness stand,
16 it's fair game.

17 MR. APOSTOLOU: I agree with that, Your
18 Honor. My motion is about their case in chief.

19 THE COURT: I understand, but he's saying
20 he's not going to do it.

21 MR. APOSTOLOU: I understand that. The next
22 thing that I would have a motion is about my client's
23 prior record, Judge. He does have a prior record. If he
24 does --

25 THE COURT: Do you have a copy of it?

1 MR. APOSTOLOU: I do, Your Honor.

2 THE COURT: What do you think applies?

3 MR. APOSTOLOU: Well, Judge, there is nothing
4 on my client's prior record, at all, exceptor some
5 narcotics convictions. Narcotics convictions have been
6 determined not to be indicative of truthfulness, so I
7 don't see the relevance of any of the narcotics
8 convictions coming in.

9 THE COURT: What is he charged with?

10 MR. LAWTON: Distribution of crack, Your
11 Honor.

12 THE COURT: Is that all you have?

13 MR. LAWTON: That is the only thing I would
14 think would have any significance, and I would ask Your
15 Honor in the past, it has been allowed to say Mr. Mack,
16 if he takes the stand, do you have a prior felony on your
17 record? Of course, if he denies it, then I can offer it
18 in. I won't mention what it is, but I would ask the
19 Court to grant that. It doesn't get into what it is. Of
20 course, if he denies it --

21 THE COURT: What is your position on that?

22 MR. APOSTOLOU: I don't like it.

23 THE COURT: Well, I know you don't like it.
24 You won't like anything he does as far as your client is
25 concerned, but what is your legal position on it?

1 MR. APOSTOLOU: My legal position is that
2 just leaves the jury to speculate about the nature of
3 that felony, and the Courts have determined that
4 narcotics are not indicative of truthfulness, so there is
5 no benefit to it, and if we just throw a felony out in
6 front of that that the jury is free -- he's probably got
7 an armed robbery out there or something to that effect,
8 and I think that would create more ambiguity than it
9 would cure.

10 MR. LAWTON: I would argue, of course, it
11 carries more than 15 years. It is then ten years, Your
12 Honor. It's not a possession type thing. This isn't
13 dealing with his fault. It's a distribution thing, and I
14 think that goes to him taking the stand, his character of
15 him providing a substance to someone else, and I thought
16 the happy medium would be -- fall in the middle.

17 THE COURT: What I'm going to do on that
18 motion, I'm going to take that under advisement, and if
19 he does decide to take the stand, before the prosecutor
20 goes into it, I may listen to some in camera testimony
21 and how it should be handled before we cover that.

22 So before you go into it, assuming Mr. Mack
23 does take the stand, let me know when you're going into
24 it. I will excuse the jury, and I'd make a decision at
25 that time. Or if I'm going to let you do what you

1 said -- because I think it probably applies to the
2 statute. The question of whether it's a 403 evaluation,
3 and that is his argument, it's hard to make a 403
4 evaluation if I don't hear some testimony. Okay?

5 MR. APOSTOLOU: And then prior bad acts,
6 Judge, the case in chief, if he gets on the stand I
7 understand he opens the door they might come to it
8 anything else, they might try to enter into the case --

9 MR. LAWTON: Your Honor, nothing in our case.

10 MR. APOSTOLOU: That's fine. And then the
11 last motion regards the lineup, and obviously we're not
12 at that point.

13 THE COURT: Anything else?

14 MR. APOSTOLOU: No, Your Honor.

15 THE COURT: Okay. Where are we on the police
16 officer?

17 MR. LAWTON: Your Honor, if I could step out.

18 THE COURT: The jury is not going to be here
19 until 10:00, so is there anything else we need to cover
20 while we're waiting on your officer to get here?

21 MR. LAWTON: Yes, sir. I would ask that -- I
22 know when we talked about this about a month ago with
23 Mr. Smiley that he was not willing to stipulate to the
24 chain involving things, and I still --

25 MR. SMILEY: I have talked to my client. He

1 doesn't wish to stipulate.

2 THE COURT: What, DNA?

3 MR. SMILEY: We got DNA. We've got some
4 firearms involved.

5 THE COURT: Any tests done on the firearms?

6 MR. SMILEY: Yes.

7 MR. LAWTON: The DNA was on the firearm, Your
8 Honor.

9 MR. SMILEY: But I talked to my client, and
10 he doesn't wish to stipulate to anything, and I've
11 explained to him what that means, and so we can't enter
12 into a stipulation, Your Honor.

13 THE COURT: Okay. All right.

14 MR. LAWTON: Honor, if it please the Court,
15 if I could step out and see if I can locate Mr. Faison
16 and find out.

17 THE COURT: Okay.

18 MR. LAWTON: Your Honor, I'm going to go
19 ahead and enter these pictures into evidence.

20 MR. SMILEY: We don't have an objection to
21 them. I think he still has to lay a foundation, but I'm
22 not going to object once you lay the foundation.

23 MR. LAWTON: We can do that.

24 THE COURT: You understand that? Once you
25 lay a proper foundation. We're still waiting on two

1 jurors.

2 Is the police officer here?

3 MR. SMILEY: He just arrived.

4 MR. LAWTON: State calls detective O.J.

5 Faison.

6 O.J. FAISON,

7 having been first duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. LAWTON:

11 Q. How are you doing, Detective Faison?

12 A. I'm doing all right.

13 Q. Can you tell the judge where you're currently
14 employed?

15 A. City of North Charleston, police department and
16 narcotics division.

17 Q. Okay. And in the summer of '07, what was your
18 duties?

19 A. I was a detective in crime against persons.

20 Q. Okay. And you were the lead detective in the
21 armed robbery, kidnapping, et cetera, that occurred, at
22 the Urban Wear store in June of '07?

23 A. Yes, sir.

24 Q. And you know the victim, Andy, correct?

25 A. Yes, sir.

1 Q. Okay. I'm going to fast forward to June 30th of
2 '07, okay? This is when there was a show of
3 identification involving defendant Joy Mack and the
4 victim, Andy. Do you recall detective -- or Officer
5 Singletary conduct contacting you?

6 A Yes, sir.

7 Q. Okay. And what did you advise Officer Singletary?

8 A. Well, actually, if I'm not mistaken, he contacted
9 my supervisor.

10 Q. Okay.

11 A. At the time which was Sergeant Perry.

12 Q. Okay. And when did you order the photo lineup?

13 A. Well, as soon as I got aware of the whole
14 situation, I ordered it through Charleston County Jail.

15 Q. Okay. And you don't have anything to do with what
16 photos go in there and all that?

17 A. No, sir.

18 Q. Okay. Do you recall when you actually did the
19 photo lineup?

20 A. I don't remember the exact date and time, but
21 whenever I got aware of the situation, I gave them a call
22 and --

23 Q. I'm going to show you Court's Exhibit No. 2, let
24 you look at that, and does that refresh your memory as
25 far as the date?

1 A. Yes.

2 Q. Okay. Can you tell the judge the date?

3 A. The date that actually dated on the picture is
4 07/17/2007, I believe.

5 Q. Okay. And then there is an admonition of rights.
6 Did you not give Andy one of those?

7 A. No, sir, because I just told him to take a look at
8 the photograph and tell me if you recognize anybody, if
9 you did recognize them, circle them and sign it, and just
10 tell me who the person is that you recognize.

11 Q. Okay. So you didn't indicate that this Joy Mack
12 was in there?

13 A. No, sir.

14 Q. Okay. And didn't point your figure ever at
15 anybody?

16 A. No, sir.

17 Q. Okay. And who was the person that Andy actually
18 circled in that?

19 A. This is number three, which is Joy Mack.

20 Q. Okay.

21 MR. LAWTON: One moment, Your Honor.

22 All right. Please answer any questions
23 Mr. Apostolou may have.

24 CROSS-EXAMINATION

25 BY MR. APOSTOLOU:

1 Q. Thank you, Mr. Faison. You said that as soon as
2 you got things in order, you showed him this lineup?

3 A. Yes. As soon as I received it, because I called
4 Charleston County Jail, and they didn't have it on the
5 exact date that I called them, so I had to wait till they
6 had it ready.

7 Q. So the jail put the list together?

8 A. Yes, yes, sir.

9 Q. Had you met with Andy prior to the 30th of --
10 what, June?

11 A. Yes, because I have the case.

12 Q. So you were the investigator?

13 A. Yeah. I'm the lead investigator on the case.

14 Q. And you came out there the 14th, date --

15 A. The day of the robbery, if that is the day of the
16 robbery, yes, sir, I did.

17 Q. And you spoke to Andy?

18 A. Yes, sir.

19 Q. And did he talk about any of the description of
20 the people?

21 A. Actually, I believe, if I'm not mistaken, I don't
22 have the case file in front of me. I believe Detective
23 Elmore was actually the person that actually initially
24 talked to him and got a statement from him, if I'm not
25 mistaken. I don't have the case file in front of me.

1 Q. I understand that, by as the case officer, did you
2 have --

3 A. Yeah, I did eventually spoke with him.

4 Q. Okay. Did you have any input into what the
5 description he gave of the individuals was?

6 A. I can't really recall off the top of my head.
7 Once again, I have to refer back to the --

8 Q. Okay. And so when you got the lineup together,
9 you went and you showed it to Andy?

10 A. Yes, I did.

11 Q. And that was on the 17th of July?

12 A. Yes, yes, it was.

13 Q. Okay. And I think Andy testified yesterday that
14 there was a photo published in the newspaper?

15 A. I can't recall it, it possibly because was, but I
16 don't recall it, to be honest with you. I'm not trying
17 to say it's not, but I don't recall it.

18 Q. Do you know when that photo was published?

19 A. No, because I don't recall it.

20 Q. Do you know when the warrants were taken out?

21 A. Everything would be in that case file. I don't
22 remember an exact date.

23 Q. Would the date of the 2nd of July ring a bell?

24 A. I mean, if that is what it said on the warrant,
25 that is what I got it.

1 Q. All right. So you got the warrants on the 2nd of
2 July, and you did the lineup on the 17th of July?

3 A. Yes, I did.

4 Q. Okay. Why would you do the lineup two weeks
5 after?

6 A. Because that is what I had to wait for the jail to
7 get it to me.

8 Q. Okay. So you pulled the warrants without any
9 regard to whether he could identify them or not?

10 A. He positively identified him, and I spoke with
11 him. I spoke with him the week and everything, and he
12 positively identified them.

13 Q. How did he positively identify them?

14 A. By actually pointing them out to Sergeant
15 Singletary.

16 Q. Okay. And that was on the 30th?

17 A. Yeah. If I'm not mistaken, yes.

18 Q. Okay. And are you aware that he had had several
19 contacts with Mr. Mack prior to that?

20 A. I knew of at least two occasions because he told
21 me he called the cops, which I believe I stated in my
22 statement on two occasions -- he came on the first
23 occasion, when the officer responded out there, he
24 already left. He did give me a tag and everything of the
25 vehicle that he left in, but I think on the second case,

1 that is when David Singletary came out there and
2 positively ID'd him, said that's the guy.

3 Q. You're saying that was in your supplement?

4 A. I believe it was in my supplement.

5 Q. Okay. Do you know what date that supplement was?

6 A. No, sir. This is, like, two years ago. I don't
7 recall the dates.

8 Q. Okay. So since the photo lineup was two weeks
9 after the warrant was pulled, then it's pretty safe to
10 say you didn't rely on the photo lineup for the warrants
11 at all?

12 A. No, sir.

13 Q. And the previous description -- I mean, the
14 previous contact with the defendant, between the
15 defendant and the victim, you said that was two times?

16 A. I said I know at least two times.

17 Q. Do you know when the first time that the victim
18 stated that that was the --

19 A. The very first time might have been -- could have
20 been a week before, three days prior. I'm not 100
21 percent sure, but I know it was at least two occasions
22 that I know of.

23 Q. Before the 30th?

24 A. No, no --

25 Q. The 30th being --

1 A. One occasion, then the 30th would have been the
2 second occasion.

3 Q. Okay. And so he positively ID'd him on the 30th,
4 but y'all put him on trespass notice.

5 A. I didn't have nothing to do with that, so I don't
6 know what really transpired out there --

7 Q. Okay.

8 A. -- that day.

9 Q. Okay.

10 MR. APOSTOLOU: Court's indulgence. Nothing
11 further.

12 THE COURT: Redirect.

13 MR. LAWTON: Nothing, Your Honor.

14 THE COURT: You may step down. Any further
15 witnesses?

16 MR. LAWTON: No, Your Honor.

17 THE COURT: Mr. Apostolou, do you have any
18 witnesses you're you want to offer pursuant to the
19 lineup?

20 MR. APOSTOLOU: No, Your Honor.

21 THE COURT: First of all, let me make sure I
22 understand what you're asking the Court to do. I assume
23 you're asking the Court to suppress the lineup evidence;
24 is that correct?

25 MR. APOSTOLOU: That is correct, Your Honor.

1 THE COURT: And is that the only thing you're
2 asking the Court to do?

3 MR. APOSTOLOU: Yes.

4 THE COURT: All right. I'll be glad to hear
5 your argument on lineup issues.

6 MR. APOSTOLOU: Thank you, Your Honor. The
7 lineup suggests impartiality to a jury. It suggests that
8 the person viewed the defendant, then the next contact
9 they had with them was the picture and the person circled
10 it, and that is what the connotation is of the lineup.
11 That doesn't corroborate at all the facts of this
12 situation.

13 We have had three encounters between Mr. Mack
14 and Andy prior to this. The lineup itself was on the
15 17th, two weeks after the warrants were taken out.
16 Officer Singletary was standing there, talking with Andy,
17 when Joy Mack walked out of the store, and they had a
18 conversation between the three of them. And then so
19 there is a confusion between whether he's identifying Joy
20 Mack as to what? What is he identifying him to? As to
21 the robber on the 14th, or as to the person that came
22 into the store the first time when he didn't call the
23 cops or the second time when he did call the cops but he
24 wasn't there, or the third time that the officer was
25 standing there with Officer Singletary -- where Joy Mack

1 was standing there with Officer Singletary?

2 So there is no reliability at all into the
3 lineup, and it didn't play any part in pulling the
4 warrants. He had already pulled the warrants. The other
5 issue is the admonition where we get in there and say,
6 I'm not compelled, all of the things, the rights and the
7 voluntariness of the identification. That is completely
8 missing in this case, Judge, and it conveys the wrong
9 message, and it's prejudicial and we would ask that it be
10 suppressed.

11 THE COURT: Okay. Thank you very much.
12 Solicitor?

13 MR. LAWTON: Okay. To address the show up
14 identification, Your Honor, clearly in the actual
15 robbery, he had plenty of time to witness defendant's
16 face. And it wasn't covered up, still light outside, it
17 wasn't dark, it wasn't one of those things where he came
18 up behind him, hit in the back, fell, didn't see him.

19 He had some 70 feet of him walking towards
20 him, plenty of time to view them. Clearly, Singletary
21 said he told him in the statement he did, That is the guy
22 that participated in June 17, 2005 robbery. I don't
23 think there is any confusion about that. I know
24 Mr. Apostolou alluded to they didn't know what he was
25 identifying him to. That statement clearly says that is

1 what he is identifying him too.

2 As far as the photo lineup, Your Honor, as it
3 came out in testimony, this occurred on June 14th. On
4 June 30th, that is when they did the showup
5 identification. Shortly after that, July 2nd, they did
6 the warrants. Time elapsed.

7 They ordered photo lineups just to be doubly
8 sure, let's make sure that he's able to completely
9 identify this guy, there is nothing wrong. That is why
10 they did it, and it was July 17th. If it was that same
11 day, of course, there may be some problems with that, but
12 it's not. There is time that lapsed, and I don't think
13 there is any question that everything that Andy has
14 testified -- and I hate calling him by his first name --
15 but everything he alluded to, all those identifications
16 they made were regarding the robbery, not when he saw him
17 at the store one time or in the parking lot, it was all
18 about Joy Mack's the guy with the AK47, that is the guy
19 that assaulted me, every time. And.

20 I think there is no question of reliability
21 on what he's basing his identification on in Court, Your
22 Honor.

23 THE COURT: Okay.

24 MR. APOSTOLOU: I think there is a great
25 debate about what he is basing his identification on. He

1 called the police the day after the robbery on somebody
2 else, didn't call the police the first time he came into
3 the store. None of those show ups are in any of the
4 police reports, so there is no indicia of reliability
5 there, and then he has in front -- on the 30th, he is
6 standing there with an officer when Joy Mack is standing
7 right there. They go back.

8 They said, We'll put him on trespass notice,
9 and then they take the warrants out before they can do
10 the lineup, so the lineup -- there is a great deal of
11 debate about what that going to, and the way the lineup
12 typically works is that the lineup, the person leaves the
13 store, they develop a suspect, and then they put the
14 lineup together and the person circles it.

15 The implication there is that the next time
16 they see him, they see him in the robbery, and the next
17 time they identify him is in the lineup. This is three
18 times afterwards for Officer Singletary is sitting there
19 talking to him. It's highly prejudicial. There is no
20 reliability there, and it wasn't involved with why they
21 pulled the warrants to begin with. So there is no
22 reliability about what he's identifying in this case.
23 It's three different encounters with him. It easily
24 could have been on something else.

25 MR. LAWTON: If I could add -- and if I

1 understand what Mr. Apostolou is saying, we're pretty
2 much penalizing the victim. In other words, if I were to
3 get robbed today and saw the defendant two weeks later,
4 it would be like, Oh, you didn't identify him that day.
5 Let's give him a free pass.

6 THE COURT: Let me ask you this, Solicitor.
7 My concern is this: I mean, you've got three, possibly
8 four identifications, by the victim of this individual.

9 MR. LAWTON: Yes.

10 THE COURT: Okay. He calls the cops three
11 times, or he didn't call them the first time. I don't
12 remember exactly the sequence of events, but he calls the
13 cops: This is the guy that robbed me.

14 Arrest warrant is issued. I'm not sure, I
15 assume he was arrested. I assume he was arrested when
16 the lineup was given. He was incarcerated. All that has
17 done is boost your witnesses, almost bolster your
18 witnesses. It's sort of out of the context of a lineup,
19 and that is what bothers me.

20 All you're trying to do is bolster your
21 testimony of your witness, and that is what concerns this
22 Court about the lineup itself. It's not your traditional
23 lineup, where the police have a suspect and they go to
24 the victim and give him a series of pictures and say, Can
25 you pick out the person that who beat you or whatever

1 they did to you, and then he picked him out?

2 But that is part of the investigating process
3 the place used. This is not the investigative process
4 you come to a conclusion or a warrant has been issued, so
5 to me, you just bolstered it, so the second question,
6 from the Court, what the Court is looking at, at 403 is
7 if there is any probative value, or prejudicial value,
8 that outweighs the probative value.

9 You've already identified three times that
10 the prejudicial value is very strong against the
11 defendant if the photo lineup after he has already been
12 identified, and that is my concern, if you want to
13 address that, okay? I know Mr. Apostolou is making the
14 statement argument, but he went around it somewhat.

15 MR. LAWTON: All I would add, Your Honor, is
16 that I would make sure that your ruling is and we would
17 allow Andy to identify, make in court identification.

18 THE COURT: He's talking about the photo
19 lineup, okay? That is what we talked about. That is
20 what he asked for to be suppressed, and that is what we
21 talked about.

22 MR. LAWTON: Yes, and I would just say that
23 the photo lineup was done on July 17th, and he actually
24 wasn't arrested until a week later, so he wasn't
25 incarcerated at the time.

1 THE COURT: So he was arrested after the
2 photo lineup.

3 MR. LAWTON: Yes, yes.

4 THE COURT: But the arrest warrant wasn't
5 issued.

6 MR. LAWTON: Yes.

7 THE COURT: Okay. Do you want to make any
8 arguments about bolstering your witness?

9 MR. LAWTON: All I would say is that, you
10 know, the officer was trying to be --

11 THE COURT: It's totally serve self-serving.

12 MR. LAWTON: Yes.

13 THE COURT: All right. Anything else?

14 MR. LAWTON: Let me just make clear, show of
15 identification --

16 THE COURT: If the officer had any concern
17 about the identification, he should have done the lineup
18 before he issued the arrest warrant and when the arrest
19 warrant was issued, if there was any doubt in his mind.

20 MR. LAWTON: Thank you, Your Honor.

21 THE COURT: All right. I'm going to grant
22 his motion to suppress the photo ID, photo lineup, and
23 that is all I'm suppressing. No in Court identification
24 or any of the other identifications, but just the
25 pictures, I will grant his motion. Anything else?

1 MR. APOSTOLOU: Yes, Judge. Yesterday when
2 Andy was testifying, he talked about a phone conversation
3 where somebody on the other line who we don't know was
4 offering him money or something to that effect. I'm not
5 going there. Obviously, cross-examination, and I would
6 make the motion to exclude that testimony. We don't know
7 anything about that.

8 THE COURT: I'm not going to exclude it. The
9 solicitor may develop lay some foundation. The way it
10 came about yesterday, I agree it's not admissible, but he
11 may lay a foundation, makes it admissible, so I'm not
12 going to exclude it until you've heard testimony at
13 trial. You can make your objection at trial if he tries
14 to go into it, okay? I'm not going to just randomly
15 exclude it because I haven't heard what you are going to
16 do, so that motion is denied --

17 MR. APOSTOLOU: Thank you.

18 THE COURT: -- at this point in time. You
19 want to confer with Mr. Smiley?

20 MR. APOSTOLOU: If I could, just briefly.

21 MR. SMILEY: Your Honor, before we get
22 started, the alleged victim in this case has a pending
23 charge, and when and if he testifies, I intend to use it
24 in cross-examination.

25 THE COURT: Pending charge?

1 MR. SMILEY: With this office, yes, sir.
2 It's a counterfeiting charge, counterfeiting goods
3 charge, but I'm going to ask him if he, in fact, has been
4 arrested and being prosecuted by the Ninth Circuit
5 solicitor's office.

6 THE COURT: What is your position? It's not
7 a conviction. Are we talking about a prior bad act on
8 behalf of a witness, not this defendant?

9 MR. LAWTON: I take the position, Your Honor,
10 that it's not a conviction. I don't know what the basis
11 would be.

12 THE COURT: On what basis do you think you
13 should be allowed to do that, Mr. Smiley? Let me ask you
14 that.

15 MR. SMILEY: I think it goes to his
16 credibility and bias, Your Honor. He has an incentive to
17 testify in a way the state wishes him to because they're,
18 in fact, prosecuting him for a charge. Same people that
19 are asking him questions are also prosecuting him.

20 I think there is a bias as that is developed
21 to testify favorably, whether it -- and I'm not saying --
22 please understand, I'm not making any overt -- that the
23 solicitor has suggested that if you don't testify, then
24 this charge could differ. I'm not suggesting that, as
25 Mr. Lawton is certainly very honorable in that regard. I

1 think it's extrinsic that if you're being prosecuted by
2 the same agent, there is a built in bias, and I think the
3 jury has a right to hear that.

4 So under a 403 analysis, I believe that when
5 a witness testifies, I ought to be able to develop that
6 in cross-examination, that there is a relevance to show
7 bias.

8 THE COURT: I'm not going to allow you to go
9 into opinion charge. Okay? Period.

10 MR. SMILEY: Yes, sir.

11 MR. LAWTON: Your Honor, the last thing
12 before -- Mr. Smiley and I agreed. Yesterday it came out
13 the defendant, Mr. Goss -- or I don't know if it came out
14 or not, but that he might or allegedly shoplifted that
15 week in the store. I have advised Andy we're not going
16 to go into that. I think Mr. Smiley is going to stay
17 away from that.

18 MR. SMILEY: My client was -- Andy was shown,
19 a lineup with client in it and he picked my guy out and
20 says, He was in the store on Tuesday, shoplifting, and I
21 just don't want the word shoplifting brought up.

22 MR. LAWTON: And I think when we are doing
23 the direct on Andy, you know, He'll say I have seen
24 Darrell before in the store, but he's going to stay away
25 from the shoplifting.

1 MR. SMILEY: That is fine.

2 MR. LAWTON: Just as a prior bad act.

3 MR. SMILEY: If I open the door, it's one
4 thing.

5 THE COURT: I understand. Anything else?
6 Y'all ready for opening statements?

7 MR. APOSTOLOU: Yes, Your Honor.

8 MR. LAWTON: Yes, Your Honor.

9 THE COURT: Bring in the jury, please.
10 (In open court, jury present.)

11 THE COURT: All right. Mrs. O'Donnell, if
12 you'll just stay in that seat, the two alternates in the
13 back, everyone else can sit where they please except for
14 those two or three people. Would you swear the jury,
15 please.

16 (Whereupon, the jury was duly sworn.)

17 THE COURT: Solicitor?

18 MR. LAWTON: Counsel, Your Honor, ladies and
19 gentlemen of the jury: On June 14, 2007, at the Urban
20 Wear clothing store, [REDACTED] [REDACTED] [REDACTED]
21 about 7:30 p.m., in the afternoon, five black males
22 walked in the store. Two of them are right over there,
23 Joy Mack and Darrell Goss, armed and dangerous and
24 looking to do whatever it took to take, steal, rob
25 everything and anything that wasn't theirs. It was the

1 easy way out. If you want something, you got to go and
2 just take it. You don't have to earn it; you don't have
3 to buy it.

4 The owner is Andy. He's over there. You'll
5 meet him shortly. He was in the store. He had a helper
6 David in the store. Andy is in the back of the store and
7 the first defendant in there was defendant Joy Mack. Joy
8 Mack walks the whole length of the store, staring right
9 at Andy. Andy is about to vacuum, about to close up.
10 And by that time, about five feet away from Andy,
11 defendant Joy Mack pulled out an AK47 out of his pants,
12 points it at his face, orders him to the ground, and
13 proceeded repeatedly to beat him in the head over and
14 over and over, causing 20 stitches in the back of his
15 head, blood going all over the place.

16 Andy had just emptied the cash register, had
17 over \$1,000 in his pocket, was going to deposit it later
18 that day. Had that taken from him. Had his wallet taken
19 from him. The store had opened up just six days before,
20 and there was a grand opening banner in the front, and
21 they used the rope from that to tie Andy's hands up, to
22 tie his feet together, and drag him in the back.

23 David was in there as well. He was assaulted
24 and also tied up and put in the back, beside Andy.
25 Luckily for Andy and David, they were able to get out of

1 the ropes and the plastic ties and call 911. Police show
2 up on the scene, rope off the area. Fortunately, the
3 crime scene made a huge break in the case that night that
4 led to the arrest of Darrell Goss the next night. Almost
5 15 days later, the defendant, Joy Mack, is identified by
6 Andy. That leads to his arrest a short time later.

7 Ladies and gentlemen: This is a hand of one,
8 hand of all case. There were five guys in that store,
9 and we only know of two of them, right there, and we'll
10 never know who those other three are, unless something
11 comes about later, but right now, it's a trial of these
12 two guys, and they are responsible in South Carolina for
13 what happens in that store.

14 If you go in there with guns, anything goes.
15 You're in for a penny, you're in for a pound. They're
16 responsible for each and every one of those actions.
17 That is the law in South Carolina, and at the end, the
18 judge will talk to you about that, and that is what I'll
19 ask you to do.

20 Ladies and gentlemen: As I mentioned, you're
21 going to hear from Andy. He's going to tell you what
22 happened that day. You will not hear from David. He is
23 out of state and cannot come back here. He's in
24 Illinois. You'll hear from the crime scene. They will
25 talk about what they did on the crime scene, and you'll

1 hear about SLED agents and the testing they did on the
2 materials and you'll also hear from the case detective.

3 And when all the evidence is in, and all the
4 testimony is heard up there, you're going to be firmly
5 convinced that each one of these defendants is guilty of
6 armed robbery, guilty of kidnapping, guilty of assault
7 and battery with intent to kill, and guilty of possession
8 of a firearm during a violent crime.

9 Thank you. I appreciate it.

10 MR. SMILEY: Ladies and gentlemen: Jim
11 Smiley. I'm over here in the corner today. In this
12 case, you got to look at what there really is and what
13 there isn't. All right? There is two kinds of evidence,
14 direct evidence, what someone sees, what someone says,
15 and circumstantial evidence and what conclusion that
16 leads you to.

17 So in this case, I'm not saying one evidence
18 is better than the other, it's just different kinds of
19 evidence. There is no direct evidence in this case of
20 anything on the part of Darrell Goss. They've got some
21 circumstantial evidence that I think there are
22 explanations of that make perfect case. You're going to
23 be presented evidence, and after that is over with,
24 you've got to decide whether the state has proved beyond
25 a reasonable doubt that Darrell Lee Goss was involved in

1 this incident at all.

2 It's not going to happen. The evidence in
3 this case is going to be a fingerprint on the outside of
4 the store, there is going to be a gun, and there is going
5 to be some of the clothing. That is the main evidence
6 relating to Darrell Goss. And they're going to suggest
7 that that makes him a participant in the robbery. I'm
8 going to ask you to look at the evidence, to see if there
9 is other explanations, reasonable explanations, that
10 would cause you to doubt, to hesitate to act.

11 I think the evidence in this case will show
12 you, there is nothing to show that Darrell Lee Goss
13 participated in any form of an armed robbery, kidnapping,
14 assault and battery with intent to kill, or possession of
15 a weapon during a crime of violence. Because we have
16 codefendants in these cases, I got to sit over there in
17 the corner. I'm not telling you I dislike being across
18 the room, I'm telling you it's a long ways away but it's
19 a very important day for Darrell.

20 Darrell, if you could come over here since
21 you're standing so far away. Darrell is a young man.
22 It's been my pleasure to represent him in this case.
23 This is Darrell Lee Goss, and while he's sitting a long
24 ways away, I just wanted you to have an opportunity to
25 see him at the beginning of this case.

1 Thank you, Darrell. It's an important day
2 for him. This isn't a guessing game. The police's job
3 is to make an arrest, to gather their evidence and make
4 an arrest. The prosecution's job is to take that
5 evidence and seek justice. It's my job to defend Darrell
6 Lee Goss with all my might to make sure the constitution
7 and the rights that he is afforded are put forth in this
8 courtroom.

9 It's the judge's job to make sure I do my job
10 and everybody else does their job and follows the rules.
11 Y'all's job, and the most important job, is to take your
12 common sense, take your intellect, and look at the
13 evidence before you and see what it proves or does not
14 prove.

15 Darrell is innocent. He starts off presumed
16 innocent, and he will remain that way. The only time
17 that he can be anything but innocent is if Mr. Lawton can
18 prove beyond a reasonable doubt that he was a
19 participant. I'm going to suggest to you, at the end of
20 this case, that cloak of innocence that we all have is
21 going to remain.

22 Thank you very much for your time in the
23 beginning, in advance. It's a serious day in Mr. Goss's
24 life, and I know y'all will do a good job. Thank you.

25 THE COURT: Mr. Apostolou?

1 MR. APOSTOLOU: What happened on June 14th
2 and what happened to that victim during the armed robbery
3 is a terrible thing. Nobody is going to debate that.
4 That is clear and that is obvious, but that doesn't
5 relieve us -- because it's a terrible thing, that doesn't
6 relieve us of our burden to make sure, beyond a
7 reasonable doubt, that we held the people responsible
8 for -- that we convict the people that are responsible
9 for it beyond a reasonable doubt.

10 It's a terrible thing to happen to him, but
11 that doesn't relieve us of our burden to make sure we get
12 the right people for the crime. You're going to hear a
13 lot about an investigation that the police did. You're
14 going to hear about fingerprints. You're going to hear
15 about DNA. You're going to hear about weapons. None of
16 that information, none of that evidence, not any of it,
17 is going to show anything about Joy Mack.

18 None of it is tied to Joy Mack, but before I
19 talk about what this trial is about, I want to talk --
20 before I talk about what Mr. Lawton said, I want to talk
21 about something the judge said earlier.

22 The judge told you earlier this is two
23 separate trials. It is not the state of South Carolina
24 versus Darrell Goss and Joy Mack. It's the state of
25 South Carolina versus Darrell Goss, and it is the state

1 of South Carolina versus Joy Mack. They are two
2 completely, entirely separate trials. They are going on
3 at the same time, out of judicial economy, just because
4 they have a lot of the same witnesses and because it's
5 just easier to put all the facts together, but at the end
6 of the day, you're going to be asked to make a
7 determination based off of Joy Mack and based off of
8 Darrell Goss.

9 You can find one guilty and one innocent; you
10 can find both innocent or not guilty, as the standard.
11 You can find them not guilty. You can even find them
12 both guilty. I don't think you will, but that is one of
13 your options, so the most important thing I'm going to
14 say to you in this opening statement is this is two
15 trials. Do not lump them together. They're sitting over
16 there on that side of the room together, but they're
17 completely separate trials.

18 So let's look at what the evidence --
19 forecast what the evidence is going to be.

20 I've told you, you're going to see
21 fingerprints. You're going to see DNA. None of that is
22 related to Joy Mack. Joy Mack is involved in this
23 because he was identified by the defendant. Two and a
24 half weeks after this robbery, the victim sees him and
25 thinks that Joy Mack was one of the participants. Two

1 and a half weeks after the robbery, the victim sees Joy
2 Mack and thinks he's one of the participants in the
3 robberies. That is the only reason Joy Mack is here.

4 So I was going to tell you exactly -- kind of
5 forecast what the victim's statement is going to be. I'm
6 not going to do that. There is a lot of things going on.
7 He's going to take the stand, and we'll look at what his
8 statement is, so, basically, this is the case where the
9 victim's statement is going to come back with the
10 presumption of innocence of Joy Mack, and does it beyond
11 a reasonable doubt prove that he's involved in this? And
12 you're not going to see that.

13 One of the things I want to say is this is a
14 single witness identification. Remember, there is two
15 victims of this robbery, two victims. The solicitor told
16 you that David was there. Well, David never identified
17 Joy Mack as part of this, so this is only one witness,
18 one of two. I would suggest to you reasonable doubt is
19 there.

20 But look at some of the important factors in
21 the statement made by the victim here. Look at the
22 timing. It's made two and a half weeks afterwards. Look
23 at the location. It's made at the store where it
24 occurred, and look at what initiated it. See if it
25 matches the description given to the description he made

1 the night of the robbery. It's not going to.

2 See if the victim himself thinks he can
3 identify him later. He doesn't, and see if the victim
4 has accused anybody else of it. He has, prior to Joy
5 Mack. So at the end of the day, the last thing I want to
6 talk to you about is reasonable doubt, and we're going to
7 talk about that a lot more as the trial goes on. We're
8 going to talk about it closing a lot more, and,
9 ultimately, the judge in his charge is going to tell you
10 the definition of reasonable doubt.

11 But that is the standard that this is. Y'all
12 are the finders of fact. This is a trial. The victim
13 says that Joy Mack was involved in it. Joy Mack says he
14 wasn't. Y'all are here to make that determination, and
15 their burden is to prove it beyond a reasonable doubt.
16 It's the highest standard we have. It's not
17 preponderance of the evidence, which is civil stuff,
18 which is just about money. This is about liberty and
19 this is about in fringing on somebody's liberty and that
20 is the highest thing. We hear about people that are
21 falsely convicted, all that stuff, in the newspaper.
22 That is why we use the highest standard.

23 When you look at all the evidence at the end
24 of the day, you do not find that Joy Mack is going to be
25 involved with this crime, and you are going to have to

1 come back with a not guilty.

2 Thank you.

3 THE COURT: Call your first witness, please.

4 MR. LAWTON: The state calls Andy Ayazgok.

5 AYTEKIN AYAZGOK,

6 having been first duly sworn,

7 was examined and testified as follows:

8 DIRECT EXAMINATION.

9 BY MR. LAWTON:

10 Q. How are you doing?

11 A. I'm doing good.

12 Q. Is it okay if I call you Andy?

13 A. Yes.

14 Q. How old are you, Andy?

15 A. About to be 28.

16 Q. Are you married?

17 A. Yes, sir, I am.

18 Q. How long have you been married?

19 A. I've been married close to eight years.

20 Q. So eight years?

21 A. Yes, sir, eight years.

22 Q. Tell the jury who your wife is.

23 A. She's in the military.

24 Q. Okay. And her name.

25 A. Her name is Tansa, and last name is Ayazgok.

1 Q. Okay. Do have you any children?

2 A. Yes, sir, I have one children.

3 Q. Where do you currently work right now?

4 A. I own a business [REDACTED]

5 Q. What is the name of that business?

6 A. Urban Gear.

7 Q. Okay. When did you move to America?

8 A. 2003, 15 January.

9 Q. And where were you born?

10 A. I was raised and born in Turkey.

11 Q. Turkey?

12 A. Yes, sir.

13 Q. Did you have any education, as far as English,
14 over there in Turkey?

15 A. Beside learning in the street, work around with
16 Air Force people about 17 years. That is where I learned
17 my English.

18 Q. So are you still developing that now?

19 A. Oh, yes, of course.

20 Q. Okay. Did -- when did you open the store up?

21 A. The one on Charleston, I opened in 2007, and 8, I
22 believe it was 1st of June.

23 Q. 1st of June? June 2?

24 A. Yeah.

25 Q. All right. You know why we're here today, right?

1 A. Yes, sir.

2 Q. Let's talk about June 14, 2007. I believe it was
3 a Thursday. Do you remember that day?

4 A. Yes, sir.

5 Q. Were you working that day?

6 A. Yes, sir.

7 Q. And was anybody working with you?

8 A. David.

9 Q. David?

10 A. Yes, sir.

11 Q. Do you know where David is currently now?

12 A. In Illinois.

13 Q. Okay. Tell us on that day how -- what time did
14 the store open?

15 A. At that time our store hour was 10:00 till 7:30
16 during the week, between 10:00 and 8:00. We decided to
17 close and once I got robbed it's 10 till --

18 Q. Let's just slow down. Tell the jury what you do
19 when you open the store up, as far as prepping the store.

20 A. When I open the store in the morning?

21 Q. Yeah.

22 A. The first thing I do every morning is go and
23 vacuum. After we vacuum, we clean the glasses on the
24 doors.

25 Q. Okay.

1 A. And the doors in the showcase.

2 Q. Do you clean the inside and outside of the door?

3 A. Yes, sir.

4 Q. Okay. And do you do that more than once
5 sometimes?

6 A. Yes, sir. It depends on how much traffic we have.

7 Q. What about June 14th? Did you clean the door?

8 A. Yes, sir, I did.

9 Q. Fast forward to later on that afternoon. Starting
10 to close up, correct?

11 A. Yes, sir.

12 Q. Okay. What did you do with the money in the cash
13 register?

14 A. It was not all money for that day. It was money
15 for three days, I believe.

16 Q. Okay.

17 A. I was going to deposit that money the next day in
18 the morning.

19 Q. Where did you put it?

20 A. I put it in my pocket, sir.

21 Q. Okay. And what time were y'all closing on June
22 14, 2007?

23 A. It was 7:30.

24 Q. So a little before that, did anybody come in the
25 store?

1 A. Excuse me. I didn't get the question. Sorry.

2 Q. Before y'all closed, did anybody come in the
3 store?

4 A. Yes, sir.

5 Q. Okay. How many people were there?

6 A. There were five.

7 Q. Five?

8 A. Yes, sir.

9 Q. Can you tell the jury the race of these people?

10 A. They were all black male.

11 Q. Black males?

12 A. Yes, sir.

13 Q. Okay. And where were you in the store when they
14 came in?

15 A. I was --

16 Q. If this is the front door, where are you?

17 A. If that would be the front door, you need to go a
18 little more farther.

19 Q. Okay. Tell me when to stop.

20 A. Somewhere right there, approximately.

21 Q. Okay. And this is June, so is the sun still up?

22 A. Yes, sir.

23 Q. Okay. And the lights are still on in the store?

24 A. Yes, sir.

25 Q. Okay. How is the weather that day?

1 A. It was sunny.

2 Q. Sunny?

3 A. It was summer.

4 Q. So clear visibility?

5 A. Yes, sir.

6 Q. And who -- who is the first person that comes in
7 the store? Is he in the courtroom today?

8 A. Joy Mack. Yes, sir.

9 Q. Would you please point out --

10 A. Right there (indicating).

11 Q. Can you tell the jury what he's wearing.

12 A. Right now he's wearing white plain shirt with a
13 tie with a stripe, white tie with a stripe.

14 MR. LAWTON: Your Honor, let the record
15 reflect he has identified the defendant Joy Mack.

16 THE COURT: Okay.

17 BY MR. LAWTON:

18 Q. Okay. So you've said he's the first one in the
19 store.

20 A. Yes, sir.

21 Q. And you're in the back, correct?

22 A. Yes, sir.

23 Q. What does he do next?

24 A. And he came close to me. He was walking straight
25 to me.

1 Q. How was he acting when he was walking towards you?

2 A. He was just very calm, and, I mean, the way he was
3 acting was once he got close to me, I know what was going
4 to happen, and I just had that feeling.

5 Q. Sorry, Andy. I apologize. Was he smiling?

6 A. No, sir.

7 Q. Okay. Did he look serious?

8 A. Very serious.

9 Q. Okay. So he is walking towards you.

10 A. Yes.

11 Q. And you tell me when he stops, just tell me, as
12 far as the distance.

13 A. About right there, sir.

14 Q. And what does he do next?

15 A. Then he took the gun out of his pants.

16 Q. And tell the jury what the gun looked like?

17 A. It looked like an AK47.

18 Q. Was it wooden? Were there wooden parts on it?

19 A. It did have a wood part on it.

20 Q. What did he do with the gun?

21 A. Then he point it on my face and he told me to get
22 down.

23 Q. Okay. Let's take it one question at a time.

24 A. Sure..

25 Q. You said he pointed it at your face, and what did

1 he tell you to do next?

2 A. Get down.

3 Q. And before that, you said that -- are you focussed
4 on this guy at this point when he's walking towards you?

5 A. Yes, sir.

6 Q. But you do know there was five individuals in
7 there, including him, correct?

8 A. Yes, sir.

9 Q. Did you see any other weapons in the store?

10 A. I see one more, sir.

11 Q. And what was that?

12 A. Handgun.

13 Q. Handgun?

14 A. Okay.

15 Q. So you got the weapon in your face, AK47. What do
16 you do once he points it in your face?

17 A. I get down.

18 Q. And what happens next?

19 A. Next, he started hitting me on my head with the
20 gun.

21 Q. What part of the rifle was he using?

22 A. The bottom part.

23 Q. The bottom part?

24 A. Yes, sir.

25 Q. Okay. I know a lot is going on at this point, but

1 do you have any idea about how many times you were hit by
2 Mr. Mack?

3 A. Not really, but if I had to assume, about five,
4 six times.

5 Q. Okay. Can you tell if you're bleeding at this
6 point?

7 A. Oh, yeah. I was bleeding a lot.

8 Q. What is going through your mind at this point?

9 A. Almost that I lost my life, of course.

10 Q. Okay. You told the jury earlier you had \$1,000 on
11 you.

12 A. Yes, sir.

13 Q. What happened to that money?

14 A. They take everything, the money, wallet.

15 Q. You said you had a wallet as well?

16 A. Yes, sir.

17 Q. Okay. And that was taken from you too as well?

18 A. Yes, sir.

19 Q. Okay. What did they do with you once they took
20 your money?

21 A. He hit me a couple more times.

22 Q. Okay. And then what happened after that?

23 A. He was just saying where is the money, and I say,
24 You take all of it. That was it.

25 Q. Okay. Did he take you anywhere at that point?

1 A. Yeah. He dragged me to the back after.

2 Q. And what did they do with you once you got in the
3 back?

4 A. They tied us up.

5 Q. Do you know what they used to tie you up with?

6 A. Yes, sir.

7 Q. Okay. What was -- please tell the jury.

8 A. It was -- I had a sign, grand opening sign. It
9 had some string on the end part.

10 Q. Okay.

11 A. They used the grand opening sign.

12 Q. Okay. Did they tie your hands together?

13 A. That is not -- I can't remember exactly. I
14 believe they tied our hands -- yeah, our hands and legs
15 back together, yeah.

16 Q. And so you're saying that your hands and legs were
17 tied together?

18 A. Yeah.

19 Q. And how were you -- were you face down or were you
20 face up?

21 A. Face down.

22 Q. Face down.

23 A. Yes, sir.

24 Q. Okay. And did they tell you -- as far as with
25 your eyes, did they warn you anything regarding looking?

1 A. Yes, sir.

2 Q. What did they tell you?

3 A. That was not -- another one told me not to look at
4 him. That's when I saw the handgun. He point the
5 handgun at me. Do not look at it. Look at the ground.
6 That's what he told me.

7 Q. Okay. At any point did David come back there with
8 you?

9 A. Yes. Once he dragged me, he was coming there too.
10 They both almost take us at the same time.

11 Q. Okay. And tell the jury, do you know if David was
12 tied up?

13 A. Yes, sir. He was tied up.

14 Q. Hands and feet?

15 A. Yes, sir. I mean, not exactly sure about that,
16 but he was tied up.

17 Q. Okay. Were y'all eventually able to get loose?

18 A. Yes, sir.

19 Q. And what did y'all do after that?

20 A. Called 911.

21 Q. Okay. Did you have to go to the hospital?

22 A. Yes, sir.

23 Q. What did the doctor do to you at the hospital?

24 A. I had -- he had to check on my head and make sure
25 I didn't have any damage on my head, and I had 20 stitch.

1 Q. Twenty stitches?

2 A. Yes, sir.

3 Q. You identified Joy Mack earlier as being the guy
4 with the AK47. Do you know who Darrell Goss is?

5 A. I've seen him before at the store.

6 Q. Okay. You didn't see him in the store that day,
7 correct?

8 A. On armed robbery, no, sir.

9 Q. Okay. You were focussed on the guy with the AK47,
10 correct?

11 A. Yes, sir.

12 Q. Okay. Let's talk about after this occurred. Of
13 course you spoke to the police, correct?

14 A. Yes, sir.

15 Q. Did you have the opportunity to see Joy Mack
16 sitting over there in the tie after this occasion? Do
17 you remember if you ever saw him again after that?

18 A. I'm sorry. I didn't get the question.

19 Q. That's fine. I apologize. June 14th, robbery
20 occurred. Did you see the defendant again at a later
21 date, at a different time?

22 A. Yes, sir.

23 Q. Okay. And when was the next time you saw the
24 defendant, Joy Mack?

25 A. Don't remember exactly the day, sorry.

1 Q. Okay. Roughly, how many days after this? And I
2 grant it's a year and a half later.

3 A. About a week, if I have to --

4 Q. And where did you see him?

5 A. The first time I saw him, at the shopping area,
6 shopping center.

7 Q. Was he with anybody?

8 A. No, sir. First time he was by himself.

9 Q. Did you call the cops when you saw him?

10 A. No, sir.

11 Q. Please tell the jury why you didn't call the cops.

12 A. I was nervous, sir.

13 Q. Okay.

14 A. I was nervous.

15 Q. Explain why you were nervous.

16 A. I just had opened the store in that neighborhood.
17 I didn't know the area. You know, it's not easy to have
18 20 stitch in your head. You know, I have a son.

19 Q. Okay.. So you were scared. Okay. Did you have an
20 opportunity to see him again after that?

21 A. Yes, sir.

22 Q. And I know times and dates are a tough thing, but
23 do you remember where you saw him the next time?

24 A. Yes, sir.

25 Q. And where was that? Please tell the jury.

1 A. Inside the store.

2 Q. Inside your store?

3 A. Yes, sir.

4 Q. Who was there with you that day?

5 A. My wife.

6 Q. Okay.. Was he in there with anybody?

7 A. Yeah. He had another guy with him.

8 Q. Okay. What did y'all do once he left the store?

9 A. We called 911.

10 Q. Okay. Did the police show up?

11 A. Yes, sir.

12 Q. And where was Joy Mack when the police got there?

13 A. He left already.

14 Q. Okay. Did you have an opportunity to see Joy Mack
15 again that day at some point?

16 A. No -- yes, sir.

17 Q. Okay. Please tell the jury the next time you saw
18 him.

19 A. It was about five minutes after we called 911.

20 Q. Okay. So the police had already left.

21 A. Yes, sir.

22 Q. Okay. And you saw Joy Mack again.

23 A. Yes, sir.

24 Q. What did you do as a result of seeing him again?

25 A. I called 911 again.

1 Q. Okay. And what happened when the police got back
2 there a second time?

3 A. He was gone again.

4 Q. Gone again.

5 A. Uh-huh.

6 Q. And tell the jury if -- did you see him again?

7 A. Yes, sir.

8 Q. When was that?

9 A. Next day.

10 Q. The next day. Okay. Tell the jury where you saw
11 him and roughly about what time it was.

12 A. I was -- somewhere afternoon.

13 Q. Okay. And where was the defendant, Mr. Mack?

14 A. He was at the place called 31 Sport.

15 Q. Did you do something after you saw him?

16 A. No, sir, called 911.

17 Q. Did any police officers show up on the scene?

18 A. Yes, sir.

19 Q. And he was in the store, correct?

20 A. Yes.

21 Q. Did he ever come out of the store?

22 A. While I was explaining to the police officer what
23 was going on, basically, I was telling him the story, and
24 he came out.

25 Q. Did you indicate to the officer this was the guy

1 involved in the robbery?

2 A. Yes, sir.

3 Q. Okay. No question about it?

4 A. No, sir.

5 MR. LAWTON: Beg the Court's indulgence.

6 BY MR. LAWTON:

7 Q. Mr. Andy, I'm showing you State's exhibits for
8 identification purposes 37, 38, 40, 41, and 42. See if
9 you recognize any of these items in these pictures, just
10 go through them.

11 A. Yes, sir.

12 Q. Okay. We'll take the first one. Where do you
13 recognize those items from?

14 A. In my store.

15 Q. Okay.

16 MR. LAWTON: Your Honor, he said he's
17 indicated he recognizes items from his store. I would
18 offer them into evidence, State's Exhibit 37.

19 THE COURT: Any objection?

20 MR. SMILEY: No objection, Your Honor.

21 THE COURT: State.

22 MR. APOSTOLOU: No objection.

23 THE COURT: State's Exhibit 37 in without
24 objection.

25 (Photograph admitted into evidence as State's

1 Exhibit No. 37.)

2 BY MR. LAWTON:

3 Q. Can you tell the jury about the jeans on the left?

4 A. Yes, sir.

5 Q. Do you recognize those jeans?

6 A. Yes, sir.

7 Q. Where do you recognize them from?

8 A. From my store.

9 Q. And what about the hats?

10 A. They don't belong to me, sir.

11 Q. They don't belong to you. Okay. Fine. Tell us
12 about those shoes.

13 A. Yes, sir. They belong to me.

14 Q. Okay. Where did you keep those shoes in your
15 store?

16 A. On the back storage, back room.

17 Q. Back room?

18 A. Yes, sir.

19 Q. So if a customer came in your store, how would
20 that shoe be displayed for them if they wanted to
21 purchase it?

22 A. We just keep single pairs on outside for display.

23 Q. There would be one individual shoe?

24 A. One individual.

25 Q. So those are shoes sold in your store.

1 A. Yes, sir.

2 Q. How about the shirts?

3 A. Yes, sir. That belongs to me.

4 Q. Can you tell the jury -- I know it's difficult for
5 the jury to see the logo or the brand of that one shirt.

6 A. Enyce.

7 Q. Is that is an item in your store?

8 A. Yes, sir.

9 Q. What about sunglasses?

10 A. Those don't belong to me.

11 Q. Okay. I'm going to let you look at State's
12 Exhibit 40 and see if you recognize those tags.

13 A. Yes, sir, some of them.

14 Q. Some of them.

15 A. Yes, sir.

16 Q. Can you tell the jury how you price your tags.

17 A. I use the red tag.

18 Q. Okay. Speak up. What color represents the tags?

19 A. Red. It's orange or red, orange or red.

20 MR. SMILEY: No objection.

21 MR. LAWTON: State offers 40 -- I
22 apologize -- into evidence.

23 THE COURT: Any objection?

24 MR. SMILEY: No objection, Your Honor.

25 MR. APOSTOLOU: No objection.

1 THE COURT: 40 admitted without objection.

2 (Photograph admitted into evidence as State's
3 Exhibit No. 40.)

4 BY MR. LAWTON:

5 Q. I know once again it's difficult. Can you tell
6 the jury about these tags?

7 A. Yes, sir.

8 Q. Are these items that are sold in your store?

9 A. Yes, sir, some of them.

10 Q. And you mentioned earlier, what color is your
11 price tag and you put --

12 A. Orange.

13 Q. Orange?

14 A. Yes, sir.

15 Q. I want you to look at the shoes in State's Exhibit
16 41 for ID purposes and see if you can mention about the
17 shoes. Do they look new to you?

18 A. Yes, sir.

19 Q. Can you see anything inside of them that would
20 indicate they would be new?

21 A. Yes, sir.

22 Q. Okay. Tell the jury what you see.

23 A. I see the things that are inside so you won't bend
24 it, the shoe will not bend.

25 Q. What material is that?

1 A. It's cardboard.

2 Q. Cardboard?

3 A. Cardboard.

4 Q. Okay.

5 MR. LAWTON: We'll offer State's 41.

6 THE COURT: Any objection?

7 MR. SMILEY: No objection to 41.

8 MR. APOSTOLOU: No objection.

9 (Photograph admitted into evidence as State's
10 Exhibit No. 41.)

11 BY MR. LAWTON:

12 Q. Do you recognize 42?

13 A. Yes, sir.

14 MR. LAWTON: We offer 42 into evidence as
15 well.

16 MR. SMILEY: No objection to 42, Your Honor.

17 MR. APOSTOLOU: No objection.

18 THE COURT: Admitted without objection.

19 (Photograph admitted into evidence as State's
20 Exhibit No. 42.)

21 BY MR. LAWTON:

22 Q. You mentioned earlier to the jury that you had
23 injuries from this?

24 A. I didn't get the question.

25 Q. I'm sorry. I apologize. You had indicated

1 earlier you had 20 stitches?

2 A. Yes, sir.

3 Q. Do you know if David had any injuries, visible
4 injuries?

5 A. Yes, sir.

6 Q. Okay.

7 MR. LAWTON: Did y'all see these, Mr. Smiley.

8 BY MR. LAWTON:

9 Q. I'm going to let you look at State's 44, 45, 46,
10 43, 52, 51, 50, 49 -- I'm making a mess -- 48 and 47, if
11 you could briefly just go through those and see if you
12 recognize those injuries on yourself and David. If you
13 do recognize it, just tell us the number on the bottom,
14 okay.

15 A. 44.

16 Q. For 45 -- let me give you one at a time. I
17 apologize. Look at 45 and see -- I don't know if that
18 displays anything.

19 A. I don't see it.

20 Q. Okay. For State's 44 for ID purposes, see if you
21 recognize that.

22 A. Yes.

23 Q. Okay.

24 MR. LAWTON: We offer 44 into evidence, Your
25 Honor.

1 THE COURT: Any objection?

2 MR. SMILEY: No objection, Your Honor to 44.

3 MR. APOSTOLOU: Without objection.

4 THE COURT: 44 admitted without objection.

5 (Photograph admitted into evidence as State's
6 Exhibit No. 44.)

7 BY MR. LAWTON:

8 Q. That is 43, and see if you recognize those
9 injuries and whose injuries those are, if you do.

10 A. Yes, sir. That's me.

11 Q. Okay. And what are the injuries?

12 A. I had a swelling hand and some scratches on me
13 when he was dragging me.

14 Q. Okay.

15 MR. LAWTON: We offer State's 43 into
16 evidence.

17 MR. SMILEY: Without objection.

18 MR. APOSTOLOU: Without objection.

19 THE COURT: Admitted without objection.

20 (Photograph admitted into evidence as State's
21 Exhibit No. 43.)

22 BY MR. LAWTON:

23 Q. I show you 52 for ID purposes, see if you
24 recognize that.

25 A. Yes, sir.

1 Q. What are you looking at there?

2 A. That is some stitches on my hand.

3 Q. All right.

4 MR. LAWTON: Offer 52 into evidence, Your
5 Honor.

6 MR. SMILEY: Without objection.

7 MR. APOSTOLOU: Without objection.

8 (Photograph admitted into evidence as State's
9 Exhibit No. 52.)

10 BY MR. LAWTON:

11 Q. Show you 51 and see if you recognize that.

12 A. Yes, sir.

13 Q. What do you recognize again?

14 A. I see stitches.

15 MR. LAWTON: Offer 51 into evidence.

16 MR. SMILEY: Without objection, Your Honor.

17 MR. APOSTOLOU: Without objection.

18 (Photograph admitted into evidence as State's
19 Exhibit No. 51.)

20 BY MR. LAWTON:

21 Q. And show you 50. I apologize. This is a
22 different angle. See if you recognize what you're
23 looking at.

24 A. Yes, sir, I see some stitches.

25 Q. And whose stitches are those?

1 A. That would be me.

2 Q. Okay.

3 MR. LAWTON: Offer 50 into evidence, Your
4 Honor.

5 MR. SMILEY: Without objection, Your Honor.

6 MR. APOSTOLOU: Without objection.

7 (Photograph admitted into evidence as State's
8 Exhibit No. 50.)

9 BY MR. LAWTON:

10 Q. Show you state's 49 for ID purposes.

11 A. Yes, sir, my arm.

12 Q. Okay. And what are they of your arm?

13 A. There is -- he dragged me.

14 Q. Okay.

15 MR. LAWTON: We'll offer 49 into evidence.

16 MR. SMILEY: Without objection, Your Honor
17 opinion.

18 MR. APOSTOLOU: Without objection.

19 (Photograph admitted into evidence as State's
20 Exhibit No. 49.)

21 BY MR. LAWTON:

22 Q. Let me show you 47, see if you recognize that.

23 A. Yes, sir.

24 Q. What is that? Tell the jury.

25 A. Stitches on the back of my hand.

1 MR. LAWTON: Offer 47 into evidence, Your
2 Honor.

3 MR. SMILEY: Without objection, Your Honor.

4 MR. APOSTOLOU: Without objection.

5 (Photograph admitted into evidence as State's
6 Exhibit No. 47.)

7 MR. LAWTON: I'm going to show these, Honor,
8 if the Court would permit.

9 BY MR. LAWTON:

10 Q. Can you tell the jury what we're looking at?

11 A. The back of my head.

12 Q. And did you have stitches back there?

13 A. Yes, sir.

14 Q. Okay. Are these all the stitches you had right
15 here, or is it a different location as well?

16 A. No, sir, I had something.

17 Q. Okay. We're getting to that. This is State's 49.
18 I know it's difficult, but what are we looking at here?

19 A. My arm.

20 Q. Tell the jury -- it's very difficult to see, but
21 what is wrong with your arm here?

22 A. I had a lot of scratches when he dragged me to the
23 back.

24 Q. Okay. And this is a different injury for the one
25 we showed previously?

1 A. Yes, sir.

2 Q. Okay. And tell us -- the jury about this injury.
3 That is on the side? Okay. And as far as these head
4 injuries, how did they occur?

5 A. I'm sorry?

6 Q. As far as the stitches, how did they occur? Was
7 this during the robbery?

8 A. Yes, sir, during the robbery.

9 Q. And how did they -- were you hit by a gun?

10 A. Yes, sir.

11 Q. And was it an AK47?

12 A. Yes, sir.

13 MR. LAWTON: Please answer any questions
14 Mr. Smiley has for you, okay?

15 CROSS-EXAMINATION

16 BY MR SMILEY:

17 Q. Mr. Ayazgok?

18 A. Yes, sir.

19 Q. You were born in Turkey?

20 A. Yes, sir.

21 Q. How long had you been in the Charleston area?

22 A. Two years, a little over two years.

23 Q. Now, you said that five guys come in the store,
24 right?

25 A. Yes, sir.

1 Q. That you're focussed on the guy walking at you?

2 A. Yes, sir.

3 Q. And that he pulled out an AK47?

4 A. Yes, sir.

5 Q. What is your experience with an AK47?

6 A. I don't. I just say it looked like an AK47. It
7 could be a rifle.

8 Q. Okay. So you're using an AK47 as a general
9 description of a rifle?

10 A. Yes, sir.

11 Q. Okay. And this gentleman was facing you,
12 Mr. Ayazgok, as he pulled it out of his pants?

13 A. Yes, sir.

14 Q. What was the length of this rifle, if you could
15 demonstrate?

16 A. Somewhere about this size.

17 Q. About three feet?

18 A. Something like that.

19 Q. He pulled this three feet long rifle out of his
20 pants, right?

21 A. Yes, sir.

22 Q. Okay. All right. Now, that's the person that
23 struck you, right?

24 A. Yes, sir.

25 Q. Okay. And that is the person that dragged you to

1 the back, right?

2 A. Yes, sir.

3 Q. Now, you were able to give the police a
4 description of that person, right?

5 A. Yes, sir.

6 Q. That night. I think you told them that that
7 person had on black jeans, right?

8 A. Yes, sir.

9 Q. That he had on a red shirt, right?

10 A. I don't remember exactly because it's been two
11 years.

12 Q. Let me get your statement for you. Would it
13 refresh your memory if I showed you your statement that
14 you gave that day?

15 A. Sure.

16 Q. Okay. I'm going to give you your statement
17 that --

18 A. If that is what I said on my statement. I'm sure
19 it's true.

20 Q. I don't want to put words in your mouth. You gave
21 this about 9:00 on the 14th of June?

22 A. Yes, sir.

23 Q. If you could review it, I believe it says that the
24 person that came in that struck you with the rifle had on
25 black jeans, right?

1 A. Yes, sir.

2 Q. And a red shirt, right?

3 A. Yes, sir.

4 Q. And a gray skull cap?

5 A. Yes, sir.

6 Q. I mean, when you gave -- let's stop for a second.

7 That night, about 9 o'clock, a detective took a statement
8 from you, right?

9 A. Yes, sir.

10 Q. And when you were giving that statement to the
11 police, this was really fresh in your mind, right?

12 A. Yes.

13 Q. It had just happened?

14 A. Yes, sir.

15 Q. And so when you gave that description to the
16 police as you assumed -- not assumed, you knew what you
17 were telling them was accurate, right?

18 A. Yes, sir.

19 Q. Because it had just happened?

20 A. Yes, sir.

21 Q. And you told them that the gentleman that hit you
22 had on black pants, a red shirt, and a gray skull cap?

23 A. Yes, sir.

24 Q. However, you did not provide any other description
25 of any of the other guys except that one as light

1 skinned, right?

2 A. Yes, sir.

3 Q. Okay. Now, you weren't blindfolded during this
4 event at all, were you?

5 A. I'm sorry. I didn't get the question.

6 Q. Okay. Well, I get going sometimes. I'll slow
7 down. You were not blindfolded during the event?

8 A. No, sir.

9 Q. So you could see, right?

10 A. Yes, sir.

11 Q. Okay. And so you got to look at the other four
12 people that came in the store, correct?

13 A. Yes, sir.

14 Q. Okay. You were unable to provide a description of
15 any of those people, correct?

16 A. Yes, sir.

17 Q. You did tell the police that one of them was a
18 light skinned black male, correct?

19 A. Yes, sir.

20 Q. But as far as being any more specific, you
21 couldn't be, besides the one guy that came at you, right?

22 A. Yes, sir.

23 Q. Okay. Now, the person that struck you with the
24 rifle is the guy that took the money out of your pocket?

25 A. Yes, sir.

1 Q. Okay. Now, that person took the money before or
2 after you were dragged towards the back of the store?
3 You already started in the back of the store, right?

4 A. Before he dragged me to the back. It was on the
5 front.

6 Q. Were you in the front?

7 A. Yeah. There is a difference between dragging me
8 to the back storage and --

9 Q. Oh, in the storage part?

10 A. Yes.

11 Q. Okay. So make sure I understand. The first guy
12 comes to the door. He is about 70 feet away, give or
13 take?

14 A. Yes, sir.

15 Q. And he walks straight at you, right?

16 A. Yes, sir.

17 Q. And you say he has a serious look on his face?

18 A. Yes, sir.

19 Q. So you were looking at him, right?

20 A. Yes, sir.

21 Q. The other four guys come in. He's walking right
22 at you. When he gets five feet away, he pulls a rifle
23 out, right?

24 A. Yes, sir.

25 Q. Beats you. Takes your money.

1 A. Yes, sir.

2 Q. And then he drags you into a storage room.

3 A. Yes, sir.

4 Q. Okay. Got it. Then while that is going on, your
5 friend that was helping you was also taken to the back of
6 the store, right?

7 A. Yes, sir.

8 Q. Okay. And when I say back, into that storage
9 area.

10 A. Yes, sir.

11 Q. Now, the person that beat you, was he also the man
12 that bound you, that tied you up?

13 A. I don't remember that part.

14 Q. Okay. So I think -- is it fair to say that when
15 you were being tied up, all those fellows that had come
16 into the store were right there, right?

17 A. Yes, sir.

18 Q. They were in close proximity to you, and you could
19 get a look at them, right?

20 A. No, sir.

21 Q. Okay. So even though you weren't blindfolded,
22 they were right next to you, right?

23 A. I was on my stomach on the ground.

24 Q. Okay. All right. You were looking around,
25 though, weren't you?

1 A. No. He pulled a gun on me.

2 Q. When you said he put a gun on you, the buy that
3 walked in the store first?

4 A. No. There is another guy. He pulled a handgun on
5 me, the shorter guy.

6 Q. Short guy?

7 A. Yes.

8 Q. All right. When you say short, you mean shorter
9 than you?

10 A. Yes, sir.

11 Q. Okay. And you're about five eight?

12 A. Five eleven.

13 Q. Five eleven. Okay. So the person that had the
14 handgun, is that right, pointed it, was shorter than you?

15 A. Yes.

16 Q. Okay. And he was a black man?

17 A. Yes, sir.

18 Q. Okay. Can you tell us anything else about that
19 man?

20 A. No, sir.

21 Q. Was he the light skinned one?

22 A. I don't remember.

23 Q. Okay. All right. There wasn't anything that
24 stuck out in your mind about him besides he's black,
25 right?

1 A. Yes, sir.

2 Q. Okay. And he's standing there with a gun. The
3 other guys are there. You get tied up, right?

4 A. Yes, sir.

5 Q. You're bleeding, right?

6 A. Yes, sir.

7 Q. Okay. Then while -- and all the guys were in that
8 back room, right?

9 A. No, sir.

10 Q. Just the two of them?

11 A. I don't remember the numbers. Not all of them.

12 Q. Not all of them?

13 A. Not all of them.

14 Q. Okay. And they took your wallet?

15 A. Wallet.

16 Q. Okay. And they took your money?

17 A. Money.

18 Q. All right. And they took -- the group of people
19 took clothing out of your store.

20 A. Yes, sir.

21 Q. All right. Did you ever get a list of what was
22 taken? Did you ever make a list of what was taken?

23 A. Yes -- not really, but I know what was taken. I
24 know --

25 Q. You had -- I mean, did you go five shirts, four

1 pants?

2 A. No. Didn't have no numbers.

3 Q. Okay. No numbers?

4 A. No numbers.

5 Q. Stuff was taken?

6 A. Yes, sir.

7 Q. Okay. So some shirts were taken?

8 A. Yes, sir.

9 Q. Some jeans were taken?

10 A. Yes, sir.

11 Q. Were shoes taken?

12 A. Yes, sir.

13 Q. Okay. How many shoes were taken?

14 A. I do not remember, sir.

15 Q. You don't know?

16 A. No.

17 Q. You don't have any clue what sizes were taken?

18 A. No.

19 Q. Don't have any idea what kind of styles were
20 taken?

21 A. Yes, sir.

22 Q. Okay. How many different styles?

23 A. There was two different styles.

24 Q. Two different styles?

25 A. Yes, sir.

1 Q. Was there two different styles -- was that just
2 the two shoes taken, or was there 20 pairs of shoes
3 taken? Give us --

4 A. No numbers, but between ten or twenty, I would
5 say.

6 Q. Ten or twenty pairs of shoes.

7 A. Yeah.

8 Q. And those are shoes that you sell in that store,
9 right?

10 A. Yes, sir.

11 Q. And you've sold those shoes before, right?

12 A. Yes, sir.

13 Q. Okay. And the jeans that were taken, was there
14 one pair of jeans taken, 50 pairs?

15 A. No numbers.

16 Q. No numbers. You have no clue how many were taken?

17 A. No, no.

18 Q. How many styles were taken?

19 A. Don't know.

20 Q. Okay. But that style, you had sold those styles
21 that were taken before that, right?

22 A. Yes, sir.

23 Q. And you sold some after that, too, of course.
24 That is your business?

25 A. Yes, sir.

1 Q. So your store caters to young men, right?

2 A. Yes, sir.

3 Q. Your gear, by the name of your store, Urban Gear,
4 caters to a young hip-hop crowd, right?

5 A. Yes, sir.

6 Q. And it was your grand opening, been open about a
7 week?

8 A. Yeah, six to eight days, six days.

9 Q. And you were excited. There was a lot of traffic,
10 right? Your store, that generated a lot of traffic?

11 A. Well, I was excited. I opened a new business.

12 Q. My point is, you had some pretty good traffic
13 coming in out of that store, right?

14 A. I cannot say that for the first opening.

15 Q. Okay. And there is a store two doors down from
16 you called 31 Sports, right?

17 A. Yes, sir.

18 Q. And it was your hope that you would get some
19 bleed-off from that business, right?

20 A. No.

21 Q. Okay. Because that store catered to the young
22 crowd also, didn't it?

23 A. Yes, sir.

24 Q. Okay. Now, when you were giving your statement to
25 the police --

1 A. Yes, sir.

2 Q. -- you tried to tell them anything you could to
3 help apprehend these guys, right?

4 A. Yes, sir.

5 Q. And so if anything -- if you had remembered
6 anything in particular, you would have told them right
7 then and there, right, like guy had a limp. If he had a
8 limp and had seen it, you certainly would have told that
9 to the police, right?

10 A. Yes, sir.

11 Q. Or guy had a big old tattoo. If you saw that, you
12 would have told the police, right?

13 A. Yes.

14 Q. So you were trying to give him as much information
15 as possible?

16 A. Yes, sir.

17 Q. The only information that you could give him was
18 that it was -- the one fellow you described and four
19 other black males, one of which was light skinned, right?

20 A. Yes, sir.

21 Q. Now, did you get a look at a handgun?

22 A. No, sir.

23 Q. You didn't see a handgun.

24 A. I seen a gun.

25 Q. Okay. You couldn't describe it, whether it was

1 revolver?

2 A. No, sir. I'm not good with guns.

3 Q. You're not good with guns?

4 A. No, sir.

5 Q. Okay. So all you can tell us is that it was a
6 handgun?

7 A. Yes, sir.

8 Q. Now, the guy that came in the store first was the
9 guy with the rifle, and one of those other four guys had
10 the handgun, the shorter guy?

11 A. Yes, sir.

12 Q. Did he strike you with that gun?

13 A. No, sir.

14 Q. You weren't struck with the gun. How long did
15 this whole event take? How long were these fellows in
16 the store?

17 A. About three minutes, three to five minutes.

18 Q. It was pretty quick?

19 A. Yes, three to five minutes.

20 Q. All right. Did you have any -- I know it's a new
21 store, but had you installed any kind of camera or video
22 surveillance?

23 A. No, sir.

24 Q. So there is not any record other than your memory
25 of this event.

1 A. Yes, sir.

2 Q. Okay. Now, those shoes and those jeans and those
3 shirts you sold, you weren't the only guys that sold
4 them. Other people sell those same brands, right?

5 A. Yes, sir.

6 Q. Okay. All right. Let me ask you some other
7 questions. Now, this is my client, all right? Darrell
8 Goss, all right?

9 A. Yes, sir.

10 Q. Now, you had seen him in the store before this
11 robbery, hadn't you?

12 A. Yes, sir.

13 Q. All right. He had come in and looked around
14 earlier that week, right?

15 A. Yes, sir.

16 Q. Okay. And later in this case, as the police were
17 doing their investigation, they showed you a photo
18 lineup, a couple of photo lineups, correct?

19 A. Yes, sir.

20 Q. And when they showed you a lineup, this is the
21 lineup they showed you -- that had Mr. Goss in it, you
22 picked him out, right?

23 A. Yes, sir.

24 Q. And you told him, not that he was involved in the
25 robbery that day, but you had seen him in the store that

1 week, right?

2 A. Yes, sir.

3 Q. Okay. So you knew that he had been in the store,
4 right?

5 A. Yes, sir.

6 Q. But you didn't identify him as being in the store
7 during the robbery, correct?

8 A. No, sir.

9 Q. All right. Now, how the guys got there and they
10 left, you don't know, do you?

11 A. No, sir.

12 Q. You didn't see the guys drive up; you didn't see
13 the guys drive away. You don't know whether they even
14 drove away. You saw them come in and they left, right?

15 A. Yes, sir.

16 Q. Okay. Do you remember seeing Darrell in the store
17 that day, earlier that day?

18 A. Robbery day?

19 Q. Yeah, with his mother.

20 A. No, not robbery day.

21 Q. Okay. Do you recall what they bought when he was
22 in your store?

23 A. Two days before the robbery.

24 Q. You remember seeing him two days before the
25 robbery. Now, you testified in your direct testimony

1 that you saw Mr. Mack a couple weeks after the robbery.

2 A. Yes, sir.

3 Q. Okay. You've never seen Mr. Mack and Mr. Goss
4 together, though?

5 A. No, sir.

6 Q. Okay. When you saw Mr. Mack at your store and the
7 store a couple of doors down, Mr. Goss, he didn't have
8 anything to do with that.

9 A. No, sir.

10 Q. So --

11 MR. SMILEY: Beg the Court's indulgence.

12 BY MR. SMILEY:

13 Q. Now, you identified some pictures of items that
14 you sold in your store in your direct testimony, right?

15 A. Yes, sir.

16 Q. For instance, I'm going to show you what is
17 State's Exhibit No. 41. That pair of jeans, those are
18 called puzzle jeans, right?

19 A. I didn't get --

20 Q. In that picture is a pair of jeans, right?

21 A. Yes, sir.

22 Q. They have a design on the pocket?

23 A. Yes, sir.

24 Q. They're called puzzle jeans?

25 A. Yes, sir.

1 Q. That is one of the brands that you sell at your
2 store.

3 A. Yes, sir.

4 Q. You aren't the only one that sells puzzle jeans?

5 A. No, sir.

6 Q. There are a couple of shirts in that picture that
7 you identify as styles that you sell at your store,
8 right?

9 A. Yes, sir.

10 Q. You're not the only one that sells those shirts?

11 A. No, sir.

12 Q. And you identify a couple pairs of shoes in that
13 picture as being kinds that you sell at your store,
14 right?

15 A. Yes, sir.

16 Q. All right. You are not the only person that sells
17 those shoes, though?

18 A. No, sir.

19 Q. Now, let me ask this question: I'm going to show
20 you what has been identified as State's Exhibit No. 42.
21 That has got a stack of tags in there, right?

22 A. Yes, sir.

23 Q. Now, you said that some of those tags belong to
24 items that were sold in your store, correct?

25 A. Yes, sir.

1 Q. Some don't, though, right? There are some tags
2 that don't come from your store in that pile.

3 A. Yes, sir.

4 Q. Okay. Now, you know a load of clothing was taken
5 out of your store, correct?

6 A. Yes, sir.

7 Q. But you can't tell us exactly what was taken out,
8 could you?

9 A. No, sir.

10 Q. If you would, you would have provided a list to
11 the police, right?

12 A. Yes, sir.

13 Q. And once those items left your store, you don't
14 know where they all went, do you?

15 A. No, sir.

16 Q. You don't know if they were resold, do you?

17 A. No, sir.

18 MR. SMILEY: I beg the Court's indulgence.

19 BY MR. SMILEY:

20 Q. The 1,000 in your pocket, do you remember putting
21 that in your bank the next day?

22 A. Yes, sir.

23 Q. Did it have a deposit slip with it?

24 A. No, sir.

25 Q. Were any sunglasses taken from your store?

1 A. No, sir.

2 Q. Were any hats taken from your store?

3 A. Not that I know. Those hats don't belong to me.

4 Q. I understand. I'm just asking.

5 A. No, sir.

6 Q. Any jewelry taken?

7 A. No, sir.

8 Q. Is it fair the only things that were taken were
9 shirts, jeans, and shoes?

10 A. Yes, sir.

11 Q. Okay.

12 MR. SMILEY: No further questions.

13 THE COURT: All right. Cross-examination?

14 MR. APOSTOLOU: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. APOSTOLOU:

17 Q. May I call you Andy as well?

18 A. That's fine.

19 Q. Okay. Now, you testified that the door opened in
20 your store, and you were in the back of the store, right?

21 A. Yes, sir.

22 Q. And the first person through the door was the guy
23 that had the AK47?

24 A. Yes, sir.

25 Q. And you saw him walking pretty much the whole way.

1 A. Yes, sir.

2 Q. Because it was getting close to closing time, and
3 when the door opened, you just naturally turned and
4 you're, like, What's going on, and you see him walking
5 in, right?

6 A. Yes, sir.

7 Q. And you watch him walk, I think, 70 feet?

8 A. Yes, sir.

9 Q. And that is pretty much -- what was he wearing?

10 A. I don't remember exactly. I would say black
11 shirt. Like I said, I could be wrong, but on my
12 statement it says red T shirt, black jeans, and gray
13 skully. If that is what I say on my statement, that is
14 true.

15 Q. So what you're saying is you gave a statement
16 yesterday, and I asked you what was he wearing
17 yesterday --

18 A. I did say black, sir.

19 Q. You said he was wearing black jeans, a black
20 hoody, and a black snow cap?

21 A. Yes, sir.

22 Q. And we talked about what a snow cap is, and that
23 is how you described what he was wearing, the first
24 person through the store that you're alleging is Joy
25 Mack?

1 A. Yes, sir.

2 Q. That is how you described what he was wearing
3 yesterday.

4 A. Yes, sir.

5 Q. Was black jeans, a black hoody, and a black snow
6 cap?

7 A. Yes, sir.

8 Q. But the day of the robbery, after you watched him
9 from 70 feet, walk all the way to you -- you got a good
10 look at him, didn't you?

11 A. Yes, sir.

12 Q. You described him wearing jeans, a red shirt, and
13 a gray skull cap?

14 A. Yes, sir.

15 Q. Okay. That is not very consistent, is it?

16 A. It's been two years. How am I going to remember
17 my statement?

18 Q. I'm not asking you to remember your statement.
19 I'm asking, do you remember the defendant when he walked
20 into the store?

21 A. Yes, sir.

22 Q. And that is not a consistent description, is it?

23 A. I didn't hear the question.

24 Q. It's not a consistent description of it?

25 A. I don't know what the word means. I'm not going

1 to ask -- I don't get the word. I don't understand.
2 What does that mean? I don't get the big words
3 sometimes.

4 Q. Okay. The description that you made yesterday
5 does not match the description you made two hours after
6 the robbery, does it?

7 A. It mentions who it is, but it doesn't mention the
8 clothes, though.

9 Q. It doesn't match the clothes.

10 A. The clothes don't match because I don't remember.

11 Q. Okay. But you got a good look at him on the day?

12 A. Yes, sir.

13 Q. And Mr. Smiley asked you if you gave all the
14 information that you could, that you could help the
15 police?

16 A. Yes, sir.

17 Q. The only description that you gave was that he was
18 wearing back jeans, red shirt, and a gray skull cap?

19 A. Yes, sir.

20 Q. That is the only description you gave of him; is
21 that right?

22 A. Yes, sir.

23 Q. So the only description that you gave of him was
24 different than what you testified yesterday about, okay?
25 Is that right?

1 A. Yes, sir.

2 Q. All right. And when you gave that statement two
3 hours after the robbery, the police asked you, If you saw
4 them again, do you think you would recognize these guys?
5 Didn't they?

6 A. Yes, sir.

7 Q. And what was your answer to that question, made
8 two hours after the robbery?

9 A. Yes, sir.

10 Q. They asked you, If you see these guys again, will
11 you recognize them? What was your answer?

12 A. Most likely I say no.

13 Q. You say no.

14 A. Yes, sir.

15 Q. Most likely you said no, or I said I could not --

16 A. I can't identify them.

17 Q. So you said two hours after the robbery that you
18 couldn't identify them.

19 A. Yes, sir.

20 Q. But two and a half weeks later, you did identify
21 them.

22 A. Yes, sir.

23 Q. Okay. Okay. Well, let's talk about when he's
24 walking towards you. You said he had a serious look on
25 his face.

1 A. Yes, sir.

2 Q. But nothing distinctive about that. You said he
3 was calm but serious.

4 A. Yes, sir.

5 Q. Okay. Could you see his hands?

6 A. I mean, his hand was down, yeah.

7 Q. His hands were down by his side?

8 A. Yeah.

9 Q. And you could see them?

10 A. Yeah.

11 Q. Okay. Was he wearing gloves or anything like
12 that?

13 A. No, sir.

14 Q. Was he wearing a mask or anything like that?

15 A. No, sir.

16 Q. Just -- okay. All right. And you said when he
17 got to five feet from you, he pulled out the AK47?

18 A. Yes, sir.

19 Q. And Mr. Smiley asked you if that was just a
20 generic term or whether you had independent knowledge
21 that it was an AK47?

22 A. Yes, sir.

23 Q. You said basically it was a rifle?

24 A. Yes, sir.

25 Q. Are we talking about a rifle or machine gun?

1 A. I said machine gun. They are legal machine gun.
2 I don't know. I don't know anything about guns.

3 Q. I'm not trying to trip you up.

4 A. I don't know anything about guns. I just answered
5 that.

6 Q. I understand.

7 A. I mean, you're trying to make me know about the
8 gun.

9 Q. I'm not trying to make you know about the gun.
10 I'm just trying to get the description of the gun for the
11 jury.

12 A. It looked like a machine gun. It looked like an
13 AK47. It looked like a rifle. All I know, it was not a
14 handgun. That's all I know.

15 Q. Okay. And how long was it?

16 A. About this size right there (indicating).

17 Q. About that size?

18 A. Yes, sir.

19 Q. So on your body it came up to where, rifle?

20 A. I mean, somewhere off my knee, between three to
21 four feet, I assume.

22 Q. Three or four feet?

23 A. Yeah.

24 Q. Would be the length of the rifle?

25 A. Yes, sir, three feet.

1 Q. That would be a little higher than your knee,
2 wouldn't it?

3 A. I'm not sure, sir. Maybe. It could be possible.

4 Q. What would be possible?

5 A. If you think it is longer or longer. I don't
6 know. It was about this size right here.

7 Q. Well, Andy, I didn't see the gun, and nobody else
8 in the jury saw the gun, so you saw the gun, so I'm
9 asking you for the description. And you said three or
10 four feet in length for the gun?

11 A. Yes, sir.

12 Q. I also said as long as your knee.

13 A. About a little longer.

14 Q. A little longer than your knee?

15 A. Yes, sir, about right there.

16 Q. Okay.

17 A. I don't know how long it would be. About right
18 there.

19 Q. Okay. And what other distinctive factors was
20 there about the gun?

21 A. I didn't get the question.

22 Q. Can you describe the gun at all. Was it rusty,
23 barrel, wood stock?

24 A. All I see wood stock.

25 Q. It had a wood stock at the end?

1 A. Yes, sir.

2 Q. And you saw him walking towards, but he pulled it
3 out when he got about five feet from you?

4 A. Yes, sir.

5 Q. And that is the first time that you knew that
6 something was going on?

7 A. Yes, sir.

8 Q. When he was about five feet from you. So about
9 this distance from you, roughly?

10 A. Yes, sir.

11 Q. About five feet? Okay. All right. And so you
12 said with Mr. Smiley testified this lasted about three to
13 five minutes?

14 A. Yes, sir.

15 Q. And out the door he went?

16 A. Yes, sir.

17 Q. And that is the only time that you had a view of
18 him, at that time?

19 A. Yes, sir.

20 Q. Now, the other people, you had seen Mr. Goss
21 before and you didn't recognize him that day, right?

22 A. No, sir. No, I recognized him.

23 Q. What is that?

24 A. I didn't get the question. Can you ask the
25 question?

1 Q. Sure. You didn't recognize anybody else there --

2 A. No, sir.

3 Q. -- that day?

4 A. No, sir.

5 Q. And of the -- you said there was -- in your
6 statement, you said about five.

7 A. About five.

8 Q. Are you 100 percent sure it was five?

9 A. Almost 100 percent sure it was five people.

10 Q. Okay. So it could have been more, could have been
11 less?

12 A. No, five. I'll stay with five.

13 Q. Okay. And did you give any descriptions for
14 anybody else of those five people?

15 A. Yes, sir.

16 Q. Did you describe one of these them as light
17 skinned?

18 A. Yes, sir.

19 Q. And that is only other description you gave on
20 that day?

21 A. Yes, sir, yes, sir.

22 Q. Okay. Well, let's talk about when these other
23 identifications, where you see Mr. Mack. You said that
24 one of them occurred about a week afterwards?

25 A. Yes, sir.

1 Q. Okay. Let's tell the jury where that happened.

2 A. Where I see Joy Mack?

3 Q. Right.

4 A. In a shopping center area.

5 Q. Not in your store?

6 A. Not in my store.

7 Q. But just walking down the street of the shopping
8 center?

9 A. Not walking, standing over there by the 31 Sports.

10 Q. So he was standing in front of 31 Sports on the
11 sidewalk?

12 A. Yes, sir, sidewalk.

13 Q. So what, a week after robbing your store without a
14 mask, Joy Mack had returned to the mall where the robbery
15 happened?

16 A. Yes, sir.

17 Q. And he was just standing, basically, in front of
18 your store?

19 A. Yes, sir.

20 Q. Okay. And you saw him that time? That is --

21 A. First time.

22 Q. First you had seen him?

23 A. First time I see him in the shopping center.

24 Q. And did you know instantly that he was involved in
25 the robbery?

1 A. Yes, sir.

2 Q. You said --

3 A. Yes, sir. I told David.

4 Q. You told David that?

5 A. Yes, I did.

6 Q. And David was there during this whole robbery
7 also?

8 A. Yes, sir.

9 Q. And David saw the same things that you saw?

10 A. Yes, sir.

11 Q. Okay. And you said that the first guy that went
12 in the store was with the AK47?

13 A. Yes, sir.

14 Q. Okay. Okay. Let's go back to the identification.
15 So did you call the police that day?

16 A. No, sir.

17 Q. Why didn't you call the police?

18 A. I was a little nervous.

19 Q. What were you nervous about?

20 A. Because I just had a ton of stitches on my head.

21 Q. Okay. And so why did that make you nervous to
22 call the police?

23 A. Criminals. They don't -- they don't think like
24 me.

25 Q. Okay. What about the way the criminals think -- I

1 mean, why wouldn't you just call the police? You didn't.
2 have to go out and talk to them.

3 A. No. I was new in the area. I didn't know what
4 was going to happen.

5 Q. Okay. You could have just gone to the back and
6 called on the phone, and he would have never known that
7 you called the police, right?

8 A. Yes, sir.

9 Q. But you didn't do that?

10 A. No, sir.

11 Q. Because you were nervous?

12 A. Yes, sir.

13 Q. Did you call the police about anybody else?

14 A. Yes, sir.

15 Q. Matching the description of the five robbers?

16 A. Yes, sir.

17 Q. Did you do that before you saw Joy Mack in front
18 of your store?

19 A. Yes, sir. That was the next day after my robbery
20 that morning.

21 Q. So the day after the robbery --

22 A. Yes, sir.

23 Q. -- you called the police, and you identified
24 another of the robbers?

25 A. Yes, sir.

1 Q. Okay. Tell us about that.

2 A. I identified another one, the light skinned one I
3 was talking about, and then police show up and he was
4 gone already and I did give them the plate number. He
5 wasn't driving, though. Somebody else was driving, and I
6 guess they couldn't get anything out of it because they
7 said it could be somebody else's car. It could be so and
8 so's car.

9 Q. How did you recognize this person? Where did you
10 recognize him?

11 A. I recognize him at the 31 Sports. He was over
12 there.

13 Q. He was at the 31 Sports also?

14 A. Yes, sir, he was.

15 Q. Was he inside the store or outside on the street?

16 A. He was inside the store.

17 Q. What were you doing at 31 Sports?

18 A. I was not on the inside. I was on the outside
19 when I called 911.

20 Q. So you saw him inside 31 Sports?

21 A. Yes, sir.

22 Q. And you called 911?

23 A. Yes, sir.

24 Q. Did you recognize him instantly as being one of
25 the robbers?

1 A. Yes, sir.

2 Q. So this is a second robber. This was about 12
3 noon the day after the robbery?

4 A. Yes, sir.

5 Q. The robbery was about 7:30, and at 12 noon, one of
6 the robbers had come back to the location --

7 A. Yes, sir.

8 Q. He wasn't wearing a mask?

9 A. No, sir.

10 Q. And he was there also?

11 A. Yes, sir.

12 Q. And so you did call the police. Why were you
13 nervous to call the police on Joy Mack a week later but
14 you weren't nervous to call the police on this guy?

15 A. I don't know. He was the one with the AK47.
16 Maybe that is why it made me nervous.

17 Q. The fact that the other guy was with him?

18 A. Yes, sir.

19 Q. Or with whoever came in and robbed you, it didn't
20 make you nervous to call the police on him?

21 A. Yes, sir.

22 Q. But it did make you nervous to call --

23 A. Yes, sir.

24 Q. Okay. Okay. And so you said that you got his --
25 you called the police --

1 A. Yes, sir.

2 Q. -- on this individual. And when the police came,
3 did they come talk to you?

4 A. When I called the police on Joy Mack?

5 Q. No, on whoever this other light skinned person
6 was.

7 A. Yes, sir, yes.

8 Q. They came and they talked to you?

9 A. Yes, sir.

10 Q. And what did you explain to them?

11 A. I just told him this guy was in an armed robbery
12 and he was one of them, light skinned.

13 Q. And you were 100 percent sure on the
14 identification of this light skinned individual?

15 A. Yes, sir.

16 Q. 100 percent?

17 A. Yes, sir.

18 Q. Just like you were --

19 A. If I was not 100 percent sure, I would not tell
20 anybody.

21 Q. Okay. And you said something about a license
22 plate.

23 A. Yes, sir.

24 Q. How did you get the license plate of the car?

25 A. Because his car was parked over there, once he

1 arrived in the car and I got the license plate.

2 Q. Okay. And so you just testified that the first
3 time you saw him, you saw him inside 31 Sports?

4 A. Yes, sir.

5 Q. But you also testified that you got the license
6 plate when he pulled up in the car.

7 A. No, sir. When he got into the car when he was
8 leaving.

9 Q. Okay. I'm sorry. I didn't understand that. So
10 when he was leaving --

11 A. Yes, sir.

12 Q. -- he went and he got into a car?

13 A. Yes, sir.

14 Q. And you copied down the license plate?

15 A. Yes, sir.

16 Q. So you went outside and you followed him?

17 A. No, sir. I called 911.

18 Q. I understand that. How did you go about getting
19 his license tag? Can you tell us about that.

20 A. Yeah. He was parked right in front of one of
21 those store over there in the shopping area, liquor
22 store.

23 Q. So he was parked in front of a liquor store?

24 A. Yes, sir.

25 Q. Did you actually go out of your store to look at

1 the license plate for the light skinned guy?

2 A. Yes, sir.

3 Q. So you did go out of -- when he walked out of 31
4 Sports, you followed him to his car, and you jotted down
5 the license plate.

6 A. No, sir. I didn't follow him. When he left, I
7 got his license plate, when he was leaving the shopping
8 area.

9 Q. Okay. Could you see his license plate from your
10 store?

11 A. No, sir.

12 Q. Okay. How did you get his license plate number if
13 you did not leave your store?

14 A. Sir, I was outside. I was outside of my store. I
15 was in the shopping area. I was waiting for him to come
16 out, because when I called 911, I was following him.

17 Q. That was my question. You followed him to his
18 car --

19 A. Well, when you say follow, you say follow with him
20 a car. I didn't follow him.

21 Q. I didn't mean to confuse you.

22 A. Okay.

23 Q. So you did follow him to the car, got his license
24 plate?

25 A. Yes, sir.

1 Q. And when the police came, he had already taken
2 off?

3 A. Yes, sir.

4 Q. But you did give the police the license plate
5 number for this car?

6 A. Yes, sir.

7 Q. And the police investigated it?

8 MR. SMILEY: Objection. I don't believe he
9 can answer that question, did they investigate it. He
10 didn't know what the police --

11 THE COURT: Overruled. Go ahead.

12 BY MR. APOSTOLOU:

13 Q. Did the police investigate that car?

14 A. No, sir, not that I know.

15 Q. I thought you just said that the police said that
16 it could have been anybody or something.

17 A. Yes, sir.

18 Q. Okay. Can you tell us about that.

19 A. The police officer told me if we go by the license
20 plate --

21 MR. SMILEY: Objection. Hearsay.

22 THE COURT: Sustained. Don't tell us about
23 what somebody told you.

24 BY MR. APOSTOLOU:

25 Q. As a result of the identification of this other

1 person, nobody was ever arrested on that car?

2 A. No, sir.

3 Q. And nobody else was ever identified about that?

4 A. No, sir.

5 Q. Okay. So you were 100 percent positive the light
6 skinned guy was in the store?

7 A. Yes, sir.

8 Q. You had the license plate to the car that he left
9 the store?

10 A. Yes, sir.

11 Q. But no charges were ever brought against anybody
12 as a result of that incident.

13 A. No, sir.

14 Q. Okay. You told the police you were 100 percent
15 sure, right?

16 A. Yes, sir.

17 Q. Now, you saw Joy Mack a week after that?

18 A. Yes, sir.

19 Q. At the same location?

20 A. Yes, sir.

21 Q. So both of these robbers returned right back to
22 the same location. That is where you identified both of
23 them, right?

24 A. Yes, sir.

25 Q. Okay. All right. Now, the second time you saw

1 him, you were with David, you said?

2 A. Yes, sir.

3 Q. And you told David that, That is the guy?

4 A. Second time I was with him, I was with my first.

5 First time I saw him with David.

6 Q. First time you saw Joy Mack, you were with David?

7 A. Yes, sir.

8 Q. And you saw him standing in front of 31 Sports?

9 A. Yes, sir.

10 Q. You were in the safety and comfort of your own
11 store?

12 A. Yes, sir.

13 Q. And you saw him through the window?

14 A. Yes, sir.

15 Q. And you said to David, That is the guy.

16 A. Yes, sir.

17 Q. Did you point at him?

18 A. Yes, sir.

19 Q. You pointed him out to David.

20 A. Yes, sir.

21 Q. Okay. Okay. So David saw the person that you
22 said was, 100 percent, one of the robbers?

23 A. Yes, sir.

24 Q. And, in fact, the first one through the door,
25 right?

1 A. Yes, sir.

2 Q. Okay. But you didn't call the police that day?

3 A. No, sir.

4 Q. And did -- my client didn't stay around or did you
5 see him for a long time or --

6 A. I don't remember how long, but he was there for
7 about five to ten minutes, if I assume.

8 Q. And did he go inside 31 Sports?

9 A. I don't remember that.

10 Q. Okay. So now there is a second time that you see
11 him.

12 A. Yes, sir.

13 Q. And that is the time, the 29th; is that right?

14 A. I don't remember the days, if that is what it says
15 on the statement.

16 Q. Let's put it another way. It's the day before the
17 police came, and you and Joy Mack were all standing there
18 together.

19 A. Okay.

20 Q. I'm asking you. The 30th is the day where Officer
21 Singletary came?

22 A. That's correct.

23 Q. So it's the day before?

24 A. Yes.

25 Q. So it's the 29th.

1 A. Yeah. I don't remember the dates. It was the day
2 before, though.

3 Q. I understand. So on the 29th, where do you see
4 Mr. Mack?

5 A. Inside the store.

6 Q. Inside your store?

7 A. Yes, sir.

8 Q. Okay. So one of the armed robbers that came in
9 without a mask, he came back shopping at your store?

10 A. No.

11 Q. Okay. Why is that now?

12 A. Do you mean Joy Mack?

13 Q. Yes, I mean Joy Mack.

14 A. Yes, sir. I thought you meant was there another
15 person with him.

16 Q. So it was just now Mack by himself?

17 A. No.

18 Q. There was another person with him?

19 A. Yes, sir.

20 Q. And he came into the store?

21 A. Both of them together.

22 Q. Both of them together?

23 A. Yes, sir.

24 Q. And what did they do inside the store? They
25 shopped?

1 A. No, they just looked around.

2 Q. They just looked around?

3 A. Yes, sir.

4 Q. They weren't antagonistic or hostile toward you?

5 A. No, sir.

6 Q. Just kind of ordinarily shopping inside the store?

7 A. Yes, sir.

8 Q. Okay. And did you say anything to them? Did you
9 have any kind of confrontation or anything?

10 A. I did not.

11 Q. You said, You are the robber?

12 A. I did not say that.

13 Q. You didn't do that?

14 A. No.

15 Q. But you did call the police that day?

16 A. I did.

17 Q. And the police came out?

18 A. Police came.

19 Q. By that time, Joy Mack had already left?

20 A. Yes, sir.

21 Q. Did you call the police while Joy was still inside
22 your store shopping?

23 A. No, sir.

24 Q. So you waited for him to leave?

25 A. Yes, sir.

1 Q. And then you called the police?

2 A. Yes, sir.

3 Q. So this is the second time you've called police
4 identifying robbers from the armed robbery --

5 A. My wife is the one that actually called the
6 police.

7 Q. So she called. So she was in the store that time?

8 A. Yes, sir.

9 Q. And so you told her, That is one of the robbers?

10 A. Yes, sir.

11 Q. And did you say, I'm 100 percent positive that's
12 the robber?

13 A. Yes, sir.

14 Q. You were 100 percent positive?

15 A. Yes, sir.

16 Q. Or did you say, I think that is the guy. I'm
17 almost sure.

18 A. No, sir. I said 100 percent sure.

19 Q. You said you're 100 sure?

20 A. Yes, sir. It's on my statement.

21 Q. It's on your statement?

22 A. Yes, sir.

23 Q. What statement is that on?

24 A. The police officer when they give me --

25 Q. On the 30th, the statement that you gave to

1 police?

2 A. Yes, sir.

3 Q. Okay.

4 MR. APOSTOLOU: Your Honor, may I approach
5 the witness?

6 THE COURT: Sure.

7 BY MR. APOSTOLOU:

8 Q. Can you just show me that portion where it's
9 inside the store. This is the 29th we're talking about.

10 A. Right there.

11 Q. This is the identification you made on the 30th?

12 A. That is what I'm talking about.

13 Q. I'm talking about the 29th.

14 A. There was no statement on the 29th.

15 Q. There was never any statement made on the 29th?

16 A. No, sir.

17 Q. And, in fact, on the statement you made on the
18 30th --

19 A. Yes, sir.

20 Q. -- you never mentioned seeing him on the first
21 time or second time, do you?

22 A. I don't remember that.

23 Q. Take a second and review it.

24 A. I don't see it.

25 Q. So you never mentioned in this statement -- when

1 you gave this statement, you wanted to give all the
2 information to the officer?

3 A. Yes, sir.

4 Q. You wanted to tell him the fact you had seen him
5 the day before. That was relevant information?

6 A. Everything happened very quick.

7 Q. You know, the police report and eight supplemental
8 reports have been entered about this case, and in none of
9 those police reports is there a mention of you seeing him
10 the first time or the second time. Okay?

11 MR. APOSTOLOU: Your Honor, could we approach
12 the bench briefly?

13 THE COURT: Yes, sir.

14 Madame Forelady, ladies and gentlemen of the
15 jury: We've been going since about 10 o'clock, so we're
16 going to take a break. If you need anything, let the
17 bailiff know. If anybody is a smoker, let the bailiff
18 know. They'll take you to the proper place. Please
19 don't discuss the case amongst yourselves. I want you to
20 make a decision on the testimony you hear in the
21 courtroom. I think if you follow the bailiff, he'll take
22 you to the jury room.

23 (Jury leaves the courtroom.)

24 THE COURT: Tell her what you're looking for
25 and when and where it was to narrow it down. See if you

1 are correct or who's correct.

2 (Record read back.)

3 THE COURT: Anything else from the state
4 before we bring the jury in?

5 MR. LAWTON: No, Your Honor.

6 (In open court, jury present.)

7 BY MR. APOSTOLOU:

8 Q. Andy, before we took a break, we were talking
9 about the second time that you saw Joy Mack after this
10 robbery was the 29th of June?

11 A. Yes, sir.

12 Q. You saw him in your store?

13 A. Correct.

14 A. Yes, sir.

15 Q. And I asked you if the second you saw him you were
16 instantly sure that that was him.

17 A. Yes, sir.

18 Q. And that was the second time you've seen him?

19 A. Yes, sir.

20 Q. The first time you didn't call the police?

21 A. Yes, sir.

22 Q. And this the second time, I'm asking if you were
23 instantly sure?

24 A. Yes, sir.

25 Q. And you said that you were 100 percent sure,

1 right?

2 A. Yes.

3 Q. Like you said you were 100 percent sure about the
4 guy that came into your store the day after the robbery?

5 A. Yes, sir.

6 Q. Okay. But you also testified yesterday in this
7 trial, didn't you?

8 A. Yes, sir.

9 Q. And when the prosecutor was asking you a question
10 about the 29th --

11 A. Yes, sir.

12 Q. -- you made a statement that day, you made a
13 statement yesterday when he asked you the question about
14 the time you saw Joy in on the 29th, right?

15 A. Yes, sir.

16 Q. Okay. I'm going to show you a document.

17 MR. APOSTOLOU: May I approach, Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. APOSTOLOU:

20 Q. Okay. And after Joy came into the store, you
21 turned to your wife and you said something.

22 A. Yes, sir.

23 Q. Okay. What did you say when you turned to your
24 wife and you said something to her?

25 A. I said, I'm 100 percent sure that is the guy who

1 robbed me. He had an AK47.

2 Q. And now you've looked at that document to compare
3 your testimony when your prosecutor asked you that
4 question yesterday.

5 A. Yes, sir.

6 Q. And you still want to have that answer?

7 A. Yes, sir.

8 Q. You still say that you were 100 percent sure?

9 A. I'm still saying I'm 100 percent sure.

10 Q. I want to be real clear here, because I don't want
11 to confuse you, and I don't know if I'm being 100 percent
12 clear. So my question to you isn't are you 100 percent
13 sure for the 29th?

14 A. I am 100 percent sure for the 29th.

15 Q. That's not my question, Andy. My question is,
16 yesterday when you testified, did you say you were 100
17 percent sure? It's a different question.

18 A. I don't remember what I say yesterday, but I'm 100
19 percent sure it was him. I don't remember what was my
20 statement. I always say I'm 100 percent sure.

21 Q. Okay. And I understand that, but I'm asking you,
22 did you yesterday say you were 100 percent sure --

23 MR. LAWTON: Asked and answered. Objection.

24 THE COURT: Overruled.

25 BY MR. LAWTON:

1 Q. And I've provided the document, the wording that
2 you used yesterday.

3 A. Possible. I don't remember.

4 Q. This is right here.

5 A. I don't even remember saying this statement.

6 THE COURT: If you would, just read it to
7 him.

8 MR. APOSTOLOU: Yes, sir.

9 THE COURT: Ladies and gentlemen: This is a
10 transcript from the hearing yesterday the court reporter
11 prepared for this purpose. So just read it to us.

12 BY MR. APOSTOLOU:

13 Q. The prosecutor asked you: Did you see the
14 defendant come in your store?

15 You said: Yes, sir.

16 And he had an individual with him?

17 Yes, sir. And you said okay, and then this is
18 your testimony.

19 A. Yes.

20 Q. And then I told my wife, I think that's the guy
21 that robbed me. And that is him right there, and I'm
22 almost sure. It's just some face you don't forget. Is
23 that what --

24 MR. LAWTON: Objection, Your Honor.

25 THE COURT: What is your objection?

1 MR. LAWTON: May I approach?

2 THE COURT: Yes, sir.

3 (Discussion held at sidebar.)

4 BY MR. APOSTOLOU:

5 Q. I'm going to read the last sentence, and then I
6 told my wife, I think that is the guy that robbed me, and
7 that is him right there. I'm almost sure. It's just
8 some face you don't forget. That's him right there.

9 Okay? So Andy, after you looked at that --

10 A. Yes, sir.

11 Q. -- you would agree that you said, I think that's
12 him, and I'm almost sure.

13 A. Yes, sir.

14 Q. Okay. Now, that was the 29th. That is the second
15 time that you've seen him.

16 A. Yes, sir.

17 Q. The first time you didn't call the police. The
18 second time you think that's him, you're almost sure.
19 Now, let's talk about the third time. The third time is
20 the next day; is that right?

21 A. Yes, sir.

22 Q. Okay. Now, where do you first come in contact
23 with Joy Mack that next day?

24 A. The third day?

25 Q. The 30th, the third time.

1 A. I saw him. He parked his car at the shopping
2 center area that he was walking to 31 Sports. That's
3 when I saw him.

4 Q. You noticed him when he was driving his vehicle?

5 A. Yes, sir.

6 Q. Okay. So before he parked the car, you first saw
7 him.

8 A. Yes, sir.

9 Q. Okay. And how did you see him? Did you look
10 through the window and you saw that he was there?

11 A. Yeah. I saw from the window that he was at a
12 parking lot. He was going to the 31 Sports. He passed
13 by the shop.

14 Q. Okay.

15 A. In front of the store.

16 Q. Now, when he was driving the car, did you know
17 that was him driving the car?

18 A. No, sir.

19 Q. Okay. So you saw the car pull in first?

20 A. I don't remember that part, sir.

21 Q. Okay. You just testified that the -- I asked you
22 when you first saw him, and you said I saw he was pulling
23 his car in to the parking lot.

24 A. I don't remember that part, sir.

25 Q. Okay. Perhaps I'm not --

1 A. Sir, it's been two years. I can't remember
2 everything that you are asking me.

3 Q. Andy, I understand that, and I'm not trying to
4 trip you up.

5 A. But you were. Sorry.

6 Q. What I'm asking you is -- and I'm not trying to
7 trip you up, I'm just trying to get to the facts. When
8 you first came in contact with Joy Mack on the 30th, the
9 third time you saw him --

10 A. Yes, sir.

11 Q. -- when did you see him? Where did you see him?

12 A. I don't remember the date, sir.

13 Q. Okay. Well, the third time --

14 A. If the statement says it's the 30th of June,
15 that's correct.

16 Q. On the third time you saw him, where did you first
17 come in contact with him?

18 A. On the first time he was passing by in front of
19 the store. That is when I called 911 again.

20 Q. Was he walking or was he driving?

21 A. He was walking.

22 Q. The first time you saw him, he was walking?

23 A. Yes, sir.

24 Q. Okay.

25 A. The third time.

1 Q. The third time. I'm sorry. Now, this is the
2 third time you saw him, right? Did you first see him
3 when he was driving his car, or did you first see him
4 when he was out of the car walking?

5 A. He was out of the car. I believe he was walking
6 because his car was parked there. I told the police
7 officer, That's his car.

8 Q. Okay. How did you know that --

9 A. His car was over there, though.

10 Q. How did you know that was his car?

11 A. Because I reported two days before, two days --
12 two times the day before, two times in a row I reported
13 what car he were driving.

14 Q. Okay. So on the 29th visit --

15 A. Yes, I told the police officer I know what car he
16 was driving. I even had a plate number and everything.

17 Q. That hadn't come out yet. All right. So let's go
18 back to the second time, the 29th. You said he was in
19 the store, and when he left, that's when you called the
20 police.

21 A. Yes, sir.

22 Q. So after you called the police, you went outside
23 the store and followed him?

24 A. When you say follow, yes. As walking, follow him.

25 Q. You just observed him?

1 A. Yes, sir.

2 Q. But you had to go out of your store to observe
3 him?

4 A. Yes, sir.

5 Q. And you saw him go to his car?

6 A. Yes, sir.

7 Q. And you saw him get in his car?

8 A. Yes.

9 Q. And drive off?

10 A. Yes, sir.

11 Q. And you jotted down the license tag?

12 A. Yes, sir.

13 Q. The exact same thing you had done with the one the
14 day after the robbery.

15 A. Yes, sir.

16 Q. Okay. So when the police come out, you give them
17 the license plate to the car.

18 A. Yes, sir.

19 Q. Okay. Okay. And so now the third time you see
20 this car pull in; is that right?

21 A. Yes, sir.

22 Q. And so what first attracts you to him on the third
23 time was the car pulling in.

24 A. Yes, sir.

25 Q. Does the car bear any relevance to the

1 identification that you've made to Joy Mack at all, the
2 color of the car, the description of the car? Does that
3 bear any relevance at all?

4 A. Not the robbery date, but the date that he came to
5 the store.

6 Q. It's got nothing to do with the observations.
7 Your observations aren't from the car, it's from seeing
8 him, personally, right?

9 Q. After I see what he were driving, it became both
10 the car and him. The robbery date is from -- I didn't
11 see no car, no robbery case.

12 Q. And what color is the car that Mr. Mack was
13 driving?

14 A. It's between maroon and purple.

15 Q. So he gets out the car and goes where, day three,
16 third time?

17 A. The third time? Well, when you say third time,
18 second time on that day, the 29th.

19 Q. We're on the 30th.

20 A. Yes, it's third time.

21 Q. So he gets out of his car. Where does he go?

22 A. I don't know where he goes. He just drives his
23 car.

24 Q. After he parks the car, he got out of the car,
25 where did he go?

1 A. He went in 31 Sports.

2 Q. And 31 Sports is a store much like yours that
3 caters to younger, urban, predominantly African American
4 people.

5 A. Yes, sir, yes, sir.

6 Q. Predominantly African American males?

7 A. Yes, sir.

8 Q. Do you do any female clothing at all?

9 A. No, sir.

10 Q. So all of your store stuff is male clothing?

11 A. Only male.

12 Q. Only male?

13 A. Yes, sir.

14 Q. And most of your customers are black, young men?

15 A. Yes, sir.

16 Q. Okay. So when do you call the police, as soon as
17 you see him pull up?

18 A. Yes, sir.

19 Q. And the police come?

20 A. Yes, sir.

21 Q. And you talk to the police, and they come and
22 speak to you?

23 A. Yes, sir.

24 Q. And you tell them that this is one the guys that
25 was involved in the robbery?

1 A. Yes, sir.

2 Q. And while you're standing there -- and where does
3 the conversation from the officer take place?

4 A. Me and him was talking in front of my store.

5 Q. So you're on the sidewalk?

6 A. Yeah, outside sidewalk.

7 Q. And while you're sitting there talking to the
8 officer about the armed robbery, Joy Mack comes out of 31
9 Sports?

10 A. Yes, sir.

11 Q. And he comes walking toward y'all?

12 A. Yes, sir.

13 Q. Was he animated? Was he yelling, anything like
14 that?

15 A. No, sir.

16 Q. He was just amiably walking -- he was just
17 happy-go-lucky, walking down the street?

18 A. Yes, sir.

19 Q. Okay. He wasn't scared, wasn't running, anything
20 like that?

21 A. No, sir.

22 Q. Just came walking up to you, the victim of the
23 robbery, and the police officer standing there?

24 A. Yes, sir.

25 Q. And he walked over, and then what happened at that

1 point?

2 A. Police officer basically told him what I told him,
3 that he was one of the persons who was at the robbery and
4 then asking for identification.

5 Q. So Officer Singletary is the officer that comes
6 out; is that correct?

7 A. Yes, sir.

8 Q. He sees Joy Mack and he calls him over there, and
9 you're standing right there too?

10 A. No. I went back inside after the officer asked
11 him for identification. I said I'll let the police
12 officer do his job.

13 Q. Prior to that, though, you're standing there
14 explaining what is happening, Joy walks out. He brings
15 Joy Mack over there, right?

16 A. Yes, sir.

17 Q. And he explains to him that this individual has
18 accused you of being the armed robber in this robbery?

19 A. I'm not sure because I was inside. I didn't hear
20 what they were talking about. When he asked for
21 identification -- he asked for identification. He said
22 he was involved in an armed robbery. I heard that part.
23 That was all I heard.

24 Q. So you did hear the officer tell Joy Mack that
25 this guy says you're involved in an armed robbery?

- 1 A. Yes, sir. I did hear that part.
- 2 Q. You were standing right there.
- 3 A. Yes, sir.
- 4 Q. You heard that from Officer Singletary.
- 5 A. Yes, sir.
- 6 Q. Then he asked him for his identification?
- 7 A. Yes, sir.
- 8 Q. And then you went inside the store?
- 9 A. Yes, sir.
- 10 Q. And that is all you really know about that
- 11 encounter?
- 12 A. That's it.
- 13 Q. Okay and. That was the last time you ever saw Joy
- 14 Mack?
- 15 A. Yes, sir.
- 16 Q. Up until yesterday, when we have this trial?
- 17 A. Yes, sir.
- 18 Q. Let's just talk about when they're coming in the
- 19 store briefly, the day of the robbery.
- 20 You said that this lasted three to five minutes
- 21 total.
- 22 A. Yes, sir.
- 23 Q. Okay. Most of that three to five minutes you are
- 24 tied up, face down, in the back of the store.
- 25 A. Yes, sir.

1 Q. And I think Mr. Smiley asked you if you could look
2 around and you could see, and you said no.

3 A. No, sir.

4 Q. So most of the three to five minutes, you're not
5 looking around at all.

6 A. No, sir.

7 Q. So really the only identification that you had was
8 that 70 foot walk.

9 A. Yes, sir.

10 Q. After that, you're face down on the ground, being
11 struck by the rifle?

12 A. Yes, sir.

13 Q. And you can't see -- you know that it's the butt
14 of the gun?

15 A. Yes, sir.

16 Q. But you can't see that individual.

17 A. No, sir.

18 Q. So it's -- really, the distance of that is how
19 long you had to observe him.

20 A. Yes, sir.

21 Q. And after that you really didn't observe him at
22 all.

23 A. No, sir.

24 Q. Okay. Was he walking fast?

25 A. Don't remember that.

1 Q. Was he running?

2 A. Don't remember that. There was just a lot of
3 walking fast, a lot of running inside the store. A lot
4 of stuff was going on. I can't remember all of it.

5 Q. I'm talking about when he first comes in the
6 store.

7 A. He was walking.

8 Q. Was he walking fast?

9 A. He was walking slow.

10 Q. Just walking?

11 A. Yes, sir.

12 Q. Normally?

13 A. Yes, sir.

14 Q. Okay. 31 Sports is the next store over; is that
15 right?

16 A. Two stores, yeah.

17 Q. Okay. And you testified that basically your
18 clientele is young, African American males?

19 A. Yes, sir.

20 Q. And you also testified the the robbers were young
21 African American males?

22 A. Yes, sir.

23 Q. And you said in that statement that that's a face
24 you don't forget; is that right?

25 A. Yes, sir.

1 Q. Tell us how you described the face of that
2 individual in your statement the night of the robbery.

3 A. What do you mean?

4 Q. When you gave your statement to the police officer
5 two hours after the robbery, you didn't describe his face
6 at all, did you?

7 A. No, sir. I'm very bad on describing because I
8 don't know how this works -- I know how to do
9 centimeters. I don't know feet. I'm not good. I'm good
10 with centimeters.

11 Q. I understand. In Turkey you're in centimeters?

12 A. Yes, sir.

13 Q. Okay. So what did you say was he was a little
14 taller than you?

15 A. Yes, sir.

16 Q. Okay. So he's a little taller than you.

17 A. Yes, sir.

18 Q. And you're just basing that off you're standing
19 there?

20 A. Yes, sir.

21 Q. So he's right there close to your height, but
22 just --

23 A. Not close to my height. He was taller than me,
24 because I could see.

25 Q. Right. I understand that, but your statement says

1 he was a little taller than you.

2 A. That's why I said it was true.

3 Q. Let me show you a statement to refresh your
4 memory.

5 A. Yes, sir.

6 Q. So your statement said he was little taller than
7 you.

8 A. Yes, sir.

9 Q. And you're not basing that off feet or
10 centimeters?

11 A. No, sir.

12 Q. You're just basing that off of where you are?

13 A. No, sir.

14 Q. All right.

15 MR. APOSTOLOU: Court's indulgence, Your
16 Honor?

17 THE COURT: Yes, sir.

18 BY MR. APOSTOLOU:

19 Q. Now, Andy, at some point there came to be -- after
20 the third identification, after the third time that you
21 saw him --

22 A. Yes, sir.

23 Q. He was -- he wasn't arrested right then, was he?

24 A. No, sir.

25 Q. The officer put him on trespass notice that day?

1 A. Yes, sir.

2 Q. And said hey this guy didn't want you coming to
3 his store; is that right?

4 A. He put him on trespass because he said that he
5 has -- he called Detective Faison.

6 Q. I understand. I'm not going to get into all that.
7 That is for another person to testify. But sufficient to
8 say that the third time that he came to see you, the
9 third time that you saw Joy Mack, he wasn't arrested that
10 day?

11 A. No, sir.

12 Q. He was just put on trespass notice?

13 A. Yes, sir.

14 Q. Okay. And at some point in the future, an arrest
15 warrant was taken out for Joy Mack; is that right?

16 A. Yes, sir.

17 Q. Okay. So it wasn't that time, it was after that
18 that an arrest warrant was taken out?

19 A. Yes, sir.

20 Q. And because Joy Mack wasn't there, they didn't
21 just take him into custody. They put in the newspaper a
22 picture of Joy Mack, didn't they?

23 A. Yes, sir.

24 Q. And you saw that picture?

25 A. I did.

1 Q. And you had a chance to look at it?

2 A. Yes, sir, I did.

3 Q. And, in fact, you actually cut it out, didn't you?

4 A. Yes, sir.

5 Q. And you saved that picture of Joy Mack?

6 A. Yes, sir.

7 Q. That was published after the third time you saw
8 him?

9 A. Yes, sir.

10 Q. So that would technically have been the fourth
11 time you saw him?

12 A. In the newspaper would be the fourth time.

13 Q. In the newspaper?

14 A. Yes, sir.

15 Q. And you've saved that photo, and you have had that
16 ever since it came out?

17 A. Yes, sir.

18 Q. And that has basically been a year and a half now?

19 A. Yes, sir.

20 MR. APOSTOLOU: Court's indulgence one more
21 moment?

22 THE COURT: Yes, sir.

23 BY MR. APOSTOLOU:

24 Q. You weren't able to see the get away cars at all,
25 were you?

1 A. No, sir.

2 Q. Just the identification, yesterday when you said
3 he was wearing a black hoody, do you remember whether the
4 hoody was up?

5 A. No, sir.

6 Q. You don't remember whether it was up or down?

7 A. He had a snow hat. He didn't have -- just a snow
8 hat.

9 Q. Okay. But you said he was wearing a black hoody.

10 A. Yes, sir.

11 Q. And that is a sweat shirt, basically?

12 A. He did not have a hoody on. All he had on was the
13 skull -- the snow hat. That is what he had on.

14 Q. So he was wearing a hoody, but the hoody was down?

15 A. Yes, sir.

16 Q. And the snow hat goes down around here?

17 A. However you want to pull it.

18 Q. I got to be honest, Andy. I don't know what a
19 snow cap is.

20 A. I know, if you ask me, some of them pull it right
21 here. Some of them pull it down. It just depends on how
22 much he pulled.

23 Q. And where did -- the first person through the door
24 that day, where did he have his skull cap, or snow cap?

25 A. Somewhere about right here.

1 Q. About right there.

2 MR. APOSTOLOU: That's all I've got, Your
3 Honor.

4 THE COURT: Any redirect?

5 MR. LAWTON: No, Your Honor.

6 THE COURT: Okay. You may step down. Thank
7 you very much.

8 All right. Ladies and gentlemen of the jury:
9 It's about 5 minutes to 1:00, and we generally stop as
10 close to 1:00 as we can. This is a good stopping point,
11 so we'll take a lunch break at this time. You be back in
12 the jury room at 2:30. We'll get started at that time.

13 When you come to the courthouse, go straight
14 to the jury room. Please don't discuss the case amongst
15 yourselves or anyone else. See you at 2:30. Have a good
16 lunch.

17 (Jury recessed.)

18 THE COURT: All right. Anything from the
19 state we can deal with before the break?

20 MR. LAWTON: No, Your Honor.

21 THE COURT: Anything from the defendants?

22 MR. SMILEY: The only thing, Your Honor, is
23 there is several pictures that weren't entered in
24 evidence. I'm just making sure. I marked what it was,
25 and there were some pictures that are up there that

1 weren't entered. Make sure he knew, because we won't put
2 them in.

3 MR. LAWTON: Your Honor, for scheduling
4 purposes briefly, this afternoon, we got three officers,
5 and then four SLED chain witnesses that are coming from
6 Columbia, and I think we can get them in. I don't think
7 the chain -- it is just going to be one of those, What
8 did you do with this, but I hate for them to get all the
9 way here without getting to them. What time are we
10 planning on --

11 THE COURT: Today I got to quit at 5:00.

12 (Recess taken.)

13 A F T E R N O O N S E S S I O N

14 THE COURT: Call your next witness.

15 MR. LAWTON: The state calls Lisa Bousquet.

16 LISA BOUSQUET,

17 having been first duly sworn,
18 was examined and testified as follows:

19 D I R E C T E X A M I N A T I O N

20 BY MR. LAWTON:

21 Q. Can you tell the jury where you're currently
22 employed?

23 A. I'm employed by North Charleston police
24 department.

25 Q. How long have you worked there?

1 A. And four and a half years.

2 Q. What are your duties?

3 A. Patrol officer.

4 Q. I'm going to fast forward you to June 14, 2007.

5 Were you working that night?

6 A. Yes.

7 Q. Were you called to the scene of 2400 [REDACTED]

8 Avenue?

9 A. Yes, I was.

10 Q. Roughly, what time did you arrive?

11 A. Somewhere after 7:30, about quarter till.

12 Q. And tell the jury what you saw when you got there.

13 A. When I arrived there, I saw the two victims. I

14 know one is Andy. The other one, I believe, is Kilic.

15 They were both bleeding from the back of their heads and

16 had blood all over the front of their clothes and hands.

17 Q. Let's talk about Andy first, and if you could just

18 piece by piece the injuries you remember seeing from the

19 victim.

20 A. He had two major lacerations on the back of his

21 head. They were bleeding rather profusely at the time.

22 He had red marks around both his wrists, and when he

23 lifted his shirt up, he had large bruises as well as red

24 marks across his back in several places.

25 Q. How about Mr. David Kilic?

1 A. He had a laceration on the bag of his head, also
2 bleeding, and he had what looked like little rough marks
3 that were bleeding and red around both of his wrists.
4 You could see that he had been tied, his wrists had been
5 tied.

6 Q. You were the first responding officer. Did y'all
7 secure the scene?

8 A. Yes.

9 Q. How did y'all go about doing that?

10 A. We cleared the building, me and officer Troy
11 Butler. We went in, cleared the entire place, and
12 determined nobody was in there. The back door was
13 already secured, and then we put crime scene tape around
14 the entire front and refused access to anybody else.

15 Q. As far as the front door of the business, did you
16 notice anything about that, the front glass door of the
17 business? When crime scene got there, did you notice
18 anything?

19 A. Yes. There was a handprint on the door.

20 Q. And can you describe in detail about the
21 handprint.

22 A. It was almost a full handprint, and it was sweaty.

23 Q. Sweaty. Okay. Did it appear like it was fresh?

24 MR. SMILEY: Objection, Your Honor.

25 THE COURT: What is your legal objection?

1 MR. SMILEY: Calls for an opinion.

2 THE COURT: Overruled. Go ahead.

3 BY MR. LAWTON:

4 Q. It appears it was fresh?

5 A. Yes, it did.

6 Q. Okay. Were you there when Officer Hallman and
7 Officer Booker arrived on the scene?

8 A. Yes.

9 Q. Okay. Did you locate the print?

10 A. No.

11 Q. Okay. The crime scene located it?

12 A. Yes, they did.

13 Q. Do you know if the victims were transported to the
14 hospital?

15 A. Yes, they were.

16 Q. Okay. Were you there when they were transported?

17 A. Yes.

18 Q. Can you describe the condition of the store when
19 you went in there?

20 A. Several of the clothing -- there are, like, four
21 way crosses. Several of those were knocked over, clothes
22 were on the floor, there were shoes that were knocked
23 over, and there was blood on the floor, leading into the
24 back room, and on the back floor of that room.

25 Q. One moment, Your Honor.

1 MR. LAWTON: Please answer any questions
2 Mr. Smiley has for you, please.

3 CROSS-EXAMINATION

4 BY MR. SMILEY:

5 Q. You said the print on the front door appeared
6 fresh. So how old was it?

7 A. I can't answer that.

8 Q. You don't know when it was put there, do you?

9 A. No.

10 Q. Do you have any training in fingerprints?

11 A. No, I don't.

12 Q. Okay. So what you saw was a palm print,
13 handprint, on the door, right?

14 A. Uh-huh.

15 Q. As far as its age, you don't know?

16 A. No, I do not.

17 Q. Now, you spoke with both of the gentlemen that
18 were bleeding, correct? Did you take statements from
19 either of them?

20 A. Not statements, no.

21 Q. And did they describe to you what happened?

22 A. Yes, they did.

23 Q. Did each of them describe to you what happened,
24 independently?

25 A. Yes, they did.

1 Q. All right. Would it be fair to say that their
2 stories were different?

3 A. No.

4 Q. Okay. In your report, did you -- you put down
5 that four slender black males entered, followed by --

6 MR. LAWTON: Objection. Hearsay.

7 MR. SMILEY: I'm asking her what is in her
8 report.

9 THE COURT: I'll sustain the objection.

10 MR. SMILEY: Okay.

11 THE COURT: It had to be hearsay information.
12 She can testify what she observed and what she saw, and
13 what other people told her.

14 MR. SMILEY: That is why I was asking her --
15 very good, Your Honor. I'll ask it a different way.

16 BY MR. SMILEY:

17 Q. You collected information in this case, correct?

18 A. Uh-huh.

19 Q. In that information, you created a report,
20 correct?

21 A. Yes.

22 Q. In that report that you did, as you wrote down a
23 general description of how the robbery took place,
24 correct?

25 A. Uh-huh.

1 Q. Would it be fair to say that your description says
2 that four --

3 MR. LAWTON: Objection.

4 THE COURT: He's laying some foundation. Go
5 ahead.

6 BY MR. SMILEY:

7 Q. Isn't it fair to say that your report says that
8 four slender black males entered the store, correct?

9 MR. LAWTON: Objection, Your Honor. May we
10 approach?

11 THE COURT: Yes.

12 (Discussion held at sidebar.)

13 BY MR. SMILEY:

14 Q. So after gathering information, you created a
15 report, correct?

16 A. Yes.

17 Q. In your report, you put that four slender black
18 males entered the store, correct?

19 A. Yes.

20 Q. Followed by a fifth, correct?

21 A. Yes.

22 Q. And that the fifth had an AK47?

23 A. Yes. That's what I was told.

24 Q. You also in the course of your investigation
25 collected that there were two other black males with

1 handguns, correct?

2 A. Yes, of the five.

3 Q. Okay. Now, in collecting your information, one of
4 the things that you want to get in talking to people is a
5 description of the people that committed the crime,
6 right? In talking to anybody available, were you able to
7 get descriptions of any of the five in the store?

8 A. I got descriptions of two of them.

9 Q. And the descriptions that you got, one of them was
10 the fellow with the AK47, and one of them was another
11 fellow, a shorter fellow with a handgun, correct?

12 A. I believe so.

13 Q. And you need to --

14 A. I would have to refer to my report.

15 Q. If it would refresh your memory to look at your
16 report, feel free to do so. I'm going to grab a copy of
17 the report while you're looking at it.

18 A. You want me to answer it?

19 Q. If it's refreshed your memory, yes.

20 A. In my report, not that I remember do they ever say
21 that the one with the short twisties in his hair had gone
22 it.

23 Q. Forgive me. You got a description of the
24 gentleman with the AK47, and you got a description of
25 another gentleman with twisties, or whatever twisties

1 are?

2 A. It's when they twist their hair and it makes it
3 all stick out.

4 Q. That is the description that you gathered from the
5 available witnesses there at the scene, and you were the
6 first responding officer, right? So the information that
7 you gathered was very close to the time that the incident
8 occurred, right?

9 A. Yes.

10 Q. Based on that information, did you BOLO it? Did
11 you put out be on the look out for it or anything else,
12 or just put it later in your report?

13 A. I'm not sure we BOLO'd out those exact
14 descriptions, just the black males in the vehicles.

15 Q. Okay. All right.

16 MR. SMILEY: Beg the Court's indulgence.

17 BY MR. SMILEY:

18 Q. A couple other things, and then I'll be done. You
19 got there about, roughly, quarter of 8:00 that evening?

20 A. Roughly around there.

21 Q. And you responded quickly to the 911 call,
22 correct?

23 A. Uh-huh.

24 Q. And then you and Sergeant -- is it Sergeant
25 Mueller? The other officer, the canine officer?

1 A. Oh, that was -- he's just canine officer Troy
2 Butler.

3 Q. The two of y'all got out of the crime scene and
4 secured it, right? And at the time you secure it, that
5 means a log is kept of everybody that goes inside and
6 comes outside, correct?

7 A. Yes, sir.

8 Q. And the back door was locked, correct?

9 A. Yes, sir.

10 Q. And you turned it over to the detectives and
11 provided the information you had gathered, and that is
12 the extent of your involvement, correct?

13 A. Uh-huh.

14 MR. SMILEY: Nothing further.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. APOSTOLOU:

18 Q. Officer Bousquet, in your fact finding, and when
19 you spoke to people, your report indicated, and I know
20 that Mr. Smiley talked about this, but your report
21 indicated four black males came into the store. Your
22 report indicated that the fifth person --

23 MR. LAWTON: Objection, Your Honor. There
24 was --

25 THE COURT: What is your legal objection?

1 MR. LAWTON: Hearsay, Your Honor.

2 THE COURT: You can approach.

3 (Discussion held at sidebar.)

4 BY MR. APOSTOLOU:

5 Q. In your report, it says that the suspect carrying
6 the AK47 was light skinned and wearing a gray skully cap
7 with a red shirt.

8 A. Yes.

9 MR. APOSTOLOU: Nothing further.

10 THE COURT: Any redirect?

11 MR. LAWTON: No, Your Honor.

12 THE COURT: You may step down. Thank you
13 very much.

14 MR. HALES: The state calls James Green.

15 JAMES GREEN,

16 having been first duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HALES:

20 Q. Good afternoon, Mr. Green.

21 A. Good afternoon.

22 Q. What is your occupation?

23 A. I'm a forensic scientist with the South Carolina
24 law enforcement division, commonly referred to as SLED.

25 Q. And what does that mean? What do you do?

1 A. Right now I'm in training. I'm finishing up my
2 training. I examine firearms and firearms related
3 evidence, tool mark and tool mark related evidence. I
4 assist Court qualified examiners in preparing their cases
5 in dealing with firearms, and microscopic comparisons in
6 firearms and firearms evidence.

7 Q. So specifically your duties would be you would
8 assist someone who is qualified; is that correct, an
9 expert?

10 A. Yes, sir, in cases where there are fired
11 components, yes, sir.

12 Q. You handle evidence in your duties?

13 A. Yes, sir, I do.

14 Q. Okay. Briefly explain what you do with that
15 evidence.

16 A. The first thing I will do is get evidence from the
17 evidence control. I will bring it up to my office and
18 verify what the submitting agency says they submitted is
19 actually what I received.

20 I will then take photographs and document the
21 evidence on the appropriate departmental work sheets, and
22 if there is a firearm involved, I will function test the
23 firearm to make sure it functions properly and then test
24 fire the firearm.

25 Q. Okay. When you say evidence control, what is

1 that? What room is that?

2 A. That is the evidence log-in department downstairs
3 in the forensic services laboratory where submitting
4 agencies come in, and they give the evidence to the SLED
5 forensic laboratory and store it there until it's given
6 to the appropriate departments.

7 Q. And what is the purpose of keeping these records,
8 regarding this evidence?

9 A. It preserves the integrity of the chain of
10 custody.

11 Q. And what is the chain of custody?

12 A. It's a way of documenting who had what piece of
13 evidence at what particular time.

14 Q. All right. Mr. Green, we're here on this case.
15 Did you receive any evidence or handle any evidence in
16 this case?

17 A. Yes, sir, I did.

18 Q. And what was that?

19 A. It was one Smith & Wesson revolver and some
20 unfired cartridges.

21 Q. Okay. Where did you pick that evidence up from?

22 A. From evidence control.

23 Q. Okay. And have you had your chain of custody
24 sheet, your internal SLED chain of custody sheet?

25 A. Yes, I did.

1 Q. What did you do when you picked that evidence up?

2 A. I brought it back up to my office. I opened the
3 box. I put on Latex gloves because I noted there was a
4 DNA request on it. I opened the box and only determined
5 that firearm was opened. I contacted Catherine Leisy who
6 was the DNA handler who was assigned the DNA portion of
7 this case and walked the evidence up to her, where she
8 took custody of it, physically.

9 In my presence, she swabbed the firearm. I took
10 custody of the evidence back in our evidence tracking
11 system. I then took the firearm to the trace department
12 because I noticed a pink in color dried material that was
13 stuck to the barrel, and Jennifer Stoner took a big
14 sample of that material and gave me a sample, as opposed
15 to DNA, when Catherine Leisy took the samples with her.

16 Q. Just for our information, what is trace, when you
17 say you took a trace?

18 A. Trace department is a department inside of SLED
19 where there is examiners that analyze materials that are
20 on the firearm, or any particular piece of evidence, to
21 distinguish, basically, a common origin or what it is.

22 Q. Okay. When you first received this evidence, and
23 you took it up to your office and you photographed it,
24 did it appear that it was tampered with in any way?

25 A. No, sir.

1 Q. Okay. And while it was in your control, did you
2 allow anyone else to tamper with it or examine it other
3 than the people in DNA, the people that trace?

4 A. No, sir.

5 Q. I'm showing you box has previously been marked as
6 State's Exhibit 52. Would you take a look at the
7 contents of that box.

8 A. Ladies and gentlemen of the jury: You'll notice
9 that I just visually and physically checked this firearm
10 to make sure it is unloaded and safe to handle. Yes,
11 sir.

12 Q. Do you recognize the contents of that box?

13 A. Yes, sir, I do.

14 Q. And what would those be?

15 A. This is the Colt model Trooper Mark III 357 magnum
16 caliber revolver that was submitted in this case, the
17 unfired cartridges, and the sample of the trace material
18 that was taken by Ms. Stoner in the trace department.

19 Q. Does that firearm and those unfired cartridges and
20 also that trace material that was taken by Ms. Stoner,
21 does that appear in the same condition as you last saw
22 it?

23 A. Yes, sir. The trace material and the unfired
24 cartridges are inside the heat sealed ziplock bag that I
25 placed them in. My initials and the date I sealed them

1 is still intact on the heat seal, and the firearm appears
2 to be in the same condition.

3 Q. And when you say heat seal, what does that mean?

4 A. It's a method of sealing the plastic where we use
5 a heat sealer, and it melts two edges of the plastic
6 together so you can tell if anyone is trying to open it
7 in that seal.

8 Q. After you finish examining the evidence and you
9 took it to DNA and trace and you return it, where did you
10 return the evidence to?

11 A. I sealed everything up, closed the box back, and
12 sealed it and then I took it back down to the evidence
13 control.

14 Q. And is that a secure facility?

15 A. Yes, sir.

16 Q. Okay. One moment, Your Honor.

17 MR. HALES: Thank you, Mr. Green. Please
18 answer any questions Mr. Smiley may have.

19 CROSS-EXAMINATION

20 BY MR. SMILEY:

21 Q. So when you were finished with that gun, those
22 bullets, and the trace material, you put it back in that
23 box, right there, right?

24 A. Yes, sir.

25 Q. And closed the box and you sealed it, right?

1 A. Yes, sir.

2 Q. And then you returned it to the locker till it got
3 picked up later?

4 A. Actually, I transferred -- I took it down to
5 evidence control and I gave it to Ms. Selena Kinard who
6 took custody of it.

7 Q. Okay. So the last time you had this, you said
8 nothing had been tampered with, but, in fact, the box has
9 been opened since the last time you got there, right?

10 A. Yes, sir.

11 Q. Because the box, when you turned it in, was
12 sealed?

13 A. Yes.

14 Q. Do you initial it or something so that --

15 A. Yes, sir, I do.

16 Q. All right. But other than moving it from one
17 place to another, you don't have anything else to really
18 do with this case, right? You're the mover of the
19 evidence inside of SLED?

20 A. Well, I did test fire the firearm and enter the
21 bullets into -- yes, sir.

22 Q. All right. Okay.

23 MR. SMILEY: Nothing further.

24 MR. APOSTOLOU: No questions.

25 THE COURT: You can step down. May he be

1 excused? Any objection if he is excused?

2 MR. LAWTON: No, sir.

3 MR. SMILEY: Not from the defense.

4 THE COURT: All right. Mr. Green, you may be
5 excused.

6 MR. HALES: State calls Selena Kinard.

7 SELENA KINARD,

8 having been first duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HALES:

12 Q. What is your occupation?

13 A. I'm a forensic technician with the South Carolina
14 Law Enforcement Division, also known as SLED.

15 Q. Okay. And what are your duties?

16 A. In our department, we are responsible for taking
17 in evidence from officers across the state and logging it
18 into our computer system, which is called the beast, and
19 it is given its own label and lab number which is
20 followed throughout the lab.

21 Q. Okay. So each individual piece of evidence is
22 assigned a different number, or is everything given one
23 number per case?

24 A. Per case.

25 Q. Okay.

1 A. Like item number.

2 Q. Do you handle evidence any more than taking it in
3 in your duties, or do you just intake first?

4 A. We take it in, and we store it in our locked
5 evidence room until the person in the department, DNA or
6 firearms, comes to us to pick that evidence up, for
7 analysis.

8 Q. Okay. Do you have a copy of your chain of custody
9 with you?

10 A. I do not. I apologize for that.

11 (Chain of custody document marked for
12 identification as State's Exhibit No. 59.)

13 BY MR. HALES:

14 Q. I'm showing you what has been marked as State's
15 Exhibit 59.

16 A. Yes, sir.

17 Q. Are you familiar with that document?

18 A. Yes, sir.

19 Q. Okay. And what is that?

20 A. This is our chain of custody and lists the
21 particular lab number that was given to this particular
22 case.

23 Q. Okay. What, if any evidence, did you handle in
24 this case?

25 A. Beginning with item number one, which is listed

1 here as a sealed gun box containing a handgun described
2 as a Colt Trooper MK3, 357 Magnum revolver. When it came
3 in to us, I received it. I got it out of the intake
4 storage, which is a locked part of our evidence room for
5 firearms, and I took it out of the evidence room, which
6 at that time was under renovation, and put it into a
7 temporary evidence room, which is also locked, and the
8 firearms were in a separate locked room from all the
9 other evidence.

10 Q. So the temporary evidence room is still a secured
11 location?

12 A. Oh, yes, sir, yes, sir. It actually -- it was two
13 doors that were located in the temporary room.

14 Q. And after you locked it up, what did you do after
15 that? What were your responsibilities?

16 A. After I put it into the temporary room, it looks
17 like, according to the chain, I did put it back into my
18 custody again and move it to a different location
19 within -- still within the temporary room.

20 Q. And why would you have done that? Why would you
21 have received it again?

22 A. At the time we were renovating and we were trying
23 to make more space for some of the evidence, so we would
24 move it, but every time we move evidence from one
25 location to another, it has to go through our custody and

1 then be rescanned to that new location to have the chain
2 of custody be correct.

3 Q. Did you remove that evidence from the secured
4 evidence room at any time?

5 A. No, sir, only from the evidence room that was
6 being renovated to the temporary room.

7 Q. Okay. Did you receive any other evidence?

8 A. I do believe I did, item two, which is listed here
9 as a sealed -- heat sealed pouch containing oral swab
10 described as Davutkan Kilic, and that evidence I did take
11 in. It was in our DNA intake storage, which is a
12 refrigerator. I took it out of the refrigerator, put it
13 into my custody, and at that time I gave it to Sheree
14 Brown who was a forensic technician within the DNA
15 department.

16 Q. So that was actually a swab that had some sort of
17 sample on it?

18 A. Right. It would be a heat sealed pouch, which
19 when it's brought in to us it's dated and initialed by
20 the officer that brings it in, and that sealed evidence
21 pouch was given to Sheree Brown.

22 Q. Okay. And did you receive any other evidence in
23 this case?

24 A. I did. Item number 3, which is also listed as a
25 oral swab, actually from a different person. I'm not

1 sure how to pronounce that name. I apologize.

2 Q. We call it Andy.

3 A. Okay. And that would be the same situation with
4 that one, got out of the refrigerator, put it into my
5 custody, then put it into Sheree Brown's custody.

6 Q. With those swabs, when Sheree Brown takes those
7 swabs, do you then get those swabs back?

8 A. We do, at a later time -- Sheree is, like I said,
9 the forensic technician for DNA. When she picks the
10 evidence up, she takes it up to the DNA department, and
11 my understanding is she assigns it to a particular
12 analyst, and that is when it is analyzed. And once it's
13 analyzed and completed, that evidence does come back down
14 to the evidence control department.

15 Q. And y'all keep that swab?

16 A. We do keep that in our evidence room, and when the
17 agency that brought it in comes back in, we give evidence
18 back to them --

19 Q. Okay

20 A. -- that is completed.

21 Q. Okay. I'm going to show you what has been marked
22 as State's Exhibit No. 56. Do you recognize that box?

23 A. I do. We recognize it from our yellow label,
24 which lists the lab number and also the item number, and
25 that is how it is tracked throughout the lab.

1 Q. Did you ever actually open up that box and see the
2 contents of it?

3 A. No, no, sir.

4 Q. So your only involvement would be with the sealed
5 box, and you would know it by its number?

6 A. Yes, and also the yellow seal tape is when the
7 officer brings it in, we seal it, they actually initial
8 and date it, and it is opened by the analyst.

9 Q. Okay. One moment, Your Honor.

10 MR. HALES: Please answer any questions
11 Mr. Smiley has.

12 MR. SMILEY: I just got a couple.

13 CROSS-EXAMINATION

14 BY MR. SMILEY:

15 Q. So you're the gatekeeper and organizer?

16 A. Yes, sir.

17 Q. So that box that you're saying was in your system
18 because of that, it was sealed up when it was in your
19 custody?

20 A. Yes, sir.

21 Q. Okay. And if, basically, somebody in your agency
22 needs that evidence, they come and check it out,
23 basically, right?

24 A. Yes, sir.

25 Q. And so you keep a record of it, and in the end,

1 the agency comes and permanently checked it out, once
2 you're done with it?

3 A. Yes, sir, after analysis.

4 Q. So you have this piece of evidence that went
5 through some testing, and then you had the swabs. The
6 swabs, are they -- I know they are in heat shrink
7 pouches but they're not just strewn around. You have an
8 organizing system, right?

9 A. Yes, sir.

10 Q. Are they refrigerated?

11 A. They are refrigerated when they are brought in,
12 and then when they go upstairs to the DNA department,
13 when their technician Sheree Brown picks it up, it's my
14 understanding she puts it in a refrigerator up there,
15 after analysis. We do not --

16 Q. You don't need to?

17 A. Right.

18 Q. Because it's already been used?

19 A. Yes, sir, that's right.

20 Q. And then whoever comes and gets those swabs back,
21 right?

22 A. Yes, sir.

23 Q. All right. So as far as what is inside the box,
24 you don't know besides what the label tells you, right?

25 A. Exactly. We work on a set to contain basis. What

1 we get is a log-in sheet and an inventory sheet with each
2 case, and that comes in from the submitting officer, so
3 they hand us the paperwork. They would have handed us
4 this box, and, obviously, it has their information on the
5 top.

6 We do put the yellow seal tape on it. They
7 initial and date it, and we double-check that. If it's
8 not initialed and dated, we do call those officers back
9 to do that. We do not send it any further.

10 Q. I'm not trying to make a big deal out of it. I'm
11 just trying to make sure I understand. The officer
12 brings it to you. You get a box, you put your stuff on
13 it, it stays sealed. If, for some reason, it becomes
14 unsealed, you would consider it possibly contaminated?

15 A. Yes, sir.

16 Q. And I'm not saying we had that in this case. I'm
17 just saying if that came up, that would be a flag that
18 there is something wrong here?

19 A. Yes, sir.

20 Q. And somebody in your agency, and I think in this
21 case Mr. Green came and checked it out to go take it
22 wherever it needed to go inside, you're the gatekeeper
23 and the organizer, and that's all you have to do in this
24 case?

25 A. Yes, sir.

1 MR. SMILEY: Nothing further.

2 THE COURT: Cross-examination?

3 MR. APOSTOLOU: No, sir.

4 THE COURT: Any redirect?

5 MR. HALES: No, sir.

6 THE COURT: You may step down. Any reason
7 she can't be excused?

8 MR. HALES: We ask she be excused.

9 MR. SMILEY: No objection.

10 MR. APOSTOLOU: No objection.

11 MR. HALES: Amy Stephens.

12 AMY STEPHENS,

13 having been first duly sworn,

14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. HALES:

17 Q. What is your occupation?

18 A. I'm a forensic technician with the South Carolina
19 Law Enforcement Division.

20 Q. What do you do?

21 A. Our job is to log in evidence with the different
22 agencies to South Carolina to log into our computer
23 system and store it in our evidence room.

24 Q. Okay. Did you receive evidence in this case?

25 A. I received our SLED item number four directly from

1 that agency.

2 Q. And what is SLED item number four?

3 A. It was described as a hair slash fiber.

4 Q. Okay. And what did you do when you received that?

5 A. When we received this type of evidence, we would
6 have placed it in a heat-sealed pouch. I then logged it
7 into our computer system, giving it item number four, and
8 I then put it into our intake storage, which is a
9 refrigerator in our storage room.

10 Q. Does it stay in there until someone comes and
11 checks it out?

12 A. Correct.

13 Q. If who would come and check it out?

14 A. Actually, at this point, Catherine Leisy,
15 scientist, came and got it.

16 Q. Okay. At that point in time she would have it in
17 her control?

18 A. Correct.

19 Q. And she would go up, and, I assume, do tests on
20 it?

21 A. I assume so. You would have to ask her.

22 Q. And do you know what would happen with that
23 afterwards? Would she bring it back to you?

24 A. In most circumstances, unless they're going to
25 court.

1 Q. Okay. Do you have the receipt from the other one?

2 A. I transferred items number one from our temporary
3 evidence room into our processing intake, and I also
4 transferred it from our firearms intake to James Green.

5 Q. Okay. If you briefly explain to us what that
6 means, those different places you see there. What
7 exactly are those places?

8 A. Our temporary evidence room is a storage room
9 while we were renovating our normal evidence room. Our
10 evidence processing firearms intake is a storage we used
11 to store our firearms. It's behind a lock and key to
12 protect firearms.

13 Q. For the firearms, you just transport it from one
14 place to another?

15 A. Correct, in a sealed box at all times.

16 Q. Any reason you did that in particular? Is that
17 just one of your duties?

18 A. It's one of our duties. I have five technicians.

19 (Evidence bag containing a gun marked for
20 identification as State's Exhibit No. 56.)

21 BY MR. HALES:

22 Q. Okay. I'm going to show you what has been marked
23 as State's Exhibit No. 56, and take a look at that.

24 A. I recognize the lab number LD079061, item number
25 one.

1 Q. Did you know what the contents of that box was?

2 A. No.

3 Q. Okay. Was the box sealed when you had it?

4 A. Yes.

5 Q. Was it sealed it when you had it both times
6 transported from place to place?

7 A. Yes.

8 Q. When they examine it, do they reseal it?

9 A. Yes.

10 Q. So it was sealed both times you had it, and you
11 took it from the evidence room to a testing location and
12 brought it back?

13 A. I didn't take it to a testing location.

14 Q. Where did you take it?

15 A. I took it from our temporary room and put it into
16 our firearms intake. All we do is put it into storage.

17 Q. Okay. And that storage is a secured location?

18 A. Correct.

19 Q. Did you let anyone else hold the box during that
20 period of time?

21 A. No, sir.

22 Q. Okay.

23 MR. HALES: Please answer any questions Mr.
24 Smiley may have.

25

CROSS-EXAMINATION

1 BY MR. SMILEY:

2 Q. Just a couple. I just heard from Ms. Kinard.
3 She's the gatekeeper, the organizer, and it was
4 originally given to her when she came in because she said
5 she put it in this box, put it in the temporary area.

6 A. Correct.

7 Q. Then once it was in the temporary area, you
8 grabbed it and moved it into the gun safe, basically?

9 A. Correct.

10 Q. So you're an internal organizer?

11 A. We all are. We all have the same job title.

12 Q. But the whole time you had that box, it was
13 sealed, right?

14 A. Correct.

15 Q. All right. And when somebody wants to come check
16 it out, sort of like checking out a book, you find it,
17 get it all ready, and give it to them and make sure it's
18 the same condition?

19 A. Correct.

20 Q. And that is the extent of your involvement with
21 this case?

22 A. Correct.

23 MR. SMILEY: Yes, sir. Nothing further.
24 Thank you.

25 MR. APOSTOLOU: No questions.

1 THE COURT: You may step down. Thank you
2 very much. Any reason she can't be excused?

3 MR. HALES: No, Your Honor.

4 MR. SMILEY: Not from the defense.

5 THE COURT: Very well. You're excused.

6 MR. HALES: State calls Sheree Brown.

7 SHEREE BROWN,

8 having been first duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HALES:

12 Q. Good afternoon, Ms. Brown.

13 A. Good afternoon.

14 Q. What is your occupation?

15 A. I'm a technician within the DNA department.

16 Q. What does that mean?

17 A. I just assist some of the analysts doing their
18 tasks.

19 Q. Okay. In the course of your duties, do you have
20 the opportunity to handle evidence in this cases?

21 A. Yes, I do.

22 Q. Okay. Tell us what you do when you handle this
23 evidence. What are your duties with the evidence?

24 A. All the law enforcement agency brings the evidence
25 into SLED, and once it's deemed to go to DNA, I go and

1 retrieve that evidence from evidence control, take it in
2 my custody, physically and computer wise, and then just
3 if the case needs to be assigned to an analysis, route it
4 that way.

5 Q. Okay. Did you do the assignments to the analyst?

6 A. Yes.

7 Q. Okay. Did you happen to receive any evidence in
8 this case?

9 A. Yes, yes, I did.

10 Q. What evidence did you take possession in this
11 case?

12 A. SLED items number two and number three.

13 Q. And what are items number two and number three?

14 A. They're all swabs, and I'm bad about this one,
15 name --

16 Q. I understand.

17 A. I'm not sure, the suspect's name.

18 Q. I believe his last name is Kilic?

19 A. Kilic and also a swab from --

20 Q. We just call him Andy.

21 A. Yes. I'm sorry.

22 Q. That's fine. When you got this evidence, what did
23 you do with it?

24 A. I got it and kept it in my custody till I could go
25 back upstairs, and a few hours later I transferred it

1 physically and in computer into a locked, secure area
2 within the DNA department.

3 Q. You said this a couple times. You transfer it
4 physically and through a computer. What does that mean?

5 A. That I actually have the heat sealed pouch, which
6 it was heat sealed evidence control, and then we have to
7 go to a computer. And we have a system called the beast,
8 and each heat seeking pouch -- our evidence container has
9 a unique bar code on it, so I transfer it so we know
10 where it's routed to within SLED.

11 Q. Okay. Now, when you did that, when you
12 transferred it both physically and through the computer,
13 what happened next?

14 A. It just stayed in a locked, secure, refrigerated
15 area until the analyst, Catherine Leisy, could take
16 custody of it.

17 Q. Did you have any other involvement with this
18 evidence at all?

19 A. No, I did not.

20 Q. So your involvement with this evidence was
21 transporting it. You got it out of one secured location
22 and took it to another secured location?

23 A. Yes, I did.

24 Q. Okay. You said it was a heat sealed pouch. Was
25 this integrity of this pouch at any time compromised when

1 you had control of it?

2 A. No, it was not. If it had been, I would have
3 noted it, and it would have been noted on our chain of
4 custody printout.

5 Q. Your involvement ended at that point in time when
6 you dropped it off at a secured locate?

7 A. Yes.

8 Q. Okay.

9 MR. HALES: Please answer any questions
10 Mr. Smiley may have for you.

11 MR. SMILEY: Real quick.

12 CROSS-EXAMINATION

13 BY MR. SMILEY:

14 Q. So you come and get these two pouches in the
15 refrigerated storage, check them out, take them so that
16 Ms. Leisy, or Dr. Leisy or Scientist Leisy, can analyze
17 the swab, the oral swab taken from Mr. Kilic and from Mr.
18 Ayazgok, and then you got to scan them to keep them
19 running in line.

20 A. Right.

21 Q. So you're a mover of evidence, inside SLED?

22 A. Sure.

23 Q. So we've heard from Mr. Green, who basically has
24 the same kind of function with firearms as you do. He's
25 a mover of evidence, I think he actually testified to

1 that, but he's a mover like you are, and you heard from
2 Ms. Kinard, who is a gatekeeper organizer, right? So all
3 of y'all keep making sure this stuff is in the right
4 place, right?

5 A. Correct.

6 Q. And if it is in any way tampered with before that
7 test gets done, you make a note, and in this case there
8 was nothing abnormal, correct?

9 A. Correct.

10 MR. SMILEY: That's all I got.

11 MR. APOSTOLOU: No questions.

12 THE COURT: Any redirect?

13 MR. HALES: No, Your Honor.

14 THE COURT: All right. You may be excused.
15 Thank you very much.

16 MR. LAWTON: State's calls Angela Bunker.

17 ANGELA BUNKER,

18 having been first duly sworn,

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. LAWTON:

22 Q. May it please the Court, good afternoon, Ms.
23 Bunker. Can you please tell the jury where you're
24 currently employed.

25 A. I'm currently employed with the city of North

1 Charleston police department.

2 Q. And how long have you been worked there?

3 A. I've worked there since 2001.

4 Q. What are your current duties?

5 A. My current position is forensic investigator.

6 Q. Okay. And what do you do based upon that?

7 A. I respond to crime scenes, which are anywhere from
8 burglaries, homicides, rapes, anything that there is
9 potential evidence that can be processed and secured.

10 Q. And were you called to the scene in the June 14th
11 armed robbery of the Urban Wear clothing store?

12 A. Yes, sir.

13 Q. Okay. Tell us what you did when you got there.

14 A. Upon my arrival, I looked at the scene and I took
15 initial photographs of the scene. I was addressed that
16 it just occurred, and the victims had already been
17 transferred to a medical facility for further treatment.

18 Detective Patrick and Sergeant Perry responded to
19 the hospital with the victims, and they were notifying me
20 through phone that -- of the incident and the victim's
21 condition and stuff, and the crime scene was being set up
22 at that point with crime scene tape and being secured
23 with the crime log.

24 Q. Did you notice anything on the front glass doors?

25 A. Yes, sir.

1 Q. Okay. And what did you notice?

2 A. There were some latent detail, and there was a
3 palm print, or partial palm print, that was still moist
4 that appeared to have been sweat from the hand.

5 Q. And were there fingers also involved in the print?

6 A. There was partially, yes, sir.

7 Q. And you said there was moisture?

8 A. Yes, sir.

9 Q. All right. Okay. What else did you do inside the
10 shop?

11 A. Inside the shop, I took the initial pictures.
12 There was several hangers and boxes that had been
13 destroyed and that had been laid around in the store.
14 There was also some blood and items of evidence. I
15 collected any of the hangers that had been thrown to the
16 ground, also the boxes that were noticeably out of place.
17 There are shoe boxes scattered throughout the store. The
18 shoes were taken from the boxes, and I secured the boxes
19 themselves in my vehicle to be processed.

20 Q. Okay. I'm going to show you some photos that I
21 believe you took and see if you -- as you go through
22 them, would you tell the jury what you see and if you
23 recognize. I show you State's Exhibit No. 1.

24 A. Yes, sir. That's just the address of the suite
25 number.

1 Q. Okay. I'll you State's Exhibit 3, see if you
2 recognize that.

3 A. It's the front of the incident location.

4 Q. Okay.

5 MR. LAWTON: Your Honor, state offers State's
6 Exhibit No. 1 into evidence.

7 MR. SMILEY: No objection.

8 MR. APOSTOLOU: No objection.

9 MR. LAWTON: And State's 3 into evidence.

10 MR. SMILEY: No objection.

11 MR. APOSTOLOU: No objection.

12 (Photographs admitted into evidence as
13 State's Exhibit Nos. 1 and 3.)

14 BY MR. LAWTON:

15 Q. I'm going show you State's Exhibit 4, see if you
16 recognize that.

17 A. This is a photograph I took of the scene there
18 that there was some blood on carpet towards the back area
19 going into the storage area.

20 MR. LAWTON: I offer State's 4 into evidence.

21 MR. SMILEY: No objection.

22 MR. APOSTOLOU: No objection.

23 (Photograph admitted into evidence as State's
24 Exhibit No. 4.)

25 THE COURT: Thank you, sir.

1 BY MR. LAWTON:

2 Q. I show you State's Exhibit 6 for ID purposes if
3 you recognize that.

4 A. Yes, sir. This is a close up shot of Exhibit 4,
5 which is the blood that was on the carpet.

6 MR. LAWTON: Okay. I offer State's 6 into
7 evidence.

8 MR. SMILEY: No objection.

9 MR. APOSTOLOU: No objection.

10 (Photograph admitted into evidence as State's
11 Exhibit No. 6.)

12 BY MR. LAWTON:

13 Q. I show you State's Exhibit 7, see if you recognize
14 that.

15 A. Yes, sir. This is a grand opening banner that was
16 located towards the back of the store also. Later on we
17 were directed by Detective Patrick that the victims were
18 tied with that.

19 Q. Okay.

20 (Photograph admitted into evidence as State's
21 Exhibit No. 7.)

22 MR. LAWTON: Offer 7 into evidence, Your
23 Honor.

24 MR. SMILEY: Without objection.

25 MR. APOSTOLOU: No objection.

1 BY MR. LAWTON:

2 Q. Showing you State's 9, see if you recognize that.

3 A. Yes, sir. This is a tie that was also used to
4 contain the victims.

5 MR. LAWTON: Offer No. 9 into evidence.

6 MR. SMILEY: No objection.

7 MR. APOSTOLOU: No objection.

8 (Photograph admitted into evidence as State's
9 Exhibit No. 9.)

10 BY MR. LAWTON:

11 Q. I'm showing you State's Exhibit 10.

12 A. That's also some more blood that was located
13 towards the back of the store, and also later on we
14 discovered this was the victim's shoe.

15 MR. LAWTON: Offer State's 10 into evidence.

16 MR. SMILEY: No objection.

17 MR. APOSTOLOU: No objection.

18 (Photograph admitted into evidence as State's
19 Exhibit No. 10.)

20 THE COURT: How many more do you have?

21 MR. LAWTON: I could do them all --

22 THE COURT: Just do them at all at one time,
23 please.

24 MR. LAWTON: Yes, sir.

25 BY MR. LAWTON:

1 Q. I show you State's 11, see if you recognize that.

2 A. Yes, sir. It's the register that was located open
3 upon our arrival.

4 Q. Okay.

5 THE COURT: Any objection?

6 MR. SMILEY: No objection.

7 MR. APOSTOLOU: No objection.

8 MR. LAWTON: I was going to wait --

9 THE COURT: Just hand them all to her,
10 State's whatever through, and ask her to look at them and
11 identify them, and we'll put them all in at one time,
12 please.

13 BY MR. LAWTON:

14 Q. I'm showing you State's 12 through 24, if you
15 could just -- one by one, if you do recognize it, talk
16 about it briefly.

17 A. State 12 is up on the platform where the register
18 is located. Hats and items were knocked off the shelf on
19 that.

20 State 13 is over on the opposite side where there
21 was clothes that had been scattered through out the
22 store. State 14 is back towards the jean area, which was
23 towards the rear of the store. It also had hangers that
24 had nothing on them and some clothes that were located on
25 the floor.

1 Exhibit 15 shows what we later found out what the
2 victim said the defendant had piled stuff into the boxes
3 to take them out, and this was a box that was not taken,
4 clothes inside a larger cardboard box.

5 16 is, furthermore, clothes on the hangers, still
6 on the some hangers that were empty.

7 17 shows the register area, platform along with
8 some of the clothes that had been knocked down.

9 18, also clothes that were taken from the hangers
10 and also from the metal pole.

11 19, same thing; 20 is also another box that was
12 loaded up with clothing and left behind; 21 shows pretty
13 much the entire store from the entrance door; 22 shows a
14 large area of hangers that were scattered throughout the
15 floor, also with a grand opening banner.

16 Q. And what area of the store is that, do you recall?

17 A. This is towards the section -- it's back
18 towards -- in the second room there is a storage room
19 where they kept their extra items.

20 Q. Could you tell what brand of shoe that is?

21 A. Nike, sir.

22 Q. Okay.

23 A. And same here, 23 is also clothing that is still
24 in their packaging that hadn't even hit the store floor
25 yet.

1 Q. And did you notice what brand of shoe that is?

2 A. It's also Nike, sir. And 24 is back in the
3 storage area where it shows the items that had been
4 knocked off the shelf and things are in disarray.

5 THE COURT: Any objection to 12 through 24?

6 MR. SMILEY: None from Mr. Goss, Your Honor.

7 MR. APOSTOLOU: None from Mr. Mack.

8 THE COURT: 12 through 24 admitted without
9 evidence.

10 MR. LAWTON: Thank you, Your Honor.

11 (Photographs admitted into evidence as
12 State's Exhibit No. 12 through 24.)

13 BY MR. LAWTON:

14 Q. Did you also collect some items from the crime
15 scene?

16 A. I know I collected some of the strip ties that
17 were supposedly used to detain the victims.

18 Q. I show you State's 57 and 58, see if you can just
19 open those up. You recognize the package?

20 A. Yes, sir. They're a biohazard.

21 Q. Okay. We won't open those up then. Do you see
22 your initials on there?

23 A. Yes, sir.

24 MR. LAWTON: Your Honor, we offer 57 and 58
25 into evidence. Any objection?

1 MR. SMILEY: I don't know what he's offering.
2 No objection.

3 THE COURT: All right. 57 and 58 admitted
4 without objection..

5 (Photographs marked for identification and
6 admitted into evidence as State's Exhibit Nos. 57 and
7 58.)

8 BY MR. LAWTON:

9 Q. What else? Did you collect anything else?

10 A. I also collected some swabs from the blood located
11 on the scene from a black belt. Also hair that was
12 located on the back floor.

13 Q. Okay. Let's talk about the hair for a second.
14 You saw the hair?

15 A. Yes, sir.

16 Q. And you collected it?

17 A. It was collected with a sterile swab and distilled
18 water.

19 Q. What did you do with the hair once --

20 A. The hair was sent to SLED to be processed to see
21 if we could locate any DNA, and it came back with
22 unsuccessful.

23 Q. Did you -- who did you turn it in to at NCPD?

24 A. It was directed to the evidence room.

25 Q. Okay.

1 A. And, also, I agreed to --

2 Q. Hold on a minute. Sorry. Also, with the victims,
3 you had the opportunity to meet them at a later date?

4 A. Yes, sir.

5 Q. And can you tell the jury what you did?

6 A. At this time, I was able to get oral swabs, which
7 are known as buccal swabs, from the victims to collect
8 their DNA to compare to any DNA, such as the blood in any
9 other DNA items that were collected that were on the
10 scene.

11 Q. What did you do once you collected the swabs?

12 A. The swabs were placed in a forensic dryer to
13 completely sterilize and dry the DNA where it wouldn't be
14 damaged or evidence which was then placed into an
15 evidence envelope and taken to the North Charleston
16 evidence locker and then later transported to SLED.

17 Q. Okay.

18 MR. LAWTON: One moment, Your Honor. No
19 further questions at this time.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. SMILEY:

23 Q. Investigator Bunker --

24 A. Officer.

25 Q. Officer Bunker, for a simple word, you're the

1 collector, right?

2 A. In this case, yes, sir.

3 Q. Okay. So your job in this case is to take
4 pictures of anything important, right?

5 A. Yes, sir.

6 Q. Or anything that could have value in the
7 prosecution of this case, and then whether you found it
8 or someone else found it, to collect the evidence from
9 the scene.

10 A. Yes.

11 Q. That is what you did in this case, right?

12 A. Yes.

13 Q. So starting with the pictures, you take lots of
14 pictures, right?

15 A. Yes, sir.

16 Q. Not just the ones that are entered into evidence
17 here, but lots of pictures, right?

18 A. Yes, sir.

19 Q. Now, one of the things you talked about was this
20 fresh print that was seen on the door, right?

21 A. Yes, sir.

22 Q. It was the outside of the door?

23 A. It was the exterior upper half.

24 Q. Outside of door. Did you take a picture of it?

25 A. No, sir.

1 Q. Okay. Now, you said that it looked like it was a
2 sweaty print. Did you collect any of that sweat to be
3 analyzed?

4 A. We did not collect any of the DNA from that in
5 reference to we do not want to ruin any of the latent
6 detail on it.

7 Q. But the truth is that if, in fact, it was sweat,
8 you say it was sweat, but it wasn't analyzed, correct?

9 A. Correct, sir.

10 Q. But if, in fact, it was sweat, DNA could have been
11 gotten from it, right?

12 A. Yes, sir.

13 Q. But rather than do that, y'all took a latent of
14 it, in other words, took a lift off of it, right?

15 A. Sergeant Hallman did, yes, sir.

16 Q. Took a lift of it, and didn't take a picture of
17 it.

18 A. Yes, sir. It's very difficult to take a picture
19 of a latent print, definitely on glass, because it
20 reflects on to you.

21 Q. That's my point. Let me ask it in small pieces.
22 This front door, right, it makes it sound like there is
23 this huge print that is just neon, bouncing out, fresh
24 print, fresh print, with sweat coming off of it. In
25 fact, it's something that had to be lifted off the door,

1 right?

2 A. It had to be dried and then lifted, yes.

3 Q. Okay. So there is a print on the door, and it's
4 not something that is easily detected, easy to take a
5 photograph of because it's --

6 A. Because it's on glass.

7 Q. -- because it's on glass, right? Now, I know
8 you're a collector, but when you keep using this word
9 fresh, you can't date the print?

10 A. I didn't use the word fresh.

11 Q. Well, it's been used and was used in your
12 testimony, and I apologize in general from your knowledge
13 and experience in working. You can't date a print, can
14 you?

15 A. As far as I understand, no, sir, but Sergeant
16 Hallman is nor certified to testify to that.

17 Q. All right. Thanks. Now, did you collect the
18 prints or that was Hallman's job, right?

19 A. Sergeant Hallman did.

20 Q. Your job was to take pictures and then any
21 physical evidence that was collected, right?

22 A. Yes, sir.

23 Q. All right. Now, the stuff you took out of the
24 store, the empty boxes and stuff like that, who decided
25 what was going to get taken, yourself or someone

1 instructed you what to do?

2 A. After hearing the testimony of the victims through
3 Detective Patrick, it was -- what was taken was decided
4 between Sergeant Hallman and I, who were both working for
5 him at that time.

6 Q. So some information was relayed to you about what
7 happened?

8 A. Yes, sir.

9 Q. And based on that, because you were told that
10 clothes and what have you were taken, anything that
11 appeared to be disturbed, in that kind of context, was
12 taken, correct?

13 A. The clothing themselves and the shoes themselves
14 were not taken. The boxes that contained shoes that
15 appeared to be moved and also the hangers and anything
16 that could have been processed later after being taken
17 back to the office.

18 Q. And when you say processed, you mean for
19 fingerprints?

20 A. Yes, sir, or any other DNA collection.

21 Q. Okay. Did you attempt any of that or you just
22 collected it?

23 A. Back at the office, yes, sir, I collected it.

24 Q. You did?

25 A. Yes.

1 Q. So you attempted to get prints from the boxes and
2 the hangers?

3 A. Yes, sir, and we also -- I mean, the black banner.

4 Q. What is that?

5 A. That is a chemical that detects the blood, so if
6 blood has been wiped or anything, it can be detected to
7 further appeal to the visible.

8 Q. Okay. Were you able to collect any latents
9 from -- maybe I should -- a latent print is something
10 that is a present that is transferred from one surface to
11 another, like tape or what have you? I'm a lawyer. Help
12 me out here. Explain, when I say latent, what I mean,
13 what you mean about that.

14 A. Once again, Sergeant Hallman is the latent expert
15 on this, but latents are the points are detailed that are
16 within your fingerprints that can be transferred from one
17 surface, and when left on a surface, as forensics, we can
18 use different kind of chemicals and powders to be able to
19 lift those. That detail is placed onto a card to be
20 entered into the system so that compares it to several
21 thousand prints.

22 Q. Thanks. So you processed the boxes you took in
23 and the hangers you took in, and you processed the grand
24 opening banner for latents, correct?

25 A. Yes, sir.

1 Q. Did you collect any evidence off those items?

2 A. You'll have to ask -- Sergeant Hallman has listed
3 the collection.

4 Q. But you're the one that collected them, right?

5 A. It was a joint effort.

6 Q. That happens. Okay. It was a joint effort. The
7 two of you did that?

8 A. Yes, sir.

9 Q. All right. And then you followed protocol and got
10 the swabs from Mr. Kilic and Mr. Ayazgok later, when you
11 were directed to do that, yes?

12 A. Yes, sir, on the 20th.

13 Q. And that is your total involvement in this case?

14 A. Yes, sir.

15 MR. SMILEY: Thank you so much.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. APOSTOLOU:

19 Q. Officer, we really haven't laid out the scene all
20 that well. This is basically a strip mall, that's
21 correct?

22 A. That's correct.

23 Q. And it's basically stalls? It's just a long strip
24 mall, correct?

25 A. Yes, sir.

1 Q. In the front there is -- the windows kind of open
2 into the businesses and in back there is a door that goes
3 out to like a little alleyway behind the strip mall; is
4 that right?

5 A. If I may, when you first enter into the actual
6 business itself, it's a long, narrow building, and then
7 it has two dressing rooms with just a curtain towards the
8 back, and then in the right part of the corner, if you're
9 looking in, goes back to a storage area where they kept
10 their inventory and everything and an exit door, but it
11 was a long, straight, business.

12 Q. And there is a door. There is a door in the back
13 that goes out into a little alleyway back there?

14 A. Yes.

15 Q. Did you take any photos of the back door?

16 A. I'm not positive, sir.

17 MR. APOSTOLOU: Okay. That's all.

18 MR. LAWTON: No redirect.

19 THE COURT: All right. You may step down.
20 Thank you very much.

21 MR. LAWTON: State calls Al Hallman.

22 MR. SMILEY: Your Honor, I hate to -- before
23 we do Mr. Hallman, it's going to be a little bit
24 lengthier, so could we take about a five-minute break?

25 THE COURT: How long is he going to be?

1 MR. SMILEY: He's probably about an hour long
2 witness, I would guess.

3 THE COURT: How long do you think, Solicitor?

4 MR. LAWTON: I would say about 20 minutes for
5 the state and then -- all right.

6 THE COURT: All right. We'll take a break at
7 this time. Madame forelady: Don't discuss the case
8 among yourselves, and if you need a smoke break, let them
9 know. They'll take you to the appropriate place, and
10 we'll take about 15, 20 minute break.

11 (Recess taken.)

12 (In open court, jury present.)

13 THE COURT: Thank you very much. Call your
14 next witness, please.

15 MR. LAWTON: State calls Al Hallman.

16 AL HALLMAN,

17 having been first duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. LAWTON:

21 Q. May it please the Court, good afternoon,
22 Mr. Hallman.

23 A. Good afternoon.

24 Q. Could you tell the jury where you're working
25 currently?

1 A. I'm currently employed with the city of North
2 Charleston police department.

3 Q. And how long have you been there?

4 A. Just over 21 years.

5 Q. Okay. Can you tell the jury some of your duties.

6 A. Currently, I am the forensics unit supervisor.
7 I'm in charge of supervising four individuals that work
8 for me now. We respond to all types of crime scenes
9 where evidence is required to be documented, collected,
10 and processed for latent fingerprints or DNA evidence.

11 Q. Okay. Let's talk about latent fingerprints.
12 Could you tell the jury what latent prints are.

13 A. Yes, sir. A latent print is an impression left on
14 a surface when a person's hands or the bottoms of their
15 feet come in contact with this surface. The term latent
16 means invisible to the naked eye, which means this
17 impression, in order to be viewed, examined, or visible
18 has to be further processed by various methods, such as
19 fingerprint powder or certain chemicals that we can
20 process certain items with to enhance and develop these
21 prints to make it what is called a patent print. The
22 patent means visible to the naked eye.

23 Q. Could you tell the jury as far as the impressions
24 how it determines availability to be able to lift one.

25 A. In ideal conditions, a latent print is more so

1 recovered off of very shiny smooth surfaces such as glass
2 or shiny metals, vehicles, exterior of vehicles, things
3 of that nature.

4 Prints can also be obtained with chemical
5 processes off of paper, or porous products, wood,
6 nonfibrous wood, like a smooth door or something like
7 that. The more porous or corrugated a surface becomes,
8 the harder it becomes to develop a latent print on that
9 surface, one of the hardest being a brick. We've gotten
10 fingerprints off bricks before, and it's a very
11 complicated because of rough texture of the bricks.

12 Q. Can you tell the jury what type of training over
13 the years you've done with latent print identification?

14 A. I've been doing fingerprint comparisons for 16
15 years. I have attended numerous events, training courses
16 around the nation, dealing with ridgeology, latent print
17 examination and identifications. I obtained a degree --
18 or, excuse me, a diploma from the American Institute of
19 Applied Sciences that dealt with forensic science and law
20 enforcement, and I received a certification through the
21 IEI as a latent print examiner as well.

22 Q. Have you ever testified in court as an expert in
23 latent print identification?

24 A. Yes, sir.

25 Q. Roughly, how many times?

1 A. In excess of 50.

2 Q. Fifty times? Can you name some of those courts?

3 A. It's all been General Sessions Court.

4 Q. Okay.

5 MR. LAWTON: And, Your Honor, at this time I
6 would offer him as an expert in the field --

7 THE COURT: Do either of the defendants want
8 to cross-examine his qualifications?

9 MR. APOSTOLOU: Not Defendant Mack.

10 THE COURT: Do you have an objection to his
11 qualifications?

12 MR. SMILEY: No, sir. I just want to state
13 -- I did want to make sure he's qualified as a latent
14 print examiner.

15 MR. LAWTON: Identified.

16 THE COURT: I think he's going to do a
17 comparison.

18 MR. SMILEY: Which is a examiner, latent
19 print examiner.

20 THE COURT: Make a comparison between the
21 latent and the known.

22 MR. SMILEY: Yes, sir. For that purpose, I
23 have no objection.

24 THE COURT: Okay. All right. Go ahead.
25 Court so finds. Go ahead.

1 BY MR. LAWTON:

2 Q. You know why we're here today, Mr. Hallman?

3 A. Yes, sir, I do.

4 Q. Did you get called to the scene on June 14, 2007?

5 A. Yes, I did.

6 Q. Roughly, what time did you arrive?

7 A. Myself and Investigator Bunker responded to that
8 location at approximately 8 p.m., and we got there a very
9 short time later because we were within several miles of
10 the location.

11 Q. What did you do when you got there, Mr. Hallman?

12 A. Upon our arrival, we noticed that the scene had
13 been secured by crime scene tape and crime scene log had
14 been initiated by an officer on scene. No one was in the
15 business when we got there.

16 We began examining the crime scene from the
17 exterior of the business in and immediately noticed some
18 latent fingerprints on the exterior and interior of the
19 front glass door. Once inside the business, the business
20 was in disarray. There were clothes on the ground.
21 Numerous curtain rods were thrown on the ground. There
22 are hangers all over the place. There was blood
23 spattered on the carpet and around the carpet area in
24 that nature, and immediately we began documenting the
25 scene as it was upon arrival by photographs.

1 Q. Did you try to lift any prints?

2 A. Yes, sir. I processed the exterior and interior
3 sides of the front glass door for prints. Prior to
4 processing that, we noticed that -- or I noticed there
5 was a latent print on the outside of the front door, on
6 the glass, that appeared to be wet with sweat, or with
7 some wet surface, a wet substance, so I left that print
8 alone.

9 I pointed that print out to Investigator Bunker
10 and also Officer Bousquet and advised them that we need
11 to let that print dry before we could process this any
12 further so we could not damage any ridge detail that
13 might be present in that print. I then processed the
14 interior side of that glass door and lifted several
15 latent prints there, and then to speed up the drying
16 process on that latent print, I got several cards and
17 fanned the latent print for approximately five minutes
18 before it was dry enough to dust with black powder and
19 lift.

20 Q. May I approach? As far as -- do you have some
21 prints involving that exterior door on you?

22 A. Yes, sir, I do.

23 Q. Would you please get those out.

24 A. That is the interior. That is the one from the
25 exterior right there.

1 Q. I apologize. I'm going to show you 60. Tell the
2 jury about it.

3 A. This is the latent impression that I lifted from
4 the exterior of the front door to the business that I
5 briefly testified about that had to be dried prior to
6 processing.

7 Q. Okay. Are you able -- what did you do when you
8 got back to the station with that latent print?

9 A. I compared it -- I obtained inked impressions on
10 several individuals that had been named at the scene as
11 possible suspects. I obtained their inked fingerprints
12 from our files and then did what's called side by side
13 comparisons, where I took a latent print and set it down
14 and put these inked impressions to the right and back and
15 forth I examined the latent print to these inked
16 impressions until I was able to effect several IDs.

17 Q. And as far as Exhibit 60, were you able to
18 determine whose print it was?

19 A. Yes. There are four individual prints identified
20 on this latent card. All prints were identified to one
21 Darrell Goss.

22 MR. LAWTON: Your Honor, I offer State's 60
23 into evidence.

24 THE COURT: Any objection?

25 MR. SMILEY: No objection.

1 THE COURT: All right. Admitted without
2 objection.

3 (Fingerprint card marked for identification
4 and admitted into evidence as State's Exhibit No. 60.)

5 BY MR. LAWTON:

6 Q. I'm going to show you State's 53. Do you mind
7 coming down, Mr. Hallman, and let you look at State's 53.
8 Once you've identified it you can set it up.

9 MR. SMILEY: Permission to move, Your Honor.

10 THE COURT: Yes, sir.

11 THE WITNESS: This is a chart I prepared for
12 court and testimony involving the latent print that I
13 just testified to.

14 BY MR. LAWTON:

15 Q. Let's just talk about the numbers and significance
16 of those, and maybe start with the one on the right and
17 just go through and tell what that is.

18 A. Basically, as I previously testified, when I did
19 two side by side comparisons, I take a latent print and
20 put it on the left-hand side of the desk where I'm
21 working and the inked impressions that I would take from
22 our files on the right, and then as I start comparing,
23 I'm looking for what is called points of identification.

24 In fingerprint examinations there are two types of
25 identifying or identifiable points within a finger or

1 palm print, that being an ending ridge, where a ridge
2 within the print comes to an abrupt ending, that is what
3 we classified as an ending ridge, and also what is called
4 a bifurcation, or bifurcating ridge, and that is where
5 one ridge will come and then break off into two ridges
6 and continue on. That is classified as a bifurcation.

7 In this case, as I said, I started with the latent
8 print, as we always do, and was able to match 12 points
9 of identification within this print here. There are
10 several other points, as you can see, bifurcating with an
11 ending ridge here. There are some other points within
12 the print that I did not bother to chart. Basically, for
13 courtroom presentation, I like to go with ten or twelve
14 points on a chart. It gives the jury something to refer
15 to, and then you can make your own determination from
16 there.

17 Q. So the significance of 12, that is when you felt
18 comfortable, as far as reasonable certainty is as an
19 expert latent identification?

20 A. In order -- most examiners go by a code. It's
21 whatever the examiner is comfortable with prior to
22 calling an identification, and then, of course, once
23 we've called an identification, we get another examiner
24 to reexamine your identification to confirm or deny it
25 whether that is a valid identification as it was done in

1 this case.

2 I have testified in cases in cases in court where
3 I had only four points within a fingerprint, and I felt
4 comfortable, because of the uniqueness of the points,
5 that it was an identification. And, of course, it was
6 again verified by another examiner.

7 In this case here, I went with four points,
8 basically, for courtroom presentation. I could have
9 charted a lot more, I could have charted even fewer than
10 this, but I was completely confident this was an ID, and
11 in the field of fingerprint examinations, the possibility
12 of a fingerprint belonging to anyone other than that
13 person is 10 to the 48th power, that is 10 with 48 zeros,
14 recently done by a study out in Maryland.

15 So I think that is pretty conclusive, as far as
16 each person having unique and individual fingerprints.

17 Q. Okay.

18 MR. LAWTON: Your Honor, I'll offer State's
19 53 into evidence opinion.

20 THE COURT: Any objection?

21 MR. SMILEY: No objection.

22 THE COURT: All right. 53 admitted into with
23 evidence without objection.

24 (Fingerprint chart marked for identification
25 and admitted into evidence as State's Exhibit No. 53.)

1 BY MR. LAWTON:

2 Q. I'm showing you State's 54 and 55, see if you can
3 identify those. Actually, just 54. I'll show you
4 State's 54 and see if you can identify it, and if you
5 can, tell the jury what that is.

6 A. Yes. These are pieces of string or rope that was
7 obtained from a banner that had blood stains present on
8 it that we found at the scene. The ropes were removed
9 and allowed to dry because they were treated with a
10 chemical process that is used to respond to the enzymes
11 in blood.

12 MR. LAWTON: At this time I would offer that
13 into evidence, Your Honor, as State's 54.

14 MR. SMILEY: No objection.

15 THE COURT: 54 admitted into evidence.

16 (Bag of evidence marked for identification
17 and admitted into evidence as State's Exhibit No. 54.)

18 BY MR. LAWTON:

19 Q. Mr. Hallman, you mentioned earlier seeing blood at
20 the scene.

21 A. Yes, sir. There was blood on the carpet and
22 around the front counter area.

23 Q. Can you go into why the samples weren't taken from
24 the blood in the carpet?

25 A. Well, the information that we received responding

1 to the scene was that a struggle had ensued. Basically,
2 an assault had taken place within the business, and
3 information was obtained that the assault was the suspect
4 assaulting the victims. The victims never had any
5 opportunity to retaliate whatsoever, so it was believed
6 that the blood was from the victim's injuries.

7 Q. Okay. And what would have been involved if you
8 were to take samples from the carpet?

9 A. We would have had to cut the carpet out and then
10 send to to SLED for DNA analysis.

11 Q. Okay. As far as on the banner, did you have any
12 luck with the prints, from the banner, from the grand
13 opening banner?

14 A. I believe there were two partial palm prints that
15 were developed from the banner but neither were
16 identified.

17 Q. I'm going to go to the next night, 6/15/07. Were
18 you also involved in a search warrant being executed?

19 A. Yes.

20 Q. Okay. Do you recall where that execution was?

21 A. In fact, can I refer to my report?

22 Q. Sure, if that will refresh your memory.

23 A. [REDACTED] I believe, is the address we
24 responded to.

25 Q. May I approach, Your Honor? And what were your

1 duties as far as the search warrant?

2 A. I was primarily there to photograph any evidence
3 located related to this incident and to collect that
4 evidence for evidentiary purposes or for further latent
5 processing.

6 Q. I'm going to show you State's 25, 26, 27, 28, 29,
7 30, 31, 34, 36, and 39. As you go through each one of
8 those, maybe talk about it, see if you can identify them,
9 tell the jury what you see.

10 A. State's Exhibit 25 is a photograph of
11 bluish-greenish colored vehicle that was parked in the
12 driveway of the residence; 26 is a photograph of a
13 revolver that I located under the front passenger seat of
14 that vehicle; 27 is another photograph of that revolver
15 after I removed it from underneath the seat to get a
16 better photograph of the weapon itself; 28 is a
17 photograph taken of the trunk area. There was a blue bag
18 that was in the trunk that had clothing folded up and
19 placed inside that bag; 29 is a photograph of a pair of
20 Nike Air white tennis shoes also found in the trunk of
21 that vehicle.

22 Q. Can you comment on the age of the shoes?

23 A. They appear to be --

24 MR. SMILEY: Objection, Your Honor. He's not
25 been qualified.

1 THE COURT: I'll sustain the objection.

2 THE WITNESS: 30 is a photograph of the trunk
3 area showing all the items in place inside the trunk; 31
4 is a closed-up photograph of a blue plastic bag, also
5 containing folded up clothing items; 34 is a photograph
6 taken in one of the interior bedrooms of the bed in that
7 room. There are assorted clothing tags and a ball cap on
8 the bed, along with several plastic baggies.

9 BY MR. LAWTON:

10 Q. And where were the tags originally located?

11 A. They were in one of the plastic baggies on the
12 bed.

13 Q. Okay. And could you -- honestly, I guess you
14 don't know whose room that was. Could you tell by the
15 things in the room the gender of the occupant?

16 A. No, I could not.

17 Q. Okay.

18 A. It's hard to say. There were several ball caps
19 and things of that nature in there, but I could not tell
20 you that, no.

21 A. Exhibit 36 is a photograph of a pair of Nike white
22 shoes, along with a pair of sunglasses, and Exhibit 39 is
23 a photograph of the washer and dryer area. I was advised
24 upon my arrival that Mr. Goss had been located hiding
25 behind the dryer and was taken into custody by police, so

1 I photographed that area just to document where he was
2 located at that time.

3 Q. I'm going to show you State's 56, see if you can
4 identify that.

5 A. This is the Colt Trooper Mark III 357 magnum
6 revolver that I recovered from the vehicle underneath the
7 front passenger seat.

8 Q. Okay.

9 MR. LAWTON: Your Honor, I offer State's 56
10 into evidence.

11 THE COURT: Any objection?

12 MR. SMILEY: No objection, Your Honor.

13 THE COURT: All right. 56 is admitted
14 without objection.

15 (Bag of evidence containing a gun admitted
16 into evidence as State's Exhibit No. 56.)

17 BY MR. LAWTON:

18 Q. Did you notice anything about the gun, anything on
19 it?

20 A. There appeared to be several areas that might be
21 blood around the barrel and around the grip area.

22 Q. What did you do with the gun once you collected
23 it?

24 A. Once we identified the presence of possible blood,
25 the gun was packaged and sent to SLED for DNA analysis.

1 Q. When you got the gun back, did you try to lift any
2 prints on it?

3 A. Once it was returned from SLED, yes. Kevin Murphy
4 with my crime scene unit processed my gun and was able to
5 obtain three lifts from the gun. None of which contained
6 identifiable ridge detail.

7 Q. I want to show you State's 55, which I previously
8 showed to defense, see if you can identify those.

9 A. These are the assorted clothing tags that were
10 recovered on the bed at [REDACTED]

11 Q. Did you try to lift anything off of those?

12 A. Yes. Each one of these tags was processed with a
13 chemical process that is generally used for paper
14 products and no latent prints were developed.

15 Q. What was the significance of the tags?

16 A. The tags -- while I was at the initial crime
17 scene, some of the clothing items and the ball caps that
18 were in the business had similar tags to the ones found
19 in the bed, and for that reason they were recovered.

20 MR. LAWTON: Your Honor, I neglected -- I
21 would like to offer those photos as State's 25, 26, 27,
22 28, 29, 30, 31, 34, 36, and 39 into evidence.

23 MR. APOSTOLOU: No objection from Joy Mack.

24 MR. SMILEY: No objection, Your Honor.

25 THE COURT: All right.

1 (Photographs admitted into evidence as
2 State's Exhibit No. 25, 26, 27, 28, 29, 30, 31, 34, 36,
3 and 39.)

4 BY MR. LAWTON:

5 Q. I show you once again what has already been in
6 evidence as 36 and see if you can identify that and
7 comment on what is inside the shoe.

8 A. There was cardboard inserts in the shoes, which
9 are commonly found in brand new shoes, to maintain the
10 shape of the shoe prior to sale.

11 Q. Okay. And where was that?

12 A. These were in the bedroom of the residence.

13 Q. Is that the same bedroom as you found the tags?

14 A. Yes, sir.

15 MR. LAWTON: Beg Court's indulgence, Your
16 Honor.

17 BY MR. LAWTON:

18 Q. As far as the wet latent print on the front door,
19 comment on that, as far as how long it took for it to
20 dry.

21 A. As I testified, it took me probably five minutes
22 fanning it with a card in order to get it dry enough to
23 process.

24 Q. Do you have an indication as to how long it had
25 been there based on the moisture still being visible?

1 A. There is no way to tell the age of a latent print;
2 however, in this instance, being that the print was still
3 wet with sweat it had to be recent. I can't put a
4 timeline on it, but it was a recently applied latent
5 print.

6 Q. You talked about, like -- can you explain the
7 difference between can't be identified and as far as not
8 having enough ridge detail?

9 A. A latent impression that is unsuitable for
10 identification is simply one that does not have points of
11 identification within that latent print to sufficiently
12 identify it to an linked impression, and we classify that
13 as insufficient for identification. There are latent
14 prints that have sufficient ridge detail within that
15 print to affect an identification should it be compared
16 to the person leaving that print; however, there may be
17 some dissimilarities or some forces that may have
18 distorted the latent prints, such as smearing or movement
19 of the hand or palm when the latent was placed on a
20 surface thus distorting or creating what is called ghost
21 identification points, and for those reasons we will
22 still list the latent print as insufficient for
23 identification, should that happen.

24 Latent prints that are suitable for identification
25 and are not identified to a known individual will simply

1 be labelled insufficient for search through our computer
2 system; however, identifiable ridge detail does exist to
3 effect an identification.

4 Q. You had mentioned the car earlier, State's 25. I
5 wonder if you could comment to the jury about the tag
6 number and if this, in fact, was the same automobile
7 where you located the gun.

8 A. Yes. The tag is 228 WEJ, and the tag was still
9 affixed to the vehicle that night, and I photographed the
10 tag in place on the vehicle itself.

11 Q. And that is a South Carolina tag?

12 A. Yes, sir, South Carolina. It expired in '08. It
13 looks like an April of '08 was the expiration of the
14 tag.

15 Q. And are you aware who is the owner of the
16 residence the search warrant was executed?

17 A. The Goss family.

18 Q. Okay.

19 MR. LAWTON: Please answer any question Mr.
20 Smiley has for you.

21 CROSS-EXAMINATION

22 BY MR. SMILEY:

23 Q. The latent you got off that exterior glass door --

24 A. Yes, sir.

25 Q. -- you said that you compared it to names you were

1 given?

2 A. Yes, sir.

3 Q. When did you make that comparison?

4 A. It was later that evening.

5 Q. Same evening?

6 A. Yes, sir.

7 Q. So while you were at the scene that evening, you
8 were supplied the name Darrell Goss?

9 A. Yes.

10 Q. Who provided you that name?

11 A. Officer Bousquet.

12 Q. Bousquet. Okay. All right. Now, I know that
13 they put this -- this is State's Exhibit No. 60?

14 A. Correct.

15 Q. That is the exterior front glass door, right?

16 A. Yes.

17 Q. This is actually the lift?

18 A. That is the lift.

19 Q. It's a picture of the lift?

20 A. No, that is the lift.

21 Q. That is the lift that you took off?

22 A. That is the lift.

23 Q. Basically, it looks like a piece of tape you put
24 on a white background?

25 A. What I did was I dusted the latent with black

1 powder made it very visible and then lifted it.

2 Q. Okay. So that is not a picture of it. That is
3 after you put the dust on it, pulled it off?

4 A. That is the actual lift.

5 Q. Very good. Okay. And that came from the outside
6 of the door?

7 A. Yes, sir.

8 Q. Now, I think you testified that you can't age
9 prints.

10 A. No. You cannot put a timeline on a print.

11 Q. Prints can exist for a long time sometimes?

12 A. Certainly.

13 Q. Okay. And so there is no age. What makes this
14 one different, in your mind, is it appeared wet when you
15 got there, right?

16 A. No, it was wet.

17 Q. All right. You said that it was sweat. Did you
18 have it, the substance that made it appear wet, examined?

19 A. No, I did not.

20 Q. Okay. So when you say sweat, it's what it looked
21 like to you, right?

22 A. Yes, it did.

23 Q. All right. This incident happened in June, right?

24 A. I believe so, yes, sir.

25 Q. June of '07?

1 A. Yes.

2 Q. So it was warm outside?

3 A. I don't recall, but I imagine it was in the summer
4 time, yes.

5 Q. No analysis was done about the substance and how
6 long it would take for that substance to evaporate on its
7 own?

8 A. No.

9 Q. This substance didn't dry or evaporate until you
10 actually added a source to it by fanning it, right?

11 A. That is correct.

12 Q. All right. So you cannot testify to any degree of
13 scientific certainty how long it had been there?

14 A. Absolutely not.

15 Q. Now, I know we just put -- the prosecutor only put
16 this latent in, but you collected a bunch of latent
17 prints that night.

18 A. There were several latent lifts that were
19 obtained, but yes, a lot of latent prints were developed
20 from that scene, yes.

21 Q. So not just the exterior door, but inside, you
22 went around looking for latents anywhere you thought that
23 whoever robbed that store could have touched, right?

24 A. Absolutely, yes, sir.

25 Q. So the cash register area --

1 A. Yes.

2 Q. -- was dusted or any kind of analysis you could to
3 try to get latent prints, and you lifted some?

4 A. Yes, sir, I did.

5 Q. The metal display rods is a surface that would
6 catch prints, right?

7 A. It's very conducive to prints, yes.

8 Q. So you got some latents, lifted some latents, off
9 of that, right?

10 A. That's correct.

11 Q. And then the door frames, the rear door frames in
12 that area, you lifted some prints from there too?

13 A. There were some partial palm prints lifted from
14 there, yes, sir.

15 Q. And then even though it's difficult, and you use a
16 process, you're able to lift some prints off the shoe
17 boxes, weren't you?

18 A. No. The prints were not lifted off the shoe
19 boxes. They were developed with --

20 Q. I'm using the wrong word. So you raised some
21 prints --

22 A. Correct. There were some prints developed on the
23 shoe boxes.

24 Q. And what is the process and how --

25 A. Ninhydrine, N-i-n-h-y-d-r-i-n-e.

1 Q. Chemical process?

2 A. Chemical process.

3 Q. Put a chemical on it that reacts to any kind of --

4 A. It reacts to the amino acids and enzymes in sweat.

5 Q. You got some off the shoe box, right?

6 A. Yes, we did.

7 Q. All right. The light switch --

8 A. I believe there was a lift from that area too.

9 Q. Okay. The banner? You actually got some prints
10 off a banner?

11 A. Correct.

12 Q. And then you got some lifts off of -- even though
13 it didn't have a whole lot of detail, you got some off of
14 that revolver you found at [REDACTED] right?

15 A. There was no identifiable detail.

16 Q. But you lifted some --

17 A. We made some lifts.

18 Q. And you lifted -- hold on for a second. I'm going
19 to get a picture here. I show you State's Exhibit No.
20 37. It shows some sunglasses, right?

21 A. That is correct.

22 Q. And off of one of those pairs of sunglasses, you
23 got a lift, right?

24 A. Yes, off the white pair.

25 Q. Off the white pair. So you got something, a lift

1 off of that, to help you identify who could have handled
2 the sunglasses, right?

3 A. That is correct.

4 Q. Okay. Now, of all those prints, whether they
5 lifted them, raised them, or whatever that you got from
6 the interior of the store, you used the known prints for
7 Darrell Goss and compared them?

8 A. That's correct.

9 Q. And you did not get any matches?

10 A. Other than the exterior front door, no other
11 matches were made to Darrell Goss.

12 Q. On the interior where the robbers would have been,
13 it's not just insignificant details. They were not his
14 prints?

15 A. They were not identified to Darrell Goss, no.

16 Q. Is the only actually in this whole case, in all
17 these prints you looked at, the only prints that were
18 identified were the one on the exterior of the door,
19 right?

20 A. That was to Darrell Goss, correct.

21 Q. And then you identified a print off those
22 sunglasses right?

23 A. That is correct. That is to a Benjamin Goss.

24 Q. So Benjamin Goss, Darrell's brother, that lives at
25 [REDACTED] also, right?

1 A. Yes, sir.

2 Q. Okay.

3 Q. All right. Now, were you given any other names to
4 compare to?

5 A. I was given Darrell and Benjamin Goss.

6 Q. You were given Ben's name that night too?

7 A. Yes.

8 Q. From Officer Bousquet?

9 A. Yes.

10 Q. And you don't know where she got them from. She
11 just provided them to you?

12 A. That's correct.

13 Q. You don't know whether that came from the victims,
14 whatever. You just got those and compared them.

15 A. That's correct.

16 Q. All right. So those other prints inside the
17 store, you didn't have any other known prints other than
18 Darrell and his brother Benjamin to compare them to?

19 A. At that time. We later obtained inked impressions
20 from the two victims, and a lot of the prints were
21 subsequently identified from the victims.

22 Q. Did you do a report about that?

23 A. Yes. I got it right here.

24 Q. Could I look at it, please.

25 A. Certainly.

1 Q. All right.

2 MR. SMILEY: I beg the Court's indulgence.

3 BY MR. SMILEY:

4 Q. So your examination was first you were given from
5 the investigator and then Darrell Goss, did those
6 comparisons, and found Darrell's print on the outside,
7 and then later you did the comparison and found Ben's on
8 the sunglasses in the bedroom?

9 A. That's correct.

10 Q. And then later you cleared up some of those on the
11 inside by doing it to Mr. Kilic and Mr. Ayazgok, right?

12 A. The two victims, yes, sir.

13 Q. Okay. Now, you were not given any other suspects
14 to match prints to?

15 A. Not at that time. Through the investigation,
16 investigators provided me other names, and I subsequently
17 compared them to those names, and no identifications were
18 effected.

19 Q. Did you do reports on each one of those?

20 A. They're the ones I just gave to you.

21 Q. What other persons did you attempt to compare them
22 to?

23 A. I compared the remaining latents to a Desmond
24 Antwan Brown.

25 Q. Desmond Brown. Okay.

1 A. And I believe that was the only other name that
2 was provided to me; yes, that is correct.

3 Q. All right. So your first did Darrell and then
4 Mr. Kilic and Ayazgok and then a Mr. Brown?

5 A. Correct.

6 Q. Okay. Now, the pistol that you got out of the car
7 in the driveway --

8 A. Yes, sir.

9 Q. All right? It has -- I beg the Court's
10 indulgence. Let me grab a paper here. It will be
11 easier.

12 I'll show you State's Exhibit No. 27. Is that the
13 pistol after you pulled it out from under the seat?

14 A. Yes, sir, it is.

15 Q. And you say that a visual examination, that it
16 appeared to have blood on it?

17 A. Yeah. It appeared to be a small spot of blood on
18 the handle next to the screw, and then it appeared to be
19 blood in the one side of the barrel itself on the end.

20 Q. Does that picture depict the blood spot on the
21 handle?

22 A. Yes, it does.

23 Q. Can you show the jury -- Your Honor, if he could
24 step down, with your permission.

25 THE COURT: Yes, sir.

1 BY MR. SMILEY:

2 Q. And if you could just show to the jury where this
3 spot of blood was.

4 A. It's very difficult to see. It's about halfway
5 between the screw and the little silver piece there.

6 MR. APOSTOLOU: Your Honor, may I relocate?

7 THE COURT: Yes, sir.

8 BY MR. SMILEY:

9 Q. So everybody can see, just show them about where
10 this spot of blood --

11 A. The spot is right there, between these two screws,
12 would have had a reddish tint to it.

13 Q. Which you believed to be blood?

14 A. Which I believed to be blood, correct.

15 Q. Thank you. Can you grab a seat again.

16 So you got a little spot you thought to be blood
17 on the handle that you just directed the jury to, and
18 then in looking on the inside of the barrel, there
19 appeared to be some blood inside.

20 A. Yes, sir.

21 Q. Okay. So that blood was collected, right?

22 A. No, sir. It was left in place on weapon and the
23 weapon was sent to SLED for DNA analysis.

24 Q. Okay. Very good. Now, were you -- and I don't
25 know the answer to this, and I always hesitate asking

1 questions that I don't know the answer to, so I ask it in
2 real simple terms -- that car in the driveway, were you
3 part of trying to identify whose car that was?

4 A. No.

5 Q. All right. Now, you said that the tags that you
6 took a picture of in that bedroom --

7 A. Yes, sir, on the the bed.

8 Q. And that is the same room that you found the
9 glasses that had Ben Goss's prints?

10 A. That is correct.

11 Q. Now, that picture is not how you found the tags.
12 It actually had to be dumped out of a bag?

13 A. They were in that little plastic bag, but a few of
14 them were hanging out, and we took them out of the
15 plastic bag to examine them, and that is when they were
16 photographed.

17 Q. And one of the reasons that you took that picture
18 is because the night before you had been in the store and
19 seen tags that were very similar.

20 A. Yes, sir.

21 Q. Okay. Because now, not every one of those tags
22 appeared to have come from that store, though, did it?

23 A. I wouldn't know.

24 Q. Okay. The search warrant, the intrusion into the
25 [REDACTED] home, you were part of that team?

1 A. I was called there to document the evidence, yes.

2 Q. So you were present when it was gone into. You
3 didn't actually --

4 A. No, sir. They had already breached it prior to my
5 arrival.

6 Q. They had breached and then called you?

7 A. Correct.

8 Q. And so you weren't the person that found these
9 items. You were the person that documented the items?

10 A. That's correct. Everything had already been
11 previously located and was pointed out to me.

12 Q. So you didn't find the gun. Once the gun was --
13 we're told there is a gun in that car, you went and
14 documented it and then collected it?

15 A. That's correct.

16 Q. So the trunk had already been opened.

17 A. Yes, sir.

18 Q. You documented it. Did you collect any of that or
19 just document?

20 A. What was in the trunk?

21 Q. Yeah.

22 A. Oh, yeah. I collected all the clothing items that
23 were in the trunk.

24 Q. Got it. Okay. Beg the Court's indulgence. Just
25 a moment. All right.

1 Now, last couple questions and I'm done, and I
2 think I want to make sure I am clear on it. This other
3 fellow in the courtroom, Joy Mack over here, you didn't
4 do any comparisons with his prints, did you?

5 A. No, sir. His name was never provided to me.

6 Q. Okay.

7 MR. SMILEY: Nothing further.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. APOSTOLOU:

11 Q. Thank you. Officer, out of all of that
12 investigation, all of that information, you never found
13 any evidence that linked Joy Mack to this crime at all,
14 did you?

15 A. No, sir, nothing.

16 Q. You found -- Mr. Smiley did a good job of listing
17 all of the extensive areas inside the store that you
18 collected evidence from.

19 A. Correct.

20 Q. And none of that came back to Joy Mack?

21 A. No, sir.

22 Q. And then we also went to Mr. Goss's house, and we
23 executed a search warrant; is that correct?

24 A. That is correct.

25 Q. And you tested some of the items. Some of the

1 items that were ultimately linked to Urban Gear were
2 recovered at Mr. Goss's house.

3 A. That is correct.

4 Q. And you tested fingerprints off of that
5 information.

6 A. Correct.

7 Q. And you were able to link one of those to Ben
8 Goss --

9 A. Correct.

10 Q. -- the defendant, codefendant here, his brother.
11 Nothing on items that were recovered was tied back to Joy
12 Mack.

13 A. Nothing.

14 Q. So there is nothing to tie Joy Mack to the store
15 itself.

16 A. Not that I had, no, sir.

17 Q. Nothing that you have ties Joy Mack to the Gosses'
18 house at all.

19 A. No, sir.

20 Q. You found prints at the house and all that stuff,
21 nothing tied to the car.

22 A. No, sir.

23 Q. Nothing tied to the pistol.

24 A. No, sir.

25 Q. Nothing tied to the -- any of the evidence that

1 you found in this whole case.

2 A. No, sir.

3 Q. Okay. The reason there is not a giant poster of
4 Joy Mack here is because you never got a match to Joy
5 Mack?

6 A. I got no fingerprint identification matches with
7 Joy Mack.

8 Q. You testified basically you target people. You
9 testified that you were provided the names of both Gosses
10 and some other individual -- who was it, Brown or
11 something --

12 A. First of all, I don't target anyone. Second of
13 all, I was provided Darrell Goss and Benjamin Goss's
14 names from Officer Bousquet at which time I obtained
15 their fingerprint cards to either rule them as or as not
16 a suspect.

17 Q. Right. What I meant to say, and I didn't mean to
18 suggest you were targeting any of these people, but once
19 you develop a suspect in a criminal case, that allows you
20 to narrow your focus.

21 A. Absolutely.

22 Q. So you're not testing across the general
23 population.

24 A. Correct.

25 Q. You're able to testify and target specifically the

1 people that you think, through other sources, are related
2 to this crime?

3 A. That is correct.

4 Q. Or this investigation.

5 Q. And Joy Mack was arrested a year and a half ago in
6 this case.

7 A. Okay.

8 Q. All right? And when you get booked, the first
9 thing they do is fingerprint you, right?

10 A. Right.

11 Q. So now that Joy Mack is charged with this crime,
12 and all that stuff, none of the evidence that you tested
13 came back positive to Joy Mack.

14 A. Nothing.

15 MR. APOSTOLOU: Thank you. Nothing further.

16 THE COURT: Redirect.

17 MR. LAWTON: Briefly, Your Honor.

18 I'm going to mark these for identification.

19 (Photograph marked for identification as
20 State's Exhibit No. 52.)

21 REDIRECT EXAMINATION.

22 BY MR. LAWTON:

23 Q. I'm going to show you State's 52 and let you
24 examine that regarding Joy Mack. They had mentioned
25 earlier there wasn't any fingerprint testing on the part

1 of Joy Mack.

2 A. As a matter of fact, yes, there was. I did do
3 comparisons to Joy Mack.

4 Q. Okay.

5 A. I must have overlooked that report.

6 Q. Explain to the jury if you had any results.

7 A. No. On July 3rd of '07, I received information, I
8 believe through our detectives, that Joy Mack was a
9 possible suspect in this case, and I did conduct
10 comparisons to remaining latent prints that were
11 identified at the time, and, again, no identifications
12 were made to Joy Mack whatsoever.

13 Q. Okay. Thank you. As far as -- Mr. Smiley alluded
14 to not being able to tell the age of the print, as far as
15 cleaning products and cleaning glass, can you explain the
16 significance of the possibility of having old prints left
17 on a glass?

18 A. I don't understand what glass products would have
19 to do with it.

20 Q. As far as -- we've got a print on a glass, okay?

21 A. Correct.

22 Q. As far as being wiped down with a substance, would
23 there be a print left?

24 A. No. If anything comes in contact with that
25 surface whatsoever, it's going to either distort or

1 completely remove the print. Somebody cleaning the door
2 would completely wipe the print away, there would be
3 nothing left, no residue, nothing.

4 Q. Okay. And also, Mr. Smiley talked about one print
5 on the exterior of the door. Can you comment as far as
6 was it more than one print?

7 A. No, it was one print. It's what we classify as a
8 simultaneous impression, meaning the actual lift is part
9 of the palm and three of the fingers, all simultaneously
10 placed on that door at the same time, and out of that
11 latent print, I identified the three fingers and the palm
12 print all to Darrell Goss.

13 Q. And as far as the sunglasses, was that located at
14 the store or the residence at [REDACTED]

15 A. That was located at the residence of [REDACTED]
16 in the bedroom.

17 Q. And those were the sunglasses where you identified
18 Ben Goss?

19 A. Yes.

20 MR. LAWTON: One moment, Your Honor. No
21 further questions, Your Honor opinion.

22 MR. SMILEY: Two, if I could, Your Honor.

23 THE COURT: Okay. Make them on recross now.

24 RECROSS-EXAMINATION

25 BY MR. SMILEY:

1 Q. You don't know if the door was wiped down or not.
2 You just collected what was there?

3 A. Absolutely.

4 Q. That's number one. Number two is the sunglasses
5 were in the bedroom, but the clothes and the tags were
6 found --

7 A. The tags and the hat and the shoes, yes, in the
8 bedroom.

9 Q. And the sunglasses that had Ben Goss's fingerprint
10 on them --

11 A. In that bedroom, yes.

12 MR. SMILEY: That's it.

13 THE COURT: Thank you very much.

14 MR. APOSTOLOU: Just one, just clarification.

15 RECROSS EXAMINATION

16 BY MR. APOSTOLOU:

17 Q. So now we've stated we did test for Joy Mack's
18 fingerprint?

19 A. Apparently I did, on July the 3rd.

20 Q. And they were negative?

21 A. They were negative.

22 THE COURT: You may step down. Thank you
23 very much.

24 All right. Madame Forelady, members of the
25 jury: We are going to break at this time. It's about

1 three minutes to 5:00. Be back in the jury room at 9:30.
2 We'll get started at that time.

3 Please don't read anything about it, listen
4 to anything about it, talk to anybody about the case. As
5 I told you yesterday, and I'll tell you numerous times, I
6 want you to make a decision about what you hear in the
7 courtroom, not what you girlfriend, boyfriend, your
8 husband or wife or some close friend tells you about the
9 case because they haven't heard anything, nor what some
10 reporter interprets facts to be.

11 I want you to make a decision from what you
12 hear in this courtroom and what comes from the witness
13 stand. See you in the morning at 9:30.

14 Have a good evening.

15 (Wednesday, February 25, 2009.)

16 THE COURT: Call your next witness, please.

17 MR. LAWTON: State calls James Hill.

18 JAMES HILL,

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

21 DIRECT EXAMINATION

22 BY MR. LAWTON:

23 Q. Good morning, Mr. Hill. Could you please tell the
24 jury where you're currently employed.

25 A. I'm currently employed by the city of North

1 Charleston assigned to the ATF Task Force.

2 Q. And how long have you been with North Charleston
3 police department?

4 A. About ten years.

5 Q. How about the ATF Task Force?

6 A. Six.

7 Q. And can you tell us what kind of training you've
8 had with ATF?

9 A. It's all been on-the-job training.

10 Q. On the job? And what type of duties do you do for
11 ATF?

12 A. I review cases, gun cases, and gun and drug cases
13 from the city of North Charleston police department to
14 see if they meet federal criteria for prosecution.

15 Q. So it's a federal agency, in other words?

16 A. Correct.

17 Q. Okay. I'm going to let you what has already been
18 entered into as State's Exhibit 56, see if you can look
19 at that gun and find out the serial number.

20 A. Yes.

21 Q. And tell the jury what the serial number is?

22 A. 48174J as in Juliette.

23 Q. Can you tell the model of the gun?

24 A. It's a Trooper Mark III.

25 Q. Okay. Do you know what brand?

1 A. It's a Colt.

2 Q. Okay. I'm showing you, for State's ID purposes,
3 Exhibit 62. See if you can take a look at that exhibit
4 and tell the jury what that is.

5 A. It's an ATF trace form from the National Tracing
6 Center.

7 Q. Okay. Do you know what gun it represents?

8 A. Yes. It's a trace for the firearm you just showed
9 me, the Colt Mark 357.

10 Q. What is the serial number indicated on the
11 document?

12 A. 48174J Juliette.

13 Q. Could you please tell the jury the results of that
14 trace.

15 A. The results of the trace are -- I'll read it to
16 you as is stated. It says that the NTC, which is the
17 National Tracing Center, has examined the records sent by
18 the out of business dealer to the NTC, again that is
19 National Tracing Center; however, the serial number
20 requested is not listed into these records.

21 Q. Okay. And in layman's terms, what does that mean?

22 A. The business that originally got this firearm
23 sold, it was out of business, and when an FFL, which is a
24 federal firearms licensee, someone who can sell or
25 business who can sell firearms, when they go out of

1 business, they're supposed to send their records to the
2 tracing center, but there is nothing you can do to them
3 if they don't, so --

4 Q. So, in other words, this is an untraceable gun?

5 A. They don't have the records for it, so they were
6 not able to see who the original purchaser was, and if
7 you look on there, it also showed a ship date of 1975, so
8 they weren't maintaining too good of records in 1975.

9 MR. LAWTON: Your Honor, I offer State's 62
10 into evidence.

11 THE COURT: Any objection?

12 MR. SMILEY: No objection.

13 MR. APOSTOLOU: No objection.

14 THE COURT: 62 admitted without objection.

15 (Firearms trace summary marked for
16 identification and admitted into evidence as State's
17 Exhibit No. 62.)

18 MR. LAWTON: Please answer any questions Mr.
19 Smiley has for you.

20 CROSS-EXAMINATION

21 BY MR. SMILEY:

22 Q. You know, Detective Hill, I got to ask a question.

23 A. Yes, sir.

24 Q. But you're able to figure out where this dealer
25 was located, right?

1 A. It's listed on there, yes, sir.

2 Q. So this gun, back in 1975, originally sold in
3 Nashville, Tennessee?

4 A. Correct.

5 Q. Okay. So instead of the comment untraceable
6 because the records are not intact, you don't know where
7 the gun went from there.

8 A. Usually, on a ship date of 1975, ATF considers
9 that gun has gone into a secondary market, meaning that
10 you could have bought the gun in 1975 and sold it to
11 someone else and sold it to someone else --

12 Q. My point being that there is nothing to say that
13 gun was ever sold illegally or obtained illegally.

14 A. Correct.

15 Q. Now, in this case, only thing you've done is run
16 the gun, right?

17 A. Actually, Al Hallman ran the gun.

18 Q. Because you're ATF, you're able to interpret the
19 report, correct?

20 A. Correct.

21 Q. As far as where the gun was or who had the gun,
22 you don't know that.

23 A. I know nothing of it.

24 MR. SMILEY: I've got nothing else.

25 MR. APOSTOLOU: No questions, Your Honor.

1 THE COURT: You may step down. You may be
2 excused, Mr. Hill. Thank you very much.

3 State, call your next witness.

4 MR. LAWTON: The state calls Angela Watts.

5 ANGELA WATTS,

6 having been first duly sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. LAWTON:

10 Q. Beg the Court's indulgence. Ms. Watts, could you
11 please tell the jury where you're employed.

12 A. I'm the manager of the South Carolina Department
13 of Motor Vehicles at [REDACTED]

14 Q. And how long have you been there?

15 A. Twenty-one and a half years.

16 Q. What type of duties do you do on an everyday
17 basis?

18 A. I coordinate, manage the facility of the branch
19 office that I run. I have 18 employees, and I do
20 accounting, inventory. I manage the office.

21 Q. I'm going to show you State's 30 that is already
22 in evidence and see if you can tell the jury the license
23 tag number on there.

24 A. Yes, sir. It's 228 WEJ. It expires 4 of '08.
25 That is a South Carolina license plate.

1 Q. Did you bring some records regarding those tags
2 today, ma'am?

3 A. I did, I brought the plate history, and I brought
4 also what is in our computer system.

5 Q. And how do y'all keep track of these records as
6 far as far as the plate history?

7 A. We have a Phoenix system, and it keeps track of
8 all of our inventory and all of the license plates.

9 Q. And this is all computerized?

10 A. Yes.

11 MR. LAWTON: I'd like to mark those, if I
12 could look at your reports -- I'll show the defendant
13 briefly.

14 BY MR. LAWTON:

15 Q. I'm going to show you State's 63. These are the
16 documents that you brought that are kept at DMV?

17 A. Yes, sir.

18 Q. Based on the number that is off the picture there,
19 can you tell us who the titled owner of that at the time
20 it was issued?

21 A. Yes, sir. The owner of that license plate is
22 Sharon Rasheed Goss, and it belongs to a '92 Lincoln four
23 door.

24 Q. What date was that tag issued?

25 A. Transaction date was 6/21/07. Decal was issued

1 4/23/07, expires 4/30 of '08.

2 Q. That picture was taken 6/15/07, and I was looking
3 at the date issued.

4 A. Okay. 4/23/07 was the date that the license plate
5 was issued.

6 Q. Okay. That's fine. And if you could tell us the
7 address of the owner, Sharon Goss.

8 A. Yes, sir. It's [REDACTED] North
9 Charleston 29405.

10 Q. All right. Thank you.

11 A. You're welcome.

12 Q. One moment, Your Honor.

13 MR. LAWTON: Your Honor, I'd offer State's 63
14 into evidence.

15 THE COURT: Any objection?

16 MR. SMILEY: No objection.

17 THE COURT: 63 is admitted without objection.

18 (License plate history marked for
19 identification and admitted into evidence as State's
20 Exhibit No. 63.)

21 MR. LAWTON: Thank you for coming, Ms. Watts.
22 If you could answer any questions the defense attorneys
23 have for you.

24 CROSS-EXAMINATION

25 BY MR. SMILEY:

1 Q. Ms. Watts, Jim Smiley.

2 A. Hi.

3 Q. Does this information tell you sex of the person
4 that is holding the plate, male or female? Do you know?

5 A. Well, Sharon Goss is assigned a customer number.
6 We could --

7 Q. If I told you that name was Sharon versus Sharon,
8 it's still spelled the same.

9 A. I'm sorry.

10 Q. But it doesn't tell you there whether it's a male
11 or female?

12 A. No, sir.

13 Q. So if I told you that belonged to Sharon Goss, a
14 25-year-old black male, you could go and check it, but it
15 doesn't show up there?

16 A. That's correct. I could check it by her or his
17 customer number.

18 Q. All right. And the address that is put in is
19 given by the person when they apply for the plate, right?

20 A. That is correct.

21 Q. All right. And that plate is attached at that
22 point in time to a car, right?

23 A. That is correct.

24 Q. And the plate, should it correspond to ownership
25 of the car, correct?

1 A. That is correct.

2 MR. SMILEY: Nothing further.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. APOSTOLOU:

6 Q. Sure. Did Joy Mack's name come up at all in
7 relation to that car?

8 A. Joy Mack? I don't know Joy Mack.

9 MR. APOSTOLOU: Thank you. Nothing further.

10 THE COURT: Any redirect?

11 MR. LAWTON: No, Your Honor.

12 THE COURT: Ms. Watts, you may step down.

13 Thank you so very much.

14 MR. LAWTON: State calls Ebony Johnson.

15 EBONY JOHNSON,

16 having been first duly sworn,

17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. LAWTON:

20 Q. My name is Trip Lawton. Could you please tell the
21 jury where you're currently employed.

22 A. I am full time right now at Comcast but on
23 Saturdays I still work at Urban Gear.

24 Q. Could you tell the jury where that is located?

25 A. [REDACTED] I believe.

1 Q. How long have you worked there? I know you're
2 part time now, but --

3 A. Since April.

4 Q. April of '08?

5 A. Yeah, '08.

6 Q. Could you tell us the things do you in the store
7 on a day-to-day basis.

8 A. I'm a manager. I sell clothes, price items, put
9 them up, ring customers up, vacuum every day, clean the
10 windows, things like that.

11 Q. Okay. And let's talk about in the morning. What
12 do y'all normally do in the morning as far as cleaning up
13 around the store?

14 A. I immediately vacuum every morning and clean the
15 windows all around the front and the outside of the
16 front, inside.

17 Q. So you clean the inside of the windows and the
18 outside?

19 A. Uh-huh.

20 Q. Does that also concern the front door?

21 A. It's mainly the front door, because our windows,
22 they're very big windows, so we don't really clean the
23 window part of it, but the doors, we have to make sure we
24 do the whole door frame there.

25 Q. And why do y'all clean it every day?

1 A. Because fingerprints from the day -- we had a very
2 high traffic day, fingerprints all over it.

3 Q. And this is an everyday occurrence?

4 A. Every morning.

5 Q. Do y'all sometimes do it more than once?

6 A. Yeah. When there are days when there is a lot of
7 customers in and out and there is fingerprints -- I mean,
8 in the middle of the day, there might be a lot of
9 fingerprints, so we have to clean it a couple of times
10 sometimes.

11 Q. And you said you started in April of '08.

12 A. Uh-huh.

13 Q. Is this something that you started doing or were
14 you told by your boss?

15 A. I was told by my boss that this is something we do
16 every day when I started.

17 Q. Okay.

18 MR. LAWTON: One moment, Your Honor. No
19 further questions. Please answer any questions
20 Mr. Smiley has for you.

21 MR. SMILEY: I don't have any questions for
22 you, Ms. Johnson.

23 MR. APOSTOLOU: No questions.

24 THE COURT: You may step down. Thank you
25 very much.

1 MR. LAWTON: State calls O.J. Faison.

2 OLENTHIL FAISON,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LAWTON:

7 Q. May it please the Court, Mr. Faison.

8 A. Good morning.

9 Q. Please tell the Court where you're currently
10 employed.

11 A. City of North Charleston, assigned to the
12 narcotics division.

13 Q. How long have you been in the narcotics division?

14 A. This is my second time around, so I would say a
15 total of five years. This is my second time around.

16 Q. And when did you originally begin at North
17 Charleston?

18 A. In 1999.

19 Q. 1999?

20 A. 1999.

21 Q. Did you go to the academy before that?

22 A. Yes, sir.

23 Q. Do you know when you graduated?

24 A. I started at North Charleston police department in
25 1999, and I graduated from the police academy February of

1 2000.

2 Q. How about in the summer of '07, what were your
3 duties at North Charleston?

4 A. At that particular time I was assigned to the
5 technical division, crimes against person.

6 Q. And crime against person, would you tell the jury
7 what all it was regarding.

8 A. Any crime that -- it can be assault, rape, any
9 crime against a person, and that is what I deal with, at
10 that time.

11 Q. So mostly violent crime?

12 A. Yes, sir.

13 Q. Did you happen to be involved in the June 14th,
14 2007 --

15 A. Yes, I was.

16 Q. -- robbery?

17 A. Yes, I was.

18 Q. And where was that located?

19 A. At [REDACTED]

20 Q. Did you have the opportunity to go to the scene
21 that night?

22 A. Yes, I have.

23 Q. And what was your official title, as far as this
24 particular case?

25 A. Actually, in this case I was the lead detective in

1 this case.

2 Q. What does that involve, the lead detective?

3 A. That means that I'm basically the case agent. I'm
4 the one that kind of like handles everything and kind of
5 like the rest of the detectives kind of like assist me in
6 this case and I kind of give them the direction.

7 Q. I know it's been a while. Do you remember what
8 time you arrived on the scene, roughly?

9 A. I think a call went out approximately about 7:30
10 that night, and I think I probably responded there
11 probably, I would say, a little after 8:00, somewhere up
12 in that area.

13 Q. Were the victims still there when you got there?

14 A. No, sir.

15 Q. Okay. Did y'all receive any tips that night?

16 A. Yes, we did. We received a tip.

17 Q. Do you know who gave the tip --

18 MR. SMILEY: Objection, Your Honor. Can we
19 approach?

20 THE COURT: Yes, sir.

21 (Sidebar discussion held.)

22 BY MR. LAWTON:

23 Q. I apologize, O.J. Before did y'all receive a tip
24 that night?

25 A. Yes, sir.

1 Q. And it was concerning this robbery?

2 A. Yes, yes, it was.

3 Q. Do you know who the tip was given by?

4 A. Yes, I do.

5 Q. Who is that?

6 A. Lorenzo Johnson.

7 Q. What did y'all do as a result of this tip?

8 A. We actually forwarded the two names that he gave
9 us to the crime scene.

10 Q. And do you know those two names?

11 A. Yes, Darrell Goss and Benjamin Goss.

12 Q. And what did crime scene do?

13 A. They compared a fingerprint. They did a
14 fingerprint analysis.

15 Q. And as a result of that, what did you do?

16 A. From the next day, which would be June the 15th,
17 we did a search warrant.

18 Q. Okay. Okay. Tell the jury basically how the
19 search warrant process -- before you executed it, how
20 does that work?

21 A. Well, actually, we establish, I guess, a suspect
22 through the fingerprints because they have positively
23 identified Darrell Goss's fingerprints here. So we did a
24 search warrant of his residence, where he live at, to
25 find further evidence to prosecute him.

1 Q. And do you recall that address?

2 A. Yes, I do, [REDACTED]

3 Q. And what city is that in?

4 A. That is located in the city of North Charleston.

5 Q. Okay. So did you have to get a magistrate to sign
6 the search warrant before that?

7 A. Yes, I did.

8 Q. Okay. And roughly, what time did y'all go over
9 there? Would it help if you looked at your report?

10 A. Yes. If you give me a second I can look through
11 my report. We executed the search warrant approximately
12 9:35 p.m. on June the 15th.

13 Q. And whose residence was that, once again?

14 A. That was 2865. The mother is Sharon Goss and the
15 son is Darrell Goss.

16 Q. Okay. How does -- as far as executing the search
17 warrant, what do y'all do when y'all get there?

18 A. Actually, when we arrive on the scene on this
19 particular day, I knew -- I know for a fact that we was
20 met -- I know Sharon Goss was the mother, and we actually
21 knock and announce our name and we just went inside.

22 Q. Did you see Darrell Goss inside there?

23 A. Yes. He was actually hiding from us, to be honest
24 with you.

25 Q. Where was he hiding?

1 A. Behind -- I think it was a washer and dryer was
2 sets up in the corner. He was, like, right behind the
3 washing machine part, behind it, tucked in the corner
4 real tight away.

5 Q. Did y'all look around the house for evidence?

6 A. Yes, we did.

7 Q. And what did y'all discover?

8 A. We discovered several clothing items, tags, hats,
9 shades, items that could have been consistent with this
10 crime that just occurred at the Urban Gear store.

11 Q. Where were these items located?

12 A. In a bedroom, in one of the bedrooms.

13 Q. And you said you saw Darrell Goss there hiding,
14 correct?

15 A. Yes, sir.

16 Q. Where in relation between Darrell Goss and the
17 bedroom when you located Darrell Goss?

18 A. I would say approximately -- I'm not good on
19 measurements, but I would say probably about three feet.
20 It couldn't have been more than about three or four foot.

21 Q. Okay. From the room?

22 A. Yes, yes.

23 Q. And as a result of this evidence, what did y'all
24 do to Darrell Goss?

25 A. We ended up arresting him, placed him into

1 custody.

2 Q. As you know also, Joy Mack's involved with this
3 case.

4 A. Yes, yes, sir.

5 Q. Do you know when the arrest warrants were issued
6 for Joy Mack?

7 A. On July the 2nd.

8 Q. And do you know when he was actually arrested?

9 A. On July the 24th.

10 Q. Okay. Did you have anything to do with the
11 identification of Joy Mack? Do you know when that
12 occurred?

13 A. If I'm not mistaken, I believe that was -- because
14 that was Sergeant Singletary.

15 Q. Were you there?

16 A. I wasn't there at the time when he had called
17 Sergeant Singletary up.

18 Q. So you weren't there?

19 A. No, sir.

20 Q. Were you involved in searching of the car at the
21 residence?

22 A. Well, I was involved in the searching the whole
23 premises of the residence.

24 Q. But did you actually search the car?

25 A. No, I did not search the car.

1 Q. I'll show you a picture, just to -- I'll show you
2 State's 30. You didn't have anything to do with going
3 into that car.

4 A. No, no, sir, but, I mean, I saw it.

5 Q. You saw it?

6 A. I saw the stuff in there. I mean, I wasn't the
7 one that --

8 Q. That's fine.

9 MR. LAWTON: One moment, Your Honor.

10 Please answer any questions Mr. Smiley has
11 for you, O.J.

12 CROSS-EXAMINATION

13 BY MR. SMILEY:

14 Q. Detective Faison, you kept saying the mother was
15 Sharon Goss, and I you told it was Thomasina Goss was the
16 mom. Would that break the memory bank, or do you
17 remember the mom being Sharon?

18 A. Thomasina is another name.

19 Q. So when you say Sharon, you were referring to
20 Thomasina?

21 A. Yes.

22 Q. Just making sure. I didn't know there was another
23 woman floating around there. All right. And there is
24 several young men that live at that residence, right?

25 A. I'm not aware.

1 Q. Well, Ben, Ben Goss, did you know that he lived
2 there?

3 A. No, sir.

4 Q. Sharon Goss, did you know he lived there?

5 A. No, sir.

6 Q. Okay. Thomasina?

7 A. Yes, sir.

8 Q. Clifford Hartwell?

9 A. No, sir.

10 Q. You didn't know. Okay. Let's start with that
11 search warrant. When y'all waited till dark the next
12 night, about 9:35 -- because it wasn't just you going to
13 the house, right?

14 A. No, sir.

15 Q. There was several officers, right?

16 A. Yes, sir.

17 Q. Actually, a good bit of officers?

18 A. Yes, yes, sir.

19 Q. If you had to estimate, I guess there was probably
20 eight, ten, maybe even more?

21 A. I would say approximately -- I mean, we had
22 probably -- I think we had, like, one marked unit.

23 Q. Uh-huh.

24 A. And that is one individual, and then probably the
25 rest of us was detective -- I would say probably no more

1 than -- possibly ten, if that.

2 Q. Ten people?

3 A. If that.

4 Q. All right. All right. And y'all took entering
5 this residence fairly serious. It wasn't just a knock
6 knock knock, let us in. Y'all breached this residence,
7 right?

8 A. I can't recall if we breached or not. I'm not 100
9 percent sure. I believe she let us in to search, but I
10 can't recall it.

11 Q. That's fair enough. Let me put it this way: When
12 you went in that house, you didn't just stand around, go
13 in and secure the residence?

14 A. Yes, we did secure the residence, yes.

15 Q. Okay. And you do that for officer safety?

16 A. Yes.

17 Q. Well, everybody's safety?

18 A. Yes.

19 Q. First thing you want to do is get everything
20 secure?

21 A. Yes.

22 Q. So the officers come in, and I don't want to use
23 the word bum rush, but it's quick. Y'all move, right?

24 A. Yes, we do.

25 Q. Were weapons drawn?

1 A. Yes.

2 Q. You come in with weapons drawn. You get everybody
3 secured --

4 A. Yes.

5 Q. -- before you do anything?

6 A. Yeah.

7 Q. Okay. Now, the search warrant covered looking for
8 evidence of the crime inside the house and any cars in
9 the yard, right?

10 A. Yes, sir.

11 Q. Okay. And in a bedroom, you found a pair of
12 jeans, a couple of shirts, right?

13 A. Uh-huh.

14 Q. A couple of pairs of shoes, right?

15 A. Yeah.

16 Q. And some tags?

17 A. Yes.

18 Q. Okay. Is that what -- all that wasn't taken from
19 that store, by any means?

20 A. I never had an inventory to see everything that
21 was taken from the store, so I can't say.

22 Q. Well, isn't it fair to say more than one pair of
23 jeans?

24 A. Yeah, yeah, yeah.

25 Q. That's my point.

1 A. Okay.

2 Q. All right. Now, this bedroom, also, you found
3 some sunglasses in it?

4 A. Yes.

5 Q. And, subsequently, the sunglasses had fingerprints
6 of Ben Goss on them?

7 A. Yes.

8 Q. Were you able to identify whose bedroom that was?

9 A. No.

10 Q. Just a bedroom inside the house?

11 A. Yes, it was a bedroom inside the house.

12 Q. All right. Now, the car in the yard, we've heard
13 testimony that it belonged to a Sharon Goss. Did you
14 have an opportunity to find Mr. Goss, Mr. Sharon Goss?

15 A. No, sir.

16 Q. Okay. There was a gun found inside that car,
17 correct?

18 A. Yes.

19 Q. Do you have -- did you state any evidence that
20 ever -- withdraw that question. I'll ask it a different
21 way.

22 Have you collected any evidence that directly puts
23 that gun in Darrell Goss's hand?

24 A. No.

25 Q. Inside the store, you're the case officer, and the

1 collection of evidence and getting the statements, did
2 you collect any evidence that put Darrell Goss inside
3 that store?

4 A. Other than a fingerprint?

5 Q. Fingerprint is on the outside, right?

6 A. Yeah.

7 Q. Insight the store?

8 A. No, sir.

9 Q. Okay.

10 MR. SMILEY: Beg the Court's indulgence. Beg
11 the Court's indulgence. I'm trying to track down the
12 lineup that was used yesterday. And, Judge, I apologize.
13 I'm bad about setting things somewhere and not keeping up
14 with it.

15 BY MR. SMILEY:

16 Q. Let me ask you some questions. Did you have an
17 opportunity to show Mr. Ayazgok some lineups in this
18 case, right?

19 A. Andy? You're talking about Andy?

20 Q. Andy, Ayazgok. I've been trying to get his name
21 right. You showed him a couple in this case, right?

22 A. Yes, I did.

23 Q. And the reason you showed the victim in this case
24 a lineup is to see if he can identify participants in the
25 robbery, right?

1 A. Yes, yes.

2 Q. And because of your information, tips, the
3 fingerprint on the outside and your stolen goods you
4 found in the house, you showed him a lineup of Darrell
5 Goss, right?

6 A. Yes, I did.

7 MR. APOSTOLOU: Your Honor, may we approach
8 the bench?

9 (Discussion held at sidebar.)

10 BY MR. SMILEY:

11 Q. All right. So in doing that, you showed him a
12 lineup that had Darrell Goss in it.

13 A. I did.

14 Q. And you asked him, did you recognize anyone in
15 this lineup?

16 A. Yes, I did.

17 Q. And he, in fact, recognized Darrell, didn't he?

18 A. Yes, he did.

19 Q. Okay. But he told you it wasn't from the robbery,
20 it was from being in the store earlier that week?

21 A. Yes, he did.

22 Q. Matter of fact, he told you he wasn't in the
23 robbery, that you had saw him earlier that week, right?

24 A. No. He didn't say that he saw him earlier that
25 week.

1 Q. Okay. Now, you had an opportunity after you took
2 Mr. Goss into custody to speak with him?

3 A. Yes.

4 Q. And he admitted to you he had been in that store
5 earlier?

6 A. I didn't actually look --

7 Q. I'll get it for you. I'll get it for you.

8 A. Because I wasn't the one that actually was in the
9 room.

10 Q. Oh, okay. Hang on a second. I thought you were.
11 You were there when he was taking this statement,
12 however?

13 A. Yes.

14 Q. I'm going to show you -- I better have it marked.

15 (Statement marked for identification as
16 Defendant's Exhibit No. 3.)

17 BY MR. SMILEY:

18 Q. I'll show you what has been marked as Defendant's
19 Exhibit No. 3. It's got your signature on it?

20 A. Yes, it does.

21 Q. And you were a witnesses and you were there,
22 right?

23 A. Yes, I was.

24 Q. After Darrell was arrested, y'all talked with him,
25 right?

1 A. Yes, we did.

2 Q. In talking to him, he admitted to being in that
3 store?

4 A. Yes, he did.

5 Q. He admitted to buying some items and pants in the
6 store?

7 A. Yes, he did.

8 Q. And then he decided he wanted a lawyer, right?

9 A. Yes, he did.

10 Q. In this robbery, some things other than clothes
11 were taken?

12 A. Yeah.

13 Q. I believe \$1,000 was taken?

14 A. Yes.

15 Q. Both Mr. Kilic and Mr. Ayazgok's wallets
16 were taken?

17 A. Yes.

18 Q. In your investigation the search of Darrell's
19 house and everything else you did, did you find the
20 wallets?

21 A. No, we didn't.

22 Q. Did you find -- well, did you find the \$1,000?

23 A. No, we didn't.

24 Q. Also, there is allegation that an AK47, or
25 something like that, a rifle, was used by one of the

1 assailants. Was any AK47 or anything similar found in
2 this case?

3 A. No.

4 Q. All right., Ben Goss, he was a suspect in this
5 case?

6 A. Was he a suspect in this case? Well, from the tip
7 that we got, yes, sir.

8 Q. Well, you got a fingerprint off a pair of
9 sunglasses, right?

10 A. Uh-huh.

11 Q. The car that had the gun that had DNA from the
12 storekeeper was found at [REDACTED] right?

13 A. Yes, it was.

14 Q. And Ben Goss lived at [REDACTED]

15 A. I can't say that.

16 Q. All right. And the stolen clothes were found in a
17 room inside that home.

18 A. Yes.

19 Q. Did you show a lineup of Ben Goss to Mr. Ayazgok?

20 A. Yes, I did.

21 Q. Was he able to pick Ben Goss out?

22 A. No, he didn't.

23 Q. Now, there were allegedly five assailants in this
24 case, right?

25 A. Correct.

1 Q. All right. One of which you believed to be Mr.
2 Goss; one of which you believed to be Mr. Mack?

3 A. Correct.

4 Q. In your investigation, trying to assemble what
5 happened, were you able to put a direct connection
6 between Mr. Mack and Mr. Goss?

7 A. No.

8 Q. Okay. Last question. Before I ask that, let me
9 check. Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 BY MR. SMILEY:

12 Q. Two things, just to make sure I didn't confuse
13 myself. While Darrell was going to be in the store, he
14 didn't admit being in a robbery, he just said he had
15 shopped there days before, right?

16 A. Yes.

17 Q. Last question about stolen goods. In your
18 experience as an officer, having stolen goods does not
19 make an armed robber, does it?

20 A. No.

21 MR. SMILEY: Okay. Thank you.

22 THE COURT: Cross-examination?

23 MR. APOSTOLOU: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. APOSTOLOU:

1 Q. Officer Faison, you said you got a tip very early
2 in this case; is that right?

3 A. Yes.

4 Q. And as a result, Mr. Lawton asked you what you did
5 as a result of that tip. What did you do as a result of
6 that tip in regards to Joy Mack?

7 A. What did I do in regards to Joy Mack?

8 Q. Right.

9 A. When a tip came in, nothing came in about Joy
10 Mack.

11 Q. So the initial tip you got within hours of the
12 robbery had no mention whatsoever of Joy Mack?

13 A. No, sir.

14 Q. And so therefore you did nothing about Joy Mack in
15 this?

16 A. Not at that time.

17 Q. And, in fact, in your investigation you were the
18 case officer. Other officers reported to you. You're in
19 charge of the investigation. You never heard Joy Mack's
20 name at all. It was never mentioned in the investigation
21 until Andy called y'all about the identification at the
22 store on the 29th; is that correct?

23 A. Yes, sir.

24 Q. So in the two weeks of investigating, you never
25 even heard Joy Mack's name until Andy called you about it

1 on the 29th.

2 A. Yes, sir.

3 Q. Okay. Now, you executed a search warrant at
4 Darrell Goss's residence; is that correct?

5 A. That is correct.

6 Q. All right. And there was some -- how many people
7 were there?

8 A. There was several people there.

9 Q. Several people? Was Joy Mack there?

10 A. No, sir, he was not there.

11 Q. Was anything tying Joy Mack to that residence at
12 all?

13 A. No, sir.

14 Q. No ID, no wallet, nothing?

15 A. No, sir.

16 Q. Okay. So as a result of that search warrant, you
17 arrested Darrell Goss?

18 A. Yes.

19 Q. The day after the incident date.

20 A. Yeah. We arrested Darrell Goss on June the 15th.

21 Q. So you arrested Darrell Goss on June the 15th.

22 Now, Darrell Goss is allegedly Joy Mack's codefendant in
23 this armed robbery.

24 A. Yes.

25 Q. Have all of Joy Mack's contact in this case come

1 from the incident location, the Urban Gear; is that
2 correct?

3 A. Can you --

4 Q. Let me rephrase it. I'll break it down a little
5 smaller. Joy Mack's involvement in this case came from
6 the fact that Andy, the victim, says that Joy Mack was
7 involved in the robbery.

8 A. Yes, sir.

9 Q. All of those contacts occurred at Andy's store?

10 A. Yes.

11 Q. We heard testimony of three contact periods
12 between Andy about Joy. All of them occurred at the
13 Urban Gear.

14 A. Uh-huh.

15 Q. One of them occurred one week after Joy's alleged
16 codefendant in the robbery was arrested; is that correct?

17 A. I didn't know if you was asking me or you was
18 telling me. You put it in a statement.

19 Q. It was perhaps confusing. I'll put it in the form
20 of a question. After Darrell Goss, Joy Mack's alleged
21 codefendant is arrested for this robbery?

22 A. Uh-huh.

23 Q. Joy Mack goes back to the same store one week
24 later; is that correct?

25 A. Yeah.

1 Q. Then after that, the second time, Joy Mack
2 actually goes inside the store where his codefendant has
3 been arrested for robbing, and he goes shopping inside
4 the store; is that correct?

5 A. That's correct.

6 Q. And then the third time he comes back to the same
7 store, or into that same area where his codefendant has
8 already been arrested now for two weeks, for this armed
9 robbery, and he comes right back to that same location
10 again; is that correct?

11 A. Yes.

12 Q. Okay. Now, at some point, you said, I think, that
13 the search warrants came out on July the 2nd.

14 A. The search warrant? No, not the search warrant.

15 Q. The arrest warrant came out for July -- for Joy
16 Mack on July the 2nd?

17 A. Yes.

18 Q. His last contact, Andy's last contact seeing Joy
19 Mack at the store, was on the 30th of June.

20 A. I would have to actually refer back to my notes,
21 but I believe it was June the 30th.

22 Q. Did you discover any new information in between
23 June 30th and July the 2nd regarding Joy Mack?

24 A. Other than positive ID, that's it.

25 Q. That's it. So nothing new?

1 A. No, sir nothing new.

2 Q. Now, an identification doesn't end a criminal
3 case. It really kind of begins a criminal case?

4 A. Yes, it does.

5 Q. At that point you can focus all the energies of
6 North Charleston police department on this person, and
7 you can try to develop as much evidence against him as
8 you can.

9 A. Yeah.

10 Q. You go out and you try to find other witnesses
11 with the name of the person you're trying to link to the
12 robbery.

13 A. Yes, correct.

14 Q. And there was a second person in this store,
15 wasn't there?

16 A. Yes, there was, there was.

17 Q. Okay. You also developed forensics. I think that
18 the fingerprint person testified that he had all of this
19 evidence, and then y'all supplied the names of the people
20 you wanted tested and then he tested specifically for
21 those people.

22 A. Yes, he did.

23 Q. Okay. And then the other thing that you can do
24 for something that you're targeting is a search warrant,
25 which is exactly what did you for Darrell Goss.

1 A. Yeah.

2 Q. Now, after focussing all of that investigative
3 powers of the North Charleston police department at Joy
4 Mack, did you find anything else, anything else, linking
5 him to this robbery?

6 A. No, sir.

7 Q. The only thing linking him to the robbery is the
8 statement of Andy identifying him?

9 A. Yes, that is correct.

10 Q. Now, as the case officer, you would know if he
11 called the police on the first incident.

12 A. I know throughout that investigation I talked to
13 Andy on several occasions, and, like I said, I know at
14 least two incidents that he called the police.

15 Q. The 29th and the 30th.

16 A. I can't recall the date, I mean, but it's fair to
17 say --

18 Q. Sounds correct. Sounds correct?

19 A. It was at least two times.

20 Q. But he didn't call the first time. Okay. Now,
21 when you first go in there and you take statements from
22 an individual that night, you want to get a statement as
23 soon as you can, don't you?

24 A. Yes, I do.

25 Q. And that is because a person's memory is freshest

1 right when the incident happens; is that right?

2 A. Yes, sir.

3 Q. And one of the things that you want to see is how
4 much of a look did they get at the person that robbed
5 them or whatever the crime is?

6 A. Yeah.

7 Q. And whether they can identify them again; is that
8 correct?

9 A. Yes.

10 Q. And that is really one of the most important parts
11 of getting the statement, right?

12 A. That is correct.

13 Q. And one of the things you asked them is, Do you
14 think, if you saw that person again, you would be able to
15 recognize them?

16 A. Yes, that is one thing.

17 Q. Why do you ask that question?

18 A. I mean, just -- that was just an investigation tip
19 that I was doing for years and years. There is no set
20 way how to do it, but that is one of the questions that I
21 developed over the period of years in law enforcement to
22 ask them that question.

23 Q. What information are you trying to learn by asking
24 that question?

25 A. Just to see the possibility of -- I probably was

1 showing him a photo lineup, if I have a picture, it might
2 jog his memory or something like that.

3 Q. One of the things you ask him is because you want
4 to gauge how much of an impression they got of the
5 person, right?

6 A. Correct.

7 Q. Because that might be relevant in the
8 investigation, and you asked that question of Andy that
9 night, or somebody. In the investigation, that question
10 was asked of Andy.

11 A. Can I look at my --

12 Q. Sure.

13 A. -- the statement?

14 Q. His first statement. I have it right here.

15 MR. LAWTON: I have an objection, Your Honor.
16 May I approach?

17 THE COURT: Yes, sir.

18 BY MR. APOSTOLOU:

19 Q. Were you present when Andy made his statement?

20 A. No, sir.

21 Q. But, in general, that's an investigative tip that
22 you ask, can you recognize this person if you see them
23 again?

24 A. That's what I do.

25 Q. And that is useful?

1 A. That is only what I do. I can't tell about any
2 other investigator. That's what I do.

3 Q. Thank you. Court's indulgence for a second.

4 MR. APOSTOLOU: I got nothing further.

5 THE COURT: Any redirect?

6 MR. LAWTON: One moment, Your Honor.

7 ~~REDIRECT EXAMINATION~~

8 BY MR. LAWTON:

9 Q. Mr. Smiley had mentioned the document he gave you,
10 Defendant's for identification 3. He had indicated that
11 Mr. Goss told y'all, the defendant, that he was inside
12 that store sometime that week?

13 A. Yes, sir. That is correct.

14 Q. And Mr. Smiley had indicated several days. Can
15 you tell the jury what day Mr. Goss told you he was in
16 that store at Urban Wear?

17 A. He said Monday of that same week, Monday of that
18 same week.

19 Q. Thank you. And can you tell us where the
20 interview took place?

21 A. At the North Charleston police department.

22 MR. LAWTON: Thank you.

23 ~~RE-CROSS EXAMINATION~~

24 BY MR. SMILEY:

25 Q. What day of the week did the robbery take place?

1 A. On June 14th.

2 Q. What date of week is that? Because we just said
3 he was in on Monday, but I think it would help the jury
4 to know what day was the robbery.

5 A. The 14th -- I don't have a calender in front of me
6 to tell you the exact date.

7 THE COURT: That's fine. Just get a
8 calendar.

9 MR. SMILEY: Ill get it and find it.

10 THE COURT: I'll get the law clerk to find
11 one. Okay?

12 MR. APOSTOLOU: No redirect, Your Honor.

13 THE COURT: All right. You may step down.
14 Thank you very much.

15 MR. HALES: State calls Paula Davis.

16 THE COURT: All right. July the 14th of '07
17 was on a Saturday, according to the calendar.

18 MR. LAWTON: Pardon me?

19 THE COURT: Saturday, June 14th was on a
20 Saturday. June 14 was on a Thursday.

21 PAULA DAVIS,

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

24 DIRECT EXAMINATION

25 BY MR. HALES:

1 Q. How are you doing, Ms. Davis?

2 A. Fine, and yourself?

3 Q. What is your occupation?

4 A. I'm an evidence technician. That means in the
5 city of North Charleston, we take in evidence, we tag it,
6 we secure it, and we take it in according to the OCA.

7 Q. Okay. So you work for North Charleston police
8 department?

9 A. Yes, I do.

10 Q. And OCA number, that is just a number assigned to
11 the case?

12 A. Right, by the officer.

13 Q. And you said you're an evidence technician, so you
14 handle evidence in your job. Briefly explain what you do
15 with your evidence when you take it in.

16 A. We locate it, according to what type of evidence
17 it is. Let's say if it's drugs, we have a special place
18 for that. If it's guns, we have a special place for
19 that.

20 Q. Okay.

21 A. So everything is logged according to what it is.

22 Q. When you say logged, is it logged down, is it --

23 A. Logged in our -- it's logged in evidence, but it's
24 also logged in our system.

25 Q. Okay.

1 A. Uh-huh.

2 Q. Did you receive any evidence in this case?

3 A. Yes, but I need to see -- I didn't bring a chain
4 with me, so --

5 Q. I believe we got one submitted up here. I'll just
6 show you what has been marked as State's Exhibit 59, show
7 you that, if you would also look at State's Exhibit 54.

8 A. Okay.

9 Q. Do you recognize these documents?

10 A. Yes, I do.

11 Q. And what are those?

12 A. You want me to read all of them, the swabs?

13 Q. No, ma'am. I just wanted the documents.

14 A. Oh, when you say documents --

15 Q. Chain of custody?

16 A. Oh, you just asked me what they are. Yes. These
17 are our chains of custody.

18 Q. All right. What evidence did you personally take
19 in in this case, specifically? Did you take any swabs or
20 any?

21 A. Yes. I took in mouth swabs, two of them. I can't
22 pronounce the names, but yes.

23 Q. Okay. And did you happen to take in a gun?

24 A. Yes. A Trooper MK3, 357 magnum revolver.

25 Q. And when you take in swabs, what happens with

1 those swabs?

2 A. They are refrigerated until they go to SLED.

3 Q. Okay.

4 A. It depends on whether they were submitted for
5 refrigeration.

6 Q. Okay.

7 A. So these -- yeah.

8 Q. And when you take in a gun, what would you do with
9 the gun?

10 A. The gun is actually entered into evidence, and,
11 like I told you before, we use our chain of custody to
12 actually identify that gun, and then it's logged in on
13 our system, and then it's placed in our storage area for
14 guns, specifically for guns.

15 Q. Okay. And when something is placed into evidence,
16 is that a secure place?

17 A. Yes. It's alarmed. We only have three people
18 that can get in there.

19 Q. Okay. And does it stay in evidence until -- when
20 does it leave that evidence room?

21 A. Only if it's requested to go to SLED.

22 Q. Okay. Were those items requested to go to SLED,
23 those swabs and that gun?

24 A. The gun was requested, yes, sir, and the swabs.

25 Q. And what happens when they're requested to go to

1 SLED? Does SLED come down and pick them up, or do y'all
2 take them up there?

3 A. No. We actually take them and submit them to
4 them, and they log them into their system.

5 Q. So someone that works in the evidence room
6 personally takes those items up to SLED?

7 A. That's correct..

8 Q. Okay. And who took those items to North
9 Charleston up to SLED?

10 A. I did, Paula A. Davis.

11 Q. What date did you take those up?

12 A. On 6/22/07.

13 Q. Now, take those things up to SLED, if you could
14 please explain what the process is when you get to SLED.
15 What do you do with those items?

16 A. Well, I take them into SLED, and they're actually
17 logged into evidence by another custodian.

18 Q. Okay.

19 A. So they do not leave my sight until the van.

20 Q. Do those items have any kind of seal on them?

21 A. Yes, they're sealed, that's correct.

22 Q. Do you have to sign anything?

23 A. I do have to sign, that's correct. I sign their
24 chain of custody after they enter them into evidence. We
25 actually sign their chain of custody, showing that we

1 accepted it. They also give us something similar to
2 this, showing that it was submitted by us.

3 Q. Okay. And then if they run tests or they do
4 whatever they do with SLED and they are finished
5 examining the objects or the evidence, what happens then?

6 A. Once we -- when we go back to take more evidence,
7 they actually give us whatever is available at that time.
8 And at that time, I also sign for it, and it doesn't
9 leave my eyesight until it gets back to North Charleston.

10 Q. Okay. So you make another run up there to take
11 more evidence --

12 A. Right.

13 Q. At that time, even though they may not have
14 contacted you and told you that stuff was finished at
15 that time, they tell you, We're through testing this
16 stuff. You can take it back to North Charleston?

17 A. That's correct, uh-huh.

18 Q. And when you bring it back, what happens to it?

19 A. We log it back in, showing that we received it,
20 and it's also placed in our gun area, or the gun or
21 whatever type of evidence it is.

22 Q. Okay. So basically it's just like you got it, but
23 the first time you put it in whatever area?

24 A. Right, right. We don't open it or anything like
25 that.

1 Q. Okay.

2 A. So we just place it as it is returned to us.

3 Q. And it stays there until when?

4 A. Until either the case is over, the officer wants
5 to do whatever with it. We don't -- like I said, we
6 don't tamper with it. It stays there, locked.

7 Q. Thank you very much, Ms. Davis. Please answer any
8 other questions.

9 CROSS-EXAMINATION

10 BY MR. SMILEY:

11 Q. You took one gun into evidence?

12 A. That's correct, according to this.

13 Q. I'm just asking. There wasn't a second one, just
14 one?

15 A. Just one.

16 Q. All right. And you don't know where the gun comes
17 from, just an officer presents it to you, and you lock it
18 down as related to this particular case?

19 A. Right, that's correct.

20 Q. And same thing for any other items you collected?

21 A. That's true.

22 Q. You don't know where they come from, you're just
23 in charge of making sure they're safe?

24 A. Don't ask, don't inquire. That's it.

25 MR. SMILEY: Thank you very much.

1 MR. APOSTOLOU: No questions.

2 THE COURT: You may step down. Thank you
3 very much.

4 MR. LAWTON: May we approach, Your Honor?
5 (Discussion held at sidebar.)

6 THE COURT: All right. Ladies and gentlemen:

7 Like I told you yesterday, we are going to break at 12
8 o'clock because we're not going to be able to -- because
9 the witness from SLED is not going to be here. So we'll
10 take a lunch break at this time, a little bit early for
11 y'all, if you're still feeling the effects of breakfast,
12 if you did have breakfast, but we'll take a lunch break
13 at this time. Be back at one o'clock. Have a good
14 lunch. Please don't discuss the case with anyone.

15 A F T E R N O O N S E S S I O N

16 THE COURT: Thank you very much. Call your
17 next witness.

18 MR. HALES: Catherine Leisy.

19 CATHERINE LEISY,

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

22 DIRECT EXAMINATION

23 BY MR. HALES:

24 Q. What is your occupation?

25 A. I'm a forensic scientist assigned to the DNA and

1 serology unit at South Carolina Law Enforcement Division,
2 also known as SLED.

3 Q. How long have you been in that position?

4 A. For probably three years.

5 Q. What do you do in that position?

6 A. My responsibilities include processing forensic
7 cases, generating reports based on results and
8 conclusions drawn, and testifying to those reports as
9 necessary.

10 Q. What kind of education allows you to perform your
11 job?

12 A. I have a bachelor of science degree in genetic
13 engineering from Cedarhurst University in Allentown,
14 Pennsylvania.

15 Q. Have you received any further training after that?

16 A. I have received in-house training, both at SLED as
17 well as at my previous employer where I performed the
18 same type of forensic testing, and I'm also required to
19 submit to post -- continuing education training every
20 year, including conferences and courses specific to the
21 testing that I perform in my job.

22 Q. And what jobs did you hold before your job at
23 SLED?

24 A. Prior to coming to SLED, I spent approximately
25 four years as a forensic DNA analyst at Orchid Cellmark,

1 which is a private DNA testing lab in Germantown,
2 Maryland.

3 Q. Have you performed this testing of DNA at your
4 prior job and your job now at SLED?

5 A. That's correct.

6 Q. How many years total have you been performing
7 these duties?

8 A. It's been approximately seven years.

9 Q. Are you the member of any organizations or
10 professional --

11 A. I'm a member of the American Academy of Forensic
12 Scientists.

13 Q. And what does that organization test?

14 A. To be a member is a voluntary submission. You
15 have to meet certain requirements and continuing
16 education goals to maintain your membership.

17 Q. Okay. Have you ever testified in court before?

18 A. Yes, I have.

19 Q. Approximately how many times?

20 A. Three times prior to today here in South Carolina,
21 as well as approximately 15 times in other states and in
22 the District of Columbia.

23 MR. HALES: At this time I would move to
24 admit Ms. Leisy as an expert in DNA analysis.

25 MR. SMILEY: Mr. Goss does not object to her

1 being qualified as an expert.

2 MR. APOSTOLOU: Without objection.

3 THE COURT: All right. Thank you very much.

4 BY MR. HALES:

5 Q. What is DNA?

6 A. DNA stands for deoxyribonucleic acid. It's the
7 genetic material found within all our body cells. DNA is
8 packaged into structures called chromosomes, which
9 contain our genes, and genes are said to be strands of
10 DNA that determine our physical characteristics, such as
11 our hair color or our height. We receive half of our DNA
12 from our mother and half from our father, and we
13 therefore have two copies of every gene.

14 Now, approximately 99.9 percent of every
15 individual's DNA is exactly identical to that of everyone
16 else's, but it's the variation of that remaining .1
17 percent that allows us to tell different people apart.

18 Q. And why is DNA important to criminal
19 investigations?

20 A. We use DNA to try and determine whether an unknown
21 biological sample left at a crime scene or some other
22 location could or could not have been contributed by a
23 known individual whose DNA sample has been submitted for
24 comparison purposes.

25 Q. You talked about DNA .1 percent being unique.

1 Explain how that would be. Explain what makes that
2 unique.

3 A. The portion of DNA that we tested is called a STR,
4 which stands for short tandem repeat, and it's a location
5 in our DNA where a short unit of DNA repeats a certain
6 number of times, and the number of times that unit
7 repeats varies from person to person.

8 We characterize that variation and compare the DNA
9 profile from a piece of evidence to the DNA profile of a
10 known individual to determine whether or not we have a
11 match and that person could be a contributor of that
12 profile.

13 Q. What about twins?

14 A. Identical twins would have identical DNA and would
15 generate the same profile.

16 Q. What about brothers and sisters?

17 A. We would expect siblings to have more similar
18 profiles than you would see if you just randomly selected
19 people off the street. We would not expect for just
20 siblings to necessarily have the same DNA profile.

21 Q. What are the methods of DNA analysis, comparing
22 DNA?

23 A. There are several steps in DNA testing, the first
24 being the extraction of DNA, where we remove it from the
25 item of evidence that we're testing.

1 The next step is called amplification, where we're
2 making copies of the STR locations that we're interested
3 in comparing. Once we have those copies made, we can
4 type them, so, basically, we're just counting the number
5 of repeats, so at one given location, if there are eight
6 repeats of a gene and on the other gene there are nine
7 repeats, both types at that location would be eight nine.

8 Once we do that for all 15 locations that we test,
9 we have what we call a DNA profile. Once we have a
10 DNA profile from a piece of evidence, we can compare it
11 to a DNA profile from a known individual.

12 Q. Now, you talk a little bit about you get a piece
13 of evidence and then you get the controls or your
14 standards. What is that standard?

15 A. A standard is a sample taken from a known
16 individual, usually either an oral swab, where you take a
17 Q tip and swab the inside of an individual's cheek or a
18 tube of blood. It's basically just a sample that we know
19 to be from certain individual that we can then generate a
20 profile to compare two pieces of evidence.

21 Q. So you would take that standard and compare it to
22 the unknown?

23 A. That's correct.

24 Q. Okay. What kind of results can you get when you
25 run these tests between the standard and the unknown?

1 A. With full profiles, it is possible for us to make
2 a match, where if the DNA profile from a known individual
3 perfectly matches and is the same as the DNA profile from
4 an unknown, we can make a match statement and then
5 generate a statistic which gives the general idea of how
6 common or rare that profile is in the general population.

7 Q. Okay. Now, let's talk about this case. Did you
8 happen to receive any evidence in this case?

9 A. Yes, I did.

10 Q. What did you receive?

11 A. I received several oral swabs labelled as being
12 that of Davuthan Kilic. I also obtained swabs from
13 Aytekin Ayazgok, as well as testing that I performed, and
14 what was identified as a Trooper MP III 357 Magnum
15 revolver.

16 Q. Did you also receive a hair?

17 A. Yes, I did.

18 Q. Now, we've heard from some other witnesses talking
19 about a chain of custody, and I think the jury can
20 understand what the chain of custody is now. When you
21 received those items, are you then part of that chain?

22 A. Yes, I am.

23 Q. And if you could, were you part of the chain on
24 the two swabs, the swab of the revolver and the hair?

25 A. Yes.

1 Q. And we have that chain of custody to insure the
2 integrity of that; is that correct?

3 A. Correct.

4 Q. Now, with respect to the hair, did you perform any
5 tests on that hair?

6 A. I performed a visual inspection of the hair. I
7 did not perform any DNA testing on it.

8 Q. And why not?

9 A. My visual inspection indicated that there wasn't a
10 root attached to the hair, meaning there were no skin
11 cells that I could detect at the end of the hair, which
12 is what I would need for DNA testing.

13 Q. So if you have a hair and it's just like a piece
14 of the hair that is actually not inside the scalp, that
15 is not able to be tested for DNA?

16 A. Not with the testing that we perform at SLED.

17 Q. So that has to be pulled out and have the little I
18 guess it's the white tip on the end of hair?

19 A. Correct. I need that to do DNA testing.

20 Q. So the hair that you received was not able to be
21 DNA tested?

22 A. That's correct.

23 Q. Let's talk about the other evidence you received,
24 the swab from the gun and the two cheek swabs. What did
25 you do with those?

1 A. Initially, with the revolver, it was brought into
2 the DNA lab by James Green, who is a member of our
3 firearms department. I took custody of the revolver. I
4 took a small swab from the end of the barrel to do what
5 we call presumptive screening test, which would indicate
6 the possible presence of blood. That test was positive,
7 indicating blood. I then took another swab from the end
8 of the barrel to use for DNA testing.

9 Q. And just to break that down, you do a test
10 initially just to determine if the substance is blood; is
11 that correct?

12 A. Correct.

13 Q. And then what did you do after that, after you
14 determined it was blood?

15 A. Once I get a positive indicating possible presence
16 of blood, I took another swab from a stain that was on
17 the barrel and used that swab for DNA testing.

18 Q. Okay. And what do you call that swab? That is
19 your unknown?

20 A. Correct.

21 Q. Okay. And then you received the two standards; is
22 that correct?

23 A. Yes.

24 Q. And what did you do with those standards?

25 A. I took custody of those standards on the same day.

1 that I swabbed the gun, which would be March 18th of
2 2008. I generated a profile from not only the unknown
3 swab taken from the gun, but also from both sets of oral
4 swabs that I received.

5 Q. Okay. So you do a DNA profile, which is what you
6 explained earlier, when you take the different sequencing
7 and you make a profile of the unknown, and then you make
8 a separate profile of each one of the standards?

9 A. That's correct.

10 Q. And then what do you do once you have -- I guess
11 it's in this case three profiles?

12 A. Once I have the profiles, I compare the profiles
13 of the known individuals, from Mr. Kilic and Ayazgok, and
14 compare them to the DNA profile that was generated from
15 the firearm.

16 Q. And what did you find when you compared those
17 three profiles?

18 A. The DNA that I obtained from the gun was a mixture
19 of at least two individuals. The DNA profile developed
20 from the major contributor to this mixture matches the
21 DNA profile of Aytekin Ayazgok. The probability of
22 randomly selecting an unrelated individual having a DNA
23 profile matching this major contributor is approximately
24 1 in 490 quadrillion, and the DNA profile developed from
25 the minor was insufficient for lab interpretation.

1 Q. Okay. So if I understand you, in the blood that
2 was taken off the gun, there were two DNA profiles on
3 that?

4 A. There was a mixture of at least two individuals.

5 Q. At least two?

6 A. Yeah.

7 Q. Now, you said major contributor, Mr. Ayazgok.

8 What does that mean? What does major contributor mean?

9 A. When we have a mixture, if one individual
10 contributes significantly more DNA to the sample than
11 does the other, we have what we call a major contributor.
12 It basically just means that their DNA profile gave off a
13 much stronger signal, and we were more easily able to
14 identify that in the mixture.

15 Q. You said one in 490 quadrillion?

16 A. That's correct.

17 Q. How many is quadrillion?

18 A. One quadrillion would be a one with 15 zeros
19 behind it.

20 Q. Now, in addition to the major contributor, you say
21 there was some other DNA that was there that was unable
22 to be identified? Is that a good way to put it?

23 A. That's correct. At two of the 15 locations
24 tested, there was a very weak DNA type, indicating the
25 presence of another individual, but it was not on .

1 information for me to make any type of comparison with
2 any standard profile.

3 Q. So that just means that somebody else, or more
4 than one other person's DNA, could have been on that gun?

5 A. That's correct.

6 Q. Did you -- in your analysis of this DNA did you
7 happen to prepare a report?

8 A. I did, yes.

9 Q. Okay. I'm showing you what has been marked as
10 State's Exhibit 65. Could you please take a look at
11 that.

12 Do you recognize that?

13 A. I do.

14 Q. What is that?

15 A. It includes a copy of the original report that was
16 issued in the testing of the gun and two oral swabs, as
17 well as the report issued for the hair.

18 Q. And who prepared that report?

19 A. I did.

20 Q. Okay. Does it bear a copy of your signature on
21 it?

22 A. It does.

23 Q. And what does that report contain?

24 A. The report contains a list of the items that were
25 tested as well as the results that were drawn.

1 MR. HALES: At this time we ask the report be
2 entered into evidence, Your Honor.

3 THE COURT: Any objection?

4 MR. SMILEY: Yes, sir.

5 THE COURT: What is your legal objection?

6 MR. SMILEY: She didn't prepare -- do all the
7 tests that went into that report. There is a part of
8 that she didn't do.

9 THE COURT: Overruled. Go ahead.

10 (Report marked for identification and
11 admitted into evidence as State's Exhibit No. 65.)

12 MR. HALES: No further questions, Your Honor.
13 Please answer any questions defense attorneys have.

14 CROSS-EXAMINATION

15 BY MR. SMILEY:

16 Q. You didn't test fire the gun, did you?

17 A. No, sir.

18 Q. Okay. So the part that's in your report about
19 that was done by somebody else?

20 A. Correct. No report that I issued contained any
21 information about the test firing of a weapon.

22 Q. Okay. All right. You got the gun, and you took a
23 sample from inside the paraphernalia?

24 A. The swab was from the end of the barrel, I believe
25 on the very end, or on the outside of the barrel.

1 Q. Okay. And that is what you used to compare to the
2 known samples?

3 A. That's correct, yes.

4 Q. Okay. You don't make a determination about how
5 that blood got there; we just know that there was blood
6 there and that you made the comparison, right?

7 A. That's correct, yes.

8 Q. And the thing that you do know is that that blood
9 had the DNA of two people, two humans, right?

10 A. Of at least two people, yes.

11 Q. It could have been more than that, but we know it
12 wasn't just the one fellow, Mr. Ayazgok. It had somebody
13 else's too?

14 A. That's correct.

15 Q. And you had no idea how it got mixed, do you?

16 A. No, I don't.

17 Q. And you don't even know if the other DNA came from
18 blood, do you?

19 A. No, I don't.

20 Q. Because DNA can come from several different
21 places, correct?

22 A. Correct.

23 Q. As a matter of fact, that hair that you were
24 talking about that needed cells on it, is that -- the
25 hair, without the root on it, actually can be prepared --

1 can be compared for DNA, but just not through the test
2 y'all have; is that correct?

3 A. That's correct.

4 Q. So when you said it couldn't be tested, it
5 couldn't be tested by the methods and things available to
6 SLED?

7 A. That's correct.

8 Q. All right. Now, as a general principle, DNA is an
9 excluder, rather than an includer; is that a fair
10 statement? It excludes people from being a possible
11 match, rather than includes people? Would that be a fair
12 statement?

13 A. I would say that it is useful as both. When an
14 individual's profile doesn't match the profile in a piece
15 of evidence, exclusions are very clear-cut, but we can
16 also make matches, and depending on the type of mixture,
17 we can say not excluded or somebody as a possible
18 inclusion.

19 Q. Possible. All right. Now, 149 quadrillion is
20 more people than there is on earth, right?

21 A. That's correct.

22 Q. I just have a hard time getting my mind around
23 that number. One in 149 quadrillion is the possibility
24 that the blood from the end of that gun contained DNA of
25 Mr. Ayazgok.

1 A. When we generate a statistic, that statistic is
2 the general frequency of that profile in the population.
3 It basically just gives you an idea of how common or rare
4 that profile is within the population.

5 Q. Okay. Now, in the minor contributor stuff, if you
6 had been given other known samples, could you have tried
7 to pull out the minor contributors or it just didn't have
8 enough?

9 A. In this particular instance, I just didn't have
10 enough to feel comfortable in making any kind of
11 comparison with it.

12 Q. Fair enough. So if you had been given some other
13 samples, it really wouldn't have made a difference, but
14 you just didn't have enough there?

15 A. That's correct.

16 Q. Okay. Did you test -- did you find any blood on
17 the handle of the gun?

18 A. I did not test the handle of the gun on this
19 barrel.

20 Q. Okay.

21 MR. SMILEY: Thank you.

22 THE COURT: Cross-examination?

23 MR. SMILEY: I apologize. No further
24 questions.

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

1 MR. APOSTOLOU: Thank you.

2 CROSS-EXAMINATION

3 BY MR. APOSTOLOU:

4 Q. Ma'am, in your DNA research, did any of that come
5 back to my client, Joy Mack?

6 A. I did not have any profile of Mr. Mack to compare
7 to any evidence that I received.

8 Q. Okay. You didn't have DNA from Joy Mack?

9 A. No, I did not, none was submitted to me.

10 Q. Okay. No DNA matches from your office tied Joy
11 Mack to this at all?

12 A. Not comparisons that I did, no.

13 MR. APOSTOLOU: Thank you.

14 THE COURT: Any redirect?

15 MR. HALES: No, Your Honor.

16 THE COURT: Please step down. Thank you very
17 much.

18 MR. LAWTON: State calls David Singletary.

19 DAVID SINGLETARY,

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

22 DIRECT EXAMINATION

23 BY MR. LAWTON:

24 Q. May it please the Court, good afternoon,
25 Mr. Singletary.

1 A. Good afternoon, sir.

2 Q. Could you tell the jury the hours you've been
3 working this week.

4 A. It's been crazy. My normal hours are 7 p.m. to 3
5 a.m., so that is why I just got up just a while ago. I
6 apologize.

7 Q. I apologize for bringing you in when you could be
8 sleeping right now. Could you tell the jury where you're
9 currently employed.

10 A. Yeah, North Charleston police department.

11 Q. How long have you been there?

12 A. A little over 15 years.

13 Q. And were you working there in June of '07?

14 A. I was.

15 Q. Okay. And what are your normal duties?

16 A. I'm a sergeant with the police department. I'm
17 one of the supervisors.

18 Q. Okay. And were you called to the Urban Wear on
19 June 30th of '07?

20 A. I was.

21 Q. Do you roughly remember about what time it was?

22 A. It was around 4, a little after 4 p.m.

23 Q. And how were you contacted?

24 A. Our communications center dispatched a call, and
25 we responded to the call.

1 Q. Was it a 911 call?

2 A. I don't remember.

3 Q. Okay. And tell the jury what happens when you get
4 out there.

5 A. When I arrived on the scene, I met with the victim
6 in this case. I think we're calling him Andy. I can't
7 pronounce his last name, and he explained that a person
8 had just went into the store a couple stores down from
9 him that was involved in a armed robbery of his store a
10 couple weeks prior.

11 While speaking to him, the defendant, Mr. Mack,
12 came out of, I believe it was, the 31 Sports, which is a
13 store right, like I said, a couple stores down from him.
14 I then made contact with Mr. Mack and identified him.

15 Q. Where was Andy when he came out of the store?

16 A. I believe when he came out, he was standing next
17 to him, I believe.

18 Q. What did Andy tell you?

19 A. That that was the guy that was involved in the
20 armed robbery.

21 Q. Was there any hesitation?

22 A. No, sir.

23 Q. Was he positive?

24 A. Yes, sir.

25 Q. Did he say, I'm pretty sure that's him?

1 A. No. He was 100 percent positive.

2 Q. And once he made the identification, what did Andy
3 do?

4 A. I believe he went back in the store. I can't
5 recall right offhand what actually he did.

6 Q. And what did you do with Joy Mack?

7 A. I got his identification card, just for procedure
8 things. We ran him for warrants and it came up no
9 warrants against him, and I believe that was all I did.

10 Q. Did you ask him about the vehicle in the parking
11 lot?

12 A. I did. I asked him if he arrived in that vehicle.
13 He said he didn't. I then ran a tag on it. It came back
14 to the same address that was on his ID.

15 Q. And he said he didn't arrive in that?

16 A. That's correct.

17 Q. And did you contact, like, a sergeant or someone?

18 A. Yes, yes, sir. After I identified him, I called
19 then Detective Sergeant Perry, Lieutenant Perry now, and
20 advised him of the information that we had, and it was a
21 positive ID. Sergeant Perry at the time told me to get a
22 written statement from the defendant -- or from the
23 victim, Andy, and get a positive ID on Mr. Mack.

24 Q. And what did you do with Mack at that time?

25 A. I had no charges on him. I gave him back his ID,

1 put him on trespass notice, for Andy's store, the Urban
2 Gear store.

3 MR. LAWTON: One moment.

4 Thank you, Mr. Singletary. Please answer any
5 questions Mr. Smiley has.

6 CROSS-EXAMINATION

7 BY MR. SMILEY:

8 Q. We've been talking about this address, [REDACTED]
9 [REDACTED]

10 A. Yes, sir.

11 Q. You were a patrol officer in that area at the
12 time?

13 A. Right.

14 Q. You can maybe help us. Where on [REDACTED]
15 is that?

16 A. It's the Brentwood Shopping Center, which is right
17 near Leeds and [REDACTED] It's in the Food Lion
18 shopping center.

19 Q. Not all of us are familiar with that, but Leeds
20 and [REDACTED] cross each other, right?

21 A. That's correct.

22 Q. And on one of the corners is, like, a Checkers,
23 right?

24 A. Right.

25 Q. Is it in that shopping center right there?

1 A. With the Checkers? No, sir.
2 Q. It's the other corner?
3 A. One catty corner.
4 Q. The one that has got the CVS in it?
5 A. Right.
6 Q. And a couple other stores, and then the Food Lion
7 in it?
8 A. Yes, sir, the Wachovia bank.
9 Q. So right there. Now, another question that might
10 sort of help the jury here, [REDACTED] about how far
11 away is [REDACTED] from that area?
12 A. Maybe not quite a mile.
13 Q. It's pretty close in that vicinity.
14 A. Yeah, yeah.
15 Q. Okay.
16 A. Right down the street.
17 Q. And then the information that you collected and
18 your involvement in this case doesn't have anything to do
19 with Darrell Goss, does it?
20 A. That's correct.
21 MR. SMILEY: Thank you for coming. Nothing
22 further.
23 THE COURT: Cross-examination?
24 MR. APOSTOLOU: Yes, Your Honor, may it
25 please the Court.

CROSS-EXAMINATION

1
2 BY MR. APOSTOLOU:

3 Q. Officer Singletary, when you came over there, you
4 first made contact with the victim that we are referring
5 to as Andy; is that correct?

6 A. That's correct, yes, sir.

7 Q. And where was Andy when you came up?

8 A. I don't recall if he was standing outside the
9 store or if he was inside the store. I want to say he
10 was outside.

11 Q. He was outside the store, kind of waiting on you?

12 A. Yes, sir, I think he was.

13 Q. And the store that Joy Mack was in was a place
14 called 31 Sports, which is basically right next door. I
15 think it's two stores over?

16 A. I think there is a liquor store in between the two
17 stores.

18 Q. But Joy Mack was in the 31 Sports store?

19 A. That's correct.

20 Q. Okay. And I know that -- let's just talk about
21 the venue a little bit. We talked a little bit about it,
22 but this is basically a giant strip mall, isn't it?

23 A. It's a strip mall. It isn't giant.

24 Q. It's a big strip mall?

25 A. It's a shopping center.

1 Q. And there is a -- Food Lion is the big store
2 there, grocery store there, and then it's just shops that
3 go down.

4 A. Yes, sir.

5 Q. And behind the store is, like, an alleyway, and
6 there is just, like, little shops and just one right
7 after the other; is that correct?

8 A. Yes, yes.

9 Q. And so they share a common sidewalk?

10 A. Yes, sir.

11 Q. And there is basically a big glass facade on all
12 the stores so everybody kind of gets the light?

13 A. Yes.

14 Q. And all the places have a back door that opens up
15 to the alleyway?

16 A. Yes, sir.

17 Q. Okay. And you and Andy are standing on the
18 sidewalk, right in front of the basic area where Joy Mack
19 is?

20 A. I believe so, yes, sir.

21 Q. Okay. And Joy Mack comes walking right out of the
22 store, doesn't he?

23 A. Yes, sir.

24 Q. Was he hostile, aggressive?

25 A. No.

1 Q. Was he trying to run or anything like that?

2 A. No, sir.

3 Q. Not at all?

4 A. No, sir.

5 Q. He was very nonchalant, minding his own business,
6 walking down --

7 A. Yes, sir.

8 Q. Okay. And when -- what are you wearing at the
9 time? Are you dressed like that?

10 A. No, sir. I'm in a police officer's uniform.

11 Q. So you're in a police officer's uniform, and
12 you're standing there, talking to the victim of the armed
13 robbery.

14 A. Yes, sir.

15 Q. And the alleged person that committed the robbery
16 just comes walking up right to you and the victim?

17 A. Yes.

18 Q. Okay. And when Joy comes up, do you explain to
19 him, Look, we're investigating an armed robbery, and we
20 think you did it?

21 A. I believe I may have. I can't recall verbatim
22 what the conversation was. I don't recall what I said to
23 him or anything like that.

24 Q. You think you told him that he was the suspect in
25 an armed robbery?

1 A. I can't remember, I really don't. I may
2 remember --

3 MR. LAWTON: Asked and answered. Objection.

4 MR. APOSTOLOU: I'm just trying to clarify
5 his answer.

6 THE COURT: Overruled. Go ahead.

7 BY MR. APOSTOLOU:

8 Q. So you just don't know whether he said it or not?

9 A. I don't recall.

10 Q. Do you remember what Mr. Mack's reaction to that
11 information was?

12 A. I can't recall. I'm sorry.

13 Q. Okay. It's okay.

14 A. I don't remember.

15 Q. But his basic demeanor that you remember that day
16 was very cooperative?

17 A. Yes. He was very cooperative.

18 Q. Very polite?

19 A. Yes, sir.

20 Q. And you asked him for his ID, he gave you his ID?

21 A. That's correct.

22 Q. And Mr. Lawton asked you about the card. Did he
23 explain to you that he didn't have a driver's license,
24 that he was not trying to embroil himself in a DUS?

25 A. No, sir.

1 Q. Driving under suspension?

2 A. No.

3 Q. So you asked for his ID?

4 A. Yes, sir.

5 Q. And he gave it to you?

6 A. Yes, sir.

7 Q. And then you ran it and saw he didn't have any
8 warrants?

9 A. That's right.

10 Q. And you gave it back to him?

11 A. Yes, sir.

12 Q. And you said, Hey, this store owner here doesn't
13 want you, or you just said, Hey, I'm going to put you on
14 trespass notice for the Urban Gear store?

15 A. That's correct.

16 Q. And he said okay.

17 A. That's correct.

18 Q. And then he walked off, you got in your car, and
19 you left?

20 A. Pretty much, yes, sir.

21 Q. That's pretty much it. How long does this entire
22 encounter last? It's pretty quick, right?

23 A. Maybe 30, 45 minutes.

24 Q. Okay.

25 A. It wasn't long.

1 Q. All right. Did Andy tell you that he had, in
2 fact, seen this defendant now three times?

3 A. I can't remember. I assumed, but --

4 Q. You assumed?

5 A. I assumed that he may have said something about it
6 due to the fact I put him on trespass notice.

7 Q. Okay.

8 A. I just can't remember what he said.

9 Q. He did write a supplement to this report?

10 A. Yes, sir.

11 Q. And if that information had been given to you,
12 would that have made it in your supplement report?

13 A. It should have, yes.

14 Q. Would you like to see your supplement report?

15 A. I've got it right here.

16 Q. You got a copy of it? Can you look at it and see
17 whether Andy mentioned the fact that -- do you denote
18 that in your report at all?

19 A. I don't see it in here, no, sir.

20 Q. And you, in fact, took a statement from Andy that
21 day as well?

22 A. Yes, sir.

23 Q. And that statement doesn't say anything about
24 having seen him the day before or another time as well,
25 does it?

1 A. I don't have that statement in front of me, but I
2 don't remember.

3 Q. If you would like to take a second to review it
4 briefly.

5 A. No, sir. It's not in here.

6 Q. So neither of those reports mention it at all?

7 A. That's correct.

8 Q. And you were standing pretty close to Joy Mack,
9 weren't you?

10 A. Yes, sir.

11 Q. Joy is a big guy?

12 A. Tall built, yes, sir.

13 Q. Pretty big guy?

14 A. Yes.

15 Q. And Andy is a littler fellow, more like my size?

16 A. Yes, sir.

17 Q. Let me ask you, you put the -- he tells you this
18 is the armed robber that robbed me two weeks ago, and you
19 put him on trespass notice. If you really thought that
20 he was the armed robber, wouldn't you have arrested him
21 right there on the spot?

22 A. I wanted to, but when I called Detective Sergeant
23 Perry, he advised me to get the statement and to release
24 him and the detectives would follow up with that
25 information.

1 Q. So the officers that were more familiar with the
2 case told you not to arrest him.

3 A. That's correct.

4 Q. Okay. Now, you put him on some sort of -- I can't
5 remember -- my police terminology is not so good, but
6 where you put him on a check where people come by and
7 check?

8 A. What we call the SPR list. It's a special patrol
9 request, extra patrol around a certain area.

10 Q. And that was on the 30th of June?

11 A. Correct.

12 Q. And Joy Mack was not arrested for another month;
13 is that correct?

14 A. That's correct.

15 Q. Well, you probably don't know that. Okay. But
16 there was never any instances of any sort of trouble at
17 the store?

18 A. Not to my knowledge.

19 Q. Joy Mack never went to intimidate the witness or
20 anything like that?

21 A. Not to my knowledge.

22 Q. Okay.

23 MR. APOSTOLOU: Court's indulgence.

24 THE COURT: Yes, sir.

25 MR. APOSTOLOU: That's all I have, Officer

1 Singletary.

2 MR. LAWTON: Beg the Court's indulgence. No
3 further questions.

4 THE COURT: You may step down. Thank you
5 very much.

6 MR. LAWTON: May we approach, Your Honor?

7 THE COURT: Yes, sir.

8 (Discussion held at sidebar.)

9 THE COURT: All right, ladies and gentlemen.
10 We're going to take about a ten-minute break. I
11 understand we got one smoker. If you need to take a
12 smoke break, go ahead and take it. Please don't discuss
13 the case among yourselves.

14 (Recess taken.)

15 (In open court, jury present.)

16 THE COURT: Thank you very much. Call your
17 next witness, please.

18 MR. HALES: State calls Tansa Ayazgok.

19 TANSA AYAZGOK,

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

22 DIRECT EXAMINATION

23 BY MR. HALES:

24 Q. Good afternoon.

25 A. Good afternoon.

1 Q. Can I call you Tansa?

2 A. Sure.

3 Q. Tansa, what do you do?

4 A. I'm active duty Air Force, chaplain assistant.

5 Q. And are you related to the victim in the case,
6 Andy Ayazgok?

7 A. I am. He's my husband.

8 Q. Okay. You say you work in the Air Force. Did you
9 ever do anything else, as far as work?

10 A. I have had a few part-time jobs while I've been on
11 active duty, but this has been my full career since age
12 15, been there for 15 years.

13 Q. Do you ever assist Andy in the store?

14 A. Very seldomly.

15 Q. Do you remember the events leading up to the
16 reason we're here, the armed robbery?

17 A. I do recall them.

18 Q. And do you recall the events after the armed
19 robbery?

20 A. I do.

21 Q. Were you ever at the store in the days immediately
22 after the armed robbery?

23 A. I was.

24 Q. Okay. Would you please explain to us what
25 happened then.

1 A. After the armed robbery, of course Andy was a
2 little afraid, a little nervous, brand new to the
3 community. The store had only been opened a week or two,
4 and this had transpired, so he was working alone with his
5 cousin, who was just there assisting. So after this
6 event, his cousin was a little bit more afraid and said,
7 I don't think I'll be able to stay here and help you out.

8 Q. You said stay here. Do you mean in Charleston?

9 A. In Charleston, to assist us with opening the
10 store.

11 Q. And he left?

12 A. He was ready to depart, based off of the event.

13 Q. Did he go by another name?

14 A. David.

15 Q. That is David?

16 A. David.

17 Q. Please continue.

18 A. And so since David was really not -- he was kind
19 of in and out of the store, not very happy with being
20 there. I was going down there more often than I normally
21 would because, of course, due to the events, I didn't
22 want him to be there by himself as much, so I was down
23 there with him.

24 Q. Okay. During that period of time that you were
25 down there, did Andy ever mention seeing anyone that you

1 remember?

2 MR. APOSTOLOU: Objection. Hearsay.

3 THE COURT: I'll sustain the objection.

4 BY MR. HALES:

5 Q. Okay. Were the police ever called while you were
6 at your store?

7 A. The police were called, and the police were called
8 at my recommendation.

9 Q. Please tell us why you recommended the police be
10 called.

11 A. One day when I was down there, we had a -- it was
12 in the latter part of the week, around Thursday or
13 Friday, and a gentleman came into the store and my
14 husband, Andy said to me, I am 100 percent sure that is
15 the guy --

16 MR. APOSTOLOU: Objection, Your Honor.
17 Hearsay.

18 THE COURT: Let me see the attorneys up here
19 just a second.

20 (Discussion held at sidebar.)

21 BY MR. HALES:

22 Q. Without telling us exactly what your husband said,
23 the police were called?

24 A. They were called.

25 Q. Okay. What happened when they got there?

1 A. When the police got there, my husband and I spoke
2 to them and said that the gentleman that we saw there --

3 MR. APOSTOLOU: Objection, Your Honor.
4 Hearsay.

5 THE COURT: Overruled.

6 BY MR. HALES:

7 Q. Please only tell us what you said when the police
8 got there.

9 A. I said to the policeman -- my husband was standing
10 there. We were both in agreement at this time. We said
11 to the policeman, The gentleman that came in is believed
12 to be the gentleman that robbed the store.

13 Q. Okay.

14 A. One of the gentleman that robbed the store,
15 particularly the gentleman that beat my husband over the
16 head with a gun. Okay?

17 Q. How long after the robbery was this, when you
18 called the police, do you remember?

19 A. We called the police, I would say, about two weeks
20 after the event of the robbery, give or take.

21 Q. It doesn't have to be exact. Was the guy there
22 when you called the police?

23 A. When we called the police, he was there. When the
24 police arrived, he was gone.

25 Q. Okay. Were the police called again at all during

1 this time?

2 A. They were. They were called a total of three
3 times while I was present. The second time hat they were
4 called, basically the same thing transpired. Called the
5 police, said, Here is who we believe we saw. The person
6 again was gone once the police arrived.

7 Q. And when was that?

8 A. That was probably about a day after the first call
9 when I was there.

10 Q. Okay. And then you said there was another call.

11 A. There was a third call.

12 Q. Okay.

13 A. From the third call, the gentleman was questioned
14 by the police officer.

15 Q. Okay. Were you inside the store when this was
16 going on?

17 A. I was inside the store when I saw the same vehicle
18 pull up into the parking lot that we had saw the previous
19 two days.

20 Q. What kind of vehicle was that?

21 A. It was a Pontiac, burgundy, purple looking color.
22 The vehicle pulled up, same vehicle with the same
23 gentleman that we had saw the previous two days that we
24 had called, and upon the police arrival, the gentleman
25 was gone. So we called the police. As soon as I saw the

1 car pull up, I said to my husband, We should call the
2 police right now. Maybe they will get here before they
3 would leave, because at that time the gentleman went into
4 the store two doors down from my husband's store called
5 31 Sports.

6 Q. Now, just to be clear, you weren't there when the
7 robbery occurred?

8 A. I was not there when the robbery occurred.

9 Q. But were you there when the police were called?

10 A. I was there when the police were called.

11 MR. HALES: Okay. Court's indulgence. Thank
12 you. Please answer any of the questions the defense has.

13 THE COURT: Cross-examination?

14 MR. SMILEY: None from Mr. Goss.

15 CROSS-EXAMINATION

16 BY MR. APOSTOLOU:

17 Q. Can I call you Tansa as well?

18 A. Go right ahead, to be fair.

19 Q. I appreciate that. So let's be clear. You were
20 not there on the day of the robbery?

21 A. I was not there on the day of the robbery.

22 Q. No idea about what happened on the day of the
23 robbery?

24 A. Only what I was told by my husband and his cousin
25 David.

1 Q. Now, you said that your husband was new to the
2 area.

3 A. We were both new. We had just PCSed here in April
4 of that same year, and my husband had just opened the
5 store in June of the same year, of '07.

6 Q. And you had just opened this store?

7 A. I mean, few weeks, maybe a week, not even.

8 Q. Not even a week, really?

9 A. Right.

10 Q. And then, unfortunately, this armed robbery
11 happens.

12 A. That is correct.

13 Q. It's got to be a terribly scary thing to go
14 through.

15 A. Of course.

16 Q. And I imagine Andy was pretty shaken up by the
17 whole experience?

18 A. I would be.

19 Q. And he was obviously struck by the weapon, so he
20 was hurt physically, but I bet mentally that had to be a
21 very traumatic experience, and he was robbed by five
22 black males, or about five black males, young black
23 males, and y'all's store basically caters to young black
24 males?

25 A. Correct.

1 Q. So every time that door opens, another young black
2 male walks into that store, doesn't he?

3 A. That is correct.

4 Q. I would imagine that he would have been in a very
5 nervous situation, and that must have -- each time that
6 door opened, I bet he just drew his breath in. I guess
7 his mindset right that time period, he was scared, he was
8 nervous?

9 A. You can ask him.

10 MR. HALES: Objection.

11 THE COURT: Hold on a second. I'll sustain
12 the objection.

13 BY MR. APOSTOLOU:

14 Q. He was very nervous and scared?

15 A. You can ask him, sir. I'm sorry.

16 Q. Okay. So you testified there were three calls to
17 the police?

18 A. Three calls while I was there, that is correct.

19 Q. Three calls while you were there. And what were
20 the days, those days?

21 A. I do not remember specifically days. I know it
22 was in the latter part of the week.

23 Q. How long --

24 A. Thursday, Friday.

25 Q. Okay. In reference to the accident, how long are

1 we talking about?

2 A. Maybe two weeks.

3 Q. Maybe two weeks?

4 A. Approximately two weeks.

5 Q. And that was the first call, two weeks?

6 A. I can't give you specific dates and times on the
7 first call or second one or third one.

8 Q. I'm just trying to get a chronology of where they
9 are.

10 A. Right.

11 Q. Roughly, approximately two weeks after the robbery
12 was the first one?

13 A. Was all three of them, sir. They were all about a
14 day apart. They was all about a week two weeks after the
15 event.

16 Q. So was it three days, was it one day, the next
17 day, and then the next day?

18 A. That's correct.

19 Q. So it probably would have been the 28th, the 29th,
20 and 30th?

21 A. I guess.

22 Q. Ball park? Okay. What about the day after the
23 robbery? There was a call to the police that day, too,
24 wasn't there?

25 A. The day after the robbery?

1 Q. Right.

2 A. I don't recall the call to the police. I do not
3 recall it. If you refresh my memory, maybe.

4 Q. Okay. There was a call placed to the North
5 Charleston police department at 12:23:53 on 6/15 and the
6 declarant said, My husband is next door at the Dollar
7 Tree trying to detain one of the suspects.

8 Does that ring a bell to you?

9 A. It does not.

10 Q. Okay. The immediate day -- the next day after the
11 robbery?

12 A. It does not ring a bell to me.

13 Q. Okay. So you're not aware of a call to the police
14 the day after the robbery?

15 A. I do not recall the call to the police the day
16 after the robbery.

17 Q. Okay. Is there a Dollar Tree next door or in that
18 area?

19 A. There was.

20 Q. At that time?

21 A. At that time.

22 Q. Okay.

23 MR. APOSTOLOU: Okay. Thank you very much.
24 That's all I have.

25 THE WITNESS: You're welcome.

1 THE COURT: Any redirect?

2 MR. HALES: No, Your Honor.

3 THE COURT: You may step down. Thank you so
4 very much.

5 Do you have any further witnesses?

6 MR. LAWTON: No further witnesses at this
7 time, Your Honor.

8 THE COURT: Okay. Thank you very much.

9 Madame forelady, we have to send you to the jury room at
10 this time. I hope it won't be too long. I got to hear
11 some motions at this time. Please don't discuss the case
12 amongst yourselves.

13 (Jury dismissed.)

14 THE COURT: All right. Gentlemen, throughout
15 the trial, there has been some conversations between the
16 Court and the attorneys for Lorenzo L. Johnson, and I'm
17 going to put something on the record so the record is
18 very clear about what has transpired.

19 The solicitor has sent Lorenzo L. Johnson a
20 subpoena, who is the witness in this case, for two terms
21 set for January, and has been trying to locate this
22 witness and had him subpoenaed for court since sometime
23 last week, and there has been some conversation through
24 the solicitor and investigator about their efforts to
25 locate Mr. Johnson. I told the solicitor's office that

1 they could call Lorenzo Johnson out of order if they
2 could locate him.

3 I have issued an order ordering the North
4 Charleston police department to pick him up and bring him
5 to court, and order expires at 12:00 tomorrow, giving the
6 solicitor the opportunity to see if they could find the
7 witness and bring him to Court this afternoon or this
8 morning. Therefore, the solicitor is not resting at this
9 time; however, I'm going to hear motions from the
10 defendant at this time concerning any motions they would
11 like to file. If, in fact, Mr. Johnson is found and he
12 is brought to court and we take additional testimony at
13 that time, I will allow you to revisit your motions if
14 that additional testimony is taken; however, in an
15 abundance of caution, I think I should hear your motions
16 at this point in time, and I want to make that
17 clarification on the record so there is no
18 misunderstanding of what has transpired.

19 Is that correct on behalf of the defendant
20 Joy Mack?

21 MR. APOSTOLOU: It is, Your Honor.

22 THE COURT: Is that correct on behalf of
23 Darrell Lee Goss?

24 MR. SMILEY: Yes, sir.

25 THE COURT: And, solicitor, is that your

1 understanding?

2 MR. LAWTON: Yes, sir.

3 THE COURT: All right. I'll be glad to hear
4 any motions that the state may have of any sort. I
5 assume you don't.

6 MR. LAWTON: No.

7 THE COURT: I'll be glad to hear Mr. Goss's
8 motion.

9 MR. SMILEY: Yes, sir, Your Honor, assuming
10 the state rests, and I understand all that, I would make
11 a motion for directed verdict on the charges of assault
12 and battery with intent to kill, armed robbery, and
13 kidnapping, the three charges that remain. I know there
14 is only three.

15 Your Honor, from the direct testimony, even
16 viewing it in the light most favorable to the state, the
17 victim in this case has testified that -- in fact, I
18 asked him directly, and he said, No, Mr. Goss was not
19 present in the store during the armed robbery.

20 So the only theory which the state can then
21 go forward on would be the hand of one is the hand of all
22 theory to show that he was either a planner --

23 THE COURT: Did he say he wasn't in the
24 store, or just didn't see him?

25 MR. SMILEY: No, sir, I asked him directly,

1 and if you look, he said he was not in the store. I made
2 a point of it when I would ask that and wrote it down
3 exactly as he responded, but if that be the case --
4 because he recognized my guy. My guy had been in the
5 store earlier that week.

6 If that is the case, Your Honor, the only
7 theory the cases could survive on on that basis would be
8 the hand of one is the hand of all, if my client is a
9 planner or some kind of accessory.

10 THE COURT: The way I recall the testimony,
11 the victim testified that the man came in, came straight
12 towards him, pulled out a gun when he got within six or
13 seven feet of him, got him on the floor, and he did
14 testify at that time, but he did not see your defendant
15 in the store, but he knew there were four black males.
16 He didn't know who they were, okay? So I don't see how
17 that is contradicting. What you're saying he was
18 basically saying, yeah, he didn't see them in the store.

19 Now, it's a play on words. If you know what
20 I'm saying, he wasn't in the store. I think you're doing
21 a play on words there.

22 MR. SMILEY: Yes, sir, but I'll say it a
23 different way.

24 THE COURT: Okay. Please do.

25 MR. SMILEY: Yes, sir. The state has

1 produced no evidence to place my client in the store
2 during the robbery, none before.

3 THE COURT: We've got DNA off the gun, and
4 we've got --

5 MR. SMILEY: And I would argue they've shown
6 no evidence to link my client to the gun. There is blood
7 on a gun, and I asked Mr. Ayazgok, Andy, I asked him if
8 he had been struck by a pistol and he said no, but
9 neither here nor there, his DNA certainly was on a pistol
10 found in a car with the tags of Mr. Sharon Goss on it at
11 a residence that Mr. Goss resides at; however, there has
12 been no evidence that ever placed that gun in Mr. Goss'
13 hands at any time in this case. There is nothing to
14 place Mr. Goss in the car that's been presented in this
15 case or Mr. Goss placing that gun into the car.

16 Additionally, the only thing that places him
17 at that scene is a fingerprint on the exterior door.
18 That is it. There is nothing from the inside. There are
19 no witnesses that could testify that he was present
20 during the commission of the robbery, kidnapping, or
21 assault and battery with intent to kill.

22 It's not even arguable, and so for those
23 facts, I don't think they get over the basic hurdle to
24 present it to the jury when there is not any evidence
25 that links him in any manner.

1 THE COURT: You don't think the fingerprints
2 on the glass door? Normally, if you're going through a
3 glass door, you put your hand on it and push it. I don't
4 know if it swings out or in. I haven't heard any
5 testimony about which way it swings, whether you pull it
6 to you or push it away from you to get in, but if you
7 push it away from you, normally you put your hand on a
8 door and walk in. Yes or no?

9 MR. SMILEY: I don't disagree with that, but
10 there has been no evidence to establish when that
11 fingerprint was put there. We do have some evidence
12 established through their witness --

13 THE COURT: Scientifically, that can't be
14 done.

15 MR. SMILEY: Absolutely.

16 THE COURT: They can't put a time limit on
17 the fingerprint.

18 MR. SMILEY: Exactly. But when you look at
19 it in the light most favorable to the state --

20 THE COURT: But they also said the windows
21 were washed every day.

22 MR. SMILEY: Yes, sir.

23 THE COURT: Because the little girl testified
24 she wiped down every day, so based on that testimony --

25 MR. SMILEY: No, sir, if you listen to her

1 testimony, she didn't start with that company until April
2 of '08. They may wash them every day starting in April
3 of '08, but she wasn't there in June of '07, so I don't
4 know the relevance of her testimony.

5 THE COURT: You didn't make the objection.

6 MR. SMILEY: I didn't need to. I'm going to
7 make sure that jury knows she didn't start till April of
8 '08, so if you look at it in the light most favorable, is
9 there anything, any evidence, that places Mr. Goss inside
10 the store at the time of the incident?

11 And I would submit to Your Honor there is
12 none, zero. Is there any circumstantial evidence that
13 would place Mr. Goss inside the store at the time of this
14 incident? And I would submit to you no. Is there
15 evidence that Mr. Goss has been to the front door of that
16 store? Yes, sir. Is there evidence that Mr. Goss has
17 been in that store previously? Yes, sir. Is there
18 evidence that stolen goods, or possible stolen goods --
19 he might have bought them, but were there goods from that
20 store found in his home? Yes, sir. Is there evidence
21 that a gun was found in a car outside of his home
22 belonging to another man that had the DNA of the victim?
23 Yes, sir, but I don't know that that gets it to the jury,
24 and therefore I would respectfully make a motion to
25 direct a verdict on each of the cases.

1 THE COURT: Okay.

2 MR. SMILEY: That would be my first motion.

3 If you were to deny my motion, then I don't believe there
4 is anything to establish assault and battery with intent
5 to kill in this case. You can assume intent to kill from
6 the use of a weapon, but it was used by someone else to
7 hit someone, and if they've not determined serious bodily
8 injury or anything else in this case, then they've shown
9 a battery. I don't know if that raises it to the level
10 of assault and battery with intent to kill.

11 THE COURT: Before we get to that, first on
12 the armed robbery --

13 MR. SMILEY: All three of them.

14 THE COURT: Okay. Let the solicitor address
15 that, and then you can address the other arguments.

16 MR. LAWTON: First thing I would like to
17 clarify, and I know for a fact with me, I asked Andy, You
18 didn't see Darrell Goss in there, and he said no and he
19 talked about that. I don't see anywhere in the
20 transcript where it will say he excluded Darrell Goss
21 from not being there, and before we get that closings or
22 whatever, I would like to get to the bottom of that. I
23 don't have any recollection of him saying, No, Darrell
24 Goss was not there that day. We would not be here if
25 that were the case.

1 THE COURT: We're not getting to the bottom
2 of anything. Get to your argument.

3 MR. LAWTON: As far as the fingerprint, we
4 talked about it being wet. We had three witnesses who
5 said it was wet all at the scene. There is plenty of
6 evidence placing that scene at the time of crime. As far
7 as Andy, Andy testified that day he wiped the front door
8 down. Mr. Goss, through his statement that Mr. Smiley
9 put in, said he was at the store on Monday. We're
10 talking about Thursday afternoon.

11 We got a wet fingerprint. It's not going to
12 be able to be sustained for three days. Granted, I can't
13 scientifically prove that, but through the reasonableness
14 of the jury, and obviously so --

15 THE COURT: Which way does the door swing, do
16 you know?

17 MR. LAWTON: I can't recall, Your Honor.

18 THE COURT: Why would he be putting his hand
19 on it to open it?

20 MR. LAWTON: I think if you're running up to
21 a door, stopping, pulling -- there is plenty of
22 explanation.

23 THE COURT: You think most people run up to
24 the door, put their hand on it, and open it?

25 MR. LAWTON: I don't know, Your Honor.

1 Obviously, there is a lot of ways to look at it. We have
2 it wet at the scene. That is 30 minutes later, and it
3 takes five minutes to dry. Obviously, if it only took
4 five minutes to put a fan on it, why didn't the sun dry
5 it up for three days, like Mr. Smiley would like them to
6 believe?

7 But as far as the armed robbery, the hand of
8 one, hand of all theory, he testified a guy with his
9 rifle, with his AK47 or rifle, like they would want us to
10 believe, pointed at him, threw him down on the ground.
11 He was obviously in fear, intimidated, and took the money
12 out of his thing. I believe that clearly suffices.

13 THE COURT: Only thing you got against him on
14 kidnapping is, really, the hand of one, hand of all, on
15 all three of them.

16 MR. LAWTON: Yes, sir, and that is the theory
17 we're going on. Obviously, Joy Mack is the guy that did
18 that.

19 Kidnapping, he testified his hand, his legs
20 were tied up. He was dragged to the back, was not free
21 to leave at that point. ABWIK, Your Honor, Ms. Bousquet
22 talked about all the blood all over his shirt. He had 20
23 stitches in the back of his head, more stitches on the
24 side. I think, clearly, the butt of an assault rifle is
25 clearly a deadly weapon in that case with the amount of

1 blood splatter.

2 As far as the amount of blood getting on the
3 pistol, Your Honor, you can look at the pictures. There
4 is plenty of blood splatter. He said he saw a pistol
5 that clearly explains how that blood got on there at the
6 scene.

7 THE COURT: How do you explain the victim's
8 blood on him?

9 MR. LAWTON: He said he saw --

10 THE COURT: I didn't mean to give you a heart
11 attack.

12 MR. SMILEY: I did.

13 MR. LAWTON: He said he saw a pistol, the guy
14 getting beat with a butt of a gun. He did testify to
15 that.

16 THE COURT: Okay. All right.

17 MR. SMILEY: We agree on that.

18 THE COURT: Anything else, Solicitor?

19 MR. LAWTON: No, Your Honor. I would just --

20 THE COURT: All right. Thank you very much.
21 Motion denied. Make any other motions.

22 MR. SMILEY: My next motion was -- he's
23 already covered assault and battery with intent to kill.
24 I would say they've not shown any intent to kill in this
25 case, they've shown a battery, and that would be the only

1 other motion I have.

2 THE COURT: Okay. That motion is denied.

3 MR. SMILEY: Thank you very much.

4 THE COURT: Thank you very much.

5 MR. APOSTOLOU: Your Honor, I would also make
6 a directed verdict motion. I believe, although there has
7 been some evidence regarding an identification of Mr.
8 Mack, I think that the victim's testimony was that he
9 wasn't sure, and almost positive. I don't think that
10 that is enough to get it to the jury. I would ask that
11 the Court direct a verdict against him.

12 THE COURT: That motion is denied. Anything
13 else we need to hear before we bring the jury back?

14 MR. LAWTON: Before, briefly, I would just
15 like to maybe pull that, because I don't think my victim
16 Andy ever said Darrell Goss was not?

17 MR. SMILEY: I don't have a problem going
18 with what was in the transcript. I would never
19 mischaracterize the testimony.

20 THE COURT: If you're talking about a play on
21 words, if his original conclusion is that saying he
22 didn't see him, I think he could make that argument. I
23 don't think you got to look at the transcript that would
24 allow him to make that argument. You asked him, did you
25 see him in there, and he said no, right?

1 MR. LAWTON: And that is different from what
2 he said. He told him he was not --

3 THE COURT: If the court reporter can find
4 it, she can find it. Okay? All right. Anything else?

5 MR. HALES: Your Honor, I believe Mr. Smiley
6 is going to call Ms. Thomasina Goss. We pulled her prior
7 record. She does have some prior convictions.

8 THE COURT: Who does?

9 MR. HALES: One of his witnesses, Thomasina
10 Goss.

11 THE COURT: What is the prior record?

12 MR. HALES: She has a 1990 shoplifting and
13 forgery; a 1990 larceny; 1991, petty larceny; 1995, petty
14 larceny; and in 2003 giving false information to police;
15 2005, shoplifting; and a 2008 giving false information to
16 police.

17 THE COURT: You agree with all that?

18 MR. SMILEY: 2008 conviction?

19 THE COURT: All those are convictions.

20 MR. SMILEY: Actually, a whole bunch we
21 talked about at the beginning were outside of ten years.
22 He's got a 2003, and one from the early '90's were
23 certainly -- outside of shoplifting and the petty
24 larcenies were early --

25 THE COURT: Which one is outside the ten

1 years?

2 MR. HALES: Your Honor, she has a 1990
3 shoplifting and forgery conviction; another 1990 petty
4 larceny; '91 petty larceny; and a 1995 petty larceny.

5 THE COURT: Those three are outside of the
6 ten years.

7 MR. HALES: That's right.

8 THE COURT: Why should I allow you to go into
9 those?

10 MR. HALES: Crimes of dishonesty. I'm just
11 giving you a full record.

12 THE COURT: Do you plan on going into those?

13 MR. HALES: No, sir; 2003 giving false
14 information; 2005 shoplifting and, the 2008 giving false
15 information.

16 THE COURT: He says he's not going into the
17 ones outside.

18 MR. SMILEY: I understand, and when she
19 testifies, she's going to be impeached with two false
20 informations to police and a shoplifting. Yes, sir.

21 THE COURT: Okay. All right. Mr. Goss,
22 would you please stand, raise your right hand.

23 (Defendant duly sworn.)

24 THE COURT: All right. Mr. Goss, has your
25 attorney explained to you your right to testify?

1 DEFENDANT GOSS: Yes, sir.

2 THE COURT: Or not to testify?

3 DEFENDANT GOSS: Yes, sir.

4 THE COURT: Have you understood the
5 conversations you have had with your attorney concerning
6 your right to testify?

7 DEFENDANT GOSS: Yes, sir.

8 THE COURT: I'm going to explain a few facts
9 to you about your right to testify and why I'm telling
10 you that this, if you have any questions you would like
11 to know, I'll stop and you can ask me a few questions.

12 First of all, in South Carolina, in the
13 United States, the Fifth Amendment states that no person
14 shall be compelled in any criminal case to be a witness
15 against himself, which means you have the right not to
16 testify. Burden is on the state to prove you guilty.
17 You do not have to prove your innocence. Do you
18 understand.

19 DEFENDANT GOSS: Yes, sir.

20 THE COURT: Do you understand nobody can
21 compel you to testify?

22 DEFENDANT GOSS: Yes, sir.

23 THE COURT: That is a privilege that you
24 have. It's a personal privilege that you have, and only
25 you can waive that privilege. Do you understand?

1 DEFENDANT GOSS: Yes, sir.

2 THE COURT: Do you understand if you elect
3 not to testify, and I will tell the jury that cannot be
4 used against you as an inference of guilt, and your
5 failure to testify cannot be considered by the jury in
6 the deliberations. Do you understand?

7 DEFENDANT GOSS: Yes, sir.

8 THE COURT: Do you understand if you decide
9 to testify, you will be a witness, and once you take the
10 witness stand, if the questions are appropriate under the
11 rules of evidence, you will have to answer them; do you
12 understand?

13 DEFENDANT GOSS: Yes, sir.

14 THE COURT: You can't pick and choose which
15 questions you're going to ask or not ask. It's not like
16 television where they ask the question, What is your
17 name, and then they ask another question and you take the
18 Fifth Amendment. You either take the Fifth Amendment and
19 not testify, or you take the witness stand and answer all
20 the questions; do you understand?

21 DEFENDANT GOSS: Yes, sir.

22 THE COURT: Once you decide to testify, to
23 take the witness stand, you cannot refuse to answer a
24 question on the Fifth Amendment. Do you understand?

25 DEFENDANT GOSS: Yes, sir.

1 THE COURT: Has anybody forced you or
2 threatened you or coerced you into not testifying?

3 DEFENDANT GOSS: No, sir.

4 THE COURT: Has anybody forced, threatened,
5 or coerced you into making you testify?

6 DEFENDANT GOSS: No, sir.

7 THE COURT: Have you had enough time to talk
8 with your lawyer about your right to testify?

9 DEFENDANT GOSS: Yes, sir.

10 THE COURT: Do you understand what I have
11 explained to you?

12 DEFENDANT GOSS: Yes, sir.

13 THE COURT: Have any questions that you want
14 to ask about your right to defendant?

15 DEFENDANT GOSS: No, sir.

16 THE COURT: Do you want to talk with your
17 attorney now before you tell the Court whether or not
18 you're going to testify?

19 DEFENDANT GOSS: No, sir.

20 THE COURT: All right. Mr. Smiley, do you
21 want to ask Mr. Goss any questions concerning his right
22 to testify and any conversations you may have had with
23 him concerning that subject matter?

24 MR. SMILEY: We've talked about it, and I
25 believe it's settled, and I believe at this time he will

1 tell you he does not wish to testify.

2 THE COURT: Mr. Goss; is that correct?

3 DEFENDANT GOSS: Yes, sir.

4 THE COURT: You do not wish to testify?

5 DEFENDANT GOSS: Yes, sir.

6 THE COURT: All right. Thank you so very
7 much.

8 All right. Mr. Joy Mack, would you please
9 stand, raise your right hand. Mr. Mack, you were in the
10 courtroom when I questioned Mr. Goss concerning his right
11 to testify; is that correct?

12 DEFENDANT MACK: Yes, sir.

13 THE COURT: Did you hear all the questions I
14 asked?

15 DEFENDANT MACK: Yes, sir.

16 THE COURT: Did you hear all the questions I
17 asked?

18 DEFENDANT MACK: Yes, sir.

19 THE COURT: I'm going to go through those
20 same informations very briefly. Do you understand that
21 you have the right to testify or not testify?

22 DEFENDANT MACK: Yes, sir.

23 THE COURT: Do you understand that that is a
24 privilege that you have?

25 DEFENDANT MACK: Yes, sir.

1 THE COURT: Only you can give that privilege
2 up; do you understand?

3 DEFENDANT MACK: Yes, sir.

4 THE COURT: Do you understand, as I told Mr.
5 Goss, that once you take the witness stand, you're going
6 to have to answer all the questions.

7 DEFENDANT MACK: Yes, sir.

8 THE COURT: Does he have any prior criminal
9 record?

10 MR. LAWTON: We would address that
11 distribution of crack, I believe, on Monday. I think you
12 put it under advisement.

13 THE COURT: All right.

14 MR. APOSTOLOU: I think it was from 2006?

15 MR. LAWTON: That's correct.

16 MR. APOSTOLOU: I think the year was 2006.

17 THE COURT: On the distribution. Okay. If I
18 do rule that you can be impeached on that, then they can
19 ask you that question by distribution. Do you
20 understand?

21 DEFENDANT MACK: Yes, sir.

22 THE COURT: And I guess I'm going to have to
23 rule on that issue before you can make a decision on
24 whether or not you wanted to testify or not. So before,
25 if you tell me whether you're going to testify or not

1 testify, I'll make a decision on that, okay?

2 DEFENDANT MACK: Yes, sir.

3 THE COURT: Do you understand? But what I do
4 want you to understand, if you decide to testify, the
5 Court rules, you could be impeached by that conviction.
6 You will have to answer the question about that charge.
7 Do you understand, or that conviction?

8 DEFENDANT MACK: Yes, sir.

9 THE COURT: All right. Have you understood
10 the conversations you have had with your attorney?

11 DEFENDANT MACK: Yes, sir.

12 THE COURT: Do you need to talk to your
13 attorney any more about your right to testify?

14 DEFENDANT MACK: No, sir.

15 THE COURT: Do you have any questions about
16 what I have explained to you?

17 DEFENDANT MACK: No, sir.

18 THE COURT: Any questions about what I
19 explained to Mr. Goss?

20 DEFENDANT MACK: No, sir.

21 THE COURT: Have you understood all the
22 questions and information I have given you about your
23 right to testify?

24 DEFENDANT MACK: Yes, sir.

25 THE COURT: You understand all the

1 information I gave to Mr. Goss about his right to
2 testify?

3 DEFENDANT MACK: Yes, sir.

4 THE COURT: All right. Now, I'm not going to
5 ask you whether you want to testify or not, and I will
6 give you the opportunity to talk to your attorney, but
7 I'm going to have to make a decision on what I'm going to
8 allow them to use -- is it trafficking?

9 MR. LAWTON: Distribution, Your Honor.

10 THE COURT: Distribution based on amount?

11 MR. LAWTON: I'm assuming if they didn't do
12 PWID, it was either he made an undercover buy. I don't
13 know. You might want to ask him.

14 MR. APOSTOLOU: Your Honor, he informs me he
15 sold drugs today an undercover officer.

16 THE COURT: All right. Thank you very much.
17 Y'all can have a seat, okay? All right.

18 Solicitor, I'll ask you a couple of questions
19 before I rule on the admissibility of the record. When
20 we were at the bench, we were discussing before the
21 trial, you wanted to ask him a question and I would not
22 allow it, the impeachment by the evidence of conviction
23 of the drug charge, which, obviously, I think in South
24 Carolina, it's not dishonest and false statement, which
25 is under 609(a)2, so it takes me to, one, it's outside of

1 the years so the Court has to make the determination of
2 probative value versus prejudicial value.

3 Let me hear you on that. What is the
4 probative value of allowing his testimony other than the
5 state just barely wants this jury to know he's got a drug
6 charge, therefore convict him because he's got a drug
7 charge versus the facts in this case? What is your
8 probative value in this case?

9 MR. LAWTON: I would think the jury, once he
10 gets up there, his character is in play, this isn't him
11 harming himself, it's harming someone else. I would say
12 in the alternative, Your Honor --

13 THE COURT: Let's get to the other first.
14 Okay? What do you think the probative value is from the
15 state's perspective, other than it goes to whether he's
16 honest or not honest, but this is not an honest or
17 dishonest type crime.

18 MR. LAWTON: I was just letting the jury know
19 what's going on, that this is who they're trying to judge
20 his credibility on, someone that was willing to sell
21 something illegal that harms someone else, and I think if
22 we're going to be open with the jury and let them know
23 that once he takes that Fifth Amendment right, puts it up
24 there, he's just like any other witness. Lets them know
25 in the past what's going on.

1 THE COURT: Okay. Yes, sir?

2 MR. APOSTOLOU: Well, Judge, I would say he's
3 not like any other witness. He's a defendant in a
4 criminal case. The rules are to protect the fairness of
5 the trial and to get the most honest, forthright trial,
6 and I think it doesn't have any probative value, but I do
7 know it has plenty of prejudicial, in fact, and I would
8 ask you to exclude it.

9 THE COURT: Solicitor, I know you want to ask
10 him whether or not he has ever been convicted of a
11 felony. To this Court, that seems more prejudicial than
12 asking him if you've ever been convicted of distributing
13 drugs, or distrubution of drugs. That is just an open
14 ended question, so I know you want to do that. In the
15 alternative, my inclination, if I deny you to ask about
16 the drugs, I'm not going to let you ask an open ended
17 question, Hey, have you ever been convicted of a felony,
18 when I know the felony, I've already ruled that you can't
19 go into it.

20 MR. LAWTON: Yes, sir.

21 THE COURT: Why should I let you do your
22 alternative plan, is what I'm asking you?

23 MR. LAWTON: I've just seen it occur in the
24 past, Your Honor, with drug charges.

25 THE COURT: That doesn't mean I'm going to

1 let it in.

2 MR. LAWTON: I know.

3 THE COURT: Okay.

4 MR. LAWTON: It's a backup plan, Your Honor,
5 clearly a backup plan, and I certainly at this point --

6 THE COURT: I like your backup plan even less
7 than I do your primary plan.

8 MR. LAWTON: That's fine, Your Honor. We
9 won't go into that.

10 THE COURT: I'm going to rule it's not
11 admissible under 609(a)1, because the prejudicial value
12 vastly outweighs the probative value. The only probative
13 value you have is trying to tell this jury he's in drug
14 trafficking; therefore, you ought to convict him of this
15 armed robbery and assault and battery with intent to kill
16 and that is what that is about, to prevent that,
17 convicting individuals on the facts of this particular
18 case, not on his prior criminal history.

19 I'm not going to let you go to your backup
20 plan because I think that is coming in the back door on
21 609.

22 MR. LAWTON: Yes, sir.

23 THE COURT: If you have another felony
24 outside of ten years, then yeah, I could understand that.
25 If you have some statute, some crime outside the ten

1 years that had a -- you know, was concerning dishonesty
2 or false statement, then I would allow you to do that.
3 But the only thing we talked about is the drug charge,
4 and I ruled against you on that, so I'm not going to let
5 you ask whether he had a felony.

6 Do you understand?

7 MR. LAWTON: Yes, sir, Your Honor.

8 THE COURT: All right. Anything else? Y'all
9 need a short break before we start? First of all, I got
10 to finish -- I'm sorry. I got to finish with Mr. Mack.

11 Mr. Mack, as I was talking to you earlier
12 about your right to testify, I told you I was going to
13 have to rule on whether I was going to allow him to
14 impeach you concerning your criminal record, and I'm not
15 going to allow you to do that. Do you need time to talk
16 to your attorney in light of the Court's ruling before
17 you make a decision to testify or not testify?

18 MR. APOSTOLOU: If I could just explain
19 exactly what is going on, make sure he understands
20 exactly what the ruling was, Your Honor.

21 THE COURT: Yes, sir?

22 MR. APOSTOLOU: He's made a decision.

23 THE COURT: Mr. Mack, do you want to testify
24 or not testify?

25 DEFENDANT MACK: No, sir.

1 THE COURT: No, sir what?

2 DEFENDANT MACK: I don't want to testify.

3 THE COURT: Okay. Thank you very much.

4 MR. LAWTON: Your Honor, we've clocked in
5 copies of the order, and just for clarification, North
6 Charleston is making sure it's okay as far as arresting
7 him tonight. If, say, it's 11 o'clock at night,
8 obviously we're not going to be around here.

9 THE COURT: Yeah. Put them in the North
10 Charleston city jail, or have him here at 9:00 in the
11 morning.

12 MR. LAWTON: Thank you, Your Honor.

13 THE COURT: All right. It's 3:30. Neither
14 defendants -- you're going to offer the mother, so -- is
15 it the mother or brother?

16 MR. SMILEY: The mother.

17 THE COURT: Rest, see if they find
18 Mr. Johnson.

19 Let me say this, in all fairness to the
20 defendants and the defendants' attorney, I'm going to
21 allow the state to call a witness out of order, if they
22 find him, and I have no idea what he's going to testify
23 to, but once you finish direct and cross, either one of
24 you defendants want to offer any further testimony, or if
25 you want to offer any further testimony, I will allow you

1 to do that, even from your defendants, you can now tell.
2 the Court they don't want to testify.

3 MR. SMILEY: Yes, sir.

4 THE COURT: Do you understand?

5 MR. SMILEY: Yes, Your Honor.

6 THE COURT: All right. Anything else before
7 we bring the jury in?

8 MR. SMILEY: No, sir.

9 THE COURT: I'll give you about ten minutes.

10 (Recess taken.)

11 THE COURT: Thank you, sir. Mr. Smiley, will
12 you call your witness, please.

13 MR. SMILEY: Yes, sir. At this time I would
14 call Thomasina Goss.

15 MR. APOSTOLOU: Your Honor, could we have the
16 lawyers approach the bench briefly?

17 (Discussion held at sidebar.)

18 THOMASINA GOSS,

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

21 DIRECT EXAMINATION

22 BY MR. SMILEY:

23 Q. Thomasina, how old are you?

24 A. Forty-three years old.

25 Q. How many children do you have?

- 1 A. Seven.
- 2 Q. How old is the oldest?
- 3 A. Twenty-five.
- 4 Q. And how old is the youngest?
- 5 A. Six.
- 6 Q. All right. Where do you live?
- 7 A. I live at [REDACTED]
- 8 Q. And that is a residence that we've been talking
- 9 about in this case. I know you haven't been sitting in
- 10 here, but there at your residence on [REDACTED] one by
- 11 one, let's go over who lives there. You live there?
- 12 A. Yes.
- 13 Q. Who else?
- 14 A. My husband.
- 15 Q. That is Clifford Hartwell?
- 16 A. Clifford Hartwell.
- 17 Q. Who else?
- 18 A. My son Benjamin Goss.
- 19 Q. Benjamin Goss. All right. Anybody else?
- 20 A. We have Darrell Goss.
- 21 Q. Who else?
- 22 A. We got Quamain Goss.
- 23 Q. How old is Quamain?
- 24 A. Quamain is 17.
- 25 Q. And that is your son?

- 1 A. That's my son.
- 2 Q. So that is five people. Who else?
- 3 A. We have Dominique Hartwell.
- 4 Q. How old is Dominique?
- 5 A. Fifteen.
- 6 Q. Boy or girl?
- 7 A. He's a boy.
- 8 Q. Who else?
- 9 A. We have Clifford Hartwell, Jr.
- 10 Q. Is your son?
- 11 A. Yes, he is.
- 12 Q. How old?
- 13 A. Sixteen.
- 14 Q. Who else?
- 15 A. We have Cliffany Hartwell.
- 16 Q. How old is Cliffany?
- 17 A. Cliffany is 13.
- 18 Q. Who else?
- 19 A. And we have Tommy Hartwell.
- 20 Q. How old is Tommy?
- 21 A. Tommy is six years old.
- 22 Q. Okay. Do have you any other children living
- 23 there?
- 24 A. Yes, I have a nephew, Sharon Goss.
- 25 Q. How old is Sharon?

1 A. Sharon is 23.

2 Q. Okay. Is that it?

3 A. That is it.

4 Q. You have a bunch of people living in that house.

5 How long have you been there on [REDACTED] for a
6 while?

7 A. Yes.

8 Q. Okay. How would you describe on a normal day the
9 activity at [REDACTED] at the Goss family house?

10 A. It's busy on a daily basis, in and out, in and
11 out.

12 Q. When you say that, you got a bunch of boys,
13 they're coming in and out of that house day and night?

14 A. Yes, they do.

15 Q. Well, something I need to clear up, because it's
16 going to come up in your case, is you got a record,
17 right?

18 A. Yes, I do.

19 Q. You've been convicted of giving false information
20 to the police a couple of times, right?

21 A. Yes.

22 Q. And you also got a shoplifting on your record,
23 right?

24 A. Yes.

25 Q. Now, in this case -- there is a lot of things I'm

1 going to ask you, but I want to get down to these
2 relevant points. In this case, you were home the day the
3 police came and served the search warrant, right?

4 A. Yes.

5 Q. Okay. Can you describe -- well, first, what time?
6 About what time did they come? I know you can't be
7 exact --

8 A. It was around 6:30, 7:00.

9 Q. It was that evening?

10 A. Yes.

11 Q. Okay. When the police came, if you had to guess,
12 how many policemen do you think came?

13 A. Well, it was about 14, 15.

14 Q. A bunch?

15 A. Yes.

16 Q. When they came in to your house, did they kick the
17 door in?

18 A. Yeah.

19 Q. They came in?

20 A. They came in, they came in.

21 Q. All right. When they came in, did they have their
22 weapons drawn?

23 A. They did.

24 Q. How did you feel when they came in? Were you
25 scared or what? What did you think?

1 A. I was scared. I was scared. I was very scared.

2 Q. Okay. Everybody -- was there people in the house
3 at the time?

4 A. Yes.

5 Q. Okay.

6 A. And all the small kids.

7 Q. All right. So when they came in, they looked
8 around in the house, right?

9 A. They did.

10 Q. They found some items in your house that they took
11 in evidence, right?

12 A. Yes.

13 Q. What bedroom was that? Better question, whose
14 bedroom did they find these items in?

15 A. In my daughter, Cliffany's room.

16 Q. Cliffany's. Does anybody else use that room?

17 A. Yes.

18 Q. Who?

19 A. Everybody, Ben, Darrell, Sharon, the guests,
20 everybody uses Cliffany's room.

21 Q. But that's her room to sleep in?

22 A. Yes.

23 Q. When you say everybody uses it, what do they use
24 it for?

25 A. When -- like, most of the time she has the games,

1 the movies and everything in there, so they come in and
2 they use that room.

3 Q. Okay. Another thing that is in this case, there
4 was a car they searched out in the driveway. Are you
5 familiar with that car?

6 A. Yes.

7 Q. Whose car was that?

8 A. Sharon Goss.

9 Q. Sharon Goss, your nephew's.

10 A. Yes.

11 Q. Is Sharon the only one that used that car, or did
12 multiple people use that car?

13 A. Multiple people uses that car.

14 Q. So while it's his car, lots of people drove it?

15 A. Yes, sir.

16 Q. What about Darrell? Did Darrell ever drive that
17 car?

18 A. I never seen Darrell drove that car.

19 Q. Why is that?

20 A. Darrell can't drive.

21 Q. Okay. Have you seen Darrell in that car?

22 A. Not that I seen him.

23 Q. Okay. Would it surprise you if he had been in
24 that car?

25 A. No.

1 Q. Okay. All right. Now, one of the things that is
2 being talked about in this in this case is some clothing.
3 Did you have an opportunity to buy some clothing that is
4 the subject of this case?

5 A. Yes.

6 Q. What day was that?

7 A. It was the same day that the policemen came into
8 the house.

9 Q. About what time that day was it, do you know?

10 A. It was earlier in the evening.

11 Q. But it was earlier in the evening?

12 A. Yeah.

13 Q. So before the police came, but after lunch; is
14 that fair?

15 A. Yes.

16 Q. Can you narrow it down any closer than that?

17 A. After lunch, 1:30, 2:00.

18 Q. Okay. Can you -- describe to the jury what that
19 was all about, to the best of your recollection.

20 A. That day, there was some guys, lots of people were
21 going on [REDACTED] selling clothes.

22 Q. Let me ask you this: Do you know any of those
23 guys that were selling clothes?

24 A. There was a bunch. I know one of them, I told --
25 yeah.

1 Q. So you knew about the clothes?

2 A. Uh-huh.

3 Q. And you provided that information when asked.

4 A. I did.

5 Q. Do you remember who you told it to?

6 A. One of the officers. I believe --

7 Q. Did they have a uniform on? Was he plainclothes?

8 A. Plainclothes.

9 Q. White officer or black officer?

10 A. White officer.

11 Q. Okay. Thank you. So these guys are on [REDACTED]
12 Drive selling clothes. What happened? Did you buy any
13 clothes?

14 A. I did.

15 Q. Do you remember what you bought?

16 A. I bought a lot of pants, some shirts, hats; they
17 had gloves. It was just a lot of stuff for my kids.

18 Q. What kind of prices were they selling those
19 clothes for?

20 A. Real good deal, like for what I --

21 Q. You got an idea those clothes were stolen maybe?

22 A. Maybe.

23 Q. Okay. All right. Do you remember if Darrell was
24 around when those clothes were being sold?

25 A. I don't remember Darrell at the time. There was

1 just so many people out there, and everybody is buying
2 clothes.

3 Q. Okay. All right.

4 MR. SMILEY: Beg the Court's indulgence.
5 Thomasina, I think that's all I need to ask
6 you, if you answer any questions Mr. Lawton or
7 Mr. Apostolou might have for you, all right?

8 THE WITNESS: Yes, sir.

9 MR. SMILEY: Or, excuse, me Mr. Hales. I
10 apologize. He's a prosecutor also.

11 CROSS-EXAMINATION

12 BY MR. HALES:

13 Q. How are you?

14 A. I'm fine.

15 Q. There is a lot of people living in that residence.
16 Were all of these people living there at the time of this
17 robbery?

18 A. All of them stayed at that house.

19 Q. And all of them stayed there at the house back in
20 2002 when this robbery happened?

21 A. Correct.

22 Q. Okay. Now, you were talking about your daughter
23 Cliffany's room?

24 A. Yes.

25 Q. How many different rooms in your house do you have

1 where people sleep?

2 A. Five.

3 Q. So you got five bedrooms?

4 A. Yes.

5 Q. But that is the -- I don't want to say the common
6 room. That seems like that is sort of a room where a lot
7 of people hang out, watch TV, that kind of thing?

8 A. Yes, sir.

9 Q. Okay. Do people keep stuff in that room other
10 than clothing?

11 A. Yes.

12 Q. Okay. So you got something and it wouldn't be
13 unusual to find something of somebody else's other than
14 Cliffany's?

15 A. I guess so.

16 Q. Okay. Now, with a family that big, I'm sure
17 people share. If you got that many brothers and sisters,
18 you got to learn how to share, right?

19 A. Yes.

20 Q. You share clothes, share space in the house, share
21 television privileges. When you got that many people
22 living under one roof, people got to give and take,
23 right?

24 A. Yes.

25 Q. Okay. So if somebody has something, it wouldn't

1 be unusual for one or the other, especially brothers in
2 this case -- it seems like there is a lot of brothers,
3 one of the other brothers to be able to use it.

4 A. Right.

5 Q. Now, how old was Darrell back in June of 2007?

6 A. Twenty-one.

7 Q. Twenty-one. Okay. So he would have been able to
8 drive, right?

9 A. Yes.

10 Q. Okay. He was of age to drive?

11 A. Yes.

12 Q. Okay. And there was a car there. You said it was
13 Sharon's car, right?

14 A. Yes.

15 Q. Okay. And we're talking about brothers and
16 sisters sharing, so it wouldn't be out of the realm of
17 possibility for Darrell to use Sharon's car, right?

18 A. I don't think so.

19 Q. You don't think so, but, I mean, it's possible.
20 Would that be possible?

21 A. Yes, yes.

22 Q. Okay. And if there were any other things that
23 those brothers had, it would be possible for them to use
24 it, right?

25 A. Yes.

1 Q. All right. Are you aware that there was a gun
2 found in that car?

3 A. Yes.

4 Q. Okay. And would it be possible for one of the
5 other brothers to use that gun as well, wouldn't it,
6 since they share things? I mean, because there is a gun
7 in Sharon's car and because we've established that the
8 brothers share things and maybe they would share that
9 car, it's also then probable, possible, that they could
10 share that gun. Yes or no?

11 A. Yes.

12 Q. Okay. So it's possible. Now, you say you bought
13 this clothing the same day of that robbery; is that
14 right?

15 A. Yes.

16 Q. I'm sorry, the same day of search warrant?

17 A. Right.

18 Q. I'm sorry. I didn't mean to misspeak. And you
19 say you bought it earlier this the day, 1:00 or 2:00,
20 something like that?

21 A. Yes.

22 Q. How much clothing did you buy?

23 A. A lot of clothing.

24 Q. Okay. And these were just some guys on the street
25 selling this clothing.

1 A. Yes, sir.

2 Q. So you had a feeling it might have been stolen?

3 A. Yes, sir.

4 Q. Okay. And you testified you bought some pants,
5 shirts, hats, and gloves?

6 A. Yes, sir.

7 Q. Okay. And you bought those for your kids?

8 A. Yes, sir.

9 Q. Did you buy yourself anything?

10 A. No, sir.

11 Q. You didn't buy yourself anything? Okay. Do your
12 sons all get along and hang out together?

13 A. Yes, pretty well.

14 Q. They're brothers. I'm sure they have some fights
15 every once in a while, but for the most part, they get
16 along?

17 A. Yes, sir.

18 MR. HALES: Court's indulgence one moment.

19 BY MR. HALES:

20 Q. Mr. Smiley went over your record, and I'm not
21 going to rehash it, I just want to make sure we get the
22 years right on this. On your giving false information to
23 police, was that a 2003 conviction?

24 A. Probably so, yes, sir.

25 Q. And shoplifting, would that have been 2005?

1 A. Probably.

2 Q. And then another giving false information 2008?

3 A. Yes, sir.

4 MR. HALES: Okay. All right. Thank you very
5 much, Ms. Goss.

6 THE COURT: Cross-examination?

7 MR. APOSTOLOU: No questions.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION

10 BY MR SMILEY:

11 Q. Yes. Do you know why Darrell doesn't drive?

12 A. Yes. Darrell doesn't have a license.

13 Q. It's suspended?

14 A. It's suspended.

15 Q. So he doesn't drive?

16 A. He doesn't drive.

17 MR. SMILEY: That's all I got.

18 THE COURT: Any recross?

19 MR. LAWTON: May we approach?

20 (Discussion held at sidebar.)

21 THE COURT: Recross?

22 RECROSS EXAMINATION

23 BY MR. HALES:

24 Q. Just briefly, Your Honor. Ms. Goss, you said
25 Darrell's license was suspended?

1 A. Yes.

2 Q. Why was it suspended?

3 A. For driving under suspension, and he's paying
4 on -- he was paying those tickets off.

5 Q. Okay. What happened to get it under suspension?

6 A. I don't know.

7 Q. Okay. You don't know that.

8 MR. HALES: Nothing further Your Honor.

9 MR. SMILEY: I have nothing else.

10 THE COURT: Any further witnesses?

11 MR. SMILEY: Mr. Goss's defense will rest at
12 this point in time.

13 THE COURT: Okay. All right. Mr. Mack --

14 MR. SMILEY: Ms. Goss, you can come down now.

15 THE COURT: You can step down, Ms. Goss.

16 You're through for the day. Thank you very much.

17 MR. SMILEY: And, actually, can she be
18 released from the sequestration order and join the
19 gallery? Is there any objection?

20 THE COURT: You can have a seat in the
21 courtroom.

22 MR. SMILEY: Thank you.

23 THE COURT: All right. Mr. Mack,

24 Mr. Apostolou, do you have any witnesses?

25 MR. APOSTOLOU: No, Your Honor. We'll rest.

1 THE COURT: All right. Thank you very much.

2 All right. Ladies and gentlemen of the jury:

3 It's ten minutes after 4:00. What we're going to do is
4 there may be some more additional testimony in the
5 morning or reply from the state. I don't know. We'll
6 have to find out in the morning; however, we're going to
7 stop at this time.

8 Be back in the jury room at 9:30 tomorrow
9 morning. We'll finish up the trial tomorrow. Don't
10 discuss the case amongst yourselves or anyone else. See
11 you at 9:30.

12 (Jury recessed.)

13 THE COURT: Mr. Smiley, I understand
14 concerning y'all have looked at the transcript on that
15 issue about whether the victim said he was not in the
16 store, and you were wrong; is that correct?

17 MR. SMILEY: No, sir.

18 THE COURT: What did the transcript show?

19 MR. SMILEY: The transcript shows that I
20 asked him if he recognizes him from the robbery, and he
21 said no. It wasn't definitive he was not there.

22 THE COURT: My problem is this: I can
23 understand the conclusion, why you can argue to the jury
24 he wasn't there, but to tell the jury a witness said that
25 he wasn't there is a different story.

1 MR. SMILEY: I will make the conclusion.

2 THE COURT: I will instruct you not to tell
3 the jury, The witness said he wasn't there.

4 MR. SMILEY: I will say the witness didn't
5 recognize him, certainly.

6 THE COURT: I don't have any problem with you
7 wanting to offer it, but to misquote the witness, I do
8 have a problem.

9 MR. SMILEY: I wouldn't -- no attempt to
10 mischaracterize the statement.

11 THE COURT: You now how word of mouth is.
12 Everybody hears different things. Sometimes you hear
13 what you think you want to hear, and that is not what was
14 said.

15 MR. SMILEY: I certainly would never
16 mischaracterize someone's testimony.

17 THE COURT: I'm not insinuating you did. I
18 just want to make sure you don't. All right. Anything
19 else before we break for the evening?

20 MR. LAWTON: No, Your Honor.

21 THE COURT: Let me see the solicitor up here
22 just a second on this other issue of the witness. Y'all
23 can come up too if you want.

24 (Whereupon, the proceedings were adjourned
25 for the day.)

1 (Thursday, February 26, 2009.)

2 MR. SMILEY: If I could put this on the
3 record, I know the answers, but I've got to preserve the
4 record, I should ask that for the same reasons as
5 previously stated at the close of the state's case, I
6 renew my motions for a directed verdict at this time.

7 THE COURT: Okay. Denied.

8 MR. APOSTOLOU: I would also like to renew my
9 motion for directed verdict.

10 THE COURT: Denied.

11 MR. LAWTON: Would you like us to officially
12 rest when the jury comes in?

13 THE COURT: You want to do that and say you
14 rest, that is your business. Anything else before we
15 bring the jury?

16 MR. SMILEY: No, sir.

17 (In open court, jury present.)

18 THE COURT: Thank you very much. Mr. Smiley?

19 MR. SMILEY: May it please the Court, what
20 we're going to do now is closing arguments. The evidence
21 is all in. I get to talk to you, and Mr. Lawton is going
22 to talk to you, and Mr. Apostolou is going to talk to
23 you, the judge is going to give you the charge, and y'all
24 decide the facts.

25 I'm going to read you a piece of transcript

1 to start with, and this came from the first witness,
2 Mr. Ayazgok, Andy, from the stand, and this is questions
3 I was asking him during cross-examination.

4 Question: Okay. And later in this case, as
5 the police were doing their investigation, they showed
6 you a photo lineup, couple of phone lineups, correct?

7 Answer: Yes, sir.

8 Question: And when you were shown a lineup,
9 this is the lineup they showed you? And I showed a
10 lineup with Darrell Goss in it. And Mr. Goss was in it.
11 You picked him out, right?

12 Yes, sir.

13 Question: And you told him that he was not
14 involved in the robbery that day, but that you had seen
15 him in the store that week, right?

16 Answer: Yes, sir.

17 Okay. So you knew that he had been in the
18 store?

19 Yeah.

20 But you didn't identify him as being in the
21 store during the robbery?

22 No, sir, I didn't.

23 What more direct evidence do we need? There
24 is no direct evidence placing Darrell Goss in the store
25 during the robbery. But Andy, who got up here and told

1 you as straightforward as he could, I think -- I'm not
2 commenting. He was pretty forthright, told you what he
3 could remember, and he remembered Darrell Goss.

4 I mean, look at Darrell. He's pretty
5 distinctive. He's got that beard. He remembers him
6 being in the store, and, of course, you got a new store,
7 somebody comes in and buys something, you remember your
8 customers. Now, he very clearly states, when asked, was
9 he in the store during the robbery, and you told him that
10 he was not involved in the robbery that day, but you had
11 seen him in the store that week, very clear, he answered
12 that question. No hesitation, he answered. All right?

13 So they're left with circumstantial evidence.

14 Now, Mr. Lawton and the state are going to
15 make a big deal about this fingerprint, and it's my
16 experience this is the first fingerprint I can remember
17 trying to be dated, all right? I asked everybody that
18 had any kind of scientific expertise, can you date it?
19 Can you say when that fingerprint was put there, and the
20 answer is no.

21 Now, they tried to characterize that as being
22 a print with sweat dripping down on it. They didn't test
23 the substance. They could have; they didn't. He had to
24 artificially dry this thing. I don't know if it was oil;
25 I don't know if it was a cleaning solution; I don't know

1 if it was sticky from a honey bun. I don't know. I
2 don't know where -- the evidence doesn't tell you where
3 that fingerprint was on the door. Did you hear any
4 evidence about where on the door it was? I kept
5 listening. I didn't hear it.

6 Now, if I tell you something or suggest
7 something that you remember differently, your memory
8 trumps mine, okay? I don't for a second want you to
9 think I'm trying to mischaracterize any evidence, no
10 tricks here. I'm just trying to relay to you why I
11 believe this evidence is insufficient.

12 So you got a fingerprint. The fingerprint,
13 palm print, of Darrell Goss. Darrell, when he is talked
14 to by the police, admits, I've been in that store. Andy
15 says, yeah, he was in that store. Now, they brought up
16 this Ebony Johnson who testified that, Hey, look, we
17 cleaned those windows, those doors, every morning, twice
18 a day.

19 April of 2008 is when she started. Okay?
20 This happened in June 2007, so what they did in April
21 2008 really doesn't matter. However, I suggest to you
22 after the events of June 2007, I'm betting you that Andy
23 told everybody to clean that glass real good. All right?
24 Now, Andy testified he cleaned the glass.

25 Now, as the crime scene expert, Detective

1 Hallman told you, latent prints are -- let them get a
2 seat. Good morning, Andy.

3 This crime scene, Hallman told you, latent
4 prints, by definition are invisible. All right? Patent
5 prints, or patent prints, are visible prints. He
6 characterized this print as latent, that he had to raise
7 it, so I don't know where it was. Don't know how long it
8 had been there, and for you to suggest, or for the
9 prosecution to suggest, that they knew when this print
10 was put on there is just speculation, pure speculation,
11 and the one thing that the jury can't do is speculate.

12 Y'all are the finders of the facts based on
13 the evidence put in front of you. You're not here to
14 guess. You're not here to fill in gaps. You're here to
15 take the evidence and apply it.

16 So the fingerprint, on the outside of the
17 store. Didn't find it on the inside of the store, and
18 then we got this gun, the gun and the car outside of the
19 residence that Darrell Goss lives in with a whole bunch
20 of other boys, family members.

21 There is no connection between Darrell and
22 that car. There wasn't even an attempt made to put him
23 in that car, to put that gun in his hand. To say he had
24 that gun is pure speculation, pure. We don't deal with
25 suspicion. We don't deal with maybes or possibilities. We

1 deal with what is. What is a reasonably -- are you
2 reasonably able to conclude, and I suggest to you, you
3 can't reasonably conclude that Darrell Goss possessed
4 that gun. There is no evidence, none, to show that he
5 did.

6 And then they got some clothes. What those
7 clothes show you, I don't know. First, nobody puts those
8 clothes on Darrell. They put him in the house that he
9 stays at, with a lot of other boys. We got Ms. Goss, who
10 has lied before, and I'm not going to sit here and try to
11 tell you she's Mother Theresa, but she came in and told
12 you things that she knew. Take it for what you believe
13 it's worth, but she told you she bought all that and she
14 bought all stolen goods, and, of course, she would say
15 what she needs to say to protect her son. I'm not going
16 to tell you that she's above reproach, but she admits to
17 buying clothes on the street.

18 It was in a room that is not tied to Darrell
19 Goss, and it's not a whole lot of clothes. In that room
20 they found a pair of pants, a couple shirts, a couple
21 pairs of shoes. They find tags, I think is significant,
22 from that store, but they find tags from another store.
23 They find -- now, I asked Andy, did any sunglasses get
24 taken? And he said no, but there is a pair of glasses
25 that had Ben Goss's, the brother, fingerprint on them.

1 What do the clothes mean? I would suggest to you they
2 don't mean anything. They don't mean anything in the
3 context of whether Darrell Goss participated in an armed
4 robbery or kidnapping and assault and battery with intent
5 to kill.

6 If you look at the crime and what the state
7 wants you to do, we don't have any evidence, none.
8 Actually, the only piece of evidence you got is an
9 excluder, not an includer. Andy told you he knew the
10 guy, he had seen the guy. Mr. Lawton is probably going
11 to tell you, I'm trying to play on words. I can just ask
12 the question. If he didn't think that was a fair
13 question, he could have asked more questions, so all I'm
14 telling you is I asked him if he was involved and he said
15 no.

16 Now, lastly, the lawyers, whenever you talk
17 about the word reasonable doubt, I find jurors look at
18 you and say, Well, yeah, okay. Reasonable doubt, the
19 kind that makes you hesitate to act. The important
20 concept behind this reasonable doubt is this isn't a
21 50/50 game. All right? It's not -- in the game of
22 football, it's not crossing the 50 yard line. They got
23 to do a lot more than that. They got to get down there
24 and score. They have to remove reasonable doubt from
25 your mind.

1 If you have a reasonable doubt, the verdict
2 must be not guilty. If you look at the fingerprints,
3 well, it could be this or it could be that, you must
4 resolve doubts in favor of Mr. Goss.

5 If you look at the clothes, oh, it could be
6 this and it could be that, I just don't know, you must
7 resolve that in favor of Mr. Goss. If you look at that
8 gun and say, you know, it's more suspicious being in the
9 driveway, I agree with you. Well, but I don't know. You
10 must resolve that doubt in favor of Mr. Goss.

11 Well, if you say, Well, we got somebody that
12 was in the store. What does he say? He says he
13 recognized Darrell Goss, but he didn't see him in the
14 store during the robbery. There is not even a doubt
15 here. You must look at that and say, Darrell Goss wasn't
16 in the store. Now, there was another witness there,
17 Mr. Kilic, that, according to the wife, got scared and
18 left, and I guarantee you this: If he could identify
19 Darrell Goss, if he could add anything to their
20 prosecution, he would have been here. He couldn't
21 identify Darrell Goss either.

22 There is nothing here. It's sort of scary
23 that you could leave a fingerprint and get arrested
24 without more. And I've also -- this has bothered me, and
25 I don't have an answer, but I hope it bothers you too.

1 Those clothes were in the house that Darrell Goss lived
2 in. That gun was in the driveway that Darrell Goss lived
3 in. The officers showed a photo lineup to Andy of his
4 brother Benjamin Goss, couldn't pick him out either.
5 Couldn't pick Darrell out, and they arrested Darrell, but
6 didn't arrest Ben. I don't understand.

7 Because in Ben's case, we look at the photo
8 lineup, I don't recognize anybody. In Darrell's case
9 there is an affirmative: Yeah, I recognize this guy. He
10 wasn't there. Okay? I don't know what to make of that.
11 I turned that over, over and over, and I hope it sort of
12 sticks out for you too.

13 So, ladies and gentlemen, what happened that
14 day shouldn't happen in our society. Andy tried to start
15 a business, trying to do things the right way, got
16 robbed, and that is bad. And I stand next to him and
17 say, you ought to be able to run a business without being
18 fearful, but that doesn't make it okay because the
19 fingerprints say he did it.

20 I hope they catch the people that did it.
21 Darrell Goss started this trial innocent, and he ends
22 this trial innocent, and I hope you return the only
23 verdict, the only verdict, the direct evidence and the
24 circumstantial evidence in this case will support: Not
25 guilty.

1 THE COURT: Solicitor?

2 MR. LAWTON: May it please the Court. Good
3 morning. Like Mr. Smiley said, that day, these two
4 defendants, along with three others, tried to ruin Andy's
5 American dream. He just opened up a store, six days
6 before, just got there several months before. He was
7 excited about this opportunity, and this happened.

8 Well, they failed miserably. He's still in
9 business today. He still has to go back to that crime
10 scene every day and has to relive that in his mind, but
11 he's still doing it every day. He still believes in the
12 American way. He still trusts the American judicial
13 system, and that is why he's here. Its Andy's day.
14 We're here for justice. That is the only reason we're
15 here.

16 But what is justice? In the state of South
17 Carolina, if you participate in a robbery, a brutal
18 beating as this, and a kidnapping, you got to suffer the
19 consequences, and we're here today to seek justice and
20 hold these guys accountable for their actions, both of
21 them. Now, I'll briefly talk about the charges, and then
22 we'll get into Joy Mack's case and then we'll address
23 some of the things Mr. Smiley just talked about.

24 The judge will go over the law for you, and I
25 believe he'll actually send the charges in with you, so

1 you can go through them, but armed robbery, just like
2 what you think it is. You got to have a deadly weapon.
3 Here, an AK47. Andy also says he has a pistol. Got
4 that. The taking from another, around their presence, of
5 someone's other property; wallet taken out, clothes, all
6 that includes, and also with fear, threat, or
7 intimidation or force. We have force here.

8 Obviously, from what Andy told you,
9 kidnapping. It doesn't have to be one of those things
10 where you're sleeping in your bed, someone comes to your
11 window, grabs you, takes you, throws you in the trunk.
12 Yes, that's kidnapping, but the judge will go through a
13 list of verbs under the law that are all kidnapping, and
14 the main thing is confinement. Once Andy and David were
15 tied up, set in the back, they were not free to leave.
16 That is a completed crime. Whether they got later, yes,
17 fortunately for them, they were able to untie their hands
18 and feet and get out of there, but it doesn't matter.
19 It's a completed crime.

20 Assault and battery with intent to kill,
21 assault just means beating. Battery is the touching, and
22 then the complicated part, with intent to kill. Well,
23 that is semantics. We don't have to have Joy Mack coming
24 in there saying, I'm going to try to kill you, and start
25 hitting away on Andy. They can be inferred. We've got

1 to prove malice aforethought, and all that is, is
2 disregard for life. So when Andy is on the ground and
3 Joy Mack's got the butt end repeatedly hitting him in the
4 back of the head, blood going all over, no disregard for
5 the life, that is assault and battery with intent to
6 kill.

7 Our standard is beyond a reasonable doubt.
8 Notice what it doesn't say. It's not beyond all doubt,
9 or beyond absolute doubt. As we know, there are very few
10 things in life that are absolute, other than maybe the
11 sun coming up, but it's just beyond a reasonable doubt.
12 That is our standard in South Carolina. It's no more
13 greater. Mr. Smiley talked about the storm, or it's not
14 100 percent for sure. He didn't say touchdown or
15 anything like that.

16 It's more than 50 percent, or -- excuse me,
17 it's definitely not 51 percent, like the civil thing, but
18 it's not 100 percent, by any means. You just got to be
19 firmly convinced of their guilt, each and every element.

20 This is what kind of case we have: It's a
21 hand of one, hand of all case, and the judge will tell
22 you that law. That just means that two or more people,
23 you got to have two people, participating in a crime, and
24 what one does, it's like they all did. If one's got a
25 gun, they've all got a gun. If you're in for a penny,

1 you're in for a pound.

2 Two main reasons we have that rule in South
3 Carolina and a lot of states. One is safety in numbers.
4 You walk into a dark parking lot. Do you want to do it
5 by yourself at night, or do you want other people with
6 you? Of course you want to have other people with you.
7 You feel more secure.

8 Second reason: It's easier to commit crimes.
9 Okay? Perfect example is a bank robbery. Okay? Three
10 people involved, you got a guy waiting outside with the
11 bank, got the car running, got a guy sitting right there
12 at the door, lookout, and of course you got a guy at the
13 counter with a gun, demanding money.

14 Well, in the eyes of the law in South
15 Carolina, they might as well all three walk up to the
16 counter with a gun because it doesn't matter. It made
17 the crime easier. In South Carolina, we want to deter
18 that. We want to deter that kind of group activity
19 because it does make it easier, and let's look at this.
20 Imagine one defendant walks in there without a gun.
21 What's going to happen? You got two victims in there,
22 not much is going to happen. You're probably going to
23 get some resistance. Okay?

24 What happens if two guys go in there with no
25 guns? Same thing. You may get a wallet out of it,

1 you're a little bit stronger, you're not going to get any
2 clothes, you're not going to get any shoes or all that.
3 You're not going to have time to ransack the place, but
4 you certainly won't be able to tie them up, but you get
5 two defendants, and one has got a gun, you're starting to
6 get somewhere. That is why that one gun, they're in fear
7 at that time, and imagine five coming in there, assault
8 rifle, a pistol: You're getting somewhere.

9 You got an opportunity for someone to be
10 handling one victim, one to be tying up, other to be
11 taking off the clothes and gathering up, you got a
12 completed crime.

13 Let's talk about Joy Mack first. This is an
14 identification case. We said that from the very
15 beginning. Let's talk about the factors that go into
16 identification.

17 One: Does the Defendant Mack have a mask on?
18 No. Is this a dark alley where Andy can't see anything?
19 No, daytime, summertime, around 7:30 or so, give or take.
20 Sun is still out.

21 Lighted store. Let's talk about the
22 opportunity he has to view him. Did he say the defendant
23 ran right up to him and threw him down? No. He said he
24 seriously walked for 70 feet, and I don't know how far
25 that is, but walking for 70 feet directly at him, serious

1 look on his face. He knows what's up. This is not good.
2 It's late in the afternoon. There are other people
3 around, knows there are other black males in there, but
4 he's focused on Joy Mack.

5 The closeness. Walked right up to him, right
6 in his face, AK47 right in his face. Talk about, like he
7 said, That is a face you'll never forget. Attention to
8 detail, plenty of reason to focus only on his face. Now,
9 let's think about what happens right after that.

10 He gets his brains beat in, okay? He gets
11 tied up. He told you he thought he might die. Okay.
12 Can you imagine, he's in the hospital, he's got a police
13 officer there, trying to get some description from this
14 guy? It's going to be a little bit off. It's difficult.
15 He had a lot going through. He had a brand new store
16 taken apart, pretty much. It's hard to describe someone,
17 but it's a lot different when you recognize somebody, and
18 the first time he saw him a week later, what did he do?
19 He didn't do anything. He was scared to death. Didn't
20 want to deal with them. Saw the guys in the parking lot.
21 Didn't want to do that.

22 Now, Mr. Apostolou will talk about the next
23 day he's back there, Andy is, at the store. I'm sure
24 he's fired up, and I'm sure he's fired up today about all
25 of this, but he calls the police on another guy, not one

1 of these two individuals, but guess why? He isn't scared
2 of that guy. That guy didn't beat his brains out. When
3 he saw Joy Mack in the parking lot a week later, you
4 think he's, like, Okay, this is the guy I do not want to
5 deal with. What if he has got that AK47 in his car? But
6 then what happens? Joy Mack and another individual comes
7 in that store, about a week after that.

8 That is too close for comfort. There is a
9 difference between seeing somebody in a parking lot --
10 talk about intimidation of Andy, coming back in that
11 store. That is when he told his wife, That's it. Okay.
12 Time to call the police.

13 And Mr. Apostolou made a big deal about,
14 okay, did he really call the police or not? They put
15 Tansa on there to tell you all they called the police
16 twice, and then the next day, he comes back on the scene,
17 still hanging out, and he identified him to the police
18 as, This is the individual with the AK47.

19 You know, Mr. Apostolou will tell you, why in
20 the world would this Defendant Mack be hanging around
21 this area, but does he really want to get y'all in that
22 guy's mind, the same guy that walked in a store, and beat
23 the full out of Andy and robbed him? That guy doesn't
24 think like you and I, totally different. He has no
25 regard for life, no fear of anything, no logic. He's

1 going to do something like that, he doesn't give a rip
2 about, Hey, I'm going to hang out. I walked into the
3 store and got away with. This two weeks later, I'm going
4 to do what I got to do. No problems, walked right up to
5 the cop like, I'll get away with this. Andy doesn't have
6 the guts to show up in court.

7 Well, he was dead wrong. Andy is right here.
8 He's not backing down. That was the guy that nearly took
9 his life. Andy's credibility -- and we'll get to Smileys
10 argument in a second. Wouldn't it be a little suspicious
11 if Andy had an answer for everything? But he doesn't.
12 He's honest. I showed him those hats. I would have
13 loved for him to have said, Yeah, I sold those hats.

14 No, I didn't sell those hats, the same hats
15 that were found in Darrell Goss's house? No, I didn't.
16 He can't explain to you all, why after the crime, he
17 remembers seeing a red shirt. The other day he just
18 remembers black pants, black hoody, and he said a black
19 skully. Right after the crime, he said a gray skully,
20 little things like that.

21 Does anyone honestly remember what tie I had
22 on Monday? I don't, but it was the recognition of his
23 face. He focussed on his face, totally different. Think
24 about what happened when he sees Joy Mack walk in the
25 store, walking right at him. Things are going on.

1 Focussed in on Joy Mack, and then repeatedly and
2 repeatedly gets beat in the back of the head, tied up.
3 He's in the hospital, and he's got some police officer
4 asking him, Do you think you could identify these guys?
5 And he tells them no. He's got stitches all in the back
6 of his head. He tells them no. Of course he's going to
7 say that, but it's a difference between recognizing him
8 and when he saw them, he immediately said, A face I'll
9 never forget. That's him.

10 You heard Mr. Smiley talk about David. David
11 is not here. You heard what Tansa said. Can you imagine
12 a guy from Illinois coming down here to help a guy open a
13 shop and this happens? I don't blame him one bit for not
14 wanting to come back to South Carolina. That is
15 embarrassing that this is happening here in Charleston
16 County, and he didn't want to come back here and deal
17 with this. He didn't want to have to sit in front of
18 these two defendants after seeing what they were capable
19 of doing that day.

20 Look at Andy. Don't hold David's not being
21 here against Andy, because Andy is here. David couldn't
22 do it. He had to get out of town. He couldn't deal with
23 it. Andy has to go back to that store every day, every
24 day, and every time somebody comes in there, I'm sure
25 he's thinking about this, and that is why it's time.

1 He came in here. He knew he was taking a
2 risk. He knew he was taking a big risk. He knows the
3 Defendant Mack and Darrell Goss know exactly where he is
4 every day, but he still came in here. He pointed the
5 finger at Joy Mack and said, That is the guy with the
6 AK47. That is the guy that put me on the ground and beat
7 me repeatedly, treated him like an animal. That's what
8 he did. A man trying to make a living on his own, and
9 that is what happened to him.

10 Darrell Goss. You heard from Smiley. Smiley
11 is a good attorney, just like Mr. Alex Apostolou is. He
12 got a crafty attorney. You got a man from Turkey up
13 here, throwing questions at him, a man in broken English,
14 and he trips him up about saying he wasn't in the store
15 that day. There is a total difference. Did you think we
16 would be here today if Andy told people, No, he wasn't in
17 the store? Of course not. There is a difference between
18 saying they're not in the store and you couldn't identify
19 them, and as I said earlier, and as he said, regardless
20 of who came in the store first, he locked in on the
21 defendant Joy Mack, and that is what he sees, and once he
22 gets thrown down, he's not seeing anything. He's getting
23 beat. He sees a pistol around his head, nothing. That
24 is why you can't identify Darrell Goss.

25 He doesn't have the opportunity to do. Yes,

1 he knows there are other black males in the store, but he
2 can't do it. Mr. Smiley mentioned the wet print, and
3 he's right, you can't age a print. Let's use common
4 sense for a second. Three different officers. They all
5 testified that it was wet.

6 Now, we don't know if it was Sprite, sweat,
7 but they're using their common sense, just like we would
8 ask you to do. It's wet. So what do we know about that?
9 They're trying to guess about how long it's been there.
10 What time of year, in June? It's hot. Sun is still out.
11 This is Charleston. Mr. Smiley made the point about
12 Ebony. When we put Andy up there, he told us that day,
13 under oath, that he cleaned that window. Okay?

14 Put Ebony up there, same thing. She started
15 working in April of '08, every day. Andy's rules: We
16 clean the windows. Everybody comes in there, we
17 sometimes do it more than once. Happened sometime
18 between 7:30, 7:40. Hallman testified he got there at
19 8:00, had to fan it off. Took five minutes to dry.
20 That's it. Five minutes.. Okay?

21 Now, we heard testimony that Darrell Goss
22 told him he was in there Monday, three days later, hot
23 sun every day, and that is amazing, that according to
24 Mr. Smiley, it would still be wet.

25 Now, tip, get a tip. You heard from O.J.,

1 dealing with two brothers, Darrell Goss and Benjamin
2 Goss. Okay? They know they got these wet prints on the
3 front of the door, partial palm, three prints. They
4 pulled their prints. They analyze them. Al Hallman been
5 doing this for a while, expert in numerous court. He
6 showed you 12 identifiable points, said he could have
7 kept going. Talked to his expert, Darrell Goss's prints,
8 no question about it. Who they weren't? They weren't
9 Ben Goss. Okay?

10 That is Mr. Smiley trying to shift blame, get
11 you away from the scene, trying to think about, okay, who
12 is that other person? Wasn't Ben Goss, nothing linking
13 the crime scene back to Ben Goss. There is a tip. Tips
14 are in a lot of cases, and we had on that and, of course,
15 it comes back to Darrell Goss.

16 What do you do next? You get a search
17 warrant. They're investigating at this point. Get a
18 search warrant out. They go to the [REDACTED]
19 residence where Darrell lives, and what is the first
20 thing? Lo and behold, Darrell Goss is there, and he's
21 hiding. He's hiding behind a washing machine. Why in
22 the world is an innocent man hiding all of a sudden?
23 Notice Mr. Smiley didn't bring that up.

24 Mr. Faison talked about a room, three or four
25 feet away. There was a bag of tags, and you go through

1 those tags and you hear Andy talked about how that has an
2 original price tag on there. Maybe not all of them are
3 from the store, but look at the brands compared to in the
4 pictures. So Mr. Smiley is a crafty attorney, puts the
5 mom on the stand. Okay? Be that what it may. He
6 admitted it's a mom looking out for her son, and they
7 needed to somehow explain why in the world you have all
8 these tags. Otherwise, that is one heck of a random
9 shopping spree the day after a clothing store got robbed.

10 Mom? What do we know about mom? We know
11 that two times she's been convicted for lying to the
12 police, and I wonder who she was trying to cover up both
13 times.

14 MR. SMILEY: Objection, Your Honor. Improper
15 argument.

16 THE COURT: I'll sustain the objection.
17 Disregard that last comment made by the solicitor.

18 MR. LAWTON: I apologize, Your Honor. We
19 know that she's stolen before, just like the defendant.
20 So she gets up there, and what does she tell us? She
21 tells us, Everybody uses that room. Okay? She tells us
22 also that Ben Goss lives there, and that is another
23 avenue they are trying to get you down as a possible
24 suspect of why that stuff was there, to get you thinking.
25 She also tells you Sharon Goss lives there, another