

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Sumter County

S.C. SUPREME COURT

Honorable Diane Schafer Goodstein, Circuit Court Judge

JASON FORDE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000658

APPENDIX

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STATE OF SOUTH CAROLINA	)	
COUNTY OF SUMTER	)	COURT OF GENERAL SESSIONS
The State of South Carolina,	)	
PLAINTIFF,	)	
v.	)	TRANSCRIPT OF PLEA
Jason Forde,	)	C/A No. 2009-GS-43-0248
DEFENDANT.	)	

Sumter County Courthouse
Apri 12, - April 15, 2010

BEFORE:

HONORABLE GEORGE C. JAMES, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Mattison Gamble
Attorney for State of South Carolina

Timothy Murphy, Esquire
Attorney for Jason Forde

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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1 The Court: Alright, Mr. Gamble?

2 Mr. Gamble: May it please the Court Your Honor?

3 The Court: Yes.

4 Mr. Gamble: This is the State of South Carolina versus
5 Jason Forde on indictment 2009-GS-43-0248 on one count of
6 armed robbery. The State is ready to proceed Your Honor.

7 The Court: Alright Mr. Murphy, you ready?

8 Mr. Murphy: Yes Your Honor.

9 The Court: Does anybody have any particular questions
10 they want me to ask?

11 Mr. Murphy: If any jurors or close family members been
12 the victim of a violent crime.

13 Mr. Gamble: None from the State Your Honor.

14 The Court: Alright, ladies and gentlemen, we're going to
15 pick a jury now for the trial of the case of The State of
16 South Carolina versus Jason J. Forde. Forde is spelled F-
17 O-R-D-E. The questions that I'm going to ask you are
18 designed to make sure that we have paneled a jury that is
19 fair and impartial and one that will base a verdict in
20 this case solely on the evidence and the law and not on
21 any other improper, outside notice. I will remind you
22 that you are under the oath that you took this morning to
23 answer all questions truthfully. If I do ask you a
24 question that applies to you, simply stand. I will ask
25 any necessary follow up questions. Please do not

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1 volunteer any information, don't blurt out anything
2 unless I specifically ask you for it. Alright ladies and
3 gentlemen, the Defendant in this case is Jason J. Forde.
4 Mr. Forde if you could please stand and face the jury
5 panel. Alright, thank you sir. As I go through these
6 questions, if I refer to an immediate family member, that
7 means father, mother, brother, sister or child. The
8 question is this. Is there anyone on this jury panel or
9 member of your immediate family, who was related to Mr.
10 Forde. Do you or that family member know him or have any
11 connection, acquaintance, association with him at all,
12 now or in the past? If so, please stand. Alright ladies
13 and gentlemen, in this case the Defendant has been
14 charged with the offense of Armed Robbery and the fact
15 that a person has been arrested, charged with the offense
16 of Armed Robbery and the fact that a person has been
17 arrested, charge, indicted for any crime is not evidence
18 of anything. The case has to get to the courtroom in some
19 fashion and the vehicle that is used in this state is the
20 indictment process. The Defendant has entered
21 a plea of not guilty to this charge. He's presumed
22 innocent and the State has the burden of proving the
23 Defendant guilty beyond a reasonable doubt and the
24 Defendant does not have to prove or disprove anything,
25 but for reference purposes, the indictment says this:

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1 that the Defendant did, in this county, on or about March
2 6, 2008, commit the offense of armed robbery by
3 feloniously taking, while armed with a hand gun, from
4 Gene Rogers and Shantel Hodge in their presence, by means
5 of force or intimidation, cash money from the Food Lion
6 at 5700 Broad Street, located here in Sumter County. That
7 is the Food Lion where Mr. Gamble?

8 Mr. Gamble: Your Honor, that's the Food Lion on 378/ 441.

9 The Court: At the, the corner out there?

10 Mr. Gamble: Yes, Your Honor.

11 The Court: Alright, alright ladies and gentlemen, the
12 fact that I just referred to that set of allegations is
13 not intended to be a comment from me on the facts. I
14 simply have to relate to you what the State claims
15 occurred, so that you'll have an idea what the case is
16 about and that leads to this question; is there anyone on
17 this jury panel who knows anything about this case or has
18 any information about it at all from any source, other
19 than what I read from the indictment? Anyone know
20 anything about it at all? Read anything about it? Heard
21 anything about it or have any information at all?

22 Alright, no one stood. Okay, some potential witnesses,
23 ladies and gentlemen, and if I call your names if you'd
24 please stand, these witnesses may testify, they may not,
25 but these are potential witnesses and the, the question

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1 is the same as the first question. Is there anyone on
2 this jury panel, or member of your immediate family who
3 is related to any of these witnesses by blood or
4 marriage, do you know them or have any connection or
5 acquaintance or association with them now or in the past
6 at all? And these witnesses are Curtis Hodge of the
7 Sumter Police Department, Angie Rabon, Sumter Police
8 Department, Irene Culick, Sumter Police Department, Billy
9 Lyons, Sumter Police Department, Heath Gardner, Sumter
10 Police Department, Tony Rivers, Sumter Police Department,
11 Marie Hodge, Sumter Police Department, Robert Skinner,
12 Sumter County Sheriff's Office, Dominick West, Sheriff's
13 Office, Cindy Pierson, Sheriff's Office, Ray MacKessy,
14 Sheriff's Office, Jason Tassone, Sheriff's Office, Kevin
15 Lindsay, Sheriff's Office, Nicki Perry, State Law
16 Enforcement Division, Laura Mills, also SLED, Amanda
17 Webb, SLED, Lori Jiles, SLED, Amy Stevens, SLED, Theresa
18 Hynes, SLED, David Holzbach, and Chantel Hodge. How about
19 the other individual listed in the indictment?

20 Mr. Gamble: Your Honor, I don't believe she's going to be
21 testifying.

22 The Court: Okay. Alright, again ladies and gentlemen, is
23 there any one on this panel, or member of your immediate
24 family who is kin to any of these individuals or do you
25 know them or have any connection or acquaintance or

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1 association with them now or in the past? Alright, first
2 thing I need is your name please sir.

3 A: Jeremy Richardson.

4 The Court: Alright, Mr. Richardson is number 119. First
5 of all, is it you or a family member that has the
6 connection?

7 A: I, I personally know a few of the names and family
8 member connections as well.

9 The Court: Alright, tell me, tell me about the family
10 member please.

11 A: My brother is a Sheriff's Deputy in Sumter County.

12 The Court: What's his name?

13 A: Jeffrey Richardson.

14 The Court: How long has he been a Sheriff's deputy?

15 A: About five years.

16 The Court: And would you tell me, you say you're
17 acquainted with some of the witnesses?

18 A: I know Heath.

19 The Court: You know Mr. Gardner?

20 A: Yes sir.

21 The Court: How long have you known him?

22 A: A few years sir.

23 The Court: And is that a casual acquaintance or are y'all
24 close friends?

25 A: Casual acquaintance.

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1 The Court: Okay. You've known him for about five years?

2 A: For a few years sir. I'm not sure how long.

3 The Court: Alright, any other witnesses that you would
4 have any connection at all with?

5 A: I have a casual acquaintance with Tassone from the
6 Sheriff's department.

7 The Court: Alright, how long have you known him?

8 A: A few years, mainly through my brother.

9 The Court: Alright, anyone else?

10 A: No sir.

11 The Court: Alright, Ms. Kelly do you know your jury
12 number?

13 A: I don't. I'm sorry.

14 Mr. Campbell: Number 73 Your Honor.

15 The Court: You'll probably know it by the end of the
16 week. Yes ma'am, is it you or a family member?

17 A: Both, David Holzbach is a good family friend.

18 The Court: How long have you known Mr. Holzbach?

19 A: I'd say at least ten years.

20 The Court: Alright, okay, any other witnesses that you
21 have any kind of connection with?

22 A: No sir.

23 The Court: Alright. Mr. Richardson, you can stand. Y'all,
24 y'all can stay standing. Taking into account any of the
25 facts that you've related to me, the circumstances that

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1 you've related to me, could you still be fair and
2 impartial to the State and to the Defendant if you served
3 as a juror in this case, Mr. Richardson?

4 Mr. Richardson: Absolutely.

5 The Court: Ms. Kelly?

6 Ms. Kelly: Yes sir.

7 The Court: Could you set aside the associations that you
8 have related to me and base your verdict in this case
9 solely on the evidence in the law, Mr. Richardson?

10 Mr. Richardson: Yes sir.

11 The Court: Ms. Kelly?

12 Ms. Kelly: Yes sir.

13 The Court: Alright, thank you very much. The lawyers in
14 this case, Mattison Gamble represents the State of South
15 Carolina. He's a member of the third circuit Solicitor's
16 office. Seated at the table with him at this time is
17 Kelly Jackson, the third circuit Solicitor. The Defendant
18 is represented by Timothy Murphy of the third circuit
19 public defender's office. He is also in practice with
20 Wade Kolb. Both of them, of course, of the Sumter County
21 Bar. Is there anyone on this jury panel or member of your
22 immediate family who's related to either one of these
23 lawyers, know them, have any connection, acquaintance or
24 association with them at all, now or in the past, or have
25 you or that family member ever been represented by these

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1 lawyers or their offices? Of course that would include
2 Mr. Gamble and the third circuit Solicitor's office, Mr.
3 Murphy, the third circuit defender's office and the
4 offices of Wade Kolb. Alright.

5 Juror: Excuse me. I'm a little familiar with Mr. Wade's
6 office.

7 The Court: Alright, how long have you known him?

8 Juror: Seven years.

9 The Court: What is your name please?

10 Juror: Margaret Shanaugh.

11 The Court: Alright. That is one of the questions, if you
12 know, know any of the lawyers or anyone with whom they
13 are affiliated. You've known Mr. Kolb for seven years?

14 Juror: Yes sir.

15 The Court: Is that a legal matter or are you just
16 personal acquaintance?

17 Juror: Personal acquaintance.

18 The Court: Okay, would that have any impact on your
19 ability to be fair and impartial to both sides in this
20 case?

21 Juror: No sir.

22 The Court: Could you set aside that circumstance and base
23 your verdict solely on the evidence of the law in this
24 case?

25 Juror: Yes sir.

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1 The Court: Alright, thank you ma'am. Anyone else?

2 Alright, ladies and gentlemen, the State claims in this
3 case that the crime of Armed Robbery was committed. That
4 leads to this question, is there anyone on this jury
5 panel or member of your immediate family, as I previously
6 defined as mother, father, sister, brother or child, ever
7 been the victim of or ever been accused of committing a
8 crime of violence? Such as, these are, this is certainly
9 not an all-inclusive list, burglary, armed robbery,
10 murder, criminal sexual conduct, anything of that nature.
11 Have you or any family member ever been a victim of or
12 been accused of committing such an offense? Just simply
13 stand at this time. Alright, if you folks could just form
14 a line over here by Mr. Herriott, raise your hand so they
15 can see you. Alright, your name sir?

16 A: James Griffin.

17 The Court: Alright, come on up Mr. Griffin.

18 {Side Bar}

19 The Court: Alright Mr. Griffin. What's his number?

20 Mr. Campbell: 52

21 The Court: Alright, thank you. That's number 52. Ms.
22 Shanaugh. Number 129.

23 {Side Bar}

24 The Court: Alright, Mr. Richardson? Again Mr. Richardson
25 is number 119.

1 {Side Bar}

2 The Court: Yes sir, your name?

3 Juror: Parker.

4 {Side Bar}

5 The Court: Okay, alright ladies and gentlemen, is there
6 any member of this jury panel who has formed or expressed
7 an opinion about any issue or matter involved in this
8 case. Even if, even if you've been sitting in here this
9 afternoon. Is there anyone on this panel who has formed
10 or expressed any opinion about any issue or matter
11 involved in this case? Is there anyone on this panel who
12 is aware of any biased or prejudice that you might have
13 for or against the State or for or against the Defendant
14 or for or against any of the lawyers or potential
15 witnesses? Is there anyone on the panel who is a member
16 of the grand jury that issued the indictment in this
17 case? Is there anyone on the panel who is a member of or
18 a contributor to any organization that has a primary
19 focus a promotion of law enforcement or the enforcement
20 of victim's rights, and these organizations are, they
21 include, but don't, they certainly aren't limited to
22 Mothers Against Drunk Driving, Students Against Drunk
23 Driving, and Citizens Against Violent Crimes, South
24 Carolina Law Enforcement Officers' Association, State
25 Troopers' Association or any other similar organization.

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1 Are you a member of or a contributor to? Your name please
2 ma'am?

3 A: Vicki Mann.

4 The Court: Alright, Ms. Mann is number 83. Yes ma'am?

5 Well, first of all, which organization is it?

6 A: Mothers Against Drunk Driving.

7 The Court: And you're a member of that?

8 A: Yes sir.

9 The Court: How long have you been a member?

10 A: Several years.

11 The Court: Would that have any impact on your ability to
12 be fair and impartial to both sides of this case?

13 A: No, it wouldn't.

14 The Court: Would you be able to set aside the
15 relationship and base your verdict on the law in this
16 case?

17 A: Yes, I would.

18 The Court: Thank you. Is there anyone on the jury panel
19 who is aware of any reason why you should not serve as a
20 juror in this case, keeping in mind my primary emphasis
21 on your ability to be fair and impartial to both sides.
22 Does anyone know any reason why you should not serve as a
23 juror in this case? Alright, any additional questions
24 from the State?

25 Mr. Gamble: None from the State Your Honor.

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1 The Court: Mr. Murphy?

2 Mr. Murphy: No, Your Honor.

3 The Court: Alright, Mr., Mr. Hill could you come up for
4 just a moment? Lawyers, y'all come on up too.

5 {Side Bar}

6 The Court: Anything else Mr. Gamble and Mr. Murphy?

7 Mr. Gamble: No sir.

8 Mr. Murphy: No sir.

9 The Court: Alright it's going to be five and ten. Both
10 sides agree, y'all want two alternates or one alternate?

11 Mr. Gamble: Fine with one Your Honor.

12 Mr. Murphy: One.

13 The Court: Alright, ladies and gentlemen, we do it a
14 little bit differently in this courtroom since we're a
15 little bit more cramped. If your name is called, simply
16 stand where you are and the lawyers and Mr. Forde can
17 come around to this side of the table if you want to so
18 you don't have to look over your shoulders, if you want
19 to. You don't have to do anything ladies and gentlemen,
20 except stand exactly where you are if your name is
21 called. While they're printing that ladies and gentlemen,
22 I didn't ever introduce myself; my name's Buck James. I'm
23 a Circuit Judge, just like Judge Young who's down the
24 hall. I guess he is, I haven't seen him, but once this
25 morning. He's begun a trial in another case. To my right

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1 is my law clerk, Lauren Felder. I guess Judge Young's
2 clerk was in the courtroom with him too and our law
3 clerks help us with research, scheduling and making sure
4 we're where we're supposed to be when we're supposed to
5 be there. So if she's in and out of the courtroom, it's
6 more noticeable in the small courtroom than it would be
7 in the other one. If you're selected as a juror in this
8 case, you'll be told to report back at a certain time and
9 make sure that when you walk into your jury room, that
10 you eyeball everybody; the bailiffs nine hundred and
11 ninety nine times out of a thousand have you in the right
12 room, but just don't go in the jury room with the other
13 jury. But you'll be on a separate list if you are
14 selected. This particular trial will actually start
15 tomorrow; we'll pick the jury this afternoon and then
16 we'll start the trial in the morning. Is that what we
17 agreed on?

18 Mr. Murphy: Yes sir.

19 Mr. Gamble: Yes sir.

20 The Court: Judge Young probably told you that in criminal
21 court, the lawyers don't know the names that are going to
22 be called; the only ones who know are me and the clerk's
23 office and my law clerk. Alright.

24 Bailiff: You ready Judge?

25 The Court: Yes sir.

1 Bailiff: If you would, when your name is called, just
2 stand where you are and then if you're chosen, bring all
3 your personal belongings with you and come up to the jury
4 box over here. Number 64, Gene Howard. What sayeth the
5 State?

6 Mr. Gamble: Please present the juror.

7 Bailiff: What sayeth the Defense?

8 Mr. Murphy: Please sit this juror.

9 Bailiff: Make your way forward ma'am and have a seat in
10 the jury box. Number 6, Bruce Hartley, Jr. What sayeth
11 the State?

12 Mr. Gamble: Please present the juror.

13 Bailiff: What sayeth the Defense?

14 Mr. Murphy: Please seat the juror.

15 Bailiff: Make your way forward sir. Number 105, Eric
16 Osbourne. What sayeth the State?

17 Mr. Gamble: Please present the juror.

18 Bailiff: What sayeth the Defense?

19 Mr. Murphy: Please seat the juror.

20 Bailiff: Make your way forward sir to the jury box.

21 Number 21, Julia Busbom. What sayeth the State?

22 Mr. Gamble: Please present the juror.

23 Bailiff: What sayeth the Defense?

24 Mr. Murphy: Please seat this jury.

25 Bailiff: Make your way to the jury box please ma'am.

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1 Number 54, Susan Cunttingham. What sayeth the State?

2 Mr. Gamble: Please present the juror.

3 Bailiff: What sayeth Defense?

4 Mr. Murphy: Please seat the juror.

5 Bailiff: Make your way forward ma'am. Number 58, George
6 Hatfield. What sayeth the State?

7 Mr. Gamble: Please present the jury.

8 Bailiff: What sayeth Defense?

9 Mr. Murphy: Please excuse this juror.

10 Bailiff: Please have a seat sir; you've been excused from
11 this trial at this time. Number 23, Thomas Carpenter.

12 What sayeth the State?

13 Mr. Gamble: Please present this juror.

14 Bailiff: What sayeth Defense?

15 Mr. Murphy: Please seat this juror.

16 Bailiff: Make your way forward sir and have a seat in the
17 jury box. Number 149, Sharon Vaughn. What sayeth the
18 State?

19 Mr. Gamble: Please present the juror.

20 Bailiff: What sayeth the Defense?

21 Mr. Murphy: Please seat this juror.

22 Bailiff: Make your way forward ma'am. Number 84, James
23 Martin. What sayeth the State?

24 Mr. Gamble: Please present this juror.

25 Bailiff: What sayeth Defense?

1 Mr. Murphy: Please seat this juror.

2 Bailiff: Make your way forward Mr. Martin. Number 31,

3 Johnny Davis. What sayeth the State?

4 Mr. Gamble: Please present this juror.

5 Bailiff: What sayeth Defense?

6 Mr. Murphy: Please seat this juror.

7 Bailiff: Make your way forward sir. Number 116, Jerry

8 Pritchard. What sayeth the State?

9 Mr. Jackson: 116 Mr. Prince?

10 Bailiff: Yes sir, 116.

11 Mr. Gamble: Please present the juror.

12 Bailiff: What sayeth Defense?

13 Mr. Murphy: Please excuse this juror.

14 Bailiff: Have a seat sir. You're excused from this trial

15 at this time. Number 17, Carol Brown. What sayeth the

16 State?

17 Mr. Gamble: Please excuse this juror from this trial.

18 Bailiff: Have a seat ma'am. You've been excused from this

19 trial at this time. Number 79, Linda Locklear. What

20 sayeth the State?

21 Mr. Gamble: Please present this juror.

22 Bailiff: What sayeth Defense?

23 Mr. Murphy: Please excuse this juror.

24 Bailiff: Have a seat ma'am. You're excused from this

25 trial at this time. Number 119, Jeremy Richardson. What

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1 sayeth the State?

2 Mr. Gamble: Please present the juror.

3 Bailiff: What sayeth the Defense?

4 Mr. Murphy: Please excuse this juror.

5 Bailiff: Have a seat sir. You're excused from this trial
6 at this time. Number 117, Cindy Cole. What sayeth the
7 State?

8 Mr. Gamble: Please present this juror.

9 Bailiff: What sayeth Defense?

10 Mr. Murphy: Please sit, please seat this juror.

11 Bailiff: Make your way forward ma'am. Number 30, Mike
12 Davis. What sayeth the State?

13 Mr. Gamble? Please excuse this juror from this trial.

14 Bailiff: Have a seat sir, you're excused from this trial
15 at this time. Number 157, John Brunson, III. What sayeth
16 the State?

17 Mr. Gamble: Please present this juror.

18 Bailiff: What sayeth Defense?

19 Mr. Murphy: Please seat this juror.

20 Bailiff: Make your way forward sir. Number 125, Gwendolyn
21 Rogerson. What sayeth the State?

22 Mr. Gamble: Please present the juror.

23 Bailiff: What sayeth Defense?

24 Mr. Murphy: Please seat this juror.

25 Bailiff: Make your way forward sir, ma'am. One alternate

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1 Judge? Alternate juror number 126, Deborah Sebastian.

2 What sayeth the State?

3 Mr. Gamble: Please present this juror.

4 Bailiff: What sayeth Defense?

5 Mr. Murphy: Please seat this juror.

6 Bailiff: Make your way forward. Okay, Judge.

7 The Court: Alright, any motions or other matters
8 pertaining to jury selection from the State?

9 Mr. Gamble: Nothing from the State Your Honor.

10 The Court: Defendant?

11 Mr. Murphy: No, Your Honor.

12 The Court: Alright, Mr. Jackson. Ladies and gentlemen who
13 are selected as jurors for the trial of this case, as I
14 indicated earlier, we're going to start this trial
15 tomorrow morning. What, which room will they be going
16 back to? Ladies and gentlemen, the bailiffs will show you
17 where you are supposed to report tomorrow morning at
18 9:30. Before you leave I want to tell you a few things.
19 First of all, you cannot discuss this case at all with
20 anybody, and that includes amongst yourselves, either
21 today or as you gather back in the jury room tomorrow
22 morning. This is more than likely the only thing that the
23 thirteen of you have in common. It is the only thing that
24 you can't talk about; matter of fact, you can't discuss
25 any of the issues, any of the witnesses or any of the

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1 lawyers with anybody. Even with your friends, family, co-
2 workers, whoever else you might encounter. You can't talk
3 about this case with anybody. The reason for that is
4 someone that you talk to may say something in response to
5 what you tell them and that might have an impact on your
6 decision in this case. You'll be taking an oath to try
7 this case in evidence of the law and you'll see and
8 you'll hear all of that right here in this courtroom.
9 Also, I'm required to tell you, by order of the Chief
10 Justice, that you're not supposed to read, listen to or
11 gather any information about this case from any source
12 whatsoever. Whether it be newspaper article, magazine
13 article, television, radio, whatever, you can't, you
14 can't gather any information about it at all. Also, you
15 can't, as I told you, discuss the case with anybody and I
16 truly mean that means anybody. You can't use the
17 computer, cell phone or any other electronic device with
18 communication capabilities at any time during the course
19 of this trial to gather information about this, about
20 this case. You can't use any of those sources to gather
21 any information about any of the lawyers or any of the
22 witnesses or any of the issues in this case and the
23 reason for that, again ladies and gentlemen, I'll tell
24 you this more than once. You will swear an oath to try
25 this case according to the evidence in the law. All of

1 which you will see and hear in this courtroom. Alright,
2 ladies and gentlemen, you are excused until 9:30
3 tomorrow. Mr. Mann will show you down the hall to where
4 your jury room will be and I will see you back tomorrow
5 morning at 9:30.

6 {Jury Exits}

7 The Court: Alright, ladies and gentlemen who were not
8 selected as jurors for the trial of this case, you're
9 excused for the rest of the day. You're to call the
10 number that you have after six this evening. You will
11 hear a recording, you can't call back to the voice that
12 you hear if you hear something you don't like. You simply
13 follow the instructions; the instructions will say
14 perhaps to call back tomorrow maybe between twelve and
15 one. It may tell you to call back tomorrow morning after
16 9:30, it may tell you to come back sometime tomorrow, so
17 the instructions could be any number of things. Simply
18 follow those instructions. If the instructions that you
19 hear aren't clear, you don't understand what you're
20 supposed to do, simply call here tomorrow morning at 8:30
21 and you can talk to someone live and they can give you
22 information more specific than what you may hear, but the
23 recording will be plenty. Alright. Thank you for your
24 patience this afternoon. We appreciate it.

25 The Court: All right. Mr. Gamble and Mr. Murphy, what do

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1 you all want to do first?

2 Mr. Murphy: Your Honor, as we indicated in chambers, the
3 motion to suppress and Jackson v. Deno motion. I would
4 assume we would do the suppression motion first.

5 The Court: Okay, alright. Why don't you give me an idea
6 what the issue is. If you're going to call witnesses and
7 so forth, I don't know if all of the witnesses are ...

8 Mr. Murphy: Your Honor, the, it's our position that the
9 arrest of my client was in violation of the 4th Amendment
10 and that all the evidence therefore, emanating from the
11 arrest, actually to include most of the physical evidence
12 and the confession should be suppressed. It's our
13 position that the arrest was done, both in violation of,
14 well, basically without probable cause and that probable
15 cause was required.

16 The Court: Okay.

17 Mr. Murphy: It's during a stop ...

18 The Court: This is a traffic stop?

19 Mr. Murphy: Yes Your, well, it's not really a traffic
20 stop. I think the evidence will show that there was no,
21 it was a traffic stop in the sense that a car was pulled
22 over. It is not a traffic stop in the sense that a car
23 was pulled over because they violated a traffic
24 ordinance.

25 The Court: Okay, who's going to call witnesses?

1 Mr. Gamble: I believe I am Your Honor.

2 The Court: Alright.

3 Mr. Murphy: Your Honor, we made a, I mean --- my client
4 may testify.

5 The Court: Alright.

6 Mr. Murphy: And then we may have a co-Defendant testify.

7 The Court: Okay, go ahead Mr. Gamble.

8 Mr. Gamble: Thank you Judge. If it please the Court. The
9 State first calls Detective Billy Lyons to the stand.

10 Mr. Murphy: Your Honor, I would request that the law
11 enforcement folks not be present for each other's
12 testimony.

13 The Court: Mr. Gamble?

14 Mr. Gamble: I have no objection to that Your Honor.

15 The Court: Alright, who might they be? All of them or
16 some of them? Or who?

17 Mr. Murphy: All of them.

18 The Court: Okay, if you could step out in the hall out
19 there.

20 Mr. Gamble: Judge, I don't plan on calling Investigator
21 Skinner to the stand. This is his case, he's the
22 investigator on the case that's been called.

23 The Court: If he's the lead investigator, he can stay in
24 here. Mr. Gamble: Yes sir.

25 The Court: Okay.

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1 Bailiff: State your name please.

2 Det. Lyons: William Lyons.

3 Bailiff: Do you solemnly swear or affirm the testimony
4 you give to this Court is the truth, the whole truth and
5 nothing but the truth, so help you God?

6 Det. Lyons: I do.

7 Bailiff: Okay, please state your name and spell your last
8 for the record.

9 Det. Lyons: William Lyons, L-Y-O-N-S.

10 PROFFER DIRECT EXAMINATION OF DET. LYONS BY MR. GAMBLE:

11 Q: Detective Lyons, where do you work?

12 A: Sumter Police Department.

13 Q: And how long have you worked there?

14 A: Since 2004.

15 Q: And were you employed on May 28, 2008?

16 A: I was.

17 Q: And what was your capacity with the Sumter Police
18 Department at that time?

19 A: I was assigned to Criminal Investigations Division as
20 Detective of which I'm currently still assigned.

21 Q: And what all does that involve?

22 A: Investigating criminal cases that may arise from armed
23 robberies, homicides, assaults, aggravated assaults, drug
24 related crimes. Any, basically any violent crime to
25 include some narcotic crimes as it relates to gang or

1 gang involvement.

2 Q: Did you happen to respond to an armed robbery the
3 morning of that date?

4 A: I did. It was about eight, four after eight a.m. that
5 morning, as we were all heading into work we all work the
6 normal hours, the 8:30 to 5:00, are what our normal
7 assigned hours are. I believe around eight, eight ten
8 a.m. a call came out for armed robbery in progress at the
9 Dollar General located at number 5 Alice Drive in the
10 city of Sumter.

11 Q: Did you respond to that location?

12 A: I did.

13 Q: Please tell us what you observed when you got to that
14 location.

15 A I responded to the location. Initially was in the
16 parking lot and then I ended up taking up a post on the
17 parameter, trying to see if we could locate the
18 individual that may have been involved in the robbery.
19 During which information was being given that a powder
20 blue in color, older model Cadillac was seen at the
21 robbery location of the Dollar General just moments
22 before the robbery. It had a forty five day tag on it,
23 unclear on the tag numbers, we weren't able to get tag
24 numbers, but it was a light colored, powder blue
25 Cadillac. A very distinct, you know, don't see very many

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1 of those around town. It was occupied by three black
2 males. It was seen in the parking lot just moments before
3 the robbery and it was seen in the adjacent neighborhood,
4 which would be the, like off the Alice Drive into the
5 Phelps, Mattison Avenue neighborhood. Speeding at highway
6 speed, disregarding a stop sign in just an all-out
7 wreckless manner. That information was given out BOLO as
8 being a vehicle possibly involved in that robbery. Gave
9 out to patrol units and the other detectives that were
10 working the scene that day.

11 Q: And when you say BOLO, what do you mean by that?

12 A: Be on the lookout for. It was given to the units that
13 were working and it was given to, it was also given to on
14 coming personnel throughout the day. Officers that were
15 coming to work that may not have been at work at the time
16 of the robbery occurring. So we provided the information
17 to them in their briefing to be on the lookout for that
18 vehicle. If the vehicle was spotted, we need to stop the
19 vehicle, investigate it, and determine who may be in the
20 vehicle and determine their involvement in the robbery.

21 Q: And the description you gave of the vehicle, would you
22 consider that a unique description of a vehicle?

23 A: Yes, in my mind it would be.

24 Q: And what would make it unique?

25 A: Just that it being the powder blue, baby blue colored

1 Cadillac, older model, forty five day plate. Just it, it,
2 it, for me it's just not something you see riding around
3 the sheets or even in the roads of Sumter on a daily
4 basis.

5 Q: Were you on duty later that day when a stop was made
6 on the vehicle?

7 A: Yes, I was.

8 Q: Do you recall when that stop?

9 A: It was a little after six p.m. It was made by, at that
10 time it was Corporal Rivers, he's now Sergeant Rivers
11 with the Sumter Traffic Division and Officer Heath
12 Gardner as well.

13 Q: And the vehicle that was stopped, did that match the
14 description of that unique vehicle that you just told us
15 about?

16 A: Yes it did. It was a, it was a baby blue, powder blue
17 colored Cadillac with a forty five day temporary tag
18 affixed to the rear of it.

19 Q: Did you have a chance to come into contact with the
20 individuals in that car?

21 A: I did; I made contact with all parties that were
22 involved. There were three individuals in the car to
23 include the Defendant, Mr. Forde who was seated in the
24 back, rear passenger seat as well as the driver and the
25 front seat passenger.

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1 Q: Was Mr. Forde developed as a suspect at that time of
2 the stop?

3 A: He was. Prior to all of this happening and prior to
4 even the robbery that day, there had been several
5 robberies in both our jurisdiction with the Sumter Police
6 Department and with the Sumter County Sheriff's
7 Department for which we both developed a suspect that was
8 to be a tall individual, over six feet tall, medium to
9 light skin complexion and the most distinctive thing
10 about that individual was that he spoke with a Jamaican
11 accent or an accent that resembled that to be Jamaican.

12 Q: Where was Mr. Forde seated in the car?

13 A: He was seated in the rear passenger seat.

14 Q: Did you happen to hear him speak?

15 A: I did and immediately bells went off, you know, bells
16 and whistles went off. Hey, he's someone that matches the
17 description. He's tall, light to medium complexion black
18 male and he's speaking with the accent, so you know, of
19 course immediately we started, I mean we were thinking,
20 okay we really need to narrow it down and see if this was
21 the gentleman that was involved in the robberies.

22 Q: Were any of the individuals taken out of the car at
23 that time?

24 A: Yes sir, they all were.

25 Q: And tell us what happened after they were taken out of

1 the car.

2 A: They were all taken out of the car. They were asked
3 if there were any weapons in the car. The reply was yes,
4 at which time we recovered a revolver and a semi-
5 automatic hand gun from the glove compartment. The
6 revolver that we recovered matched the description of the
7 revolver that we were given from that day's robbery.

8 Q: From earlier that day?

9 A: Yes, the robbery at the Dollar General.

10 Q: Was there any contraband found in the trunk?

11 A: I know there was marijuana recovered. And I believe
12 there was marijuana recovered from Mr. Forde's person as
13 well and I believe one of the other co-Defendants that
14 was as well.

15 Q: At that time was Mr. Forde placed under arrest?

16 A: Yes he was.

17 Q: Was he Mirandized when he was arrested?

18 A: He was taken to the law enforcement center to be
19 Mirandized, given the written waiver that we would
20 normally do in a case where we intend to question someone
21 about their involvement in a crime.

22 Mr. Gamble: Please answer any questions that Mr. Murphy
23 has.

24 CROSS EXAMINATION OF DET. LYONS BY MR. MURPHY:

25 Q: Now the, you arrived at the scene of the parking lot,

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1 did you in particular speak to anybody who saw this
2 vehicle?

3 A: I did speak to one Willie Dantzler.

4 Q: What, what did Willie Dantzler say?

5 A: That he saw a light powdered blue Cadillac in the
6 parking lot just moments before the, the robbery. That
7 there were three black males, that it had temporary tags,
8 but he couldn't get the numbers off the tag.

9 Q: Alright. Is that the only person you spoke to?

10 A: That's the only person that I spoke to.

11 Q: So when you were, you were talking about the
12 uniqueness of the vehicle, the term Cadillac and powder
13 blue, you were referring to Mr. Dantzler's description?

14 A: Not only that, but the descriptions the other officers
15 received as well.

16 Q: How many people described this vehicle?

17 A: Mr. Dantlzer, David Holzbach and another gentlemen by
18 the name of Mr. Nelson.

19 Q: Now these BOLOs are summarized or they are in writing
20 or ...

21 A: Basically just given out over the radio and then when
22 we got our shift briefings, tell our shifts or detectives
23 coming on, we tell them what to look for.

24 Q: Was the vehicle described as, do you know if the
25 vehicle was described in a incident report or anything as

1 slate blue as opposed to powder blue?

2 A: I just believe it was said slate blue, but also
3 somebody said powder blue. It's blue.

4 Q: By blue, you mean?

5 A: Blue and I mean its at someone's discretion as to
6 whether it's slate blue or powder blue.

7 Q: Well, a slate blue car, would that be as unique as a
8 powder blue car?

9 A: I don't know what are we considering slate. And I
10 don't want to draw straws ...

11 Q: But there was some discrepancy about the color of the
12 car?

13 A: Well, there's the uniqueness of it being a late model
14 Cadillac with a forty five day tag. One calls it slate
15 blue, the other calls it powder.

16 Q: Well did everybody say it was a Cadillac?

17 A: Yes sir.

18 Q: Are you familiar with these types of incident reports
19 prepared by the Sumter Police Department?

20 A: I am.

21 Q: That type of report taken in the normal course, would
22 it be in the responsibilities of the Sumter Police
23 Department?

24 A: It's going to depend upon the scene of the crime or
25 whatever. It be written or it may not be written. It's

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1 not something that's required for every crime scene.

2 Q: So, so that document relays, and I think I can be a
3 little bit leading since we are in our motions hearing,
4 but that document relays a summary of a witness contact,
5 correct?

6 A: Yeah, this, this --- do you want me to read it?_

7 Q: Yes.

8 A: It just says that I submit the following with
9 reference to the armed robbery of the Dollar General.
10 Detective Hodge spoke to someone that told him the
11 possible suspect vehicle went down Burnett to Phelps, to
12 Phelps to Liberty. He also stated the vehicle then went
13 towards Second Mill Pond. He said it was occupied by
14 three black males. It's possibly slate blue in color with
15 peeling paint and a forty five day license plate that
16 were bending on the corners, possibly from being wet and
17 dry.

18 Q: It doesn't say anything specifically about a Cadillac
19 though?

20 A: Not in this one.

21 Q: Is there other ones like this that exist?

22 A: I know there's a statement from Mr. Holzbach and I
23 believe there's a statement from Mr. Nelson.

24 Q: Okay. Now the individual, one of the things you
25 testified to was that an individual, later that day, the

1 Dollar General incident occurred at what time?

2 A: I believe the dispatch time was around 8:10 a.m. I'd
3 have to look at the report to be more precise, but it was
4 sometime after 8 a.m.

5 Q: And the stop of the vehicle occurred at six p.m.,
6 correct?

7 A: Yes, sir.

8 Q: Now I believe what you testified to, and I might be
9 wrong, is that the individuals in the vehicle, one of
10 them being my client, fit the description of the
11 individual who was involved in a Dollar General robbery?

12 A: He fit the description of a suspect we had developed
13 from multiple robberies not only in ...

14 Q: Not only the Dollar General?

15 A: Well, for us, we were, we were thinking that
16 everything was tied together; the way the robberies, the
17 way the robberies were happening. So, obviously we were
18 looking at all of the robberies that were occurring in
19 that time frame that they were being committed by the
20 same individual or group of individuals. So, yes, I was
21 looking at them as a suspect, plus I was looking at the
22 car for the suspect, for the suspect to be in the car
23 from that morning. So you kind of had two different
24 reasons as to why we were looking at the car. We had
25 belief that that car or that, that individual may be

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1 responsible for other robberies, but we also believed
2 that morning, that powder blue Cadillac was involved with
3 that robbery, which led to the stop of it later that day.
4 Of course making contact with Mr. Forde, bells and
5 whistles started going off. Okay, he's a tall, black
6 male, he's of light to medium skin complexion, and he has
7 the specific, distinct dialect that's not normal.

8 Q: But the description of Mr. Forde, a tall person with a
9 distinct dialect was not the description of the
10 perpetrator at the Dollar General robbery was it?

11 A: I have to look at the lady's statement; I don't
12 believe she included it in her, in her statement. I don't
13 think it's included on the incident report either.

14 Q: Let's see if this refreshes your recollection.

15 Mr. Murphy: For i.d. that's great, thank you.

16 (Defendant's Exhibit 2 for identification purposes)

17 The Court: Number what?

18 Mr. Murphy: Two.

19 The Court: I.d.?

20 Mr. Murphy: Yes sir.

21 A: It says it's a black male, thirty to forty, no
22 ethnicity. In other words, not Hispanic. Weight 170,
23 height approximately 5'10, black hair, brown eyes,
24 wearing plaid shirt and unknown colored pants.

25 Q: And so it doesn't fit the description of my client

1 correct or that you have in your mind, 6'4 , tall person
2 with the Jamaican accent?

3 A: At the time, I mean, that's a shade taller or, I mean
4 a shade shorter than what we had been given on our other
5 robberies.

6 Q: Sure. Now at what point did you follow Officers
7 Rivers and Gardner, at what point were you, did you
8 become involved in the ...

9 A: After they got the car stopped, we showed up.

10 Q: Okay, so it was already stopped?

11 A: Yes.

12 Q: Okay, how many police officers were there?

13 A: I know I was there, I know Rivers and Gardner were
14 there. I believe Lieutenant Rabon was there and I'm not
15 sure there may have been more.

16 Q: Okay, so at least half a dozen?

17 A: I'd say probably at least six.

18 Q: Any other blue light cars there?

19 A: All of our, all of our cars have blue lights.

20 Q: Okay, so about how many vehicles were there?

21 A: Maybe, I know, Corporal Rivers drove a Camera at the
22 time. I know Officer Gardner was in his car, so that's
23 at least two and I know that I was in a car and
24 Lieutenant Rabon was in a car so that gives you at least
25 four but I can't say for the rest of them.

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1 Q: Sure. And how many, were the individuals still in the
2 vehicle when you arrived or were they out of the
3 vehicles?

4 A: It was at the point that they were starting to get
5 them out of the vehicle as we drove up and tried to get
6 them out, it was about the same time.

7 Q: Okay, now at the point that my client got out of the
8 car you said he spoke and, and that's kind of when the
9 clue went off. This guy has an accent which fits the
10 description.

11 A: He's somebody that we need to, we need to look at for
12 our other stuff as well as we're looking at him for the
13 robbery this morning, because the vehicle matching, but
14 now I also need to draw back and look, this could be the
15 person responsible for the previous robberies.

16 Q: Okay, what you were saying was he was wondering what
17 was going on, correct?

18 A: I don't know his exact words, but he did speak. I'm
19 sure he asked, you know, I'm sure he asked what was going
20 on.

21 Q: Do you recall him asking for an attorney at that
22 point?

23 A: I do not.

24 Q: Do you know that he didn't ask for an attorney at that
25 point?

1 A: I don't believe he asked me for an attorney at that
2 point.

3 Q: Okay, do you recall him asking anybody for an
4 attorney?

5 A: Not to my knowledge.

6 Q: Did the officers have their weapons drawn?

7 A: No, not when we were taking them out of the car, no.
8 It's a little hard to take them out of a car with your
9 weapon drawn.

10 Q: Well, what I'm asking is did some of the officers have
11 their weapons drawn and then other ones were taking the
12 individuals out of the car?

13 A: No, that wouldn't be a safe manner to do so with
14 officers being in cross fire.

15 Q: There were no weapons drawn that you saw?

16 A: Not that I saw.

17 Q: Okay, clearly the vehicle couldn't have left though? I
18 mean these individuals were being taken out of the car
19 and being arrested, correct?

20 A: Well, yeah, I mean, they could have left at some point
21 if they had decided ...

22 Q: But not at the point you were there?

23 A: Once they were out of the car they could have still
24 tried to leave, I mean I'm not going to say they
25 couldn't.

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1 Q: Now, at the point they got out of the vehicles, were
2 they then handcuffed?

3 A: Yes they were.

4 Q: Were they separated?

5 A: Yeah. I'm sure they were. I'm sure they were put into
6 three different cars.

7 Q: And then at that point a search was conducted of the
8 vehicle?

9 A: By then we were told were there were weapons in the
10 car.

11 Q: So the search was conducted before or after, were you
12 aware there were weapons in the car before or after you
13 got to the scene?

14 A: I was aware once I got to the scene. The question was
15 asked, 'Do you have any weapons in the car?' and the
16 answer was yes, in the glove box. They were removed from
17 the car. We, you know, for the safety of the officers,
18 again we were looking at the car as being involved in an
19 armed robbery from that morning, they admitted there was
20 weapons in the car in the glove box, so we removed them
21 from the vehicle, detained them so that we could recovery
22 the weapons.

23 Q: Did the vehicle have peeling paint?

24 A: It did on the, if memory serves me correctly, on the
25 back and then top it was like the paint was coming off

1 the top. Either it was peeling, paint on the vinyl. I'm
2 not real certain but there was definitely something
3 peeling off the top of it.

4 Q: Okay. Did the vehicle have a plate?

5 A: It did have a 45-day plate.

6 Q: Did you have any role in any questioning of my client
7 after he was transported to ...

8 A: I think I was in, tried to speak to him at one point
9 but I really wasn't involved in his overall questioning.
10 I think I stepped in, but after we spoke to some co-
11 Defendants to try to pass on information as far as what
12 we got. Now I know I spoke to him out at the jail when we
13 asked, when I asked for consent for DNA samples and he
14 told me no. I do remember that part.

15 Q: Did you have any role in the investigation of his
16 wife?

17 A: Other than we conducted the search warrant out at the
18 residence. As far as any charges that she got as a result
19 of that, or prior charges, no, I did not.

20 Q: Did you ever communicate to my client anything
21 regarding his wife and her charges to your recollection?

22 A: I don't know. I don't know if I did or not.

23 Mr. Murphy: I have nothing further. Thank you.

24 The Court: Any redirect?

25 Mr. Gamble: Your Honor I have no further questions at

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1 this time for Detective Lyons.

2 The Court: You can step down. Thank you sir.

3 Detective Lyons: Thank you.

4 The Court: Okay, Mr. Gamble?

5 Mr. Gamble: Thank you Judge. Your Honor the State next
6 calls David Holzbach.

7 The Court: Come on up Mr. Holzbach.

8 Bailiff: Place your left hand on the Bible and raise your
9 right hand. State your name please.

10 Mr. Holzdach: David Holzdach.

11 Bailiff: Do you solemnly swear or affirm the testimony
12 you give this Court to be the truth, the whole truth and
13 nothing but the truth, so help you God?

14 Mr. Holzdach: Yes sir, I do.

15 Bailiff: State your name and spell your last for the
16 record.

17 Mr. Holzbach: David Holzbach. H-O-L-Z-B-A-C-H.

18 DIRECT EXAMINATION OF MR. HOLZBACH BY MR. GAMBLE:

19 Q: Mr. Holzbach, do you live in Sumter?

20 A: Yes.

21 Q: How long have you lived here?

22 A: My whole life. Since January 1, 1969.

23 Q: Were you in Sumter on May 28 of 2008?

24 A: Yes sir, I was.

25 Q: Were you in Sumter on May 28, 2008 around eight

1 o'clock in the morning?

2 A: Yes.

3 Q: Without giving too much away, are you familiar with
4 this map?

5 A: Yes sir. I am.

6 Q: And what is this a map of?

7 A: This is a map of the Heathlywood section of Sumter and
8 also the Second Mill Pond section of Sumter. By Wise
9 Drive, Alice Drive and Liberty Street.

10 Q: Were you in a vehicle on May 28, 2008?

11 A: Yes sir I was.

12 Q: Where were you in that vehicle?

13 A: I was making a right turn off of Mattison Avenue onto
14 Phelps Street and as I made my right turn a Cadillac, at
15 a very, I would say at a high rate of speed came off of
16 Dorn Street, making a left hand turn onto Phelps, right
17 in front of me. I followed that automobile all the way
18 down to the end of Phelps at Liberty Street here. The car
19 disregarded the stop sign and made a right turn onto
20 Liberty Street. I made a left turn onto Liberty Street
21 and proceeded up Liberty until I got to the intersection
22 and I saw the police cars there at Persimmon Hill at the
23 Dollar General. I immediately called dispatch, 911 with
24 my cell phone and informed the lady that there was a car,
25 a late model, slate colored, four door Cadillac with

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1 three black males with a forty-five day tag, could not
2 read the numbers, because the tag appeared to be wet
3 several times, was faded. Very light colored paint. I
4 was the one who gave the description of the slate blue
5 color. The car also had a considerable amount of rust
6 around it, just from old paint, peeling paint. Told her I
7 did not know if the car was involved in what appeared to
8 be a crime scene there at Persimmon Hill but I gave her a
9 description of the car and told her the car had two black
10 males in the front seat and one black male in the rear.
11 The car made a right turn on Liberty Street headed
12 towards the Wedgefield Road, Pinewood Road area and told
13 dispatch that if they had an officer in that area they
14 might, you know, might want to proceed and be on the
15 lookout for that car, because it just appeared to me that
16 after, you know, just disregarding two stop signs and
17 seeing the crime scene there at Persimmon Hill that the
18 car might have been involved.

19 Q: And did you speak with any law enforcement later that
20 day?

21 A: One law enforcement officer called me later that day,
22 took a statement and asked me would I be, you know,
23 available at a later date should I be needed. I said you
24 know, I would, gave him my number and that was that.

25 Q: Do you recall who you spoke to?

1 A: I believe it was, the last name was Hodge I believe.

2 Q: He was with the police department?

3 A: Yes.

4 Q: Now, if you could, just give one more description of
5 the vehicle that you saw on the road?

6 A: It was a four door older model Cadillac. Slate blue in
7 color. Very faded paint, considerable amount of rust
8 around it with a forty five day tag. I got close enough
9 to the car before it made the right turn onto Liberty
10 Street to see that it was a forty five day tag, but the
11 numbers were faded and I couldn't read them. The tag was
12 very wrinkled, again from possibly being wet several
13 times and drying. There were three black males in the
14 car, two in the front and one in the rear. Again,
15 disregarding two stop signs. I mean what really got my
16 notice is when I made that right turn onto Phelps off of
17 Mattison. The car turned in front of me, it just made
18 that hard lefthand turn, it proceeded at a high rate of
19 speed down Phelps, got to Liberty Street, again
20 disregarded a stop sign and made of right turn onto
21 Liberty.

22 Q: And is that the description of the vehicle you gave to
23 law enforcement?

24 A: Yes sir it is.

25 Q: And is that the description that you gave to who you

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1 thought was Detective Hodge.

2 A: Yes sir.

3 Mr. Gamble: No more questions at this time Your Honor.

4 Please answer any questions Mr. Murphy may have.

5 CROSS EXAMINATION OF MR. HOLZBACH BY MR. MURPHY:

6 Q: Did you give a written statement or a oral statement?

7 A: I gave a oral statement.

8 Q: You're sure you told Detective Hodge Cadillac?

9 A: Yes sir. I am.

10 Q: That's important.

11 A: Yes sir. It was a Cadillac. I know my automobiles.

12 It was a Cadillac. There's no mistaking that car.

13 Q: Alright, thank you. I have no further questions.

14 The Court: Any redirect?

15 Mr. Gamble: No redirect Your Honor.

16 The Court: Alright, you can step down sir. Thank you. Is

17 Mr. Holzbach needed this afternoon?

18 Mr. Gamble: I don't need him any further Your Honor.

19 The Court: Okay, Mr. Murphy? Mr. Murphy?

20 Mr. Murphy: Just a moment.

21 The Court: Okay.

22 Mr. Murphy: I, no Your Honor.

23 The Court: Okay, is he still under subpoena for a
24 different time?

25 Mr. Gamble: Yes he is Your Honor.

1 The Court: You're fine to go today. Mr. Gamble can tell
2 you exactly when to come back.

3 Mr. Holzbach: Okay. Thank you.

4 The Court: Yes sir. Alright, Mr. Hodge, come up and be
5 sworn.

6 Bailiff: Place your left hand on the Bible and raise your
7 right hand. State your name please.

8 Mr. Hodge: Curtis Hodge.

9 Bailiff: Do you solemnly swear or affirm the testimony
10 you give this Court to be the truth, the whole truth and
11 nothing but the truth, so help you God?

12 Mr. Hodge: I do.

13 Bailiff: Okay, state your name and spell your last for
14 the record please.

15 Mr. Hodge: Curtis Hodge. H-O-D-G-E.

16 DIRECT EXAMINATION OF MR. HODGE BY MR. GAMBLE:

17 Q: Detective Hodge, where do you work?

18 A: Sumter Police Department.

19 Q: How long have you worked there?

20 A: About eight years.

21 Q: Were you employed by the Sumter Police Department on
22 May 28, 2008?

23 A: Yes sir.

24 Q: Did you happen, at that time, to have any involvement
25 in a armed robbery that occurred that morning?

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1 A: Yes sir, I did.

2 Q: Could you explain your involvement in that?

3 A: I believe that morning I was on my way to work and
4 heard the call come out over the radio for an armed
5 robbery at the Dollar General, Alice Drive at Liberty
6 Street. I responded directly to the scene and assisted, I
7 believe, Detective Duggan with processing and
8 interviewing the victim.

9 Q: Did you happen to get a description of any vehicle
10 that was in the vicinity at the armed robbery?

11 A: Yes, while I was on scene dispatch actually gave a
12 call out indicating that a vehicle was seen in the area
13 and leaving the scene. It was a blue, powder blue, with
14 some rust on it possibly, older model, older model
15 vehicle and gave a name of a witness.

16 Q: Did you happen to speak with David Holzbach that day?

17 A: I did.

18 Q: And what did he tell you?

19 A: He basically told me that he was driving down, I
20 believe it was Phelps Street when another vehicle ran a
21 stop sign, turned in front of him, almost hit him. That
22 was when he called dispatch to let them know what had
23 happened, because the vehicle took off. He saw the
24 vehicle go down to the end where it runs into Liberty
25 Street and make the right hand turn going out towards

1 Wedgefield Road and stated that it never stopped.

2 Q: And did he give you a description of that vehicle?

3 A: He did. He also said it was a baby, or powder blue
4 colored, older model vehicle.

5 Q: Do you remember which model vehicle it was?

6 A: I believe later we found it was a Cadillac.

7 Q: Were you involved in the traffic stop later that day?

8 A: Yes I was.

9 Q: Please tell the Court about your involvement in that.

10 A: Through our investigation during the day, we had
11 narrowed it down, basically, to a finer point what type
12 of vehicle we were actually dealing with and gave out a
13 description to the oncoming shift and they were told to
14 be on the lookout for a vehicle matching that
15 description. Before we were able to leave work that day,
16 I believe one of the officers called in that he had a
17 visual on that, in fact that vehicle and where it was
18 located at that time. We advised him to follow the
19 vehicle until we could catch up and assist with the stop.

20 Q: Did you assist with a stop?

21 A: Yes I did.

22 Q: And what was your assistance in that?

23 A: Well, basically we had a marked unit pull the vehicle
24 over and approach the vehicle to basically do an
25 investigatory stop at that time. I believe, due to the

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1 fact that we felt weapons were involved, the driver and
2 passengers were asked to exit the vehicle. They were
3 frisked for, obviously officer safety reasons and I
4 believe one was asked, Mr. Forde was asked if he had
5 anything on him, which he, at that time, said he did.

6 Q: And was an arrest made on the individuals in the car
7 at that time?

8 A: Yes sir.

9 Q: Do you remember anything specific about the individual
10 in the rear seat of that car?

11 A: I believe Mr. Forde was in the passenger rear of the
12 car.

13 Q: And was Mr. Forde arrested that night?

14 A: Yes he was.

15 Mr. Gamble: Please answer any questions Mr. Murphy may
16 have.

17 A: Yes sir.

18 CROSS EXAMINATION OF DETECTIVE HODGE BY MR. MURPHY:

19 Q: So when Mr. Holzbach spoke to you, he described a
20 powder or light blue older type vehicle correct?

21 A: Yes sir.

22 Q: And it was later on that, through further
23 investigation that something was identified as, as a
24 Cadillac?

25 A: Yes sir.

1 Q: So it wasn't Mr. Holzbach?

2 A: No sir.

3 Q: Okay. Now the description, I mean were you actually
4 present when the oncoming shift was briefed? Did you do
5 the briefing or?

6 A: I did not do the briefing for oncoming shift, but I
7 know that they were briefed.

8 Q: Okay.

9 A: About what we had had earlier in the day.

10 Q: So you don't know for certain exactly what they were
11 briefed?

12 A: No sir.

13 Q: How are they normally briefed? By just oral word of
14 mouth or is there a document people use or what?

15 A: Generally through dispatch. Dispatch would come in
16 because they have all of the information that was
17 obtained from earlier in the day. They would give an
18 initial run down of what happened and then they, what we
19 have is an on-call detective; somebody who works two to
20 ten would generally be the one that would go in there and
21 pass on any specific information involving a case that we
22 were working.

23 Q: Do you know who the person was that was the on call
24 detective?

25 A: I don't recall at this time.

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1 Q: Now were you following the marked car when --- the
2 shift at six o'clock?

3 A: Yes sir.

4 Q: Were you following the marked car when it was pulled
5 over?

6 A: Yes sir.

7 Q: And who, who, what other law enforcement was available
8 there?

9 A: There was numerous law enforcement on the scene by the
10 time we actually stopped the vehicle.

11 Q: Uh-huh. About how many vehicles? Law enforcement
12 vehicles?

13 A: Two or three. I know it was a marked vehicle, an
14 unmarked vehicle and possibly another marked vehicle
15 there. There may have been another detective that arrived
16 after the fact, but the initial time that we stopped the
17 car it was around three, I believe.

18 Q: Okay and you, how was the car stopped? The marked
19 vehicle turned on its blue lights?

20 A: Yes sir.

21 Q: Okay, during all of this, the suspects' vehicle hadn't
22 committed any traffic violations or anything; it was
23 pulled over specifically because you all were there and
24 ready to pull it over, correct?

25 A: To my knowledge, yeah. We weren't behind the car the

1 entire time.

2 Q: Uh-huh.

3 A: The officer that first observed the vehicle was
4 obviously behind it for a greater period of time than we
5 were.

6 Q: Uh-huh.

7 A: We actually, when we got there and as soon as we
8 arrived, to where people were following the car, then we
9 had them go ahead and initiate the stop.

10 Q: Okay. So it was based on security reasons, not traffic
11 violation? I mean sometimes stops are based on traffic
12 violations?

13 A: Yes sir. From our end it was, yes sir.

14 Q: It was security. Now all the police officers got out
15 of the cars at the same time or how did that happen?

16 A: Probably so.

17 Q: Okay.

18 A: That's standard, yes sir.

19 Q: Alright, now understanding you were all concerned
20 about your safety, how do you, what's the procedure and
21 what happened that night in regard to all of your
22 weapons? Were the weapons drawn or not drawn? I mean, at
23 what point, do you recall?

24 A: I don't rightly recall. I don't, I don't remember any
25 weapons from our end being drawn. I think we approached

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1 it cautiously, but that's normal.

2 Q: Now the individuals in the vehicle were told to get
3 out of the vehicle, correct?

4 A: Yes.

5 Q: Okay and then they were handcuffed?

6 A: Yes.

7 Q: Okay, and they were separated, correct?

8 A: Yes.

9 Q: And frisked. Did you frisk anybody?

10 A: No sir.

11 Q: Alright, now let's get back to the Dollar General.

12 A: Alright.

13 Q: You indicated that you spoke to the victim in the
14 Dollar General?

15 A: Yes

16 Q: Okay, who was that? Do you remember if it was a
17 female?

18 A: It was a female, yes sir.

19 Q: The person who worked at the Dollar General?

20 A: Yes sir.

21 Q: Okay, what was her description of the perpetrator?

22 A: She gave me a tall, black male. The only thing that
23 she could really tell me at that point in time was that
24 he spoke with some sort of an accent.

25 Q: Okay.

1 A: She couldn't tell me what kind of accent or anything
2 like that, but she did say that it was a tall, black male
3 that spoke with an accent.

4 Q: Okay, did you, did you put that information down
5 anywhere, in any reports?

6 A: I may have actually put it in my notes that day.

7 Q: Okay, let me show you what's been marked.

8 A: Okay.

9 Q: Defense exhibit two for i.d. Is that the standard
10 police report?

11 A: Yes sir.

12 Q: The description of the perpetrator is what 5'10, 170.

13 A: Yes.

14 Q: That's not, I mean I like to think 5'10 is tall, but
15 that's not really a tall person.

16 A: I'm 5'10 and I like to consider myself tall.

17 Q: I mean comparing the description that had been going
18 on of a tall armed robbery for lack of a better word, all
19 the descriptions were tall. 6'2, somewhere around there,
20 correct?

21 A: At that time I don't know if I had a whole lot of
22 information about any other armed robberies, so I
23 couldn't speak to those.

24 Q: Okay, I mean there's nothing in here about a Jamaican
25 accent either is there?

1 A: No sir.

2 Q: When you say in reference to the Jamaican accent might
3 be in your notes?

4 A: Possibly. I don't believe she identified it as a
5 Jamaican accent, she just said an accent.

6 Q: Okay. Were you involved at all in the questioning of
7 my client?

8 A: No sir.

9 Q: Okay.

10 Mr. Murphy: I have no further questions. Thank you.

11 The Court: Re-direct?

12 Mr. Gamble: Nothing on re-direct Your Honor.

13 The Court: Okay Mr. Hodge you can step down. Okay Mr.
14 Gamble. How many more do you think you'll have?

15 Mr. Gamble: Two more officers Your Honor.

16 The Court: After Mr. Gardner?

17 Mr. Gamble: No sir. Mr. Gardner and one more.

18 The Court: Alright.

19 Bailiff: Place your left hand on the Bible and raise your
20 right hand please. State your name please.

21 Mr. Gardner: Heath Gardner.

22 Bailiff: Do you solemnly swear or affirm that the
23 testimony you give this Court will be the truth, the
24 whole truth and nothing but the truth, so help you God?

25 Mr. Gardner: I do.

1 Bailiff: State your name and spell your last for the
2 record.

3 Mr. Garnder: Heath Gardner. G-A-R-D-N-E-R.

4 DIRECT EXAMINATION OF MR. GARDNER BY MR. GAMBLE:

5 Q: Officer Gardner, where do you work?

6 A: Sumter Police Department.

7 Q: How long have you worked there?

8 A: Three and a half years.

9 Q: Were you employed by Sumter Police Department on May
10 28, 2008?

11 A: I was.

12 Q: Were you on patrol that day?

13 A: I was.

14 Q: As part of your patrol duties are you responsible for
15 identifying certain vehicles if they come over dispatch?

16 A: Yes sir.

17 Q: How often does that occur on a shift?

18 A: Maybe, approximately once.

19 Q: Okay on that date, when were you working? Do you
20 recall?

21 A: We were working nights.

22 Q: When does the night shift start?

23 A: Six pm.

24 Q: Did you happen to make a traffic stop on a vehicle
25 that night?

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1 A: I did not.

2 Q: Did you happen to get a description on a vehicle that
3 night?

4 A: I did.

5 Q: Do you recall the description of the vehicle that
6 night?

7 A: A light blue in color Cadillac with duct tape on the
8 top of the vinyl roof.

9 Q: Were there any other specifics given about that
10 vehicle?

11 A: A forty five day plate on the vehicle.

12 Q: Did you have a chance to observe that vehicle?

13 A: I did.

14 Q: Did you have a chance to observe whether there were
15 any individuals in that vehicle?

16 A: Not myself, no sir.

17 Q: What was your involvement, if any, in pursuing that
18 vehicle?

19 A: I drove the vehicle, I stayed back on a road until I
20 could get unmarked units to observe them as they left.
21 After the vehicle left I pursued by following on roads
22 that were parallel to the road that they were traveling
23 on.

24 Q: Do you recall which roads those were?

25 A: I stayed on Bultman Drive until I got to Wise Drive

1 and made a left of Wise and then right onto Thelma.

2 Q: Do you recall where that vehicle was pulled over?

3 A: Thelma at, at Herbert Circle.

4 Q: Where was your patrol car in relation to when the
5 vehicle was pulled over?

6 A: I was at the, the back of the pack.

7 Q: Did you happen to make contact with any of the
8 vehicles, with any individuals inside that vehicle?

9 A: I did.

10 Q: And what did you observe when you made contact with
11 them?

12 A: I made contact with Mr. Forde who was in the back seat
13 of the vehicle.

14 Q: Was Mr. Forde arrested that night?

15 A: He was.

16 Q: Do you recall why Mr. Forde was arrested that night?

17 A: Mr. Forde told that he had marijuana in his pocket,
18 which led to checking him before, when he got out of the
19 vehicle he did have two baggies of marijuana, which was
20 about twenty-eight grams.

21 Q: How were you given the description of that vehicle
22 that night?

23 A: We were given the description of the vehicle during a
24 briefing where Detective Lyons came in and said the
25 vehicle was BOLO-ed out after somebody had seen it

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1 earlier in the day.

2 Q: What do you mean by BOLO-ed out?

3 A: He had gotten a description from somebody that was a
4 witness after there was an armed robbery earlier in the
5 morning.

6 Q: And what does BOLO stand for?

7 A: Be on the lookout.

8 Q: In your experience as a law enforcement officer, did
9 the vehicle you saw that night match the description of
10 the vehicle that was given out over the BOLO?

11 A: Yes' sir.

12 Q: And that description was of a ...

13 A: Light blue in color, Cadillac with forty five day tags
14 with duct tape on the side to hold the vinyl.

15 Mr. Gamble: Please answer any questions that Mr. Murphy
16 may have.

17 CROSS EXAMINATION OF MR. GARDNER BY MR. MURPHY:

18 Q: Good afternoon, how are you?

19 A: Doing well.

20 Q: When you, going back to the briefing, you came on duty
21 at what time?

22 A: We came, we come on about 5:45.

23 Q: And it was Detective Lyons that did the briefing?

24 A: Yes and when he came in for our briefing.

25 Q: Okay and he's the one that gave you the description of

1 the vehicle?

2 A: Yes sir.

3 Q: Okay, did he give you any description of the suspect?

4 A: I don't recall that. The only thing I do recall is the
5 description of the vehicle being given out.

6 Q: Okay. Now you, you observed the vehicle, you call it
7 in and then you driving parallel when the vehicle takes
8 off. Did you observe people getting into the vehicle?

9 A: I did not.

10 Q: Okay, you just took off basically and were listening
11 on the radio as to what's occurring?

12 A: I actually parked my vehicle, they were on Miller
13 Road. I pulled down in a culdesac and waited on them to
14 leave after everybody was behind me kind of followed
15 unmarked. I pulled out then and as they went across the
16 right. I made a right hand turn on to Broad Street.

17 Q: Was it, was it your vehicle? You were in a marked car?

18 A: Yes sir.

19 Q: Was it your vehicle that actually turned on the blue
20 lights to have the car stop?

21 A: No sir.

22 Q: Okay, whose vehicle was that?

23 A: That would be, at the time it was Corporal Rivers.

24 Q: How many, so how many vehicle, police vehicles were
25 there? About three or four?

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1 A: Yes sir, give or take.

2 Q: And when you observed my client, was he in the car or
3 out of the car?

4 A: He was in the car.

5 Q: He was in the car. Did you tell him to get out of the
6 car?

7 A: I did not.

8 Q: Who told him to get out of the car?

9 A: I have no idea, sir.

10 Q: Okay, was he handcuffed as soon as he got out of the
11 car?

12 A: No sir.

13 Q: Okay. You indicated that he said something to you. Do
14 you recall what he said?

15 A: That, well I asked him if he had anything on him and
16 he told me that he did have marijuana on him.

17 Q: Okay, did he ask you anything like what's going on or
18 anything like that?

19 A: He could have possibly. I don't remember that.

20 Q: Alright. Did you escort him away from the car?

21 A: Sir?

22 Q: Did you escort him away from the car?

23 A: I didn't.

24 Q: Did you see any officers with their weapons drawn or
25 anything?

1 A: I don't recall.

2 Mr. Murphy: I have no further questions. Thank you.

3 The Court: Mr. Gamble?

4 Mr. Gamble: Just a few questions Your Honor.

5 RE-DIRECT EXAMINATION OF OFFICER GARDNER BY MR. GAMBLE:

6 Q: Officer Gardner, do you recall where the marijuana was
7 on Mr. Forde's person?

8 A: In the left front pocket.

9 Q: And in your experience as a law enforcement officer,
10 does that possession of the suspect marijuana give you
11 probable cause to make an arrest?

12 A: Yes sir.

13 Mr. Gamble: No more questions Your Honor.

14 Mr. Murphy: No more questions

15 The Court: You can step down Mr. Gardner

16 Mr. Gamble: Lieutenant Rivers.

17 Bailiff: Raise your right hand and state your name
18 please.

19 A: Anthony Rivers.

20 Bailiff: Do you solemnly swear or affirm that the
21 testimony you give this Court today to be the truth, the
22 whole truth and nothing but the truth, so help you God?

23 A: I do.

24 Bailiff: State your name and spell your last for the
25 record.

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1 Mr. Rivers: Anthony Rivers. Last named spelled R-I-V-E-R-
2 S.

3 DIRECT EXAMINATION OF MR. RIVERS BY MR. GAMBLE:

4 Q: Sergeant Rivers, where do you work?

5 A: Sumter Police Department.

6 Q: How long have you worked there?

7 A: About six years.

8 Q: Were you employed by the Sumter Police Department on
9 May 28, 2008?

10 A: Yes.

11 Q: Were you on patrol that day?

12 A: Yes.

13 Q: What time did you come on patrol that day?

14 A: I don't recall that particular day.

15 Q: As part of your duties as patrol officer or an officer
16 with the Sumter Police Department, do you ever make
17 traffic stops on vehicles?

18 A: Yes I do.

19 Q: Are those ever made because of a description given
20 about a vehicle over dispatch, if you're given a
21 description of a vehicle ...

22 A: Yes.

23 Q: ... over dispatch?

24 A: Yes.

25 Q: Did you happen to make a, excuse me, did you happen to

1 be given a description of a vehicle that day that was
2 suspected in an armed robbery?

3 A: Yes.

4 Q: Do you recall what the description of the vehicle was?

5 A: Yes. The description that we were given was an older
6 model, powder blue Cadillac.

7 Q: Was there any other description given of the vehicle
8 at the time?

9 A: Not that I can recall.

10 Q: Did you happen to become involved in a traffic stop on
11 a vehicle matching that description?

12 A: Yes sir.

13 Q: Do you recall where that was?

14 A: On Thelma Drive.

15 Q: If you could, point on this map, do you recognize
16 where the map is?

17 A: Yes, sir. Right there between Alice Drive and
18 Guignard Drive.

19 Mr. Gamble: I'm sorry, Your Honor, this is marked as
20 State's exhibit one for identification. If you can point
21 at on the map where you made the stop on the vehicle.

22 A: Yes sir.

23 Q: The approximate area.

24 A: This is Thelma Drive right here.

25 Q: Okay and that vehicle was suspected in an armed

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1 robbery that occurred where?

2 A: At the Dollar General at the corner of Alice and
3 Liberty.

4 Q: Can you point out on here, if you see it, where that
5 location is?

6 A: That would be right there.

7 Q: Whereabouts, just as an estimate, how far is the
8 location of where you made the stop from the location of
9 the suspected vehicle from the incident location?

10 A: I would estimate two miles, straight shot.

11 Q: Do you recall if there were any that night?

12 A: Yes, there were three individuals in the vehicle.

13 Q: Do you recall seeing Mr. Forde, who's seated over
14 here, in that vehicle?

15 A: I don't recall seeing him in the vehicle. I know that
16 he was seated in the backseat, and I saw him after he was
17 removed from the vehicle.

18 Q: Do you recall any other actions that night that
19 involved Mr. Forde?

20 A: Nothing else that was done by me, no sir.

21 Q: Did you make an arrest on Mr. Forde?

22 A: No sir.

23 Q: Do you recall if there was any contraband or weapons
24 in the vehicle?

25 A: There was marijuana that came from the driver's pocket

1 and I recall hearing that there was a gun in the glove
2 compartment, but I didn't ever see it myself.

3 Q: In your experience as a law enforcement officer, if
4 you make a stop on a vehicle and an individual has
5 marijuana on them, is that probable cause to arrest
6 everyone in the vehicle?

7 A: No.

8 Q: It's not?

9 A: Not if it's on their particular person, not
10 necessarily, no.

11 Q: Do you recall if Mr. Forde had any marijuana on him?

12 A: I do not recall.

13 Q: What was your personal involvement with Mr. Forde's
14 arrest that night?

15 A: None.

16 Mr. Gamble: Answer any questions Mr. Murphy might have.

17 CROSS EXAMINATION OF MR. RIVERS BY MR. MURPHY:

18 Q: Do you recall any specific description of the
19 perpetrator of the robbery that you were given before you
20 went out on patrol?

21 A: No sir.

22 Q: Now you, it was your vehicle that actually pulled the
23 vehicle over?

24 A: That's correct.

25 Q: Prior, prior to pulling the vehicle over, the suspect

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1 vehicle had not committed a traffic violation or pulled
2 over specifically to ascertain whether or not it was
3 involved in this Dollar General robbery, correct?

4 A: Yes sir.

5 Q: And there were about half a dozen police officers
6 including yourself?

7 A: I would say, yes sir.

8 Q: Do you have a camera on your vehicle?

9 A: It was there, but it was not operational at that time.

10 Mr. Murphy: I have no further questions.

11 The Court: Do you have any re-direct?

12 Mr. Gamble: Nothing on re-direct Your Honor.

13 The Court: Alright, thank you sir, you can step down. Any
14 other witnesses on this issue?

15 Mr. Gamble: Not on behalf of the State Your Honor.

16 The Court: Any other witnesses Mr. Murphy?

17 Mr. Murphy: No Your Honor.

18 The Court: Okay, do y'all want to argue this point now or
19 do you want to move forward on to the other issue?

20 Mr. Murphy: I'm prepared Your Honor.

21 Mr. Gamble: That's fine Your Honor.

22 The Court: Okay.

23 Mr. Murphy: Your Honor, obviously, what I'd like to focus
24 on here is a couple of points regarding the Terry case,
25 it's prodigy and then how this doesn't really fit into

1 the, the, the Terry Stop. Very specifically, what we're
2 contending is that at the time my clients, my client was
3 stopped, the question for the Court is whether or not
4 there was probable cause to arrest them, based on the
5 information that those officers had at the time.

6 The Court: Okay, and you're disputing the arrest of them
7 for any reason?

8 Mr. Murphy: Yes Your Honor.

9 The Court: You're not talking about stopping them?

10 Mr. Murphy: Well, what I'm saying is that this would
11 have, there could have been a basis for an investigatory
12 stop, but that was not done in this case. What was done
13 in this, in a typical investigatory stop is when, first
14 of all, as the, as the cases point out now, I'll site
15 some cases for you. A typical investigatory stop involves
16 a situation where a car it either violates some traffic
17 law and therefore it's reasonable per se or a situation
18 as could be the case in this situation, where it's
19 suspected some sort of criminal activity and it's pulled
20 over at that time. Obviously, a traffic stop, I think all
21 of the officers testified there was no violation of any
22 traffic code, so the reasonable per se type of analysis
23 is not applicable in this case.

24 The Court: At least then there wasn't; there was earlier
25 perhaps.

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1 Mr. Murphy: Well perhaps earlier. Not ten hours later
2 okay? So, in order for the stop, the first thing that has
3 to be analyzed in an investigatory stop under Terry is
4 the stop reasonable under the, under the circumstances
5 and it is our position that the actions of the police
6 officers in this case were unreasonable for the following
7 reasons and I would like to site or direct the Courts
8 attention to the State v. Pichardo case. Pichardo reads
9 367SC84. It's a 2007 case. I'm sorry, 2006 case
10 The Court: State vs. Pichardo?
11 Mr. Murphy: Pichardo, P-I-C-H-A-R-D-O.
12 The Court: Okay.
13 Mr. Murphy: ... Reyes. In some of the factors you look
14 at when you're talking about the reasonableness of the
15 stop, the first thing you got to look at is, okay, we're
16 talking about a vehicle stop under Terry. We're not
17 talking about stopping a vehicle for an investigation.
18 There are some protections. The Fourth Amendment used
19 that as a seizure, but the stop has to be reasonable
20 under the circumstances and what our position is, is that
21 the information the police officers had at the time
22 regarding the description of the vehicle was not specific
23 enough; that's first. I think we demonstrated by some of
24 the witnesses that it's not even clear that it was
25 consistent. The second thing is that there was the

1 identification of the individuals who were involved at
2 the Dollar General robbery didn't match my client, that's
3 second, and then the overriding factor in this case is
4 the ten hour situation. Most of the cases that, that I've
5 read and we're talking about were the Court upholds a
6 stop, we're talking about a description and a close nexus
7 in time between the criminal activity and the, and the
8 pull over. This is a situation where we talk about ten
9 whole hours. Okay? Ten hours of, which we would contend
10 makes the initial report rather stale. Also, and quite
11 frankly, rather irrelevant. We're talking about the
12 location of a vehicle ten hours later. The fact that it
13 was within two, two, two miles or so of the robbery site,
14 you know, should be given less ... So the description
15 itself is vague, the source of the information is vague
16 and so, in assessing what was reasonable under the
17 circumstances in this type of stop, we would contend that
18 what was, that, the officers, what was unreasonable was
19 an immediate arrest of the individuals in that vehicle
20 for armed robbery, which is, we would contend, exactly
21 what happened. These individuals, unlike a typical Terry
22 Stop, where a situation where an officer goes up, a
23 person might act nervous or he smells marijuana or
24 something like that leads to further types of clues going
25 off. In this situation, these individuals were pulled

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1 over, a detective indicated, I forget which one, they
2 were pulled over specifically to detain them because they
3 were suspected of this armed robbery and they clearly
4 were, shortly thereafter placed in handcuffs, separated
5 and arrested.

6 The Court: I haven't heard yet what the arrest was for. I
7 think Mr. Lyons or one of the officers testified that
8 there was no arrest on Thelma Drive, but that they were
9 transported to the law enforcement center, at which time
10 they were arrested. Is there anything in the record right
11 now what they were arrested for?

12 Mr. Gamble: Your Honor, Detective Lyons testified that
13 Mr. Forde matched the description of the person that they
14 were looking for in connection to other armed robberies.

15 The Court: But was he arrested for armed robbery at the
16 law enforcement center or marijuana or what? Well,
17 there's nothing in the record now.

18 Mr. Murphy: I believe there is testimony that he was
19 arrested for marijuana.

20 The Court: Okay, alright.

21 Mr. Murphy: We would contend the arrest is a, is a legal
22 determination and the fact of the matter is they were
23 pulled over because ...

24 The Court: They were in custody.

25 Mr. Murphy: They were in custody; they were in effect for

1 the armed robbery. Therefore, your analysis, I would
2 suggest, or we suggest, your analysis should be on
3 whether or not there is sufficient evidence to establish
4 probable cause for an arrest for armed robbery based on
5 the description of the vehicle, the ten hour lapse of
6 time. We would contend there's not probable cause, or
7 there was not probable cause to arrest my client then and
8 there. This wasn't, the investigatory stop in effect was
9 an investigatory stop in name only. In fact, when that
10 vehicle was stopped, those individuals were arrested.
11 The Court: Alright now, do you, do you contend that they
12 had no probable cause to even stop the vehicle?
13 Mr. Murphy: I don't think you need probable cause to
14 stop the vehicle. You need, you need some sort of
15 reasonable suspicion to stop the vehicle and I, and I,
16 they had that.
17 The Court: Okay, alright, you've got the powder blue,
18 whatever color, old Cadillac and you've got three black
19 males in the vehicle. What in the perfect world would the
20 officers have done on Thelma Drive at that time? What
21 would they have done?
22 Mr. Murphy: Well, they do either one of two things; they
23 either stop them and get a warrant for their arrest,
24 because they believe they have probable cause. They
25 arrested them for armed robbery right then and there

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1 because they believed they had probable cause or in your
2 typical scenario, they go up, they ask for registration,
3 they ask what they're doing and then they assess whether
4 or not there, if they should arrest, whether, whether
5 they fit the description of the perpetrator. The
6 description of the perpetrator is a 5'10 guy that is
7 forty years old. Nobody in that vehicle fit that
8 description.

9 The Court: Well, am I missing something? Isn't the
10 testimony that Mr. Forde was arrested for possession of
11 marijuana? I haven't heard anything about ...

12 Mr. Murphy: What I'm saying ...

13 The Court: ... anybody being arrested for armed robbery
14 ...

15 Mr. Murphy: What I'm saying ...

16 The Court: ... here on the stand.

17 Mr. Murphy: Their arrest, they were in, what I'm saying
18 is, arrest is determined by the facts and circumstances
19 by reality. It's not when an officer says ...

20 The Court: I understand that.

21 Mr. Murphy: What we're saying is ...

22 The Court: One of the, one of the officers said do you
23 got anything on you and he said I got some marijuana.

24 Mr. Murphy: Right.

25 The Court: Can't he be, or whatever you call it, can't he

1 be arrested then?

2 Mr. Murphy: Well yeah, but we're saying they would never
3 have got that far had they conducted the appropriate
4 Terry Stop, because there was nothing in that vehicle,
5 there was nothing in that vehicle that would have led
6 them to conclude further that my client was involved in
7 the Dollar General robbery. He didn't fit the description
8 of the perpetrator of that robbery.

9 The Court: I guess my question is have we even gotten
10 there yet? Didn't all that happen later? You've got the
11 description of the car driving on Phelps in that manner
12 that was described.

13 Mr. Murphy: Right.

14 The Court: You've got the witness calling and saying hey
15 saw some police cars at Dollar General and this car was
16 driving erratically and there might be a connection, you
17 might want to check that out. Ten hours later, different
18 officer sees the same car, he hangs back, drives on
19 parallel road until somebody comes up and pulls that car
20 over.

21 Mr. Murphy: And it's our position that at the point they
22 stop that vehicle, they in effect arrested our client, my
23 client for armed robbery. That there really was no
24 investigatory stop. And, therefore ...

25 The Court: They didn't arrest and detain for any specific

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1 thing, they just detained him.

2 Mr. Murphy: See that's where I disagree Your Honor. It's
3 our position that he was detained for armed robbery from
4 that moment forward. That the arrest for marijuana or
5 whatever ...

6 The Court: So, you're saying they should have just sat
7 there until they got a warrant to do what?

8 Mr. Murphy: Well, I mean, either, either, no. I mean what
9 I'm saying is either sit there and get a warrant if you
10 believe that they are being arrested for armed robbery.
11 They didn't arrest him for armed robbery. Or you
12 conduct, what you should conduct in the Terry situation
13 is ask them for their identification, remember these
14 individuals have not been, didn't commit any traffic
15 violations. You ask them who they are, you look in, you
16 see do they, do they fit the description of the
17 individuals of the individual who was involved in the, as
18 the perpetrator, none of them do and then you make, and
19 then at that point you back off. I mean they either have
20 enough to arrest my client at the point of detention or
21 they don't and it's our position is that they didn't.

22 The Court: Alright, Mr. Gamble?

23 Mr. Gamble: Judge I think Mr. Murphy contended that they
24 had reasonable suspicion to stop the car, is that
25 correct?

1 The Court: Well I, I, I think, I think he says the two
2 descriptions, ten hours apart, there's apparently enough
3 to at least stop the vehicle. He's just saying that in
4 effect they didn't have a slam dunk --- whole thing by
5 arresting them or whatever the description you used all
6 of those individuals for armed robbery and there was no
7 cause to dot that time.

8 Mr. Gamble: Your Honor, I'm looking at State v. Leslie.
9 Your Honor, I don't have the specific site, but the
10 opinion number is 2676. It's from 97, it's a State of
11 South Carolina Court of Appeals case. It deals with
12 almost identical circumstances in that in this case, an
13 individual witness gave a description, in this case it
14 was a brown colored Honda baring paper tags of someone
15 who had driven by and pointed a gun. The police made a
16 stop on the vehicle later and the individual in that
17 vehicle had crack cocaine on him and contended that the
18 crack cocaine had came about out of the stop, was the
19 result of a illegal stop and a illegal search and
20 seizure, but Judge we'd argue that, that all of this
21 taken in sequence that the police did have reasonable
22 suspicion to stop the vehicle because of the description
23 that was given by individuals who witnessed the vehicle
24 in the area. Your Honor, the police, there was testimony
25 that a vehicle matching that description was seen, was

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1 pulled over. There were individuals in the vehicle, at
2 that time, the State would argue that no person was
3 identified as the person who robbed the Dollar General
4 ten hours before. They had pulled that over for, they
5 stopped based upon their reasonable suspicion had the,
6 Your Honor, we'd argue that, and I believe there was also
7 testimony that the individuals were asked out of the car
8 and there was some frisks done on individuals and Your
9 Honor, that would come about as, just a second Your
10 Honor. If there was a reasonable caution, excuse me, if
11 there was a reason to believe that there were some
12 weapons in the vehicle they could have those individuals
13 exit the vehicle, because this car was seen leaving the
14 scene of an armed robbery, which is a violent crime,
15 there is some reasonable suspicion that there could be
16 weapons in this vehicle at the time. Also, Your Honor, I
17 believe there's testimony that when asked if he had
18 anything on his person, Mr. Forde did state that he had
19 marijuana on him and was arrested for that marijuana. So
20 the State would contend that Mr. Forde was arrested for
21 the marijuana at that time. The State could book Mr.
22 Forde, could take Mr. Forde to law enforcement center and
23 arrest him on that and talk to him about whatever they
24 want to talk to him about. The stop at that time was made
25 on a vehicle that matched the description of a vehicle

1 that the police reasonably believed or had reasonable
2 suspicion to believe that it was involved in some kind of
3 criminal activity, which was the armed robbery. However,
4 Mr. Forde, of course, had the marijuana on him and that
5 was what the initial arrest was made for, excuse me, what
6 the initial detention was made for. The, I believe the
7 armed robbery charge didn't come about until after Mr.
8 Forde had been transported to the law enforcement center
9 with his co-Defendants and had spoken with Mr. Forde,
10 with Mr. Forde at some time that evening. That's when,
11 and I believe also an AFIS match came back to match Mr.
12 Forde and that's where the armed robbery ...

13 The Court: That's not in evidence right now.

14 Mr. Gamble: Yes Your Honor, but we, we just argue that
15 there was reasonable suspicion to pull the vehicle over,
16 that Mr. Forde was an occupant of that vehicle that was
17 believed to be involved in criminal activity, he did
18 state to an officer that he did have contraband in his,
19 on his person at that time; they had reason to detain him
20 at that time for that offense. The fact later that it
21 came, that, that Mr. Forde was charged with the armed
22 robbery, we believe is just another, it's almost another
23 incident in itself.

24 The Court: That was one of the things I was wondering. I
25 didn't hear anything about the case that's going to be

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1 tried, at least from the witness stand. I don't know any
2 of the factual matter, I haven't heard any testimony of
3 ... I guess the way I'm hearing this is, I want everybody
4 to understand this is the first time I've ever heard
5 this. The way I'm hearing it now is ... I don't have any
6 idea what y'all are talking about insofar as the Dollar
7 General and the Food Lion, except y'all told me earlier
8 today that they have something to do with each other.
9 Mr. Murphy: The nexus will be the confession Your Honor,
10 which will be, which was from his arrest. Which was from
11 his arrest.
12 The Court: Alright. Mr. Murphy, I thought the Pichardo
13 case had something to do with the search on the vehicle.
14 First let me ask you this, do you have any response to
15 what Mr. Gamble said?
16 Mr. Murphy: No, the other point I'd, I'd reiterate is the
17 case he sites, most of the cases are dealing with a
18 situation where there is a relatively short period of
19 time between the car being viewed by police officers and
20 the crime. In this situation, we have a ten hour
21 difference. And that's, that's number one; secondly, it's
22 again, it's our position the arrest, in effect, occurs at
23 the time they pulled the car over. There really wasn't an
24 investigatory stop in this case. They call it that, but,
25 but, but actually ...

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1 The Court: I think you'd have a pretty strong p
2 he didn't have any marijuana on him and they j
3 him down town.

4 Mr. Murphy: Well, I would contend that he was actually
5 arrested before then. I mean it's our position that, that
6 the investigatory stop was an investigatory stop in name
7 only. The testimony of the officers, again, this is sort
8 of, you're going to make this decision, but it seems
9 clear from the testimony of the officers that that car
10 was stopped specifically because of the Dollar, it was
11 suspected at the Dollar General robbery ...

12 The Court: No doubt about it.

13 Mr. Murphy: Those individuals were handcuffed immediately
14 and ordered out of the car, handcuffed immediately and
15 separated for armed robbery. I mean it, it, it, and then
16 transported. Now I understand we don't get, so, so, so
17 therefore the question is did they have probable cause to
18 arrest those individuals at that time. In other words,
19 there is no, the arrest occurred immediately; that's
20 basically what I'm saying. The facts show that the arrest
21 for armed robbery occurred immediately. The question for
22 this court ...

23 The Court: After the verification that he was in the car
24 with the ...

25 Mr. Murphy: Exactly.

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1 The Court: That were otherwise in that vehicle ten hours
2 before.

3 Mr. Murphy: Exactly. And it's our position that, that
4 probable cause for an arrest is insufficient based on the
5 ten hours, based on what we would contend isn't a clear
6 description of the vehicle there was some discrepancy
7 about the color and, and the make. I mean there were some
8 discrepancies on the stand where the witness says one
9 thing and identified it as a Cadillac, the officer says
10 well, no, actually he didn't and then the, the fourth
11 thing would be the discrepancy between the identity of
12 the description of the actual perpetrator at the Dollar
13 General and the individuals in the vehicle. So, the
14 question for the Court, in this case, we would suggest is
15 was there probable cause to arrest my client for armed
16 robbery at the time that car was pulled over. There,
17 there really was no investigatory stop. It's an
18 investigatory in name only, not in legal reality.

19 The Court: Alright, let's do Jackson versus Deno. Do you
20 have your witnesses here for that?

21 Mr. Gamble : Just a second Your Honor.

22 The Court: Melissa are you ready? Do you need a break?

23 Court Reporter: I'm fine Judge.

24 The Court: Okay.

25 Mr. Gamble: Thank you Judge. The State will first call

1 Detective Irene Culick to the stand.

2 Bailiff: Do you solemnly swear or affirm the testimony
3 you give this Court will be the truth, the whole truth
4 and nothing but the truth, so help you God?

5 Ms. Culick: I do.

6 The Court: You have one witness on this?

7 Mr. Gamble: At least two, maybe three Your Honor.

8 The Court: How, how long is this going to take? I'm just
9 asking, I'm not looking for short.

10 Mr. Gamble: I'm going over my questions, that's it; I'm
11 not going in depth in anything any more than I need to.

12 The Court: Alright, have a seat. Thank you.

13 Bailiff: State your name and spell your last for the
14 record.

15 Ms. Culick: Irene Culick. C-U-L-I-C-K.

16 DIRECT EXAMINATION OF MS. CULICK BY MR. GAMBLE:

17 Q: Ms. Culick, where do you work?

18 A: The Sumter Police Department?

19 Q: And how long have you worked there?

20 A: A little over twelve years now.

21 Q: So were you employed by the Sumter Police Department
22 on May the 28, 2008?

23 A: I was.

24 Q: Did you, are you familiar with what Miranda Warnings
25 are?

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1 A: Yes.

2 Q: And what are those?

3 A: Those are the rights that we give Defendants when
4 we're questioning them. When they are in custody in
5 connection with a crime.

6 Q: Do you typically use a pre-printed Miranda form or
7 oral warnings?

8 A: We use both, whatever we have on hand. We do have
9 printed waiver of rights is what we call it.

10 Q: Is it usually your practice to Mirandize someone
11 suspected of a crime before you talk with them?

12 A: Yes sir.

13 Q: And why do you do that?

14 A: Just so they will be advised of their rights and if
15 they want to talk to us and let them know they are a
16 suspect in case that they may admit to something that
17 they've done, just so that they will know their rights
18 ahead of time, in case they don't want to talk with us.

19 Q: Did you help to investigate an armed robbery or
20 multiple armed robberies that occurred on or about May
21 28, 2008?

22 A: Yes, I did.

23 Q: And how did you become involved in that case?

24 A: On May 28th, 2008 we had an armed robbery in the city,
25 at the Dollar General which is on Alice Drive, the corner

1 of Alice and Wesmark. Later we had a description of the
2 vehicle that left the area with several males in it. That
3 evening I left work and then I got a call from the
4 Lieutenant, Lt. Rabon who stated that they had the
5 suspect vehicle stopped and that they had three males
6 that needed to be interviewed and she asked me if I could
7 help, so I went to the law enforcement center to help
8 with that.

9 Q: Was a suspect developed based on your investigation or
10 your involvement in that incident?

11 A: This was another detective's case, it was assigned to
12 another detective, but yes, the interviews were based on
13 the suspect's involvement in the armed robbery to the
14 Dollar General. We had also had a couple of other armed
15 robberies in the city and I helped process scenes and
16 helped detectives with. I don't know if you want to get
17 into all of that, but this night in particular I was
18 there to help interview in reference to the armed robbery
19 that happened at the Dollar General.

20 Mr. Gamble: Just a second, Your Honor.

21 The Court: Alright.

22 Q: Was the Defendant here today identified as a suspect
23 in any of those armed robberies?

24 A: Yes he was.

25 Q: Did you happen to talk with Mr. Forde on the evening

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1 of the 28th?

2 A: I did.

3 Q: I want to show you what's been marked for
4 identification as State's number two. Are you familiar
5 with what that is?

6 A: Yes sir.

7 Q: And what is that?

8 A: This is our Sumter Police Department interview form.
9 That's what we consider our waiver of rights. This is
10 what we read if we have somebody at the station and we
11 have one of these available, this is what we use to make
12 sure they understand what their rights are and if they
13 want to talk to us.

14 Q: And how do you, do you have the individuals that
15 you're speaking to sign their initials on those forms?

16 A: I do. What I do is I tell them I'm going to go ahead
17 and read their rights to them and I turn the form so it's
18 facing them and then I tell if they can read just follow
19 along with me. If they can't, then I'll go slow and I'll,
20 you know, just move my hand as I'm reading going along,
21 and read it to everybody and I read it to Mr. Forde that
22 night. I told him he had the right to remain silent.
23 Anything you say can be used against you in court, you
24 have the right to talk to a lawyer, and I went through
25 everything on here and dated it and time and when I asked

1 him if he wanted to talk, he stated at that time that he
2 thought he might want to call, he said he had some prior
3 drug charges and he had John Clark representing him, I
4 believe it was on drug charges and that he would like to
5 call him, so he stated that he wanted to call his
6 attorney John Clark, so I wrote that on his waiver and I
7 left the interview room at that time.

8 Q: Was there anyone else with you at that time?

9 A: Yes.

10 Q: Who was that?

11 A: Lt. Rabon.

12 Q: Did, at that time, did, in your experience as a law
13 enforcement officer, had Mr. Forde invoked his right to
14 an attorney?

15 Mr. Murphy: Objection, irrelevant as to what her opinion
16 is.

17 The Court: What was the question again?

18 Mr. Gamble: I asked if she thought that Mr. Forde had
19 invoked his right to an attorney.

20 The Court: I'll let her answer. Didn't she just say that
21 he said he wanted call John Clark?

22 Mr. Gamble: Yes Your Honor.

23 The Court: Alright, go ahead. You can answer the
24 question.

25 Q: Did you cease interviewing him at that point?

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1 A: I did. Lt. Rabon left the room to get the phonebook so
2 he could look up the number so that he could call and
3 sometimes attorneys will come over and talk with us or to
4 them advising of whether they should talk or not, but I
5 left the room and I moved on to another interview with a
6 co-defendant of his and actually developed the same with
7 that co-defendant and typing that statement up for that
8 co-defendant.

9 Q: At the time that you were talking to Mr. Forde that
10 night, did he seem to be intoxicated by drugs or alcohol?

11 A: No.

12 Q: Was his speech coherent?

13 A: Yes sir.

14 Q: Did he complain of any tiredness or anything to you?

15 A: Not to me. I talked to him just briefly, told him who
16 I was and why I was there, read his rights and then I
17 left. I passed by the interview room, taking the other
18 co-defendant at one point and never spoke to him or
19 talked to him again.

20 Q: Did you happen to ...

21 A: That day, that night, excuse me.

22 Q: Do you, I'm sorry, do you know whether Mr. Forde
23 remained at the law enforcement center that night or was
24 transported elsewhere?

25 A: I think he was, he was at the law enforcement center

1 for a while. You will have to talk to Lt. Rabon to tell
2 you times because my focus was the co-defendant after
3 that initial statement he gave me earlier. I didn't talk
4 with him or deal with him anymore that night.

5 Q: Did you have any contact with Mr. Forde at a later
6 date?

7 A: I did. Two days later I was at the jail serving
8 warrants. That would have been on the 30th of May. I had
9 to go out to the jail for a bond hearing and that's when
10 another detective, Lyons, he asked me if I would serve
11 the warrants for him on Mr. Forde. I told him that I
12 would. After I got to the jail and saw Mr. Forde, the
13 correctional officer placed him into a little room that
14 they have outside of the pod. I told him that I was there
15 with his warrants, I read him his warrants, I handed them
16 to him, served him and as I was leaving, Mr. Forde asked
17 me if I would talk to him about the charges.

18 Q: Do you remember specifically what he said to you?

19 A: Yes. He said, he said detective, he said how many of
20 these do you have me on and I said, well, what do you
21 mean? And he said, how many of these and he starts
22 spreading his warrants out, how many of these do you
23 really have me on? And I said, well, we have you on all
24 of them or there wouldn't be enough probable cause for a
25 judge to sign these warrants on you. I said, but if

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1 you're asking which cases are stronger than others, then
2 I started going through them, looking at his warrants and
3 I told him, you know, you've got witnesses, co-
4 defendants, you've got fingerprints and we just went
5 through case by case and I explained to him this one, you
6 know where you got your fingerprints and this evidence
7 and you can, there's video, and you can be tried on this
8 one first and then you can be tried on another one. And
9 we talked about the strikes that there are and that's
10 when he asked me if I would talk to him some more.
11 Q: And did you, did you re-Mirandize Mr. Forde at that
12 time?

13 A: I did. I didn't have a waiver with me. I wasn't
14 prepared to, I wasn't going there to interview him, so I
15 went to my car and got out the file and there was a
16 waiver in the file that he had already signed, not this
17 one from the night that I was talking to him but after I
18 left out of the room he wanted to talk to Lt. Rabon, I
19 guess he, I don't want to guess, I don't know why he
20 decided to talk to her. I don't know if it's because he
21 talked to his attorney and he told him or if he couldn't
22 get in touch with him, I don't know that. But I know he
23 had signed a waiver and that was in the file, so I took
24 that waiver out and I used that to re-Mirandize him and
25 then I signed it at the bottom and had him to sign it.

1 Q: Okay, I'm going to show you what's been marked for
2 identification as State's 3. Is that the form that you
3 just spoke of?

4 A: Yes.

5 Q: So you went back through the Miranda Warnings with Mr.
6 Forde at that time?

7 A: That's correct. I went back through them again and I
8 dated them at the bottom, the date it was, which was May
9 30th and he signed and dated it also. He wrote the wrong
10 date to start with and he drew a line through it and put
11 his initials above it and put the correct date beside it.

12 Q: And at that time did he seem as though he was
13 intoxicated by drugs or alcohol?

14 A: No.

15 Q: Was his speech coherent at that time?

16 A: Yes.

17 Q: Did he appear to understand his rights on that Miranda
18 form?

19 A: He did. He understood them and he talked, we talked
20 for a long time. We talked about his family, we talked
21 about where he came from, he talked about his sisters.
22 Yeah, we had a nice conversation. He's nice to talk to.
23 He didn't appear intoxicated or under the influence of
24 any thing.

25 Q: Did anyone witness him signing that form re-

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1 Mirandizing him?

2 A: No, it was just me and him in the room at that time.

3 Later, during our interview, Lt. Rabon came in, because

4 she wasn't in for this initial part, when I told him,

5 when I went back outside the room one time, she was out

6 there and I told him that she was in the hallway and I

7 asked him if it was okay for her to come in and he said

8 yes, that he had liked her and that it was fine, she

9 could come in there while we were talking.

10 Q: So, after re-Mirandizing him, did he invoke his right
11 to remain silent?

12 A: No. He even told me about the one he didn't do, that
13 he had, there were warrants on that he was charged with.

14 Q: And he didn't ask for an attorney to be present at
15 that time?

16 A: No, he didn't.

17 Q: And he agreed? Did he agree to answer your questions
18 or give you a statement without an attorney being there?

19 A: He did.

20 Q: And did you receive a statement from Mr. Forde?

21 A: Well, I wrote as he talked. He didn't want to sign, he
22 did sign one statement. The statement went to Richland
23 County in reference to their robbery at Food Lion, but he
24 was kind of reluctant about signing. He said, he would
25 talk to me, he would let me write word for word, as I was

1 writing and then I asked him if he wanted to sign and he
2 said he'd sign the one from out of town and I said okay,
3 that was fine.

4 Q: So you made a transcript by hand ...

5 A: Right.

6 Q: ... of his statement. Did you promise him anything in
7 return for the statement?

8 A: No, I did not.

9 Q: To the best of your knowledge, was Mr. Forde's
10 statement given freely and voluntarily to you?

11 A: Oh yes, yes it was.

12 Q: Let me show you what's been marked for identification
13 as State's number 4. Do you recognize that?

14 A: Yes.

15 Q: And what is that?

16 A: This is my interview with Jason Forde. We went through
17 ...

18 Q: What date, please?

19 A: Oh, I'm sorry. This is May 30th, 2008.

20 Q: Okay.

21 A: And we went through all of his warrants and we talked
22 about each case and then I put them in order and then I
23 started writing what happened on each case that he was
24 involved with in reference to the robberies.

25 Q: Is there, you signed the edge of that statement, is

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1 that correct?

2 A: I did.

3 Q: On each page?

4 A: Correct.

5 Q: And why did you do that?

6 A: Just because, just to show that I wrote these. That
7 this is in my handwriting, what he told me, I wrote and I
8 was actually going to have him sign them but he didn't
9 want to sign. He just had to give me the information and
10 I told him not to sign it, that he didn't have to.

11 Q: Did anyone else witness that statement?

12 A: Lt. Rabon.

13 Q: She was in the room?

14 A: That was in there. She was in the room. She didn't
15 sign her name, but she was in the room.

16 Mr. Gamble: Judge, of course, if the statement was to
17 come in as evidence, I would have the officer
18 specifically talk about the statement he gave in
19 reference to the Food Lion armed robbery for the
20 indictment that we've called. At this time I'd like to
21 ask Detective Culick to read that part of the statement.
22 I don't think it's necessary to read the whole statement.

23 The Court: Alright, go ahead.

24 A: Alright.

25 The Court: That's State's number 4?

1 Mr. Gamble: Yes sir.

2 A: Before I start, I put I, Jason Forde want to talk
3 about what I've done. I've been advised of my rights
4 again by Detective Culick and I want to talk. And this is
5 going to be the last one that we talked about and it says
6 on March 6, 2008, Food Lion at 5700 Broad Street, he's
7 telling me it's not the same guy, it was a different
8 friend. In reference to that he's talking about the
9 driver of the vehicle because there was some other armed
10 robberies and he's saying it was a different person. He
11 said he can't remember what gun, he said possibly the
12 same gun, he's talking about using a revolver in some
13 others or said he had a high point, said he wasn't sure
14 in this robbery, since it's two months prior. He said it
15 was late at night, I got dropped off near Statesburg and
16 I walked to the Food Lion. He stated he walked in and
17 walked to the back, used the bathroom, he walked back up
18 front, asked the cashier where beer was. He said the
19 store was a little packed, so I was trying to kill time.
20 Left beer at counter, went to the back and grabbed a
21 soda. Probably the one you got the print off of. Walked
22 up to the cashier and asked her very nicely to open the
23 safe. Then she turned around and said I don't know the
24 combination to the safe, asked who knows the combination.
25 She told me the manager. I walked over and got the

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1 manager. I had the gun in and out of my pocket. I told
2 the manager to go open the safe. She dropped the keys and
3 we had to go back and get them. So she opened the safe
4 and gave me all the money. I think I had a camo backpack
5 that I put the money in, no, a blue backpack. I left and
6 went out the store and got in the truck. We went around
7 to was 26. We went by Delaine's school and back to the
8 right on 261 and threw the clothes out the window. It was
9 a grey hoodie and blue sweat pants. I got eighteen
10 hundred dollars exactly. We split the money and got nine
11 hundred dollars. This was my first one.

12 Q: And again for the record, your second time talking
13 with Mr. Forde, he asked to talk with you specifically?
14 He asked to speak with you specifically about these
15 charges?

16 A: Yes.

17 Q: And ...

18 A: I mean he didn't call the law office. I was there
19 served him and after I served him he asked me if he could
20 talk to me about these charges. That's when he started
21 which ones do you have me on and I told him which ones
22 were strongest in my opinion and which ones I felt like
23 the Solicitor's office would call first due to the
24 evidence.

25 Mr. Gamble: Judge, of course in the trial, I would move

1 that these be entered as evidence.

2 The Court: Alright.

3 A: I also talked to him again on, I don't know if ...

4 The Court: Any statement that's going to come up in the
5 trial I'm going to need to hear about now.

6 Q: Did you ever hear any other statements from Mr. Forde?

7 A: After I got all these, we only had three armed
8 robberies in the City, so I got with the County on these
9 armed robberies, because the Food Lion is their armed
10 robbery, not my jurisdiction and I gave them copies of
11 this, what he told me. Of course I talked to Richland and
12 Dominick West, who's an investigator with the County. I
13 went back to the jail with him and talked to Mr. Forde
14 and Mr. Forde again waived his rights and I introduced
15 them and then I went through the statements. Again, in
16 front of Dominick West since he's the county investigator
17 that was going to be working on some of these and I think
18 he had a case with Mr. Forde that Mr. Forde was saying I
19 didn't do and you know, I just was telling him, look he's
20 confessing to all these and from out of town. I believe
21 him when he says I didn't do this one and so he went back
22 over these robberies with Dominick West ...

23 The Court: Did he go back over the Food Lion facts?

24 A: Yes, he went back over the Food Lion facts and then
25 some questions Dominick had specific to those cases, you

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1 know he asked him, that I didn't know about and he told
2 us where some clothes were and that's why we went, after
3 we left the jail we were able to locate and recover some
4 clothes that Mr. Forde told us about where they were. He
5 also gave consent for DNA.

6 Q: But he just gave a verbal statement to Detective West?
7 To Investigator West?

8 A: Yes. His was verbal. Everything here was in writing
9 and that's it.

10 Q: But you witnessed him waiving his rights to Detective,
11 excuse me, Investigator West?

12 A: Yes. I might have signed, I'm not sure if signed or
13 not but I did.

14 Q: I'm going to show you what's been marked for
15 identification as State's exhibit five. Is that the form
16 that you witnessed for Investigator West.

17 A: Yes and that was on the 6th of June. That's when we
18 went back to talk to him. Mr. Forde said he felt more
19 comfortable with a female. He grew up with a lot of
20 sisters and he felt comfortable talking to me.

21 Mr. Gamble: That's all the questions I have. Please
22 answer any questions from Mr. Murphy.

23 The Court: Mr. Murphy.

24 CROSS EXAMINATION OF DET. CULICK BY MR. MURPHY:

25 Q: So there's really no question in your mind that at the

1 night of the incident, he did invoke his right to
2 counsel?

3 A: Correct.

4 Q: Okay, now when you came back two days later, did you
5 ask him at that point are you represented by Mr. Clark or
6 did you bring Mr. Clark up at all?

7 A: I didn't.

8 Q: Why not?

9 A: I was just there to serve warrants. I wasn't there to
10 question him or ask him if he wanted to talk. When he
11 asked me about the cases and I answered the question, I
12 wasn't expecting him to say I want to tell you about it.
13 I wasn't expecting that. So no, I didn't, I didn't say
14 anything about him.

15 Q: But you did share with him the information in your
16 opinion regarding the strengths and weaknesses of the
17 charges against him?

18 A: I did.

19 Q: Okay, and, and at no point did you clarify his legal
20 representation at that point?

21 A: No, no I wasn't asking him for any information. He was
22 asking me, so no I didn't, no sir I didn't say anything
23 about do you have an attorney, do you have ...

24 Q: And at that point you were aware that he was may have
25 been implicated in what, five robberies, three, or ...

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1 A: I know he was ...

2 Q: How many warrants did you have?

3 A: Three. He was implicated in three with the city and
4 several with the county. I didn't know all of his with
5 the county. I knew with the Food Lion, but I didn't know
6 all the other with the County until we looked at his
7 warrants.

8 Q: And during that discussion, you told him that this,
9 you know, type of evidence, with fingerprint evidence,
10 this is a strong case. You also told him that he
11 probably, he could face life without parole.

12 A: Correct with his strikes because of armed robbery. Yes
13 sir I did.

14 Q: Did he bring up his charges against his wife?

15 A: He asked if his wife was there. He asked if his wife
16 was going to be okay.

17 Q: Is this before he waived his rights?

18 A: I don't know. We talked about her several times,
19 because one of the conversations he was telling me that
20 he had, there was like a nice glass or expensive bong
21 that you use to smoke marijuana and he was telling me
22 that his wife had bought it for him or his mother-in-law
23 in California it was a gift or something to him from
24 California, so I can't tell you what part of it was, it
25 might have been, I don't know.

1 Q: Would that be before he ...

2 A: I was thinking toward the end of the interview we were
3 talking more about the wife, but during this conversation
4 he did talk about his wife.

5 Q: And he did talk about his wife before he waived his
6 rights?

7 A: I can't tell you exactly when, but we talked about his
8 wife. He asked if she was ...

9 Q: When you spoke about his wife he was clearly concerned
10 about his wife, isn't that right?

11 A: Yeah, he was asking if she was okay and he didn't want
12 her to be in trouble about her military career ...

13 Q: And actually she had been arrested by then correct?

14 A: I believe the county had arrested her.

15 Q: And she was actually in Sumter Lee County Detention
16 Center at that point. Do you recall that?

17 A: I think, I think she was there.

18 Q: Alright.

19 A: If she, yeah I believe the county arrested her and
20 charged her.

21 Mr. Murphy: Alright. I have no further questions. Thank
22 you.

23 The Court: Re-direct?

24 Mr. Gamble: No sir.

25 The Court: Alright it's five fifteen now. Do you want to

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1 take this up in the morning? How many other witnesses do
2 you have on this issue?

3 Mr. Gamble: I would call Detective Rabon very briefly and
4 then Detective West very briefly; that would be it.

5 The Court: Alright, you can step down. Thank you ma'am.

6 Detective Culick: Thank you.

7 The Court: Well, I guess you know, I'm not, briefly, what
8 does that mean?

9 Mr. Gamble: About ...

10 The Court: Ten minutes, fifteen minutes?

11 Mr. Gamble: I'm going to ask Detective Rabon to just get
12 up and state that she was in the room with Detective
13 Culick.

14 The Court: In other words, you can accomplish this inside
15 of five minutes?

16 Mr. Gamble: I don't think anything ...

17 The Court: That's what I'm asking. Briefly doesn't
18 really tell me anything.

19 Mr. Murphy: Your Honor, I'm going to have some, I'm going
20 to have similar type questions for Detective Rabon

21 The Court: We'll start back at 9:15 okay?

22 {Break}

23 Bailiff: State your name.

24 Mr. West: Dominick West

25 Bailiff: Do you solemnly swear or affirm that the

1 testimony to this Court to be the truth, the whole truth
2 and nothing but the truth, so help you God?

3 Mr. West: I do.

4 Bailiff: Have a seat. State your name and spell your last
5 name for the reporter please.

6 Mr. West: Dominick West, W-E-S-T

7 DIRECT EXAMINATION OF MR. WEST BY MR. GAMBLE:

8 Q: Investigator West, where do you work?

9 A: Sumter County Sheriff Office.

10 Q: How long have you worked there?

11 A: Going on ten years.

12 Q: Were you employed by the Sheriff's office on the
13 second of June 2008?

14 A: Yes sir.

15 Q: Did you happen to come into contact with Mr. Forde
16 who's sitting by Mr. Murphy?

17 A: Yes sir.

18 Q: Right there?

19 A: Yes sir.

20 Q: Where did you come into contact with him?

21 A: At the Sumter Lee Regional Detention Center.

22 Q: Are you familiar with what Miranda Warnings are?

23 A: Yes sir.

24 Q: And what are those?

25 A: It's the rights that law enforcement reads towards

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1 suspects before questioning.

2 Q: And why do you normally read those to suspects before
3 questioning?

4 A: Just to let them know that they have rights and if
5 they want a attorney before they want to talk to us, any
6 law enforcement officials.

7 Q: Did you speak with Mr. Forde involving an armed
8 robbery?

9 A: I spoke with him involving different armed robberies
10 on the second.

11 Q: Second of what?

12 A: June.

13 Q: On the second of June?

14 A: On the second of June of 2008.

15 Q: And I want to show you what's been marked for
16 identification as State's exhibit number five. Do you
17 recognize that?

18 A: Yes sir, it's, it Miranda Warning, waiver of rights
19 form that the Sumter County Sheriff Office with our logo
20 on it.

21 Q: How do you use that to advise a person of their
22 rights?

23 A: It says so, it's a statement, it's five of them. It's
24 your Miranda Warning. Each one has a line beside it where
25 each suspect or defendant initial it stating that they

1 understand it.

2 Q: And when did you advise Mr. Forde of those rights?

3 A: On the second of June.

4 Q: Where were you when you read those rights to Mr.

5 Forde?

6 A: Sumter Lee Regional Detention Center.

7 Q: Where you in the interview room when you read them or
8 a cell or what?

9 A: Interview room; it's a pod, right there across from a
10 pod.

11 Q: Was there anyone else there with you?

12 A: Yes sir.

13 Q: Who else was there?

14 A: Detective Irene Culick of Sumter Police Department.

15 Q: At that time did Mr. Forde seem like he was
16 intoxicated by drugs or alcohol?

17 A: No sir.

18 Q: Was his speech to you coherent?

19 A: No sir.

20 Q: His speaking was not coherent?

21 A: You say was it coherent? Was it good? I mean it was
22 good, yeah.

23 Q: Did you understand him?

24 A: Yes sir, everything was understandable. Sorry about
25 that.

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1 Q: Who completed that waiver of rights form?

2 A: I did.

3 Q: Did Mr. Forde appear to understand those rights?

4 A: Yes sir.

5 Q: Did he sign that waiver of rights form?

6 A: He initialed it and also signed it.

7 Q: And who signed as a witness at the bottom of that
8 form?

9 A: Detective Culick.

10 Mr. Gamble: Your Honor, at this time in the trial I'll
11 offer it for evidence.

12 The Court: Alright, we'll i.d. it at this time.

13 Q: Did Mr. Forde invoke his right to remain silent?

14 A: No sir, he went down, there's a waiver of rights part
15 on there, it says I have been advised your rights and
16 fully understand your rights you do wish to answer
17 questions at this time without an attorney and it states
18 no one has threatened me or promised me anything.

19 Q: So, did he ask for an attorney?

20 A: No sir.

21 Q: Did he agree to answer questions without there being
22 an attorney there?

23 A: He did.

24 Q: Did you, did you get a statement from him?

25 A: Detective Culick took notes; he didn't give her, he

1 stated he would not give a written statement, but he
2 would tell the events that took place on different
3 occasions.

4 Q: Did he give you a oral statement?

5 A: Yes sir.

6 Q: Did you promise him anything for talking with you?

7 A: I did not.

8 Q: Did you coerce or threaten him to get him to talk to
9 you?

10 A; No sir, I did not.

11 Q: To the best of your knowledge, was the statement he
12 gave you freely and voluntarily given?

13 A: Yes sir.

14 Q: Do you recall what was in his oral statement that he
15 gave to you?

16 A: Just it's, it's, it was stating about different
17 incidents that took place, with robberies that took place
18 within the city and the county and also I think there was
19 something about what took place in Richland county, but
20 any particulars, I would have to read the statement.

21 Q: Do you recall if he gave any information about a
22 robbery that happened at the Food Lion on Broad Street
23 Extension on 378?

24 A: That was one of the incidences.

25 Q: Is that a county case?

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1 A: Yes sir.

2 Q: Do you recall if he gave any type of statement
3 confessing to that crime?

4 A: He stated, I do remember, he state that he went to buy
5 a beverage, whatever beverage it was that he doesn't
6 drink and he knew he made a mistake when he left it there
7 because he left his prints right there on the counter top
8 with the beverage.

9 Q: Did he make any statement regarding committing an
10 armed robbery at that Food Lion?

11 A: Yes sir.

12 Q: Did he make a confession to that armed robbery?

13 A: In those notes that he did confess to that one and
14 also others.

15 Q: While you were there, did anyone else question Mr.
16 Forde?

17 A: It was just me and Detective Culick.

18 Mr. Gamble: Please answer any questions Mr. Murphy has.

19 A: Yes sir.

20 CROSS EXAMINATION OF INVESTIGATOR WEST BY MR. MURPHY:

21 Q: Did you have any contact with my client prior to June
22 2, 2008?

23 A: I believe I've served warrants on him at the, before,
24 before then. It was , it was brought to me that he would
25 like to talk, but he wanted to talk to Detective Culick

1 and Detective Culick asked me to go along with her and
2 that's how I came with the going on June 2nd.

3 Q: Do you believe you had served warrants on him?

4 A: I have to, I have to look at my case file; it's
5 different warrants that was obtained. I don't know the
6 day he was arrested or the day after or several days
7 afterwards. I, I have to look at my warrants.

8 Q: You don't recall any conversations with him?

9 A: He did not want to talk to me, so.

10 Q: Were you involved at all in the investigation
11 concerning the ...

12 A: No sir.

13 Mr. Murphy: I have no further questions.

14 The Court: Re-direct?

15 Mr. Gamble: Nothing on re-direct Your Honor.

16 The Court: Thank you Mr. West. You may step down.

17 Mr. Gamble: Your Honor, I believe Mr. West is needed in
18 the other courtroom.

19 The Court: Alright.

20 Mr. Gamble: I'm going to need him at some later point in
21 the trial.

22 The Court: Any other witnesses?

23 Mr. Gamble: Nothing further at this time Your Honor.

24 The Court: Mr. Murphy?

25 Mr. Murphy: Your Honor I call my client for the purposes

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1 of this hearing.

2 The Court: Alright. Mr. Kelly. Come on up Mr. Forde.

3 Bailiff: Place your left hand on the Bible and raise your
4 right hand please. State your name.

5 Mr. Forde: Jason Forde.

6 Bailiff: Do you solemnly swear or affirm the testimony
7 you give this Court will be the truth, the whole truth
8 and nothing but the truth, so help you God?

9 Mr. Forde: I do.

10 Bailiff: Thank you. Be seated. State your name and spell
11 your last name for the Court.

12 Mr. Forde: Jason Forde, F-O-R-D-E.

13 DIRECT EXAMINATION OF MR. FORDE BY MR. MURPHY:

14 Q: Mr. Forde, you're the defendant in this case?

15 A: Yes sir.

16 Q: Mr. Forde I want to direct your attention to May 28th,
17 2008, specifically approximately six p.m. okay?

18 A: Okay.

19 Q: Can you describe your recollection, your testimony
20 regarding stopping of the vehicle and proceeding from
21 there. Will you state what your recollection was of how
22 you were stopped?

23 A: We were traveling on, I believe we were traveling on
24 Thelma, Thelma Drive or Thelma Street going to
25 Dontrell's, that was the driver, his grandfather's house,

1 that's where he lives, we was going there. And we were,
2 and there was a bunch of traffic, like police cars pulled
3 up behind us and the lights came on.

4 Q: When did you first notice the police cars?

5 A: I think, I think it was like, I think there was like a
6 police car, I know that we noticed a police car like two
7 cars behind us, like a car or two behind us, but then all
8 the cars behind us lit up, like I believe a blue SUV and
9 the rest were marked cars and that's my ...

10 Q: What did the driver do when the lights came on?

11 A: He pulled over.

12 Q: Were there any cars in front of you?

13 A: No, it's, it's a dead end street. We were at the, they
14 was the last house on the street, we were right in front
15 of his house.

16 Q: After you were pulled over what occurred?

17 A: Well, the, the police, the police officers, we heard
18 the loudspeaker, I look back. They say, they say get, put
19 your hands in the air. Don't make any sudden moves, they
20 had their guns drawn, all the, they were outside, outside
21 they cars so we, I put my hands in the air and we waited.

22 Q: You say they had their guns drawn, how many police
23 officers are we talking about?

24

25

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1 A: I mean, I looked back, I looked back and the, there
2 was, the closest car to us was the white and blue Camero
3 I believe and the SUV, then to the left of the SUV was
4 another unmarked car and there's another unmarked car
5 behind the SUV. To my knowledge, there were, there were,
6 every, the SUV, I know the SUV had guns drawn and the
7 Camero. I can't remember if the marked car, if the other
8 marked car or anything else had their guns drawn.

9 Q: Approximately how many police officers do you recall
10 seeing?

11 A: I would, I would say roughly six or more.

12 Q: Now when you say guns drawn, where were they? Were
13 they behind their open door or ...

14 A: Yes, they were behind they open doors.

15 Q: With their guns drawn?

16 A: Their guns drawn.

17 Q: Were they on the loudspeaker telling y'all to get out
18 of the vehicle?

19 A: No, they didn't say get out of the vehicle. They said
20 put your hands up and stay where you are.

21 Q: Okay. At what point were you told to get out of the
22 vehicle?

23 A: A officer, I believe, a officer, he wasn't in uniform,
24 approached the back passenger door, my, where I was at
25 and he, and he came and he told, he told me to show my

1 hands. I put my hands on the glass, he opened the door,
2 he pulled me out of the car and handcuffed me and then
3 another uniform, he told a uniform officer to stand by
4 the car with me.

5 Q: Alright so you were handcuffed immediately after you
6 got out of the car?

7 A: Yes.

8 Q: And you were escorted out of the car or told to get
9 out of the car or dragged out of the car?

10 A: I was, I wasn't dragged, but you know, he told me get
11 out, he opened, he opened the door and cause I had my
12 hands up and he helped, basically helped me out of the
13 car and he told me turn around right there by the, by the
14 back door and he put the cuffs on me and he brought a
15 uniform, he told a uniform officer to come and stand next
16 to me.

17 Q: Alright, then what happened after that?

18 A: They, they ordered the rest of, they ordered, they
19 ordered the passenger and the driver out of the car. Did
20 the same thing to them and then they took me to the, they
21 walked up, they told the, they asked, matter of fact they
22 asked us if there were any, they asked us was, what,
23 what, what are y'all doing? So I said, I said what's up?
24 I said what's this all about? They said, they said you,
25 do you have, they said, to be honest with you they said

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1 you're not under arrest and everything will be explained
2 to you in due time. Just, just listen to what we're
3 saying, so I said okay. So they asked, they asked if I
4 had anything on me. I said yes I do, I have marijuana on
5 me. They asked, they said if there were any weapons in
6 the car. I said yes. I said yes because I, I, I had, I
7 own, I own a semi automatic weapon and it was in the
8 glove compartment. I told them that where it was and they
9 took me and they walked me back to the police car. So I,
10 so they ...

11 Q: Did they ever find the gun?

12 A: No, not til, not til I got to the police car.

13 Q: And later that night you heard testimony, that you
14 asked to speak to Mr. Clark. That is correct?

15 A: Yes.

16 Q: And he was your lawyer?

17 A: Yes.

18 Q: Now were you successful in your efforts to contact Mr.
19 Clark?

20 A: No, because I was never allowed a chance to contact
21 Mr. Clark.

22 Q: And why is that, is that while you were at the jail or
23 what?

24 A: No, we was at the police department.

25 Q: Okay. So you were never provided with a phone number

1 or anything?

2 A: No, I, I, I was actually denied because they told me I
3 wasn't under arrest.

4 Q: So you would dispute the testimony that you heard that
5 you were provided with a telephone book and cell phone?

6 A: Yes.

7 Q: Between the time you asked to speak to Mr. Clark.

8 The Court: For clarification, was it a cell phone the
9 testimony was or a cordless phone? Just whatever
10 difference it makes.

11 A: I, I believe the testimony was a cordless phone.

12 The Court: Alright, I wanted to make sure I heard that
13 correct. Go ahead.

14 Q: Would you, after May 28th, after you were finally
15 arrested and escorted to the jail, would you, how much
16 contact did you have with various detectives in this
17 case?

18 A: In, in this, well, that's has testified, the first
19 time I had anybody, contact with any officers that
20 testified was when they served me my warrants.

21 Q: Who served you your warrants?

22 A: Detective Lyons, Detective Skinner and Detective West
23 served me all my warrants.

24 Q: Okay, did they, did they engage in any conversations
25 with you?

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1 A: Yeah, they took me to, I believe it was a break room
2 in the jail house. They took me down there, they sat me
3 down at the table and they slid me a piece of paper said
4 alright, help yourself.

5 Q: And what was your response?

6 A: I said, I said help myself with what? I said I don't,
7 I said I don't know what you're talking about.

8 Q: And this was after, this would have been the next day,
9 the 29th or the 30th, one of those two days?

10 A: One of those two days.

11 Q: Do either of those individuals or any of those
12 individuals discuss your wife's case with you?

13 A: At that time, no, no.

14 Q: Was there a later time when a detective contacted you
15 regarding your wife's case?

16 A: On, I'm not sure of the date. I believe it's the same
17 day I got my warrant or either the day before. I was, I
18 was in the pod, the pod I was in, it was Alpha Pod and
19 it's just, it shares the same like sally port area, exit
20 area with the female pod and the Officer Mayes I believe,
21 Tripp Mayes they call him, he was serving my wife a
22 warrant and then he asked the correctional officer if he
23 could speak to me.

24 Q: Did he speak with you?

25 A: Yes.

1 Q: What did he say?

2 A: He said, he said we just served your wife the warrant,
3 the warrant for some marijuana that's at the house and
4 the rest of the detectives are going to serve her with
5 accessory to armed robbery before and after the fact.

6 Q: Did he say anything else?

7 A: He said, he said, he said that he, that he's not, that
8 he's not here to talk to me, he just wanted me to know
9 that and that when the other detectives come, come,
10 they'll, they'll let me know what's going on. They'll
11 talk to me further.

12 Q: And was there a time after that, that detectives
13 talked to you about your wife's case?

14 A: When, when I was, when I was coming back from getting
15 my warrants, I believe from Detective West and Skinner
16 and Officer Lyons, I, I was walking, because I came from
17 the break room, I was walking back to the pod. I passed
18 Detective Rabon in the hallway and she said, she said you
19 see how serious situation is, I hope you're ready to talk
20 now, because she say, because you're going to take your
21 wife down with you so, we'll be ready to talk to you and
22 the officer of the pod escorted me to a room, the
23 interview room outside the pod.

24 Q: So again, you dispute Officer Rabon's or Detective
25 Rabon's testimony that she had no contact with you?

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1 A: Yes.

2 Q: The night of May 29th at the time she sat down with
3 Detective Culick and read you your rights?

4 A: Yeah, it was, it was just before, that was just before
5 I was sat down with Detective Culick.

6 Q: Alright. Would you describe your, the discussions you
7 had with Detective Culick prior to the time you were read
8 your rights?

9 A: It was basically, she, I mean, we, we, she came in
10 there, she seem you know, like caring, she was like well,
11 you know, so you just had a baby, your wife's locked up.
12 They say, she say, she say well actually she say you're
13 not going to get a bond. So, and we're actually going to
14 charge your wife with accessory. She said, I said why
15 would you do that? She said because there was, she said
16 something about her deleting pictures off my computer at
17 the house, because during the search they took the
18 computer also. She say something about her deleting
19 pictures off the computer and she say yeah, she said, she
20 say, she say you're going to mess your wife up. She say
21 your baby's going to have to grow up, you know, stuff
22 like that without, without the parents. She say, she's
23 going to get kicked out of the military and all that
24 stuff, so she said that's and that was, we was sitting
25 there, I actually started, when she started going on like

1 that, I, she, she had me, I started crying actually.

2 Q: And that's before. Did she also talk to you about your
3 case?

4 A: Well, not yet, not yet. She, she, then she said, she
5 said well, you're going to, if you, if you help yourself,
6 she said you give us the information that we want then we
7 can, we can help you, help your wife out of this
8 situation that you're in.

9 Q: And this was prior to her reading you your rights?

10 A: Yes.

11 Q: Did you, did you at any time initiate any sort of
12 contact or ask to see Detective Culick or Detective Rabon
13 or Detective Mayes?

14 A: No, I didn't speak to, I didn't speak, no.

15 Q: After the time you asked to speak to John Clark did
16 you, at any time ask to speak to any detective from
17 either Sumter County or Sumter City?

18 A: No, I didn't see anybody until they brought me my
19 warrants. Until Detective Lyons, the first officer I seen
20 after I left the police department was Detective Lyons,
21 Detective West and Detective Skinner.

22 Q: During that meeting, did you ask to talk about your
23 case to them?

24 A: No.

25 Q: When you spoke to Detective Rabon later on, did she,

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1 did she approach you or made that comment regarding ...

2 A: Yeah, she was walking, she walking in the hallway,
3 apparently to go speak to them. I don't know, because she
4 was going the direction I was coming from and that's when
5 she say, she said I hope you're ready to talk. She said I
6 hope you're ready to talk, because I'll be right back and
7 she kept, she kept on going and a CO took me to the ...

8 Q: Did you ask to speak to her?

9 A: No.

10 Q: Did you ever ask to speak to Detective Culick?

11 A: No.

12 Q: Prior to you waiving those rights on May 30th?

13 A: No.

14 Mr. Murphy: I have no further questions. Please answer
15 any questions from the Prosecutor.

16 The Court: Mr. Gamble?

17 CROSS EXAMINATION OF MR. FORDE BY MR. GAMBLE:

18 Q: Just a second Your Honor. Let me show you what's been
19 marked for identification as State's exhibit two, three
20 and five. Do you recognize those?

21 A: No, I don't, I don't recognize this one that says John
22 Clark on it.

23 Q: Number two?

24 A: Number two, but I recognize the other two; number
25 three and number five.

1 Q: Is that your signature at the bottom of this?

2 A: Yes sir.

3 Q: You signed those forms?

4 A: Yes sir.

5 Q: Did the detectives go over the Miranda Warnings on
6 those forms?

7 A: Yes sir.

8 Q: Okay, did you understand those?

9 A: Yes, yes sir.

10 Q: And you signed at the bottom?

11 A: Yes I did.

12 Q: But you never asked Detective Culick, you never asked
13 to speak to her about talking with her about anything?

14 A: No, they were given to me, the first, this one right
15 here, this, number three.

16 Q: Uh-huh.

17 A: Number three was given to me at the law enforcement
18 department. The night on the 28th, the night I was
19 arrested, it was I believe Detective Culick and Ms.
20 Rabon, Detective Rabon gave me this. They, they would
21 not, I was, they wouldn't allow me to talk to anybody.
22 They told me I wasn't under arrest, so I, so they said
23 there was no reason for me to call a lawyer. And they
24 asked me, they said, they said after, after I was there
25 for about two hours, probably around there, I said okay,

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1 you know what, I'm tired, I say I'll sign it, I'll talk
2 to you.

3 Q: That was on ...

4 A: And I signed, and I signed this one on the 28th.

5 Q: Okay. So number three?

6 A: Yeah.

7 Q: So you, that was the night that you were at the law
8 enforcement center?

9 A: Yes sir.

10 Q: Okay, so you did say that you talked with them that
11 night?

12 A: Yes, I, I didn't say I would talk to them. I just
13 said, yes, yes I did say I would talk to them. I said
14 yes, I said I'll talk to you and I signed.

15 Q: Okay. And down here where there's another signature,
16 is that your signature?

17 A: Yes, that's my signature also.

18 Q: And then it says 5/29/08 and then scratched through
19 with JF, is that, that's your initials?

20 A: Yes, that's my initial.

21 Q: It says 5/30/08?

22 A: Yes.

23 Q: What, what happened on the 30th where you decided, for
24 you to put that down there and scratch through it?

25 A: On the 30th they came back, that's when, that's when I

1 spoke to Detective Culick and Detective Rabon at the jail
2 house and they came back to me with this, with this same
3 form and she, she, that's when she asked me, after, well
4 after she spoke, I spoke to her about my wife, she give
5 me the form and I signed it.

6 Q: But you never asked specifically to ask with Detective
7 Culick?

8 A: No, no I never did.

9 Q: Okay and what's been marked for identification as
10 State's exhibit number 4. Do you recognize that?

11 A: Yeah, I recognize that. That's what I have, I have a
12 copy in my motion.

13 Q: Okay. But you didn't say any of those things that
14 Detective Culick stated she wrote down?

15 A: I, I didn't, I did speak to Detective Culick. I didn't
16 she what she was writing or I didn't have any or I don't
17 have any knowledge of what she was writing until I got it
18 in my motion.

19 Q: Until you ...

20 A: I received a copy of it, yes.

21 Q: From your attorney?

22 A: Yes.

23 Mr. Gamble: Okay. Just a second Your Honor. I have no
24 further questions Your Honor.

25 The Court: Mr. Murphy?

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1 Mr. Murphy: No further questions Your Honor.

2 The Court: Thank you sir, you can step down. Any other
3 witnesses Mr. Murphy?

4 Mr. Murphy: No, Your Honor.

5 The Court: Alright, Mr. Murphy do you have any other
6 points that you want to raise about the stop and the
7 activity on Phelps Drive?

8 Mr. Murphy: No Your Honor, the only point I would
9 reiterate is that it's our position that the Court must
10 conclude that there was probable cause to arrest, that
11 those individuals were under arrest for armed robbery at
12 the time that they were stopped. And that's the
13 appropriate analysis and it's our position based on the
14 information that those officers had that they lacked
15 probable cause to arrest them for armed robbery after
16 stopping them.

17 The Court: Anything else on that point Mr. Gamble?

18 Mr. Gamble: No sir.

19 The Court: You mentioned, you mentioned a case yesterday
20 afternoon that you said you would just substitute the
21 names Forde in for the other.

22 Mr. Gamble: Judge, it's parallel to what, I believe it's
23 parallel to what occurred on the night ...

24 The Court: What, what's the name of that case again?

25 Mr. Gamble: State v. Leslie.

1 The Court: Alright, Mr, Murphy, what is your position on
2 the statements given in three or excuse me, as testified
3 to by the various detectives?

4 Mr. Murphy: In regard to the statement of my client, Your
5 Honor, I believe Edwards case, by the Supreme Court talks
6 about when an individual exercises their right to
7 counsel. It's pretty much undisputed that on the night of
8 the 28th my client asked for John Clark. We have two
9 detectives saying they took that as invocation of his
10 rights. And the case law is pretty clear in the Edwards
11 case that once an individual exercises their rights to
12 counsel, the police may not reinitiate contact. And any
13 subsequent statements must be suppressed unless it is
14 shown that the, that the Defendant reinitiates contact
15 and then makes a knowingly, intelligent waiver. It's our
16 position, based on the testimony of the officers and
17 based on the testimony of my client, that number one, he
18 didn't reinitiate contact after he exercised his right to
19 counsel. He testified that he didn't reinitiate the
20 contact and quite frankly, as a matter of fact, while
21 serving warrants isn't reinitiating contact for purposes
22 of interrogation, Detective Culick didn't go to him to
23 serve the warrants. Anybody could have done that. So, you
24 know, it's our position number one, he didn't reinitiate
25 contact. Number two ...

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1 The Court: So you're saying that her serving warrants
2 isn't a reinitiating of contact?

3 Mr. Murphy: I would contend that, when you read the cases
4 it's clear what the Court's talking about in reinitiating
5 contact for purposes of getting a statement.

6 The Court: Reinitiating questioning?

7 Mr. Murphy: Right, but not just contact.

8 The Court: Like she goes in there, hands him the warrant
9 and she said, now look here, don't you want to talk to
10 me?

11 Mr. Murphy: Right.

12 The Court: Don't you want to talk to me? That's
13 reinitiating?

14 Mr. Murphy: That's a reinitiating.

15 The Court: She walked in and said here are your warrants
16 and he said hey can I talk to you?

17 Mr. Murphy: Well that is something of her testimony. She
18 also testified that she didn't really recall whether or
19 not her discussions regarding, when, when her discussions
20 regarding his wife's case came up. That it could have
21 occurred prior to the exercise of the rights. I would
22 also submit to the Court in a situation, because she
23 clearly was aware and she testified she, she took his,
24 she was aware he exercised his right to an attorney and I
25 would submit to the Court that in a situation like that

1 when a, when a, when a Defendant makes a statement
2 regarding the warrants or a discussion, there is some
3 obligation on the part of a, of a law enforcement to
4 clarify whether or not they are waiving their right to
5 counsel then and there, before any discussions are made.
6 The Court: She testified she simply read the warrants to
7 him and then she said, she asked him, he asked her if she
8 would talk with him about all of his charges. She
9 testified that she re-Mirandized him, didn't have a blank
10 form, went out to her car and got the other one that had
11 already been signed and that's when the re-initialing or
12 the re-giving of the rights or the initialing, the
13 correction made by Mr. Forde was done.
14 Mr. Murphy: But she also testified that she talked to him
15 about his case in detail before going out and getting the
16 Miranda Form. She talked to him about the strength of his
17 cases. They had a long discussion about his case, about
18 the strength of his case, about whether or not he's
19 facing life without parole unless he pled guilty to some
20 of this stuff and she also said she couldn't remember
21 whether she talked to him about his wife and obviously my
22 client's testimony is that he didn't initiate any sort of
23 discussion and to the extent he did it was based on the
24 discussions he was getting from other officers regarding
25 his wife's case. So, we would contend that taken as a

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1 whole, this isn't a situation where she just walks in and
2 reads him his warrants and he says, hey, hey I want to
3 talk to you. That's not exactly the case. She walks in
4 and reads the warrants to him and then goes on and has a
5 conversation with him regarding the, the strengths of his
6 case. Now, I would submit ...

7 The Court: Law enforcements strengths?

8 Mr. Murphy: Right, right. His case, and I would submit
9 that all that, at some point, prior to any sort of in
10 depth discussion with him, she had an obligation to
11 clarify his, his status in regard to counsel. And I would
12 also submit, you know obviously, if you believe my client
13 that he didn't reinitiate contact with her at all. That
14 the, the discussion of the case in general at that point
15 he state's he's asking about his wife, he's crying, that,
16 that all of that taken together demonstrates a waiver
17 that is not really knowingly and intelligently made.
18 Knowingly and intelligently made and undercuts the nature
19 of the re-initiation. The re-initiation was to some
20 degree predicated on the ... of the waiver was predicated
21 on a longer discussion regarding the merits of the case
22 and therefore, served to encourage him to waive those
23 rights.

24 The Court: Well, there's a case that came out in
25 January, State versus Navy that talks about law

1 enforcement questioning a suspect, getting incriminating
2 information and then administering Miranda Warnings. Is
3 that what you say happened here at the detention center?
4 Mr. Murphy: No, no what I'm saying is that, is that, that
5 re-initiation, that there was no, number one what I'm
6 saying first of all, based on my client's testimony, he
7 didn't re-initiate contact with law enforcement at all.
8 They did. And number two, ultimately his waiver was
9 based on this long discussion about the merits of his
10 case and that, and that was designed to encourage him to
11 waive his rights.

12 The Court: And did he give incriminating information?

13 Mr. Murphy: After the waiver, after the waiver.

14 The Court: Did he give an incriminating statement during
15 that long discussion or was that just a one sided
16 discussion?

17 Mr. Murphy: I, I don't believe there's any testimony that
18 he gave any incriminating information prior to the, to
19 the waiver of his rights.

20 The Court: The re-Mirandizing?

21 Mr. Murphy: Yes sir.

22 The Court: Alright, anything else?

23 Mr. Murphy: No Your Honor.

24 The Court: Alright, Mr. Gamble?

25 Mr. Gamble: Judge, I'm going on what you and Mr. Murphy

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1 were just talking about. I believe the testimony from
2 Detective Culick was that she went and served the
3 warrants and Mr. Forde started asking her questions about
4 the warrants and I don't believe that she interrogated or
5 questioned him like what y'all were just talking about
6 while she was serving the warrants. But, the State's
7 contention is that Mr. Forde, at that time, re-initiated
8 the questioning with Detective Culick, at which time she
9 went out to the car, got the form and got --- and then
10 she testified came in and had him re-mirandized and had
11 him sign the form again. And we just went to cases
12 supporting that, State v. Navy, State v. Howard and the
13 Edwards case that Mr. Murphy stated. I'm not familiar
14 with State vs. Navy case at this time Your Honor.
15 The Court: Well evidently, nobody thinks State versus
16 Navy applies. I thought that's what Mr. Murphy was saying
17 but he explained that that scenario is not exactly
18 applicable. What's the site on Edwards?
19 Mr. Gamble: Your Honor it's a Supreme Court case 451 US
20 477.
21 The Court: Okay, I thought you were talking about a State
22 case. Alright, anything else Mr. Murphy? I'll give you
23 the last word. Oh, I'm Mr. Gamble, anything else?
24 Mr. Gamble: Judge, there's also State v. Kennedy that I
25 believe sites Edwards v. Arizona.

1 The Court: Alright, okay, with regard to the stop and all
2 of the activity that flowed from the stop, I, I would
3 respectfully deny your motion Mr. Murphy. Based on my
4 view of the evidence, the stop itself was implemented
5 Constitutionally, based on the identification of the car
6 and that described car being within two miles of where
7 the Dollar General robbery was. I don't think Mr. Murphy
8 actually contest that part. I disagree, respectfully with
9 Defendant's position that he was under arrest or in
10 custody for the armed robbery at that time and that there
11 was no probable cause to arrest him for armed robbery at
12 that time. I don't think he was under arrest for armed
13 robbery at that time. He gave a statement to the officer
14 on the scene that he had marijuana in his pocket, he was
15 taken to the law enforcement center and the activities
16 flowed from there. I think his detention, custody and so
17 forth was lawful, Constitutional and otherwise
18 appropriate. With regard to the allegedly incriminating,
19 and I say allegedly because ultimately this will be for
20 the jury to determine. The allegedly incriminating
21 statements given by Mr. Forde, there's certainly room for
22 argument during trial as far as the jury is concerned as
23 to whether or not the statements were given freely and
24 voluntarily, but I do find that this is by the greater
25 weight of the evidence, that before any incriminating

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1 statement was given, he was fully advised of his rights
2 in Miranda versus Arizona and summarized those. He was
3 advised of his right to remain silent. And that was done
4 obviously before any questioning took place. He had the,
5 he was told that if he made statements, one could be used
6 against him court. He had the right to an attorney of his
7 own choice. If he could not afford an attorney, one would
8 be appointed to represent him free of charge and that he
9 had a right to have a lawyer present during all
10 interviews and questioning and he was also advised he had
11 the right to talk to a lawyer before any questioning and
12 that he could stop the questioning at any time and he was
13 also told that he would be given the opportunity to
14 consult with an attorney, if he exercised his option to
15 cease the interrogation. He knowingly and intelligently
16 waived those rights. The statements that were allegedly
17 given were given freely and voluntarily without coercion,
18 duress, hope or reward and without any undue influence
19 and that overall, these statements were the voluntary
20 product of his free and unconstrained will. That's my
21 ruling at this point. Of course, once we go through this
22 during the trial, I'll just make sure the attorneys
23 understand. I'll be charging the jury on those points.
24 It will be up to them to determine whether or not that
25 was, whether or not the State, if they believe it was

1 made, was given freely and voluntarily, so go back
2 through the Miranda and all of those points again in
3 front of the jury, so that they, if you don't do that,
4 then that's at your own peril. Alright, how about any
5 issues pertaining to these other cases? Obviously, during
6 the in camera portion of this, ninety percent of the time
7 has been spent on Dollar General, not inside the store,
8 but how they got to where they were at any given time.
9 What, what's the Defendant's position on how there other
10 cases are to be handled? I know as far as Miranda is
11 concerned, you may want to get into the coercive parts
12 that you consider to be about the wife, her drug charges.
13 That, that's one point, but what is the Defendant's
14 position on how we handle other robberies? Richland
15 county robberies, Dollar General? The only thing I've
16 heard is Richland, Dollar General and Food Lion. So,
17 what's your position Mr. Murphy?

18 Mr. Murphy: Well, our position is that the references to
19 other robberies, in particular, other criminal activity,
20 in general would be unduly prejudicial. In regard to
21 couching the terms in regard to the stop if that evidence
22 is going to be presented, I don't have a problem with
23 saying we stopped them in regard to the BOLO they had. I
24 would also note that in regard to the written notes, I
25 mean I would object to verbatim reading of Detective

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1 Culick's notes. If she wants to summarize what my client
2 told her, I don't have problem with that.

3 The Court: Well I think she's got the right to read them
4 in so far as Food Lion is concerned.

5 Mr. Murphy: Okay, well I ...

6 The Court: But not ...

7 Mr. Murphy: Her, her own notes? Her written notes,
8 because it's not, it's not a written statement by my
9 client. It's her written notes.

10 The Court: Well, that's different.

11 Mr. Murphy: I understand.

12 The Court: I'm talking about reference to other crimes.

13 Mr. Murphy: Well there's references, in particular, in
14 the Food Lion notes that talk about this is the first
15 time, this is the first time I did this, I'm not sure if
16 it's the same guy that I, you know, that I was, in other
17 words it's certain phraseology that ...

18 The Court: Well those can be summarized in a way that it
19 focuses on the Food Lion.

20 Mr. Murphy: Right and that's what we would request. No
21 reference to other types of robberies.

22 Mr. Gamble: And Judge, I've prepared a copy of the
23 specific portion of the confession to that and I can re-
24 dact what Mr. Murphy was just pointing to, not the same
25 guy, this was my first one.

1 The Court: Well, are you wanting that document to go to
2 the jury? The document itself I doubt will go to the
3 jury. The officer can say this is what he told me.

4 Mr. Gamble: As far as Detective Culick reading ...

5 The Court: For testimony, but not for viewing purposes?

6 Mr. Gamble: Correct.

7 Mr. Murphy: And again, just so counsel is aware, I'm
8 going to object to her reading the document. I don't have
9 a problem with her summarizing what he told her and ...

10 The Court: Well, to summarize she may have to review.

11 Mr. Murphy: Right.

12 The Court: She may need to review or whatever.

13 Mr. Murphy: Right, but as far as reading verbatim the
14 document, I am going to object to that.

15 The Court: I may disagree with you; if she were to say,
16 let's say this is the only armed robbery that had ever
17 happened in the world, she could read what he said. But
18 she's not going to be able to read what he said verbatim
19 if it references other things that she ought not be
20 referencing. So I think we can handle that from a, from a
21 strictly evidentiary standpoint instead of a threatening
22 standpoint. Anything else?

23 Mr. Gamble: Judge, I have been advising my witnesses to,
24 as far as this traffic stop, to just say we had a BOLO
25 for an unrelated incident.

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1 The Court: They can just say be on the look-out for a
2 powder blue, light blue, slate blue ...

3 Mr. Gamble: And just leave that out?

4 The Court: ... navy blue Cadillac. In another incident,
5 I don't see why we need to have that.

6 Mr. Gamble: Okay.

7 The Court: Unless, unless you need and you know, this is
8 preliminary, we're not going to try this case inside of a
9 box. If something needs to be in context, in fairness,
10 you can certainly do that. You'll know that when you come
11 to it. Y'all, y'all just have to bring it to my
12 attention. I don't know anything about what happened at
13 the Dollar General, so I, I think, I think we can handle
14 that as it comes.

15 Mr. Gamble: And my other concern is I don't see any way
16 of getting around Mr. Forde's possession of the
17 marijuana.

18 The Court: What do you say about that Mr. Murphy?

19 Mr. Murphy: I don't see why that has to be addressed at
20 all. I mean, he was taken into custody and brought down
21 to the station. The basis for why he was taken into
22 custody is a legal issue. You ruled on that.

23 The Court: How about that Mr. Gamble?

24 Mr. Gamble: I guess my question would be is Mr. Murphy
25 okay with stipulating to our officers testifying that

1 they had a BOLO and they saw a vehicle that matched the
2 description and Mr. Forde was the back seat passenger and
3 they took him to the law enforcement center that night?

4 The Court: And then they questioned him and it went from
5 there. I don't see any need to ...

6 Mr. Murphy: I'm not, I mean, I'm not going to stipulate
7 to it, but if that's what's said, I'm not going to object
8 to that. That's sufficient evidentiary basis in my mind
9 to get him where he wants to go.

10 The Court: Well, what we need to do is get to the point
11 in the questioning and the alleged confession of the
12 armed robbery after he had marijuana a gun in the car is
13 a different question. I think that, that might form some
14 type of evidentiary meaning at some point, but I don't
15 see any reason to mention the marijuana.

16 Mr. Gamble: Okay.

17 The Court: What if he had a golf ball, is that relevant
18 to this case, whether or not he's guilty or not guilty of
19 armed robbery?

20 Mr. Gamble: I believe we have testimony that that is what
21 he was placed under arrest for and taken to the law
22 enforcement center.

23 The Court: But I've already ruled that all that, that
24 gets us past go.

25 Mr. Gamble: Right.

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1 The Court: To you being able to try this case.

2 Mr. Gamble: He was taken to the law enforcement center
3 based upon that and he was fingerprinted and the
4 fingerprints matched the fingerprint ...

5 The Court: As some lawyers do. You had no right to, isn't
6 it true detective, you didn't have any right to take my
7 client downtown and question him, you can talk about
8 marijuana for a whole day if you want to. But some, some
9 defense lawyers ask all those questions to give them a
10 soap box to stand about how dare they question my client
11 about anything when they didn't have anything on him. If
12 they do that, then you can talk about the marijuana. But
13 as far as setting the stage or anything, I've already
14 ruled that the, that there was probable cause to take him
15 into custody. Alright? I'm going to appoint Gene Howard
16 as the foreperson and we'll take, let's take five minutes
17 and then we'll begin. If you would go down there and ask
18 the bailiff to tell the jury that we'll have them out in
19 just a few minutes and they can bring their coffee,
20 water, sodas, okay? Alright, thank y'all.

21 (Court Break was taken)

22 Mr. Gamble: Yes sir, Your Honor.

23 The Court: Mr. Murphy?

24 Mr. Murphy: Yes sir.

25 The Court: Alright, you can bring in the jury and Mr.

1 Howard will be the foreperson.

2 {Jury enters Courtroom}

3 The Court: Alright, thank you Mr. Kelly. All of the
4 jurors and the alternates, all of the jurors are in the
5 courtroom?

6 Mr. Kelly: Yes sir.

7 The Court: Alright, Mr. Kelly you can, let me talk to you
8 for just a moment Ladies and gentlemen and then I'm going
9 to talk to you a little bit longer. Before we actually
10 get started with the trial, it's necessary that we
11 require that you are to be administered another oath, so
12 if you would, please stand.

13 (Jurors comply)

14 Bailiff: Ladies and gentlemen raise your right hand
15 please. Ladies and gentlemen of the jury, the State of
16 South Carolina, County of Sumter in the court of General
17 Session under indictment number 2009-GS-43-248, State of
18 South Carolina, you shall well and truly try and true
19 deliverance make between the State of South Carolina and
20 the Defendant Jason Forde, whom you shall have in charge
21 and a true verdict give according to the evidence, so
22 help you God. Say I do.

23 Jury: I do.

24 Bailiff: Thank you much.

25 The Court: Alright, Ladies and gentlemen I need to talk

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1 to you in detail about the oath that you just took,
2 because in essence, that's what this case is all about.
3 You have just sworn an oath to try this case according to
4 the evidence and the law and that's what this case is all
5 about. That's what any case is all about. What I'm going
6 to talk to you about now is intended to serve as an
7 introduction to the trial of this case and any remarks
8 that I make to you aren't a comment on my part as to what
9 the facts are. I want to make sure that you understand
10 that under the law, under the Constitution, you are the
11 sole fact finders in this case. You are the only people
12 in the world who can decide whether or not this Defendant
13 is guilty or not guilty of the crimes he's charged with.
14 Now Ladies and gentlemen, in this case, the Defendant has
15 been indicted for armed robbery and as I've told you at
16 the beginning, or at the beginning of jury selection, the
17 fact that a person is arrested, charged or indicted for
18 anything is not evidence of one single thing. Now the
19 Defendant has entered a plea of not guilty to the charge
20 of armed robbery. He is presume innocent and the State
21 has the sole burden of proving that he is guilty beyond a
22 reasonable doubt. At the end of this case I will tell you
23 what reasonable doubt is. Now, the fact that the
24 Defendant has been charged is not to be held against him.
25 The State still has to prove these charges. The Defendant

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1 does not have to prove himself not guilty and he doesn't
2 have to disprove anything. That's not the way the system
3 works. Now Ladies and gentlemen the indictment is simply
4 the charge that walks this case or the document that
5 walks this case into the courtroom. It will be up to the
6 State to present evidence that will convince a jury of
7 guilt beyond a reasonable doubt before that type of
8 verdict can be entered. You will be charged with the
9 responsibility at the conclusion of this case to go back
10 to your jury room and discuss all of the issues and
11 determine whether or not the State has met that burden.
12 And in essence that's what you have sworn to do; to try
13 this case according to the evidence in the law so help
14 you God. Now, before I tell you that you can, you cannot
15 begin discussing this case amongst yourselves. For
16 example, this afternoon when you get back from lunch,
17 tomorrow morning when you get back and the case isn't
18 over yet, you can't start talking about this

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1 case with each other. If you go to lunch with one
2 another, some of you may strike up an acquaintance and go
3 to Wendy's or go to Guignard Diner or wherever you might
4 go, you can't talk about the case. You can't talk about
5 lawyers, you can't talk about the Defendant, you can't
6 talk about any of the witnesses in this case until I tell
7 you that you can. That's because you will not know
8 everything that there is to know until you have heard
9 everything that there is to hear. The testimony of the
10 first witness is no more and no less important than the
11 testimony of the second, third, fourth, fifth or the five
12 hundredth witness that testifies in any case. Because
13 that last witness may provide evidence that may tilt
14 something in your mind about what your decision should
15 be, so don't begin making up your mind about anything
16 except credibility issues, which I'm going to talk to you
17 about in just a moment, until I tell you that you can.
18 Now, likewise, you can't talk about this case with
19 anybody else. By the end of the trial, someone you live
20 with or someone you work with may be dying to know what
21 you are doing in here and they may pester you
22 inaccessibly with questions about what the case is about
23 and we do have a system in this nation where things can
24 be written about a case in the newspaper or talked about
25 on the radio or talked about on television

1 . You can't look at any of that, you can't listen to any
2 of that, you can't watch any of that, because those
3 people aren't jurors and they are not witnesses and what
4 they say may be their own view of certain things and, and
5 your view is what counts. Not what some outsider who is
6 not affiliated with this case tells other people what the
7 case is about. So, don't read anything, don't look at
8 anything, don't listen to anything unless it's right here
9 in this courtroom. Alright, now, here's how the case will
10 be tried; in a moment the lawyers are going to stand up
11 and give what is called a opening statement. That is
12 their opportunity to tell you what they think the
13 evidence will or won't show. Mr. Gamble for the State
14 will give an opening statement. Mr. Murphy can if he
15 wants to give an opening statement. He doesn't have to.
16 He can wait until the State rests its case to give you
17 his opening statement, but if he wants to, Mr. Murphy can
18 give an opening statement right after Mr. Gamble does.
19 Now, what the lawyers say to you during the course of
20 their opening statement isn't evidence, because the
21 evidence is going to come to you during the next courses
22 of the trial, which will be the State's case in chief and
23 the Defendant, if he wants to, even though he is not
24 required to, because he is presumed innocent and doesn't
25 have any burden. The Defendant can present evidence after

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1 that. The next phase of the trial will be for the lawyers
2 to give you their closing arguments and then I give what
3 is called a charge on the law. What you have to do is
4 listen to everything and keep an open mind. You can't
5 decide in the middle of the trial to take a witness off.
6 You can't sit there and close your eyes and where this is
7 really going to hit home to you is this afternoon after
8 you come back from lunch, because it happens to
9 everybody. It depends what, whether or not you are a day
10 person, night person, afternoon person, I'll guarantee
11 you some of you will come back this afternoon heavy
12 lidded, but if I see that, we'll take a break or I'll
13 just tell everybody in the jury box to stand up and
14 stretch, even if you don't want to. So, make sure that
15 you pay very close attention. The State expects and is
16 entitled to a fair and impartial trial; the Defendant
17 expects and is entitled to a fair and impartial trial.
18 You've given an oath to give them both that. Now, as fact
19 finders in this case you have the responsibility and it's
20 absolutely necessary that you determine the believability
21 of the witnesses who testify. The witnesses will come up
22 here after being sworn, sit in this chair and answer
23 questions. You have to evaluate whether or not you
24 believe what that person is saying. Now, there's no magic
25 formula for me to point to to tell you how to do that,

1 except that you use your good common sense. Everyday,
2 when you listen to somebody talk you decide well do I
3 believe that person, can I believe that person? You can
4 believe every single word of what a witness has to say.
5 You can believe parts and reject the rest, that's up to
6 you. You can disbelieve every single word that a witness
7 has to say. I'm not going to tell you who to believe, who
8 you should believe and what you believe. That's entirely
9 up to you and you'll notice that when these witnesses are
10 testifying, they will be testifying to you, not to me ,
11 because under the system I don't have any role in
12 determining whether or not I believe somebody; that's for
13 you. So, I may, if I don't hear something I may say
14 excuse me, what did you just say? But I won't be making
15 any credibility or determinations. Some things that you
16 can take into account within your common sense is how
17 does that witness appear on the witness stand? Is that
18 witness hesitant or straight forward when he or she is
19 answering questions? Is the witnesses' testimony
20 consistent or inconsistent in other testimony or evidence
21 that's in the record. How did that witness come to know
22 the facts that he or she testified to and what was that
23 witnesses true ability to know the facts? Perhaps did
24 that witness say something different on another occasion?
25 And again, anything else that you think, that you factor

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1 in as common sense and lead you to determine whether or
2 not you believe somebody. There's no magic formula on
3 that. Now, during the course of the trial, I will tell
4 you this, because it happens in every trial, I think I've
5 been, I've presided over maybe one trial where there
6 hasn't been an objection and that's a miracle. We have
7 the rules of evidence and my set of rules is in this
8 brown book. There are a lot of rules and those rules are
9 open to interpretation. It is there lawyer's
10 responsibility to make an objection if they believe that
11 a question is inappropriate or information that is sought
12 to be from the witness is inadmissible. Do not take
13 offense if a lawyer stands up to make an objection. He's
14 not trying to hide something from you. He's trying to
15 make a legal point with me that has nothing to do with
16 you. That lawyer may object many times to the same
17 question. He may object many times to the same line of
18 questioning, that's because it is that lawyer's
19 responsibility to do that, because this is a court of
20 record and they have to protect the record insofar as
21 their objections are concerned. Again, the lawyers is not
22 trying to hide something and the lawyer who asked the
23 question is not trying to slip something in that you
24 ought not hear. So, if an objection is sustained, that
25 doesn't mean that that lawyer is being underhanded;

1 that's just the way the system works. There are two, two
2 points here: you determine the facts, so if I allow the
3 question and I allow the answer, you can consider it. I
4 made a legal ruling that you can hear that testimony. If,
5 if I over, if I sustain an objection that means you can't
6 hear it. I may tell you during the course of a trial
7 ladies and gentlemen disregard the testimony that the
8 black cat walked across the street; you can't consider
9 that. If I tell you that, you can't consider it. That's
10 one of your responsibilities, because you try the case
11 according to the evidence and the law and if I make a
12 legal ruling you have to abide by that. Now Ladies and
13 gentlemen if I say or do anything during the course of
14 the trial that makes you think that I favor one side over
15 the other, I don't. We'll be learning about this case,
16 for the most part, together. I don't favor one side, I
17 don't favor one lawyer, I don't have, I don't have a dog
18 in that fight; it's up to you and I respect your role and
19 by the same token you respect my role as the judge of the
20 law. Alright, any objection to those remarks from the
21 State?

22 Mr. Gamble: Not from the State Your Honor.

23 The Court: Alright, Mr. Murphy?

24 Mr. Murphy: No Your Honor.

25 The Court: Alright Ladies and gentlemen, again the

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1 lawyers are going to give you their opening statements.
2 The Defendant can do so if he chooses. What they say is
3 not evidence and after those statements we'll move
4 promptly into the presentation of evidence. Mr. Gamble?
5 Mr. Gamble: Thank you Judge, may it please the Court?
6 The Court: Yes sir.

7 OPENING STATEMENT BY MR. GAMBLE:

8 Good-Morning Ladies and gentlemen. My name is Mattison
9 Gamble and I work here at the Solicitor's office in
10 Sumter county. I work for the third judicial circuit
11 under Mr. Kelly Jackson who is head Solicitor Sumter,
12 Lee, Williamsburg and Clarendon County. As you probably
13 know, our job up here is to prosecute criminal cases. The
14 criminal case we're prosecuting here today is an armed
15 robbery. This is an armed robbery that happened over two
16 years ago; it happened on March 6 of 2008 at the Food
17 Lion on 378, out in the county near 441, what I call the
18 McDonald's Food Lion. That Food Lion that's got a
19 McDonald's on the corner, it's got Advance Auto Parts and
20 it use to have a Movie Gallery, but I think it's gone out
21 of business now. This occurred about 9:45 at night, Ms.
22 Shantel Hodge, who's sitting right here at the end of
23 this pew was working that night. She was helping a
24 customer; she was helping a customer find some vitamins,
25 finding some other items when a man in a grey hooded

1 sweat shirt and blue sweatpants comes up behind her and
2 puts a gun on her and says, I need you to open the safe
3 and give me the money. She follows him around to where
4 the office area of the store is located, goes to open up
5 the safe and follow his directions, because she doesn't
6 want to get shot. He's got a gun pointed at her, a black
7 handgun. She goes to open it up and drops her key she's
8 so nervous. She picks the keys up, finally gets the safe
9 open and he's telling her hurry up, hurry up, open the
10 safe, give me the money, give me the money. She gets the
11 safe open, hands him the money, he takes the money and
12 takes off running. The alarm was pushed to let law
13 enforcement know what happened and they show up to the
14 scene shortly thereafter. They secure that area and
15 process that scene. Officers look at an in store camera
16 video that the store has up on the walls and sees the
17 suspect going through the store, sees the suspect picking
18 up items in the store, sees the suspect picking up a
19 drink bottle, putting it on the checkout counter at the
20 clerk. They see him pull the gun out on the clerk and
21 then walk out and pull a gun out on Ms. Hodge. When they
22 see this, they start fingerprinting; they fingerprint
23 rails, they fingerprint the checkout counter and they
24 fingerprint that drink bottle that the suspect put on
25 that check out counter. They lift a fingerprint off of

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1 that checkout counter and they submit that into evidence.
2 Officers in the area are alerted as to what happened
3 because this man left on foot. They don't know which way
4 he left. Officers there in the area are traveling along
5 261 and see some clothing on the side of the road. Well,
6 that clothing on the side of the road matches the
7 clothing that the suspect was wearing. They collect that
8 and put it into evidence. Two months go by and no one is
9 arrested for this. It gets to be May 28, 2008 and Mr.
10 Forde, who's sitting right over here, the Defendant is
11 taken into custody by the Sumter Police Department
12 because he was taken into custody, his fingerprints were
13 taken, which was standard procedure, which you'll hear
14 testimony of and one of his fingerprints matches that
15 print that was lifted off of that drink bottle that was
16 left on the check out counter. A photographic line up was
17 made and shown to Ms. Hodge on June 2nd. Keep in mind
18 this is almost three months afterwards, and who does she
19 pick out, no doubt? Mr. Forde who's sitting right over
20 here at the table, and the man who arrested her, excuse
21 me, the man who robbed her that night and the man whose
22 fingerprint matched the fingerprint on that bottle that
23 night. The police also get a statement from the Defendant
24 admitting to the armed robbery; he says he did it. He
25 tells them what he did, he tells them how much money he

1 got. He says that he ran up, he says that he through the
2 clothes on the side of the road. They ask him for DNA
3 sample; they take a cheek swab and submit that to SLED in
4 Columbia and SLED runs a comparison to those clothes that
5 they found on the side of the road and get a positive
6 match on the tee shirt that they find with those clothes,
7 that's Mr. Forde's DNA. And you'll hear that testimony
8 from the SLED people that they ran those procedures that
9 ran the tests that are their standard procedures and it
10 came back to match Mr. Forde's DNA. You're going to hear
11 testimony from the victim, from the officers and
12 witnesses that are involved with this crime. You're going
13 to see pictures from the in store video that shows what
14 happened, that shows the armed robbery. You're going to
15 hear testimony about the fingerprint that came off of
16 that bottle matching Mr. Forde. You're going to hear
17 testimony about the DNA that came from Mr. Forde matching
18 that tee shirt with the clothing they found on the side
19 of the road and you're going to hear testimony from the
20 officers who got the confession from Mr. Forde that he,
21 that he did in fact rob that Food Lion. The State asks
22 that you take very, pay very close attention to
23 everything that you're going to hear in this trial,
24 because it's all going to come together into one final
25 conclusion, which is Mr. Forde is responsible for the

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1 armed robbery at the Food Lion on March 6, 2008. He was
2 the one that went in and put that gun on Ms. Hodge. He
3 was the one who took the money out of the safe, he's the
4 one that took off running, he's the one that left the
5 clothing on the side of the road and he's the one that
6 left that fingerprint behind. You're also going to hear
7 testimony from Ms. Hodge that he's the individual that
8 robbed her, robbed the store that night. And she picked
9 him up out of a lineup three months later. She couldn't
10 forget that face; she picked him out of that line up. We
11 ask that you pay close attention to all of the evidence
12 that's going to be presented to you and the testimony
13 from the officers and the witnesses that are involved and
14 the State believes that at the end of the, at the end of
15 the trial that you're going to be able to come to the
16 conclusion and convict Mr. Forde of the crime of armed
17 robbery. Thank you.

18 The Court: Thank you Mr. Gamble. Mr. Murphy any statement
19 at this time?

20 Mr. Murphy: Yes Your Honor.

21 The Court: Alright.

22 OPENING STATEMENTS OF MR. MURPHY:

23 Good morning.

24 Jury: Good morning.

25 My name's Tim Murphy and I represent Mr. Jason Forde who

1 is seated right over there. I'll be very brief this
2 morning. Mr. Forde is innocent of this case. That's not
3 just my opinion, that is the state of the law and that is
4 the presumption he's entitled to right now. Now, you've
5 heard Mr. Gamble's opening comments to you, that's not
6 evidence, as the Judge just indicated to you. What Mr.
7 Forde asks and what he requests and quite frankly
8 whatever individual who is on trial for some sort of
9 serious crime, like armed robbery requires, and what he's
10 requesting of you is that you hold the State to its
11 burden of proof. Burden of proof, in the United States is
12 beyond a reasonable doubt. We'll talk about that later,
13 you will get instructions from the judge, but going into
14 this right now, what Mr. Forde requests, is what he's
15 entitled to as a Defendant. He's not asking for anything
16 special and that is that right now, you understand that
17 he's innocent. He's entitled to a presumption of
18 innocence throughout this trial. That's what he asks for,
19 that's what he's required to have as a Defendant. We ask
20 you also, as you listen to the testimony, listen to the
21 evidence, to give Mr. Forde the benefit of every doubt.
22 Hold Mr. Gamble to exactly what he indicated he has. Hold
23 him, and hold the State to their burden of proof and give
24 Mr. Forde the benefit he's entitled to every single doubt
25 that is raised in this case. At the end of this process,

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1 we're confident that when you examine all of the
2 information and all of the evidence, you will have
3 concluded the State will not have met its burden. Thank
4 you.

5 The Court: Thank you Mr. Murphy. Alright Mr. Gamble you
6 may call your first witness.

7 Mr. Gamble: Thank you Judge. The State would first call
8 Shantel Hodge to the stand.

9 Bailiff: Place your left hand on the Bible and raise your
10 right hand please. State your name please.

11 Ms. Hodge: Shantel Hodge.

12 Bailiff: Do you solemnly swear and affirm the testimony
13 you give the Court to be the truth, the whole truth, and
14 nothing but the truth, so help you God?

15 Ms. Hodge: I do.

16 Bailiff: State your name for the court and spell your
17 last name please ma'am.

18 Ms. Hodge: Shantel Hodge, H-O-D-G-E.

19 DIRECT EXAMINATION OF MS. HODGE BY MR. GAMBLE:

20 Q: Ms. Hodge, do you live here in Sumter?

21 A: Yes sir.

22 Q: Were you working at the Food Lion at 5700 Broad Street
23 on the night of March 6, 2008?

24 A: Yes sir.

25 Q: Did a crime occur that night?

1 A: Yes sir.

2 Q: Would you please tell the jury what happened that
3 night?

4 A: I was working at the Food Lion on Broad Street and I
5 was helping a customer get some vitamins from behind a
6 counter, from behind the office and a man came up behind
7 me with a black handgun and he put it in my back and he
8 told me, he was telling me things like b, if you don't
9 open up the safe I'm going to kill you and just telling
10 me stuff. Just cursing at me, telling me things like that
11 and I walked over to the safe and I dropped the keys and
12 I opened, I finally got the keys up and I opened up the
13 safe and gave him the money.

14 Q: Do you recall how much money he took that night?

15 A: No.

16 Q: Do you remember which way he left out of the store?

17 A: No, I didn't look.

18 Q: Did y'all alert the police?

19 A: Yes.

20 Q: Did the police come that night?

21 A: Yes.

22 Q: Were you there when the police showed up?

23 A: Yes.

24 Q: And did they secure the area?

25 A: Yes.

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1 Q: Did they process the scene?

2 A: Yes.

3 Q: This was while you were there?

4 A: Yes.

5 Q: And you stated that he pointed a gun at you, could you
6 please tell the jury again what the description of the
7 gun that he had?

8 A: It was a black handgun and he put it in my back.

9 Q: But you saw that hand gun?

10 A: Yes, a black gun, yeah.

11 Q: And that Food Lion that you worked at, that was,
12 that's here in Sumter County?

13 A: Yes sir.

14 Q: Were you, Investigator Skinner, it says on the paper
15 right here with me, were you ever shown a lineup of
16 individuals ...

17 A: Yes.

18 Q: ... With Detective Skinner?

19 A: Yes sir.

20 Q: Do you recognize what's been marked for identification
21 as State's exhibit number 7? And what is that?

22 A: A line up of pictures of the man who, this, this a
23 line up right here.

24 Q: That's the one that he showed you?

25 A: Yeah.

1 Q: Did he ask you to pick an individual out of that
2 lineup?

3 A: Yes sir.

4 Q: Did you pick a person out of that lineup?

5 A: Yes sir.

6 Q: Which number did you pick?

7 A: Number two.

8 Q: And is number two the man who robbed the Food Lion
9 that night?

10 A: Yes sir.

11 Q: And is number two the same man that's sitting over
12 there at that table?

13 A: Yes sir.

14 Q: Did you initial it?

15 A: Uh-huh.

16 Q: Those are your initials right there and did you sign
17 the back of the, that's your signature?

18 A: Uh-huh.

19 Q: How positive are you that number two and the
20 individual that's sitting right there is the man that
21 robbed the Food Lion that night?

22 A: Very positive.

23 Q: Are you a hundred percent positive?

24 A: Yes, yes.

25 Q: I want to show you some photographs. Are you familiar

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1 with what these photographs are?

2 A: Yes sir.

3 Q: What are those photographs of?

4 A: Right here, that's where ...

5 The Court: Have they been marked?

6 Mr. Gamble: Yes, I'm sorry Your Honor. These have been
7 marked for identification as State exhibit number 6.

8 A: Right here, this must be where he went to go get the
9 beer and he, he was going to the counter to take it to
10 the girl at the register. She was on register four and
11 right here ...

12 Mr. Murphy: Your Honor I'm going to object. I don't
13 believe proper foundation has been laid regarding these
14 photographs and what they intend to ...

15 The Court: Alright you can lay a foundation and then you
16 ... I don't want the witness describing the photos to the
17 jury until they're in evidence.

18 Mr. Gamble: Thank you Your Honor. Are those, do y'all
19 have a camera system in the Food Lion?

20 A: Yes.

21 Q: Are you familiar with the camera system in the Food
22 Lion?

23 A: Yes.

24 Q: The pictures that, these four pictures, do they depict
25 areas of the Food Lion that you were working in that

1 night?

2 A: Yes.

3 Q: So those pictures are a fair and accurate
4 representation of what the Food Lion was that night?

5 A: Uh-huh.

6 Q: How can you know that that's the Food Lion you were
7 working in that night?

8 A: Cause I, that's me right there.

9 Q: Really?

10 A: Yeah, uh-huh.

11 Q: Are you familiar with this, this what I would call the
12 aisle?

13 A: Uh-huh.

14 Q: Okay, which aisle is that.

15 The Court: You need to say yes or no.

16 A: Yes, yes sir, yes.

17 Q: And what's, what's, what area is this in this picture?

18 A: The office area.

19 Q: That's the area that you were in when he took the
20 money?

21 A: Yes sir.

22 Q: And you say that you were in this picture up here,
23 that's the office area too?

24 A: Yes sir.

25 Q: And how about this right here with this man?

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1 A: That's the register area where you check out at
2 register four.

3 Q: And I, I've asked you before, but I'll ask you again,
4 are these pictures a fair and accurate representation of
5 the Food Lion that you worked at?

6 A: Yes sir.

7 Q: And the pictures that you see, is that a fair and
8 accurate representation of what occurred that night?

9 A: Yes sir.

10 Mr. Gamble: And just, Judge at this time we'd offer the,
11 what's been identification 6 into evidence.

12 The Court: Alright, Mr. Murphy?

13 Mr. Murphy: Your Honor I would just renew my objection. I
14 don't believe that an adequate foundation has been laid.

15 The Court: Alright the objection is overruled; those are
16 in and let me see the photos real quick. Alright
17 objection is overruled. Those could be stapled together
18 in two pieces of paper for a total of four photographs.
19 Those are in as State's number 6.

20 (State's Number 6 was marked)

21 Q: And at this time would you please, if you could just
22 hold it up like that and show it to the jury and tell
23 them what's going on in each one of those pictures.

24 A: Right there he went down to the, I think he got some
25 beer, that was beer and he was taking it to register four

1 and right there, that's me; I'm in the safe. He just now
2 got the money and after he got the money he went running
3 out the door and, and that's right, on this picture right
4 here, that's right after he got the beer he went, he put
5 the gun on her, on the girl at register four and he, he
6 asks her, I guess he asked her who had the keys to the
7 safe and she told him me and right there, that's where he
8 got me at the safe. I, right there, you can see where the
9 keys dropped right there. I dropped the keys because I
10 was so nervous because he was cursing at me, calling me
11 all kind of b's, telling me he was going to kill me if I
12 didn't open up the safe and that's the other girl right
13 there in front of register four and that's him.

14 Q: Did he have a gun pointed on you at that time?

15 A: Yeah, the gun is right there, right there.

16 Q: Judge, I'd like to publish these to the jury.

17 The Court: Alright Ladies and gentlemen, if an exhibit's
18 published, that just means it's going to be passed
19 through the box to you. Make sure that you continue to
20 pay attention to the testimony as you look at any
21 exhibits. Okay Mr. Gamble, go ahead.

22 Mr. Gamble: Thank you Judge.

23 Q: Ms. Hodge, were you afraid that night?

24 A: Yes sir.

25 Q: Were you afraid this man was going to kill you?

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1 A: Yes sir.

2 Q: And you, and again you didn't see which way he ran
3 out, you just alerted the police?

4 A: Yes sir.

5 Mr. Gamble: If you would, please answer any questions
6 from Mr. Murphy.

7 A: Yes sir.

8 CROSS EXAMINATION OF MS. HODGE BY MR. MURPHY:

9 Q: I take it you were extremely nervous at the time?

10 A: Yes sir.

11 Q: And this entire episode happened over a very short
12 period of time?

13 A: Yes.

14 Q: Less than a minute?

15 A: No, it wasn't no less than a minute, no. I don't know
16 exactly how long it took, but ...

17 Q: A relatively short period of time though?

18 A: Not too short of a time, but it was short yeah, but
19 not too short.

20 Q: Alright.

21 A: He had to ...

22 Q: A detective approached you two months after this
23 incident correct?

24 A: Yes sir, about ...

25 Q: And now we're almost two years after this incident?

1 A: Yes sir.

2 Mr. Murphy: I have no further questions.

3 The Court: Okay, any re-direct?

4 Mr. Gamble: Nothing on re-direct Your Honor.

5 The Court: Thank you ma'am. You can step down.

6 A: Thank you.

7 The Court: Alright, any objection to the witness being
8 excused if she'd like to be excused Mr. Murphy?

9 Mr. Murphy: No Your Honor.

10 The Court: Alright now Ms. Hodge you can leave or stay,
11 whichever you'd like. You can be here, but you don't have
12 to be here if you don't want to. Alright.

13 Mr. Gamble: Thank you Your Honor. The State next calls
14 Raymond Mackessy to the stand.

15 Bailiff: Place your left hand on the Bible and raise your
16 right hand. State your name.

17 Mr. Mackessy: Raymond Mackessy.

18 Bailiff: Do you solemnly swear or affirm the testimony
19 you give this Court to be the truth, the whole truth and
20 nothing but the truth, so help you God?

21 A: I do.

22 Bailiff: Thank you, be seated. State your name and spell
23 your last name if you would please.

24 A: Raymond Mackessy. That's M-A-C-K-E-S-S-Y.

25 DIRECT EXAMINATION OF MR. MACKESSY BY MR. GAMBLE:

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- 1 Q: Sgt. Mackessy are you working for anyone at this time?
- 2 A: No sir, I'm retired.
- 3 Q: And who, who did you use to work for?
- 4 A: Sumter County Sheriff's Office.
- 5 Q: And how long did you work for them?
- 6 A: Twenty three years.
- 7 Q: Were you working on the night of March 6, 2008?
- 8 A: Yes sir.
- 9 Q: Did you happen to respond to a armed robbery report at
- 10 5700 Broad Street at the Food Lion in the county?
- 11 A: Yes sir.
- 12 Q: Could you please tell the jury what your position was
- 13 with the county at that time?
- 14 A: I was supervisor of the crime scene unit for the
- 15 Sheriff's office and I was called, was on call that night
- 16 and was called to respond to the Food Lion.
- 17 Q: And what job duties do you have with the, with that
- 18 title when you were working with the county?
- 19 A: I processed crime scenes, photograph, process
- 20 evidence, collection of evidence.
- 21 Q: And as part of that collection of evidence, do you
- 22 lift fingerprints?
- 23 A: Yes sir.
- 24 Q: Could you please explain to the jury how you lift a
- 25 fingerprint?

1 A: When I lift a fingerprint I use what's, it's a carbon
2 based powder and I'll take a fingerprint brush, dip it in
3 the powder and rub it over the surface and a fingerprint
4 will develop if it's there. I then take a piece of what's
5 called lifting tape, fingerprint lifting tape and put it
6 over the fingerprint, lift it and put it on what's called
7 a backing card and then once it's on the backing card, I
8 will then fill out the other side of the card as to where
9 I found the print and then other such information.

10 Q: Did you lift any fingerprints that night?

11 A: Yes sir.

12 Q: Where did you lift the print off of?

13 A: I lifted a print off of a Sierra Mist bottle, drink
14 bottle that was on the checkout counter on the conveyor.

15 Q: And how were you able to determine that there was a
16 print on that bottle?

17 A: When I put the powder on the, on the bottle, the
18 fingerprint developed; you could see it.

19 Q: Did you look at any sort of in store video to
20 determine that there might be a print on that bottle?

21 A: Yes sir, I viewed the video prior to doing any
22 processing.

23 Q: And you saw the individual place that bottle onto the
24 ...

25 A: Yeah.

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1 Mr. Murphy: Your Honor, unless the entire video is going
2 to be produced I'm going to object to testimony regarding
3 the video.

4 The Court: Overruled.

5 A: Yes sir, I saw the suspect put the bottle on the
6 counter.

7 Q: And you said that you were able to lift a fingerprint
8 off of that Sierra Mist bottle?

9 A: Yes sir.

10 Q: And in your experience as a crime scene investigator,
11 was that print suitable to send forward to evidence to
12 use for any fingerprint data?

13 A: Yes sir. I found the fingerprint was suitable for
14 identification.

15 Q: And what do you do with a fingerprint once you lift it
16 and you send it forward?

17 A: Once I lift it, it will eventually, it'll go to Marie
18 Hodge , who is the Avis operator for Sumter Police
19 Department. She's the one who actually does the
20 comparisons.

21 Q: Are fingerprints submitted to your evidence custodian?

22 A: Yes sir, they go through, they go into the evidence
23 room first and I was one of the evidence technicians and
24 I put it in the evidence room until it went to Marie
25 Hodge.

1 Q: Just a second Your Honor.

2 The Court: Alright.

3 Q: I'm going to show you what's been marked for
4 identification as State's exhibit number 8. Do you
5 recognize that?

6 A: Yes sir, this is a manila envelope that our
7 fingerprint lifts are store in.

8 Q: And can you tell from that manila envelope what's
9 inside of that envelope?

10 A: From the manila envelope, it says Latent File, so I
11 know it's Latent's and it also bares an evidence tag with
12 the victim as Food Lion and the remarks armed robbery. It
13 bares my name, it's all in my handwriting and the case
14 number assigned to this case.

15 Q: And are you able to identify, are you able to identify
16 the Latent prints that are in that manilla envelope as
17 the ones that you lifted the night of March 6, 2008?

18 A: Yes sir, these are the fingerprints that I lifted; it
19 bares my name.

20 Q: And when you say Latent print, what do you mean?

21 A: Latent means hidden. It's a, it's an impression that
22 needs to be developed at the surface to make it visible.

23 Q: And you used the powder substance to bring up those
24 prints?

25 A: I used the powder to bring up the print.

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1 Q: And when you lift those prints, they stay in your
2 custody until you turn them over to evidence custodian?

3 A: That's correct.

4 Q: Do you know which evidence custodian those were turned
5 over to?

6 A: That was me. I'm also evidence custodian too. I help
7 our, the head of the evidence room is Cindy Pierson and I
8 assist her, so I also have a key to the evidence room.

9 Q: Sgt. Mackessy were you able to identify a suspect that
10 night just from looking at that one fingerprint?

11 A: I wasn't, no.

12 Q: I'm sorry Your Honor. Just a second. Your Honor at
13 this time I would like to offer what has been identified
14 for identification as State's exhibit number 8 into
15 evidence.

16 Mr. Murphy: No objection.

17 The Court: Alright number 8 is in with no objection.

18 Mr. Gamble: Please answer any questions Mr. Murphy may
19 have.

20 CROSS EXAMINATION OF MACKESSY BY MR. MURPHY:

21 Q: Was the print from the bottle the only print you
22 lifted from the bottle?

23 A: No, there was other prints in that envelope that were
24 lifted from the bottle also, but I don't believe that
25 they came back as, as being identified.

1 Q: Okay, so multiple prints on the bottle, one of which
2 ultimately made a match?

3 A: Yes sir.

4 Q: Alright. How long do fingerprints, I mean, if I
5 touched a bottle, how long, do you have any idea you
6 would expect for my prints to stay on that bottle
7 assuming it just stayed there?

8 A: You can, in theory, you cannot determine the age of a
9 fingerprint.

10 Q: You cannot determine the age of a fingerprint?

11 A: You cannot determine the age of a fingerprint, but it
12 is my practice or my belief in doing this for twenty five
13 years that a fresh print is going to come up a little bit
14 darker than a print that hasn't been there, or it's been
15 there for a while. A fresher print will come up darker,
16 because the, the chemicals that make up a fingerprint do
17 not have a lot of time to dissipate.

18 Mr. Murphy: I have no other questions.

19 The Court: Re-direct?

20 Mr. Gamble: No questions on re-direct Your Honor.

21 The Court: Thank you Mr. Mackessy. You can step down.

22 A: Thank you Your Honor.

23 The Court: Any objection to his witness being excused?

24 Mr. Murphy: No, Your Honor.

25 The Court: Mr. Gamble?

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1 Mr. Gamble: No sir.

2 The Court: Mr. Mackessy you can leave or stay, whichever
3 you'd like.

4 Mr. Mackessy: Thank you Your Honor.

5 The Court: Thank you.

6 Mr. Gamble: Your Honor I believe our next witness is out
7 in the hallway.

8 The Court: Alright. We're going to take a brief recess at
9 this point. The witnesses involved in cases from time to
10 time perhaps could be exposed to other court appearances
11 and I think that's the case with the next witness. You
12 may go to your jury room. If you would like a soft drink
13 --- and by the way, Ms. Howard, you are the foreperson.
14 I will talk to you later about what your duties are. If
15 anybody would like a soft drink and if we have the kind
16 in the courthouse you can bring it back out when you come
17 back. All right. Just go to your jury room and don't
18 discuss the case.

19 (Jury break was taken)

20 The Court: All right. Is everyone ready to go?

21 Mr. Gamble: Yes, sir.

22 Mr. Murphy: Yes, sir.

23 The Court: All right. You can bring in the jury.

24 (Jury enters courtroom)

25 The Court: Okay. We are ready to move forward Ladies and

1 Gentlemen. Mr. Gamble, you can call your next witness.

2 Mr. Gamble: Thank you, Your Honor, the State next calls
3 Officer Jason Tassone.

4 Bailiff: Place your left hand on the Bible and raise your
5 right hand, please.

6 Witness: Jason Tassone.

7 Bailiff: Do you solemnly swear or affirm the testimony to
8 this case will be the truth, the whole truth and nothing
9 but the truth so help you God?

10 Witness: I do.

11 Bailiff: State your name and spell your last name for the
12 Court, please.

13 Witness: Jason Tassone, T-A-S-S-O-N-E.

14 Mr. Tassone - Examination by Mr. Gamble:

15 Q: Officer Tassone, where do you work?

16 A: With the Sumter County Sheriff's Office.

17 Q: How long have you been there?

18 A: Approximately three years.

19 Q: What position do you hold there?

20 A: Patrol deputy.

21 Q: Where you a patrol deputy on March 6, 2008?

22 A: Yes, I was.

23 Q: Where you on patrol that night?

24 A: Yes, I was.

25 Q: Where you patrolling the vicinity of 5700 Broad

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1 Street?

2 A: Yes I was.

3 Q: Where were you on patrol that night?

4 A: When the call came out I was actually on Highway 441
5 behind the base.

6 Q: Did you have any, you said the call came out, did you
7 happen to respond to any type of call specific call to
8 assist with anything?

9 A: Yes, sir. We received a call of the armed robbery at
10 the Food Lion.

11 Q: Did you observe anything while you were patrol in
12 assistance with the armed robbery?

13 A: Yes, I did. Sergeant Lindsey was on Highway 261, he
14 stated that he observed a vehicle ...

15 The Court: Yes, sir. Mr. Gamble?

16 Mr. Gamble: Your Honor, I believe ...

17 The Court: Is Mr. Lindsey going to testify?

18 Mr. Gamble: I hadn't planned on it.

19 The Court: All right. You all come on up.

20 (Sidebar between attorneys and Judge)

21 The Court: All right. Mr. Gamble if you would rephrase
22 the question, I'll permit the witness to testify in
23 general how he got to be where he got to be but not
24 without any undue specifics from Mr. Lindsey.

25 Q: Did you go to area at 261 and 378?

1 A: Yes sir. I did.

2 Q: Did you observe anything on the roadway that night?

3 A: Yes I did. I observed a t-shirt, a black t-shirt that
4 had a skull on it and a, I believe a grey in colored
5 sweat shirt that had the word State Property written on
6 it and that was at the bottom of the on Highway 378/76
7 just before 261 and about a hour later I did locate a
8 pair of blue type sweat pants that had a bundle of cash
9 in the pocket. I believe they were five dollar bills
10 still with the wrap in the pocket.

11 Q: I want to show you what's been marked for
12 identification as State's Exhibit Number 12. Do you
13 recognize that?

14 A: Yes, sir.

15 Q: What is that?

16 A: It appears to be the sweat paints and shirt, sweat
17 shirt I turned into evidence.

18 Q: When you find those clothes on the side of the road,
19 what is your procedure for taking them?

20 A: There were placed into evidence, the evidence chain
21 and then evidence technician retrieves them from the
22 evidence locker.

23 Q: So when you collect them what do you do with them?

24 A: I secure them and make out a chain and put them in the
25 evidence locker at the station.

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1 Mr. Gamble: Your Honor, I would like Officer Tassone to
2 open the box at this point.

3 The Court: Mr. Murphy?

4 Mr. Murphy: I have no objection.

5 The Court: Is it 12 for i.d.?

6 Mr. Gamble: Yes sir.

7 The Court: Okay.

8 (Officer Tassone opens box)

9 A: These are the sweatpants.

10 Q: Now did you bag those up like that?

11 A: No I didn't. Sgt. Mackessy did. Or no, I bagged them
12 and he sealed them and they were sent to SLED.

13 Q: He put that seal on?

14 A: Yes he did.

15 Mr. Gamble: Your Honor, can he open that bag?

16 The Court: Alright.

17 A: It's just the pants.

18 Q: Are those, are those the pants you recovered off the
19 roadway that night?

20 A: Yes they are.

21 Q: Is there anything else in that bag down there?

22 A: Yeah, should be the T-Shirt. Tee shirt with the skull
23 on the inside.

24 Q: Those are the ones you found on the roadway?

25 A: Yes it is, and a grey sweatshirt marked State Property.

1 Q: And that's the one that you found on the roadway that
2 night?

3 A: Yes it is.

4 Q: I'll now hand you what's been marked for identification
5 as State's exhibit number 13. Do you recognize that?

6 A: Yes, it's the money that was in the pocket of the sweat
7 pants.

8 Q: And how are you able to identify that?

9 A: I looked at the chain.

10 Mr. Gamble: Your Honor at this time I would ask that
11 Officer Tassone open the evidence bag.

12 The Court: That's number 13? Is that right?

13 Mr. Gamble: I believe so Your Honor, yes, 13.

14 The Court: Okay, go ahead.

15 (Witness opens the bag)

16 Q: Now again, where did you find that money?

17 A: In the sweatpants on Highway 378/76 next to 261.

18 Q: And they were in these blue sweat pants right here?

19 A: Yes it was, in the pocket of the sweatpants.

20 Q: And what did you do with those when you collected them?

21 A: I collected them and placed them into the evidence
22 locker at the police station.

23 Mr. Gamble: Your Honor at this time I'd like to move
24 exhibit, what's been marked for identification as State's
25 exhibit number 13 be placed into evidence.

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1 The Court: Mr. Murphy?

2 Mr. Murphy: 13 is the, Your Honor, I'll object to the
3 admission of any of this. There hasn't been a foundation
4 laid.

5 The Court: Alright, I'll make that determination later. As
6 far as foundation is concerned, right now, do, do you
7 need, are you going to be referring to this money with any
8 other witness before lunch?

9 Mr. Gamble: Not, not directly Your Honor.

10 The Court: Alright, so that we can move along, I'll hear
11 any arguments on that point once we, right after we break
12 for lunch, so the objection is sustained at this time.

13 Okay?

14 Mr. Gamble: Please answer any questions Mr. Murphy may
15 have.

16 A: Yes sir.

17 CROSS EXAMINATION BY MR. MURPHY:

18 Q: How long after you received the report of the Food
19 Lion, did you find those items?

20 A: The shirt was, the two shirts were right after, within
21 several minutes and the pants were about, a little over an
22 hour.

23 Mr. Murphy: Nothing further.

24 The Court: Any re-direct?

25 Mr. Gamble: Nothing on re-direct.

1 The Court: Alright thank you sir you can step down. Okay,
2 Mr. Gamble.

3 Mr. Gamble: Your Honor I would recall Sergeant Ray
4 MacKessy.

5 The Court: Come up us Mr. MacKessy. You're still under
6 oath.

7 Mr. MacKessy - Examination by Mr. Gamble:

8 Q: Sergeant Mackessy very briefly, you've heard Officer
9 Tassone's testimony as to the clothing he found on the
10 side of the road. Did you have any involvement in any
11 chain of custody in those clothes?

12 A: Yes sir.

13 Q: And what is that?

14 A: I removed them from D shift evidence locker at the law
15 enforcement center on the 7th of March, 2008 and
16 transferred them to the evidence room.

17 Q: Did you perform any tests on them at that time?

18 A: No.

19 Q: All you did was transport them to the evidence locker?

20 A: I transported them to the evidence locker.

21 Mr. Gamble: Just a second Your Honor.

22 Q: Would anybody have access to these pieces of evidence
23 outside of law enforcement?

24 A: Outside of law enforcement? No.

25 Q: Is this evidence, is it kept locked up?

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1 A: Yes sir, it is.

2 Q: Is there any other type of security to insure that
3 nobody tampers with it?

4 A: Yes sir, there's, when I receive the evidence, I put
5 evidence tamper proof tape on it and then sign my initials
6 and date across the seal.

7 Q: And that was the tamper proof tape that you saw Officer
8 Tassone remove?

9 A: That's correct.

10 Q: Does that indicate to you that, that hasn't been
11 tampered with when you put that tape on?

12 A: Yes sir.

13 Q: Did you take that evidence anywhere other than the
14 evidence the locker at the Sumter County Sheriff's Office?

15 A: It went to the main evidence room where it was stored
16 until eventually it went to SLED I believe.

17 Mr. Gamble: No more questions Your Honor. Please answer
18 any questions Mr. Murphy may have.

19 The Court: Mr. Murphy?

20 Mr. MacKessy - Cross Examination by Mr. Murphy:

21 Mr. Murphy: You indicated, how many people have access to
22 the evidence locker?

23 A: The evidence locker at the law enforcement center?

24 Q: Yes.

25 A: It'll be three evidence technicians, myself, Cindy

1 Pierson and Investigator Mike Bean who at that time would
2 have access to the lockers. The shift lieutenants have
3 keys to the lockers, to their own locker.

4 Q: Is the evidence locker in a different place than the
5 evidence room?

6 A: Yes sir.

7 Q: Okay, how many people have access to the evidence room?

8 A: To the evidence room only three. The three names I just
9 mentioned; myself, Cindy Pierson who runs the evidence
10 room and investigator Mike Bean who is crime scene, but he
11 also assists with evidence.

12 Q: Now the room itself is just a normal room with shelves
13 and it's locked? Is it refrigerated?

14 A: Well, the room, the room is not only locked, but has an
15 alarm system, a coded system and there's refrigeration
16 inside there if we need it, inside the evidence room.

17 Q: Okay, were any of these items placed into
18 refrigeration?

19 A: I don't believe they were, no.

20 Q: Have you been trained in preserving DNA evidence or
21 anything of that sort?

22 A: Yes sir.

23 Mr. Murphy: I have no further questions.

24 The Court: Re-direct?

25 Mr. Gamble: Nothing on re-direct Your Honor.

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1 The Court: Alright, thank you sir, you can step down.

2 A: Yes sir.

3 The Court: Okay Mr. Gamble?

4 Mr. Gamble: Your Honor the State next calls Detective
5 Billy Lyons to the stand.

6 Bailiff: Put your hand on the Bible and raise your right
7 hand please. Do you solemnly swear or affirm the testimony
8 to this court to be the truth, the whole truth and nothing
9 but the truth, so help you God?

10 Mr. Lyons: I do.

11 Bailiff: State your name and spell your last name for the
12 court please sir.

13 Mr. Lyons: William Lyons, L-Y-O-N-S.

14 DIRECT EXAMINATION OF MR. LYONS BY MR. GAMBLE:

15 Q: Mr. Lyons, who do you work for?

16 A: The City of Sumter Police Department.

17 Q: And how long have you worked there?

18 A: Since 2004.

19 Q: Were you on patrol the night of May 28, 2008?

20 A: Not necessarily on patrol per se, but I was working.

21 Q: Did you happen to have contact with Mr. Forde that day?

22 A: Yes, it was a little after six p.m. on May 28 of 2008.

23 I made contact with Mr. Forde and some other individuals

24 and during the course of our contact Mr. Forde came down

25 to the law enforcement center and during the course of our

1 talking, we obtained his fingerprints. They were taken by
2 Detective Curtis Hodge of the Sumter Police Department.

3 Mr. Gamble: Judge can Mr. Murphy and I approach briefly?

4 The Court: Yes sir.

5 (Sidebar was held)

6 The Court: Go ahead.

7 Q: Mr. Lyons, if you could just tell the jury how you came
8 into contact with Mr. Forde at the time that you took him
9 to law enforcement center.

10 A: Like I said, it was a little after six p.m. we received
11 a BOLO in regards to a powder ...

12 Mr. Murphy: I'm going to object regarding to any
13 substance concerning ...

14 The Court: Alright the limited testimony about the BOLO I
15 will permit. So, so that particular objection is
16 overruled, but you can continue to make those objections
17 as you see fit and I'll rule on them. So go ahead Mr.
18 Gamble.

19 Q: If you could tell the jury how you came into contact
20 with Mr. Forde and transported him to the law enforcement
21 center.

22 A: As I stated, just after six p.m. a BOLO in regards to a
23 powder blue, older model Cadillac with a forty five day
24 plate. The vehicle was observed, the vehicle was stopped
25 by myself ...

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1 Mr. Murphy: Your Honor at this point I would renew my
2 previous objection.

3 The Court: Alright that's overruled.

4 A: As I was saying, the vehicle was stopped by my self and
5 some other detectives as well as some patrol officers.

6 During the course of that stop, we made contact with Mr.
7 Forde and two other gentlemen at which point in time we
8 did go down to the law enforcement center from which his
9 fingerprints were taken by Detective Curtis Hodge.

10 Q: And taking his fingerprints, is that standard procedure
11 when you take someone into law enforcement center?

12 A: It's, it is, for that particular night it was. We took
13 the fingerprints.

14 Mr. Gamble: Please answer any questions Mr. Murphy has.

15 Mr. Murphy: I have no questions.

16 The Court: Thank you sir, you can step down.

17 A: Thank you Your Honor.

18 The Court: Alright Mr. Gamble.

19 Mr. Gamble: Your Honor the State calls Detective Curtis
20 Hodge.

21 Bailiff: Left hand on the Bible and raise your right hand
22 please. State your name.

23 A: Curtis Hodge.

24 Bailiff: Do you solemnly swear or affirm the testimony to
25 this court to be the truth, the whole truth so help you

1 God?

2 A: I do.

3 Bailiff: Have a seat please sir. State your name and spell
4 your last name for the court please.

5 A: Curtis Hodge, H-O-D-G-E.

6 DIRECT EXAMINATION OF MR. HODGE BY MR. GAMBLE:

7 Q: Detective Hodge who do you work for?

8 A: Sumter Police Department.

9 Q: And how long have you worked there?

10 A: About eight years.

11 Q: And were you working the night of May 28, 2008?

12 A: I was.

13 Q: You heard Detective Lyons testimony, did you take the
14 fingerprints of Mr. Forde?

15 A: I did.

16 Q: And that's the same Mr. Forde sitting right over here?

17 A: It is.

18 Q: I'm going to show you what's been marked for
19 identification as State's exhibit number nine. Do you
20 recognize that?

21 A: Yes sir, I do.

22 Q: What is that?

23 A: That is what is commonly referred to as a fingerprint
24 card that was taken by myself of Mr. Jason John Forde.

25 Q: How do you know that that's the card of Mr. Forde's

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1 prints?

2 A: I wrote his name, his date of birth, sex, race, height,
3 weight; all of that information.

4 Q: That's your handwriting on that card?

5 A: It is my handwriting.

6 Q: And what do you do with that card once you fingerprint
7 Mr. Forde?

8 A: Generally, once we're done taking somebody's prints, we
9 turn them into the AFIS operator. The fingerprint ...

10 Q: And who is that?

11 A: Marie Hodge.

12 Mr. Gamble: Just a second Your Honor. Please answer any
13 questions that Mr. Murphy may have for you.

14 Mr. Murphy: I have no questions.

15 The Court: Thank you sir. You can step down. Alright, next
16 witness?

17 Mr. Gamble: Your Honor the State next calls Marie Hodge.

18 Bailiff: Put your hand on the Bible and raise your right
19 hand please ma'am. State your name.

20 Ms. Hodge: Marie Hodge.

21 Bailiff: Do you solemnly swear or affirm the testimony you
22 give this court will be the truth, the whole truth and
23 nothing but the truth, so help you God?

24 Ms. Hodge: I do.

25 Bailiff: Thank you. State your name please and spell your

1 last name for the court.

2 Ms. Hodge: Marie A. Hodge, H-O-D-G-E.

3 DIRECT EXAMINATION OF MS. HODGE BY MR. GAMBLE:

4 Q: Ms. Hodge, who do you work for?

5 A: The Sumter Police Department.

6 Q: And how long have you worked there?

7 A: Thirty seven years.

8 Q: And what is your position at the Sumter Police
9 Department?

10 A: I am currently the afis examiner for the Sumter Police
11 Department and Afis is the automated fingerprint
12 identification system.

13 Q: And what are your official duties as a AFIS person at
14 the Sumter Police Department?

15 A: I receive laden fingerprints from different crime
16 scenes from the Sheriff's Department and also the city
17 Police Departments. We'll also accept latent fingerprint
18 information from adjoining counties, Bishopville, Manning
19 on occasion too. Examine those fingerprints for quality,
20 enter those into the automated fingerprint identification
21 system to see if we can get a match from a suspect. Also,
22 on occasion, compare those laden fingerprints to ink
23 rolled prints for the same purpose, to see if we can get
24 an identification.

25 Q: And how long have you been employed in fingerprint

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1 work?

2 A: I actually started my fingerprint career in 1968 when I
3 went to work for the Federal Bureau of Investigation in
4 Washington, DC at the fingerprint division.

5 Q: And have you received any special education or training
6 in regarding to being a fingerprinting handler?

7 A: Yes. We had, starting in 1968 with the FBI we had to go
8 to school for three months before we could actually go on
9 the floor and start searching fingerprints. Started to
10 work for the Sumter Police Department in 73 and my duties
11 there were also concerning fingerprint identification
12 jackets, in other words, when someone was fingerprinted at
13 the correctional center, I received those fingerprints to
14 compare to see if they had a prior record and maintain
15 that fingerprint record there. I've also been to various
16 schools with SLED and also with the International
17 Association of Identification.

18 Q: Approximately how many fingerprints have you examined?

19 A: Hundreds of thousands over the years.

20 Q: And have you ever had occasion to testify as an expert
21 in court regarding identification of a person based on
22 fingerprint matter?

23 A: Yes I have.

24 Q: How many times?

25 A: Twice, both in front of the Honorable Judge Howard

1 King.

2 Q: Your Honor at this time the State moves that Ms. Hodge
3 be declared an expert in the field of fingerprints
4 examination.

5 The Court: Mr. Murphy any objections or questions at this
6 time for the witness?

7 Mr. Murphy: No Your Honor.

8 The Court: Alright I'll qualify the witness as an expert
9 in the field of fingerprint examination and
10 identification. Ladies and gentlemen, let me have your
11 attention for just a minute. Normally, when a person
12 testifies, that person can't give opinions. That person
13 can usually say well I saw this or I touched this or what
14 I saw. There's an exception under the rules of evidence
15 that I had already mentioned to you for expert witnesses.
16 When someone is qualified by reason of education and
17 training or experience in a particular field, that person
18 can testify as to matters in that field and also can give
19 opinions and give the reasons for the opinions. That
20 doesn't mean that you're bound by the opinion given an
21 expert. You weight it just as you would the testimony of
22 any other witness. I'll explain all that to you in more
23 detail at the conclusion of the case, but now you may
24 proceed Mr. Gamble with Ms. Hodge's questioning.
25 Mr. Gamble: Thank you Your Honor. Did you receive a latent

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1 fingerprint that was lifted from the Food Lion at 5700
2 Broad Street on March 6, 2008?

3 A: Yes I did.

4 Q: I'll show you what's been entered into evidence as
5 State's exhibit number 8. Would you open that?

6 The Court: Number 8?

7 Mr. Gamble: Yes Your Honor.

8 A: Yes, this is the packet that I did receive from the
9 Sumter County Sheriff's Department. Which also contains a
10 chain of custody that I signed, showing that I received
11 these prints on March 17th actually, of 2008, from
12 Investigator Ray Mackessy at that time.

13 Q: What do you do with those prints once you receive them?

14 A: The first thing I do is take each one individually
15 examine to see if there are any visible, Latent prints on
16 each item and mark each item as I go along. If I do find
17 any visible prints, I number each card with my initial and
18 the date. Like this would be item number one with my
19 initials and the date that I examined. This would be item
20 number two and this is item number three. And I also
21 examined the other things that you see here. These five
22 dollar bills and I've actually initialed those on the
23 outside of the little sleeve. I make a report after I've
24 examined each one to see if there's enough quality there
25 on the fingerprints. In other words, there's got to be

1 enough ridge detail for you to be able to make a
2 comparison, there's got to be enough there. A lot of times
3 we don't have quite enough; there might be one or two
4 little ridges, but not enough to do any kind of
5 comparison. In this particular case, let me look at the
6 report here. I was able to make a comparison based on
7 several things and enter those prints into the computer of
8 only one fingerprint that was good enough on any of these
9 items to be put in to the AFIS system. So I entered that
10 into the AFIS system and did a search and this actually
11 searches all of the records that are on file at the State
12 Law Enforcement Division. It did not receive any
13 identification at that time.

14 Q: Were you given an ink card. I'm going to show you
15 what's been marked for i.d. as State's exhibit 9. Were you
16 given that ink card at any time?

17 A: Yes, I was, this, the card was submitted to me, I
18 believe in May. Let me find my notes. Yes, approximately
19 May 28th is when this card was submitted to me.

20 Q: And what did you do with that ink card?

21 A: I compared the fingerprints that I had previously
22 photographed into my AFIS system, in other words, the
23 actual Latent fingerprints were refilled and sent back to
24 the Sheriff's Department to be stored in their evidence
25 room. But the fingerprint that I had run on the AFIS

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1 system stays in my system, so I can bring it up on the
2 screen when I need to. I made a comparison with that
3 fingerprint that was still in my AFIS system against all
4 ten fingers. In other words, you have to go one by one by
5 one to see, you know which one, if any it may be and was
6 able to make that comparison and was able to identify the
7 fingerprint that I had on file with finger number seven,
8 which is the left index finger of Jason John Forde, which
9 is the name that was on this fingerprint card that was
10 given to me.

11 Q: And how many positive identification did you identify?

12 A: If I may, I've prepared a chart. There are actually no
13 preset number of points per se that you need to have. I
14 have marked eleven points of identification on this chart,
15 if you'd like to present that. There are some that I
16 didn't mark.

17 Mr. Gamble: I'd like to mark this for identification.

18 The Court: What number is it?

19 Court Reporter: Number 9.

20 You said number 9 for i.d. is the ink card?

21 Court Reporter: Yes sir.

22 Q: And if you could, just go over, basically what that ...

23 A: Is it okay if I stand up in front of the jury?

24 Q: You may.

25 A: It's easier for me.

1 The Court: Keep your voice up.

2 A: Yes sir. On this particular chart, and you can see it
3 over there, we were able to bring the prints up side by
4 side. This over here that's got a little smudge on it that
5 you can see right there is actually the Latent print and
6 this over here is the known ink print that I photographed
7 into the system, okay? Each one of these is marked side by
8 side in the same location to show you where the points
9 are. These lines that you see are called ridges. That's,
10 if you look at your fingerprints, you can see the little
11 ridges kind of stand up and each ridge contains sweat
12 pores, little tiny pores and there's always little oils
13 and things that come out of there and that's what's left
14 behind on any surface that you touch. So that when you
15 dust it with black powder, those lines, those ridges
16 become black and that's what you see. It actually picks up
17 each little point of identification; each ridge is
18 different, okay? And even the ridges that don't have any
19 breaks in them have to match up with the exact same
20 position over here. So each ridge is actually an
21 identification point, not just where there's an ending
22 ridge. To explain a little bit better, I don't know if
23 y'all can see that. I'm sorry I'm a little bit nervous and
24 I'm shaking and y'all can see that, but if you have a
25 ridge that's running and all of a sudden it breaks into

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1 two, we call that a bifurcation, so right there where it
2 breaks or splits is a point of identification. So, this
3 would be marked number seven and you can come and find
4 number seven over here on the ink print and see that's in
5 the exact same place. So you can follow that one through
6 eleven and there's also some that I didn't mark. It
7 actually picked up a little tiny scar. This is the ink
8 print, there's a little tiny scar right there and you can
9 see that same scar over here. So that's how we effect
10 identification; we put them side by side and we go point
11 by point by point and everything has to match. There can
12 be no difference. If there's any difference in there at
13 all, then it's not a match. So it has to be one hundred
14 percent.

15 Q: And that identified Mr. Forde as the person, Sergeant
16 MacKessy lifted?

17 A: Yes sir.

18 Q: Did you happen to take any other ink cards from Mr.
19 Forde?

20 A: Yes sir. We came over, I believe it was a month ago,
21 several weeks ago, I'm sorry.

22 Mr. Gamble: Your Honor I'm going to i.d. this as number
23 10.

24 A: And I actually rolled these prints myself of Mr. Forde
25 to compare to the ones that I had to be sure that we were

1 dealing with the same individual and this is in fact, they
2 are the prints of Mr. Forde's.

3 Q: So those prints matched the other ink card?

4 A: Yes.

5 Q: And your test results?

6 A: Yes.

7 Q: Examination results?

8 A: Yes.

9 Q: Your Honor at this time I would, the State would move
10 to enter the two ink cards, 9, 10 and 14 ...

11 The Court: 9,10 are the ink cards and 14 is what I have
12 written down as a comparative.

13 A: Chart, yes.

14 The Court: Any objection Mr. Murphy?

15 Mr. Murphy: Your Honor. Our objection is based on my
16 previous motion.

17 The Court: Alright objection is overruled.

18 Mr. Gamble: Just a second Judge. Please answer any
19 questions Mr. Murphy may have.

20 A: Yes sir.

21 The Court: Mr. Murphy?

22 CROSS EXAMINATION OF MS. HODGE BY MR. MURPHY:

23 Q: If a person touches something, those fingerprints,
24 those fingerprints can last forever, correct?

25 A: As long as they're not cleaned. In other words if you

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1 were to, of course, come across and wipe them or wash them
2 and clean them off they would be gone. But as long as
3 they're not disturbed in any manner, they're going to stay
4 there indefinitely.

5 Q: And what was the time of day that you received the
6 fingerprints from the card?

7 A: The time of day? I really don't recall, no sir.

8 Q: Thank you .

9 The Court: Alright any re-direct?

10 Mr. Gamble: Nothing Your Honor.

11 The Court: You can step down.

12 A: Thank you.

13 The Court: Any other witnesses before lunch?

14 Mr. Gamble: May Mr. Murphy and I approach? May it please
15 the Court Your Honor?

16 The Court: Yes sir.

17 Mr. Gamble: The State calls Investigator Robert Skinner.

18 Bailiff: Put your hand on the Bible and raise your right
19 hand please. State your name.

20 A: Robert Skinner.

21 Bailiff: Do you solemnly swear or affirm the testimony you
22 give this court will be the truth, the whole truth and
23 nothing but the truth, so help you God?

24 A: Yes sir, I do.

25 Bailiff: Thank you. State your name and spell your last

1 name for the court please.

2 A: Robert Skinner, S-K-I-N-N-E-R.

3 DIRECT EXAMINATION OF MR. SKINNER BY MR. GAMBLE:

4 Q: Investigator Skinner, who do you work for?

5 A: The Sumter County Sheriff's Office.

6 Q: And how long have you worked there?

7 A: Approximately eight years.

8 Q: Were you working on March 6, 2008?

9 A: I would assume I would have working that day; yes sir.

10 Q: Did you respond to an armed robbery or did you
11 investigate an armed robbery that occurred at the Food
12 Lion at 5700 Broad Street?

13 A: I investigated it, I did not respond to the crime
14 scene.

15 Q: What was your involvement with the investigation?

16 A: The patrol officers do the incident report and the
17 following work day the case was assigned to me to follow
18 it up.

19 Q: At the time you began the investigation, did you all
20 have a suspect?

21 A: No sir.

22 Q: Were you able to develop a suspect at any time?

23 A: When the fingerprints came back as a match to Mr.
24 Forde.

25 Q: I'm going to show you what's been marked for i.d. as

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1 State's exhibit number 7; it's a photo i.d. card. Are you
2 familiar with that?

3 A: Yes sir, I am.

4 Q: And what is that?

5 A: It is the six person photo lineup that was generated,
6 using Mr. Forde for me to take to Ms. Hodge to see if she
7 could pick him out of a lineup.

8 Q: And do y'all use those six person lineups in normal
9 course of business?

10 A: Yes sir.

11 Q: And when you took it to Ms. Hodge, was she able to pick
12 out an individual?

13 A: Yes she was.

14 Q: And which individual did she select?

15 A: Number 2, Mr. Forde.

16 Q: And that is Mr. Forde who's sitting ...

17 A: ... That is correct.

18 Q: Did you have her initial that form?

19 A: I did, yes sir.

20 Q: Did you have her sign the back?

21 A: And she signed it on the back, yes sir.

22 Q: And when did that identification take place?

23 A: That was on June 9, 2008 at 5:15 p.m.

24 Q: Did you suggest any picture to Ms. Hodge to pick out?

25 A: No sir.

1 Q: You just ...

2 A: It was explained to her and on the back of it, it even,
3 she has to read before she signs, if you'd like me to read
4 what ...

5 Q: If you could.

6 A: You will be asked to look at a group of photographs.
7 The fact that the photographs are shown to you should not
8 influence your judgment. You should not conclude or guess
9 that the photographs contain the picture of the person who
10 committed the crime. You are not obliged to identify
11 anyone. It is just as important to free innocent persons
12 from suspicious as to identify guilty parties. Please do
13 not discuss the case with other witnesses nor indicate in
14 any way that you have identified someone.

15 Q: And did Ms. Hodge appear to understand that?

16 A: Yes sir.

17 Q: And where did you show her that lineup? What location?

18 A: I believe it was at her residence, on her front porch.

19 Q And once again, which number did she pick?

20 A: Number two.

21 Q: And is that Mr. Forde in the courtroom today?

22 A: Yes sir.

23 Q: Your Honor at this time I'd offer that into evidence.

24 The Court: Mr. Murphy?

25 Mr. Murphy: Your Honor, our objection is based on our

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1 previous motion.

2 The Court: Alright, objection is overruled; number seven
3 is in over the defendant's objection.

4 Mr. Gamble: If you would please answer any questions Mr.
5 Murphy may have.

6 A: Yes sir.

7 Mr. Murphy: I have no questions.

8 The Court: Alright step down. Thank you sir.

9 A: Thank you.

10 The Court: Now Ladies and gentlemen, we're going to stop
11 for lunch at this time. I will remind you that it's very
12 important on your lunch break that you're not permitted to
13 discuss this case with each other or anyone else and I'll
14 be telling you that a lot more. You've not heard all the
15 testimony, you've not heard the arguments of the attorneys
16 and you've not heard the charge on the law, so please
17 continue to keep an open mind about all of the issues in
18 this case. I think, as I understand it, I have a
19 conference in a completely unrelated case at two o'clock
20 and then I believe a plea, a guilty plea in a completely
21 different case has been assigned to me at two thirty. Is
22 that right? So I'll ask you to be back in your jury room
23 at 2:45 and we'll start at that time. The only thing that
24 would keep us from starting back is if that plea is still
25 going on, but I anticipate that it will be finished by

1 2:45. Alright thank you very much and have a nice lunch.

2 {Jury exits}

3 The Court: Alright. Mr. Murphy a couple of times during
4 the last couple of witnesses you made objections based on
5 your earlier objection and I want to give you an
6 opportunity to clarify if you're talking about the
7 indemnity objections?

8 Mr. Murphy: Yes Your Honor.

9 The Court: Okay, I just wanted to make sure that was
10 clear. As far as this afternoon is concerned, your next
11 witness you said will be who?

12 Mr. Gamble: Detective Culick.

13 The Court: And then the other witnesses who will testify.

14 Mr. Gamble: Judge, I can have investigator West, who got
15 the saliva sample and sent it to SLED. I can have him
16 testify this afternoon and just go ahead and get him out
17 of the way.

18 The Court: Well, I know that when we talked yesterday you
19 might have a slip up as far as the SLED agents were
20 concerned. How far do you think you'll get today? Will we
21 stop earlier than normal based on the problem with the
22 SLED ...

23 Mr. Gamble: Your Honor, if we start at 2:45, I think we'll
24 finish by 5:00.

25 The Court: Okay, Alright. We'll plan on stopping at five

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1 and I'll just see the lawyers in my office for just a
2 minute. But Melissa we'll be back on the record for that
3 plea. Could you be back at quarter after maybe and we'll
4 get started earlier. Okay, thank you.

5 {Court recess for lunch}

6 The Court: It was my understanding yesterday that the
7 statement that I was going to allow was going to be
8 summarized by the officer. Is that correct?

9 Mr. Murphy: That was my understanding.

10 The Court: Alright isn't that what we did yesterday and
11 today?

12 Mr. Gamble: Yes sir.

13 The Court: Okay and again, the evidence can take any form.
14 What is your proposition that we do? That she, that she,
15 read the statements? It can be marked for i.d. and I can
16 decide later whether the document goes in, so do you
17 object to her even reading it?

18 Mr. Murphy: I do object to her reading it but ...

19 The Court: Do you object for a different reason?

20 Mr. Murphy: No.

21 The Court: Her reading it?

22 Mr. Murphy: My objections are based on my motion in
23 limine.

24 The Court: Okay.

25 Mr. Murphy: And in addition, I don't believe that reading

1 agents notes, I just don't believe there's evidentiary
2 bases for that, unless the agent doesn't remember or it's
3 a past recollection, court issue.

4 The Court: I understand what you're saying. Let's just
5 assume that the detective memorized it and she says well
6 what he told me was this and she just, right out of her
7 mouth she says it.

8 Mr. Murphy: That would be a okay.

9 The Court: What's the difference in that and saying can't
10 remember what gun. It was like at night, I got dropped
11 off in Stateburg and I walked to the Food Lion.

12 Mr. Murphy: The difference is the rules don't permit.

13 That's the difference. That's my objection.

14 The Court: What rule?

15 Mr. Murphy: First of all, 801, well not 801. 803(5),
16 recorded to recollection. It's my position that this is a
17 record concerning the matter, if a witness once had
18 knowledge, the preference is in evidence if a witness
19 testified regarding their knowledge of the events. If they
20 can't remember it verbatim, because they didn't memorize
21 the statement or they can't summarize it correctly, then
22 there's a problem when they don't remember it. The process
23 you go through is first of all you say, well with this
24 document there's a past recollection recorded which isn't
25 this provision, it's actually ...

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1 The Court: 803(5) doesn't apply. This would be if she's
2 reading her own statement.

3 Mr. Murphy: Well, she wrote it.

4 The Court: No, this is not her statement.

5 Mr. Murphy: I understand it's not her statement.

6 The Court: It says made or adopted by the witness ...

7 Mr. Murphy: That's where we disagree; I believe that it is
8 her summary of what occurred and what he told her. So I
9 mean ...

10 The Court: You're saying that the only way she can testify
11 what he told her if she had sufficiently memorized what
12 her summary says?

13 Mr. Murphy: The only way she can read that statement is
14 if, is if, well, I would argue that she can't read the
15 statement verbatim period unless during the course of the
16 direct testimony regarding what he said she has lapses of
17 memory then she can refer to it and summarize what it
18 says.

19 The Court: That's usually what's done with witnesses who
20 summarize what somebody's told them. So, we'll, we'll deal
21 with that as the witness testifies, but I suspect that I
22 will overrule your objection on that. As far as the
23 document itself coming into evidence, that would be a
24 different question and we will handle that in the course
25 of things. If somebody wants to read something into the

1 record, it's logical to me the document doesn't come in
2 unless he signed it.

3 Mr. Murphy: He did not sign it.

4 The Court: Alright anything else before we start back?

5 Mr. Murphy: No, Your Honor.

6 Mr. Gamble: Judge, as to the content of what Ms. Culick
7 can use,

8 The Court: I can't tell you what questions to ask. I can't
9 lay down and say this is what you can ask her; that's for
10 y'all. The only thing I can do is when you begin to
11 question her, if he objects, I'll rule. But if y'all want
12 to know in advance what I think? I think the witness can
13 testify to what he told her. That's pretty simple. And if
14 it comes down to the fact that if she starts reading from
15 it and Mr. Murphy objects, I'll rule. And my suspicion is
16 that I will overrule the objection. This, this is a
17 fairly typical situation where an investigating officer to
18 whom a confession is allegedly given memories about the
19 confession was not every time does the person sign it or
20 is recorded so you can go ahead and I think it's fairly
21 simple. Okay? Alright you can bring the jury.

22 {Jury Enters}

23 The Court: Alright, everybody is present in the courtroom.

24 Ladies and gentlemen first let me apologize. I told you
25 we'd start back at a quarter til and it's not. These folks

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1 here involved in this case have all been here ever since
2 two thirty. The plea that we, that I, that I just
3 concluded about five minutes ago went an exuberant amount
4 of time. That's not their fault, so don't hold it to
5 anybody except for me. You can hold it against me and
6 I'll certainly accept the blame for that, because it is my
7 fault. I apologize for that. We are ready to move forward
8 now Mr. Gamble, you can call your next witness.

9 Mr. Gamble: Thank you , may it please the Court? The State
10 calls detective Irene Culick.

11 Bailiff: Place your hand on the Bible and raise your right
12 hand. State your name.

13 A: Irene Culick.

14 Bailiff: Do you solemnly swear or affirm the testimony you
15 give this court to be the truth, the whole truth and
16 nothing but the truth, so help you God?

17 A: Yes.

18 Bailiff: Thank you. State your name please and spell your
19 last name for the court.

20 A: Yes sir. It's Irene Culick, C-U-L-I-C-K.

21 DIRECT EXAMINATION OF MS. CULICK BY MR. GAMBLE:

22 Q: Detective Culick, where do you work?

23 A: I work at the Sumter Police Department for the city.

24 Q: And how long have you worked there?

25 A: I've been there for twelve years now.

1 Q: What is your position right now at the Sumter Police
2 Department?

3 A: I'm currently assigned to the detective division. I am
4 the sergeant back there. That's just recently; I have been
5 the senior detective over the violent crimes division for
6 the last four years at the Sumter Police Department.

7 Q: Are you familiar with Miranda Warnings?

8 A: Yes sir, I am.

9 Q: And what are those?

10 A: Those are the rights that we give suspects or anybody
11 that we're going to interview in reference to, if we think
12 they're involved in a crime or they may know some
13 information about a crime, and they're in our custody, we
14 read them their rights, which are just your basic rights.
15 You have the right to remain silent.

16 Q: Is it the Sumter Police Departments customary practice
17 to Mirandize someone that is suspected of a crime before
18 you talk to them?

19 A: Yes, if we suspect that they're involved in something
20 then out of an abundance of caution we'll go ahead and
21 read them their rights to make sure that they are fully
22 aware of their rights before they talk to us about
23 something.

24 Q: Do you typically use preprinted Miranda form or do give
25 oral Miranda or do you both of those?

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1 A: We do both. It just depends. If you were in the office,
2 we have a form that's printed at the Sumter Police
3 Department that has the rights on it and we read that and
4 we have the person we're talking to read it while we're
5 reading it and if we're out in the field or say we are on
6 a traffic stop and we don't have one, then sometimes we'll
7 just orally tell somebody what their rights are.

8 Q: Were you, were you working at the police department on
9 May 28, 2008?

10 A: Yes I was.

11 Q: Did you happen to come into contact with Mr. Forde?

12 A: Yes I did.

13 Q And where was that contact made?

14 A: That was made at the law enforcement center here in
15 Sumter.

16 Q: What was your contact with Mr. Forde that night?

17 A: I was called in that night from the residence to talk
18 to Mr. Forde. When I got to the station, Mr. Forde was
19 already there. I went in with Lt. Rabon with the police
20 department who was already there. We wanted to talk to Mr.
21 Forde and before talking to him I wanted to go ahead and
22 explain his rights to him, so what I did was I got our
23 interview form that we use and I read those rights to him
24 and I had him read along with me and when we got through I
25 asked him if he would like to talk to us and he stated

1 that he would like, he thought he would like to call John
2 Clark, his attorney, and so at that point I said okay and
3 I left the room and Lt. Rabon went and got a phone and a
4 phone book for him and I went to another room and was
5 doing something different, a separate interview.

6 Q: And that form that you are talking about, let me show
7 you what's been marked for identification as State's
8 exhibit 2. Is that the form that you used?

9 A: Yes sir. This is the form I was telling you about; it's
10 got the Sumter Police Department, the interview forms and
11 it states before we ask you any questions, you must
12 understand your rights and at that time I just read them.
13 You have the right to remain silent. Anything you say can
14 be used against you in court. I explained to him that you
15 have the right to talk to a lawyer for advice before we
16 ask you any questions and to have him or her with you
17 during the questioning. If you cannot afford a lawyer, one
18 will be appointed for you before any questioning if you
19 wish. If you decide to answer any questions now, without a
20 lawyer present, you will still have the right to stop
21 answering at anytime until you talk with a lawyer. And
22 then I always go through, before any questioning I was
23 furnished the above statements of my rights at and at this
24 time it was 8:50 in the evening and this was on May the
25 28th , 2008 at the Sumter Police Department and it's by

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1 Detective Culick of the Sumter Police Department and then
2 I ask him, I have read or had read this statement to me of
3 my rights. I understand what my rights are. I'm willing to
4 answer questions at this time without a lawyer present. No
5 promises or threats have been made to me and no pressure's
6 been used against me. And after reading all of this,
7 that's when he stated, and I dated it on the 28th he
8 stated he'd like to call his attorney and so at that point
9 I did not talk to him anymore that evening.

10 Q: Was there anyone else present when you did that?

11 A: Yes, as I stated Lt. Rabon who's in the courtroom today
12 was also there.

13 Q: Did she witness that?

14 A: Yes she did.

15 Q: Do you have a lot of experience dealing with people who
16 are under the influence of drugs or alcohol?

17 A: Yes sir.

18 Q: Alright, that night did Mr. Forde seem to be
19 intoxicated by drugs or alcohol?

20 A: No, he did not.

21 Q: Was his speech clear and coherent?

22 A: It was.

23 Q: Did he appear to understand the waiver of rights when
24 you first read them?

25 A: Oh yeah, he understood them. That's why he asked if he

1 could call his attorney.

2 Q: But he did not sign that first form?

3 A: No, he, he's only, we only ask somebody to sign it if
4 they are agreeing to talk to us. If they would like to
5 talk to an attorney or if they just don't want to talk to
6 an attorney or just don't want to talk. You don't have to
7 have an attorney, then we wouldn't have him sign it. We
8 would then just simply say, okay, they have invoked their
9 rights and not talk to them anymore.

10 Q: Did you make contact with Mr. Forde any time after
11 that?

12 A: I did. Not that night. I was at the Sumter Lee Regional
13 Detention Center, which is the jail here in Sumter, two
14 days later, on May 30th and while I was there serving some
15 legal papers, I had the chance to come into contact with
16 Mr. Forde again, at which time he started talking to me.

17 Q: Did he make any mention to you or talking to you about
18 this case?

19 A: Yes he did.

20 Q: And what did he want to talk to you about?

21 Mr. Murphy: Your Honor at this point I would renew my
22 objection.

23 The Court: And what date are we talking about now?

24 Mr. Gamble: This is on the 30th Your Honor.

25 The Court: Okay, so your objection, at this point, is

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1 overruled.

2 Mr. Murphy: Thank you.

3 Q: What did he want to talk to you about on this case?

4 A: He wanted to talk to me about what happened in this
5 case, with the armed robbery that happened at the Food
6 Lion, which is actually in the county, out on Broad Street
7 extension, near Shaw Air Force Base, that Food Lion. It's
8 not my jurisdiction, but I did speak with Mr. Forde about
9 that incident.

10 Q: And did he at any time ask or tell you that he wanted
11 to give you any type of statement?

12 A: Yes.

13 Q: What did you do at that point?

14 A: When he told me he'd like to talk to me, and tell me
15 about this case and what happened I did not have a waiver
16 of rights form or anything with me. I went out to my car
17 and got the file out that had another waiver, if you've
18 got that, if you'll ...

19 Q: This is what's been marked for identification as
20 State's 3. Is that the form?

21 A: Yes. Okay, this is another waiver of rights form for
22 the Sumter Police Department and as I was telling y'all,
23 that night on the 28th, when I left out of that room and
24 went and spoke with someone else that night, Mr. Forde
25 initiated contact with Lt. Rabon who was still with him,

1 assisting him with the phone and the phone book that night
2 and so he actually stated that he wanted to speak with her
3 and had signed a waiver of rights form that night. Because
4 when I went to the detention center that day and wasn't
5 planning on interviewing him, I didn't have a form or
6 anything so I went to the file and pulled this out and
7 what I did that day was I just read this all over to him
8 again and then I signed this at the bottom with the May
9 30th date and he also signed it again and he accidentally
10 put the 29th and then he put one straight line through it
11 and his initials and then signed it here on 5/30/08 that
12 he wanted to talk to me and tell me what had happened at
13 the Food Lion and I agreed that I would talk to him after
14 this was signed and he stated he understood his rights. At
15 that point, he began telling me what happened.

16 The Court: Do you want to object Mr. Murphy on this line
17 of questioning?

18 Mr. Murphy: Yes sir.

19 Q: Alright let me ask you something real quick ...

20 A: Okay.

21 Q: Before we go into that. Did you re-Mirandize him at
22 that point?

23 A: Yes I did. I read this entire form to him over again
24 and he stated he wanted to talk to me about that incident
25 and I signed it and he signed it.

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1 Q: So, he appeared to understand his rights at that time
2 at the detention center?

3 A: Yes, he understood and wanted to talk.

4 Q: And he signed that waiver of rights form?

5 A: Yes sir, he did.

6 Q: And did anyone witness that form?

7 A: No, it was me and him at that time in the room.

8 Q: Did he, did he agree to give you a statement without an
9 attorney being there at that point?

10 A: Yes he did.

11 Q: Did you coerce or threaten him in order to obtain a
12 statement from him?

13 A: No sir, I didn't.

14 Q: Did you promise him anything in return for his
15 statement?

16 A: No, I did not.

17 Q: To the best of your knowledge, was that statement
18 freely and voluntarily given?

19 A: Yes, he wanted to talk.

20 Q: And you said that he did give you a statement?

21 A: He did.

22 Q: Is this the statement that's been marked for
23 identification as court's exhibit number 4.

24 The Court: State's exhibit or court's exhibit?

25 Mr. Gamble: Excuse me, State's exhibit number four.

1 A: Yes.

2 Q: Is that the statement he gave you?

3 A: Yes.

4 Q: Did he give you a statement as to the armed robbery at
5 Food Lion?

6 A: Yes he did.

7 Q: Could you please tell the jury what he told you about
8 his involvement in the armed robbery?

9 A: Yes.

10 Mr. Murphy: Your Honor I'm going to object to her reading
11 the statement.

12 The Court: Alright y'all come on around for just a second.
13 Let me see that piece of paper.

14 (Counsel approach)

15 The Court: Okay, Mr. Gamble you can continue.

16 A: To start off with I wrote, I Jason Forde want to talk
17 about what I've done.

18 Mr. Murphy: Your Honor I renew my objection to her
19 reading.

20 The Court: At 803, you can lay the foundation, but she
21 needs to refer to this and read from it to refresh her
22 recollection, you can do that?

23 Mr. Gamble: Thank you, Judge.

24 Q: Do you remember what he stated to you?

25 A: I remember we talked about the robbery at the Food Lion

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1 that happened at Broad Street extension in the county. I'd
2 like to, to look at my notes to tell you exactly what he
3 told me. I don't want to, I don't want to misquote
4 anything that he told me.

5 The Court: Mr. Murphy any objection to that?

6 Mr. Murphy: I do not have an objection to her referring to
7 her notes; I do have an objection to her reading those
8 notes.

9 The Court: Alright I'll be the judge of what crosses any
10 particular evidentiary line, but you can continue Mr.
11 Gamble. So that objection as stated is overruled.

12 Q: And you are the lead detective on this robbery correct?

13 A: No I am not. This robbery actually is not in my
14 jurisdiction. It's in the county and so county has lead on
15 that. I work with the city, but anytime somebody's wants
16 to talk, sometimes somebody might want to an investigator
17 with the county; they feel comfortable with them, they
18 might know them, then they would interview for us or if,
19 you know, we're talking to somebody and somebody wants to
20 tell us something, I'm not going to say don't tell me and
21 I'll go get a county investigator, so that's why this case
22 ...

23 Q: So at this time you, you didn't know anything specific
24 about this case?

25 A: No, I did not know any details about this case.

1 Q: Okay, so what did he tell you that night at the law
2 enforcement center?

3 A: We were at the correctional center ...

4 Q: I'm sorry, correctional center.

5 A: When this happened. He told me that it was March 6,
6 2008; he told me that it was the Food Lion, because there
7 is two in Sumter. He told me it was the one located at
8 5700 Broad Street. He told me that he couldn't remember
9 what gun that he used. That it was possibly the same gun
10 or a high point that was used. He stated it was late at
11 night. That he got dropped off near Statesburg and walked
12 to the Food Lion. He walked in. He walked to the back,
13 used the bathroom, walked back up front ...

14 Mr. Murphy: Your Honor, I believe she's basically reading
15 the statement.

16 The Court: Alright you can ask the witness if she can
17 remember all this independently other than reading from
18 her notes.

19 Q: Is it possible for you to recall all this information
20 without you looking at your notes?

21 A: No, I need to refer to the notes.

22 The Court: Alright I'll permit the witness to read. Of
23 course my earlier ruling and restrictions. Alright go
24 ahead.

25 A: Thank you Your Honor. Walked back up front, asked the

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1 cashier where beer was. The store was a little packed, so
2 I was trying to kill time. Left beer at counter. Went to
3 the back and grabbed a soda, probably the one you got the
4 print off of. Walked up to the cashier and asked her very
5 nicely to open the safe, then she turned around and said I
6 don't know the combination to the safe. Asked who knows
7 the combination, she told me the manager. I walked over
8 and got the manager. I had the gun in and out of my
9 pocket. I told the manager to go open the safe. She
10 dropped the keys and we had to go back and get them, so
11 she opened the safe and gave me all the money. I think I
12 had a camo backpack that I put the money in; no blue book
13 pack. I left and went out the store and got in the truck.
14 We went around towards 261. We went by Delaine's school
15 and came back to the light on 261 and threw the clothes
16 out the window. A grey hoodie and blue sweat pants. I got
17 eighteen hundred dollars exactly. We split the money and
18 got nine hundred dollars.

19 Mr. Gamble: Please answer any questions Mr. Murphy may
20 have.

21 The Court: Mr. Murphy?

22 Mr. Murphy: Thank you Your Honor.

23 CROSS EXAMINATION OF MS. CULICK BY MR. MURPHY:

24 Q: When you first met with Mr. Forde on the 28th, he did
25 exercise his right to an attorney, correct?

1 A: Yes. The first time I met him he stated he would like
2 to call John Clark. He wanted to call him and talk to him.

3 Q: Did you stop questioning him at that time because it's
4 important when an individual asks for an attorney to not
5 question him right?

6 A: Oh yes sir. Even if they don't ask for an attorney and
7 just don't want to talk, it's, it's good not to.

8 Q: And you saw him on the 30th and he approached you, as
9 your testimony says, he approached you, you didn't ask him
10 whether he had talked to an attorney did you?

11 A: No.

12 Q: And you didn't clarify whether or not he had talked to
13 Mr. Clark or any other attorney?

14 A: No, he had ...

15 Q: Did he contact Mr. Clark?

16 A: No sir, he had ...

17 Q: Thank you.

18 A: Oh, I'm sorry. Not that day or the second when I talked
19 to him.

20 Q: When Mr. Forde also discussed issues dealing with his
21 wife. Is that correct?

22 A: Mr. Forde? Yes, he talked about his wife, his sisters,
23 his ...

24 Q: He was upset because ...

25 A: ... his daughter.

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1 Q: He was upset because she was getting arrested is that
2 correct?

3 A: That was not a city case, but his wife was charged with
4 something.

5 Q: You were aware his wife had been arrested, correct?

6 A: Not something to do with the city or a robbery.

7 Q: And at some point during your questioning of him, or
8 your discussion with him he was actually crying about his
9 wife, is that correct?

10 A: I didn't question him, he asked to talk to me about
11 what had happened.

12 Q: I'm asking about his wife; was he crying about his
13 wife?

14 A: When we went through the events about the armed robbery
15 I remember him crying about his daughter that he had a
16 week old daughter I believe or a new born child and he was
17 upset because ...

18 Q: You don't remember him crying about the predicament his
19 wife was in?

20 A: No, not his wife. I remember him crying about his
21 daughter.

22 Q: He was under some distress, correct?

23 A: He's facing armed robbery. He's admitted to doing armed
24 robbery ...

25 Q: He was under some distress?

1 A: He, he was, he was distressed about the situation that
2 he was in.

3 Q: So is your answer yes, he was distressed?

4 A: He was upset about the situation he was in. That, I
5 don't know how else to say that.

6 Mr. Murphy: I have no other questions.

7 The Court: Re-direct Mr. Gamble?

8 RE-DIRECT OF MS. CULICK BY MR. GAMBLE:

9 Q: When you were at the detention center, did Mr. Forde
10 reinitiate the contact with you to speak with you?

11 A: He did on that day and I talked with him again two
12 days, three days after that on June 2nd and he also ...

13 Mr. Murphy: Objection to any reference to do with anything
14 he talked about on June 2nd.

15 The Court: Alright your objection is overruled.

16 A: When I talked to him again on June 2nd, the same thing,
17 he was fine, wanted to talk, because I didn't know the
18 details of this robbery, because it happened in the
19 county, I asked the investigator that's with the county,
20 Dominick West, if he would come out to the detention
21 center with me, so he could hear the details. I didn't
22 know that clothes were thrown out of the window, until Mr.
23 Forde told me that, so I wanted to get with a county
24 investigator to say did y'all find some clothes? Were
25 there clothes thrown out the window? He said that he had

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1 touched a drink, that you had fingerprints on it and these
2 things were confirmed by the county investigator and I had
3 him come out to the jail. I introduced them. Mr. Forde
4 said he felt comfortable with me; he had several sisters,
5 I believe four and that he just felt comfortable, so I
6 made that introduction between him and the county
7 investigator and he again told that, those facts to him
8 and he had specific details to ask him that I didn't know
9 about.

10 Q: So you were present with Investigator West when he
11 talked to Investigator West?

12 A: Yes and also when he consented to give a DNA sample.
13 Now we don't have to take someone to the hospital for DNA
14 and get blood, we can just do a swab, kind of like a Q-tip
15 on your gums and we can get DNA samples. And so I was
16 present when he also consented to give his DNA.

17 Q: So when you talked to him on the 30th, did he at any
18 point, tell you anything about having a lawyer?

19 A: No, he didn't mention anything. Again, I knew that he
20 had, after I left that night and didn't talk to him again,
21 Lt. Rabon stated right after I left, but I was already
22 busy with somebody else, that he stated he wanted to talk
23 and had signed a waiver.

24 Q: So he never told you ...

25 A: No, and I wasn't there to talk to him or question him

1 and certainly not about a robbery that happened in the
2 county.

3 Q: So he reached out to you to talk to you?

4 A: Yes sir, he did.

5 The Court: Anything else Mr. Murphy? I'm sorry Mr. Gamble?

6 Mr. Gamble: Nothing, that's all the questions I have.

7 The Court: Alright , Mr. Murphy?

8 RE-CROSS OF MS. CULICK BY MR. MURPHY:

9 Q: He refused to sign the statement that you read correct?
10 You prepared that and he wouldn't sign it correct?

11 A: No, I didn't, I didn't, I didn't, I didn't, I wrote out
12 everything he said, I asked him if he would like to sign
13 and he said no.

14 The Court: Talk one at a time.

15 Q: So your answer is he did not, he did not sign that
16 statement correct?

17 A: No sir, he didn't.

18 Q: Okay, thank you.

19 The Court: Alright anything else?

20 Mr. Gamble: Just a second Your Honor. Just one question
21 Your Honor.

22 RE-DIRECT OF MS. CULICK BY MR. GAMBLE:

23 Q: Did you go over the statement with Mr. Forde after he
24 gave it to you?

25 A: Yes I did. I went over it to make sure all of the

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1 details were correct and if there was anything else I
2 needed to add and he stated that was it.

3 Mr. Gamble: No more questions Your Honor.

4 The Court: Alright you can step down. Thank you ma'am.

5 A: Thank you.

6 The Court: Mr. Gamble?

7 Mr. Gamble: Your Honor the State next calls Detective
8 Angela Rabon.

9 Bailiff: Place your hand on the Bible and raise your right
10 hand please. State your name please.

11 A: Angela Rabon.

12 Bailiff: Do you solemnly swear and affirm the testimony to
13 this court to be the truth, the whole truth and nothing
14 but the truth so help you God?

15 A: I do.

16 Bailiff: State your name and spell your last name for the
17 court please ma'am.

18 A: Angela Rabon, R-A-B-O-N.

19 DIRECT EXAMINATION OF MS. RABON BY MR. GAMBLE:

20 Q: Detective Rabon, where do you work?

21 A: Sumter Police Department.

22 Q: How long have you worked there?

23 A: Approximately a little over thirteen, right at thirteen
24 years.

25 Q: And what is your position at the Sumter Police

1 Department?

2 A: Lieutenant. over the investigative services division.

3 Q: And were you working in your capacity, in that capacity
4 on May 28, 2008?

5 A: I was.

6 Q: Did you happen to come into contact with Mr. Forde?

7 A: I did.

8 Q: Explain to the jury your contact that night.

9 A: He was brought in and we were talking with him about a
10 matter and at that time I was with detective Culick in the
11 interview room when before he was going to be interviewed.
12 We read him Miranda warnings.

13 The Court: I'm sorry Mr. Gamble. The witness said May
14 28th, is that correct?

15 Mr. Gamble: Yes sir.

16 The Court: Okay.

17 Q: I'm going to hand you what's been marked as State's
18 exhibit number 2. Do you recognize that form?

19 A: I do.

20 Q: What is that form?

21 A: This is our interview form, which has the Miranda
22 rights on it's also known as a waiver of rights.

23 Q: And you heard detective Culick's testimony on what
24 Miranda warnings are and what they're used for. Who
25 administered the Miranda Warning at that time to Mr.

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1 Forde?

2 A: Detective Culick read those rights to him and explained
3 the form to him and I witnesses that.

4 Q: So your signature appears at the bottom of that form?

5 A: That's right.

6 Q: At that time and you heard Detective Culick testify, at
7 that time did Mr. Forde wish to speak to y'all?

8 A: He stated that he thought he would like to speak to his
9 attorney first before he did talk and at that time we took
10 that as he wanted an attorney.

11 Q: What did you do next?

12 A: Yes, what I did then when, when he invoked that and
13 stated that he wished to speak to his attorney before he
14 spoke with us, I went to get a cordless phone and bring it
15 back to the interview room, along with a phone book so he
16 could attempt to call and contact, make contact with John
17 Clark, his attorney. At which time he was not able to
18 reach his attorney during that, so while we were in there
19 he, he stated to me that he liked me, didn't have a
20 problem with me, but just did not feel comfortable with
21 another investigator that had been in the room, probably
22 standing by while I was going to get the phone and the
23 phone book. Anyway, he was not comfortable with that
24 investigator, so that investigator left the room.

25 Q: Who was that investigator?

1 A: Detective Lyons. So Detective Lyons, he left the room
2 and I was in the interview room with Mr. Forde and he
3 stated, look I don't have a problem with you, you know , I
4 would like to talk to you. So at that time I left the room
5 again, having Detective Lyons stand by while I went to
6 obtain another interview form, a waiver of rights form and
7 I read that to him again and at that time he waived his
8 rights and indicated that he did want to talk.

9 Q: And that form that you are talking about, that second
10 form, is it this form that's been marked for
11 identification as State's exhibit 3?

12 A: That's right.

13 Q: The Miranda Warnings that detective Culick testified
14 about those same Miranda warnings given on that form ...

15 A: Right, it's dated, when I read this to him it was May
16 28th and Jason Forde signed his signature on this form
17 that he's waiving his rights.

18 Q: And what did he tell you on the night of the 28th,
19 after he signed that form?

20 A: Basically after he signed the form and he just
21 indicated he does want to talk, he does want to talk to
22 me, he does not have a problem with me, but he just does
23 not feel like talking at that time. He said, he said I'm
24 tired, but please come see me at the correctional center
25 and I'll talk, but I just do not want to talk at this

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1 time. And so at that time the interview stopped.

2 Q: Did you subsequently make contact with Mr. Forde out at
3 the detention center later?

4 A: I was there actually speaking with his wife on another
5 matter and when I was waiting in the hallway for Detective
6 Culick who was doing some service of paperwork out at the
7 facility, she informed me that Mr. Forde was asking to
8 talk and he didn't mind if I came in there with them in
9 the interview.

10 Q: And Detective Culick testified that he was re-
11 Mirandized. Did you witness that re-mirandization, if we
12 call it that?

13 A: No, she came and got me out of the hallway and they had
14 already basically started the interview and so I was in
15 there and she informed me of what, that he was wishing to
16 talk with her and that he stated it was okay for me to be
17 in there.

18 Mr. Murphy: I object to what my client stated.

19 The Court: Overruled.

20 A: So anyway, basically she was just basically letting me
21 know that he had told her he would like to talk and that
22 she went over the waiver of rights with him. And that this
23 is where we are in the interview and then we began talking
24 about the incident.

25 Q: And you heard her testify as to the what was in that

1 statement. Were you present for that part of his
2 statement?

3 A: Yes I was.

4 Q: And do you remember her going over with Mr. Forde the
5 statement?

6 A: Yes I do.

7 Q: Do you remember Mr. Forde okaying the statement?

8 A: Yeah, he stated that's what he, that's all the facts
9 that he relayed to us during the interview.

10 Q: Do you remember Mr. Forde being coerced or threatened
11 or promised anything to get a statement from him?

12 A: No he was not.

13 Q: Going back to the first time that you talked to him on
14 the night of the 28th, did he seem like he was under the
15 influence of any drug or alcohol?

16 A: No he wasn't.

17 Q: How about when you talked to him when you made contact
18 with him out at the detention center two days later?

19 A: No, he wasn't

20 Mr. Gamble: Please answer any questions Mr. Murphy may
21 have for you.

22 A: Yes sir.

23 CROSS EXAMINATION OF MS. RABON BY MR. MURPHY:

24 Q: So on May 28th, Mr. Forde asked for an attorney,
25 correct?

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1 A: He stated he would like to consult with his attorney
2 before he spoke with us.

3 Q: Did he, on May 30th, when he spoke with you and
4 Detective Culick, do you recall him being concerned about
5 his wife's well-being and being in distress?

6 A: I'm not going to say he made a lot of mention to that,
7 but he did talk about his wife, but more, I think he was
8 more concerned with, maybe not being able to see his child
9 grow up. I think that was the main concern.

10 Q: Was he crying about his wife?

11 A: More the child; not seeing the child grow up. He had a
12 young baby.

13 Q: Between your initial contact with Mr. Forde on May 28th
14 and sitting down with Detective Culick on May 30th, did
15 you advise my client in the hallway that, did you ask him
16 something to the effect, 'are you ready to talk or are you
17 going to take your wife down with you?'

18 A: No, never.

19 Q: Did you have a conversation with him about his wife's
20 predicament at all during that time frame?

21 A: It's possible he asked what she was in for, but as far
22 as anything specific, me bringing that up to him, no. I
23 think it was more him maybe asking about his wife, but
24 expressing his concern for his baby.

25 Q: You deny telling him are you ready to talk now? Are you

1 going to bring your wife down with you?

2 A: That's correct. I did not say that.

3 Q: Mr. Forde did not sign that summary that you and
4 Detective Culick wrote, did he?

5 A: That's correct.

6 Mr. Murphy: I have no other questions.

7 The Court: Re-direct?

8 RE-DIRECT EXAMINATION OF MS. RABON BY MR. GAMBLE:

9 Q: The statement that you heard Detective Culick give, was
10 that a summary that she was given or was that his word for
11 word statement?

12 A: She was writing that as he was talking, word for word.

13 Mr. Murphy: No other questions Your Honor.

14 The Court: Thank you ma'am. You can step down.

15 A: Thank you.

16 The Court: Okay Mr. Gamble.

17 Mr. Gamble: Judge, may we approach?

18 The Court: Yes sir.

19 {Side bar}

20 The Court: Alright Ladies and gentlemen we're going to
21 take what will amount to our, may not be your afternoon
22 break, but it will be ours, since we've been in here for
23 about two hours. Even though you've only been in here a
24 little over thirty minutes. You may not discuss the case.
25 If you'd like a soft drink just let your foreperson know

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1 and that will be gotten for you and we'll have you back
2 out here shortly. Alright, thank you.

3 {Jury Exits}

4 The Court: Let's make sure the record is clear, Mr.
5 Murphy, your objections to when you said Ms. Culick going
6 back to the earlier matter.

7 Mr. Murphy: Yes Your Honor.

8 The Court: Also, when I indicated earlier that I don't
9 think 803(5) applies, I think in fact it does apply. I
10 think it was applied correctly in this instance, the
11 witness who was Detective Culick said that she didn't have
12 the ability to remember the statements that signed here
13 today, but she could refer to her notes and the rule does
14 say that the memorandum or may be read into evidence but
15 itself cannot be received as an exhibit unless altered by
16 an adverse party. So, at least at this point my ruling is
17 clear on the record. Alright, I know Mr. West is in the
18 courtroom now. We'll take about five minutes. If
19 everybody would be so kind as not to go far. We'll start
20 back in five minutes.

21 {Court Break}

22 The Court: Okay, you can bring them in.

23 {Jury Enters Courtroom}

24 Bailiff: All the jurors are present and accounted for.

25 The Court: Alright. We're ready to move forward Ladies and

1 gentlemen. Mr. Gamble?

2 Mr. Gamble: Judge, may it please the Court? The State
3 calls Investigator Dominick West.

4 Bailiff: Raise your right hand and state your name.

5 A: Dominick West.

6 Bailiff: Do you solemnly swear that the testimony you give
7 this court to be the truth, the whole truth and nothing
8 but the truth, so help you God?

9 A: I do.

10 Bailiff: Thank you. State your name and spell your last
11 name please.

12 A: Dominick West, W-E-S-T.

13 DIRECT EXAMINATION OF MR. WEST BY MR. GAMBLE

14 Q Investigator West, who do you work for?

15 A: Sumter County Sheriff Office.

16 Q: And how long have you worked there?

17 A: Going on ten years this July.

18 Q: Were you working for the Sumter County Sheriff's Office
19 on June 2, 2008?

20 A: Yes I was.

21 Q: Did you happen to go out to the Sumter Lee Regional
22 Detention Center on that day?

23 A: I did.

24 Q: Did you make contact with Mr. Forde here in the
25 courtroom?

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1 A: Yes sir.

2 Q: Are you familiar with what Miranda Warnings are?

3 A: Yes I am.

4 Q: And what are those?

5 A: Those are the rights, warning rights that we give to
6 suspects before any questioning in reference to any crime.

7 Q: And why do you give Miranda Warnings?

8 A: Just to let them know they have the right, whether they
9 can talk to us with or without an attorney.

10 Q: Do you typically use a preprinted Miranda form or do
11 you give a verbal Miranda Warnings?

12 A: We have a little card that we read off of. We have that
13 form that's, that's made up from the Sheriff's office with
14 our logo on it.

15 Q: I'm going to show you what's been marked for
16 identification as State's exhibit number 5. Is that the
17 form you speak of?

18 A: Yes sir.

19 Q: Explain that form to the jury if you will.

20 A: Like I said, it's our logo Sumter County Sheriff Office
21 that's with Sheriff Anthony Dennis name stamped on the
22 top. It states Miranda Warning and waiver of rights,
23 excuse me. it's five numbers and each by each number it
24 have your, it have a sentence by it. The first one has you
25 have the right to remain silent. It also has a line right

1 next to it, excuse me. The second one states anything you
2 say can and will be used against you in a court of law.
3 You have the right to talk to an attorney and have him or
4 her present while you're being questioned. If you, number
5 four is, if you cannot afford to hire an attorney, one
6 will be appointed to represent you before any questioning
7 if you wish. Number five, you can decide at any time to
8 exercise these rights and not answer any questions or make
9 any statements. Like I say, there's a line next to each
10 statement once I read it.

11 Q: And do you have a person who you're talking with
12 initial that form?

13 A: We do.

14 Q: And did Mr. Forde initial that?

15 A: He did, he did, yes sir.

16 Q: Did he sign it at the bottom as well?

17 A: Yes sir, he did.

18 Q: Did anybody witness that form?

19 A: Yes sir, after the witness, we did a waiver of rights,
20 it says having been advised of your rights and fully
21 understand your rights, he do wish to answer questions at
22 this time and I do not wish to have an attorney present.
23 His decision to answer questions now without an attorney
24 is made freely and is on my own choice. No one has
25 threatened me or promised me anything. I signed it, he

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1 signed it and Detective Irene Culick signed it at 12:46
2 p.m. on June 2nd, 2008.

3 Q: So you were with Detective Culick?

4 A: Yes sir I was.

5 Q: Did she call you to come out there and talk to them?

6 A: Yes sir, she did.

7 Q: And why did she bring you out there?

8 A: She spoke with the Defendant in reference to a incident
9 that occurred in the county of Sumter, on Broad Street at
10 the Food Lion.

11 Q: And did she call you out there because of your
12 affiliation with the county?

13 A: Yes sir.

14 Q: Do you know when you advised Mr. Forde of the rights
15 that are on that form?

16 A: What time?

17 Q: Yes, is it on that form?

18 A: At 12:46 p.m.

19 Q: Did Mr. Forde appear to be under the influence of drugs
20 or alcohol at that time?

21 A: No sir.

22 Q: Was his speech clear?

23 A: Yes sir.

24 Q: You could understand him?

25 A: Yes sir.

1 Q: Did he appear to understand his rights that you gave
2 him when he initialed and signed at the bottom?

3 A: Yes sir. He initialed and signed each one and I put my
4 initials off to the left to make sure which one I read,
5 when I read.

6 Q: At any point did he invoke his right to remain silent?

7 A: No sir.

8 Q: Did he ask for an attorney to be present?

9 A: No sir.

10 Q: Did he agree to answer your questions or talk with you
11 without an attorney being present at that time?

12 A: Yes sir.

13 Q: Did he give you any sort of statement?

14 Mr. Murphy: Objection.

15 The Court: Objection is overruled.

16 Q: Did he give you any sort of statement?

17 A: We spoke in reference to that statement that he gave
18 Detective Culick. That was our main objective to come out
19 there and speak about that incident.

20 Q: And when you said, say he spoke to you in regards to
21 the statement that he gave to Detective Culick ...

22 A: Yes sir.

23 Q: Do you recognize what's been marked for identification
24 as State's exhibit number 4?

25 A: Yes sir. This is the interview that Detective Culick

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1 had with Mr. Jason Forde.

2 Q: And he references when he spoke with you when you were
3 out with Detective Culick he told you about the armed
4 robbery at Food Lion?

5 A: Yes sir. We spoke about that.

6 Q: And he told you some specific facts about that?

7 A: He just talked about how he left the can on there and
8 they possibly got his print off, off that and the money
9 that, that the outfit that he threw out the window where
10 we recovered the clothing that he wore.

11 Q: Did you promise Mr. Forde anything to give you a
12 statement or talk to you?

13 A: No sir, I did not.

14 Q: Did you coerce him or threaten him to get him to give
15 you a statement at that time?

16 A: No sir, I did not.

17 Q: So to the best of your knowledge, was Mr. Forde,
18 anything that he said to you, was it freely and
19 voluntarily given?

20 A: Yes sir, it was.

21 Q: Did he give you any information that he didn't give
22 Detective Culick that you know of?

23 A: No sir. Each information that he gave Detective Culick
24 assisted with the investigation with the county.

25 Q: Now I'm going to show you what's been marked for

1 identification as State's number 15. Can you tell us what
2 that is?

3 A: Also it has our logo on it. The Sumter County Sheriff
4 Office. It's a consent form, with that. It says having
5 been advised of his rights, we did get a saliva sample, so
6 we could send off to SLED for comparison for the clothes.

7 Q: And did Mr. Forde consent to give you a sample at that
8 time?

9 A: Yes sir, he did.

10 Q: Can you explain to the jury what kind of sample you
11 took from him?

12 A: A saliva sample.

13 Q: How do you take a saliva sample?

14 A: It's a cotton swabs. We do each side of the mouth, of
15 the subject, of the Defendant and send off to SLED.

16 Q: Was there anyone there that witnessed you take that
17 sample?

18 A: Detective Culick was also, was there.

19 Q: Did she witness the consent order?

20 A: Yes sir.

21 Q: Excuse me, consent form?

22 A: Yes sir.

23 Q: What do you do with those swabs once you take the
24 sample?

25 A: Once I took the samples I do a chain of custody form,

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1 put it into evidence with our evidence custodian. She take
2 it, do her chain and submit it to SLED for comparison.

3 Q: So after you took the swabs from Mr. Forde you went and
4 put them into the evidence ...

5 A: Yes sir.

6 Q: You dropped them in the evidence locker?

7 A: We have a evidence locker or I could a took it straight
8 to Cindy Pierson, who is our evidence custodian. I could
9 have took it straight to her, but I believe I took it and
10 put it in the locker.

11 Q: Did Mr. Forde seem okay with giving you that sample?

12 A: Yes sir, he was freely and voluntarily.

13 Q: And he didn't ask you any questions as to whether he
14 should give it to you or not?

15 A: No sir.

16 Q: Did he seem comfortable talking with you and Detective
17 Culick?

18 A: He did.

19 Q: You didn't threaten or force Mr. Forde to give you a
20 DNA sample correct?

21 A: No sir.

22 Q: Did he state that he wished to have an attorney present
23 at that time?

24 A: No sir.

25 Q: Did he mention anything to you about having an

1 attorney?

2 A: No sir.

3 Mr. Gamble: If you will, answer any questions Mr. Murphy
4 may have.

5 A: Yes sir.

6 Mr. Murphy: No questions.

7 The Court: Alright thank you sir. You may step down.

8 Alright Mr. Gamble in light of the other witnesses'
9 schedule, would you like to stop for today?

10 Mr. Gamble: Give me just, give me just a second.

11 The Court: Alright. Any objection to Mr. West being
12 excused?

13 Mr. Murphy: No Your Honor.

14 The Court: He left and came back.

15 Mr. Gamble: I don't believe so Your Honor. I might recall
16 him in the morning.

17 The Court: You can go ahead. Alright Mr. Gamble, the
18 schedule that you alerted me to of certain out of town
19 witnesses, is that where you want to pick up next or is
20 there anything you want to do today?

21 Mr. Gamble: That's where I pick up Your Honor. I've
22 instructed them to be here at 9:15 in the morning.

23 The Court: Alright Ladies and gentlemen, we're going to
24 break for today. It's a bit earlier than we normally
25 would. The next few witnesses are coming from other than

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1 Sumter county and they're tied up today and not able to be
2 here today. So we're going to start back tomorrow morning
3 at 9:30. I'll tell you what, just to be on the safe side,
4 let's make it a quarter to ten. I know now that I've got
5 something to do at 9:15. When I get here usually people
6 tell me what to do. I have to be here to take care of
7 certain things and I don't want to keep you waiting
8 unnecessarily. Of course you may not discuss the case. I
9 know that you know I'm going to tell you this, don't read
10 anything, listen to anything or look at anything about it.
11 Don't use any internet or any other type of electronic
12 device to gather any information about the case or the
13 lawyers, the witnesses or any of the parties involved.
14 I'll see you back tomorrow morning at quarter to ten.
15 Thank you very much.

16 {Jury Exits Courtroom}

17 The Court: Alright Ms. Howard I noticed you have a 2:00
18 appointment. Do you have any idea how long that will
19 take?

20 A: Probably thirty minutes and it's right down town near
21 Washington Street.

22 The Court: Alright what I'd like for you to do, since we
23 have a lot of things going on in this case and other cases
24 tomorrow, just remind me of that and we'll accommodate you
25 on that.

1 A: Okay.

2 The Court: And, and if you have any trouble, if they keep
3 you sitting in the waiting room, let me know and I'll give
4 them a call.

5 A: Okay. He's a pretty good doctor, I like him. Thank you.

6 The Court: Alright see you tomorrow morning. Any
7 objection? Is there anything you'd like to accomplish
8 today in the next fifteen minutes or so that we might have
9 to cover tomorrow, anything you anticipate? I'll see
10 y'all in the office in just a few minutes and I know Mr.
11 Murphy --- Mr. Heriott, will you tell the fellas at the
12 detention center not to take Mr. Forde back until Mr.
13 Murphy has a chance to talk to him.

14 Mr. Murphy: Thank you.

15 (Court Break)

16 (End of the Day)

17 Bailiff: All the jurors are present

18 The Court: Alright Ladies and gentlemen one of your number
19 was not present when we were going to start at 9:45, and
20 that kind of threw things off a little bit. Just to give
21 you an idea, when the cases are prepared, it takes
22 obviously a lot of time and a very integral part of that
23 is the selection of the jury and at any case you want to
24 make sure that the jury as selected by the parties is
25 fully present. I was going to make an effort for us to

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1 locate the juror who is not here. I'm not even sure who it
2 was, but in doing that I have notified the lawyers that I
3 was going to take a break while we explored that and for
4 that reason some of the witnesses who were going to
5 testify, are not prepared yet to testify because they are
6 doing other things. So what I'm going to do is this, to
7 make a long story short, be back at noon, okay, and we'll
8 go forward at that time. That's twelve o'clock and please,
9 I know that all of you have been here patiently and on
10 time and it has been my fault in many instances, because
11 the buck stops with me that we didn't get started on time,
12 but if you would be back at noon and we will proceed in
13 one way or another at that time. Alright see you at twelve
14 o'clock.

15 {Jury Exits Courtroom}

16 The Court: We'll be adjourned. I don't want anyone going
17 anywhere. Everybody in the courtroom will be prepared to
18 go forward at noon. We had an issue with the forelady's
19 two o'clock doctor's appointment. I know we have all
20 these people from SLED and under the circumstances, which
21 are difficult at this time, I'm going to make every effort
22 to accommodate all of y'all to get you on about your
23 business, but please bear with me. Alright thank you.
24 Okay, let me see the lawyers back here.

25 {Court Break}

1 The Court: Alright we're back on the record with State
2 versus Jason Forde. An attorney matter was brought to my
3 attention by the lawyers in the case, to make the record
4 clear. Mr. Jackson came in to the office this morning,
5 he's obviously the elected Solicitor and advised of me of
6 a conversation he had had which he thought in the course
7 of his duties, he should disclose to the court. Of course
8 he's to be applauded for that, but the Defendant is on
9 trial for armed robbery. The events allegedly occurred at
10 the Food Lion out on 378 and some of the issues that have
11 arisen during the case are of course fingerprints, eye
12 witness identification, video tape, clothing, so forth and
13 so on. Mr. Jackson, if you would please, just make sure
14 you keep your voice up and tell me what your conversation
15 was with the person at issue.

16 Mr. Jackson: Your Honor yesterday afternoon at the close
17 of business I came up to the courtroom to find out what
18 time we were bringing the jury back this morning. I went
19 in the courtroom you had adjourned, the officers from the
20 City Police Department were present in the courtroom, as
21 was the court reporter, Ms. Winfield, and I asked the
22 officers if the case had been recessed or adjourned. They
23 said it was adjourned for the day and I asked them what
24 all they knew we still had left to do before this morning
25 and they said that we need to put up the SLED agents and

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1 we need to put up, or we need to recall a witness, the
2 name of the witness I do not recall. We need to recall a
3 witness for the purpose of describing the clothing or give
4 a clothing description and they then said that we need to
5 recall that witness because they had seen Mr. Murphy's
6 notes and he was going to make an issue about the clothing
7 description.

8 The Court: Alright and which officer was that?

9 Mr. Jackson: That was Officer Irene Culick that told me
10 that. At that point I left the courtroom.

11 The Court: Alright and that, let's make sure everybody
12 understands, Mr. Murphy you agree that that's what Mr.
13 Jackson told us this morning?

14 Mr. Murphy: Yes sir.

15 The Court: And you've discussed that with your client?

16 Mr. Murphy: Yes sir.

17 The Court: And the record will also show that the Chief
18 Public Defender Mr. Jack D. Howle is also present in this
19 hearing. You've discussed that with him of course, is that
20 right?

21 Mr. Murphy: Yes sir.

22 The Court: And Mr. Howle was present at the second
23 meeting. Mr. Jackson where you had firmed up that
24 conversation with Detective Culick and tell us what
25 happened then.

1 Mr. Jackson: Yes sir, of course this morning we apologized
2 to the court and Mr. Murphy after we met in chambers, I
3 and Assist. Solicitor Gamble and Assistant Solicitor
4 Griffin went to my office with Irene Culick and Billy
5 Lyons and those officers, the purpose of that was to find
6 out if they had deliberately gone through something or if
7 they just looked at some notes that were exposed on the
8 table. And what, what the two of them tell me is that no
9 one went through any notes, no one looked through
10 anybody's material; it wasn't one of those situations, but
11 that it was a notepad on the desk, in plain sight and they
12 looked, Billy Lyons looked at it and saw on there
13 something about a Sierra Mist bottle and something about
14 the clothing description and because they had seen that
15 written on Mr. Murphy's notepad, they wanted to make sure
16 that those items were covered, both pieces of evidence
17 were covered appropriately by witnesses.

18 The Court: Alright and again Mr. Murphy and Mr. Howle,
19 since you were there for the second conversation we had
20 this morning, Mr. Murphy do you, does that accurately
21 reflect what Mr. Jackson told us in the second get
22 together this morning?

23 Mr. Murphy: Yes sir.

24 The Court: Alright Mr. Howle do you agree with that?

25 Mr. Howle: Yes sir.

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1 The Court: And have you relayed that to your client?

2 Mr. Murphy: Yes sir.

3 The Court: Alright the issue that I want to address that
4 is more or less separate and apart from the facts and the
5 ultimate disposition of this case is the overall process,
6 the integrity of the overall process that needs to be
7 protected. What I intend to do is to call in one by one
8 the officers at issue. Mr. Jackson, when these discussions
9 with you were occurring, was any other officer present? I
10 know you had a discussion with Ms. Culick and Mr. Lyons.

11 Mr. Jackson: In the courtroom yesterday afternoon ...

12 The Court: Was anyone else a party to this?

13 Mr. Jackson: Billy Lyons ... you mean the conversation?

14 The Court: Yes.

15 Mr. Jackson: No sir. In the room yesterday afternoon, the
16 only one that spoke was Irene Culick, Billy Lyons was in
17 the courtroom. Angela Rabon was in the courtroom and the
18 court reporter was present. I don't know, remember if
19 there was a bailiff in there or not . I don't remember.
20 There could have been another city police officer.

21 The Court: Alright but the courtroom ...

22 Mr. Jackson: The only person who spoke was Irene Culick.

23 The Court: Alright and this morning you spoke with Mr.
24 Lyons?

25 Mr. Jackson: Mr. Lyons and Ms. Culick.

1 The Court: Alright. What I intend to do is at least call
2 the two of them in here separately and then see where that
3 leads us and then what I intend to do Mr. Murphy is me ask
4 the questions and if you feel compelled to examine that
5 witness, just let me know and I'll decide if, do you
6 intend on questioning them?

7 Mr. Murphy: Depending on what their responses to you are.
8 I might have some questions.

9 The Court: Alright and I'll make this observation in case
10 I forget to make it later on, if the case is reconvened in
11 front of this jury or any jury, this issue will not be
12 discussed with the jury. Alright I'll make that clear
13 unless someone can present me with some authority that
14 would make it appropriate to do so. Alright if you would
15 please go get, who do you propose that I speak with first
16 Mr. Murphy?

17 Mr. Murphy: I think Detective Culick.

18 The Court: Alright get Detective Culick for me please and
19 I'll just tell her when she comes in that she's still
20 under oath. Alright you can have a seat. Alright Detective
21 Culick, of course you're still under oath from yesterday
22 and what I'm going to do is ask you a few questions about
23 some issues that have come up and if you would please,
24 make sure you talk loud enough, because this is a
25 different system than she uses in the courtroom. It relies

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1 on the tape more so than the, well you got the system in?

2 Alright well, never mind. Alright if you would please

3 ma'am, you were, you were one of the investigators in the

4 city charges in this particular case, is that right?

5 A: Correct, not the county.

6 The Court: And the record is clear that you had certain

7 conversations with the Defendant about virtue of the fact

8 that there was some jurisdictional cross over insofar as

9 county incidents and city incidents.

10 A: That's correct.

11 The Court: So as a practical matter, you've been present

12 during this trial, because even though this incident

13 occurred out in the county, necessarily the

14 investigation's crossed over. Is that right?

15 A: For part of the trial, not the entire trial. Yes sir.

16 The Court: Okay, alright. If you would please tell me what

17 you know about any information obtained from any of Mr.

18 Murphy's notes or any other source from the defense side

19 of the aisle if you will.

20 A: Yeah. Yesterday after we got through testifying and we

21 were waiting in the courtroom, I guess for Mattison to

22 return, as we were standing there, Detective Lyons looked

23 down and saw a legal pad sitting on the desk and this is

24 the small courtroom, the tables are right beside each

25 other and he noticed bottle and clothing written down on a

1 notepad.

2 The Court: And that was at the defense table?

3 A: Yeah, that was on the defense table. He didn't touch
4 anything, he didn't move anything, he made mention of
5 those. Since I hadn't been in the entire trial, I asked
6 about those, do we have the bottle in evidence? I know
7 they got a fingerprint off the county case, is there one?
8 I asked Mattison do they have one and talked to the
9 Solicitor Kelly Jackson.

10 The Court: And then mentioned all of that to him?

11 A: Correct.

12 The Court: What has Mr. Lyons told you, the whole, let me
13 back up. Has Mr. Lyons related any of the information to
14 you about what he saw on the notepad even since the
15 conversation with Mr. Jackson yesterday?

16 A: Not since we left the courtroom.

17 The Court: In other words, did y'all talk about it this
18 morning?

19 A: In, in the Solicitor's office.

20 The Court: Alright Mr. Murphy do you have any questions?

21 Mr. Murphy: Just a couple of clarifying questions, Your
22 Honor, if I may.

23 The Court: And make sure you keep your voice up, because
24 of that air conditioning.

25 Mr. Murphy: Mr. Lyons relayed information that he observed

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1 on my legal pad to you? Who else was present when he gave
2 you that information?

3 A: I believe, were you in there? I don't know if the court
4 reporter was in the room or not and the county officer may
5 have been in there.

6 The Court: That was Mr. Skinner?

7 A: Skinner.

8 Mr. Murphy: And how was the decision made to clarify that
9 information for feedback to the Solicitor. I mean, how
10 ...

11 A: I asked was there a bottle entered into evidence?
12 Clothing? He stated that he entered in the fingerprint,
13 was already in from that ...

14 Mr. Murphy: And that conversation was sparked by Mr. Lyons
15 observation to you?

16 A: Correct.

17 Mr. Murphy: In his comment to you, was it clear to you
18 when he made that comment to you that he got that
19 information from my legal pad?

20 A: When who?

21 Mr. Murphy: In other words, did he just say do we have the
22 bottle in or did he say something to the effect of you
23 know I looked at Tim's notes or was it clear to you ...

24 A: We were, we were all just standing in the courtroom and
25 he said bottle and clothing and so he, he asked me about

1 bottle and clothing. He was like, Tim's got bottle and
2 clothing written here.

3 Mr. Murphy: Yeah.

4 A: Yeah, that's what he said.

5 Mr. Murphy: And it was your intent then to advise Mr.
6 Gamble or to, to clarify those issues in the remainder of
7 the trial and have a witness recalled correct?

8 A: It was my intent to talk to him about this. Was there,
9 was there a bottle in this case? Was there, was there
10 clothing and he explained to me what they had done.

11 The Court: Insofar as the introductory of evidence?

12 A: Yes, what he had into evidence and what he's ... about
13 the fingerprint that came from the bottle. That that was
14 already in evidence, because I wasn't here for that part
15 of the testimony.

16 Mr. Murphy: Those are all the questions that I have.

17 The Court: Alright. Any questions Mr. Gamble? Mr. Jackson?

18 Mr. Jackson: No sir.

19 The Court: Okay, Alright. Thank you ma'am, you can step
20 out and I'll, if you would please have Mr. Lyons to come
21 in. Thank you Detective.

22 A: Thank you.

23 The Court: Have a seat right up here Detective. Mr. Lyons.
24 Okay, you're still under oath from yesterday and what I'm
25 going to do is ask you a series of questions. No magic

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1 formula to the questions and then Mr. Murphy may have some
2 questions of you as well. It all centers upon some matters
3 that were disclosed to the court today, which is
4 appropriate method we're doing now. Tell us, just to keep
5 the record clear, your role in the investigation and
6 handling of this case has been what?

7 A: In regards to ...

8 The Court: I know the Food Lion robbery occurred in the
9 County.

10 A: Correct.

11 The Court: You're a city officer. What's been your
12 involvement with the Defendant as far as charges pending
13 against him?

14 A: The city of Sumter police department also has four
15 outstanding robberies, the Dollar General and two Young's
16 markets for sure that I do recall. The testimony that I
17 gave in regards to the car being stopped, that was our
18 involvement at the beginning when we first developed him
19 as a suspect.

20 The Court: And there's been that robbery and there's been
21 some jurisdictional cross over because of incidents in the
22 county and in the city?

23 A: And in the city. We were both working together to work
24 these series of armed robberies, that we felt were being
25 committed by the same individuals.

1 The Court: You were present yesterday for all of part of
2 the testimony?

3 A: Yes.

4 The Court: Tell us please what occurred yesterday
5 afternoon, after we adjourned about any information that
6 you may have obtained, may have seen, obtained or
7 whatever, however you want to describe it from any note
8 pad or any other material on the defense side.

9 A: Detective Culick, myself and Investigator Skinner were
10 still in there. We were standing around talking. I was
11 close to their table; I glanced down and I saw something
12 about clothing and something about a bottle. I don't
13 remember what specifically it said about either one of
14 them, but I saw those two items and I made mention of it
15 to Irene and she started brainstorming like okay, asking
16 me did we get the bottle in? Do you know about this and I
17 told her we got the bottle in. We got the bottle and stuff
18 like that, but I don't know what they are specifically
19 referring to on their notes other than I saw something
20 about clothing or something about a bottle.

21 The Court: Did you talk to her at that time about the need
22 to recall any witnesses?

23 A: We talked about what we needed to do if in the event,
24 we discussed if we had a bottle. And she was like we need
25 to ask Mattison if we have a bottle. I don't remember if

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1 we had a bottle into evidence. If that would be the case
2 it would be up to Mattison on whether or not he would
3 recall a witness to introduce a piece of evidence. If it
4 was a county case I don't think ... we talked to Mattison
5 and he said no he's not going to put anybody up to talk
6 about a bottle. We've already talked about the fingerprint
7 that was on the bottle and the fingerprint match came back
8 to match Mr. Forde so he wasn't going to put anybody up
9 with regard to the bottle.

10 The Court: Okay and you had a discussion with Mr. Jackson
11 this morning?

12 A: That is correct.

13 The Court: What was that about?

14 A: The same matter. Mr. Jackson asked me yesterday
15 afternoon did we see something on Mr. Murphy's desk and I
16 said yes we were standing there and in fact I did see some
17 writing that said something about clothing and bottle. I
18 said I never once touched anything on Mr. Murphy's desk,
19 never touched the notepad, never went through any of this
20 paperwork. I just causally glanced down and saw it.

21 The Court: Mr. Murphy do you have any questions?

22 Mr. Murphy: Did investigator Skinner participate in any
23 discussions about any of this?

24 A: I'm sure he did. He may, he may have had some input
25 into what we were talking about yesterday afternoon, since

1 it was his case and he was still around.

2 Mr. Murphy: I have no further questions.

3 The Court: Anything?

4 Mr. Gamble: No sir.

5 The Court: Alright thank you sir. If you could ask Mr.
6 Skinner to come down.

7 A: Yes sir.

8 The Court: Mr. Skinner come on in and have a seat right
9 over here.

10 A: Yes sir.

11 The Court: You're still under oath from yesterday. I have
12 a few questions for you. Perhaps Mr. Murphy will have some
13 questions for you too. Are you the lead investigator in
14 this case?

15 A: Yes sir.

16 The Court: And, and as part of that role you've been
17 present for the trial the entire time?

18 A: Yes sir.

19 The Court: Tell us, tell us if you could, what occurred
20 yesterday afternoon in the courtroom after we adjourned
21 about any conversations with Mr. Lyons, Detective Culick
22 about any matters that may have developed because of any
23 information obtained from Mr. Murphy's notepad or
24 otherwise.

25 A: Yes sir. What I can recall is we were just standing

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1 here, just having a conversation and Detective Lyons
2 looked down on the notebook ...

3 The Court: What notebook is that?

4 A: I believe it was Mr. Murphy's notebook on his desk. I
5 believe it said the word bottle and clothing.

6 The Court: Did you see that or ...

7 A: No ...

8 The Court: ... is that what you heard him say?

9 A: ... I didn't. That's just what I heard him say.

10 The Court: Who was he talking to?

11 A: I'm not sure if he was, I guess to all of us. But after
12 that I didn't think really much of it.

13 The Court: Okay, any other conversation that you heard
14 about all that? Did they have any conversation in your
15 presence, either with you or with each other or with
16 somebody else about recalling any witnesses or doing
17 anything else because of what he saw on the notepad?

18 A: That was, no I wasn't a part of that. No sir.

19 The Court: But you previously indicated he, that's the
20 extent of your knowledge?

21 A: Yes sir.

22 The Court: Did you have any conversations with them this
23 morning about that? Detective Lyons and Detective Culick.

24 A: Since all this has been brought up?

25 The Court: Yes sir.

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1 A: When I was figuring on what the problem was.

2 The Court: What did they say to you if anything.

3 A: That the hold up was caused because Detective Lyons
4 reading those words off the notebook.

5 The Court: Alright and did you have a conversation with
6 Mr. Jackson, the Solicitor?

7 A: No I have not talked to Mr. Jackson.

8 The Court: Any questions Mr. Murphy?

9 Mr. Murphy: No sir.

10 The Court: Alright thank you sir. Alright Mr. Murphy, is
11 there anyone else that you would like to hear from?

12 Mr. Murphy: No sir.

13 The Court: Mr. Jackson?

14 Mr. Jackson: No sir.

15 The Court: Alright is there anything you want to put on
16 the record Mr. Murphy?

17 Mr. Murphy: Your Honor I'm going to make a motion to
18 dismiss.

19 The Court: Let me makes sure the record notes the time
20 lapse here. I know you said you were going to do some
21 research on this; I don't know whether you completed it or
22 not, so I'm not going to prohibit you from doing anything
23 further that you see fit that you have to do to look into
24 any legal authority. But you want to move for a dismissal
25 now?

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1 Mr. Murphy: If I have the opportunity to do a little more
2 research I would prefer to do that.

3 The Court: Alright, so what I'll do is I'll note that
4 you've made that motion for dismissal and I'll hold that
5 in abeyance as we proceed further. What I anticipate doing
6 is going forward at noon until we can. Hopefully we can
7 get the SLED agents done this morning. Even if we have to
8 go til about one thirty, then we can break until three and
9 then that way everybody can get their lunch break and give
10 you the opportunity to do what you need to do and the
11 forelady can go to her medical appointment.

12 Mr. Murphy: Okay.

13 The Court: Does the State want to hear any testimony from
14 any other witnesses?

15 Mr. Jackson: No sir, Judge. There are a few thing I would
16 like to put on the record.

17 The Court: Yes sir.

18 Mr. Jackson: Yesterday evening, after hearing this in the
19 courtroom, I carried it home with me and I came back to
20 work this morning and called in the two lawyers. Mr.
21 Gamble and Mr. Griffin, because I was curious as to what
22 the officers may have talked to them about. And
23 they came down to my office and I asked them where they
24 had gone after they left Your Honor chamber's last night
25 and they said that the officers were still in the

1 courtroom, the two attorneys went in the courtroom and I
2 said well, did they ask you about any follow up, any
3 follow up work that needed to be done in the trial and Mr.
4 Gamble said that Irene gave him a to do list.

5 The Court: That's Detective Culick?

6 Mr. Jackson: Yes sir, Detective Culick gave him a to do
7 list and I said well, you know did they ask you to recall
8 any witnesses and he said yes, on the to do list was
9 witnesses to recall to address the issue of the bottle and
10 the clothing description and I said did they tell you why
11 they wanted you to do that and he said no. And I said well
12 do you intend to call those witnesses and he said no we
13 don't intend to call them. The evidence on the clothing
14 is, I believe it's the black sweats, is that correct?

15 The Court: Blue sweat pants.

16 Mr. Jackson: Blue sweat pants. There's a photo of the
17 Defendant wearing sweats. They were recovered from the
18 side of the road, there would have been DNA testimony this
19 morning connecting the clothes to the defendant and the
20 defendant had stated that he had thrown them out of the
21 window of the car. So they didn't intend to put anything
22 else up on the issue of clothing, nor do they intend to
23 put anything else on the issue of the bottle.

24 The Court: Other than what they were going to do anyway.

25 Mr. Jackson: Other than what had already been done. That

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1 was, that was the end of the road for them and they were
2 going to tell Detective Culick when they got here this
3 morning that had made the decision not, of course, they
4 hadn't put the SLED agents on and I think there was
5 something else they were going to do, but they were not
6 going to do those two things.

7 The Court: Well, he mentioned yesterday when we adjourned
8 that he perhaps might call, ask to recall Mr. West about
9 the swab.

10 Mr. Jackson: Yes sir, yeah, that was something separate.
11 So, then they said why you asking boss and I said well,
12 this is what happened in the courtroom yesterday afternoon
13 and, and, but no one had mentioned that to either of them.
14 The point I wanted to make was independently they had
15 already made the decision in their trial tactics to not
16 talk, to not do any of the things they've been asked to
17 do.

18 The Court: The to do list, was it a written list?

19 Mr. Jackson: We had a written list, but I'm not going to
20 make it a court's exhibit. That's the to do list that he
21 was given.

22 The Court: And that was given to you by?

23 Mr. Jackson: I got Mr. Gamble to bring it down this
24 morning.

25 The Court: No, by who?

1 Mr. Jackson: Detective Culick.

2 Mr. Murphy: I would just be curious as to who's
3 handwriting this is. Is this Detective Culick's or one of
4 the ...

5 Mr. Gamble: The very two bottom things?

6 Mr. Murphy: Yeah.

7 Mr. Gamble: The very two bottom things, I believe
8 Detective Culick wrote that. I'm not, I don't recall. I
9 didn't see anyone writing that list, it was given to me.

10 Mr. Murphy: But you didn't write these notes.

11 Mr. Gamble: I didn't, well I, you see that blue X at the
12 top?

13 Mr. Murphy: That's yours?

14 Mr. Gamble: That's my X.

15 Mr. Murphy: Okay, so you didn't write any of this other
16 stuff?

17 Mr. Gamble: I didn't write anything on that paper. That's
18 my X.

19 Mr. Murphy: Those are the only questions I would ask.

20 The Court: Alright that will be court's exhibit #1.

21 (Court's Exhibit Number One)

22 Mr. Jackson: Judge, I didn't know if you wanted to ask
23 either of them about our conversation this morning and
24 their decision making process to not put those people up
25 before they even knew about this.

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1 The Court: Alright Mr. Gamble, do you have anything to
2 add?

3 Mr. Gamble: Judge, I had expressed to the officers that
4 even after looking over that, that I thought it was
5 unnecessary to do any of that and that after the SLED
6 people were going to testify then that evidence that we
7 had in was enough.

8 The Court: Alright Mr. Griffin?

9 Mr. Griffin: Your Honor I did have a discussion with Mr.
10 Gamble and Solicitor Jackson this morning regarding Mr.
11 Gamble's intention to recalling the witnesses regarding
12 the Sierra Mist bottle and the clothing. We had further
13 discussions about the clothing. The testimony of the SLED
14 agents, which was intended to be put up first thing this
15 morning, would tie the clothing to the Defendant and we
16 didn't feel a need to recall any agents that worked the
17 case, city or county police to tie the clothing to the
18 Defendant and my role in this case has been, I guess, for
19 lack of a better phrase, an advisory role to Mr. Gamble.
20 As the court knows I haven't questioned any witnesses or
21 offered any exhibits into evidence. So I've been up there
22 to assist Mr. Gamble in any role he wanted me to. I know
23 he wanted me to, but we did have discussions and Mr.
24 Gamble asked me if he thought we needed to, what we needed
25 to do and I said what we had planned to do in regards to

1 the SLED agents is all we need to do.

2 The Court: Anything else Mr. Murphy?

3 Mr. Murphy: No sir.

4 The Court: Mr. Howle?

5 Mr. Howle: Nothing further.

6 The Court: Mr. Jackson?

7 Mr. Jackson: No sir.

8 The Court: Okay, we'll move back in the courtroom at noon.

9 Mr. Murphy y'all can take a longer than normal lunch break
10 if you think that you need to explore your research more.

11 Mr. Murphy: We're fine.

12 The Court: Alright. Mr. Gamble. Call your next witness.

13 Mr. Gamble: Yes sir, I believe Ms. Pierson is in the other
14 courtroom. We're sharing her with the trial in courtroom
15 number 1.

16 The Court: Okay, well she needs to be down here at noon,
17 or we're going to have to call somebody else.

18 Mr. Gamble: Okay, well I can take her out of order. I can
19 do SLED first.

20 The Court: Is she testifying now?

21 Mr. Gamble: I saw Sergeant Mackessy on the stand.

22 The Court: Let her know she needs to come on down. We need
23 to get through this. Mr. Murphy you ready?

24 Mr. Murphy: Yes sir.

25 The Court: Okay, alright, bring in the jury.

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1 Bailiff: Yes sir, Your Honor.

2 {Jury Enters Courtroom}

3 Bailiff: Judge all the jurors and alternates are seated.

4 The Court: Thank you sir. Alright Ladies and gentlemen we
5 are ready to move forward now. Mr. Gamble you can call
6 your next witness.

7 Mr. Gamble: Okay, Judge, before the State calls its next
8 witness, I've discussed with Mr. Murphy about the state
9 offering what's been marked for identification as State's
10 exhibit #15, that would be the buccal swab, the cheek
11 swabs consent form.

12 The Court: That mister ...

13 Mr. Gamble: That Mr. Forde signed.

14 The Court: That Mr. West testified to?

15 Mr. Gamble: That Mr. West testified to, yes sir.

16 The Court: Alright.

17 Mr. Gamble: We're offering that as evidence.

18 The Court: Is that your position Mr. Murphy?

19 Mr. Murphy: Your Honor I've waived any requirement to
20 bring these witnesses back to identify that. We've
21 already talked about it.

22 The Court: That's in as State's exhibit 15? Okay.

23 Mr. Gamble: Your Honor the State next calls Amy Stephens.

24 Bailiff: Place your left hand on the Bible and raise your
25 right hand. State your name.

1 A: Amy Stephens.

2 Bailiff: Do you solemnly swear or affirm the testimony to
3 this court to be the truth, the whole truth and nothing
4 but the truth, so help you God?

5 A: I do.

6 Bailiff : Thank you. State your name and spell your last
7 name for the court please.

8 A: Amy Stephens, S-T-E-P-H-E-N-S

9 DIRECT EXAMINATION OF MS. STEPHENS BY MR. GAMBLE:

10 Q: Ms. Stephens where do you work?

11 A: I'm employed with the South Carolina Law Enforcement
12 Division, also known as SLED.

13 Q: How long have you worked at SLED?

14 A: I've been with SLED since March 2nd of 2006.

15 Q: What is your present position or title at SLED?

16 A: I'm a forensic technician in the evidence control
17 department.

18 Q: And describe for the jury your job duties.

19 A: Our duties are to log in the evidence that we receive
20 from submitting agencies, package them and then transfer
21 them to our evidence room.

22 Q: I'm going to show you what's been marked for
23 identification as State's exhibit #16. Do you recognize
24 that?

25 A: Yes I do.

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1 Q: What is that?

2 A: This was a buccal swab collected from Jason Forde.

3 Q: And when did that first come into your possession?

4 A: I received it on July 23rd of 2008.

5 Q: And how do you know that?

6 A: I have a receipt with my signature and the submitting
7 officer's signature.

8 Q: And what did you do that upon receipt?

9 A: When I received this piece of evidence I would have
10 placed it in the heat seal pouch, seal the evidence up
11 here, had the officer initial and date on the heat seal
12 and also sign and date the front of the heat seal package.

13 Q: And what did you do with it after you sealed it?

14 A: After I entered the evidence into our computer system
15 and packaged it appropriately, I stored it in our DNA
16 evidence refrigerator in our evidence room.

17 Q: And who has access to that refrigerator?

18 A: Myself and four other technicians.

19 Q: But no one else?

20 A: Our Lieutenant, our supervisor, but no one else.

21 Q: How has the custody of that package been maintained
22 since it arrived at SLED?

23 A: We use a chain of custody, which is an electronic chain
24 of custody that documents all transfers of the evidence.

25 Q: And is that package in the same condition as when you

1 first took custody of it?

2 A: Well the analyst has opened it and have their initials
3 on the seal, so.

4 Q: So it's been opened by an analyst?

5 A: Yes it has.

6 Q: So it has been re-sealed?

7 A: Yes it has.

8 Q: And is that proper procedure for SLED?

9 A: Yes it is.

10 Q: So once you receive that package, you put it in, log it
11 into evidence locker for a technician to pick up?

12 A: I put it in our DNA refrigerator, yes.

13 Q: Did you do anything with that package other than log it
14 in and put it into the evidence locker or the
15 refrigerator?

16 A: I did return the evidence to Cindy Pierson with the
17 Sumter County Sheriff's Office.

18 Mr. Gamble: Please answer any questions Mr. Murphy may
19 have.

20 CROSS EXAMINATION OF MS. STEPHENS BY MR. MURPHY:

21 Q: Is the refrigerator a small refrigerator or is it a
22 special type of refrigerator with a lock on it or?

23 A: It's a normal refrigerator, but it's in our evidence
24 room which is locked.

25 Q: If I, by access you saying that you and four other

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1 techs and your supervisor have keys to allow access in.

2 A: We have keys and also a card that allows access to the
3 evidence room.

4 Q: When did you return the evidence to Ms. Pierson.

5 A: On September 18th of 2008.

6 Q: And when was the DNA sample retrieved by the, you said
7 earlier it was removed from the refrigerator by the lab,
8 has somebody tested it?

9 A: One of our evidence control technician transferred it
10 to the DNA technician on July 24th of 2008.

11 Q: Do you know which technician it was?

12 A: Doris Yarborough transferred it to Sheri Brown.

13 Q: Doris?

14 A: Doris Yarborough.

15 Q: Doris Yarborough?

16 A: Yes.

17 Q: Is she another one of the evidence custodians?

18 A: Correct; she has the same duties as I.

19 Q: Who was the tech?

20 A: The DNA forensic technician was Sheri Brown.

21 Ms. Murray: Thank you. I have no further questions.

22 The Court: Re-direct?

23 RE-DIRECT EXAMINATION OF MS. STEPHENS BY MR. GAMBLE:

24 Q: Just one question. Again, what was Ms. Yarborough's
25 duties are far as using that package?

1 A: Oh she would have taken this package out of our DNA
2 refrigerator and transferred it to Sheri Brown.

3 Q: Just a follow up. Did she do anything with that
4 package other than transfer it?

5 A: No.

6 Mr. Gamble: No more questions Your Honor.

7 Mr. Murphy: Just one more question.

8 RE-CROSS EXAMINATION OF MS. STEPHENS BY MR. MURPHY:

9 Q: After Ms. Brown got it and was finished with it, does
10 it go back to the refrigerator.

11 A: It would have been transferred to the analyst for them
12 to work on the case and then it came back down to our
13 evidence room for storage until the agency picked it up
14 for return.

15 Q: Okay and who, which evidence custodian got it back from
16 the analysis?

17 A: Forensic Technician Nicki Perry.

18 Q: And which evidence custodian restored it?

19 A: Nicki Perry stocked it on our return shelf and I
20 returned it to Cindy Pierson with the Sumter County
21 Sheriff's Department.

22 Q: So, it went directly from the, so it never returned to
23 the refrigerator after it was tested?

24 A: It went to the DNA department, after, when forensic
25 technician Sheri Brown received it from evidence control.

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1 You would have to ask the DNA analyst what their policies
2 and procedures are.

3 Q: But it never returned to the refrigerator --- no one
4 ever returned it to you? In other words, no evidence
5 custodian returned it to the refrigerator?

6 A: No, that's not part of our policy and procedures.

7 Q: So, you got it from the DNA folks to turn it over to
8 Ms. Pierson.

9 A: Nicki Perry received it from the DNA department and
10 stocked it on the shelf for return. And then I received it
11 and returned it to Cindy Pierson.

12 Q: Where's the shelf?

13 A: In our locked evidence room.

14 Q: Not to the refrigerator?

15 A: No.

16 Mr. Murphy: I have nothing further.

17 The Court: Alright Mr. Gamble, anything else?

18 Mr. Gamble: No further questions.

19 The Court: Thank you. You may step down.

20 A: Thank you.

21 The Court: What exhibit number was that?

22 Mr. Gamble: Number 16 I believe Your Honor.

23 The Court: Sixteen? Alright.

24 Mr. Gamble: Sixteen for i.d.

25 The Court: Okay. Next witness?

1 Mr. Gamble: Your Honor Ms. Pierson's here. This will be
2 sort of out of order, but I can call her at this time.

3 The Court: Alright.

4 Mr. Gamble: Your Honor the State calls Cindy Pierson.

5 Bailiff: Place your left hand on the Bible and raise your
6 right hand. State your name.

7 A: Cindy C. Pierson.

8 Bailiff: Do you solemnly swear or affirm the testimony to
9 this court to be the truth, the whole truth and nothing
10 but the truth, so help you God?

11 A: Yes.

12 Bailiff: State your name please and spell your last name
13 for the court.

14 A: Cindy C. Pierson, P-I-E-R-S-O-N.

15 DIRECT EXAMINATION OF MS. PIERSON BY MR. GAMBLE:

16 Q: Ms. Pierson where do you work?

17 A: Sumter County Sheriff's Office.

18 Q: And how long have you worked there?

19 A: Approximately twelve years.

20 Q: And what is your present position or title at the
21 Sumter County Sheriff's Office?

22 A: I handle all the evidence in the evidence room; I'm the
23 evidence technician.

24 Q: And describe those job duties as being the evidence
25 technician.

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1 A: Any evidence that comes within the department I take
2 and store until time for court or if it needs to be
3 transported to SLED I transport those items to SLED and I
4 also pick them back up from SLED when they release them
5 back to myself and then they're stored until court.

6 Q: And that item that's sitting on the bench right there,
7 State's Exhibit 16, do you recognize that?

8 A: I do sir.

9 Q: And how do you recognize that?

10 A: That's my handwriting on the front of this manila
11 envelope inside this little package.

12 Q: And does it contain any sort of special, special
13 packaging that you would be able to identify from the
14 Sheriff's office?

15 A: The envelope inside along with the copy of the incident
16 report, excuse me, not incident report. A copy of the
17 evidence card is placed on the outside of the package and
18 I have a seal on the back stating Sumter County Sheriff's
19 Office evidence and the date and my initials.

20 Q: And when did that first come into your possession?

21 A: I received it on 6/3/08 at 10:05 in the morning.

22 Q: And what did you do with that when you received it?

23 A: Once I received it, it was stored in our evidence room
24 and upon the time the paperwork was filled out, then I
25 transported it to SLED.

1 Q: And do you know when you took it to SLED?

2 A: I took it to SLED on 7/23/08.

3 Q: And what procedure, if any, do you follow when you take
4 things to SLED?

5 A: I take, when I go to SLED there are several individuals
6 in separate pods or sections. They call me and I transfer
7 the evidence over to them, they log it in and give me a
8 receipt back as to the items I brought in.

9 Q: Did you later get that package back from SLED and bring
10 it back to the Sheriff's office?

11 A: I did.

12 Q: And when did you do that?

13 A: 9/18/2008

14 Q: And what did you do when you brought it back from SLED?

15 A: When I brought it back from SLED I placed it on the
16 shelf and stored it until court.

17 Q: And how has that package been maintained since that
18 time?

19 A: It has not been opened since that time.

20 Q: It's been in storage at Sumter County Sheriff's office?

21 A: Yes it has.

22 Q: If you could, explain to the jury what a chain of
23 custody is and why it's important.

24 A: Our chain of custody starts out with the first officer
25 that actually receives the evidence; once that officer

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1 receives the evidence, we have a form that looks, just a
2 regular form that states chain of custody. Where they
3 received the item from, the time and date they received
4 the item. At that point then they place down the
5 information on the card as to what the item
6 contains. If they have the evidence already packaged in
7 something I try not to open it to protect the chain of
8 custody. If it's applicable I will keep it in the same
9 package and place like I did in this in a envelope and
10 place my initials on it. After they turn it over to me, I
11 then sign down at the bottom in reference as to who I
12 received it from, the date and time I received it and then
13 I sign it. If that evidence is to leave the evidence room,
14 at that point, I then do a chain of custody as to where I
15 took it, the date and time. When it comes back into my
16 custody, there again, I do another chain showing who I
17 received it from and when I received it. And that just
18 goes to show everybody that had contact with this evidence
19 after it was taken into custody.

20 Q: Is that package in the same condition it was when you
21 originally got it? When you took custody of it?

22 A: It's been opened by SLED and then they seal it back up.
23 Other than that it's in the same condition.

24 Q: Do you know which officer you got that piece of
25 evidence from?

1 A: Yes sir. I received it from Investigator Dominick West.

2 Q: And I want to show you what's been marked for
3 identification, let me find it, State's exhibit number 12.
4 I'm going to sit it on the ground right here. Do you
5 recognize that?

6 A: The box itself I transported to SLED with the items
7 contained inside.

8 Q: Are you able to tell what those items are?

9 A: It would be a pair of blue type sweat pants, a grey
10 sweatshirt with the words state property on it, a black
11 tee shirt with skull written on it and that was provided
12 by the officer that wrote out this evidence card.

13 Q: And do you know who wrote out that evidence card?

14 A: Would be officer Jason Tassone.

15 Q: And you're able to recognize that how?

16 A: I recognize the box because it's my handwriting and as
17 well as when this tape was placed on it from SLED, I
18 initialed it. This evidence I did not take in. This was
19 signed in by Raymond Mackessy , which packaged this
20 evidence. I only transported it to SLED.

21 Q: And when did you take it to SLED?

22 A: 5/1/08

23 Q: And you testified to the, to the other item marked for
24 identification, but I'll ask you again, what are you, what
25 is your procedure with that item when you take it to SLED?

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1 A: As, as always, once I take it to SLED, then transfer
2 it over to one of the forensic technicians in that area
3 and then it goes to whichever department it's assigned to.

4 Q: Did you later pick that package up from SLED and bring
5 it back to the Sheriff's office?

6 A: Yes sir I did on 9/1/09

7 Q: And what did you do with it when you brought it back?

8 A: I then stored it in my evidence room until court time.

9 Q: And that's been stored and maintained the same way as
10 the other item?

11 A: Yes sir, it has.

12 Q: Is that package in the same condition as when you
13 originally took, took it to SLED?

14 A: Other than it being opened in the courtroom, yes sir.

15 Q: I want to show you what's been marked for
16 identification as State's exhibit 13 and ask if you can
17 recognize that.

18 A: This is the money that was also turned in to Srgt.
19 Mackessy by Jason Tassone.

20 Q: And how are you able to recognize that?

21 A: I, I only took it to SLED. Other than, actually this
22 item did not go to SLED and today in court is the first
23 time, or when it was first opened because I did not sign
24 these items in. They were signed in by Sergeant Mackessy
25 as is his initials are on there.

1 Q: And you're able to identify that by?

2 A: By Sergeant Mackessy's handwriting as well as his
3 initials.

4 Q: By the packaging it's in?

5 A: Correct

6 Q: What type of packaging is that?

7 A: This is in a plastic package that if you tamper with
8 it, you're going to tell that someone has opened it. At
9 that point, there's a red piece of tape on here that when
10 the officer first sealed it, there's no tampering, officer
11 Mackessy then opened it, I believe to process some of the
12 items in the package. He resealed it, dated it and
13 initialed it and then he placed it in this envelope along
14 with our property number and the shelf that it was
15 contained on until court.

16 Q: How is that item maintained at the Sumter County
17 Sheriff's Office?

18 A: There again, it was placed in the evidence room and
19 held until court.

20 Q: The three items that I've had you look at, have those
21 items been maintained in the continuous care, custody and
22 control of the Sumter County Sheriff's office?

23 A: Yes sir, they have.

24 Mr. Gamble: If you would answer any questions Mr. Murphy
25 has.

1 CROSS EXAMINATION OF MS. PIERSON BY MR. MURPHY:

2 Q: In regard to the swab, when did, when did Investigator
3 West submit that swab to the Sumter County Sheriff's
4 office?

5 A: They were turned over to me on 6/3 of 2008.

6 Q: Do y'all have a refrigerator to maintain DNA samples?

7 A: Yes sir we do.

8 Q: Okay, is there any indication it was refrigerated?

9 A: I usually, per protocol place all swabs in the
10 refrigerator.

11 Q: You don't have any specific recollection if that
12 particular item was placed in the refrigerator?

13 A: Due to protocol, DNA items I have I place in the
14 refrigerator.

15 Q: And then that was transported off to SLED on July 23rd?

16 A: Yes sir.

17 Q: In regard to prosecution exhibit number 13 for
18 identification, I believe you testified that at some, at
19 some point the, at what time, what's the date that Officer
20 Tassone handed it over to Officer Mackessy.

21 A: Would that be the clothing you're speaking of? The
22 money? Looks like the date he received it was 3/6/08 and
23 it was turned over to D shift evidence locker and Sergeant
24 Mackessy received it 3/7/08.

25 Q: I believe he testified it was opened at some point.

1 A: Yes sir. He had a to be processed sticker on the front
2 of this, which means the money, some of the money should
3 have been processed and there on the back of the envelope
4 is a sticker that says processed for prints and it is also
5 dated and initialed by Sergeant Mackessy. That was done
6 3/07/08.

7 Q: So basically the day after it was turned in?

8 A: Yes, so he, Tassone could have placed it in the
9 evidence locker on that day, which would have been 3/6/08.
10 We do not check the lockers until the following morning,
11 which would have been 3/7/08, because he checked it at
12 eight o'clock that morning.

13 Q: How many folks have access to your evidence locker?

14 A: To the evidence locker in the control room should be
15 the shift lieutenants and myself and Sergeant Mackessy and
16 I believe Investigator Bean was with us at that time.

17 Q: So the total, how many, ten?

18 A: Guessing, the shift lieutenants, I think we have four,
19 five. So there would be seven or eight of us
20 approximately.

21 Q: And the evidence locker is in the evidence room?

22 A: Correct.

23 Q: How many people have access to the evidence room?

24 A: There's only three people with access to the evidence
25 room and that would be myself, my supervisor and another

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1 crime scene investigator and that way that's to cover
2 someone if we're, if we're out.

3 Mr. Murphy: Thank you.

4 The Court: Re-direct?

5 RE-DIRECT EXAMINATION OF MS. ^{01/02/07}STEPHENS BY MR. GAMBLE:

6 Q: You brought the clothes and the cheek swab back from
7 SLED, correct?

8 A: Yes I did.

9 Mr. Gamble: No further questions Your Honor.

10 The Court: Alright. Thank you, ma'am. Alright Mr. Gamble
11 your next witness?

12 Mr. Gamble: Thank you Judge, the State would call Laura
13 Mills.

14 Bailiff: Place your left hand on the Bible and raise your
15 right hand. State your name.

16 A: Laura Mills.

17 Bailiff: Do you solemnly swear or affirm the testimony to
18 this court to be the truth, the whole truth and nothing
19 but the truth, so help you God?

20 A: I do.

21 Bailiff: Thank you. State your name for the court and
22 spell your last name please ma'am.

23 A: My name is Laura Mills, M-I-L-L-S.

24 DIRECT EXAMINATION OF MS. MILLS BY MR. GAMBLE:

25 Q: Ms. Mills, where do you work?

1 A: I'm employed at the South Carolina Law Enforcement
2 Division more commonly known as SLED.

3 Q: And how long have you been there?

4 A: I've been at SLED for approximately five and a half
5 years.

6 Q: What services does SLED provide to local law
7 enforcement?

8 A: We are a forensics lab; we have departments for trace
9 analysis, which is hairs and fibers. We have a firearms
10 department for any types of guns and knives and weapons.
11 We have a drug lab for the analysis of drugs. We have a
12 DNA database department that maintains convicted
13 offender's samples. We have a DNA case work department
14 that specializes in the analysis of biological fluids from
15 crime scenes and we have a polygraph department. So mainly
16 we are an assisting agency to local law enforcement.

17 Q: And what is your job title at SLED?

18 A: I'm employed as a DNA analyst in the DNA analysis of
19 case work.

20 Q: And what are your present duties and responsibilities
21 as a DNA analyst?

22 A: As a DNA analyst, what we do is we receive evidence in
23 a criminal investigation and we take that evidence and the
24 first thing that we have to do is forensic serology which
25 just means we have to identify what body fluid, if any

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1 body fluid is present on the particular piece of evidence.
2 From that we then go forward and try to develop a DNA
3 profile from that piece of evidence and a profile is
4 unique to every individual. Only identical twins will have
5 the same DNA profile, so what we're able to do is actually
6 develop a DNA profile from a piece of evidence and then we
7 also receive in standards , which are buccal swabs or
8 tubes of blood from a particular person and we know who
9 it's from and we have a name associated with that sample
10 and then we compare the DNA profile from the evidence to
11 the DNA profile that we developed from the standard and we
12 can either say that, that body fluid left on that piece of
13 evidence from the crime scene came from that particular
14 person or it did not come from that particular person.

15 Q: And if you could please explain to the jury your
16 educational background.

17 A: Sure. I received a Bachelor's Degree in Chemistry from
18 Clemson University. I also have a PHD degree in basic
19 pharmaceutical sciences from the University of South
20 Carolina. Following the completion of these two degrees, I
21 worked for approximately one year in a DNA lab at the
22 University of South Carolina doing some postdoctoral
23 research. Upon the completion of this appointment, I was
24 hired on by SLED and was trained for approximately one
25 year handling of case work, the analysis of forensic

1 samples and I was trained by a court qualified DNA
2 analyst.

3 Q: And are you a member of any professional societies or
4 organizations?

5 A: Not at this time, no, but as part of our requirements
6 for being a DNA analyst, we're required to receive some
7 sort of external training at least one time per year and I
8 just got back from a meeting in February from my external
9 training and usually I attend numerous trainings per year,
10 not just one in the field of DNA analysis.

11 Q: And has your education or training included the study
12 of serology?

13 A: Yes it has.

14 Q: How about DNA? The study of DNA?

15 A: Yes it has.

16 Q: And did your education, and you may have said this
17 already, but did your education and training include
18 working with serology and DNA testing techniques?

19 A: Yes, during the approximately one year that we are
20 required to undergo a training program, it's an in house
21 training program at SLED, we are taught extensively on how
22 to handle evidence, how to perform serology testing and
23 how to perform DNA testing. During this time we are
24 tested, we are given written exams, oral exams and then at
25 the end we actually have to complete a test of DNA samples

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1 and get the correct results on these samples before we're
2 even allowed to take independent case work.

3 Q: And again, you may have answered this, but would you
4 please tell the jury about your experience in the field of
5 DNA testing or typing.

6 A: Sure, I've been at SLED for approximately five and a
7 half years. For about four, four and a half of those years
8 I've been accepting DNA cases of my own, which you know,
9 entails serology, DNA. During the one year training I was
10 trained extensively on both of these two fields and then
11 in addition to this, we are required every year to take
12 two external DNA proficiency tests and one serology
13 proficiency test and you do in fact have to pass all three
14 of these tests per year to maintain your position as a DNA
15 analyst.

16 Q: And can you estimate how many serological tests you've
17 performed?

18 A: Hundreds.

19 Q: How about DNA tests?

20 A: It's pretty much the same. Most of the time when we
21 perform a serology test a lot of the times we're going to
22 go ahead and perform DNA too and in the approximately
23 years I've been at SLED, it may have been anywhere from
24 two to four hundred cases per year. So, quite a few.

25 Q: And you just said how many in a year; how many would

1 you say in a week that you do?

2 A: Well, I'm actually not assigned DNA case work now,
3 because I've assumed a supervisory role; I'm the DNA
4 technical leader for the department. Before I was assigned
5 to this position we could, we were on a rotating basis for
6 case assignments so we could get anywhere from two cases
7 to ten cases a week and just depending on your work
8 schedule. There was no set number that you had to work in
9 a week, but you know, typically it was twenty to thirty
10 cases per month that I would try to do.

11 Q: And have you ever been qualified as an expert in
12 serology or DNA testing in a court?

13 A: Yes I have.

14 Q: How many times?

15 A: Approximately seventeen.

16 Q: Did you testify on these occasions?

17 A: Yes, yes.

18 Q: Is the field of DNA testing and analysis generally
19 accepted and recognized within the scientific community?

20 A: Yes it is.

21 Q: Would you please explain that to the jury?

22 A: Sure. The type of blood testing that we use in the lab
23 and that is currently available are approved for use all
24 over the United States, across the country and it is
25 widely accepted in courts across the country and the

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1 world.

2 Mr. Gamble: Your Honor at this time I'd like to offer Ms.
3 Mills as an expert in forensic serology and DNA testing.

4 The Court: Mr. Murphy any questions at this time?

5 Mr. Murphy: No questions Your Honor.

6 The Court: Alright, Ladies and gentlemen this witness is
7 qualified in the field of forensic serology and DNA
8 testing. I told you yesterday that the fact that the
9 testimony comes from an expert witness does not mean that
10 you automatically have to accept it; you weight that
11 testimony and give it the weight that you ultimately think
12 that it's entitled to. Alright Mr. Gamble, you can
13 continue.

14 Mr. Gamble: Thank you Judge. Ms. Mills how are samples
15 submitted to your lab at SLED or analysis?

16 A: Well the investigating officer or an officer from the
17 Sheriff's office or from the agency that is going to
18 submit the case will bring the evidence to SLED. They will
19 then go through our evidence control department, which you
20 just heard testimony from where they will log in the
21 evidence, get a receipt back as to what they have
22 submitted. Our evidence control technicians will then
23 decide what department the evidence needs to go to,
24 because I've already said that we have trace departments,
25 DNA departments, firearms departments, so they decide

1 which, which request by, if it's a DNA request or a drug
2 i.d. request, where that particular evidence needs to go.
3 We have a forensic technician in the DNA department that
4 will come down to the evidence control department and
5 retrieve that evidence and then she will take it and
6 decide if it needs to be refrigerated, if it's liquid
7 blood or the storage conditions of that and then we will
8 have somebody else that's in-house that's a DNA analyst
9 that ultimately decide who is the DNA analyst that's going
10 to be assigned that particular case and from there the
11 analyst is responsible for retrieving the evidence,
12 working the case, sealing the evidence back up and
13 returning it back to the evidence control department.
14 Q: And what you just spoke of, would you consider that
15 your chain of custody?
16 A: Yes and every time the evidence, such as this, every
17 time there's a yellow sticker on a piece of evidence,
18 there's a bar code on this and every time that this
19 evidence is transferred we will scan this bar code and we
20 have a computer system that will log in the date and the
21 time and the person who transferred it, where they
22 transferred it from and where it was going. So everything
23 is maintained electronically.
24 Q: And in this case, did SLED receive, I'm going to show
25 you what's been marked for State's exhibit for

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1 identification as number 16. Did SLED receive any evidence
2 like this?

3 A: Yes.

4 Q: And when you receive these evidences is it assigned any
5 specific number?

6 A: Yes it is. It's given a SLED lab number and then it's
7 given an item number that's associated with it. Because
8 typically when we have a DNA case, we may have ten items
9 of evidence, so it's numerically ordered 1, 2, 3, 4, 5, 6,
10 7. So a lot of times, if it's just one piece of evidence
11 in a particular pouch it will just say number 3. But if
12 there's five pieces of evidence in a particular pouch it
13 may have a container A on it and then we can go into our
14 computer system and electronically see what is in this
15 heat sealed pouch.

16 Q: And what evidence did you receive for that case file?

17 A: This is going to be buccal swabs from Jason Forde and I
18 can recognize it; it's got my initials on the heat seal
19 where we actually sealed it after we were done with it.
20 It's got the agency on the upper right corner. This is our
21 heat sealed pouch, because it says the South Carolina Law
22 Enforcement Division evidence and it's got our yellow
23 electronic sticker on it.

24 Q: Why was that submitted?

25 A: This is submitted as a standard, which I testified to

1 earlier. This is going to be buccal swabs from Jason Forde
2 and a buccal swab is simply a swab of the inside of
3 somebody's cheek. It's for the collection of their skin
4 cells so that we can test it in the lab. And
5 we develop that profile we know without a doubt that, that
6 profile belongs to Jason Forde.

7 Q: And when did SLED receive the suspect's standard from
8 Jason Forde?

9 A: I do not have with me the verified chain of custody,
10 but I know that from when it was logged in to SLED it was
11 logged in July 23rd of 2008.

12 Q: When you received that evidence was it properly sealed
13 and secured?

14 A: Yes. We will not work any case that we get in the lab
15 that is not completely sealed. If we open the inner pouch
16 and it looks in any way that the tape has been tampered
17 with, we will call the investigating officer immediately
18 and we will not work the case.

19 Q: And turning to a little more scientific area, can you
20 explain to the jury what deoxyribonucleic acid, DNA is?

21 A: Yes. DNA, as you said stands for deoxyribonucleic acid
22 essentially it's just a chemical found in virtually every
23 cell of the human body. Over 99% of everybody's DNA is the
24 same. You know we all need heads, two arms, two legs, so
25 the majority of our DNA codes for that type of thing. It's

1 the little part of DNA, the minute portion of it that
2 differs from individual to individual and we as forensic
3 scientists, use this very small difference to
4 differentiate one individual from another individual and
5 we get have of our DNA from our mom and half from our dad.
6 So essentially when we're looking at a DNA profile, what
7 it looks like to us is a series of numbers and we use that
8 to compare standards to evidence and we can make an
9 exclusion based on one location. If you don't match at
10 every single one of the locations, then we can say it's an
11 exclusion, so it's very rare that two people would have
12 even that similar of a DNA pattern.

13 Q: And did you get a DNA profile from that buccal swab?

14 A: I did, yes.

15 Q: Could you please explain how you got a DNA profile from
16 swab?

17 A: Sure, in this case it was submitted as buccal swab,
18 which is, like I said a swab is the inside of a persons'
19 cheek and what we'll do in the lab is we'll take this
20 piece of evidence, essentially it looks like a Q-tip and
21 we'll cut just the edge of the tip of the Q-tip off, we'll
22 put it in a series of buffers and detergents which will
23 release the DNA from the cells. We then have several
24 instruments that we then put the swab through and the end
25 result what we essentially end up with is a tube filled

1 with a very small amount of liquid and that liquid will
2 contain the DNA that we're looking for. We put it onto a
3 final instrument that runs and develops the DNA profile
4 from that liquid sample and then in the lab we put it
5 through some computer software that will generate what
6 looks like, if you were just to look at the profile, it
7 looks like a series of numbers.

8 Q: And were you able to develop a DNA profile for Mr.
9 Forde?

10 A: Yes.

11 Q: And what do you do with that profile once it is
12 developed?

13 A: Once we develop the profile, we then look at the
14 evidence that's associated with this particular individual
15 and we look to see if he does match the evidence. The
16 biological material left behind on that crime scene
17 sample; it could have been from blood, semen, saliva,
18 sweat, any of the biological fluids and we can tell if
19 that particular person did in fact leave the biological
20 evidence behind.

21 Q: And once you develop a DNA profile do you keep it in
22 storage in any way in a computer or any other type
23 assistance?

24 A: Yes. Well we have, when we make our projects at the end
25 of our analysis, it will be electronically kept and we

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1 also, in our reports, in our case file we will have a
2 print out of the person's profile and all the evidence
3 associated with the particular case. The profiles we
4 generated from the evidence as well.

5 Mr. Gamble: Just a second Your Honor.

6 The Court: Alright.

7 Q: Ms. Mills what did you do with the buccal swab once you
8 analyzed it and developed a DNA profile on Mr. Forde?

9 A: What we would then do is put the evidence into the
10 envelope, reseal it and you can see it's sealed across
11 here with the date and the initials and then we would take
12 this heat sealed pouch back down to the evidence control
13 department where they will store it until an officer with
14 the Sumter County Sheriff's office comes to SLED and
15 retrieves that evidence.

16 Mr. Gamble: Please answer any questions Mr. Murphy may
17 have.

18 CROSS EXAMINATION OF MS. MILLS BY MR. MURPHY:

19 Q: You indicated that the items you received were logged
20 in at SLED on July 23rd, 2008.

21 A: The SLED laboratory request form that I have shows this
22 as submission on July 23, 2008 at 12:39.

23 Q: But you don't know what was transferred ...

24 A: No I don't. I know that in the lab we started the
25 analysis of it on August 4, 2008.

1 Q: Generally speaking, if the result is a mixture of more
2 than one person and you come to a conclusion, for example,
3 two individuals contributed to a sample, you say at least
4 two. Can it be more than two?

5 A: It depends. We would have to look at that particular
6 piece of evidence, but a lot of times when we say it's a
7 mixture of at least two individuals, we're saying that two
8 people are definitely there. We can't tell by the way that
9 the result came out if there is a third person, but there
10 could be.

11 Q: Now regarding the process itself or the, you've
12 mentioned the DNA sample is put into a computer or the
13 computer extracts the numeric readings, is that correct?

14 A: Well when we cut, when we initially cut the swab we
15 have to let it sit for anywhere from thirty minutes to
16 overnight just to pull that DNA out of the cotton swab.
17 When you're looking at biological fluids or any type that
18 you want DNA from, it's going to have DNA as well as
19 protein cells, a bunch of other junk in it. We just want
20 the DNA so we've got to let it sit and then we actually
21 put it on an instrument that will purify that DNA and put
22 it in a tube for us so the end result is a tube containing
23 just a very small amount of liquid with only DNA in that
24 tube.

25 Q: Those machines that do that, how often are they

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1 inspected or calibrated?

2 A: The machines are checked at least once per year. We
3 have very strict guidelines from our accreditation body
4 that tells us how often we have to maintain our
5 instruments and exactly what we have to do with our
6 instruments that we deem as a critical instrument. The
7 instruments that we use for this are called cagentent easy
8 one instruments. They are in fact called a critical
9 instrument. We maintain them, we have a service contract
10 with the company which means that every single year the
11 company comes out and does preventive maintenance on this.
12 We keep records of this and then once the preventive
13 maintenance is done on the instrument, we have to do in
14 house testing on these instruments to make sure that they
15 are giving us the correct data. We have sheets that show
16 where we have maintained the instruments so there's no
17 doubts that the machines do function as we would expect
18 them to.

19 Q: So they're inspected once a year?

20 A: At least once a year.

21 Q: Nothing further.

22 (There was a break taken during the court proceedings)

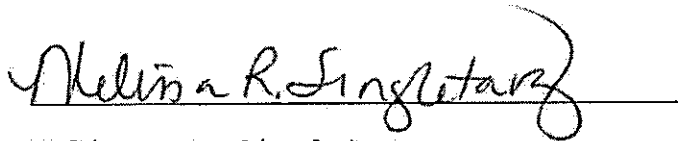
23 (This was end of trial, Defendant entered into a plea -
24 counsel already has plea and did not want plea transcribed
25 again)

CERTIFICATE

This is to certify that the transcript in the matter of The State of South Carolina vs. Jason Forde, consisting of Two Hundred Ninety Three (293) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 7th day of October, 2014.

A handwritten signature in cursive script, reading "Melissa R. Singletary", written over a horizontal line.

Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

COURT OF GENERAL SESSIONS

Jason Forde,

PLAINTIFF,

v.

The State of South Carolina,

DEFENDANT.

TRANSCRIPT OF MOTIONS
C/A No. 2009-GS-43-0248

Sumter County Courthouse
April 14-15, 2010

BEFORE:

HONORABLE GEORGE C. JAMES, PRESIDING JUDGE.

APPEARANCES:

Solicitor Kelly Jackson
Assistant Solicitor Mattison Gamble
Attorneys for State of South Carolina

Timothy Murphy, Esquire
Attorney for Jason Forde

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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1 (4-14-10 PM)

2 The Court: Mr. Murphy, have you talked to your
3 client about whether or not he will or will not testify?

4 Mr. Murphy: We spoke yesterday and as of yesterday,
5 the answer is no.

6 The Court: All right. Do you have a motion?

7 Mr. Murphy: Yes sir.

8 The Court: What I will do right now is I'll hear any
9 motions that came up as a result of the events of earlier
10 today and also any motion for a directed verdict.

11 Mr. Murphy: Yes sir.

12 The Court: On the grounds that Mr. Gamble is not
13 going to be offering anymore testimony.

14 Mr. Murphy: Your Honor in regard to the Motion to
15 Dismiss, I'd like to say first of all my motion is
16 limited to a motion to dismiss. I am offering a Motion
17 for Mistrial.

18 The case that I think sets forth the standard is the
19 Quattlebaum case, 338 S.C. 441, 527 S.E.2d 105. That
20 supports the standard and that was basically a situation
21 where an allegation of, I'll use the term, I use the term
22 prosecutorial misconduct only in the sense that it was an
23 agent, i.e., being the police, that are involved in this
24 act of misconduct, not the office of the solicitor.
25 Nevertheless, the Defendant must show either deliberate

1 prosecutorial misconduct or prejudice to make out a
2 violation of the Sixth Amendment, but not both.
3 Deliberate prosecutorial misconduct raises an
4 irrebuttable presumption of the prejudice. The content
5 of the protected communications is not relevant. The
6 focus must be on the misconduct. And what we have here
7 Your Honor, first of all, the notes of a defense attorney
8 are covered and privileged and that the notes of a
9 defense attorney made in courtroom on a defense table are
10 important and should not be read or looked at and are
11 covered by the type of protection that Quattlebaum and
12 other cases anticipated.

13 Certainly in the course of trials, you know, you are
14 called up. You are asked to visit the Judge. Your
15 witnesses comes up. We're what, four feet away from
16 here. I think those of us who that are involved in the
17 profession understand there is a line you don't cross and
18 --- but those notes are protected.

19 What I contend also, Your Honor, is what the
20 testimony showed this morning in regard to the officers
21 is that their actions were deliberate. It takes intent
22 to first of all notice notes on a defense attorney's
23 desk. It takes a measure of intent to read those notes.
24 It takes a measure of intent to convey the generalized
25 content of those notes to your law enforcement

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1 colleagues. It takes intent to thereafter contemplate
2 seeking some sort of tactical advantage to convey to the
3 Solicitor's office.

4 The Court: And you're saying that even if the
5 tactical advantage was never carried through?

6 Mr. Murphy: That's correct. At least what
7 Quattlebaum specifically says that if it is deliberate
8 prejudice need not be demonstrated. And I think --- I
9 would submit to the Court that Quattlebaum and the cases
10 it relies on and some of the other cases that I've read
11 come to that conclusion because of this --- and I use
12 this term kind of almost as secrete as to our process.
13 I mean, the American Judicial System is a process
14 designed to ensure that when an accused and a defendant
15 is presumed not guilty, presumed innocent, and it's that
16 secretness of the process that from a layman's point of
17 view, the remedy of dismissal it seem rather harsh, but
18 when you are a legal professional, you understand the
19 importance of a process. It makes sense and because what
20 we are designed to do here and I would contend as
21 officers of the court is to seek justice in the final
22 end.

23 Your Honor, not only did they seek an advantage,
24 they actually added the content of my notes to a paper to
25 be given to the solicitor, and you know, let me say,

1 again but for the integrity of Mr. Jackson and the
2 solicitor's office I wouldn't have known that and I am
3 prepared to say not only wouldn't I have known that but I
4 would have been placed at a disadvantage down the road in
5 our defense to some degree.

6 You know, Your Honor, I think the testimony today
7 showed that, you know failure to understand the legal
8 consequences of an action doesn't mean they weren't
9 deliberate. The officers involved did not act in good
10 faith. This is not a inadvertence. They sought to gain
11 a tactical advantage and convey that to the solicitor's
12 office and in so doing at that point I would submit the
13 analysis of misconduct occurs. So, you know, I'm
14 hesitant to, you know, allege for lack of a better word,
15 evil motive or evil intent. But what I will say is this.
16 It demonstrates a lack of appreciation for what we are
17 here to do and that is to seek justice; not to win a
18 case. And I would submit to you that should not be a
19 fine line. That should not be a fine line and in this
20 case, that line was crossed and notwithstanding, you
21 know, and I would submit the law mandates certain
22 consequence as a result of that and in this case
23 therefore I am asking the Court to dismiss the charges
24 again my client with prejudice.

25 A lesser type of motion for a mistrial quite frankly

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1 is not going to help us. The cat is out of the bag and
2 we would be in a --- we would in effect be in a position
3 had this information to be conveyed and use. There are
4 some imperfections in the State's case at this point
5 which would not exist in a subsequent trial and we would
6 be at a disadvantage if a mistrial were granted and
7 therefore I am requesting that the case be dismissed.

8 Thank you.

9 The Court: All right. Mr. Gamble.

10 Mr. Gamble: Just a second, Your Honor.

11 The Court: I'm familiar with the Quattlebaum case.
12 That's the case I mentioned earlier in my office.

13 Mr. Jackson: Your Honor, may it please the Court.

14 The Court: Yes, sir.

15 Mr. Jackson: Judge, the motion for dismissal based
16 on the Quattlebaum case. First of all, I want to go back
17 and review some of what we learned today is the basis I
18 understand for the motion.

19 As I understand it, based on what Detective Lyons
20 said, he was in here in the courtroom. I know it was
21 after everyone had left the courtroom and he looked and
22 saw the note pad on the defense attorney's desk and saw
23 two words, clothing and bottle. And that was all he
24 gleaned from that and he knew that it was Mr. Murphy's
25 pad.

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1 What I want to point out to the Court is some things
2 that didn't happen. They didn't put, the officer, one or
3 the other rifled through his stuff, they didn't get his
4 notes and run down and try to figure out everything in
5 it. They didn't turn pages. As I understand it, they
6 simply were standing in close proximity to the table,
7 looked and saw it.

8 That's inappropriately gained information. There's
9 no question about it. Now, whether it is inadvertent;
10 whether it's intentional, I'm not sure, but I know that
11 they didn't set out some motive, some conspiracy, some
12 cover up operation to filter through and figure out what
13 was in the defense attorney's file and then use that
14 against them.

15 So I think we are as close to the line as you can
16 get without crossing it. Now, I think the question then
17 becomes what is done with information and as I understand
18 it those two words, he shared that information with
19 Detectives Culick and Rabon and from then everything is a
20 knee jerk reaction. They don't know why those two words
21 are written there. They don't go looking trying to
22 figure it out so I think that takes you a little bit
23 further away from intentionally running through and
24 trying to figure out what is going.

25 They take it and they do a knee jerk reaction and

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1 that's about the time I walked in here and Culick tells
2 me, this is what we think needs to be done. This is why
3 we think it needs to be done and where they got the
4 information from and that's when I knew it didn't pass
5 the smell test.

6 So, you know, the fact that she told me where it
7 came from, I think somewhat bolsters the fact that they
8 weren't setting out to go rummage through his stuff. It
9 gets closer to inadvertent than intentionally going and
10 looking and reading out. They didn't look past those
11 words. When he looked down and saw the words, that was
12 it. Not anything about why they were there. What they
13 would be used for anything else. And so I relayed that
14 information to the Court this morning. We brought them
15 in, they being Detective Culick and Mr. Lyons and Mr.
16 Gamble as well. They discussed what they did and what
17 they saw and what they said there has been no conspiracy,
18 no hiding of the truth, nothing bad other than let's go
19 back and revisit what happened yesterday and figure out
20 what we did any why we did it and I think --- or I feel
21 like that that should go towards showing the Court that
22 this was not an intentional sabotaging plan or something
23 trying to gain an advantage or something trying to
24 prejudice the defendant and more so than that, the
25 information that they gathered is inconsequential to the

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1 case. Totally inconsequential to the case.

2 The Court: Well, and Mr. Murphy probably would
3 agree with that. He says it is not inconsequential to
4 the process.

5 Mr. Jackson: And that's why I brought it up to
6 begin with. It is not inconsequential to the process,
7 but I do think that when you talk about prejudice, there
8 isn't a prejudice to the defendant in this case based on
9 what actually happened and based on what you do with that
10 information, I don't see any prejudice whatsoever to the
11 defendant in this case. It certainly doesn't put the
12 State to any advantage. What have we gained as a
13 prosecution unit to know that the words bottle and
14 clothing were written down on a piece of paper. It ought
15 to be written down about 27, 28 times, so as far as what
16 has this information caused, I know that's not important;
17 it's the action that is important but ...

18 The Court: What he is saying is what a layperson
19 might see as overkill by dismissing the case. That's
20 what the integrity of the process demands. That's his
21 argument in a nutshell.

22 Mr. Jackson: Yes, sir.

23 The Court: So what is your point on that?

24 Mr. Jackson: My point is ...

25 The Court: ... if you use the word evil or

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1 malicious, there was probably no such intent ...

2 Mr. Jackson: Yes sir.

3 The Court: How about the outside world looking in on
4 our little bubble here, is this the way the system is
5 suppose to work.

6 Mr. Jackson: Judge, I think dismissal --- I think
7 this. I think something inappropriate happened and we
8 have built a record and appropriately handled it to this
9 point. I think a dismissal of the case would be overkill
10 and I don't see any precedent for it and I don't see any
11 rule calling for it. Quattlebaum itself was overturned.
12 I would venture to say that if we had gone and this had
13 comes out later, what would happen if there was a
14 conviction, it would be overturned. There would be
15 scolding and all that stuff but the end result of the
16 case itself is it would go back to it's beginning.

17 The Court: As I recall, the scope of the relief
18 granted in Quattlebaum was not a dismissal charge, I
19 don't even know if that was asked for. It was a reversal
20 of the conviction, right, a new trial with a different
21 solicitor prosecuting the case.

22 Mr. Jackson: Yes, sir. I understand that because
23 that solicitor's office couldn't be removed from what
24 they themselves had participated in and I don't think
25 that applies here at all so I think that is overkill.

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1 Quite frankly, I think the Court has built a good enough
2 record that this case could continue on its merits in
3 between the course of a mistrial. I'm certainly asking
4 you to deny the motion to have it dismissed.

5 The Court: All right. Mr. Murphy, anything in
6 response?

7 Mr. Murphy: No, sir.

8 The Court: All right. Mr. Forde, you can stay right
9 where you are. Have you had enough time to talk with Mr.
10 Murphy?

11 Mr. Forde: Yes, Your Honor.

12 The Court: Have you made a decision?

13 Mr. Forde: Yes, Your Honor.

14 The Court: What is that decision?

15 Mr. Forde: I'm not going to testify.

16 The Court: All right. Has anybody forced you to
17 make that decision?

18 Mr. Forde: No, Your Honor.

19 The Court: You are doing that on your own freewill?

20 Mr. Forde: Yes, Your Honor.

21 The Court: All right. Thank you very much.

22 Mr. Forde: Thank you.

23 The Court: Okay. Are you ready for the jury? Are
24 you folks ready to argue? Yes, Mr. Murphy?

25 Mr. Murphy: When does, Your Honor, believe he would

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1 be inclined to rule on the Motions?

2 The Court: Well, I'm open for that. I've got some
3 thoughts in mind but I don't think you would be prejudice
4 with all that. If you folks want, it's your case, it's
5 not my case. We can argue and charge in the morning, I
6 don't care. The jury is coming back in.

7 Solicitor Jackson: That trial next door is going to
8 continue into tomorrow so whether or not we pick another
9 one in here will depend on where this goes.

10 The Court: If we argue and charge this jury will
11 not have the case until 4:30 or 5:00. I'm reluctant to
12 do that to them because this jury has sat and sat and sat
13 and sat waiting on us.

14 Mr. Murphy: Your Honor, I would request that we
15 argue and charge tomorrow.

16 The Court: Mr. Gamble?

17 Mr. Gamble: I have got no objection to that, Your
18 Honor.

19 The Court: Okay. What we will do is this, I will
20 bring the jury in Mr. Gamble and you can offer what you
21 said you wanted to offer. Mr. Murphy, do you have any
22 foundational on objections or just objections that were
23 raised in limine?

24 Mr. Murphy: Just the objections that were raised in
25 limine.

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1 The Court: All right. I'm going to allow those
2 pieces of evidence in over those objections and then I
3 will tell the jury to make the most economical use of our
4 time we are going to do the arguments and charge in the
5 morning. They may be very pleased with that. I will tell
6 them that that will prevent them from having to be here
7 until the evening hours and that will make sure that they
8 have the full opportunity to discuss what they need to
9 discuss without any self imposed clock restraints. All
10 right.

11 Any objection to that Mr. Gamble?

12 Mr. Gamble: No, Your Honor.

13 The Court: Mr. Murphy?

14 Mr. Murphy: No sir.

15 The Court: I want you to also announce to the jury
16 that you will not be calling any witnesses.

17 Mr. Murphy: Yes sir.

18 (Jury enters courtroom 3:32)

19 Bailiff: The jury and alternates are all here, sir.

20 The Court: All right. Thank you. Mr. Gamble.

21 Mr. Gamble: Thank you, Your Honor, may it please the
22 court?

23 The Court: Yes sir.

24 Mr. Gamble: Your Honor, at this time the state would
25 move items number 12, 13 and 16 into evidence.

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1 The Court Any objection other than the ones
2 previously spoke, Mr. Murphy?

3 Mr. Murphy: No, Your Honor.

4 The Court: Those exhibits are in evidence. Any other
5 witnesses, Mr. Gamble?

6 Mr. Gamble: No sir. At this time the State rest.

7 The Court: All right. Mr. Murphy, any witnesses for
8 the defense?

9 Mr. Murphy: No, Your Honor. The defense rest.

10 The Court: All right. Ladies and Gentlemen, the way
11 the process works is this. In many incidence the lawyers
12 make their decisions about certain things based on their
13 view of circumstances existing at the time. The lawyers
14 advised me a few minutes ago that this would be where we
15 are right now. Certainly there is no way for me or you
16 to know that and there is no reason for them to make
17 these decisions until they are fully aware of all the
18 relevant facts they need to consider.

19 The next phrase of the trial will be closing
20 arguments. Those closing arguments would likely take a
21 total of about forty-five minutes. After that I will
22 give you a charge on the law which would carry us up
23 probably til about five o'clock and then I would not be
24 releasing you from your deliberations until you have
25 reached a verdict, which would carry us on up into the

1 evening. My standard rule of thumb is if we get
2 anywhere near 3:45 in the afternoon I don't argue and
3 charge.

4 All of you have been extremely patient with me
5 throughout this trial and you have sat in that jury room
6 on some occasions an inordinate amount of time. That's
7 not your fault. So, what I'm going to do now is break
8 for the day. You may be wondering what in the world is
9 that man doing. We just came back. I'm going to ask you
10 to come back at 9:30. I'm going to take the next thirty
11 minutes with the lawyers which I forgot to mention I'm
12 required by law to review with them the points of law
13 that I'm going to charge and that takes some time as
14 well. So that you will not have to be up here in to the
15 evening and interfere with your personal schedules I will
16 just ask you to be back tomorrow morning at 9:30 and we
17 will start with the closing arguments and charge and then
18 you will have all the time you need to deliberate this
19 case. I will remind you that you are not permitted to
20 discuss the case. You are not permitted to read anything
21 about it. Listen to anything about it or gather any
22 information about it, the parties, the lawyers or
23 anything from any source because the evidence that has
24 been presented here in the courtroom and that is the only
25 source that you are supposed to use. All right. We'll

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1 see you back tomorrow morning at 9:30.

2 Thank you.

3 (Jury is excused for evening)/(Off the Record)

4 (Back on the record)

5 The Court: Any objections to those comments, Mr.
6 Gamble?

7 Mr. Gamble: None from the State, Your Honor.

8 The Court: Mr. Murphy?

9 Mr. Murphy: No sir.

10 The Court: Okay. Over the next few moments, if you
11 will, bear with me and I'll go over the charges I'm going
12 to charge and I will get this charge to you but you have
13 to understand that I will not be giving it verbatim. The
14 gist of the charge is what I will give. As we go along
15 if you want any additional charges you just let me know
16 what they are.

17 Of course you are all aware that the preliminary
18 charge about my role and the juries role and you are both
19 familiar with that. I will talk with them about direct
20 and circumstantial evidence. I will give an example of
21 some kind. I had a lawyer one time who tried several
22 cases in front of me and he told the jury my example and
23 I couldn't think of one. Whichever one that I use I tell
24 you I'm going to use just don't use it. I'll talk to the
25 jury about credibility of witnesses. The presumption of

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1 innocence. What reasonable doubt is. I'm sure you'll be
2 interested in getting a copy of that part of it. Of
3 course, the charge and the indictment aren't evidence.
4 I'll talk to the jury about them having heard a statement
5 alleged to have been made by the Defendant. I will
6 discuss with them their review of that and I'll do the
7 Miranda points even though they are not called Miranda in
8 the charge. I will tell them that they have to decide
9 whether or not the statement was given beyond a
10 reasonable doubt and if it was given whether or not it
11 was a free and voluntarily statement of the Defendant. I
12 also will give an identification charge because I believe
13 the lady at the Food Lion not only identified the
14 defendant in the courtroom but also had previously
15 identified him from a photo array. I will give the
16 charge on the fact that the Defendant did not testify and
17 I'll caution Mr. Gamble not to use the word failure, of
18 course you can't talk about it at all. If you argue to
19 the jury that they can't hold it against him that he
20 didn't testify, don't use the word failure. I'll tell
21 the jury about what armed robbery is and that comes from
22 the statute to a large extent. I'll give a charge on
23 criminal intent. And if you work backward around the
24 time of the credibility charge or immediately after that
25 I will give a charge on expert witness.

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1 Okay. Is there anything Mr. Gamble that you want me
2 to charge that I haven't referenced? I don't see any
3 room for a lesser included in this case.

4 Mr. Gamble: No, Your Honor.

5 The Court: Mr. Murphy, anything that you want me to
6 charge?

7 Mr. Murphy: No sir.

8 The Court: If there is anything that you want me to
9 charge I will need that on my desk by 9:00, okay?

10 Mr. Murphy: Yes sir.

11 The Court: If it comes in any later than that I will
12 have to respectfully decline because I don't want to keep
13 this jury waiting again. All right. Both of you want a
14 copy of this?

15 Mr. Murphy: Yes sir.

16 The Court: All right. Is there anything else that
17 you all want to bring to my attention? You will be going
18 first, you will be going last. How long do you think
19 you'll need? I'm not going to hold you to it, I'm just
20 looking for an ideal.

21 Mr. Gamble: Anywhere from five to ten minutes.

22 The Court: Mr. Murphy. Well, I'll just probably say
23 fifteen to twenty.

24 Mr. Murphy: Well, if he's only going to take five
25 out our forty-five minutes, I guess I'll take forty.

1 The Court: I will anticipate that your arguments
2 combined will be a total of forty-five minutes to maybe
3 an hour. If you go more than forty-five minutes you can
4 keep in mind the preacher rule. Nobody will be paying
5 attention to you anyway.

6 All right. I'll use my own judgment about whether or
7 not we need to take a break before I give my charges.

8 The verdict form simply says as to the charge of
9 armed robbery. We the jury find the Defendant, they've
10 got two choices, not guilty, guilty. The reason I put
11 not guilty first because that logically, under the law,
12 should be their first consideration. I had somebody ask
13 me that one time and I said well that's how he starts
14 out. And then it's got certification that's an unanimous
15 verdict.

16 Okay. Anything else. What I'm going to do is I'm
17 going to ask the court reporter to stay until ten after
18 four which is thirty minutes from now in case there is
19 anything else that you think of and then I'm going to
20 release her for the day. Okay.

21 Mr. Murphy: Your Honor, are you going to rule on the
22 motion before argument?

23 The Court: I will do that within the next thirty
24 minutes, if I do it today. Let's put it this way. If I
25 deny it you can renew it again, if he's found guilty, you

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1 can renew it at the post trial motion stage.

2 Mr. Murphy: Yes sir.

3 The Court: I've got some concerns and frankly I
4 think the situation is that there was no evil or
5 underhanded intent but what brings it about is the
6 argument --- The process needs to be protected. But then
7 again you look at the Quattlebaum case that was pretty
8 bad.

9 Mr. Murphy: Yes sir.

10 The Court: The only thing that happened was his
11 conviction was reversed and there was a new trial and a
12 new prosecutor. Now if Mr. Lyons had done this before
13 Mr. Lyons had testified perhaps a logical agreement would
14 have been to prevent him from testifying. But in the
15 Quattlebaum case the extreme nature of that misconduct,
16 that was pretty malicious and the conviction was not
17 outright reversed just a new trial and a new solicitors
18 office. That's what I want to read and kind of get my
19 arms around it. Okay?

20 Mr. Murphy: Yes sir.

21 The Court: If y'all will just stay for another
22 thirty minutes and if I've got a ruling between now and
23 then we can put that on the record. Melissa, is that
24 okay with you?

25 Court Reporter: That's fine.

1 The Court: Okay.

2 Mr. Murphy: Thank you.

3 Mr. Gamble: Thank you, Judge.

4 (Off the record)

5 (Back on the record)

6 Bailiff: All stand.

7 The Court: Okay. Thank you. Be seated. What I'm
8 going to do now gentlemen is make my ruling on the motion
9 for dismissal.

10 I'm not going to go through the sequence of events
11 again because that has been on the record. I will just
12 review the summary that I made and go from there. In the
13 end the ultimate point I would like to make is a
14 deliberate action of this kind, of this nature raises a
15 irrebuttal presumption of prejudice and I'm compelled to
16 reach that conclusion based on the Quattlebaum case. And
17 the action consisted of the looking on the notepad, a
18 conveying of the information and then in some respects
19 planning a course of action or at least presenting a
20 proposed course of action to the prosecutor about what to
21 do about what was seen on the notepad.

22 Under Quattlebaum the fact that there was ultimately
23 no effective use of the information by the prosecutor
24 since they were to a large extent through with the
25 presentation of evidence on those points. The fact that

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1 no effective use of the information is of not of any
2 consequence in determining whether or not there is a
3 irrebuttal presumption of prejudice. So the question
4 obviously becomes what should I do about it. The
5 activity took place more than halfway through the trial.
6 The Sierra Mist bottle which was referenced on the notes,
7 supposedly, wasn't referenced again in the trial. The
8 fingerprint information was already in. The point of the
9 clothing in that list of things to do such as the
10 recalling of the witnesses that firm up more thoroughly
11 or more thoroughly identified the clothing et cetera was
12 ironically an unfounded concern on the part of the
13 officer because Mr. Gamble was still in the process of
14 methodically reaching the point of doing all that anyway.
15 I know I'm getting close right now to examining whether
16 or not there is any prejudice but I am making that
17 observation because I think he does have an impact on
18 what I do, not on whether or not there is a irrebuttal
19 presumption of prejudice. I will grant --- more than
20 likely I will grant a motion for a mistrial because Mr.
21 Murphy is in a quandary because he is saying, you know,
22 what do I do. The case perhaps in my mind has gone as
23 well as it could go for the Defendant so if I ask for a
24 mistrial these little blocks will be checked off perhaps
25 a little more thoroughly the next time. Might get a

1 different jury, one that maybe the defendant would not be
2 as comfortable with. But I would grant a motion for a
3 mistrial if Mr. Murphy asked for it and if it was within
4 my power I would make certain rulings as to whether or
5 not certain evidence could be introduced the next time or
6 whether or not certain witnesses could testify the next
7 time. That's not before me. I couldn't make an advisory
8 ruling or project a ruling into the future except at that
9 time I would grant a mistrial which I would do. Frankly,
10 I think Mr. Murphy's wisdom is perhaps correct in not
11 asking for one but he's in the unfortunate position of
12 having to exercise that professional judgment in
13 circumstances where he shouldn't have to.

14 All right. So therefore the question becomes
15 whether a dismissal is the appropriate resolution and
16 that's what I have to determine. More importantly I have
17 to determine whether or not a dismissal is required to
18 protect the integrity of the judicial system which is
19 what Quattlebaum centered on. In that case, the court
20 said that every South Carolinian has a vital interest in
21 the fair administrative of justice. The Court, I'm
22 paraphrasing, the Court bears the ultimate responsibility
23 for maintaining the judicial integrity and for protecting
24 and defending the constitutional rights of the accused
25 and the integrity of the system is called into question

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1 by conduct which might be considered to be so egregious
2 and that's a relative term under the circumstances. Then
3 the Court goes on to say we will not tolerate deliberate
4 and prosecutorial misconduct which threatens rights
5 fundamental to liberty and justice. The curious thing
6 about that particular case is that they simply reversed
7 the conviction and remanded it for a new trial with a
8 different prosecutor handling the case. The case itself
9 wasn't dismissed. I think in this particular case
10 involving Mr. Forde a dismissal of the charges would be
11 too drastic a remedy.

12 So that's my ruling on the motion to dismiss.

13 I know that, just to make the observation, I know
14 that Mr. Lyons didn't have any evil intent but again that
15 doesn't matter, just doesn't matter. I have to take it
16 for what it is and the fact that activity was conducted
17 is what I have to look at. Not whether or not he meant
18 anything evil about it. The case says that. I've had
19 dealings with Mr. Lyons before in the courtroom and he
20 has always conducted himself in a thoroughly professional
21 manner but in this particular instance I think that the
22 looking speaks for itself. Not as to his own character.
23 I don't doubt that. It doesn't speak for his own
24 character. It speaks for one action at that one time and
25 the fact that his supervisors were in the courtroom.

1 Detective Culick and Detective Rabon were in here and
2 then it went on from there which I find very curious and
3 somewhat disturbing that it went on when they were all in
4 the courtroom and progressed further after they became
5 aware of it.

6 That's my ruling on the motion to dismiss. Anything
7 else before we resume?

8 Mr. Murphy: Nothing.

9 The Court: Do you all want to go forward with the
10 jury arguments?

11 Mr. Murphy: Can I have a second.

12 The Court: Yes sir.

13 Mr. Murphy: Your Honor, my client has advised me
14 that he wishes to change his plea.

15 The Court: All right. To this charge?

16 Mr. Murphy: Yes sir.

17 The Court: Any others?

18 Mr. Murphy: There are no other charges that I have
19 spoken with the solicitor about.

20 The Court: How do you all want to handle the hearing
21 of any pleas? I can easily do this one. Is there any
22 recommendation of concurrent, consecutive, no
23 recommendation, anything like that?

24 Mr. Murphy: Your Honor, the recommendation would be
25 concurrent.

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1 The Court: Is that right?

2 Mr. Gamble: That's correct, Your Honor. We have I
3 believe seven cases in Sumter that the Third Judicial
4 Circuit is handling. One of those I told Mr. Murphy
5 would be dismissed. Also, there is a charge from
6 Richland County outstanding that I talked with the
7 Solicitor in Richland County about and we would be
8 running all of those concurrent together but no
9 recommendation as to time.

10 The Court: Is that correct?

11 Mr. Murphy: Yes sir.

12 The Court: All right. You can come on up, please
13 sir. You are still under oath from yesterday.

14 (The Plea was entered to at this time)

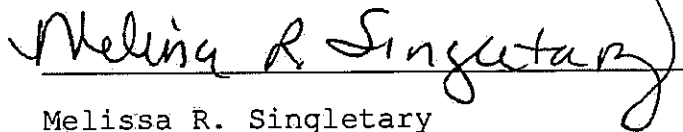
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CERTIFICATE

This is to certify that the motion transcript in the matter of Jason Forde vs. The State of South Carolina, consisting of Twenty-seven (27) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 19th day of May, 2014.

A handwritten signature in cursive script, reading "Melissa R. Singletary", is written over a horizontal line.

Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

COURT OF GENERAL SESSIONS

JASON J. FORDE,)
)
 PLAINTIFF,)

TRANSCRIPT OF RECORD
 C/A #: 2009-GS-43-0218
 2009-GS-43-242; 2009-GS-43-0243;
 2009-GS-43-0244; 2009-GS-43-)
 0245; 2009-GS-43-246;
 2009-GS-43-0248

v.)
)
 THE STATE OF SOUTH CAROLINA,)
)
 DEFENDANT.)
 _____)

April 15, 2010
 Sumter, South Carolina

BEFORE:

HONORABLE GEORGE C. JAMES, PRESIDING

APPEARANCES:

Assistant Solicitor Maddison Gamble
 Attorney for the State of South Carolina

Tim Murphy, Esquire
 Attorney for Jason J. Forde

TAKEN BY MELISSA R. SINGLETARY
 CERTIFIED VERBATIM REPORTER

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EXHIBITS

(There were no exhibits marked in this hearing)

HEARING

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1 The Court: Mr. Murphy, it is obvious that you
2 represent Mr. Forde. Some of these questions may ring
3 hollow to both of you, but I'm going to go through to
4 make sure all of these questions are placed on the
5 record. Do you agree with his decision to plead guilty
6 to this charge and the others?

7 Mr. Murphy: Yes, sir.

8 The Court: Do you think this jury would find him
9 guilty of this robbery?

10 Mr. Murphy: Yes, sir.

11 The Court: Do you have any concerns about his
12 competency?

13 Mr. Murphy: No, sir.

14 The Court: I'll also make the observation that Mr.
15 Forde certainly understands those charges, what the State
16 has to prove and has ably assisted you in representing
17 him in this case so I'm comfortable with his competency.
18 All right. Are you sure that your client has truly
19 informed you that he desires to plead guilty?

20 Mr. Murphy: Yes, sir. We've talked about it in
21 detail.

22 The Court: You are Jason Forde?

23 Mr. Forde: Yes, sir.

24 The Court: Mr. Forde, before I accept your plea, I
25 have to make sure you've entered your plea freely and

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1 voluntarily.

2 Mr. Forde: Yes, sir.

3 The Court: If you want to talk to Mr. Murphy, you
4 let me know and you can do so.

5 Mr. Forde: Yes, sir.

6 The Court: If somebody says something that you do
7 not understand or agree with you tell Mr. Murphy and he
8 will immediately tell me and we will stop and clarify any
9 confusion, do you understand that?

10 Mr. Forde: Yes, sir.

11 The Court: I guess at the end I want you to make
12 sure that I will not know unless you tell us ...

13 Mr. Forde: Yes, sir.

14 The Court: ... you do not understand.

15 Mr. Forde: Yes, sir.

16 The Court: How far did you go in school?

17 Mr. Forde: I graduated high school and a little bit
18 of college.

19 The Court: Where are you from?

20 Mr. Forde: I'm originally from Trinidad.

21 The Court: How old are you?

22 Mr. Forde: I'm 29 right now.

23 The Court: What has been your employment?

24 Mr. Forde: Excuse me?

25 The Court: Your work?

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1 Mr. Forde: I've been in military. Light
2 construction, I've worked a lot of construction jobs. A
3 lot of on and off jobs.

4 The Court: All right. Are you under the influence
5 of any medication, drugs or alcohol today?

6 Mr. Forde: No, sir.

7 The Court: Have you ever been treated for any mental
8 problems?

9 Mr. Forde: No, sir.

10 The Court: Do you have any mental problems?

11 Mr. Forde: No, sir.

12 The Court: Have you ever been treated for drug or
13 alcohol abuse?

14 Mr. Forde: No, sir.

15 The Court: Are you thinking clearly today?

16 Mr. Forde: Yes, sir.

17 The Court: Now your lawyer has told me that you
18 understand these charges and the punishment that you face
19 which is ten years to thirty years in prison, do you
20 understand that?

21 Mr. Forde: Yes, sir.

22 The Court: Now, this indictment, as you know,
23 charges you with the offense of armed robbery and it
24 says, and you've heard the evidence in the case ...

25 Mr. Forde: Yes, sir.

HEARING

6

1 The Court: ... that on March 6, 2008, you did, with
2 a handgun commit the crime of armed robbery at the Food
3 Lion at 5700 Broad Street and that you obtained
4 approximately \$300 in cash. Is that your understanding
5 of the charge?

6 Mr. Forde: Yes, sir.

7 The Court: All right. This is what the law calls a
8 most serious offense.

9 Mr. Forde: Yes, sir.

10 The Court: This is what the law calls a most serious
11 offense. Having a two strikes law and a three strikes
12 law in this case. This is a most serious offense so that
13 falls under the two strikes law. If, in the future, you
14 are convicted of another most serious offense, it would
15 not apply to any other armed robberies for which you
16 might plea this week or perhaps even early next week or
17 whenever that might be, but if all these pleas are
18 entered at the same time and sentence is passed at the
19 same time that would be one most serious offense, do you
20 understand that?

21 Mr. Forde: Yes, sir.

22 The Court: If, when you are released from prison,
23 you commit another most serious offense, the prosecutor,
24 if it's in the State of South Carolina, would not have
25 any choice but to seek mandatory life in prison without

HEARING

7

1 parole, do you understand that?

2 Mr. Forde: Yes, sir.

3 The Court: On the other hand, after you get out of
4 prison on these and commit two serious offenses, which
5 aren't as high as most serious, you'd be facing potential
6 life without parole, not mandatory, but potential, do you
7 understand that?

8 Mr. Forde: Yes, sir.

9 The Court: Now, there's a recommendation that when
10 the pleas are concluded that I impose one concurrent
11 sentence between ten and thirty years, is that your
12 understanding?

13 Mr. Forde: Yes, sir.

14 The Court: Do you understand that the ultimate
15 decision will be up to me in that regard?

16 Mr. Forde: Yes, sir.

17 The Court: Do you understand the nature of this
18 charge and the punishment that you face?

19 Mr. Forde: Yes, sir.

20 The Court: Are you on probation or parole now?

21 Mr. Forde: No, sir.

22 The Court: You give up some rights when you plead
23 guilty. First, you give up your right to remain silent.
24 In other words, in a few minutes, I'm going to be asking
25 you to tell me if you're guilty or not guilty and then

HEARING

8

1 I'm going to ask you to tell me what you did that makes
2 you guilty, do you understand that?

3 Mr. Forde: Yes, sir.

4 The Court: Second, you give up your right to have a
5 jury trial and you can see that form now, because this
6 jury is waiting to hear closing arguments and deliberate.

7 Mr. Forde: Yes, sir.

8 The Court: You have the right to let this jury pass
9 judgment on whether you are guilty or not guilty, do you
10 understand that?

11 Mr. Forde: Yes, sir.

12 The Court: Now, on the other charges, you also have
13 a right to a jury on those charges, do you understand
14 that?

15 Mr. Forde: Yes, sir.

16 The Court: You don't have to prove anything, you
17 don't have to disprove anything and the State has to
18 convince every single juror that you're guilty beyond a
19 reasonable doubt, do you understand that?

20 Mr. Forde: Yes, sir.

21 The Court: That's a very high burden for the State
22 to meet, do you understand?

23 Mr. Forde: Yes, sir.

24 The Court: Third, you would give up your right to be
25 present when the witnesses testify. That's a little bit

HEARING

9

1 moot in this case but let's carry it forward, you have
2 the right to look at these people who testify and you
3 also have a right to be present when Mr. Gamble makes his
4 closing argument and when I give the charge to the jury,
5 do you understand that?

6 Mr. Forde: Yes, sir.

7 The Court: Do you understand all of those rights?

8 Mr. Forde: Yes, sir.

9 The Court: Do you want to give them all up and plead
10 guilty?

11 Mr. Forde: Yes, sir.

12 The Court: All right. If you have any defenses you
13 give those up when you plead guilty, do you understand
14 that?

15 Mr. Forde: Yes, sir.

16 The Court: If you said anything to the police you
17 give up the right to challenge whether or not you said it
18 voluntarily, do you understand that?

19 Mr. Forde: Yes, sir.

20 The Court: Understanding this charge, Mr. Forde are
21 you pleading guilty or not guilty?

22 Mr. Forde: Guilty.

23 The Court: Are you truly guilty?

24 Mr. Forde: Yes, sir.

25 The Court: Did you commit the offense of armed

HEARING

10

1 robbery at that Food Lion?

2 Mr. Forde: Yes, sir.

3 The Court: The evidence that you've heard about
4 going into the store, taking the drink bottle putting it
5 on the cash register, is that you?

6 Mr. Forde: Yes, sir.

7 The Court: Did you have a gun in your possession at
8 that time?

9 Mr. Forde: Yes, sir.

10 The Court: Did you present it and/or point it at Ms.
11 Hodge and instruct her to open the safe.

12 Mr. Forde: Yes, sir.

13 The Court: Did you obtain \$1,800 in cash as a result
14 of that act?

15 Mr. Forde: Yes, sir.

16 The Court: All right. Has anybody promised you
17 anything to get you to plead guilty?

18 Mr. Forde: No, sir.

19 The Court: Has anybody used any threat, force,
20 pressure or intimidation?

21 Mr. Forde: No, sir.

22 The Court: And I always ask this question concerning
23 the attorneys. Has your lawyer forced you to plead
24 guilty?

25 Mr. Forde: No, sir.

HEARING

11

1 The Court: In the end, it's your decision to plead
2 guilty based on your own freewill?

3 Mr. Forde: Yes, sir.

4 The Court: Have you had time to make up your mind?

5 Mr. Forde: Yes, sir.

6 The Court: All right. Are you satisfied with Mr.
7 Murphy's service?

8 Mr. Forde: Yes, sir.

9 The Court: Do you think he's done everything within
10 reason to represent you properly?

11 Mr. Forde: Yes, sir.

12 The Court: Have you talked to him long enough and
13 often enough?

14 Mr. Forde: Yes, sir.

15 The Court: Have you understood all those talks?

16 Mr. Forde: Yes, sir.

17 The Court: Do you have any complaints at all about
18 his services?

19 Mr. Forde: No, sir.

20 The Court: Have you understood all of my questions?

21 Mr. Forde: Yes, sir.

22 The Court: Is there anything you want me to go back
23 over?

24 Mr. Forde: No, sir.

25 The Court: You have ten (10) days to appeal this

HEARING

12

1 plea and the sentence. I will defer sentencing until the
2 other pleas are heard, but you have ten (10) days from
3 that point to appeal, do you understand that?

4 Mr. Forde: Yes, I ...

5 The Court: After you plea, before me ...

6 Mr. Forde: Yes.

7 The Court: You have ten days to appeal and I'll
8 repeat all of that when you plea to the other charges, do
9 you understand that?

10 Mr. Forde: Yes, sir.

11 The Court: If he decides not to plea to those
12 charges, is there any position, I would assume this plea
13 would still be effective. If he changes his mind between
14 today and tomorrow. Because I don't have any of those
15 other facts before me. I can't fully determine whether
16 or not I will ...

17 Mr. Murphy: I would assume this plea is still
18 effective; yes, sir.

19 The Court: Okay. You agree with that Mr. Forde? If
20 you change your mind about pleading to the other seven
21 charges, this plea will still stand, do you understand
22 that?

23 Mr. Forde: Yes, sir.

24 The Court: All right. Anything else on the facts,
25 Mr. Gamble? I think I've heard all the facts.

HEARING

13

1 Mr. Gamble: I don't think so at this time, Your
2 Honor.

3 The Court: Anything that you want to tell me other
4 than the petty larceny on his record?

5 Mr. Gamble: That's it, Your Honor. He has some
6 other pending charges. I've talked with law enforcement
7 about dismissing them. They are drug charges.

8 The Court: Okay. You may have discussed parole,
9 parole eligibility or other aspects of early release with
10 your lawyer or with other people. This is a 85 percent
11 sentence, do you understand that?

12 Mr. Forde: Yes, sir.

13 The Court: In the end, I don't have anything to do
14 with when you get out of prison, all I do is sentence
15 you. Do you understand that?

16 Mr. Forde: Yes, sir.

17 The Court: Also, you would get credit for anytime
18 that you've served on this charge, do you understand
19 that?

20 Mr. Forde: Yes, sir.

21 The Court: And the recommendation includes, Mr.
22 Gamble, credit for time served and it would be applicable
23 to all these charges?

24 Mr. Gamble: That's correct, Your Honor.

25 The Court: All right. That's your understanding?

HEARING

14

1 Mr. Forde: Yes, sir.

2 The Court: All right. I'll accept that plea. It's
3 entered freely, voluntarily, knowingly and intelligently.
4 Mr. Forde has had the benefit of an attorney with whom
5 he's satisfied and certainly should be satisfied and
6 there is a substantial factual basis for the plea. I'll
7 accept it and I'll assume that any comment will be
8 withheld until the other pleas are entered, Mr. Murphy?

9 Mr. Murphy: Yes, sir.

10 The Court: Now, if the other pleas fall by the waist
11 side I'll just hear from you and from Mr. Forde and from
12 Ms. Hodge if she desires to be here. All right. You all
13 can have a seat.

14 (Off the record)

15 Mr. Gamble: Your Honor, would you like to go ahead
16 and get the signature on the sentencing sheet?

17 The Court: Yes, sir.

18 (Off the Record)/(Back on the Record, P.M.)

19 The Court: All right. Mr. Gamble.

20 Mr. Gamble: Thank you, Judge. Obviously, as to the
21 indictments, the first being 2009-218, that incident
22 occurred on May 28th of 2008, approximately 8:00 in the
23 morning at 5 Alice Drive here in Sumter County at the
24 Dollar General. The victim in this case Victoria Smith,
25 according to law enforcement a black male approached her

HEARING

15

1 in the office pointing a black in color revolver and said
2 open the safe, she opened it ...

3 The Court: We don't need to do all the facts quite
4 yet.

5 Mr. Gamble: Okay.

6 The Court: That's a armed robbery case with the
7 Dollar General?

8 Mr. Gamble: Yes.

9 The Court: What's 242?

10 Mr. Gamble: Your Honor, 242 is the Food Lion on 15
11 South.

12 The Court: Okay. And 243.

13 Mr. Gamble: 243 is the 441 check cashing on Peach
14 Orchard Road.

15 The Court: Okay. 244?

16 Mr. Gamble: Your Honor, 244 is the Young's on Camden
17 Highway.

18 The Court: On the corner of Mason Road and Camden
19 Highway, all right. 245?

20 Mr. Gamble: 245 is the Young's Store on Liberty,
21 East Liberty and that's the one the victim is here on.

22 The Court: Okay. Which one is that?

23 Mr. Gamble: At the by-pass, Your Honor.

24 The Court: All right. 246?

25 Mr. Gamble: Your Honor, again, that's a Young's

HEARING

16

1 Market. This one is at 1063 Manning Road.

2 The Court: Okay. And 248?

3 Mr. Gamble: That's the one that we've called, Your
4 Honor.

5 The Court: All right. All right. Mr. Murphy, do you
6 represent Mr. Forde on all these charges?

7 Mr. Murphy: Yes, Your Honor.

8 The Court: Okay. Do you think he understands all of
9 these charges, that he faces ten (10) years to thirty
10 (30) years, does he understand all of the charges?

11 Mr. Murphy: Yes, sir.

12 The Court: Based on your knowledge of the facts of
13 all these cases, do you think it's likely that a jury
14 would find him guilty?

15 Mr. Murphy: Yes, Your Honor.

16 The Court: We've been through it this morning, but
17 does he understand that the fact that these pleas as one
18 will constitute one strike under the most serious aspect
19 of the two strikes law?

20 Mr. Murphy: Yes, sir.

21 The Court: How long has he served on any one more or
22 all of these charges?

23 Mr. Murphy: About two years, Your Honor.

24 Mr. Gamble: He's been incarcerated since May 28th.

25 The Court: 2000 ...

HEARING

17

1 Mr. Gamble: 2008.

2 The Court: Do you have any concerns about his
3 competency?

4 Mr. Murphy: No, Your Honor.

5 The Court: Again, you are Jason Forde?

6 Mr. Forde: Yes, Your Honor.

7 The Court: Mr. Forde, you're still under oath ...

8 Mr. Forde: Yes, sir.

9 The Court: ... from this morning. I'm going to ask
10 you a lot of similar questions that I did this morning.

11 Mr. Forde: Yes, Your Honor.

12 The Court: But I want to make sure you understand
13 all these charges and all of your rights. Before I get
14 into the charges specifically, did you truthfully answer
15 me this morning about your name, your age, your
16 occupation, your educational level?

17 Mr. Forde: Yes, Your Honor.

18 The Court: Are you under the influence of any
19 substances now?

20 Mr. Forde: No, Your Honor.

21 The Court: Are you thinking clearly now?

22 Mr. Forde: Yes, Your Honor.

23 The Court: Are you still satisfied with the services
24 of your lawyer?

25 Mr. Forde: Yes, Your Honor.

HEARING

18

1 The Court: All in all do you think he has done a
2 proper job in representing you in all these cases?

3 Mr. Forde: Yes, Your Honor.

4 The Court: You've talked to him enough and have you
5 understood all of those talks?

6 Mr. Forde: Yes, Your Honor.

7 The Court: Is there anything you want to talk to him
8 about now?

9 Mr. Forde: Concerning this arrest?

10 The Court: Yes..

11 Mr. Forde: No, Your Honor, we went over everything.

12 The Court: As I said earlier, if at anytime,
13 anything that we go over, you want to stop and talk to
14 him, you let me know and you can do that.

15 Mr. Forde: Yes, Your Honor.

16 The Court: That happened a couple of times during
17 the trial and I certainly permitted you to do that, okay?

18 Mr. Forde: Yes, Your Honor.

19 The Court: If somebody says something that you
20 simply don't agree with let your lawyer know and he'll
21 let me know.

22 Mr. Forde: Yes, Your Honor.

23 The Court: There are a few indictments that I am
24 going to refer to. We've already covered number 248.
25 I'll start with 09-218. That indictment says that you

HEARING

19

1 and two co-defendants did in this county on May 28, 2008
2 commit the offense of armed robbery in the presence of
3 Victoria Smith at the Dollar General at 5 Alice Drive.
4 Do you understand that charge?

5 Mr. Forde: Yes, Your Honor.

6 The Court: That carries from ten years to thirty
7 years in prison.

8 Mr. Forde: Yes, Your Honor.

9 The Court: Indictment 242 says that on May 24, 2008,
10 you did commit the offense of armed robbery concerning
11 one Steven Parnell at Food Lion at 1785 Highway 15,
12 South. Do you understand that charge?

13 Mr. Forde: Yes, Your Honor.

14 The Court: That also carries ten years to thirty
15 years.

16 Mr. Forde: Yes, Your Honor.

17 The Court: The indictment that ends in 242 says that
18 on May 16, 2008 you committed the offense of armed
19 robbery, the victim being Linda Whitaker at 441 Check
20 Cash on Peach Orchard Road. Do you understand that
21 charge?

22 Mr. Forde: Yes, Your Honor.

23 The Court: Also ten to thirty years.

24 Mr. Forde: Yes, Your Honor.

25 The Court: Indictment 244, May 11, 2008, says that

HEARING

20

1 you violated the law by committing the offense of armed
2 robbery the victim being Drucella Hodges at the Young's
3 Market at 1970 Camden Highway. Do you understand that
4 charge?

5 Mr. Forde: Yes, sir.

6 The Court: That also carries ten to thirty years, do
7 you understand that?

8 Mr. Forde: Yes, Your Honor.

9 The Court: The indictment 245 says that on or about
10 May 11, 2008 you did commit the offense of armed robbery,
11 the victim being Jamaica Savage and Sam Spann and that
12 occurred at the Young's Market at 940 East Liberty
13 Street. Do you understand that charge and that it
14 carries ten years to thirty years?

15 Mr. Forde: Yes, Your Honor.

16 The Court: And indictment 246 says May 9, 2008, you
17 committed the offense of armed robbery, the victim being
18 Dawn Myers and Tiffany Green and that that occurred at
19 Young's Market at 1063 Manning Road as well. Do you
20 understand that charge and that it carries ten to thirty?

21 Mr. Forde: Yes, Your Honor.

22 The Court: All of these indictments reference the
23 fact that you made away with cash money, do you
24 understand that?

25 Mr. Forde: Yes, sir.

HEARING

21

1 The Court: I will not cover again the Food Lion on
2 378 since we did that this morning. All right. As I
3 explained to you earlier this morning we have a two
4 strikes law. These pleas altogether will constitute one
5 strike under that law. If you are ever convicted of
6 another most serious offense you will be subjected to
7 mandatory life without parole. Under the current law the
8 prosecutor would have to seek it even if he or she didn't
9 want to, do you understand that?

10 Mr. Forde: Yes, sir.

11 The Court: And in addition, we have a three strikes
12 law so after you get out of prison for this if you ever
13 commit two serious offenses there will be an option for
14 life without parole that the prosecutor could seek, do
15 you understand that?

16 Mr. Forde: Yes, sir.

17 The Court: As I explained to you this morning, you
18 do have certain rights under the constitution that you
19 have to give up if you want to plead guilty. First, you
20 have to give up your right to remain silent just as you
21 did this morning on that other plea, do you understand
22 that?

23 Mr. Forde: Yes, Your Honor.

24 The Court: Second, you have to give up your right to
25 have a jury trial. I don't know how many jury trials you

HEARING

22

1 might end up having but there would be at least two maybe
2 more but in all those cases you would be presumed
3 innocent, you wouldn't have to prove anything and the
4 prosecutor would have to present enough evidence to
5 convince all twelve jurors on each case that you were
6 guilty beyond a reasonable doubt, do you understand that?

7 Mr. Forde: Yes, Your Honor.

8 The Court: And the third right you have is your
9 right to confront witnesses who are called to testify.
10 That means you have the right to look at them, listen to
11 them and then your lawyer is permitted to cross examine
12 them and even though you wouldn't have to, you could call
13 your own witnesses. Do you still understand all those
14 rights?

15 Mr. Forde: Yes, Your Honor.

16 The Court: Do you want to give up all those rights
17 and plead guilty to all of these armed robbery charges?

18 Mr. Forde: Yes, Your Honor.

19 The Court: There's a recommendation that I impose a
20 sentence in the range of ten to thirty years and that
21 those sentences run concurrently. In other words, you
22 would serve all that time at the same time. Do you
23 understand that?

24 Mr. Forde: Yes, sir.

25 The Court: And you would have to serve under the

HEARING

23

1 current state of the law eighty-five percent of your
2 sentence, do you understand that?

3 Mr. Forde: Yes, sir.

4 The Court: All right. If you have any defenses to
5 these charges, you give those up when you plead guilty.
6 Do you understand that?

7 Mr. Forde: Yes, sir.

8 The Court: Do you understand that if you made any
9 statements to the police that you give up the right to
10 challenge whether or not you made the statements
11 voluntarily?

12 Mr.. Forde: Yes, Your Honor.

13 The Court: All right. All right. Mr. Forde,
14 concerning the indictment 218, this is the armed robbery
15 May 28, 2008 at the Dollar General at 5 Alice Drive.
16 Understanding that charge and the punishment that you
17 face, do you plead guilty or not guilty?

18 Mr. Forde: Guilty, Your Honor.

19 The Court: Tell me what you did.

20 Mr. Forde: I went into the store and demanded money.
21 from them.

22 The Court: Did you have a weapon?

23 Mr. Forde: Yes, Your Honor.

24 The Court: Was it a handgun?

25 Mr. Forde: Yes, Your Honor.

HEARING

24

1 The Court: You did, in essence, rob the store of
2 \$800 in cash, approximately?

3 Mr. Forde: Yes, Your Honor.

4 The Court: Have the co-Defendants been tried?

5 Mr. Gamble: No, sir.

6 The Court: Are they in jail?

7 Mr. Gamble: One of them is in Lexington County, I
8 believe and the other one is out of state.

9 Mr. Forde: They are both out of jail.

10 The Court: They are both our jail?

11 Mr. Forde: Yes.

12 Mr. Gamble: I'm sorry, Your Honor, one of them is
13 actually at Sumter/Lee Regional Center.

14 The Court: You are guilty of that?

15 Mr. Forde: Yes, Your Honor.

16 The Court: And all of that business about the powder
17 blue Cadillac, was that you in that Cadillac?

18 Mr. Forde: Excuse me, Your Honor.

19 The Court: That was the powder blue Cadillac?

20 Mr. Forde: Yes, Your Honor, but honestly as far as
21 what happened, as far as what they said about the
22 Cadillac being at the scene of the crime and all that,
23 that did not happen.

24 The Court: Did you rob that store?

25 Mr. Forde: Yes, Your Honor.

HEARING

25

1 The Court: What happened, how did the Cadillac get
2 involved?

3 Mr. Forde: I have no clue how the Cadillac ...

4 The Court: You were in the Cadillac later on?

5 Mr. Forde: We was all in the Cadillac later on that
6 day.

7 The Court: Okay. All right. Indictment 242.
8 That's the armed robbery involving Mr. Stephen Parnell at
9 1785 Highway 15 South, \$19,000 in cash, checks and WIC
10 vouchers. Are you guilty or not guilty?

11 Mr. Forde: Guilty.

12 The Court: What did you do there.

13 Mr. Forde: Entered the store and demanded money.

14 The Court: Did you have a weapon?

15 Mr. Forde: Yes, Your Honor.

16 The Court: Was it a handgun?

17 Mr. Forde: Yes, Your Honor.

18 The Court: Were you the one holding it?

19 Mr. Forde: Yes, Your Honor.

20 The Court: Were you by yourself on that occasions?

21 Mr. Forde: Yes, Your Honor.

22 The Court: Indictment 243 that's the armed robbery,
23 the victim being Linda Whitaker at 441 Check Cashing on
24 Peach Orchard Road, guilty or not guilty?

25 Mr. Forde: Guilty, Your Honor.

HEARING

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1 The Court: What did you do there?

2 Mr. Forde: Went into the check cashing place while
3 she was opening it and grabbed the money.

4 The Court: What was your weapon?

5 Mr. Forde: A handgun.

6 The Court: Indictment 244 that's May 11, 2008, the
7 victim Drucella Hodges at Young's Market on Camden
8 Highway, are you guilty or not guilty?

9 Mr. Forde: Guilty, Your Honor.

10 The Court: Did you do the same thing?

11 Mr. Forde: Yes, Your Honor.

12 The Court: A handgun and took the cash?

13 Mr. Forde: Yes, Your Honor.

14 The Court: Indictment 245, Jamaica Savage and Sam
15 Spann being the victim of the armed robbery of the
16 Young's Market on East Liberty Street are you guilty or
17 not guilty?

18 Mr. Forde: Guilty, Your Honor.

19 The Court: What did you do there?

20 Mr. Forde: Entered the store with a handgun and took
21 the money.

22 The Court: All right. Indictment 246, the armed
23 robbery May 9, 2008 the victims Dawn Myers and Tiffany
24 Green, Young's Market on Manning Road. Guilty or not
25 guilty?

HEARING

27

1 Mr. Forde: Guilty, Your Honor.

2 The Court: What did you do there?

3 Mr. Forde: Went into the store with a handgun and
4 asked them to open the safe.

5 The Court: It says that you got \$330 in cash, does
6 that sound about right?

7 Mr. Forde: Yes, Your Honor.

8 The Court: Are you truly guilty of all these armed
9 robberies?

10 Mr. Forde: Yes, Your Honor.

11 The Court: Has anybody promised you anything to get
12 you to plead guilty to any of these charges?

13 Mr. Forde: No, Your Honor.

14 The Court: Is Mr. Murphy forcing you to plead
15 guilty?

16 Mr. Forde: No, Your Honor.

17 The Court: Has anybody used any pressure, threat,
18 force or intimidation?

19 Mr. Forde: No, Your Honor.

20 The Court: Have you had enough time to make up your
21 mind?

22 Mr. Forde: Yes, Your Honor.

23 The Court: Now, are you entering all these pleas
24 based on your own freewill?

25 Mr. Forde: Yes, Your Honor.

HEARING

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1 The Court: Are you satisfied with the services Mr.
2 Murphy has provided.

3 Mr. Forde: Yes, Your Honor.

4 The Court: Any change in your answers to that
5 question from this morning?

6 Mr. Forde: No, Your Honor.

7 The Court: He's done everything you think he could
8 have done?

9 Mr. Forde: Yes, Your Honor.

10 The Court: All right. Have you understood all of my
11 questions?

12 Mr. Forde: Yes, Your Honor.

13 The Court: You have ten (10) days to appeal any one
14 or all of these pleas but you and your lawyer again have
15 to do that within ten (10) days.

16 Mr. Forde: Yes, Your Honor.

17 The Court: That's includes the sentence, you can
18 appeal that to, do you understand that?

19 Mr. Forde: Yes, sir.

20 The Court: Mr. Gamble.

21 Mr. Gamble: Thank you, Judge. Judge, before I get
22 into the facts I just wanted to cover the victims rights
23 issue. Your Honor, we have attempted to contact all the
24 victims in all these indictments. Mr. Savage who was at
25 the East Liberty Street is here with us in the courtroom .

HEARING

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1 today. Victoria Smith, who is the young lady at the
2 Dollar General was here earlier but had to leave and go
3 to work. Your Honor, we did speak to managers at the
4 Young's on Camden Highway and the Young's on Manning Road
5 and the Food Lion on 15 South. Of course, you know I've
6 spoken with the individuals at the Broad Street Food
7 Lion. The 441 Check Cashing, Your Honor, is out of
8 business and I've been attempting to track down Ms.
9 Whitaker through a Dalzell Finance Company. I did speak
10 with an individual there and that they would have the
11 manager of that store try to give her notice of the
12 hearing today.

13 The Court: All right. All of the victim's rights
14 have been protected.

15 Mr. Gamble: Judge, I'll start with indictment number
16 09-218 ...

17 Mr. Murphy: Your Honor, if I could, just to clarify
18 one point, too, before we get too much into the facts.
19 Obviously one of the issues that we discussed earlier was
20 a pending Richland County charge. My understanding in
21 talking to Mr. Gamble was that he contacted Richland
22 County and they are nolle prosequing that particular case.

23 Mr. Gamble: That's correct, Judge, I spoke with Dan
24 Goldberg at the Solicitor's Office in Columbia and he
25 stated that Mr. Forde hadn't actually been served with a

HEARING

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1 warrant in Columbia yet and had spoken with an
2 investigator and due to the plea here today they were
3 going to be dismissing the warrant in Columbia.

4 The Court: All right. Is that suitable status for
5 you, Mr. Murphy?

6 Mr. Murphy: Yes, Your Honor.

7 The Court: An oral assurance?

8 Mr. Murphy: Yes, Your Honor.

9 The Court: Okay. Go ahead Mr. Gamble.

10 Mr. Gamble: On indictment number 09-218 that is 5
11 Alice Drive, the Dollar General, Ms. Victoria Smith
12 stated that a black male approached her in the office,
13 pointed a black and color handgun at her and asked her to
14 open the safe, which she did. He grabbed an unidentified
15 amount of money. He told her to go to the back of the
16 store. She walked back there and at that time, he ran
17 out the front door. At that time, she reported to law
18 enforcement what had happened and law enforcement had
19 arrived on the scene. Your Honor, of course, you know
20 the events later that day that led to Mr. Forde's arrest
21 that we had for the trial earlier this week.

22 The Court: All right.

23 Mr. Gamble: Your Honor, on Indictment 09-242, this
24 incident occurred on May 24, 2008. Steven Parnell,
25 manager of the Food Lion, Highway 15 South, 1785 Highway

HEARING

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1 15 South according to Sumter County deputies that a black
2 male with a Jamaican accent came into the store with a
3 handgun demanding money. Gave them a physical
4 description of the individual. The subject left the
5 store with approximately \$19,000 in cash, checks and WIC
6 vouchers. The scene was processed. Mr. Parnell was able
7 to pick Mr. Forde and another individual out of a six
8 person line up stating that it was one or the other.
9 Based upon his description of the individual the other
10 factors Mr. Forde was served with that arrest warrant.

11 Your Honor, the next indictment is 09-243 this
12 incident occurred on May 16, 2008. Law enforcement with
13 the Sumter County Sheriff's Office responded to the 441
14 Check Cashier location 1345 Peach Orchard Road here in
15 Sumter County in reference to an armed robbery. Linda
16 Whitaker is the victim in that circumstance. She advised
17 the police officer that she had been robbed at gun point
18 by a tall skinny black male. She gave a description of
19 what he was wearing. He had forced her to open the safe
20 and take out approximately \$6,300. Also, he took \$200
21 from her purse and pull the telephone from the wall. She
22 did give a description of the individual and further was
23 able to pick Mr. Forde out of a lineup.

24 Your Honor, as to indictment 09-244, this incident
25 occurred on the 11th of May, 2008 at the Young's Store at

HEARING

32

1 1970 Camden Highway. Drucella Hodges is the victim in
2 this incident. She stated that an unknown subject
3 entered the store and pointed a black in color handgun at
4 her head told her to give him the money. Stated that the
5 subject then took, walked behind the counter, held the
6 gun at her head. She stated that the individual took
7 money from the safe and put it in a bank bag. Stated
8 that he had a Jamaican accent. Also, stated the subject
9 walked out of the store and walked toward Mason Road.
10 The scene was processed by Sumter Police Department at
11 that time.

12 As to indictment 02-245 this incident occurred on
13 the 11th of May the same date of 2008 at approximately
14 7:00 in the morning at the Young's Store on East Liberty
15 Street here in Sumter. Jamaica Savage was the victim in
16 this incidence. Ms. Savage stated the subject entered
17 the store and presented a black in color revolver. Told
18 her and the customer in the store to get behind the
19 counter. The suspect demanded Ms. Savage to give him all
20 the money that was in the register and in the safe. She
21 cooperated with the individual at that time. The suspect
22 also made Ms. Savage put money in a clear plastic bag.
23 He then left the store on foot headed towards Highway 378
24 by pass on Liberty Street. Detective Lyons responded and
25 processed the scene at that time, Your Honor. There was

HEARING

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1 an unknown amount of currency at that time.

2 As to indictment 09-246, Your Honor, this incident
3 occurred on the 9th of May 2008 at the Young's Market
4 here at 1063 Manning Road here in Sumter County. Dawn
5 Myers and Tiffany Green were employees at the Young's
6 Market. They reported to Sumter County Deputies that a
7 black male with a Jamaican accent wearing a black shirt
8 and a black in color Pittsburgh hat presented a black and
9 colored handgun towards them demanding money from the
10 safe in the store. Approximately \$330 was taken from the
11 register and the subject left the scene. Video evidence
12 was put into evidence and still photos were printed. Ms.
13 Green was able to pick photos out from a six person photo
14 lineup. And, Judge, also, I'll just reiterate that Mr.
15 Forde did initial the statement that we offered during
16 the trial.

17 Judge, if I could put it on the record he also was
18 arrested on indictment 09-247 which was an armed robbery
19 which occurred at the Young's Store at 2264 Peach Orchard
20 Road. I've spoken the Investigator West about nolle
21 prosing this to lack of evidence involved in the case and
22 he had agreed to drop that charge. Also, we are going to
23 be nolle prosing Mr. Forde's outstanding drug charges.
24 He also has a resisting arrest charge.

25 The Court: Mr. Forde are all those facts related by

HEARING

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1- Mr. Gamble about the robberies correct?

2 Mr. Forde: Yes, sir.

3 The Court: All right. His record?

4 Mr. Gamble: Judge, the only thing he has conviction
5 wise on his record is a petty larceny from 2008.

6 The Court: All right. You said that one of the
7 ladies wanted to speak?

8 Mr. Gamble: Yes, sir. Jamaica Savage was present in
9 the store. The Young's Store on East Liberty Street.
10 She'd like to say something at the appropriate time.

11 The Court: Yes, ma'am. You may speak. Your name is
12 Jamaica Savage?

13 Speaker: Jamaica Savage.

14 The Court: Yes, sir.

15 Ms. Savage: I'm just ready for this to be over with
16 and some closure in my life. I just, you just never know
17 what happens. You think about your kids and you think
18 about your whole life. Everything flashes in front of
19 you. Just trying to, you know, working and I feel like
20 it was unfair that it happened, you know, and I feel that
21 justice should be served.

22 The Court: Where were you in the store?

23 Ms. Savage: I was currently, I was currently
24 employed on Mason Road and I was working at the Young's
25 on East Liberty.

HEARING

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1 The Court: Were you behind the counter?

2 Ms. Savage: Yes.

3 The Court: Day time or night time?

4 Ms. Savage: Day time.

5 The Court: He came walking in with a mask on or no
6 mask?

7 ' Ms. Savage: He had a, I believe it was a bandana
8 around his mouth and he made my customer come behind the
9 counter with me. He put the gun at the back of his back
10 and he made me get the money out the safe first and then
11 the drawer.

12 The Court: All right. Anything else?

13 Ms. Savage: No, sir.

14 The Court: Thank you, ma'am.

15 Mr. Gamble: Judge, also Victoria Smith was in the
16 courtroom earlier today. She was the young lady working
17 at the Dollar General. She had to leave for employment
18 reasons but she did speak to Detective Lyons and I
19 believe he would like to address the court at the
20 appropriate time.

21 The Court: Mr. Lyons.

22 Mr. Lyons: Do you want me to address that now, Your
23 Honor, or ...

24 The Court: Yes, sir.

25 Mr. Lyons: As far as all of ...

HEARING

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1 The Court: Yes. Yes, sir. All of them.

2 Mr. Lyons: As Mr. Gamble said Ms. Smith was here I
3 had spoken with her earlier and informed her of the
4 hearing this afternoon. She did come in, unfortunately
5 she had to leave to get back to work. She is still
6 employed by Dollar General. Her expressions to us were
7 and I guess her exact words were he should get as much
8 time as the law will allow. She was extremely scared
9 that day and the facts that Mr. Gamble said are true and
10 accurate of the account that took place that morning. I
11 did try to contact Ms. Hodges as well from the Camden
12 Highway robbery. The one with Savage and Ms. Smith those
13 were in our jurisdiction. I was unable to get in contact
14 with Ms. Hodges. I do know Ms. Hodges subsequently quit
15 working at the Young's a few days after that robbery due
16 to the traumatic event that took place that day. She
17 actually did come in and talk with Ms. Culick. At one
18 point here husband even came in and applied to do some
19 work for the Department. From law enforcement stand
20 point, I will make note that the robbery that happened to
21 Ms. Savage and to Ms. Hodges occurred on one day, the
22 robbery on East Liberty Street, while responding to that
23 store the other store was getting robbed pretty much
24 within a very short amount of time.

25 As, Your Honor, can probably see by the dates on the

HEARING

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1 indictments and on the incident reports this was about a
2 month and a half worth of robberies that were occurring
3 in both our jurisdiction and the Sumter County Sheriff's
4 Department jurisdiction. During a traffic stop on May
5 28th we did recover two handguns, a revolver and semi-
6 automatic pistol. I do believe, referring back to Mr.
7 Forde's statement that he had given to Detective Culick,
8 I think he did admit that the pistol that we recovered
9 that night on the 28th was the revolver was the one he
10 used that morning. I believe it belonged to, and I may
11 be wrong, it was either Mr. Green or Mr. Carter's
12 grandfather, it was one of the other two co-defendants in
13 the cars family members weapon. So therefore we did
14 recover two handguns during that traffic stop. Of
15 course, it is our belief those two weapons were probably
16 weapons that had been used throughout this string of
17 robberies that occurred in the city and county
18 jurisdiction.

19 Given the number of robberies, Your Honor, and the
20 fear that was spreading throughout the small business
21 community, our position would be for, you know, the seven
22 counts of robbery that Mr. Forde receive the maximum
23 amount of time that would be allowed under the penalty of
24 law for thirty years. That would be our position from
25 the law enforcement division.

HEARING

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1 The Court: All right. Anything Mr. West?

2 Mr. West: Just whatever the State ...

3 The Court: Anything else Mr. Gamble on the facts or
4 any of the victims or anything about his record that you
5 haven't previously mentioned?

6 Mr. Gamble: No, sir, Your Honor. I don't see anyone
7 new in the courtroom either as far as victims.

8 The Court: All right. He's already voiced his
9 understanding that whatever the sentence might be that he
10 has to serve at least 85 percent, correct?

11 Mr. Murphy: Yes, sir.

12 The Court: Do you understand that, sir?

13 Mr. Forde: Yes, sir.

14 The Court: All right. I will accept all of the
15 pleas. They are entered freely, voluntarily, knowingly
16 and intelligently. Mr. Forde is represented by an
17 attorney he is satisfied with. There is obviously
18 substantial factual basis for me to accept the pleas.
19 Mr. Murphy.

20 Mr. Murphy: Thank you, Your Honor. My client, as
21 you know, is 29 years old. He was trained as a licensed
22 practical nurse in the United States Army. He served
23 four years in the United States Army. He was honorably
24 discharged. He received tech school training in the
25 army. He got married and he's been married for four

HEARING

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1 years. He has a two year old daughter. Your Honor, this
2 is his sister. Your Honor, I've had extensive contact
3 since I've represented Mr. Forde with both his wife and
4 then he has another sister who I've had contact with who
5 is a service member who presently is in Germany with his
6 mother who is also in Germany. And at the appropriate
7 time his sister would like to address the court. Mr.
8 Forde and I have had a, I would say a very honest type of
9 relationship. When we were talking earlier today
10 regarding whether to ask for a dismissal, whether to ask
11 for a mistrial, he's also been very actively engaged and
12 to be honest it's very difficult for me to hear these
13 facts and fit them up with Mr. Forde as I know him. We
14 would ask the court to consider that there is no violence
15 in this individuals past. That these crimes, for the
16 most part, occurred in a relatively short period of time.
17 They are awful in and of themselves each one, but I would
18 ask the court to consider we're talking, for the most
19 part, about a twenty day period of this man's life that
20 most of these occurred in probably extending over a
21 couple of months period of time and that --- it just, I'm
22 not even sure, you know, and Mr. Forde can address it
23 later on, I'm not even sure he understands what happened.

24 The Court: You're talking about why he did it?

25 Mr. Murphy: About why he did it. You know the

HEARING

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1 normal, for lack of a better word, normal reasons, you
2 know, drug addiction or, you know, gang related type
3 activity initiation type stuff are not players in this
4 case. You know, it's easy for, I think, somebody to say,
5 well, you know, give him the max but on the other hand,
6 you know, there is the prospect of an individuals past up
7 to a certain point should account for something and, you
8 know, looking forward obviously he may not, I would
9 suggest to the court, given the fact that at least twenty
10 six --- twenty six, twenty seven years he served his
11 country, he seemed to be going down a pretty good path.
12 This is one of those things where I think you can say
13 with at least some confidence something like this
14 wouldn't happen again. On the other hand, obviously, you
15 know, you wonder where it would have stopped. I know at
16 one point one of my conversations with Mr. Forde he
17 honestly expressed a kind of relief that it stopped and
18 he's always expressed to me that he, you know, he
19 wouldn't have actually, you know, hurt, I mean, killed
20 anybody but what he did in and of itself was violent
21 enough.

22 Your Honor, I would ask you to consider the minimum.
23 My client would request that. But, whatever you do he
24 dearly wants to opportunity to know his daughter before
25 she becomes an adult. He recognizes that ten (10) years

HEARING

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1 is the minimum, but he was incarcerated when his wife
2 gave birth to their daughter --- a week after. So, he's
3 known her for about a week. He realizes, you know, she's
4 back in California with her parents. She's out of the
5 Air Force now and he would like that opportunity for you
6 to consider that. I would ask his sister to say a few
7 words.

8 The Court: Your name, please ma'am.

9 Speaker: Ms. Farrow.

10 The Court: Yes, ma'am.

11 Ms. Farrow: I don't have any explanation for any of
12 the actions. I can just say that I know, I know Jason.
13 I know he's remorseful. I know that his wife and his
14 daughter. I know that at the time his wife was pregnant.
15 And I know that he really would like the court to show
16 mercy so that he may have a opportunity to be a part of
17 his daughter's life. Obviously, my opinion is a little
18 bias but this what I'm hearing today doesn't match the
19 person, excuse me, and it has to be something out of the
20 ordinary and I do not think that it would ever happen
21 again. So, on those grounds, I ask the court for mercy.

22 The Court: Thank you, ma'am. All right. Mr. Forde,
23 is there anything that you would like to tell me?

24 Mr. Forde: Your Honor, first of all, I want to
25 apologize to Ms. Savage, the State and Your Honor, for

HEARING

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1 what I did. For my crimes against them. Your Honor,
2 I've been locked up for two years, Your Honor. When I
3 was out there, I mean, I was new around here trying to
4 fit in, I guess, it was something that the crowd I was
5 hanging with, you know, that I got into and I've had a
6 lot of time to think, Your Honor. I've had a lot of time
7 to think over these last two years and I've cried a lot,
8 you know. Taking back even hearing what was going on, I
9 can't even believe it. For the most part, I just want to
10 ask for your mercy, Your Honor, and I'm really sorry for
11 what I did.

12 The Court: Thank you. Anything else, Mr. Murphy?

13 Mr. Murphy: No, Your Honor.

14 The Court: Anything else Mr. Gamble?

15 Mr. Gamble: Nothing further.

16 Mr. Murphy: Your Honor, for the record, I just want
17 to point out earlier I don't know if I made the record
18 clear but in regard to the mistrial motion my client and
19 I did consult about that and made a decision not to
20 request a mistrial. I just wanted to make that clear for
21 the record.

22 The Court: All right. We've been in here for about
23 two hours. I'm going to take a break right now. Mr.
24 Forde you can have a seat in the grand jury box. Does
25 that suit you Mr. Sinkler?

HEARING

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1 Mr. Sinkler: That will be fine, Judge.

2 The Court: All right. I'll be back in about five
3 minutes and will pass the sentence at that time.

4 (There was a Court break taken)

5 The Court: All right. We are back on the record on
6 these indictments involving Mr. Forde. Mr. Forde, I
7 don't know if anybody ever offered you any words of
8 wisdom, I certainly don't have any to offer but I can
9 tell you this. During the trial, you know, as you and I
10 spoke a few times on the record, one thing kept coming
11 back to me was why did this young man do this because
12 everybody can look at you and talk to you and tell that
13 you're not the run of the mill thud who goes out and robs
14 people at least as far as the way you present yourself.
15 That's just - it's amazing to me. I may have made the
16 comment that if he ever came to me for a job I would have
17 hired him at least based on your ability to handle
18 yourself. These people that are the victims of your
19 escapades they don't have any reason to think of you in
20 that way. Everybody in here have seen people come and go
21 who are the worse people and then there's people like you
22 that you just can't understand why you did what you did.

23 I'm not going to give you the minimum. If it had
24 been one I would have considered something very close.
25 I'm not going to give you the maximum. I'm going to give

HEARING

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1 you something in between and all the sentences will be
2 concurrent. I'm sure once I do pronounce the sentence
3 it's not going to be something you will be happy with.
4 It's not going to accomplish your goal wanting to see
5 your daughter before she becomes an adult. It's not
6 going to be the maximum that law enforcement wants. I
7 don't really blame law enforcement for wanting it. They
8 got a job to do and they were led around by the nose for
9 three or four weeks by somebody who was putting a gun in
10 peoples faces. What it all boils down to is I have to
11 determine what I think is an appropriate sentence under
12 these circumstances. I fully believe that once you get
13 out you do have some hope. I mean, you do have some
14 prospects to make something of yourself. Unfortunately
15 not because of what I'm going to do but for what you did
16 it's not going to be anytime soon. It's going to be when
17 you're at a more advanced age.

18 All right. The sentence of the Court, Mr. Forde, on
19 each of these and again these will all run concurrent.
20 You will receive time you've served since May of 2008,
21 it's two years. You're committed to the State Department
22 of Corrections for a period of twenty-two (22) years.
23 These will all be concurrent.

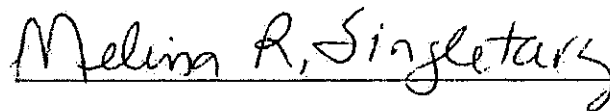
24
25

CERTIFICATE

This is to certify that the hearing in the matter of Jason J. Forde vs. State of South Carolina, consisting of Forty-Four (44) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 17th day of July, 2011.

A handwritten signature in cursive script, reading "Melissa R. Singletary", is written over a horizontal line. The signature is fluid and includes a large, sweeping loop at the end.

Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

WITNESSES

SPD

Lyons

ARREST WARRANT NUMBER

J304244, J296022, J304245

D/A: 05/30/08

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 19 FEB 09

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-43-218

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE

vs.

JASON J. FORDE

DONTRELL M. CARTER

KESHAWN M. GREEN

Indictment for

ARMED ROBBERY

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

ARMED ROBBERY

At a Court of General Sessions, convened on February 19, 2009, the Grand Jurors of SUMTER County present upon their oath:

That JASON J. FORDE, DONTRELL M. CARTER AND KESHAWN M. GREEN did in Sumter County on or about May 28, 2008, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a handgun, did feloniously take from Victoria Smith in the presence of Victoria Smith, by means of force or intimidation goods or monies of the said Victoria Smith at Dollar General, 5 Alice Drive, such goods or monies being described: \$800 in cash.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

372
COUNTY OF SUMTER

INDICTMENT/CASE#: 2009-GS-43-0218

STATE VS.

JASON J. FORDE

AW#: J304244

AKA:

Date of Offense: May 28, 2008

Race: Black

Sex: Male

Age:

S.C. Code §: 16-11-0330(A)

DOB: [REDACTED]

SS#: [REDACTED]

CDR Code #: 0139

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Address: [REDACTED] Cold Stream Drive Dalzell, SC 29040

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Armed Robberyin violation of § 16-11-330(H) of the S.C. Code of Laws, bearing CDR Code # 0, 1, 3, 1, 9☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

W. B. G. 76715 [Signature] [Signature] 74057
 Solicitor Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 22 ~~days~~ months years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All charges sentenced today☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. From May 2008☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Recipient:

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§35.13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ _____

James C. Campbell
Clerk of Court/Deputy ClerkCourt Reporter: M. Singletary

PRESIDING JUDGE

Judge Code: 2009-14-13Sentence Date: 4-15-10

WITNESSES

SCSO

Skinner

ARREST WARRANT NUMBER

J294524

D/A: 05/30/08

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: *19 Feb 09*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-43- 242

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE

vs.

JASON J. FORDE

Indictment for

ARMED ROBBERY

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

ARMED ROBBERY

At a Court of General Sessions, convened on February 19, 2009, the Grand Jurors of SUMTER County present upon their oath:

That JASON J. FORDE did in Sumter County on or about May 24, 2008, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a handgun, did feloniously take from Steven Parnell in the presence of Steven Parnell, by means of force or intimidation goods or monies of the said Steven Parnell at Food Lion, 1785 Why. 15 South, such goods or monies being described: approximately \$19,000 in cash, checks and WIC vouchers.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

COUNTY OF SUMTER

INDICTMENT/CASE#: 2009-GS-43-0242

STATE VS.

JASON J. FORDE

AKA:

Race: Black

Sex: Male

Age:

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED] Cold Stream Drive Dalzell, SC 29040

DL#

SID#

AW#: J294524

Date of Offense: May 24, 2008

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Armed Robberyin violation of § 16-11-330(4) of the S.C. Code of Laws, bearing CDR Code # 0111319☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

W. McG... 76715
Solicitor[Signature]
Defendant[Signature] 74057
Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All charges, P/5 today☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. From 5/58☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

_____ days/hours Public Service Employment

Recipient:

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.90
§90.11 TP (SCCJA Surcharge)	\$5	\$ 5.00
TOTAL		\$ 133.90

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]
2011-14-13
24-15-10

Court Reporter:

Clerk of Court/Deputy Clerk

WITNESSES

SCSO

West

DOCKET NO. 2009-GS-43- 243

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE

vs.

JASON J. FORDE

ARREST WARRANT NUMBER

J394518

D/A: 05/30/08

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 19 Feb 09

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

ARMED ROBBERY

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

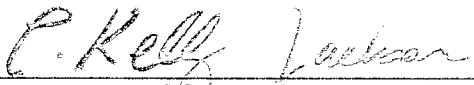
INDICTMENT FOR

ARMED ROBBERY

At a Court of General Sessions, convened on February 19, 2009, the Grand Jurors of SUMTER County present upon their oath:

That JASON J. FORDE did in Sumter County on or about May 16, 2008, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a handgun, did feloniously take from Linda Whitaker in the presence of Linda Whitaker, by means of force or intimidation goods or monies of the said Linda Whitaker at 441 Check Cashing, 1345 Peach Orchard Road, such goods or monies being described: approximately \$6,500 in cash.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

378
COUNTY OF SUMTER

INDICTMENT/CASE#: 2009-GS-43-0243

STATE VS.

JASON J. FORDE

A/W#: J294518

AKA:

Race: Black

Sex: Male

Age:

DOB: [REDACTED]

SS#: [REDACTED]

Date of Offense: May 16, 2008

S.C. Code §: 16-11-0330(A) OF ORIGINAL

CDR Code #: 0139

Address: [REDACTED] Cold Stream Drive Dalzell, SC 29040

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0111319

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

W. N. [Signature] 76715
Solicitor[Signature]
Defendant[Signature] 74557
Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All charges pled today☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. From 5/10/08☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§90.11 TP (SCCJA Surcharge)

TOTAL

	\$	
\$100	\$	100.00
\$100	\$	
\$12	\$	
\$500	\$	
\$25	\$	25.00
\$100	\$	
\$50	\$	
\$40/ea	\$	
\$5	\$	5.00
	\$	

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2-14-14	13
4-15-10	

Court Reporter:

Clerk of Court/Deputy Clerk

WITNESSES

SPD

Culick

ARREST WARRANT NUMBER

J304249

D/A: 05/30/08

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 12 Feb 09

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-43-244

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE

vs.

JASON J. FORDE

Indictment for

ARMED ROBBERY

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

ARMED ROBBERY

At a Court of General Sessions, convened on February 19, 2009, the Grand Jurors of SUMTER County present upon their oath:

That JASON J. FORDE did in Sumter County on or about May 11, 2008, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a handgun, did feloniously take from Drucilla Hodges in the presence of Drucilla Hodges, by means of force or intimidation goods or monies of the said Drucilla Hodges at Young's Market, 1970 Camden Hwy., such goods or monies being described: an undetermined amount of currency.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

COUNTY OF SUMTER

INDICTMENT/CASE#: 2009-GS-43-0244

STATE VS.

JASON J. FORDE

AW#: J304249

AKA:

Date of Offense: May 11, 2008

Race: Black

Sex: Male

Age:

S.C. Code §: 16-11-0330(A)

DOB: [REDACTED]

SS#: [REDACTED]

CDR Code #: 0139

Address: [REDACTED] Cold Stream Drive Dalzell, SC 29040

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Armed Robberyin violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0111319☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

W. N. [Signature] 76215
Solicitor[Signature]
Defendant[Signature] 7457
Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All charges pled today☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. From 5/08☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$
§90.11 TP (SCCJA Surcharge)	\$5	\$ 5.00
TOTAL		\$

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

WITNESSES

SPD

Culick

DOCKET NO. 2009-GS-43- 245

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE

vs.

JASON J. FORDE

ARREST WARRANT NUMBER

J304248

D/A: 05/30/08

ACTION OF GRAND JURY

Chris Bice
Chris Bice
Foreperson of Grand Jury

Date: *19 Feb 09*

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

ARMED ROBBERY

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

 ARMED ROBBERY

At a Court of General Sessions, convened on February 19, 2009, the Grand Jurors of SUMTER County present upon their oath:

That JASON J. FORDE did in Sumter County on or about May 11, 2008, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a handgun, did feloniously take from Jamaica Savage and Sam Spann in the presence of Jamaica Savage and Sam Spann, by means of force or intimidation goods or monies of the said Jamaica Savage and Sam Spann at Young's Market #607, 940 E. Liberty Street, such goods or monies being described: an undetermined amount of currency.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



 SOLICITOR

384
COUNTY OF SUMTER

INDICTMENT/CASE#: 2009-GS-43-0245

STATE VS.

JASON J. FORDE

AKA:

Race: Black

Sex: Male

Age:

DOB: [REDACTED]

SS#: [REDACTED]

AW#: J304248

Date of Offense: May 11, 2008

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

CERTIFIED TRUE COPY
OF ORIGINAL

Address: [REDACTED] Cold Stream Drive Dalzell, SC 29040

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Armed Robberyin violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0111319☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

W. No. 76715

Solicitor

Defendant

Attorney for Defendant

SC Bar # 7457WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All charges pled today☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. From 5/08☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

_____ days/hours Public Service Employment

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§90.11 TP (SCCJA Surcharge)

TOTAL

\$

\$100

\$100

\$12

\$500

\$25

\$100

\$50

\$40/ea

\$

\$5

\$

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

PRESIDING JUDGE

Judge Code:

Sentence Date:

WITNESSES

SCSO

Skinner

ARREST WARRANT NUMBER

J294523

D/A: 05/30/08

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 19 Feb 09

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-43- 246

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE

vs.

JASON J. FORDE

Indictment for

ARMED ROBBERY

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

ARMED ROBBERY

At a Court of General Sessions, convened on February 19, 2009, the Grand Jurors of SUMTER County present upon their oath:

That JASON J. FORDE did in Sumter County on or about May 9, 2008, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a handgun, did feloniously take from Dawn Myers and Tiffany Green in the presence of Dawn Myers and Tiffany Green, by means of force or intimidation goods or monies of the said Dawn Myers and Tiffany Green at Young's Market, 1063 Manning Road, such goods or monies being described: approximately \$330 in cash.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

STATE VS.

JASON J. FORDE

AKA:

Race: Black

Sex: Male

Age:

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED] Cold Stream Drive Dalzell, SC 29040

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-43-0246

387

AW#: J294523

Date of Offense: May 09, 2008

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

CERTIFIED TRUE COPY
OF ORIGINAL

DEPUTY CLERK
[REDACTED]

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0111319

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ Mandatory GPS (CSC

☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature] 76715 [Signature] [Signature] 74057
Soliditor Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All charges pled today

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. From 5/98

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

_____ days/hours Public Service Employment

Recipient:

*Fine: \$ _____

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§90.11 TP (SCCJA Surcharge)

TOTAL

\$100 \$120.00

\$100 \$

\$12 \$

\$500 \$

\$25 \$25.00

\$100 \$

\$50 \$

\$40/ea \$

\$ \$

\$5 \$5.00

\$ \$

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]
2111413
4-15-10

WITNESSES

SCSO

Skinner

DOCKET NO. 2009-GS-43- 248

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE

vs.

JASON J. FORDE

ARREST WARRANT NUMBER

J294522

D/A: 05/30/08

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury

Date: 19 FEB 09

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

ARMED ROBBERY

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

ARMED ROBBERY

At a Court of General Sessions, convened on February 19, 2009, the Grand Jurors of SUMTER County present upon their oath:

That JASON J. FORDE did in Sumter County on or about March 6, 2008, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a handgun, did feloniously take from Jean Rogers and Shantel Hodge in the presence of Jean Rogers and Shantel Hodge, by means of force or intimidation goods or monies of the said Jean Rogers and Shantel Hodge at Food Lion, 5700 Broad Street, such goods or monies being described: approximately \$1,800 in cash.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

390
COUNTY OF SUMTER

INDICTMENT/CASE#: 2009-GS-43-0248

STATE VS.

JASON J. FORDE

AW#: J294522

AKA:

Date of Offense: March 06, 2008

Race: Black

Sex: Male

Age:

S.C. Code §: 16-11-0330(A)

DOB: [REDACTED]

SS#: [REDACTED]

CDR Code #: 0139

Address: [REDACTED] Cold Stream Drive Dalzell, SC 29040

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Armed Robberyin violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0117319☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

W.D. [Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 ~~days/months~~ years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All charges pled today☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. From 5/28☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§35.13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ _____

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

SC Attorney General
RECEIVED

APR 20 2011

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Referred to M. Williams

Answered _____

CLERK
COURT
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

County of

Sumter

In the Court of Common Pleas

Jason J. Forder #340328

Full name and prison number (if any) of Applicant,

vs.

State of South Carolina

Name of Respondent.

2011-CP-43-754

**APPLICATION FOR
POST-CONVICTION RELIEF**

OF ORIGINAL FILE

DEPUTY CLERK
SOUTH CAROLINA

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correctional Institution 990 Wasacky Hwy, Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Sumter County General Sessions Court, Sumter South Carolina
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Armed Robbery #s 2009 QS-43-0218, 43-0242, 43-0243
 - (b) 2009 QS-43-0244, 43-0245, 43-0246, 43-0248
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4/15/2010 22 years Concurrent on all
 - (b) Charges Pled today
 - (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

No

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) I was under the impression I could not appeal.

(b) I was not aware of Appeal Rights process.

(c) My attorney advised me not to.

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Inadequate use of counsel. See attachments.

(b) Violation of fourth amendment rights. See attachments.

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See Attachments

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. None
- ii. None
- iii. None

(b) the proceedings in which each ground was raised:

- i. None
- ii. None
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Defense Attorney's failure to do so.
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Timothy W. Murphy Assistant Public Defender
Law Office of Wades Kolb Jr. 107 North Main St. Sumter S.C.
- ii. 29150.
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Arraignment and plea
- ii. Trial and Sentencing
- iii. _____

18. State clearly the relief you seek in filing this application.

That my conviction be Reversed and Remanded, and
sentence be vacated, set aside for further proceedings.

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of Sumter

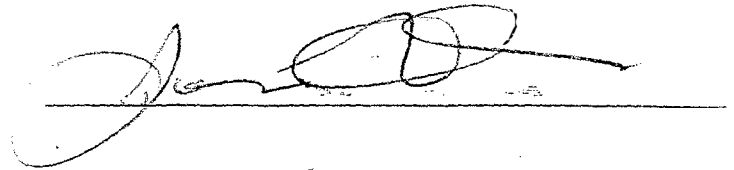
2011-OP-43-754

2011 APR 15 PM 1:03

VERIFICATION

JASON J. FORDE
COURT
S.C.

I, Jason J. Forde #340328, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.


SWORN to and subscribed before me this 14day of April, 2011Debra Jones

Notary Public

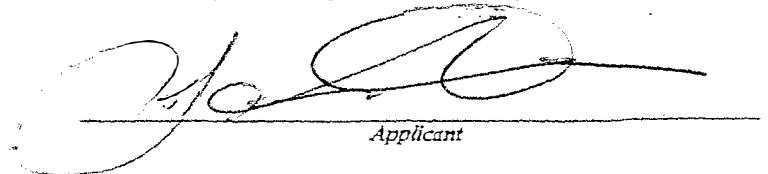
(L.S.)

My Commission Expires: 11-4-2015

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Jason Forde, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.



Applicant

SWORN or affirmed to and subscribed before me this

14day of April, 2011Debra Jones

Notary Public

11-4-2015

Attachments

Post Conviction Application Line 9 and 10 P.C.R.

Jason Forde vs State of South Carolina.

Issue # 1

Ineffective Assistance of Counsel (A)
Violation of 6th and 14th Amendment Rights

Defense counsel failed to motion the court for a Fast and Speedy Trial at defendants request. Defense counsel held off filing Speedy Trial motions for almost one year. Defense counsel also delayed for another year after filing speedy trial motion by refusing defendants request to file a motion to dismiss for failure to prosecute.

An accused is entitled to a speedy trial under the Sixth and Fourteenth Amendment of the United States Constitution and under Article (I), Section (4) of the Constitution of South Carolina.

Issue #2

Ineffective Assistance of Counsel (B)

Trial counsel failed to object to the introduction of a set of fingerprints taken one month before trial. The judge ordered defendant, who refuse, to give a new set of fingerprints to the prosecution because the original set of fingerprints that were taken were not signed by the reviewing officer, thus making them invalid.

At trial, prosecution witness testified that the new set of fingerprints were taken specifically to be compared to the original set. This is perjury, because the prosecution lied as to reason for the new set of prints. Defense counsel made no indication to this fact and the evidence was used against defendant.

Issue #3

Ineffective Assistance of Counsel (C)

The court erred by not granting a dismissal after an in trial discovery that two of the prosecution witnesses deliberately read information off the defense attorney's notes, which were in his work area on his desk and proceeded to gain an unfair advantage by informing the solicitor to recall witnesses to address this information. The intention of the witnesses were clear as to what they intended to achieve.

Defense Attorney then advised the defendant to plea because of this because the prosecution now has an unfair advantage and if you accept the mistrial being granted this will result in the case going differently. Defendant believes Defense Counsel should have asked for a mistrial with prejudice where in any further court proceedings the defense's case would have been prejudiced.

Defense Attorney also advised defendant that now would be a good time to plea because

the judge was extremely upset at the conduct of the prosecution witnesses and would rule in favor of the defense with a lighter sentence. Had it not been for this the defendant would have proceeded to go to trial.

Issue #4

Ineffective Assistance of Counsel. (D)

Defense Attorney refused to file a motion to suppress the testimony of prosecution witness who no knowledge was made known to Defense until the first day of trial. Under rule (5) of S.C. rules of disclosure, the prosecution was asked to reveal potential witnesses to the defense, the witness, who was in initial discovery ~~was~~^{is} referred to as "someone" could have been anyone, prosecution picked up off the street and by not allow the Defense to know who the witness was Defense was unable to properly prepare for trial because of lack of information.

Defense Attorney also failed to object to inconsistencies in witness testimony and incident report taken the day of the crime.

The witness testified that he informed law enforcement of make and model of suspected vehicle but both the incident report and the testimony of Det. Hodge say the witness never offered this information.

If not for Defense Counsel's unprofessional errors the results of the proceedings would have been different.

Issue #5

Ineffective Assistance of Counsel (E)

The court erred in allowing prosecution witness to read from her notes a prior alleged declaration by Defendant.

A Consonant Statement is a prior declaration of a witness, testified to by a person to whom the declaration was made and allowed into evidence only after the witness's testimony has been impeached. This type of evidence would, but for the impeachment of the witness be inadmissible hearsay.

The Defendant having not taken the stand or testify in the proceedings, causes the prosecution's witness's notes to be a Consonant Statement thus it should have been inadmissible.

Defense Attorney's failure to notice these facts makes his assistance as counsel fall below standard thus forcing defendant who but for the ~~is~~ sub-standard representation by counsel would have went to trial.

Issue # 6

Ineffective Assistance of Counsel. (F)

South Carolina rules of Court, the introduction of evidence, a proper ground must be layed before evidence can be introduced at trial

Defense Attorney erred by not objecting to the introduction of a soda bottle in prosecution witness testimony as being an item on which fingerprint evidence was removed but the bottle was never presented at trial and Defendant's fingerprints were at the disposal of the prosecution, who, without the bottle could have fabricated this story to strength their case against defendant.

If not for Defense Attorney's unprofessional and clear errors Defendant would have insisted on going to trial.

Issue # 7

Ineffective Assistance of Counsel (G)

Prosecution introduced clothing they believed were used in the crime but never showed how they arrived at this conclusion nor were the clothes ever presented to victims to identify.

Defense Counsel never objected or challenged the admissability of the clothing which under evidence, in South Carolina rules of evidence, prosecution must show a connection to the crime and failed to do so.

Issue # 8

Ineffective Assistance of Counsel
4th Amendment Violation

C.A. 4 (S.C.) 2001. Reasonable suspicion which may justify an investigatory stop under Fourth Amendment is more than an inchoate and unparticularized suspicion or hunch of criminal activity. U.S.C.A. const. Amend. 4.

Arresting Officers testified that "someone told them the possible suspects are 3 black mal in a slate blue car with paper tags, and the reason for this assumption was because he saw this vehicle driving restlessly in the vicinity of the crime, so he assumes this is the suspect vehicle.

Arresting officers having spotted a vehicle fitting this ~~description~~^{J.F.} description later that day (10 hours later) observed vehicle, until backup arrived, leaving a shopping area and was headed to the drivers address but was pulled over in front of drivers home. A Terry stop was performed on vehicle based on information given earlier, but there was no one in the vehicle who fit the description of the suspect and unless criminal activity is on going or immanent a terry stop is invalid. Officer safety was also irrelevant ~~because~~ because of officer presence there were at least (5) law enforcement vehicles present and defendant vehicle was pulled over at gun point.

and all passengers in vehicle were removed and handcuffed immediately and searched.

Det. Lyons testified that it was defendant's native accent that aroused suspicion to other crimes committed but there was nothing to link defendant to the crime in which he was being detained. "Once the reason for the stop has been satisfied, the stop may not be used as a fishing expedition for unrelated criminal activity" (Davis v State, 947 S.W.2d 240, 243 (Tex. Crim. App. 1997))

A police officer may stop and frisk a person for a weapon if the officer reasonably concludes that criminal activity may be contemplated and that the person may be armed and dangerous. However, if the search is based on an anonymous tip, the seized weapon may not be offered in to evidence, Florida v. J.L. 529 U.S. 266, 120 S.Ct. 1375, 146 L. Ed. 2d 254 (2000) Cannot be for already committed crime. (US v Hensley, 469 U.S. 221 (1985))

Criminal activity must be ongoing or immanent. (US v Feliciano, 415 F.3d 1070 - Court of Appeals, 7th Circuit 1995).

C.A.D.C. 1987. If real aim of investigative search was discovery or preservation of contraband rather than immobilization of any weapons, intrusion was not authorized by Terry.

U.S. v. Williams, 822 F.2d 1174, 262 U.S. App.D.C.

C.A. 4 (S.C.) 2001. Reasonable suspicion which will justify an investigatory stop under Fourth Amendment is more than an inchoate and unparticularized suspicion or hunch of criminal activity. U.S.C.A. Const. Amend. 4 *U.S. v. Jones*, 242 F.3d 215.

The requirement that the officer's suspicion be articulable prevents the police from stopping a person on the basis of pure, even if inspired hunch. *Terry v. Ohio*, supra 392 U.S. at 27, 88 S.Ct. at 1883.

C.A. 8 (Mo) 1985. To justify an investigative stop, it is not necessary that behaviour on which reasonable suspicion is grounded be susceptible only to an interpretation of guilt; however, officers must be acting on facts directly relating to suspect or suspects conduct and not just on a "hunch" or on circumstances which describe a very broad category of predominantly innocent persons. *U.S. v. Jones*, 759 F.2d 633, certiorari denied 106 S.Ct. 113, 474 U.S. 837, 88 L.Ed.2d 92.

Summary.

In summary to the above Issues, raised in the foregoing Post-Conviction-Relief Application Applicant contends that his Attorney did in fact render Ineffective Assistance of Counsel a clear violation of Applicants 5th, 6th, and 14th Const. Amended Rights.

Applicant in this case will contend that his attorney did not provide him adequate assistance and representation within the range of Competence required by attorneys in criminal cases. See: *Butler v. State* 286 SE 411, 334 SE2d 813 (1985). In Post-Conviction Relief proceedings applicant raises issues for relief pursuant to § 17-27-45 (4), and will prove that Counsel's conduct so undermined the proper function and Adversarial process that the trial court can not be relied upon as having produced a just result.

Strickland v. Washington, 466 US 668, 104 S.Ct 2052-64, 80 L.Ed 2d 674, 692 (1984) *Butler* Id.

The Applicant contends that, the court presumption that counsel rendered adequate assistance and made all significant decisions, in the exercise of reasonable professional judgement, was in error, and was not legal.

This Applicant not being fully knowledgeable in the law, but having full understanding and comprehension skills believes his attorney is the reason the judicial proceedings concluded the way they did. Attorney's inadequate representation and failure to research Applicant's case, resulted in one court's error in upholding the law and the Const. as Amended.

Applicant contends that but for this type of representation, Applicant would have insisted on going through with trial. Hill vs. Lackhart. 474 US 52 106 S.Ct. 366, 88 L. Ed 2d 203 (1985)

Conclusion

Applicant prays this Honorable Court grants relief from this conviction and sentence, where he contends the court rendered their decision in violation of his 4th, 5th, 6th and 14th Const. Amended rights of the U.S. Constitution.

STATE OF SOUTH CAROLINA,
COUNTY OF SUMTER.

RECORDED
IN THE COURT OF COMMON PLEAS
DOCKET NO. 2011-CP-43-00754
2013 NOV -4 PM 4:20

Jason J. Forde

Applicant,

vs.

State of South Carolina,

Defendant.

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

SEE ATTACHED

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James C. Campbell

CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

Respectfully submitted,

LEE, ERTER, WILSON,
HOLLER & SMITH, LLC

David C. Holler
126 North Main Street
Post Office Box 580
Sumter, South Carolina 29151
803-778-2471
davidholler@leeandmoise.com
ATTORNEY FOR APPLICANT

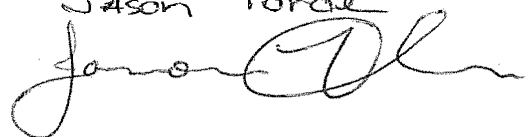
November 4, 2013.

This applicant, by and through appointed Counsel, David Holler, would respectfully Amend and Clarify his application for Post Conviction Relief, filed April 14th 2011, by making the following specific allegation

- 1: Ineffective Assistance of Counsel pursuant to Hill vs. Lockhart.
- 2: Abuse of Discretion
- 3: Belated Direct Appeal pursuant to White vs. State.
- 4: Judicial Errors.
- 5: Constitution Violations
- 6: Prosecutorial Misconduct.
- 7: Invalid Affidavit.

I respectfully ask that this be submitted in a timely manner.

Submitted: Oct. 24th 2013.

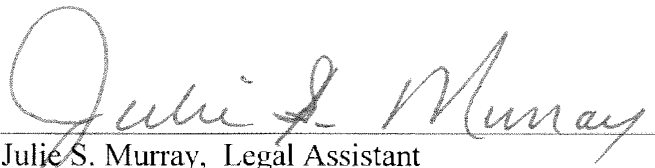
Respectfully Yours
Jason Forde


Hand Written Copy (3 of 3)

CERTIFICATE OF MAILING

This is to certify that a copy of the foregoing *Amendment to Application for Post Conviction Relief* was deposited in the United States mail, with first class postage affixed thereto, addressed as follows:

Daniel F. Gourley, Esquire
S. C. Attorney General's Office
P. O. Box 11549
Columbia, SC 29211

A handwritten signature in cursive script, reading "Julie S. Murray", written over a horizontal line.

Julie S. Murray, Legal Assistant
to David C. Holler

November 7, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
Jason J. Forde, #340328,)
Applicant,)
v.)
State of South Carolina.)

COURT OF COMMON PLEAS
FOR THE 3rd JUDICIAL CIRCUIT
Case No.: 2011-CP-43-00754

RECORDED
2011 NOV -8 PM 3:54

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

**SECOND
AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on or about April 15, 2011, to add the following allegations:

1. Pursuant to Mr. Forde's amended application filed on or about November 7, 2013, the undersigned reiterates Mr. Murhpy's ineffectiveness in not filing an appeal. Therefore, the Applicant requests a belated direct appeal pursuant to White v. State. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California. White, Id. If the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 243(i), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

2. The Applicant hereby attaches and incorporates by reference the transcripts associated with his trial and the related motions that occurred prior to him entering into a guilty plea.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

McMAHAN & TAYLOR ATTORNEYS, LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

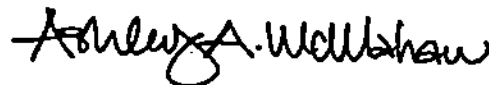
November 5, 2021

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Michael J. Neubauer
Assistant Attorney General
michaelneubauer@scag.gov

This 5th Day of November, 2021.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 3 rd JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	Case No.: 2011-CP-43-00754
Jason J. Forde, #340328,	)	
	)	
Applicant,	)	THIRD
	)	AMENDED POST-CONVICTION
v.	)	RELIEF APPLICATION
	)	
State of South Carolina.	)	
_____	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on or about April 15, 2011, to add the following allegations:

1. Ineffective assistance of counsel of Timothy W. Murphy, Esquire-
 - a. Please see attached 13 letters from Mr. Murphy to Mr. Forde regarding this allegation.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

McMAHAN & TAYLOR ATTORNEYS, LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

November 15, 2021

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Michael J. Neubauer
Assistant Attorney General
michaelneubauer@scag.gov

This 15th Day of November, 2021.

A handwritten signature in black ink, reading "Ashley A. McMahon". The signature is fluid and cursive, with the first name "Ashley" and last name "McMahon" clearly legible.

ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

TIMOTHY W. MURPHY
Assistant Public Defender

Law Offices of Wade S. Kolb, Jr.
 107 North Main Street
 Sumter, South Carolina 29150
 (803) 418-0800

Wade S. Kolb, Jr.
 Attorney at Law

Fax: (803) 418-0801
www.lawyers.com/wadekolb

Timothy W. Murphy
 Attorney at Law

September 18, 2008

Jason Forde
 SLRDC
 1250 Winkles Road
 Sumter, South Carolina 29153

IN RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

Reference is made to your letter received this date as well as a telephone conversation with your wife. You have requested the status of motions for a speedy trial, bond reduction hearing as well as the suppression motions we discussed during my most recent visit.

Be advised that because you recently had a bond hearing before a General Sessions judge, you are not entitled to another absent some change in circumstance. Inability to afford a bond is not a change in circumstance. Quite frankly, given the crimes for which you are charged, I do not believe any court will view your bond as unreasonable. I will consider requesting another bond hearing if there is no movement on your case after six months, but do not intend to file one when there is no basis and no chance of success.

In regard to a motion for a Speedy Trial, once again, I will file such a motion at such time I believe that it has legal merit. Such a motion is not filed simply to "speed things up". I have no reason to believe that the State is "slow rolling" your case—under newly established metrics, it has approximately one year to bring your case to trial—and I have no basis to conclude that anything they have done thus far has prejudiced any defense we might be able to assert. Accordingly, I do not intend to file such a motion at this time—but will do so if in my legal judgment it has some chance of success.

In regard to the Motion to Suppress, I will discuss it with you after I have had an opportunity to review the discovery. I have discussed your case with the assigned solicitor and he indicates he hopes to be in a position to send me discovery sometime early next month. I will deliver you a copy when I receive it.

Very truly yours,

Timothy W. Murphy

TIMOTHY W. MURPHY
Assistant Public Defender

Law Offices of Wade S. Kolb, Jr.
107 North Main Street
Sumter, South Carolina 29150
(803) 418-0800

Fax: (803) 418-0801
www.lawyers.com/wadekolb

October 3, 2008

Wade S. Kolb, Jr.
Attorney at Law

Timothy W. Murphy
Attorney at Law

Jason Forde
SLRDC
1250 Winkles Road
Sumter, South Carolina 29153

IN RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

Reference is made to a telephone call today with your mother, wherein she indicated that you have requested a status of motions for a speedy trial and bond reduction. Reference is made to my letter dated September 18, 2008, wherein I discussed those issues with you.

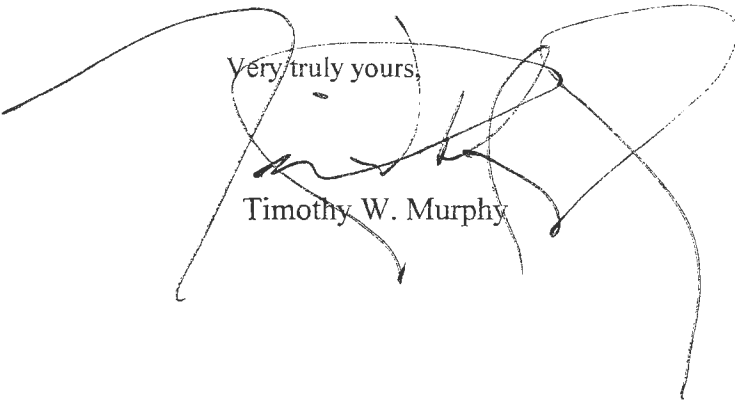
Be advised that the Assistant Solicitor assigned to your case has indicated to me that he will provide me with discovery prior to the next term of General Session—which begins on November 3, 2008. If I do not receive discovery by that date, I will file the appropriate motion requesting a Speedy Trial.

If there is no movement in your case, I intend to request a bond hearing six months from the date of your prior hearing.

I hope to visit you before the next term begins in November.

Very truly yours,

Timothy W. Murphy



TIMOTHY W. MURPHY
Assistant Public Defender

Law Offices of Wade S. Kolb, Jr.
 107 North Main Street
 Sumter, South Carolina 29150
 (803) 418-0800

Wade S. Kolb, Jr.
 Attorney at Law

Fax: (803) 418-0801
www.lawyers.com/wadekolb

Timothy W. Murphy
 Attorney at Law

November 18, 2008

Jason Forde
 SLRDC
 1250 Winkles Road
 Sumter, South Carolina 29153

IN RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

I am in receipt of your letter dated November 15, 2008. I have spoken to the Assistant Solicitor assigned to your case and expect to receive the initial amount of discovery shortly after this term of court ends later this week.

While I appreciate your efforts to educate yourself on various legal principles, and encourage you to continue to do so, I suggest that it would be more helpful to me if you write down for me your recollection of the facts and circumstances surrounding your arrest and interrogation by authorities. This factual information will assist me as I assess the merits of raising any issues regarding those events, and will also assist us in our discussions.

The matter you raise regarding your interrogation is interesting, but would not appear at first instance to be sufficient in my view to successfully establish a claim of duress under the applicable legal standards. It is not enough to raise an issue if its likelihood of success is minimal or non-existent—and, perhaps surprisingly, police are permitted to mislead and lie to those being interrogated without breaching our Constitutional standards.

I will deliver to you a copy of the discovery as soon as I receive it.

Very truly yours,

Timothy W. Murphy

TIMOTHY W. MURPHY
Assistant Public Defender

Law Offices of Wade S. Kolb, Jr.
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Timothy W. Murphy
Attorney at Law

March 16, 2009

Jason Forde
SLRDC
1250 Winkles Road
Sumter, South Carolina 29153

IN RE: The State of South Carolina v. Jason Forde

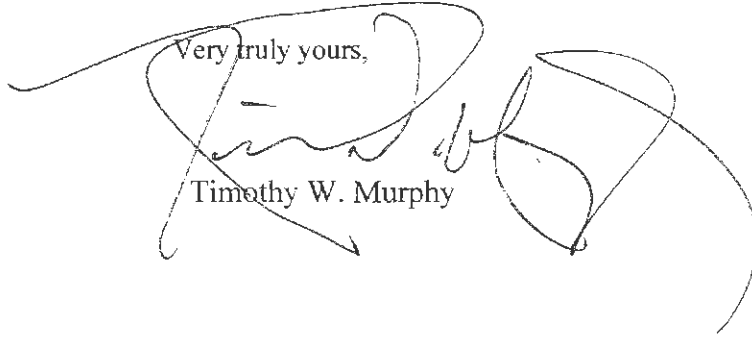
Dear Mr. Forde:

Reference is made to your letter dated March 3, 2009. The motions cited therein are motions appropriately heard immediately prior to trial. I will raise it at that time. As you know, should this matter go to trial, the present plea offer will no longer be able to be accepted.

The time has come for you to make a decision on whether to accept the offer. As you requested, I can delay the actual trial date past the April term.

Very truly yours,

Timothy W. Murphy



TIMOTHY W. MURPHY
Assistant Public Defender

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Timothy W. Murphy
 Attorney at Law

August 20, 2008

Jason Forde
 SLRDC
 1250 Winkler Road
 Sumter, South Carolina 29153

IN RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

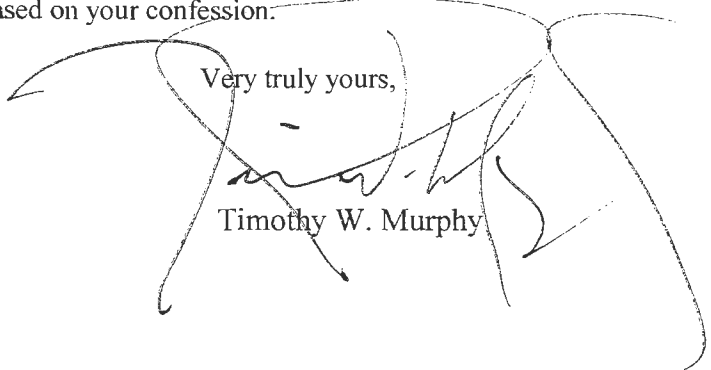
Reference is made to our telephone conversation of today, August 20, 2008, wherein you advised that you desired me to file a Motion to Suppress. I advised you that such motions are made at trial, and in order to be preserved for purposes of appeal, must also involve an actual trial on the merits after an adverse ruling. It should be noted that such motions are made as a matter of course when they involve the State's admission of a defendant's statements.

Shortly after the most recent bond hearing, the Solicitor assigned to your case indicated a willingness to enter into plea negotiations provided that the monies stolen from the various businesses are returned. I indicated to him that I needed to discuss the matter with you after we received the State's discovery. After receipt of the discovery, you will need to consider whether you wish me to pursue any negotiations with the State on any possible plea deal—given that you would forfeit any suppression motions should you plead guilty.

I will visit you after receipt of the State's service of discovery. In regard to our discussion of potential motions, what I require that would be helpful to me in preparing these motions is your summary of the facts and circumstances surrounding the interviews by the detectives from the time you were arrested onward—including what specifically occurred when you initially did not provide a statement to them. I do not require your interpretation of the law, though of course I am happy to respond to any questions you might have based on your legal research. If possible, please write your recollection of the interviews for me.

Finally, I would be remiss if I did not indicate to you that typically the prospects for a successful motion at trial are not good. However, I will be in a better position to assess the merits of any motion after reviewing the discovery. Needless to say, if we lose the motion at trial you are likely to be convicted, as the State has an extremely strong case based on your confession.

Very truly yours,


 Timothy W. Murphy

TIMOTHY W. MURPHY
Assistant Public Defender

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Timothy W. Murphy
Attorney at Law

March 20, 2009

Jason Forde
SLRDC
1250 Winkles Road
Sumter, South Carolina 29153

IN RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

I am in receipt of your most recent letter. I will visit you prior to the next term. I take your response to be a direction to me to advise the Solicitor that you are not interested in taking the 15 year negotiated plea offer. If that is correct, I feel compelled to advise you very clearly that I view your decision as a grave mistake that will probably result in a punishment much more severe.

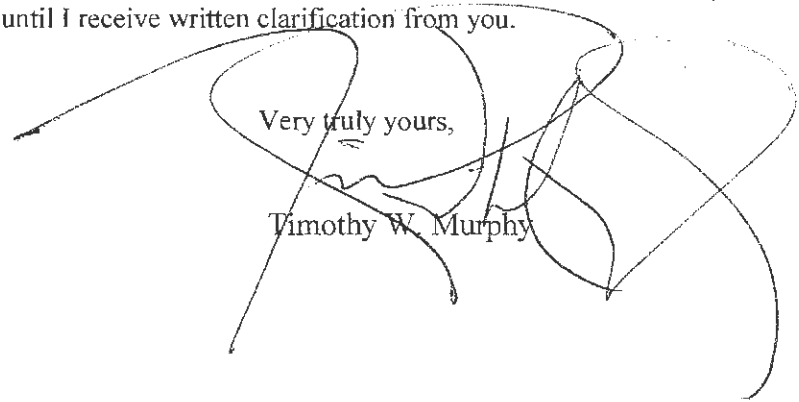
As I have previously indicated, it is my opinion—based on over twenty years dealing with these types of issues—that the prospect for a successful suppression motion based upon a lack of probable cause at the time of your arrest is negligible. While I can certainly fashion a credible argument and can preserve the issue, you are simply mistaken regarding your legal conclusions. It is folly to think that your review of “legal books” in a county jail library combined with the advice of fellow inmates or family members is a sufficient insight into the law and its practical application. Your interpretation is simply wrong—probable cause is very easy to demonstrate—and while this may not be the “perfect” arrest scenario, in my view the court will conclude that it existed. Based upon my interviews of the investigators, I also believe that the court will introduce your confessions.

It is certainly your decision and right to ignore my advice—but you do so at your peril—and I strongly urge you to reconsider. These are incredibly serious crimes. Should, as I suspect, the State succeed in defeating this motion, they can easily prove the case against you. I believe that upon conviction you would likely be sentenced to an amount of imprisonment at least double what the State has offered you. Naturally, I will do my best to defend you. I can fashion an argument on these issues and will attempt to “poke holes” in the State’s case. However, I have been involved in hundreds of criminal cases—and I would not be performing my duty to you as your attorney to not fully apprise you of the severe repercussions of your decision.

The filing of the Speedy Trial motion will alert the State that you are uninterested in the plea. For that reason, I will withhold filing it until I receive written clarification from you.

Very truly yours,

Timothy W. Murphy



TIMOTHY W. MURPHY
Assistant Public Defender

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Timothy W. Murphy
Attorney at Law

March 30, 2009

Jason Forde
SLRDC
1250 Winkles Road
Sumter, South Carolina 29153

RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

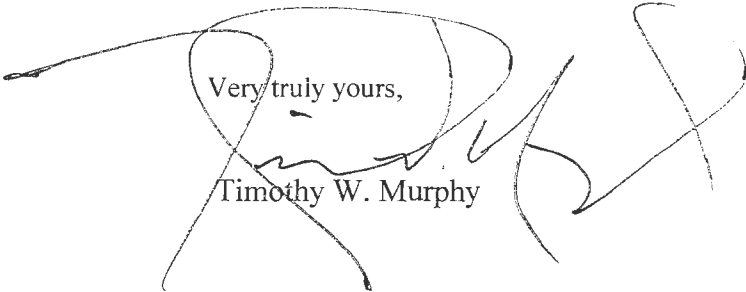
I am in receipt of your letter dated March 27, 2009. As you requested, I have filed a Motion for Speedy Trial.

I believe you are under some misunderstanding regarding the timing of these motions. Because the same judge that hears evidentiary motions must preside over the trial, none will be heard prior to your case being called for trial. I do not control when the case will be called, and I do not believe that your case will be called for trial this term.

I will be prepared to litigate the motions that have legal merit when the case is called. The Assistant Solicitor advises me when a case will be called by placing it on the trial list. Given this motion, and your decision to reject his plea deal, I anticipate that we are probably looking at a trial this coming summer at the earliest.

Very truly yours,

Timothy W. Murphy



TIMOTHY W. MURPHY
Assistant Public Defender

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Timothy W. Murphy
Attorney at Law

April 16, 2009

Jason Forde
SLRDC
1250 Winkles Road
Sumter, South Carolina 29153

IN RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

I am in receipt of your recent letter.

There is no issue concerning the indictments. You have been indicted and I do not intend to waste my time procuring and recopying the indictments and having them certified.

I do not intend to issue subpoenas to SLED. I have filed a request for discovery and am satisfied with the evidence thus far received. I have no reason to believe that evidence to which you are entitled has been withheld improperly by the State.

I am well aware of the applicable legal principles that are relevant to your cases. When an issue arises that I conclude, in my legal judgment, has merit, I will not hesitate to file it. However, I am not simply your legal functionary, and I have an independent responsibility to the court to ensure that the issues I raise have merit. I will not file spurious motions.

At the present time, a motion to suppress the statements you provided will be heard at the beginning of trial. I am preparing the case under the assumption they will not be suppressed, with the focus on ensuring the issue is preserved on appeal. If the motion is granted—which would be an unexpected surprise—the case would not be handled much differently from my perspective.

I will advise you when I receive further information in your cases.

Very truly yours,

Timothy W. Murphy

TIMOTHY W. MURPHY
Assistant Public Defender

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Wade S. Kolb, Jr.
Attorney at Law

Timothy W. Murphy
Attorney at Law

June 12, 2009

Jason Forde
SLRDC
1250 Winkles Road
Sumter, South Carolina 29153

IN RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

I have been advised that your case will definitely be called for trial next term—I anticipate it being called on July 27, though it could be the following week (July 20 is a plea and motions week).

I was going to tell you in person during my visit to B-pod yesterday but was glad to be informed that you have been moved.

Very truly yours,

Timothy W. Murphy

TIMOTHY W. MURPHY
Assistant Public Defender

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Timothy W. Murphy
 Attorney at Law

November 17, 2009

Jason Forde
 SLRDC
 1250 Winkles Road
 Sumter, South Carolina 29153

IN RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

I am in receipt of your recent letter. I have always extended to you every professional courtesy. I do not lie to my clients, and I have not lied to you. I have always answered every question you have asked as best as I can. I would have expected some measure of courtesy from you in asking for clarification before accusing me of lacking personal and professional integrity and threatening to write the SC Bar and Supreme Court. Sadly, it is an unfortunate fact that attacking the defense attorney when faced with the inevitable consequences of the criminal justice system is an all too common practice, though it never ceases to surprise me given the commitment and expertise most public defenders bring to their jobs.

Rule 5(a)(2) of the South Carolina Rules of Criminal Procedure specifically controls information such as the statements of government witnesses and limits access by the defense to those statements until after they testify. I suggest you spend time examining those Rules.

I have provided you with the discovery in my possession, as well as the indictments. I have also provided you with copies of various cases I have reviewed. When I receive the additional discovery, I will provide you—once again—with copies of the discovery in my possession.

I am not intimidated by baseless allegations and threats to contact either the bar or the Supreme Court. I have practiced law for over twenty years and served a career in an institution whose first core value is integrity. I have the confidence of knowing the law, knowing how it applies, and knowing that my advice is usually correct and helpful. I also do things the right way, all of the time.

You have chosen to rely on your own instincts and ignore my advice. That is your prerogative. I predict that this matter is likely to end very badly for you, and you are likely to incur a significant prison sentence above the parameters of the plea offer. Again, after advising you of this, you have chosen to ignore that prediction and proceed. I am prepared to proceed and have done all that I can professionally do to defend you properly.

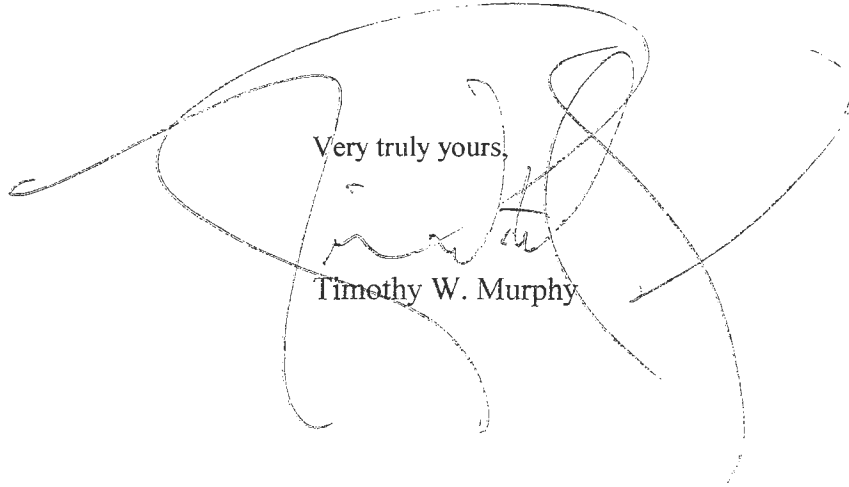
Because you have accused me of being dishonest, I believe that ethically you have left me with no choice but to approach the court in order to clarify your intentions in regard to my representation of your interests. Prior to the selection of the jury, I will ask the court to examine you on the record regarding your allegations and inclination regarding my representation of your interests. At that time, the court will make a

determination of whether I should be relieved or you can proceed on your own. However, be advised that I will tell the court that I am prepared to proceed to either represent your interests or assist you as you represent yourself, should that be your decision or the court's conclusion. I do not believe that the court will delay this case.

I do not control the calling of cases. I rely on what the Assistant Solicitor advises me. It is not the system I prefer, but it is the system that is in place.

As you are aware, the 17 year deal expires on Friday, November 20. After that date, the only deal the Solicitor will consider is a plea to all charges with all to run concurrent. Once again—for the record—I am advising you to accept the deal. It is my professional judgment that the arrest was legally valid and the likelihood of suppression is minimal. It is also my judgment that you will incur a prison sentence in excess of 20 years. I am at a loss at what experience you base your judgments to reject my advice other than a misguided confidence in some other party or your limited experience with the criminal justice system. However, it is your choice to make **as you will** bear the full unpleasant consequences of those decisions.

You know how to contact me if you decide to change your mind, but you need to do it before Friday.



Very truly yours,

Timothy W. Murphy

TIMOTHY W. MURPHY
Assistant Public Defender

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Wade S. Kolb, Jr.
Attorney at Law

Timothy W. Murphy
Attorney at Law

November 20, 2009

Jason Forde
SERDC
1250 Winkles Road
Sumter, South Carolina 29153

IN RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

I am in receipt of your recent letter. I responded to the question you asked—and you asked me about the written statements of the witnesses being called for the state. I am not interested in trying to manipulate anything or anyone, and I do not deliberately withhold information.

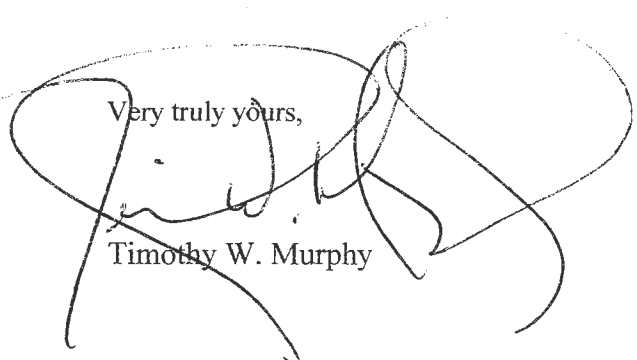
The State will provide me with a list of their witnesses shortly before trial. I have been advised by Mr. Gamble that all of the Law Enforcement personnel we have requested will be testifying, and I have also requested that your co-defendant be available to possibly testify in regard to the traffic stop. One can pretty much discern who the witnesses will be by looking at the reports, so I prepare based on that information as well as information provided to me by clients and investigators (when hired).

Brady and its progeny require the turning over of certain reports and materials as well as exculpatory evidence and statements of the defendant. It does not require the state to open up its files and let us examine every single document or every single witness they might have interviewed—that is my understanding of *Brady* based on my reading of the cases, and twenty years of experience dealing with it.

The court will rule on the motion for the speedy trial at trial—assuming I can demonstrate prejudice from the delay. I referenced the speedy trial motion in my letter to you dated March 30, 2009.

Enclosed are copies of the indictments, which I believe I had previously provided to you in person, and copies of my motions.

Very truly yours,


Timothy W. Murphy

TIMOTHY W. MURPHY
Assistant Public Defender

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Timothy W. Murphy
 Attorney at Law

March 9, 2010

Jason Forde
 SLRDC
 1250 Winkles Road
 Sumter, South Carolina 29153

IN RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

I am, once again, in the difficult position of reminding you that I expect you to advise me of any independent attempts you wish to make that are designed to impact the legal process of your case. I am referring to the correspondence that you sent to the Honorable Clifton Newman, which he was kind enough to advise me through his return letter to you. While my advice to you to refrain from such conduct will probably be ignored, I do insist that you provide me with the courtesy of letting me know what it is you are doing.

Given your comments to the court regarding consolidation of the various offenses, I believe it is important for you to understand my interpretation of the law in South Carolina regarding this issue and the manner in which that case-law intersects with issues involving the right to a speedy trial.

Consolidation of charges may occur when a judge determines that the separate charges are of the same general nature, closely related as to time, place and character, and the substantive rights of a defendant will not be compromised. Some courts focus on whether all of the indictments arose out of a "single chain of circumstances" or the "same transaction." Conversely, even if the charges are of the same general nature, they cannot be tried concurrently when they are not provable by the same evidence. Thus, when there are different victims, the Court of Appeals has held that consolidation is improper. *State v. Simmons*, 573 SC 342 (S.C.Ct. of Appeals 2002). In *State v. Middleton*, 288 S.C. 21 (1986), the Supreme Court of South Carolina concluded that consolidation of two murders was improper even though they seemed to be part of the same "crime spree" that the defendant engaged in after his escape from prison.

Given the state of the law, it is my view that consolidation is not legally permissible in your case. Even, for the sake of argument, you waived the prejudice that would arise to you from consolidation, the fact remains that these indictments do not, in my opinion, meet the "same transaction" test.

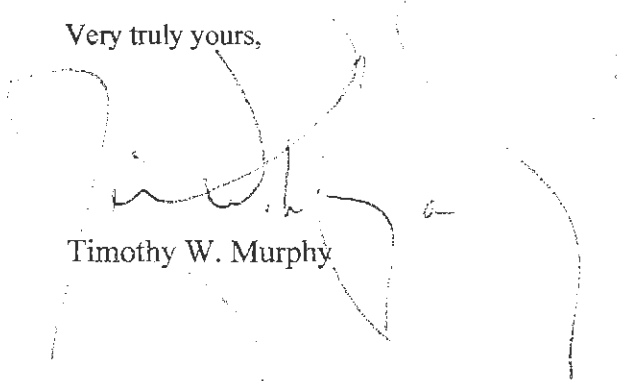
In a situation (such as yours) where there are multiple indictments, speedy trial analysis would, by necessity, involve consideration of the legality of consolidation.

I have given you the courtesy of my views on this issue. As I have advised you previously, I will not raise issues or file motions at your direction simply because you want me to do so. An attorney does not jettison independent legal judgment on these kinds of issues because a client believes otherwise.

However, given your clear preference for consolidation, I am still considering the issue and researching it, along with the issues involving the applicability of the "law of the case doctrine" to multiple indictments at the trial level, so as to address the suppression issue to the multiple cases.

Please advise me of your continued preference for consolidation in writing.

Very truly yours,



Timothy W. Murphy

TIMOTHY W. MURPHY
Assistant Public Defender

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Timothy W. Murphy
Attorney at Law

March 19, 2010

Jason Forde
SLRDC
1250 Winkles Road
Sumter, South Carolina 29153

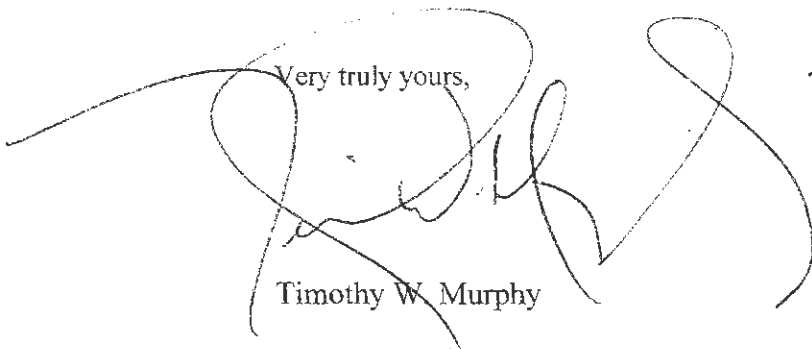
IN RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

I received your letter regarding the *Motion To Consolidate* after I had already filed the motion. However, I certainly respect your decision and understand your point of view, and have advised Mr. Gamble that we will not be pursuing the motion. One aspect of the charges that concerned me was that one of the Indictments had two co-conspirators, which would undercut an argument for consolidation on that particular indictment—and also compromise our ability to handle the cases in one instance. As a practical matter, a judge might consolidate all indictments except that one, which is not what the goal of the consolidation is supposed to attain. This would still give Sumter County the ability to bring a second case against you and notice you for life.

Thank you for responding after our conversation and we will press ahead with the case at hand.

Very truly yours,



Timothy W. Murphy

TIMOTHY W. MURPHY
Assistant Public Defender

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Timothy W. Murphy
Attorney at Law

March 30, 2010

Jason Forde
SLRDC
1250 Winkles Road
Sumter, South Carolina 29153

IN RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

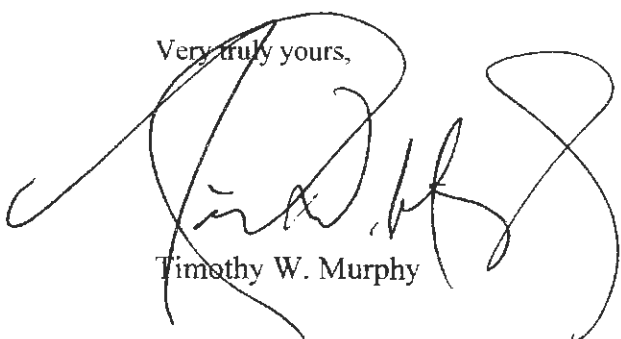
I decline to file any request for a bond until after the trial. Depending on the circumstances after the trial, there may be a legal basis to do so at that time. Obviously, if you are sentenced to a period of imprisonment, a bond motion would be without any merit until such time you are eligible for release.

I do not intend to have anything tested, nor do I recall you asking me to have anything tested. My focus on the DNA evidence is the chain of custody, and I do not want any defects in that chain "cured" by a re-test.

I have been advised that the "Food Lion" case will be called for trial on Monday, April 12. I suspect the trial will likely last most of the week. I will have clothes ready for you

My task in defending this case on the merits is difficult. Assuming that the motions are unsuccessful, my approach is simply to try to force the State to meet its burden through every single witness and expose every single error and attempt to argue that cumulatively, those errors constitute reasonable doubt. I am not interested in curing any potential defects, or in filing what are, in my view, questionable motions or requests.

Very truly yours,



Timothy W. Murphy

TIMOTHY W. MURPHY
Assistant Public Defender

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Timothy W. Murphy
Attorney at Law

September 7, 2010

Jason Forde # 00340328
Darlington 2235
Lee Correctional Institution
990 Wasacky Hwy
Bisopville, SC 29010

IN RE: The State of South Carolina v. Jason Forde

Dear Mr. Forde:

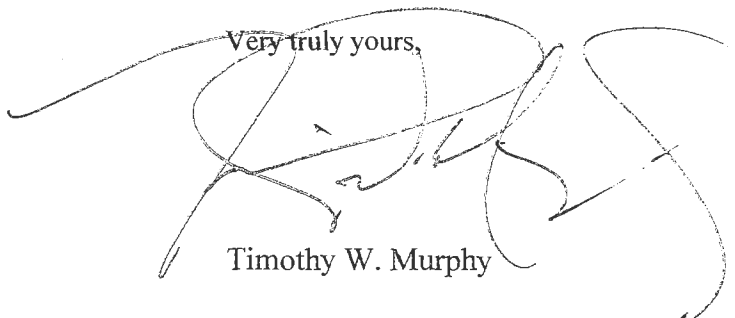
First of all, let me apologize for the delay in responding to your letter postmarked June 28, 2010.

Upon receipt of your letter, I contacted Mr. Gamble, who no longer works for the Solicitor in Sumter County, but is employed at the Attorney General Office in Columbia. He, in turn, contacted the Solicitor in Richland County, and was assured that the pending charge against you would be dismissed.

I trust that has occurred. If it has not, write to me again and I will personally contact Mr. Gamble again as well as the Richland County Solicitor. Our understanding is "on the record" and I am confident that Mr. Gamble will intervene again.

I hope that you are doing as well as can be expected under the circumstances. Best wishes,

Very truly yours,



Timothy W. Murphy

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Jason J. Forde, #340328,	)	
	)	2011-CP-43-0754
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on April 15, 2011, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted at the February 2009 term of the Sumter County Grand Jury for seven (7) counts of Armed Robbery (2009-GS-43-0218/0242/0243/0244/0245/0246/0248). Tim Murphy, Esquire, represented him. On April 15, 2010, Applicant appeared before the Honorable George C. James where he pled guilty to seven counts of armed robbery. Applicant was sentenced to twenty two (22) years imprisonment on each charge to all run concurrent to each other. Several charges were dropped as part of the plea, including several outstanding drug charges, a resisting arrest charge, one armed robbery charge and an outstanding warrant in Richland County. Applicant did not appeal his plea or sentences.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Inadequate use of counsel"
 - a. "Failure to motion the court for a fast and speedy trial at defendant's request"

- b. "Failed to object to the introduction of a set of fingerprints taken one month before trial."
 - c. "Court erred by not granting a dismissal after an in trial discovery that two of the prosecution witnesses deliberately read information off the defense attorney's notes which were in his work area on his desk and proceeded to gain an unfair advantage by informing the solicitor to recall witnesses to address this information... Counsel should have asked for a mistrial"
 - d. "Defense attorney refused to file a motion to suppress the testimony of prosecutor witness who no knowledge was made known to Defense until the first day of trial."
 - e. "The Court erred in allowing prosecution witness to read from her notes a prior alleged declaration by Defendant"
 - f. "Defense attorney erred by not objecting to the introduction of a soda bottle in prosecution witness testimony as being an item on which fingerprint evidence was removed but the bottle was never presented at trial"
 - g. "Defense counsel never objected or challenged admissibility of the clothing which...must show a connection to the crime"
2. "Violation of fourth amendment rights"
- a. Reasonable suspicion issues

For the purpose of this Return, the Respondent incorporates the Sumter County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections and the plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
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By: 

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August 3, 2011.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2011-CP-43-0754
	)	
JASON J. FORDE, 340328,	)	
	)	
Applicant,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**William A. Buxton, Esquire
Curtis & Croft, LLC
325 W. Calhoun Street
Sumter, SC 29150**

DATED this 3RD day of August, 2011.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF SUMTER)

COURT OF COMMON PLEAS NONJURY

3
4 JASON FORDE,)

5 APPLICANT,)

6 vs.)

7 STATE OF SOUTH CAROLINA,)

8 RESPONDENT.)

TRANSCRIPT

OF

RECORD

2011-CP-43-754

9
10 November 19th, 2021

11
12 B E F O R E :

13 THE HONORABLE DIANE S. GOODSTEIN, Judge.

14
15 A P P E A R A N C E S :

16 ASHLEY A. MCMAHAN

ESQ.

Attorney for the Applicant

18 MICHAEL J. NEUBAUER

ASSISTANT ATTORNEY GENERAL

Attorney for the Respondent

20
21
22 Transcribed by PAMELA E. GREEN, from
23 Digital Courtroom Recording Project
24
25

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P R O C E E D I N G S

(WHEREUPON, the audio of this proceeding was very choppy and hard to understand.)

THE COURT: Okay. Yes, and, and, Ms. McMahan, if you could just --.

MS. MCMAHAN: Judge, this is---

THE COURT: -- or Mr. Neubauer can do it. Either way.

MS. MCMAHAN: Judge, this is 2011-CP-43-754, Jason Forde versus the State of South Carolina. I have talked to Mr. Forde about having his PCR in this format. I explained to him that if we had it in, in person, obviously that probably wouldn't be until next year some time at a minimum and then he indicated to me he was okay going forward in this manner. But I will let Mr. Forde explain that to you.

Are you still okay going forward in this manner, Mr. Forde?

MR. FORDE: And I, I obviously would prefer to be in person. I would prefer the in person. However, I just -- it's been, it's been a long time. So, you know, it's just been very long since -- so -- but I'm gonna give it -- I'll, I'll -- if the clarity -- that's what I'm worried about. That's the -- I'm really worried about the clarity and how, how it's always gonna come across. If that has (indiscernible), I don't want, I don't want to be deterred

1 by this process. That's, that's, that's my problem.

2 MS. MCMAHAN: I can hear you.

3 MR. FORDE: If it's gonna, if it's gonna create a
4 hinderance.

5 MS. MCMAHAN: I can hear you.

6 THE COURT: Well that (indiscernible). So, I -- well,
7 you know, if you---

8 MR. FORDE: I, I really want this to be done if you,
9 you can hear fine. Ain't nobody else be saying anything or,
10 or then I don't know whose -- with the court reporter, I
11 don't know. So, I don't want to -- I'll go with this. I do
12 not want to be hindered by this proceeding. That's my---

13 THE COURT: It will be---

14 MR. FORDE: That's my whole issue.

15 THE COURT: It will be our goal, Mr. Forde, for that
16 not to happen.

17 MR. FORDE: All right.

18 THE COURT: And, you know, I'm, I'm getting to be
19 pretty, pretty good hand at this virtual courtroom since the
20 pandemic began and there's some things that I really like
21 about it and I don't mind telling you what I like about it.

22 I think that -- I think that, because of the camera and
23 the closeness of the camera, I, I think that folks have a
24 certainly better, better view of certainly me because I'm
25 close enough and, and I like that. I like -- I, I have a

1 very good, close view of folks who are on the, the video
2 conferencing and I, I like that very much. And because we
3 are -- we're all in this together, we can all help to be
4 sure that everyone can be heard and I've got Sherry, our
5 court reporter, and Sherry is a super court reporter. But
6 what she is not is shy and (indiscernible).

7 So, if she has any problems hearing she speaks up. I
8 expect you to speak up and I know you will if you have
9 difficulty hearing. Obviously I got to make a decision so
10 you can rest assured I'm gonna be sure I can hear.

11 MR. FORDE: Yes, ma'am.

12 THE COURT: But, but having said all of that, you have
13 waited such a long time. I'm real excited. I don't know
14 who was representing you before. But I know I am so
15 familiar with the reputation from your current PCR lawyer.
16 So, I'm -- I feel excellent for you about that.

17 So, I know that if you think it would be better for you
18 to be in person, you will not languish cause she won't let
19 it languish. The problem is, and, and just in the interest
20 of full disclosure, Mr. Forde, it's gon be a minute before
21 we're able to do PCRs in person.

22 I would tell you this. I know that Ms. McMahan's gonna
23 speak up if she thinks you're getting compromised in a
24 negative way. I will speak up if I think you're getting
25 compromised in a negative way cause I'm not interested in

1 that happening. It's your one bite at the apple. So it's
2 sort of an important apple. And so we're kind of in it
3 together.

4 okay?

5 MR. FORDE: Yes, ma'am.

6 THE COURT: But we're all here. If something goes a
7 little haywire and we can't hear, we, we just pull the plug.
8 That's all.

9 MR. FORDE: Yes, ma'am.

10 THE COURT: It's no different.

11 All right. Wonderful.

12 Now, Mr. -- this is Mr. Neubauer who's up here.

13 You see Mr. Neubauer?

14 You know him. He's a -- he's got the bow tie on.

15 MR. FORDE: Yes. Yes.

16 THE COURT: (Indiscernible) your case. Then when
17 you're called as a witness, I will swear you in.

18 okay?

19 MR. FORDE: Say, say that one more time.

20 THE COURT: Absolutely.

21 when you are called as a witness, I'm gonna speak --
22 I'll have the opportunity then to swear you in.

23 Cool?

24 MR. FORDE: Yes, ma'am.

25 THE COURT: All right. Mr. Neubauer.

1 MR. NEUBAUER: Thank you, Your Honor.

2 May it please the Court.

3 This is the case of Jason Forde versus State of South
4 Carolina. Case Number 2011-CP-43-0754.

5 In 2000 or February, 2009, the Sumter County Grand Jury
6 indicted applicant for seven counts of armed robbery.
7 2009-GS-43-218, 242, 243, 244, 245, 246, and 248. Applicant
8 was represented by Timothy Murphy and Assistant Solicitor
9 Madison Gable of the Third Circuit Solicitor's Office
10 represented the State.

11 On April 12th through April 15th of 2010 Applicant
12 proceeded to a jury trial. Prior to the conclusion of that
13 trial, on April 15th, 2010, applicant appeared before the
14 Honorable George C. James and pled guilty to seven counts of
15 armed robbery. Applicant was sentenced to 22 years
16 imprisonment on each charge all to run concurrent. Several
17 additional charges were dropped as part of applicant's plea
18 including outstanding drug charges, resisting arrest
19 charges, and an armed robbery charge outstanding in Richland
20 County. Applicant did not appeal his plea or sentence.

21 On April 15th, 2011, applicant filed a application for
22 post-conviction relief and I would ask Ms. McMahan to
23 clarify which allegations they intend to go forward on at
24 this time.

25 THE COURT: You know, Mr. Neubauer, tell me who, who is

1 trying the case that took the plea.

2 MS. MCMAHAN: It was Judge James.

3 THE COURT: Judge James.

4 MR. NEUBAUER: Judge James.

5 MS. MCMAHAN: Now Justice James.

6 THE COURT: Yes. Got it.

7 All right. Now, Mr. Neubauer wants to know, Ms.

8 McMahan, what y'all are going to be going forward on.

9 MS. MCMAHAN: Yes, Your Honor. They're actually four
10 PCR applications, the original one, an amended one that
11 Mr. Holler had submitted for Mr. Forde back in November of
12 2013, and then two that I recently did, the second and the
13 third, and the second and the third pretty much just add to
14 the other allegations. So, while there is -- seems like a
15 lot of amendments, they're really all the same issues.

16 THE COURT: Okay.

17 MS. MCMAHAN: So we are going forward on all the issues
18 that Mr. Forde has put forward in his initial application as
19 well as all the amendments, which, as we go along, you'll
20 see kind of how that works out and Mr. Forde will obviously
21 explain all of these in detail to the Court.

22 THE COURT: Excellent.

23 If you would call your first witness please.

24 MS. MCMAHAN: The applicant calls Mr. Forde.

25 THE COURT: Mr. Forde, if you would raise your

Jason Forde - Direct examination
By Ms. McMahan

1 right-hand.

2 JASON FORDE, being first duly
3 sworn, testified as follows:

4 THE COURT: Thank you so much.

5 Now, now, listen, Mr. Forde, this is not a
6 (indiscernible). Take it slow, deliberate. Take your time.

7 All right?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Thank you.

10 All right. Your witness.

11 DIRECT EXAMINATION

12 BY MS. MCMAHAN:

13 Q. Mr. Forde, did you file this PCR application?

14 A. Yes, ma'am.

15 Q. And understanding that the Court can grant you the
16 ability to start over from the beginning, is that what kind
17 of relief that you want?

18 A. Yes, ma'am.

19 Q. Okay. So, let's start with your initial application
20 that you filed back in 2011 and you've got your attachments
21 to it with your allegations.

22 A. Okay.

23 Q. Okay. So let's start with your first allegation.
24 Failed to motion the Court for a speedy trial.

25 A. Right.

Jason Forde - Direct examination
By Ms. McMahan

1 Q. Okay. So explain to Judge Goodstein what it is it --
2 that Mr. Murphy did that was ineffective regarding that
3 issue.

4 A. He, he, he -- if you, if you look at the letters that I
5 submitted, when I -- when I've asked about it, he just -- he
6 should of told me no, that he wasn't, he wasn't gonna do it
7 and it's, it's, it's, it's one of his (indiscernible). They
8 (indiscernible) more than one. It's more than one letters.

9 MS. McMAHAN: Judge, the letters are attached to the
10 third amended post-conviction relief action.

11 THE COURT: Got it.

12 A. I want to read -- I want to (indiscernible).

13 Q. Mr. Forde, if you look at the September 18th, 2008,
14 letter?

15 A. Right. I have the 2007.

16 Q. September 18th, 2008, letter as well as
17 (indiscernible) December 3rd letter.

18 A. (Indiscernible).

19 Q. And -- yeah, September 18th, 2008.

20 A. Yeah, I got it.

21 Q. Is that the one you're referencing where it, it appears
22 that Mr. Murphy---

23 A. I believe this, this -- I believe this would be the
24 first one date wise that he responded to.

25 Q. Regarding the motion for a speedy trial?

Jason Forde - Direct examination
By Ms. McMahan

1 A. Regarding the speedy, the speedy trial motion
2 (indiscernible).

3 Q. Okay. And, and are these all letters attached to the,
4 the amendment that you received from Mr. Murphy?

5 A. Yes, ma'am.

6 Q. Okay. And in this particular letter, what does he
7 reference about the speedy trial?

8 A. Being able to say -- and, and in this particular
9 letter, he would say I know -- it says right here in this
10 third paragraph. It says I have no reason to believe the
11 state is (indiscernible) in your case under (indiscernible)
12 and he's saying that this -- there was a year -- I mean
13 there was, there was at least a year. Let me, let me read
14 it to be honest with you.

15 Let me read it to (indiscernible). It has
16 approximately one year to bring your case to trial and I
17 have no basis to conclude that anything they have done thus
18 far as prejudice and it is best we might be able to -- we
19 might be able to assert. According -- accordingly, I do not
20 intend to file such a motion at this time or to in do so if
21 my leading judgment -- if, if by leading judgment, it has
22 some chance of success.

23 Q. Okay. So you were arrested in May of 2008, correct?

24 A. Yes, ma'am.

25 Q. And you were in the detention center, had a bond, but

Jason Forde - Direct examination
By Ms. McMahan

1 it was a high bond.

2 Is that right?

3 A. Yes, ma'am.

4 Q. And so you couldn't make this bond to get out?

5 A. (Indiscernible).

6 Q. And then you wrote him this letter in September of
7 2008?

8 A. Yes, ma'am.

9 Q. And -- but at -- the solicitor didn't indict you until
10 February, 2009, almost a year after you were arrested?

11 A. Right.

12 Q. So was this in reference to the fact---

13 A. (Indiscernible).

14 Q. ---that they hadn't indicted you?

15 A. It's, it's in the -- I, I, I apologize. That's not
16 correct cause there was an issue with that indictment they
17 indicted also and it was referenced in the letter --

18 Q. Okay.

19 A. -- because in, in, in March, 2008, it was a bond
20 reduction hearing in front of Judge James where Judge James
21 ordered the solicitor to do -- they told them that he was
22 going to give me a bond reduction after then -- within 90
23 days if I was not indicted. At that hearing -- so the
24 solicitor stated that I was not indicted and the -- that,
25 that in 2000 March -- that was in March, 2008, 2009 --

Jason Forde - Direct examination
By Ms. McMahan

1 sorry. March, 2009.

2 In April of 2009 I received the indictments and the
3 indictments said that I was indicted in February of 2008 --
4 of 2009.

5 And so how could I be indicted in 2000 -- in February
6 if the, if the hearing in March I wasn't indicted at the
7 bond reduction hearing. So like that's what I referenced to
8 Mr. Murphy that he needs to challenge the indictments and,
9 and he wrote me back saying on the -- it was --.

10 Q. Mr. Forde, while you're looking, the letter on Oct---

11 A. Yes, ma'am.

12 Q. ---October 3rd, 2008, references for Mr. Murphy to
13 you that the assistant solicitor has indicted -- has
14 indicated to you he's going to do something with the --
15 provide discovery and request a speedy trial. I just wanted
16 to go back to that issue real fast --

17 A. Yes, ma'am.

18 Q. -- and wrap that up.

19 So you'd asked for a speedy trial?

20 A. Yes, ma'am, I asked for a speedy trial and he, he
21 refused, refused. He was just -- he blatantly refused to
22 file that early -- that was the first letter. Then -- and
23 there's another letter again where I asked about the
24 speedy -- about the -- about a speedy trial motion. He
25 responded again saying no.

Jason Forde - Direct examination
By Ms. McMahan

1 Q. Okay. So now let's, let's go on the one about the
2 indictments. Let's continue on that.

3 So you said you had written him a letter about the
4 indictments.

5 A. Correct. (Indiscernible).

6 Q. So, on April 16th of 2009 it looks like Mr. Murphy
7 wrote you a letter about the indictments.

8 A. And he said -- it says April 15th -- 16th. He said
9 okay. That, that it starts off I have received a recent
10 letter. There is no issues (indiscernible) the indictment.
11 You have been indicted and I do not intend to waste my time
12 (indiscernible) indictments having considered
13 (indiscernible). When it -- when, when -- we're in, we're
14 in a hearing. It's after (indiscernible) where I received
15 my indictments in April and it's saying I'm indicted in
16 February and we -- in March, we were told on the record
17 that I was not indicted.

18 So (indiscernible) was that the solicitor have to be
19 present when you're indicted. He said yes. And that was
20 the main person who (indiscernible). So, that's my word
21 against his. (Indiscernible).

22 He said yes. So what's the -- how could he not know
23 that I was indicted in March when I was indicted in
24 February?

25 And that's when he, he went off when he read the, the

Jason Forde - Direct examination
By Ms. McMahan

1 letters asking when (indiscernible) he told me I was
2 (indiscernible) if you read the letters at all. They are --
3 I, I really don't have any words about this question but
4 they did -- if you read the letter, the letters, which is
5 (indiscernible) put on the record that he's, he's, he's
6 actually going back and forth between (indiscernible) really
7 as a lawyer. He has 15 years experience. He's been doing
8 this this time. Stop, stop using what I've learned in the
9 jail to, to in -- to, to let how -- to try to -- now don't
10 get me wrong now.

11 I, I (indiscernible). It wasn't not -- it wasn't
12 disrespectful or, or challenged before. But it was that I,
13 I honestly believed that he had too much on his plate and my
14 issue wasn't -- and (indiscernible) wasn't that much that
15 motion would carry.

16 Q. Okay. So anything else regarding the issue of the
17 speedy trial and the indictments for now?

18 A. As far as what -- why he, he didn't, he didn't, he
19 didn't do nothing about it. But I feel, I feel as though
20 this -- that if he had done these things, the situation
21 would of been different -- the situation would of been way
22 different.

23 Q. Okay.

24 A. I, I believe that I was -- that prejudiced
25 (indiscernible) I ain't done (indiscernible). These are

Jason Forde - Direct examination
By Ms. McMahan

1 the -- those are the rules of procedure --
2 (indiscernible) -- at a bare minimum (indiscernible)
3 investigate the status of the case, that there had been the
4 investigation, that's really, really what, what you do this.
5 And that, that right there, when he failed to do that,
6 (indiscernible) cause I'm taking -- I'm banking on his
7 advice. I don't know the law at the time. At the time I
8 ain't learn it.

9 So -- and, and, and I might have (indiscernible). This
10 may seem like, like they -- to me, at the time, it seem way
11 but after, after (indiscernible) out, and actually
12 understanding and being informed, no, I just -- I
13 (indiscernible). He, he didn't advise me, he didn't advise
14 me right at all.

15 THE COURT: That---

16 A. He didn't advise me---

17 THE COURT: Let, let me ask you a question before we
18 leave the issue of this speedy trial. Tell me -- and, and
19 I'm sure that you-all have told me and I want to be sure
20 that I have a correct date.

21 The date of -- the first date of arrest, there may have
22 been more than one date of arrest, I need to know the
23 earliest date -- perfect.

24 That date is?

25 A. May 28th, 2008.

Jason Forde - Direct examination
By Ms. McMahan

1 THE COURT: Excellent. Thank you.

2 All right. And --.

3 Q. Okay.

4 THE COURT: -- the date of trial, tell me that. I've,
5 I've got that. Sorry.

6 MR. NEUBAUER: I apologize for interrupting, Your
7 Honor. On arrest warrant (indiscernible) 294524 indicates
8 May 24th, 2008, and then he was ultimately tried on
9 April 12th through the 15th of 2008.

10 THE WITNESS: That, that is -- that's, that's
11 incorrect. I was never arrested on May -- on, on, on May
12 24th, 2008.

13 THE COURT: Okay. I think that's fine. Oh, but did --
14 February -- I mean April the 12th, 2000 and --?

15 MR. NEUBAUER: Ten, Your Honor.

16 THE COURT: Ten. That --.

17 THE WITNESS: August, August the, the 24th I was
18 still in North Carolina. My daughter was born the 20th. I
19 was in North Carolina with my family from the 20th to the
20 27th.

21 THE COURT: Okay.

22 THE WITNESS: On the 28th, the day I got arrested.

23 THE COURT: Got it.

24 THE WITNESS: Yeah, my daughter was born like a week
25 before I was arrested. So, I remember perfectly.

Jason Forde - Direct examination
By Ms. McMahan

1 THE COURT: I understand. Great. Thank you.

2 All right. All right. Ms. McMahan, I just need that
3 just for finish up the issue as, as I look at the issue of
4 the dates of trial.

5 Okay. Yes, ma'am.

6 Q. Okay. Mr. Forde, so the next issue is regarding the
7 fingerprint cards. So --.

8 A. Okay.

9 Q. -- at one point you had your fingerprints taken.

10 Is that right?

11 A. Yes, ma'am.

12 Q. With -- and that was for an arrest they took your
13 fingerprints?

14 A. But I wasn't arrested but -- on the 28th of May they
15 took my fingerprints.

16 Q. And did they put them on a card?

17 A. They, they -- I, I believe so. I'm, I'm not sure,
18 ma'am. I could -- what they usually do I guess when you get
19 arrested, I been arrested about several times, they take it
20 and they, you know, they do one finger at a time and do a
21 print card, yes.

22 Q. Okay. And then there was an issue with that card,
23 wasn't there?

24 A. Yes, ma'am.

25 Q. Okay. Please explain to everybody what the issues with

Jason Forde - Direct examination
By Ms. McMahan

1 the card were.

2 A. I -- my, my attorney -- when I first did -- they
3 transferred me to the, to the courthouse and I, I -- they
4 said it was -- I had court that day. When I got there,
5 somebody from somewhere, I don't know, somebody I have no
6 idea who it is, comes to me and was like I need your
7 fingerprints. I was like what. They was like oh, we just,
8 we just need your fingerprints. I said where is my
9 attorney. He's not here.

10 why, why would I be here at the courthouse to give your
11 fingerprints without my attorney?

12 He said it's okay. We can call your attorney. But
13 I -- so he called Mr. Murphy on the phone. Mr. Murphy --
14 I -- when I spoke to Mr. Murphy, Mr. Murphy was like oh,
15 they just missed your finger -- give it to them. I said why
16 would I do that. I been locked up almost a year and a half
17 now. What, what am I -- why, why do they need my
18 fingerprints.

19 He said they messed up the original fingerprint card
20 and they need another set of fingerprint card. I said
21 that's, that's not my fault. That's -- actually that's a
22 chain of custody violation really. So it, so it -- I
23 don't -- why would I -- why would, why would I give you more
24 fingerprints not to mention you take fingerprints of me up
25 at the jailhouse where I'm booked in. So, the jailhouse has

Jason Forde - Direct examination
By Ms. McMahan

1 a record of my fingerprint.

2 So why would, why would you need more fingerprints?

3 Then, at trial, then the, the, the testimony at trial
4 was that the fingerprint card was taken to make sure it
5 matched the original fingerprints and my, my attorney did
6 not object at all and he was going with advice to giving
7 them fingerprints.

8 why would I -- why would you advise to give evidence
9 against, against me to (indiscernible). why would
10 (indiscernible).

11 Q. So, if I---

12 A. He never, he never objected. He never objected to them
13 getting the fingerprints. Not to mention what the
14 fingerprints did -- the fingerprints were a match. The set
15 of fingerprints they said came off a bottle at the crime
16 scene, a bottle that was never presented into evidence ever.
17 That was, that was evidence.

18 So, so how can -- I mean there's no record -- there's
19 no bottle evidence -- there's no bottle but there's, there's
20 a record of a -- of a set of fingerprints that come off the
21 bottle, the bottle.

22 My understanding of how things suppose to go is when
23 evidence procure -- you secure evidence, they didn't secure
24 the fingerprints and you can see like that. Once again, my
25 attorney didn't, didn't explain anything. Didn't object to

Jason Forde - Direct examination
By MS. McMahan

1 that or the evidence.

2 So I believe that he caused, he caused the judge to err
3 by allowing it into, into evidence. He did that and that's
4 part that caused me (indiscernible).

5 Q. So effectively---

6 A. (Indiscernible).

7 Excuse me. Excuse me.

8 Also, also like he didn't -- I didn't get a chance to
9 like, like these issues, issues that I have raised like on
10 direct appeal or something. That's like we didn't even --
11 we didn't even attempt any of those things after he advised
12 me of why I need to plea.

13 Q. So, Mr. Murphy was ineffective regarding the
14 fingerprints in that one he told you to go ahead and give
15 the other set of fingerprint?

16 A. And, two, that he never object -- had never objected to
17 them saying the reason for -- the reasons for
18 (indiscernible) a (indiscernible) reason was that they
19 needed it because they didn't have a, a set of fingerprints
20 in the record. That was why I was suppose to give it to
21 them when they, when they -- at trial. That was not what
22 they testified that the fingerprint or they used it in
23 evidence to say that this is what we use it to show and this
24 is the same fingerprints that we originally got and it's the
25 same person. (Indiscernible) ten years later we're saying

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1 that these things (indiscernible) still match. That's what
2 they, that's what they said right up (indiscernible).

3 why would you do that?

4 It's not the same person.

5 Q. So, you had no idea until that day that the reason why
6 they had to take your fingerprints was to try to match them
7 on a bottle that was found at the crime scene?

8 A. No, no, no. That's not what I'm saying. That -- but
9 they did not -- the, the, the fingerprints were taken
10 because they said they did not have a more recent
11 (indiscernible). They lost the original fingerprint card.
12 That's what their reason for they, they wanted my
13 fingerprint.

14 I, I said why would I give them that. He said if I
15 don't give it to them, (indiscernible) report, the judge
16 gonna give us a new court order telling you you'd have to
17 (indiscernible) anyway. I said okay, no problem. That's
18 for the Court. Went to court. The judge did that. The
19 judge ordered me to take a different fingerprint and I, and
20 I gave, and I gave the fingerprint. The same judge, Judge
21 James, ordered me to give the fingerprints and I gave the
22 fingerprints.

23 when we got to trial, they said that the reason for the
24 fingerprints was not that they needed it because they didn't
25 have any. They said that they needed it because wanted to

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1 (indiscernible) the original, original in court, in court.

2 (WHEREUPON, at this time the audio was blank for a
3 little over a minute.)

4 A. Okay. Now, you have -- if you looked at the
5 transcript, the trial transcript, it was Page 187 is where
6 they're talking about I should -- like they're talking about
7 these fingerprints, right.

8 They're talking about the fingerprint card that they
9 got -- the original fingerprint card that didn't -- that,
10 that, that they took from me that they got no match on.
11 Then they ran my -- they ran the, the evidence through the,
12 through the, the AFIS. If you're at -- it's Page 18 --
13 180 -- hold up. Page 187 where they just -- they just
14 actually start talking about it and she's, she's asking --
15 the officer and the Court asking -- all right. Hold on.
16 Let me get the right page they was talking on.

17 So I guess this is direct examination of
18 Ms., Ms. Hodges by Mr. Campbell. It's -- she's talking
19 about fingerprints.

20 Let me slow down. Be looking at by 14 on 8/7. It says
21 the first thing they take is the original -- the first thing
22 I do is take each one individually, examine, see if there
23 are any visible ink prints. Each item -- I mark each item
24 as I go along. If I do find any fingerprints, I number each
25 one off initially dated like -- dated -- like this would be

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1 item number one. Like this was the date I examined it.
2 She's -- once she's going on to explain what, what she does.
3 Then she tells about going through the -- look on Page 188
4 where she talks about putting it into the AFIS system.

5 She says so I entered that into the AFIS system and did
6 a back -- to the search and it's actually searched all the
7 records on file in the State Law Enforcement. I did not
8 receive any identification at that time.

9 But she said she originally read. So we do -- hold on.
10 So Mr. -- here it says just submitted -- this card was
11 submitted. Here's where she said -- she says she had a card
12 that was submitted to her on May 28th and where she
13 testified she, she actually -- she actually received the
14 original card and he said -- and she -- what did you do with
15 that card. She said I could bring the print the previously
16 before the -- to the previous -- to the previously
17 photographed AFIS system. In other words, this actual
18 latent prints was refilled and sent back to the Sheriff's
19 Department to be restored in the evidence room for the
20 fingerprints that I have on it. All it is is the system --
21 it stays in the system so I can bring it up and I, I can
22 explain it. I made a comparison of the prints that are
23 still here in the system.

24 But ultimately -- in other words, you have to go on and
25 (indiscernible) and see if one match new were able to make a

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1 comparison and they get to identify (indiscernible). She's
2 just explaining right there. The mark identified number
3 nine. She's explaining it. (Indiscernible).

4 Listen. I, I want to waste a lot of time.

5 Q. Okay.

6 A. But it's a lot, a lot I -- normally -- I'm not, I'm not
7 (indiscernible). I really want to -- I really would like to
8 put the transcript on the, on the, on the record --

9 THE COURT: Oh, yeah.

10 A. -- instead of taking up a lot of time pulling this
11 cause I mean like I was --.

12 (Indiscernible).

13 A. At anytime I wasn't, I wasn't prepared where that,
14 where that, where that got rushed. So, I got everything but
15 just I got it -- it's not in order. So --

16 Q. Okay. (Indiscernible).

17 A. -- that's why, that's why I'm asking really but I
18 ain't, I ain't telling you everything. I can tell you
19 everything. I can tell you everything. I can tell where
20 you can find it but that's (indiscernible).

21 THE COURT: I got it. Pages 187---

22 THE WITNESS: No, no.

23 THE COURT: ---188. It is the direct examination of
24 Hodges by Gable. Got it.

25 THE WITNESS: Right.

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1 THE COURT: Got it. I'll look.

2 Q. You don't, you don't have (indiscernible) -- their
3 whole transcripts are already part of the record.

4 A. So, it's---

5 Q. Can you hear us now?

6 Can you hear me how?

7 A. Yes.

8 Q. Okay. So remember the trial transcript and everything
9 has been made part of the record.

10 A. Okay.

11 Q. So, Judge Goodstein has all that in front of her and
12 she's gonna review all that in terms of your case.

13 A. Okay.

14 Q. So, if -- we know -- it was sent -- the situation as
15 you noted in your application also was basically you felt
16 the prosecution lied about the reason as to getting the new
17 set of prints and Mr. Murphy basically fed you essentially
18 to the wolves, for lack of a better term, in telling you to
19 go ahead and get these prints, to give them, and then the
20 judge said you've got to give them, but this whole time they
21 were essentially being used for (indiscernible)---

22 MR. NEUBAUER: Your Honor, I would object. It seems as
23 though she's trying to testify for Mr. Forde at this point.

24 THE COURT: It's okay. She's summarizing. There's
25 nothing new. They -- and in that this is nonjury. Thank

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1 you, Mr. Neubauer.

2 Yeah, it's just, it's just summarizing so that he knows
3 that he's been heard. I, I, I will allow it some degree of
4 that.

5 Q. Would, would you say that's an accurate summary of what
6 your main issue is with those fingerprints?

7 A. Yes, ma'am.

8 Q. Okay. So let's go to the -- you talk about the issue
9 with the dismissal and not getting the dismissal. That's
10 couched in more of a, a direct appeal issue but also did you
11 feel that Mr. -- continue.

12 A. Yes, considered the (indiscernible) appeal issues.

13 Are we -- I thought they said that was gonna be first?

14 Q. In your -- so I'm just---

15 A. (Indiscernible).

16 Q. Let me finish my question and then maybe it will be a
17 little bit clearer for you.

18 A. Yes, ma'am.

19 Q. So you have it written as this is couched as -- as
20 this -- a direct appeal issue you want to address since you
21 allege that Mr. Murphy did not file a direct appeal, which I
22 think is pretty obvious that nobody filed an appeal for you.

23 Is that correct?

24 A. Yes, ma'am.

25 Q. And you, you would like a belated direct appeal.

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1 Is that correct?

2 A. Yes, ma'am.

3 Q. Okay. So was Mr. Murphy ineffective in regarding the
4 issue about trying to get a dismissal after everything that
5 happened during your trial?

6 A. Yes, ma'am.

7 Q. Okay. Explain how he was ineffective with all that.

8 A. Because during the, during the trial, two of the, two
9 of the detectives read Mr. Murphy statement where -- during
10 a, during a break in the trial. They took the con -- they
11 took -- whatever the, whatever the information was. There
12 was a hearing on the trial. The transcript says where they,
13 where they testified as to what got the -- where they, where
14 they, where they testified.

15 They, they, they read something into Murray's on the
16 paperwork towards Mr. -- I think it was the bottle and
17 something else and they took this -- they took it back to
18 the solicitor (indiscernible) paperwork, which they took
19 information on. The solicitor then attempted to recall a
20 witness to address those issues. He, he re -- I think they
21 recalled on Wednesday a Mr. McCaslin at just -- they, they
22 just asked him why he was recalling the, the -- this witness
23 as -- and they, and they -- where -- and they, they
24 explained to the judge why.

25 The judge denied it, denied it him recalling and

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1 dismiss this witness and then we went into a side hearing or
2 something to that effect. We went into a side hearing. We
3 stopped in the big courtroom and went into the -- a small
4 courtroom where a hearing on that actual issue, on the, on
5 the -- on a mistrial.

6 Now he starts here -- it starts here where okay, this,
7 this, this Mr. Murphy---

8 Q. Which---

9 A. ---on -- it was totally missing from the record when I
10 got first my transcript. When I first got my transcript
11 (indiscernible) somebody said that it was there. It was
12 missing, missing. It was not. It was, it was nowhere,
13 where. When they said it was total, this was not -- this
14 was missing and, and then, then it comes. And so it's
15 another sworn that this (indiscernible). That's another
16 thing.

17 So I don't understand how the record is even in the
18 thing. You did not (indiscernible). But, but when we, when
19 we did this hearing, they testified that they -- that they
20 read the paperwork off Mr. Murphy's hearing (indiscernible),
21 and that the, the solicitor sit up there and testified that
22 he, that he attempted to ask the witness, the judge denied
23 it, that was an issue when the judge -- that the judge,
24 that, that it -- that the judge said that he would grant a
25 mistrial if that's the case. He said (indiscernible) which

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1 it says -- I, I don't understand why you would not want a
2 mistrial because now it's stated only repetitive
3 (indiscernible).

4 So, I said -- that Mr. Murphy asked for a dismissal.
5 The judge said that he doesn't believe that this is a --
6 being that the solicitor's the one bringing the issues
7 saying that this is allowed, this is what I've heard, that,
8 that he doesn't believe that they should be penalized, that
9 they should that -- they should be -- it should be a
10 dismissal. That's what he wrote in there, the dismissal,
11 that he said that he would grant a mistrial.

12 However, it -- it's always gonna be intent. The
13 intention that the prosecution is to, is to a, a -- for
14 uncharacteristics and when you, when you intend to do that,
15 this is enough for a mistrial. That is enough for a
16 dismissal of its trial on the merits. But not even on
17 the -- not even a dismissal. He took over the dismissal.
18 But it was suppose to mistrial on that along. Mr. Murphy
19 never addressed that.

20 He, he advising me to accept a mistrial and just accept
21 a plea with -- as potential -- and to, and to, and to give
22 up all the issues that he objected to that we raised that we
23 haven't got to yet and, at, at that time, which would, would
24 of -- which I didn't want to.

25 I'm not -- at no part I wanted to plead all up to that

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1 hearing, up to the hearing and then he's like well -- his
2 words to -- were the judge done said what the state. So
3 this would be the best matter to take a plea. Then I
4 ain't -- well, I don't, I don't want to get off topic but
5 all this but --.

6 THE COURT: Got it.

7 A. That was the issue concerning was that (indiscernible).

8 Q. The issue about the dismissal -- and, and just for the
9 record, judge, the motions transcript is also included---

10 A. Yes.

11 Q. ---that -- the issue's related to this and you'll -- I,
12 I believe that you just have a chance to read through that,
13 you'll get a better idea of exactly what Mr. Forde's talking
14 about.

15 THE COURT: Got it.

16 THE WITNESS: And the reason for the trial---

17 THE COURT: Can you -- if you would---

18 THE WITNESS: ---and the motions as---

19 THE COURT: ---give me a (indiscernible), it would be
20 helpful.

21 MS. McMAHAN: I'm sorry.

22 would you repeat that, judge?

23 THE COURT: Sure. Page number.

24 MS. McMAHAN: Your Honor, there's a very short
25 transcript. It's a -- it's 25 pages. It just sets out --

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1 and Mr. Jackson kind of pops in in this part with the
2 motions. They -- they're arguing Quattlebaum, whether or
3 not the case should be dismissed, that kind of thing.

4 THE COURT: Yes.

5 MS. MCMAHAN: That will give you (indiscernible)---

6 THE COURT: And I got -- was it -- it, it is, it is its
7 own -- is its own standalone transcript?

8 MS. MCMAHAN: Yes, ma'am.

9 MR. NEUBAUER: Yes, Your Honor.

10 THE COURT: Okay. Got it.

11 MR. NEUBAUER: Your Honor, it's a standalone transcript
12 of motion captioned Jason Forde versus State of South
13 Carolina. It is April 14th through 15th of 2010 and it
14 should be, I believe including the covering and
15 certification, it's 28 pages total.

16 THE COURT: Got it.

17 THE WITNESS: Right. This, that -- excuse me?

18 Q. Uh-huh. Go -- yes, Mr. Forde.

19 A. All right. This is the, this is the tran -- this is
20 the transcript of a hearing. However, there's not a
21 transcript. It's where Mr. Forde went into hearings. It's
22 where the solicitor called a witness back---

23 THE COURT: Got it.

24 A. --- (indiscernible) to the hearing. This is -- it was a
25 Mr. McCaslin who come and testify about a bottle and some

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1 clothes about that. It was a, it was a -- it was a recall
2 of the -- one said the evidence room guy because, if I'm not
3 mistaken, to recall him to testify only those things. The
4 judge denied that and that's when they went into everything
5 else, you know, if you're, if you're looking in the
6 transcript. It's in there.

7 THE COURT: Got it. Got it.

8 Q. Okay. So that was on---

9 A. It should be, it should be (indiscernible) wanted me to
10 add was I don't think we called any more witnesses after
11 that.

12 Q. Okay.

13 A. Yeah.

14 Q. So, Mr. Forde, that was in relation to issue three that
15 you had about the dismissal and then Mr. Murphy going into
16 basically discussing with you that you should try to plead
17 guilty even though you had never indicated you wanted to
18 plead guilty, right?

19 A. No, I probably never did.

20 Q. Okay. So let's go to your next issue which was failing
21 to file motion to suppress the testimony of the prosecution
22 witness that you guys didn't know about until the day of
23 trial.

24 who was that?

25 A. I believe it was a -- I believe it was somebody that

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1 they never gave a name up until (indiscernible) all that.

2 Q. Okay.

3 A. It was, it was the fall back, somebody that they said I
4 believe for the affidavit of my arrest. The affidavit
5 reads -- hold on. The affidavit reads, the affidavit reads
6 on 5/28/20 -- 2008, Jason code-- codefendants robbed the
7 Dollar General located at 5 Dallas Drive in Sumter County.
8 (Indiscernible) into this store presented a black in color
9 revolver demanding money from the state and drove
10 (indiscernible) the scene in an unknown direction with
11 approximately \$800.00.

12 witnesses described the suspects and their vehicle.
13 (Indiscernible) they also recovered the suspect's jacket
14 (indiscernible) to in the robbery on the, the roadway. The
15 blue black bag that was taken was also recovered in the
16 roadway. Suspect's vehicle was located later that day
17 traveling on Middle Road at a truck -- on a traffic stop was
18 initiated on the vehicle. Two handguns were located in the
19 vehicle, black three Smith & Wesson revolver and a black .45
20 caliber Smith -- semiautomatic.

21 Forde was identified as one of the occupants of the
22 vehicle. Forde fits the co description (indiscernible) of
23 the suspect that entered the Dollar General and robbed the
24 clerk of the -- at gunpoint.

25 I'm gonna stop right there. Listen. That's pretty

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1 much where I was going.

2 Q. Okay. So just---

3 A. (Indiscernible).

4 Q. --- (indiscernible) real fast---

5 A. (Indiscernible). But --.

6 MS. MCMAHAN: Judge, he's talking about Mr.

7 Holsbacker's testimony which starts on Page 41.

8 THE COURT: Okay.

9 THE WITNESS: Right.

10 THE COURT: Thank you.

11 THE WITNESS: And --.

12 MS. MCMAHAN: In prior testimony, Mr. Forde was
13 referencing the recall of Mr. McCassie I believe---

14 THE WITNESS: (Indiscernible).

15 MS. MCMAHAN: ---and that was on (indiscernible) Page
16 176.

17 THE WITNESS: Yep.

18 THE COURT: That's 86?

19 MS. MCMAHAN: 176.

20 THE COURT: I'm so sorry. 176.

21 Okay. Got it.

22 Q. Okay. So you guys get there. Holsbacker's there to
23 testify about the affidavit.

24 A. Right. Mr Holsbacker.

25 Q. And Mr.---

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1 A. Holsbacker is testifying that -- about seeing a car
2 turning off in traffic and it goes speeding up the road.
3 Mr. Holsbacker never witnessed the crime and never said
4 anything about a suspect.

5 So -- and Mr. Murphy never objected to Mr. Holsbacker
6 testimony. Mr. Holsbacker never -- he never saw -- the only
7 crime he saw was he said that he saw some guys speeding in a
8 car. He did not know a robbery occurred. He did not know
9 any of that. He just (indiscernible) on the record that he
10 didn't know any of that.

11 So, so if this is the person that they're seeking and
12 this -- that they did not know of until that day, his
13 testimony also doesn't match the officer's testimony who is
14 it he spoke to which Officer Hodges, if you look at that
15 transcript in the Officer Hodges testimony -- testified to
16 something totally different from what Mr. Holsbacker said
17 and this is the officer that received the communications
18 from Mr. Holsbacker.

19 Q. So, do you believe that Mr. Murphy was ineffective in,
20 one, not objecting to the testimony altogether?

21 A. Right.

22 Q. And, two, in the absence of objecting to that
23 testimony, failing to cross-examine those witnesses
24 adequately about those discrepancies?

25 A. I agree.

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1 Q. Okay.

2 A. Yes.

3 Q. All right. Do you believe the outcome of your trial
4 would of been different had he done that?

5 A. Yes, I believe so. I, I totally believe so cause if
6 he -- cause if you look at the affidavits from my arrest,
7 the affidavit is, is invalid based on the testimony. The
8 offer -- the, the affidavit says that I fit the description
9 of a suspect.

10 The description of the suspect is 5'10", 170 pounds,
11 (indiscernible) black male. I am 6'6". I been
12 (indiscernible) my whole life. I, I, I get -- I, I totally
13 do not fit the physical description of this, of this
14 suspect. Not to mention Detective Lyons (phonetic), the
15 lead detective, Wendall Lyons, testified that I did not meet
16 the physical description of the suspect. He said I fit the
17 description of a suspect that law enforcement came up
18 because of ongoing crimes in the dis -- in the hearing.

19 However, they said detective -- I mentioned Detective
20 Hodges. All the records said that there was no other
21 description that he knew of before this day, before
22 (indiscernible) that (indiscernible). There was no des --
23 he, he testified to that and Officer -- it's one officer in
24 the record. It's another, it's another that testified to
25 that also that there was no up -- they did not know of

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1 another description other than that.

2 So for -- so, so with, with, with these things -- like
3 you said, with these things together, if Mr. Murphy had
4 (indiscernible) and he had raised these issues, challenged
5 these issues, these issues have no remedy and it would show
6 that after my arrest, which came about in the face, because
7 I don't fit the description and there's no witnesses to
8 describe anything.

9 So, if you take -- if you that -- if you take those
10 things out, this, this affidavit is, is totally -- there's
11 nothing -- there's nothing in here to, to, to, to say that I
12 think (indiscernible).

13 Q. Okay.

14 A. And Mr. Murphy didn't do that and the, the officer
15 (indiscernible) said I did not fit the description -- no
16 description like he supported the affidavit and the sworn
17 testimony was that I did not fit the physical description,
18 that Mr. Murphy did not acknowledge the prejudice even --
19 he, he did raise (indiscernible) a Fourth Amendment
20 violation of -- or, or, or, or I believe -- I don't want to,
21 I don't want misspoke but he raised the Fourth Amendment
22 violation and he objected.

23 But -- had he said that perjury on right here once the
24 sworn testimony said he fit the description. The sworn
25 testimony said you don't. I believe the outcome of the

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1 trial would of been different.

2 Q. Okay. So let's move on to issue five.

3 A. Okay.

4 Q. Mr. Murphy was ineffective in allowing a prosecution --
5 objecting to allowing a prosecution witness to read from
6 their notes of a prior alleged declaration by yourself.

7 A. Right. Cause it was a, it was a, a so called statement
8 that it was entered. It was, it was unsigned. I signed a
9 consent form, you know, Miranda rights. I signed the
10 Miranda to be able to, to, to, to, to be able to, to, to
11 speak to them but we spoke to each other. I did speak to
12 officers.

13 well, at trial, this, this is in her, her notes in
14 speaking to me was entered as my sworn statement, something
15 that I did not, that I did not swear to sign to. These were
16 her notes and Judge (indiscernible) Mr. Murphy objected to
17 her reading to the notes. However, when you -- you
18 objecting, then you preserve an issue that you later on
19 don't ad (indiscernible) me to, to, to not, to not do, to,
20 to, to, to, to take a guilty plea so this -- so that this
21 issue can not be addressed and this, this issue -- these
22 are, these are serious issue.

23 It's an issue that is -- it's an issue dealing with,
24 with evidence and stuff that you talk -- that, that would
25 not -- that would -- I don't think that would be allowed had

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1 he addressed the issues properly.

2 Q. Did you ever get to see her notes to confirm whether or
3 not that was something you actually said to her?

4 A. Yes, they, they, they gave us the copies. They sent
5 us, they sent us the copy of the statement, as a statement.
6 Then she took the -- they said that they were entered into
7 evidence as stated by me.

8 This -- I did not take the stand. So there was --
9 those, those statements should not be entered, one.

10 Two. Her testifying as to what I said here as a sworn
11 testimony is hearsay. This is not -- she, she came up
12 testifying to what I said to her. She consented yes, he
13 said this to me. But how can she swear that what I been
14 raising -- where you're actually on the stand saying that
15 I'm a dishonest person, I'm gonna -- that I am a, a law
16 breaker, that I am a (indiscernible) person.

17 So, in one hand they're saying on the --
18 (indiscernible) it's got to be true. But on the other hand
19 she said I'm a liar. I'm um -- I'm a discreditable person.
20 So, which one is it?

21 Then Mr. Murphy didn't even -- didn't, didn't address
22 those issues -- and wait. No, I apologize. I apologize.
23 No.

24 He did address the issue. He did object to her
25 (indiscernible) those notes getting answered. However, by

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1 him advising me to keep and preserving those issues and not
2 allowing those issues to be addressed by the direct appeal
3 is where -- and not advising me -- he didn't advise me.
4 Like I didn't even -- I, I didn't know. I didn't know. If
5 I knew better, if I knew that those issues were issues that
6 it caused the outcome to be different, I would not have pled
7 guilty. I would of went forward to trial, went all the way
8 through. I would of went and got my (indiscernible) and did
9 my direct appeal and everything.

10 Q. Okay. And that went back to your direct appeal issue
11 that we've talked about --

12 A. Okay.

13 Q. -- earlier.

14 So, your other one is I think you're talking about some
15 failing to object or not adequately addressing some issues
16 regarding introduction of some evidence of a soda bottle.

17 A. That, that -- I believe that's what, that's what I was
18 talking about with the fingerprint.

19 Q. Okay.

20 A. The soda -- the soda bottle was mentioned at trial.
21 The soda bottle was, was, was, was testified. But there
22 was, there was never a soda bottle ever one -- at one time
23 in trial. There was never a soda bottle in evidence. There
24 was a soda bottle testified to me in evidence.

25 There was no soda bottle in evidence -- to, to be

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1 presented to trial showed to in evidence for this -- for you
2 to say that this is, that this is evidence. At trial, they
3 presented everything other they presented. They broke the
4 seal. They brought it -- they, they, they introduced it and
5 it, and it was presented. The soda bottle was, was, was
6 brought up.

7 It was never presented and this soda bottle was the
8 actual -- was the key to the entire situation because the
9 soda bottle was the soda bottle that they were saying that I
10 left a fingerprint on and that, that, that, that the suspect
11 left a fingerprint on and they saying that this is my
12 fingerprint. But there was no soda bottle. There is no --
13 there was never a bottle that Mr. Murphy never objected to.

14 So, if there is -- well, how can you do fingerprints
15 when there is no evidence of a fingerprint?

16 There's no -- where -- there's no -- where is, where is
17 the bottle?

18 Where is the bottle that the evidence?

19 I don't, I don't understand. See that's, that's why,
20 that's why I feel as though it definitely would of been
21 different had he raised the issue about that bottle.

22 Q. Okay. And that goes into issue seven, the issue with
23 the clothing being introduced.

24 A. Correct.

25 Q. Similar sort of situation, correct?

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1 A. Right.

2 Q. So -- but they had never -- in fact, today you mean the
3 prosecution never showed how they got to the conclusion of,
4 of these -- this clothing being used in the crime?

5 A. Right. That the witness, the witness to the crime
6 never identified any clothing.

7 Q. And then---

8 A. He saying clothing. It had like -- and then signed
9 this -- what they were showing was discovering. I mean it,
10 it was the description of the clothing entered at trial
11 wasn't even -- they did not -- they didn't match the
12 clothing that was there---

13 Q. And---

14 A. ---that was there. So, it was a -- in the, in the, in
15 the testimony I believe it was a gray hoodie the suspect
16 wore. But they filed another (indiscernible) which they say
17 they got my DNA off of which had, which had a
18 (indiscernible) on the, on the front which the witness never
19 identified. There was, there was never given a chance to
20 say that this is what the suspect wore or anything.

21 Q. And that -- and Mr. Murphy never adequately addressed
22 any of these issues during the trial.

23 Is that right?

24 A. No, ma'am, not to my, not to my knowledge or my
25 understanding.

Jason Forde - Direct examination
By Ms. McMahan

1 Q. Okay. So now let's discuss your Issue A. You talk
2 about a Fourth Amendment violation, reasonable suspicion.

3 A. Pretty much.

4 Q. But we already kind of talked about that with
5 Mr. Holts, the guy with the Holts name---

6 A. I mean---

7 Q. ---about (indiscernible)---

8 A. I mean but---

9 Q. (Indiscernible).

10 A. Fourth, Fourth Amendment violation occurred with the,
11 with the no probable cause. Just like I said---

12 Q. Yeah.

13 A. ---the, the, the -- at trial, the officer -- the
14 officer that, that, that took that -- that warrant directing
15 officer testify that like my physical description did not
16 fit the description for the (indiscernible) suspect. He
17 testified to that.

18 He said that, that law enforcement arrested me because
19 they were -- because of a suspicion because of an act --
20 because of my action. That's profiling.

21 (Indiscernible) those statement of description, once my
22 action -- why, why won't an action be the reason for
23 something, after next, the description of the suspect did
24 not have an accent. He said that law enforcement came up
25 with their description.

Jason Forde - Direct examination
By Ms. McMahan

1 And, once again, I'll point you back to the record
2 where there were I believe it was six officers testified.
3 Mr. Murphy asked each officer or these officer as far as
4 where the investigation concerned, do y'all have, do y'all
5 know of anyone of the description, and then he
6 (indiscernible) Mr. Myers said there was no other
7 description other than the, other than the -- Murphy, Murphy
8 knew about the case that, that had that arrest, the arrest.

9 Q. Okay.

10 A. (Indiscernible).

11 Q. I'm sorry. I didn't mean to cut you off.

12 A. And -- right. Ms. Tolias (phonetic) testified -- he
13 testify that what he, what he ruled -- why -- what, what --
14 about what his testimony affidavit says about physical
15 description matched. He testified that that wasn't, that
16 wasn't the case and it's in, it's in his testimony. And
17 with that being said, that's the (indiscernible) cause the
18 affidavit is a sworn testimony.

19 This is what he read in front of the judge to get a
20 warrant for my arrest at which point the judge said --
21 that -- that's the as far as the judge stood to, to rule --
22 to, to be able to do something that they wouldn't have done.
23 Had he told the truth that, that they didn't have a physical
24 description, this wouldn't have been a warrant. This
25 wouldn't of been an affidavit for an arrest.

Jason Forde - Direct examination
By Ms. McMahan

1 Q. And I'm just -- I'm gonna skip to your amendment
2 application real fast. I think all of the issues we've just
3 addressed right now are already brought up in your amended
4 application.

5 Are -- where you---

6 A. But not, but not all of them. The testimony -- the,
7 the abuse and discretion of the judicial (indiscernible)
8 because just every -- everything is really tied into each
9 other. Everything---

10 Q. Yeah.

11 A. ---is, is pretty much -- it's, it's really falls, falls
12 on every -- falls on everybody's (indiscretion), fall on the
13 prosecution, falls on the (indiscernible), falls on the
14 Courts to -- be causing the Court to rule erroneously. And,
15 and so it's, so it's really everything causing -- because of
16 these records. That's---

17 Q. And, and so were there any other issues, like an
18 Eighteenth Amendment issue, or anything else you want to---

19 A. There, there was an Eighteenth Amendment issue I was
20 talking about. As far as for me, that's me pretty much --
21 that's pretty -- they're two entirely -- the two officers
22 testifying. Not to mention they went to the, they went to
23 the attorney. They went to the solicitor who asked, asked
24 (indiscernible) tried to call (indiscernible) an our -- a
25 witness. So I just want to (indiscernible) issues before

Jason Forde - Direct examination
By Ms. McMahan

1 telling the Court that this is what occurred.

2 Q. Okay. And, and that was all ineffective of Mr. Murphy
3 because he did not adequately not (indiscernible)---

4 A. Address these issues. That's, that's -- that, that --
5 they all (indiscernible) strength of Mr. Murphy's behalf
6 because, as, as an agent of the Court, you, you the one who
7 know. I don't know. I, I did not know. I, I probably
8 mislead -- it's, it's very admirable about -- it's about --
9 it's his skill level, his experience I believe at the time
10 was 21 years if I'm not mistaken.

11 I, I don't want -- I don't want to misquote. That
12 might be military time. But they waived -- but like, like
13 I, like I, like I really, I really because was speaking, I
14 just, I just have really ups and downs with him and speaking
15 to him.

16 He's very articulate. He's very -- you know, so -- and
17 also some of his stuff that I was, I was actually speaking
18 away to him about when I learned was from a (indiscernible)
19 he sent me like (indiscernible) information and that stuff
20 like that, he sent this stuff to me cause of he saw that I
21 was interested and he said stuff -- and as I was speaking
22 and he read it to him, he stated -- like I said, had he, had
23 he applied with the things the way that they should be
24 according to (indiscernible), it shouldn't be -- it
25 shouldn't of been -- I, I would of went all the way to

Jason Forde - Direct examination
By Ms. McMahan

1 trial. I would of went to (indiscernible). I would of
2 went -- we might, we might of been talking about this thing
3 PCR a (indiscernible).

4 Q. Okay. So you said Lock -- a Till v. Lockhart
5 (phonetic) is what you're referencing, correct, the case?

6 A. Yes, ma'am.

7 Q. And also I, I believe you're referencing the Fourth
8 Amendment and not the Eighteenth Amendment since the
9 Eighteenth Amendment prohibited alcohol from the United
10 States?

11 A. I think it's -- I might be right. You might be right
12 but then I apologize.

13 Q. It's not---

14 A. (Indiscernible).

15 Q. ---the one prohibiting the alcohol, correct?

16 A. Yes, ma'am, looks like it.

17 Q. Can not---

18 A. It's right.

19 (WHEREUPON, at this time, the Court, Ms. McMahan, and
20 Mr. Forde were all talking at the same time and could not be
21 understood.)

22 THE COURT: I think we got that one fixed.

23 MS. MCMAHAN: Yeah, we fixed that one.

24 THE COURT: I think we got that one fixed.

25 THE WITNESS: Yes, ma'am.

Jason Forde - Direct examination
By Ms. McMahan

1 THE COURT: It's the Fourteenth we're worried about.

2 Q. Is there anything else you, you need the judge to---

3 A. No, ma'am.

4 Q. ---hear about today about your case that we haven't
5 already talked about?

6 A. Excuse me?

7 Q. Is there anything else the judge needs to know today
8 about your case that we have not already talked about?

9 A. We talked about, we talked about the, the --.

10 (WHEREUPON, the audio was blank for a few seconds
11 here.)

12 Q. I believe---

13 A. That's what -- I believe -- what they last said it was
14 prosecutor -- it was prosecutorial misconduct from the, from
15 the, from the -- from the initial -- from the beginning.
16 Prosecutorial cause the prosecution -- the prosecution is
17 the -- the entire process, the police, everybody, they've
18 all been in there in it. From the beginning it was
19 prosecutorial misconduct. The, the, the officer -- the
20 officer's lies obtaining, obtaining arrest.

21 The, the -- he committed perjury when he testified at
22 trial. They, they, they cleared the situation for me to
23 come talk to them was a duress situation where I was asked
24 to -- where, where content -- where you know woman and man
25 are separated.

Jason Forde - Direct examination
By Ms. McMahan

1 I, I was, I was getting to -- my going to see my --
2 going getting -- receive warrants on me, I was -- I had to
3 pass my wife in the hallway. It was a real emotional
4 situation. And so then it -- and then they're right there
5 like oh, yes, what you gonna do now. You know what I mean?

6 Like all these at the -- so all this happened I
7 mentioned at trial. We even went further. We even went
8 further to go to my lawyers work area to try to get
9 information to take it to the solicitor and try to do so
10 much, so much like -- it was -- it, it, it -- for what like?

11 You, you, you going -- you're doing -- you're, you're,
12 you're representing -- you're, you're rep -- you're, you're
13 suppose to be, if I'm not (indiscernible) -- you're suppose
14 to be opponent protected. You're, you're, you're going to
15 do these things to, to, to be able to, to be able to do this
16 and not and, and, and it's all -- and it's together because
17 you -- cause why -- because the, the, the solicitor asked,
18 asked (indiscernible) of the Court also is suppose to see,
19 see the facts also and not take issues to the Court that
20 don't have issues.

21 You have, you have three -- you, you -- my, my attorney
22 advised me to plead to, to, to, to charges where they --
23 the, the, the citizen testified that they, they don't have
24 witnesses for. They're contacted people. They do have --
25 so why would you keep it -- advise me to plead to all the --

Jason Forde - Direct examination
By Ms. McMahan

1 I had seven charges.

2 why would you, why would you not, not do any, any,
3 anything -- you didn't have any information on any of the
4 other cases other than the one we went to trial on and you
5 advised me to plea on all these cases and I would -- I, I
6 honestly believe that everything still from one arrest. So,
7 it's (indiscernible).

8 I think this officer was (indiscernible). Had there
9 not been -- there is no, there is no -- there is no
10 exception to the rule as, as far as (indiscernible) poor
11 exception. You look into it. But, like I said, I --
12 Mr. Murphy (indiscernible) did his job. Hey, he really
13 found just the basics, just let do this (indiscernible). I
14 believe the outcome would of been different. I believe that
15 I would of went to court and I believe that I would not be
16 here today.

17 Q. Okay. Thank you. Answer any questions Mr. Neubauer
18 may have for you.

19 A. Yes.

20 THE COURT: Mr. Neubauer, cross-examination.

21 MR. NEUBAUER: Thank you, Your Honor.

22 would you be briefly opposed to like a three minute
23 recess so I could use the bathroom?

24 I apologize.

25 THE COURT: No. We'll -- let's take a comfort break

Jason Forde - Direct examination
By Ms. McMahan

1 and obviously too I, I want Mr. Forde to be able to do so as
2 well. Let's -- we'll take five minutes.

3 MR. NEUBAUER: Thank you, Your Honor.

4 THE COURT: Five (indiscernible) minute comfort break.

5 MR. NEUBAUER: Thank you, Your Honor. Greatly
6 appreciate it.

7 THE COURT: Thank you-all. No problem. Five minute
8 comfort break.

9 (WHEREUPON, a short recess was taken at this time.)

10 (WHEREUPON, the audio at this time was very low.)

11 CROSS-EXAMINATION

12 BY MR. NEUBAUER:

13 Q. Do you recall Mr. Forde telling you that he filed a
14 motion for a speedy trial on your behalf?

15 A. No, it's a, it's a letter -- it's a letter later on I
16 believe where he mentioned something. I don't -- I'm not --
17 where he said he would, he would do it. But at the, at the
18 time I don't know (indiscernible).

19 THE DIGITAL REPORTER: Hello, Michael?

20 Q. All right. Is that for your testimony you said that I
21 would (indiscernible) for you today that your motion for a
22 speedy trial was filed on March 31st, 2009---

23 THE DIGITAL REPORTER: Hello.

24 Q. ---which would -- which would be less than a year after
25 you were arrested?

Jason Forde - Direct examination
By Ms. McMahan

1 Now --.

2 THE DIGITAL REPORTER: Hello.

3 Q. Regarding the issue with the fingerprint, you said
4 that -- you're saying -- he's saying on, on Page
5 (indiscernible) of your fingerprints that were
6 (indiscernible)?

7 A. No.

8 Q. That is not correct?

9 A. That's not correct.

10 Q. All right. I apologize. If you --.

11 (WHEREUPON, the volume of the audio increased at this
12 time.)

13 Q. would you look at Page 187 of the trial transcript,
14 Line 8 through 12?

15 A. (Indiscernible).

16 Q. Yes, sir.

17 A. Lines 8 through 12 on the what?

18 On what -- page what -- what page?

19 Q. Page 187.

20 A. Right.

21 Q. Line 8 through 12.

22 A. Right. Right.

23 Q. And do you recall the day that this witness received
24 the latent fingerprints on?

25 A. Excuse me?

Jason Forde - Direct examination
By Ms. McMahan

1 Q. From that -- from that section that I sent you, could
2 you see the day that this witness indicated they received
3 the fingerprints that they scanned or that they examined?

4 A. Right. But this is not for the trial. All of this is
5 just, just after -- I -- after the fingerprints -- the
6 result after they told me that they had none. So they're
7 saying that they had the (indiscernible). They -- that --
8 this is what I was talking about.

9 I said this. I said that they have -- testified that
10 they had them or whether they got no original prints from
11 me. They said they never had them. That's why I'm saying.
12 Before trial -- a month before trial, they took me to the,
13 to the, to the courthouse. Mr. Murphy advised me to give
14 them the prints because they said they did not have any
15 prints that on my file. That's what I---

16 Q. Yes, sir.

17 A. ---testified to.

18 Q. Yes, sir. You still did not answer the question
19 though.

20 What date does it say that this witness received
21 fingerprints from the Sumter County Sheriff's Department?

22 A. Where it says --?

23 Q. That'd be line---

24 A. (Indiscernible) 12 but that's what date you mean, the
25 12th. There's no date here but it's no (indiscernible)---

Jason Forde - Direct examination
By Ms. McMahan

- 1 Q. Page 187.
- 2 A. 187.
- 3 Q. Line 11.
- 4 A. I was on the wrong page. I'm sorry. I'm looking at
- 5 the wrong page. It said page -- 8 through 12. It says---
- 6 Q. Page 187.
- 7 A. It says March 17 on here.
- 8 Q. Yes, sir.
- 9 And what day did you say that you were arrested on?
- 10 A. Yeah, May 28th (indiscernible).
- 11 Q. Yes, sir. Now, if you would look at the following
- 12 page, Page 188.
- 13 A. Okay.
- 14 Q. Line 14 there's a question were you given an ink card.
- 15 A. Right.
- 16 Q. And Line 17 through 19, what day do they indicate that
- 17 they received the ink card with your fingerprints?
- 18 A. It says the 28th.
- 19 Q. Of May?
- 20 A. Yes.
- 21 Q. Would that be the same day that you were arrested for
- 22 these charges?
- 23 A. Yes.
- 24 Q. Yes, sir. And the -- we'll just move on from this
- 25 issue for now.

Jason Forde - Direct examination
By Ms. McMahan

1 You raised an issue of the Court not granting a
2 dismissal or counsel -- you said counsel should have asked
3 for a mistrial with prejudice.

4 Were you wanting him to have the charges dismissed with
5 prejudice so they could not be brought back up?

6 A. I never said that. I never said that.

7 Q. I apologize.

8 What were you wanting your counsel to do once there was
9 the issue of two witnesses viewing the notes on his notepad?

10 A. To appeal the issue.

11 Q. And you know (indiscernible)---

12 A. (Indiscernible) deny the issue -- after the judge deny
13 the issue, I wanted him to appeal the issue and move --
14 and -- to a higher court to hear a different decision.

15 Q. And you know that that could not have happened until
16 your trial was completed, correct?

17 A. That -- sir, I had no idea.

18 Q. You did not know that you can not appeal in the middle
19 of a trial?

20 A. No, I did, sir. I knew that, I knew that you can do it
21 in the middle of a trial, yeah.

22 Q. (Indiscernible).

23 A. He, he advised to and I took his advice.

24 Q. But the question was you were not threatened or coerced
25 to plead guilty, were you?

Jason Forde - Direct examination
By Ms. McMahan

1 A. I was, I was coerced by Mr. Murphy because he told me
2 this, this how I should -- is not to plead if you want to
3 plead because the judge is upset with the State to plead and
4 (indiscernible) about it. He actual yelled at me at that --
5 in the, in the break room. We had a, we had a back and
6 forth because I didn't want to plead.

7 I did not (indiscernible) at all to his advice at the
8 last day of trial because, because my, my family showed up
9 and they created a situation, crying, and all that kind of
10 stuff, and Mr. Murphy kept at me asking about you don't want
11 your family to see you get a whole bunch of time on these
12 people. Just do it what you suppose to do, do it now, and
13 that's what I did.

14 Q. Do you remember during your guilty plea Judge James
15 asking you if anybody used any threat, force, pressure, or
16 intimidation to make you plead guilty?

17 A. Right. I apologize.

18 Q. Do you remember saying that nobody had threatened,
19 forced, coerced, or intimidated you to plead guilty?

20 A. Mr. Murphy advised me to say that. He said there's a
21 form (indiscernible) that you have to go by it. In order
22 for the plea to go forward, you have to be -- you have to
23 say these things.

24 Q. But you did tell the judge on two separate occasions at
25 your guilty plea that you were not threatened, forced,

Jason Forde - Direct examination
By Ms. McMahan

1 coerced to plead guilty, correct?

2 A. I didn't know any better. I, I followed Mr. Murphy's
3 advice, yes. I followed Mr. Murphy's advice.

4 Q. So---

5 A. I didn't know any better at the time. Had I know
6 better I would not.

7 Q. But you did, in fact, say that you were not threatened,
8 coerced, or pressured to plead guilty, correct?

9 A. I did. I know I, I -- (indiscernible) any better. I
10 didn't know any better. I didn't know any better.

11 Q. It's a yes or no question, sir.

12 Were you -- did you just---

13 A. (Indiscernible) I know. I'm telling you if I knew
14 better I would not have done it. I didn't know any better.
15 I didn't know. If I knew, I would not have done it.

16 Q. All right. You claim counsel failed to file a motion
17 to suppress the testimony of a prosecution witness. I
18 believe in one of your letters there's a reference that he
19 is aware of the State's witnesses.

20 I beg the Court's indulgence so I can find it.

21 (Pause.)

22 MR. NEUBAUER: I beg the Court's indulgence. I don't
23 want to linger and waste the Court's time looking for this.

24 THE COURT: If you need to, don't -- again, we're --
25 this is not a horse march.

Jason Forde - Direct examination
By Ms. McMahan

1 (Pause.)

2 MR. NEUBAUER: I will -- I'll look for this momentarily
3 and attempt to return. I apologize.

4 THE COURT: No problem.

5 (Pause.)

6 Q. And you say the Court erred in allowing prosecution's
7 witness to read from notes of a prior declaration by you.

8 Are you aware of the rules of hearsay in criminal
9 court?

10 A. No.

11 Q. Okay. So, you are unaware that statements by a party
12 opponent or a defendant could be used by the prosecution and
13 they would not be considered hearsay?

14 A. It was the statement. It was the notes. It was -- she
15 testified that they were her notes. Mr. Murphy heard her
16 testify that they were her notes and he asked the judge
17 could he -- while -- would he allow her to testify that her
18 notes are statement.

19 Q. And just regarding your allegation of un, unlawful
20 search and seizure, you claim that police did not have
21 probable cause to stop you and do you remember Mr. Murphy
22 challenging that stop and moving to suppress any statements
23 or physical evidence prior to the start of your trial?

24 A. Yes, I've answered that earlier when I testified. I
25 said that Mr. Murphy raised the Fourth Amendment violation

Jason Forde - Direct examination
By Ms. McMahan

1 issue. However, he did not, he did not point out a break in
2 the, the person that occurred and the issues or the fact
3 that there was no -- affidavit was invalid. He did not put
4 point none of -- any of those things out. Had he done that,
5 it would of been a different (indiscernible). It would of
6 been -- we would of had a hearing on those merits and it
7 would of, and it would of have to been addressed.

8 Q. Okay. And just regarding your guilty plea, this
9 ultimately boiled back to the issue of deciding to plead
10 guilty.

11 Do you recall there being plea offers from the State in
12 this case prior to trial?

13 A. Yes, I believe Mr. Murphy said something like that.

14 Q. And you did not want to accept any of those plea offers
15 initially?

16 A. Never. Never. I did not plea because, when I started
17 reading, reading about it, I didn't know the law when I got
18 arrested. I didn't -- I'll be honest. I didn't know
19 anything about the law other than watching TV.

20 When I got there, I actually started reading stuff and
21 I realized what occurred, like what, what, what -- I have
22 rights. I have rights that I didn't know. I didn't know
23 the constitution. I didn't, I didn't know this stuff.

24 So, had I had -- when I, when I say that
25 (indiscernible), I was literally with three books, the rules

Jason Forde - Direct examination
By Ms. McMahan

1 of court, federal rules of court, and a, and a Black's Law
2 Dictionary.

3 So, the (indiscernible) that I was given was very good.
4 So, my question is coming to, other than I got frustrated,
5 and then Mr. Murphy. Like I said, Mr. Murphy did offer me
6 information on that type of stuff. So, that's when
7 people -- that's what had me raising these issues. Issues
8 that I'm seeing now are things that -- if I had -- had I
9 known at trial, I would of raised that, I would have raised
10 them at trial with Mr. Murphy (indiscernible).

11 I'm very adamant. I'm very -- you know what I mean?

12 I'm, I'm originally -- I be -- I have no problem
13 speaking up for myself. So I should -- had I known these,
14 all of these things, I would of, I would of had a real
15 suspicion argument with Mr. Murphy (indiscernible) and
16 having not, having not raised them. Like I really, I
17 really -- I didn't know -- I didn't know any of these things
18 and I hope not when it said -- it would be so cause I knew
19 something was wrong. I just couldn't put my finger and I, I
20 (indiscernible) and had it not been for the trial, we would
21 not have been addressing none of these issues.

22 Had I pled guilty before trial, it would of never -- no
23 issues would of been raised, and, to be honest, I raised
24 this issue Mr. Murphy. I asked him is there a way, if I'm
25 being offered to plead guilty, after the -- after the

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By Ms. McMahan

1 hearing on the merits, on the, on the, on the issues --
2 stuff like that get me to the hearing, the suppression
3 hearing, the first if they had an opportunity, had an
4 opportunity (indiscernible) it's overwhelming. It was like
5 no, you have to go to trial.

6 So that's what I told him. I'm willing to go to trial.
7 Let's go to trial. I'm willing -- I have no worries. It
8 was gonna be (indiscernible). We got, we got to the point
9 where -- we got to a point where I -- he advised me to do it
10 and I didn't know any better. If I had of known better, I
11 would not have done it. So, I was not willing and I was not
12 do -- doing it knowingly.

13 Q. Do you recall your attorney telling you that motions to
14 suppress are proper for pretrial and that they would be
15 handled at the start of a trial?

16 A. Yeah, I believe that's a letter speaking of something
17 like that. That's -- if you say that's what it is, it might
18 be true and so you're speaking on something like that.

19 Q. And do you recall the plea offer -- one of the letters
20 indicating that a 17 year plea offer was set to expire
21 November 20th which would been pri -- of 2009 which would
22 have been prior to your trial?

23 A. I, I think -- like I said, I, I -- if you, if you're
24 saying it happened, it probably did. I don't remember it.
25 I don't remember all exactly. I know there was 17

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By Ms. McMahan

1 (indiscernible). I'm unaware. I can't remember their
2 names. I know there was a 17 year offer.

3 There was an offer to plead that Mr. Murphy
4 (indiscernible). There was two offers out. One was -- I
5 think it was a 15 and one was a 17 that -- and I, and I, and
6 I believe the letter says -- his letter, it says that I --
7 if you're going to take it now, this is the time to get
8 serious and get ready for trial and the letter -- I wasn't
9 involved in the (indiscernible) or I'm ready to moving
10 forward with trial.

11 Q. All right. And do you recall the same letter from
12 November 17th, 2009, indicating to you that, after
13 November 20th, the only offer that -- the only plea offer
14 would be to plead to all charges and have them run
15 concurrent?

16 A. I, I think I seen that letter --

17 Q. And---

18 A. -- that you're making reference to.

19 Q. Do you recall Mr. Murphy telling you that it was his
20 professional judgment that the arrest was legally valid and
21 the likelihood of suppression was minimal?

22 A. Say that again, sir.

23 Q. Do you recall Mr. Murphy telling you that, in his
24 professional judgment, your arrest was legally valid and the
25 likelihood of suppressing would be minimal?

Jason Forde - Direct examination
By Ms. McMahan

1 A. I'm -- no, I don't remember him saying that.

2 MR. NEUBAUER: I would draw the Court's attention to
3 the letter dated November 17th, 2009.

4 A. Same letter?

5 Right?

6 Q. Yes, sir.

7 And you recall him saying that, in his judgment, you
8 would likely receive a sentence in excess of 20 years if you
9 were convicted?

10 A. It says that, it says that in the letter.

11 Q. So you were aware that, if you wanted to plead guilty
12 to 17 years, you would of had to have done it prior to a
13 trial and prior to having the suppression motion being
14 heard?

15 A. It was, it was in the letter and I didn't, I didn't
16 understand any of it at the time. So I -- so that's -- so
17 me telling him now that what I did then would, would, would
18 totally be invalid because I didn't understand any of that
19 at the time. I didn't know what was going on. I was going
20 off of the advice of my attorney who, who knew the law
21 somewhat who I trusted. I did not know the law.

22 So I, I, I don't know -- I don't know how to keep
23 reiterating that. I, I didn't -- I do not -- I did not
24 think nothing (indiscernible) of any of this prior to making
25 any decision. Any decisions that I made was based on the

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1 advice of my attorney and his, and his, his (indiscernible)
2 to, to, to, to help me with this case.

3 Q. And do you recall, at your plea hearing, the judge
4 telling you that you could receive a sentence of 10 years to
5 30 years in prison for armed robbery?

6 A. Somewhat. I believe so. It was an open plea hearing.
7 It was an open plea.

8 Q. Yes, sir.

9 A. Yeah, it was an open plea. I believe so.

10 Q. And do you recall the judge informing you that armed
11 robbery would be a most serious strike, and if you were
12 convicted of another armed robbery, that you could be
13 sentenced to life in prison without the possibility of
14 parole?

15 A. (Indiscernible) called that -- I believe that.

16 Q. And do recall the judge telling you that had a right to
17 a jury trial and that you could complete your jury trial
18 instead of pleading guilty on April 15th?

19 A. I remember the judge saying those things.

20 Q. Do you remember telling him that you did not want to
21 complete your trial and you wanted to plead guilty?

22 A. Yes, Mr. Murphy told me that's a formality. That's
23 what you -- that's what you suppose to do. He said that to
24 do -- to, to do that. I was just---

25 Q. Do you remember---

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By Ms. McMahan

1 A. ---following his instructions.

2 Q. Do you remember---

3 A. (Indiscernible).

4 Huh?

5 what did you say?

6 Q. You -- I apologize.

7 Do you remember being told that you had a right to
8 remain silent and that you would not have to admit to
9 anything or testify at a trial if you weren't -- did not
10 want to?

11 A. I believe -- what -- when I got arrested?

12 Q. Additionally, do you remember that the judge at your
13 guilty plea informing you that you have a right to remain
14 silent and that you would be waiving that by pleading guilty
15 and admitting that you committed the crimes?

16 A. Yeah, Mr. Murphy, during trial, reiterated to me -- he
17 whispered to me on the record that you have -- that this is
18 what you have to do in order for this to go through. That's
19 what, that's what he has to do. I didn't want to do it. I
20 didn't know. I didn't know any better. I didn't, I didn't
21 want to. I cried or literally distraught.

22 Q. Do you remember the plea judge asking you if your
23 lawyer had forced you to plead guilty?

24 A. You asked me that question already and I
25 (indiscernible)---