

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
The Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No: 2020-001361

OSHAUN J. ROBINSON,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

TRICIA A. BLANCHETTE
Post Office Box 2147
Leesville, South Carolina 29070
(803) 908-3266

ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Sr. Assistant Deputy Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR PETITIONER

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
3) 2008-GS-23-5381-84
4) 2008-GS-23-5527-30
5)

6 State of South Carolina) TRANSCRIPT OF RECORD
7)
8)

9 -vs-
10)
11)

12 Oshaun Robinson &
13 Kenneth Workman
14 -----
15)

16 December 1 & 2, 2008
17 Greenville, South Carolina

18 B E F O R E:

19 THE HONORABLE VICTOR C. PYLE, Judge.

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

21 LUCAS MARCHANT, Esquire
22 Assistant Solicitor
23 Attorney for the Plaintiff

24 ANDREW MOOREMAN, Esquire
25 Attorney for Defendant Robinson

SCOTT ROBINSON, Esquire
Attorney for Defendant Workman

CAROLINE HISKELL
Circuit Court Reporter

(DUE TO TECHNICAL DIFFICULTIES, PORTIONS OF THIS
TRANSCRIPT CAN NOT BE PRODUCED.)

I N D E X

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P R O C E E D I N G S

THE COURT: Ladies and gentleman, if I could have your attention. At this time we will select a jury and the cases of the State against Oshaun Joseph Robinson and Kenneth Workman.

Mr. Robinson, would you stand up momentarily and face the jury panel; and Mr. Workman, would you do the same, stand up and face the jury panel.

(Mr. Robinson and Mr. Workman stand.)

Thank you. You can be seated.

These defendants are each charged in four separate indictments. The first indictment alleges that on or about December 10, 2007, while armed with a deadly weapon, they robbed Sergio Espinoza.

This indictment further alleges that on that same date, while in the commission of armed robbery, they possessed or visibly displayed what appeared to be a handgun.

The next indictment alleges that on that same date, they each unlawfully carried a pistol.

The next indictment alleges that on that same date, they unlawfully combined and conspired with Timothy Lee Wright to committed armed robbery.

The last indictment alleges that these two defendants committed an assault and battery of a high and

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1 aggravated nature on Sergio Espinoza. The aggravating
2 circumstances is alleged to be the use of a deadly weapon
3 and/or the infliction of serious bodily harm.

4 Now, potential witnesses in this case will be
5 Deputy Mendenhall and Detective David Weiner of the
6 Greenville County Sheriff's Office, Craig Hanning with
7 SLED, Sergio Espinoza, Timothy Wright, Lori R. Van
8 Wallendael, Judy Hudson, Jarvis McCombs, Scotian Cummings
9 and Isiah Graves.

10 I would inquire at this time if any member of
11 the jury panel is related by blood, marriage or connected
12 by employment to either defendant or to any potential
13 witness in the case?

14 (No response from the jury panel.)

15 Are you sensible or aware of any bias or any
16 prejudice with respect to either defendant or to the State
17 or to the subject matter of the case, that being these
18 various indictments that I called or, or do you know of
19 any reason that you could not give these defendants and
20 the State a fair and impartial trial based on the lone
21 evidence to be submitted? If so, would you please stand
22 and give me your name.

23 (No response from jury panel.)

24 Do I have any member of the panel or any
25 member of your family who has been a victim of a violent

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1 crime, if so, would you please stand and give me your
2 name.

3 (Juror Number 157 stands.)

4 Give us your name, ma'am.

5 MS. RHODEMAN: Glenda Rhodeman.

6 THE COURT: Ms. Rhodeman.

7 MS. RHODEMAN: My brother was killed.

8 THE COURT: Would that in any way interfere
9 with your ability to be a fair and impartial juror on this
10 case?

11 MS. RHODEMAN: No.

12 THE COURT: Thank you, ma'am.

13 Now, do I have any member of the panel who
14 has any connection, family, business, social or otherwise
15 with Bob Airial, our solicitor, or any member of his staff
16 including Lucas Marchant, who is the assistant solicitor
17 handling this case, or with law enforcement, whether that
18 be federal, state, county or municipal?

19 (Juror Number 66 stands.)

20 And your name, sir?

21 MR. FRANKLIN: Bobby Franklin.

22 THE COURT: All right, sir.

23 MR. FRANKLIN: I am socially acquainted with
24 Ms. Wendy at the Solicitor's Office.

25 THE COURT: Now, would that fact in any way

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1 interfere with your ability to be a fair and impartial
2 juror in this case?

3 MR. FRANKLIN: No, sir.

4 THE COURT: Thank you, sir. You're qualified
5 so far.

6 (Juror Number 171 stands.)

7 Your name, sir.

8 MR. SEARS: Charles Sears.

9 THE COURT: Yes, sir.

10 MR. SEARS: My brother-in-law is in the
11 highway patrol.

12 THE COURT: Would that fact in any way
13 interfere with your ability to be a fair and impartial
14 juror on this case?

15 MR. SEARS: No, sir.

16 THE COURT: Andrew Mooreman represents
17 Mr. Robinson, Scott Robinson represents Mr. Workman. Do I
18 have any clients now or formally of either of these
19 attorneys, if so, please give me your names.

20 (No response from jury panel.)

21 All right, counsel, have I overlooked
22 anything?

23 MR. MARCHANT: No, Your Honor.

24 MR. MOOREMAN: No, Your Honor.

25 MR. ROBINSON: Nothing from Defendant

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1 Workman.

2 THE COURT: The strikes are 10 for the State
3 and 10 for each defendant.

4 Ladies and gentleman, when your name is
5 called, I'll ask you to please come forward to this podium
6 up front, turn around, face counsel and await further
7 instructions. Thank you.

8 THE CLERK: No. 99, Robert Hubbard.

9 (Juror No. 99, Robert Hubbard, white male,
10 comes to front.)

11 What says the State?

12 MR. MARCHANT: Please present the juror.

13 THE CLERK: What says Defendant Robinson?

14 MR. MOOREMAN: Please swear the juror.

15 THE CLERK: What says Defendant Workman?

16 MR. ROBINSON: Please swear the juror.

17 THE CLERK: You may have a seat in the jury
18 box.

19 MR. MARCHANT: Your Honor, if it pleases the
20 Court, the State is comfortable if the the jurors want to
21 stand where they are.

22 THE COURT: No. Bring them up.

23 MR. MARCHANT: Thank you, Your Honor.

24 THE CLERK: No. 47, Jerry Dean.

(25 (Juror 47, Jerry Dean, white male, comes to

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1 front.)

2 What says the State?

3 MR. MARCHANT: Please present the juror.

4 THE CLERK: What says Defendant Robinson?

5 MR. MOOREMAN: Please swear the juror.

6 THE CLERK: What says Defendant Workman?

7 MR. ROBINSON: Please swear the juror.

8 THE CLERK: You may have a seat in the jury
9 box.

10 Juror No. 192, Michael Turner.

11 (Juror 192, Michael Turner, white male, came
12 forward.)

13 What says the State?

14 MR. MARCHANT: Please present the juror.

15 THE CLERK: What says Defendant Robinson?

16 MR. MOOREMAN: Please excuses this juror from
17 this case.

18 THE CLERK: You may be seated. You're
19 excused from this case.

20 Juror 94, Anna Hogan.

21 (Juror 94, Anna Hogan, white female, came
22 forward.)

23 What says the State?

24 MR. MARCHANT: Please present the juror.

25 THE CLERK: What says Defendant Robinson?

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1 MR. MOOREMAN: Please excuse this juror from
2 the trial of this case?

3 THE CLERK: You may be seated. You're
4 excused from this case.

5 Juror 54, April Ellison.

6 (Juror 54, April Ellison, white female, came
7 forward.)

8 What says the State?

9 MR. MARCHANT: Please present the juror.

10 THE CLERK: What says Defendant Robinson?

11 MR. MOOREMAN: Please swear the juror.

12 THE CLERK: What says Defendant Workman?

13 MR. ROBINSON: Please swear the juror.

14 THE CLERK: You may have a seat in the jury
15 box.

16 150, Damon Paden.

17 (Juror 150, Damon Paden, black male, came
18 forward.)

19 What says the State?

20 MR. MARCHANT: Please present the juror.

21 THE CLERK: What says Defendant Robinson?

22 MR. MOOREMAN: Please swear the juror.

23 THE CLERK: What says Defendant Workman?

24 MR. ROBINSON: Please swear the juror.

25 THE CLERK: You may have a seat in the jury

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1 box.

2 172, Margaret Seidl.

3 (Juror 172, Margaret Seidl, white female,
4 came forward.)

5 What says the State?

6 MR. MARCHANT: Please present the juror.

7 THE CLERK: What says Defendant Robinson?

8 MR. MOOREMAN: Please swear the juror.

9 THE CLERK: What says Defendant Workman?

10 MR. ROBINSON: Please swear the juror.

11 THE CLERK: You may have a seat in the jury

12 box.

13 157, Glenda Rhodeman.

14 (Juror 157, Glenda Rhodeman, black female,
15 came forward.)

16 What says the State?

17 MR. MARCHANT: Please present the juror.

18 THE CLERK: What says Defendant Robinson?

19 MR. MOOREMAN: Please excuse this juror from
20 the trial of this case.

21 THE CLERK: Your excused from this case.

22 202, Emily Webb.

23 (Juror 202, Emily Webb, black female, came
24 forward.)

25 What says the State?

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1 MR. MARCHANT: Please present the juror.

2 THE CLERK: What says Defendant Robinson?

3 MR. MOOREMAN: Please swear the juror.

4 THE CLERK: What says Defendant Workman?

5 MR. ROBINSON: Please swear the juror.

6 THE CLERK: You may have a seat in the jury
7 box.

8 THE COURT: Ms. Webb, take that first seat
9 and serve as foreperson on this case for me, ma'am.

10 THE CLERK: No. 201, Teresa Watts.

11 (Juror 201, Teresa Whatts, white female,
12 came forward.)

13 What says the State?

14 MR. MARCHANT: Please excuse the juror from
15 the trial of this case.

16 THE CLERK: You're excused from this case.
17 173, Larry Seyller.

18 (Juror 173, Larry Seller, white male, came
19 forward.)

20 What says the State?

21 MR. MARCHANT: Please present the juror.

22 THE CLERK: What says Defendant Robinson?

23 MR. MOOREMAN: Please swear the juror.

24 THE CLERK: What says Defendant Workman?

(25 MR. ROBINSON: Please swear the juror.

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1 THE CLERK: You may have a seat in the jury
2 box.

3 156, Maggie Reid.

4 (Juror 156, Maggie Reid, black female, came
5 forward.)

6 What says the State?

7 MR. MARCHANT: Please excuse the juror from
8 this trial.

9 THE CLERK: Your excused from this case.

10 148, Brandy Odom.

11 (Juror 148, Brandy Odom, white female, came
12 forward.)

13 What says the State?

14 MR. MARCHANT: Please present the juror.

15 THE CLERK: What says Defendant Robinson?

16 MR. MOOREMAN: Please excuse this juror from
17 the trial of this case.

18 THE CLERK: You're excused from this case.

19 3, Michael Alford.

20 (Juror 3, Michael Alford, white male, came
21 forward.)

22 What says the State?

23 MR. MARCHANT: Please excuse the juror from
24 the trial of this case.

25 THE CLERK: You're excused from this case.

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1 19, Joseph Boch.

2 (Juror 19, Joseph Boch, white male, came
3 forward.)

4 What says the State?

5 MR. MARCHANT: Please present the juror.

6 THE CLERK: What says Defendant Robinson?

7 MR. MOOREMAN: Please swear the juror.

8 THE CLERK: What says Defendant Workman?

9 MR. ROBINSON: Please swear the juror.

10 THE CLERK: You may have a seat in the jury
11 box.

12 171, Charles Sears.

13 (Juror 171, Charles Sears, white male, came
14 forward.)

15 What says the State?

16 MR. MARCHANT: Please present the juror.

17 THE CLERK: What says Defendant Robinson?

18 MR. MOOREMAN: Please excuse this juror from
19 the trial of this case.

20 THE CLERK: You're excused from this case.

21 151, Susan Palmer.

22 (Juror 151, Susan Palmer, white female, came
23 forward.)

24 What says the State?

25 MR. MARCHANT: Please present the juror.

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1 THE CLERK: What says Defendant Robinson?
2 MR. MOOREMAN: Please swear the juror.
3 THE CLERK: What says Defendant Workman?
4 MR. ROBINSON: Please swear the juror.
5 THE CLERK: You may have a seat in the jury
6 box.
7 175, Bonnie Shephard.
8 (Juror 175, Bonnie Shepherd, white female,
9 came forward.)
10 What says the State?
11 MR. MARCHANT: Please present the juror.
12 THE CLERK: What says Defendant Robinson?
13 MR. MOOREMAN: Please excuse this juror from
14 the trial of this case.
15 THE CLERK: You're excused from this case.
16 91, Donna Hill.
17 (Juror 91, Donna Hill, white female, came
18 forward.)
19 What says the State?
20 MR. MARCHANT: Please present the juror.
21 THE CLERK: What says Defendant Robinson?
22 MR. MOOREMAN: Please swear the juror.
23 THE CLERK: What says Defendant Workman?
24 MR. ROBINSON: Please swear the juror.
25 THE CLERK: You may have a seat in the jury

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1 box.

2 18, Jenny Boatright.

3 (Juror 18, Jenny Boatright, white female,
4 came forward.)

5 What says the State?

6 MR. MARCHANT: Please present the juror.

7 THE CLERK: What says Defendant Robinson?

8 MR. MOOREMAN: Please excuse this juror from
9 the trial of this case.

10 THE CLERK: You're excused from this case.

11 210, Elaine Wilson.

12 (Juror 210, Elaine Wilson, white female,
13 came forward.)

14 What says the State?

15 MR. MARCHANT: Please present the juror.

16 THE CLERK: What says Defendant Robinson?

17 MR. MOOREMAN: Please excuse this juror from
18 the trial of this case.

19 THE CLERK: You're excused from this case.

20 123, Jason Lindsey.

21 (Juror 123, Jason Lindsey, white male, came
22 forward.)

23 What says the State?

24 MR. MARCHANT: Please excuse this juror from
25 the trial of this case.

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1 THE CLERK: You're excused from this case.
2 158, Kenneth Richardson.

3 (Juror 158, Kenneth Richardson, white male,
4 came forward.)

5 What says the State?

6 MR. MARCHANT: Please present the juror.

7 THE CLERK: What says Defendant Robinson?

8 MR. MOOREMAN: Please excuse this juror from
9 the trial of this case.

10 THE CLERK: You're excused from this case.
11 146, Patricia Norton.

12 (Juror 146, Patricia Norton, white female,
13 came forward.)

14 What says the State?

15 MR. MARCHANT: Please present the juror.

16 THE CLERK: What says Defendant Robinson?

17 MR. MOOREMAN: Please excuse this juror from
18 the trial of this case.

19 THE CLERK: You're excused from this case.
20 87, Robin Heitman.

21 (Juror 18, Robin Heitman, white female, came
22 forward.)

23 What says the State?

24 MR. MARCHANT: Please present the juror.

25 THE CLERK: What says Defendant Robinson?

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1 MR. MOOREMAN: Please swear the juror.
2 THE CLERK: What says Defendant Workman?
3 MR. ROBINSON: Please excuse this juror.
4 THE CLERK: You're excused from this case.
5 155, Kay Reid.
6 (Juror 18, Kay Reid, white female, came
7 forward.)
8 What says the State?
9 MR. MARCHANT: Please present the juror.
10 THE CLERK: What says Defendant Robinson?
11 MR. MOOREMAN: Please swear the juror.
12 THE CLERK: What says Defendant Workman?
13 MR. ROBINSON: Please excuse this juror.
14 THE CLERK: You're excused from this case.
15 90, Bonnie Hill.
16 (Juror 18, Bonnie Hill, white female, came
17 forward.)
18 What says the State?
19 MR. MARCHANT: Please present the juror.
20 THE CLERK: What says Defendant Robinson?
21 MR. MOOREMAN: Please swear the juror.
22 THE CLERK: What says Defendant Workman?
23 MR. ROBINSON: Please excuse this juror.
24 THE CLERK: You're excused from this case.
25 74, Christopher Greathouse.

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(1 (Juror 74, Christopher Greathouse, white
2 male, came forward.)

3 What says the State?

4 MR. MARCHANT: Please present the juror.

5 THE CLERK: What says Defendant Robinson?

6 MR. MOOREMAN: Please swear the juror.

7 THE CLERK: What says Defendant Workman?

8 MR. ROBINSON: Please excuse this juror.

9 THE CLERK: You're excused from this case.

10 71, Lee Roy Giles.

11 (Juror 71, Lee Roy Giles, black male, came
12 forward.)

(13 What says the State?

14 MR. MARCHANT: Please excuse the juror from
15 the trial of this case.

16 THE CLERK: Your excused from this case.

17 59, Jane Farry.

18 (Juror 59, Jane Farry, white female, came
19 forward.)

20 MR. MARCHANT: Please present this juror.

21 THE CLERK: What says Defendant Robinson?

22 MR. MOOREMAN: Please swear the juror.

23 THE CLERK: What says Defendant Workman?

24 MR. ROBINSON: Please excuse this juror.

(25 THE CLERK: You're excused from this case.

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1 100, Brent Hunter.

2 (Juror 100, Brent Hunter, black male, came
3 forward.)

4 What says the State?

5 MR. MARCHANT: Please excuse this juror from
6 the trial of this case.

7 THE CLERK: You're excused from this case.

8 184, Esther Taylor.

9 (Juror 184, Esther Taylor, black female came
10 forward.

11 What says the State?

12 MR. MARCHANT: Please present the juror.

13 THE CLERK: What says Defendant Robinson?

14 MR. MOOREMAN: Please present the juror.

15 THE CLERK: What says Defendan Workman?

16 MR. ROBINSON: Please present the juror.

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

19 118, Maria Lalas.

20 (Juror 118, Maria Lalas, white female, came
21 forward.)

22 What says the State?

23 MR. MARCHANT: Please present the juror.

24 THE CLERK: What says Defendant Robinson?

25 MR. MOOREMAN: Please present the juror.

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1 THE CLERK: What says Defendant Workman?

2 MR. ROBINSON: Please excuse this juror.

3 THE CLERK: You're excused from this case.

4 9, Olga Bannister.

5 (Juror 9, Olga Bannister, white female, came
6 forward.)

7 What says the State?

8 MR. MARCHANT: Please present the juror.

9 THE CLERK: What says Defendant Robinson?

10 MR. MOOREMAN: Please present the juror.

11 THE CLERK: What says Defendant Workman?

12 MR. ROBINSON: Please excuse this juror.

13 THE CLERK: You're excused from this case.

14 143, Sara Moore.

15 (Juror 143, Sara Moore, white female, came
16 forward.)

17 What says the State?

18 MR. MARCHANT: Please present the jury.

19 THE CLERK: What says Defendant Robinson?

20 MR. MOOREMAN: Please present the juror.

21 THE CLERK: What says Defendant Workman?

22 MR. ROBINSON: Please excuse the juror.

23 THE CLERK: You're excused from this case.

24 8, Kenneth Ball.

25 (Juror 8, Kenneth Ball, white male, came

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1 forward.)

2 What says the State?

3 MR. MARCHANT: Please present the jury.

4 THE CLERK: What says Defendant Robinson?

5 MR. MOOREMAN: Please excuse this juror from
6 the trial of this case.

7 THE CLERK: You're excused from this case.

8 180, Brandi Steinmeyer.

9 (Juror 180, Brandi Steinmeyer, white female,
10 came forward.)

11 THE CLERK: What says the State?

12 MR. MARCHANT: Please swear the juror.

13 THE CLERK: What says Defendant Robinson?

14 MR. MOOREMAN: Please swear the juror.

15 THE CLERK: What says Defendant Workman?

16 MR. ROBINSON: Please swear the juror.

17 THE CLERK: You may have a seat in the jury
18 box.

19 THE COURT: One alternate.

20 THE CLERK: No. 10, Lorraine Barksdale.

21 What says the State?

22 MR. MARCHANT: Please swear the juror.

23 THE CLERK: What says Defendant Robinson?

24 MR. MOOREMAN: Please swear the juror.

25 THE CLERK: What says Defendant Workman?

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1 MR. ROBINSON: Please swear the juror.

2 THE CLERK: You may have a seat in the jury
3 box.

4 THE COURT: Okay. Please swear this jury,
5 please.

6 THE CLERK: Would you please raise your right
7 hand and the appropriate response is "I will."

8 (Whereupon, the jury in the case of the State
9 versus Kenneth Workman and Oshaun Robinson was sworn.)

10 Thank you. You may be seated.

11 THE COURT: Ladies and gentleman, there are
12 some pre-trial matters that I need to take up before we
13 start this case. Those matters do not involve you as a
14 juror so what I'm going to do so far as you're concerned,
15 I'm going to let you go to lunch and we'll pick back up
16 after lunch with the testimony in this case.

17 Now, you don't know any more about this case
18 other than what I briefly told you earlier this morning,
19 but I need to instruct you that from this point on you
20 don't talk about this case. You do not discuss the facts
21 of this case until you have heard all of the testimony to
22 be presented, the arguments by the attorneys, and my
23 charge on the law.

24 Now, during the recess, I'll ask that you
25 keep your badges on. I'll ask that you do that so

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1 everyone involved with this case will know that you are a
2 juror on this case and it would be highly improper for
3 them to discuss or talk about this case in your presence.
4 So please keep your badges on during the lunch recess.

5 I'll ask that Paul will show you where you
6 will be during the course of this trial and I'll ask that
7 you report to that jury room at 2:00 p.m. Thank you very
8 much. Just follow Paul.

9 (Whereupon, there was a jury lunch break at
10 12:00 p.m.)

11 Gentleman, what's the first matter we need to
12 take up?

13 THE COURT: We're going to take a quick
14 break. One of the defendants needs to use the restroom.

15 (Whereupon, there was a brief break.)

16 What are your motions?

17 MR. MOOREMAN: I have a couple of different
18 motions. The first is exclude any evidence of any other
19 arguable bad acts. My client, Mr. Workman, and the
20 testifying co-defendant, Timothy Wright have been charged
21 with a number of different armed robberies, a number of
22 different crimes. My first motion would be to exclude any
23 evidence of any other armed robberies that my client has
24 been charged with.

25 MR. MARCHANT: The State doesn't intend to

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1 introduce any of those unless the door is opened. I have
2 spoken to Mr. Wright and instructed him that he is to
3 speak of this incident and this incident only concerning
4 the other two defendants' involvement. Mr. Wright has
5 pled guilty to a subsequent armed robbery that we'll ask
6 him about his involvement.

7 THE COURT: So that satisfies that.

8 MR. MOOREMAN: The second motion is, I talked
9 to Mr. Marchant about this morning, specifically about the
10 plea agreement and the arrangement that the State has
11 struck with Mr. Wright for his testimony. My
12 understanding is that he has pled to this set of charges
13 and a subsequent set of charges. It is also my
14 understanding that he has multiple charges that are still
15 pending against him.

16 First, my intent, if Mr. Wright were to
17 testify would be to talk specifically about the fact that
18 he has charges pending and has pled to this charge and the
19 sentence that he got related to this charge. I think
20 that's highly probative of his credibility. I would also
21 like to add that all of the charges that Your Honor read,
22 I intend with Mr. Wright during his cross-examination to
23 discuss with him how much time he was looking at and how
24 much time he got as a result of the State's deal.

25 THE COURT: What's your position on that,

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1 Mr. Marchant?

2 MR. MARCHANT: Your Honor, I don't have any
3 problem with him discussing with Mr. Wright what he has
4 pled to. The one issue I do have is with respect to the
5 amount of time he's got. He is serving a substantial
6 sentence of 20 years that he pled guilty to. My concern
7 is that the jury will draw some inference from the
8 sentence he had received as to the potential sentence that
9 these other two defendants may get, and therefore, that
10 may factor into their determination of whether or not
11 these gentleman are not guilty of this particular offense.

12 MR. MOORE: A couple responses to that, Your
13 Honor. First, if Your Honor does have a concern about
14 that, you're free to give an instruction as to how to
15 consider that. Second, I think it's extremely important
16 for this jury to know what Mr. Wright could have gotten
17 and what he got because of the fact that a person's
18 exposure is much greater for charges as a much stronger
19 motive to be dishonest when he comes to testify. If he
20 had been charged with traffic ticket, his motive to lie
21 may not be as much, but he's looking at 60, 70, 80 years
22 potentially. He gets a 20 year deal to plead guilty, he
23 saves himself potentially a life sentence by coming in and
24 testifying. I think that's highly motive to come in here
25 and testify.

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1 THE COURT: I'm not going to allow any
2 testimony concerning sentence. You can cross-examine
3 otherwise, but not on the time that he got.

4 MR. MOOREMAN: Does Mr. Marchant have his
5 prior criminal history?

6 MR. MARCHANT: I can certainly get his prior
7 record, Your Honor, but he pled to this offense with the
8 charges you have before you and a subsequent offense which
9 are essentially identical except one of them was an ABWIK
10 as opposed --

11 THE COURT: But he does have a prior record?

12 MR. MARCHANT: Yes, sir. His priors are this
13 offense and one after this offense, but has nothing prior.

14 MR. MOOREMAN: I'll accept that.

15 THE COURT: All right.

16 MR. MOOREMAN: I don't know if the State
17 intends to have a Jackson v Denno hearing. My client did
18 give a statement about a different set of facts.

19 MR. MARCHANT: No, Your Honor, we're not
20 going to go into that.

21 THE COURT: All right.

22 MR. MOOREMAN: Also, related to Mr. Wright's
23 statement. In the statement he talks about multiple
24 different offenses. I understand he's not going to go
25 into any of that. He does talk about, though, this

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1 offense specifically and in this offense, he talks about
2 -- he makes a couple of statements and references that
3 would lead the jury to believe that there were other
4 crimes that these individuals had committed. For example,
5 in the paragraph in his statement where he talks about
6 this offense, he says, "The next one was when," and then
7 he starts talking about the offense.

8 The third the last sentence at the bottom, he
9 say, "Oshaun said give it up and punched the Mexican.
10 Kenneth and Oshaun had the guns this time." So
11 specifically I would ---

12 THE COURT: This is the statement of your
13 client?

14 MR. MOOREMAN: This is the testifying
15 co-defendant. I just bring it to the Court's attention
16 because -- I would just put the Court on notice because
17 even though he's talking about this ---

18 THE COURT: Mr. Marchant has already told me
19 that's all he's going to talk about.

20 MR. MARCHANT: I see what Mr. Marchant is
21 referencing. I have instructed him on numerous occasions
22 that we are to talk about this incident and this incident
23 only on any line of questioning I may ask.

24 MR. MOOREMAN: And, finally, Your Honor, I
25 have a motion to prohibit the victim from making any

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1 in-court identification of my client, Mr. Robinson.
2 Specifically, it's based on a 403 objection. A little
3 factual background, Your Honor, in this case, the
4 testifying co-defendant, Mr. Wright, had been arrested,
5 served with warrants. He made a statement to the police
6 on, I believe, December 27th. Let me back up.

7 When the incident occurred, the victim had
8 given a oral statement to the police talking about giving
9 a description of the assailants who did this to him; never
10 showed a photo line-up, never identified any person in
11 particular, just gave a description. About two to
12 two-and-a-half weeks after this, the co-defendant,
13 Mr. Wright, gave a statement and in that statement he
14 implicated my client and Mr. Workman.

15 After he gives the statement, there's a news
16 broadcast that shows my client's face and Mr. Workman's
17 face. After the news broadcast, the victim calls
18 Investigator Hanning and says I watched this news
19 broadcast and now have had an excellent look at these
20 individuals who did this to me and they are Oshaun
21 Robinson and Kenneth Workman. Again, never shown any
22 pre-trial photo line-up, any out-of-court identification
23 procedure prior to seeing that news broadcast.

24 It would be our position that because the
25 victim's identification is based on the news broadcast,

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1 there is a danger for unfair prejudice related to this
2 identification because of the fact the identification that
3 was used, if any, was totally unreliable and extremely
4 prejudicial. So I would ask that he not be allowed to
5 make an in-court identification of Mr. Oshaun Robinson.

6 MR. MARCHANT: Of course, the State would say
7 that it is not prejudicial based on two cases: State
8 versus Gradon (ph), 361 S.E. 2nd, 329, and the State v
9 Tisdale, 527 S.E. 2nd, 389, both of which reference back
10 to the photo array or line-up or identification of a
11 defendant that is made that is not through law enforcement
12 or State means. Mr. Espinoza was watching television
13 three to four days after these defendants were arrested.
14 He recognized two of them and immediately called Detective
15 Hanning and said Mr. Workman is the one that did "x", and
16 Mr. Robinson is the one who did "y". He had ample
17 opportunity to view them on the night in question and
18 there is going to be additional evidence from a
19 co-defendant that these two individuals were involved in
20 the incident.

21 So I would ask that you respectfully deny his
22 motion.

23 MR. MOOREMAN: And, Your Honor, I've read the
24 Tisdale. I haven't read the other case, but the Tisdale
25 case talks about the descriptive rule because there was

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1 no state action. This is not a due process basis that I'm
2 objecting to; I am objecting to it based on a 403
3 objection.

4 THE COURT: I understand. I'm going to deny
5 your motion. I think the objection goes to weight and not
6 admissibility.

7 MR. MOOREMAN: Yes, sir.

8 THE COURT: So that will be allowed. I'm
9 going to charge identification. I've got a standard
10 charge that I give on identification.

11 Mr. Robinson.

12 THE COURT: Your Honor, I have a more of a
13 due process objection. I've read the Tisdale case that
14 they're talking about and they do talk about in there a
15 situation in there that kind of exemplifies what we have
16 here. This is not your average situation because contrary
17 to Mr. Marchant said, the victim in this case could not
18 identify anyone that night. The persons who did this
19 incident were wearing hoods. He couldn't identify these
20 people.

21 I never seen the broadcast that was done in
22 this case. That has not been provided to us, but in the
23 Tisdale case they do talk about a potential situation
24 where you have, although it's not a State action, it is
25 highly suggestible what they put in the news. But in this

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1 case there was 17 days that elapsed between the time this
2 incident happened and the time of this news broadcast on
3 December 27th. But before that time, there were no
4 corroborating witnesses in this case. The only person who
5 came forward is the individual, Mr. Wright, who was
6 arrested and gave a statement, extensively, to help
7 himself.

8 Your Honor, this case is directly in contract
9 to the Tisdale case and it kind of fits in with the
10 reasoning our court used in that case. While they looked
11 at other jurisdictions in the case, while they said it's
12 not a State action in Biggers analysis is not applicable;
13 however, the also talked about a situation which such as
14 the one we have in this case where it's so suggestive that
15 the due process rights are completely obviated for this
16 defendant.

17 I haven't looked at this video tape and I
18 would have an objection, too, as far as Motion In Limine
19 to use that in this case because we have an obligation to
20 be able to cross-examine this person who put this on the
21 news and where did they get this information from.

22 THE COURT: What are you planning to do,
23 Solicitor?

24 MR. MARCHANT: All I know about this video is
25 that there is one.

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1 THE COURT: You're not planning on using it?

2 MR. MARCHANT: No. I don't even know what
3 television station put that out there.

4 MR. ROBINSON: My issue with that, Your
5 Honor, is we haven't seen it and from my understanding as
6 to how these things get on the news ---

7 THE COURT: Mr. Robinson, I think that's an
8 issue for the jury and what weight they want to give to
9 the identification. I'm going to admit the identification
10 testimony and you can argue to the jury the
11 misidentification.

12 MR. ROBINSON: Thank you, Your Honor.

13 THE COURT: Anything else?

14 MR. MARCHANT: The only thing I have is just
15 for clarification purposes. Mr. Mooreman did provide me
16 with an alibi defense. He's the only one who had provided
17 me that. Mr. Robinson has his witness list but I've been
18 given no notice of alibi. I am to assume there is no
19 alibi.

20 THE COURT: Okay.

21 MR. ROBINSON: The last motion I have, Your
22 Honor, is the Motion In Limine in terms to limit the State
23 from producing any testimony regarding this newscast that
24 came forward in this case. I believe it is hearsay in
25 this matter.

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1 THE COURT: Tell me specifically.

2 MR. ROBINSON: What's going to come out in
3 evidence in this case is going to be Mr. Espinoza or an
4 officer talking about a newscast that came out at some
5 point on one of these news station that put forth a
6 picture of these individuals either arrested or something
7 of that nature. While I haven't seen it, I believe it's a
8 hearsay objection as far as a ---

9 THE COURT: Whose going to testify to that?

10 MR. MARCHANT: The victim is going to say he
11 was watching the news and he ---

12 THE COURT: That's how he identified them.

13 MR. MARCHANT: Yes, Your Honor.

14 THE COURT: Motion denied.

15 MR. MARCHANT: No, Your Honor.

16 MR. MOOREMAN: No, Your Honor.

17 MR. ROBINSON: Nothing further.

18 THE COURT: All right. I'll see you back
19 here at 2:00.

20 (Whereupon, there was a lunch break at
21 12:20 p.m.)

22 MR. MARCHANT: I'm sorry. I'd like to
23 address just one thing before we get started. With
24 respect to the victim that's going to be testifying, we're
25 going to go into what his occupation is. I would like to

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1 stay away from where he is employed. He is fearful of
2 maybe some possible retribution that may exists. I don't
3 have any problems with anybody going into what he does,
4 but we're going to stay away from where he is actually
5 employed.

6 MR. MOOREMAN: I won't touch that, Your
7 Honor.

8 THE COURT: Okay.

9 (Jury enters the courtroom.)

10 Brief opening statements. Solicitor.

11 OPENING STATEMENTS

12 MR. MARCHANT: May it please the Court,
13 Mr. Robinson, Mr. Mooreman.

14 Ladies and gentleman of the jury, my name is
15 Lucas Marchant. I am a solicitor in Greenville County.
16 It's my job today to deliver information to prove that
17 this man, Oshaun Robinson, and this man, Kenneth Workman
18 robbed Sergio Espinoza outside of his apartment
19 approximately at 2:00 a.m. on Monday, December 10, 2007.

20 The case actually boils down to this;
21 Mr. Espinoza was returning from getting some food at Taco
22 Bell. He was exiting his jeep when these two men, along
23 with a third, came up and put a gun in his face, took his
24 money, wallet, his identification and then one of the two
25 of them assaulted him prior to them running off.

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1 Mr. Espinoza, for lack of understanding, he
2 got in his vehicle and chased after these men in their
3 car. He got a description of their car. And as he was
4 driving after them and attempting to get their license
5 plate, one of them leaned out of the driver's side of the
6 vehicle and fired one shot.

7 At one point in time, he stopped, went back
8 into his apartment and called the police.

9 There was an investigation that occurred with
10 the detectives here with the Sheriff's Office that
11 eventually led to the arrest of three men, the two that
12 are sitting over there as well as Timothy Wright.

13 The testimony will show at the end of the day
14 that these two men are guilty of five things that the
15 Judge had read to you in the indictments.

16 The first is armed robbery. The second is
17 possession of a weapon during the commission of a violent
18 crime; the third is conspiracy; the fourth is assault and
19 battery of a high and aggravated nature, and the fifth is
20 unlawful carrying of a pistol. They all occurred at the
21 same time. It's not like we had different events that
22 precipitated these charges. These men are charged with
23 these offenses because they occurred at one time.

24 I'll ask you at the end of the day, if the
25 State has not proven that these men are guilty of these

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1 Court, Mr. Marchant. Ladies and gentleman, good
2 afternoon. Judge Pyle introduced me to you earlier and
3 I'll introduce myself again. My name is Andy Mooreman and
4 I represent Oshaun Robinson.

5 Ladies and gentleman, the State has talked to
6 you about what it perceives to be the evidence in this
7 case and what the evidence will show. It's sort of a
8 prediction as to what is to happen.

9 I'd like to talk to you about what the
10 evidence has shown thus far and that is zero, nothing. At
11 this point in time there is absolutely no evidence that
12 has been produced by the State either against my client,
13 Oshaun Robinson, or Mr. Kenneth Workman.

14 When they come to court, ladies and
15 gentleman, they come with what's called a presumption of
16 innocence. Now, that has a very important concept in our
17 law. It is important because it is one of the foundations
18 of our criminal justice system.

19 Let me explain to you or tell you what this
20 means. I'm standing in front of you and I'm making an
21 opening statement and you presume that I'm a lawyer
22 because I'm doing so. You haven't see any degrees or you
23 haven't seen any diplomas but by the fact that I am
24 standing here before you, you presume that I'm a lawyer.
25 The Judge is sitting on the bench. The fact that he's

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1 sitting on the bench and he has a robe on, you presume
2 that he is the judge.

3 In the same way under the law, you are to
4 presume that my client, Oshaun Robinson is innocent of the
5 charges that the State has brought against him. You must
6 presume that he's innocent. He remains innocent until or
7 unless the State satisfies you of his guilty beyond a
8 reasonable doubt. That's a very important concept.
9 Beyond a reasonable doubt is not beyond any doubt, but
10 it's as close as we get in the law.

11 Another way to say it, beyond a reasonable
12 doubt is evidence that leaves you firmly convinced of
13 Oshaun's guilty. That is what the State must do for you,
14 ladies and gentleman, to return a guilty verdict against
15 Oshaun Robinson, they must present you with evidence that
16 strips away the presumption of innocence and satisfies you
17 of his guilt on each and every element of each charge
18 beyond a reasonable doubt.

19 Now, ladies and gentleman, I stand here in
20 the same position you are. I don't know what the evidence
21 will show but at the close of the evidence, I will come
22 back and talk to you again.

23 THE COURT: Mr. Robinson.

24 MR. ROBINSON: If it please the Court.

25 Mr. Marchant.

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1 Ladies and gentleman, my name is Scott
2 Robinson and I represent Kenneth Workman.

3 I want to cover a couple of points. Y'all
4 may have, prior to this, heard about civil cases, car
5 accident, personal injuries and things of that nature, you
6 may have heard of those kinds of cases. The standard in
7 those cases is a little more towards the person and his
8 burden. In this case, we have a different kind of
9 standard and that is the standard of beyond a reasonable
10 doubt, civil versus criminal standard of beyond a
11 reasonable doubt.

12 It's kind of like comparing the urn or
13 whatever you want to call it, to something of this size, a
14 large piece of equipment versus that because one requires
15 a little bit more evidence to prove that person is guilty
16 and this requires the State to prove each and every
17 element of their case beyond a reasonable doubt to your
18 satisfaction.

19 So you basically have two different standards
20 here. We have a civil standard and a criminal standard.
21 We have a General Sessions Court and a Civil Court. When
22 you go back there and you think about this case, those are
23 the standards you have to use, beyond a reasonable doubt.
24 You don't have to like the person. You don't have to like
25 the way they are dressed, but you do have to follow the

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1 law, and that is the person that's accused of these crimes
2 are innocent. As Mr. Mooreman discussed, there's a
3 presumption there.

4 Before you came here today, you may have read
5 a newspaper, got on the Internet, looked at the news in
6 the area and so forth, whatever means that you see as far
7 as media that you look at things. You may have seen
8 something saying, well, they arrested somebody. They
9 arrested X,Y,Z, person or something, at that moment you
10 made a presumption about that case which probably most
11 people do. Yeah, they got the person. We presume that
12 person was guilty of whatever offense that was, but when
13 you took that oath a few moments ago, that presumption or
14 that inclination that you had in your mind is gone.

15 When you took the oath a few moments ago, you
16 took on a totally different standard in this case. You
17 are bound by the law to look at this case with the
18 presumption that the two persons over here are presumed
19 innocent and the State must prove each and every element
20 of their case beyond a reasonable doubt. That's the
21 window that you're going to be using when you look at this
22 case.

23 Being a juror is not easy, no question that
24 it's hard because it takes you away from your jobs and
25 things that you do. This is probably not the most

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1 enjoyable place in the world to be in, I'm sure it's not,
2 but in peace time, this is one of the greatest services
3 that citizens have in this country.

4 I ask you in this case to take your
5 obligation seriously, which I'm sure you will. Take your
6 obligation seriously and view this case in the light that
7 the State must prove each and every element of their case
8 beyond a reasonable doubt. If they haven't done that, it
9 doesn't matter if you don't like this person or the way
10 they look or something like that, they must be found not
11 guilty.

12 I ask you in this case on behalf of my
13 client, Mr. Workman, and Mr. Mooreman's client, to return
14 a verdict in this case of not guilty.

15 Thank you very much for your time.

16 THE COURT: Solicitor.

17 MR. MARCHANT: The State would call Deputy
18 Mendenhall.

19 THE CLERK: Place your left hand on the bible
20 and raise your right hand.

21 S. MENDENHALL, after having been duly sworn,
22 testified as follows:

23 THE CLERK: State your full name for the
24 record, please.

25 THE WITNESS: Deputy S. mendenhall.

DEPUTY MENDENHALL - DIRECT EXAMINATION

DIRECT EXAMINATION

BY MR. MARCHANT:

Q. Deputy Mendenhall, where are you employ?

A. Greenville County Sheriff's Office?

Q. What are your duties with the Sheriff's Office?

A. Patrol officer, work the roads, answer calls just like Mr. Espinoza's call.

Q. How long have you been doing this for the Sheriff's Office?

A. Just over a year-and-a-half.

Q. What did you do prior to becoming employed with the Sheriff's Office?

A. I was at college; citadel.

Q. Did you graduate?

A. Yes, sir.

Q. And in between the citadel and the Sheriff's Office, did you have any training before you had to start?

A. I went straight to Criminal Investigation Academy in Columbia.

Q. Please tell the jury what is included in the Academy as far as training?

A. Nine weeks of training. You go to your Laws and Legals, pretty much you learn the ropes of police work, day to day physical training. You go to training, learn the ropes. Once you graduate, you go straight to the

DEPUTY MENDENHALL - DIRECT EXAMINATION

1 road?

2 Q. Did you graduate?

3 A. Yes, sir.

4 Q. Back in December of last year, your duties were
5 the same as you just described as a patrol officer?

6 A. Yes.

7 Q. Do you recall whether or not you were working on
8 the evening of December 9, morning of December 10?

9 A. Yes, I was.

10 Q. Are you assigned to a particular area of town?

11 A. Yes, sir, I was assigned to that area.

12 Q. And when you say you were assigned to that area,
13 where are you referring to?

14 A. The west side of Greenville, right off of White
15 Horse Road area.

16 Q. Do you only respond or answer calls on the west
17 side of town?

18 A. Yes, sir.

19 Q. Would there be an occasion when something happens
20 on the east side and you're called over there?

21 A. It happens.

22 Q. On the night of the 9th, morning of the 10th, you
23 were working the west side of town?

24 A. Yes.

25 Q. Did you receive a call at some point in time to

DEPUTY MENDENHALL - DIRECT EXAMINATION

1 respond to Stratford Villa Apartments?

2 A. Yes, I did.

3 Q. And do you recall what time that call came
4 across?

5 A. It was about 1:55 in the morning.

6 Q. Do you recall where exactly you were patrolling
7 at the time that you received the call?

8 A. Yes, I was down the road at White Horse and West
9 Blue Ridge approximately a half mile to a mile away when I
10 received the call.

11 Q. How long did it take you to respond to the
12 location that was calling for assistance?

13 A. Merely a few minutes, five to seven at the most.

14 Q. Was there anyone riding with you or were you
15 training with an officer at that time?

16 A. Yes, sir, I had Master Deputy Phillips in the
17 passenger seat with me.

18 Q. Did any other officers or deputies respond to the
19 scene that night?

20 A. No, it was just me on the scene.

21 (Arial photo marked as State's Exhibit No. 1
22 for identification.)

23 BY MR. MARCHANT:

24 Q. I'm going to show you what's been marked as
25 State's Exhibit 1. Do you recognize this?

DEPUTY MENDENHALL - DIRECT EXAMINATION

1 A. Yes, I do.

2 Q. Please tell the Court how you recognize State's
3 No. 1?

4 A. I arrived the Stratford Villa Apartments where I
5 went to the building and met Mr. Espinoza.

6 Q. Is this a fair and accurate depiction overhead
7 shot of the apartment complex?

8 A. Very accurate.

9 MR. MARCHANT: I move State's 1 into
10 evidence.

11 MR. MOOREMAN: I have no objection.

12 MR. ROBINSON: No objection.

13 THE COURT: Without objection. It's in.

14 (Aerial map of apartment complex previous
15 marked as State's Exhibit No. 1 for identification was
16 admitted into evidence.)

17 BY MR. MARCHANT:

18 Q. If you would please, sir, if you would just step
19 down a moment.

20 (Witness complies.)

21 Would you please show the jury where you
22 responded to that morning?

23 THE COURT: Would you stand on the other side
24 and face the court reporter and the jury.

25 THE WITNESS: The night I arrived on the

DEPUTY MENDENHALL - DIRECT EXAMINATION

1 and face the court reporter and the jury.

2 THE WITNESS: The night I arrived on the
3 scene, I came through the top part right here
4 (indicating), came back by the pool area, and Building F
5 is in this area back here. I arrived and spoke with
6 Mr. Espinoza right over here by the pool, and
7 Mr. Espinoza's car was parked right here where I met him.

8 BY MR. MARCHANT:

9 Q. Okay. You can take your seat.

10 Now, what is the most significant or major
11 road that these apartments are off of beside from this
12 drive here?

13 A. It would be White Horse Road, Highway 25.

14 Q. And White Horse Road within Greenville County?

15 A. Yes.

16 Q. And is Stratford Villa Apartments within
17 Greenville County?

18 A. Yes.

19 Q. Now, once you arrived at the apartment complex,
20 who did you first make contact with?

21 A. Mr. Espinoza, the victim.

22 Q. Was there anyone else present beside
23 Mr. Espinoza?

24 A. Not that I recall.

25 Q. What information did you gather from him?

DEPUTY MENDENHALL - DIRECT EXAMINATION

1 questions about what happened. He stated he just go back
2 from grocery shopping. He pulled in and as he was sitting
3 in his vehicle, he seen a black male with a red hoodie
4 walk by. As he looked up, he looked kind of suspicious.
5 As he looked up, the black male with the red hoodie and
6 dark shorts came up over to him at that time is when he
7 seen the gun.

8 Q. Did he give you any other information about what
9 this male looked like?

10 A. He said he was a younger male, 18, 20 years old
11 wearing a red hoodie, dark colored shorts and red tennis
12 shoes, skinner build, a little bit taller, probably six
13 foot, kind of thin gotie.

14 Q. Did he give you any information about anyone else
15 who may have been present that night?

16 A. Yes. The second subject, as he was held at gun
17 point, came up from the back of the vehicle. He was
18 approximately 5' 8", between 160 and 180 pounds. As he
19 approached, he was wearing a white tee shirt and a white
20 shirt with dark colored pants, dark tennis shoes with
21 white socks.

22 Q. And you described earlier, you had to calm him
23 down. Please explain to the jury, in your opinion, his
24 emotional state at that time?

25 A. Normally, when you arrive on a scene and you see

DEPUTY MENDENHALL - DIRECT EXAMINATION

1 somebody that's been arm robbed. They're pretty
2 hysterical and kind of frightened. With his situation, he
3 actually went after them and he was shot at. His
4 adrenalin was pumping, you know, a little upset with the
5 fact that they stole his items. And also when he went
6 after them, they shot at him. After that, he didn't want
7 to chance it anymore. He left and came back and he was
8 still pretty worked up about it.

9 Q. Was he clearly able to communicate to you what
10 had occurred?

11 A. Yes, sir. After I spoke to him and told him
12 everything was going to be all right and calmed him down a
13 little bit, he gathered his thoughts and we started
14 talking about it.

15 Q. What, if anything, did you do with that
16 information that he provided to you?

17 A. At that time, after receiving information on the
18 vehicle and the suspects, I called over the radio what we
19 call a BOLO, "Be On The Lookout," the direction of travel,
20 what they looked like, where they were last scene and that
21 airs to all of our units.

22 Q. And do you recall what type of vehicle you put
23 this BOLO out for?

24 A. Dark colored Crown Vic, older model, maybe black
25 in color with two black male passengers with also a

DEPUTY MENDENHALL - CROSS-EXAMINATION

1 driver, but at the time, we weren't sure what the driver
2 looked like.

3 Q. After you responded and gathered this information
4 from Mr. Espinoza, did you have any idea of who the
5 suspects maybe at this time?

6 A. None whatsoever.

7 Q. Did you show him a photo line-up or any
8 photographs of any possible subjects?

9 A. No, sir.

10 Q. Now, you say that you arrived at approximately a
11 little after 2:00?

12 A. I believe it was around 2:10.

13 Q. Do you recall where the phone calls was made from
14 or how the call was put into the Sheriff's Office?

15 A. At the time we weren't sure. I know he stated
16 his cell phone was stolen. I don't recall whether the
17 phone call was made from. I was just told where to meet
18 him at and when I arrived on the scene, he was there.

19 Q. So following this BOLO that was put out, did you
20 have any further follow-up investigation with this case?

21 A. No.

22 Q. Have you had any other involvement after the time
23 you left the apartment complex until today?

24 A. No.

25 MR. MARCHANT: I don't have any other

DEPUTY MENDENHALL - CROSS-EXAMINATION

1 questions. Please answer any questions Mr. Mooreman may
2 have.

3 THE COURT: Mr. Mooreman.

4 MR. MOOREMAN: Thank you, Your Honor, may it
5 please the Court.

CROSS-EXAMINATION

6 BY MR. MOOREMAN:

7 Q. Deputy Mendenhall, just a few questions to begin
8 with the area that this happened, and you're welcomed to
9 step down if that would be easier.
10

11 (Witness complies.)

12 Now, where this allegedly happened was right
13 around here, right (indicating)?

14 A. Yes?

15 Q. And, obviously, you've been to the scene because
16 you responded that night.

17 A. Right.

18 Q. Now, there's a light -- that's a light right
19 there, isn't it?

20 A. I assume so.

21 Q. You don't remember seeing that light?

22 A. There is a little distance between these two
23 apartments.

24 THE COURT: Speak up, please.

25 BY MR. MOOREMAN:

DEPUTY MENDENHALL - CROSS-EXAMINATION

1 Q. Isn't it true that the light points in this
2 direction outward, isn't that true?

3 A. I'm not sure. You can see fairly well. There's
4 light coming from these apartments and where he was
5 sitting is fairly well-lit.

6 Q. If you would just answer my question. Is this
7 light pointing outward or inward or do you remember?

8 A. I can't say.

9 Q. There's a light over here. Do you remember if
10 there's a light over here?

11 A. No, I can't remember.

12 Q. Do you remember if there was a light on the pool?

13 A. I can't recall.

14 Q. All right. You can have a seat. Mr. Espinoza
15 gave you a description of the individuals who did this,
16 correct?

17 A. Yes.

18 Q. And you testified to that description. And he
19 told you that, isn't it true, the description that you got
20 that there were two people who came to his car, correct?

21 A. Yes.

22 Q. Two black males, correct?

23 A. (Witness nods).

24 Q. And, in fact, as part of your duties as a deputy
25 you generated a form, what's called a Victim Witness Form

DEPUTY MENDENHALL - CROSS-EXAMINATION

1 that you gave Mr. Espinoza; is that correct?

2 A. That's correct.

3 (Victim Witness Form marked as Defendant's
4 Exhibit No. 1 for identification)

5 BY MR. MOOREMAN:

6 Q. Let show you what's been marked as Defendant's
7 Exhibit No. 1 for identification purposes only.

8 Is that the form that you provided
9 Mr. Espinoza?

10 A. That's correct.

11 Q. And at the top of that form there is a slot for
12 suspect information, correct?

13 A. Yes.

14 Q. What did you write on there?

15 A. Two black males.

16 Q. And the height that Mr. Espinoza gave you of the
17 suspects who did this he said one was approximately six
18 feet tall?

19 A. Yes.

20 Q. He said the other one was approximately 5' 8"
21 tall?

22 A. Yes.

23 Q. He said the tall guy had a hoodie over his head?

24 A. That's correct.

25 Q. I'm going to talk to you a little bit about your

DEPUTY MENDENHALL - CROSS-EXAMINATION

1 training in the Criminal Justice Academy.

2 A. Okay.

3 Q. Is it true the Criminal Justice Academy, a lot of
4 emphasis is put on report writing, thorough report
5 writing?

6 A. That's correct.

7 Q. And there's a lot of emphasis put on accurate
8 report writing; is that correct?

9 A. Yes.

10 Q. And isn't it true because as time passes and as
11 your responsibilities require you to go to other calls and
12 work, it gets harder and harder to remember what happened
13 in the past; is that corrects?

14 A. I don't understand what your asking.

15 Q. Isn't it true the reason why you want to keep
16 good reports is so that you can remember what happened?

17 A. Yes.

18 Q. And in a case like this, isn't it true that it's
19 critical to keep good reports especially as it relates to
20 the description of these people?

21 A. Yes.

22 Q. Because a description is what is ultimately going
23 to be the best evidence you have to finding these people
24 down the road; is that correct.

25 A. That's correct.

DAVID WEINER - DIRECT EXAMINATION

1 A. Yes.

2 Q. Because a description is what is ultimately going
3 to be the best evidence you have to finding these people
4 down the road; is that correct.

5 A. That's correct.

6 Q. Are you familiar with a form entitled Criminal
7 Description Sheet?

8 A. Yes.

9 Q. What is a Criminal Description Sheet?

10 A. Those the sheets we fill out for violent crimes,
11 armed robberies to show what our suspects look like. We
12 turn those in after we fill them out.

13 (Criminal Description Sheet marked as
14 Defendant's Exhibit No. 2.)

15 (Whereupon, due to technical difficulties,
16 this portion of the transcript can not be produced.)

17 MR. MERCHANT: The State would call Detective
18 Weiner to the stand.

19 THE CLERK: If you would step up here please.
20 Place your left hand on the Bible and raise your right
21 hand.

22 DAVID WEINER, after having been duly sworn,
23 testified as follows:

24 THE CLERK: Thank you. You may be seated.

25 State your full name for the record, please.

DAVID WEINER - DIRECT EXAMINATION

1 A. I am presently assigned to the Armed Robbery
2 Division.

3 Q. What does an investigator assigned to the Armed
4 Robbery Division does versus someone who is on road
5 patrol?

6 A. We'll take reports that come into the Sheriff's
7 Office from whether business or individual victims
8 regarding either armed robberies or strong armed robberies
9 and investigate those cases to completion.

10 Q. Do you do any work with burglaries?

11 A. No, sir.

12 Q. Everything you do is geared towards property?

13 A. Yes, sir. We'll handle a burglary if it occurs
14 during the course of a robbery. It has to have that title
15 of robbery for us to investigate.

16 Q. Back in December of '07, were you working in the
17 same capacity as you are now?

18 A. Yes, sir.

19 Q. And how many people back in December of '07 were
20 employed with the Sheriff in the same capacity?

21 A. At that time there were four of us.

22 Q. And how were the four of you assigned? Were you
23 in teams or --

24 A. When I say four, it includes our sergeant, he's
25 working as well with us. He takes some cases on. He will

DAVID WEINER - DIRECT EXAMINATION

1 hand out cases as they come in and will try to evenly
2 distribute the cases that appear to be similar type MOs
3 and similar descriptions and appear to be the same person.

4 Q. Do you frequently work with other investigators
5 on the same case?

6 A. Yes, absolutely.

7 Q. Now, you just said that he tries to divide them
8 up equally.

9 A. The best he can.

10 Q. Back in December of '07, who were the detectives
11 assigned to the investigation of robberies?

12 A. It was myself, Mr. Craig Hanning, Mr. Ford, Tim
13 Jones.

14 Q. Did you become involved in this incident?

15 A. I did.

16 Q. And who, if anyone, was working with you on this
17 incident?

18 A. Investigator Hanning was the primary on this
19 investigation.

20 Q. Now, there's been a lot of talk about report
21 writing and things of that nature, did you file any
22 reports on this particular case?

23 A. Yes, I've taken a statement from a co-defendant.

24 Q. You said you took a statement from one of the
25 defendants, how many people associated with this

DAVID WEINER - DIRECT EXAMINATION

1 particular incident were charged?

2 A. Three.

3 Q. And who were they?

4 A. Oshaun Robinson, Kenneth Workman, and Timothy
5 Wright.

6 Q. And do you recall on what date they were charged?

7 A. My notes say December 27th. I believe it was
8 December 27th.

9 Q. And this incident happened on the 10th of
10 December, correct?

11 A. Yes.

12 Q. Were you working the night this incident
13 happened?

14 A. No.

15 Q. Do you know whether or not there was an
16 investigator assigned to the Robbery Division that was
17 working that night?

18 A. There was none.

19 Q. Had there been an investigator who had been
20 called out to the scene?

21 A. Yes, we have an on-call investigator.

22 Q. If you weren't working that night, how did you
23 get assigned this case?

24 A. The sergeant gets the robbery reports in and puts
25 them into the computer and then puts them on your desk.

DAVID WEINER - DIRECT EXAMINATION

1 Q. And what did you do when you got assigned to this
2 case?

3 A. I believe this particular case got assigned to
4 Investigator Hanning, but I got involved in the case to
5 assist with some of the interviews.

6 Q. So is it fair to say that Investigator Hanning
7 was the lead investigator in this case?

8 A. In this incident, yes, sir.

9 Q. Now, you stated a moment ago you assisted him in
10 a number of duties involved in this case, correct, and one
11 of those you said was interviewing one of the defendants.
12 Who is it that you interviewed?

13 A. Timothy Wright.

14 (Miranda Waiver marked as State's Exhibit No.
15 2 for identification.)

16 BY MR. MARCHANT:

17 Q. I'm going to show you what's been marked as
18 State's Exhibit No. 2 and ask if you recognize that
19 document?

20 A. I do.

21 Q. And how is it that you recognize that document?

22 A. It's a common Miranda Waiver that we fill out,
23 Miranda being like you hear on tv: You have a right to
24 remain silent. It's essentially in writing and it's a
25 Sheriff's Office form that we have to fill out before we

DAVID WEINER - DIRECT EXAMINATION

1 interview anybody that's under arrest.

2 Q. And when did you interview Timothy Wright?

3 A. December 27th at 11:56.

4 Q. And who, if anyone else, was present when you
5 conducted this interview?

6 A. Investigator Hanning.

7 Q. And how is it that you know about informing a
8 defendant of their Rights? Do you read them off a card or
9 do you --

10 A. Once we sit down at the desk, I'll actually print
11 this form out. I'll put their name and birth date on it.
12 I'll put the date and time on it as well as the case
13 number, and ask them if they have any problem reading and
14 writing. Ninety-nine percent of the time it's no
15 problem. Just for my piece of mind I'll have them read
16 the top part of the statement out loud showing that they
17 can read, and then I'll let them read the rest of it to
18 themselves. When we completed that, I'll have them
19 initial it after each line and sign it in several places.

20 Q. What's the purpose of having them initial it
21 after each line?

22 A. So that they can say I read it and I understand
23 it.

24 Q. When you were speaking with Mr. Wright on the
25 27th of December, did he appear to have any problems

DAVID WEINER - DIRECT EXAMINATION

1 comprehending or any problems reading and writing?

2 A. No, sir.

3 Q. Before you started asking him any questions, did
4 you make him any promises?

5 A. No, sir, no promises.

6 Q. Did you tell him he was going to get a better
7 deal if he agreed to talk to you?

8 A. No, sir.

9 Q. That he was going to get cut out on bond?

10 MR. MOOREMAN: Your Honor, I'm going to
11 object to the leading nature of the questions.

12 THE COURT: I sustain the objection to the
13 form of the question.

14 BY MR. MARCHANT:

15 Q. Did you make any promises to him?

16 A. No, sir, no promises.

17 Q. And who, if anyone else, was with you when you
18 were going over these Rights with Mr. Wright?

19 A. Investigator Hanning.

20 Q. And is his signature reflected on this document?

21 A. It is.

22 MR. MARCHANT: I move State's Exhibit No. 2
23 into evidence.

24 THE COURT: Any objection?

25 MR. MOOREMAN: May I see that?

DAVID WEINER - DIRECT EXAMINATION

1 No objection.

2 THE COURT: It's in without objection.

3 (Wright Miranda Waiver marked as State's
4 Exhibit No. 2 for identification was admitted into
5 evidence.)

6 BY MR. MARCHANT:

7 Q. Where were you when you were conducting this
8 interview with Mr. Wright?

9 A. In my office at the Law Enforcement Center.

10 Q. And please describe for the jury the environment
11 of your office down at the jail?

12 A. It's an open office. There's actually five desks
13 in there. For some reason we've never been able to keep
14 it fully stocked. There are three investigators in a room
15 maybe 15 X 15 and each desk is placed in a corner in an
16 L-shape and there are hutches so you can have some
17 privacy.

18 Q. Is there a door is it more like a cubicle.

19 A. There is a door just to the main office itself,
20 but as far as our desks are sit up, they're more like
21 cubicles.

22 Q. Do you recall at the point in time you were
23 speaking with Mr. Wright whether or not he was under
24 arrest for this offense?

25 A. He was under arrest.

DAVID WEINER - DIRECT EXAMINATION

1 Q. Had you provided him with an opportunity to
2 obtain a lawyer?

3 A. Yes, sir.

4 Q. And what was his response to that?

5 A. That he was not interested in seeking one.

6 Q. And did he agree to speak with you that day?

7 A. Yes, sir.

8 Q. Did he give a written statement to you that day?

9 A. Yes, sir, he did.

10 Q. Now, after Mr. Workman and Mr. Robinson were
11 arrested, did you have an opportunity to speak with the
12 victim, Mr. Espinoza?

13 A. He was in the office talking with Investigator
14 Hanning, but I really didn't interact with that
15 conversation.

16 Q. Do you recall whether or not that was before or
17 after you spoke with Mr. Wright?

18 A. It was after.

19 Q. In the situation that we have here, there's been
20 some television depictions of three individuals and
21 Mr. Espinoza came and spoke with Investigator Hanning.
22 With him having identified two people, would you go
23 through the process of conducting a photo line-up?

24 A. He's already done the work. Those are our
25 suspects and if I put them in a line-up with five other

DAVID WEINER - DIRECT EXAMINATION

1 people and he's already seen them, he'll pick the same one
2 out. It's against our policy. If they come in with a
3 name and a person that they're familiar with, like he said
4 I seen this picture, I can't put them in a line-up. We
5 don't do it. He's going to pick them out again as the
6 same thing?

7 Q. Let me make sure I'm clear. Is that the
8 Sheriff's policy that you do not do that?

9 A. I don't know if it's the Sheriff's Office policy,
10 but under my sergeant, that's ---

11 MR. MOOREMAN: I object, Your Honor. I don't
12 think there's been laid a foundation at this point.

13 THE COURT: Overruled. Go ahead.

14 BY MR. MARCHANT:

15 Q. I'm sorry. It is or is not the Sheriff's policy?

16 A. In the Armed Robbery Division underneath my
17 sergeant that is not something we do.

18 Q. With respect to this incident to your personal
19 knowledge, did you or Investigator Hanning, did you get
20 any fingerprints in this case?

21 A. Not in this case, no, sir.

22 Q. Did you recover a firearm in this case?

23 A. Not that I'm aware of, no, sir.

24 Q. Did you recover any of Mr. Espinoza's personal
25 property?

DAVID WEINER - CROSS-EXAMINATION

1 A. Not that I'm aware.

2 Q. Did you have an opportunity to speak with any
3 other eyewitnesses to the incident besides Mr. Espinoza?

4 A. To the best of my knowledge no others came
5 forward.

6 Q. And did you ever take any information from
7 Mr. Espinoza?

8 A. No, sir.

9 Q. But you were present when Investigator Hanning
10 was speaking with him?

11 A. Yes, sir. I was in the office but I don't recall
12 the entire conversation, I just remember the interview.

13 MR. MARCHANT: I don't have any other
14 questions.

15 CROSS-EXAMINATION

16 BY MR. MOOREMAN:

17 Q. Investigator, first --

18 MR. MOOREMAN: I'd like to have this marked.

19 (Arrest Warrant marked as Defendant's Exhibit
20 No. 4 for identification.)

21 BY MR. MOOREMAN:

22 Q. Investigator, let me show you what's been marked
23 as Defense Exhibit No. 4 just for armed robbery that was
24 served on my client in this case; is that right?

25 A. I believe so, yes, sir.

DAVID WEINER - CROSS-EXAMINATION

1 Q. Now, the bottom left corner, it lists when it was
2 served on him; is that correct?

3 A. Yes, sir.

4 Q. And when was that served on him?

5 A. It shows December 28th of '07.

6 Q. You took the statement from Mr. Wright on the
7 27th?

8 A. Yes, sir.

9 Q. And my client was served with this warrant on the
10 28th?

11 A. Yes, sir.

12 Q. And you and Investigator Hanning met with the
13 victim on the 31st?

14 A. Investigator Hanning met with him. I was just in
15 the office is where I was.

16 Q. But he came into the office?

17 A. Right.

18 Q. And there was no photo line-up shown the victim
19 between the time Mr. Wright, also known as Lee-Lee, gave a
20 statement and the time that warrant was served on my
21 client; is that correct?

22 A. Correct.

23 Q. And nobody from law enforcement ever met with the
24 victim again prior to the time that warrant was served on
25 my client; is that correct?

DAVID WEINER - CROSS-EXAMINATION

1 A. Not to my knowledge.

2 Q. Now, you said something very interesting in your
3 direct. You talked about how -- it may or may not be
4 Sheriff's policy but it's your policy not to show a
5 witness a photo line-up after an identification has been
6 made; is that correct?

7 A. After he's already seen the individual, that's
8 correct.

9 Q. Because pretty much isn't it true the cat's out
10 of the bag?

11 A. That's one way of putting it, correct.

12 Q. So you can show the best photo line-up you could
13 ever put together and you can give him all the
14 instructions you would normally give about this person may
15 or may not be in there and you can do everything you could
16 possibly do, but there's no way that photo line-up could
17 be made a good identification once the cat's out of that
18 bag; is that right?

19 A. He's already seen the picture.

20 Q. And so after he's seen the picture, every
21 identification after that is going to be tainted; is that
22 right?

23 A. What do you mean every identification?

24 Q. Every photo line-up you would show containing
25 that defendant in there.

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 A. Yes, sir, it would be tainted.

2 MR. MOOREMAN: I've got no further questions.

3 THE COURT: Mr. Robinson.

4 MR. ROBINSON: No questions.

5 THE COURT: You can step down.

6 (Witness leaves the witness stand.)

7 MR. MARCHANT: The State would call Timothy
8 Wright.

9 THE COURT: All right.

10 THE CLERK: Please step up and place your
11 left hand on the Bible and raise your right hand.

12 TIMOTHY WRIGHT, having been duly sworn,
13 testified as follows:

14 THE CLERK: Thank you, you may be seated.
15 Please state your full name for the record.

16 THE WITNESS: Timothy Wright.

DIRECT EXAMINATION

17
18 BY MR. MARCHANT:

19 Q. Mr. Wright, how old are you?

20 A. I'm 20.

21 Q. And when is your birthday?

22 A. 7-20-88.

23 Q. And where were you born?

24 A. In Greenville, South Carolina.

25 Q. Did you go to school here in Greenville?

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 A. Yes, sir.

2 Q. What high school did you attend?

3 A. Southside.

4 Q. When did you graduate Southside High School?

5 A. Last year.

6 Q. After graduating Southside, what did you do?

7 A. I was going to Greenville Tech.

8 Q. What kind of classes were you taking at

9 Greenville Tech?

10 A. Truck driving classes.

11 Q. Did you have any aspirations or direction after

12 Greenville Tech to go somewhere else?

13 A. I was going to Coastal Carolina Beach.

14 Q. And what were you going to do down the Coastal

15 Carolina?

16 A. It was going to play football, sir.

17 Q. And when were you supposed to be going to Coastal

18 Carolina?

19 A. This year, January 1st.

20 Q. It's pretty obvious that you're not at Coastal

21 Carolina right now. Would you please tell this jury where

22 you are right now?

23 A. Leigh County. I got 20 years at Leigh County.

24 Q. What did you get 20 years for?

25 A. I got 20 years for some armed robberies and some

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 crimes that I was involved with.

2 Q. You know that's what we're here about today?

3 A. Yes, sir.

4 Q. This incident that happened back in December 10,
5 2007, were you involved in that?

6 A. Yes, sir.

7 Q. At some point in time did you talk with
8 Investigator Hanning and Investigator Weiner about this
9 particular incident?

10 A. Yes, sir.

11 Q. I'm going to show you what's been put into
12 evidence as State's No. 2, do you recognize that?

13 A. Yes, sir.

14 Q. Is this your signature down here?

15 A. Yes, sir.

16 Q. I need you to speak up a little bit.

17 A. Yes, sir.

18 Q. Did you agree on December 27th of 2007 to speak
19 with these two gentleman?

20 A. Yes, sir.

21 Q. Before we get that far, do you know Mr. Robinson?

22 A. Yes, sir.

23 Q. And how is it that you know him?

24 A. When I got out in '05, I had just met him.

25 Q. So did you meet him out in the neighborhood or

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 where did you meet him?

2 A. Yes, sir, in the neighborhood.

3 Q. And where is the neighborhood that you're talking
4 about?

5 A. In West Greenville, sir.

6 Q. Did you live there in West Greenville?

7 A. No, sir.

8 Q. Where did you live?

9 A. I lived on Anderson Road, sir.

10 Q. And this gentleman right here, Mr. Workman, do
11 you know him?

12 A. Yes, sir.

13 Q. How is it that you know him?

14 A. We grew up together and that's my cousin, sir.

15 Q. And how is he related to you?

16 A. On my grandma's side, sir.

17 Q. How long have you know Kenny Workman?

18 A. For a long time, sir, since we been babies.

19 Q. You grew up with him?

20 A. Yes, sir.

21 Q. Did y'all play together?

22 A. Yes, sir.

23 Q. Go to family barbecues?

24 A. Yes, sir.

(25 Q. Were you involved with these two gentleman in a

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 social type atmosphere last fall?

2 A. Yes, sir.

3 Q. And do you know what Mr. Robinson was doing last
4 fall? Was he working any where?

5 A. I don't know if he was working or not.

6 Q. How about Mr. Workman?

7 A. I don't know if he was working either.

8 Q. Let's talk about this particular incident. Do
9 you recall where you were prior to getting over to this
10 apartment complex? Do you remember what y'all were doing?

11 A. We was just riding around looking for girls that
12 we could talk to.

13 Q. How is it you ended up in this apartment complex?

14 A. A drive through.

15 Q. Who was driving?

16 A. Marcus was driving, sir.

17 Q. Do you know Marcus' last name?

18 A. No, sir.

19 Q. Who was riding in the passenger's seat?

20 A. Workman, sir.

21 Q. I'm going to need you to speak up just a little
22 bit.

23 A. I said Workman, sir?

24 Q. Who was in the back passenger seat?

25 A. I was sir.

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 Q. And who was in the back seat behind the driver?

2 A. Robinson, sir.

3 Q. Now, you said you were driving around this
4 apartment complex looking for girls. Had you been to this
5 particular complex before?

6 A. Yes, sir.

7 Q. You were familiar with this complex?

8 A. Yes, sir.

9 Q. You had a girl or something over there?

10 A. Just some friends we had met over there, sir.

11 Q. You don't recall what you were doing prior to
12 showing up in this particular apartment complex.

13 A. No, sir.

14 Q. When you got to the apartment complex, what did
15 you do once you got inside of the parking area?

16 A. Road around for a little while then we parked on
17 the side of the building, sir.

18 Q. Why were you parked on the side of the building?

19 A. Just waiting to see if we were going to see any
20 females.

21 Q. Did you see any females that night?

22 A. No, sir.

23 Q. What, if anything, did you see? Did you see
24 people walking around? Were there cars coming and going?

25 A. No, sir.

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 Q. You didn't see any cars come in and out while you
2 were there?

3 A. No, sir.

4 Q. Whose car were you in?

5 A. We was in Tez car, sir.

6 Q. What kind of car was Tez driving at the time?

7 A. A black Lincoln, sir.

8 Q. And when you say a black Lincoln, two door, four
9 door?

10 A. Four door.

11 Q. Do you know or can you recall what year and make
12 that was?

13 A. No, sir.

14 Q. If you had to compare that black Lincoln to
15 another automobile, what would you compare it to?

16 A. One of the newer models of Lincoln.

17 Q. Is it a long one or is it a short one?

18 A. Long one.

19 Q. Did it have tinted windows or a stereo system or
20 anything?

21 A. Yes, sir.

22 Q. Which one was it?

23 A. Both.

24 Q. Do you recall what color it was?

25 A. Black.

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 Q. Who is Tez?

2 A. Tez was just another friend.

3 Q. How did you meet Tez.

4 A. When I was hanging around with Workman, sir.

5 Q. So who, if you remember, introduced you to Tez?

6 A. Ain't nobody introduced me to him. I just
7 started hanging around him and I just go to know him.

8 Q. Was he your friend or was he somebody else's?

9 A. He was everybody's friend.

10 Q. And what about his Marcus fellow?

11 A. He was just everybody friend.

12 Q. While y'all were in this parking lot and y'all
13 were parked, did you ever get out of the car?

14 A. Yes, sir.

15 Q. And when you got out of the car, where did you
16 go?

17 A. I went to the back of the car, sir.

18 Q. The back of whose car?

19 A. Tez.

20 Q. From there what did you do?

21 A. We all got out the car and that's when we saw the
22 red Jeep or whatever.

23 Q. Where did you see this red Jeep?

24 A. The red Jeep had came in.

25 Q. Came into the complex?

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 A. The apartment complex.

2 Q. Do you recall whether it was the top entrance to
3 the apartment complex or the bottom?

4 A. It was up at the top.

5 Q. When it came in, what did y'all do?

6 A. We was discussing about what we were going to do.

7 Q. When you saw y'all were discussing about what
8 y'all were going to do, what were y'all talking about
9 y'all were going to do?

10 A. We were going to rob him.

11 Q. Rob who?

12 A. The Mexican driving the red Jeep.

13 Q. Why were you going to rob the Mexican driving the
14 red Jeep?

15 A. Just because -- we just didn't have nothing to
16 do.

17 Q. Did you need money or anything or were you just
18 doing it to be doing it?

19 A. Just doing it to be doing it.

20 Q. And when you say, "we" who were you talking about
21 robbing the Mexican?

22 A. Me, Robinson and Workman.

23 Q. And when you got out of the Lincoln, where did
24 you go to find this red Jeep? Was it parked or where
25 y'all chasing him or what?

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 A. It was parked and we went up there.

2 Q. And when you say "we went up there," tell me
3 where you went?

4 A. I had went on the driver's side, sir.

5 Q. Where did Workman go?

6 A. On the passenger side, sir.

7 Q. Where did Robinson go?

8 A. On the driver's side with me, sir.

9 Q. Did you have a gun?

10 A. No, sir.

11 Q. Did Workman have a gun?

12 A. No, sir.

13 Q. Did Robinson have a gun?

14 A. Yes, sir.

15 Q. How do you know he had a gun?

16 A. Because he pulled his gun out and told him to
17 give it up.

18 Q. To give it up?

19 A. Yes, sir.

20 Q. And when you say he pulled a gun out and told the
21 victim to give it up, where exactly were you standing in
22 relation to where the red Jeep was parked?

23 A. I was standing right beside him, sir.

24 Q. Was it on the driver's side, the passenger's
25 side?

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 A. The driver's side, sir.

2 Q. The front or the back?

3 A. The front, sir.

4 Q. Were you in front of Robinson or behind him?

5 A. I was beside him.

6 Q. So was Robinson next to the car and then you're
7 on the outside of him or were you inside between Robinson
8 and the car?

9 A. Like I was at the back door around the driver's
10 side.

11 Q. You just said that you and Robinson was standing
12 together?

13 A. He was standing right beside me, sir.

14 Q. So if this is the side of the vehicle, were you
15 standing closest to the car or were you standing on the
16 outside and Robinson was standing closest to the car?

17 A. I was standing closest to the car, sir.

18 Q. Now, what, if anything, did you say to the
19 victim?

20 A. I didn't say nothing to him.

21 Q. You didn't make any words to him?

22 A. No, sir.

23 Q. You didn't make any words to him?

24 A. No, sir.

25 Q. What did you hear Mr. Robinson say to him?

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 A. I heard him say give it up.

2 Q. While he was saying give it up, where was the
3 gun?

4 A. He had it pointing at him, sir.

5 Q. And where was Mr. Workman when Mr. Robinson was
6 pointing the gun at the victim?

7 A. On the passenger's side, sir.

8 Q. Mr. Workman ever come around to the driver's
9 side?

10 A. No, sir.

11 Q. What happens after Robinson says give it up?

12 A. He put the gun up and then punched him, sir.

13 Q. Do you know where he put the gun?

14 A. In his pocket, sir.

15 Q. So it's your testimony that Mr. Robinson punched
16 this Hispanic victim.

17 A. Yes, sir.

18 Q. And do you know if Mr. Robinson got anything from
19 the victim?

20 A. No, sir.

21 Q. Money?

22 A. No, sir. I know he got a wallet.

23 Q. Do you know if there was any money in it?

24 A. No, sir.

25 Q. Did you get any money, if there was any, out of

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 his wallet?

2 A. No, sir.

3 Q. Do you know whether Mr. Workman got any?

4 A. No, sir.

5 Q. Once you say Mr. Robinson punched the victim,
6 what happened next?

7 A. He got the wallet and all of us ran and got back
8 in the vehicle.

9 Q. And where did you get -- what position did you
10 get into the vehicle, in the front or the back?

11 A. We all got back in the same positions. I was in
12 the back.

13 Q. Who got in the front passenger's seat?

14 A. Workman was still in the front passenger's seat,
15 sir.

16 Q. I need you to speak up a little bit. Who got in
17 the back passenger's seat behind the driver?

18 A. Robinson, sir.

19 Q. And, again, who was driving?

20 A. Marcus was, sir.

21 Q. I don't know if I asked you, but do you know
22 Marcus' last name?

23 A. No, sir.

24 Q. Have you seen him since this happened?

25 A. No, sir.

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 Q. Once y'all got back in Tez's black Lincoln, where
2 did you go? Where were y'all headed to after leaving
3 these apartments?

4 A. Back to West Greenville, sir.

5 Q. I need you to speak up a little bit.

6 A. West Greenville, sir?

7 Q. Is that the neighborhood you were talking about
8 earlier?

9 A. Yes, sir.

10 Q. Is this where y'all just hang out and congregate?

11 A. Yes, sir.

12 Q. Sometime after y'all left the apartment complex,
13 did you notice anybody following you?

14 A. Yes, sir.

15 Q. What type of vehicle did you see following you?

16 A. The red Jeep that we just left from.

17 Q. What, if anything, happened while that red Jeep
18 was following me?

19 A. Robinson pointed the gun out the window and shot
20 at him, sir.

21 Q. What side of the vehicle did he lean out of to
22 fire?

23 A. The driver's side in the back seat, sir.

24 Q. How many times did he fire?

25 A. One time, sir.

TIMOTHY WRIGHT - DIRECT-EXAMINATION

1 Q. You stated earlier that you pled guilty to this
2 particular offense, right?

3 A. Yes, sir.

4 Q. And you've been sentenced, correct?

5 A. Yes, sir.

6 Q. Do you have any other charges out there that are
7 pending?

8 A. No, sir.

9 Q. For your testimony here today, has anyone made
10 you any promises that you're going to get a lighter
11 sentence than what you've already got?

12 A. No, sir.

13 Q. Prior to you pleading guilty, did anyone make you
14 any promises about your sentence?

15 A. No, sir.

16 Q. Why is it that you're here today telling this
17 jury that Mr. Workman and Mr. Robinson were involved in
18 this robbery?

19 MR. MOOREMAN: Your Honor, I would object to
20 this question.

21 THE COURT: The reason?

22 MR. MOOREMAN: Improper bolstering.

23 THE COURT: Overruled. Go ahead.

24 BY MR. MARCHANT:

25 Q. Mr. Wright, why are you here today telling this

TIMOTHY WRIGHT - CROSS-EXAMINATION

1 jury about Mr. Workman and Mr. Robinson's involvement in
2 this crime?

3 A. When the crime happened, all of us was together.

4 Q. All three of you what?

5 A. All three of us was together, sir.

6 Q. That's the only reason that all three of you were
7 together?

8 A. Yes, sir.

9 MR. MARCHANT: I beg the Court's indulgence.

10 BY MR. MARCHANT:

11 Q. What type of gun did Mr. Robinson have that day?

12 A. I think it's a Magnum, sir.

13 Q. And what color was it?

14 A. Silver and brown, sir.

15 Q. You say brown, where was the brown part?

16 A. On the handle, sir.

17 Q. Had you ever seen him with that gun prior to this
18 date?

19 MR. MOOREMAN: Your Honor.

20 MR. MARCHANT: I withdraw the question.

21 BY MR. MARCHANT:

22 Q. Had you ever seen Mr. Workman with a gun that
23 night?

24 A. No, sir.

25 Q. Did this other fella named Tez have a gun that

TIMOTHY WRIGHT - CROSS-EXAMINATION

1 night?

2 A. No, sir.

3 Q. So how many guns were there to your knowledge
4 involved in the robbery of this Hispanic male?

5 A. One, sir.

6 Q. Please answer any questions Mr. Mooreman and
7 Mr. Robinson may have.

8 THE COURT: Cross-examine.

9 CROSS-EXAMINATION

10 BY MR. MOOREMAN:

11 Q. Mr. Wright, did you have a nickname?

12 A. Yes, sir.

13 Q. Was your nickname Lee-Lee?

14 A. Yes, sir.

15 Q. You testified that you don't have any pending
16 charges; is that right?

17 A. Yes, sir.

18 Q. Have your other charges been dismissed?

19 A. Yes, sir.

20 Q. When did you find that out?

21 A. The day before I came to court and get my
22 sentence and my sentence was 20 years.

23 Q. So you found out that your other charges had been
24 dismissed ---

25 A. October.

TIMOTHY WRIGHT - CROSS-EXAMINATION

1 Q. You said you answered Mr. Merchant's questions
2 you said there was only one gun that night; is that right?

3 A. Yes, sir.

4 Q. Is it true that the statement that you gave to
5 Investigator Hanning and Investigator Weiner that,
6 "Kenneth and Oshaun had guns?" Is this your statement?

7 A. Yes, sir?

8 Q. Would you read this for me?

9 A. "Kenneth and Oshaun had a gun."

10 Q. You pled guilty to armed robbery and a number of
11 other charges for what you did in this case; isn't that
12 true.

13 A. Yes, sir.

14 Q. You admitted to being one of the assailants who
15 robbed Mr. Espinoza; is that correct?

16 A. Yes, sir.

17 Q. And your telling this jury that there were three
18 people that night who approached the Jeep?

19 A. Yes, sir.

20 Q. And you're saying it was you, Oshaun, and
21 Kenneth; is that right?

22 A. Yes, sir.

23 Q. You said you didn't have a gun; is that right?

24 A. Yes, sir.

25 Q. You said that you were standing next to and right

TIMOTHY WRIGHT - CROSS-EXAMINATION

1 behind Oshaun; is that right?

2 A. Right beside him, sir.

3 Q. Is it your testimony you weren't doing anything
4 to rob this guy, you were just there; is that right?

5 A. Yes, sir.

6 Q. Well, if you didn't do anything to rob this
7 victim, you still pled guilty; is that right?

8 A. Yes, sir.

9 Q. And you were standing there with your hand just
10 behind your back like this while you were watching this
11 victim get robbed; is that right?

12 A. No, sir.

13 Q. Were you leaning against the car or what were you
14 doing?

15 A. I was standing straight up.

16 Q. And you were there just observing, just watching?

17 A. Yes, sir.

18 Q. At first you went to -- you guys were looking for
19 girls and that wasn't true, right?

20 A. Yes, sir.

21 Q. And Marcus was in the car as well, right?

22 A. Yes, sir.

23 Q. And isn't it true that whether it be the
24 statement you gave the investigator or in court today,
25 you're the only guy who never had a gun that night, isn't

TIMOTHY WRIGHT - REDIRECT-EXAMINATION

1 that right, according to you?

2 A. Yes, sir.

3 Q. So initially you said that Oshaun had the gun,
4 right?

5 A. Yes, sir.

6 Q. You said that Oshaun and Kenneth had the gun
7 initially; is that right?

8 A. Yes, sir.

9 Q. And then you said that Kenneth might not have had
10 the gun; is that right?

11 A. Yes, sir.

12 Q. But you never had the gun?

13 A. No.

14 Q. How close were you to Oshaun when this was going
15 on, when the robbery was going on?

16 A. How close I was to him?

17 Q. Yes.

18 A. We were right beside each other.

19 Q. You were right in front of the victim, weren't
20 you, Mr. Espinoza?

21 A. Yes, sir.

22 Q. And Kenneth was on the other side?

23 A. Yes, sir.

24 Q. When you pled guilty to the armed robbery in this
25 case, was the sentence that you got -- you said you got 20

TIMOTHY WRIGHT - REDIRECT-EXAMINATION

1 years; is that right?

2 A. Yes, sir.

3 Q. Did the prosecutor in this case, did he recommend
4 that sentence?

5 A. Yes, sir.

6 Q. Part of your plea of guilty, isn't it true that
7 you and the prosecutor talk about testifying against these
8 two guys?

9 A. Yes, sir.

10 MR. MOOREMAN: I don't have anything else,
11 Your Honor.

12 THE COURT: Mr. Robinson.

13 MR. ROBINSON: I don't have any questions.

14 REDIRECT EXAMINATION

15 BY MR. MARCHANT:

16 Q. Mr. Wright, Mr. Mooreman showed you your
17 statement down here where you read Kenneth and Oshaun had
18 guns, that is the statement you gave to investigators,
19 correct?

20 A. Yes, sir.

21 Q. Would you please explain to the jury why you're
22 saying today that only Mr. Robinson had a gun?

23 A. The reason I say he had a gun is because there
24 was only one gun the whole time with that robbery.

25 Q. Why did you tell the investigators that Kenneth

TIMOTHY WRIGHT - REDIRECT-EXAMINATION

1 and Oshaun had the gun?

2 A. I had meant that there was only one gun.

3 Q. Are you saying -- I'm not sure I understand. If
4 there was only one gun, how could both Kenneth and Oshaun
5 have it?

6 A. He was the one with the gun.

7 Q. He being who?

8 A. Mr. Robinson.

9 Q. Now, a minute ago Mr. Mooreman asked you about
10 what your intentions were when you went into this
11 apartment complex and you told me and you told the jury
12 you went over there looking for girls, is that true?

13 A. Yes, sir.

14 Q. Is it true you also went over there looking for
15 somebody to rob?

16 A. Yes, sir.

17 Q. Now, you answered a question that Mr. Mooreman
18 discussed about had you met with me prior to pleading
19 guilty and we talked about you testifying against
20 Mr. Robinson and Mr. Workman. Had you and I ever met
21 prior to you pleading guilty?

22 MR. MOOREMAN: Your Honor, I believe the
23 question was asked and answered.

24 THE COURT: Go ahead.

25 BY MR. MARCHANT:

TIMOTHY WRIGHT - RECROSS-EXAMINATION

1 Q. Mr. Wright, had you and I ever met or ever seen
2 me prior to you coming into this courtroom pleading
3 guilty?

4 A. No, I ain't never seen you. When I had plead
5 guilty, I had talked to my lawyer.

6 Q. But to be clear, you and I had never met each
7 other until that day when you pled guilty?

8 A. Yes.

9 Q. Did you know what kind of neighborhood this was
10 you were driving through?

11 A. Yes, sir.

12 Q. Did you know what type of residents mainly
13 occupied the apartments there?

14 A. Yes, sir.

15 MR. MARCHANT: Nothing further.

16 RECROSS-EXAMINATION

17 BY MR. MOOREMAN:

18 Q. Had your lawyer ever talk to the prosecutor about
19 the possibility of you testifying against Kenneth and
20 Oshaun?

21 A. Did my lawyer ever talk to --

22 Q. To your knowledge, had your lawyer ever talk to
23 Mr. Merchant about the possibility of you testifying?

24 A. I don't particularly know.

25 Q. In my cross before I had asked you if you ever

TIMOTHY WRIGHT - RECROSS-EXAMINATION

1 talked to Mr. Merchant about testifying prior to your plea
2 and you said yes. Are you telling me that was wrong?
3 What you told me on cross-examination was wrong; is that
4 right?

5 A. I guess so.

6 MR. MOOREMAN: I have nothing further.

7 THE COURT: You can step down now.

8 (Witness leaves the witness stand.)

9 MR. MERCHANT: There are no other witnesses
10 for the State, Your Honor. That's the State's case.

11 THE COURT: Ladies and gentleman, there are
12 some matters I need to take up that doesn't involve you so
13 I will excuse you for the day. We'll pick back up
14 tomorrow morning. When you leave, please remember don't
15 talk about this case amongst yourselves or anyone else.
16 If anybody contacts you and tries to talk about this case,
17 get their names and addresses and report that to me.

18 Now, you can talk to your family members and
19 tell them what kind of case it is that you're working on,
20 but don't discuss the facts with them or anyone else.

21 Please keep your badges on and have them on
22 when you come back in the morning so that everyone
23 involved with this case will know that you're a juror on
24 this case and they should not discuss it in your presence.
25 I don't know if there will be any media coverage of this

TIMOTHY WRIGHT - RECROSS-EXAMINATION

1 trial by way of television or newspaper, but should there
2 be any, ignore it. You took an oath to try this case
3 based only and solely on the testimony and evidence
4 presented in this courtroom. Should there be any media
5 coverage, ignore it. With that, I will ask you to be back
6 in your jury room at 9:00 in the morning.

7 Thank you.

8 (Whereupon, the jury was dismissed for the
9 day at 4:45 p.m.)

10 Are there any motions?

11 MR. MOOREMAN: Yes, Your Honor. I would have
12 a Motion for Directed Verdict on at least three of the
13 charges. First, the assault and battery of a high and
14 aggravated nature, the two elements alleged in the
15 indictment are one, the use of a deadly weapon, and two,
16 serious bodily injury. Mr. Robinson ---

17 MR. MARCHANT: Your Honor, if I could
18 interrupt. I agree with Mr. Mooreman that it's not ABHAN,
19 it's simple assault and battery and I was going to ask the
20 Court to charge that instead of ABHAN when we got to that
21 stage of the trial.

22 THE COURT: All right.

23 MR. MOOREMAN: The second issue relates to
24 unlawful carrying of a pistol charge. I'm not aware of
25 any testimony and I could have missed it, but I didn't

TIMOTHY WRIGHT - RECROSS-EXAMINATION

1 hear any testimony that my client was under the age of 21
2 whether was would be any other evidence that make it
3 unlawful for him to carry a pistol. So it would be my
4 position, Your Honor, that they have not met the elements
5 necessary for the unlawful carrying of a pistol charge.

6 MR. MARCHANT: Frankly, Your Honor, I don't
7 believe there was any testimony, but since this law has
8 occurred the law has changed. An individual can now carry
9 after the age of 18, and with respect to that, in this
10 case, the State would not go forward on the unlawful
11 carrying of a pistol on these two defendants.

12 THE COURT: Okay, so carrying a pistol is
13 out, and simple assault and battery; is that correct?

14 MR. MARCHANT: Yes, Your Honor.

15 THE COURT: The other Directed Verdict Motion
16 I have is on the conspiracy and the assault and the armed
17 robbery. I believe, Your Honor, that there are --
18 according to the victim, the two individuals who robbed
19 him Mr. Workman had a gun, my client on the passenger side
20 came around. In order for my client to be guilty of the
21 armed robbery, he would have to be guilty under the hand
22 of one hand of all. As an element necessary to prove hand
23 of one hand of all, it's my understanding that there is
24 some agreement to break the law that leads to certain
25 consequences.

TIMOTHY WRIGHT - RECROSS-EXAMINATION

1 The same type of agreement that the state
2 would have to prove in order for my client to be found
3 guilty of conspiracy. Because of the conflicted natures
4 of the charges, it would be my position, Your Honor, that
5 a Directed Verdict would be necessary on either conspiracy
6 or armed robbery due to the overlapping nature of the
7 elements to be given in this case.

8 THE COURT: I deny that motion.

9 MR. MOOREMAN: That would be it for the
10 motions, Your Honor.

11 MR. ROBINSON: Same motions, Your Honor, as
12 Mr. Mooreman.

13 THE COURT: I'll deny your motion.

14 At this point, we're going forward on armed
15 robbery, possession of a weapon during a violent crime,
16 conspiracy and simple assault and battery. I'll see you
17 back at 9:00 in the morning.

18 ---End of transcript record for December 1, 2008---

CRAIG HANNING - DIRECT EXAMINATION

P R O C E E D I N G S

(1 (Whereupon, Day 2 in the case of the State
2 versus Kenneth Workman and Oshaun Robinson.)

3 THE CLERK: All rise. The Honorable Victor
4 C. Pyle presiding.

5 THE COURT: Thank you. You may be seated.
6 Do you have anything before I bring the jury in?

7 MR. ROBINSON: Nothing, Your Honor.

8 MR. MOOREMAN: Nothing, Your Honor.

9 THE COURT: All right, bring the jury in.

10 (Whereupon, the jury re-enters the
11 courtroom.)

(12 Good morning, ladies and gentleman.
13 Mr. Mooreman.

14 MR. MOOREMAN: May it please the Court, Your
15 Honor, the defense calls Investigator Craig Hanning to the
16 stand.

17 THE CLERK: Mr. Hanning, would you step up
18 here to the stand, please. Place your left hand on the
19 Bible and raise your right hand.

20 CRAIG HANNING, after having been duly sworn,
21 testified as follows:

22 Thank you. You may be seated.

23 State your full name for the record.

(24 THE WITNESS: Craig Hanning.

CRAIG HANNING - DIRECT EXAMINATION

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. MOOREMAN:

4 Q. Mr. Hanning, tell me what your title is now?
5 What's the best way to address you?

6 A. Special Agent with the South Carolina Law
7 Enforcement Division.

8 Q. Agent Hanning, how long have you been with the
9 South Carolina Law Enforcement Division?

10 A. Since March of 2008.

11 Q. In December of 2007, where were you working?

12 A. I was a detective with the Greenville County
13 Sheriff's Office.

14 Q. And, in fact, you were the lead detective on this
15 case; is that correct?

16 A. Yes, I was.

17 Q. As lead detective in this case, you were charged
18 with the task of determining who the possible suspects
19 were who committed these crimes; is that correct?

20 A. Yes, sir; myself and Detective Weiner worked
21 together.

22 Q. And ultimately you charged my client Mr. Robinson
23 and Mr. Kenneth Workman as well as Mr. Wright with the
24 crime; is that correct?

25 A. Yes, sir, we did.

CRAIG HANNING - DIRECT EXAMINATION

1 Q. And isn't it true that the type of measurements
2 you have for these individuals is the following: You have
3 the ---

4 MR. MARCHANT: Your Honor, I'm going to
5 object to the leading question.

6 MR. MOOREMAN: Your Honor, under 611 this is
7 an appropriate mode of interrogation. He's aligned with
8 an adverse party. He testified that he is an agent with
9 the South Carolina Law Enforcement Division and Greenville
10 County Sheriff's Office.

11 THE COURT: Go ahead.

12 BY MR. MOOREMAN:

13 Q. Isn't it true that you had Timothy Wright, also
14 known as Lee-Lee, with a height of 5', 10" tall; isn't
15 that true?

16 A. Yes, sir. If that's what you're reading, I'm
17 sure it is.

18 Q. Isn't it true that you had Mr. Oshaun Robinson
19 with a height of 5', 8" tall?

20 A. Okay.

21 Q. And isn't it true that you had Mr. Kenneth
22 Workman with a height of 5', 8" tall?

23 A. Okay, if you say so.

24 Q. Between December 10th and December 27th, did you
25 have any contact with Mr. Espinoza?

CRAIG HANNING - CROSS-EXAMINATION

1 A. No, sir. In this particular case, I attempted to
2 make contact with Mr. Espinoza on December 14th. I don't
3 know if we had the wrong phone number because in my
4 supplemental report it says somebody answered the phone,
5 he spoke very little English, and then I attempted to make
6 contact with him at his residence and he was not home.

7 Q. Agent Hanning, that isn't what your report says.
8 Your report says Mr. Espinoza answered the telephone,
9 however, he spoke very little English?

10 A. If I was indeed speaking with Mr. Espinoza, we
11 weren't communicating very well.

12 Q. Well, if you weren't sure it was Mr. Espinoza,
13 why did you put Mr. Espinoza in your report?

14 A. Because the phone number I called to the person
15 who answered I identified myself in the English we were
16 able to communicate to each other I asked: Mr. Espinoza
17 -- I'm not sure of the exact words -- he said, yes. I
18 tried to communicate with him. He didn't speak enough
19 English to communicate with me. We ended the conversation
20 and I attempted to make contact with him at the residence
21 that's listed on the report and Mr. Espinoza was not home.
22 So I don't know if the person I spoke with on the phone
23 was Mr. Espinoza and that's why I didn't continue the
24 conversation.

25 Q. But you put Mr. Espinoza as answering the

CRAIG HANNING - CROSS-EXAMINATION

1 telephone so that may or may not be true.

2 A. True, I don't know if it was him or not. He
3 identified himself as Mr. Espinoza whomever I spoke to on
4 the telephone. When I asked if this was Sergio Espinoza,
5 the communication was varied so I did not continue the
6 conversation with him. I did not know if it was
7 Mr. Espinoza or not.

8 THE COURT: That's been asked and answered.
9 Move on.

10 MR. MOOREMAN: I've got nothing further.

11 THE COURT: Do you have any questions,
12 Mr. Robinson?

13 MR. ROBINSON: No questions.

14 CROSS-EXAMINATION

15 BY MR. MARCHANT:

16 Q. Did you have a conversation with Mr. Espinoza
17 following the attempt that you made on December 14th?

18 A. Yes, sir.

19 Q. Where was that conversation?

20 A. At the Law Enforcement Center in our office.

21 Q. Were you able to communicate with him?

22 A. Yes, I was.

23 Q. The person that answered the phone who you spoke
24 to on this date, in your opinion, is that the same person
25 who came to the Law Enforcement Center?

CRAIG HANNING - CROSS-EXAMINATION

1 A. Absolutely not.

2 Q. Now, as far as follow-up investigation in this
3 case, from the time that this incident occurred until the
4 arrest was made, did you have any contact with
5 Mr. Espinoza?

6 A. We made contact with Mr. Espinoza on December
7 27th, I believe. On December 31, 2007, Mr. Espinoza came
8 to our office and provided a sworn statement.

9 Q. And on December 31st, all three of these
10 defendants had already been arrested; isn't that true?

11 A. Yes.

12 Q. And who arrested Mr. Wright? Was it you or some
13 other officer?

14 A. Detective Weiner and I arrested Mr. Wright.

15 Q. And where did you arrest him?

16 A. His mother called us and told us ---

17 MR. MOOREMAN: Your Honor, I'm going to
18 object to what his mother said.

19 THE COURT: Don't tell us what the mother
20 said.

21 THE WITNESS: Mr. Wright was arrested at his
22 residence.

23 BY MR. MARCHANT:

24 Q. What about Mr. Robinson?

25 A. Mr. Robinson was arrested at his residence as

CRAIG HANNING - CROSS-EXAMINATION

1 well.

2 Q. Who effectuated the arrest on Mr. Robinson?

3 A. Myself and Detective Weiner.

4 Q. What about Mr. Workman?

5 A. Mr. Workman was arrested at a residence that he
6 did not live at but he was staying there.

7 Q. And where did you find Mr. Workman in that
8 residence?

9 A. In the basement sleeping on the couch.

10 Q. And do you know or recall whose residence that
11 is?

12 A. I don't recall off the top of my head.

13 Q. When you were present at the residence of
14 Mr. Workman, who else was with you?

15 A. Myself, Detective Weiner, several patrol deputies
16 had a parameter around the house and a K-9 officer.

17 Q. And do you recall the layouts of the house? Was
18 there a basement or a second floor?

19 A. Yes, sir. When we knocked on the door, the
20 homeowner answered the door. We identified ourselves and
21 asked if Mr. Workman was in the residence. We told her we
22 had active arrest warrants for him for armed robbery. She
23 said he was in the basement and he was sleeping on the
24 couch ---

25 MR. MOOREMAN: Your Honor, objection ---

CRAIG HANNING - CROSS-EXAMINATION

1 THE COURT: Don't tell us what she said.

2 THE WITNESS: Mr. Workman was in the basement
3 on the couch.

4 BY MR. MARCHANT:

5 Q. And who went down into the basement to arrest
6 him?

7 MR. ROBINSON: Objection, Your Honor,
8 relevance.

9 THE COURT: Go ahead.

10 THE WITNESS: Myself, Detective Weiner and a
11 K-9 officer with his dog.

12 BY MR. MARCHANT:

13 Q. And how did you announce yourself to Mr. Workman
14 in the basement?

15 A. As you come down the basement stairs, there's a
16 side -- it's a bedroom off to the right and just beyond
17 that there's a garage that had been closed in and made
18 into a separate room where there's a couch, a tv. It's a
19 like a playroom, if you will. We saw the subject laying
20 on the couch. His head was uncovered. His body was
21 covered with a blanket and we positively identified
22 Mr. Workman through a photograph that I had. I announced
23 myself to Mr. Workman as the Greenville County Sheriff's
24 Office and we have an arrest warrant for you; you're under
25 arrest; show us your hands.

CRAIG HANNING - CROSS-EXAMINATION

1 At that time Mr. Workman covered up his head
2 with the blankets and we again announced to him to uncover
3 himself and lay down on the ground, that he was under
4 arrest.

5 Q. Did he follow your commands?

6 A. No, sir, he did not.

7 Q. What did he do?

8 A. Mr. Workman began looking around the room looking
9 for a place to escape or exit from the basement. We again
10 ordered Mr. Workman to lay on the ground and put his hands
11 behind his back. Mr. Workman began to lay on the ground.
12 As I approached Mr. Workman, he began to resist arrest at
13 which time the K-9 unit took over.

14 Q. What happened with the K-9 unit?

15 THE COURT: That's -- move on.

16 MR. MARCHANT: Very good.

17 BY MR. MARCHANT:

18 Q. Once you had Mr. Workman under arrest, did you
19 take him down to the Law Enforcement Center? Did he ride
20 in your vehicle?

21 A. No, he went to Saint Francis East side Hospital.

22 Q. And then some time he ended up in jail?

23 A. Yes, sir.

24 Q. Did you attempt to communicate with Mr. Workman
25 at the jail?

CRAIG HANNING - CROSS-EXAMINATION

1 A. He refused all questions, refused his Rights,
2 refused to give a statement.

3 Q. How about Mr. Robinson, did you attempt to speak
4 with him?

5 MR. ROBINSON: Objection, Your Honor,
6 relevance in this case.

7 MR. MARCHANT: Your Honor, I'm just simply
8 asking whether or not ---

9 MR. MOOREMAN: May we approach?

10 THE COURT: I sustain the objection. Move
11 on.

12 BY MR. MARCHANT:

13 Q. You were present when you and Investigator Weiner
14 spoke with Mr. Wright?

15 A. Yes.

16 Q. And after Mr. Wright spoke with you is when
17 charges were filed against all three of these individuals?

18 A. Yes.

19 Q. And did you at any time show Mr. Espinoza a photo
20 line-up?

21 A. No, sir, it was not necessary.

22 MR. MARCHANT: No further questions. Thank
23 you.

24 THE COURT: Anything else?

25 MR. MOOREMAN: No, Your Honor.

LORI VAN WALLENDael - DIRECT EXAMINATION

1 MR. ROBINSON: No, Your Honor.

2 THE COURT: You may step down.

3 (Witness leaves the witness stand.)

4 MR. MOOREMAN: Your Honor, the defense calls
5 Dr. Lori Van Wallendael.

6 THE CLERK: Please place your left hand on
7 the Bible and raise your right hand.

8 LORI R. VAN WALLENDael, Ph.D, after having
9 been duly sworn, testified as follows:

10 Thank you. You may be seated.

11 State your full name for the record, please.

12 THE WITNESS: Lori Van Wallendael.

13 DIRECT EXAMINATION

14 BY MR. MOOREMAN:

15 Q. Good morning, Dr. Wallendael.

16 A. Good morning.

17 Q. Dr. Wallendael, where do you work?

18 A. I work at the University of North Carolina in
19 Charlotte.

20 Q. What position do you hold at UNC Charlotte?

21 A. I'm Associate Professor and Associate Chair in
22 the Psychology Department?

23 Q. What are your duties as an Associate Professor and
24 Associate Chair in the Psychology Department?

25 A. Basically I have some administrative duties in

LORI VAN WALLENDael - DIRECT EXAMINATION

1 the Undergraduate Program. I teach typically two courses
2 per semester and I'm expected to keep an active research
3 program and publish.

4 Q. Tell me a little bit about the education training
5 you receive on your way to becoming a faculty member of
6 the University of North Carolina in Charlotte?

7 A. I went to college at a little school in central
8 Illinois call McMurry College and got my Bachelor's Degree
9 there in English and Psychology in 1982. Then I went on
10 to Northwestern University and got my Master's and
11 received my Ph.D in 1986.

12 Q. And so you had your Doctorate for approximately
13 12 years?

14 A. About 22 years.

15 Q. Tell me, do you have any particular research
16 interests that you pursue as a faculty member?

17 A. Yes. My training is in what's called cognitive
18 psychology which is really embraces everything from memory
19 to decision making; anything that we would call thinking.
20 And over the past 10 years or so I've more specifically
21 devoted my research interests to memory in a criminal
22 context I guess you would say. I do research on
23 eyewitness memory, ear witness or voice recognition memory
24 and false memory.

25 Q. And, in fact, you published numerous articles on

LORI VAN WALLENDael - DIRECT EXAMINATION

1 the topic of eyewitness identification; is that correct?

2 A. Yes.

3 Q. Have you ever testified or been qualified in a
4 court as an expert in eyewitness identification?

5 A. Yes, I have.

6 Q. Approximately how many times have you been
7 qualified as an expert?

8 A. Probably about 14 or 15 times now.

9 Q. Have you ever been qualified in eyewitness
10 identification in South Carolina?

11 A. Yes, I have.

12 MR. MOOREMAN: Your Honor, I move, at this
13 time, to have Dr. Wallendael qualified as an expert in the
14 field of psychology and eyewitness identification
15 testimony.

16 THE COURT: Any voir dire?

17 MR. MARCHANT: Just a few questions, Your
18 Honor.

19 VOIR DIRE

20 BY MR. MARCHANT:

21 Q. Dr. Van Wallendael, you have a Curriculum Vitae
22 here that's several pages long and I noticed you published
23 several different articles here. The articles and the
24 research that you've conducted, is it empirical or theory
25 based, and to make sure I'm asking this question

LORI VAN WALLENDael - DIRECT EXAMINATION

1 correctly, is it research that you have conducted or is it
2 you analyzing someone else's research?

3 A. Both. I have done some empirical studies on
4 eyewitness identification and I have also published some
5 summaries and theoreticals of other researchers work.

6 MR. MARCHANT: No further questions, Your
7 Honor. No objections to her being qualified.

8 THE COURT: She's qualified. Proceed.

9 BY MR. MOOREMAN:

10 Q. Dr. Wallendael, I want to talk to you about the
11 psychology of eyewitness testimony and specifically I want
12 to talk to you about the three components to eyewitness
13 testimony for identification.

14 Would you tell the jury, please, what are
15 those three components?

16 A. Sure. When we talk about memory as going through
17 three stages, basically, what we call acquisition, storage
18 and retrieval. I guess one of the first things to say to
19 kind of explain what those are is when we look at memory
20 as psychologists, it's not like looking at a file drawer
21 or video cabinet with video tapes where we can take
22 something out and replay it in our mind.

23 We talk about memory as a constructive or
24 sometimes a reconstructive process. It's more like
25 putting a puzzle together than replaying a video or

LORI VAN WALLENDael - DIRECT EXAMINATION

1 looking at photographs.

2 So the first state we call acquisition and
3 that's really just acquiring. It's getting in the
4 information in. It has to do with your senses and it has a
5 lot to do with paying attention.

6 We know that human beings can't possibly pay
7 attention to everything that's going on around them, and
8 that when we're listening and we're seeing, we only
9 acquire a fraction of the information that's out there.

10 Q. Dr. Van Wallendael, let me ask you specifically
11 about this first stage, the acquisition stage. Are there
12 any facts or factors that would impede the acquisition
13 process for an individual?

14 A. Yes. First of all there is our nature learns on
15 what you can see or perceive in a situation; things that
16 are based on lighting, clothing. So, for instance, if I
17 were looking at the jury and trying to acquire information
18 about all of you, there are certain information that I
19 won't acquire simply because I can't see it. I can't see
20 any of your feet. The ladies in the front row, I can't
21 tell whether you're wearing pants or skirts. That
22 information won't be acquired because it's simply not
23 visible to me.

24 But there's a lot of information won't be
25 acquired because I'm limited as to how much I can take in.

LORI VAN WALLENDael - DIRECT EXAMINATION

1 So certain kind of salient things will pop out at me like
2 the fact that y'all wearing yellow name tags, people who
3 are wearing bright clothing and I'll remember red
4 sweaters. But beyond that, there are some wide faces out
5 there. I see some glasses, different hair styles,
6 different skin colors. I'll take a part of that in but
7 there's going to be a lot that I miss. So if I turn
8 around and I try to describe you from memory right now,
9 I'm going to miss some things. I'll be able to describe
10 some of you fairly accurately. I'll get some details.
11 I'll remember that there was a couple of people with
12 glasses. I'll remember that there were some guys with
13 beards. I'll remember a red sweater and so forth because
14 there's only so much a person can take in.

15 What we try to do as researchers is try to
16 figure out are there any predictable ways that we can tell
17 when a person can take a lot in and when a person is going
18 to more likely miss details and even what details they're
19 going to miss.

20 Q. Doctor, let's take about the acquisition phase in
21 the context of a criminal case. What effect, if any, has
22 your research suggested that stress would have in ones
23 ability to have an efficient or effective acquisition
24 stage?

25 A. Stress typically has a very bad affect on our

LORI VAN WALLENDael - DIRECT EXAMINATION

1 ability to remember. As the victim himself said
2 yesterday, when you're under stress you're not thinking
3 clearly. Your adrenaline is rushing. Your attention gets
4 focused more narrowly so in a crime situation very often
5 the stress kind of will make you focus on survival and
6 make you focus on something like a weapon for instance.

7 There is research that shows, in fact, there
8 is a weapon focus effect where there is a gun in a scene,
9 people focus on it. They are able to describe the gun
10 frequently more than they can the person holding it
11 because a gun is a life threatening piece of equipment and
12 you're going to want to have your attention on it. While
13 you're attention is on the gun, your attention can't be
14 focused on faces, clothing, height, and other kinds of
15 details of the scene. So typically people are less able
16 to recognize a perpetrator when there's been a gun
17 involved in a crime?

18 Q. What effect if any do the demographics of a
19 victim versus an assailant have on ones ability to have a
20 effective acquisition stage?

21 A. This is our laboratory and we also refer to it as
22 a cross race effect and the problem basically is when you
23 have a victim of one race, that person is going to be much
24 better able to recognize someone of their own race as
25 opposed to someone of a different race. We see if from

LORI VAN WALLENDael - DIRECT EXAMINATION

1 white eyewitnesses and black perpetrators and we see it
2 visa versa. There are pieces of research on Asian
3 Americans and Hispanic Americans, and it always seems to
4 come down to this biasing affect of recognizing your own
5 race better, which you think goes back to probably our
6 babyhood when we're first learning to recognize faces. It
7 doesn't have anything to do with prejudice. It really
8 doesn't have that much to do with exposure to other races
9 as an adult either. What's probably going on is when
10 you're a baby and you're learning to recognize your
11 mother.

12 We know that babies learn to recognize their
13 mother in the first day or two after their born, and if
14 you think about all the ways that people differ from each
15 other, the faces and you got this little baby and how do
16 they learn to do this? They probably learn by focusing in
17 on salient features to help them distinguish their mom
18 from their nurses and other visitors and uncles. And the
19 way that they did that for a Caucasian baby, let's say, is
20 I probably learned from the scent of my mother, her eye
21 color, hair color, possibly skin tone, the person's hand
22 if their fair skinned. But a lot of the things that I
23 learned as a baby are going to help me throughout my life
24 in identifying other people of my race, but it they may
25 not be very helpful if I'm put in a situation where I have

LORI VAN WALLENDael - DIRECT EXAMINATION

1 to identify an African American person or an Asian
2 American person. Well, you may be saying, gosh, dark
3 eyes, dark skin, and I have nothing else to say.

4 Q. Let's move to the second phase. What term do you
5 use for the second phase?

6 A. Retention.

7 Q. Retention. Describe for the jury, briefly, what
8 is the retention phase?

9 A. This is a phase where you're storing information.
10 Storing is another term that was used here. In a criminal
11 context this can be very important because very often
12 there's a lot of time passes between a crime and a trial
13 certainly. Retention in this case could be several days
14 or so that passed between the crime and seeing faces on
15 the news and you can talk about almost a year that's
16 passed between the crime and the trial here. The think
17 that makes the retention phase interesting is that things
18 are happening during that stage. Memories are changing
19 constantly during the retention period, recreating that
20 memory.

21 Q. What effect, if any, do worldly forces or other
22 influences have on a person's memory during the retention
23 phase?

24 A. Basically, during the retention phase -- keep in
25 mind when you acquired the information, you couldn't have

LORI VAN WALLENDael - DIRECT EXAMINATION

1 acquired it. There are gaps in your memory, missing
2 pieces. During the retention phase, you fill in missing
3 pieces in a lot of different ways maybe from information
4 that someone else has told you, maybe from information you
5 kind of put together yourself as you have relived the
6 event or you told your girlfriend about it and she told
7 the police details start getting added. There was a lot
8 said yesterday about differences between what was said on
9 the stand versus police reports, and you based that on a
10 lot of just the police making errors ---

11 MR. MARCHANT: Your Honor, I object to this
12 and ask her to stick to what's she's researched and not
13 what she heard yesterday.

14 THE COURT: Go ahead.

15 BY MR. MARCHANT:

16 Q. Would a newscast, for example, would that be a
17 type of worldly force or effect that would play a role in
18 the retention phase?

19 A. Yes, definitely. That could basically be
20 superimposed on top of your memory so that what you are
21 seeing becomes a part of what you are remembering from the
22 actual event.

23 Q. Let's go to the third phase. What term would you
24 use for the third phase?

25 A. That term would be retrieval.

LORI VAN WALLENDael - DIRECT EXAMINATION

1 Q. Briefly explain what that phase is?

2 A. Retrieval is when your tested on the memory and
3 in the case of a criminal trial, you're tested frequently.
4 You're tested to a certain extent when you're asked
5 immediately to describe what happened to you. You are
6 tested when you are put in any kind of situation when you
7 might recognize a person who was a part of this event.
8 You are tested on the stand in court. When we research
9 the retrieval stage what we are looking at primarily are
10 the circumstances that might bias a person during the
11 retrieval phase, things that might lead you to change your
12 memory or might lead you to make a certain kind of answers
13 as opposed to others.

14 Q. Is it possible for a news broadcast, for example,
15 to have an effect on ones ability to accurately effectuate
16 the retrieval stage?

17 A. Definitely. If you are a victim, let's say, of
18 an armed robbery and you happen to hear on the news that
19 the police have arrested some people that have been
20 involved in armed robberies in the area, what you remember
21 are three people and you remember seeing two young African
22 American males, and you look on the tv screen and low and
23 behold two or three young African American males. That
24 could push you towards thinking, oh, these must be the
25 people that robbed me.

LORI VAN WALLENDael - DIRECT EXAMINATION

1 Q. Doctor, how is it possible that someone can
2 testify that they are sure that a particular person
3 committed a crime and still be wrong? How is that
4 possible?

5 A. There's a lot of research that suggests that
6 confidence and accuracy are not closely related. You can
7 be very confidence and inaccurate. You can be very
8 accurate and be, in fact, lacking in confidence.
9 Confidence and accuracy typically are effected by
10 variables in the road. So confidence is partly a matter
11 of personality. In a criminal situation, it's often a
12 matter of all of the positive feedback that you tend to
13 get during your stay in the criminal justice system. You
14 make an identification and you make a report about that
15 identification. You want to feel like you're helping the
16 police and you seem to be and ultimately it comes to a
17 trial which makes you feel like, yes, I did do the right
18 thing and I did get the answer right. But all of those
19 are after the fact kind of variables that serve to
20 increase your confidence, whereas the actual event itself,
21 those are the things that are most likely to effect your
22 memory, and that won't necessarily make you more or less
23 confident in your report.

24 MR. MOOREMAN: Your Honor, I've got nothing
25 further.

LORI VAN WALLENDael - CROSS-EXAMINATION

1 MR. ROBINSON: I have no questions.

2 THE COURT: Solicitor.

3 CROSS-EXAMINATION

4 BY MR. MARCHANT:

5 Q. Good morning, Doctor.

6 A. Good morning.

7 Q. A few things to run through, if you would,
8 please. We started around 9:30 this morning. Do you live
9 in Charlotte?

10 A. Yes, I do.

11 Q. And you drove down here this morning?

12 A. Yes, I did.

13 Q. I think it's pretty obvious from some of your
14 testimony that you were here all day yesterday?

15 A. Yes, I was.

16 Q. Are you a volunteer for Mr. Mooreman or is he
17 paying you?

18 A. He is paying me.

19 Q. And you get paid whether or not you testify?

20 A. Yes, I do.

21 Q. You get paid more for testifying?

22 A. Yes, I do.

23 Q. In fact, how much do you get paid per hour for
24 testifying?

25 A. For testifying I get paid \$175.00 per hour for

LORI VAN WALLENDael - CROSS-EXAMINATION

1 testifying.

2 Q. How much do you get paid for just sitting in the
3 courtroom?

4 A. Sitting in the courtroom, driving too and from,
5 waiting, \$75.00 per hour.

6 Q. I didn't recall what time you showed up
7 yesterday. Do you remember what time you got here?

8 A. About 10:00.

9 Q. And you said you got paid for your travel time?

10 A. Yes.

11 Q. What time did you leave Charlotte; about 8:00?

12 A. Yes.

13 Q. And we got done approximately 5:00 yesterday?

14 A. Right.

15 Q. So you got home at about 7:00?

16 A. Right.

17 Q. It's fair to say you were not here for about 11
18 hours not testifying yesterday?

19 A. Yes.

20 Q. And you would say you got about four hours,
21 three-and-a-half hours in travel a day.

22 A. I did, in deed.

23 Q. You've probably been in the stand for about an
24 hour?

25 A. Probably.

LORI VAN WALLENDael - CROSS-EXAMINATION

1 Q. So 15 hours of sitting around about an hour of
2 testifying, that's a pretty good chunk of change, isn't
3 it?

4 A. It is.

5 Q. Mr. Mooreman went through several phases if you
6 would of all of your professional opinion about
7 acquisition, retention and retrieval. You would agree
8 with me that a person's background would influence their
9 ability to remember things?

10 A. Yes, it can.

11 Q. And you would agree with me that a person's life
12 experiences -- what I mean by life experiences is the
13 amount of interaction one race has with another race for
14 their retention or acquisition of an event?

15 A. Yes, particular earlier experiences in life.

16 Q. For example, he as a white male had grown up in
17 an African American community, you would agree it would be
18 easier for me to recognize an African American male as
19 opposed to someone who grew up in a white community?

20 A. Yes.

21 Q. And you would agree that a person's educational
22 level would have an influence on a person's ability to
23 retain knowledge because of their training in school and
24 being taught to remember things?

25 A. Typically not. People who are taught things are

LORI VAN WALLENDael - CROSS-EXAMINATION

1 not typically taught facial recognition.

2 Q. You would agree would you not the length of the
3 amount of time of an incident would play a factor in a
4 person's memory, for example something that took a few
5 seconds as opposed to something that took a few minutes?
6 Obviously if someone was involved in something for a few
7 minutes, they would remember more things?

8 A. Right.

9 Q. And even more so the length of time the location
10 of where an event occurred would play in it as well.

11 A. Yes, that's true.

12 Q. So for someone who lives in an apartment complex,
13 for example, they are more familiar with their
14 surroundings as opposed to a different apartment complex?

15 A. Yes.

16 Q. I guess what I'm asking is the familiarity of a
17 person's surroundings will play a part in what someone is
18 going to remember and what they're not?

19 A. Yes, that's true.

20 Q. And you would agree that a person's state of mind
21 would have significant influence on what they acquire,
22 retain, and are able to spit out meaning if someone is
23 under the influence their acquisition of an event is going
24 to be less than someone is not under the influence?

25 A. Very.

LORI VAN WALLENDael - CROSS-EXAMINATION

1 Q. You would agree that the physical characteristics
2 of an incident location meaning the time of day, the
3 lighting, would play a big factor into someone's ability
4 to observe?

5 A. Yes.

6 Q. And therefore to recall?

7 A. Yes.

8 Q. So if it's bright outside, it would make it
9 easier to identify someone's characteristics as opposed it
10 being dark?

11 A. Absolutely.

12 Q. And having items that were in your way such as
13 bushes and trees and fences would cause someone to have
14 less ability to recall certain characteristics of an
15 individual?

16 A. Yes.

17 Q. Now, obviously we're here about this traumatic
18 event that happened to Mr. Espinoza several months ago in
19 December of last year. You would agree that the ability
20 for someone to observe at that particular time of day the
21 differences between skin tone. That's a pretty
22 significant memory recall, is it not?

23 A. Differences between lighter or darker skin?

24 Q. Yes.

25 A. Yes, I would say so.

LORI VAN WALLENDael - CROSS-EXAMINATION

1 Q. And the possible appearance of facial hair?

2 A. Yes, under those circumstances that might be
3 difficult to perceive upon recall.

4 Q. I'm sorry you said it would be difficult? I
5 didn't hear that last part.

6 A. Yes, it would be difficult.

7 Q. You think it would be difficult?

8 A. Yes.

9 Q. Have you done any analysis with Hispanics being
10 victim and an identification of African Americans?

11 A. Not specifically, no.

12 Q. Have you done white and black?

13 A. Mostly white and black.

14 Q. Absolutely none with Hispanics and African
15 Americans?

16 A. I typically have as much of a population to work
17 with at the UNC Charlotte.

18 Q. You've done some or you've done none?

19 A. I haven't done any or published that involved
20 Hispanic and African Americans.

21 Q. You would agree that the length of time and
22 reporting information to the police is very important?

23 A. Sure.

24 Q. And the quicker and the sooner the report is made
25 the more likely it is to be accurate?

LORI VAN WALLENDael - CROSS-EXAMINATION

1 A. Absolutely.

2 Q. I presume you were able to see and hear the
3 testimony from the victim yesterday about this apartment
4 complex?

5 A. Yes.

6 Q. And you've been here and been to the spot where
7 Mr. Espinoza was robbed?

8 A. No.

9 Q. You have not been to this apartment complex?

10 A. No.

11 Q. And you've talk with Mr. Espinoza and talked with
12 him about his education, his background, and what he saw
13 that night?

14 A. No, I have not spoken with him.

15 Q. And you've talk about the co-defendant,
16 Mr. Wright, about what he recalled that day?

17 A. No, I have not.

18 Q. All of these particular factors of acquisition,
19 retention and retrieval, your just making a general
20 opinion about how people observe?

21 A. Yes.

22 Q. And even more particularly you can't say how
23 Hispanic people observe and retain information about
24 African Americans?

25 A. No.

LORI VAN WALLENDael - REDIRECT EXAMINATION

1 Q. And, lastly, you're not up here saying that this
2 man right here, Mr. Robinson, and this man right here,
3 Mr. Workman, you're not saying that these two right here
4 were not involved in robbing Mr. Espinoza, are you?

5 MR. MOOREMAN: Your Honor, that was not part
6 of the direct examination. That's an irrelevant question.

7 THE COURT: Go ahead.

8 THE WITNESS: No, I can not say that.

9 MR. MARCHANT: I have no further questions.

10 THE COURT: Redirect.

REDIRECT EXAMINATION

11 BY MR. MOOREMAN:

12 Q. Just a few questions, Your Honor. Doctor, you
13 testified that you had no participated personally in
14 studies that involved Hispanic identification of African
15 American males; is that correct?

16 A. That is correct.

17 Q. Is there research that you're aware of that
18 address that phenomenon, the phenomenon of Hispanic
19 victims and African American suspects and visa versa?

20 A. I believe there is research that has used those
21 combinations. The majority of the research has been black
22 and white, but there are obviously going to be some to
23 address other groups, but there are some published studies
24 our there to address the same sorts of things with a
25

LORI VAN WALLENDael - REDIRECT EXAMINATION

1 variety of other ethnic groups.

2 Q. Mr. Marchant asked you about opinions you had
3 specifically related to this case and asked you about your
4 interaction with Mr. Espinoza. After hearing
5 Mr. Espinoza's testimony yesterday, do you have an opinion
6 as to the reliability of the identification that he made
7 especially in light of the fact of the news broadcast.

8 MR. MARCHANT: Your Honor, I'm going to
9 object. I don't think she's qualified to answer that
10 question.

11 THE COURT: I'll sustain that objection to
12 that question.

13 BY MR. MOOREMAN:

14 Q. You talked about different factors that affects
15 ones ability to acquire information in the acquisition
16 stage; is that correct?

17 A. Yes.

18 Q. And many are present in this case; is that
19 correct?

20 A. Yes.

21 Q. Stress.

22 A. Yes.

23 Q. Weapon focus.

24 A. Correct.

25 Q. Cross-racial identification.

STATE VERSUS K. WORKMAN & O. ROBINSON

1 A. Correct.

2 Q. You also indicated that there were many factors
3 to impair ones ability to effectively execute the second
4 stage as well, correct?

5 A. Yes.

6 Q. Especially a news broadcast; is that correct?

7 A. Yes.

8 MR. MOOREMAN: I have nothing further.

9 THE COURT: Thank you, Doctor. You may step
10 down.

11 (Witness was leaves the witness stand.)

12 Would counsel approach, please.

13 (Whereupon, there was a bench conference.)

14 Take the jury out for a minute.

15 (Jury leaves the courtroom.)

16 Madam Clerk, would you place Mr. Robinson and
17 Mr. Workman under oath, please.

18 KENNETH WORKMAN and OSHAUN ROBINSON, having
19 been duly sworn, testified as follows:

20 THE CLERK: Thank you. You may be seated.

21 THE COURT: Mr. Robinson and Mr. Workman,
22 it's time for you to make a decision on whether or not you
23 will take the stand to testify. Do you each understand
24 that?

25 DEFENDANT WORKMAN: Yes, sir.

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1 DEFENDANT ROBINSON: Yes, sir.

2 THE COURT: That is a Constitutional Right
3 that you each have that you do not take the stand and
4 testify or otherwise present evidence because that is your
5 Constitutional Right. The burden is always on the State
6 to prove you guilty beyond a reasonable doubt. Do you
7 understand that?

8 DEFENDANT ROBINSON: Yes, sir.

9 MR. WORKMAN: Yes, sir.

10 THE COURT: If you do not take the stand, I
11 will instruct the jury that they can not hold that against
12 you. They can't even discuss it while in the jury room.
13 Do you understand that?

14 DEFENDANT ROBINSON: Yes, sir.

15 MR. WORKMAN: Yes, sir.

16 THE COURT: Now, you got a perfect right to
17 take the stand and testify, do you understand that?

18 DEFENDANT ROBINSON: Yes, sir.

19 MR. WORKMAN: Yes, sir.

20 THE COURT: If you do decide to take the
21 stand and testify, then you become like any other witness
22 subject to being cross-examined by the solicitor. Do you
23 understand that?

24 DEFENDANT ROBINSON: Yes, sir.

25 MR. WORKMAN: Yes, sir.

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1 THE COURT: I don't know if you have any
2 prior record that could be impeached, but if you do, then
3 the solicitor could bring that out, do you understand
4 that?

5 DEFENDANT ROBINSON: Yes, sir.

6 MR. WORKMAN: Yes, sir.

7 THE COURT: I understand that you have made a
8 decision that you will not take the stand and testify; is
9 that correct?

10 DEFENDANT ROBINSON: Yes, sir.

11 MR. WORKMAN: Yes, sir.

12 THE COURT: Is this a decision that you,
13 yourselves, have made?

14 DEFENDANT ROBINSON: Yes, sir.

15 MR. WORKMAN: Yes, sir.

16 THE COURT: Your lawyers have not put any
17 pressure on you not to testify; is that correct?

18 DEFENDANT ROBINSON: No, sir.

19 MR. WORKMAN: No, sir.

20 THE COURT: So this is your decision?

21 DEFENDANT ROBINSON: Yes, sir.

22 MR. WORKMAN: Yes, sir.

23 THE COURT: Are you under the influence of
24 any alcohol or drugs or any other substance right at this
25 moment?

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1 MR. WORKMAN: No, sir.

2 DEFENDANT ROBINSON: No, sir.

3 THE COURT: You're sober?

4 MR. WORKMAN: Yes, sir.

5 DEFENDANT ROBINSON: Yes, sir.

6 THE COURT: You know what you're doing?

7 DEFENDANT ROBINSON: Yes, sir.

8 MR. WORKMAN: Yes, sir.

9 THE COURT: And you've each made the decision
10 not to take the stand to testify.

11 DEFENDANT ROBINSON: Yes, sir.

12 MR. WORKMAN: Yes, sir.

13 THE COURT: Mr. Mooreman, anything else?

14 MR. MOOREMAN: Not on this issue, Your Honor.
15 I would just like to bring your that Mr. Scott Robinson
16 have talked and he's going to go first in the closing and
17 then I'll follow him.

18 THE COURT: The solicitor will open and have
19 the final argument.

20 MR. MARCHANT: Your Honor, I waive the
21 opening.

22 MR. MOOREMAN: I just ask for an easle.

23 THE COURT: Do you rest, Mr. Mooreman?

24 MR. MOOREMAN: We rest.

25 THE COURT: Mr. Robinson.

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1 MR. ROBINSON: We rest, Your Honor.

2 THE COURT: Any motions?

3 MR. MOOREMAN: We would renew our Motion for
4 Directed Verdict on the remaining charge, armed robbery,
5 conspiracy, the assault and battery, possession of a
6 weapon. It would be our position that in light of
7 Dr. Walldendeal's testimony there is not sufficient
8 evidence for the jury to consider the armed robbery charge
9 because the victim's identification is called in
10 substantial question. So we would call for a Directed
11 Verdict based on that.

12 MR. ROBINSON: I join with that, Your Honor.

13 THE COURT: I deny that motion.

14 MR. MOOREMAN: Your Honor, one other question
15 I have is now that the jury's charges are going to them
16 differently, I'm not going to talk about why, but it was
17 my intent -- I'm not going to talk about why, but it was
18 my intent in my closing to say, from a procedural
19 standpoint, we're starting with these charges and now you
20 are considering these charges.

21 THE COURT: I'm not likely to tell the jury
22 that I have granted a motion or dismissed.

23 MR. MARCHANT: On a technical point there,
24 Your Honor, did you dismiss the unlawful carrying or the
25 Directed Verdict or did you dismiss it before we got that

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1 far.

2 THE COURT: I think you moved to dismiss it
3 yourself.

4 MR. MARCHANT: Mr. Mooreman had raised the
5 issue of the Directed Verdict and I didn't know,
6 technically, where we were. I felt like I had dismissed
7 the unlawful carrying and agreed to a charge of simple
8 assault.

9 THE COURT: Let's take a short recess.

10 (Whereupon, there was a brief break.)

11 I'm going to let you rest in the presence of
12 the jury and then I'll explain to them what's going on.

13 Anything else before you bring the jury in?

14 MR. MARCHANT: Nothing from the State.

15 MR. MOOREMAN: Nothing, Your Honor.

16 THE COURT: Bring the jury back in.

17 (Whereupon, the jury re-enters the
18 courtroom.)

19 MR. MOOREMAN: Your Honor, the defense rests.

20 MR. ROBINSON: The defense rests on behalf of
21 Mr. Workman.

22 THE COURT: Ladies and gentleman, in the
23 trial of criminal case, a defendant never has any
24 obligation or responsibility to testify or present
25 evidence. That is his Constitutional Right. The burden

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1 is always on the State to prove a defendant guilty beyond
2 a reasonable doubt. I will explain that right more fully
3 during the course of my charge.

4 So the testimony in this case is now
5 concluded and what is remaining is the final closing
6 argument by the attorneys and then my charge on the law.

7 Mr. Robinson, you're going first?

8 MR. ROBINSON: Yes, Your Honor.

CLOSING ARGUMENTS

9
10 Mr. Marchant, Mr. Mooreman, Your Honor,
11 ladies and gentleman of the jury, good morning, again. As
12 I said before my name is Scott Robinson and I represent
13 Kenneth Workman. I hope you've all enjoyed this
14 experience that you've had. As I said before, it's a big
15 honor and so forth to do what you're doing.

16 As I said yesterday, you have a standard in
17 this case beyond a reasonable doubt. The Judge will give
18 you that definition at the end when he gives you the
19 charge.

20 You're going to go back to the jury room in a
21 few moments and get a chance to deliberate this case. You
22 may wonder to yourself Mr. Workman and Mr. Robinson did
23 not testify and you may think to yourself why didn't they
24 testify. Think to yourself that these two folks believe
25 in you. They believe that the jury of honest, hardworking

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1 people looked carefully at this case and decide this case
2 according to the law as the Judge is going to give it to
3 you. That's what Mr. Workman and Mr. Robinson have, they
4 have confidence in your ability to decide this.

5 Now, you heard a lot of things in this case
6 in the past couple of days regarding identification,
7 eyewitness testimony and things of that nature. You had
8 an opportunity a moment ago to listen to a expert, a fine
9 expert.

10 And there was also something you may be
11 thinking about, you heard a few moments ago Officer
12 Hanning, and he said something about Mr. Workman resisting
13 arrest in the basement of his house. Mr. Workman is not
14 on trial for that. Mr. Workman is on trial for armed
15 robbery and other charges, but there is no charge for
16 resisting arrest. There is no charge for that.

17 What we have here is we have a case that
18 comes down to a few different factors. What don't have in
19 this case is we don't have any video. We don't have any
20 fingerprints. I know a lot of you may watch CSI or CSI
21 Miami and you expect that, but we don't have any of that
22 in this case. We have no fingerprints, video.

23 What's interesting too is we have no
24 corroborating witnesses, nobody. Just think about this
25 how believable is it that Mr. Espinoza, almost 2:00 in the

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1 morning, getting off from work going to get some food, I
2 believe, and he goes chasing after these folks going 70
3 miles an hour down the street with his lights off and
4 gives a license number or tag number that didn't believe
5 to either of these two folks.

6 Let's think about Mr. Espinoza for a second
7 because you're going to go back in the jury room with the
8 police reports that were made on the basis of what
9 Mr. Espinoza said on the night this happened. The
10 statement that he gave was given three weeks later when he
11 had an opportunity to think about things, and again, he
12 states in his testimony that hoodie over their head and
13 never saw their faces and then it's three weeks before he
14 gives a statement. Does that make sense to you that an
15 individual that was allegedly robbed at almost 2:00 in the
16 morning waits almost three weeks to give a statement?

17 Does it make sense to you that he sees a
18 flash on the news or he says five seconds or something
19 like that and he says now I think I remember? Does that
20 make sense to y'all? This is all is about sense. What
21 makes sense? Who is credible and who is not credible?
22 That's what it comes down to.

23 And the State has a burden -- two standards.
24 You have preponderance of evidence on the one hand and we
25 have beyond a reasonable doubt on the other hand. So

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1 without anything such as corroborating witnesses, video or
2 nothing, with a witness who obviously thinks he is smarter
3 in the police because he states in his testimony that the
4 statement he gave to the police they didn't (inaudible).
5 And he also says in his statement, he says that well, you
6 know, my driver's license says that I'm 5' 8" and actually
7 I'm 5' 6" and I just never changed it because why would I
8 change it. So think about this stuff. Think about his
9 credibility.

10 It's obvious from his report that he gave to
11 the police that this person or persons he didn't see their
12 faces. But look at this case in terms of the idea that
13 the State has to prove each and every element beyond a
14 reasonable doubt. If you have any issues, any questions
15 in this case, you must find in favor of Mr. Robinson and
16 Mr. Workman.

17 You may not like these guys. You may not
18 like the way they dressed. You may not like the people
19 they associate with, their family, but what we have is the
20 State has to prove each and every element of their case
21 beyond a reasonable doubt. If they fail to do that in any
22 respect, you've got to find these folks not guilty. It's
23 not a popularity contest. It is y'all using your coming
24 sense and looking at the evidence in this case and making
25 a decision.

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1 I ask you to return a verdict that
2 Mr. Workman is not guilty of these crimes they are charged
3 with.

4 MR. MOOREMAN: A couple of housekeeping
5 matters regarding these charges. First, the Judge is
6 going to tell you that Oshaun and Ken Workman have a
7 Constitutional Right to remain silent and you can not even
8 discuss that. If anyone in the jury room discusses that,
9 please bring that to our attention.

10 Secondly, another housekeeping matter,
11 initially Oshaun and Ken Workman were charged with
12 conspiracy, armed robbery and unlawful carrying of a
13 pistol, assault and battery of a high and aggravated
14 nature. The unlawful carrying of a pistol is no longer
15 before you for consideration.

16 Now, this whole case is based on two people.
17 It's based on Sergio Espinoza, the victim, and it's based
18 on Timothy Wright also known as Lee-Lee. There are no
19 fingerprints, no eyewitnesses. So the whole case boils
20 down to Sergio Espinoza and Lee-Lee.

21 Let's talk about their involvement and let's
22 talk about their stories one at a time. I'll refer to
23 Mr. Wright as Lee-Lee because it's just easier and I think
24 it's more appropriate. So I'll say Lee-Lee.

25 Lee-Lee has given two statements -- really

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1 three. The first statement that he gave on the 27th,
2 12-27. Then we have his guilty plea. We have his guilty
3 plea to this offense. And then we have testimony that you
4 heard in court. His first statement to police he says
5 there were three people there. There were three people
6 who approached the car. That's his first statement.
7 Three people. In court he testified, again, three people.
8 By the way his guilty plea, if you remember, he testified
9 he had a recommendation from the prosecutor of 20 years.

10 Also, in his first statement, he says both
11 guys have guns. Kenneth and Oshaun have guns in his first
12 statement. His testimony in court he says only Oshaun had
13 a gun. We also have inconsistencies between what he said
14 in court during his testimony. One of the inconsistencies
15 is during cross-examination, he admitted that he had
16 spoken with the prosecutor about testifying prior to the
17 plea. Then on redirect, he said, no, he never spoke to
18 the prosecutor. Also, in his testimony we were going out
19 looking for girls, then he said we were going there to rob
20 somebody. Then he said we were going there looking for
21 girls and to rob somebody.

22 He also, when he talked about what his role
23 was, one of the few things he was consistent about is he
24 never had any gun. Oh, no, I never had any gun. To hear
25 him testify, his role was to observe. He walked up and he

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1 stood there and he observed, and he said he didn't do
2 anything. Yet, he pled to armed robbery. He never did a
3 thing and he pled to armed robbery. He is totally
4 unbelievable as he relates to my client, Oshaun's
5 involvement in this things.

6 Let me tell you why. He says there were
7 three people. Now, keep in mind Sergio Espinoza always
8 said, that's one of the two things he was consistent
9 about, there were only two people. Lee-Lee says there
10 were three and that my guy Oshaun was on the side, Lee-Lee
11 was on the said and Workman was over here. He said he
12 never had the gun and he said Oshaun did and then he said
13 Oshaun and Workman. I'll get back to that in just a
14 second. That's Lee-Lee's testimony.

15 Something else to keep in mind I think the
16 only thing in this case that everybody agrees on is that
17 Lee-Lee was there. Lee-Lee was involved. Lee-Lee was one
18 of the ones who committed this armed robbery. So if you
19 believe the victim that there were only two, there were
20 only two people who did it, we've already got one, and
21 that's Lee-Lee. We've already got one. So your entire
22 focus is who was the second one? Who was the second
23 person there is Lee-Lee? Lee-Lee was there. Lee-Lee pled
24 guilty. Lee-Lee got 20 years and he said he was there.
25 We've got two and Lee-Lee said he was there. Who is that

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1 other person?

2 Lee-Lee, three people there, both had guns,
3 only Oshaun had a gun, never spoke to the prosecutor prior
4 to testifying; I did speak to the prosecutor prior to
5 testifying; I didn't do anything, but I pled guilty to 20
6 years. That's Lee-Lee's testimony. And is what the State
7 would have you believe to satisfy you of my client's guilt
8 beyond a reasonable doubt.

9 Let's talk about Sergio Espinoza. First he
10 gives a statement to Deputy Mendenhall. Then about two to
11 two-and-a-half weeks later he hears a news broadcast.
12 Then he gives his second statement of December 31st to law
13 enforcement. And then he testified in court, his third
14 statement.

15 The first statement to Deputy Mendenhall, how
16 does he describe the people who did this? The guy with
17 the gun, 6 feet tall, wearing a hoodie. That is also
18 supported by Defendant's Exhibit 2, the Criminal Worksheet
19 that the law enforcement did based on the description he
20 gave; the first guy. The second guy is -- well, let me
21 back up, if you remember Agent Hanning testified that
22 Lee-Lee was the tallest of the two. Lee-Lee was 5' 10".
23 So at the time he gave his first statement, victim's
24 description of 6 feet tall is more consistent with Lee-Lee
25 than Oshaun and Ken Workman. Initially, the guy with the

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1 gun was a tall guy and he had told Detective Mendenhall he
2 was a tall guy. That's Lee-Lee.

3 He sees the news broadcast with Oshaun's face
4 and with Ken Workman's face and he gives a statement two
5 to three days later and he knows it's them. He picks out
6 the defendant. Then he gets to court and he realizes that
7 neither Ken or Oshaun are tall, so he says, well, I was
8 sitting down when it happened so it was hard for me to
9 judge how tall he was, which he didn't say in any of this
10 prior statements.

11 There are some other differences between his
12 prior statements and his testimony. The hood, he
13 testified that the guy with the gun pulled his hood down
14 right before he committed the robbery. Make your mistake,
15 ladies and gentleman, I'm not going to stand here and tell
16 you that Sergio Espinoza is consciously lying. He's been
17 through a lot. I don't understand what he's been through
18 and I'm not going to stand here and say I do. I'm not
19 going to stand here and tell you that he's lying. What
20 I'm telling you is that he's the victim of a crime, he
21 wants to get the people who did it, understandably so, the
22 news gave him those people. Ever since the news gave him
23 those people, this is what his story has been. I'm not
24 saying he's lying, I'm just saying he's wrong.

25 Now, we have a difference in height. You're

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1 going to take these back with you and if you notice these
2 criminal description worksheets are very interesting. I
3 had Deputy Mendenhall talk about these worksheets and how
4 important it is to get the description right. Look at
5 those when you go back. Those criminal description
6 worksheets have both individuals having a hooded
7 sweatshirt on, which makes sense if you're going to commit
8 a robbery. These are just a few of the inconsistencies.

9 Also, the details he gave about what
10 happened, I would argue to you are just unbelievable. For
11 example, I asked multiple times, the people who did this,
12 how long were they at the car? I said minutes or seconds?
13 And he said minutes. I said, how many minutes? He said,
14 I believe two to four or four to five minutes. When
15 you're back in the jury room, you got a watch on. Look at
16 your watch. Look at how long two to four minutes. Who in
17 the world is going to sit there for two to four minutes
18 during a robbery? The reason why is because wants to
19 believe that he saw what he needed to be able to tell you
20 that these guys did it, and part of that is the four to
21 five minutes.

22 The other thing is he said he was chasing a
23 car going 75 miles an hour. He is sure that, going 70
24 miles an hour, the gun that was stuck out and shot at him
25 was the very same gun that was used in this robbery. He

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1 is sure. How is that possible at 2:00 in the morning
2 driving 70 miles an hour to be sure that that's the same
3 gun?

4 He talked to you about the people's
5 disposition. He said one was cocky, one was shy. He also
6 described in great detail the gun, remember I asked him.
7 I said, tell me what it looked like. I said describe the
8 barrel. He described the little site at the end of the
9 gun. He describe the color. He described the chamber
10 that the revolver had. He described all of these things,
11 and he also described, besides ever detail about the gun,
12 he described the guy that came around from the back what
13 he looked like based on a profile. He saw him for just a
14 few seconds.

15 He wants to believe, and Dr. Van Wallendael
16 gave you an explanation as to why he wants to believe. He
17 wants to believe because of the fact that he has
18 reconstructed this in his mind. He had names given to him
19 on the news and he wants to believe.

20 Now, not only is his testimony inconsistent,
21 it's also very constructive what the police said about the
22 photo line-up. Both Deputy Weiner and Agent Hanning both
23 testified that they didn't do a photo line-up.
24 Investigator Weiner testified he didn't do a photo line-up
25 because once the victim -- once Sergio saw their faces on

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1 the news, whatever photo line-up he ever did would be
2 forever tainted. Those are his words "forever tainted."
3 And why is that? Because Investigator Weiner and Agent
4 Hanning both know that once they flashed Oshaun's picture
5 on the news, that was it. That's all they needed. No
6 other identification procedure after that could ever be
7 pure.

8 If Investigator Weiner's photo line-up would
9 be tainted, how in the world did Sergio's identification
10 of these two fellas sitting where the accused are, in
11 court, how is that not tainted? How is that reliable?
12 It's not hard to sit on that witness stand and say, oh,
13 those are the guys charged with it, yep. Forever tainted,
14 and that's what Sergio's identification is in this case,
15 and you heard Dr. Van Wallendael explain why.

16 Finally, this is the most telling part about
17 Sergio's testimony regarding identification and what calls
18 into question. The only guy who both the State and the
19 defense agree was there was Lee-Lee. He admitted to it.
20 He pled guilty to it and he is serving 20 years, and
21 Sergio can't even identify Lee-Lee. He never identified
22 Lee-Lee. If he can't identify Lee-Lee, how in the world
23 can he identify Oshaun?

24 There's a lot of different statements, and a
25 lot of different testimony, and it's very hard to piece

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1 together what happened. But let me tell you what I think
2 happened. Lee-Lee is arrested, taken into custody on this
3 charge. He knows there are two suspects who did this. He
4 knows that he had the gun and he knows it's just a matter
5 of time before the police find out he has the gun, so he
6 has to put a third person there with the gun; a third
7 period there with the gun because he needs a buffer
8 between him and the gun. Who does he pick out? My
9 client, Oshaun, somebody he knows from the neighborhood.
10 He put Oshaun there with the gun.

11 He tells the police his story. The police
12 jump at it. They don't call Sergio and present him with a
13 line-up and say, hey, are these the guys that robbed you?
14 They don't go out and try to make contact with Sergio
15 after he gets Lee-Lee's story. Based solely on Lee-Lee's
16 story, somebody who admits to this crime, they go and
17 scope up Oshaun Robinson and arrest him solely on
18 Lee-Lee's story.

19 Sergio, December 10th was robbed by two
20 suspects. Later on, Lee-Lee is arrested. He admits to it
21 and puts my client in the middle so that he didn't have to
22 carry the gun. The police jump on that, they arrest my
23 client, and the news gets a hold of it and flashes my
24 client's face on the news and the victim sees it five or
25 ten seconds and says, those are the guys. And to make

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1 sure he gets on line and he looks at those pictures over
2 and over and over again, reconstructing it. Those are the
3 guys who did it, those are the guys who did it. They
4 arrest my guy solely on Lee-Lee's testimony and here we
5 are.

6 The State doesn't know what happen so how
7 would you know what happened. What we know is this, my
8 client, Oshaun Robinson, was not there. Lee-Lee was there
9 because he admitted to it. We know Oshaun wasn't there
10 because Lee-Lee put him there as the third person. He was
11 never there. Workman was there. We know Workman was
12 there because Workman resisted when the police went to
13 arrest him. He tried to hide and wouldn't cooperate. You
14 didn't hear any of that about Oshaun.

15 Not only that, but of all the guys involved
16 in this, Oshaun is the only one that Lee-Lee had to make
17 up. And we know Lee-Lee had to make him up because there
18 weren't two guys on the driver's side.

19 In closing, ladies and gentleman, the
20 prosecutor in his opening statement told you that if the
21 State had met its burden, then you would have to find the
22 defendants guilty, but if they had not, you would have to
23 cut them loose and find them not guilty.

24 Ladies and gentleman, I would ask that you
25 follow the prosecutor's instructions and find Oshaun

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1 Robinson not guilty. Thank you.

2 MR. MARCHANT: If it please the Court,
3 Mr. Mooreman, Mr. Robinson.

4 Good morning ladies and gentleman. I want to
5 thank you for your time. As both defense attorneys have
6 told you, we have removed you from your families, your
7 jobs, your normal lives in order to come here. And as I
8 did tell you at the beginning, and I do completely agree
9 with Mr. Mooreman's last statement, the burden rests on
10 me. It's on my shoulders to prove to you beyond a
11 reasonable doubt that these two gentleman did it, and I
12 told you at the beginning if I did not do this, you were
13 to turn them loose. That is your duty.

14 It's my job to bring you the evidence that we
15 have. What you heard today and yesterday is the evidence.
16 There is nothing else out there. There's no smoking gun.
17 There's nobody that's going to jump up and admit guilt.
18 I'm not Perry Mason on Matlock. There's nothing that's
19 going to be brought in here that's going to magically show
20 you that these two guys are the ones that did it. What it
21 is going to show you is the evidence that we have, and
22 I'll get to that shortly.

23 I submit to you there are two issues in this
24 case and they are simply two and I submit that you don't
25 even have to worry about one of them. The first one is,

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1 did an armed robbery occur, and the second is did these
2 two guys either do it or were they involved with the
3 robbery. Your Honor is going to charge you with some law
4 at the end and I ask that you pay particular attention to
5 accessory, the hand of one hand of all, meaning that just
6 because three people commit a robbery and one of them has
7 a gun, all three can found guilty of the robbery. I don't
8 have to put the gun in both of these gentleman's hands.
9 They gun doesn't have to be in either one of their hands.
10 His Honor will get to that in a moment.

11 What you are faced with now are less charges
12 with what you were initially charged with. First, and I
13 suggest is the most important one here, is armed robbery
14 and a possession of a weapon during a violent crime. What
15 is a robbery? Basically it is taking someone else's
16 property with the intent to permanently deprive them of
17 it. Armed means with a deadly weapon. You are to decide
18 in your expertise, common knowledge, and every day
19 experiences is a pistol a deadly weapon?

20 The next issue is conspiracy. I would
21 suggest to you, again, pay particular attention to the
22 Judge's instructions it's a combination between two or
23 more people for the purposes of accomplishing an unlawful
24 object or accomplishing a lawful object by unlawful means.
25 I would suggest you don't even have to worry about the

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1 "or" in this case. Did the three of these men -- and
2 that's the testimony you have -- did these three men
3 conspire together to rob Sergio Espinoza?

4 Again, I wish there was more than what we
5 have, but I have presented you everything that this case
6 has to offer.

7 Now, let's briefly go through what we do
8 have. Let's talk about Mr. Wright. Mr. Wright is 20
9 years old. He was caught and arrested on this incident
10 that occurred on December 10, 2007. As a man, he spoke
11 with Investigator Hanning and Investigator Weiner on
12 12/27. He told them that he, Mr. Robinson, and Mr. Wright
13 got out of Tez's black Lincoln. He told you that Marcus
14 was driving. I don't want you to concern yourselves with
15 Tez because he wasn't at the scene or Marcus. Marcus is
16 not on trial today, these two gentleman are on trial.

17 He told Investigator Hanning and Investigator
18 Weiner that it was the four of them, that they went to
19 this apartment complex. They parked the car and they saw
20 Sergio Espinoza come in a red Jeep. On 12/27, this is
21 when he was giving this statement. This incident happened
22 on 12/10.

23 So you got roughly 17 days later he is caught
24 and he tells investigators that it was him, Kenneth and
25 Oshaun. He tells them that the three of them went up

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1 behind the red Jeep. He tells you that Workman was here
2 and that he and Oshaun was over here.

3 Now, I'm going to point you to what
4 Mr. Mooreman said a moment ago there is no question that
5 the State or the defense is disputing that Mr. Wright was
6 there that night. Mr. Wright has pled guilty to armed
7 robbery. How credible is it that the has pled guilty to
8 something that he was involved in. He might have got on
9 the stand and said, well, I wasn't really involved and I
10 didn't have the gun in this incident, but he was there, he
11 was in the car prior to getting out and confronting
12 Mr. Espinoza. They talked about what they were going to
13 do in that black Lincoln before getting out and pointing,
14 gun at Mr. Espinoza's face taking his wallet, his cell
15 phone, his identification and his driver's license.
16 Does it make sense that he would plead guilty if he wasn't
17 guilty? I ask you to consider the credibility of it.

18 And while we are on Mr. Wright, there were no
19 promises made by the Sheriff's Office. There was no
20 promise made by the State. He stood up like a man and
21 admitted his guilty and his involvement and pled guilty.
22 The State made a recommendation and that is the way the
23 court system works. He's not here on trial. He stood up
24 and pled guilty. I made a recommendation as to what the
25 appropriate sentence should be.

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1 Prior to his pleading guilty, there was no
2 agreement that I was going to reduce anything, give him
3 some reduction if he was to come in here and testify, or
4 increase or attempt to increase the potential sentence he
5 got if he didn't come in here and testify. Again, he knew
6 he was wrong. He did Mr. Espinoza wrong. He was involved
7 in this. He stood up like a man and took responsibility.
8 And he told you yesterday when I asked him, you're getting
9 no benefit from being here and you received no benefit
10 from coming here and testifying, why are you doing it? He
11 said, because they were involved. He wants justice to be
12 served as well, ladies and gentleman.

13 What did Mr. Write tell you? He told you
14 about the red Jeep. He told you about the vehicle they
15 were in. He told you about the chase that ensued
16 afterwards. That happened on 12/27. This incident
17 happened on 12/10. When did Sergio give this information
18 to law enforcement? On 12/10, Sergio says, "They were in
19 what I believed to be a dark colored Crown Victorian."
20 From your experience, does a Crown Victorian look similar
21 to a Lincoln?

22 He followed them out of the apartment complex
23 to White Horse Road, and I can not understand or
24 comprehend why he would do such a thing, but he needed to
25 get as much information about these people and this

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1 robbery. And what did he tell the officer who responded
2 that night? Someone reached out of the driver's side, he
3 couldn't tell you whether it was driver or the back seat
4 passenger, and fired a shot at him.

5 This happened on 12/10 he's giving this
6 information to law enforcement. That's what precipitated
7 this whole investigation. On 12/27, 17 days later,
8 Mr. Wright tells law enforcement his version of the facts
9 and what happened that night. He told you yesterday on
10 the stand that Mr. Robinson was sitting in the back
11 passenger's seat behind the driver, that he leaned out the
12 back passenger window and fired a shot. Consistencies in
13 the stories between two men or have never met and didn't
14 know each other. Mr. Espinoza testified that he had never
15 seen this man before. He told you that these two
16 gentleman were the ones he saw that night.

17 Now, was Mr. Wright there? Mr. Wright puts
18 himself there. He testified under oath that he was part
19 of this crime.

20 Let's go over there. Mr. Espinoza has
21 circled where his Jeep was parked. He told you there were
22 no cars in between his car and this particular sidewalk.
23 He told you that he saw Mr. Workman come around from here
24 to the front of his vehicle pointing a gun at him. He
25 told you he was still seated in the driver's seat of his

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1 car. He told you Mr. Workman then came around to the side
2 and then at some point in time he heard some commotion
3 behind him. He told you he turned around and someone was
4 behind his vehicle like this. He told you he could not
5 see whether or not they had a gun in their right hand. He
6 did describe that the person that was up here in front of
7 his car was tall, somewhere between 5' 10" and 6 feet, 160
8 to 180 pounds. His testimony has been consistent about
9 that from day one.

10 He told you that that person had a red hood
11 on. He told the officer, the deputy that reported that
12 night, Officer Mendenhall, that information. He told
13 Investigator Hanning the same thing when he went and spoke
14 with him on December 31st.

15 He told you that he turns around and hears or
16 sees another person. Now, let's talk about in particular
17 of what he saw, and you are determine whether or not it is
18 credible or reliable. His first description to Mendenhall
19 is there was a black male with a red hooded sweatshirt
20 with dark shorts and tennis shoes. His description of the
21 person behind the vehicle was a black male with a white
22 shirt, dark shorts, black tennis shoes and white socks.
23 That's pretty descriptive. That's with a gun in his face
24 at 2:00 in the morning.

25 And why are there no other eyewitnesses? Of

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1 course we would love to have someone there, but it's 2:00
2 on a Sunday night. It's not a heavily travelled road and
3 you're in the corner of an apartment complex where there
4 is one, possibly two buildings with tenants who could have
5 seen some of this. Obviously, there is nobody who has
6 come forward.

7 The expert, if you will, that Mr. Mooreman
8 has put on the stand, I think it's pretty obvious what
9 she's here for. She's here for roughly \$600 for a day and
10 a half. You want to talk about some bias in somebody's
11 testimony. What is her job? Her job is to throw out all
12 these little fancy terms at you about whether or not you
13 can acquire, retain, and retrieve information. I asked
14 her had she done any experimentation on Hispanics? Mostly
15 her experiences are for black and white. She says that
16 she believes there is some information out there about
17 cross racial analysis as far as Hispanics. She didn't
18 talk to Mr. Espinoza. She didn't talk to Mr. Wright. She
19 sure didn't go out to the scene to see what the light was
20 like, to see if there were any shrubs, to see what, if
21 any, obstruction was there to prevent Mr. Espinoza from
22 seeing, from acquiring information.

23 I asked her if education and experience and
24 whether that would factor into whether one would have a
25 better ability to retain information, and she agreed that

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1 it would. What was Mr. Espinoza's line of work? He told
2 you he was a security guard. I'm certainly not going to
3 come in here and tell you that a security guard and a law
4 enforcement officer are on the same playing field, but
5 it's his duty of a security officer to take care of
6 customers and to pay attention to the surroundings and to
7 pay attention to what people look like. Because in his
8 experience, he has had interface with law enforcement, so
9 I suggest to you that his credibility and his
10 believability of what he saw that night and what he
11 remembers is increased than your typical citizen on the
12 street. And what does he tell you? He says Kenneth
13 Workman had the gun.

14 There was big stink about how long it was. I
15 specifically remember Mr. Espinoza saying it felt like a
16 life time. Imagine, if you would, that you've got a gun
17 stuck in your face at 2:00 in the morning, what are you
18 going to remember. Mr. Espinoza has come here and
19 confronted the people who stuck that gun in his face. He
20 has told you what they looked like and how they acted. He
21 specifically told you about Mr. Workman and his light skin
22 and pointed ears. He told you he was the one who had the
23 gun.

24 Now, the defense's own witness will talk
25 about this level of stress that may or may not factor into

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1 a particular person's acquisition. Is it possible that
2 Mr. Espinoza did not see Mr. Wright? Is it possible that
3 Mr. Wright is incorrect about where he was standing? Was
4 he standing behind the car as opposed to beside it? I
5 don't know. That's for y'all to take into consideration,
6 but I will ask you to consider is how many things in
7 common that Mr. Wright and Mr. Espinoza tell you.

8 The red Jeep, Mr. Wright tells you he robbed
9 a Mexican in a red Jeep. They talked about it beforehand
10 in the car. They went on a chase. Mr. Espinoza tells you
11 he followed them out of the complex. There are very
12 similar vehicle description. They ran a tag that night.
13 Driving down White Horse Road, he got shot at.

14 There are consistencies in his story before
15 there's even any indication that Mr. Espinoza makes
16 identification of Mr. Workman and Mr. Robinson. This
17 information was recorded before anything goes out on the
18 tv, or would you feel more comfortable if there had been a
19 photo line-up that night? Probably. They got three to
20 four black male suspects at 3:00 in the morning, do you
21 really expect Deputy Mendenhall to prepare a line-up?

22 The deputies have told you repeatedly that
23 they could not prepare a line-up because the photo that's
24 used on the television is the photo that they would have
25 to use in the line-up. How would you feel if they had

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1 prepared a line-up and I then give it to you after
2 Mr. Espinoza sees this photo on the news.

3 The simple fact is these two gentleman were
4 riding around and they were up to no good. They saw an
5 opportunity and they took it. Why did they take it?
6 According to Mr. Wright it was something to do. He wasn't
7 able to tell you whether or not these guys were employed
8 or if they were in school or whatever. They went after
9 Mr. Espinoza, stuck a gun in his face, stole his items,
10 punched him and left. They shot at him and he sees 17
11 days or 18 days later that three people had been arrested.
12 He doesn't recognize Mr. Wright. He recognizes
13 Mr. Robinson being at the rear of his vehicle. Mr. Wright
14 puts Mr. Robinson at the rear of his vehicle. He puts
15 Mr. Workman as being the gunman. Mr. Wright puts
16 Mr. Workman at the front of the car.

17 Ladies and gentleman, I submit to you that
18 the evidence is there. And I would ask to go back and
19 render a verdict that speaks the truth, and that verdict
20 is to find Mr. Workman and Mr. Robinson of armed robbery
21 and possession of a weapon during a violent crime, of
22 conspiracy and of assault and battery.

23 I would ask you to pay particular attention
24 to the Judge's instructions especially to the hand of one,
25 hand of all. I would again ask you to return that verdict

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1 of guilty.

2 Thank you.

3 THE COURT: Ladies and gentleman of the jury,
4 the State has dismissed the charge against these
5 defendants of unlawfully carrying a pistol, and reduced
6 the aggravated assault and battery charge to simple
7 assault and battery.

8 Now, as jurors in this case you have a
9 responsibility that's entirely separate and distinct from
10 my function as the trial judge. The Constitution of our
11 State does not allow me to charge you on the facts of this
12 case or to discuss the facts with you or in any way or
13 manner let you know what my personal feelings, if any, are
14 about this case. That is because you and you alone are
15 the judges of the facts. Therefore, if during the course
16 of this trial or during the course of this trial, you have
17 a feeling or left with the impression that I have a
18 personal feeling about this case one way or the another,
19 then you disregard that feeling or that impression.

20 Now, it's your duty and your duty alone to
21 weigh the testimony and evidence presented in the case and
22 to pass upon the credibility or the believability of the
23 witnesses you heard testify. In this connection, you have
24 all a witness told you or you can disbelieve all a witness
25 told you. You can believe a part of a witness told you

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1 and disbelieve a part of what a witness told you. You can
2 believe one witness against several or you can believe
3 several against one.

4 You also have a right to take into
5 consideration the bias or prejudice or interest you
6 believe a witness might have. I'm the judge of the law in
7 this case and I am required to charge the law as it
8 applies to the facts. It's not a question of what you
9 feel the law might be or what the should be. It is not
10 necessarily what the lawyers told you it is because under
11 your oath you are required to take the law as I give it to
12 you and apply that law to the facts as you determine what
13 those facts to be and to render your verdict accordingly.

14 It's also my duty to see that trial is
15 conducted according to the rules of the court and the
16 rules of evidence applicable to the admissibility of
17 testimony as I understand those rules to be, and
18 therefore, you are not to consider in any way or manner
19 any testimony that was ruled out by me in this case as
20 admissible.

21 Now, in this case as in all criminal cases,
22 these defendants come into this courtroom presumed to be
23 innocent. This presumption continues and carries through
24 the entire trial until and unless it is removed by
25 evidence that satisfies you of their guilt beyond a

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1 reasonable doubt.

2 The burden is on the State in this case to
3 prove these defendants guilty and to prove each and every
4 element of the offenses for which they are charged beyond
5 a reasonable doubt.

6 Now, some of you may in the past have served
7 on civil cases as jurors and if so you were most likely
8 told that it is only necessary to prove a fact is more
9 likely true than not true, but in civil cases, proof must
10 be more powerful. As I've told you, it must be beyond a
11 reasonable doubt.

12 Now, proof beyond a reasonable doubt is proof
13 that leaves you firmly convinced of these defendants
14 guilt. There are few things that we know with absolute
15 certainty and in criminal cases the law does not require
16 proof that overcomes ever possible doubt. If based on
17 your consideration of the testimony and the evidence in
18 this case, you are firmly convinced that these defendants
19 are guilty, you must find them guilty. But if on the
20 other hand, you think there is a real possibility they are
21 not guilty, you must give them the benefit of that doubt
22 and find them not guilty.

23 Ladies and gentleman, our law does not compel
24 a defendant in a criminal case to take the witness stand
25 and testify or present any evidence and no presumption of

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1 guilt may be raised or no inferences of any kind may be
2 drawn from these defendants not to testify. Our law never
3 imposes upon a defendant in a criminal case the burden of
4 duty of calling any witnesses or producing any evidence or
5 in testifying, therefore, the decision of these defendants
6 not to take the stand to testify on their behalf can not
7 be taken, held or discussed or considered against them in
8 any manner whatsoever.

9 Ladies and gentleman a principle in a crime
10 is one who either in person perpetrates that crime or who
11 being present aides, abets or assists in its commission.
12 When one does an act presence of or with the assistance of
13 another the act is done by both, and where two or more are
14 acting with a common design or intent or present at the
15 commission of a crime it matters not by whom the specific
16 crime is committed, all are guilty.

17 Intent, however, is a necessary element for
18 there must have been a common design or intent to commit
19 the crime and the crime must have been committed thereto
20 with the person aiding or abetting by some overt act.

21 Presence at the commission of a crime means
22 to be sufficiently near so as to be able to aide and abet
23 and assist in its commission.

24 Stated somewhat differently, ladies and
25 gentleman, that is one or more persons in pursuance of a

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1 common design to commit an unlawful act set out together
2 and each takes a part agreed upon or assigned to them,
3 some to commit the act, others to watch at distances to
4 prevent interference or surprise or to encourage the of
5 the unlawful act. Under any or all of these
6 circumstances, if the act is committed, all would be
7 guilty because the act of one is the act of all.

8 Now, ladies and gentleman, one of the issues
9 in this case is the identification of these defendants as
10 the perpetrators of these crimes. Now, the State has the
11 burden of proving identify beyond a reasonable doubt. It
12 is not essential that the witness himself or herself free
13 from doubt as to the correctness of the statement;
14 however, you the jury must be satisfied beyond the
15 reasonable doubt of the accuracy of the identification of
16 these defendants before you can convict them. If you are
17 not convinced beyond a reasonable doubt that these
18 defendants are the persons who committed the crime, then
19 you must find them not guilty.

20 Now, identification testimony is the
21 expression of belief or impression by a witness. It's
22 value depends on the opportunity the witness had to
23 observe the offenders at the time of the offense and to
24 make a reliable identification later. In appraising the
25 identification of the witness you may consider did the

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1 witness had the capacity and ample opportunity to observe
2 the offender. Now, whether a witness had an adequate
3 opportunity to observe the offender or offenders at the
4 time of the offense would be effected by such matters as
5 how long or short a time was available, how far or close
6 the witness was, and how good were the lighting
7 conditions.

8 You may also consider was the identification
9 made by the witness subsequent to the offense the pilot of
10 his own recollection. You may take into account both the
11 strength of his identification and the circumstances under
12 which the identification was made.

13 You may also consider the length of time that
14 elapse between the occurrence of the crime and the next
15 opportunity for the victim to see the defendants.

16 Now, as I said earlier the burden of proof
17 extends to every element of the crimes charged and this
18 includes the identity of these defendants as the
19 perpetrators of the crimes, and after examining the
20 testimony you have a reasonable doubt as to the accuracy
21 of the identification then you must find them not guilty.

22 Ladies and gentleman, the rules of evidence
23 ordinarily does not allow a witness to testify to opinions
24 or to conclusions. Now, an exception to this rule are
25 those who we call expert witnesses. Witnesses who by

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1 reason of education and experience have become expert in
2 some art, science, profession or calling, may state an
3 opinion as to relevant and material matters to which they
4 profess to be experts, and they also state their reasons
5 for the opinion.

6 Now, you should consider the expert opinion
7 received into evidence in this case and give it such
8 weight as you think it deserves. If you decide that the
9 opinion given by the expert witness is not based on
10 sufficient education or experience, or if you should
11 conclude that the reasons given for that opinion are not
12 sound, or that the opinion is outweighed by other
13 evidence, then you may disregard the opinion in its
14 entirety.

15 And experts testimony is to be given no
16 greater weight than that of other witnesses simply because
17 that person is declared to be an expert. And you are not
18 required to except an expert's opinion even though it may
19 be uncontradicted.

20 Now, these defendants are charged, ladies and
21 gentleman, with the crime of conspiracy. This is a
22 Statutory offense. In Section 16-17-410 in our Code of
23 Laws provides, in part, as follows: Conspiracy is defined
24 as a combination between two or more persons for the
25 purpose of accomplishing a criminal or unlawful act. The

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1 Statute, therefore, makes it unlawful for two or more
2 persons to conspire or combine to accomplish a criminal or
3 unlawful purpose.

4 Ladies and gentleman, conspiracy is the
5 unlawful combination or agreement between two or more
6 persons that constitutes the offense and no overt act is
7 necessary. Stated differently, conspiring is a distinct
8 offense and nothing else need be done in the execution
9 thereof, that is an overt act carrying out the completion
10 of the conspiracy is necessary or required.

11 For example, if two people meet and agree to
12 commit a crime, they would be guilty of criminal
13 conspiracy even though later they changed their minds and
14 determine not to do so.

15 These defendants are charged with armed
16 robbery. In order for you to understand armed robbery, I
17 must define for you the term larceny. Larceny, ladies and
18 gentleman, is the taking and carrying away by any person
19 of the goods or things personal with the felonious, that
20 is the unlawful intent to permanently deprive that owner
21 of his personal property and to convert it to the takers
22 own use.

23 Now, robbery, ladies and gentleman, is the
24 felonious unlawful taking of money or goods or things
25 personal of any value from the person of another or in his

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1 presence, and by using violence or by putting that person
2 in fear. Now, a robbery includes all of the elements
3 necessary to constitute larceny as I have defined that
4 term to you, but the aggravating circumstances necessary
5 to constitute robbery as distinguished from larceny are,
6 first of all, the taking must not only be without consent
7 but it must also be accomplished with violence or by
8 putting that person in fear. The property must be taken
9 from the person of a another. But if it is taken in his
10 presence, it is taken constructively from such person.

11 An armed robbery, ladies and gentleman, is
12 robbery as I have defined that term to you while armed
13 with a deadly weapon. Section 16-11-330 of the Code of
14 Law reads in part as follows: Any person convicted for
15 the crime of robbery while armed with a pistol, sling
16 shot, metal knuckles, razor or other deadly weapon, or
17 while alleging either by actions or words he was armed by
18 using a representation of a deadly weapon or any object
19 which a person present during the commission of a robbery
20 would reasonable believe to be a deadly weapon.

21 Now, these defendants are also charged with
22 possession of a firearm during the commission of a violent
23 crime. This too is a Statutory offense, and Section
24 16-23-490 of our Code of Laws defines in part as follows:
25 If a person is in possession of a firearm or visibly

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1 displays what appears to be a firearm during the
2 commission of a violent crime and is convicted of
3 committing or attempting to commit a violent crime as
4 defined in Section 16-1-60, and armed robbery is one of
5 those crimes, he must be imprisoned in addition to the
6 punishment provided for the principle crime.

7 So before these defendants can be convicted
8 of this offense, they must first have been found guilty by
9 you of armed robbery.

10 Now, lastly, these defendants are charged
11 with simple assault and battery. Ladies and gentleman, I
12 charge you on assault. It is an attempt or offer through
13 force or violence to do bodily harm to the person of
14 another where there is the ability to complete the attempt
15 or offer. In other words, it may be defined as an attempt
16 to do violence to the person of another in a rude, angry
17 or resentful manner.

18 Stated differently, a simple assault and
19 battery is the unlawful act of injury to the person of
20 another or a company by any circumstances of aggravation.

21 Ladies and gentleman, under the oath you took
22 in this case, you swore to try this case based solely on
23 the testimony and evidence that was presented in this
24 courtroom. I tell you that it is your duty to lay aside
25 all outside opinions, bias, or prejudice you may have in

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1 reaching your verdict. The verdict is taken from the
2 latin word veredicto which means to speak the truth.

3 You have no friends to reward in this case or
4 enemies to punish. I charge you to abide by your oath and
5 return a verdict that speak the truth.

6 Ladies and gentleman, you'll have in the jury
7 room with you the indictments in this case. These
8 indictments do not constitute evidence. They simply set
9 forth the allegations by the State. These indictments are
10 legal documents that bring this case into the courtroom
11 and presented to you for your determination.

12 Now, ladies and gentleman, with respect to
13 the charges of armed robbery, conspiracy and possession of
14 a weapon during the commission of a violent crime there
15 are two possible verdicts, guilty or not guilty. With
16 respect to the indictment of assault and battery of a high
17 and aggravated nature, there are two possible verdicts in
18 that case, guilty of simple assault and battery and No. 2,
19 not guilty.

20 Madam forelady, I have written out these
21 possible verdicts and I'll send that in with the
22 indictments. You may look at these and be sure to write
23 out whatever the verdicts of the jury are. You'll find on
24 the back of the indictment you'll find where it says,
25 please write out in the space provided the verdict of the

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1 jury as I have explained that you.

2 Ladies and gentleman, whatever your verdicts
3 are they must be unanimous meaning all 12 of you must
4 agree.

5 At this time I am required to go over the
6 charges with the lawyers. I'm going to ask you to go back
7 into your jury room and don't begin deliberating until I
8 send word in for you to do so.

9 (Whereupon, the jury exits the courtroom.)

10 All right, anything further from the State.

11 MR. MARCHANT: Your Honor, I don't have an
12 exception to the charges, and I don't have any problems
13 with the indictments going back. However, on
14 Mr. Workman's indictment it references a .38 caliber --

15 THE COURT: I'll take that out.

16 MR. MOOREMAN: Mr. Robinson doesn't have any
17 objection.

18 MR. ROBINSON: No objection, Your Honor.

19 THE COURT: I have just been informed that
20 our juror Robert Hurbert, he is a diabetic and he is ill
21 and does not believe he can make it through the
22 deliberations on this case. Based on that, I'll have to
23 excuse him and seat the alternate in this case.

24 (Note from the jury was marked as Court's
25 Exhibit No. 1 for identification and admitted into

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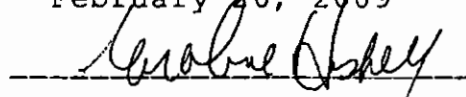
1 (Whereupon, due to technical difficulties
2 this portion of the transcript can not be produced.)
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1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 1st and 2nd day of December, 2008.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11
12 February 26, 2009

13 

14 Caroline Hiskell
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 O'SHAUN J. ROBINSON AND)
 KENNETH M. WORKMAN,)
)
 DEFENDANTS.)
 _____)

2008-GS-23-5381 - 5384
2008-GS-23-5527 - 5530
TRANSCRIPT OF RECORD

JANUARY 14 - 15, 2009
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE C. VICTOR PYLE, JR.

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

LUCAS MARCHANT, ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANTS:

ANDREW MOORMAN, ESQUIRE
SCOTT ROBINSON, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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Case No.: 2008-GS-23-5381-5384

Judge: C. Victor Pyle

Date: 1/14/09 - 1/15/09 5527-5530

Court/County: Greenville

Plaintiff/State: State

Attorney: Lucas Marchant

Defendant: O'Shaun Robinson +
Kenneth WorkmanAttorney: Andy Montman
Scott Robinson

Court Reporter: Susan Hudgins

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Defendant	
133	Robert Moran	W	M				✓
211	Judith Soler	W	F		X		
106	David Land	W	M				✓
149	Alison Patrick	W	F		X		
164	Frank Richards	W	M				✓
215	Harriet Wilson	B	F				✓
75	Bryan Hayes	W	M			X	
3	Frances Anderson	B	F				✓
138	Robert Newell	W	M			X	
119	Dwight Mangum	W	M				✓
150	Amy Perkins	W	F				✓
69	William Haley	W	M				✓
146	Patricia Owens	B	F		X		
26	Jewel Bunche	B	F				✓
1	Joyce Abdullahi	B	F				✓
34	Caron Collier	W	M				✓

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for Court, "P" for Plaintiff, or "D" for Defense.

Voir Dire

Case No.: 2008-GS-23-5381-5384

Date: 1/14/09 - 1/15/09 5527-5530

Plaintiff/State: State

Judge: C. Victor Pike

Court/County: Greenville

Attorney: Lucas Marchant

Defendant: Shawn Robinson &

Kenneth Workman

Attorney: Richard Moorman

Scott Robinson

Court Reporter: Susan Hudgins

[illegible]

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for Court, "P" for Plaintiff, or "D" for Defense.

1 THE COURT: ALL RIGHT. NOW I UNDERSTAND WE HAVE SOME
2 MOTIONS BEFORE WE START.

3 MR. MOORMAN: I DO, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 MR. MOORMAN: THE FIRST MOTION WE WOULD HAVE, YOUR
6 HONOR, IS A MOTION IN LIMINE TO PRECLUDE THE VICTIM'S IN
7 COURT IDENTIFICATION OF MY CLIENT. THE BASIS FOR THE MOTION
8 WOULD BE RULE 403 IN THAT THIS -- THE PROBATIVE VALUE OF
9 THIS VICTIM'S IDENTIFICATION WOULD BE -- WOULD BE VERY LOW
10 BECAUSE OF THE FACT, A COUPLE OF FACTS.

11 FIRST, THAT THE INITIAL IDENTIFICATION HE MADE WAS
12 BASED ON A NEWS BROADCAST AND NOT ON A PHOTO LINEUP. SO THE
13 INITIAL PROCEDURE IN AND OF ITSELF WAS EXTREMELY SUGGESTIVE.
14 AND ANY SUBSEQUENT IDENTIFICATION COMING FROM THAT WOULD BE
15 UNRELIABLE AND WITH THE DANGER FOR UNFAIR PREJUDICE.

16 THAT COUPLED WITH THE FACT THAT THIS VICTIM HAS MADE AN
17 IDENTIFICATION IN COURT IN THIS VERY COURTROOM WITH OUR
18 CLIENTS SITTING IN THE SAME CHAIRS, YOUR HONOR, WOULD, I
19 WOULD ARGUE, WOULD UNDERMINE ITS RELIABILITY. AND THAT'S
20 WHY WE WOULD MOVE TO EXCLUDE THE IN COURT IDENTIFICATION.

21 THE COURT: SOLICITOR.

22 MR. MARCHANT: MAY IT PLEASE THE COURT, YOUR HONOR?
23 THE VICTIM, HIS TESTIMONY IS GOING TO SHOW THAT ABOUT TWO
24 WEEKS AFTER THE LATEST INCIDENT HE WITNESSED OR VIEWED A
25 TELEVISION BROADCAST EITHER BY NBC, CBS, FOX, ONE OF THE

1 LOCAL TELEVISION STATIONS. UPON THAT VIEWING HE STATES HE
2 IMMEDIATELY RECOGNIZED TWO OF THE THREE PERSONS THAT WERE IN
3 THAT. THIS WAS DONE THROUGH THE MEDIA. IT WAS NOT LAW
4 ENFORCEMENT. IT WAS NOT STATE ACTION.

5 UPON THAT VIEWING HE CONTACTED INVESTIGATOR HANNING
6 WITH THE SHERIFF'S OFFICE AND INFORMED HIM THAT THOSE WERE
7 TWO OF THE MEN THAT HAD ROBBED HIM. SO IT WAS THROUGH NO
8 INFLUENCE OF LAW ENFORCEMENT OR THE STATE HE VIEWED OR HAD A
9 PRIOR VIEWING OF THESE ALLEGED DEFENDANTS.

10 AS HIS HONOR IS AWARE IN THE LAST TRIAL HE DID TAKE THE
11 STAND AND TESTIFY AND SAID THAT THAT WAS NOT AN INFLUENTIAL
12 PART OF HIS IDENTIFICATION. HE HAD AVAILABILITY AND AN
13 OPPORTUNITY TO OBSERVE THESE TWO DEFENDANTS THE NIGHT IN
14 QUESTION, AND HE IDENTIFIED THEM ON THE STAND. THERE WAS
15 JUST SIMPLY NOT AN OPPORTUNITY FOR HIM TO DO A PHOTO LINEUP
16 OR ANYTHING OF THAT NATURE IF HIS HONOR REMEMBERS THIS PRIOR
17 CASE.

18 SO IT'S THROUGH NO FAULT OF LAW ENFORCEMENT THAT THIS
19 VICTIM HAD THE OPPORTUNITY. SO WE WOULD ASK THAT THE -- NOT
20 ONLY THE ABILITY FOR THE VICTIM TO TALK ABOUT WHERE HE SAW,
21 BUT ALSO THAT THE IN COURT IDENTIFICATION IS PROPER IN THIS
22 CASE, YOUR HONOR.

23 THE COURT: ALL RIGHT, MR. MOORMAN.

24 MR. MOORMAN: YOUR HONOR, I WOULD DISAGREE. WELL,
25 FIRST, THE REASON WHY WE USE THE RULE 403 AS THE BASIS FOR

1 THE MOTION IS BECAUSE AS YOUR HONOR KNOWS BETTER THAN I DO,
2 THAT STATE ACTION WOULDN'T BE NECESSARY FOR -- TO EXCLUDE IT
3 PURSUANT TO RULE 403 AS OPPOSED TO A DUE PROCESS BASIS.

4 WE WOULD -- I WOULD DISAGREE WITH MR. MARCHANT'S
5 CHARACTERIZATION THAT THE VICTIM MADE THE IDENTIFICATION ON
6 NEWS BROADCAST THROUGH NO FAULT OF LAW ENFORCEMENT. THE
7 EVIDENCE IS GOING TO SHOW THAT MR. TIMOTHY WRIGHT IDENTIFIED
8 MY CLIENT. AFTER HE IDENTIFIED MY CLIENT, MY CLIENT WAS
9 ARRESTED. AND THEN MY CLIENT'S PICTURE WAS PUT ON THE NEWS.

10 HAD THE STATE CHOSEN THE STATE COULD HAVE TAKEN THE
11 STATEMENT FROM MR. WRIGHT, PRODUCED A PHOTO LINEUP, SHOWN IT
12 TO THE VICTIM, HAD THE VICTIM MAKE THE IDENTIFICATION PRIOR
13 TO MAKING AN ARREST AND PRIOR TO IT GOING ON THE NEWS. SO I
14 WOULD DISAGREE AND ARGUE THAT THE STATE HAD EVERY
15 OPPORTUNITY TO PREVENT THE SUGGESTIVE IDENTIFICATION BY
16 SHOWING THE VICTIM A PHOTO LINEUP PRIOR TO MAKING AN ARREST.

17 THE COURT: ALL RIGHT. NOW LET ME ASK YOU THIS. THIS
18 IS THE IDENTICAL MOTION YOU MADE AT THE PRIOR TRIAL AND I
19 DENIED THE MOTION, IS ---

20 MR. MOORMAN: THAT'S CORRECT.

21 THE COURT: --- THAT CORRECT? ALL RIGHT. THEN I'M
22 GOING TO ADOPT AND MAKE IT A PART OF THE RECORD IN THIS CASE
23 THE MOTION IN THE PRIOR TRIAL. AND THE MOTION IS AGAIN
24 DENIED.

25 MR. MOORMAN: YES, SIR, YOUR HONOR.

1 THE COURT: OKAY.

2 MR. MARCHANT: THANK YOU, YOUR HONOR.

3 MR. MOORMAN: YOUR HONOR, I DO HAVE ANOTHER SIMILAR
4 MOTION THAN I DID FROM THE LAST TRIAL. MR. TIMOTHY WRIGHT'S
5 STATEMENT, I HAD MADE A MOTION IN THE LAST TRIAL TO EXCLUDE
6 PORTIONS OF HIS STATEMENT, SPECIFICALLY HIS STATEMENT THAT
7 DEALS WITH OTHER ARRESTS THAT WERE MADE RELATED TO OTHER
8 CRIMES.

9 FIRST I WOULD MOVE TO REDACT ANY PORTION OF THAT
10 STATEMENT.

11 THE COURT: DID WE DO THAT BEFORE?

12 MR. MARCHANT: YES, YOUR HONOR. AND THERE'S NO
13 OBJECTION. THE STATE WILL BE QUESTIONING MR. WRIGHT ABOUT
14 THIS INCIDENT THAT HE HAS PLED GUILTY TO AS WELL AS A
15 SUBSEQUENT INCIDENT THAT HE HAS PLED GUILTY TO WITH NO
16 IMPLICATION OF THESE DEFENDANTS IN THAT SUBSEQUENT GUILTY
17 PLEA.

18 AND THERE ARE A FEW THINGS IN MR. WRIGHT'S STATEMENT
19 THAT DO REFER TO THIS TIME ON THIS ROBBERY. AND I'M
20 CERTAINLY NOT GOING INTO THAT. AND I HAVE INSTRUCTED MR.
21 WRIGHT ON MORE THAN ONE OCCASION ---

22 THE COURT: ALL RIGHT.

23 MR. MARCHANT: --- ONLY TO DISCUSS THIS ROBBERY.

24 MR. MOORMAN: YES, SIR. YOUR HONOR, I WOULD ALSO MAKE
25 A MOTION TO HAVE THE STATE REVEAL TO ME ANY DEALS THAT HAVE

1 BEEN MADE BETWEEN THE STATE AND MR. TIMOTHY WRIGHT. I MADE
2 THIS MOTION BEFORE. I DO BELIEVE THOUGH THAT THERE HAS BEEN
3 A CHANGE IN THE PROCEDURAL POSTURE OF HIS CASES SINCE THE
4 TRIAL. SO I DO MAKE IT AGAIN.

5 THE COURT: MR. MARCHANT.

6 MR. MOORMAN: I BELIEVE THAT THERE WERE OTHER CHARGES
7 THAT HE HAD PENDING AT THE TIME OF THE FIRST TRIAL AND
8 EITHER SOMETIME DURING THE FIRST TRIAL OR AFTER THESE
9 CHARGES WERE DISMISSED.

10 MR. MARCHANT: THAT'S CORRECT, YOUR HONOR. IT WAS
11 DURING THE FIRST TRIAL. PRIOR TO HIS TESTIMONY I DISMISSED
12 ALL REMAINING CHARGES. AT THIS TIME THERE ARE NO
13 OUTSTANDING CASES PENDING AGAINST MR. WRIGHT. HE HAS BEEN
14 SENTENCED ON THIS OFFENSE.

15 MR. MOORMAN: I JUST HAVE ONE QUESTION. SO THE CHARGES
16 WERE DISMISSED THE DAY HE TESTIFIED IN THE PRIOR TRIAL, BUT
17 BEFORE HE TESTIFIED, IS THAT CORRECT?

18 MR. MARCHANT: THAT IS CORRECT.

19 MR. MOORMAN: OKAY.

20 THE COURT: OKAY.

21 MR. MOORMAN: ALL RIGHT.

22 MR. ROBINSON: YOUR HONOR, ON BEHALF OF MR. WORKMAN THE
23 MOTION THAT I HAD THAT MR. -- THAT YOU HAVE RULED ON, I JUST
24 WANTED TO MAKE SURE THAT -- THIS IS MY CONCERN AS FAR AS THE
25 MOTION TO SUPPRESS THE MEDIA IDENTIFICATION THAT THE ALLEGED

1 VICTIM MADE -- THE 'VICTIM MADE IN THIS CASE. WHAT I DON'T
2 -- WHAT WE DON'T KNOW IS WHAT KIND OF INVOLVEMENT THAT LAW
3 ENFORCEMENT HAD IN TERMS OF GETTING THIS IMAGE OF THESE
4 THREE FELLOWS OR FOUR FELLOWS TO THE MEDIA.

5 I MEAN, THAT'S -- I DID SOME RESEARCH ON THIS AS FAR AS
6 HOW THEY GET THESE THINGS TO THE MEDIA AND SO FORTH. AND
7 I'M A LITTLE CONCERNED. MY CONCERN IS THAT IT IS NOT ONLY
8 THE SUGGESTIVENESS OF IT IN TERMS ---

9 THE COURT: THE IDENTIFICATION OF WHO?

10 MR. ROBINSON: IDENTIFICATION OF ---

11 THE COURT: OF YOUR CLIENT?

12 MR. ROBINSON: YES, YOUR HONOR.

13 THE COURT: OKAY.

14 MR. ROBINSON: IS THE SUGGESTIVENESS OF IT. I JUST --
15 WE'RE JUST -- I'M CONCERNED ABOUT THE ROLE OF LAW
16 ENFORCEMENT IN PRESENTING THESE PICTURES TO THE MEDIA
17 BECAUSE WHILE THERE WAS NO LINEUP, THIS WAS NOT LIKE OTHER
18 CASES IN THE SENSE THAT IT WAS TWELVE OR A NUMBER OF DAYS
19 LATER, THERE WAS NO PHOTO LINEUP EVER DONE IN THIS CASE.

20 AND THAT'S THE BIGGEST ISSUE WE HAVE IN OUR -- IN OUR
21 MOTION TO SUPPRESS ON BEHALF OF MR. WORKMAN IS THAT WE'RE
22 NOT -- THIS WAS A MEDIA -- IT WAS EITHER -- I THINK IT WAS
23 CHANNEL 4, ONE OF THE MEDIA NETWORKS, BUT THE ROLE OF LAW
24 ENFORCEMENT IS WHAT WE'RE CONCERNED ABOUT THAT WOULD --
25 'CAUSE IT'S A VERY, VERY SUGGESTIVE, SUGGESTIVE THING WHEN

1 THESE THREE GUYS OR FOUR GUYS ARE SHOWN OVER THE NEWS AND
2 THIS VICTIM, WHO HAS NOT IDENTIFIED THEM BEFORE SAYS THOSE
3 ARE THE GUYS WITHOUT ANY LINEUPS AND A NUMBER OF DAYS LATER.

4 AND I'D LIKE THE OPPORTUNITY TO PROTECT -- IF LAW
5 ENFORCEMENT'S AVAILABLE TO PROFFER THE TESTIMONY OF ONE OF
6 THESE OFFICERS AS FAR AS IF THEY HAD ANY INVOLVEMENT WITH
7 THAT.

8 THE COURT: SOLICITOR.

9 MR. MARCHANT: YOUR HONOR, I WOULD ASK YOU TO OVERRULE
10 THAT OBJECTION BY MR. ROBINSON. I DON'T KNOW WHAT MR.
11 WEINER KNOWS ABOUT THE -- GETTING PHOTOGRAPHS TO THE MEDIA
12 OR ANYTHING LIKE THAT. I'D BE HAPPY FOR MR. ROBINSON TO
13 QUESTION HIM IF THE COURT SO PLEASES. BUT I THINK MR.
14 ROBINSON'S MOTION IS THE SAME AS MR. MOORMAN'S MOTION. AND
15 I'D ASK YOU TO DENY IT.

16 THE COURT: MR. MOORMAN.

17 MR. MOORMAN: AND, YOUR HONOR, MR. ROBINSON DOES RAISE
18 AN ISSUE THAT WE WOULD ALSO -- INITIALLY WE MADE THE MOTION
19 BASED ON THE 403 BASIS. BUT IF, IN FACT, THAT LAW
20 ENFORCEMENT HAD A ROLE IN RELEASING THESE PICTURES TO THE
21 MEDIA, THEN I DO THINK THERE WOULD BE AN ARGUMENT MR.
22 O'SHAUN ROBINSON WOULD HAVE THAT THAT CONSTITUTES STATE
23 ACTION.

24 AND SO FOR THE PURPOSES OF A DUE PROCESS VIOLATION I DO
25 THINK THEN THAT MR. O'SHAUN ROBINSON -- WE CAN ARGUE THAT

DAVID WEINER - DIRECT EXAMINATION BY MR. ROBINSON

13

1 THE IDENTIFICATION SHOULD BE INADMISSIBLE ALSO ON A DUE
2 PROCESS BASIS BECAUSE OF STATE ACTION RELATED ---

3 THE COURT: ALL RIGHT. YOU WANT TO QUESTION THE
4 OFFICER?

5 MR. ROBINSON: I WOULD, YOUR HONOR.

6 THE COURT: ALL RIGHT. COME AROUND, PLEASE, TO BE
7 SWORN.

8 DAVID WEINER, BEING DULY
9 SWORN TESTIFIED AS FOLLOWS:

10 MADAME CLERK: THANK YOU. PLEASE BE SEATED. PLEASE
11 STATE YOUR FULL NAME FOR THE RECORD.

12 MR. WEINER: DAVID WEINER.

13 MR. ROBINSON: MAY IT PLEASE THE COURT?

14 THE COURT: YES.

15 DIRECT EXAMINATION BY MR. ROBINSON:

16 Q. OFFICER WEINER, YOU'VE HEARD THE MOTION, YOU'VE HEARD
17 WHAT WE'RE TALKING ABOUT HERE. WHAT WAS YOUR ROLE IN THIS
18 INVESTIGATION OF MR. WORKMAN AND MR. ROBINSON? WHAT WERE
19 THE -- WHAT WAS YOUR ROLE?

20 A. I WAS ASSIGNED TO THE ARMED ROBBERY DIVISION. AT THE
21 TIME THERE WERE, I THINK, THREE INVESTIGATORS DOWN THERE AND
22 THE SUPERVISOR. AND I HAD ONE OF THE MULTIPLE CASES THEY
23 WERE CHARGED IN.

24 Q. AT WHAT -- WAS THE MEDIA EVER CONTACTED REGARDING THIS
25 IN TERMS OF THE PHOTOS OF THESE INDIVIDUALS?

DAVID WEINER - DIRECT EXAMINATION BY MR. ROBINSON

14

1 A. MY UNDERSTANDING IS THE WAY IT WORKS IS THAT THERE'S
2 LIKE A FOLDER THAT SITS AT OUR FRONT DESK AT THE SHERIFF'S
3 OFFICE. AND THE MEDIA WILL COME DOWN EVERY DAY AND REVIEW
4 THAT FOLDER. AND OUR PUBLIC INFORMATION OFFICER, I THINK
5 THERE'S TWO OF THEM, WILL REVIEW THE REPORTS. AND A
6 SUPPLEMENT IS TURNED IN THAT DAY TO LOOK FOR THINGS THAT THE
7 PRESS MAY BE INTERESTED IN. AND THAT'S BASICALLY HOW THAT
8 HAPPENS.

9 Q. SO -- BUT ---

10 A. I DO NOT RELEASE ANYTHING TO THE PRESS.

11 Q. BUT REGARDING THIS PARTICULAR -- ARE YOU FAMILIAR WITH
12 THE POLICIES OF THE DEPARTMENT IN TERMS OF RELEASING
13 PICTURES IN AN ONGOING INVESTIGATION? ARE YOU INVOLVED WITH
14 THAT AT ALL?

15 A. IF WE HAVE ACTIVE WARRANTS -- IT'S MY UNDERSTANDING IF
16 WE HAVE ACTIVE WARRANTS ON A PERSON OR THEY'RE IN OUR
17 CUSTODY AND HAVE BEEN CHARGED, THAT INFORMATION CAN BE
18 RELEASED, YOU KNOW, CERTAIN PORTIONS OF IT, THEIR NAME, WHAT
19 THEY'VE BEEN CHARGED WITH, THINGS LIKE THAT.

20 Q. SO AS FAR AS YOUR INVOLVEMENT WITH THIS ARMED ROBBERY
21 INVESTIGATION FOR THESE INDIVIDUALS MY CLIENT, MR. WORKMAN
22 AND MR. MOORMAN'S CLIENT, THESE PICTURES CAME FROM WHERE?
23 WHERE DID THESE PICTURES OF THESE FOLKS COME FROM? DO YOU
24 KNOW?

25 A. WE HAVE A DATABASE, YOU KNOW, FROM PRIOR ARRESTS OR IF

DAVID WEINER - DIRECT EXAMINATION BY MR. ROBINSON

15

1 THEY WERE IN OUR CUSTODY.

2 Q. BUT ON THIS PARTICULAR ARMED ROBBERY CASE -- WHAT DO
3 YOU PUT -- IN THAT FOLDER -- YOU'VE SEEN THE FOLDER BEFORE,
4 CORRECT?

5 A. CORRECT.

6 Q. OKAY. IN THE FOLDER DOES IT HAVE -- DOES IT HAVE
7 PICTURES OF THE INDIVIDUALS THAT HERE SETS SUSPECTS IN AN
8 ARMED ROBBERY CASE? WHAT DO YOU -- WHAT DO YOU HAVE?

9 A. WHAT WILL BE THERE WILL BE A COPY OF THE WARRANT WITH
10 THE DEFENDANT'S NAME ON THE WARRANT WITH THEIR PHOTOGRAPH,
11 YOU KNOW, FROM OUR DATABASE AS WELL AS AN ORIGINAL COPY OF
12 THE REPORT, THE INITIAL REPORT TAKEN.

13 Q. THE QUESTION I HAVE FOR YOU THOUGH IS AT THE TIME THESE
14 PICTURES WERE PUT IN THIS FOLDER YOU HAD NOT ISSUED ANY
15 WARRANTS FOR THESE THREE INDIVIDUALS, HAD YOU?

16 A. NO, WE HAVE TO. WE CAN'T PUT THEIR PICTURES OUT UNLESS
17 THE WARRANTS ARE OUT.

18 Q. OKAY. BUT YOU DIDN'T HAVE AT THAT POINT ANY SORT OF --
19 AT THAT POINT WHAT WAS THE INVESTIGATION? WHAT WAS THE --
20 YOU PUT -- STRIKE THAT. YOU PUT PICTURES OF THESE
21 INDIVIDUALS IN THERE FOR AN ARMED ROBBERY CASE, IS ---

22 A. CORRECT.

23 Q. --- THAT CORRECT?

24 A. YES.

25 Q. AS SUSPECTS, CORRECT?

DAVID WEINER - DIRECT EXAMINATION BY MR. ROBINSON

16

1 A. I DIDN'T PUT THE PICTURES IN THERE, BUT OUR PIO DID,
2 CORRECT. THEY HAD BEEN CHARGED WITH ARMED ROBBERY. IT WAS
3 NOT IN THIS CASE.

4 Q. NOT IN THIS CASE?

5 A. CORRECT. IT WAS THE ONE WHERE MR. ROBINSON SEATED
6 THERE, HIS FINGERPRINT MATCH HAD COME BACK.

7 Q. BUT HOW ABOUT MR. WORKMAN?

8 A. AS FAR AS WHAT?

9 Q. HE WASN'T -- HE WASN'T CHARGED AT THAT POINT?

10 A. HE WAS, YEAH.

11 Q. WAS CHARGED WITH WHICH ROBBERY?

12 A. WITH THE CASE WHERE MR. ROBINSON'S FINGERPRINT CAME
13 BACK.

14 Q. OKAY. SO HE WAS CHARGED WITH BOTH AT THE SAME TIME,
15 CORRECT?

16 A. YEAH. HE -- MR. ROBINSON, MR. WORKMAN AND MR. WRIGHT.

17 Q. OKAY. SO IT GETS PUT INTO THIS PUBLIC INFORMATION
18 FILE, ---

19 A. CORRECT.

20 Q. --- AND THE MEDIA COMES BY AND PICKS IT UP?

21 A. CORRECT.

22 Q. CORRECT?

23 A. CORRECT.

24 Q. ARE THERE ANY OTHER -- ARE THERE ANY OTHER PICTURES IN
25 THERE AT ALL OF ANY OTHER POTENTIAL SUSPECTS OR ANYTHING

DAVID WEINER - DIRECT EXAMINATION BY MR. MOORMAN

17

1 LIKE THAT?

2 A. RELATED TO THIS CASE?

3 Q. YEAH.

4 A. NO, I MEAN, ONLY ONES WE HAVE WARRANTS ON. THAT'S IT.

5 Q. BUT YOU DIDN'T DO ANY PHOTO LINEUPS OF -- YOU DIDN'T
6 BRING IN THE VICTIM AND GIVE ANY PHOTO LINEUPS OR ANYTHING
7 LIKE THAT ---

8 MR. MARCHANT: YOUR HONOR, I OBJECT. I DON'T KNOW WHAT
9 THAT HAS TO DO WITH ---

10 THE COURT: YEAH, ---

11 MR. MARCHANT: --- WHETHER OR NOT THESE PICTURES WERE
12 RELEASED.

13 THE COURT: RIGHT. ALL RIGHT. ANYTHING ELSE?

14 MR. ROBINSON: NO, SIR, YOUR HONOR.

15 MR. MOORMAN: MAY I JUST ASK ---

16 THE COURT: SURE.

17 DIRECT EXAMINATION BY MR. MOORMAN:

18 Q. INVESTIGATOR WEINER, WHO HAS ACCESS TO THESE PICTURES?

19 A. YOU MEAN LIKE THE DATABASE ITSELF?

20 Q. YES.

21 A. ANY LAW ENFORCEMENT OFFICER.

22 Q. DOES THE GENERAL PUBLIC HAVE ACCESS TO THESE PICTURES?

23 A. YOU KNOW, I DON'T KNOW. I KNOW YOU CAN GO ON THE
24 WEBSITE AND LOOK AND SEE WHAT PEOPLE HAVE BEEN CHARGED WITH,
25 BUT I DON'T KNOW IF YOU CAN GET THEIR PICTURE OR NOT.

DAVID WEINER - CROSS EXAMINATION BY MR. MARCHANT

18

1 Q. SO THE ONLY PEOPLE OR ENTITY WHO HAS ACCESS TO THESE
2 PICTURES ON THIS DATABASE IS LAW ENFORCEMENT ENTITIES AND
3 DEPUTIES, OTHER LAW ENFORCEMENT PERSONNEL?

4 A. CORRECT.

5 Q. SO AS A MEMBER OF THE GENERAL PUBLIC I COULDN'T GO IN
6 THERE AND HAVE ACCESS TO THESE PICTURES IN YOUR DATABASE?

7 A. I DON'T KNOW THE ANSWER TO THAT. I MEAN, I WOULD THINK
8 THAT IF WE'VE RELEASED THEM TO THE PRESS, THEN THAT WOULD
9 MEAN THAT IT'S PUBLIC INFORMATION AT THAT POINT AND THAT YOU
10 WOULD, IN FACT, HAVE ACCESS TO THOSE PICTURES.

11 Q. WELL, AND I'M TALKING ABOUT ACCESS.

12 A. YOU COULDN'T LOOK AT ALL OF THEM, IF THAT'S WHAT YOU'RE
13 ASKING.

14 Q. I COULD ONLY LOOK AT THE ONES THAT YOU MADE AVAILABLE
15 IN THE FOLDER?

16 A. CORRECT. I GUESS THAT'S ...

17 MR. MARCHANT: YOUR HONOR, IF I COULD FOLLOW UP ON THAT
18 POINT.

19 CROSS EXAMINATION BY MR. MARCHANT:

20 Q. DETECTIVE WEINER, ARE YOU FAMILIAR WITH THE ON-LINE
21 AVENUE WHERE THE GENERAL PUBLIC CAN GO IN AND ACCESS INMATES
22 THAT ARE CURRENTLY HOUSED IN THE LAW ENFORCEMENT CENTER?

23 A. YES.

24 Q. DOES THAT ON-LINE ACCESS -- IS IT LIMITED TO LAW
25 ENFORCEMENT?

DAVID WEINER - CROSS EXAMINATION BY MR. MARCHANT

1 A. NO.

2 Q. DOES THAT ON-LINE ACCESS PROVIDE PHOTOGRAPHS OF
3 INDIVIDUALS WHO ARE CURRENTLY HOUSED AND ONLY CURRENTLY
4 HOUSED?

5 A. YES.

6 Q. DID YOU PUT ANYTHING ABOUT THIS CASE UP-FRONT OR
7 RELEASE ANYTHING TO THEIR MEDIA GUY?

8 A. NOT THAT I RECALL. LIKE I SAID, THE ONLY ONE I
9 REMEMBER PERTAINING TO IS ONE WHERE MR. ROBINSON'S
10 FINGERPRINT CAME BACK. THAT'S -- THAT'S WHERE THIS ORIGINAL
11 STUFF STARTED.

12 Q. AND TO BE CLEAR, IS THAT THIS CASE?

13 A. NO.

14 Q. OKAY. THANK YOU.

15 THE COURT: I SEE NO BASIS TO CHANGE MY RULING.

16 MR. MOORMAN: YES, SIR.

17 THE COURT: ALL RIGHT. ANYTHING ELSE?

18 MR. MOORMAN: YES, SIR. JUST TWO MORE MOTIONS BY MR.
19 ROBINSON. YOUR HONOR, I WOULD MAKE A MOTION TO SEVER. AND
20 I WOULD MAKE A MOTION TO SEVER BASED ON THE FACT THAT MR.
21 SCOTT ROBINSON AND I IN THE LAST TRIAL UTILIZED DIFFERENT
22 TRIAL STRATEGIES, SPECIFICALLY ---

23 THE COURT: YOU CAN STEP DOWN.

24 MR. WEINER: THANK YOU, SIR.

25 MR. MOORMAN: IN THE LAST TRIAL, IF YOUR HONOR

1 REMEMBERS, FOR EXAMPLE, WE -- WHEN THE VICTIM WAS ON THE
2 STAND ON CROSS EXAMINATION BOTH MR. ROBINSON AND I
3 QUESTIONED THE WITNESS ABOUT THE NEWS BROADCAST. I HAD
4 QUESTIONED THE WITNESS VERY BRIEFLY ABOUT THE FACT THAT HE
5 SAW OUR CLIENTS' PICTURES AND THEN HE MADE THE
6 IDENTIFICATION.

7 MR. ROBINSON HAD QUESTIONED THEN THE VICTIM A LITTLE
8 BIT MORE STRENUOUSLY ABOUT WHAT WAS ON THE NEWS BROADCAST
9 POTENTIALLY OPENING THE DOOR FOR EVIDENCE OF THIS -- OF
10 OTHER CRIMES THAT HAD BEEN COMMITTED. THAT WAS A STRATEGY
11 THAT I DID NOT WANT TO IMPOSE FOR MR. -- MY CLIENT, MR.
12 O'SHAUN ROBINSON.

13 ANOTHER EXAMPLE IS THAT MR. SCOTT ROBINSON IN HIS
14 CLOSING TALKED ABOUT OUR CLIENTS UTILIZING THEIR 5TH
15 AMENDMENT RIGHT TO REMAIN SILENT. THAT WAS A STRATEGY THAT
16 I DID NOT WANT TO IMPORE WITH MR. O'SHAUN ROBINSON.

17 SO I'D JUST BRING THOSE EXAMPLES TO YOUR HONOR'S
18 ATTENTION BECAUSE I BELIEVE THAT WE HAVE DIFFERENT
19 STRATEGIES IN HOW TO REPRESENT OUR CLIENTS. AND I BELIEVE
20 THAT THOSE STRATEGIES ARE INCOMPATIBLE. AND THAT'S WHY,
21 YOUR HONOR, I WOULD MOVE TO SEVER.

22 THE COURT: SOLICITOR.

23 MR. MARCHANT: YOUR HONOR, I WOULD STATE THAT'S NOT A
24 SUFFICIENT GROUND FOR SEVERANCE IN THIS CASE. THE SAME
25 INFORMATION WOULD COME OUT IN THIS TRIAL THAT WOULD COME OUT

1 IN THE SUBSEQUENT TRIAL AGAINST WHICHEVER OTHER DEFENDANT WE
2 WERE TRYING. SO FOR JUDICIAL ECONOMY, THE FACTS ARE WHAT
3 THE FACTS ARE, AND THAT BASIS OR THAT MOTION OR BASIS FOR
4 THE MOTION ALONE, I DON'T BELIEVE, IS SUFFICIENT TO HAVE A
5 SEVERANCE OF THESE TWO DEFENDANTS IN THIS TRIAL, YOUR HONOR.
6 AND I ASK THAT YOU DENY THAT MOTION.

7 THE COURT: I DENY THAT MOTION. I CAN'T SEE HOW THE
8 DEFENDANTS' SUBSTANTIVE RIGHTS WOULD BE PREJUDICED BY A
9 JOINT TRIAL. SO YOUR MOTION IS DENIED.

10 MR. MOORMAN: THANK YOU, YOUR HONOR. AND IN LIGHT OF
11 YOUR HONOR'S RULING I WOULD JUST MOVE THEN TO PREVENT MR.
12 ROBINSON AND MR. MARCHANT FROM OBVIOUSLY INTRODUCING ANY
13 CHARACTER EVIDENCE ABOUT MY CLIENT OR ANY EVIDENCE OF OTHER
14 CRIMES.

15 THE COURT: ALL RIGHT.

16 MR. MOORMAN: AND THE LAST THING, YOUR HONOR, ABOUT THE
17 MISTRIAL AND HOW WE DEAL WITH THAT IN THIS TRIAL AS FAR AS
18 REFERENCE TO THE LAST TRIAL, WHEN I'M -- IF I MAKE ANY
19 REFERENCE TO OTHER STATEMENTS THAT WERE MADE IN THE PRIOR
20 TRIAL, MY INCLINATION WAS JUST TO SAY THAT YOU GAVE SWORN
21 TESTIMONY BEFORE IN THAT TRIAL.

22 THE COURT: I THINK THAT'S THE WAY TO HANDLE IT.

23 MR. MOORMAN: OKAY.

24 MR. ROBINSON: I JUST HAVE ONE MORE MOTION IN LIMINE,
25 YOUR HONOR, ---

1 THE COURT: ALL RIGHT.

2 MR. ROBINSON: --- IN THIS CASE. AND THAT IS TO
3 PREVENT -- THE MOTION IN LIMINE IS TO LIMIT THE LAW
4 ENFORCEMENT OFFICERS OUTSIDE OF OPENING THE DOOR IN THIS
5 CASE FROM GOING INTO ANY CURRENT INVESTIGATIONS OR
6 INVESTIGATIONS OF ONGOING ---

7 THE COURT: I DON'T -- YOU'RE NOT GOING INTO THAT, ARE
8 YOU?

9 MR. MARCHANT: YOUR HONOR, I DON'T BELIEVE THERE'S ANY
10 ACTIVE INVESTIGATION ON EITHER ONE OF THESE DEFENDANTS.

11 THE COURT: OKAY. ALL RIGHT.

12 MR. ROBINSON: THANK YOU, YOUR HONOR.

13 MR. MARCHANT: JUDGE, I JUST HAVE TWO THINGS. THERE'S
14 BEEN A LOT OF TALK ABOUT THIS PHOTOGRAPH OR THE PICTURES
15 THAT WERE RELEASED TO THE MEDIA. AND IT'S ALREADY BEEN
16 BROUGHT OUT THAT THAT WAS FROM A SUBSEQUENT CASE. MY VICTIM
17 IS HERE, IS PRESENT IN THE COURTROOM.

18 I JUST WANT TO BE SURE THAT WE'RE ALL UNDERSTANDING AND
19 IN AGREEMENT THAT WE'RE NOT GOING TO TALK ABOUT THAT CASE.
20 BUT, I MEAN, IT'S A VERY SENSITIVE ISSUE. IF IT COMES UP, I
21 JUST -- I'M LOOKING FOR SOME GUIDANCE ABOUT HOW WE SHOULD
22 HANDLE THAT ISSUE, YOUR HONOR.

23 THE COURT: MR. MOORMAN.

24 MR. MOORMAN: YOUR HONOR, MY --- WITHOUT TOTALLY
25 TELEGRAPHING WHAT THE QUESTIONS ARE GOING TO BE FOR THE

1 VICTIM, MY INTENT IS MERELY TO ELICIT THE FACT THAT THIS
2 VICTIM'S WATCHING THE TELEVISION, SAW THE PICTURES OF MY
3 CLIENT AND MR. WORKMAN ON THE NEWS BROADCAST AND THE FACT
4 THAT THEY HAD BEEN ARRESTED. AND THIS IS WHAT I DID IN THE
5 PRIOR TRIAL. I DON'T ANTICIPATE TALKING ANYTHING ABOUT WHY
6 THEY WERE ARRESTED OR ANYTHING LIKE THAT.

7 THE COURT: ALL RIGHT.

8 MR. MARCHANT: VERY GOOD, YOUR HONOR. THE LAST ISSUE I
9 HAVE IS ONE OF MY MOTIONS IN THE FIRST TRIAL WAS TO PREVENT
10 ANY QUESTIONING BY THE DEFENSE OF TIMOTHY WRIGHT OF WHAT
11 SENTENCE HE RECEIVED. IT WOULD BE IMPROPER FOR THE JURY TO
12 CONSIDER MR. WRIGHT'S SENTENCE. THAT MAY CAUSE THEM TO
13 EITHER CONVICT OR NOT CONVICT ONE WAY. TO ME IT WOULD BIAS
14 THEM OF WHAT THE POTENTIAL RANGE OF SENTENCES ARE FOR THESE
15 PARTICULAR CRIMES. I WOULD ---

16 THE COURT: MR. MOORMAN.

17 MR. MOORMAN: ARE YOU ...

18 MR. MARCHANT: I WOULD SUBMIT TO THE COURT THAT THIS
19 WOULD BE DIFFERENT HAD MR. WRIGHT NOT ALREADY BEEN
20 SENTENCED. IF HIS CASE WAS AWAITING SENTENCING I WOULD HAVE
21 A DIFFERENT POSITION. BUT SINCE HE HAS ALREADY BEEN
22 SENTENCED I THINK IT WOULD BE IMPROPER TO ALLOW ANY
23 DISCUSSION ABOUT THAT. I REALIZE IT CAME UP ON MY DIRECT
24 QUESTION LAST TIME, BUT AGAIN, I'VE INSTRUCTED HIM NOT TO
25 DISCUSS THAT.

1 **MR. MOORMAN:** YOUR HONOR, I THINK IT'S HIGHLY PROBATIVE
2 THAT THE JURY KNOW WHAT THE NEGOTIATIONS WERE BETWEEN THE
3 STATE AND MR. WRIGHT.

4 **THE COURT:** I THINK YOU CAN INQUIRE ABOUT NEGOTIATIONS,
5 BUT NOT WHAT THE SENTENCE WAS.

6 **MR. MOORMAN:** YOUR HONOR, MAY I ASK ABOUT WHAT THE
7 RECOMMENDATION -- BECAUSE I BELIEVE THERE WAS A
8 RECOMMENDATION OF TWENTY YEARS FROM MR. MARCHANT. AND I
9 WOULD ARGUE THAT THAT IS DIFFERENT THAN A STRAIGHT UP PLEA
10 WHERE THE JUDGE WERE TO SENTENCE HIM. AND I DO BELIEVE
11 THAT'S PROBATIVE FOR ME TO MENTION THAT THE NEGOTIATION WAS
12 MR. MARCHANT RECOMMENDED TWENTY YEARS AND IN ADDITION THE
13 DAY OF HIS SWORN TESTIMONY THE OTHER CHARGES HAD BEEN
14 DISMISSED.

15 **MR. MARCHANT:** JUDGE, I THINK WE'RE STILL SITTING IN
16 THE SAME POSTURE IF THEY ---

17 **THE COURT:** I'M GOING TO ALLOW YOU TO CROSS EXAMINE
18 THEM THAT THERE WERE NEGOTIATIONS, BUT NOT WHAT THE
19 RECOMMENDATION OR THE SENTENCE WAS.

20 **MR. MOORMAN:** OKAY. YES, SIR.

21 **THE COURT:** ALL RIGHT. WE'VE GOT A LARGE PANEL OF
22 POTENTIAL JURORS. SO WE'LL NEED ALL THE SEATS IN THE
23 COURTROOM. BRING THE PANEL UP. STRIKES ARE TEN, TEN AND
24 TEN.

25 (WHEREUPON COURT WAS IN RECESS AT 9:45 AM)

1 MR. MARCHANT: THE LAST TIME WE PROCEEDED ON JUST
2 SIMPLE ASSAULT AND BATTERY. I JUST WANTED TO BE SURE THAT
3 THAT WAS THE INSTRUCTION ---

4 THE COURT: SIMPLE ASSAULT AND BATTERY?

5 MR. MARCHANT: YES, SIR, INSTEAD OF ABHAN. YES, SIR.

6 (WHEREUPON COURT WAS IN RECESS AT 9:50 AM)

7 (WHEREUPON THE JURY PANEL ENTERED THE COURTROOM AT 9:54
8 AM)

9 THE COURT: LADIES AND GENTLEMEN, IF I COULD HAVE YOUR
10 ATTENTION. AT THIS TIME WE WILL SELECT A JURY IN THE CASE
11 OF THE STATE AGAINST O'SHAUN JOSEPH ROBINSON AND KENNETH M.
12 WORKMAN. MR. ROBINSON, MR. WORKMAN, WOULD YOU BOTH STAND UP
13 AND FACE THE JURY PANEL FOR ME A MOMENT, PLEASE. THANK YOU.
14 YOU CAN BE SEATED.

15 EACH DEFENDANT IS INDICTED FOR CONSPIRACY, FOR ARMED
16 ROBBERY, FOR POSSESSION OF A WEAPON DURING THE COMMISSION OF
17 A VIOLENT CRIME AND FOR ASSAULT AND BATTERY. THESE
18 INDICTMENTS ALLEGE THAT ON OR ABOUT DECEMBER 10, 2007 THAT
19 EACH COMBINED WITH TIMOTHY LEE WRIGHT TO COMMIT THE CRIME OF
20 ARMED ROBBERY.

21 THE NEXT INDICTMENT ALLEGES THAT ON THAT SAME DATE THEY
22 COMMITTED ARMED ROBBERY OF SERGIO ESPINOZA WHILE ARMED WITH
23 WHAT APPEARED TO BE A DEADLY WEAPON. THEN ARE NEXT INDICTED
24 FOR POSSESSION OF A WEAPON DURING THE COMMISSION OF A
25 VIOLENT CRIME ON THAT SAME DATE. AND LASTLY THEY ARE

1 INDICTED FOR COMMITTING AN ASSAULT AND BATTERY ON SERGIO
2 ESPINOZA.

3 POTENTIAL WITNESSES IN THIS CASE WILL BE DEPUTY S.
4 MENDENHALL, SERGIO ESPINOZA, TIMOTHY WRIGHT, DETECTIVE DAVID
5 WEINER, CRAIG HANNING AND LORI VAN WALLENDAL. NOW I WOULD
6 INQUIRE AT THIS TIME IF ANY MEMBER OF THE JURY PANEL IS
7 RELATED BY BLOOD OR MARRIAGE OR CONNECTED BY EMPLOYMENT TO
8 EITHER DEFENDANT OR TO ANY POTENTIAL WITNESS IN THE CASE,
9 ARE YOU SENSIBLE OR AWARE OF ANY BIAS OR PREJUDICE WITH
10 RESPECT TO THE STATE, TO THE DEFENDANTS OR TO THE SUBJECT-
11 MATTER OF THE CASE OR DO YOU KNOW OF ANY REASON WHY YOU
12 COULD NOT GIVE THE STATE AND EACH DEFENDANT A FAIR AND
13 IMPARTIAL TRIAL BASED ON THE LAW AND EVIDENCE TO BE
14 PRESENTED? IF SO, WOULD YOU PLEASE STAND AND GIVE ME YOUR
15 NAME?

16 (NO RESPONSE)

17 THE COURT: DO I HAVE ANY MEMBER OF THE PANEL WHO HAS
18 ANY CONNECTION, FAMILY, BUSINESS, SOCIAL OR OTHERWISE WITH
19 BOB ARIAIL, THE SOLICITOR IN THIS CASE, OR WITH LAW
20 ENFORCEMENT, WHETHER THAT BE FEDERAL, STATE, COUNTY OR
21 MUNICIPAL? IF SO, PLEASE STAND AND GIVE ME YOUR NAME. YOUR
22 NAME, SIR?

23 JUROR: AARON JARVIS.

24 THE COURT: ALL RIGHT, SIR.

25 MR. JARVIS: MY BROTHER IN-LAW IS THE DEPUTY DIRECTOR

1 OF EMERGENCY MANAGEMENT FOR GREENVILLE COUNTY.

2 THE COURT: AND WOULD THAT IN ANY WAY INTERFERE WITH
3 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR ON THIS CASE?

4 MR. JARVIS: NO, SIR, IT WOULD NOT.

5 THE COURT: THANK YOU, SIR. YOUR NAME, SIR?

6 JUROR: BRYAN HAYES.

7 THE COURT: ALL RIGHT, SIR.

8 MR. HAYES: MY FATHER IS A RETIRED FBI AGENT.

9 THE COURT: AND WOULD THAT FACT IN ANY WAY INTERFERE
10 WITH YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR ON THIS
11 CASE?

12 MR. HAYES: NO, SIR.

13 THE COURT: THANK YOU. YOUR NAME, SIR?

14 JUROR: DOUGLAS KONDRA.

15 THE COURT: ALL RIGHT, SIR.

16 MR. KONDRA: BOB ARIAIL AND I HAVE BEEN TOGETHER ON
17 NUMEROUS OCCASIONS IN THE COMMUNITY.

18 THE COURT: ALL RIGHT. WOULD THAT FACT IN ANY WAY
19 INTERFERE WITH YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR
20 ON THIS CASE?

21 MR. KONDRA: NO.

22 THE COURT: THANK YOU, SIR. ANDY MOORMAN REPRESENTS
23 MR. ROBINSON. SCOTT ROBINSON REPRESENTS MR. WORKMAN. DO I
24 HAVE ANY CLIENTS NOW OR FORMERLY OF EITHER OF THESE
25 ATTORNEYS? IF SO, PLEASE STAND AND GIVE ME YOUR NAME.

1 (NO RESPONSE)

2 THE COURT: DO I HAVE ANY MEMBER OF THE PANEL OR ANY
3 MEMBER OF YOUR FAMILY WHO HAS BEEN THE VICTIM OF A VIOLENT
4 CRIME? IF SO, WOULD YOU PLEASE STAND AND GIVE ME YOUR NAME?

5 (NO RESPONSE)

6 THE COURT: ALL RIGHT. ANY OTHER QUESTIONS -- YES,
7 SIR. YOUR NAME?

8 JUROR: ROBERT NEWELL.

9 THE COURT: ALL RIGHT, SIR. AND WHAT ---

10 MR. NEWELL: MY WIFE WAS ASSAULTED IN TEXAS.

11 THE COURT: ALL RIGHT. WOULD THAT FACT IN ANY WAY
12 INTERFERE WITH YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR
13 ON THIS CASE?

14 MR. NEWELL: NO.

15 THE COURT: THANK YOU, SIR. ANY OTHER QUESTIONS,
16 GENTLEMEN?

17 MR. MOORMAN: NOTHING FROM THE DEFENSE, YOUR HONOR.

18 THE COURT: ALL RIGHT. STRIKES ARE TEN FOR THE STATE,
19 TEN FOR EACH DEFENDANT. LADIES AND GENTLEMEN, WHEN YOUR
20 NAME IS CALLED I'LL ASK THAT YOU PLEASE COME FORWARD UP
21 FRONT TO THIS PODIUM, TURN AROUND, FACE COUNSEL AND AWAIT
22 FURTHER INSTRUCTIONS. THANK YOU.

23 MADAME CLERK: JUROR 133, ROBERT MORAN. AND PLEASE
24 BRING YOUR THINGS WITH YOU. WHAT SAYS THE STATE?

25 MR. MARCHANT: PLEASE PRESENT THE JUROR.

1 MADAME CLERK: WHAT SAYS THE DEFENDANT?

2 MR. MOORMAN: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

4 MR. ROBINSON: PLEASE PRESENT THE JUROR.

5 MADAME CLERK: SIR, IF YOU'LL PLEASE HAVE A SEAT IN THE
6 JURY BOX. JUROR 211, JUDITH ISLER. WHAT SAYS THE STATE?

7 MR. MARCHANT: PLEASE EXCUSE THE JUROR FROM THE TRIAL
8 OF THIS CASE.

9 MADAME CLERK: MS. ISLER, YOU MAY BE SEATED. YOU HAVE
10 BEEN EXCUSED FROM THIS CASE. JUROR 106, DAVID LAND. WHAT
11 SAYS THE STATE?

12 MR. MARCHANT: PLEASE PRESENT THE JUROR.

13 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

14 MR. MOORMAN: PLEASE PRESENT THE JUROR.

15 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

16 MR. ROBINSON: PLEASE PRESENT THE JUROR.

17 MADAME CLERK: ALL RIGHT. THANK YOU, SIR. PLEASE BE
18 SEATED IN THE JURY BOX. JUROR 149, ALISON PATRICK. WHAT
19 SAYS THE STATE?

20 MR. MARCHANT: PLEASE EXCUSE THE JUROR FROM THE TRIAL
21 OF THIS CASE.

22 MADAME CLERK: ALL RIGHT, MS. PATRICK, YOU MAY BE
23 SEATED. YOU HAVE BEEN EXCUSED FROM THIS CASE. JUROR 164,
24 FRANK RICHARDS. WHAT SAYS THE STATE?

25 MR. MARCHANT: PLEASE PRESENT THE JUROR.

1 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

2 MR. MOORMAN: YOUR HONOR, MAY WE APPROACH?

3 THE COURT: SURE.

4 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
5 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

6 MR. MOORMAN: PLEASE PRESENT THIS JUROR.

7 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

8 MR. ROBINSON: PLEASE PRESENT THE JUROR.

9 MADAME CLERK: MR. RICHARDS, PLEASE HAVE A SEAT IN THE
10 JURY BOX. JUROR 215, HARRIET WILSON. WHAT SAYS THE STATE?

11 MR. MARCHANT: PLEASE PRESENT THE JUROR.

12 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

13 MR. MOORMAN: PLEASE PRESENT THE JUROR.

14 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

15 MR. ROBINSON: PLEASE PRESENT THE JUROR.

16 MADAME CLERK: MA'AM, PLEASE HAVE A SEAT IN THE JURY
17 BOX. JUROR 75, BRYAN HAYES. WHAT SAYS THE STATE?

18 MR. MARCHANT: PLEASE PRESENT THE JUROR.

19 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

20 MR. MOORMAN: PLEASE EXCUSE THIS JUROR FROM THE TRIAL
21 OF THIS CASE.

22 MADAME CLERK: MR. HAYES, YOU MAY BE SEATED. YOU'VE
23 BEEN EXCUSED FROM THIS CASE. JUROR NUMBER 3, FRANCES
24 ANDERSON. WHAT SAYS THE STATE?

25 MR. MARCHANT: PLEASE PRESENT THE JUROR.

1 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

2 MR. MOORMAN: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

4 MR. ROBINSON: PLEASE PRESENT THE JUROR.

5 MADAME CLERK: MA'AM, PLEASE BE SEATED IN THE JURY BOX.

6 JUROR 138, ROBERT NEWELL. WHAT SAYS THE STATE?

7 MR. MARCHANT: PLEASE PRESENT THE JUROR.

8 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

9 MR. MOORMAN: PLEASE EXCUSE THIS JUROR FROM THE TRIAL
10 OF THIS CASE.

11 MADAME CLERK: YOU MAY BE SEATED. YOU HAVE BEEN
12 EXCUSED FROM THIS CASE. JUROR 119, DWIGHT MANGUM. WHAT
13 SAYS THE STATE?

14 MR. MARCHANT: PLEASE PRESENT THE JUROR.

15 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

16 MR. MOORMAN: PLEASE PRESENT THIS JUROR.

17 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

18 MR. ROBINSON: PLEASE PRESENT THE JUROR.

19 MADAME CLERK: SIR, PLEASE HAVE A SEAT IN THE JURY BOX.
20 JUROR 150, AMY PERKINS. WHAT SAYS THE STATE?

21 MR. MARCHANT: PLEASE PRESENT THE JUROR.

22 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

23 MR. MOORMAN: PLEASE PRESENT THE JUROR.

24 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

25 MR. ROBINSON: PLEASE PRESENT THE JUROR.

1 MADAME CLERK: MS. PERKINS, PLEASE HAVE A SEAT IN THE
2 JURY BOX. JUROR 69, WILLIAM HALEY. WHAT SAYS THE STATE?

3 MR. MARCHANT: PLEASE PRESENT THE JUROR.

4 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

5 MR. MOORMAN: PLEASE PRESENT THE JUROR.

6 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

7 MR. ROBINSON: PLEASE PRESENT THE JUROR.

8 MADAME CLERK: MR. HALEY, PLEASE HAVE A SEAT IN THE
9 JURY BOX. JUROR 146, PATRICIA OWENS. WHAT SAYS THE STATE?

10 MR. MARCHANT: PLEASE EXCUSE THE JUROR FROM THE TRIAL
11 OF THIS CASE.

12 MADAME CLERK: ALL RIGHT, MS. OWENS, YOU MAY BE SEATED.
13 YOU HAVE BEEN EXCUSED FROM THIS CASE. JUROR 26, JEWEL
14 BUNCHE. WHAT SAYS THE STATE?

15 MR. MARCHANT: PLEASE PRESENT THE JUROR.

16 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

17 MR. MOORMAN: PLEASE PRESENT THE JUROR.

18 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

19 MR. ROBINSON: PLEASE PRESENT THE JUROR.

20 MADAME CLERK: MA'AM, PLEASE HAVE A SEAT IN THE JURY
21 BOX.

22 THE COURT: MS. BUNCHE, TAKE THAT FIRST SEAT AND SERVE
23 AS FOREPERSON ON THE CASE FOR ME, PLEASE, MA'AM.

24 MADAME CLERK: JUROR NUMBER 1, JOYCE ABDULLAHI. WHAT
25 SAYS THE STATE?

1 MR. MARCHANT: PLEASE PRESENT THE JUROR.

2 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

3 MR. MOORMAN: PLEASE PRESENT THE JUROR.

4 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

5 MR. ROBINSON: PLEASE PRESENT THE JUROR.

6 MADAME CLERK: MA'AM, PLEASE HAVE A SEAT IN THE JURY
7 BOX. JUROR 34, AARON COLLIVER. WHAT SAYS THE STATE?

8 MR. MARCHANT: PLEASE PRESENT THE JUROR.

9 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

10 MR. MOORMAN: PLEASE PRESENT THE JUROR.

11 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

12 MR. ROBINSON: PLEASE PRESENT THE JUROR.

13 MADAME CLERK: MR. COLLIVER, PLEASE HAVE A SEAT IN THE
14 JURY BOX. JUROR 139, DONALD NIEMI. WHAT SAYS THE STATE?

15 MR. MARCHANT: PLEASE PRESENT THE JUROR.

16 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

17 MR. MOORMAN: PLEASE PRESENT THE JUROR.

18 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

19 MR. ROBINSON: PLEASE PRESENT THE JUROR.

20 MADAME CLERK: SIR, PLEASE HAVE A SEAT IN THE JURY BOX.

21 THE COURT: GIVE ME ONE ALTERNATE. ONE FOR THE STATE
22 AND TWO FOR EACH DEFENDANT.

23 MADAME CLERK: JUROR 188, RAMONA STRATMANN. WHAT SAYS
24 THE STATE?

25 MR. MARCHANT: PLEASE PRESENT THE JUROR.

1 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

2 MR. MOORMAN: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

4 MR. ROBINSON: PLEASE PRESENT THE JUROR.

5 MADAME CLERK: MA'AM, PLEASE HAVE A SEAT IN THE JURY
6 BOX.

7 (PAUSE)

8 THE COURT: OKAY. SWEAR THE JURY, PLEASE.

9 MADAME CLERK: LADIES AND GENTLEMEN, PLEASE STAND AND
10 RAISE YOUR RIGHT HAND FOR THE OATH IN THIS CASE. THE PROPER
11 RESPONSE IS, I WILL. AND I'LL READ BOTH DEFENDANTS.

12 YOU SHALL WELL AND TRULY TRY THE CASES 2008-GS-23-5382,
13 THE STATE VERSUS O'SHAUN JOSEPH ROBINSON, INDICTED FOR ARMED
14 ROBBERY, POSSESSION OF A WEAPON DURING THE COMMISSION OF A
15 VIOLENT CRIME, 5383 FOR CONSPIRACY AND 5384 FOR ASSAULT AND
16 BATTERY.

17 ALSO, PLEASE WELL AND TRULY TRY THE CASES 2008-GS-23-
18 5530, THE STATE VERSUS KENNETH M. WORKMAN, INDICTED FOR
19 ARMED ROBBERY, POSSESSION OF A WEAPON DURING THE COMMISSION
20 OF A VIOLENT CRIME, 5529 FOR CONSPIRACY AND 5528 FOR ASSAULT
21 AND BATTERY AND A TRUE VERDICT RENDERED ACCORDING TO THE LAW
22 AND THE EVIDENCE SO HELP YOU GOD. I WILL?

23 THE JURY: I WILL.

24 MADAME CLERK: THANK YOU. PLEASE BE SEATED.

25 THE COURT: LADIES AND GENTLEMEN, I'LL GIVE YOU A SHORT

OPENING STATEMENTS - MR. MARCHANT

35

1 RECESS BEFORE WE START. WHILE ON RECESS DO NOT TALK ABOUT
2 THIS CASE. YOU DON'T DO THAT UNTIL YOU'VE HEARD ALL OF THE
3 TESTIMONY TO BE PRESENTED, THE ARGUMENTS BY THE ATTORNEYS
4 AND MY CHARGE ON THE LAW. SO IF YOU'LL BE AT EASE, FOLLOW
5 THE BAILIFF, WE'LL START SHORTLY. THANK YOU.

6 (WHEREUPON THE JURY EXITED THE COURTROOM AT 10:14 AM)

7 THE COURT: AND FOR THE BALANCE OF THE PANEL, WE CAN
8 GIVE YOU THE REST OF TODAY OFF, BUT WE NEED YOU TO CALL IN
9 THIS AFTERNOON AFTER SIX. SO PLEASE CALL IN AFTER SIX
10 TODAY. THANK YOU. YOU'RE EXCUSED.

11 (WHEREUPON THE REMAINING JURY PANEL EXITED THE
12 COURTROOM AT 10:15 AM)

13 (WHEREUPON COURT WAS IN RECESS AT 10:16 AM)

14 THE COURT: OKAY. YOU READY TO MAKE OPENING, BRIEF
15 OPENING STATEMENTS TO THE JURY?

16 MR. MOORMAN: YES, SIR.

17 THE COURT: BRING OUR JURY.

18 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 10:24 AM)

19 THE COURT: ALL RIGHT. BRIEF OPENING STATEMENT,
20 SOLICITOR.

21 MR. MARCHANT: MAY IT PLEASE THE COURT, MR. MOORMAN,
22 MR. ROBINSON? GOOD MORNING, LADIES AND GENTLEMEN OF THE
23 JURY. MY NAME IS LUCAS MARCHANT. I'M AN ASSISTANT
24 SOLICITOR HERE IN GREENVILLE COUNTY.

25 IT'S MY JOB AS AN ASSISTANT SOLICITOR TO BRING CASES TO

OPENING STATEMENTS - MR. MARCHANT

36

1 YOU AND PRESENT EVIDENCE TO YOU THAT WILL PROVE THAT THESE
2 TWO GENTLEMEN, MR. O'SHAUN ROBINSON AND MR. KENNETH WORKMAN,
3 DID ON DECEMBER THE 10TH OF 2007 ROB AT GUNPOINT THE VICTIM,
4 SERGIO ESPINOZA, OF HIS CELL PHONE, HIS WALLET AND HIS
5 IDENTIFICATION CARDS. THAT EVENT TOOK HERE -- TOOK PLACE
6 HERE IN GREENVILLE COUNTY.

7 THERE ARE TWO THINGS ESSENTIALLY THAT THIS CASE IS
8 GOING TO BOIL DOWN TO. AND I WOULD ASK YOU TO KEEP IT AS
9 SIMPLE AS THIS. ONE, THAT IT HAPPENED. AND, TWO, WERE
10 THESE TWO GENTLEMEN INVOLVED? I SUBMIT TO YOU THAT EVIDENCE
11 WILL SHOW TO YOU THAT THEY WERE.

12 THERE WERE THREE PEOPLE THAT HAVE BEEN CHARGED IN THIS
13 ARMED ROBBERY. ONE OF THEM YOU'LL HEAR FROM TODAY. HIS
14 NAME IS TIMOTHY WRIGHT. HE'S ALREADY PLED GUILTY AND BEEN
15 SENTENCED ON THIS OFFENSE.

16 THESE TWO GENTLEMEN HAVE PLED NOT GUILTY. THEY ARE ON
17 TRIAL TODAY AND HAVE EXPRESSED THEIR INNOCENCE. I WOULD ASK
18 YOU TO FOLLOW WHAT THE JUDGE WILL PRESENT TO YOU AT THE END
19 OF THIS TRIAL AND INSTRUCT YOU THAT THE BURDEN OF THIS CASE,
20 THAT ALL THE EVIDENCE RESTS UPON THE STATE, THAT I HAVE TO
21 CONVINCE YOU BEYOND A REASONABLE DOUBT THAT THOSE TWO
22 GENTLEMEN WERE INVOLVED IN THIS INCIDENT.

23 NOW HE'S GOING TO GIVE YOU SOME DEFINITIONS AT THE END.
24 AND I WOULD ASK YOU TO PAY ATTENTION TO WHAT REASONABLE
25 DOUBT IS. HE'S GOING TO TELL YOU, I BELIEVE, THAT IT

OPENING STATEMENTS - MR. MARCHANT

37

1 DOESN'T MEAN THAT THERE'S ANY OTHER POSSIBILITY. IT'S NOT
2 ONE HUNDRED PERCENT. REASONABLE DOUBT IS DOUBT THAT WOULD
3 CAUSE YOU OR GIVE YOU HESITATION TO ACT. HE'S GOING TO TELL
4 YOU I DON'T HAVE ONE HUNDRED PERCENT TO PROVE. IT'S BEYOND
5 A REASONABLE DOUBT.

6 HE'LL EXPLAIN SOME OTHER DOUBTS THAT YOU MAY SEE IN
7 OTHER TRIALS. CIVIL CASES, MORE LIKE FIFTY-ONE TO FORTY-
8 NINE PERCENT. THIS IS BEYOND A REASONABLE DOUBT. IT
9 DOESN'T MEAN ALL DOUBT.

10 HOW ARE WE GOING TO PROVE THIS? WELL, YOU'RE GOING TO
11 HEAR FROM THE VICTIM. HE'S GOING TO GIVE YOU HIS ACCOUNTS
12 OF THE INCIDENT. AND YOU'RE GOING TO HEAR FROM THE CO-
13 DEFENDANT.

14 THAT'S ESSENTIALLY WHAT THIS CASE BOILS DOWN TO, TWO
15 EYEWITNESS ACCOUNTS OF AN ARMED ROBBERY AS WELL AS
16 POSSESSION OF A WEAPON DURING THAT ARMED ROBBERY AND THE
17 CONSPIRACY WHERE THEY TALKED ABOUT ROBBING THE VICTIM PRIOR
18 TO THE ROBBERY ITSELF AS WELL AS AN ASSAULT AND BATTERY THAT
19 OCCURRED DURING THIS ROBBERY. THAT TESTIMONY WILL COME FROM
20 THE VICTIM AS WELL AS THE CO-DEFENDANT.

21 THERE IS NO GUN. THERE WAS NO PROPERTY RECOVERED.
22 THERE'S NO DNA. THIS IS NOT CSI. I'M SURE Y'ALL ARE WELL
23 AWARE, THIS AIN'T GONNA BE DONE IN FORTY-FIVE MINUTES. IT
24 WILL BE BRIEF, BUT THE EVIDENCE IS GOING TO BOIL DOWN TO TWO
25 EYEWITNESS TESTIMONIES. AND I SUBMIT TO YOU THAT AFTER YOU

OPENING STATEMENTS - MR. MARCHANT

1 HAVE HEARD THE TESTIMONY OF THOSE TWO PEOPLE THAT THAT
2 TESTIMONY WILL LEAVE YOU CONVINCED BEYOND A REASONABLE DOUBT
3 THAT THESE TWO OTHER GENTLEMEN WERE INVOLVED IN THIS CASE.

4 NOW A PRINCIPLE THAT HIS HONOR IS GOING TO RECITE TO
5 YOU AT THE END OF THE TRIAL AS WELL IS WHAT WE CALL
6 ACCOMPLICE LIABILITY. AND I WOULD ASK YOU TO KEEP THAT
7 PARTICULARLY IN MIND THROUGHOUT THIS TRIAL. ESSENTIALLY
8 IT'S THE HAND OF ONE IS THE HAND OF ALL, OKAY?

9 SO THESE THREE GENTLEMEN GOT TOGETHER, THEY DEVISED A
10 PLAN, THEY ROBBED. NOT ALL THREE OF THEM NEED TO HAVE HAD A
11 GUN. ONE OF THEM HAD A GUN. AND THEN ESSENTIALLY THE OTHER
12 TWO, THEIR HAND JOINS INTO THAT DEFENDANT'S HAND HOLDING
13 THAT GUN. THIS IS OBVIOUSLY NOT LITERAL, BUT FIGURATIVE.
14 SO I WOULD ASK YOU TO PAY ATTENTION THAT IF ONE OF THEM'S
15 GUILTY, THEY'RE ALL GUILTY.

16 I WOULD ASK YOU TO PAY ATTENTION TO WHAT GOES ON IN
17 THIS CHAIR RIGHT HERE. THERE'S GOING TO BE A LOT OF THINGS
18 THAT COME OUT OF MY MOUTH AS WELL AS MR. ROBINSON, WHO'S
19 REPRESENTING MR. WORKMAN, AND MR. MOORMAN, WHO'S
20 REPRESENTING MR. ROBINSON.

21 THE ONLY THING THAT MATTERS THAT YOU'RE GOING TO BE
22 ABLE TO TAKE BACK WITH YOU IS WHAT COMES OUT OF THIS STAND
23 OUT OF THE WITNESSES' MOUTHS OR HARD EVIDENCE THAT'S GOING
24 TO -- THAT YOU'RE GOING TO BE ABLE TO CARRY BACK. AS I'VE
25 TOLD YOU, THERE IS NO HARD EVIDENCE. THERE'S EYEWITNESS

OPENING STATEMENTS - MR. MARCHANT

39

1 ACCOUNT OF TWO PEOPLE.

2 SO PAY PARTICULAR ATTENTION TO WHAT COMES OUT OF THEIR
3 MOUTHS BECAUSE YOU'RE GOING TO HAVE TO TAKE THAT INTO YOUR
4 MEMORY AND PULL THAT BACK OUT WITH YOUR DISCUSSION BACK
5 THERE OF WHETHER OR NOT THESE MEN ARE INNOCENT OR GUILTY.

6 WE HAVE FOUR CHARGES THAT COMES TO YOU ON THREE
7 INDICTMENTS. THE FIRST IS ARMED ROBBERY AND POSSESSION OF A
8 WEAPON DURING A VIOLENT CRIME. ESSENTIALLY ROBBERY IS THE
9 TAKING OF ANOTHER PERSON'S PROPERTY BY FORCE OR INTIMIDATION
10 WHILE ARMED WITH A DEADLY WEAPON. POSSESSION OF A WEAPON IS
11 INCLUDED IN THAT SAME INDICTMENT AS HAVING THAT WEAPON, THAT
12 WEAPON BEING A REVOLVER WHILE THE VICTIM'S BEING ROBBED.

13 CONSPIRACY IS A MEETING OF THE MINDS OF TWO PEOPLE TO
14 ACCOMPLISH AN UNLAWFUL ACT. THAT UNLAWFUL ACT IS THE ARMED
15 ROBBERY.

16 AND THEN THERE'S ASSAULT AND BATTERY. YOU WILL HEAR
17 TESTIMONY FROM MR. ESPINOZA THAT HE WAS ASSAULTED DURING
18 THIS INCIDENT. AND I WOULD REMIND YOU AGAIN, PAY ATTENTION,
19 THAT THE HAND OF ONE IS THE HAND OF ALL. ALL THREE OF THE
20 DEFENDANTS NEED NOT HAVE HAD A PISTOL TO BE CONVICTED OF
21 THESE OFFENSES.

22 AT THE END OF THE TRIAL I'LL HAVE ANOTHER OPPORTUNITY
23 TO SPEAK WITH YOU. I CERTAINLY WANT TO THANK YOU FOR YOUR
24 TIME HERE. WITHOUT YOU THE JUSTICE SYSTEM, THE WHEELS OF
25 JUSTICE, AS IT IS, WOULD NOT BE ABLE TO ROLL. YOUR TIME

OPENING STATEMENTS - MR. MOORMAN

40

1 HERE IS VERY IMPORTANT NOT ONLY TO ME, BUT AS WELL TO THESE
2 TWO DEFENDANTS.

3 IT IS VERY IMPORTANT THAT THE EVIDENCE IS CONSIDERED
4 AND THAT A JUST VERDICT IS REACHED TODAY. AND I SUBMIT TO
5 YOU AFTER YOU HEAR THE EVIDENCE THE JUST VERDICT IS GOING TO
6 BE GUILTY. THANK YOU.

7 THE COURT: MR. MOORMAN.

8 MR. MOORMAN: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
9 COURT, MR. MARCHANT, MR. ROBINSON? LADIES AND GENTLEMEN,
10 GOOD MORNING. AGAIN, MY NAME IS ANDY MOORMAN. AND I
11 REPRESENT MR. O'SHAUN ROBINSON IN THIS CASE.

12 MR. MARCHANT TALKED TO YOU A LITTLE BIT ABOUT THE TASK
13 BEFORE YOU. AND I'M GOING TO DO THE SAME. THE STATE HAS
14 CHARGED MY CLIENT AND MR. WORKMAN WITH A NUMBER OF CHARGES,
15 WHICH JUDGE PYLE HAS TOLD YOU.

16 THE STATE HAS SUMMONED YOU TO COURT. THEY SUMMONED OUR
17 CLIENTS TO COURT. AND THE STATE BEARS THE BURDEN OF PROVING
18 BEYOND A REASONABLE DOUBT EACH AND EVERY ELEMENT OF EVERY
19 OFFENSE THAT THEY HAVE BROUGHT HERE TODAY. AS MR. MARCHANT
20 SAID, BEYOND A REASONABLE DOUBT IS A DOUBT THAT WOULD LEAVE
21 A REASONABLE, CONSCIENTIOUS JUROR OR CAUSE A CONSCIENTIOUS
22 JUROR TO HESITATE TO ACT.

23 ANOTHER TEST OF REASONABLE DOUBT OR ANOTHER DEFINITION
24 IS THAT THE STATE HAS MET ITS BURDEN BY PROVING TO YOU OR BY
25 GIVING YOU PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE

OPENING STATEMENTS - MR. MOORMAN

41

1 DEFENDANTS' GUILT, FIRMLY CONVINCED. SO PURSUANT TO'
2 REASONABLE DOUBT, CONVINCED IS NOT ENOUGH. FIRMLY
3 CONVINCED.

4 NOW, LADIES AND GENTLEMEN, PROOF BEYOND A REASONABLE
5 DOUBT IS NOT PROOF BEYOND ANY DOUBT, BUT IT IS THE HIGHEST
6 BURDEN WE HAVE. IT IS AS CLOSE AS WE GET IN THE LAW TO
7 THAT. THAT IS THE BURDEN UPON THE STATE.

8 I WANT TO TALK TO YOU A LITTLE BIT ABOUT THE
9 PRESUMPTION OF INNOCENCE. WHEN MY CLIENTS -- WELL, WHEN MR.
10 ROBINSON WAS BROUGHT INTO THIS COURTROOM HE IS PRESUMED
11 INNOCENT.

12 AND THE BEST WAY I CAN EXPLAIN THAT IS THIS. WHEN
13 YOU'VE COME TO COURT AND YOU'RE SITTING IN THIS CHAIR RIGHT
14 NOW, JUDGE PYLE IS ON THE BENCH, I'M STANDING BEFORE YOU,
15 YOU, BY THE VIRTUE OF WHAT I'M DOING RIGHT NOW, YOU PRESUME
16 THAT I'M A LAWYER EVEN THOUGH YOU HAVEN'T SEEN ANY
17 CREDENTIAL OF MINE. YOU HAVEN'T SEEN DIPLOMAS, NO DEGREES,
18 NO CERTIFICATE, NOTHING. YOU PRESUME I'M A LAWYER BECAUSE
19 OF WHAT I'M DOING RIGHT NOW. THE SAME WAY FOR MR. MARCHANT
20 AND MR. SCOTT ROBINSON.

21 IN THAT SAME WAY BY VIRTUE OF WHERE MY CLIENT AND MR.
22 WORKMAN ARE SITTING YOU ARE TO PRESUME THAT THEY ARE
23 INNOCENT. AND YOU MUST PRESUME THAT THEY ARE INNOCENT UNTIL
24 OR UNLESS THE STATE PROVES BEYOND A REASONABLE DOUBT EACH
25 AND EVERY ELEMENT OF THE OFFENSES CHARGED IN THIS CASE.

OPENING STATEMENTS - MR. ROBINSON

42

1 NOW, LADIES AND GENTLEMEN, AT THE CLOSE OF THE CASE I'M
2 GOING TO BE ABLE TO COME BACK AND TALK TO YOU AGAIN. BUT
3 WHAT I WANT -- WHAT I ASK THAT YOU THINK ABOUT WHILE THE
4 EVIDENCE IS BEING PRESENTED IS HAS THE STATE PROVEN HOW MANY
5 PEOPLE WERE INVOLVED AND, TWO, HAS THE STATE PROVEN WHO WAS
6 INVOLVED? HAVE THEY PROVEN HOW MANY PEOPLE WERE INVOLVED
7 AND HAVE THEY PROVEN WHO WAS INVOLVED? THOSE ARE THE TWO
8 QUESTIONS THAT THIS CASE IS ABOUT. THANK YOU FOR YOUR
9 ATTENTION. I'LL TALK TO YOU AT THE END OF THE CASE. THANK
10 YOU.

11 THE COURT: MR. ROBINSON.

12 MR. ROBINSON: MAY IT PLEASE THE COURT, MR. MOORMAN,
13 MR. MARCHANT? GOOD MORNING. MY NAME IS SCOTT ROBINSON. I
14 PRACTICE HERE IN GREENVILLE. AND IT'S MY PLEASURE TO
15 REPRESENT KEN WORKMAN, WHO'S SITTING TO MY LEFT.

16 YOU HAVE A UNIQUE OPPORTUNITY IN THIS CASE BECAUSE IT'S
17 AN UNUSUAL CASE IN A SENSE. MR. MOORMAN HAS SPOKEN TO YOU
18 ABOUT THE PRESUMPTION OF INNOCENCE, REASONABLE DOUBT AND
19 WHAT IT IS. BUT THIS CASE IS GOING TO COME DOWN TO
20 IDENTIFICATION. THAT'S WHAT THIS CASE IS GOING TO COME DOWN
21 TO.

22 AND IT'S GOING TO REQUIRE Y'ALL, TWELVE OF YOU,
23 THIRTEEN OF YOU NOW WITH THE ALTERNATE, TO USE YOUR COMMON
24 SENSE, YOUR EXPERIENCES IN LIFE, WHAT YOU KNOW PERSONALLY
25 ABOUT CERTAIN THINGS, WHAT YOUR JUDGMENT IS AND SO FORTH.

OPENING STATEMENTS - MR. ROBINSON

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1 BUT RIGHT NOW IT IS 10:36, ALL RIGHT? AND THIS IS A
2 LITTLE PICTURE THAT I -- THAT I PUT TOGETHER, REAL SIMPLE
3 LITTLE PICTURE. I DON'T DRAW VERY WELL. BUT IT'S A LITTLE
4 PICTURE OF A LITTLE MAN. IT'S GOT MAYBE -- REALLY NO
5 DISTINGUISHING CHARACTERISTICS AT ALL EXCEPT ONE.

6 I'M GOING TO ASK YOU IN A FIVE MINUTE PERIOD FROM A ONE
7 TO TWO OR THREE OR FOUR MINUTE PERIOD OF TIME HOW MUCH YOU
8 CAN REMEMBER ABOUT SOMEONE THAT YOU SAW FOR A PERIOD OF A
9 FEW MINUTES AND GIVE IT ABOUT -- GIVE IT OVER A WEEK, A
10 NUMBER OF DAYS AND SO FORTH AND AGAIN TRY TO IDENTIFY
11 SOMEONE. AND I ASK YOU TO THINK ABOUT THAT.

12 BUT THIS CASE, I PROPOSE TO YOU, IS GOING TO COME DOWN
13 TO IDENTIFICATION BY THE ALLEGED VICTIM IN THIS CASE. AND
14 YOU'RE GOING TO HEAR FACTS IN THIS CASE. AND YOU'RE GOING
15 TO HEAR TESTIMONY AND SO FORTH. BUT YOU SEE WHEN YOU CAME
16 IN THIS COURTROOM YOU DIDN'T CHECK YOUR COMMON SENSE AT THE
17 DOOR. YOU DIDN'T CHECK YOUR JUDGMENT, NOR DID YOU CHECK
18 YOUR LIFE EXPERIENCES IN THIS CASE.

19 AND I ASK YOU WHEN YOU LOOK OR YOU VIEW THE TESTIMONY
20 IN THIS CASE, WHEN YOU LOOK AT THE WITNESSES AND SO FORTH
21 THAT YOU USE THAT AND THINK ABOUT IT. HOW MUCH DO YOU
22 REMEMBER SOMEONE YOU SEE FOR A BRIEF PERIOD OF TIME? I
23 CAN'T, SO I'M NOT GOING TO STAY UP HERE AND BELABOR YOU FOR
24 FIVE MINUTES, BUT YOU GET THE GIST OF WHAT I'M TRYING TO GET
25 TO. AND GIVE IT A NUMBER OF WEEKS OR A PERIOD OF TIME AND

OPENING STATEMENTS - MR. ROBINSON

44

1 SEE HOW MUCH -- THINK ABOUT HOW MUCH YOU REMEMBER ABOUT
2 SOMEONE. BUT THIS CASE COMES DOWN TO IDENTIFICATION.

3 AND THE STATE IN THIS CASE HAS THIS BURDEN THEY CALL
4 BEYOND A REASONABLE DOUBT. AND I'M NOT GOING -- MR. MOORMAN
5 DID AN EXCELLENT JOB AT DESCRIBING THE STANDARDS AND SO
6 FORTH. AND I'M NOT GOING TO BELABOR THAT POINT.

7 BUT WHEN YOU TAKE YOUR LIFE EXPERIENCES AND YOU TAKE
8 YOUR JUDGMENT AND YOU TAKE THE COMMON SENSE THAT YOU HAVE
9 YOU HAVE TO LOOK AT IT IN TERMS OF, YEAH, THE BURDEN IS ON
10 THE STATE IN THIS CASE TO PROVE THEIR CASE, EACH AND EVERY
11 ELEMENT OF THEIR CASE BEYOND A REASONABLE DOUBT. AND IT'S
12 GOING TO COME DOWN TO IDENTIFICATION IN THIS CASE.

13 AND IF YOU HAVE A QUESTION IN YOUR MIND USING YOUR
14 JUDGMENT AND YOUR EXPERIENCES, WHICH IS WHAT WE ALL ASK FOR,
15 ASK YOU TO DO, AND IF YOU HAVE A DOUBT, THEN YOU MUST FIND
16 IN FAVOR OF MR. ROBINSON AND MR. WORKMAN.

17 BUT FOR ME, THIS IS TRULY A PLEASURE TO COME IN HERE
18 AND BE IN FRONT OF YOU. I'M SURE WE ALL -- WE ALL
19 APPRECIATE YOU BEING HERE AND IN THIS COLD WEATHER AND THIS
20 COURTROOM THAT SEEMS TO BE HEATING UP EVERY MOMENT THAT WE
21 STAND OR SIT. BUT I'M LOOKING FORWARD TO WORKING WITH YOU,
22 APPRECIATE YOUR TIME. THANK YOU VERY MUCH.

23 THE COURT: SOLICITOR.

24 MR. MARCHANT: MAY IT PLEASE THE COURT? THE STATE
25 CALLS SCOTT MENDENHALL.

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

45

1 SCOTT MENDENHALL, BEING

2 DULY SWORN TESTIFIED AS FOLLOWS:

3 MADAME CLERK: THANK YOU. PLEASE BE SEATED. PLEASE

4 STATE YOUR FULL NAME FOR THE RECORD.

5 MR. MENDENHALL: SCOTT MENDENHALL.

6 DIRECT EXAMINATION BY MR. MARCHANT:

7 Q. DEPUTY MENDENHALL, WHERE ARE YOU EMPLOYED?

8 A. GREENVILLE COUNTY SHERIFF'S OFFICE.

9 Q. HOW LONG HAVE YOU BEEN WITH THE SHERIFF?

10 A. ABOUT A YEAR AND EIGHT MONTHS.

11 Q. WHAT DID YOU DO PRIOR TO YOUR EMPLOYMENT WITH THE

12 SHERIFF'S OFFICE?

13 A. I WAS IN COLLEGE.

14 Q. AND WHERE DID YOU ATTEND COLLEGE?

15 A. THE CITADEL.

16 Q. DID YOU GRADUATE?

17 A. YES, SIR.

18 Q. NOW PRIOR TO ENROLLING WITH THE SHERIFF'S OFFICE AND

19 STARTING YOUR SHIFT DID YOU HAVE TO GO THROUGH ANY TRAINING?

20 A. YES, I DID.

21 Q. AND WHERE DID THAT TRAINING OCCUR?

22 A. CRIMINAL JUSTICE ACADEMY IN COLUMBIA.

23 Q. AND HOW LONG WAS THAT TRAINING?

24 A. NINE WEEKS.

25 Q. NINE WEEKS. AND WHEN EXACTLY DID YOU START WITH THE

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

46

1' SHERIFF, IF YOU REMEMBER?

2 A. IN MAY OF 2007.

3 Q. SO AFTER OR IN MAY, IS THAT WHEN YOUR TWELVE WEEKS OF
4 TRAINING BEGAN OR ---

5 A. YES.

6 Q. OKAY. SO YOU WENT ON SHIFT APPROXIMATELY JULY?

7 A. AUGUST.

8 Q. AUGUST. AUGUST OF '07. AND WHEN YOU BEGAN WORKING
9 DAILY SHIFTS WHAT WERE YOUR DUTIES WITH THE SHERIFF?

10 A. BASICALLY UNIFORM PATROL. YOU ANSWER ALL 911 CALLS
11 JUST LIKE MR. ESPINOZA'S. YOU CAN BE PROACTIVE, GET OUT
12 WITH ANYBODY YOU WANT, JUST DETER CRIME.

13 Q. AND FROM AUGUST UNTIL THIS INCIDENT IN DECEMBER WERE
14 YOU RIDING BY YOURSELF, WAS THERE A SUPERVISOR WITH YOU,
15 WERE Y'ALL IN TEAMS?

16 A. AT THE TIME OF THIS INCIDENT I HAD A SUPERVISOR, A
17 MASTER DEPUTY WITH ME.

18 Q. HAD THAT MASTER DEPUTY BEEN RIDING WITH YOU FROM AUGUST
19 EVERY DAY YOU WERE ON SHIFT OR ---

20 A. YES.

21 Q. AND THAT DEPUTY WAS WITH YOU ON THIS INCIDENT?

22 A. YES, HE WAS.

23 Q. OKAY. AND DO YOU RECALL WHERE THIS INCIDENT TOOK
24 PLACE?

25 A. IT WAS 200 EUNICE DRIVE, STRATFORD VILLAS.

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

47

1 (WHEREUPON STATE'S EXHIBIT 1 WAS MARKED FOR
2 IDENTIFICATION)

3 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S NUMBER 1.
4 DO YOU RECOGNIZE THIS?

5 A. YES, I DO.

6 Q. AND HOW IS IT THAT YOU RECOGNIZE THIS?

7 A. THAT'S THE INCIDENT LOCATION WHERE MR. ESPINOZA WAS
8 ROBBED.

9 THE COURT: ANY OBJECTION?

10 MR. MOORMAN: NO OBJECTION, YOUR HONOR.

11 MR. ROBINSON: NO OBJECTION.

12 MR. MARCHANT: THE STATE WOULD MOVE NUMBER 1 INTO
13 EVIDENCE.

14 (WHEREUPON STATE'S EXHIBIT 1 WAS ENTERED INTO EVIDENCE)

15 Q. THIS MAP, DOES IT TRULY DEPICT AND ACCURATELY DEPICT
16 THE AREA OUT THERE AT THE APARTMENT COMPLEX?

17 A. YES, IT DOES.

18 Q. NOW IF YOU CAN, TELL THE JURY WHERE THIS APARTMENT
19 COMPLEX IS LOCATED HERE IN GREENVILLE?

20 A. IT'S IN GREENVILLE. IT'S 20 EUNICE DRIVE. IT'S NEAR
21 WHITE HORSE ROAD. IT'S ON THE WEST SIDE OF GREENVILLE.
22 IT'S ONE OF THE MAIN ROADS IN THE AREA JUST TO BE -- LET YOU
23 KNOW.

24 Q. WHAT'S THE NEAREST MAJOR INTERSECTION TO THIS APARTMENT
25 COMPLEX?

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

48

- 1 A. I'M NOT FAMILIAR. I CAN'T RECALL AT THE TIME.
- 2 Q. DO YOU KNOW -- WHITE HORSE ROAD, YOU SAID PREVIOUSLY?
- 3 A. YES. THAT'S THE MAIN ROAD NEAR IT.
- 4 Q. OKAY. HOW WOULD YOU GET TO THIS APARTMENT COMPLEX FROM
- 5 WHITE HORSE ROAD?
- 6 A. I BELIEVE YOU TAKE LILLY STREET.
- 7 Q. AND DOES LILLY INTERSECT WITH WHITE HORSE?
- 8 A. YES.
- 9 Q. AND WHERE IN PARTICULAR -- AND WHAT COUNTY IS THIS?
- 10 A. GREENVILLE COUNTY.
- 11 Q. WERE YOU ON SHIFT THE EVENING/MORNING OF DECEMBER 9TH
- 12 AND 10TH?
- 13 A. YES, I WAS.
- 14 Q. OKAY. AND WHAT WERE YOUR HOURS WHEN YOU WERE WORKING
- 15 THIS EVENING?
- 16 A. SEVEN PM TO SEVEN AM.
- 17 Q. AND DID YOU RECEIVE A CALL IN REFERENCE TO THIS CASE?
- 18 A. YES, I DID.
- 19 Q. AND DO YOU RECALL APPROXIMATELY WHAT TIME YOU RECEIVED
- 20 THAT CALL?
- 21 A. I BELIEVE CLOSE TO 2:00, ABOUT 1:55.
- 22 Q. OKAY. SO A LITTLE AFTER NOON OR A LITTLE AFTER
- 23 MIDNIGHT?
- 24 A. MIDNIGHT.
- 25 Q. AND WHAT DID YOU DO IN RESPONSE TO THAT CALL?

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

49

1 A. AS SOON AS THE CALL CAME OUT I WASN'T FAR UP THE ROAD.
2 I RESPONDED FROM WEST BLUE RIDGE DOWN WHITE HORSE TO THE
3 INCIDENT LOCATION WHERE I MET WITH MR. ESPINOZA.

4 Q. WERE THERE ANY OTHER DEPUTIES BESIDES THE SUPERVISOR
5 THAT RESPONDED TO THIS LOCATION?

6 A. JUST HIM AND I WERE THE ONES THAT WENT TO THE ACTUAL
7 LOCATION WITH MR. ESPINOZA.

8 Q. AND WHY DID YOU RESPOND TO STRATFORD VILLA APARTMENTS?

9 A. WELL, WE TAKE A REPORT FROM THE VICTIM. ALSO WE'VE GOT
10 TO GET INFORMATION TO PUT OUT OVER THE RADIO FOR THE
11 SUSPECTS.

12 Q. LET ME BE A LITTLE CLEARER. WHY IS IT THAT YOU WENT TO
13 THE APARTMENT COMPLEX?

14 A. IT WAS FOR AN ARMED ROBBERY.

15 Q. AND WHEN YOU GOT TO THE APARTMENT COMPLEX WHO DID YOU
16 FIND?

17 A. MR. ESPINOZA.

18 Q. WERE THERE ANY OTHER PEOPLE OUT WITH MR. ESPINOZA AT
19 THAT TIME?

20 A. NOT THAT I RECALL.

21 Q. DO YOU RECALL SEEING ANY OTHER PEOPLE IN THE APARTMENT
22 COMPLEX WHEN YOU RESPONDED THAT MORNING?

23 A. NO, SIR.

24 Q. DO YOU RECALL WHAT THE PARKING LOT WAS LIKE THAT
25 MORNING? AND IN THAT RESPECT I MEAN DO YOU RECALL WHAT THE

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

50

1 LIGHTING WAS LIKE, WHETHER OR NOT THE PAVEMENT WAS WET OR
2 DRY, HOW MANY CARS WERE IN THE PARKING LOT?

3 A. WELL, LIKE ANY NORMAL PARKING LOT, THERE WAS A FEW
4 CARS. AS FAR AS BEING WET OR DRY, I DON'T RECALL. AND THE
5 LIGHT, I MEAN, I COULD SEE MR. ESPINOZA VERY CLEARLY TO
6 SPEAK TO HIM. AND I DIDN'T HAVE TO ASK HIM TO WALK BACK
7 INSIDE 'CAUSE YOU LIKE TO SEE VISIBLE MARKS ON THE VICTIM IF
8 AN ASSAULT OCCURS.

9 Q. NOW DID YOU HAVE AN OPPORTUNITY TO TALK WITH MR.
10 ESPINOZA AT THAT TIME?

11 A. YES, I DID.

12 Q. AND WHAT INFORMATION DID YOU TAKE FROM HIM?

13 A. OUR BASIC INFORMATION WOULD BE THE SUSPECT INFORMATION,
14 WHAT THEY LOOKED LIKE, AGE, WHAT THEY WERE WEARING, WHAT
15 HAPPENED, WHAT WAS HE DOING, WHERE WAS HE COMING FROM, WHAT
16 TIME. AFTER HE TELLS ME THAT INFORMATION FOR THE SUSPECTS I
17 ASK HIM, YOU KNOW, WHERE DID THEY GO.

18 AND HIS SITUATION, HE HAD FOLLOWED THEM. SO I HAD TO
19 GET MORE INFORMATION AS FAR AS WHAT KIND OF VEHICLE, WHERE
20 HE FOLLOWED THEM TO AND THE OFFENSE THAT OCCURRED AFTER THAT
21 WHEN HE WAS SHOT AT.

22 Q. WELL, LET'S START WITH WHAT HE INFORMED YOU THAT
23 OCCURRED IN THE PARKING LOT.

24 MR. MOORMAN: AND, YOUR HONOR, I WOULD -- I'D OBJECT ON
25 THE BASIS OF HEARSAY FOR THE PURPOSES OF WHAT THE VICTIM

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

51

1 TOLD THE OFFICER.

2 MR. MARCHANT: YOUR HONOR, HE'S A RESPONDING OFFICER.

3 HE'S TAKING THIS INFORMATION AND PUTTING OUT A ---

4 THE COURT: HE'S GOT A RIGHT TO INQUIRE AND

5 INVESTIGATE. GO AHEAD. OVERRULED.

6 Q. WHEN YOU INITIALLY ARRIVED AT THE COMPLEX WHAT DID MR.

7 ESPINOZA RELATE TO YOU THAT HAD HAPPENED IN THE COMPLEX?

8 A. HE HAD PULLED INTO HIS DRIVEWAY. HE'D JUST WENT OUT

9 GETTING GROCERIES. AS HE WAS SITTING IN HIS VEHICLE HE

10 LOOKS OVER AND HE SEES A BLACK MALE WITH A RED HOODED

11 SWEATSHIRT WALKING ON THE SIDEWALK. AT THE TIME HE KIND OF

12 KNEW IT WAS VERY SUSPICIOUS.

13 HE LOOKED UP, THE BLACK MALE RAN TOWARDS HIM, GRABBED

14 HIM OUT OF THE VEHICLE. WHEN HE DID I BELIEVE HE, YOU KNOW,

15 TOLD HIM TO GIVE HIM ALL OF HIS MERCHANDISE. AT THAT TIME

16 MR. ESPINOZA GAVE HIM, I BELIEVE, HIS WALLET AND SOME MONEY,

17 A CELL PHONE.

18 AS HE WAS BEING SEARCHED ANOTHER SUSPECT CAME UP. HE

19 WAS WEARING A WHITE SHIRT, DARK COLORED PANTS, BLACK TENNIS

20 SHOES AND WHITE SOCKS. HE STATED, WASTE THE GUY.

21 MR. ESPINOZA WAS STILL STANDING THERE WITH THE FIRST

22 SUBJECT. AT THAT TIME HE STILL HAD A GUN POINTED AT HIS

23 FACE. IT WAS A SILVER REVOLVER. HE STATED ---

24 Q. WAS MR. ESPINOZA ABLE TO TELL YOU WHAT TYPE OF REVOLVER

25 HE THOUGHT IT WAS?

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

52

1 A. YES. HE MADE IT VERY CLEAR. IT WAS A SILVER REVOLVER,
2 I BELIEVE IT HAD A BLACK HANDLE, POSSIBLY A .38.

3 Q. OKAY. WHAT DID MR. ESPINOZA RELATE TO YOU HAPPENED
4 AFTER HIS PERSONAL PROPERTY, MONEY AND CELL PHONE WAS TAKEN
5 FROM HIM?

6 A. HE STATED THE SUBJECT ASKED HIM IF THAT WAS EVERYTHING.
7 AT THAT TIME THE FIRST SUBJECT IN THE RED HOODED SWEATSHIRT
8 HANDED THE GUN OFF TO THE SECOND SUBJECT. THE FIRST SUBJECT
9 THEN PUNCHED HIM IN THE FACE. AND THEY RAN OFF TOWARDS THE
10 POOL.

11 Q. DID HE TELL YOU HOW MANY TIMES HE WAS PUNCHED?

12 A. I BELIEVE ONLY ONCE.

13 Q. DID YOU SEE OR NOTICE ANY MARKS ON MR. ESPINOZA'S FACE?

14 A. YES, AT THE TIME I BELIEVE I DID.

15 Q. COULD YOU TELL US -- TELL THE JURY HOW SIGNIFICANT OR
16 VISIBLE THOSE INJURIES WERE?

17 A. HE LOOKED LIKE HE HAD BEEN HIT ONE TIME IN THE FACE.
18 IT WASN'T TOO SEVERE, ONLY ONE PUNCH.

19 Q. AFTER HE HAD GIVEN YOU THIS INFORMATION ABOUT BEING
20 PUNCHED WHAT DID HE TELL YOU HAPPENED AFTER THAT?

21 A. HE SAID TWO SUBJECTS, THE ONE THAT PUNCHED HIM THAT HAD
22 THE WEAPON AND THE SECOND ONE THAT HAD THE GUN LAST RAN
23 TOWARDS THE POOL AREA. I GUESS THERE WAS SOME MESS UP AS
24 FAR AS HOW THEY WERE GOING TO GET BACK TO THEIR CAR. HE
25 SAID THEN THEY TOOK A DIFFERENT DIRECTION AROUND THE BACK

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

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1 SIDE OF THE POOL.

2 AND WHEN HE LOOKED OVER TO THE DIRECTION THEY WERE
3 RUNNING THERE WAS A BLACK OLDER MODEL VEHICLE. AT THE TIME
4 IT POSSIBLY LOOKED LIKE A CROWN VICTORIA. AND HE SAID THEY
5 RAN TOWARDS THAT VEHICLE. IT WAS ALREADY RUNNING. THEY GOT
6 IN AND TOOK OFF.

7 Q. AND WHAT DID MR. ESPINOZA TELL YOU HE DID ONCE THE
8 DEFENDANTS GOT IN THE VEHICLE?

9 A. AT THE TIME HE GOT BACK IN HIS VEHICLE, HE LEFT THE
10 APARTMENT COMPLEX AND CAUGHT UP WITH THE SUSPECTS ON WHITE
11 HORSE ROAD NEAR SALUDA DAM. AT THE TIME HE WAS BLACKED OUT.
12 WHEN HE CAUGHT UP TO THE SUSPECTS HE TURNED ON THE LIGHTS
13 AND GOT A TAG NUMBER. AND AT THAT TIME HE WAS SHOT AT.

14 Q. AND FOR THE JURY'S BENEFIT CAN YOU DESCRIBE THE
15 INTERSECTION OF WHITE HORSE ROAD AND SALUDA DAM ROAD? DO
16 YOU KNOW WHAT RESTAURANTS OR ---

17 A. YES. THERE'S A -- I BELIEVE IT'S A CITGO GAS STATION
18 ON THE CORNER. WHITE HORSE IS THE MAIN ROAD, APPROXIMATELY
19 SIX LANES. AND SALUDA DAM'S A TWO LANE HIGHWAY. IT'S A
20 PRETTY BIG INTERSECTION WITH A LIGHT.

21 Q. WHAT WAS THE DESCRIPTION THAT MR. ESPINOZA GAVE YOU AS
22 FAR AS, IF YOU RECALL, HEIGHT, WEIGHT, CLOTHING THAT THE
23 FELLOW WITH THE RED HEAD -- THE RED HOODED SWEATSHIRT?

24 A. HE STATED HE WAS WEARING A RED HOODED SWEATSHIRT, DARK
25 COLORED PANTS AND TENNIS SHOES, ACTUALLY HAD SHORTS ON.

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

54

1 STATED HE WAS ROUGHLY SIX FOOT, SKINNY, ABOUT A HUNDRED AND
2 NINETY POUNDS, HAD A THIN GOATEE AND HE WAS DARK SKINNED.

3 AND THE SECOND SUBJECT WAS ROUGHLY FIVE EIGHT, ONE
4 SEVENTY. HE WAS WEARING A WHITE SHIRT, BLACK SHORTS, BLACK
5 TENNIS SHOES AND WHITE SOCKS.

6 Q. DID MR. ESPINOZA MAKE ANY REFERENCE ABOUT ANY
7 SIGNIFICANT FACIAL FEATURES OR TATTOOS OF ANY KIND?

8 A. NO TATTOOS. HE STATED THE FIRST SUBJECT HAD A THIN
9 GOATEE AND HE WAS VERY COCKY, DEMANDING. THE SECOND SUBJECT
10 WAS KIND OF LAID BACK.

11 Q. DID HE GIVE YOU ANY DESCRIPTION ABOUT THEIR HAIR STYLE?

12 A. NO. THEY HAD -- THE FIRST SUBJECT HAD HOODIES ON, HAD
13 A HOODIE. AND I DON'T BELIEVE HE DID ABOUT THE SECOND.

14 Q. YOU STATED A MOMENT AGO THAT HE GOT THE TAG NUMBER OF
15 THE VEHICLE?

16 A. YES, SIR.

17 Q. DID HE RELAY THAT INFORMATION TO YOU?

18 A. YES, SIR. AT THE TIME HE WAS VERY HECTIC, 'CAUSE LIKE
19 I SAID, HE'D JUST GOT SHOT AT. THE TAG NUMBER HE GAVE ME
20 DURING THAT TIME, I GOT BACK IN MY VEHICLE, AND OUR
21 COMPUTERS WE CALL MBTs, WE HAVE A DMV FILE. WE CAN PLACE
22 THE TAG NUMBER IN THE DMV FILE AND IT COMES BACK WHERE --
23 EVERYTHING ON THE PERSON WHO OWNS THE VEHICLE, WHERE THEY
24 LIVE, THEIR INFORMATION. WHEN I RAN THAT TAG NUMBER IT CAME
25 BACK NOT ON FILE, WHICH MEANS MAYBE A LETTER, A NUMBER WAS

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

55

1 INCORRECT.

2 Q. IS IT POSSIBLE THAT YOU RUN A TAG AND THE TAG IS NOT
3 ACTIVE OR SUSPENDED? WOULD THAT DRAW UP ON THE COMPUTER?
4 WOULD IT PROVIDE YOU THAT INFORMATION?

5 A. IF IT'S SUSPENDED? YES, IT WOULD SHOW UP.

6 Q. SO IF SOMEONE HADN'T PAID THEIR TAXES ON THEIR TAG
7 WOULD IT STILL SHOW ---

8 A. YES.

9 Q. --- IN THE SYSTEM? NOW WITH THE INFORMATION THAT HE
10 PROVIDED TO YOU DID YOU ALERT ANY OTHER OFFICERS IN THE
11 AREA?

12 A. YES. WE CALL A BOLO, WHICH IS BE ON THE LOOKOUT, PUT
13 OUT OVER THE RADIO THE SUSPECT DESCRIPTION, THE VEHICLE,
14 THEIR DIRECTION OF TRAVEL, WHAT THEY WERE WEARING, THEIR
15 HEIGHT, AGE, JUST A RUN-DOWN DESCRIPTION SO THAT OUR
16 SURROUNDING UNITS CAN EITHER, (A) SEE THE VEHICLE OR
17 POSSIBLY SEE THE OTHER SUBJECTS WALKING AROUND SOMEWHERE.

18 Q. ALL RIGHT. A MOMENT AGO YOU STATED THAT YOU ARRIVED --
19 I BELIEVE THIS INCIDENT TO OCCUR AROUND TWO AM?

20 A. I ARRIVED JUST A LITTLE AFTER. I BELIEVE IT WAS ABOUT
21 2:10. MR. ESPINOZA SAID IT HAPPENED AROUND 1:55, I BELIEVE,
22 THEN AFTER HE CHASED AND CAME BACK BECAUSE HE DIDN'T HAVE
23 HIS CELL PHONE.

24 Q. SO CAN YOU GIVE THE JURY AN ESTIMATE OF HOW LONG FROM
25 THE TIME MR. ESPINOZA SAYS THIS HAPPENED AND THE INFORMATION

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

56

1 YOU GATHERED TIL THE TIME YOU PUT THIS BOLO OUT? SO IF IT
2 HAPPENS AT 1:55 IN THE MORNING HOW LONG DID IT TAKE FOR YOU
3 TO PUT THAT INFORMATION OUT ON THE RADIO?

4 A. I ARRIVED AT 2:10, WHICH IS ABOUT FIFTEEN MINUTES
5 LATER. TAKES ABOUT FIVE MINUTES TO GET THE INFORMATION,
6 JUST A RUN-DOWN OF THE VEHICLE AND THE SUSPECTS. SO ABOUT
7 TWENTY MINUTES.

8 Q. FOLLOWING YOU PUTTING THIS INFORMATION OUT FOR THE BOLO
9 DID YOU DO ANY FURTHER INVESTIGATION WITH RESPECT TO THIS
10 CASE?

11 A. NO, I HAVE NOT.

12 Q. NOW AT THE TIME YOU HAD A DESCRIPTION OF TWO BLACK
13 MALES OF VARIOUS HEIGHT AND VARIOUS WEIGHT, IS THAT CORRECT?

14 A. YES.

15 Q. SO DID YOU SHOW MR. ESPINOZA A LINEUP OF ANY KIND?

16 A. NO, SIR, I DIDN'T.

17 Q. WHY NOT?

18 A. WE DIDN'T HAVE ANY SUSPECTS AT THE TIME.

19 Q. WELL, SURELY THE SHERIFF'S OFFICE HAS A DATABASE OF A
20 NUMBER OF INDIVIDUALS THAT WOULD MATCH THAT DESCRIPTION,
21 WOULDN'T THEY?

22 A. YES, SIR. WE HAVE A VERY BIG DESCRIPTION AND DATABASE
23 WITH IT.

24 Q. DO YOU HAVE THAT INFORMATION AVAILABLE TO YOU IN YOUR
25 PATROL CAR?

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

57

1 A. YES.

2 Q. DO YOU KNOW HOW MANY PEOPLE FIT THAT DESCRIPTION ---

3 A. HUNDREDS.

4 Q. --- THAT YOU HAVE ON FILE?

5 A. WE HAVE HUNDREDS.

6 MR. MARCHANT: THE COURT'S INDULGENCE?

7 (PAUSE)

8 Q. I DON'T HAVE ANY FURTHER QUESTIONS. PLEASE ANSWER ANY
9 QUESTIONS MR. MOORMAN ---

10 THE COURT: MR. MOORMAN.

11 Q. --- OR MR. ROBINSON MAY HAVE FOR YOU. THANK YOU.

12 MR. MOORMAN: MAY IT PLEASE THE COURT?

13 CROSS EXAMINATION BY MR. MOORMAN:

14 Q. DEPUTY MENDENHALL, YOU TALKED A LITTLE BIT ABOUT YOUR
15 TRAINING THAT YOU RECEIVED ON YOUR WAY TO BECOMING A
16 SHERIFF'S DEPUTY.

17 A. YES.

18 Q. AS PART OF YOUR TRAINING YOU WERE TRAINED TO PROPERLY
19 WRITE REPORTS, IS THAT CORRECT?

20 A. THAT'S CORRECT.

21 Q. YOU WERE -- ISN'T IT TRUE YOU WERE TRAINED THAT REPORT
22 WRITING IS A CRITICAL FUNCTION YOU PERFORM?

23 A. YES.

24 Q. AND ISN'T IT TRUE THAT IT'S CRITICAL BECAUSE WHAT IS IN
25 YOUR REPORT IS THE ONLY WAY THAT YOU CAN ENSURE THAT YOU'LL

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

1 HAVE A RECORD OF WHAT PEOPLE SAY AND WHAT ACTIONS YOU TOOK?

2 A. THAT'S CORRECT.

3 Q. SO YOU DON'T HAVE TO RELY ON YOUR MEMORY, IS ---

4 A. THAT'S CORRECT.

5 Q. --- THAT CORRECT? YOU SAID THERE WAS A MASTER DEPUTY

6 RIDING WITH YOU THAT NIGHT. WHO WAS THAT MASTER DEPUTY?

7 A. MASTER DEPUTY PHILLIPS.

8 Q. HE WAS YOUR TRAINING OFFICER?

9 A. YES.

10 Q. AFTER YOU, GENERALLY SPEAKING, AFTER YOU WRITE A REPORT

11 WHILE YOU'RE IN TRAINING DOES THE MASTER DEPUTY REVIEW THAT

12 REPORT?

13 A. YES, HE DOES.

14 Q. AFTER THE MASTER DEPUTY REVIEWS THAT REPORT DOES THE

15 SERGEANT, YOUR SUPERVISORS REVIEW THAT REPORT?

16 A. YES, THEY DO.

17 Q. SO AT THIS TIME YOUR REPORTS HAD TWO LAYERS OF

18 SUPERVISION?

19 A. YES.

20 Q. SO ISN'T IT TRUE WHEN YOU WROTE YOUR REPORT YOU NOT

21 ONLY WANTED TO GET IT RIGHT BECAUSE THAT'S WHAT YOU WERE

22 TRAINED TO DO, BUT YOU ALSO WANTED TO MAKE SURE THAT YOUR

23 SUPERVISORS WERE PLEASED WITH WHAT YOU WERE DOING?

24 A. YES.

25 Q. YOU TALKED ABOUT, WITH THE PROSECUTOR, ABOUT WHAT THE

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

59

1 -- WHAT MR. ESPINOZA HAD TOLD YOU ABOUT WHAT HAD HAPPENED,
2 CORRECT?

3 A. YES, I DID.

4 Q. AND ISN'T IT TRUE THAT MR. ESPINOZA TOLD YOU THAT THERE
5 WERE TWO BLACK MALES INVOLVED? ISN'T THAT TRUE?

6 A. THAT'S CORRECT.

7 Q. TWO BLACK MALES INVOLVED.

8 A. HE SAID THERE WAS TWO BLACK MALES INVOLVED NEAR THE
9 VEHICLE. HE STATED THAT SOMEBODY ELSE HAD TO BE INSIDE THE
10 VEHICLE TO DRIVE OFF.

11 Q. SO YOU HAVE TWO BLACK MALES WHO ARE AROUND THE VEHICLE
12 AND YOU HAVE ONE INDIVIDUAL IN THE CAR, CORRECT?

13 A. YES, THAT'S WHAT HE STATED.

14 Q. SO A TOTAL OF THREE PEOPLE, CORRECT?

15 A. THAT'S CORRECT.

16 Q. TWO AROUND THE -- MR. ESPINOZA'S JEEP AND ONE IN THE
17 CAR?

18 A. YES.

19 Q. AND ISN'T IT TRUE, LIKE YOU SAID, LIKE YOU TOLD MR.
20 MARCHANT, THAT HE DESCRIBED THE HEIGHT AND WEIGHT OF THESE
21 INDIVIDUALS WHO CAME AROUND HIS JEEP, CORRECT?

22 A. YES, HE DID.

23 Q. AND THE HEIGHT OF THE BLACK MALE WHO CAME ON THE
24 DRIVER'S SIDE WAS WHAT?

25 A. THEY BOTH CAME TO THE DRIVER'S SIDE.

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

60

1 Q. THE HEIGHT OF THE -- HOW TALL WAS THE TALLEST ONE?

2 A. HE SAID ROUGHLY SIX FOOT.

3 Q. HE SAID SIX FEET TALL?

4 A. YES.

5 Q. HOW MUCH DID HE SAY THAT PERSON WEIGHED?

6 A. ABOUT A HUNDRED AND NINETY POUNDS.

7 Q. AND THE SECOND BLACK MALE AROUND THE CAR, HOW TALL DID
8 HE SAY THAT WAS?

9 A. FIVE EIGHT.

10 Q. AND WHAT -- HOW MUCH DID THAT PERSON WEIGH?

11 A. A HUNDRED AND SEVENTY.

12 Q. DEPUTY MENDENHALL, ISN'T IT TRUE THAT THE MEASUREMENTS
13 THAT LAW ENFORCEMENT HAS FOR MY CLIENT, MR. O'SHAUN
14 ROBINSON, IS FIVE EIGHT, A HUNDRED AND FIFTY POUNDS? ISN'T
15 THAT TRUE?

16 A. THAT'S WHAT YOUR CLIENT ---

17 Q. ISN'T THAT -- AREN'T THOSE THE MEASUREMENTS LAW
18 ENFORCEMENT HAS FOR MY CLIENT, MR. O'SHAUN ROBINSON?

19 A. I DON'T RECALL. I NEVER LOOKED AT THEIR INFORMATION.

20 Q. YOU NEVER LOOKED UP THAT INFORMATION?

21 A. NO. I HAD NO IDEA WHO YOUR CLIENT WAS.

22 Q. MR. MARCHANT ASKED YOU A LITTLE BIT ABOUT PHOTO
23 LINEUPS.

24 A. YES.

25 Q. LET'S TALK ABOUT PHOTO LINEUPS. ISN'T IT TRUE IT'S

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

61

1 PART OF YOUR TRAINING -- YOUR TRAINING TO USE PHOTO LINEUPS?

2 A. THAT'S CORRECT.

3 Q. DESCRIBE TO THE JURY, GENERALLY SPEAKING, WHAT IS A
4 PHOTO LINEUP?

5 A. YOU TAKE YOUR SUSPECT THAT YOU HAVE IN A CRIME, YOU
6 TAKE FIVE OTHER SUSPECTS, YOU HAVE SIX ALTOGETHER, AND YOU
7 PUT THEM ON A PIECE OF PAPER WITH THEIR PICTURES. THERE'S
8 NO NAMES. AND YOU TRY TO CROP IT DOWN SO YOU JUST HAVE A
9 FACE.

10 YOU SHOW IT TO YOUR VICTIM. YOU DON'T TELL THEM WHO'S
11 ON THE PHOTO LINEUP, BUT YOU KNOW WHICH ONE'S THE SUSPECT.
12 AND IF THEY PICK OUT THE CORRECT ONE, THEN YOU HAVE THEM
13 SIGN IT, DATE IT AND THEN PRINT THEIR NAME AND CIRCLE IT TO
14 SHOW WHICH ONE THAT THEY KNOW IS THE SUSPECT.

15 Q. AND ISN'T IT TRUE THAT OF THE IDENTIFICATION PROCEDURES
16 YOU USE THIS IS THE ONE THAT LAW ENFORCEMENT BELIEVES SHOULD
17 BE USED MOST OFTEN? IS THAT TRUE?

18 A. IF WE HAVE A SUSPECT AND WE FEEL IT'S HIM, WE KNOW FOR
19 A FACT IT'S HIM, THAT'S WHAT WE NORMALLY DO.

20 Q. AND ISN'T IT TRUE THAT YOU USE THIS PROCEDURE BECAUSE
21 IF IT'S DONE CORRECTLY YOU'RE NOT SUGGESTING TO THE WITNESS
22 WHO THE PERSON WAS WHO COMMITTED THE CRIME, IS THAT CORRECT?

23 A. SAY THAT ONE MORE TIME, PLEASE.

24 Q. ISN'T IT TRUE THAT THE REASON WHY YOU WANT TO USE THIS
25 PHOTO LINEUP IS THAT IT DOESN'T SUGGEST TO THE VICTIM WHO TO

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

62

1 PICK, CORRECT?

2 A. THAT'S CORRECT. IT'S ON THEIR KNOWLEDGE OF WHO THEY
3 SAW. AND IF THEY COULD PICK THEM OUT OF A PHOTO LINEUP AND
4 THEY'RE VERY SURE, THEN THAT'S THEM.

5 Q. OKAY. AND, IN FACT, ISN'T IT TRUE THE INSTRUCTIONS YOU
6 GIVE WITNESSES WHEN YOU PRESENT THEM WITH PHOTO LINEUPS IS
7 TO ONLY PICK A PERSON IF YOU'RE SURE THAT'S THE PERSON YOU
8 SAW?

9 A. ABSOLUTELY.

10 Q. DON'T PICK A PERSON IF YOU'RE NOT SURE THAT'S THE
11 PERSON YOU SAW?

12 A. WELL, IF THE SUSPECT'S IN THERE I TELL THEM TO THEIR
13 BEST KNOWLEDGE WHO WAS THE SUSPECT AND THEY PICK SOMEBODY
14 ELSE THAT'S NOT THE SUSPECT, I STILL HAVE THEM DO THE SAME
15 -- EVERYTHING ELSE. CIRCLE THE SAME ONE AND SIGN IT AS, YOU
16 KNOW, THEY WOULD SIGN A NORMAL ONE. AND YOU GO ABOUT IT
17 LIKE THAT. AND YOU JUST DON'T HAVE A SUSPECT 'CAUSE THEY
18 COULDN'T IDENTIFY HIM.

19 Q. BUT BEFORE YOU SHOW THEM THE PHOTO LINEUP YOU DON'T
20 TELL THEM WHO THE SUSPECT IS, RIGHT?

21 A. NO.

22 Q. 'CAUSE YOU DON'T WANT TO TAINT THE IDENTIFICATION ---

23 A. THAT'S CORRECT.

24 Q. --- PROCEDURE?

25 A. THAT'S CORRECT.

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

63

1 Q. DEPUTY MENDENHALL, YOU TALKED ABOUT HOW AFTER THE
2 VICTIM OR AFTER MR. ESPINOZA GAVE YOU A DESCRIPTION OF THE
3 PEOPLE WHO DID THIS YOU PUT IT OUT ON A BE ON THE LOOKOUT,
4 CORRECT?

5 A. YES, SIR.

6 Q. AND IT'S CRITICAL EARLY ON THAT THAT DESCRIPTION THAT
7 YOU PUT OUT BE AS ACCURATE AS POSSIBLE, CORRECT?

8 A. YES.

9 Q. 'CAUSE THAT'S THE BEST CHANCE LAW ENFORCEMENT HAS TO
10 CATCH THE PEOPLE WHO DID THIS?

11 A. THAT'S CORRECT.

12 Q. AND SOMETIMES LAW ENFORCEMENT GENERATES DOCUMENTS
13 CALLED DESCRIPTION WORKSHEETS IN ORDER TO CAPTURE THIS
14 DESCRIPTION, IS THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS DEFENDANT'S
17 EXHIBITS 2 AND 3 FOR IDENTIFICATION PURPOSES ONLY. WOULD
18 YOU PLEASE LOOK AT THOSE?

19 (WHEREUPON DEFENDANT ROBINSON'S EXHIBITS 2 AND 3 WERE
20 MARKED PRIOR BY MR. MOORMAN FOR IDENTIFICATION)

21 A. YES, SIR.

22 Q. ARE THOSE THE CRIMINAL DESCRIPTION WORKSHEETS THAT WERE
23 GENERATED FOR THIS CASE?

24 A. YES.

25 Q. ISN'T IT TRUE ---

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

64

1 MR. MARCHANT: YOUR HONOR, I'D OBJECT TO HIM ASKING HIM
2 ANY QUESTIONS OFF THESE SHEETS. IF THERE'S SOMETHING HE
3 DOESN'T REMEMBER, THEN HE CAN CROSS EXAMINE HIM OFF THE
4 SHEETS, BUT I WOULD SUBMIT THAT HE'D HAVE TO MOVE THEM INTO
5 EVIDENCE BEFORE HE COULD CROSS EXAMINE HIM ON THEM.

6 MR. MOORMAN: AND, YOUR HONOR, MY POSITION WOULD BE
7 THAT I COULD ASK QUESTIONS. THESE ARE BUSINESS -- THESE
8 WERE BUSINESS RECORDS. SO THE CONTENT OF THE DOCUMENTS ARE
9 ADMISSIBLE PURSUANT TO THE RULES OF EVIDENCE.

10 THE COURT: GO AHEAD.

11 Q. ISN'T IT TRUE, DEPUTY MENDENHALL, THAT ON BOTH
12 WORKSHEETS BOTH SUBJECTS ARE LISTED AS HAVING HOODED
13 SWEATSHIRTS?

14 A. YES, I BELIEVE SO.

15 Q. AND, DEPUTY MENDENHALL, IF THE VICTIM IN A CASE LIKE
16 THIS HAD MADE A COMMENT TO YOU ABOUT HIS ABILITY TO SEE THE
17 SUSPECTS, FOR EXAMPLE, IF A VICTIM IN A CASE LIKE THIS HAD
18 SAID, I GOT AN EXCELLENT LOOK AT THE SUBJECT, THAT'S
19 SOMETHING YOU WOULD HAVE DEFINITELY PUT IN YOUR REPORT,
20 ISN'T THAT TRUE?

21 A. IT JUST ALL DEPENDS.

22 Q. DON'T YOU THINK THAT WOULD BE A VERY, VERY IMPORTANT
23 THING YOU'D NOTE IN YOUR REPORT?

24 A. WELL, YOU ASK THE VICTIMS, YOU KNOW, HOW WELL THEY
25 COULD SEE THEM. OF COURSE, THEY DON'T KNOW THEM. YOU JUST

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. ROBINSON

65

1 ASK THEM AND GET A LITTLE -- A DESCRIPTION AND BE VERY
2 DETAILED ABOUT IT.

3 Q. OKAY. ALL RIGHT.

4 A. AND THEN HIS SITUATION WAS SEVERAL MINUTES. SO HE GOT
5 A GOOD LOOK AT THEM.

6 Q. OKAY. ALL RIGHT. IF HE HAD TOLD YOU THAT HE GOT AN
7 EXCELLENT LOOK AT THEM, THAT'S SOMETHING THAT YOU WOULD HAVE
8 PUT IN YOUR REPORT, ISN'T THAT TRUE, IN THE INTEREST OF
9 BEING THOROUGH AND COMPLETE?

10 A. IF IT WAS BROUGHT UP, YES.

11 Q. OKAY. LET ME SHOW YOU -- LET ME SHOW YOU THE REPORT
12 THAT YOU GENERATED IN THIS CASE.

13 (WHEREUPON DEFENDANT ROBINSON'S EXHIBIT 1 WAS MARKED
14 FOR IDENTIFICATION)

15 Q. WHAT'S BEEN MARKED AS DEFENSE EXHIBIT NUMBER 1.
16 ANYWHERE IN YOUR REPORT DO YOU LIST THAT THE VICTIM SAID OR
17 NOTE THAT THE VICTIM SAID HE GOT AN EXCELLENT LOOK?

18 A. NO.

19 MR. MOORMAN: YOUR HONOR, I HAVE NOTHING FURTHER.

20 THE COURT: MR. ROBINSON.

21 MR. ROBINSON: MAY IT PLEASE THE COURT?

22 CROSS EXAMINATION BY MR. ROBINSON:

23 Q. OFFICER, BESIDES MR. ESPINOZA THERE WERE NO OTHER
24 EYEWITNESSES AT THE SCENE, WERE THERE?

25 A. THAT'S CORRECT.

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. ROBINSON

66

1 Q. IN FACT, THE -- IN FACT, THE -- THERE WAS NO ONE FROM
2 THE APARTMENT COMPLEX THAT SAW THIS, CORRECT?

3 A. NO.

4 Q. NO ONE IN THE PARKING LOT THAT SAW THIS, CORRECT?

5 A. NO.

6 Q. OKAY. IN TERMS OF THE -- YOU SAID TO MR. MOORMAN ON
7 CROSS EXAMINATION ABOUT SEVERAL MINUTES THIS HAPPENED. YOU
8 WEREN'T AT THE SCENE, WERE YOU?

9 A. NO, SIR, I WAS NOT.

10 Q. AND YOU DON'T KNOW HOW MANY MINUTES IT WAS THAT HE
11 ACTUALLY SAW THIS -- THESE ---

12 A. THAT'S CORRECT.

13 Q. --- PEOPLE, CORRECT?

14 A. YES, SIR.

15 Q. YOU DON'T KNOW ANYTHING ABOUT THAT, CORRECT?

16 A. NO.

17 Q. COULD HAVE BEEN ONE MINUTE, COULD HAVE BEEN THREE
18 MINUTES, YOU DON'T KNOW, DO YOU?

19 A. THAT'S RIGHT.

20 Q. OKAY. AND AS FAR AS THE TAG GOES ON THIS AUTOMOBILE
21 THAT YOU PUT IN YOUR REPORT.

22 A. YES.

23 Q. THAT AUTOMOBILE WHEN YOU RAN THE TAG ON THAT DIDN'T
24 BELONG TO EITHER MR. ROBINSON NOR TO MR. WORKMAN, DID IT?

25 A. NO, IT WAS AN INCORRECT TAG.

SCOTT MENDENHALL - REDIRECT EXAMINATION BY MR. MARCHANT

. 67

1 Q. OKAY. AND NOTHING --- NO ITEMS WERE EVER RECOVERED FROM
2 EITHER MR. ROBINSON OR MR. WORKMAN, WERE THEY?

3 A. I'M NOT AWARE.

4 Q. OKAY. AND WHEN THEY PUT OUT A BOLO AT THIS SCENE IN
5 TERMS OF FINDING THIS VEHICLE OR FINDING THE DESCRIPTION OF
6 THESE GENTLEMEN THAT YOU TESTIFIED TO IT COULD BE HUNDREDS
7 OF, ---

8 A. YES.

9 Q. --- THEY NEVER SAW MR. ROBINSON OR MR. WORKMAN, DID
10 THEY?

11 A. WHO ARE YOU REFERRING TO AS THEY?

12 Q. THE DEPUTIES OR ---

13 A. NO.

14 Q. --- ANYBODY LIKE THAT? NEVER SAW THEM AROUND THE SCENE
15 OR ANYTHING, DID THEY?

16 A. NO.

17 Q. THAT'S ALL THE QUESTIONS I HAVE. THANK YOU.

18 THE COURT: ANY REDIRECT?

19 MR. MARCHANT: BRIEFLY, YOUR HONOR.

20 REDIRECT EXAMINATION BY MR. MARCHANT:

21 Q. I'LL SHOW YOU WHAT'S BEEN MARKED AS DEFENSE EXHIBIT 2.
22 WHAT DID YOU WRITE DOWN AS THE HEIGHT AND WEIGHT OF SUSPECT
23 NUMBER 1?

24 A. HE'S SIX FOOT, ONE SEVENTY.

25 Q. NOW AS FAR AS THE LINEUP IS CONCERNED, IS THAT

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

68

1 SOMETHING YOU WOULD HAVE DONE AT THE TIME OR WOULD THAT
2 GENERALLY COME AT A FOLLOWUP REPORT OR A FOLLOWUP
3 INVESTIGATION FROM THE ARMED ROBBERY DIVISION?

4 A. IT'S FILLED OUT A FEW MINUTES AFTER I LEAVE THE SCENE
5 WITH OUR REPORT.

6 Q. I'M SORRY. WHAT I'M ASKING IS WOULD YOU BE THE ONE
7 THAT GENERALLY DOES A LINEUP OR WOULD IT BE SOMEBODY FROM
8 THE ARMED ROBBERY DIVISION?

9 A. IN AN ARMED ROBBERY IT WOULD BE AN INVESTIGATOR, NOT I.

10 Q. THANK YOU. I HAVE NO FURTHER QUESTIONS.

11 MR. MARCHANT: I ASK THAT THIS WITNESS ---

12 THE COURT: THANK YOU. STEP ---

13 MR. MARCHANT: --- BE EXCUSED.

14 THE COURT: STEP DOWN. ANY OBJECTION TO EXCUSING ---

15 MR. MOORMAN: NO OBJECTION, YOUR HONOR.

16 THE COURT: --- THE WITNESS?

17 MR. ROBINSON: NO OBJECTION.

18 THE COURT: THANK YOU. YOU'RE EXCUSED.

19 MR. MARCHANT: THE STATE WOULD CALL SERGIO ESPINOZA.

20 SERGIO ESPINOZA, BEING

21 DULY SWORN TESTIFIED AS FOLLOWS:

22 MADAME CLERK: THANK YOU. PLEASE BE SEATED. PLEASE
23 STATE YOUR FULL NAME FOR THE RECORD.

24 MR. ESPINOZA: SERGIO DAVID ESPINOZA.

25 DIRECT EXAMINATION BY MR. MARCHANT:

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

69

- 1 Q. GOOD MORNING, MR. ESPINOZA.
- 2 A. GOOD MORNING.
- 3 Q. HOW OLD ARE YOU, SIR?
- 4 A. THIRTY-TWO.
- 5 Q. AND WHERE WERE YOU BORN?
- 6 A. MEXICO.
- 7 Q. AND WHEN DID YOU COME TO THE UNITED STATES?
- 8 A. WHEN I WAS A BABY.
- 9 Q. AND WHEN YOU SAY YOU WERE A BABY, HOW OLD WERE YOU?
- 10 HOW ---
- 11 A. SEVEN. SEVEN, EIGHT.
- 12 Q. SEVEN OR ---
- 13 A. EIGHT.
- 14 Q. AND FROM MEXICO WHERE DID YOU FIRST TAKE RESIDENCE HERE
- 15 IN THE UNITED STATES?
- 16 A. I WAS RAISED IN TEXAS. SO TEXAS.
- 17 Q. HOW LONG DID YOU LIVE IN TEXAS PRIOR TO MOVING TO SOUTH
- 18 CAROLINA?
- 19 A. MOST MY LIFE. I'VE BEEN HERE THREE YEARS NOW FROM
- 20 TEXAS.
- 21 Q. DO YOU HAVE A DRIVER'S LICENSE FROM THE UNITED STATES?
- 22 A. I HAD EVERYTHING, SOCIAL SECURITY NUMBER, MY CARD,
- 23 VOTER REGISTRATION, TEXAS DRIVER'S LICENSE FROM TEXAS.
- 24 Q. SO ARE YOU AN AMERICAN CITIZEN?
- 25 A. YES, SIR.

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

70

1 Q. YOU SAID YOU HAD A TEXAS DRIVER'S LICENSE.

2 A. YES, SIR.

3 Q. DO YOU HAVE A SOUTH CAROLINA DRIVER'S LICENSE?

4 A. COULDN'T GET THAT.

5 Q. YOU COULDN'T GET THAT?

6 A. NO, SIR.

7 Q. WHY IS THAT?

8 A. 'CAUSE EVERYTHING WAS STOLEN FROM ME TO SHOW THE
9 CREDENTIALS TO GET A SOUTH CAROLINA LICENSE.

10 Q. BUT YOU HAD A STATE OF TEXAS DRIVER'S LICENSE?

11 A. YES, SIR, NUMBER.

12 Q. NOW PRIOR TO THIS INCIDENT IN DECEMBER WHERE WERE YOU
13 EMPLOYED?

14 A. I WAS A PUBLIC SAFETY OFFICER IN THE HAYWOOD MALL.

15 Q. AND WHAT WERE YOUR DUTIES OR WHAT ARE YOUR DUTIES IN
16 THAT CAPACITY?

17 A. OBSERVE, PATROL AND REPORT. JUST PROVIDE SAFETY FOR
18 ALL THE TENANTS, CUSTOMERS.

19 Q. AND PRIOR TO DECEMBER OF 2007 HOW LONG HAD YOU BEEN
20 WORKING AS A SECURITY OFFICER AT HAYWOOD MALL?

21 A. THREE YEARS. STARTED IN APRIL '06.

22 Q. AS A SECURITY OFFICER DID YOU HAVE TO GO THROUGH ANY
23 TRAINING OR CERTIFICATION?

24 A. YES, SIR, SLED CERTIFIED, SOUTH CAROLINA LAW
25 ENFORCEMENT DIVISION.

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

71

1 Q. AND WHEN YOU SAY SLED CERTIFIED, PLEASE TELL THE JURY
2 WHAT YOU MEAN BY SLED ---

3 A. SLED CERTIFIED? IT MEANS YOU HAVE THE SAME AUTHORITY
4 AS A SHERIFF DEPUTY. YOU HAVE THE SAME ARREST POWER WITHIN
5 THAT FACILITY, SAME DUTIES. YOU'RE THERE TO ASSERT THE LAW,
6 OBSERVE, MAINLY SURVEILLANCE. YOU WORK SIDE BY SIDE WITH
7 LAW ENFORCEMENT, ANYTHING OF THAT NATURE. AND THAT'S ONLY
8 WITHIN THAT CONTRACTED PROPERTY.

9 Q. ONLY WITHIN THE HAYWOOD MALL?

10 A. WHEREVER YOU'RE CONTRACTED AS A SLED OFFICER.

11 Q. NOW YOU HEARD DEPUTY MENDENHALL A MOMENT AGO TALK ABOUT
12 HIS TRAINING BEFORE BECOMING EMPLOYED WITH THE SHERIFF. IS
13 THAT THE SAME TRAINING YOU'RE TALKING ABOUT OR YOU HAVE
14 SOMETHING DIFFERENT?

15 A. NO, SIR. OUR TRAINING IS NOT TO BE A POLICE OFFICER,
16 JUST A SECURITY OFFICER. WE -- THEY BASE IT ON WHAT KIND OF
17 TRAINING YOU HAD BEFORE. I USED TO BE A SELF-DEFENSE
18 INSTRUCTOR IN TEXAS, WOMEN'S SELF-DEFENSE FOR THE CITY OF
19 LUFKIN, TEXAS. SO THAT WENT WITH MY JOB HERE. THAT HELPED
20 ME GET SLED CERTIFICATION QUICKER BECAUSE OF THAT TRAINING.

21 Q. BEING SLED CERTIFIED, DOES THAT AUTHORIZE YOU TO CARRY
22 A FIREARM WHILE ON DUTY?

23 A. IF YOU'RE -- IF SLED HIRES YOU OR IF THAT COMPANY HIRES
24 YOU AS AN ARMED SECURITY OFFICER. THERE'S EITHER ARMED OR
25 UNARMED. IT ALL DEPENDS ON THE CRIME WITHIN THAT AREA.

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

72

1 Q. SO WERE YOU ARMED OR UNARMED ---

2 A. UNARMED AS A SLED OFFICER.

3 Q. AND FOR THREE YEARS YOU WERE WORKING AT THE HAYWOOD
4 MALL?

5 A. YES, SIR.

6 Q. NOW WHAT IS IT THAT BROUGHT YOU TO GREENVILLE, SOUTH
7 CAROLINA?

8 A. MY FAMILY LIVES IN GEORGIA. BEEN IN TEXAS MOST OF MY
9 LIFE. THEY MOVED TO GEORGIA FROM TEXAS, MY MOM, MY BROTHERS
10 AND MY SISTERS. DURING MY COMMUTING BACK AND FORTH VISITING
11 I MET A GIRL. AND WHAT I DID WAS JUST TRY TO GET CLOSER TO
12 MY FAMILY. AND SINCE I MET A GIRL IN SOUTH CAROLINA, THAT
13 KIND OF WORKED OUT FOR -- FOR BOTH OF US SO I COULD BE
14 CLOSER TO FAMILY AND HAVE MY GIRLFRIEND HERE.

15 Q. WILL YOU PULL THE MICROPHONE TOWARDS YOU A LITTLE BIT,
16 PLEASE, SIR, TO MAKE SURE WE CAN ALL HEAR? OKAY. NOW LET'S
17 TALK ABOUT THIS APARTMENT COMPLEX. HOW LONG HAD YOU BEEN
18 LIVING IN THIS APARTMENT COMPLEX PRIOR TO DECEMBER 2007?

19 A. ALMOST TWO YEARS.

20 Q. DO YOU RECALL WHAT APARTMENT NUMBER YOU WERE LIVING IN?

21 A. F-8, RIGHT ACROSS FROM THE POOL.

22 Q. IF YOU WOULD STEP DOWN FOR ME. I'M GOING TO GIVE YOU
23 THE STICKER THAT'S BEEN MARKED "F" REPRESENTING BUILDING
24 "F". COULD YOU PLEASE PLACE THAT WHERE BUILDING "F" IS?

25 A. (WHEREUPON THE WITNESS PLACED THE STICKER ON THE

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 BOARD) .

2 Q. PLEASE TAKE THE STAND. HAVE YOU BEEN IN THIS
3 PARTICULAR BUILDING FOR TWO YEARS OR JUST IN THIS COMPLEX
4 FOR TWO YEARS?

5 A. THAT PARTICULAR BUILDING.

6 Q. NOW ON THE NIGHT THAT THIS HAPPENED WERE YOU WORKING
7 THAT EVENING?

8 A. YES, SIR.

9 Q. AND, IF YOU RECALL, WHAT TIME DID YOU GET OFF WORK?

10 A. IT WAS DURING THE HOLIDAYS. SO THE MALL STAYED OPEN
11 LATER. I GOT OFF AT -- CLOSE TO -- IT WAS TWELVE -- AFTER
12 MIDNIGHT.

13 Q. IF IT WAS A SUNDAY WOULD THE MALL BE OPEN THAT LATE
14 DURING THIS PERIOD OF TIME YOU'RE REFERRING TO?

15 A. THE MALL -- IT HAD DIFFERENT HOURS BECAUSE OF THE
16 HOLIDAYS. SO IT STAYED OPEN TIL ELEVEN, I BELIEVE, OR
17 TWELVE. I DON'T REMEMBER. BUT SECURITY OFFICERS ARE THERE
18 24/7.

19 Q. SO FOLLOWING YOUR SHIFT DID YOU GO OUT OR DID YOU GO
20 HOME?

21 A. I WENT TO GO GET SOMETHING TO EAT.

22 Q. WHEN YOU LEFT THE MALL WHEN YOU GOT DONE DID YOU COME
23 HOME FIRST?

24 A. I WENT HOME, CHANGED, TOOK OFF MY UNIFORM. I DIDN'T
25 WANT TO BE DRIVING AROUND WITH THE UNIFORM. AND THEN THAT'S

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 WHEN I WENT TO GET ME SOMETHING TO EAT.

2 Q. OKAY. AND WHAT TYPE OF VEHICLE WERE YOU DRIVING ---

3 A. I WAS ---

4 Q. --- AT THIS TIME?

5 A. I HAD A RED JEEP CHEROKEE, FOUR DOOR.

6 Q. DO YOU RECALL WHAT YEAR THIS MODEL OF CHEROKEE WAS?

7 A. '91.

8 Q. OKAY. NOW YOU SAID YOU CAME HOME AND THEN YOU WENT TO
9 GET SOMETHING TO EAT. DO YOU RECALL WHERE YOU WENT TO GET
10 SOMETHING TO EAT?

11 A. YES, SIR. NOT MANY PLACES ARE OPEN THAT LATE. SO I
12 WENT TO TACO BELL ON WHITE HORSE ROAD.

13 Q. AND ABOUT WHAT TIME DID YOU RETURN BACK TO THE
14 APARTMENT AFTER YOU WENT TO TACO BELL?

15 A. IT WAS AROUND 1:45, 1:40, SOMETHING LIKE THAT.

16 Q. WAS ANYONE WITH YOU WHEN YOU WENT TO TACO BELL?

17 A. NO, SIR.

18 Q. WAS THERE ANYONE WAITING BACK AT YOUR APARTMENT FOR
19 YOU?

20 A. NOT YET. I WAS ON THE PHONE AT THE TIME. AND MY
21 GIRLFRIEND WAS ABOUT TO GET HOME.

22 Q. WERE YOU ON THE PHONE WHEN YOU PULLED INTO YOUR PARKING
23 SPOT AT THE APARTMENT COMPLEX?

24 A. NO, SIR.

25 Q. NOW WHEN YOU -- WHEN YOU PULLED INTO YOUR APARTMENT AND

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1 INTO YOUR PARKING SPOT WHAT, IF ANYTHING, DID YOU NOTICE?

2 A. I NOTICED -- WELL, THIS IS HOW IT HAPPENED. I HAD
3 DROVE UP. I OPENED THE DRIVER'S SIDE DOOR. I STUCK MY FOOT
4 OUT. I REACHED OVER ON THE RIGHT SIDE, THE PASSENGER'S
5 SIDE, WHERE I LEFT THE FOOD. AND THEN WHEN I LOOKED UP I
6 SAW A BLACK MALE, LOOKED IN, RED HOODIE COMING RIGHT ACROSS
7 FROM MY APARTMENT DOOR. AND HE WAS WEARING SHORTS.

8 AND I DIDN'T PAY NO, YOU KNOW, I DIDN'T REALLY THINK
9 THAT MUCH OF IT, KIND OF THOUGHT IT WAS SUSPICIOUS FOR BEING
10 THAT LATE, RIGHT IN FRONT OF MY DOOR. AND I WENT AHEAD AND
11 PROCEEDED GETTING MY -- THE FOOD, THE BAG OF FOOD. AND THEN
12 WHEN I LOOKED UP AGAIN HE HAD PUT THE REVOLVER IN FRONT OF
13 MY -- MY FACE.

14 Q. DID THIS PERSON OPEN THE DOOR OR DID YOU OPEN THE DOOR?

15 A. I HAD OPENED THE DOOR. I HAD ONE FOOT OUT THE DOOR AT
16 THE TIME.

17 Q. I'M GOING TO HAVE YOU STEP DOWN AGAIN, PLEASE, SIR.

18 AND WITH THIS BLACK SHARPIE PLEASE CIRCLE WHERE YOUR VEHICLE
19 WAS PARKED THAT NIGHT.

20 A. (WHEREUPON THE WITNESS MARKED ON THE BOARD).

21 Q. OKAY. NOW ON THIS PARTICULAR MAP THERE ARE TWO OTHER
22 VEHICLES HERE AND IT LOOKS LIKE FOUR HERE? DO YOU RECALL
23 WHETHER OR NOT THERE WERE ANY VEHICLES ON EITHER SIDE OF
24 YOU?

25 A. THERE WAS ONE VEHICLE RIGHT HERE ON THE LEFT SIDE.

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 Q. OKAY. WERE THESE TWO VEHICLES HERE?

2 A. NO, SIR.

3 Q. OKAY. SO THESE WERE NOT THERE WHEN YOU GOT HOME?

4 A. CORRECT.

5 Q. OKAY. PLEASE SHOW THE JURY WHERE THIS PERSON CAME FROM

6 THAT YOU FIRST SAW.

7 A. RIGHT HERE. THERE'S A WALKWAY HERE, A SIDEWALK HERE,

8 GOES ALL THE WAY DOWN HERE. IT ACTUALLY MAKES A CIRCLE.

9 Q. OKAY. PLEASE HOLD YOUR POSITION, SIR. DO YOU RECALL
10 IF THERE WERE ANY, YOU KNOW, TELEPHONES OR STREET LAMPS THAT
11 WERE LIGHTING UP THE PARKING LOT?

12 A. YES, BECAUSE I WAS STOPPED HERE.

13 Q. DO YOU RECALL WHERE THEY ARE?

14 A. YES, SIR.

15 Q. OKAY. I'M GOING TO HAND YOU A STICKER. IF YOU WOULD
16 PUT THAT ONE ---

17 A. WELL, RIGHT HERE THERE'S A DUMPSTER. AND THE POLE, THE
18 LIGHT POLE IS RIGHT IN THE MIDDLE OF THE GRASS. SO IT'S
19 RIGHT THERE.

20 Q. ARE THERE ANY OTHER ONES?

21 A. OH, YES.

22 Q. OKAY.

23 MADAME COURT REPORTER: I'M SORRY, I CAN'T HEAR YOUR
24 ANSWER.

25 THE COURT: CAN YOU TRADE PLACES SO YOU CAN FACE THE

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

77

- 1 COURT REPORTER SO SHE CAN HEAR YOU, PLEASE?
- 2 Q. PLEASE REPEAT THAT LAST COMMENT.
- 3 A. THIS IS THE LAUNDRY MAT. SO EVERYTHING HAS TO BE WELL
- 4 LIT. THERE'S A COKE MACHINE RIGHT OUTSIDE. SO THEY KEEP
- 5 THAT WELL LIT AS WELL. YOU CAN ACTUALLY SEE THE POLE RIGHT
- 6 HERE.
- 7 Q. NOW ARE THERE OTHER POLES IN THE COMPLEX AS WELL?
- 8 A. THERE'S -- THERE'S LIGHTS ON EVERY DOOR OUTSIDE THE
- 9 DOOR.
- 10 Q. BUT WHAT I'M ASKING IS IS THIS PART OF THE COMPLEX LIT
- 11 UP AS WELL?
- 12 A. OH, YES, SIR, IN EVERY CORNER.
- 13 Q. DO YOU RECALL WHETHER OR NOT THAT EVENING THOSE
- 14 TELEPHONE POLES AND THOSE LAMPS WERE WORKING?
- 15 A. I DIDN'T DRIVE THAT DAY -- I DIDN'T DRIVE THROUGH THE
- 16 WHOLE PARKING LOT, BUT I KNOW THE WAY I COME IN, ALL THAT
- 17 WAS LIT THROUGH HERE.
- 18 Q. DO YOU RECALL ANY OF THESE POLE LAMPS BEING OUT?
- 19 A. OUT? NO, SIR.
- 20 Q. OKAY. PLEASE HAVE A SEAT. NOW THE PERSON THAT CAME
- 21 AROUND THE FRONT OF YOUR CAR, ONCE THEY GOT TO YOUR DOOR
- 22 WHAT DID THEY DO?
- 23 A. THEY PUT THE HOOD DOWN, THEIR HOODIE DOWN. THEY KEPT
- 24 PUTTING THE -- HE KEPT PUTTING THE GUN TOWARDS ME. HE
- 25 GRABBED THE DOOR. I OPENED IT. HE KEPT TELLING ME TO KEEP

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 MY HANDS UP. I STEPPED OUT OF THE DOOR.¹ I HAD LET GO OF
2 THE FOOD AND I STILL HAD MY HANDS UP. AND HE TOLD ME TO
3 GIVE HIM EVERYTHING I HAD.

4 I KEPT LOOKING AT THE REVOLVER, I MEAN, THE GUN. AND I
5 KEPT TELLING HIM, YOU DON'T WANT TO DO THIS. I SAID, TAKE
6 IT EASY, YOU DON'T WANT TO DO THIS. HE SAYS, COME ON, HURRY
7 UP.

8 AND HE TOOK -- HE HAD ONE HAND UP FACING ME. AND THEN
9 HE TOOK THE OTHER HAND AND STARTED SEARCHING MY POCKETS.
10 AND THAT'S WHEN HE GRABBED MY CELL PHONE, EVERYTHING I HAD.
11 AND HE JUST TOOK THE WALLET.

12 I THOUGHT HE WAS THE ONLY ONE. AND THEN I HEARD A
13 VOICE BEHIND ME, BEHIND MY JEEP. I LOOKED AROUND AT FIRST
14 TO SEE IF MY GIRLFRIEND WAS LOOKING OR IF ANYBODY WAS
15 AROUND. AND THEN THAT'S WHEN I HEARD ANOTHER VOICE SAY,
16 JUST DO IT, HURRY UP, JUST DO IT, MAN.

17 Q. LET'S STOP FOR A MINUTE AND LET'S TALK ABOUT WHAT
18 PROPERTY YOU HAD THAT WAS TAKEN FROM YOU THAT EVENING.

19 A. I HAD MY CELL PHONE. AND I HAD MY WALLET, WHICH HAD
20 MONEY AND MY IDENTIFICATIONS, SOCIAL, EVERYTHING.

21 Q. DID IT CONTAIN YOUR DRIVER'S LICENSE?

22 A. YES, SIR, MY TEXAS DRIVER'S LICENSE, MY VOTER
23 REGISTRATION CARD, MY SOCIAL SECURITY CARD, MY SLED CARD
24 THAT I HAD TALKED ABOUT, MY WALLET.

25 Q. DID YOU HAVE ANY CASH ON YOU?

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- 1 A. YES, SIR.
- 2 Q. DO YOU RECALL HOW MUCH?
- 3 A. I DON'T KNOW THE EXACT AMOUNT. I KNOW IT WAS -- I HAD
- 4 JUST GOT PAID. SO IT WAS FOUR HUNDRED SOMETHING. BUT I --
- 5 THE DEPUTY SAID I HAD SAID TWO SOMETHING, BUT WHAT I WAS
- 6 DOING IS I WAS TALKING TO MY GIRLFRIEND AND ...
- 7 Q. HOW MUCH MONEY DO YOU THINK YOU HAD THAT EVENING?
- 8 A. I KNOW IT WAS CLOSE TO FOUR.
- 9 Q. WHEN YOU SAY FOUR, YOU MEAN ---
- 10 A. FOUR HUNDRED.
- 11 Q. OKAY. NOW LET'S TALK ABOUT THE GUN A LITTLE BIT MORE.
- 12 DO YOU RECALL WHICH HAND THIS FELLOW THAT CAME AROUND THE
- 13 FRONT OF YOUR CAR WAS HOLDING THE GUN IN?
- 14 A. THE RIGHT HAND.
- 15 Q. AND HOW CLOSE TO YOU WAS THAT PERSON?
- 16 A. IT WAS THIS FAR.
- 17 Q. CAN YOU GIVE US A FOOT MEASUREMENT?
- 18 A. ABOUT TWO AND A HALF FEET.
- 19 Q. AND WHERE WAS THE GUN EXACTLY POINTING AT YOU?
- 20 A. MY FACE.
- 21 Q. AND DO YOU KNOW WHETHER OR NOT IT WAS A REVOLVER OR A
- 22 PISTOL?
- 23 A. IT WAS A REVOLVER.
- 24 Q. HOW IS IT THAT YOU KNOW THE DIFFERENCE BETWEEN A
- 25 REVOLVER AND A PISTOL?

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 A. I USED TO OWN A REVOLVER. REVOLVERS HAVE THE GROOVES.
2 AND THAT'S WHERE YOU PUT THE BULLETS IN AND YOU ALTERNATE
3 IT. SO A PISTOL IS MORE LIKE A .9 MILLIMETER. MOST POLICE
4 OFFICERS CARRY THAT. THEIR BACKUP WEAPON IS USUALLY A
5 REVOLVER. AND I KNOW BECAUSE IT WAS STARING IN MY FACE.

6 Q. YOU'RE CERTAIN IT WAS A REVOLVER?

7 A. POSITIVE.

8 Q. DO YOU KNOW WHAT CALIBER?

9 A. I TOLD THE DEPUTY IT WAS ABOUT A .38 OR A .357, WHICH
10 THEY'RE SIMILAR. THE ONLY DIFFERENCE IS THE BARREL.

11 Q. DO YOU KNOW WHETHER OR NOT IT WAS LOADED?

12 A. NO, SIR, NOT FOR CERTAIN.

13 Q. WERE YOU ABLE TO SEE THE HANDLE OF THE REVOLVER?

14 A. YOU COULD SEE THE BOTTOM PART OF IT. I DIDN'T SEE THE
15 WHOLE HANDLE. HE HAD HIS HAND ON THERE.

16 Q. WHAT COLOR WAS THE REST OF IT ASIDE FROM THE HANDLE
17 THAT YOU COULD NOT SEE?

18 A. SILVER.

19 Q. SILVER.

20 A. OR CHROME.

21 Q. A MOMENT AGO YOU MENTIONED YOU HEARD ANOTHER VOICE.
22 WHAT DID YOU DO WHEN YOU HEARD THIS OTHER VOICE?

23 A. I TURNED AROUND AND LOOKED AT WHERE THE VOICE WAS
24 COMING FROM.

25 Q. AND WHERE WAS THAT VOICE COMING FROM?

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 A. FROM -- I'M ON THE DRIVER'S SIDE. THE BACK SEAT. NOT
2 THE BACK SEAT, THE REAR SIDE, LEFT SIDE OF MY JEEP.

3 Q. WERE YOU ABLE TO SEE THE PERSON THAT WAS BACK THERE?

4 A. YES, SIR.

5 Q. AND DO YOU KNOW WHETHER THEY WERE MALE OR FEMALE?

6 A. MALE.

7 Q. DO YOU KNOW THEIR ETHNICITY?

8 A. YES, SIR.

9 Q. AND WHAT IS THAT?

10 A. AFRICAN AMERICAN, BLACK MALE. I REMEMBER WHAT HE WAS
11 WEARING. HE WAS WEARING A WHITE T-SHIRT, DARK SHORTS, WHITE
12 SOCKS.

13 Q. WERE YOU ABLE TO SEE THEIR EYES?

14 A. HE KEPT LOOKING DOWN, BUT, I MEAN, WHEN I HAD LOOKED AT
15 HIM HE HAD HALF -- HALF HIS BODY WAS SHOWING. SO I DIDN'T
16 KNOW IF HE HAD A WEAPON OR NOT. BUT THEN HE WOULDN'T LOOK
17 AT MY FACE. HE LOOKED DOWN AFTERWARDS.

18 Q. WHAT DO YOU MEAN HALF HIS BODY WAS SHOWING?

19 A. YEAH, HE WAS BEHIND MY JEEP. SO ONLY HALF -- HE WAS
20 EXPOSING HALF OF HIS BODY. HE WAS TRYING TO HIDE. SO I
21 COULDN'T SEE THE RIGHT SIDE OF HIS BODY AT THE MOMENT. AND
22 THEN LIKE I SAID, THERE'S MORE THAT HAPPENED AFTER THAT.

23 Q. DO YOU KNOW WHETHER OR NOT THAT PERSON HAD A WEAPON,
24 GUN, KNIFE?

25 A. NO, SIR, THAT'S WHAT I WAS -- I COULDN'T SEE THE BODY

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1 AT FIRST.

2 Q. DO YOU KNOW APPROXIMATELY HOW TALL THE PERSON AT THE
3 REAR OF YOUR VEHICLE WAS?

4 A. HE WAS ABOUT MY HEIGHT.

5 Q. HOW TALL ARE YOU, SIR?

6 A. THEY SAY I'M FIVE SIX ON SOME -- ON SOME
7 IDENTIFICATION. LIKE MY WORK ID, IT SAYS FIVE SIX, BUT ON
8 MY DRIVER'S LICENSE IT SAYS I'M FIVE EIGHT.

9 Q. HOW TALL WAS THE PERSON THAT HAD THE GUN IN THEIR HAND?

10 A. HE LOOKED TALL TO ME, BUT I WAS SITTING DOWN AT THE
11 MOMENT WHEN HE APPROACHED ME. AND THERE WAS A -- THE
12 SIDEWALK. SO IT'S ABOUT THREE FEET HIGH, TWO TO THREE FEET
13 HIGH FROM THE -- FROM THE FLOOR, FROM THE GROUND.

14 Q. I'M NOT SURE I UNDERSTAND WHAT YOU'RE SAYING, FROM ---

15 A. WELL, WHEN I WAS SITTING DOWN HE LOOKED -- HE APPEARED
16 TALLER. SO I WAS JUST GIVING AN APPROXIMATION OF ...

17 Q. AND HOW TALL DID YOU THINK HE WAS?

18 A. I THOUGHT HE WAS TALLER THAN ME, FIVE NINE, FIVE TEN,
19 SIX FOOT SOMETHING.

20 Q. APPROXIMATELY HOW MUCH DID YOU BELIEVE THAT HE WEIGHED?

21 A. WHEN I HAD TOLD THE -- THE DEPUTY THE WEIGHT I WAS
22 TRYING TO GIVE HIM AN IMAGE THAT HE WASN'T HEAVYSET. SO I
23 GAVE HIM ABOUT A LITTLE HEAVIER THAN ME OR -- BECAUSE HE WAS
24 TALL. SO I FIGURED ONE SEVENTY, ONE NINETY.

25 Q. NOW DO YOU RECALL THE MAN THAT HAD THE GUN HAVING ANY

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1 DISTINGUISHABLE MARKS ON HIS FACE?

2 A. JUST -- NOT MARKS. JUST THE ---

3 Q. DID HE HAVE ANY SCARS OR ---

4 A. NO, SIR.

5 Q. --- BIRTHMARKS?

6 A. NO, SIR.

7 Q. DO YOU RECALL IF HE HAD ANY TATTOOS?

8 A. NO, SIR.

9 Q. DO YOU RECALL WHETHER OR NOT HE HAD ANY FACIAL HAIR?

10 A. I THOUGHT HE HAD A LIGHT BEARD LIKE -- WELL, LIKE THIS,
11 BUT IT WAS LIKE A SHADOW, LIKE A 5:00 SHADOW.

12 Q. YOU MEAN A FULL BEARD ---

13 A. NO.

14 Q. --- OR A GOATEE SUCH AS YOU'RE WEARING?

15 A. GOATEE.

16 Q. WHAT ABOUT THE GUY THAT WAS AT THE REAR OF THE VEHICLE,
17 DO YOU RECALL ANY PARTICULAR FACIAL FEATURES OF HIS?

18 A. SIDEBURN COMING DOWN WITH CURLY OR WAVY HAIR.

19 Q. ONCE THE MAN WITH THE GUN TOOK YOUR PROPERTY, WHAT
20 HAPPENED NEXT?

21 A. THEN THE OTHER GUY APPROACHED HIM, THE GUY FROM BEHIND,
22 FROM THE REAR, STARTED COMING TOWARDS HIM. THEN THE ONE
23 WITH THE GUN HANDED OFF THE GUN TO THE GUY IN THE BACK.
24 WHEN HE GAVE HIM THE GUN I LOOKED AT HIM, AND HE TURNED
25 AROUND AND PUNCHED ME IN MY FACE. BUT THAT'S WHEN I GOT THE

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1 FULL FIGURE OF THE SECOND SUSPECT. SO ---

2 Q. WHICH PERSON PUNCHED YOU?

3 A. THE ONE WITH THE RED HOODIE.

4 Q. AFTER HE PUNCHED YOU, WHAT HAPPENED NEXT?

5 A. AFTER HE PUNCHED ME THEY BOTH RAN. AND THEY HEADED
6 TOWARDS THE POOL AREA, BUT THERE WAS A FENCE AROUND COVERING
7 THE POOL AREA. SO THEY CAME AROUND THE DUMPSTER, WENT
8 TOWARDS THE LAUNDRY MAT AND HEADED TOWARDS THE CAR THAT WAS
9 PARKED BY THE MAILBOX.

10 AND THE CAR WAS TURNED ON. IT HAD THE LIGHTS ON AND
11 EVERYTHING. SO I FIGURED THERE WAS A SECOND PERSON THERE, I
12 MEAN, A THIRD PERSON THERE.

13 Q. IF YOU WOULD, STEP DOWN FOR ME, SIR. I'VE GOT ANOTHER
14 STICKER THAT'S MARKED CAR. WOULD YOU PLACE THAT WHERE YOU
15 OBSERVED THAT VEHICLE?

16 A. THIS IS THE MAILBOX. MY CAR IS HERE. THIS IS JUST THE
17 FENCE COVERING IT. SO I COULD SEE FROM HERE TO THERE.

18 Q. OKAY. PLEASE TAKE THE STAND. IN BETWEEN WHERE YOU
19 WERE PARKED AND WHERE THIS CAR WAS PARKED WAS THERE ANYTHING
20 OBSTRUCTING YOUR VIEW?

21 A. NO, SIR.

22 Q. WERE THERE ANY BUSHES OR HEDGES OUT THERE AROUND THE
23 POOL NEAR THE LAUNDRY MAT?

24 A. NO, SIR, NOT FROM WHERE, I MEAN, THE CAR WAS PARKED AND
25 FROM WHERE I WAS THERE WAS NOTHING OBSTRUCTING IT. THE

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1 FENCE IS WIRE.

2 Q. THE FENCE IS WHAT?

3 A. WIRE FENCE.

4 Q. IS ONE ABLE TO CUT THROUGH THE POOL AREA?

5 A. IF THE GATE WAS OPEN, BUT IT WASN'T AT THE TIME.

6 Q. NOW YOU TALKED ABOUT WHEN THE GUY APPROACHED YOU
7 INITIALLY AND CAME AROUND THE TOP SIDE OF THE LAUNDRY MAT.

8 WHEN THESE FOLKS LEFT DID THEY GO BACK AROUND THE TOP OR DID
9 THEY GO UNDERNEATH THE POOL?

10 A. THE SAME WAY THAT THE OTHER GUY HAD -- HAD CAME.

11 Q. TO BE CLEAR, DO YOU KNOW WHERE THE SECOND PERSON CAME
12 FROM?

13 A. NO, SIR.

14 Q. DID YOU SEE A THIRD PERSON AT YOUR VEHICLE THAT NIGHT?

15 A. NO, SIR.

16 Q. AND AGAIN, THE LIGHTING WAS GOOD?

17 A. YES, SIR.

18 Q. HOW LONG WOULD YOU SAY OR ESTIMATE THIS ENTIRE EVENT
19 TOOK PLACE?

20 A. FELT LIKE FOREVER, BUT I THINK IT WAS ABOUT FIVE
21 MINUTES.

22 Q. YOU MEAN FIVE MINUTES AT YOUR CAR OR FIVE MINUTES FROM
23 THE TIME THEY GOT BACK INTO THEIR CAR?

24 A. IT'S JUST AN ESTIMATE. I MEAN, I'D SAY FIVE MINUTES --
25 FIVE MINUTES -- I DON'T KNOW.

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1 Q. LET ME ASK IT THIS WAY. HOW LONG DO YOU THINK THE
2 WHOLE TRANSACTION TOOK PLACE AT YOUR VEHICLE?

3 A. PROBABLY THREE MINUTES.

4 Q. WERE YOU WEARING A WATCH THAT NIGHT?

5 A. NO.

6 Q. DO YOU RECALL WHAT TIME YOU GOT OUT OF YOUR VEHICLE?

7 A. YEAH, I GOT -- I REMEMBER WHAT TIME I GOT HOME AND
8 PARKED.

9 Q. WHAT TIME WAS THAT?

10 A. 1:45, SOMETHING LIKE THAT.

11 Q. ARE YOU CERTAIN IT WAS 1:45 OR ARE YOU JUST ESTIMATING
12 THE TIME?

13 A. I REMEMBER LOOKING AT THE TIME, IT WAS 1:45. AND WHEN
14 I HAD LOOKED DOWN TO GET MY FOOD AND THEN THAT HAPPENED, I
15 DIDN'T KEEP UP WITH THE TIME AFTER THAT. BUT I REMEMBER --
16 THE LAST TIME I REMEMBER WAS 1:45. SO THAT'S WHY I SAID
17 1:45.

18 Q. THE PERSON THAT HAD THIS RED HOODED SWEATSHIRT ON, DID
19 THEY TAKE IT COMPLETELY OFF OR DID THEY JUST DROP THE HOOD?

20 A. THEY DROPPED THE HOOD.

21 Q. AND WAS THE SWEATSHIRT COVERING THE REST OF THEIR ARMS
22 OR WAS THEIR -- WAS THEIR FOREARMS AND SUCH SHOWING?

23 A. NO, IT WAS -- IT WAS LIKE THIS WHEN THEY -- IT WASN'T
24 COVERING IT ALL, BUT IT WAS -- IT WAS STILL ON.

25 Q. NOW DID YOU SEE WHERE THE PERSON THAT ORIGINALLY HAD

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 THE GUN, WHAT SIDE OF THE VEHICLE HE GOT IN?

2 A. THEY GOT ON THE -- IT WAS -- HE GOT ON THE RIGHT SIDE.
3 THE ONE WITH THE WHITE SHIRT GOT ON THE LEFT SIDE. I DON'T
4 KNOW IF HE GOT ON THE DRIVER'S TO DRIVE OR ON THE
5 PASSENGER'S. BUT I REMEMBER HIM BEING ON THE LEFT SIDE.

6 Q. OKAY. SO THE PERSON AT THE REAR OF YOUR VEHICLE GOT IN
7 THE LEFT SIDE OR THE DRIVER'S SIDE OF THE CAR?

8 A. YES, SIR.

9 Q. AND THE FELLOW THAT CAME AROUND AT YOU INITIALLY GOT IN
10 ON THE PASSENGER'S SIDE?

11 A. ON THE RIGHT SIDE OF THE CAR, PASSENGER'S SIDE.

12 Q. DID THEY TAKE YOUR KEYS?

13 A. NO, SIR.

14 Q. DID YOU HAVE ACCESS TO YOUR APARTMENT AT THAT TIME?

15 A. YES, SIR, THE KEYS.

16 Q. DID YOU HAVE A HOUSE PHONE?

17 A. I HAD AT THE TIME.

18 Q. DID YOU GO INSIDE AND CALL 911?

19 A. AFTER I GOT BACK.

20 Q. WHEN YOU SAY AFTER YOU GOT BACK WHAT DO YOU MEAN?

21 A. AFTER THEY HAD ROBBED ME AND I NOTICED THAT THE CAR WAS
22 TURNED ON, I MEAN, THEIR CAR, THERE WAS ANOTHER CAR OUT
23 THERE AND THEY GOT INTO IT, I LOOKED UP TO SEE IF ANYBODY
24 WAS -- HAD WITNESSED ANYTHING OR SEEN ANYTHING.

25 SO I GOT IN THE CAR, IN MY JEEP, AND I FOLLOWED THEM,

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1 BUT I KEPT THE LIGHTS OFF. I DIDN'T WANT THEM TO SEE ME. I
2 KEPT MY DISTANCE, BUT I WAS TRYING NOT TO LOSE THEM. SO I
3 SPED UP, CHASED THEM ON WHITE HORSE ROAD. SO I HAD ALREADY
4 PASSED BEREHA HIGH SCHOOL. THEY SEEMED TO BE STOPPING BACK
5 AND FORTH. SO I SEEN THE LIGHT COME ON AND OFF, THE BRAKE
6 LIGHT.

7 WHEN WE GOT ON WHITE HORSE ROAD I WAS TRAVELING
8 PROBABLY ABOUT SEVENTY MILES AN HOUR. THAT'S WHEN I CAUGHT
9 UP TO THEM. I DIDN'T WANT TO LOSE THEM. I TURNED THE
10 HIGHLIGHTS ON SO I COULD SEE THE TAG NUMBER. I GOT ABOUT A
11 CAR LENGTH, CAR AND A HALF LENGTH AWAY FROM THEM. AND
12 THAT'S WHEN I SAW THE TAG. AND I JUST KEPT REPEATING IT TO
13 MYSELF. I DIDN'T HAVE ANYTHING TO WRITE IT ON OR WRITE IT
14 DOWN WITH. SO I KEPT REPEATING IT.

15 WHEN I LOOKED UP RIGHT BEFORE WE GOT TO THE GAS STATION
16 ON THE RIGHT, WHICH IS ACROSS FROM THE DMV ON WHITE HORSE
17 ROAD, I NOTICED THAT THERE WAS A -- THAT THEY HAD A REVOLVER
18 COMING FROM THE DRIVER'S SIDE FACING ME.

19 Q. WHEN YOU SAY DRIVER'S SIDE, YOU MEAN THE DRIVER'S SEAT
20 OR WAS IT THE BACK SEAT? DO ---

21 A. I COULDN'T TELL --

22 Q. --- YOU KNOW?

23 A. I COULDN'T TELL YOU, SIR. I JUST KNOW IT WAS ON THE
24 LEFT SIDE, WHICH IS THE DRIVER'S SIDE.

25 Q. WHAT HAPPENED NEXT?

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1 A. WHEN I LOOKED UP AND SAW THAT 'CAUSE I WAS FOCUSING ON
2 THE CAR, THE TAG NUMBER, AND WHEN I LOOKED UP I SAW THAT THE
3 GUN WAS FACING ME. AND I SWERVED. AND THAT'S WHEN THEY
4 SHOT AT ME. I SWERVED ---

5 Q. HOW MANY ---

6 A. --- TO THE RIGHT.

7 Q. --- TIMES?

8 A. JUST ONCE.

9 Q. WAS YOUR VEHICLE STRUCK?

10 A. NO, SIR. I HAD SWERVED, BUT I LOST CONTROL. SO I WENT
11 BACK HOME.

12 Q. AND WHAT DID YOU DO WHEN YOU GOT BACK HOME?

13 A. I RAN UPSTAIRS AND USED THE HOUSE PHONE AND CALLED 911.

14 Q. WHY WOULD YOU NOT GO CALL 911 FIRST? WHY DID YOU CHASE
15 AFTER THIS VEHICLE?

16 A. BECAUSE THEY ROBBED ME. THEY TOOK EVERYTHING FROM ME.
17 I MEAN, IT COULD HAVE BEEN WORSE. THEY COULD HAVE SHOT ME.
18 THEY COULD HAVE SHOT SOMEBODY ELSE. THEY COULD HAVE ROBBED
19 SOMEBODY ELSE. I WANTED TO GET AS MUCH INFORMATION AS I
20 COULD.

21 Q. NOW AT SOME TIME IN THE FUTURE DID YOU OR WERE YOU ABLE
22 TO VIEW A PICTURE OF THE DEFENDANTS?

23 A. YES.

24 Q. AND WHERE DID YOU VIEW THAT PICTURE?

25 A. IT WAS ON THE CHANNEL 4 NEWS, THE 4:00 NEWS.

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

90

1 Q. WHERE WERE YOU WHEN YOU SAW THIS PICTURE?

2 A. I WAS AT HOME.

3 Q. AND WHAT DID YOU DO ONCE YOU SAW THIS PICTURE?

4 A. WELL, WHEN I SAW THE PICTURE I DIDN'T READ THE WHOLE
5 STORY. I JUST SAW THE PICTURES AND IT CAME ON FOR JUST A
6 LITTLE BIT. AND WHAT I DID, IT WAS -- I GOT ON THE WEBSITE.
7 AND WHICH, YOU KNOW, EVERY TIME THERE'S SOMETHING THAT
8 HAPPENS ON THE NEWS IF YOU MISSED IT IT KIND OF GIVES YOU A
9 RECAP. SO WHAT I DID IS THEY -- TWO OF THE THREE SUSPECTS
10 THAT THEY HAD SHOWED ON TV, I RECOGNIZED. SO, I MEAN, THERE
11 WAS ONLY TWO WHENEVER THEY ROBBED ME OR THAT I, YOU KNOW,
12 THAT WAS -- THAT I REMEMBER.

13 AND WHAT I DID WAS I LOOKED ON THE WEBSITE AND I SAW
14 THE TIP FROM WHAT THEY HAD JUST SHOWN. AND I GOT A STEADY,
15 YOU KNOW, PICTURE. IT WASN'T MOVING OR WHATEVER. I MEAN, I
16 GOT CONFIRMATION THAT THAT WAS THE GUYS THAT HAD ROBBED ME,
17 TWO OF THE THREE THAT THEY SHOWED.

18 Q. NOW WHEN YOU SAY YOU GOT CONFIRMATION ...

19 A. I MEAN, THAT'S, I MEAN, WITHOUT A DOUBT THOSE WERE THE
20 GUYS THAT WERE THERE. I HAD A PICTURE TO MATCH WHAT I
21 REMEMBERED.

22 Q. DO YOU RECALL SEEING THE THIRD PERSON AT ANY POINT IN
23 TIME THAT EVENING?

24 A. NO. NO, SIR.

25 Q. NOW DO YOU RECALL THE DAY THAT YOU SAW THIS INFORMATION

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

91

1 ON THE NEWS?

2 A. THE DAY? I DON'T KNOW, IT WAS PROBABLY A WEEK, TWO
3 WEEKS LATER.

4 Q. AND AFTER YOU SAW THIS INFORMATION DID YOU GET IN TOUCH
5 WITH ANYONE FROM THE SHERIFF'S OFFICE?

6 A. YES, SIR. I CALLED MR. HANNING, I BELIEVE, WAS
7 HANDLING THE CASE, THE INVESTIGATOR THAT WAS HANDLING THE
8 CASE.

9 Q. OKAY. AND WHAT DID YOU DO WITH INVESTIGATOR HANNING?

10 A. I HAD JUST CALLED THEM AND TOLD THEM THAT I HAD SEEN
11 THE GUYS THAT HAD ROBBED ME ON THE NEWS. I SAID, I SAW A
12 PICTURE OF TWO OF THE GUYS THAT HAD ROBBED ME. AND WHAT I
13 DID WAS I TOLD THEM WHAT SHOULD I DO NOW. AND HE SAID,
14 WELL, YOU NEED TO COME DOWN, ARE YOU SURE, KEPT ASKING ME
15 ARE YOU SURE. AND I SAID, YES, SIR, WITHOUT A DOUBT THOSE
16 ARE THE GUYS.

17 Q. AND DO YOU RECALL WHAT DAY YOU WENT DOWN AND SPOKE WITH
18 INVESTIGATOR HANNING?

19 A. I DON'T REMEMBER WHAT DAY. I DON'T KNOW IF IT WAS THE
20 31ST.

21 Q. AND DID YOU GIVE INVESTIGATOR HANNING A STATEMENT AT
22 THAT TIME?

23 A. YES, SIR.

24 Q. AND DID YOU TELL HIM WHAT TYPE OF LOOK OR OPPORTUNITY
25 YOU WERE ABLE TO GET THAT EVENING?

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

92

1 A. YES, SIR.

2 Q. AND WHAT TYPE OF LOOK DID YOU TELL INVESTIGATOR HANNING
3 YOU GOT?

4 A. TOLD HIM I GOT A GOOD LOOK.

5 Q. WAS IT A GOOD LOOK OR WAS IT AN EXCELLENT LOOK?

6 A. EXCELLENT IS GOOD TO ME.

7 Q. OKAY. AND IF YOU REPORTED THIS TO DETECTIVE HANNING
8 DID YOU -- WAS THIS JUST VERBALLY OR DID YOU GIVE A WRITTEN
9 STATEMENT?

10 A. I DID BOTH. I HAD TOLD HIM. AND HE SAID HE -- THAT HE
11 NEEDS TO WRITE IT DOWN. SO I REPEATED MYSELF. BUT IT WAS
12 THE SAME STORY EVERY TIME BECAUSE THOSE WERE THE GUYS.

13 Q. WHAT TYPE OF VEHICLE DID YOU TELL DEPUTY MENDENHALL AND
14 INVESTIGATOR HANNING THAT THESE FOLKS WERE DRIVING?

15 A. I TOLD HIM IT WAS AN 80s MODEL, BOXED CAR, LOOKED LIKE
16 A CROWN VICTORIA, A CADILLAC STYLE. THAT'S WHAT I TOLD HIM.

17 Q. AND AFTER TALKING WITH INVESTIGATOR HANNING, EXCUSE ME,
18 WHILE TALKING WITH INVESTIGATOR HANNING DID HE EVER SHOW YOU
19 A PHOTOGRAPHIC LINEUP?

20 A. NO, SIR.

21 Q. LAST QUESTION I HAVE FOR YOU, MR. ESPINOZA, THE MAN
22 WITH THE GUN THAT CAME AROUND YOUR CAR AND HAD THE RED
23 HOODED SWEATSHIRT ON THAT NIGHT, DO YOU SEE HIM IN THE
24 COURTROOM HERE TODAY?

25 A. YES, SIR.

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

93

1 Q. WOULD YOU POINT HIM OUT FOR THE JURY, PLEASE?

2 MR. MOORMAN: AND, YOUR HONOR, I WOULD OBJECT ON THE
3 BASIS OF 403.

4 THE COURT: SUBJECT TO YOUR OBJECTION, GO AHEAD.

5 MR. ROBINSON: SAME OBJECTION, YOUR HONOR, AS WELL.

6 THE COURT: SUBJECT TO YOUR OBJECTION, GO AHEAD.

7 Q. PLEASE POINT HIM OUT FOR THE JURY, MR. ESPINOZA. AND
8 DESCRIBE WHAT THEY'RE WEARING.

9 A. HE'S WEARING A WHITE SHIRT IN THE CORNER, RIGHT CORNER.

10 Q. AND THE PERSON THAT CAME AROUND THE REAR OF YOUR
11 VEHICLE, ARE THEY HERE IN THE COURTROOM TODAY?

12 A. YES, SIR.

13 Q. DO YOU RECOGNIZE HIM?

14 A. YES, SIR.

15 Q. WOULD YOU PLEASE POINT HIM OUT FOR THE JURY?

16 A. THE GENTLEMAN RIGHT BESIDE THE LAWYER.

17 Q. AND WHAT IS THAT PERSON WEARING?

18 A. HE'S WEARING A BLUE, AND I DON'T KNOW WHAT COLOR THAT
19 IS, BROWNISH DRESS SHIRT.

20 MR. MARCHANT: PLEASE LET THE RECORD REFLECT THAT MR.
21 ESPINOZA'S IDENTIFIED MR. WORKMAN AS THE GUNMAN AND MR.
22 ROBINSON AS HIS -- AS THE SECOND SUSPECT AT THE REAR OF THE
23 VEHICLE.

24 THE COURT: ALL RIGHT.

25 Q. I HAVE NO FURTHER QUESTIONS. PLEASE ANSWER ANY

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

94

1 QUESTIONS MR. MOORMAN OR MR. ROBINSON MAY HAVE FOR YOU.

2 THANK YOU.

3 THE COURT: LET'S FIRST GIVE THE JURY A RECESS. TAKE
4 THE JURY OUT, PLEASE.

5 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11:45 AM)

6 THE COURT: OKAY. NOW, MR. ESPINOZA, DURING THE RECESS
7 DON'T TALK TO ANYONE ABOUT YOUR TESTIMONY THAT YOU'VE
8 ALREADY GIVEN, OKAY?

9 A. YES, SIR.

10 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT RECESS.

11 (WHEREUPON COURT WAS IN RECESS AT 11:46 AM)

12 THE COURT: COME BACK AROUND, MR. ESPINOZA. YOU'RE
13 STILL UNDER OATH.

14 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:57 AM)

15 THE COURT: ALL RIGHT. MR. MOORMAN.

16 MR. MOORMAN: YES, SIR. MAY IT PLEASE THE COURT?

17 CROSS EXAMINATION BY MR. MOORMAN:

18 Q. MR. ESPINOZA, YOU'RE SURE THAT THERE WERE TWO GUYS WHO
19 CAME AROUND YOUR CAR AND ROBBED YOU THAT NIGHT?

20 A. YES, SIR.

21 Q. LET'S GET -- LET'S TALK A LITTLE BIT ABOUT THE TIME-
22 LINE OF EVENTS THAT HAPPENED. THIS ROBBERY OCCURRED ON
23 DECEMBER 10TH, 2007, CORRECT?

24 A. YES, SIR.

25 Q. AFTER THIS ROBBERY OCCURRED WHAT INTERACTION, IF ANY,

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

95

1 DID YOU HAVE WITH LAW ENFORCEMENT? DID YOU MEET WITH LAW
2 ENFORCEMENT AGAIN BEFORE THE 31ST OF DECEMBER?

3 A. NO, SIR.

4 Q. SO FROM DECEMBER 10TH AND THREE WEEKS ON YOU HAVE NO
5 CONTACT WITH LAW ENFORCEMENT AT ALL, CORRECT?

6 A. REGARDING THIS CASE, NO, SIR.

7 Q. THEN WAS IT ON THE 30TH OR 31ST WHERE YOU SAW THE NEWS
8 BROADCAST?

9 A. I SAID APPROXIMATELY ABOUT THE 31ST.

10 Q. SO -- AND ON THE 31ST YOU SAW -- WELL, LET'S BACK UP.
11 NEVER PRESENTED ANY PHOTO LINEUP, CORRECT?

12 A. CORRECT.

13 Q. EVEN TO THIS DAY YOU HAVE NEVER BEEN PRESENTED WITH A
14 PHOTO LINEUP, IS THAT CORRECT?

15 A. CORRECT.

16 Q. NO POLICE OFFICER EVER CAME TO YOU AND SAID, HERE'S A
17 LIST OF SIX PEOPLE, THE PERSON OR PEOPLE WHO DID THIS MAY OR
18 MAY NOT BE IN THIS? NO ONE EVER DID THAT, RIGHT?

19 A. CORRECT.

20 Q. NOBODY EVER CAME TO YOU AND SAID, WITH A PHOTO LINEUP,
21 AND SAID ONLY PICK THE PERSON IF YOU'RE SURE THAT'S THE
22 PERSON WHO ROBBED YOU? NOBODY EVER DID THAT WITH A PHOTO
23 LINEUP, CORRECT?

24 A. CORRECT.

25 Q. SO ON DECEMBER 31ST YOU SEE THE NEWS BROADCAST WITH THE

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

96

1 PICTURES OF MY CLIENT AND MR. WORKMAN. AND WHEN YOU SEE
2 THAT NEWS BROADCAST THAT'S WHEN YOU SAY, THOSE ARE THE GUYS
3 WHO ROBBED ME?

4 A. WHEN I RECOGNIZED TWO OF THE THREE, YES, SIR.

5 Q. OKAY. ONLY AFTER YOU SAW THE NEWS BROADCAST, CORRECT?

6 A. AFTER I RECOGNIZED THEM, YES, SIR.

7 Q. THEN YOU SAID YOU GOT ON THE WEBSITE AND AGAIN LOOKED
8 AT THEIR PICTURES, CORRECT?

9 A. CORRECT.

10 Q. THEN YOU CALLED INVESTIGATOR HANNING, IS THAT CORRECT?

11 A. YES, SIR.

12 Q. AND THAT'S WHEN YOU GAVE THE STATEMENT?

13 A. THAT'S WHEN HE ASKED ME TO COME OVER AND GIVE A
14 STATEMENT, YES, SIR.

15 Q. LET'S TALK ABOUT THAT STATEMENT.

16 (WHEREUPON DEFENDANT ROBINSON'S EXHIBIT 4 WAS MARKED
17 FOR IDENTIFICATION)

18 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS DEFENSE EXHIBIT
19 NUMBER 4 FOR IDENTIFICATION PURPOSES ONLY. PLEASE TAKE A
20 LOOK AT THAT, MR. ESPINOZA. IS THAT THE STATEMENT YOU GAVE
21 TO INVESTIGATOR HANNING?

22 A. YES, SIR.

23 Q. ON YOUR DIRECT TESTIMONY YOU TESTIFIED THAT THE MAN
24 WITH THE HOODIE AND THE GUN PULLED HIS HOODIE DOWN BEFORE HE
25 ROBBED YOU, IS THAT CORRECT?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

97

1 A. YES, SIR.

2 Q. ANYWHERE IN THAT STATEMENT DO YOU SAY THAT?

3 A. IT'S NOT WRITTEN ON THERE, NO, SIR.

4 Q. ON YOUR DIRECT TESTIMONY YOU SAID SOMETHING TO THE
5 EFFECT THAT YOU TOLD THE ROBBER, HEY MAN, YOU DON'T WANT TO
6 DO THIS, IS THAT CORRECT?

7 A. YES, SIR.

8 Q. ANYWHERE IN THAT STATEMENT DID YOU INDICATE THAT'S WHAT
9 YOU SAID TO THE GUNMAN?

10 A. IT'S NOT WRITTEN ON THERE, NO, SIR.

11 Q. IN YOUR DIRECT TESTIMONY YOU SAID THAT THE MAN WHO HAD
12 THE GUN INITIALLY WAS ABOUT TWO AND A HALF FEET AWAY FROM
13 YOU, IS THAT CORRECT?

14 A. YES, SIR.

15 Q. ANYWHERE IN THAT STATEMENT YOU SAID THAT?

16 A. IT'S NOT WRITTEN ON THERE, NO.

17 Q. WHEN YOU WERE -- WHEN YOU MET WITH INVESTIGATOR
18 HANNING, PRIOR TO INVESTIGATOR HANNING TAKING YOUR STATEMENT
19 ISN'T IT TRUE THAT INVESTIGATOR HANNING GAVE YOU SOME
20 INSTRUCTIONS ABOUT THE STATEMENT? ISN'T THAT TRUE?

21 A. REGARDING ...

22 Q. DID HE GIVE YOU INSTRUCTIONS THAT -- BE AS COMPLETE AND
23 AS THOROUGH AS YOU CAN POSSIBLY BE IN GIVING THE STATEMENT?
24 DID HE GIVE YOU THOSE INSTRUCTIONS?

25 A. TO THE BEST OF YOUR KNOWLEDGE. YES, SIR, THAT'S WHAT

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

98

1 HE SAID.

2 Q. ON YOUR DIRECT TESTIMONY YOU TESTIFIED THAT YOU WERE
3 SITTING DOWN WHEN YOU -- WHEN YOU WERE APPROACHED BY THE
4 GUNMAN, IS THAT CORRECT?

5 A. YES, SIR.

6 Q. ANYWHERE IN YOUR STATEMENT DID YOU SAY YOU WERE SITTING
7 DOWN WHEN YOU WERE APPROACHED?

8 A. NO, SIR.

9 Q. ISN'T IT TRUE THAT RIGHT AFTER THIS HAPPENED YOU TOLD
10 DEPUTY MENDENHALL THAT THE MAN WITH THE GUN WAS SIX FEET
11 TALL? ISN'T THAT TRUE?

12 A. APPROXIMATELY, YES, SIR.

13 Q. BUT WE COME IN HERE TODAY AND YOU TESTIFY THAT HE COULD
14 BE FIVE NINE, FIVE TEN, SIX FOOT, ISN'T THAT TRUE?

15 A. THAT'S WHAT I HAD TOLD HIM THAT DAY.

16 Q. SO DID YOU TELL HIM THAT DAY THAT THE GUNMAN WAS SIX
17 FEET TALL OR THAT HE WAS FIVE NINE, FIVE TEN OR SIX FEET?

18 A. I TOLD HIM THAT. AND THEN HE SAID, SO WAS HE SIX FEET
19 TALL? AND I SAID, APPROXIMATELY, YES, SIR, HE WAS TALL.

20 Q. OKAY. SO YOU DID TELL DEPUTY MENDENHALL THAT THE
21 GUNMAN WAS SIX FEET TALL?

22 A. YES, SIR.

23 Q. IT WAS CLEAR TO YOU, ISN'T IT TRUE, THAT THE GUNMAN --
24 THAT THE MAN WITH THE RED HOODIE WAS TALLER THAN THE MAN WHO
25 WAS BEHIND THE CAR, CORRECT?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

99

1 A. I DIDN'T MEASURE HIM, BUT HE LOOKED TALLER BECAUSE I
2 WAS SITTING DOWN AND HE WAS ON TOP OF THE CURB.

3 Q. SO YOU'RE NOT SURE HOW TALL ANY OF THESE PEOPLE WERE?

4 A. LIKE I SAID, IT WAS AN APPROXIMATION.

5 Q. AGAIN, MR. ESPINOZA, LET ME ASK THIS QUESTION. DO YOU
6 OR DO YOU NOT KNOW HOW TALL THESE PEOPLE WERE?

7 A. NO, SIR.

8 Q. YOU DON'T KNOW, CORRECT?

9 A. CORRECT.

10 Q. I WANT TO TALK ABOUT THIS MAN IN THE RED HOODIE. WHEN
11 YOU SAW HIM INITIALLY -- AND, MR. ESPINOZA, YOU'RE WELCOME
12 TO STEP DOWN. IF YOU WOULD, PLEASE. AND I MIGHT HAVE
13 MISSED IT, BUT DID YOU TESTIFY IN YOUR DIRECT -- THIS WAS
14 YOUR CAR, CORRECT?

15 A. RIGHT HERE.

16 Q. AND THE MAN WITH THE HOODIE WAS WALKING IN THIS
17 DIRECTION?

18 A. NO. WHEN I FIRST SAW HIM HE HAD JUST PASSED THE POLE
19 AND HE WAS COMING AROUND RIGHT IN FRONT OF MY APARTMENT,
20 WHICH IS F-8 RIGHT HERE.

21 Q. OKAY. ALL RIGHT. AND YOU WERE IN YOUR CAR GETTING
22 YOUR GROCERIES OUT?

23 A. YES, SIR.

24 Q. OKAY. YOU CAN HAVE A SEAT IN THE WITNESS SEAT. NOW
25 THE MAN WITH THE RED HOODIE, WHEN HE WAS WALKING DOWN THE

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

100

1 SIDEWALK THERE, HE WASN'T -- AND I DON'T MEAN TO BE

2 FACETIOUS, BUT HE WASN'T SHUFFLING HIS FEET LIKE THIS WHERE

3 HIS FACE WAS RIGHT IN FRONT OF YOU, CORRECT?

4 A. CORRECT.

5 Q. HE WAS TURNED WALKING SIDEWAYS, CORRECT?

6 A. YES, SIR.

7 Q. AND YOU SAID HE HAD HIS HOODIE UP, CORRECT?

8 A. CORRECT.

9 Q. SO WHILE HE'S WALKING SIDEWAYS, AT MOST YOU'RE CATCHING

10 WHAT PART OF HIS PROFILE THAT YOU CAN SEE THROUGH THE

11 HOODIE, CORRECT?

12 A. CORRECT.

13 Q. AND DURING THIS TIME YOU DON'T EVEN SEE THE OTHER GUY

14 WHO'S THERE, CORRECT?

15 A. CORRECT.

16 Q. AND ON YOUR DIRECT TESTIMONY YOU TESTIFIED THAT YOU

17 WENT INTO YOUR CAR TO GET OUT YOUR GROCERIES, AND WHEN YOU

18 TURNED AROUND THAT GUY WITH THE RED HOODIE WAS RIGHT THERE,

19 CORRECT?

20 A. HE HAD JUST PASSED, I MEAN, HE WAS IN FRONT OF MY

21 VEHICLE WHEN I NOTICED HIM. AND I REACHED DOWN FOR JUST A

22 SECOND TO GET MY -- MY FOOD. WHEN I LOOKED UP HE WAS STILL

23 IN FRONT OF MY VEHICLE, BUT HE WAS FACING ME WITH THE GUN.

24 Q. SO HE DIDN'T COME UPON YOU, YOU SAID HE WAS FACING YOU

25 WITH THE GUN?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

101

1 A. RIGHT, AT THAT MOMENT.

2 Q. WHILE YOU WERE IN YOUR CAR GETTING YOUR GROCERIES DID
3 YOU TURN AND SEE HIM COMING TOWARDS YOU?

4 A. NO, SIR. HE STOPPED RIGHT IN FRONT OF MY DOOR, MY
5 APARTMENT DOOR, RIGHT IN FRONT OF THE JEEP. AND HE WAS
6 FACING ME WITH THE GUN. THAT'S WHEN I RAISED MY HAND. HE
7 WAS STILL IN FRONT OF MY HOOD, IN FRONT OF MY JEEP.

8 Q. SO HE WAS A LOT FARTHER THAN TWO AND A HALF FEET AWAY
9 FROM YOU, WASN'T HE?

10 A. HE ASKED HOW FAR WAS THE GUN TOWARDS ME AT FIRST.
11 THAT'S WHAT HE SAID.

12 Q. ALL RIGHT. HOW FAR WAS HE AWAY FROM YOU WHEN HE WAS
13 POINTING THE GUN AT YOU?

14 A. WHEN HE FIRST STARTED POINTING THE GUN AT ME? I DON'T
15 KNOW HOW -- HOW MANY FEET IS FROM -- ABOUT SIX FEET AWAY
16 FROM ME. I MEAN, ---

17 Q. JUST SO I UNDERSTAND YOUR TESTIMONY THEN, YOU'RE SAYING
18 THAT THIS GUY, THIS GUY WITH THE RED HOOD -- WELL, BACK UP.
19 WHEN YOU SAW HIM WITH THE RED HOODIE WALKING SIDEWAYS DID
20 YOU THINK THAT SOMETHING WAS FUNNY OR WRONG?

21 A. HE WAS ACTING SUSPICIOUS. HE WAS, I MEAN, HE HAD HIS
22 RED HOOD ON. AND AT FIRST I JUST THOUGHT IT WAS SUSPICIOUS,
23 HIM WALKING AROUND HIDING HIS IDENTITY ---

24 Q. AND HE WAS USING THAT HOOD TO HIDE HIS IDENTITY?

25 A. HE HAD THE HOOD ON, YES, ---

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

102

1 Q. IS THAT RIGHT?

2 A. --- SIR. (AFFIRMATIVE NOD) .

3 Q. BUT YOU'RE TELLING THIS JURY THAT WHEN HE -- WHEN THIS
4 PERSON DECIDED TO ROB YOU HE DECIDED TO NO LONGER HIDE HIS
5 IDENTITY AND PUT HIS HOOD DOWN, CORRECT?

6 A. CORRECT.

7 Q. OKAY. SO HE WAS HIDING HIS IDENTITY BEFORE HE DID
8 ANYTHING WRONG, BUT HE DIDN'T WANT TO WHEN HE STARTED TO DO
9 SOMETHING WRONG, CORRECT?

10 A. I GUESS. YES, SIR.

11 Q. HE COMES UP TO YOU, THIS FELLOW WHO'S TALLER, BUT YOU
12 WERE SITTING DOWN, HE COMES UP TO YOU AND SAYS, GIVE ME YOUR
13 MONEY. AND THEN AT SOME POINT YOU HEAR A FELLOW BEHIND YOU,
14 CORRECT? OR BEHIND THE CAR?

15 A. YES, SIR.

16 Q. AND AS YOU SAID, THIS FELLOW BEHIND THE CAR IS -- IS
17 HIDING BEHIND THE CAR, CORRECT?

18 A. HALF OF HIS -- I COULDN'T SEE THE RIGHT -- RIGHT TORSO.

19 Q. HALF OF HIS BODY'S BEHIND THE CAR?

20 A. RIGHT.

21 Q. AND AT THIS POINT HE DOESN'T HAVE A GUN, CORRECT?

22 A. NOT THAT I COULD TELL. LIKE I SAID, HALF HIS TORSO.

23 Q. AND YOU HAVE A GUN POINTED IN YOUR FACE, CORRECT?

24 A. YES, SIR.

25 Q. BY THE GUY WITH THE RED HOOD?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

103

1 A. YES, SIR.

2 Q. AND YOU'RE FOCUSED ON THE GUN THAT'S POINTING IN YOUR
3 FACE, CORRECT?

4 A. CORRECT.

5 Q. AND YOU TESTIFIED ABOUT THE FACT THAT IT WAS A
6 REVOLVER. YOU TESTIFIED ABOUT THE HANDLE. HOW FAR WAS THE
7 BARREL?

8 A. HOW FAR WAS THE BARREL?

9 Q. I'M SORRY. HOW LONG WAS THE BARREL ON THE GUN?

10 A. HOW LONG WAS THE BARREL? IT WAS, I MEAN, I DIDN'T SEE
11 THE SIDE VIEW. I SAW IN FRONT OF ME. I MEAN, IT WASN'T A
12 SHORT BARREL, IF THAT'S WHAT YOU'RE ASKING.

13 Q. OKAY. ALL RIGHT. THEN, IF I UNDERSTAND, THE GUY IN
14 THE BACK CAME UP, TOOK THE GUN, AND THE GUY WITH THE RED
15 HOODIE HIT YOU, CORRECT? IS THAT RIGHT?

16 A. SOMETHING LIKE THAT. THE GUY WITH THE GUN HANDED THE
17 GUN OFF TO THE OTHER GUY. AND AFTER -- AS HE HANDED IT OFF
18 HE STRUCK ME WITH HIS RIGHT HAND AND HIT ME ON MY LEFT
19 CHEEK.

20 Q. AND WAS IT -- IT WAS A PRETTY QUICK EXCHANGE, WASN'T
21 IT? HE GAVE HIM THE GUN AND THE GUY WITH THE RED HOOD HIT
22 YOU, RIGHT?

23 A. YES, SIR.

24 Q. AND THEN AFTER THEY HIT YOU THEY TOOK OFF RUNNING AWAY
25 FROM YOU, CORRECT?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

104

1 A. CORRECT.

2 Q. SO YOU HAD TO LOOK AT THE BACK OF THEIR HEADS, CORRECT?

3 A. CORRECT.

4 Q. DIDN'T HAVE A LOOK AT THE FRONT OF THEIR FACES,
5 CORRECT?

6 A. WHEN THEY RAN AWAY, NO, SIR.

7 Q. RIGHT. SO -- AND YOU HAD TESTIFIED EARLIER THAT --
8 THAT THIS WHOLE THING TOOK FIVE MINUTES, DID YOU SAY?

9 A. I SAID APPROXIMATELY. I MEAN, IT FELT LIKE FOREVER. I
10 WASN'T TIMING IT.

11 Q. BUT YOU THINK IT'S FIVE MINUTES?

12 A. I'M -- IT FELT LIKE AROUND FIVE MINUTES.

13 Q. DO YOU KNOW HOW LONG IT TOOK?

14 A. I DON'T KNOW EXACTLY HOW LONG IT TOOK.

15 Q. SO IT'S POSSIBLE IT TOOK A VERY FEW SECONDS?

16 A. NO.

17 Q. HAD TO HAVE TAKEN MINUTES?

18 A. YES, SIR.

19 Q. AND THEN YOU TESTIFIED THAT AFTER -- AFTER THESE TWO
20 INDIVIDUALS RAN TO A CAR AND GOT IN INSTEAD OF CALLING 911
21 YOU GOT INTO YOUR CAR, CORRECT?

22 A. YES, SIR.

23 Q. AND ISN'T IT TRUE THAT YOU WENT FROM BEING A SCARED
24 VICTIM TO JUMPING INTO ACTION AS A LAW ENFORCEMENT OFFICER,
25 CORRECT?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

105

1 A. I WOULDN'T SAY A LAW ENFORCEMENT OFFICER, BUT I -- I
2 JUST WANTED TO GIVE A LEAD, ---

3 Q. ALL RIGHT.

4 A. --- YOU KNOW.

5 Q. SO YOU WERE VERY CONCERNED -- YOU WERE -- YOU HAD
6 OVERCOME BEING A VICTIM, IS THAT WHAT YOU'RE TELLING US?

7 A. NO, I WAS STILL A VICTIM.

8 Q. IN OTHER WORDS, YOU WERE NO LONGER -- WERE YOU STILL
9 SCARED FROM THE INCIDENT OR HAD YOU -- HAD YOU MOVED INTO
10 THIS INVESTIGATIVE EVIDENCE COLLECTION MODE?

11 A. NO, I WAS -- THE ADRENALINE WAS STILL THERE. I MEAN, I
12 WAS STILL MAD, SCARED, EVERYTHING.

13 Q. ALL RIGHT. AND ISN'T IT TRUE BEFORE YOU SAW THAT NEWS
14 BROADCAST YOU HAD ABSOLUTELY NO IDEA OF THE IDENTITY OF THE
15 PEOPLE WHO ROBBED YOU, CORRECT?

16 A. CORRECT.

17 Q. AND YOU SAID THAT THE -- THAT ONE OF THE GUYS THERE HAD
18 WAVY HAIR, IS THAT CORRECT?

19 A. HAD, YOU KNOW, LIKE -- YEAH, LIKE A WEAVE, LIKE AN
20 AFRO, BUT WAVY, YOU KNOW.

21 Q. DID HE HAVE WAVY HAIR?

22 A. IT -- I DON'T KNOW HOW YOU CALL IT. IT'S CURLED.

23 Q. I'M JUST USING YOUR WORDS, SIR. WAS IT WAVY?

24 A. YES, SIR.

25 MR. MOORMAN: WE HAVE NOTHING FURTHER, YOUR HONOR.

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. ROBINSON

106

1 THE COURT: MR. ROBINSON.

2 MR. ROBINSON: MAY IT PLEASE THE COURT?

3 CROSS EXAMINATION BY MR. ROBINSON:

4 Q. SIR, WHEN YOU INITIALLY HAD TESTIFIED YOU SAID THAT YOU
5 WENT TO TACO BELL AROUND 2:00. DO YOU AGREE WITH THAT?

6 A. AROUND ---

7 Q. YOU SAID 2:00. I MEAN, WHEN MR. MARCHANT ASKED YOU ON
8 DIRECT EXAMINATION ABOUT WHAT TIME IT WAS, YOU SAID 2:00,
9 ABOUT 2:00 YOU WERE GOING TO TACO BELL. DO YOU REMEMBER
10 THAT?

11 A. I DON'T REMEMBER THAT.

12 Q. YOU DON'T REMEMBER SAYING THAT?

13 A. (AFFIRMATIVE NOD).

14 Q. OKAY. AND LATER ON YOU SAID THAT YOU LOOKED AT YOUR
15 WATCH AT SOME POINT EITHER AFTER THE INCIDENT OR AFTER YOU
16 CHASED AFTER THE CAR AND YOUR WATCH SAID 1:45, IS THAT ABOUT
17 RIGHT?

18 A. I REMEMBER 1:45, YES, SIR.

19 Q. NOW YOU'RE A -- YOU'RE A MALL SECURITY OFFICER, RIGHT?
20 IS THAT WHAT YOU ARE? AT THAT TIME YOU WERE A MALL SECURITY
21 OFFICER, CORRECT?

22 A. YES, SIR.

23 Q. AND YOU WORK AT -- YOU WERE WORKING AT HAYWOOD MALL
24 AROUND DECEMBER 10TH, 2007?

25 A. YES, SIR.

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. ROBINSON

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1 Q. OKAY. AND DO YOU WORK -- DO YOU WORK AS A SECURITY
2 OFFICER -- DO YOU PATROL THE MALL? IS THAT WHAT YOU DO?

3 A. YES, SIR. WE WORK AT THE POLICE SUBSTATION. WE PATROL
4 THE FACILITY.

5 Q. AND THE SHIFTS THAT YOU HAVE ARE HOW LONG?

6 A. IT ALL DEPENDS, EIGHT HOURS, TEN HOURS.

7 Q. EIGHT HOURS, TEN HOURS? AND YOU WALK AROUND THE MALL
8 TO THE DIFFERENT ANCHOR STORES AND YOU WALK THE MALL AS FAR
9 AS THE COMMON AREAS THAT THEY HAVE, RIGHT?

10 A. CORRECT. WE'RE OUTSIDE PATROL AS WELL. WE DRIVE.

11 Q. SO YOU CAN GO OUTSIDE AND PATROL?

12 A. YES, SIR.

13 Q. NOW THE INCIDENT TOOK PLACE ON DECEMBER 10TH, IS THAT
14 ABOUT RIGHT?

15 A. YES, SIR.

16 Q. AND YOU NEVER WENT INTO THE POLICE BETWEEN THE TIME OF
17 THIS -- OF THIS NEWSCAST AND CHANNEL 4 AND NEVER LOOKED AT A
18 LINEUP. THAT'S WHAT YOU TOLD MR. MOORMAN, CORRECT?

19 A. CORRECT. YOU'RE CORRECT.

20 Q. AND THAT WOULD BE -- I THINK YOU SAID YOU MADE YOUR
21 STATEMENT AROUND -- ABOUT THREE WEEKS LATER. WOULD THAT
22 SOUND ABOUT RIGHT WHEN YOU ACTUALLY -- WHEN YOU ACTUALLY SAW
23 THE NEWSCAST ON CHANNEL 4 ---

24 A. TWO OR THREE WEEKS, YES, SIR.

25 Q. TWO OR THREE WEEKS OR SO?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. ROBINSON

108

1 A. YES, SIR.

2 Q. I WANT TO ASK YOU SOMETHING. NOW YOUR SHIFT -- THESE
3 TWELVE HOUR SHIFTS YOU TALK ABOUT, YOU HAVE SHIFTS ON THE
4 WEEKEND TOO, DON'T YOU?

5 A. YES, SIR.

6 Q. YOU WORKED AFTER DECEMBER 10TH UP UNTIL THREE WEEKS
7 LATER, TWO OR THREE WEEKS LATER WHEN YOU SAW THIS -- SAW
8 THIS BROADCAST ON CHANNEL 4? YOU WERE WORKING AT THE MALL
9 AT THAT TIME WEREN'T YOU? FOR THAT THREE WEEKS YOU WERE
10 STILL CONTINUING AT THE MALL, CORRECT? .

11 A. OH, CORRECT.

12 Q. CORRECT? OKAY. AND WOULD IT BE FAIR TO SAY THAT
13 DURING THAT THREE WEEK, APPROXIMATELY THREE WEEK PERIOD OF
14 TIME THAT YOU THOUGHT -- THAT YOU SAW THOUSANDS OF PEOPLE AT
15 THE MALL WALKING BACK AND FORTH? WOULD YOU AGREE WITH THAT?

16 A. YES, SIR.

17 Q. AND YOU AGREE WITH ME TOO THAT YOU SAW NUMEROUS -- ALL
18 DIFFERENT RACES WALKING THE MALL DURING THAT PERIOD OF TIME,
19 IS THAT CORRECT?

20 A. YES, SIR.

21 Q. OKAY. AND HOW MUCH -- HOW MANY PEOPLE DO YOU THINK --
22 ESTIMATE AT HAYWOOD MALL -- YOU WOULD KNOW THIS BETTER THAN
23 ANYBODY. ON A SATURDAY NIGHT HOW MANY -- HOW MANY PERSONS
24 DO YOU THINK YOU -- WHEN YOU WALK AROUND THE MALL, HOW MANY
25 PEOPLE DO YOU THINK ARE AT THE MALL?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. ROBINSON

109

1 A. THAT ALL DEPENDS.

2 Q. AROUND THIS TIME? THIS WAS AROUND CHRISTMAS TIME, I
3 THINK, ---

4 A. CORRECT.

5 Q. SO HOW MANY PEOPLE DO YOU THINK WERE AT THE MALL?

6 A. DURING THAT DAY?

7 Q. YEAH. HOW MANY PEOPLE DO YOU SEE DURING -- DURING YOUR
8 SHIFT, YOUR TWELVE HOUR SHIFT?

9 A. HUNDREDS.

10 Q. HUNDRED, MAYBE THOUSANDS?

11 A. AH ---

12 Q. ABOUT A HUNDRED ---

13 A. DURING MY SHIFT, PROBABLY A HUNDRED.

14 Q. ABOUT A HUNDRED? OKAY. HUNDRED OR HUNDREDS, RIGHT?

15 A. SOMETHING LIKE THAT.

16 Q. OKAY. AND YOU TOLD MR. MARCHANT ON DIRECT EXAMINATION,
17 I THINK MR. MOORMAN ON CROSS EXAMINATION, THAT THERE WERE NO
18 DISTINGUISHING CHARACTERISTICS OR MARKS OR ANYTHING OF THAT
19 NATURE ON THESE TWO INDIVIDUALS THAT -- OR THREE INDIVIDUALS
20 THAT WERE AT THE SCENE THAT NIGHT, IS THAT CORRECT?

21 A. MEANING TATTOOS OR ---

22 Q. NOTHING, YOU KNOW, TATTOOS, NOTHING UNUSUAL ---

23 A. CORRECT.

24 Q. --- RIGHT? NOW YOU SEEM TO HAVE A REAL GOOD -- YOU
25 SEEM TO HAVE A REAL GOOD IDEA OF THE TYPE OF GUN THAT WAS

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. ROBINSON

110

1 USED THAT NIGHT, DIDN'T YOU?

2 A. YES, SIR.

3 Q. AND YOU ACTUALLY WERE LOOKING AT THIS GUN. AND I THINK
4 YOU TOLD THE -- TOLD MR. MARCHANT IT WAS A REVOLVER, ISN'T
5 THAT RIGHT?

6 A. YES, SIR.

7 Q. 'CAUSE YOU HAVE TRAINING IN -- WITH THE KINDS OF GUNS
8 AND THINGS LIKE THAT, RIGHT?

9 A. YES, SIR.

10 Q. AND YOU HAD AN OPPORTUNITY TO -- TO WATCH THIS GUN
11 DURING THAT BRIEF PERIOD OF TIME, IS THAT RIGHT?

12 A. CORRECT.

13 Q. AS FAR AS -- DID YOU -- YOU DIDN'T GET AN OPPORTUNITY,
14 OR IF YOU DID, DID YOU GET AN OPPORTUNITY TO SEE WHETHER OR
15 NOT THERE WERE ANY DISTINGUISHING CHARACTERISTICS ON THE
16 WRISTS OR ARMS OF THIS INDIVIDUAL THAT HAD THE GUN?

17 A. NO.

18 Q. SO YOU DON'T KNOW IF THERE WAS ANYTHING? YOU DIDN'T --
19 YOU DIDN'T PUT IN YOUR STATEMENT OR TESTIFY OR SAY ANYTHING
20 TO THE OFFICERS ABOUT ANY DISTINGUISHING CHARACTERISTICS,
21 DID YOU?

22 A. REGARDING LIKE ---

23 Q. WELL, REGARDING THE WRISTS OR THE ARMS, CORRECT?

24 A. CORRECT.

25 Q. OKAY. SO WHAT YOU'RE TELLING THIS JURY THEN IS THAT TO

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. ROBINSON

111

1 YOUR KNOWLEDGE THERE WERE NO DISTINGUISHING CHARACTERISTICS
2 ON EITHER THE WRISTS OR ARMS OF THE INDIVIDUAL THAT STUCK A
3 GUN TO YOUR HEAD, CORRECT?

4 A. CORRECT.

5 Q. OKAY. IN THIS APARTMENT COMPLEX THAT YOU -- THAT YOU
6 WERE LIVING AT AT THE TIME -- WHAT IS IT CALLED?

7 A. STRATFORD VILLA.

8 Q. AND IT'S A PRETTY LARGE APARTMENT COMPLEX, ISN'T IT? A
9 PRETTY GOOD SIZE? A PRETTY GOOD SIZE?

10 A. IT'S OKAY.

11 Q. MAYBE HUNDREDS OF PEOPLE LIVE THERE, IS THAT RIGHT?

12 A. PROBABLY.

13 Q. TO YOUR KNOWLEDGE ARE THERE A LOT OF PEOPLE THAT WORK
14 LIKE YOU, LIKE TWELVE HOUR SHIFTS THAT END AT MIDNIGHT OR
15 DIFFERENT KINDS OF SHIFTS AND SO FORTH?

16 A. THE MAJORITY OF THEM, NO. THEY WORK FIVE IN THE
17 MORNING.

18 Q. FIVE IN THE MORNING?

19 A. YES, SIR. WE'RE ALWAYS HERE GETTING OUT AT FIVE IN THE
20 MORNING.

21 Q. AND WHEN THIS ALL HAPPENED THERE WERE NO WITNESSES
22 AROUND OR ANYTHING, WERE THERE?

23 A. NO, SIR.

24 Q. BESIDES YOU, BESIDES YOU, THERE WERE NO OTHER
25 EYEWITNESSES, WERE THERE?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

112

1 A. NO, SIR.

2 Q. THANK YOU.

3 MR. ROBINSON: THAT'S ALL I HAVE, YOUR HONOR.

4 THE COURT: ANY REDIRECT?

5 MR. MARCHANT: NO FURTHER QUESTIONS, YOUR HONOR.

6 THE COURT: THANK YOU. STEP DOWN, PLEASE. OKAY.

7 MR. MARCHANT: THE STATE WOULD CALL TIMOTHY WRIGHT.

8 TIMOTHY WRIGHT, BEING

9 DULY SWORN TESTIFIED AS FOLLOWS:

10 MADAME CLERK: THANK YOU. PLEASE BE SEATED. SIR,

11 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

12 MR. WRIGHT: MY NAME IS TIMOTHY LEE WRIGHT.

13 MADAME CLERK: YOU NEED TO MOVE UP, PLEASE.

14 THE COURT: PULL IN CLOSER TO THE MICROPHONE, PLEASE,

15 MR. WRIGHT.

16 MR. WRIGHT: TIMOTHY LEE WRIGHT.

17 MADAME CLERK: THANK YOU, SIR.

18 DIRECT EXAMINATION BY MR. MARCHANT:

19 Q. MR. WRIGHT, HOW OLD ARE YOU?

20 A. TWENTY, SIR.

21 Q. TWENTY?

22 A. YES, SIR.

23 Q. AND WHERE DID YOU GROW UP?

24 A. I GROWED UP IN GREENVILLE, SOUTH CAROLINA, SIR.

25 MR. MARCHANT: JUDGE, I'M GOING TO NEED TO MOVE THIS

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

113

1 MICROPHONE A LITTLE CLOSER.

2 Q. I'M GOING TO ASK YOU TO SPEAK UP AS LOUD AS YOU CAN SO
3 THE JURY CAN HEAR YOU, SIR. I'M SORRY. WHERE DID YOU GROW
4 UP?

5 A. I GROWED UP IN GREENVILLE, SOUTH CAROLINA, SIR.

6 Q. AND WHERE DID YOU GO TO HIGH SCHOOL?

7 A. SOUTHSIDE, SIR.

8 Q. AND DID YOU GRADUATE FROM SOUTHSIDE HIGH SCHOOL?

9 A. YES, SIR.

10 Q. WHAT YEAR DID YOU GRADUATE?

11 A. '07, SIR.

12 Q. AND FOLLOWING GRADUATING SOUTHSIDE HIGH SCHOOL DID YOU
13 ATTEND COLLEGE ANYWHERE?

14 A. YES, SIR.

15 Q. AND WHERE DID YOU GO?

16 A. GREENVILLE TECH, SIR.

17 Q. AND WHAT PROGRAM OR DIRECTION WERE YOU ENROLLED IN AT
18 GREENVILLE TECH?

19 A. TRUCK DRIVING, SIR.

20 Q. AND DID YOU ENROLL IN GREENVILLE TECH THE AUGUST
21 FOLLOWING YOUR GRADUATION?

22 A. YES, SIR.

23 Q. YOU GRADUATED IN '07, IS THAT CORRECT?

24 A. YES, SIR.

25 Q. SO IN DECEMBER OF 2007 WERE YOU A STUDENT AT GREENVILLE

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

114

1 TECH?

2 A. NO, SIR, 'CAUSE I HAD GOT LOCKED UP.

3 Q. OKAY. PRIOR TO GETTING LOCKED UP WERE YOU ENROLLED
4 TAKING CLASSES?

5 A. YES, SIR.

6 Q. AND BEFORE ANY OF THIS HAPPENED WERE YOU PLANNING ON
7 GOING TO SCHOOL SOMEWHERE ELSE?

8 A. YES, SIR.

9 Q. AND WHERE WAS THAT?

10 A. EAST COASTAL CAROLINA.

11 Q. AND WHAT WERE YOU GOING TO DO DOWN AT COASTAL CAROLINA?

12 A. PLAY FOOTBALL, SIR.

13 Q. AND WHEN WERE YOU SUPPOSED TO BE BEGINNING CLASSES AT
14 COASTAL CAROLINA?

15 A. '08, JANUARY THE 1ST.

16 Q. SO YOU WERE ONLY GOING TO DO SIX MONTHS OR ONE SEMESTER
17 AT GREENVILLE TECH?

18 A. YES, SIR.

19 Q. DO YOU KNOW KENNETH WORKMAN?

20 A. YES, SIR.

21 Q. AND HOW IS IT THAT YOU KNOW KENNETH WORKMAN?

22 A. WELL, I GROWED UP WITH HIM. AND THAT'S MY COUSIN, SIR.

23 Q. AND THEN YOU KNOW HOW OLD MR. WORKMAN IS?

24 A. YES, SIR.

25 Q. HOW OLD IS HE?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

115

- 1 A. NINETEEN, SIR.
- 2 Q. Y'ALL ABOUT THE SAME AGE?
- 3 A. YES, SIR.
- 4 Q. DO YOU KNOW MR. ROBINSON?
- 5 A. YES, SIR.
- 6 Q. AND HOW DO YOU KNOW MR. ROBINSON?
- 7 A. I MET HIM WHEN I HAD GOT OUT OF -- WHEN I HAD GOT OUT
- 8 OF MY JUVENILE TIME IN '05, SIR.
- 9 Q. SO YOU'VE KNOWN MR. ROBINSON SINCE 2005?
- 10 A. YES, SIR.
- 11 Q. AND YOU'VE KNOWN MR. WORKMAN PRETTY MUCH YOUR WHOLE
- 12 LIFE?
- 13 A. YES, SIR.
- 14 Q. MR. WORKMAN'S YOUR COUSIN?
- 15 A. YES, SIR.
- 16 Q. NOW IN THE FALL OF 2007 WHILE YOU'RE ATTENDING CLASSES
- 17 AT GREENVILLE TECH WERE YOU HANGING OUT WITH THESE TWO GUYS?
- 18 A. YES, SIR.
- 19 Q. WAS IT THROUGH SOME EMPLOYMENT OR WERE Y'ALL JUST --
- 20 WAS IT A SOCIAL ARRANGEMENT?
- 21 MR. MOORMAN: YOUR HONOR, I'M GOING TO OBJECT TO THAT,
- 22 TO THE QUESTION.
- 23 THE COURT: WHAT'S THE OBJECTION?
- 24 MR. MOORMAN: ON THE BASIS OF A -- A 403 OBJECTION,
- 25 YOUR HONOR.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

116

1 THE COURT: NO, OVERRULED. GO AHEAD.

2 Q. MR. WRIGHT, WERE YOU -- LET'S GO AT IT THIS WAY. WERE
3 YOU EMPLOYED IN THE FALL OF 2007?

4 A. WAS I EMPLOYED?

5 Q. WERE YOU WORKING SOMEWHERE?

6 A. YES, SIR.

7 Q. AND WHERE WERE YOU WORKING?

8 A. I WAS WORKING AT OJ'S, OJ'S RESTAURANT.

9 Q. OKAY. WHEN THIS -- THIS INCIDENT HAPPENED WERE YOU
10 WORKING?

11 A. NO, SIR.

12 Q. DO YOU KNOW WHETHER OR NOT MR. WORKMAN WAS EMPLOYED?

13 A. NO, SIR.

14 Q. WHAT ABOUT MR. ROBINSON HERE?

15 A. NO, SIR.

16 Q. NOW WHAT DID YOU TYPICALLY CALL MR. WORKMAN?

17 MR. ROBINSON: OBJECTION, YOUR HONOR, RELEVANCE.

18 MR. MARCHANT: I'M ASKING WHAT HE REFERRED -- HOW HE
19 REFERRED TO HIM.

20 THE COURT: GO AHEAD.

21 Q. WHAT DO YOU CALL HIM? IF YOU CALLED HIM UP ON THE
22 PHONE WHAT DO YOU SAY TO HIM?

23 A. I ASK HIM WHAT'S UP, WHAT THEY DOING?

24 Q. BUT WHAT DO YOU CALL HIM?

25 A. TALKING ABOUT O'SHAUN?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

117

- 1 Q. NO, MR. WORKMAN.
- 2 A. I SAY KEN.
- 3 Q. KEN. AND HOW DO YOU ADDRESS MR. ROBINSON HERE?
- 4 A. "O".
- 5 Q. KEN AND "O"?
- 6 A. (AFFIRMATIVE NOD).
- 7 Q. NOW IT'S PRETTY OBVIOUS THAT YOU'RE DRESSED IN SOME
- 8 JAIL ATTIRE. YOU'VE PLED GUILTY TO THIS OFFENSE, ISN'T THAT
- 9 CORRECT?
- 10 A. YES, SIR.
- 11 Q. AND YOU'VE BEEN SENTENCED, ---
- 12 A. YES, SIR.
- 13 Q. --- CORRECT? I DON'T WANT -- I DON'T WANT YOU TO TELL
- 14 US WHAT YOUR ACTUAL SENTENCE WAS, BUT YOU HAVE PLED GUILTY?
- 15 A. YES, SIR.
- 16 Q. AND HAVE BEEN SENTENCED?
- 17 A. YES, SIR.
- 18 Q. DID YOU PLEAD GUILTY TO ANY OTHER OFFENSES?
- 19 A. NO, SIR. NO, SIR.
- 20 Q. THIS IS THE ONLY OFFENSE YOU'VE PLED GUILTY TO?
- 21 A. OH, NO, SIR.
- 22 Q. OKAY. YOU'VE PLED GUILTY TO ---
- 23 A. TWO OF THEM.
- 24 Q. --- A SUBSEQUENT OFFENSE?
- 25 A. TWO OF THEM.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

118

1 Q. OKAY. SO YOU'VE PLED GUILTY TO THIS INCIDENT AND
2 YOU'VE PLED GUILTY TO SOMETHING THAT HAPPENED AFTER THIS,
3 ISN'T THAT CORRECT?

4 A. YES, SIR.

5 Q. OKAY. NOW DO YOU RECALL BEING ARRESTED AND SPEAKING
6 WITH INVESTIGATOR HANNING AS WELL AS INVESTIGATOR WEINER?

7 A. YES, SIR.

8 Q. AND WHEN YOU WERE SPEAKING WITH THEM DID THEY GO OVER
9 YOUR MIRANDA RIGHTS?

10 A. YES, SIR.

11 Q. AND DO YOU KNOW WHAT THAT IS?

12 A. YES, SIR.

13 Q. AND AFTER THEY WENT OVER YOUR MIRANDA RIGHTS DID YOU
14 AGREE TO SPEAK WITH THEM?

15 A. YES, SIR.

16 Q. WERE YOU UNDER ARREST AT THE TIME YOU SPOKE WITH THEM?

17 A. YES, SIR.

18 Q. WHILE SPEAKING WITH INVESTIGATOR WEINER AND
19 INVESTIGATOR HANNING DID THEY MAKE ANY PROMISES TO YOU ABOUT
20 WHAT TYPE OF SENTENCE YOU WOULD RECEIVE IF YOU COOPERATED?

21 A. NO, SIR.

22 Q. DID THEY MAKE ANY PROMISES ABOUT ANYTHING TO YOU?

23 A. NO, SIR.

24 Q. NOW YOU WERE REPRESENTED BY AN ATTORNEY ON YOUR
25 CHARGES?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

119

- 1 A. YES, SIR.
- 2 Q. DO YOU RECALL WHO THAT ATTORNEY IS?
- 3 A. CHRIS POSEY, SIR.
- 4 Q. WHEN IS THE FIRST TIME THAT YOU AND I SAW EACH OTHER
- 5 FACE TO FACE?
- 6 A. WHEN I -- WHEN I HAD GOT MY SENTENCE.
- 7 Q. THE DAY YOU PLED GUILTY? IS THAT WHAT YOU MEAN?
- 8 A. YES, SIR.
- 9 Q. HAD YOU AND I EVER SPOKE PRIOR TO THAT DAY?
- 10 A. NO, SIR.
- 11 Q. WERE THERE ANY PROMISES THAT WERE MADE TO YOU WHEN YOU
- 12 PLED GUILTY ABOUT WHAT TYPE OF SENTENCE YOU WOULD RECEIVE?
- 13 A. NO, SIR.
- 14 Q. ON THE NIGHT THAT THIS HAPPENED ON DECEMBER 10TH WHERE
- 15 WERE Y'ALL PRIOR TO GOING OVER TO THIS APARTMENT COMPLEX?
- 16 MR. ROBINSON: OBJECTION, YOUR HONOR.. IT'S A VERY NON-
- 17 SPECIFIC GENERAL QUESTION. I THINK HE NEEDS TO ASK HIM --
- 18 SET A FOUNDATION FOR THIS, YOUR HONOR.
- 19 THE COURT: NO, OVERRULED. GO AHEAD.
- 20 Q. MR. WRIGHT, WHERE WERE YOU PRIOR TO GOING OVER TO THIS
- 21 APARTMENT COMPLEX?
- 22 A. WELL, BEFORE WE WENT OVER THERE WE WAS IN WEST
- 23 GREENVILLE, SIR.
- 24 Q. WHERE WERE YOU?
- 25 A. IN WEST GREENVILLE.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

120

1 Q. AND WHERE PARTICULARLY IN WEST GREENVILLE WERE YOU?

2 A. HANGING AROUND.

3 Q. WERE YOU AT SOMEBODY'S HOUSE, AT A RESTAURANT?

4 A. NO, JUST HANGING AROUND ON THE STREETS.

5 Q. AND HOW IS IT THAT YOU ENDED UP AT THIS APARTMENT

6 COMPLEX?

7 A. WELL, WE HAD -- WELL, WE HAD GOT -- WELL, WE HAD GOT

8 THIS OTHER -- THIS OTHER FRIEND CAR NAMED TEZ. WE WENT OVER

9 THERE TO LIKE SEE WAS SOME GIRLS OR SOMETHING OVER THERE,

10 SEE IF WE COULD MEET SOME GIRLS.

11 Q. AND WHOSE CAR WERE YOU IN?

12 A. TEZ.

13 Q. I'M SORRY, SIR. YOU'RE ---

14 A. TEZ.

15 Q. --- GOING TO HAVE TO SPEAK UP.

16 A. TEZ.

17 Q. WAS TEZ WITH YOU?

18 A. NO, SIR.

19 Q. WHO ALL WAS WITH YOU WHEN YOU WENT OVER TO THIS

20 COMPLEX?

21 A. ME, MARCUS, ROBINSON AND WORKMAN, SIR.

22 Q. WHO WAS MARCUS?

23 A. THAT'S JUST ANOTHER FRIEND, SIR.

24 Q. WHO WAS DRIVING THIS VEHICLE?

25 A. MARCUS, SIR.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

121

1 Q. AND WHAT TYPE OF VEHICLE WAS IT?

2 A. A BLACK LINCOLN, SIR.

3 Q. WAS IT TWO DOOR OR FOUR DOOR?

4 A. FOUR DOOR.

5 Q. WHERE WERE YOU SITTING IN THE VEHICLE?

6 A. BEHIND THE PASSENGER'S SEAT.

7 Q. WHERE WAS KEN SITTING?

8 A. IN THE PASSENGER'S SEAT.

9 Q. WHERE WAS "O" SITTING?

10 A. SITTING BEHIND THE DRIVER'S SEAT.

11 Q. WHAT DID YOU DO ONCE YOU GOT INTO THIS APARTMENT

12 COMPLEX? DID YOU PARK?

13 A. WE DROVE AROUND FOR A LITTLE BIT.

14 Q. AND WHY WERE Y'ALL DRIVING AROUND?

15 A. LOOKING FOR SOME FEMALES.

16 Q. DID YOU KNOW ANY FEMALES IN THIS COMPLEX?

17 A. NOT AT THE TIME. WE HAD MET SOME OUT THERE BEFORE.

18 Q. YOU HAD MET SOME OUT THERE BEFORE?

19 A. YES, SIR.

20 Q. HOW MANY TIMES WOULD YOU SAY YOU CIRCLED THIS PARKING

21 LOT BEFORE YOU PARKED?

22 A. ABOUT FIVE OR SIX TIMES.

23 Q. AND ONCE YOU PARKED WHAT DID YOU DO?

24 A. JUST SAT RIGHT THERE AND TALKED.

25 Q. HOW LONG DID YOU TALK?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

122

- 1 A. ABOUT A GOOD MINUTE.
- 2 Q. HOW LONG?
- 3 A. ABOUT A GOOD MINUTE.
- 4 Q. WHAT DID YOU TALK ABOUT?
- 5 A. WELL, WE WAS TALKING -- WELL, WE WAS TALKING ABOUT --
- 6 WE STARTED TALKING ABOUT ROBBING -- ABOUT THE ROBBING
- 7 INCIDENT.
- 8 Q. ABOUT WHAT?
- 9 A. ABOUT THE ROBBING INCIDENT.
- 10 Q. WHEN YOU SAY YOU WERE TALKING ABOUT THE ROBBING
- 11 INCIDENT, WHAT DO YOU MEAN?
- 12 A. THAT WE STARTED PLANNING IT.
- 13 Q. AND WHOSE IDEA WAS IT?
- 14 A. ROBINSON'S, SIR.
- 15 Q. AND THIS CONVERSATION EXISTED BETWEEN HOW MANY OF THEM?
- 16 A. THREE OF US.
- 17 Q. HOW MANY?
- 18 A. THREE OF US.
- 19 Q. WAS MARCUS INVOLVED IN THIS CONVERSATION?
- 20 A. NO, SIR.
- 21 Q. SO THE THREE OF US, WHO ARE YOU REFERRING TO?
- 22 A. ME, ROBINSON AND WORKMAN.
- 23 Q. NOW SPECIFICALLY WHAT WERE Y'ALL TALKING ABOUT ROBBING
- 24 OR WHO WERE YOU TALKING ABOUT ROBBING?
- 25 A. WELL, WE WAS GOING -- WE WAS GOING TO WAIT UNTIL WE SEE

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

123

1 SOMEBODY THAT WE CAN -- THAT WE CAN GET.

2 Q. AND DID YOU SEE SOMEBODY THAT YOU COULD GET?

3 A. YES, SIR, AFTER -- AFTER THE PERSON HAD PASSED IN THE
4 RED JEEP.

5 Q. AND WHAT -- WHAT HAPPENED AFTER THIS PERSON PASSED IN
6 THE RED JEEP?

7 A. WE STARTED PLANNING THAT WE WAS GOING TO -- THAT WE WAS
8 GOING TO ROB THAT PERSON.

9 Q. AND DID YOU HAVE A GUN?

10 A. NO, SIR.

11 Q. DID KEN HAVE A GUN?

12 A. NO, SIR.

13 Q. DID "O" HAVE A GUN?

14 A. YES, SIR.

15 Q. WHAT TYPE OF GUN WAS IT?

16 A. I THINK A .57 MAGNUM, SIR.

17 Q. WHAT COLOR WAS IT?

18 A. SILVER AND BROWN.

19 Q. WHERE WAS THE BROWN PART LOCATED?

20 A. ON THE HANDLE, SIR.

21 Q. AFTER Y'ALL TALKED ABOUT ROBBING SOMEBODY DID Y'ALL
22 DECIDE ON THIS PERSON THAT HAD PULLED IN IN THE RED JEEP?

23 A. YES, SIR.

24 Q. DID YOU WAIT FOR THAT PERSON TO PARK?

25 A. YES, SIR.

TIMOTHY WKIGHT - DIRECT EXAMINATION BY MR. MARCHANT

124

- 1 Q. AND ONCE HE PARKED WHAT HAPPENED?
- 2 A. THEN WE ALL JUMPED OUT OF THE CAR, SIR.
- 3 Q. AND WHERE DID KEN GO?
- 4 A. ON THE PASSENGER'S' SIDE, SIR.
- 5 Q. PASSENGER'S SIDE OF WHAT?
- 6 A. OF THE RED JEEP.
- 7 Q. DO YOU REMEMBER WHAT KEN WAS WEARING?
- 8 A. NO, SIR.
- 9 Q. WHERE DID "O" GO?
- 10 A. ON THE DRIVER'S SIDE, SIR, OF -- OF THE JEEP.
- 11 Q. AND WHERE DID YOU GO?
- 12 A. ON THE DRIVER'S SIDE BESIDE HIM, SIR.
- 13 Q. YOU'RE ON THE DRIVER'S SIDE OF THE JEEP. AND "O's" ON
- 14 THE DRIVER'S SIDE OF THE JEEP. WHO WAS IN FRONT?
- 15 A. ROBINSON, SIR.
- 16 Q. SO WHERE -- IF THIS IS THE VEHICLE AND THIS IS THE REAR
- 17 OF THE JEEP WHERE WERE YOU STANDING?
- 18 A. I WAS STANDING LIKE RIGHT -- RIGHT BESIDE HIM, LIKE
- 19 BEHIND HIM.
- 20 Q. OKAY. I'D ASK YOU TO STEP DOWN SO YOU CAN SHOW THE
- 21 JURY WHERE YOU WERE POSITIONED. ASSUMING FOR DEMONSTRATION
- 22 PURPOSES THIS IS THE DRIVER'S SIDE OF THE VEHICLE, THIS IS
- 23 THE DRIVER'S DOOR AND THIS IS THE BACK DOOR OF THE RED JEEP,
- 24 WHERE WAS "O" STANDING?
- 25 A. HE WAS STANDING RIGHT HERE.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

125

1 Q. OKAY. AND WHERE WERE YOU STANDING?

2 A. RIGHT HERE BESIDE HIM.

3 Q. SO WERE Y'ALL LINED UP LIKE THIS OR WERE YOU LINED UP
4 LIKE THIS?

5 A. LINED UP SIDEWAYS.

6 Q. WAS HE IN FRONT OF YOU?

7 A. YES, SIR.

8 Q. AND WHERE AGAIN WAS KEN?

9 A. ON THE PASSENGER'S SIDE, SIR.

10 Q. OKAY. PLEASE TAKE YOUR SEAT. DID ALL THREE OF YOU
11 ARRIVE AT THE VEHICLE AT THE SAME TIME?

12 A. YES, SIR.

13 Q. AND WHAT HAPPENED ONCE YOU GOT TO THE VEHICLE?

14 A. ROBINSON PULLED THE GUN OUT ON THE VICTIM, SIR, AND
15 TOLD HIM TO GIVE IT UP.

16 Q. AND DID YOU SEE WHETHER OR NOT THE VICTIM HANDED OVER
17 ANYTHING?

18 A. NO, SIR.

19 Q. DO YOU KNOW WHETHER OR NOT "O" GOT ANYTHING FROM THE
20 VICTIM?

21 A. YES, SIR.

22 Q. AND HOW IS IT THAT YOU KNOW HE GOT SOMETHING?

23 A. WELL, HE HAD SNATCHED A WALLET FROM THE VICTIM, SIR.

24 Q. YOU SAW HIM DO THAT?

25 A. YES, SIR.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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1 Q. WHERE WAS KEN THE WHOLE TIME?

2 A. STILL ON THE PASSENGER'S SIDE, SIR.

3 Q. DID KEN EVER COME AROUND TO THE DRIVER'S SIDE?

4 A. NO, SIR.

5 Q. WHAT HAPPENED AFTER "O" TOOK THE WALLET FROM THE
6 VICTIM?

7 A. WE TOOK OFF RUNNING, SIR.

8 Q. AND WHERE DID YOU RUN TO?

9 A. BACK TO THE CAR.

10 Q. WAS THE CAR RUNNING?

11 A. (AFFIRMATIVE NOD) .

12 Q. WAS THE CAR STILL RUNNING OR WAS IT TURNED OFF?

13 A. YES, SIR, IT WAS STILL RUNNING.

14 Q. DID ANYTHING HAPPEN TO THE VICTIM AFTER "O" TOOK THE
15 MONEY FROM HIM BEFORE Y'ALL GOT BACK TO THE CAR?

16 A. YEAH, HE -- HE PUNCHED THE VICTIM IN THE HEAD.

17 Q. WHO DID?

18 A. ROBINSON.

19 Q. WITH WHAT?

20 A. WITH HIS FIST.

21 Q. AND DO YOU RECALL WHAT "O" WAS WEARING THAT DAY?

22 A. NO, SIR.

23 Q. DO YOU REMEMBER WHAT YOU WERE WEARING?

24 A. NO, SIR.

25 Q. ONCE YOU GOT BACK TO THE CAR WHERE DID YOU POSITION

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

127

1 Q. YOURSELF IN THE VEHICLE?

2 A. BACK BEHIND THE PASSENGER'S SEAT.

3 Q. WHERE DID KEN GO?

4 A. BACK TO THE FRONT, SIR.

5 Q. AND WHERE DID "O" GO?

6 A. BACK TO THE DRIVER'S SIDE IN THE BACK.

7 Q. AND WHAT HAPPENED ONCE Y'ALL ALL GOT BACK IN THE CAR?

8 A. WE TOOK OFF IN THE CAR.

9 Q. WHERE DID -- WHERE WERE Y'ALL PLANNING ON GOING AFTER
10 YOU GOT BACK IN THE CAR?

11 A. HEADING BACK TOWARDS WHITE HORSE ROAD TO GO BACK TO
12 WEST GREENVILLE.

13 Q. DID YOU SEE THE VICTIM AT ANY TIME LATER?

14 A. YES, SIR.

15 Q. WHERE DID YOU SEE HIM?

16 A. SEEN HIM BEHIND US.

17 Q. BEHIND YOU WHERE?

18 A. IN HIS RED JEEP.

19 Q. DO YOU RECALL WHETHER OR NOT HIS LIGHTS WERE ON OR OFF?

20 A. THEY WAS OFF UNTIL HE GOT UP -- UNTIL HE GOT UP TO US.
21 THEN HE TURNED THEM ON. AND THAT'S WHEN WE REALIZED HE WAS
22 BEHIND US.

23 Q. WHAT HAPPENED INSIDE YOUR CAR WHEN HE TURNED HIS LIGHTS
24 ON?

25 A. ROBINSON HAD POINTED THE PISTOL OUT THE WINDOW AND SHOT

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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1 AT HIM.

2 Q. HOW MANY TIMES?

3 A. ONCE.

4 Q. AFTER "O" SHOT ONE TIME WHERE DID Y'ALL GO FROM THERE?

5 A. BACK TO WEST GREENVILLE.

6 Q. DID YOU GET ANY OF MR. ESPINOZA'S PROPERTY FROM THIS
7 ROBBERY?

8 A. NO, SIR.

9 Q. DID YOU GET ANY MONEY?

10 A. NO, SIR.

11 Q. CREDIT CARD?

12 A. NO, SIR.

13 Q. YOU DIDN'T GET ANYTHING OUT OF THIS?

14 A. NO, SIR.

15 Q. DO YOU SEE THE VICTIM HERE TODAY?

16 A. YES, SIR.

17 Q. WILL YOU POINT HIM OUT FOR THE COURT?

18 A. HE'S RIGHT THERE, SIR.

19 Q. WHAT'S HE WEARING?

20 A. I CAN'T SEE WHAT HE'S WEARING, SIR.

21 MR. MARCHANT: I'D ASK THAT THE GENTLEMAN STAND UP,
22 PLEASE.

23 THE COURT: STAND UP, PLEASE.

24 Q. IS THIS WHO YOU'RE POINTING TO?

25 A. YES, SIR.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

129

1 MR. MARCHANT: LET THE RECORD REFLECT THAT MR. WRIGHT
2 HAS IDENTIFIED MR. ESPINOZA AS THE VICTIM.

3 Q. WHAT HAPPENED TO THE GUN?

4 A. WELL, WE WENT BACK TO THE NEIGHBORHOOD. AND I DON'T
5 KNOW WHAT HAPPENED TO THE GUN.

6 Q. MR. WRIGHT, YOU'VE RECEIVED YOUR SENTENCE FOR THIS
7 CRIME, CORRECT?

8 A. YES, SIR.

9 Q. AND YOU'RE AWARE THAT YOUR TESTIMONY TODAY WILL NOT
10 INCREASE NOR DECREASE THAT SENTENCE?

11 A. YES, SIR.

12 Q. WHY ARE YOU HERE TELLING THIS JURY WHAT YOU'RE TELLING
13 THEM?

14 A. WELL -- WELL, I KNOW -- WELL, I KNOW WHAT WE WAS DOING,
15 I MEAN, IT WAS WRONG. IT WAS WRONG IN THE FIRST BEGINNING
16 AND BEFORE WE EVEN -- BEFORE WE EVEN DID THE CRIME. WE
17 SHOULDN'T EVEN NEVER, I MEAN, WE SHOULD HAVE NEVER THOUGHT
18 ABOUT DOING THAT KIND -- BEEN DOING THAT KIND OF CRIME.

19 Q. THANK YOU, MR. WRIGHT. THAT'S ALL THE QUESTIONS I
20 HAVE. IF ---

21 THE COURT: ALL RIGHT. MR. MOORMAN.

22 Q. --- YOU'D ANSWER ANY QUESTIONS MR. ROBINSON, MR.
23 MOORMAN MAY HAVE.

24 MR. MOORMAN: YOUR HONOR, MAY I HAVE A -- MAY WE
25 APPROACH?

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

130

1 THE COURT: SURE.

2 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
3 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

4 THE COURT: ALL RIGHT. MR. MOORMAN, YOU MAY CROSS.

5 MR. MOORMAN: THANK YOU, YOUR HONOR.

6 CROSS EXAMINATION BY MR. MOORMAN:

7 Q. MR. WRIGHT, YOU HAVE A NICKNAME ON THE STREET, DON'T
8 YOU?

9 A. YES, SIR.

10 Q. AND THAT NICKNAME IS LEE LEE, IS THAT CORRECT?

11 A. YES, SIR.

12 Q. AND YOUR TESTIMONY IS THAT THERE WERE THREE PEOPLE
13 AROUND THAT CAR THAT NIGHT, CORRECT?

14 A. YES, SIR.

15 Q. THERE WERE YOU?

16 A. YES, SIR.

17 Q. AND THEN THESE CO-DEFENDANTS, CORRECT?

18 A. YES, SIR.

19 Q. AND YOUR TESTIMONY IS THAT YOU'RE DOING -- YOU'RE
20 TESTIFYING BECAUSE IT WAS -- IT WAS JUST WRONG AND YOU WANT
21 TO TELL THE TRUTH, IS THAT RIGHT?

22 A. YES, SIR.

23 Q. WHAT'S THAT?

24 A. YES, SIR.

25 Q. I CAN'T HEAR YOU.

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

131

1 A. YES, SIR.

2 Q. BUT THAT'S NOT THE ONLY REASON WHY YOU'RE TESTIFYING,
3 IS IT? ISN'T IT TRUE THAT THIS PROSECUTOR DISMISSED
4 NUMEROUS CHARGES THAT WERE PENDING AGAINST YOU, ISN'T THAT
5 TRUE?

6 A. NO, SIR.

7 Q. SO IT'S YOUR TESTIMONY THAT THIS PROSECUTOR NEVER
8 DISMISSED ANY CHARGES AGAINST YOU?

9 A. HE DISMISSED CHARGES.

10 Q. OKAY. SO ISN'T IT TRUE HE DISMISSED CHARGES AGAINST
11 YOU? ISN'T THAT TRUE?

12 A. YEAH, HE DISMISSED CHARGES. YES, SIR.

13 Q. AND ISN'T IT TRUE THAT HE DISMISSED THESE CHARGES ON
14 THE DAY YOU GAVE SWORN TESTIMONY IN THIS CASE? ISN'T THAT
15 TRUE?

16 A. YES, SIR.

17 Q. THE SAME DAY, ISN'T THAT TRUE?

18 A. YES, SIR.

19 Q. I WANT TO TALK ABOUT WHAT YOUR ROLE WAS IN THIS. YOU
20 SAID THAT YOU WERE STANDING NEXT TO O'SHAUN, IS THAT RIGHT?

21 A. YES, SIR.

22 Q. WHAT WAS YOUR ROLE IN THIS -- IN THIS ROBBERY? WHAT
23 WERE YOU SUPPOSED TO DO?

24 A. I BELIEVE I WAS SUPPOSED TO BEEN A WATCH-OUT.

25 Q. OKAY. SO YOU WERE JUST STANDING THERE, RIGHT?

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

132

1 A. YES, SIR.

2 Q. AND IS IT YOUR TESTIMONY THAT KEN WORKMAN WAS ALSO JUST
3 TO BE -- JUST TO STAND THERE, RIGHT?

4 A. YES, SIR.

5 Q. AND YOUR TESTIMONY IS THAT YOU NEVER HAD A GUN,
6 CORRECT?

7 A. YES, SIR.

8 Q. AND YET YOU PLED GUILTY TO ARMED ROBBERY FOR STANDING
9 THERE, IS THAT CORRECT?

10 A. YES, SIR.

11 Q. WHAT'S THAT?

12 A. YES, SIR.

13 Q. YOU TESTIFIED THAT YOU WERE -- YOU AND THE OTHERS WENT
14 THERE TO LOOK FOR GIRLS, IS THAT RIGHT?

15 A. YES, SIR, THAT'S WHAT WE WENT THERE TO LOOK FOR.

16 Q. I'M SORRY, I CAN'T ---

17 A. I SAID YES, SIR.

18 Q. --- HEAR YOU. BUT THAT ISN'T WHY YOU WENT THERE, IS
19 IT?

20 A. NO, SIR.

21 Q. YOU WENT THERE TO ROB SOMEBODY, ISN'T THAT RIGHT?

22 A. YES, SIR.

23 Q. SO WHEN YOU SAID EARLIER YOU WENT THERE LOOKING FOR
24 GIRLS THAT WAS NOT TRUE, IS THAT CORRECT?

25 A. WELL, REALLY -- NOT REALLY.

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

133

1 Q. ALL RIGHT. ISN'T IT TRUE¹ THAT IN THE STATEMENT YOU
2 GAVE POLICE YOU SAID THAT THERE WERE TWO GUNS INVOLVED IN
3 THIS? ISN'T THAT TRUE?

4 A. NO, SIR.

5 Q. THAT'S NOT TRUE?

6 A. NO, SIR.

7 Q. SO THE STATEMENT YOU GAVE TO INVESTIGATOR WEINER YOU
8 NEVER SAID THAT KENNETH AND O'SHAUN HAD GUNS? YOU NEVER
9 SAID THAT, DID YOU?

10 A. WHAT I MEANT BY THAT WAS, I MEAN, IT WAS ONLY ONE GUN.

11 Q. OKAY. SO WHEN YOU SAID THERE WERE MULTIPLE GUNS, THAT
12 WASN'T TRUE EITHER, RIGHT?

13 A. NO, SIR.

14 Q. AND YOUR TESTIMONY IS THAT THERE WERE FOUR PEOPLE
15 INVOLVED IN THIS THING ALTOGETHER, RIGHT?

16 A. YES, SIR.

17 Q. THREE AROUND THE CAR AND THEN ONE IN THE CAR THAT Y'ALL
18 DROVE AWAY IN, RIGHT?

19 A. YES, SIR.

20 Q. AND WHO WAS THE GUY -- WHO WAS THE GUY IN THE CAR?

21 A. MARCUS.

22 Q. MARCUS. WHAT WAS -- WHAT WAS MARCUS' LAST NAME?

23 A. I DON'T KNOW HIS LAST NAME, SIR.

24 Q. JUST MARCUS?

25 A. THAT'S ALL I KNEW.

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

134

1 Q. SO YOU NEVER DID ANYTHING DURING THIS ROBBERY BUT STAND
2 THERE, CORRECT?

3 A. YES, SIR.

4 Q. NEVER HAD A GUN?

5 A. NO, SIR.

6 Q. AT THE TIME YOU GAVE THIS STATEMENT TO INVESTIGATOR
7 WEINER YOU WERE IN CUSTODY, IS THAT RIGHT?

8 A. YES, SIR.

9 Q. ISN'T IT TRUE THAT YOU WERE THE ONE WHO HAD THE GUN
10 THAT NIGHT? ISN'T IT TRUE? ISN'T THAT TRUE?

11 A. THAT I HAD THE GUN THAT NIGHT?

12 Q. YOU WERE THE ONE THAT HAD THE GUN?

13 A. NO, SIR. NO.

14 Q. ISN'T IT TRUE YOU WERE THE ONE WHO PUT THAT GUN IN MR.
15 ESPINOZA'S FACE? ISN'T THAT TRUE?

16 A. NO, SIR.

17 Q. ISN'T THAT -- ISN'T THAT WHY YOU PLED GUILTY TO ARMED
18 ROBBERY 'CAUSE YOU WERE THE ONE WITH THE GUN THAT NIGHT?

19 A. NO, SIR.

20 MR. MARCHANT: YOUR HONOR, IT'S ASKED AND ANSWERED.

21 THE COURT: HE'S ASKED AND ANSWERED IT. MOVE ON.

22 MR. MOORMAN: YOUR HONOR, I'VE GOT -- I'VE GOT NOTHING
23 FURTHER.

24 THE COURT: ALL RIGHT. MR. ROBINSON.

25 MR. ROBINSON: MAY IT PLEASE THE COURT?

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. ROBINSON

135

1 CROSS EXAMINATION BY MR. ROBINSON:

2 Q. MR. WRIGHT, YOU TESTIFIED A MOMENT AGO THAT YOU'RE
3 DOING -- YOU'RE GIVING YOUR TESTIMONY BECAUSE YOU WANT TO
4 TELL THE TRUTH, ISN'T THAT RIGHT?

5 A. YES, SIR.

6 Q. NOW YOU WOULD AGREE WITH ME THAT WHEN YOU DID YOUR --
7 YOU HAD A PRIOR ATTORNEY, MR. POSEY, IS THAT RIGHT?

8 A. YES, SIR.

9 Q. AND HE AND YOU MET WITH MR. MARCHANT, WHO'S SITTING
10 OVER HERE, IS THAT CORRECT?

11 A. WELL, I DIDN'T MEET -- I DIDN'T MEET HIM UNTIL I CAME
12 -- UNTIL I CAME -- UNTIL I CAME TO COURT.

13 Q. YOU MET MR. MARCHANT WHEN YOU CAME TO COURT?

14 A. YES, SIR.

15 Q. OKAY. AND WHILE YOU'RE SAYING THAT YOU'RE DOING THIS
16 TO TELL THE TRUTH YOU WOULD ALSO AGREE WITH ME THAT YOU HAD
17 A NUMBER -- A NUMBER OF CHARGES DISMISSED ALSO AGAINST YOU,
18 ISN'T THAT TRUE AS WELL?

19 A. YES, SIR.

20 Q. THANK YOU. I HAVE NO MORE QUESTIONS.

21 THE COURT: ANYTHING ELSE, SOLICITOR?

22 MR. MARCHANT: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: THANK YOU. STEP DOWN. ALL RIGHT. LADIES
24 AND GENTLEMEN, WE WILL SUSPEND AT THIS TIME FOR LUNCH.

25 WE'LL PICK BACK UP WITH THE TESTIMONY AFTER LUNCH.

1 DURING THE LUNCH RECESS DO NOT TALK ABOUT THIS CASE
2 AMONG YOURSELVES OR WITH ANYONE ELSE. IF ANYBODY CONTACTS
3 YOU AND TRIES TO TALK TO YOU ABOUT THIS CASE, GET THEIR
4 NAMES AND ADDRESSES AND REPORT THAT TO ME.

5 I ASK THAT YOU KEEP YOUR BADGES ON DURING THE LUNCH
6 RECESS. I ASK THAT YOU DO THAT SO THAT EVERYONE INVOLVED
7 WITH THIS CASE WILL KNOW THAT YOU ARE A JUROR ON THIS CASE
8 AND IT WOULD BE HIGHLY IMPROPER FOR THEM TO TALK ABOUT OR
9 DISCUSS THIS CASE IN YOUR PRESENCE. SO PLEASE KEEP YOUR
10 BADGES ON DURING THE LUNCH RECESS. I'LL ASK THAT YOU BE
11 BACK IN YOUR JURY ROOM AT 2:15, 2:15. THANK YOU.

12 (WHEREUPON THE JURY EXITED THE COURTROOM AT 12:51 PM)

13 THE COURT: ALL RIGHT. SEE YOU BACK AFTER LUNCH, 2:15.

14 MR. MOORMAN: AND, YOUR HONOR, IF IT BE POSSIBLE EITHER
15 NOW OR BEFORE 2:15 JUST TO PRESERVE THE RECORD FOR MY
16 CLIENT. IF IT WOULD BE POSSIBLE I'D LIKE TO PUT ON THE
17 RECORD THE DISCUSSION ABOUT I DESIRED TO -- ABOUT THE
18 RECOMMENDATION AND THE LINE OF QUESTION OF MR. MARCHANT.

19 THE COURT: OKAY. YOU WANT TO PUT IT ON ---

20 MR. MOORMAN: IF ---

21 THE COURT: --- THE RECORD NOW? SURE.

22 MR. MOORMAN: YOUR HONOR, MR. MARCHANT ASKED A NUMBER
23 OF QUESTIONS OF MR. WRIGHT RELATED TO WHAT PROMISES HAD BEEN
24 MADE TO HIM IN EXCHANGE FOR HIS TESTIMONY, WHY HE WAS
25 TESTIFYING AND HIS MOTIVATION. I BELIEVE, YOUR HONOR, THAT

1 ENLARGED THE SCOPE OF RELEVANCE TO ALLOW ME TO ASK ABOUT THE
2 FACT THAT THE SOLICITOR HAD MADE A TWENTY YEAR
3 RECOMMENDATION BASED ON HIS PLEA OF GUILTY, AND I WOULD
4 CONTEND BASED ON HIS COOPERATION.

5 AND IT WAS MY UNDERSTANDING THAT YOUR HONOR DISAGREED
6 AND DECIDED THAT THE SCOPE OF RELEVANCE HAD NOT BEEN -- HAD
7 NOT BEEN ENLARGED. AND I WAS ALLOWED TO ASK ABOUT THE FACT
8 THAT CHARGES HAD BEEN DISMISSED, BUT NOT ABOUT THE FACT THAT
9 HE HAD MADE A TWENTY YEAR RECOMMENDATION IN EXCHANGE.

10 THE COURT: THAT'S CORRECT. ALL RIGHT. BE BACK AT
11 2:15.

12 MR. MOORMAN: THANK YOU, YOUR HONOR.

13 (WHEREUPON COURT WAS IN RECESS AT 12:53 PM)

14 THE COURT: BE SEATED. ALL RIGHT. ALL RIGHT. YOU CAN
15 BE PUTTING ON THE RECORD WHAT YOU WANTED TO PUT ON IT.

16 MR. MOORMAN: YES, SIR, YOUR HONOR. FIRST, YOUR HONOR,
17 DURING -- IT'S MY RECOLLECTION THAT DURING MR. TIMOTHY
18 WRIGHT'S TESTIMONY THE PROSECUTOR ASKED HIM A QUESTION,
19 SOMETHING TO THE EFFECT, HOW DID YOU MEET O'SHAUN ROBINSON?
20 AND I BELIEVE MR. WRIGHT'S ANSWER TO THAT WAS EITHER I MET
21 HIM WHILE I WAS IN THE DEPARTMENT OF JUVENILE JUSTICE OR I
22 MET HIM AFTER I GOT OUT OF THE DEPARTMENT OF JUVENILE
23 JUSTICE LEAVING THE JURY WITH AN INFERENCE THAT BOTH HE AND
24 MY CLIENT WERE IN OR ASSOCIATED WITH THE DEPARTMENT OF
25 JUVENILE JUSTICE. BASED ON THAT PREJUDICE, YOUR HONOR, I

1 WOULD MAKE A MOTION FOR A MISTRIAL BECAUSE I BELIEVE THERE'S
2 A MANIFEST OF NECESSITY OF A NEW TRIAL BECAUSE OF THE
3 CHARACTER EVIDENCE.

4 THE COURT: OKAY. SOLICITOR.

5 MR. MARCHANT: YOUR HONOR, WE'VE GONE BACK THROUGH THE
6 NOTES HERE THAT WE HAVE ANYWAY, AND IT'S OUR RECOLLECTION
7 THAT TESTIMONY -- IN RESPONSE TO MY QUESTION OF HOW HE MET
8 O'SHAUN, HE SAID, I MET HIM WHEN I GOT OUT OF JUVIE. I,
9 MEANING ---

10 THE COURT: MEANING ---

11 MR. MARCHANT: --- MR. WRIGHT.

12 THE COURT: --- WRIGHT.

13 MR. MARCHANT: WHEN I GOT OUT OF JUVIE ---

14 THE COURT: AND THERE WAS NO ---

15 MR. MARCHANT: --- THAT'S WHEN I ---

16 THE COURT: THERE WAS NO REFERENCE TO THE TWO OF THEM
17 BEING IN ---

18 MR. MARCHANT: IT'S THE STATE'S POSITION ---

19 THE COURT: --- JAIL TOGETHER.

20 MR. MARCHANT: --- THAT IT WAS NOT, YOUR HONOR.

21 THE COURT: AND I DENY YOUR MOTION FOR ---

22 MR. MOORMAN: YES, SIR.

23 THE COURT: --- A MISTRIAL.

24 MR. MOORMAN: THE ONLY OTHER MATTER I WOULD HAVE, YOUR
25 HONOR, WOULD BE EARLIER I HAD REQUESTED THAT I BE ALLOWED TO

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 GET INTO SPECIFICS ABOUT THE NEGOTIATIONS BETWEEN THE STATE
2 AND MR. WRIGHT AND SPECIFICALLY ABOUT A RECOMMENDATION OF
3 TWENTY YEARS. AND I'D ARGUED THAT THE SCOPE OF RELEVANCE
4 HAD BEEN ENLARGED BASED ON HIS DIRECT TESTIMONY. I WOULD
5 ALSO HAVE ANOTHER BASIS FOR THAT REQUEST.

6 AND THAT WOULD BE IT IS MY RECOLLECTION AT THE FIRST
7 TRIAL MR. WRIGHT TESTIFIED THAT HE WAS SERVING A TWENTY YEAR
8 SENTENCE AND THAT PART OF THE REASON FOR HIM RECEIVING THE
9 TWENTY YEAR SENTENCE WAS BASED ON A TWENTY YEAR
10 RECOMMENDATION MADE BY -- BY THE PROSECUTOR.

11 DURING HIS DIRECT HE TESTIFIED THAT THERE WERE NO
12 PROMISES MADE AND THAT HIS ONLY MOTIVATION FOR TESTIFYING
13 WAS THAT HE WANTED TO -- TO -- WHAT HE DONE WAS WRONG AND HE
14 WANTED TO BE TRUTHFUL. YOUR HONOR, I WOULD ARGUE THAT I
15 SHOULD BE ALLOWED TO INQUIRE ABOUT HIS PRIOR INCONSISTENT
16 STATEMENT PURSUANT TO RULE 613.

17 THE COURT: AND I WOULD NOT ALLOW THAT.

18 MR. MOORMAN: THANK YOU, YOUR HONOR.

19 THE COURT: OKAY. BRING OUR JURY, PLEASE.

20 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:20 PM)

21 THE COURT: ALL RIGHT. SOLICITOR, YOU MAY PROCEED.

22 MR. MARCHANT: THE STATE WOULD CALL INVESTIGATOR DAVID
23 WEINER.

24 DAVID WEINER, BEING DULY

25 SWORN TESTIFIED AS FOLLOWS:

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 MADAME CLERK: THANK YOU. PLEASE BE SEATED. PLEASE
2 STATE YOUR FULL NAME FOR THE RECORD.

3 MR. WEINER: DAVID WEINER.

4 DIRECT EXAMINATION BY MR. MARCHANT:

5 Q. INVESTIGATOR WEINER, WHERE ARE YOU EMPLOYED?

6 A. THE GREENVILLE COUNTY SHERIFF'S OFFICE.

7 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE SHERIFF?

8 A. JUST UNDER NINE YEARS NOW.

9 Q. AND WHAT ARE YOUR CURRENT RESPONSIBILITIES WITH THE
10 SHERIFF?

11 A. CURRENTLY ASSIGNED AS AN INVESTIGATOR TO CRIMINAL
12 INVESTIGATIONS, SPECIFICALLY TO THE ARMED ROBBERY DIVISION.

13 Q. AND HOW LONG HAVE YOU BEEN WITH CRIMINAL
14 INVESTIGATIONS?

15 A. ABOUT THREE YEARS NOW.

16 Q. HOW LONG HAVE -- THOSE THREE YEARS YOU BEEN IN THE
17 ARMED ROBBERY DIVISION OF THE ...

18 A. ALMOST TWO YEARS.

19 Q. CAN YOU TELL THE JURY APPROXIMATELY HOW MANY ROBBERY
20 CASES YOU WORK A YEAR?

21 A. PROBABLY UPWARDS OF TWO HUNDRED.

22 Q. WERE YOU IN THAT CAPACITY IN DECEMBER OF 2007?

23 A. YES, SIR.

24 Q. DID YOU HAVE AN OPPORTUNITY TO WORK ON THIS CASE?

25 A. YES, SIR.

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 Q. OKAY. WHO ELSE WORKED ON THIS CASE WITH YOU?

2 A. MYSELF AND INVESTIGATOR HANNING.

3 Q. TYPICALLY WHEN A CASE IS ASSIGNED TO ONE OF YOU, ARMED
4 ROBBERY DIVISION, IS IT ASSIGNED SPECIFICALLY TO YOU OR TO
5 THE UNIT AS A WHOLE OR HOW DOES THAT WORK?

6 A. IN THE COMPUTER CASE MANAGEMENT SYSTEM IT'LL BE
7 ASSIGNED TO A SPECIFIC INDIVIDUAL, BUT WE ALWAYS HELP EACH
8 OTHER OUT TO TRY TO CLEAR CASES UP. YOU NEVER KNOW IF
9 THEY'RE CONNECTED OR RELATED.

10 Q. SO IF IT WAS YOU AND INVESTIGATOR HANNING WORKING ON
11 THIS CASE WHO WAS FORMALLY ASSIGNED?

12 A. SPECIFICALLY THIS CASE WAS ASSIGNED TO INVESTIGATOR
13 HANNING.

14 Q. AND IF YOU KNOW, CAN YOU TELL THE JURY WHERE
15 INVESTIGATOR HANNING IS EMPLOYED TODAY?

16 A. CURRENTLY HE WORKS FOR THE STATE LAW ENFORCEMENT
17 DIVISION. HE DOESN'T WORK FOR THE SHERIFF'S OFFICE ANYMORE.

18 Q. NOW WHEN, IF YOU RECALL, DID YOU GET PULLED INTO THIS
19 PARTICULAR INCIDENT?

20 A. PROBABLY SHORTLY AFTER IT WAS ASSIGNED. WITHIN TWO OR
21 THREE DAYS WE STARTED FOLLOWING UP ON IT.

22 Q. AND WHAT TYPE OF FOLLOWUP DID YOU DO AS FAR AS
23 CONTACTING THE VICTIM?

24 A. THAT'S NOT SOMETHING THAT I DID ON THIS CASE.

25 Q. DO YOU KNOW WHO THAT WAS ON THIS CASE?

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 A. THAT WOULD HAVE BEEN SOMETHING FOR INVESTIGATOR
2 HANNING. I JUST DID INTERVIEWS WITH SUSPECTS.

3 Q. DID YOU HAVE AN OPPORTUNITY AT SOME POINT IN TIME TO
4 SPEAK WITH A DEFENDANT BY THE NAME OF TIMOTHY WRIGHT?

5 A. YES, SIR, I DID.

6 Q. NOW WHEN YOU SPOKE WITH MR. WRIGHT WAS HE UNDER ARREST?

7 A. YES, SIR, HE WAS.

8 Q. WAS HE UNDER ARREST FOR THIS OFFENSE?

9 A. NO, SIR, HE WAS NOT.

10 Q. NOW WHEN YOU BEGAN SPEAKING WITH HIM DID YOU ADVISE HIM
11 OF HIS MIRANDA RIGHTS?

12 A. YES, SIR.

13 Q. AND DID YOU THOROUGHLY GO THROUGH THOSE RIGHTS?

14 A. YES, SIR.

15 Q. DID HE APPEAR TO YOU TO UNDERSTAND THOSE RIGHTS?

16 A. YES, SIR.

17 Q. AND AFTER YOU WENT THROUGH THOSE RIGHTS WITH HIM DID HE
18 AGREE TO SPEAK WITH YOU?

19 A. HE DID, YES, SIR.

20 Q. AND DID HE GIVE YOU INFORMATION IN THIS CASE?

21 A. HE DID, YES, SIR.

22 Q. AND DO YOU RECALL THE DAY THAT HE GAVE YOU INFORMATION
23 ON THIS CASE?

24 A. I'D HAVE TO LOOK AT THE STATEMENT, BUT I BELIEVE IT'S
25 DECEMBER 27TH WAS THE DATE FOR THIS STATEMENT.

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 Q. NOW AFTER HE GAVE YOU INFORMATION ABOUT THIS CASE ON
2 THE 27TH THERE WAS REFERENCE TO ANOTHER INDIVIDUAL BY THE
3 NAME OF MARCUS.

4 A. CORRECT.

5 Q. DID YOU DO ANY FOLLOWUP INVESTIGATION WITH RESPECT TO
6 MARCUS?

7 A. WE DID, MOSTLY WITH MR. WRIGHT 'CAUSE HE WAS
8 COOPERATING, JUST SHOWING HIM PICTURES OF -- HE THOUGHT HIS
9 LAST NAME MIGHT BE BROWN. WE WERE LOOKING AT MARCUS BROWN,
10 BUT REALLY WE HAD NO OTHER EVIDENCE TO INDICATE WHO HE MIGHT
11 BE. WE WERE UNABLE TO IDENTIFY HIM.

12 Q. SO TO THIS DAY HAVE YOU IDENTIFIED WHO HAS BEEN NAMED
13 MARCUS WITH RESPECT TO THIS INCIDENT?

14 A. NO, SIR.

15 Q. OKAY. THERE WAS ALSO REFERENCE OF AN INDIVIDUAL BY THE
16 NAME OF TEZ WHOSE LINCOLN THEY WERE DRIVING.

17 A. YES, SIR.

18 Q. WERE YOU ABLE TO IDENTIFY WHO TEZ IS?

19 A. WE DID FIND WHO WE THOUGHT MIGHT BE TEZ WHO POSSESSED A
20 BLACK LINCOLN TOWNCAR, YES, SIR.

21 Q. DO YOU KNOW WHETHER OR NOT THAT LINCOLN WAS THE SAME
22 LINCOLN THAT MR. WRIGHT TESTIFIED WAS USED IN THIS ROBBERY?

23 A. I DON'T KNOW IF IT'S THE SAME ONE. HE JUST SAID THAT
24 HE WOULD ALLOW HIM TO USE IT.

25 Q. DID YOU SIGN ANY WARRANTS ON THIS TEZ FELLOW?

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 A. NO, SIR.

2 Q. DID YOU FIND THAT TEZ WAS INVOLVED IN THIS INCIDENT IN
3 ANY MANNER?

4 A. NO, SIR.

5 Q. AFTER SPEAKING WITH MR. WRIGHT ON THIS INCIDENT DID YOU
6 SIGN OR DID THE SHERIFF'S OFFICE SIGN WARRANTS FOR HIS
7 ARREST ON THIS INCIDENT?

8 A. YES, SIR.

9 Q. OKAY. AND AT SOME POINT IN TIME WAS INFORMATION
10 PROVIDED TO THE MEDIA ABOUT THIS EVENT?

11 A. TO MY UNDERSTANDING THE INFORMATION RELEASED TO THE
12 MEDIA WAS NOT RELATED TO THIS EVENT.

13 Q. NOW WERE YOU INVOLVED WHEN MR. ESPINOZA CAME DOWN TO
14 THE LAW ENFORCEMENT CENTER TO SPEAK WITH ---

15 MR. MOORMAN: YOUR HONOR, ---

16 Q. --- INVESTIGATOR HANNING?

17 THE COURT: HOLD ON.

18 MR. MOORMAN: YOUR HONOR, I -- I WOULD OBJECT. I
19 BELIEVE ---

20 THE COURT: ALL RIGHT. TAKE THE JURY OUT, PLEASE.

21 (WHEREUPON THE JURY EXITED THE COURTROOM AT 2:26 PM)

22 THE COURT: ALL RIGHT, MR. MOORMAN.

23 MR. MOORMAN: YOUR HONOR, IF I UNDERSTOOD CORRECTLY MR.
24 MARCHANT ASKED INVESTIGATOR WEINER ABOUT A -- ABOUT MEDIA --
25 INFORMATION THAT WAS RELEASED TO THE MEDIA. AND THEN

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 INVESTIGATOR WEINER TESTIFIED THAT THE MEDIA WAS NOT RELATED
2 TO THIS EVENT.

3 THAT TAKEN IN CONJUNCTION WITH THE VICTIM'S TESTIMONY
4 ABOUT SEEING THE NEWS, SEEING THESE PEOPLE'S PICTURES ON --
5 THE FACES ON THE NEWS, THEN THE ONLY INFERENCE THAT CAN BE
6 DRAWN IS THAT THE NEWS BROADCAST THAT THE VICTIM SAW WAS
7 RELATED TO OTHER CRIMES INVOLVING MY CLIENT AND MR. WORKMAN.

8 THE COURT: SOLICITOR.

9 MR. MARCHANT: YOUR HONOR, I BELIEVE THE QUESTION I
10 ASKED HIM WAS WHETHER OR NOT INFORMATION WAS RELEASED TO THE
11 MEDIA ON THIS EVENT. AND I THINK HIS RESPONSE WAS NO. I'M
12 NOT CERTAIN OF THE EXACT WORDS THAT HE USED.

13 THE COURT: WELL, HE SAID THAT -- AS I UNDERSTOOD HIM
14 TO SAY, NOT RELATED TO THIS CASE.

15 MR. MARCHANT: WHICH I GUESS WOULD BE, I MEAN, THAT'S
16 HIS ANSWER, WHICH WAS -- I GUESS THOSE ARE THE FACTS AS THEY
17 ARE. THEY WERE -- THE MEDIA WAS NOT RELEASED ON THIS
18 INCIDENT.

19 THE COURT: MR. MOORMAN.

20 MR. MOORMAN: AND, AGAIN, YOUR HONOR, MY CONCERN IS NOW
21 WE HAVE TESTIMONY THAT THE VICTIM SAW MY CLIENT AND MR.
22 WORKMAN'S FACE PUT ON THE NEWS. I BELIEVE THERE WAS
23 TESTIMONY ABOUT THE ARREST OR SOME GENERAL NATURE OF THE
24 BROADCAST. IT WASN'T ANYTHING TALKED, YOU KNOW, BUT NOW THE
25 ONLY INFERENCE THAT CAN BE DRAWN, I WOULD ARGUE, IS THAT THE

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 NEWS BROADCAST RELATED TO OTHER EVENTS.

2 THE COURT: YOU KNOW, I THINK THAT MAY BE A
3 POSSIBILITY, BUT I DON'T BELIEVE THE JURY IN THIS CASE IS
4 GOING TO INTERPRET IT IN THAT FASHION. AND I THINK THE BEST
5 THING TO DO IS LEAVE IT ALONE.

6 MR. MOORMAN: YES, SIR.

7 THE COURT: I DON'T THINK YOUR CLIENT'S BEEN PREJUDICED
8 ---

9 MR. MOORMAN: OKAY.

10 THE COURT: --- BY THAT ONE ANSWER.

11 MR. MOORMAN: YES, SIR.

12 THE COURT: ALL RIGHT. NOW, SOLICITOR, LET'S MOVE ON,
13 PLEASE.

14 MR. MARCHANT: YES, SIR.

15 THE COURT: BRING THE JURY.

16 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:30 PM)

17 THE COURT: ALL RIGHT. SOLICITOR, YOU MAY CONTINUE.

18 DIRECT EXAMINATION BY MR. MARCHANT CONTINUED:

19 Q. FOLLOWING YOUR CONVERSATIONS WITH MR. WRIGHT DID YOU
20 AND INVESTIGATOR HANNING SIGN WARRANTS ON ANY OTHER
21 INDIVIDUALS IN THIS CASE?

22 A. YES, SIR.

23 Q. OKAY. AND WHO WERE THOSE OTHER INDIVIDUALS?

24 A. O'SHAUN ROBINSON AND KENNETH WORKMAN.

25 Q. DID YOU SIGN WARRANTS ON ANYONE ELSE?

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

147

1 A. NOT THAT I'M AWARE OF, NO, SIR.

2 Q. WERE YOU PRESENT WHEN MR. ESPINOZA CAME DOWN TO THE LAW
3 ENFORCEMENT CENTER ON THE 31ST AND MET WITH INVESTIGATOR
4 HANNING?

5 A. I WAS IN THE OFFICE, YES, SIR.

6 Q. DO YOU KNOW WHETHER OR NOT A LINEUP WAS SHOWN TO HIM AT
7 THAT TIME?

8 A. NO LINEUP WAS SHOWN.

9 Q. AFTER WARRANTS HAVE BEEN SIGNED ON INDIVIDUALS DO YOU
10 HAVE AN OCCASION TO SHOW A VICTIM A PHOTO LINEUP? OR WOULD
11 YOU -- LET ME REPHRASE IT. WOULD YOU SHOW A VICTIM A PHOTO
12 LINEUP AFTER WARRANTS HAD BEEN SIGNED?

13 MR. ROBINSON: YOUR HONOR, I'M GOING TO OBJECT. I'D
14 ASK HIM TO LAY A FOUNDATION AS FAR AS WITH THIS OFFICER.

15 THE COURT: WHAT ---

16 MR. MARCHANT: YOUR HONOR, HE WAS PRESENT WHEN MR.
17 ESPINOZA CAME DOWN TO THE LAW ENFORCEMENT CENTER.

18 THE COURT: OVERRULED. GO AHEAD.

19 A. IT WOULD NOT BE SOMETHING THAT WE WOULD NORMALLY DO.
20 NO, SIR.

21 Q. WHEN WOULD YOU SHOW A VICTIM A PHOTOGRAPHIC LINEUP?

22 A. PRELIMINARY STAGES WHEN WE'D POSSIBLY IDENTIFIED A
23 POTENTIAL SUSPECT BUT WE WEREN'T SURE, WHETHER IT WOULD BE
24 BASED OFF OF A STATEMENT OF SOMEBODY ELSE, MY WITNESS OR
25 SOME KIND OF FORENSIC EVIDENCE RECOVERED THAT -- COULD BE

DAVID WEINER - CROSS EXAMINATION BY MR. MOORMAN

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1 READILY EXPLAINED, IF WE'D GOTTEN A FINGERPRINT OFF A DOOR
2 TO A CONVENIENCE STORE THAT HUNDREDS OF PEOPLE TOUCH A DAY.
3 I COULD SHOW THEM A LINEUP, IS THIS THE PERSON THAT ROBBED
4 THE STORE? THEY COULD SAY YES OR NO.

5 Q. YOU DIDN'T DO THAT IN THIS CASE, CORRECT?

6 A. NO, SIR.

7 Q. DID YOU EVER FIND A GUN IN THIS CASE?

8 A. NOT THAT I'M AWARE OF.

9 Q. WAS ANY OF MR. ESPINOZA'S PROPERTY EVER RECOVERED?

10 A. NOT THAT I'M AWARE OF.

11 Q. AFTER THE WARRANTS WERE SIGNED IN THIS CASE WAS THERE
12 ANY FURTHER INVESTIGATION OUTSIDE OF INVESTIGATOR HANNING'S
13 MEETING WITH MR. ESPINOZA?

14 A. NOT THAT I'M AWARE OF.

15 Q. I HAVE NO FURTHER QUESTIONS. PLEASE ---

16 THE COURT: ALL RIGHT, MR. MOORMAN.

17 Q. --- ANSWER THE QUESTIONS THAT MR. ROBINSON AND MR.
18 MOORMAN MAY HAVE.

19 CROSS EXAMINATION BY MR. MOORMAN:

20 Q. INVESTIGATOR WEINER, LET ME MAKE SURE I UNDERSTAND THE
21 TIME-LINE OF THIS CASE. ISN'T IT TRUE THAT LAW ENFORCEMENT
22 HAD MR. TIMOTHY WRIGHT IN CUSTODY? IS THAT CORRECT?

23 A. I BELIEVE SO. YEAH, WHEN I TOOK THE STATEMENT HE WAS.
24 YES, SIR.

25 Q. AND MR. WRIGHT GAVE THE STATEMENT IMPLICATING O'SHAUN

DAVID WEINER - CROSS EXAMINATION BY MR. MOORMAN

149

1 AND KEN IN THIS CRIME, IS THAT CORRECT?

2 A. YES, SIR.

3 Q. THEN BASED ON THAT STATEMENT WARRANTS WERE OBTAINED FOR
4 O'SHAUN AND KEN ON THESE CHARGES, CORRECT?

5 A. CORRECT.

6 Q. THEN A NUMBER OF DAYS PASSED WHERE LAW ENFORCEMENT HAS
7 NO CONTACT WITH THE -- WITH MR. ESPINOZA, CORRECT?

8 A. I DON'T KNOW WHAT CONTACT THERE WAS. I MEAN, IF HE
9 CAME IN ON THE 31ST, THEN IT WAS A COUPLE OF DAYS.

10 Q. THEN MR. ESPINOZA SEES THE NEWS BROADCAST, CORRECT?

11 A. PRIOR TO HIM COMING IN, YES, SIR.

12 Q. AND PRIOR TO BEING SHOWN ANY PHOTO LINEUP OF ANY KIND,
13 CORRECT?

14 A. CORRECT.

15 Q. THEN MR. ESPINOZA COMES IN AND GIVES THE STATEMENT?

16 A. YES, SIR.

17 Q. SO INVESTIGATOR HANNING WAS THE LEAD INVESTIGATOR IN
18 THIS CASE, CORRECT?

19 A. ON THIS SPECIFIC CASE, YES, SIR.

20 Q. AND ISN'T IT TRUE THAT INVESTIGATOR HANNING HAS GIVEN
21 SWORN TESTIMONY IN THIS CASE? IS THAT TRUE?

22 A. YES, SIR.

23 Q. ISN'T IT TRUE YOU HAVE NEVER SHOWN THE VICTIM A PHOTO
24 LINEUP IN THIS CASE?

25 A. CORRECT.

DAVID WEINER - CROSS EXAMINATION BY MR. MOORMAN

150

1 Q. DO YOU HAVE A PROCEDURE YOU FOLLOW WHEN YOU SHOW
2 EYEWITNESSES PHOTO LINEUPS?

3 A. YES, SIR.

4 Q. VERY BRIEFLY, IF YOU WOULD, DESCRIBE FOR THE JURY WHAT
5 THAT PROCEDURE IS.

6 A. SURE. THE DEPUTY HAD EARLIER TESTIFIED, GENERALLY A
7 PHOTO LINEUP CONSISTS OF SIX PHOTOGRAPHS. ONE IS THE
8 POTENTIAL SUSPECT, FIVE ARE INDIVIDUALS WITH SIMILAR FACIAL
9 CHARACTERISTICS, SKIN TONE, FACIAL HAIR, WHATEVER IT MAY BE.

10 THE POTENTIAL SUSPECT IS PLACED IN THE LINEUP IN A
11 DESIGNATED POSITION. IT DOESN'T MATTER. WE TEND TO STAY
12 AWAY FROM NUMBER ONE, BUT TWO THROUGH SIX. AND I'LL TURN
13 THE PAGE OVER FACE DOWN WHERE THEY CAN'T SEE THE PHOTOGRAPH.

14 I'LL EXPLAIN TO THEM THAT THIS SIX-PERSON PHOTO LINEUP
15 MAY OR MAY NOT CONTAIN THE INDIVIDUAL THAT COMMITTED THIS
16 CRIME. DO NOT PICK THE PERSON UNLESS YOU ARE CERTAIN THAT
17 IT'S THEM. AND AGAIN, I'LL REITERATE THAT THE PERSON MAY
18 NOT BE IN THERE.

19 I'LL TELL THEM WHEN THEY'RE READY TO TURN THE
20 PHOTOGRAPH OVER. THEY'LL TURN IT OVER AND MAKE A SELECTION
21 IF THEY SO CHOOSE.

22 Q. WHY DO YOU GO AT SUCH LENGTHS TO TELL THEM THAT THE
23 PERSON THEY SAW MAY OR MAY NOT BE IN THERE?

24 A. SO THAT I DON'T PREJUDICE THE LINEUP THERE.

25 Q. BECAUSE IF THE LINEUP IS PREJUDICED IT COULD BE

DAVID WEINER - CROSS EXAMINATION BY MR. MOORMAN

151

1 UNRELIABLE, IS THAT CORRECT?

2 A. CORRECT.

3 Q. IN THIS CASE DID YOU EVER SHOW MR. ESPINOZA A PHOTO, A
4 LINEUP AFTER HE SAW THE NEWS BROADCAST?

5 A. NO, SIR.

6 Q. WHY DIDN'T YOU SHOW MR. ESPINOZA A PHOTO LINEUP?

7 A. NO MATTER HOW I WOULD CHANGE THE DEFENDANTS' PICTURES
8 THEY STILL WOULD HAVE BEEN THE SAME INDIVIDUALS HE'D ALREADY
9 IDENTIFIED.

10 Q. ISN'T IT TRUE THAT IN FORMER TESTIMONY YOU HAD SAID
11 THAT ANY SUBSEQUENT IDENTIFICATION PROCEDURE AFTER THE NEWS
12 BROADCAST WOULD BE TAINTED? ISN'T THAT TRUE?

13 A. I DON'T KNOW THAT I WOULD HAVE USED THE WORD TAINTED,
14 BUT I THINK THAT IF HE'D ALREADY MADE AN IDENTIFICATION
15 BASED OFF A SINGLE PHOTOGRAPH, THAT IF I PUT HIM IN A LINEUP
16 HE'D STILL IDENTIFY THE SAME PERSON.

17 Q. WHETHER THAT BE IN A LINEUP OR IN A COURTROOM, ISN'T
18 THAT TRUE?

19 A. CERTAINLY I WOULD THINK IN A LINEUP BECAUSE HE'D BE
20 LOOKING AT THE SAME PICTURE.

21 Q. AND IF THAT WERE TRUE WITH A LINEUP IT WOULD ALSO BE
22 TRUE IN A COURTROOM WHEN THE PEOPLE ARE SITTING IN CHAIRS,
23 ISN'T THAT TRUE?

24 A. IT'S POSSIBLE, YES, SIR.

25 Q. AND SO JUST SO I'M UNDERSTANDING WHAT YOU'RE SAYING, NO

DAVID WEINER - CROSS EXAMINATION BY MR. MOORMAN

152

1 MATTER WHAT IDENTIFICATION PROCEDURE WAS USED YOU DIDN'T
2 SHOW A LINEUP BECAUSE YOU THINK HE'D STILL BEEN PICKING OUT
3 THE SAME PEOPLE NO MATTER WHAT?

4 A. RIGHT. HE'S ALREADY -- HE'S MADE THE DECISION. HE'S
5 IDENTIFIED THE TWO INDIVIDUALS HE FELT WERE RESPONSIBLE.
6 AND, THEREFORE, IF I SHOWED HIM A LINEUP CONTAINING THOSE
7 INDIVIDUALS HE'S GOING TO IDENTIFY THOSE INDIVIDUALS.

8 Q. AND SO ONCE THE NEWS BROADCAST CAME OUT THE DYE'S BEEN
9 CAST, IN OTHER WORDS?

10 A. ONCE HE TOLD ME THAT HE'D IDENTIFIED THEM OR TOLD
11 INVESTIGATOR HANNING, YES, SIR.

12 Q. BASED ON THE NEWS BROADCAST?

13 A. CORRECT.

14 Q. NOTHING FURTHER.

15 THE COURT: MR. ROBINSON.

16 MR. ROBINSON: I HAVE NO QUESTIONS, YOUR HONOR.

17 THE COURT: THANK YOU. STEP DOWN.

18 A. THANK YOU, SIR.

19 MR. MARCHANT: ASK THAT THIS WITNESS BE EXCUSED.

20 THE COURT: ANY OBJECTION?

21 MR. MOORMAN: NO OBJECTION.

22 MR. ROBINSON: NO OBJECTION, YOUR HONOR.

23 MR. MARCHANT: YOUR HONOR, WITH THAT, THAT'S THE
24 STATE'S CASE.

25 THE COURT: ALL RIGHT. TAKE THE JURY OUT A MINUTE,

1 PLEASE.

2 (WHEREUPON THE JURY EXITED THE COURTROOM AT 2:39 PM)

3 THE COURT: ALL RIGHT. ANY MOTIONS?

4 MR. MOORMAN: YES, SIR, YOUR HONOR. YOUR HONOR, I
5 WOULD HAVE A MOTION ON BEHALF OF MR. O'SHAUN ROBINSON FOR A
6 DIRECTED VERDICT. THE EVIDENCE THUS FAR FAILS TO ESTABLISH,
7 FIRST, HOW MANY PEOPLE WERE INVOLVED AND, SECOND, WHO WAS
8 INVOLVED.

9 WE HAVE CONTRADICTORY TESTIMONY FROM ALL THE STATE'S
10 EYEWITNESSES AS TO WHO WAS THERE, WHAT PART EACH INDIVIDUAL
11 PLAYED AND WHAT PART MR. O'SHAUN ROBINSON PLAYED
12 SPECIFICALLY. BASED ON THESE INCONSISTENCIES AND THIS LACK
13 OF EVIDENCE, YOUR HONOR, IT WOULD BE MR. ROBINSON'S POSITION
14 THAT THERE IS NOT EXISTING EVIDENCE SUFFICIENT TO WARRANT A
15 CONVICTION. AND WE'D MOVE FOR A DIRECTED VERDICT.

16 THE COURT: AND THAT MOTION IS DENIED.

17 MR. ROBINSON: WE'D MAKE A MOTION FOR A DIRECTED
18 VERDICT ON THE SAME LINES, YOUR HONOR, IN TERMS OF LACK OF
19 ANY EVIDENCE IN THIS CASE TO SUPPORT ---

20 THE COURT: ALL RIGHT. YOUR MOTION, LIKEWISE, IS
21 DENIED.

22 MR. ROBINSON: THANK YOU.

23 THE COURT: ALL RIGHT. NOW WILL YOU HAVE ---

24 MR. MOORMAN: YOUR HONOR, MAY I HAVE JUST A MINUTE OR
25 TWO?

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

154

1 THE COURT: I MEAN, IS YOUR EXPERT GOING TO TESTIFY?

2 MR. MOORMAN: WELL, SHE'S HERE, AND SHE'S READY ---

3 THE COURT: OKAY.

4 MR. MOORMAN: MAY I JUST HAVE JUST A ---

5 THE COURT: SURE. SURE

6 MR. MOORMAN: THANK YOU, YOUR HONOR.

7 THE COURT: WE'LL TAKE A SHORT RECESS.

8 (WHEREUPON COURT WAS IN RECESS AT 2:40 PM)

9 MR. MOORMAN: YOUR HONOR, WE WOULD HAVE A WITNESS.

10 THE COURT: OKAY. WILL THAT BE YOUR ONLY WITNESS?

11 MR. MOORMAN: I BELIEVE SO, YOUR HONOR. YES, SIR.

12 THE COURT: OKAY. AND YOU'RE READY TO GO?

13 MR. MOORMAN: YES, SIR.

14 THE COURT: OKAY. BRING THE JURY.

15 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:46 PM)

16 THE COURT: OKAY, MR. MOORMAN.

17 MR. MOORMAN: YES, SIR, YOUR HONOR. MR. O'SHAUN

18 ROBINSON CALLS DR. LORI VAN WALLENDAL TO THE STAND.

19 LORI VAN WALLENDAL,

20 BEING DULY SWORN TESTIFIED AS FOLLOWS:

21 MADAME CLERK: THANK YOU. PLEASE BE SEATED. PLEASE

22 STATE YOUR FULL NAME FOR THE RECORD.

23 DR. VAN WALLENDAL: LORI VAN WALLENDAL.

24 DIRECT EXAMINATION BY MR. MOORMAN:

25 Q. GOOD AFTERNOON, DR. VAN WALLENDAL.

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 A. GOOD AFTERNOON.

2 Q. DR. VAN WALLENDAL, BY WHOM ARE YOU EMPLOYED?

3 A. THE UNIVERSITY OF NORTH CAROLINA IN CHARLOTTE.

4 Q. WHAT POSITION DO YOU HOLD WITH UNC CHARLOTTE?

5 A. I AM AN ASSOCIATE PROFESSOR AND ASSOCIATE CHAIR OF THE
6 DEPARTMENT OF PSYCHOLOGY.

7 Q. IF YOU WOULD, PLEASE, BRIEFLY DESCRIBE TO THE JURY WHAT
8 TRAINING AND EDUCATION YOU'VE RECEIVED ON YOUR WAY TO
9 ACHIEVING THIS POSITION.

10 A. I RECEIVED MY BACHELOR'S DEGREE IN PSYCHOLOGY AND
11 ENGLISH IN 1982 FROM MURRAY COLLEGE IN ILLINOIS. AND THEN
12 MY MASTER'S DEGREE AND PHD FROM NORTH WESTERN UNIVERSITY
13 WITH A PHD RECEIVED IN 1986.

14 MR. MARCHANT: YOUR HONOR, IF IT'LL SPEED THINGS UP,
15 THE STATE DOES NOT OPPOSE TO HER BEING QUALIFIED AS AN
16 EXPERT IN IDENTIFICATION PROCEDURES.

17 MR. MOORMAN: AND, YOUR HONOR, WE WOULD -- WE
18 APPRECIATE THE STIPULATION. WE ALSO BELIEVE THAT IT'S
19 IMPORTANT FOR THE JURY TO ---

20 THE COURT: PROCEED. GO AHEAD.

21 Q. AND, I'M SORRY, TELL US AGAIN ABOUT YOUR DEGREE AT
22 NORTH WESTERN.

23 A. I HAVE A MASTER'S DEGREE IN EXPERIMENTAL PSYCHOLOGY AND
24 A PHD IN EXPERIMENTAL PSYCHOLOGY.

25 Q. IS THAT FROM NORTH WESTERN?

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 A. YES.

2 Q. DO YOU -- WHAT CLASSES DO YOU TEACH AT UNC CHARLOTTE?

3 A. I NORMALLY TEACH CLASSES IN COGNITIVE PSYCHOLOGY, WHICH
4 HAS TO DO WITH THINKING AND HUMAN MEMORY, COGNITIVE SCIENCE,
5 FORENSIC PSYCHOLOGY, RESEARCH METHODS IN PSYCHOLOGY AND A
6 VARIETY OF OTHER PSYCHOLOGY COURSES, BUT MAINLY HAVING TO DO
7 WITH COGNITIVE PROCESSES.

8 Q. DO YOU HAVE ANY SPECIFIC RESEARCH INTEREST SPECIFICALLY
9 RELATED TO EYEWITNESS IDENTIFICATION?

10 A. YES, I DO. MY MAIN RESEARCH INTEREST IS IN FACE
11 RECOGNITION AND VOICE RECOGNITION IN AN EYEWITNESS CONTEXT.

12 Q. HAVE YOU BEEN PUBLISHED ON THIS TOPIC AND PARTICIPATED
13 IN PRESENTATIONS ON THIS TOPIC OF EYEWITNESS IDENTIFICATION?

14 A. YES, I HAVE.

15 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN THE
16 PSYCHOLOGY OF EYEWITNESS IDENTIFICATION?

17 A. YES, I HAVE.

18 Q. HAVE YOU BEEN QUALIFIED AS AN EXPERT IN MULTIPLE
19 STATES?

20 A. YES.

21 Q. INCLUDING SOUTH CAROLINA?

22 A. YES.

23 MR. MOORMAN: YOUR HONOR, AT THIS TIME I WOULD MOVE TO
24 HAVE DR. VAN WALLENDAL QUALIFIED AS AN EXPERT IN THE
25 PSYCHOLOGY OF EYEWITNESS IDENTIFICATION.

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 THE COURT: SHE'S QUALIFIED. PROCEED.

2 Q. DR. VAN WALLENDAL, SPECIFICALLY I'D LIKE TO TALK TO
3 YOU ABOUT THE THREE PHASES OR STAGES OF MEMORY, IF I COULD.
4 WOULD YOU PLEASE TELL THE JURY WHAT ARE THOSE -- WHAT ARE
5 THOSE STAGES?

6 A. SURE. WHEN WE TALK ABOUT MEMORY, BASICALLY WE'RE
7 TALKING ABOUT A PROCESS THAT INVOLVES NOT JUST ONE THING
8 LIKE A -- LIKE A CAMERA SHOT, BUT THAT ACTUALLY INVOLVES
9 SEVERAL STAGES BEGINNING WITH WHAT WE CALL ENCODING WHEN A
10 MEMORY IS TAKEN IN AS SOMETHING IS HAPPENING TO US. THEN
11 THERE IS A STAGE CALLED STORAGE WHEN THE MEMORY HAS TO BE
12 STORED TO BE IN OUR MINDS FOR A PERIOD OF TIME. AND THEN
13 FINALLY THERE IS A STAGE CALLED RETRIEVAL WHEN WE ACTUALLY
14 HAVE TO FIND THAT MEMORY AGAIN, GET IT OUT OF OUR MINDS AND
15 INTO OUR CONSCIOUSNESS TO ANSWER QUESTIONS OR RECALL AN
16 EVENT OR RECOGNIZE SOMEONE.

17 Q. SPECIFICALLY HAVE YOU DONE RESEARCH AND MADE YOURSELF
18 OR EDUCATE YOURSELF ON RESEARCH RELATED TO THESE STAGES OF
19 MEMORY IN THE CONTEXT OF EYEWITNESS IDENTIFICATION?

20 A. YES, I HAVE.

21 Q. AND YOU -- HAVE YOU TESTIFIED BEFORE ON THESE TOPICS?

22 A. YES.

23 Q. I WANT TO TALK TO YOU MORE SPECIFICALLY ABOUT EACH
24 STAGE. AND BEFORE WE DO THAT HAVE YOU TESTIFIED OR GIVEN
25 SWORN TESTIMONY IN THIS CASE BEFORE?

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 A. YES.

2 Q. AND NORMALLY WHEN YOU TESTIFY ARE YOU PAID FOR YOUR
3 SERVICES?

4 A. YES, I AM.

5 Q. AND WHAT IS YOUR -- WHAT IS THE RATE YOU'D NORMALLY
6 CHARGE FOR TESTIFYING IN COURT?

7 A. NORMALLY A HUNDRED AND SEVENTY-FIVE DOLLARS AN HOUR.

8 Q. HAVE YOU BEEN -- HAVE YOU BEEN PAID FOR YOUR
9 PARTICIPATION IN THIS CASE -- HAVE YOU BEEN PAID FOR YOUR
10 PARTICIPATION IN THIS CASE?

11 A. I'VE SUBMITTED AN INVOICE FOR WORK THAT'S BEEN DONE
12 PREVIOUSLY IN THIS CASE. I HAVE NOT YET ACTUALLY RECEIVED
13 THE CHECK, BUT I EXPECT TO SOON.

14 Q. OKAY. ALL RIGHT. AND -- AND ALSO IN COMING HERE TODAY
15 DID YOU ALSO REALIZE THAT THERE'S A POSSIBILITY THAT YOU
16 WOULD NOT BE PAID FOR YOUR SERVICES?

17 A. YES, I DID.

18 Q. BUT, NONETHELESS, YOU DECIDED TO COME HERE AND
19 PARTICIPATE TODAY, IS THAT CORRECT?

20 A. THAT IS CORRECT.

21 Q. LET'S TALK ABOUT THE FIRST STAGE. WHAT DID YOU CALL
22 THAT STAGE?

23 A. ENCODING.

24 Q. IF YOU WOULD, DESCRIBE FOR THE JURY THAT STAGE AS IT
25 RELATES TO EYEWITNESS IDENTIFICATION.

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 A. BASICALLY WHAT HAPPENS DURING ENCODING IS FIRST OF ALL
2 THAT YOU PERCEIVE SOMETHING HAPPENING WITH YOUR SENSES, BUT
3 MORE IMPORTANTLY THAT YOU PAY ATTENTION TO THE THINGS THAT
4 ARE COMING TO YOU THROUGH YOUR SENSES AND THAT SOMEHOW THEN
5 THAT SENSORY INFORMATION GETS TRANSFORMED INTO A MEMORY.

6 AND THE KEY TYPICALLY IN AN EYEWITNESS SITUATION IS THE
7 ATTENTION FACTOR BECAUSE VERY OFTEN WHEN YOU ARE IN A
8 SITUATION OF WITNESSING OR BEING A VICTIM OF A CRIME MORE
9 ATTENTION IS DRAWN IN MANY DIRECTIONS. IT IS OFTEN DRAWN IN
10 THE DIRECTION OF SURVIVAL, OF WHAT IS HAPPENING TO YOU THAT
11 MIGHT BE PUTTING YOU IN DANGER.

12 AND SO IT'S A DIFFICULT SITUATION FOR PEOPLE TO TRY AND
13 FOCUS ON, LET'S SAY, DETAILS OF A FACE, DETAILS OF WHAT IS
14 HAPPENING BECAUSE YOU ARE PROBABLY UNDER STRESS, YOU MAY BE
15 FINDING YOUR ATTENTION DISTRACTED. AND IT'S -- IT'S A
16 DIFFICULT KIND OF CIRCUMSTANCE.

17 IF YOU THINK ABOUT THE OPTIMAL CIRCUMSTANCE WHERE YOU
18 WOULD WANT TO REMEMBER SOMETHING AND, YOU KNOW, WHERE YOU
19 WOULD WANT TO BE KIND OF CALM, AND COLLECTED, AND ALERT AND
20 SO FORTH. THE TYPICAL EYEWITNESS SITUATION IS NOT A VERY
21 GOOD SITUATION FOR PEOPLE TO PAY THEIR BEST ATTENTION TO THE
22 KINDS OF FACTS THAT THEY MIGHT LATER WANT TO TRY TO
23 REMEMBER.

24 Q. AND IF I'M UNDERSTANDING CORRECTLY, DR. VAN WALLENDAL,
25 THEN STRESS IS A FACTOR THAT WOULD INHIBIT ONE'S ABILITY TO

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

160

1 HAVE AN EFFECTIVE ENCODING STAGE?

2 A. YES. THERE'S A LOT OF RESEARCH THAT SUGGESTS THAT
3 STRESS IS SOMETHING THAT DECREASES OUR ABILITY TO FOCUS AND
4 TO REMEMBER AND THAT IN GENERAL PEOPLE WHO ARE UNDER STRESS
5 REMEMBER LESS THAN PEOPLE WHO ARE NOT.

6 Q. IS THERE ALSO A PHENOMENON CALLED WEAPONS FOCUS?

7 A. YES.

8 Q. DESCRIBE FOR THE JURY, IF YOU WOULD, OR EXPLAIN WHAT
9 THAT PHENOMENON IS.

10 A. THIS IS ACTUALLY A PHENOMENON THAT RESEARCHERS FIRST
11 KEYED INTO BECAUSE OF THINGS THAT WE WERE TOLD BY POLICE
12 OFFICERS THAT OFTEN HAPPEN TO THEM IN INVESTIGATIONS. AND
13 VERY OFTEN THEY WOULD TALK TO RESEARCHERS AND SAY, YOU KNOW,
14 IT'S REALLY WEIRD BECAUSE I GET WITNESSES SOMETIMES AND THEY
15 CAN GIVE YOU THE MOST PERFECT DETAILED DESCRIPTION OF THE
16 GUN AND NOT OF THE PERPETRATOR. AND RESEARCHERS LOOKED AT
17 THAT AND SAID, HUM, I WONDER WHY.

18 WE STARTED DOING RESEARCH ON WHAT HAPPENS WHEN YOU HAVE
19 THE PRESENCE OF A WEAPON, PARTICULARLY A GUN, IN A SCENE.
20 AND TYPICALLY HOW THE RESEARCH IS DONE IS WE WILL SIMULATE A
21 CRIME IN SOME WAY, KEEP ALL THE OTHER FACTORS SIMILAR BY IN
22 ONE CIRCUMSTANCE HAVE A CRIME WHERE A GUN IS CLEARLY VISIBLE
23 AND IN ANOTHER CIRCUMSTANCE HAVE THE EXACT SAME SCENARIO
24 OCCUR BUT LET'S SAY THE PERPETRATOR HAS HIS HAND IN HIS
25 POCKET THE WHOLE TIME.

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 AND WHAT WE FIND IS THAT WHENEVER THAT GUN IS PRESENT
2 PEOPLE TEND TO HAVE LESS RECALL FOR THE DETAILS OF THE
3 EVENT. THEY'RE LESS LIKELY TO PICK A PERSON OUT OF A LINEUP
4 LATER. THEY'RE EVEN LESS LIKELY TO RECALL THINGS THAT THEY
5 HAVE HEARD, WHICH IS NOT A VISUAL KIND OF ATTENTION FOCUS,
6 BUT IT'S JUST, YOU KNOW, YOUR MIND IS DRAWN TO THE GUN AND
7 IS FOCUSED UPON IT.

8 Q. LET'S TALK ABOUT THE SECOND STAGE. WHAT DID YOU CALL
9 THE SECOND STAGE?

10 A. I CALLED THE SECOND STAGE STORAGE.

11 Q. EXPLAIN TO THE JURY WHAT THE STORAGE STAGE IS IN THE
12 CONTEXT OF EYEWITNESS IDENTIFICATION.

13 A. STORAGE IN THIS CONTEXT BASICALLY REFERS TO HOW MUCH
14 TIME PASSES BETWEEN THE EVENT OR THE CRIME AND THE TIME THAT
15 YOU ACTUALLY MAKE AN IDENTIFICATION. AND COMMON SENSE WILL
16 TELL YOU THAT THE LESS TIME THAT PASSES PROBABLY THE MORE
17 LIKELY YOU ARE TO BE ABLE TO REMEMBER SOMETHING ACCURATELY.

18 BUT THE PROBLEM, OF COURSE, WITH THE CRIMINAL CONTEXT
19 IS THAT YOU DON'T OFTEN GET A CHANCE TO MAKE A RECOGNITION
20 JUDGMENT WITHIN, YOU KNOW, A COUPLE OF HOURS OR EVEN A DAY
21 OR SO OF HAVING AN EVENT HAPPEN. VERY OFTEN YOU MAY HAVE
22 DAYS OR WEEKS OR MORE PASS BEFORE YOU ACTUALLY HAVE A CHANCE
23 TO IDENTIFY SOMEONE.

24 Q. IS IT A TRUE STATEMENT THAT THE MORE TIME PASSES THE
25 LESS RELIABLE THE IDENTIFICATION IS? OR EXPLAIN TO THE JURY

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 WHAT THE PASSAGE OF TIME -- WHAT EFFECT THAT HAS ON THE
2 RELIABILITY OF THE IDENTIFICATION.

3 A. YEAH, YOU'VE DESCRIBED IT FAIRLY WELL. THE MORE TIME
4 THAT PASSES THE LESS LIKELY YOU ARE TO ACCURATELY REMEMBER
5 SOMETHING.

6 Q. THE THIRD STAGE, WHAT WAS THE PHRASE OR THE TITLE OF
7 THE THIRD PHASE?

8 A. RETRIEVAL.

9 Q. EXPLAIN TO THE JURY THAT PHASE, PLEASE.

10 A. RETRIEVAL IS NOT JUST A SIMPLE MATTER OF SORT OF THE
11 PULLING A FILE BACK OUT OF YOUR MENTAL FILING CABINET AND
12 LOOKING AT IT AGAIN. WE KNOW FROM A LOT OF RESEARCH THAT
13 WHEN A PERSON RETRIEVES A PIECE OF INFORMATION THEY CAN BE
14 VERY INFLUENCED BY THE WORDING OF THE QUESTION, BY THE KINDS
15 OF INSTRUCTIONS THAT THEY'RE GIVEN.

16 IF THEY'RE LOOKING AT A LINEUP THEY CAN BE INFLUENCED
17 BY NOT ONLY THE PERSON THAT THEY'RE TRYING TO RECOGNIZE, BUT
18 ALSO THE OTHER FACES THAT THEY SEE AROUND THAT PERSON. SO
19 IT'S REALLY VERY CRITICAL TO TRY AND PUT TOGETHER AN
20 UNBIASED, FAIR KIND OF PROCEDURE FOR A PERSON TO RECOGNIZE A
21 FACE THAT THEY HAVE SEEN BEFORE.

22 Q. LET'S TALK A LITTLE BIT MORE SPECIFICALLY ABOUT THE
23 RETRIEVAL STAGE. DR. VAN WALLENDAL, WHAT EFFECT, IF ANY,
24 WOULD A -- A SUGGESTIVE IDENTIFICATION PROCEDURE HAVE? FOR
25 EXAMPLE, A NEWS BROADCAST OR OTHER SUGGESTIVE IDENTIFICATION

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 HAVE IN ONE'S ABILITY TO ACCURATELY RETRIEVE THAT
2 INFORMATION?

3 A. WHEN YOU HAVE ENCODED SOMETHING AND STORED IT IN YOUR
4 MEMORY YOU NEVER HAVE COMPLETE INFORMATION THERE. WHAT YOU
5 HAVE ARE KIND OF PIECES OF A JIGSAW PUZZLE. AND VERY OFTEN
6 THERE ARE PIECES OF THAT MEMORY THAT ARE FUZZY.

7 WHEN YOU GET SOMETHING THEN THAT IS SUGGESTIVE
8 PRESENTED TO YOU, LIKE FOR INSTANCE, A NEWS BROADCAST THAT
9 IDENTIFIES A PARTICULAR FACE AS A SUSPECT OR AN ARRESTED
10 PERSON IN A CRIME LIKE YOURS OR PERHAPS EVEN A CRIME THAT
11 ACTUALLY HAPPENED TO YOU, THEN THAT FACE CAN BECOME A PART
12 OF YOUR MEMORY OR DETAILS OF THAT FACE CAN BECOME A PART OF
13 YOUR MEMORY.

14 IF YOU'RE A LITTLE FUZZY ON WHAT THE FACE REALLY LOOKED
15 LIKE, YOU SEE THIS PERSON ON THE NEWS AND THE NEWS TELLS YOU
16 THESE GUYS HAVE BEEN ARRESTED IN ROBBERIES IN THIS AREA,
17 THEN YOU LOOK AT THAT FACE AND YOU SAY, YEAH, THAT'S THE
18 PERSON THAT HAPPENED TO ME. BUT -- OR THAT'S THE PERSON
19 THAT DID THIS TO ME. BUT YOU CAN'T REALLY KNOW AT THAT
20 POINT, YOU KNOW, AM I REALLY RECOGNIZING THIS PERSON? AM I
21 MAKING AN INFERENCE BECAUSE THE NEWS BROADCASTER SAID THAT
22 THIS WAS A GUILTY PARTY?

23 SOUTH CAROLINA, AS YOU'VE HEARD, HAS A VERY GOOD LINEUP
24 PROCEDURE WHERE THEY VERY IMPARTIALLY INSTRUCT WITNESSES,
25 YOU KNOW, THIS PERSON MAY OR MAY NOT BE IN THE LINEUP. IT'S

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 IMPORTANT FOR YOU TO TELL US IF THE PERSON ISN'T IN THE
2 LINEUP. THOSE ARE VERY GOOD INSTRUCTIONS TO GIVE, BUT A
3 NEWS BROADCAST GIVES YOU PRETTY MUCH THE OPPOSITE OF THOSE
4 KINDS OF INSTRUCTIONS.

5 Q. DR. VAN WALLENDAL, I WANT TO TALK TO YOU IN JUST A
6 MINUTE ABOUT ONE OTHER FACTOR THAT CAN INHIBIT
7 IDENTIFICATION. BUT BEFORE THAT, HAVE YOU MET WITH MR.
8 ESPINOZA IN THIS CASE?

9 A. NO, I HAVE NOT.

10 Q. WAS IT NECESSARY FOR YOU TO MEET WITH MR. ESPINOZA TO
11 BE ABLE TO TESTIFY?

12 A. NO. I REALLY DON'T THINK I COULD HAVE GOTTEN ANYTHING
13 USEFUL OUT OF A MEETING WITH MR. ESPINOZA AT THIS POINT IN
14 TIME.

15 Q. TALK ABOUT ANOTHER FACTOR THAT MAY COMPLICATE AN
16 EYEWITNESS IDENTIFICATION. IS ANOTHER FACTOR WHAT'S CALLED
17 CROSS RACIAL IDENTIFICATION?

18 A. YES.

19 Q. EXPLAIN THAT TO THE JURY, PLEASE.

20 A. THIS IS ONE OF THE MOST STUDIED AREAS IN EYEWITNESS
21 TESTIMONY. AND IT HAS TO DO WITH THE FACT THAT ANY WITNESS
22 IS GOING TO BE BETTER ABLE TO RECOGNIZE A PERSON OF THEIR
23 OWN RACE THAN A PERSON OF ANOTHER RACE.

24 THERE ARE LOTS OF STUDIES THAT HAVE SHOWN THAT WHEN YOU
25 SEE AN INCIDENT OR VIEW A PHOTOGRAPH AND THEN TRY TO

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 RECOGNIZE IT LATER YOU ARE LESS LIKELY TO BE ACCURATE, YOU
2 ARE MORE LIKELY TO MAKE A FALSE IDENTIFICATION OF SOMEONE
3 WHO IS NOT OF YOUR OWN RACIAL GROUP.

4 AND WHAT'S PROBABLY GOING ON THERE IS THAT FROM THE
5 TIME THAT YOU ARE A BABY AND CERTAINLY THROUGH YOUR
6 CHILDHOOD AND ON INTO YOUR ADULTHOOD YOU'VE BEEN LEARNING
7 HOW TO RECOGNIZE FACES OF YOUR OWN RACE. AND WHEN YOU LEARN
8 HOW TO RECOGNIZE YOU LEARN TO FOCUS ON FACTORS THAT ARE
9 GOING TO HELP YOU THE MOST IN TELLING YOUR MOTHER FROM THE
10 NURSE AT THE HOSPITAL OR YOUR FATHER FROM SOME OTHER RANDOM
11 MAN THAT COMES INTO YOUR FIELD OF VIEW.

12 SO AS A WHITE PERSON, FOR INSTANCE, I LEARNED TO FOCUS
13 IN ON THINGS LIKE EYE COLOR, HAIR COLOR. I LEARNED TO TELL
14 A PLATINUM BLONDE FROM A STRAWBERRY BLONDE FROM A DISHWATER
15 BLONDE. AND THOSE ARE THINGS THAT I'M GOING TO CARRY INTO
16 MY ADULTHOOD AND FOCUS ON WHEN I TRY TO RECOGNIZE ANOTHER
17 HUMAN BEING.

18 BUT IF I'M TRYING TO RECOGNIZE A PERSON WHO IS AFRICAN
19 AMERICAN OR ASIAN AMERICAN AND I ZERO IN ON SOMETHING LIKE
20 THEIR EYE COLOR AND THEIR HAIR COLOR, THAT'S NOT GOING TO
21 HELP ME THAT MUCH UNLESS THE PERSON HAS A REALLY UNUSUAL DYE
22 JOB OR CONTACT LENSES. WHAT'S PROBABLY GOING TO HAPPEN IS
23 I'M STUCK TELLING THE POLICE THAT WELL, YOU KNOW, THE PERSON
24 HAD DARK SKIN, DARK EYES, DARK HAIR, AND I'VE GIVEN THEM NO
25 USEFUL INFORMATION.

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 AND THE SAME THING HAPPENS ACROSS OTHER RACES. MY
2 STUDENTS, FOR INSTANCE, ARE MUCH BETTER -- MY AFRICAN
3 AMERICAN STUDENTS ARE MUCH BETTER AT TELLING ME, YOU KNOW,
4 THE DIFFERENCE BETWEEN BRAIDS AND CORN ROWS AND DREADS THAT
5 I COULDN'T EVEN TELL ONE FROM THE OTHER, WHICH MY STUDENTS
6 LAUGH AT ME ABOUT. BUT THEY HAVE LEARNED TO ZERO IN ON
7 DIFFERENT FEATURES THAT ARE BETTER AT TELLING ONE PERSON OF
8 THEIR RACE APART FROM ANOTHER.

9 Q. DR. VAN WALLENDAL, THE RESEARCH ON CROSS RACIAL
10 IDENTIFICATION, HAS THE MAJORITY OF THE RESEARCH BEEN DONE
11 ON AFRICAN AMERICAN VERSUS WHITE? IS THAT WHERE THE
12 MAJORITY OF THE RESEARCH HAS BEEN DONE?

13 A. INITIALLY, YES. AND THE MAJORITY IS STILL IN THAT
14 AREA.

15 Q. HAS THERE ALSO BEEN RESEARCH ON IDENTIFICATIONS MADE
16 BETWEEN HISPANIC VICTIMS AND AFRICAN AMERICAN DEFENDANTS AND
17 VICE VERSA?

18 A. YES, THERE HAVE. I'M AWARE OF AT LEAST FOUR STUDIES IN
19 THE AREA THAT HAVE MADE THAT SPECIFIC COMPARISON.

20 Q. ARE THE -- ARE THE DIFFICULTIES YOU DESCRIBED IN A
21 RESEARCH CONSISTENT ACROSS ALL -- ACROSS THE HISPANIC VERSUS
22 WHITE -- IS THE SAME THING GOING ON AS TO HISPANIC VERSUS
23 WHITE AS HAS BEEN AFRICAN AMERICAN VERSUS WHITE?

24 A. YES. RESEARCH HAS SHOWN THAT, YOU KNOW, FOR INSTANCE,
25 A HISPANIC WITNESS WILL HAVE THE SIMILAR KIND OF TROUBLE

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

167

1 RECOGNIZING AN AFRICAN AMERICAN PERPETRATOR AS A WHITE
2 PERSON WOULD. THEY'RE MUCH BETTER AT IDENTIFYING OTHER
3 HISPANIC PERSONS.

4 MR. MOORMAN: YOUR HONOR, I HAVE NOTHING FURTHER.

5 THE COURT: YOU HAVE ANY QUESTIONS, MR. ROBINSON?

6 MR. ROBINSON: I HAVE NO QUESTIONS, YOUR HONOR.

7 THE COURT: ALL RIGHT, SOLICITOR.

8 CROSS EXAMINATION BY MR. MARCHANT:

9 Q. GOOD AFTERNOON, DR. VAN WALLENDAL.

10 A. GOOD AFTERNOON.

11 Q. DO YOU RECALL AS BEEN PREVIOUSLY MENTIONED THERE WAS
12 SOME PRIOR TESTIMONY IN THIS CASE AND YOU SUBMITTED YOUR
13 BILL FOR THAT? DO YOU RECALL WHAT THE AMOUNT WAS ON THAT
14 BILL?

15 A. I'M NOT GOING TO BE PRECISE ON THIS, BUT IT WAS
16 PROBABLY SOMEWHERE BETWEEN THIRTEEN HUNDRED AND FOURTEEN
17 HUNDRED DOLLARS.

18 Q. AND EVEN THOUGH THERE'S APPARENTLY SOME POSSIBILITY
19 YOU'RE NOT GOING TO GET PAID TODAY, I SUPPOSE YOU'RE GOING
20 TO SUBMIT A BILL FOR YOUR TESTIMONY TODAY AS WELL?

21 A. ONE CAN ALWAYS HOPE.

22 Q. YES, MA'AM. ALL RIGHT. YOU WOULD AGREE WITH ME THAT
23 THE ENVIRONMENT IN WHICH ONE HAS BEEN ROBBED WOULD MAKE A
24 DIFFERENCE AS TO WHAT THE PERCEPTION MAY BE?

25 A. YES.

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

168

1 Q. SO IF IT'S DAYTIME VERSUS NIGHTTIME THERE'S GOING TO BE
2 A DIFFERENCE?

3 A. YES, DEFINITELY.

4 Q. AND THE ABILITY OF THAT PERSON TO OBSERVE?

5 A. YES.

6 Q. OKAY. IF IT WAS INSIDE VERSUS OUTSIDE?

7 A. YES.

8 Q. AND I BELIEVE YOU'VE MADE IT VERY CLEAR THAT YOUR
9 TESTIMONY IS THAT IT WOULD BE EASIER FOR AN AFRICAN AMERICAN
10 TO IDENTIFY AN AFRICAN AMERICAN VERSUS A WHITE OR HISPANIC
11 TO IDENTIFY AN AFRICAN AMERICAN?

12 A. YES.

13 Q. AND NOW HAVE YOU DONE ANY STUDIES PERSONALLY ABOUT
14 HISPANICS AND THEIR IDENTIFICATIONS OF EITHER CAUCASIANS,
15 AFRICAN AMERICANS OR ASIANS?

16 A. I HAVE NOT PUBLISHED ANY STUDIES YET. I HAVE ONE
17 THAT'S ONGOING, BUT I DON'T HAVE DATA AT THIS POINT TO
18 REPORT.

19 Q. YOU WOULD AGREE WITH ME THAT A VICTIM'S OPPORTUNITY TO
20 OBSERVE WOULD GREATLY INFLUENCE THEIR ABILITY TO RECALL AND
21 RETRIEVE INFORMATION?

22 A. YES, THAT'S A VERY IMPORTANT FACTOR.

23 Q. SO THE LONGER SOMEONE HAS TO OBSERVE THE BETTER THEIR
24 OPPORTUNITY TO RETRIEVE WOULD BE?

25 A. YES.

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

169

1 Q. YOU WOULD ALSO AGREE THAT THE LENGTH OF TIME BETWEEN AN
2 INCIDENT AND THE RETRIEVAL IS A BIG FACTOR AS WELL?

3 A. YES.

4 Q. SO A SHORTER PERIOD OF TIME ONE WOULD BE ABLE TO
5 RETRIEVE EASIER THAN A LONGER PERIOD OF TIME?

6 A. YES.

7 Q. AND YOU WOULD AGREE WITH ME THAT A VICTIM'S INITIAL
8 REPORTING OF THE INCIDENT TO LAW ENFORCEMENT IS GOING TO BE
9 THE MOST RELIABLE IDENTIFICATION OR CHARACTERISTIC REPORTING
10 OF THE ALLEGED SUSPECT?

11 A. YES. THE DETAILS THAT YOU GET IN THAT VERY FIRST
12 INTERVIEW ARE USUALLY THE ONES THAT ARE THE MOST CLOSE TO
13 REALITY.

14 Q. AND YOU WOULD AGREE WITH ME THAT IF A PERSON HAD
15 ALREADY SEEN SOME NEWS COVERAGE ON AN EVENT THAT A
16 SUBSEQUENT VIEWING OF THAT SAME INDIVIDUAL, THEIR PERCEPTION
17 WOULD BE TAINTED?

18 A. YES, I THINK THAT'S A GOOD WORD.

19 Q. SO WOULD IT OR WOULD IT NOT BE A GOOD IDEA TO SHOW A
20 VICTIM A LINEUP AFTER THEY'VE SEEN A NEWS BROADCAST WITH A
21 SUSPECT'S PHOTO?

22 A. AFTER THEY'VE SEEN THE NEWS BROADCAST THERE'S REALLY NO
23 POINT IN DOING A LINEUP. YOU'RE NOT GOING TO GET AN
24 ACCURATE RECOGNITION AT THAT POINT.

25 Q. NOW YOU MADE AN INTERESTING COMMENT A MINUTE AGO. YOU

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

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1 SAID THAT SPEAKING WITH MR. ESPINOZA WOULD NOT HELP YOU IN
2 COMMUNICATING TO THIS JURY TODAY ABOUT THE ABILITY TO, I
3 BELIEVE YOU SAID, ACQUIRE, EXCUSE ME, YOU REFERRED TO IT AS
4 ENCODING STORAGE OR RETRIEVAL. YOU DON'T THINK TALKING WITH
5 MR. ESPINOZA WOULD CHANGE YOUR OPINION IN ANY MANNER?

6 A. NO. I WAS BROUGHT INTO THIS CASE PRACTICALLY A YEAR
7 AFTER THE ROBBERY ACTUALLY OCCURRED. SO AT THAT POINT I
8 THINK ANY QUESTIONS THAT I COULD ASK HIM ABOUT HIS MEMORY
9 WOULD BE POTENTIALLY TAINTED BY THE VARIOUS INTERVIEWS THAT
10 HE'S HAD WITH POLICE, BY THE TELEVISION BROADCASTS HE'S
11 SEEN. I RELY MOST ON WHAT THE INVESTIGATING OFFICERS HAD TO
12 SAY AND WHAT THE VICTIM HIMSELF HAD TO SAY AT THE TIME OF
13 THE CRIME.

14 Q. SO EVEN THOUGH THERE'S BEEN A LIMITED NUMBER OF
15 RESEARCH DONE ON HISPANICS' IDENTIFICATION OF CROSS RACIAL
16 PARTIES AND, IN FACT, YOU HAVE NOT PUBLISHED YET, RIGHT?

17 A. RIGHT.

18 Q. SO EVEN THOUGH THERE'S LITTLE TO NONE IN COMPARISON TO
19 WHAT THERE IS IN BLACK VERSUS WHITE, YOUR OPINION WOULD BE
20 THE SAME AFTER A CONVERSATION WITH A HISPANIC VICTIM?

21 A. EVEN IF I GAVE HIM A TEST AND SHOWED HIM PHOTOGRAPHS OF
22 HISPANIC AND WHITES AND BLACK PERSONS AND ASKED HIM TO
23 IDENTIFY THEM LATER, I COULD ONLY GET A VERY GENERAL SENSE
24 OF HOW HE RESPONDS TO SUCH KIND OF CIRCUMSTANCES. IT
25 WOULDN'T REALLY GIVE ME AN INSIGHT INTO THIS PARTICULAR

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

171

1 EVENT AND WHETHER HE REMEMBERED IT ACCURATELY OR NOT.

2 Q. SO IT WOULD NOT HELP YOU TO SPEAK WITH HIM?

3 A. NO.

4 Q. I BELIEVE YOUR TESTIMONY A MOMENT AGO WAS THAT YOU SAID
5 STRESS DECREASES THE ABILITY TO FOCUS, BUT YET YOU SHIFTED
6 TO THIS -- I FORGET THE WORDING, THE GUN FOCUS ---

7 A. THE WEAPON FOCUS.

8 Q. OKAY. NOW WHEN ONE IS FOCUSED ON A GUN ARE YOU SAYING
9 AND TELLING THIS JURY THAT THEY DO NOT REMEMBER OTHER
10 DETAILS?

11 A. THEY CAN REMEMBER OTHER DETAILS, BUT RELATIVELY
12 SPEAKING THEY REMEMBER FEWER DETAILS THAN THEY WOULD HAVE IF
13 THE GUN HAD NOT BEEN PRESENT AT THE SCENE.

14 Q. AND YOU'VE ALSO STATED, I BELIEVE IT WAS ABOUT THE
15 HISPANICS, THAT WE STARTED DOING RESEARCH. WHEN YOU SAY WE,
16 WHO ARE YOU REFERRING TO?

17 A. PSYCHOLOGISTS WHO STUDY MEMORY.

18 Q. YOU ALSO REFERENCED THAT THE INFORMATION THAT WAS
19 RECEIVED WITH YOUR EVALUATION IS IN SIMULATION FASHION, IS
20 THAT CORRECT?

21 A. YES, FREQUENTLY.

22 Q. SO YOU'VE SET UP EXPERIMENTS, IF YOU WILL, WHERE A
23 CRIME OR AN INCIDENT HAS BEEN SIMULATED?

24 A. YES.

25 Q. SO IN REALITY THE WAY ONE ACTS OR RESPONDS TO THIS

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

172

1 EVENT IS NOT A TRUE EVALUATION OR A RESPONSE BECAUSE IT'S
2 JUST A SIMULATION?

3 A. WE TRY TO DO THE SIMULATIONS AS REALISTICALLY AS WE
4 CAN, BUT OBVIOUSLY WE CAN'T ETHICALLY PUT PEOPLE IN
5 SITUATIONS WHERE THEY GENUINELY FEEL THREATENED JUST FOR THE
6 PURPOSES OF A SCIENTIFIC STUDY.

7 Q. WELL, YOU'VE GOT A VICTIM HERE TODAY THAT'S BEEN IN
8 THAT SITUATION, BUT IT'S NOT BENEFICIAL TO SPEAK WITH HIM?

9 A. AGAIN, ANY ONE PERSON IN ONE INCIDENT, I MEAN, SHORT OF
10 GOING BACK IN TIME AND RELIVING IT WITH THEM, THERE REALLY
11 ISN'T A WAY TO TEST THEIR MEMORY. THERE'S NO MIRACLE ---

12 Q. I'M SORRY. ARE YOU ---

13 A. --- MEASUREMENT.

14 Q. --- OR ARE YOU NOT CURRENTLY DOING RESEARCH ON
15 IDENTIFICATIONS MADE BY HISPANIC INDIVIDUALS VERSUS OTHER
16 ETHNICITIES (PHONETICS)?

17 A. YES.

18 Q. I BELIEVE IN YOUR PREVIOUS TESTIMONY, AND WOULD YOU
19 AGREE THAT YOU STATED THAT DEPENDING ON THE SITUATION, AND I
20 BELIEVE YOU REFERRED TO IT AS THE LEVEL OF STRESS AND AGAIN
21 THIS GUN FOCUS IDEA THAT YOU'VE TALKED ABOUT, THAT A VICTIM
22 OR INDIVIDUAL MAY REMEMBER SOME DETAILS OF THE WRONG PERSON?

23 A. YES.

24 Q. WOULD YOU PLEASE ELABORATE ON THAT?

25 A. SURE. BASICALLY WHAT HAPPENS IS WE HAVE A SOMEWHAT

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

173

1 LIMITED ABILITY TO TAKE IN DETAILS INTO OUR MEMORY. AND YET
2 BY THE SAME TOKEN WE HAVE A BRAIN THAT DOESN'T LIKE TO ADMIT
3 TO HOLES AND GAPS IN OUR MEMORY.

4 SO WHAT OFTEN HAPPENS IS WHEN WE ENCODE A PIECE OF
5 INFORMATION WE MISS SOME DETAILS, BUT WHEN WE PLAY IT BACK
6 IN OUR HEADS OR WHEN WE'RE ASKED TO RECALL IT FOR SOMEONE
7 VERY OFTEN OUR BRAIN FILLS IN THOSE DETAILS. AND IT CAN
8 FILL IN THE DETAILS WITH COMMON SENSE, WITH OTHER PAST
9 EXPERIENCES, WITH INFORMATION GLEANED FROM QUESTIONS PEOPLE
10 HAVE BEEN ASKING OF US, WITH THINGS WE SAW ON TV. THERE ARE
11 A LOT OF WAYS THAT THE PUZZLE PIECES CAN GET PUT TOGETHER
12 WITH EVENTS THAT WEREN'T ACTUALLY ENCODED IN THE BEGINNING.

13 Q. SO IT'S POSSIBLE FOR AN INDIVIDUAL TO BE IN THE
14 SITUATION AND REMEMBER DETAILS AND CONFUSE THEM WITH THE
15 PERSON THAT ACTUALLY DID THE EVENT?

16 A. YES.

17 Q. SO IF THERE ARE TWO PEOPLE THERE, ONE COULD CROSS UP
18 WHO WAS WEARING A BALL CAP?

19 A. SURE, VERY COMMONLY.

20 Q. YOU'RE NOT HERE TO TELL THIS JURY THAT MR. ESPINOZA --
21 HIS RECOLLECTION IS INCORRECT, ARE YOU?

22 A. NO, I'M NOT.

23 Q. AND YOU'RE NOT HERE TO TELL THIS JURY THAT MR. ROBINSON
24 AND MR. WORKMAN ARE NOT GUILTY OF THIS CRIME, ARE YOU?

25 A. NOPE, THAT'S THEIR JOB.

LORI VAN WALLENDAL - REDIRECT EXAMINATION BY MR. MOORMAN

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1 Q. I HAVE NO FURTHER QUESTIONS.

2 THE COURT: ALL RIGHT. ANY REDIRECT?

3 MR. MOORMAN: JUST A FEW QUESTIONS.

4 REDIRECT EXAMINATION BY MR. MOORMAN:

5 Q. BUT, DR. VAN WALLENDAL, WHAT YOU HAVE TESTIFIED TO IS
6 THAT A -- ONCE A SUGGESTIVE IDENTIFICATION PROCEDURE IS USED
7 SUCH AS A NEWS BROADCAST IT SERIOUSLY UNDERMINES THE
8 RELIABILITY OF ANY SUBSEQUENT IDENTIFICATION, IS THAT
9 CORRECT?

10 A. THAT IS CORRECT.

11 Q. MR. MARCHANT ASKED YOU ABOUT OPPORTUNITY TO OBSERVE.
12 IS THERE ANY RESEARCH THAT DISCUSSES THE ACCURACY OF TIME
13 ESTIMATIONS EYEWITNESSES GIVE?

14 A. YES, THERE IS.

15 Q. DISCUSS FOR A SECOND THAT RESEARCH, PLEASE.

16 A. VERY OFTEN WHEN STUDIES ARE DONE THAT INVOLVE SIMULATED
17 CRIMES OR OTHER ACTIONS ONE OF THE QUESTIONS THAT WE ASK OUR
18 WITNESSES IS ABOUT HOW LONG DID THE WHOLE INCIDENT TAKE
19 PLACE. AND ONE OF THE FINDINGS THAT'S VERY CONSISTENT IS
20 THAT PEOPLE ARE NOT VERY GOOD AT ESTIMATING TIME.

21 AND THEY VERY PREDICTABLY OVER-ESTIMATE TIME IN A
22 SITUATION LIKE THIS OFTEN BY A FACTOR OF TWO HUNDRED, THREE
23 HUNDRED, FOUR HUNDRED PERCENT. SO IT'S NOT UNUSUAL, FOR
24 INSTANCE, TO STAGE AN INCIDENT THAT LASTS FOR THIRTY SECONDS
25 AND HAVE YOUR AVERAGE WITNESS TELL YOU THAT IT LASTED FOR

LORI VAN WALLENDAL - REDIRECT EXAMINATION BY MR. MOORMAN

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1 TWO MINUTES.

2 MR. MOORMAN: I'VE GOT NOTHING FURTHER, YOUR HONOR.

3 THE COURT: ANYTHING ELSE, MR. MARCHANT?

4 MR. MARCHANT: NO, YOUR HONOR.

5 THE COURT: THANK YOU. STEP DOWN. ALL RIGHT. WOULD

6 COUNSEL APPROACH JUST A MINUTE?

7 MR. MOORMAN: YES, SIR.

8 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
9 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

10 THE COURT: ALL RIGHT. WOULD YOU TAKE THE JURY OUT A
11 MINUTE, PLEASE?

12 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:18 PM)

13 THE COURT: ALL RIGHT. ANYTHING FURTHER, MR. MOORMAN?

14 MR. MOORMAN: NO, SIR.

15 THE COURT: ALL RIGHT. MR. ROBINSON, WOULD YOU HAVE
16 ANY TESTIMONY OR ...

17 MR. ROBINSON: NO, SIR, YOUR HONOR.

18 THE COURT: OKAY. MARY, WOULD YOU PUT EACH DEFENDANT
19 UNDER OATH FOR ME, PLEASE?

20 MADAME CLERK: YES, OF COURSE. GENTLEMEN, WOULD YOU
21 PLEASE STAND UP? MR. ROBINSON, PLEASE RAISE YOUR RIGHT
22 HAND.

23 (WHEREUPON BOTH DEFENDANTS WERE DULY SWORN)

24 THE COURT: OKAY. YOU CAN BE SEATED NOW, GENTLEMEN.

25 MR. ROBINSON, MR. WORKMAN, I'VE JUST BEEN TOLD BY YOUR

1 ATTORNEYS THAT YOU WILL NOT TAKE THE STAND AND TESTIFY OR
2 OTHERWISE PRESENT TESTIMONY. THAT IS YOUR CONSTITUTIONAL
3 RIGHT. YOU DO NOT HAVE TO TAKE THE STAND AND TESTIFY OR
4 PRESENT EVIDENCE. THAT'S YOUR CONSTITUTIONAL RIGHT.

5 THE BURDEN REMAINS ON THE STATE TO PROVE YOU GUILTY
6 BEYOND A REASONABLE DOUBT. NOW YOU UNDERSTAND THAT RIGHT,
7 MR. ROBINSON?

8 MR. ROBINSON: YES, SIR.

9 THE COURT: AND, YOU, MR. WORKMAN?

10 MR. WORKMAN: YES, SIR.

11 THE COURT: IF YOU CHOOSE NOT TO TAKE THE STAND AND
12 TESTIFY I WILL INSTRUCT THE JURY THAT THAT IS YOUR RIGHT AND
13 THAT THEY IN NO WAY CAN HOLD THAT AGAINST YOU. NOW I NEED
14 TO TELL YOU THAT WHILE YOU HAVE A CONSTITUTIONAL RIGHT NOT
15 TO TESTIFY, YOU'VE GOT A PERFECT RIGHT TO TAKE THE STAND AND
16 TELL THE JURY YOUR SIDE OF THE STORY. YOU UNDERSTAND THAT,
17 MR. ROBINSON?

18 MR. ROBINSON: YES, SIR.

19 THE COURT: MR. WORKMAN?

20 MR. WORKMAN: YES, SIR.

21 THE COURT: IF YOU MAKE THAT DECISION YOU BECOME LIKE
22 ANY OTHER WITNESS IN THE CASE SUBJECT TO CROSS EXAMINATION
23 BY THE SOLICITOR. I DON'T KNOW WHETHER EITHER OF YOU HAVE
24 ANY PRIOR CRIMINAL RECORD FOR WHICH YOU COULD BE IMPEACHED,
25 BUT IF YOU SHOULD, THEN THE SOLICITOR COULD GO INTO THAT.

1 YOU UNDERSTAND THAT, MR. ROBINSON?

2 MR. ROBINSON: YES, SIR.

3 THE COURT: AND, MR. WORKMAN?

4 MR. WORKMAN: YES, SIR.

5 THE COURT: NOW I UNDERSTAND, MR. ROBINSON, THAT YOU
6 HAVE MADE THE DECISION THAT YOU WILL NOT TESTIFY. IS THAT
7 CORRECT?

8 MR. ROBINSON: YES, SIR.

9 THE COURT: IS THIS A DECISION YOU, YOURSELF, HAVE
10 MADE?

11 MR. ROBINSON: YES, SIR.

12 THE COURT: MR. MOORMAN HAS NOT PUT ANY PRESSURE ON YOU
13 TO NOT TAKE THE STAND AND TESTIFY IN YOUR OWN DEFENSE, IS
14 THAT CORRECT?

15 MR. ROBINSON: YES, SIR.

16 THE COURT: MR. WORKMAN, I'LL ASK YOU THE SAME
17 QUESTION. THIS IS YOUR DECISION?

18 MR. WORKMAN: YES, SIR.

19 THE COURT: MR. ROBINSON HAS NOT PUT ANY PRESSURE ON
20 YOU TO STAY OFF THE STAND AND NOT TESTIFY, IS THAT CORRECT?

21 MR. WORKMAN: YES, SIR.

22 THE COURT: MR. ROBINSON, MR. WORKMAN, ARE YOU UNDER
23 THE INFLUENCE OF ANY ALCOHOL, DRUG OR ANY OTHER SUBSTANCE
24 RIGHT AT THIS MOMENT? MR. ROBINSON?

25 MR. ROBINSON: NO, SIR.

1 THE COURT: MR. WORKMAN?

2 MR. WORKMAN: NO, SIR.

3 THE COURT: YOU'RE SOBER, YOU KNOW WHAT YOU'RE DOING
4 AND YOU WANT TO NOT TAKE THE STAND AND TESTIFY, IS THAT
5 CORRECT?

6 MR. ROBINSON: YES, SIR.

7 MR. WORKMAN: YES, SIR.

8 THE COURT: ALL RIGHT, GENTLEMEN, ANYTHING ELSE NOW
9 BEFORE I RELEASE THE JURY?

10 MR. MARCHANT: NOTHING FROM THE STATE, YOUR HONOR.

11 MR. MOORMAN: NOTHING FROM MR. ROBINSON. I JUST -- I
12 WOULD INQUIRE -- THESE GENTLEMEN ARE GOING TO SPEND THE
13 NIGHT IN THE DETENTION CENTER, IS THAT CORRECT, YOUR HONOR?

14 THE COURT: I UNDERSTAND THAT.

15 MR. MARCHANT: YOUR HONOR, THERE WAS AN ORDER SIGNED
16 LAST WEEK ---

17 THE COURT: YEAH.

18 MR. MARCHANT: --- BY JUDGE FEW KEEPING THEM HERE
19 THROUGH THE DISPOSITION OF THIS TRIAL.

20 THE COURT: OKAY.

21 MR. MARCHANT: SO THEY SHOULD NOT BE GOING ANYWHERE.

22 THE COURT: OKAY. ALL RIGHT. I'M GOING TO LET THE
23 JURY GO, AND THEN WE'LL HAVE MOTIONS.

24 MR. MOORMAN: YES, SIR, YOUR HONOR.

25 THE COURT: ALL RIGHT. BRING THE JURY.

1 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:23 PM)

2 THE COURT: LADIES AND GENTLEMEN, IN THE TRIAL OF A
3 CRIMINAL CASE A DEFENDANT NEVER HAS ANY BURDEN WHATSOEVER.
4 HE DOES NOT HAVE TO TAKE THE STAND AND TESTIFY OR OTHERWISE
5 PRESENT EVIDENCE. THAT'S BECAUSE THE BURDEN IS ALWAYS ON
6 THE STATE TO PROVE A DEFENDANT GUILTY BEYOND A REASONABLE
7 DOUBT.

8 NOW THE DEFENDANTS IN THIS CASE HAVE EXERCISED THEIR
9 CONSTITUTIONAL RIGHT NOT TO TAKE THE STAND AND TESTIFY IN
10 THEIR DEFENSE. I WILL CHARGE YOU MORE FULLY CONCERNING THAT
11 RIGHT DURING THE COURSE OF MY CHARGE.

12 THE TESTIMONY IN THIS CASE, THEREFORE, IS CONCLUDED.
13 WHAT WE HAVE REMAINING IS THE FINAL ARGUMENTS BY THE
14 ATTORNEYS AND THEN MY CHARGE ON THE LAW. IT IS TOO LATE IN
15 THE AFTERNOON TO DO THAT. WE'LL PICK BACK UP TOMORROW
16 MORNING AT 9:00 AT WHICH TIME WE'LL HAVE THE ARGUMENTS BY
17 THE ATTORNEYS AND THEN MY CHARGE ON THE LAW.

18 NOW WHEN YOU LEAVE, PLEASE REMEMBER, DO NOT TALK ABOUT
19 THIS CASE AMONG YOURSELVES OR WITH ANYONE ELSE. THIS
20 INCLUDES EVEN MEMBERS OF YOUR OWN FAMILY. YOU CAN TELL
21 FAMILY MEMBERS THAT YOU'RE SERVING ON THIS CASE, WHAT KIND
22 OF CASE IT IS, BUT DON'T DISCUSS THE FACTS WITH THEM, OR AS
23 I SAID, ANYONE ELSE.

24 IF ANYBODY CONTACTS YOU AND TRIES TO TALK TO YOU ABOUT
25 THIS CASE, GET THEIR NAMES AND ADDRESSES AND REPORT THAT TO

1 ME. PLEASE KEEP YOUR BADGES ON. HAVE THEM ON WHEN YOU COME
2 BACK IN THE MORNING.

3 I DON'T KNOW IF THERE'LL BE ANY MEDIA COVERAGE OF THIS
4 TRIAL. SHOULD THERE BE ANY, IGNORE IT. UNDER THE OATH YOU
5 TOOK IN THIS CASE YOU SWORE TO TRY THIS CASE BASED ONLY AND
6 SOLELY ON THE TESTIMONY AND EVIDENCE PRESENTED IN THIS CASE.
7 AND FOR YOU TO READ ANYTHING OR SEE ANYTHING ON TELEVISION
8 ABOUT THIS CASE, SHOULD THERE BE ANY, THAT WOULD BE A
9 VIOLATION OF YOUR OATH. SO IF THERE'S ANY MEDIA COVERAGE,
10 IGNORE IT.

11 I'D ASK THAT YOU BE BACK IN YOUR JURY ROOM AT 9:00 IN
12 THE MORNING. 9:00 IN THE MORNING. THANK YOU VERY MUCH.
13 SEE YOU IN THE MORNING.

14 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:25 PM)

15 THE COURT: ALL RIGHT. MR. MOORMAN, YOU HAVE SOME
16 MOTIONS?

17 MR. MOORMAN: YES, SIR, YOUR HONOR. I WOULD HAVE
18 ANOTHER DIRECTED VERDICT MOTION ON BEHALF OF MR. O'SHAUN
19 ROBINSON. IN LIGHT OF DR. VAN WALLENDAL'S TESTIMONY ABOUT
20 DIFFICULTIES WITH EYEWITNESS IDENTIFICATION AND IN LIGHT OF
21 THE FACT THAT MANY OF THE PROBLEMS THAT INHIBIT EYEWITNESS
22 IDENTIFICATION ARE PRESENT IN THIS CASE I WOULD ARGUE THAT
23 MR. ROBINSON HAS PROVEN THAT THE IDENTIFICATION'S UNRELIABLE
24 AND, THEREFORE, I'D MOVE FOR A DIRECTED VERDICT.

25 THE COURT: THAT MAKES A GOOD ARGUMENT FOR THE JURY,

1 MR. MOORMAN, BUT NOT FOR A MOTION FOR DIRECTED VERDICT.

2 MR. MOORMAN: YES, SIR.

3 THE COURT: THAT'S DENIED.

4 MR. MOORMAN: YES, SIR.

5 THE COURT: MR. ROBINSON.

6 MR. ROBINSON: YOUR HONOR, JUST FOR THE SAKE OF
7 PRESENTATION, I'D RENEW THE SAME MOTION OBVIOUSLY ---

8 THE COURT: AND I WOULD DENY YOUR MOTION LIKEWISE.
9 OKAY. 9:00.

10 MR. ROBINSON: YOUR HONOR, I HAVE ONE MORE, BEFORE WE
11 LEAVE, REQUEST AS FAR AS JURY CHARGES GO.

12 THE COURT: SURE.

13 MR. ROBINSON: THE DOCTOR TALKED ABOUT THE CROSS RACIAL
14 IDENTIFICATION IN THIS CASE. AND WE'RE GOING TO -- I'M
15 GOING TO ASK FOR AN IDENTIFICATION CHARGE ---

16 THE COURT: I'M GOING TO CHARGE IDENTIFICATION.

17 MR. ROBINSON: WELL, AS WELL, YOUR HONOR, THE AMERICAN
18 BAR ASSOCIATION HAS PUT FORTH A PROPOSED CHARGE FOR JUDGES
19 IN TERMS OF CROSS RACIAL IDENTIFICATION. I HAVE A -- I'VE
20 GOT A -- I'VE GOT THE PROPOSED JURY CHARGE.

21 THE COURT: HOW ABOUT LEAVE IT WITH US, AND I'LL
22 CONSIDER IT.

23 MR. ROBINSON: YES, SIR, YOUR HONOR.

24 THE COURT: YOU HAVE IT WITH YOU?

25 MR. ROBINSON: I DO.

1 THE COURT: ALL RIGHT.

2 MR. MOORMAN: IF WE COULD SEE IT TOO, THAT'D BE GREAT.
3 YOUR HONOR, I'VE NEVER SEEN THAT. SO ---

4 MR. ROBINSON: IT'S -- IT'S A NEW THING. BUT BECAUSE
5 OF THE -- BECAUSE OF IDENTIFICATION ISSUES AND AS THE DOCTOR
6 TESTIFIED ---

7 THE COURT: ALL RIGHT. LET MARY MAKE COPIES OF IT SO
8 SHE CAN GIVE IT TO YOU AND ME.

9 MR. MARCHANT: JUDGE, I JUST HAVE ONE THING. I REALIZE
10 WHAT YOU'VE TOLD THE JURY THAT THEY'RE NOT TAKING THE STAND
11 AND THEY'RE NOT TESTIFYING, THAT THEIR CASE IS OVER. I JUST
12 WANT TO BE SURE WE WEREN'T GOING TO HAVE A CHANGE OF HEART
13 IN THE MORNING AND TESTIMONY WOULD COME FORTH, AND I'VE SENT
14 MR. WRIGHT BACK TO THE DEPARTMENT OF CORRECTIONS. AND
15 SHOULD I NEED HIM FOR REPLY ---

16 THE COURT: NO, THEY'VE MADE THE DECISION. AND ---

17 MR. MARCHANT: JUST MAKING SURE, YOUR HONOR. THANK
18 YOU.

19 THE COURT: YEP. ALL RIGHT. MARY, WOULD YOU MAKE
20 COPIES OF -- MAKE THREE COPIES AND MR. ROBINSON CAN KEEP HIS
21 ORIGINAL.

22 MR. ROBINSON: YES, YOUR HONOR.

23 (PAUSE)

24 MR. ROBINSON: AND, YOUR HONOR, IF YOU CAN'T -- IF MY
25 WRITING IS LESS THAN PERFECT, I HAVE THE INSTRUCTION RIGHT

1 HERE, THE ABA -- CITING THE ABA PROPOSAL IN THIS CASE. AND
2 I CAN HAND THIS -- I CAN GIVE THIS UP TO THE COURT. I CAN
3 PRINT IT OUT FOR YOU ---

4 THE COURT: HOW ABOUT PRINT IT OUT FOR ME CAUSE I ---

5 MR. ROBINSON: YES, SIR.

6 THE COURT: --- DO HAVE A LITTLE DIFFICULTY
7 INTERPRETING YOUR ---

8 MR. ROBINSON: I UNDERSTAND.

9 THE COURT: --- WRITING. AND TELL ME WHO -- YOU SAID
10 THE ABA. IS THIS A COMMITTEE OF THE ABA? IS IT ...

11 MR. ROBINSON: MAY IT PLEASE THE COURT, YOUR HONOR?
12 WHERE I GOT THIS FROM WAS A -- IT'S ORIGINALLY -- THIS WAS A
13 -- WHAT I DID, I PUT IN A -- I QUERIED GOOGLE ON CROSS
14 RACIAL IDENTIFICATION. SO I GUESS IT'S PRETTY PREVALENT IN
15 TERMS OF ISSUES THAT HAVE COME UP. AND THIS WAS A -- THIS
16 WAS A PROPOSAL THAT WAS ADOPTED BY THE ABA, THE CRIMINAL
17 JUSTICE SECTION OF THE AMERICAN BAR ASSOCIATION, COMMITTEE
18 ON RULES OF CRIMINAL JUSTICE EVIDENCE AND POLICE PRACTICES.

19 AND I'M GOING TO PRINT THIS OFF FOR THE COURT, BUT IT'S
20 -- IT'S INTENDED AS A SUPPLEMENT TO THE IDENTIFICATION
21 CHARGE THAT YOU WOULD NORMALLY GIVE IN A CASE BECAUSE WE DO
22 HAVE AN ISSUE HERE BETWEEN A HISPANIC VICTIM AND AFRICAN
23 AMERICAN DEFENDANTS. AND I THINK THIS CAME OUT IN TERMS OF
24 WHEN THE DOCTOR TESTIFIED, MR. MOORMAN DID A GREAT JOB OF
25 BRINGING OUT THE CROSS RACIAL PROBLEMS WE WERE HEARING OF

1 THAT.

2 AND I THINK THAT -- THAT'S WHY I THINK THAT -- AND TOO,
3 AND I'LL LET YOU READ THE ARTICLE, BUT IT TALKS ABOUT OTHER
4 JURISDICTIONS THAT HAVE -- THAT HAVE ALSO SPOKEN OF THIS
5 INCLUDING THE DC CIRCUIT, CALIFORNIA, UTAH, NEW JERSEY, AND,
6 OF COURSE, IT ALSO HAS -- IT POINTS TO AN ARTICLE. AND I'M
7 SURE THE DOCTOR MAY HAVE READ SOME OF THIS INFORMATION. BUT
8 I THINK MR. MOORMAN KIND OF BROUGHT -- FLESHED THAT OUT IN
9 TERMS OF THE CROSS ---

10 THE COURT: OKAY. WELL, DO THIS FOR ME, SCOTT.

11 MR. ROBINSON: YES, SIR.

12 THE COURT: YOU GOING TO YOUR OFFICE WHEN YOU LEAVE
13 HERE?

14 MR. ROBINSON: YEAH, I'M GOING TO PRINT THIS OFF FOR
15 YOUR HONOR.

16 THE COURT: ALL RIGHT. WELL, DO -- WHY DON'T YOU EMAIL
17 IT TO ME, AND I CAN TAKE A LOOK AT IT TONIGHT.

18 MR. ROBINSON: YES, SIR.

19 MR. MARCHANT: JUDGE, IF HE WOULDN'T MIND FORWARDING IT
20 ON TO ME AS WELL.

21 THE COURT: ALL RIGHT. EMAIL IT THEN TO ME AND ALSO
22 GIVE HIM YOUR EMAIL ADDRESS.

23 MR. ROBINSON: I HAVE LUCAS' EMAIL ADDRESS, AND I HAVE
24 ANDY'S.

25 MR. MARCHANT: THANK YOU, JUDGE.

1 THE COURT: OKAY. SEE YOU BACK IN THE MORNING.

2 (WHEREUPON COURT WAS IN RECESS AT 3:32 PM)

1 THURSDAY, JANUARY 15, 2009:

2 THE COURT: ALL RIGHT. MR. MARCHANT, YOU WAIVE OPENING
3 ARGUMENT?

4 MR. MARCHANT: YES, YOUR HONOR.

5 THE COURT: YOU READY TO TALK TO THE JURY?

6 MR. MOORMAN: YES, SIR, YOUR HONOR.

7 MR. MARCHANT: HAVE YOU REVIEWED THIS ---

8 THE COURT: OH, I'M SORRY. YES, I HAVE. MR. ROBINSON,
9 I HAVE STUDIED THE INSTRUCTIONS ADOPTED BY THE ABA
10 COMMITTEE. AND I'M TROUBLED BY SOME PARTS OF IT. IT SEEMS
11 TO ME PARTS OF IT COULD BE CONSTRUED AS BEING A CHARGE ON
12 FACTS.

13 SO WHAT I HAVE DONE, I HAVE ADOPTED A PORTION OF IT.
14 AND, MARY, WOULD YOU RUN A COPY OF THIS AND GIVE EACH LAWYER
15 A COPY?

16 MADAME CLERK: YES, SIR.

17 (PAUSE)

18 MR. ROBINSON: I LIKE THAT, YOUR HONOR. THANK YOU FOR
19 CONSIDERING THAT.

20 THE COURT: ALL RIGHT. SO THIS IS WHAT I WILL CHARGE.
21 ALL RIGHT. ANYTHING NOW BEFORE I BRING THE JURY?

22 MR. MOORMAN: AND JUST -- THE ORDER OF CLOSINGS, YOUR
23 HONOR, I GUESS I WOULD GO FIRST OR -- IT DOESN'T MATTER, BUT
24 ...

25 THE COURT: WELL, THAT'S THE WAY WE'VE BEEN DOING IT

CLOSING ARGUMENTS - MR. MOORMAN

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1 THROUGH THE TRIAL.

2 MR. MOORMAN: OKAY. THAT'S FINE WITH ME.

3 THE COURT: SO IT'LL BE YOU FIRST, THEN MR. ROBINSON
4 AND THEN MR. MARCHANT.

5 MR. MOORMAN: YES, SIR.

6 THE COURT: OKAY. BRING OUR JURY.

7 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:23 AM)

8 THE COURT: GOOD MORNING. ALL RIGHT, MR. MOORMAN.

9 MR. MOORMAN: MAY IT PLEASE THE COURT, MR. ROBINSON,
10 MR. MARCHANT? GOOD MORNING, LADIES AND GENTLEMEN. WE'VE
11 COME TO THE END OF THE TRIAL. YOU'VE GOT THE EVIDENCE IN
12 FRONT OF YOU THAT YOU'RE GOING TO CONSIDER.

13 I WANT TO TALK TO YOU VERY BRIEFLY ABOUT YOUR
14 DELIBERATIONS. THEN I WANT TO TALK TO YOU ABOUT THE CASE
15 AND THE EVIDENCE THE STATE PUT UP BEFORE YOU.

16 FIRST, YOUR DELIBERATIONS. THE JUDGE IS GOING TO TALK
17 TO YOU OR INSTRUCT YOU ON THE LAW ABOUT YOUR DELIBERATIONS.
18 SPECIFICALLY THE JUDGE IS GOING TO TELL YOU THAT ANY VERDICT
19 YOU REACH MUST BE UNANIMOUS. ALL TWELVE OF YOU MUST AGREE
20 ON ANY VERDICT.

21 NOW IMPLICIT IN THAT IS THAT EACH PERSON ON THIS JURY
22 HAS A VOICE. EACH PERSON'S VOICE IS EVERY BIT AS IMPORTANT
23 AS THE OTHER PERSON'S VOICE. SO IN KEEPING WITH THAT, I
24 HAVE AN IDEA OR JUST A SUGGESTION FOR YOU TO THINK ABOUT.
25 WHEN YOU GO INTO THE JURY ROOM AND YOU BEGIN TO DELIBERATE

CLOSING ARGUMENTS - MR. MOORMAN

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1 LET EACH PERSON TALK ONE TIME BEFORE ANY PERSON TALKS TWICE.
2 LET EACH PERSON TALK TWICE BEFORE ANY PERSON TALKS THREE
3 TIMES JUST SO EVERY PERSON HAS A VOICE, HAS AN EQUAL -- HAS
4 AN EQUAL VOICE AND A CHANCE TO PARTICIPATE. JUST AN IDEA.
5 ALL RIGHT.

6 LET'S TALK ABOUT THIS CASE. THERE'S A LOT OF
7 CONFLICTING TESTIMONY. THERE'S A LOT OF EVIDENCE THAT
8 DOESN'T -- THAT DOESN'T MAKE SENSE. BUT WHAT I CAN SAY OR
9 WHAT I WOULD ARGUE TO YOU IS THAT WHAT IS CLEAR, LADIES AND
10 GENTLEMEN, IS THAT THE STATE DOES NOT HAVE A CLUE AS TO WHAT
11 REALLY HAPPENED OUT THERE THAT NIGHT. THE STATE DOES NOT
12 HAVE A CLUE.

13 LET ME EXPLAIN WHY I SAY THAT. YOU HEARD THE
14 INDICTMENTS THAT THE -- THAT THE COURT READ TO YOU AT THE
15 BEGINNING OF THE CASE. ONE OF THE INDICTMENTS IS
16 CONSPIRACY. AND IN THAT INDICTMENT IT SAYS THAT TIMOTHY
17 WRIGHT -- IT SAYS THAT KEN WORKMAN AND O'SHAUN ROBINSON
18 COMBINED TO PERFORM THIS ILLEGAL ACT, ARMED ROBBERY. THREE
19 PEOPLE DID THAT.

20 IN MR. MARCHANT'S OPENING STATEMENT HE SAID THAT HE WAS
21 GOING TO CALL TWO EYEWITNESSES WHO WERE THE KEYS TO PROVING
22 WHAT HAPPENED, TWO EYEWITNESSES. HE ALSO SAID IN HIS
23 OPENING STATEMENT THAT THERE WERE THREE PEOPLE OUT THERE.
24 THERE WAS TIMOTHY WRIGHT, THERE WAS KEN WORKMAN, THERE WAS
25 MY CLIENT, O'SHAUN ROBINSON.

CLOSING ARGUMENTS - MR. MOORMAN

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1 | TO PROVE THAT THERE WERE THREE PEOPLE OUT THERE WHO
2 COMMITTED THIS ROBBERY THE FIRST EYEWITNESS THE STATE CALLS
3 IS MR. SERGIO ESPINOZA. AND HE TESTIFIES THERE WEREN'T
4 THREE PEOPLE AROUND THE CAR, THERE WERE TWO. HE SAYS THAT
5 KEN WORKMAN AND O'SHAUN ROBINSON WERE AROUND THE CAR.

6 HE NEVER IDENTIFIES, EVER IDENTIFIES TIMOTHY WRIGHT AS
7 BEING A PART OF THIS AT ALL. HE NEVER IDENTIFIES THE ONLY
8 PERSON EVERYBODY IN THIS COURTROOM KNOWS WAS THERE THAT
9 NIGHT, THE ONLY PERSON WHO'S PLED GUILTY TO BEING THERE TO
10 ARMED ROBBERY FOR WHAT HE DID, AND THE ONLY PERSON WHO'S
11 SERVING A PRISON SENTENCE FOR WHAT HAPPENED THAT NIGHT. MR.
12 ESPINOZA SAYS ONLY TWO PEOPLE, NOT THREE.

13 WHEN HE DESCRIBES WHAT HAPPENS HE SAYS THAT MR. KEN
14 WORKMAN, WHO IS THE GUY WITH THE GUN AND HAS THE RED HOODIE
15 OVER HIS HEAD, PUTS THE HOOD OVER HIS HEAD AS HE'S WALKING
16 BACK AND FORTH TO CONCEAL HIS IDENTITY. THEN HE SAYS AS KEN
17 WORKMAN APPROACHES HE TAKES OFF HIS HOOD.

18 NOW ASK YOURSELF, WHY WOULD HE CONCEAL HIS IDENTITY
19 WHEN HE'S CASING MR. ESPINOZA AND THEN TAKE HIS HOOD OFF AND
20 REVEAL WHO HE IS WHEN HE ACTUALLY WANTS TO COMMIT THE ARMED
21 ROBBERY? DOESN'T MAKE SENSE.

22 IF YOU'LL REMEMBER TOO, MR. ESPINOZA TALKS ABOUT HOW
23 WHEN -- WHEN THEY GOT TO THE CAR OR WHEN HE WAS AT THE CAR,
24 THE JEEP, KEN WORKMAN WAS THE GUY WITH THE GUN. AND HE SAYS
25 O'SHAUN WAS THE GUY IN THE BACK WHO WAS STANDING SORT OF

CLOSING ARGUMENTS - MR. MOORMAN

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1 BEHIND THE CAR, SO HE COULD ONLY SEE HALF OF HIM. SO HE
2 COULD ONLY SEE HALF OF HIM.

3 THEN WE HAVE A LITTLE CONFLICTING TESTIMONY ON DIRECT.
4 AND BY THE WAY, LADIES AND GENTLEMEN, THERE'S TWELVE OF YOU,
5 THERE'S ONE OF ME. YOU ARE WELCOME -- GO WITH YOUR
6 RECOLLECTION. I'M JUST TELLING YOU WHAT MINE IS. AND IF
7 YOU HAVE ANY QUESTIONS, YOU'RE WELCOME TO -- TO LISTEN TO
8 THE TESTIMONY.

9 BUT ON DIRECT MR. ESPINOZA SAID HE WAS IN HIS CAR
10 GETTING HIS GROCERIES, HE LOOKED UP AND HE SAW A GENTLEMAN
11 WITH A RED HOOD WALKING BACK AND FORTH, THOUGHT THAT WAS
12 KIND OF FUNNY, WENT BACK TO THE GROCERIES. AND THEN ALL OF
13 A SUDDEN THE FELLOW WITH THE RED HOOD IS ON HIM AT THE JEEP
14 DOOR.

15 ON CROSS EXAMINATION HE BACK-PEDDLED. HE SAID THAT
16 REALLY WASN'T WHAT HAPPENED. HE SAID THAT THE FELLOW WITH
17 THE RED HOOD POINTED THE GUN AT HIM FROM THE SIDEWALK, THEN
18 PULLED OFF HIS HOOD AND WALKED UP EXPOSING HIS FACE. ALL
19 RIGHT.

20 THEN HE SAYS THAT THE GUY WITH THE RED HOOD, KEN
21 WORKMAN, SAYS, GIVE ME THE MONEY. THEN HE SAYS MY GUY
22 GRABBED THE GUN, AND KEN HIT HIM, AND THEN THEY TOOK OFF.
23 THAT'S WHAT HE SAID.

24 TWO GUYS -- TWO GUYS TOOK OFF FROM THE CAR, FROM THE
25 JEEP TO THE GETAWAY CAR WITH ONLY ONE OTHER FELLOW IN THE

CLOSING ARGUMENTS - MR. MOORMAN

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1 GETAWAY CAR. 'THREE GUYS TOTAL. TWO AROUND THE CAR, AROUND
2 THE JEEP, ONE IN THE GETAWAY CAR, AND ALL TOTAL THREE IN THE
3 GETAWAY CAR. THAT'S WHAT HE SAYS, THREE TOTAL. THREE
4 TOTAL.

5 WE MOVE FROM MR. ESPINOZA'S TESTIMONY TO TIMOTHY WRIGHT
6 OR ALSO KNOWN AS LEE LEE'S TESTIMONY. AND BEFORE I GET TO
7 LEE LEE'S TESTIMONY MR. ESPINOZA, HE'S A VICTIM OF A CRIME.
8 UNDERSTANDABLY HE WANTS SOMEBODY TO PAY. WE ALL WANT
9 SOMEBODY TO PAY. IS HE LYING? I'M NOT SAYING THAT HE'S
10 LYING. WHAT I'M SAYING IS THAT HE WAS A VICTIM OF A
11 TRAUMATIC EVENT.

12 HE LEAVES -- FOR THREE WEEKS HE DOESN'T HEAR ANYTHING
13 FROM THE POLICE. NO IDEA ABOUT WHETHER OR NOT THERE'S ANY
14 LEADS. NO IDEA ABOUT WHAT STEPS THE POLICE ARE TAKING TO
15 FIND THESE PEOPLE WHO DID THIS TO HIM. NO PHOTO LINEUPS AS
16 TO WHO MIGHT HAVE DONE THIS. HE'S GOT TO BE WONDERING,
17 WHAT'S GOING ON? WHERE ARE THESE PEOPLE? WHY HAVEN'T THEY
18 BEEN CAUGHT?

19 HE SEES THE NEWS BROADCAST. HE SEES THE PICTURES OF
20 OUR CLIENTS ON THE NEWS. AND THERE YOU GO. AND YOU HEARD
21 HOW THAT IS SO POSSIBLE WITH DR. VAN WALLEN'S [SIC]
22 TESTIMONY. AND YOU ALSO HEARD FROM INVESTIGATOR DAVID
23 WEINER WHO SAID THAT THE REASON WHY HE DIDN'T SHOW OR NOBODY
24 IN LAW ENFORCEMENT SHOWED MR. ESPINOZA A PHOTO LINEUP AFTER
25 THE NEWS WAS THAT IT DIDN'T MATTER. ONCE HE SAW THOSE

CLOSING ARGUMENTS - MR. MOORMAN

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1 PICTURES ON THE NEWS THEY -- THAT VICTIM, MR. ESPINOZA, WAS
2 GOING TO PICK OUT O'SHAUN ROBINSON AND KEN WORKMAN NO MATTER
3 WHAT. DIDN'T MATTER.

4 AND SO I WOULD SUBMIT TO YOU THAT, QUOTE,
5 IDENTIFICATION FROM THE STAND DOESN'T MEAN A HILL OF BEANS.
6 ONCE HE SAW THAT NEWS BROADCAST, THAT WAS IT. HE WAS GOING
7 TO PICK THEM OUT NO MATTER WHAT. AND THAT'S EVEN WHY THE
8 LAW ENFORCEMENT WOULDN'T SHOW HIM A PHOTO LINEUP.

9 SO WE GO FROM MR. ESPINOZA, TWO GUYS AROUND THE CAR,
10 AROUND THE JEEP, ONE GUY IN THE GETAWAY CAR, THREE GUYS
11 TOTAL. TOTALLY DIFFERENT THEORY THAN WHAT MR. MARCHANT TOLD
12 YOU. TOTALLY DIFFERENT THEORY. WE HAVE MR. ESPINOZA.

13 WE MOVE TO LEE LEE, TIMOTHY WRIGHT. OH, BY THE WAY,
14 MR. ESPINOZA SAYS THERE WAS ONLY ONE GUY INVOLVED. LEE LEE
15 SAYS IN AN EARLIER STATEMENT ON CROSS EXAMINATION, HE SAID
16 THERE WERE TWO. AND THEN IN DIRECT HE SAID THERE WAS ONE.

17 BUT THIS IS -- THIS IS LEE LEE'S STORY. THERE WEREN'T
18 TWO PEOPLE THERE. THERE WERE THREE PEOPLE AROUND THE JEEP.
19 THERE WAS KEN WORKMAN, O'SHAUN ROBINSON AND ME. HE SAYS
20 THAT KEN WORKMAN WAS ON THE PASSENGER'S SIDE. HE SAYS THAT
21 HE WAS ON THE DRIVER'S SIDE BEHIND THE CAR. AND HE SAYS
22 O'SHAUN ROBINSON HAD THE GUN. HE SAYS THAT I WAS JUST
23 STANDING THERE WITH A LOOKOUT, KEN WAS JUST STANDING THERE
24 AS A WORKOUT -- WAS A LOOKOUT. CONVENIENTLY NEITHER HE NOR
25 KEN EVER HAD THE GUN. SO THAT'S -- THAT'S HIS STORY.

CLOSING ARGUMENTS - MR. MOORMAN

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1 HE SAYS THERE WAS A FOURTH GUY IN THE GETAWAY CAR,
2 MARCUS. HE SAYS THAT AFTER THE ROBBERY ALL THREE GUYS,
3 TIMOTHY WRIGHT, LEE LEE, O'SHAUN AND KEN ALL THREE GUYS RAN
4 TO THE GETAWAY CAR, GOT IN IT WITH THE FOURTH GUY, THEY
5 DROVE OFF. SO HIS STORY IS THREE GUYS AROUND THE JEEP, ONE
6 GUY IN THE GETAWAY CAR, FOUR GUYS TOTAL.

7 BY THE WAY, THERE'S A MARCUS OUT THERE WHO
8 PARTICIPATED. THEY DON'T REALLY KNOW A THING ABOUT MARCUS.
9 THEY DON'T HAVE A CLUE ABOUT MARCUS OTHER THAN THAT HIS NAME
10 IS MARCUS.

11 THIS -- THESE CONTRADICTIONS SHOW THAT THE STATE REALLY
12 DOESN'T KNOW WHAT HAPPENED OUT THERE. THEY DON'T KNOW HOW
13 MANY GUYS WERE AROUND THE CAR. WAS IT AROUND -- I KEEP
14 SAYING CAR. I MEAN THE JEEP.

15 WAS IT TWO GUYS AROUND THE JEEP? WAS IT THREE GUYS
16 AROUND THE JEEP? HOW MANY GUYS RAN FROM THE JEEP TO THE
17 CAR? DID TWO GUYS RUN FROM THE JEEP TO THE CAR? OR THREE
18 GUYS RUN FROM THE JEEP TO THE CAR? WERE THERE THREE GUYS IN
19 THE CAR? WERE THERE FOUR GUYS IN THE GETAWAY CAR?

20 TO SORT OF ILLUSTRATE SORT OF THIS -- THIS
21 INCONSISTENCY AND HOW DIFFICULT THIS IS TO RECONCILE, THINK
22 ABOUT THIS, THINK ABOUT THIS. LET'S SAY AFTER THIS TRIAL,
23 JUST HYPOTHETICAL, LET'S SAY THAT -- IMAGINE THAT MR.
24 ESPINOZA -- THAT SERGIO AND THAT LEE LEE AND THAT MR.
25 MARCHANT GO OUT TO EAT LUNCH AND THEY'RE TALKING ABOUT THE

CLOSING ARGUMENTS - MR. MOORMAN

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1 TRIAL AND THE TESTIMONY.

2 AND MR. ESPINOZA -- SERGIO SAYS TO LEE LEE, LEE LEE,
3 YOU WERE WRONG ABOUT SO MANY THINGS. LEE LEE, YOU SAID
4 THERE WERE THREE PEOPLE AROUND MY JEEP. YOU WERE WRONG.
5 THERE WERE ONLY TWO. LEE LEE, YOU SAID THAT O'SHAUN
6 ROBINSON WAS THE GUY WITH THE GUN ON THE PASSENGER'S SIDE.
7 YOU WERE WRONG. IT WAS KEN WORKMAN.

8 SERGIO SAID, LEE LEE, YOU WERE WRONG WHEN YOU SAID
9 THREE GUYS RAN FROM THE JEEP TO THE CAR, ONLY TWO GUYS RAN
10 FROM THE JEEP TO THE CAR. LEE LEE, YOU WERE WRONG WHEN YOU
11 SAID THAT THERE WERE FOUR PEOPLE IN THE GETAWAY CAR, THERE
12 WERE ONLY THREE. AND, LEE LEE, WHEN YOU SAID YOU WERE
13 THERE, YOU WERE WRONG, YOU WEREN'T THERE.

14 AND, LEE LEE, WHEN YOU PLED GUILTY AND ADMITTED UNDER
15 OATH THAT YOU WERE PART OF THIS ARMED ROBBERY, YOU WERE
16 WRONG 'CAUSE YOU WEREN'T PART OF THE ARMED ROBBERY. AND,
17 LEE LEE, WHEN YOU'RE SERVING A PRISON SENTENCE, YOU'RE WRONG
18 FOR DOING THAT 'CAUSE YOU'RE SERVING A SENTENCE FOR A CRIME
19 YOU DIDN'T COMMIT. THAT'S WHAT SERGIO SAYS TO LEE LEE.

20 AND THEN LEE LEE SAYS TO SERGIO, OH, SERGIO, NO, NO,
21 YOU WERE WRONG. THERE WEREN'T TWO PEOPLE AROUND THE JEEP,
22 THERE WERE THREE PEOPLE AROUND THE JEEP. LEE LEE, OH, YOU
23 WERE -- SERGIO, YOU WERE WRONG. KEN WORKMAN DIDN'T HAVE THE
24 GUN, O'SHAUN HAD THE GUN. SERGIO, YOU WERE WRONG WHEN YOU
25 SAID I WASN'T THERE, I WAS THERE.

CLOSING ARGUMENTS - MR. MOORMAN

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1 SERGIO, YOU WERE WRONG WHEN YOU SAID YOU ONLY SAW TWO
2 PEOPLE RUNNING FROM THE JEEP TO THE CAR, THERE WERE REALLY
3 THREE PEOPLE RUNNING FROM THE JEEP TO THE CAR. SERGIO, YOU
4 WERE WRONG WHEN YOU SAID THERE WERE ONLY THREE PEOPLE IN THE
5 CAR, THERE WERE FOUR PEOPLE IN THE CAR. ALL RIGHT.

6 THEN MR. MARCHANT PIPES UP AND SAYS, NO, NO, NO,
7 SERGIO. NO, NO, NO, LEE LEE. YOU'RE BOTH WRONG. SERGIO,
8 YOU'RE WRONG WHEN YOU SAID THAT THERE WERE TWO PEOPLE AROUND
9 THE JEEP, THERE WERE THREE. AND, LEE LEE, YOU WERE WRONG
10 WHEN YOU SAID THAT O'SHAUN ROBINSON HAD THE GUN, IT WAS
11 REALLY KEN WORKMAN. AND, SERGIO, YOU WERE WRONG WHEN YOU
12 SAID THAT LEE LEE WASN'T THERE BECAUSE HE REALLY WAS.

13 IT IS IRRECONCILABLE. THERE IS NO WAY TO REALLY KNOW
14 WHAT HAPPENED. LET ME TRY. LET ME GUESS. LET ME MAKE A
15 GUESS. AND THIS, I BELIEVE, IS BORNE OUT OF THE EVIDENCE.

16 LEE LEE TESTIFIED THAT HE WAS IN CUSTODY WHEN HE MET
17 WITH LAW ENFORCEMENT AND GAVE HIS STATEMENT ABOUT THIS CASE.
18 HE'S IN CUSTODY. HE KNOWS HE'S IN TROUBLE. HE KNOWS IT'S A
19 MATTER OF TIME BEFORE THE HAMMER FALLS. HE KNOWS THAT THERE
20 WERE TWO PEOPLE WHO WERE INVOLVED IN THIS ROBBERY AROUND
21 THAT JEEP. HE KNOWS IT WAS HIM, LEE LEE. AND WE KNOW IT
22 TOO. EVERYBODY KNOWS IT BUT SERGIO.

23 LEE LEE WAS INVOLVED. THE OTHER GUY -- LEE LEE --
24 WE'LL GET TO THE OTHER GUY IN A SECOND. LEE LEE'S INVOLVED.
25 AND HE KNOWS THAT HE WAS THE GUY ON THE DRIVER'S SIDE. HE

CLOSING ARGUMENTS - MR. MOORMAN

196

1 KNOWS THAT HE'S THE GUY WHO HAD THE GUN. AND HE REALIZES
2 THE HAMMER'S COMING DOWN. I'VE GOT TO PUT SOME DISTANCE
3 BETWEEN THE GUN AND ME. I CANNOT HAVE THAT GUN IN MY HAND.
4 SO LEE LEE HAS TO PUT SOMEBODY ELSE THERE WITH THE GUN.

5 IF HE DOESN'T HE'S THE ONE WITH THE GUN. AND THE GUY HE
6 CHOOSES IS THE GUY WHO WAS NOT THERE, O'SHAUN ROBINSON.

7 HE GIVES THIS STORY TO THE POLICE. THE POLICE TAKE IT
8 AND RUN WITH IT. RATHER THAN GET THE VICTIM IN, SHOW HIM A
9 PHOTO LINEUP JUST TO MAKE SURE, JUST TO CORROBORATE, THEY GO
10 BOTH GUNS ABLAZING, GET A WARRANT FOR O'SHAUN ROBINSON.

11 THE MEDIA GETS AHOLD OF HIS PICTURE, PUTS IT ON THE
12 NEWS THREE WEEKS LATER. THREE WEEKS LATER SERGIO,
13 APPREHENSIVE, WONDERING WHAT'S GOING ON WITH THE CASE,
14 WONDERING WHY WE DON'T HAVE A SUSPECT, WONDERING IF THOSE
15 GUYS ARE STILL OUT THERE, SEES THOSE PICTURES. HE THEN GOES
16 ON THE INTERNET, CONTINUES TO LOOK AT THOSE PICTURES,
17 CONTINUES TO SAY, HUM.

18 DR. VAN WALLENDAL TALKED ABOUT WHAT HAPPENS NEXT. I
19 THINK THOSE ARE THE GUYS, THOSE ARE THE GUYS, THOSE ARE THE
20 GUYS, YEP, THOSE ARE THE GUYS. CALLS THE POLICE, THESE ARE
21 THE GUYS, GIVES A STATEMENT, AND HERE WE ARE. LAW
22 ENFORCEMENT RUNS WITH LEE LEE'S VERSION, THREE GUYS AROUND
23 THE JEEP, FOUR GUYS IN THE CAR. AND HERE WE GO.

24 NOW, LADIES AND GENTLEMEN, I HAVE THE LUXURY OF
25 GUESSING. YOU DON'T. AS THE JURY YOU MUST BE SATISFIED OF

CLOSING ARGUMENTS - MR. ROBINSON

197

1 O'SHAUN ROBINSON'S GUILT BEYOND A REASONABLE DOUBT. YOU'VE
2 GOT TO BE FIRMLY CONVINCED. YOU CANNOT GUESS.

3 AND SO, LADIES AND GENTLEMEN, WHAT I WOULD SUBMIT TO
4 YOU IS THE STATE DOESN'T KNOW WHAT HAPPENED OUT THERE. THE
5 STATE DOESN'T EVEN KNOW HOW MANY PEOPLE WERE AROUND THAT
6 JEEP. THE STATE DOESN'T KNOW WHO WAS AROUND THAT JEEP. AND
7 BECAUSE THE STATE DOESN'T KNOW, YOU CAN'T KNOW. AND THAT
8 MEANS YOU'VE GOT TO FIND O'SHAUN ROBINSON NOT GUILTY. THANK
9 YOU.

10 THE COURT: MR. ROBINSON.

11 MR. ROBINSON: MAY IT PLEASE THE COURT, MR. MARCHANT,
12 MR. MOORMAN? I KNOW YOU SAID GOOD MORNING A SECOND AGO. SO
13 I'M NOT GOING TO SAY GOOD MORNING AGAIN. MY NAME IS SCOTT
14 ROBINSON, AGAIN. AND I REPRESENT KEN WORKMAN, WHO'S SITTING
15 TO MY RIGHT.

16 I TOLD YOU IN THE BEGINNING OF THE CASE THAT THIS CASE
17 IS ABOUT THE NOTION OF IDENTIFICATION. REMEMBER I TOLD YOU
18 THAT IT'S KIND OF AN INTERESTING CASE BECAUSE WE'RE DEALING
19 WITH IDENTIFICATION? I THINK Y'ALL REMEMBER THAT BECAUSE IT
20 WAS YESTERDAY. AND THAT'S WHAT THIS CASE IS ABOUT.

21 AND I SHOWED YOU A PICTURE OF A LITTLE PERSON, THIS
22 LITTLE STICK PERSON THAT I HAVE HERE. AND Y'ALL LOOK AT IT.
23 IT LOOKS LIKE THE SAME PERSON THAT YOU SAW YESTERDAY, BUT
24 IT'S BEEN CHANGED. THERE'S SOMETHING DIFFERENT ABOUT IT.
25 WHAT'S DIFFERENT ABOUT IT IS THIS LITTLE GUY HAS NOW GOT A

CLOSING ARGUMENTS - MR. ROBINSON

198

1 NOSE, SOMETHING A LITTLE DIFFERENT. SO IT'S DIFFERENT, A
2 LITTLE BIT DIFFERENT.

3 YOU TAKE THAT, TAKE THIS SMALL EXAMPLE AND TAKE THREE
4 WEEKS DURING A BUSY CHRISTMAS SEASON AND YOU FIGURE OUT -- I
5 THINK MR. ESPINOZA SAID THERE WERE HUNDREDS OF PEOPLE THAT
6 HE WOULD SEE AT THE MALL. Y'ALL MAY HAVE BEEN TO HAYWOOD
7 MALL DURING CHRISTMAS TIME. IT'S KIND OF A VERY BUSY PLACE
8 DURING CHRISTMAS. THIS WAS IN THE PERIOD FROM 12/11 TO
9 AROUND -- ALMOST THE END OF -- END OF DECEMBER, 12/30,
10 12/31.

11 I WANT TO DISPENSE WITH ONE THING FIRST. MR. MOORMAN
12 DID AN EXCELLENT JOB IN THE CLOSING, BUT I TEND TO MAKE
13 THINGS A LITTLE QUICKER. THIS LEE LEE PERSON, THIS MR.
14 WRIGHT, THINK ABOUT WHAT HE HAS AT STAKE. HE HAS GOT A LOT
15 AT STAKE HERE.

16 YOU LISTENED TO THE OFFICER TESTIFY YESTERDAY. WHAT
17 DID HE SAY? ONE BIG WORD THAT WAS VERY INTERESTING,
18 COOPERATION. LEE LEE WAS OR MR. WRIGHT WAS COOPERATIVE.
19 AND WE ALL KNOW WHAT COOPERATIVE MEANS, BUT WHAT DOES THAT
20 MEAN? THINK ABOUT YOUR OWN EXPERIENCES. COOPERATE.

21 ANOTHER THING THAT CAME UP IS THAT THE CHARGES, OTHER
22 CHARGES AGAINST HIM WERE DISMISSED. COOPERATING, CHARGES
23 DISMISSED. AND THEN HE GETS ON THE STAND AND SAYS, I'M JUST
24 DOING THIS 'CAUSE I'M TELLING THE TRUTH.

25 SO THINK ABOUT THAT WHEN YOU THINK ABOUT LEE LEE'S

CLOSING ARGUMENTS - MR. ROBINSON

199

1 TESTIMONY BECAUSE IT BARES NO CREDIBILITY WHEN YOU'VE 'GOT
2 TWO VERY LARGE -- ONE VERY LARGE ULTERIOR MOTIVE. I CAN GET
3 MY TIME CUT. I CAN COOPERATE. AND MAYBE, JUST MAYBE
4 THEY'RE GOING TO DO SOMETHING GOOD FOR ME. THAT'S WHY.

5 SO WHEN THE SOLICITOR STANDS UP HERE IN A FEW MOMENTS
6 IN HIS CLOSING AND SAYS HE JUST CAME UP ON THE STAND, THIS
7 MR. WRIGHT, AND JUST KIND OF BARED HIS SOUL FOR THE SAKE OF
8 TRUTH, YOU THINK ABOUT WHAT THE OFFICER SAID, COOPERATION,
9 CORROBORATING.

10 NOW WE DISCOVERED ON CROSS EXAMINATION THAT HE HAD
11 CHARGES DISMISSED AGAINST HIM. AND WE DON'T KNOW WHAT THE
12 CHARGES WERE OR HOW MUCH TIME IT CARRIED. WE HAVE NO IDEA.
13 BUT JUST THINK TO YOURSELF. THINK ABOUT THE -- SOMEONE
14 TELLING YOU I'M DOING THIS BECAUSE I'M TELLING THE TRUTH AND
15 I WANT TO JUST BARE MY SOUL. AND THINK ABOUT THAT. THINK
16 ABOUT THE REASONS FOR IT.

17 PEOPLE HAVE A LOT OF AGENDAS. THEY HAVE REASONS FOR
18 DOING THINGS. DO YOU -- DO YOU BELIEVE THAT MR. WRIGHT HAS
19 NO ULTERIOR MOTIVE FOR THIS WHEN HE SAYS THAT HE HAD CHARGES
20 DISMISSED OR THE CHARGES WERE DISMISSED?

21 WELL, LET'S TURN -- I'VE DISPENSED WITH MR. WRIGHT
22 BECAUSE I THINK THAT HE HAD NO CREDIBILITY. HE HAS NO
23 CREDIBILITY. ANYTHING THAT HE SAYS ON THAT STAND IS NOT
24 BELIEVABLE BECAUSE HE HAS SELF-INTEREST OR HE HAD SELF-
25 INTEREST.

CLOSING ARGUMENTS - MR. ROBINSON

200

1 WELL, LET'S TURN TO THE THEME OR THE IDEA OR THE WHOLE
2 ISSUE IN THIS CASE OF IDENTIFICATION. AND THAT'S MR.
3 ESPINOZA. NO QUESTION HE'S THE VICTIM OF A CRIME. AS MR.
4 MOORMAN SAID, THERE'S NO QUESTION THAT HE WAS THE VICTIM OF
5 A CRIME. BUT WE HAVE THE ISSUE OF IDENTIFICATION WITH MR.
6 ESPINOZA.

7 LET ME GO THROUGH THE FACTORS THAT YOU SHOULD PAY
8 ATTENTION TO WHEN YOU DELIBERATE BACK THERE. THESE ARE JUST
9 THINGS. AND ALL I WOULD ASK YOU TO DO IS USE YOUR COMMON
10 SENSE AND AS I SAID IN THE BEGINNING YESTERDAY TO USE YOUR
11 -- DON'T SHUT YOUR COMMON SENSE AT THE DOOR. BRING IT TO
12 THIS CASE, AND THINK ABOUT IT.

13 LET'S TALK ABOUT THE TIME. HE SAID IT SEEMED LIKE A
14 LIFETIME, BUT HE SAID THAT WE PROBABLY -- WE PROBABLY CAN --
15 IF YOU LISTENED TO HIS TESTIMONY, PROBABLY THREE TO FIVE
16 MINUTES MAYBE IS WHAT HE SAID HAPPENED WHEN HE WAS GETTING
17 GROCERIES AND HE'D GONE TO TACO BELL AROUND TWO IN THE
18 MORNING. VERY SHORT PERIOD OF TIME.

19 SECOND, THERE WERE NO CORROBORATING WITNESSES AT THE
20 SCENE THAT CAN IDENTIFY ANYONE. THIRD, HE COULDN'T PICK OUT
21 ANY DISTINGUISHING CHARACTERISTICS OF THESE FELLOWS,
22 ANYTHING THAT REALLY STOOD OUT TO HIM, WHAT THESE GUYS
23 LOOKED LIKE SUCH AS A -- SOME SCARS, ANYTHING THAT THEY
24 COULD POINT TO THAT HE COULD POINT OUT THAT WAS
25 DISTINGUISHING.

CLOSING ARGUMENTS - MR. ROBINSON

201

1 AND FINALLY YOU HAVE ALMOST THREE WEEKS WORTH OF TIME
2 THAT ELAPSED BETWEEN THE TIME THIS SMALL PERIOD OF TWO OR
3 THREE MINUTES OR UP TO FIVE MINUTES HAPPENED VERSUS THREE
4 WEEKS LATER WHEN HE SEES SOMETHING ON THE NEWS WHEN HE'S HAD
5 ALL THESE PEOPLE THAT HE'S SEEN, ALL THESE PEOPLE THAT HE'S
6 HAD CONTACT WITH THAT HE'S SEEN AND THERE'S NO
7 DISTINGUISHING CHARACTERISTICS.

8 AND THINK TO YOURSELVES ABOUT YOUR OWN EXPERIENCES.
9 CAN YOU REMEMBER THINGS LIKE THAT IN AN INSTANT WHEN THERE'S
10 NO DISTINGUISHING CHARACTERISTICS?

11 AND I THINK THE DOCTOR MADE A VERY INTERESTING POINT
12 YESTERDAY ABOUT THIS CROSS RACIAL IDENTIFICATION. THOSE ARE
13 VERY INTERESTING POINTS SHE MADE. BUT THINK ABOUT THAT.

14 AND FINALLY THERE WERE NO PROCEDURES IN PLACE THAT TOOK
15 PLACE IN THIS CASE. MR. MOORMAN MENTIONED IT IN HIS
16 CLOSING. IT WASN'T YOUR STANDARD KIND OF HAPPENING THAT YOU
17 THINK ABOUT. THERE WERE NO LINEUPS DONE. THERE WERE NO
18 SKETCHES DONE.

19 AND MR. MARCHANT IS RIGHT, THERE WERE NO -- THIS IS NOT
20 CSI. WE DON'T HAVE FINGERPRINTS OR ANYTHING LIKE THAT,
21 WHICH MAKES IT WORSE BECAUSE ALL WE HAVE TO RELY UPON IS ONE
22 PERSON. AND THAT'S MR. ESPINOZA, WHO FOR THREE WEEKS HAD
23 CONTACT AS A MALL SECURITY PERSON WITH ALL SORTS OF PEOPLE.
24 AND IS THAT RELIABLE? THINK ABOUT IT. IS THAT RELIABLE?

25 LADIES AND GENTLEMEN, THIS IS A VERY IMPORTANT CASE FOR

CLOSING ARGUMENTS - MR. ROBINSON

202

1 BOTH OUR CLIENTS IN THIS CASE. AND THE JUDGE IS 'GOING TO
2 CHARGE YOU IN A FEW MOMENTS ABOUT THIS IDEA OF REASONABLE
3 DOUBT AND THE STANDARD THAT THE STATE HAS.

4 NOW Y'ALL HAVE PROBABLY SEEN A LOT OF THINGS ON THE
5 NEWS. AND IT'S VERY NORMAL WHEN YOU SEE SOMETHING ON THE
6 NEWS AND SAY, YEP, THEY'VE GOT A PICTURE OF SOMEBODY, THEY
7 CAUGHT SOMEBODY. IT'S VERY NORMAL TO SAY THEY GOT THE
8 PERSON. THAT MUST BE THE PERSON. THAT'S THE PERSON. AND
9 YOU MADE A PRESUMPTION THERE THAT THE PERSON WAS GUILTY.
10 WITHOUT ANYTHING ELSE YOU MADE A PRESUMPTION THAT THE PERSON
11 WAS GUILTY.

12 BUT WHEN YOU COME INTO THIS COURTROOM YOU HAVE TO --
13 YOU HAVE TO SET THAT ASIDE AND THE STANDARD BECOMES THAT THE
14 STATE HAS TO PROVE BEYOND A REASONABLE DOUBT THAT THIS
15 PERSON, THIS DEFENDANT IS GUILTY OF THIS CRIME BEYOND A
16 REASONABLE DOUBT. THE PRESUMPTION IS OF INNOCENCE, NOT
17 GUILT. AND THAT'S TO PROTECT EVERYONE. SO THE STATE HAS TO
18 BE PUT TO THE STANDARD OF BEYOND A REASONABLE DOUBT WHEN
19 THEY SET FORTH A CASE.

20 AND IF YOU REMEMBER IN THE BEGINNING OF THIS CASE MR.
21 MARCHANT STOOD UP HERE AND HE SAID THAT THERE WERE TWO
22 EYEWITNESSES TO THIS CASE. LADIES AND GENTLEMEN, WE ALL SAW
23 THAT THERE WEREN'T TWO EYEWITNESSES TO THIS CASE. THERE WAS
24 NOT -- THERE WERE NO EYEWITNESSES TO THIS CASE. THE VICTIM
25 TESTIFIED, THE OFFICERS TESTIFIED THAT THERE WERE NO

CLOSING ARGUMENTS - MR. MARCHANT

203

1 CORROBORATING WITNESSES, NO OTHER EYEWITNESSES IN THIS CASE.
2 SO WHEN THE SOLICITOR TOLD YOU THAT THERE WERE TWO
3 EYEWITNESSES IN THIS CASE, THAT WAS NOT -- THAT -- THE FACTS
4 HAVE SHOWN THAT THAT'S NOT TRUE.

5 BUT I ASK YOU WHEN YOU GO BACK TO THE JURY ROOM -- YOU
6 DON'T HAVE TO -- YOU DON'T HAVE TO LIKE WHAT A PERSON LOOKS
7 LIKE. YOU MAY NOT LIKE THEIR SHIRT. YOU MAY NOT LIKE THE
8 WAY THEY DRESS. BUT THIS CASE IS NOT ABOUT WHETHER YOU LIKE
9 SOMEONE OR NOT. THIS CASE IS ABOUT JUSTICE. AND THIS CASE
10 IS ABOUT YOU ALL, THE TWELVE OF YOU DELIBERATING AND USING
11 THE STANDARD THAT THE STATE HAS GOT TO PROVE THEIR CASE
12 BEYOND A REASONABLE DOUBT AS TO EVERY OTHER -- EVERY SINGLE
13 ELEMENT.

14 AND IF THEY DON'T PROVE TO YOU BEYOND A REASONABLE
15 DOUBT THAT MR. ROBINSON AND MR. WORKMAN WERE THE GUYS THAT
16 WERE IDENTIFIED BY MR. ESPINOZA AFTER THREE WEEKS WITH NO
17 CORROBORATING WITNESSES, WITH NO POLICE LINEUPS, THEN YOU
18 MUST FIND THEM NOT GUILTY IN THIS CASE. THANK YOU VERY
19 MUCH.

20 THE COURT: SOLICITOR.

21 MR. MARCHANT: MAY IT PLEASE THE COURT, MR. MOORMAN,
22 MR. ROBINSON? GOOD MORNING, LADIES AND GENTLEMEN. I WANT
23 TO THANK YOU FOR YOUR TIME AND YOUR ATTENTION. THIS IS
24 OBVIOUSLY A VERY IMPORTANT CASE FOR BOTH SIDES HERE.
25 THEY'VE GIVEN YOU THEIR SPIN OF THE EVENTS AND CLAIM THAT IT

CLOSING ARGUMENTS - MR. MARCHANT

204

1 WASN'T THESE TWO GENTLEMEN THAT COMMITTED THESE CRIMES. I'M
2 GOING TO TELL YOU WHY IT WAS. OKAY.

3 IN THE BEGINNING OF THIS CASE I TOLD YOU THERE WERE TWO
4 THINGS THAT WE WERE GOING TO WORRY ABOUT HERE TODAY. ONE,
5 THAT IT HAPPENED. TWO, WERE THEY INVOLVED? THERE'S BEEN NO
6 QUESTION THAT THERE WAS THIS EVENT HAPPENED AND THERE WAS AN
7 ARMED ROBBERY. YOU AIN'T EVEN GOT TO WORRY ABOUT THAT.

8 THE SECOND QUESTION, WERE THESE TWO GUYS INVOLVED? I
9 SUBMIT TO YOU BY THE TIME I'M FINISHED YOU WILL BE ABLE TO
10 GO BACK AND REACH THAT VERDICT AND THAT IT WILL BE BEYOND A
11 REASONABLE DOUBT THAT THEY'RE GUILTY.

12 DECEMBER THE 10TH, 2007 MR. ESPINOZA GETS HOME FROM
13 TACO BELL IN HIS RED JEEP. GETS OUT OF HIS VEHICLE, SEES A
14 MAN COME AROUND THE FRONT OF HIS CAR WEARING A RED HOODED
15 SWEATSHIRT POINTING A GUN AT HIM. HE TOLD YOU HE CAME
16 AROUND THE SIDE, HE GOT AN EXCELLENT LOOK. HE TOLD
17 INVESTIGATOR HANNING -- MR. MOORMAN ASKED HIM ON THE STAND,
18 DID YOU GIVE A STATEMENT? HE SAID, YES, I GOT AN EXCELLENT
19 LOOK.

20 HE SAID, THEN ANOTHER GENTLEMAN CAME UP FROM BEHIND
21 THERE. AND HE WAS ABLE TO SEE THAT PERSON. I HAD MR.
22 ESPINOZA COME DOWN SHOW YOU WHERE HIS CAR WAS PARKED, THAT
23 THERE WERE NO CARS IN BETWEEN HIM. YOU GOT ALL THESE STREET
24 LAMPS HERE. THIS IS HIS APARTMENT. HE TOLD YOU THIS IS
25 WHERE THE OTHER CAR WAS PARKED.

CLOSING ARGUMENTS - MR. MARCHANT

205

1 HE GIVES A DESCRIPTION INITIALLY. HE TELLS YOU THE
2 FIRST GUY WAS ABOUT SIX FOOT, ONE SEVENTY. THE OTHER GUY
3 WAS FIVE FOOT, ONE SIXTY. MR. MOORMAN ASKED, I BELIEVE,
4 SERGEANT, EXCUSE ME, DEPUTY MENDENHALL, HOW BIG IS MY
5 CLIENT? FIVE EIGHT, ONE SIXTY IS THE REPORT THAT MR.
6 MOORMAN GOT FROM SERGEANT, EXCUSE ME, DEPUTY MENDENHALL.
7 SERGIO TOLD YOU, FIVE EIGHT, ONE SEVENTY. THAT'S PRETTY
8 DARN CLOSE. IT'S TEN POUNDS GIVE OR TAKE DURING AN EVENT.

9 TOLD YOU THE FIRST GUY CAME AROUND, STUCK A GUN IN HIS
10 FACE AND DEMANDED THAT HE GIVE IT UP, GIVE HIM EVERYTHING HE
11 HAD, OKAY? I TALKED TO YOU IN THE VERY BEGINNING ABOUT WHAT
12 THE CHARGES HERE WERE TODAY. AND I ASKED YOU TO CONSIDER
13 ACCOMPLICE LIABILITY. WHAT THAT MEANS IS THAT THE HAND OF
14 ONE IS THE HAND OF ALL, OKAY?

15 NOW LET ME TELL YOU WHY IT IS ARMED ROBBERY. ONE, MR.
16 ESPINOZA WAS RELIEVED OF HIS PERSONAL PROPERTY THROUGH FORCE
17 OR INTIMIDATION. THE FORCE BEING THE ASSAULT THAT OCCURRED
18 ON HIM AFTER THE GUN WAS POINTED IN HIS FACE. SO YOU HAVE
19 BOTH OF THOSE. YOU HAVE FORCE AND INTIMIDATION. THEY TOOK
20 HIS MONEY, HIS CELL PHONE, HIS WALLET, HIS DRIVER'S LICENSE,
21 HIS SOCIAL SECURITY CARD, HIS MALL SECURITY ID BADGE, OKAY?

22 IT WAS ARMED BECAUSE THERE WAS A WEAPON. AND IT'S ALSO
23 POSSESSION OF A WEAPON DURING A VIOLENT CRIME BECAUSE ARMED
24 ROBBERY IS A VIOLENT CRIME. THERE'S BEEN UNDISPUTED
25 TESTIMONY THAT THERE WAS A WEAPON PRESENT, OKAY?

CLOSING ARGUMENTS - MR. MARCHANT

206

1 HE TOLD YOU THAT WORKMAN CAME AROUND, PUT THE GUN IN
2 HIS FACE, HANDED THE GUN OFF TO O'SHAUN ROBINSON AND THEN
3 PUNCHED HIM AFTER THE FACT. THEY THEN WENT BACK TO THE CAR
4 THAT'S PARKED HERE. WHERE DOES HE TELL YOU O'SHAUN GETS IN
5 THE CAR? ON THE DRIVER'S SIDE. HE WAS NOT ABLE TO SAY
6 WHETHER IT WAS THE FRONT SEAT OR THE BACK SEAT, BUT IT WAS
7 ON THE DRIVER'S SIDE.

8 WHERE DOES HE TELL YOU KEN WORKMAN GOT IN? ON THE
9 PASSENGER'S SIDE. IS THAT CONSISTENT WITH WHAT MR. WRIGHT
10 SAID? IT IS. IT IS, IN FACT, THE SAME POSITIONS IN WHICH
11 MR. WRIGHT TOLD YOU THAT THEY ARRIVED AT THE APARTMENT
12 COMPLEX. MR. WORKMAN WAS IN THE FRONT, MARCUS WAS DRIVING,
13 O'SHAUN WAS IN THE BACK DRIVER'S SIDE AND TIMOTHY WRIGHT WAS
14 IN THE BACK PASSENGER'S SIDE.

15 ONCE THEY TOOK THE MONEY FROM MR. ESPINOZA THEY DECIDED
16 WE'VE GOT TO GET OUT OF HERE. AND WHAT DOES MR. ESPINOZA
17 DO? FOR THE LIFE OF ME, I CANNOT UNDERSTAND WHY HE WOULD
18 GET IN THE CAR AND GO AFTER THEM, BUT THAT'S WHAT HE DID.
19 HE'S GOT A LOT MORE GUTS THAN I DO. I WOULD HAVE GONE
20 UPSTAIRS AND CALLED 911.

21 WHY IS THAT IMPORTANT? HE GETS IN THE RED JEEP, WHICH
22 TIMOTHY WRIGHT TALKED ABOUT THE RED JEEP, AND HE FOLLOWS
23 THESE GENTLEMEN TO WHITE HORSE ROAD, WHICH IS WHERE TIMOTHY
24 WRIGHT TOLD YOU THEY WENT, IS WHITE HORSE ROAD.

25 AND WHAT HAPPENS ON WHITE HORSE ROAD AND SALUDA DAM? A

CLOSING ARGUMENTS - MR. MARCHANT

207

1 SHOT, A SINGLE SHOT IS FIRED OUT OF THIS GETAWAY CAR, WHICH
2 MR. WRIGHT TOLD YOU WAS A LINCOLN, A BLACK LINCOLN, FOUR
3 DOOR. MR. ESPINOZA TOLD LAW ENFORCEMENT HE FELT LIKE IT WAS
4 A CROWN VICTORIA. BOTH OLDER MODEL VEHICLES WITH FOUR
5 DOORS.

6 ONCE THE SHOT WAS FIRED HE TURNED AROUND, WENT BACK TO
7 HIS APARTMENT AND CALLED LAW ENFORCEMENT. MENDENHALL SHOWS
8 UP, TAKES THE REPORT, TAKES DOWN THE PARTICULARS OF THE
9 DEFENDANTS THAT MR. ESPINOZA SAID WERE INVOLVED IN THIS
10 INCIDENT AND A BOLO GOES OUT. TOLD YOU THAT BOLO MEANS BE
11 ON THE LOOKOUT.

12 MIND YOU, THIS IS TWENTY TO THIRTY MINUTES AFTER THE
13 INITIAL INCIDENT. DID THEY FIND THE CAR? GREENVILLE COUNTY
14 IS A LARGE PLACE, LADIES AND GENTLEMEN. WOULD IT HAVE BEEN
15 NICE IF WE COULD HAVE CAUGHT THEM THAT NIGHT? ABSOLUTELY.
16 BUT THIS IS THE WAY IT UNFOLDED. AND THIS IS THE WAY IT IS.
17 IT'S EXACTLY LIKE MR. ROBINSON SAID. AS I TOLD YOU IN THE
18 BEGINNING, THIS IS NOT CSI. THE FACTS ARE WHAT THEY ARE,
19 OKAY?

20 I ASKED DEPUTY MENDENHALL IF HE DID A PHOTO LINEUP. HE
21 SAID, NO, WE HAVE HUNDREDS OF PEOPLE THAT FIT THAT
22 DESCRIPTION, OKAY? I'LL GET BACK TO THAT IN A MINUTE.

23 NOW LET'S TALK ABOUT MR. WRIGHT. REMEMBER, THIS
24 HAPPENED ON DECEMBER THE 10TH OF 2007. MR. WRIGHT WAS
25 ARRESTED ON UNRELATED CHARGES TO THIS CASE ON DECEMBER THE

CLOSING ARGUMENTS - MR. MARCHANT

208

1 27TH, TWENTY-SEVEN DAYS LATER.

2 AT THAT TIME HE AGREES TO SPEAK WITH INVESTIGATOR
3 WEINER AND INVESTIGATOR HANNING. FOR WHATEVER REASON MR.
4 WRIGHT WANTED TO GET IT OFF HIS CHEST. AND HE TOLD THESE
5 OFFICERS WITH THE SHERIFF'S OFFICE THAT IT WAS HIM, THAT IT
6 WAS O'SHAUN, THAT IT WAS KEN AND SOME GUY NAMED MARCUS. HE
7 WASN'T VERY FAMILIAR WITH MARCUS.

8 MR. WRIGHT GOT ON THE STAND AND TOLD YOU KEN IS HIS
9 COUSIN. KNOWN HIM HIS WHOLE LIFE. AND HE'S KNOWN O'SHAUN
10 FOR SEVERAL YEARS NOW. NOW IF YOU'RE IN A HEAP OF TROUBLE
11 AND YOU NEED TO GET YOUR TAIL OUT OF IT ARE YOU GOING TO
12 ROLL ON YOUR COUSIN? ARE YOU GOING TO SEND HIM UP THE RIVER
13 TO SAVE YOUR OWN HIDE? WOULDN'T IT HAVE MADE MORE SENSE IF
14 HE'D THROWN SOMEBODY ELSE IN THE MIX? DOES IT MAKE SENSE
15 THAT MR. WRIGHT IS GOING TO THROW HIS OWN COUSIN UNDER THE
16 BUS TO POSSIBLY SAVE HIS OWN TAIL?

17 HE HAD NO IDEA. INVESTIGATOR WEINER AND HANNING TOLD
18 YOU NO PROMISES WERE MADE. MR. WRIGHT TOLD YOU HE WAS NOT
19 PROMISED ANYTHING. MR. WRIGHT CAME INTO THIS SAME
20 COURTHOUSE AND PLED GUILTY TO THIS OFFENSE. HE ADMITS HIS
21 INVOLVEMENT. I DON'T KNOW HOW YOU CAN JUSTIFY OR RECTIFY
22 WHAT MR. MOORMAN SAID. WHY WOULD HE COME IN HERE AND PLEAD
23 GUILTY TO SOMETHING HE DIDN'T DO? THAT JUST MAKES IT ALL
24 THE MORE CREDIBLE OF WHAT HE CAME IN HERE AND TOLD YOU,
25 OKAY?

CLOSING ARGUMENTS - MR. MARCHANT

209

1 HE TOLD YOU, WE WENT TO THIS APARTMENT COMPLEX TO LOOK
2 FOR GIRLS, DIDN'T SEE ANYBODY, SAID HE MIGHT HAVE USED TO
3 MESS AROUND WITH SOMEBODY OVER THERE. NEVERTHELESS, THEY
4 CIRCLED THE LOT THREE OR FOUR TIMES. AND THEN O'SHAUN
5 STARTED TALKING ABOUT ROBBING SOMEBODY.

6 HE TELLS YOU THAT HE, MR. WRIGHT TELLS YOU, HE, O'SHAUN
7 AND KEN TALK ABOUT ROBBING SOMEBODY. THERE'S YOUR
8 CONSPIRACY. TWO OR MORE PEOPLE PLANNING OR COMBINING TO DO
9 AN UNLAWFUL ACT. THAT UNLAWFUL ACT WAS COMPLETED. IT
10 DIDN'T HAVE TO BE COMPLETED, BUT IT WAS. THEY TALKED ABOUT
11 ROBBING SOMEBODY, AND THE ACT WAS COMPLETED.

12 MR. ESPINOZA PULLS UP IN HIS RED JEEP, WHICH IS WHAT
13 MR. WRIGHT TOLD YOU. MR. ESPINOZA WAS ROBBED BY O'SHAUN.
14 THAT'S WHAT MR. WRIGHT TOLD YOU. IT CAME OUT OF HIS MOUTH.

15 THERE'S NO WAY TO SAY WHETHER OR NOT HE'S TRYING TO
16 SAVE HIS COUSIN, KEN. IS HE TRYING TO MAKE KEN LOOK LESS
17 CULPABLE HERE? HE'S ALREADY PUT HIM UNDER THE BUS FOR
18 WHATEVER REASON. HE'S ALREADY TOLD LAW ENFORCEMENT. HE'S
19 GIVEN A STATEMENT THAT THEY WERE INVOLVED. NOW IS HE TRYING
20 TO SAVE KEN AND SAY THAT O'SHAUN HAD THE GUN? THE TESTIMONY
21 IS WHAT IT IS, LADIES AND GENTLEMEN.

22 IF WE WERE TRYING TO SET AND FRAME UP THIS WHOLE THING
23 WOULDN'T IT MAKE MORE SENSE IF WE'D JIVED THE STORIES
24 TOGETHER AND EVERYTHING WOULD FIT ALL NICE AND NEAT LIKE A
25 PUZZLE? I WOULD BE THRILLED TO COME IN HERE AND GIVE YOU

CLOSING ARGUMENTS - MR. MARCHANT

210

1 FINGERPRINTS, AND CSI, AND VIDEO AND A TRAFFIC STOP THAT
2 OCCURRED, BUT THIS IS THE WAY THE EVENTS UNFOLDED.

3 IN FACT, MR. WRIGHT FROM THE STAND LOOKS AT SERGIO AND
4 SAYS THAT'S THE MAN WE ROBBED. SO HE WAS THERE. AND IF YOU
5 WANT TO BELIEVE MR. MOORMAN'S THEORY OF THE CASE, WHY WOULD
6 SERGIO NOT HAVE PICKED MR. WRIGHT OUT OF THIS TELEVISION
7 BROADCAST WHERE THERE WERE THREE PEOPLE? SERGIO TESTIFIED
8 HE ONLY SAW TWO. WHY DID HE NOT SEE MR. WRIGHT? DON'T
9 KNOW.

10 WAS HE NOT FOCUSED IN ON POSSIBLY SEEING A THIRD PERSON
11 THAT WAS CONCEALED BY MR. ROBINSON? DON'T KNOW. HE
12 REMEMBERS THE EVENTS THE WAY THEY OCCURRED. MR. WRIGHT TOLD
13 YOU HE REMEMBERS THE EVENTS THE WAY THEY OCCURRED. AGAIN,
14 ACCOMPLICE LIABILITY. THE HAND OF ONE IS THE HAND OF ALL.

15 NOW THERE'S BEEN A BIG STINK ABOUT WHAT BENEFIT MR.
16 WRIGHT RECEIVES AND WHAT POSSIBLE PUNISHMENTS HE COULD HAVE
17 GOTTEN AND THINGS OF THAT NATURE. DID HE GET A BENEFIT?
18 CERTAINLY HE GOT A BENEFIT. HE STOOD UP UPSTAIRS IN
19 COURTROOM NUMBER 8 AND PLED GUILTY. IT IS THE WAY THE
20 JUSTICE SYSTEM WORKS. WHEN YOU PLEAD GUILTY YOU ARE GOING
21 TO GET A BENEFIT FOR THE CONFESSION OF THE CRIMES THAT YOU
22 HAVE COMMITTED.

23 DID I DISMISS SOME OTHER CHARGES UNRELATED TO THIS?
24 YES, I DID. IS IT CONTINGENT UPON HIS TESTIMONY? YOU
25 HEARD, I CAN NEITHER PUNISH HIM, NOR REWARD HIM FOR WHAT HE

CLOSING ARGUMENTS - MR. MARCHANT

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1 HAS TOLD YOU YESTERDAY. WHY DID HE COME AND TESTIFY? HE
2 TOLD YOU, GIVE OR TAKE, WE SHOULDN'T HAVE BEEN OUT THERE
3 DOING THAT. IT WAS WRONG. MR. WRIGHT IS REMORSEFUL FOR
4 WHAT HE'S DONE. AND HE HAS PROFESSED HIS INVOLVEMENT AND
5 HIS GUILT IN THIS CASE.

6 DECEMBER 10TH THE EVENT OCCURS. 27TH MR. WRIGHT IS
7 ARRESTED, WARRANTS ARE SERVED ON THESE OTHER TWO GENTLEMEN.
8 MR. GARCIA [SIC] GOES TO LAW ENFORCEMENT FOUR DAYS LATER ON
9 THE 31ST AND TELLS INVESTIGATOR HANNING, I SAW TWO PEOPLE I
10 RECOGNIZED. HE DIDN'T TELL THEM HE RECOGNIZED MR. WRIGHT.
11 I SAW TWO PEOPLE I RECOGNIZED, MR. WORKMAN; MR. ROBINSON.

12 DO I WISH I COULD COME TO YOU AND TELL YOU, WE DID A
13 LINEUP BEFORE HE SAW THOSE PHOTOGRAPHS? IT'S NOT THE WAY IT
14 HAPPENED. THOSE PHOTOGRAPHS THAT WERE ON THE TV, SAME
15 PHOTOGRAPHS HE WOULD HAVE SEEN IN A LINEUP.

16 HE SAW THE VIDEO ONLINE. HOW MANY NEWS STORIES DO WE
17 HAVE THESE DAYS OF EVENTS OF CRIME IN THIS COUNTY? EVERY
18 TIME YOU WAKE UP IN THE MORNING AND FLICK ON THE NEWS, IT'S
19 NOTHING BUT BAD THINGS THAT HAPPENED THE NIGHT BEFORE.

20 IS IT JUST THAT ONE BIG OF A COINCIDENCE THAT MR.
21 ESPINOZA SAW THIS AND SAID, GOT TO BE THE TWO GUYS THAT
22 ROBBED ME? GOT TO BE THEM. I RECOGNIZE THEM. YEAH, THAT'S
23 IT. NO, YOU KNOW WHAT, HE STOPPED, HE TOOK SOME REFLECTION,
24 HE WENT ONLINE, HE LOOKED AT THEM AGAIN. AND HE SAID, THOSE
25 ARE THE FELLOWS. HE'S COME IN HERE TODAY UNDER OATH AND

CLOSING ARGUMENTS - MR. MARCHANT

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1 TOLD YOU THOSE TWO GUYS.

2 THE DEFENSE HAS PROVIDED AN EXPERT IN THIS WITNESS
3 [SIC]. JUST AS THEY HAVE ASKED YOU TO BELIEVE OR DISBELIEVE
4 THE WITNESSES IN MY CASE, IN THE STATE'S CASE, YOU SHOULD DO
5 THE SAME WITH HER TESTIMONY.

6 SHE IS A PHD FROM NORTH CAROLINA IN CHARLOTTE, I
7 BELIEVE. SHE'S BEING PAID FOR HER TESTIMONY. SHE CLAIMS TO
8 HAVE BEEN INVOLVED AND RESEARCHED IN THIS CROSS RACIAL
9 IDENTIFICATION PROCEDURES. SHE HAS NOT DONE ANYTHING
10 SPECIFICALLY ON HISPANICS HERSELF. I ASKED HER WOULD IT
11 HAVE BEEN BENEFICIAL FOR HER TO, EXCUSE ME, MR. MOORMAN
12 ASKED HER, WOULD IT HAVE BEEN BENEFICIAL FOR HER TO SPEAK
13 WITH SERGIO PRIOR TO HER TESTIMONY. NO. FINE.

14 SHE'S CURRENTLY DOING RESEARCH ON CROSS IDENTIFICATION
15 WITH HISPANICS BEING THE VICTIMS, AND SHE DOESN'T WANT TO
16 GET SOME INSIGHT FROM SOMEONE WHO'S ACTUALLY BEEN THROUGH IT
17 AS OPPOSED TO STAGING AND PUTTING UP SIMULATION EVENTS?
18 AGAIN, YOU CONSIDER HER CREDIBILITY AND DETERMINE WHETHER OR
19 NOT WHAT SHE HAS TO SAY MAKES ANY DIFFERENCE.

20 THE ONLY THING I WILL SAY THAT WAS CURIOUS IN HER
21 TESTIMONY IS SHE SPOKE OF THIS GUN FOCUS PHENOMENON, IF YOU
22 WILL. I SUBMIT TO YOU THAT'S PROBABLY CORRECT. IF YOU'VE
23 GOT A GUN STUCK IN YOUR FACE WHAT'S THE MOST THING YOU'RE
24 GOING TO LOOK AT? WHETHER OR NOT THAT GUY'S GOING TO PULL
25 THE TRIGGER.

CLOSING ARGUMENTS - MR. MARCHANT

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1 NEVERTHELESS, MR! ESPINOZA NOTICED AND TOOK INTO HIS
2 HEAD -- LOOK AT THESE GENTLEMEN, THERE'S NO DISTINGUISHING
3 MARKS ON THEIR FACES. HE TOLD YOU THE FIRST GUY WAS FULLY
4 CLOTHED, COULDN'T SEE ANYTHING BUT HIS HANDS.

5 SHE ALSO SAYS THAT ONE MAY REMEMBER SOME DETAILS ABOUT
6 THE OTHER PERSON. IS IT POSSIBLE THAT SERGIO HAS CROSSED UP
7 MR. ROBINSON AND MR. WORKMAN? DON'T KNOW. SERGIO IS
8 CONVINCED, HE IS CERTAIN THAT MAN HAD THE GUN, HE HANDED IT
9 OFF TO THAT MAN AND THEN HE WAS PUNCHED BY THAT MAN, AND
10 THEY FLED.

11 AND I WANT TO TELL YOU, LADIES AND GENTLEMEN, THE
12 BURDEN'S RIGHT HERE. IF WE DIDN'T DO IT, YOU'VE GOT TO TURN
13 THEM LOOSE. IT WOULD BE WRONG FOR YOU NOT TO.

14 BUT LET ME TELL YOU LASTLY WHY THESE TWO WERE INVOLVED
15 AND WHY THEY SHOULD BE FOUND GUILTY. HIS HONOR AGAIN IS
16 GOING TO GO THROUGH THAT ACCOMPLICE LIABILITY. I WANT YOU
17 TO PAY PARTICULAR ATTENTION TO THAT. DECEMBER 10TH SERGIO
18 TELLS LAW ENFORCEMENT HE WAS AT STRATFORD VILLA APARTMENTS.
19 HE HAS A RED JEEP. HE IS HISPANIC. THERE WAS A .38 SILVER
20 REVOLVER INVOLVED. HE TOLD YOU WHERE HIS VEHICLE WAS, WHAT
21 TYPE OF VEHICLE AGAIN, THAT HE LEFT AND FOLLOWED THEM DOWN
22 WHITE HORSE ROAD AND HE WAS SHOT AT ONE TIME.

23 SEVENTEEN DAYS LATER TIMOTHY WRIGHT TELLS LAW
24 ENFORCEMENT, WE WENT TO STRATFORD VILLA APARTMENTS. WE
25 ROBBED A MEXICAN IN A RED JEEP. O'SHAUN HAD A .357 SILVER

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1 REVOLVER. O'SHAUN TOOK HIS WALLET. WE LEFT, WENT TO WHITE
2 HORSE ROAD. WE NOTICED THE VICTIM WAS FOLLOWING US IN HIS
3 RED JEEP. HE TURNED HIS LIGHTS ON. O'SHAUN LEANS OUT THE
4 WINDOW AND FIRES ONE SHOT.

5 YOU HAVE TWO SEPARATE STORIES FROM TWO DIFFERENT PEOPLE
6 THAT DON'T KNOW EACH OTHER THAT HAVE NO CONNECTION
7 WHATSOEVER IN THIS CASE OTHER THAN THE FACT THAT MR. WRIGHT
8 WAS THERE AND MR. ESPINOZA WAS THERE. AND THEY BOTH TELL
9 YOU WITH CERTAINTY THAT THIS GENTLEMAN AND THIS GENTLEMAN
10 WERE PRESENT DURING THE ARMED ROBBERY OF MR. ESPINOZA AT
11 STRATFORD VILLA APARTMENTS ON DECEMBER THE 10TH OF 2007.

12 THERE IS NO DOUBT, LADIES AND GENTLEMEN. THESE MEN ARE
13 GUILTY. I ASK THAT YOU RETURN A VERDICT, AND THAT VERDICT
14 WILL SPEAK THE TRUTH, GUILTY OF CONSPIRACY BECAUSE THEY
15 TALKED ABOUT IT, ROBBERY BECAUSE THEY TOOK HIS MONEY BY
16 FORCE, ARMED ROBBERY BECAUSE THEY USED A WEAPON AND
17 POSSESSION OF A WEAPON DURING A VIOLENT CRIME BECAUSE ARMED
18 ROBBERY IS A VIOLENT CRIME. THANK YOU.

19 THE COURT: ALL RIGHT. NOW NO ONE IN OR OUT OF THE
20 COURTROOM DURING MY CHARGE. SO IF ANYONE NEEDS TO LEAVE,
21 NOW IS THE TIME TO DO IT.

22 (PAUSE)

23 THE COURT: LADIES AND GENTLEMEN, THE DEFENDANTS IN
24 THIS CASE ARE FIRST INDICTED FOR CONSPIRACY. THIS IS A
25 STATUTORY OFFENSE. AND SECTION 16-17-410 OF OUR CODE OF

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1 LAWS READS IN PART AS FOLLOWS; 'CONSPIRACY IS DEFINED AS A
2 COMBINATION BETWEEN TWO OR MORE PERSONS FOR THE PURPOSE OF
3 ACCOMPLISHING A CRIMINAL OR UNLAWFUL OBJECT. THE STATUTE
4 THEN, LADIES AND GENTLEMEN, MAKES IT UNLAWFUL FOR TWO OR
5 MORE PEOPLE TO CONSPIRE OR TO COMBINE TO ACCOMPLISH A
6 CRIMINAL OR UNLAWFUL PURPOSE.

7 IN OTHER WORDS, I CHARGE YOU THAT IT IS THE UNLAWFUL
8 COMBINATION OR AGREEMENT BETWEEN TWO OR MORE PEOPLE THAT
9 CONSTITUTES THE OFFENSE. AND NO OVERT ACT IS NECESSARY.

10 STATED DIFFERENTLY, CONSPIRING IS A DISTINCT OFFENSE.
11 AND NOTHING ELSE NEED BE DONE IN EXECUTION OF IT. THAT IS,
12 NO OVERT ACT CARRYING OUT OR COMPLETING A CONSPIRACY IS
13 NECESSARY OR REQUIRED.

14 THE DEFENDANTS ARE NEXT INDICTED FOR ARMED ROBBERY. IN
15 ORDER FOR YOU TO UNDERSTAND WHAT IS ROBBERY I MUST FIRST
16 DEFINE TO YOU LARCENY. LARCENY, LADIES AND GENTLEMEN, IS
17 THE TAKING AND CARRYING AWAY BY ANY PERSON OF THE GOODS OR
18 THINGS PERSONAL OF ANOTHER WITH THE FELONIOUS, THAT IS THE
19 UNLAWFUL INTENT TO PERMANENTLY DEPRIVE THAT OWNER OF HIS OR
20 HER PROPERTY AND TO CONVERT IT TO THE TAKER'S OWN USE. THAT
21 IS WHAT CONSTITUTES LARCENY.

22 NOW ROBBERY, LADIES AND GENTLEMEN, IS THE FELONIOUS OR
23 UNLAWFUL TAKING OF MONEY OR GOODS OR THINGS PERSONAL FROM
24 THE PERSON OF ANOTHER OR IN HIS OR HER PRESENCE AND BY USING
25 VIOLENCE OR BY PUTTING THAT PERSON IN FEAR.

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1 NOW ROBBERY INCLUDES ALL OF THE ELEMENTS NECESSARY TO
2 CONSTITUTE LARCENY AS I HAVE DEFINED THAT TERM TO YOU, BUT
3 THE AGGRAVATING CIRCUMSTANCES NECESSARY TO CONSTITUTE
4 ROBBERY AS DISTINGUISHED FROM LARCENY, FIRST OF ALL, THE
5 TAKING MUST NOT ONLY BE WITHOUT CONSENT, BUT IT MUST ALSO BE
6 ACCOMPLISHED WITH VIOLENCE OR BY PUTTING THAT PERSON IN
7 FEAR.

8 AND SECONDLY, THE PROPERTY MUST BE TAKEN FROM THE
9 PERSON OF ANOTHER. BUT IF IT IS TAKEN IN HIS OR HER
10 PRESENCE, THEN IT IS TAKEN CONSTRUCTIVELY FROM SUCH PERSON.
11 IN OTHER WORDS, FOR THE PURPOSE OF ROBBERY A THING IS IN THE
12 PRESENCE OF A PERSON IF IT BE WITHIN HIS REACH, INSPECTION,
13 OBSERVATION OR CONTROL SO THAT HE COULD RETAIN HIS
14 POSSESSION OF IT IF NOT OVERCOME BY VIOLENCE OR PREVENTED BY
15 FEAR.

16 NOW ARMED ROBBERY IS ROBBERY AS I HAVE DEFINED THAT
17 TERM TO YOU WHILE ARMED WITH A DEADLY WEAPON. AND SECTION
18 16-11-30 -- 330 OF OUR CODE OF LAWS PROVIDES IN PART AS
19 FOLLOWS; ANY PERSON CONVICTED FOR THE CRIME OF ROBBERY
20 WHILE ARMED WITH A PISTOL, DIRK, SLING-SHOT; METAL KNUCKLES,
21 RAZOR OR OTHER DEADLY WEAPON SHALL SUFFER PUNISHMENT.

22 THESE DEFENDANTS ARE INDICTED ALSO FOR POSSESSION OF A
23 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. THIS
24 AGAIN IS A STATUTORY OFFENSE. AND SECTION 16-23-490 OF OUR
25 CODE PROVIDES IN PART AS FOLLOWS; IF A PERSON IS IN

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1 POSSESSION OF A FIREARM OR VISIBLY DISPLAYS 'WHAT APPEARS TO
2 BE A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME AND IS
3 CONVICTED OF COMMITTING OR ATTEMPTING TO COMMIT A VIOLENT
4 CRIME AS DEFINED IN SECTION 16-1-60, AND I CHARGE YOU THAT
5 ARMED ROBBERY IS ONE OF THOSE LISTED, HE MUST BE IMPRISONED
6 IN ADDITION TO THE PUNISHMENT PROVIDED FOR THE PRINCIPLE
7 CRIME. SO BEFORE THE DEFENDANTS IN THIS CASE CAN BE
8 CONVICTED OF THIS OFFENSE YOU, THE JURY, MUST FIRST HAVE
9 FOUND THEM GUILTY OF ARMED ROBBERY.

10 LASTLY, LADIES AND GENTLEMEN, THE DEFENDANTS ARE
11 CHARGED WITH ASSAULT AND BATTERY. LADIES AND GENTLEMEN, I
12 CHARGE YOU THAT AN ASSAULT IS AN ATTEMPT OR AN OFFER WITH
13 FORCE OR VIOLENCE TO DO BODILY HARM TO ANOTHER PERSON WHERE
14 THERE IS THE ABILITY TO COMPLETE THE ATTEMPT OR OFFER BY
15 COMMITTING A BATTERY. IN OTHER WORDS, AN ATTEMPT IS DEFINED
16 AS AN ATTEMPT TO DO VIOLENCE TO THE PERSON OF ANOTHER IN A
17 RUDE, ANGRY OR RESENTFUL MANNER. NOW, OF COURSE, BATTERY IS
18 THE CARRY INTO EFFECT OF AN ASSAULT BY USING OR APPLYING
19 FORCE TO THE PERSON OF ANOTHER HOWEVER SLIGHT IN A RUDE,
20 ANGRY OR RESENTFUL MANNER.

21 LADIES AND GENTLEMEN, IF SEVERAL PERSONS IN PURSUANCE
22 OF A COMMON DESIGN TO COMMIT AN UNLAWFUL ACT SET OUT
23 TOGETHER AND EACH TAKES A PART AGREED UPON OR ASSIGNED TO
24 HIM, SOME TO COMMIT THE ACTS, OTHERS TO WATCH AT PROPER
25 DISTANCES AND STATIONS TO PREVENT INTERFERENCE OR SURPRISE

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1 OR TO ENCOURAGE THE COMMISSION OF THE UNLAWFUL ACT OR TO
2 FAVOR, IF NECESSARY, THE ESCAPE OF THOSE IMMEDIATELY ENGAGED
3 IN THE COMMISSION OF THE UNLAWFUL ACT, UNDER ANY OF THESE
4 CIRCUMSTANCES IF THE UNLAWFUL ACT IS COMMITTED, THE ACT IS
5 ONE OF -- THE ACT IS THE ACT OF ONE IS THE ACT OF ALL AND
6 ALL ARE GUILTY.

7 IN OTHER WORDS, IF SEVERAL PERSONS AGREE TO CONSPIRE TO
8 COMMIT A CRIME EACH OF THOSE PERSONS IS CRIMINALLY
9 RESPONSIBLE FOR THE ACTS OF HIS CONFEDERATES WHICH ARE DONE
10 IN FURTHERANCE OF THE COMMON PURPOSE FOR WHICH THEY
11 COMBINED. ALL WHO ARE PRESENT, EITHER ACTUALLY OR
12 CONSTRUCTIVELY, IN PARTICIPATING IN THE UNLAWFUL COMMON
13 DESIGN WOULD BE GUILTY.

14 NOW, LADIES AND GENTLEMEN, ONE OF THE ISSUES IN THIS
15 CASE IS THE IDENTIFICATION OF THESE DEFENDANTS AS THE
16 PERPETRATORS OF THE CRIMES. THE STATE HAS THE BURDEN OF
17 PROVING IDENTITY BEYOND A REASONABLE DOUBT.

18 NOW IT IS NOT ESSENTIAL THAT A WITNESS HIMSELF OR
19 HERSELF BE FREE FROM DOUBT AS TO THE CORRECTNESS OF HIS OR
20 HER STATEMENT. HOWEVER, YOU, THE JURY, MUST BE SATISFIED
21 BEYOND A REASONABLE DOUBT OF THE ACCURACY OF THE
22 IDENTIFICATION OF THESE DEFENDANTS BEFORE YOU CAN CONVICT
23 THEM. IF YOU'RE NOT CONVINCED BEYOND A REASONABLE DOUBT
24 THAT THESE DEFENDANTS WERE THE PERSONS WHO COMMITTED THE
25 CRIME, YOU MUST FIND THEM NOT GUILTY.

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1 NOW IDENTIFICATION TESTIMONY IS AN EXPRESSION OF BELIEF
2 OR IMPRESSION BY A WITNESS. ITS VALUE DEPENDS UPON THE
3 OPPORTUNITY THAT THE WITNESS HAD TO OBSERVE THE OFFENDER AT
4 THE TIME OF THE OFFENSE AND TO MAKE A RELIABLE
5 IDENTIFICATION THEREAFTER.

6 NOW IN THIS CASE THE DEFENDANTS ARE OF A DIFFERENT RACE
7 THAN THE ALLEGED VICTIM. IN THIS CONNECTION I CHARGE YOU
8 THAT YOU MAY CONSIDER WHETHER THE FACT THAT THE DEFENDANTS
9 ARE OF A DIFFERENT RACE THAN THE ALLEGED VICTIM HAS AFFECTED
10 THE ACCURACY OF HIS ORIGINAL PERCEPTION OR THE ACCURACY OF
11 HIS LATER IDENTIFICATION. YOU MAY ALSO CONSIDER IF THERE
12 ARE OTHER FACTORS PRESENT THAT OVERCOME ANY SUCH DIFFICULTY
13 OF IDENTIFICATION.

14 NOW IN APPRAISING IDENTIFICATION TESTIMONY OF A WITNESS
15 YOU MAY CONSIDER DID THE WITNESS HAVE THE CAPACITY AND AN
16 ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER? NOW WHETHER A
17 WITNESS HAD AN ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER
18 AT THE TIME OF THE OFFENSE WILL BE AFFECTED BY SUCH MATTERS
19 AS HOW LONG OR SHORT OF TIME WAS AVAILABLE, HOW FAR OR CLOSE
20 THE WITNESS WAS AND -- OR HOW GOOD WERE LIGHTING CONDITIONS.

21 YOU MAY ALSO CONSIDER WAS THE IDENTIFICATION MADE BY
22 THE WITNESS SUBSEQUENT TO THE OFFENSE THE PRODUCT OF HIS OR
23 HER OWN RECOLLECTION? YOU MAY TAKE INTO ACCOUNT BOTH THE
24 STRENGTH OF THE IDENTIFICATION AND THE CIRCUMSTANCES UNDER
25 WHICH THE IDENTIFICATION WAS MADE. YOU MAY ALSO CONSIDER

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1 THE LENGTH OF TIME THAT LAPSED BETWEEN THE OCCURRENCE OF THE
2 CRIME AND THE NEXT OPPORTUNITY OF THE WITNESS TO SEE THE
3 DEFENDANTS.

4 AS I SAID EARLIER, LADIES AND GENTLEMEN, THE BURDEN OF
5 PROOF IS ON THE STATE. AND THIS EXTENDS TO EVERY ELEMENT OF
6 THE CRIMES CHARGED. AND THIS INCLUDES THE IDENTITY OF THE
7 DEFENDANTS AS THE PERPETRATORS OF THESE CRIMES.

8 NOW, LADIES AND GENTLEMEN, AS JURORS IN THIS CASE YOU
9 HAVE A FUNCTION OR A RESPONSIBILITY THAT IS ENTIRELY
10 SEPARATE AND DISTINCT FROM MY FUNCTION AS THE TRIAL JUDGE IN
11 THIS CASE. I'M THE JUDGE OF THE LAW, BUT YOU ARE THE JUDGES
12 OF THE FACTS.

13 I AM PROHIBITED BY THE CONSTITUTION FROM CHARGING YOU
14 ON THE FACTS OF THIS CASE. I AM PROHIBITED FROM DISCUSSING
15 FACTS OF THE CASE WITH YOU OR IN ANY WAY OR MANNER LETTING
16 YOU KNOW WHAT MY PERSONAL FEELINGS, IF ANY, ARE ABOUT THIS
17 CASE. THAT'S BECAUSE YOU AND YOU ALONE ARE THE JUDGES OF
18 THE FACTS.

19 THEREFORE, IF DURING THE COURSE OF THIS TRIAL OR IF
20 DURING THE COURSE OF MY CHARGE YOU HAVE A FEELING OR YOU
21 HAVE BEEN LEFT WITH THE IMPRESSION THAT I HAVE A PERSONAL
22 FEELING ABOUT THIS CASE ONE WAY OR ANOTHER, THEN YOU
23 DISREGARD THAT FEELING OR THAT IMPRESSION.

24 LADIES AND GENTLEMEN, THE RULES OF EVIDENCE ORDINARILY
25 DO NOT PERMIT WITNESSES TO TESTIFY AS TO OPINIONS OR

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1 CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS AS TO THOSE
2 WHOM WE CALL EXPERT WITNESSES. WITNESSES WHO BY EDUCATION
3 AND EXPERIENCE HAVE BECOME EXPERT IN SOME ART, SCIENCE,
4 PROFESSION OR CALLING MAY STATE AN OPINION AS TO A RELEVANT
5 AND MATERIAL MATTER IN WHICH THEY PROFESS TO BE EXPERT AND
6 MAY ALSO STATE THEIR REASONS FOR THEIR OPINION.

7 NOW YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED
8 INTO EVIDENCE IN THIS CASE AND GIVE IT SUCH WEIGHT AS YOU
9 THINK IT DESERVES. IF YOU SHOULD DECIDE THAT THE OPINION OF
10 AN EXPERT WITNESS IS NOT BASED UPON SUFFICIENT EDUCATION
11 AND/OR EXPERIENCE OR IF YOU SHOULD CONCLUDE THAT THE REASONS
12 GIVEN IN SUPPORT OF THAT OPINION ARE NOT SOUND OR THAT THE
13 OPINION IS OUTWEIGHED BY OTHER EVIDENCE, THEN YOU MAY
14 DISREGARD THE OPINION IN ITS ENTIRETY.

15 AN EXPERT'S TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT
16 THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THAT PERSON HAS
17 BEEN DECLARED TO BE AN EXPERT. AND YOU'RE NOT REQUIRED TO
18 ACCEPT A PURPORTED EXPERT'S OPINION EVEN THOUGH IT BE
19 UNCONTRADICTED.

20 NOW AS I TOLD YOU, I AM THE JUDGE OF THE LAW. AND I AM
21 REQUIRED TO CHARGE YOU THE LAW THAT APPLIES TO THE FACTS IN
22 THIS CASE. IT'S NOT A QUESTION OF WHAT YOU FEEL THE LAW
23 MIGHT BE OR WHAT IT SHOULD BE. IT IS NOT NECESSARILY WHAT
24 THE LAWYERS MAY HAVE TOLD YOU IT IS BECAUSE UNDER YOUR OATH
25 YOU ARE REQUIRED TO TAKE THE LAW AS I GIVE IT TO YOU, APPLY

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1 THAT LAW TO THE FACTS AS YOU DETERMINE THOSE FACTS TO BE AND
2 TO WRITE YOUR VERDICT ACCORDINGLY.

3 LADIES AND GENTLEMEN, IN THIS CASE AS IN ALL CRIMINAL
4 CASES THIS DEFENDANT COMES INTO THIS COURTROOM PRESUMED TO
5 BE INNOCENT. AND THIS PRESUMPTION CONTINUES AND CARRIES
6 THROUGH THE ENTIRE TRIAL UNTIL AND UNLESS IT IS REMOVED BY
7 EVIDENCE THAT SATISFIES YOU OF THEIR GUILT BEYOND A
8 REASONABLE DOUBT. THE BURDEN IS ON THE STATE IN THIS CASE
9 TO PROVE THESE DEFENDANTS GUILTY AND TO PROVE EACH AND EVERY
10 ELEMENT OF THE OFFENSE WITH WHICH THEY ARE CHARGED BEYOND A
11 REASONABLE DOUBT.

12 NOW SOME OF YOU MAY IN THE PAST HAVE SERVED AS JURORS
13 ON CIVIL CASES. AND IF SO YOU WERE MOST LIKELY TOLD THAT IT
14 WAS ONLY NECESSARY TO PROVE THAT A FACT WAS MORE LIKELY TRUE
15 THAN NOT TRUE. BUT IN CRIMINAL CASES THE STATE'S BURDEN IS
16 MORE POWERFUL. AS I'VE TOLD YOU, IT MUST BE BEYOND A
17 REASONABLE DOUBT.

18 NOW PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
19 LEAVES YOU FIRMLY CONVINCED OF THESE DEFENDANTS' GUILT.
20 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH
21 ABSOLUTE CERTAINTY. AND IN CRIMINAL CASES OUR LAW DOES NOT
22 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.

23 IF BASED ON YOUR CONSIDERATION OF THE TESTIMONY AND
24 EVIDENCE IN THIS CASE YOU ARE FIRMLY CONVINCED THAT THESE
25 DEFENDANTS ARE GUILTY, THEN YOU MUST FIND THEM GUILTY. IF,

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1 ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY
2 THAT THEY ARE NOT GUILTY, THEN YOU MUST RESOLVE THAT DOUBT
3 IN THEIR FAVOR AND FIND THEM NOT GUILTY.

4 NOW, LADIES AND GENTLEMEN, OUR LAW DOES NOT COMPEL A
5 DEFENDANT IN A CRIMINAL CASE TO TAKE THE WITNESS STAND AND
6 TESTIFY. AND NO PRESUMPTION OF GUILT MAY BE RAISED AND NO
7 INFERENCE OF ANY KIND MAY BE DRAWN FROM THESE DEFENDANTS'
8 DECISIONS NOT TO TESTIFY.

9 OUR LAW NEVER IMPOSES UPON A DEFENDANT IN A CRIMINAL
10 CASE THE BURDEN OR DUTY OF CALLING ANY WITNESSES, OF
11 PRODUCING ANY EVIDENCE OR OF TESTIFYING. THEREFORE, THE
12 DECISION OF THESE DEFENDANTS NOT TO TAKE THE STAND AND
13 TESTIFY IN THEIR BEHALF CANNOT BE TAKEN, HELD, DISCUSSED OR
14 CONSIDERED AGAINST THEM IN ANY MANNER WHATSOEVER.

15 NOW, LADIES AND GENTLEMEN, UNDER THE OATH YOU TOOK IN
16 THIS CASE YOU SWORE TO TRY THIS CASE BASED ONLY AND SOLELY
17 ON THE TESTIMONY AND EVIDENCE PRESENTED IN THIS COURTROOM.
18 I TELL YOU THAT IT IS YOUR DUTY TO LAY ASIDE ALL OUTSIDE
19 OPINIONS, BIAS, PREJUDICE OR SYMPATHY YOU MAY HAVE IN
20 REACHING A VERDICT.

21 THE WORD VERDICT, LADIES AND GENTLEMEN, IS TAKEN FROM
22 THE LATIN WORD VEREDICTO. IT MEANS TO SPEAK THE TRUTH. YOU
23 HAVE NO FRIENDS TO REWARD IN THIS CASE OR ENEMIES TO PUNISH.
24 I CHARGE YOU TO ABIDE BY YOUR OATH AND RETURN VERDICTS THAT
25 SPEAK THE TRUTH.

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1 NOW YOU'LL HAVE IN THE JURY ROOM WITH YOU THE
2 INDICTMENTS IN THIS CASE. THESE INDICTMENTS DO NOT
3 CONSTITUTE EVIDENCE. THEY SIMPLY SET FORTH THE ALLEGATIONS
4 BY THE STATE. THESE INDICTMENTS ARE THE LEGAL DOCUMENTS BY
5 WHICH THIS CASE IS BROUGHT INTO THE COURTROOM AND PRESENTED
6 TO YOU FOR YOUR DETERMINATION.

7 LADIES AND GENTLEMEN, THERE ARE ONE OF TWO POSSIBLE
8 VERDICTS ON EACH INDICTMENT, GUILTY OR NOT GUILTY. WHATEVER
9 THAT VERDICT IS IT MUST BE UNANIMOUS, THAT IS ALL TWELVE OF
10 YOU MUST AGREE.

11 AND, MADAME FOREMAN, YOU'LL FIND A PLACE ON THE BACK OF
12 EACH INDICTMENT WHERE YOU'LL SEE THE WORD VERDICT IS
13 PRINTED. WHATEVER THE UNANIMOUS VERDICT OF THE JURY IS ON
14 EACH INDICTMENT, GUILTY OR NOT GUILTY, THEN WRITE IT OUT IN
15 THAT SPACE, SIGN YOUR NAME ON THE LINE WHERE IT SAYS
16 FOREPERSON OF THE PETIT JURY.

17 NOW WITH RESPECT TO THE INDICTMENT FOR ARMED ROBBERY,
18 THAT'S COUNT ONE ON THIS INDICTMENT. AND COUNT TWO IS
19 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
20 CRIME. ON THE BACK OF THE INDICTMENT IN THE SPACE WHERE IT
21 SAYS -- I PUT COUNT ONE, THAT WOULD BE ARMED ROBBERY. COUNT
22 TWO WOULD BE POSSESSION OF A WEAPON. AND THAT'S WHERE YOU
23 WOULD WRITE OUT THE VERDICT, GUILTY OR NOT GUILTY.

24 NOW AT THIS TIME, LADIES AND GENTLEMEN, I'M REQUIRED TO
25 GO OVER MY CHARGE WITH THE LAWYERS. I NEED YOU TO GO BACK

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1 INTO YOUR JURY ROOM, BUT DON'T BEGIN DELIBERATING UNTIL I
2 SEND WORD IN FOR YOU TO DO SO. THANK YOU.

3 (WHEREUPON THE JURY EXITED THE COURTROOM AT 10:30 AM)

4 THE COURT: ANYTHING FURTHER FROM THE STATE?

5 MR. MARCHANT: NOTHING FROM THE STATE, YOUR HONOR.

6 THE COURT: FROM THE DEFENDANT?

7 MR. MOORMAN: NOTHING FROM MR. ROBINSON.

8 MR. ROBINSON: NOTHING FROM MR. WORKMAN.

9 THE COURT: ALL RIGHT. WE GOT ALL THE EXHIBITS
10 GATHERED UP?

11 MADAME COURT REPORTER: YES, SIR.

12 THE COURT: OKAY. DONALD, TELL THEM TO DELIBERATE.
13 WHERE ARE THE EXHIBITS?

14 MADAME COURT REPORTER: JUST THIS ONE OVER HERE.

15 THE COURT: OH, IS THAT THE ONLY ONE?

16 MADAME COURT REPORTER: YES, SIR.

17 THE COURT: OKAY. AND BRING MY ALTERNATE TO ME, MS.
18 STRATMANN. JUST TAKE THAT ONE EXHIBIT OVER THERE, AND TELL
19 THEM TO DELIBERATE. AND BRING MY ALTERNATE.

20 (WHEREUPON THE JURY BEGAN DELIBERATING AT 10:31 AM)

21 THE COURT: MS. STRATMANN, SINCE OUR TWELVE JURORS HAVE
22 MADE IT THROUGH THIS CASE I HAVE THE PLEASURE OF TELLING YOU
23 YOU'RE THROUGH ON THIS CASE AND ALSO FOR THE WEEK.

24 MS. STRATMANN: OKAY.

25 THE COURT: YOU DON'T HAVE TO COME BACK TODAY OR

1 TOMORROW. THANK YOU SO MUCH FOR SERVING WITH US. I KNOW
2 IT'S BEEN DIFFICULT FOR YOU, ---

3 MS. STRATMANN: THANK YOU.

4 THE COURT: --- BUT I HOPE YOU'VE ENJOYED YOUR SERVICE.

5 MS. STRATMANN: I HAVE.

6 THE COURT: IF YOU WILL GO DOWN TO THE JURY ASSEMBLY
7 ROOM AND SEE JUDY, SHE'LL GIVE YOU A VOUCHER ---

8 MS. STRATMANN: ALL RIGHT.

9 THE COURT: --- FOR YOUR SERVICE THIS WEEK. THANK YOU
10 VERY MUCH.

11 MS. STRATMANN: THANK YOU.

12 THE COURT: NOW IF YOU WANT TO STAY AROUND AND SEE WHAT
13 THE VERDICT IS, YOU'RE CERTAINLY WELCOME TO DO THAT. IF YOU
14 WANT TO GET OUT OF HERE, THEN YOU'RE FULLY FREE TO LEAVE.
15 THANK YOU.

16 (WHEREUPON COURT WAS IN RECESS AT 10:33 AM)

17 THE COURT: ALL RIGHT. I GOT -- I NEED THE DEFENDANTS.
18 THEY WANT TO HEAR -- THEY WANT TO HEAR WRIGHT'S TESTIMONY
19 PLAYED BACK. SO BRING THE DEFENDANTS UP.

20 (PAUSE)

21 THE COURT: BRING THEM ON.

22 (WHEREUPON COURT'S EXHIBIT 1 WAS MARKED)

23 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 10:56 AM)

24 THE COURT: NOW, MADAME FOREMAN, I UNDERSTAND YOU WANT
25 TO HEAR THE TESTIMONY OF MR. WRIGHT. WE'RE GOING TO PLAY

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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1 HIS TESTIMONY FROM THE BACK-UP. AND I AGREE HE WAS HARD TO
2 HEAR. SO WE'LL DO THE BEST WE CAN, OKAY? ALL RIGHT.

3 (WHEREUPON THE TESTIMONY OF TIMOTHY WRIGHT WAS PLAYED
4 FOR THE JURY)

5 TIMOTHY WRIGHT, BEING
6 DULY SWORN TESTIFIED AS FOLLOWS:

7 MADAME CLERK: THANK YOU. PLEASE BE SEATED. SIR,
8 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

9 MR. WRIGHT: MY NAME IS TIMOTHY LEE WRIGHT.

10 MADAME CLERK: YOU NEED TO MOVE UP, PLEASE.

11 THE COURT: PULL IN CLOSER TO THE MICROPHONE, PLEASE,
12 MR. WRIGHT.

13 MR. WRIGHT: TIMOTHY LEE WRIGHT.

14 MADAME CLERK: THANK YOU, SIR.

15 DIRECT EXAMINATION BY MR. MARCHANT:

16 Q. MR. WRIGHT, HOW OLD ARE YOU?

17 A. TWENTY, SIR.

18 Q. TWENTY?

19 A. YES, SIR.

20 Q. AND WHERE DID YOU GROW UP?

21 A. I GROWED UP IN GREENVILLE, SOUTH CAROLINA, SIR.

22 MR. MARCHANT: JUDGE, I'M GOING TO NEED TO MOVE THIS
23 MICROPHONE A LITTLE CLOSER.

24 Q. I'M GOING TO ASK YOU TO SPEAK UP AS LOUD AS YOU CAN SO
25 THE JURY CAN HEAR YOU, SIR. I'M SORRY. WHERE DID YOU GROW

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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1 UP?

2 A. I GROWED UP IN GREENVILLE, SOUTH CAROLINA, SIR.

3 Q. AND WHERE DID YOU GO TO HIGH SCHOOL?

4 A. SOUTHSIDE, SIR.

5 Q. AND DID YOU GRADUATE FROM SOUTHSIDE HIGH SCHOOL?

6 A. YES, SIR.

7 Q. WHAT YEAR DID YOU GRADUATE?

8 A. '07, SIR.

9 Q. AND FOLLOWING GRADUATING SOUTHSIDE HIGH SCHOOL DID YOU
10 ATTEND COLLEGE ANYWHERE?

11 A. YES, SIR.

12 Q. AND WHERE DID YOU GO?

13 A. GREENVILLE TECH, SIR.

14 Q. AND WHAT PROGRAM OR DIRECTION WERE YOU ENROLLED IN AT
15 GREENVILLE TECH?

16 A. TRUCK DRIVING, SIR.

17 Q. AND DID YOU ENROLL IN GREENVILLE TECH THE AUGUST
18 FOLLOWING YOUR GRADUATION?

19 A. YES, SIR.

20 Q. YOU GRADUATED IN '07, IS THAT CORRECT?

21 A. YES, SIR.

22 Q. SO IN DECEMBER OF 2007 WERE YOU A STUDENT AT GREENVILLE
23 TECH?

24 A. NO, SIR, 'CAUSE I HAD GOT LOCKED UP.

25 Q. OKAY. PRIOR TO GETTING LOCKED UP WERE YOU ENROLLED

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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1 TAKING CLASSES?

2 A. YES, SIR.

3 Q. AND BEFORE ANY OF THIS HAPPENED WERE YOU PLANNING ON
4 GOING TO SCHOOL SOMEWHERE ELSE?

5 A. YES, SIR.

6 Q. AND WHERE WAS THAT?

7 A. EAST COASTAL CAROLINA.

8 Q. AND WHAT WERE YOU GOING TO DO DOWN AT COASTAL CAROLINA?

9 A. PLAY FOOTBALL, SIR.

10 Q. AND WHEN WERE YOU SUPPOSED TO BE BEGINNING CLASSES AT
11 COASTAL CAROLINA?

12 A. '08, JANUARY THE 1ST.

13 Q. SO YOU WERE ONLY GOING TO DO SIX MONTHS OR ONE SEMESTER
14 AT GREENVILLE TECH?

15 A. YES, SIR.

16 Q. DO YOU KNOW KENNETH WORKMAN?

17 A. YES, SIR.

18 Q. AND HOW IS IT THAT YOU KNOW KENNETH WORKMAN?

19 A. WELL, I GROWED UP WITH HIM. AND THAT'S MY COUSIN, SIR.

20 Q. AND THEN YOU KNOW HOW OLD MR. WORKMAN IS?

21 A. YES, SIR.

22 Q. HOW OLD IS HE?

23 A. NINETEEN, SIR.

24 Q. Y'ALL ABOUT THE SAME AGE?

25 A. YES, SIR.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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1 Q. DO YOU KNOW MR. ROBINSON?

2 A. YES, SIR.

3 Q. AND HOW DO YOU KNOW MR. ROBINSON?

4 A. I MET HIM WHEN I HAD GOT OUT OF -- WHEN I HAD GOT OUT
5 OF MY JUVENILE TIME IN '05, SIR.

6 Q. SO YOU'VE KNOWN MR. ROBINSON SINCE 2005?

7 A. YES, SIR.

8 Q. AND YOU'VE KNOWN MR. WORKMAN PRETTY MUCH YOUR WHOLE
9 LIFE?

10 A. YES, SIR.

11 Q. MR. WORKMAN'S YOUR COUSIN?

12 A. YES, SIR.

13 Q. NOW IN THE FALL OF 2007 WHILE YOU'RE ATTENDING CLASSES
14 AT GREENVILLE TECH WERE YOU HANGING OUT WITH THESE TWO GUYS?

15 A. YES, SIR.

16 Q. WAS IT THROUGH SOME EMPLOYMENT OR WERE Y'ALL JUST --
17 WAS IT A SOCIAL ARRANGEMENT?

18 MR. MOORMAN: YOUR HONOR, I'M GOING TO OBJECT TO THAT,
19 TO THE QUESTION.

20 THE COURT: WHAT'S THE OBJECTION?

21 MR. MOORMAN: ON THE BASIS OF A -- A 403 OBJECTION,
22 YOUR HONOR.

23 THE COURT: NO, OVERRULED. GO AHEAD.

24 Q. MR. WRIGHT, WERE YOU -- LET'S GO AT IT THIS WAY. WERE
25 YOU EMPLOYED IN THE FALL OF 2007?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

231

1 A. WAS I EMPLOYED?

2 Q. WERE YOU WORKING SOMEWHERE?

3 A. YES, SIR.

4 Q. AND WHERE WERE YOU WORKING?

5 A. I WAS WORKING AT OJ'S, OJ'S RESTAURANT.

6 Q. OKAY. WHEN THIS -- THIS INCIDENT HAPPENED WERE YOU
7 WORKING?

8 A. NO, SIR.

9 Q. DO YOU KNOW WHETHER OR NOT MR. WORKMAN WAS EMPLOYED?

10 A. NO, SIR.

11 Q. WHAT ABOUT MR. ROBINSON HERE?

12 A. NO, SIR.

13 Q. NOW WHAT DID YOU TYPICALLY CALL MR. WORKMAN?

14 MR. ROBINSON: OBJECTION, YOUR HONOR, RELEVANCE.

15 MR. MARCHANT: I'M ASKING WHAT HE REFERRED -- HOW HE
16 REFERRED TO HIM.

17 THE COURT: GO AHEAD.

18 Q. WHAT DO YOU CALL HIM? IF YOU CALLED HIM UP ON THE
19 PHONE WHAT DO YOU SAY TO HIM?

20 A. I ASK HIM WHAT'S UP, WHAT THEY DOING?

21 Q. BUT WHAT DO YOU CALL HIM?

22 A. TALKING ABOUT O'SHAUN?

23 Q. NO, MR. WORKMAN.

24 A. I SAY KEN.

25 Q. KEN. AND HOW DO YOU ADDRESS MR. ROBINSON HERE?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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- 1 A. "O".
- 2 Q. KEN AND "O"?
- 3 A. (AFFIRMATIVE NOD).
- 4 Q. NOW IT'S PRETTY OBVIOUS THAT YOU'RE DRESSED IN SOME
- 5 JAIL ATTIRE. YOU'VE PLED GUILTY TO THIS OFFENSE, ISN'T THAT
- 6 CORRECT?
- 7 A. YES, SIR.
- 8 Q. AND YOU'VE BEEN SENTENCED, ---
- 9 A. YES, SIR.
- 10 Q. --- CORRECT? I DON'T WANT -- I DON'T WANT YOU TO TELL
- 11 US WHAT YOUR ACTUAL SENTENCE WAS, BUT YOU HAVE PLED GUILTY?
- 12 A. YES, SIR.
- 13 Q. AND HAVE BEEN SENTENCED?
- 14 A. YES, SIR.
- 15 Q. DID YOU PLEAD GUILTY TO ANY OTHER OFFENSES?
- 16 A. NO, SIR. NO, SIR.
- 17 Q. THIS IS THE ONLY OFFENSE YOU'VE PLED GUILTY TO?
- 18 A. OH, NO, SIR.
- 19 Q. OKAY. YOU'VE PLED GUILTY TO ---
- 20 A. TWO OF THEM.
- 21 Q. --- A SUBSEQUENT OFFENSE?
- 22 A. TWO OF THEM.
- 23 Q. OKAY. SO YOU'VE PLED GUILTY TO THIS INCIDENT AND
- 24 YOU'VE PLED GUILTY TO SOMETHING THAT HAPPENED AFTER THIS,
- 25 ISN'T THAT CORRECT?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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1 A. YES, SIR.

2 Q. OKAY. NOW DO YOU RECALL BEING ARRESTED AND SPEAKING
3 WITH INVESTIGATOR HANNING AS WELL AS INVESTIGATOR WEINER?

4 A. YES, SIR.

5 Q. AND WHEN YOU WERE SPEAKING WITH THEM DID THEY GO OVER
6 YOUR MIRANDA RIGHTS?

7 A. YES, SIR.

8 Q. AND DO YOU KNOW WHAT THAT IS?

9 A. YES, SIR.

10 Q. AND AFTER THEY WENT OVER YOUR MIRANDA RIGHTS DID YOU
11 AGREE TO SPEAK WITH THEM?

12 A. YES, SIR.

13 Q. WERE YOU UNDER ARREST AT THE TIME YOU SPOKE WITH THEM?

14 A. YES, SIR.

15 Q. WHILE SPEAKING WITH INVESTIGATOR WEINER AND
16 INVESTIGATOR HANNING DID THEY MAKE ANY PROMISES TO YOU ABOUT
17 WHAT TYPE OF SENTENCE YOU WOULD RECEIVE IF YOU COOPERATED?

18 A. NO, SIR.

19 Q. DID THEY MAKE ANY PROMISES ABOUT ANYTHING TO YOU?

20 A. NO, SIR.

21 Q. NOW YOU WERE REPRESENTED BY AN ATTORNEY ON YOUR
22 CHARGES?

23 A. YES, SIR.

24 Q. DO YOU RECALL WHO THAT ATTORNEY IS?

25 A. CHRIS POSEY, SIR.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

234

1 Q. WHEN IS THE FIRST TIME THAT YOU AND I SAW EACH OTHER
2 FACE TO FACE?

3 A. WHEN I -- WHEN I HAD GOT MY SENTENCE.

4 Q. THE DAY YOU PLED GUILTY? IS THAT WHAT YOU MEAN?

5 A. YES, SIR.

6 Q. HAD YOU AND I EVER SPOKE PRIOR TO THAT DAY?

7 A. NO, SIR.

8 Q. WERE THERE ANY PROMISES THAT WERE MADE TO YOU WHEN YOU
9 PLED GUILTY ABOUT WHAT TYPE OF SENTENCE YOU WOULD RECEIVE?

10 A. NO, SIR.

11 Q. ON THE NIGHT THAT THIS HAPPENED ON DECEMBER 10TH WHERE
12 WERE Y'ALL PRIOR TO GOING OVER TO THIS APARTMENT COMPLEX?

13 MR. ROBINSON: OBJECTION, YOUR HONOR. IT'S A VERY NON-
14 SPECIFIC GENERAL QUESTION. I THINK HE NEEDS TO ASK HIM --
15 SET A FOUNDATION FOR THIS, YOUR HONOR.

16 THE COURT: NO, OVERRULED. GO AHEAD.

17 Q. MR. WRIGHT, WHERE WERE YOU PRIOR TO GOING OVER TO THIS
18 APARTMENT COMPLEX?

19 A. WELL, BEFORE WE WENT OVER THERE WE WAS IN WEST
20 GREENVILLE, SIR.

21 Q. WHERE WERE YOU?

22 A. IN WEST GREENVILLE.

23 Q. AND WHERE PARTICULARLY IN WEST GREENVILLE WERE YOU?

24 A. HANGING AROUND.

25 Q. WERE YOU AT SOMEBODY'S HOUSE, AT A RESTAURANT?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

235

1 A. NO, JUST HANGING AROUND ON THE STREETS.

2 Q. AND HOW IS IT THAT YOU ENDED UP AT THIS APARTMENT
3 COMPLEX?

4 A. WELL, WE HAD -- WELL, WE HAD GOT -- WELL, WE HAD GOT
5 THIS OTHER -- THIS OTHER FRIEND CAR NAMED TEZ. WE WENT OVER
6 THERE TO LIKE SEE WAS SOME GIRLS OR SOMETHING OVER THERE,
7 SEE IF WE COULD MEET SOME GIRLS.

8 Q. AND WHOSE CAR WERE YOU IN?

9 A. TEZ.

10 Q. I'M SORRY, SIR. YOU'RE ---

11 A. TEZ.

12 Q. --- GOING TO HAVE TO SPEAK UP.

13 A. TEZ.

14 Q. WAS TEZ WITH YOU?

15 A. NO, SIR.

16 Q. WHO ALL WAS WITH YOU WHEN YOU WENT OVER TO THIS
17 COMPLEX?

18 A. ME, MARCUS, ROBINSON AND WORKMAN, SIR.

19 Q. WHO WAS MARCUS?

20 A. THAT'S JUST ANOTHER FRIEND, SIR.

21 Q. WHO WAS DRIVING THIS VEHICLE?

22 A. MARCUS, SIR.

23 Q. AND WHAT TYPE OF VEHICLE WAS IT?

24 A. A BLACK LINCOLN, SIR.

25 Q. WAS IT TWO DOOR OR FOUR DOOR?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

236

- 1 A. FOUR DOOR. '
- 2 Q. WHERE WERE YOU SITTING IN THE VEHICLE?
- 3 A. BEHIND THE PASSENGER'S SEAT.
- 4 Q. WHERE WAS KEN SITTING?
- 5 A. IN THE PASSENGER'S SEAT.
- 6 Q. WHERE WAS "O" SITTING?
- 7 A. SITTING BEHIND THE DRIVER'S SEAT.
- 8 Q. WHAT DID YOU DO ONCE YOU GOT INTO THIS APARTMENT
- 9 COMPLEX? DID YOU PARK?
- 10 A. WE DROVE AROUND FOR A LITTLE BIT.
- 11 Q. AND WHY WERE Y'ALL DRIVING AROUND?
- 12 A. LOOKING FOR SOME FEMALES.
- 13 Q. DID YOU KNOW ANY FEMALES IN THIS COMPLEX?
- 14 A. NOT AT THE TIME. WE HAD MET SOME OUT THERE BEFORE.
- 15 Q. YOU HAD MET SOME OUT THERE BEFORE?
- 16 A. YES, SIR.
- 17 Q. HOW MANY TIMES WOULD YOU SAY YOU CIRCLED THIS PARKING
- 18 LOT BEFORE YOU PARKED?
- 19 A. ABOUT FIVE OR SIX TIMES.
- 20 Q. AND ONCE YOU PARKED WHAT DID YOU DO?
- 21 A. JUST SAT RIGHT THERE AND TALKED.
- 22 Q. HOW LONG DID YOU TALK?
- 23 A. ABOUT A GOOD MINUTE.
- 24 Q. HOW LONG?
- 25 A. ABOUT A GOOD MINUTE.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

237

1 Q. WHAT DID YOU TALK ABOUT?

2 A. WELL, WE WAS TALKING -- WELL, WE WAS TALKING ABOUT --
3 WE STARTED TALKING ABOUT ROBBING -- ABOUT THE ROBBING
4 INCIDENT.

5 Q. ABOUT WHAT?

6 A. ABOUT THE ROBBING INCIDENT.

7 Q. WHEN YOU SAY YOU WERE TALKING ABOUT THE ROBBING
8 INCIDENT, WHAT DO YOU MEAN?

9 A. THAT WE STARTED PLANNING IT.

10 Q. AND WHOSE IDEA WAS IT?

11 A. ROBINSON'S, SIR.

12 Q. AND THIS CONVERSATION EXISTED BETWEEN HOW MANY OF THEM?

13 A. THREE OF US.

14 Q. HOW MANY?

15 A. THREE OF US.

16 Q. WAS MARCUS INVOLVED IN THIS CONVERSATION?

17 A. NO, SIR.

18 Q. SO THE THREE OF US, WHO ARE YOU REFERRING TO?

19 A. ME, ROBINSON AND WORKMAN.

20 Q. NOW SPECIFICALLY WHAT WERE Y'ALL TALKING ABOUT ROBBING
21 OR WHO WERE YOU TALKING ABOUT ROBBING?

22 A. WELL, WE WAS GOING -- WE WAS GOING TO WAIT UNTIL WE SEE
23 SOMEBODY THAT WE CAN -- THAT WE CAN GET.

24 Q. AND DID YOU SEE SOMEBODY THAT YOU COULD GET?

25 A. YES, SIR, AFTER -- AFTER THE PERSON HAD PASSED IN THE

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

238

1 RED JEEP.

2 Q. AND WHAT -- WHAT HAPPENED AFTER THIS PERSON PASSED IN
3 THE RED JEEP?

4 A. WE STARTED PLANNING THAT WE WAS GOING TO -- THAT WE WAS
5 GOING TO ROB THAT PERSON.

6 Q. AND DID YOU HAVE A GUN?

7 A. NO, SIR.

8 Q. DID KEN HAVE A GUN?

9 A. NO, SIR.

10 Q. DID "O" HAVE A GUN?

11 A. YES, SIR.

12 Q. WHAT TYPE OF GUN WAS IT?

13 A. I THINK A .57 MAGNUM, SIR.

14 Q. WHAT COLOR WAS IT?

15 A. SILVER AND BROWN.

16 Q. WHERE WAS THE BROWN PART LOCATED?

17 A. ON THE HANDLE, SIR.

18 Q. AFTER Y'ALL TALKED ABOUT ROBBING SOMEBODY DID Y'ALL
19 DECIDE ON THIS PERSON THAT HAD PULLED IN IN THE RED JEEP?

20 A. YES, SIR.

21 Q. DID YOU WAIT FOR THAT PERSON TO PARK?

22 A. YES, SIR.

23 Q. AND ONCE HE PARKED WHAT HAPPENED?

24 A. THEN WE ALL JUMPED OUT OF THE CAR, SIR.

25 Q. AND WHERE DID KEN GO?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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- 1 A. ON THE PASSENGER'S SIDE, SIR.
- 2 Q. PASSENGER'S SIDE OF WHAT?
- 3 A. OF THE RED JEEP.
- 4 Q. DO YOU REMEMBER WHAT KEN WAS WEARING?
- 5 A. NO, SIR.
- 6 Q. WHERE DID "O" GO?
- 7 A. ON THE DRIVER'S SIDE, SIR, OF -- OF THE JEEP.
- 8 Q. AND WHERE DID YOU GO?
- 9 A. ON THE DRIVER'S SIDE BESIDE HIM, SIR.
- 10 Q. YOU'RE ON THE DRIVER'S SIDE OF THE JEEP. AND "O's" ON
- 11 THE DRIVER'S SIDE OF THE JEEP. WHO WAS IN FRONT?
- 12 A. ROBINSON, SIR.
- 13 Q. SO WHERE -- IF THIS IS THE VEHICLE AND THIS IS THE REAR
- 14 OF THE JEEP WHERE WERE YOU STANDING?
- 15 A. I WAS STANDING LIKE RIGHT -- RIGHT BESIDE HIM, LIKE
- 16 BEHIND HIM.
- 17 Q. OKAY. I'D ASK YOU TO STEP DOWN SO YOU CAN SHOW THE
- 18 JURY WHERE YOU WERE POSITIONED. ASSUMING FOR DEMONSTRATION
- 19 PURPOSES THIS IS THE DRIVER'S SIDE OF THE VEHICLE, THIS IS
- 20 THE DRIVER'S DOOR AND THIS IS THE BACK DOOR OF THE RED JEEP,
- 21 WHERE WAS "O" STANDING?
- 22 A. HE WAS STANDING RIGHT HERE.
- 23 Q. OKAY. AND WHERE WERE YOU STANDING?
- 24 A. RIGHT HERE BESIDE HIM.
- 25 Q. SO WERE Y'ALL LINED UP LIKE THIS OR WERE YOU LINED UP

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

240

1 LIKE THIS?

2 A. LINED UP SIDEWAYS.

3 Q. WAS HE IN FRONT OF YOU?

4 A. YES, SIR.

5 Q. AND WHERE AGAIN WAS KEN?

6 A. ON THE PASSENGER'S SIDE, SIR.

7 Q. OKAY. PLEASE TAKE YOUR SEAT. DID ALL THREE OF YOU
8 ARRIVE AT THE VEHICLE AT THE SAME TIME?

9 A. YES, SIR.

10 Q. AND WHAT HAPPENED ONCE YOU GOT TO THE VEHICLE?

11 A. ROBINSON PULLED THE GUN OUT ON THE VICTIM, SIR, AND
12 TOLD HIM TO GIVE IT UP.

13 Q. AND DID YOU SEE WHETHER OR NOT THE VICTIM HANDED OVER
14 ANYTHING?

15 A. NO, SIR.

16 Q. DO YOU KNOW WHETHER OR NOT "O" GOT ANYTHING FROM THE
17 VICTIM?

18 A. YES, SIR.

19 Q. AND HOW IS IT THAT YOU KNOW HE GOT SOMETHING?

20 A. WELL, HE HAD SNATCHED A WALLET FROM THE VICTIM, SIR.

21 Q. YOU SAW HIM DO THAT?

22 A. YES, SIR.

23 Q. WHERE WAS KEN THE WHOLE TIME?

24 A. STILL ON THE PASSENGER'S SIDE, SIR.

25 Q. DID KEN EVER COME AROUND TO THE DRIVER'S SIDE?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

241

1 A. NO, SIR.

2 Q. WHAT HAPPENED AFTER "O" TOOK THE WALLET FROM THE
3 VICTIM?

4 A. WE TOOK OFF RUNNING, SIR.

5 Q. AND WHERE DID YOU RUN TO?

6 A. BACK TO THE CAR.

7 Q. WAS THE CAR RUNNING?

8 A. (AFFIRMATIVE NOD).

9 Q. WAS THE CAR STILL RUNNING OR WAS IT TURNED OFF?

10 A. YES, SIR, IT WAS STILL RUNNING.

11 Q. DID ANYTHING HAPPEN TO THE VICTIM AFTER "O" TOOK THE
12 MONEY FROM HIM BEFORE Y'ALL GOT BACK TO THE CAR?

13 A. YEAH, HE -- HE PUNCHED THE VICTIM IN THE HEAD.

14 Q. WHO DID?

15 A. ROBINSON.

16 Q. WITH WHAT?

17 A. WITH HIS FIST.

18 Q. AND DO YOU RECALL WHAT "O" WAS WEARING THAT DAY?

19 A. NO, SIR.

20 Q. DO YOU REMEMBER WHAT YOU WERE WEARING?

21 A. NO, SIR.

22 Q. ONCE YOU GOT BACK TO THE CAR WHERE DID YOU POSITION
23 YOURSELF IN THE VEHICLE?

24 A. BACK BEHIND THE PASSENGER'S SEAT.

25 Q. WHERE DID KEN GO?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

242

1 A. BACK TO THE FRONT, SIR.

2 Q. AND WHERE DID "O" GO?

3 A. BACK TO THE DRIVER'S SIDE IN THE BACK.

4 Q. AND WHAT HAPPENED ONCE Y'ALL ALL GOT BACK IN THE CAR?

5 A. WE TOOK OFF IN THE CAR.

6 Q. WHERE DID -- WHERE WERE Y'ALL PLANNING ON GOING AFTER
7 YOU GOT BACK IN THE CAR?

8 A. HEADING BACK TOWARDS WHITE HORSE ROAD TO GO BACK TO
9 WEST GREENVILLE.

10 Q. DID YOU SEE THE VICTIM AT ANY TIME LATER?

11 A. YES, SIR.

12 Q. WHERE DID YOU SEE HIM?

13 A. SEEN HIM BEHIND US.

14 Q. BEHIND YOU WHERE?

15 A. IN HIS RED JEEP.

16 Q. DO YOU RECALL WHETHER OR NOT HIS LIGHTS WERE ON OR OFF?

17 A. THEY WAS OFF UNTIL HE GOT UP -- UNTIL HE GOT UP TO US.
18 THEN HE TURNED THEM ON. AND THAT'S WHEN WE REALIZED HE WAS
19 BEHIND US.

20 Q. WHAT HAPPENED INSIDE YOUR CAR WHEN HE TURNED HIS LIGHTS
21 ON?

22 A. ROBINSON HAD POINTED THE PISTOL OUT THE WINDOW AND SHOT
23 AT HIM.

24 Q. HOW MANY TIMES?

25 A. ONCE.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

243

1 Q. AFTER "O" SHOT ONE TIME WHERE DID Y'ALL GO FROM THERE?

2 A. BACK TO WEST GREENVILLE.

3 Q. DID YOU GET ANY OF MR. ESPINOZA'S PROPERTY FROM THIS
4 ROBBERY?

5 A. NO, SIR.

6 Q. DID YOU GET ANY MONEY?

7 A. NO, SIR.

8 Q. CREDIT CARD?

9 A. NO, SIR.

10 Q. YOU DIDN'T GET ANYTHING OUT OF THIS?

11 A. NO, SIR.

12 Q. DO YOU SEE THE VICTIM HERE TODAY?

13 A. YES, SIR.

14 Q. WILL YOU POINT HIM OUT FOR THE COURT?

15 A. HE'S RIGHT THERE, SIR.

16 Q. WHAT'S HE WEARING?

17 A. I CAN'T SEE WHAT HE'S WEARING, SIR.

18 MR. MARCHANT: I'D ASK THAT THE GENTLEMAN STAND UP,
19 PLEASE.

20 THE COURT: STAND UP, PLEASE.

21 Q. IS THIS WHO YOU'RE POINTING TO?

22 A. YES, SIR.

23 MR. MARCHANT: LET THE RECORD REFLECT THAT MR. WRIGHT
24 HAS IDENTIFIED MR. ESPINOZA AS THE VICTIM.

25 Q. WHAT HAPPENED TO THE GUN?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

244

1 A. WELL, WE WENT BACK TO THE NEIGHBORHOOD. AND I DON'T
2 KNOW WHAT HAPPENED TO THE GUN.

3 Q. MR. WRIGHT, YOU'VE RECEIVED YOUR SENTENCE FOR THIS
4 CRIME, CORRECT?

5 A. YES, SIR.

6 Q. AND YOU'RE AWARE THAT YOUR TESTIMONY TODAY WILL NOT
7 INCREASE NOR DECREASE THAT SENTENCE?

8 A. YES, SIR.

9 Q. WHY ARE YOU HERE TELLING THIS JURY WHAT YOU'RE TELLING
10 THEM?

11 A. WELL -- WELL, I KNOW -- WELL, I KNOW WHAT WE WAS DOING,
12 I MEAN, IT WAS WRONG. IT WAS WRONG IN THE FIRST BEGINNING
13 AND BEFORE WE EVEN -- BEFORE WE EVEN DID THE CRIME. WE
14 SHOULDN'T EVEN NEVER, I MEAN, WE SHOULD HAVE NEVER THOUGHT
15 ABOUT DOING THAT KIND -- BEEN DOING THAT KIND OF CRIME.

16 Q. THANK YOU, MR. WRIGHT. THAT'S ALL THE QUESTIONS I
17 HAVE. IF ---

18 THE COURT: ALL RIGHT. MR. MOORMAN.

19 Q. --- YOU'D ANSWER ANY QUESTIONS MR. ROBINSON, MR.
20 MOORMAN MAY HAVE.

21 MR. MOORMAN: YOUR HONOR, MAY I HAVE A -- MAY WE
22 APPROACH?

23 THE COURT: SURE.

24 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
25 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

245

1 THE COURT: ALL RIGHT. MR. MOORMAN, YOU MAY CROSS.

2 MR. MOORMAN: THANK YOU, YOUR HONOR.

3 CROSS EXAMINATION BY MR. MOORMAN:

4 Q. MR. WRIGHT, YOU HAVE A NICKNAME ON THE STREET, DON'T
5 YOU?

6 A. YES, SIR.

7 Q. AND THAT NICKNAME IS LEE LEE, IS THAT CORRECT?

8 A. YES, SIR.

9 Q. AND YOUR TESTIMONY IS THAT THERE WERE THREE PEOPLE
10 AROUND THAT CAR THAT NIGHT, CORRECT?

11 A. YES, SIR.

12 Q. THERE WERE YOU?

13 A. YES, SIR.

14 Q. AND THEN THESE CO-DEFENDANTS, CORRECT?

15 A. YES, SIR.

16 Q. AND YOUR TESTIMONY IS THAT YOU'RE DOING -- YOU'RE
17 TESTIFYING BECAUSE IT WAS -- IT WAS JUST WRONG AND YOU WANT
18 TO TELL THE TRUTH, IS THAT RIGHT?

19 A. YES, SIR.

20 Q. WHAT'S THAT?

21 A. YES, SIR.

22 Q. I CAN'T HEAR YOU.

23 A. YES, SIR.

24 Q. BUT THAT'S NOT THE ONLY REASON WHY YOU'RE TESTIFYING,
25 IS IT? ISN'T IT TRUE THAT THIS PROSECUTOR DISMISSED

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

246

1 NUMEROUS CHARGES THAT WERE PENDING AGAINST YOU, ISN'T THAT
2 TRUE?

3 A. NO, SIR.

4 Q. SO IT'S YOUR TESTIMONY THAT THIS PROSECUTOR NEVER
5 DISMISSED ANY CHARGES AGAINST YOU?

6 A. HE DISMISSED CHARGES.

7 Q. OKAY. SO ISN'T IT TRUE HE DISMISSED CHARGES AGAINST
8 YOU? ISN'T THAT TRUE?

9 A. YEAH, HE DISMISSED CHARGES. YES, SIR.

10 Q. AND ISN'T IT TRUE THAT HE DISMISSED THESE CHARGES ON
11 THE DAY YOU GAVE SWORN TESTIMONY IN THIS CASE? ISN'T THAT
12 TRUE?

13 A. YES, SIR.

14 Q. THE SAME DAY, ISN'T THAT TRUE?

15 A. YES, SIR.

16 Q. I WANT TO TALK ABOUT WHAT YOUR ROLE WAS IN THIS. YOU
17 SAID THAT YOU WERE STANDING NEXT TO O'SHAUN, IS THAT RIGHT?

18 A. YES, SIR.

19 Q. WHAT WAS YOUR ROLE IN THIS -- IN THIS ROBBERY? WHAT
20 WERE YOU SUPPOSED TO DO?

21 A. I BELIEVE I WAS SUPPOSED TO BEEN A WATCH-OUT.

22 Q. OKAY. SO YOU WERE JUST STANDING THERE, RIGHT?

23 A. YES, SIR.

24 Q. AND IS IT YOUR TESTIMONY THAT KEN WORKMAN WAS ALSO JUST
25 TO BE -- JUST TO STAND THERE, RIGHT?

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

247

1 A. YES, SIR.

2 Q. AND YOUR TESTIMONY IS THAT YOU NEVER HAD A GUN,
3 CORRECT?

4 A. YES, SIR.

5 Q. AND YET YOU PLED GUILTY TO ARMED ROBBERY FOR STANDING
6 THERE, IS THAT CORRECT?

7 A. YES, SIR.

8 Q. WHAT'S THAT?

9 A. YES, SIR.

10 Q. YOU TESTIFIED THAT YOU WERE -- YOU AND THE OTHERS WENT
11 THERE TO LOOK FOR GIRLS, IS THAT RIGHT?

12 A. YES, SIR, THAT'S WHAT WE WENT THERE TO LOOK FOR.

13 Q. I'M SORRY, I CAN'T ---

14 A. I SAID YES, SIR.

15 Q. --- HEAR YOU. BUT THAT ISN'T WHY YOU WENT THERE, IS
16 IT?

17 A. NO, SIR.

18 Q. YOU WENT THERE TO ROB SOMEBODY, ISN'T THAT RIGHT?

19 A. YES, SIR.

20 Q. SO WHEN YOU SAID EARLIER YOU WENT THERE LOOKING FOR
21 GIRLS THAT WAS NOT TRUE, IS THAT CORRECT?

22 A. WELL, REALLY -- NOT REALLY.

23 Q. ALL RIGHT. ISN'T IT TRUE THAT IN THE STATEMENT YOU
24 GAVE POLICE YOU SAID THAT THERE WERE TWO GUNS INVOLVED IN
25 THIS? ISN'T THAT TRUE?

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

248

1 A. NO, SIR.

2 Q. THAT'S NOT TRUE?

3 A. NO, SIR.

4 Q. SO THE STATEMENT YOU GAVE TO INVESTIGATOR WEINER YOU
5 NEVER SAID THAT KENNETH AND O'SHAUN HAD GUNS? YOU NEVER
6 SAID THAT, DID YOU?

7 A. WHAT I MEANT BY THAT WAS, I MEAN, IT WAS ONLY ONE GUN.

8 Q. OKAY. SO WHEN YOU SAID THERE WERE MULTIPLE GUNS, THAT
9 WASN'T TRUE EITHER, RIGHT?

10 A. NO, SIR.

11 Q. AND YOUR TESTIMONY IS THAT THERE WERE FOUR PEOPLE
12 INVOLVED IN THIS THING ALTOGETHER, RIGHT?

13 A. YES, SIR.

14 Q. THREE AROUND THE CAR AND THEN ONE IN THE CAR THAT Y'ALL
15 DROVE AWAY IN, RIGHT?

16 A. YES, SIR.

17 Q. AND WHO WAS THE GUY -- WHO WAS THE GUY IN THE CAR?

18 A. MARCUS.

19 Q. MARCUS. WHAT WAS -- WHAT WAS MARCUS' LAST NAME?

20 A. I DON'T KNOW HIS LAST NAME, SIR.

21 Q. JUST MARCUS?

22 A. THAT'S ALL I KNEW.

23 Q. SO YOU NEVER DID ANYTHING DURING THIS ROBBERY BUT STAND
24 THERE, CORRECT?

25 A. YES, SIR.

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. ROBINSON

249

1 Q. NEVER HAD A GUN?

2 A. NO, SIR.

3 Q. AT THE TIME YOU GAVE THIS STATEMENT TO INVESTIGATOR
4 WEINER YOU WERE IN CUSTODY, IS THAT RIGHT?

5 A. YES, SIR.

6 Q. ISN'T IT TRUE THAT YOU WERE THE ONE WHO HAD THE GUN
7 THAT NIGHT? ISN'T IT TRUE? ISN'T THAT TRUE?

8 A. THAT I HAD THE GUN THAT NIGHT?

9 Q. YOU WERE THE ONE THAT HAD THE GUN?

10 A. NO, SIR. NO.

11 Q. ISN'T IT TRUE YOU WERE THE ONE WHO PUT THAT GUN IN MR.
12 ESPINOZA'S FACE? ISN'T THAT TRUE?

13 A. NO, SIR.

14 Q. ISN'T THAT -- ISN'T THAT WHY YOU PLED GUILTY TO ARMED
15 ROBBERY 'CAUSE YOU WERE THE ONE WITH THE GUN THAT NIGHT?

16 A. NO, SIR.

17 MR. MARCHANT: YOUR HONOR, IT'S ASKED AND ANSWERED.

18 THE COURT: HE'S ASKED AND ANSWERED IT. MOVE ON.

19 MR. MOORMAN: YOUR HONOR, I'VE GOT -- I'VE GOT NOTHING
20 FURTHER.

21 THE COURT: ALL RIGHT. MR. ROBINSON.

22 MR. ROBINSON: MAY IT PLEASE THE COURT?

23 CROSS EXAMINATION BY MR. ROBINSON:

24 Q. MR. WRIGHT, YOU TESTIFIED A MOMENT AGO THAT YOU'RE
25 DOING -- YOU'RE GIVING YOUR TESTIMONY BECAUSE YOU WANT TO

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. ROBINSON

250

1 TELL THE TRUTH, ISN'T THAT RIGHT?

2 A. YES, SIR.

3 Q. NOW YOU WOULD AGREE WITH ME THAT WHEN YOU DID YOUR --
4 YOU HAD A PRIOR ATTORNEY, MR. POSEY, IS THAT RIGHT?

5 A. YES, SIR.

6 Q. AND HE AND YOU MET WITH MR. MARCHANT, WHO'S SITTING
7 OVER HERE, IS THAT CORRECT?

8 A. WELL, I DIDN'T MEET -- I DIDN'T MEET HIM UNTIL I CAME
9 -- UNTIL I CAME -- UNTIL I CAME TO COURT.

10 Q. YOU MET MR. MARCHANT WHEN YOU CAME TO COURT?

11 A. YES, SIR.

12 Q. OKAY. AND WHILE YOU'RE SAYING THAT YOU'RE DOING THIS
13 TO TELL THE TRUTH YOU WOULD ALSO AGREE WITH ME THAT YOU HAD
14 A NUMBER -- A NUMBER OF CHARGES DISMISSED ALSO AGAINST YOU,
15 ISN'T THAT TRUE AS WELL?

16 A. YES, SIR.

17 Q. THANK YOU. I HAVE NO MORE QUESTIONS.

18 THE COURT: ANYTHING ELSE, SOLICITOR?

19 MR. MARCHANT: NOTHING FURTHER, YOUR HONOR.

20 THE COURT: THANK YOU. STEP DOWN.

21 (WHEREUPON THE TESTIMONY HAD ENDED)

22 THE COURT: OKAY, LADIES AND GENTLEMEN, PLEASE RETIRE
23 AND CONTINUE WITH YOUR DELIBERATIONS. THANK YOU.

24 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11:26 AM)

25 THE COURT: ALL RIGHT. IF YOU'LL BE AT EASE.

1 (WHEREUPON COURT WAS IN RECESS AT 11:26 AM)

2 THE COURT: THE JURY HAS QUESTIONS CONCERNING THE FACTS
3 OF THE CASE, WHICH I CANNOT ANSWER. THEY WANT TO KNOW HOW
4 MANY PHOTOS WERE ON TV? WERE THERE THREE? AND MR. ESPINOZA
5 ONLY PICKED TWO. AND I DON'T UNDERSTAND THIS LAST
6 STATEMENT, TALKED ABOUT DURING THE ACCOUNT WITH MR. ESPINOZA
7 AND SOLICITOR. THAT'S NOT A QUESTION, THAT'S JUST A
8 STATEMENT.

9 BUT ANYWAY, THAT RELATES TO THE FACTS. SO I CAN'T
10 ANSWER THOSE. ALL RIGHT. BRING THIS DELIBERATING JURY SO I
11 CAN ANSWER -- TALK ABOUT THIS QUESTION.

12 (WHEREUPON COURT'S EXHIBIT 2 WAS MARKED)

13 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 1:15 PM)

14 THE COURT: MADAME FOREMAN, YOU HAVE SENT IN SOME
15 ADDITIONAL QUESTIONS. YOU WILL RECALL DURING THE COURSE OF
16 MY CHARGE THAT I EXPLAINED TO YOU THAT YOU ARE THE JUDGES OF
17 THE FACTS IN THIS CASE AND THAT THE CONSTITUTION OF OUR
18 STATE DOES NOT ALLOW ME TO DISCUSS THE FACTS OF THE CASE
19 WITH YOU.

20 NOW THE QUESTIONS THAT YOU'VE SENT IN ARE QUESTIONS OF
21 FACT. SO I CANNOT ANSWER THESE QUESTIONS FOR YOU. YOUR
22 QUESTIONS ARE HOW MANY PHOTOS WERE ON TV? WERE THERE THREE?
23 AND MR. ESPINOZA ONLY PICKED TWO. AND I'M NOT SURE ABOUT
24 THIS LAST STATEMENT. IT'S NOT A QUESTION. TALKED ABOUT
25 DURING THE ACCOUNT WITH MR. ESPINOZA AND SOLICITOR.

ALLEN CHARGE OF THE COURT

252

1 NOW THAT OBVIOUSLY, OF COURSE, IS A FACTUAL QUESTION OR
2 ISSUE IN THE CASE. SO WHAT I HAVE TO TELL YOU, LADIES AND
3 GENTLEMEN, THAT I CAN'T ANSWER THESE QUESTIONS. I DON'T
4 KNOW IF THEY CAN BE ANSWERED. IF THEY CAN BE ANSWERED, THEN
5 THEY MUST BE ANSWERED FROM YOUR RECOLLECTION AS TO WHAT THE
6 TESTIMONY WAS DURING THE COURSE OF THE TRIAL. OKAY? ALL
7 RIGHT. WITH THAT I NEED YOU TO RETURN TO YOUR JURY ROOM AND
8 CONTINUE WITH YOUR DELIBERATIONS. THANK YOU.

9 (WHEREUPON THE JURY EXITED THE COURTROOM AT 1:17 PM)

10 THE COURT: ALL RIGHT. BE AT EASE, PLEASE.

11 (WHEREUPON COURT WAS IN RECESS AT 1:17 PM)

12 THE COURT: BE SEATED. BE SEATED. ALL RIGHT. THIS
13 JURY SAYS THEY'RE UNABLE TO REACH A VERDICT. SO I PROPOSE
14 TO GIVE THEM A LITTLE PEP TALK. ALL RIGHT. BRING THE JURY.

15 (WHEREUPON COURT'S EXHIBIT 3 WAS MARKED)

16 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:50 PM)

17 THE COURT: NOW, MADAME FOREMAN, YOU SENT IN A NOTE
18 THAT YOU'RE UNABLE TO COME TO A UNANIMOUS DECISION. IS THAT
19 CORRECT?

20 MADAME FOREMAN: THAT IS CORRECT.

21 THE COURT: I HAVE SOME REMARKS TO MAKE TO YOU AT THIS
22 TIME. AND WHEN I HAVE CONCLUDED, THEN I'LL SEND YOU BACK TO
23 YOUR JURY ROOM TO CONTINUE YOUR DELIBERATIONS.

24 LADIES AND GENTLEMEN, THE ONLY MODE OR THE ONLY METHOD
25 THAT IS PROVIDED BY OUR LAWS FOR DECIDING QUESTIONS OF FACT

ALLEN CHARGE OF THE COURT

253

1 IN A CRIMINAL CASE 'IS THE VERDICT OF A JURY. NOW I TELL YOU
2 THAT IN MOST ALL CASES ABSOLUTE CERTAINTY CANNOT BE OBTAINED
3 OR EVEN EXPECTED. WHEN A MATTER IS IN DISPUTE IT ISN'T
4 ALWAYS EASY FOR EVEN TWO PEOPLE TO AGREE. INDEED, THE
5 PARTIES TO THIS PROCEEDING HAVE BEEN UNABLE TO AGREE.
6 THEREFORE, WHEN TWELVE PEOPLE MUST AGREE IT BECOMES
7 CORRESPONDINGLY MORE DIFFICULT.

8 NOW I TELL YOU THAT IT IS VERY UNUSUAL FOR A JURY TO GO
9 OUT AND TO QUICKLY OR IMMEDIATELY RETURN WITH A VERDICT. AT
10 THE SAME TIME I TELL YOU THAT WE USUALLY GET A VERDICT. SO
11 WHILE IT'S NORMAL FOR JURORS TO DISAGREE AT FIRST WE
12 NEVERTHELESS GET A VERDICT AFTER THE JURY HAS LAID ASIDE ALL
13 OUTSIDE OR EXTRANEIOUS MATTERS AND HAVE DETERMINED TO TRY THE
14 CASE ON ITS MERITS AND ON THE BASIS OF THE LAW AND EVIDENCE
15 IN THE CASE.

16 NOW IT'S BEEN SAID THAT JURY SERVICE IS PERHAPS THE
17 HIGHEST SERVICE THAT A CITIZEN CAN PERFORM FOR HIS OR HER
18 COUNTRY OR STATE DURING PEACE-TIME. AND I CERTAINLY AGREE
19 WITH THAT. HOWEVER, I TELL YOU THAT A JUROR DOES NOT RENDER
20 GOOD JURY SERVICE WHO ARBITRARILY SAYS, I KNOW WHAT I WANT
21 TO DO IN THIS CASE, AND IF AND WHEN EVERYBODY AGREES WITH
22 ME, THEN WE'LL WRITE A VERDICT. AND WE WILL NOT WRITE A
23 VERDICT UNTIL THAT TIME.

24 I TELL YOU THAT IT WAS NEVER INTENDED THAT THE VERDICT
25 OF A JURY SHOULD BE THE VIEW OF ANY ONE PERSON. AT THE SAME

ALLEN CHARGE OF THE COURT

254

1 TIME I TELL YOU THAT EVERY JUROR HAS A RIGHT TO HIS OR HER
2 OWN OPINION AND HE OR SHE NEED NOT GIVE IT UP MERELY FOR THE
3 PURPOSE OF BEING IN AGREEMENT. HOWEVER, THE VERDICT OF A
4 JURY IS THE COLLECTIVE REASONING OF ALL JURORS. AND THAT,
5 OF COURSE, IS WHY WE HAVE A JURY.

6 I TELL YOU THAT IT IS THE DUTY OF EACH OF YOU TO TELL
7 THE OTHERS HOW YOU FEEL AND WHY YOU FEEL THAT WAY. HOWEVER,
8 I ALSO TELL YOU THAT IF MUCH THE LARGER NUMBER OF YOUR PANEL
9 ARE IN FAVOR OF ONE PARTICULAR VERDICT, THEN A DECENTING
10 JUROR OR JURORS SHOULD CONSIDER WHETHER OR NOT HIS OR HER OR
11 THEIR POSITIONS IS A REASONABLE ONE WHICH MAKES NO
12 IMPRESSION UPON THE MINDS OF THE MAJORITY.

13 IN OTHER WORDS, IF A MAJORITY OF YOU ARE FOR ONE
14 PARTICULAR FORM OF VERDICT, THE MINORITY OUGHT TO SERIOUSLY
15 ASK THEMSELVES WHETHER THEY CAN REASONABLY DOUBT THE
16 CORRECTNESS OF THE JUDGMENT OF THE MAJORITY.

17 NOW ALTHOUGH THE VERDICT TO WHICH A JUROR AGREES MUST,
18 OF COURSE, BE HIS OR HER OWN VERDICT, THE RESULT OF HIS OR
19 HER OWN CONVICTIONS AND NOT A MERE ACQUIESCENCE IN THE
20 CONCLUSION OF HIS OR HER FELLOW JURORS, YET IN ORDER TO
21 BRING TWELVE MINDS TO A UNANIMOUS DECISION AS YOU ARE
22 REQUIRED TO DO YOU MUST EXAMINE THE QUESTIONS SUBMITTED TO
23 YOU WITH CANDOR AND WITH A PROPER REGARD TO AND RESPECT FOR
24 THE OPINIONS OF EACH OTHER.

25 YOU SHOULD ALSO CONSIDER THAT YOU WERE SELECTED IN THE

ALLEN CHARGE OF THE COURT

255

1 SAME MANNER AND FROM THE SAME SOURCE FROM WHICH ANY FUTURE
2 JURY MIGHT BE SELECTED. AND THERE'S CERTAINLY NO REASON FOR
3 ME TO SUPPOSE THAT THIS CASE WOULD BE SUBMITTED TO TWELVE
4 PEOPLE MORE INTELLIGENT, IMPARTIAL AND COMPETENT THAN YOU
5 TWELVE ARE OR THAT MORE OR CLEARER EVIDENCE WILL BE PRODUCED
6 ON ONE SIDE OR THE OTHER.

7 IN OTHER WORDS, LADIES AND GENTLEMEN, I TELL YOU THAT A
8 MISTRIAL IN A CASE IS AN UNFORTUNATE THING. IF YOU CANNOT
9 AGREE ON A VERDICT IN THIS CASE IT DOESN'T MEAN ANYBODY
10 WINS. IT JUST MEANS POSSIBLY THAT AT SOME FUTURE TIME I
11 WILL OR ONE OF THE OTHER JUDGES WILL TRY THIS CASE WITH A
12 JURY SEATED WHERE YOU ARE. THE SAME PARTICIPANTS WILL COME.
13 AND THE SAME LAWYERS WILL ASK BASICALLY THE SAME QUESTIONS
14 AND I SUPPOSE PROBABLY GET BASICALLY THE SAME ANSWERS. AND
15 WE'LL JUST GO THROUGH THE WHOLE PROCESS AGAIN.

16 IN CONCLUSION, LADIES AND GENTLEMEN, I TELL YOU THAT IF
17 THE STATE IS ENTITLED TO GUILTY VERDICTS IN THIS CASE, IT IS
18 ENTITLED TO THOSE VERDICTS TODAY. NOT TOMORROW, NEXT WEEK,
19 NEXT MONTH, OR NEXT YEAR, BUT TODAY. ON THE OTHER HAND I
20 TELL YOU THAT IF THE DEFENDANTS ARE ENTITLED TO VERDICTS OF
21 NOT GUILTY IN THIS CASE, THEY ARE ENTITLED TO THOSE VERDICTS
22 TODAY, NOT NEXT WEEK, NEXT MONTH, NEXT YEAR, BUT TODAY.

23 THEREFORE, LADIES AND GENTLEMEN, I CANNOT ACCEPT ANY
24 REPORT AT THIS TIME THAT YOU CANNOT AGREE ON A UNANIMOUS
25 VERDICT IN THIS CASE. I AM OF THE OPINION THAT YOU HAVE NOT

VERDICT OF THE JURY

256

1 DELIBERATED SUFFICIENTLY LONG THAT I COULD IN GOOD
2 CONSCIENCE ACCEPT THAT REPORT. AND I TELL YOU FRANKLY IT
3 WILL TAKE CONSIDERABLY MORE TIME BEFORE I AM CONVINCED THAT
4 YOU CANNOT REACH A VERDICT.

5 I, THEREFORE, HUMBLY BESEECH YOU TO RETURN TO YOUR JURY
6 ROOM, CONTINUE YOUR DELIBERATIONS WITH THE HOPE THAT YOU CAN
7 ARRIVE AT A UNANIMOUS VERDICT WITHIN A REASONABLE TIME.
8 THANK YOU. PLEASE RETIRE AND CONTINUE WITH YOUR
9 DELIBERATIONS.

10 (WHEREUPON THE JURY EXITED THE COURTROOM AT 2:58 PM)

11 THE COURT: ALL RIGHT. THANK YOU. FOLKS, PLEASE BE AT
12 EASE.

13 (WHEREUPON COURT WAS IN RECESS AT 2:59 PM)

14 THE COURT: LADIES AND GENTLEMEN, I'VE BEEN TOLD THAT
15 WE HAVE A VERDICT IN THIS CASE. OF COURSE, WE DON'T KNOW
16 WHAT THAT VERDICT IS, BUT REGARDLESS OF THE VERDICT,
17 WHATEVER IT IS, I WILL NOT PERMIT OR CONDONE ANY DISPLAYS OF
18 EMOTION WHATSOEVER. NO CRYING, NO CLAPPING, NO LAUGHING,
19 NOTHING OF THAT NATURE.

20 AND SHOULD THERE BE ANY, THAT WILL CONSTITUTE CONTEMPT
21 OF COURT. AND I WILL PUNISH ACCORDINGLY. NOW DOES ANYONE
22 IN THE COURTROOM -- WHO DOES NOT UNDERSTAND WHAT I JUST
23 SAID?

24 (NO RESPONSE)

25 THE COURT: ALL RIGHT. BRING THE JURY, PLEASE.

VERDICT OF THE JURY

257

1 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 4:47 PM)

2 THE COURT: MADAME FOREMAN, IF YOU'VE REACHED A VERDICT
3 WOULD YOU HAND IT TO THE BAILIFF, PLEASE, MA'AM? ALL RIGHT.
4 PUBLISH THE VERDICTS, PLEASE.

5 MADAME CLERK: YOUR HONOR, IN CASE 2008-GS-23-5383, THE
6 STATE VERSUS O'SHAUN JOSEPH ROBINSON, INDICTED FOR
7 CONSPIRACY, THE VERDICT IS GUILTY.

8 IN THE CASE OF 2008-GS-23-5382, THE STATE VERSUS
9 O'SHAUN JOSEPH ROBINSON, COUNT ONE, INDICTED FOR ARMED
10 ROBBERY, THE VERDICT IS GUILTY. COUNT TWO, POSSESSION OF A
11 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, VERDICT IS
12 GUILTY.

13 IN THE CASE OF 2008-GS-23-5384, THE STATE VERSUS
14 O'SHAUN JOSEPH ROBINSON, INDICTED FOR ASSAULT AND BATTERY OF
15 A HIGH AND AGGRAVATED NATURE, THE VERDICT IS ---

16 THE COURT: THAT'S SIMPLE ASSAULT AND BATTERY.

17 MADAME CLERK: THANK YOU VERY MUCH. IT IS SIMPLE
18 ASSAULT AND BATTERY. AND THE VERDICT IS GUILTY. ALL RIGHT.

19 IN THE CASE OF 2008-GS-23-5529, THE STATE VERSUS
20 KENNETH WORKMAN, HE IS INDICTED FOR CONSPIRACY, THE VERDICT
21 IS GUILTY.

22 IN THE CASE OF 2008-GS-23-5530, THE STATE VERSUS
23 KENNETH WORKMAN, COUNT ONE, HE'S INDICTED FOR ARMED ROBBERY,
24 THE VERDICT IS GUILTY. COUNT TWO, POSSESSION OF A WEAPON
25 DURING THE COMMISSION OF A VIOLENT CRIME, THE VERDICT IS

VERDICT OF THE JURY

258

1 GUILTY.

2 IN 2008-GS-23-5528, THE STATE VERSUS KENNETH WORKMAN,
3 INDICTED FOR ASSAULT AND BATTERY, THE VERDICT IS GUILTY.

4 THESE ARE ALL SIGNED BY JEWEL BUNCHE, OUR FOREPERSON.
5 LADIES AND GENTLEMEN OF THE JURY, IF YOU AGREE THESE ARE ALL
6 THE VERDICTS YOU REACHED IN YOUR DELIBERATION ROOM, WOULD
7 YOU PLEASE RAISE YOUR RIGHT HAND?

8 (WHEREUPON ALL OF THE JURORS RAISED THEIR RIGHT HAND)

9 MADAME CLERK: THANK YOU.

10 THE COURT: ANYTHING FURTHER FROM THE JURY?

11 MR. MARCHANT: NOTHING FROM THE STATE, YOUR HONOR.

12 THE COURT: MR. MOORMAN?

13 MR. MOORMAN: NOTHING FROM MR. ROBINSON.

14 THE COURT: MR. ROBINSON?

15 MR. ROBINSON: NOTHING FROM MR. WORKMAN, YOUR HONOR.

16 THE COURT: THANK YOU, LADIES AND GENTLEMEN, FOR YOUR
17 SERVICE ON THIS CASE. AND INSOFAR AS YOU'RE CONCERNED,
18 THANK YOU FOR YOUR SERVICE THIS WEEK. YOU DON'T HAVE TO
19 COME BACK TOMORROW.

20 SO I WANT TO TAKE THIS OPPORTUNITY TO THANK YOU FOR
21 COMING AND SERVING. I WANT YOU TO KNOW THAT WE ARE WELL
22 AWARE OF THE FACT THAT JURY SERVICE IS A BURDEN TO YOU. WE
23 KNOW THAT IT'S DIFFICULT FOR YOU TO TAKE TIME OFF FROM YOUR
24 JOBS AND FAMILIES AND SPEND IT WITH US ON JURY DUTY.

25 BUT I DO HOPE YOU UNDERSTAND THE IMPORTANCE OF BEING

1 HERE THIS WEEK. FOR WITHOUT YOUR PRESENCE WE SIMPLY COULD
2 NOT GET OFF FROM OUR DOCKET THE CASES THAT WE DO. IT IS A
3 VERY IMPORTANT SERVICE THAT YOU HAVE PERFORMED THIS WEEK.
4 AND I THANK YOU VERY MUCH FOR THAT SERVICE.

5 AND IF YOU'LL REPORT DOWNSTAIRS TO THE JURY ASSEMBLY
6 ROOM JUDY WILL HAVE A VOUCHER FOR YOUR SERVICE THIS WEEK.
7 AND ATTACHED TO THAT VOUCHER WILL BE A SLIP FOR YOU TO GIVE
8 TO YOUR EMPLOYER SHOULD YOU NEED THAT. NOW DO I HAVE ANY
9 MEMBER OF THE PANEL WHO HAS ANY QUESTION THAT I CAN TRY TO
10 ANSWRE FOR YOU BEFORE LETTING YOU GO?

11 (NO RESPONSE)

12 THE COURT: WELL, I'VE ENJOYED WORKING WITH YOU, LADIES
13 AND GENTLEMEN. THANK YOU SO MUCH. YOU ARE FREE TO GO.

14 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4:51 PM)

15 THE COURT: ALL RIGHT. ANY MOTIONS, GENTLEMEN?

16 MR. MOORMAN: YOUR HONOR, I WOULD -- I WOULD MAKE A
17 MOTION FOR A NEW TRIAL BASED ON -- BASED ON -- IN LARGE PART
18 ON THE ARGUMENTS I MADE BEFORE THE DIRECTED VERDICT STAGE
19 BECAUSE OF THE INCONSISTENCY IN THE TESTIMONY AND BECAUSE OF
20 THE FACT THAT -- THERE JUST WAS NOT -- THERE WAS
21 INSUFFICIENT EVIDENCE FOR THE VERDICT.

22 THE COURT: AND YOUR MOTION IS DENIED. MR. ROBINSON.

23 MR. ROBINSON: MAY IT PLEASE THE COURT? YOUR HONOR, AT
24 THIS POINT WE HAVE NO MOTIONS AT THIS TIME.

25 THE COURT: ALL RIGHT.

SENTENCE OF THE COURT

260

1 MR. MARCHANT: YOUR HONOR, COULD I JUST HAVE ONE MOMENT
2 WITH DEFENSE COUNSELS?

3 THE COURT: EXCUSE ME?

4 MR. MARCHANT: COULD I JUST HAVE A MOMENT WITH DEFENSE
5 COUNSELS?

6 THE COURT: SURE.

7 (PAUSE)

8 THE COURT: ALL RIGHT. DO YOU HAVE THE SENTENCING
9 SHEETS, SOLICITOR? AND DO YOU HAVE THE ASSAULT AND BATTERY
10 ONE CORRECT TO SHOW THE CORRECT ---

11 MR. MARCHANT: SIMPLE ASSAULT, YES, SIR.

12 THE COURT: OKAY.

13 MR. MARCHANT: COULD THEY HAVE A MOMENT TO CONFER WITH
14 THEIR CLIENTS?

15 THE COURT: SURE.

16 MR. MARCHANT: THANK YOU.

17 THE COURT: I'LL BE RIGHT BACK.

18 (WHEREUPON COURT WAS IN RECESS AT 4:53 PM)

19 THE COURT: HAVE A SEAT. NOW, MR. ROBINSON, MR.
20 WORKMAN, YOU EXERCISED YOUR CONSTITUTIONAL RIGHTS NOT TO
21 TAKE THE STAND AND TESTIFY IN YOUR DEFENSE. THAT IS YOUR
22 CONSTITUTIONAL RIGHT. BUT YOU HAVE A RIGHT AT THIS TIME TO
23 ADDRESS THE COURT CONCERNING SENTENCE. IS THERE ANYTHING
24 THAT YOU'D LIKE TO SAY NOW BEFORE I -- BEFORE I SENTENCE
25 YOU? MR. ROBINSON?

SENTENCE OF THE COURT

1 MR. ROBINSON: I'M ALREADY DOING A SENTENCE, ---

2 THE COURT: SIR?

3 MR. ROBINSON: --- NINE YEARS AND SIX MONTHS FOR A
4 PROBATION VIOLATION.

5 THE COURT: SIR?

6 MR. ROBINSON: I'M ALREADY SERVING NINE YEARS AND SIX
7 MONTHS FOR A VIOLATION PROBATION.

8 THE COURT: ALL RIGHT. ANYTHING ELSE YOU WANT TO SAY?

9 MR. ROBINSON: (NEGATIVE NOD).

10 THE COURT: ALL RIGHT. MR. WORKMAN, ANYTHING THAT
11 YOU'D ...

12 MR. WORKMAN: YEAH, I'M SORRY FOR EVERYTHING.

13 THE COURT: ALL RIGHT. OKAY. MR. MOORMAN.

14 MR. MOORMAN: YES, SIR. YOUR HONOR, MAY IT PLEASE THE
15 COURT? YOUR HONOR, THE -- LIKE HE SAID, HE WAS BEFORE YOUR
16 HONOR IN APRIL AND YOUR HONOR SENTENCED HIM TO NINE AND A
17 HALF YEARS ON A PROBATION VIOLATION WHERE I BELIEVE IT'S ON
18 THAT -- OF A HIGH AND AGGRAVATED NATURE.

19 AT THE TIME I MADE A COMMENT THAT THIS WAS BY FAR THE
20 LONGEST SENTENCE HE'D EVER RECEIVED. WHATEVER SENTENCE YOUR
21 HONOR GIVES HIM WILL BE LONGER THAN EVEN THAT SENTENCE.

22 YOUR HONOR, I JUST ASK THAT YOU -- THAT YOU TAKE INTO
23 ACCOUNT THE FACT THAT HE IS AS YOUNG AS HE IS, THE FACT THAT
24 HE DOES HAVE HIS -- HIS WHOLE LIFE AHEAD OF HIM AND THE FACT
25 THAT -- I THINK IN A LOT OF CASES WHEN YOU HAVE A -- WHEN

SENTENCE OF THE COURT

262

1 YOU GO TO TRIAL AND A VERDICT COMES BACK VERY QUICKLY AND
2 IT'S A CLEAR CUT CASE, THEN I THINK -- I THINK OFTENTIMES A
3 DEFENDANT GETS A SENTENCE BECAUSE HE -- HE DECIDED TO GO TO
4 TRIAL WHEN MAYBE HE SHOULDN'T HAVE. THIS WAS A CLOSE CASE.
5 HE WAS FOUND GUILTY. AND I'D JUST ASK YOUR HONOR TO SHOW
6 MERCY ON HIM.

7 THE COURT: MR. ROBINSON.

8 MR. ROBINSON: THE ONLY THING WE'D LIKE TO ADD IS THAT
9 HE IS PRETTY -- HE'S A PRETTY YOUNG MAN. HE UNDERSTANDS
10 THAT HE GOT CONNECTED WITH THE WRONG PEOPLE AND SO FORTH IN
11 THE CASE. BUT HE -- HE'S VERY SORRY FOR GETTING IN THIS
12 POSITION. HE'S GOT HIS DAD HERE TODAY WITH HIM AND FRIENDS
13 AND SO FORTH.

14 HE'S GOT NO PRIOR RECORD TO SPEAK OF, I DON'T BELIEVE,
15 NOT THAT I KNOW OF. AND WE'D ASK THE COURT FOR LENIENCY IN
16 THIS CASE. HE DID EXERCISE HIS RIGHT TO A TRIAL AND SO
17 FORTH. BUT WE'D ASK THE COURT FOR LENIENCY IF THE COURT
18 DOES SEE FIT.

19 THE COURT: SOLICITOR.

20 MR. MARCHANT: THANK YOU, YOUR HONOR. I BELIEVE, IF
21 I'M NOT MISTAKEN, MR. ROBINSON WAS CONVICTED OF A DRUG
22 CHARGE, NOT ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED.

23 MR. MOORMAN: AND I MAY HAVE BEEN -- I THOUGHT IT WAS,
24 BUT I COULD BE WRONG. I APOLOGIZE.

25 MR. MARCHANT: NEVERTHELESS, THAT IS MR. ROBINSON'S

SENTENCE OF THE COURT

263

1 ONLY CONVICTION. MR. SCOTT ROBINSON IS CORRECT. MR.
2 WORKMAN HAS NO PRIOR CONVICTIONS.

3 YOUR HONOR, I'D LIKE FOR YOU TO CONSIDER MR. WRIGHT.
4 HE CAME IN HERE AND HE PLED GUILTY TO THIS OFFENSE AS WELL
5 AS A SUBSEQUENT OFFENSE. DON'T WANT TO GET INTO THE DETAILS
6 OF THE SUBSEQUENT OFFENSE, BUT ESSENTIALLY THE SAME
7 SCENARIO.

8 AT THAT PLEA I RECOMMENDED A YEAR -- A SENTENCE OF
9 TWENTY YEARS. THESE GENTLEMEN DID EXERCISE THEIR RIGHT TO
10 TRIAL. THAT IS CERTAINLY THEIR CONSTITUTIONAL RIGHT, BUT IF
11 YOU'D JUST TAKE THAT INTO CONSIDERATION.

12 BOTH OF THEM HAVE BEEN INCARCERATED, UNABLE TO MAKE
13 BOND SINCE DECEMBER THE 28TH OF 2007. I'D CERTAINLY ASK THE
14 COURT TO GIVE THEM THE CREDIT FOR THE TIME THAT THEY'VE
15 SERVED SINCE THAT TIME. AND I'D ASK HIS HONOR TO SENTENCE
16 THEM ACCORDINGLY.

17 (PAUSE)

18 THE COURT: ALL RIGHT. MR. ROBINSON, MR. WORKMAN, ON
19 THE INDICTMENTS FOR ARMED ROBBERY THE SENTENCE OF THE COURT
20 IS YOU BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A
21 PERIOD OF TWENTY-FIVE YEARS. YOU ARE CREDITED WITH YOUR
22 TIME SINCE DECEMBER 28TH OF 2007.

23 ON THE INDICTMENTS FOR POSSESSION OF A WEAPON DURING
24 THE COMMISSION OF A VIOLENT CRIME, FIVE YEARS, CONCURRENT.
25 ON THE INDICTMENTS FOR CONSPIRACY, FIVE YEARS, CONCURRENT.

SENTENCE OF THE COURT

264

1 AND ON THE INDICTMENTS FOR ASSAULT AND BATTERY, THIRTY¹ DAYS,
2 CONCURRENT. ALL RIGHT.

3 THE OFFICER: STEP THIS WAY, PLEASE.

4 THE COURT: ALL RIGHT. SEE YOU BACK AT 9:00 IN THE
5 MORNING.

6 (WHEREUPON COURT WAS IN RECESS AT 5:06 PM)

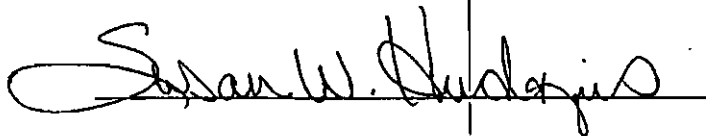
7 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT
3 REPORTER FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 14TH -
9 15TH DAY OF JANUARY 2009.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
11 NOR INTEREST TO ANY PARTY HERETO.

12 APRIL 8, 2009

13 
14

15 CIRCUIT COURT REPORTER

ARREST WARRANT

I-474511

5031

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

1-28-05

Greenville

THE STATE

07-171044

against

Oshaun Joseph Robinson

Address:

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5 7 Weight: 115

DL State: [REDACTED] DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: C W Hanning - 1018

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Oshaun Robinson

on 12-28-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Magistrate #2
4 Mc Gee Street Room 116-B
Greenville, SC 29601

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

AFFIDAVIT

Personally appeared before me the affiant C W Hanning

who

being duly sworn deposes and says that defendant Oshaun Joseph Robinson

did within this county and state on or about 12/10/2007

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 12-10-07 the defendant, along with several co-defendants did plan and conspire to commit and armed robbery. The defendant and co-defendants drove to 200 Eunice Dr. and circled the parking lot numerous times before locating the victim, Sergio Espinoza. The defendant and co-defendants exited their vehicle and approached the victim's Jeep, the defendant and co-defendants then pointed a firearm at the victim and demanded that he give them his money and phone. The victim complied after he was punched in the face by the defendant. The defendant and co-defendants then fled the scene in their vehicle. The affiant has obtained a written signed confession from a co-defendant. This offense occurred in Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone (864)271-5210

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/10/2007 defendant Oshaun Joseph Robinson

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 12/27/2007

(L.S.)

Signature of Issuing Judge

James E. Hudson

Judge Code: 5031

Judge's Address 4 Mcgee Street, Room 116-B

Greenville, SC 29601-

Judge's Telephone (864)467-5302

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

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ORIGINAL

435

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

COMPUTER
ENTERED
DEC 28 2007
SHERIFF

436

ARREST WARRANT

I-474522

5031

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

07-171044

against

Oshaun Joseph Robinson

Address:

Greenville, SC 29601-

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5 7 Weight: 115

DL: [REDACTED]

9

Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: C W Hanning - 1018

Offense: Assault / Assault and battery of a high and aggravated nature (ABHAN)

Offense Code: 0013

Code/Ordinance Sec: C/L, 17-25-0030

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

12/28/07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Magistrate #2
4 Mc Gee Street Room 116-B
Greenville, SC 29601

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Personally appeared before me the affiant C W Hanning

who

being duly sworn deposes and says that defendant Oshaun Joseph Robinson

did within this county and state on or about 12/10/2007

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE Assault / Assault and battery of a high and aggravated nature (ABHAN)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 12-10-07 the defendant and several co-defendants were in possession of a deadly weapon, a pistol, during the commission of a robbery. The defendant and several co-defendants did plan and conspire to commit this robbery. Once the defendant and co-defendants located the victim they approached him and demanded that he give them his money. The defendant and co-defendants then punched the victim in the face knocking him into the vehicle before fleeing with the victim's belongings. The defendant is under the age of 21 and is prohibited from possessing a firearm under South Carolina State Law. The affiant has a written sworn confession from a co-defendant in this case. This offense occurred in Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-

Affiant's Telephone (864)271-5210

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/10/2007 defendant Oshaun Joseph Robinson

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

DESCRIPTION OF OFFENSE: Assault / Assault and battery of a high and aggravated nature (ABHAN)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 12/28/2007

Signature of Issuing Judge
James B. Hudson

(L.S.)

Judge Code: 5031

Judge's Address 4 Mcgee Street, Room 116-B
Greenville, SC 29601-

Judge's Telephone (864)467-5302

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

COMPUTER ENTERED
DEC 31 2007
GREENVILLE SHERIFFS OFFICE

ARREST WARRANT

I-474523

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

07-171044

against

Oshaun Joseph Robinson

Address:

Greenville, SC 29601-

Phone:

SSN:

Sex: M Race: B Height: 5 7 Weight: 115

DL State: DL #:

DOB: 10/19/1989 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: C W Hanning - 1018

Offense: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Magistrate #2
4 Mc Gee Street Room 116-B
Greenville, SC 29601

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

AFFIDAVIT

Personally appeared before me the affiant C W Hanning

who

being duly sworn deposes and says that defendant Oshaun Joseph Robinson

did within this county and state on or about 12/10/2007

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 12-10-07 the defendant and several co-defendants were in possession of a deadly weapon, a pistol, during the commission of a robbery. The defendant and several co-defendants did plan and conspire to commit this robbery. Once the defendant and co-defendants located the victim they approached him and demanded that he give them his money. The defendant and co-defendants then punched the victim in the face knocking him into the vehicle before fleeing with the victim's belongings. The defendant is under the age of 21 and is prohibited from possessing a firearm under South Carolina State Law. The affiant has a written sworn confession from a co-defendant in this case. This offense occurred in Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 McGee Street
Greenville, SC 29601-

Affiant's Telephone (864)271-5210

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/10/2007 defendant Oshaun Joseph Robinson

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 12/28/2007

Signature of Issuing Judge

James E. Hudson

Judge Code: 5031

(L.S.)

Judge's Address 4 McGee Street, Room 116-B
Greenville, SC 29601-

Judge's Telephone (864)467-5302

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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437
Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 918

COMPUTER ENTERED
DEC 31 2007
GREENVILLE COUNTY
SHERIFF'S OFFICE

438

ARREST WARRANT

1-474524

5031

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

07-171044

against

Oshaun Joseph Robinson

Address:

Greenville, SC 29601-

Phone:

SSN:

Sex: M Race: B Height: 5 7 Weight: 115

DL State:

DL #:

DOB:

Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: C W Hanning - 1018

Offense: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

Offense Code:

0049

Code/Ordinance Sec:

16-17-0410

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Magistrate #2
4 Mc Gee Street Room 116-B
Greenville, SC 29601

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Personally appeared before me the affiant C W Hanning

who

being duly sworn deposes and says that defendant Oshaun Joseph Robinson

did within this county and state on or about 12/10/2007

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

in the following particulars:

DESCRIPTION OF OFFENSE Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 12-10-07 the defendant and several co-defendants were in possession of a deadly weapon, a pistol, during the commission of a robbery. The defendant and several co-defendants did plan and conspire to commit this robbery. Once the defendant and co-defendants located the victim they approached him and demanded that he give them his money. The defendant and co-defendants then punched the victim in the face knocking him into the vehicle before fleeing with the victim's belongings. The defendant is under the age of 21 and is prohibited from possessing a firearm under South Carolina State Law. The affiant has a written sworn confession from a co-defendant in this case. This offense occurred in Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601

Affiant's Telephone (864)271-5210

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/10/2007

defendant Oshaun Joseph Robinson

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

) as set forth below.

DESCRIPTION OF OFFENSE: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 12/28/2007

(L.S.)

Signature of Issuing Judge
James R. Hudson

Judge Code: 5031

Judge's Address 4 Mcgee Street, Room 116-B

Greenville, SC 29601-

Judge's Telephone (864)467-5302

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

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WITNESSES

C Hanning

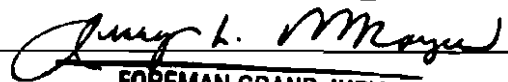
Greenville County Sheriffs Office

12/28/2007

ARREST WARRANT NUMBER

I474511, I474523

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

COUNT ONE: GUILTY

COUNT TWO: GUILTY


 Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-23-

LCM

005382

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August TERM 2008

1-15-09

THE STATE

GUILTY

vs.

OSHAUN JOSEPH ROBINSON

Indictment for.

0139, 0549

**ARMED ROBBERY AND POSSESSION OF A
 WEAPON DURING THE COMMISSION OF A
 VIOLENT CRIME**

VIOLATION § 16-11-0330 and §16-23-0490

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
**ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT CRIME**

At a Court of General Sessions, convened on
 County present upon their oath:

AUG 19 2008

the Grand Jurors of Greenville

COUNT ONE

ARMED ROBBERY

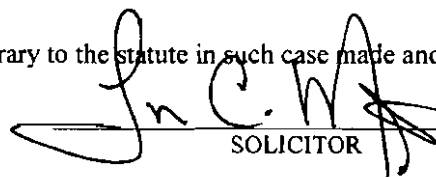
That OSHAUN JOSEPH ROBINSON did in Greenville County, on or about the 10th day of December, 2007, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Money and phone from the person or presence of Sergio Espinoza. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That OSHAUN JOSEPH ROBINSON did in Greenville County, on or about the 10th day of December, 2007, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

WITNESSES

C Hanning

Greenville County Sheriffs Office

12/28/2007

ARREST WARRANT NUMBER

1474522

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

GUILTY

Jewel Burche
Foreperson of Petit Jury1/15/09
Date:DOCKET NO. 2008-GS-23-
LCM

005304

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2008

1-15-09

GUILTY THE STATE

vs.

OSHAUN JOSEPH ROBINSON

Indictment for

0013

ASSAULT AND BATTERY OF A HIGH AND
AGGRAVATED NATURE

VIOLATION § C/L

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
~~NATURE~~

At a Court of General Sessions, convened on

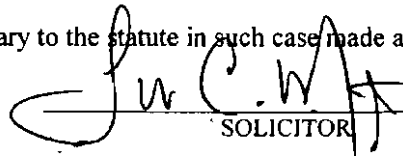
the Grand Jurors of Greenville

AUG 19 2008

County present upon their oath:

That OSHAUN JOSEPH ROBINSON did in Greenville County, on or about the 10th day of December, 2007, willfully and unlawfully commit an assault and battery upon Sergio Espinoza constituting an unlawful act of violent injury to Sergio Espinoza, accompanied by ~~circumstances of aggravation, to wit: Use of a deadly weapon and/or infliction of serious bodily~~. This is in violation of the Common Law of the State of South Carolina. 

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

C Hanning

Greenville County Sheriffs Office

12/28/2007

ARREST WARRANT NUMBER

1474524

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

GUILTY

James L. Burche
Foreperson of Petit Jury1/15/09
Date:DOCKET NO. 2008-GS-23-
LCM

005303

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2008

1-15-09

THE STATE

GUILTY

vs.

OSHAUN JOSEPH ROBINSON

Indictment for

0049

CONSPIRACY

VIOLATION § 16-17-0410

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR CONSPIRACY

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath: **AUG 19 2008**

That OSHAUN JOSEPH ROBINSON did in Greenville County, on or about the 10th day of December, 2007, willfully and unlawfully combine with Timothy Lee Wright and Kenneth Workman for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: Armed Robbery. This is in violation of §16-17-0410 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ary to the statute in such case made and provided


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Oshaun Robinson

AKA: _____

Race: B Sex: M Age: 18

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]
Greenville, SC 29601

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-23-5382

A/W#: I474511

Date of Offense: 12/10/2007

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Robbery. Armed With A Deadly Weapon (gs)

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

Marchant, Lucas

Defendant

Attorney for Defendant

SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections Sum 12/28/07

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %) _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ _____

TOTAL \$ _____

Paul B. Wickens

Clerk of Court/ Deputy Clerk

Court Reporter: S. Higgins

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE C. Vick

Judge Code: 2 1 0 1 7 1 6

Sentence Date: 1-15-09

446

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE _____VS.
Oshaun Robinson

AKA: _____

Race: B Sex: M Age: 18DOB: [REDACTED] SS#: [REDACTED]

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-23-5382A/W#: 1474523Date of Offense: 12/10/2007S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Weapons / Poss. Weapon During Violent CRIMEin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

J. C. Marchant, Lucas

Defendant

Attorney for Defendant

SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ _____

TOTAL \$ _____

Paul B. Wickensmeier

Clerk of Court/ Deputy Clerk

Court Reporter: S. Hudgins

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]Judge Code: 21017010Sentence Date: 1-15-09

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GreenvilleSTATE VS.Oshaun Robinson

AKA: _____

Race: B Sex: M Age: 18DOB: [REDACTED] SS#: [REDACTED]Greenville, SC 29601

DL#: _____ SID#: _____

INDICTMENT/CASE#: 2008-GS-23-5384A/W#: 1474522Date of Offense: 12/10/2007S.C. Code § : C/L, 17-25-0030CDR Code #: 0013

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Assault / Simple Assault And Batteryin violation of § C/L, 22-05-0150, of the S.C. Code of Laws, bearing CDR Code # 0612☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Marchant, Lucas

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %) _____ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

§ 90.11 TP (SCCJA Surcharge) \$5 \$

TOTAL \$

Paul B. Wickens
Clerk of Court/ Deputy Clerk

Court Reporter: S. Hadjens

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE Chick BoydJudge Code: 2101708Sentence Date: 1-15-09

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATEVS.
Oshaun Robinson

AKA:

Race: B Sex: M Age: 18DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]
Greenville, SC 29601DL#: [REDACTED] SID#: [REDACTED]

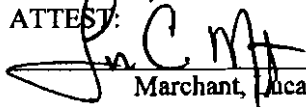
IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-23-5383A/W#: I474524Date of Offense: 12/10/2007S.C. Code § : 16-17-0410CDR Code #: 0049

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Conspiracv. (gs)in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:


Marchant, Lucas

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ _____

TOTAL \$ _____


Clerk of Court/ Deputy ClerkCourt Reporter: S. Hodgins

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

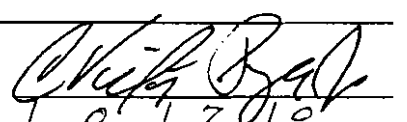
Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE Judge Code: 21017010Sentence Date: 1-15-09

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 02/16/21

C0639

ROBINSON, OSHAUN JOSEPH FBI # 544182JC3 SID# SC01641471 SCDC # 327798

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... TYGER RIVER CORR INST

DORM.....: U30104A

SECURITY/CUST.: 2 ADULT-STRAIGHT SENTENCE

RACE....:B SEX...:M

CURR INCARC SENT...: 25 YRS 0 MOS 0 DYS

PROJ MAXOUT DATE: 03/12/2029

CENTRAL MONITORING.: YES

PROJ PAROLE DATE: 00/00/0000

SOCIAL SECURITY #...:XXXX3 [REDACTED]

EWC JOB...: WARDKEEPER

CURRENT PROGRAM...: IMPACT OF CRIME

EDUC PGM.: NO CURR EDUC PROGRAM

AGE...: 31 DATE OF BIRTH...: [REDACTED]

EWC LEVEL: 5F5 EEC LEVEL:

ASSIGNMENT...: WARD KEEPER WARD #3

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			V/NV	CATEGORY
	YRS	MOS	DYS		START				
COCAINE POSS INT/DISTR	9	6	0	GREENVILLE	4/18/20	8	N		2
CRACK DISTR PROX SCHOOL	9	6	0	GREENVILLE	1/23/20	8	N		2
POSSESSION OF WEAPON	5	0	0	GREENVILLE	12/18/20	7	N		3
CRIMINAL CONSPIRACY	5	0	0	GREENVILLE	12/18/20	7	N		2
ASSLT & BATT W/INTNT KIL	20	0	0	GREENVILLE	12/18/20	7	V		4
ARMED ROBBERY	25	0	0	GREENVILLE	12/18/20	7	V		4
SIMPLE ASSLT	0	0	30	GREENVILLE	11/18/20	7	N		2
CRIMINAL CONSPIRACY	5	0	0	GREENVILLE	11/18/20	7	N		2
POSSESSION OF WEAPON	5	0	0	GREENVILLE	11/18/20	7	N		3
ARMED ROBBERY	15	0	0	GREENVILLE	11/18/20	7	V		4

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

CODE NOT IN TABLE

NOTIFY

MARY ANN YOUNG

CATEG: 4

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

3/13/17 POSSESSION OF A WEAPON DROPPED MAJOR

NON-ASSAULTIVE DISCIPLINARIES:

9/17/20 POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR
5/20/20 REFUSING OR FAILING OBEY	CONVICTED	MAJOR
2/13/20 POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR
3/13/17 POSSESSION OF CONTRABAND	DROPPED	MAJOR
3/13/17 POSS. OR/ATTEMPT TO POSS	DROPPED	MAJOR
7/ 7/16 REFUSING OR FAILING OBEY	CONVICTED	ADMIN
6/ 1/16 INCITING/CREATING A DIST	CONVICTED	MAJOR
11/11/14 POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR
1/ 6/14 POSSESSION OF CONTRABAND	CONVICTED	MAJOR
8/ 1/13 GAMBLING AND LOAN SHARKI	CONVICTED	ADMIN
7/29/12 POSSESSION OF CONTRABAND	DROPPED	MAJOR
7/29/12 POSS. OR/ATTEMPT TO POSS	DROPPED	MAJOR
4/17/12 POSSESSION OF CONTRABAND	CONVICTED	ADMIN
3/27/10 INTERFERING WITH DUTIES	CONVICTED	ADMIN
3/27/10 REFUSING OR FAILING OBEY	DROPPED	ADMIN
7/ 8/ 9 REFUSING OR FAILING OBEY	CONVICTED	ADMIN
1/13/ 9 DISRESPECT		OTHER
10/13/ 8 REFUSING TO ATTEND COMPU	CONVICTED	ADMIN
8/ 5/ 8 USE OBSCENE, VULGAR, PROFA	CONVICTED	ADMIN
7/15/ 8 REFUSING OR FAILING OBEY	CONVICTED	ADMIN

ROBINSON, OSHAUN JOSEPH FBI # 544182JC3 SID# SC01641471 SCDC # 327798 (CONTIN
HISTORY OF MOVEMENTS:

1/22/20	TYGER RIVER	INCARCERATED	RETURN FROM COURT
1/22/20	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
11/ 5/19	TYGER RIVER	INCARCERATED	ADMINISTRATIVE
4/17/19	LEE	INCARCERATED	RETURN FROM COURT
4/17/19	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
4/15/19	LEE	INCARCERATED	RETURN FROM COURT
4/15/19	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
11/ 2/17	LEE	INCARCERATED	ADMINISTRATIVE
5/17/16	MCCORMICK	INCARCERATED	RETURN FROM COURT
5/11/16	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
4/ 5/16	MCCORMICK	INCARCERATED	RETURN FROM COURT
4/ 5/16	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
3/ 1/16	MCCORMICK	INCARCERATED	RETURN FROM COURT
3/ 1/16	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
8/12/15	MCCORMICK	INCARCERATED	RETURN FROM COURT
8/12/15	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
2/18/14	MCCORMICK	INCARCERATED	RETURN FROM COURT
2/18/14	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
11/27/13	MCCORMICK	INCARCERATED	ADMINISTRATIVE
3/ 4/ 9	LEE	INCARCERATED	RETURN FROM COURT
3/ 4/ 9	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
1/22/ 9	LEE	INCARCERATED	ADMINISTRATIVE
1/20/ 9	TYGER RIVER	INCARCERATED	RETURN FROM COURT
1/14/ 9	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
1/12/ 9	TYGER RIVER	INCARCERATED	RETURN FROM COURT
1/12/ 9	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
12/ 9/ 8	TYGER RIVER	INCARCERATED	RETURN FROM COURT
12/ 1/ 8	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
6/25/ 8	TYGER RIVER	INCARCERATED	RETURN FROM COURT
6/25/ 8	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
6/24/ 8	TYGER RIVER	INCARCERATED	RETURN FROM COURT
6/24/ 8	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
5/21/ 8	TYGER RIVER	INCARCERATED	ADMINISTRATIVE
4/21/ 8	KIRKLAND	INCARCERATED	R&E PROCESSING
4/21/ 8	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER	12/07/20	0/ 0/ 0		5F5
SANITATION WORKER	11/02/20	12/ 6/20	UNSAT JOB PERFORM	5F5
SANITATION WORKER	06/10/20	11/ 1/20	ASLT/DRUG/MAJOR DISC	3F5
SANITATION WORKER	03/19/20	6/ 9/20	ASLT/DRUG/MAJOR DISC	2F5
WARDKEEPER	02/18/20	3/18/20	LATERAL TRANSFER	2F5
WARDKEEPER	11/22/19	2/17/20	POLICY CHANGE 2020	3F5
SANITATION WORKER	11/07/19	11/21/19	LATERAL TRANSFER	3F5
GENERAL WORKER	12/04/17	11/ 5/19	INSTIT TRANSFER	3F5
GENERAL WORKER	08/03/16	11/ 2/17	INSTIT TRANSFER	3F5
GENERAL WORKER	05/17/16	5/31/16	PLACED IN ST/SP CUSTODY	3F5
GENERAL WORKER	12/03/13	5/11/16	COURT	3F5
WARDKEEPER	12/18/08	1/14/ 9	COURT	2F5
WARDKEEPER	05/30/08	12/ 1/ 8	COURT	2F5
WARDKEEPER	05/22/08	5/29/ 8	MI ELIGIBLE FOR LEVEL 2	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 15 OR MORE	12/30/19	2/28/20	POOR ATTENDANCE
BONUS 15 OR MORE	04/06/18	11/ 5/19	INSTIT TRANSFER

LVL 3	- FULL TIME (NO EWC)	01/12/10	7/30/12	PLACED IN ST/SP CUSTODY
LVL 3	- FULL TIME (NO EWC)	02/04/09	12/21/ 9	PLACED IN ST/SP CUSTODY

ROBINSON, OSHAUN JOSEPH FBI # 544182JC3 SID# SC01641471 SCDC # 327798 (CONTIN
BONUS 15 OR MORE 05/27/08 1/14/ 9 COURT
***** END OF REPORT *****

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Oshann Robinson

AKA:

Race: B

Sex: M

Age: 18

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

DL#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-23 - 5387

A/W#: 1474519

Date of Offense: 12/14/2007

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Weapons / Poss. Weapon During Violent CRIME

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature]
Marchant, Lucas

[Signature]
Defendant

[Signature] 69670
Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. SINCE 12/18/07

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90.11 TP (SCCJA Surcharge)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$500

\$

\$25

\$

\$100

\$

\$50

\$

\$40/ea

\$

\$

\$5

\$

\$

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21310

Sentence Date: 3/4/09

SCCA/217 (07/2008)

[Signature]
Clerk of Court/ Deputy Clerk

Court Reporter: Jenkins

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Oshaun Robinson

AKA:

Race: B Sex: M Age: 18

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-23-5385

A/W#: 1474445

Date of Offense: 12/14/2007

S.C. Code § : 16-17-0410

CDR Code #: 0049

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Marchant, Lucas

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. SINCE 12/18/07☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90.11 TP (SCCJA Surcharge)

TOTAL

Paul B. Winkemann

Clerk of Court/Deputy Clerk

Court Reporter: Jenkins

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2111310

Sentence Date: 3-4-09

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Oshaun Robinson

AKA:

Race: B Sex: 18DOB: [REDACTED]Address: [REDACTED]

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-23-5386

A/W#: 1474444

Date of Offense: 12/14/2007

S.C. Code § : 16-03-0620

CDR Code #: 0014

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
 TO: Assault / Assault and battery with Intent to Kill (ABWIK)

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Marchant, Lucas

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. SINCE 1/18/07☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 35.13 (Public Def/Prob)	\$500
§ 73.3, 1B TP (Law Enforce. Funding)	\$25
§ 33.7, 1B TP (Drug Court Surcharge)	\$100
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
§ 90.11 TP (SCCJA Surcharge)	\$5
TOTAL	\$

Paul B. Wickens
 Clerk of Court/ Deputy Clerk

Court Reporter:

Jenkins

PRESIDING JUDGE

Judge Code: 2111310Sentence Date: 3/4/09

SCCA/217 (07/2008)

INMATE RECORDS OFFICE
 2009 MAR -5 AM 9:47

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.Oshann Robinson

AKA:

Race: B Sex: [redacted] Age: 18DOB: [redacted]Address: [redacted]DL#: [redacted] SID#: [redacted]INDICTMENT/CASE#: 2008-GS-23-5387A/W#: 1474443Date of Offense: 12/14/2007S.C. Code §: 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Robbery, Armed With A Deadly Weapon (gs)in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Marchant, LucasDefendantAttorney for DefendantSC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. SINCE 12/18/07☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
§ 90.11 TP (SOCJA Surcharge)	\$5	\$ <u>5</u>
TOTAL	\$	\$

Paul B. Wickham

Clerk of Court/Deputy Clerk

Court Reporter: Jenkins

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 2111310Sentence Date: 3-2-09

SCCA/217 (07/2008)

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JUL 30 11:18 P.4

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

STATE

VS.

Osbaun Robinson

AKA:

Race: B

Sex: M

18

Address:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-23-5382

A/W#: 1474511

Date of Offense: 12/10/2007

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Robbery, Armed With A Deadly Weapon (gs)

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Marchant, Lucas

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. *Sum 12/28/07*
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100
§ 56-5-2995 (DUI Assessment)	\$12	\$ 12
§ 35.13 (Public Def/Prob)	\$500	\$ 500
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$ 100
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ 50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 40
3% to County (if paid in installments)	\$	\$
§ 90.11 TP (SCCA Surcharge)	\$5	\$ 5
TOTAL	\$	\$

Paul B. Wickens

Clerk of Court/Deputy Clerk

Court Reporter: S. Hodgins

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/B beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2

Sentence Date: 1-15-09

SCCA/217 (07/2008)

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p. 1

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Oshann Robinson

AKA:

Race: B

Sex: M

Age: 18

DOB:

Address:

Greenville, SC 29601

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-23-5382

A/W#: 1474523

Date of Offense: 12/10/2007

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. Weapon During Violent CRIME

in violation of § 16-23-0490

of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTES:

Marchant, Lucas

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(I) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90.11 TP (SCCJA Surcharge)

TOTAL

Paul B. Wickham

Clerk of Court/ Deputy Clerk

Court Reporter:

S. Hudgins

 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel §35.13 TP Requires \$300 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21017018

Sentence Date: 1-15-09

SCCA/217 (07/2008)

Jan 15 2009 8:59PM

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P. 2

STATE OF SOUTH CAROLINA

COUNTY OF GreenvilleSTATE VS.Oshaun Robinson

AKA:

Race: B Sex: M Age: 18DOB: [REDACTED]Address: [REDACTED]
Greenville, SC 29601DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-23-5383A/W#: 1474524Date of Offense: 12/10/2007S.C. Code §: 16-17-0410CDR Code #: 0049

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Conspiracy, (as)in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Marchant, J. C.

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years and/or to pay a fine of \$ [REDACTED]; provided that upon the service of [REDACTED] days/months/years and/or payment of \$ [REDACTED]; plus costs and assessments as applicable*; the balance is suspended with probation for [REDACTED] months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: [REDACTED]☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ [REDACTED] plus 20% fee: \$ [REDACTED]Payment Terms: [REDACTED]☐ set by SCDPPPS [REDACTED]Recipient: [REDACTED]

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(i) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90.11 TP (SCCJA Surcharge)

TOTAL

Paul B. Wickemeyer

Clerk of Court/ Deputy Clerk

Court Reporter: S. Hodgins[REDACTED] days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ [REDACTED] beginning\$ [REDACTED] paid to Public Defender FundOther: [REDACTED]☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE Chick B. [REDACTED]Judge Code: 210172015Sentence Date: 1-15-09

SCCA/217 (07/2008)

Jan 15 2008 6:59PM RUE COPY CTR 8

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p. 3

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE

VS.

Oshawn Robinson

AKA:

Race: B Sex: M Age: 18

DOB:

Address:

Greenville, SC 29601

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-23-5384

A/W#: 1474522

Date of Offense: 12/10/2007

S.C. Code §: C/L 17-25-0030

CDR Code #: 0013

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Assault / Simple Assault And Battery

in violation of § C/L 22-05-0150, of the S.C. Code of Laws, bearing CDR Code # 0612

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTES:

Marchant, Lucas

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surchage)	\$100 \$ 100
§ 14-1-211(A)(2) (DUI Surchage)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 35.13 (Public Def/Prob)	\$500 \$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25 \$ 25
§ 33.7, 1B TP (Drug Court Surchage)	\$100 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(7) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$
§ 90.11 TP (SCCJA Surchage)	\$5 \$
TOTAL	\$

Paul B. Winkens

Clerk of Court/ Deputy Clerk

Court Reporter:

S. Hadgen

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/B beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2 1 0 1 7 0 0 1

Sentence Date: 1-15-09

SOCA/217 (07/2008)

Created by the South Carolina Department of Probation, Parole and Pardon Services

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Greenville
STATE VS.

INDICTMENT#:

02-03-73-08802
Probation C/W#s: 10-23-08-1876Name of Original Offense: Adult Wd. School
Original AWW#: 1819245
Date of Original Offense: 8/4/2006
Conviction S.C. Code §: 44-53-0445(B)(1)
Conviction CDR Code #: 011017
Original Sentence: 10 yrs. SDP.AKA: Osborn Joseph Robinson
Race: B Sex: M
DOB: [REDACTED]
SSN: [REDACTED]
SID#: 01041471

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 7/19/07 in the Court of General Sessions of Greenville County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 11/4/08, as set forth in the attached warrant(s) or citation(s) dated 11/4/08. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit) 1, 4, 5, 7, 9, 10, and Special

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 9 yrs + 6 mos months/years, the remainder of the original sentence, and/or pay \$_____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$_____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Additional Conditions ordered by the Court:Terminate Probation. Time to satisfy Supervision Fee, Surcharges, and POF.

- ☐
- The defendant is given credit for pre-arrest detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

- ☒
- The defendant has previously served
- 6
- months/years on this sentence.
-
- (split sentence time and/or prior partial revocation time)

- ☐
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 18th day of April, 2008
Greenville SCC. Victor Pyle Jr.
Presiding Judge
C. Victor Pyle Jr. 13th Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____

Witnessed by _____

Signed this _____ day of _____, 2008, at _____ SC
Day Month Year City

Created by the South Carolina Department of Probation, Parole and Pardon Services

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Greenville
STATE VS.

INDICTMENT#:

016-GS-23-08863
Probation C/W#: W-23-08-1876AKA: Oshawn Joseph EdmonName of Original Offense: PWID - CocaineRace: B Sex: MOriginal AWW: 1819244

DOB: [REDACTED]

Date of Original Offense: 8/12/2006

SSN: [REDACTED]

Conviction S.C. Code §: 44-53-0370(B)(1)SID#: 0160414-11Conviction CDR Code #: 01/1/8/3Original Sentence: 10 yrs. susp. 6 mos. + 3 yrs.

ORDER Prob.

The above named defendant has been charged with violating the conditions of probation ordered on 7/19/07 in the Court of General Sessions of Greenville County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 11/14/08, as set forth in the attached warrant(s) or citation(s) dated 11/14/08. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit) 1, 4, 5, 7, 9, 12, and Special

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 9 yrs + 6 mos months/years, the remainder of the original sentence, and/or pay \$_____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$_____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Additional Conditions ordered by the Court:

Terminate Probation. Time to satisfy
Supervision Fee and Surcharges, and DDF.

☐ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

☒ The defendant has previously served 6 months/years on this sentence.
(split sentence time and/or prior partial revocation time)

☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 18th day of April, 2008Greenville, SC

Presiding Judge

C. Victor Pyle Jr. 13th Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____

Witnessed by _____

Signed this _____ day of _____, _____ at _____, SC

THE STATE OF SOUTH CAROLINA
In the Appellate Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

C. Victor Pyle, Jr., Circuit Court Judge

Case No(s): 2008GS23005383, 2008GS23005384,
2008GS23005382

The State,

Respondent.

v.

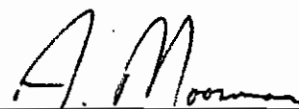
Oshaun J Robinson,

Appellant.

NOTICE OF APPEAL

Oshaun J Robinson appeals his conviction and sentence in this case. The sentence was imposed by the Honorable C. Victor Pyle, Jr. on January 14, 2009.

Date: January 22, 2009



Andrew M. Moorman, Esq.
Greenville County Courthouse
Greenville, SC 29601
Attorney for Appellant

Other Counsel of Record:
Lucas Marchant, Esq.
Assistant Solicitor, 13th Judicial Circuit
305 E. North Street, Suite 325
Greenville, SC 29601
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Appellate Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

C. Victor Pyle, Jr., Circuit Court Judge

Case No(s): 2008GS23005383, 2008GS23005384,
2008GS23005382

The State,

Respondent.

v.

Oshaun J Robinson,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the below listed respondents by depositing a copy of it in the United States Mail, postage prepaid, on January 22, 2009, addressed to:

Lucas Marchant, Esq.
Assistant Solicitor
13th Circuit Solicitor's Office
305 E. North St, Suite 325
Greenville, SC 29601

Henry McMaster, Esq.
Attorney General
P.O. Box 11549
Columbia, SC 29211

Date: January 22, 2009



Andrew M. Moorman, Esq.
Greenville County Courthouse
Greenville, SC 29601

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

OSHAUN J. ROBINSON,

APPELLANT

FINAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred and denied appellant his right of confrontation by limiting him in his cross-examination of a co-defendant testifying for the State over what sentence he received?

STATEMENT OF THE CASE

Appellant along with a co-defendant, were both convicted of armed robbery, possession of a weapon, conspiracy, and assault and battery after a jury trial held before the Honorable C. Victor Pyle, Jr. and a jury on January 14-15, 2009, in Greenville County. Respective sentences of twenty-five (25) years, five (5) years, five (5) years, and thirty (30) days were imposed.

This appeal follows.

ARGUMENT

The trial court erred and denied appellant his right of confrontation by limiting him in his cross-examination of a co-defendant testifying for the State over what sentence he received.

The victim, Sergio Espinoza, was robbed by two men outside his apartment around 2:00 AM on December 10, 2007. His cell phone, wallet, and identification cards were taken. Three people were charged for armed robbery, possession of a weapon, conspiracy, and assault and battery. There was appellant, Kenneth Workman and Timothy Wright. Wright would testify for the State. Espinoza did not know who his attackers were. A week or two later he was watching the news and saw two people who he thought he recognized as the people who robbed him. He called the police. (ROA p. 73, line 21 – p. 95, line 8). The two people the victim identified as robbing him were appellant and Kenneth Workman. He did not see a third person that evening. (ROA p. 89, lines 14-15). Contrary to the victim's testimony, Timothy Wright testified that he was also at the scene with appellant and Workman. (ROA p. 128, lines 1-19).

Prior to the start of the trial, the solicitor sought to exclude any questioning by the defense of the sentence Timothy Wright received. He said it would be improper for the jury to consider that. (ROA p. 36, lines 8-15). Defense counsel said it was highly probative for the jury to know what the negotiations were between the State and Mr. Wright. To his knowledge there was a recommendation of twenty (20) years with other charges being dismissed. The trial court ruled that it would allow defense counsel to cross-examine Wright about negotiations, but not what the recommendation or sentence was. (ROA p. 37, lines 1-19).

When Timothy Wright took the stand the solicitor got out from his witness that he had pled guilty to two offenses and had been sentenced. (Tr. p. 121, line 7 – p. 122, line 4). He explained that he was testifying because what he had done was wrong. (Tr. p. 133, lines 12-20).

On cross-examination defense counsel was able to get out that the solicitor dismissed charges against Wright on the day he testified in the previous trial. (Tr. p. 135, lines 10-17). After he finished his cross-examination, defense counsel again asked to ask Wright about the fact that the solicitor made a twenty (20) year deal with him.¹ The trial judge again declined (Tr. p. 140, line 22 – p. 141, line 10). That ruling was in error.

The Confrontation Clause of the Sixth Amendment does not allow limitations on a defendant's right to cross-examine an adverse witness over his plea agreement with the State. Such limitations are reversible error. State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991); State v. Mizzell, 349 S. C. 326, 563 S.E.2d 315 (2002).

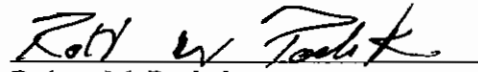
The error in this case was prejudicial. Identification was a key issue in the case and Wright's testimony was crucial to the State. There was no weapon recovered from the robbery or fruits of the crime. There were no fingerprints and there was no DNA. Credibility was a key issue and defense counsel should have been allowed to confront Wright over his motivation for testifying and his credibility as a witness.

¹ Later, defense counsel noted that in the first trial Wright testified that part of the reason he received a twenty (20) year sentence was based on a recommendation made by the solicitor. In this trial he testified there were no promises. Hence, defense counsel should be allowed to impeach Wright with a prior inconsistent statement. The trial court would not allow it. (Tr. p. 142, line 24 – p. 139, line 17).

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robt M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

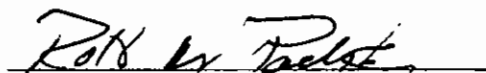
ATTORNEY FOR APPELLANT.

This 24th day of January, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 24th, 2011

A handwritten signature in black ink, appearing to read "Rob M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

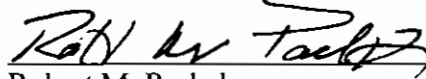
V.

OSHAUN J. ROBINSON,

APPELLANT

CERTIFICATE OF SERVICE

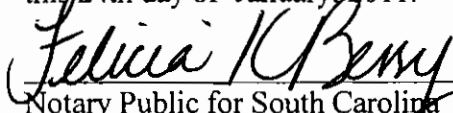
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R. J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; this 24th day of January, 2011.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 24th day of January, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
The Honorable C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

OSHAUN J. ROBINSON,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ROBERT M. ARIAIL
Solicitor, 13th Judicial Circuit

305 E. North Street, Suite 325
Greenville, SC 29601-2185
(864) 467-8648

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court did not abuse its discretion in limiting the cross-examination of a co-defendant witness about the actual sentence imposed after his guilty plea; however, if any error occurred, it was harmless beyond a reasonable doubt.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On December 10, 2007, three men, subsequently identified as Appellant Oshaun J. Robinson (“Robinson”), Timothy Wright (“Wright”), and Kenneth Workman (“Workman”) robbed Sergio Espinoza (“Espinoza”) at gunpoint outside his apartment. (2009 Trial Transcript [2009 TT], pp. 72-93, 119-129; Record on Appeal [R.], pp. 76-97, 123-133). On December 27, 2007, while in custody for a separate offense, Wright implicated himself, Robinson, and Workman in the Espinoza robbery. (2009 TT, pp. 141-152, R. pp. 145-156).

The case was called for a jury trial in December 2008. Prior to trial, Wright pled guilty to the charges related to the Espinoza robbery and was sentenced to twenty years incarceration. He also pled guilty to charges stemming from a subsequent incident. (2008 Trial Transcript [2008 TT], pp. 23-26; R., pp. 2-5).

Wright then testified for the State about the facts of the robbery, his guilty plea and sentence, and his motive for testifying. On direct examination, he stated he pled guilty and received a twenty year sentence, he had no other charges pending against him, no one promised him anything prior to his guilty plea, and no one promised him a sentence reduction in exchange for his testimony. Wright further stated he was testifying against Robinson and Workman because “[a]ll three of us was together” when the crime occurred. (2008 TT, pp. 67-83; R., pp. 6-22).

On cross-examination, Wright testified when he came to court to plead guilty, he learned the other charges against him had been dismissed the previous day, the solicitor recommended his twenty year sentence, and he talked to the solicitor that day about testifying

against his co-defendants. On redirect, Wright stated he did not meet with the solicitor prior to the day he pled guilty. (2008 TT, pp. 83-90; R., pp. 22-29).

The first trial ended in a mistrial, and the case was called for trial again on January 14, 2009, before the Honorable Victor C. Pyle, Circuit Court Judge. Prior to trial, Robinson moved to have the State reveal any deals made with Wright, and the solicitor indicated all remaining charges against Wright were dismissed prior to his testimony in the first trial, and no other charges were pending against him. (2009 TT, pp. 9-10; R., pp. 34-35).

The State then moved to exclude any questions about the actual sentence imposed on Wright because such questions would inform the jury of the potential sentences for the co-defendants on trial, and could improperly affect their decision on guilt or innocence. The State asserted questioning Wright about the sentence he received was improper because he had already been sentenced.

Robinson argued he should be allowed to question Wright about the solicitor's recommendation of a twenty year sentence, as well as the dismissal of other charges against him. The circuit court ruled Robinson could cross-examine Wright "that there were negotiations, but not what the recommendation or sentence was." (2009 TT, pp. 23-24; R., pp. 36-37).

Espinoza testified he parked his red Jeep Cherokee in front of his apartment in the early morning hours of December 10, 2007. As he got out of the jeep, a black male wearing a red hoodie approached him, pointed a gun at his face, demanded everything Espinoza had, and took Espinoza's cell phone and wallet containing, among other things, about \$400 cash. Espinoza stated the man took his hoodie down while pointing the gun at him, and the gun

was either a .38 or .357 caliber revolver, with a chrome or silver finish. (2009 TT, pp. 68-80; R., pp. 72-84).

Espinoza testified a second robber, also a black male, was standing at the rear of the jeep. At some point the first robber handed the gun to the second robber, and punched Espinoza in the face. The robbers ran to a waiting car, which Espinoza described as an "80s model, boxed car," similar to a Crown Victoria or Cadillac.

Espinoza got in his jeep and followed the car. He had his headlights off initially, but turned them on when he got close enough to see the license tag. After he turned his lights on, someone in the robbers' car fired a shot at his jeep from one of the driver's side windows. Espinoza gave up pursuit, returned to his apartment and called the police. (2009 TT, pp. 80-89; R., pp. 84-93).

A week or two after the robbery, Espinoza recognized Robinson and Workman in a picture displayed on a television news broadcast, and advised the police they were the men who robbed him. In court, Espinoza positively identified Workman as the man who approached him with the gun, and Robinson as the man who stood at the rear of the jeep. (2009 TT, pp. 89-93; R., pp. 93-97).

Wright testified on direct examination he pled guilty to and was sentenced for charges arising from the Espinoza robbery, as well as another charge on a separate incident. He stated neither the investigators nor the solicitor promised him anything in exchange for his cooperation, and the first time he met with or talked to the solicitor was the day he pled guilty. He further stated he was testifying because what he, Robinson and Workman did was wrong, and he knew his testimony would not decrease the sentence he already received.

(2009 TT, pp. 117-119, 129; R., pp. 121-123, 133).

Wright also testified that the night of the incident, he, Robinson, Workman, and a fourth person named Marcus, went to Espinoza's apartment complex to see if they could meet some girls. Marcus drove them to the complex in a black Lincoln, and when they saw Espinoza pass in his red jeep, he, Robinson, and Workman decided to rob him. Wright stated Robinson had a silver gun with a brown handle, which he thought was was a ".57 magnum."

Workman went to the passenger's side of the jeep, Robinson went to the driver's side, and Wright stood beside Robinson. Robinson pulled out the gun, told Espinoza to "give it up," took Espinoza's wallet and punched him. They then ran back to the car and drove away. When they saw Espinoza following them, Robinson held the gun out the window and fired one shot at Espinoza's vehicle. Wright positively identified Espinoza in court as the person they robbed that night. (2009 TT, pp. 112-129; R., pp. 116-133).

Robinson requested a bench conference after the State completed Wright's direct examination.¹ He argued the State's questions to Wright about whether promises were made in exchange for his testimony and his motivation for testifying "enlarged the scope of relevance to allow [him] to ask about the fact that the solicitor had made a twenty year recommendation" as a result of Wright's guilty plea and cooperation. The circuit court again ruled Robinson could ask about the negotiations and dismissal of the charges, but not about any specific sentence recommendation or the actual sentence imposed. (2009 TT, pp. 129-

¹Robinson summarily recounted the substance of the bench conference on the record immediately after the termination of his cross-examination. (TT., pp. 136-137; R., pp. 140-141).

130, 136-137; R., pp. 133-134, 140-141).

On cross-examination, Robinson asked Wright if he was actually testifying in exchange for the charges dismissed against him, and Wright responded he was not, maintaining he was testifying because what they did was wrong. As permitted by the court, Robinson questioned Wright about the solicitor's dismissal of charges against him the day he testified in the prior trial. (2009 TT, pp. 130-131; R., pp. 134-135).

When Robinson asked about Wright's role in the robbery, Wright stated he was a lookout and never had a gun. Robinson then asked "[a]nd yet you pled guilty to armed robbery for standing there, is that correct," to which Wright responded, "[y]es, sir." Robinson also elicited testimony about Wright being in custody when he first implicated Robinson, Workman, and himself in the crime, and implied Wright pled guilty to armed robbery because he was one who actually had the gun that night and held it to Espinoza's face, which Wright denied. (2009 TT, pp. 131-135; R., pp. 135-139).

After Wright's cross-examination, Robinson again asked to question Wright about his sentence and the solicitor's recommendation, asserting Wright's testimony in the first trial was a prior inconsistent statement. He argued Wright testified in the first trial he received a twenty year sentence because the solicitor recommended it, but in this trial stated he was testifying only because what they did was wrong.² The circuit court denied the request. (2009 TT, pp. 138-139; R., pp. 142-143).

Robinson vigorously attacked Wright's credibility in closing argument, asserting there were purported inconsistencies between Espinoza's and Wright's testimony regarding

²As stated in Respondent's Motion to Strike, Robinson did not proffer any portion of the first trial transcript in support of this contention.

the details of the robbery. He further argued Wright fabricated his testimony to minimize his own involvement, noting Wright was in custody when he gave his statement to police. Workman's counsel argued Wright "has no credibility" and "is not believable because he has self-interest." (2009 TT, pp. 189-199; R., pp. 182-192).

The jury convicted Robinson on all charges, and the circuit court sentenced him to twenty-five years incarceration on the armed robbery conviction, with concurrent sentences of five years each on the possession of a weapon and conspiracy convictions, and thirty days on the assault and battery conviction. (2009 TT, pp. 257, 263; R., pp. 197, 198). This appeal followed.

ARGUMENT

The circuit court did not abuse its discretion in limiting the cross-examination of a co-defendant witness about the actual sentence imposed after his guilty plea; however, if any error occurred, it was harmless beyond a reasonable doubt.

Robinson contends the circuit court erred in limiting his cross-examination of Wright regarding the sentence imposed after he pled guilty to the charges arising from the Espinoza robbery, arguing the limitation improperly infringed on his right to confront the witnesses against him and impeach Wright's credibility. To the contrary, it is clear from the record Wright's testimony was not a condition of his plea or sentence, and providing the jury with information about the sentence he actually received was more prejudicial than probative. If the circuit court erred in the specific limitation at issue, however, any error was harmless beyond any reasonable doubt.

A. Exclusion of Testimony

The Sixth Amendment's Confrontation Clause grants defendants the right to cross-examine adverse witnesses. *See State v. Graham*, 314 S.C. 383, 444 S.E.2d 525, 527 (1994) ("Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses"). The right to cross-examine specifically includes the right to cross-examine a witness concerning bias. *State v. Brown*, 303 S.C. 169, 399 S.E.2d 593, 594 (1991). Further, "[c]onsiderable latitude is allowed in the cross-examination of an adverse witness for the purpose of testing bias." *Id.*

The right to cross-examine concerning bias is not without limitation, however, and the trial court may impose reasonable limits on its scope. *See State v. Mizzell*, 349 S.C. 326, 563 S.E.2d 315, 317 (2002) ("The trial judge retains discretion to impose reasonable limits

on the scope of cross-examination”). Emphasizing this point, the Supreme Court of the United States stated:

It does not follow, of course, that the Confrontation Clause of the Sixth Amendment prevents a trial judge from imposing any limits on defense counsel’s inquiry into the potential bias of a prosecution witness. On the contrary, trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.

Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986). The Court further observed: “the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” *Id.* (quoting Delaware v. Fensterer, 474 U.S. 15, 20 [1985]) (emphasis in original).

To establish a Confrontation Clause violation, the defendant must show the trial court’s limitation prohibited “*otherwise appropriate* cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby ‘to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of witnesses.’” Graham, 444 S.E.2d at 527 (quoting Van Arsdall, 475 U.S. at 680) (emphasis in original). Evidence having “a legitimate tendency to throw light on the accuracy, truthfulness, or sincerity” of the witness’ testimony should be admitted. State v. Sims, 348 S.C. 16, 558 S.E.2d 518, 523 (2002). “Included in the Confrontation Clause protection is the right to cross-examine any State’s witness as to possible sentences faced when there exists ‘a substantial possibility [the witness] would give biased testimony in an effort to have the solicitor highlight to [a] future [court]’ how the witness cooperated in the instant case.”

State v. Gillian, 360 S.C. 433, 602 S.E.2d 62, 73 (Ct. App. 2004)), *aff'd on other grounds*, 373 S.C. 601, 646 S.E.2d 872 (2007) (*citing Sims*, 558 S.E.2d at 523) (emphasis added).

In this case, the evidence Robinson sought to elicit from Wright on cross-examination was not probative of Wright's credibility because his actual sentence and the solicitor's recommendation were not part of a negotiated plea agreement. Wright testified he received no promises of leniency in exchange for his testimony, he knew his testimony would not affect his sentence, and stated he was testifying because what he, Robinson and Workman did was wrong. (2009 TT, pp. 117-119, 129; R., pp. 121-123, 133). In addition to Wright's acknowledgment his testimony would not impact the sentence already imposed, he had no charges or sentences pending at the time of the second trial, thus removing any chance he would give biased testimony to receive future leniency. (2009 TT, 9-10; R., pp. 34-35).

Further, evidence about the substance of the solicitor's sentencing recommendation, if any, and the actual sentence Wright received for the armed robbery guilty plea, would have informed the jury of the potential sentence Robinson faced for the same charge, which was improper for its consideration. Unless the defendant's right to cross-examine a co-conspirator for possible bias outweighs the need to exclude it, "a judge may prevent the introduction of evidence which informs the jury of the possible sentence defendants may receive because it is either irrelevant or substantially prejudicial." Mizzell, 563 S.E.2d at 317-318. A defendant's right to effectively cross-examine a witness concerning bias outweighs the court's need to exclude such evidence where: (1) the witness has already entered into a plea agreement conditioning leniency on the witness' testimony, or (2) the witness has not already entered into a plea bargain or been found guilty. See Mizzell, *supra*

(error to exclude testimony concerning **potential** sentence witness would receive if convicted where witness had **not** yet entered a plea bargain or been found guilty); Sims, *supra* (error to exclude testimony regarding specific charges **pending** against witness where State promised to tell future judge about the witness' cooperation); Brown, *supra* (error to exclude **potential** sentence for charge the State dismissed **in exchange for** witness' current testimony); State v. Whitner, 380 S.C. 513, 670 S.E.2d 655 (Ct. App. 2008) (error to exclude testimony concerning **potential** sentences witness faced where witness already pled guilty to same charges as defendant and was **waiting to be sentenced**); Gillian, *supra* (error to exclude testimony concerning **potential** sentence witness faced from first-degree burglary charges where witness testified solicitor agreed to advise his plea judge of his cooperation in instant case).

This case is clearly distinguishable from the cited cases because Wright had **already pled guilty and been sentenced** prior to his testimony at both trials. Neither the solicitor's sentence recommendation, if any, nor the actual sentence imposed were contingent on Wright's testimony against Robinson and Workman, and he was not promised even the possibility of a sentence reduction in exchange for his testimony. Further, at the time of this trial Wright had no pending charges or sentencing which might tempt him to give biased testimony in hopes of obtaining future leniency. (2009 TT, pp. 9-10, 23-24, 117-119; R., pp.34-35, 36-37, 121-123). Therefore, the circuit court did not abuse its discretion in

excluding evidence of the substance of the solicitor's sentencing recommendation, if any, or Wright's actual sentence.³

B. Harmless Error

Even if it was error to limit cross-examination of Wright specifically as to the purported sentence recommendation and the actual sentence imposed, any error was harmless beyond a reasonable doubt in light of the entire record. To determine whether an error was harmless, the appellate court must review "the entire record to determine what effect the error had on the verdict." Mizzell, 563 S.E.2d at 319 (quoting State v. Clark, 315 S.C. 478, 445 S.E.2d 633 [1994]). Violation of the defendant's Sixth Amendment right to confront the witness is "not *per se* reversible error," and the appellate court must determine whether any error was harmless beyond a reasonable doubt. Graham, 444 S.E.2d at 527.

³By way of footnote, Robinson asserts the circuit court should have allowed the cross-examination because: "in the first trial Wright testified that part of the reason he received a twenty (20) year sentence was based on a recommendation made by the solicitor. In this trial he testified there were no promises." (Brief of Appellant, p. 6, n. 1). Even if this issue is preserved for appellate review, which the State contests as set forth in its previously filed Motion to Strike, Wright's testimony in both trials consistently indicated he received no promises in exchange for his testimony, and there was no prior inconsistent statement.

In the first trial, Wright testified no one promised him anything about his sentence prior to entry of his guilty plea; no one promised him a sentence reduction in exchange for his subsequent testimony; the solicitor recommended a twenty year sentence at his guilty plea hearing; the first time he talked with the solicitor about testifying against Robinson and Workman was the day he pled guilty; and the reason he was testifying was because "[a]ll three of us was together." (2008 TT, p. 81-87; R., pp. 20-26). In the second trial, Wright testified no one promised him anything about his sentence prior to his guilty plea; he was testifying because he knew what they did was wrong; and he knew his testimony at trial would not affect the sentence already imposed. (2009 TT, pp. 117-119, 129; R., pp. 121-123, 133). Robinson did not even ask Wright whether the solicitor made a sentence recommendation on his behalf, even though the circuit court only precluded questions about what specific recommendation was made, and therefore, he did not testify inconsistent with his previous testimony about any purported sentence recommendation. (2009 TT, p. 24; R., p. 37).

Whether an error is harmless depends on the particular facts of each case and multiple factors, including without limitation: (1) the importance of the witness's testimony in the State's case; (2) whether the testimony was cumulative; (3) the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points; (4) the extent of cross-examination otherwise permitted; and (5) the overall strength of the State's case. Van Arsdall, 475 U.S. at 684; *see also* Mizzell, 563 S.E.2d at 333; Whitner, 670 S.E.2d at 659.

In this case, the case against Robinson, even without resorting to Wright's testimony. *See* Sims, 558 S.E.2d at 523 (2002) (error was harmless where State's case "was strong without resorting to [the witness's] testimony"). Most significantly, Espinoza positively identified Robinson in court as one of the robbers, and testified about Robinson's specific actions during the robbery. (2009 TT, pp. 72-112; R., pp. 76-116).

Further, much of Wright's testimony merely corroborated Espinoza's testimony. Espinoza positively identified Robinson and Workman as two of the people who robbed him; Wright positively identified Espinoza as the person they robbed. (2009 TT, pp. 93, 128-129; R., pp. 97, 132-133). Espinoza testified he drove a red Jeep Cherokee the night he was robbed; Wright testified the person they robbed drove a red jeep. (2009 TT, pp. 74, 123-127; R., pp. 78, 127-131). Espinoza testified the robbers used a .38 or a .357 revolver; Wright testified he thought the gun Robinson had that night was a ".57 magnum." (2009 TT, pp. 79-80, 123; R., pp. 83-84, 127). Espinoza testified his cell phone and wallet were taken from him; Wright testified he saw Robinson take Espinoza's wallet. (2009 TT, pp. 78, 125; R., pp. 82, 129). Espinoza testified one of the robbers punched him in the face; Wright testified

Robinson punched Espinoza in the head. (2009 TT, pp. 83-84, 126; R., pp. 87-88, 130). Espinoza testified the robbers drove away in an 80's model box car, like a Crown Victoria or Cadillac style; Wright testified they drove a four door black Lincoln. (2009 TT, pp. , 92, 121; R., pp. 96, 125). Finally, Espinoza testified he pursued the robbers until one of them fired a bullet at his jeep; Wright testified Robinson fired one shot at the jeep when they saw it following them. (2009 TT, pp. 87-89, 127-128; R., pp. 91-93, 131-132). Thus, except as to events prior to the robbery and who actually fired the shot at Espinoza's jeep as he followed the robbers' car, all of which was irrelevant to the issue of Robinson's guilt or innocence on the charges arising from the robbery itself, Wright's testimony was largely cumulative to Espinoza's testimony on material points in the State's case. See Gillian, 602 S.E.2d at 74-75 (error was harmless where witness's testimony was largely cumulative, excluding it left no material point of State's case uncorroborated or unsupported, and there was abundant evidence to otherwise find appellant guilty).

Robinson's reliance on Brown and Mizzell to support his contention the cross-examination limitation in this case was reversible error is misplaced. Significantly, the witnesses' testimony in those cases provided the **only** link between the defendants and the crimes. This case is clearly distinguishable.

As discussed above, Wright's testimony was not the **only** evidence directly linking Robinson to the robbery. Rather, Espinoza positively identified Robinson at trial as one of the robbers, and testified regarding Robinson's actions during the robbery.

Further, the court found prejudice in Brown because the excluded testimony prevented the jury from learning the witness' plea agreement allowed her to avoid a

mandatory prison sentence three times greater than she otherwise faced. The State dismissed a cocaine trafficking charge, with a mandatory minimum sentence of twenty-five years incarceration without parole, and allowed the witness to pled guilty to one conspiracy charge with no mandatory minimum and a maximum sentence of seven and a half years. Brown, 399 S.E.2d at 594. In this case, prior to testifying at **either** trial, Wright pled guilty and received a substantial twenty year sentence, which was only **five years less** than Robinson received as a result of his guilty verdict, and there is absolutely no evidence of any possibility Wright's sentence would be reduced as a result of his testimony. A five year difference in sentence is clearly not comparable to the eighteen year difference at issue in Brown.

Finally, Robinson had ample opportunity at trial to impeach Wright's testimony. The circuit court did not preclude him from asking Wright questions about any plea negotiations with the State, as well as the dismissal of charges against him. (2009 TT, pp. 23-24; R., pp.36-37). See Whitner, 670 S.E.2d at 659 (error was harmless where witness's testimony was merely cumulative, and appellant was not prevented from asking any other questions, was allowed to elicit witness pled guilty to same charges as appellant, and allowed to ask if witness hoped testifying would help her when sentenced); see also State v. Ferguson, 742 N.W.2d 651, 657 (Minn. 2007) ("Confrontation Clause is not violated by limitations on cross-examination so long as the jury is presented with sufficient information from which to appropriately draw inferences as to the witness's reliability").

Robinson elicited testimony from Wright about the dismissal of charges against him the day he pled guilty to the armed robbery charge. He also questioned Wright extensively about purported inconsistencies between his trial testimony, his statement to police, and

Espinoza's testimony, and specifically accused Wright of pleading guilty to armed robbery because he was the one who actually had the gun that night. (2009 TT, pp. 130-137; R., pp.134-141).

Robinson further attacked Wright's credibility during closing argument by reiterating the purported inconsistencies and gaps in Wright's testimony to the jury, and arguing Wright fabricated his testimony and placed the blame on Robinson and Workman in the hope he would receive less severe punishment. Workman's counsel argued Wright "has no credibility" because "he had self-interest." (2009 TT, pp. 187-203; R., pp. 180-196).

Given the entire record, including Espinoza's positive in-court identification of Robinson as one of the robbers, the cumulative nature of Wright's testimony on material elements of the State's case, and the extent of cross-examination and impeachment otherwise permitted, any possible error in excluding questions about Wright's actual sentence was harmless beyond any reasonable doubt.

CONCLUSION

Based on the foregoing, Respondent respectfully submits Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

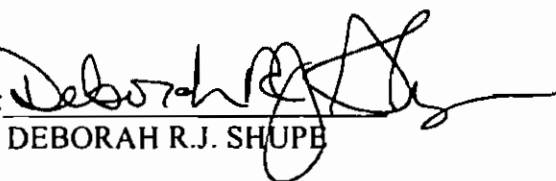
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Attorney General

ROBERT M. ARIAIL
Solicitor, 13th Judicial Circuit

BY: 
DEBORAH R.J. SHUPE

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 21, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
The Honorable C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

OSHAUN J. ROBINSON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Attorney General

ROBERT M. ARIAIL
Solicitor, 13th Judicial Circuit

By: 

DEBORAH R.J. SHUPE

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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PROOF OF SERVICE

I, Ellen R. DuBois, certify I served the Final Brief of Respondent on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
 South Carolina Commission on Indigent Defense
 Division of Appellate Defense
 PO Box 11589
 Columbia, SC 29211-1589

I further certify all parties required by Rule to be served have been served.

This 21th day of January, 2011.


 ELLEN DUBOIS
 Legal Assistant

Office of Attorney General
 Post Office Box 11549
 Columbia, SC 29211
 (803) 734-3727

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
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AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Deborah R.J. Shupe, all
of Columbia; and Solicitor W. Walter Wilkins, III, of
Greenville, for Respondent.

PER CURIAM: Oshaun J. Robinson appeals his convictions for armed robbery, possession of a weapon during the commission of a violent crime, conspiracy, and assault and battery of a high and aggravated nature. He argues the trial court committed reversible error in precluding him from cross-examining a witness for the State regarding the sentence he received for charges arising from the same incident. We affirm.¹

The Confrontation Clause of the Sixth Amendment of the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." This encompasses the right to "meaningful cross-examination of adverse witnesses[.]" including the right to cross-examine a witness concerning bias. State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). This right to cross-examination entails the "right to cross-examine any State's witness as to possible sentences faced when there exists a substantial possibility the witness would give biased testimony in an effort to have the solicitor highlight to a future court how the witness cooperated in the instant case." State v. Gillian, 360 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct. App. 2004), aff'd as modified by State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007) (internal quotation marks and alterations omitted). "A criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness" Graham, 314 S.C. at 385, 444 S.E.2d at 527 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986)).

The Confrontation Clause does not, however, prevent a trial [court] from imposing any limits on defense counsel's inquiry into the potential bias of a prosecution witness. On the contrary, trial [courts] retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

