ORIGINAL

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

D. Garrison Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILLY ROY BOYD,

APPELLANT

APPELLATE CASE NO. 2012-205986

RECORD ON APPEAL

BENJAMIN JOHN TRIPP
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3970

Attorneys for Respondent

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)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE)	No. 2010 GS 23 3488
STATE OF SOUTH CAROLINA)	
)	
)	
versus)	TRANSCRIPT OF RECORD
)	
)	
BILLY R. BOYD)	
)	
Defendant)	
	Greenville, South Carolina
	December 9, 2011

B E F O R E :

HONORABLE ROBIN STILWELL, Judge

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

For the State: J. TESSITORE, Esq
Assistant Solicitor

For the Defendant: S. ROBINSON, Esq.

Reporter Present: MARY DiGIROLAMO

HARRIET P. BENNETT
Reporter, S. C. Court Administration
46 Regency Oaks Drive
Summerville, SC 29485

EXHIBITS

Court's Exhibit 1 - Procedural history

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(The within matter came before the Court on December 9, 2011)

SOLICITOR: Billy Boyd.

THE COURT: Mr. Robinson, is this your motion, sir?

MR. ROBINSON: It is, Your Honor.

THE COURT: All right, I'll be happy to hear you.

MR. ROBINSON: Your Honor, I have had the pleasure of . .

THE COURT: You want to be relieved?

MR. ROBINSON: Yes, sir, I do.

THE COURT: All right, does the State take any position?

SOLICITOR: Well, Your Honor, I think there have to be some parameters.

THE COURT: Oh, I got that.

SOLICITOR: Okay. We're on the trial docket on Monday.

THE COURT: All right.

MR. ROBINSON: I have been in trial in Laurens for the past week on a murder case.

THE COURT: I hear you, I hear you.

What are the -- I understand you are not satisfied with his services. Right?

DEFENDANT: No, I'm not.

THE COURT: Okay, and, Mr. Robinson, what is your

basis for petitioning the Court for relief?

MR. ROBINSON: His failure to cooperate in this case as far as witnesses, potential alibi, things of that nature.

Also, there is a recording that the Solicitor's Office has that has some statements on it -- I don't want to divulge the statements, but they are kind of almost intimidation or whatever of a witness, and I'm concerned about that, about his behavior.

I can't condone that, and I can't represent him if he won't cooperate with me. When I try a case, I try a case to win the case, not to lose the case.

THE COURT: Mr. Boyd, I'll be happy to hear from you, sir.

DEFENDANT: Yes, Your Honor. I think that Mr. Robinson is making excuses due to the fact that me and my family retained Mr. Robinson in February of last year.

Mr. Robinson has not communicated with me. There has been more than ample and sufficient enough evidence to plead my case and represent me, and I feel like Mr. Robinson has not investigated anything that has been presented to him -- my alibis.

I've been denied bail for the twenty-one months I have been incarcerated, and I couldn't build my case like I could.

Furthermore, my family have really investigated, being a job that Mr. Robinson has received moneys to do himself, and I just feel like Mr. Robinson is now bailing out due to the fact that we have -- we filed with U.S. District Court and they gave me -- they gave me a written Habeas Corpus, so I think things are kinda like getting real deep down -- I find like it's kind of a bail out, and this is what I'm feeling.

I have sufficient enough evidence to prove this.

THE COURT: Is this a murder trial?

SOLICITOR: No, Your Honor, and the State wishes to be heard.

THE COURT: What are the changes?

SOLICITOR: Your Honor, if I could hand up a procedural history?

THE COURT: Okay.

SOLICITOR: There is an extensive procedural history Your Honor should be familiar with because you have dealt with several of the motions in this case, as you can see there.

I draw your attention to -- I have provided this to Mr. Robinson as well.

THE COURT: I can see you've highlighted a name on there, or it's bold on there.

SOLICITOR: Yes, Your Honor, it is bold on there,

and Your Honor can see that after he was arrested in March of 2010 that Fletcher Smith began representation, on March 16th, and then soon after receiving discovery from the State as well as a bond hearing at which Your Honor denied the motion for bond, then Mr. Smith was relieved in May of 2010, based on this Defendant's complaints and letters and his -- again, the same type of statements that he's made here today about Mr. Smith.

Your Honor signed that Order on -- I believe it was May third of 2010.

Then Elizabeth Weidle is hired by this Defendant and his family, and she makes a motion for a new bond based on change of circumstances due to his medical issues . . .

THE COURT: Are you reading this?

SOLICITOR: No, I'm summarizing, and I will give you . .

THE COURT: I see exactly what you're talking about. I got it.

SOLICITOR: Just for the record though.

THE COURT: Yeah, I know. I got you, and I'll put this in the record.

SOLICITOR: Okay.

THE COURT: Mr. Smith, his attorney, was relieved, and Ms. Weidle was relieved, his attorney, and Tony, his attorney, was relieved, and Mr. Robinson, his attorney now,

was relieved, and in every instance I basically said, I will relieve you but it is not going to be cause to continue the case.

SOLICITOR: Correct, and Your Honor can see that on January 13th your Order says that would not be a basis for continuance, and so I just want to make sure -- the State is ready to proceed on Monday.

We have all the witnesses under subpoena and have been for two weeks because we were going to try to do it this week but Mr. Robinson was in trial and just finished up in Laurens.

The State is ready to proceed, and if Your Honor is inclined to relieve Mr. Robinson the State would ask that he at least act as stand-by counsel, although I do appreciate the delicate situation that is raised by Rule 1.16 of the Rules of Professional Conduct as well as 1.2, and the State does believe that there may be some fraudulent conduct, the course of which began before Mr. Robinson was hired, and it has continued.

So I think that it is a delicate matter, but for the protection of Mr. Boyd's interests at trial that he have some means to consult with an attorney, and that we should be able to go forward.

His sister has been acting more as counsel than anyone here, and she hasn't been relieved yet.

So basically it's the State's position that we are ready to go forward on Monday, and we want to make sure that Mr. Boyd realizes he will be representing himself and there will not be any more continuances in this matter.

Just one more thing for the record, Your Honor. He himself has filed a pro se motion for a speedy trial but because of his course of conduct and complaints -- and he is satisfied with nobody but his own family representing him in this matter, if you will -- it's the State's position that we've got to get this tried.

I mean, he's complained against everyone and we need to resolve this case.

THE COURT: Yes. Mr. Boyd, are you ready to go to trial on Monday?

DEFENDANT: Well, one thing, and I want to present this as well. I find the State is more so ready now because I filed this motion with U. S. District, and my thing is I've been offered two plea bargains. I've been sitting here for twenty-two months and denied bail, my constitutional right.

I only feel like the State now is pushing because on September 22nd of 2011 I also filed with the -- the aforementioned motion with the U. S. District Court on November 2nd. The case was closed on November 2nd of

2011 -- U. S. District Court submitted a written Habeas Corpus, so I didn't hear anything from Mr. Robinson for periods of three months, nor the State.

Now all of a sudden I'm hearing from the State and hearing from Mr. Robinson, and Mr. Robinson has presented to me what the State, quote, may have on their behalf, but I feel like if the State has been investigating to work against me, I think that Mr. Robinson, who has received money -- I felt like he should have been investigating to defend me, so to speak, as I'm his client, and I just feel like with the system -- I feel like the attorneys or lawyers out there who receive money from you to represent you and they also work against you -- it's like who can I trust, you know.

THE COURT: I understand.

SOLICITOR: Your Honor, he has been on the trial docket since back in May and there were no motions made at that time. The State didn't call the case for trial because of a sudden death in the family of the detective involved.

So it's been on the docket before and we didn't have any of these issues. Now it seems like we have all of these issues but also Mr. Robinson has more information from the State about this other possible course of conduct that the Defendant is attempting to pursue.

So just to bring that to Your Honor's attention, and it is two counts of armed robbery and two counts of kidnapping.

THE COURT: All right. Mr. Boyd, what I'm going to do is order that the case go forward on Monday and that Mr. Robinson be there as stand-by counsel. Okay?

And you can engage him to whatever extent you would find necessary in the trial of that case. You don't have to refer to him at all. You can try it on your own, but I am going to submit into the record this procedural history which includes a recitation of all of the Orders I have signed as Chief Administrative Judge of General Sessions relieving a list of attorneys, and also that the Office of Indigent Defense's services were refused.

Now, I think in looking at this and in listening to it that you have a very difficult time finding an attorney with whom you are satisfied. The Constitution requires an appointment of competent counsel, not that you be appointed the attorney of your choosing or that you have perfect counsel. That has been extended to you several times, but we're to a point now where it's time to go forward.

If we don't go forward to court and you continue to stop it with procedural bases, it will never go forward to Court.

Okay, I understand the problem that you have. I can guarantee when you get to Court next week you will get a fair trial.

I'm sensitive to all of your constitutional rights. The State is and Mr. Robinson is as well. So you may ask Mr. Robinson any questions that you may have and he will -- his presence will be required at that trial.

I wish you good luck, sir.

MR. ROBINSON: Your Honor, I would just ask the Court to order that Mr. Boyd tell me of any alibi witnesses and any witnesses he would like to have . .

THE COURT: Well, what I'm going to do is, Mr. Boyd can contact you today if he chooses and give you those names. I'm not going to order Mr. Boyd to do anything.

MR. ROBINSON: Okay.

THE COURT: If he chooses, he can contact you and give you those names but I don't want him to feel like I am ordering him to do anything he doesn't want to do or to try his case. It's his case, his life.

If he wants to give that to you, he will. If he doesn't, . .

SOLICITOR: Your Honor, the State though is entitled to have those alibi witnesses, as well as an opportunity to review whatever it is he's going to present.

THE COURT: That's an issue for the Trial Judge.

DEFENDANT: Your Honor, can I please add something? I can't communicate with my counsel, so to speak, if he is not communicating with me.

THE COURT: Are you willing to go downstairs and meet with him?

MR. ROBINSON: Yes, sir.

THE COURT: Go down and talk to him. Okay.

DEFENDANT: Thank you.

-----END OF REQUESTED TRANSCRIPT OF RECORD-----

CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for South Carolina Court Administration, do hereby certify that the foregoing Transcript was prepared from the records of Mary DiGirolamo to the best of my ability, having been heard in the Court of General Sessions for Greenville County on December 9, 2011.

FURTHER, I certify that I am neither of kin nor counsel to any party to this proceeding, nor do I have any interest in the case.

May 23, 2013

Harriet P. Bennett

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	2010-GS-23-03487
	)	2010-GS-23-03488
	)	2010-GS-23-03489
	)	2010-GS-23-03490
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
BILLY ROY BOYD,	)	
DEFENDANT.	)	ORIGINAL
	)	

December 12, 13, and 14, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE; and a jury.

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

JENNIFER A.R. TESSITORE, ESQ.
Assistant Solicitor

BILLY ROY BOYD
Pro Se
SCOTT D. ROBINSON, ESQ.
Advisor for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

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PROCEEDINGS

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The COURT: I'll let the Solicitor call the case.

Yes, ma'am, Ms. Tessitore.

MS. TESSITORE: May it please the Court.

Your Honor, this is the case of State v. Billy Roy Boyd. And he is charged with two counts of armed robbery, and two counts of kidnapping. The indictments ares 2010-3489; 3490; 3488, and 3487. The State is prepared to proceed.

Just to give the Court a little bit of background, we had a hearing on Friday before Judge Stilwell. And there was a motion to be relieved by Mr. Robinson. And just to clarify the issue of counsel, he was seeking to be relieved. And I'll let Mr. Robinson explain further, if necessary. But that there were issues regarding lack of cooperation, and that there was possible repugnant fraudulent conduct on behalf of his client. And that he would not meet with him to provide any notice of alibi, or any defenses that he may have.

Judge Stilwell relieved Mr. Robinson, but ordered on Friday, December 9th, that Mr. Robinson act as stand-by

counsel, and respond to any questions that the Defendant may have. But he made it very clear to the Defendant that he would be representing himself, based on the history that Judge Stilwell had, which began -- and I can provide the Court with an updated procedural history. But it began back when Fletcher Smith was first hired on March 16, 2010. And then he was ordered relieved by Judge Stilwell, based on the Defendant's written motion and letter. And that was on May 3rd of 2010.

On May 14th, Elizabeth Wiygul was retained. And there has been a grievance filed against her by the Defendant's sister, apparently. And on July 12th, Ms. Wiygul was relieved. On July 20 -- I'm sorry, July 27th is when she was relieved. The motion was on July 12th. The Defendant refused the Office of Indigent Defense's services back in August when he was advised about those services that would be available to him.

And then Mr. Toney was hired, Ivan Toney, on September 20th of 2010. And he was relieved as counsel on December 15th of 2010, by Judge Stilwell, again, and ordered this Defendant to retain an attorney in 30 days, or his right to an attorney would be deemed waived.

Judge Stilwell then ordered on January 13th of 2011, that it would not be a basis for a continuance if he had no attorney. Then Mr. Robinson was hired on -- I believe

it was February 8th of 2011. Discovery was provided to him. The State had set it for trial back in May of 2011. Due to a death in the family of the investigator, the case was not called. And we have attempted to resolve this matter by way of trial today.

And, as far as the publication of the docket, it was on the docket last week and it rolled all week. We were not reached because Mr. Robinson was in trial. And we stand here today, and the State is prepared to proceed. I just wanted to give the Court a little bit of history. And, if you want, Your Honor, I do have the history, if that would be helpful to the Court.

THE COURT: All right. Thank you.

Mr. Boyd, are you ready for trial, sir?

DEFENDANT BOYD: I am ready for trial, Your Honor. I hope that all my witnesses are here. Because I do have a substantial amount of evidence. And I do have some witnesses.

As the Solicitor -- as she kind of read off everything, and dates, and everything as to why this attorney was eliminated or that attorney was eliminated, I kind of like have a journal and a documentation, the dates of various events that acquired, also.

THE COURT: Well, sir, the ruling has already been made on that. So you're going to represent yourself, as I

understand it. And Judge Stilwell had advised you of the dangers of doing that, and the disadvantages of doing that. And he found that you had waived or forfeited your right to have counsel, as I understand it, and that you're going to proceed without a lawyer.

Mr. Robinson is here as your advisor. He's stand-by counsel to assist you with the basic courtroom mechanics and the rules.

DEFENDANT BOYD: Well, Your Honor, actually, since my family did a thorough investigation, I wanted my sister as a main witness. Because I've been incarcerated the whole 21 months. And I couldn't prepare for my case, because I was denied bail. So I'm doing the best that I can to represent my case, defend myself from within, so to speak.

THE COURT: Right.

DEFENDANT BOYD: So the majority of evidence, and testimony, and everything, my sister really needs to be that witness for me.

THE COURT: Be a witness?

DEFENDANT BOYD: She could really help me in this situation. I don't want to do it totally alone. In fact, she's more aware about everything than this last counsel right here. So I'm very comfortable with her.

THE COURT: And that's common. Family members often have a lot of knowledge about the case, but they aren't --

unless they're licensed attorneys, they can't appear at the counsel table and make arguments. That's just the way it goes. That's what the rules provide. But I understand that. You're, certainly, not the only person that's ever been in that situation. It happens almost every day.

So are you ready to proceed, sir?

Ma'am, what's your name?

THE DEFENDANT'S SISTER: Donna.

THE COURT: This is a courtroom, and there's certain rules. There's decorum. If you cannot control yourself in the courtroom, you need to leave now. Because I'm not going to tolerate any outbursts. And I've noticed the head shaking going on throughout this. And that's not appropriate either. It doesn't help your case or your --

You're the sister?

THE DEFENDANT'S SISTER: Yes, sir.

I apologize. I wasn't aware I was shaking my head, sir.

THE COURT: All right. And there are rules, and they're going to be followed. And if you can't comply, then, please, don't attend the court session. Because I don't want to get in a situation where there's something I have to take care of. And I will take care of it, if need be.

Yes, sir.

DEFENDANT BOYD: Your Honor, I would like to state at this time, no, because I don't even see one of my main witnesses.

THE COURT: Who is the main witness you're referring to?

DEFENDANT BOYD: Paul Silvaggio, the investigator, on my behalf. Also, Your Honor, I'd like to state upon being incarcerated for 21 months, the first 11 months of that incarceration, I was not even indicted.

And, right now, there's been a U.S. District motion filed, and that case was closed with habeas corpus. And I feel like this is kind of like a rush situation, so to speak. And I think everything was coerced to go right along with what's happening right now. So, no, I'm not thoroughly prepared, no.

THE COURT: All right. Do you have any motions or -- issues or any motions that you wish to have heard before we bring the jury panel up, sir?

DEFENDANT BOYD: The motion that I, actually, wanted to -- can I just give a little brief scenario of some of the things that have happened and dates?

THE COURT: Well, I'm interested in making sure that all your motions are heard. So if you have a specific motion, or a specific issue you want me to rule upon, I need to know it so we can get the case underway and have a

jury panel come up, and pick a jury, and, hopefully, begin the case.

(Pause.)

DEFENDANT BOYD: Yes, sir, I do, Your Honor.

THE COURT: Okay. Yes, Mr. Boyd.

DEFENDANT BOYD: I have right here, Your Honor, the motion for prosecutorial misconduct. And I want to address this as Dear Department of Justice, I, Billy Roy Boyd, do hereby file the complaint of violations of my Constitutional rights granted to me by the United States and South Carolina Constitution, violations of state and federal laws, violations of my civil rights as a black citizen of the United States.

And this is a brief timeline of some of the things that have transpired since I've been here.

THE COURT: Okay.

DEFENDANT BOYD: On March the 8th of 2010, I was arrested. I was denied an initial appearance. On April the 1st, 2010, my bond was denied by Judge Stilwell, Robin Stilwell, due to a medical condition. I have full blown AIDS. On 2000 -- June the 4th of 2010, a request for bond was denied again. Judge Stilwell states that his decision is final, and that the matter would not be considered any further.

On 9-12-2010, I was brought before Solicitor Bob

Ariail. Mr. Ariail stated that they needed to resolve this issue right away, and they would only give me a couple of weeks to procure another attorney. He even suggested that I use a state-appointed attorney.

On 9-22-2010, I received an offer to plead guilty to kidnapping and the robbery would be dropped. However, it stated that the guilty plea had to be entered before 1-10-2011. If I did not plead guilty by this date, this case would be placed on the trial calendar for disposition.

On 9-29-2010, a potential witness, Tracy Bryan Shirah, is coerced into making a false statement to Assistant Solicitor Allen Fretwell. On 10-7-2010, I was awakened at 4:00 a.m. by a detention officer stating that I would go to court. I was taken to the Greenville municipal court, placed in a holding cell for four hours. Subsequently, it was determined that I was not on the docket for a hearing. I was told by my attorney, Scott Robinson, that there would be no trial. Hold on, Your Honor. I was then transported back to the detention center. And I was told that I would be going back to court at 3:00 p.m.

I was transported to the Greenville County Courthouse and brought before a female judge and the arresting officer. She asked the whereabouts of my attorney. I

stated that I had not spoken with him. She then asked if I knew the purpose of the meeting. I stated that I did not. Then she stated that it was a preliminary hearing to determine if there is sufficient evidence to move forward with the case. I stated that I did not wish to proceed without my attorney. Once again, she stated that we could, if I wanted to. As I was leaving, she told me to put in for a request for bond.

Later, I discovered that my attorney at that time, Ivan Toney, had not been notified about a preliminary hearing. Furthermore, when he called the Solicitor's Office to inquire, he was told that I was not scheduled for a hearing that day and that she, Jan Crouch, and Donna Bearden knew nothing about it. This was an order to transport on the day on record.

On October the 25th of 2010, after much insistence from my sister, I was admitted to the hospital for oozing blisters from my head to my private areas. Although test results are outstanding, the doctor gave me a diagnosis of herpes zoster, or shingles. I was discharged on October 28. And I was put back into the general population on October the 30th. October the 25th, 2010, my attorney, Ivan Toney, did submit a motion to Judge Robin Stilwell requesting a change of circumstance of hearing.

On November the 11th, I received a response from

Judge Stilwell flat out denying my right to a bond again. I, along with my attorney, expected to, at least, be given a hearing to present my case. From the very outset, Judge Stilwell has taken an exceptional interest in my case.

On January the 13th, 2011, I was brought before Allen Fretwell. He asked me angrily why was I giving them a hard time. He, also, stated he was not supposed to be speaking with me, but he continued to do so. He then took me before a judge, whom I later discovered to be Judge Robin Stilwell. I had never faced him face-to-face, the same judge that denied my bail.

On February the 3rd, 2011, I, without counsel, was brought before the municipal court Judge Hawley and the arresting officer, Detective Lusk. He stated that we needed to go forward with the hearing now, and that there was no need to prolong it. After stating several times that I would not without counsel, he tried to induce me to go forward. Moreover, he commented that the most I'm giving out today is three years.

On February the 17th, 2011, almost a year later, allegedly, I had my first preliminary hearing. As of today's date, I have not heard anything about the results. I was told by my attorney, Scott Robinson, that there would be no trial on May the 22nd, 2011.

In addition, I needed to prepare to meet with the

Solicitor on May the 31st, 2011. It was requested that my sister bring me a suit and dress shoes. No specific time frame was given. Later, I was told that this date was cancelled due to the arresting officer's mother's passing. I did not receive any notification of this meeting from the Court. Also, Attorney Robinson did take discovery evidence and refuses to return a sworn statement by the potential witness Tracy Bryan Shirah, and a letter written to me by the witness' girlfriend.

On June the 8th, 2011, another attempt was made by prosecutors to meet with me. On June the 11th, 2011, my sister met with the attorney to represent a tape-recorded conversation between her and a potential witness. Assistant Solicitor Tessitore was apprised of the tape recording on the same date. She stated she wanted to meet with my sister and hear the tape. Also, Tessitore was scheduled to meet with me the first week of July 2011.

On June the 28th of 2011, my sister submitted a recorded conversation between her and Tracy Bryan Shirah as evidence to my attorney and Assistant Solicitor Tessitore. After being apprised of the tape, we never met or heard from Assistant Solicitor Tessitore again.

This recording took place on July the 20th, 2010. Mr. Shirah, an inmate at the Greenville County Detention Center, spoke with my sister via phone about the robbery

and kidnapping incident. On September the 29th, 2010, Shirah was brought before the Solicitor's Office to make a statement. Based on Mr. Shirah's statement, it is evident that Allen Fretwell never disclosed the tape recorded conversation. Moreover, Allen Fretwell gives a false brief narration of the actual recording, and never submits the actual recording into the evidence.

Also, Assistant Solicitor Allen Fretwell did deliberately and maliciously withhold exculpatory evidence. Moreover, Fretwell allows Mr. Shirah to make a prejudge statement. On July the 11th, 2011, I did make a formal complaint to the Commission on Lawyers Conduct against Assistant Solicitor Allen Fretwell, Jennifer Tessitore, and the State of South Carolina, the Thirteenth Judicial Circuit. However, based on personal experience, I do not place any confidence in the Commission on Lawyers Conduct to conduct an impartial investigation.

On July the 18th, 2011, my sister discovered that I was indicted on February the 15th. However, I've been unlawfully detained without bail since March the 8th, 2010. This information was never discussed with me by my present counsel. On September the 7th, 2011, I did serve the State with a motion for dismissal of indictment pursuant to the Speedy Trial Act of 1974. After paid counsel received to do so, as of date, I have received no

response from the State.

On September the 22nd, 2011, I, also, filed the aforementioned motion with the U.S. District Court. On November 2nd, this case was closed. On November the 2nd, 2011, the U.S. District Court submitted a writ of habeas corpus.

On November the 10th, 2011, I received another plea offer from the State sent by mail from the attorney reducing the armed robbery to strong armed robbery, and dropping the kidnapping. Moreover, it is demanded that I enter a plea by November the 18th, 2011, or the matter will be set for trial on December the 5th, 2011.

On November the 19th, 2011, I was informed by the detention officer that I would be going to trial on December the 5th, 2011. Also, I discovered that I was placed on the docket on November the 18th, 2011.

It is my honest opinion that prosecutors are trying to circumvent the judicial process. I respectfully implore the Department of Justice to investigate this matter. Since being arrested on March the 8th of 2010, Assistant Solicitor Allen Fretwell and Jennifer Tessitore have employed both illegal and improper actions against me in an attempt to secure a conviction, and to cover up their misdeeds.

Unfortunately, my attorney, Scott Robinson, is

playing right along with the Prosecution. He admits that the Prosecutors have absolutely no case. However, he refuses to request that the charges be dismissed. However, there is sufficient evidence showing that my attorney is complacent in this illegal and unethical behavior.

I have recently discovered that the majority of inmates that I have spoken with, black and white, are being denied bail in an effort to get them to plead out. After submitting tape recorded evidence deliberately withheld by prosecutors, he refuses to compel the State to dismiss the charges. After much pressing, he admitted that prosecutors and law enforcement from the onset mishandled this case, never investigated, and they were doing damage control, and trying to invert embarrassment. Meanwhile, I am languishing in jail.

And I would, also, like to state this. This is my first time in civilian clothes in 21 months. Underneath these nice new civilian clothes, I am infested with ringworms. My mental status has been devastated. My health has been devastated. I was diagnosed with full blown AIDS in 2008. I have been on my deathbed more than the law allows with no immune sytem. And I have never been within this system, incarcerated, that is, never. I don't know why I was denied bail. That is my

Constitutional right, even to face my accusers. This is the best I could build of my case.

I may stutter a little bit, but I have been through pure hell. I will never ever forget my experience in this jail. For the four paid attorneys that I obtained, my family has spent over $15,000 to make sure I had representation that would represent me thoroughly. But it's obvious that I was paying money to be represented while it seems like they was receiving money to work against me.

Who can you trust? It seems that people with influence get what they want. I've been in here. And when I couldn't find an attorney, I was pushing for a federal injunction to, at least, get me bail. When I couldn't find that, I went from one attorney to the next one to get someone to fight for my Constitutional rights. This is why I went from attorney to attorney to attorney. And I would have went through 100, if I could.

But I have found that the best person that represented me was my sister, who did a thorough investigation, and who made a full-time job out of it. And Paul Silvaggio, who is not here, he did do a personal investigation himself. When Mr. Robinson was retained, Paul Silvaggio, at the time, was the investigator. So, yes, I would love for him to be here to present his

findings. There's other witnesses. There's places that had video footage of my whereabouts, my dates. I see that my housekeeper is not here, Your Honor.

Your Honor, I'm 44 years old. I have maybe six misdemeanors on my record. I've never been incarcerated at GCDC. My life will never be the same. My life will never be the same. Had someone taken the time to investigate, but I was denied bail. So I couldn't build my case. So here we are today.

THE COURT: All right. Thank you, Mr. Boyd.

And I'm certain that Mr. Robinson will be able to communicate with your sister, and get all the pertinent material information for your defense as we go through the trial.

What is on the tape, Ms. Tessitore, that was referred to?

MS. TESSITORE: The tape that Mr. Boyd referred to, Your Honor?

THE COURT: Yes, with Tracy Shirah. I don't know how to spell that.

MS. TESSITORE: Your Honor, that is a tape -- or, well, a DVD that Mr. Robinson provided to me.

As far as any contact with the Defendant, Your Honor, I have not communicated with Mr. Boyd in any way, shape, or form.

THE COURT: Well, what's on it? What's on the tape?

MS. TESSITORE: Okay. The tape is -- the DVD -- excuse me, the CD from Mr. Robinson contains a conversation that was a recorded conversation, I believe, that his sister made while Mr. Boyd was on the jail phone with his sister. Mr. Shirah was, also, an inmate at the same time that Mr. Boyd was in jail. Mr. Shirah was speaking with the sister, who is -- I believe it was Ms. Ladson, or whichever sister prepared it. In talking to Mr. Shirah, Mr. Boyd put him on the phone. And Mr. Shirah says that he has information that will help this case.

And, essentially, the conversation continues -- and I can -- I have it for the Court, if you want to hear it. He talks about how he has information, because he was dating one of the hair stylists at the beauty salon where this robbery occurred. And Mr. Shirah had been there minutes before this incident took place.

And he, for the first time -- the first time, he tells the sister that he saw a burgundy Cadillac out in the -- well, he didn't say where exactly he saw it, but it was outside. And there was a black male in that vehicle. And he says, This is what I know. It was the night that this happened. And I don't think, you know, that Mr. Boyd did this. And he describes -- he says, I believe if I get

out, I can talk to somebody about this, and it would be a good thing. And, you know, basically, he says these victims didn't know what he looked like. They had, you know, inconsistent descriptions, et cetera. He insists that he can help the Defendant. And his sister states, Yes, I strongly believe in quid pro quo. And he says, Well, I really need to get out of here.

And there's parts of the recording that the Defense has provided that does not contain the full call. And the full call goes on to include information from Mr. Shirah saying, Well, tell Robin at Robin's Bail Bonding that I'll be down there. My wife is going to come down with the paperwork. She's going to sign the paperwork. And, essentially, the bond is paid by, we believe, the Defendant's sister to get Mr. Shirah out of jail so that he could provide this very important information about this mysterious third party that was allegedly in the parking lot.

Mr. Shirah gets out of jail. He never communicates this information to anybody in our office that I know of, to Mr. Fretwell, who had the case before I did, or to Detective Lusk. When he immediately got out, he did not provide any information.

So just to give the Court a little bit of flavor, that's where I think Mr. Robinson has indicated concerns

about some possibly fraudulent conduct in the fact that the sisters provided money for Mr. Shirah to get out of jail to provide testimony, whether it's manufactured or not. There's no other evidence that there was any other car out there that anybody saw, except for what Mr. Shirah has provided.

And Mr. Shirah has a criminal history. There's a bench warrant for him right now for failure to comply with a CDV sentence. So that, hopefully, gives the Court enough information. But I want the Court to know that once this information -- this recording was provided to me after the first trial date. Like I said, we could not call the case. Detective Lusk's family member passed away. It was not his mother. But he was in the funeral and the funeral was the day of trial, so we did not call the case.

But once that was provided to me by Mr. Robinson, then when I heard that, I went back and listened to all of the inmate calls that we had. And that call was contained within the inmate calls. I then immediately sent all of the inmate calls to Mr. Robinson in discovery, and he had received that. So all that information has been provided as far as the discovery goes. We have provided additional supplemental discovery as we have received it, or have gotten knowledge of it.

Mr. -- let's see. Well, that, hopefully, addresses the Court's question.

THE COURT: All right. Thank you.

Mr. Boyd, I'm construing your statements as requesting me to dismiss your indictments for prosecutorial misconduct, and, also, for violations of the speedy trial provision of our law.

As to the prosecutorial misconduct, I find there has been a failure to demonstrate that that occurred. As to the violation of the speedy trial provision, I find that any delay that occurred was not unreasonable. In fact, it was caused by the changing of your counsel. And, in addition, there's no prejudice that's been demonstrated due to any delay.

So I respectfully deny the motions.

All right. Let's go ahead and get the jury panel up here and select a jury. And then we'll have a break for lunch.

Yes, sir.

DEFENDANT BOYD: Yes, sir. I would like to get a continuance on the record, Your Honor.

THE COURT: Okay.

DEFENDANT BOYD: And I would like -- can I add something briefly to what she stated? She stated that from the tape recorded information she had.

THE COURT: Yes.

DEFENDANT BOYD: I have a motion of discovery that stated that the detective over there, that he went and questioned Tracy Brian Shirah, and the things that was discussed, and everything, and the whereabouts in the tapes, you know. It was like a block, so we couldn't use them as testimony. So we have this in the motion of discovery. We have this information, not just based upon what she presented after she heard a fraction of what she received.

THE COURT: All right. So is there some type of statement that would be responsive to --

DEFENDANT BOYD: It's --

THE COURT: Hold on a second, sir.

When I'm speaking, I need to be able to complete my thought, just as you do when you're speaking.

So thank you.

Is there any document by the detective that is responsive to Brady or Rule 5?

MS. TESSITORE: Yes, Your Honor.

The State has provided the statements of Mr. Shirah that were taken. There were two different statements. And those have been provided in discovery to Mr. Robinson.

THE COURT: Okay. So what else are you asking for?

MS. TESSITORE: And just to clarify, Your Honor.

Mr. Shirah was not placed in custody by Detective Lusk. And he has not been -- he has other charges that, apparently, he was incarcerated on in Pickens County.

THE COURT: All right.

DEFENDANT BOYD: Also, I would like to have Brian Shirah subpoenaed so he can come in here, and he can be a witness to some things.

THE COURT: Okay. Well, you can talk to Mr. Robinson about how to do that.

Do you -- as far as your motion for a continuance, I respectfully deny that. I think Judge Stilwell, from my understanding, on Friday decreed there would be no further delays in the case. And I don't see any basis for a continuance for any good cause.

And, as far as any missing witnesses, there's been no complaints with the rules to warrant a continuance.

DEFENDANT BOYD: Okay. Your Honor, can I motion to suppress the lineup?

THE COURT: I don't know anything about the facts of the case.

Was there a lineup?

MS. TESSITORE: Yes, Your Honor.

There's a photo array. And we are prepared to --

THE COURT: We'll do that, sir, after we select a jury. I just thought we'd go ahead and select a jury

while they're down there.

Okay. Bring the jury in.

(WHEREUPON, the jury panel entered the courtroom.)

THE COURT: Are all the jurors present?

THE BAILIFF: Yes, sir.

THE COURT: Thank you, Mr. Frazier.

All right. Ladies and gentlemen, we're about to select a jury in the case of the State v. Billy Roy Boyd.

And, Mr. Boyd, if you'll just stand up so everybody can see you, sir.

Thank you.

You can have a seat, sir.

We're going to attempt to find a jury that can be fair and impartial to both the State and Mr. Boyd. And I'm going to ask you a series of questions. To that end, the first thing I'm going to do is read the indictments in this case. And, before I do that, I want to emphasize and stress to you that these indictments are not evidence of anything. The indictments do not constitute evidence of any type. They are simply allegations. And the sole purpose of an indictment is simply to let a citizen know what he's charged with, and to put him on notice of what the case is concerning -- in terms of alleged crimes.

Mr. Boyd has pled not guilty to the allegations in the indictments, and that puts the burden of proof on the

State of South Carolina to prove him guilty. Any time someone is charged in an indictment in a case, the Defendant is presumed innocent. And by pleading not guilty, the burden of proof is placed on the State. And Mr. Boyd will be presumed innocent throughout this trial, and even into your deliberations. And that presumption of innocence can only be removed if, and only if, you determine, as a jury, unanimously that the State has proven each and every element of the crime beyond a reasonable doubt.

There are four separate charges in these indictments. And you will have to weigh and evaluate the evidence as to each charge separately, and not let your decision on one charge influence your decision on another. Because Mr. Boyd is entitled to your independent, fair, and impartial consideration on each alleged indictment.

Mr. Boyd doesn't have any burden of proof. Nobody charged with a crime ever does. They don't have to prove themselves innocent, or prove themselves not guilty. Instead, it is the State's burden. And, again, Mr. Boyd is presumed innocent.

Now, with that, I'm going to read these allegations. And the first case is 2010-GS-23-3487. And it alleges that Billy Roy Boyd did in Greenville County on or about the 4th day of March, 2010, while armed with a deadly

weapon, or while alleging either by actions or words he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon did take by means of force or intimidation the goods or monies described as U.S. currency and jewelry from the person or presence of Sharon Maurer, M-A-U-R-E-R. This is in violation of Section 16-11-330 of the South Carolina Code of Laws.

The second indictment is in case number 2010-GS-23-3488. It alleges that Billy Roy Boyd did in Greenville County on or about the 4th day of March, 2010, while armed with a deadly weapon or while alleging, either by actions or words he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon did take by means of force or intimidation goods or monies described as U.S. currency and jewelry from the person or presence of Debbie Holcombe. This is in violation of Section 16-11-330 of the South Carolina Code of Laws.

The next and third indictment alleges in case 3489 that Mr. Boyd did in this county on or about March 4th, 2010, unlawfully seize, abduct, confine, inveigle, decoy, or carry away Debbie Holcombe without the authority of

law.

And the last and fourth indictment alleges that Mr. Boyd did in this county on or about March 4th, 2010, unlawfully seize, abduct, confine, inveigle, decoy, or carry away Sharon Maurer without the authority of law.

Now, those are the allegations. And, bear in mind, they are simply that, allegations and not evidence.

JURY QUALIFICATION

THE COURT: So the first question I have, is there anyone related by blood or marriage, or kinned to in any way Billy Roy Boyd, Sharon Maurer, or Debbie Holcombe? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Does anyone have a personal, social, or business acquaintance with any of those individuals? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Does anyone know anything about this case, other than what you've heard here today from me? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: I'm going to read to you a list of people who may testify in this case. They include Sharon Maurer, Tracy Brian Shirah, Emily Stroud, Donna Boyd, Debra Ladson, Debbie Holcombe, C.B. Powell, David Owens, Brendan

Manning, Dar Shaw, Kara Bennick, Brad Lusk, Tim Conroy, Paul Silvaggio, Christina Bailey, Keith Rector, Linda Meyers, Stephanie Neubia, Chris Gary, and Wayman Martin.

Is that all the witnesses?

MS. TESSITORE: Yes, sir.

THE COURT: Okay. Is anyone related by blood or marriage, or kinned in any way to any of these potential witnesses? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Does anyone have any personal, social, or business relationship with any of these potential witnesses? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Okay. I'm going to ask the attorneys -- or the Solicitor to introduce herself, and the people at her table.

Yes, ma'am.

MS. TESSITORE: Thank you, Your Honor.

May it please the Court.

My name is Jennifer Tessitore. And I'm the assistant solicitor here with the Thirteenth Judicial Circuit. This is my assistant, Renee Kelly. She's my legal investigator that works in the office with me. And this is Detective Brad Lusk, who works with the Greenville City Police.

THE COURT: Thank you.

Is anyone related by blood or marriage, or kinned to in any way Ms. Tessitore, or anyone she introduced? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Does anyone have a personal, social, or business relationship with her, or any of the people she introduced? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Has anybody ever been employed by or had a member of their immediate family be employed by the Solicitor's Office, which is the Prosecutor of this circuit, who is Walt Wilkins? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Has anyone ever been employed by or had a member of their immediate family be employed by any law enforcement agency or prosecutor's office, such as a district attorney, solicitor, or Attorney General, United States Attorney? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Okay. And, Mr. Robinson, if you'll introduce yourself, please, sir.

MR. ROBINSON: Good morning.

My name is Scott Robinson. I practice here in Greenville.

THE COURT: Is anyone related by blood or marriage,

or kinned to in any way Mr. Scott Robinson? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Does anyone have any personal, social, or business relationship with him? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: All right. This case involves allegations of an armed robbery and kidnapping. Those are the charges. So I need to ask if anyone here has ever been charged with, arrested for, indicted, or convicted of a violent crime, or had a member of their immediate family be convicted of a violent crime, or has anyone ever been a victim of a violent crime? And if so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: All right, sir. If you'll just come down front. And we'll talk to you up here with the court reporter.

(WHEREUPON, a side bar was held with the Court, Ms. Tessitore, Mr. Robinson, and Juror #32, Orville Eastland.)

JUROR #32, ORVILLE EASTLAND: Your Honor, I, myself --

THE COURT: Okay. I can hear you. You're too loud.

JUROR #32, ORVILLE EASTLAND: Your Honor, I, myself, was not involved. However, my brother was the manager of

a restaurant that was the subject of an armed robbery.

Would that be grounds for me to report it?

THE COURT: Yes, you can report it.

But would it affect your ability to be fair and impartial in this case?

JUROR #32, ORVILLE EASTLAND: I do not believe so.

THE COURT: All right. Thank you.

(WHEREUPON, the side bar was concluded.)

THE COURT: Is there any other voir dire either side requests --

Oh, yes, ma'am, come --

JUROR #3, TERESA ARMSTRONG: Oh, I'm sorry. I wondered if that included family members as a victim?

THE COURT: Immediate family member. I'm talking about --

JUROR #3, TERESA ARMSTRONG: Son?

THE COURT: Son, sibling, or parent.

JUROR #3, TERESA ARMSTRONG: Okay. I have a son who was --

THE COURT: Okay. Come up here.

(WHEREUPON, a side bar was held with the Court, Ms. Tessitore, Mr. Robinson, and Juror #3, Teresa Armstrong, and Juror #82, Geneva Mann.)

THE COURT: She's got to be able to hear what you're

saying.

JUROR #3, TERESA ARMSTRONG: My son was assaulted last year. Actually, it goes -- there's a hearing this week. And he was not living at my home at the time, but it still is a pending case.

THE COURT: All right. Would that affect your ability to be fair and impartial in this case?

JUROR #3, TERESA ARMSTRONG: I don't think so.

THE COURT: Do you believe you can decide this case on the evidence and the law?

JUROR #3, TERESA ARMSTRONG: I believe so.

THE COURT: Is that a "yes"?

JUROR #3, TERESA ARMSTRONG: Yes, sir. I'm sorry.

THE COURT: Thank you.

(WHEREUPON, Juror #3, Teresa Armstrong, was seated.)

THE CLERK: Your Honor, there's one more coming up.

(WHEREUPON, Juror #82, Geneva Mann, came forward.)

THE COURT: Okay. She's just got to hear what you say.

JUROR #82, GENEVA MANN: Okay. I have a brother that him and his son got into a fight. And there's a pending trial in Pickens. My brother is supposed to -- he -- my brother says he didn't have a gun. And his son says he did have a gun. I don't know any other details. But his son was on his property. His son lives with his mother.

He's a teenager.

THE COURT: Tell me your name.

JUROR #82, GENEVA MANN: Huh?

THE COURT: What's your number?

THE CLERK: It's #82, Your Honor.

THE COURT: #82?

JUROR #82, GENEVA MANN: #82.

THE COURT: Would that affect your ability to be fair and impartial in this case, Ms. Mann?

JUROR #82, GENEVA MANN: No, it wouldn't.

THE COURT: You could decide the case on the evidence and the law?

JUROR #82, GENEVA MANN: Uh-huh.

THE COURT: Thank you, ma'am.

(WHEREUPON, Juror #82, Geneva Mann, was seated.)

MS. TESSITORE: I didn't hear. Was it her son that was charged in Pickens County?

THE COURT: Her brother.

MS. TESSITORE: So they are charges in our circuit?

THE COURT: Yes.

Okay. Any further voir dire?

MR. ROBINSON: Your Honor, I wanted to see if you could ask a question as to if any jurors have a close personal acquaintance with law enforcement.

THE COURT: I'm not asking that.

MR. ROBINSON: Thank you.

MS. TESSITORE: Thank you.

(WHEREUPON, the side bar was concluded.)

THE COURT: All right. Is anyone a contributor, whether it's your time or your money, to any organization whose primary purpose is advancement of more aggressive law enforcement or victims' rights? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Does anyone know of any reason why they could not be fair or impartial in this case, or is anyone aware of any bias or prejudice they may have for or against the State, or for or against Mr. Billy Roy Boyd?

All right. If you'll just come forward, sir.

(WHEREUPON, a side bar was held with the Court, Ms. Tessitore, Mr. Robinson, and Juror #52, Robert Guinan, Jr.)

THE COURT: Tell me your name.

JUROR #52, ROBERT GUINAN, JR.: Robert Guinan.

THE COURT: And you're #52?

JUROR #52, ROBERT GUINAN, JR.: I don't know what it is, maybe it's my allergies, but I'm missing about a third of the things you're saying, maybe a quarter of the dialogue.

THE COURT: Okay. Thank you.

MS. TESSITORE: The -- one of the victims did

indicate that she's having trouble hearing you, too.

THE COURT: Okay.

MS. TESSITORE: Thank you.

(WHEREUPON, the side bar was concluded.)

THE COURT: Okay. Any further voir dire requested by the State or the Defense?

MS. TESSITORE: None from the State, Your Honor.

MR. ROBINSON: No, sir, Your Honor.

THE COURT: Okay. We'll select a jury at this time.

JURY SELECTION

THE CLERK: When I call your name, if you would, please, stand in place and wait for further instructions.

Juror #99, Robert Parker.

(WHEREUPON, Robert Parker, a white male, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: What says the Defendant?

MR. ROBINSON: Please seat the juror.

THE CLERK: Mr. Parker, please, bring your things, and come have a seat in the jury box.

Juror #36, George Eskew.

(WHEREUPON, George Eskew, a white male, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: What says the Defendant?

MR. ROBINSON: Please excuse the juror from the trial of this case.

THE CLERK: You may be seated. You've been excused from this case.

Juror #44, Jason Garrett.

(WHEREUPON, Jason Garrett, a white male, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: Thank you.

What says the Defendant?

MR. ROBINSON: Please excuse the juror from the trial of this case.

THE CLERK: All right. You may be seated. You've been excused from this case.

Juror #103, Janice Phillips.

(WHEREUPON, Janice Phillips, a white female, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: What says the Defendant?

MR. ROBINSON: Please seat the juror.

THE CLERK: Ma'am, please, come have a seat in the jury box.

Juror #32, Orville Eastland.

(WHEREUPON, Orville Eastland, a white male, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: What says the Defendant?

MR. ROBINSON: Please excuse the juror from the trial of this case.

THE CLERK: All right. You may be seated. You've been excused from this case.

Juror #65, Chris Ingle.

(WHEREUPON, Chris Ingle, a white male, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: What says the Defendant?

MR. ROBINSON: Please seat the juror.

THE CLERK: Mr. Ingle, please, come have a seat in the jury box.

Juror #141, Samuel Welchel.

(WHEREUPON, Samuel Welchel, a white male, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: What says the Defendant?

MR. ROBINSON: Please excuse the juror from the trial of this case.

THE CLERK: All right. You may be seated. You've been excused from this case.

Juror #146, Ashlee Wagner.

(WHEREUPON, Ashlee Wagner, a white female, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please excuse the juror.

THE CLERK: All right. You may be seated. You've been excused from this case.

Juror #45, Joshua George.

(WHEREUPON, Joshua George, a white male, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: What says the Defendant?

MR. ROBINSON: Please seat the juror.

THE CLERK: Sir, please, come have a seat in the jury box.

Juror #151, Scott Schwarz.

(WHEREUPON, Scott Schwarz, a white male, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: Thank you.

What says the Defendant?

MR. ROBINSON: Please excuse the juror from the trial of this case.

THE CLERK: You may be seated. You've been excused from this case.

Juror #13, Christine Bougher.

(WHEREUPON, Christine Bougher, a white female, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: What says the Defendant?

MR. ROBINSON: Please excuse the juror from the trial of this case.

THE CLERK: All right. You may be seated. You've been excused from this case.

Juror #100, Matthew Patterson.

(WHEREUPON, Matthew Patterson, a white male, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: What says the Defendant?

MR. ROBINSON: Please excuse the juror from the trial of this case.

THE CLERK: All right. Sir, you may be seated.

Juror #96, Jacob Nicholson.

(WHEREUPON, Jacob Nicholson, a white male, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: What says the Defendant?

MR. ROBINSON: Please seat the juror.

THE CLERK: Thank you.

Please bring your things, and have a seat in the jury box.

Juror #87, Dawn McGee.

(WHEREUPON, Dawn McGee, a white female, stood.)
THE CLERK: What says the State?
MS. TESSITORE: Please present the juror.
THE CLERK: What says the Defendant?
MR. ROBINSON: Please excuse the juror from the trial of this case.
THE CLERK: All right. You may be seated. You've been excused from this case.
Juror #76, Myron Ligon.
(WHEREUPON, Myron Ligon, a black male, stood.)
THE CLERK: What says the State?
MS. TESSITORE: One moment, please.
(Pause.)
MS. TESSITORE: Please present the juror.
THE CLERK: Thank you.
What says the Defendant?
MR. ROBINSON: Please seat the juror for the trial of this case.
THE CLERK: Sir, please, come have a seat in the jury box.
Juror #147, Kendra Young.
(WHEREUPON, Kendra Young, a black female, stood.)
THE CLERK: What says the State?
MS. TESSITORE: Please present the juror.
THE CLERK: What says the Defendant?

MR. ROBINSON: Please seat the juror for the trial of this case.

THE CLERK: Ma'am, please, come have a seat in the jury box.

Juror #51, Savonne Green-Dalvina.

(WHEREUPON, Savonne Green-Dalvina, a black female, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please excuse the juror.

THE CLERK: All right. You may be seated, ma'am. You've been excused from this case.

Juror #28, John Cullen.

(WHEREUPON, John Cullen, a white male, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: What says the Defendant?

MR. ROBINSON: Please excuse this juror.

THE CLERK: You may be seated. You've been excused from this case.

THE COURT: All right. And just so I have it, the State has exercised two strikes, and the Defense nine; is that right?

THE CLERK: Yes, sir.

MR. ROBINSON: Yes, sir.

THE CLERK: Juror #18, Lisa Byars.

(WHEREUPON, Lisa Byars, a white female, stood.)
THE CLERK: What says the State?
MS. TESSITORE: Please present the juror.
THE CLERK: What says the Defendant?
MR. ROBINSON: Please seat the juror.
THE CLERK: Ma'am, please, come have a seat in the jury box.
Juror #113, Michael Roth.
(WHEREUPON, Michael Roth, a white male, stood.)
THE CLERK: What says the State?
MS. TESSITORE: Please excuse the juror.
THE CLERK: Sir, you may be seated. You've been excused from this case.
Juror #134, Sherlyn Vaughn.
(WHEREUPON, Sherlyn Vaughn, a white female, stood.)
THE CLERK: What says the State?
MS. TESSITORE: Please present the juror.
THE CLERK: What says the Defendant?
MR. ROBINSON: Please seat the juror.
THE CLERK: Ma'am, please, come have a seat in the jury box.
Juror #9, Samantha Beale.
(WHEREUPON, Samantha Beale, a white female, stood.)
THE CLERK: What says the State?
MS. TESSITORE: Please present the juror.

THE CLERK: What says the Defendant?

MR. ROBINSON: Please seat the juror.

THE CLERK: Ma'am, please, come have a seat in the jury box.

Juror #19, Patrick Byers.

(WHEREUPON, Patrick Byers, a black male, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: What says the Defendant?

MR. ROBINSON: Please seat the juror.

THE CLERK: Sir, please, come have a seat in the jury box.

THE COURT: Let me see the lawyers up here just real quick.

Thank you.

(WHEREUPON, a bench conference was held.)

THE CLERK: Juror #148, Laurie Bonavia.

(WHEREUPON, Laurie Bonavia, a white female, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: Thank you.

What says the Defendant?

MR. ROBINSON: Please seat the juror.

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

THE COURT: We'll have one alternate. The strikes are one and two.

THE CLERK: Juror #97, Darrell Owens.

(WHEREUPON, Darrell Owens, a white male, stood.)

THE CLERK: What says the State?

MS. TESSITORE: Please present the juror.

THE CLERK: Thank you.

What says the Defendant?

MR. ROBINSON: Please seat the juror.

THE CLERK: Sir, please, come have a seat in the jury box.

THE COURT: All right. Any matters or motions related to the selection process, or the composition of the jury from the State?

MS. TESSITORE: None from the State.

THE COURT: From the Defense?

MR. ROBINSON: None from Mr. Boyd, Your Honor.

THE COURT: All right. I find that it complied with all statutory and Constitutional requirements.

And, ladies and gentlemen, you've been selected to be the jury in the case of the State v. Billy Roy Boyd. We're going to have to take up some matters before we can, actually, get the trial underway.

So I'm just going to ask you to be back at 3:00 in the jury room, which Ms. Fryer will show you where that

is. Please don't talk about the case. You haven't heard any evidence yet. And, of course, it would not be appropriate to discuss the case until the end when you've heard all the evidence, and the closing arguments of the attorneys, and the law that applies to the case.

So continue to keep an open mind. And don't do any kind of outside investigation. And we'll see you back at 3:00.

Thank you very much.

(WHEREUPON, the jury was excused from open court at approximately 12:50 p.m.)

THE COURT: All right. Those of you who were not chosen, just be back at -- excuse me. Call back after 6:00. And they'll give you further instructions.

Thank you.

(WHEREUPON, the remaining jury panel members exited the courtroom.

THE COURT: Okay. We'll reconvene at 2:15.

Thank you.

(WHEREUPON, a lunch break was taken.)

(WHEREUPON, State's Exhibit Nos. 39, 40, 41, and 42 were marked for identification only.)

THE COURT: This is a motion to suppress identification, as I understand it. So the State would have the burden.

Go ahead.

MS. TESSITORE: Yes, Your Honor.

We, also, have a very brief Jackson v. Denno hearing.

THE COURT: Okay.

MS. TESSITORE: Do you just want to address both at the same time?

THE COURT: Yes, ma'am.

MS. TESSITORE: The State would call Detective Lusk.

THE CLERK: Sir, please, place your left hand on the Bible and raise your right hand.

WHEREUPON,

BRADLEY LUSK,

after first having been duly sworn, testified as follows:

THE CLERK: Please have a seat.

And state your name for the record.

THE WITNESS: Bradley Lusk.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Detective Lusk, where do you work?

A I work for the Greenville City Police Department.

Q And what do you do there?

A I'm an investigator in violent crimes.

Q And how long have you been an investigator?

A Four years.

Q And before that?

A I was uniform patrol for 17 years.
Q And did you have the -- I guess, first, the opportunity to compare a photo array in this case?
A Yes, ma'am, I did.
Q Okay. And what was your role as far as in this case?
A I was the primary investigator in this case.
Q Okay. And when you prepared that photo array, can you -- who were you meeting with to show the array to?
A I was meeting with Sharon Maurer.
Q Ms. Maurer?
A Maurer.
Q And did you meet with her with the photo array?
A Yes, I did.
Q Okay. And where did you meet with her?
A I met with her at the beauty salon on North Main Street.
Q And when you met with her, where in that shop -- or can you describe where you --
A There's a little kitchenette area with a table and refrigerator in the back room. It's kind of like a break room, I guess.
Q And, in that back room -- or break room, did you -- was there anybody else present with you and Ms. Maurer?
A No. It was just me and her.
Q And was there an area where you could -- well, let me

ask you this. Was there any -- you know, where did you -- did you stand there? Did you sit there? Can you describe how you went about showing her the array?

A Yes. First, I asked her if she had ever looked at a photo array. She vouched she had not. I asked her if she knew what one was. She said she did. I further explained that I had a series of six photos. The person that robbed her may or may not be in one of the photos. Mr. Boyd was positioned in photo #2. And I asked her if she would be willing to look at a photo array. She said she would.

I placed the photo array down on the table. There's a small black table in that room. I placed it face down, and asked her when she was ready to turn the photo array over. When she turned it over, she immediately pointed to #2, and identified that person as the individual who robbed her.

Q And who was that individual?

A That's Billy Roy Boyd.

Q And do you see him in the courtroom here today?

A Yes, I do.

Q Okay. Now, when you say it was a series of photographs -- let me go ahead and show you State's Exhibit No. 1. And take a look at that, please.

A (Witness complied.)

Q Do you recognize that?

A Yes.
Q And what is that?
A It's the photo array I showed to Ms. Maurer.
Q When you showed it to her, did it have any -- can you describe what writing was on there? Was it any of your writing?
A My writing includes the number above each photo, the case number at the top, and the time next to the date at the bottom. At present -- when I showed her the array, it was only the numbers above these photos.
Q And did she have any information regarding his name, or anything about any of those individuals in those photos?
A No, ma'am.
Q Had you shown her any pictures before that?
A No, ma'am.
Q Did -- when you said that there was a series, you're describing them -- I mean, how were they displayed to her?
A I laid it face down on the table.
Q So it was not a series of photographs like one after another?
A No. I had a series of photos on a piece of paper.
Q Okay. So she turned it over?
A She turned it over and pointed to #2.
Q How certain did she appear to be?

A She said she was positive.
Q Did -- and how did she indicate she was positive?
A She initialed above the photograph, circled the photograph, and wrote, This is the person that robbed us -- or #2 is the person that robbed us.
Q Okay. And that's her handwriting?
A Yes.
Q Did you see her put that on the paper?
A I did.
Q And did you influence or suggest to her in any way as far as which photo to pick, or anything about suggesting who was in the lineup, or who she should pick, or anything?
A No, I did not.
Q Did you pressure her in any way? Did you tell her to hurry up and pick one?
A No, I did not.
Q And when you show a photo array, do you, typically, go through the same steps every time?
A Yes, I do.
Q Okay. And is that -- is State's Exhibit No. 1 in the same condition as when you saw it that day and she put her writing on there?
A It is.
Q Okay. And where has it been since?

A It's been in the evidence section of the law enforcement center in property and evidence.

Q All right. And it's in the same condition. Has it been -- I'm sorry. Let's just focus on the date of that picture. Could you tell the Court when that picture was taken?

A When the photo was taken?

Q Of the Defendant. Was that from his arrest?

A Yes. That was from the arrest the day before. He was arrested on Monday, the 8th.

Q So it was a recent photo?

A Yes.

Q And how did you go about selecting the other photos?

A Through a series of photos we're supplied, I guess, that's available to us.

Q And what do you look for when you're trying --

A Similar size, physical characteristics, description, you know, as far as similar physical characteristics of the person in the photo.

Q Okay. And was Ms. Maurer able to give you a description prior to you showing the array to her on the date that you showed it to her on March 9th?

A She was.

Q What was that? I'm sorry.

A Yes.

Q Okay. And what was the description that she gave to you prior to the photo array when you spoke with her Friday, the day after the robbery?
A I didn't speak with Ms. Maurer that Friday. I talked to her that Tuesday.
Q And what was the description that she gave of the suspect?
A A tall black male, 6'2", about 180 pounds, 175. I can't remember exactly. Short uncut beard. That was, basically, the description I was given.
Q Okay. Approximate age?
A Oh, 30, 35, I believe it was.
Q And did Ms. Maurer ever identify anybody else in that array?
A No, ma'am.
Q Did she look at any other arrays, other than that one?
A No, she did not.
Q Now, as far as -- you mentioned the arrest on March 8th of 2010; correct?
A Yes, ma'am.
Q Were you involved in that arrest?
A I was.
Q Okay. Can you describe for the Court the -- regarding any statements that the Defendant may have made?

Describe the circumstances that -- you know, how it came to be that you had the occasion to speak with the Defendant, and where you were, and what happened there.

A I received a call from the manager of First Cash Pawn stating that an individual that was there on that Friday was again there pawning jewelry. I responded to that location. A description was given out by the employee that he was wearing a striped shirt, and he was getting into a gray pickup truck.

As I was driving into the parking lot, he was exiting the business, getting into a gray pickup truck. I pulled in behind him, identified myself, approached him as he was the driver, the only person in the vehicle. The other -- the jewelry that he had just pawned was identified as one of the victim's jewelry. I mean, it's specific in detail as described by the victim.

And, also, the weapon used during the crime was found in the vehicle at the time. Based on these circumstances, he was placed in investigative detention, handcuffed, and put in the back of a patrol car.

Q Okay. Did you Mirandize him?

A I did.

Q And can you recite the rights as you would have -- or did on this particular day?

A Yes. I advised Mr. Boyd that he had the right to

remain silent. Anything he said could and would be used against him in court. He had the right to talk to a lawyer before questioning, and have him there during any questioning.

I, also, advised him that if he didn't have money to pay a lawyer's fee, one could be appointed to represent him without cost. I then asked him, having the rights in mind, if he understood every right I explained to him. He indicated he did understand what I just explained to him.

Q So he was not under arrest at that point in time?

A No. He was not placed under arrest at that time.

Q But he was not free to leave?

A He was under investigative detention.

Q Were you in plain clothes?

A I was.

Q Did you have any indicia that you were law enforcement?

A I had my badge on my belt and my side arm.

Q And what about another officer or investigator?

A There was another investigator that rode with me to the pawnshop.

Q Was he present when you Mirandized the Defendant?

A I don't think he was right beside me, no.

Q And can you describe for the Court -- well, first of all, did he seem to understand his rights?

A He did. He indicated he understood.
Q And how would you describe his manner? Was he impaired in any way?
A No. He did not seem impaired.
Q And how about his speech?
A It was clear.
Q And so you didn't have any concerns about him -- have any concerns about him understanding what you were saying to him?
A No, ma'am.
Q And what questions -- did you ask him questions?
A I did. I asked him where he got the jewelry.
Q And how did he respond?
A He said, I pawn stuff all the time. That's pretty much all he told me, I pawn stuff all the time.
Q Okay.
A And I explained to him that's not what I'm asking. Where did you get this?
Q Did you ask him, specifically, about the gold rings?
A I did. When he kept saying I pawn stuff all the time, I asked him, specifically, I was asking about where -- there was a solitary in white gold, and a sapphire and diamond ring. And I asked him about those two things. And he said he didn't know anything about those two rings.

Q And those were the -- had those two rings been located?
A They were. Shortly thereafter, when we had his name, we were able to run his name through LeadsOnline. It's a pawnshop program. And we found that he had pawned a white gold solitary ring and a sapphire and diamond in yellow gold on that Friday.
Q And that was the day after the robbery?
A That was the day after the robbery, yes, ma'am.
Q So that would have been March the 5th?
A Yes, ma'am.
Q Okay. Did you make any threats, or coerce him in any way to respond in the way he did?
A No, ma'am.
Q And this was during the day?
A It was.
Q Okay. Was he handcuffed?
A He was handcuffed.
Q And where was he in relation to where you were?
A He was seated in the back of a patrol car. And I was standing at the door with the door open.
Q Okay. Did you have an opportunity to just kind of go back to the scene of the robbery? Did you have an opportunity to go to that scene immediately after the robbery?

A No, I did not.
Q When did you go there?
A I went there on -- I believe it was --
Q Was it the next -- do you need your --
A Before or after he was arrested?
Q Oh, I'm sorry. Going back to the robbery that occurred on Thursday evening. You got assigned to the case the next morning?
A I did. I received the case the next morning for investigation. And I did meet with Ms. Holcombe that Friday morning -- or that Friday after -- it was probably late morning, early afternoon.
Q Okay. At the shop?
A At the shop, I did.
Q Okay. And were you able to observe the area in which this -- where the victim had described that he came in, and where this incident occurred?
A I did.
Q And did you observe that the -- was it -- describe the lighting.
A It was well lit. It was bright. I mean, you could -- there were no problems seeing at all.
MS. TESSITORE: Answer any questions Mr. Boyd may have, please.
DEFENDANT BOYD: Yes --

MR. ROBINSON: Stand up.

CROSS-EXAMINATION

BY DEFENDANT BOYD:

Q On the night that the "incident," the robbery took place, it states right here that the victim stated that -- and here's you, I responded to the incident location in regards to an armed robbery in progress. Prior to my arrival, dispatch had advised responding units that the victims were inside the bathroom --

MS. TESSITORE: Your Honor, I'm going to object. I don't know what he's reading from.

DEFENDANT BOYD: This is the initial arrival, and the notes.

MS. TESSITORE: It's a different officer.

DEFENDANT BOYD: This is in the motion of discovery. These are your notes, what you wrote. This is what you wrote.

MS. TESSITORE: Your Honor, can I see what he's referring to?

I think he's referring to Officer Powell --

DEFENDANT BOYD: This is your notes.

MS. TESSITORE: Your Honor, I'm sorry. They are officer -- it's Officer Powell's report that he's referring to. And this is Detective Lusk.

So I think if he has questions pertaining to the

photo array and the statements that he made to this detective, certainly --

DEFENDANT BOYD: Okay.

THE COURT: Wait. Hold on one second. Before we go any further, you're going to let her finish talking, just like she let's you finish.

So are you through?

MS. TESSITORE: Yes, Your Honor.

I've stated my objection.

THE COURT: Okay.

DEFENDANT BOYD: Your Honor, this is very circumstantial, and this is new to me. I'm learning this as I go. I'm not familiar with all this.

THE COURT: I know you aren't. And that's why I don't want you to do something improper. I know you don't want too, either. That's why I'm trying to help you out with that.

So you're wanting to ask this officer questions about what exactly?

DEFENDANT BOYD: Well, this is what I want to do. Since this is the motion of discovery, this is in the discovery. This is the incident report upon arrival. And I'm seeing the description of a person in disguise. And I would kind of like to read that off to the Court, and let everybody hear.

THE COURT: But this is pre-trial. Okay. This is not part of the trial. The jury, obviously, is not in here.

DEFENDANT BOYD: Okay.

THE COURT: So all this is right now, Mr. Boyd, is a determination of whether or not the statement you gave was voluntary, and complied with the Constitutional mandate that you be advised of your rights and that you intelligently and knowingly waived your right to remain silent. So that's the first thing we're trying to do before we start the trial is determine if your statement was voluntary. And the second thing is to determine whether the photo lineup was fair, and not unduly suggestive.

So those are the two issues we've got to decide right now. So I understand what you're talking about. So your questions just need to bear on those two issues right now.

BY DEFENDANT BOYD:

Q Well, let me address when I was coming out of the alleged --

THE COURT: Okay. So these are questions, not statements right now. You can ask him questions about those issues.

DEFENDANT BOYD: Okay.

BY DEFENDANT BOYD:

Q Officer Lusk?

A Yes, sir.

Q On the day of March the 8th, when Mr. Boyd was coming out of the pawnshop and you approached him at his truck, and you said, Tell me where the rest of the stuff is. Make it easy on yourself. Turn your truck off. I proceeded to get out of my truck. You proceeded to reach in my truck. You did not have a search warrant or anything.

You proceeded to handcuff me, and put me in another additional car. Yes, you did take me back to the headquarters and you stated, Would you like to talk? Would you like to talk? And my response was, Hey, you don't have anything on me. Look at my record. You don't have anything on me. And that's stated, also, in the motion of discovery partially. You did state some partialness.

But, anyhow, when I responded to Officer Lusk -- Detective Lusk, you have nothing on me, you then took me to the detention center where you went to a judge and obtained four warrants. This is what you did. And I told you, You have nothing on me. I have no record. You can't put that on me. You said, Well, you do now. And you said, Would you like to talk? And I said, Speak with my

attorney. I was denied bail right then and there upon arrival.

So you said -- most of what you said was inaccurate. That was not how it went from my recollection --

MS. TESSITORE: Your Honor --

BY DEFENDANT BOYD:

Q And, as I see your story -- but, as I say, additional stories, I would like to, also, eventually, respond to --

THE COURT: Hold on. Hold on, Mr. Boyd. You're going to have to ask a question. You're just making statements.

DEFENDANT BOYD: Okay.

THE COURT: You'll have the opportunity to -- at the end of the case to give what is called a closing argument --

DEFENDANT BOYD: Okay.

THE COURT: -- where you can make your argument. But, until then, we have to deal with the evidence.

DEFENDANT BOYD: Okay.

THE COURT: And you have to do that by questions.

DEFENDANT BOYD: Okay.

MR. ROBINSON: Your Honor, may I speak to him for one second?

THE COURT: Sure.

(Pause.)

MR. ROBINSON: Your Honor, may it please the Court. I've explained to him Neil v. Biggers. And that's what he's going to ask questions about.

THE COURT: Okay.

BY DEFENDANT BOYD:

Q You know, it's been 21 months, so I have to go way back. But I remember this, Detective Lusk, that you took my driver's license and my wallet. And is it true that you took my driver's license and my wallet?

A I did get your ID.

Q Yes, you did. And you were gone for sometime. Grant you, Detective Lusk, prior before you arrested me that day -- and, by the way, I read my own rights. There was prior photos of me at the detention center where I once had some misdemeanors.

So if the "victims" gave a description of who the black male was, they should have already recognized my past photos, so to speak. But I find that in the lineup, I didn't face my accusers, or anything. What I saw was in the discovery that you had contacted them as was written in the discovery. And you told them that the person that, quote, was found pawning the merchandise that he was in custody and denied bail.

So for what they didn't know, that was made known

then. Because how could two people, Detective Lusk, with four eyeballs and one say we didn't recognize the man and the other one say he was in disguise? Was it a stick or, Detective Lusk, was it an ax handle? Because you've got so many different weapons in the discovery. Which one was it?

MS. TESSITORE: Your Honor, I'm going to have to object. There's no indication that there was any other weapon than a stick. And that's not relevant to the fact that the witness gave a description, and did not indicate that there was anything concealing his face. But she hasn't testified yet.

So I think he might be jumping the gun. But I'm not hearing the questions, Your Honor. So I'd object to the monologue from the Defendant.

THE COURT: All right. I overrule the objection.

So, if you can, answer the question, sir.

THE WITNESS: Could you ask the question again? What was the question?

BY DEFENDANT BOYD:

Q Well, actually, I asked several.

THE COURT: See, that's, I think, part of the problem. Just ask him one at a time. Because he's getting confused about what they are.

DEFENDANT BOYD: Okay.

BY DEFENDANT BOYD:

Q Detective Lusk, upon arresting me and taking me to the detention center, after I had left headquarters, Detective Lusk, wasn't it true that you took my driver's license? That you took my driver's license; wasn't that true?

A I kept your driver's license with me.

Q Okay. You took those driver's license for an extended period of time. And what I'm saying, Detective Lusk, is that did you not get in touch with the "victims," and tell them this is the man that we have in custody?

A No, I did not.

Q I find something to differ with that in the motion. Detective Lusk, I had prior pictures from prior warrants. Detective Lusk, why didn't the alleged victims identify Mr. Billy Boyd then with the prior pictures? Why --

THE COURT: Okay. That's one question so let him answer it.

THE WITNESS: I used the most recent picture I had available, and that was the day I arrested you.

BY DEFENDANT BOYD:

Q Okay. Detective Lusk?

A Yes, sir.

Q Can you explain what type of person that they saw that night, or did they see anyone that night, or was that

person in disguise, Detective Lusk?
A There was no disguise mentioned. They described --
Q Really?
A They described from 6' to 6'2", 175 to 185 pounds, I believe, 30 to 35-year-old black male.
Q Detective Lusk, wasn't it true, upon being in bond court, that the alleged victims screamed out, We know him. His name is Billy. He was seen at the Salvation Army as a homeless man?
MS. TESSITORE: Your Honor, Detective Lusk was not -- I object. Detective Lusk was not present at the bond hearing, so he can't respond.
THE COURT: He can answer it. That's a valid question.
THE WITNESS: I was not present at the bond hearing.
BY DEFENDANT BOYD:
Q Well, I'm sure that's recorded.
THE COURT: See, now, you're testifying. You just have to ask questions. You'll get a chance to testify later.
DEFENDANT BOYD: Okay.
BY DEFENDANT BOYD:
Q Detective Lusk, did you investigate at the pawnshop to see if Mr. Billy Boyd had ever taken anything stolen there before? Did you do this?

A I did a history of pawn lists with you, yes.
Q Did you find that anything had been stolen -- pawned that was stolen ever?
A No, I did not.
Q No, you didn't. No, you didn't. Yes, Detective Lusk. I want to know how did you go about doing this lineup? How did you go about it?
A We have a -- photos that are available to us. And based on similar descriptions, physical descriptions, and characteristics, other photos were selected and put with your photo in the lineup.
Q Detective Lusk, here's some written statements with you and Mr. Bryan Shirah of the possibility of another person that was in the parking lot that night --
THE COURT: Okay. So that's getting away from the lineup suggestivity and the voluntariness of the statement. Those are the issues we've got to concentrate on right now, sir.
BY DEFENDANT BOYD:
Q Detective Lusk, in the lineup, I find that only Billy Boyd was moved. And, Detective Lusk, did they only identify Billy Boyd because you pointed him out as the one who was found pawning the jewelry?
A No, they did not. They identified you. There were two photo lineups done --

Q So --

THE COURT: Let him finish answering.

THE WITNESS: And the reason for that was so it wouldn't be suggestive. As far as -- I showed two lineups. I showed one to one individual, and one to another. I moved the photos, so there's no chance of saying, hey, pick the guy in #1, or pick the guy in #5, or pick #3.

BY DEFENDANT BOYD:

Q Detective Lusk, would you say that the "alleged victims" were coerced by you?

A Not at all.

Q I -- Detective Lusk, look at this. I see that only Billy Boyd is moved. And I see, Detective Lusk, that there was a period of time that you left with my license, my driver's license. And, Detective Lusk, is it true that you put your own lineup together to secure a conviction?

A I put the lineup together to identify the person that robbed them that night.

Q Detective Lusk, did you get a search warrant to search Mr. Boyd's vehicle upon being arrested?

A No, I did not.

Q Detective Lusk, did you see any other tools in that truck that particular night?

A No, I did not.

Q Detective Lusk, did you not say in this past preliminary hearing that was recorded that there were other tools that you found in that truck? This is on recording at the preliminary hearing. This was recorded.

THE COURT: This is not relevant to the lineup, or the statements. So stick to those areas, as we've already discussed.

BY DEFENDANT BOYD:

Q Detective Lusk, I see major discrepancies as we process this motion of discovery, as we process it. That's all I'm going to say for right now.

MS. TESSITORE: Your Honor, very briefly.

REDIRECT EXAMINATION

BY MS. TESSITORE:

Q Just to clarify. Detective Lusk, you mentioned you had shown a photo array to Ms. Holcombe; is that correct?

A Yeah.

Q Okay. And was that a -- he -- the Defendant has described that his face had been moved. And can you just describe when you met with Debbie Holcombe, Ms. Holcombe, and what the result was?

A I did. Earlier that Tuesday, I met with -- I went to the beauty salon in hopes of meeting with both of them. Ms. Holcombe was the only one working. Ms. Maurer was not

there at that time.

I met with Ms. Holcombe. I presented her with a photo lineup with Mr. Boyd positioned in another position. I believe it was #5. She looked at the lineup as I described. I allowed Ms. Maurer to look at it. And she was like, I'm not sure. I'm not sure.

Q Okay. So she wasn't able to make a positive identification?

A She was not able to make a positive identification.

Q And then when you left, did you indicate that you would be back?

A Yeah, I did. I found out what time Ms. Maurer would be back. I asked her not to discuss what we did, and not to discuss that I would be returning that day.

Q And then, out of caution, you provided an array in a different order?

A I did.

Q And when you did take the arrest of this Defendant -- or take him into custody, rather, at the pawnshop, where did you observe the -- he mentioned that there was some items -- the -- I'm sorry. There was an item in the truck that you took. Can you just tell the Court as far as when you approached him what you saw in plain view?

A Yeah. Laying on the passenger side of the truck seat was a three to four foot i length two by two piece of

wood.

Q And the coloring and the --

A It was --

THE COURT: Well, I mean, what's that got to do with the statement?

MS. TESSITORE: Well, I was just trying to cover the issue.

THE COURT: Well, it's not an issue for this hearing.

MS. TESSITORE: Yes, sir.

No more questions.

Thank you.

Your Honor, the State would call --

THE COURT: Well, do you have any further questions, Mr. Boyd?

RECROSS-EXAMINATION

BY DEFENDANT BOYD:

Q Detective Lusk?

A Yes.

Q Upon arriving to the "incident," did you find any video footage or fingerprints, anything like that?

THE COURT: No, no. That's not part of this. It's not part of the statement, or the lineup.

DEFENDANT BOYD: Your Honor, at this time, I would like to sequester the other witnesses.

THE COURT: Okay.

DEFENDANT BOYD: I would like to sequester them.

THE COURT: Okay. I grant your motion.

DEFENDANT BOYD: Okay.

MS. TESSITORE: Your Honor, obviously, the two victims have the right to be in the courtroom, as well as Detective Lusk.

THE COURT: They do. With the exception of those three, the witnesses will be sequestered pursuant to Rule 615.

MS. TESSITORE: Okay.

THE COURT: Who's your next witness?

MS. TESSITORE: Your Honor, the State would call Sharon Maurer.

THE CLERK: Ma'am, if you'll stop at the end of the bench.

Raise your right hand and place your left hand on the Bible.

WHEREUPON,

SHARON MAURER,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Please be seated.

Please state your full name for the record.

THE WITNESS: Sharon Maurer.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Ms. Maurer, I'm going to take you back to March of 2010. And we're going to talk a little bit about just the photo array. And what I want to do is just very briefly describe where you work.

A Where I work?

Q Yes. Where do you work?

A I work at Northgate Beauty Salon at 922 North Main Street.

Q And what do you do there?

A I'm a hair stylist, and nail technician.

Q And do you have any licenses?

A Yes.

Q What licenses do you have?

A Well, I'm a licensed cosmetologist, which allows me to do skin care, facials, hair, nails. And I've been doing it 30 years.

Q Okay. And would you -- can you describe for the Court what you were doing that evening when you got robbed?

A Debbie and I were taking some things out to the car. I had a small cabinet that I kept pedicure towels in. And I was taking it out, because I replaced it with a larger one. Debbie was helping me carry it out.

We had been at the shop by ourselves for about 10 or 15 minutes after the last person left. We went out to the car, and put it in the front seat of my car, and went back into the salon. And we were closing up.

The front door was already locked. And we were kidding around, and shutting the lights off, and getting ready to go. And --

Q Can you -- I'm sorry. Can you describe for the Court as far as the first time you saw the suspect's face?

A When he walked in the back door.

Q Okay. And, at that back door, is there any lighting around the door?

A Yes.

Q Was that on?

A Yes. It's as bright there as it is in here.

Q And were -- what did you observe when you saw him at the door?

A I observed -- as my statement says, I observed a tall black male. I figured he was about 6'2" to 6'3", because he was taller than me, but not sufficiently taller than I am. I guesstimated around 100 -- between 175, 190 pounds. I figured he was a little heavier than I am. And I'm no light weight. He was wearing a stocking cap that was cocked back a little bit. You could see there was nothing obstructing his face.

Q No disguises?
A Nope. He was wearing a dark windbreaker or hoodie, a zip-up something or another, a pair of sweat pants, and dingy grayish looking shoes. And he had a two by two that's about this long. I know what a two by two is because my husband and I are doing a lot of home improvements.
Q Just to clarify, when you say two by two, what kind of object are you --
A It's a stick of lumber. It's two inches wide by two inches long -- two inches width by two inches depth. And it was this long.
Q And where did he have that?
A In his hand.
Q And what was he doing with that as he came in the door?
A He had it up, and he was moving it.
Q Okay. And how close did he get to you?
A Too close, very close.
Q Approximately -- so give me --
A Within two feet of me.
Q Okay. And then what was your response when you saw him and saw the stick?
A I did not resist him. I backed up.
Q Okay. And where did you back up to?

A He pointed me into the kitchen. And that's where I went. That's where Debbie was.
Q And was anyone else there, other than you and Debbie?
A Nope.
Q And when you went into the kitchen area or break room area, what happened in the break room as far as physically where were you? Where was Debbie? And where was the suspect?
A Okay. The door is here. The back door is here. And he came through the back door. And the door to the kitchen is like this. We came in here. Debbie was back here close to the bathroom door.
Q If you could, just back off the microphone.
A I'm sorry.
Q That's okay. As far as the positioning, how --
A Here's the door. He's standing here in the door. And I'm standing here on the other side of the table. There's a table right there as you come in the door that's up against the wall.
Q How close did he get to you?
A He stayed approximately two to three feet away from me until he pushed us into the bathroom.
Q And when you describe the encounter there in the kitchen, can you describe the lighting in just that room, in the kitchen?

A It's very bright. The kitchen is yellow. And there's a lot of florescent lights all the way through.

Q Okay. And was -- during the time that he was in that room, did -- what were you focused on?

A Not getting hurt.

Q Okay. Did you --

A Watching his face. Because I was determined if I lived through this, I was going to remember every single solitary detail of that man's face.

Q Okay. So what do you remember about the detail of his face?

A He has an oblong face. He has a flared nose. He has full lips. At the time, he had a beard that was cut around like this.

Q And describe the beard.

A He had a moustache that came down like a goatee cut. Once upon a time, it was very crisp and clean. But he was starting to let it grow through here, or he had it shaved. So that's why I said it was unkempt. It wasn't very well maintained.

Q What color was it?

A Black, curly.

Q Had you ever seen him before?

A Never.

Q And, regarding the encounter that you had with him,

how long did the incident, actually, take as far as -- roughly, how much time would you say you had to see him?
A It felt like forever, but it was probably about 15 minutes.
Q And did you speak with the officers when they arrived on the scene?
A Yes.
Q And how did you contact the police?
A I called 911 with Debbie's cell phone.
Q Were you able to give a description on the 911 call?
A Yes.
Q And did you provide that description to the officers on the scene?
A Yes.
Q All right. Focusing on the -- Detective Lusk met with you regarding a photo array?
A He did.
Q Okay. And do you recall where you were when he showed it to you?
A Yes, ma'am. I was in the kitchen at the table, the same table we had been robbed at.
Q Okay. And, when he came in, had you talked to anybody before he arrived --
A No.
Q -- regarding the photo array prior to you getting

there?
A No.
Q And what -- approximately what time did you come to work?
A I had a 1:00 client coming in, so I was there to meet with that 1:00 client. I had no clue there was going to be somebody there that was waiting on me for this.
Q Did Detective Lusk appear at some point?
A Yes.
Q Okay. And when you met with him, what did he say to you?
A He told me that there was a possibility that they had caught the man that had done it. He would like for me to look at a photo array, and see if I saw anybody that looked familiar. And I said I'd be happy to.
Q Okay. Had you seen any pictures before the photo array that Detective Lusk brought to you?
A No.
Q Did you have any information regarding the suspect's name? Obviously, you knew what he looked like, because you saw him. But as far as other identifying information as far as him having any --
A No, no.
Q And I'm showing you what's been marked as State's Exhibit No. 1. Can you look at that? Do you recognize

it?
A Oh, yes.
Q Okay. What is that?
A That's the photo array he showed me.
Q Okay. And does your handwriting appear on this?
A Yes, ma'am.
Q And how did you indicate your selection?
A I circled it.
Q Okay. And how did Detective Lusk present the array to you?
A He said that he was going to show me a photo array. And he put -- he very carefully, so I couldn't see anything, put it down on the table and stepped away. And he said, I want you to look at it and see if there's anybody you recognize. He was a man of very few words. He didn't encourage me one way or the other.
Q Okay. What did you do?
A I took a deep breath. And I flipped the picture over, and I looked at it very carefully. And I noticed that there are some similarities with some of these guys. Some of them have similar eyebrows, some of them have kind of basic similarities, roundness of the --
Q How long did you look at it before you indicated your selection?
A Well, I wanted to make absolutely sure. So I stood

there and looked at it for a couple of minutes.

Q Okay.

A Even though I felt like I knew, I very carefully looked at each individual. Because there's no way in the world I'd want to ever, ever put an innocent person in jail.

Q And the person you selected in that photo array, do you see him in the courtroom?

A Yes, ma'am.

Q And where is he?

A He's right there.

Q Okay. When he was in the shop -- did he, also, speak to you while he was in the break room there?

A Yes, ma'am.

Q Okay. And did you hear his voice?

A Yes, ma'am.

Q And did you hear his voice here today in court?

A Yes, ma'am.

Q Do you recognize that voice?

A Yes, ma'am.

Q And whose voice --

THE COURT: All right. Now Mr. Boyd, we don't need any comments or --

DEFENDANT BOYD: I didn't know you could hear me.

THE COURT: Well, I can hear everything. So you need

to maintain decorum in here, or you're going to forfeit your right to be present.

Do you understand that?

DEFENDANT BOYD: Yes, sir.

BY MS. TESSITORE:

Q Did Detective Lusk ever show you a driver's license --

A Nope.

Q -- picture of the Defendant? Did he ever show you any other photos of anybody prior to that?

A No. This is the only thing I saw until -- well, a week after that he had shown me this. I saw that, and it was a week before I saw anything else.

Q Okay.

A Or heard anything else, for that matter. Because Debbie and I work opposite times of the day. So I didn't know -- you know, we don't even talk. She works at the far end of the salon. So I didn't even know what was going on. Nobody called me or anything.

Q When you indicated your selection, you put your handwriting on there?

A Yes, I did.

Q And what did you put?

A I put #2 is the person who robbed us. And I put an explanation point and signed it with my first name, middle

initial, and last name. And I initialed the photo that I circled. And I printed my name.

Q Is that in the same condition as when you signed it?

A Yes, ma'am.

MS. TESSITORE: Thank you.

Answer any questions that Mr. Boyd may have, please.

CROSS-EXAMINATION

BY DEFENDANT BOYD:

Q Ms. Maurer?

A Maurer.

Q Maurer, whatever. Excuse me.

THE COURT: No, sir. You're going to call her by her correct name.

BY DEFENDANT BOYD:

A Maurer.

Q Maurer?

A Maurer. It's like an hour, but with an M instead of an H.

Q Ms. Maurer, you stated that you was closing up that night. And you stated that the suspect came in and you said, at first, "ragged" beard?

A I did not say ragged beard.

Q Okay. Unkempt beard, and then you stated goatee. Which story is it? Also --

THE COURT: No. That's one question. Let her

answer.

DEFENDANT BOYD: Okay.

THE WITNESS: What I said was that the predominant beard -- moustache was here and here. It had not been trimmed in. So it was not properly kept up. That's what unkempt means. It means it has not properly been -- and this was growing in, and this is very well defined.

BY DEFENDANT BOYD:

Q Ms. Maurer, at bond court, on April the 1st, 2010, you stated that you once saw the accused homeless at the Salvation Army?

A No, I did not.

Q That's on --

A I never laid eyes on you until you walked through court. And I never laid eyes on you after that until I saw you in court.

Q Ms. Maurer, between now and over a period of time, how many times have you spoke with Jennifer Tessitore or Detective Lusk?

A Detective Lusk, I haven't spoken with him since the photo array but maybe once. I don't know. Jennifer --

Q Ms. Maurer --

THE COURT: Wait. You've got to --

THE WITNESS: Excuse me. I've spoken with Jennifer probably three times, maybe four. I don't know. I really

don't keep count of stuff like that. I've got too much other stuff going on.

BY DEFENDANT BOYD:

Q Ms. Maurer, would you say that your testimony has been coerced?

A Absolutely not.

Q Ms. Maurer, were you investigated by Investigator Paul Silvaggio?

A No, sir, I was not. No one has ever contacted me ever, no one from either side.

Q Okay. Ms. Maurer, as I go through the discovery, I find that it was made mention that there were two types of weapons. What type of weapon was it, Ms. Maurer?

A There was no mention of two weapons. My statement that night was a two by two piece of lumber about this long. That is the only thing I saw. That is the only thing I said. I don't know where you're getting your information from, but it's not accurate.

Q Ms. Maurer, if the alleged assailant entered the whatsoever atmosphere that you worked in, if he was dressed in disguise, you said, what, a stocking cap or whatever, and you can give a distinct description of this alleged assailant?

A A stocking cap sits above the eyebrows, dear. A ski mask has been outlawed. He was not wearing -- there was

nothing covering his face.
Q Ms. Maurer --
A Your face.
Q As I look at this discovery, I see that you couldn't recognize the accused. And the other person stated that he was in disguise and I only recognized a beard, and he was a black man?
A That's inaccurate, sir. Because Debbie was standing behind me. Debbie wears hearing aids. She can't hear. And I stayed between her and you. Because I was afraid that you were going to beat the crap out of her because she couldn't hear what was going on.
Q Ms. Maurer --
A Do you recognize these?
Q Ms. Maurer, the only reason that you accused Mr. Boyd is because he was the one who pawned the merchandise.
A Absolutely not.
Q Was he made to fit the description just because he happened to be a black man, and he pawned the merchandise?
A Let me say something. I have a biracial family --
Q I do, too.
A -- I'm not one of these people that thinks all black people look alike. That's horse manure. Not all white people look alike --
THE COURT: Okay. Just a minute.

BY DEFENDANT BOYD:

Q Ms. Maurer --

THE COURT: Wait a minute. I understand this is very emotional for everyone.

THE WITNESS: I'm sorry, Your Honor.

THE COURT: But we're trying to get the trial underway. This is pre-trial. And everybody just needs to take a deep breath, and collect their emotions.

And you ask the questions in a respectful way.

And, ma'am, you answer them in a respectful way.

THE WITNESS: Yes, sir.

THE COURT: Regardless of the circumstances, which are unfortunate, but there's nothing we can do about it.

THE WITNESS: Yes, sir. I apologize if I offended anyone.

MR. ROBINSON: May I have one second?

THE COURT: Sure.

(Pause.)

MS. TESSITORE: Your Honor, very briefly, while they're conferring, the State would ask that since the State's witnesses have been sequestered that if there's any witnesses on the Defense side that they, also, be sequestered.

THE COURT: Okay. I grant the motion.

MS. TESSITORE: So Donna Boyd --

MR. ROBINSON: They're not going to testify at this particular hearing.

MS. TESSITORE: For at the trial.

MR. ROBINSON: Not at this hearing.

MS. TESSITORE: Your Honor, we're talking about the trial, not just this hearing.

THE COURT: Let them finish conferring.

MS. TESSITORE: Yes, sir.

(Pause.)

THE COURT: Go ahead.

BY DEFENDANT BOYD:

Q Ms. Maurer, can you, please, describe the suspect?

A Yes. And, according to my statement, he was about 6'2", 6'3", weighed approximately 175 to 190 pounds, a tall black male.

Q White -- tall white male you said?

A I said a tall black male.

Q Okay. Ms. Maurer, did the suspect state that he was hungry?

A Yes, he did.

Q He did?

A Yes, he did.

Q Okay.

A And Debbie offered to give him food or money. She

said, You don't have to do this to us. But you wouldn't listen to reason.

Q Ms. Maurer, do you know Tracy Shirah?

A Who?

Q Tracy Shirah.

MS. TESSITORE: Your Honor, I'm going to object at this point. It's not relevant to the --

DEFENDANT BOYD: It's very relevant.

MS. TESSITORE: And we're going --

DEFENDANT BOYD: I have testimony. And it's very relevant. He's a witness, also.

THE COURT: You can ask the question.

DEFENDANT BOYD: He's a witness.

BY DEFENDANT BOYD:

Q Can you, please, answer the question?

A That name doesn't -- Tracy?

Q Tracy Shirah, do you know him?

A I don't recognize the name. Maybe -- is it -- does he go by something different?

Q He dated one of the women that worked at the "beauty shop" and --

A Emily? Emily's boyfriend?

Q Yes.

A Bryan?

Q Yes.

A I've met him a couple of times, but I don't know him.
Q Okay.
A He wasn't allowed to come back in the salon after they had a fight in there, I guess. I don't know.
(Pause.)
BY DEFENDANT BOYD:
Q Ms. Maurer, did you ever have a conversation about the incident with Shirah?
A No.
Q Was there ever a picture of Mr. Boyd placed in the shop after him being arrested?
A About a month later, Debbie hung --
Q Ms. Maurer, after the accused, Billy Boyd, was arrested and detained, approximately two days later, his sister came by the shop. If you were very familiar with Mr. Boyd, why didn't you recognize his sister?
A I did.
Q Because they're almost identical in appearance.
A I did. And one of the other stylists in there called the police and asked if you had a sister, because she looked exactly like you. She had been there twice. I wasn't there the first time, so she came back --
Q Ms. Maurer --
THE COURT: Wait. Wait. I don't know if she's finished yet.

BY DEFENDANT BOYD:

Q She --

THE COURT: Are you finished with your answer?

THE WITNESS: Close enough.

THE COURT: Okay. What's your next question?

BY DEFENDANT BOYD:

Q Ms. Maurer, the date was placed in the motion of discovery when she came to the salon and it was approximately two, three days later. But it was not added to the motion of discovery until March the 30th, the end of the month. It's like things were added --

A It wasn't two or three days later. It was, at least, a week afterwards. Because you weren't arrested until the first part of the following week after the robbery, and it was at the end of the week.

Q Ms. Maurer, did you service the alleged -- the accused's sister? Did you service her?

A No, I did not. She came in and asked questions about getting a manicure. And she was going to come back the next morning. I don't work in the mornings, ever.

Q Ms. Maurer, have you ever -- quote, remember feeding or seeing Mr. Boyd at the Salvation Army homeless?

A No, no. And when he came in the back door, he didn't appear homeless. He appeared clean. He appeared like he had not shaven, but he didn't stink like a homeless

person, generally, does. His clothes weren't nasty like a homeless person's, generally, are.

Q Ms. Maurer, did you state in the incident report that he had an Ebonics way of speaking, sort of speaking --

A A what?

Q An Ebonics way of speaking, an ignorant way of speaking, so to speak?

A No.

Q Well, that's in the discovery, too, ma'am.

A Well, I've never heard of anything like that.

Ebonics?

DEFENDANT BOYD: No further questions right now.

THE COURT: All right. You can step down.

Thank you, ma'am.

MS. TESSITORE: Your Honor, at this time, the State would move State's Exhibit No. 1 in for purposes of this hearing regarding the photo array.

THE COURT: Okay. Any objection?

DEFENDANT BOYD: Your Honor, I object based upon my prior argument.

THE COURT: Okay.

DEFENDANT BOYD: I object.

THE COURT: I overrule the objection.

MS. TESSITORE: And regarding the Jackson v. Denno statements that he made, the State would seek to introduce

those statements into evidence in their case in chief.

THE COURT: All right. Any objection or argument at this time, Mr. Boyd?

DEFENDANT BOYD: Your Honor, I object to that as well.

THE COURT: Okay. Well, I find the State has proven beyond a reasonable doubt that the statement was given voluntarily, and as the product of Mr. Boyd's free will, and that he was not coerced in any manner. He was accurately and correctly apprised of his rights pursuant to Miranda, and that he intelligently, knowingly, and voluntarily gave up his Constitutional right to remain silent.

And this was all, again, a situation where his free will was exercised after knowing his options, and the consequences of his choice. And, therefore, I find the State has proven the statement. And it would be admissible and, of course, be up to the jury to determine whether the Defendant did make the statement, and, if so, whether it was voluntary. But for purposes of the Jackson v. Denno, I find that it is admissible at the trial.

As far as the lineup, pursuant to Neil v. Biggers and Manson v. Brathwaite, and subsequent cases, I find there is no due process violation in the manner in which the photo array was assembled or presented to the witness,

Ms. Maurer, and that Mr. Boyd's due process rights were not violated.

The lineup was assembled by the detective based on his investigation. It was assembled randomly in a non-suggestive manner. I find there's no risk of impermissible or improper identification based on the way the array appears. And I'm looking at it now, State's Exhibit No. 1.

Further, I note that the witness, Ms. Maurer, had ample opportunity to observe the features of her assailant. She was in a well-lighted place. She, based on her occupation, obviously, has quite proficient observational skills in regards to faces, and had testified several times that the assailant came within two feet of her. And she was able to observe him for approximately 15 minutes, to her recollection, and up close. And her descriptions were detailed and based on ample opportunity to make such an identification.

So I find that, based on all the circumstances, the lineup, the photo identification is admissible, and not the product of any kind of Unconstitutional suggestive procedure.

All right. Anything else before we bring the jury out to have the opening statements?

MS. TESSITORE: Your Honor, yes, the matter of the

sequestration of the witnesses.

THE COURT: All right. The Defense witnesses will be sequestered based on the State's motion, just as the State's witnesses are to be sequestered.

Anything further?

MS. TESSITORE: Your Honor, we would just have the Court instruct the witnesses that they need to leave the courtroom. I believe it was Ms. Ladson, Debra Ladson, Donna Boyd, Keith Rector, Tracy Shirah, and Linda Meyers.

THE COURT: All right. I don't know who the witnesses are, so y'all are going to have to help me police that.

MS. TESSITORE: Well, Your Honor, I think I recognize two, but I don't know the others. Obviously, Mr. Robinson or Mr. Boyd would have to --

THE COURT: All right. So if your name was on the list that was just presented by the State, then the witnesses will have to leave the courtroom, except for the time they testify.

MS. TESSITORE: Your Honor, prior to beginning, the State would request the Court to -- I think that Mr. Boyd has referred multiple times to a motion for discovery, which is going to confuse the jury. And it's not relevant as far as -- I mean, he's just making this kind of general illusion to this motion for discovery. And all of the

discovery that has been provided, which, obviously, is broken down into different witness statements, different investigator, different officer, physical evidence -- and so I would just -- the State would request that he be instructed and limited in his talking about this motion for discovery so that the jury might be -- that would just lead to confusion.

THE COURT: All right. Well, Mr. Boyd, the improper part of that would be talking about documents when they aren't necessarily in evidence. Okay.

So you can ask questions based on what you've learned through what you got during discovery. But, unless the document itself is admissible, it would be improper to refer to what it says in front of the jury.

Do you understand that?

DEFENDANT BOYD: Yes, sir, Your Honor.

THE COURT: Okay. So do you have any questions of me about that?

DEFENDANT BOYD: Yes, I do, Your Honor.

You know, I, also, ask that the State minimize anything else except that that is factual. As far as me, my credibility, or my circumstance, or evidence is based upon what the motion they say that they have against me, so to speak.

And if I can, Your Honor, I still would like to file

a motion to dismiss due to the fact I was detained here for almost a year without even being indicted, Your Honor. I didn't have a chance to really build my case. I've been building my case from the inside.

And I will say again, I feel, yes, Ms. Maurer was coerced and to that she has said -- because in the actual trial with my witnesses and even people that are familiar with her and the shop's atmosphere, even they can testify of other actual people looking similar or whatever. So I want to use everything, because I'm fighting for my life here. I've never been in this kind of trouble or in this jail, so to speak. I didn't come from a bad homeless background. I came from a decent background. So I'm using whatever strategy it takes to defend myself as the State is presenting their strategy to fight against me, so to speak.

THE COURT: Yes, sir.

And I'm not trying to tell you what strategy you can use. I'm just telling you what kind of statements you can use when you ask these questions. And I've already ruled on those motions that you referred to.

So let's talk a little bit about the ground rules before we get started, because I want to make sure everybody understands.

And, again, I know you don't want to do anything

improper, Mr. Boyd, so I want to make sure you understand since you are representing yourself.

When we bring the jury in, I'll give some opening remarks. And then the State will have the opportunity to give an opening statement. And you'll have the opportunity to give an opening statement, too. And I'm going to require that all statements and questioning be done from the counsel table for both sides.

I'm going to remind everybody that opening statements are supposed to be brief outlines of what you think the evidence is going to show. This is not the opportunity to give a speech, or to testify. This is simply the way to give a snapshot of what the evidence is going to show. So I'm putting a 10-minute time limit on both sides on their opening statements. And they're not to be arguments. They're to be opening statements. And I will interrupt your opening statement if it ventures off into argument, or any kind of improper commentary.

And then we will have the presentation of evidence. And, again, we'll follow somewhat the same procedure we used out here when the jury wasn't present as far as strictly limited to questions and answers, and letting everybody have time to answer the questions, and being respectful to the witnesses.

So once we have all the evidence in that the State

intends to produce, you will then have your opportunity to present your defense, sir, and any witnesses and evidence you wish to. So after all that is completed, assuming the State doesn't have any reply evidence, we would then go into closing arguments. And I would instruct the jury on the law.

So do you have any questions about any procedures or any matters of law before we bring the jury out, Ms. Tessitore?

MS. TESSITORE: Your Honor, only one practical consideration. The first witness I'm going to call, I'm going to need to use the sound system. And I just want to make sure it's going to be up and running.

Do you want me to go ahead and try to do that now, or after the opening statements?

THE COURT: Yes. Why don't you go ahead and get it up.

Can you get it up now?

MS. TESSITORE: Hopefully, yes.

THE COURT: Now, do you have any questions about the procedure?

MS. TESSITORE: Yes. I'm sorry. One question is the -- whether -- you're indicating that I'll have to stand back here when I give my opening statement as well.

THE COURT: Right.

MS. TESSITORE: Okay. And if I do need to approach the witness, do I need to ask Your Honor every time?

THE COURT: Yes.

MS. TESSITORE: Okay. Yes, sir.

THE COURT: All right. Mr. Boyd, do you have any questions about the procedures, or the rules at this time?

DEFENDANT BOYD: No, I don't, Your Honor.

THE COURT: So you completely understand them?

DEFENDANT BOYD: I'm learning.

THE COURT: Well, if you do have a question or you need to confer with Mr. Robinson, just let me know, sir.

DEFENDANT BOYD: Yes, sir.

THE COURT: All right. We'll take about a 10-minute break while we --

Is that going to give you enough time?

MS. TESSITORE: Well, Your Honor, what I have to do is make sure it's up and running. And then I have to take it out, because I have to show it to the witness. So I'll make sure it's ready to go. I'm sorry.

THE COURT: Okay. That's fine.

(WHEREUPON, a break was taken.)

MS. TESSITORE: Your Honor.

THE COURT: Yes, ma'am.

MS. TESSITORE: I think -- there's just -- we've got the technology, and it's up an running.

I just want to bring up one issue very briefly that the Defendant has indicated up to this point that he would -- let me -- the State would move that he be limited from getting into this third-party guilt evidence as far as this guy that Mr. Shirah saw, or claims he saw. And I'm just concerned that if -- you know, if we don't deal with it now that I'm going to have to object in the middle of his opening. And I don't want to do that.

THE COURT: Okay. I don't know the context of it, so somebody is going to have to explain it to me. I don't understand really what Mr. Shirah has to do with it.

MS. TESSITORE: Mr. Shirah is the inmate that was in jail with Mr. Boyd that Mr. Boyd's family bonded out for him coming forward and providing some information. And, in the phone call, he stated that he saw some other -- some black guy in a burgundy vehicle that looked a little bit like Mr. Boyd, but he appeared to be shorter. And he was out there. And that Mr. Shirah saw this minutes before the armed robbery occurred.

There is -- I know the State doesn't consider -- I mean, the Court doesn't consider the strength of the State's case with regard to that issue. But it's the State's position that the information about this mystery person, there's -- all it is is casting a suspicion that there's some guy in a parking lot before this incident

occurs. And the only description is a black male that kind of looked like Mr. Boyd, but that's it.

I mean, there's no other connection whatsoever, other than just casting a mere suspicion that he may have been involved. It doesn't detract from his guilt as far as he was an accomplice. But there's no indication that there was anybody else out there, other than what Mr. Shirah has stated to the Defense.

THE COURT: Okay.

DEFENDANT BOYD: Excuse me, Your Honor. At this time, may it please the Court.

If I may add to that right there that Mr. Shirah, what he has presented to me is very valuable to my case. It's very, very valuable.

THE COURT: Well, I'm sure it is, sir. But is he going to testify?

DEFENDANT BOYD: Yes.

THE COURT: Okay. Well, if he testifies, you can make arguments about what can be concluded from his testimony.

So is he under subpoena, or is he still in custody?

DEFENDANT BOYD: We're in the process of trying to get in touch with him now, Your Honor.

THE COURT: Okay.

MS. TESSITORE: Your Honor, I believe he may be in

the Pickens Detention Center. I haven't confirmed that. And he has an active bench warrant. So I don't know if he's gotten out. But the State will object to the testimony.

THE COURT: On what basis?

MS. TESSITORE: On the grounds that it's not relevant. I mean, it's third-party guilt. He's just saying there's this guy out there. It's just conjecture that he was involved. Nobody describes a vehicle leaving the scene as a burgundy vehicle, or anything like that.

THE COURT: What's he going to testify to, sir?

DEFENDANT BOYD: Your Honor, he's going to testify about some findings that particular night, some other people.

THE COURT: I don't understand what that means. You're going to have to be specific.

DEFENDANT BOYD: Another individual person that looked similar to Mr. Boyd.

THE COURT: Did what?

DEFENDANT BOYD: Pardon me?

THE COURT: Did what?

DEFENDANT BOYD: Did what?

THE COURT: What did that person do?

DEFENDANT BOYD: He's just going to testify that there was someone else that could have possibly been the

alleged and not Mr. Boyd, and the timing and the appearance.

THE COURT: And this is someone he saw?

DEFENDANT BOYD: Even more so than that, Your Honor. He, also, dated someone that worked at the salon. And he's got intimate details of everything that happened, transpired, so to speak. Because his "fiancée," she worked at the salon. So he's going to be very, very valuable to my testimony.

MS. TESSITORE: Your Honor, obviously, it sounds like he's talking about a lot of hearsay, based on what Ms. Hudson may have characterized.

So, I mean, we -- my concern is if we don't deal with it beforehand that it's going to become a -- it's going to confuse the jury. It's not admissible as far as -- I mean, it has no relevance.

THE COURT: Well, I mean, if he said he saw somebody leave with a similar description, I can see how it could be highly relevant.

MS. TESSITORE: If he saw them leave. But all he's going to say, as I understand it, is that when Mr. Shirah left the shop right before the robbery occurred that he saw somebody in the parking lot that was sitting in a car, and it was a black male.

THE COURT: I don't know how -- I'm curious as to how

Mr. Shirah's observations or overhearing other conversations or, apparently, statements made by his ex-girlfriend could be admissible.

Why wouldn't that just be rank hearsay?

DEFENDANT BOYD: Your Honor --

THE COURT: Do you want to talk to Mr. Robinson about that before you answer?

(Pause.)

DEFENDANT BOYD: Your Honor, what Mr. Shirah has to present is very relevant to the case.

THE COURT: Well, I mean, I understand that, but it's still got to be admissible.

DEFENDANT BOYD: Okay. It's not circumstantial. It's conversation and testimony that went on within the beauty shop, the description of what they saw, the description of the weapon. Plus, that he dated one of the women that worked at the salon. And he was there, he said, prior before the incident and after. And he verbally stated what he saw with his eyes, not what he speculated.

THE COURT: Well, they could have had a talking parrot in that beauty salon. And if you brought the parrot in here, it would be hearsay, what the parrot overheard and was repeating.

So what's the difference?

DEFENDANT BOYD: I think it's very much relevant and it could be very, very positive for my case. Because his "fiancée," she even wrote me a thank you card really, really thanking me and everything. And I would like to submit all of that. I have that, also.

MS. TESSITORE: Your Honor, can I just state the cases that support third party -- exclusion of third party guilt, just put it on the record?

As far as State v. Gregory and State v. Rice that the third-party guilt evidence that has no other affect other than to cast a mere suspicion on another or raises a conjectural inference that the crime was committed by another. I mean, I think that what we're -- there's no -- at this point, I mean, there's no other indication that there's any connection between this individual in the parking lot and this Defendant's guilt.

And, based on those cases, you know, there has to be something that would raise an inference as to his innocence, and limited to the facts that are inconsistent with his guilt. And, I mean, based on what I hear, I think that those strict limitations would apply here.

If Mr. Boyd were to call Ms. Stroud -- or Ms. Hudson-Stroud, obviously, she could testify about what she heard the victim say, if there's inconsistent statements. But Mr. Shirah is one step removed.

And so it's the State's position it's all inadmissible based or hearsay, but, also, based on third-party guilt.

DEFENDANT BOYD: Your Honor, I think the Solicitor is trying to minimize my strategy of defense. And, in the testimony that Mr. Shirah has given, it stated that he saw an individual so similar to me, in fact, Your Honor, it was so important that Detective Lusk went and investigated. And I've got a three- or four-page letter of the statement and conversation. It's in depth detail of what this individual looked like as he sat in the car during the time of this alleged robbery.

THE COURT: Who's the letter from?

DEFENDANT BOYD: Pardon me?

It's a statement from Mr. Shirah. And it's like an interview between him and Detective Lusk.

THE COURT: Well, let me see that, please.

(Pause.)

THE COURT: This says it's got five pages. I've only got three, four, and five.

Is one and two the statement of Tracy Bryan Shirah?

MS. TESSITORE: Your Honor, there are five pages, as well as the prior statement from September of 2010. And then there's the -- I don't know if four and five are enclosed here.

THE COURT: I don't have pages one and two of the statement dated November 4th, 2011.

MS. TESSITORE: This is everything. I don't know what -- I don't know what Mr. Boyd did with it -- with the remainder of it.

MR. ROBINSON: Your Honor, this is the rest of it.

THE COURT: Okay.

MR. ROBINSON: I'm just going to pass it up real quick.

THE COURT: So what's the earlier statement?

MS. TESSITORE: Your Honor, there was -- just to give the Court a very little bit of --

THE COURT: Do you have the earlier statement?

MS. TESSITORE: Yes, sir.

THE COURT: Let me just read it.

MS. TESSITORE: That was on September 29 of 2010, when Detective Lusk contacted Mr. Shirah, rather than Mr. Shirah contacting law enforcement --

THE COURT: Okay. Let me just read it.

MS. TESSITORE: Yes, sir.

(Pause.)

THE COURT: What is Mr. Shirah going to say that's not in these statements, Mr. Boyd?

DEFENDANT BOYD: Mr. Shirah, Your Honor, wanted to apologize to me. Upon the first affidavit that he filled

out, he felt coerced. I don't know if there was a deal made or whatever, I really don't.

But I do know that he took a liking to me. And he even came back to see me after being released out of incarceration. And I just think that him and his present -- or ex-girlfriend could be very valuable. Because she even sent some thank you cards to me and my family.

So he just went in real depth about what happened that night to --

THE COURT: When did he go in depth about it?

DEFENDANT BOYD: He went in depth, Your Honor, to a point that after he left the jail that my family tape recorded the entire conversation. And that's some evidence we do have on my behalf. My family taped the entire conversation.

THE COURT: Well, what did he say?

This is the time to tell me --

DEFENDANT BOYD: He --

THE COURT: Hold on. Hold on. Hold on. Let me finish.

This is the time to tell me exactly, concretely what he would say if he were called as a witness on your behalf. I don't want conclusions.

DEFENDANT BOYD: Okay.

THE COURT: I want the facts he's going to tell the jury.

DEFENDANT BOYD: Your Honor, he stated that night he knew for a fact that it wasn't me. Because he had seen somebody in the parking lot that looked like me.

Your Honor, he, also, stated that the -- how can I say? The victims, that they gave three and four different stories, and that they stated it was an ax handle. And one said it was a bat. And they wasn't for sure who it was until Detective Lusk came along and kind of told them who he had in custody. This is why I asked were they coerced.

So I feel like he could be very, very valuable, because he said he was coerced. And I noticed, also, that I saw a printout of his charge. So I don't know what deal was struck. And I just feel like he could be very, very valuable. And, like I said, we do have him on tape recorder as he was giving this information on that night. And it is specific and thorough details of even what his girlfriend said, and what all the women, quote, was talking about in the salon. And he became familiar with me when his girlfriend took a mug shot home of the accused, which was me.

So him being incarcerated, he just came to me one day and said, Did you do it? And we became so close that he

was like, wow, you get more canteen in this jail than anybody. In return for his testimony, my family was even willing to pay his bail just to get that testimony, because that could really, really help my case. That could really help my case. That could be a great alibi for me.

THE COURT: Alibi? How could that be an alibi?

DEFENDANT BOYD: Well, in other words, if someone else was there, that could take the focus off of Billy Boyd, so to speak. And for all the different weapons that they stated was involved, you know. It could just shed light so much. So I feel like very much he could help me, so to speak, his testimony.

THE COURT: All right.

MS. TESSITORE: Your Honor, can I just tell you in a nutshell?

It's the State's belief that Mr. Shirah provided all of this information in order to create an opportunity for him to be able to get out of jail when the Defendant's sisters paid. That's how valuable it is. They paid for his bond to get out so that Mr. Shirah could get out of jail and help Mr. Boyd.

And, perhaps, they all believe Mr. Shirah. But Mr. Shirah has, obviously, stated all sorts of information that's not verified in any way. And, potentially, it's

perjured testimony. So I just want the Court to know that's the State's position in a nutshell.

THE COURT: Well, can somebody tell me what's on this tape?

MS. TESSITORE: Yes, Your Honor.

I have the inmate calls, as well as the call that Mr. Robinson had provided to us, which is a portion of the calls. Unfortunately -- I mean, I could pull one out, Your Honor. But, at this point, I don't know -- you know, as far as keeping the jury waiting.

THE COURT: Well, I mean, I'll worry about that. I want to know what's on the tape.

MS. TESSITORE: Yes, sir.

THE COURT: Can't you just tell me what's on the tape?

MS. TESSITORE: I'm sorry, Your Honor. I thought you wanted to hear it.

My notes from listening to it indicate that on -- when he gets on the phone -- if you could just give me one minute.

(Pause.)

MS. TESSITORE: On July 17th of 2010, Your Honor, the Defendant refers to Mr. Shirah saying that they met in Bible study, and that he approached him and said, I know you. I saw your picture at the beauty salon. And then

in -- on the 17th, later on the 17th, there's another call where Mr. Shirah gets on the phone with Debbie -- I assume it's the Defendant's sister -- and tells her, I need to call my wife and tell my wife, but don't say this to anybody. Call Robin at Robin's Bail Bonding on Monday. And go ahead and fill the paperwork out. Tell her to call Robin's, and tell her my name. And as soon as you get off the phone, tell her what to do. All she needs to do is drop the money off. When I get out, everything is lined up. I know what I'm going to do.

And Debbie says, Well, what's her number?

And Mr. Shirah gives the wife's number, Amanda. Don't tell her grandmother. She lives with her grandmother. Don't tell anybody. Go ahead and call Robin's Bail Bonding. Tell her my name is Tracy Shirah, and tell her what's going on. Okay. And I already talked to her, just remind her.

And then the Defendant says, When all of this is set up, however it's set up, I want her to walk into Caroline's face. I need to see how concrete this is. And they can sit down with a recorder and take care of business.

And then Debbie says, Amen to that.

And then the Defendant states that he will keep her posted on everything.

Then, on the 18th, Debbie says, I'm going to go see you know who. And before Caroline does that, I just need to get him on a recording because once they go, Speaky [phonetic] could say they didn't say that. And then the Defendant says, The only way to get him on the recording is to get him out first thing.

THE COURT: I'm sorry.

MS. TESSITORE: And then it just -- I will get to the --

THE COURT: I thought there was a tape Mr. Boyd was referring to.

MS. TESSITORE: He's talking about --

THE COURT: Is this the same thing?

MS. TESSITORE: Yes.

It's all embedded within the inmate calls --

THE COURT: I'm asking him.

Is that the same thing?

DEFENDANT BOYD: No, sir, Your Honor.

That was the initial conversation, just to get the ball rolling, so to speak. He didn't want to go into detail, because we knew that the conversation --

THE COURT: What tape are you talking about?

DEFENDANT BOYD: We knew that the conversation was being monitored --

THE COURT: What tape are you talking about?

DEFENDANT BOYD: After he walked out of the jail, my sister was in the parking lot. And they taped an extensive conversation. And, a month later, he came to see me. There was another conversation that he and I had that should be on the jail's monitoring. And it was so important that Detective Lusk went and investigated him. So it's very important.

THE COURT: I want to know what it is, if it's so important. I want you to tell me.

DEFENDANT BOYD: She's not in here yet.

THE COURT: You tell me what it is that's so important that he's going to come in --

DEFENDANT BOYD: After he got in the car, I do not know what's on that tape recording. I've been limited, Your Honor. I've been detained.

MS. TESSITORE: And I don't know anything about that tape, Your Honor.

DEFENDANT BOYD: She doesn't.

MS. TESSITORE: But Mr. Shirah is, clearly, an opportunist. And even the sister says she believes in quid pro quo.

So that's more of the conversation than the tape that I thought Mr. Boyd was referring to as far as when Tracy Shirah gets on the phone and says, This is what I will tell you. This is what I know. The night this happened,

it was about 8:00 p.m. We went to the shop. I'm not racist, but hardly ever do black people come in there. When we came out, there was a burgundy Cadillac with a black male sitting in it. I was talking to the Defendant and said, I'm almost 100 percent positive you did do this or didn't do this. It's not clear what he says. There's a guy that looks like Billy that lives at the Salvation Army, and he's walking all the time. It wouldn't surprise me if he did it.

So, I mean, he's just feeding this information to the Defendant and the family. And he gets bonded out. And he never once initiates a conversation with law enforcement, or the Solicitor's Office about any information that he had. And that's why Detective Lusk went back out to say, Why didn't you tell me this? And he just said he didn't think it was important. But it was important enough at the time to get him out of jail.

THE COURT: All right. Based on the extensive discussion we've had about this, and State v. Gregory, I find that the proposed testimony from Mr. Shirah should be excluded to -- pursuant to the third-party guilt doctrine. It's simply casting a mere suspicion on an individual unidentified that was allegedly sitting in a burgundy vehicle outside of the scene of the crime. And that is it. And that is not admissible given the Gregory

doctrine.

And I'm not weighing the strength of the State's case, or doing anything else that the U.S. Supreme Court has said you can't do with third-party guilt. But they did not change the long-standing law, embedded in American juris prudence that you cannot bring up vague, amorphous claims about third parties committing the crime that you're on trial for, unless the evidence is more than casting a mere suspicions on others. And there's no inference from this testimony that would be allowed, based on the law of third-party guilt.

So what that means, Mr. Boyd, is that you cannot make arguments, or refer to, or elude to in any way Mr. Shirah and what his testimony would be.

Do you understand that, sir?

(WHEREUPON, there was no response.)

THE COURT: I'm not asking you if you agree with it. I'm asking you if you understand it.

DEFENDANT BOYD: A little, a little.

THE COURT: So what part do you not understand?

DEFENDANT BOYD: Well, I just feel like he had valuable information.

THE COURT: I know you do.

DEFENDANT BOYD: Of what went on from the inside between his fiancée who worked at the salon.

THE COURT: Well, it may be, but you would have to talk to Mr. Robinson about other ways to elicit that information. And there may be other ways. But I can't give you legal advice, just like I can't give the State legal advice. So you would have to consult with him as your stand-by attorney to determine how you could elicit that evidence.

But I'm talking about Mr. Shirah. And what I'm saying is you're not going to be able to make statements about what he's going to say, or what he would say if he were a witness. Because it's not permissible under the rules.

DEFENDANT BOYD: Will he be able to say it on his own behalf, Your Honor?

THE COURT: You've given me no indication -- I, certainly, will let you proffer his testimony. You can bring him up here. And we'll listen to him outside of the presence of the jury. And, you know, you can proffer his testimony.

But, based on the arguments I've heard, which have been very extensive, which I repeatedly tried to get both sides to be specific about what exactly the evidence was going to be from Mr. Shirah, based on what I've been provided, it simply is not enough to overcome the law that mere suspicion of guilt of a third party is not

admissible.

Anything else before we bring the jury in?

MS. TESSITORE: Nothing from the State, Your Honor.

THE COURT: Mr. Boyd, do you have anything else before we bring the jury in?

DEFENDANT BOYD: No, sir, Your Honor.

THE COURT: Okay. You can bring the jury in.

(WHEREUPON, the jury came into open court at approximately 4:37 p.m.)

INTRODUCTORY REMARKS

THE COURT: All right. Ladies and gentlemen, I apologize for the delay in getting started this afternoon. We were trying to make things run a little smoother once they do get started. But it did take us much longer than anticipated to get underway. So I apologize for that.

And I'm not going to promise you it won't happen again. It is very difficult to predict how long certain things are going to take. But, nevertheless, we appreciate your patience and cooperation.

We're about to start the trial of the State v. Billy Roy Boyd. And --

Do y'all need some time over there to finish up something?

MR. ROBINSON: No. We apologize. We're all set.

THE COURT: All right. And, before we get started, I

want to go over just a few things with you by way of preliminary remarks. The first thing I want to do is introduce some of the people in the courtroom that you have not met yet. I believe you've met the lawyers. And I introduced myself earlier to you. I'm Gary Hill. I'm one of the circuit judges here in Greenville.

And the other important people in the Court system who are here in the courtroom today are, first of all, Hollie Jenkins, who is the court reporter, who is seated below me. And, as you can see, she's furiously typing down there. Circuit court is a court of record. And she takes down everything that is said. And then to her right is Mary Troop, who is with the Clerk's Office. And then to Mary's right is Janine Shamey. She's, also, with the Clerk's Office. And they helped, as you saw, with the jury selection earlier today. And they help with the jury qualification process, and help to try to run things efficiently as we try these cases.

Up here on the bench with me is Lindsey Overby, who is my law clerk. She has graduated from the USC School of Law. And she helps me research matters that arise during trial, and helps me prepare for cases as well. And then the bailiffs in this case are Mozella Fryer, who is to my left, and Mr. Charles Frazier, who is back there in the back. And they're here for your assistance and your

comfort while you're serving on the jury.

All of the people I introduced to you just now, and the lawyers have done this as well, and I, certainly, have done it, we have all taken an oath to do our jobs. And you're going to take an oath, too.

So I'm going to ask the Clerk to administer the oath. And listen to it very carefully, because it's been around a long time. And the words have very specific meaning and insight into your role as a juror. And I'm going to expand upon that once you take the oath.

So, yes, ma'am.

THE CLERK: Please stand and raise your right hand for the oath. The proper response is "I will."

(WHEREUPON, the jury was sworn at approximately 4:44 p.m.)

THE CLERK: Thank you.

Please be seated.

THE COURT: All right. Thank you very much.

As I mentioned to you this morning, in General Sessions Court and Circuit Court, there's always two judges in a given case. The first judge is the judge of the facts, and that's the role that you occupy. And the second judge is the judge of the law, and that's the role that I occupy. And our roles are very distinct. And I'm going to go into some detail about what your role is, and

what your job is.

But, before I do that, I'm going to tell you what my job is, because it's much simpler than your job. As the judge of the law, what I do, primarily, are two things. The first is that I will rule on the admissibility of evidence. If during the course of this trial there's an objection to evidence, I will have to rule upon whether the evidence is admissible under the law. Usually, I can do that right on the spot. Sometimes, we have to take a break so I can do it in a little more relaxed setting. And if it's somewhat complicated, we can go through it a little more efficiently that way.

But, nevertheless, if I uphold the objection, I will say the objection is sustained. And that means the evidence is improper and you can't consider it. If I overrule the objection, that just means it's denied and the evidence is proper and you can consider it.

The second thing I do as the judge of the law is that I'll give you the law that applies to the facts of this case. And I'll give you that instruction at the end of the trial. And you, ladies and gentlemen, have the much more onerous task of being the judges of the facts, and determining what the facts are, and what those facts are that you apply to the law that I give to you.

So how do you determine what the facts are in a case?

You determine what the facts are by weighing and evaluating the evidence you're going to hear during this trial. It's very important for you to understand that evidence consists of two sources. And the first source is sworn witness testimony. I anticipate we will have witnesses who will come in who are sworn. And they will give you things they know about this case, and testimony about matters that are relevant to the case.

The second source of evidence is by way of an exhibit. And I anticipate we will have exhibits in this case. An exhibit is simply a physical, tangible object. It might be a photograph or a map. But you'll know it's an exhibit. And you'll know it's evidence. And you'll know it's something you can use to determine what the facts are, because it will have a sticker on it that says exhibit number so and so. And you'll have it back in the jury room with you at the end of the case.

So keep in mind that those are the only two things you can use to determine what the facts are, sworn witness testimony and exhibits. Nothing else is evidence. And you'll have to confine your decision as to what the facts are to those two sources.

Now, by necessity, you'll have to evaluate the believability of all the evidence. So that means, for every witness who is sworn in and every exhibit that's

admitted, you'll have to determine whether it's worthy of belief, whether the testimony is believable or credible, and whether the exhibit is believable or credible. How do you do that? I'll give you some guidelines you can use in determining the credibility of a witness.

First of all, you can consider -- and these are in no way ranked in order of importance. But you can, certainly, consider whether someone has an interest in the outcome of this case, that is whether they have some bias or prejudice in favor or against someone involved in the case, or some issue involved in the case. You may, also, consider how the witnesses testimony stacks up with the other evidence in the case. You can consider what opportunity the witness had to observe the facts to which he or she is testifying about. You can consider their demeanor on the stand in gauging their credibility. And with some, you can use your common sense. Because that, certainly, did not evaporate when you walked into the courthouse. You can use whatever you use in your day-to-day life to determine whether someone is telling you the truth, or whether something is believable.

Now, ladies and gentlemen, I don't know how many of y'all have served on a jury in a criminal trial. Could you just raise your hands for me if you've done that before?

(WHEREUPON, two jurors raised their hands.)

THE COURT: So we've got a couple of veterans. And some of you may know the following things that I'm going to tell you from your own experience.

First of all, a criminal trial has certain fundamental principles that apply to it. And I've already told you a little bit about those when we were doing the jury selection. The first is that the indictment in this case -- there are four indictments against Mr. Boyd. These indictments are just pieces of paper. They are the ticket, so to speak, that allows the State to come into court and inform a citizen of what he is charged with. And they do not constitute evidence in any way, shape, or form. Remember, the indictment is not a witness. It's not an exhibit. It's simply the formal way the case begins.

And Mr. Boyd has pled not guilty to the indictment. And that put the burden of proof on the State. And Mr. Boyd is presumed innocent like anyone charged with a crime is. And that presumption of innocence may only be removed if and only if you, the jury, unanimously find that the State has proven each and every element of each crime beyond a reasonable doubt.

So you'll have to weigh and evaluate the evidence as to each of the four charges separately and individually,

and determine whether the State has met its burden of proof as to each crime. The indictment does not even create a suspicion of guilt.

Now, a criminal trial has a certain structure to it. And, in just a moment, you're going to hear the opening statement by the Solicitor. And I anticipate that that may be the only thing we get to today is the opening statement. But, nevertheless, in just a few moments, you're going to hear the Solicitor, also, known as the Prosecutor here, give their opening statement, which is simply a brief outline or road map of what they think the evidence is going to show. It's not an argument or any kind of extended statement. It's simply a brief summary of what they think the evidence will show. The State goes first, because they have the burden of proof.

After the State finishes their opening, the Defense, Mr. Boyd, will have the opportunity to give an opening statement as well, if he wishes to. But Mr. Boyd has no burden of proof. And he doesn't have to offer any evidence or explanation whatsoever at any time. And he does not even have to give an opening statement.

So after the opening statement or statements, we'll move into the presentation of evidence where the State will, again, bearing the burden of proof, go first and, again, calling their witnesses and introducing any

exhibits that they are going to attempt to introduce. Mr. Boyd will have the opportunity to confront that evidence. And then after the State has completed its presentation of evidence, Mr. Boyd will have the opportunity, but, again, not the obligation to present any evidence he wishes to, which the State may confront.

Now, after that, the evidence will be closed. And then I'll give you -- or the lawyers -- the State, Ms. Tessitore, the assistant solicitor, will give her closing argument. Mr. Boyd will give his closing argument. And then I will give you the instruction on the law that applies to the facts. And then the case will be in your hands for a decision and a verdict.

Now, until we reach that point, ladies and gentlemen, it's very important that you not discuss this case with anyone, that you not do any kind of outside research, that you not get on the Internet and try to find things out about this case or issues that may come up in this case. Because, again, you must confine your decision to the evidence. And those things would be outside of the record. And it would be improper and not in keeping with your oath to do that.

So don't talk about this case. Keep an open mind. These trials are often like puzzles, and they have to be laid out a piece at a time. So don't jump to any

conclusions. And I know you've already been sitting back there a long time today. But I do appreciate your patience in listening to me.

Now, ladies and gentlemen, Ms. Tessitore is an advocate for the State. And Mr. Boyd is representing himself in this trial. He has Mr. Robinson as his stand-by counsel. But Mr. Boyd is going to be an advocate, obviously, for his position. You and I are not advocates for either side. Our job is to be neutral, and fair, and impartial. And your job is to determine the facts from the evidence, and determine whether the State has met its burden of proof.

So with that, Ms. Tessitore, you may give your opening statement.

OPENING STATEMENTS

MS. TESSITORE: Thank you, Your Honor.

May it please the Court.

Mr. Boyd, Mr. Robinson.

THE COURT: Yes.

MS. TESSITORE: Ladies and gentlemen of the jury, as the Judge said, your role is to be the judges of the facts in this case. And the Judge will ensure that Mr. Boyd has a fair trial. Even though Mr. Boyd has chosen to represent himself, Judge Hill will ensure there is a fair trial.

My job is to bring the evidence to you that will leave you firmly convinced that this Defendant, Billy Boyd, committed the crimes that are charged of two counts of armed robbery and two counts of kidnapping. And that's because there are two victims in this case. There's Sharon Maurer, and there's Debbie Holcombe. And you're going to hear those names a lot. They are the two victims, the two employees of the Northgate Beauty Salon where this incident occurred.

The Judge said you're going to hear a piece at a time. And, in fact, in this case, there is a piece, and another piece, and another piece, and a trail that this Defendant left behind. It all began -- and the evidence will show it began on March 4th, in the evening just as they were closing up the shop. And the employees were in there tidying up, and turning out lights.

And, as they went to leave, this Defendant walked in carrying an almost three-foot piece of lumber, and threatened them, and forced them to go into the break room, which was the first room on the right. And the evidence will show that he struck the stick on the table, that he threatened them. He told them that he was hungry and he needed money, and he wanted it now.

And then you'll hear from the victims as they testify about this encounter. He then told them -- ordered them

to go into the bathroom that was in there, shut the door, and don't come out so he could leave. And the evidence will show that, as he left, the victims then called 911. The police responded. And they were able to provide a description.

Ms. Maurer, whose business is faces, will tell you about what she saw that night, and how she described the suspect, and what details she was able to give about his face, this Defendant's face.

The next day, on Friday, March 5th of 2010, this Defendant was seen, as the evidence will show, at a pawnshop. And he was pawning the jewelry that was taken from the victims. Sharon Maurer had silver and green jewelry. Ms. Holcombe had two gold rings. And he was at the pawnshop the next morning with one set of the gold rings. And then he was at another pawnshop, another piece on the trail.

And Detective Lusk, you're going to hear from him. And he is the detective who became involved in this case the next morning. He was one step behind Mr. Boyd. And he followed the trail. He followed it to the First Cash Pawn Shop. He followed it to Cash America. And then the evidence will show that the Defendant returned to one of the pawnshops he had been at, and was pawning Ms. Maurer's items, which were the silver and green jewelry. So he

kept them in separate sets. He pawned all of those items. And what we're talking about is a four-day period.

Then Ms. Maurer is able to look at a photo array. And you're going to hear about the photo array. And she's going to tell you that she identified this Defendant as the robber. One man, one big stick. And she's going to tell you about her business, and how that made her even more aware of what she was looking at and being able to describe it.

Then, finally, Detective Lusk, the trail ends when this Defendant is at the last stop, the pawnshop, and is arrested. And in his vehicle is the long stick that matches the description that the victims gave. And Sergeant Shaw, you're going to hear from him, the forensic officer. And he'll tell you what the Defendant left behind in that break room when he testifies.

And, at the end of the case, you're going to be -- the State's evidence will leave you firmly convinced of this Defendant's guilt.

Let me just tell you very briefly as far as the roadmap goes. There are two charges, the armed robbery and the kidnapping. And, basically, you need to just have this checklist in your mind as we go through this case. The Judge will give you the law at the end of the case. And as he gives it to you, that is the law.

But I just wanted to give you a very -- there's common misconceptions about what is an armed robbery, and what it requires, and things you see on TV. But there's the legal definition and legal elements that the State has to prove. And that is that armed robbery is the taking of something of value from another person by intimidation or force, using violence or causing fear, and while armed with a deadly weapon.

And that's going to be one of the issues for you to decide, as judges of the facts, was this stick that you will see, was that a deadly weapon? Was it capable of inflicting serious bodily injury or death? It doesn't have to be a knife. It doesn't have to be a gun. It can be a fist. It could be a wine bottle. There's all sorts of ways that an object can be used to inflict bodily injury. And just the mere threat of it is what we're talking about here. Nobody got hurt in this case.

The kidnapping, the elements -- there are many ways to commit kidnapping. And there's no children involved. Kidnapping is anybody. It's seizing or confining. And the Judge will list some of the other ways of committing kidnapping as far as decoy and kidnap, abduct, carry away. There was no carrying away in this case. The State's evidence will show that he used that stick, this Defendant, to open the door. And he told them to go

inside so that he could leave.

So that's -- as far as the kidnapping, the common understanding is, you know, there has to be some duct tape or some type of, you know, lock them in and barricaded them in. It's not that. It's just that depravation of freedom, however slight, that they felt that they couldn't leave. And that's why Ms. Maurer called 911, because she thought that she couldn't leave.

So that's kind of a checklist as far as seizing and confining. And that's what we allege. We're not alleging the whole list, just that they were seized and confined in the break room.

So, at the end of this case -- hopefully, there will be about six witnesses from the State. And we'll keep it as brief as possible. And I just ask you to consider as you go along, was this just a bunch of coincidences that just happened one after another along this trail, or is it a trail of guilt that leads to this Defendant?

Thank you.

THE COURT: Thank you.

Mr. Boyd, you may give your opening statement, if you chose to do so.

DEFENDANT BOYD: Thank you.

My name is Billy. The only thing I can remember 21 months ago is that on March the 5th, I went to the night

drop on March the 5th. That's where I buy my cigarettes. And, as I bought my cigarettes, as I was buying my cigarettes, I looked down next to my truck and I saw a little plastic bag. It appeared to be costume jewelry, or something. It really didn't look real. This was about maybe 9:30, 10:00.

I had to hurry up and get home, because I have a housekeeper. She's going to be one of my witnesses. I got her to try the jewelry on. She said, Mr. Boyd, I think that this is real. I said, I'll tell you what, you watch the house and I'm going to go and get an estimate.

And my sister had once told me about this jewelry store. And the guy, he appraised it, and everything. He said, I'll give you 70 bucks. And, in my mind, I was thinking, hey, this has got to be worth more than that. And he encouraged me to shop around.

And, in shopping around, I went here, I went there. I went here because this is what I do. I've had an affiliation with several different pawnshops for 13 years. And I know that every time I pawn something, or buy something, or sell something, I have to submit my driver's license. Because, on a random basis, they come to see has anything been reported stolen.

So I submitted my driver's license. So had I known

that anything was stolen or taken from a robbery, I don't think I would have used my own driver's license. I think I would have sold it on the streets. I think I'm really guilty of a crime, and that's pawning something that was stolen that came from a crime.

But the day of March the 8th, when I was doing what I do, what I've been doing for 13 years -- and when I'm not collecting things that I find on the side of the road, and restoring furniture, and landscaping, I have a variety of tools in the back of my truck. It just wasn't one particular tool.

Plus, I've lived in my house for seven years. I'm disabled. And I had just received probably $1,000 two days before this incident. So I wasn't hurting for money by no means. And within the last 21 months, I probably just went through $15,000 just in lawyers fees. So I wasn't hungry. I wasn't homeless. I lived quite comfortably.

In fact, I have all types of friends that come over to my house. And they tell me that my house looks like a gallery. And I have multiple pictures of my house where I've collected items, and just collectibles. This is what I do. I collect stuff. And I find stuff to a point where my sister had just bought me a truck. They call me Fred Sanford, the junk man.

I'm 44 now. But I was 43 when this happened. I regret a lot of things in my life, going to the pawnshop that day. And I play it in my mind over, and over, and over, and over. And, yes, there has been a crime. And I feel like I've been very much unjustly violated, I really do. Every day, I think about what has happened. I miss my home. I miss my animals. I miss my landscaping. I miss my truck that my sister bought me.

I'm disabled. And I have been disabled since 1998. I shouldn't be here. I was diagnosed with full blown AIDS in 1998. The body should have about 1,000 T cells. When I got diagnosed, I didn't have nothing but 16 T cells. I've been through more pneumonias than the law allows. One time, I even got down to 122 pounds.

And, my family, they spoil me. They give me, basically, anything I want, because I'm the baby. Before I became diagnosed, I used to do custom service. I couldn't imagine anyone doing anything like this, because I love my sisters. I love my mother. I have all type of friends. In fact, I'm a people person.

And my work record speaks a lot of what I've done in the past. And my criminal record speaks a lot for me, too. There's probably six misdemeanors on my record in my adult life. So, every day, I understand about being a victim and being unjustly violated for the last 21 months.

I can relate.

My family is hurting. I'm hurting. I find strength in God. I realize the only person I stand against is all mighty God when I left him, when I stand against all mighty God. And I ask God to help me. And I ask God to strengthen me. And I look at the pain in my family's life. And they're very supportive, because they've never had to go through this with their baby brother. I say that if it doesn't fit, then acquit. I've been through those pawnshops trading and buying things, secondary things -- I'm on a budget -- for over 13 years. And each one of them can verify that I've never taken anything that was stolen, or from any type of robbery.

I have a housekeeper that knows what I was doing that day in those moments. I love life. I love life. And I did not wait to turn 43 years old to throw my life away, so to speak. But they say what don't kill you makes you stronger. I'm a better man now, because I know now to stay very close to God. Because when you're disobedient, things happen. So that's what I do now.

I will say the State must prove each and every element of their case beyond a reasonable doubt. They can't. At the end of this case, I ask you to render a verdict that speaks the truth. This is what I ask you to do. Look at the circumstances. Look at the credibility.

Look at the fingerprints. Look at the video footage, the stick. There's a billion sticks out there. But that day I went to the pawnshop, I became guilty. That's the only thing that incriminated me was going to the pawnshop, shopping at the pawnshop, and finding things and restoring things.

But, later on, you, the jury, will see pictures of my house. And you will see 90 percent of the things in my house are found. I like to find things, old bottles in the yard, and restore them, pennies, cars. This is what I do these days. So it's kind of like a hobby.

Have a nice evening.

THE COURT: Okay. Thank you, Mr. Boyd.

Let me speak with --

Well, your first witness, how long do you anticipate their testimony to be?

MS. TESSITORE: More than half an hour.

THE COURT: Okay. We're just going to go ahead and break for the evening. And, hopefully, it won't interfere with your obligations tonight.

So just be back in the jury room at 9:00 a.m., and we'll get underway at that time.

Thank you very much.

Have a good evening. And don't talk about the case. And keep an open mind. 9:00 in the morning.

(WHEREUPON, the jury was excused from open court at approximately 5:06 p.m.)

THE COURT: We'll see you in the morning.

Thank you very much.

(WHEREUPON, the proceedings were concluded at approximately 5:07 p.m., to be reconvened on Tuesday, December 13, 2011.)

TUESDAY, DECEMBER 13, 2011

THE COURT: We had a delay in some of the jurors arriving.

And, also, I was advised by Mr. Frazier, one of the bailiffs, yesterday that after we adjourned that Juror --

Is it #19?

THE BAILIFF: #19.

THE COURT: #19, Patrick S. Byers has indicated that he has some connection with the husband of one of the victims, as I understand it. So we're going to bring Mr. Byers out and inquire about that.

So if you'd just bring him out, ma'am.

Thank you, Ms. Fryer.

(WHEREUPON, Juror #19, Patrick S. Byers, entered the courtroom.)

THE COURT: Mr. Byers, good morning, sir.

JUROR #19, PATRICK BYERS: Good morning.

THE COURT: The bailiff indicated yesterday that you had approached him, and stated that you had some connection, I believe, to the husband of the victim.

JUROR #19, PATRICK BYERS: Yes. His name is Daniel -- I can't think of his last name. I used to work with him.

THE COURT: And his wife is who?

JUROR #19, PATRICK BYERS: His wife -- when they said

his wife did hair -- I know I met his wife. I probably met his wife one time. If she walked in here this morning, I probably wouldn't know who she was.

THE COURT: So how do you know the gentleman?

JUROR #19, PATRICK BYERS: We used to work together.

THE COURT: Okay.

JUROR #19, PATRICK BYERS: We worked together.

THE COURT: And is -- how do you describe your relationship with him?

JUROR #19, PATRICK BYERS: Well, we just had a good work relationship, just at work.

THE COURT: Do you keep in contact with him?

JUROR #19, PATRICK BYERS: No.

I haven't seen him in about two years.

THE COURT: Okay. And you don't know if his wife is either Ms. Maurer, or Ms. Holcombe?

JUROR #19, PATRICK BYERS: I don't even know -- I don't know his last name. I know his first name is Daniel.

THE COURT: Has he ever said anything to you about this incident?

JUROR #19, PATRICK BYERS: No.

THE COURT: Okay. And, sir, do you feel like you could still follow your oath in this case, and be fair and impartial, even though you have that connection?

JUROR #19, PATRICK BYERS: Yes.

THE COURT: You could decide the case solely on the evidence and the law?

JUROR #19, PATRICK BYERS: Yes.

THE COURT: Okay. Thank you very much.

JUROR #19, PATRICK BYERS: All right.

THE COURT: Thank you for bringing that to our attention.

(WHEREUPON, Juror #19, Patrick Byers, exited the courtroom.)

THE COURT: Did either the State or the Defense have any further inquiry they wanted me to make of Mr. Byers?

MS. TESSITORE: No, Your Honor, not from the State.

DEFENDANT BOYD: No, sir, Your Honor.

THE COURT: Anything further before we bring the jury out?

MS. TESSITORE: Your Honor, simply, a reminder, I guess, as far as the ground rules. I will have to step forward and have to, obviously, move around the courtroom. And I just want to make sure that --

THE COURT: Okay.

MS. TESSITORE: -- that's not going to draw an objection as far as being able to be moving around the courtroom.

I, also, just ask that the Defense be reminded that

the issue of the third-party guilt, that that has been excluded at this time. And to -- you know, so that I don't have to jump up and object every time.

THE COURT: Well, I've already ruled on that, so.

MS. TESSITORE: Yes, sir.

THE COURT: All right. Bring the jury in.

Thank you.

(WHEREUPON, the jury came into open court at approximately 9:19 a.m.)

THE COURT: Okay. Good morning, ladies and gentlemen. We are ready to begin the presentation of evidence.

So, Ms. Tessitore, you may call your first witness.

MS. TESSITORE: Thank you, Your Honor.

The State calls Ms. Sharon Maurer.

THE CLERK: Ms. Maurer, if you'll pause at the end of the bench.

Place your left hand on the Bible and raise your right hand.

WHEREUPON,

SHARON MAURER,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Please be seated.

Please state your full name for the record.

THE WITNESS: Sharon Maurer.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Good morning, Ms. Maurer.

Can you tell the jury where you're from, and what you do for a living?

A I'm a Greenville native. I'm 51 years old. I am a cosmetologist, a licensed cosmetologist, which translates into being able to do hair, nail, and skin care. I'm very proficient at all three. I get bored easy.

Q How long have you been doing that?

A 30 years.

Q And before you did that, what kind of work did you do?

A I -- in the interim, I've worked two jobs sometimes at once. I worked with Domino's Pizza.

Q And what did do you for Domino's Pizza?

A I was a driver for about three years. And I went into management training. And I was a manager for a year.

Q Okay. And as part of your -- well, let's just start with where do you work right now?

A Northgate Beauty Salon.

Q Okay. And how long have you worked for that salon?

A About eight years.

Q And how would you describe -- taking you back to the relevant time in this case, back in March of 2010, in that time period, what was your typical schedule, if you had one, just as far as when you would usually work, and what kind of hours?

A I worked according to appointments. I've never taken an appointment before 1:00. I've got a life out of there. So I'm in and out according to my clients. I don't hang around. I don't sit well. So, sometimes, I worked seven or eight hours after 1:00. Sometimes, I worked an hour.

Q Okay. And which days would you, typically, work?

A Tuesday through Friday, Saturday in emergencies.

Q Okay. And is that shop that you're talking about, Northgate Beauty Shop, is that in Greenville County?

A Yes, ma'am. It's on North Main Street.

Q Is it, typically, opened on Mondays?

A No.

Q And before -- well, before we get into the -- I'm going to show you some photographs. But just describe to the jury how many people work at this beauty shop, typically?

A There's about eight of us, eight to nine. Because we have part-time.

Q Okay. And who's the owner?

A Debbie Holcombe.

Q And Ms. Holcombe is present in the courtroom here today?
A Yes, ma'am.
Q And how long have you known Debbie?
A As long as I've worked at the salon, eight years.
Q Do you socialize with her?
A Rarely. I don't have much of a social life.
Q Okay. And, as far as the time you've worked there, how long has she been the owner?
A She's been the owner the whole time I was there. I'm not exactly sure how long she's owned the salon.
Q Okay. Can you describe to the jury, generally, where in Greenville County the Northgate Beauty Shop is?
A Yes. It's on North Main Street just past Earle Street. It's in the residential area. There's a tiny little strip shopping center right across the street from the ballpark. And there's a Soda Shop, and a dry cleaner, and a bar.
Q Are those businesses connected?
A Yes. It's all a little tiny dinky strip mall.
Q Okay. And, typically, what type of -- where do the customers come from as far as the clientele?
A Most of the customers are from that residential area. I didn't work in that area, so my customers come from a different part of town predominantly. But most of the

customers there, the large share of them live in that neighborhood, and have for several generations.

Q Okay. So mostly regulars?

A Yes.

Q Okay. And I'm going to --

MS. TESSITORE: May I approach the witness, Your Honor?

THE COURT: Okay.

BY MS. TESSITORE:

Q I'm showing you what's been marked as State's Exhibit Nos. 2, 3, 4, 5, 6, and 7. And I'd ask you to just look at those, each one. And after you're done looking at them, just turn them over. And let me know when you've looked at all of those.

A (Witness complied.)

Q Okay. Have you looked at all of those?

A Yes, ma'am.

Q And do you recognize those?

A Oh, yes, ma'am.

Q And what are those, generally?

A Photos of the salon, and the area that the salon is located in, the little strip mall itself.

Q Okay. And are they fair and accurate --

A Yes, ma'am.

Q -- depictions of the area outside the beauty shop?

A Yes, ma'am.
Q And, looking at State's Exhibit No. 2, what does that show as far as the outside?
A That shows an angular version of the entire strip mall.
Q Let me move this.
A Okay. It shows the street approach and passing.
Q Would you describe that as the front of the business, or the back of the business?
A Oh, this is the front.
Q Okay. And, looking at State's Exhibit No. 3, what does that show?
A That's the very front door of Northgate Beauty Shop, and the area right outside.
Q Is that door -- or is there another door that you can enter the business from?
A Yes, ma'am. There's one directly across in the back.
Q Okay. And I'm showing you State's Exhibit No. 4, what does that show?
A That's our back door.
Q And which door of those two doors that lead into the beauty shop is the more common door for customers and employees to go in and out of?
A Both doors are used pretty regularly, because the parking area is behind the salon. And there are very few

parking spots in the front. However, some of the older folks are let off in the front, so they can use their walkers and stuff in getting in without having to climb a step.

Q Looking at State's Exhibit No. 6, what does that show?

A This is the dry cleaner. This is the back of Northgate Beauty Salon. This is Catherine Christophillis' office next door to us. This is the bar called The Other Side. And this is Northgate Soda Shop.

Q Okay. So those are all the buildings connected?

A Yes, ma'am.

Q And what is it about the beauty shop as far as distinct from the others, as far as the color of the building, and how that compares to the other businesses?

A It has a bright yellow door.

Q And the -- I'm showing you -- in State's Exhibit No. 6, is this the parking area?

A Yes, ma'am.

Q Okay. And is that where the bulk of the parking is?

A Yes, ma'am.

Q So, as far as in the front of the business on -- well, which street is in front of the business?

A That's North Main Street.

Q So if someone were to park in the front of the

business, they'd have to pull out right into the street, or back out into the --

A Pretty much.

Q And there's limited -- well --

A There's about two parking places per building, or per business.

Q Okay. So your business shares that parking in the front with all the other businesses?

A Yes, ma'am.

Q All right. I'm showing you State's Exhibit No. 5, what does that depict?

A That's the side of Northgate Laundry Mat.

Q Okay. And what street -- you said this was Main Street in the front. So what street does the side of the building face?

A Gallivan.

Q That's Gallivan Street. And I'm showing you State's Exhibit No. 7, what does that show?

A This is our back door. And this is the bar. And here at Northgate Soda Shop, they have a little area where they have a picnic area, and a fire pit for smokers. Because there's a ban on smoking inside. So the smokers like to collect outside by the fire pit.

Q Okay. And, obviously, these photos were taken during the daytime?

A Yes, ma'am.
Q So these weren't taken the night of the incident?
A No, ma'am.
Q Okay. But they're fair and accurate representations of the area around the shop on the outside?
A Currently, yes. There used to be a very large smoker grill that sat in between us in the visual range of these tables. You couldn't see the tables because of the smoker grill. It was very large and shaped like a train.
Q Okay. And that was at the Soda Shop?
A Yes.
MS. TESSITORE: At this time, the State would move State's Exhibit Nos. 2 through 7 into evidence.
DEFENDANT BOYD: No objection, Your Honor.
THE COURT: Okay. They are in evidence.
MS. TESSITORE: Thank you, Your Honor.
(WHEREUPON, State's Exhibit Nos. 2, 3, 4, 5, 6, and 7 were admitted into evidence.)
MS. TESSITORE: May I publish those to the jury, Your Honor?
THE COURT: Yes, ma'am.
MS. TESSITORE: Thank you.
BY MS. TESSITORE:
Q Ms. Maurer, I'm going to take you back to Thursday, March 4th, when this incident occurred. What kind of --

how would you describe the -- let's just start with what time did you get there that day? Do you recall?

A Probably around 1:00 or 2:00.

Q And what time did you plan on leaving that night?

A Whenever.

Q What does that mean?

A In my business, your schedule changes minute to minute sometimes. If somebody calls in and wants to come in and get their hair done or their nails done, I'm not going to turn them down.

Q So did you have appointments that day -- I mean, that Thursday, March the 4th?

A Yes, earlier on in the day.

Q And who, typically, closes the shop?

A Whoever is the last one out, whoever finishes last.

Q Okay. So not necessarily the owner, Debbie Holcombe?

A No.

Q Okay. On that particular night, who was closing?

A Debbie and I were the last ones out.

Q Okay. And I'm going to show you --

MS. TESSITORE: One moment, please.

(Pause.)

BY MS. TESSITORE:

Q I'm going to show you State's Exhibit Nos. 8 through 14. And I'll ask you to do the same thing. Just take a

look at them. After you look at them, turn them over. And let me know when you've looked at all of those.

A Okay.

Q And do you recognize those?

A Yes, ma'am.

Q And what are those?

A Those are pictures of the inside of the salon.

Q Are they a fair and accurate depiction of how the salon appeared as far as the --

A Yes, ma'am.

Q -- floor plan, and break room, and the interior of the shop?

A Yes. The only difference is there's -- at that time, there was a bowl kept in the center of this table with stuff like napkins, apples.

Q Okay. We'll talk about the table in just a minute. But as far as these pictures --

A They're accurate.

MS. TESSITORE: At this time, Your Honor, the State would offer State's Exhibit Nos. 8 through 14 into evidence.

THE COURT: Any objection, Mr. Boyd?

DEFENDANT BOYD: No objection.

THE COURT: All right. They're in evidence.

Thank you.

MS. TESSITORE: Thank you.

(WHEREUPON, State's Exhibit Nos. 8, 9, 10, 11, 12, 13, and 14 were admitted into evidence.)

BY MS. TESSITORE:

Q Now, what I'd like you to do is take a look at State's Exhibit No. 8. And what does that show?

A That's an area inside the back. It's called the kitchen, the break room back there.

Q Okay. And which door is that closest to as far as the shop, the back door or the front door?

A The back door.

Q So this is the back section of the shop?

A Yes, ma'am.

Q And State's Exhibit No. 9, what does that show?

A That's the coat rack, and the breaker box, and the refrigerator, and the bathroom door.

Q Okay. And what is, if anything, significant about the breaker box?

A That's how we shut the lights off.

Q The lights off to --

A The front part of the salon. The back of the salon is on independent switches. The front of the salon has a lot of fluorescent bulbs. They're all tied in to one switch at the breaker.

Q And I'm showing you State's Exhibit No. 10. What

does that show?
A That shows the view if you were standing in the bathroom door looking out into the hallway from the back door going up to our work area.
Q Okay. And State's Exhibit No. 11, what does that show?
A That's the table and the wall behind it in the break room, kitchen, whatever.
Q And State's Exhibit No. 12?
A. That shows -- that's a pretty good picture from the door of the kitchen into the contents of it.
Q Okay. And there's a room or some -- there's a door in -- that yellow door there, what does that lead to?
A That's the bathroom door.
Q Okay. And State's Exhibit No. 13, what does that show?
A That's the open floor of the salon.
Q And State's Exhibit No. 14?
A That's the rear exit.
Q And has anything changed as far as the lighting, or the structure in this photo at all in State's Exhibit No. 14?
A No.
Q Okay. Now, what I would like you to do is just tell the jury as far as that evening before you closed up the

shop with Ms. Holcombe, describe for the jury what has -- what happened that evening.

A How far ahead do you want me to go? Immediately before the robbery or --

Q Well, yeah, minutes before the robbery occurred, what were you doing? And describe in just slow motion what happened.

A Okay. One of the former employees came in and trimmed her boyfriend's hair and left. For the next about 15 or 20 minutes, Debbie and I were up front at the desk working on a crossword puzzle. We make a good team on them, but don't do so good by ourselves.

After we finished and were ready to go home, we picked up some stuff and carried it out to my car in the back. We went out the back door. The front door was already locked. Debbie has been there forever. She's worked in that place for 40 years since she got out of school. There's no fear factor there for her. There's never been anything to happen.

So the back door was unlocked. We took the stuff out to my car, put it in my car. We came back in the back door. And I picked up my pocketbook off my station. And I was standing in the kitchen with her turning off the lights. And I heard the storm door at the back open. And then the door -- the heavy door, the wooden door opened.

So I came out of the kitchen and walked forward to see who it was. And that's when Mr. Boyd came in. He approached me swinging a stick, and herded me into the kitchen. I was face-to-face with this man.

Q Did he have anything obscuring his face at all?

A No. He was wearing a stocking cap that was riding about here on his face. Because I could see from the eyebrows down.

Q So there was nothing concealing his face?

A No.

Q And do you recall the -- well, how close did he get to you just in the doorway?

A He was within -- when he first came in, he was within two feet of me. And I backed up, because he was swinging that thing.

Q Okay. When you say "that thing," can you describe what this thing was?

A It is what's called a two by two. If you know anything about construction, it's two inches by two inches, and it was this long. It was gray weathered wood that had been outside for a while. And it had a small knot on it, which just looked like a spot to me.

Q Okay. And so what happened after that initial encounter at the back door there?

A He herded me into the kitchen. And he demanded our

money. I pulled the money that I had out. I don't carry much cash. I pulled the money that I had out and gave it to him. And he turned and demanded money from Debbie. He said, This isn't enough. I'm hungry, bam. I've got bills to pay, bam. I ain't got nobody to help me, bam.

And he kept banging on the wall and on the table. I started pulling stuff out of my purse. See, I don't have any more money. Here, take it all. Take my checkbook. Take my credit cards. Take my debit cards. Take it all.

He said, I don't want no checks. I don't want no credit cards. I want cash, and I want it now.

Q Do you remember anything distinctive about his voice, other than his demanding tone?

DEFENDANT BOYD: Objection, Your Honor.

THE COURT: Okay. What's your objection, Mr. Boyd?

DEFENDANT BOYD: My objection is the victim -- I have something, Your Honor, that I want to take up outside the presence of the jury.

THE COURT: All right. Ladies and gentlemen, I'm just going to ask you to go to the jury room. And don't discuss the case. And continue to keep an open mind.

Thank you.

(WHEREUPON, the jury was excused from open court at approximately 9:42 a.m.)

THE COURT: Okay. Yes, sir Mr. Boyd.

DEFENDANT BOYD: Your Honor, it's an objection due to the voice indication -- identification, that is.

THE COURT: The voice identification?

DEFENDANT BOYD: Yes, sir.

THE COURT: I'm not sure I fully understand.

You're objecting on the basis that the victim identified you as the person talking, is that what you're saying?

DEFENDANT BOYD: Well, Your Honor, in the motion of discovery, there's been several things as far as having an Ebonics tone, so to speak. So, yes, I do have an objection to that.

THE COURT: Well, I don't think she mentioned anything about that in front of the jury, did she?

DEFENDANT BOYD: No, she didn't.

THE COURT: All right. Well, I respectfully overrule your objection.

Anything else?

DEFENDANT BOYD: No, sir.

THE COURT: You can bring the jury back on in.

Thank you.

(WHEREUPON, the jury came into open court at approximately 9:45 a.m.)

THE COURT: Yes, ma'am. You may continue.

MS. TESSITORE: Thank you, Your Honor.

BY MS. TESSITORE:

Q So, Ms. Maurer, we were -- I was asking you about was there anything distinctive about his voice when he spoke, other than the demanding tone?

A The tenor of his voice. He wasn't speaking loudly and clearly like he is now. He was speaking in a lower tone.

Q Do -- when -- after that initial encounter, you said you went into the bathroom -- or the -- excuse me, the break room; is that correct?

A Yes.

Q Okay. So describe for the jury as far as what you could observe and -- how close were you to him?

A I was within two feet of him, maybe a little closer.

Q All right.

A Body wise, probably a little closer. Face wise, within two feet.

Q And describe what you observed as far as just his physical appearance.

A I observed his face closely, very closely. I burned it into my brain. Because if I lived to get out of there, I wanted to make sure that I knew what this person looked like.

Q Have you been robbed before by anybody else?

A Yes, ma'am.

Q And so you've been a victim of a prior robbery. Did -- in your -- have you received any training regarding --

A When I was at Domino's Pizza, when I entered the management training program or, basically, a manager -- it's an assistant manager, I was required to take three days of intensive training in Atlanta.

So I left my family and went down there for three days. For three days, they drilled into us the basics of how to run a store for about three hours. The rest of it was spent on how to survive a robbery, how to identify people, which I already knew from my cosmetology training. I'm, also, a make-up artist. I do make-up for photography, so I have to know the features.

Q So you say you were up close to him. What did you observe -- you already mentioned the hat -- as far as his facial characteristics?

A His head was oblong, rounded rather than angular. Like these two gentlemen right here have angular faces. This gentleman back here, it's more squared. He has softer features, but it's more squared. This young lady right here has a nice soft, rounded face profile --

Q Okay. What about --

A His was oblong. He had very prominent eyebrows. He had a sharp nose with flared nostrils. He had full lips.

Q What about facial hair?
A His beard at one time had been very nice. It -- he had a moustache.
Q Had you seen him before this?
A I've never seen him.
Q Okay. So when you say it had been kept very nice, just describe what you observed about his -- the facial hair on his face that night.
A Most of the beard came here, but he had been letting it grow in, or he just hadn't shaved. So it was darkening through here. You could see where it was starting to grow in. It was not kept up. It was unkempt.
Q Okay. What about his -- was there anything distinctive about his face, as far as like tattoos or anything, any markings that --
A No.
Q -- were unique?
A No.
Q Now, let's focus on his clothing. What was he wearing?
A He was wearing a dark windbreaker or zip-up type jacket. He was wearing green fleece pants or sweat pants. He was wearing dingy-looking tennis shoes, grayish or white. I don't know. Clothes can be changed, so I didn't really pay a whole lot of attention. I paid attention to

the body and the face.
Q Okay. Speaking of the body, what about his height?
A He was slightly taller than me.
Q How tall are you, Ms. Maurer?
A 5'8".
Q And so what about his weight? Can you give me an approximate of his weight?
A He was wearing clothes that did not contour with his body. So assuming that from the broadness of the shoulders and from the set of the clothing profile or outline, I assumed he didn't weigh a whole lot more than I did.
Q So did you have an approximate weight you gave when you were describing him to the police?
A Yeah. I gave 175 to 195 pounds.
Q So that was an approximate?
A Yeah. In the statement, I think I had figured out that 175 would have been a much smaller frame. And I believe I said between 180 and 190.
Q Okay. Did he have anything on his hand as far as -- could you see his hands?
A I saw his hands, but I didn't notice anything on them. I was too busy looking at his face.
Q Was he wearing gloves?
A No.

Q And did you observe -- while he was in the break room, did you observe if he had touched any objects in the break room at all?
A No. He was very careful not to. The only thing he touched, he touched with that stick.
Q Okay. Now, I'm going to -- well, how is the lighting in the break room there?
A Very bright.
Q As this was occurring?
A Very bright. At least, as bright as it is in here, maybe brighter because it's yellow.
Q And how is the lighting at the exit door where you first saw him?
A Even brighter than the kitchen.
Q And, as he made these demands, what was he doing with the weapon in his hand?
A Shaking it at us, swinging it, hitting things.
Q When you say he was hitting things, do you recall what he might have -- what he struck?
A He struck the wall. He was standing in the doorway and he struck the wall beside him. He struck the table in front of him and I several times.
Q Okay. And did -- was anything moved or disturbed when he did this?
A It bounced.

Q When you say it "bounced," were there objects on the table?

A Yes. There were objects on the table. There was a wrought iron filigree bowl that had stuff in the center of it, you know, an el cheapo thing you get to put fruit in. He hit the table. And he hit it so hard that it lurched.

Q Okay. And after -- you said you gave him money?

A Yes.

Q Do you -- approximately how much?

A $22, $23. I don't know. I don't usually carry cash.

Q Okay. And where did you get the cash from?

A A customer paid me.

Q So where did you get it from physically?

A Oh, from within my purse.

Q And what did Ms. Holcombe give him?

A She reached in her purse and was fumbling around. I don't know the layout of her pocketbook, but she reached in her purse and was fumbling around. And she pulled money out and said, Here.

Q Okay. And then after the money -- at that point, what else -- what did he say at that point?

A He said, This ain't enough. I'm hungry. I've got bills to pay. And I ain't got nobody to help me. And I want more money. And I want it now.

Q Okay. And so what was your response?

A I don't have any more. I don't carry cash. And I offered him my credit cards, my debit cards, my check -- I'm sorry, my checkbook. He didn't want it. He wanted money.

Q And after the money, did you give him anything else?

A Yes. When we convinced him that we did not have any more money, he asked for our jewelry.

Q Did he ask for it, or how --

A No. He informed us that we needed to give it to him. He said, Give me your jewelry.

Q Okay. And did you do that?

A Yes, ma'am.

Q And what jewelry did you give him?

A I gave him these earrings. I gave him this ring.

Q Can you describe for the jury the type of jewelry it is?

A The earrings are sterling silver, square-shaped with a braid around the outside. The stone is called malachite. It's a semiprecious stone. They're very heavy. I had to save for weeks and weeks to get it. They're one of a kind.

Q And what was the approximate value of those -- the jewelry items?

A The ring and the earrings together -- the value then, or the value now?

Q The value then approximately?
A The value then was probably about 70 bucks.
Q Okay. And did Ms. Holcombe give him any jewelry?
A Yes.
Q And what did she give him?
A She gave him whatever was on her hand. I think she gave him her engagement ring, and a birthday ring. I don't know. I don't keep up with that sort of thing.
Q But you were in the room, did you see her give him any jewelry?
A Yes. She pulled what she had off of her fingers and gave it to him.
Q After the jewelry was taken, what happened then?
A He pointed the stick at the bathroom door and shoved it all the way open and said, Get in there and don't you come out.
Q And did he -- how did he use his hand?
A He did not use his hand. He used the stick. He told us to get in there, close the door, don't come out. He may have quoted a time frame. He may not have. I don't remember.
Q And what did you -- how did you respond to that?
A I went. I wanted to get as far away from that man as I possibly could.
Q Okay. So where did you go?

A I went into the bathroom, and I closed the door.
Q And were you by yourself?
A No. Debbie was with me.
Q And was there anybody else in the shop at the time this was occurring?
A No.
Q Was -- when you shut the door, what happened then?
A I tried catching my breath. I was trying to work out what I was going to do. Because my cell phone was in front of the table with my purse. I asked Debbie if she had her cell phone. She snagged her purse and took off in the bathroom with it.
Q So what did you do?
A She gave me the cell phone. And I fumbled around with it and dialed 911.
Q Did they respond?
A Yes, ma'am, they did. While I was trying to make the 911 call, I could hear him rustling around up in the front. Now, there's no other light switch in the front. There is no other light. It's all back in the back.

So he was rustling around up in the front probably trying to find a light so he could figure out where more money was. There wasn't a light switch. But I could hear him up there. And Debbie was trying to talk to me. And she was kind of -- I'm sorry. She was kind of panicked.

She said something about calling the Soda Shop and calling 911. And I don't know. I was trying very hard to focus on making that 911 call.

Q Okay. And --

A And getting somebody there to help us.

Q Okay. And did someone respond as far as on the phone?

A Yes, ma'am, they did.

Q And did you speak to the dispatcher?

A Yes.

Q Okay. And what did you -- were you able to provide a description of the suspect?

A Yes.

Q And could you tell if and when he left the shop?

A No.

Q Okay. If he had -- was -- the front door, had that been locked, or was it unlocked?

A The front door is locked. The front door locks and unlocks only with a key. If you don't have a key, you can't get in or out.

Q So he couldn't have gotten out the front door?

A No.

Q And you -- what was the next thing that happened after you made the call?

A We stayed in the bathroom until the police came in.

When the police came in, they were yelling at us to get us -- to find where we were.

Q Okay. And they found you?

A Yes. When I made the call, the person asked me questions. And I was trying -- Debbie wears hearing aids. She can't hear a lot of times. She has to see your mouth in order to read your lips. I was trying to keep track of what she was saying. She was wanting to go out of the bathroom door to see if he was still there. I was afraid, yes, he was still there and he had that stick.

So I was trying to tell them exactly where we were. And then when they asked me what he looked like, I took a deep breath and told him -- her. I think it was a her on the phone.

Q Okay. And have you had a chance to hear that call that you made?

A Yes.

Q All right. And we're going to talk about that in just a minute. I'm going to ask you --

MS. TESSITORE: Ms. Fryer, could we pull down the screen for the photo?

BY MS. TESSITORE:

Q And, Ms. Maurer, you may have to step away from the screen, and just stand to the side. That might be easier for you to see it.

A Okay. Thank you.
Q I'm showing you what's been marked as State's Exhibit No. 8. And if I could just get it positioned so that you can see that. What does that depict?
A That is the kitchen or break area. That's the room we were in when Mr. Boyd robbed us.
Q Okay. And is that -- as far as the lighting, it's kind of -- I'm sorry for the exposure. But the --
A Well, it's very reflective because the ceiling is white.
Q Okay. Just describe --
A All of these are florescent's here.
Q Okay. And can you describe as far as your position while this robbery was occurring? Where you were when you were giving him the cash and the rings, and where Debbie was.

And depending on where you're more comfortable, if you could just stand to the side and point for the jury, and let them know.
A Like I said, Debbie can't hear. I was afraid that this guy was going to get mad because she couldn't hear him. And he was looking at me and looking down. He was standing here. I was standing here. He was right here on this side. And I was here right behind this chair.

Because I dropped my pocketbook in that chair to dig

around in it. Debbie was standing off here. And I was positioning myself as close as I could without just getting away from her so that he couldn't hurt her. I was afraid he was going to hurt her. I could hear what was going on, and she could not.

Q Okay. Just take a deep breath.

If you want to go to the other side, I think it might be more helpful. I think the jury could see a little better.

A Okay.

Q And can you tell the jury what view this is as far as where you would be looking?

A If you were standing in the doorway, the back door would be here and this would be the door to the kitchen. You're looking into the kitchen break area.

Q Okay. And everything happened in there after you, initially, saw him at the back door?

A Yes, ma'am.

Q Okay. And so as far as -- who was closest to the robber?

A Me.

Q Okay. And when you described the bathroom, is that shown in the picture there?

A Yes, ma'am. This is the bathroom door. And it wasn't -- this is the bathroom door spread wide open. At

the time, it was pushed more closed.
Q All right. Now, I'm going to show you State's Exhibit No. 10, and ask you to describe for the jury what that shows.
A This is the wall that runs along the hall area, if you want to call it that. The back door would be here. Here is the doorway. This is the kitchen. This is the table. This is --
Q When you say, "this is the table," what do you mean?
A This is the table where Mr. Boyd and I were standing when he robbed me.
Q Okay. And can you describe that type of table as far as the surface?
A The table is an old-style table. It's probably from the '50s or '60s. It has some kind of plastic, or polymer, or slate. I'm really not sure what that is, because they don't make tables like that any more. It's a hard surface. It's black. It's black, black. And it doesn't mar with chemicals on it, or anything else like that.
Q Okay. And where would the person who took this picture be in relation to the bathroom?
A Probably standing in the bathroom door just inside the door frame.
Q Okay. So that's looking out to where he entered?

A Yes, ma'am.
Q All right. And I'm showing you State's Exhibit No. 11, and what is that?
A That's the table.
Q Okay. And State's Exhibit No. 13, what does that show?
A That is the view of the salon coming in from the back door. These are the dryer chairs. This is my nail table. That's where everybody else's station is. This is Paul's station. This is another station. My hair chair is like back here opposite the nail table.
Q Okay.
A This is the front door. And that's the front window.
Q And, as far as the lighting there that night, was the lighting on?
A No, not in the front part of the salon. She had already shut the lights off.
Q And that was at the breaker box?
A Yes, ma'am. There is no other light switch. It has to be shut off from the breaker. The hallway here, the kitchen, and the bathroom, and the light right outside the outside door are on different circuits from the main salon. There's so much lighting in there that it requires its own circuits.
Q Okay. I'm going to show you State's Exhibit No. 9.

Is that the breaker box we're talking about?

A Yes, ma'am.

Q And you can go ahead and step down -- have a seat.

A (Witness complied.)

Q Ms. Maurer, I'm showing you State's Exhibit No. 27, and I would ask you if you can identify that?

A This is the recording of my 911 call. And that's my initial emblem that I designed myself.

Q Okay. And did you have an opportunity to listen to this?

A Yes, ma'am.

Q And is it a fair and accurate recording of the conversation you had that night from the bathroom?

A Yes, ma'am.

Q Okay. Can you just maybe swing the chair forward. We're not going to use the screen at this moment. And that way --

A I'm sorry.

Q That way, we can hear you, and you're closer to the microphone.

A Okay.

MS. TESSITORE: Your Honor, at this time, the State would move State's Exhibit No. 27 into evidence.

DEFENDANT BOYD: No objection, Your Honor.

THE COURT: Okay. It's in evidence.

(WHEREUPON, State's Exhibit No. 27 was admitted into evidence.)

MS. TESSITORE: Your Honor, at this time, I would request to publish it for jury.

THE COURT: Yes, ma'am.

(WHEREUPON, State's Exhibit No. 27 was played in open court.)

BY MS. TESSITORE:

Q So when you said you've got to go, what was happening at that point?

A I was hearing loud noises outside the door, which turned out to be the police arriving. I didn't know at the time what it was.

Q So you don't know when he left?

A No.

Q Or how he left?

A No. I was trying to keep Debbie from going out the door. I was -- Debbie was in worse shape than I was in. I was trying to keep her from running out the door and getting hurt. And she was talking to me. And I could hear the dispatcher -- she was talking to me. But she was, also, talking to the other officers, evidently, on the radio. So I'm hearing all this stuff. And it's all -- I'm trying to keep it separate, and keep it straight. And it was just --

Q You were still under the stress of what was happening, and had just happened?

A Yeah. I'm able to keep my cool during a crisis. But as soon as the crisis is removed and I feel like I'm safe, I have a tendency to let go of what I have pinned up inside. You can't survive a robbery if you go psycho and do stupid stuff. So I kept my head about me so that we might live.

Q Okay. And when the officers did get there -- and I'm sure you felt much safer at that point. What -- did you speak with the officers when they got there?

A Yes.

Q All right. And were you able to calm down enough to be able to communicate to the officers what you had just witnessed?

A Yes, ma'am.

Q Okay. And when you spoke with the officer, did you provide a description of the robber to him?

A Yes, ma'am.

Q Okay. And then you've already indicated what that description was; correct?

A Yes, ma'am.

Q All right. Did -- do you recall when you spoke with the officer, did -- what was he doing as you were speaking to him?

A First, he had me just -- he had me tell him what happened. And he asked for a description again, so that he could relay the message to people that were -- other officers, I guess, that -- who -- I'm sorry. He was relaying the description to people outside so that they could keep looking -- keep a lookout for him, maybe find him, drive through the neighborhoods. I don't really know.

Q And were you able to provide him, at that time, with a more specific description regarding --

A Yes.

Q Other than what was on the 911 call as far as --

A Yeah.

Q Height, weight --

A There were uniform officers there. There were -- I felt safe. So I took a deep breath and tried to calm down.

Q Were you able to provide a statement to the officer as far as in writing?

A I provided the statement. My hands were shaking so much that it would have taken me forever to write it out.

Q So who wrote it?

A I had -- I dictated to -- I think it was Officer Owens. And he wrote as I spoke. And I read over it very carefully after I finished to make sure that he wrote what

I said.

Q Okay. And how did you describe the stick to the officer?

A It was a two by two. It was gray, weathered, about -- I guess, it was approximately three feet long.

Q Okay. And did you, also, meet with the forensics officer when he arrived, Sergeant Shaw?

A Yes, ma'am.

Q And did you speak with Sergeant Shaw?

A I did.

Q And what were -- what was -- what did you do when he came?

A I showed him where Mr. Boyd was standing. I showed him the marks on the wall where Mr. Boyd had hit. And he looked at the table and he said, What's this? Is this dirt? And I told him, at the time, I did not see any dirt on the stick. And I didn't know what it was that was on the table.

Q Okay. Did you explain to him -- strike that.

MS. TESSITORE: One minute, please.

(Pause.)

BY MS. TESSITORE:

Q Did you have any other contact with law enforcement that evening?

A Not after I left the salon, no.

Q Okay. So after the forensics officer came, what did you do at that point?
A We stayed there until they said it was okay for us to leave. I had called my husband. My husband came up there and got me.
Q All right. And I'm showing you what's been marked as State's Exhibit No. 15.
MS. TESSITORE: Excuse me one second.
(Pause.)
BY MS. TESSITORE:
Q And do you recognize that?
A Yes, ma'am.
Q And what is that?
A That is this ring, these earrings is what Mr. Boyd made me take off and give to him.
Q Okay. Is there any question in your mind that that's the same jewelry?
A No, ma'am.
Q How did that --
A These are one of a kind.
Q Okay. How did that jewelry end up back on your ears and --
A I'm told that it came from a pawnshop.
Q Rather than --
DEFENDANT BOYD: Objection, Your Honor.

THE COURT: All right. I sustain the objection.

BY MS. TESSITORE:

Q Rather than saying what somebody told you, how did you get those items back?

A The police returned them to me.

MS. TESSITORE: Okay. Thank you.

DEFENDANT BOYD: Objection, Your Honor.

THE COURT: I'm not clear on what's --

DEFENDANT BOYD: I want to discuss this matter outside the presence of the jury.

THE COURT: Okay. Ladies and gentlemen, we're going to take a brief recess. Don't talk about the case. And continue to keep an open mind.

(WHEREUPON, the jury was excused from open court at approximately 10:19 a.m.)

THE COURT: All right. This is an exhibit that the State has showed Mr. Boyd that he objects to. I don't know what it is, so.

MS. TESSITORE: Your Honor, it's a photograph of the item that was collected by Detective Lusk. And I am going to show it to the witness, and ask her if she recognizes it. I think she's entitled to look at it, and see if it appears to be the item that he had in his hand or not.

THE COURT: All right. And that is marked for identification as what?

MS. TESSITORE: State's Exhibit No. 25, Your Honor.

THE COURT: And, Mr. Boyd, your objection to this exhibit is what, specifically?

DEFENDANT BOYD: Well, I object to it, Your Honor, because I have some major discrepancies about them having that, in particular. I've gotten several different descriptions of the weapon that night. So I feel like that could have been easily planted by anybody. So I object to that right now at this moment.

THE COURT: Okay. Well, I understand your reasons, but they would not be sufficient to keep it from being admitted, assuming adequate foundation is laid by the witness.

Okay. We're going to take about a 10-minute break. And we will resume in 10 minutes.

Thank you very much.

(WHEREUPON, a break was taken.)

THE COURT: Anything before we bring the jury back in?

MS. TESSITORE: Your Honor, I believe that Mr. Robinson is having an exhibit marked, which is the statement of Ms. Maurer. Out of concern, obviously, for the victim, we have redacted the address and phone numbers. And that's the one that I believe Mr. Boyd and Mr. Robinson agree that that would be -- if it is

introduced that that would be the one that would be used.

MR. ROBINSON: That's true, Your Honor.

I just advised him of the procedure for getting us to identify the statement and to -- he's going to cross-examine her on what she stated, and what she did not state.

THE COURT: Okay.

MR. ROBINSON: He's going to do everything from here, so that's why we're getting it marked.

THE COURT: Okay. Anything else?

(WHEREUPON, Defendant's Exhibit No. 1 was marked for identification only.)

MR. ROBINSON: Your Honor, I'm just going to leave this up here, because he's going to cross-examine her on this. So I'm going to leave it up there.

MS. TESSITORE: I'm not done yet.

MR. ROBINSON: Okay. I'm sorry.

MS. TESSITORE: Can she resume the stand, Your Honor?

THE COURT: Sure.

Okay. Bring the jury back in.

Thank you, Mr. Frazier.

(WHEREUPON, the jury came into open court at approximately 10:40 a.m.)

THE COURT: Yes, ma'am. You may continue.

MS. TESSITORE: Thank you, Your Honor.

At this time, the State moves State's Exhibit No. 15, which the witness has identified, into evidence.

THE COURT: Any objection?

DEFENDANT BOYD: No objection, Your Honor.

THE COURT: Okay. It's in evidence.

(WHEREUPON, State's Exhibit No. 15 was admitted into evidence.)

MS. TESSITORE: Your Honor, may I publish it to the jury?

THE COURT: Yes.

MS. TESSITORE: Thank you.

CONTINUED DIRECT EXAMINATION

BY MS. TESSITORE:

Q Ms. Maurer, I'm showing you State's Exhibit No. 25, and I ask you to take a look at that. Do you recognize that?

A It looks like the stick that Mr. Boyd was using when he robbed us.

MS. TESSITORE: And, at this time, I would ask to publish State's Exhibit Nos. 14 through -- excuse me, they're out of order -- State's Exhibit Nos. 8 through 14 to the jury, Your Honor.

THE COURT: They're already in evidence, aren't they, Solicitor?

(WHEREUPON, there was no response.)

BY MS. TESSITORE:

Q Ms. Maurer, after the night of the 4th, when the robbery and the kidnapping occurred, what was your next contact with law enforcement in this case?

A The next contact I had with the police department was a surprise -- it was a surprise visit to the salon -- or a surprise to me. I went into work, and Detective Lusk was there shortly thereafter.

Q Okay. When did you go to work? That was --

A Tuesday, I think.

Q Okay. Tuesday, March 9th, the Tuesday right after --

A Yes, ma'am.

Q -- the robbery occurred on Thursday?

A Yes, ma'am.

Q Had you worked between Thursday and when he came in, Thursday night, when you left that night, Friday, Saturday, or Monday?

A I'm not sure. I don't think I did. I would have to look at my appointment book.

Q Do you usually work on Mondays?

A No, never.

Q Now, on Tuesday, you say Detective Lusk surprised you there. What time did you have an appointment that day?

A I had an appointment that day, so I came in.

Q What kind of appointment was that?

A I think it was a nail client.
Q Okay. And when you say a "nail client," what were you -- are you talking about a manicure?
A I do manicures, and I do acrylic nails. And I think it was a fill-in.
Q And did you meet with Detective Lusk?
A Yes, ma'am.
Q And did -- where did you meet with him?
A He asked me if I would come back to the back room, to the kitchen where we were robbed. And he wanted some privacy. And he made sure that there was nobody going -- he told them to stay out.
Q So you met with him in the break room?
A Yes, ma'am.
Q Okay. And were you seated, or standing, or --
A I was standing.
Q And what did Detective Lusk tell you about what he was there for?
A He was --
DEFENDANT BOYD: Objection, Your Honor, hearsay.
THE COURT: Sustained.
BY MS. TESSITORE:
Q Okay. Did Detective Lusk show you anything that day?
A He showed me a photo array.
Q And when you say that he showed you a photo array,

did he indicate to you in any way, shape, or form anything about the photo array prior to him showing it to you?

A No. I had to talk to him.

DEFENDANT BOYD: Objection, leading.

THE COURT: Overruled.

BY MS. TESSITORE:

Q And how did he show it to you?

A He put it face down on the table. And he walked away.

Q When you say he walked away, did he walk out of the room?

A No. He stepped back from the table several steps, more than arms length from me. And he let me flip it over and look at it carefully.

Q Okay. And when you flipped it over and looked at it, what did you see?

A I saw Mr. Boyd's face. It's kind of hard to forget.

Q Okay. Did Detective Lusk say anything while you were looking at the photos?

A No, absolutely not.

Q Okay.

A He said very little the whole time he was there.

Q Was -- I'm sorry. Go ahead.

A I'm sorry. He said very little the whole time he was there.

Q Okay. Did he -- was anyone else in the room with you, other than Detective Lusk?
A No, ma'am.
Q Had you seen any other photos of this Defendant, Billy Boyd, in any form, shape, video, anything prior to you looking at this photo array?
A No, ma'am.
Q Had you seen any other photo arrays before Detective Lusk got there?
A No, ma'am.
Q Did you have any information regarding his name before you looked at this array?
A No, ma'am. I've never even heard his name until a week, two weeks after I identified him.
Q And did you see any array of anybody else -- I mean, any arrays at all before this array?
A No.
Q Now, I'm showing you State's Exhibit No. 1, and I ask you to take a look at that. Do you recognize that?
A Yes, ma'am.
Q Okay. And how do you recognize that?
A I recognize it by my handwriting. I recognize Mr. Boyd's face on it.
Q Okay. And any other -- how -- well, first of all, show the jury how Detective Lusk put it down on the table.

A He told me that he was going to put it down on the table, and not to pick it up until he said I could.

Q So he put it face down like that?

A He put it face down on the table. And he stepped back and walked away.

Q And show the jury what you did.

A When he told me it was okay -- and he was very meticulous, so there would be no shadow of a doubt that he might have coerced me or anything.

Q So what did you do?

A I flipped it over and looked at it.

Q Okay.

A And he had instructed me to look at it carefully.

Q And did you look at it carefully?

A Yes, ma'am. I compared -- I recognized Mr. Boyd right away. But I compared the facial features of all of these men to make absolutely positively 10,000 percent sure that I wasn't implicating the wrong person.

Q So you looked --

A There's six.

Q And are they -- how are -- are they similar?

A In a round about way, yes. There are some obscure things like they have angular -- some of them have heavier eyebrows, some of them have angular features. The rounded head --

Q How many pictures of Mr. Boyd are in there?
A There's just one.
Q Okay. And did you -- how did you indicate your selection?
A I circled it.
Q And your handwriting appears on there?
A Yes, ma'am.
Q And what did you state as far as your handwriting there?
A #2 is the person who robbed us, exclamation point. And I signed my name and I printed it. I, also, circled his photo. And I put my initials on it. I've got a little initial crest.
Q Okay. And that's on there?
A Yes, ma'am, right there.
Q Is that in the same condition as when you saw it, other than the State's Exhibit No. 1 label?
A A little worse for the wear, but, yeah, exactly the same. You can tell it's been passed around a little bit.
Q Well, that's probably my fault, because I've been moving it around the courtroom.

Do you see that individual in the courtroom today?
A Yes, ma'am.
Q And could you, please, identify him?
A It's this man right there.

Q All right. And what's he wearing?
A He's wearing a white-striped shirt.
MS. TESSITORE: And let the record reflect that the witness has identified the Defendant, Billy Boyd.
BY MS. TESSITORE:
Q Now, Ms. Maurer, as you look at him here today, does he appear different to you?
A Yes, ma'am. He's put on a few pounds. And he's changed the way he's wearing his hair and his beard.
Q Okay. But you -- how sure are you that this is the man that robbed you that night and kidnapped you?
A 10,000 percent. When you're nose to nose with somebody for 15 minutes, and they've scared the hell out of you and you're afraid you're not going to live through it, but you want to identify them, you study them carefully, and I did.
DEFENDANT BOYD: Objection, Your Honor, non-responsive.
THE COURT: All right. Overruled.
BY MS. TESSITORE:
Q Okay. Just going back briefly to his appearance. Did he appear, at that time, not today, to be undernourished, or disheveled, or anything like that?
A No.
Q Okay. How would you describe the condition of the

clothing that you described earlier?
A It was clean.
Q Okay. And was there any kind of -- for lack of a better term, any kind of odor about him, or anything that would have indicated to you --
A No, ma'am.
Q -- that he hadn't showered, or bathed, or anything like that?
A No, ma'am. The only thing was his beard. And he could have very well decided to grow it full. A lot of guys do.
Q All right. And had you ever seen him before this incident?
A No, ma'am.
Q The condition of the jewelry, as far as the jewelry that you've identified as yours, when it was returned to you, was it -- how would you describe the condition?
A Fine.
Q So no damage to it?
A Not that I noticed.
Q No dirt or debris on it?
A Well, silver tarnishes easily. But, no, there was nothing on it.
Q Okay. And no damage?
A No, no damage. There still isn't.

MS. TESSITORE: Just one moment, please.

(Pause.)

BY MS. TESSITORE:

Q Do you recall giving a description of his approximate age?

A Yes, ma'am.

Q And what was that?

A 30 to 40 years old.

MS. TESSITORE: Your Honor, at this time, the State would move State's Exhibit No. 1 into evidence.

DEFENDANT BOYD: Objection, Your Honor, based on my prior objection.

THE COURT: Subject to your prior arguments, the objection is respectfully overruled. It's in evidence.

MS. TESSITORE: Thank you, Your Honor.

(WHEREUPON, State's Exhibit No. 1 was admitted into evidence.)

BY MS. TESSITORE:

Q Ms. Maurer, I'm showing you State's Exhibit No. 1 that's been entered into evidence. And could you indicate to the jury which photograph you circled?

A Yes, ma'am, this one.

Q Okay. Thank you.

Have a seat.

A To the average person, the person there may have

similarities. To me --

THE COURT: Okay --

BY MS. TESSITORE:

Q Ms. Maurer, when -- just to go back very briefly as far as the parking lot. When you were going in and out prior to the robbery, did you observe anything suspicious, or anything outside that gave you reason to believe that something was going to --

A No, ma'am.

Q That this was going to happen?

A There was nothing visible that would give any indication that anybody was in the parking lot in a car, or anywhere else. You could hear voices from behind the smoker two doors down from people sitting by the fire pit smoking cigarettes. But you couldn't even see them, because of the smoker grill being there.

Q All right. And did -- what was the lighting in the back parking lot?

A The lighting in the parking lot itself --

Q At that time, I mean.

A -- you can see where you're going. It's bright out there. Against the back wall of the dry cleaner, it's dark.

Q Okay. So you would describe the parking lot lighting at that time of evening at about 8:00 in March as dark?

A No. The parking lot was bright. You could see pretty well.

Q Okay.

A You could see well enough to see whether someone was in a car, or see their tag, or what kind of car it was. I mean, you could see well, especially by the back door of the salon. Because there's a light over the overhang.

Q Okay. And so, in the back parking lot, you didn't see anything unusual?

A No.

Q And after this photo identification that you made of this Defendant, was there anything else that occurred as far as after the incident at the shop regarding this incident as far as this Defendant?

Let me rephrase that.

Was there any reason that you needed to contact law enforcement about this case when you went back to work?

A Yes.

Q And what was the occasion for that?

A His sister came into the salon. It's apparent --

DEFENDANT BOYD: Objection, Your Honor, relevance.

THE COURT: Sustained.

BY MS. TESSITORE:

Q Did anybody come in the shop after that point that you recognized?

A No.

DEFENDANT BOYD: It's already been ruled on from my objection.

MS. TESSITORE: Please answer any questions that Mr. Boyd or his stand-by counsel, Mr. Robinson, may have.

THE WITNESS: Certainly.

DEFENDANT BOYD: I would like to say good morning to the Court.

CROSS-EXAMINATION

BY DEFENDANT BOYD:

Q Good morning, ma'am. In listening to everything and doing some evaluating --

THE COURT: Mr. Boyd, remember, just ask questions.

BY DEFENDANT BOYD:

Q I made some notes, ma'am. Isn't it true that on March the 4th, 2010, Ms. Maurer stated they were closing, you were closing, turning off the lights? Isn't it true? Isn't it true, ma'am, on March the 4th, that you stated that you and your witness were closing, turning off the lights?

A Yes. We were in the kitchen -- we just flipped off the light switch in the kitchen. As we exit the building, we flip the lights as we go by.

Q Isn't it true on March the 4th, that you and your witness with you in a very confined area being next to one

another, she couldn't see the perpetrator, but you could?

A That's correct. She was behind him. He was in my face. She was to the side and behind him.

Q Isn't it true that she runs a business?

A Yes, it is.

Q Is she -- is it true that -- is she diagnosed with being legally blind?

A No.

Q She's not diagnosed with being legally blind?

A How could you be a hairdresser if you're blind?

Q So how could two witnesses with a total of four eyeballs, one could see and one couldn't see?

A Because his back was to her. She got side glimpses, basically, only except quickly when he turned around and opened the door and pointed us into the bathroom. You should know that, sir.

Q Isn't it true, ma'am, she stated flat out she could not identify the accused?

A She wasn't close to him, sir. And, yes, it's true.

Q Isn't it --

A If I didn't recognize you, I wouldn't have either.

Q Isn't it true in the motion of discovery --

MS. TESSITORE: Your Honor, I'm going to object to the form of the question.

THE COURT: Okay. Just ask the question.

BY DEFENDANT BOYD:

Q Isn't it true that it was not mentioned that she had eye problems?

A She does not have eye problems.

Q Isn't it true that it wasn't mentioned that she was hard of hearing? Isn't it true?

A She wears hearing aids. And it's bountifully obvious to anyone who looks at her face. Yes, it was mentioned.

Q Ma'am, you stated you recognized the accused on 3-4-2010 who was arrested on 3-8-2010. But you identified him five days later on 3-10-2010. You only made a positive identification, isn't it true, based upon because you was informed that Billy R. Boyd was in custody by Detective Lusk?

A No, sir. I had not talked to anyone that either worked at the salon, or law enforcement, or anyone else. I never heard your name until long after I identified you.

Q Ma'am, was you made, isn't it true, to identify the accused through repeated coercion? You were made to become familiar of the accused by Detective Lusk and Prosecutor Tessitore?

A I had never laid eyes on Prosecutor Tessitore, nor Detective Lusk before that day. I had bountifully laid eyes on you. Nobody talked to me. And anybody that knows me will tell you that nobody tells me what to do. I make

up my own mind.

Thank you very much.

And if someone did try to coerce me, I would walk away, because I don't listen to idle gossip. I don't have time for that stuff.

Q Ma'am, isn't it true that if the lighting does not change, why didn't your witness see --

A Because he was behind her.

Q Isn't it true --

A Him. Excuse me.

Q Isn't it true that prior to closing, Bryan Shirah, who was --

MS. TESSITORE: Objection, Your Honor. Relevance.

THE COURT: I sustain the objection.

BY DEFENDANT BOYD:

Q Isn't it true that a witness was getting his hair trimmed prior before everything occurred?

MS. TESSITORE: Objection, Your Honor. He's referring to Mr. Shirah as a witness.

THE COURT: I don't know who he's referring to.

BY DEFENDANT BOYD:

Q Isn't it true that you stated an employee came in with a boyfriend? Who was the employee?

A The employee was a young lady by the name of Emily. She came in. She did a quick trim. They weren't there

five minutes, and they were out. They had been gone 10 or 15 minutes before we even started collecting our stuff.

Q Who was the gentleman that was with her?

A Some guy named Bryan. I don't really know him. I had met him twice. That was the second time I had ever laid eyes on him. And I didn't talk to him.

Q Isn't it true, ma'am, you stated the perpetrator was hungry? You didn't see if he drove off or walked?

A Nope. I did not see how he -- I was in the bathroom. There's no way that I could have seen how he left. And I was not going to come out and face that stick and you, sir.

Q Isn't it true that you described the perpetrator as being in disguise?

A No, it's not. I have my statement right here. There is never at any moment anything that indicates a disguise.

Q Isn't it true -- isn't it true that you stated he was in a hoodie and he had his --

MS. TESSITORE: Your Honor, I'm going to object as far as --

DEFENDANT BOYD: -- isn't it true --

MS. TESSITORE: -- if he's talking about a prior statement then, at least, I'd like to know which statement he's talking about. Because I think there's only the one she has.

THE COURT: I don't know what --

Why don't you finish your question, sir. And then we'll --

BY DEFENDANT BOYD:

Q Isn't it true, ma'am, that you stated his shoes possibly -- you even stated, isn't it true, that they were possibly white?

A No. I never said white. I said dingy, dingy-grayish.

Q Did you, also, state that he had on a big coat, or whatever you stated? Did you state that?

A I -- my statement that they took from me, he was wearing a dark stocking cap, dark wind breaker, dark green fleece pants, gray tennis shoes, and had a short unkempt beard. He was approximately 30 to 40 years old.

And this statement was written for me by Officer Owens, signed and initialed, because my hands were shaking too much for me to write it. It would have taken forever.

Q Ma'am, I would like you to see what's been marked for identification purposes as Defendant's Exhibit No. 1.

MR. ROBINSON: May I approach the witness, Your Honor, on behalf of Mr. Boyd?

THE COURT: Sure.

MR. ROBINSON: We've had this pre-marked, Your Honor.

BY DEFENDANT BOYD:

Q On Defendant's Exhibit No. 1, you did not describe the stick used by the perpetrator as a two by four.

A That's because it wasn't a two by four. It was a two by two.

Q And you did not describe the stick as gray?

A I was not asked to describe the stick.

Q You really didn't describe too much of anything as far as putting emphasis upon the stick upon -- this is your statement here, ma'am.

A I said to the officer more than what was put in this statement. This statement was paraphrased for brevity and importance. He told me what was important to go on there, and what was not. And, you know, you can change clothes quickly. You can throw a stick in the woods. You can't change a face in five minutes.

Q Ma'am, you have my condolences, my sympathy --

THE COURT: Let's just ask questions, sir.

BY DEFENDANT BOYD:

Q Ma'am, you stated, isn't it true, that it appeared that the assailant, the accused, weighed about 188 pounds to 190, but you really couldn't make a thorough investigation of his body because he was covered? This is what you stated in your testimony.

MS. TESSITORE: Your Honor, I'd object. She didn't

state that in her testimony. And if he's referring to a prior statement, the witness should have an opportunity to see it.

THE COURT: Sir, you will have an opportunity to present evidence, if you wish to. But, right now, you need to ask this witness questions, and not make statements.

BY DEFENDANT BOYD:

Q Ma'am, I weigh 254 pounds --

THE COURT: Sir. Mr. Boyd --

DEFENDANT BOYD: Okay. Okay.

THE WITNESS: You've put on weight, too.

THE COURT: Ma'am, you don't answer unless you're asked a question.

THE WITNESS: I'm sorry.

BY DEFENDANT BOYD:

Q Ma'am, isn't it true that the discovery stated that all of this happened in a matter of minutes. How did so much happen?

A What?

Q Isn't it true -- isn't it true -- the discovery stated that all of this happened in a matter of minutes. How did so much happen? You gave a long story as to some of the events that occurred that night.

A I don't understand what you're trying to say. There

is -- at any point in given time, there's more than one thing in the room going on --

Q How long --

THE COURT: Wait a minute. Wait a minute.

BY DEFENDANT BOYD:

Q How long did all of this take that night? How long did it take for all of this to transpire that night?

MS. TESSITORE: Your Honor, can I just ask that he clarify what he's referring to, if it's the robbery or the whole incident with the officers, just to clarify, please.

THE COURT: Okay. Mr. Boyd, just rephrase your question, sir.

BY DEFENDANT BOYD:

Q Ma'am, you stated a long scenario of the many events and a graphic description of what the alleged perpetrator looks like from one extreme to the other. So I want to know if you could put a time limit on approximately how long did it take for all of this to occur?

A I didn't look at a clock. And I didn't look at a watch. I would have to guesstimate. It seemed like forever. You backed me through the back door into the kitchen --

Q Ma'am --

A -- and probably no more than we were there, maybe 15 minutes. You -- I stared at your face for 15 minutes.

You even told me, Stop looking at me.

Q Ma'am, isn't it true that you've been robbed before?

A It, certainly, is.

Q Ma'am, isn't it true that you stated that it was at close range?

A That what was at close range?

Q Close range of the atmosphere, the events, and the person you saw. Isn't it true that you stated --

A What are you talking about? What robbery?

MS. TESSITORE: Your Honor, at this point, the State would object to the form of the question. It's not clear whether he's talking about the prior robbery that's completely unrelated to this case when she worked at Domino's, or if he's talking about this particular incident.

THE COURT: All right. Well, Mr. Boyd, you need to clarify your question, sir.

BY DEFENDANT BOYD:

Q Isn't it true that as we looked at the photos, the layout of the area, that you and your witness were in, wasn't it a close range?

A Yes. It's very close range.

Q Very close for you to see what you say you saw that night, but your witness couldn't identify anything.

MS. TESSITORE: Objection, Your Honor. That witness

hasn't testified. And she's not here to testify for Ms. Holcombe. Ms. Holcombe will be testifying.

THE COURT: Sustained. I sustain the objection.

BY DEFENDANT BOYD:

Q Isn't it true you've stated that your witness didn't see or hear? Was she clinically diagnosed as deaf or blind?

A No. She's, obviously, not blind if she's been a hairdresser for 40 years. And we're supposed to be at work doing people right now. You can't be blind and do hair. And she's not legally deaf. She wears hearing aids. You can see them in her ears.

Q Isn't it true, ma'am, that when you saw a photo or what appeared to look like the alleged weapon, did you not say in your testimony that it looks like the stick?

A Yeah. I cannot -- I'm not a forensic specialist. I cannot say 100 percent this is or this is not, nobody can.

Q Isn't it true, ma'am, that you just stated that I, the accused perpetrator, stated, Don't look at me, and I was swinging the stick abruptly? If all of this was happening and you was very, very scared for your life, how did you manage to recognize and see so much?

A You were in my face. We were this far from one another.

Q But, ma'am, isn't it true that you were demanded not

to look at the perpetrator?

A I glanced away, yeah. And then I stared you down again. Otherwise, there was no way I could identify. I would never point a finger at anybody and risk their life and freedom if I wasn't sure. I was robbed twice 20 some odd years ago. I didn't get a good enough look at those people to identify them. So I wouldn't even give testimony to the police about it.

Q Ma'am --

A My freedom is valuable and so is anybody else's, any law abiding citizen.

Q Ma'am, on that day of March the 9th of 2010, on that day, the accused perpetrator, Mr. Boyd, his sister visited the shop where you worked. She visited. Our appearance is almost identical. If you stated that you recognized the accused perpetrator as of the night of March the 4th, 2010, how come the day of March the 9th, a day after Mr. Boyd was arrested, how come you was not able to recognize the accused's sister and you, also, made an appointment the following day for her to get a manicure?

THE COURT: All right. Hold on.

Ladies and gentlemen, I'm going to ask you to step back to the jury room for a few moments. Don't talk about the case. And continue to keep an open mind.

(WHEREUPON, the jury was excused from open court at approximately 11:18 a.m.)

THE COURT: Mr. Boyd, you objected to the reference of the sister coming into the store when the State tried to present it as being irrelevant. And I agreed with you.

So why are we getting into this right now?

DEFENDANT BOYD: Well, Judge, I wouldn't think I would object to my sister, who's going to be a witness. And the reason -- what I was trying to disclose is that the day that she --

THE COURT: I'm sorry. Did you not object to that?

DEFENDANT BOYD: Yes, sir, whether she came to the store or not. It wasn't irrelevant, sir.

THE COURT: It wasn't irrelevant?

DEFENDANT BOYD: It wasn't relevant.

THE COURT: You objected to the State bringing that up; right?

DEFENDANT BOYD: Of my sister coming in, no, sir.

THE COURT: Well, you did.

DEFENDANT BOYD: Your Honor, at that time, she was going into things that didn't have anything to do with it. The reason why I was bringing up that particular date, Your Honor --

THE COURT: Right.

DEFENDANT BOYD: -- is because she stated that date

when Detective Lusk came to show the alleged photos of the accused, me, the accused perpetrator's sister had came that day, too, who she couldn't even identify. And we look almost identical, she and I.

And, later on, Your Honor, she stated that she, eventually, recognized the perpetrator -- the accused perpetrator's sister. But she put it in the motion of discovery a month later only after she became familiar with the accused perpetrator's sister at the bail hearing.

So it's quite obvious that she didn't recognize anything, that she was coerced to recognize these events by the Prosecutor and Detective Lusk, sir.

THE COURT: I'm not sure I following what you're saying.

When did she have some opportunity to identify your sister?

DEFENDANT BOYD: Okay. Let me slow down.

On March the 8th, Your Honor -- on March the 4th, when all of this alleged situation happened, March the 4th -- from March the 4th, until March the 8th, when I became arrested, I had not been identified as Billy Boyd. Even having prior photos of myself, I had not been recognized as Billy Boyd.

But as of March the 8th, when I became arrested, arrested and charged right then and there, arrested and

charged, not detained and questioned, but arrested and charged right then on March the 8th. And as my driver's license were taken from me for a long period of time, I know that this Ms. Maurer, who I've never seen in my life, I know she was coerced into everything she's saying. If it doesn't fit, don't force it.

THE COURT: What's that got to do with the sister? You're losing me.

DEFENDANT BOYD: Well, Your Honor, on the particular day that she stated Detective Lusk came to show her photos of the alleged perpetrator, who was in custody, she stated how she picked out the individual on her own.

THE COURT: Right.

DEFENDANT BOYD: I'm the only person on that lineup who has a beard/goatee, the only person. So that wasn't hard to do right there.

THE COURT: Okay.

DEFENDANT BOYD: And it's quite obvious it's an investigation that Detective Lusk made on his own. And I know that Ms. Maurer was coerced by the Prosecutor and Detective Lusk.

THE COURT: Again, sir, what does it have to do with your sister?

DEFENDANT BOYD: Your Honor, on the day of March the 9th, when Detective Lusk came to the place of employment

for Ms. Maurer, my sister, also, had came that day. If someone's brother had assaulted me and offended me to the graphic details that she described, if I saw the alleged perpetrator's sister on my property, I think I would have called the law, instead of making an appointment for her to get her nails did the next day. That's if I could recognize the alleged perpetrator.

At that point in time, she wasn't familiar with Billy Boyd at all. She was not. She was not familiar with Billy Boyd.

THE COURT: Well, you can ask her if your sister came in and you made -- she made an appointment. But that's all you can do.

DEFENDANT BOYD: Yes, sir.

THE COURT: If you want to make some argument about that later in your closing argument, that's a different matter. But, just as far as asking questions, I'll let you ask those two questions.

DEFENDANT BOYD: Yes, sir.

THE COURT: Now, Ms. Maurer --

THE WITNESS: Yes, sir.

THE COURT: -- I understand this is very difficult for you, ma'am. And I understand that there's a lot of emotions that I, certainly, can't pretend to know that you're going through. Okay. But this is going to go a

lot quicker and, I think, easier on you if you simply answer the questions and not try to argue with Mr. Boyd.

THE WITNESS: Yes, sir.

THE COURT: Just listen to his questions very carefully, and just answer the questions he's asking.

THE WITNESS: Yes, sir.

THE COURT: And don't go off into editorials --

THE WITNESS: I'll try not to.

THE COURT: -- and make arguments. That's what the Solicitor can do on your behalf.

THE WITNESS: Yes, sir.

THE COURT: Thank you.

All right. Bring the jury back on out.

Thank you.

(WHEREUPON, the jury came into open court at approximately 11:26 a.m.)

THE COURT: Mr. Boyd, you may resume your questioning.

CONTINUED CROSS-EXAMINATION

BY DEFENDANT BOYD:

Q Ms. Maurer, on the night of March the 9th, 2010, did the accused perpetrator's sister come to your beauty salon?

A Did she? Is that what you're asking me?

Q Yes.
A Yes, she did.
Q She did?
A She sure did. And I recognized her right away.
Q Isn't it true that you would agree that this was in a short period of time from the time the person came in and left during the time of the robbery?
A What?
Q Would you agree that it was a short period of time from the time that the person came in the shop and left?
A What person?
Q The perpetrator.
A Are you talking about the robbery or the sister?
Q The perpetrator that night, the robbery.
A The robbery didn't occur on the 9th, sir.
Q On the 4th, ma'am. On March the 4th of 2010, how long would you say the time elapsed that the robber was in the shop?
A As I said before, it was probably about 15 minutes or so. I did not have a clock. I was not watching a watch. I wasn't counting down the minutes. I can only guesstimate. It seemed like forever.
Q Would you agree that it was a short period of time?
A That's a matter of perspective, and if you perceive

15 minutes to be a long time or a short time.

Q Were you wearing a watch that night?

A No.

Q How many times, Ms. Maurer, did you speak with the official -- Prosecutor Tessitore and Detective Lusk? How many times approximately?

A At what point in time are you talking about?

Q Throughout every event. Isn't it true yesterday, during pre-trial, you stated how many times you had spoke with the Prosecutor and Detective Lusk?

A I spoke with Detective Lusk once in this whole thing that I know of. I may have passed him in the hallway or something and said, hi, hello. I'm nice to people. I speak to him. But, as far as having a conversation regarding the robbery, once.

I've spoken with Ms. Tessitore several times. She's doing her job.

Q How many times would you say you spoke with Officer Owens?

A Once, when he took my statement.

Q How many times would you say you spoke with Solicitor Fretwell?

A I've never laid eyes on that man until yesterday.

Q How many times would you say investigators at the Solicitor's Office?

A Never.
Q How many meetings and how many telephone conferences with the Solicitor?
A With Ms. Tessitore, she talked to me before we were supposed to go to trial every time, maybe once.
Q Ms. Maurer, would you say you've been coerced? Would you say you've been coerced?
A No, no. Nobody puts words in my mouth.
DEFENDANT BOYD: At this point in time, I want to beg the Court's indulgence so I can look at my notes for a second.
THE COURT: Sure. Take your time.
(Pause.)
BY DEFENDANT BOYD:
Q Ms. Maurer, isn't it true you stated you didn't know how the perpetrator fled, vehicle, walked, ran, or anything like that?
A Yes, it is.
DEFENDANT BOYD: That's all I have at this moment. Thank you.
THE COURT: All right.
MS. TESSITORE: Your Honor, just very briefly. I just have a few questions for this witness just to follow-up.
THE COURT: All right.

REDIRECT EXAMINATION

BY MS. TESSITORE:

Q Mr. Boyd has referred to his sister, and asked you about her coming in the shop on Tuesday. And you stated that -- well, let me go back.

Did someone come in the shop on Tuesday that appeared similar in any way to this Defendant?

A I can't state the date that she came in. I thought it was later on in the week. But she walked in and asked questions about getting a manicure. She didn't direct them directly at me. She just walked in.

And I was sitting up front in Debbie or Kathy's chair. I asked her when she wanted to have it done. You could tell it's his sister. I'd never laid eyes on the woman before. She had, certainly, never done anything to me. I make it a habit to be nice to everyone that I meet.

Q Well, okay. So had you ever seen her before?

A No.

Q But she appeared similar to this Defendant?

A Yes. She looked very similar to him. And before she left, she stated that she wanted to come in the following morning. I don't work in the mornings. So they put her name down to come in and see Emily the next morning.

Q Okay. And was Detective Lusk contacted regarding the

fact that she had shown up at the shop?
A Noelle [phonetic] called the law enforcement center.
Q Who's Noelle?
A Noelle is one of my coworkers.
Q Okay. So was Detective Lusk contacted --
DEFENDANT BOYD: Objection.
THE COURT: What's the objection?
DEFENDANT BOYD: That's irrelevant.
MS. TESSITORE: Your Honor, I think he made it relevant.
THE COURT: I sustain the objection.
BY MS. TESSITORE:
Q Did you later learn the identity of the woman that came in that appeared identical to him?
A Yes, ma'am.
Q Okay. And was -- how long after?
A Several days.
Q Okay.
A I thought she looked an awful lot like him.
Q And was this after the photo array?
A Yes.
Q Okay.
A Otherwise, I wouldn't have known her or him from Adam's house cat.
Q So you identified him prior to --

A Yes, ma'am.
Q -- seeing her?
A Yes, ma'am.
Q And that was only four days after this incident occurred?
A Yes, ma'am.
Q Excuse me. Five days.
A It was the next week, yes.
MS. TESSITORE: I have no further questions.
THE COURT: Any further questions, Mr. Boyd?
DEFENDANT BOYD: That's all, Your Honor.
THE COURT: Okay. Thank you.
You may step down, Ms. Maurer.
You may call your next witness.
MS. TESSITORE: Your Honor, the State calls Ms. Debbie Holcombe.
THE CLERK: Ma'am, please, place your left hand on the Bible and raise your right hand.
WHEREUPON,
DEBORAH HOLCOMBE,
after first having been duly sworn, testified as follows:
THE CLERK: Thank you.
Please be seated.
Please state your full name for the record.
THE WITNESS: Deborah Holcombe.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Good morning, Ms. Holcombe.

A Good morning.

Q Ms. Maurer said that you wear hearing aids; is that correct?

A That's right.

Q Are you having any trouble hearing me?

A I'm having a little bit. I can hear you. I can make it out. Usually, I need to be a little bit closer. And I do read lips to help me.

Q And did you have those hearing aids in at the -- when this incident occurred?

A I did.

Q All right. Can you tell the jury just a little bit about your background, where you work, how long you've worked there, and what you do there?

A Okay. I have been -- I'm -- I started to work at Northgate Beauty Salon in 1971. I worked there for eight years. And then I bought the shop in 1979. And I have owned it 32 years now. I've been there for 40 years. Prior to that, as a teenager, I worked in a wood shop. But I've been at Northgate Beauty Salon all of my life.

Q And that's in Greenville County?

A Pardon me?

Q That's in Greenville County?
A Yes, it is.
Q All right. And do you -- who does the books there?
A I -- who does the books?
Q Yes.
A I do the book work. And then I take it to an accountant.
Q Okay. And, as far as just collecting the monies that come in from the other stylists, I mean, how does that all work?
A They handle their own. They're all independent contractors.
Q So is there any payroll, or anything you do?
A I think probably at the time of the robbery, I probably had two on payroll then. But since then, they have become independent contractors.
Q Okay. And you were working on the evening of March 4th -- Thursday, March 4th of 2010?
A Yes.
Q Was it a -- how would you describe the typical traffic on a Thursday as far as customers?
A Very busy, very busy.
Q Okay.
A We had a long day. Customers were in and out all day. Fortunately, the days that I'm there, I'm busy all

day long, which I need to be there now. But, anyway, we were busy. I probably finished up my last customer about 7:00.

Q Okay. And had there been anything unusual that day before this robbery?

A No, no. Everything was fine.

Q Okay. And do you recall what time you were getting ready to close up?

A I think that I looked at the clock about -- I want to say around five till 8:00. Sharon and I were moving a lot of things around, because I had a new booth renter coming in and we were getting ready for him. And that's why we were moving the furniture out. And I'm thinking probably about four to five after 8:00, I asked her was she ready to leave. And she said she was.

Q Okay. And when you normally leave -- well, going back, you said you were in and out, moving stuff in and out. Was that the front door, or the back door?

A Pardon me?

Q Was that out the front, or the back door?

A We would be leaving out the back door. The front was locked.

Q Did you notice anything in the back parking lot?

A No. We had been in and out several times to her car. And I really didn't look. I -- you know, I was just

concentrating on what we were moving in and out, and hoping I could leave soon and go home.

Q Okay. Did you notice anybody out there?

A Several times when we went out, there would be customers from The Other Side out there smoking or -- but, I mean, not enough to even speak or anything. They were all the way over behind the Soda Shop.

Q Okay. And that's -- the Soda Shop is the business at the end?

A Uh-huh.

Q And did you notice that evening, was it -- how would you describe the volume as far as people out there? Was it a busy night at the Soda Shop?

A No -- well, there was a good many cars, but I think most of the people were inside that night.

Q Okay. What -- do you recall -- was it -- as far as just a cool evening, warm evening?

A It was a cool evening, yeah.

Q Okay. And let me just take a minute here. I'm showing you State's Exhibit No. 6, and I'll ask you to look at that. Do you recognize that?

A Yes, I do.

Q Okay. And what do you recognize that to be?

A Pardon?

Q I'm sorry. What do you recognize that to be?

A That is the back of the beauty shop, the back of the -- what used to be the laundry mat. It's a laundry pick up and drop off now, the back door to the lawyer's office, the back door to The Other Side, and part of the Northgate Soda Shop.

Q And is that the area where you were coming out to when you say you came out the back door?

A Yes. Sharon's car was parked this way, like right there.

Q If you could, just turn this for the jury.

A Okay. She had her car parked about right there in that direction.

Q Okay. And where you were from in that area, would you be able to see -- I'm showing you State's Exhibit No. 5, if there was any vehicle parked on the side there?

A No.

Q Okay. Now, I'm going to take you back to that evening as far as after you brought these things in and out, and you said you were ready to close up and turn out the lights. Can you describe for the jury what you did to -- as far as turning out the lights, and then what happened?

A Okay. We had decided we were through for the evening, and we were going to head on home. Because it was getting kind of late. So I was in the kitchen, the

back room area. Sharon was still out in the salon where she works. And I asked her did she have her pocketbook, was she ready to go. She said she was. I said, I'm going to turn out the light. I reached up and switched out the light. And I started to walk out of the kitchen.

Sharon came to the kitchen door and we kind of met there. And she stopped and just had this funny look on her face. Well, I heard a noise like the door opening out back. And she just stood there with a frightened look on her face. And, all the sudden, I saw -- first, I saw this post, this stick. And then I saw a man with the stick. And he was telling her to get in that room.

So I backed up. Sharon came on in the room past me. And she went around to the other side of the table. And then Mr. Boyd came inside the doorway and stopped there.

Q Okay. Would it help you if I showed you a picture --

A Yeah.

Q -- of the break room? Okay. I'm going to ask you, if you would, just -- so the jury can see it as well, if you would, just stand to the side. And I'm going to put the light on there.

And this is State's Exhibit No. 10. And what -- if you could, describe, as you explain what happened, the positions that you were in in relation to Mr. Boyd and to where Sharon was as well.

A All right. I had been right over here turning the lights out. And I started walking to here. About the time I got here, Sharon was coming from here. And she stopped. She was kind of like she was going to turn to come in or, you know, she was sort of at an angle, not going really either way.

And I stopped there. And I thought, well, why is she stopping? And then about that time, you can't tell from here, but up in this area, I saw a stick.

Q Okay. And can you describe the stick that you saw?

A A weathered like a maybe three to four feet long like -- and I'm estimating -- two by two. It looked like a post that would go in a rail, you know, maybe on a front porch or such. It was that kind of post.

Q And you saw the post first?

A Yeah. I saw the corner of it up in the air. He had it up.

Q And where was he with respect to the back door?

A I was here. Sharon was right here. And the stick was like up here. I could see that, because I'm still inside the kitchen area.

Q Okay. And, at that time, what was the -- the color is a bit distorted. What was the color inside the break room, as far as the trim and the walls?

A All of this is kind of a bright yellow. And out half

of the door frame is the yellow. And on the other side is like a foam green. And then the wall out there is a foam green.

Q Is that a dark or light color?

A Light, very light.

Q Okay. And was there a door on that door frame at the time?

A No. At one time, there was.

Q But at this time?

A It hasn't been on there for years, no.

Q Now, describe what happened after you saw the stick.

A Okay. I saw it. And, you know, I -- just for a moment, I thought, well, you know, what is this? But I really didn't get scared or think much about it. But the look on Sharon's face was enough to -- I knew something bad was wrong.

So we started -- she started coming in. And I started backing up. And then she walked past me, and came over here about right here. I stayed right here. And Mr. Boyd came in and stood right here on the inside of the doorway.

Q Okay. So when you say Mr. Boyd came in, what did you observe as far as his -- just his physical characteristics?

A Well, I kept looking at him, because I wanted to be

able to identify something, a scar, an earring, something. But there was nothing like that. But he had the stocking cap on. He had on what appeared to be like it was a jacket, a little bit bulky around the neck and sweat pants. I didn't notice the shoes. And he needed to shave.

Q Okay. Now, when you say he needed to shave, what color -- he had facial hair?

A Yeah. It was all up in here. I don't know at the time -- I don't know before if he had a beard, or what. He just looked like he had not shaven in several days.

Q And what was the color of the hair on his face?

A It was dark. And maybe there were a few little gray hairs here and there, not much, just a little.

Q And was there anything distinctive about his face?

A Pardon me?

Q Was there anything else distinctive about his face?

A Well, his -- mainly, he never looked at me face on. I saw like just half of his face.

Q So his profile?

A And he never turned -- the only time -- the only thing he did is he cut his eyes at me one time. And he shook the stick at me and told me to quit looking at him, or he was going to hurt me bad. And I looked away. But then I kept looking at him.

Q Did you -- how did you feel at that point?
A I felt very frightened then. And a little bit later when he wanted the money and all that, I felt like any minute that he was going to hit me over the head with the stick.
Q How close were you to him when you were in the room there?
A I was at arms length. Yeah, I could have reached out and touched him.
Q And so is there anything blocking your view of his profile?
A No, no.
Q So did he speak while he was -- after he came in the door there into the break room where you were?
A Did he do what?
Q Did he speak?
A Yes. He came in. And he said that he was hungry. He had bills to pay, that he wanted our money. And I said, I've been to the bank today earlier. I'll get you some food, if you need food. He said, No. I don't want that. I know better than that about the bank. I want your money.

And, at that time, I just kind of stood there with my pocketbook. And Sharon started getting her money out. And he was banging the stick.

Q And where -- looking at that photograph, where was he banging the stick?
A He was hitting the wall here, and he was hitting the table. I mean, every time he did it, it was so forceful that I almost jumped out of my skin. It was just really forceful.
Fortunately, this is an old retro table. For some reason, there's not a scratch or dent on it from that. The wall, I don't know, but...
Q Okay. And were any items disturbed? I mean, this -- as far as where the items were on that evening, was there anything on the table?
A All I remember is there was a pepper shaker that had been broken. There was a cup broken. There were some pens and utensils that when he hit had -- day to day, it changes what goes on at the table. That's kind of our little drop off when we come in. But I do remember the cup. It was just a Styrofoam cup, and it was just smashed. The pepper shaker was broken, and pieces of it all came off the table and was on the floor.
Q Okay. And, prior to him coming in and making all this mess, what was the condition of the table as far as just was it neat and orderly? I mean, what's the --
A As far as I remember, there was nothing on the table but the salt and pepper shaker, the little cup with the

pens and pencils in it. I can't remember -- the fruit thing sits on the table. I don't remember if it was there. I can't remember.

Q Okay. And when you said that he spoke to you -- or spoke to both of you, did you have any trouble hearing what he was saying?

A No, no. I was very close. I could read his lips. No, no trouble at all. He has a very good voice for me to hear.

Q Okay. And what makes it good for you to hear?

A Pardon me?

Q What makes it a good voice to hear as far as --

A It's kind of deep. It -- well, maybe monotone. It's not high, it's not low. I hear those voices better than, say, the really low tones. The high tones I hear okay. But it gets -- just the monotone sort of -- I can understand that really well.

Q Okay. You can have a seat.

A (Witness complied.)

Q And you've heard Mr. Boyd speaking in the courtroom while you've been in here; correct?

A Yes.

Q Okay. And do you recognize his voice?

A I did. I did right off.

Q Okay. Did -- do you see the person who robbed you?

A I do, yes, Mr. Boyd right there.
Q Is there any question in your mind?
A No, no question at all.
Q Okay. Now, let me show you State's Exhibit No. 25, and I'll just ask you to take a look at that.
A Yes.
Q And do you recognize that?
A I do.
Q What does that appear to be?
A This appears to be the stick that he carried in the shop that night. And when he brought it in, it was not broken.
Q Okay. And I'm going to take you -- well, let me just ask you about State's Exhibit No. 4. Which door is shown in that picture?
A Which door what?
Q I'm sorry. Which door is shown in that picture?
A Okay. This is the shop door, and the little storm door.
Q Is that the front or the back?
A This is the back.
Q And, as far as that evening, was the -- were the doors -- I notice there are two doors there. Were both doors open before he came in -- I'm sorry, unlocked. Were they unlocked?

A Oh, yes. They were unlocked. But we always keep the wood door open. And the storm door, we keep it closed. But they were not locked at that time. The front door was.

Q And that's the door you were going in and out of?

A Yes.

Q And is this the storm door from the -- would you say that -- which door gets more traffic, as far as customers and employees?

A It's about the same.

Q Okay. And is there more parking in the back, or the front?

A Yes, more parking at the back.

Q Okay. And the -- on the storm door -- let me get a picture of that. What type of latch or door handle is on that back door?

A On the outside, I'm pretty sure it's the long handle that you mash the little button to open it. On the inside, it's just a little sideways handle that you push. And it has a little latch on top of the handle to lock it.

Q Okay. And so if -- just one moment. Well, I guess -- State's Exhibit No. 4, is that still -- is that the -- is that a fair and accurate depiction of that door as it appeared on that night?

A Yes.

Q And if someone were going out the storm door -- when you went out the storm door to get stuff, do you have to use the latch, or can you push the door?
A You have to push the little latch on the inside. It's just a little handle that sticks out kind of sideways. It's about that long. You just push it. I just usually -- usually, I have my arms full, and I just hit it with my elbow and go out.
Q Okay. Now, when you described that he was speaking to you, did -- were you able to see his face clearly?
A What I saw, yes, the side of it.
Q Okay.
A Yes.
Q Did he have any disguise on?
A Pardon?
Q Did he have any disguise on?
A Disguise?
Q Correct.
A No, no.
Q And what happened after he -- what -- well, let me ask you this. When he demanded the money, how much money did you give him approximately?
A I'm really not sure. By Thursday, I have a large cash load. And Friday was payroll for the ones that I did have on payroll. And I just knew I couldn't give him all

the money.

So I just sort of reached down in the middle of the money, and I gently tossed the money on the table. From what I saw, maybe $100, maybe a little more, a little less. I'm not sure.

Q So you grabbed it pretty quickly?

A Pardon?

Q So you grabbed it pretty quickly, the cash? You didn't count out the cash?

A No, No, I didn't. I had just organized it that night and put it in my pocketbook. I was ready to leave.

Q And did you give him anything else?

A He -- after he said we didn't have enough money, he said, That's not enough.

And I said, What am I supposed to do? That's all I've got.

I was scared he was going to see in my pocketbook that I did have more money. Then he said, I see gold. Give me the gold.

Q When he said he sees -- when he saw the gold, where did he see the gold?

A I guess our rings, our jewelry.

Q Okay. And what did you -- did you give him the jewelry?

A Yeah. I took off the diamond and sapphire first and,

reluctantly, I took off my engagement ring.

Q Okay. It's all right. Just take your time.

A That's the one that killed me. And I put them on the table. And one of them dropped into the chair, and he reached down and picked it up. I don't know which ring it was that he picked up. But one was on the table and one was in the chair, and he got them.

Q Other than those items, did he touch anywhere around the table with his hands at any point in time that you noticed?

A No. I don't think he really touched anything.

Q When he took the rings, where was the stick?

A He was still standing in the same area holding the stick up.

Q Did he ever put the stick down?

A No.

Q Was anybody else with him?

A No, not that we saw, no.

Q And was -- had you ever seen him before?

A No, I haven't.

Q As far as the jewelry items that you gave him, I'm going to show you State's Exhibit Nos. 16 and 17 --

DEFENDANT BOYD: Your Honor, I object, but outside of the presence of the jury.

THE COURT: What are the --

MS. TESSITORE: I'm sorry, Your Honor.

May I approach?

THE COURT: Sure.

Ladies and gentlemen, just go back to the jury room and stretch your legs for a minute or two. And we'll try to resume in just a minute. Don't talk about the case. And continue to keep an open mind.

Thank you.

(WHEREUPON, the jury was excused from open court at approximately 12:04 p.m.)

THE COURT: All right. Mr. Boyd, what's your objection, sir, to these exhibits?

DEFENDANT BOYD: Your Honor, my objection -- I was kind of familiar with one, but not quite both of them, Your Honor. That was a very long time ago.

THE COURT: All right. Well, overruled.

MR. ROBINSON: May it please the Court.

THE COURT: Yes, sir.

MR. ROBINSON: Your Honor, what I'm doing, I'm making sure he's not giving speaking objections, and putting all of this stuff out there in front of the jury. That's why he's making sure he does things outside the presence of the jury.

THE COURT: Okay.

MS. TESSITORE: Your Honor, one other matter, so we

don't have to do this again.

THE COURT: Yes.

MS. TESSITORE: The State intends to introduce State's Exhibit No. 42, which is a diagram of the jewelry that Ms. Holcombe prepared for the detective in identifying the jewelry. It was when she first met with Detective Lusk and gave the information as far as what jewelry to be looking for.

THE COURT: Any objection to that?

DEFENDANT BOYD: No, sir.

THE COURT: Okay. You can bring the jury back in. Thank you.

(WHEREUPON, the jury came into open court at approximately 12:07 P.M.)

THE COURT: Yes, ma'am.

CONTINUED DIRECT EXAMINATION

BY MS. TESSITORE:

Q Ms. Holcombe, we were talking about the rings. And I know it can be emotional. I would just ask you, if you need a break, just let the Court know.

But going back to the engagement ring, can you describe that for the jury, please?

A It was just a solitaire. I think it's maybe about a half carat. I've had it reset since then. But it was just a solitaire with a white gold band.

Q Okay. And describe the other ring, please.
A It is a diamond sapphire, a slant set. I have it here. It's missing one sapphire now, but it wasn't then. But -- and it has a gold band.
Q Okay. And how -- those items were, obviously, returned to you -- I'm sorry -- those rings were returned to you?
A Yes, they were.
Q And who returned those to you?
A Detective Lusk.
Q I'm showing you what's been marked as State's Exhibit Nos. 16 and 17. And I would ask you to take a look at State's Exhibit Nos. 16 and 17. And let me know if you -- do you recognize those?
A I do.
Q Okay. What are those?
A This is my engagement ring, and the diamond and sapphire ring that was taken the night of the robbery.
Q And you said you've had your engagement ring for 30 years?
A I have had my engagement ring for -- at that time, probably 38 years.
Q Okay. And is that something that you would wear every day?
A I wear it every day, yes.

Q So is there any question in your mind that that's the ring?
A That's the ring. That's my ring.
Q And how about the other ring?
A Yes, absolutely. I've had that one for about 30 years.
Q Okay. I'm going to show you what's been marked as State's Exhibit No. 42, and if you'll take a look at that.
A (Witness complied.)
Q Do you recognize that?
A I do.
Q And what is that?
A That's a picture of my engagement ring that someone has drawn. And there is a picture of my diamond and sapphire ring, also, that someone has drawn.
Q Okay. And who drew that?
A I think Detective Lusk did.
Q Okay. And how did he -- were you present when he drew it?
A Yes. I described them to him. And he drew it as I told him how it looked.
Q Okay. And did you look at it after he finished?
A Yes.
Q And did you confirm --
A Yes.

Q -- whether that was accurate?
A I did.
MS. TESSITORE: At this time, the State would move State's Exhibit Nos. 16, 17, and 42 into evidence.
DEFENDANT BOYD: No objection, Your Honor.
THE COURT: Okay. They're in evidence.
(WHEREUPON, State's Exhibit Nos. 16, 17, and 42 were admitted into evidence.)
BY MS. TESSITORE:
Q Now, can you tell the jury the approximate value of those rings?
A I am really not sure. I know that about 38 years ago, the diamond was around $400. It would be a lot more now. But -- and I think -- the diamond and sapphire at the time he bought it, I think it was around $200. I do not know the value now.
Q All right. And how long after the incident did you get the jewelry back into your possession?
A How long have I had it back?
Q No. How long was it after the robbery that you got the rings back?
A The robbery was on Thursday night, the 4th. And I got it back on Wednesday after the robbery, Wednesday afternoon.
Q So less than a week?

A Less than a week, yes.
Q And did the condition of the rings change in any way?
A No.
Q All the stones were there?
A Uh-huh.
Q Okay. Now, when -- you described going back to the break room. After you gave him the money and the jewelry, then what happened?
A He picked up the ring and the money -- the rings and the money, and he took the stick and just kind of stretched. And the door to the bathroom was not closed. It was open about halfway. He took the stick and sort of opened the door. And he said, What's in there?
And I said, The bathroom.
And he said, Get in there. Y'all get in there, and stay in there. And God will forgive me for this.
Q And then what happened?
A We went in the bathroom. Fortunately, there was a lock -- inside lock. We locked the door. Sharon asked me -- I did grab my pocketbook and ran in there with it. And she asked me did I have my cell phone. And I gave her my cell phone. And she made the call to 911.
Q And while you were in the closet, were you able to hear yourself anything that was going on outside?
A I could hear just a little bit. But Sharon, she was

telling me that --

Q Okay --

DEFENDANT BOYD: Objection, Your Honor.

THE COURT: Sustained.

BY MS. TESSITORE:

Q This is while you were in the bathroom?

A Yes.

Q And so you yourself, as far as what was going on outside the bathroom, did you have any idea --

A No.

Q -- when the Defendant left?

A No.

Q Did you have any idea as far as how he left?

A He would have had to go out the back door, because it takes a key to unlock the front door.

Q Okay. But as far as -- so his access would have been out the back door. But did you know how he left, whether he was in a vehicle or on foot?

A No.

Q What -- how did you -- how would you describe his height and weight at that time.

A I felt he was very tall. In my statement, I said six foot. Weight, I'm not -- I'm just not real sure. He wasn't small. He was like a medium build. I don't know pound wise what -- I didn't put that in my statement. I'm

really not sure.
Q Okay. Now, when you gave a statement -- did you talk with police when they did arrive?
A Yeah. When we were still in the bathroom and I could hear them hollering, you know. I don't know what they were saying, but we knew it was the police. And we opened the door. And they were all there just crowded in the door.
Q Before you opened the door to find the police and were probably relieved, did you feel like you could leave the bathroom after he forced you in there?
A I wanted to. After we got in there and was in there just a couple of minutes, I just wanted to go out and run out and try to get help. And Sharon was, no, you can't go out there. He'll kill you. You can't go out there. So I just stayed. I wanted to go, but, fortunately, I didn't.
Q Now, when the police did open the door and they arrived there, did you speak with an officer?
A Yes.
Q Okay. And was -- how many officers arrived there?
A I think there was like four or five that came in the back. And, at some point in time, the front door was unlocked and there was police officers coming in and out of the front door. And, in the shop, there was a lot of police officers in there.

Q Okay. Did you provide a description to them as soon as they arrived?
A I did.
Q And do you recall the officer that you spoke you?
A Officer Powell.
Q He was the first officer you spoke to?
A I can't be sure of that. He was the one that took my statement. All of them were asking, Are you okay? Have you been hurt? But Officer Powell was the one that took the statement.
Q Okay. And that was -- where were you when you gave him the statement, the written statement?
A Where was I what?
Q Where did he get the written statement from you? Where were you when you explained to him what happened?
A Coming from the back door after you step into the salon, the wall on the left has about six dryers, hair dryers there and chairs. And I was seated in one of those. And I -- the officer had pulled up a chair, one of Sharon's chairs from her manicure table. And I was writing out my statement then.
Q And did -- at that time, did you, also, describe the weapon that was in his hand to the officers?
A Yes.
Q Did you, also, describe the jewelry for those

officers that were there as well?

A Yes. I mean, I'm sure they all heard what we just -- well, they asked us what type of weapon, and we said a stick. But, actually, the description that night went to Officer Powell mainly.

Q Okay. Did you meet with the forensics officer, Sergeant Shaw, when he arrived?

A Did what?

Q I'm sorry. Did you meet with Sergeant Shaw, the forensics officer, when he arrived?

A I'm not getting it. You're going to have to come a little closer to me. I'm sorry.

Q Do you recall meeting with the forensics officer, Officer Shaw?

A He came later. And, yes, I did talk with him just a little bit. Yeah, he saw the wood fragments and dust, or dirt on the table. And he asked was that there before.

Q And was it?

A No, no.

Q And had -- what did he -- did he, also, ask you about the description of the weapon?

A Yes.

Q And did -- after you gave -- met with the police there, did you have any other involvement that evening after providing this information to the officers on the

scene?
A Did I have what?
Q Did you have any other involvement that evening as far as any possible suspects, or any information?
A No.
Q So you were only able to give the physical description, and describe what you had experienced. And the next -- what was the next contact that you had with law enforcement regarding the case?
A The next morning, an officer came by to check. He had been there that night. He came by to check and see if we were okay. And then about mid-afternoon, Officer Lusk came to ask just a few questions and to look around.
Q Okay. And so you met with Detective Lusk on the scene the day after?
A Yes. He -- yeah. He just came in the shop for just a minute and told me that he was just going to scan all around the shop. And there's kudzu out back around the parking lot. He went over across the street in the park. He was, I guess, looking and trying to find something. But he was there a while.
Q And did you describe to him the suspect, as well as the weapon, to Detective Lusk?
A Yes, I did.
Q And how did you -- were you able to -- let me -- I'm

sorry.

MS. TESSITORE: One minute.

(Pause.)

BY MS. TESSITORE:

Q When -- is that when you prepared the -- or he prepared the diagram of the jewelry?

A I'm not sure.

Q Okay. And did you meet with Detective Lusk after Friday? Do you remember meeting with Detective Lusk? Did he come back to the shop?

A He came back in the shop on the Wednesday after the robbery to return our jewelry.

Q Okay. And, prior to that, did he come by the shop and show you a photo array?

A Yes.

Q Okay. Did -- do you recall which day that was?

A That had to be on Tuesday. I'm not sure. I'm really not sure.

Q Was it the same day that Ms. Maurer viewed the photo array?

A He -- the same day. He showed me first, and then her later that afternoon. I'm thinking it was Tuesday.

Q All right. So on Tuesday, March 9th, did you meet with Detective Lusk at the shop to view the photo array?

A Yes, I did.

Q And where did you view that?
A We did it back in the kitchen area.
Q Where this incident happened?
A Yes.
Q Okay. And were you able to make a positive identification of this Defendant?
A No, I wasn't.
Q And so what happened after that?
A After he showed me the photo array, I -- there was two men on there that I -- that had familiar features. But I had rather be sure than to have tried to pick one out. So I just told him I could not positively identify.

So he took the paper. And he asked me not to speak with Sharon about this, that he was going to -- he would see her later. So, shortly after she came in, I'm thinking about 1:30, he came in and met with her.

Q Okay. And so was anyone in the room when you looked at the photo array?
A No.
Q And were you in the shop when he came back and met with Ms. Maurer?
A I was in the shop, but I was up front working.
Q Had you told her anything about it?
A No, no.
Q And did -- had Ms. Maurer seen, as far as you know,

any photos of this Defendant prior to the photo array?
A No.
Q Okay --
DEFENDANT BOYD: Objection, that calls for speculation.
THE COURT: All right. Overruled.
BY MS. TESSITORE:
Q Did -- at some point, after Ms. Maurer met with Detective Lusk, did you learn -- at that point, did you have any information about who he might be as far as his name, or anything like that? Had you ever seen his driver's license?
A No.
Q Had you ever seen any videos?
A No.
Q Or anything with him in it?
A No.
Q Okay. So, at that point, did you meet with -- well, let me rephrase it.
Did you later learn about the identity of the person that they arrested for the crimes?
A Not that day.
DEFENDANT BOYD: Objection, relevance.
THE COURT: Well, how is it relevant?
MS. TESSITORE: Well, Your Honor, as far as that

she -- when she learned his name and information, I think that's relevant.

THE COURT: To what?

MS. TESSITORE: It's -- I'll move on.

THE COURT: All right.

BY MS. TESSITORE:

Q Did you, at some point later, find any pictures of this Defendant?

A I did. It was probably --

DEFENDANT BOYD: Objection, relevance.

THE COURT: Overruled.

BY MS. TESSITORE:

Q Did you locate a picture of him after the incident?

A I did, that I found myself.

Q Okay. And that was -- what did you do with that picture?

A A couple of days after I got it, I put it on the wall beside my working area at the shop.

Q Okay. And why did you do that?

A Because there's probably about -- I would say around 50 or more people that come in the shop every day, and they said, What did this man look like? What did he have on? So I put the picture up and I said, There's the information.

DEFENDANT BOYD: Objection. Relevance.

THE COURT: I sustain the objection to that question.

Go ahead.

BY MS. TESSITORE:

Q Did you -- do you recall how long after the Defendant was -- well, let me rephrase it.

Do you recall how much later in time -- with respect to when the photo arrays were shown to Ms. Maurer and to you, how much time had passed when you decided to try to look to find out -- to get this picture of him?

A If -- we saw the photo array on Tuesday, and this probably was like the next week later on. Because I did not know his name for that long.

Q Okay.

A No one told me his name.

Q Okay. And the detective then -- is that -- as far as the jewelry being returned to you, when did that occur?

A Pardon me?

Q The jewelry, when was that returned to you?

A It was returned to me Wednesday after the robbery on Thursday, the next week.

MS. TESSITORE: All right. Just one minute.

(Pause.)

MS. TESSITORE: Please answer any questions Mr. Boyd or his counsel may have.

Thank you.

CROSS-EXAMINATION

BY DEFENDANT BOYD:

Q Ms. Holcombe, you have my condolences --

THE COURT: No, sir. Ask questions. Ask questions.

BY DEFENDANT BOYD:

Q Isn't it true you were shown a lineup by police to identify a robber, a present photo? Isn't it true?

A No, not by a policeman.

Q A lineup?

A I was shown a lineup, not by a policeman.

Q Isn't it true that that lineup photo was a present picture?

A It was a picture of you the day you were arrested in March.

Q Isn't it true that it was four days after the robbery at the beauty salon? It was four days later; correct? Isn't it true?

A Yeah.

MS. TESSITORE: Your Honor, I'm not sure what he's asking that was four days before.

DEFENDANT BOYD: After.

THE COURT: Okay.

MS. TESSITORE: So I object to the form of the question.

BY DEFENDANT BOYD:

Q Isn't it true that when you saw the present photo of the lineup that this picture was taken four days after the alleged robbery, four days?

MS. TESSITORE: Objection, Your Honor. As far as the photograph, she didn't take the photograph. She doesn't know when the photograph was, actually, taken, other than the fact that it was a -- seemed to be a recent photograph.

THE COURT: I don't know. She can answer it, if she can. I don't know if she can.

THE WITNESS: Can I answer the question?

BY DEFENDANT BOYD:

Q Yes.

A No. It was not four days.

Q The alleged incident happened on March the 4th of 2010. When did Mr. Boyd, the alleged -- the accused become incarcerated? March the 8th, four days later.

A On Monday.

Q That was four days later. Four days.

A I was shown --

MS. TESSITORE: Your Honor, I don't think he's asking questions. I think he's making statements.

THE COURT: All right.

BY DEFENDANT BOYD:

Q Isn't it true that night that you had good lighting in the shop?

A Yes.

Q Isn't it true that you could not identify me, Billy Roy Boyd, as the robber?

A I'll say yes to that, but under circumstances.

Q Isn't it true that you stated that the suspect had a southern drawl? Isn't that true?

A Yes.

Q Isn't it true you was given a lineup that you couldn't verify Mr. Billy Roy Boyd?

A Right.

Q Isn't it true that you saw a stick, that you saw a stick? Isn't it true you saw a stick?

A That I saw what?

Q A stick, a stick, S-T-I-C-K.

A Yes, I did. You don't have to spell it.

Q Okay. Isn't it true -- how could you state that you saw Ms. Maurer, but you couldn't see Mr. Boyd's face? Isn't that true? Isn't it true you stated that you saw -- isn't it true -- Ms. Maurer's face? You saw her face. You said she was afraid and in a desperate situation, but you couldn't see Mr. Boyd's face. Isn't it true?

A I saw the side of Mr. Boyd's face, your face.

Q Isn't it true, Ms. Holcombe, that you stated you talked with him, but you couldn't recognize him? Isn't it true in your statement --

MS. TESSITORE: Objection, Your Honor. I think he's got to provide the statement that he's talking about so she can answer the question.

DEFENDANT BOYD: Your Honor, I'm referring to the testimony that she was making as she was being addressed by the Prosecutor here.

THE COURT: I --

DEFENDANT BOYD: Her alleged testimony.

THE COURT: Overruled.

Re-ask the question.

BY DEFENDANT BOYD:

Q Isn't it true that you stated that the accused perpetrator that you were talking with him? You were talking with him?

A Yes.

Talking with him?

Q Yes.

A Yes.

Q You were talking with him, but you couldn't recognize him, Ms. Holcombe?

A You never turned your face to me. I was looking at the side of your face.

Q Ms. Holcombe, do you wear glasses?
A No. I wear contact lens.
Q Ms. Holcombe, isn't it true that you were shown a lineup by police to identify a robber? Isn't that true?
A Yes, it's true.
Q Isn't it true that night the robber was in no disguise? Isn't that true?
A In disguise?
Q Isn't it true that he was in no disguise?
A No disguise.
Q Isn't it true that the lighting was good that night?
A Yes, yes. You already asked that.
Q But you couldn't -- isn't it true -- but you couldn't identify the robber?
THE COURT: You've already asked --
DEFENDANT BOYD: In the presence --
THE COURT: Sir, you've already asked that.
BY DEFENDANT BOYD:
Q Isn't it true that you stated he said, Please forgive me, God, forgive me? Isn't it true you stated that?
A No. You said, God will forgive me for this.
Q Isn't it true you stated that you met with Lusk -- Detective Lusk on 3-5-11 [sic]? Isn't that true?
A Yes, it is.
Q Isn't it true that this is your statement?

A I need to see that.
Q May I ask, Ms. Holcombe, do you know what Ebonics means, the word Ebonics?
A I do. I do. I don't have a dictionary with me, but I'm kind of familiar with it.
THE COURT: Now, sir --
BY DEFENDANT BOYD:
Q The word means a southern drawl --
THE COURT: Mr. Boyd, when I start talking, you stop.
DEFENDANT BOYD: Yes, sir, Your Honor.
THE COURT: That's not a question.
Okay. If you want to ask a question, ask the question. That's the only thing you can do at this time.
DEFENDANT BOYD: This is my final question.
BY DEFENDANT BOYD:
Q Isn't it true, Ms. Holcombe, when you were presented a lineup of the suspect, the accused perpetrator, a very present picture four days later that identified with a partial beard, goatee, et cetera, but you still stated that you could not recognize the accused perpetrator as Billy Roy Boyd?
A There were two that looked very familiar.
Q Familiar.
A I could not pick out Mr. Boyd, you, because I did not look at you at any time face on.

DEFENDANT BOYD: I have no further questions.

THE COURT: All right. Thank you, ma'am.

You may step down.

THE WITNESS: I would like to say that I'm highly --

THE COURT: I'm sorry, ma'am. He's already asked the questions, so that would not be proper for you to respond.

Thank you.

Ladies and gentlemen, we're going to take a break for lunch at this time. Just be back in the jury room at 1:45. And we'll try to resume at that time.

Thank you very much.

Don't talk about the case. And continue to keep an open mind.

(WHEREUPON, the jury was excused from open court at approximately 12:37 p.m.)

THE COURT: We'll be in recess until 1:45.

(WHEREUPON, a lunch break was taken.)

THE COURT: Anything before we bring the jury in?

MS. TESSITORE: Not from the State, Your Honor.

THE COURT: Okay. You can bring them on in.

Thank you.

(WHEREUPON, the jury came into open court at approximately 1:46 p.m.)

THE COURT: Ms. Tessitore, you may call your next witness.

MS. TESSITORE: May it please the Court.

The State would call Officer Powell.

THE CLERK: Sir, pause at the end of the bench.

Raise your right hand and place your left hand on the Bible.

WHEREUPON,

CHRISTOPHER BRANDON POWELL,

after first having been duly sworn, testified as follows:

THE CLERK: Please be seated.

Please state your full name for the record.

THE WITNESS: Christopher Brandon Powell.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Good afternoon, Officer Powell.

Where do you work?

A The Greenville Police Department.

Q What do you do there?

A I'm a patrol officer. I patrol, deter crime, answer calls for service, and investigate crimes.

Q And how long have you worked for the Greenville Police Department?

A Seven years, ma'am.

Q And in the same capacity, same role?

A Yes, ma'am.

Q Okay. And, as a uniform patrol officer, did you have

the occasion to respond to the scene that brings us here today at the Northgate Beauty Shop in reference to an armed robbery and kidnapping?

A Yes, ma'am, I did.

Q And approximately what time did you receive that call?

A I received the call and began to respond at 8:12 p.m.

Q And how -- do you know how much time there was between the call and when you arrived?

A Approximately one minute. My arrival time was about 8:13 p.m.

Q And, as you arrived, were you traveling by yourself?

A I was.

Q When you arrived on the scene there, where did you pull up?

A I pulled up to, I believe, the rear of the building.

Q Okay.

A Not directly to the door, but out of harms way, but toward the rear of the building.

Q Did -- when you arrived there, did you notice anything that was -- well, first of all, had you received information about the suspect, or any information before you got there?

A Yes. We had been told that it was a black male, armed with a long stick, and that -- we were advised by

dispatch that he was destroying the inside of the business prior to arrival.

Q Okay. And, when you arrived, did you observe anything in the parking lot, or anybody that, you know, fit the description? Did you see anybody leaving, or anything?

A No, ma'am. I did not notice anyone when I arrived, nor did I notice anyone on my way to the scene.

Q Okay. When you arrived to that back parking lot, do you recall, was it -- how many cars approximately? Was it a crowded parking lot, or were there --

A No, ma'am. There were a few cars. I don't remember exactly how many, but it couldn't have been more than three or four cars.

Q Okay. And when you arrived, what did you find outside there in the parking lot, as far as the back of the shop? What did you observe as far as -- just tell the jury what you did when you got there.

A We immediately made entry through the rear door, which was unlocked. And, once we got inside, we were met by Ms. Maurer and Ms. Holcombe, who were inside the bathroom of the break area.

And, at that point in time, they informed us that the suspect may be in the front of the business where the actual hair salon and equipment is.

Q So you found them in the bathroom with the door closed?
A Yes, ma'am.
Q And so how did you respond to this information that he may still be in the business?
A Myself and Detective Palmer immediately cleared the front of the business to ensure that there was no one else there. We found no one else on the property. And, from there, we just began to receive descriptions.
Q Okay. And so who did you speak with?
A I, initially, spoke with Ms. Maurer.
Q And how would you describe her demeanor and condition at that point?
A Well, I would describe Ms. Maurer, as well as Ms. Holcombe, as being very excited. They were still trembling, just under stress from what had occurred.
Q And it had just occurred?
A We had received the call at 8:10. So -- and they were said to have been calling as it was taking place, from the information that was given to dispatch, so, yes, ma'am.
Q And where were you when you first spoke to them about the description?
A We were back --
Q Of the suspect?

A We were in the break room where the majority of the incident, actually, took place.
Q Okay. And, while you were in there, did you move any objects, or change anything --
A No, ma'am.
Q -- about the break room?
A No, ma'am.
Q Did -- starting, I guess, with Ms. Maurer, what did she tell you?
A She gave me -- I asked for a brief description --
DEFENDANT BOYD: Objection, hearsay, Your Honor.
MS. TESSITORE: Your Honor, excited utterance, as well as statement identifying the person they had just perceived, so it's not hearsay.
THE COURT: Overruled.
BY MS. TESSITORE:
Q So what did -- how did Ms. Maurer describe the suspect?
A She described him as a black male, approximately six foot, approximately 175 pounds wearing a dark stocking cap, a dark blue or a black zip-up jacket, and a dark green pair of sweat pants.
Q And did she describe anything about his facial characteristics?
A I believe later Ms. Maurer described that he was

unshaven, unkempt beard, not quite a full beard, but just like a few days growth.

Q And, when you spoke to her, where was Ms. Holcombe?

A Ms. Holcombe and Ms. Maurer were both still in the break room. They were both very -- still excited, and going on about what had just occurred.

Q Okay. And how did Ms. Holcombe describe him?

A Ms. Holcombe described him as approximately six foot, 30 to 35 years of age, a stocking cap, a dark colored jacket, and a dark colored pair of sweat pants.

Q Okay. And, at that point, are you -- what are you doing with that information they're giving you?

A I'm attempting to receive the information as quickly as I can so I can relay that out to other officers. It's what we commonly refer to as a BOLO, or be on the lookout for. From there, other officers will be able to use that information to attempt to locate any possible suspects who are still in the immediate vicinity, as well as when they're on perimeter, if we are to attempt to set up a perimeter.

Q Okay. And were you able to convey that information?

A I was. I immediately got that out to the officers who responded to the scene.

Q And did Ms. Holcombe describe whether he had any facial hair? And, if so, how did she describe it?

A Yes. In the same fashion, that it was -- appeared to be a few days growth, unkempt. He was, basically, unshaven, as she described it.

Q Did they indicate to you, either one of them, that he had tried to conceal his face or identity at all?

A No, ma'am. There was no mask, or nothing over his face.

Q Did -- how did they describe the weapon?

A Both of them described it as a very long stick. And Ms. Holcombe, in particular, who I obtained a statement from later, went into detail to say three to four feet long. And the way they were speaking of it was that it could be used as a deadly weapon. It was of that size. It was not a mere small stick, or twig, or anything.

Q Okay. And did they describe what he had done with the stick while they were in the break room?

A Yes, ma'am. He had used it to pound on the table repeatedly while making demands.

Q Did they indicate to you whether the stick had been broken, or anything?

A There were a few pieces pointed out. And I noticed, as well, a few small pieces of wood on the table. As well, I, also, noticed there was a broken pepper shaker. And there was a Styrofoam cup that was containing ink pens, and various markers, and things of that sort that

was, also, broken.

So it was -- it did indicate that something had been used to strike the table or it, at least, appeared that way.

Q Did you observe any other damage to the break room area?

A I did not.

Q Okay. And did you contact forensics?

A Yes.

Q Okay. And who came from the forensics office?

A Forensics Officer Dar Shaw. And I believe he arrived at 9:25 p.m.

Q Okay. And, during the time between when you arrived and when he arrived, were there -- what was happening, as far as were there a lot of officers there?

A There were officers that responded to the scene. We attempted to set up a perimeter. And we called the K-9 officer. Detective Palmer, Detective Manning, and, also, Officer Owens, who was working the detective division at the time under a cross-training assignment, were, also, on scene. The detectives and then Officer Manning assisted with taking statements.

Q Okay. And Officer Owens?

A Yes. I'm sorry. Officer Owens as well.

Q Okay. So there were a lot of officers on the scene.

You didn't have any -- did you have any information about the way in which the suspect had fled the scene?

A There was no known direction that he went. But we were told by both Ms. Holcombe and Ms. Maurer that the front door is locked by a dead bolt, and you can only unlock it with a key from the inside. So that meant that he would have -- the suspect would have, obviously, gone out the back door.

Q Okay. And was there any information as far as -- any other witness information as far as to anybody leaving the scene, or, you know, whether there was any vehicle description, or anything?

A No, ma'am. Because they were both inside the bathroom of the break room. They weren't able to get any of that information, or know which way he went.

Q And was there anybody else out in the parking lot when you arrived near the business?

A No, ma'am.

Q Do you recall the lighting in that parking lot when you arrived?

A The outdoor lamps are lit. To what degree of light they provided, I'm not sure.

Q Okay. What about the lighting when you approached the back door and came in? What was the -- were those lights -- let me show you a picture. Taking a look at

State's Exhibit Nos. 8, 10, and 14, do you recognize -- take a look at those, please.

A (Witness complied.)

Q What do those appear to be?

A These are the lights that were lit whenever we walked inside. And the table in this picture and the set up appears to be exactly the same as it was when we encountered Ms. Holcombe and Ms. Maurer. And that is, indeed, the bathroom that they were inside whenever we arrived.

Q Did you have any trouble seeing them, or looking around the area as far as where the crimes had occurred?

A No, ma'am.

Q So all the lights were on?

A Yes, ma'am.

Q And I'll show you -- I'm showing you State's Exhibit No. 34, and I'll just ask you to take a look at that.

A (Witness complied.)

Q And what does that appear to be?

A These would be the pieces of wood found on the table in the break room.

Q And who collected those?

A Forensics Officer Shaw.

Q Is that something you would normally do?

A No, ma'am. Not on a crime scene of this magnitude, I

wouldn't. It's customary for a forensics officer to collect that type of evidence. We just preserve it until they can arrive.

Q Okay. And did you have -- well, did you have any other involvement in the case after Sergeant Shaw arrived to collect the evidence?

A The only other involvement I had was obtaining a statement from Ms. Holcombe.

Q Okay. And when you obtained that statement, did you write that out for her, or was she able to write it?

A No, ma'am. She wrote that at the end, I believe. I asked a few questions and she, again, wrote the answers to my questions for clarification.

Q Okay. Did she describe to you anything about the Defendant's voice, in a manner of speaking?

A She said he spoke clear and slowly.

Q Okay. Did she indicate -- I mean, as far as how good a look she got, or what position she was in when she saw him?

A They both described that he was not wearing a mask, and they did get a good look at his face.

Q Okay. And at the point that Sergeant Shaw had come, and after you -- after he arrived, did you stay on the scene after getting a statement from Ms. Holcombe?

A Yes, ma'am.

Q And did you do anything else there on the scene?
A No, ma'am.
MS. TESSITORE: Okay. One moment, please.
(Pause.)
BY MS. TESSITORE:
Q Did she indicate to you what the Defendant had said to her after she described the way he spoke?
DEFENDANT BOYD: I object, Your Honor.
THE COURT: I sustain the objection.
DEFENDANT BOYD: Outside the presence of the jury.
THE COURT: I sustained your objection.
MS. TESSITORE: Your Honor, it's an excited utterance with respect to the incident that had just happened. She's still under the stress of the event.
THE COURT: Well, let's take the jury out, please.
(WHEREUPON, the jury was excused from open court at approximately 2:04 p.m.)
THE COURT: All right. Yes, ma'am, Ms. Tessitore.
MS. TESSITORE: Your Honor, based on Rule 803(2), the excited utterance exception to the hearsay rule, the witnesses have testified, both Ms. Holcombe and Ms. Maurer, as well as Officer Powell regarding the fact that this had just occurred, this incident. They were still under the stress of that event. And they were relating -- they were making statements to the officer

while they were still under the stress of the event.

THE COURT: What was the time lag between the time he got there and this statement?

MS. TESSITORE: Well --

THE WITNESS: 8:10 was the time we received the call, Your Honor. And 8:13 was the time of my arrival.

THE COURT: All right. My question was, what was the time lag between the time he arrived and the time the statement was allegedly made?

MS. TESSITORE: Oh, the written statement.

THE COURT: Whatever you're asking him about.

MS. TESSITORE: Well, she recorded the statement in writing, but I wanted to ask the officer regarding when he arrived there. And I can try to establish the time.

THE COURT: The statement recorded in writing is an excited utterance?

MS. TESSITORE: No, Your Honor.

The statement that she made to him before he reduced it to writing -- or before she reduced it to writing.

THE COURT: What was the time lag between the time he got there and the time this statement was allegedly made? How much time elapsed?

MS. TESSITORE: I don't know, Your Honor. I'd have to ask the officer.

THE WITNESS: Very shortly thereafter, Your Honor.

After we cleared the building -- after we cleared the front and then went back, they were both very excited and both spouting off what had just occurred.

THE COURT: That's not the question, sir.

MS. TESSITORE: Your Honor, I'll move on.

THE COURT: You can ask him. If you want to try to lay the foundation, go ahead.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Officer, when you spoke with Ms. Holcombe, at what point did she tell you what the Defendant had said to her, if anything?

A There were several statements conveyed to me, what he had told them -- when I entered the break room --

Q Just regarding Ms. Holcombe.

A Both of them were directly after. They were both --

Q Okay. So do you recall how much time was between when you responded, and when they told you what the Defendant had said?

A Less than a minute. Because it took us -- the front is very open. It took less than probably 30 seconds to clear it, and then go back and start getting information.

Q Okay. And do you recall what the Defendant said -- what they related to you that the Defendant said to them?

A That he was making statements to them that he didn't

want to hurt them, but if they didn't cooperate and give him money, then he would.

Q Okay. Any other statements?

A There were some statements about God would forgive him for his actions.

Q Okay. Anything else that you can recall?

A He asked them not to look him in the face or say anything or he would hurt them.

Q And that was all told to you within a couple minutes of when you arrived?

A Yes. Because it took us a matter of seconds to clear the front. And we went back. And, during the time I was trying to get information regarding the description, they were both very excited, and both were spouting off as much information as they could at one time about what had just occurred.

Q Okay. But you were able to keep it clear as far as who was saying what?

A No. I wouldn't be able -- I mean, both of them were saying similar statements about the things he had said, and the occurrences.

Q But, as far as Ms. Holcombe, when you spoke with her, do you recall her words? That's what I'm asking you.

A Yes. And she, again, placed that into the statement.

Q Okay. So then she reduced it to writing at a later

point in time?
A Yes.
Q And any significant -- in a different way, or in the same way?
A No. In a way they had recanted it to me when I first got there.
MS. TESSITORE: Your Honor, that -- I think the State has laid the foundation for the excited utterances regarding the statement that Ms. Holcombe made and Ms. Maurer made.
THE COURT: Okay. I agree.
I think under State v. Stall, the statement was made while the declarant was under the stress of the excitement, and that stress of the excitement was caused by the startling event. And, based on all the circumstances, including the passage of time and the demeanor of the declarant, and the severity of the startling event, I believe it would qualify under the law.
So I overrule the objection.
MR. ROBINSON: Your Honor.
THE COURT: Yes, sir.
MR. ROBINSON: On behalf of the Mr. Boyd, I would point out one thing that's concerning to me is that the Prosecutor and the officers all are referring to the Defendant. They should be talking about the perpetrator

of the robbery, not the Defendant, which I think is inappropriate in this case.

She's referring to the Defendant each time she talks or questions the officer. I think she should -- I would ask her to refrain and talk about the suspect, not the Defendant. I think it prejudices him.

THE COURT: Okay. You can bring the jury in. Thank you.

(WHEREUPON, the jury came into open court at approximately 2:12 p.m.)

THE COURT: Yes, ma'am.

CONTINUED DIRECT EXAMINATION

BY MS. TESSITORE:

Q Officer Powell, when you spoke with Ms. Holcombe, did she tell you what the suspect may have said to her?

A There were several statements that she said that the suspect made.

Q And what were those?

A She said that he had told them he didn't want to harm them, but he would if they didn't meet his demands or give him money. He stated that if they looked at him or said anything that he would harm them. And then he, also, said that God would forgive him.

Q And did the victims, also, describe the items that had been taken by the suspect?

A They did.
Q Okay. And what did they describe?
A The items taken were $100 from Ms. Holcombe. And I believe that was in increments of three 20's, three 10's, and two fives. From Ms. Holcombe, an engagement ring and a sapphire ring.
And I did not get into too much detail with Ms. Maurer, but I believe she had jewelry, as well, and some money, I believe in the range of $20.
Q Okay. And then she was speaking with Officer Owens?
A Yes.
MS. TESSITORE: All right. Answer any questions the Defense may have, please.

CROSS-EXAMINATION

BY DEFENDANT BOYD:
Q Officer, that night, how fast would you say you responded to the call?
A I received the call at 8:12. And I arrived at 8:13, so it would have been within a minute.
Q Was there any surveillance out there to depict any type of activity, you know, vehicle, or inside surveillance, or anything of that knowledge [sic]?
A No, sir. There is no surveillance.
Q Did anyone see anything, or hear of a suspicious vehicle or anything out there? If you responded that

fast, someone should have seen something.
A That would be an assumption if there were a vehicle. We do not know that there was a vehicle. And no one conveyed to me that there was a vehicle involved.
Q So there was no surveillance out there over the parking lot, or anything?
A No, sir, as there aren't in many small businesses. There wasn't any surveillance either inside or outside of the business.
Q Excuse me, sir?
A Yes, sir.
Q Did you just testify that there were three other cars out there in the parking lot that night?
A Approximately. I could not give an exact amount as to how many cars. But she asked if there were a large number of cars. And I said, No.
Q No one outside the salon saw Mr. Boyd immediately after you arrived? Nobody? No one saw Mr. Boyd?
A No one conveyed to me that they saw Mr. Boyd.
DEFENDANT BOYD: Thank you.
THE WITNESS: Yes, sir.
THE COURT: Any further questions?
MS. TESSITORE: No, Your Honor.
THE COURT: All right. Thank you, Officer Powell.
THE WITNESS: Yes, sir.

THE COURT: You may call your next witness.

MS. TESSITORE: Thank you, Your Honor.

The State would call Officer David Owens.

THE CLERK: Sir, please, come forward.

If you would, please, place your left hand on the Bible and raise your right hand.

WHEREUPON,

DAVID BARRY OWENS, JR.,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Please be seated.

Please state your full name for the record.

THE WITNESS: David Barry Owens, Jr.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Officer Owens, where do you work?

A The Greenville Police Department.

Q And what do you do there?

A I'm, currently, assigned to the crime response team. I've been assigned to that team for the past six months. We just address crime trends in the city.

Q And, back in March of 2010, what was your position then?

A I was in uniform patrol at the time, but temporarily assigned to the detective division.

Q Did you, in that capacity, have the occasion to respond to Northgate Beauty Shop in Greenville County on March 4th of 2010?
A Yes.
Q Okay. And do you recall approximately what time you arrived on the scene there?
A It was about 8:20 in the evening.
Q And, when you arrived, what was your role?
A Well, I was training Detective Manning at the time. When I arrived there, the scene was already secured by other officers. And I just offered to help with paperwork, and just took a statement.
Q Okay. And did you speak with -- who did you speak with?
A Sharon Maurer.
Q And when you spoke with Ms. Maurer, how would you describe her emotional condition?
A She was shaken and upset.
Q Was she able to communicate?
A She was able to communicate and talk, but she asked me to write her statement for her.
Q And when she spoke to you, this was within minutes of the -- or let me ask you this. How much time was between when you arrived and when you spoke with her?
A I would estimate approximately five minutes. As soon

as I got there, I offered to help with paperwork. And then I spoke with her, so just a few minutes.

Q And what did she tell you?

A She told me that her and a co-worker were preparing to close the beauty shop that they work at. They had stepped outside to their vehicle to take some items out to the vehicle. They stepped back in to the beauty shop. When they were finalizing whatever they were doing, an individual stepped in. The individual was swinging a stick around. They were in the kitchen area. The individual was swinging a stick, a wooden stick in a threatening manner. He demanded money from them.

Ms. Maurer told me -- or Ms. Maurer gave the individual the money she had. The individual, also, took money from the other female victim. He, also, told her that that wasn't enough. At which time, she removed her jewelry and gave her jewelry to the suspect.

Q Did she describe the suspect for you?

A She did.

Q And what physical description did she give?

A She told me he was around 6'2", 190 pounds, a black male wearing a dark stocking cap, a dark windbreaker-type jacket, dark green pants, and gray athletic-type shoes. And she, also, said he had a short unkempt beard.

Q Did she describe the stick at all to you?

A Not to me. She just -- just to me, she said it was a wooden stick. I didn't go any further and ask her about the stick.

Q Did she give any indication as far as the size, or anything like that?

A Not that I remember.

Q And did she indicate what he was doing -- what the suspect was doing with the stick?

A Yeah. He was swinging it around in a threatening manner. He had knocked items over in the kitchen or break room area with it.

Q And did you go into that break room at any point in time when you were there?

A I looked in there. I don't know if I, actually, walked into the break room area.

Q Okay. Do you recall -- where did you speak with Ms. Maurer -- I mean, excuse me -- yeah, Ms. Maurer when you took her statement?

A It was, actually, in the beauty shop area.

Q Is that -- where is that in relation to the break room?

A It's -- you come in from the back door, the kitchen area and the bathroom are directly to the right. But if you continue in, the beauty shop, the larger area where they work is more towards the front.

Q And where was Ms. Holcombe when you were speaking to Ms. Maurer?
A She was nearby, I believe, with Officer Powell in the same room. But I don't remember exactly how close or where she was in relation to us.
Q Was there any information you received regarding how the suspect may have left the business and left the area?
A I didn't receive any of that information.
Q Okay. And do you know whether -- so you didn't have any information regarding whether he left on foot, or vehicle, or anything like that?
A Not that I recall.
Q Did the victims indicate or did Ms. Maurer indicate to you, at any point in time, that the suspect was wearing any type of disguise, or anything to conceal his identity?
A Not that I -- I just remember her telling me he had a dark stocking cap on.
Q Okay. Did -- when you arrived there, was the -- how would you describe the lighting in that area in the back?
A Behind the business?
Q No, in the break room.
A In the break room, I would describe it as well lit.
Q And how about the parking lot?
A The parking lot was dark.
Q Okay. Was there any lighting out there?

A There may be minimal lighting, but I don't think it's well lit, no.

Q And was there any video surveillance?

A There was none, to my knowledge. I did not retrieve any.

Q If there had been, would that be something that one of the officers would have collected, if there had been?

A That would be something we'd be interested in collecting, yes.

Q In the back parking lot there, do you recall whether -- in the back of the beauty shop, how would you describe the amount of cars, or people? You know, what did you observe about the parking lot?

A I don't recall that there were many cars parked out there, or many other people moving about, besides police officers.

Q And was there -- did they attempt to locate the suspect, other than through the BOLO, be on the lookout for the description while you were out there?

A I'm sure other officers that were on the road looked for him -- for the suspect. But, other than that, I don't know.

Q Okay. And you didn't receive any information regarding name or anything, other than the victims information regarding the description; is that

correct?
A No.
MS. TESSITORE: Please answer any questions the Defense may have.
Thank you.

CROSS-EXAMINATION

BY DEFENDANT BOYD:
Q Officer, that night, sir, how long would you say that it took you to respond to the scene?
A Probably about 10 minutes from the time the call came out, 10 to 15 minutes.
Q Can you give me an estimate of how many more officers were on the scene at the time?
A There were, at least, three already on the scene when I got there, in addition to the other officers that were on the road driving the area.
Q And you stated that there was no surveillance?
A Not to my knowledge.
Q Were there any fingerprints or video?
A Not to my knowledge.
Q Were there any K-9s on the scene?
A I don't remember if we had a K-9 come and track the suspect. I don't remember.
DEFENDANT BOYD: Okay. No further questions.
THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. TESSITORE:

Q Was the suspect located that evening, as far as you know?

A No.

MS. TESSITORE: That's all, Your Honor.

THE COURT: Thank you, Officer.

You may call your next witness.

MS. TESSITORE: Your Honor, may we take a brief recess so I can contact the forensics office?

THE COURT: Okay. We'll take about a 10-minute break.

Ladies and gentlemen, I'm going to ask you to do one thing while you're on your break. In addition to not talking about the case and continuing to keep an open mind, if you would, select someone to be the Foreperson. And give their name to Ms. Fryer or Mr. Frazier. I'd appreciate that.

So we'll take about a 10-minute break.

Thank you.

(WHEREUPON, the jury was excused from open court at approximately 2:27 p.m.)

THE COURT: We'll be in recess for about 10 minutes.

(WHEREUPON, a break was taken.)

THE COURT: You can bring the jury on in.

Thank you.

(WHEREUPON, the jury came into open court at approximately 2:39 p.m.)

THE COURT: All right. Mr. George, you've been selected as the Foreperson. You've been sitting in that chair all along, haven't you?

JUROR #45, JOSHUA GEORGE: Almost every time.

THE COURT: But you'll be the liaison between the Court and the jury. And, if you need to communicate with me, you can just do so in writing, which is the preferred form, or out here on the record. The writing will be made part of the record. But, otherwise, I can't communicate with you any other way.

So you'll just preside over the deliberations. And, of course, your vote doesn't count more than anyone else's. And I hate to tell you, but you don't get paid more than anybody else either.

With that, you may call your next witness.

MS. TESSITORE: The State would call Sergeant Shaw.

THE CLERK: Sir, if you'll, please, place your left hand on the Bible and raise your right hand.

WHEREUPON,

DARWIN SHAW,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Please be seated.

Please state your name for the record.

THE WITNESS: Darwin Shaw, S-H-A-W.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Sergeant Shaw, can you tell the jury where you are employed?

A I'm employed by the Greenville County Forensics Division.

Q And what do you do there?

A I'm a sergeant. And part of my duties are to supervise other technicians, as well as respond to crime scenes for every agency within Greenville Counties jurisdiction.

Q And what are your duties?

A I respond to crime scenes, depending on the type of crime, take photographs, if I deem them necessary, process for fingerprints, collect evidence, and prepare a report for court presentation.

Q And approximately how many scenes have you processed in the course of your career?

A In my 13 years with the county, close to 8,000.

Q And what did you do before you came to Greenville County?

A I was with a police department for 21 years, seven years as a road officer, and 14 as an investigator.

Q Now, in your role as a forensics officer, did you have the occasion to respond to the armed robbery and kidnapping that occurred at the Northgate Beauty Shop on March 4th, 2010 in the evening hours?

A Yes, I did.

Q Okay. What time did you get the call?

A I got called at about five minutes after 9:00.

Q And what time did you respond?

A I got there about 20 minutes after, I believe.

Q And, when you arrived, can you tell the jury what you do as soon as you get to the crime scene, and this particular crime scene?

A As soon as I respond to a scene, I meet with the investigating officer, try to get pertinent information as far as the type of crime, and any information they may have that may assist me with my investigation. And, as the same, in this case, I met with a detective to try to get information to give me some basis as far as where I could start processing, or if there was anything for me to process.

Q Okay. So who -- in this case, who did you meet with at first?

A Detective Manning.

Q Okay. And, based on the information that he was able to provide to you, what did you do in response to that?
A As I -- originally, as I got to the scene, I asked him to provide me as much information as he could. I was advised that a subject had come in through the back door carrying a -- had a stick, and demanded money from two of the employees. The subject, reportedly, had gone out into the front area of the beauty shop. And they heard some banging around, but didn't know if anything was taken from the front of the shop. So I asked them to check.

And they had gone into a desk, and found an envelope that, I think, had like Girl Scout money. They said that money was there. And there was, also, a bank bag and another envelope in a bottom drawer that, also, had money that was still there. And they said they didn't believe anything was missing from the front of the store.
Q So what did you do at that point?
A I asked the employees to take me back into the kitchen area -- or the back part of the store where they were both at when this incident occurred so I could find out if anything had been touched by the subject, if things had been moved, if anything was out of place, if there was anything out of the ordinary.

And I was advised that this subject had a stick, about a two by two square stick that he hit the wall and,

also, hit the table in that break room with it.
Q Okay. And so did you talk with both Ms. Maurer and Ms. Holcombe at the same time in the break room?
A I did. And it was, specifically, to try and find out what each one of them were missing. In my report, I had the business as one victim. And because each one said they had personal property that was taken from them, I, also, included them as victims, like victim two and victim three. And I tried to get information from them as to what personal items they were missing.
Q Okay. And what did you observe about the break room? You referred to the table.
A It was pointed out to me by the employees that there were like wood fragments on top of the table in the break room. I believe the salt and pepper shakers may have been laying on its side. They advised me that these things -- the things that I saw that looked like bark or some type of wood fragments, they said those were not there prior to the subject hitting the table with the stick.
Q And what was the condition of the table when you saw it?
A It was just like a formica top, like a kitchen table.
Q I'm showing you what's been marked as State's Exhibit No. 10, do you recognize that?
A I do.

Q And what is that?
A This is a photograph of the table that's just inside the door of the break room.
Q And what did you collect from that table -- well, let me ask you this. At that point, what did you do in response to this information, and what you observed?
A Originally, the first thing that I did was I processed the back door for fingerprints. Because of the time of night, dew and condensation was starting to set in. So I wanted to get that completed and try to get that processed for fingerprints. And, once that was completed, then I went and I collected the -- those wood fragments on the table.
Q And I'm showing you State's Exhibit No. 18. When you say -- well, can you look at that and tell me what that is?
A This is a -- just a photograph of the back door of the business.
Q Okay. And is that the door that you processed for the fingerprints?
A It is. The storm door, not the interior door.
Q Okay. Did -- well, first of all, what do you look for when -- as far as when you're trying to collect prints? Can you explain to the jury how you do that?
A Once I have determined -- or it's been explained to

me what items or areas have been touched, I look at the surface. I try to determine if it's rough textured, if it's suitable.

We kind of have three rules: Clean, smooth, and dry. If we have those three items available, then there's a possibility for getting prints. So once I'm advised what items have been touched, I then examine those things to see if they fit that criteria, which would enable me to try to get fingerprints.

Q And, regarding this door, did you have information about what type of usage the door got?

A I knew that officers had come and gone from the door -- from the storm door, as well as employees, customers. But it was my understanding that that was the door that the suspect had left through, that storm door. And that was my logical place to attempt to get fingerprints.

Q Okay. I'm showing you State's Exhibit Nos. 19 and 20, do you recognize those?

A I do.

Q Okay. And what are those pictures of?

A The one photograph is the -- it's a photograph of the door standing open showing the texture. The other is, actually, a close-up photograph of the frame of the storm door showing the textured surface, which would make it

unsuitable for obtaining identifiable prints.
Q Okay. And just going back to State's Exhibit No. 18, is that the same door?
A It is. It's just the interior side is a different color.
Q Okay. And is this a fair and accurate representation, State's Exhibit Nos. 18, 19, and 20, of the door that you processed that evening?
A They are.
MS. TESSITORE: At this time, the State would move those into evidence, Your Honor.
THE COURT: Any objection?
DEFENDANT BOYD: No objection, Your Honor.
THE COURT: Okay. They're in evidence.
(WHEREUPON, State's Exhibit Nos. 18, 19, and 20 were admitted into evidence.)
BY MS. TESSITORE:
Q Sergeant Shaw, when you processed that door, what were you able to process, if anything?
A The only area was off the interior side of the glass. And I did send a latent print up to our latent division to see if they could identify who may have touched the glass.
Q Okay. And did that print match this Defendant?
A No, it didn't.
Q Okay. And were you -- or was the forensics division

able to determine whose it was?
A No, they could not.
Q Okay. And regarding the -- well, would a stick leave a print, or an elbow?
A Not if there was clothing above it, it would not. You can -- in the summertime, if you're sweating, you could leave -- there could be pore marks from an elbow, from a wrist, from an arm, from a nose. Those types of transfers could be left, but not ridge detail.
Q Did you -- after you processed the door, what did you do after that?
A I went outside -- with the information I had gotten from the two employees about a stick they described as a two inch by two inch square stick, possibly two to three foot long, I went outside and went over to a neighboring business where they had a grill. There were tree branches. There were logs, and so on. And I was looking for any kind of stick that may resemble what they had identified to me as being the stick that the subject had brought into the business.
Q Okay. And when you're referring to the -- what was the business at the end of the row of businesses there?
A I believe it's the Soda Shop.
Q Okay. And I'm showing you State's Exhibit No. 7. And when you refer to you were looking around, is that --

what does that show?

A This is just a photograph showing the distance from the back door of the beauty shop to the business next door, and, also, to show that there are chairs and so on out behind that business.

Q Okay. And, on the evening that you responded, was there anything different from as it appears in there?

A It doesn't -- it appears to be the same. It was in the evening when I was there the first time.

Q Okay. And was there anybody -- did you observe anybody out there?

A No. There was nobody outside at that time.

Q Okay. So after you -- did you locate anything that resembled what the victims described?

A No, I didn't.

Q As far as the weapon?

A I checked next to the business, an alleyway, and out into the parking area behind the beauty shop. Again, I walked around this area that is covered where it had the barbecue grill. I looked for anything that might resemble what they had described. And I found nothing. And that's when I went back into the store.

Q And, when you went back into the store, what did you do?

A I collected the wood fragments from the top of the

table.
Q All right. I'm showing you State's Exhibit No. 34, and I'll ask you to look at that. Can you identify that?
A This is a photograph of wood fragments that I had collected from the scene.
Q Okay. And how did you collect them?
A I took a latent card, which is a fingerprint card, and scraped it across the top of the table and put it in a coin envelope, which is a small manila coin envelope.
Q And what did you do with that envelope?
A When I cleared the scene, I took it back to our office and put it into my secure evidence locker.
Q And where was it between the time you collected it and put it in your secure evidence locker?
A In my pocket.
Q And did it remain there?
A It remained in my pocket until I put it into my locker. And then I, eventually, put it in property and evidence.
Q Okay. And who has access to that secure area you're talking about?
A Only officers within our division.
Q Okay. And then from there, where did it go?
A It went to property and evidence.
Q Okay. I'm showing you what's been marked as State's

Exhibit No. 39.

DEFENDANT BOYD: No objection.

BY MS. TESSITORE:

Q Would you take a look at that. Do your initials appear on that item?

A They do.

Q Okay. And what is that?

A This is -- it's just a manila envelope. Rather than putting a small coin envelope into property and evidence where you have to write all the detailed information, I just used a regular manila envelope. I wrote all my case information on the outside and put the coin envelope on the inside.

Q Okay. And what did you -- so is there any handwriting on there that's not yours, as far as on the envelope?

A No. All the information on the front is my writing.

Q Okay. And when you say you brought it to property and evidence, where is that?

A That's located at the law enforcement center.

Q Okay. When did you bring that there?

A On the 15th of March, I believe.

Q And when you brought it there, describe for the jury how that works.

A We have -- at that time, we had a property and

evidence sheet, which is a multi-copy sheet that has all the information -- the same information that is on my -- on the envelope is on the property and evidence sheet as far as where it was collected, what time it was collected, the date, the type of evidence that's going in. All of that information goes to property and evidence where a technician or somebody from P&E looks at my packaging, makes sure it's been initialed on the back by me to show it's been sealed, and they take custody of it at that point.

Q Okay. And, in this particular case, did -- who did you give this to?

A Kara Bennick.

Q And how -- in what condition was the envelope when you gave it to her?

A It was sealed. And, again, she confirmed it was sealed. In fact, I believe the P&E sheet, they write sealed, actually, on the property and evidence sheet.

Q Okay. And is this item there in substantially the same condition as when you put it into property and evidence?

A It is.

Q And, if you could, go ahead and open that.

A (Witness complied.)

Q And take a look inside and see if you recognize that,

as well.
A I do.
Q Okay. And what is that?
A There is a coin envelope, a small manila coin envelope that has my name, my initials, the time it was collected, and what evidence was put in there. And it was then removed from the manila envelope and placed into the sealed clear envelope so to make it more visible, rather than take a chance of losing it out of the coin envelope.
Q Okay. So, initially, it was in the coin envelope?
A That's correct.
Q And then who put it into the plastic envelope?
A I did.
Q Okay. And are -- regarding those pieces, are they in substantially the same condition as when you collected those?
A I believe so, yes.
Q And has there been, as far as you know any -- were they -- was there any testing that you did regarding the fragments?
A No, there was not.
MS. TESSITORE: Your Honor, at this time, the State moves State's Exhibit No. 39 into evidence.
DEFENDANT BOYD: I object, Your Honor, due to -- outside of the presence of the jury, please.

THE COURT: Okay. Ladies and gentlemen, we'll just take a short recess. Don't talk about the case.

(WHEREUPON, the jury was excused from open court at approximately 3:02 p.m.)

THE COURT: All right. Yes, sir, Mr. Boyd.

DEFENDANT BOYD: Yes, sir, Your Honor.

I object to the stick coming in, because there's a variety of things that I've heard about the stick. And that doesn't describe anything that I had.

MS. TESSITORE: Your Honor, at this time, the State is not intending to introduce the stick. The State moved to introduce the wood -- pieces of wood that Sergeant Shaw had collected.

DEFENDANT BOYD: Your Honor, at this time, I object to the search that was made to my vehicle. A search warrant was not obtained.

Might I add, sir --

THE COURT: Has there been any testimony about the search?

MS. TESSITORE: Well, Your Honor, as far as the wood fragments, they have nothing to do with the --

THE COURT: The stick.

MS. TESSITORE: Well, they have nothing to do with the search of the vehicle. Those were located from the crime scene --

THE COURT: Right.

MS. TESSITORE: -- where the stick was striking the table. So I think that's a separate issue. Regarding the stick, there has not been any testimony yet, because Detective Lusk has not testified about how he retrieved the stick.

THE COURT: I've heard --

MS. TESSITORE: He did testify that it was in plain view when he apprehended Mr. Boyd at the pawnshop, and when he took him into custody at that point.

THE COURT: All right. Well, if you're going to try to suppress submission of the stick, we'll just take that up later.

Are you getting ready to introduce the stick?

MS. TESSITORE: Through Detective Lusk, yes. But he would be probably two witnesses -- the second witness after Sergeant Shaw.

THE COURT: Okay. So before he testifies, we'll have a hearing on how he found the stick. And you can ask him questions about that.

DEFENDANT BOYD: Can I add something to you as well, too, please, sir?

THE COURT: Yes.

DEFENDANT BOYD: Not only do I object to not having that search warrant, so to speak.

THE COURT: Right.

DEFENDANT BOYD: But there was a lot of material in my vehicle, tools, et cetera, all kinds of things. And that was just one particular item that was submitted, if that was "the weapon." So I'm very much -- I have a lot of questions.

THE COURT: Well, we'll, certainly, give you the opportunity to ask those questions, Mr. Boyd.

MS. TESSITORE: Your Honor, it may be -- just as far as a practical consideration, based on what he's now raising regarding the stick and if I could recall Sergeant Shaw on the issue of the markings that he placed on the stick before we even get into that, if there's going to be any type of contest about the -- or challenge as far as the introduction of the stick.

THE COURT: I'm not sure what you're referring to.

MS. TESSITORE: Well, what I don't -- Sergeant Shaw will have to testify about the markings that he placed on the stick. And it's not in evidence yet.

THE COURT: Oh, I see what you're saying.

MS. TESSITORE: Right.

And I have to wait until I establish the foundation with Detective Lusk.

THE COURT: Okay.

MS. TESSITORE: I'm sorry.

THE COURT: Well, I overrule the objection to State's Exhibit No. 39, which I think is the one you were about to seek to introduce; right?

MS. TESSITORE: Yes, sir.

(WHEREUPON, State's Exhibit No. 39 was admitted into evidence.)

MR. ROBINSON: I was just explaining to him what the Court did, and he can raise the issue once they attempt to introduce the stick.

THE COURT: Okay.

MS. TESSITORE: So, Your Honor, I would just ask -- the State will have to recall Sergeant Shaw on that. And I just wanted to give the Court notice about that, and Sergeant Shaw as well. If you could just give me about 30 seconds, then I can make sure what I need to --

THE COURT: Yes, sure.

(Pause.)

MS. TESSITORE: Your Honor, I think, at this point, the State has no further questions for Sergeant Shaw regarding the item that was just admitted.

The only thing is just that the State would seek to admit State's Exhibit No. 34. And then if Mr. Boyd would cross-examine Sergeant Shaw just regarding what the State has elicited at this point.

THE COURT: What is State's Exhibit No. 34?

MS. TESSITORE: State's Exhibit No. 34 is the picture of the pieces that he collected.

THE COURT: Is there any objection to that picture?

DEFENDANT BOYD: No objection to that, Your Honor.

THE COURT: Okay. It's in evidence.

(WHEREUPON, State's Exhibit No. 34 was admitted into evidence.)

MS. TESSITORE: Thank you, Your Honor.

THE COURT: You can bring the jury back in.

Thank you.

(WHEREUPON, the jury came into open court at approximately 3:10 p.m.)

THE COURT: Yes, ma'am.

MS. TESSITORE: Your Honor, I just request permission to publish State's Exhibit No. 34, which has been admitted into evidence, to the jury.

THE COURT: All right.

MS. TESSITORE: And I have no further questions at this time of Sergeant Shaw, but we reserve the right to recall him.

THE COURT: Okay, ma'am.

Mr. Boyd, you may question the witness.

DEFENDANT BOYD: I don't have no questions at this moment, Your Honor.

THE COURT: Sergeant Shaw, thank you, sir.

THE WITNESS: Sure.

THE COURT: You may call your next witness.

MS. TESSITORE: Your Honor, the State calls Kara Bennick.

THE CLERK: Ma'am, please, come forward.

If you'll place your left hand on the Bible and raise your right hand.

WHEREUPON,

KARA BENNICK,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Please be seated.

Please state your full name for the record.

THE WITNESS: Kara Bennick.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Ms. Bennick, where do you work?

A I'm employed by the Greenville County Department of Public Safety in the property and evidence room.

Q And what do you do there?

A I'm the property and evidence supervisor.

Q And how long have you been a supervisor?

A Eight years.

Q And before that eight years, what did you do?

A I worked in forensics in the ID section.

Q Okay. And what, if any, training have you received as far as in your role as supervisor?
A I've been trained through the International Association of Property and Evidence, and the Florida Department of Law Enforcement. I've taken classes through them for property management and handling.
Q And, as part of your duties, can you kind of break it down for the jury to explain what you do on a daily basis with respect to evidence that's brought there?
A In addition -- my job, in addition to the administrative duties, is accepting evidence in from the officers and the deputies of Greenville County and City.
Q Okay. And where do you -- when you say you accept evidence, what does that mean?
A We're responsible for the care, custody, and control of the evidence once it comes into P&E.
Q And where do you keep it?
A We're located in the basement of the law enforcement center in a secured section.
Q Who has access to that area?
A Only the four property technicians.
Q And how does that evidence come into your possession?
A There's one of three ways. It can come in through the counter during business hours from the officer directly. It can come in through the drop box, which is

an after-hours secure box that they can place evidence into. If it is too big for the drop box, it then goes to a locker, which is a secure locker that officers can place evidence into after hours.

Q And what are the -- as far as the documentation that you have in your office regarding each item, how do you track the items?

A Everything that comes into our office comes in accompanied by a property and evidence report that details the inventory, the date and time of impound, who put it in, and it tracks all the movement. It moves with the evidence everywhere it goes.

Q Okay. And taking you back to March of 2010, did you have the same employees at that time?

A No. I think we've had a couple of changes since then.

Q Okay. And you're familiar with Sergeant Shaw?

A I am.

Q And do you recall him bringing to property and evidence an item of evidence in this case?

A Not without seeing the property and evidence report. But I do on a routine basis accept stuff from him.

Q All right. I'm showing you State's Exhibit No. 39.

A Yes, ma'am.

Q And is that the report you're talking about?

A Yes, ma'am.
Q Okay. And based on -- first of all, if you'll take a look at State's Exhibit No. 39. When did that come into your possession?
A I signed for it on March 15th, 2010, at 9:45.
Q And when you say you "signed for it," what does that mean?
A That means I accepted it from Dar Shaw.
Q Okay. And in what condition do you accept items as far as the way that it's packaged?
A Crime scene, typically, brings their stuff in sealed.
Q And was this item sealed when it was brought in?
A It appears it was sealed, although I did not sign it in as sealed.
Q Okay. And did you -- does your signature, your name, appear on the P&E sheet?
A Yes, ma'am, it does.
Q And what time did you receive it?
A 9:45.
Q And what day?
A March 15th, 2010.
Q Okay. And is it in substantially the same condition as when Sergeant Shaw brought it to P&E?
A Yes, ma'am.
Q And are there any other signatures on the P&E sheet

regarding -- in this case regarding that item?
A Yes, ma'am. Investigator Lusk's signature is on it. He signed it out for court.
Q Okay. And that was for trial this week?
A Yes, ma'am.
Q Okay. And are there any other signatures?
A Not on the paperwork.
Q Okay. And when the item is checked out, what is required if you're going to -- if the item is going to leave your custody and control?
A It has to be signed out on the property and evidence report. We will retain a copy of the report. And then the original will travel with the evidence and the officer.
Q Okay. So, as far as this item, that had been in property and evidence since the day that Sergeant Shaw put it in there?
A Yes, ma'am.
Q Until the trial this week?
A Yes, ma'am.
MS. TESSITORE: Okay. Thank you.
Please answer any questions the Defense may have.
DEFENDANT BOYD: No questions.
THE COURT: Thank you, Ms. Bennick.
You may call your next witness.

MS. TESSITORE: Your Honor, at this time, we would ask Ms. Bennick to, also, be subject to recall regarding the previous discussion that we've had --

THE COURT: All right.

MS. TESSITORE: -- in the courtroom.

THE COURT: Okay.

MS. TESSITORE: The State would call Detective Lusk.

THE CLERK: Please place your left hand on the Bible and raise your right hand.

WHEREUPON,

BRADLEY LUSK,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Please be seated.

Please state your full name for the record.

THE WITNESS: Bradley Lusk.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Detective Lusk, where do you work?

A I work for the Greenville City Police Department.

Q And how long have you worked there?

A I've been in law enforcement for 17 years.

Q In what capacity have you worked?

A I started my career as a uniform patrol officer.

Recently, about four years ago, I was promoted to the detective division.

Q And what is your -- what are your daily duties as a detective?

A In the detective division, I'm assigned to the violent crimes unit, which is specific crimes involving violent crimes toward an individual, which include anywhere from murder, missing persons to sex crimes or sexual assaults, aggravated assaults, armed robbery, kidnappings, firearms, you know, any offense involving firearms, or anything like that.

Q And did you have an occasion to become involved in this case?

A Yes, ma'am, I did.

Q How did you become involved in this particular case?

A This case, it was assigned to me on Friday morning, the 5th, for further investigation.

Q Okay. And this -- you're referring to the Northgate Beauty Shop?

A Yes, ma'am, I am.

Q And that's in Greenville County?

A That is within the city limits of Greenville.

Q And were you working that evening before -- when the incident occurred?

A No. I was off that evening.

Q So, at the point you got assigned, did you -- well, how did you begin your investigation?

A After looking over the report, I decided to try and meet with the victims. I went to the beauty salon. And I was able to talk with Ms. Holcombe.

I reviewed some of the information in the report. I asked her to give me a description. I looked over the scene, I guess, the beauty shop and the salon area. I took some photos of the exterior, and walked around the area. There's an adjoining park that I walked through to check some avenues of escape, maybe something was dropped, or missed, or something. And I took overall pictures of the outside of the business.

Q Okay. Was Ms. Maurer there when you went there the next day on Friday?

A No. Ms. Maurer was not there on Friday.

Q So, at that point, when you say you had the information from Ms. Maurer -- or the other victim -- how do you get the information from the officers who are there the night before?

A Yes. They'll complete an incident report and supplemental reports, which are reports which are attached to the original incident report, statements obtained from the victims. And that's compiled into a file, which I receive.

Q And did you have any information regarding -- at that point in time, other than all the information that was provided regarding a physical description and description of the weapon? Did you have any information when you got assigned regarding any suspects at that point?

A No, I did not.

Q So did you -- were you able to -- or, I guess, how did you -- where did you start?

A After I talked with Ms. Holcombe -- you know, I checked the pawnshop. A lot of times when crimes like this occur, people do pawn stuff. For example, if it was a robbery, someone taking a phone, we check phone records. Sometimes, people make mistakes and use the property that they took. It's an investigative tool I use to associate and link a suspect.

What I did was I responded to some area pawnshops. I went to First Cash, which is located on Rutherford Street, right -- it's near the Salvation Army. I went there and, you know, to my surprise, I spoke with an individual who recognized when I gave her -- I had a jewelry description given -- Ms. Holcombe gave me a jewelry description, and a small sheet of paper that a diagram was drawn on. And with that diagram and with the physical description given by the victims of the suspect, the employee at the pawnshop was like -- she readily recognized and said,

Yeah, that guy was in here a couple of hours ago trying to pawn. And I believe it was the solitaire, and sapphire and diamond ring.

Q Let me just show you State's Exhibit No. 42. Do you recognize that?

A Yes, ma'am.

Q Okay. And what's that?

A That's the drawn diagram I received on Friday while I was talking to Ms. Holcombe.

Q Okay. And was she, also, able to explain to you a further description, other than just the diagram?

A She did. It was a basic -- the way she tried to describe it to me was -- when she started describing her engagement ring, it took a moment, because she got visibly upset and started crying. And it took a few moments. But she said, My husband gave it to me over 30 years ago.

When she was, finally, able to regain her composure, she further described it as white gold with about a quarter carat diamond in a square setting. It was like a little antique setting. She described her sapphire and diamond in a diagonal setting in yellow gold.

She gave me a description of Ms. Maurer's jewelry, which is distinct. It's a sterling -- she described it as like a sterling set, matching earrings and a ring with a large green stone in the center of each, and some designs

around the perimeter of the stone.

Q Okay. Now, did you, also -- I'm going to show you State's Exhibit Nos. 2, 3, 4, 5, and 6, and ask you to just take a look at those.

A (Witness complied.)

Q Do you recognize those?

A Yes, I do.

Q What are those?

A Photographs I had taken that day after I had spoken with Ms. Holcombe.

Q Okay. And you took those photographs?

A Yes, I did.

Q Was she able to describe to you the weapon that was used in the crime?

A She did.

Q And how did she describe it to you?

A She described a square -- I thought you were talking about the jewelry. She goes, It was kind of like squared like that wide. She said, Hold on, go outside. And right outside the back door, there's a post that supports the overhang. And it's like a four by four post that holds up the awning. And she said, It's just like that color, but it was smaller. And the way she was describing it, it was like a two by two piece of wood. And she said it was about three to four feet in length in a gray weathered

condition.
Q I'm showing you State's Exhibit No. 18, does that -- what does that show?
A That's the rear of the beauty shop entrance.
Q Okay. And is there -- is the post visible in the picture?
A Yeah. The post she indicated to me is right next to the heating and air exterior machine, I guess.
Q Okay. So, now, when -- let me take that back. When you say you went to the area pawnshops --
A Yes, ma'am.
Q -- do you -- where did you first go?
A The first place I went was First Cash Pawn on Rutherford street.
Q And who did you speak with there?
A I spoke with a Stephanie Neubia, I believe is what her name was.
Q And she's an employee there?
A Yes.
Q And what did you do while you were there?
A After she described the gentleman -- or after I described the gentleman or the suspect and the jewelry, she gave me a time frame, He was in here about two hours before. At that time, I met with the manager. And I was able to pull a video of the gentlemen entering the

pawnshop.

Q Okay. How did they pull up the video?

A There's a surveillance system within the business. It's on a hard drive. It was downloaded on a disk.

Q Okay. And, once you saw that, did he -- well, what did you see?

A Well, Ms. Neubia explained to me that the gentleman -- or the suspect entered, asked for, I guess, a price on what they would give him for the two rings. And she said it was the solitaire and the sapphire, and the diamond ring. When the offer was made, the individual declined and says, Luthi's offered me $200. And he took the rings and left.

Q Now, when there's no transaction, is there any -- was there any information that she was able to provide you regarding the identity of this person that was in the pawnshop?

A No. There was no record of the transaction or any information obtained.

Q Were you able to observe on the video? Were you able to see what he was wearing?

A Yes, I was.

Q Do you recall what he was wearing?

A Yes, I do.

Q What was he wearing?

A It was a blue ball cap, thermal long-sleeve shirt, and jeans. I'm not sure about the footwear.
Q What about -- could you see his face?
A Yes. It appeared he had facial hair to include a beard, goatee, and moustache.
Q And could you tell anything about as far as the race, or his height, or his weight?
A He was a black male, 30, 40 years old. The weight, you know, depending on the angle of the camera, if it's perched up high. The height and weight, it would be a guess.
Q Okay. Without guessing, where did you go after you left First Cash Pawnshop?
A After I left First Cash, after she provided the disc, I went to Luthi's.
Q Okay. And what did you learn at Luthi's regarding this investigation?
A There, I spoke with an employee, I believe his name was Brad Martin. He recalled the gentleman coming in trying to pawn the two rings. He did advise me that he offered him $200. And the individual declined and left.
Q And did he provide a description of the individual?
A He did. It was the same description I just said.
Q Okay. Did -- I guess in the first -- in the video you saw, did the individual that you were focused on --

well, was there any other individual with him at that time from what you observed?

A No. From the video I could see, there was no way to determine. I didn't see anybody with him in the video.

Q Okay. And when -- as far as Luthi's, was there any video available there?

A There was no video surveillance at Luthi's.

Q So he wasn't able to give you any further information at Luthi's?

A No.

Q Then, after that, can you tell the jury a little bit about the LeadsOnline system, and what is that all about?

A Yeah. Law enforcement, we have a program called LeadsOnline. And it's kind of like -- well, most of the area pawnshops when they enter something as received, as bought, pawned, or sold, it goes into -- I don't know how to explain it. It's, I guess, a program which interacts with our computers that we have access to. So, as soon as it happens there, we usually can track it.

Q Okay. And so you're able to access that information?

A Yes, I am.

Q Okay. And is that something that's part of your investigatory resources?

A Absolutely it is, yes.

Q Okay. Could anybody just access that information?

A No. It's law enforcement sensitive.
Q So if a customer walks into First Cash and engages in a transaction, would they know that their transaction is being transmitted to law enforcement?
A No.
Q Okay. What did you do after -- after you left Luthi's, did you -- were you able to get any other information that day, on Friday, the day after the robberies?
A No. There was no more information I was able to obtain that day. Prior to leaving both locations, I advised employees, I left my business card, if this guy returns, please, call me.
Q And did you get any calls regarding any other information?
A No, I did not.
Q Okay. What was the next thing you did?
A I took the video and made some stills off the video from the pawnshop at First Cash -- or the First Cash Pawn. I dispersed them out to uniform patrol as far as, you know, if they -- kind of a be on the lookout, this person of interest was possibly pawning stolen property.
Q Okay. And what was your next contact as far as information in the case?
A On Monday -- the Friday was the last time at the

pawnshop. On Monday, it was about 3:00, 3:30 -- I can't remember. I received a call from Stephanie Neubia explaining that the gentleman had returned, but he had -- he didn't have the solitaire and the sapphire, he had a new set of jewelry. Myself and another detective jumped in the car, and we went straight to First Cash Pawn.

Q And when you arrived, what did you observe?

A As we were driving, I was still on the phone, because she called me on my cell phone. A description was given out, striped shirt, black male. He was -- as I was getting ready to approach, I turned on Stone, and onto Rutherford where the Hess used to be. And she said he just walked out of the store. He's getting ready to get into his gray truck, I believe.

When we were approaching the front, I, visibly, observed a gentleman matching that description given to me that day, a striped shirt, getting into a gray pickup truck. I immediately pulled in the parking lot. And I pulled in behind him.

Q Okay. And were you traveling alone?

A No. Detective Conroy was with me.

Q Okay. In the same vehicle, or a different vehicle?

A He was in the same vehicle. He was in the passenger seat. I was driving.

Q And how did you -- where did you park when you got

there?
A Directly behind the truck.
Q And why is that?
A So he couldn't leave.
Q And what did you do after -- well, where was the suspect at that point?
A He had already entered the driver's side of the truck. I approached the truck, identified myself. I asked him to exit the truck. I obtained his ID. And Detective Conroy went inside and retrieved the jewelry that he had pawned.

While he was doing that, I -- well, I stood by with the subject at that time. When he brought the jewelry back out and I looked at it, I mean, it, clearly, matched the description of Ms. Maurer's jewelry. It was the matching ring, and the earrings with the large green stones with the design around the stones.

Q And so you were outside dealing with the suspect?
A Yes, I was.
Q Okay. And, at that time, you were able to obtain his identity?
A Yes, I was. I got -- or he had a South Carolina ID card, which was listed to a Billy Roy Boyd.
Q Okay. And do you see him in the courtroom today?
A Yes, I do.

Q Where is he?
A He's the black male in the white striped shirt sitting at the table.
MS. TESSITORE: Let the record reflect he identified the Defendant.
BY MS. TESSITORE:
Q Now, when you dealt with the Defendant as far as when you arrived, what was he wearing?
A A striped shirt, blue ball cap, jeans. Like I said, I can't remember the footwear. But it was like a Polo with the stripes going up and down.
Q Okay. And how does he compare as far as today as you look at him and when you approached him that day? What differences or similarities? Has he changed at all? Does he look the same?
A He's added some weight. I guess he's gained some weight. His hair on the top of his head is a little changed. The facial hair is changed. He's a lot fuller now in the face.
Q Okay. But there's no question --
A No question at all.
Q Now, when you first approached him, were you wearing a uniform or plain clothes?
A I was in plain clothes. I had my -- I've got a badge I put on my belt like we all do in our investigations.

And I was wearing my side arm.
Q Okay. And what transpired at that point as far as what did you do?
A He was placed in investigative detention at that time, and handcuffed, and put in the back of the patrol car. Because, I mean, when we were on the way, we contacted dispatch and a marked patrol car arrived, also.
Q Okay. Did you read him his rights?
A Yes, I did. After he was placed in the patrol car, I advised him of his Miranda warnings, and his right not to speak to me if he didn't want to.
Q Can you just speak up and tell the jury what you told him as far as what his Miranda rights were?
A Yes. When he was -- I handcuffed him and put him in the back of the car. I advised him he was being detained. I advised him he did have the right to remain silent. Anything he said could and would be used against him in court. He had a right to an attorney, and to have him with him during questioning. If he could not afford an attorney, I advised him the Court could appoint one to represent him without cost. And he, also, had a right to stop answering at any time until he talked to a lawyer.
Q Did he appear to understand what you were telling him?
A He did.

Q And did -- was there any indication that he had any type of difficulty as far as impairment, or anything like that when he was speaking with you?

A No.

Q Okay. And did you ask him questions?

A I did.

Q What did you ask him?

A I asked him where the other two rings were. He said, I pawn stuff all the time. I pawn stuff all the time. I asked him again, that's not what I was asking him. I asked him where the other two rings were. He said, I pawn stuff all the time. I asked him where he got that jewelry from. I just pawn stuff all the time is the only response I got.

Then I asked him, specifically, I was like, There was a sapphire and diamond, and a solitaire, what did you do with that? He denied any knowledge of those two rings. He said, I don't know anything about it, or anything about those.

Q Okay. So he said he didn't know anything about the two gold rings?

A Yeah, the white gold and yellow gold ones.

Q And, at that point, what was Detective Conroy doing?

A Detective Conroy, after he was going -- he was going to go to the beauty shop to show the jewelry, but they

weren't open. He had brought the green jewelry. They weren't there, so he came right back.

Q Okay. Did -- one moment, please.

A Sure.

Q I'm showing you State's Exhibit No. 26, can you take a look at that. Do you recognize it?

A Yes, I do.

Q Okay. What is that?

A It's a photograph of the sterling jewelry, the green stone matching earrings and ring that was retrieved from First Cash Pawn.

Q On the day you found this Defendant?

A Yes.

Q And I'm showing you State's Exhibit No. 15 -- well, actually, at this point, is that a fair and accurate representation of the way that the items appeared when they were retrieved from the pawnshop that day?

A Yes.

MS. TESSITORE: The State would move State's Exhibit No. 26 into evidence.

THE COURT: Any objection?

DEFENDANT BOYD: No objection, Your Honor.

THE COURT: Okay. It's in evidence.

(WHEREUPON, State's Exhibit No. 26 was admitted into evidence.)

BY MS. TESSITORE:

Q I'm showing you State's Exhibit No. 15. Do you recognize that?

A I do.

Q What is that?

A It's a photograph of the jewelry out of the packaging.

Q And it's the same jewelry?

A That is the same jewelry.

Q Who took that photograph?

A I did.

Q Okay. And, at some point, were those items, the green stone jewelry, was that returned to the victim?

A It was. Since the pawnshop had given the individual money for the pawn, they were allowed to keep the jewelry until -- we had to go and procure some money from our finances, the $20 for this set, and buy the stuff back to return to the victim.

Q And you did that?

A I did.

Q Okay. And did the victim identify the jewelry when you returned it to her?

A She did.

Q Was there anybody else in the truck when you found Mr. Boyd?

A No. He was alone in the truck.
Q And were you able to determine who owned the truck?
A I was.
Q Who was that?
A It was Billy Boyd.
Q Okay. And you got the tag number?
A I did. That's how we figured out the registered owner.
Q Did he have keys to the truck?
A He did. They were in the ignition.
Q And were they -- what type of vehicle?
A It's an -- I believe it's an '83 Dodge -- no, I'm sorry. An '83 Ford pickup, gray in color with a burgundy interior.
Q What was the condition of the truck?
A It looked like a work truck.
Q And what about the windows, were they up? Down?
A I believe both windows were up. I can't remember. I can't recall for sure.
Q Could you see into the interior?
A Yeah. It was clear glass. You could see straight through from one side to the other side. There was no tint on the windows at all.
Q Now, I'm going to show you -- one minute, please.
I'm showing you State's Exhibit Nos. 22 and 23, take

a look at those.
A (Witness complied.)
Q Do you recognize those?
A Yes, ma'am.
Q What are those?
A Photographs of Mr. Boyd's truck at the time of his arrest.
Q Okay. And who took the photographs?
A I did.
Q And approximately what time did this all take place?
A Probably close to -- between 3:45 to 4:00 p.m.
Q Okay. So is that -- are those fair and accurate depictions of the way that the truck appeared, and its location when you found Mr. Boyd?
A Yes, it is.
Q Okay. And that's State's Exhibit Nos. 22 and 23.
And, as far as the interior of the vehicle, State's Exhibit No. 22, does that appear to be fair and accurate as far as the interior?
A Yes, ma'am.
MS. TESSITORE: The State would move State's Exhibit Nos. 22 and 23 into evidence.
THE COURT: Any objection?
DEFENDANT BOYD: No objection, Your Honor.
THE COURT: They're in evidence.

(WHEREUPON, State's Exhibit Nos. 22 and 23 were admitted into evidence.)

MS. TESSITORE: Your Honor, at this point, could we take up a matter before we proceed?

THE COURT: Sure.

All right. Ladies and gentlemen, just go to the jury room. Don't talk about the case. And continue to keep an open mind.

Thank you very much.

(WHEREUPON, the jury was excused from open court at approximately 3:46 p.m.)

MS. TESSITORE: Your Honor, at this point, the State would be getting into the questioning regarding the stick that was located within the vehicle.

THE COURT: All right.

MS. TESSITORE: And if the Defense has a motion regarding the suppressions of that stick, I just want to understand what the specific basis for the motion is so I can address that.

THE COURT: Yes, sir, Mr. Boyd.

DEFENDANT BOYD: It's a motion to suppress, Your Honor. He did not have a search warrant to search my truck. And there were a lot of tools in my truck that day. So I don't know what he was looking for in particular that day. And I was arrested and taken from my

truck. But, without a search warrant, I don't know what could have happened beyond that point.

THE COURT: Yes, ma'am.

MS. TESSITORE: In response to that, Your Honor, the State would proffer Detective Lusk's testimony regarding the circumstances by which he located the stick.

THE COURT: Do you have any questions you want to ask Detective Lusk?

DEFENDANT BOYD: Yes, sir, Your Honor.

THE COURT: All right. Go ahead.

CROSS-EXAMINATION

BY DEFENDANT BOYD:

Q Detective Lusk, upon approaching me at the truck, you asked me to step out of the truck, and you handcuffed me. You identified yourself as an officer -- or a detective and you immediately handcuffed me, and took me into custody.

Detective Lusk, did you have a search warrant to touch anything in my vehicle at that point?

A No. I didn't need a search warrant.

Q Detective Lusk, were you aware of other tools in my truck at that moment, any other gas jugs, tools, et cetera?

A Inside the cab of your truck, or in the bed of your truck?

Q The truck, period.
A The truck, period. I don't recall anything in the bed of the truck. Inside the cab, the only thing that stuck out to me was that piece of lumber in the seat.
Q Detective Lusk, did you see a variety of lumber and wood tools in that truck that day?
A I don't recall seeing anything in the bed of -- I saw a piece of lumber in the seat, if that's what you're asking.
Q Officer Lusk, did you place me in custody before you searched my vehicle?
A No.
Q Officer Lusk, did you ask me to step out of my truck, and handcuff me, escorted me to another vehicle, and put me in the backseat while you did whatever you wanted to with that truck that day? Did you, Officer Lusk?
A After you were placed under arrest, I did observe in plain view an article, which was determined to be a fruit of the crime of the robbery. And I seized that piece of evidence --
Q Officer --
THE COURT: Let him finish.
THE WITNESS: And, after that, you were arrested for the armed robbery. And there was an inventory done of that truck. And, at that time, we did not search your

truck. We inventoried it before it was towed by a towing company.

BY DEFENDANT BOYD:

Q Officer Lusk, would you state that I was taken away from the scene so I don't know what happened beyond that point? I was taken away; isn't that true?

A I don't know exactly what time. I was there when the tow truck got there.

Q Okay. Officer Lusk, wasn't I taken to headquarters to be questioned, along with you, and the truck was left in the parking lot?

A I was there until the truck left. You were transported by another officer, because I don't have a screen nor a cage in my car.

Q Officer Lusk, would the pawnshop that day have surveillance footage of everything that transpired that particular day?

A I don't think they've got exterior cameras. They have interior cameras.

Q Officer Lusk, let me ask you this.

A Yes, sir.

Q Did you have any legal consent, at that point, to search my vehicle?

A From you, no.

Q Did you, at that point, Officer Lusk, show me any

type of warrant? Was any warrant, at that point in time, issued to search my vehicle?

A No. There was no warrant. There was no search warrant for the vehicle.

Q Officer Lusk --

A Yes, sir.

Q -- was I running, or trying to leave the scene?

A No. You were seated in the driver's seat of the truck when I approached you.

Q Was I running, or trying to leave?

A No.

DEFENDANT BOYD: I have no further questions at this point.

THE COURT: All right. The Government bears the burden of proving that the warrant complied with the Fourth Amendment. I find the Government has easily met that burden. Detective Lusk's testimony established that he was in a position where he had a right to be, and he saw something in plain view. Therefore, it's not a search pursuant to the Fourth Amendment, based or Arizona v. Hicks.

We'll take about a five-minute break, and resume right at 4:00.

(WHEREUPON, a break was taken.)

MR. ROBINSON: Your Honor, I just --

THE COURT: Yes, sir.

MR. ROBINSON: Your Honor, I just want to make sure, what I'm doing is putting down potential questions for him that are relevant. But, in this case, there was one question I was going to ask -- not me ask, but Mr. Boyd ask. In his report, he talks about speaking to two witnesses that had information about a burgundy vehicle and a gentleman named Petey that matched the description. And I wanted to see if the Court is going to allow him to ask that question. That was in his investigative report. And I think the Court may have ruled on that, but I want to make sure.

THE COURT: Right.

I think that was in the statements that I read earlier.

MS. TESSITORE: Yes, Your Honor.

THE COURT: From Mr. Shirah.

Is that his name? Shirah?

MS. TESSITORE: Shirah.

THE COURT: Okay. Well --

MS. TESSITORE: That is the third-party guilt evidence, and then some.

THE COURT: Yes.

Because I don't think Petey was mentioned previously. I did read his name, though.

MS. TESSITORE: Okay. I'm sorry.

THE COURT: No. Go ahead.

MS. TESSITORE: I was just going to say I think Petey is the name that was given to Detective Lusk from Mr. Shirah at a later point.

THE COURT: Yes. That's what I inferred.

But that would be subject to my earlier ruling, and that would not be admissible.

MR. ROBINSON: Yes, sir.

I just wanted to make sure.

THE COURT: You can bring the jury on in.

MS. TESSITORE: Your Honor, before the jury comes back in, I just ask that Officer Powell and Officer Owens be excused.

THE COURT: Is there any objection to that?

DEFENDANT BOYD: No objection.

THE COURT: Okay. They're excused.

MS. TESSITORE: Thank you, Your Honor.

(WHEREUPON, the jury came into open court at approximately 4:07 p.m.)

THE COURT: You may proceed.

CONTINUED DIRECT EXAMINATION

BY MS. TESSITORE:

Q Detective Lusk, taking you back to talking about the truck you located this Defendant in, was -- you indicated

he had the key. And was the truck running, or not?
A I can't remember if the truck was, actually, running or not. But he was seated in the driver's seat. And the key was in the ignition.
Q Okay. And, when you looked in the vehicle, what did you observe, other than the Defendant?
A There was a long two by two piece of lumber laying on the passenger side of the bench seat of the truck.
Q Okay. And did it appear to match the description that the victims had provided to law enforcement, and to you?
A Yes. It matched the description.
Q And what did you do regarding that object, the stick?
A It was seized as possible fruits of the crime.
Q Okay. And who seized it?
A I did.
Q And, when you took it into your custody and control, what did you do with it from there?
A After I retrieved it, I photographed it on the back of my patrol car, and placed it in the trunk of my locked patrol car -- or in the trunk of my car. There was an evidence sheet completed starting the custody of that stick that was transported later that day and placed in property and evidence in the drop box, because there was no custodian on duty at that time.

Q And what was the condition of the stick when you first found it?
A Gray weathered. And it had -- it was visibly cracked.
Q I'm showing you what's been marked as -- one minute.
DEFENDANT BOYD: Same objection, Your Honor.
THE COURT: Okay. Overruled.
BY MS. TESSITORE:
Q I'm showing you State's Exhibit Nos. 24 and 25. I ask you to take a look at those and identify those, please.
A Yes. These are photographs of the interior of Mr. Boyd's truck. And it's a photograph as the stick laid as I found it -- or observed it the first time in his truck.
Q And which photograph are you referring to?
A State's Exhibit No. 24 is the cab of Mr. Boyd's truck that contained the stick. State's Exhibit No. 25 is a photograph of the stick after I removed it from his truck, laid it on my patrol car, and photographed it.
Q And are those fair and accurate depictions of the interior of the vehicle as you found it, as well as the condition of the stick?
A Yes, ma'am.
MS. TESSITORE: The State would move those exhibits

into evidence at this time, Your Honor.

THE COURT: Any objection?

DEFENDANT BOYD: Objection, same objection.

THE COURT: All right. Overruled.

(WHEREUPON, State's Exhibit Nos. 24 and 25 were admitted into evidence.)

BY MS. TESSITORE:

Q Now, Detective Lusk, when you say you put the stick in your truck -- and where did you take it -- excuse me, in your trunk. And where did you go from there?

A Well, I went to the law enforcement center.

Q And -- well, I'm sorry. Let's just back up. Were there other items that you had collected in addition to the stick at that point in time?

A Yes. There was a pawn ticket that I recovered from the Defendant, Mr. Boyd, and, I believe, a ball cap.

Q And who had custody of those items?

A I did, until they were placed in property and evidence.

Q Okay.

A And they were placed in at the same time the stick was.

Q Detective Lusk, I'm showing you what has been marked as State's Exhibit No. 28, take a look at that. What is that? Do you recognize it?

A It's the pawn receipt I recovered from Mr. Boyd. It was in his pocket.
Q Okay. And I'm showing you -- is that -- was that in -- is that in substantially the same condition as when you found it that day in his pocket?
A It is.
Q And where has it been until today?
A Property and evidence.
Q Okay. And I'm showing you State's Exhibit No. 37, take a look in there.
A (Witness complied.)
Q And what is that?
A A blue ball cap.
Q And where did that come from?
A It came from the Defendant, Mr. Boyd.
Q And who collected it?
A I did.
Q And where did you put that?
A I put it in property and evidence, also.
Q And is that in substantially the same condition as when you seized it from him that day?
A It is.
MS. TESSITORE: At this point, the State would move State's Exhibit Nos. 37 and 28 into evidence at this time.
DEFENDANT BOYD: Same objection, other -- same

objection on State's Exhibit No. 38 [sic], and no objection on others.

THE COURT: Which one is State's Exhibit No. 38?

MS. TESSITORE: Your Honor, State's Exhibit No. 28 -- he may be referring to State's Exhibit No. 28, which is the pawn ticket.

THE COURT: Do you object to State's Exhibit No. 28?

DEFENDANT BOYD: No objection to State's Exhibit No. 28, Your Honor. The one, State's Exhibit No. 38, the box.

THE COURT: Which one is that?

MS. TESSITORE: That's State's Exhibit No. 38, which I haven't presented at this time.

So those are in evidence?

THE COURT: Yes, ma'am.

MS. TESSITORE: Thank you, Your Honor.

(WHEREUPON, State's Exhibit Nos. 28 and 37 were admitted into evidence.)

BY MS. TESSITORE:

Q I'm showing you State's Exhibit No. 38 with the property and evidence form. And, if you would, take a look inside there, and see what's inside there.

A (Witness complied.)

Q Do you recognize that?

A I do.

Q And what is that?
A It's the two by two section of lumber that I recovered from the Defendant, Mr. Boyd's, truck.
Q And is it in substantially the same condition as when you saw it laying on the seat in the truck --
A It is.
Q -- that day?
A It is.
Q Have there been any markings placed on it since you've placed it into property and evidence?
A I didn't place any markings on it.
Q Okay. And are there markings on there that -- are there any markings on the stick that you did not place there?
A There are. There's a few pen markings, dates, initials on one side of the stick.
Q All right. And they're not yours?
A They're not mine.
Q Now, when you placed it into property and evidence, how did you -- tell the jury about as far as how you placed it into property and evidence, and when you did that?
A I completed the chain of custody, which lists the section of wood, the hat, and the pawn ticket. Everything was placed -- I placed in this padded envelope -- well,

envelope, it's for guns and stuff. I placed it all in there, and placed it in the drop box. Because there was no custodian for the property and evidence on duty at that time, along with a sheet that goes with it. It's like a deposit.

Q And where is that located?

A At the law enforcement center in the basement.

Q Is that where Ms. Bennick works?

A It is. It's attached to the same section. There's a door -- it's kind of like a -- there's a little slot you can slide stuff in.

Q And, when you deposit that, do you have any access to it after you deposit it?

A Once you drop it, you know, it's inside the property and evidence section.

Q And when did you bring that and place it in the drop box?

A I dropped it in the drop box at 8:24 on the evening of the 8th, so Monday, that Monday.

Q And these items were in your custody and control until such time you put it in there?

A They were.

Q And is there any other markings as far as the label? What is that?

A I placed that on there. Just in case it fell out of

the packaging, it was labeled individually. I placed that on there. And that's my writing and signature.

Q And do you normally do that with other items that --

A I do. If it's an item that may get dislodged or something like a weapon or something, I attach a small tag just kind of like a backup so we don't lose the evidence.

Q And is your -- so is your handwriting on that?

A Yes, it is.

Q Is anybody else's?

A No.

Q Okay. And what is -- what other information do you put on there that's pertinent?

A At the top is the case number, which is assigned to the report. Everything under this case is under one case number. That's listed on there, the item number, which is on the evidence sheet and can be matched, DL-8 through 10. This is number eight. It's placed on there, a brief description, two by two section of wood, and my signature at the bottom.

Q Okay. And did you request -- well, let me back up.

MS. TESSITORE: The State would move State's Exhibit No. 38 into evidence at this time.

DEFENDANT BOYD: Same objection, Your Honor.

THE COURT: All right. Well, subject to your previous objection, and arguments, and previous ruling on

that, in addition, I would cite Carroll v. United States, the objection is overruled.

Go ahead.

MS. TESSITORE: Thank you, Your Honor.

(WHEREUPON, State's Exhibit No. 38 was admitted into evidence.)

BY MS. TESSITORE:

Q Did you -- let me just show you State's Exhibit No. 33. I'm showing you State's Exhibit No. 33, what is that?

A Photographs of some wood fragments.

Q And who took those photographs?

A I did.

Q And, when you took those photographs, where did you take them?

A At the window of the property and evidence section.

Q Okay. And what does that -- how did you access the items that are depicted in there?

A The evidence custodian brought it to the window. I didn't sign it out as far as taking it from evidence. While they're present, we're able to view other evidence. And that's how I was able to obtain it.

Q So you didn't leave with those items?

A No.

Q Okay. And was there someone present from property

and evidence --

A There was.

Q -- while you examined that?

A Yes.

Q I'm showing you State's Exhibit No. 39, take a look at that. And what is that?

A It's the wood fragments I photographed.

Q At that time, when you photographed them, how did you -- can you -- do your initials appear on that item?

A They do.

Q And what does that indicate by your initials?

A Sergeant Shaw signed it into evidence, and sealed it on that same date that he signed it in. The seal was broken so I could look at it. There was another seal put on there when it was closed back up. And I initialed and dated it.

Q Okay. Did you perform any tests or anything that changed the fragments that were collected in any way?

A No. I just photographed them.

Q All right. So, as far as State's Exhibit No. 33, is that a fair and accurate depiction of the items you observed that day?

A It is.

Q And did you -- what was the object above the wood

fragments?

A There's a -- it's a portion of the two by two piece of wood.

Q And how did you -- what piece of wood are you talking about?

A The one recovered from Mr. Boyd's truck.

MS. TESSITORE: The State would move State's Exhibit No. 33 into evidence at this time.

THE COURT: Any objection?

DEFENDANT BOYD: I object not in the presence of the jury.

THE COURT: Now, what exhibit number is that?

MS. TESSITORE: Your Honor, it's State's Exhibit No. 33.

THE COURT: Can I see it?

MS. TESSITORE: Yes, sir.

THE COURT: You're just going to have to tell me succinctly what your objection is, sir, based on the rules.

DEFENDANT BOYD: Relevance, Your Honor.

THE COURT: All right. Overruled.

It's in evidence.

MS. TESSITORE: Thank you, Your Honor.

(WHEREUPON, State's Exhibit No. 33 was admitted into evidence.)

BY MS. TESSITORE:

Q So why, Detective Lusk, did you remove the wood fragments and put them next to the -- and look at them with the stick?

A Sure. When you look at the stick, you can see it's visibly cracked. The area where it's visibly cracked, it's almost like -- when they mill the wood, you can see a bark texture. And when I viewed the wood fragment --

DEFENDANT BOYD: Objection, foundation. Objection. It's not -- he's not qualified to make that type of assumption.

THE COURT: Overruled.

Go ahead.

THE WITNESS: When I viewed the wood fragments, they appeared similar as the bark. And that's why I placed them to get a comparison.

BY MS. TESSITORE:

Q Had you seen those wood fragments prior to when you went down there and took the photograph?

A I did. I pulled them out the day that Sergeant Shaw put them in there to look at them to see if there was a -- if there was a possibility that we could send it off to a lab to get it compared. And then, on a later date, I pulled -- you know, I photographed it next to the stick.

Q And that's the photograph that we just looked at?

A Yes, ma'am.
Q Okay. Regarding the stick and those pieces, did you request any kind of testing to be done regarding either item, the stick or the pieces?
A Yes. I spoke with our lab -- individuals in our lab and they could not perform it. I checked with SLED, and spoke with individuals down at SLED.
Q What is SLED?
A SLED is an acronym for State Law Enforcement Division, state police. They assist our agency in numerous tasks, you know, DNA analysis, blood analysis, types of evidence analysis. And, also, they have different divisions within SLED.
Q So did you request any testing?
A I called down there and asked if it would be possible to compare one piece of wood to another piece of wood. And they said they do not do that kind of comparison.
Q And did you check with the local forensics office?
A I did. They, also, advised that there's no way to -- they didn't have the abilities to compare as far as chemically the two pieces of wood.

I further, also, called the FBI, and they do not do that kind of comparison either.

Q Okay. Now, back in -- talking about taking Mr. Boyd into custody. Can you describe as far as when you take a

suspect into custody, you know, what did you do regarding the vehicle, and the items or other valuables in the vehicle? What happened to the vehicle, and where was Mr. Boyd brought?

A Yes. After viewing this jewelry --

Q When you say "this jewelry," which jewelry are you referring to?

A I'm sorry. The green stone and the sterling silver that he had pawned that Monday. After viewing that and giving me his answer as far as not knowing where the other two pieces of jewelry were, the two gold rings, the LeadsOnline, you can check by description or the name. Once we had his name, I got his ID.

We ran it through LeadsOnline -- or another detective did at the office. And, at that time, I was able to discover he had, actually, pawned a solitary ring in white gold, and a blue stone and diamond ring in yellow gold that Friday at another pawnshop, at Cash America, I believe.

Q Before we go into that pawnshop, as far as the truck, what happened to Mr. Boyd's truck?

A It was -- after he was placed under arrest, it was towed by our local tow company by whoever was on duty that day.

Q Okay. And is there any process as far as any type of

inventory you do regarding the vehicle?
A There is. There's an inventory sheet that's completed prior to tow. And it goes with the tow driver. A copy goes with the owner, or is held at the towing company for the owner to retrieve the vehicle.
Q Okay. And why do you do the inventory of the -- what is the inventory of?
A It lists the description. It identifies the vehicle as being towed, who's the owner, who the driver is, if there's a driver, and any valuables that are inside. I guess it's kind of like a claim ticket for the owner.
Q Was there anything else located in the vehicle as part of that inventory search?
A Nothing of value, no.
Q And when you say "value," what do you mean by that?
A Nothing I would list as far as valuable, I guess.
Q As far as the Defendant?
A Yeah.
Q Okay.
A I'm sorry. Nothing -- I mean, there was nothing -- during the inventory, there was nothing else recovered that could be associated with --
Q So, now, after the vehicle is towed, where did you go with Mr. Boyd?
A He was transported by a uniform patrol officer. I

followed them to the law enforcement center.

Q Okay. And what took place there?

A I met with Mr. Boyd in an interview room. I, once again, was going to go over his waiver of rights and see if he would, actually, give me a written statement about anything that happened.

Q Okay. Now, did you -- were there any other items that you collected while you were there at the law enforcement center?

A Yeah. At the law enforcement center, that's where I retrieved the hat, the pawn ticket, and the cash that was on him.

Q And how much cash did he have on him?

A I can't remember. It was $25 or $30, and some change.

Q I'm showing you State's Exhibit Nos. 40 and 41, and ask you to look at those.

A (Witness complied.)

Q And do you recognize those?

A I do.

Q And what are those?

A They're photographs of the property that was in his pockets, I guess, including the hat that was on his head. And that's a photo of pretty much how it came out of his pockets.

Q And you're referring to?
A State's Exhibit No. 40.
State's Exhibit No. 41, I laid out the cash in increments and took a photo.
Q So you took those photos?
A I did.
Q And are they fair and accurate representations of the items that you retrieved and photographed?
A They are.
MS. TESSITORE: At this time, the State would seek to admit these into evidence, Your Honor.
THE COURT: Any objection, Mr. Boyd?
DEFENDANT BOYD: I have no objection.
THE COURT: All right. They're in evidence.
(WHEREUPON, State's Exhibit Nos. 40 and 41 were admitted into evidence.)
BY MS. TESSITORE:
Q As far as that property, his wallet, other than checking his -- you said you checked his driver's license?
A Yes.
Q And where did the driver's license go after you confirmed his identity?
A When I got back to the law enforcement center, I put it back in his wallet.
Q And where was it until you got down to the law

enforcement center?
A I had it in my car.
Q Okay. When you went to the law enforcement center and met with him, is there -- can you describe the process as far as -- the booking process just very briefly?
A After the warrants were issued by a judge, he was taken to the detention center. There, you know, they'll do his fingerprints, photographs --
DEFENDANT BOYD: Objection, Your Honor, relevance.
THE COURT: Overruled.
THE WITNESS: His height and weight --
BY MS. TESSITORE:
Q Okay. So they took his height and weight. And you, also, observed him. How would you describe his height and weight on that particular day?
A 6'2", 180, 190 pounds.
Q What about the facial -- anything about his face?
A Yeah. He did have growth, like a few days growth of like a beard, moustache, slight growth on his head.
Q Okay. And the photo that was taken that day when he was booked, is that the photo that -- well, did you prepare a photo array?
DEFENDANT BOYD: Objection, Your Honor. I want to present a matter outside the presence of the jury to the Court, please.

THE COURT: All right. Ladies and gentlemen, please don't talk about the case. And continue to keep an open mind.

(WHEREUPON, the jury was excused from open court at approximately 4:33 p.m.)

THE COURT: Yes, sir, Mr. Boyd.

DEFENDANT BOYD: Your Honor, he stated that a judge signed a warrant. I would ask for a mistrial at this time because of that, Your Honor.

THE COURT: On what basis?

DEFENDANT BOYD: Due to the fact that he stated that a judge signed a warrant, a judge that signed something, I would like to interject [sic] that.

THE COURT: All right. What's the State's position?

MS. TESSITORE: Well, Your Honor, with respect to -- I mean, obviously, that's part of the booking process. Once he got the warrants, then the booking begins. He's just stating that he obtained the warrants. And a magistrate has to sign the warrants in order for them to be served on the Defendant.

THE COURT: Why do you think that justifies a mistrial?

DEFENDANT BOYD: Your Honor, he stated several things, which I will address when I speak to him, just several things in general. And I wasn't weighed. I

wasn't weighed at any point in time. And that is when I was denied bail, also, Your Honor.

THE COURT: Well, I overrule the objection.

Do you have anything else you want to say at this time?

DEFENDANT BOYD: Your Honor, I believe that's prejudice towards me that he entered the judge on behalf of me in this situation. And, also, I would like to state that was the day, March the 8th, that I was arrested and charged with robbery and kidnapping. That was the day I was arrested.

THE COURT: All right. I respectfully overrule the objection. And I respectfully decline to grant a mistrial. There's simply no basis for it. And the testimony was not objectionable.

Let's bring the jury back in.

(WHEREUPON, the jury came into open court at approximately 4:37 p.m.)

THE COURT: Yes, ma'am.

MS. TESSITORE: Thank you, Your Honor.

BY MS. TESSITORE:

Q So when Mr. Boyd was booked in on the charges, what charges did -- what did you charge him with?

A He was charged with two counts of armed robbery, including two counts of kidnapping.

Q Okay. And when he was booked, you took -- were you present when he was booked?

A Not during the booking process, no.

Q But you saw how he appeared that day; correct?

A Yes, ma'am.

Q And did you take a photograph -- did you take any photographs of the Defendant yourself?

A I did as he was sitting in the interview room.

Q Okay. And, the booking photograph, typically, what does that entail as far as what is displayed?

A It's kind of like from the shoulders up, just the head, face, frontal.

DEFENDANT BOYD: No objection, Your Honor.

BY MS. TESSITORE:

Q I'm showing you State's Exhibit No, 32, and what is that?

A That's a photograph of Mr. Boyd inside the interview room.

Q Okay. And who took the photograph?

A I did.

Q And is that how he appeared the day you arrested him?

A It is.

MS. TESSITORE: The State would move that into evidence, Your Honor.

THE COURT: It's in evidence.

(WHEREUPON, State's Exhibit No. 32 was admitted into evidence.)

BY MS. TESSITORE:

Q Now, what did you do after the booking process, regarding did you compile any photo lineups in this case?

A I did.

Q Okay. And describe how you did that.

A Using similar photos as to the Defendant, I compiled -- I, actually, compiled two arrays. One, he was in position #2. And, the other, he was in position #5.

Q Okay. When you say you compiled it, can you just explain to the jury how you do this, and what you're looking for when you're creating the array?

A Sure. Similar characteristics, facial hair, skin tone, complexion, race, size, just similar physical characteristics as to the Defendant.

Q Okay. So when did you compile the photo arrays?

A The following day, that Tuesday.

Q And why did you have two?

A I was going to meet with the two victims just to see if we could further confirm the identity, and see if they could identify him.

Q So where did you go with those and how -- what -- physically, what is -- how did you carry the array to them?

A Sure. I went to the beauty salon. There, I met with Ms. Holcombe. Ms. Maurer wasn't there at the time.

At that time, I decided I would show Ms. Holcombe one of the lineups. She was asked to go back into the kitchen break area. I met with her. There is a small black table. I advised her that I had -- at first, I asked her, do you know what a lineup is, or a photo array? She said that she did. She knew what one was. I asked her if she had ever looked at one. She said she had never looked at one.

At that time, I further explained that I had a series of six photos on a piece of paper. And the person that robbed them may or may not be included as one of the photos, and not to pick someone unless she was absolutely positive.

At that time, I took the array and laid it face down on the table. And I said, When you're ready, just turn it over and take a look at it. If you see the individual that robbed you, just let me know.

Q And was she able to identify anybody in the photo array?

A No. She didn't identify anyone in the photo array.

Q So what did you do at that point?

A I terminated the -- I stopped her. She was looking at it, looking at it. And she was like, I don't know. If

it's not immediate, I just stop them. So I took the array back from her and put it back in my file -- or in my folder.

MS. TESSITORE: I'd like to have this marked.

(WHEREUPON, State's Exhibit No. 43 was marked for identification only.)

BY MS. TESSITORE:

Q Detective Lusk, I'm showing you State's Exhibit No. 43. And, if you could, look at that and tell the jury what that is.

A It is the photo array I presented to Ms. Holcombe on the 9th.

Q Okay. And does your writing appear on there?

A It does. There's a case number listed, which was later placed on that, but above and below are numbers to number each photo.

Q And is Mr. Boyd in that photo array?

A He is.

Q In what position?

A I positioned him in #5 in this array.

Q And what's the purpose for putting numbers on the array?

A To identify the photo.

Q Okay. And is that a fair and accurate depiction of -- is that the photo array that you showed to

Ms. Holcombe that day?

A It is.

MS. TESSITORE: At this point, the State would move State's Exhibit No. 43 into evidence.

THE COURT: Any objection?

DEFENDANT BOYD: No objection, Your Honor.

THE COURT: It's in evidence.

(WHEREUPON, State's Exhibit No. 43 was admitted into evidence.)

BY MS. TESSITORE:

Q Now, did you, also -- after you terminated the discussion with Ms. Holcombe, what did you do at that point?

A I asked her if Ms. Maurer was coming in that day. She advised she would be in -- she believed she would be in later on. She said she would probably be there at about 1:00. She said she had a 1:00 appointment, or something like that.

Q So did you return to the shop?

A I did. I asked Ms. Holcombe, I said, Don't discuss me coming, don't discuss that I've been here. And I'll return when she gets back to work.

Q Okay. And when did you return?

A I returned between 1:00 and 1:30. I can't remember if it was closer to 1:30, or not.

Q Now, did -- when you arrived there, describe for the jury what you did when you got there.

A Sure. When I got there, Ms. Maurer was -- I think she had a client. She was doing somebody's nails. I waited just briefly. And I asked when she was ready, I would like to speak with her in private.

We moved the conversation into the break room. There was no one else with us in the break room at the time. Then I went through the same questions I did with Ms. Holcombe. I asked her if she knew what a photo lineup was, if she had ever viewed a photo lineup, and if she would be willing to. She said she knew what one was, never looked at one, and she was willing to look at this one.

Q Okay. Had you shown any photos whatsoever, videos, or still shots of the suspect to Ms. Maurer before you showed her the photo array?

A No, I did not.

Q Did -- when you left with the photos that had been shown to Ms. Holcombe, did -- what did you do with the -- with State's Exhibit No. 43, that array that you had shown to Ms. Holcombe?

A It stayed in my folder.

Q Okay. And did you leave any copies behind, or anything behind that would have -- that Ms. Maurer would

have seen before she saw the photo array?

A No.

Q Did you ever take Mr. Boyd's driver's license and show that to anybody?

A No, I did not.

Q Okay. Now, I'm going to show you State's Exhibit No. 1, and ask you if you recognize that?

A I do. It's the photo array I presented to Ms. Maurer.

Q Okay. And when you met with her, how did you explain the process to her, and what happened as a result of that?

A Sure. I explained this process the same as I did with Ms. Holcombe. She advised she was aware of what a lineup was, but she had never looked at one.

I said that I had a series of six photos on a piece of paper, and the person that robbed her may or may not be in the photos, but only identify if she was absolutely positive. At that time, we were in the break room. I pulled it out, laid it face down. And I stepped away and said, When you're ready to look at it, turn it over and look at the photo lineup. She turned it over, looked at it briefly --

DEFENDANT BOYD: I object, Your Honor, bolstering.

THE COURT: Overruled.

THE WITNESS: She turned it over, looked at it, and

pointed to photo #2.
BY MS. TESSITORE:
Q And who is in position #2?
A Billy Roy Boyd.
Q And was there any identifying information whatsoever given to Ms. Maurer before the array?
A No, there was not.
Q Okay. Was the -- how did she indicate her selection of Mr. Boyd?
A She pointed to it and said, That's him.
Q And did you have her place anything on the photo array?
A She did. I asked her to circle the photo, initial indicating that's the photo she circled. And, at the bottom, I just said, What did #2 do? And she said, #2 is the person that robbed us. She signed it, and wrote her name at the bottom.
Q Okay. Did you, at any point in time while you were meeting with her, influence or suggest to her which photo, or if she should even pick a photo?
DEFENDANT BOYD: Objection, leading.
THE COURT: I sustain that objection.
BY MS. TESSITORE:
Q Did you suggest any particular photo to her?
A No, I did not.

Q Okay. Did you influence her in any way --

DEFENDANT BOYD: Objection, leading.

THE COURT: Overruled.

THE WITNESS: No, I did not.

BY MS. TESSITORE:

Q Did you coerce her?

A No, I did not.

Q And when she indicated her selection, what was her -- how did she -- let me rephrase it.

Was she certain, or how did she indicate the selection?

A She indicated she was certain. She said, That's the person that robbed us.

Q And how long did it take her to point to Mr. Boyd?

A It was almost immediately.

Q Okay. Now, the photo that was used in that array, was the photo -- where did that photo come from?

A That was the booking photo from the previous day.

Q And the -- after the photo array, and after she made that selection, what did you do with the photo array?

A It was placed in property and evidence.

Q And is that -- after the array, where did you go from there, after she made that selection five days later?

A After that, I think that's when I went back and bought the jewelry back. I got the money to purchase the

jewelry.

Could I refer to my supplemental?

Q Excuse me?

A Could I refer to my report? I'm sorry.

Q Did you prepare a report in this case?

A I did a supplemental report.

Q And would that help you refresh your recollection?

A It would. It would help me refresh my recollection.

Q Just take a minute, if you would --

A I'm sorry.

Q As far as the next step in your investigation, did you prepare a report regarding your investigation?

A I did.

Q Okay. And was it when it was fresh in your mind back last year?

A Yes.

Q Okay. And, after having looked at that, do you recall what your next step was in the investigation?

A Yes. That's when I obtained the money from finances to buy back the jewelry from the pawnshops. I went to First Cash Pawn and bought back Ms. Maurer's jewelry. And I went to Cash America, and there, I obtained the two gold rings and, also, I obtained a surveillance video from inside that location.

Q Now, let's talk about the -- at Cash America, what

did you learn at Cash America as it relates to this case?
A I learned that on Friday, Mr. Boyd pawned the white solitaire, and the gold sapphire and diamond ring at Cash America.
Q And when you say "Friday," which Friday are you --
A I'm sorry. The 5th.
Q So the day after the robbery?
A The day after the robbery.
Q And when you learned of that, what did you do?
A The rings were placed on hold. And until -- I had to buy them back to return them to the owner.
Q Okay. And did you review the video? You said that there was surveillance there.
A I did.
Q And when you reviewed that, what did you observe?
A The video showed Mr. Boyd entering the pawnshop with another individual. He makes all the business transactions at the counter --
Q "He" being who?
A Mr. Boyd. I apologize. It showed Mr. Boyd making the business transactions at the counter, and then exiting.
Q Did he conduct a transaction there?
A He did.
Q And that was regarding?

A The pawning of the two rings.
Q And which rings? Which victim did those belong to?
A Those were Ms. Holcombe's rings, the white gold solitaire, and sapphire and diamond yellow gold ring.
Q I'm showing you State's Exhibit Nos. 16 and 17. Take a look at those.
A (Witness complied.)
Q What are those?
A Photos of Ms. Holcombe's two rings.
Q And those are the rings you bought back?
A They are.
Q And returned to the victim?
A Yes, ma'am.
Q Okay. Did you speak with anyone at the Cash America pawnshop that day?
A I did.
Q And who did you speak with there?
A Ms. Goode.
Q And did you -- one moment. Okay.
Approximately what time did the Defendant enter the Cash America on Friday, the day after the robbery?
A It was a little after 3:00 p.m., I believe.
Q And regarding his appearance at First Cash on Rutherford Road earlier in the day, approximately what time was that?

A That was -- according to the video, it was a little after 11:00, maybe close to 11:30.

Q Okay. And did you -- were you able to identify the other individual that was with Mr. Boyd in the Cash America video?

A I was.

Q And who is he?

A Wayman Martin.

Q Okay. And does he -- do you know anything as far as any relationship to this Defendant?

A The way the relationship -- the only relationship I know is he lives two doors down from Mr. Boyd's address.

Q Okay. And did you receive any other information, or any other contact from the beauty shop after the photo array?

A Yes, I did. That night, I got a phone call -- well, that night, it was probably --

Q Which night?

A I'm sorry. The 9th, Tuesday, March the 9th. It was probably 5:30, 6:00 p.m., I received a phone call.

Q Okay.

A From one of the employees stating that a female had entered the business asking about manicures, asking about an appointment, or such. I was further advised that Ms. Maurer thought the female looked or resembled the

person that robbed them.

Q Regarding the person that came in there, were you able to get any information to find out who that individual was that resembled the Defendant?

A Yeah. They gave me a tag number. I ran it through the South Carolina Department of Motor Vehicles, and it came back registered to a Donna Boyd.

Q And do you know what her relationship to the Defendant is?

A Sister.

Q Okay. Did -- was there any follow-up investigation as far as that was concerned?

A No.

MS. TESSITORE: Detective Lusk, please, answer any questions Mr. Robinson [sic] may have.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY DEFENDANT BOYD:

Q Detective Lusk, did you record any conversations with the victims?

A No, I didn't.

Q Do you have any recorded conversations with the victims?

A No, sir.

Q Did you audio tape the interviews with witnesses?

A No, I did not.
Q Did you get any fingerprints of me? Did you get any fingerprints of Billy Boyd?
A No, I did not.
Q Was there any video surveillance? Any?
A Can you specify where?
Q Was there any surveillance in the parking area of the beauty salon, in the inside of the beauty salon? The alleged victims stated that as they were confined to a restroom area, they heard a lot of moving around for approximately 15 minutes throughout the store making noise. Was any fingerprints retained? Any fingerprints?
A There was a fingerprint, I believe, which Sergeant Shaw with forensics lifted from the door.
Q Detective Lusk, you stated that in the lineup that Mr. Boyd was immediately identified by Ms. Maurer. This is what you stated. I find that Mr. --
MS. TESSITORE: Your Honor, I'm going to object to the --
THE COURT: Yes.
Just ask questions, Mr. Boyd.
BY DEFENDANT BOYD:
Q Detective Lusk, is it true that in both of the lineups, Mr. Boyd is the only one that has a beard, so it's easily to identify him?

A No, it's not.
Q He's the only one in the lineup with a partial beard. Everybody else in the lineup has a goatee. Mr. Boyd has a little ragged beard, so to speak.
THE COURT: Is that a question, sir? Are you asking him?
DEFENDANT BOYD: Yes, I was.
BY DEFENDANT BOYD:
Q Detective Lusk, you did --
THE COURT: Hold on. He's got to have an opportunity to answer your question.
THE WITNESS: All the photos were assembled to be similar. There was some -- I believe there are some with a beard, and moustache, and goatee.
BY DEFENDANT BOYD:
Q Detective Lusk, in what way were they similar?
A Age, size, facial hair.
Q Detective Lusk, in this lineup that you've submitted, I see six men. But I see only one man in the lineup that has a partial beard/goatee, only one man and that individual is Mr. Billy Roy Boyd.
A They all have facial hair. And they all -- I mean, there's one --
MS. TESSITORE: Your Honor, at this point, I'd just request that Detective Lusk be able to have the exhibit.

THE COURT: He's answered the question.

Move on to another topic.

BY DEFENDANT BOYD:

Q In investigation, Ms. Holcombe told you that she thought the stick was, actually, broken. She thought the stick was, actually, broken.

THE COURT: All right. That's not a question, sir.

BY DEFENDANT BOYD:

Q Detective Lusk, this -- isn't it true that this stick that you submitted in this photo, I don't see any broken parts on that particular stick, anything that was broken, so to speak. A crack, yes, but not broken.

Is it true that they stated in the report that it was slinging, and breaking, and hitting the wall? Is it true, Detective Lusk, as I look at the walls -- and the walls appear to be yellow. Did you get any yellow paint residue?

A The way it was described to me by Ms. Holcombe is she thought the stick was cracked, but not broken in two.

Q You stated, sir, she thought?

A She told me she thought the stick cracked when it was being hit on the table, but it did not break in two.

Q Detective Lusk, you found this stick, is it true, four days after the alleged incident? Is it true?

A Yes.

Q You stated that you found some particles, bark, did you state that on the 5th?

MS. TESSITORE: Objection, Your Honor.

BY DEFENDANT BOYD:

Q Did you state that on the 5th, or on the 4th upon the initial arrival on scene? When did you find that? How much time lapsed before you found this?

A I didn't recover the bark. The forensic officer did at the scene on the 4th.

Q Detective Lusk, can you connect the stick with the robbery?

A It's -- based on the description, it is similar to the one described by the victims.

Q Detective Lusk, similar, but not the same, Detective Lusk? Can you answer that?

A Yes. It was similar, as described by the victims.

Q Detective Lusk, testing in your investigation -- your investigation -- testing could not connect the stick to fragments -- SLED, FBI, your own forensics. Also, I'd like to ask you some additional questions.

MS. TESSITORE: Your Honor, I'm not sure if that was a question.

THE COURT: Well --

DEFENDANT BOYD: I'm waiting for him to respond.

THE COURT: Well, what was the question?

You're making statements, Mr. Boyd. So you just break it down, and ask them one at a time.

BY DEFENDANT BOYD:

Q What I mean, sir, is that your own individual testing, your own evaluation, investigating could not connect the stick to fragments.

A Is that your question?

Q Yes.

A It looks similar.

Q It looks similar. Detective Lusk, let me ask you another question.

A Yes, sir.

Q Do a lot of things look similar?

A It depends on what you're talking about.

Q Detective Lusk, in each particular -- in each time that the alleged suspect went to the pawnshop, he submitted his driver's license, not ID, but driver's license.

MS. TESSITORE: Objection, Your Honor, he's testifying.

THE COURT: Mr. Boyd, I sustain the objection.

DEFENDANT BOYD: Okay.

BY DEFENDANT BOYD:

Q Detective Lusk?

A Yes, sir.

Q When you were notified from the pawnshops -- when you -- and they stated that an individual had came in and pawned some merchandise, did you find that he had submitted a state driver's license as identification?

A Yes.

Q And were you, also, aware that he was under surveillance?

A I was aware that he was under surveillance. I don't know if he did.

Q Detective Lusk, as you made your investigation, did you get a printout from all of these pawnshops to see what was the extended affiliation and history that the alleged suspect had with them?

A I reviewed the pawn history that you have done, and it is quite extensive.

Q Detective Lusk, did you find that in your investigation of reviewing that it had been a 13-year history? Did you find that?

A I don't know if the records go back that far. It -- I think the earliest I could go back was 2003.

Q Detective Lusk, did you find any evidence of one item that had been pawned throughout the course of the years that had been reported stolen?

A No.

Q Detective Lusk, were you aware that on a random

monthly basis that all pawnshops give a surveillance of all the merchandise they've received to find out has anything been stolen, or came from a robbery, or something like that? Are you aware of this?

A Yeah. We receive pawn tickets from the pawnshops each month. That's in addition to the LeadsOnline. And then it takes -- I mean, just the mere amount of pawn tickets we receive. If there is enough -- if there is enough of like a serial number or something that we can associate with the crime, it's further investigated at that time.

Q Detective Lusk?

A Yes, sir.

Q In your investigating, did you find one incident against Mr. Billy Roy Boyd that there was something reported stolen that --

MS. TESSITORE: Your Honor, I object. I think he's asked this question already.

THE COURT: All right. I sustain the objection.

BY DEFENDANT BOYD:

Q Did you find anything, Detective Lusk, that stated that Mr. Boyd on any basis had brought something that was reported stolen or taken from an alleged robbery?

A The two rings from Ms. Holcombe.

Q That's the only thing you found?

A And the two -- or the ring and the earrings from Ms. Maurer.
Q Those things?
A Those two things -- or those five things.
Q Detective Lusk, on March the 8th, 2010 -- did you receive a call regarding stolen items on March the 8th?
A I did.
Q You did. About what time?
A It was about 3:30. I think it was closer to 3:30 in the afternoon on Monday, the 8th.
Q Who did you receive this call from?
A I believe it was Stephanie Neubia. She's an employee at First Cash Pawn.
Q And what type of business was this?
A It's a pawnshop.
Q What did you observe on March the 8th, 2010?
MS. TESSITORE: Your Honor, I'm going to object. I think all of this was covered. Unless Mr. Boyd has specific questions regarding what Detective Lusk has already testified to when he found him at the pawnshop with the stolen items.
THE COURT: I sustain the objection.
BY DEFENDANT BOYD:
Q What did you observe on March the 8th, 2010? How did you identify the suspect at the time, Detective Lusk?

A You had your ID with you.
Q At that time -- did you tell Mr. Boyd the reason for detaining him at that time?
A At the time you were placed in the back of the patrol car, I explained to you why.
Q What type of vehicle was Mr. Boyd driving?
A A gray Ford pickup truck.
Q Was it an older, or newer model?
A I believe it was a 1983 truck.
Q What type of condition was it in?
A It looked like a work truck.
Q Can you state that again?
A It looked like a work truck.
Q Okay. Did it look like a truck that you would haul junk in?
A It looked like a junk truck. I don't know what you would haul in it.
Q At that time, did you ask to see my driver's license, registration, or insurance?
A No, just your driver's license.
Q What about inside the truck, were there any other items?
A In the cab of the truck, there was paperwork on the seat with that stick.
Q That was the only thing you remember seeing?

A That was the only thing I paid attention to.
Q Okay. When you say, Detective Lusk, that you saw a piece of wood in plain view --
A Yes, sir.
Q -- on the passenger side, did you remove the stick of wood, Detective Lusk?
A I did.
Q Detective Lusk, did you at any time ask my permission to search my vehicle?
A No, I did not.
Q Detective Lusk, at any time -- did you at any time make the effort to get a warrant to search my vehicle?
A No, I did not.
MS. TESSITORE: Your Honor, I'm going to object at this point.
THE COURT: Yes. I sustain the objection.
And I instruct the jury to disregard that. That's not relevant to the issues they have to decide.
BY DEFENDANT BOYD:
Q Detective Lusk, after discovering the wood, did you make the statement that this might be the weapon? Did you?
A It was similar to the one described to me by the victims.
Q Similar. On March the 8th, 2010, did you ever make

the sarcastic statement that you had already done your investigation?

A I don't recall making that kind of statement.

Q You don't?

A No.

Q On March the 8th, 2010, was the Defendant, Mr. Boyd, arrested, or taken into custody?

A You were arrested.

Q And what was the charge?

A Two counts of armed robbery, and two counts of kidnapping.

Q Did I ask to call my sister?

A You did.

Q And where was I at the time, at the pawnshop or the county detention?

A You were at the -- I believe that was at the detention center.

Q Yes, it was.

And what was the stated reason for doing so?

A To -- I believe you asked about taking care -- you had some pets or something you were worried about.

Q And you allowed me to do so?

A I made the phone call for you.

Q On March the 8th, 2010, did you tell my sister, Debra Boyd, to check on my home and my pets?

A I did.
Q Did you, also, tell my sister the reason for my arrest?
A I explained to her the charge. I didn't go any further into the explanation.
Q On March the 9th, 2010, did you speak with my sister, Donna Boyd?
A Well, there again, I spoke with an individual that identified herself as Donna Boyd on the phone.
Q At that time, did you state to her that during your, again, investigation that I, Billy Boyd, was identified as the person who committed the robbery?
A I did.
Q Detective Lusk, on what day did the robbery take place?
A March the 4th, 2010. It was a Thursday.
Q Detective Lusk, what is the Defendant's arrest date?
A March the 8th. That was a Monday, the following Monday.
Q Detective Lusk, when was the Defendant charged or indicted for the crime of robbery and kidnapping?
A You were arrested that Monday on March the 8th, 2010.
Q Detective Lusk, how is it that I was arrested and charged for robbery and kidnapping on March the 8th, 2010, but I was not allegedly identified in a lineup until March

the 9th, 2010?

A Well, if I can explain. The only way I can explain this is it's like a puzzle. There's several pieces to a puzzle. One of the pieces was Ms. Holcombe's jewelry found in your possession at one time. Another piece of the puzzle was Ms. Maurer's jewelry found in your possession at one time. A third piece of the puzzle was the stick, which was described by the victims in specific detail as the weapon found in your possession at the time of the arrest. That was enough for your arrest.

The following day, I furthered my investigation for another piece of the puzzle, which included a photo identification of you as the robber and kidnapper of the two victims.

Q So if the lineup was not conducted until March the 9th of 2010, and other evidence, such as forensics and surveillance had not come in yet because the investigation was in its beginning stages, please, tell me what evidence did you have on March the 8th, 2010, to support the charge of armed robbery and kidnapping?

A I believe I just answered that question.

Q Detective Lusk, how much time did you spend investigating the case?

A I can't put it into hours. I've worked on it some last month.

Q Detective Lusk, let's see, the robbery took place on March the 4th, 2010, and you completed your investigation on March the 8th, 2010.

Please bear in mind, ladies and gentlemen of the jury, there's a weekend --

THE COURT: Hold on. Hold on. Wait a minute.

Now, you're not to address the jury at this point. You're asking him questions, and that's it.

BY DEFENDANT BOYD:

Q Please bear in mind, there was a weekend between those four days.

THE COURT: Okay. That's not a question. You're making statements, sir.

BY DEFENDANT BOYD:

Q Detective Lusk?

A Yes.

Q In your honest opinion, did you conduct a thorough investigation?

A I did.

Q One that is sufficient enough to support and warrant the charge of armed robbery and kidnapping?

A Yes, sir.

Q So, Detective Lusk, on the lack of sufficient and supporting evidence, would you say that all you had on March the 8th, 2010, was a simple case of receiving stolen

goods?
A I explained what the investigation held up to at that point. You had the jewelry from the two victims, and possible weapon that was used during the crime.
Q And could you not upgrade the charge if sufficient evidence was found during further investigation?
A I'm sorry. Could you repeat -- I don't understand the question.
Q And could you not upgrade the charge if sufficient evidence was found during further investigation?
A I don't know what I would have upgraded it up to from armed robbery and kidnapping.
Q Detective Lusk, would you say that your investigation was unethical?
A Not at all.
Q Was it within the Constitution?
A Yes.
Q Were you trying to avert justice?
A Absolutely not.
Q If you found a stick in my truck, which you did not have a search warrant --
THE COURT: I've already stated that it is not relevant --
BY DEFENDANT BOYD:
Q Detective Lusk, did you plant the stick in the truck?

A No.
Q Detective Lusk, the photo that you showed of a stick, there was multiple sticks that were two by twos --
THE COURT: Sir, you're making an argument now. This is not the time for that. You just ask questions.
BY DEFENDANT BOYD:
Q Detective Lusk, this stick that you just presented on the photo, it had no --
THE COURT: Sir, I'm warning you. You're going to ask questions, or you're going to lose the right to ask them.
BY DEFENDANT BOYD:
Q Detective Lusk?
A Yes, sir.
Q You stated that you were a four-year rookie and you had done patrol prior -- before being an investigator.
A That's not what I said.
Q You stated you had been investigating for four years.
THE COURT: That's not a question.
BY DEFENDANT BOYD:
Q Detective Lusk, you stated you had been an investigator for four years.
A I've been an investigator. I was assigned to the investigation division four years ago. That's correct.
Q What would you say to avoid embarrassment, Detective

Lusk, and negligence? It was easier to move some things around, Detective Lusk, would you say that?

A Absolutely not.

Q Detective Lusk, on the day you brought me to detention to question me, Detective Lusk, and you asked me, Detective Lusk, if I had anything to say. Do you recall that?

A I do.

Q And my response was? Do you remember, Detective Lusk, I said, You have nothing on me?

A You said you weren't going to sign the form, and you wanted to talk to a lawyer.

Q Detective Lusk, do you remember when I stated that you have nothing on me?

A I don't recall that exact statement from you.

Q Detective Lusk, do you, also, remember when I stated, I said, I find things all the time? Do you remember that?

A I remember you saying I pawn stuff all the time. And I do remember you saying, when I was trying to explain that's not what I asked you, I asked you where you got the ring, and you said, Well, I find stuff all the time. I think I do remember you saying that on that Monday in the car.

Q Detective Lusk, if you would have done a thorough investigation, Detective Lusk -- Detective Lusk?

A Yes, sir.
Q When you stated that you went to the pawnshops, if you would have looked at the printout, you would have saw that I go there all the time. You stated you went there and you found these items?
A Correct.
Q This is what I do. Detective Lusk, isn't it true that the FBI could not connect the stick to the fragments?
A They did not -- they don't do tests like that. No, they could not.
Q Isn't it true that SLED could not connect the stick to the fragments?
A They don't perform that type of test that I requested.
Q So the answer is no?
A No, they do not.
MS. TESSITORE: Objection, Your Honor. I just want it to be clear as far as what he's saying no to.
THE COURT: Well, you have the opportunity for redirect.
MS. TESSITORE: Yes, sir.
BY DEFENDANT BOYD:
Q Isn't it true, Detective Lusk, that Greenville County forensics could not connect the stick to the fragments?
A Sure.

Q Detective Lusk?
A Yes, sir.
Q You stated that you made your investigation; am I correct?
A I conducted an investigation, yes.
Q Detective Lusk?
A Yes, sir.
Q Do you have anything in your report remembering Ms. Holcombe stating that she thought the stick was being broke as it was being pounded all over the place?
A I don't know if it's in the -- that's what she told me that Tuesday.
Q Would it refresh your memory if you looked in your file to your supplemental report?
A It might.
Q Do you have your supplemental report in front of you?
A A portion of it. I've got four and five. I think I need one through three for the initial supplement.
Q Does that refresh your memory?
A It does.
Q What did Ms. Holcombe advise you she thought to be -- okay. What did Ms. Holcombe advise you in paragraph two in the last sentence?
A I'll read it from my report. Ms. Holcombe advised she had thought he, actually, broke the stick as he was

striking the table.

Q Detective Lusk?

A Yes, sir.

Q Do you remember February the 17th of this year, the preliminary hearing? Do you remember that day, sir?

A I remember a preliminary hearing. I don't remember which day it was.

Q Detective Lusk, do you remember being asked if you saw other tools or lumber in that particular truck that day? Do you remember being asked this?

A Not offhand, I do not.

DEFENDANT BOYD: No further questions.

MS. TESSITORE: Your Honor, just very briefly.

THE COURT: Okay. Redirect.

REDIRECT EXAMINATION

BY MS. TESSITORE:

Q Detective Lusk, when you were talking about these pieces of the puzzle that you put together that led to you seeking the warrants that you obtained, did you, also, consider the information that had been provided to the officers the night of the incident?

A I did.

Q Okay. And did you, also -- you had the opportunity to view Mr. Boyd when you arrested him?

A I did.

Q And how did he compare to the description that the victims gave?

A It was very similar to the description given by the victims.

Q And that appearance is different, or similar today?

A It's different.

Q And when you were, also, considering the pieces in the puzzle, did you, also, consider the 911 call that was made by Ms. Maurer?

A I did.

Q So those were all the pieces, in addition to the photo array?

A Yes, ma'am.

Q And why did you take that extra step to conduct the photo array with the two victims?

A I just wanted to be as complete as I could be.

MS. TESSITORE: No further questions.

THE COURT: Mr. Boyd, any further questions?

DEFENDANT BOYD: I have no recross, Your Honor.

THE COURT: All right. Thank you, sir.

Thank you, Detective.

You may step down.

Ladies and gentlemen, we're going to go ahead and adjourn for the evening. Don't talk about the case. Don't do any kind of outside investigation or research.

And continue to keep an open mind. You haven't heard all the evidence. And you, certainly, haven't heard the closing arguments, or the law that you are to apply to the facts.

So have a good evening. And we'll see you back in the morning at 9:00.

Thank you.

(WHEREUPON, the jury was excused from open court at approximately 5:35 p.m.)

THE COURT: Okay. See you in the morning.

Thank you.

(WHEREUPON, the proceedings were concluded at approximately 5:35 p.m., to be reconvened on Wednesday, December 14, 2011.)

WEDNESDAY, DECEMBER 14, 2011

THE COURT: Good morning.

You can bring the jury in.

Thank you.

(WHEREUPON, the jury came into open court at approximately 9:09 a.m.)

THE COURT: Good morning, ladies and gentlemen.

We're going to resume the testimony at this time.

Ms. Tessitore, you may call your next witness.

MS. TESSITORE: Thank you, Your Honor.

The State would call Sergeant Shaw.

THE CLERK: Sir, please, place your left hand on the Bible and raise your right hand.

WHEREUPON,

DARWIN SHAW,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Please be seated.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Good morning, Sergeant Shaw.

A Good morning.

Q I'm going to ask you to kind of pick up where we left off yesterday. But we're going to focus briefly on the weapon in this case. Did you have the opportunity to

examine the weapon in this case at a later point in time after it was placed into property and evidence by Detective Lusk?

A I did.

Q I'm showing you what's been marked as State's Exhibit No. 38. Could you look in there and take out the item?

A (Witness complied.)

Q And do you recognize that?

A I do.

Q And how do you recognize it?

A My initials are placed on two areas on the stick.

Q Okay. When did you place your initials on that stick?

A On May 3rd of 2011.

Q Okay. And why did you place those markings on the stick?

A Once I had been informed that some type of stick had been found, I wanted to look at it to see if there was a possibility of getting -- of there being paint transfer from the scene onto this stick, or look at the condition of the stick. So I went to P&E and examined it at that time.

Q And when you examined it, what did you find?

A I found two areas on the stick. One looked like it had a blueish-green color to it. The other was a small

area of white -- it looked like white paint transfer.

So I marked those with a permanent marker, and initialed it as those are two possible questionable areas that may be a paint transfer.

Q But -- and as a result of your examination -- just tell the jury how you accessed the item that we're looking at?

A I just went to P&E and requested them to show it to me. It was in a package. I opened it up and looked at it. I had a magnifying glass. And I just examined it with a magnifying glass.

Q Okay. Is that the package it was in?

A I believe so, yes.

Q Does it have the case number on it?

A It does.

Q And was that the case number you were involved in?

A Yes, ma'am, it is.

Q Okay. And when you examined it, was it in substantially the same condition as it appears today, other than the markings that you placed on it?

A It appears to be, yes.

Q Did you -- at that time, where did you physically -- where did you examine it?

A I examined the entire stick from end to end.

Q And where were you physically when you did that?

A At property and evidence.
Q And where in that area of property and evidence did you review it?
A I believe it was at the front counter.
Q And, at any time, did you remove it from that area, that secure area?
A I did not.
Q And if you had, would you have made -- how would you have documented that?
A If I had removed it from property and evidence, I would have to sign the property and evidence sheet, and taken custody of it. And then when it was returned to P&E, they would then have to sign it back in.
Q But you didn't do that?
A I did not.
Q And, based on the areas you circled there, would you be able to -- or were you able to determine when or how those colors appeared on that stick right there?
A No, ma'am, I couldn't.
Q So it could have been before the incident, after the incident?
A That's correct.
Q Okay. And was that the end of your examination as far as the stick?
A Yes, ma'am, it was.

MS. TESSITORE: Thank you.

Answer any questions the Defense may have, please.

THE COURT: Mr. Boyd, do you have any questions of this witness?

DEFENDANT BOYD: Yes, sir.

CROSS-EXAMINATION

BY DEFENDANT BOYD:

Q Sir, could you tell me the color that you identified on that stick in your findings, the color of it?

A There was one area that had a blueish-green color, and the other was white.

Q Sir, according to the pictures that we've seen, sir, it appears that the walls were yellow where the "robbery" took place. Would you agree that that's true, sir?

A The photographs, very possible.

Q So would you, also, agree if there was any breakage or banging of the walls, then maybe that particular stick should have had some yellow paint on it, so to speak? Would you agree?

A I believe the problem is in the photographs. The color of the wall has not changed, or did not change. Florescent lighting can change the color of a photograph so that it may, actually, look a different color than it is, which is very common.

Q Sir, in your investigation, did you find anything

that was similar to the greenish-blue color that you found on the stick at the scene, sir?

A Yes, I did.

Q Okay. Sir, in your extensive investigation throughout the front of the salon area that you stated, did you find -- in all of this movement you heard about, did you find any fingerprints, or anything?

A No, sir, I did not.

Q In your investigation, you stated you did a forensics of a fingerprint finding on the back door entrance. Were there any type of fingerprints, sir?

A Yes, there were.

Q Was it linked, sir, to Billy Roy Boyd?

A No, sir, it was not.

Q Did you find any type of surveillance that day in your investigation?

A No, sir, I didn't.

Q Sir, did you surveillance the parking lot?

MS. TESSITORE: Objection, Your Honor, to the form of the question. He's not referring as to what point he's talking about.

THE COURT: Yes.

Narrow it down a little bit, Mr. Boyd.

BY DEFENDANT BOYD:

Q Sir, at what particular day did you arrive at the

salon to begin your investigation?

A On the 3rd -- or 4th of March is when I, originally, went. And that's when I was at the original scene and looked for potential evidence at that time.

Q On that particular day, the 4th?

A That's correct.

Q Did you see any other activity on the outside of the atmosphere of the salon? Any other vehicles?

A Employee vehicles, I believe. But there were no other vehicles out in the parking lot, and no other people that I saw.

Q Did you find -- sir, in your investigating outside of the salon, did you see any other sticks in comparison?

A Not that matched the detail that was given to me by the employees.

Q Sir, in your investigation, did you find any yellow scrapings of paint that came off the wall in that particular canteen kitchen area?

A No, sir.

DEFENDANT BOYD: Thank you, sir.

No more questions.

MS. TESSITORE: Your Honor, very briefly.

REDIRECT EXAMINATION

BY MS. TESSITORE:

Q Sergeant Shaw, when you -- you talked about lifting

the print that you mentioned yesterday. And can you just describe as far as what type of print it was?

A The -- on the glass, on the interior side when I applied the powder, I observed the ridge detail that looked to be the tip -- a fingertip, and that was what was collected.

Q And that was compared to the Defendant's fingertips and it was not his fingertip; is that correct?

A That's correct.

Q Were you able to match it to anybody else?

A I didn't do the examinations, but it's my understanding that nobody else was matched to them.

Q And so it could have been the police officers, it could have been the witnesses, it could have been anybody that had been in the store that day?

A Or any other day.

Q Or any other day. How long do prints stay on?

A There's no timeline. Depending on the heat, humidity, type of surface, it can all vary as to how long a fingerprint can stay.

Q And I'm showing you what's marked as State's Exhibit No. 11. Can you take a look at that? What is that?

A This is a photograph of the table inside the break room.

Q Okay. And did you examine the walls in there as part of your investigation?

A I did.

Q And did you see any markings on the wall that would have been consistent with any type of significant impact on the wall there?

A I did not.

Q Okay. And so there weren't areas where the paint had been chipped off in a noticeable way that evening?

A That's correct. I checked the door frame, as well as the wall interior and exterior. And I found nothing. That was the purpose for trying to look for -- I was advised there was an impacted area with a stick. That's what I was looking for and trying to find out where it may have struck, and I found no area.

Q Okay. And so what was the only thing you found in that break room?

A The wood chips that were on the table.

MS. TESSITORE: Okay. Thank you.

No further questions, Your Honor.

DEFENDANT BOYD: Can I beg the Court's indulgence, please?

THE COURT: Sure, yes.

(Pause.)

RECROSS-EXAMINATION

BY DEFENDANT BOYD:

Q You can't connect the stick in my truck to the beauty shop?

A That's correct.

Q And wood chips on table cannot be connected to the stick found in my truck?

A I can't give you that determination.

DEFENDANT BOYD: Thank you, sir.

THE COURT: All right. Thank you, sir.

You may call your next witness.

MS. TESSITORE: Thank you, Your Honor.

One moment, please.

(Pause.)

MS. TESSITORE: Your Honor, can we just take up a matter briefly before we call the next witness?

THE COURT: Ladies and gentlemen, just return to the jury room briefly while we resolve this. And don't talk about the case.

Thank you.

(WHEREUPON, the jury was excused from open court at approximately 9:24 a.m.)

MS. TESSITORE: Your Honor, the State would ask that Sergeant Shaw be excused at this time.

THE COURT: Is there any objection?

DEFENDANT BOYD: No, Your Honor.

THE COURT: Thank you, sir, for your time.

MS. TESSITORE: Your Honor, at this time, the State would be calling the pawn -- one of the pawnshop employees. And there's a pawn ticket and a video. And I have discussed with the Defense whether there's any willingness to stipulate as to the admission of the pawn ticket as a business record, as well as the video being a fair and accurate depiction of the events that occurred that day.

DEFENDANT BOYD: I have no objection, Your Honor.

THE COURT: Okay.

MS. TESSITORE: Thank you, Your Honor.

THE COURT: Why did we have to take the jury out for that?

MS. TESSITORE: Well, Your Honor, I just didn't want to tell the jury about what they were about to hear in the event that there was some issue regarding that evidence.

THE COURT: All right.

MS. TESSITORE: The stipulation is that he -- the Defendant agrees that the pawn ticket from the pawnshop accurately represents the transaction that occurred that day between him and the pawnshop. And that would relate to, actually, both pawnshops, First Cash, as well as Cash

America.

MR. ROBINSON: And Mr. Boyd agrees with that stipulation.

MS. TESSITORE: Okay.

THE COURT: You can bring the jury back in.

Thank you.

(WHEREUPON, State's Exhibit No. 44 was marked for identification only.)

(WHEREUPON, the jury came into open court at approximately 9:27 a.m.)

MS. TESSITORE: The State would call Christina Bailey.

THE CLERK: Ma'am, if you'll, please, come forward and pause at the end of the bench.

Please place your left hand on the Bible and raise your right hand, and face the Judge, please.

WHEREUPON,

CHRISTINA BAILEY,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Please come around and be seated.

Would you, please, state your full name for the record.

THE WITNESS: Christina Bailey.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Good morning, Ms. Bailey.

Where do you work?

A Cash America Pawn on East North Street.

Q And is that in Greenville County?

A Yes, it is.

Q And how long have you worked there?

A I've worked for the company for a little over nine years, and at that particular location for over two.

Q And what about the other seven years, where did you work?

A I worked at all three locations in Greenville, one on Pleasantburg and one in Berea.

Q Are there any other Cash Americas in Greenville?

A No.

Q And what are your duties there at the pawnshop?

A I'm an assistant manager. So I mainly make sure everything is moving smoothly out on the floor and with all of our customers.

Q And, as far as your hours that you would, typically, work, taking you back to 2010, leading up to March 5th, what were your typical hours and days that you would work?

A I'm required to work a minimum of 48 hours. Most of the time, I work around 50 to 56 hours.

Q And what days of the week is the shop open?
A We're open Monday through Saturday.
Q And that's all the shops?
A Yes.
Q All right. And would you say that in your experience at the pawnshop there that there are regular customers that you get to know by name, and by face?
A There's several, yes.
Q Okay. And, as far as back in March of 2010, that was when you were working at the shop on Pleasantburg, just to clarify?
A 2010?
Q Yes.
A I was working on East North Street.
Q Okay. I'm sorry. And is that where you had the occasion to be involved in a pawn transaction with Mr. Boyd?
A Yes.
Q Okay. Did you have an opportunity -- well, let me back up. Do you recall when Mr. Boyd came in the store what he brought with him?
A There were two rings.
Q Okay. And can you describe those rings?
A If I had a pawn ticket in front of me, I would be able to.

Q Did you prepare the pawn ticket?
A Yes, I did.
MS. TESSITORE: Based on the Defense stipulation, as well as this witness' testimony, the State would move State's Exhibit No. 44 into evidence.
DEFENDANT BOYD: No objection, Your Honor.
THE COURT: Okay. It's in evidence.
BY MS. TESSITORE:
Q Take a look at that.
A This one is not mine.
Q I'm sorry.
MS. TESSITORE: State's Exhibit No. 29, Your Honor, the State would move into evidence and revisit the last exhibit.
THE COURT: So State's Exhibit No. 29 is in evidence?
MS. TESSITORE: Yes.
(WHEREUPON, State's Exhibit No. 29 was admitted into evidence.)
BY MS. TESSITORE:
Q Did you take a look at that exhibit?
A Uh-huh.
Q And do you recognize that?
A Yes, it's our pawn ticket.
Q How many pawn tickets are there?
A One per customer.

Q Who prepared that pawn ticket?
A I did.
Q Can you describe just how you go about -- when Mr. Boyd came in, based on that, is that when you had the transaction with Mr. Boyd?
A Yes. Whenever the ticket prints out is when we do the actual transaction. When the customer first comes in, we ask for an ID, and we verify that the ID is the person who's bringing it in. Then we ask if they want to sell or pawn the items. And we go into different screens, whatever it is.

This one was a pawn. And then I go and each ring would be weighed separately. I would look at it through a loop, which is a magnifying glass for jewelers. And then I describe the ring as closely as I possibly can on the ticket.

Q Okay. And how did you describe those rings?
A The first one was a lady's fashion ring, 14 carat. It weighed approximately 3.1 grams. It had five round stones that had diamonds that were two points each. 14 round blue stones that were one point a piece.

And then the second one was an engagement ring. It was white gold, 14 carat, approximately 2.4 grams. It had a solitaire style, so it's just one stone. It had one round stone at 50 points.

Q Okay. And why do you provide so much detail about the rings?

A To get an accurate description, not only for our customers, but for our police, also.

Q For who?

A For our police, also.

Q Okay. And how do the police --

A It's online. They get a copy of everything from LeadsOnline.

Q And what is LeadsOnline?

A It's a database that whenever we type anything into the computer, it goes to the police department so they can look for stolen merchandise.

Q And is that apparent to the customer who's in the store?

A I'm sorry?

Q Would that be apparent to a customer in the store?

A Sometimes, not always. Sometimes, they ask why we're getting so much information, and we do tell them. On the back right here, it, also, says that they are saying they're the owners of the merchandise.

Q Okay. And do you ask -- you ask them if they're the owner?

A No. We don't ask them. They just -- by them signing this paper, it is a legal binding document saying that

they're the ones that gave us the jewelry, and they know they're pawning their stuff.

Q And do you ask where they got the property from?

A No.

Q So you leave that up to law enforcement to determine?

A Yes.

Q I'm showing you State's Exhibit Nos. 16 and 17. Can you take a look at those?

A (Witness complied.)

Q And what do those appear to be?

A Those are the two rings I took.

Q And talk about, if you would, as far as when you verify the information that's on that pawn ticket. What kind of information are you verifying about the customer, in this case, Mr. Boyd?

A We're verifying that when they give us their ID that it looks like the person. Looks do change, so we kind of make sure it's them. If their facial hair has grown, then we make a comment about it, and make sure that it is them. We check the -- you know, we can't check the weight, of course. But we estimate what their approximate weight is. And we, also, verify from a gauge on our door about how tall they are. Because when they come in, there is a measuring stick on the wall.

Q Okay. And did -- so you don't weigh the customers

while they're there?
A No.
Q Thank goodness.
Did -- so when you -- on the pawn ticket, did you indicate a weight there?
A Yes. It says approximately 210.
Q And where did that come from?
A Probably his driver's license.
Q Now, if -- well, focusing on the driver's license, did Mr. Boyd present a driver's license?
A Yes, he did.
Q And you confirmed it was the Defendant, Mr. Boyd?
A Yes. I'm the one that entered all the data in.
Q Did you -- had you ever seen him before?
A No.
Q Had you ever had any prior transactions with him?
A Not to my knowledge, no, and not at this store. I was the only one to put his information in. I was the first one.
Q So. And, at the other locations where you worked at the Berea location and the only other one in Greenville, the Pleasantburg store, you hadn't seen him there?
A Not to my knowledge, no.
Q Okay. Now, I'm going to show you State's Exhibit No. 36. Can you take a look at that?

A Yes. That's the video.
Q And what is that -- how do you know that's the video?
A I've, actually, watched the video with you, and we reviewed the video. My initials are right here.
Q Okay. And did you review the video and -- after the incident?
A Yes.
Q Okay. And then when I showed you this video, is that when you placed your initials on there?
A Yes, it is.
Q Okay. And, after you viewed it, did you -- was that a fair and accurate depiction of what was happening in the --
A Yes.
Q -- on the floor of the store where this transaction occurred?
A Yes, it was.
Q Okay. Does the -- just tell the jury briefly about the security system in the store.
A We have security systems pretty much everywhere in the front and back. As they walk out the door, there's security, also. It's at every drawer, so we can make sure everybody who's coming in is doing what they're supposed to be doing. And it's not only them, but for us, also.
Q Okay. And, as far as the video cameras, are they

visible to customers?
A No. Some of them are, not all of them.
Q Okay.
A The ones behind us are where the cash registers are, the one at the door is not.
MS. TESSITORE: Okay. And, based on the Defense stipulation, as well as the testimony, the State would move State's Exhibit No. 36 into evidence.
THE COURT: Any objection?
DEFENDANT BOYD: No objection.
THE COURT: Okay. It's in evidence.
MS. TESSITORE: Thank you, Your Honor.
(WHEREUPON, State's Exhibit No. 36 was admitted into evidence.)
BY MS. TESSITORE:
Q Ms. Bailey, I think just for ease so that you don't get blinded by the light of the projector, can you just step down?
A (Witness complied.)
Q Maybe just come to this side. And just make sure that the jury can hear you.
I'm going to go ahead and publish that for the jury. And, if you could, just describe as it comes up here the -- kind of what the jury is seeing as far as where you are, where the Defendant is.

Okay. As you see those multiple frames, can you just describe for the jury what they're looking at in each frame, starting from the -- wherever you're comfortable starting?

A Okay. This is our jewelry case. This one right here is the one side --

THE COURT: Ms. Bailey, I'm sorry. I think maybe the better thing is if you step over there and that way, you can --

BY MS. TESSITORE:

Q Yes. And speak up just a little bit louder.

A This is our jewelry case right here. This is the left side of our loan counter, and this is the right side. And this is the front door camera.

Q And are you in that video in any of the images at that time?

A Not yet.

Q Okay. Is the Defendant?

A Actually, it looks like I might be right there. And right there is --

Q Can you speak up just a little bit. I'm having trouble hearing you.

A Yes. Right here is where we did the transaction. And right there is the jewelry that was handed to me.

Right now, I'm going through and, actually, looking

at the jewelry, and asking if it was a loan or a pawn. Because I have to go into a different screen to do the different transactions. I'm looking at the jewelry right now. As you can see, he's just kind of walking around. Most customers look at our merchandise as we're doing their stuff.

Right back here, the reason I turned around is because I'm, actually, testing the jewelry to make sure the items are real. I'm just going through and typing in all the information for the actual loan ticket. I'm looking at each piece.

Q Now, did Mr. Boyd appear to be with anybody else in -- while he was conducting the transaction?

A There was another gentleman that was kind of walking around with him that had came in with him, also.

Q Again, I just need you to speak up a little bit.

A I'm sorry.

Q It's hard to hear back here.

A There was another gentleman that was walking around with him that appeared to be with him when he came in.

Q Was he involved in the transaction in any way?

A No.

Q And where is Mr. Boyd at this point?

A Standing in front of the counter.

Q Obviously, there's no sound to the video?

A No.
Q So the surveillance system doesn't pick up sound?
A No, it does not.
Q And what's happening at this point?
A I'm testing the jewelry. I'm, also, having to -- I'm a manager, so I do lots of different things. So I'm getting a price on something else. But I'm, actually, testing the jewelry, at this point in time, as to the gold to make sure the gold was real.
Q Okay. And was it?
A Yes, it was real. I'm, actually, taking the jeweler's loop that I was telling you about earlier. And I'm looking at the one diamond at the moment.
Q You're looking at the what?
A At the diamond at the moment with the jeweler's loop.
Q If don't mind, too, just stepping back a little bit so that --
Thank you.
And what are you doing at this point in the view up in the right corner?
A I'm still gauging the diamond and looking at it. It takes a little while with jewelry. We have to verify everything, and make sure that it is real and everything is good with the stones.
Q Okay. And when you say you're working out on the

floor, is that what -- is this the floor you're referring to?

A Yes.

Q How many entrances or exits are there?

A There is one entrance, two exits.

Q So only one way to come in, and two ways to go out?

A Yeah.

Q Now, looking up there, at that point, what's happening?

A I'm still putting in the information on the diamonds. And, now, I'm getting his ID. I don't think I've gotten it yet. I'm sorry. He just gave me his ID right there.

Q Okay.

A I've, actually, got it sitting in the corner of the key board where the computer is. That's where I'm getting all my information from.

Q Is the time that's on the video as it's running there at the bottom --

A It is a correct and accurate time, yes. We have to verify that once a month to make sure that the time is correct.

Q And that's in military time?

A Yes.

Q So that would have been about what time? 3:19?

A 3:19.

Q And that's on March 5th, 2010?
A Uh-huh.
Q And what's happening at this point when he approaches the counter?
A Basically, he's just coming back and just checking with us. They walk around and look at the merchandise and then come back. The transaction should be just about finished. We're just putting in the rest of this information. We do give a very detailed description of every customer that comes in the door. That's why it takes so long.
Q Okay. And if it's a new customer, you have to --
A I have to, actually, put in every bit of the information, which is what I'm doing now.
Q And what did he just take right there?
A I gave him back his ID. Right here, he and the gentleman are just talking and waiting for me to finish the transaction.
Q And did you recognize that other individual that was with Mr. Boyd?
A No.
Q And what's happening right here?
A Right here, he's, actually, signing the transaction saying that he was the one that pawned the merchandise. And I'm, actually, giving him the money.

Q Okay. So did he hand you -- what did he hand you?
A He handed me back the ticket that he had just signed. There's three copies of the ticket. One goes to us, one goes to the police, and I give him one.
Q What's happening right here?
A I'm giving him his money and his blue ticket. And he just put it back in his wallet.
Q And how much did you give him for the rings?
A It was $320 for both rings.
Q Okay. And in what form did you give it to him?
A Cash.
And they just left.
Q Okay. Just have a seat.
A (Witness complied.)
Q Did you have any other involvement or contact with this Defendant, Mr. Boyd, after this transaction?
A Not to my knowledge, no.
Q Okay. Do you recognize him here today?
A No. People change. I'm sorry.
Q Okay. But, I mean, as you look at him here today, do you recognize him?
A Yeah. The video, yeah, I mean, it matched.
Q Have you ever seen him before, other than in the video?
A No, not to my knowledge.

MS. TESSITORE: Just one moment.

(Pause.)

BY MS. TESSITORE:

Q Okay. After you, at that point, took possession of those two rings, what happened to those two rings?

A They get filed in our safe. And then later, a police officer called and put them on hold and picked them up.

Q Okay. And what condition were they in when he brought them in there?

A Good condition.

Q As they appear in the photographs?

A Yeah. They're exactly the way they are in the video.

Q And if there had been any defects or damage --

A We would have --

Q I'm sorry.

A We would have, actually, notated it if there was any damage, or if there was a break in the ring, cuts, anything like that.

MS. TESSITORE: Please answer any questions that the Defense may have, please.

Thank you.

CROSS-EXAMINATION

BY DEFENDANT BOYD:

Q On March the 5th, ma'am, upon seeing Mr. Boyd entering the store, would you say that -- do you have

access to the other store records?
A No, we do not.
Q You don't have access?
A No. Our stores are individual stores, even though we're owned by the same company.
Q Would you agree this was in the middle of the day?
A It was around 3:00.
Q Would you agree that when I came in the store, I gave my license?
A Yes, you did.
Q Would you agree that I followed normal procedures?
A Yes.
Q Would you agree that I signed the ticket?
A Yes.
Q Would you agree that I was not in a hurry and this probably was a transaction of, what, 15 or 20 minutes?
A Uh-huh.
Q Would you agree that I did not appear nervous?
A Yes.
Q Would you agree that I did not try to avoid the camera?
A Yes.
Q In fact, was I facing the camera?
A Yes.
Q Would you, also, agree that you stated that you have

to sign the ticket for verification purposes in case an item has been stolen?

A Yes.

DEFENDANT BOYD: Thank you, ma'am.

No further questions.

THE COURT: Anything further?

MS. TESSITORE: No, Your Honor.

THE COURT: All right. Thank you, Ms. Bailey.

You may step down.

MS. TESSITORE: The State would call Stephanie Neubia.

May this witness be excused?

THE COURT: Any objection?

DEFENDANT BOYD: No objection.

THE COURT: Thank you.

THE CLERK: Ma'am, if you'll, please, come forward.

Place your left hand on the Bible and raise your right hand.

WHEREUPON,

STEPHANIE NEUBIA,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Please be seated.

Please state your full name for the record.

THE WITNESS: Stephanie Neubia.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Ms. Neubia, where do you work?

A First Cash Pawn.

Q And how long have you worked there?

A Three years.

Q You might just need to speak up a little bit, because I'm having trouble hearing back here.

What do you do there?

A I'm a sales associate.

Q And what does that mean? What are your duties?

A We buy and sell merchandise, and we pawn and buy for customers.

Q What location do you work at?

A Rutherford Street.

Q And that -- and, as far as your duties, would you -- where do you primarily work in that store?

A At the front counter.

Q And so you're dealing with the customers?

A Right.

Q And how many hours do you, typically, work?

A Usually, eight hours a day, 40 hours a week.

Q How many hours a week?

A 40.

Q Back in 2010, was it -- how many hours did you work

then?
A The same.
Q And what days of the week would you, typically, work?
A We work Monday through Thursday. We have one day off during the week.
Q So you work Monday through Thursday?
A We have -- I'm sorry. Monday through Saturday, and we have one day off during the week.
Q So is the store open on Sunday?
A No.
Q And I'm going to take you back to March 5th of 2010. And were you working that day?
A Yes.
Q And what time did you start work that day?
A 8:00.
Q And do you recall an individual by the name of Billy Boyd coming in there?
A Yes.
Q And when he came in the shop, what do you recall as far as what happened that day?
A He came in and brought some jewelry. And he wanted to know how much he could get for it.
Q All right. And was he by himself?
A Yes.
Q And what -- when you say he had some jewelry, what

did he have?
A It was two rings.
Q Okay. If you could, just speak up a little bit more.
A Two rings.
Q Okay. And do you recall anything about those rings?
A One was a sapphire ring, and then the other was just a solitaire.
Q Okay. I'm showing you what's been marked as State's Exhibit Nos. 16 and 17. If you'll take a look at those.
A (Witness complied.)
Q What do those appear to be?
A Two rings. One is a sapphire and diamond, and one is a solitaire.
Q Okay. Are those the rings you saw that day?
A Yes.
Q Okay. And did -- with respect to those rings, how did the Defendant present them to you?
A He brought them in like a plastic bag, and asked how much could he get for them.
Q Okay. And so did you -- what did you do in response to that?
A I just took them over to the front counter where we weigh them. And I walked back to the manager to verify the amount to offer.
Q You walked back to who?

A The manager.
Q Okay. And why do you do that?
A Because they have to verify any jewelry with us.
Q Did you verify that the items were, in fact, gold?
A Yes. We scratched them on a pad and acid to verify them.
Q And did you make an offer?
A Yes.
Q What was your offer?
A $150.
Q What?
A $150.
Q And what was his response to that offer?
A He thought he could get more, so he just left.
Q And when -- would there have been any record as far as a pawn ticket, or any type of documentation that would have been produced?
A Not if we didn't enter anything in the computer, no.
Q So only if there's a pawn or a sale?
A Right.
Q Did -- do you have a video surveillance system in the shop?
A We do.
Q And were you able to pull that up to view the conversation that y'all had on March 5th at 11:22 --

A Yes.
Q -- in the morning? And did you review that video?
A With the detective, yes.
Q When did you first review it?
A We had two detectives that came in that were looking for -- they had like a drawing of some jewelry and they were looking for items that had been taken.
Q Do you remember, was that Detective Lusk?
A Yes.
Q Okay. Did -- and what did he do when he came in to speak with you?
A First, he walked -- well, we always ask them to go back to the manager first. And the manager asked me had I saw them. And I was like, Yes. He showed me the drawings. And I told him that it looked like some jewelry that somebody had just brought in a few hours before he got there.
Q Okay. And when you say he showed you the jewelry, how did he show that to you?
A It was two drawings of some jewelry.
Q Okay. I'm showing you State's Exhibit No. 42, what does that appear to be?
A Two rings. One is a solitaire. And those are the ones he showed me.
Q Okay. So is that the diagram?

A Yes.
Q And, after he spoke with you, did you have -- were you able to secure the video and provide that to Detective Lusk on that day, on Friday?
A The manager did that. I didn't do anything with the video, because we don't do that as associates. The managers deal with that.
Q But you were the sales associate that dealt with Mr. Boyd?
A Right.
Q I'm going to show you what's been marked as State's Exhibit No. 35, and ask you to look at that.
A (Witness complied.)
Q Do you recognize that?
A Yes. These are our CDs we use.
Q And are there any initials on there?
A Yes, these are mine.
Q Did you review that video?
A Yes.
Q And is it a fair and accurate recording of the transaction -- or the conversation you had with Mr. Boyd in the pawnshop on Friday?
A It's an accurate viewing, yes.
MS. TESSITORE: At this time, the State would move State's Exhibit No. 35 into evidence.

DEFENDANT BOYD: No objection.

THE COURT: All right. It's in evidence.

(WHEREUPON, State's Exhibit No. 35 was admitted into evidence.)

BY MS. TESSITORE:

Q Ms. Neubia, if you want to, actually, step down. Maybe come back here so the light won't be in your face.

A (Witness complied.)

Q And step right here so the jury can hear you. And what I'm going to ask you to do is this is a laser pointer. And you just press that button, and you'll be able to point if you need to as we look at the video.

Okay. What does that appear to be?

A That's just the shop there, the right counter.

Q And what is the time and date?

A March 5th at 11:22.

Q Okay. And is Mr. Boyd in the shop at this point -- let me ask you. Are you in the video?

A Yeah, I'm here.

Q Okay. And who did you just speak to?

A That was Mr. Boyd.

Q So the video doesn't capture the top half of him at this point?

A That's me. I'm examining the jewelry there, which is what we do when they first come in. I'm trying to see

what carat it is.

Q And that's the jewelry that Mr. Boyd handed you?

A Correct.

Q Where is Mr. Boyd at this point?

A He was walking over there. I go back to the back to verify with the manager. And, also, the test is on the back part where I'm walking so you can't see it, where we go back to test the jewelry.

Q Okay. And did Mr. Boyd appear to be by himself?

A Yes. This is where I'm figuring up the weight.

Q You're figuring what?

A How much to offer. I have to weigh and see what the weight of each piece is.

Q And who's that?

A This is Mr. Boyd here.

Q That's who?

A Mr. Boyd.

Q Okay.

A I came back with my offer.

Q And what's happening there?

A This is where I'm telling him the offer.

Q And what's in your hand?

A The calculator is in my hand.

Q And did you communicate the offer to him at this point?

A Yes. Then I go back to the manager to see if there is a possibility to offer more.
Q And why would you go try to offer more?
A That's what we do to get the customer -- to get them to do business with us.
Q So did you make the offer to him?
A I'm not sure at that point.
This is where I'm coming back to offer our final offer, what the manager has said what to be offered, an amount.
Q And do you recall what that amount was?
A $150. And I put it back in the little baggy he gave me.
Q And what are you telling him there?
A I'm explaining to him about the diamond and the rings.
Q And what did he say in response to your offer?
A He could probably get more.
Q And what is this?
A This is just another view of the -- where I'm putting it on the scales and stuff, and testing it as far as weight.
Q Okay. So this is just another view of --
A The same transaction.
Q Or the same conversation?

A Right.
Q And where is -- does Mr. Boyd appear on the video at this point?
A Right there.
Q Okay. So this is more of a birds eye view?
A Right.
Q Okay. Thank you.
You may resume the stand.
A (Witness complied.)
Q Thank you.
So, at that point, he walked out the door?
A Right.
Q Did he indicate that he had been to any other stores?
A No.
Q And were you -- did you have the occasion to see Mr. Boyd again after this Friday?
A He did come back, yes.
Q Okay. And what did -- when you spoke with Detective Lusk, did he -- based on what he may have told you, what was your response when you saw Mr. Boyd return?
A I notified the manager about the jewelry that was in the drawing that he had showed us from Detective Lusk.
Q All right.
A And he said --
Q I'm sorry. Go ahead.

A And he decided to call and let him know he was in the store again.
Q Okay. And that was on -- was that on that Monday, because you were closed on Sunday?
A We were closed on Sunday, right.
Q So on that Monday, March 8th, did -- how did Mr. Boyd appear that day?
A Just regular. He just came in with the jewelry, and wanted to know how much he could get for it.
Q Okay. And was it the same jewelry that you had seen?
A No. This was some green and silver jewelry.
Q Okay. And so what happened when, you know, he came in and showed you that green and silver jewelry?
A I recognized it from the picture. And I told the manager that this was the jewelry that one of the detectives had on the drawing.
Q Okay. So, at that point, were you -- did you engage in any transaction with him?
A Yes.
Q And describe -- I'm showing you what's been marked as State's Exhibit No. 15. Take a look at that.
A Okay.
Q And what does that appear to be?
A It's the rings and earrings that were brought in.
Q By?

A Mr. Boyd.
Q On Monday?
A Yes.
Q And I'm showing you -- just one moment.
I'm showing you what's been marked as State's Exhibit No. 44.
A Okay.
Q And take a look at that. Do you recognize that?
A Yes. It's the --
Q What is that?
A This is our pawn ticket.
Q And which -- what pawn ticket does that refer to?
A This is for the ring and the silver jewelry.
Q And what's the date of the transaction?
A March 8th.
Q March 8th?
A Uh-huh.
Q Of which year?
A 2010.
Q Okay. Now, focusing on that pawn ticket, who prepared that pawn ticket?
A I did.
Q And when you prepare that pawn ticket, what information are you looking at as far as what's necessary to go in there?

A We have to get a state's ID driver's license or state-issued ID. And then we input all the information from that.
Q And did Mr. Boyd present an ID?
A Yes.
Q And was that the first time you saw his identification?
A Right, yes.
Q All right. And how did that information get placed onto the pawn ticket?
A It's printed out on our computer -- from the computer.
Q And is it something -- as far as identity, why do you look at the driver's license?
A That's a state law that we have to have an ID or driver's license.
Q To make sure that the customer is --
A Who they say they are, yes.
Q And do you ask them where they get the items from that they're pawning?
A No.
Q When -- is State's Exhibit No. 44 that you're looking at there, the ticket, is that a fair and accurate representation of the transaction that occurred on Monday, March 8th?

A Yes.
Q And approximately what time did that take place?
A 15:36.
Q So that would be about 3:30?
A Yeah.
Q 3:36 p.m.?
A (Witness nodded.)
Q And, as you were going through that transaction with him, what -- how much did you offer?
A $20.
Q And is that documented on the ticket as well?
A It is.
MS. TESSITORE: The State would move State's Exhibit No. 44 into evidence, Your Honor.
THE COURT: Any objection?
DEFENDANT BOYD: No objection, Your Honor.
THE COURT: It's in evidence.
(WHEREUPON, State's Exhibit No. 44 was admitted into evidence.)
BY MS. TESSITORE:
Q Do you keep that original?
A Yes.
Q And how did that get here today?
A I brought it here.
Q From where?

A From work.
Q And, as far as that transaction, was any -- well, let me just jump ahead. When Detective Lusk was contacted, what happened while you were having this transaction with Mr. Boyd?
A I was doing the transaction while the manager in the back was calling Detective Lusk. And he just said to delay him, you know, take your time.
Q He said to delay him?
A Just to take your time with the transaction.
Q Okay. And why is that?
A To delay the customer until they got there -- until law enforcement got there.
Q Okay. And did they arrive?
A Yes.
Q And what happened?
A They were outside. I didn't -- they did everything outside until they came in to get the merchandise.
Q Okay. And, when they came in to get the merchandise, did you provide that to them?
A Yes.
Q Did you see what kind of vehicle he was driving?
A No, ma'am.
Q And how many doors are on the front of your business?
A Just two doors.

Q And I'm showing you what's been marked as State's Exhibit No. 26.
A Okay.
Q And, if you could, describe what you see there.
A This is the envelope that we put our jewelry in. And we place the two pawn stamps at the top of it.
Q Okay. So are those stamps from your store?
A Yes.
Q All right. And what's contained inside that -- the envelope?
A It's a pair of earrings and a ring.
Q And so that -- those were the items you gave to the detective?
A Yes.
Q All right. And, at some point, were those collected by law enforcement?
A When they came -- after they came in from outside, I handed them the envelope.
Q Okay. And did they, eventually, buy those back?
A That's with the manager. I don't do anything as far as that.
Q So you weren't involved --
A No.
Q -- in that aspect of returning the property?
A No.

MS. TESSITORE: Just one minute, please.

(Pause.)

BY MS. TESSITORE:

Q Now, Ms. Neubia, just as far as the two opportunities that you had to speak with and transact with Mr. Boyd, did you -- when you first saw him, did you recognize him from any prior transactions?

A No.

Q And how long had you worked at that pawn store?

A Maybe going on -- it was three years.

Q Three years today?

A Three years as of September 2nd of this year.

Q Okay. So, at that time, two years?

A Right.

Q And had you ever seen him before?

A No.

Q And you do have regular customers that come in there that you know by name?

A Yes.

Q And he wasn't one of them?

A No.

Q Do people pawn items there that they don't return for?

A Yes.

Q And was this a pawn, or a cash sale?

A That was a pawn. Cash is given, also.
Q And so what happens to items that are never picked up?
A Just jewelry or hard goods, as we call it, which is other merchandise, is put out for sale at our store.
Q Okay. And -- but either way, whether it's a pawn or a sale, the customer leaves with cash in their hand?
A Correct.
MS. TESSITORE: Answer any questions the Defense may have.
Thank you.
THE COURT: Cross-examination, Mr. Boyd.

CROSS-EXAMINATION

BY DEFENDANT BOYD:
Q Excuse me, ma'am. Isn't there a notice at your store that there will be a background check on all items?
A No.
Q Isn't there a signature writing on the back that items will be checked to see if they're stolen?
A No.
Q And, also, is there a notice that law enforcement reviews reports of pawned items?
A Is there a notice?
Q Yes.
A No.

Q This is -- this was in the middle of the day?
A It was.
Q Would you agree that when I was in the store, I gave you my license?
A Yes.
MS. TESSITORE: Your Honor, if we could just clarify which date he's talking about since there was a day after the robbery, and then the Monday.
BY DEFENDANT BOYD:
Q On the day of March the 8th, 2010, would you agree that when we made the transaction that I gave you my license?
A Yes.
Q Okay. Would you agree that I followed normal procedure?
A Yes.
Q Would you agree that I was not in a hurry?
A Yes.
Q Would you agree that I did not appear to be nervous?
A You didn't appear to be, no.
Q Would you agree that I didn't try to avoid the camera?
A You didn't appear to, no.
Q In fact, was I facing the camera?
A On which date?

Q Upon looking at you at the register, upon looking at you, and conversating [sic]?

A On which day?

Q On the day of the 5th?

A On the 5th, you were like walking around the store.

Q Okay. When I handed you the jewelry for you to go and inquire about it, did I hand it to you face-to-face?

A Right, yes.

Q That was on the day of the 5th. On the day of the 8th, when we made a transaction, did I look at you face-to-face behind the register?

A Yes.

Q Ma'am, would you have the accessibility to pull up all of the past records of Billy Roy Boyd at the place of employment where you work?

A If there were transactions, we should have the pawn slips, or the...

DEFENDANT BOYD: Thank you, ma'am.

No further questions.

MS. TESSITORE: Just very briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. TESSITORE:

Q Both times that you saw Mr. Boyd, there was nothing concealing his face; correct?

A Correct.

Q And what was he wearing on his head on both occasions?

A Just a baseball cap.

Q With a lid?

A Uh-huh.

Q And did Mr. Boyd -- on Monday, when you contacted Detective Lusk, did you give him any indication that the police were on their way?

A No.

MS. TESSITORE: No further questions.

DEFENDANT BOYD: No recross, Your Honor.

THE COURT: Thank you, Mr. Boyd.

Thank you, ma'am.

All right. You may call your next witness.

MS. TESSITORE: Your Honor, may we take a five-minute recess?

And I'd, also, ask that Ms. Neubia be excused at this time.

DEFENDANT BOYD: No objection.

THE COURT: Yes, ma'am, you're excused.

Thank you very much.

We'll take about a 10-minute break. And don't talk about the case. And continue to keep an open mind.

(WHEREUPON, the jury was excused from open court at approximately 10:24 a.m.)

MS. TESSITORE: Your Honor, before the jury comes in, the State just wanted to bring to your attention that the State intends to call Wayman Martin to the stand next. And he would -- the State believes he will testify that he was with Mr. Boyd the evening after the time of the robbery and kidnapping, and that he was with him, that he had cash -- the Defendant had cash in his possession, and approximately $100 worth. And that was turned into crack cocaine, which they smoked, some of which together.

And then the next day, he appears in the video. He's with the Defendant. And it -- it's all part of the -- furnishes the context for why Mr. Martin is in the video, what the motive was for Mr. Boyd to be stealing the cash, and what he did with the same amount of cash that was described as being taken from the victims that night.

So you have the recency, you have the issue of the relevance as far as its part of -- its res gestae and part of the story that the evidence upholds. And the State's position is that it's not unduly prejudicial. He is not charged with drug charges. The State is not going to get into prior drug convictions. But the issue is -- so it would not make it more likely that they would convict him of any type of drug charge.

And if the Court wants to give any type of curative instruction regarding that or cautionary instruction, I,

certainly, would not have any objection. But I think the State submits that it is relevant evidence and we, certainly, can proffer that testimony if Your Honor wants to hear that before we get started.

DEFENDANT BOYD: I object, Your Honor. That totally does not have anything to do with the case here. That's hearsay.

MS. TESSITORE: Well, Mr. Martin is here, Your Honor.

DEFENDANT BOYD: Excuse me, Your Honor. It interjects drugs into the situation. And I don't think I was drug tested upon being incarcerated.

MS. TESSITORE: And, Your Honor, just so we can address all of this. Mr. Martin will, also, testify as far as the Defendant's statement about where he got the rings from. And so that, obviously, is to the Defendant's statement and it is, certainly, pertinent.

THE COURT: Well, what's he going to say?

MS. TESSITORE: He's going to say that the Defendant said they were his sisters, which is inconsistent with his prior statement to Detective Lusk.

THE COURT: All right. Based on Rule 404, I find this evidence is just probative only as to character. And I find even if it did meet some admissibility standard under Rule 404 that its prejudicial value vastly outweighs any probative value it could have. And, therefore, it

will be inadmissible under Rule 403. So that's my ruling on that type of evidence.

MS. TESSITORE: And, Your Honor, you're referring to just, specifically, the drugs -- in reference to the drugs. But the State would -- I just want to make sure the parameters are clear. I intend to ask him about the fact that Mr. Boyd had -- whether -- ask him if Mr. Boyd had any money with him that evening, and how much did he see, and as far as the statement regarding the source of where he got the rings from.

THE COURT: That somebody had $100 on them?

MS. TESSITORE: Well, Mr. Martin says that it was not his money, that -- and I can verify, but I believe -- in his written statement, he said that he -- they hooked up and he went over there with a stem. But, obviously, I'm not going to get into that. And he went over to Billy's house and that they smoked approximately $100 worth. I mean, I don't -- I'd have to ask the witness, specifically, if he saw the money in his hand.

THE COURT: I just don't think it's advancing the ball any. And, therefore, under Rule 403, I have the authority to exclude it as a waste of time, which I think it is.

MS. TESSITORE: Yes, sir.

THE COURT: So thank you.

MS. TESSITORE: Just, again, for clarification, if I call this witness just to testify that he was with him in the pawnshop, and that that was him.

MR. ROBINSON: Your Honor, on behalf of Mr. Boyd, that's really a 403 waste of time objection. It's not really doing anything.

MS. TESSITORE: Well, Your Honor, he's in the video. He's wearing a stocking [sic] cap. And it's just -- I think the jury is entitled to see the man who was with him, and look at him physically in the event that there's any confusion that -- you know, I don't know where Mr. Boyd is going to go with that.

THE COURT: Well, certainly, if Mr. Boyd presents evidence saying that he used the money for other purposes, and the State has evidence of what he, actually, used it for, then he may have opened the door. And this could all be very relevant. But, right now, I just don't see the point of it.

Do you want to call the guy and say, yes, I was with him?

MS. TESSITORE: Yes, and as far as the source of the rings, to say where he got the rings from.

THE COURT: Okay. I'll allow you to do that.

MS. TESSITORE: And, Your Honor, he does have prior convictions.

THE COURT: Who?

MS. TESSITORE: Mr. Martin.

He has two prior convictions, one for possession of crack cocaine in 2006, and attempting to possess crack cocaine back in 1989. So I think within the 10-year rule, the only one that would be admissible would be the possession of crack cocaine from the more recent 2006 conviction.

THE COURT: So you're just disclosing that to the Defense?

MS. TESSITORE: Yes, Your Honor.

MR. ROBINSON: She has provided Mr. Boyd with the NCIC, Your Honor.

THE COURT: Okay. Anything further?

MS. TESSITORE: Nothing from the State, Your Honor.

THE COURT: Okay. Bring the jury on in.

Thank you.

(WHEREUPON, the jury came into open court at approximately 10:53 a.m.)

THE COURT: Yes, ma'am, Ms. Tessitore. You may call your next witness.

MS. TESSITORE: Thank you, Your Honor.

The State calls Wayman Martin.

THE CLERK: Mr. Martin, please, come forward.

Mr. Martin, please, if you'll pause at the end of the

bench. Place your left hand on the Bible and raise your right hand.

WHEREUPON,

WAYMAN MARTIN,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Please be seated.

Please state your name for the record.

THE WITNESS: My name is Wayman Martin.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. TESSITORE:

Q Good morning, Mr. Martin.

How are you today?

A All right.

Q And can you tell the jury, do you work?

A No, not right at the moment.

Q Okay. And where do you stay?

A

Q Okay. And where is that in relation to where Billy Boyd resided around that time?

A Say what now, ma'am?

Q Okay. Let me ask you this. Do you know the Defendant, Billy Boyd?

A Yes, ma'am.

Q Okay. And how long have you known him?
A I've known him about five to 10 years, almost.
Q And does -- did he live nearby where you stayed?
A Yes, ma'am.
Q And how close or how far did he live?
A A couple houses down, two houses down.
Q What street?
A East Washington Street.
Q East Washington Street?
A (Witness nodded.)
Q And I'm going to take you back to March of 2010. Do you remember going in the Cash America Pawnshop with Mr. Boyd, the Cash America on East North Street?
A Yes, ma'am.
Q Okay. And do you recall how you got there?
A Riding in his truck.
Q Riding in whose truck?
A We rode in his truck.
Q Whose truck?
A Billy's truck.
Q And what kind of truck does he have?
A He has a gray Chevy, or gray Ford. I don't know.
Q And so how did you get to the pawnshop?
A I rode with him.
Q Okay. And why did you go to the -- what was the

purpose of going with him to the pawnshop?
A Well --
Q Let me ask you this. What did -- did he have anything in his possession, at that time, that he was taking to the pawnshop?
A Yes, ma'am.
Q Okay. And what did he have?
A He had two rings.
Q All right. Do you remember what they looked like.
A Not really, you know. I asked him to let me see them, you know.
Q Okay. Did you see them?
A Yes, ma'am.
Q Do you remember if they were silver, or gold, or what they were?
A They were gold. I believe they were gold. They were gold.
Q And did he tell you where he got those rings from?
A No, ma'am. He told me they were his sister's rings.
Q I'm sorry. I can't hear you.
A He told me they were his sister's rings.
Q They were his sister's rings?
A Yeah.
Q Did he say which sister, Debbie or Donna?
A No. He didn't say which one.

Q Just that they were one of his sister's rings?
A Yeah.
Q And what happened while you were in the pawnshop with him?
A Nothing happened. I just browsed around and was just looking in the glass, looking at some jewelry and stuff. And then I just left out. I left out of the pawn store and went and sat in the truck.
Q Okay. So you didn't conduct any transactions there?
A No, ma'am.
Q And did -- how did you leave the pawn store?
A We left in his truck.
Q What?
A We left in the truck.
Q And did he have any cash with him?
A Yes, ma'am.
Q Okay. Do you recall how much he got?
A No. I don't know an exact amount.
Q Okay. Did you get any of that money?
A No, ma'am.
Q Mr. Martin, how much do you weigh? I'm sorry. It's a personal question. How much did you weigh back in 2010?
A About the same.
Q And do you know how much you weigh approximately?
A About 135, 136, something like that.

Q Okay. And how tall are you?
A 5'11".
Q Okay. And would you say that in the time you've known Mr. Boyd, have you spent -- how much time do you spend with him? How do you describe him, a friend, an acquaintance?
A A friend.
DEFENDANT BOYD: Objection, relevance, Your Honor.
THE COURT: Overruled.
BY MS. TESSITORE:
Q So you know him as an acquaintance?
A Acquaintance, whatever you want to say. It don't make no difference.
Q Well, how often, back in March of 2010, would you have seen Mr. Boyd on a social basis?
A Not every day, though. Sometimes, I would be gone a lot, you know.
Q Okay. And did --
MS. TESSITORE: Just one moment.
(Pause.)
MS. TESSITORE: Please answer any questions the Defense may have.
DEFENDANT BOYD: Your Honor, I'd like to state, at this time, I have no questions.
THE COURT: All right. Thank you.

Mr. Martin, thank you.

You may step down.

MS. TESSITORE: Your Honor, may this witness be excused?

THE COURT: Any objection?

DEFENDANT BOYD: No objection, Your Honor.

THE COURT: You may call your next witness.

MS. TESSITORE: Your Honor, at this point, the State rests.

THE COURT: All right. Ladies and gentlemen, the State has completed their presentation of evidence. And so, at this time, we'll take a brief recess and take up a matter of law. And we will resume the case in, hopefully, short order.

So don't talk about the case. Continue to keep an open mind.

Thank you very much.

(WHEREUPON, the jury was excused from open court at approximately 11:02 a.m.)

THE COURT: Yes, sir.

MR. ROBINSON: May it please the Court.

I'm just -- if I could have one second with him regarding a motion.

THE COURT: Yes, sure.

(Pause.)

MOTIONS

THE COURT: Yes, sir, Mr. Boyd.

DEFENDANT BOYD: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DEFENDANT BOYD: I move for a directed verdict of acquittal on all the counts. The State has failed to present any evidence of my guilt.

THE COURT: All right, sir. I find that based on the evidence, which I can't weigh or make any findings as to whether or not the evidence is credible or believable, that's entirely up to the jury at this stage, there is sufficient evidence in the record to support the elements of the crime as to each indictment. I have to view the evidence in the light most favorable to the State. And construing all inferences in the State's favor, I find that under Rule 19, your motion must be respectfully denied.

Any further motions or matters at this juncture?

MR. ROBINSON: Your Honor, on behalf of Mr. Boyd, I would like the Court to -- and the Solicitor to advise us what Mr. -- as far as his testimony, what prior record he has that could be used to impeach him.

THE COURT: I'm going to get to that in just a minute.

MR. ROBINSON: Yes, sir.

THE COURT: But I'm asking if there are any other motions right now.

MS. TESSITORE: None from the State, Your Honor.

DEFENDANT BOYD: No, sir, Your Honor.

THE COURT: So, Mr. Boyd, I'm going to ask the Clerk to swear you in at this time.

THE CLERK: Please stand and raise your right hand.

WHEREUPON,

BILLY ROY BOYD,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Be seated.

THE COURT: Mr. Boyd, we've reached the stage of the trial where the State has concluded their presentation of evidence and it's now your opportunity to present evidence, if you choose to. I know you listed potential witnesses. And I need to make sure you understand that you have the right to testify yourself, sir. And that means that you could come take the stand and tell your side of the story.

And I just need to make sure you understand if you do that, you would be subject to being cross-examined just as you have cross-examined the State's witnesses so far. And that means that the Solicitor, after you finish testifying on your direct examination, could ask you about anything

that might be relevant to this case, or might bear on your credibility, or be, otherwise, admissible evidence.

And what would the State seek to use to impeach him as far as a prior record, if any?

MS. TESSITORE: Your Honor, it would be in 1998 -- excuse me. In 2004, two counts of fraudulent check under $500. And those both have the same conviction days of December 13th, 2004. And there is -- there's a receiving stolen goods charge in 1997 that was charged as failure to return rental property. And his NCIC indicates that it was a receiving stolen goods under $1,000. And that would be it, Your Honor.

THE COURT: All right. So, Mr. Boyd, the jury would learn of those convictions if you did testify. And, of course, if you did not testify, they would not know about them. I will tell the jury that convictions can only be used to assess your credibility, if I do find they are admissible, and cannot be used for any other purpose, including inferring that you would be guilty of these charges.

If you, also, chose not to take the stand and not testify, I need to advise you, sir, that I will tell the jury, as I've already told them, that they can't hold that against you. Although I haven't told them they can't hold it against you, I have told them that you have no burden

of proof in this case. And the burden of proof is completely on the State, and you don't have to offer any evidence or explanation whatsoever.

And I will tell the jury at the end that you have the Constitutional right, just like any citizen does, to remain silent. And they cannot hold that against you in any way. And they cannot take it into account whatsoever in determining whether you're guilty or not guilty.

So do you understand those things that I've just spoken about, Mr. Boyd?

DEFENDANT BOYD: Yes, sir, Your Honor.

THE COURT: Do you have any questions of me, sir?

DEFENDANT BOYD: No, sir, Your Honor.

THE COURT: And I'm -- do you feel like you've had enough opportunity to determine whether you want to testify, or not?

MR. ROBINSON: Your Honor, may it please the Court.

Could I speak to him for a second just about the dangers and so forth? Would that be appropriate?

THE COURT: Yes. Go ahead.

(Pause.)

THE COURT: Yes, sir.

DEFENDANT BOYD: May it please the Court, Your Honor. I would like to take the stand, Your Honor.

THE COURT: Okay. Well, let's try to resolve the

prior record issue as far as under Rule 609.

Receiving stolen goods, is that what he, actually, pled guilty to?

MS. TESSITORE: Your Honor, according to the NCIC, yes. The conviction is so faded out on the actual certified copy that it's -- I can show that to the Court and -- if you would like to see that.

THE COURT: And that carries a maximum of how many years?

MS. TESSITORE: That was a misdemeanor. It was 30 days.

THE COURT: Oh, 30 days.

So you're saying it's a crime of dishonesty, or false statement?

MS. TESSITORE: Yes.

Since the requirement is that he knew or should have known that it was stolen property.

MR. ROBINSON: Your Honor.

THE COURT: Yes, sir.

MR. ROBINSON: On behalf of Mr. Boyd, Your Honor, under 609, one, we believe that -- Mr. Boyd believes that it's more than 10 years old, obviously.

And, secondly, the probative value is far outweighed by any prejudicial value in this case.

THE COURT: What's the date of it?

MS. TESSITORE: Your Honor, it is July 9th, 1997.

THE COURT: Oh, okay. Well, I find that there's no authority I know to say that is a crime of dishonesty or false statement within the reading of Rule 609(a)(2). I rely on the federal case of Walker v. Horn, 389 F. 321, which is a Third Circuit case from 2004, which says that for a crime to be one of dishonesty or false statement admissible for impeachment under Rule 609(a)(2), it must "involve expressive dishonesty."

In addition, our state Supreme Court in State v. Bryant, 369 S.C. 511, stated that convictions for robbery, burglary, theft, and drug possession beyond the basic crime itself are not probative of truthfulness. And, accordingly, I find that it would not be admissible under Rule 609 for that reason and, also, because it exceeds 10 years.

And I don't find in the interest of justice that it is required that it be admitted. Under the State v. Colf, there's no reason in the interest of justice that it should be admitted. And the probative value supported by specific facts and circumstances substantially outweighs the prejudicial effect.

So I'm going to exclude the receiving stolen goods conviction. Fraudulent check, again, under the Bryant case would be, in fact, a crime of dishonesty or false

statement. And it, therefore, would be admissible.

MS. TESSITORE: Your Honor, just as far as any kind of discovery that -- or documents, or photographs, or anything like that, the State has only received the much talked about DVD that Mr. Robinson provided, as well as a release statement from years prior that doesn't appear relevant in any way. And I haven't received anything else.

So I just ask the Court that as far as reciprocal discovery, we provided all the discovery. And if there's anything he intends to introduce that I have an opportunity to review those before we bring the jury in.

DEFENDANT BOYD: Your Honor, I just need to talk about that day, the day prior, and the fact that I had just received a social security check myself of $1,000 that day.

THE COURT: But do you have any -- what she's asking is, do you have anything you're going to try to put into evidence?

DEFENDANT BOYD: Your Honor --

THE COURT: As far as like an exhibit is what she's talking about.

DEFENDANT BOYD: Not today, but it's on its way. There's a lot of things that I plan to have brought. It's in the making right now. There's a lot more evidence that

I would like to have submitted, Your Honor, on my behalf.

THE COURT: Okay. Well, we're getting far into the case, sir. And we're going to continue to move as efficiently and fairly as we can.

We're going to take about a five-minute break. And then we're going to bring the jury out.

Thank you.

(WHEREUPON, a break was taken.)

THE COURT: Is there some issue about some exhibits? Is that my understanding?

MS. TESSITORE: Your Honor, I've reviewed what Mr. Boyd has provided in the way of photographs, and ask that they -- the ones that he's seeking to introduce that they be marked.

And, Your Honor, the State's position is that the photographs that he is intending to introduce are not relevant to any of the factual issues in the case regarding the elements of the crime. They just depict, you know, where he claims that he lives. He doesn't -- he's not sure who took the pictures in the brief discussions prior to Your Honor coming in. And he indicated that the only reason he wants to introduce them is to show where he lives, and a picture of his work truck, which has already been introduced into evidence, so it's cumulative. And, again, I don't think the way that

his home appears is in any way relevant to the elements.

THE COURT: How many photographs are there?

MS. TESSITORE: Eight, Your Honor.

THE COURT: May I see them?

MS. TESSITORE: Yes, Your Honor.

THE COURT: How many exhibits does the State have in evidence?

MS. TESSITORE: Your Honor, we have approximately 44. However, they're all established as far as relevancy and authenticating. If he can authenticate if he took the pictures and knows when they were taken...

THE COURT: All right. Well, I -- assuming he can lay the foundation, they're going to be admissible.

Anything else before we bring the jury in?

MS. TESSITORE: Your Honor, just one issue I believe that we need to address before we begin so that we can continue through the witnesses. As far as the order of sequestration, it's my understanding that the pastor who has been coming in and out of the courtroom has been communicating with two of the witnesses on the witness list, the two sisters. And he's been coming back in and out and, apparently, talking about the testimony and what's going on in the case.

Based on that, Your Honor, the State would seek to exclude them as witnesses. Because they've, obviously --

I mean, if there's this communication going back and forth in direct violation of the Court's order, I have concerns that, obviously, they've been attending the trial through Mr. Rector, who's been sitting back here.

DEFENDANT BOYD: Your Honor, they're not testifying.

THE COURT: All right.

MS. TESSITORE: As long as we're -- I just wanted to be clear on that, Your Honor.

THE COURT: All right. Bring the jury in.

(WHEREUPON, Defendant's Exhibit Nos. 2, 3, 4, 5, 6, 7, 8, and 9 were marked for identification and admitted into evidence.)

(WHEREUPON, the jury came into open court at approximately 11:39 a.m.)

THE COURT: Ladies and gentlemen, we've reached the stage of the trial where the State has completed their presentation of evidence. So, at this time, as I mentioned before, the Defense, Mr. Boyd, has the opportunity, but not the obligation, to present any evidence he wishes to.

So, Mr. Boyd, yes, sir.

DEFENDANT BOYD: I'd like to take the stand, sir.

THE COURT: Come around and be sworn in, sir.

THE CLERK: Sir, please, place your left hand on the Bible and raise your right hand.

WHEREUPON,

BILLY ROY BOYD,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Please be seated.

Please state your full name for the record.

DEFENDANT BOYD: My name is Billy Roy Boyd.

THE CLERK: Thank you.

THE COURT: All right, sir. You may go ahead.

DEFENDANT BOYD: On March the 5th of 2010, as I was moving around in my home very early, I was kind of used to getting up quite early and playing with my animals. I have a lot of animals. I love my animals. I was waiting for my housekeeper to arrive. And she, normally, arrives between 9:00 a.m. and 10:00 a.m.

As I was waiting for her, I went to what they call the 711 night drop. As I exited my truck, I looked down on the ground where I saw a little plastic bag, and what appeared to look like costume jewelry. It didn't look real at all. As I got a pack of cigarettes and returned home, I was waiting for my housekeeper. As she arrived, we began to converse. And I was constantly always letting her know the new things that I had found, or what I was painting, whatever I was doing.

Every day, I had some type of project going on. And

her being a female, a 50-year-old Caucasian white female, I asked her, I said, What do you think about this right here that I just found? Is it real? She tried it on and stated, Mr. Boyd, this looks nice.

MS. TESSITORE: Objection, Your Honor, hearsay.

THE COURT: Sustained.

You can't testify about what somebody else said under no circumstances.

DEFENDANT BOYD: I was encouraged to go to a jewelry store, which I've had a past affiliation with a relative. And I ran -- I went to this jewelry store. And I asked her to watch the house until I got back. As I went to the jewelry store, it was evaluated that this was real. And I was offered $70. And I knew that if I was offered $70, it probably was worth more, because this was a jewelry exchange.

So I was advised, because I didn't accept that $70 offer, to shop around. So, as I was advised to shop around, one of the few places I was advised to go to was pawnshops. Well, I've got a 13-year past affiliation with pawnshops. And I know that every time I go to a pawnshop that I'm under surveillance. And I, also, know that I have to submit my valid driver's license. And I know that randomly that they take a -- how could I say? They take a surveillance of their monthly items that are brought in

for purchase to find out was anything confiscated from any type of crime being committed, so to speak. So I was very much aware of this at all times. But I was very confident, because I've never taken anything stolen, so to speak.

So, as I went to the first pawnshop, which was, actually, a First Cash America off 291, Pleasantburg -- it wasn't mentioned. I went there. There were four places I went total. Only two places were mentioned today. And this person advised me that they would give me $215. So the first estimate was about $70, $74. The second place I went to was like $215. So I'm like, wow, this price is going up, let me shop around some more.

So, as I went to the fourth pawnshop, which is called Luthi's, which I have a past affiliation there over a period of maybe 10 years, I was told that probably -- I think, what, $315, between $275 and $315. I was like, wow, this price is really going up. I left there and I went and inquired at First Cash. I was on a mission. I was going all over the place. If I could have gotten $10,000, I would have. Because, at that point in time, I thought I had struck gold, so to speak, a jackpot, so to speak.

So, as I went to First Cash and I inquired, it seemed like their price kind of declined. So I was like, well,

the last person offered me more. So I continued to go back home. I didn't purchase anything, because I knew my housekeeper, she was only working three hours that day. This was March the 5th of 2010. I went back home. And, as I went back home, I talked with her and everything like that.

And, later on that day, I was in my back yard. I'm constantly playing with my animals and doing landscaping. I like to spend a lot of time just staying busy, so to speak. That's when I'm feeling good. And on these particular days, I was feeling pretty good. I had just overcame a bad bout of sickness, so to speak --

MS. TESSITORE: Objection, Your Honor, relevance.

THE COURT: Overruled.

DEFENDANT BOYD: I had just overcame a bad bout with sickness and was on a medication called -- God, what's the name of this medication? I'm on it now. Concerning parasites, oh, man. I've forgot this medication's name. But it's kind of like chemotherapy, so to speak. And I had got all the way down to 122 pounds. So this is kind of why I was very thin in the pictures that you saw.

And as she, who was a good Christian woman, was encouraging me and praying for me daily because the medicine was working. And I was beginning to gain my weight back. My diagnosis was that I had a parasite that

probably was the size of a snake that was eating all of my food for a year and a half. And they ran so many tests and --

MS. TESSITORE: Your Honor, the State objects. This is just not relevant to --

THE COURT: Well, I don't know where you're going, but I'm going to give you the opportunity to tell the jury what you want to say. But let's try to make it relevant to the case, sir.

DEFENDANT BOYD: I had had so many hard times in my life. And, at this particular time in my life, the medicine was working. And I wasn't released from a doctor, so to speak. And, as my housekeeper would come to work every morning, if I wasn't in the house assisting her or running after my spoiled rotten cats, I was outside doing something.

And this was on the 5th of March, 2010. So approximately that afternoon where my neighbor was constantly calling around the yard, from the yard, his yard and my yard, he was always looking to make a couple of dollars, so to speak, cut your grass, whatever. He lives with his mother. And I asked him, Hey, man, I found this. And I showed him my findings of the jewelry. And he stated to me, he said, I know of this --

MS. TESSITORE: Your Honor, I'm going to object to

hearsay.

THE COURT: Sustained.

DEFENDANT BOYD: And he stated to me --

THE COURT: Sir, you can't talk about what that person said.

DEFENDANT BOYD: Okay. Well, I was encouraged to go to one more particular pawnshop that I had never been to. And this pawnshop was off East North Street. So I said, okay, why not, one more. When I went to this particular pawnshop, they gave me the highest bid. And it was then that I made my offer, giving my driver's license and willingly knowing that I was under surveillance. I didn't have anything to hide. I knew that they would run a background check on every piece of merchandise that was pawned.

And she, also, stated that today -- I didn't think anything of it. If anything, I was thinking I had hit the jackpot, so to speak. And I really was given the course where asking each pawn representative to give an account past record of all my affiliations, and dealing with them. Because I remember first pawning items and buying items ever since the year probably 1997. And, in all of this time, there has not been one time on my record or any other occasion that I had ever taken them anything that was stolen.

And if I knew that these things came from a robbery, I think what I would have done if I was desperate or on drugs, so to speak, I think I would have sold these items on the street, so to speak, or let somebody else use their identification. I didn't have anything to hide. And I didn't think nothing more of the fact that I had hit the jackpot. This is all I knew. This is what I had done before. And it had never backfired. This has taught me a very valuable lesson, which I can say honestly, even my family had encouraged me maybe you don't want to shop there so often. This is where people go on drugs or they try to get quick money. But I felt like every time I went there since I submitted my driver's license, I, Billy Boyd, did not have anything to hide.

Now, it's been 21 months later, two years. I've had to pay for that. I pay for that every day of my life. I just kind of today wanted the Court to get a little feel of who Mr. Billy Roy Boyd is. So I have some photos of my house, how I live. I have some landscaping photos of the landscaping that I do at my house. These pictures were taken probably two weeks before I was incarcerated, arrested.

And I would like the Court to see just a little bit about who Mr. Billy Roy Boyd is, if I can, please.

THE COURT: All right. So you just want to hold the

pictures up, and explain what they are?

DEFENDANT BOYD: If the jury, please, sir, can see everything.

THE COURT: Well, they'll have them back there with them.

DEFENDANT BOYD: I don't know if they can really see them from this point.

THE COURT: We'll pass them around to the jury.

DEFENDANT BOYD: This is like what -- I have a veranda in my house. This is like my prayer room where I've got probably 50 or 60 tropical flowers growing in my house. I'm constantly having people over to my house. They say, Billy, how do you do it? I have a green thumb. I'm a landscaper.

My father is a landscaper/plumber, so to speak. And I used to hate my father, so to speak, because he always spent time in the yard growing things. And I made my first plant grow one day, and I went crazy. So, now, I can make any tree or whatever grow in the house. And I kind of love that, so to speak. So this gives a scenario of my green house. I have, literally, a green house inside of my house, literally.

This is some findings. As I said, I'm always finding things. I stated that before. This is some of the findings in my house. My house is that of a gallery, so

to speak. I have black and white friends that come over to my house to show my house off, so to speak. My house is a hundred-year-old house, and I love it. It's built out of old wood. I have the old crystal doorknobs. And I have the square door panels. That's how old my house is.

And what I really love about my house, being a black man, is one day sitting in my house having a glass of wine, and knocking the wall out to an old fireplace, and seeing that the chimney was still intact, and making a fire in this house, and just letting my mind go back to, wow, now, I know when this house was built, and there was no black man in sight, so to speak. So I'm kind of living in history. I really love my house. I've been in my house for seven years, stable, stably in my house for seven years.

I'm in the process of buying my house. I was negotiating this prior before being arrested. I have eight rooms. And I live alone. My house is full of items. In fact, they call me Fred Sanford. They say I'm a pack rat. That's what I do these days. The older I've got, since I've been through so many crises in my life with illness, I've become more sensitive to sentimental things, such as animals. Because I don't have kids, and I don't have a wife.

MS. TESSITORE: Your Honor, I'm going to object as

far as relevance.

THE COURT: Overruled.

DEFENDANT BOYD: I'm sentimental to things, animals, collecting things. That truck that you saw, you'll see it again, my sister had just bought me that truck, because she knows I like to collect stuff. In fact, if I can, I want to have my house enlarged, so to speak. I want to get lost in my house.

And I'm always entertaining guests, because I, also, like to cook, too. So when I can make a white person lick their fingers, it's really impressive. Because I notice white people don't put too much seasoning in their food. It's kind of like bland, so to speak. So to have them eat your food, you're pretty good in the kitchen, so to speak. So I would like for you definitely to look at these things.

This is, also, another picture of the truck with some other tools. And those tools are still in the back of the truck presently today. I inquired and asked my sister.

This is a different approach right here of my backyard that I landscaped. I loved this backyard, because it was covered with kudzu. And I've got the big bad spoiled rotten cat, so to speak, to keep the snakes away. And I worked in this backyard on many sick days, or days when I didn't feel so good, just sitting outside in

the shade looking at the neighbors. Because we're on the back dead end street of a driveway. And you see your neighbors coming up the back alley. You can just literally scream over there and say, hey, do you have any butter, or sugar, or whatever?

And that gentleman that testified, he's constantly going up and down the alley. He lives with his mother. I am constantly landscaping her yard as well. Well, I spent a lot of time in my backyard. And I've realized that in my 40's that I've turned out to be my father, so to speak.

I'm the baby of five children. My parents are still married, so to speak. I wasn't born in the ghetto. I have a sister that's been in the Navy service, so to speak. I have another sister that has worked at Greenville Tech for approximately 20 years. And she still works there. Prior, before I got diagnosed in 1998 with full blown AIDS -- and I don't know how I contracted it -- I was in customer service. And I was kind of really, really good with people, so to speak. And I, at one time in my life, was introverted, but my self-esteem was boosted, and I become extroverted. So, now, I'm like my father. I spend a lot of time in my backyard, so to speak. And this will refresh the jury and the Court as to the landscaping I do, and the tools that were found in my truck.

This is one of my spoiled rotten kitty cats named Munchkin. She keeps my snakes and mice away in my old house, so to speak. I love Munchkin. I haven't seen Munchkin in two years. I really miss Munchkin.

This is another finding in my kitchen. I like to spend a lot of time in my kitchen. I was renovating my kitchen, so to speak, into a cafe style. There's a lot of collections in my kitchen. I found a lot of old bottles. And I was landscaping my backyard. And I was building a shelf on my wall for some of the antiques that I had found. So, in other words, it was a collection of my house's own history and antiques. So, as I entertain my friends with a glass of wine, or we ate a steak, or whatever, I will let them see some of my collections. And I became very, very sentimental.

In other words, after I got diagnosed with AIDS, I started valuing life, so to speak. I've had pneumonia more times than the law allows. I've been in a coma multiple times. Multiple times, I've gotten down to 125, or 130, or 140. I look very healthy and nice now, because I've been incarcerated for two years. And I eat a lot of canteen. In fact, I've probably put about $3,500 in the canteen since I've been incarcerated. I've got receipts from the canteen where I'm getting constantly Honey Buns, Snickers. And I really hate that, so to speak, but it's

an account that I'm definitely not hungry, that's for sure.

Also, if I can add, before the 5th, I had just received a monthly check on the 3rd of $1,000. I get that every month on the 3rd, disability, because I once worked under social security. And I was really a part of society, so to speak. So because I put in the pot, so to speak, I'm allowed to receive a little something.

And this is another picture of another one of my rooms. Like I stated, I have eight rooms. And some of my findings -- my house is cluttered with findings. And my family tells me, you don't need any more room, what you need to do is get rid of some stuff. But, like I said, it seems like these things, and these hobbies, and these activities, they fill a void in my life, so to speak. They fill a void.

This is some more of my house, so to speak, so the jury and the Court can see I live quite comfortably. I was not hungry. And my bills, my finances, so to speak, are not delinquent, or past due. There's a lot of character references that I can use that I'm not going to use.

MS. TESSITORE: Your Honor, I'd object if he's going to start --

THE COURT: Okay.

DEFENDANT BOYD: I really felt that the jury and the courtroom needed to hear how I feel, and let me express my own self. This is the first time I've been able to express myself in two years. I have been through hell and back, and my life will never be the same. I may look fine now, because this is my first time in civilian clothes in two years. When I'm not in these civilian clothes, I'm in chains. I have been affected emotionally, mentally, spiritually, all of the above. I miss my family. I miss my friends. I miss my home that I presently still have because my family still maintains it.

My family is so supportive, because I've never been in this type of trouble. In fact, I've never been incarcerated in GCDC in my entire life. And underneath these clothes, so to speak, I have suffered probably 65 ringworm parasites, so to speak.

This situation has been very conducive to my health. It has compromised my health. When I stated before I never got released from the doctor -- at this point in time, I don't know what's going on in my blood work, so to speak. I don't know. But I will tell you this, this was a very, very good experience for me to be incarcerated. Because I became closer to God like never before. They say what doesn't kill you makes you stronger.

MS. TESSITORE: Your Honor --

MR. ROBINSON: Mr. Boyd, excuse me. I'd like to ask you just a couple more questions to follow-up with your statements, or whatever.

DIRECT EXAMINATION

BY MR. ROBINSON:

Q In 2004, you had two bad checks; is that right?

A Yes, sir.

Q Okay. Regarding this incident on the 4th that you're here for today, did you ever rob or kidnap that day?

A No, sir.

Q Okay. The items that you found, you tried to pawn those; is that correct?

A Yes, sir.

Q Those items were pawned at two different pawnshops; correct?

A Yes, sir. That's correct.

Q Did you present a license?

A Yes, sir, I did.

MR. ROBINSON: I just wanted to follow-up with your testimony, Mr. Boyd. Answer any questions Ms. Tessitore has.

DEFENDANT BOYD: Thank you, sir.

And because you really made me remember to, also, reiterate this right here --

MS. TESSITORE: Your Honor --

MR. ROBINSON: Mr. Boyd, answer any questions Ms. Tessitore has.

DEFENDANT BOYD: Yes, sir.

CROSS-EXAMINATION

BY MS. TESSITORE:

Q Mr. Boyd, you've talked about mostly the Friday, March 5th?

A Yes.

Q And your activities that day; correct?

A That's correct.

Q And so you agree that the truck that you were found in by Detective Lusk is the same truck that you've got a picture of there; correct?

A Yes, ma'am. That's correct.

Q Okay. And you'd, also, agree that State's Exhibit No. 32 that that's you on the day you were arrested?

A Yes, ma'am. Distressed, just broke down that day, just unbelievable. I can't believe it.

Q And how much weight have you put on since --

A Since that picture, I probably was about 198 there. I've probably put on 60, 55, 60 pounds.

Q Okay. And that's because you're getting three square meals a day?

A Lots of Honey Buns. I really can't eat that food, it's so bad. I get a lot of canteen from my family, so to

speak.
Q And would you, also, agree that your -- this is you in State's Exhibit No. 43, position #5?
A That's Billy Roy Boyd.
Q Okay. And on State's Exhibit No. 1, who's in position #2?
A That is Billy Roy Boyd.
Q That is Billy Roy Boyd. Okay. And did you, also, agree that your facial hair has changed since then?
A Yes, it has.
Q Okay. And who changed that?
A Who changed my facial hair?
Q Did Mr. Boyd?
A Yes, I shaved.
Q And when did you shave and change your --
A Well, I normally, shave every two days. This is why if I don't shave I wear hats, so to speak. Because since I'm in my 40s, my hairline has receded. And that's kind of ugly, so to speak. So I, normally, stay shaved. That day, with the hate on, just being out in the yard and whatever, I didn't care.
Q So you've shaved your hair as well?
A Uh-huh. I shave my head all the time. I have multiple -- I have other pictures of my head being clean, too.