

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

RECEIVED

JUL 17 2013

JIMMY D PORTEE,

S.C. Supreme Court

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213469

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) COURT OF GENERAL SESSIONS
)

2007-GS-40-10684,
10685, 10686, 11829

State of South Carolina

vs.

) TRANSCRIPT OF RECORD
) (Trial)
)
)
)

Jimmy D. Portee,

Defendant.

September 2, 3 and 4, 2008
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

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1 Tuesday, September 2, 2008

2 (WHEREUPON, State's Exhibit No. 1 is marked for
3 identification.)

4 (WHEREUPON, State's Exhibit No. 2 is marked for
5 identification.)

6 (WHEREUPON, State's Exhibit No. 3 is marked for
7 identification.)

8 (WHEREUPON, State's Exhibit No. 4 is marked for
9 identification.)

10 (WHEREUPON, State's Exhibit No. 5 is marked for
11 identification.)

12 **THE COURT:** All right, Solicitor. Call your
13 first case.

14 **MS. SHIPLEY:** Yes, sir, Your Honor. The State
15 calls the case against Jimmy Portee for the following
16 indictments: 2007-GS-40-10684, 10686, 10685 and
17 11829. Those are for the charges of armed robbery,
18 assault and battery of a high and aggravated nature,
19 two counts, failure to stop for blue lights. Your
20 Honor, at this time the State is prepared to call Dr.
21 Jeffrey Musick to the stand for a Blair hearing.

22 **THE COURT:** Defense ready to proceed?

23 **MR. COOPER:** Yes, Your Honor.

24 **THE COURT:** Call your first witness.

25 **MS. SHIPLEY:** Your Honor, at this time the State

1 calls Dr. Jeffrey Musick.

2 DR. JEFFREY E. MUSICK, after affirming to tell
3 the truth, testifies as follows:

4 THE CLERK: Thank you. Please have a seat in
5 the witness stand and state your full name for the
6 record. And if you'll please spell your last name.

7 WITNESS: My name is Jeffrey Earl Musick. Last
8 name is spelled M-U-S-I-C-K.

9 DIRECT EXAMINATION

10 BY MS. SHIPLEY

11 Q Dr. Musick, can you please the Court where you are
12 employed?

13 A I'm employed by the Department of Mental Health in
14 the forensic evaluation service where I'm the chief
15 psychologist.

16 Q And can you tell Judge Cooper a little bit about what
17 your duties entail?

18 A My duties entail conducting competency and criminal
19 responsibility evaluations on defendants in the
20 courts of South Carolina. I also do psychological
21 consultations on defendants and I supervise the
22 clinical staff in the forensic evaluation service.

23 Q How long have you been with the Department of Mental
24 Health?

25 A About eight and a half years.

Dr. Jeffrey E. Musick - Direct by Ms. Shipley (In Camera)

11

1 Q Can you tell Judge Cooper a little bit about your
2 educational background, training and experience in
3 the field of forensic psychology?

4 A Prior to working with the Department of Mental Health
5 I worked for a similar organization in the state of
6 Florida for about five and a half years where I did
7 competency to stand trial evaluations and risk
8 assessments for dangerousness on defendants. Prior
9 to that I earned a doctorate in clinical psychology
10 from the Department of Mental Health where my
11 training -- excuse me. A doctorate from the
12 University of Florida where my training involved
13 evaluations of competency to stand trial. I am
14 currently board certified in forensic psychology by
15 the American Board of Professional Psychology.

16 Q Have you ever testified in the courts of South
17 Carolina as an expert in this field before?

18 A Yes, I have.

19 Q And approximately how many times?

20 A I would estimate about 25 times.

21 MS. SHIPLEY: Your Honor, at this time we would
22 offer Dr. Musick as an expert in the field of
23 forensic psychology.

24 THE COURT: Any voir dire or objection?

25 MR. SECOR: Just some brief questions when the

1 State is done, Your Honor; but no objection.

2 THE COURT: No. Go ahead. As to his
3 qualifications.

4 MR. SECOR: Oh, no, no. No, sir. Not as to his
5 qualifications. I apologize.

6 THE COURT: No objection.

7 MR. SECOR: No objection.

8 THE COURT: Go ahead.

9 MS. SHIPLEY: Thank you, Your Honor.

10 Q Dr. Musick, I'm going to bring your attention to the
11 case at hand. Pursuant to State's Exhibit No. 1,
12 could you please tell us what exactly that is?

13 A That's an order for a competency to stand trial
14 evaluation on Mr. Portee.

15 Q And is that the order you followed in order to do
16 this evaluation?

17 A Yes. It appears to be.

18 MS. SHIPLEY: Your Honor, at this time we would
19 introduce State's No. 1 into evidence.

20 THE COURT: What's the date of that?

21 MS. SHIPLEY: The date of the evaluation --

22 THE COURT: No. The order.

23 MS. SHIPLEY: I mean the order. Excuse me.

24 THE COURT: May 6th?

25 MS. SHIPLEY: May 6th, 2008.

Dr. Jeffrey E. Musick - Direct by Ms. Shipley (In Camera)

13

1 **THE COURT:** Thank you.

2 **MS. SHIPLEY:** Any objection?

3 **MR. SECOR:** No objection, Your Honor.

4 (State's No. 1 received in evidence for this
5 hearing)

6 **Q** And are these typically the orders that come to you
7 from the courts requesting these evaluations to be
8 conducted?

9 **A** That appears to be the standard order form, yes.

10 **Q** And on this order, which one is checked off in the
11 box, in the title?

12 **A** There is a choice for the Department of Mental Health
13 and the Department of Disabilities and Special Needs.
14 And the Department of Mental Health is checked off.

15 **Q** And this is for purposes of a competency evaluation,
16 correct?

17 **A** Competency to stand trial, yes.

18 **Q** Okay. Great. And inside, in this order, is there
19 reference to a private psychiatrist's findings or
20 affidavit that you also reviewed in preparation to
21 evaluate Mr. Portee?

22 **A** Yes. I did review an affidavit from a private
23 psychiatrist.

24 **Q** Okay. And I'm going to show you what's been marked
25 State's No. 2. Is that the affidavit that you

1 evaluated or examined before evaluating Mr. Portee?

2 A It is.

3 Q And what is it?

4 A It's an affidavit by Dr. Donna Schwartz-Watts saying
5 that she examined Mr. Portee on April 17th, 2008 and
6 during the course of this examination noted some
7 memory disturbance and impairment in cognitive
8 functioning. It then goes on to say that because of
9 this she ordered some laboratory tests to rule out
10 reversible causes of dementia. Apparently the
11 laboratory tests found that his thyroid function was
12 abnormal, which indicates that he might have been
13 suffering from hypothyroidism which can be associated
14 with cognitive impairment. And it concludes saying
15 that Mr. Portee needs to be evaluated by an internist
16 to examine his thyroid function. And after that he
17 needs to be evaluated again.

18 MS. SHIPLEY: Okay. Your Honor, at this time we
19 would introduce No. 2 into evidence.

20 MR. SECOR: No objection.

21 THE COURT: Without objection.

22 (State's Exhibit No. 2 received in evidence for
23 this hearing)

24 Q And, lastly, pursuant to Court's order, State's
25 No. 1, did you indeed meet with Mr. Portee?

Dr. Jeffrey E. Musick - Direct by Ms. Shipley (In Camera)

15

1 A Yes. I initially met with him on May 19th of 2008,
2 and then I also met with him again this morning.

3 Q Okay. And in preparation to evaluate Mr. Portee back
4 on May 19th, 2008, could you please tell Judge Cooper
5 what materials you reviewed in preparation?

6 A I reviewed the aforementioned court order. I
7 reviewed all the legal and investigative documents
8 related to the charges that were provided to me. I
9 reviewed Mr. Portee's arrest record. I reviewed some
10 records from Hall Psychiatric Institute on Mr. Portee
11 from 1987. I reviewed the aforementioned affidavit.
12 I reviewed Mr. Portee's records from the Alvin S.
13 Glenn Detention Center. I reviewed a social work
14 assessment conducted by the Department of Mental
15 Health. I interviewed the officer who transported
16 Mr. Portee to the May 19th appointment. I also
17 interviewed Mr. Portee myself for about an hour and a
18 quarter. And I did some psychological testing on Mr.
19 Portee as well. Those are all listed in the report.
20 In addition, I acquired Mr. Portee's jail records
21 that have been accumulated since I saw him on
22 May 19th and reviewed those before I saw him today.

23 Q Okay. I'm going to show you what's been pre-marked
24 State's No. 3 and ask you if you recognize this?

25 A This is the report of my competency to stand trial

1 evaluation on Mr. Portee conducted on May 19th.

2 MS. SHIPLEY: Your Honor, at this time the State
3 would seek to introduce No. 3 into evidence.

4 MR. SECOR: No objection.

5 (State's Exhibit No. 3 received in evidence for
6 this hearing).

7 Q All right. And I guess I see a copy. If you'd
8 prefer to go by your copy, that's fine. All right,
9 Dr. Musick. First of all, when you meet with a
10 patient to determine their competency, do you ask
11 them some questions about their history?

12 A Yes. That would be a routine part of the evaluation.

13 Q And did you do so in this case?

14 A Yes, I did.

15 Q And what information were you able to gather about
16 Mr. Portee?

17 A Well, I asked Mr. Portee about his mental health
18 history. And he denied that he has a history of
19 mental illness, as did -- as I mentioned, we also did
20 a social work assessment. And that involved talking
21 to Mr. Portee's mother and his fiancée. And these
22 two informants also denied that he has a history of
23 mental illness. We did discover that he had once
24 been committed to Hall Psychiatric Institute in 1987
25 for about a week. At that time he was diagnosed with

Dr. Jeffrey E. Musick - Direct by Ms. Shipley (In Camera)

17

1 marijuana abuse and cocaine abuse.

2 Q But those are not considered mental illnesses,
3 correct?

4 A Well, they are mental disorders. And those are noted
5 in the report.

6 Q At any time from the date of his arrest,
7 November 9th, 2006, through the time that you met
8 with him on May 19th, 2008, were there ever any
9 complaints noted in the county jail records as to him
10 having any mental disorders?

11 A No. The detention center did not list Mr. Portee as
12 having any mental disorders.

13 Q Did he indicate whether or not he had any other
14 health problems?

15 A He denied having any medical problems both at the
16 time on May 19th and again this morning. And I
17 should mention, also this morning he again denied
18 having any mental health problems.

19 THE COURT: Counsel, let me see you. Just
20 approach the bench, please.

21 (Whereupon, a bench conference is had)

22 Q Dr. Musick, based on the social history, the family
23 history, the defendant's educational background, the
24 tests that you performed on May 19th, did you come to
25 a conclusion as to his competency to stand trial?

1 A Yes, I did.

2 Q And what is that to a reasonable degree of medical
3 certainty?

4 A It was my opinion that Mr. Portee was competent to
5 stand trial.

6 Q And, therefore, he understood the charges against
7 him, correct?

8 A Yes.

9 Q The possible penalties?

10 A Yes.

11 Q The fact that he is facing life without parole?

12 A Yes.

13 Q He understood the purpose of a trial?

14 A Yes.

15 Q He understood the role of the judge?

16 A Yes.

17 Q The role of the jury?

18 A Yes.

19 Q And the role of witnesses?

20 A Yes.

21 Q Did he also indicate any understanding about possible
22 plea bargaining?

23 A Yes. He showed an understanding of the concept of
24 plea bargaining.

25 Q Did he also indicate whether or not he understood he

Dr. Jeffrey E. Musick - Direct by Ms. Shipley (In Camera)
19

1 had the right to testify or not to testify?

2 A Yes. He understood that right.

3 Q Did he understand the role of the solicitor?

4 A Yes, he did.

5 Q Did he indicate he could communicate with his
6 attorney?

7 A Yeah. Based on his ability to communicate during the
8 evaluation in a rational, relevant, coherent way, it
9 appeared that he would be able to do the same with
10 his attorneys.

11 Q And so as a result you found that he was competent to
12 stand trial, correct?

13 A Correct.

14 Q Now, when you met with him this morning, are there
15 any differences that you would like to address from
16 your evaluation on May 19th, 2008?

17 A No. On May 19th, 2008, I didn't think -- there was
18 no evidence that Mr. Portee had a mental disorder,
19 and I still don't see a mental disorder today.

20 MS. SHIPLEY: Your Honor, that is all from the
21 State.

22 THE COURT: Cross examination.

23 MR. SECOR: Briefly, Your Honor. Thank you.

24 CROSS EXAMINATION

25 BY MR. SECOR

1 Q Good morning, Dr. Musick.

2 A Good morning.

3 Q When you met with Mr. Portee this morning, I was
4 there, correct?

5 A Correct.

6 Q And it was just sort of a checkup to see if your
7 findings from when you first evaluated him were still
8 true in your opinion?

9 A Right. We only spent about 22 minutes with him.

10 Q Okay. And during that you asked him questions
11 pertaining to why he was here today?

12 A Yes.

13 Q And it was your understanding or your opinion that
14 had understands why he's here today and the process
15 that's going to transpire?

16 A Yes. That's my opinion.

17 Q Okay. And with regards to how a criminal jury trial
18 goes forward, it's your opinion that he understands
19 how that works?

20 A Yes. It's my opinion that he has a satisfactory
21 understanding of how that works. He doesn't
22 understand it as well as a lawyer of course.

23 Q Of course. Yeah.

24 A But he understands the basics certainly.

25 Q And he understands the role of the judge?

Dr. Jeffrey E. Musick - Cross by Mr. Secor (In Camera)

21

1 **A** Yes. During our interview this morning he mentioned
2 that the judge is in charge of the sentencing. I
3 didn't go into a lot of detail about the role of the
4 judge because I had no reason to think that's
5 something he would not understand now given that he
6 understood it in May and was not showing any new
7 symptoms today.

8 **Q** And he understood the role of the jury?

9 **A** Yes.

10 **Q** And of the solicitor?

11 **A** Yes.

12 **Q** And of his attorneys, Mr. Cooper and myself?

13 **A** Yes.

14 **Q** Okay. And he felt -- was it your opinion that he
15 trusted Mr. Cooper and myself?

16 **A** He said that he did.

17 **Q** Thank you, Dr. Musick. I've got nothing further,
18 Your Honor.

19 **THE COURT:** Anything further?

20 **MS. SHIPLEY:** Nothing further from the State
21 Your Honor.

22 **THE COURT:** All right. Doctor, you may come
23 down. Thank you very much for coming.

24 **MS. SHIPLEY:** Your Honor, may he be excused?

25 **THE COURT:** May the witness be excused? Without

1 objection.

2 **WITNESS:** Thank you, Your Honor.

3 **THE COURT:** Anything further?

4 **MS. SHIPLEY:** Your Honor, we're ready to pick a
5 jury if you'd like, or we've got witnesses to proceed
6 with pre-trial.

7 **THE COURT:** Let's go ahead and pick the jury.
8 Any objection?

9 **MR. COOPER:** No objection, Your Honor.

10 **THE COURT:** As to the -- hold on. As to the
11 competency issue, as a result of the previous
12 witness's testimony, I find that the defendant, Jimmy
13 Portee, is capable of understanding the process, that
14 he is competent and able to communicate with his
15 attorneys and can testify in a rational, relevant and
16 coherent fashion. This is as a result of a report of
17 Dr. Musick on May 19th and again this morning,
18 September 2nd. So I find that Mr. Portee is
19 competent and capable of assisting in his own
20 defense.

21 Now, it's my understanding, I'm just looking at
22 pre-trial motions. Brady. We need an identification
23 hearing, something about redacting part of the
24 statement.

25 **MS. SHIPLEY:** Your Honor, we've done that

1 already. I think both parties are in agreement.

2 *THE COURT:* Is that correct?

3 *MR. COOPER:* Yes, Your Honor.

4 *THE COURT:* All right. Strike that.

5 Sequestration.

6 *MR. COOPER:* And, Your Honor, with regard to the
7 witnesses, I have some witnesses here under subpoena
8 today, and I'd just like to get permission for them
9 to go ahead and leave.

10 *THE COURT:* Are they in the courtroom?

11 *MR. COOPER:* I've got them outside.

12 *THE COURT:* Go ahead and release them for the
13 day.

14 *MR. COOPER:* Okay. Thank you, Your Honor.

15 *MS. SHIPLEY:* Obviously, Your Honor, we'd ask
16 for the exception for the witness, Ms. Anderson, the
17 victim, and then our lead investigator Isenhoward,
18 that they be allowed to remain in the courtroom; and
19 then Don Robinson is also sort of the sergeant in
20 charge. So we'd ask that he be permitted to remain
21 in the courtroom as well. And they don't have
22 anything to do with one another's role in the case.

23 *THE COURT:* Any objection during the jury
24 selection?

25 *MR. COOPER:* No, Your Honor, not during jury

1 selection. You know, I would agree to the lead
2 investigator being in here, but I'm not sure about
3 Robinson.

4 **THE COURT:** Well, we'll go into that. Let's go
5 ahead and get the jury first.

6 **MR. COOPER:** Okay.

7 **THE COURT:** You ready for the jury?

8 **MS. SHIPLEY:** Yes, sir, Your Honor.

9 **THE COURT:** Defense ready?

10 **MR. COOPER:** Yes, Your Honor.

11 **THE COURT:** All right.

12 **THE BAILIFF:** The jury is all present, Your
13 Honor.

14 **THE COURT:** All right. Good. Good morning,
15 ladies and gentlemen. Welcome to the Court of
16 General Sessions. This is the criminal division of
17 our court system. We call the civil division the
18 Court of Common Pleas. We call our criminal division
19 the Court of General Sessions. These are names that
20 have been with us since colonial times and we've just
21 not chosen to change them. We kind of like them the
22 way they are.

23 So those of you who are selected on the jury
24 this morning will be sitting on a criminal case. And
25 I'm going to tell you something about it in just a

1 few minutes. But as you went through a qualification
2 process earlier, this is a more specific
3 qualification process to see basically if you know
4 anything about this case or anything about the people
5 that are involved in this case.

6 Now, as you probably know, all cases, all
7 criminal cases are prosecuted or tried by the state
8 Solicitor's Office. You may have met Solicitor Giese
9 downstairs when you were -- I don't know if he was
10 down there this morning. He usually is there when
11 the jury is brought in. But he will not actually be
12 trying the case today. Two of his assistant
13 solicitors will be trying the case. And they are
14 Ms. Vanessa Shipley and Ms. Anna Good.

15 Now, I need to know if any member of the jury
16 panel is related by blood, connected by marriage or
17 employment or a close personal acquaintance of either
18 Ms. Vanessa Shipley or Ms. Anna Good. If so, please
19 stand. All right. Thank you very much.

20 Let me say this, ladies and gentlemen. I meant
21 to mention this as I started. Any of these questions
22 that you respond to, I'm going to ask you to respond
23 with your juror number; in other words, not your
24 name. So everybody look at their badge, make sure
25 what your number is.

1 And we've found over the past several years that
2 jurors, particularly in criminal cases, would prefer
3 to be referred to by their number and not by their
4 name, just because some people have little qualms
5 about -- and I understand it -- about giving their
6 name in the context of a criminal case. So if you
7 will do that, if you'll give me your juror number, I
8 would appreciate it if you have to respond to any of
9 these questions.

10 All right. I've asked you about Ms. Shipley and
11 Ms. Good. I'll ask if any member of the jury panel
12 is related by blood, connected by marriage or
13 employment to Mr. Barney Giese? In other words, any
14 connection that you may have with the solicitor for
15 the Fifth Judicial Circuit? Any member of the jury
16 panel know him, go to church with him, go to school
17 with his children or any -- yes, sir. And your name,
18 please? I'm sorry. Your number.

19 **JUROR:** 187.

20 **THE COURT:** All right. Mr. 87 (sic), yes, sir.

21 **JUROR:** He -- I just know Mr. Giese because our
22 kids went to school together. We went to school
23 functions together. That's all.

24 **THE COURT:** You have no other social or personal
25 relationship with him?

1 *JUROR:* No, sir.

2 *THE COURT:* All right. Let me ask you this,
3 Mr. 87 (sic). Would that fact in any way interfere
4 with your ability to give both the State and the
5 defendant a fair and impartial trial?

6 *JUROR:* No, sir.

7 *THE COURT:* Thank you very much, Mr. 87 (sic).

8 *JUROR:* 187.

9 *THE COURT:* 187. I'm sorry.

10 *JUROR:* 187.

11 *THE COURT:* I just marked down Mr. 87. It takes
12 a while to get used to it. Anybody else? Any member
13 of the jury panel or any member of your family in any
14 way connected with the staff of the Fifth judicial
15 Circuit Solicitor's Office? Any member of the jury
16 panel know anybody that works in that office or
17 related to anybody that works in that office? All
18 right.

19 Let me carry that one step further. Since the
20 Solicitor's Office naturally has a lot of connection
21 with law enforcement, interaction is the word, with
22 law enforcement and frequently are involved up until
23 the point of trial with law enforcement, I need to
24 ask if any member of the jury panel or any member of
25 your family is involved in law enforcement. And that

1 could mean anything from the Richland County
2 Sheriff's Department to the Columbia City Police
3 Department, Forest Acres, any military police force,
4 the State Law Enforcement Division or SLED or any of
5 these law enforcement agencies that either you or a
6 member of your family is connected with? Any member
7 of the jury panel? Yes, ma'am. And your number,
8 please.

9 *JUROR:* 188. My dad is a retired deputy
10 sheriff.

11 *THE COURT:* For Richland County?

12 *JUROR:* Yes, sir.

13 *THE COURT:* Ms. 188, would that fact in any way
14 interfere with your ability to give both the State
15 and the defendant a fair and impartial trial?

16 *JUROR:* No, sir.

17 *THE COURT:* And your father's name is what?

18 *JUROR:* James Vincent.

19 *THE COURT:* James Vincent. All right. Thank
20 you very much.

21 *JUROR:* You're welcome.

22 *THE COURT:* Yes, sir. On the front row.

23 *JUROR:* Your Honor, I'm number 17.

24 *THE COURT:* Yes, sir.

25 *JUROR:* I work for the City of Columbia legal

1 department and I prosecute some in City Court.

2 *THE COURT:* All right. Mr. 17, would that fact
3 in any way interfere with your ability to give both
4 the State and the defendant a fair and impartial
5 trial in this case?

6 *JUROR:* No, it would not, Your Honor.

7 *THE COURT:* Let me ask one question. Solicitor,
8 is this a case involving the City of Columbia Police
9 Department or the Richland County Sheriff's
10 Department?

11 *MS. SHIPLEY:* Richland County Sheriff's
12 Department.

13 *THE COURT:* All right. This is a Sheriff's
14 Department case. All right. Thank you very much,
15 Mr. 17.

16 *JUROR:* Thank you.

17 *THE COURT:* Go ahead. If you'll stand up, I can
18 identify you quicker. Yes.

19 *JUROR:* Number 148.

20 *THE COURT:* Mr. 148.

21 *JUROR:* I do have a cousin that works for the
22 Richland County Sheriff's Department.

23 *THE COURT:* All right. Do you know what
24 division he works in?

25 *JUROR:* He has a K-9 unit.

1 **THE COURT:** K-9 unit?

2 **JUROR:** Yes, sir.

3 **THE COURT:** Mr. 148, would that fact in any way
4 interfere with your ability to give both the State
5 and the defendant a fair and impartial trial?

6 **JUROR:** No, sir.

7 **THE COURT:** Thank you very much, sir. Yes, sir.

8 **JUROR:** 243. I have a twin brother retired from
9 the Richland County Sheriff's Department.

10 **THE COURT:** Out of where?

11 **JUROR:** Retired from Richland County.

12 **THE COURT:** Richland County. And your number
13 again was what?

14 **JUROR:** 243.

15 **THE COURT:** 243. Mr. 243, would that fact in
16 any way -- how long ago did he retire?

17 **JUROR:** About eight, nine months ago probably.

18 **THE COURT:** Okay. Would that fact in any way
19 interfere with your ability to give both the State
20 and the defendant a fair and impartial trial in this
21 case?

22 **JUROR:** No, it wouldn't.

23 **THE COURT:** I probably need to ask if you could
24 give me his name because it may affect whether he
25 worked on this case. That's why I'm curious.

1 *MS. SHIPLEY:* Your Honor, I know who he is. He
2 did not work on this case.

3 *THE COURT:* All right. Thank you very much,
4 Mr. 243. Anybody else? All right. Let me carry
5 that sort of one step, a little bit further. Any
6 member of the jury panel a member of or contributor
7 to any group which has as its primary function or
8 concern the promotion of law enforcement and/or
9 victims' rights?

10 In other words, groups such as the Sheriff's
11 Association or the Troopers Association or Mothers
12 Against Drunk Driving or Students Against Drunk
13 Driving or Citizens Against Violence, even things
14 like Sister Care, where any of these groups that you
15 either contribute to or actually volunteer for so
16 that you're somewhat involved with these groups. Any
17 member of the jury panel? If you'll stand, please,
18 then I can get your number. Yes, sir. Again.

19 *JUROR:* 187.

20 *THE COURT:* 187. Which group is that that
21 you --

22 *JUROR:* Troopers Association.

23 *THE COURT:* Troopers Association. All right,
24 sir. Let me ask you this. I always ask the first
25 person who tells me that: Did you get a sticker

1 decal to go on the back of your car?

2 JUROR: Yes, sir.

3 THE COURT: All right. Did you put it on your
4 car?

5 JUROR: No.

6 THE COURT: Have you ever gotten a ticket?

7 JUROR: No.

8 THE COURT: Well, you're lucky. All right.
9 Thank you very much, Mr. 187. Anybody else? Nobody
10 else? Yes, ma'am.

11 JUROR: I'm number 13.

12 THE COURT: 13. Yes, ma'am.

13 JUROR: Donations to the Troopers Association.

14 THE COURT: Okay. That's what I was asking.

15 JUROR: Oh, okay.

16 THE COURT: You donate or have donated to the
17 Troopers Association?

18 JUROR: Yes. And I'm also a guardian ad litem.
19 I didn't know if that was --

20 THE COURT: Yes, ma'am. It's sort of a general
21 question. But any groups that you, as I said,
22 volunteer for or give your time or your resources to
23 support those groups. Thank you very much, Ms. 13.
24 Anybody else? All right.

25 Now, ladies and gentlemen, what I told in my

1 hand are four documents. These are what's known as
2 indictments. I'm sure all of you have probably, if
3 you watch enough television, you know what
4 indictments are. But these are the formal charging
5 documents by which a case is brought into court.
6 They're not evidence of anything. They don't -- when
7 I tell you what they say, you're not to infer
8 anything from them other than these are the charges.
9 But they are not any evidence of guilt or innocence
10 of the defendant.

11 Any defendant, any individual who is brought
12 into court by way of an indictment, is always in this
13 county, in this state, in this United States presumed
14 innocent of the charges alleged in these indictments
15 until proven guilty beyond a reasonable doubt to a
16 jury of his or his peers. And I'm sure you've heard
17 that before. But I just want to reiterate that these
18 are not any evidence of the guilt of the defendant.
19 The defendant is presumed innocent at this point and
20 will remain so until this case is concluded.

21 Now, the defendant in this case today is
22 Mr. Jimmy Portee. Mr. Portee, if you'll stand and
23 face the jury. I need to know if any member of the
24 jury panel is related by blood, connected by marriage
25 or employment or a close personal acquaintance of

1 Mr. Jimmy Portee? Or anybody know Mr. Portee? All
2 right, sir. Thank you very much.

3 Mr. Portee is represented in this matter today
4 by Mr. James Cooper and Mr. Casey Secor. I need to
5 know if any member of the jury panel is related by
6 blood or connected by marriage or employment or a
7 close personal acquaintance of either of these two
8 attorneys, Mr. James Cooper who is on your left and
9 Mr. Casey Secor. Any member of the jury panel know
10 either of these two attorneys? All right. Thank you
11 very much.

12 The indictments, as I say, there are four
13 indictments in this case. And, Solicitor, it says
14 Family Dollar Store. Where is that store?

15 **MS. SHIPLEY:** Your Honor, it's the one on
16 Garners Ferry Road.

17 **THE COURT:** Garners Ferry Road. All right. The
18 indictments allege that on or about November 9th,
19 2006 -- November 9th, 2006, is that correct? 2006?

20 **MS. SHIPLEY:** (Nods head affirmatively).

21 **THE COURT:** So it's almost two years ago; that
22 Jimmy Portee, the defendant in this case, did commit
23 an armed robbery at the Family Dollar Store on
24 Garners Ferry Road here in Richland County by
25 committing an armed robbery by feloniously taking

1 from the person or presence of Tracey Anderson goods
2 and monies of the Family Dollar Store, particularly
3 in the form of U.S. currency, with the intent to
4 deprive the owner of that property while armed with a
5 pistol or some other deadly weapon, or by alleging
6 that he had a deadly weapon, that he was armed with a
7 deadly weapon during the course of the armed robbery.
8 So that's the first charge.

9 The second charge is that on or about the same
10 day, the same place, that Mr. Portee, the defendant,
11 did commit an assault and battery of a high and
12 aggravated nature on the person of at that same
13 location.

14 The defendant, Mr. Portee, is also charged in a
15 third indictment with an assault and battery of a
16 high and aggravated nature on an individual named
17 Tracey Anderson. I think I mentioned her in the
18 armed robbery indictment.

19 And the fourth charge is that on or about the
20 same date, the same time, the same place that the
21 defendant is charged with unlawful failing to stop
22 for an officer who was driving a motor vehicle and
23 was signaled to stop by a Richland County Sheriff's
24 Deputy with a blue light or siren.

25 So those are the four charges. Now, I need to

1 know if any member of the jury panel knows anything
2 about it. In other words, I don't know where you
3 work, where you live, if you may have heard something
4 about this alleged armed robbery back two years ago.
5 It may have even been in the press. I don't know.
6 But any member of the jury panel, does that kind of
7 jog your brain a little bit, know anything about this
8 alleged event that took place, as I say, almost two
9 years ago now? Any member of the jury panel? Nobody
10 read or heard anything about it? All right.

11 Thank you very much. All right, ladies and
12 gentlemen. Let me ask you this. Any member of the
13 jury panel or any member of your family ever been the
14 victim of a violent crime? Any member of the jury
15 panel or any member of your family ever been the
16 victim of a violent crime? And your number, please,
17 ma'am.

18 **JUROR:** 123.

19 **THE COURT:** 123.

20 **JUROR:** My husband was murdered three years ago.

21 **THE COURT:** How long?

22 **JUROR:** Three years.

23 **THE COURT:** Was that in Richland County?

24 **JUROR:** Richland County. Mm-hmm (affirmative).

25 **THE COURT:** All right, ma'am. Is that matter

1 concluded at this time, or is it still pending?

2 JUROR: It's still pending.

3 THE COURT: Still pending? All right. Thank
4 you very much. Let me ask you this, ma'am. And I've
5 got to ask this question of everybody that answers
6 this question. Would that fact in any way interfere
7 with your ability to give both the State and the
8 defendant a fair and impartial trial in this case?

9 JUROR: No, it would not.

10 THE COURT: You're absolutely certain?

11 JUROR: Sure.

12 THE COURT: Thank you very much, ma'am. Any
13 other -- yes.

14 JUROR: 231.

15 THE COURT: All right, sir.

16 JUROR: My wife's mother was killed in a robbery
17 about three years ago.

18 THE COURT: Where? 231, where did that take
19 place?

20 JUROR: In Virginia.

21 THE COURT: In Virginia? And that's your wife's
22 ...?

23 JUROR: Uncle.

24 THE COURT: Uncle. Mr. 231, would that life
25 experience you had, your family's experience, do you

1 think that would interfere with your ability to give
2 both the State and the defendant a fair and impartial
3 trial in this case?

4 **JUROR:** No.

5 **THE COURT:** Thank you very much, sir. Yes,
6 ma'am. And your number?

7 **JUROR:** Juror number 88.

8 **THE COURT:** 88. Yes, ma'am.

9 **JUROR:** I was personally robbed and mugged.
10 That was about 20 years ago.

11 **THE COURT:** In Richland County?

12 **JUROR:** No. New York City.

13 **THE COURT:** Okay. Ma'am, would that fact in any
14 way interfere with your ability to give both the
15 State and the defendant a fair and impartial trial in
16 this case?

17 **JUROR:** No.

18 **THE COURT:** Thank you very much, ma'am. Yes,
19 ma'am.

20 **JUROR:** I was kidnapped and domestically abused
21 probably about 20 some years ago.

22 **THE COURT:** 20 years ago?

23 **JUROR:** Mm-hmm (affirmative).

24 **THE COURT:** And your number, please?

25 **JUROR:** I'm 35.

1 **THE COURT:** Ms. 35, would that fact interfere in
2 any way with your ability to give both the State and
3 the defendant a fair and impartial trial?

4 **JUROR:** No, sir.

5 **THE COURT:** Thank you very much, ma'am. Anybody
6 else? All right. Any member of the jury panel or --
7 I'm going to turn that around. Any member of the
8 jury panel or any member of your family ever been
9 accused of committing a violent crime? Any member of
10 the jury panel or any member of your family ever been
11 accused of committing a violent crime? Number,
12 please.

13 **JUROR:** Juror 150.

14 **THE COURT:** 1-5-0.

15 **JUROR:** Yes. I'd rather not say. But my
16 father-in-law --

17 **THE COURT:** Accused?

18 **JUROR:** Accused.

19 **THE COURT:** How long ago?

20 **JUROR:** About a year ago.

21 **THE COURT:** Where?

22 **JUROR:** Pennsylvania.

23 **THE COURT:** All right. So not here?

24 **JUROR:** Not me.

25 **THE COURT:** No. I say not in Richland County.

1 *JUROR:* Oh. Not in Richland. Oh, no.

2 *THE COURT:* Okay. Mr. 150, would that fact in
3 any way interfere with your ability to give both the
4 State and the defendant a fair and impartial trial in
5 this case?

6 *JUROR:* No.

7 *THE COURT:* Thank you very much, sir. Anybody
8 else? All right. Any member of the jury panel or
9 any member of your family employed by the Richland
10 County Public Defender's Office? Any member of the
11 jury panel?

12 All right. Ladies and gentlemen, I'm going to
13 call out a list of names. These are potential
14 witnesses in the case. If any of these individuals
15 are present, if you'll please stand and let the jury
16 identify you. The question is the same as to all of
17 these names. And that is, is any member of the jury
18 panel related by blood, connected by marriage or
19 employment to any one of the following individuals
20 who may testify in this case?

21 Erica Wilson. Now, all of these witnesses are
22 not present right now, but they are scheduled to be
23 called at same later date during the course of the
24 trial.

25 Tracey Anderson. Anybody know Ms. Anderson?

1 Joan Hooks. Lisa Ellis. Michael Murphy. Captain
2 Howard Hughes, Sheriff's Department. Sergeant Kevin
3 Isenhoward, the Richland County Sheriff's Department.
4 Sergeant Donald Robinson, the Richland County
5 Sheriff's Department. Corporal D. T. Unger, Richland
6 County Sheriff's Department. Deputy Sean Kilcoyne,
7 Richland County Sheriff's Department.

8 Corporal Chad Enzor, Richland County Sheriff's
9 Department. Deputy William Davis, Richland County
10 Sheriff's Department. Investigator Harold
11 Bouknight, Richland County. Investigator Kristen
12 Polis, Richland County. Investigator Anna Elsey with
13 Richland County. Kenneth Brown, 911. Jennifer
14 Blair, 911. Dr. Gray Amick.

15 *JUROR:* Excuse me. I do know Kenneth Brown from
16 911. We work together.

17 *THE COURT:* Kenneth Brown?

18 *JUROR:* Yes.

19 *THE COURT:* How do you know him? Your number,
20 please?

21 *JUROR:* Oh. 246.

22 *THE COURT:* 246. And how do you know him,
23 ma'am?

24 *JUROR:* I used to work with him at SCANA
25 Security.

1 **THE COURT:** All right.

2 **JUROR:** That was like four years ago.

3 **THE COURT:** Okay. Let me ask you this. Would
4 that fact in any way interfere with your ability to
5 give both the State and the defendant a fair and
6 impartial trial in this case?

7 **JUROR:** No, sir.

8 **THE COURT:** Thank you very much, Ms. 246.
9 Mr. 17?

10 **JUROR:** Yes, Your Honor. I think I know
11 Jennifer Blair. I think I've met her once before.

12 **THE COURT:** All right. The same question.
13 Would that fact in any way interfere with your
14 ability to give both the State and the defendant a
15 fair and impartial trial?

16 **JUROR:** No, sir.

17 **THE COURT:** Thank you very much, sir. I come
18 back to Dr. Gray Amick with the Richland County DNA
19 lab. Dr. John Barron also with the Richland County
20 DNA lab. Tena Goff, Richland County. William
21 Cedarstaff, Richland County. Curtis Burnett,
22 Richland County. Joy Delatorre, formerly a Richland
23 County deputy. Charles Earles, formerly with
24 Richland County.

25 **MS. SHIPLEY:** Your Honor.

1 THE COURT: I'm sorry.

2 JUROR: 194. I believe it's Chuck Earles.

3 THE COURT: Yes, ma'am.

4 JUROR: I worked with Chuck at Richland County
5 EMS before I went to medical school.

6 THE COURT: EMS?

7 JUROR: Mm-hmm (affirmative). Years ago.

8 THE COURT: Five? Ten?

9 JUROR: Ten.

10 THE COURT: All right. Would that fact in any
11 way interfere with your ability to give both the
12 State and the defendant a fair and impartial trial?

13 JUROR: No, sir.

14 THE COURT: Thank you very much. Edward
15 Andrews. Janice Andrews. Anita Knox.

16 All right. Ladies and gentlemen, I've
17 introduced the parties to you. I've told you who the
18 witnesses are or will be, read the indictments to
19 you. I need to know, I need to ask this sort of
20 final question. Does any member of the jury panel
21 know of any reason why he or she could not give both
22 the State and the defendant a fair and impartial
23 trial in this case? Any member of the jury panel
24 know of any reason -- it doesn't matter what the
25 reason is -- why you feel you could not sit and

1 impartially hear the evidence in the case, listen to
2 what the attorneys say, listen to the law as I
3 explain it to you and make a decision in this case?
4 Any member of the jury panel? All right. Anything
5 further from the State?

6 **MS. SHIPLEY:** No, sir, Your Honor.

7 **THE COURT:** From the defense?

8 **MR. COOPER:** No, Your Honor.

9 **THE COURT:** All right. Madam Clerk, give us a
10 jury.

11 **THE CLERK:** Ladies and gentlemen of the jury
12 panel, as I call your number, if you'll please come
13 to the center of the courtroom at the microphone
14 bringing any personal items with you and stating your
15 name and number and your occupation. Number 224.

16 (White female)

17 **THE CLERK:** Your number and your occupation.

18 **JUROR:** 224. I'm a retired clinical
19 psychologist.

20 **THE CLERK:** What says the State?

21 **MS. GOOD:** Please seat this juror.

22 **THE CLERK:** What says the defense?

23 **MR. COOPER:** Please seat this juror.

24 **THE CLERK:** Please have a seat in the jury box.

25 Number 150.

1 (White male)

2 *JUROR:* Jay Leidy.

3 *THE CLERK:* Just your number.

4 *JUROR:* Sorry. 150, I.T. consultant.

5 *THE CLERK:* What says the State?

6 *MS. GOOD:* Please excuse this juror.

7 *THE CLERK:* Please have a seat in the back of
8 the courtroom. Number 283.

9 (White male)

10 *JUROR:* 283, sales manager.

11 *THE CLERK:* What says the State?

12 *MS. GOOD:* Please seat this juror.

13 *THE CLERK:* What says the defense?

14 *MR. COOPER:* Please excuse this juror.

15 *THE CLERK:* Please have a seat in the back of
16 the courtroom. Number 243.

17 (White male)

18 *JUROR:* 243. I'm a general manager at
19 Chick-Fil-A.

20 *THE CLERK:* What says the State?

21 *MS. GOOD:* Please seat this juror.

22 *THE CLERK:* What says the defense?

23 *MR. COOPER:* Please excuse this juror.

24 *THE CLERK:* Please have a seat in the back of
25 the courtroom. Number 148.

1 (White male)
2 JUROR: Number 148. I'm an auditor.
3 THE CLERK: What says the State?
4 MS. GOOD: Please seat this juror.
5 THE CLERK: What says the defense?
6 MR. COOPER: Please excuse this juror.
7 THE CLERK: Please have a seat in the back of
8 the courtroom. Number 145.
9 (Arab male)
10 JUROR: 145, operations officer, First Citizens
11 Bank.
12 THE CLERK: What says the State?
13 MS. GOOD: Please seat this juror.
14 THE CLERK: What says the defense?
15 MR. COOPER: Please seat this juror.
16 THE CLERK: Please have a seat in the jury box.
17 Number 209.
18 (White male)
19 JUROR: 209, gardening sales and installation.
20 THE CLERK: What says the State?
21 MS. GOOD: Please seat this juror.
22 THE CLERK: What says the defense?
23 MR. COOPER: Please seat this juror.
24 THE CLERK: Please have a seat in the jury box.
25 Number 48.

1 (White female)

2 JUROR: Number 48. I work at the USC School of
3 Medicine, development of pediatrics, office manager.

4 THE CLERK: What says the State?

5 MS. GOOD: Please seat this juror.

6 THE CLERK: What says the defense?

7 MR. COOPER: Please seat this juror.

8 THE CLERK: Please have a seat in the jury box.

9 Number 176.

10 (White female)

11 JUROR: 176. Schoolteacher.

12 THE CLERK: What says the State?

13 MS. GOOD: Please seat this juror.

14 THE CLERK: What says the defense?

15 MR. COOPER: Please seat this juror.

16 THE CLERK: Please have a seat in the jury box.

17 Number 188.

18 (Black female)

19 JUROR: Number 188, histologist.

20 THE CLERK: What says the State?

21 MS. GOOD: Please seat this juror.

22 THE CLERK: What says the defense?

23 MR. COOPER: Please excuse this juror.

24 THE CLERK: Please have a seat in the back of
25 the courtroom. Number 183.

1 (White female)

2 JUROR: Number 183. I'm administrative at
3 Thoracic and Cardiology Associates.

4 THE CLERK: What says the State?

5 MS. GOOD: Please seat this juror.

6 THE CLERK: What says the defense?

7 MR. COOPER: Please seat this juror.

8 THE CLERK: Please have a seat in the jury box.
9 Number 63.

10 (White female)

11 JUROR: Number 61, administrative assistant.

12 THE CLERK: What says the State?

13 MS. GOOD: Please seat this juror.

14 THE CLERK: What says the defense?

15 MR. COOPER: Please seat this juror.

16 THE CLERK: Please have a seat in the jury box.
17 Number 149.

18 (Black female)

19 JUROR: 149 nutrition educator, Clemson
20 University Extension Service.

21 THE CLERK: What says the State?

22 MS. GOOD: Please seat this juror.

23 THE CLERK: What says the defense?

24 MR. COOPER: Please seat this juror.

25 THE CLERK: Please have a seat in the jury box.

1 Number 58.

2 (Black male)

3 JUROR: Number 58, food service work.

4 THE CLERK: What says the State?

5 MS. GOOD: Please excuse this juror.

6 THE CLERK: Please have a seat in the back of
7 the courtroom. Number 246.

8 (White female)

9 JUROR: 246, SCANA Corporation.

10 THE CLERK: What says the State?

11 MS. GOOD: Please seat this juror.

12 THE CLERK: What says the defense?

13 MR. COOPER: Please excuse this juror.

14 THE CLERK: Please have a seat in the back of
15 the courtroom. Number 67.

16 (White female)

17 JUROR: Joan Cutler, insurance.

18 THE CLERK: What says the State?

19 MS. GOOD: Please seat this juror.

20 THE CLERK: What says the defense?

21 MR. COOPER: Please seat this juror.

22 THE CLERK: Please have a seat in the jury box.

23 Number 103.

24 (White male)

25 JUROR: It's 103, account manager.

1 **THE CLERK:** What says the State?
2 **MS. GOOD:** Please seat this juror.
3 **THE CLERK:** What says the defense?
4 **MR. COOPER:** Please excuse this Juror.
5 **THE CLERK:** Please have a seat in the back of
6 the courtroom. Number 76.
7 (White male)
8 **JUROR:** Number 76, registered nurse.
9 **THE CLERK:** What says the State?
10 **MS. GOOD:** Please seat this juror.
11 **THE CLERK:** What says the defense?
12 **MR. COOPER:** Please excuse this juror.
13 **THE CLERK:** Please have a seat in the back of
14 the courtroom. Number 73.
15 (Black female)
16 **JUROR:** Number 73, registered nurse.
17 **THE CLERK:** What says the State?
18 **MS. GOOD:** Please seat this juror.
19 **THE CLERK:** What says the defense?
20 **MR. COOPER:** Please excuse this juror.
21 **THE CLERK:** Please have a seat in the back of
22 the courtroom. Number 12.
23 (White female)
24 **JUROR:** Number 12, administrative assistant for
25 One Point Community Church.

1 THE CLERK: What says the State?

2 MS. GOOD: Please seat this juror.

3 THE CLERK: What says the defense?

4 MR. COOPER: Please seat this juror.

5 THE CLERK: Please have a seat in the jury box.

6 Number 216.

7 (White female)

8 JUROR: Number 216. Marketing manager for an
9 engineering firm.

10 THE CLERK: What says the State?

11 MS. GOOD: Please seat this juror.

12 THE CLERK: What says the defense?

13 MR. COOPER: Please excuse this juror.

14 THE CLERK: Please have a seat in the back of
15 the courtroom. Strike count is two for the State and
16 nine for the defense. Number 119.

17 (White female)

18 JUROR: Number 119, real estate appraiser.

19 THE CLERK: What says the State?

20 MS. GOOD: Please seat this juror.

21 THE CLERK: What says the defense?

22 MR. COOPER: Please seat this juror.

23 THE CLERK: Please have a seat in the jury box.

24 Number 88.

25 (Hispanic female)

1 **JUROR:** Number 88, Realtor.

2 **THE CLERK:** What says the State?

3 **MS. GOOD:** Please seat this juror.

4 **THE CLERK:** What says the defense?

5 **MR. COOPER:** Please excuse this juror.

6 **THE CLERK:** Please have a seat in the back of

7 the courtroom. Number 174.

8 (Black male)

9 **JUROR:** Number 174, electrical technician.

10 **THE CLERK:** What says the State?

11 **MS. GOOD:** Please seat this juror.

12 **THE CLERK:** Does the defense challenge for

13 cause?

14 **MR. COOPER:** Please seat this juror.

15 **THE CLERK:** Please have a seat in the jury box.

16 Number 17.

17 (White male)

18 **MR. SECOR:** Your Honor, may we approach briefly?

19 **THE COURT:** Well, sure.

20 **MR. SECOR:** Thank you.

21 (Whereupon, a bench conference is had)

22 **THE COURT:** Number 17, you're excused.

23 **JUROR:** Thank you, Your Honor.

24 **THE CLERK:** Number 155.

25 (White female)

1 JUROR: 155. Accountant.

2 THE CLERK: What says the State?

3 MS. GOOD: Please seat this juror.

4 THE CLERK: What says the defense?

5 MR. COOPER: Please excuse this juror.

6 THE CLERK: Please have a seat in the back of
7 the courtroom. Number 217.

8 (White female)

9 JUROR: Number 217, teacher.

10 THE CLERK: What says the State?

11 MS. GOOD: Please seat this juror.

12 THE CLERK: What says the defense?

13 MR. COOPER: Please seat this juror.

14 THE CLERK: Please have a seat in the jury box.
15 Number 240.

16 (White male)

17 JUROR: Number 240. I'm a graduate from South
18 Carolina Department of Archives and History.

19 THE CLERK: What says the State?

20 MS. GOOD: Please seat this juror.

21 THE CLERK: What says the defense?

22 MR. COOPER: Please seat this juror.

23 THE CLERK: Please have a seat in the jury box.

24 THE COURT: All right, counsel. Any objection
25 to the jury selection process?

1 **MS. SHIPLEY:** None from the State.

2 **THE COURT:** From the defense?

3 **MR. COOPER:** None from the defense, Your Honor.

4 **THE COURT:** All right. Thank you very much.

5 All right. Ladies and gentlemen remaining on the
6 jury panel, obviously you were not selected for this
7 jury. But it's early in the week, so we may have
8 need for your services later. But at the present
9 time I'm going to ask you to return to the jury
10 assembly room for further instructions. I want to
11 thank you for coming. Good luck to all of you. And
12 perhaps I'll see you later in the week.

13 All right. Ladies and gentlemen of the jury,
14 there are a number of pre-trial matters I need to
15 take up with the attorneys. So I'm going to release
16 you now until 2:30 for a sort of an early lunch or a
17 long lunch hour.

18 And I'm going to ask you to do just a few things
19 for me. The first thing I'm going to ask of you is
20 that when you return to the courthouse at 2:30, I'm
21 going to ask you to go directly to your jury room.
22 Now, the bailiffs are going to show you where your
23 jury room is. Don't return to the jury assembly room
24 because I will just have to come looking for you if
25 you're down there. If you'll come up to the third

1 floor to the room that the bailiffs are going to show
2 you in just a moment, I'd appreciate it.

3 The second thing I'm going to ask you to do is
4 not talk about this case to anybody or friends or
5 family about the fact that you've been selected on
6 this jury. And the normal thing would be for
7 somebody to ask you what it's about and that sort of
8 thing, and it would be improper to start talking
9 about the case at this time.

10 The third thing I'm going ask you to do is when
11 you return to the jury room, if you'll select one of
12 your members to be the foreperson of the jury. That
13 person will take the seat where the lady that was
14 selected first is sitting on the front row and will
15 maintain that seat throughout the trial. The rest of
16 the seats I tell jurors don't have any names on them.
17 So just sit where you're most comfortable.

18 If you have hearing problems or anything like
19 that, it might be best that you sit up front. All
20 the witnesses will testify from this stand here on
21 your left, and the attorneys will generally just be
22 in this area right out front. Any exhibits will be
23 probably on that table right there in front of you.
24 So if you do have any hearing problems or think you'd
25 be better off sitting up front, just please do so.

1 Now, I go back to the selection of a foreperson.
2 The last two jurors who were selected are going to be
3 our alternates in case somebody gets sick or
4 something happens during the course of the trial.
5 And they will step in and serve as jurors if that
6 becomes necessary. But neither of them could be
7 selected as the foreperson of the jury.

8 I anticipate this trial may last certainly
9 through tomorrow but maybe into Wednesday. I don't
10 know. We'll sort of gauge where we are tomorrow and
11 see where the hurricane is. I kind of hope it hits
12 but I hope it doesn't hit too hard, you know, that
13 sort of thing. So anyway, I guess that's it. I
14 guess -- oh, the other thing I want to ask you to do
15 is have a pleasant lunch. We'll see you at 2:30 and
16 we'll start the trial at that time. Thank you very
17 much.

18 (Jury out at 12:27 p.m.)

19 **THE COURT:** All right, Solicitor. Do you have
20 your witnesses here for a Denno hearing?

21 **MS. SHIPLEY:** Yes, sir, Your Honor. And also
22 the Neil v. Biggers hearing.

23 **THE COURT:** All right. You have both witnesses?

24 **MS. SHIPLEY:** Yes.

25 **THE COURT:** All right. Well, let's do them.

Dr. Jeffrey E. Musick - Cross by Mr. Secor (In Camera)

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1 **MS. SHIPLEY:** Which one would you rather that I
2 do first, Your Honor?

3 **THE COURT:** I think probably the Biggers hearing
4 will probably take a little longer.

5 **MS. SHIPLEY:** Yes, sir. The State calls Tracey
6 Anderson.

7 TRACEY ANDERSON, after being duly sworn,
8 testifies as follows:

9 **THE CLERK:** Thank you. Please have a seat in
10 the witness stand and state your full name for the
11 record.

12 **WITNESS:** My name is Tracey Anderson,
13 A-N-D-E-R-S-O-N.

14 (WHEREUPON, State's Exhibit No. 6 is marked for
15 identification.)

16 (WHEREUPON, State's Exhibit No. 7 is marked for
17 identification.)

18 DIRECT EXAMINATION

19 **BY MS. SHIPLEY**

20 **Q** Ms. Anderson, can you tell Judge Cooper where you're
21 employed?

22 **A** I'm employed at the Family Dollar.

23 **Q** And how long have you worked for this company?

24 **A** Going on five years now.

25 **Q** And where are you from?

1 A I'm from Columbia, South Carolina.

2 Q How far did you go in school?

3 A I went all the way up to my second year at Columbia
4 College.

5 Q Wow. And what was your major?

6 A It was undecided.

7 Q Okay. Do you have any children?

8 A No, ma'am.

9 Q I'm going to bring your attention November 9th, 2006.
10 Okay. Can you tell Judge Cooper where it was that
11 you were employed at that time?

12 A I was employed at the Family Dollar on Garners Ferry.

13 Q And can you tell Judge Cooper how long you were at
14 that branch?

15 A I was employed at that branch for about a year.

16 Q And what was your title there?

17 A At that time I was a store manager.

18 Q And can you describe what your duties were as a
19 manager?

20 A Basically to supervise, staff my schedule, prepare
21 deposits, stuff like that, and making sure, covering
22 the assets of the property or the merchandise in the
23 store.

24 Q Okay. I'm going to show you a picture, State's
25 No. 6, and ask you, do you recognize you this

Tracey Anderson - Direct by Ms. Shipley (In Camera)

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1 photograph?

2 A Yes, I do.

3 Q And what is that a picture of?

4 A The Garners Ferry store.

5 Q Okay. And is the address 7361 Garners Ferry Road?

6 A Yes, it is.

7 Q What time did you get to work on November 9th, 2006?

8 A It was probably between 7, 7:35, 7:45, something like
9 that.

10 Q Okay. And what were the store hours of Family
11 Dollar?

12 A Store hours were from 9 to 7.

13 Q Can you describe for Judge Cooper what it was that
14 you were doing when you got to work around 8:00, what
15 you were doing around 8:00 after you got to work?

16 A Basically I was making sure that the tills, our
17 register was broken down, and made sure they were all
18 100's, and making sure my deposit was prepared to be
19 taken to the bank.

20 Q And do you make those deposits yourself to go to the
21 bank?

22 A Yes, ma'am.

23 Q Tell Judge Cooper where you prepare the tills and so
24 forth in the Family Dollar Store?

25 A We are supposed to take them up to our office. So

1 that's where I was, in my office.

2 Q And I'm going to show you again State's No. 6 for
3 identification purposes. And can you point on this
4 photograph where exactly your office is in relation
5 to the front door?

6 A It was -- it's on the other side of this Coca-Cola
7 machine.

8 Q Okay. Is it level with the street? Or describe how
9 high it is.

10 A It's upstairs. The stairs are very steep.

11 Q Okay. But can you see outside from your office?

12 A I can go -- I can come -- well, I got on the first
13 step and I could see out the door.

14 Q Okay. And how far would you say the front door of
15 the business is in relation to the office?

16 A It's probably about three, three to four feet.

17 Q Three to four feet?

18 A Mm-hmm (affirmative).

19 Q And where I'm standing, is that approximately the
20 same distance that you are describing?

21 A A little bit. Yeah. Probably I would say five.

22 Q Five feet?

23 A A little closer to five.

24 Q Closer to five?

25 A Mm-hmm (affirmative).

Tracey Anderson - Direct by Ms. Shipley (In Camera)

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1 Q And when you were in your office which is elevated,
2 does this Coke machine obstruct your view of any of
3 the door?

4 A No.

5 Q All right. Your Honor, can I show this photograph to
6 you so you can see what she's talking -- she was
7 pointing to right around there is the office and
8 that's the front door. All right. Tell Judge
9 Cooper, when you were preparing the tills for the
10 day, what happened? What brought your attention to
11 outside?

12 A Basically I heard a loud noise. And so I just said,
13 well, let me come downstairs and see what that is.
14 And then I saw the defendant come to the door. I
15 wasn't sure whether he was looking for store hours or
16 what was he looking for. But I did -- I was aware of
17 his face. I did see him.

18 Q Okay. And did you see him driving a vehicle?

19 A Yes. Prior to me coming into the store, while I was
20 pulling up, we have hotels that was on the right of
21 me. And I saw the same exact car parked over there,
22 but I didn't think nothing of it. I thought it was
23 just an abandoned car in the parking lot.

24 Q And so did you see that car again?

25 A Yes, I did. I didn't know the make and the model of

1 it, but I knew that it was white.

2 Q Okay. Did it look -- describe how old the car
3 appeared?

4 A It appeared to me to be inbetween '89, so forth.
5 '89.

6 Q So about 20 years old?

7 A Mm-hmm (affirmative).

8 Q So an older car?

9 A Yes.

10 Q And again, the color?

11 A White.

12 Q Do you remember how many doors on the car?

13 A I do remember four.

14 Q Four doors?

15 A Mm-hmm (affirmative).

16 Q Okay. And when you saw the person come up to the
17 window or the store door, --

18 A Yes, ma'am.

19 Q -- did you see that vehicle?

20 A No, ma'am, I didn't see the vehicle.

21 Q Okay. I'm talking when the store hours were being
22 checked.

23 A When the store hours were being -- no. All I saw was
24 the whiteness of the car. I saw the front end of the
25 car. That's the only thing that I saw.

Tracey Anderson - Direct by Ms. Shipley (In Camera)

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1 Q When you saw the car earlier by the hotel, did you
2 see anybody in it?

3 A No, I did not.

4 Q I'm going to bring your attention to your written
5 statement that you provided to the police on November
6 the 9th, 2006. I think you've got the date wrong.
7 November 8th, 2006. If you could read the
8 highlighted portion to see if that would refresh your
9 memory?

10 A "I did see a car earlier, about 8:00. I heard a car
11 and looked outside and saw the vehicle and he was in
12 the driver's seat. He was alone and then he got out
13 of the car and walked" --

14 MR. SECOR: Your Honor, I need to object to this
15 given the fact that there's been no allegation she's
16 falsified the statement. It's just a prior
17 consistent statement.

18 MS. SHIPLEY: I'm just trying to refresh her
19 memory, Your Honor.

20 MR. SECOR: I don't think she said that she
21 couldn't remember.

22 THE COURT: Well, I don't know.

23 Q By reading that, does that help you refresh your
24 memory as to what took place on November 9th, 2006?

25 A What helps me is it just basically goes along with

1 the statement that I made earlier that I had saw him
2 got out of the car. And --

3 MR. SECOR: Your Honor, again, she hasn't said
4 that she can't remember what she's testifying to.

5 THE COURT: Well, ask her the question then.

6 Q Okay. Did you see anybody in the white car?

7 A You talking about earlier, prior, when I rolled up to
8 the building?

9 Q Right.

10 A Well, the car, you have to understand, the car was a
11 lot of feet away from the building. When I pulled
12 up, it's over there where the Hampton Inn is, hotel.
13 It was parked like closer to that than it was to my
14 building. So I wasn't able to see if anyone was in
15 the car or not.

16 Q When was it that -- did you see the car when the
17 person came to check on the store hours?

18 A I saw the front end of the car.

19 Q Okay.

20 A I saw that it was white.

21 Q All right. Do you remember providing a statement to
22 law enforcement on the date of the incident?

23 A Yes. I did provide the statement that I saw the
24 vehicle in which I was referring to running the car.

25 Q Now, by reading your statement, does that help you

Tracey Anderson - Direct by Ms. Shipley (In Camera)

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1 refresh your memory as to whether or not you
2 witnessed the person that came to check on the store
3 hours coming from being seated in the driver's seat
4 of the vehicle?

5 A Yes.

6 Q All right. So does that help you refresh your
7 memory?

8 A Mm-hmm (affirmative).

9 Q Okay. So I'm going to ask you, did you see the
10 person who walked up to the door to check the store
11 hours, what you believed to be checking the store
12 hours? Did you see him in the car?

13 A Yes.

14 Q And what part of the car?

15 A In the driver's seat.

16 Q All right. Was there anyone else with him in that
17 car?

18 A No, ma'am.

19 Q Okay. Let me get that back from you. Now, you
20 described the front door being about approximately
21 five feet away from where your office was where you
22 were observing him?

23 A Yes.

24 Q Is that correct?

25 A Mm-hmm (affirmative).

1 Q Describe the lighting conditions that morning?

2 A My lighting conditions in my store was dark, but it

3 was daylight outside.

4 Q Daylight outside?

5 A Mm-hmm (affirmative).

6 Q Okay. And I already asked you about the Coke machine

7 and other merchandise at the front of the store. Was

8 there anything obstructing your view of his face when

9 he came to check on the store hours?

10 A No, ma'am.

11 Q How long do you think you had an opportunity to view

12 him at that time?

13 A How long did I have opportunity? It was seconds.

14 Q Okay.

15 A A very few seconds.

16 Q And once he finished looking at the store hours, did

17 you watch where he went?

18 A No. I just thought he got back in the car.

19 Q Okay.

20 A Yeah.

21 Q And did you think anything else of it?

22 A No. I just walked up and finished continuing what I

23 was doing.

24 Q Now, the individual that you saw come up to the store

25 door to check on the hours, --

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1 A Yes, ma'am.

2 Q -- can you describe him for Judge Cooper?

3 A He was tall. And what I could see at that time, he
4 was an African-American. And --

5 Q Can you describe his complexion for Judge Cooper
6 please?

7 A It was light, very light.

8 Q Okay. And anything else that you noted about him?

9 A No.

10 Q Was he -- would you describe -- was he fat or skinny?

11 A Skinny.

12 Q All right. Then can you tell Judge Cooper what
13 happened later on that morning at the Family Dollar
14 Store?

15 A Well, while I was opening, I had -- it was the day
16 after the truck. And I had Erica Wilson and Lisa
17 Ellis in the store. And while I -- while Lisa was
18 working some of the freight inside the store, I told
19 Erica let's go to the back end, let's do the trash.
20 So we had some Bojangle's breakfast. And as the door
21 was opening, we was about to take out the trash. And
22 the u-boat was sitting outside. So we was getting
23 all the rest of the trash prepared to take it out.

24 Erica, at the back door, the back door was
25 facing me. I probably was on -- I was on the right

1 of the back door, and Erica was the left of the back
2 door facing it. So she saw the defendant first. I
3 didn't see him first. But when he came around the
4 door, I was able to touch him. And that's --

5 Q And so I'm going to stop you there. You said you
6 were able to touch him?

7 A Mm-hmm (affirmative).

8 Q So you tell me to stop when I get as close to you as
9 he was to you at that time. Okay?

10 A Right there.

11 Q Okay. Would you say that this is about a foot
12 between us?

13 A Yes.

14 Q Okay. Now, how long do you think he was standing
15 about a foot away from you at that point?

16 A It was -- it had to be no more than about five
17 seconds.

18 Q Okay. And tell the judge what happened next?

19 A Next, then he immediately grabbed me and Erica by our
20 hair.

21 Q And how did he grab you?

22 A At that point in time I had kinky twists in my hair.
23 So he wrapped my hair around his hand and just
24 pulled.

25 Q Okay.

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- 1 **A** And Erica, he took -- she had weaves in her hair. So
2 he pulled some of that out. And he immediately
3 rushed us to the floor. And he was saying, "I need
4 to get the money, I need to get the money." Okay.
5 And at that point in time he proceeded to leave Erica
6 in the back. And Erica started screaming
7 hysterically. And then he said to he, then he said
8 both of us, "Give me the money or I'll kill you."
9 Okay. Never once did I see a weapon but I did see a
10 bulge.
- 11 **Q** Okay. Did you see him doing anything on his person,
12 holding anything with his other hand?
- 13 **A** Yes. I believe, if I am not mistaken, I believe that
14 he had his right hand in his pocket.
- 15 **Q** Okay. Which pocket?
- 16 **A** In his right pocket.
- 17 **Q** Okay. Of what article of clothing?
- 18 **A** It was a yellow jacket.
- 19 **Q** What else do you remember about him wearing?
- 20 **A** I do remember him wearing gray sweatpants.
- 21 **Q** Okay. What about shoes?
- 22 **A** It was white shoes, dingy white shoes.
- 23 **Q** What about anything on his head or face?
- 24 **A** I do remember him having a ski mask with the eyes cut
25 out of it.

1 Q And did you have an opportunity to view his eyes at
2 that point?

3 A No, ma'am.

4 Q Okay. And why is that?

5 A Because he had -- when he grabbed my hair, he turned
6 us away from his face. Yes, ma'am.

7 Q Okay. And describe his build, the build and frame of
8 this individual?

9 A He was tall and he was skinny. And I noticed that
10 the gray sweatpants that he had on, it wasn't all the
11 way pulled town. It was mid way on his legs.

12 Q In other words, what kind of pants were they?

13 A Sweatpants.

14 Q So describe where the elastic of the sweatpants came
15 to?

16 A I would say about mid leg.

17 Q Mid leg?

18 A Mm-hmm (affirmative).

19 Q Between the foot and the knee?

20 A Yes, ma'am.

21 Q At that point were you able to get a look at the
22 color of his skin?

23 A The only thing I knew, it was very slight, very
24 light. And I proceeded to think that he was a white
25 man. Yes.

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1 Q Okay. And at this point was he wearing gloves? Or
2 how did you know about his skin color?

3 A His hands.

4 Q His hands?

5 A Yes, ma'am.

6 Q Now, describe for Judge Cooper where he took you to
7 next?

8 A Basically while having my hair in his hand, he left
9 Erica back there on the floor. And that's when a
10 customer of my mine that usually comes and shops in
11 my store, while he was walking me up to the front
12 towards the cash register he had -- she was coming
13 along with a mop in her hand. And then towards the
14 left of me, it was Lisa. And he told Lisa to stay
15 there and no do not move.

16 Q And who is Lisa?

17 A Lisa was one of my employees at that time also.

18 Q And is that Lisa Ellis?

19 A Yes, ma'am.

20 Q Okay. What happened next? What did he tell Lisa
21 Ellis?

22 A To stay there and do not move.

23 Q Okay. And where did he take you next?

24 A He took me -- he took me up front. And that's when I
25 proceeded to take him to the cash register.

1 Q All right. And so when he was telling -- at this
2 time describe for Judge Cooper what he's telling you
3 to do?

4 A He is basically saying, "Get the money." He's not
5 really saying much. He's just saying, "Get the
6 money." And at that time we cannot go into the cash
7 register without making a transaction.

8 Q Okay.

9 A Okay? So I had to do a "no sale" which took about a
10 minute. And then when I opened the register, I asked
11 him would he like this in a bag. And he said yes.

12 Q And did you grab a bag?

13 A Yes, ma'am, I did.

14 Q Was it a large bag or a small bag?

15 A It was medium.

16 Q Medium sized?

17 A Yeah.

18 Q Is it a Family Dollar bag?

19 A Yes, ma'am.

20 Q At that point did you put the cash from the register
21 in the bag?

22 A Yes, ma'am, I did.

23 Q Did he touch the money at all?

24 A No, ma'am.

25 Q And while you're doing this, how close is he to you

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1 at the time?

2 A Basically as a customer would be if I'm ringing up an
3 item.

4 Q And I'm going to walk up to you at this point. And
5 you stop me when I get as close to him as he was to
6 you at the cash register?

7 A Right there.

8 Q Right here?

9 A Yes, ma'am.

10 Q And describe the lighting conditions inside of the
11 store?

12 A The lights were on and the sun was definitely glaring
13 inside. And my customer, she -- as he was standing
14 right there, he was on -- she was on the left side of
15 him.

16 Q Okay. And how long do you think it lasted from the
17 time that he first grabbed you in the back of the
18 store to taking you up to the front to take the money
19 out of the cash register?

20 A I would put it between -- it was not very long. I
21 would put it between about five or ten minutes.

22 Q Okay. Now, five or ten minutes?

23 A Five -- between five to fifteen minutes. It depends.
24 It happened so quickly. It really did.

25 Q So it happened quickly?

- 1 A Mm-hmm (affirmative).
- 2 Q You weren't looking at your watch or anything?
- 3 A No. I didn't.
- 4 Q Okay. What happened once he got the money?
- 5 A Once he got the money, then he ran straight out to
- 6 the back.
- 7 Q The back door?
- 8 A Yes, ma'am.
- 9 Q Describe the events that happened right after he ran
- 10 out of the back door?
- 11 A Once he ran out the back door, the minister, I think
- 12 Mr. Murphy, came to the front. And he kind of
- 13 gestured like, did he just rob you? And then he ran
- 14 around to the back. And he is the one that
- 15 identified the car. And he said when he tried to
- 16 approach the guy, the guy pulled out a pistol.
- 17 Q Okay. And now, did Mr. Murphy tell you this right
- 18 after the incident happened?
- 19 A He didn't have a chance to because that's when the
- 20 cops came. But I believe that he did come in there
- 21 and talk to me about it. He did.
- 22 Q Okay. Now, did he report to you what kind of car he
- 23 saw the robber jump into?
- 24 A Yeah. He did.
- 25 Q But you never saw the car at that point, correct?

Tracey Anderson - Direct by Ms. Shipley (In Camera)

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- 1 A No. I never did.
- 2 Q All right. Now, you said the police eventually
- 3 showed up?
- 4 A Yes, they did.
- 5 Q And did they take you to somebody that day?
- 6 A Yes, they did.
- 7 Q How many minutes passed from the time the robber left
- 8 the back door to the time you were being escorted by
- 9 the police to go look at someone?
- 10 A I'd say between 15, 20 minutes.
- 11 Q Okay. So it was relatively quick?
- 12 A Yeah.
- 13 Q Do you remember where they took you to?
- 14 A They took me on Atlas, somewhere off of Atlas Road.
- 15 Q Okay.
- 16 A I know that.
- 17 Q And was it a long drive?
- 18 A No.
- 19 Q When you got there -- during the ride over there, did
- 20 the police -- what did the police tell you?
- 21 A The police said basically we want you to view this
- 22 person and you just let us know if this is the person
- 23 that you saw.
- 24 Q Okay. Did they suggest to you to identify this
- 25 person in any way?

- 1 A No.
- 2 Q All right. When they took you, when the officer took
3 you to view the suspect, do you remember meeting
4 Sergeant Don Robinson?
- 5 A Yes.
- 6 Q Okay. And did you then go with Sergeant Robinson to
7 go view the suspect?
- 8 A Yes.
- 9 Q Can you describe where it was that the suspect was
10 standing?
- 11 A I remember that the community -- it was a lot of
12 houses together. It was a community.
- 13 Q Uh-huh (affirmative).
- 14 A I did see a fence and I remember a basketball goal
15 that I remember him standing under.
- 16 Q I'm going to show you what's been marked State's
17 No. 7. Does that look familiar to you?
- 18 A Mm-hmm (affirmative).
- 19 Q What is that?
- 20 A Basically it's the kind of car the defendant was
21 driving.
- 22 Q Okay. And do you see the goal, the basketball goal
23 you were just describing earlier?
- 24 A Yes, ma'am.
- 25 Q Is that where you saw the suspect?

Tracey Anderson - Direct by Ms. Shipley (In Camera)

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- 1 A Yes, ma'am.
- 2 Q And where approximately was he standing in State's
- 3 No. 7?
- 4 A He was standing underneath I believe.
- 5 Q Underneath it?
- 6 A Mm-hmm (affirmative).
- 7 Q And can you describe for the judge what he was
- 8 wearing?
- 9 A He was wearing -- as far as I can notice, he was
- 10 wearing a white shirt and he was wearing gray
- 11 sweatpants.
- 12 Q And what about, did you get a glance at his shoes?
- 13 A I did see the shoes. They were the same exact shoes
- 14 that I saw at the robbery.
- 15 Q The same shoes that you saw during the robbery?
- 16 A Mm-hmm (affirmative).
- 17 Q And did you see yellow jacket?
- 18 A I did see the yellow jacket. I was under the
- 19 assumption that they were covering his hands. Yes.
- 20 Q Now, do you know what they were using to cover his
- 21 hands with?
- 22 A I think that it was the yellow jacket.
- 23 Q You think it was?
- 24 A Mm-hmm (affirmative).
- 25 Q And the fact that they had his hands covered, --

1 A Yes.

2 Q -- did that suggest to you in any way that this was
3 the man that robbed you?

4 MR. SECOR: Your Honor, I know this is not that
5 big a deal for purposes of this hearing, but the
6 leading is getting a little excessive so I would
7 object to that.

8 THE COURT: Just don't lead your witness.

9 MS. SHIPLEY: Okay.

10 Q After -- when he -- describe for Judge Cooper exactly
11 what -- you know, when you saw him underneath the
12 basketball goal, what exactly were you asked to do by
13 Sergeant Robinson?

14 A I was just asked to look at the person and see if I
15 ID the person, if this was in fact the man that
16 robbed me.

17 Q Okay. Did you see police officers standing around
18 this man?

19 A Yes, I did.

20 Q How far away do you think they were from him?

21 A Not that far.

22 Q Not that far?

23 A No, ma'am.

24 Q The fact that he was surrounded by police officers --
25 do you remember how many there were?

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- 1 A Two.
- 2 Q Two?
- 3 A Mm-hmm (affirmative).
- 4 Q Did that influence you in identifying this man?
- 5 A No, ma'am.
- 6 Q In any way?
- 7 A No, ma'am.
- 8 Q Did you see the vehicle that you had noticed earlier
- 9 in the vicinity?
- 10 A Yes.
- 11 Q In fact, were you able to identify that vehicle?
- 12 A Yes.
- 13 Q You recognized that vehicle?
- 14 A Mm-hmm (affirmative).
- 15 Q Okay. And was that vehicle the same vehicle that you
- 16 had seen being -- drive up by the person who viewed
- 17 the store hours on your business at 8 a.m. that
- 18 morning?
- 19 A Yes. The front end of the car was exactly the same
- 20 make and model of it.
- 21 Q Okay. The gray sweatpants and shoes that you saw the
- 22 suspect wearing while he's standing underneath the
- 23 basketball goal, is that the same clothes that you
- 24 saw the robber wearing?
- 25 A Yes, ma'am.

1 Q Can you please identify him for Judge Cooper?

2 A Right over there in the white with a tie on.

3 MS. SHIPLEY: Your Honor, let the record reflect
4 that she has identified the defendant, Mr. Jimmy
5 Portee.

6 THE COURT: The record will so reflect.

7 Q When he was in front of the business looking at the
8 door, did he notice you?

9 A No, he didn't.

10 MS. SHIPLEY: That's all I have, Your Honor.

11 THE COURT: Cross examination.

12 MR. SECOR: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MR. SECOR

15 Q Good morning, Ms. Anderson.

16 A Hey. How are you?

17 Q Fine. How are you?

18 A I'm good.

19 Q Good. I just want to clarify a few things that you
20 talked about with Ms. Shipley, if that's all right
21 with you.

22 A Mm-hmm (affirmative).

23 Q You saw -- I guess there's sort of three different
24 situations we need to talk about, right? There's the
25 early morning situation?

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- 1 A Mm-hmm (affirmative).
- 2 Q And then the time that you were actually robbed?
- 3 A Yes.
- 4 Q And then later on when you were brought to the scene
5 where they had Mr. Portee. Is that right?
- 6 A Yes.
- 7 Q Okay. At 8 a.m. when you first got there, you
8 testified you were sort of going about your morning
9 duties before the store opened. Is that right?
- 10 A Yes, sir.
- 11 Q And I wasn't entirely clear. At that time you saw
12 somebody come up to the store, what you thought
13 looked they were checking the hours. Is that right?
- 14 A Yes.
- 15 Q And this is the back door?
- 16 A No. This is the front door.
- 17 Q The front door.
- 18 A Mm-hmm (affirmative).
- 19 Q And at that time I think you said you saw the front
20 end of a white car. Is that right?
- 21 A Yes. I did.
- 22 Q Okay. And you saw somebody walk up to the front
23 door?
- 24 A Yes.
- 25 Q And at that time you believed that to be a Caucasian

1 or a white male. Is that right? Isn't that what you
2 said?

3 A No. I said at that time I knew it was an
4 African-American.

5 Q Oh, okay. I'm sorry. I got that confused.

6 A Yeah. He was just light skinned.

7 Q Okay. And I think you testified just a few minutes
8 ago that because you were doing your morning duties,
9 you weren't particularly paying attention to this
10 person, right?

11 A No. I paid attention because when he pulled up I
12 heard a loud noise of the car.

13 Q Right.

14 A And then I came -- I proceeded to step onto the first
15 step of my office. And that's when I noticed him
16 looking at the door. Yeah, I stopped and paid
17 attention to that because I knew at that time I was
18 the only one in the building. And, yeah, the door
19 was locked; but still, yeah, I was the only one in
20 the building.

21 Q But I mean you just assumed he was checking the hours
22 because he turned and walked away?

23 A Checking the store hours. But I stood there long
24 enough to see him get back into the car.

25 Q Okay. So did you say you saw him go to the car that

Tracey Anderson - Cross by Mr. Secor (In Camera)

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1 you saw the front end of?

2 A Mm-hmm (affirmative).

3 Q Now, I think you said it was a -- at that time, at
4 8 a.m. when you saw car, it was pretty far away.

5 Right?

6 A Yeah. It was probably approximately about four or
7 five feet away.

8 Q Outside the door you mean?

9 A I mean, you are talking about prior to him pulling
10 up? Or are you talking about when I was in the
11 building?

12 Q At the time that you said you saw the front end of
13 that white car?

14 A Oh, yeah. It was four or five feet away.

15 Q From the front of the store?

16 A Yeah.

17 Q And you're inside the store?

18 A Yes, sir.

19 Q Okay. Now, I thought you said when Ms. Shipley was
20 talking to you that you in fact didn't see where he
21 went after checking the store hours?

22 A I didn't see which direction he went in, but I did
23 see long enough for him to get back into his car.

24 Q Oh, okay. All right.

25 A Yes, sir.

1 Q And after you watched him turn away, I think you said
2 you just went back to doing what you were doing,
3 right?

4 A Yes.

5 Q Because you just thought he was checking the store
6 hours. Okay. Let's talk about when you were
7 actually robbed. Okay?

8 A Okay.

9 Q Now, I think you said that you believe that Ms.
10 Wilson saw the person come in the store first?

11 A Yes. She was there.

12 Q Is that right?

13 A The reaction on her face.

14 Q Okay. And you were in close proximity to the rear
15 entrance of the Family Dollar, correct?

16 A Yes, sir.

17 Q And this person came inside?

18 A Mm-hmm (affirmative).

19 Q And excuse me. I think you said you were close
20 enough to touch him, right?

21 A Mm-hmm (affirmative). Yes, sir.

22 Q But at that time he was -- the person that was in the
23 store at that time was wearing some sort of a cover
24 over their face, correct; some sort of a mask
25 covering their face?

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- 1 **A** Yes. It was basically what I told to the cops. It
2 was a knit hat with the eyes cut out of it.
- 3 **Q** Okay. And a yellow jacket?
- 4 **A** Yes, sir.
- 5 **Q** And those would be the things that stuck out most in
6 your mind?
- 7 **A** Yes, sir.
- 8 **Q** And that period of time I think you said lasted
9 somewhere in the neighborhood of five seconds, when
10 he was standing getting close enough to you to touch?
- 11 **A** Mm-hmm (affirmative).
- 12 **Q** Okay. And then at the conclusion of that, somewhere
13 in the neighborhood of a five-second period of time,
14 this person in the yellow jacket with the knitted hat
15 covering their face grabbed you by the back of your
16 hair, correct?
- 17 **A** Exactly.
- 18 **Q** And I believe you testified that the person that
19 grabbed you by the back of your hair was forcing you
20 towards the front of the store after telling you to
21 get down and then telling you to get back up?
- 22 **A** Yes, sir.
- 23 **Q** This person was forcing you towards the front of the
24 store and turning your head away from them, correct?
- 25 **A** Yes.

- 1 Q They're behind you?
- 2 A Yes.
- 3 Q Okay. And you're on your feet at this point when
- 4 you're being pushed to the front of the store by this
- 5 person, correct?
- 6 A Yes. I am.
- 7 Q Okay. And you did think that this person that had
- 8 come into the store wearing the yellow jacket and the
- 9 mask, knitted cap over their face, you did think that
- 10 this person was a Caucasian male, correct?
- 11 A Yes, I did.
- 12 Q And you talked about it being well lit in the store
- 13 because I guess the store is open at this point?
- 14 A Yes, sir, it is.
- 15 Q So it's well lit. But again, this person is forcing
- 16 your line of view away from them, correct?
- 17 A Yes.
- 18 Q Okay. All right. Finally I'd just like to talk to
- 19 you about after you were robbed. You stayed at the
- 20 Family Dollar until police arrived, right?
- 21 A Mm-hmm (affirmative).
- 22 Q And I think was it Deputy or Officer Kilcoyne was the
- 23 first guy that arrived there?
- 24 A Mm-hmm (affirmative).
- 25 COURT REPORTER: You need to answer yes or no,

Tracey Anderson - Cross by Mr. Secor (In Camera)

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1 please.

2 A Yes.

3 COURT REPORTER: Thank you.

4 Q And you talked to him, right?

5 A Yes.

6 Q But you didn't make a statement at that point?

7 A No, sir.

8 Q And then I believe you said that it was approximately
9 15 or 20 minutes before another officer arrived to
10 take you out to view who they said they arrested. Is
11 that right?

12 A Yes, sir.

13 Q And that was, I believe it's Corporal or Deputy
14 Enzor. Is that right? Do you remember him?

15 A I'm not sure.

16 Q That's all right. Don't worry about the name. But
17 you remember somebody coming to pick you up?

18 A Yes, sir.

19 Q And that person, was that a uniformed police officer?

20 A No.

21 Q Not a uniformed police officer?

22 A Hmm-mm (negative).

23 Q But when he came to pick you up, he obviously
24 introduced himself to you?

25 A Yes, he did.

- 1 Q Said that he was Deputy Enzor with the Richland
2 County Sheriff's Department, right?
- 3 A Yes, sir.
- 4 Q And he told you that they'd arrested somebody in
5 connection with this armed robbery, right?
- 6 A Yeah. I just -- he told me they had someone. I'm
7 not sure he said that he was arrested though. I'm
8 not sure about that.
- 9 Q All right. And then he asked you if you'd come with
10 him, right?
- 11 A Yes.
- 12 Q Because he wanted to see if there was any way you
13 could identify the person that they had or the person
14 he was going to show you as potentially the person
15 that had robbed you?
- 16 A Yes, sir.
- 17 Q Is that right?
- 18 A Mm-hmm (affirmative).
- 19 Q Okay. And you get into the car with Deputy Enzor.
20 And I know you said it was a short ride?
- 21 A Mm-hmm (affirmative). Yes, sir.
- 22 Q But you talked to Deputy Enzor during that ride?
- 23 A Yeah. But it was general. It was basically about
24 different things that were going on in Columbia.
- 25 Q Okay. He didn't ask you about the fact that you'd

Tracey Anderson - Cross by Mr. Secor (In Camera)

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1 just been robbed?

2 A He did talk to me a little bit about it, but
3 basically he wanted me to concentrate on viewing the
4 suspect.

5 Q And you're taken by Corporal or Deputy Enzor -- I'm
6 sorry; I can't remember what his title is -- to this
7 scene. And then I believe -- and tell me if I'm
8 mistaken, please. I believe that you then meet
9 Investigator or Sergeant Robinson for the first time.
10 Is that right?

11 A Yes.

12 Q Okay. And at that time Sergeant Robinson introduces
13 himself to you?

14 A Yes.

15 Q You know that he's a police officer?

16 A Yes, sir.

17 Q And he tells you that they've got somebody that they
18 believe may be the person that robbed you?

19 A Yes.

20 Q And they want you to -- I believe you did a drive by.
21 Is that right?

22 A Yes, sir.

23 Q So they say we're going to drive by and see if this
24 is the person that robbed you?

25 A Yes, sir.

1 Q And how long would you say approximately you were
2 there before you did the actual drive by?

3 A I believe that we conversated for about three minutes
4 and then he said he was going to circle around and
5 look at the guy.

6 Q Okay. And how many police officers did you see in
7 that area?

8 A How many did I see in that area?

9 Q Yeah.

10 A It was a lot. The only ones that I really, really
11 remember is the one that I was riding with and the
12 one that talked to me prior and the other one that
13 showed me the mask and the two that were standing
14 beside the suspect.

15 Q You saw a lot of other people in police uniforms?

16 A Yes, sir.

17 Q How about police cars?

18 A I want to say three, but I'm probably mistaken.

19 Q Three? Somewhere around there?

20 A Yes, sir.

21 Q Now, I guess you get into a vehicle with Sergeant
22 Robinson, right?

23 A Did I get into a vehicle with Sergeant Robinson?

24 Q To do the drive by.

25 A Yes.

Tracey Anderson - Cross by Mr. Secor (In Camera)

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1 Q And he drives you by where they've got Mr. Portee
2 standing?

3 A Yes, sir.

4 Q And would it be fair to say that he's standing like
5 this on the side of the road?

6 A Yes. Underneath the basketball goal.

7 Q Under the basketball hoop?

8 A Yes, sir.

9 Q And I'm looking at State's Exhibit 7, a photograph
10 the show-up scene. On State's Exhibit 7, Ms.
11 Anderson, you see that Sheriff's Deputy standing
12 underneath the basketball hoop?

13 A Yes, sir.

14 Q Would that be approximately where Mr. Portee was
15 standing?

16 A Yes, sir.

17 Q Okay. And would you agree with me that that's
18 somewhere between six and ten feet from this white
19 vehicle?

20 A Yes.

21 Q So is that in the neighborhood?

22 A (Nods head affirmatively).

23 Q And I think you that said that Mr. Portee was
24 standing with his hands together as if they were
25 handcuffed but you couldn't see the handcuffing,

1 right?

2 A No, sir, I couldn't.

3 Q And this would be as if he was handcuffed in the
4 front?

5 A Yes, sir.

6 Q Okay. And you said that over his hands, what
7 prevented you from seeing the handcuffs was a yellow
8 jacket of some sort?

9 A Yes, sir.

10 Q But prior to this you had told officers that the
11 person that robbed you was wearing a yellow jacket,
12 right?

13 A Yes, sir.

14 Q And as you drove by, I think you testified that there
15 were at least a few officers standing very close to
16 Mr. Portee, right?

17 A Yeah. Two that I saw.

18 Q And just to clarify one thing. We talk about how you
19 had not made a formal statement at this point. You'd
20 talked to officers, particularly Officer Kilcoyne, at
21 the Dollar General (sic) about what had happened,
22 right?

23 A Mm-hmm (affirmative).

24 Q But you had not reduced your statement or description
25 of the person to writing or anything in any way,

Tracey Anderson - Cross by Mr. Secor (In Camera)

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1 correct?

2 A No, sir.

3 Q And when you drove by Mr. Portee with Sergeant
4 Robinson, you could see the uniformed police officers
5 standing near him?

6 A Yes, sir.

7 Q You could see the white car that was somewhere six to
8 ten feet --

9 A Yes, sir.

10 Q -- next to him? And I believe you said that you were
11 certain about the identification. Is that what you
12 said?

13 A No. I was certain about what he had on.

14 Q Specifically, the clothing?

15 A Yes, sir.

16 THE COURT: What did she say? I didn't hear
17 you.

18 MR. SECOR: The clothing.

19 A Yes. I was certain about what he was wearing.

20 Q Okay. And when you say you're certain about what
21 he's wearing, I would assume that means certain about
22 the gray sweatpants?

23 A Yes, sir.

24 Q And the yellow jacket?

25 A Yes, sir.

1 Q And I think you said you were pretty certain about
2 the car?

3 A No. At that point in time, Mr. Murphy was certain
4 about the car. But the car that I saw parked pulling
5 up to the store was the same car that I saw when I
6 saw him under the basketball goal.

7 Q Yeah. I'm sorry. That's what I was trying to get
8 at.

9 A Yes, sir.

10 Q I probably didn't do a very good job of asking you.
11 You believe that the car you saw there was the car
12 you saw at 8:00 in the morning?

13 A Yes, sir.

14 Q Okay. And when you did the -- when you went the
15 show-up scene to do that drive by with Sergeant
16 Robinson, they showed you at some point a mask, too,
17 right?

18 A Yes, sir, they did.

19 Q Or a knit hat with holes in it?

20 A Yes, sir.

21 Q Was that before they drove you by Mr. Portee?

22 A I believe that was after.

23 Q After?

24 A Yes.

25 Q Okay. Now, you said something about Mr. Michael

Tracey Anderson - Cross by Mr. Secor (In Camera)

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1 Murphy. And I'm sorry if I misunderstood. You said
2 that he was certain about it. Was he at the show-up
3 scene where you did the drive by as well? Or are you
4 talking about a different cop?

5 A Before.

6 Q So Mr. Murphy was not there?

7 A No.

8 Q Beg the Court's indulgence for just a moment, please.
9 Just a little bit more, Ms. Anderson. I don't want
10 to keep you up there for too long. I just want to
11 turn back briefly to 8 a.m., the initial time that
12 you saw somebody coming to the front of the door?

13 A Yes, sir.

14 Q It was at that time you saw the front end of the car
15 pull up. You heard the car first and foremost?

16 A Yes, sir.

17 Q And you looked. You saw the front end of the car?

18 A Yes, sir.

19 Q Then you saw what you believed at that point in time
20 to be a black man, an African-American man?

21 A Yes, sir.

22 Q Light skinned?

23 A Mm-hmm (affirmative).

24 Q But an African-American?

25 A Yes, sir.

- 1 Q He came up to the door, was there very briefly?
- 2 A Yes.
- 3 Q Yeah. And then left?
- 4 A Yes.
- 5 Q And you thought at that time that he was just there
- 6 checking the store hours?
- 7 A Yes, sir.
- 8 Q And that's because that's something you've seen other
- 9 people do before?
- 10 A Yes.
- 11 Q And that person, the African-American man that you
- 12 saw, light skinned African-American man you saw
- 13 around 8 a.m. that morning didn't do anything
- 14 threatening to you?
- 15 A No.
- 16 Q Didn't attempt to rob you?
- 17 A (Shakes head negatively).
- 18 Q And I think you said you all didn't even make eye
- 19 contact?
- 20 A No. He didn't see me.
- 21 Q Okay. And again, the car is about five feet I
- 22 believe you said from the outside of the door?
- 23 A Yes, sir.
- 24 Q And how far inside the store were you?
- 25 A Not -- it wasn't five feet from the door. It was

Tracey Anderson - Cross by Mr. Secor (In Camera)

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1 five feet from where I was standing.

2 Q Okay. So you were standing near a window or
3 something?

4 A Yes.

5 Q Oh. It was your office window. Is that right?

6 A Yes.

7 Q Okay. I'm sorry. So at the time that you saw this
8 car and this individual at 8 a.m., and I know that
9 you've got a different opinion of it now, but at that
10 time this was just sort of a normal occurrence for
11 you?

12 A Yes. It was.

13 Q Okay. Just somebody checking the store hours as
14 you're going about your normal routine in the
15 morning?

16 A Yes, sir.

17 Q Beg the Court's indulgence again just briefly. Thank
18 you, Ms. Anderson. I appreciate it.

19 MS. SHIPLEY: May it please the Court.

20 THE COURT: Ms. Shipley.

21 REDIRECT EXAMINATION

22 BY MS. SHIPLEY

23 Q Were you paying attention to the person who came up
24 to the door at 8 a.m. that morning while you were
25 dealing with the deposits and the tills?

- 1 **A** Yes, ma'am.
- 2 **Q** Nothing was obstructing your view?
- 3 **A** No, ma'am.
- 4 **Q** The person that you saw come up to that door to check
5 on the store hours, do you see him in the courtroom
6 today?
- 7 **A** Yes, I do.
- 8 **Q** And could you please again identify him for the
9 Judge?
- 10 **A** That gentleman over there in the white shirt.
- 11 **Q** And when is the next time you saw him after that?
12 After you saw him at 8 a.m., when did you see him
13 again?
- 14 **A** I saw his face again after the robbery.
- 15 **Q** Okay. And tell the judge again what was he wearing
16 when you saw -- what was the robber wearing, first of
17 all?
- 18 **A** The robber was wearing a knitted hat with eyes cut
19 out, a yellow jacket that went to his waist and I saw
20 the gray sweatpants as he was running towards the
21 back door.
- 22 **Q** And what about shoes?
- 23 **A** He was wearing some white dingy shoes.
- 24 **Q** And when you were asked to go look at a person, a
25 suspect, you were never told he was under arrest,

Tracey Anderson - Redirect by Ms. Shipley (In Camera)

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1 correct?

2 A No, ma'am.

3 Q In fact, you never saw him in handcuffs, did you?

4 MR. SECOR: Objection, Your Honor. Leading.

5 MS. SHIPLEY: I'm just trying to hurry this
6 process up.

7 THE COURT: Well, we've got time.

8 Q Okay. At this point when you were asked to go see
9 this person who is under the basketball goal, did you
10 see any handcuffs?

11 A No.

12 Q What was he wearing at this point?

13 A He was wearing a short white shirt and gray
14 sweatpants.

15 Q What about the shoes?

16 A The shoes were dingy, the same as the robber.

17 Q So he's wearing the same clothes as the robber. Is
18 that correct?

19 A Yes, ma'am.

20 Q And the mask that they show you and his yellow ski
21 jacket that they show you or the yellow jacket that
22 they show you, were those the same articles of
23 clothing worn by the suspect?

24 A Yes, ma'am.

25 Q During the robbery?

1 **A** Yes, ma'am.

2 **Q** The fact that there was police around him, police
3 cars around him, that the white car was five to ten
4 feet away, did that influence your decision to
5 identify this person?

6 **A** No, ma'am.

7 **Q** And he never saw you when he came to case the joint
8 out that morning, correct?

9 **A** No, ma'am.

10 **MS. SHIPLEY:** That's all I have, Your Honor.

11 **THE COURT:** Anything further?

12 **MR. SECOR:** Nothing further, Your Honor.

13 **THE COURT:** All right. You may come down,
14 ma'am. Thank you.

15 **MS. SHIPLEY:** The State calls Sergeant Don
16 Robinson.

17 DONALD ROBINSON, after being duly sworn,
18 testifies as follows:

19 **THE CLERK:** Thank you. Please have a seat in
20 the witness stand and state your full name for the
21 record.

22 **WITNESS:** My name is Donald Robinson.

23 DIRECT EXAMINATION

24 **BY MS. SHIPLEY**

25 **Q** Sergeant Robinson, where are you employed?

Donald Robinson - Direct by Ms. Shipley (In Camera)

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1 A Richland County Sheriff's Department.

2 Q How long have you worked there?

3 A I've been employed close to 16 years.

4 Q And what are your duties now as a sergeant?

5 A Currently my capacities are to supervise a group of
6 investigators that are assigned to my division. My
7 division currently is the aggravated assault
8 division. I think at that time I was asked to
9 supervise a group of investigators that worked all
10 the, investigated the crimes in the Lower Richland
11 community.

12 Q Okay. I'm going to go ahead and bring your attention
13 to November 9th, 2006. Were you on duty that day?

14 A I was.

15 Q Is there a specific region of Richland County that
16 you supervise?

17 A It's listed as Region One. Region One area
18 circumference is Bluff Road to the City of Columbia
19 all the way to the Eastover area to Leesburg or Ft.
20 Jackson up to Highway 601. That was our assigned
21 investigative region.

22 Q Okay. Tell Judge Cooper how you got involved in this
23 case?

24 A That morning I was working on some other cases, just
25 patrolling the area around Bluff Road coming from

1 Rick's Party Shop. As I was going, just riding down
2 the road, I hear the tone go out over dispatch that
3 there was an armed robbery at the Family Dollar. The
4 description of the vehicle was placed over the radio.

5 Q And what was it?

6 A It was an older model white vehicle.

7 Q Okay.

8 A Possibly driven by a white male.

9 Q Any clothing description?

10 A It mentioned a bright yellow jacket.

11 Q Okay.

12 A And that's all that we could put out. I think they
13 might have mentioned the gray clothes over the radio.
14 But I was focusing more of what I could see to the
15 car.

16 Q And describe what happened next after you heard that
17 dispatch?

18 A When that call went out, the first thing I did was I
19 went to the interstate of I-77 and Bluff Road to
20 position myself in case the vehicle tried to leave
21 and go towards the West Columbia area. So I knew
22 there were other deputies further out on Bluff Road.
23 So I went there to catch that area.

24 At that time then I heard Deputy Unger, Corporal
25 Unger who came on the radio, asked, "Can you give me

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1 that description of that vehicle one more time?"

2 That vehicle description was placed again. "Central,
3 I think I may be out with that vehicle. I'm going to
4 attempt to make a stop." So then he initiates a
5 traffic stop on that vehicle. Then they engage in a
6 pursuit. When they engaged in a pursuit, I turned
7 around and got off the interstate, went to the area
8 to go back him up.

9 Q And what area did you respond to? Where was the
10 pursuit taking place?

11 A Predominantly in the Starlight Subdivision on Bluff
12 Road.

13 Q And where is that in relation to Bluff Road?

14 A That's Bluff Road. It's south of the interstate, I
15 guess probably maybe three to four miles of I-77.

16 Q Heading towards the Richland County jail?

17 A Heading towards the jail. That's correct.

18 Q Now, when you get there, describe for Judge Cooper,
19 are you able to listen to Corporal Unger as you are
20 responding?

21 A Oh, as I'm responding I'm listening to him. He's
22 kind of almost circling the neighborhood pursuing
23 this vehicle.

24 Q Okay. And did he dispatch what kind of -- did he
25 dispatch on his own radio what kind of the car he was

1 following?

2 A Absolutely. He provided the description, the license
3 plate tag. That's generally standard operating
4 procedure if you get into a pursuit, put all the
5 vehicle information out.

6 Q And were you able to learn while you were in route
7 whether or not he was able to successfully apprehend
8 the driver of that vehicle?

9 A I knew -- and he was shortly ahead of me; I wasn't
10 too far behind him -- but I knew right shortly right
11 after they made the traffic stop he put out that the
12 vehicle wrecked, the subject fled, silence on the
13 radio for very brief time. He came back and he noted
14 on the radio that the subject's 1067 which is our
15 radio ten code, it means that the subject is
16 apprehended.

17 Q And so did you arrive on the scene where he was
18 apprehended?

19 A I did.

20 Q And describe for Judge Cooper what you observed?

21 A When I first arrived on the scene, and I pulled in
22 kind of like behind Deputy Unger, when I arrived on
23 the scene, Deputy Unger had placed the defendant in
24 the back seat of his patrol car. He was handcuffed
25 in the patrol car. And Deputy Unger was trying to

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1 configure and see what evidence is around the area.

2 So when I first rolled up, I met Deputy Unger.

3 Hey, what's going on? He told me about the call. I
4 already knew that the call had went out because I had
5 heard it. And then -- so then I went to speak with
6 the defendant in the back of the car.

7 I opened the door, advised him of who I was and
8 the purpose of why I was there, advised him of his
9 Miranda warning verbally, explained if there's
10 anything he wanted to mention about the incident. He
11 just denied it. He didn't know nothing. "I don't
12 know nothing. I have no idea what you're talking
13 about. This guy just stopped me."

14 Q And when you Mirandized him, did you use a -- what,
15 if anything, did you use to Mirandize him? Do you
16 have a card or did you do it from memory? How did
17 you Mirandize hit?

18 A Well, I recall that from memory because it's exactly
19 the same. "You have the right to remain silent.
20 Anything you say can and will be used against you in
21 a court of law. You have the right to an attorney.
22 If you cannot afford one, one will be appointed to
23 you by the state of South Carolina. Do you
24 understand the rights that I've read to you?" And --

25 Q Did he indicate he understood?

1 A He understood. He said he didn't know anything about
2 it. And he was --

3 Q Did he indicate he wanted to talk to you in any way?

4 A He didn't deny that he wanted to talk to me.

5 Q Okay.

6 A I knew at that point when I saw him in the car and
7 the way he was, the way he was positioned, sweating
8 and everything, I went ahead, set up the remaining
9 investigative portion of the case.

10 Q Okay.

11 A I left him in the car with Deputy Unger until I could
12 get everything else set up.

13 Q And did Deputy Unger --

14 A It was little chaotic at that point.

15 Q Did Deputy Unger report to you what, if anything, was
16 found in this man's possession?

17 A There were several things found regarding his
18 possession. I'm not sure quite sure. I know --

19 Q Well, in the vicinity of where he fled by foot, did
20 they recover things?

21 A They recovered money.

22 Q Uh-huh (affirmative).

23 A They recovered a jacket. The jacket was laying on
24 the front of the car.

25 Q By the time you got there?

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1 **A** Yeah. Had collected money. There was cash kind of
2 strewn around the area of the apprehension site.

3 **Q** Okay. Any other articles of clothing?

4 **A** Later on he showed me the cap.

5 **Q** Okay.

6 **A** But that was --

7 **Q** At the time you first got there, that's all you knew
8 about?

9 **A** Yeah. The cap was not in play at that point. And
10 that's why --

11 **Q** So at this point you know this man has a bright
12 yellow jacket and cash?

13 **A** That's correct.

14 **Q** And the cash was located where?

15 **A** It was in one of the yards right there at the
16 apprehension site.

17 **Q** Right there at the location?

18 **A** In the yard right there by the apprehension site.

19 **Q** All right. After you Mirandized him and he indicated
20 he didn't know anything about anything, what did you
21 do next?

22 **A** At that point then we needed to make sure we had
23 gotten -- the identification needs to be done, needs
24 to be correct. So what I did is I set up the plan.
25 I called Corporal Enzor who was the supervising from

1 the uniform division. I said we need to get a deputy
2 over there and pick up the victim, bring the victim
3 back to me so we can do the information portion.

4 Q And how did you ensure that Deputy Enzor would not
5 drive by you inadvertently by you and the suspect in
6 route?

7 A Well, I explained to Enzor, I said, you need to make
8 sure when you bring them in, you bring them on the
9 back side because on the back side was where my car
10 was parked. Just bring her to me. Don't go the
11 other way. Come on around on this back side. Stay
12 away. Come straight to me. Then I will get her and
13 drive her back around and we'll get through the area.

14 Q And did you eventually meet him at your patrol car --

15 A I did.

16 Q -- or your investigations car?

17 A I did. When he arrived I met with Corporal Enzor
18 with me and Ms. Anderson.

19 Q Anderson?

20 A Yes, ma'am.

21 Q And did you -- what did you tell Ms. Anderson at this
22 point?

23 A I explained to her that we stopped a car, we had
24 gotten into pursuit for our case, traffic case, but
25 we have a person that we'd like to take a look at and

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1 see if it could be the same person that robbed the
2 store where she was working.

3 Q Did you suggest to her in any manner that this indeed
4 was the person that committed the robbery?

5 A No, ma'am. Not at all.

6 Q At that point did you tell her about the money or the
7 jacket or anything like that?

8 A None of that. No, ma'am.

9 Q What measures did you take to ensure that it would
10 not suggest to her that this person was in custody?

11 A I did a few things. The first thing I did is I
12 picked the site of where I wanted to do the line-up.

13 Q Okay. And I'm going to show you State's No. 7. Do
14 you recognize that?

15 A I do.

16 Q Okay. And where exactly did you decide to put the
17 suspect?

18 A Okay. If you look at the house where the car is, you
19 can see to the right is the basketball goal. And
20 that's more than six, eight feet. That's probably
21 more like about 20 to 25. I moved him over there to
22 get away from the vehicle, but I couldn't go too far
23 because it started taking him further into the
24 neighborhood in front of other people's homes and
25 stuff. So I tried to get him as far away from the

1 car as I could.

2 Q From his car?

3 A From his car.

4 MS. SHIPLEY: Your Honor, may I show this photo
5 to you? No. 7?

6 THE COURT: They've seen it.

7 MS. SHIPLEY: Yeah. They've all seen it.

8 THE COURT: Okay. Go ahead.

9 Q And then what measures did you take to conceal the
10 fact that he was in custody?

11 A Well, the next thing I did, when I took him out of
12 the patrol car, I removed his handcuffs from the back
13 to the front.

14 Q So originally he was in custody with his handcuffs to
15 the back?

16 A That's correct.

17 Q All right. And what did you do with the handcuffs?

18 A Then when I put the handcuffs in the front, I set
19 them in the front so he'd be in a relaxed fashion so
20 it wouldn't change his posture or anything like that.
21 I set him up straight. I found a t-shirt in the back
22 of the car. It was just a normal loose t-shirt that
23 he had in the car.

24 Q His car?

25 A His car.

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1 Q Okay.

2 A I took that and I draped that -- that's what I draped
3 over the handcuffs.

4 Q Okay. So you did not drape the yellow jacket over
5 his handcuffs?

6 A Oh. Absolutely not. I didn't even have custody of
7 that.

8 Q And you testified earlier. Where was that yellow
9 jacket?

10 A It was on the hood of the patrol car. Deputy Unger
11 was the one that had custody of the jacket the whole
12 time.

13 Q And you actually made notes that day of what actions
14 you took, correct?

15 A That's correct.

16 Q And in your notes did you document that you used a
17 white t-shirt to cover his handcuffs?

18 A I did.

19 Q Okay. Now, did you also ask the deputies to stand
20 back from the suspect?

21 A I did. What we --

22 MR. COOPER: Objection. She is leading the
23 witness, Your Honor.

24 Q What, if anything, did you instruct the officers in
25 the vicinity to do?

1 A My next plan was to set the person into the site,
2 which I did. I placed him over there near that
3 basketball goal. We had one deputy car that was
4 probably about another 40 feet, 50 feet further down
5 through the neighborhood making sure we had no walk
6 through traffic coming through. I had a deputy stand
7 on each side of the subject, probably eight to ten
8 feet. But we had to stay somewhere kind of close to
9 him in case he wanted to flee. We had to keep in
10 mind the safety of the neighborhood. So eight and
11 ten feet was probably a good safe relative distance
12 for that. So set the deputies to the side.

13 The cars are further and further out and then
14 positioned him standing there like a normal person,
15 comfortable, relaxed; covered up the handcuffs. And
16 then I went back to my car and met Ms. Anderson over
17 there in my vehicle which was further away. She
18 couldn't -- I don't think she could even see the
19 basketball goal from where we were. I know she
20 couldn't because the road comes in and curves, and we
21 were at this point. So I was further over here
22 outside this other cul-de-sac. I met her over in the
23 grassy area of this cul-de-sac.

24 Then I went back and met her over there, placed
25 her in the passenger's seat of my truck, drove around

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1 the neighborhood, came back around, took only one
2 pass by the defendant. I made that pass on purpose
3 to where she could get full view. Her view during
4 the show-up was not obstructed in any way, shape or
5 form. The window was directly at her. She was in
6 the passenger's side. I drove right by so she had
7 full view and run by him. Generally, was that the
8 guy? What do you think? Is that the guy that did
9 this?

10 Q And what was her response?

11 A No hesitation.

12 Q She picked him?

13 A That's him. That's him.

14 Q And did she indicate about having some hesitation
15 concerning the face? And describe that for the
16 judge.

17 A She explained to me that she wasn't a hundred percent
18 sure on the face because of course he had the mask.
19 But she described every other bodily feature that you
20 could possibly describe on the defendant; shoes
21 clothing, even the point of where I think his
22 sweatpants were even up a little bit, not typically
23 the way sweatpants are generally worn. They were
24 pulled up. She discussed his skin tone, his
25 complexion.

1 Q And so did she indicate her certainty? What
2 percentage did she give you about her certainty that
3 this was the same person that robbed her?

4 A Well, she explained to me that she was a hundred
5 percent sure.

6 Q Based on his build, clothing, the complexion of his
7 skin. Is that correct?

8 A Yes.

9 Q And the vehicle?

10 A Yes. Well, that was the next thing. That was the
11 next thing. That was just, we just went over the
12 person first.

13 Q Okay.

14 A Then she'd saw the car as we drove by. And the car
15 was secondary to the person first, then rode by to go
16 back and park, then passed the car.

17 Q So you're driving down the street, and the suspect is
18 first and then the car is second?

19 A Yes.

20 Q So she is to the right, nothing obstructing her view?

21 A Nothing obstructing her view.

22 Q She doesn't have to look over your lap to see?

23 A No. No. No.

24 Q And what, if anything, did she comment about the
25 vehicle?

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1 A She said that vehicle looks like the car also.

2 Q Did you then take a written statement from Ms.
3 Anderson?

4 A I did. I went back to the location where my truck
5 was originally parked, sat in my car. I look a
6 written statement from there.

7 Q And I'm going to show you a document and ask you if
8 you recognize it?

9 A Yes, ma'am. That's my statement.

10 Q All right. And you're questioning the witness?

11 A I am.

12 Q And is that is in your handwriting?

13 A That's correct.

14 Q Did you have her sign it?

15 A She did.

16 Q And the date, I noted you put down November 8th.
17 Should that be November 9th?

18 A That would be the 9th, November 9th.

19 Q 2006?

20 A Yes.

21 Q And in her description of the perpetrator to you, did
22 she describe what the robber was wearing during the
23 robbery?

24 A Exactly. Said he was wearing the wool mask.

25 MR. COOPER: Objection, Your Honor. We've

1 already had Ms. Anderson testify. I don't think this
2 is really relevant. She's already been on the stand.
3 She can testify to what she saw.

4 MS. SHIPLEY: Your Honor, I have to establish
5 the accuracy of the description prior and then
6 subsequent to the identification or at the
7 identification.

8 THE COURT: Well, the identification is at the
9 scene of the identification. So what she says
10 sometime later I'm not sure is relevant.

11 Q Okay. Can I have that back? The clothing, the
12 articles of clothing found on the subject, Mr.
13 Portee, that being the gray pants, the bright yellow
14 jacket, the ski mask, the white scuffed up tennis
15 shoes; were all those consistent with the description
16 provided by Ms. Anderson when the call first went
17 out?

18 A Very much so.

19 Q Now, how far away was this identification, show-up
20 identification conducted from the crime scene?

21 A Somewhere between three to five miles. It might have
22 been four to five miles right there. I don't think
23 it's any more than five.

24 Q And I'm going to show you a map. Are you familiar
25 with Region One?

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1 A Pretty much.

2 Q Okay. I'm going to just to speed this process up;
3 7361 Garner's Ferry Road, Family Dollar, do you see
4 that on the map?

5 A Yes. It's about right there.

6 Q And do you see Hialeah Drive in Richland County?

7 A Yes.

8 Q All right. So describe what route one would take to
9 drive from the crime scene to the location where Mr.
10 Portee was apprehended?

11 A More than likely, probably took, I think that's
12 Veterans Road there, turns onto Atlas Road, take
13 Atlas all the way to Bluff. When you come into Bluff
14 you're going to go into the Candlelight Subdivision.
15 That might be Flamingo Road. I don't know. I'd have
16 to look at all the roads. But when you pull in right
17 there and then it goes right up to that spot and it
18 goes dead center right to where that house is.

19 Q So there is one road, Atlas Road, that would take you
20 from the Family Dollar to the Bluff Estates or Bluff
21 Road?

22 A That's the shortest, most direct route.

23 Q And in your approximation that's about three to five
24 miles away?

25 A Right.

1 Q And it was a marked car?

2 A It was a marked patrol car.

3 Q Now, when you -- when Ms. Anderson got there, you
4 didn't immediately place her in your car, did you?

5 A Yeah. She came over and got in my pick-up.

6 Q You immediately placed her in the car. Okay. And
7 you didn't drive her to a completely different area,
8 did you?

9 A What you mean a completely different area?

10 Q Well, did you drive -- where did you take her right
11 after she got in your car?

12 A She stayed in my car where it was parked, and it was
13 parked in the cul-de-sac; if I can show you that map
14 again, which was further away. I couldn't even get
15 close enough with my vehicle anyway because there was
16 activity down there. But we were further away. She
17 couldn't even see the scene. So I put her in my car.
18 I kind of made sure everything was set up, was kind
19 of right before I got into the car with her to drive
20 her around.

21 Q Did you explain to her what you were doing?

22 A Yeah. I explained to her that we were going to have
23 her look at a person to see if he could have been
24 involved.

25 Q And you testified earlier that you told her that this

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1 was a person that had been involved in a pursuit,
2 correct?

3 A Mm-hmm (affirmative).

4 Q Okay. Now let's talk about some of these ID's that
5 you have conducted in the past. You've conducted
6 show-up ID's where you didn't handcuff the suspect,
7 haven't you?

8 A Oh, God. You're talking about some timeframe. Every
9 time I've ever done it, when we've ever done a
10 line-up on the street or show-up, and you're talking
11 about varying degrees for different kinds of crimes.
12 You know, there's some crimes that you're not worried
13 about a flight risk. There's some crimes you're not
14 worried about a danger to society, and there are
15 those that you are. So, to me, that makes the
16 decision of whether I'm going to be a little cautious
17 in terms of handcuffs or not.

18 Q Have you ever conducted one without handcuffing a
19 suspect?

20 A I don't think so.

21 Q Okay. So it would be your absolute practice to
22 always have the suspect in handcuffs when conducting
23 a show-up ID?

24 A That's the general practice. And usually when we're
25 getting involved, it's usually something a little

1 more serious, so you don't take that risk.

2 Q Now, you talked about safety precautions in the
3 community. So it's fair to say that your practice in
4 conducting a show-up ID changes based on the
5 neighborhood you're in. Is that fair to say?

6 A I didn't say that.

7 Q Well, you've said that it depends on how many houses
8 are around, didn't you?

9 A I depends on what the crime alleged has occurred.

10 Q Okay. And is it fair to say that your practice in
11 conducting a show-up ID changes based on who else
12 might be in the area?

13 A If the crime is what is considered as a dangerous
14 crime, then I'm not going to take that risk.

15 Q So is that a yes?

16 A But I have never, not from recollection over many
17 years, I've ever -- once we get someone in custody,
18 we don't take a gamble by taking handcuffs off of
19 people and then allowing them the opportunity to
20 flee.

21 Q So your answer is, yes, your practice does change
22 based on the surrounding circumstances, who is in the
23 community and what area, what neighborhood it may be
24 in?

25 A I wouldn't say the practice changes. I'm not going

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1 to say it changes.

2 Q Mm-hmm (affirmative).

3 A I'm explaining to you that -- you asked me in my
4 personal experiences. And my experience is I've
5 never taken handcuffs off to do a line-up, but I
6 might entertain that thought if it was a vandalism as
7 opposed to a robbery.

8 Q Okay. So your testimony then is that you might
9 entertain the thought of changing your practices
10 depending upon the crime they're accused of?

11 A Could be, yeah.

12 Q Okay. That's good enough. Investigator, Ms. Shipley
13 went over the fact that you prepared an investigative
14 report in this case?

15 A Yes.

16 Q Okay. You recall doing that?

17 A Yes.

18 Q Okay. And you and Ms. Shipley went over the fact
19 that the reason you do that is to get your facts
20 right, correct? So for a situation like this, being
21 in court today. Is that fair enough?

22 A Not with the way you're describing it. This report
23 is done to get my notes together immediately after I
24 am involved. I don't get involved with Solicitor
25 Shipley until months or a year or two later.

- 1 Q But you want the report to be accurate, right?
- 2 A Yes.
- 3 Q And that was helpful earlier because you were able to
- 4 recall on direct testimony that you covered the
- 5 defendant's hands with a t-shirt, correct?
- 6 A That's correct.
- 7 Q Okay. And so this report is designed to help you
- 8 correct what may be a lapse in memory over two years?
- 9 A It's a safeguard. Yes.
- 10 Q All right. And this report is a depiction of your
- 11 investigation?
- 12 A It's roughly. Yes.
- 13 Q All right. And in your report you indicate that Ms.
- 14 Anderson was not 100 percent sure on the ID, don't
- 15 you?
- 16 A Let me read it to make sure. I said, I think my
- 17 quote was, she was not 100 percent sure because --
- 18 well, she looked at him and positively picked him.
- 19 She was not a hundred percent because he was wearing
- 20 a mask. However, she was a hundred percent sure of
- 21 his build, clothing and the vehicle.
- 22 Q Okay. So sure on the build, correct?
- 23 A Sir?
- 24 Q Sure on the build?
- 25 A Sure on the build, yes.

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- 1 Q Sure on the clothing, correct?
- 2 A Sure.
- 3 Q Sure on the vehicle, right?
- 4 A Yes.
- 5 Q But not a hundred percent sure, right?
- 6 A Right.
- 7 Q Okay. Now, when you did what you call a drive by,
8 that was on the side of Bluff Road, correct? You had
9 the defendant positioned on the side of Bluff Road.
10 Is that right?
- 11 A On the side of Bluff Road?
- 12 Q Yes.
- 13 A No. No.
- 14 Q Where did you have him?
- 15 A Well, that map will show you back, I believe it was
16 on Candlelight which is where the apprehension site
17 was.
- 18 Q Okay. So you had him, you said you thought it was on
19 Candlelight where the apprehension site was?
- 20 A If I'd have to refer to the incident report to tell
21 you exactly where the arrest location is. But it's
22 deep within a neighborhood. If you'd give me a map,
23 maybe I can help you a little bit better.
- 24 Q Do you not remember where you had him?
- 25 A Yeah. I just don't remember the name of every road

1 on there.

2 Q Take your time.

3 A I mean that's kind of confusing.

4 Q You're right.

5 A Do you have a map?

6 Q Do you need to refer to the map?

7 A Yeah.

8 Q Okay.

9 A Okay. Bluff Road is over here.

10 Q Mm-hmm (affirmative).

11 A He was stopped and apprehended back in this

12 neighborhood at that point.

13 Q Okay.

14 A Right there.

15 Q Okay.

16 A Right there beside that was the next house over from

17 his apprehension site. And that's where the

18 basketball goal was. So it's three blocks away from

19 Bluff Road. It's back into a little bit more

20 isolated part of the neighborhood.

21 Q Okay. How many blocks away from where you had him

22 positioned would you estimate is the apprehension

23 site?

24 A From the apprehension site?

25 Q Yes, sir.

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1 A Probably -- I know it's within the same block. It
2 wasn't numerous blocks.

3 Q Okay.

4 A So I guess from the apprehension site, it might be
5 only 30 or 40 feet, something like that.

6 Q So less than a block away from the apprehension site?

7 A Yes, sir.

8 Q All right. The apprehension site, when you say the
9 apprehension site, you're describing where a number
10 of police officers apprehended Mr. Portee, right?

11 A I can't speculate. I don't know. I wasn't there.

12 Q So when you say apprehension site, is it fair to say
13 that's what you are referring to?

14 A I'm referring to the apprehension site as the
15 location where I guess the money and stuff was, where
16 Deputy Unger, he was the one that apprehended the
17 man.

18 Q And there were police cars at the apprehension site,
19 correct?

20 A Well, no. Not really. Because when they made the
21 traffic stop the patrol car was back here. The
22 defendant's vehicle was here. The guy fled and ran
23 to join the next property. And that's where the
24 apprehension site was. So there was not a patrol car
25 probably within, I don't know, maybe 30, 40, 50 feet

1 from him.

2 Q Okay. And you said that -- again you said where you
3 had Mr. Portee positioned was less than a block away
4 from where he was apprehended. Is that right?

5 A Yes.

6 Q Okay. Now, when you finally did arrange the show-up
7 ID the way you wanted it, you testified that there
8 were two officers within eight to ten feet of Mr.
9 Portee, correct?

10 A I mean, give or take. I didn't pull out a measuring
11 stick. But somewhere in that vicinity.

12 Q So it could have been less than eight to ten feet?

13 A I don't think it was any less. But I think eight to
14 ten is probably accurate.

15 Q And these officers were in uniform?

16 A Yes, sir. Yes, sir.

17 Q All right. And you had -- you testified that you
18 covered Mr. Portee's hands with a t-shirt?

19 A I did.

20 Q And you did so to hide the fact that he was
21 handcuffed, correct?

22 A That's correct.

23 Q You didn't take the handcuffs off though, did you?

24 A No.

25 Q All right. Now, you had two other police officers

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1 close by, correct?

2 A Yes.

3 Q You didn't take the handcuffs off?

4 A Oh, no.

5 Q Okay. And when you had his hands covered, he was
6 standing like this with his hands -- let me just
7 describe for the court reporter; his hands collapsed
8 in front of him?

9 A They were together.

10 Q They were together?

11 A Whether they were collapsed or hand in hand like
12 that, I don't know. But they were close.

13 Q This was a white t-shirt?

14 A It was white or it might have been beige, something
15 like that, something off white or something.

16 Q And it's your testimony that this didn't change his
17 posture at all?

18 A No.

19 Q He looked like he was standing there normally?

20 A Well, as normal as we could do.

21 Q As normal as you can do with two police officers on
22 either side?

23 A I mean, I don't know how comfortable you want him to
24 be, but he stood in a normal posture.

25 Q Okay. After you conducted this show-up ID, it was

1 then that you took a statement from Ms. Anderson,
2 wasn't it?

3 **A** After everything was done, then I took a statement.
4 Yes.

5 **Q** After everything was done. Okay. All right. Beg
6 the Court's indulgence one moment. Nothing further,
7 Your Honor.

8 **THE COURT:** Just out of curiosity, are those
9 witnesses? No?

10 **MS. SHIPLEY:** Not my witnesses.

11 **THE COURT:** You all are not witnesses in the
12 case? No. I say are you witnesses in this case?

13 **UNKNOWN PERSON:** No, sir.

14 **THE COURT:** Okay. Well, you can stay. That's
15 all right. All right. Nothing is going to happen.

16 **MR. COOPER:** I don't think he's coming back.

17 **MS. SHIPLEY:** Yeah. You scared him.

18 **THE COURT:** Is there a warrant out for your
19 arrest? Yes, ma'am.

20 **MS. SHIPLEY:** Your Honor, just two questions.

21 REDIRECT EXAMINATION

22 **BY MS. SHIPLEY**

23 **Q** In your experience of 16 years of being in law
24 enforcement, was Mr. Portee a flight risk when he was
25 apprehended?

Donald Robinson - Redirect by Ms. Shipley (In Camera)

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1 **A** Absolutely. And I think that was obvious with what
2 happened.

3 **Q** The high speed chase through a neighborhood?

4 **A** The high speed pursuit. Yeah.

5 **Q** And what about, was he considered a danger to the
6 community after having committed a crime of armed
7 robbery?

8 **A** I would say yes.

9 **Q** Thank you. No further questions.

10 **THE COURT:** Anything further?

11 **MR. COOPER:** Nothing for the record.

12 **THE COURT:** You may come down, sir. Thank you
13 very much.

14 **WITNESS:** Thank you, Your Honor.

15 **MS. SHIPLEY:** That is all the witnesses for
16 purposes of Neil vs. Biggers, Your Honor.

17 **THE COURT:** All right. Approach the bench,
18 please.

19 (Whereupon, a bench conference is had)

20 **THE COURT:** All right. We'll stand at ease
21 until 2:30.

22 (Whereupon, a lunch break is taken)

23 **THE COURT:** All right, counsel. As I said, I'm
24 just trying to get an indication as to time. I know
25 you want to try to get this case under way this

1 afternoon or in the morning. Juror number 183 is the
2 foreperson.

3 **MS. SHIPLEY:** Juror number 140 what?

4 **THE COURT:** 183. 183 is the foreman. All
5 right. Any motions with regard to the identification
6 testimony?

7 **MR. COOPER:** Yes, Your Honor. Your Honor, based
8 on the previous hearing, defense moves to suppress,
9 number one, any mention of the out-of-court
10 identification of the defendant by the witness in
11 trial in front of the jury; number two, any in-court
12 identification by the witness in trial in front of
13 the jury.

14 **THE COURT:** What's the difference?

15 **MR. COOPER:** Well, Your Honor, I'm just
16 distinguishing them to mention that she positively
17 ID'd him.

18 **THE COURT:** Oh. You mean the solicitor in
19 opening statements? Is that what you're talking
20 about?

21 **MR. COOPER:** Yes, Your Honor. And any mention
22 by the witness for any testimony as to the effect;
23 you know, testimony such as, well, that day I went
24 and ID'd him with the officer; in addition to the
25 witness identifying him in court in front of the

1 jury.

2 *THE COURT:* All right. I understand. And
3 what's the basis for that?

4 *MR. COOPER:* Well, Your Honor, several bases.
5 Number one, based on the case law of Neil v. Biggers
6 and resulting South Carolina case law; notably, State
7 v. Govan which I have a Porter copy of if you'd like
8 it, we believe that the ID procedure, the show-up ID
9 procedure was inherently suggestive. We believe that
10 during testimony we demonstrated this.

11 We elicited testimony that, number one, Corporal
12 Enzor who went and picked up the witness was in a
13 marked car. He was in uniform. Number two, we
14 demonstrated that the show-up ID took place not far
15 from where he was apprehended close to the car which
16 had been ditched at that point.

17 And the officer just testified that where he
18 positioned Mr. Portee was within eight to ten feet of
19 two uniformed police officers. There was also
20 testimony that Mr. Portee remained handcuffed and
21 that those handcuffs were covered with a t-shirt.

22 Well, our position is that that is not
23 sufficient to eliminate the suggestiveness in that
24 the totality of the circumstances, when you look at
25 everything that happened to that witness from the

1 time of the events that morning to the time when she
2 was taken to see Mr. Portee, she was undoubtedly
3 exposed to suggestive activities.

4 She knew that, the police officers discussed
5 that with her, that they were taking her to see
6 someone that they had just engaged in a pursuit with.
7 She again testified that there were marked police
8 cars where he was. Her testimony was that the
9 handcuffs were covered by a yellow jacket.

10 And Your Honor may have noticed some of the
11 discrepancies in her testimony versus the officer's
12 testimony. And it's our position that this is
13 exactly the kind of testimony in front of the jury
14 that Neil v. Biggers and resulting case law was
15 designed to prevent. Because it's our belief that
16 Ms. Anderson's perception today has been irreparably
17 compromised by the suggestive procedure that she was
18 subjected to.

19 So it's our position that not only was the
20 procedure suggestive, but it was so suggestive as to
21 render the ID unreliable. And, Your Honor, for all
22 those reasons, that's what we base our motion to
23 exclude the in-court identification and any mention
24 of the out-of-court identification.

25 And, Your Honor, I think those discrepancies are

1 highlighted by one in particular; and that is, her
2 testimony that she made an ID and then the officer's
3 resulting testimony that she did say that she wasn't
4 100 percent sure. And we submit those differences
5 are then caused by the suggestive procedure that she
6 was subjected to.

7 **THE COURT:** The State's position.

8 **MS. SHIPLEY:** Your Honor, the State relies on
9 the exact same case, State vs. Govan. I'm going to
10 hand one up to the Court. Your Honor, in State vs.
11 Govan, it was an armed robbery of a Chinese
12 restaurant. And the robber in that case held a gun
13 in close proximity to the victim one, Yin Lin, L-I-N,
14 Jenny. Indicated that the guy was a black male with
15 a long black jacket, black hat or a rag, entered the
16 restaurant, held the gun to her hair and demanded --
17 and there was some language problems because she was
18 Asian, Your Honor. But demanded money from the cash
19 register, lifted the money from the register into a
20 bag and then the robber fled on a bicycle with
21 \$1,024.

22 Your Honor, there was basically another employee
23 that also saw the driver flee on a bicycle and
24 basically left the scene. 45 minutes later an
25 individual fitting the description provided by the

1 witnesses of the armed robbery was spotted by the
2 police. This man was identified later as Govan. He
3 dropped a brown paper bag when he saw the police and
4 he attempted to flee. The police were able to locate
5 the bag and they found what appeared to be the same
6 amount of money stolen from the robbery.

7 At that point they got a K-9 unit to track the
8 scent from the bag and they were able to find Govan
9 hiding in a ditch. The police then took custody of
10 Mr. Govan. And when they did so, they also found a
11 gun in his possession. The police then had Mr. Govan
12 stand in front of a police vehicle and had Lin, the
13 victim, driven in a second police vehicle to identify
14 him.

15 Our court has ruled that that blatant showing
16 this man standing next to a police car was not unduly
17 suggestive. And the reasons this court provides is
18 that, "Although show-up identifications are not
19 favored or looked upon favorably, they are necessary
20 in some limited cases."

21 And on I guess page 6, Your Honor, it says:
22 "Notwithstanding the inherent suggestiveness and
23 general disfavor of a one-on-one show-up
24 identification, they may be proper where they occur
25 shortly after the alleged crime."

1 Your Honor, we have this going on in a shorter
2 amount of time. This was within about 20 to 30
3 minutes; 20 minutes if you listen to Ms. Anderson, 30
4 minutes if you listen to Mr. Robinson or Sergeant
5 Robinson. But it's still less time than it did take
6 in the Govan case.

7 Also that it was near the scene of the crime.
8 Again, Ms. Anderson testified it was a short drive
9 from the Family Dollar to where she was taken to this
10 identification. Sergeant McDonald or Sergeant
11 Robinson testified that it was somewhere between
12 three to five miles. All you do is take Atlas Road
13 from the Family Dollar to Bluff Road and you're
14 there.

15 But also because the witness's memory is still
16 fresh. Well, clearly, Ms. Anderson's memory was
17 fresh. Also the suspect had not had time to alter
18 his looks or dispose of evidence. Well, in this case
19 he's caught in the same clothes as the perpetrator of
20 the robbery. He's wearing the gray pants and his
21 sneakers. He is seen caught in possession of cash
22 from the robbery and also in possession of a bright
23 yellow jacket which I submit is unique, and also a
24 black ski mask with the holes cut out of it or a
25 black knit cap with the holes cut out of it.

1 And also another reason why the court has found
2 that this is a proper area to do a show-up
3 identification is because the show-up may expedite
4 the release of innocent suspects. I specifically
5 asked Sergeant Robinson, you know, why did you have
6 her come right away? Well, I wanted to make sure I
7 had the right guy.

8 Also to enable the police to determine whether
9 or not to continue searching. Had this not been the
10 right guy, they would have continued their search and
11 simply charged the defendant with failure to stop.

12 Your Honor, also the court in Govan goes on to
13 elaborate about the items of clothing that that
14 suspect was wearing as consistent with the
15 description provided by the witness of the crime, the
16 victim. The fact that the money was recovered. In
17 that case the gun was recovered. In our case, Your
18 Honor, you will hear testimony of Unger's search of
19 the vehicle. But for purposes of this hearing, he's
20 found to be in possession of cash, the ski mask and
21 the bright yellow jacket. He's wearing white shoes.

22 **THE COURT:** That's got nothing to do with the
23 identification.

24 **MS. SHIPLEY:** Yes, sir, Your Honor. Because
25 it's consistent with what -- according to the court,

1 the consistency of the description of the clothes as
2 provided by the victim of the crime is to be
3 considered, the accuracy of the description.

4 *THE COURT:* The clothes, yes. But the money --

5 *MS. SHIPLEY:* Well, the fact that he is found
6 with cash, Your Honor. The cash as described by
7 Sergeant Robinson was found underneath him during the
8 apprehension, strewn along the ground beneath him.

9 *THE COURT:* Well, those are circumstantial
10 evidence that it's him.

11 *MS. SHIPLEY:* Yes, sir. And I'm just saying --

12 *THE COURT:* And I agree with that.

13 *MS. SHIPLEY:* -- under the totality of the
14 circumstances, those are things --

15 *THE COURT:* Well, that's what you're dealing
16 with.

17 *MS. SHIPLEY:* Yes, sir. And that because of the
18 totality of the circumstances that there is
19 independent corroborating evidence in addition to the
20 identification by Ms. Anderson. That's the only
21 reason I bring those up.

22 *THE COURT:* I understand. Yeah. Because they
23 don't have a lot to do with how she identified him.

24 *MS. SHIPLEY:* No, sir. I just wanted to explain
25 that those were corroborating factors and evidence in

1 this case.

2 Your Honor, the court in Govan held that the
3 show-up identification: "We find that although the
4 show-up was suggestive, it was not unduly suggestive
5 under the above-noted tests", which it cites the Neil
6 vs. Biggers test, as well as they refer to Carlson.

7 They find -- they state further in Govan that
8 even if it had been unduly suggestive that the
9 attempt by the defense to exclude the in-court
10 identification would fail under the analysis of the
11 second prong of the test developed in the Biggers
12 decision. The in-court identification is admissible
13 if the State can prove by clear and convincing
14 evidence that the identification is reliable based on
15 information independent of the out-of-court
16 procedure.

17 And, Your Honor, the reason why I brought up the
18 clothing and all of that is to show that we have
19 established by clear and convincing evidence that
20 there are independent factors and corroborating
21 circumstances to the identification by Ms. Anderson
22 of this defendant.

23 Also I think in the direct testimony of Ms.
24 Anderson we covered clearly her opportunity to view
25 him on several occasions. Number one, it being,

1 noticing the vehicle, for one thing, near the parking
2 lot of the hotel, then being in the business at
3 8 a.m. and noticing him pull up. She heard the car.
4 She looked. She stepped down to look further. He
5 was five feet away from her. It's 8 a.m. in the
6 morning. She said although it was dark in the
7 business, she had a good view of him at the door of
8 the business and that he didn't even notice her but
9 that she saw his vehicle at that point and then that
10 that lasted for a few seconds. But her testimony was
11 she was alone in the store and so her attention was
12 heightened as a result.

13 Then the next opportunity, Your Honor, is during
14 the robbery when he is disguising his face. But she
15 still describes him as having very light skin. She
16 actually thought he was white during the robbery
17 because he was wearing a mask. But she describes
18 with distinct detail the clothing he was wearing, his
19 height, his weight, that it's consistent with the
20 height and weight of the person she observed looking
21 at the store hours, what she thought was the store
22 hours, and also his complexion.

23 Then the third opportunity, Your Honor, is
24 during the show-up identification which is within a
25 short period of time. Nothing was obstructing her

1 view. And she was absolutely certain that this was
2 the same individual based on his build, the clothing,
3 the vehicle and so forth. However, --

4 **THE COURT:** He wasn't wearing the yellow jacket
5 when she went to the show-up.

6 **MS. SHIPLEY:** No. No, sir. But later on --
7 you're right. You're right, sir. But also she did
8 not even know he was under arrest because that was
9 covered, the handcuffs were covered by a white
10 t-shirt according to Sergeant Robinson. And she was
11 able to say that I'm sure it's him based on his build
12 and based on his complexion and based on the gray
13 sweatpants.

14 She even was descriptive about how they appeared
15 to be higher up his legs than they were during the
16 robbery. And then the shoes were the same. She said
17 those were the same shoes. So for the purposes of
18 identification, that would be what the State would
19 stand on.

20 But, in addition, subsequent to that, she also
21 identifies the vehicle as being the same and the
22 jacket, yellow jacket and ski mask as being the same.
23 And for purposes, this is more of any discrepancy
24 between her recollection of a yellow jacket being
25 used to cover his hands or Sergeant Robinson's

1 documented notes that it was in fact a white t-shirt
2 that he used to cover the hands, it's an issue for
3 the jury. It's a credibility issue for them to
4 decipher. So this would go to its weight, not its
5 admissibility, Your Honor. And we would respectfully
6 request that you deny the defense's motion.

7 *THE COURT:* All right. Mr. Cooper, what about
8 the other factors other than the identification by
9 the witness that corroborate in effect the
10 identification? In other words, when Govan talks
11 about the State proving by convincing evidence that
12 the identification is reliable based on information
13 independent of the out-of-court procedure?

14 In other words, even if I agree with you with
15 regard to the out-of-court procedure -- I'm not
16 saying I do, but I'm not saying I don't -- what about
17 those other factors?

18 I mean there are a lot of show-ups where the
19 witness, they've been in this courtroom, where the
20 witness never even saw the perpetrator but approached
21 from behind and there was no identification at the
22 scene. Yet, the witness makes an identification and
23 a show-up. It's almost entirely because of the
24 suggestive nature of the show-up.

25 Courts disfavor that show-up procedure. But

1 this case has additional factors. I am wondering
2 what your position is with regard to those
3 independent factors, like the prior identification or
4 the prior observation of the defendant, the clothing,
5 the pursuit, the fact that the defendant fled on
6 foot; all of those factors that probably go into
7 making a decision on whether or not this is indeed a
8 truly reliable identification.

9 **MR. COOPER:** Yes, sir. And, Your Honor, if I
10 understand you correctly, part of your question is
11 addressing the second prong as to the reliability?

12 **THE COURT:** Yeah.

13 **MR. COOPER:** Our position is that while Govan
14 calls them independent factors, under the specific
15 facts of case, those factors aren't entirely as
16 independent as the State would like you to believe.

17 For instance, one thing that they relied on, and
18 it was my impression that the main initial ID that
19 they were relying on was the witness seeing someone
20 at 8 a.m. at the store. Well, one of the prongs of
21 the reliability prong is the witness's perception at
22 the time of the crime. Well, at the time of the
23 crime would be the time of the armed robbery.

24 **THE COURT:** Right.

25 **MR. COOPER:** So really all the testimony

1 elicited about her perception of someone else outside
2 the store, actually our position is isn't to be
3 considered because that was not at the time of the
4 crime.

5 *THE COURT:* Well, do you think that if she
6 identified at the show-up the person who was at the
7 door at 8:00, it may have nothing to do with the
8 robber; maybe another guy came in the back door. Is
9 that sort of the --

10 *MR. COOPER:* And, Your Honor, what I'm saying
11 is, our argument remains that none of it should be
12 allowed. But I think that what I was trying to
13 illustrate is that we're not relying just on the
14 suggestivity of the procedure.

15 *THE COURT:* Okay.

16 *MR. COOPER:* We're saying that taken altogether,
17 that's why they had so many problems getting the
18 officer's testimony to line up with the witness's.
19 Because this thing led to confusion that makes it
20 unreliable. That's the kind of testimony our
21 position is that you don't want going in front a
22 jury. Because what they did tainted it. Even with
23 those independent factors, we believe that taken all
24 together that witness with everything that happened,
25 ID'ing him in court would not be proper.

1 **THE COURT:** All right. Anything further?

2 **MS. SHIPLEY:** No, Your Honor. We just -- we
3 stand on Govan.

4 **THE COURT:** All right. Well, the consistent
5 things about her identification, whether the process
6 was unduly suggestive or not, are the automobile
7 which she says she saw that morning, the skin tone of
8 the defendant, the build of the defendant, the
9 clothing of the defendant.

10 In other words, even if the officers were to
11 have suggested that this was the perpetrator, those
12 factors would have been consistent with her
13 observations throughout the day prior to the
14 identification.

15 If I take those factors; I mean, even if, as,
16 Mr. Cooper, you say, that the process of identifying
17 him by means of a show-up was overly suggestive, then
18 that's why the courts make us look at these issues
19 very closely, because show-ups are inherently
20 suggestive; she is fairly positive in her
21 identification of the defendant when she saw him.
22 She talks about the way he wore his sweatpants.

23 I think have to rely somewhat on the degree of
24 certainty that she exhibited when she saw him at the
25 scene of the arrest. And, granted, there were police

1 officers standing fairly close to him and police cars
2 in the vicinity. But this identification took place
3 probably within 30 minutes of the robbery, not a
4 great distance away, not a great distance away from
5 the scene of the robbery.

6 And I take those factors and add to that the
7 fact that the defendant was the object of the
8 pursuit, both vehicular and on foot, that there was a
9 mask discovered later. I don't know if she ever
10 identified that mask. There was a bright yellow
11 jacket which she consistently said was worn by the
12 perpetrator.

13 The fact that there's money at the arrest site,
14 that would not normally be laying on the ground if it
15 was the defendant's money or the perpetrator's money.
16 It's more likely that that money was taken from the
17 store bag and not carried carefully as most people
18 carry their money.

19 I just think if I put all of those factors
20 together, Mr. Cooper, you said I need to look at the
21 totality of the circumstances, and that's exactly
22 right; but if I put all of those circumstances
23 together, even though her identification may have
24 been suggested or suggestive, either way you want to
25 look at it, the officers testified that they made no

1 affirmation that was the perpetrator. And I have to
2 rely on that testimony as well.

3 Actually the process used by the officer was
4 probably more -- Sergeant Robinson was probably more
5 meticulous and more careful than a lot of show-up
6 identifications that are overly suggestive. It seems
7 that his procedure, at least he had a procedure for
8 going about this show-up identification and not
9 making it any more suggestive than necessary.

10 So putting all those factors together, and I
11 realize that there could have been somebody at the
12 front door of the store, Family Dollar Store, and
13 somebody at the back door of the Family Dollar Store,
14 but the skin tone and the clothing and the manner of
15 dress suggests that it was the same person that she
16 saw at the front door and the same person she saw at
17 the site of the show-up identification.

18 So I'm going to respectfully deny your motion.
19 I think the totality of the circumstances would allow
20 the identification.

21 Now, what else do we have?

22 **MS. SHIPLEY:** Jackson vs. Denno.

23 **THE COURT:** And that's --

24 **MS. SHIPLEY:** That's it.

25 **THE COURT:** How much?

1 *MS. SHIPLEY:* His statement is two pages long.
2 There is one sentence on the third page.

3 *THE COURT:* What's the objection to it, to the
4 statement?

5 *MR. COOPER:* Well, the objection is the
6 voluntariness of the statement, Your Honor.

7 *THE COURT:* Okay. Well, that's the issue for
8 Denno. Is there anything else about the statement
9 that's --

10 *MR. COOPER:* I believe the solicitor and I have
11 already addressed redaction. We've agreed on that.

12 *THE COURT:* There's some redaction?

13 *MS. SHIPLEY:* Yes, sir. We already redacted two
14 questions on the third page and it's already marked
15 for evidence.

16 *THE COURT:* All right. Call your first witness.

17 *MS. SHIPLEY:* Your Honor, just for planning
18 purposes, should I excuse my victim or should I make
19 her stay for the trial? Has the jury been excused
20 yet?

21 *THE COURT:* No. They have not been excused.
22 I'm trying to get something in today.

23 *MS. SHIPLEY:* Yes, sir. Your Honor, at this
24 time the State calls Sergeant Kevin Isenhoward.

25 KEVIN ISENHOWARD, after being duly sworn,

1 testifies as follows:

2 **THE CLERK:** Thank you. Please have a seat in
3 the witness stand. Please state your full name for
4 the record and please spell your last name.

5 **WITNESS:** My name is Kevin Isenhoward. Last
6 name is spelled I-S-E-N-H-O-W-A-R-D.

7 DIRECT EXAMINATION

8 **BY MS. SHIPLEY**

9 **Q** Sergeant Isenhoward, where are you employed?

10 **A** At the Richland County Sheriff's Department.

11 **Q** How long have you been employed there?

12 **A** Ten years.

13 **Q** What is your title and your duties?

14 **A** I'm a sergeant in the major crimes unit, specifically
15 armed robberies.

16 **Q** And what are your duties as a sergeant?

17 **A** I supervise a unit of three investigators handling
18 armed robberies occurring in Richland County.

19 **Q** And part of your duties, is that questioning suspects
20 about armed robberies?

21 **A** Absolutely.

22 **Q** I'm going to bring your attention to November 9th,
23 2006. Do you recall making contact with the
24 defendant, Jimmy Portee?

25 **A** I do.

Kevin Isenhoward - Direct by Ms. Shipley (In Camera)

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1 Q And where was that?

2 A Initially it was on I believe Hialeah just briefly.
3 And then he was brought to the Richland County
4 Sheriff's Department where we spoke further.

5 Q Okay. And where is the Richland County Sheriff's
6 Department?

7 A In the criminal investigations division. I have a
8 cubicle there. I spoke to him in my cubicle.

9 Q And describe how big your cubicle is?

10 A It's 10-by-12, I think is the measurements, with
11 walls that are about four foot high concealing you
12 while you're sitting down, but you can see the roof
13 and it's open.

14 Q And if you were to stand, could other people see you?

15 A Yes. You can see completely across the room.

16 Q Is it a door or is it open?

17 A There is an entryway to the cubicle. It doesn't have
18 a door on it.

19 Q Okay. And a desk and a chair for you and a chair for
20 the witness or suspect?

21 A Yes.

22 Q All right. Now, describe for Judge Cooper the
23 defendant's demeanor when you made contact with him
24 at the headquarters?

25 A He was visibly upset. I mean he was -- appeared to

1 be nervous. He was sweating. And I attributed that
2 to the situation. I explained to him what was going
3 on and that we'd be taking him to headquarters and
4 that he was under arrest. And I believe Sergeant
5 Robinson had already advised him verbally of his
6 rights. But when I arrived to headquarters, I
7 advised him of his rights in writing.

8 Q I'm going to show you State's No. 4. Do you
9 recognize it?

10 A I do.

11 Q What is it?

12 A This is our departmental Interrogation/Advice of
13 Rights Form.

14 Q And is that the one that you filled out with Mr.
15 Portee?

16 A It is the exact one.

17 Q What time did you start his advice of rights?

18 A It's 11:47 hours.

19 Q And that's in the morning, correct?

20 A 11:47 in the morning.

21 Q And could you please go over that form in the exact
22 same fashion that you did with Mr. Portee on
23 November 9th?

24 A Like I said, it's the Richland County
25 Interrogation/Advice of Rights. It has Mr. Portee's

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1 name and the location where I advised him, which is
2 the Sheriff's Department on Two Notch Road; my name;
3 the date of November the 9th of 2006; the time. It
4 says: "Your rights." As I read through these with
5 the individual, there is a block for me to check off
6 acknowledging that they were read it, they heard it
7 and understood it. So once I get confirmation that
8 they understood it, I check the block.

9 This one, it begins: "Before we ask you any
10 questions you must understand your rights." I say,
11 "Do you understand that?" If I get an affirmative
12 answer, I check the block, which I did. "You have
13 the right to remain silent." The block is checked.
14 "Anything you say can be used against you in court."
15 Again checked. "You have the right to talk to a
16 lawyer for advice before we ask you any questions and
17 to have a lawyer present with you during any
18 questioning." The block is checked.

19 "If you cannot afford a lawyer, one will be
20 appointed to you before any questioning if you wish."
21 It's also checked. "If you decide to answer
22 questions now without a lawyer present, you still
23 have the right to stop answering at any time. You
24 also have the right to stop answering at any time
25 until you talk to a lawyer." That block is checked.

1 And then I asked him if he understood everything
2 that I've read to him, please sign, which he did
3 sign; and I acknowledged as a witness with my
4 signature. It continues.

5 Q Go ahead.

6 A It continues down to the waiver of rights which says:
7 "I have read this statement of my rights and
8 understand what my rights are. I am willing to talk
9 and answer questions. I understand and know what I
10 am doing. No promises have been made to me and no
11 pressure or coercion of any kind has been used
12 against me." That block was checked.

13 I will note that oftentimes I will ask them if
14 they can tell me what coercion means. If they say
15 they don't, I underline it. It's not underlined
16 here. That would acknowledge that he understands the
17 word coercion. He did sign it and I witnessed it.

18 Q At that point did you begin your interview of the
19 defendant, Mr. Portee?

20 A I did.

21 Q And can you describe exactly what it is he told you?

22 A I explained to him the situation, the evidence that
23 we had against him and the severity of the charges.

24 Q And before you began, is this State's No. 5?

25 A Yes, it is.

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1 Q And what is that?

2 A It is a statement of Jimmy Douglas Portee.

3 Q And is that the statement you took from him that day?

4 A This is the statement I took from him the 9th of
5 November 2006 at 12:02 hours.

6 Q And so the actual written form began at 12:02?

7 A Yes. What we do is we go over their statement
8 verbally. I talk to them. I give them an
9 opportunity to change their statement, if they want
10 to clarify something before we actually reduce it to
11 writing.

12 Q Okay.

13 A So the final statement should be exactly what they
14 want to tell me.

15 Q All right. And so did you then begin -- after you
16 had a verbal conversation with him, did you then
17 begin to type up his answers?

18 A I did.

19 Q And please go over the statement in State's No. 5 as
20 he provided it to you on November 9th?

21 A Okay.

22 MR. COOPER: Your Honor, I object. The exact
23 contents of the statement is not really relevant to
24 its voluntariness. I don't think it's necessary for
25 her to go through it all.

1 Q Okay. That's fine. Okay. Now you said that at
2 12:02 he provided, began the written portion of his
3 statement, correct?

4 A Yeah. And I might add that that written statement
5 also has a secondary advice of rights at the
6 beginning of it, which he also signed this document.

7 Q Okay. And at that point when you interviewed him,
8 did you have him sign each page of his statement?

9 A I did. I signed -- he actually signs on two places.
10 The first is acknowledging the statement. The second
11 is that I provided him an accurate copy of the
12 statement.

13 Q Okay.

14 A So he signed on every page twice, which I notarized
15 every page.

16 Q And under his signature the first time on each page,
17 what is the preceding sentence?

18 A Under his signature the first time?

19 Q Mm-hmm (affirmative).

20 A It says: "This is to certify that I have read" --

21 Q No. The first one above that.

22 A Oh. "I have made this foregoing statement freely,
23 voluntarily, without fear, threat, promise or reward
24 or hope of a reward of any kind."

25 Q So did he sign that?

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1 A He did.

2 Q Then the second signature on that same page, what's
3 it under?

4 A It says: "This is to certify that I've read or have
5 had read to me the foregoing statement consisting of
6 three pages, and a true copy has been given to me
7 this 9th day of November 2006."

8 Q Okay. And then again did you have him sign that?

9 A I did.

10 Q And if he were to make any changes to this three-page
11 statement, would you have allowed him the opportunity
12 to do so?

13 A Yes.

14 Q And so you read -- did you read the statement back to
15 him, or did he read and it and sign it?

16 A Generally what I do is I ask them can they read, do
17 they need glasses. And if I get yes, I can read and
18 I don't need glasses or I have them with me, I
19 provide them a copy and then I read it back using my
20 computer screen. Because it's on a computer screen.
21 So basically both. I read it and he reads it.

22 Q Okay. How long was Mr. Portee in police custody by
23 this point, by 12:02 a.m.?

24 A Let's see. Several hours I guess.

25 Q Okay. If he was -- what time did the incident occur

1 approximately?

2 A The incident report indicates that the incident
3 occurred at 9:15 in the morning.

4 Q Okay. And the defendant is then apprehended
5 according to Sergeant Robinson and the victim 20 to
6 30 minutes later. Is that correct?

7 A Yeah. So about 9:45.

8 Q 9:45'ish?

9 A Mm-hmm (affirmative).

10 Q And then he is Mirandized by 11:47. Is that right?

11 A In written form.

12 Q In written form?

13 A Yes.

14 Q But already once before that?

15 A Yes.

16 Q By Sergeant Robinson?

17 A Yes.

18 Q And I'm going to show you the arrest report and ask
19 you if you are familiar with this kind of report?

20 A Yes, I am.

21 Q And what time does Deputy Unger document he arrests
22 the suspect?

23 A I believe it looks like 9:28.

24 Q A.M.?

25 A Yes.

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1 Q So basically within two hours and 15 minutes he is
2 being advised a second time of his rights and gives a
3 statement. How long does this interview last between
4 you and him in your cubicle?

5 A Like I said, well, he was advised at 11:47. We
6 speak. And by 12:02 I'm taking the written
7 statement. I believe probably by about 12:45 we were
8 probably complete.

9 Q Okay. And I'm going to show you the third page of
10 this statement. Do you see what time you document
11 this interview ended?

12 A 12:31 hours.

13 Q And at that point is he then taken to the jail?

14 A He is photographed I believe. And we recover some
15 clothing. And he's placed into jail clothing and
16 then taken to the jail. So within the next hour he's
17 on his way to the jail.

18 Q So basically from 9:28 'til 12:31 and maybe a few
19 minutes after that to change his clothes he was in
20 custody with you?

21 A Yes.

22 Q But the interview of him ended by 12:31?

23 A Yes.

24 Q At any time during this two-hour, 45, three-hour
25 period, did you threaten him in any way?

1 A No.

2 Q Did you make any promises of reward to get him to
3 give up his rights and give a statement?

4 A No, I did not.

5 Q Did you coerce him in any way?

6 A No.

7 Q Was he deprived of any restroom breaks or food or
8 water?

9 A No. As a matter of fact, I believe I provided him
10 with water.

11 Q Okay. Your Honor, that is all I have.

12 **THE COURT:** Cross examination.

13 **MR. COOPER:** Thank you, Your Honor. May it
14 please the Court.

15 CROSS EXAMINATION

16 **BY MR. COOPER**

17 Q Good afternoon.

18 A Hello.

19 Q Okay. When you took Mr. Portee to the Richland
20 County Sheriff's Department, he was handcuffed,
21 right?

22 A Yes.

23 Q And what floor is your office on? Second floor?

24 A The second floor.

25 Q When you took him up the elevator, was he handcuffed?

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1 A He doesn't come up the elevator. We come in the back.
2 door of the Sheriff's Office which is up on the
3 second level. The back of the parking lot is higher
4 than the front.

5 Q He was handcuffed?

6 A Yes.

7 Q And when you sat him down in the cubicle he was
8 handcuffed?

9 A Usually, depending on the behavior of the suspect, I
10 will take them out of handcuffs when they sit down in
11 my cube. So I believe I recall taking him out of
12 handcuffs and sitting down and talking to him.

13 Q So you're saying you don't know whether you had him
14 in cuffs or not, or you're saying what you normally
15 do?

16 A I'm telling you that he wasn't in handcuffs when he
17 sat down and talked to me.

18 Q He was not in handcuffs?

19 A That's right.

20 Q And that's your normal practice?

21 A Yes. Unless they're being unruly. And I don't
22 remember him being that way.

23 Q And you testified that he was nervous and sweating.
24 Is that right?

25 A Yes.

1 Q Ms. Shipley alluded to bathroom breaks and getting
2 water. When that happens, do you make a notation of
3 it on the statement?

4 A If it's going to be very long interview, I will.
5 This was what I would characterize as a pretty short
6 interview process. So, no, I did not make any notes
7 about it.

8 Q Okay. So sometimes you do make a note of it, right?

9 A Yes.

10 Q But in this case you didn't?

11 A Correct.

12 Q All right. All right, Your Honor. I have nothing
13 further.

14 THE COURT: Anything further?

15 MS. SHIPLEY: No, Your Honor.

16 THE COURT: You may come down.

17 WITNESS: Thank you, sir.

18 MS. SHIPLEY: That's all the witnesses for the
19 State, Your Honor.

20 THE COURT: Anything from the defense?

21 MR. COOPER: No witnesses from the defense, Your
22 Honor.

23 THE COURT: All right.

24 MR. COOPER: Based on the content of the
25 testimony at the hearing, we have no motion.

1 **THE COURT:** All right. Thank you very much.

2 **MS. SHIPLEY:** Your Honor, we have a logistics
3 problem. I excused my witnesses before we took our
4 break, and I thought they were still here but they're
5 gone.

6 **THE COURT:** Well, that's all right.

7 **MS. SHIPLEY:** So we won't be able to start. We
8 can do the openings, but I'd like my victim here for
9 that.

10 **THE COURT:** Just do a long opening. Yeah. We
11 can open. Well, is there anything else of a
12 pre-trial nature?

13 **MS. SHIPLEY:** No. Nothing further from the
14 State, Your Honor.

15 **THE COURT:** Just make sure all of your motions
16 are covered, Mr. Cooper.

17 **MR. COOPER:** Yes, sir. I do just want to put on
18 the record, Ms. Shipley spoke to me about it, as far
19 as settling the records, we're still waiting on one?

20 **MS. SHIPLEY:** Lisa Ellis. I'll get that for you
21 as soon as I get her date of birth.

22 **MR. COOPER:** Okay. Appreciate it.

23 **MS. SHIPLEY:** And, Your Honor, for the record,
24 Tracey Anderson, the victim, has no prior record.
25 And Joan Hooks has two fraudulent check convictions.

1 **THE COURT:** That are admissible?

2 **MS. SHIPLEY:** Right.

3 **THE COURT:** Impeachment purposes?

4 **MS. SHIPLEY:** Yes, sir. And I'll get the third
5 one for him.

6 **THE COURT:** All right. Anything else of a
7 pre-trial nature?

8 **MS. SHIPLEY:** None from the State.

9 **THE COURT:** Are you ready to proceed with the
10 jury?

11 **MR. COOPER:** Yes, Your Honor.

12 **MR. SECOR:** Yes, Your Honor.

13 **MS. SHIPLEY:** Your Honor, could you give me one
14 second to confer with my law clerk about whether or
15 not he's made contact with my victim? It won't take
16 long. I'd like her present for the proceeding.

17 **THE COURT:** Oh, I see.

18 **MS. SHIPLEY:** Yes, sir. I thought we were done
19 for the day.

20 **THE COURT:** I understand.

21 **MR. COOPER:** Oh, Your Honor. I'm sorry. I
22 forgot. There is one more thing. You may have ruled
23 on this and I missed it or am not clear on it. We
24 discussed whether or not Officer Robinson would be
25 sequestered. I believe they've designated

1 Investigator Isenhoward as their investigator. And
2 it would be my motion for evidence at trial to go
3 ahead and also sequester Officer Robinson.

4 *THE COURT:* All right. Let's do that. ✓

5 *MR. COOPER:* Thank you, Judge.

6 *THE COURT:* I'm not sure -- we're not going to
7 get to him today anyway.

8 *MS. SHIPLEY:* No, sir. Well, actually, he's my
9 only witness now because I sent everyone home. And
10 so you might want to stick around outside.

11 *THE COURT:* We're not going to take any
12 witness's testimony.

13 *MS. SHIPLEY:* All right. Then you're excused.
14 Let me go find out if they have made contact with my
15 victim, Your Honor.

16 *THE COURT:* John Meadors always needs a break
17 before we start.

18 *MR. SECOR:* May I go to the bathroom, Your
19 Honor?

20 *THE COURT:* That's John Meadors' request. I
21 don't care if you go to the bathroom. Do what you
22 want to do. Are you doing the opening?

23 *MR. SECOR:* Yes, sir. That's probably why I've
24 got to go to the bathroom.

25 (Off the record)

1 **MS. SHIPLEY:** Your Honor, her cellphone is not
2 functioning so we can't get ahold of her. As long as
3 the defense agrees not to comment on her absence,
4 we'll be glad to proceed without her here.

5 **MR. COOPER:** I'm sorry. I didn't hear. I was
6 talking.

7 **MS. SHIPLEY:** We can get ahold of Ms. Anderson.
8 We excused her after the break earlier today.

9 **MR. COOPER:** Right. He's not going to talk
10 about her in opening. No. I don't believe. I'll
11 make sure to tell him that.

12 **THE COURT:** Who is opening for the State?

13 **MS. GOOD:** I am.

14 **MS. SHIPLEY:** Ms. Good is, Your Honor.

15 **THE COURT:** I'm looking forward to that.

16 **MS. GOOD:** Sir?

17 **THE COURT:** I'm looking forward to that.

18 **MS. GOOD:** I'm glad to hear it.

19 (Pause)

20 **THE COURT:** The State ready to proceed?

21 **MS. GOOD:** Yes, sir, Your Honor.

22 **THE COURT:** The defense ready to proceed?

23 **MR. COOPER:** Yes, sir.

24 **THE COURT:** Bring the jury, please.

25 (Jury in at 3:32 p.m.)

1 **THE BAILIFF:** The jury is all present, Your
2 Honor.

3 **THE COURT:** Thank you very much. All right,
4 ladies and gentlemen. Let me say to begin with that
5 sometimes when I tell you it will just be a few
6 minutes, we're trying to work something out, it
7 doesn't always work that way. We worked almost
8 through lunch trying to straighten out some issues
9 that are of a pre-trial nature and just hopefully
10 will make the trial go easier and smoother but it
11 took a little longer than we anticipated. That's why
12 I didn't anticipate it would take quite that long.
13 So I had asked you to be back at 2:30. And I
14 apologize for the wait, but we're now ready to begin.
15 And, Ms. Falcone, if you'll swear the jury, please.

16 **THE CLERK:** Yes, sir.

17 Whereupon, the jury is sworn)

18 **THE COURT:** All right, ladies and gentlemen.
19 You've now received your oath as jurors in this case.
20 We're ready to begin the trial. But permit me a few
21 minutes to explain the process of a trial so that
22 you'll know up front what's expected of you and what
23 your role is and what my role is and what the role of
24 these attorneys is in this case.

25 My purpose in doing so is to put you at ease as

1 best I can in what I'm sure is somewhat of an
2 unfamiliar sitting to most all of you. There are
3 charges in this case. In this court a charge of a
4 criminal law violation is presented in a legal
5 document known as an indictment. And that's what I
6 explained to you a little bit earlier.

7 There are four indictments in this particular
8 case. Please remember that an indictment is not
9 evidence of any kind whatsoever. An indictment is
10 merely the document containing the specific charge
11 against a particular individual. I reiterate that an
12 indictment is not evidence in any sense of the word
13 of any kind.

14 You're going to be asked to pass judgment or to
15 render a verdict on each of the indictments
16 separately, not necessarily influenced by your
17 decision on any of the other indictments. So if
18 you'll keep that in mind during the course of the
19 trial and try to separate in your mind which of the
20 indictments are that you're hearing evidence about as
21 we go along.

22 And do not infer anything from anything that I
23 say as to what your verdict should be in this case.
24 You are to determine the innocence or guilt of the
25 defendant based on the evidence that will be

1 introduced during the trial of the case.

2 Now, I have no opinion about the facts in this
3 case which I can share with you. In fact, the
4 Constitution of the state of South Carolina provides
5 in part that a trial jury -- sir, would you be
6 seated, please? Thank you. A trial judge should not
7 make any comment or statement to a jury about the
8 facts of the case.

9 So do not infer from anything that I might say
10 to you in this instruction or anything else that I
11 might say during the course of the trial in ruling on
12 the admissibility of evidence or otherwise that I
13 have any opinion about the facts in this case. You
14 and you alone will determine what the facts are in
15 this case. You are the sole and exclusive judges of
16 the facts in this case.

17 While you and you alone will determine the facts
18 of the case, as the judge of the law I am required to
19 explain it to you, and you are required under your
20 oath to accept and apply the law precisely as I state
21 it to you.

22 Now, let me remind you of two legal principles.
23 One is the legal yardstick you will use in judging or
24 measuring the evidence in this case. That legal
25 yardstick is known as the burden of proof. And in

1 this case the burden of proof is on the State to
2 prove guilt beyond a reasonable doubt. Should the
3 State fail to meet that burden of proof with respect
4 to a particular charge, it would be your duty to find
5 the defendant not guilty with respect to that
6 particular charge.

7 There is absolutely no burden whatsoever on the
8 defendant to prove or disprove anything. There is no
9 burden on the defendant to testify or to present any
10 evidence because the burden, as always, is on the
11 State to prove guilt beyond a reasonable doubt.

12 Now, you will recall my earlier comment
13 regarding the presumption of innocence. It's a
14 cardinal and fundamental rule of law that a defendant
15 will always be presumed to be innocent of the crime
16 or crimes for which he is charged and indicted. And
17 this presumption of innocence is not some legal
18 theory. It's not a simple legal phrase. It is a
19 substantial right to which any accused, including
20 this defendant, is entitled.

21 And as we begin the trial your role lies
22 essentially in the oath you took, part of which
23 requires to you well and truly try this case. Your
24 oath requires you to find facts, to find the truth
25 from the evidence presented to you during the course

1 of the trial.

2 You are not to consider anything you may have
3 heard or read or seen or done, talked about anything
4 outside the courtroom because your decision must be
5 based solely on the evidence you hear in the
6 courtroom.

7 Now, what is evidence in the state of South
8 Carolina? Evidence comes from one of three sources.
9 The most common example of evidence is the testimony
10 of a witness. The witness will testify from this
11 witness stand. You will see and hear and observe the
12 witnesses and their testimony and their credibility
13 and their demeanor. You determine the credibility of
14 each witness as the course of the trial goes along.

15 A second source of evidence known to the law is
16 what's called an exhibit. An exhibit may be a
17 photograph or a chart or a diagram or something like
18 that. An exhibit is a tangible document with an
19 exhibit label attached to it. And at the end of the
20 trial when you retire to the jury room to begin your
21 deliberation all of those exhibits that are
22 introduced during the course of the trial will go
23 with you to the jury room.

24 And the third source of evidence is what the law
25 calls a stipulation. There may or may not be a

1 stipulation in this case. As the law implies, a
2 stipulation is basically an agreement between the
3 parties as to the existence or nonexistence of a
4 certain fact. If there is such a stipulation, you
5 will be required to accept that stipulation as
6 conclusively determined for purposes of this trial
7 without the necessity of any additional evidence.
8 So, ladies and gentlemen, that's what evidence is.
9 It's testimony, exhibits, and any stipulations.

10 Now, as the trial judge I will preside over the
11 trial and at the end of the case. I will rule during
12 the course of the trial on admissibility of the
13 evidence and at the end of the case charge you the
14 law applicable to this case.

15 Please understand what I tell you is not
16 evidence; and by the same token, what these attorneys
17 tell you is not evidence. The attorneys may make
18 opening statements and closing statements to you but
19 these statements are not evidence. The attorneys ask
20 questions of witnesses but the questions are not
21 evidence. It is the responses that the witnesses
22 give to those questions which constitute evidence.
23 The attorneys will further facilitate the
24 introduction and the receipt of those exhibits that
25 may be introduced during the course of the trial.

1 Now, ladies and gentlemen, you and I do not ask
2 questions of witnesses. We do not offer any
3 exhibits. Your duty is to listen honestly and openly
4 to the evidence, keep an open mind. Do not form any
5 conclusion or judgments prematurely. Do not form any
6 conclusions or judgments until you've received and
7 considered all the evidence, the arguments of the
8 attorneys and my final charge to you on the law as it
9 applies to this case.

10 Consistent with your oath, do not discuss this
11 case with your fellow jurors or with anyone else
12 during the course of the trial. The first
13 opportunity you will have to discuss this case is at
14 the end of the trial when I authorize you to begin
15 your deliberations. I trust you will honor my
16 instructions and your oath in that regard.

17 Now, let's look briefly at the trial process.
18 Each side may make an opening statement to you.
19 After the opening statements we'll begin with the
20 receipt of evidence. The State goes first and
21 presents its evidence. The State goes first because
22 the State brought the charges and has the burden of
23 proof.

24 After we've heard and received the evidence from
25 the State, the same opportunity is given to the

1 defendant; bearing in mind, however, there is
2 absolutely no burden on the defendant to present any
3 evidence at all. Once we have received all the
4 evidence in the case, each side is prepared to make a
5 final argument or summation to you after which I will
6 charge you on the law applicable to this case. It is
7 at that point at the end of the trial when you will
8 be permitted to begin your deliberations.

9 Now, there are just a couple of housekeeping
10 matters. We'll generally run court for about an hour
11 and a half to two hours between breaks, but some
12 things normally happen during the trial of the case
13 which may require us to deviate from the normal
14 schedule. For example, we will break whenever you
15 need a break. So if during the trial of the case you
16 need to take a break, just raise your hand or get the
17 bailiff's attention or my attention and we will take
18 a break.

19 Also legal questions come up from time to time
20 which require me to send you back in the jury room
21 more frequently than I would like. I will apologize
22 up front, but sometimes it's just part of trying a
23 case. Also, if you cannot hear, as I explained
24 earlier, please let us know and we'll make sure that
25 the attorneys or the witnesses speak up more clearly.

1 And if your view of an exhibit is obstructed, please
2 let us know so we can correct that.

3 If you need to bring something to my attention
4 during the course of the trial, please notify one of
5 the bailiffs. And if you do need to contact me
6 during the course of the trial for any reason, it may
7 be necessary for the bailiff to require you to put
8 such a request or concern in writing so that we will
9 have a record of it. If you do have any questions or
10 concerns, which you need to bring to my attention, I
11 will respond as quickly as I can to the extent the
12 law permits me to do so.

13 So thank you for your kind attention. I'll
14 trust you'll give the same kind and undivided
15 attention to these fine attorneys and the parties in
16 this case. Now, because of the lateness of the hour,
17 we will today only hear the opening statements of
18 counsel and we will actually begin with witnesses'
19 testimony in the morning. So with that, counsel, you
20 may begin with your opening statements.

21 *MS. GOOD:* Thank you, Your Honor. Good
22 afternoon. November 9th, 2006, three women by the
23 names of Tracey Anderson, Lisa Ellis and Erica Wilson
24 went to work at the Family Dollar as they do every
25 day to earn a living and to make money. And a fourth

1 woman by the name of Joan Hooks went shopping that
2 morning at the Family Dollar, all believing that that
3 day would be like any other day and that they would
4 go through their normal routine and go home to their
5 families.

6 But on that day, ladies and gentlemen, little
7 did they know that that man, Jimmy Portee, would
8 change their normal routine and cause them to have
9 something extraordinary happen to them. On that day
10 Jimmy Portee came through the back door of the Family
11 Dollar.

12 You are going to hear how he grabbed Tracey
13 Anderson and Erica Wilson by the back of the head by
14 their hair, forcing them to the ground, and you're
15 going to hear how he took Tracey Anderson by her
16 hair, drug her to the front of the Family Dollar
17 store, all the way while with his hand in his pocket
18 with her seeing a bulge and threatening to kill her
19 if she didn't give him the money.

20 Ladies and Gentlemen, you're going to hear from
21 the witnesses in that case. You're going to hear how
22 after she was able to give him the money he fled the
23 store. They called 911, like anybody would do, when
24 they were robbed.

25 You're going to hear how after giving a

1 description of what the defendant was wearing that
2 day, wearing a mask, a yellow jacket, sweatpants and
3 white shoes, it was put out over dispatch and they
4 were able to get a suspect. They saw Jimmy Portee
5 driving a car, and you're going to hear how the
6 police tried to stop him. But you're also going to
7 hear how he took them on a high speed chase through
8 neighborhoods, ultimately wrecking the car and then
9 getting out on foot and running.

10 Ladies and gentlemen, that's why you're here
11 today, because Jimmy Portee is charged with one count
12 of armed robbery, two counts of assault and battery
13 of a high and aggravated nature, and one count of
14 failure to stop for a blue light and the police.

15 Now, Judge Cooper just got through telling you
16 how it's our burden beyond a reasonable doubt to
17 prove to you that Mr. Portee is guilty of these
18 crimes. And that's a burden Ms. Shipley and I
19 welcome. We're happy to have that burden. We're
20 happy to prove that to you.

21 To prove that to you I want to talk to you just
22 a little bit about what you're going to be looking
23 for when you see the evidence. For armed robbery you
24 are going to be looking for a couple of things. One,
25 you're going to be looking that he feloniously took

1 goods or monies from the person of somebody with the
2 intent to deprive that person of that possession;
3 and, three, armed with a deadly weapon or threatening
4 or alleging to have a deadly weapon and whoever he
5 was robbing believes that he had a deadly weapon.

6 We also have to prove to you for the assault and
7 battery of a high and aggravated nature that he
8 committed an assault and battery. That means an
9 unlawful touching of another person. And high and
10 aggravated nature, in order to prove that to you, one
11 of the reasons we can do that is the difference in
12 the sexes. We have to prove to you that he is a male
13 and the victims, Ms. Tracey Anderson, Ms. Erica
14 Wilson, were women. And that's why you have two
15 counts, ladies and gentlemen, is because have you one
16 for Ms. Anderson and one for Ms. Wilson, the two
17 people you heard me describe earlier that he grabbed
18 by the back of the head by the hair at the back of
19 the store and then threw on the ground.

20 Then finally we have to prove failure to stop
21 for a blue light. What we have to prove for that,
22 ladies and gentlemen, is that the defendant was
23 driving a motor vehicle in South Carolina, that he
24 failed to stop for police upon being signaled, that
25 the police were chasing him.

1 And to do this, you're going to hear evidence
2 from that stand. You're going hear testimony from
3 witnesses. Ladies and gentlemen, you're going to
4 hear how Tracey Anderson describes Jimmy Portee. And
5 listen very carefully to what she says. Listen to
6 the unique clothing that he was wearing. Listen to
7 how she later identifies the defendant once he has
8 been caught.

9 You're also going to hear from the police
10 officers who were involved who chased Mr. Portee
11 through the streets of Bluff Estates. And earlier
12 Judge Cooper when he was reading the indictments to
13 you said he's sure you've heard Law & Order. Ladies
14 and gentlemen, this is not Law & Order. This is not
15 CSI. This is real life. This is something that
16 happened to four women that they had to experience
17 that they shouldn't have had to.

18 But you will get to see a little bit of CSI,
19 ladies and gentlemen, because you are going to see
20 the crime scene analyst, the crime scene analyst who
21 comes to the scene that day. Pay attention to what
22 is in the possession of the defendant. You are going
23 to find, or you're going to hear how he had a yellow
24 jacket. You are going to hear how he had a black ski
25 mask.

1 Ladies and gentlemen, you're going get to see
2 and learn all about DNA. Pay attention to where that
3 DNA is found. It's found on the ski mask. Pay
4 attention to exactly where it is found on the ski
5 mask and who it matches up to, how it's going to
6 match to the defendant.

7 And also you're going to hear from the 911
8 center. You're going to hear from them what happens
9 when a 911 calls comes in, how they document it. And
10 pay close attention to that, too, ladies and
11 gentlemen. Pay close attention to the timeline, to
12 what time things occur, because that's going to be
13 very important.

14 And at the end of this case we're going to come
15 back to you and we're going to ask you that you go
16 back to that jury room and that you deliberate. And
17 at the end of this, once have you seen all the
18 evidence, we're going to ask that you find the
19 defendant guilty of one count of armed robbery and
20 two counts of assault and battery of a high and
21 aggravated nature and one count of failure to stop
22 for a blue light.

23 **THE COURT:** Mr. Secor.

24 **MR. SECOR:** Thank you, Your Honor. May it
25 please the Court. Good afternoon, ladies and

1 gentlemen. The police had a perfectly good reason to
2 arrest Jimmy Portee on November 9th, 2006. As Ms.
3 Good detailed to you, on that day, on that morning
4 the Family Dollar Store on Garners Ferry Road was
5 robbed by somebody. And there is absolutely no
6 question the person that robbed that store was
7 wearing a yellow jacket of some sort and a mask over
8 their face and the person fled and there was some
9 description, somewhat of a description of the car
10 that that person fled in.

11 Now, after the people at the store who were
12 robbed called 911, the 911 dispatcher called out to
13 police in the area saying that they're looking for
14 this particular vehicle. And there's two officers
15 from the Richland County Sheriff's Department that
16 you will hear from.

17 You'll hear from at least one of them that they
18 were in that area, in the area that they thought that
19 this car might be. And that's Deputy Unger and
20 Deputy Davis with the Richland County Sheriff's
21 Department. And they saw a car they thought might be
22 the car that this person was fleeing in. So they
23 tried to pull it over. And the car didn't stop and
24 they had to chase the car. And they chased the car
25 for, I'm not entirely sure how long, but you'll hear

1 more about that.

2 And eventually the car came to a stop and the
3 person that was driving the car got out and ran away
4 and Deputy Davis and Deputy Unger chased him down and
5 they caught him and they arrested him. And the
6 person that was driving that car, the person they
7 chased and the person that they handcuffed and the
8 person that they arrested was Jimmy Portee. There is
9 absolutely no question about that. The fact that he
10 fled from police with regards to the charge of
11 failure to stop for a blue light is a foregone
12 conclusion.

13 Now, what happened when the police arrested Mr.
14 Portee is that they assumed they had the right guy.
15 And no one can really blame them for that based on
16 where it happened and what they had seen. They
17 assumed that they had the right guy, and so they
18 arrested him. No one blames or no one will blame
19 them because to a certain degree, sometimes good
20 police work requires a degree of assumptions.

21 But the reason you're all here today and the
22 reason this trial is occurring is because you now
23 have to test the assumptions that the police made on
24 that day to figure out if those assumptions were
25 correct, if they were correct in their belief based

1 on what they saw and what happened that day. And
2 after hearing the testimony and seeing the evidence
3 presented to you tomorrow, you're going to know those
4 assumptions were in fact wrong.

5 As I just stated, an arrest by law enforcement
6 based on assumptions is okay because sometimes good
7 police work requires that. But a criminal conviction
8 for a very serious charge based on those same
9 assumptions without evidence to back them up is not
10 okay. It's far from okay. It would be an absolute
11 tragedy for a conviction to happen based on the
12 assumptions that have not been supported by evidence.

13 What you're going to learn during this trial is
14 that the assumptions that were made by the police
15 that arrested Mr. Portee colored everything that
16 happened immediately after the arrest. They thought
17 they had the right guy and that colored everything
18 they did and thought from that point forward.

19 And because they thought they had the right guy,
20 they didn't do investigation in the way that you
21 think an investigation probably should be done,
22 particularly in a case where someone is faced with
23 such a serious charge. And in place of a thorough
24 and fair and accurate and meticulous investigation,
25 instead of that, the police did a series of acts that

1 just supported the assumptions that they had made
2 when they arrested Mr. Portee. And you're going to
3 see those things. You're going to see what they did.

4 And although I'm not going to go into great
5 detail about them, about what those things were the
6 police did, you're going to see they talked to people
7 only that supported the assumptions that they made;
8 in some cases taking very little, if any, information
9 down from them. They in fact ignored some
10 information they got from eye witnesses and victims
11 that did not support their assumptions, that in fact
12 actually contradict their assumptions, but they
13 disregarded those things. And they even ignored some
14 physical evidence that didn't support the assumptions
15 that they made. They had blinders on and they went
16 forward with the assumption that they made.

17 The investigation in this case was tailor-made to
18 try convict Mr. Portee. Any kind of evidence or
19 statement that didn't corroborate the assumptions
20 they made were totally disregarded because the police
21 thought they had the right guy at the time they
22 arrested him and that was all that mattered to them.

23 After seeing the evidence in this case and
24 hearing the testimony in this case, you're going to
25 see that those assumptions were wrong, as I said; and

1 they are wrong because Mr. Portee was innocent on
2 November 9th, 2006. He's innocent today and he will
3 be innocent when this trial is over. Thank you.

4 **THE COURT:** All right, ladies and gentlemen of
5 the jury. Because I had indicated to you earlier
6 that the witnesses would not start until in the
7 morning, I'm going to release you now for the
8 afternoon. It's a little -- we would not -- normally
9 we'll usually go until about 5:00, but because of
10 pre-trial matters I had released the witnesses and
11 they'll be ready at 9:30 in the morning.

12 In the morning when you return to the jury room
13 I'm going to provide you with note pads and pencils.
14 If you want to take notes during the course of the
15 trial, you are certainly welcome to do so. There are
16 a number of witnesses, and sometimes it's helpful if
17 you keep the witnesses straight in your own mind by
18 making notes.

19 I'll caution you the notes are just for your own
20 purposes and not to try to convince somebody else of
21 what your notes say. But I'll talk to you more about
22 that as we get on into the trial. So I hope you have
23 a pleasant evening. Again don't discuss the case
24 among yourselves when you return to the jury room or
25 with anyone else over the evening hours. Please have

1 a pleasant evening. We'll see you at 9:30 in the
2 morning. We'll be ready to go.

3 (Jury out at 3:58 p.m.)

4 **THE COURT:** Anything further from the State?

5 **MS. SHIPLEY:** No, sir, Your Honor.

6 **THE COURT:** From the defense?

7 **MR. COOPER:** No, sir, Your Honor.

8 **THE COURT:** 9:30. We'll stand at ease until
9 9:30.

10 **MR. SECOR:** Thank you, Your Honor.

11 (Whereupon, the proceedings are concluded for
12 the day, to be reconvened tomorrow morning)

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Wednesday, September 3, 2008

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22 identification.)

23 (WHEREUPON, State's Exhibit No. 55 is marked for
24 identification.)

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1 (WHEREUPON, State's Exhibit No. 56 is marked for
2 identification.)

3 THE COURT: The State ready to proceed?

4 MS. SHIPLEY: Yes, sir, Your Honor.

5 THE COURT: Defense ready to proceed?

6 MR. COOPER: Yes, sir, Your Honor. I do have --

7 THE COURT: Housekeeping?

8 MR. COOPER: -- one thing, Your Honor.

9 THE COURT: Yes, sir.

10 MR. COOPER: Just out of an abundance of
11 caution, looking at the State's witness list, I just
12 want to make sure there's been no other out-of-court
13 ID's that we might need to have a hearing on.

14 MS. SHIPLEY: No, Your Honor. No one else has
15 identified the defendant.

16 THE COURT: As the alleged perpetrator?

17 MS. SHIPLEY: Yeah. That's what the discovery
18 supports.

19 THE COURT: I mean, the officer saw him.

20 MR. COOPER: Yes.

21 THE COURT: But that's --

22 MS. SHIPLEY: No one else can identify him from
23 the robbery because he was wearing a mask.

24 THE COURT: So you're talking about those other
25 witnesses?

1 MR. COOPER: Yes, sir.

2 THE COURT: Or the other people at the store?

3 MR. COOPER: Yes, sir.

4 THE COURT: All right. Bring the jury, please.

5 (Jury in at 9:35 a.m.)

6 THE BAILIFF: The jury is all present, Your
7 Honor.

8 THE COURT: All right. Thank you. Good
9 morning, ladies and gentlemen. I hope you had a
10 pleasant evening. We're now ready to begin the trial
11 or continue with the trial.

12 I want to remind you again, we've provided you
13 with pencils and note pads, and that I always remind
14 jurors that the notes, if you take notes, are for
15 your own benefit, not to try to convince somebody
16 else that you wrote something down that they didn't
17 write down and trying to convince them from the use
18 of your notes. So if you'll just honor that
19 throughout the course of the trial and in your
20 deliberations also.

21 And I want to remind you again since you now
22 have those pads that there are four separate
23 charges -- and I talked to you a little bit about
24 this yesterday -- the first being armed robbery.
25 There are two counts of assault and battery and one

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1 count of failure to stop for a blue light. So just
2 as you go along, as we go along through the trial you
3 may want to make notes as to each of those separate
4 charges. All right, Solicitor. Call your first
5 witness.

6 **MS. SHIPLEY:** Thank you, Your Honor. May it
7 please the Court. The State calls Tracey Anderson.

8 **TRACEY ANDERSON,** after being duly sworn,
9 testifies as follows:

10 **THE CLERK:** Thank you. Please have a seat in
11 the witness stand and state your full name for the
12 record.

13 **WITNESS:** My name is Tracey Anderson.

14 **DIRECT EXAMINATION**

15 **BY MS. SHIPLEY**

16 **Q** Good morning, Ms. Anderson.

17 **A** Good morning.

18 **Q** Ms. Anderson, can you tell the jury a little bit
19 about yourself? Where are you from?

20 **A** I am originally from Hopkins, South Carolina.

21 Basically I'm an only child. I have been with Family
22 Dollar Store for five years. Basically at this point
23 in time in my life I really enjoy what I do.

24 **Q** And do you still work for Family Dollar?

25 **A** Yes, I do.

1 Q And back in November of 2006, which Family Dollar
2 were you working at?

3 A I was working at the one on Garners Ferry Road.

4 Q And would that be 7361 Garner's Ferry Road?

5 A Yes, ma'am.

6 Q And how long had you been there by the time
7 November 9th, 2006 rolled around?

8 A For a year.

9 Q For a year?

10 A Mm-hmm (affirmative).

11 Q Can you tell the jury what your position was at
12 Family Dollar?

13 A My position was the store manager.

14 Q Are you married?

15 A No.

16 Q Do you have any children?

17 A No.

18 Q Where did you go to high school?

19 A Lower Richland High School.

20 Q And how far did you go with your education?

21 A My second year at Columbia College.

22 Q Can you tell the jury a little bit about what your
23 role as a store manager at the Family Dollar entails?

24 What are your duties every day and so forth?

25 A Protecting company assets, preparing deposits,

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1 staffing the store, unloading, receiving, inventory,
2 supervise, et cetera.

3 Q Okay. And I'm going to show you some pictures just
4 to orient the jury as to which Family Dollar we're
5 talking about. Okay?

6 A All right.

7 Q You indicated earlier it was at 7361 Garners Ferry
8 Road, correct?

9 A Yes, ma'am.

10 Q I'm going to show you a diagram and ask you if you
11 recognize this?

12 A Yes, I do.

13 Q And does this accurately depict where the Family
14 Dollar is in Richland County?

15 A Yes, ma'am.

16 MS. SHIPLEY: Okay. Your Honor, at this time
17 the State would seek to introduce this exhibit into
18 evidence. We'll have it marked in a moment.

19 MR. SECOR: Without objection from the defense,
20 Your Honor.

21 THE COURT: Without objection.

22 (WHEREUPON, State's Exhibit No. 57 is marked for
23 identification.)

24 (WHEREUPON, State's Exhibit No. 58 is marked for
25 identification.)

1 Q I'm going to hand you a pointer, Ms. Anderson. Oh.
2 Where did it go? If you could just use your finger
3 and point -- oh, here it is. They moved it on me.
4 Could you use this pointer and point for the jury
5 where your Family Dollar store is on that map so
6 everyone knows where we're talking about?

7 A It's right here.

8 Q Okay. Great. And is that pointing at this little
9 pic right there?

10 A Yes.

11 Q So it's off on 378. What street does it intersect?

12 A Greenlawn.

13 Q Greenlawn Drive?

14 A Yes, ma'am.

15 Q Okay. Is there a Richland County library in the
16 vicinity?

17 A Yes, ma'am.

18 Q And where is that?

19 A It's on the other side of Greenlawn but still on the
20 same road, Garners Ferry.

21 Q Okay. So it's on the same side of Garners Ferry
22 Road; however, across the street from Greenlawn?

23 A Yes, ma'am.

24 Q And is there any church nearby the Family Dollar
25 Store?

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1 A The church was right there. Word of God. Yes.

2 Q I'm going to show you some photographs and ask you to
3 review them and tell me if you recognize them?

4 A Yes, ma'am.

5 Q Okay. These photographs, what do they show? What's
6 depicted in the photographs?

7 A Basically it shows the door, the entrance of the
8 door, the back door.

9 MS. SHIPLEY: Okay. Your Honor, at this time
10 the State would seek to introduce 27 through 42 and
11 6.

12 THE COURT: Have these not been previously --

13 MS. SHIPLEY: They've been presented, Your
14 Honor.

15 MR. SECOR: No objection, Your Honor.

16 THE COURT: All right. Thank you.

17 (WHEREUPON, State's Exhibit No. 6 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 27 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 28 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 29 is admitted
24 into evidence.)

25

1 (WHEREUPON, State's Exhibit No. 30 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 31 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 32 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 33 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 34 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 35 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 36 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 37 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 38 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 39 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 40 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 41 is admitted
24 into evidence.)

25

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1 (WHEREUPON, State's Exhibit No. 42 is admitted
2 into evidence.)

3 MS. SHIPLEY: Your Honor, may the witness step
4 down?

5 THE COURT: Yes, ma'am.

6 MS. SHIPLEY: Thank you.

7 Q Ms. Anderson, will you step down over here so we can
8 show the jury the pictures? Watch your step. I'm
9 going to -- you need you to speak up so that the
10 court reporter can hear you. Okay? Show the jury
11 what's shown in No. 6. What does that picture show?

12 A Basically this shows the front entrance of the store.
13 My office is right there on the other side of the
14 Coca-Cola machine.

15 Q Is your office on the same level as the street?

16 A No. It's two steps high, but the steps are very
17 steep in my office.

18 Q Okay. So it's elevated from the road?

19 A Yes, ma'am.

20 COURT REPORTER: Could you all switch places? I
21 think I can see her better.

22 MS. SHIPLEY: Sure.

23 Q Please show the jury what's shown in No. 27?

24 A No. 27 is also showing basically the front entrance
25 of the store. And it's showing the police, the

1 police department and the administrative of the Word
2 of God church that's in the back corner of this
3 picture here.

4 Q What is depicted in 28?

5 A 28 shows the entrance of the store.

6 Q And what is 29?

7 A 29 is showing the outside of the parking lot, and
8 it's showing from the entrance of the store also.

9 Q And do you see any buildings in the distance?

10 A I do see the buildings in the distance. I do see the
11 hotel rooms, well, the hotels in the back. This is
12 where I first spotted out the white car.

13 Q Okay. What does State's No. 30 show?

14 A State's No. 30 shows the steep steps to my office.

15 Q Okay. And where in that picture is it?

16 A It's right up here in this back corner.

17 Q Okay. In which corner?

18 A Right here.

19 Q Okay. Those are your office steps?

20 A Yes.

21 Q What is shown in State's No. 31?

22 A State's No. 31, it shows -- it gives you a little
23 view to the exit of my back door in the back of the
24 stock room.

25 Q The person who photographed this photo, where would

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1 they be standing in the business to take this
2 photograph?

3 A They would have to be standing in the front, towards
4 the front of the entrance, because our battery cam
5 can only be located in the front.

6 Q So you're at the front of the business looking to the
7 back of the business?

8 A Yes, ma'am.

9 Q Do you see the rear door of the business in that
10 photo?

11 A You can see it kind of where the brown door is in the
12 back.

13 Q And I believe State's No. 32 depicts that a little
14 better?

15 A Yes, it does. Right here, it gives you a little more
16 clear picture of the back.

17 Q Okay. 33, what does that show?

18 A 33, this is where the other witness was coming from.
19 She had a mop in her hand. She was coming from this
20 angle.

21 Q And when you're in the business, where are the mops
22 when you walk in the front door?

23 A When you walk in the front door, when you walk in the
24 front door, it's on your left.

25 Q Against the wall on the left?

1 A Yes, ma'am.

2 Q Okay. What is shown in State's 34?

3 A State's 34 shows the two registers up front. And I
4 was at this back register right here.

5 Q So the second one away from the front door?

6 A Yes, ma'am.

7 Q And what is 35 depicting?

8 A 35 is depicting the register till that I used to bag
9 up the money.

10 Q Okay. 36, what does that show?

11 A 36 gives you a clear view of the register and how
12 much money -- well, it doesn't give you a clear view
13 of how much money, but this was the register that I
14 used to give him the money out of.

15 Q And State's No. 37, what's that show?

16 A 37 shows you my exit, my back door.

17 Q Okay. And 38, what does that show?

18 A 38 shows you a parking lot where it could have been
19 an escape route.

20 Q Okay. And when you're taking -- where would the
21 photographer that took that photograph be standing in
22 order to take that picture?

23 A The photographer would have walked out -- he would
24 have been out of the left of my stock room, because
25 my trashcans were located on the left.

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1 Q Okay. And so the direction of this photograph, which
2 way is it facing? In other words, if you were to
3 walk out the rear door of your business, would you
4 take a left or a right in order to go in that
5 direction?

6 A It would be a left.

7 Q Okay. And State's No. 39, what does that show?

8 A 39, it also shows a trashcan. Which me and the
9 church uses this trashcan that's on the right.

10 Q And so exiting the rear door of the business, which
11 way would a person have to walk in order to reach
12 that point?

13 A The right way.

14 Q Okay. State's 46, what does that show? Or is that
15 40? Excuse me. 40.

16 A Yeah. It shows just the exist of the back door and
17 the sidewalk that he takes.

18 Q Okay. And lastly -- or two more -- 41, what does
19 that show?

20 A That shows the left entrance of my back door and --
21 but I know these are the rollers that we use for our
22 trucks.

23 Q And do you see a road anywhere in that photograph?

24 A Yes, ma'am. I do see a road to the left.

25 Q Can you point that out for the jury, please?

1 **A** You can exit this parking lot and then you can go to
2 the right. It takes you out there on Greenlawn.

3 **Q** So that road right there leads you to Greenlawn
4 Drive?

5 **A** Yes, ma'am.

6 **Q** And State's No. 42, what does that show?

7 **A** 42 shows another exit. You can't really see it from
8 here. But you could exit, when you come out of my
9 back door, you could exit towards the right. And
10 there's a little skinny, narrow road towards the
11 left. And it brings you out to Greenlawn also.

12 **Q** So both roads from the back of the Family Dollar
13 Store lead to Greenlawn?

14 **A** Yes, ma'am.

15 **Q** I'm going to show you one more diagram, State's 42.
16 Or excuse me. 58. Do you recognize that?

17 **A** Yes.

18 **Q** And does that accurately depict what Family Dollar
19 Store looks like from a bird's eye view?

20 **A** Yes.

21 **MS. SHIPLEY:** State's No. 58 at this time, Your
22 Honor.

23 **MR. SECOR:** No objection.

24 **THE COURT:** Without objection.

25

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1 (WHEREUPON, State's Exhibit No. 58 is admitted
2 into evidence.)

3 Q The roads that you were describing to the jury in
4 those previous photographs, do you see them on
5 State's No. 58; just to orient the Family Dollar
6 Store?

7 A Yes. I believe this would be the back of the parking
8 lot back here. And then this is the skinny road that
9 I was telling you about. And then this parking lot
10 takes you out here onto Greenlawn. Which this
11 business right here is a transmission,
12 Mr. Transmission. So it takes you out to the road
13 further. And Carolina Purse is across from that.

14 Q And where would the Richland County Public Library be
15 in relation?

16 A The Richland County Public Library would be right
17 here. Yes.

18 Q And so you have two roads leading to Greenlawn Drive,
19 correct?

20 A Yes, ma'am.

21 Q From the rear of the Family Dollar business?

22 A Yes.

23 Q Thank you. Please have a seat. I'm going to show
24 you three more photographs, State's 43, 44 and 45,
25 and ask you if those accurately depict the business?

1 A Yes.

2 Q What do those pictures show?

3 A The floors being very dirty. And also it shows
4 whereas the back door was open.

5 MS. SHIPLEY: Okay. Your Honor, at this time
6 the State introduces 43 through 45.

7 MR. SECOR: No objection, Your Honor.

8 THE COURT: Without.

9 (WHEREUPON, State's Exhibit No. 43 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 44 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 45 is admitted
14 into evidence.)

15 Q Now, the floors, do they normally appear to be that
16 dirty?

17 A Yes.

18 Q Okay. And so, do you have any idea how long these
19 scuff marks have been on the floor?

20 A No, ma'am. I cannot recall.

21 Q All right. I'm going to go ahead and bring your
22 attention now that we've oriented the jury to the
23 early morning hours of November 9th, 2006. What time
24 do you normally arrive at work?

25 A Between 7:30 and 8:00.

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1 Q On November 9th, 2006, tell the jury what time it was
2 that you got to work that morning?

3 A It was between 7:30 and probably 7:45.

4 Q And tell the jury what your routine is when you get
5 to work?

6 A Basically my routine is to prepare the tills, make
7 sure that they balance out and prepare my deposits to
8 be taken to the bank before the store opens.

9 Q And by preparing the tills, is that the money that
10 goes in the cash registers?

11 A Yes, ma'am.

12 Q Tell the jury about how much money you prepare for
13 each till?

14 A At that store, at Garners Ferry, it was \$100 for each
15 till.

16 Q Okay. Were both tills going to be operated on that
17 morning? In other words, were you going to have two
18 cash register employees working that morning?

19 A Yes, ma'am.

20 Q Tell the jury what increments you typically prepare
21 the tills in; in other words, you know, the
22 denomination of the money?

23 A Usually we try not have 20's in the drawer when we
24 first start in the morning. We usually take the 20's
25 and break them down, and probably by change, what we

1 call petty cash. And we usually rolls, like rolls of
2 quarters, rolls of nickels, rolls of dimes. And we
3 usually have 40 in 5's. We rarely ever keep 10's in
4 our drawers. And we usually have -- we try to make
5 sure that we are very well stocked on 1's.

6 Q And why is that?

7 A Just because, just in case if I work in the back of
8 the store and I have a cashier working in the front
9 of the store, that way they wouldn't have to call me
10 so excessively.

11 Q And is that to give customers change?

12 A Exactly.

13 Q You indicated that you put rolls of quarters and
14 nickels in the cash registers, in the tills. Can you
15 describe to this jury the way, the manner in which
16 the coins are wrapped?

17 A Sometimes they do come in like paper wraps that says
18 \$10 or they say pennies. That's 50 cents or \$2. But
19 sometimes it comes rolled in clear, clear paper
20 wrapping.

21 Q And that morning do you recall what kind of wrapping
22 the coins had when you put them in the tills?

23 A I do recall First Citizens on Garners Ferry, that
24 they were clear.

25 Q Clear plastic?

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1 A Mm-hmm (affirmative).

2 Q I'm going to show you the contents of State's No. 55
3 and ask you if you can look in that bag and tell me
4 if you recognize the items in there?

5 A Yes, ma'am, I do.

6 Q And what that are they?

7 A They are \$10 in quarters and \$2 in nickels.

8 Q And are they wrapped in the manner in which you put
9 them in the till that morning?

10 A Yes, ma'am.

11 MS. SHIPLEY: Your Honor, at this time the State
12 would seek to introduce No. 55 in evidence.

13 MR. SECOR: No objection, Your Honor.

14 THE COURT: Without objection.

15 MS. SHIPLEY: Your Honor, may I publish the
16 contents to the jury?

17 THE COURT: Yes, ma'am.

18 (WHEREUPON, State's Exhibit No. 55 is admitted
19 into evidence.)

20 Q So this one right here, what's contained in this one?

21 A Two dollars worth of nickels.

22 Q And this one, what's that one?

23 A \$10 worth of quarters.

24 Q And so they're wrapped in the clear. Now, I noticed
25 my hands getting dirty. Is that how they are

1 normally?

2 A No, ma'am.

3 Q Okay. Now, once you arrived at work and were
4 preparing the tills, tell the jury if anything
5 happened while you were doing that?

6 A While I was preparing tills I heard a loud noise. So
7 immediately I came to my first step on my steps
8 because I just could just see clearly to the door the
9 face of the person. And I saw the defendant come to
10 the door. But which I normally would think, as most
11 customers do, come and check our store hours.

12 MR. SECOR: Your Honor, I need to object. Can
13 we approach briefly?

14 THE COURT: Yes, sir.

15 (Whereupon, a bench conference is had)

16 Q So you saw the defendant come up to the door. Is
17 that correct?

18 A Yes, ma'am.

19 Q And tell this jury, I believe we've already gone
20 through the photograph, but just to refresh
21 everyone's memory --

22 MR. SECOR: Your Honor, just briefly can I just
23 state for the record that I object to the
24 identification?

25 THE COURT: All right. I'll note your

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1 objection. Your objection is overruled. I'll allow
2 it to be a continuing objection.

3 MR. SECOR: Thank you, Your Honor.

4 Q State's 27, can you show the jury where it is that
5 you were watching the person come up to the front
6 door?

7 A It would be on the other side of this Coke machine
8 here.

9 Q Okay. And then the front door in this photograph, am
10 I pointing to the right location?

11 A The front door is right over here.

12 Q Okay. And is this finger right here on the right
13 location as to --

14 A Yes, ma'am.

15 Q Okay. How many feet would you say that is?

16 A For me, from the steps, it's four to five feet.

17 Q Now, I noticed that the Coke machine is there. Did
18 that obstruct your view of the person coming up to
19 the door?

20 A No, it didn't.

21 Q And what did you think he was doing when he came up
22 to the door?

23 A I thought he was looking at the store hours.

24 Q Did you see what kind of vehicle he came from?

25 A No. The only thing that I noticed was the front end,

1 that it was a white car.

2 Q And had you seen that white car earlier?

3 A Yes. Prior to me pulling up where I showed you where
4 the motels were, it was an abandoned -- looked like
5 an abandoned white car parked over there in the
6 parking lot.

7 Q And I'm going to show you State's 29. Can you kind
8 of figure out where in this parking lot you noticed
9 that vehicle?

10 A It was right here in front of what looks like this
11 red -- I don't know what that is right there. But
12 it's over there in that back parking lot right there.

13 Q And am I pointing out the right location right there?

14 A Yes.

15 Q Okay. So back there is when you noticed that white
16 car?

17 A Yes, ma'am.

18 Q Tell the jury when it was that you noticed that white
19 car?

20 A When I was pulling up to my store.

21 Q And so that would have been about 7:45 in the
22 morning?

23 A Yes, ma'am.

24 Q What time was it approximately when the individual
25 came up to the door to check the store hours?

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- 1 A 8:00.
- 2 Q 8:00?
- 3 A Mm-hmm (affirmative).
- 4 Q And describe the person. Describe who you saw?
- 5 A He was a skinny, light skinned, African-American
- 6 male.
- 7 Q Approximately, was it -- describe the lighting
- 8 conditions outside?
- 9 A Well, my store was dark, but it was a sunny, bright
- 10 day that day.
- 11 Q Did you have any problem whatsoever seeing this
- 12 person's face?
- 13 A No, ma'am.
- 14 Q Or his body?
- 15 A No, ma'am.
- 16 Q After this person looked at the store hours, tell the
- 17 jury what he did next?
- 18 A Basically what I saw is that he got back into his
- 19 car. I did not know which direction he went into.
- 20 My main concern was that he get back into his
- 21 vehicle.
- 22 Q And why was that? Why were you concerned about him
- 23 leaving?
- 24 A Because I was the only person in the store at the
- 25 time.

1 Q So you were alone?

2 A Yes, ma'am.

3 Q Did that concern you?

4 A It did at first. It did to a certain degree. As
5 long as I know that he got back into the car, I was
6 okay with that.

7 Q Now, you said you saw him get back in his car?

8 A Yes, ma'am.

9 Q Describe for the jury what the car looked like?

10 A As I said earlier, the front end of the car, I saw
11 the car, but it was white. That's the only thing
12 that I can remember.

13 Q Okay. And can you describe whether it was a brand
14 new car? Describe how old the car might have been.

15 A I believed it to be inbetween '89 to '90, early
16 nineties.

17 Q Okay. And if this happened in 2006, a 16-year-old
18 car?

19 A Yes.

20 Q An older car?

21 A Yes, ma'am.

22 Q And what color?

23 A White.

24 Q Did you -- were you able to notice how many doors on
25 the car?

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1 A I did notice that it had four doors.

2 Q Four doors?

3 A I did notice that. Yes, ma'am.

4 Q Did you see anybody else in that car with the man?

5 A No, I did not.

6 Q How long do you think you were able to observe him
7 when he came up to the door?

8 A It was not that long. It was probably about, I would
9 say probably seconds to a minute.

10 Q Were you paying attention to this person?

11 A Yes, I was.

12 Q Did he notice you at any time?

13 MR. SECOR: Objection, Your Honor.

14 THE COURT: What's the objection?

15 MR. SECOR: It calls for speculation.

16 THE COURT: Overruled. Go ahead.

17 Q Did he notice you at any time?

18 A No, he didn't.

19 Q Did you see him look in your direction?

20 A No, he didn't.

21 Q And approximately in State's 27, where did you notice
22 the vehicle?

23 A The vehicle was right in front because the store
24 signs were straight ahead. It was on -- if you walk
25 into the entrance of my door, it would be on the left

1 of my entrance of the door walking in.

2 Q And so how many feet -- am I pointing at the right
3 position of where the car was?

4 A Yes, ma'am.

5 Q How many feet from the front door did he park his
6 white car?

7 A It was not that far. He was close to the sidewalk.

8 Q Okay. And did he pull up nose first or sideways?
9 How did he park?

10 A Nose first.

11 Q Were there any other cars in the parking lot? I'm
12 going to show you State's No. 29. Do you see cars in
13 that parking lot?

14 A Yes, I do.

15 Q Were those cars there when he pulled up?

16 A No, they wasn't.

17 Q So there were no cars blocking his way to pulling
18 nose forward, nose first?

19 MR. SECOR: Objection, Your Honor.

20 MS. SHIPLEY: I'll rephrase the question, Your
21 Honor.

22 THE COURT: Rephrase the question.

23 Q Were there other cars obstructing his car?

24 A No, ma'am.

25 Q Now, after you observed him leaving, tell the jury

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1 what happened next? Did your other employees come to
2 work that morning?

3 A Yes, they did.

4 Q Who were they?

5 A They were Erica Wilson and Lisa Ellis.

6 Q All right. Tell the jury how long you've known Erica
7 Wilson and Lisa Ellis?

8 A Well, Erica I believe had started working for me for
9 about two months prior to that. Lisa, I just hired
10 her.

11 Q Okay. And do you know where Erica Wilson is now?

12 A No, ma'am.

13 Q All right. Now, tell the jury what you all did that
14 morning once they got to work. By the way, what time
15 did they get to work?

16 A They got to work between -- it was between 8:45 and
17 9:00.

18 Q And what time did the store open?

19 A At 9.

20 Q Describe for the jury what you did with your
21 employees once they arrived at work?

22 A I had Lisa -- usually we have what we call a door to
23 shelf the first day after our truck. And after that,
24 that's door to shelf where we have to process all our
25 freight. And I had Lisa working on the food aisle

1 and I told Erica for us to go in the back and take
2 out the trash.

3 As we proceeded to open to take out the trash,
4 we had some Bojangle's for breakfast that morning.
5 And as soon as I opened the door, usually I have the
6 door open because the church is right nextdoor and
7 usually the ministers park their car out there in the
8 parking lot. So I didn't figure it to be threatening
9 by that time. Okay?

10 And as I opened the door and I pulled out the
11 u-boat for the trash, Erica was in the stockroom and
12 I was on the right side of the door and Erica was in
13 the left side of the door. But she was further back
14 in the stockroom to where she sees someone come up.

15 Q And how do you know she saw someone come up?

16 A Because I saw the expression on her face.

17 Q Describe the expression on her face?

18 A The expression on her face, at first she didn't know
19 what to think, but then she seemed a little bit
20 frightened.

21 Q And then what did you see next?

22 A Next then I saw the robber come up to me. And he was
23 so close to me 'til I touched him.

24 Q And I'm going to walk up to you as close as he got to
25 you.

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- 1 A Okay.
- 2 Q And you tell me to stop when I get to the right
- 3 distance. Okay?
- 4 A Okay.
- 5 Q All right. I'm going to come from this direction so
- 6 everyone can see. More?
- 7 A More. Right here.
- 8 Q So he was closer to you?
- 9 A Yes. Because I was sitting on the rollers in the
- 10 back of my stockroom.
- 11 Q And how much distance is between you and me right
- 12 now?
- 13 A I would say no more than one feet.
- 14 Q Okay. Now, when he came up to you, describe his
- 15 height for the jury?
- 16 A He was very tall, very tall.
- 17 Q How tall are you?
- 18 A I'm five-three.
- 19 Q And when you say very tall, are you familiar with
- 20 people's heights? Could you guesstimate how tall he
- 21 was?
- 22 A Well, he wasn't far from the length of my door in the
- 23 stockroom.
- 24 Q All right. I'm going to show you that picture of the
- 25 door, State's No. 37. Is that the door you are

1 describing?

2 A Yes, ma'am.

3 Q So your testimony is he was almost as tall as that
4 door?

5 A Yes, ma'am.

6 Q Do you know how tall this door is?

7 A No, I do not.

8 Q Okay. Now, when he came up to you, what did you
9 notice about anything else about him? Describe his
10 build.

11 A I noticed that he -- at first I couldn't see his
12 build. What I did see was the knit hat that I
13 described with the eyes cut out, and I saw the yellow
14 coat. That's what I saw. I didn't really see his
15 build until the end of the robbery.

16 Q Now, once he's up on you, you noticed him wearing a
17 yellow jacket. Is that right?

18 A Yes, ma'am.

19 Q And he's got a --

20 MR. SECOR: Objection, Your Honor.

21 THE COURT: Leading?

22 MR. SECOR: Leading. Yes, sir.

23 MS. SHIPLEY: I'll rephrase the question, Your
24 Honor.

25 THE COURT: Just rephrase your question.

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1 Q What did he have on his face?

2 A It was a knit hat with the eyes cut out.

3 Q Now, when you say the eyes cut out, was it
4 manufactured? Or describe it.

5 A No, ma'am. It was homemade.

6 Q Homemade?

7 A Mm-hmm (affirmative).

8 Q What happened next after he is close to you?

9 A After he is close to me, he immediately pulled my
10 hair. I had braids in my hair, what you call kinky
11 twists. And as he immediately wrapped it around his
12 hand and tugged my hair. And he told Erica to come
13 over there, and he immediately tugged her hair which
14 came off. She also had a weave. And he rushed us
15 both to the floor.

16 Q And so after he grabs you by the hair, where on the
17 floor does he push you guys down?

18 A Basically he moved us out of the stockroom first.

19 Q Okay.

20 A It's a picture that you have, and it's right there
21 before you get in my stockroom. That's where we
22 were.

23 Q I'm going to show you State's No. 30. Is that -- oh,
24 excuse me. I'm just going to show you State's 37.
25 And is that the room inside? Is that where it

1 happened, where he pushed you?

2 **A** Where he grabbed my hair.

3 **Q** And then did he pull you somewhere?

4 **A** He immediately pushed us into the store right there
5 in front of the stock room door.

6 **Q** Okay. And I believe State's No. 37 -- excuse me --
7 32. Do you see the back door or the doorway to the
8 stock room?

9 **A** Yes, I do.

10 **Q** Can you point on this photograph where he forced you
11 to the floor?

12 **A** It would be right there close to the stock room.

13 **Q** Okay. Am I pointing at the right direction?

14 **A** Yes, ma'am.

15 **Q** All right. So right before the room leading to the
16 back door?

17 **A** Yes, ma'am.

18 **Q** Can you describe whether or not you heard Erica
19 Wilson say anything at this point?

20 **MR. SECOR:** Objection, Your Honor. It calls for
21 hearsay and leading.

22 **THE COURT:** I don't know that it does at this
23 point. It's in the middle of a -- it's in the middle
24 of an event. So I'm going to overrule your objection
25 at this point.

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1 Q Ms. Anderson, tell the jury about Erica's demeanor?

2 A Erica's demeanor, she was very hysterical. I knew --
3 at that point in time, I knew the procedures of
4 robbery. And I knew I could not panic because that
5 would only make the robber more upset. So I knew I
6 had to do what I was told and I knew I had to stay
7 calm. But at that point in time Erica was screaming,
8 Jesus, Jesus, Jesus.

9 Q What did he tell you to do at that point, the robber?

10 A Basically he told me I needed to give him the money.
11 And at that point in time when he had Erica on the
12 floor, me and Erica on the floor and when she started
13 screaming, he did say, "If you don't do what I tell
14 you to do, then I will kill you."

15 Q So he threatened you?

16 A Yes.

17 Q What if anything did you notice him doing with the
18 other hand, the hand he was not using to pull your
19 hair?

20 A I saw his right pocket with a bulge.

21 Q In the pocket of what article of clothing?

22 A It was a yellow jacket.

23 Q And so when he said that to, "If you don't do what I
24 tell you, I will kill you", where was his hand
25 positioned at that point?

1 A His hand was still positioned, from what I could see,
2 into his clothes. Because when he pulled my hair, he
3 made sure that I wasn't able to see him, make contact
4 with him.

5 Q Did you believe at that point that he was armed?

6 A At that point I did when he threatened me.

7 Q Tell the jury what you did once he threatened you?
8 What did you do?

9 A Basically what happened was Erica was still left on
10 the floor and he basically nudged me to go up front
11 while still pulling my hair.

12 Q And he left Erica behind?

13 A Yes, ma'am.

14 Q Tell the jury which aisle he made you go down? Do
15 you see it in State's 32?

16 A It was this main center aisle right here.

17 Q This center aisle?

18 A Yes, ma'am.

19 Q Did you pass anybody along the way while he's forcing
20 you to the front of the store?

21 A While I was walking up to the front, Lisa Ellis, like
22 I said, was working on the food aisle. And she was
23 on the left of me. And then the other witness with a
24 mop in her hand, she was at the right of me coming
25 out of the aisle.

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- 1 Q And in this picture do you see the food aisle?
- 2 A You see it slightly on this side right here.
- 3 Q So it's an aisle over from the center aisle?
- 4 A Yes, ma'am.
- 5 Q And then the customer, what side of the store was
- 6 she?
- 7 A The customer as I was walking up that aisle, she was
- 8 on the right side.
- 9 Q Okay. And I'm showing you State's 33. Do you see
- 10 where she was standing?
- 11 A Yes.
- 12 Q And where is that?
- 13 A If you walk into the store, it's on the left side.
- 14 But as I was walking from the back, it's on the right
- 15 side.
- 16 Q Tell the jury what the robber said to these two women
- 17 as he drug you by the hair?
- 18 A He told the lady with the mop in her hand to come
- 19 with us, and he told Lisa Ellis to stay still, don't
- 20 move.
- 21 Q Were you familiar with the lady with the mop in her
- 22 hand?
- 23 A Yes. She is a regular customer.
- 24 Q Do you know her by name, by any chance?
- 25 A No, ma'am.

1 Q All right. When he instructed them to follow, did
2 they comply?

3 A Yes.

4 Q At that point where did he lead you to?

5 A Basically he just led me up to the front where the
6 cash registers were.

7 Q Now, did you go to the first register or the second
8 register?

9 A I went to the second register.

10 Q Why didn't you go to the first register?

11 A Because I wasn't logged onto that register.

12 Q I'm sorry?

13 A I wasn't logged onto that side.

14 Q You weren't on that side?

15 A No, ma'am.

16 Q I'm going to show you State's No. 34. Does this
17 photograph show both registers?

18 A Yes, it does.

19 Q All right. And which register did he take you to?

20 A To the back, further back, the second register.

21 Q Am I pointing to the right register?

22 A Yes, ma'am.

23 Q And so entering the store, would that be the second
24 register on the right as you walk in?

25 A Yes.

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1 Q Did you have to -- tell the jury, when he took you to
2 the second register, what you did next?

3 A What I did next is, we can't automatically go into
4 our register unless we do a transaction, unless we
5 ring up something. So I automatically hit a no sale
6 which takes about a minute because you have to turn
7 the key; you have to enter a manager code. At that
8 time he did proceed to say, "Hurry up." And I did
9 ask if he wanted a bag, and he said yes. And I
10 bagged all the money up for him.

11 Q I noticed in State's No. 35, is that the actual
12 register, the second register?

13 A Yes, ma'am.

14 Q All right. I notice a bag in there. Describe -- is
15 that the bag that you put the money in?

16 A It wasn't the low prices big bag that we have, but it
17 was the medium sized bag that was on this gray thing
18 right here.

19 Q Over here?

20 A Yes, ma'am.

21 Q So it was not this large bag depicted in State's
22 No. 35. Is that correct?

23 A Exactly.

24 Q What color was the bag that you did put the money in?

25 A At that point I want to say that it was gray, but I'm

1 not certain.

2 Q Gray?

3 A Yes.

4 Q Describe for the jury what happened while you're
5 putting money in the bag?

6 A While I was putting the money in the bag, the
7 customer was looking at the robber up and down. And
8 at the time that I proceeded to put the money in the
9 bag and give it to him, then he immediately ran out
10 the back door.. That's when I was able to basically
11 see what he had on from the bottom.

12 Q And what did you see him having on from the bottom?

13 A I saw that he had on gray sweatpants. But his shoes,
14 when I was at the register, I was able to look over
15 there at his shoes with the no sale. So I did saw
16 that his shoes were white and scuffed.

17 Q Scuffed?

18 A Yes, ma'am.

19 Q Now, were they -- describe what kind of shoes they
20 were?

21 A I just only knew they were white at that point in
22 time.

23 Q Okay. Tell the jury what happened after he left the
24 store?

25 A After he left the store I called 911. I ran to the

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1 back and I called 911. But before I ran to the back,
2 Michael Murphy, the minister, came around to the
3 front. And he began to ask me was I robbed, and I
4 said yes. That's when he ran around to the back to
5 see the robber, and that's when he identified the car
6 and that's when he said the robber pulled out a
7 pistol on him. And he just threw up his hands like
8 that. But then after that, immediately, as soon as I
9 told Michael Murphy that I was robbed, I ran to the
10 back and called the police.

11 Q And do you know whether or not Erica Wilson had
12 called the police before you?

13 A After the incident, after I called the police and
14 everyone had, you know, tried to get their composure
15 together, I did realize she said she called the
16 police but she had to put down the phone because the
17 robber did see her have the phone.

18 Q And so Ms. Wilson did call the police but did not
19 complete the call?

20 A Yes. Exactly.

21 Q When you get on the phone with the police, do you
22 recall what information you are telling 911?

23 A I was basically -- I was clear on what he was
24 wearing. I was very clear on that. I was clear -- I
25 wasn't clear 100 percent how he looked.

1 Q And why is that?

2 A Because he had a mask on. But I knew his physique.
3 I knew he was wearing gray sweatpants. I knew that
4 he had a knit cap, had his eyes cut out. I knew that
5 he had on a yellow jacket. I knew those things.

6 Q And what about the pants?

7 A The pants, they were mid length on his legs. They
8 wasn't all the way pulled down as normal sweatpants
9 would be. They were mid way between his legs.

10 Q And so, in other words, where on his leg were the
11 sweatpants pulled up to?

12 A It was basically between the knee and the ankle.

13 Q And describe the material of these gray pants?

14 A I believe they were cotton.

15 Q Now, you indicated you couldn't see his face because
16 of the mask, correct?

17 A Yes, ma'am.

18 Q Were you able to ever notice his skin tone?

19 A Yes, I did notice his skin tone. And that's when I
20 perceived for him to be Caucasian because he was very
21 light skinned, very light skinned.

22 Q So you thought he was a white man?

23 A Yes, ma'am, I did.

24 Q Now, the build, describe his build for this jury?

25 A The build was very skinny, very slender and very --

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1 all I know, he was very tall and very slender.

2 Q Now, the build of the robber, was that the same build
3 as the person that you had noticed at 8 a.m. that
4 morning?

5 A Yes, ma'am.

6 Q Tell the jury after you got off the phone with the
7 police what happened next?

8 A Basically what proceeded to happen next, Michael
9 Murphy had came in and the police arrived. I knew
10 that we all had to write a statement. We all had to
11 show our ID's and we all had to write a statement as
12 to what was done and what was said.

13 Q Do you remember being approached by a police officer
14 at the store and him asking you to come with him?

15 A Yes.

16 Q Do you happen to remember that officer's name?

17 A No.

18 Q But he was, no question, a police officer, correct?

19 A Yes, he was.

20 Q Would you have left with a stranger?

21 A No.

22 Q And did he ask you to go with him somewhere?

23 A Yes, he did.

24 Q How did he take you to that other location?

25 A I know that we were going close down Atlas Road.

1 Q And did he take you in his car, or did you go in your
2 car?

3 A He took me in his car.

4 Q And what kind of the car was it?

5 A At that time I thought it was the investigator that I
6 got in the truck with. But then I realized the
7 investigator brought me back to Family Dollar, the
8 one who took my statement. But I do remember riding
9 in the back seat of a police car to go down there.

10 Q Okay. And so this uniformed police officer asked you
11 to come with him?

12 A Yes, ma'am.

13 MR. SECOR: Objection, Your Honor. Leading.

14 MS. SHIPLEY: I'm confirming her statement, her
15 testimony.

16 THE COURT: Go ahead. Overruled.

17 MS. SHIPLEY: Thank you, Your Honor.

18 Q Once he takes you, where does he take you?

19 A He takes me, proceeds to take me down Atlas Road into
20 a neighborhood. I'm from Hopkins and I'm from -- you
21 know, I am familiar with local areas but I'm not that
22 familiar with it.

23 Q Do you recall where on Bluff Road he took you to?

24 A I'm not sure.

25 Q What road did you take to go to Bluff Road?

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1 A I know that we went Greenlawn that crosses over to
2 Atlas.

3 Q Okay. Can you show the jury on this map the route
4 that you took with the officer to get to Bluff Road?

5 A Basically, if we're coming out of the Family Dollar,
6 Garners Ferry, we took this Greenlawn off of there to
7 Atlas Road.

8 Q And then is that Atlas Road right there?

9 A Yes, ma'am.

10 Q And how far down Atlas Road did you travel?

11 A I'm not quite sure.

12 Q Did you end up on Bluff Road?

13 A Yes, ma'am, we did.

14 Q And is that Bluff Road right here on the map?

15 A Yes, ma'am.

16 Q All right. And then that's Atlas Road?

17 A Yes, ma'am.

18 Q Does Atlas Road intersect Bluff Road?

19 A Yes, ma'am, it does.

20 Q What did the officer tell that you were going to do
21 with him?

22 A Basically he said that they had someone and he wanted
23 me to see if this was the person.

24 Q At any time did he tell you that they caught the
25 robber?

1 A No. He never did say that.

2 Q Did he suggest to you in any form or fashion that
3 they indeed had the man?

4 A No.

5 Q When you get to the location off of Bluff Road, tell
6 the jury, did you make contact with an investigator
7 at that point?

8 A Yes, I did.

9 Q And did that investigator ask you, tell you what you
10 were about to do?

11 A Yes, he did.

12 Q Describe for the jury, did he suggest to you in any
13 fashion or form that they indeed had the man in
14 custody?

15 A No, he didn't.

16 Q Tell the jury what procedures they did with you.
17 Where did you go?

18 A I went into a rural area. It was a lot of houses
19 close together. It was like a little community. And
20 I had to switch cars. Basically I got out of the
21 police car and I got into what I believe was an
22 F-150, a truck.

23 Q That would be the investigator's car?

24 A Yes.

25 Q Okay. And do you remember the investigator's name,

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1 by any chance?

2 A No, ma'am.

3 Q All right. Where did he take you?

4 A Basically he sat there with me for a while. He
5 explained to me what I'm going to do, and then he
6 circled around. So I was able to identify him more
7 better, get a closer look at him, the robber.

8 Q Okay. I'm going to show you some photographs and ask
9 you to look through them and tell me if you recognize
10 them. State's Nos. 7, 8, and 9, do you recognize
11 those photos?

12 A Yes, ma'am, I do.

13 Q And do those pictures accurately depict the area you
14 were taken to by the investigator?

15 A Yes, ma'am.

16 MS. SHIPLEY: Your Honor, at this time the State
17 would seek to introduce 7, 8 and 9.

18 MR. SECOR: No objection.

19 THE COURT: Without objection.

20 (WHEREUPON, State's Exhibit No. 7 is admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 8 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 9 is admitted
25 into evidence.)

1 Q I'm going to show you State's 7 first.

2 A Okay.

3 Q All right. Can you tell the jury where it was the
4 man was standing when you were driven by him?

5 A He was standing Underneath the basketball goal over
6 here.

7 Q Okay. Am I pointing to the right direction?

8 A Yes, ma'am.

9 Q The right point? Can you tell this jury what exactly
10 his appearance was like at that point?

11 A I saw him with a yellow shirt on that was by his
12 waist. And I saw him with gray sweatpants on to the
13 middle of his leg. I did see two uniformed cops
14 standing on each side of him. And I saw the white
15 shoes with white socks.

16 Q And what color were the pants that he was wearing?

17 A They were gray.

18 Q And where were the pants positioned on his legs?

19 A Between the knee and ankles.

20 Q And so they were not all the way pulled down to the
21 ankle?

22 A No, ma'am.

23 Q The position of these pants, were they the same
24 position as the robber?

25 A Yes, ma'am.

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1 Q Now, you indicated that you saw something yellow on
2 him. Is that correct?

3 A Yes, ma'am.

4 Q Did you ever see the man handcuffed in any way?

5 A No, ma'am.

6 Q You never saw handcuffs?

7 A No, ma'am.

8 Q Did anyone tell you this person was under arrest for
9 anything?

10 A No, ma'am.

11 Q You said there were two officers by him. Is that
12 correct?

13 A Yes, ma'am.

14 Q How far away from this man were the officers?

15 A They weren't that far away. I would say between four
16 to five feet.

17 Q Okay. And were you able to have a good view of this
18 person's face?

19 A Yes, I was.

20 Q Did you recognize the face?

21 A Yes, I did.

22 Q Where did you see that face before?

23 A I saw him at 8:00 that morning.

24 Q Did you recognize the pants?

25 A I recognized the pants.

- 1 Q Where did you recognize the pants from?
- 2 A I recognized the pants from the robber that ran out
3 of the back door.
- 4 Q What about the shoes?
- 5 A I recognized the shoes that I saw across from my
6 register when I opened it to give him the money.
- 7 Q Now, are you absolutely sure about what they had
8 covering his handcuffs?
- 9 A No, ma'am, I'm not.
- 10 Q Okay. But you recall it being the yellow jacket?
- 11 A Yes, ma'am, I do.
- 12 Q At that point when you noticed him and were driving
13 by him, tell the jury, how long did it take for you
14 to identify him?
- 15 A Immediately.
- 16 Q No hesitation at all?
- 17 A No hesitation.
- 18 Q You were not able to say with absolute certainty
19 about the face, correct?
- 20 A Yes.
- 21 Q And why is that?
- 22 A Because he had on a mask.
- 23 Q The person's build, tell me about that that was
24 standing underneath the basketball goal?
- 25 A It was the same build as the gentleman that came to

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1 my door at 8:00 that morning and the same build as
2 the robber when I saw him run out the door.

3 Q Describe the skin tone?

4 A The skin tone was the same gentleman that I described
5 at 8:00 that morning.

6 Q And how was that?

7 A He was an African-American male and very light
8 skinned.

9 Q Okay. Did you see police cars around?

10 A Yes, I did.

11 Q And do you remember where the police cars were in
12 relation to the defendant?

13 A I wasn't that sure, but I know it was where he was
14 standing.

15 Q The fact that there were police cars on the street
16 and there were officers about four feet away from the
17 man, did that influence your decision to identify him
18 in any way?

19 A No, it didn't.

20 Q Why did you identify this man?

21 A I identified him because he was the same man that I
22 saw at 8:00 that morning. I identified him because
23 he had on gray sweatpants and he had on the same
24 white shoes that I saw at the robbery.

25 Q I noticed in State's No. 7 that there is a white

1 vehicle parked nearby?

2 A Exactly.

3 Q The fact that this white car was located near the
4 suspect in police custody, did that influence your
5 decision in any way?

6 A No, it didn't.

7 Q Were you ever asked to identify this vehicle, ma'am?

8 A No.

9 Q Did they ever ask you if that's the car that you saw
10 pull up at 8 a.m.?

11 A They did ask me.

12 Q Is this the car that pulled up at 8 a.m.?

13 A I saw the front end of the car at 8 a.m. but that's
14 the same car that I saw in the parking lot when I
15 pulled up towards my building to go into the store.

16 Q At 7:45 a.m.?

17 A Mm-hmm (affirmative). Yes, ma'am.

18 Q And here is another photograph, State's 8 and 9. You
19 testified earlier that you saw the car pull away
20 after he checked the store hours. Is that consistent
21 with the car?

22 A Yes, that is.

23 Q Okay. Do you recall the description you provided to
24 911 about what kind of the car to look for?

25 A I don't know the description that I recall telling

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1 them, but it was basically based on what the minister
2 gave me.

3 Q Okay. I'm going to show you some articles. Okay?
4 State's No. 51. State's No. 51, what are these,
5 ma'am?

6 A Gray sweatpants.

7 Q And do you recall seeing these before?

8 A Yes, ma'am.

9 Q On who?

10 A On the robber.

11 MR. SECOR: Your Honor, I object. Can we
12 approach briefly, please?

13 THE COURT: What's the objection?

14 MR. SECOR: Improper foundation for purposes of
15 introduction of this.

16 THE COURT: She hasn't offered them yet.

17 MS. SHIPLEY: I'm getting ready to.

18 THE COURT: Well, then you'd better approach the
19 bench.

20 (Whereupon, a bench conference is had)

21 Q Again, State's No. 51, where did you see these
22 before?

23 A On the robber.

24 Q And when you were describing the position of where
25 these pants were on his body, you said -- can you

1 tell the jury where they were positioned during the
2 robbery?

3 A During the robbery they were between his knee and his
4 ankle.

5 Q Scrunched Up?

6 A Yes, ma'am.

7 Q I'm going to show you State's No. 52. Do you
8 recognize these?

9 A Yes, ma'am, I do.

10 Q And how do you recognize these?

11 A They were the same shoes that I saw across from the
12 counter when I was handing him the money.

13 COURT REPORTER: I'm sorry. I didn't hear the
14 response.

15 A They were the same shoes that I saw across from the
16 counter when I was handing him the money.

17 COURT REPORTER: Thank you.

18 WITNESS: Mm-hmm (affirmative).

19 Q State's No. 54, do you recognize this?

20 A Yes, ma'am, I do.

21 Q And what is this?

22 A That was the yellow jacket that I saw on the robber.

23 Q State's No. 53, do you recognize this?

24 A Yes, ma'am. That's the knit hat with the eyes cut
25 out of it.

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1 Q And you described them. What did you describe the
2 holes as being?

3 A They were cut out.

4 Q Did you use the term homemade?

5 A Yeah. Homemade. Yes.

6 Q You indicated that when you put the money in the till
7 every morning you generally do not put \$10 bills,
8 correct?

9 A Yes, ma'am.

10 Q Tell the jury approximately what time this robbery
11 occurred?

12 A This robbery occurred between 9 and 9:10 or 9:15.

13 Q Okay. And the fact that if there was is a \$10 bill,
14 where could that have come from?

15 A That would have come from a customer.

16 Q And did you recall having customers that morning?

17 A I had one.

18 Q One?

19 A Mm-hmm (affirmative).

20 Q You indicated that after you -- tell the jury what
21 happened after you identified the man. Did you tell
22 the officer that was him?

23 A Yes. I did.

24 Q And where did you go from there?

25 A We proceeded to stay, sit in his truck, and that's

1 when he took a statement from me.

2 Q Okay. And I'm going show you a document and ask you
3 if you recognize it?

4 A Yes, ma'am, I do.

5 Q And what is it?

6 A It's the statement that the officer took from me.

7 Q And how many pages long it is?

8 MR. SECOR: Objection, Your Honor. Bolstering.

9 THE COURT: What's the question?

10 MS. SHIPLEY: I'm asking her how many pages the
11 statement was that she gave to the police.

12 THE COURT: Overruled.

13 Q Can you answer the question, please?

14 A It was three pages.

15 Q And is it in your own handwriting or in the officer's
16 handwriting?

17 A It's in the officer's handwriting.

18 Q Did you have an opportunity to review your statement
19 before you signed your statement?

20 A Yes, I did.

21 Q And is everything in that statement accurate?

22 A Yes, ma'am.

23 Q And do you see your signature on that document?

24 A Yes, I do.

25 Q All three pages?

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1 A Yes, ma'am.

2 Q Do you recall whether or not your business had a
3 surveillance camera?

4 A We did.

5 Q Tell the jury, was it operating or not?

6 A At the time I believe for it to be operating. But we
7 used the VHS, and basically the tape just basically
8 was bouncing up and down. We couldn't tell anything
9 on it.

10 Q And so you actually reviewed the videotape that
11 was --

12 A Yes, I did.

13 Q And describe again the quality of the video?

14 A The quality of the video was not good.

15 Q Could you see anything in the video?

16 A Not really. No.

17 Q Do you remember giving that video to law enforcement?

18 A Yes, I do.

19 Q The person that you saw come up to the business --

20 A Yes.

21 Q -- at 8 a.m. in the morning on November 9th, 2006,
22 and the person that committed the robbery at 9:00,
23 9:15, and the person that you were asked to identify
24 underneath the basketball goal, is that the same
25 person?

1 A Yes.

2 Q Do you see that person in this courtroom today?

3 A Yes, I do.

4 Q Can you please identify him for this jury?

5 A He is right over there in a white shirt with a tie.

6 MR. SECOR: The same objection, Your Honor.

7 THE COURT: All right. The objection is
8 overruled. The record will reflect that the witness
9 identified the defendant.

10 MS. SHIPLEY: Thank you, Your Honor. Beg the
11 Court's indulgence. Thank you, Ms. Anderson. Please
12 answer any questions from the defense.

13 THE COURT: Cross examination.

14 MR. SECOR: Thank you, Your Honor..

15 CROSS EXAMINATION

16 BY MR. SECOR

17 Q Good morning, Ms. Anderson.

18 A Hey. How are you?

19 Q Good. How are you?

20 A I'm fine. Thanks.

21 Q Let's get a little bit closer. All right. I just
22 want to talk to you about things that occurred to you
23 on November 9th, 2006. Okay?

24 A Yes, sir.

25 Q I'll try to do it as methodically as I can so we

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1 don't get confused. Okay?

2 A All right.

3 Q On that morning, as you stated, you got to work
4 before the store opened?

5 A Yes, sir.

6 Q As you normally do?

7 A Yes.

8 Q And as you normally do, you went through your daily
9 routine of opening the store?

10 A Yes, sir.

11 Q Before it actually opens?

12 A Yes.

13 Q And that involves things like preparing the deposits?

14 A Mm-hmm (affirmative).

15 Q Getting the cash ready for registers?

16 A Yes, sir.

17 Q Okay. And again, these are things you do virtually
18 every day before the store opens?

19 A Yes, sir.

20 Q And you were doing these things upstairs in your
21 office, right?

22 A Yes, sir.

23 Q And you said that when you were upstairs you heard
24 the sound of a car or a loud car?

25 A Yes.

1 Q And you walked downstairs?

2 A No. I didn't walk downstairs. I proceeded to come
3 to the second step, first step of my office.

4 Q Okay. But you were on the stairs?

5 A Yes. Yes, sir, I was.

6 Q Okay. And you saw the front portion of a white car?

7 A Yes, sir, I did.

8 Q Okay. And when you say front portion, do you mean
9 sort of the hood?

10 A Yes, sir; like the hood.

11 Q Okay. So at that time you just saw the hood. You
12 didn't see how many doors the car had?

13 A At that time I just saw the hood but I was able to
14 see the left tire.

15 Q Okay.

16 A Yes, sir.

17 Q And you saw the man approach the front door, correct?

18 A Yes, sir, I did.

19 Q And that was an African-American man?

20 A Yes, sir.

21 Q And your immediate reaction when you saw him was that
22 he was checking the store hours?

23 A Yes.

24 Q And he was there for a matter of seconds?

25 A Yes, sir.

- 1 Q Turned around, walked away?
- 2 A Yes, sir.
- 3 Q And this is, working at the store, a normal
4 occurrence for people to check the hours?
- 5 A Yes, sir, it is.
- 6 Q And once you walked away you returned to your normal
7 duties?
- 8 A Once he walked away he got back into his car. Then I
9 returned upstairs.
- 10 Q Okay. With regards to when you were actually robbed,
11 you were near the back door of the Family Dollar at
12 that time, right?
- 13 A Yes, sir.
- 14 Q And this person that robbed you came through the back
15 door?
- 16 A Yes, they did.
- 17 Q And was the door opened or closed?
- 18 A It was opened.
- 19 Q And you stated that when this person came in the door
20 he was very close to you?
- 21 A Yes, he was.
- 22 Q So close that you could touch him?
- 23 A Yes.
- 24 Q And he was so close, he was close enough for to you
25 touch him. And that period of time lasted for about

1 five seconds?

2 A Five seconds. Mm-hmm (affirmative).

3 Q And I believe you said when you talked to Ms. Shipley
4 that the store is very well lit?

5 A Yes.

6 Q And after standing there next to this man for five
7 seconds, he grabbed you by the back of your head,
8 right?

9 A Yes, he did.

10 Q And first told you to get on the ground or forced you
11 to the ground?

12 A No. He immediately asked Erica to come over there
13 and he immediately grabbed her by her hair and --

14 Q I'm sorry. And then you got on the ground and then
15 got back up. Is that right?

16 A No, sir. He proceeded to nudge us out of the
17 stockroom onto the sales floor.

18 Q Okay.

19 A Yes, sir.

20 Q But there was a period of time when he told you to
21 get down, right?

22 A Yes, sir. It was on the sales floor.

23 Q Okay. And then he got you back up?

24 A Yeah. He got me back up but he had Erica to stay
25 down.

1 Q Okay. And he pushed you towards the front of the
2 door?

3 A Yeah. He nudged me to go towards the front of the
4 store.

5 Q So you were walking on your own but he was holding
6 you by the back of the head?

7 A Yes, he was.

8 Q And throughout this period of time this person was
9 talking to you?

10 A Throughout this period of time?

11 Q I'm sorry. Throughout the robbery he was talking to
12 you?

13 A He was just -- at that point in time, when he had me
14 and Erica on the floor, he first told us to get down,
15 and then he said, "If you both don't do what I ask
16 you to do, then I'll kill you."

17 Q But then he told you to get down?

18 A Yes.

19 Q Then he told you to go get the money. He demanded
20 the money?

21 A Yes, sir.

22 Q I believe you said you asked him if he wanted a bag.
23 He said yes?

24 A Yes.

25 Q Okay. And you said that he threatened you. But you

1 didn't feel threatened, right?

2 A No, I didn't.

3 Q And after the money was taken from registers, or the
4 register -- I'm sorry -- this person left out the
5 back door?

6 A Yes, sir. Right.

7 Q And you -- once he went out the back door, you never
8 saw him again?

9 A Once he went out the back door, I didn't know what
10 direction he went out the back door.

11 Q And you didn't see him get into a car?

12 A No, I didn't see him get into a car.

13 Q And obviously as soon as this ordeal ended you called
14 911?

15 A Yes, sir.

16 Q And this was the second call to 911?

17 A Yes, sir.

18 Q And a police officer arrived?

19 A Yes, he did.

20 Q Somebody from the Richland County Sheriff's
21 Department?

22 A Yes.

23 Q And obviously you spoke to them as soon as they
24 arrived?

25 A Yes.

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1 Q And you gave them information about what happened?

2 A Yes.

3 Q You told them everything that had happened?

4 A Yes.

5 Q And at the time that you were talking to the officer
6 that arrived there first on the scene, you were
7 trying to be as accurate as possible in your
8 description to him, right?

9 A Yes.

10 Q And you were trying to give him as much detail as
11 possible?

12 A Yes.

13 Q Because you clearly wanted the police to catch this
14 person that did this to you?

15 A Correct.

16 Q And at the time after this incident occurred, you
17 told the police that the person who had robbed you
18 was a white male?

19 A Yes, I did.

20 Q And you told the police that the person that robbed
21 you had either a Middle Eastern or Pakistani accent,
22 right?

23 A Yes, I did.

24 Q And I believe that it was Deputy Kilcoyne was the
25 first deputy that arrived. I think you said you

1 didn't remember who it was?

2 A No, I didn't.

3 Q But he didn't take a statement from you at that time?

4 A He didn't take a statement from me. Basically he
5 just asked for all our ID's, for us to write down our
6 address and our information.

7 Q Okay. And after that deputy had been there for a
8 while, another deputy arrived, correct?

9 A Yes.

10 Q And that was the deputy that said that he wanted to
11 take you somewhere?

12 A Yes.

13 Q And he told you that he wanted to take you somewhere
14 because they had somebody that they thought might be
15 the person that had robbed you?

16 A They just told me that, yes, that he had someone but
17 they wasn't very sure, he wanted know go and identify
18 him.

19 Q Okay. And so that deputy, the second deputy that
20 arrived, he asked you to get in his car?

21 A Yes.

22 Q And you drove to another location where you met
23 another police officer, right?

24 A Yes, sir.

25 Q And I believe that officer was Sergeant Robinson with

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1 the Richland County Sheriff's Department. Is that
2 right?

3 A I believe so.

4 Q Okay. And I believe you described to Ms. Shipley
5 that they told you what they wanted to do?

6 A Basically he said that we were going to drive around
7 and if you can identify this person, you let me know.
8 And that's basically it.

9 Q Okay. And so you got into this Ford F-150 with the
10 other officer, right?

11 A Yes, sir.

12 Q And you knew both these people were police officers
13 that had --

14 A Yes, sir, I did.

15 Q -- brought you there? And you approached the area
16 where they said they've got somebody that they want
17 you to look at?

18 A Yes, sir.

19 Q And as you're approaching that scene in this truck,
20 you see several uniformed police officers, right?

21 A I don't see several. Mainly I just saw the police
22 cars. I saw about three police cars. And that's
23 basically what I remember seeing. Three.

24 Q You saw at least two people who were uniformed police
25 officers at the scene though, right?

- 1 A Yes, sir, I did.
- 2 Q And you're riding with a police officer?
- 3 A Yes, I did.
- 4 Q And you've just been dropped off by another police
5 officer?
- 6 A Yes, sir.
- 7 Q And they drive you up to this area. There's three
8 police cars, at least two uniformed police officers?
- 9 A Yes, sir.
- 10 Q And you see Mr. Jimmy Portee standing there?
- 11 A They drive me up to the area. At first I didn't see
12 him. At first I had to switch cars. I had to get
13 out of the police car and get into the investigator's
14 car.
- 15 Q You were in the truck, right?
- 16 A Yes, sir.
- 17 Q But they pull up and you see Mr. Portee standing
18 underneath the basketball goal?
- 19 A Correct.
- 20 Q And he's standing in -- he's standing relatively
21 close to a white car?
- 22 A I wouldn't say it was close. I don't have a
23 recollection of where the white car was from him, but
24 I know it wasn't that far.
- 25 Q You did say he was standing right underneath the

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1 basketball hoop though, right?

2 A Yes, I did. Yes, I did.

3 Q I'm going to show you what's been marked as State's
4 Exhibit 7.

5 A Okay.

6 Q Do you recognize that as being an accurate depiction
7 of the scene that you saw?

8 A Yes, sir, it was.

9 Q So you'd say the car was pretty close to where he was
10 standing?

11 A Yes. About ten feet, something like that.

12 Q And there was two officers on either side of Mr.
13 Portee, right?

14 A Yes, sir.

15 Q Four to five feet?

16 A Yes, sir.

17 Q And Mr. Portee is standing with his arms like this,
18 correct?

19 A Yes, sir.

20 Q And there is a yellow jacket draped over his hands?

21 A Yes, sir. What I appeared to have thought was a
22 yellow jacket. But I'm not quite sure. But I knew
23 something was covering his hands.

24 Q Now, clearly the purpose of this was for the police
25 to determine whether or not you thought this was the

1 man that robbed you, right?

2 A Yes.

3 Q And they drove you up there. And you said that the
4 pants looked right, the sweatpants looked right to
5 you?

6 A No. I immediately said that that was the person that
7 robbed me.

8 Q You immediately said that was the person who robbed
9 you?

10 A Yes, sir.

11 Q Ms. Anderson, you've testified with regards to this
12 fact before today, right?

13 A Yes, sir.

14 Q And do you recall while testifying under oath --

15 A Yes, sir.

16 Q -- that you were not sure that the person you saw --

17 A No. I wasn't certain of his face but I was certain
18 of the clothes that he was wearing.

19 Q Okay. So I'll ask you again; when they brought you
20 by, you said that you were sure about the pants?

21 A Well, he didn't ask me in that way. He just said, is
22 this the person, and then I said yes.

23 Q Okay. But you said yes even though you weren't sure?

24 A I was sure because of the -- I was certain of his
25 clothes.

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1 Q You were certain of the sweatpants?

2 A Yes, sir.

3 Q And the yellow jacket that they had hanging between
4 his hands?

5 A I didn't say he had the yellow jacket. I don't
6 recall. But something was covering his hands.

7 Q Beg the Court's indulgence for just a moment. Ms.
8 Anderson, just so we're clear; the way that Mr.
9 Portee was standing by the police, he was standing
10 with his hands together in front of him, the way they
11 would be if he was handcuffed?

12 A The only thing I know that his hands were in front of
13 him.

14 Q Okay.

15 A Yes, sir.

16 Q Okay. Thank you, Ms. Anderson. I've got nothing
17 further, Your Honor.

18 THE COURT: Redirect?

19 MS. SHIPLEY: Yes, sir. Very briefly, Your
20 Honor.

21 REDIRECT EXAMINATION

22 BY MS. SHIPLEY

23 Q Mr. Secor was asking you about whether or not it's
24 unusual for customers to come to the front of your
25 store to check store hours?

- 1 A Yes.
- 2 Q Do you recall him asking you that?
- 3 A Mm-hmm (affirmative)..
- 4 Q Ma'am, is it usual for customers to come up to your
5 store to check store hours later to return to rob
6 you?
- 7 A No, ma'am.
- 8 MR. SECOR: Objection, Your Honor.
- 9 A It's not.
- 10 THE COURT: What's the objection?
- 11 MR. SECOR: Leading. Counsel is testifying.
12 Speculation.
- 13 THE COURT: All right. Sustained. Strike that
14 from the record, ladies and gentlemen.
- 15 Q During the robbery when he threatened to kill you if
16 you didn't do what he asked you to do, did you
17 believe he was armed?
- 18 A Yes.
- 19 Q Have you had training as a manager of this store to
20 maintain your calmness during a robbery?
- 21 A Yes, ma'am.
- 22 Q Did you remain calm during the robbery?
- 23 A Yes, ma'am.
- 24 Q How about Erica?
- 25 A No, ma'am.

Tracey Anderson - Redirect by Ms. Shipley

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1 Q And she'd only worked there how long?

2 A She was there -- I hired her six months.

3 Q I believe Mr. Secor asked you during your cross
4 examination about what the police told you concerning
5 the person they had in custody?

6 A Yes, ma'am.

7 Q Did they ever tell you they had the robber in
8 custody?

9 A No, ma'am.

10 Q Who told them they had the robber in custody?

11 A I did.

12 Q Did you ever know Jimmy Portee, that man right there,
13 before November 9th, 2006?

14 A No, I didn't.

15 Q Do you have any problems with this man?

16 A No.

17 Q Other than him robbing you?

18 A Exactly.

19 Q Do you recall how much time passed from the time of
20 the robbery when the man ran out the back of the
21 store to the time that the police take you to
22 identify him?

23 A It was between 20 to 30 minutes.

24 Q When you were brought to him, Mr. Secor was asking
25 you about the position of his hands?

1 **A** Yes, ma'am.

2 **Q** Did you ever see any handcuffs on the man?

3 **A** No, I didn't.

4 **Q** Did you even know he had handcuffs on?

5 **A** No, I didn't.

6 **Q** Thank you. No further questions, Your Honor.

7 **THE COURT:** Anything further?

8 **MR. SECOR:** Nothing further, Your Honor.

9 **THE COURT:** You may come down, please. May this
10 witness be excused?

11 **MS. SHIPLEY:** Yes, sir. Please, Your Honor.

12 **THE COURT:** All right. Counsel, let me see you
13 for just a minute.

14 (Whereupon, a bench conference is had)

15 **THE COURT:** Call your next witness.

16 **MS. SHIPLEY:** Thank you, Your Honor. The State
17 calls Joan Hooks.

18 **JOAN HOOKS,** after being duly sworn, testifies as
19 follows:

20 **THE CLERK:** Thank you. Please have a seat in
21 the witness stand and state your full name for the
22 record.

23 DIRECT EXAMINATION

24 **BY MS. SHIPLEY**

25 **Q** State your name for the record, ma'am?

Joan Hooks - Direct by Ms. Shipley

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- 1 A My name is Joan Hooks.
- 2 Q Ms. Hooks, can you pull that microphone close to you
- 3 so we can all hear you okay?
- 4 A Okay.
- 5 Q Ms. Hooks, can you tell the jury a little bit about
- 6 yourself? Where are you from?
- 7 A I'm from Columbia, South Carolina.
- 8 Q What do you do for a living?
- 9 A I work for the DMV.
- 10 Q What is your position with the DMV?
- 11 A I'm a customer service rep.
- 12 Q How long have you had that job?
- 13 A A year.
- 14 Q And prior to that where did you work?
- 15 A I worked at Blue Cross and Blue Shield of South
- 16 Carolina.
- 17 Q How long were you with them?
- 18 A A year and a half.
- 19 Q Okay. And I'm not going to ask you for a street
- 20 address, but where in the general area of Columbia do
- 21 you live?
- 22 A I live off of Garners Ferry Road on Greenlawn.
- 23 Q Okay. Are you familiar with the Family Dollar Store
- 24 on Greenlawn?
- 25 A Yes, I am.

1 Q Can you describe for the jury how many times a week
2 you frequent this store?

3 A Maybe two or three times a week.

4 Q So you frequent the store quite a bit, don't you?

5 A I do, yes.

6 Q Are you familiar with the employees of the store?

7 A Yes, I am.

8 Q And do you know Tracey Anderson?

9 A Yes, I do.

10 Q I'm going to bring your attention to November 9th,
11 2006. Do you remember being at the Family Dollar
12 Store that day?

13 A Yes, I do.

14 Q Can you tell the jury what you were there to buy?

15 A I was there to buy cleaning products. I have a side
16 business where I do housekeeping, and I was buying my
17 products from that store.

18 Q And what kind of products were you looking at
19 specifically?

20 A Pine Sol, mops and gloves.

21 Q Can you tell the jury, when you walk in the front
22 door of the Family Dollar, where are the mops
23 located?

24 A The mops are located to the left-hand side of the
25 store.

1 Q Okay. And are they against the wall or in the
2 center? Where in the store?

3 A Against the wall.

4 Q I'm going to show you a photograph, State's No. 33,
5 and ask you if you recognize that picture?

6 A Yes, I do.

7 Q And do you see the mops?

8 A Yes, I do.

9 Q Is that where you were standing?

10 A Yes.

11 Q All right. Tell the jury what was going on. What
12 happened when you were trying to buy mops?

13 A I heard a loud ruckus in the back and I heard someone
14 saying, oh, Jesus; oh, Jesus; oh, Jesus. That's all
15 I heard the person saying. So because I frequent the
16 store a lot, I'm like, okay, I don't know if they're
17 talking or playing in the back. So I went up the
18 aisle to the middle, and that's when I saw Tracey
19 being held by the person who was robbing the store,
20 and he had her by her hair and was walking her
21 upwards the store, up the front of the store.

22 Q Did you see the other employee by any chance at this
23 point?

24 A I -- I saw maybe a glimpse of her. I didn't really
25 see the other employee.

1 Q Can you describe for this jury what you remember the
2 robber looking like?

3 A I know that he was taller than me.

4 Q How tall are you?

5 A I am -- at that time I didn't have on heels. So I
6 was maybe about five-seven. I'm about five-seven.

7 Q So he was taller than you?

8 A I know that he was taller than me.

9 Q What about his build?

10 A He is slim build.

11 Q What else do you remember about the robber?

12 A I remember the gray pants, the gray jogging pants.

13 Q Okay.

14 A And --

15 Q I'm going to show you State's No. 51 and ask you if
16 you recognize these?

17 A Yes. Those look like the pants he had on.

18 Q What else do you remember about this man?

19 A I remember just his shoes.

20 Q Do you remember what color they were?

21 A I don't know if they were beige or white in color.
22 They were A light color.

23 Q I'm going to show you State's No. 52. Do these look
24 familiar?

25 A Yes.

1 Q Do these appear to look similar?

2 A They could be similar, yes.

3 Q What else do you remember about the robber?

4 A I know that he was yelling something to me as he was
5 walking up. And I'm not really sure exactly what he
6 was saying at that time. But I just walked up
7 towards the store with them as he was walking her up
8 the store.

9 Q And you said he was walking her up the store. Who?

10 A Tracey. I'm sorry.

11 Q And how was he walking her up the store?

12 A He had her by the hair. And I'm not sure what type
13 of weapon he had but he was walking her up and
14 walking her up towards the store to the cash
15 register.

16 Q Did you see what he was -- how many hands was he
17 using to grab her hair?

18 A Just one.

19 Q What was he doing with the other hand?

20 A And it's been a long time ago, so from my
21 recollection, he had it inside of his jogging pants,
22 like he had something in his pants. But I'm not
23 certain.

24 Q So you correct me if I'm wrong. But you remember him
25 having his hand like so and then the other hand like

1 so?

2 A Right.

3 Q Walking her to the front of the store?

4 A Right.

5 Q You indicated that you met up with him in the center
6 aisle. Is that correct?

7 A That's right.

8 Q Does State's No. 32 accurately depict the center
9 aisle?

10 A Yes.

11 Q So you testified earlier that you followed them. Or
12 did you follow or did you go ahead of them to the
13 front?

14 A I went ahead of them to the front.

15 Q Where did you go once you got to the front of the
16 store?

17 A In front of the cash register.

18 Q And what happened at the cash register?

19 A He was asking her to give him the money from out of
20 the register.

21 Q And what did she do as a result?

22 A She did that. He was asking her for a bag. He kept
23 asking her for a bag.

24 Q Do you recall what kind of bag he was asking for?

25 A Well, at first she asked him, you know, how did he

1 want, where did he want the money. And he said
2 inside of a bag. And then he then referring to
3 another bag. And I am not sure what bag he was
4 referring to when he kept saying, "Where is the bag,
5 where is the bag?"

6 Q And so you don't know what kind of bag he was
7 referring to?

8 A No. I don't.

9 Q Describe Tracey at the register. Was she able to
10 move quickly or slowly? Describe her actions.

11 A She was moving quickly, but she was very, very, very
12 nervous.

13 Q Describe her demeanor for the jury?

14 A I guess she kept asking him questions, and she just
15 seemed very frightened to me.

16 Q Okay. Did he say anything to her while she was
17 grabbing the money out of the register?

18 A Telling her to hurry up, hurry up. He asked her to
19 hurry up.

20 Q And do you recall his accent while he's talking?

21 A I honestly don't.

22 Q Did he sound like a foreigner?

23 A No.

24 Q No?

25 A Not to me. I can't remember, honestly.

1 Q All right. Did you ever get a glimpse of his skin?

2 A I knew that he was light complected from -- I can't
3 remember what type of jacket he had on, but it seemed
4 like he was light complected.

5 Q You don't remember his jacket?

6 A Not -- no.

7 Q Did he instruct you -- tell the jury whether or not
8 you were allowed to look at him?

9 A No. I was not allowed to look at him.

10 Q And how is that? Did you do that voluntarily, or
11 were you instructed to do so?

12 A He told me to -- not to.

13 Q Not to?

14 A Don't look at him. Yeah.

15 Q So you recall the pants and the shoes but not the
16 jacket?

17 A Right.

18 Q And why is that?

19 A I know when they were walking up, she was in front of
20 him, kind of in front of him. So I really couldn't
21 pay attention to what he was wearing besides because
22 I was standing right beside them at the cash
23 register. That's how I got a good look at his pants
24 and his shoes.

25 Q Okay.

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- 1 A So ...
- 2 Q Were you trying to make an effort not to look at his
- 3 face?
- 4 A Right.
- 5 Q What happened after he got the money?
- 6 A He ran out the back of the store.
- 7 Q And what happened next?
- 8 A The reverend or minister came in from the church
- 9 nextdoor.
- 10 Q Can you describe his demeanor for the jury when he
- 11 came in?
- 12 A He was very excited and wanted to know where the guy
- 13 was or what happened, and he ran to the back of the
- 14 store as well.
- 15 Q So he ran through the store following the robber?
- 16 A Right.
- 17 Q Did you see him return, the reverend or minister?
- 18 A Yes, I did.
- 19 Q And describe for the jury his demeanor when he
- 20 returned?
- 21 A He was very excited then and said he saw the car in
- 22 the back of the store.
- 23 Q And did you hear him describe the car?
- 24 A Yes. He said it was a white car.
- 25 Q Do you know Jimmy Portee?

1 A No, ma'am.

2 Q Do you even know who that is?

3 A (Shakes head negatively).

4 Q Okay. And back in 2002 and 2005 you bounced two
5 checks, correct?

6 A Yes, I did.

7 Q And that is the only time you've been in trouble with
8 the law?

9 A Right.

10 Q Beg the Court's indulgence. Were you able to see the
11 man's face?

12 A No.

13 Q Why not?

14 A He had a mask.

15 Q What color was the mask? Do you remember?

16 A I can't honestly say I remember what color the mask
17 was.

18 Q Thank you very much, Ms. Hooks. Answer any questions
19 from the defense.

20 THE COURT: Cross examination.

21 MR. SECOR: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. SECOR

24 Q Good morning, Ms. Hooks.

25 A Good morning.

- 1 Q How are you today?
- 2 A Great. Thank you.
- 3 Q Okay. I just ask you a couple of quick questions.
- 4 You were at the Family Dollar when the police
- 5 arrived?
- 6 A Correct.
- 7 Q And the police wanted to speak to you when they
- 8 arrived?
- 9 A Correct.
- 10 Q Because you had just seen an armed robbery?
- 11 A Right.
- 12 Q And when the police approached you and talked to you,
- 13 you knew that they were talking to you because they
- 14 were investigating a crime?
- 15 A Correct.
- 16 Q And they wanted information about that crime?
- 17 A Correct.
- 18 Q And they wanted information from people who saw that
- 19 crime?
- 20 A Correct.
- 21 Q And they wanted information about what the person
- 22 looked like?
- 23 A Mm-hmm (affirmative).
- 24 Q Right?
- 25 A Yes. Mm-hmm (affirmative).

1 Q And you did make a statement at that time, right?

2 A Correct.

3 Q In fact you wrote your own statement?

4 A Correct.

5 Q And did the police ask you to put details in your
6 statement that would help them identify the person
7 that did this?

8 A Well, not really identify the person, but to -- what
9 I saw, what events occurred.

10 Q Okay. And do you remember telling them or putting in
11 your statement rather, do you remember putting in
12 your statement any details about what this person
13 that robbed the store looked like?

14 A No. Not what he looked like, no.

15 Q You didn't or you don't remember?

16 A I don't think -- I don't recall that I did.

17 Q Okay. I'm just going to show you this, ask you if
18 you recognize that?

19 A Yes.

20 Q Does that look like --

21 A That's my statement.

22 Q That's your statement --

23 A Mm-hmm (affirmative).

24 Q -- you made that day?

25 A Yes.

1 Q And can you just read it to yourself?

2 A Mm-hmm (affirmative).

3 Q And just tell me if there is any details there
4 specifically about what this person that robbed the
5 store looked like?

6 A No. There is nothing in it that describes him. No.

7 Q Okay. Thank you, Ms. Hooks. I appreciate it.
8 Nothing further, Your Honor.

9 THE COURT: Yes, ma'am.

10 MS. SHIPLEY: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. SHIPLEY

13 Q Ms. Hooks, you were just shown a copy of your
14 statement. Is that your statement?

15 A Yes.

16 Q How long is your statement?

17 A Maybe ten sentences.

18 Q Okay. And you signed it?

19 A Yes.

20 Q Did you put your name and address on this statement?

21 A Yes.

22 Q All right. Have you ever been present during an
23 armed robbery?

24 A No, I haven't.

25 Q Do you need to look at this paragraph to remember

1 what happened on November 9th, 2006?

2 **A** No, ma'am.

3 **Q** Do you have a personal recollection of what the
4 robber looked like from that day?

5 **A** Yes. I do.

6 **Q** Thank you. No further questions, Your Honor.

7 **THE COURT:** Anything further?

8 **MR. SECOR:** Just very briefly.

9 RE CROSS EXAMINATION

10 **BY MR. SECOR**

11 **Q** When you wrote your statement, it was right after
12 this had happened, right?

13 **A** That's correct.

14 **Q** And now when you're testifying to this based on your
15 recollection, it's approaching two years from the
16 date of this incident, correct?

17 **A** Mm-hmm (affirmative). Yes.

18 **Q** Thank you.

19 **THE COURT:** All right. Thank you very much,
20 ma'am. You may come down. May this witness be
21 excused?

22 **MS. SHIPLEY:** Yes. Please, Your Honor.

23 **THE COURT:** Without objection. All right,
24 ladies and gentlemen. Let's take our morning break
25 at this time. I'll take about a 15-minute break.

1 Just relax in your jury room. We'll call you when
2 we're ready or when you're ready.

3 (Jury out at 11:08 a.m.)

4 **THE COURT:** All right. We'll stand at ease for
5 about ten minutes.

6 (Whereupon, a break is taken)

7 (WHEREUPON, State's Exhibit No. 59 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 60 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 61 is marked for
12 identification.)

13 **THE COURT:** The State ready to proceed?

14 **MS. SHIPLEY:** Yes, sir, Your Honor.

15 **THE COURT:** The defense ready to proceed?

16 **MR. COOPER:** Yes, sir.

17 **THE COURT:** All right. Bring the jury, please,
18 if they're ready.

19 (Jury in at 11:30 a.m.)

20 **THE BAILIFF:** The jury is all present, Your
21 Honor.

22 **THE COURT:** All right. Thank you very much.
23 All right, Solicitor. Call your next witness.

24 **MS. SHIPLEY:** Thank you, Your Honor. The State
25 calls Lisa Ellis.

1 LISA ELLIS, after being duly sworn, testifies as
2 follows:

3 THE CLERK: Thank you. Please have a seat in
4 the witness stand and state your full name for the
5 record.

6 WITNESS: My name is Lisa Ellis.

7 DIRECT EXAMINATION

8 BY MS. SHIPLEY

9 Q Good morning, Ms. Ellis.

10 A Good morning.

11 Q Ms. Ellis, can you pull that microphone a little
12 close to your mouth so we can all hear? Thank you.
13 Ms. Ellis, can you tell the jury a little bit about
14 yourself? Where are you from?

15 A Originally from Long Island, New York.

16 Q When did you move to South Carolina?

17 A Oh, about 1990.

18 Q I'm really hard of hearing. Can you put that --

19 A About 1990.

20 Q -- closer to your mouth. And I think you can even
21 scoot up a little bit in your chair. Okay? Thank
22 you. In 1990?

23 A Mm-hmm (affirmative).

24 Q And what made you move to South Carolina?

25 A Family.

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- 1 Q Family?
- 2 A (Nods head affirmatively).
- 3 Q When you moved to South Carolina, did you go to
- 4 school?
- 5 A Yes.
- 6 Q Where did you go to school?
- 7 A My first school was Nursery Road Elementary.
- 8 Q So you came here as a young girl?
- 9 A Yes.
- 10 Q And just bear with me one more time. All right.
- 11 Right up to your lips. Okay? Ms. Ellis, tell the
- 12 jury, did you finish high school?
- 13 A No.
- 14 Q Which high school did you attend?
- 15 A Brooklyn Cayce.
- 16 Q All right. And when did you start working for Family
- 17 Dollar? Well, let's put it this way. The day of the
- 18 robbery, do you remember that day?
- 19 A Yes.
- 20 Q How long have you been working at the Family Dollar
- 21 by then?
- 22 A About two and a half months.
- 23 Q Two and a half months. So you were a new employee?
- 24 A Yes.
- 25 Q Tell the jury what you remember about November 9th,

1 2006?

2 A Well, I came in as opener.

3 Q What does that means, an opener?

4 A Well, I was like the first cashier.

5 Q What time do you have to report to work as an opener?

6 A I come in like 8:30.

7 Q Okay. And do you remember who else was working that
8 morning?

9 A It was me, my manager, Tracey, and I can't remember
10 the -- there was two other employees but I can't
11 remember their names.

12 Q Okay. So there was another employee in addition to
13 Tracey Anderson?

14 A Yes.

15 Q And does the name Erica Wilson ring a bell?

16 A Yeah.

17 Q Is that her?

18 A Yes.

19 Q But you don't know Ms. Anderson or Ms. Wilson.
20 You're not friends with them outside of work?

21 A No.

22 Q Do you still work at the Family Dollar?

23 A No.

24 Q When did you quit working there?

25 A About a week and a half. No. About a good two, two

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1 to three weeks after that.

2 Q After the robbery?

3 A Yes.

4 Q You quit working there?

5 A Mm-hmm (affirmative).

6 Q Tell the jury a little bit about what you were doing
7 when something unusual happened?

8 MR. COOPER: Objection.

9 THE COURT: Overruled. What's the objection?
10 I'm sorry. What's the objection?

11 MR. COOPER: Judge, it's leading and it assumes
12 facts that aren't already in evidence.

13 THE COURT: She asked her what she was doing
14 when something unusual happened. I think it's a fair
15 question. Go ahead.

16 Q Please answer the question.

17 A I was stocking shelves. I had just had my drawer
18 counted.

19 Q You just had your drawer counted?

20 A Yes.

21 Q Okay. And you were stocking. What kind of items
22 were you stocking?

23 A I was close to the counter. So it was like food.

24 Q Do you remember which register you were supposed to
25 be working that morning?

1 **A** The second one.

2 **Q** When you were stocking the food, were you close to
3 the second register?

4 **A** Yes.

5 **Q** Tell the jury what you heard?

6 **A** Okay. First I heard screaming. But I didn't really
7 think nothing of it because, I mean, we kind of like
8 have fun in there. But I didn't pay attention to it
9 until I thought she had just saw a bug or something.

10 **Q** You thought she had what?

11 **A** Saw a bug or something.

12 **Q** Saw a bug?

13 **A** Something like that, yes.

14 **Q** So you didn't think it was anything serious?

15 **A** No.

16 **Q** All right. When did you think it was serious?

17 **MR. COOPER:** Objection. Leading.

18 **THE COURT:** Overruled. Go ahead.

19 **MR. SECOR:** Your Honor, could we ask the witness
20 the speak up a little bit?

21 **THE COURT:** She's asked her three or four times.

22 **Q** Ms. Ellis, you need to pull your chair closer to that
23 microphone. I'm sorry, but we all have to hear what
24 you've got to say. All right?

25 **A** All right.

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- 1 Q And just lean into that microphone. Okay? You are
2 very soft spoken. All right. So you heard a scream,
3 correct?
- 4 A Yes.
- 5 Q What made you realize it wasn't something silly, like
6 seeing a bug?
- 7 A When I looked around the counter, the ground, I saw
8 them.
- 9 Q And who did you see?
- 10 A I saw Tracey and Erica and a guy.
- 11 Q And describe this guy that you saw with them?
- 12 A Okay. He had a mask on, a yellow jacket, kind of
13 tall. And --
- 14 Q What about his build?
- 15 A Skinny. Slim.
- 16 Q Skinny?
- 17 A (Witness nods head affirmatively).
- 18 Q Do you recall what kind of pants he was wearing?
- 19 A Gray jogging pants.
- 20 Q Gray jogging pants?
- 21 A Sweatpants.
- 22 Q Did you get a look at his shoes?
- 23 A Like white, old white tennis shoes.
- 24 Q Okay. Did you -- were you able to see his skin tone?
- 25 A Very light.

- 1 Q Very light?
- 2 A Mm-hmm (affirmative).
- 3 Q And how did you -- what part of his body did you
- 4 notice his skin?
- 5 A I saw it, like a little bit of his wrists and like
- 6 where the eyes were cut out on the mask around his
- 7 eyes.
- 8 Q What happened when you saw -- what was he doing with
- 9 Tracey and Erica when you noticed him?
- 10 A He had his -- he had Tracey's hair. He had her
- 11 walking down the aisle by her hair.
- 12 Q And where did he take Tracey by the hair?
- 13 A To my register.
- 14 Q To the second register?
- 15 A Yes.
- 16 Q And what did he do when he got there?
- 17 A He told her to open it up.
- 18 Q And you could hear him talking?
- 19 A Yes.
- 20 Q Did he have any funny accents?
- 21 A I don't remember.
- 22 Q Okay. Now, did she obey what he was asking her to
- 23 do?
- 24 A Yes.
- 25 Q Did you witness her give him the money?

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- 1 A Yes.
- 2 Q What happened after or during -- did he say anything
- 3 while she was giving him the money?
- 4 A I was looking. I was like standing right at the end
- 5 of the aisle. And he I guess looked back at me. I
- 6 was trying to see what was really going on, but he
- 7 told me to turn my head. So I turned my head.
- 8 Q You turned your head?
- 9 A Yes.
- 10 Q And again, what did he say to you?
- 11 A He said, "Don't look at me."
- 12 Q "Don't look at me"?
- 13 A Mm-hmm (affirmative).
- 14 Q After you turned your head, could you still hear what
- 15 was going on?
- 16 A Yes.
- 17 Q And what did you hear?
- 18 A Basically he told -- she gave him the money. He told
- 19 her to put it in a bag. And after she handed him the
- 20 bag, that was about it.
- 21 Q Okay. And did you see which direction he ran?
- 22 A Back out the back door.
- 23 Q The back door?
- 24 A Yes.
- 25 Q Do you recall anybody coming into the store after the

1 robbery?

2 A After? No.

3 Q You don't remember?

4 A The police.

5 Q Did you meet with the police that morning?

6 A Yes.

7 Q Do you remember giving the police a statement?

8 A Yes.

9 Q And I'm going to show you a document and ask you if

10 you recognize this document?

11 A Yes.

12 Q Is that your statement?

13 A Yes.

14 Q Who wrote it?

15 A I did.

16 Q And did you sign it?

17 A Yes.

18 Q How long is your statement?

19 A About five lines.

20 Q Five lines?

21 A Mm-hmm (affirmative).

22 Q You've been on the witness stand for about ten

23 minutes. You've said more to us than your statement.

24 Is that correct?

25 A Yes.

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1 Q Did you need to look at your statement to remember
2 what happened to you November 9th, 2006?

3 A No.

4 Q Back in 2003 you were convicted of indecent exposure,
5 correct?

6 A Yes.

7 Q But that is the only brush with the law that you've
8 ever had in your life?

9 A Yes.

10 Q Beg the Court's indulgence. No further questions,
11 Your Honor.

12 THE COURT: Cross examination.

13 MR. COOPER: May it please the Court.

14 CROSS EXAMINATION

15 BY MR. COOPER

16 Q Ms. Ellis, good morning. How are you?

17 A Fine. How are you?

18 Q Ms. Ellis, you just testified that you can't remember
19 one of the other employees that was working with you
20 that day, right?

21 A Mm-hmm (affirmative).

22 Q And that's because it was some time ago, right?

23 A Yes.

24 Q Ms. Shipley talked about a statement that you gave to
25 the police. You recall just testifying about that,

1 right?

2 A Yes.

3 Q And the police took that statement from you the day
4 that this happened, right?

5 A Yes.

6 Q In fact, they took it from you very shortly after
7 this happened, right?

8 A Yes.

9 Q And you just testified that statement is about five
10 lines long, right?

11 A Yes.

12 Q Do you recall when you gave that statement, do you
13 recall putting in there a detailed description of the
14 robber?

15 A It was pretty detailed, I mean, from what I could
16 just put down for the moment because I really didn't
17 want to write a statement.

18 Q You didn't want to write a statement?

19 A No. But, I mean, I put down what I saw, basically a
20 summary of what I saw.

21 Q So really you just testified your statement was a
22 summary?

23 A Somewhat, yeah.

24 Q And this was right after it happened?

25 A Yes.

Lisa Ellis - Cross by Mr. Cooper

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1 Q And this was a police officer taking the statement
2 from you?

3 A Yes.

4 Q And you testified that the robber was wearing a mask,
5 right?

6 A Yes.

7 Q And that you turned your head away from him, right?

8 A Yes.

9 Q All right, Ms. Ellis. I have nothing further. Thank
10 you.

11 THE COURT: Redirect?

12 MS. SHIPLEY: No, sir, Your Honor.

13 THE COURT: All right. You may come down,
14 ma'am. Thank you very much. May this witness be
15 excused?

16 MS. SHIPLEY: Please, Your Honor.

17 THE COURT: Without objection. Next witness.

18 MS. GOOD: The State calls Deputy Shawn
19 Kilcoyne.

20 SHAWN J. KILCOYNE, after being duly sworn,
21 testifies as follows:

22 THE CLERK: Thank you. Please have a seat in
23 the witness stand and state your full name for the
24 record. And please spell your last name.

25 WITNESS: My name is Shawn James Kilcoyne. Last

1 name is K-I-L-C-O-Y-N-E.

2 DIRECT EXAMINATION

3 BY MS. GOOD

4 Q Deputy Kilcoyne, where are you employed?

5 A The Richland County Sheriff's Department.

6 Q And what's your duties there?

7 A I'm a K-9 officer assigned to the K-9 unit.

8 Q And what does that entail?

9 A I am in charge of the county's bloodhound. I answer
10 routine service calls.

11 Q And before you became part of the K-9 unit, what did
12 you do there?

13 A I was assigned to Region One, the Southeast area, as
14 a master deputy.

15 Q And what do you do as a master deputy?

16 A You are assistant to a corporal who runs the shift.
17 You run the shift when the corporal is not there and
18 answer calls. Anybody who dials 911, we go there.

19 Q And how long have you been employed with the
20 Sheriff's Department?

21 A Since May of 2004.

22 Q And back in November of 2006, were you a master
23 deputy then?

24 A Yes, ma'am.

25 Q And to become a deputy, what do you do? What kind of

Shawn J. Kilcoyne - Direct by Ms. Good

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1 training do you have?

2 A You go to the Criminal Justice Academy on Broad River
3 Road. It's nine weeks basic. It's called the basic
4 law enforcement class. You get to learn about
5 Constitutional law, all the Bill of Rights, and also
6 driving, shooting, physical training and all that
7 that entails law enforcement work. Then once you go
8 to your department you spend 13 weeks in what we call
9 a field training officer program. Basically I rode
10 with a master deputy at the time, and for 13 weeks I
11 learned how to be a deputy in Richland County,
12 answered pretty much every call there was to answer,
13 wrote every report that I would have to write.

14 Q And back in November of 2006 you had been a deputy
15 for two years?

16 A Yes, ma'am.

17 Q I'm going to take you to November 9th, 2006. Were
18 you on duty then?

19 A Yes, ma'am. I was --

20 Q Go ahead.

21 A I was -- actually I was off. I wasn't scheduled to
22 work that day, but I was working extra duty doing
23 security at Carolina First Bank at 7309 Garners Ferry
24 Road.

25 Q And did you end up assisting in a call at the Family

1 Dollar?

2 A Yes, ma'am. That Family Dollar is at 7361 Garners
3 Ferry which is the -- Carolina First sits here and
4 then there is a shopping center that comes behind it.
5 And it's actually -- if you go behind the Carolina
6 First, it's kind of right there. I heard the call
7 come out and I drove right to it.

8 Q And what had address did you say that was at?

9 A 7361 Garners Ferry Road.

10 Q Is that in Richland County?

11 A Yes, ma'am.

12 Q And you said you heard a call come out. How did you
13 hear a call come out?

14 A Basically there's two types of ways calls get
15 dispatched. Our dispatch has a line-up. And if a
16 call comes down and there's certain deputies there,
17 they call that deputy directly. Or if it's a major
18 incident, one that anybody in the area would need to
19 respond to, it's called a tone out. It's very loud
20 beeps that come across the radio to get your
21 attention; and they say, any in the area, prepare to
22 copy this call. I heard that call go out realized I
23 was close and responded.

24 Q And when you arrived on the scene, what did you
25 observe?

Shawn J. Kilcoyne - Direct by Ms. Good

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1 **A** I observed there were the clerks, I believe Ms.
2 Anderson and Ms. Wilson. They were inside the store.
3 I pulled up to the front of the store, walked inside.
4 They explained to me what had happened. I got a
5 brief description of the subject, realized that he
6 wasn't there any more. And I gave 1730 over the
7 radio. Basically that means I'm under control, you
8 know, I don't need any help because the subject is
9 not there at that point in time, just look out for
10 the subject if you see him because there is other
11 units coming.

12 **Q** Were you the first one on the scene?

13 **A** Yes, ma'am.

14 **Q** When you arrived first on the scene, what's your
15 first goal?

16 **A** My first goal is to, one, ascertain if the subject
17 who committed the crime is still there; second, to
18 secure the scene and any witnesses that may be there.

19 **Q** And you just testified the perpetrator wasn't there
20 at the time?

21 **A** Right. They advised me that he had left out the back
22 door.

23 **Q** And what was their demeanor? How were they acting?

24 **A** They were visibly shaken, stirred up. They were
25 almost in tears, shaken. They had to sit down for a

1 minute, gain their composure; kind of all over the
2 place there, I mean, obviously.

3 Q When you arrived and they were visibly shaken, did
4 they give you a description of who had done this?

5 A Yes, ma'am. They said it was a black male, light
6 skin tone. I believe they said he had a yellow
7 jacket, sweatpants, and that he had ran out the back
8 door.

9 Q Okay. And you got this description. How did you get
10 this out to other officers in the area?

11 A I basically got the description, keyed up on the
12 radio, you know, activated my radio and said, you
13 know, all officers responding, the subject is going
14 to be a, you know, black male, light skin tone. I
15 gave an approximate height, thin; approximate height,
16 weight, body build, and just advised them to be on
17 the look for that subject.

18 Q And what was that approximate height, weight, build?

19 A I can't remember, to be honest with you. I'm sorry.

20 Q When you put a description out, had you gotten a
21 description of any type of vehicle or anything that
22 he got away with?

23 A Not at the time. But I did have a -- I had a witness
24 who was -- because if -- it's hard to describe it.
25 Basically it's a strip mall and it sits kind of like

1 a big L. And in this side, the big store here,
2 there's a church that was being built in that.
3 They're basically trying to make a church up in
4 there. And one of the guys who was working at the
5 church came up and ran up to me, said, hey, I saw --

6 *MR. SECOR:* Objection, Your Honor.

7 *THE COURT:* Sustained. You can't say what
8 somebody else told you.

9 *Q* Did you get a description from him?

10 *A* Yes. Yes, ma'am.

11 *Q* And did you put that description out?

12 *A* Yes, ma'am.

13 *Q* And you were just explaining where this church was.

14 I'm going to show you what's been entered as State's
15 Exhibit No. 27. Do you recognize that?

16 *A* Yes, ma'am.

17 *Q* And would that help you show the jury where the
18 church was?

19 *A* Yes, ma'am. It's this building right here.

20 *Q* Okay. After you put the description out and you
21 determined that the subject was not there any more,
22 what was your next course of action?

23 *A* My next course of action was to contact an
24 investigator and a lab unit. Basically with major
25 crimes such as that, we have, kind of like on TV,

1 CSI. Our crime scene units come and process the
2 scene. They go real thorough over it, get video
3 evidence and what they can. I went up on our direct
4 channel with our headquarters and asked for them.

5 Q And while you were there, did you get statements from
6 anybody?

7 A Yes, ma'am. I got statements from I believe Ms.
8 Wilson and one of the managers who was there at the
9 time I believe.

10 Q And what type of statements did you get from them?

11 A I basically -- because I wanted to try to get a
12 statement while it was fresh in their mind, I grabbed
13 just a blank incident report and asked them just to
14 write their contact information and just what had
15 happened.

16 Q Okay. And is it your job to get the main details, or
17 do you save that for investigations later?

18 A My job is mainly to get the five W's, if you will:
19 Who, what, when, where, why and how. You know, just
20 the main guts of it as much as I can get at the time.
21 And then when the investigator arrives on the scene,
22 then they break it down a little further.

23 Q And did you stay at the scene until the end?

24 A No, ma'am.

25 Q Okay. And why not?

Shawn J. Kilcoyne - Direct by Ms. Good

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1 A Because I wasn't working that day. I was supposed to
2 be at the bank and I was close to that. As soon as
3 the supervisor that was working the road that day, as
4 soon as he responded, and the scene was turned over
5 the him.

6 Q Okay. And since you were the first responder on the
7 scene, do you fill out an incident report?

8 A Yes, ma'am.

9 Q And why do you do that?

10 A Because I'm -- it's just standard operating procedure
11 that --

12 Q What's the purpose of the incident report?

13 A Basically to report the crime, get the witness
14 information, the victim, description of the subject;
15 basically to document what had happened at that time.

16 Q And you were just discussing you talked on your
17 radio?

18 A Yes, ma'am.

19 Q Do you recall what your call number was at the time?

20 A It was 180.

21 Q 180. Beg the Court's indulgence. No further
22 questions, Your Honor.

23 THE COURT: Cross examination.

24 MR. SECOR: May it please the Court.

25 CROSS EXAMINATION

1 BY MR. SECOR

2 Q Good morning, Deputy Kilcoyne.

3 A Good morning, sir.

4 Q How are you?

5 A I'm good.

6 Q I want to talk to you a little bit about just your
7 background that you talked about with Ms. Good. You
8 sound like you have pretty extensive training when it
9 comes to being a Richland County deputy, correct?

10 A Yes, sir.

11 Q And you said that I think it was 13 weeks of
12 training?

13 A Yes, sir.

14 Q Or that was just one part of --

15 A Yeah. That's part that our department provides. The
16 state requirement is basic law and then the Richland
17 County's requirement is 13 weeks.

18 Q So is that 13 separate weeks, or does the 13 include
19 the first nine?

20 A No. It's separate. You spend your nine weeks at the
21 academy, and then when you come to the Sheriff's
22 Department you spend 13 consecutive weeks with your
23 field training officer.

24 Q To be a deputy at your level in Richland County you
25 need 13 weeks more training than a deputy might need

1 in another state or another county?

2 A I believe that our 13-week model is something that's
3 trying to be put into place by the -- it's a standard
4 set forth by the academy. It's not a required
5 standard but it's something they suggest. And I
6 believe there are several other departments in the
7 state that use that.

8 Q But that would be correct. You've got more training
9 than is absolutely required?

10 A Yes, sir.

11 Q Okay. And I believe you said that part of that
12 training involves learning how to write incident
13 reports?

14 A Yes, sir.

15 Q And part of that training involves what you do when
16 you're the first officer the arrive on the scene?

17 A Yes, sir.

18 Q And I assume that when you arrive on the scene that
19 can potentially be -- if you know you're the first
20 officer on the scene, that can be somewhat of an
21 intimidating experience. I mean, you're going into
22 an unknown situation?

23 A Yes, sir.

24 Q As you said, when you go to an unknown situation your
25 primary objective early on is safety?

1 A Yes, sir.

2 Q Safety for yourself?

3 A Yes, sir.

4 Q Safety for potential victims?

5 A Yes, sir.

6 Q Safety for bystanders? And that's why the first
7 thing you do is try to figure out whether or not the
8 perpetrator is still there?

9 A Yes, sir.

10 Q Okay. Which you did --

11 A Yes, sir.

12 Q -- at this time? And when you were able to determine
13 that he was not -- the person that had robbed the
14 store was no longer there, you then went -- sort of
15 transitioned into a mode of investigating the crime.
16 I know you weren't the investigating officer.

17 A Yes, sir.

18 Q But you're there to gain their information?

19 A Yes, sir. I basically went from trying to find out
20 what I needed to do to secure the scene and make it
21 safe to documenting what happened.

22 Q Right. And documenting evidence, whether it be
23 physical evidence or witness statements, you'd agree
24 with me is absolutely crucial as the first person on
25 the scene?

1 A Yes, sir.

2 Q Okay. And as the first person on the scene, you
3 document as much evidence as you possibly can to get
4 the information to other people?

5 A Yes, sir. We document as much as we can with what
6 we're given.

7 Q Right. And the purpose is to get as much information
8 as you can in a short period of time with the
9 greatest amount of detail. Would that be fair to
10 say?

11 A Yes, sir.

12 Q And that's your goal?

13 A Yes, sir.

14 Q And you do that as carefully, meticulously as you
15 possible can under the circumstances?

16 A Yes, sir.

17 Q And the way that you document it is in an incident
18 report, right?

19 A Yes, sir.

20 Q I mean, because when people are talking to you, the
21 only way to document that other than have them write
22 their own statement is for you to write it in an
23 incident report?

24 A Yes, sir.

25 Q The incident reports have several boxes and several

1 places to put lots of different information. That
2 would be fair to say?

3 A Yes, sir.

4 Q And in this case you said that you spoke to -- I
5 think you said to you spoke to Ms. Anderson and then
6 one of the other -- and then another manager. Isn't
7 that what you said?

8 A Yes, sir. I spoke to Ms. Anderson, Ms. Wilson. And
9 I believe there may have been another person there.
10 I can't recall off the top of my head.

11 Q So you do recall there being people other than Ms.
12 Anderson and Ms. Wilson at the time that you arrived?

13 A Yes, sir. I believe there was -- there may have been
14 a patron in the store as well, as well as people
15 standing outside.

16 Q Okay. In speaking to them, I understand that time is
17 of the essence to some degree because you wanted to
18 get it from them and get it out?

19 A Yes, sir.

20 Q And you had asked them what happened. And you asked
21 them to describe the person to you, correct?

22 A Yes, sir.

23 Q And you needed that information because you wanted to
24 catch this person?

25 A Yes, sir.

1 Q And you wanted to catch the right person?

2 A Yes, sir.

3 Q Okay. And you asked them to describe this person to
4 you and you asked them for detail?

5 A Yes, sir.

6 Q And I assume they provided it to you?

7 A Yes, sir.

8 Q And you put the information that you get from these
9 people in your incident report, right, because you're
10 documenting it for the future?

11 A Well, I put -- I put what's needed in the incident
12 report. Yes, sir.

13 Q And I would assume in a situation where you're trying
14 to find someone that committed an armed robbery, the
15 description of the person would be pretty crucial?

16 A Yes, sir, it would.

17 Q Because other officers are going to be relying on
18 your information to try to find this person?

19 A Well, sir, at the time the most crucial point where
20 the information is needed is over the radio. Because
21 at the time our incident reports are written by hand
22 and that incident report won't be seen by another
23 officer unless I hand it over on the scene. And if I
24 turn it in, it will be seen by a supervisor and then
25 not turned into investigations until the next day.

1 Q Right.

2 A So --

3 Q But you would agree with me that accurate
4 documentation of what you find out in your incident
5 report is crucial because other officers will rely on
6 it in the future?

7 A Yes, sir.

8 Q And you will be called to testify oftentimes a long
9 time after an incident occurs and you'll need your
10 incident report to remember what happens?

11 A Yes, sir.

12 Q Because you get called to numerous calls even in one
13 day, not to mention a two-year period of time, right?

14 A Yes, sir.

15 Q Okay. And you said that you received information
16 when you arrived that there was a light-skinned black
17 male or a black male that was the person that robbed
18 this store?

19 A Yes, sir.

20 Q But that's not in your incident report, right?

21 A No, sir. It's not in the main narrative of the
22 report.

23 Q And the information you had with regards to any sort
24 of vehicle was basically just a white car?

25 A Yes, sir. That's what -- yes, sir. That's the

1 information I was given.

2 Q Okay. Now, there were other people at the scene that
3 you didn't talk to. And, you know, you said that the
4 reason is because your time is of the essence is --
5 you're trying to get as much information as you can
6 in a short period of time?

7 A Yes, sir.

8 Q But there are other people there that you didn't take
9 statements from at that time, right?

10 A Yes, sir.

11 Q You testified that the reason you didn't take
12 statements from them, first and foremost, because
13 time was of the essence and second of all because
14 you're not the investigating officer?

15 A Yes, sir.

16 Q So you just assumed that people who followed up on
17 this would have taken thorough statements from
18 everybody who knew anything about what had happened?

19 A Well, if those people were there at the time and if
20 given the opportunity, yes.

21 Q Yes. You would expect that?

22 A Yes, sir.

23 Q When was it that you actually wrote this statement,
24 this incident report out? Because I notice that
25 there's no time listed on it.

1 A Yes, sir. I wrote the incident report out on the
2 scene there.

3 Q Okay.

4 A And I wrote it rather hastily.

5 Q But it was after police had arrested Jimmy Portee,
6 right?

7 A Actually, I was writing the report as Lance Corporal
8 Unger at the time, it kind of -- I started it and it
9 kind of -- it kind of got written, you know, the guts
10 of it. And then I believe the very last, that last
11 sentence got put in after that happened, after he was
12 placed under arrest.

13 Q Okay. Because your incident report, it does indicate
14 that on the bottom of the front page that the subject
15 has been located and identified. That's on the front
16 page, although on the second page you talk about him
17 being taken into custody?

18 A Just bear with me a second. I'm sorry. I don't see
19 on the front page where it says he was located.

20 Q Oh, I'm sorry. I didn't mean in the actual
21 narrative. I mean in the boxes that are checked.

22 A Yes, sir. Yes, sir.

23 Q Okay.

24 A Prior to turning it in, you check if he was
25 identified, located. There's another box on there if

1 it's closed.

2 Q Now, based on the fact that there's no time and date
3 listed, you know, on either page, the sequence of
4 events and when things were written in to a certain
5 degree is lost to us, correct?

6 A No, sir. Basically the time that's missing is my
7 dispatch date, dispatch time, time arrival, departure
8 time. What I failed to do prior to leaving was;
9 generally what we do is we ask dispatch or our
10 central dispatch when our time is, the time that we
11 are notified, what time did we arrive. And then we
12 write on there what time we left.

13 Q And this report doesn't have those, right?

14 A No, sir.

15 Q Beg the Court's indulgence for just a moment.
16 Thanks, Deputy Kilcoyne. I appreciate it. Nothing
17 further, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. GOOD

20 Q Very briefly. Just talking about when you're
21 dispatched and you put times on your incident report,
22 what time were you dispatched?

23 A I believe it was 9:15 in the morning.

24 Q And how long did it take you to get there?

25 A Less than two minutes.

1 Q And why was this?

2 A Because I was about less than a block away.

3 Q And when you got there, Mr. Secor was asking you
4 about your first role is to get all the critical
5 information basics?

6 A Yes, ma'am.

7 Q What did you do with that information when you got
8 it?

9 A Basically I wrote down the main points of the
10 incident; like I explained earlier: Who, what, why,
11 when and where. As an investigator arrived on the
12 scene the report was turned over to them, and they
13 generally do what is called an investigative
14 follow-up. Basically, like I said, these reports
15 just relay the guts of what happened. Investigative
16 follow-up is basically all the details.

17 Q And the information he was asking you about, about
18 the clothing and what the subject was wearing, what
19 did you do with that information when you got that
20 information?

21 A I put it out over the radio to the units surrounding
22 and I also advised the investigator when they arrived
23 on the scene.

24 Q What was your call number again?

25 A 1-8-0.

1 Q And he's asking about interviewing people. You said
2 that you had gotten written statements from people?

3 A Yes, ma'am.

4 Q I show you these. Do you recognize these?

5 A Yes, ma'am.

6 Q And what are those?

7 A These are the supplementary forms like I explained.
8 They're just an incident report, long form, and I
9 asked -- I handed these to the people in the store
10 and asked them to --

11 Q Who were those people that you handed them to and got
12 information from?

13 A Joan Hooks, Lisa Ellis, Erica Wilson and Leonard
14 Smith as well as Michael Murphy.

15 Q And where did you speak with Michael Murphy?

16 A I spoke with him in the front parking lot of the
17 Family Dollar.

18 Q Who is he again?

19 A He is an individual that was -- I believe he was
20 working with the church.

21 Q Okay. And you had stated you put the basic guts in
22 the incident report. When you spoke with Ms.
23 Anderson she was upset. Did she mention anything to
24 you about a weapon?

25 A She advised me that the subject had --

1 **MR. SECOR:** Objection, Your Honor. Hearsay.

2 **THE COURT:** He can't say what she said.

3 **MS. GOOD:** Your Honor, he's testifying when she
4 was upset what she told him.

5 **THE COURT:** Well, he can testify as to what her
6 demeanor was at the time. Lay the foundation.

7 **Q** When you spoke with Ms. Anderson about what had
8 occurred, what was her demeanor again?

9 **A** She was visibly shaking. She wasn't to the point of
10 tears but she was very upset and she had to sit down.

11 **Q** And during that point in time did she tell you
12 anything about a weapon during the robbery?

13 **MR. SECOR:** The same objection, Your Honor.

14 **THE COURT:** Overruled. Go ahead.

15 **A** She stated that the unknown subject had his hand in
16 his pocket pointing it at her to indicate that he
17 would have a weapon. She assumed that he had a
18 weapon.

19 **Q** No further questions.

20 **THE COURT:** Anything further?

21 **MR. SECOR:** Oh. No, Your Honor.

22 **THE COURT:** All right, sir. You may come down.
23 Thank you very much. May the witness be excused?
24 Without objection. Next witness.

25 **MS. GOOD:** The State calls Lance Corporal David

1 Unger.

2 DAVID UNGER, after being duly sworn, testifies
3 as follows:

4 **THE CLERK:** Thank you. Please have a seat in
5 the witness stand and state your full name for the
6 record and please spell your last name.

7 **WITNESS:** It's David Unger, U-N-G-E-R.

8 DIRECT EXAMINATION

9 **BY MS. GOOD**

10 **Q** Where are you employed?

11 **A** Richland County Sheriff's Department.

12 **Q** What is your title there?

13 **A** I'm an investigator with the Richland County
14 Sheriff's Department.

15 **Q** And how long have you been an investigator?

16 **A** About three months.

17 **Q** Okay. And before you were an investigator, what was
18 your title?

19 **A** I was a corporal with the Richland County Sheriff's
20 Department.

21 **Q** And what are your duties as a corporal?

22 **A** I was a shift supervisor. I supervised the
23 day-to-day operations of a shift within the region of
24 the Richland County Sheriff's Department.

25 **Q** And back -- what's your background? How did you

1 become a police officer and an investigator and --

2 A I've been in law enforcement 13 years, eight years
3 with the military. I was a military police officer.
4 When my time was up after eight years, I applied and
5 became a Richland County Sheriff's Deputy. While
6 there I was a deputy and then I was a master deputy,
7 and I was chosen to become a field training officer.
8 After field training officer, I tested boards and
9 became a corporal with the Department and then
10 recently tested the boards and became an
11 investigator.

12 Q And back in November of 2006, what was your title?

13 A I was a Lance Corporal field training officer.

14 Q And what's a field training officer?

15 A I take a new deputy, somebody who is new to the
16 Department, and I take them through a 13-week
17 training course, through the day-to-day operations
18 within the department, teaching them policy and
19 procedure and road activities.

20 Q And during that time in November, did you have a
21 deputy that you were training?

22 A I did. I had a Deputy Davis.

23 Q And were you on call November 9th, 2006?

24 A I was.

25 Q And what were you doing?

1 **A** Regular day-to-day operations and patrol of Region
2 One which is the lower side of Richland County.

3 **Q** And did you become involved in this case against Mr.
4 Portee at that time?

5 **A** I did. Yes.

6 **Q** And what time were you dispatched?

7 **A** Well, the call was dispatched around 9:15 in the
8 morning. We became involved probably about eight
9 minutes after the dispatched call came out.

10 **Q** And how did you become involved?

11 **A** When they dispatched the call, most units -- as you
12 know, it was on 7361 Garners Ferry -- or I'm sorry --
13 7361 Garners Ferry Road which is the Family Dollar.
14 It's off of Garners Ferry and Atlas Road. Most units
15 went down Garners Ferry. I took my trainee down
16 Pineview to Bluff Road since Atlas dead ends at Bluff
17 Road.

18 **Q** And what were you looking for?

19 **A** The dispatched call came out as an armed robber who
20 was a light-skinned male, possibly white with a
21 yellow rain jacket on. They said that he got into a
22 four-door white cab, possibly an early nineties, late
23 eighties Cavalier. That's what we were looking for.

24 **Q** And eventually were you able to find a car that fit
25 that description?

1 A Yes, ma'am. At Bluff and Atlas, we were coming down
2 Bluff Road heading towards the stadium, if you're
3 familiar with Bluff Road. At Atlas Road which is
4 about a mile, a mile and a half from 77, we observed
5 a white four-door car. It was an older model. And
6 it took a right onto Bluff Road as it was heading
7 inbound.

8 Q And let me show you what's been entered as State's
9 Exhibit No. 57. Do you recognize that?

10 A I do. Yes.

11 Q And what is that?

12 A That's a map of the lower side.

13 Q And can you -- may I ask the witness to step down,
14 Your Honor?

15 THE COURT: Yes, ma'am.

16 Q Can you show the jury where you were when you first
17 saw the car?

18 A This is Atlas Road right here. All right. This is
19 Garners Ferry. It comes down to Shop. It dead ends
20 at Bluff Road. I saw the car. He was on Atlas right
21 here turning onto Bluff going in this way.

22 Q And when you saw that car, what did you do?

23 A He took a right, got into the left-hand lane. Do you
24 want me to sit back down?

25 Q Sure.

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1 **A** Got into the left-hand lane. He started going up
2 towards 77. We got behind him. I called into
3 dispatch a couple of times to ask -- to verify the
4 make and model of the vehicle at which time at 3050
5 Bluff Road which is Rickenbaker's. It's a small
6 parking lot. He made an abrupt left-hand turn into
7 that parking lot, made a really rough u-turn
8 inbetween two poles, almost hitting the poles and
9 started going the other way. At that time we turned
10 around on that vehicle, tried to initiate a traffic
11 stop by turning on blue lights and then sirens. And
12 he failed to stop and a chase ensued.

13 **Q** And what type of car were you in when you stopped
14 him?

15 **A** I was in a Crown Vic, fully marked Crown Vic with a
16 light bar on top.

17 **Q** And did you see anybody in the car?

18 **A** Yeah. We saw one person that was a light-skinned
19 black male, had a white shirt. At the time all we
20 could see was a white shirt. And he was the only
21 occupant of the vehicle.

22 **Q** Okay. And you said at that point you turned on your
23 sirens and began a pursuit?

24 **A** Yes, ma'am.

25 **Q** Can you explain the pursuit?

1 **A** Yes, ma'am. The pursuit started right, probably at
2 about 500 yards past Rickenbacker's. We're heading
3 back outbound now. We're heading back towards the
4 Congaree. We proceeded down Bluff Road. We were
5 getting into speeds of excess of 100 miles an hour.
6 We got to about Bluff and Harlem. May I stand?

7 **Q** Sure. Go ahead.

8 **A** Which is right here. Bluff and Harlem, if you've got
9 Atlas which is right here, he lost control of the
10 vehicle at that point, skidded, started going
11 sideways a couple of times, almost wrecked out. He
12 then regained control. And right here we observed
13 him throw what appeared to be something out of the
14 window. I don't know what was thrown out. We didn't
15 see what it was. We just thought something was
16 thrown out of the window. I reported that to our
17 dispatch.

18 We then traveled into -- keep going outbound.
19 We traveled to a neighborhood called Bluff Estates.
20 Or he took a left onto Palmland Drive. You know,
21 this is all at high speeds. We're traveling anywhere
22 from 35 to 75 miles an hour, just depending on what
23 part of the chase we're at.

24 When he turned into Palmland, he made a first
25 right onto Winter Park Drive. At the time when he

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1 turned onto Winter Park Drive, he started fumbling
2 around in the car, and he picked up a yellow piece of
3 clothing. It was later identified as a yellow rain
4 jacket. But at the time it was a yellow piece of
5 clothing. We picked that up in view where I could
6 actually call it out over dispatch that we observed a
7 yellow jacket. We continued. We went -- if you
8 don't mind, look at my notes just --

9 Q And did you fill -- when you go through an incident
10 like this, do you do an incident report?

11 A Yes, ma'am. We do do an incident report.

12 Q And what's the purpose of that report?

13 A The purpose is for recalling it later and to document
14 the actual incident.

15 Q And did you do that in this case?

16 A We did, yes.

17 Q Would it help you recall?

18 A It would. Yes. We made -- we went in a large circle
19 through Bluff Estates. And we traveled about five
20 streets. And let me just go over that real quick.
21 All right. He made a left on Hialeah. He made a --
22 went all the way to the end, made a right onto Shore
23 Crest. Then he made another right onto Flamingo
24 Drive and a right onto Tavaneer. When the defendant
25 made a right onto Tavaneer, he hit mailbox at 4105

1 Tavaneer, lost control of the vehicle, went into the
2 yard, hit the mailbox, took it down. He regained
3 control of the vehicle and then he continued down
4 Hialeah -- or excuse me -- Tavaneer until the end.
5 He took a left on Tavaneer onto Hialeah.

6 All right. As I stated a few minutes ago, we
7 were already on Hialeah. We did a big circle and
8 we're back on Hialeah. Hialeah is a road that runs
9 to a 90 -- it goes straight and then it takes a 90
10 degree. And when we came to that 90 degree, it's
11 about 4233 Hialeah Street, he lost control, couldn't
12 make the turn and crashed into a fence at 4233
13 Hialeah. At that time he exited the vehicle.

14 Q Okay. Let's stop right there for a second.

15 A Okay.

16 Q Can you show the jury on the map exactly as best as
17 you can the route that you took chasing him?

18 A Yes. We came in her, Bluff Estates. We took a
19 right -- or excuse me -- a left onto Palmland. This
20 is Palmland right here. All right. A right onto
21 Winterpark. We came around. We did a couple of
22 loops and we ended back up on Tavaneer. This is
23 Tavaneer. All right. We took -- we came on Tavaneer
24 onto Hialeah Street. And when we took the turn onto
25 Hialeah, that's when he crashed in right there to the

1 fence.

2 Q And approximately how long -- from the moment that
3 you got behind the vehicle to the time that he
4 crashed that fence, how long was that?

5 A No more than five minutes.

6 Q I'm going to show you what's been marked as -- or
7 what's been entered as State's Exhibits 7, 8 and 9.
8 Do you recognize those pictures?

9 A I do.

10 Q And what are those?

11 A That is his vehicle going into that fence at 4233
12 Hialeah.

13 Q Does that represent how he -- where the car was once
14 he crashed that day?

15 A Yes, ma'am. That was the final rest.

16 Q And you said at that point he exited the vehicle?

17 A He did.

18 Q Can you explain to the jury what happened then?

19 A At that time he opened up the passenger door. Or
20 correction. I'm sorry. The driver's door. He
21 jumped out of the vehicle. He had in tow two black
22 items and a yellow item. The two black items were
23 later identified as a mask, black mask, and a black
24 sock. The yellow item was later identified as the
25 yellow rain jacket. He jumped out, ran to the front

1 of his vehicle and towards -- up the driveway of that
2 house, 4233, towards the back. When he ran towards
3 the back, there's a fence at the back, and he
4 attempted to jump that fence, but he was stopped by a
5 110, 120-pound Rottweiler.

6 So when he stopped there and the Rottweiler --
7 my trainee, Deputy Davis, was probably about ten feet
8 behind him. At that time he turned around and he ran
9 perpendicular between the two houses. There is
10 another chain link fence. He ran about half way down
11 that driveway, jumped over that fence, and Deputy
12 Davis jumped over that fence right behind him.

13 At that time I was running around the other
14 fence and Deputy Davis and the defendant at that time
15 started to struggle. They started to fight. They
16 ended up on the ground rolling around. Mr. Portee
17 tried to get back up. Deputy Davis had to use force
18 to restrain him back down on the ground. At that
19 time I arrived. I got control of Mr. Portee's arms.
20 I was able to place handcuffs on his arms, at which
21 time he was put into custody.

22 Q And you explained Deputy Davis used force. What type
23 of force did he use?

24 A He had to use his foot. They were both on the
25 ground. Mr. Portee tried to get up. And Davis got

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1 up. He used his foot and he put his foot in his
2 chest to keep him down on the ground. And then they
3 got back down on the ground. And right after that is
4 when I got on the scene right there with them, and I
5 was able to apply handcuffs.

6 Q And when you applied handcuffs, what did you do next?

7 A We applied handcuffs. We checked them for tightness,
8 double locked them to make sure that they weren't too
9 tight. At that time Deputy Davis was able to get up,
10 get his breath back. We rolled Mr. Portee up to help
11 him get up off the ground. And when we rolled Mr.
12 Portee up, there is dollar bills and there was money
13 on the ground under Mr. Portee. There was loose
14 bills of different denominations. And later when it
15 was collected by the lab, it added up to \$72.

16 Q And you mentioned that when he got out of the car he
17 was carrying two black items and a yellow jacket?

18 A Yes, ma'am.

19 Q Was he holding those items when you put the handcuffs
20 on him?

21 A He was not. No. They had been dropped throughout
22 the short foot pursuit.

23 Q And did you see him drop those items?

24 A I did. Yes.

25 MR. SECOR: No objection, Your Honor.

1 Q I'm going to show you what's marked as State's
2 Exhibits 10 through 13. Can you look at those and
3 tell me if you recognize those?

4 A I do.

5 Q And do they accurately depict part of the chase that
6 day that you saw?

7 A They do. Yes, ma'am. That's where the mask got
8 stuck on the actual fence as he was jumping the
9 fence.

10 MS. GOOD: At this time, Your Honor, I would
11 like to enter into evidence State's Exhibits 10
12 through 13.

13 THE COURT: Without objection.

14 (WHEREUPON, State's Exhibit No. 10 is admitted
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 11 is admitted
17 into evidence.)

18 (WHEREUPON, State's Exhibit No. 12 is admitted
19 into evidence.)

20 (WHEREUPON, State's Exhibit No. 13 is admitted
21 into evidence.)

22 MS. GOOD: May I ask the witness to step down,
23 Your Honor?

24 THE COURT: Yes, ma'am.

25 COURT REPORTER: Could you all switch sides,

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1 please?

2 MS. GOOD: Sure.

3 Q What is shown in State's Exhibit 10?

4 A You see where the vehicle finally rested. You see
5 that fence line that I was telling you about. This
6 is back there, the fence line where the dog is.
7 Okay. He went back to that fence line right there,
8 tried to jump it, and there was a large dog. I
9 believe we have a picture with the dog in it. He
10 then came across right here, and this about the area
11 where he actually jumped over the fence into the next
12 yard, 4235 Hialeah.

13 Q Show the jury State's Exhibit 13, what that depicts?

14 A That depicts the fence where he jumped over.

15 Q Is that just a farther view away?

16 A Yeah, it is. It's a closer view.

17 Q Can you tell the jury what's in State's Exhibit
18 No. 11?

19 A That's the mask that was left on the fence as he was
20 trying to jump over the fence.

21 Q And do you see the dog in that picture?

22 A I do see the dog. If everybody looks closely, right
23 there is the large Rottweiler that stopped him from
24 going through the back yard.

25 Q And then State's Exhibit No. 12, can you tell the

1 jury what that is?

2 A It's just a close up of that mask.

3 Q I'm going to show you what's been marked as State's
4 Exhibit No. 53. Do you recognize this?

5 A Yes. That would be the mask.

6 Q The mask that you saw the defendant drop?

7 A Yes.

8 MS. GOOD: At this time, Your Honor, we'd like
9 to enter into evidence State's Exhibit 53.

10 MR. SECOR: May we approach briefly, Your Honor?

11 THE COURT: Sure.

12 (Whereupon, a bench conference is had)

13 Q And this is the mask that you saw the defendant drop?

14 A Yes, ma'am.

15 Q And I'm going to show you State's Exhibits 14 through
16 16.

17 MR. SECOR: No objection, Your Honor.

18 Q Do you recognize these photographs?

19 A I do.

20 Q And what are those photographs?

21 A These are 4235 Hialeah. This is where he was
22 actually apprehended after struggling with him.

23 Q Okay. Do they accurately represent how it looked
24 that day?

25 A They do. Yes.

1 Q And do you see anything else in one of those
2 pictures?

3 A I do. I see -- two of them, you can see the loose
4 money that was under his body when we rolled him
5 over.

6 MS. GOOD: At this time, Your Honor, we would
7 like to enter into evidence State's Exhibits 14, 15
8 and 16.

9 THE COURT: Objection?

10 MR. SECOR: No objection.

11 (WHEREUPON, State's Exhibit No. 14 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 15 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 16 is admitted
16 into evidence.)

17 Q Can you tell the jury what's in State's Exhibit 14?

18 A This would be the fence line right here. This is
19 where we jumped over, ran up right here, and this is
20 where it finally ended right up there. It's 4235
21 Hialeah.

22 Q Can you tell the jury what's in State's Exhibit
23 No. 15?

24 A This is just a little bit closer up to the house.
25 This is actually the area right here where they were

1 struggling..

2 Q And State's Exhibit 16?

3 A And this one right here is a close up where you can
4 actually see the money that was found on the ground
5 under his body.

6 Q And can you tell the denomination of that money?

7 A I can tell that there is different denominations.
8 You have 1's, 5's. That's all I see right here in
9 the actual picture. No. I see I believe a \$10 bill
10 also.

11 Q Take a seat. I show you what's marked as State's
12 Exhibit No. 56. I show you what's marked as State's
13 Exhibit No. 56. Can you tell look in there and tell
14 me if you recognize that?

15 A It's going to be 5's, 1-dollar bills and a 10-dollar
16 bill.

17 Q Is that the money you saw that day?

18 A I believe it is, yes.

19 Q Did the lab come out and collect it?

20 A The lab actually came out and collected it. I did
21 not collect that money.

22 Q Okay. I'm going to show you what's been marked --
23 you were discussing the yellow jacket?

24 A Yes.

25 Q Where was the yellow jacket when you saw it after the

1 chase?

2 A He had it in his hand and he had dropped it as we
3 were running. When the chase was finished we
4 recovered it. I actually did pick up that and I put
5 it on the hood of my vehicle.

6 Q And where did you pick that up from?

7 A It was in the yard at 4233.

8 Q And is that this house or the other one?

9 A It's the other one.

10 Q Okay. Can you show the jury on State's Exhibit 10
11 where you picked up that yellow jacket?

12 A Excuse me. I believe it was going to be right in
13 this general area. And I remember I picked it up and
14 actually removed it and brought it to the hood of my
15 vehicle.

16 Q I'm going to show you what's been marked as State's
17 Exhibits 24 and 25. Do you recognize these two
18 photographs?

19 A Yes, ma'am. That's going to be my patrol vehicle
20 with the yellow rain jacket on top of the hood or the
21 front of the vehicle.

22 MS. GOOD: Okay. At this time, Your Honor, we
23 would like to enter in State's evidence State's
24 Exhibits 24 and 25.

25 MR. SECOR: No objection.

1 (WHEREUPON, State's Exhibit No. 24 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 25 is admitted
4 into evidence.)

5 Q I'm going to show you what's been marked as State's
6 Exhibit 54. Do you recognize this?

7 A Yeah. That appears to be the rain jacket that was on
8 the scene.

9 Q Is that the jacket you picked up?

10 A Yes, ma'am.

11 Q Put it on your car?

12 A Yes, ma'am.

13 Q And what was the defendant wearing while you were
14 chasing him?

15 A He was wearing a pair of gray sweatpants and a white
16 t-shirt.

17 Q I show you what's been marked as State's Exhibit
18 No. 51. Do you recognize these?

19 A Yes, ma'am.

20 Q What are these?

21 A They appear to be the sweatpants he was wearing.

22 Q And do you remember what type of shoes he was
23 wearing?

24 A I do not remember what type of shoes he was wearing.

25 Q And I'm going to show you what's marked as State's

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1 Exhibits 49 and 50. Do you recognize these two
2 pictures?

3 A Yes, ma'am. I do.

4 Q And what do they depict?

5 A They depict Mr. Portee in the pants, t-shirt and the
6 shoes that he was wearing that day.

7 Q Is that how he looked when you arrested him?

8 A Yes, ma'am.

9 MS. GOOD: Okay. At this time, Your Honor, we'd
10 like to enter in State's evidence State's Exhibits 49
11 and 50.

12 MR. SECOR: I would object, Your Honor, on the
13 lack of foundation.

14 THE COURT: Approach the bench.

15 (Whereupon, a bench conference is had)

16 THE COURT: I'll sustain the objection.

17 Q When you arrested Mr. Portee, do you do an arrest
18 report?

19 A Yes, ma'am.

20 Q And about how tall is he?

21 A May I?

22 Q What's the purpose of doing an arrest report?

23 A For later identification and to document the charges
24 that were put upon him.

25 Q Okay. And do you get information about -- or do you

1 put information on there about his build and height?

2 A We do. Height, weight, demographics, where they're
3 from, telephone number, address, anything we can get
4 out of them.

5 Q And what was his height?

6 A His height was -- it says six-four.

7 Q And how much did he weigh?

8 A Approximately 160 pounds.

9 Q Once you had the defendant under control, what did
10 you do with him?

11 A He was placed in the back of my patrol vehicle.

12 Q Okay. And did anybody else arrive at the scene?

13 A Yes. At that time a whole bunch of other units
14 arrived. But at that time, once we placed him under
15 arrest and everything was under control, I called out
16 our lab unit to respond and I also called out
17 investigations. At that time I believe Investigator
18 Don Robinson and Investigator Isenhoward both were on
19 the scene.

20 Q And did the lab unit come?

21 A They did come. Yes.

22 Q And once they arrived, what did you do?

23 A I released the scene to them for processing.

24 Q Okay. And when they arrived or before they arrived,
25 did you observe the car in any way?

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1 **A** Yeah. In plain view you could see inside of the car.
2 There was rolled money, change money. You could see
3 that in plain view in the car. At that time when we
4 saw that, we let the lab process it and collect it.

5 **Q** Okay. Let me show you what's been marked as State's
6 Exhibits 17 through 23. Do you recognize these
7 photographs? Look through them.

8 **A** Yes. This is going to be the interior of his vehicle
9 with that rolled changed money sitting in plain view.

10 **Q** Do those pictures accurately represent how it looked
11 that day when you saw the car?

12 **A** They do. Yes.

13 **MS. GOOD:** At this time, Your Honor, we'd like
14 to enter in State's evidence State's Exhibits 17
15 through 23.

16 **MR. SECOR:** No objection.

17 (WHEREUPON, State's Exhibit No. 17 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 18 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 19 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 20 is admitted
24 into evidence.)

25

1 (WHEREUPON, State's Exhibit No. 21 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 22 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 23 is admitted
6 into evidence.)

7 Q May I ask the witness to step down? Can you tell the
8 jury what's in State's Exhibit 17?

9 A This right here is the front of his vehicle, the
10 Cutlass Sierra, the front seat, driver and passenger.

11 Q Exhibit 18?

12 A This is the passenger's side where you see a roll of
13 money sitting between the center console and the
14 seat.

15 Q And how is that money wrapped? Can you tell?

16 A It's wrapped it looks like in cellophane or some sort
17 of plastic.

18 Q State's Exhibit 19?

19 A It's a closer look at that money rolled.

20 Q State's Exhibit 20?

21 A That's an additional roll found on the passenger's
22 seat right where the seat meets, you know, right
23 where you would put your hand under it to move it up
24 and down.

25 Q State's Exhibit 21?

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1 A That's a close-up view of the rolled change.

2 Q State's Exhibit 22?

3 A That's a further back angle of it, of that seat and
4 floorboard.

5 Q State's Exhibit 23?

6 A And that's a close-up of a beer bottle and a handle
7 to what appeared to be a saw.

8 Q Let me show you what's been marked as State's Exhibit
9 No. 59. Can you look inside there and tell me if you
10 recognize that?

11 A It's going to be the sock that we found.

12 Q And where did you find the sock?

13 A I don't remember, to be honest with you.

14 Q Was it in the car or was it outside the car?

15 A I believe it was outside the car. He jumped --
16 excuse me. He had jumped out with it in his hand.

17 Q I show you what's been marked as State's Exhibit 55.
18 Do you recognize that?

19 A That's the two rolled coins.

20 Q And I show you what's been marked as State's Exhibit
21 60. Do you recognize this?

22 A Yes, ma'am. That's the handle that was found on the
23 passenger floorboard.

24 Q Okay. Once the lab unit had arrived and had
25 processed everything at the scene, did anything

1 happen with the car?

2 A Yes, ma'am. The car was towed by Fender Mender.

3 Q And when a car is towed, does your Department or do
4 you do anything in particular?

5 A We do. We have a tow slip that we fill out. And
6 it's a record to keep where the vehicle went and who
7 towed it and the inventory of what's inside of it.

8 Q And who took the car?

9 A I believe it was Fender Mender.

10 Q And you had just mentioned this tow slip. Did you
11 fill out a tow slip?

12 A We did. Yes, I did.

13 Q And where was the car towed to? Do you know?

14 A It was towed to our compound.

15 Q Okay. And where is your compound?

16 A It's at -- to be honest with you, I don't know if it
17 was towed to -- I don't know which compound it was
18 towed to. It was towed off to Powell Road, 401
19 Powell Road.

20 Q Okay. And is that Richland County Sheriff's
21 Department?

22 A It is. It's Richland County sheriff's outdoor.

23 Q And after that did you have any more involvement?

24 A I transported Portee to investigations.

25 Q And after you dropped off Mr. Portee, was that the

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1 end of your --

2 A We completed our paperwork. We filled out a use of
3 force form. Any time any force is used beyond
4 placing handcuffs on somebody, we fill that out. We
5 filled that out. And also a tow slip. I'm sorry. A
6 pursuit packet because any time we chase a vehicle we
7 have to fill out a pursuit packet.

8 Q And during this pursuit you were talking about, you
9 were telling dispatch or radio where you were; do you
10 recall what your call number was at the time?

11 A It was 9-9-1, Richland 9-9-1.

12 Q Beg the Court's indulgence, Your Honor. Just talking
13 about the tow slip that you filled out, do you put
14 the operator of the vehicle on that tow slip?

15 A Yes, ma'am, we do.

16 Q And who was the operator of that vehicle?

17 A It was Jimmy D. Portee.

18 Q And what address was he living at?

19 A 621 Chow Street. It's in Columbia, South Carolina,
20 29201.

21 Q And you said you had gotten a description of this car
22 as a Cutlass Sierra. Do you know the difference
23 between a Cutlass Sierra and a Cavalier?

24 A We had gotten the description as a Cavalier. And I
25 do know the difference, yes.

1 Q Do they look similar?

2 A They do look very similar, especially that year and
3 make.

4 Q And this person that you had been in a car pursuit
5 with that you had chased through these two yards and
6 eventually arrested, do you see him in the courtroom
7 today?

8 A Yes, ma'am, I do.

9 Q And can you show the jury where he is?

10 A He's sitting over there at the end, the defendant, at
11 the defense table.

12 Q And what's he wearing?

13 A He's wearing a white shirt, and I believe it's a
14 shade of blue tie.

15 MS. GOOD: Let the record reflect, Your Honor,
16 that he identified the defendant.

17 THE COURT: The record will so reflect the
18 witness identified the defendant.

19 Q And who is the registered owner of that car?

20 A It was Janice G. Portee. Which I'm figuring -- I
21 don't know -- a relationship to Mr. Portee, but I'm
22 not sure what it is.

23 Q But it was a Jane Portee?

24 A Janie, J-A-N-I-E.

25 MS. GOOD: I have no further questions, Your

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1 Honor.

2 THE COURT: Cross examination.

3 MR. SECOR: May it please the Court.

4 CROSS EXAMINATION

5 BY MR. SECOR

6 Q Good afternoon, sir.

7 A Good afternoon. How are you?

8 Q Good. Thanks. How are you?

9 A Good.

10 Q Is it investigator or deputy?

11 A It's investigator.

12 Q Investigator. And in addition to being an
13 investigator, you're also a field training deputy?

14 A During that incident I was a field training officer.
15 I am no longer one. I was back then.

16 Q And field training deputy I assume means you train
17 people to be deputies?

18 A Yes, sir.

19 Q And I would assume that part of that involves
20 teaching them how to write reports?

21 A Correct.

22 Q And certainly as an investigating officer and as a
23 person who formerly trained deputies, you understand
24 the importance of an incident report?

25 A I do.

1 Q I mean, it is basically your statement of everything
2 that happened at a crime scene?

3 A Correct.

4 Q As best as you can remember under the circumstances?

5 A Correct.

6 Q All right. And in writing incident reports, you'd
7 agree that it's important to be fair?

8 A Yes.

9 Q And would you agree it's important to be accurate?

10 A Yes.

11 Q As complete as possible under the circumstances?

12 A Yes.

13 Q And as thorough as possible under the circumstances?

14 A Yes.

15 Q And in terms of trying to fulfill those things when
16 you write an incident report, fairness, accuracy,
17 completeness and thoroughness, would you agree that
18 to a certain degree, or as best as you can, you try
19 to be objective in your investigation in writing your
20 report?

21 A Yes.

22 Q Because you want guilty people to be convicted?

23 A Well, we write the facts.

24 Q Right. But you're trying to be objective because you
25 want guilty people to be convicted, but only guilty

1 people, correct?

2 A Right.

3 Q You don't want an innocent person?

4 A Sure.

5 Q Now, your incident report I think you were referring
6 to earlier, it totals three pages, right?

7 A Yes, sir.

8 Q The second page has some sort of sections on it that
9 you couldn't fill in. But it is a total of three
10 pages. And you would consider it a pretty thorough
11 statement of what happened?

12 A Yes, sir.

13 Q Okay. And now in reviewing it, you state on various
14 occasions beginning pretty early on on the first page
15 of it that you locate this car and you're following a
16 suspect?

17 A I believe we give an actual description of a
18 light-skinned black male.

19 Q Yeah. You do. But I'm just saying, you use the word
20 "suspect" numerous times as you're following this
21 person, referring to them as a suspect?

22 A I use Portee, Portee, reckless driver, Portee,
23 Portee, the suspect, and then in parentheses Portee,
24 suspect, suspect Portee, Portee. It appears I used
25 his name most of the time.

- 1 Q Yeah. I'm glad you brought that up. Because while
2 this was all happening you had no idea who he was?
- 3 A No, sir. But it's written after the fact.
- 4 Q It's written after you find out who he is after you
5 arrest him?
- 6 A Right.
- 7 Q Okay. And you testified when you were speaking to
8 Ms. Good that when the car finally came to a stop or
9 hit the fence and you got out to pursue Mr. Portee
10 that he got out of the car carrying something yellow
11 and two black items, or the cloth black items. Isn't
12 that what you said when you were talking to this
13 jury?
- 14 A Yes, sir, I did.
- 15 Q But in your incident report you wrote that he got out
16 of his car carrying a yellow jacket, a black sock and
17 a black mask?
- 18 A Yes, sir.
- 19 Q But you didn't know that at the time?
- 20 A No, sir.
- 21 Q Okay. So you're writing this after having found
22 out --
- 23 A Yes, sir.
- 24 Q -- these things later? With regards to the black
25 sock and the black mask and the yellow jacket that

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1 you saw at different periods of time, those I think
2 you said were thrown down or caught on fences or
3 something like that?

4 A Correct.

5 Q Throughout the chase?

6 A Yes, sir.

7 Q So there were periods of time that those items were
8 not in your possession, Deputy Davis's possession or
9 Mr. Portee's possession?

10 A That is correct.

11 Q Okay. Now, with regards to your testimony that
12 Deputy Davis and Mr. Portee fought --

13 A They were struggling on the ground. I didn't say
14 they were fighting. They were struggling, Deputy
15 Davis struggling to try to put him into custody; Mr.
16 Portee was struggling to try to get out of custody.

17 Q And did you document that in your incident report?

18 A Let me check. I did. I put in there that they fell
19 over. They were attempting to get back on foot at
20 which time responding Officer Davis placed his left
21 foot in suspect Portee's chest area at which time I
22 arrived on the scene and was able to handcuff him.

23 Q There is nothing in your incident report about them
24 struggling, right?

25 A Well, when you're on the ground rolling around,

1 that's struggling, correct?

2 Q Well, let's just make sure we get this clear.

3 A All right.

4 Q I'm trying to figure out a good place to start.

5 Okay. Do you see the sentence that ends with 4235

6 Hialeah, sort of middle of the page?

7 A Landing in 4235 Hialeah?

8 Q Yeah. Lead to the front yard?

9 A I do.

10 Q I'm just going to read a section just to make sure I
11 don't make any mistakes.

12 A Okay.

13 Q "Portee then tripped over some unknown object causing
14 him to fall which lead to responding Officer Davis
15 falling with the suspect, Portee. As responding
16 Officer Davis tried to recover back on foot, Portee
17 also attempted to get back on foot until R. L. Davis
18 placed his left foot in the suspect Portee's chest
19 area, at which time Lance Corporal Unger placed
20 handcuffs on Portee with no further resistance."

21 A Okay.

22 Q And that pretty much sums up the arrest?

23 A Correct.

24 Q There was nothing further?

25 A No. Once I placed handcuffs on him, the resisting

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1 stopped.

2 Q And he wasn't charged with resisting arrest?

3 A He was not, no.

4 Q And he wasn't charged with assaulting a police
5 officer?

6 A He was not.

7 Q Beg the Court's indulgence for just a second, Your
8 Honor. Thank you, Investigator Unger. I appreciate
9 it.

10 THE COURT: Redirect?

11 MS. GOOD: Very briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. GOOD

14 Q This report that you wrote, is it possible to write a
15 report during the middle of 100-mile per hour chase?

16 A No, ma'am, it is not.

17 Q So when do you have to write your report?

18 A We write it after everything is done, usually after
19 the suspect has been transported to -- in this case
20 he was transported to our criminal investigation
21 division. Then we'll go back. Especially when I'm
22 training somebody, we'll go back and we'll sit down.
23 We sat down at Region One headquarters and wrote
24 this.

25 Q You talked about using the word "suspect" and Portee.

1 At the time that you were chasing him, was he a
2 suspect?

3 A He was.

4 Q And he wasn't identified until later. So he wouldn't
5 have been a defendant until later, correct?

6 A Yes, ma'am.

7 Q And the items, the jacket and the two black cloth
8 items that Mr. Secor asked you about, not being in
9 anybody's possession for a time, when you found those
10 items, were they in the spots that the defendant had
11 dropped them?

12 A They were in the spots the defendant dropped them.

13 Q And was anybody else around other than you?

14 A No, ma'am.

15 MS. GOOD: We have no further questions, Your
16 Honor.

17 THE COURT: Anything further?

18 MR. SECOR: No, Your Honor.

19 THE COURT: You may come down. May this witness
20 be excused?

21 MS. SHIPLEY: Please, Your Honor.

22 THE COURT: Without objection. You're free to
23 go, sir. Thank you very much. All right, Ladies and
24 Gentlemen. We're going to take our lunch break at
25 this time. I'll ask you to be back in the jury room

1 at 2:30. This is there a matter that has come up
2 that I have to attend to at 2:00. I normally ask you
3 to be back at 2, but I think we'd better just say
4 2:30 to be safe. So have a pleasant lunch. Don't
5 discuss the case among yourselves when you return to
6 the jury room or with anyone else over the lunch
7 hour. We'll see you at 2:30. Thank you very much.

8 (Jury out at 12:50 p.m.)

9 **THE COURT:** All right, Counsel. Let me ask
10 defense counsel, you've made a sort of a continuing
11 objection to the introduction of these physical items
12 that were recovered during the course of the chase
13 and arrest, that sort of thing. Do you want to put
14 your -- do you want to put that on the record? I
15 mean, it's all been done at the bench, but I thought
16 you might want to make that --

17 **MR. COOPER:** Yes, Your Honor. I appreciate
18 that.

19 **THE COURT:** -- for the record.

20 **MR. COOPER:** Yes, Your Honor. I appreciate
21 that. Our objection to the evidence being entered
22 under these witnesses was that there was no proper
23 foundation laid for their entrance at the time,
24 meaning that that witness, Deputy Unger, could not
25 lay a proper foundation for saying that that was the

1 same mask in court today that he picked up on
2 November 9th.

3 Okay. What we're asking for is for them to lay
4 the proper foundation known as the chain. And our
5 position is that they cannot enter these items of
6 evidence properly until they lay a foundation of the
7 chain. And at that point our objection was that they
8 had not done that. And we would like to make that
9 objection continuous for all those items until the
10 time that they lay a proper foundation.

11 **THE COURT:** All right. What is the State's
12 position?

13 **MS. GOOD:** Your Honor, it's our position Deputy
14 Unger testified that it was the same one the
15 defendant dropped, the same jacket the defendant
16 dropped, the same mask. In addition, Your Honor,
17 these items are not fungible and chain does not need
18 to be laid for non-fungible items.

19 **THE COURT:** I don't think the law says that no
20 chain has to be laid. I think it's more that the
21 exact chain doesn't have to be laid. I think you
22 have to at least bring a person that has them or had
23 them, whether it's Tena Goff. I don't think because
24 they're non-fungible, the law doesn't require a
25 specific chain like you would have with drugs or

1 other items of that character. But I think you at
2 least have to bring the person that's held them since
3 the date of the arrest in whose custody.

4 Now, the last officer could have said, well, I
5 mean, I don't know how they got from the scene to the
6 evidence room, which I am assuming is what happened.
7 That's usually what happens. Somebody says they took
8 it to the evidence and Tena Goff says she had them, I
9 think that's all you need. So, I mean, his objection
10 is founded, well founded, except that these are
11 non-fungible items and you've had three witnesses
12 testify about a yellow jacket. The police picked up
13 a yellow jacket and somebody has had it in their
14 custody. I'll rule that they're admissible.

15 MS. GOOD: Thank you.

16 THE COURT: I mean, I just -- I don't think you
17 have to do the exact person to person to person to
18 person to person link like you would something that's
19 fungible. All right. Let's stand at ease until
20 2:30.

21 MR. COOPER: Your honor, just to clarify.

22 THE COURT: Yeah.

23 MR. COOPER: Is your ruling that they do have to
24 put up at least one more witness I understand?

25 THE COURT: Yeah.

1 MR. COOPER: Okay. Thank you.

2 THE COURT: I think that's --

3 MS. SHIPLEY: Basically the person that then
4 collects it and puts it in evidence needs to testify?
5 Okay. We'll take care of that later.

6 THE COURT: You've got him on your list.

7 (Whereupon, a lunch break is taken)

8 THE COURT: The State ready for the jury?

9 MS. SHIPLEY: Yes, sir.

10 THE COURT: Defense ready for the jury?

11 MR. COOPER: Yes, Your Honor.

12 THE COURT: Bring the jury, please.

13 (Jury in at 2:50 p.m.)

14 THE BAILIFF: The jury is all present, Your
15 Honor.

16 THE COURT: All right. Thank you very much.
17 Thank you very much for your patience, ladies and
18 gentlemen. We're now ready to continue with the
19 trial. Solicitor, call your next witness.

20 MS. GOOD: May it please the Court. The State
21 calls Corporal Chad Enzor.

22 JOHN C. ENZOR, after being duly sworn, testifies
23 as follows:

24 THE CLERK: Thank you. Please have a seat in
25 the witness stand and state your full name for the

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1 record. And please spell your last name.

2 WITNESS: It's Corporal John C. Enzor,
3 E-N-Z-O-R.

4 DIRECT EXAMINATION

5 BY MS. GOOD

6 Q And, Corporal Enzor, where are you employed?

7 A The Richland County Sheriff's Department.

8 Q What's your title there?

9 A I'm a corporal which is a road supervisor. You dial
10 911, I show up.

11 Q And how long have you been with the Richland County
12 Sheriff's Department?

13 A Eight years.

14 Q Back in November of 2006, what was your title then?

15 A It was Corporal also.

16 Q Also a corporal then? And can you tell the jury a
17 little bit about how you became an officer?

18 A I applied back in 2000 at the Sheriff's Department.
19 They hired me. I went through the police academy,
20 got hired on, and I have been at the Richland County
21 Sheriff's Department since then.

22 Q And how long have you been a corporal?

23 A It will be three years in December.

24 Q I want to take your attention to November 9th, 2006.

25 Were you on duty that day?

1 **A** Yes, ma'am.

2 **Q** And did you become involved in a call at Family
3 Dollar at 7361 Garners Ferry Road?

4 **A** Yes, ma'am. We got a call of an armed robbery at the
5 7361 Garners Ferry Road about 9:00 in the morning.

6 **Q** And when you got that call, what did you do?

7 **A** I immediately responded to the scene. Since I was
8 the supervisor on duty, that was part of my job, was
9 to respond.

10 **Q** And were you the first one on the scene?

11 **A** Actually I believe I was the second one.

12 **Q** Who was the first one?

13 **A** It was Master Deputy Kilcoyne.

14 **Q** And when you got to the scene, what did you do?

15 **A** When I was at the scene, basically I was assisting
16 Officer Kilcoyne in getting information as far as
17 descriptions, what happened, notifying the proper
18 chain of commands and crime scene and all that.

19 **Q** And did you do that?

20 **A** Yes, ma'am.

21 **Q** And at some point did you end up leaving the Family
22 Dollar?

23 **A** Yes. At some point during all this, Lance Corporal
24 Unger got behind a car that he suspected was the
25 suspect's vehicle. That was BOLO'd out.

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1 Q What does BOLO mean?

2 A It slipped my mind. But basically giving a
3 description to everybody in the county what it was.

4 Q Okay.

5 A Be on the lookout. That's what it stands for.

6 Q And when you heard that Deputy Unger had gotten
7 behind a car, what did you do?

8 A I immediately got in my car, one, because I am the
9 supervisor and part of my job is to supervise any
10 pursuits. Also I had stop sticks which are tire
11 deflating devices that a vehicle can run over and
12 deflate the tires. That way the car wouldn't wreck
13 or anything like that.

14 Q And were you involved in this pursuit?

15 A No. The pursuit ended before I got there. The
16 suspect's vehicle crashed into I think a fence is
17 what it was.

18 Q So you arrived at that scene?

19 A Yeah. Shortly after.

20 Q And once you arrived at that scene, what did you
21 observe?

22 A I observed Lance Corporal Unger along with his
23 trainee. I believe it was Deputy Davis at the time.
24 They had somebody that fit the description that was
25 given out as the suspect. And at that time I believe

1 he was handcuffed and they were walking him back to
2 their patrol car.

3 Q And what did you do once you saw that the suspect was
4 in handcuffs?

5 A What I did was I knew that we needed somebody to ID
6 the person, to make sure this is the right person,
7 this wasn't some innocent person that did something
8 wrong and just got scared. So I went back to the
9 scene and got Ms. Anderson who was a witness of the
10 crime and proceeded to take her over to the incident
11 location.

12 Q And what route did you take to get her to the
13 incident location?

14 A I believe it was Greenlawn to Atlas Road, Atlas Road
15 to Harlem Street. And that runs into I want to say
16 Winter Park. I don't work that area now, so I kind
17 of lost some of the road names. But it's only maybe
18 a mile and a half from where it was.

19 Q Let me show you what's marked State's Exhibit 57. Do
20 you recognize that?

21 A Yes, ma'am.

22 Q And what is that?

23 A It's a map of the roads of the area where this took
24 place.

25 Q And would that help you show the jury what route you

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1 took to take her?

2 A Yes, ma'am.

3 Q May ask the witness step down, Your Honor?

4 **THE COURT:** Go ahead.

5 Q Can you show the jury how you got Ms. Anderson to the
6 location?

7 A Let me get oriented here first. Okay. All right. I
8 know where I'm at now. Basically we went down
9 Greenlawn which is this road right here, went down
10 Atlas Road, crossed over Shop, came down here to -- I
11 don't know the name of that little road. I forgot
12 it. This is Harlem Street right here. And we came
13 down -- I believe that is actually Winter Park right
14 here.

15 Q Okay. And while you were in route with Ms. Anderson,
16 did you tell her anything about what she was going to
17 do?

18 A Basically what I told her is that we have somebody
19 that fit the description that she gave us and that we
20 needed her to identify whether or not this person is
21 or is not the person who committed the crime.

22 Q And did you ever suggest to her that it was the
23 person?

24 A No, ma'am. That's the only thing I said to her.

25 Q And when you drove up to the location, did you drive

1 in front of where the defendant had been arrested?

2 A No, ma'am. We probably stopped about maybe 50 yards
3 away from where he was actually arrested and the
4 scene was.

5 Q What did you do with her?

6 A At that time I -- Investigator Sergeant Robinson was
7 on the scene and he was a senior investigator on the
8 scene at that time. So I had proceeded to introduce
9 them two.

10 Q And did you actually show Ms. Anderson the defendant
11 or the suspect at the time?

12 A No, ma'am.

13 Q And who did that?

14 A Sergeant Robinson.

15 Q And what did you do while Sergeant Robinson was
16 conducting that?

17 A I just stood there basically.

18 Q And after the identification what did you do with Ms.
19 Anderson?

20 A I got her from Sergeant Robinson, put her back in my
21 vehicle and took her the same route back to the
22 Family Dollar.

23 Q And when you got back to the Family Dollar, what if
24 any involvement did you have?

25 A I basically let her out of the vehicle, made sure

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1 that the crime scene was there, the report was done.

2 And at that time that's my end of my involvement.

3 Q And when you arrived back at the scene, was the crime
4 scene unit there?

5 A I believe so. Yes.

6 Q Beg. the Court's indulgence. Did you suggest in any
7 way when you were taking Ms. Anderson --

8 MR. SECOR: Objection, Your Honor. Asked and
9 answered.

10 THE COURT: Overruled. Go ahead.

11 Q Did you suggest in any way to Ms. Anderson that the
12 person that you all had in custody was the robber?

13 A No, I did not.

14 Q No further questions, Your Honor.

15 THE COURT: Cross examination.

16 MR. SECOR: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. SECOR

19 Q How you doing, Corporal Enzor?

20 A Fine. How are you?

21 Q Good. Thanks. You said at the end of your testimony
22 with Ms. Good that when you got back to the Family
23 Dollar you made sure that the report was complete?

24 A That it was being done.

25 Q Okay. So you didn't write a report of your own?

- 1 A No. I didn't write a report at all.
- 2 Q And you were involved in the initial call and
3 response to the Family Dollar, correct?
- 4 A Correct.
- 5 Q And you were involved in investigation, being the
6 second officer who arrived at the scene and talking
7 to witnesses?
- 8 A I would say as far as investigation, I was just
9 getting general information.
- 10 Q Wasn't that investigation talking to people about
11 what happened?
- 12 A Yes. Getting a -- I would say it would be a general
13 investigation. Yes, I would.
- 14 Q Okay. And then you were contacted by another officer
15 asking you to bring Ms. Anderson to another location?
- 16 A No, I wasn't.
- 17 Q You weren't?
- 18 A No.
- 19 Q You just did that on your own accord?
- 20 A I heard the pursuit in progress. I got over there,
21 and then I took it upon myself to go back.
- 22 Q After you came from the scene where the officers --
- 23 A Yes.
- 24 Q -- had arrested Mr. Portee?
- 25 A Correct.

1 Q Okay. You went and got her yourself?

2 A Yes.

3 Q Brought her back?

4 A Correct.

5 Q You were there for the show-up --

6 A Yes.

7 Q -- identification process? And then you brought her
8 back to the Family Dollar?

9 A Correct.

10 Q Where I guess the investigation was ongoing?

11 A Yes, sir.

12 Q And you never wrote any report on any of those events
13 whatsoever?

14 A I never wrote a report at all.

15 Q Okay. I've got nothing further, Your Honor. Thank
16 you.

17 THE COURT: Anything further?

18 MS. GOOD: Very briefly.

19 REDIRECT EXAMINATION

20 BY MS. GOOD

21 Q How many people write a report at the actual scene of
22 the crime at Family Dollar?

23 A One person at any scene. Whoever gets there first
24 does the paperwork.

25 Q And were you the first one there?

1 A No, I was not.

2 Q I have no further questions.

3 THE COURT: Anything further?

4 MR. SECOR: Nothing further.

5 THE COURT: You may come down, sir. Thank you
6 very much. May the witness be excused?.

7 MS. SHIPLEY: Please, Your Honor.

8 THE COURT: Without objection. Next witness.

9 MS. GOOD: The State calls Jennifer Blair.

10 JENNIFER BLAIR, after being duly sworn,
11 testifies as follows:

12 THE CLERK: Thank you. Please have a seat on
13 the witness stand and state your full name for the
14 record, and please spell your last name.

15 WITNESS: My name is Jennifer Blair. Last name
16 is B-L-A-I-R.

17 DIRECT EXAMINATION

18 BY MS. GOOD

19 Q Ms. Blair, where are you employed?

20 A I'm employed with the City of Columbia 911
21 Communications.

22 Q And what does your job involve there?

23 A I am the administrative physical officer there. My
24 job entails budget, Freedom of Information requests,
25 procurement, and any admin, administrative management

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1 responsibilities.

2 Q And do you maintain records?

3 A Yes, I do.

4 Q And are you the custodian of those records?

5 A Yes, I am.

6 Q And when you maintain those records, how are they
7 done?

8 A Our records are kept in a locked RayCal recording.
9 It's a recording system where we keep all 911
10 recordings for 90 days.

11 Q And at 911, when a call comes in, is anything done
12 other than just recording the call?

13 A When a call comes in from a citizen of Richland
14 County, the City of Columbia, the call taker or the
15 telecommunicator processes the call and it is entered
16 into our computer aid dispatch CAD system for
17 dispatch for first responders.

18 Q And when those reports are done, how are they taken
19 down?

20 A They are kept in the computer system and they are
21 printed out. And they are called closed incident
22 reports.

23 Q And these closed incident reports, when they're made,
24 are they made at the time of the call or are they
25 made sometime later?

1 A At the time of the call.

2 Q And are they made by somebody -- are they made by
3 whoever is taking the call, or is it made by somebody
4 else?

5 A They're made by the person that is taking the call,
6 the actual call taker or communicator.

7 Q And is one of these reports done in each call that
8 comes in?

9 A Yes.

10 Q And whatever call that comes in, is this record
11 something that you do in the regular course of your
12 business?

13 A Yes, it is.

14 Q And do you maintain these records throughout?

15 A Mm-hmm (affirmative).

16 Q And in this case, were there any calls that came into
17 the 911 on November 9th of 2006 regarding Family
18 Dollar?

19 A Yes.

20 Q And how many calls was that?

21 A Four.

22 Q Four? And with each call that comes in, is it given
23 a special number?

24 A Yes, it is. It called an incident number.

25 Q And did you pull -- before you came here today, did

1 you pull the closed incident reports for this
2 particular case?

3 A Yes, I did.

4 Q And you brought them with you?

5 A Yes.

6 Q And have you reviewed these reports?

7 A Yes, I have.

8 (WHEREUPON, State's Exhibit No. 62 is marked for
9 identification.)

10 (WHEREUPON, State's Exhibit No. 63 is marked for
11 identification.)

12 Q I'm going to show you what's been -- I'm going to
13 show you what's been marked as State's Exhibits 62
14 State's Exhibit 63. Do you recognize these?

15 COURT REPORTER: Could you staple 63?

16 MS. GOOD: I'm sorry?

17 COURT REPORTER: Could you staple 63? I didn't
18 have a staple.

19 Q Showing you what's been marked as State's Exhibits 62
20 and 63, do you recognize those two documents?

21 A Yes, I do.

22 Q What are they?

23 A These are closed incident and pretty -- what they are
24 is information relayed to the call taker at the time
25 of the call.

1 Q Okay. And do these reports -- were these kept in the
2 regular course of business?

3 A Yes.

4 Q And have they been tampered with or changed in any
5 way?

6 A No, they have not.

7 MS. GOOD: At this time, Your Honor, we'd like
8 to enter into evidence State's Exhibits 62 and 63.

9 MR. COOPER: I have no objection.

10 THE COURT: Without objection.

11 (WHEREUPON, State's Exhibit No. 62 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 63 is admitted
14 into evidence.)

15 Q Now, when a closed incident report is done, what
16 information is put on this report?

17 A The information that is recorded on the report is the
18 date, the time we receive the call, the time the call
19 was routed through dispatch, the actual dispatch
20 time, the route time of the first responder, the
21 arrival time, the clear time, the call for service
22 call, what type of call it is, a 911 hangup or
23 robbery, whatever it may be, the person or business
24 that called the call in, and all pertinent
25 information related to the call.

1 Q And let's take I believe it's 62 first. What is the
2 incident number on that one?

3 A L-328.

4 Q And what location did that call come from?

5 A 7361 Garners Ferry Road.

6 Q And do you know who the caller was?

7 A It states --

8 MR. COOPER: Objection, Your Honor. At this
9 time her testimony would be cumulative. The reports
10 are in evidence.

11 MS. GOOD: She can testify as to what the report
12 says. They are in evidence. We haven't been through
13 it yet. So it's not cumulative.

14 THE COURT: I think she can refer to the
15 documents and testify as to what -- there is
16 evidence -- I mean there is information on the sheets
17 perhaps only she can interpret. So, I mean, I think
18 she ought to be able to testify to that fact. And so
19 I'll respectfully deny your motion.

20 MS. GOOD: Thank you, Your Honor.

21 Q Where did this particular phone call come from?

22 A From the Family Dollar Store.

23 Q And was anybody on the line?

24 A Yes. Someone was on the line, but on this particular
25 incident it doesn't state who.

1 Q Okay. And give me just a second. At what time did
2 that first call come through?

3 A The call came in at 9:12:34.

4 Q At 9:12:34, first 911 call. Okay. And when that
5 call came through, was anybody spoken to initially?

6 A Yes. Not initially. I'm sorry.

7 Q Okay.

8 A It states the Family Dollar Store had an open line.
9 So apparently someone called from the business but
10 did not relay any information at that particular
11 time.

12 Q And an open line means -- what does an open line
13 mean?

14 A An open line is that there is no form of anyone
15 communicating with us, but there is someone on the
16 line but no communication at this point.

17 Q Okay. And after that initially, did somebody
18 eventually get on the phone and give a description?

19 A Okay. According to what's on the report, initially
20 on this particular incident, L-328, there was no
21 conversation, and apparently during this open line
22 the business hung up. So we had to call the business
23 back.

24 Q Okay. And what time did you call the business back?

25 A At 9:13.

1 Q And when you called back, were you able to talk to
2 somebody? Was the telecommunicator able to speak
3 with somebody at that time?

4 A Not at that time, because it indicates 10-6 which is
5 a ten code, meaning on call back it was busy, the
6 line to the store was busy.

7 Q Okay. Turning your attention to State's Exhibit 63,
8 L-331, where did that call come from?

9 A This call came at 9:13 from Tracey Anderson.

10 Q Okay. And Tracey Anderson is the caller?

11 A Yes.

12 Q And what information was given to the 911
13 telecommunicator at that point?

14 A At that point from Tracey Anderson, reported this
15 business was Family Dollar, that a white male ran out
16 of the back door headed toward the right.

17 Q Okay. And was there any description of the clothing
18 given?

19 A In the comments it states was no weapon was
20 presented, unknown hair color, wearing a mask, only
21 eyes were showing, possibly gray sweatpants, and they
22 were unable to get a tag number.

23 Q And when the telecommunicator is talking with
24 somebody on the line, are they also dispatching at
25 the same time?

1 A The telecommunicator is relaying that information.
2 If that telecommunicator is working that particular
3 channel that this information needs to go out to,
4 yes, they are responding the officers to the call at
5 that time.

6 Q And is that information also kept on the closed
7 incident report?

8 A Yes, it is.

9 Q And in this case was the description given out to
10 officers?

11 A Yes.

12 Q And was there a description given to an officer of
13 the car?

14 A Yes. It's information given to the responding
15 officer. Suspect is in a white Chevrolet Cavalier.

16 Q And which officer or which call number had that
17 information?

18 A L-331. I'm sorry. Suspect vehicle, description of
19 white Cavalier was given out by the responding unit,
20 Richland 180.

21 Q 180?

22 A Mm-hmm (affirmative).

23 Q And after that were there other officers that called
24 in on the dispatch that they had found something?

25 A On the dispatch we have several officers responding

Jennifer Blair - Direct by Ms. Good

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1 to this call which is normal for a holdup at a
2 business.

3 Q What about 9:25? Did an officer call in saying they
4 were behind somebody?

5 A Yes. It states at 9:25 they are turning into Bluff
6 Estates.

7 Q Okay. And are you aware of which officer call number
8 that was? Is it on there?

9 A Richland 9-9-1.

10 Q Okay. And at that point did 991 relay to you where
11 they were going?

12 A Yes. Information states they were turning into Bluff
13 Estates coming up to Winter Park. They are now on
14 Winter Park. He is grabbing stuff out of the car.
15 Left on Hialeah. Then they see the yellow jacket.
16 They are now on Shore Crest. The K-9 and other units
17 are responding, possibly trying to have chop sticks
18 set up around the perimeter. They are turning onto
19 Flamingo. The channel is cleared at that point so
20 the officers can communicate and give additional
21 information. They're back on Tavaneer. Took out a
22 mailbox. Now Bush Vine. He is headed toward the
23 back of Hialeah. Units advised of the updates.
24 They're in Bluff Estates. And at 9:28 they are
25 detaining one subject.

1 Q And so at 9:28 they detained the suspect?

2 A Yes.

3 Q And all this information that is received is done at
4 the same time as its happening, or is it done later?

5 A The same time it's occurring.

6 Q Beg the Court's indulgence. And also on L-331, back
7 at the beginning when there was a description given,
8 was there an approximate height given?

9 A Suspect is approximately six-two.

10 Q And after the suspect was detained, did the officers
11 relay any information regarding anything in his
12 possession?

13 A Richland 991 at 9:30 states has possession of a
14 yellow jacket with a knife in it.

15 Q And did 911 also give information after that about
16 something that happened during the pursuit?

17 A Mailboxes were taken. Richland 991 was at Bluff and
18 Harlem where the suspect possibly threw something out
19 of the window. And that was at 9:36.

20 MS. GOOD: We have no further questions, Your
21 Honor.

22 THE COURT: Cross examination.

23 MR. COOPER: If it pleases the Court, Your
24 Honor.

25 CROSS EXAMINATION

Jennifer Blair - Cross by Mr. Cooper

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1 BY MR. COOPER

2 Q Good afternoon, ma'am. How you doing?

3 A Good afternoon.

4 Q Could I ask you to please refer to 331, please? You
5 got it?

6 A Yes.

7 Q Can you refer to the very first line? It says:
8 "Family Dollar, W/M ran out back door." Is that
9 right?

10 A Yes.

11 Q What does W/M mean?

12 A That's abbreviation for white male.

13 Q All right. Thank you. I have nothing further?

14 THE COURT: Anything further?

15 MS. GOOD: No, Your Honor.

16 THE COURT: All right. You may come down,
17 ma'am. Thank you very much for coming.

18 WITNESS: You're welcome.

19 THE COURT: The witness may be excused without
20 objection. Next witness.

21 MS. SHIPLEY: Your Honor, the State calls
22 William Davis. Your Honor, at this time the State
23 calls Sergeant Donald Robinson.

24 THE COURT: Is this sort of like "Let's Make a
25 Deal" or something?

1 MS. SHIPLEY: Musical witnesses.

2 THE COURT: Whoever comes through the door.

3 MS. SHIPLEY: No. Officer Davis is in training,
4 Your Honor.

5 (Pause)

6 DONALD ROBINSON, after being duly sworn,
7 testifies as follows:

8 THE CLERK: Thank you. Please have a seat in
9 the witness stand and state your name for the record.

10 DIRECT EXAMINATION

11 BY MS. SHIPLEY

12 Q State your name for the record, sir?

13 A My name is Donald Robinson.

14 Q Sergeant Robinson, can you tell the jury where you're
15 employed?

16 A I am currently employed at the Richland County
17 Sheriff's Department.

18 Q How long have you worked there?

19 A A total of 16 years.

20 Q And currently what is your title?

21 A Currently I am a sergeant of investigations.

22 Q What do your duties entail as sergeant of
23 investigations?

24 A I supervise a group of detectives or investigators as
25 we call them. Right now I supervise a group of

1 investigators who investigate aggravated assaults and
2 any other aggravated violent crimes in our county.

3 Q And prior to being a sergeant in the investigative
4 unit, where were you? What were you doing for the
5 Sheriff's Department?

6 A Prior to as a sergeant position, I worked
7 investigations an additional four years before that
8 for the burglary team. We did that primarily, but we
9 investigated every crime possible that we'd have.
10 Then I worked on the road I guess five years at that
11 point in the uniform division. And before that,
12 that's where I was certified at the academy. And I
13 worked in -- I was a customer service manager for a
14 company on Shop Road called South Carolina Tees prior
15 to that, and then graduated from the University of
16 South Carolina.

17 Q All right. I'm going to bring your attention to
18 November 9th, 2006. Is there a particular region?
19 When you're a sergeant of an investigative unit, is
20 there a region that you are assigned to?

21 A At that time in 2006 our investigative division, we
22 were divided into regions. My position as the
23 sergeant at that time in this year was I was over the
24 investigators. I worked the Lower Richland area. So
25 we predominantly handled all the crimes in Lower

1 Richland. And that area went from everywhere from
2 Eastover to Bluff Road near the Congaree, all the way
3 down to the Interstate, 77, where it borders into
4 West Columbia, all the way down to the city, down by
5 Bombers Stadium and by USC, and expanded all the way
6 to Leesburg Road, to Ft. Jackson, then all the way
7 out to Ft. Jackson all the way to the Elgin area.

8 Q Now, back on November 9th of 2006, which
9 investigative unit were you working with?

10 A I was working with what is called Region One. That
11 was the title of our area.

12 Q And were there particular crimes that you were a
13 supervisor for?

14 A At that time generally the crimes that my unit
15 handled were the burglaries, motor vehicle thefts,
16 auto break-in's, property crimes and all of that.
17 The major crimes unit was a separated division. They
18 handled -- even our Region One major crimes handled
19 it. But we handled just pretty much everything. But
20 at that point specifically it was major, the
21 burglaries and the break-in's, most of the property
22 crimes and stuff.

23 Q Now, on November 9th, 2006, do you recall whether or
24 not you received -- were working, first of all, in
25 the morning hours?

1 A Sure. I was working that morning. And what I was
2 doing was I was finishing up a task from that area
3 and I was riding down Bluff Road. As a matter of
4 fact, according to this map --

5 Q Here. I'll give you a pointer so you can use this.

6 A Okay.

7 Q Okay.

8 A All right. This road here is Bluff Road. This leads
9 to the interstate going towards the city, Columbia.
10 That morning I was patrolling this area right here
11 around Rick's Party Shop coming through here.

12 Q And were you there for an unrelated case?

13 A It was unrelated.

14 Q Okay.

15 A Unrelated matter. And then I hear the tone go over
16 the radio that there was an armed robbery that
17 occurred over here on Garners Ferry Road. At that
18 point I heard the description that was placed over
19 the radio. And immediately, the first thing I did,
20 because I knew that most deputies are a little bit
21 further out here. So the first thing I did is I went
22 there to get on the interstate here to shut off any
23 kind of access point in case the car were to head
24 towards the West Columbia area and kind of set up a
25 perimeter there, be on the lookout for the vehicle.

1 Q Okay. And do you recall -- you said a tone. What do
2 you mean by a tone?

3 A Any crimes that are in progress, our dispatchers will
4 send out an alert. It's a tone that automatically
5 shuts off every other radio transmission and lets
6 everyone know no matter what frequency you're
7 listening to, it clears it on all channels that there
8 is a crime in process and the closest ones, everyone
9 needs to be alerted. Whoever the closest deputies
10 are will be able to respond, hopefully apprehend the
11 defendant.

12 Q Okay. Do you recall what kind of description came
13 out over the radio?

14 A I do.

15 MR. COOPER: Objection. It calls for hearsay.

16 MS. SHIPLEY: Present sense impression, Your
17 Honor.

18 THE COURT: What was the -- repeat the question.

19 MS. SHIPLEY: The description that was
20 dispatched over the radio.

21 THE COURT: Overruled. Go ahead.

22 Q Please proceed.

23 A The description that I heard was that it was a white
24 vehicle, older model Buick Olds, something to that
25 effect, probably a late eighties vehicle, driven by a

1 real light-skinned, maybe white male.

2 Q And do you recall any clothing description dispatched
3 at that point?

4 A Sure. They said that the subject had committed
5 what's called a 1074 which is an armed robbery in our
6 ten code transmission and that the subject was
7 wearing like a bright yellow -- I guess; I don't
8 know -- like a rain coat or some sort of a bright
9 yellow jacket.

10 Q Based on that information, you indicated you were by
11 I-77. Is that correct?

12 A That's correct.

13 Q How long did you remain at I-77 and make sure this
14 car didn't get away on that exit ramp?

15 A It wasn't for long. Here is where I had gotten on.
16 I was already here which is probably within probably
17 400 yards. So it's not very far, less than a mile of
18 the interstate. I jumped on the interstate. That's
19 about right there, not very far at all. I'm pretty
20 much just barely just getting on. And then I hear
21 Deputy Unger. He started to transmit on his radio.
22 Actually his first thing, if I remember correctly,
23 the first thing I heard is he was calling dispatch to
24 get a confirmation of the vehicle and the suspect
25 description. He asked it again over the radio that

1 the transmission was then cleared. He reaffirmed the
2 description of that vehicle and the suspect, and then
3 he notified central, I think I'm behind that vehicle.
4 I will make an attempt to try to stop this vehicle.
5 So at that point I quickly turned around, went
6 straight to where he was going.. He was coming from
7 this direction here. So I came here to head him off
8 and join in and assist. So all of this area is not a
9 lot of room there. So you can get there pretty
10 quick. But a very, very short time.

11 Q All right. And were you able to spot Deputy Unger
12 when you got off the interstate back on Bluff Road?

13 A What I had gotten back onto Bluff Road, he was
14 calling out his directions as he's traveling through
15 the pursuit. So as he's calling them, I can tell
16 that he's sitting in this neighborhood here.

17 Q And what is that neighborhood called?

18 A Well, you have two of them right together. You have
19 Candlelight and Bluff Estates. They're right there
20 real, real tight together.

21 Q Okay. And did you recall recognizing the names of
22 the streets he was calling out?

23 A I recognized the streets because I work the area.

24 Q Okay.

25 A I couldn't recite to you which street he traveled.

1 But I was very familiar with the area and knew
2 exactly where he was going. So then I went straight
3 to this area to try to shut off any kind of access
4 point because there is the one area they can come
5 out. So I hovered here. And then right when I went
6 to go hover that spot, that's when Unger had called
7 out on the radio that the suspect vehicle had stopped
8 or wrecked and there was a foot pursuit and the
9 apprehension was made.

10 Q Okay. And once you heard that an apprehension was
11 made, did you go to where they had apprehended the
12 driver of that car?

13 A I did.

14 Q And do you recall what you -- just describe for the
15 jury what you observed when you got there?

16 A When I first arrived there, you can only pull down
17 the road so far. I couldn't get all the way in. So
18 when I pulled in, I was probably about 75 feet to the
19 rear of this white vehicle. And I could see where it
20 skidded off the side of the road and just -- I can
21 tell where there was an accident.

22 Q Okay. And bear with me one second, please.

23 A Okay.

24 Q State's No. 9, do you see those ski marks that you
25 were describing just now?

1 A I do. I see those.

2 Q And can you point them out on that photograph for me?

3 A On this picture?

4 Q Yes.

5 A Right here. Right here.

6 Q So right there and there?

7 A Yes.

8 Q Now, once you observed that, describe where you
9 noticed the subject?

10 A When I arrived the subject was in the back seat of
11 the patrol car, Deputy Unger's car. He had him in
12 custody and apprehended him. He was in the back
13 seat. He was in the back seat handcuffed, handcuffed
14 to the rear at that time. So I went to Unger to find
15 out what's going on because I knew he was the first
16 one there, he was the most involved deputy. So the
17 first thing of my purpose was to get the facts, find
18 out what's going on, see what the investigator needs,
19 we needed to do to follow up on the case.

20 Q Okay. And did you make any -- did Unger show you
21 around as to different items of articles of clothing
22 that were left behind?

23 A He did. He walked me over to where the --

24 MR. COOPER: Objection, Your Honor. Leading.

25 THE COURT: Rephrase your question.

1 Q What did Unger do as far as you showing you around?

2 A What I did is, he kind of presented to me the
3 configuration of where the suspect is or where the
4 car was and where the suspect had ran from and where
5 he was apprehended. Then when he was apprehended, he
6 showed me that there was money still strewn on the
7 ground beside the house. I told him, I said, just
8 leave alone because we want to photograph it. And
9 then he showed me also that he had on the car, the
10 hood of his car was a bright yellow rain coat or a
11 bright yellow jacket.

12 Q Okay.

13 A And that was the matching jacket from the tone of the
14 dispatch that had called.

15 Q And do you recall whether or not you all looked in
16 the jacket?

17 A Looked in the jacket? I did not look in the jacket.

18 Q And is that how the jacket appeared when you arrived
19 on State's 25?

20 A It is.

21 Q And that's on Corporal Unger's patrol car?

22 A This was on his car, right front hood.

23 Q Now, you indicated also that he showed you where you
24 the money was?

25 A Yes. That's correct.

1 Q And you instructed him not to touch the money, just
2 to let the lab I guess come pick it up?

3 A That's correct.

4 Q And is that the general -- am I pointing to the
5 general vicinity of where the money was located?

6 A That is. Yes. That is.

7 Q Here is a better picture. State's 16, is that the
8 money, the condition that you observed the money to
9 be in?

10 A That is, yes.

11 Q Okay. Now, after you were shown around, what did you
12 do next?

13 A The next thing I did is I went to the defendant to
14 see if maybe I could start an interview process.

15 Q Okay. And tell the jury exactly what you do any time
16 you talk to someone that you suspect is involved in
17 criminal activity?

18 A The first thing we do is you approach the defendant,
19 introduce yourself and your purpose for why you're
20 there. So what I did is I said, look, my name is
21 Sergeant Robinson. I'm an investigator for the
22 Sheriff's Department. I am here to investigate this
23 matter that's going on. But first and foremost I
24 want to make sure everybody has had their rights. So
25 at that point I advised of him of what's called his

1 Miranda warnings. The Miranda warnings I recite to
2 them verbatim every single time. Nothing has changed
3 for the last 10 or 12 years I have done it. And the
4 quote that I use is: "You have the right to remain
5 silent. Anything you say can and will be used
6 against you in a court of law. You have the right to
7 an attorney. If you cannot afford one, one you will
8 be appointed to you by the state of South Carolina.
9 Do you understand the rights I've read to you?"

10 Q Did he indicate he understood?

11 A He indicated that he understood. So I asked him, I
12 said, what's going on here? He goes, I don't know
13 anything. I don't know what's going on. Man, these
14 guys just stopped me. I don't know.

15 Q Okay. And that's all he --

16 A He just completely denied everything. And it was
17 obvious to me with his physical condition that I knew
18 something was wrong. He was sweating profusely in
19 the back of the car. And so at that point I realized
20 I'm not going to push the issue and interview him.
21 You know, it's just not the time or the place. So I
22 let him sit there for a minute. We regained his
23 talks. Then I go back to start configuring the
24 crime scene and make sure everything else is working
25 for the case.

1 Q And was it Corporal Unger's responsibility to call
2 the crime scene unit to come to the scene?

3 A It is.

4 Q And were you present when the crime scene arrived?
5 Do you remember?

6 A I don't know specifically when they arrived.

7 Q Okay.

8 A I might have been moving around so many different
9 places. I'm not quite sure exactly. Because I was
10 trying to set up, getting the witnesses there and
11 getting the robbery team involved and kind of
12 coordinating those events.

13 Q Okay. Now, did you want to make sure that --
14 describe for the jury what efforts you took to get a
15 witness from the scene to view him?

16 A The next thing I realized I needed to do is we needed
17 to do what's called a show-up or an identification
18 here on the street. So I coordinated with Corporal
19 Enzor who is the uniformed supervisor of that
20 division that was working that day and explained to
21 him we needed to get the witness or the victim down
22 to us. We can't take the defendant to them. So we
23 had the witness to come there to identify him or
24 identify the defendant. Corporal Enzor had set up --
25 did it himself or set it up with one of his people.

1 I'm pretty sure he was the one that did it as far as
2 I know.

3 Q Okay. And do you recall what efforts you did to
4 prepare for the viewing of the defendant?

5 A The next thing I had done is to set up what's called
6 the show-up identification. So the first thing I did
7 was tried to get the defendant a little bit away from
8 the area. So I moved him away from the car because I
9 knew that was one of the identifications. So we're
10 in the neighborhood. It's kind of small with a bunch
11 of homes, a lot of people around. So the best I
12 could do was move him almost about a house over. And
13 there was a basketball goal standing over there. So
14 I positioned or put him there.

15 Q I'm going to show you State's No. 7. Do you see that
16 basketball goal in that photograph?

17 A I do.

18 Q Is that the basketball goal where you put him?

19 A That's the one I'm referring to, yes.

20 Q Do you see his car nearby?

21 A His car is to the left of that basketball goal.

22 Q How many feet away would you say?

23 A From that angle, it's a little bit misleading. But
24 I'd probably say probably about 25 feet or something
25 like that.

1 Q 25 feet?

2 A 30 feet.

3 Q And can you stop me? I'm going to walk away from
4 you. You stop me when I get to the approximate
5 distance between the goal, the basketball goal and
6 the car?

7 A Oh, okay. Right there maybe.

8 Q Okay. So this is about 25 feet?

9 A I guess. I'm not very in tune with distances.

10 Q Give or take a few feet?

11 A Yeah.

12 Q Now, was Mr. Portee handcuffed at this point?

13 A At this point he is still in the car. He hasn't been
14 moved. I was just picking out the location. So he
15 is still in the car and he's handcuffed. So now I
16 figured out when I picked out the location, I told
17 the deputies, I said, look, this is what we're going
18 to do here. I'm going to put the handcuffs in front
19 of him. We're going to pull him out. We're going to
20 set him in this location. We're setting up the
21 identification.

22 Q Okay. And why did you put his handcuffs from behind
23 him to in front of him?

24 A Well, the reason why is because I wanted him to be
25 seen in a relaxed fashion. I didn't want the victim

1 to see him crunched up with his arms back, anything
2 like that. So what we do is try to put the handcuffs
3 in front so it appears that they're just having a
4 normal posture. Then once I put the handcuffs in
5 front of him, I pulled a t-shirt that he had loose in
6 the back of the car, draped it over his hands in such
7 a manner where his hands were like this. You don't
8 want him to be like this. So I set him up like this
9 right here, draped the shirt over that where it would
10 be kind of like a tie so; in other words, the
11 handcuffs were not visible.

12 Q Okay.

13 A At that point. So then I took him over there, placed
14 him under the basketball goal, set him up in that
15 fashion, moved his handcuffs, put them in the front,
16 put the shirt, draped it over the handcuffs.

17 Q And did you have officers around him?

18 A There were two. And there were two. And it was for
19 a specific purpose. And that purpose --

20 Q And where were they? How far away were they from him
21 underneath the basketball goal?

22 A There was -- they were fanned out on each side.
23 Probably about somewhere around ten feet.

24 Q On either side?

25 A On either side.

1 Q Describe for the jury why it is that you kept Mr.
2 Portee handcuffed? Why not just uncuff him?

3 A Well, because there is a flight risk. I mean,
4 there's a danger. And it's in a neighborhood. I
5 mean, it's obvious he had to attempt to flee because
6 there were other present charges from the pursuit.
7 You can't allow someone to flee. So you have to
8 regain that and you have to maintain that security
9 there. And also considering the veracity of this
10 crime that he is being accused of, we have to
11 maintain safety for the neighborhood. You can't
12 predict people's actions.

13 Q And describe for the jury why it is you asked the
14 officers to stand where they did? Why not tell them
15 to get in their cars and get away?

16 A Well, just to stand there just to make sure so he
17 can't flee.

18 Q Okay.

19 A And that could be dangerous for the neighbors, for
20 himself or for us or for anyone involved.

21 Q At that point you indicated that you believe it was
22 Chad Enzor or Deputy Enzor that brought the victim to
23 you?

24 A Yes, ma'am.

25 Q Describe for the jury where you met with them?

1 **A** What I did is when I had coordinated with Corporal
2 Enzor, I explained to him -- if I can show you a
3 little bit on this map?

4 **Q** Yes. Please do.

5 **A** Here is where this basketball goal is. I wanted to
6 make sure when he brought Ms. Anderson over here that
7 he did not come back this way, explaining to him the
8 set up to make sure he drove this way. And the
9 reason why, the purpose of that is we didn't want her
10 to see anything from this angle of the guy standing
11 because we knew there was a patrol car waiting down
12 here blocking off the neighborhood traffic. So we
13 brought him in here and met with her back here by my
14 vehicle which was completely away from him. So we
15 didn't want --

16 **Q** And so you met with Corporal Enzor on which street?

17 **A** On this side over here.

18 **Q** On this side right here?

19 **A** And that would be on this other side.

20 **Q** Am I circling the correct street? Is that the --

21 **A** That's the correct street. I think that might be
22 Winter Park. But it's right there.

23 **Q** No problem. And again, why did you have meet him you
24 on that side of the neighborhood?

25 **A** That way there is no possibility of her seeing the

1 defendant before I could produce the -- show a
2 line-up.

3 Q Once you met with her on that street, Winter Park
4 Street, did you introduce yourself to her?

5 A I introduced myself and explained to her what we were
6 going to do and what it was.

7 Q Explain to the jury how you explained it to her?

8 A What I explained to Ms. Anderson is that, Ms.
9 Anderson, you know, I'm Sergeant Robinson with the
10 Sheriff's Department. We have a guy here that just
11 was in a pursuit with an officer. We'd just like for
12 you to take a look at this guy to see if he might
13 have been the one involved.

14 Q All right. And did she appear to understand what
15 this procedure was going to entail?

16 A She was very clear, very clear.

17 Q As a result, did you then put her in your vehicle?

18 A I did. I placed her in the passenger, front
19 passenger's seat. I was driving my pick-up truck,
20 made sure she was in the front passenger's seat. And
21 I specifically put her in that seat for the purpose
22 of, as my direction of travel would go by the
23 location of the defendant, that she would be placed
24 right here at the window. She would be sitting here
25 with no obstruction, straight view with plenty of

1 room and opportunity to view the defendant.

2 Q Okay. And did you drive by the defendant? And
3 describe the speed that you drove by?

4 A Probably two or three miles per hour. And it's a
5 fair opportunity. So I took this loop, drove around,
6 drove by. I just ride by. It might stop depending
7 on how she wished to do it.

8 Q But you didn't ride by 100 miles per hour?

9 A Oh, no. Extremely slow rate of speed.

10 Q Now, did you suggest to Ms. Anderson in any fashion
11 or form that the person you had in custody was the
12 robber?

13 A Oh, no. In fact, I did everything in the world I
14 could to not suggest.

15 Q And is that why you covered his handcuffs?

16 A Exactly.

17 Q Okay. At that point describe for the jury, how long
18 did it take Ms. Anderson to identify the defendant?

19 A It was seconds. When she rode by and looked at him,
20 she goes, that's him. It was pretty quick.

21 Q All right. Did she indicate to you -- concerning the
22 face, what did she indicate to you?

23 A Well, she said she really couldn't tell on the face
24 because --

25 MR. COOPER: Objection. Hearsay.

1 **THE COURT:** Sustained.

2 **Q** After that, after she identified him, did she appear
3 to have any doubts about this person being the same
4 person that robbed her?

5 **A** No. As a matter of fact, I will give you my quote
6 that I wrote on my notes from what she --

7 **MR. COOPER:** Objection.

8 **MS. SHIPLEY:** Well, this is still hearsay. So
9 we'll just move forward.

10 **Q** At that point after she positively identified the
11 defendant, Mr. Portee, did you then charge him with
12 armed robbery?

13 **A** Well, I knew that there was going to be probable
14 cause to charge him at that point. I continued with
15 preparing for the investigation. I called for
16 Investigator Isenhoward responding to the scene for
17 the robbery team. And the robbery team would
18 actually follow up and probably produce the final
19 charges. But he wasn't advised at that point that he
20 was under arrest for the armed robbery.

21 **Q** Without Ms. Anderson identifying him, would he have
22 been charged?

23 **A** Without her identification? I guess with more
24 probable cause, eventually.

25 **Q** At that point did you know that this person that was

1 Underneath the basketball goal that you put there,
2 did you know whether or not he was the robber?

3 A I didn't know until --

4 MR. COOPER: Objection. It calls for
5 speculation. It's outside --

6 MS. SHIPLEY: It's his thoughts, Your Honor.
7 You can't speculate about your own thoughts.

8 MR. COOPER: May we approach, Your Honor?

9 THE COURT: Sure.

10 (Whereupon, a bench conference is had)

11 THE COURT: I sustain the objection.

12 Q Did you make notes of what transpired at the Hialeah
13 Drive? Did you issue some investigative notes?

14 A I have an investigative report.

15 Q You have a report. Okay. And did you document the
16 events in your report?

17 A I did.

18 Q Moving forward, after Ms. Anderson positively
19 identified Mr. Portee, what did you do with her next?

20 A Next, then as we went by, I finished that, went back
21 to my car where we were. We were continuously in the
22 car, but I went back and parked where we were. And
23 then I took a written statement from her while she
24 was still aware of all the details.

25 Q Okay. And when you took her written statement, did

1 you write it in your own handwriting?

2 A I did. I wrote it in my handwriting.

3 Q Did you give her an opportunity to review the
4 statement before you had her sign it?

5 A Sure did. Sure did. Absolutely. What we do when we
6 take statements from witnesses, actually from anyone,
7 what we do is we go over the details, a chronological
8 account of what happened, then may ask a few
9 questions, Q and A's just to kind of firm up details.
10 But if we're not in our office setting, if we're out
11 in the field, then we'll do it by hand. And what we
12 do is we try to write verbatim what they say, the
13 questions, replies and then hand that to them, have
14 them read it, make sure it's correct. Once it's
15 correct or accurate, then acknowledge and we have
16 them sign it as a sworn affidavit.

17 Q Did you also have an opportunity to go over to the
18 vehicle that was being driven by the defendant that
19 day?

20 A I did.

21 Q Okay. And did Corporal Enzor point any items out to
22 you from the vehicle in plain view?

23 A He pointed out --

24 MR. COOPER: Objection. Leading.

25 Q What if any articles did he point out to you?

1 A Well, the main article was the jacket.

2 Q Okay.

3 A And he advised me about the jacket. And everything
4 about that appeared to be consistent with the armed
5 robbery call that went out.

6 Q And did you look inside of the white vehicle that had
7 crashed into the fence on Hialeah Road?

8 A Well, I mean I looked through it and I scanned
9 through it. I didn't process it and go through it in
10 fine detail because that's what our forensics people
11 and those guys were going to do that.

12 Q After that did you go to -- where did you go from the
13 scene after the arrest?

14 A All right. After I was through with the statement,
15 then the next thing I did after I had known that the
16 robbery team came and picked up from that point, I
17 was summoned by Investigator, Sergeant Isenhoward at
18 that point. He wanted me to swing by the public
19 library to go there and look and see if there was a
20 video or some evidence that the defendant claimed
21 that he was at the public library.

22 Q Do you recall going to the Family Dollar to retrieve
23 a videotape there?

24 A Yeah. I did that, too; both of them in one swoop.

25 Q And I'm going to show you State's -- we need to mark

1 it first.

2 (WHEREUPON, State's Exhibit No. 64 is marked for
3 identification.)

4 Q -- State's No. 64, and ask you if you recognize any
5 of your handwriting on that bag?

6 A That's the evidence bag that I placed the video in.
7 And that's my handwriting.

8 Q And is that video from the Family Dollar?

9 A Yes..

10 MS. SHIPLEY: Your Honor, at this time we would
11 introduce State's No. 64 in evidence.

12 MR. COOPER: I object to it based on
13 irrelevance, Your Honor.

14 THE COURT: What's the relevance? I mean the
15 witness --

16 MS. SHIPLEY: Just that he collected it. Based
17 on the opening statement.

18 THE COURT: He said that.

19 MS. SHIPLEY: Okay.

20 THE COURT: He testified to that. I mean --

21 MS. SHIPLEY: It corroborates the witnesses,
22 Your Honor.

23 THE COURT: He's already done that.

24 MS. SHIPLEY: Okay.

25 THE COURT: Sustained.

1 Q Did you have an opportunity to view that videotape?

2 A I did.

3 Q And was it clear? Could you see anything?

4 A There were some malfunctions with the recording.

5 Q After that you indicated that you went to the

6 Richland County Public Library?

7 A I did.

8 Q And who requested that you go there?

9 A Sergeant Isenhoward.

10 Q And who is Sergeant Isenhoward with when he requested

11 that you go to the Richland County Public Library?

12 A He was at the office. And I think he was still in

13 the middle of the interview process with the

14 defendant.

15 Q With Mr. Portee?

16 A Mr. Portee.

17 Q And is what exactly were you instructed to go collect

18 at the Richland County Library?

19 A Any surveillance video to support or disclaim or

20 disprove his theory, the claim that he was in the

21 library at the time of the --

22 MR. COOPER: Objection.

23 THE COURT: What's the objection?

24 MR. COOPER: He'd be testifying to hearsay.

25 MS. SHIPLEY: That's okay, Your Honor. We'll

1 get it in through Investigator Isenhoward.

2 **THE COURT:** All right. Sustain the objection.

3 **Q** Now, when you went to the Richland County Library,
4 did you, or were you able to collect any videos from
5 their business?

6 **A** That location on Greenlawn, they did not have
7 surveillance video there at all.

8 **Q** Okay. Beg the Court's indulgence, Your Honor. And
9 the individual that you took underneath the
10 basketball goal at Hialeah Drive, do you see him in
11 the courtroom today?

12 **A** I do. That's the defendant --

13 **Q** Will you please point him out?

14 **A** -- sitting in the chair.

15 **MS. SHIPLEY:** Okay. Your Honor, let the record
16 reflect that he's identified the defendant.

17 **THE COURT:** The record will so reflect the
18 witness identified the defendant.

19 **MS. SHIPLEY:** Thank you no. Further questions.

20 **THE COURT:** Cross examination.

21 **MR. COOPER:** May it please the Court, Your
22 Honor.

23 CROSS EXAMINATION

24 **BY MR. COOPER**

25 **Q** Good afternoon, Officer.

- 1 A Hello.
- 2 Q You testified that you've been an officer for quite
- 3 some time, correct?
- 4 A Altogether, 16.
- 5 Q Sixteen years?
- 6 A That's correct.
- 7 Q And during those 16 years you've conducted quite a
- 8 few investigations, correct?
- 9 A Yes.
- 10 Q So it would be fair to say you have quite a bit of
- 11 investigative experience?
- 12 A I hope so.
- 13 Q Now, in preparation for your career and during your
- 14 career, you've also undergone extensive training. Is
- 15 that right?
- 16 A Yes.
- 17 Q And some of that training, I imagine the bulk of it
- 18 was in criminal investigations, correct?
- 19 A Yeah.
- 20 Q And part of the training that you received focuses on
- 21 how to properly conduct criminal investigations. Is
- 22 that right?
- 23 A That's correct.
- 24 Q And one of the things you've learned about during
- 25 your training is how to take witness statements. Is

1 that correct?

2 A That's correct.

3 Q Another thing that you learned about is how to
4 conduct proper identification procedures. Is that
5 right?

6 A Yes, sir.

7 Q And those were both things that you had an occasion
8 to do in this investigation, right?

9 A Yes.

10 Q Because it's fair to say that you took if not a lead
11 role, an extremely active role in this investigation.
12 Wouldn't you agree?

13 A Yes, sir.

14 Q Now, let's go to the show-up ID that you discussed
15 with Ms. Shipley. You testified that Corporal Enzor
16 was the one who brought Ms. Anderson to you. Is that
17 right?

18 A Yes.

19 Q And you also went through extensive testimony about
20 the specific procedures that you take in a show-up
21 ID, correct?

22 A Yes, sir.

23 Q And the purpose of the a show-up ID is to get an
24 accurate identification from the witness. Would you
25 agree?

- 1 A That's correct.
- 2 Q Because you'd also agree that you want to avoid any
- 3 inaccurate identifications by witnesses, right?
- 4 A Right.
- 5 Q Because an identification by an eye witness is an
- 6 extremely important part of a criminal investigation,
- 7 right?
- 8 A As long as it's been corroborated, yes.
- 9 Q So it's not important otherwise?
- 10 A It's important. But nothing is extremely important
- 11 alone. Everything must be corroborated by facts.
- 12 Q I agree with that. And part of your training was in
- 13 procuring these identifications, right?
- 14 A Right.
- 15 Q Have you ever -- how many of these show-up ID's have
- 16 you conducted in your career, if you had to guess?
- 17 A I don't know. You're talking about at varying
- 18 levels. I've done them when I was in uniform
- 19 division for different purposes. I've done them --
- 20 Q More than a few, right?
- 21 A Oh, yeah.
- 22 Q This is not your first time around the block, right?
- 23 A No.
- 24 Q Okay. So when you got in contact with Corporal
- 25 Enzor, you had a pretty good idea of what you wanted

1 to accomplish, right?

2 A Yes, sir.

3 Q And you had a pretty good idea of the precautions you
4 wanted to take?

5 A Sure. Absolutely.

6 Q Because precautions are an important part of a
7 show-up ID, right?

8 A That's correct.

9 Q And the precautions you take are specifically
10 tailored not to suggest an identification to the
11 witness, right?

12 A That's right.

13 Q Because suggesting an ID to the witness could really
14 compromise the investigation, couldn't it?

15 A It's got to be a good one.

16 Q So you wouldn't want -- and you think about these
17 precautions before you start an ID, right?

18 A That is right.

19 Q And over the more than several show-up ID's you've
20 done in your career, you've had occasion to take
21 these same precautions over and over again, right?

22 A That's right.

23 Q So you're familiar with them?

24 A (Nods head affirmatively).

25 Q Okay. So, discussing these precautions, you wouldn't

1 want any of your officers telling a witness that she
2 is going to see the suspect, would you?

3 A I wouldn't say that, quote, are you going to see the
4 suspect? No.

5 Q You wouldn't want any of your officers informing a
6 witness that she was going to see your main suspect,
7 would you?

8 A Well, not in those words. You don't mind them saying
9 we have someone for you to view.

10 Q But that would be -- that would be fine. Because in
11 your scenario, the officer is not suggesting
12 anything. He is just saying, we're going to take you
13 to look for somebody. Right? And that's what you
14 want. Right?

15 A Well, she has to know the reason of why she's being
16 transported.

17 Q Sure. But you don't want him to get any more
18 specific than that, do you?

19 A No.

20 Q You wouldn't want an officer saying something,
21 telling a witness that he has somebody that matches a
22 description that he got of a robber, would you?
23 Isn't that the whole point of a show-up ID?

24 A Would I rather? Probably not. But it doesn't ruin
25 anything. I'd rather not.

1 Q So your testimony is that if you have a witness on
2 her related to a show-up ID and she has been told
3 that she is going to view someone that matches their
4 description of the robber, that would not compromise
5 the ID?

6 A Not totally, no.

7 Q You wouldn't be happy with that result though, would
8 you?

9 A I'd rather not --

10 Q You'd rather not have that?

11 A Yeah.

12 Q Because when she gets there and she looks out that
13 window under that scenario, wouldn't you find it
14 likely that she thinks she's looking at somebody that
15 you all think is the robber?

16 A No. I wouldn't say that.

17 Q You wouldn't say that?

18 A (Shakes head negatively).

19 Q All right. Now let's talk about the statements that
20 you took. You've said you spent five years as a
21 uniformed officer, correct?

22 A Yes.

23 Q And during that time I imagine that you were often
24 the first responding officer at the scenes, right?

25 A That's correct.

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1 Q So in your days as a uniform, you knew that the job
2 as the first responder is to get the initial
3 information?

4 A Well, we like to get a little bit more than just the
5 initial information.

6 Q Oh, you do?

7 A If I can.

8 Q All right. Well, that's -- I mean, that's fine. So,
9 it's not so -- responding officers are tasked with
10 getting as much information as they can. Would that
11 be a fair statement?

12 A That would be fair.

13 Q All right. And the reason for that is because you as
14 an investigator are going to rely on the information
15 that they collect, right?

16 A That's right.

17 Q So that information that they collect is going to
18 become an integral part of your investigation, right?

19 A That's correct.

20 Q So you as an investigator would want that information
21 to be as accurate as possible, wouldn't you?

22 A Sure.

23 Q Going back your days as a uniform, you knew as a
24 uniform, when you collected information at a scene,
25 you knew that an investigator like yourself was going

1 to use that later on, right?

2 A Sure.

3 Q All right. But as a uniform it wasn't your job to
4 take thorough statements, right?

5 A Well, referring back to when I was on the road, that
6 was several years, it's a different process,
7 comparing kind of apples to oranges. Our theory is,
8 from an investigative standpoint, is we want to try
9 to train our younger deputies to be able to become
10 good investigators through the years. So we don't
11 mind them taking statements. They need the
12 experience to learn, to do it right as they go. So
13 we don't object to them taking statements from the
14 scene. If they can, if they have the time, go for
15 it. That's fine. If it needs to be tuned up or
16 adjusted or anything else, then we can handle that.
17 As long as it's accurate. That's all we need to
18 know, as long as its truthful.

19 Q Right. So you actually encourage your responding
20 deputies to take detailed statements?

21 A If they can, sure.

22 Q But whether or not they do, you as the investigator
23 are going to come back later and take a detailed
24 statement, right?

25 A It's possible, yeah. You can.

1 Q Well, that's the job of an investigator, to go back
2 and investigate the initial facts, right?

3 A (Nods head affirmatively).

4 Q All right. So if a uniformed deputy, you know,
5 because he didn't have time or was distracted or
6 whatever, if he didn't take a detailed statement from
7 a witness, he could be consoled by the fact that an
8 investigator would, right?

9 A Well, it's going to happen regardless.

10 Q Okay. All right. So in this case you went back
11 after November 9th and took a more detailed statement
12 from Ms. Anderson, right?

13 A No. The statement that I took from Ms. Anderson was
14 on November 9th. That was right after the
15 identification.

16 Q Okay. So you didn't go back?

17 A No.

18 Q Okay. And you didn't go back with Ms. Wilson either,
19 did you?

20 A No. I didn't.

21 Q Okay. And you didn't go back with Ms. Ellis, did
22 you?

23 A No.

24 Q I beg the Court's indulgence for one second, Your
25 Honor. I have nothing further for you at this time,

1 Sergeant Robinson. Thank you?

2 A Thank you.

3 THE COURT: Redirect.

4 MS. SHIPLEY: Yes, sir, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. SHIPLEY

7 Q Investigator Robinson, are show-up identifications an
8 unusual thing to do by law enforcement officers?

9 A It's not unusual at all.

10 Q In fact, what's the purpose of doing a show-up
11 identification?

12 A Well, the purpose is really you want to make sure you
13 have the right guy.

14 Q And so it's helpful to people that are apprehended
15 that might be innocent on the street?

16 A It could be. It could provide exculpatory evidence.

17 Q And in this case did Ms. Anderson hesitate in any way
18 when she identified Mr. Portee?

19 A Oh, no. As a matter of fact, she affirmed it. She
20 was pretty firm.

21 Q And you were also asked concerning what your patrol
22 officers are instructed to do when they bring
23 witnesses for show-up identifications?

24 A Sure.

25 Q If a person, an officer told a witness that you are

1 going to see a suspect, actually the term was a
2 person who fits the description, is that going to
3 taint someone's identification later on, within
4 minutes of the robbery?

5 A Absolutely not. I think that's a pretty vague
6 statement.

7 Q And again, did you hide the handcuffs that were on
8 Mr. Portee from Tracey Anderson?

9 A Absolutely. I covered them with a t-shirt.

10 Q Now, after you got done with taking the statement of
11 Ms. Anderson; typically, how many pages long is a
12 statement from a witness in your investigations?

13 A I guess the average would be two to three, some more
14 detailed than others. But generally on the average,
15 probably two to three. Maybe two.

16 Q I'm going to show you this statement from Ms.
17 Anderson. How many pages is it?

18 A It's three.

19 Q Did she provide all the details that you needed
20 concerning what happened during the robbery?

21 A She did. She provided me very detailed events about
22 what happened during the robbery, I believe detailed
23 on his clothing, very detailed.

24 Q And after you were done with collecting the videotape
25 from the Family Dollar Store and going to the

1 Richland County Library to see if they had
2 videotapes, who did you turn the case over to?

3 A The case was then turned over to Investigator
4 Sergeant Isenhoward of the robbery team.

5 Q And so, therefore, you're not familiar with what
6 witness statements were provided through Shawn
7 Kilcoyne, were you?

8 MR. COOPER: Objection. Leading.

9 A No.

10 Q I'll rephrase the question, Your Honor. Is it your
11 ~~duty then to go follow up with what other witnesses~~
12 had to say?

13 A No. Not at that juncture. My juncture was to assist
14 them at the beginning until the robbery team took
15 over. And then once we turned them over and they
16 took over, that's --

17 Q Your role ended?

18 A I'm out of the picture.

19 Q No further questions, Your Honor.

20 MR. COOPER: Thank you, Your Honor.

21 RE CROSS EXAMINATION

22 BY MR. COOPER.

23 Q Okay, Officer. During your -- I realize that you,
24 you know, turned this case over. But during your
25 investigation, you did prepare an investigative

1 report, right?

2 A I did.

3 Q And the reason you do that is because you investigate
4 a lot of cases and you want to be able to remember
5 details of this investigation, right?

6 A Sure.

7 Q It's a common practice, right?

8 A (Nods head affirmatively).

9 Q Okay. So it's fair to say that what you put in that
10 investigative report is an accurate depiction of what
11 happened during your investigation, right?

12 A Yes. But --

13 Q I'm sorry?

14 A I said it's pretty accurate. There may be a detail
15 or two, but it's pretty accurate.

16 Q So you're not sure whether it's accurate. It's
17 pretty accurate?

18 A No. It's accurate.

19 Q Well, I don't want to put words in your mouth.

20 A Okay. It's accurate.

21 Q It's accurate?

22 A Yes.

23 Q All right. So you discussed with Ms. Shipley Ms.
24 Anderson's ID. And you recorded that she wasn't
25 100 percent sure, didn't you?

1 A I can read you my quote. Do you want me to read it?

2 Q I'm asking you my question.

3 MS. SHIPLEY: Your Honor, if the witness is
4 allowed to read the quote.

5 THE COURT: Just answer the questions.

6 MR. COOPER: Thank you, Your Honor.

7 THE COURT: And then you can explain your answer
8 if you need to do that.

9 WITNESS: Okay.

10 Q Officer, my question to you was, you recorded in your
11 ~~report that she was not 100 percent sure. Isn't that~~
12 right?

13 A She said she wasn't 100 percent sure on the face.
14 But she was very sure on the clothing.

15 Q Okay. No further questions. Thank you.

16 THE COURT: All right. You may come down, sir.
17 Thank you very much.

18 WITNESS: Thank you, Your Honor.

19 THE COURT: May this witness be excused?

20 MS. SHIPLEY: Yes, please.

21 THE COURT: Without objection. Next witness.

22 MS. GOOD: The State calls William Davis.

23 WILLIAM DAVIS, after being duly sworn, testifies
24 as follows:

25 THE CLERK: Thank you. Please have a seat in

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1 the witness stand and state your full name for the
2 record.

3 **WITNESS:** William Davis.

4 DIRECT EXAMINATION

5 **BY MS. GOOD**

6 **Q** Good afternoon, Mr. Davis. Where are you employed?

7 **A** I'm now employed with the South Carolina Department
8 of Mental Health.

9 **Q** And what do you do there?

10 **A** I'm a public safety police officer.

11 **Q** And how long have you been with the Department of
12 Mental Health?

13 **A** August will make one year.

14 **Q** And before you were with the Department of Mental
15 Health, where were you employed?

16 **A** Richland County Sheriff's Department.

17 **Q** And how long had you been employed there?

18 **A** I started there in August '05. So about two years.

19 **Q** And back in November of 2006, what was your title and
20 duties at that time with the Richland County
21 Sheriff's Department?

22 **A** I was going through field training officer. I was in
23 an FTO program.

24 **Q** And what is that?

25 **A** It's a program that recruits; well, a program that

1 helped train new recruits to be more proficient with
2 the duties of the job there.

3 Q And do you ride with another deputy --

4 A Yes.

5 Q -- and do that? And do you recall which deputy you
6 were riding with?

7 A Lance Corporal Unger.

8 Q And on that date, on November the 9th, 2006, did you
9 all become involved in a pursuit of a car?

10 A Yes.

11 Q How did you become involved in that?

12 A Well, I was with my FTO and we got a call of a
13 burglary of I believe Family Dollar on that day.
14 And, you know, we responded also. And we took
15 another route. And my training officer stumbled upon
16 the vehicle, confirmed the vehicle with the
17 dispatcher. The call came in as a white male or a
18 light-skinned male description. So my field training
19 officer picked up on it. And the subject, he got
20 looked at. As we looked at him, he got suspicious
21 and took off.

22 Q And when you say he took off, what did he do?

23 A He started driving recklessly, reckless about the
24 area of Bluff Road and then out of Bluff Estates.

25 Q And were you driving, or were you --

- 1 **A** No. I was a passenger.
- 2 **Q** Okay. And during this pursuit, do you recall how
- 3 fast you all were going?
- 4 **A** It was pretty fast. I would say probably maybe 75,
- 5 between 65, 75 back and forth.
- 6 **Q** And during this pursuit, about how long did this
- 7 pursuit last?
- 8 **A** I would say maybe 20 minutes.
- 9 **Q** And eventually did the car come to a stop?
- 10 **A** He crashed the vehicle.
- 11 **Q** And do you remember what he crashed the vehicle into?
- 12 **A** A gate, slash, mailbox.
- 13 **Q** And what happened once the person you were chasing
- 14 crashed the vehicle?
- 15 **A** I exited the vehicle and foot pursuit started.
- 16 **Q** And who was the foot pursuit between?
- 17 **A** Myself and Mr. Portee I believe, the subject.
- 18 **Q** And where did this foot pursuit take you?
- 19 **A** Over maybe two fences. And we fell to the ground
- 20 once. And then he got up before I did. We stumbled
- 21 over each other again until he went over -- he wound
- 22 up going to the next house. So he hit the fence of
- 23 one house, and he tried to go over a couple of other
- 24 fences. But I was able to subdue him until the
- 25 backup arrived.

1 Q And how how were you able to subdue him?

2 A Well, like I said, we both -- every time we jumped
3 over a fence, we both struggled to get up. So there
4 was a lot of pushing and shoving. Well, I was able
5 to get up before him the last time by placing my left
6 foot in his chest area and pushing him back down. By
7 then the backup officers had arrived and, you know,
8 handcuffed him and took him in.

9 Q And during this foot pursuit, about how far did he
10 take you on the foot pursuit?

11 A From the point where he crashed into the gate, well,
12 he crashed into the gate and hit the mailbox, I'd say
13 maybe about 200 feet, if that.

14 Q And you just explained you were on the ground
15 struggling with him?

16 A Uh-huh (affirmative).

17 Q You were the last one to get up?

18 A The last -- well, I stopped him from getting up
19 before me the last time by placing my foot in his
20 chest area and pushing him back down to the ground.
21 He started to get up again and he had his fist pulled
22 up as though he wanted to fight, but by then the
23 backup officers arrived.

24 Q And once the backup officers arrived, what happened?

25 A They took him in.

1 Q And at that point did he resist?

2 A No.

3 Q And this force that you used, putting your left foot
4 on his chest, did you do anything in particular to
5 document that?

6 A Yeah. Well, I did a use of force, which was a
7 procedure for us to do. I believe it stated in our
8 use of force report that I did use that type of
9 physical force, yes.

10 Q And this person that you were chasing, do you
11 remember what his skin color was?

12 A Yes. It's, I would call it high yellow type skin,
13 black skin.

14 Q And is that -- high yellow, does that mean dark
15 light? Medium?

16 A Well, like I said, I call it light. I think it's the
17 lightest skin I mean.

18 Q And do you remember about how tall this person was
19 you were chasing?

20 A They were pretty tall; maybe six-four, six-five,
21 whatever.

22 Q And do you remember his build, his body?

23 A Very thin.

24 Q And when he jumped out of the car, do you recall if
25 he was carrying anything?

1 A Yeah. He had a -- oh, I definitely checked that
2 first to make sure he didn't have a gun at first in
3 his hand. He had a black hat. He had a yellow
4 jacket that was described and a mask.

5 Q And when you picked him up, once he was subdued on
6 the ground, I think Corporal Enzor came over and
7 helped you; what happened at that point?

8 A Well, when he picked him up, there was money laying
9 all over the ground. I think they confiscated maybe
10 \$72 or something.

11 Q But you saw money underneath him?

12 A Yes. He -- I'm sorry.

13 Q Go ahead.

14 A No. He started dropping everything. He tried to
15 take it with him because he was trying to get away.
16 But as he saw that every time we dropped to the
17 ground, jump over a fence, he started dropping, you
18 know, piece by piece. And where we were left at, the
19 last contact, that's where he dropped the money at.

20 Q Beg the Court's indulgence. This person that you
21 chased on foot and subdued and that you saw drop the
22 money and the other items, do you see him in the
23 courtroom today?

24 A Yes. Right there.

25 Q And can you point him out for the jury?

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1 A Right there. The gentleman.

2 Q Let the record reflect he's identified the defendant,
3 Your Honor.

4 THE COURT: Describe what he's wearing.

5 A He is wearing a white dress shirt with a grayish/blue
6 tie.

7 THE COURT: All right. The record will reflect
8 the witness identified the defendant.

9 MS. GOOD: No further questions, Your Honor.

10 THE COURT: Cross examination.

11 MR. SECOR: May it please the Court. Thank you,
12 Your Honor.

13 CROSS EXAMINATION

14 BY MR. SECOR

15 Q How you doing, sir?

16 A How you doing?

17 Q Just so I don't use a misnomer. Is it still officer
18 Davis or --

19 A Corporal.

20 Q Corporal? How you doing?

21 A All right.

22 Q I just want to clear one thing up. It was -- you had
23 Mr. Portee subdued prior to when Investigator Unger
24 ran up, right?

25 A Well, truthfully, it seemed like a lifetime. But

1 they were right behind me. Like I said, we jumped
2 maybe two fences and just wound up landing on the
3 next property over there.

4 Q And Investigator Unger was right behind you?

5 A Yes. And I forget who else. There was about maybe
6 other three other responding officers that was behind
7 my back.

8 Q And they were all right behind you?

9 A Yes.

10 Q Okay. I think that's it. Thank you, sir. I
11 appreciate it.

12 **THE COURT:** Anything further?

13 **MS. GOOD:** No, Your Honor.

14 **THE COURT:** You may come down. Thank you very
15 much.

16 **MS. GOOD:** May the witness be excused?

17 **THE COURT:** The witness may be excused without
18 objection. Approach the bench. Counsel, Mr. Secor.

19 (Whereupon, a bench conference is had)

20 **THE COURT:** All right, ladies and gentlemen.
21 The solicitor tells me the next witness may be
22 lengthy. So let's just take a short afternoon break.
23 Just relax. We'll call you when we're ready. Again,
24 don't discuss the case among yourselves while you're
25 in the jury room, please. About 15 minutes.

1 And let me ask you before you go out if any
2 member of the jury panel has any problems. We may
3 stay 'til, say, 5:30 today. If anybody has any -- I
4 don't know what your personal situations are, if you
5 have child care issues or things like that where you
6 have to be a certain place at a certain time. Let
7 the bailiff know. He'll let me know. Thank you so
8 much.

9 (Jury out at 4:17 p.m.)

10 **THE COURT:** All right. Let's stand at ease for
11 about ten minutes.

12 (Whereupon, a break is taken)

13 (WHEREUPON, State's Exhibit No. 65 is marked for
14 identification.)

15 **MR. COOPER:** Your Honor, we're still waiting on
16 the defendant.

17 **THE COURT:** Sir?

18 **MR. COOPER:** We're still waiting on the
19 defendant.

20 **THE COURT:** I understand. I wouldn't start
21 without him.

22 (Pause)

23 **THE COURT:** The State ready for the jury?

24 **MS. SHIPLEY:** Yes, sir, Your Honor.

25 **THE COURT:** Defense ready for the jury?

1 MR. COOPER: Yes, Your Honor.

2 THE COURT: Bring the jury.

3 (Jury in at 4:43 p.m.)

4 THE BAILIFF: The jury is all present, Your
5 Honor.

6 THE COURT: All right. All right, Solicitor.
7 Call your next witness.

8 MS. SHIPLEY: The State calls Joy Delatorre.

9 JOY DELATORRE, after being duly sworn, testifies
10 as follows:

11 ~~THE CLERK: Thank you. Please have a seat in~~
12 the witness stand and state your full name for the
13 record. And please spell your last name.

14 WITNESS: Joy Delatorre, D-E-L-A-T-O-R-R-E.

15 DIRECT EXAMINATION

16 BY MS. SHIPLEY

17 Q Good afternoon, Ms. Delatorre.

18 A Good afternoon.

19 Q Ms. Delatorre, can you tell the jury where you're
20 employed?

21 A I am currently employed with Creative Service as a
22 nuclear investigator.

23 Q And how long have you worked there?

24 A About 13 months.

25 Q And prior to working at Creative Services, where did

1 you work?

2 A I worked at Richland County Sheriff's Department as
3 an evidence room technician.

4 Q Okay. And can you describe for the jury how long you
5 were an evidence room technician?

6 A Approximately eight months.

7 Q And describe what your duties entailed?

8 A I would log evidence in and out. We would get them
9 from the officers either hand-to-hand or we got them
10 from secured containers that were within the lobby of
11 the evidence room.

12 Q And so these containers, if you were not available
13 for an officer to give you evidence, they would put
14 in in that box?

15 A That's correct. And they could only be unlocked by
16 the technicians.

17 Q And who else has access to that evidence room?

18 A Just the technicians.

19 Q And at the time do you recall who your colleagues
20 were?

21 A Tena Goff was my immediate supervisor.

22 Q All right. Do you recall anybody else that worked in
23 that evidence room?

24 A Curtis Burnett worked there just at the end of when I
25 was leaving.

1 Q I'm going to bring your attention to the case at
2 hand.

3 A Mm-hmm (affirmative).

4 Q Were you involved in the collection or receiving of
5 evidence in the case involving Jimmy Portee?

6 A Yes, I was.

7 Q Can you tell the jury what the case number is
8 designated by the Richland County Sheriff's
9 Department?

10 A 0611077809.

11 Q 061107 ...?

12 A 7809.

13 Q Okay. And when you receive evidence in a case, do
14 you want to make sure that the evidence is logged
15 under the proper case number?

16 A Yes, ma'am.

17 Q Describe for the jury how many articles of evidence
18 are in your property room?

19 A There are thousands.

20 Q Okay. Now, describe how it is the procedures that
21 you undertake when you receive evidence?

22 A We make sure that it's properly sealed, that the
23 label is completely filled out and that there's a
24 signature at the bottom of the officer that submitted
25 it.

- 1 Q And does the officer fill out the label describing
2 the contents of the bag?
- 3 A Yes, ma'am.
- 4 Q And so you rely on the officer's label?
- 5 A That's correct.
- 6 Q And at that point what do you do with that
7 information from the label?
- 8 A We logged it into a computerized system called AFIS.
- 9 Q And what does AFIS do once you enter in this
10 information?
- 11 A It automatically assigns item numbers to each item
12 that you put in.
- 13 Q Okay. And it's for each item of evidence?
- 14 A That is correct.
- 15 Q Okay. Bringing your attention to the case at hand,
16 can you tell the jury what items of evidence you
17 received in this case, beginning first of all with
18 item -- the first item that you collected, item
19 number 5?
- 20 A It would have been item number 5 through item number
21 20.
- 22 Q Okay. I'm going to show you a bag and ask you if you
23 can identify this bag. Excuse me.
- 24 A Yes. This is a bag that contains items 5, 6 and 7.
- 25 Q Okay. 5, 6 and 7. What are terms 5, 6 and 7?

- 1 A 5 is a pair of tennis shoes. 6 is a pair of gray
2 sweatpants. And item 7 is a white t-shirt.
- 3 Q What day did you receive these items?
- 4 A November 9th of 2006.
- 5 Q Okay. And who did you receive it from?
- 6 A Investigator Isenhoward.
- 7 Q And looking at the bag, was it properly sealed when
8 you received it?
- 9 A Yes, ma'am.
- 10 Q And do you happen to see initials on the bag?
- 11 A Yes.
- 12 Q And are those -- what are the initials?
- 13 A K.I.
- 14 Q Okay. And that's Investigator Kevin Isenhoward?
- 15 A That is correct.
- 16 Q All right. And did you tamper this with this in any
17 fashion or form?
- 18 A No, ma'am.
- 19 Q The next item of evidence that you collected, please,
20 what would that be?
- 21 A It would have been a swab from a black stocking hat.
- 22 Q And what designated item number is that?
- 23 A Number 8.
- 24 Q Okay. And again, what is it?
- 25 A A swab from a black stocking hat.

- 1 Q And who did you receive that from and when?
- 2 A That would have been submitted by Investigator
- 3 Bouknight on November 28th of 2006.
- 4 Q I'm going to show you what's been pre-marked State's
- 5 No. 65 and ask you, is that the envelope that you
- 6 received containing the swab?
- 7 A Yes, it is.
- 8 Q Okay. And do you see your signature on there?
- 9 A Yes, I do.
- 10 Q Receiving this item from Investigator Bouknight?
- 11 A That is correct.
- 12 Q Was it sealed properly when you received it?
- 13 A Yes, it was.
- 14 Q Did you tamper with it in any way while in your
- 15 custody?
- 16 A No.
- 17 Q The next item of evidence that you collected, what
- 18 was that?
- 19 A Item number 9 was a black hacksaw handle.
- 20 Q Okay. And what about the next item?
- 21 A A cobalt folding utility knife.
- 22 Q Is that item number 10?
- 23 A That is correct.
- 24 Q A folding what?
- 25 A Utility knife.

1 Q Okay. And who did you -- well, let's go one more.

2 What's the next one?

3 A Item number 11 is a roll of quarters.

4 Q Okay. And what about the next item?

5 A Item number 12 is a roll of nickels.

6 Q And what about the following item?

7 A Item number 13 is a black stocking cap.

8 Q What day and from whom did you receive items number 9
9 through 13?

10 A Those were from Investigator Bouknight on
11 November 28th of 2006.

12 Q I'm going to show you this box right here. And can
13 you tell the jury whether or not you recall seeing
14 that?

15 A Yes, I do.

16 Q And what is it? Are you looking at the label?

17 A Yes.

18 Q And can you just confirm that those item numbers are
19 correct?

20 A Yes, they are.

21 Q All right. And do you see your signature receiving
22 these items?

23 A Yes, I do. On November 28th.

24 Q Great. Now, once all of these items were received by
25 you to the evidence room, did you tamper with these

- 1 in any way?
- 2 A No, ma'am.
- 3 Q Did they appear to be properly sealed and packaged?
- 4 A Yes, ma'am.
- 5 Q The next item of evidence, items of evidence that you
- 6 collected, what were they?
- 7 A It was item number 14 --
- 8 Q Okay.
- 9 A -- was money in the amount of \$72.
- 10 Q Okay. Next?
- 11 A Item number 15 was a black sock.
- 12 Q Okay.
- 13 A Item number 16 was a piece of yellow paper.
- 14 Q Uh-huh (affirmative).
- 15 A Number 17 was a piece of white paper.
- 16 Q White paper?
- 17 A Mm-hmm (affirmative).
- 18 Q Okay.
- 19 A And item number 18 was a yellow jacket.
- 20 Q Okay. And I'm going to show you a box and ask you if
- 21 you recognize it?
- 22 A Yes, I do.
- 23 Q Okay. And is it the box that you received --
- 24 A Yes.
- 25 Q -- in this case?

1 A Yes, it is.

2 Q Containing the items number 14 through 18?

3 A That's correct.

4 Q And was it properly sealed when you received it?

5 A Yes, it was.

6 Q And who did you receive it from?

7 A Investigator Polis.

8 Q And on what date?

9 A December 8th of 2006.

10 Q And did it appear to be properly packaged and sealed
11 when you received it?

12 A Yes, ma'am.

13 Q And did she also initial her own signature, initial,
14 put her letters and her initials on it?

15 A Yes, ma'am.

16 Q Okay. Now, once items are received into evidence at
17 the Richland County Sheriff's Department, do you have
18 any dealings with the evidence again?

19 A Whenever it's sent out or requested and signed out
20 for further testing or solicitors, that is recorded.

21 Q So in this case you quit working at the Sheriff's
22 Department, correct?

23 A That is correct.

24 Q And so you did not sign any of this evidence out for
25 further testing or anything like that?

1 A No, I did not.

2 Q Okay. And this basically concluded the role of your
3 role in this case?

4 A That is correct.

5 Q Thank you. That is all I have, Your Honor.

6 THE COURT: Cross examination.

7 MR. COOPER: Thank you, Your Honor. May it
8 please the Court.

9 CROSS EXAMINATION

10 BY MR. COOPER

11 Q Good afternoon, ma'am.

12 A Good afternoon.

13 Q I just have one quick thing. And I think it's more
14 clarification. Everything that -- every item the
15 solicitor put in your hands just a moment ago, it's
16 your testimony that you were personally the one that
17 received these things?

18 A That is correct.

19 Q Okay. Thank you, ma'am.

20 A Thank you.

21 THE COURT: Further questions?

22 MS. SHIPLEY: No, sir, Your Honor. May she be
23 excused?

24 THE COURT: This witness may come down. You're
25 excused, ma'am. Thank you very much for coming. Any

1 objection? No objection?

2 MR. COOPER: No objection.

3 THE COURT: Next witness.

4 MS. SHIPLEY: The State calls Harold Bouknight.

5 HAROLD M. BOUKNIGHT, after being duly sworn,
6 testifies as follows:

7 THE CLERK: Thank you. Please have a seat in
8 the witness stand and state your full name for the
9 record. And please spell your last name.

10 WITNESS: Harold Michael Bouknight,
11 B-O-U-K-N-I-G-H-T.

12 DIRECT EXAMINATION

13 BY MS. SHIPLEY

14 Q Investigator Bouknight, can you tell the jury where
15 you're employed?

16 A With the Richland County Sheriff's Department crime
17 scene unit.

18 Q And how long have you worked there?

19 A I have been employed with Richland County for six
20 years and in the crime scene unit for three.

21 Q Can you tell the jury a little bit about the training
22 and experience that you had to go through and
23 education to get into the crime scene unit at the
24 Sheriff's Department?

25 A Yes, ma'am. In '95 I received an associate's degree

1 in criminal justice from Midlands Technical College
2 and then went to the police academy. After I started
3 in the crime scene unit with Richland County
4 Sheriff's Department I went through in-house training
5 which took approximately 18 months for me to
6 complete, which includes a lot of reading, written
7 testing, practical and competency testing in the
8 areas of crime scene searching, photography,
9 fingerprint processing, identification and
10 comparison, footwear impression comparison and
11 evaluation, tire wear comparison and evaluation,
12 blood stain pattern analysis, all those things.

13 And also during that time I have attended
14 courses in expert witness testimony, forensic
15 anthropology, forensic ridgology for a 40-hour
16 course, a 24-hour course in crime scene
17 reconstruction, a 40-hour course in blood stain
18 pattern analysis, forensic photography course,
19 fundamentals of crime scene investigation and
20 evidence collection, 40-hour course; a 40-hour course
21 in crime scene reconstruction, 24 hours in the
22 examination and comparison of footwear evidence,
23 orientation of computer crimes, an eight-hour course
24 in advanced blood pattern analysis, ethics and
25 forensic science, value based decision making,

1 80-hour HAZMAT technician training, DNA overview, and
2 a 40-hour course in expert witness testimony.

3 Q And have you ever been qualified as an expert in the
4 field of crime scene investigations?

5 A Yes, ma'am, I have.

6 Q Approximately how many times?

7 A Once.

8 Q Okay. And as a crime scene investigator you
9 indicated there are several subject categories that
10 you have to be trained in?

11 A Yes, ma'am.

12 Q And that would include fingerprint analysis?

13 A Fingerprint analysis, processing and comparison,
14 footwear impression evidence comparison and tire wear
15 comparison evaluation and blood stain pattern
16 analysis.

17 MS. SHIPLEY: Your Honor, at this time the State
18 would offer Investigator Bouknight as an expert in
19 the field of crime scene investigations.

20 THE COURT: Any voir dire or objections?

21 MR. COOPER: I have no objection, Your Honor.

22 THE COURT: All right.

23 Q This is now number two. Investigator Bouknight, tell
24 this jury if you recall being called to a Family
25 Dollar Store on Garners Ferry Road?

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- 1 **A** Yes, ma'am.
- 2 **Q** What date and time?
- 3 **A** November the 9th, 2006 at 9:24 in the morning I was
4 called to respond to the Garners Ferry Road Family
5 Dollar at 7361 Garners Ferry Road.
- 6 **Q** And describe for the jury what, if any, information
7 you had on your way over there?
- 8 **A** The only thing I knew was that a robbery had occurred
9 at that location. Upon arrival I was informed by the
10 complainant, one of the employees, that the subject
11 hadn't touched anything inside the store. I observed
12 a cash box on the counter near the front door. And
13 the back door was open. And there were some partial
14 shoe impressions on the tile floor near the back door
15 of the location.
- 16 **Q** And the cash register that the complainant, I guess
17 the victim brought to your attention, did you
18 photograph that?
- 19 **A** The cash register drawer?
- 20 **Q** Yes.
- 21 **A** Yes, ma'am.
- 22 **Q** And, in fact, you photographed the entire scene,
23 correct?
- 24 **A** Yes, ma'am. As basically our standard guidelines for
25 any scene we go to, we start off. The first

1 photograph is of our information sheet that's
2 basically got location and case number and things
3 like that on it. And then we photograph the outside
4 of the location and then a 360-degree view of the
5 inside and anything that may or may not be
6 evidentiary value.

7 When I see the cash drawer, I think, okay, the
8 suspect might have touched this. I take a picture
9 even if they tell me, no, he didn't. If I see
10 partial shoe impressions, I don't know if they're
11 going to be evidence or not at that time. I go ahead
12 and photograph them to document them for later
13 comparisons.

14 Q I'm going to show you State's 36. And is that the
15 cash register that she told you he did not touch?

16 A Yes, ma'am, it is.

17 Q So did you dust this for fingerprints as a result?

18 A No, ma'am.

19 Q And I'm going to show you State's No. 43, 44 and 45
20 and ask you if you recognize these pictures?

21 A Yes, ma'am. These are photographs of the partial
22 shoe impressions on the floor in the back of the
23 location.

24 Q Do you have any idea how long those shoe impressions
25 have been on the floor?

1 **A** No, ma'am.

2 **Q** And again, why did you photograph them?

3 **A** Because I didn't know if they were going to be
4 evidence then or later on down the road. So it's
5 best to go ahead and document them while I'm on the
6 scene the first time.

7 **MS. SHIPLEY:** The State would seek to introduce
8 State's No. 43 through 45 at this time.

9 **COURT REPORTER:** I believe they're already in.

10 **MS. SHIPLEY:** Oh. That's right. I got them in
11 through Ms. Anderson. My apologies.

12 **Q** All right. How long do you think you were at the
13 Family Dollar?

14 **A** Approximately 20 minutes, 23 minutes.

15 **Q** And at that point why did you leave?

16 **A** Because I was informed that there was another scene.
17 It was possibly related to this on Hialeah Drive.
18 Someone -- I was responding to -- I was called to
19 respond there to process that scene and collect some
20 evidence.

21 **Q** And when you arrived there, can you tell the jury a
22 little bit about your observations?

23 **A** On Hialeah?

24 **Q** Yes, sir. First of all, what time did you get there?

25 **A** One moment. I arrived on Hialeah at 13 minutes after

1 10 in the morning. I observed a vehicle. It was an
2 '89 Oldsmobile four-door white in color. It was in
3 the front fence of the location on Hialeah Drive.
4 The driver's door was open and the windshield wipers
5 were going. There was a roll of quarters on the
6 passenger's seat next to the console and a roll of
7 nickles on the passenger floorboard. There were 37
8 nickles in a plastic roll. It had been broken open.

9 There was a black stocking cap on the fence
10 between two homes, and there was a -- the stocking
11 cap had two holes cut in it, and a black sock on the
12 ground next to that. And there was \$72 in U.S.
13 currency up against that house on the ground. And
14 that was next to the front wall. There was a yellow
15 rain jacket on the hood of the patrol car, and in the
16 right pocket was a blue cobalt utility knife.

17 Q Okay. I'm going to show you first photographs of the
18 scene. If you could just glance at these.

19 A Yes, ma'am.

20 Q Okay. And did you take those pictures?

21 A Yes, ma'am.

22 Q And do they accurately show what you witnessed when
23 you got to the scene?

24 A Yes, ma'am.

25 Q And I'm showing you State's 25. Is that the way you

1 found the jacket?

2 A That's the way it was when I got there. Yes, ma'am.

3 Q And when you looked at the jacket, first you
4 photographed it, correct?

5 A Yes, ma'am.

6 Q Did you then examine the contents of the jacket?

7 A Yes, ma'am.

8 Q And --

9 MR. COOPER: Objection. She's leading him.

10 Q I apologize, Your Honor. I just caught myself. I'll
11 rephrase the question.

12 THE COURT: Please do.

13 Q And what, if anything, did you find in the pocket?

14 A In the right jacket pocket I found a blue cobalt
15 utility knife, like a carpet cutter's knife.

16 Q Okay. I'm going to show you a photograph, State's
17 26. Do you recognize that?

18 A Yes, ma'am. That's the knife.

19 Q Did you photograph that?

20 A Yes, ma'am.

21 Q And is that the -- you placed the knife onto the
22 jacket?

23 A Yes, ma'am. After I found it in the pocket I placed
24 it there and photographed it.

25 Q Okay.

1 **MS. SHIPLEY:** Your Honor, we would seek to
2 introduce 26 into evidence at this time.

3 **MR. COOPER:** No objection.

4 **THE COURT:** Without objection.

5 (WHEREUPON, State's Exhibit No. 26 is admitted
6 into evidence.)

7 **MS. SHIPLEY:** May I publish it to the jury?

8 **THE COURT:** Yes, ma'am.

9 **Q** Did you collect that cobalt knife at the scene?

10 **A** Yes.

11 **Q** I'm going to show you State's 61 and ask you if you
12 could examine that and look at the contents?

13 **A** Yes, ma'am. This has on the outside in my
14 handwriting it's a cobalt folding utility knife and
15 my initials and the date 11-09-06 on the back.

16 **Q** I'm going to hand you these scissors. If you could
17 just open it up and pull out the contents?

18 (Witness complies)

19 **A** The same blue utility knife.

20 **Q** Okay. And just put it back there in there. And did
21 you eventually put that in evidence?

22 **A** Yes, ma'am. I did turn it into evidence.

23 **MS. SHIPLEY:** Your Honor, at this time we would
24 seek to introduce No. 61 into evidence.

25 **MR. COOPER:** No objection, Your Honor.

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1 **THE COURT:** Without objection.

2 (WHEREUPON, State's Exhibit No. 61 is admitted
3 into evidence.)

4 **THE COURT:** Is that item number 10?

5 **MS. SHIPLEY:** Yes. Item number 10 with the
6 Sheriff's Department and item No. 61, State's
7 evidence.

8 **Q** I'm going to ask you to go through the contents of
9 this box and see if you recognize the items and
10 whether or not you collected them from the scene and
11 turned them into evidence?

12 **A** Okay. Yes, ma'am. These in the package marked a
13 roll of quarters the front seat and one roll of
14 nickles from floorboard of vehicle is a roll of
15 nickles and a roll of quarters that are covered in
16 black powder.

17 **Q** Why are they covered in black powder?

18 **A** Because I processed them for latent prints back at
19 our headquarters at our lab using black powder.

20 **Q** And did you submit those into evidence?

21 **A** Yes, ma'am.

22 **Q** Can you tell the jury a little bit about how it is
23 that you examine an item of evidence for
24 fingerprints?

25 **A** Yes, ma'am. Depending on the substrate of the item,

1 whether it's paper, plastic, porous, non-porous, we
2 have different methods. The standard method that
3 everybody sees on TV is black powder on something.
4 And that's basically the easiest and the most
5 efficient way of processing for fingerprints.

6 You just get a little bit of powder on the
7 brush, rub it on the outside, in this case of the
8 rolls of coins. And if there's something on there,
9 then you should see it immediately develop. And then
10 using a blue light you can see it even better. It's
11 lifted, placed on a card and forwarded for latent
12 examination and comparison.

13 Q And describe for the jury how it is a person leaves a
14 fingerprint?

15 A If you look at your hands, you see all the little
16 lines on your fingertips and everything. Those are
17 your ridges. That is what makes the fingerprint.
18 It's pores within there that secrete the sweat. And
19 fingerprints are 98 percent water. Whenever your
20 fingerprints -- whenever your finger secretes sweat
21 and they're placed on a surface, those fluids can be
22 transferred to that surface. And the black
23 fingerprint powder adheres to the moisture in the
24 fingerprint. It's a lot harder to leave a good
25 fingerprint than most people think. Most of the time

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1 what we get are smudges, smears or no prints at all
2 because they're so fragile that they can be easily
3 wiped off.

4 Q And are there types of surfaces that are more ideal
5 than others for leaving fingerprints?

6 A Your smooth, non-porous surfaces are your best.

7 Q And so were you surprised to find no fingerprints on
8 these items?

9 A No, ma'am. I'm not really surprised to not find
10 fingerprints any more.

11 Q And again, tell the jury where it is you found the
12 roll of quarters?

13 A The roll of quarters was on the front seat on the
14 passenger's side next to the center console.

15 Q And I'm showing you State's 18. Does that accurately
16 depict where you found the quarters?

17 A Yes, ma'am.

18 Q Am I pointing correctly to the item, the quarters?

19 A Yes, ma'am.

20 Q Okay. And I'm going to ask you to examine the
21 following item, 20, and see if you see the roll of
22 nickles?

23 A Yes, ma'am. It's right there next to the floor mat.

24 Q Can you just point it out for me so we can show the
25 jury?

1 A Right there.

2 Q All right. Now, after you collected the rolls of
3 quarters and nickles, the roll of quarters and
4 nickles, what other items did you collect from the
5 vehicle?

6 A The only other thing from the vehicle was a black
7 hacksaw handle, no frame or anything attached to it.
8 And that's -- this is it here.

9 Q Can you look for the State's No. on it? I think it's
10 over here. Let me help you out. State's No. 60. Is
11 that correct?

12 A Yes, ma'am.

13 Q And is that the hacksaw handle you collected from the
14 floorboard of the car?

15 A Yes, ma'am, it is.

16 Q Do you see your initials on it?

17 A It's my initials and the date across the evidence
18 seal.

19 Q Okay. And did you submit that into evidence?

20 A Yes, ma'am.

21 Q At the property room in the Sheriff's Department?

22 A Yes, ma'am.

23 MS. SHIPLEY: Your Honor, at this time the State
24 would seek to introduce No. 60 in evidence.

25 MR. COOPER: We have no objection, Your Honor.

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1 **THE COURT:** Without objection.

2 (WHEREUPON, State's Exhibit No. 60 is admitted
3 into evidence.)

4 **THE COURT:** Again, just identify it by number of
5 the Sheriff's numbers.

6 Q Okay.

7 A 9.

8 Q Item number 9?

9 A According to that.

10 Q All right. And can you pull it out of the packaging
11 and show it to the jury, please?

12 (Witness complies)

13 Q Okay. Do you recall who specifically asked you to
14 collect that item of evidence?

15 A Investigator Isenhoward.

16 Q And so he was on the scene while you were there?

17 A Yes, ma'am.

18 Q Okay. I'll just put it back. Are you familiar with
19 handguns?

20 A Somewhat; yes, ma'am.

21 Q And would this resemble a handgun in your opinion?

22 **MR. COOPER:** Objection.

23 A Yes, ma'am.

24 **THE COURT:** Sustained.

25 **MS. SHIPLEY:** I'm sorry?

1 **THE COURT:** I'll sustain the objection.

2 **Q** What other items of evidence did you collect at the
3 scene?

4 **A** Also this black mask here.

5 **Q** Okay. And what State's No. is on there?

6 **A** No. 53.

7 **Q** Okay. And what item number is it?

8 **A** 13.

9 **Q** Okay. And you collected that from the scene?

10 **A** Yes, ma'am.

11 **Q** And did you then submit it in evidence?

12 **A** Yes, ma'am.

13 **Q** Did you -- what day did you turn it into evidence?

14 And if you can just refer to your label right there.

15 **A** It was turned in on November 27th, 2006 at 6:23.

16 **Q** And who did you turn it into?

17 **A** Joy Delatorre.

18 **Q** And at that point did you seal that envelope when you
19 turned it in?

20 **A** It was -- the envelope was already sealed before it
21 was turned in.

22 **Q** Okay. And did you initial it?

23 **A** Yes, ma'am.

24 **Q** Now, at that point tell the jury what it is you did
25 with item number 13 which is State's No. 53?

1 **A** Whenever I got this back to my lab, it had holes in
2 it which could be consistent with eye holes.

3 **Q** Eye holes?

4 **A** Yes, ma'am. Like if you were to pull it over your
5 head so you could see.

6 **Q** Okay.

7 **A** And I swabbed the inside of it for DNA right below
8 the eye holes like where a mouth would be. Because
9 if you're breathing, there are better chances of DNA
10 being in that area. So I swabbed that area for DNA
11 and then I also turned the swab in for DNA.

12 **Q** Okay. And so State's No. 53 is what you collected at
13 the scene and turned into evidence?

14 **A** Yes, ma'am.

15 **MS. SHIPLEY:** Your Honor, at this time we would
16 seek to introduce State's No. 53 in evidence.

17 **MR. COOPER:** No objection.

18 **THE COURT:** Without objection.

19 (WHEREUPON, State's Exhibit No. 53 is admitted
20 into evidence.)

21 **Q** You indicated that you swabbed the mouth area of this
22 mask?

23 **A** Yes, ma'am.

24 **Q** I'm going to show you State's No. 65 and ask you if
25 you recognize that?

1 A Yes, ma'am.

2 Q And what is it?

3 A It's a swab from a black stocking hat.

4 Q Okay.

5 A And it's got my initials and date on the back where
6 it was sealed.

7 Q And turned into where?

8 A Turned into Joy Delatorre on November 27th, 2006 at
9 6:23.

10 Q All right. And what item number is that with the
11 Sheriff's Department?

12 A 8 I believe.

13 Q Okay. And do you see a sticker on the back that
14 corroborates that?

15 A Yes, ma'am. The bar code sticker.

16 Q And so item number 8 is the swab you collected from
17 the mouth area of this ski mask?

18 A Yes, ma'am.

19 Q Tell the jury how it is one collects DNA samples?

20 A It's a very simple process for collecting DNA. You
21 have a sterile swab, a swab box and distilled water.
22 You moisten the sterile swab with the distilled water
23 and you rub it in either the known DNA area which is
24 any type of biological stain, be it blood or
25 whatever, or the area of suspected DNA. You rub it

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1 in that area, place it in the swab box, seal up the
2 swab box, fill it out and under it into evidence.

3 MS. SHIPLEY: Your Honor, at this time the State
4 seeks to introduce No. 65 into evidence.

5 MR. COOPER: No objection.

6 THE COURT: Without objection.

7 (WHEREUPON, State's Exhibit No. 65 is admitted
8 into evidence.)

9 Q And so when you turn it into the evidence room when
10 you collect DNA evidence, what is it that is supposed
11 to happen to the item of evidence from there?

12 A After I collect DNA or a supposed DNA sample, it's
13 forwarded to our DNA lab for analysis.

14 Q And do you have a DNA laboratory at the Richland
15 County Sheriff's Department?

16 A Yes, ma'am.

17 Q While you were at the crime scene, were there other
18 crime scene investigators that were working with you?

19 A Yes, ma'am. Investigator Kristen Polis was working
20 with me. She was in --

21 Q Was she working -- were you supervising her?

22 A I was supervising her. Yes, ma'am.

23 Q And were you present when she collected items of
24 evidence?

25 A Yes, ma'am. She was on the scene on Hialeah Drive

1 with me, the scene of the vehicle. And at that time
2 I observed her collect the yellow jacket, the black
3 sock that was present at the scene and the \$72 in
4 cash. I actually counted it in front of her and
5 Corporal Enzor.

6 Q And I'm going to show you what's a box and see if you
7 can identify the items you witnessed her collect from
8 the scene?

9 A This appears to be the black sock.

10 Q What evidence No. is that?

11 A 59.

12 Q Okay.

13 A State's 59.

14 Q And what item is it?

15 A 15.

16 Q 15 on the lab number? Okay.

17 A And this is the yellow rain jacket that was
18 photographed there.

19 Q And do you see her initials on the bag?

20 A Yes, ma'am.

21 Q All right. And again, you witnessed her collect
22 that?

23 A Yes, ma'am. It says State's Exhibit 54.

24 Q All right.

25 A And in here is \$72 cash.

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1 Q Can you tell the jury about the denominations of the
2 cash?

3 A It's one 10, seven 5's and twenty-seven 1's.

4 Q One 10, seven 5's and how many 1's?

5 A Twenty-seven.

6 Q Twenty-seven 1's. Everything appear to be there?

7 A Yes, ma'am.

8 Q Okay. And again, can you look at the evidence tape
9 and see if you see her initials?

10 A Yes, ma'am. Her initials are up there.

11 Q And can you tell the jury where Investigator Polis is
12 now?

13 A She is on maternity leave. She just gave birth about
14 two weeks ago.

15 MS. SHIPLEY: Your Honor, at this time the State
16 would seek to introduce State's No. 59, 54 and 56
17 into evidence.

18 MR. COOPER: No objection, Your Honor.

19 THE COURT: Without objection.

20 (WHEREUPON, State's Exhibit No. 54 is admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 56 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 59 is admitted
25 into evidence.)

1 Q I'm going to take you back to the photos that you
2 took of the shoes, the shoe marks on the floor.

3 A Yes, ma'am.

4 Q Tell the jury what, if anything, you did with those
5 items?

6 A At first nothing. And then on the 19th of July of
7 2007, before that I was requested to do a comparison
8 of a pair of shoes to the unknown impressions that
9 were left at the scene. On the 19th of July 2007 I
10 received -- that was placed in my secure locker at
11 headquarters, locker number 8, a package that
12 contained clothing.

13 Inside that package, that brown bag that was
14 properly sealed was a pair of Athletic Works size
15 ten-and-a-half charger two model, white and gray
16 colored tennis shoes. I photographed them with and
17 without a scale and made comparisons, made known
18 impressions so I could make a comparison to the
19 unknown impressions from the scene.

20 Q Okay. I'm going to show you State's 46 through 48
21 and ask you if you recognize these?

22 A Yes, ma'am. These are photographs of the shoes that
23 were there from the front and the outsole of the left
24 and right shoe.

25 Q And those are the shoes you examined in this case?

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1 **A** Yes, ma'am.

2 **MS. SHIPLEY:** Your Honor, at this time we would
3 seek to introduce State's 46, 47 and 48.

4 **MR. COOPER:** No objection.

5 **THE COURT:** No objection.

6 (WHEREUPON, State's Exhibit No. 46 is admitted
7 into evidence.)

8 (WHEREUPON, State's Exhibit No. 47 is admitted
9 into evidence.)

10 (WHEREUPON, State's Exhibit No. 48 is admitted
11 into evidence.)

12 **Q** And the pictures 46 through 48, are these the shoes
13 that you photographed, State's No. 52?

14 **A** Yes, ma'am.

15 **Q** I'm going to show you, ask you to hold up 47 and 48
16 and present that to the jury and explain to the jury
17 what exactly you were looking for when making
18 comparisons?

19 **A** It's a little hard to see without getting right up on
20 this. These are the outsole or the bottom of a shoe.
21 Whenever a person wears a shoe, everybody wears shoes
22 differently. We all walk differently with a
23 different gait and everything else. And we walk in
24 different areas which are going to leave accidental
25 characteristics or injuries on the bottom of a shoe.

1 The first thing I look at is tread pattern. You
2 know, does the unknown impression have the same type
3 of tread pattern as what's on this shoe? If it does,
4 then I move on. If not, I'm done with my
5 examination. If it does have the same type of tread
6 pattern, then I get into smaller detail.

7 I start looking for accidental characteristics.
8 I look at wear pattern to see if -- in this shoe here
9 you can see right on this edge it's flattened out.
10 There is no tread left because it's worn on that
11 edge. And that's what we call wear pattern. You can
12 make, you know, comparisons on wear pattern if the
13 tread pattern is the same. And you go further on
14 until in my mind as an expert I can call it either it
15 is a match or it's not consistent or it's not a
16 match.

17 Q Okay. And did you compare the shoe impressions of
18 those known shoes to the shoe marks on the floor in
19 the Family Dollar depicted in State's 45 and 44?

20 A Yes, ma'am, I did.

21 Q And tell the jury what your analysis was and what
22 your results were?

23 A It was my -- the results I received by looking at
24 this outsole pattern and comparing it to these, these
25 unknown impressions were not made by that shoe, could

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1 not have been made by that shoe, because nowhere on
2 this shoe is that tread pattern or that same type of
3 tread pattern in consistency.

4 Q And are you able to date the treaded pattern on the
5 floor?

6 A No, ma'am. There is no way to date it.

7 Q Thank you, Investigator Bouknight. Please answer any
8 questions from the defense.

9 A Yes, ma'am.

10 MR. COOPER: If it pleases the Court.

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION

13 BY MR. COOPER

14 Q All right. Investigator Bouknight, good afternoon.
15 You've been a CSI investigator for quite some time,
16 right?

17 A Three years. Yes, sir.

18 Q Three years? Okay. And is that the first pair of
19 shoes you've ever conducted this test on?

20 A No, sir.

21 Q It's not. So you've done that test before?

22 A Yes, sir.

23 Q All right. And you just testified that those prints
24 in those photographs she just had you look at, they
25 did not match the pair of shoes that the

1 investigators provided you with, right?

2 A Correct.

3 Q All right. Now, tell me, have you ever -- you've
4 been involved in investigations where you've analyzed
5 multiple pieces of evidence, right?

6 A Yes, sir, I have.

7 Q And in this investigation did the investigators ever
8 provide you with another pair of shoes to analyze?

9 A No, sir.

10 Q Those are the only pair of shoes you analyzed in this
11 case?

12 A Yes, sir.

13 Q Now, you testified about the -- you told Ms. Shipley
14 that you couldn't be certain on a timeframe of the
15 shoe print impressions. Is that right?

16 A Yes, sir.

17 Q But we heard you qualified as an expert. I mean, in
18 your opinion, the indentations, the prints on the
19 floor of that store were probably recent, right?

20 A No, sir. I can't say how long they have been there.
21 I can only qualify on the comparison of them.

22 Q All right. Is it more likely that they were recent
23 than they were very old?

24 A I wouldn't know, sir.

25 Q But you got a clear photograph of each impression,

1 correct?

2 A Yes, sir.

3 Q If it wasn't a good impression, then you wouldn't
4 conduct the test at all, right?

5 A Correct.

6 Q Beg the Court's indulgence one second. Okay.
7 Investigator, in the three years you've been in crime
8 scene investigation you've come into frequent contact
9 with DNA evidence, right?

10 A Yes, sir.

11 Q So you're somewhat familiar with what DNA is?

12 A Yes, sir.

13 Q And DNA is a substance that can be found in a human's
14 skin cells, right?

15 A Yes, sir.

16 Q It can be found in a person's bodily fluids, right?

17 A Yes, sir.

18 Q Okay. That's all I have. Thank you.

19 THE COURT: Anything further?

20 MS. SHIPLEY: No, sir, Your Honor.

21 THE COURT: All right. May the witness be
22 excused? Without objection?

23 MS. SHIPLEY: Yes, sir.

24 THE COURT: All right. You may come down, sir.
25 Thank you very much. Approach the bench.

1 (Whereupon, a bench conference is had)

2 **THE COURT:** All right, ladies and gentlemen of
3 the jury. It's 5:30 and the next witness may be
4 somewhat lengthy. So I think the most efficient use
5 of our time would be to excuse you for the day, take
6 the evening and resume again in the morning at 9:30.
7 I'm still not sure about the length of the case. I'm
8 talking to the attorneys and watching the weather
9 channel. So I'm trying to make sure we get
10 everything in.

11 So, again, don't discuss the case over the
12 evening hours with your families or with anyone else
13 or among yourselves when you return to the jury room
14 in the morning. Have a pleasant evening. We'll see
15 you at 9:30. Thank you very much.

16 (Jury out at 5:26 p.m.)

17 **THE COURT:** All right. As far as tomorrow goes,
18 do you believe you'll finish in the morning?

19 **MS. SHIPLEY:** Yes, sir, Your Honor. We have a
20 chain of custody witness and then the DNA expert and
21 then Investigator Isenhoward. So I really anticipate
22 wrapping it up by 11 or 11:30.

23 **THE COURT:** All right. That gives defense
24 counsel plenty of time to prepare their defense. So
25 we'll see you at 9:30.

1 *MS. SHIPLEY:* Your Honor, and if I could get
2 date of births from the defense witnesses so I can
3 run rap sheets.

4 *MR. COOPER:* Oh. Are the date of births not
5 included on alibi notice?

6 *MS. SHIPLEY:* Let me double check.

7 *MR. COOPER:* I mean, it might not be. I just --

8 *MS. SHIPLEY:* No, sir. They're just addresses.

9 *MR. COOPER:* Okay. If you could, Your Honor,
10 just give me a moment to get those for her.

11 *THE COURT:* You don't need me.

12 *MS. SHIPLEY:* You can e-mail me tonight. Just
13 before they testify.

14 *MR. COOPER:* Okay.

15 *THE COURT:* All right. We'll stand at ease
16 until 9:30.

17 *MS. SHIPLEY:* Thank you.

18 (Whereupon, the proceedings are concluded for
19 the day, to be reconvened tomorrow morning)
20
21
22
23
24
25

Thursday, September 4, 2008

(WHEREUPON, State's Exhibit No. 66 is marked for identification.)

(WHEREUPON, State's Exhibit No. 67 is marked for identification.)

THE COURT: The State ready to proceed?

MS. SHIPLEY: Yes, sir.

THE COURT: Defense ready to proceed?

MR. COOPER: Yes, Your Honor.

THE COURT: Bring the jury.

(Jury in at 9:43 a.m.)

THE BAILIFF: The jury is all present, Your Honor.

THE COURT: Thank you very much. Good morning, ladies and gentlemen. We're ready to continue with the trial. Solicitor, call your first witness, please.

MS. GOOD: Thank you, Your Honor. The State calls Curtis Burnett.

CURTIS BURNETT, after being duly sworn, testifies as follows:

THE CLERK: Thank you. Please have a seat in the witness stand and state your full name for record. And please spell your last name.

WITNESS: I am Curtis Burnett. That's

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1 B-U-R-N-E-T-T.

2 DIRECT EXAMINATION

3 BY MS. GOOD

4 Q Mr. Burnett, where are you employed?

5 A I'm part time with the Richland County Sheriff's
6 Department as evidence technician.

7 Q And what does an evidence technician do?

8 A Officers bring in evidence to the room. We actually
9 get it logged in and we store it until time for it to
10 be going out to either a lab technician or to go to
11 court or be destroyed.

12 Q And where is evidence stored when you bring it into
13 the evidence room?

14 A In headquarters.

15 Q And within the evidence room, who has access to that
16 room?

17 A There is three of us.

18 Q And who are those people?

19 A Tena Goff and William Cedarstaff.

20 Q And you just mentioned that you hold it until
21 somebody would sign it out. Where is the evidence
22 held?

23 A On shelves in a storage area.

24 Q And did you have occasion to be involved in the case
25 against Mr. Portee with evidence?

- 1 A Yes, ma'am.
- 2 Q And what case number was that?
- 3 A 0611077809.
- 4 Q And what's the process when you receive evidence?
- 5 A When either the individual investigator or road
6 deputy brings the item to us, we review it to make
7 sure that all the data is correct on it as it's being
8 turned into us with their signature and the date and
9 time on it. Then we take it and put it into the
10 computer system in a program. And we assign it a
11 shelf number. Like it would be a row and then a
12 shelf number on that row.
- 13 Q Okay. And I'm going to show you what's been marked
14 as State's Exhibit 67. State's Exhibit 67, do you
15 recognize this?
- 16 A Yes. It's item 20 in our chain of evidence.
- 17 Q What is item 20?
- 18 A It's buccal swabs from J. Portee by Isenhoward which
19 is Investigator Isenhoward.
- 20 Q And when was the first time that you saw that piece
21 of evidence?
- 22 A I collected it personally from him and signed it on
23 7-25-07 at 17:05 and entered it into the system and
24 entered it on row E-32, shelf 32 on row E.
- 25 Q And who did you say you received it from?

Curtis Burnett - Direct by Ms. Good

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1 A Investigator Isenhoward.

2 Q And do you see his initials on it?

3 A He signed it at the bottom right under his name where
4 it says person to person. Either we've got a drop
5 box or we've got person-to-person. He gave it to me
6 person-to-person.

7 Q Okay. And when he gave it to you, was it properly
8 sealed?

9 A Yes.

10 Q And his initials were on it?

11 A Yes.

12 Q And had it been tampered with in any way?

13 A Not to my knowledge.

14 MS. GOOD: At this time, Your Honor, we'd like
15 to enter into evidence State's Exhibit 20. I mean,
16 excuse me, State's Exhibit 67.

17 MR. COOPER: No objection.

18 THE COURT: Without objection.

19 (WHEREUPON, State's Exhibit No. 67 is admitted
20 into evidence.)

21 Q And you said you received that from ...?

22 A Investigator Isenhoward.

23 Q On what date?

24 A 7-25-07.

25 Q Okay. Just as a matter of housekeeping, what is item

1 number 19 on the property list?

2 A Videotape.

3 Q Okay. And at some point later on did you become
4 involved again in this evidence by handing it out to
5 somebody, transferring it to someone?

6 A Yes, ma'am. It was then transferred from myself to
7 Mr. Gray Amick in the DNA lab.

8 Q And on what date was that?

9 A 8-14-07 at 15:10.

10 Q And when you transferred item number 20 to Gray
11 Amick, was it still sealed?

12 A Yes.

13 Q Had it been tampered with in any way?

14 A No.

15 Q I want to show you what has been marked as State's
16 Exhibit 65. Is there another item that you also
17 signed out to Gray Amick that day?

18 A No. This one was signed out to him on May 29, '07 at
19 9:18.

20 Q And was it signed out by you?

21 A Yes.

22 Q And when you signed it out to -- and which item is
23 that?

24 A This is item number 8 and it's Exhibit 65.

25 Q And item number 8, describe it?

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1 **A** It's a swab from a black stocking cap.

2 **Q** And when you signed it out to him, was it still
3 sealed?

4 **A** Yes.

5 **Q** Had it been tampered with in any way?

6 **A** No.

7 **MS. GOOD:** Beg the Court's indulgence. We have
8 no further questions, Your Honor.

9 **THE COURT:** Cross examination.

10 **MR. COOPER:** Your Honor, we have no questions
11 for this witness.

12 **THE COURT:** All right. You may come down, sir.
13 Thank you very much. May this witness be excused?

14 **MS. SHIPLEY:** Please, Your Honor.

15 **THE COURT:** Without objection. Next witness.

16 **MS. GOOD:** The State calls Gray Amick.

17 **DR. GRAY AMICK,** after being duly sworn,
18 testifies as follows:

19 **THE CLERK:** Thank you. Please have a seat in
20 the witness stand and state your full name for the
21 record.

22 **WITNESS:** My name is Gray Amick.

23 DIRECT EXAMINATION

24 **BY MS. GOOD**

25 **Q** And where are you employed?

1 A At the Richland County Sheriff's Department.

2 Q And what do you do there?

3 A I am the DNA technical leader. I run the forensic
4 DNA laboratory there.

5 Q And how long have you been running the DNA
6 laboratory?

7 A For approximately four and a half years there.

8 Q And before you were at the Richland County Sheriff's
9 Department running the DNA laboratory, where were you
10 employed?

11 A I worked at the South Carolina Law Enforcement
12 Division for 11 years prior to that.

13 Q And what did you do there?

14 A For about six and a half I worked in the DNA
15 laboratory there, and before that I was in the
16 forensic toxicology laboratory.

17 Q And can you tell the jury a little bit about your
18 educational background?

19 A Sure. I have a B.S. in biology and a Ph.D in
20 biochemistry from the University of South Carolina in
21 1993. From there I was employed at the South
22 Carolina Law Enforcement Division as a forensic
23 toxicologist and they transitioned to the DNA
24 laboratory as trained by court qualified experts in
25 the fields of forensic serology, forensic DNA

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1 analysis, was involved there with method development
2 and method validation, was hired at the Richland
3 County Sheriff's Department in 2004, in March, to
4 start up their DNA laboratory and subsequently did
5 that, again developing the methods and validating the
6 methods there.

7 Q And have you ever testified in court before?

8 A I have.

9 Q How many times have you testified?

10 A Over 50 times.

11 MS. GOOD: At this time, Your Honor, we would
12 like to offer Dr. Amick as an expert witness in DNA
13 analysis.

14 THE COURT: Any voir dire or objection?

15 MR. COOPER: I have no objection to him being
16 offered as an expert in DNA analysis, Your Honor.

17 THE COURT: All right. Good. Go right ahead.

18 MS. GOOD: Thank you.

19 Q Can you explain to the jury what DNA is?

20 A Yes. DNA is a large molecule in everybody's body.
21 It's in every cell that has a nucleus. And basically
22 it's the blueprint for life. So every tree, every
23 ant, every fish has DNA, and it's what makes you
24 whatever species you are. About 99 percent of that
25 DNA is the same within that species. So every human

1 has DNA that's very similar, but there is a small
2 amount that's different. Obviously we can look
3 around and see differences in people. So everybody's
4 DNA is unique to them except for identical twins.
5 Identical twins have the same DNA. It's that
6 difference between individuals that we exploit in
7 forensic DNA analysis to determine identity.

8 Q And when you talk about DNA analysis, what is that?

9 A Basically attempting to get a DNA profile from
10 evidence submitted in different types of cases along
11 with people that are involved, such as suspects and
12 victims, and then to see if the two match or if
13 they're included or excluded in that evidence.

14 Q And how do you get a DNA profile?

15 A A series of steps involving some chemical analysis;
16 basically extract the DNA, purify it, and then
17 separate that DNA so we can visualize the patterns or
18 the fingerprints. And it's kind of like a molecular
19 fingerprint.

20 Q And what parts of the body or fluids can you get DNA
21 from?

22 A Any part of the body that contains a cell that has a
23 nucleus. So within the blood, white blood cells have
24 a nucleus. Skin tissue, hair, saliva. Anything you
25 touch with your mouth, you'll leave a DNA print

Dr. Gray Amick - Direct by Ms. Good

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1 potentially. Any other body fluid just about.

2 Q And did you become involved in this case against Mr.
3 Portee?

4 A I did.

5 Q And what date was that?

6 A I don't have the chain of custody in front of me, but
7 my analysis began approximately June of last year.

8 Q Let me show you what has been marked as State's
9 Exhibit 67 which is item number 20. Do you recognize
10 that?

11 A Yes, I do.

12 Q And what is that?

13 A This is a swab in a box from a mouth swab or buccal
14 swab from Jimmy Portee.

15 Q And do you see your initials on that?

16 A I do.

17 Q And why are your initials on it?

18 A When I analyze evidence I will initial it. And when
19 I reseal this heat-sealed package, I'll initial it
20 and date it as well.

21 Q And when you received that package, was it sealed
22 properly?

23 A Yes, it was.

24 Q Did it seem to have been tampered with in any way?

25 A No.

1 Q And let me show you what's been marked as State's
2 Exhibit 65. Do you recognize that?

3 A I do.

4 Q And what's that?

5 A This is again a swab from a black stocking hat.

6 Q And when you received that swab, was it still sealed?

7 A Yes, it was.

8 Q Had it been tampered with in any way?

9 A No.

10 Q Are your initials on that?

11 A They're on the reseal and date, yes.

12 Q When you received these two samples, what is your
13 first course of action? What do you do first?

14 A Depending on what type of evidence; for example, with
15 this type of evidence, depending on what type of case
16 it is, I'll initiate my analysis like I described
17 before, basically attempting to get a DNA profile
18 from the evidence and then from anybody, any
19 standards submitted from any people involved in the
20 case, in this case this individual here.

21 Q And the piece of evidence that you received, were you
22 able to get a profile from that?

23 A Yes, I was.

24 Q And did you compare that profile with any other
25 items?

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1 A I compared it with the profile I obtained from the
2 buccal swab or standard of Jimmy Portee.

3 Q Can you tell us what your results were when comparing
4 those two samples?

5 A Yes. The DNA profile developed from item 8 which is
6 the swab from the black stocking hat matches Jimmy
7 Portee.

8 Q And how did you come to that conclusion?

9 A I developed a profile from the evidence and from this
10 victim -- I mean from this suspect or victim -- and
11 compared the two to see if they matched or didn't
12 match.

13 Q And when you do this, do you do some type of
14 paperwork or report to show your analysis?

15 A I do.

16 Q And what kind of chart or report is that?

17 A Well, I issue a report. And within that report, it
18 may contain a table summarizing the genetic results.

19 Q And you did that in this case?

20 A I did.

21 Q And would that help you explain to the jury --

22 A I could, yeah.

23 Q -- how you did it?

24 (WHEREUPON, State's Exhibit No. 68 is marked for
25 identification.)

1 Q I show you what's been marked as State's Exhibit 68.
2 Do you recognize this?

3 A I do. It appears to be copy of that table I
4 described.

5 Q And is it an accurate copy of the table that you did?

6 A It appears to be.

7 MS. GOOD: At this time, Your Honor, we'd like
8 to enter into evidence State's Exhibit 68.

9 MR. COOPER: No objection.

10 THE COURT: Without objection.

11 (WHEREUPON, State's Exhibit No. 68 is admitted
12 into evidence.)

13 MS. GOOD: I ask the witness to step down, Your
14 Honor.

15 THE COURT: Certainly.

16 Q Can you explain to the jury what this chart
17 represents or what it tells you, how you interpret
18 it?

19 A Yes. This is -- these are the two items that I
20 talked about analyzing, item 8 which was the swab
21 from the stocking cap, and this individual, Jimmy
22 Portee. And these are -- this is basically a
23 numerical representation of their DNA profile. It's
24 just in numbers. We test several different locations
25 on the DNA molecule, and that's what this describes

1 up here.

2 Q And why do you test several different locations?

3 A Well, it's kind of like to be very discriminatory
4 when it comes to the test. So, for example, if I
5 just tested something, a genetic trait like eye
6 color, then one in every four persons may have blue
7 eyes, for example. That's not very discriminating.
8 So I would go to another trait. So these you can
9 think of as many different traits of an individual
10 even though you can't visibly see them. So it's
11 basically to have a tremendous amount of
12 discriminating power to identify somebody without
13 doubt.

14 Q Okay. Go on, please.

15 A So what I do is tested each at each one of those
16 locations or loci and then compare the results
17 between the evidence and the individual. So simply
18 looking here at this particular location, the
19 evidence has a 28, 32; and so does the individual,
20 Jimmy Portee. And you just read it straight across
21 like that. There are additional numbers in a couple
22 of these locations that were unidentified. I don't
23 know where they came from basically. However, all of
24 his genetic markers are located or included in the
25 evidence here.

1 Q Okay. Thank you. After you developed a profile,
2 were you able to determine that the swab from the hat
3 was a match to Mr. Portee?

4 A Yes. The profile developed from that item matched
5 Jimmy Portee.

6 Q And how many people are there in the world?

7 A Oh, around 6 billion.

8 Q And what match was Mr. Portee to this DNA?

9 A Well, the second part of my report states a frequency
10 of seeing that profile. And I'll publish that. The
11 frequency of seeing this profile in the Caucasian
12 population is approximately 1 in 38 trillion and in
13 the African-American population, approximately 1 in
14 1.1 trillion.

15 Q And compared to 6 billion, how many is 1.1 trillion?

16 A It's about -- it's an order of magnitude more. So it
17 goes million, billion, trillion. So it's a million
18 more than a billion.

19 Q And you said there's 6 billion people in the world.
20 How many zeroes is that?

21 A It's going to be nine.

22 Q And you said the frequency for this was 1.1 million
23 in the African-American or 1.1 trillion?

24 A That's right. It's going to be three more zeroes
25 than that.

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1 Q Is that right? Correct me if I'm wrong.

2 A 1.1 trillion. Yeah. That's right.

3 Q And what was the frequency for Caucasians?

4 A 1 in 38 trillion.

5 Q Would that be ... (Writing zeros on board)

6 A That's right.

7 MS. GOOD: We have no further questions, Your
8 Honor.

9 THE COURT: Cross examination.

10 MR. COOPER: Thank you, Your Honor. If it
11 pleases the Court.

12 THE COURT: Yes, sir.

13 CROSS EXAMINATION

14 BY MR. COOPER

15 Q Hello, Dr. Amick.

16 A Hi.

17 Q Do you know how many Caucasians there are in the
18 world?

19 A No, I do not.

20 Q You don't? Okay. And, Dr. Amick, you testified that
21 DNA can be found in human cells, correct?

22 A That's correct. With a nucleus.

23 Q And that would include skin cells, correct?

24 A That's correct.

25 Q And that would include cells from bodily fluids,

1 correct?

2 A Yes. Some of them.

3 Q And work you would include cells from sweat perhaps?

4 A It's possible.

5 Q And you testified that some of the numbers on that
6 analysis you don't know where they came from,
7 correct?

8 A There is a very weak additional profile that I don't
9 know where it came from. Correct.

10 Q All right. Thank you, Doctor. I have no further
11 questions.

12 THE COURT: Redirect?

13 MS. GOOD: Just very briefly.

14 REDIRECT EXAMINATION

15 BY MS. GOOD

16 Q Is the location of where the DNA is found on an item
17 significant to you?

18 A I'm not -- I mean, it may be. I mean, we will look
19 at certain items, certain areas of certain items to
20 expect to obtain a profile. For example, the shirt
21 I'm wearing, I would expect to obtain a profile
22 around my collar where it's touching my skin. So I
23 don't know if that answers your question, but --

24 Q If you were looking at a mask, would you expect to
25 find DNA around the mouth of the mask?

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1 **A** Yes.

2 **MR. COOPER:** Objection, Your Honor.

3 **MS. GOOD:** It's a hypothetical, Your Honor.

4 **THE COURT:** Overruled. Go ahead.

5 **Q** Okay. What was your answer?

6 **A** Yeah. Masks, we will swab and scrape the part that's
7 potentially in contact with the mouth, yes.

8 **MS. GOOD:** We have no further questions.

9 **THE COURT:** Questions?

10 **MR. COOPER:** I have nothing further, Your Honor.

11 **THE COURT:** All right. You may come down, sir.

12 Thank you very much. May this witness be excused?

13 **MS. SHIPLEY:** Please, Your Honor.

14 **THE COURT:** Without objection.

15 **MS. SHIPLEY:** Thank you, Your Honor. At this
16 time the State calls Sergeant Kevin Isenhoward.

17 KEVIN ISENHOWARD, after being duly sworn,
18 testifies as follows:

19 **THE CLERK:** Thank you. Take the witness stand,
20 and state your full name for the record.

21 **WITNESS:** My name is Kevin Isenhoward. My last
22 name is spelled I-S-E-N-H-O-W-A-R-D.

23 DIRECT EXAMINATION

24 **BY MS. SHIPLEY**

25 **Q** Investigator Isenhoward, can you please tell this

1 jury where you're employed?

2 A I'm employed at the Richland County Sheriff's
3 Department.

4 Q How long have you worked there?

5 A I've worked there for almost 11 years now.

6 Q Can you tell to a jury a little bit about what your
7 job title entails?

8 A Yes. I'm a sergeant over the armed robbery division
9 which is contained in the major crimes unit at the
10 Sheriff's Department. We're responsible for
11 investigating robberies that occur within Richland
12 County.

13 Q Can you describe for the jury the training that you
14 have to become an investigator?

15 A I've got pretty extensive training in interview and
16 interrogation, basic investigations, narcotics
17 investigations, robbery investigations, burglary
18 investigations. Initially I was a patrol officer.
19 And to do that I had to go through the Criminal
20 Justice Academy for nine weeks at the time. After
21 that I went through, as you've heard described, the
22 field training officer's program. I was a patrolman
23 for two years and then I was promoted to detective.
24 I was an investigator for I guess six of those years,
25 and then I was promoted to sergeant and am

1 responsible for supervising investigators.

2 Q Are you a member of any law enforcement
3 organizations?

4 A Yes.

5 Q And which ones?

6 A I'm a member of the International Association of
7 Property Crimes Investigators.

8 Q And, in fact, have you recently been recognized by
9 that organization?

10 A Yes. This year I was voted the International
11 Investigator of the Year for that organization. I
12 received that award last month.

13 Q Investigator, can you tell the jury what it is that
14 you -- how you get involved in a case; for instance,
15 an armed robbery, a robbery case?

16 A One of two ways. Typically every morning we receive
17 reports from robberies that occur the day before.
18 Those reports are then reviewed by me, assigned to
19 other robbery investigators or I assign them to
20 myself. Also on occasion we respond out immediately
21 to armed robberies. Most of the time we do that when
22 a suspect has been identified initially. We respond
23 out to take custody of the person and to supervise
24 the investigation from the beginning.

25 Q And so is it fair to say that sometimes the case is

1 cold initially and you have to pursue leads to
2 identify the perpetrator?

3 A Most of the time it is.

4 Q And so in your experience as an investigator of armed
5 robberies, it's less common to apprehend the suspect
6 right away?

7 A Yes.

8 MR. COOPER: Objection to leading.

9 MS. SHIPLEY: I'll rephrase, Your Honor.

10 Q Describe how common it is in your experience to
11 apprehend the perpetrator?

12 A It's rare for the patrol officers to actually catch
13 someone immediately after an incident. It happens
14 every once in a while.

15 Q Investigator Isenhoward, can you tell the jury how it
16 is you became involved in this case involving the
17 Family Dollar armed robbery?

18 A Yes. This was on November the 9th of 2006. I was
19 called by Sergeant Robinson with the Sheriff's
20 Department who had advised me that he was out in the
21 area working when he heard the call go out of the
22 armed robbery and he responded to assist and that the
23 officers had arrested a possible suspect in the case.
24 He requested that I respond out to continue the
25 investigation.

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1 Q And by the time you were involved or became involved,
2 were you apprized of whether or not the suspect they
3 had in custody was identified by a witness?

4 A When I arrived on the scene, I initially spoke with
5 Sergeant Robinson and the responding officers. And
6 Sergeant Robinson told me that he did bring a
7 witness, a victim over to the location who identified
8 Mr. Portee as the man who robbed her.

9 Q And so you did not respond directly to the Family
10 Dollar. You went to the scene of where Mr. Portee
11 was apprehended?

12 A Correct.

13 MR. COOPER: Objection: Leading.

14 THE COURT: Sustained. You continue to do it.

15 MS. SHIPLEY: Yes, sir. I apologize.

16 Q Where did you go when you first -- which scene did
17 you go respond to first?

18 A I went out to Hialeah Drive which is the scene of the
19 termination of the chase where he was apprehended.

20 Q Could you describe for the jury what your
21 observations were when you got there?

22 A When I arrived on the scene, I initially observed a
23 white vehicle which obviously had veered off the road
24 and crashed into, I believe it was a fence. I spoke
25 with the officers on the scene and saw that Mr.

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1 my files.

2 Q Is there a doorway to your cubicle?

3 A It's an open doorway. There is no actual door on the
4 wall there. But it's an entryway I guess I would
5 say..

6 Q Describe for the jury where you were seated in your
7 cubicle and where Mr. Portee was seated?

8 A Excuse me. Mr. Portee was seated in the chair. It's
9 actually to my left. And I'm seated at my desk
10 basically with my computer in front of me. And I'm
11 speaking to him directly, face-to-face.

12 Q Were there any other officers in the cubicle?

13 A No.

14 Q Can you tell the jury what exactly you did once you
15 began to talk to Mr. Portee?

16 A Once we sit down I advised him of his rights again in
17 written form. Our Interrogation/Advice of Rights
18 form is filled out. I read his rights again
19 one-by-one and ask him to acknowledge if he
20 understands them. When he acknowledges them, I check
21 a box basically on the form. We go through this form
22 step-by-step slowly so they can understand, give them
23 an opportunity to stop me and ask questions if they
24 want. And in this case he acknowledged that he did
25 understand his rights. He signed that he

1 parts obviously if you're familiar to saw with. This
2 has been -- actually the entire metal piece has been
3 removed purposefully in my opinion.

4 MR. COOPER: Objection. Speculation.

5 THE COURT: Overruled.

6 A And so it -- I mean, any person obviously in fear
7 would think that that's a fireman.

8 Q And --

9 MR. COOPER: Objection.

10 THE COURT: I overruled the objection. That's
11 his opinion. He's qualified to give that.

12 Q And what if that item were to be inside a pocket of a
13 clothing article?

14 A It would definitely create a bulge somewhat.

15 Q And after you specifically requested that that item
16 of evidence be collected, what else did you do while
17 at Hialeah Drive?

18 A Again I observed the money that was on the ground
19 next to the house I guess in the -- near along the
20 track as they chased him. Also the mask, I saw that.
21 I then spoke briefly with Mr. Portee. I was told
22 that he had been advised of his rights. At this
23 point --

24 Q Who advised him of his rights first?

25 A Sergeant Robinson. And initially my job is to talk,

1 Portee was detained in a patrol car.

2 First and foremost, I wanted to see what's going
3 on. So I walked the scene. I looked at what
4 evidence they had. They were searching the vehicle.
5 So I also looked in the vehicle to see if there were
6 any items of evidence. And occasionally I do request
7 specifically that they take items that I deem as
8 evidence as well.

9 Q And in this case which item did you request
10 specifically?

11 A There was a sawed off, a broken off hacksaw handle.

12 Q And why did you ask them to collect this item? I'm
13 going to show you State's 60. Is that the item
14 you're referring to?

15 A Yes.

16 Q And why was it that you requested that item
17 specifically?

18 A In my experience in robbery investigations,
19 oftentimes people won't have access to actual
20 firearms, that they will fashion other items to look
21 like firearms. And that's what I deemed this to be.

22 Q All right. And can you point it out, pull it out for
23 the jury and describe why it is you believe that to
24 be the case?

25 A This is a hacksaw handle. It's supposed to have two

1 my files.

2 Q Is there a doorway to your cubicle?

3 A It's an open doorway. There is no actual door on the
4 wall there. But it's an entryway I guess I would
5 say.

6 Q Describe for the jury where you were seated in your
7 cubicle and where Mr. Portee was seated?

8 A Excuse me. Mr. Portee was seated in the chair. It's
9 actually to my left. And I'm seated at my desk
10 basically with my computer in front of me. And I'm
11 speaking to him directly, face-to-face.

12 Q Were there any other officers in the cubicle?

13 A No.

14 Q Can you tell the jury what exactly you did once you
15 began to talk to Mr. Portee?

16 A Once we sit down I advised him of his rights again in
17 written form. Our Interrogation/Advice of Rights
18 form is filled out. I read his rights again
19 one-by-one and ask him to acknowledge if he
20 understands them. When he acknowledges them, I check
21 a box basically on the form. We go through this form
22 step-by-step slowly so they can understand, give them
23 an opportunity to stop me and ask questions if they
24 want. And in this case he acknowledged that he did
25 understand his rights. He signed that he

1 acknowledged them. And he also signed a waiver of
2 his rights basically saying he was willing to talk to
3 me.

4 Q I'm going to show you what's been marked State's
5 Exhibit No. 4 for identification purposes. Do you
6 recognize that document?

7 A Yes. This is the Interrogation/Advice of Rights
8 form.

9 Q Pertaining to Mr. Portee?

10 A Yes. Signed by Mr. Portee and myself on November the
11 9th, 2006 at 11:47 hours.

12 **MS. SHIPLEY:** Your Honor, at this time the State
13 would seek to introduce State's No. 4 into evidence.

14 **MR. COOPER:** I have no objection, Your Honor.

15 **THE COURT:** Without objection.

16 (WHEREUPON, State's Exhibit No. 4 is admitted
17 into evidence.)

18 Q Investigator Isenhoward, tell this jury how exactly
19 you went over that form with Mr. Portee on November
20 9th, 2006 at 11:47 a.m.?

21 A Just so you know, it says the Richland County
22 Sheriff's Department, Interrogation/Advice of Rights.
23 It's got a name, place, my name, the date and time.
24 I read it as such. "These are your rights I'm going
25 to advise you of. Before we ask you any questions

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1 you must understand your rights. Do you understand?"
2 I check a block. "You have the right to remain
3 silent." That block is checked. "Anything you say
4 can be used against you in court." That block is
5 checked. "You have the right to talk to a lawyer for
6 advice before we ask you any questions and to have
7 one present with you during any questioning." That
8 block is checked.

9 "If you cannot afford a lawyer, one will be
10 appointed to you before any questioning if you wish."
11 That block is checked. "If you decide to answer
12 questions now without an attorney present, you still
13 have the right to stop answering at any time. You
14 always have the right to stop answering at any time
15 until you talk to a lawyer." And that block is
16 checked and is signed. And also I signed.

17 The second part is a waiver of rights. It says:
18 "I have read this statement of my rights and
19 understand what my rights are. I am willing to talk
20 and answer questions. I understand and know what I
21 am doing. No promises have been made to me and no
22 pressure or coercion of any kind has been used
23 against me."

24 Frequently -- this block is checked. But
25 frequently people won't know what the word coercion

1 means. If they don't I underline it and I explain to
2 them what coercion means. He acknowledged that he
3 understood the word coercion in this. And he signed
4 and I signed.

5 Q And so, therefore, you did not underline coercion?

6 A I did not.

7 Q After you advised Mr. Portee of his rights, describe
8 the procedure or the way you interviewed him, the
9 manner you interviewed him?

10 A Typically I review the evidence that we have with the
11 person. I appeal to them to tell me the truth. We
12 go over what their explanation is verbally. He tells
13 me his story. And I ask him questions about that
14 story. Once we're to a point where I feel like he's
15 gone as far as he's going to go, this is what he's
16 going to tell me, this is what he's saying has
17 happened, we reduce that statement to writing.

18 We go back through the questions I asked. I
19 type them out on my computer and I type down his
20 answers word-for-word. Once we are through, the
21 statement is printed out. I hand it to him that so
22 he can read. I ask them, can you read, do you need
23 glasses? In this case he acknowledged that he could
24 read it, there was no problem. And then I read it to
25 him as he follows along with his statement. I read

1 it off of my computer screen. If he wants to make
2 any changes at any point, he can; and we will change
3 it, at that point print out another copy. Then we
4 sign and I notarize the form.

5 Q I'm going to show you what's been marked State's No.
6 5 and ask you if you recognize that?

7 A I do. This is the statement from Jimmy Douglas
8 Portee.

9 Q And do you see your signature on that?

10 A Yes, I do.

11 **MS. SHIPLEY:** Your Honor, at this time the State
12 would seek to introduce No. 5 into evidence.

13 **MR. COOPER:** I have no objection, Your Honor.

14 **THE COURT:** Without objection.

15 (WHEREUPON, State's Exhibit No. 5 is admitted
16 into evidence.)

17 Q Investigator Isenhoward, please go over that
18 statement that you took from Mr. Portee and explain
19 what time the written portion began?

20 A Okay. This statement, at the top it's obviously
21 Jimmy Douglas Portee. It's dated the 9th day of
22 November, 2006, 12:02 hours in the presence of
23 myself. It's also got a secondary advice of rights
24 at the top of this form. So it's advised again.
25 It's a Q and A. Or a Q and R form is how I use it

1 for question and response.

2 Q I hate to interrupt you. Is there another paragraph
3 where you readvise him of his rights?

4 A Yes. Yes. At the top of the form it's a secondary
5 advice of rights form which he reads again.

6 Q Okay. Excuse me one second. I need to put it up.
7 Can you remind the jury what time Mr. Portee was
8 arrested?

9 A The date -- or excuse me -- the time that Mr. Portee
10 was arrested was at 9:28 hours on 11-9 of '06. Do
11 you want me to go through them?

12 Q And then begging the Court's indulgence. What time
13 did you advise him of his rights?

14 A He was advised of his rights at 12 -- excuse me --
15 advised of his rights at 11:47 hours in written form.

16 Q And this is in the morning, correct?

17 A Yes, ma'am.

18 Q Okay. What time did the written portion of his
19 statement begin?

20 A The written portion began at 12:02 hours.

21 Q That afternoon?

22 A Yes.

23 Q Okay. Please tell the jury exactly what was done
24 during the written statement?

25 A The first question I asked was: "Where were you

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1 today at around 9:15 a.m." --

2 **MR. COOPER:** Objection, Your Honor. This would
3 be cumulative. It's in evidence.

4 **THE COURT:** I'll allow it.

5 **MS. SHIPLEY:** Your Honor, the contents of the
6 statement have not been published to the jury.

7 **THE COURT:** Go ahead. Overruled.

8 **Q** Please proceed.

9 **A** Which is the time I understand the robbery occurred.
10 He says, "I was at my sister's house. My sister's
11 name is Janice Andrews and she lives on Britton Drive
12 in Columbia."

13 I then asked: "How long were you there?"

14 He says, "I got there at around 8:30 a.m. and
15 left around 9:45 a.m."

16 I said, "Was she there with you?"

17 "Yes. It was her and my mother, Janie Portee."

18 "Where did you go after you left your sister's
19 house?"

20 He said that "I went to the Richland County
21 Library, the public library off of Garners Ferry
22 Road."

23 I asked, "Did you go inside the library?"

24 He said, "Yes, sir."

25 "What time did you get there?"

1 "I guess I got there around 9:50 to 10 a.m.,
2 somewhere around there. I parked my car in near the
3 store".

4 "How long were you inside the library?"

5 "I was there for 15 or 20 minutes."

6 "What were you doing?"

7 "I was down there looking at ALECK", an
8 abbreviation he provided me with, "which is a job
9 search program on the computer."

10 I said, "What happened when you left the
11 library?"

12 "I got in my car and I was pulling out of the
13 library getting ready to turn on the road when I
14 stopped at the stop sign. There was a white man
15 pointing a gun at me through my window. He told me
16 to get over. He walked around the car and got inside
17 the passenger's side front. When he got in, he
18 looked in my wallet and took \$743 from it. He told
19 me to drive and directed me to go down Atlas Road
20 almost to Bluff Road. He jumped out of the car and
21 ran off. I was on my way home when a police officer
22 pulled up behind me. He put on his blue lights and I
23 panicked. I kept driving into Bluff Estates. They
24 chased me a little bit. I jumped out of the car and
25 started running. I took the yellow jacket, money and

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1 ran. I threw the money and the jacket when the
2 deputies caught me."

3 "Describe the white man?"

4 "He was about six-two, six-three, short red hair
5 and green eyes. He had a semi red beard, close to
6 his face. He was wearing a white t-shirt, sneakers,
7 khakis or sweats. I am not certain. The gun was a
8 black semi auto."

9 "What did the man have with him when he got in
10 your car?"

11 "He had a silver or gray bag."

12 I asked, "Were you at the Family Dollar Store on
13 Garners Ferry Road today at any time?"

14 "No. I have never been there."

15 "Did you rob the Family Dollar Store on Garners
16 Ferry Road today?"

17 "No, sir."

18 I asked, "Do you have anything else to add to
19 your statement?"

20 He said, "No."

21 I ended the statement on November the 9th, 2006
22 at 12:31 hours.

23 Q When he explained to you that he was at his sister's
24 house on Britton Drive and he provided you with her
25 name, Janice Edwards or Andrews --

1 A Andrews.

2 Q -- did you obtain a phone number for Ms. Andrews?

3 A Yes. I got two phone numbers from him and attempted
4 to make calls to them to verify the story.

5 Q And describe for the jury your efforts to reach
6 Janice Andrews?

7 A I called several times that day. There wasn't an
8 opportunity to leave a message. All I could do was
9 to try keep calling to see if I could verify the
10 story. And at no time did I ever speak with Ms.
11 Andrews.

12 Q And what numbers did he provide for Ms. Janice
13 Andrews? Or what phone number?

14 A 695-3277.

15 MR. COOPER: Objection, Your Honor. It isn't
16 relevant for those numbers to be testified to.

17 THE COURT: It may be. I don't know.

18 MS. SHIPLEY: It's --

19 THE COURT: Overruled.

20 MS. SHIPLEY: Thank you, Your Honor.

21 Q And what phone number did he provide for his mother,
22 Janie Portee?

23 A 353-0335.

24 Q Describe for the jury why it was that you tried to
25 reach them right away?

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1 **A** Obviously I needed to talk to them before anyone else
2 talks to them.

3 **Q** And "anyone else" meaning who?

4 **A** Mr. Portee. In an attempt to verify his story
5 without any outside influence.

6 **Q** Were you able to reach either one?

7 **A** No. Not immediately. And I tried several times to
8 call them, you know, a few minutes inbetween.

9 **Q** Now, after this all happened, did you actually have
10 conversations with his mother, Janie Portee?

11 **A** I spoke with Ms. Portee numerous times.

12 **Q** And what was the gist of the -- were you able to
13 confirm --

14 **MR. COOPER:** Objection. It calls for hearsay.

15 **THE COURT:** Phrase your question that doesn't
16 call for a hearsay answer.

17 **Q** Okay. Were you able to confirm whether or not Mr.
18 Portee was with his mother at those times on November
19 9th, 2006?

20 **MR. COOPER:** The same objection, Your Honor.

21 **THE COURT:** I'll allow that.

22 **A** She would not talk to me about that.

23 **Q** What was her main concern?

24 **A** She wanted to --

25 **MR. COOPER:** Objection.

1 **THE COURT:** Sustained.

2 **A** She wanted to --

3 **Q** No. He sustained his objection. Don't answer.

4 **A** Oh. I'm sorry.

5 **Q** The vehicle that was -- the white car that was
6 crashed into the fence, who was that registered to?

7 **A** Ms. Portee.

8 **Q** The mother?

9 **A** Yes. Janie.

10 **Q** And have you ever returned that vehicle?

11 **A** That vehicle is in our impound lot.

12 **Q** Now, I'm going to show you a document and ask you if
13 you can recognize it?

14 **A** Yeah. This is an aerial map of Richland County;
15 specifically the lower part near Garners Ferry Road.

16 **Q** And does it -- what streets are relevant in that map?

17 **A** Britton Drive is the address that Mr. Portee told me
18 he lived at. He told me lived on Britton Drive. And
19 you can also see the Family Dollar Store building on
20 Garners Ferry Road in the same photograph.

21 **Q** Okay. And, in fact, the Britton Drive, is that where
22 he told you his sister, Janice Andrews, resided?

23 **A** Yes, I believe so.

24 **MR. COOPER:** Objection. Leading.

25 **Q** Where do his sister and Ms. Andrews reside?

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1 **A** On Britton Drive.

2 **Q** Does this accurately depict the area in Richland
3 County?

4 **A** It does.

5 (WHEREUPON, State's Exhibit No. 69 is marked for
6 identification.)

7 **MS. SHIPLEY:** Your Honor, the State seeks to
8 introduce Exhibit 69 in evidence.

9 **MR. COOPER:** No objection.

10 **THE COURT:** Without objection.

11 (WHEREUPON, State's Exhibit No. 69 is admitted
12 into evidence.)

13 **MS. SHIPLEY:** Your Honor, may the investigator
14 get down from the stand?

15 **THE COURT:** Certainly.

16 **MS. SHIPLEY:** Thank you.

17 **Q** Please speak up so Ms. Williams can hear you. Show
18 the jury where Britton Drive is on that map?

19 **A** You can see Britton Drive here in yellow. It's
20 obviously adjacent to the interstate, 77. This is
21 Garners Ferry Road, and this building right here is
22 the Family Dollar Store. So it's in close proximity.

23 **Q** Okay. Thank you. Please have a seat. When he told
24 you he had gone to Richland County Public Library --
25 by the way, do you know where that is in relation to

1 the Family Dollar?

2 **A** Yes. It's very close. It's also on Garners Ferry
3 Road just around the corner.

4 **Q** What, if anything, did you instruct anyone to do
5 concerning the Richland County Public Library?

6 **A** Well, when you're trying to obtain video, which is . . .
7 what I wanted to do from the Public Library, you need
8 to go there as quickly as possible.

9 **Q** And why is that?

10 **A** Because sometimes it can be recorded over. You could
11 have, you know, extended periods that you'd have to
12 review because the dates and times aren't always
13 right on the video. So he told me he went to the
14 library. So I called down; I knew that Sergeant
15 Robinson was still in the area, and asked him to go
16 over to the library immediately and try to determine
17 whether or not they had a video camera system.

18 **Q** And were you able to confirm whether or not they did?

19 **A** They do not have one.

20 **Q** Now, when he indicated to you -- again, what time did
21 he say he was -- that he got to the Richland County
22 Public Library?

23 **MR. COOPER:** Objection. Cumulative.

24 **THE COURT:** Overruled.

25 **A** Around 9:50 to 10 a.m.