

VOL. I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Edgar W. Dickson, Circuit Court Judge

RECEIVED

OCT 18 2013

S.C. Supreme Court

TRAVIS D. ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000866

A P P E N D I X

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (August 4, 2008)	1
APPLICATION FOR POST-CONVICTION RELIEF	755
RETURN	763
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated October 10, 2012)	770
ORDER OF DISMISSAL	819
FINAL BRIEF OF APPELLANT	829
COURT OF APPEALS OPINION	842
INDICTMENTS AND SENTENCE SHEETS	844

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 TRAVIS DENIELE) 2008-GS-46-854
7 ROBINSON,) 2008-GS-46-855
8 QUINTON LAWRENCE) 2008-GS-46-856
TOBBIE,) 2008-GS-46-1304
AUGUST 4, 2008
YORK, SOUTH CAROLINA
DEFENDANTS.

9
10 (VOLUME I)

11
12 B E F O R E :
13 THE HONORABLE JOHN C. HAYES, III, JUDGE. ; And a Jury.

14
15
16 A P P E A R A N C E S :
17 E.B. SPRINGS, IV, ASSISTANT SOLICITOR
18 CHRIS EPTING, ASSISTANT SOLICITORS
ATTORNEYS FOR THE STATE
19 GARY LEMEL, ASSISTANT PUBLIC DEFENDER
20 MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER
ATTORNEYS FOR DEFENDANT TRAVIS DENIELE ROBINSON
21 GEOFF DUNN, ESQUIRE
22 ATTOFNEY FOR DEFENDANT QUINTON LAWRENCE TOBBIE
23 MICHAEL R. WATTS
24 CIRCUIT COURT REPORTER
25

INDEX

(AUGUST 4, 2008)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 16

(JACKSON V. DENNO HEARING)

LT. W.J. MILLER, II (SW)

DIRECT EXAMINATION BY MR. SPRINGS 43

CROSS EXAMINATION BY MR. DUNN 52

DIRECT EXAMINATION BY MR. SPRINGS 58

CROSS EXAMINATION BY MR. LEMEL 63

CROSS EXAMINATION BY MR. DUNN 70

REDIRECT EXAMINATION BY MR. SPRINGS 70

(NEIL V. BIGGERS HEARING)

SAVALAS DODD (SW)

DIRECT EXAMINATION BY MR. SPRINGS 77

CROSS EXAMINATION BY MS. INZERILLO 83

CROSS EXAMINATION BY MR. DUNN 91

MELINDA PARKER (SW)

DIRECT EXAMINATION BY MR. SPRINGS 97

CROSS EXAMINATION BY MS. INZERILLO 105

CROSS EXAMINATION BY MR. DUNN 122

1	INDEX	
2	(AUGUST 5, 2008)	
3	WITNESSES	PAGE
4	(NEIL V. BIGGERS HEARING)	
5	NICOLE HOWIE (SW)	
6	DIRECT EXAMINATION BY MR. SPRINGS	141
7	CROSS EXAMINATION BY MS. INZERILLO	151
8	CROSS EXAMINATION BY MR. DUNN	164
9	(JURY TRIAL)	
10	JURY SWORN -- PAGE 173	
11	OPENING STATEMENT BY MR. SPRINGS -- PAGE 177	
12	OPENING STATEMENT BY MR. LEMEL -- PAGE 180	
13	OPENING STATEMENT BY MR. DUNN -- PAGE 186	
14	SGT. DOUGLAS WAYNE SMITH (SW)	
15	DIRECT EXAMINATION BY MR. EPTING	188
16	CROSS EXAMINATION BY MR. LEMEL	200
17	CROSS EXAMINATION BY MR. DUNN	214
18	PAMELA MACOMSON (SW)	
19	DIRECT EXAMINATION BY MR. EPTING	216
20	CROSS EXAMINATION BY MR. LEMEL	236
21	CROSS EXAMINATION BY MR. DUNN	258
22	MELINDA PARKER (SW)	
23	DIRECT EXAMINATION BY MR. SPRINGS	270
24	CROSS EXAMINATION BY MS. INZERILLO	283
25	CROSS EXAMINATION BY MR. DUNN	258

1	INDEX	
2	(AUGUST 5, 2008)	
3	WITNESSES	PAGE
4	SAVALAS DODD (SW)	
5	DIRECT EXAMINATION BY MR. SPRINGS	311
6	CROSS EXAMINATION BY MR. LEMEL	318
7	CROSS EXAMINATION BY MR. DUNN	331
8	REDIRECT EXAMINATION BY MR. SPRINGS	334
9	NICOLE HOWIE (SW)	
10	DIRECT EXAMINATION BY MR. SPRINGS	335
11	CROSS EXAMINATION BY MS. INZERILLO	345
12	(NO CROSS EXAMINATION BY MR. DUNN)	
13	REDIRECT EXAMINATION BY MR. SPRINGS	359
14	RECROSS EXAMINATION BY MR. DUNN	360
15	DEPUTY WILLIAM R. GIBSON, II (SW)	
16	DIRECT EXAMINATION BY MR. EPTING	362
17	CROSS EXAMINATION BY MR. INZERILLO	377
18	CROSS EXAMINATION BY MR. DUNN	384
19	SGT. JOHN BOOTH (SW)	
20	DIRECT EXAMINATION BY MR. SPRINGS	388
21	CROSS EXAMINATION BY MR. LEMEL	405
22	CROSS EXAMINATION BY MR. DUNN	427
23		
24		
25		

INDEX

(AUGUST 5, 2008)

WITNESSES	PAGE
SLED AGENT ILA SIMMONS (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	429
CROSS EXAMINATION BY MR. LEMEL	434
CROSS EXAMINATION BY MR. DUNN	444
REDIRECT EXAMINATION BY MR. SPRINGS	445
RECROSS EXAMINATION BY MR. LEMEL	445
DR. TODD GARDNER (SW)	
DIRECT EXAMINATION BY MR. EPTING	446
CROSS EXAMINATION BY MR. LEMEL	462
CROSS EXAMINATION BY MR. DUNN	480

INDEX

(AUGUST 5, 2008)

WITNESSES

PAGE

LT. WILLIAM J. MILLER, II (SW)

DIRECT EXAMINATION BY MR. SPRINGS 495

CROSS EXAMINATION BY MR. LEMEL 509

CROSS EXAMINATION BY MR. DUNN 538

STATE RESTS -- PAGE 547

DR. LORI VAN WALLENDael (DW)

DIRECT EXAMINATION BY MR. LEMEL 560

VOIR DIRE EXAMINATION BY MR. SPRINGS 569

CONT'D DIRECT EXAMINATION BY MR. LEMEL 576

CROSS EXAMINATION BY MR. SPRINGS 605

(NO CROSS EXAMINATION BY MR. DUNN)

REDIRECT EXAMINATION BY MR. LEMEL 608

JEFF HOLLIFIELD (DW)

DIRECT EXAMINATION BY MR. LEMEL 609

CROSS EXAMINATION BY MR. SPRINGS 618

(NO CROSS EXAMINATION BY MR. DUNN)

REDIRECT EXAMINATION BY MR. SPRINGS 622

OFFICER CHERYL GOSEMAN (DW)

DIRECT EXAMINATION BY MR. LEMEL 625

(NO CROSS EXAMINATION BY MR. SPRINGS)

(NO CROSS EXAMINATION BY MR. DUNN)

INDEX

(AUGUST 6, 2008)

WITNESSES

PAGE

SLED AGENT KENNETH WHITLER (DW)

DIRECT EXAMINATION BY MR. LEMEL 630

(NO CROSS EXAMINATION BY MR. SPRINGS)

(NO CROSS EXAMINATION BY MR. DUNN)

DEFENDANT ROBINSON RESTS -- PAGE 638

DEFENDANT TOBBIE RESTS -- PAGE 638

CLOSING ARGUMENT BY MR. LEMEL -- PAGE 651

CLOSING ARGUMENT BY MR. DUNN -- PAGE 684

FINAL ARGUMENT BY MR. SPRINGS -- PAGE 692

JURY INSTRUCTIONS -- PAGE 703

JURY VERDICT -- PAGE 736

SENTENCING -- PAGE 752

REPORTER'S CERTIFICATE -- PAGE 754

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1	S-1	QUINTON TOBBIE'S STATEMENT		508
2	S-2	TRAVIS ROBINSON STATEMENT		603
3	S-3	PHOTOGRAPH		559
4	S-4	PHOTOGRAPH		559
5	S-5	PHOTOGRAPH		559
6	S-6	PHOTOGRAPH		559
7	S-7	PHOTOGRAPH		559
8	S-8	PHOTOGRAPH		191
9	S-9	PHOTOGRAPH		191
10	S-10	PHOTOGRAPH		191
11	S-11	PHOTOGRAPH		192
12	S-12	PHOTOGRAPH		192
13	S-13	PHOTOGRAPH		193
14	S-14	PHOTOGRAPH		194
15	S-15	PHOTOGRAPH		194
16	S-16	PHOTOGRAPH		195
17	S-17	PHOTOGRAPH		197
18	S-18	PHOTOGRAPH		197
19	S-19	PHOTOGRAPH		198
20	S-20	PHOTOGRAPH		222
21	S-20-A	PHOTOGRAPH		222
22	S-21	PHOTOGRAPH		222
23	S-22	PHOTOGRAPH		222

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-23	PHOTOGRAPH		222
4	S-24	PHOTOGRAPH		222
5	S-25	PHOTOGRAPH		222
6	S-26	PHOTOGRAPH		222
7	S-27	PHOTOGRAPH		222
8	S-28	911 TAPE		229
9	S-29	STORE VIDEO		230
10	S-30	PHOTOGRAPH		341
11	S-31	PHOTOGRAPH		341
12	S-32	PHOTOGRAPH		341
13	S-33	PHOTOGRAPH		453
14	S-34	PHOTOGRAPH		453
15	S-35	PHOTOGRAPH		453
16	S-36	PHOTOGRAPH		453
17	S-37	PHOTOGRAPH		370
18	S-38	PHOTOGRAPH		370
19	S-39	PHOTOGRAPH		370
20	S-40	PHOTOGRAPH		370
21	S-41	PHOTOGRAPH		370
22	S-42	PHOTOGRAPH		453
23	S-43	CHASE VIDEO		373
24	S-44	PHOTOGRAPH		391
25	S-45	GUN		403

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-46	BULLET		458
4				
5	D-1	PHOTOGRAPH		475
6	D-2	PHOTOGRAPH		475
7	D-3	PHOTOGRAPH		475
8	D-4	PHOTOGRAPH		475
9	D-5	PHOTOGRAPH		475
10	D-6	PHOTOGRAPH		475
11	D-7	PHOTOGRAPH		483
12	D-8	PHOTOGRAPH		483
13	D-9	PHOTOGRAPH		483
14	D-10	PHOTOGRAPH		483
15	D-11	JEANS SHORTS		628
16	D-12	SHIRT		628
17	D-13	SHOES		628
18	D-14	SLED REPORT		638
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, August 4, 2008)

2 THE COURT: All right.

3 MR. SPRINGS: If it pleases the court, turning
4 first, the State of South Carolina versus Travis Deniele
5 Robinson. I'm holding three indictments True Billed out of
6 York County Grand Jury. First charge is attempted armed
7 robbery. The second charge is dealing with assault and
8 battery with intent to kill, and the third charge is in
9 possession of a firearm in the commission of a violent
10 crime.

11 He's represented by Mr. Gary Lemel and Ms. Melissa
12 Inzerillo.

13 Mr. Lemel, how does he plead to those charges?

14 MR. LEMEL: Not guilty to all charges, Your Honor.

15 MR. SPRINGS: Turning to Mr. Quinton Lawrence
16 Tobbie, I'm holding two charges here the York County Grand
17 Jury has True Billed.

18 The first is aiding and abetting attempted armed
19 robbery. The number there is 2008-GS-46-1304, and then
20 accessory after the fact of attempted armed robbery,
21 2008-GS-46-2770.

22 He's represented by Mr. Jonathan Dunn.

23 Mr. Dunn, how does Quinton Lawrence Tobbie plead
24 to these charges?

25 MR. DUNN: Well, it's Geoffrey, Your Honor, and he

1 pleads not guilty.

2 THE COURT: All right.

3 MR. SPRINGS: Your Honor, one thing we have
4 addressed the question of the peremptory strikes. Each
5 attorney would get five? Each defendant would get five and
6 the State would get five.

7 We are ready for the jury.

8 THE COURT: Anything before we get the jury up? I
9 know there is some motions in limine, but I thought we could
10 draw the jury. I think we discussed this in chambers and
11 concluded it might be best to go ahead and draw the jury and
12 let them go out, not being sworn.

13 MR. LEMEL: Yes, sir, and we have no problem with
14 that.

15 Your Honor, there is one thing that I did discuss
16 with Mr. Springs after we left your chambers. Juror number
17 229 William V-U-K-E-L-A, Vukela at the time of the jury
18 qualifications approached Judge Alford, I seen Mr. Springs
19 had already left jury qualification room and discussed the
20 problem that because he suffered from multiple strokes. His
21 memory is very poor. He has problems remembering things
22 from day to day. Judge Alford discussed this with him and
23 sort of let it go and let him stay on the panel, but I have
24 some real concerns on this gentleman regarding his ability
25 to stay on for multiple days. I don't know if he's going to

1 be in our small panel at all, but because of the
2 complexities that this trial is going to pose, I would ask
3 that if he is called, that there be some voir dire done
4 regarding his comforts. This gentlemen himself expressed
5 some real doubts to Judge Alford about whether he could
6 remember everything on a day-to-day basis, but he did want
7 to serve, but he just wanted to express that he had some
8 real concerns himself, which struck me as given the
9 complexity of this case as being a big factor?

10 THE COURT: State?

11 MR. SPRINGS: I would join Mr. Lemel in that. I
12 had left before he came up. If Mr. Lemel thinks he may have
13 a memory deficiency, I would like to find out. If the court
14 could, if he was called up, during voir dire.

15 THE COURT: Mr. Dunn?

16 MR. DUNN: Your Honor, I have heard that
17 conversation that Mr. Lemel did. The court had accurately
18 and I would join in it the concerns of his ability to
19 remember from day to day what's going on. In fact, he said
20 every sentence of his life begins with "do you remember?"

21 THE COURT: So does mine.

22 THE COURT: What you are asking me to do, though,
23 is overrule what Judge Alford has already done. He's
24 already done the voir dire and the guy has talked to him
25 face to face.

1 MR. SPRINGS: This is true.

2 THE COURT: You move to voir dire him again? Do
3 you think I can better ask him than Judge Alford? I'm not
4 going to ask -- you are not going to have to answer that.

5 MR. LEMEL: Judge, the specific theme that I think
6 is in this case, and maybe Judge Alford -- I think the
7 docket spoke that there would be a number of small trials
8 this week. I don't think Judge Alford knew that we were
9 going to have one trial that was basically going for
10 multiple days of complexity. I don't think that --

11 THE COURT: All right, we will skip over him. If
12 he is on the list, we will move to the next.

13 MR. LEMEL: Thank you, Your Honor.

14 THE COURT: Anything else before we get the panel
15 up?

16 MR. SPRINGS: No, sir.

17 THE COURT: All right. Let's get the panel up.

18 MR. SPRINGS: I'm looking at defenses request for
19 voir dire. I have no problem with anything that they have
20 there, except number 8.

21 THE COURT: I'm not going to ask that.

22 Are you talking about Mr. Robinson's number 8?

23 Mr. Robinson's number 8?

24 MR. SPRINGS: Yeah, Mr. Robinson's number 8.

25 We have a copy of Mr. Robinson's potential witness

1 list and they have ours.

2 Your Honor, could you inquire if Mr. Tobbie is
3 going to have any witness list?

4 THE COURT: Do you have a witness list, Mr. Dunn.

5 MR. DUNN: We do not, Your Honor. I don't
6 anticipate anybody testifying.

7 THE COURT: Okay.

8 MR. DUNN: I mean the only potential witness is
9 maybe Mr. Tobbie himself, but that's going to be based on
10 how the court rules on our motions in limine.

11 THE COURT: Okay.

12 MR. LEMEL: I apologize, Your Honor.

13 I understand that the court has basically
14 indicated you are not going to ask number 8 with regard to
15 "has any member of the jury panel ever served as a witness
16 in a trial or given a statement under oath about something
17 that they had heard or saw?"

18 Your Honor, given the nature of this particular
19 case where a witness I.D. is basically at the crux of the
20 State's case, that's such a crucial factor, the possibility
21 that you might have a person on the panel who had either
22 served as a witness or given sworn testimony that may treat
23 that differently. We at least have the right to know
24 whether they have done so. I mean, it doesn't automatically
25 exclude them for purposes of making our selection of a jury.

1 THE COURT: Are you asking for jury profiling.
2 You are asking for jury profiling.

3 MR. LEMEL: I don't believe that's profiling, Your
4 Honor. It's simply asking whether they have done something
5 that would basically be the crux of the State's case,
6 whether that might put them in a position of having to
7 relate back to their own experiences. I don't believe
8 that's profiling, Your Honor. I think that's a basic fact
9 that would have an impact on their impartiality.

10 THE COURT: I'm not going to ask that. You are on
11 record.

12 (Whereupon, the jury venire panel entered the
13 courtroom)

14 THE COURT: Members of the jury panel, I'm John
15 Hayes. Along with Judge Alford, who you met this morning,
16 I'm the other resident circuit judge of the Sixteenth
17 Judicial Circuit, which is comprised of York and Union
18 Counties. Along with Judge Alford, I am assigned to hold
19 technically called General Sessions Court here this week.
20 It's criminal court.

21 We are starting our first trial of the week in
22 this courtroom. The cases are the case of the State versus
23 Travis Daniele Robinson.

24 Mr. Robinson, would you please stand?

25 This is Mr. Robinson. He is represented by Mr.

1 Gary Lemel and Ms. Inzerillo.

2 You may be seated.

3 The other defendant is Quinton Lawrence Tobbie.

4 Mr. Tobbie, would you please stand?

5 And Mr. Tobbie is represented by Mr. Geoffrey
6 Dunn.

7 You may be seated.

8 The State is being represented by Mr. Springs and
9 Mr. Epting.

10 You may be seated.

11 Now, Mr. Robinson is the one with the suit on by
12 Mr. Lemel is charged with three crimes - attempted armed
13 robbery, possession of a firearm during the commission of a
14 violent crime, assault and battery with intent to kill.

15 It's alleged that this occurred on or about
16 September 7th, 2007. It's alleged that Mr. Robinson
17 attempted to take personal property from Savalas Dodd. It
18 alleged this occurred at , that that
19 constituted attempted armed robbery.

20 He is charged also, Mr. Robinson is, with being in
21 the possession of a handgun during the commission of the
22 attempted armed robbery and during the commission of the
23 next indictment, which is assault and battery with intent to
24 kill.

25 It's alleged in the third indictment that at that

1 time, September 7th, 2007, Mr. Robinson, with malice
2 aforethought, committed an unlawful assault and battery
3 against Mr. Dodd, shooting Mr. Dodd with a pistol while in
4 the parking lot of a gas station.

5 To these three charges Mr. Robinson has entered
6 pleas of not guilty. The State, therefore, must prove his
7 guilt beyond a reasonable doubt before he could be
8 convicted.

9 Mr. Tobbie is charged with two offenses - aiding
10 and abetting attempted armed robbery and accessory after the
11 fact of attempted armed robbery.

12 It's alleged that on September 7th, 2007, that he
13 had knowledge that Mr. Robinson had committed an attempted
14 armed robbery, and that he, Mr. Tobbie, did assist Mr.
15 Robinson in evading responsibility for that act.

16 The second indictment alleges that at that time
17 Mr. Tobbie aided and abetted Mr. Robinson in the attempt to
18 rob Mr. Dodd.

19 To these charges Mr. Tobbie has entered pleas of
20 not guilty. Again, that places the burden on the State, the
21 burden on the State to prove his guilt beyond a reasonable
22 doubt.

23 I'm going to have to ask you some questions, just
24 like Judge Alford did this morning, but these are what we
25 call case specific. They have to do with this case and not

1 general qualifications.

2 First, are any of you related by blood or marriage
3 to any of the six individuals, or seven individuals, of whom
4 you have just been introduced? If so -- either the
5 attorneys or Mr. Robinson or Mr. Tobbie? Related by blood
6 or marriage, close personal friends or acquaintance of any
7 of them? If so, please stand.

8 No one stands.

9 Are any of you members of the Grand Jury which
10 passed on these two sets of indictments at an earlier time?
11 If so please stand.

12 No one stands.

13 Have any of you heard anything about this case,
14 know about it from any source whatsoever, or have any of you
15 formed or expressed any opinion about any matter or issue
16 that you would be involved in a case of this type? If so,
17 please stand.

18 No one stands.

19 Have any of you been represented by Mr. Springs,
20 Mr. Epting, or the Sixteenth Circuit solicitor's office, or
21 Mr. Lemel or Ms. Inzerillo or the Public Defender of the
22 York County's office, or been represented by Mr. Dunn, you
23 or a member of your family? If so, please stand.

24 No one stands.

25 Are any of you members of or contributors to

1 organizations such as Students Against Drunk Drivers,
2 Mothers Against Drunk Drivers, Citizens Against Violence,
3 Troopers Association, Sheriff's Association, Fraternal Order
4 of Police, or anything like that? If so, please stand.

5 No one stands.

6 Are any of you or a member of your immediate
7 family involved in law enforcement at any level, or in the
8 prosecution of criminal cases at any level? And by any
9 level, I mean Judge Advocate General, or M.P. in the
10 military police, to U.S. Attorney, anything like that? Any
11 kind of law enforcement or prosecution, solicitor, Attorney
12 General, or anything like that?

13 All right. Yes, sir, your name and number?

14 JUROR NUMBER 42: My name is Ronnie Clamp. My
15 number is 42.

16 THE COURT: All right. How are you --

17 JUROR NUMBER 42: I'm a field deputy with the
18 South Carolina Employment Security Commission, in charge of
19 taxes more specifically.

20 THE COURT: All right. Just remain standing.

21 Yes, sir, your name.

22 No, you remain standing, please. Just remain
23 standing.

24 Yes, sir, your name and number?

25 JUROR NUMBER 243: My name is Daniel Wilt, number

1 243. I may not have understood the question, but my
2 brother-in-law is a retired police officer.

3 THE COURT: Yes, sir. You did understand it, but
4 please remain standing, sir.

5 Yes, sir.

6 JUROR NUMBER 239: Frank Wilkerson, juror number
7 239. My first cousin is a Judge Anderson.

8 THE COURT: Yes, sir.

9 JUROR NUMBER 213: Sister-in-law working for the
10 sheriff's department.

11 THE COURT: Your name and number?

12 JUROR NUMBER 213: Rob Sturgis, 213.

13 THE COURT: All right. Of the four of you who are
14 standing, if that relationship would prevent you from being
15 fair and impartial in the trial of this case, please raise
16 your right hand.

17 No one does.

18 If you would be, because of that relationship,
19 unable to base your verdict solely on the law and the
20 evidence in the trial, raise your right hand.

21 No one does.

22 Thank you. You may be seated.

23 Do any of you volunteer for any victims support
24 groups? Do you work with any group that is solely or
25 primarily involved with the helping of individuals who claim

1 to be victims of certain offenses or certain illegal
2 conduct? If so, please stand.

3 No one stands.

4 Do any of you have any religious, political,
5 social, or any moral makeup, or anything in your makeup, for
6 that matter, that would prevent you from being fair and
7 impartial in the trial where individuals have been charged,
8 as Mr. Robinson and Mr. Tobbie have been charged? If so,
9 please stand.

10 No one stands.

11 Have any of you been a witness to a crime, that is
12 a victim -- a witness to a crime or been the victim to a
13 crime? If so, please stand.

14 All right. Yes, sir.

15 We will start on this side and give your name and
16 number. And I know that some of you have already stood, but
17 we have to get your name and number each time.

18 JUROR NUMBER 4: My name is Wade Anfin, I'm juror
19 number 4. I was robbed. (Inaudible)

20 THE COURT: Remain standing, please.

21 JUROR NUMBER 243: Daniel Wilt, 243. (Inaudible)

22 THE COURT: Just remain standing.

23 Yes, ma'am.

24 JUROR NUMBER 119: Andrea Ladrach. I had my
25 apartment burglarized. It's been probably 30 years ago.

1 THE COURT: All right. Just remain standing.

2 Yes, ma'am.

3 JUROR NUMBER 18: Melanie Bolin, juror 18. I have
4 been a victim of criminal domestic violence.

5 THE COURT: All right. Remain standing.

6 Yes, ma'am.

7 JUROR NUMBER 167: Joan Olejniczak, 167. Victim
8 of domestic violence.

9 THE COURT: Just remain standing.

10 Yes, ma'am.

11 JUROR NUMBER 148: 148. I've a victim of
12 (inaudible)

13 THE COURT: And your name?

14 JUROR NUMBER 148: Sonya Moore.

15 THE COURT: Just remain standing.

16 Now, of the six of you who are standing, if any of
17 you would be unable to be fair and impartial because of
18 having this in your past, if you would please raise your
19 right hand.

20 No one does.

21 If this past history would prevent from you making
22 your decision in this case based on the law and the evidence
23 during the trial, raise your right hand.

24 No one does.

25 You may be seated. Thank you.

1 This incident allegedly happened at a gas station.
2 Are any of you or a member of your family employed by any
3 gas station or convenience store or similar type business?
4 If so, please stand.

5 All right. We will start with Wilkerson and go
6 back.

7 Again, you have got to give us your name and
8 number.

9 JUROR NUMBER 239: Frank Wilkerson, juror 239. We
10 own a convenience store.

11 THE COURT: All right.

12 Yes, sir, your name?

13 JUROR NUMBER 129: Jeremiah McCarthy, juror 129.
14 I used to be in the convenience business.

15 THE COURT: Yes, ma'am.

16 JUROR NUMBER 228: Juror 228, Kimberly Vinson. My
17 mother is a manager of a convenience store in Gastonia.

18 THE COURT: All right. Would the fact that the
19 three of you are standing, if your involvement with those
20 businesses, if that would prevent from you being fair and
21 impartial, please raise your right hand.

22 No one does.

23 If you could not make -- if you could not base
24 your verdict on the law and the evidence which is presented
25 during this trial, please raise your right hand.

1 No one does.

2 You may be seated. Thank you.

3 Anything further from the State?

4 MR. SPRINGS: Calling the witnesses.

5 THE COURT: I will do that.

6 Anything from the defense?

7 MR. LEMEL: Your Honor, number 8 was formally
8 requested.

9 THE COURT: I failed to ask them that. I looked
10 at it. Number 7 kind of covers number 8 anyway, but you are
11 on the record.

12 And for some reason, Mr. Springs, I do not have
13 your witness list. At least I couldn't put my hands on it.

14 MR. SPRINGS: I have it.

15 THE COURT: The following are potential witnesses
16 in this case. They may not testify, and it's a fairly
17 lengthy list, but if any of you are related by blood or
18 marriage or if you are a close personal friend or
19 acquaintance of any of these individuals, please stand.
20 And, again, if you are related to them, obviously you know
21 what that means, but friend or acquaintance, if you belong
22 to the same clubs or churches and those sort of things.

23 Jeff Hollifield.

24 Lori Van Wallendaal.

25 Ken Whitler.

1 Then with the York County detention center,
2 Richard Martin and Cheryl Goseman.

3 With the York County sheriff's office, Detective
4 Eddie Strait and W.J. Miller.

5 Also with the sheriff's office Wayne Smith.

6 With the South Carolina Law Enforcement Division
7 Ila Simmons.

8 With the Charlotte-Mecklenburg Police, John W.
9 Booth.

10 Forensic officers Todd Gardner and Brian Bagwell.

11 With the sheriff's office Deputy Randy Gibson.

12 And then individuals not associated with law
13 enforcement Mr. Savalas Dodd, Ms. Nicole Howie, Ms. Pamela
14 Macomson, Ms. Melinda Parker, Ms. Yolanda Kinard, Mr. Manno
15 Heshumi Beam, Mr. Hiawatha Beam.

16 Any of you related by blood or marriage or close
17 personal friend of acquaintance with any of those
18 individuals? If so, please stand.

19 All right. Mr. Wilkerson. Give your name and --
20 I know. You have to do this every time because we have to
21 make a record.

22 JUROR NUMBER 239: Juror number 239. I know Todd
23 Gardner.

24 THE COURT: Would that affect your ability to be
25 fair and impartial in the trial of this case?

1 JUROR NUMBER 239: No.

2 THE COURT: Would you be able to base your verdict
3 on the law and the evidence?

4 JUROR NUMBER 239: Yes.

5 THE COURT: Okay. Thank you.

6 Anything further from the State?

7 MR. SPRINGS: No, sir.

8 THE COURT: Mr. Lemel?

9 MR. LEMEL: No, sir, Your Honor.

10 THE COURT: Mr. Dunn?

11 MR. DUNN: No, sir.

12 THE COURT: All right. The way we draw juries in
13 this court is as follows: Each side -- each entity, we will
14 call it, has the right to strike, remove up to five
15 individuals.

16 We will draw two alternates.

17 (Whereupon, the jury panel was impaneled)

18 THE COURT: Anything from the State involving
19 striking at this time?

20 MR. SPRINGS: Nothing from the State?

21 THE COURT: Mr. Lemel?

22 MR. LEMEL: No, sir, Your Honor.

23 THE COURT: Mr. Dunn.

24 MR. DUNN: No, sir, Your Honor.

25 THE COURT: Madam Clerk.

1 (Off the court)

2 (Back on the record)

3 THE COURT: Those of you who were not chosen, I'm
4 going to ask you to -- allow you to leave and ask you to
5 call back after seven tonight and you will receive
6 instructions about what next to do. It may be to call back.
7 It may be to report. I imagine Judge Alford told you how
8 important it is for you to follow the instructions you
9 receive. If it's to report at a certain time, please do so.
10 If it's to call back at a certain time, please do so.

11 So I'll allow you to leave. I'm going to ask you
12 to leave quietly so I can start working with the panel
13 that's been impaneled. Thank you.

14 (Whereupon, the jury venire panel left the
15 courtroom)

16 THE COURT: Those of you who were chosen, we are
17 not going to swear you in at this time. I'm going to let
18 you go to the jury room while we take up some matters that
19 we have to take up outside of your presence.

20 I'm going to go ahead and tell you now, though, do
21 not start discussing this case or try to make up your own
22 mind in this case until we reach the point in the trial
23 where I instruct you it's time to deliberate and return a
24 unanimous verdict. Prior to that time you are not equipped
25 with all the tools you need to make a fair and reasonable

1 decision. You don't know much about the case because you
2 hadn't heard, much other than me reading the indictments,
3 but I do emphasize do not try to make up your mind and don't
4 discuss the case until I instruct you to do so.

5 When you are outside the courtroom, this case will
6 at least go into tomorrow. Do not let anyone discuss this
7 case with you. Do not let anyone start a conversation with
8 you or ask you anything about this case. And, of course, do
9 not initiate a conversation with anyone.

10 If anyone tries to discuss this case with you,
11 report that back to me, hopefully identifying for me the
12 individual who has tried to discuss the case with you.

13 I do not know that this case would receive any
14 news coverage, but do not let yourself be exposed to
15 anything, if it does. Don't read it about it, watch about
16 it, or listen to anything about this case.

17 If anything catches your eye or ear that could
18 remotely deal with this trial, do not let yourself be
19 exposed to it.

20 I don't think any of you would do this, but it
21 happened in a case and so, therefore, I feel now I must tell
22 jurors do not go on the Internet to do any research on any
23 issues in this case. Don't do any global positioning to
24 find out where this took place. Don't go by the scene and
25 do any independent investigation. Don't research the law.

1 You have to base your verdict on the law and the evidence
2 that you hear and received in this courtroom. So don't do
3 anything independent investigation on the Internet or in the
4 books or -- if you -- unless you absolutely have to, don't
5 even go by the scene where this allegedly occurred.

6 So I'm going to let you go into the jury room for
7 a few minutes. It might be more than a few, because we have
8 a few matters to take up outside your presence.

9 (The following takes place outside the presence of
10 the jury panel)

11 THE COURT: We have several motions in limine.
12 It appears that the two defendants sort of mirror out of --
13 I haven't read them all to be sure, but the two defendants
14 sort of mirror, but we can adjust them as we go through.

15 The first for each has to do with ensuring that
16 the State has complied with discovery, Rule Five and Brady
17 and that line of cases.

18 MR. SPRINGS: Yes, Your Honor. The State has in
19 the case of both defendants, Travis Robinson and Quinton
20 Tobbie, complied with discovery and Brady.

21 THE COURT: All right.

22 MR. LEMEL: Your Honor, just to put on the record
23 what we received in this case and that -- we received the
24 General Sessions case summary. We have an incident result
25 that was also generated in this matter. The work of the

1 forensics unit, work of SLED, statements that were taken
2 from both of these gentlemen and also the three individuals
3 on the scene. We do not have any statements taken from Mr.
4 Dodd or the photo lineup or anything of that nature that was
5 done. I just need to put that on the record.

6 THE COURT: The second is to determine whether or
7 not there are any statements that the State intends to use
8 against Mr. Robinson, or statements made by Mr. Robinson
9 and/or Mr. Tobbie. And, if so, the defendants are requesting
10 a Jackson v. Denno Hearing regarding the admissibility of
11 such statements.

12 MR. SPRINGS: Yes, Your Honor, we are ready to do
13 that. And because they both gave statements and make some
14 mention of each other, we have prepared redacted statements
15 eliminating those names and referring to the other guy, that
16 we are ready to do the Jackson v. Denno.

17 Do you want me to go get my witnesses before we
18 start putting --

19 THE COURT: Yes, let's do that.

20 The next has to do with it looks like Lyle
21 testimony, as far as Mr. Robinson and Mr. Tobbie,
22 impeachment, prior bad acts intended to use for impeachment.

23 MR. SPRINGS: No prior bad acts. No Lyle.

24 Robinson, nothing we can use at this point in time
25 for impeachment.

1 For Mr. Tobbie, he has conviction charge in
2 Charlotte for armed robbery and assault with a deadly weapon
3 inflicting serious injury by a gun.

4 He pled out the conspiracy to armed robbery, which
5 was then -- well, conspiracy to armed robbery in 2007. We
6 would impeach him with that. We have the issue of similar
7 type crime. Because armed robbery is relevant, it
8 does shift his honesty, I would like to impeach him with
9 conspiracy to commit armed robbery.

10 MR. DUNN: Your Honor, I don't have a whole lot to
11 say. It is what it is. I think the court would note it's
12 pled guilty under 16. I'm not sure how York County works as
13 far as their courts go, but I know in South Carolina cases
14 it probably would have been in juvenile court. With but
15 that being said, I would leave that to the court's
16 discretion.

17 THE COURT: I will allow it to be used, but I'm
18 not going to allow you to reference the offense, but rather
19 a person as to a felony.

20 MR. SPRINGS: Yes, sir.

21 THE COURT: All right. Lyle we have already
22 covered.

23 Have you provided wrap sheets? I heard that
24 mentioned earlier. You provided it to one defendant and not
25 the other.

1 MR. DUNN: I do not have them, Your Honor.

2 THE COURT: All right. Are you going to share
3 them with Mr. Dunn?

4 MR. SPRINGS: I had one set and I will --

5 THE COURT: You have got two defendants.

6 MR. SPRINGS: I have got two defendants and I will
7 serve a copy. Does Mr. Lemel mind if I get them back from
8 him?

9 MR. LEMEL: Yes, sir, and just in advance of that,
10 Your Honor --

11 MR. SPRINGS: Just one second. Could we go ahead
12 and have everybody but Mr. Dodd step out?

13 MR. LEMEL: Your Honor, it appears to me, and I
14 have shared the brief with Mr. Dunn, it appears that Mr.
15 Dodd would have a record potentially would be impeachable on
16 his. And since we just received this, I had not made that
17 part of the motion, but I think we should follow it as it
18 relates to Mr. Dodd's offenses as well, as possibly being
19 used to impeach him.

20 MR. SPRINGS: We are having Mr. Epting run another
21 copy in reference to Mr. Dunn, but address some other things
22 and get those documents back to you.

23 THE COURT: Everybody got copies?

24 MR. SPRINGS: I made two copes.

25 THE COURT: While he's doing that, let's come back

1 to that then. Neil v. Biggers was mentioned as to number 6.
2 We have got pretrial identification, questions about the
3 procedures and that. We will have to have a hearing on
4 that.

5 MR. SPRINGS: Yes, sir.

6 THE COURT: 7 is kind of a derivative of 6.
7 Pretrial, we have to worry about in-court identification,
8 but that -- they look like they go together?

9 10, there is some stipulations about forensic
10 service unit employees work performed by Kevin Tolson.

11 MR. SPRINGS: Sure, I will let Mr. Lemel lay those
12 out and then I'll be glad to --

13 MR. LEMEL: Thank you, Your Honor.

14 Pursuant to preparation of trial with Mr. Springs,
15 we discussed the list of witnesses that he subpoenaed. A
16 significant amount of work on this case was done by Mr.
17 Kevin Tolson in the forensic service unit in terms of a
18 number of pictures that were taken, gunshot residue swabs
19 that was done, recovery of the bullet that struck Mr. Dodd.
20 Mr. Tolson, my understanding from Mr. Springs, is on
21 vacation this week. Out of courtesy to him, I had placed
22 him under subpoena, based upon Mr. Springs stipulation to
23 me, that essentially all those matters would come in through
24 Mr. Gardner with Mr. Tolson. That was basic forensic
25 service work, without objection from him, and I just wanted

1 to place that on the record.

2 MR. SPRINGS: Yes, we stipulate to that. Anything
3 that in the reports the defense and then has been provided.
4 Anything that literally said Mr. Kevin Tolson did a certain
5 thing, found a certain thing, going certain paths, I will,
6 whether it's through Officer Todd Gardner or any other way,
7 either defendant would like to just make sure that does get
8 before the jury and stipulate to that.

9 MR. LEMEL: Thank you.

10 MR. SPRINGS: And I appreciate their courtesy in
11 not ruining Kevin Tolson's vacation.

12 MR. DUNN: I don't have any objection to that,
13 Your Honor. I was not aware of it, but I don't have any
14 objections with it.

15 THE COURT: Okay. You were unaware of it, but
16 you --

17 MR. DUNN: No, that he was going to be on
18 vacation.

19 THE COURT: Oh, okay. I was going to say --

20 Okay. How about now there is a motion to restrict
21 Todd Gardner from testifying about Ken Whitler.

22 MR. LEMEL: Yes, sir, this is sort of a separate
23 situation. Mr. Whitler is an employee of SLED who actually
24 did scientific testing on the bullet that was recovered from
25 Mr. Dodd and issued a report on that as an expert witness.

1 This is something wholly outside of what Mr. Gardner's
2 experience is, as far as collecting these items, taking
3 photographs, things like that.

4 I have placed Mr. Whitler under subpoena. He's
5 under subpoena at this time. It's my understanding the
6 reason why he had some issues is he was under subpoena for
7 today in Anderson County, I believe, and then tomorrow had
8 some training. He's on standby for us beginning Wednesday
9 morning, but Mr. Springs indicated that he might not want to
10 have -- he might want that information to come in through
11 Mr. Gardner, report that Mr. Whitler did, and we are
12 objecting to that as being outside the scope of his
13 expertise, because he's not --

14 MR. SPRINGS: We would again --

15 MR. DUNN: I'm going to withdraw my motion on
16 that. We don't have an opinion one way or the other.

17 THE COURT: Okay.

18 MR. LEMEL: And we understand. Does that mean
19 he's consenting to the motion? He's not going to try to
20 bring that in? I just want to be a hundred percent clear.

21 MR. SPRINGS: As far as the expert opinion of Mr.
22 Ken Whitler, no, we are not going to try to bring that in.

23 MR. LEMEL: Okay. Which would include the report
24 that he produced and things of that nature?

25 MR. SPRINGS: Right, where we have given Mr.

1 Whitler.

2 MR. LEMEL: Thank you.

3 THE COURT: All right. Ready to go forward on the
4 in-camera for the Jackson v. Denno?

5 MR. SPRINGS: Yes, sir, Your Honor.

6 THE COURT: I always like for you to tell me what
7 the issue is so I can be listening with a more attentive
8 ear.

9 MR. LEMEL: Your Honor, we didn't get to number
10 10, the sequestration.

11 THE COURT: Oh, I thought y'all just done that.

12 MR. SPRINGS: Right, I sent mine out, and we would
13 like mutual --

14 THE COURT: It would be granted mutually. The
15 reason I didn't get into it is he just ran all his people
16 out. I thought he was consenting to it.

17 MR. LEMEL: Yes, sir, and that's correct. There
18 are certain expert witnesses who were not factual witnesses.
19 They may have to actually listen to the testimony to be able
20 to give their expert opinion on it at a later point in time,
21 but I would ask that expert witnesses, of course, be
22 excluded on that.

23 THE COURT: All right, Mr. Dunn, you didn't --

24 MR. DUNN: I don't have any expert witnesses.

25 THE COURT: Well, he is concerned about his, the

1 State's experts. You don't object to the State's experts
2 being present?

3 MR. DUNN: No, sir.

4 THE COURT: Okay. And the lead case agent?

5 MR. DUNN: No, sir.

6 MR. LEMEL: I don't know if there is a lead case
7 agent. We have got three officers.

8 THE COURT: I understand that and I am presuming
9 they are here for the Jackson v. Denno, but --

10 MR. SPRINGS: Just to be clear --

11 THE COURT: Everybody but experts are sequestered.

12 MR. SPRINGS: So on the defendant list provided by
13 Mr. Lemel, all those people would be sequestered, except Mr.
14 Whitler?

15 MR. LEMEL: Well, Your Honor, if they are expert
16 witnesses, they would not be --

17 MR. SPRINGS: I guess that's what I'm asking,
18 because Jeff Hollifield is an expert.

19 MR. LEMEL: Yes, sir.

20 MR. SPRINGS: Is Lori Van Wallendael an expert?

21 MR. LEMEL: Yes.

22 MR. SPRINGS: And Ken Whitler?

23 MR. LEMEL: Yes.

24 THE COURT: All right.

25 MR. SPRINGS: We ready for Jackson v. Denno, Your

1 Honor?

2 THE COURT: Well, now I have the rap sheets of it
3 looks like Nicole Howie, the first one I see. Well, any
4 way, it doesn't -- which ones --

5 MR. SPRINGS: Nicole Howie has no record.

6 THE COURT: Okay.

7 MR. SPRINGS: Pamela Macomson has no record.

8 Melinda Parker has no record.

9 Mr. Dodd has a record, and I'll let Mr. Lemel
10 propose what he thinks is an impeachable offense.

11 MR. LEMEL: Thank you, Your Honor.

12 Your Honor, it appears from the copy that I was
13 handed previously that there may be two offenses related to
14 Mr. Dodd -- excuse me, three.

15 There is a conviction from North Carolina from
16 1999, that it shows as a felony conviction for some sort of
17 drug offense, some sort of possession of marijuana type
18 offense.

19 THE COURT: All right. Wait just a minute.
20 Possession of -- let's see what have I got here? Possession
21 of marijuana?

22 MR. SPRINGS: New Jersey.

23 THE COURT: Felony conviction.

24 Well, I would allow you to impeach him on that.
25 That's within the time limit. He was arrested in '97,

1 convicted in 1999. It says felony conviction.

2 MR. SPRINGS: What would you call the crime, Mr.
3 Lemel?

4 MR. LEMEL: I will leave that to the court's
5 discretion as to how the court wants me to make that
6 inquiry.

7 THE COURT: I would just -- it's very similar,
8 just ask him was he not -- I mean, it's kind of hard to
9 tell. It says possession of marijuana, hashish, under, and
10 then it kind of stops. So in South Carolina it would be
11 something that would be a misdemeanor.

12 MR. LEMEL: Yes, sir.

13 THE COURT: So I don't know. So I would just
14 stick to calling it a --

15 MR. LEMEL: Yes, sir.

16 THE COURT: I don't know. So I would just
17 stick to calling it a --

18 MR. LEMEL: Yes, sir.

19 And then it also appears that in 2001, he received
20 a sentence of five years on the trafficking, second crack
21 charge.

22 THE COURT: I believe that you can use that for
23 impeachment.

24 MR. LEMEL: Again, I'll need the method of the
25 inquiry of the court, if the court wishes me to simply refer

1 to convicted of a felony on the indictment, or if the
2 court --

3 THE COURT: Yeah, I don't know why you can't ask
4 him about the particular offense. It looks like he's got
5 three trafficking, one is marijuana less than an ounce.

6 MR. LEMEL: Yes.

7 THE COURT: And he's got trafficking, and then you
8 have got charged under three distributions and selling for
9 crack within a -- PWID, within proximity.

10 MR. LEMEL: Yes.

11 THE COURT: So that looks like two separate ones
12 that you would be entitled to ask him about.

13 MR. LEMEL: The PWID, a total of three.

14 THE COURT: Right.

15 MR. LEMEL: Of course, I would restrict myself
16 just to convicted of a felony. The other two I -- one of
17 the convictions was for trafficking and one of the
18 convictions was for possession with intent to distribute
19 within proximity of a school.

20 THE COURT: All right. Now, we are back to
21 Jackson v. Denno.

22 MR. LEMEL: Your Honor, I do notice that Officer
23 Smith is still here. I don't believe that he actually did
24 any part of the arrest, so I don't guess he would actually
25 be part of the Jackson v. Denno Hearing.

1 MR. SPRINGS: Right.

2 Wayne, you wait outside. You are going to be
3 sequestered.

4 MR. SPRINGS: We call W.J. Miller.

5 MR. LEMEL: And, Your Honor, in some issue here
6 would be the timing and/or occasion, the hour this occurred
7 and how long Mr. Robinson had been in isolation at that
8 point in time.

9 MR. DUNN: Your Honor, just for clarification
10 purposes, are we just going to do Mr. Robinson first and
11 then come back to Mr. Tobbie, or are we going to take care
12 of both defendants with each witness as they --

13 THE COURT: I think when the witness is up, you
14 might as well cover them both.

15 MR. DUNN: I'm just --

16 THE COURT: Yeah, Mr. Springs, is that what your
17 intention is?

18 MR. SPRINGS: Yes, sir.

19 THE COURT: Okay.

20 MR. SPRINGS: I would be happy to talk about the
21 Miranda and statements for both of them.

22 MR. DUNN: I just wanted to make note of it.

23 THE COURT: That's fine.

24 LIEUTENANT W.J. MILLER, II, having been first duly
25 sworn, testified as follows:

1 DIRECT EXAMINATION BY MR. SPRINGS:

2 Q. Lieutenant, tell everyone here your full name and what
3 you do for a living.

4 A. William John Miller, II. I'm a lieutenant with the
5 York County sheriff's office.

6 Q. All right. Were you called out the night of September
7 the 7th, 2007, to an armed robbery shooting call?

8 A. Yes, sir.

9 Q. You were the on-call detective?

10 A. Yes, sir.

11 Q. Did you get at the Shell station out on Gold Hill Road?

12 A. Yes, sir.

13 Q. Did you talk to some witnesses?

14 A. Yes, sir.

15 Q. And did you get a communication from the
16 Charlotte-Mecklenburg police department?

17 A. Yes, sir.

18 Q. What did Charlotte-Mecklenburg police department say
19 they had for you?

20 A. They believed that they had the subjects that we were
21 looking for that had left the scene down at the Shell
22 station in York, or in Fort Mill.

23 Q. What kind of -- again, what kind of crime was it that
24 you were called out for there at that Shell station?

25 A. A shooting call.

1 Q. Robbery shooting?

2 A. Yes, sir.

3 Q. And how many suspects did the witnesses there at the
4 Shell station tell you you had?

5 A. Two.

6 Q. And did they give you a description of the car?

7 A. Yes, sir.

8 Q. And the number of people in the car?

9 A. Yes, sir.

10 Q. And did you go down to Charlotte and meet up with the
11 Charlotte-Mecklenburg police officers?

12 A. Yes, sir.

13 Q. And what are the names of the suspects they had in
14 custody?

15 A. Tobbie and Robinson are their last names.

16 Q. Travis Robinson?

17 A. Yes, sir.

18 Q. Quinton Tobbie?

19 A. And Quinton Tobbie, yes, sir.

20 Q. And were they in custody by the Charlotte-Mecklenburg
21 police?

22 A. Excuse me, I didn't --

23 Q. Were they in custody of the Charlotte-Mecklenburg
24 police?

25 A. Yes, sir.

1 Q. And did the Charlotte-Mecklenburg -- did you make
2 Charlotte-Mecklenburg aware that you intended to obtain
3 warrants?

4 A. Yes, sir, once it was all said and done. Once we got
5 through, yes, sir.

6 Q. Did you go over to Charlotte-Mecklenburg law
7 enforcement center and interview Mr. Robinson and Mr.
8 Tobbie?

9 A. Yes, sir, we went to a substation of theirs.

10 Q. And did you read them their Miranda Rights?

11 A. Yes, sir.

12 Q. Which one did you -- did you do them individually,
13 first one and then the other?

14 A. Yes, sir.

15 Q. And who did you do first?

16 A. Look for my -- did Quinton Tobbie first at 0:55 hours.

17 Q. Describe the environment where Quinton Tobbie was when
18 you read him his Miranda Rights in anticipation of
19 interviewing him. What kind of room and what kind of a
20 place was it?

21 A. It was probably 20 foot by 15 foot room, open.

22 Q. Was he handcuffed?

23 A. During the interview, Mr. Springs, I cannot -- I cannot
24 recall that.

25 Q. Well, was he hurt?

1 A. No, sir.

2 Q. Was he in pain?

3 A. No, sir.

4 Q. If he was handcuffed and they were hurting him, would
5 you remember that?

6 A. Yes, sir, because we would have done something about
7 it.

8 Q. And was anybody pointing a gun at him?

9 A. No, sir.

10 Q. Was anybody being mean to him?

11 A. No, sir.

12 Q. Was he awake and conscious?

13 A. Yes, sir.

14 Q. Did he seem to be clear headed?

15 A. Yes, sir.

16 Q. Did he seem to be a fairly intelligent individual?

17 A. He answered our questions with -- you know, with
18 intelligent answers.

19 Q. Okay. Before you gave him his Miranda Rights, did you
20 make any promises to him?

21 A. No, sir.

22 Q. Did you make any threats to him?

23 A. No, sir.

24 Q. Did any officer or any person there at any time make
25 any threats or promises to him?

1 A. Not within my -- not while I was in charge or around
2 him.

3 Q. And did you follow a Miranda format with the format?

4 A. Yes, sir.

5 Q. Pull that out for both gentlemen, if you would.

6 A. Okay.

7 Q. Let me know when you have got both of them out.

8 A. I have got them.

9 Q. All right. Good. Tell the court -- tell everybody the
10 Miranda Rights exactly as you gave them to Quinton Tobbie
11 that night.

12 A. We always do, pull out this sheet of paper that is
13 standard with the York County sheriff's office. It starts
14 "your rights. Before I ask you any questions I want to
15 advise you of your rights.

16 "1. You have the right to remain silent.

17 "2. Anything that you say can and will be used against
18 you in a court of law.

19 "3. You have the right to talk to an attorney and have
20 him or her present with you while you are being questioned.

21 "4. If you cannot afford to hire an attorney, one will
22 be appointed to represent you before any questioning, if you
23 wish.

24 "5. You can decide at any time to exercise these
25 rights and not answer any questions or make any statements."

1 Now, I look at them and ask them do you understand
2 these rights as I have explained them to you? And if they
3 yes, or no, I have them initial where it says yes or no on
4 it and then I ask them to sign it and date it.

5 Then at the next step I take and say these are your
6 waiver of rights, and I have a -- I read them to them. And
7 if they want to look at them and read them, then I also
8 offer that to them.

9 "I am willing to talk to the police and answer
10 questions. I do not want an attorney at this time. I
11 understand and know what I'm doing. No promises or threats
12 have been made to me, and no pressure of any kind has been
13 placed upon me."

14 At that time I ask them if they want an attorney. And
15 if they yes, that's the end of the conversation.

16 If not, I have them sign it and date it again and then
17 continue to start filling out the bottom part of it.

18 Q. Okay. And did Mr. Tobbie indicate he understood his
19 rights?

20 A. Yes, sir.

21 Q. And did he agree to waive his rights?

22 A. Yes, sir.

23 Q. Did he actually sign a piece of paper to that effect?

24 A. Yes, sir.

25 Q. All right. Let me -- do you have the original piece of

1 paper that the --

2 A. These are copies right here that I have.

3 Q. You don't have the original?

4 A. Detective Strait has got those.

5 MR. SPRINGS: I beg the court's indulgence, Your
6 Honor.

7 Madam Clerk, do you have a stapler?

8 (Written Statement of Quinton Tobbie marked as
9 State's Exhibit No. 1 for identification)

10 BY MR. SPRINGS:

11 Q. And that's been marked as a State's Exhibit. What's
12 the number on the red sticker?

13 A. One.

14 Q. All right. And is that the form that Mr. Tobbie
15 signed?

16 A. Yes, sir.

17 Q. Is that his handwriting in the statement or is it your
18 handwriting?

19 A. That's my handwriting in the statement.

20 Q. And I'll show you a typed out double spaced copy of
21 that handwritten statement.

22 A. Sir?

23 Q. Did I show you a typed out copy?

24 A. Yes, you did.

25 Q. And is that an exact copy of the statement?

1 A. Yes, sir.

2 Q. All right. And go ahead and read --

3 MR. DUNN: Your Honor, he's passing stuff up that
4 he purportedly had my client's signature on it. I have not
5 seen that. I just want to be able to look at it before we
6 start putting things into evidence. We can mark it, but at
7 least let me have a chance to look at it.

8 MR. SPRINGS: I have handed the judge a piece of
9 paper that you have in your hand. Here is what we are
10 discussing.

11 BY MR. SPRINGS:

12 Q. Go ahead and tell everyone what Mr. Tobbie told you.

13 A. "I, Quinton Lawrence Tobbie, know and understand my
14 rights, having to decide to answer the questions. At this
15 time I now make the following statement:

16 "I got in the burgundy four-door car with me and Trap."

17 Q. Trap, T-R-A-P. Are you sure he said Trap?

18 A. As best as I can remember, yes, sir.

19 Q. Go ahead.

20 A. That's what I wrote down.

21 "In the back and the driver and another person was in
22 the front seat. We left Nations Ford Road and got on I-77
23 and came south into South Carolina to buy some cheap gas.
24 We came into South Carolina and drove a short distance, got
25 off the interstate and turned right and the gas station was

1 on the right. We pulled up to the gas pumps on the right
2 and me and the front passenger got out and went into the
3 store and paid for the gas and I bought a bag of chips, Slim
4 Jim and a cigar and went back to the car and got in back in
5 the right back passenger seat. The front passenger was
6 pumping the gas. And when he got through pumping the gas,
7 he walked back towards the black vehicle in the next lane
8 and tried to rob them. And I heard a shot and he came
9 running back around and got in the front passenger seat and
10 we took off" -- or "we took out of the store and started
11 back to North Carolina. I tried to get out of the car and
12 the front passenger turned around and told me that he would
13 kill your MFS. We rode south for about five minutes and
14 then we turned around and started back to North Carolina and
15 the police got after us at Arrow Wood Road in Charlotte.
16 And ran the car until we parked the car at the apartment
17 complex and went into my sister's house apartment. Trap
18 called his momma to come pick us up. She did, and we got in
19 her" --

20 Q. Read it the way it's wrote.

21 A. "Got in her and was leaving the apartment complex when
22 the police stopped us."

23 Q. All right. Now, did he give you a clear understanding
24 of who he meant by Trap?

25 A. He -- he didn't -- as far as the long name, no, I don't

1 have a long name other than who he was.

2 Q. Did he give you an idea of what person that was more
3 than the idea other than the word Trap? Did he lead you to
4 believe that person was?

5 A. No, sir, not that I can --

6 Q. Did you ask him who Trap was?

7 A. Yes, sir, and he just -- the best I remember he said he
8 was a friend.

9 Q. Okay. All right.

10 MR. SPRINGS: Your Honor, that is our proffer on
11 Mr. Tobbie's statement, the voluntariness of it.

12 THE COURT: We'll do any cross. Well, do you ant
13 to cross him?

14 MR. LEMEL: Your Honor, as -- what we have so far,
15 it's not relating to Mr. Robinson, so I would forego it at
16 this time.

17 THE COURT: Mr. Dunn?

18 MR. DUNN: Thank you, Your Honor.

19 CROSS EXAMINATION BY MR. DUNN:

20 Q. Lieutenant Miller, you said that -- I think it's four
21 pages. Were those written by you or by Mr. Tobbie?

22 A. Sir?

23 Q. The voluntary statement that we have here, was that
24 written by you or by Mr. Tobbie?

25 A. It was written by me.

1 Q. Okay. And just so that I'm clear, did you tell me that
2 he signed the Miranda waiver before he signed the statement
3 itself?

4 A. Yes, sir.

5 Q. He didn't sign it at the same time?

6 A. It would be hard to do.

7 Q. Well, by the same time, do you mean just one right
8 after the other, two pieces of paper you put in front of him
9 and --

10 A. No, sir, I did the Miranda and then it was quite a bit
11 of time before we got through with all this discussion.

12 Q. How long did that discussion go on for?

13 A. I really can't remember in time. It's been close to a
14 year.

15 Q. Was it a short amount of time in your presence, or a
16 long amount of time in your presence?

17 A. It wasn't several hours. You know, thirty minutes, or
18 so.

19 Q. Okay. On the statement itself, it has a time of 1:55.
20 Is that the time that he signed this?

21 A. That was the time that I got started with it, the whole
22 interview. I used that time to do -- in all of my records
23 you will see where I put the -- unless the Miranda is days
24 later, the time on the Miranda and the time of the
25 statement, because the statement is going to start right

1 after Miranda does.

2 Q. And when you filled in the time and date and all the
3 information, you filled that out first and then stick it
4 aside and start talking to him, or do you just -- as you are
5 filling the paperwork out, you put all that information in
6 the block?

7 A. I fill it out as we go along.

8 Q. All right. Just so I'm clear, I guess I'm a little
9 confused then. It says 1:55, 9-8-07, right, on both the
10 waiver and on the voluntary statement?

11 A. Yes, sir.

12 Q. At the time that it was signed, was that when you
13 entered that information onto it, or did you do that --

14 A. When I sat down -- when I sat down with Mr. Tobbie,
15 once he got through with his Miranda and he signed it,
16 that's the time the time was put on there. And the
17 statement started within a minute or two after that, and I
18 did not go back to my watch and look to see if it was three
19 minutes later, or whatever. I kept the same time as the
20 statement and the Miranda were the same. They were so close
21 in proximity.

22 Q. Now, what time did you get to -- did you go the
23 substation for the Charlotte-Meck?

24 A. Yes, sir.

25 Q. About what time did you get there?

1 A. No, sir, I don't -- that was over in the morning and I
2 just don't remember the exact time I pulled up there.

3 Q. Were you on duty that night, or did they call you up
4 from your house?

5 A. Called me out from home.

6 Q. And you can't remember whether or not he was
7 handcuffed?

8 A. No, sir, I don't believe he -- I can't remember that he
9 was, but we usually try -- unless somebody is real violent
10 with us, we try to make them comfortable to talk to us.

11 Q. In that statement, Mr. Tobbie gives -- states that
12 there was four individuals in the car, including himself,
13 right?

14 A. Yes, sir.

15 Q. Did he only give you a description for the driver?

16 A. Unless it's in here, no, sir.

17 Q. Did he ever give you a description for the person who
18 was purported to be the shooter?

19 A. Again, if it's not -- if it's not in here -- if he did
20 not say it, it -- if he told me, it would be in here. It
21 won't be -- I'm not going to -- when I leave the scene, I'm
22 not going to sit there and try to second guess without
23 something written down.

24 Q. Did you take notes during the interview?

25 A. I did when I did this. This -- these are as we go

1 along, because I stop him and we go back.

2 Q. At the time that you started talking with Mr. Tobbie,
3 did you tell him that -- did you frighten him that he would
4 spend ten years in jail for somebody else's crime?

5 A. No, sir.

6 Q. Have you ever done that before?

7 A. No, sir.

8 Q. Did you ever try to scare the defendants to get their
9 attention?

10 A. No, sir.

11 Q. What was Mr. -- how was Mr. Tobbie dressed?

12 A. I would have to go back and look at the statements,
13 because he -- just -- it would have been casual. It
14 wouldn't have been -- he wasn't dressed up. He was -- I
15 didn't check whether -- I don't remember whether he had blue
16 jeans on, or a T-shirt, or what he had on. I just didn't --
17 didn't make a note of that.

18 Q. Did -- as far as his demeanor goes, was he a chatty?
19 Was it hard to get the information out of him to get that
20 statement?

21 A. No, he wanted to talk. It wasn't like he sat over
22 there in the corner and you had to continue questioning him.
23 He came forward with it.

24 Q. And as far as his emotional state and demeanor, what
25 was that like?

1 A. Not -- he wasn't mean, mad, or anything else. He was
2 just kind of telling his story and that was it. Nothing
3 else.

4 Q. Did he act scared?

5 A. No.

6 Q. Did he act like he had an attitude?

7 A. No, he just -- he just talked to us. That's what he
8 did. He just talked. He didn't get excited, holler, or do
9 anything like that. He just talked. When he was asked
10 questions, he would tell us what he had on his mind,
11 evidently.

12 Q. Do you know what the Mecklenburg police reported him
13 for at the time that you got there? Had they charged him
14 with anything?

15 A. Not that I know of.

16 Q. They were holding him for you then?

17 A. Yes, sir.

18 MR. DUNN: Just indulge the court just one second.

19 (Off the record)

20 (Back on the record)

21 MR. DUNN: I don't have any further questions,

22 Your Honor.

23 THE COURT: Any redirect?

24 MR. SPRINGS: No redirect.

25 THE COURT: All right. Do you want to move to Mr.

1 Robinson then?

2 MR. SPRINGS: Yes.

3 DIRECT EXAMINATION BY MR. SPRINGS:

4 Q. Now, turning now to Mr. Travis Robinson, detective, you
5 have an individual statement -- let me show it to these
6 gentleman before we talk about it so they don't act like we
7 don't know what we are talking about.

8 (Off the record)

9 (Back on the record).

10 (Statement of Travis Robinson marked as State's
11 Exhibit No. 2 for identification)

12 BY MR. SPRINGS:

13 Q. Now, detective, is your statement that you got from
14 Travis Robinson been marked State's Exhibit No. 2?

15 A. Yes, sir.

16 Q. And did you interview him separately from Mr. Tobbie?

17 A. Yes, we did.

18 Q. And did you interview him after Mr. Tobbie?

19 A. I was making some noise. I didn't hear you.

20 Q. Did you interview him after Mr. Tobbie?

21 A. Yes.

22 Q. What was the environment or the place where Mr.
23 Robinson was? Was it the same room where you had
24 interviewed Mr. Tobbie?

25 A. The same location.

- 1 Q. Was he handcuffed?
- 2 A. I don't remember that either.
- 3 Q. Okay. Was he hurt?
- 4 A. No, sir.
- 5 Q. Was he awake?
- 6 A. Yes, sir.
- 7 Q. Did he appear to be sober and in his right mind?
- 8 A. Yes, sir.
- 9 Q. And did he seem to be a very intelligent person?
- 10 A. Yes, sir.
- 11 Q. Was anybody pointing any guns at him?
- 12 A. No, sir.
- 13 Q. Anybody threatening him or being mean to him?
- 14 A. No, sir.
- 15 Q. Before you mirandized him and got his statement, did
- 16 you make him any promises or threaten him in any way?
- 17 A. No, sir.
- 18 Q. Did you see or know anybody threatening him or
- 19 promising him anything --
- 20 A. No, sir.
- 21 Q. -- to get him to talk.
- 22 And was it just the two of you in the room?
- 23 A. No, sir, there was another officer in there with me.
- 24 Q. And did you read him his Miranda Rights?
- 25 A. Yes.

1 Q. Tell us exactly what the Miranda Rights were that you
2 read him.

3 A. "These are your rights. Before I ask you any
4 questions, I want to advise you of your rights.

5 "1. You have right to remain silent.

6 "2. Anything that you say can and will be used against
7 you in a court of law.

8 "3. You have the right to talk to an attorney and have
9 him or her present while you are being questioned.

10 "4. If you cannot afford to hire an attorney, one will
11 be appointed to represent you before any questioning, if you
12 wish.

13 "5. You can decide at any time to exercise these
14 rights and not answer any questions or make any statements.

15 "Do you understand these rights as I have explained
16 them to you?"

17 At that time I asked him, again, "do you understand?"
18 If they say yes or no, I have them initial the block that's
19 here for yes or no and then sign it and date it.

20 And then I read them their waiver rights. "I'm willing
21 to talk to the police and answer questions. I do not want
22 an attorney at this time. I understand and know what I'm
23 doing. No promises or threats have been made to me and no
24 pressure of any kind has been placed upon me."

25 At that time I ask them do they want to read that and

1 to sign it and date it.

2 Q. Okay. Did he indicate that he understood his rights?

3 A. Yes, sir.

4 Q. And did he indicate that he would waive his rights and
5 have a conversation with you?

6 A. Yes, sir.

7 Q. And did he, in fact, give you a statement?

8 A. Yes, sir.

9 Q. And I have prepared a typed copy of his written
10 statement. Is that a typed copy of his written statement?

11 A. Yes, sir.

12 Q. Now, IS that your handwriting? Did you write out the
13 statement that he signed or --

14 A. Yes, sir, I wrote it out.

15 Q. That is yours?

16 A. Yes, sir.

17 Q. If you would, I'm going to hand up to the court Mr.
18 Tobbie, and we have already discussed his actual statement
19 and waiver of rights.

20 Go ahead and tell the court -- tell all of us what Mr.
21 Travis Robinson told you in his statement.

22 A. "Voluntary statement. I, Travis Deniele Robinson, know
23 and understand my rights having decided to answer questions
24 at this time. I now make the following statement:

25 "I was at the Tree Top Apartments around eight o'clock

1 when Quinton called and asked me where I was at and I told
2 him. I was at the Tree Top and they came and picked me up.
3 and we went to Sleepy Hollow neighborhood and the driver got
4 out to talk to some of his people. We were there for five
5 minutes and then we left and got on the interstate and
6 headed south on Interstate 77. We went into South Carolina
7 for a few miles and turned right and got off the interstate
8 and went to the gas station on the right. We pulled up to
9 the gas pumps. Quinton and the front passenger get out of
10 the car and go into the store. They are gone for a few
11 minutes and come back. Quinton got back in the car and then
12 the front passenger started pumping gas. And when he got
13 through pumping gas, he walked to a black vehicle parked on
14 the other side of the pumps and tried to rob them and shot
15 the passenger in the black car. He ran back to the front
16 passenger's seat and got in and we left and got on I-77 for
17 a couple exits, turned around and started back north on 77.
18 When we got back into North Carolina and the police got
19 after us at Arrow Wood Road in North Carolina and we ran
20 from the police until we got to Tree Top Apartments and got
21 out of the car and went into a girl's apartment named Mimi.
22 I called my momma and she came and picked me up, me and
23 Quinton up. And as we were leaving, the police stopped us.
24 I had a gun in my right rear pocket when the police stopped
25 us.

1 Q. Okay. And at any time did you, during this whole
2 statement or in the process, did you or anybody else
3 threaten or make any promises to Travis Robinson?

4 A. No, sir.

5 MR. SPRINGS: That would be our proffer, Your
6 Honor, on the statement of Mr. Travis Robinson.

7 THE COURT: Mr. Lemel.

8 CROSS EXAMINATION BY MR. LEMEL:

9 Q. I want to try to get the right time on that, if we have
10 got it. The incident at the gas station happened about ten
11 to eleven, right?

12 A. Yes, sir. If you are going tie me down to that, I'm
13 going to have to look at every piece of paper.

14 Q. And I'm just going rough numbers.

15 A. Okay, that's fine.

16 Q. About ten to eleven, would you agree with me?

17 A. Yes, sir.

18 Q. And you got there about fifteen minutes later, about
19 five after eleven?

20 A. Yes.

21 Q. Does that sound about right.

22 Now, did you make two trips up to Charlotte that night,
23 or just the one?

24 A. I just made the one trip.

25 Q. Okay. Did you go up one at a time carrying some people

1 with you?

2 A. Yes, sir.

3 Q. Okay. Did you take them back?

4 A. No, another officer brought them back down here.

5 Q. All right. And so you got up to Charlotte about 1:45?

6 Does that sound about right, that first time?

7 A. That will be -- I'll agree with it, unless I can find
8 it in here different.

9 Q. I understand.

10 A. If you want me to look for it, I will be glad to.

11 Q. And they started talking to Mr. Tobbie about 1:55,
12 about ten minutes after that at the police substation?

13 A. Ten minutes after I got to --

14 Q. Yes.

15 A. Charlotte the first time?

16 Q. Right.

17 A. No, sir.

18 Q. How long was it before you arrived in Charlotte to
19 begin talking to Mr. Tobbie?

20 A. It was probably -- I'm going to have to look, because I
21 don't want to give you a wrong answer.

22 Q. I couldn't find the time on here.

23 A. I arrived at the scene at 11:05.

24 Q. And that's at the gas station?

25 A. Right.

1 I was there for approximately 45 minutes. And when I
2 heard that we were chasing a vehicle and that they had gone
3 up -- followed them up and lost them and then Charlotte had
4 them, I left and went to Charlotte.

5 From that time I sat at the apartment complex, there
6 was a lot -- there was a good bit of time from the time I
7 got to the apartment complex to the time that I had any
8 dealings with either defendant, because Charlotte was
9 dealing with them and also our forensics units.

10 Q. Okay. Did you have people in the car with you?

11 A. I had one -- I had one of witnesses with me back -- but
12 I didn't pull up into the scene. I was back behind in a
13 parking space where she was out of sight.

14 Q. Okay. So you were up there for that period of time and
15 then at some point in time you do bring that person up to
16 see Travis, right?

17 A. Yes, sir.

18 Q. And then they all go over to the police substation?

19 A. Yeah, I make arrangements for the person to get back
20 down to Fort Mill and then we go over to the Charlotte
21 substation.

22 Q. Okay. Was there a second person in the car with that
23 witness as well?

24 A. No, sir, there was only one.

25 Q. Okay. When you -- you spoke first with Mr. Tobbie,

1 right?

2 A. Yes, sir.

3 Q. And you start with him at 1:55?

4 A. Yes, sir.

5 Q. And you don't start with Travis until 3:37?

6 A. Yes, sir.

7 Q. So he's been about -- at that point in time he was
8 under arrest by Charlotte, right?

9 A. He was being held. There was no arrest at that time.
10 He was being held.

11 Q. Okay.

12 A. I don't know if anybody -- I wasn't in there when they
13 put him in the cars or did anything else.

14 Q. Okay.

15 A. All I know is they were holding them for us to speak to
16 them.

17 Q. Okay. Well, you had seen him before. When you pull
18 up, he had been in handcuffs in the back of the --

19 A. Yes.

20 Q. -- Charlotte police department car right?

21 A. Yes, sir.

22 Q. So he had been in handcuffs since you basically arrived
23 in Charlotte and he was picked up?

24 A. Yes, sir.

25 Q. Okay. And then this one time he's been transferred

1 over to the Charlotte-Mecklenburg substation?

2 A. Yes, sir.

3 Q. And that room you described as Tobbie's room. What was
4 Travis' room?

5 A. Correct.

6 Q. What was his room like?

7 A. It was same one.

8 Q. He was in the same room that --

9 A. One went out, the other one came in.

10 Q. Do you know where he had been kept before that?

11 A. He was held -- one of the officers was over in a --
12 just like a little office room sitting with him.

13 Q. Okay. Do you know what conversation happened between
14 them?

15 A. No, sir, I wasn't there.

16 Q. Okay. As far as this statement goes, on the second
17 page, the handwriting seems to change with the line that
18 begins "until we got to the Tree Top Apartments." Do you
19 have that?

20 A. Let me get to it.

21 Q. You have a photocopy there that what's been marked as
22 State's Exhibit 2?

23 A. Page two.

24 Q. Page two, one, two, three, four, five, six, seven.

25 Seven lines up from the bottom, it says "from the police

1 until we got to Tree Top." Does the handwriting change
2 there --

3 A. Which part?

4 Q. -- where Charlotte police is in one person's
5 handwriting?

6 A. It's still my handwriting. I probably moved the book
7 that I was sitting in, because I was probably tired from it
8 and my handwriting can change from one sentence to another.

9 Q. That's all your handwriting?

10 A. Yes, it is.

11 Q. So you wrote this whole thing out?

12 A. Yes.

13 Q. Travis didn't do any of that?

14 A. No, sir.

15 Q. And as far as his demeanor that night, how would you
16 describe his demeanor?

17 A. He was not arrogant or anything. He answered the
18 questions a little more reluctantly than Mr. Tobbie did, but
19 he still sat there and answered the questions.

20 Q. Okay. What do you mean by a little more reluctantly?

21 A. Mr. Tobbie was a little more forthcoming than Mr.
22 Robinson.

23 Q. Okay. Answered all your questions?

24 A. Yes, sir.

25 Q. Cooperated with you?

1 A. Yes, sir.

2 Q. You said he wasn't arrogant?

3 A. No, sir, he wasn't arrogant. He didn't --

4 Q. And at this point in time, you started at three, it's
5 got to be into four o'clock by about the time that you are
6 getting through with this, is that accurate?

7 A. I would have to check with my -- with dispatch when I
8 cleared up from there because right this minute I do not
9 know.

10 Q. Well, I understand you wrote that, but you started at
11 2:37.

12 A. Yes. It was probably -- probably close to 45 minutes
13 that we sat down and talked.

14 Q. So potentially getting after four a.m. then?

15 A. Yes, sir.

16 Q. Obviously very early morning hours?

17 A. Yes.

18 Q. You, yourself, said that you were starting to get
19 tired?

20 A. Oh, yeah, no doubt about it.

21 Q. Did Travis appear to be tired as well?

22 A. Yes, sir.

23 MR. LEMEL: Nothing further, Your Honor.

24 THE COURT: Mr. Dunn.

25 MR. DUNN: Just one question.

1 CROSS EXAMINATION BY MR. DUNN:

2 Q. How much time in between your questioning of Mr. Tobbie
3 and your questioning of Mr. Robinson?

4 A. I think we took maybe a 10 or 15 minute bathroom break
5 and then we went back. That's my recollection.

6 Q. And you testified there was one other individual in the
7 room with you when you were talking to Mr. Robinson?

8 A. Yes, sir.

9 Q. Who was that?

10 A. My lieutenant, Rusty Helms.

11 Q. What's his name?

12 A. Lieutenant Rusty Helms.

13 Q. Helms?

14 A. Yes.

15 Q. That's the same individual that was in there with Mr.
16 Tobbie?

17 A. Yes, sir.

18 Q. Anybody else in either one of the interrogations?

19 A. No, sir.

20 MR. DUNN: Nothing else.

21 MR. SPRINGS: Very briefly.

22 REDIRECT EXAMINATION BY MR. SPRINGS:

23 Q. Lieutenant, on these times and where you were signing
24 as a witness, did you put down a time after you completed
25 the statement? Did you sign it like an assembly line and

1 put the time at the end, or did you put the time in front?

2 I'm a little confused on that.

3 A. I always put down -- unless there is going to be a
4 great period of time between my questioning, the time that I
5 start and he signs this statement that says that he
6 understands his rights --

7 Q. Right.

8 A. -- that time goes through the voluntary statement that
9 he gives me. I use that same time on every time I have ever
10 done that.

11 Q. Okay.

12 A. Because we go directly from him signing to this, and
13 that time that I put down for that statement is not the
14 ending part of it. It's the beginning part of it. That's
15 when I started that statement --

16 Q. Okay.

17 A. -- which was at the end of the waiver of rights
18 statement.

19 Q. All right. And to make sure I'm with you, it says
20 3:37, Robinson, you are marking all the pages kind of one
21 after another? I call it an assembly line. You are not
22 coming to the bottom of the page and putting 3:36, and
23 coming to the bottom of the next page, 3:37? Just did them
24 all pretty much the same time, is that right?

25 A. No, sir, what I do is I start with this Waiver of

1 Rights Form right here.

2 Q. Yes.

3 A. The time that I put on here was the time that we waived
4 our rights, that any suspect, whether it be these two, or
5 anybody else, waives their rights. I start my voluntary
6 statement at that same time.

7 Q. Okay.

8 A. There is -- this is the beginning time, the same as
9 this. We start -- we finished our statement -- or our
10 voluntary statement -- I mean our waiver of rights and we
11 started with our --

12 Q. Now I got it. After the waiver, that's the time they
13 waive and you are starting the statement?

14 A. Right.

15 Q. That's why it's the same time?

16 A. Right.

17 Q. Okay.

18 MR. SPRINGS: Nothing further.

19 THE COURT: Are we --

20 MR. SPRINGS: That's all we have.

21 THE COURT: You can step down.

22 Do you have any other witnesses?

23 MR. SPRINGS: No, that's our proffer on this.

24 THE COURT: Mr. Lemel, do you have any witnesses?

25 MR. LEMEL: No, sir.

1 THE COURT: Mr. Dunn, do you have any witnesses?

2 MR. DUNN: No, sir.

3 THE COURT: Mr. Lemel, what's your position as far
4 as Mr. Robinson?

5 MR. LEMEL: Your Honor, under the circumstances of
6 the very early morning hours, Mr. Robinson being tired,
7 having been in custody for a number of hours, being in the
8 presence of a number of officers that we don't have any
9 information from, we would move to suppress the statement as
10 a product of an involuntary statement.

11 THE COURT: Well, I deny the motion. I find that
12 Mr. Robinson -- I find by a preponderance of the evidence
13 that Mr. Robinson freely, voluntarily, and knowingly and
14 intelligently waived his rights under the Fifth Amendment to
15 the United States Constitution and the safeguards for
16 Miranda; that he gave the statement freely and voluntarily,
17 without threats, without any promises, under conditions
18 which establish that he understood and waived these rights.

19 I do not find that the time lapse was of any
20 significance. There was no weapons present. There was no
21 threats. There was no violence. He was awake, sober, in
22 his right mind. And I, therefore --

23 He was advised he had a right to remain silent.
24 He was advised that if he did not -- if he did make a
25 statement, that it could and would be used against him at

1 trial. He had a right to have an attorney present during
2 examination. That he had a right to have an attorney
3 appointed, if he could not afford one. And he could stop
4 answering questions and exercise his rights at any time.

5 So I deny the motion to suppress.

6 All right, Mr. Dunn?

7 MR. DUNN: Your Honor, I would just argue based on
8 the totality of the circumstances that were present at that
9 time, I would ask to have the statement suppressed, but I'll
10 leave it up to the court's discretion.

11 THE COURT: Again, I find by a preponderance of
12 the evidence that Mr. Tobbie freely, voluntarily, knowingly
13 and intelligently waived his rights under the Fifth
14 Amendment to the United States Constitution and Miranda;
15 that he was advised that he had the right to remain silent;
16 that if he made any statement, it could and would be used
17 against him; that he had the right to have an attorney
18 present; that he had the right to have an attorney appointed
19 at no expense to him, if he could not afford one; and that
20 he could exercise these rights at any time during the
21 interrogation.

22 I find that he was not threatened; that there was
23 no gun present; there were no promises made; that he was not
24 in any pain; he was awake; his answers were intelligent; he
25 was clear headed; and I find that his statement was freely,

1 voluntarily, knowingly and intelligently made.

2 Now, of course, the jury has a right to pass on
3 the issue of voluntariness also at a later point.

4 MR. SPRINGS: Your Honor, to preserve the right of
5 confrontation to these two gentlemen under the law of
6 Brewton, I've prepared a redacted statement of Mr. Robinson
7 and Mr. Tobbie. I'm going to hand that up to both defense
8 attorneys and copy to the court. And when the detective
9 reads the statements in front of the jury, my proposal is
10 that he read these redacted statements. And where Mr.
11 Robinson refers to Quinton in the statement, he would refer
12 to the other guy. And where Mr. Tobbie reference to Trap,
13 which is exactly the same as Trav or Travis, that it's close
14 enough that I think that we better be cautious, he would
15 refer to the other guy and not say Trap.

16 MR. LEMEL: Your Honor, on our side we would
17 certainly not question the redaction under Brewton, but I
18 would submit that if this is how it's being done, that it's
19 so patently obvious being talked about because the
20 statements basically coincide on a number of things,
21 included who called the momma to come and pick them up, that
22 it would relevant, but we haven't requested a redaction
23 under this rule.

24 THE COURT: Do you object to it?

25 MR. LEMEL: Yes, sir, I think this is

1 inappropriate and misleading.

2 THE COURT: Do you object to redacting Mr.
3 Tobbie's statement that mentions Trap?

4 MR. LEMEL: Yes.

5 THE COURT: All right.

6 THE COURT: Mr. Dunn, how about you?

7 MR. DUNN: We object to redacting either one of
8 those things as well, Your Honor.

9 MR. SPRINGS: Very good. We will read the
10 statements as written.

11 THE COURT: All right. Let's take a short break
12 and we ready to do your ID, a fairly short refresher break.

13 (Whereupon, proceedings were recessed)

14 (Whereupon, proceedings were reconvened)

15 MR. DUNN: Your Honor, do you mind if we cleared
16 something up real quick? Just --

17 THE COURT: Let's get back. Let's make sure
18 everybody is ready.

19 Mr. Dunn has the floor.

20 MR. DUNN: Yes, sir, just one second. My client
21 is now -- is out on bond at this point.

22 THE COURT: Not anymore. This case is called. He
23 will remain incarcerated throughout the trial. These are
24 rather serious offenses.

25 MR. DUNN: Yes, sir, I just wanted to make sure.

1 THE COURT: The officers checked it and they --

2 MR. DUNN: Yes, sir.

3 Your Honor, if I could just get the written
4 statement from Mr. --

5 THE COURT: This ain't got anything to do with
6 bond. This has got to do with the severity of the charges
7 and the trial has started.

8 MR. DUNN: Yes, sir.

9 THE COURT: Are we ready for the Neil v. Biggers
10 hearing?

11 MR. SPRINGS: Yes, Your Honor.

12 We call Mr. Savalas Dodd.

13 SAVALAS DODD, having been first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. SPRINGS:

16 Q. Mr. Dodd, you have got a soft voice, so I'm going to
17 ask you to speak up nice and loud and tell us all your full
18 name.

19 A. Savalas Quaskie Dodd.

20 Q. You spell your last name D-O-D-D?

21 A. Yes.

22 Q. I'm going to ask you about the night of September 7th,
23 2007. Did you get shot that night?

24 A. Yes.

25 Q. Where were you when you got shot?

1 A. The Shell station.

2 Q. And who were you with? Who did you go to the Shell
3 station with?

4 A. Nicole Howie.

5 Q. And did you -- where did you park your car? Where did
6 you two park that car?

7 A. At the gas pump.

8 Q. All right. And who got out of the car, you or Ms.
9 Howie?

10 A. I did.

11 Q. Did you pump gas?

12 A. Yes.

13 Q. Did you go in the store first or pump the gas first?

14 A. I went in the store first.

15 Q. Did you prepay your gas?

16 A. Yes.

17 Q. Did you come back and pump some gas?

18 A. Yes.

19 Q. Did you go back in the store?

20 A. Yes.

21 Q. Did you notice anybody following you?

22 A. Not really.

23 Q. Okay. Now, when you came back out the second time and
24 finished with your gas, did you get back in your car?

25 A. Yes.

1 Q. And were there lights up that night underneath the roof
2 over the gas pumps?

3 A. Yes.

4 Q. How would you describe that lighting? Real good, not
5 good, weak?

6 A. Real good.

7 Q. Do you have good eyesight?

8 A. Yes.

9 Q. As you were getting back into your car with Ms. Howie
10 to leave, did somebody come up to you?

11 A. Yes.

12 Q. And tell us all what happened when that person came up
13 to you. What did they do?

14 A. Opened my car door.

15 Q. And then what did they do, that person?

16 A. Garnished a pistol.

17 THE COURT: I can't hear him.

18 BY MR. SPRINGS:

19 Q. You have got to speak up.

20 A. Garnished a pistol.

21 Q. Speak up nice and loud.

22 A. Pulled out a weapon and told me to give him my money.

23 Q. What was your reaction? What did you do when that
24 person said "give me your money"?

25 A. I told him "cool."

1 Q. You are putting your hands up. Did you put your hands
2 up?

3 A. Yeah, "that's cool."

4 Q. And what did that person then say to you?

5 A. "Come on. Come on. Give me your money."

6 Q. And is this a man or a woman?

7 A. A man.

8 Q. And a black man or a white man?

9 A. Black man.

10 Q. Okay. What did his hair look like?

11 A. Dreads.

12 Q. Like dreadlocks?

13 A. Yeah.

14 Q. As this person has this gun and has asked you for your
15 money, I'm going to walk towards you, and tell me to stop
16 when I get the distance this person was from you. Do you
17 know what I mean?

18 A. Yeah. About right there.

19 Q. Is that about three feet?

20 A. Yes.

21 Q. Okay. Did you look this person in the face when this
22 person had the gun and was asking you for your money?

23 A. The whole time.

24 Q. And then what did that person do?

25 A. After what?

1 Q. After -- after you threw up your hands, then what did
2 he do or say?

3 A. He was nervous and scared.

4 Q. How could you tell? What was he doing?

5 A. My eye contact, it scared him.

6 Q. Yeah.

7 A. He was a coward. He just had a gun and he just -- he
8 thought it meant something with the gun, "the money in my
9 pocket, you can have it."

10 Q. Well, what did you do? What did you do?

11 A. I put my hand in my pocket to give him the money that
12 he was asking for.

13 Q. You were going to give him the money?

14 A. Yeah, sure.

15 Q. Did you get the money out of your pocket?

16 A. He said I took too long.

17 Q. And what did he do then?

18 A. He shot me in the stomach.

19 Q. Whereabouts in your body did the bullet hit you?

20 A. On the side.

21 Q. Okay. What did that guy do then after he shot you?
22 Where did he go or what did he do?

23 A. He stood there. He didn't -- like I said, he was
24 scared. He didn't know what to do. He shot me in my
25 stomach and just stood there. I asked him what did he just

1 do. He still stood there looking stupid. Just standing
2 there like that, he didn't know what to do now.

3 Q. And then what did he do?

4 A. He stood there. I just ran.

5 Q. And as you were getting ready to run, what does he do?

6 A. I have -- he was still -- he was still there.

7 Q. You say you looked him right in the eyes?

8 A. The whole time.

9 Q. While he was talking to you waving the gun?

10 A. Yes.

11 Q. All right. And the police -- did you -- were you taken
12 to the hospital that night?

13 A. Yes.

14 Q. Did the police ever come out and show you photographs
15 of people?

16 A. No, sir.

17 Q. And did they ever take you to show a lineup of human
18 beings?

19 A. No, sir.

20 Q. And did the police ever talk to you at all about
21 identifying this person?

22 A. No, sir.

23 Q. But the person that shot you that night, September 7th,
24 last year, do you see that person in this courtroom?

25 A. Yes, sir.

1 Q. Point that person out, if you see that person in this
2 courtroom.

3 A. Right there.

4 Q. You are pointing to the defendant Travis Robinson?

5 A. Yes.

6 Q. How sure are you that that's the guy that shot you that
7 night?

8 A. A hundred percent.

9 MR. SPRINGS: That's our proffer on Mr. Dodd.

10 THE COURT: All right.

11 Ms. Inzerillo, do you have some questions?

12 MS. INZERILLO: Yes, Your Honor.

13 CROSS EXAMINATION BY MS. INZERILLO:

14 Q. Mr. Dodd, you ended up at the gas station that night
15 sort of a routine going to get gas, is that right?

16 A. Yeah.

17 Q. And you were the passenger in a black SUV?

18 A. Yeah.

19 Q. You -- and I think you went through this with Mr.
20 Springs, essentially went there, prepaid for gas, walked in
21 and out of the store a couple of times?

22 A. Yes.

23 Q. Nothing unusual about that, from your point of view?

24 A. No.

25 Q. You didn't notice the car, the next car over from you?

1 A. Being the area I was in, I really didn't -- I didn't
2 pay no attention.

3 Q. Okay. Because you didn't really have no reason to?

4 A. Not at all.

5 Q. Okay. So when you noticed the car, you didn't notice
6 how many occupants were in the vehicle?

7 A. I can't really say exactly how many people was in the
8 car.

9 Q. Okay. And you can't really recall what they looked
10 like?

11 A. Say again?

12 Q. You can't really recall what the occupants in the
13 vehicle looked like, is that correct?

14 A. In the vehicle?

15 Q. Uh-huh.

16 A. No.

17 Q. All right. So you finish pumping the gas. And then,
18 if I'm correct, you said you got back in the SUV, is that
19 right?

20 A. No, I went back to the store.

21 Q. Okay. Then you came back out?

22 A. And I came back out.

23 Q. And then you got back in the SVU?

24 A. Then I got back in the SUV.

25 Q. Now, when you -- you got in the passenger seat of the

1 SUV?

2 A. Yeah.

3 Q. And when you got inside the passenger seat, did you
4 close the door, or was the door open?

5 A. I closed it.

6 Q. You closed it?

7 A. Yeah.

8 Q. Was the window down?

9 A. No.

10 Q. No. Okay.

11 All right. Was it at that point that someone
12 approached you with a gun?

13 A. They opened my door --

14 Q. Okay.

15 A. -- and pulled out -- they had two in their hands
16 already. They opened the door with the one hand and the
17 pistol was in the other.

18 Q. So did you have to look down at the person, or were you
19 eye to eye to the person?

20 A. We were fairly eye to eye.

21 Q. Okay. So when they opened the door, was the first
22 thing that you noticed the gun or the person?

23 A. Both.

24 Q. I'm sorry?

25 A. Both.

1 Q. Both. All right.

2 You had not seen that person before, is that right?

3 A. Earlier.

4 Q. Okay. Earlier?

5 A. In the store.

6 Q. All right. And I believe in your description to Mr.
7 Springs was that he was a black guy?

8 A. Yes.

9 Q. With dreads?

10 A. Yes.

11 Q. Didn't notice any tattoos on him?

12 A. No.

13 Q. Didn't notice his clothing?

14 A. I can't recall the clothing.

15 Q. Okay. Didn't make a mental note of his height?

16 A. Not his exact height.

17 Q. Or his weight?

18 A. He was 150, 160.

19 Q. Okay. What about his build?

20 A. Small.

21 Q. When he -- the exchange that happened between you and
22 the person, and you went through details of that with Mr.
23 Springs, that took what, about a couple of seconds?

24 A. Yeah.

25 Q. When the gun went off, you said he was still there

1 holding the gun, is that right?

2 A. Yes.

3 Q. Okay. So -- but then you got out of the car and you
4 ran inside the store, is that right?

5 A. He shot me.

6 Q. Okay.

7 A. I looked at him. I tell her "he just shot me."

8 Q. Okay.

9 A. I asked him what is he doing.

10 Q. Okay.

11 A. He supposed to be robbing me, or whatever. I'm trying
12 to figure out how I ended up getting shot.

13 Q. Okay. And then you ran from the car into the gas
14 station?

15 A. Yes.

16 Q. Okay. And when you ran into gas station, there were
17 other people around?

18 A. Yes, as far as -- say again.

19 Q. When you ran inside the convenience store, there were
20 other people around, the clerk, sort of thing?

21 A. Yes.

22 Q. Did you talk with any of those clerks, any of the
23 attendants, or with Ms. Howie while you were waiting for the
24 police and the EMT to come?

25 A. Yeah.

1 Q. Okay. Did you discuss what had just happened?

2 A. Yeah.

3 Q. Did any of them tell you what they saw?

4 A. Did they tell me what they saw?

5 Q. Yeah.

6 A. I can't recall.

7 Q. What, if anything, did you tell them?

8 A. What did I tell them?

9 Q. Uh-huh.

10 A. "I got shot."

11 Q. Did you tell them anything else, like a description of
12 the person that shot you?

13 A. A red car and guy had dreads.

14 Q. Red car and guy had dreads. Okay.

15 All right. You were taken to the hospital that night?

16 A. Yes.

17 Q. Is that right?

18 A. Yes.

19 Q. And when you were on the scene, did you give officers
20 that description before they took you to the hospital?

21 A. Yeah.

22 Q. Okay. Do you remember which officer you told that to?

23 A. I don't recall his name, no.

24 Q. Okay. Do either one of those officers sitting back
25 there look familiar to you?

1 A. Like the one I was talking to, no.

2 Q. Well, was he an officer in uniform?

3 A. No, he was undercover.

4 Q. He was undercover?

5 A. Yeah, he was undercover.

6 Q. But neither one of them look familiar to you?

7 A. Uh-uh.

8 Q. No.

9 All right. Now, when you were taken to the hospital,
10 did they have to put you under surgery or --

11 A. Yes.

12 Q. When -- after the surgery, you never were asked to view
13 a photo lineup, right?

14 A. No.

15 Q. And you have never in the ten months since then been
16 asked to look at a photo lineup, is that correct?

17 A. No.

18 Q. And you have never been asked to do an in-person
19 lineup?

20 A. No.

21 Q. Now, when you were in the hospital, were you told that
22 the shooter had been arrested?

23 A. Yeah.

24 Q. Okay. Who told you that?

25 A. My father.

1 Q. Your father did?

2 A. He was the first one told -- I mean, he was like -- I
3 wake up like nine o'clock in the morning --

4 Q. Uh-huh.

5 A. -- and I'm coming in and out.

6 Q. Of consciousness?

7 A. Yeah.

8 Q. Okay.

9 A. And he's like "you know, they got him."

10 Q. Okay. Do you know now or did you know then how he knew
11 that?

12 A. Did I know how he knew that?

13 Q. Uh-huh.

14 A. I mean, the shooter, they told me that.

15 Q. Did Nicole Howie tell you that she had identified the
16 shooter?

17 A. Yeah.

18 Q. Did she describe the person that she had identified?

19 A. Yeah.

20 Q. All right. When you got out of the hospital, did you
21 get on the website to see what he looked like?

22 A. No.

23 Q. No.

24 MS. INZERILLO: I have no further questions.

25 THE COURT: Mr. Dunn.

1 MR. DUNN: May it please the could, Your Honor.

2 CROSS EXAMINATION BY MR. DUNN:

3 Q. Good afternoon. My name is Geoff Dunn. I represent
4 Quinton Tobbie in this case.

5 At the time that you drove into the gas station, or if
6 you came into the gas station, were you the driver or were
7 you the passenger?

8 A. Passenger.

9 Q. The girlfriend or the female that you were with was
10 driving?

11 A. A friend, yeah.

12 Q. I see. It's just a friend?

13 A. Yeah.

14 Q. Okay. Now, you went into the gas station twice?

15 A. Yeah.

16 Q. The first time, just so I understand, was to prepay?

17 A. Yeah.

18 Q. And while you were prepaying, was she pumping?

19 A. No, I pumped it.

20 Q. Did you actually pump gas that night?

21 A. Yeah.

22 Q. How much gas did you pump, do you remember?

23 A. No. No.

24 Q. You don't remember how much money you paid to pump for
25 the gas? How much money you paid towards that gas that you

1 were going to pump?

2 A. A year ago, no.

3 Q. At the time that you were -- so at the time that you
4 got shot then, were you outside pumping gas, or were you
5 actually in your car?

6 A. Half and half.

7 Q. What does that mean?

8 A. I was in the car with my hands up.

9 Q. Okay.

10 A. "Give me your money." I go in my pocket and I pulled
11 my money out. I put like my right foot outside the car --

12 Q. All right.

13 A. -- to give him -- because he was scared. To calm him
14 down.

15 Q. Right.

16 A. As I'm feeling for -- pulling my hand out of my pocket,
17 he's like "you are taking too long." So I was like -- I had
18 one foot out, but my body -- I'm still in the car, though,
19 in the seat.

20 Q. Right. So you were sitting down in it?

21 A. Yeah.

22 Q. With your foot out of the car?

23 A. Yeah.

24 Q. In the passenger seat?

25 A. Yeah.

1 Q. The front passenger seat?

2 A. Yeah.

3 Q. And as far as the way the cars were lined up, your car
4 was pointing towards the gas station, correct?

5 A. Yeah.

6 Q. And to the -- where there is your side was there -- was
7 a red car?

8 A. Yeah.

9 Q. Which way was it pointing? Same direction, or opposite
10 direction?

11 A. Same direction.

12 Q. Same direction?

13 A. Yeah.

14 Q. Do you remember seeing Mr. Tobbie?

15 A. I can't -- I can't really say.

16 Q. You can't really say, because you can't remember, or
17 you don't want to --

18 A. I mean, I as far as me seeing him, I can't -- I
19 can't -- I can't say I did.

20 Q. Since the day that you got shot back in September,
21 September 7th of last year, have you seen any pictures of
22 Mr. Tobbie?

23 A. No.

24 Q. Have you seen any videotapes of Mr. Tobbie?

25 A. No.

1 Q. Have you ever seen the videotape of the surveillance,
2 the surveillance videotape of the convenience store?

3 A. No.

4 Q. So today is the first time that you have ever seen Mr.
5 Tobbie then?

6 A. Ah --

7 Q. Can you see him where you are sitting at?

8 A. Yeah.

9 THE COURT: I hate to interrupt, but what has this
10 got to do with the Neal v. Biggers issue?

11 MR. DUNN: Well, we -- he called him as a proffer
12 as witness of my client. I'm just making sure to see if
13 he's ever ID'd my client.

14 A. Now, what's the question?

15 BY MR. DUNN:

16 Q. Is this the first time that you have seen Mr.
17 Biggers -- or, excuse me, Mr. Tobbie?

18 A. I don't really remember.

19 Q. Do you remember seeing anybody else outside around the
20 cars at that time, besides the person who shot you?

21 A. In the store --

22 Q. Okay.

23 A. -- there were two guys --

24 Q. All right.

25 A. -- that came in after me and went in the bathroom and

1 came back out.

2 Q. And what did they look like?

3 A. What they --

4 Q. Black guys, white guys, Hispanic guys?

5 A. Black guys.

6 Q. Did you recognize who you --

7 A. One of them had dreads. One of them had a low haircut.

8 Q. One of they guys had a low haircut and one of them had
9 dreads. Was either one of them Mr. Tobbie, can you
10 remember?

11 A. Like I just said, I can't recall seeing him.

12 Q. As far as you being -- at the time that you were
13 outside when you got shot, was there anybody else outside
14 around the gas pumps or anywhere on the property of the gas
15 station?

16 A. The clerk.

17 Q. What was she doing?

18 A. Emptying trash.

19 Q. Where was she at?

20 A. Behind us.

21 Q. Behind -- I didn't hear you.

22 A. Behind the car.

23 Q. How far away, do you think?

24 Closer to her or further away from me to you right now?

25 A. About from me -- she was at the gas pumps emptying

1 trash.

2 MR. DUNN: Your Honor, I don't have anything else.

3 THE COURT: Any redirect?

4 MR. SPRINGS: No, nothing further.

5 THE COURT: You can step down. Thank you.

6 MR. SPRINGS: Thank you, Mr. Dodd. You can come
7 on back to your seat.

8 And let me get our next witness for this.

9 THE COURT: Well, let's do them one at a time.

10 MR. SPRINGS: All right.

11 THE COURT: Well, you can get the other witness --
12 well, don't bring the other witness in yet.

13 Ms. Inzerillo, what are your grounds for
14 suppressing the in-court identification at the trial?

15 MS. INZERILLO: Your Honor, regarding -- our
16 ground actually has to deal with other witnesses, not the
17 victim. It's our understanding this is the first time that
18 the victim has ever identified our client, so we feel that
19 that would actually fall under State v. Lewis, which holds
20 that Neal v. Biggers does not apply.

21 So in regards to that witness, Your Honor, we
22 don't really have an argument.

23 THE COURT: Let's call any other witness then.
24 The court doesn't need to make a ruling.

25 MR. SPRINGS: May we ask Ms. Parker to come in.

1 All right, Ms. Parker, come on up here, if you
2 would, and raise your right hand and be sworn.

3 MELINDA PARKER, having been first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION BY MR. SPRINGS:

6 Q. Tell us all your name and speak up nice and loud.

7 A. My name is Melinda Parker.

8 Q. All right. Ms. Parker, were you working as a cashier
9 clerk at the Shell station on Gold Hill Road the night of
10 September 7th, 2007?

11 A. Yes.

12 Q. And about a quarter of ten did something bad happen out
13 there?

14 A. Yes. It was a little bit later.

15 Q. I'm sorry, quarter of eleven, excuse me.

16 A. Yes, but it was a little bit later.

17 Q. What happened there?

18 A. We had a -- two male suspects -- two males come in the
19 store. I was on -- going outside to change trash and there
20 was somebody shot in the parking lot.

21 Q. Okay. And as you were going out of the store, what, to
22 change trash can --

23 A. Yes, sir.

24 Q. -- liners?

25 A. Yes.

1 Q. Of course, people were coming in the store as you were
2 going out?

3 A. Yes.

4 Q. And did you get a good look at those people or -- did
5 you get a good look at those people?

6 A. Yes, sir.

7 Q. Is there anything about the way you looked at them or
8 they looked or didn't look that gave you that sticks in your
9 mind today?

10 A. Yes, sir. I made eye contact with one of them, the
11 first one that came in, and he never looked at me at all.
12 And I had a really bad feeling come over me when he did not
13 look back at me to make eye contact.

14 Q. All right.

15 (Photograph marked as State's Exhibit No. 3 for
16 identification)

17 (Photograph marked as State's Exhibit No. 4 for
18 identification)

19 (Photograph marked as State's Exhibit No. 5 for
20 identification)

21 BY MR. SPRINGS:

22 Q. I'm looking at these. They are marked State's Exhibits
23 Exhibit 3, 4 and 5. I'm going to ask you some questions in
24 just a minute about them.

25 A. Okay.

1 (Photograph marked as State's Exhibit No. 6 for
2 identification)

3 (Photograph marked as State's Exhibit No. 7 for
4 identification)

5 BY MR. SPRINGS:

6 Q. And two more, State's Exhibit 6 and 7. Take a look at
7 those.

8 Now, do you recognize the scenes in those pictures?

9 A. Yes, sir.

10 Q. Let me hold them and I'm going to ask you questions
11 about each.

12 This picture marked State's Exhibit 3, who is that
13 person in the reddish shirt there?

14 A. That's me standing at the front door of the store.

15 Q. And this person over here to the left of you, is that
16 someone that you saw later that night?

17 A. Yes, sir.

18 Q. All right. And this picture, State's 4, is that you in
19 the background behind that man?

20 A. Yes, sir.

21 Q. And is that man that you saw later that night?

22 A. Yes, sir.

23 Q. And State's Exhibit 5, is that also you and --

24 A. Yes, sir.

25 Q. -- someone coming in the store. And you saw that man

1 later that night?

2 A. Yes, sir.

3 Q. And this rather grainy photo, State's Exhibit 6, what
4 is that figure out there at that island?

5 A. That's me standing around the gas pumps changing the
6 trash.

7 Q. Okay. And do you recognize on State's Exhibit 7, the
8 car there?

9 A. Yes, that's the little burgundy car that they jumped
10 in -- got in and left.

11 Q. Okay. Now, let's fill in some gaps.

12 As you were leaving the store to change the bags out at
13 the gas islands, you saw how many people come in?

14 A. There was two different sets of cars come in. One
15 pulled up on pump four and one pulled up on pump three.

16 Q. Okay.

17 A. A little black SUV and a burgundy -- a little burgundy
18 small car at pump three.

19 Q. And the black -- are those pumps side by side?

20 A. Yes, sir.

21 Q. The people in the black SUV, who were they? Who have
22 you learned who they were?

23 A. This young man in the blue, Savalas, and he had a
24 female with him.

25 Q. State's Exhibit 6 -- I'm sorry 8, excuse me 8, is that

1 the gas pumps?

2 A. Yes, sir.

3 Q. Okay. The gas pumps where Mr. Dodd and his friend's
4 car was?

5 A. Yes.

6 Q. And the red car was right on the other side?

7 A. Yes, sir.

8 Q. The people from the red car, did any of them come in
9 the store?

10 A. Two guys came in the store.

11 Q. Are those the guys in the photos there --

12 A. Yes, sir.

13 Q. -- on the end as you are going out to change the trash
14 bags?

15 A. Yes.

16 Q. All right. When you got out to change the trash bags,
17 did you change the bags at the islands with pumps three and
18 four?

19 A. Yes, I did.

20 Q. And right after you got through changing those trash
21 bags, what happened?

22 A. Well, I walked by the other two -- the pump that was
23 over there, pump one and two. When I turned around, they
24 were -- they all come back out of the store.

25 Savalas was pumping gas. And this young man right here

1 at the table was -- after he had got back in the jeep, this
2 young man and him were struggling. I don't know what they
3 were struggling about, because, you know, I couldn't hear
4 them, but I could see them, and the next thing I know I just
5 heard a pop.

6 Q. You pointed over said and said the young man.

7 A. At the table.

8 Q. Point one more time so I can --

9 A. The young man with the dreads at the table.

10 Q. You pointed at Travis Robinson:

11 You said there are two cars were parked at the same
12 island. Is that the island right there?

13 A. Yes, sir.

14 Q. One on one side and one on the other?

15 A. Yes, sir.

16 Q. And when you heard the pop, then what did you see
17 happen? Who did what?

18 A. I seen him jump back in the back seat of the burgundy
19 car.

20 Q. Who him?

21 A. The guy with the dreads.

22 Q. You are pointing at Travis Robinson?

23 A. Okay, Travis.

24 I seen him jump back in the back seat of the little
25 burgundy car and then they left, and then I seen him run in

1 the store and I --

2 Q. Who ran in the store?

3 A. Savalas ran in the store, and that's when my other
4 co-worker come and started screaming he had been shot.

5 Q. Now, did you see a gun?

6 A. Yes, I seen a small black handgun.

7 Q. Okay. Who was holding the gun?

8 A. Travis.

9 Q. And we looked at the picture of the gas pumps. Was the
10 light out there pretty good?

11 A. Yes, sir.

12 Q. Was your eyesight pretty good?

13 A. Yes, sir, 20/20 vision.

14 Q. Okay. Now, did the police come out?

15 A. Yes, sir.

16 Q. And after a little while did the police take you to
17 Charlotte?

18 A. Yes, sir.

19 Q. When the police got you to Charlotte, what did they do
20 or what did they show you?

21 A. They had Quinton and Travis both there at the scene and
22 I identified them there.

23 Q. And how far away were you from, let's start with Travis
24 Robinson, when you looked at him?

25 A. Probably about 20 feet.

1 Q. All right. And you had plenty of light on him too?

2 A. Yes, they had the high beams on in the car.

3 Q. All right. And this was that same evening?

4 A. Yes, sir.

5 Q. How sure were you in your own mind that you were
6 looking at the same man that was out there at the gas pumps
7 with this gun?

8 A. 99 percent sure.

9 Q. Did they show you Mr. -- did they show you another man?

10 A. Yes.

11 Q. And did you recognize that man?

12 A. Yes.

13 Q. And who was he?

14 A. He was the passenger in the car.

15 Q. And is he in this courtroom?

16 A. Yes, sir.

17 Q. And could you point him out, please?

18 A. Sitting over there at the table.

19 Q. Pointing at Quinton Tobbie.

20 How sure are you that Quinton Tobbie was the passenger
21 in -- which car, the red car --

22 A. The burgundy car.

23 Q. -- that Travis Robinson jumped into?

24 A. Uh-huh.

25 Q. How sure are you of that?

1 A. I'm 99 percent sure.

2 Q. Was he one of the two men that came in the store and
3 you saw two men?

4 A. Yes.

5 MR. SPRINGS: That's what we have from Ms. Parker.

6 THE COURT: All right.

7 MR. SPRINGS: If I may, Your Honor, may I pass up
8 these photographs to the court?

9 THE COURT: Yes.

10 CROSS EXAMINATION BY MS. INZERILLO:

11 Q. Ms. Parker, did you work at the Shell station on that
12 night?

13 A. Yes.

14 Q. And prior to the robbery -- now, I want to take you
15 back in time a little bit that evening. You were pretty
16 much going about your business doing your job, is that fair?

17 A. Yes.

18 Q. It looked like you were maybe washing some windows,
19 cleaning inside the store.

20 A. Uh-huh.

21 Q. And then after that you were -- you started changing
22 the trash cans?

23 A. Yes.

24 Q. Is that fair. Okay.

25 And those are all pretty routine duties for you?

1 A. Yes.

2 Q. Is that right?

3 A. Yes.

4 Q. So you start with the trash cans. You do that -- you
5 start at one end and you work your way down to the other, is
6 that right?

7 A. Uh-huh.

8 Q. Now, when you changed the trash cans, correct me, if I
9 do it wrong, okay? You walk up to the trash. Can look in
10 to see if it needs to be changed?

11 A. Uh-huh.

12 Q. Right?

13 A. Yes.

14 Q. Pull out the liner, set it down on the ground, the top?

15 A. Uh-huh.

16 Q. And you take it with you to the next trash can?

17 A. Uh-huh.

18 Q. You take it with you?

19 A. Uh-huh.

20 Q. All right. So when you get to the next trash, you do
21 the same thing. You look inside the trash can?

22 A. Yeah.

23 Q. If it needs to be changed, pull out the liner, tie it
24 up?

25 A. Yeah.

1 Q. Now, you are essentially doing it from your right to
2 left. So if you are standing with the trash can in front of
3 you, you take it, set it out to the left, is that right? So
4 you pretty much be facing the convenience store?

5 A. Yes.

6 Q. Okay. And when you do that, that's what you are
7 focused on, is that right?

8 A. Pretty much. I'm always looking around.

9 Q. Okay. So when you look around, there is customers and
10 cars?

11 A. Uh-huh.

12 Q. Okay. But it's fair to say that at a gas station,
13 herds of customers come through and tons of cars come
14 through, is that right?

15 A. Uh-huh.

16 Q. All right. So you notice some of them and they might
17 forget something, is that fair?

18 A. Yeah, but as you -- a certain -- when he didn't make
19 eye contact with me. Anybody normally comes in makes eye
20 contact with me. This young man did not make no kind of eye
21 contact.

22 Q. Okay. And that was when you were washing the windows?

23 A. No, when I was standing at the door going out the door
24 when he came in the door.

25 Q. And you were going out to start the trash cans?

1 A. Yes.

2 Q. Okay. So he passed right past, is that right?

3 A. Yes.

4 Q. So you had a chance to get a good look at him?

5 A. Uh-huh.

6 Q. And --

7 MS. INZERILLO: Let's see those pictures.

8 THE COURT: Here they are.

9 BY MR. INZERILLO:

10 Q. I'm showing you State's Exhibit 5. Is that the
11 gentleman that you said did not make eye contact with you?

12 A. Yes, it sure is.

13 Q. And that gentleman has a black T-shirt on, right?

14 A. Uh-huh.

15 Q. It looks like a white T-shirt underneath it?

16 A. Uh-huh.

17 Q. Black pants and black and white shoes, is that fair?

18 A. Yeah.

19 Q. Okay. And you got a good look at him from top to
20 bottom, is that right?

21 A. I got a good look at his face.

22 Q. All right.

23 A. I wasn't paying attention to his clothes.

24 Q. So you got a good look at his face?

25 A. Uh-huh.

1 Q. All right. So going back to this particular night, up
2 and to that point everything was pretty much routine, is
3 that fair?

4 A. Yeah.

5 Q. Okay. There was a red car there and you noticed the
6 red car?

7 A. The burgundy car, yeah.

8 Q. Again, another car that was kind of coming in and out
9 of the gas station, is that right?

10 A. Yeah.

11 Q. So you had no reason to really stare inside of the car?

12 A. Uh-huh.

13 Q. Is that right?

14 A. No.

15 Q. And you had no reason to really notice who was in the
16 car, right?

17 A. Yeah, not at the time.

18 Q. Okay. Or how many people were in the car at that time?

19 A. Uh-huh.

20 Q. You didn't notice the make of the car?

21 A. No.

22 Q. Right. The model of the car?

23 A. Uh-uh.

24 Q. Okay. But I think, and correct me, if I'm wrong, you
25 did notice three black males in the red car?

1 A. Yes.

2 Q. Okay. And then I believe that you testified that you
3 saw one of them walk over to the SUV where the black male
4 and a black female, is that right?

5 A. Uh-huh.

6 Q. Okay. You noticed that the guy who walked over there
7 was young, right?

8 A. Uh-huh.

9 THE COURT: You need to say yes or no.

10 A. Yes.

11 BY MR. INZERILLO:

12 Q. Young, right?

13 A. Yes.

14 Q. Black?

15 A. Yes.

16 Q. And he had dreads?

17 A. Yes.

18 Q. And I think you said this before, but you did notice
19 car, though, is that right?

20 A. No.

21 Q. You didn't know his weight?

22 A. No, I couldn't tell his weight.

23 Q. His build?

24 A. Uh-uh.

25 Q. No. Okay.

1 Whether he had any markings on, like tattoos, or
2 anything like that?

3 A. No.

4 Q. Is that right.

5 Or whether he had a birthmark or anything like that on
6 his face?

7 A. I noticed he had a scar on his face.

8 Q. Okay. Just a scar?

9 A. Uh-huh.

10 Q. Okay. All right.

11 You never mentioned the person wearing the gray
12 T-shirt, is that right, sleeveless T-shirt?

13 A. No.

14 Q. You never mentioned the person wearing blue jean
15 shorts, is that right?

16 A. No.

17 Q. And you never mentioned a person wearing bright orange
18 and yellow shoes, is that right?

19 A. Uh-uh, never.

20 Q. Okay. Now, I want you to help me out with a little
21 geography here, okay.

22 You are at pumps and one two with the trash?

23 A. Uh-huh.

24 Q. Okay. Now, when you are doing the trash, is your back
25 toward pumps three and four?

1 A. No.

2 Q. Towards the convenience store?

3 A. Uh-huh. No, it's actually to this side and I was
4 pulling it out this side.

5 Q. You mean --

6 A. My back was towards the car lot next door.

7 Q. So you are facing pump three and four?

8 A. Yes.

9 Q. So you are facing pump three and four. The red one in
10 front of you is the red car?

11 A. Yes.

12 Q. Is that right?

13 A. Yes.

14 Q. And then right past the red car or the pump is the
15 actual gas pumps for pump three and four?

16 A. Repeat the question, please.

17 Q. You look -- you see the red car.

18 A. Uh-huh.

19 Q. Right. And then right on the opposite side of the red
20 car is the actual gas pumps?

21 A. Yes.

22 Q. And then right on the opposite side of the gas pump is
23 the black SUV?

24 A. Yes.

25 Q. All right. Then you said that you heard a pop. And

1 then I think you testified -- I don't want to put words in
2 your mouth, but you testified that you saw someone run into
3 the back passenger side of the car?

4 A. Yes.

5 Q. And so he ran from that side within a couple of
6 seconds, maybe?

7 A. He ran around the front side of the gas pump and jumped
8 in the back seat behind the driver.

9 Q. Behind the driver. Okay.

10 So a couple seconds?

11 A. Could be.

12 Q. Then you saw the car drive out of the parking lot?

13 A. Yes.

14 Q. And at that point you did notice the car?

15 A. Uh-huh.

16 Q. Right?

17 THE COURT: You got to say yes or no.

18 A. Yes.

19 BY MR. INZERILLO:

20 Q. And you noticed it was burgundy?

21 A. Yes.

22 Q. And you noticed that it had a busted-out window?

23 A. I think the window might have been down in the back. I
24 don't know if it was busted out --

25 Q. Okay.

1 A. -- but I know it was down.

2 Q. Did you initially tell the police on the scene that
3 night that it was a busted-out window?

4 A. I said it looked like it might have been busted,
5 because I know back windows only come down so far, so I
6 thought maybe it had been busted.

7 Q. Okay. So this one came all the way down?

8 A. Uh-huh.

9 Q. That's why you thought it was busted.

10 And this robbery happened about 10:40 that night, is
11 that right?

12 A. Yes.

13 Q. So you hear the pop, the car drives away, immediately
14 you run inside the store?

15 A. No, not immediately.

16 Q. What did you do?

17 A. Pam come running to the door, which was the other
18 cashier, started screaming "he's been shot. He's been
19 shot." And then I stood there for a minute looking, because
20 my mother and my son was pulling in the parking lot when
21 they were pulling out of the parking lot. So I was trying
22 to get my mother and my son out of the parking lot and then
23 I went in the store.

24 Q. Okay. All right. When you ran inside the store, this
25 other co-worker was calling 911?

1 A. Yes.

2 Q. And while she was talking to the 911 dispatcher, you
3 were relaying information through her to 911?

4 A. Yes.

5 Q. Right?

6 A. Yes.

7 Q. And that description that you relayed was a dark
8 skinned black guy?

9 A. I don't remember saying all that.

10 Q. What do you remember saying?

11 A. I just remember saying it was three males in a burgundy
12 car, but I don't remember saying it was a dark skinned guy.

13 Q. Okay. Did you give any information about a white
14 T-shirt?

15 A. Yeah, I believe so.

16 Q. And you told them the person had been wearing a white
17 T-shirt?

18 A. I believe I said a white T-shirt up under one of his
19 shirts, but I know I said a white T-shirt.

20 Q. And I think you said he had dreads?

21 A. Yes.

22 Q. All right. So they get off phone with 911 and you are
23 there waiting for the police and the EMS, is that right?

24 A. Yes.

25 Q. While you are waiting, are you standing near the victim

1 and the other clerk who called 911?

2 A. I was with the victim.

3 Q. Okay. Did you discuss what you had seen with the
4 victim?

5 A. No, ma'am.

6 Q. Did he tell you what had happened?

7 A. No, ma'am. He just said he had been shot.

8 Q. So y'all just sat there in silence until EMS came?

9 A. No, I just sat there and prayed with the young man
10 until the ambulance got there.

11 Q. Okay. So EMT comes on the scene, the police?

12 A. Yes.

13 Q. And after awhile you are told that you need -- they
14 need you to go ID someone?

15 A. Yes.

16 Q. Okay. They told you that they had the shooter?

17 A. Yes.

18 Q. And you were asked to go up to Charlotte to identify
19 the shooter?

20 A. I wasn't asked. I was told I had to come to Charlotte.

21 Q. Okay. Do you remember who told you?

22 A. The police officer. I don't know who it was.

23 Q. Was it Detective Miller?

24 A. I don't remember. I was told I had to come to

25 Charlotte.

1 Q. Okay. Did you ride up with --

2 A. With the detective, yes, I did.

3 Q. And was it just you and he in the car?

4 A. Yes.

5 Q. Did y'all talk on the way up there?

6 A. Not much. I was real shaken up, so I didn't talk much.

7 Q. Did you tell him anything about what you had seen or
8 heard?

9 A. We may have talked about it, but not -- like I said,
10 not much. I was too upset.

11 Q. Did he say anything to you about the events that
12 evening?

13 A. No. Not at that time, no.

14 Q. All right. So you are taken up to Charlotte. You are
15 taken to an apartment complex?

16 A. Yes, ma'am.

17 Q. Did you get out of the car when you got to the
18 apartment complex?

19 A. No, ma'am.

20 Q. So you were sitting inside the car?

21 A. Yes, ma'am.

22 Q. And you were sitting in the car when you saw a man
23 being taken out of the Charlotte-Mecklenburg patrol car, is
24 that right?

25 A. Yes.

1 Q. And he was in handcuffs?

2 A. Yes.

3 Q. Okay. And he was told to stand in front of the car in
4 which you were sitting?

5 A. Yes, ma'am.

6 Q. And I think you said earlier that the officer that took
7 you up there had high beams on?

8 A. Yes.

9 Q. That he stood in the headlights facing y'all?

10 A. Yes.

11 Q. And was he the only person out there that wasn't law
12 enforcement?

13 A. Yes, he was.

14 Q. At that point the officer, the detective, asked you if
15 that was the shooter?

16 A. Yes.

17 Q. And you said yes?

18 A. Yes.

19 Q. And then at that point the detective that was in the
20 car with you told the patrol officer you said he was the
21 shooter?

22 A. Yes.

23 Q. And at that point the officer made thumbs up like this?

24 A. Yes.

25 Q. In the direction of the young man standing in the high

1 beams?

2 A. Yes.

3 Q. And at that point -- and you saw that?

4 A. Yes.

5 Q. And then at that point the young man was put back in
6 the patrol car?

7 A. Yes.

8 Q. Okay. The person that was standing in the high beams
9 was a black male, is that right?

10 A. Yes, ma'am.

11 Q. He had dreadlocks?

12 A. Yes.

13 Q. He had on like a gray sleeveless T-shirt?

14 A. I believe it was white.

15 Q. You believe it was white.

16 Was it sleeveless or not sleeveless?

17 A. Yeah, I think the sleeves might have been cut off.

18 Q. Okay. Were they cut off, or was it like a -- I
19 apologize for my terminology, but a wife beater type shirt?

20 A. It was not a wife beater.

21 Q. It was cut?

22 A. Yeah.

23 Q. They had on -- the person had on blue jeans shorts?

24 A. I'm not too sure about that.

25 Q. And did you notice his shoes?

1 A. No.

2 Q. That night you gave a statement to the police about the
3 events that had happened?

4 A. Uh-huh, yes.

5 Q. And you gave a separate statement where you officially
6 said that the person that you identified was the shooter?

7 A. Yes.

8 Q. And in neither one of those statements did you identify
9 clothing, is that right? The gray --

10 A. I don't remember identifying clothing at all.

11 Q. Okay. How long were you on the scene in Charlotte?

12 A. I'm going to say a good hour.

13 Q. Okay. So the young man was put back in the car and
14 then what did you do?

15 A. They brought the other one down. They brought him down
16 to me and got him out of the car and identified him too.

17 Q. Okay. And then after that were you taken back down to
18 Fort Mill?

19 A. Yes.

20 Q. Did you ride down with the same officer or did someone
21 else take you?

22 A. No, a Charlotte cop brought us down.

23 Q. Okay. Did you and that officer talk about --

24 A. No.

25 Q. -- what had happened. Okay.

1 That night you were never asked to do a photo lineup,
2 is that right?

3 A. No.

4 Q. You were never -- you haven't been asked to do so since
5 then, is that right?

6 A. No.

7 Q. Okay. You were -- you and I discussed that picture?

8 A. Yes.

9 Q. I think that's State's 5. That picture was taken from
10 video surveillance, is that right?

11 A. Yes.

12 Q. Was it you that told the officer that that was the same
13 person you had seen?

14 A. Yes.

15 Q. When did you tell officers that?

16 A. When they pulled up on the scene after they took him
17 away in the ambulance, took Savalas in the ambulance.

18 Q. So that was before the -- when they took you to
19 Charlotte?

20 A. Yeah. May have been, yeah.

21 Q. Did you pull up surveillance video then?

22 A. Yes, we did.

23 Q. You did and --

24 A. My co-worker did.

25 Q. Okay. Were you there?

1 A. Yes.

2 Q. And you identified him then?

3 A. Yes.

4 MS. INZERILLO: No further questions, Your Honor.

5 THE COURT: Mr. Dunn.

6 MR. DUNN: May it please the court, Your Honor.

7 CROSS EXAMINATION BY MR. DUNN:

8 Q. I believe you previously testified that you saw the
9 burgundy car come up and you said two men got out of the
10 vehicle?

11 A. Yes.

12 Q. Which way was the car pointed?

13 A. Towards the store, towards me.

14 Q. Were both vehicles pointing in the same direction?

15 A. Yes.

16 Q. When they got out, you previously said there was three
17 men in that car?

18 A. Yes.

19 Q. All right. Who got out the car? Where did they get
20 out from the car?

21 A. I'm not sure which seats they got out of, but two of
22 them got out and came in the store.

23 Q. Did you actually see them get out of the car, or did
24 you see them walking towards the store?

25 A. Yeah, I seen them getting out, but I don't remember who

1 got out or where, what seats.

2 Q. And did any of them get out of the driver seat?

3 A. No.

4 Q. Did one of them get out of the front passenger seat?

5 A. I don't believe so. I think both of them got out of
6 the back.

7 Q. They both got out of the back?

8 A. Uh-huh.

9 Q. But you don't remember which one got out of which side?

10 A. No.

11 Q. Okay, that's fine.

12 At the time that they pulled up in the car, you were
13 outside already?

14 A. Yes, standing in front of the -- beside the door.

15 Q. And is it your testimony that Mr. Quinton was one of
16 those individuals?

17 A. Yes, sir.

18 Q. Do you remember what he was doing as he was walking in
19 the store?

20 A. It looked like he might have been talking on his cell
21 phone or doing something up here.

22 Q. And when he walked by you that night, what was he
23 wearing?

24 A. I think a black shirt. I'm not sure about the pants or
25 whatever.

1 Q. And at the time that you got up to Charlotte -- they
2 took up to Charlotte?

3 A. Yes, sir.

4 Q. And you identified Mr. Tobbie again with the police,
5 correct?

6 A. Yes.

7 Q. What was he wearing at that time?

8 A. I think a white T-shirt.

9 Q. Wasn't wearing the same thing?

10 A. I don't think so.

11 Q. How far away -- how far away from Mr. Tobbie in
12 Charlotte were you?

13 A. I guess about 20 feet.

14 Q. The distance you from him now or --

15 A. Yeah, about the distance I am from him now.

16 Q. Do you remember anybody ever getting out of the
17 burgundy car to pump gas?

18 A. No.

19 Q. Do you remember anybody out of the black SUV -- I think
20 you said a small black SUV. Did anybody pump gas for that
21 one?

22 A. Yes, Savalas did.

23 Q. He was pumping gas?

24 A. Yes, sir.

25 Q. Just so I understand, you went to Charlotte against

1 your own will?

2 A. Well, I wasn't asked. They told me that I needed to
3 come to Charlotte with them and they put me in the car and
4 took me to Charlotte. I was never asked.

5 Q. It was just you and another officer?

6 A. Yes, sir.

7 Q. Nobody else?

8 A. No, sir.

9 Q. No other witnesses?

10 A. No.

11 Q. At the time of the shooting when you said --

12 A. All he asked me could I identify them and I said yes.
13 He said, "well, get in the car and I need you to go to
14 Charlotte with me." He never asked.

15 Q. At the time of the shooting do you remember seeing Mr.
16 Quinton anywhere?

17 A. Yes, sir.

18 Q. Do you remember seeing Mr. Tobbie anywhere?

19 A. Yes.

20 Q. Where was he?

21 A. He was getting back in the car.

22 Q. So at the time of the shooting he was getting into the
23 car?

24 A. Yes, sir.

25 Q. And which door was he getting into?

1 A. Into the passenger's side.

2 Q. Front passenger or back passenger?

3 A. Back.

4 Q. The back passenger?

5 A. Back.

6 Q. So at the time of the -- you were watching it all at
7 the same time?

8 A. Yes, sir.

9 Q. Did he get in the car before or after Mr. --

10 A. I believe it was before, like right when it was
11 happening.

12 Q. Before the individual with the gun went over to Mr.
13 Dodd and shot him, did you see him talking with Mr. Tobbie
14 outside?

15 A. He was talking -- can you repeat the question?

16 Q. Did you ever see these two individuals talking when
17 they were standing outside?

18 A. No, but I seen them standing at the car together.

19 Q. You didn't hear what they were saying?

20 A. No.

21 Q. All right. Did you give a description of Mr. Tobbie to
22 the police that night?

23 A. Yes, sir.

24 Q. Before or after you saw Mr. Tobbie up in Charlotte?

25 A. It was before.

1 Q. Okay. How did you describe him to the police?

2 A. I said he was young black male, short hair, like a low
3 fade haircut. He had -- he wasn't very dark, but he wasn't
4 light either.

5 Q. Who did you give that, the statement to, do you
6 remember?

7 A. I'm not sure which detective it was.

8 Q. And after you went up to Charlotte -- on your way up to
9 Charlotte in the police car, you talked to the police
10 officers during that time?

11 A. Yeah, but I don't remember what we talked about. I was
12 so upset.

13 Q. Were you talking about the incident?

14 A. Yeah, I'm sure we were.

15 Q. Were you describing to him what the individuals looked
16 like?

17 A. No, we never talked about that.

18 Q. And once you ID'd both of these individuals in
19 Charlotte, when you were coming back, did you talk to the
20 police officers about what had gone on?

21 A. No.

22 Q. You said that your mom and your son showed up?

23 A. Yes, sir.

24 Q. What were they driving?

25 A. A white van.

1 MR. DUNN: I don't have any further questions,
2 Your Honor.

3 THE COURT: Redirect?

4 MR. SPRINGS: Nothing further.

5 THE COURT: You can step down. Appreciate your
6 time. Thank you.

7 MR. SPRINGS: Your Honor, I seen Mr. Brackett here
8 to do something and we have one more Neal v. Biggers --

9 THE COURT: Here is what we will do, because it is
10 5:15 and we had something else planned, and I had drug court
11 at six. I'm going to bring the jury in and excuse them
12 until nine -- until ten. I have got matters at 9:15, 9:30,
13 and we still have this witness, so I'm not going to swear
14 them in. I'm going to give them the same basically
15 admonitions I gave them earlier and then we will stop for
16 the day and start back at ten.

17 MR. SPRINGS: After Mr. Brackett's, what he's
18 getting to do, can we come back and do that last ID witness?

19 THE COURT: I don't think so, because it's 5:15
20 and I have got drug court at six o'clock.

21 MR. SPRINGS: Okay.

22 THE COURT: And, you know, if we have 20 minutes,
23 I don't think so the three of you can do it in 20 minutes,
24 and I haven't heard the first word from the witness' mouth,
25 and I'd bet money on that.

1 All right. So let me bring the jury in.

2 (The following takes place in the presence of the
3 jury panel)

4 THE COURT: Members of the jury panel, first let
5 me apologize for having you back there so long. We had some
6 matters that we needed to take up. They have taken much
7 longer than I thought. In fact, we are still not through,
8 but we are not going to keep you here any longer for the
9 day. We are going to stop and start back at ten in the
10 morning.

11 Now, keep in mind not to discuss the case with
12 anyone, not to receive any information from outside sources,
13 not to try to make up your mind, and not to discuss the case
14 among yourselves.

15 We will start back at ten. We are going to start
16 earlier than that to try to be ready at ten, but I can't
17 promise we will start exactly at ten, but please be here at
18 ten ready to go.

19 Now, the bailiff will tell you how you will exit.
20 You will go out this way.

21 You still haven't been sworn in, but you are on
22 the jury, so you have got to adhere to the things that I
23 say.

24 The bailiff will show you how to get in and out
25 while you are serving on the jury. And we will start as

1 promptly as we can after ten. We will already have been
2 working for awhile, but we hope to be able to utilize your
3 services, because we don't want you sitting around with
4 nothing to do, but we had some things, as I have said.

5 Anything before the jury is dismissed?

6 MR. SPRINGS: Nothing from the State.

7 MR. LEMEL: Nothing, Your Honor.

8 MR. DUNN: No, sir.

9 THE COURT: All right. Have a pleasant evening
10 and we will see you back at ten in the morning.

11 (The following takes place outside the presence of
12 the jury panel)

13 THE COURT: Of course, Mr. Robinson has not been
14 out on bond and Mr. Tobbie has, but that's revoked and both
15 defendants will remain incarcerated for this trial -- until
16 the conclusion of the trial.

17 MR. LEMEL: Your Honor, so we are supposed to be
18 back at ten o'clock?

19 THE COURT: I want you back at 9:30. We are going
20 to start as early as we can. I have got some other matters,
21 that we want to move this along. Everybody back at 9:30.

22 MR. SPRINGS: All right.

23 (Whereupon, proceedings were adjourned to August
24 5, 2008)

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2008-GS-46-854
6 TRAVIS DENIELE) 2008-GS-46-855
7 ROBINSON,) 2008-GS-46-856
8 QUINTON LAWRENCE) 2008-GS-46-1304
9 TOBBIE,) 2008-GS-46-2770
10 DEFENDANTS.) AUGUST 5, 2008
11 YORK, SOUTH CAROLINA

12 (VOLUME II)

13 B E F O R E:

14 THE HONORABLE JOHN C. HAYES, III, JUDGE. ; And a Jury.

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

16 E.B. SPRINGS, IV, ASSISTANT SOLICITOR
17 CHRIS EPTING, ASSISTANT SOLICITOR
18 ATTORNEYS FOR THE STATE

19 GARY LEMEL, ASSISTANT PUBLIC DEFENDER
20 MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER
21 ATTORNEYS FOR DEFENDANT TRAVIS DENIELE ROBINSON

22 GEOFF DUNN, ESQUIRE
23 ATTORNEY FOR DEFENDANT QUINTON LAWRENCE TOBBIE

24 MICHAEL R. WATTS
25 CIRCUIT COURT REPORTER

INDEX

(AUGUST 4, 2008)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 16

(JACKSON V. DENNO HEARING)

LT. W.J. MILLER, II (SW)

DIRECT EXAMINATION BY MR. SPRINGS 43

CROSS EXAMINATION BY MR. DUNN 52

DIRECT EXAMINATION BY MR. SPRINGS 58

CROSS EXAMINATION BY MR. LEMEL 63

CROSS EXAMINATION BY MR. DUNN 70

REDIRECT EXAMINATION BY MR. SPRINGS 70

(NEIL V. BIGGERS HEARING)

SAVALAS DODD (SW)

DIRECT EXAMINATION BY MR. SPRINGS 77

CROSS EXAMINATION BY MS. INZERILLO 83

CROSS EXAMINATION BY MR. DUNN 91

MELINDA PARKER (SW)

DIRECT EXAMINATION BY MR. SPRINGS 97

CROSS EXAMINATION BY MS. INZERILLO 105

CROSS EXAMINATION BY MR. DUNN 122

INDEX

(AUGUST 5, 2008)

WITNESSES PAGE

(NEIL V. BIGGERS HEARING).

NICOLE HOWIE (SW)

DIRECT EXAMINATION BY MR. SPRINGS 141

CROSS EXAMINATION BY MS. INZERILLO 151

CROSS EXAMINATION BY MR. DUNN 164

(JURY TRIAL)

JURY SWORN -- PAGE 173

OPENING STATEMENT BY MR. SPRINGS -- PAGE 177

OPENING STATEMENT BY MR. LEMEL -- PAGE 180

OPENING STATEMENT BY MR. DUNN -- PAGE 186

SGT. DOUGLAS WAYNE SMITH (SW)

DIRECT EXAMINATION BY MR. EPTING 188

CROSS EXAMINATION BY MR. LEMEL 200

CROSS EXAMINATION BY MR. DUNN 214

PAMELA MACOMSON (SW)

DIRECT EXAMINATION BY MR. EPTING 216

CROSS EXAMINATION BY MR. LEMEL 236

CROSS EXAMINATION BY MR. DUNN 258

MELINDA PARKER (SW)

DIRECT EXAMINATION BY MR. SPRINGS 270

CROSS EXAMINATION BY MS. INZERILLO 283

CROSS EXAMINATION BY MR. DUNN 258

INDEX

(AUGUST 5, 2008)

WITNESSES

PAGE

SAVALAS DODD (SW)

DIRECT EXAMINATION BY MR. SPRINGS

311

CROSS EXAMINATION BY MR. LEMEL

318

CROSS EXAMINATION BY MR. DUNN

331

REDIRECT EXAMINATION BY MR. SPRINGS

334

NICOLE HOWIE (SW)

DIRECT EXAMINATION BY MR. SPRINGS

335

CROSS EXAMINATION BY MS. INZERILLO

345

(NO CROSS EXAMINATION BY MR. DUNN)

REDIRECT EXAMINATION BY MR. SPRINGS

359

RE-CROSS EXAMINATION BY MR. DUNN

360

DEPUTY WILLIAM R. GIBSON, II (SW)

DIRECT EXAMINATION BY MR. EPTING

362

CROSS EXAMINATION BY MR. INZERILLO

377

CROSS EXAMINATION BY MR. DUNN

384

SGT. JOHN BOOTH (SW)

DIRECT EXAMINATION BY MR. SPRINGS

388

CROSS EXAMINATION BY MR. LEMEL

405

CROSS EXAMINATION BY MR. DUNN

427

INDEX

(AUGUST 5, 2008)

WITNESSES

PAGE

SLED AGENT ILA SIMMONS (SW)

DIRECT EXAMINATION BY MR. SPRINGS 429

CROSS EXAMINATION BY MR. LEMEL 434

CROSS EXAMINATION BY MR. DUNN 444

REDIRECT EXAMINATION BY MR. SPRINGS 445

RE CROSS EXAMINATION BY MR. LEMEL 445

DR. TODD GARDNER (SW)

DIRECT EXAMINATION BY MR. EPTING 446

CROSS EXAMINATION BY MR. LEMEL 462

CROSS EXAMINATION BY MR. DUNN 480

INDEX

(AUGUST 5, 2008)

WITNESSES

PAGE

LT. WILLIAM J. MILLER, II (SW)

DIRECT EXAMINATION BY MR. SPRINGS 495

CROSS EXAMINATION BY MR. LEMEL 509

CROSS EXAMINATION BY MR. DUNN 538

STATE RESTS -- PAGE 547

DR. LORI VAN WALLENDael (DW)

DIRECT EXAMINATION BY MR. LEMEL 560

VOIR DIRE EXAMINATION BY MR. SPRINGS 569

CONT'D DIRECT EXAMINATION BY MR. LEMEL 576

CROSS EXAMINATION BY MR. SPRINGS 605

(NO CROSS EXAMINATION BY MR. DUNN)

REDIRECT EXAMINATION BY MR. LEMEL 608

JEFF HOLLIFIELD (DW)

DIRECT EXAMINATION BY MR. LEMEL 609

CROSS EXAMINATION BY MR. SPRINGS 618

(NO CROSS EXAMINATION BY MR. DUNN)

REDIRECT EXAMINATION BY MR. SPRINGS 622

OFFICER CHERYL GOSEMAN (DW)

DIRECT EXAMINATION BY MR. LEMEL 625

(NO CROSS EXAMINATION BY MR. SPRINGS)

(NO CROSS EXAMINATION BY MR. DUNN)

INDEX

(AUGUST 6, 2008)

WITNESSES

PAGE

SLED AGENT KENNETH WHITLER (DW)

DIRECT EXAMINATION BY MR. LEMEL 630

(NO CROSS EXAMINATION BY MR. SPRINGS)

(NO CROSS EXAMINATION BY MR. DUNN)

DEFENDANT ROBINSON RESTS -- PAGE 638

DEFENDANT TOBBIE RESTS -- PAGE 638

CLOSING ARGUMENT BY MR. LEMEL -- PAGE 651

CLOSING ARGUMENT BY MR. DUNN -- PAGE 684

FINAL ARGUMENT BY MR. SPRINGS -- PAGE 692

JURY INSTRUCTIONS -- PAGE 703

JURY VERDICT -- PAGE 736

SENTENCING -- PAGE 752

REPORTER'S CERTIFICATE -- PAGE 754

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-1	QUINTON TOBBIE'S STATEMENT		508
4	S-2	TRAVIS ROBINSON STATEMENT		603
5	S-3	PHOTOGRAPH		559
6	S-4	PHOTOGRAPH		559
7	S-5	PHOTOGRAPH		559
8	S-6	PHOTOGRAPH		559
9	S-7	PHOTOGRAPH		559
10	S-8	PHOTOGRAPH		191
11	S-9	PHOTOGRAPH		191
12	S-10	PHOTOGRAPH		191
13	S-11	PHOTOGRAPH		192
14	S-12	PHOTOGRAPH		192
15	S-13	PHOTOGRAPH		193
16	S-14	PHOTOGRAPH		194
17	S-15	PHOTOGRAPH		194
18	S-16	PHOTOGRAPH		195
19	S-17	PHOTOGRAPH		197
20	S-18	PHOTOGRAPH		197
21	S-19	PHOTOGRAPH		198
22	S-20	PHOTOGRAPH		222
23	S-20-A	PHOTOGRAPH		222
24	S-21	PHOTOGRAPH		222
25	S-22	PHOTOGRAPH		222

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-23	PHOTOGRAPH		222
4	S-24	PHOTOGRAPH		222
5	S-25	PHOTOGRAPH		222
6	S-26	PHOTOGRAPH		222
7	S-27	PHOTOGRAPH		222
8	S-28	911 TAPE		229
9	S-29	STORE VIDEO		230
10	S-30	PHOTOGRAPH		341
11	S-31	PHOTOGRAPH		341
12	S-32	PHOTOGRAPH		341
13	S-33	PHOTOGRAPH		453
14	S-34	PHOTOGRAPH		453
15	S-35	PHOTOGRAPH		453
16	S-36	PHOTOGRAPH		453
17	S-37	PHOTOGRAPH		370
18	S-38	PHOTOGRAPH		370
19	S-39	PHOTOGRAPH		370
20	S-40	PHOTOGRAPH		370
21	S-41	PHOTOGRAPH		370
22	S-42	PHOTOGRAPH		453
23	S-43	CHASE VIDEO		373
24	S-44	PHOTOGRAPH		391
25	S-45	GUN		403

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-46	BULLET		458
4				
5	D-1	PHOTOGRAPH		475
6	D-2	PHOTOGRAPH		475
7	D-3	PHOTOGRAPH		475
8	D-4	PHOTOGRAPH		475
9	D-5	PHOTOGRAPH		475
10	D-6	PHOTOGRAPH		475
11	D-7	PHOTOGRAPH		483
12	D-8	PHOTOGRAPH		483
13	D-9	PHOTOGRAPH		483
14	D-10	PHOTOGRAPH		483
15	D-11	JEANS SHORTS		628
16	D-12	SHIRT		628
17	D-13	SHOES		628
18	D-14	SLED REPORT		638
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, August 5, 2008)

2 THE COURT: Back on the record on Travis Robinson
3 and Quinton Tobbie, the State versus.

4 We are still doing a Neil v. Biggers, as I
5 understand it, and you have at least one more witness.

6 MR. SPRINGS: We do, Your Honor.

7 THE COURT: Let's call that witness and proceed.

8 MR. SPRINGS: All right. We will get that person,
9 Your Honor. They are on their way, Your Honor.

10 THE COURT: We need order.

11 If you will come up here and put your left hand on
12 this Bible and raise your right.

13 NICOLE HOWIE, having been first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. SPRINGS:

16 Q. You have a soft voice and I'm going to ask you to keep
17 your voice up nice and loud. I wasn't going to fuss about
18 that, but everybody, including the old folks, need to be
19 able to hear you.

20 A. Okay.

21 Q. What's your name, ma'am?

22 A. Nicole Howie.

23 Q. Ms. Howie, the night of September 7th, 2007, about
24 quarter of ten, were you at the Shell station over on Gold
25 Hill Road?

1 A. Yes.

2 Q. Who did you go over there with?

3 A. Myself and Mr. Savalas Dodd.

4 Q. Is he a friend of yours?

5 A. Yes, he is.

6 Q. When you pulled in there, just the two of you in your
7 car?

8 A. Yes, sir.

9 Q. All right. Who was driving the car?

10 A. I was.

11 Q. When you pulled in there, did you park in front of the
12 store or out at the gas pump?

13 A. Gas pump.

14 Q. And who got out of the car to take care of pumping gas?

15 A. Mr. Dodd.

16 Q. And did Mr. Dodd pump gas?

17 A. Yes, he did.

18 Q. Did he also go in the store?

19 A. Yes, he did.

20 Q. After he came -- did he go in the store twice?

21 A. Yes.

22 Q. When he came out of the store that second time, first
23 and second time, were you noticing the people in the car
24 next to you, the pump next to you?

25 A. Yes, I did.

1 Q. How many people were in that car next to you?

2 A. Three.

3 Q. Were they men, or women, or a mixture?

4 A. Men.

5 Q. Okay. I know that you are nervous, but you got to keep
6 your voice up.

7 A. I'm sorry. Men.

8 Q. And how many men were in that car?

9 A. Three.

10 Q. And about what color was the car? How would you
11 describe it?

12 A. I would say it was a small burgundy car.

13 Q. All right. The people in that car, did any of them get
14 out?

15 A. Yes.

16 Q. How many got out of that car?

17 A. Two.

18 Q. Did you notice as you were out there sitting in your
19 car, waiting on Mr. Dodd, where those two people went?

20 A. In the store.

21 Q. And did they come back out?

22 A. Yes.

23 Q. And did you notice anything about the hairstyle of
24 those two men? How would you describe their hair on both of
25 them?

1 A. One was short, one was dreaded.

2 Q. Okay. One had short hair and one had dreadlocks?

3 A. Yes, sir.

4 Q. Okay. These black fellows?

5 A. Yes, sir.

6 Q. And after Mr. Dodd came back out that last time, got
7 through pumping the car, did he go around and get back in
8 the car with you?

9 A. Yes, he did.

10 Q. And as he went to get back in the car with you, what
11 did you see happen?

12 A. (No response).

13 Q. Take your time. Gather your thoughts.

14 A. He finished pumping the gas and he got in the car.

15 Q. Yes, ma'am.

16 A. And that's where it gets a little fuzzy, because I
17 cannot remember if he got all the way in the car and shut
18 the door, or if he was still halfway out of the car, like
19 his legs was still out of the car and was putting his legs
20 in.

21 Q. I understand. Is it fair to say he was getting into
22 the car?

23 A. Yes.

24 Q. As he's getting into the car, what happened?

25 A. A gentleman walked up on the passenger's side and

1 pointed a gun at his side.

2 Q. Okay. Let me stop you there.

3 Had you seen that same person a little bit earlier?

4 A. Yes, I did.

5 Q. And where had you seen him a little bit earlier?

6 A. He got out of the car beside me at the next pump and
7 walked into the store.

8 Q. So you said two men got out of the car and one had
9 short hair and one had dreadlocks. Which one was it?

10 A. The dreadlock person.

11 Q. And he came up. And how close would you say that he
12 got between your car and Mr. Dodd?

13 A. He was -- the door was open -- the passenger's side
14 door was open and he was right beside Mr. Dodd.

15 Q. Okay. Well, were the lights on at the service station?

16 A. Yes.

17 Q. I'm showing you a picture that's been marked State's
18 Exhibit 8. Is that the gas pumps where you were?

19 A. Yes, it is.

20 Q. All right. Is that what the lighting looked like that
21 night?

22 A. Yes, sir.

23 Q. Okay. So the man that came up to Mr. Dodd, did he have
24 anything in his hand?

25 A. Yes, he did.

1 Q. What did he have in his hand?

2 A. A gun.

3 Q. And did you look at this man?

4 A. Yes, I did.

5 Q. Did you look just at the gun or other parts of the man?

6 A. I looked exactly in his face. We looked eye to eye.

7 Q. And were you scared?

8 A. Yes, I was.

9 Q. Then what did the man do after he came up with the gun
10 in his hand?

11 A. He asked Mr. Dodd for his money.

12 Q. And did something bad happen?

13 A. Yes.

14 Q. What bad happened?

15 A. He was shot in the side, Mr. Dodd.

16 Q. By this man --

17 A. Yes.

18 Q. -- that came up to the car.

19 How long was he standing there with the gun between the
20 time that he came up and said "give me your money" --

21 A. I couldn't tell you in minutes.

22 Q. -- until he was shot?

23 A. I couldn't tell you in minutes. I mean, it -- to me it
24 took a split second.

25 Q. Okay.

1 A. But it seemed like it lasted forever.

2 Q. All right. After he shot Mr. Dodd, where did he go,
3 did you notice?

4 A. The gentleman got back in the car and they drove away.

5 Q. Okay. Were they driving slowly or quickly?

6 A. Quickly.

7 Q. And where did Mr. Dodd go after he got shot?

8 A. He was shot sitting in my passenger's seat and he
9 jumped out of my car and he went in the store.

10 Q. Okay. Now, did the police come out there?

11 A. Yes, they did.

12 Q. And did they ask you what had happened?

13 A. Yes.

14 Q. And did you tell them what had happened?

15 A. Yes, I did.

16 Q. And a little while later did you go over to Charlotte?

17 A. Yes.

18 Q. And were you asked to look at some folks over in
19 Charlotte?

20 A. Yes, I was.

21 Q. The first person that you were asked to look at, did
22 you recognize that person?

23 A. Yes, I did.

24 Q. Had you seen him earlier that night?

25 A. Yes, I did.

1 Q. And who was the person that you recognized and where
2 had you seen him earlier that night?

3 A. Yes.

4 Q. Who was it?

5 A. He was the gentleman that shot Mr. Dodd.

6 Q. All right. And do you see that gentleman in this
7 courtroom?

8 A. Yes, I do.

9 Q. Point him out, please.

10 A. He's right there, the gentleman with the dreads in his
11 hair.

12 MR. SPRINGS: She's pointing to the defendant
13 Travis Robinson.

14 BY MR. SPRINGS:

15 Q. Now, when you got to Charlotte, how close were you when
16 you were looking at Travis Robinson?

17 I tell you, let's do it this way.

18 I'm going to start walking towards you.

19 A. Okay.

20 Q. Was he further to you just as I am from you now?

21 A. Yes, he was about that far away.

22 Q. Approximately where I am now?

23 A. Yes.

24 Q. How was the light that you had to illuminate this man
25 when you were looking at him over in Charlotte? Did they

1 have plenty of light for you?

2 A. Yes, he was actually standing right under a light pole.

3 Q. Okay. All right. Do you have pretty good eyesight
4 yourself?

5 A. Yes, I do.

6 Q. And you say that you recognized him ---

7 A. Yes.

8 Q. -- as the man who shot Mr. Dodd?

9 A. Yes.

10 Q. How sure are you that it's the same man that you were
11 looking at in Charlotte that shot Mr. Dodd?

12 A. A hundred percent positive.

13 Q. Now, did they show you somebody else?

14 A. Yes, they did.

15 Q. And did you recognize that person as somebody that you
16 had seen before?

17 A. Yes.

18 Q. And when had you seen that person before?

19 A. In the store. He went in the store.

20 Q. Okay. Was he the second man in the little red car that
21 was next to you?

22 A. Yes, sir.

23 Q. Okay. And when you got over to Charlotte, was he
24 standing about the same distance from you?

25 A. Yes.

1 Q. And I don't want to put words in your mouth, but what
2 do you think this is, about 30 feet?

3 A. I guess.

4 Q. Okay. And did they have the same kind of lighting on
5 him when you looked at him?

6 A. Yes, they did.

7 Q. And how sure were you that it was the same man that you
8 had seen --

9 A. A hundred percent.

10 Q. -- get out of the car?

11 A hundred percent?

12 A. Yes.

13 Q. Do you see that man in this courtroom?

14 A. Yes, I do.

15 Q. Could you point him out?

16 A. He's right there.

17 MR. SPRINGS: She's pointing to the defendant
18 Quinton Tobbie.

19 BY MR. SPRINGS:

20 Q. Did the police tell you you had to identify these
21 people?

22 A. No, they didn't.

23 Q. All right. Thank you very much.

24 The defense attorneys are going to want to talk to you.

25 THE COURT: Mr. Lemel or Ms. Inzerillo.

1 MS. INZERILLO: If it please the court.

2 CROSS EXAMINATION BY MR. INZERILLO:

3 Q. Good morning, Ms. Howie.

4 A. Good morning.

5 Q. On September 7th, you and Mr. Dodd went into the gas
6 station, A routine errand to get some gas?

7 A. Yes.

8 Q. And I don't want to go back through all the details
9 that you told Mr. Springs, but essentially he pumped gas,
10 went in and out of the store a couple of times?

11 A. Yes, he did.

12 Q. And while he was doing that, were you in the driver's
13 seat the whole time?

14 A. Yes, I was.

15 Q. Okay. And what were you doing in the driver's seat,
16 just kind of looking around, or were you doing something?

17 A. Just sitting there looking around, listening to the
18 radio.

19 Q. All right. The gas pump on -- the gas tank on your
20 SUV, is it on the passenger's side?

21 A. Yes, it is.

22 Q. So your car was facing the convenience store?

23 A. Yes, it was.

24 Q. You said under Mr. Springs questioning that you noticed
25 the car --

1 A. Yes.

2 Q. -- next -- on the other side of the pump?

3 A. Yes.

4 Q. Okay. You noticed it before the robbery or you noticed
5 it after the robbery?

6 A. Before the robbery.

7 Q. Okay. And you said today that you noticed that there
8 were three men inside the car?

9 A. Yes.

10 Q. Did you notice that before the robbery or after the
11 robbery?

12 A. Before the robbery.

13 Q. Okay. And you gave a description of two of the men;
14 short, low haircut, dreads -- and the one having dreads?

15 A. Uh-huh.

16 Q. Did you notice that before the robbery or after the
17 robbery?

18 A. Before.

19 Q. Okay. Do you remember giving the police a statement
20 that night?

21 A. Yes, I did.

22 Q. And you are familiar with what you told the police?

23 A. Yes.

24 Q. Okay. And nowhere in that statement did you mention
25 any description of the car or a description of the two men

1 that got out of the car, is that correct?

2 A. Say that question again.

3 Q. Nowhere in your statement did you tell the police the
4 description of the car, is that right?

5 A. That's correct.

6 Q. And nowhere in your statement did you give a
7 description of the two men, is that correct?

8 A. I gave a description of one man.

9 Q. Okay. Of one man?

10 A. Yes.

11 Q. And that was -- the description that you gave was you
12 called suspect number one, is that right?

13 A. Yes.

14 Q. Okay. And let's see here. Okay.

15 I'm going to show you --

16 MS. INZERILLO: If I may approach the witness,
17 Your Honor?

18 THE COURT: Yes.

19 BY MS. INZERILLO:

20 Q. I'm going to show you your statement and kind of walk
21 me through what you say, okay?

22 A. Uh-huh.

23 Q. That statement is two pages, right?

24 A. Yes, it is.

25 Q. The first page sort of details what happened during the

1 robbery?

2 A. Yes.

3 Q. Okay. And then it looks like the second page was
4 written after you had gone to Charlotte and identified the
5 person?

6 A. Yes.

7 Q. Is that fair?

8 A. That's fair.

9 Q. So on the first page of that statement, there is no
10 descriptions of the two men as you have described them
11 today?

12 A. No.

13 Q. Okay. I'll take that back.

14 All right. Kind of pick up starting right when the
15 robbery happened, okay?

16 A. All right.

17 Q. You were sitting in the driver's seat, correct?

18 A. Yes.

19 Q. Mr. Dodd had already pumped the gas, bought his stuff
20 from the store, and he was getting back into the car, to the
21 best of your recollection?

22 A. Yes.

23 Q. Okay. Although you are not quite sure of what phase he
24 was, whether he was half in, or all the way in, or anything
25 like that?

1 A. That's correct.

2 Q. Now, you testified under Mr. Springs questioning that
3 someone approached the car?

4 A. Yes.

5 Q. Had a gun in his hands, right?

6 A. Yes.

7 Q. And you looked him straight in the eye?

8 A. Yes.

9 Q. Okay. So you had a good nice look at his face?

10 A. Yes, I did.

11 Q. Now, I'm going to take you back to your statement, on
12 the first page where you are describing what happened.

13 A. Uh-huh.

14 Q. You -- let's see here. You say "suspect came over and
15 said give me that money. Mr. Dodd put his hand at the
16 mirror and said what?" Am I -- is that fair?

17 A. Yes.

18 Q. "At that time I saw the gun, small black gun. I could
19 not move."

20 A. That's correct.

21 Q. Is that correct?

22 A. Yes.

23 Q. "And then suspect number one said give me the money
24 again, gun waving in the air," is that right?

25 A. Yes.

1 Q. "And then I heard a pop."

2 A. Yes.

3 Q. Is that right?

4 A. Yes.

5 Q. Okay. So nowhere in that description of the robbery do
6 you ever say that you saw the robber's face?

7 A. Okay.

8 Q. Right.

9 And no point did you ever say that you looked him in
10 the eye?

11 A. Okay.

12 Q. I mean is that correct?

13 A. That's correct.

14 Q. Okay. But you did notice the gun?

15 A. Yes, I did.

16 Q. Right. You had focused on the gun?

17 A. Yes.

18 Q. And you gave a brief description of the gun of being
19 small, black, is that right?

20 A. Yes.

21 Q. All right. After Mr. Dodd was shot, you were
22 immediately focused on getting him help, is that fair?

23 A. Yes.

24 Q. Okay. And he jumped out of your car and ran inside the
25 store, is that right?

1 A. Yes, he did.

2 Q. And then you pulled your SUV up sort of straight into
3 parking space?

4 A. Yes.

5 Q. Okay. And then right after that you hopped out and you
6 ran inside the store?

7 A. Yes, I did.

8 Q. Okay. So your first concern through all that was
9 making sure that 911 was called, or something like that,
10 because he was shot?

11 A. Yes.

12 Q. Okay. You didn't notice where the guy with the gun
13 went?

14 A. What do you mean?

15 Q. I mean, after he walks away from your car, left the
16 passenger's side of your car, you didn't notice where he
17 went during all that frantic activity?

18 A. They drove right past my car.

19 Q. So you saw them drive in front of you?

20 A. Yes.

21 Q. Okay. And you noticed the car again?

22 A. Yes.

23 Q. All right. You were with Mr. Dodd while someone called
24 911?

25 A. Yes.

1 Q. And y'all were there waiting for EMS and the police to
2 be called --

3 A. Yes.

4 Q. Police to arrive?

5 A. Yes.

6 Q. During that time did you, Mr. Dodd, and some of the
7 other workers of the store talk about what had happened?

8 A. To the police.

9 Q. Okay. Did you talk about it amongst yourselves?

10 A. No, not really. We was focused on getting him help.

11 Q. So then EMS came?

12 A. Yes.

13 Q. And then the police came?

14 A. Yes.

15 Q. Is that right?

16 A. Uh-huh.

17 Q. Now, when Mr. Dodd was taken by EMS, did you ride with
18 Mr. Dodd to the hospital?

19 A. Yes, I did.

20 Q. Okay. So you rode in the ambulance, or you followed
21 him in your truck?

22 A. I left my truck and I rode in the ambulance with him.

23 Q. Okay. So you rode up to which hospital, Piedmont?

24 A. Carolina Medical.

25 Q. Carolina Medical.

1 All right. You were with Mr. Dodd the whole time until
2 you were told to go to Charlotte?

3 A. I was with Mr. Dodd until the police came and picked me
4 up from Charlotte.

5 Q. Okay. When the police came to pick you up, they told
6 you that they had arrested the shooter, is that right?

7 A. They told me that they had suspects.

8 Q. Do you remember who picked you up?

9 A. A Charlotte police officer, if I'm not mistaken.

10 Q. Was he in uniform?

11 A. Yes.

12 Q. And he was in a marked patrol car?

13 A. Yes.

14 Q. So he told you they had suspects?

15 A. Yes.

16 Q. All right. And he wanted you to ride with him to
17 identify the suspects?

18 A. Yes, he just asked if I would go. I said yes.

19 Q. Okay. Do you remember about what time that was?

20 A. No, not really.

21 Q. Okay. When you rode from the hospital to the apartment
22 complex --

23 A. Yes.

24 Q. -- did you and that patrol officer talk about what you
25 had seen, you were talking about the events of that evening?

1 A. No.

2 Q. Did he take you to an apartment complex?

3 A. Yes.

4 Q. When he took you to the apartment complex, did you get
5 out of the car?

6 A. Yes, I did.

7 Q. Okay. He asked you to step out of the car, or did you
8 ask to step out of the car?

9 A. I asked to step out.

10 Q. Okay. Was that before the person was brought before
11 you to be ID'd or after?

12 A. I just remembered them, I believe, getting out of a
13 patrol car.

14 Q. The person that you identified?

15 A. Yes.

16 Q. But before then were you out of the car when you
17 identified that person, or were you in the car?

18 A. I was out of the car, I believe.

19 Q. Okay. And you got out of the car?

20 A. Yes.

21 Q. And you saw a young man being taken out of the
22 Charlotte-Meck patrol car, another one?

23 A. Yes.

24 Q. And he was in handcuffs?

25 A. Yes.

1 Q. Okay. And he, I believe you said, was told to stand
2 under a street lamp?

3 A. I don't know if he was told to stand under that light.

4 Q. Okay. But that's where he ended up?

5 A. That's where he was.

6 Q. Okay. And you looked at the guy and told the officer
7 that that was the person that you thought was the shooter?

8 A. Yes.

9 Q. Did he ask you if that was the shooter?

10 A. No.

11 Q. Was the person that you identified the only person out
12 there who was not law enforcement, besides you?

13 A. To my knowledge.

14 Q. Okay. And then once you told the patrol officer that
15 was with you, identified him, and then I think after that
16 Mr. Tobbie, that officer went like this towards the --

17 A. I have no idea.

18 Q. After you identified him, the person was put back in
19 the patrol car?

20 A. Yes.

21 Q. He was still handcuffed?

22 A. I believe so.

23 Q. Okay. And the person that you identified that night
24 was a black male?

25 A. Yes, he was.

1 Q. And he had dreads?

2 A. Yes, he was.

3 Q. Did he have on a gray T-shirt?

4 A. Yes.

5 Q. Blue jean shorts, or long blue jeans shorts?

6 A. Blue jean pants, shorts, however.

7 Q. And orange bright lines and yellow shoes?

8 A. I didn't pay any attention to his shoes.

9 Q. You didn't pay any attention to his shoes. Okay.

10 Going back to this statement, on the first page of the
11 statement you never gave any identification or any
12 description of the person that had the gun?

13 A. No, I didn't.

14 Q. And the only description that you gave was on the
15 second page?

16 A. Yes, that's correct.

17 Q. Did you write out these statements?

18 A. Yes, I did, I wrote them out myself.

19 Q. You wrote them out yourself?

20 A. Yes, I did.

21 Q. And you gave them both at 1:16? I'll show it you. I
22 want you to be sure.

23 A. I couldn't tell you what time it was, I mean, if that's
24 what you are asking.

25 Q. Okay.

1 A. Well I guess so, yes.

2 Q. And that was -- you wrote these after you identified my
3 client?

4 A. After?

5 Q. After.

6 Oh, I'm sorry.

7 When you -- after the identification, did the officer
8 take you back to the hospital?

9 A. No.

10 Q. He took you back down to Fort Mill?

11 A. I asked to be taken back to my car.

12 Q. Okay. Was anybody else in the car with you and that
13 patrol officer?

14 A. Yes.

15 Q. Who was that, do you know?

16 A. What's her name? The clerk from the store.

17 Q. The dark haired clerk?

18 A. Yes.

19 Q. Short dark hair?

20 A. Yes.

21 Q. Did you and she talk about the identification and the
22 events that night on the way back down to the --

23 A. Not that I recall.

24 MS. INZERILLO: I have no further questions, Your
25 Honor.

1 THE COURT: Mr. Dunn.

2 MR. DUNN: May it please the court, Your Honor.

3 CROSS EXAMINATION BY MR. DUNN:

4 Q. Good morning, Ms. Howie.

5 A. Good morning.

6 Q. My name is Geoff Dunn. I represent Quinton Tobbie. I
7 just have a couple of quick questions for you.

8 When you pulled up to the gas station that night and
9 Mr. Dodd got out, what did you do during that time?

10 A. I sat in the car.

11 Q. Did you ever get out of the car?

12 A. No, I did not.

13 Q. While you were sitting there, what were you doing?

14 A. I was listening to the radio.

15 Q. Were you looking around?

16 A. Yes.

17 Q. You said that you saw two men get out of the car next
18 to you, right?

19 A. Yes.

20 Q. One was who you identified as Mr. Robinson with the
21 dreadlocks, correct?

22 A. Yes, sir.

23 Q. And you also said you saw Mr. Tobbie?

24 A. Yes, sir.

25 Q. Do you remember which door Mr. Tobbie got out?

- 1 A. Somehow I was thinking it was the back door.
- 2 Q. All right. On which side of the car?
- 3 A. Passenger.
- 4 Q. Back passenger?
- 5 A. Yes.
- 6 Q. Did you watch Mr. Tobbie go into the gas station?
- 7 A. Yes, I did.
- 8 Q. All right. Did you see him come back out?
- 9 A. Yes, I did.
- 10 Q. Where did he go when he came back out?
- 11 A. I believe he pumped gas or got back in the car. I have
- 12 no idea.
- 13 Q. Can you remember?
- 14 A. Excuse me?
- 15 Q. Can you remember?
- 16 A. No, not really.
- 17 Q. At the time that Mr. Dodd was shot, did you see Mr.
- 18 Tobbie?
- 19 A. No, I didn't.
- 20 Q. Approximately how much time do you think did you look
- 21 at Mr. Tobbie while you were sitting in the parking lot?
- 22 A. He walked in the store. He walked back out.
- 23 Q. Did you watch him both ways?
- 24 A. Yeah.
- 25 Q. Was he walking with anybody else?

1 A. No, he was by himself.

2 Q. Was he doing anything?

3 A. Who?

4 Q. Mr. Tobbie, besides walking?

5 A. Not that I recall.

6 Q. Do you remember what he was wearing?

7 A. A T and some jeans, some dark pants.

8 Q. Let me deal with one specific. At the time that you
9 were in the gas station, do you remember what he was
10 wearing?

11 A. A shirt and some jeans.

12 Q. Do you remember what color his shirt was?

13 A. It could have been white. I mean --

14 Q. Do you remember what color his jeans were? Were they
15 dark jeans, light jeans?

16 A. Blue jeans.

17 Q. In Charlotte do you remember what Mr. Tobbie was
18 wearing when -- they pulled him out of the car, right?

19 A. Yes.

20 Q. Did they let you look at him?

21 A. Yes.

22 Q. Do you remember what he was wearing?

23 A. That same thing he had on from the store.

24 Q. Okay. And during that time that you were in Charlotte
25 looking at Mr. Tobbie, about how long did you actually look

1 at him? How long did he stand there for your viewing?

2 A. Down to the minute, is that what you are asking?

3 Q. Well, a couple seconds, a minute, more than a minute?

4 A. A few minutes. I don't know.

5 Q. Okay. Did the police ever show you any pictures of Mr.
6 Tobbie?

7 A. No.

8 Q. You met with -- within the last week have you ever seen
9 any pictures of Mr. Tobbie?

10 A. No.

11 Q. So since September the 8th, when you viewed Mr. Tobbie
12 in Charlotte, have you ever seen any more picture of him?

13 A. Before then?

14 Q. Since then.

15 A. No.

16 Q. Did they ever -- have you ever looked at the videotape
17 of the store?

18 A. Yes, I saw it.

19 Q. When did you see that?

20 A. Yesterday.

21 Q. Did you see it back on September 7th or September 8th?

22 A. No, I didn't.

23 Q. Viewing that videotape yesterday, did that influence
24 your ability to identify Mr. Tobbie?

25 A. Did it influence it?

1 Q. Influence it.

2 A. No.

3 Q. Who did you ID first in Charlotte? Was it Mr. Tobbie
4 or was it Mr. Robinson?

5 A. Mr. Robinson.

6 Q. I see. They showed you him first and then they showed
7 you Mr. Tobbie?

8 A. Yes.

9 Q. How much time in between those two?

10 A. They put one back in the car and took the other one
11 out, I believe.

12 Q. Okay. Were they in the same car?

13 A. I don't think so.

14 Q. Were the cars near each other?

15 A. I mean, a good -- they were parked, so a space in
16 between.

17 Q. Okay. So maybe about one parking lot space between the
18 two cars?

19 A. I guess like enough space for another vehicle.

20 Q. All right. They weren't on the other side -- they
21 weren't on opposite sides of the parking lot? I wasn't
22 there, so I'm asking you.

23 A. I don't recall. I just know they did get out of
24 different cars.

25 Q. Have you talked to anybody -- on that night I think you

1 previously said you didn't talk to anybody about ID'ing Mr.
2 Tobbie or Mr. Robinson?

3 A. Since that night?

4 Q. During that night did you talk to anybody about your
5 identification?

6 A. No.

7 Q. Since that time have you talked to anybody about
8 identification?

9 A. No.

10 Q. Did you talk to anybody at the solicitor's office about
11 what you saw that night?

12 A. Yes.

13 Q. Did anybody suggest to you that Mr. Tobbie was the
14 person?

15 A. No.

16 Q. Did you talk to anybody in the victim's advocate
17 office?

18 A. No.

19 Q. Did you talk to anybody in the -- do you know what the
20 victim's advocate office is?

21 A. They help victims, if I'm not mistaken.

22 Q. Did you talk to anybody in the sheriff's office or
23 police department about identification since that night?

24 A. No.

25 MR. DUNN: I don't have any further questions,

1 Your Honor.

2 THE COURT: Redirect?

3 MR. SPRINGS: No.

4 Thank you, Ms. Howie.

5 THE COURT: You can step down.

6 MR. SPRINGS: Thank you, Your Honor.

7 Ms. Howie, if you would wait in the waiting room
8 and remember don't talk about the case with anyone because
9 you are what's called sequestered, so don't talk to any of
10 the folks about it.

11 THE COURT: Do you have any other witnesses?

12 MR. SPRINGS: No, sir.

13 THE COURT: All right. Well, I'm ready to rule.
14 I don't need any arguments. I think the criteria for these
15 issues are very, very well mapped out.

16 I find that the show-ups in Charlotte were unduly
17 suggestive. They were of individuals, once with Mr.
18 Robinson and once with Mr. Tobbie.

19 As to Mr. Robinson, Ms. Parker was told "we have
20 the shooter," and Ms. Howie was told "we have some
21 suspects." However, I find that that the State has shown by
22 clear and convincing evidence that the identifications of
23 each of these, Ms. Parker and Ms. Howie, are reliable.

24 I find that the pretrial identification procedure
25 does not create a substantial likelihood of an irreparable

1 misidentification. The identification is an issue here for
2 the jury and it is -- the weight is for the jury to
3 consider.

4 I have weighed the following factors against the
5 corrupting effect of the unduly suggestive procedure. As to
6 Ms. Parker, the lighting was extremely good, according to
7 her, and also their Exhibit 8, which shows the lighting. As
8 to Ms. Parker, there was a heightened attention due to
9 having tried to make eye-to-eye contact when the individuals
10 were going into the store and they failed to do so, which
11 she said was unusual and did heighten her attention.

12 There was a short span between the incident and
13 her identification of the defendants in Charlotte. Her
14 level of certainty was I think she said 99 percent. She may
15 have said 99.9 percent, but her level of certainty was 99
16 percent. She said she always noticed her customers and
17 their cars.

18 Additionally -- well, that's the main factors.

19 Additionally, with Mr. Robinson, while quite a
20 large number of individuals do have dreadlocks, that is
21 still a distinctive hairstyle that stands out and one would
22 note and she noted that.

23 As to Ms. Howie, again, there was good lighting,
24 from her testimony and from the Exhibit 8. She saw both of
25 these defendants going into the store and coming out of the

1 store.

2 As to Mr. Robinson, she had a heightened
3 attention, because she looked at him face to face and eye to
4 eye as he held the gun on her friend.

5 There was a short time span between the encounter
6 and her identification of both of these individuals in
7 Charlotte. And as to both, she said her level of certainty
8 was one hundred percent.

9 So I'm going to allow the identification, the
10 in-court identification, of the defendants by both of those.
11 And, of course, we will charge the jury appropriately as to
12 factors that they can consider.

13 All right. Anything else before we get the jury
14 in, although we will take a break before we get them in?

15 MR. SPRINGS: Nothing from the State.

16 THE COURT: Ms. Inzerillo or Mr. Lemel?

17 MS. INZERILLO: No.

18 THE COURT: Mr. Dunn?

19 MR. DUNN: No, I don't have anything else, Your
20 Honor.

21 THE COURT: We will take about a ten minute break.

22 (Whereupon, proceedings were recessed)

23 (Whereupon, proceedings were reconvened)

24 THE COURT: Is the State ready?

25 MR. SPRINGS: Yes, sir.

1 THE COURT: Mr. Lemel, are you ready?

2 MR. LEMEL: Yes, Your Honor.

3 THE COURT: Mr. Dunn?

4 MR. DUNN: Yes, Your Honor.

5 THE COURT: Bring in the jury.

6 (The following takes place in the presence of the
7 jury panel)

8 THE COURT: Please swear the jury.

9 (Whereupon, the jury panel was administered their
10 oath by the Clerk of Court)

11 THE COURT: Be seated.

12 Members of the jury panel, I'm going to chat with
13 you just a minute. I have already told you about not
14 discussing the case, that you have to base your verdict on
15 the law and the case that's developed here in the trial.

16 In just a moment the attorneys for the State and
17 the defendants have a right to come before you and make an
18 opening statement. They are not required to do that and
19 they are not arguing their case, nor are they testifying,
20 because they are not witnesses. They are the attorneys for
21 these individuals and the State. What they will be doing is
22 giving you an outline or a blueprint of the trial. Some
23 call it a preview of what's to come; that is, they will tell
24 you more about what the issues are. Again, they are not
25 trying to convince you of anything. They will at a later

1 time have an opportunity -- after all the evidence is
2 presented, they have an opportunity to come before you and
3 argue their case and try to convince you why your verdict
4 should be a certain verdict. That's not what they are doing
5 now.

6 In this case I have three primary jobs. One is
7 sometimes I call it the wagon master. I'm the logistics
8 guy. I make sure that we take breaks, that we try to stay
9 on schedule, that we break for lunch, that people are
10 talking loud enough, and I'll get more of that in just a
11 moment, but the logistics part is one of the things that I
12 do.

13 The second is I rule on questions of admissibility
14 of evidence; that is, if one party believes certain evidence
15 should be allowed in the record for your consideration and
16 the other side believes for some legal reason it should not
17 be allowed, I have to make a ruling on that. It's up to me
18 to determine what evidence may come into the record. Once I
19 had ruled on a question of evidence, it is binding on the
20 witness, the attorneys, and you. By that I mean if somebody
21 says something that's objected to and I rule that it is
22 inadmissible and tell you to disregard it, you must
23 disregard it.

24 My third job is that I'm the sole judge of the law
25 in this case. You must take, accept, and apply the law as I

1 charge it. This is true if you think I charge the law in
2 error, or even if you think the law should be different.
3 Your oath requires you to take, accept and apply the law as
4 I charge it.

5 You are not to infer from anything that I say or
6 do to indicate an opinion of mine on the facts. The law
7 does not allow a trial judge to formulate or express to a
8 jury any opinion on the facts. That is solely your job.
9 It's solely up to you to examine the evidence, give to the
10 evidence the effect, the value, the weight, and the truth
11 you believe it should have. In doing this, you may believe
12 one witness as opposed to several, several witnesses as
13 opposed to one. You may believe all, part, or none of a
14 witness' testimony. In analyzing the evidence, use your
15 common sense, use your sense of logic, your sense of reason,
16 your experiences in life.

17 As judges of the facts, you must determine and
18 judge the reliability, credibility, believability of the
19 witnesses who testify. In assessing believability, use
20 those things that I just mentioned. Use the things that you
21 in your day-to-day life find as being indicative of
22 truthfulness, and you can use certain evaluators, such as a
23 witness' demeanor, how they act on the stand. Are they
24 hesitant or straightforward? Is their testimony consistent
25 or inconsistent with themselves or with earlier statements

1 that the witness may have given? You can consider the
2 opportunity a witness had to know those things about which
3 the witness testified. And you can look at bias or
4 prejudice a witness may have; that is, whether a witness
5 would wish to help or hurt one side or the other. All these
6 things need you consider to determine the true facts, apply
7 the law, and you can then return a verdict that speaks the
8 truth.

9 If you can't see or you can't hear, let me know.
10 Cup your ear, a voice-raising gesture, a nudging gesture,
11 and I will try to correct it. It's not fair to ask you to
12 resolve this case and then not let you see and hear those
13 things that you do need to see and hear.

14 We take breaks about every hour and a half, but if
15 anybody needs a break at any time, just raise your right
16 hand. I know you cannot pay attention if you are
17 uncomfortable. So if you need to take a break, simply raise
18 your right hand. There is no questions asked and we will
19 take a break, and I extend that to counsel and the
20 defendants. We want to move the case along, but if we need
21 to take a break, we will.

22 Now, the foreman will always sit in that seat.
23 And Mr. Foreman, you will be the liaison between the jury
24 and myself, preside over the jury deliberations, and
25 ultimately sign the jury's unanimous verdict.

1 The two alternates will always sit in those two
2 back seats behind the foreman. There are no other assigned
3 seats. Those are the only seats that are assigned. The
4 rest of them are just where you happen to come in, have a
5 seat.

6 All right. Mr. Springs.

7 MR. SPRINGS: Thank you, judge. May it please the
8 court.

9 Ladies and gentlemen of the jury, Mr. Foreman, the
10 night of September the 7th of last year, 2007, a man named
11 Dodd and a lady friend of his drove to the Shell station on
12 Gold Hill Road to get some gas. As Mr. Dodd pumped the gas,
13 this guy came up to him, opened the car door after Mr. Dodd
14 had gotten back in, pointed a gun at him and said "give me
15 the money." Mr. Dodd started to go in his pocket to get him
16 the money, but he couldn't wait and he shot Mr. Dodd, and by
17 the grace of God didn't kill him.

18 Mr. Dodd and his friend, Nicole Howie, about a
19 quarter to eleven on September 7th, last year, drove to the
20 Shell station to get gas, to buy a couple of things. She
21 stayed in the car. Mr. Dodd was wearing a blue and white
22 striped shirt. He goes in the store and he prepays for the
23 gas. It's her car. She's driving. She stays in the car.
24 He gets out and goes in and he prepays. And right behind
25 him come this guy Travis Robinson and this guy Quinton.

1 Tobbie. They follow him in. They come to the store and
2 they park their car on the island just immediately on the
3 other side of the car that Mr. Dodd and Ms. Howie came in.
4 They parked their car, but it had the license tag taken off.
5 There is no tag on the back. These two guys follow Mr. Dodd
6 in, Mr. Dodd fixing to pay for his gas. He buys a couple of
7 things, comes back, pumps the gas, goes back in, comes back
8 out, and these guys have come back out. They were in the
9 store. They were behind Mr. Dodd when he pays for his
10 purchases with a lot of cash. They come back. And after
11 Mr. Dodd gotten through pumping the gas, he gets back in the
12 car and he shuts the door and this guy opens the door, puts
13 the gun in his face, demands money and then shoots him,
14 because Mr. Dodd did not move fast enough. He shoots him.
15 And then Travis Robinson jumps back in the car with Quinton.
16 Tobbie and a third person, who has never been caught, a
17 third man who has never been caught, and the three of them
18 roar out of there in a little red car and there is no tag on
19 the back.

20 Mr. Dodd lived. Mr. Dodd will tell you that
21 Travis Robinson stuck the gun in his face. That's a
22 revolver. He stuck a revolver gun in his face. He shot
23 him. They roar out of there. Mr. Dodd is taken to the
24 hospital. The doctor pulls the bullet out of him. He
25 lives.

1 The clerk right after the shooting, immediately
2 after the shooting, called 911, of course, and gives a
3 description of the getaway car, a description of the people.
4 A York County deputy sheriff out on I-77 sees that car and
5 chases them into Charlotte, where they come from in the
6 first place. And he's down in Charlotte in a neighborhood
7 and he's chasing them and chasing them and they are going
8 through turns, running stop signs, and the officer loses
9 them, and they call the Charlotte police. The York County
10 dispatchers have called the Charlotte police and they swarm
11 that area and they find the getaway car. It's abandoned.
12 There is no one in it. They find the getaway car and they
13 start looking in the area right around the getaway car. And
14 a car comes cruising by right in that area and it's got
15 three people in it. And the description the officers had
16 gotten of the person that did this shooting is someone with
17 dreadlocks, like Travis Robinson has. So the Charlotte
18 police see this car with three people coming by there area
19 where the abandoned car was and so they stopped them. They
20 get Travis Robinson and Quinton Tobbie out and they pat
21 Travis Robinson down for weapons so they don't get shot, and
22 he's got a semiautomatic pistol in his pocket. Different
23 kind.

24 The clerk from the store that was out at the gas
25 pumps in the area and saw the shooting was brought down to

1 Charlotte where Travis Robinson and Quinton Tobbie were.
2 The clerk is right up there at the gas pumps and who
3 witnessed the shooting.

4 Ms. Nicole Howie, who was sitting in the driver's
5 seat next to Mr. Dodd when he got shot and witnessed the
6 shooting and saw this guy shoot Mr. Dodd, she was brought
7 down to Charlotte where this guy and his buddy, Quinton
8 Tobbie, were being held by the Charlotte police, and they
9 identify "that's the guy. That's the guy that shot Mr.
10 Dodd."

11 It's an important case, a very important case. As
12 I said, by the grace of God, he lived.

13 You will listen to the witnesses and be a good
14 judge of the facts. That's what you judge is the facts, the
15 conduct of these two men, not whether they are good or bad.
16 You are not going to judge their soul. You are going to be
17 like an umpire. You are going to call the facts the way you
18 see them from that witness stand. As people tell you what
19 happened, tell you what they saw, you will judge those
20 facts. And at the end of this trial you will do justice.
21 You will follow the oath that you took to be good jurors,
22 fair jurors, and there is nothing more anyone can ask of you
23 than that.

24 THE COURT: Mr. Lemel.

25 MR. LEMEL: May it please the court.

1 Yesterday morning as we were sitting in jury
2 qualifications, Judge Alford made a comment that jury duty
3 is the most important duty you could give this country,
4 outside military service during a time of war, and that is a
5 phrase that resonates with those of us in the legal
6 community very strongly. I agree with that very strongly,
7 because of the very unique role that you, as jurors, are
8 going to play here today. Everyone in this courtroom has a
9 role to play. The judge referred to his role earlier when
10 he told you that he was the person that acted as the wagon
11 driver, that he gives you the law. Mr. Springs job is the
12 prosecutor's job. My job is to defend. It's your job to
13 decide the facts of the case, to decide the facts of the
14 case, and that is the most difficult job in this courtroom,
15 and I do not envy you, that job in this particular case,
16 because this is going to be a very difficult case for you to
17 decide what the facts are, because something does not become
18 a fact in this courtroom just because somebody sits on the
19 stand and says it, or an exhibit is put before you, or you
20 just hear it here in the courtroom. Something only becomes
21 a fact when you are convinced of a very specific stand, and
22 that is a tough job for you to sit here and do that.
23 Because it's such a tough job, there are certain rules that
24 our legal system has to assist you with that. They are
25 what's called cardinal points of law, cardinal points like a

1 cardinal points on a compass that are straight and fine.
2 And there is basically three of them you have heard a little
3 bit about them today, and you are going to hear about more
4 as the case goes on.

5 Now, the first basic rule that you are going to
6 operate under are what's called the presumption of
7 innocence. No one has to prove that they are innocent.
8 They start this case innocent, and that is the strongest
9 thing that exists in this courtroom right now. As Travis is
10 sitting there, as Quinton is sitting there, they are
11 innocent. However many times the State comes over and
12 shouts at them and points at them at this point in the
13 trial, they are innocent, and they will remain innocent
14 until you are convinced otherwise to a certain standard.

15 What's that standard? The standard of proof in a
16 criminal trial is what's called beyond a reasonable doubt.
17 Now, there are two types of trials in this country. There
18 is civil trials, which involve a contract dispute or a car
19 wreck, where you have two individual private persons
20 involved in a dispute. And a civil case the burden of proof
21 is what we call preponderance of the evidence; that is, you
22 put, if you are a juror, the evidence on a set of scales,
23 and if that scale tilts ever so slightly, just a feather
24 weight one side, you vote that way.

25 Criminal law is entirely different. You see, in

1 criminal law the standard is beyond a reasonable doubt.
2 Now, that's a very popular phrase. You see it on the news,
3 the title of books, it's in the news. I want you to put
4 aside what you may have heard before or what you may have
5 thought before was beyond a reasonable doubt, because our
6 Supreme Court has defined what a reasonable doubt is in one
7 very simple sentence. A reasonable doubt is the kind of
8 doubt that would cause you to hesitate to act. The kind of
9 doubt that would cause you to hesitate to act. And in order
10 for you to find a fact in this case, you must find that it
11 is proven beyond the point where you would hesitate to act
12 on it.

13 And unlike a civil case, where both sides bring
14 you evidence and you put it on that scale, we come to our
15 third rule, which who has the burden of proof. And that
16 burden is right here. It sits right at this table. Mr.
17 Springs waves his hand very casually about that.

18 MR. SPRINGS: Objection, Your Honor, that was not
19 a category --

20 MR. LEMEL: Yes, sir, it was.

21 THE COURT: Well, let's don't argue. This is
22 opening statement. Let's stick to opening statements and
23 let's don't get into argument.

24 MR. LEMEL: And you have to address how somebody
25 is approaching that. And that proof sits not just with Mr.

1 Springs, but it sits with all the law enforcement officers
2 who are in the courtroom. And you are going to judge how
3 casually they approach this in having proved that particular
4 burden, because the burden is entirely on them to take you
5 to the point beyond a reasonable doubt.

6 And there are certain things that aren't in those
7 standards that I just went over with you. We talked about
8 presumption of innocence and burden of proof and standard of
9 proof. One of those things is emotion. Mr. Springs stands
10 here shouts and gets all very sorry in his voice. That
11 doesn't have anything to do with whether it's a proven fact
12 or not. Emotion has nothing to do with whether somebody has
13 proven a fact.

14 Let me tell you what else it doesn't have anything
15 to do with the accuracy of a fact. What you are going to
16 hear in this case a lot is confidence. That's not one of
17 those rules that you were given. Confidence has nothing to
18 do with accuracy.

19 MR. SPRINGS: I'm going to object. This is all
20 argument. He's yet to say what they --

21 THE COURT: Let's just -- let's don't get into
22 argument at this time. This is opening statement.

23 MR. LEMEL: Because what you are going to hear, I
24 submit to you, is a number of people get on the stand and be
25 between 99 and 100 percent confident in what they are saying

1 when they make an identification. I submit to you that
2 right now. But what you are going to have to judge is what
3 is the basis for that, and you will have to pay attention to
4 what they did, or they may have -- or what they did that
5 night. And listen closely to what the law enforcement
6 officers support Mr. Springs shows doing that night. You
7 are going to hear about a window of opportunity they had to
8 get it right and you are going to hear what they did, given
9 that opportunity.

10 And I also notice that Mr. Springs talks a lot
11 about in his opening what you are going to hear from the
12 witnesses who were there that night, but you are also going
13 to hear a lot from other witnesses that he did not bring up:
14 Witnesses that collected bullet, or witnesses who processed
15 the bullet, or witnesses who performed tests on Mr. Tobbie
16 and on Travis, scientific tests, and you did not hear Mr.
17 Springs talk about that, but you will hear that through the
18 course of this case. You will hear other scientific
19 testimony and you will have to judge that scientific
20 testimony against the witnesses. You will have to make the
21 judgment.

22 I submit to you when you hear all the evidence,
23 not the emotional stuff, but all the evidence, the
24 scientific evidence, you will understand and, in fact, see
25 he's not guilty, that he was not the shooter that night.

1 And, in fact, he had nothing to do with this shooting
2 itself. He was there, we will give you that, in his
3 statement, but he didn't have anything to do with the
4 shooting. When you hear that, at that point in time you
5 will know that he is not guilty of what he's being charged
6 with, and that is the verdict that you will return with.

7 THE COURT: Mr. Dunn.

8 MR. DUNN: Thank you, Your Honor.

9 May it please the court.

10 Good morning. My name is Geoff Dunn. I work over
11 in Rock Hill. I represent Mr. Quinton Tobbie and I'm not
12 going to rehash everything Mr. Lemel has just said. It's
13 all true and accurate. The burden of proof in this case
14 rests upon the State to prove that Mr. Quinton did -- Mr.
15 Quinton is accused of two crimes, and the burden of proof is
16 on the State, that is for you guys to freely decide beyond a
17 reasonable doubt if he is still guilty of the crime.

18 What I'm going to ask of y'all during today and
19 going into tomorrow is that as you are watching videos and
20 looking at pictures and listening to the witnesses who take
21 the stand, ask yourselves a couple of questions when you go
22 back to your table: How is Mr. Tobbie involved in this? Is
23 he the shooter? Was he the driver of the getaway car? Did
24 somehow he talk with or conspire with the shooter to shoot
25 Mr. Dodd? There is no question Mr. Dodd had been shot and

1 there is no question Mr. Tobbie was there that night. You
2 will see pictures of him there. The question is did he know
3 that Mr. Dodd was fixing to get shot? Did he somehow help
4 in that, help shooter in coming up with a plan to attempt to
5 rob Mr. Dodd? And I submit to you that once you looked at
6 that evidence and watch the videos, you hear the testimony
7 and you see the pictures, that the answer to that is going
8 to be really simple, that he didn't have anything to do with
9 the shooting.

10 The second question that you have got to ask
11 yourself in this is he's also charged with accessory after
12 the fact, which basically means that somehow he helped the
13 shooter get away. You got to ask yourself the same
14 question. From watching the video and looking at the
15 pictures and listening to the testimony, how does he help
16 with the shooter in any way? What evidence has been
17 presented to you by the State to show that Mr. Tobbie helped
18 the shooter get away?

19 It's going to be a long trial. You are going to
20 have to listen, you are going to hear questions from Mr.
21 Springs and all the witnesses who are testifying, and you
22 are going to have to listen to Mr. Lemel with all the
23 witnesses who are testifying, and then you are going to have
24 listen to me. And I know that sometimes you get caught up
25 as having to listen to two lawyers go through all this, but

1 I ask that you be patient and now you have got to listen to
2 three lawyers, but it's very important to Mr. Tobbie that
3 you give him the same amount of time that you give to Mr.
4 Robinson. Thank you.

5 THE COURT: Call your first witness.

6 MR. SPRINGS: Mr. Springs would you ask deputy
7 Wayne Smith to come in, please.

8 SERGEANT DOUGLAS WAYNE SMITH, having been first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. EPTING:

11 Q. Deputy Smith, would you please state your name for the
12 record?

13 A. My name is Douglas Wayne Smith.

14 Q. What do you do for a living?

15 A. I'm a patrol sergeant in the Fort Mill district for the
16 York County Sheriff's Department.

17 Q. How long have you been a deputy?

18 A. I have been with the sheriff's department for 16 years.

19 Q. In what position?

20 A. Various positions over the years from deputy up to
21 sergeant.

22 Q. I want to ask you some questions about some events that
23 happened on the night of September 7th, 2007.

24 First of all, do you remember that night?

25 A. Yes, I do.

1 Q. Were you on duty about 10:45 that night?

2 A. Yes, I was.

3 Q. Did you receive an emergency call, an emergency call on
4 your radio about that time?

5 A. Yes, I did.

6 Q. What nature of call was that? What incident was
7 involved?

8 A. The communication received from our dispatch center was
9 that there had been an armed robbery and a shooting at the
10 Shell station on Gold Hill Road.

11 Q. When you first received that call, how far away were
12 you?

13 A. I was less than two miles away.

14 Q. How long did it take you to get there?

15 A. It took me less -- probably a minute, minute and a half
16 to get there.

17 Q. Before we go any further I want to show you some
18 pictures.

19 (Photograph marked as State's Exhibit No. 9 for
20 identification)

21 (Photograph marked as State's Exhibit No. 10 for
22 identification)

23 (Photograph marked as State's Exhibit No. 11 for
24 identification)

25 (Photograph marked as State's Exhibit No. 12 for

1 identification)

2 (Photograph marked as State's Exhibit No. 13 for
3 identification)

4 (Photograph marked as State's Exhibit No. 14 for
5 identification)

6 (Photograph marked as State's Exhibit No. 15 for
7 identification)

8 (Photograph marked as State's Exhibit No. 16 for
9 identification)

10 (Photograph marked as State's Exhibit No. 17 for
11 identification)

12 (Photograph marked as State's Exhibit No. 18 for
13 identification)

14 (Photograph marked as State's Exhibit No. 19 for
15 identification)

16 MR. EPTING: Let the record reflect that I'm
17 handing Deputy Smith State's Exhibits 9 through 19.

18 BY MR. EPTING:

19 Q. Deputy, would you take a look at those and look up when
20 you are done?

21 A. (Witness examining photographs)

22 Q. Let's start with the first exhibit.

23 Deputy, do you recognize State's Exhibit 9?

24 A. That is the gas pump in question where the actual
25 shooting was supposed to have taken place in the parking lot

1 of the Shell station.

2 Q. Is that gas pump in the same or substantially the same
3 condition as it was on the night of September 7th, 2007?

4 A. Yes, Your Honor.

5 MR. EPTING: Your Honor, we seek to enter State's
6 Exhibit 9 into evidence.

7 MR. LEMEL: Without objection, Your Honor.

8 MR. DUNN: No objection.

9 THE COURT: It would be received.

10 BY MR. EPTING:

11 Q. Deputy, do you recognize State's Exhibit 10?

12 A. Yes.

13 Q. What is it?

14 A. It's a photograph of the same gas pump from the
15 opposite side.

16 Q. Is that gas pump in the same or substantially the same
17 condition as it was the night of September 7th, 2007?

18 A. Yes, it is.

19 MR. EPTING: Your Honor, the State would seek to
20 enter State's Exhibit No. 10.

21 MR. LEMEL: Without objection, Your Honor.

22 MR. DUNN: No objection.

23 THE COURT: It will be received.

24 BY MR. EPTING:

25 Q. Next exhibit. What is State's Exhibit 11?

1 A. That's an overall view of the parking lot of the
2 previous two gas pumps -- of the previous gas pump, excuse
3 me, at a greater distance.

4 Q. Is the picture of State's Exhibit 11 in the same or
5 substantially the same condition as it was on September 7th,
6 2007, that night?

7 A. Yes, it is.

8 MR. EPTING: Your Honor, the State would seek to
9 move State's Exhibit 11 into evidence.

10 MR. LEMEL: Without objection, Your Honor.

11 MR. DUNN: No objection.

12 THE COURT: It's admitted.

13 BY MR. EPTING:

14 Q. State's Exhibit 12, do you recognize it?

15 A. Yes.

16 Q. What is it?

17 A. It is a view of the front door of the Shell station
18 from the left-hand side.

19 Q. Is it in the same or substantially the same condition
20 as it was that night?

21 A. Yes, it is.

22 MR. EPTING: Your Honor, the State seeks to enter
23 that into evidence.

24 MR. LEMEL: Without objection, Your Honor.

25 MR. DUNN: No objection.

1 THE COURT: It would be received.

2 BY MR. EPTING:

3 Q. State's Exhibit 13, do you recognize it?

4 A. 13?

5 Q. Are we on 12?

6 A. 12.

7 Q. 12. Do you recognize it?

8 A. 12, yes, sir, it's the photograph of the interior of
9 the store at the counter, the cashier.

10 Q. Is that the same or substantially the same condition as
11 it was the night of September 7th, 2007?

12 A. Yes, it is.

13 MR. EPTING: Your Honor, the State seeks to enter
14 State's Exhibit 13 into evidence.

15 MR. LEMEL: Without objection, Your Honor.

16 MR. DUNN: No objection.

17 THE COURT: It would be received.

18 BY MR. EPTING:

19 Q. I would ask you to take a look at State's Exhibit 14.
20 Do you recognize it?

21 A. Yes.

22 Q. What is it?

23 A. It's a view from inside the store in front of -- where
24 the cashier would be looking out into the parking lot.

25 Q. Is it in the same or substantially the same condition

1 as it was the night of September 7th, 2007?

2 A. Yes, it is.

3 MR. EPTING: Your Honor, the State seeks to enter
4 Exhibit 14 into evidence.

5 MR. LEMEL: Without objection, Your Honor.

6 MR. DUNN: No objection.

7 THE COURT: It will be received.

8 BY MR. EPTING:

9 Q. Exhibit 15, do you recognize it?

10 A: It's the same view as the previous photograph taken for
11 the back walls of the store looking out into the parking
12 lot.

13 Q. Is that in the same or substantially the same condition
14 as it was the night of September 7th, 2007?

15 A. Yes, it is.

16 MR. EPTING: Your Honor, the State seeks to admit
17 that exhibit into evidence.

18 MR. LEMEL: Without objection.

19 MR. DUNN: No objection.

20 THE COURT: Admitted.

21 BY MR. EPTING:

22 Q. I ask you to take a look at State's Exhibit 16. Do you
23 recognize it?

24 A. Yes, this is a view from the front door looking into
25 the store.

1 Q. Is that in the same or substantially the same condition
2 as it was the night of September 7th, 2007?

3 A. Yes, it is.

4 MR. EPTING: Your Honor, the State seeks to enter
5 that into evidence.

6 MR. LEMEL: Without objection.

7 MR. DUNN: No objection.

8 THE COURT: It would be received.

9 BY MR. EPTING:

10 Q. State's Exhibit -- what are we at, 17?

11 A. 16.

12 Q. 16. Take a look at it?

13 A. It's a view of the snack bar and the fountain drink
14 machines inside the Shell station.

15 Q. Is that in the same or substantially the same condition
16 as it was the night of September 7th, 2007?

17 A. Yes, it is.

18 MR. EPTING: Your Honor, the State seeks to enter
19 State's Exhibit 16 into evidence.

20 MR. LEMEL: Your Honor, I had number 16 as the
21 front door looking into the parking lot, so by that count it
22 would be number 17. I just want don't want to get --

23 THE COURT: All right. Let's clarify that.

24 A. 16.

25 MR. EPTING: It is labeled 16, Your Honor.

1 THE COURT: Show to it him. Show it to him.

2 MR. EPTING: Your Honor, I believe in going
3 through these we mixed up State's 16 and 15. I believe
4 that's the problem that Mr. Lemel is having.

5 THE COURT: What?

6 MR. EPTING: I believe that we stated that Exhibit
7 15 was actually 16.

8 THE COURT: Are we on the right page now?

9 MR. EPTING: Correct.

10 THE COURT: Okay. Go ahead.

11 MR. LEMEL: We have no objection to No. 16, Your
12 Honor.

13 THE COURT: All right.

14 MR. DUNN: No objection.

15 THE COURT: Without objection.

16 BY MR. EPTING:

17 Q. Please look at State's Exhibit 17.

18 A. Yes, sir. It's a view of the snack aisle and a soft
19 drink cooler in the Shell station.

20 Q. Are those in the same or substantially the same
21 condition as they were on the night of September 7th, 2007?

22 A. Yes, they are.

23 MR. EPTING: Your Honor, the State seeks to enter
24 State's Exhibit 17 into evidence.

25 MR. LEMEL: No objection, Your Honor.

1 MR. DUNN: No objection.

2 THE COURT: Admitted.

3 BY MR. EPTING:

4 Q. Take a look at State's 18. Do you recognize that?

5 A. It's a photograph depicting the view from behind the
6 counter of the cash register out into the store itself.

7 Q. Are the things in that picture the same or
8 substantially the same condition as they were on September
9 7th, 2007?

10 A. Yes, they are.

11 MR. EPTING: Your Honor, the State seeks to enter
12 State's Exhibit 18 into evidence.

13 MR. LEMEL: No objection, Your Honor.

14 MR. DUNN: No objection.

15 THE COURT: It will be received.

16 BY MR. EPTING:

17 Q. Let's take a look at State's Exhibit 19.

18 A. It's a view of a photograph taken from the front door
19 looking to the left side of the clerk station inside the
20 store.

21 Q. Are the things in that picture in the same or
22 substantially the same condition as they were the night of
23 September 7th, 2007?

24 A. Yes, they are.

25 MR. EPTING: Your Honor, the State seeks to enter

1 that exhibit into evidence.

2 MR. LEMEL: No objection, Your Honor.

3 MR. DUNN: No objection.

4 THE COURT: Okay.

5 MR. EPTING: Permission to publish those?

6 THE COURT: Yeah.

7 MR. EPTING: Would you mind passing these to the
8 jurors, making sure that each and every juror gets to see
9 the pictures?

10 BY MR. EPTING:

11 Q. When we left off, you had just arrived the scene?

12 A. Yes, sir.

13 Q. When you arrived, did you find anyone that was injured,
14 shot, hurt in any way?

15 A. When I first arrived on the scene, went in the front
16 door of the store and there was a gentleman laying in the
17 floor area in front of the cashier's station with a rag to
18 his abdomen. It had some blood on it.

19 Q. Was an ambulance there at that time?

20 A. Not yet.

21 Q. You beat an ambulance?

22 A. Yes, sir.

23 Q. Did you talk with the witnesses there to find out what
24 was going on?

25 A. I got a brief summation of the group of witnesses that

1 was there as to what had happened.

2 Q. If the course of your investigation, did you get a
3 description of the getaway vehicle?

4 A. They described a small red car.

5 Q. A small red car.

6 Do you know much about guns, deputy?

7 A. Yes, sir.

8 Q. Are there basically two types of pistols, handguns?

9 A. They fall in two substantially categories. It would be
10 either semiautomatic or your revolver-type mechanism.

11 Q. When a semiautomatic or an automatic pistol is fired,
12 what happens to the shell in pistol?

13 A. The shell is ejected upward and outward from the
14 firearm.

15 Q. Upward and outward?

16 A. Yes.

17 Q. And when a revolver is fired, what happens to the
18 shell?

19 A. It's retained inside of the rotating cylinder, the gun
20 itself.

21 Q. Did you check the scene for shells?

22 A. Yes, I did.

23 Q. Were you able to locate any?

24 A. I don't believe I ever located any.

25 Q. Just a cleanup question. You said earlier that you

1 responded to a Shell station. Did you know where you were?

2 A. Yes, sir.

3 Q. Do you know, is that in York County?

4 A. Yes, sir, it is.

5 Q. No further questions at this time. Please answer any
6 questions that the defense counsel may have.

7 CROSS EXAMINATION BY MR. LEMEL:

8 Q. Deputy Smith, you said that you are a member of the
9 patrol division --

10 A. Yes, sir.

11 Q. -- correct?

12 Now, the patrol division is the guy that you see out
13 there in the cars on a daily basis, right?

14 A. Yes, sir.

15 Q. Marked cars?

16 A. Yes, sir.

17 Q. Big Crown Vics?

18 A. Yes, sir.

19 Q. Just got through with a new decal system for them,
20 correct?

21 A. Yes, sir.

22 Q. Big light bar on the top?

23 A. Yes, sir.

24 Q. And these are the guys that sort of are out there
25 showing the flag, for lack of a better word, for the

1 sheriff's department?

2 A. Yes, sir.

3 Q. When most people think about the police officers coming
4 around, they are really thinking about patrol officers,
5 right?

6 A. Yes, sir.

7 Q. And as a patrol officer, you dress similar in the
8 manner in which you do today?

9 A. Identical, yes, sir.

10 Q. Identical.

11 Uniform, gun, badge, and all that stuff?

12 A. Yes, sir.

13 Q. And you went to the scene, you said, within a minute or
14 two of the actual call coming in?

15 A. Yes, sir.

16 Q. Because you were not very far away?

17 A. Yes, sir.

18 Q. And you actually were the first officers to arrive on
19 the scene at that point?

20 A. Yes, sir.

21 Q. And then shortly after you got there, Lieutenant Frye
22 got there, correct?

23 A. I believe so yes.

24 Q. And he is your supervisor on the patrol shift?

25 A. He was at that time, yes, sir.

1 Q. Okay. And as the first arriving officer, you have
2 certain responsibilities, correct?

3 A. Yes, sir.

4 Q. You are, in fact, what was referred to as a first
5 responder?

6 A. Yes, sir.

7 Q. All right. And as a first responder, you have some
8 immediate responsibilities?

9 A. Yes, sir.

10 Q. Like securing the scene?

11 A. Yes, sir.

12 Q. And you also have some responsibilities that are
13 triggered later on, like paperwork, for example?

14 A. Oh, yes, sir.

15 Q. So you got immediate stuff to do at that time and then
16 stuff that you do as a followup to what you did immediately?

17 A. Yes, sir.

18 Q. Okay. And we talk about that being paperwork, right?

19 A. Yes, sir.

20 Q. And a big part of being a police officer nowadays is
21 paperwork, right?

22 A. Always has been, yes, sir.

23 Q. You are given certain forms to use by the sheriff's
24 department, correct?

25 A. Yes, sir.

1 Q. And there are forms that you got for almost everything?

2 A. Yes, sir.

3 Q. Some forms could be used for evidence preservation?

4 A. Yes, sir.

5 Q. Some forms could be used for taking and testing of
6 samples, for example?

7 A. Yes, sir.

8 Q. Some forms could be more basic than that, towing slips,
9 tickets, things of that nature?

10 A. Yes, sir.

11 Q. And one of the forms that you are given by the
12 sheriff's department to use is something called an incident
13 report form, correct?

14 A. Yes.

15 Q. And you are familiar with that form over 16 years?

16 A. Yes, sir.

17 Q. You were trained in how to use it when you were just
18 starting off being a police officer?

19 A. Yes, sir.

20 Q. And as a supervisor, you, in fact, help other officers
21 learned how to fill those out properly?

22 A. Yes, sir.

23 Q. And there is all sorts of information that you can put
24 down in an incident report, right?

25 A. Yes, sir.

1 Q. There is location information?

2 A. Yes, sir.

3 Q. There is witness information?

4 A. Yes, sir.

5 Q. There is what we call a narrative, which is basically
6 just a description of what you did or what you were told
7 happened, things like that?

8 A. Yes.

9 Q. Basically the what happened?

10 A. Yes, sir.

11 Q. And there is also a spot in that for a description of a
12 suspect?

13 A. Yes, sir.

14 Q. And as you said, you are taught how to fill these forms
15 out, right?

16 A. Yes, sir.

17 Q. You are taught to fill them out completely?

18 A. With the most information that's available.

19 Q. Right.

20 And to be accurate in that information?

21 A. Yes, sir.

22 Q. And I'm not talking about every little tiny detail, but
23 important stuff you put in that report?

24 A. Yes.

25 Q. Because that report may be reviewed by your supervisor

1 and your superiors to see if you are doing your job right?

2 A. Yes, sir.

3 Q. And it's going to be used by the prosecutor here in
4 deciding whether to pursue a case?

5 A. Yes, sir.

6 Q. And then it's used by other officers as they follow up
7 your investigation at all?

8 A. Yes, sir.

9 Q. And, in fact, in a case like this where it's almost a
10 year that passes between the time that the incident happens
11 and you come to court, you have to use those reports to
12 refresh your recollection?

13 A. Yes, sir.

14 Q. Did you, in fact, look at your report --

15 A. Yes.

16 Q. -- this time before you came to court?

17 A. Yes, sir.

18 Q. So you actually used your report before you came here
19 to testify to help refresh what you --

20 A. Yes, sir.

21 Q. -- remembered. Okay. All right.

22 And I'm going to show you something and ask you, is
23 that, in fact, the incident report that you filled out in
24 this particular case?

25 A. Yes, it is.

1 Q. Okay. At some point after you actually responded, you
2 went back to the sheriff's department and typed this up?

3 A. It was done at the district office in Fort Mill.

4 Q. Shortly after the incident took place?

5 A. Yes.

6 Q. Okay. Did you take notes at the time, some sort of
7 field notes that you maybe transcribed into this report?

8 A. Yes, sir.

9 Q. Is that how you do it?

10 And you make sure that everything that's in your field
11 report that's important gets in here?

12 A. Yes, sir.

13 Q. Okay. Just hang onto for that for a second. I want to
14 come back to that in a second.

15 A. Okay.

16 Q. Now, we talked about being a first responder and some
17 of the duties that you have when you immediately arrive on
18 the scene as a first responder, right?

19 A. Yes.

20 Q. You come out in response to a call for service?

21 A. Yes, sir.

22 Q. That's the police lingo for a call that comes into
23 dispatch or 911 call?

24 A. Correct.

25 Q. And those things could cover a whole range of possible

1 things that could happen?

2 A. It could be anything.

3 Q. Anything.

4 A lost child to a shooting, basically?

5 A. Yes.

6 Q. And as a first responder, when you come into these
7 situations, you receive training?

8 A. Yes.

9 Q. And what to do?

10 A. Yes, sir.

11 Q. And how to talk to people?

12 A. Yes.

13 Q. And what things you are looking for as a first
14 responder?

15 A. Yes, sir.

16 Q. And that's a crucial stage when you are starting an
17 investigation, is that first response, right?

18 A. Yes, sir.

19 Q. Okay. One of those duties is to help identify
20 witnesses?

21 A. Yes, sir.

22 Q. And to try to get information from them?

23 A. Yes, sir.

24 Q. And to preserve that information?

25 A. Yes, sir.

1 Q. First, by taking down the field notes?

2 A. Yes, sir. Sometimes, yes, sir.

3 Q. Sometimes?

4 A. Uh-huh.

5 Q. And then transferring it over to the report that you
6 generate up formal?

7 A. Yes, sir.

8 Q. And it's important to talk to the witnesses at this
9 stage, because this is what their memory is the most fresh
10 immediately afterwards?

11 A. Yes.

12 Q. In this case, just a few minutes afterwards?

13 A. Yes.

14 Q. Before that memory has had a chance to be influenced or
15 contaminated by anything else?

16 A. Yes, sir.

17 Q. Right there on the scene?

18 A. Yes, sir.

19 Q. And in those situations where identification is being
20 made, that's particularly important where the witness is
21 identifying somebody that's a stranger to them, right?

22 A. Yes.

23 Q. That they wouldn't otherwise have been in contact with?

24 A. Exactly.

25 Q. You have very first description with as much

1 information as the witnesses can give you?

2 A. As much as they can remember, yes.

3 Q. As much as they can give you, okay.

4 And the idea of that is so that you can then go and
5 identify who it was, who the stranger was?

6 A. At some point, yes, sir.

7 Q. At some point in time.

8 So in this particular case you did that?

9 A. Yes, sir.

10 Q. You spoke with the witnesses who were there at the
11 scene?

12 A. I spoke with them briefly. I didn't do an in-depth
13 interview with them.

14 Q. Right, but you spoke with them to get that first
15 crucial --

16 A. Yes.

17 Q. -- statement of information, right?

18 A. Yes.

19 Q. And, again, focused on the fact that they said it was a
20 stranger, you try to get as much identifying information
21 from them as you can?

22 A. Yes, sir.

23 Q. Because that, again, as we talked about, is a critical
24 statement?

25 A. Yes, sir.

1 Q. And you wanted to get not just who that he saw, but
2 what happened?

3 A. Yes, sir.

4 Q. What they did?

5 A. Yes, sir.

6 Q. And who all was involved?

7 A. Pretty much, yes, sir.

8 Q. Okay. And they gave you information about all that
9 stuff?

10 A. Yes, sir.

11 Q. Which you wrote down?

12 A. Yes, sir.

13 Q. And later transferred over to your incident report?

14 A. Yes.

15 Q. And on that incident report you talk about information
16 with -- there is a whole section there for suspect
17 information, right?

18 A. Yes, there is.

19 Q. And at that point in time you did not have a name?

20 A. No.

21 Q. So that's blank.

22 But they told you that it was a black male?

23 A. Yes, sir.

24 Q. 17 to 21?

25 A. Yes, sir.

1 Q. 5'5"?

2 A. Yes, sir.

3 Q. With black hair?

4 A. Black hair with dreadlocks.

5 Q. Okay. I hadn't gotten there yet. We will get there.

6 A. Okay.

7 Q. It's a fairly generic description at that point in
8 time, matches literally millions of young black males in
9 this country, right?

10 A. Easily.

11 Q. Most black males have black hair, right?

12 A. Yes.

13 Q. Okay. So then you go for the specifics.

14 And there is even some things on there that sort of
15 give you hints, as far as on the paperwork. It asks was
16 there facial hair, right?

17 A. Correct.

18 Q. Scars?

19 A. Yes.

20 Q. Tattoos?

21 A. Yes, sir.

22 Q. Glasses?

23 A. Yes, sir.

24 Q. Physical peculiarities?

25 A. Yes, sir.

1 Q. Now, physical peculiarities, that could either be
2 scarring?

3 A. A limp, anything of that nature.

4 Q. A limb missing?

5 A. Yes, anything that would distinguish you from someone
6 else.

7 Q. Particular birthmark, for example?

8 A. Anything physical.

9 Q. A physical.

10 And in that particular section they told you two
11 things, right?

12 A. Correct.

13 Q. Dreadlocks?

14 A. Dreadlocks, yes.

15 Q. And a white shirt?

16 A. Yes, sir.

17 Q. Did it describe his pants?

18 A. No.

19 Q. Did it describe his shoes?

20 A. No, sir.

21 Q. Did it describe anything in terms of particularly what
22 sort of his dreadlocks looked like?

23 A. No, sir.

24 Q. Were they ragged?

25 A. No, sir.

1 Q. Were they ragged, full, filled out, anything?

2 A. No, sir.

3 Q. Ever mention any birthmark?

4 A. No.

5 Q. Can you see Travis sitting there?

6 A. Yes, I can.

7 Q. Okay. Can you step down for me real quick?

8 (Witness off the witness stand)

9 BY MR. LEMEL:

10 Q. I'm going to have you to come a distance of roughly a
11 yard and a half from him.

12 As you look at Travis as he's sitting there, do you
13 notice anything underneath what would be his right eye?

14 A. Yeah, he has a birthmark.

15 Q. That's a fairly sizeable birthmark, is it not?

16 A. Yes.

17 Q. About the size of somewhere between a quarter and half
18 dollar?

19 A. Yes.

20 Q. If you will.

21 (Witness back on the witness stand)

22 BY MR. LEMEL:

23 Q. And that birthmark is located less than an inch below
24 his right eye?

25 A. Yes, sir.

1 Q. And extends almost all the way down past his nose, and
2 they never told you anything about that?

3 A. Never mentioned it.

4 MR. LEMEL: Beg the court's indulgence.

5 (Off the record)

6 (Back on the record)

7 MR. LEMEL: Thank you.

8 MR. DUNN: Judge, if it please the court.

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION BY MR. DUNN:

11 Q. Officer Smith, on your incident report, you have a
12 place for a second victim -- or excuse me, me second suspect
13 as well, correct?

14 A. Yes, sir.

15 Q. And the only thing that you put on there on is a black
16 male?

17 A. Yes, sir, that's all the information that I could get
18 at the time, there was a second black male.

19 Q. No clothing?

20 A. No, sir.

21 Q. Hair color, no nothing, right?

22 A. No.

23 Q. Just a black guy?

24 A. Just another black male.

25 Q. Okay. When you walked into -- did you ever go inside

1 the convenience store?

2 A. Briefly.

3 Q. Okay. When you got there, how many people were inside?

4 A. I don't remember exactly. Three to five, maybe.

5 Q. Would you know if there was another officer in there
6 already?

7 A. Not when I got there, no.

8 Q. Not when you got there. All right.

9 Would it be fair to say that the demeanor of the
10 witnesses were that they were upset?

11 A. Excitable. Upset, scared.

12 Q. Excitable.

13 And even crying?

14 A. Yes, sir.

15 Q. How many were crying, do you remember?

16 A. Not right offhand, but I know there were.

17 Q. Were they talking in an excited sort of manner?

18 A. Yes.

19 Q. And you never went Charlotte, correct?

20 A. No, sir.

21 MR. DUNN: I don't have any further questions,
22 Your Honor.

23 MR. EPTING: No redirect, Your Honor.

24 THE COURT: You can step down and be excused. We
25 appreciate your time. Thanks.

1 MR. SPRINGS: Will you ask a blond haired lady
2 named Pamela Macomson to come in. She's in the waiting
3 room.

4 (Whereupon tape was turned off and not turned back
5 on during beginning of direct examination of Pamela
6 Macomson)

7 DIRECT EXAMINATION BY MR. EPTING:

8 Q. How many times did he come in the store?

9 A. He come in the store twice.

10 Q. Do you remember what he bought, if anything, when he
11 came in the store?

12 A. He bought some peanuts and a drink the first time he
13 come in. And when he come back in, he asked me about
14 something and I showed him where it was.

15 Q. Do you remember if he paid with cash or credit card?

16 A. Cash.

17 Q. Do you remember how he kept his cash?

18 A. Yeah, he had it in his pocket and he pulled it out and
19 it was money folded over.

20 Q. Money folded over?

21 A. Yeah.

22 Q. Was this a lot of money or a little bit?

23 A. Yeah, it was a good bit of money.

24 Q. Could you hold your hand up for the jury and show them
25 about how much it was?

1 A. It was about like that.

2 Q. Was anyone with him when he came in the store?

3 A. No, sir.

4 Q. Did anyone come in behind him?

5 A. Yes, sir.

6 Q. Could you describe the people or persons who were
7 behind him when he came into the store?

8 A. There was two males that come in. One of them had --
9 was black. He had short hair. The other one was black and
10 he had dreads. One of them went over towards the chip aisle
11 and the other one went around towards the restrooms.

12 Q. Toward the restrooms?

13 A. Yes.

14 Q. And where was this located relative to where you were
15 standing?

16 A. When you come in the door, I'm facing out towards the
17 drinks and all. And then the restroom goes and the other
18 registers, and there is a door that also leads to the back
19 that you can come into the back.

20 Q. Can you describe the person who went towards the
21 restroom?

22 A. He had the dreads.

23 Q. He had dreads?

24 A. Yeah.

25 Q. Did he use the restroom?

1 A. No. I heard him rattling the back door trying to get
2 in.

3 Q. You said rattling the back door?

4 A. Yeah, trying to -- the back door is right there at the
5 man's restroom and we always keep the door locked.

6 Q. What's behind that door?

7 A. The manager's desk is there. Our deli is back there,
8 which we store cartons of cigarettes in a cabinet back
9 there, and we have an entrance where you can come up into
10 where the registers are.

11 Q. So using that back door, they could come up behind you?

12 A. Yes, sir.

13 Q. Is that what you are saying?

14 A. Yes.

15 Q. Did the man in the dreads buy anything?

16 A. No.

17 Q. Did the other man come and buy some things?

18 A. Yeah, he purchased some chips and I think he paid for
19 about four or six dollars worth of gas.

20 Q. Four or six dollars worth of gas?

21 A. Yeah, it wasn't very much gas.

22 Q. So just a little bit of gas.

23 When the man that was later shot went out, left the
24 store, did the other two follow him?

25 A. Do what?

1 Q. When the man who was later shot, when he left the
2 store, did the other two people in the store follow him out?

3 A. They -- they went out right behind him, but he -- when
4 he come back in the second time, he was by himself and he
5 went back out the door and then I heard this pop a little
6 bit later.

7 Q. A pop?

8 A. Yeah.

9 Q. What did you think when you heard the pop?

10 THE COURT: You said he came in the second time.
11 Who?

12 A. Mr. Dobbs (sic) come in and --

13 BY MR. EPTING:

14 Q. And you say he went out and you heard the pop?

15 A. Yeah, a little bit later I heard this pop. I thought
16 it was like a firecracker or something, and so I come around
17 the register and I was going towards the front door and he's
18 coming in and he's hollering "I have been shot, I have been
19 shot," and he's holding his side.

20 Q. What did you do when he came in?

21 A. I went got -- he come in, he fell in front of my
22 register. I went and got Ms. Parker, the other cashier, and
23 got her to come inside. We locked the door. I went around
24 and dialed 911 and was telling them what happened and told
25 them that he had been shot and --

1 Q. Before you go into that, I want to show you something.

2 A. Uh-huh.

3 MR. EPTING: May I approach?

4 THE COURT: Yes.

5 MR. EPTING: Approach the witness?

6 (Photograph marked as State's Exhibit No. 20 for
7 identification)

8 (Photograph marked as State's Exhibit No. 20-A for
9 identification)

10 (Photograph marked as State's Exhibit No. 21 for
11 identification)

12 (Photograph marked as State's Exhibit No. 22 for
13 identification)

14 (Photograph marked as State's Exhibit No. 23 for
15 identification)

16 (Photograph marked as State's Exhibit No. 24 for
17 identification)

18 (Photograph marked as State's Exhibit No. 25 for
19 identification)

20 (Photograph marked as State's Exhibit No. 26 for
21 identification)

22 (Photograph marked as State's Exhibit No. 27 for
23 identification)

24 MR. EPTING: Let the record reflect that I'm
25 handing Ms. Macomson State's Exhibits 20 through 27.

1 BY MR. EPTING:

2 Q. Ms. Macomson, I would like for you to take a look at
3 those and look up at me when you are done reviewing them.

4 A. (Witnesses reviewing photographs)

5 Q. We will start with State's 20.

6 MR. EPTING: May I approach?

7 THE COURT: Yes, sir.

8 BY MR. EPTING:

9 Q. Ms. Macomson, do you recognize State's 20?

10 A. Yes, that's me standing at the door, and that's Mr.
11 Dobbs (sic) after he had come in holding his stomach.

12 Q. Is what you see in that picture a fair and accurate
13 depiction?

14 A. Yes, sir.

15 Q. Let's move on to State's 21.

16 Do you recognize that?

17 THE COURT: Are those in evidence?

18 MR. EPTING: To save some time, we are going to
19 enter them all when --

20 THE COURT: Well, I know, but she can't be telling
21 the jury what the picture is of until it's in evidence. You
22 can identify it and say I identify that and then it has to
23 be put into evidence before she can tell you what it is.

24 MR. EPTING: State's 20, the State seeks to move
25 to enter that into evidence.

1 MR. LEMEL: Without objection.

2 MR. DUNN: No objection.

3 THE COURT: No objection.

4 How about this? How many do you have?

5 MR. EPTING: Seven.

6 THE COURT: 21 through?

7 MR. EPTING: 20 through 27, sir.

8 THE COURT: Mr. Lemel, have you seen these?

9 MR. LEMEL: Yes, sir, Your Honor.

10 THE COURT: Do you object to any of them?

11 MR. LEMEL: No, sir.

12 MR. DUNN: No, sir.

13 THE COURT: They are all in without objection.

14 MR. EPTING: Thank you.

15 BY MR. EPTING:

16 Q. 21, do you recognize it?

17 A. Yes, sir, that's me standing there at the door and Mr.
18 Dobbs (sic), when he's coming in, he's holding his stomach.

19 Q. 22?

20 A. That's me standing in the doorway as Mr. Dobbs (sic) is
21 headed towards the door.

22 Q. And 23?

23 A. That's Mr. Dobbs (sic) coming in the entrance there
24 between my van and Ms. Parker's car.

25 Q. 24?

1 A. That's Mr. Dobbs (sic) after he had purchased his first
2 purchase.

3 Q. 25?

4 A. That is me ringing up one of the other two males that
5 had come in behind him.

6 Q. Okay. 26?

7 A. That is me getting a bag, opening the bag.

8 Q. And 27?

9 A. That is Mr. Robinson.

10 Q. And we will get back to those?

11 THE COURT: Just for clarification, she's been
12 saying Mr. Dobbs, D-O-B-B-S.

13 THE WITNESS: That's Mr. Dodd.

14 MR. EPTING: That's Mr. Dodd.

15 THE COURT: IS Mr. Dobbs or Dodds?

16 MR. SPRINGS: It's Dodd, D-O-D-D.

17 THE COURT: That's what I thought. She dad said
18 Dobbs. I just want to make sure for the record that we are
19 talking about the right person.

20 THE WITNESS: Okay. I'm sorry.

21 MR. EPTING: That's correct.

22 BY MR. EPTING:

23 Q. Ms. Macomson, we are going to get back to that 911
24 tape, that 911 call that you said you made.

25 Are you aware if they made a recording of your call?

1 A. Yes, sir.

2 Q. Have you heard a copy of it?

3 A. Yes, sir.

4 Q. Is it a true and accurate recording?

5 A. Yes, sir.

6 MR. EPTING: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 (911 Audio Tape marked as State's Exhibit No. 28
9 for identification)

10 MR. SPRINGS: May we all approach?

11 THE COURT: Yes.

12 (Whereupon, the lawyers approached the bench for
13 an off-the-record discussion)

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: The jury is dismissed.

17 The issue appears to me to be that Mr. Dunn was
18 not provided with a copy of this 911 CD until -- had not
19 seen it until this morning, is that correct?

20 MR. DUNN: That's correct, Your Honor. I am
21 checking my e-mails now just to see if I have overlooked it,
22 but I'm not seeing an E-mail.

23 THE COURT: Mr. Springs?

24 MR. SPRINGS: I have checked it. I believe I
25 e-mailed Mr. Dunn and told him we had a copy of the 911 tape

1 that I was leaving out front with my receptionist sometime
2 ago for him to pick up. I'm checking that myself.

3 MR. DUNN: Your Honor, just for the record, on
4 July the 22nd -- or excuse me, it said that the police
5 in-car video; and I got an e-mail on August the 1st that
6 said there was more pictures, as well as a security video.

7 I don't see anywhere in my e-mails I received a
8 copy of this 911 tape. Essentially I'm not even showing an
9 e-mail that shows that it --

10 THE COURT: Well --

11 MR. DUNN: If we need to rectify it, if I could
12 just look at it.

13 THE COURT: Well, if you could -- we will let you
14 listen to it, but just -- I have said this before. You
15 don't have to listen to me, but e-mails are wonderful
16 things, but my suggestion has always been to those -- the
17 person giving discovery list it and have the person
18 receiving it sign for it and we don't get into these. I
19 don't see why that's that hard and it seems to be fairly
20 common sense to do it, but nobody seems to want to, which is
21 fine with me. It just means that if it becomes a dispute
22 and I have got to rule, sometimes some evidence might not
23 come in.

24 All right. We will take a short break.

25 Do you need to step out to go to the restroom or

1 anything?

2 THE WITNESS: I'm fine.

3 THE COURT: All right. Do you want to just sit
4 there? We are not going to be long. Do you want water or
5 anything?

6 THE WITNESS: No, sir.

7 THE COURT: All right. Just let me know when you
8 are ready.

9 MR. DUNN: Yes, sir.

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: Where are we now, Mr. Springs or Mr.
13 Epting, I'm sorry?

14 MR. EPTING: I understand Mr. Dunn has an
15 objection to the admissibility of the 911 tape.

16 THE COURT: Has an objection?

17 MR. DUNN: Yes, sir.

18 THE COURT: Okay. Well, be glad to -- I haven't
19 heard the type, but why don't you go ahead and tell me what
20 it is and then I'll see if I need the tape.

21 Let's get the defendants in first.

22 (Whereupon, defendants were brought into the
23 courtroom)

24 THE COURT: Yes, sir.

25 MR. DUNN: Yes, sir.

1 Your Honor, we object to the admittance of the 911
2 tape. I have not received a copy of that tape until moments
3 ago when I listened to it. I just feel that the content on
4 it is prejudicial to my client. And the information I
5 should have been able to go over with my client prior to the
6 start of trial. It may or may not have an impact on his
7 desire to go to trial, but it -- you know, there's certainly
8 information on it that is prejudicial against him, and I
9 wish -- I would have liked to have a better opportunity to
10 discuss that with him.

11 THE COURT: Mr. Epting?

12 MR. SPRINGS: May I speak to it, Your Honor?

13 THE COURT: Well, I thought he was Mr. Epting's
14 witness, but go ahead.

15 MR. SPRINGS: He is, but it was my neglect that
16 didn't make absolutely sure that Mr. Dunn did get a copy of
17 this. I thought -- I thought I notified him and if he says
18 he didn't get notification, of course, he didn't it. And,
19 of course, I think that is the case. So I take
20 responsibility for that discovery failure. I will leave it
21 with the court. I will be glad to play it. It's about a
22 minute and a half, if the court feels that --

23 THE COURT: Let me listen to it.

24 (Whereupon, the 911 tape was played to the court)

25 THE COURT: And what do you find on that to be

1 prejudicial?

2 MR. DUNN: It's the reference, Your Honor, to the
3 three black males. That's in direct contradiction to what
4 my client said that there was four individuals. I looked
5 over Mrs. Macomson's statement she had given to the police
6 and it never mentioned any individuals. I mean, it's a new
7 piece of information that I did not know for. I'm going to
8 leave it to the court's discretion. I think it's just
9 prejudicial to my client.

10 THE COURT: Well, of course, we haven't had
11 testimony of Mr. Dodd or Ms. Howie before the jury, but I
12 have heard it, so I believe, at least as far as the car and
13 color of the car, that would be cumulative. I don't recall
14 how many individuals they testified were in the car. I
15 thought the testimony was that it was by one of them that
16 they saw two in the front and two in the back. However,
17 I -- I can't say that with any great degree of certainty.

18 MR. DUNN: I just couldn't see him standing up.

19 THE COURT: Okay. I'm going to allow it.
20 Obviously, the main thing is prejudicial. That's the reason
21 they are presenting it, or it wouldn't be relevant.

22 I do find that -- anyway, the State needs to do a
23 better job in making sure that you don't get into these
24 situations, but I'll allow it in. You have heard it now and
25 I'm going to allow it.

1 MR. DUNN: Thank you, Your Honor.

2 THE COURT: Bring in the jury.

3 Obviously you will be able to cross-examine her
4 regarding her statement.

5 MR. DUNN: Yes, sir.

6 (The following takes place in the presence of the
7 jury panel)

8 THE COURT: You may continue.

9 MR. EPTING: Your Honor, the State offers State's
10 Exhibit 28 into evidence.

11 THE COURT: Over objection I'll allow it in.

12 MR. EPTING: Permission to publish?

13 THE COURT: You may.

14 (Whereupon, the 911 Tape was played to the jury
15 panel)

16 BY MR. EPTING:

17 Q. Ms. Macomson, is the Shell station equipped with video
18 surveillance?

19 A. Yes, sir.

20 Q. Was it working on September 7th, 2007?

21 A. Yes, sir.

22 Q. Did it operate properly that night?

23 A. Yes.

24 Q. Have you seen the pictures that that surveillance
25 camera made on that night?

1 A. Yes, sir.

2 Q. Are they true and accurate pictures of things that you
3 saw?

4 A. Yes, sir.

5 (Video Surveillance Tape marked as State's Exhibit
6 No. 29 for identification)

7 MR. EPTING: May I approach, Your Honor?

8 THE COURT: Yes.

9 MR. EPTING: Let the record reflect I'm handing
10 Ms. Macomson State's Exhibit 29.

11 BY MR. EPTING:

12 Q. Ms. Macomson, take a look at that. Do you recognize
13 it?

14 A. Yes, sir.

15 MR. EPTING: Your Honor, we seek to enter this
16 piece of evidence into evidence.

17 MR. LEMEL: Without objection, Your Honor.

18 MR. DUNN: No objection.

19 THE COURT: It would be received without
20 objection.

21 MR. EPTING: Permission to publish?

22 THE COURT: Yes.

23 MR. DUNN: Your Honor, I would ask that we be able
24 to move.

25 THE COURT: Okay. You can move so you all can

1 see.

2 MR. EPTING: Madam Clerk, could you dim the lights
3 somewhat?

4 (Whereupon, the video surveillance tape was played
5 to the jury panel)

6 BY MR. EPTING:

7 Q. Who is that in the upper right hand screen?

8 A. That is Ms. Parker cleaning the glass doors.

9 Q. And what are we looking at in the upper left hand
10 screen?

11 A. The registers.

12 THE COURT: You need to speak up.

13 MR. DUNN: I can't hear her.

14 A. The registers.

15 BY MR. EPTING:

16 Q. And in the middle between those two?

17 A. That is the register. That is the one facing the front
18 the store.

19 Q. And then the screen below the register, middle left
20 hand?

21 A. That is -- it shows the potato chip aisle and the candy
22 aisle on the inside there.

23 Q. Now, from the middle -- from the middle of where we see
24 those chips, if I'm going to walk to you and I want you to
25 tell me when to stop when I'm as far from the register as I

1 would be if I was standing in the middle of those chips.

2 A. Farther.

3 Q. Pardon?

4 A. A little bit farther.

5 Right there.

6 Q. Okay. Would you say that's about 12 feet?

7 A. Yeah.

8 Q. This hallway that we see right here, could you tell the
9 jury what's in that hallway?

10 A. That hallway comes the around to the back room, the ATM
11 and the bubble gum machine there. The women's bathroom is
12 right there beside the bubble gum machine. The men's
13 bathroom is right there on the other side of it. And then
14 right next to it is the door that leads into the back.

15 Q. Is that the door that you say that you heard the man in
16 dreads jiggling?

17 A. Yes, sir.

18 Q. While we are waiting, the screen in the dead center,
19 could you tell us what we are looking at there?

20 A. The one in the middle, that's the gas pumps.

21 Q. What pump is on the far left?

22 A. That is pump three and four.

23 Q. Is that the pump where the shooting occurred?

24 A. Yes, sir.

25 Q. Do you recognize the car that just pulled up?

1 A. That's Ms. Howie's car.

2 Q. Ms. Howie?

3 A. Yes.

4 Q. I direct your attention to the top right. Do you
5 recognize this individual?

6 A. Yes, sir, that's Mr. Dodd.

7 Q. Could you tell what he had in his hand at that point?

8 A. I seen him down -- he's down there at the cooler, and
9 we have nuts and all that in there too.

10 He's at the single beer cooler there.

11 Q. Who is this, just so we are clear?

12 A. Where? At the top? That's me.

13 Q. Now, you testified earlier when he purchased these
14 goods, that he had a wad of cash in his hand?

15 A. Yes.

16 Q. Will you let me know at what point you see a wad of
17 cash in his hand on this video? Just tell me to stop when
18 you do.

19 Do you see it now?

20 A. Yeah.

21 Q. Where is it?

22 A. It's in his hands over there. I can barely see it.

23 Q. Do you recognize this individual?

24 A. Yeah, that's Mr. Robinson.

25 Q. What's -- and, again, who is this?

1 A. That's Melinda Parker.

2 Q. What's she doing?

3 A. She's going to change the trash.

4 Q. Where -- Mr. Tobbie standing is right now. Is it your
5 testimony that that would be approximately 12 feet away from
6 the counter where you have been?

7 A. That's not quite the middle of it, so it's probably a
8 little bit closer.

9 Q. A little bit closer?

10 A. Yes.

11 Q. To the best of your knowledge, in the store, would he
12 be able to see Mr. Dodd?

13 A. Yes.

14 Q. Would he be able to see the wad of cash?

15 A. Yeah.

16 Q. I seem to have lost sight of Mr. Robinson.

17 Is that the same hallway that you testified earlier --

18 A. Yes.

19 Q. -- the bathrooms and the offices?

20 A. Yes, sir.

21 Q. At this point did you start hearing jiggling on the
22 office door?

23 A. When he got around there I started hearing it.

24 Q. Is there any possibility in your mind that he would
25 have gone into the men's bathroom?

- 1 A. No, sir.
- 2 Q. Who is that at the counter now?
- 3 A. That is Mr. Tobbie.
- 4 Q. Do you remember what he purchased?
- 5 A. Some chips and some gas.
- 6 Q. Do you remember how much gas?
- 7 A. It wasn't very much. About four or six dollars.
- 8 Q. And for my education, what pump is Ms. Melinda Parker
- 9 standing at right now?
- 10 A. She is -- that's pump five and six.
- 11 Q. Do you recognize that photo?
- 12 A. Yeah, that's the car that Mr. Robinson and Mr. Dodd was
- 13 in -- I mean Mr. Tobbie was in.
- 14 Q. Did you see that car speeding away?
- 15 A. Yes, sir.
- 16 Q. And just for absolute clarification, who is this?
- 17 A. Mr. Dodd.
- 18 Q. And what's he saying?
- 19 A. He says "I have been shot, I have been shot."
- 20 Q. What are you doing?
- 21 A. I'm hollering for Mindy to come in.
- 22 Q. Who is that?
- 23 A. That is Ms. Howie.
- 24 Q. What's she doing? Did she say anything to Mindy?
- 25 MR. LEMEL: Objection.

1 A. She was use upset. She was upset.

2 THE COURT: I sustain the objection.

3 BY MR. EPTING:

4 Q. What's Ms. Parker doing there?

5 A. She's locking the door.

6 Q. Where is Mr. Dodd?

7 A. He's on the floor in front of my register.

8 Q. Was he bleeding?

9 A. I can't -- his hands there, you can't really see the
10 blood.

11 Q. Did y'all attempt to administer any kind of aid?

12 A. I went and got gloves and towels and tried to support
13 his head, because he felt like he was going to pass out. We
14 just tried to keep him calm and talk to him.

15 Q. Was it at that point you called 911?

16 A. Yes, sir.

17 Q. Ms. Macomson, that's all the questions that I have for
18 you now. I ask that you answer any questions that defense
19 counsel may have for you.

20 A. Okay.

21 CROSS EXAMINATION BY MR. LEMEL:

22 Q. It's Macomson, ma'am?

23 A. Yes.

24 Q. I'm sorry if I mispronounce your name, I apologize.

25 A. I get it all the time.

1 Q. I imagine that you do.

2 Now, you're a clerk at the Shell station?

3 A. I was at the time.

4 Q. You were at that time. Okay.

5 And in that job you worked behind the counter?

6 A. Yes, sir.

7 Q. Assisted customers as they came in?

8 A. Yes, sir.

9 Q. Took payments from them?

10 A. Yes, sir.

11 Q. And that particular Shell station on Gold Hill Road,
12 it's right off the highway?

13 A. Yes, sir.

14 Q. It's basically the second exit after you come into
15 South Carolina from North Carolina?

16 A. Yes, sir.

17 Q. That's a very busy station?

18 A. Yes, sir.

19 Q. Back in the days when lottery was in place, you would
20 have them lined up that Shell station way back?

21 A. Yes.

22 Q. Before North Carolina with their lottery?

23 A. Uh-huh.

24 THE COURT: Ma'am, you need to answer with a word
25 loud enough for to us hear you.

1 THE WITNESS: I'm sorry.

2 THE COURT: That's okay.

3 BY MR. LEMEL:

4 Q. And I apologize. If I start asking my questions real
5 quickly --

6 A. Okay.

7 Q. -- let me know. Okay?

8 A. Okay.

9 Q. Even when this was going on, this was a very busy gas
10 station?

11 A. At that particular time we are not that busy.

12 Q. At that moment. I'm talking in general, that is a busy
13 gas station?

14 A. Oh, yes. Yes, sir.

15 Q. You will literally have hundreds of customers come in
16 and out every day?

17 A. Yes.

18 Q. Some of them just pay at the pump?

19 A. Yes, sir.

20 Q. Some of them come in the store and pay?

21 A. Yes, sir.

22 Q. Or buy things from inside the store?

23 A. Yes, sir.

24 Q. And customers come in and out the store all the time
25 and nothing happens, right?

1 A. Yes, sir.

2 Q. And with those hundreds of customers coming in and out,
3 unless something significant or unusual happens, you are not
4 going to necessarily pay any particular attention to it?

5 A. Well, we do have regular customers that come there
6 every day.

7 Q. Okay. But Mr. Dodd, who you now -- you know Mr. Dodd
8 now, right?

9 A. Yes, sir.

10 Q. And he wasn't a regular customer?

11 A. No, sir.

12 Q. And nobody else that night was a regular customer?

13 A. No, sir.

14 Q. These are just people off the street that you have
15 never seen before at that point in time?

16 A. Yes, sir.

17 Q. And, again, so this being that they were not
18 particularly regular customers, would you have any sort of
19 particular reason to pay attention to them at that point in
20 time, up until the time you heard the pop or the
21 firecracker?

22 A. No, sir.

23 Q. So on this occasion, until the shot was fired,
24 basically nothing unusual was happening?

25 A. Not -- not really. You know, it like I was saying

1 earlier, I heard the rattle, or the door, but I know the
2 door is locked. Can't nobody get in.

3 Q. Let's go to that.

4 MR. LEMEL: If you dim the lights. If you can,
5 can you blow up these bathrooms that we see right there?
6 Just take it up to full size, if you would.

7 BY MR. LEMEL:

8 Q. All right. Now, as I understand your testimony -- can
9 you see the little red dot when I use this --

10 A. Yes.

11 Q. -- on the screen?

12 A. On the screen? No. Well, a little bit, yeah.

13 Q. Would you like to come down so you can see the screen a
14 little bit better?

15 A. I can see your dot now.

16 Q. Okay. Now, as I understand your testimony, where the
17 red dot I have on this time on the far side of the ATM and
18 the bubble gum machines, that's actually the men's room
19 door?

20 A. The men's room is on the other side. The women's --

21 Q. Okay. This is the women's door?

22 A. Yeah, that's the women's.

23 Q. What about this right here?

24 A. This is the men's right here.

25 Q. That's the men's.

1 Then there is another door right beside the men's?

2 A. It comes this way.

3 Q. Okay. And it's that other door that's the locked door
4 that you were talking about?

5 A. Yeah, it has a knob that --

6 Q. So that door is basically right on the other side of
7 the men's and women's room?

8 A. Yes, sir.

9 Q. And you keep that locked to keep people from coming in
10 there?

11 A. Yeah.

12 Q. Okay. And have you ever had a situation before where
13 somebody has come in and gone to that door thinking it was
14 the bathroom?

15 A. No, sir.

16 Q. That's never happened before?

17 A. Because we have always kept -- you know, we try to keep
18 it locked.

19 Q. Right, you keep it locked so people don't wander into
20 it by accident?

21 A. Yes, sir.

22 Q. Okay. And it's possible somebody could walk out of
23 there and not realize where the men's room was and try that
24 door thinking it was the men's room?

25 A. Well, it has the men's wrote on the bathroom.

1 Q. But if somebody had seen it in the back of that room?

2 A. Yes, it could.

3 Q. Okay. And that's why you keep it locked, you keep that
4 from happening?

5 A. Yes, sir.

6 MR. LEMEL: You can reduce that one down, please.

7 Please reduce that one down.

8 BY MR. LEMEL:

9 Q. Now, we see that in this process Melinda, as we start
10 off at the -- the time stamp clock up here right now, that's
11 the time that these all things happened, based off the
12 camera, correct?

13 A. Yes, sir.

14 Q. And that reads 10:34:07, correct?

15 A. Yes, sir.

16 Q. And at this point in time Melinda is outside doing her
17 duties, right?

18 A. Yes, sir.

19 Q. Normal everything that she does every day; cleaned the
20 windows in this case?

21 A. Well, we switch off.

22 Q. Okay. But it's normal things that y'all do every
23 single workday?

24 A. Yes.

25 Q. Okay.

1 MR. LEMEL: And if you would advance this to
2 10:39, please. And let's try about 20 seconds, if you
3 would, using the --

4 If you will expand that to the front door scene.
5 This one right here.

6 BY MR. LEMEL:

7 Q. All right. Now, at this point in time, this foot, I
8 don't if you remember, whose foot is that right there?

9 A. That's Melinda's.

10 Q. Okay. And she was outside. She was taking some
11 garbage bags outside at that point in time, right?

12 A. Yes, sir.

13 MR. LEMEL: If you will play it.

14 And if you pause it, I apologize, and bring up the
15 out front right screen at that same time frame. Out front
16 right. If you will expand that.

17 BY MR. LEMEL:

18 Q. Again, that's Melinda there on the outside working with
19 her garbage bags?

20 A. Yes, sir.

21 Q. And she's focused on -- the garbage can right there on
22 the outside of that door?

23 A. Yes, sir.

24 Q. And she's turned and looked at that point in time at
25 the door -- at the garbage can, right?

1 A. Yes, sir.

2 Q. And at the same time that you see this gentleman in
3 dreadlocks coming in the front door?

4 A. Yes, sir.

5 MR. LEMEL: Okay. If you will reduce down the
6 front door and just leave out front right up right now.

7 BY MR. LEMEL:

8 Q. Now, this gentleman would have walked right past Ms.
9 Parker?

10 A. Yes.

11 Q. And that's Melinda.

12 And after he walked past, he didn't come back in the
13 store and she didn't follow him?

14 A. No, I don't think so. She went all about doing her
15 trash.

16 Q. Her normal job?

17 A. Yeah.

18 Q. Didn't come in and say anything to you about that
19 gentleman?

20 A. No, sir.

21 Q. Didn't bring your attention to that gentleman
22 whatsoever?

23 A. No, sir.

24 Q. And, again, this is just normal every day business
25 going on here?

1 A. Yes.

2 MR. LEMEL: If you can reduce that down, please.

3 You can turn the lights back on.

4 BY MR. LEMEL:

5 Q. Now, in this situation as y'all are switching off,
6 she's taking care of everything outside, right?

7 A. Yes, sir.

8 Q. And you are taking care of the customers on the inside?

9 A. Yes.

10 Q. Which was normal practice?

11 A. Yes, sir.

12 Q. And that meant that you, in fact, never went outside --

13 A. No, sir.

14 Q. -- during this night. Right?

15 A. Not at that time, no.

16 Q. And we are talking about this time frame, from what we
17 just watched on the video. You were basically the entire
18 time in the area of the counter?

19 A. Yes, sir.

20 Q. Okay. So you never actually went outside and looked
21 closely at the little red car that drove by?

22 A. No, sir.

23 Q. Okay. And you never looked inside that car to see how
24 many people were inside it?

25 A. No, sir.

1 Q. Never had any reason to look at it as it was pulling
2 in?

3 A. No, sir.

4 Q. You that night gave a statement to the police, correct?

5 A. Yes, sir.

6 Q. Do you remember doing that?

7 A. Yes, sir.

8 Q. Okay. And you did that voluntarily?

9 A. Yes, sir.

10 Q. The police asked you if you could help them with that?

11 A. Yes, sir.

12 Q. Do you remember exactly what officer that was?

13 A. No, sir.

14 Q. Was it a sergeant in a uniform, or was it a guy in
15 plainclothes?

16 A. It was in a uniform.

17 Q. Okay. So it was a uniformed officer that asked you to
18 give a statement?

19 A. Yes, sir.

20 Q. And basically you did that relatively soon after this
21 incident takes place, right?

22 A. Well, I was there until about 1:30 in the morning, so I
23 don't know how soon after that it was.

24 Q. Okay. If I could have you look at this for me. Do you
25 recognize what that is?

1 A. That is what I wrote.

2 Q. Okay. And if you look in the bottom right corner of
3 it, there is a time written down there, correct?

4 A. Yes, sir.

5 Q. And that time is what?

6 A. This says 23:19.

7 Q. That's military time?

8 A. Yeah.

9 Q. Are you good at that?

10 A. No.

11 Q. If you subtract 12 from that, what is that?

12 A. 12 -- it would be 23:07?

13 Q. I'm sorry, 23 -- if you subtract 12 from the 23.

14 A. 12 from the 23?

15 Q. That's 11, right?

16 A. Yeah.

17 Q. Okay. So does 11:19 sound about right, in terms of
18 real-people time as opposed to military time?

19 A. Yes.

20 Q. That's when you signed this statement?

21 A. Yes. It seemed awful early.

22 Q. But that's the time that's written down here, right?

23 A. Yes, sir.

24 Q. And that's your handwriting?

25 A. Yes, sir.

1 Q. And you wrote that 23:19 there, or somebody did?

2 A. That's not my writing.

3 Q. Did you sign next to it?

4 A. Yes, sir.

5 Q. Okay. So -- and at least on this paper, the time on
6 the signature is 11:19?

7 A. Yes, sir.

8 Q. Which, again, is a relatively short period of time
9 immediately after this all takes place?

10 A. Yes, sir.

11 Q. Okay. Roughly 30 minutes, 45 minutes?

12 A. Okay.

13 Q. Okay. Would you agree with me on that?

14 A. Yes, sir.

15 Q. Any questions for me about that at all?

16 A. No, sir.

17 Q. And did you actually write this, or did someone write
18 this out for you?

19 A. This is my writing.

20 Q. Okay. So they handed you a piece of paper, this piece
21 of paper --

22 A. Yes, sir.

23 Q. -- and asked you to write down stuff for them?

24 A. Yes, sir.

25 Q. And they were nice to you at that point in time?

1 A. Yes, sir.

2 Q. Trying to keep you calm?

3 A. Yes, sir.

4 Q. Trying to ask you everything that you possibility could
5 about that?

6 A. Yes.

7 Q. And you wanted to help them, right?

8 A. Yes, sir.

9 Q. You were trying to help the police here?

10 A. Yes, sir.

11 Q. Trying to help the man you now know as Mr. Dodd?

12 A. Yes, sir.

13 Q. And so you wanted to write down everything that you
14 possibly could?

15 A. Yes, sir.

16 Q. So you would agree with me that in this statement with
17 regard to the gentleman in the dreads, you don't say
18 anything about him in here?

19 A. I was so nervous and upset then that --

20 Q. I understand.

21 A. And this is the first time I have ever filled out
22 anything about stuff like this.

23 Q. But you understood -- let me just couple it, we just
24 talked about, you wanted to help?

25 A. Yes, sir.

1 Q. Right. You were trying to give them all the
2 information that you possibly could?

3 A. Yes, sir.

4 Q. Right immediately after this takes place, right?

5 A. Yes, sir.

6 Q. While the event is still very fresh in your memory at
7 this point in time?

8 A. Yes, sir.

9 Q. And it's been a year, basically, since this happened?

10 A. Yes, sir.

11 Q. And you have had a chance to watch tapes since then,
12 right?

13 A. Yes, sir.

14 Q. Is this the first time that you have watched this tape?

15 A. Not today.

16 Q. Not today.

17 You have watched this tape other times today, right?

18 A. Yes, sir.

19 Q. Before you got on the stand to testify, you watched
20 this tape?

21 A. Not today.

22 Q. Yesterday?

23 A. Yes.

24 Q. So yesterday you watched this before you got on the
25 stand?

1 A. Yeah, I did see a little bit of it at work.

2 Q. That very same night?

3 A. No.

4 Q. No? A few days later?

5 A. I think it was the next day or two.

6 Q. Okay. That night you didn't watch this?

7 A. Well, we tried -- they wanted me to pull it up and I
8 could not figure it out. I called our manager to get him to
9 come, and finally I had to get someone from the office to
10 come down.

11 Q. So that was at least a couple days later, you said?

12 A. Well, she come that night to try to get it for him.

13 Q. Okay.

14 A. And I think it was the next morning before we finally
15 got it. I mean, we could bring it up, but we couldn't
16 figure out how to put it on a disc.

17 Q. Okay. I got you.

18 In terms of your testimony here today, since that time
19 frame back last year --

20 A. Yes, sir.

21 Q. -- you watched this tape again last night?

22 A. Yes, sir.

23 Q. Yesterday?

24 A. Yes, sir.

25 Q. Okay. But that's the statement that you wrote that

1 night?

2 A. Yes, sir.

3 Q. Okay. And you will agree with me that that night you
4 did not put any description down of the gentlemen who had --

5 A. No, sir, I did not.

6 Q. Didn't include a description of either of any of the
7 other -- any of those people that came in, Mr. Dodd, or any
8 of the other individuals that came in the store?

9 A. No, sir.

10 Q. Didn't talk about their height?

11 A. No, sir.

12 Q. Didn't talk about their weight?

13 A. No, sir.

14 Q. Didn't talk about their clothes at all?

15 A. No, sir.

16 Q. Didn't say anything about any facial features of any of
17 them?

18 A. No, sir.

19 Q. Birthmarks?

20 A. No, sir.

21 Q. Scars?

22 A. No, sir.

23 Q. Anything like that?

24 A. No, sir.

25 Q. And this was all situations where you were under good

1 lighting, right?

2 A. Yes, sir.

3 MR. LEMEL: Now, if you will just blow up the
4 front doors at this point in time. And if you will rewind
5 it back by single frames, about three frames. Thank you.
6 Now, if you will head forward one frame to the next image.
7 One more.

8 All right. Pause it right there.

9 BY MR. LEMEL:

10 Q. Now, this is the gentleman in dreadlocks that came in
11 the store, correct?

12 A. Yes, sir.

13 Q. Now, if you will, what color is the shirt that he's
14 wearing right there?

15 A. It looks like it's black.

16 Q. And is there something he's wearing underneath that
17 shirt?

18 A. It looks like a little white T-shirt.

19 Q. All right. How far down does that white T-shirt come?

20 A. Almost to his knees.

21 Q. Okay. Does it look like it has sleeves on it?

22 A. Yes, sir.

23 Q. Okay. What about his pants, can you tell what color
24 those are?

25 A. They are dark.

1 Q. Okay. Could be black?

2 A. Could be blue jeans.

3 Q. Could be, but dark pants?

4 A. Yes, sir.

5 Q. And how far down do those come?

6 A. It looks like they drag the floor.

7 Q. Okay. What about his shoes, what color are they?

8 A. They look white from here.

9 Q. The tops, that part is white. What about below, right
10 there?

11 A. Dark.

12 Q. It could be black, could be dark blue?

13 A. Yes, sir.

14 Q. But white and black shoes, pants all the way down to
15 the ground?

16 A. Yes, sir.

17 MR. LEMEL: Blow this up as far as we did.

18 BY MR. LEMEL:

19 Q. Now, this picture?

20 THE COURT: You want the lights off?

21 MR. LEMEL: Thank you, Your Honor.

22 BY MR. LEMEL:

23 Q. Can you see better?

24 A. Yes, sir.

25 Q. Okay. This picture of his face, that's pretty

1 indistinct, isn't it?

2 A. Yes, sir.

3 Q. You can't make out particular details of his face from
4 that picture, can you?

5 A. It's blurry.

6 Q. My question is you can't make out particular details of
7 his face from that?

8 A. No, sir.

9 MR. LEMEL: The lights can come back on.

10 BY MR. LEMEL:

11 Q. Now, as we heard that night, you called 911, correct?

12 A. Yes, sir.

13 Q. And you were calling to get help for Mr. Dodd?

14 A. Yes, sir.

15 Q. And that was your primary focus at that point in time?

16 A. Yes, sir.

17 Q. You relayed some information to the operator at that
18 point in time?

19 A. Yes, sir.

20 Q. That information was actually coming to you from
21 Melinda?

22 A. Yes, sir.

23 Q. We actually hear her screaming in the back?

24 A. Yes, sir.

25 Q. As you are talking with those, you are telling them

1 what to say?

2 A. Yes, sir.

3 Q. And she's the one who screams out "it's a small
4 burgundy car"?

5 A. Yes, sir.

6 Q. She's the one who screams out "there is three black
7 males in it"?

8 A. Yes, sir.

9 Q. She's the one who screams out that it was heading
10 towards I-77?

11 A. Yes, sir. Well, I also seen the car leave, though.

12 Q. Right.

13 A. And it was headed that way.

14 Q. But all that information is you relayed it immediately
15 after she said it, basically screaming at you?

16 A. Yes, sir.

17 Q. And at that point in time you are all standing around
18 inside the store?

19 A. Yes, sir.

20 Q. Following that night, you do not speak with any police
21 officers after that?

22 A. No, sir.

23 Q. No one came back to ask you to look at a photo lineup,
24 for example?

25 A. No, sir.

1 Q. No one asked you to come back and describe what you
2 saw?

3 A. No, sir.

4 Q. Or describe or make any sort of sketch of individuals
5 that you saw that night?

6 A. No, sir.

7 Q. Or were there anything to identify the individuals that
8 night?

9 A. No, sir.

10 Q. Somebody came by eventually and picked up this disc
11 that we have been watching, correct?

12 A. Yes, sir, they more than likely come in the morning.

13 Q. Were you there when that happened?

14 A. No.

15 Q. All right. And between then and now, you watched that
16 video last night before you got up here?

17 A. Yes, except what I saw when we were trying to get it to
18 make a copy of it.

19 MR. LEMEL: Begging the court's indulgence.

20 (Off the record)

21 (Back on the record)

22 MR. LEMEL: No further questions.

23 THE COURT: Go ahead.

24 MR. DUNN: If it please the court?

25 THE COURT: Sure.

1 CROSS EXAMINATION BY MR. LEMEL:

2 Q. Ms. Macomson, did I say that right?

3 A. Macomson.

4 Q. When the two black individuals, you never saw their car
5 come in, did you? The burgundy car, you didn't see them
6 pull up, did you?

7 A. No, sir, because I was ringing up a customer.

8 Q. And they didn't come in -- the two individuals that
9 came from that car didn't come inside at the same time, did
10 they?

11 A. Mr. Robinson come in first and he went to the side.

12 Q. They didn't come in at the same time?

13 A. One after the other.

14 Q. They weren't talking to each other when they came in,
15 right?

16 A. No. No, sir.

17 Q. Do you remember what Mr. -- do you remember what Mr.
18 Tobbie was doing when he walked in?

19 A. He went -- he come around and went over to the chip
20 aisle.

21 Q. Was he talking on the cell phone when he walked in?

22 A. I didn't see no cell phone.

23 Q. But when he came in, he went right over to the chip
24 aisle, correct?

25 A. Yeah, he went over there looking.

1 Q. Which is in the back of the store?

2 A. It's not the back. It's over to the side.

3 Q. But as far as --

4 A. The way my register is, it's to the side.

5 Q. It's right next to the drinks as well, correct?

6 A. Yes, sir.

7 Q. And you previously testified that he bought some chips?

8 A. I'm pretty sure he bought some chips and he paid for
9 some gas.

10 Q. Is it possible he bought a Slim Jim as well?

11 A. Yes, sir.

12 Q. Okay. Mr. -- when Mr. Tobbie came to pay for that
13 stuff, he never stood behind Mr. Dodd, did he?

14 A. He was walking towards when Mr. Dodd walked out.

15 Q. So as Mr. Dodd was going out the door, Mr. Tobbie was
16 coming up to the counter, is that correct --

17 A. Yes, sir.

18 Q. -- to pay for his stuff, but they were never actually
19 in line together, right?

20 A. Not exactly behind each other, no.

21 Q. You previously testified when you were talking with the
22 solicitor that it was your opinion that Mr. Quinton -- or,
23 excuse me, Mr. Tobbie could see Mr. Dodd's wad of cash.

24 A. That's because he was walking up that way, up the chip
25 aisle. The chip aisle is not that far from my register.

1 Q. Okay. But you think he could see it?

2 A. Yes, sir.

3 Q. All right.

4 A. Plus we were talking and -- I was talking about he
5 didn't need to carry that much.

6 MR. DUNN: All right, Mr. Solicitor, if you could
7 cue that back up and go to 10:38:42.

8 BY MR. DUNN:

9 Q. Ms. Macomson, if you will look at the far left corner,
10 top left corner, which is the last register, at this point
11 is the victim in line with you by himself?

12 A. It looks like he's coming towards the counter.

13 Q. Okay.

14 A. I'm ringing up stuff, so I see something right there in
15 the corner.

16 Q. Let's see if we can see it.

17 Do you see that register?

18 A. Yes, sir.

19 Q. It appears that's Mr. Dodd, correct?

20 A. Yes, sir.

21 Q. Ms. Macomson, in the bottom one, in the middle there,
22 do you see the individual with the dreadlocks?

23 A. Yes, sir.

24 Q. And you see your co-worker standing right there next to
25 him, correct?

1 A. Yes, sir.

2 Q. If you look over to the one -- the picture next to it
3 which is out front right, Mr. -- the person -- the
4 individual with the dreadlocks is walking inside, correct?

5 A. Yes, sir.

6 Q. And just now coming around the --

7 A. My van.

8 Q. -- the van is Mr. Tobbie, correct?

9 A. Yes, sir.

10 Q. All right. At the same time we still -- you are still
11 at the cash register dealing with Mr. Dodd, correct?

12 A. Yes, sir.

13 Q. All right. Do you see that upper right-hand corner
14 where the front door is?

15 A. Yes, sir.

16 Q. It looks like Mr. Tobbie just came in the front door,
17 correct?

18 A. Yes, sir.

19 Q. What did it look like he was doing?

20 A. It looks like he was on a cell phone there.

21 Q. Okay. Going over to the left-hand corner where is the
22 last register, we still have Mr. -- you are still dealing
23 with Mr. Dodd, correct?

24 A. Yes, sir.

25 Q. Okay. Now, if you look at this middle section or the

1 side cooler, is -- Mr. Quinton is now showing up with the --
2 into that back --

3 A. Yeah, he's back there at the end of the chip aisle
4 right there towards my register.

5 Q. And it looks like he's looking down at the chips,
6 right?

7 A. Yes, sir.

8 Q. Now, if we had -- if we were -- if that room was in
9 here and you had your -- where Mr. Dodd is standing now, his
10 back is to Mr. Tobbie, isn't it?

11 A. Yes, sir.

12 Q. In order for --

13 A. It's kind of to the back of him. It's like he's kind
14 of half and half.

15 Q. Okay. And there is -- during this next couple of
16 seconds or so, it looks like Mr. Tobbie is looking at the
17 chips?

18 A. Yes, sir.

19 Q. And at some point he even makes a selection, correct?

20 A. Yes, sir.

21 MR. LEMEL: Pause it for a second.

22 BY MR. DUNN:

23 Q. Now, at this time point Mr. Tobbie is still in the
24 back, correct?

25 A. Yes, sir.

1 Q. Or on the aisle, excuse me.

2 In fact, it looks like he's still looking backwards
3 toward the chip aisle, right?

4 A. Yes, sir.

5 Q. Now, if you look up to the cameras right above it where
6 says left register, Mr. Dodd has left your register, hasn't
7 he?

8 A. Yes, sir.

9 Q. And he's at this point walking sort of around like he
10 would go back towards the bathroom. That's the way he would
11 go to the bathrooms, right?

12 A. Yeah, up to the front door.

13 Q. Right.

14 But if you are looking in this middle one where it says
15 lotto register, the front door is kind of off to his left?

16 A. We actually have two lotto registers.

17 Q. I'm sorry?

18 A. That's my lotto register that you see right here.

19 Q. Well, when I say lotto register, I mean the video
20 camera linked with lotto register, this top middle one here?

21 Do you see the top row of the cameras here?

22 A. Are you in the middle one?

23 Q. Yes, ma'am. I'm just referring to the lotto register.

24 I wasn't referring to the register itself, just the camera.

25 A. Okay.

1 Q. In fact, the door is a little bit off to his left,
2 isn't it?

3 A. Yes, sir.

4 Q. Okay. Now, Mr. Dodd just now walked out the door,
5 right?

6 A. Yes, sir.

7 Q. And at this point Mr. Tobbie is just now coming up to
8 your register, correct?

9 A. Yes, sir.

10 Q. I see right there paying with cash, right?

11 A. Yes, sir.

12 Q. So Mr. Tobbie is paying in cash.

13 It looks like the person with dreadlocks is walking out
14 from behind the bathroom area, correct?

15 A. Yes, sir.

16 Q. And the victim, Mr. Dodd, has gone outside?

17 A. Yes, sir.

18 Q. And the individual with the dreadlocks has just walked
19 out that door, correct?

20 A. Yes, sir.

21 Q. Mr. Quinton -- or Mr. Tobbie is still standing in line
22 with you?

23 A. Yes, sir.

24 Q. All right. Where you stand at that cashier's station,
25 can you see pumps three and four?

1 A. Yes. I turn my head to the side, I can.

2 Q. Were you looking at pump three and four at this point?

3 A. Not at that point, no.

4 Q. You are dealing with Mr. Tobbie, correct?

5 A. Yes, sir.

6 Q. So you have no idea what's going on outside?

7 A. No, sir.

8 Q. All right. It appears you can just see a bare little
9 bit of Mr. Tobbie still talking with you, correct?

10 A. Yes, sir.

11 Q. Mr. Dodd is now walking back in for the second time?

12 A. Yes, sir.

13 Q. So Mr. Dodd comes back in, goes back -- walks -- sort
14 of changes his mind, and go to -- I think you said before he
15 asked you question, right?

16 A. Yes, sir.

17 Q. All right. He is going to look for wherever you
18 pointed him to go look at, right?

19 A. Yes.

20 Q. Which is sort of --

21 A. It's underneath the other -- on the side where the
22 other register is under beneath what he had asked me about.

23 Q. But does he have a pack in his hand at that point?

24 A. Who, Mr. Dodd?

25 Q. Yes, ma'am.

1 A. I can't remember that.

2 Q. But it appears Mr. Tobbie is headed outside right?

3 A. Yes, sir.

4 Q. And your attention is on Mr. Dodd?

5 A. Yes, sir.

6 Q. You are not looking out to see what's going on outside,
7 right?

8 A. No, because at that time I didn't have a reason to be
9 looking out there.

10 Q. So you are not looking at Mr. Quinton, Mr. Tobbie, at
11 all outside?

12 A. No.

13 Q. Okay. Now, this is you? You just heard a gunshot,
14 right?

15 A. Yes, sir.

16 Q. You didn't see the gun go off?

17 A. No, sir.

18 Q. You didn't see Mr. Dodd get shot?

19 A. No, sir.

20 Q. So you have no idea really what's going on outside?

21 A. No.

22 Q. It doesn't look like you came from the cash register.

23 A. Yes, sir, I did. There is an opening where I can come
24 around.

25 Q. That's where you are coming from, right, you heard the

1 gunshot and you are running from the cash register?

2 A. Yes.

3 Q. But you hadn't been watching what was going on outside,
4 right?

5 A. No, sir.

6 Q. Prior to this point, we have now looked at about six
7 minutes worth of video, or so, right?

8 A. Yes, sir.

9 Q. You had never put your eyes on the little red burgundy
10 car, had you?

11 A. No, not until I seen it pull off.

12 Q. So as -- so in this middle as the car goes speeding
13 by --

14 A. Yes, sir.

15 Q. -- that's your only time that you ever see that car,
16 right?

17 A. Yes, sir.

18 Q. And that was gone in -- well, that's gone, what, a
19 second or two?

20 A. It didn't take long.

21 Q. They were gone, right?

22 A. Yeah, they almost hit somebody going out of there.

23 Q. But you didn't have a chance -- but that was once they
24 get outside the parking lot going out to the main road,
25 right?

1 A. Yes, sir.

2 Q. And there is no lights on that road -- it's not as well
3 lit up as it is in the parking lot, is it?

4 A. Only until you get down to the car places.

5 Q. It's darker than it is in front of your driveway
6 parking lot, right?

7 A. Yes.

8 Q. As that car is speeding away, you are not really
9 looking at who is inside that car, are you?

10 A. No, sir.

11 Q. You are more worried about the fact that somebody just
12 got -- you heard a gunshot, right? And if we play this
13 thing a little bit further, the victim comes running in
14 saying "he was shot," right?

15 A. Yes.

16 Q. A couple seconds later --

17 A. Well, he comes in actually before that. I think he
18 comes in before the car pulls off.

19 Q. Right.

20 And right after him a couple more people come in,
21 right?

22 A. Yeah, because I tell them tell to come in.

23 Q. Your concern is not what's going on in that car when
24 they are a driving away, is it?

25 A. I'm worried he's going to hurt somebody else.

1 Q. But your concern is not what's going inside that
2 car?

3 A. No, sir.

4 Q. So when you tell 911 later on that you see a car drive
5 away with three folks in it, that's because somebody had
6 told you what -- had told you what they saw, right?

7 A. Melinda told me that there was three of them in there.

8 Q. And you were just relaying a message to the 911
9 dispatcher, right?

10 A. Yes, sir.

11 Q. Just one other question.

12 As soon as you heard that gunshot, how long did it take
13 you to respond to that?

14 A. I took off. I mean, I can't run, but I took -- you
15 know, I went straight to the door.

16 Q. As quick as you could?

17 A. Yeah.

18 Q. You didn't sit around and wait for a couple of seconds.

19 A. Oh, no.

20 Q. You immediately responded to what you heard, correct?

21 A. Yes, sir.

22 Q. Thank you.

23 MR. DUNN: I have no further questions.

24 MR. EPTING: We have no other questions.

25 THE COURT: You can step down. We appreciate your

1 time. You can be excused. Thank you.

2 Members of the jury panel, we are going to break
3 for lunch until two o'clock, so please be back ready to go
4 at two o'clock and have a pleasant lunch. Thank you.

5 (The following takes place outside the presence of
6 the jury panel).

7 THE COURT: We will reconvene at two.

8 MR. SPRINGS: Thank you.

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 THE COURT: Ready to go?

12 MR. LEMEL: Yes, sir.

13 THE COURT: Bring the jury in.

14 (The following takes place in the presence of the
15 jury panel)

16 MR. SPRINGS: The State calls Ms. Melinda Parker.

17 MELINDA PARKER, having been first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION BY MR. SPRINGS:

20 Q. Ma'am, I'm going to ask you to keep your voice up nice
21 and loud. No one is going to buck because we want to make
22 sure that everybody can hear every word that you have to
23 say.

24 Let's start out with your name. What's your name?

25 A. Melinda Parker.

1 Q. Where were you employed on September the 7th of 2007?

2 A. Gold Hill Shell gas station.

3 Q. Were you a cashier?

4 A. Yes, sir.

5 Q. And about what time did you start your shift that day?

6 A. Two o'clock.

7 Q. In the afternoon?

8 A. Yes, sir.

9 Q. All right. About 10:40 that night did something bad
10 happen?

11 A. Yes, sir.

12 Q. What bad happened?

13 A. A guy got shot in our parking lot.

14 Q. All right. And the man that got shot, was he a
15 customer or an employee?

16 A. A customer.

17 Q. And was he in the store or outside when he got shot?

18 A. Outside.

19 Q. And did you see the man get shot?

20 A. Yes, sir.

21 Q. And did you see the man who did the shooting, the
22 shooter?

23 A. Yes, sir.

24 Q. Before the actual shooting, did you see the shooter at
25 or in the store earlier that same evening?

1 A. Yes, sir.

2 Q. What was that man doing, the shooter, when you first
3 laid eyes on him?

4 A. He walked past me going in the store.

5 Q. And as he's coming in the store, what were you doing?

6 A. I was on the outside of the doors fixing to go change
7 the trash in the parking lot.

8 Q. Okay. Were you carrying out something with you when
9 you went to change the trash?

10 A. Yes, sir, some trash bags.

11 Q. All right. So how close -- did you look at this man
12 who you said later shot somebody, as he was coming in and
13 you were going out, how good a look did you get of him?

14 A. I got a pretty good look at him. I was standing
15 staring at him, because I tried to make eye contact when he
16 came in, because I like to greet the customers when they
17 come in, and he never made eye contact with me.

18 Q. How did that make you feel?

19 A. It kind of made me feel bad, because I was like -- I
20 felt like something was wrong.

21 Q. And this fellow that wouldn't make eye contact with you
22 that walked right by you, what kind of hairstyle did he
23 have?

24 A. He had dreadlocks.

25 Q. Was anyone behind him when he came in?

1 A. Yes.

2 Q. And what kind of hair did that man have?

3 A. He had short hair.

4 Q. So the man with the dreadlocks, did he actually go
5 inside the store?

6 A. Yes, sir.

7 Q. And the fellow behind him with short hair, did he
8 actually go in the store?

9 A. Yes, sir.

10 Q. Now, the trash cans that you were going to go to empty,
11 change the bags, were they behind the store or out at the
12 gas pumps?

13 A. Out at the gas pumps.

14 Q. And when you went out to change those bags, do you
15 recall how many customer cars were parked at the gas pumps?

16 A. Two.

17 Q. Do you recall where they were, what pump numbers and
18 so?

19 A. Yes, sir, pump three and pump four.

20 Q. Okay. And I'm showing you a picture that's been marked
21 State's Exhibit 8. Do you recognize those gas pumps?

22 A. Yes, sir.

23 Q. Okay. And which one is pump three and four?

24 A. This is pump three and this is pump four.

25 Q. Okay. And the store, is it over here -- over here?

1 A. Yes, sir.

2 Q. And the colors of the two cars out there, do you
3 remember?

4 A. Burgundy and black.

5 Q. Okay. Which side was the burgundy car on and which
6 side was the black car on?

7 A. The burgundy was on pump three and the black one was on
8 pump four.

9 Q. So the black one was closer to the actual store?

10 THE COURT: Can y'all see what they are talking
11 about? Okay. They say that they can.

12 BY MR. SPRINGS:

13 Q. The black one was closer to the store?

14 A. Yes, sir, that's correct.

15 Q. I'm showing you what's been marked State's 10. Does
16 that show the same gas pumps?

17 A. Yes, sir, three and four.

18 Q. Okay. Now, let's talk about the people in the black
19 car. Did you notice how many people were in the black car?

20 A. Two, a male and a female.

21 Q. Did you notice how many people were in the burgundy
22 car?

23 A. Three.

24 Q. And did you notice that they were men, or women, or a
25 mixture /KHER?

1 A. There was three males.

2 Q. And did you see any of the folks from the black car and
3 from the burgundy car coming and going from the store?

4 A. Yes, I did.

5 Q. Tell us about the black car. Who did you see coming
6 and going from that car?

7 A. I seen Mr. Dobbs (sic) come -- get out of that car and
8 come in the store. The young lady, Nicole, never got out of
9 the car.

10 Q. Okay. You said is Dodd D-O-D-D?

11 A. Dobbs (sic). Dodd.

12 Q. Savalas Dodd?

13 A. Yes.

14 Q. Okay. And tell us about the burgundy car. How many
15 people did you see get out of the burgundy car?

16 A. Just two.

17 Q. Okay. And were they passengers, or the driver, or do
18 you recall?

19 A. Passengers. The driver never got out.

20 Q. Never at any time did the driver get out?

21 A. No, sir.

22 Q. Did you notice if the passengers got out of the front
23 passenger seat, or the back, or did you notice anything
24 about that?

25 A. Travis with the dreadlocks got out of the front

1 passenger's side, and the other one got out behind him on
2 the passenger's side..

3 Q. All right.

4 MS. INZERILLO: Your Honor, at this time we are
5 going to bring in all the previous objections to the
6 identification.

7 THE COURT: Overruled. Based on earlier rulings,
8 that's overruled.

9 BY MR. SPRINGS:

10 Q. The driver of the car that you said never got out, did
11 you see his hair, or was he a wearing a hat?

12 A. He was wearing a white hat..

13 Q. Could you tell anything about his hair?

14 A. He had short hair. That's all I could tell.

15 Q. All right. So you said you saw the shooting. What
16 first got your attention? Did you hear the noise?

17 A. Yes, I heard the noise.

18 Q. And at what place --

19 Now, in the parking lot with the pumps, I'm holding up
20 State's Exhibit 10 again, and why don't you come down here
21 and let's get a little bit closer to the jury.

22 (Witness off the stand)

23 BY MR. SPRINGS:

24 Q. My projector is broken.

25 And I think you said this was pump three and four where

1 the cars were?

2 A. Yes, sir.

3 Q. When the shot, crack, and when you heard it, were you
4 somewhere that could be on this?

5 A. Yes, sir, I was standing right there.

6 Q. Right there.

7 Had you already changed the trash bag in pump three and
8 four?

9 A. Yes, sir.

10 Q. And were you going to change the trash bags in --

11 A. Yes, sir, I was on my way to pump one.

12 Q. Go up and retake your seat.

13 (Witness back on the witness stand)

14 BY MR. SPRINGS:

15 Q. Let me back up and then we are going to go come back to
16 the shooting.

17 I'm showing you what's been marked State's Exhibit 5.

18 Do you see yourself in that picture?

19 A. Yes, sir.

20 Q. And do you see another person in that picture?

21 A. Yes, sir.

22 Q. And who is that person?

23 A. Travis and then Tobbie.

24 Q. And State's Exhibit 3, are you in that picture?

25 A. Yes, sir.

1 Q. And who is that other person there?

2 A. Travis.

3 Q. All right. And the person there, the man in State's
4 Exhibit 4, who was he?

5 A. Mr. Tobbie.

6 Q. Let's get back to the shooting. You said that you were
7 out towards pump one and two?

8 A. Yes, sir.

9 Q. When you heard the noise, were you already looking in
10 the direction of Mr. Dodd's car, the black car?

11 A. Yes, I was.

12 Q. Okay. Who did you see at Mr. Dodd's car --

13 A. Travis.

14 Q. -- at the time he was shot?

15 A. Travis.

16 Q. And how close was he to the black car, Mr. Dodd's car?

17 A. He was pretty much inside of it.

18 Q. The driver's side or the passenger's side?

19 A. The passenger's side.

20 Q. And after the shot, after you hear the shot, what did
21 Travis Robinson do?

22 A. Jumped in the car and they left.

23 Q. The burgundy car?

24 A. Yes, sir.

25 Q. Do you remember if he jumped in the front or the back?

1 A. He jumped in the back seat behind the driver.

2 Q. Was the light good out there, as good as it is in the
3 photos that you are looking at?

4 A. Yes, sir.

5 Q. Do you have pretty good eyesight?

6 A. Yes, sir.

7 Q. When you heard that shot and were looking out there,
8 did that scene have your full attention, or were you
9 thinking about something?

10 A. No, it had my full attention.

11 Q. Just to be real clear about it, please point out the
12 fellow that fired the shot.

13 A. (Witness pointing)

14 Q. You are pointing at Travis Robinson?

15 A. Yes, sir.

16 Q. The man with the dreadlocks?

17 A. Yes, sir.

18 Q. And, if you would, please point out the fellow that
19 followed him into the store that night?

20 A. (Witness pointing at Quinton Tobbie)

21 Q. You are pointing at Quinton Tobbie?

22 A. (Shaking head yes)

23 Q. When they drove away in the burgundy car, were they
24 going slowly or pretty quick?

25 A. They were going very pretty fast. You could hear the

1 tires squealing.

2 Q. Did they have their lights on?

3 A. No, sir.

4 Q. And do you remember if the windows, if any of the
5 windows in the car, were down >did you get any sense of
6 that?

7 A. Yeah, it looked like the back passenger's side window
8 was down.

9 Q. Did you see glass in the back passenger side window, or
10 where it would be?

11 A. No.

12 Q. So did you and Ms. Macomson call 911?

13 A. Yes.

14 Q. And did the police come out?

15 A. Yes, sir.

16 Q. And did you talk to the police?

17 A. Yes, sir.

18 Q. Did you tell them what happened?

19 A. Yes, sir.

20 Q. And a little while later did you go down to Charlotte?

21 A. Yes, sir.

22 Q. When you got down to Charlotte a little while later,
23 was there someone there that you were shown?

24 A. Yes, sir.

25 Q. Now, when you were shown this person, were they in

1 custody of the police? Were they handcuffed?

2 A. Yes.

3 Q. And when you were shown this person, about how far away
4 from you were they?

5 A. About 20 feet.

6 Q. Okay. And was there a good light on that person so
7 that you could see them clearly?

8 A. Yes, sir.

9 Q. And when you were shown that person, did the police
10 tell you "you are going to recognize this person. Oh,
11 yeah." Did they give you any sort of instruction about it?

12 A. No, sir. I was in a car by myself.

13 Q. And when you saw that person, did you recognize him?

14 A. Yes, sir.

15 Q. And who was that person that you saw?

16 A. The first one was Travis.

17 Q. Travis Robinson, the defendant here?

18 A. Yes, sir.

19 Q. The shooter?

20 A. Yes, sir.

21 Q. Okay. Any question in your mind that you were looking
22 at the same person down in Charlotte in the custody of the
23 Charlotte-Mecklenburg police that had shot Mr. Dodd?

24 A. No, I had no question about it.

25 Q. Okay. And then did they show you a second person?

1 A. Yes, sir.

2 Q. And did you recognize that person from earlier in the
3 evening?

4 A. Yes, sir.

5 Q. Did the police, any police officer, tell you "Ms.
6 Parker, you are going to recognize this person. No doubt
7 about it." Did anybody instruct you like that?

8 A. No, sir.

9 Q. When you looked at this second person, was it someone
10 that you recognized and had seen earlier?

11 A. Yes, sir.

12 Q. Who was that?

13 A. Quinton Tobbie.

14 Q. Any question in your mind, any doubt in your mind, that
15 you were seeing Quinton Tobbie?

16 A. No, no doubt.

17 Q. The fellow that was behind Mr. Travis Robinson earlier
18 in the evening?

19 A. No doubt.

20 Q. Ms. Parker, thank you. We have two defense attorneys
21 and they are both going to want to ask you some questions.

22 A. Okay.

23 THE COURT: Ms. Inzerillo.

24 MS. INZERILLO: Thank you, Your Honor.

25

1 CROSS EXAMINATION BY MS. INZERILLO:

2 Q. Ms. Parker, you work at the Shell gas station on Gold
3 Hill Road?

4 A. I did.

5 Q. And you were looking there the night of September 7th?

6 A. Yes, that's correct.

7 Q. And you saw the events that happened September 7th?

8 A. Yes.

9 Q. You spoke to the police about the case?

10 A. Yes.

11 Q. And you gave them details of what you saw that night?

12 A. Yes, that's correct.

13 Q. You gave them all the details that you could think of?

14 A. Yes, ma'am.

15 Q. And when you talked to the officers, you were still on
16 the scene?

17 A. Yes, ma'am.

18 Q. And you gave them the details, because they were not on
19 the scene during the robbery?

20 A. That's correct.

21 Q. Okay. And you did give the police a statement?

22 A. Yes, ma'am.

23 Q. And did you give that statement to Detective Miller?

24 A. I'm not sure who Detective Miller is.

25 Q. But you did give it to a police officer?

- 1 A. Yes, ma'am, that's correct.
- 2 Q. And you told them what had happened, right?
- 3 A. Yes.
- 4 Q. When it happened, correct?
- 5 A. Yes.
- 6 Q. And how it happened?
- 7 A. Yes.
- 8 Q. And they asked you questions?
- 9 A. Yes, ma'am.
- 10 Q. Right?
- 11 A. Yes.
- 12 Q. And you gave them the answers?
- 13 A. Yes, ma'am.
- 14 Q. They wanted to know everything that you knew?
- 15 A. Yes, ma'am.
- 16 Q. And you told them everything that you could?
- 17 A. Yes.
- 18 Q. All the details about that night?
- 19 A. Yes.
- 20 Q. And they told you that they wanted as many details as
- 21 you could give them?
- 22 A. Well, yeah.
- 23 Q. Okay. And when you were talking to the police, they
- 24 were nice to you?
- 25 A. Yes.

1 Q. They were polite to you?

2 A. Yes.

3 Q. They didn't put any pressure on you in any way?

4 A. No, sir -- no, ma'am, excuse me.

5 Q. They didn't coerce you?

6 A. No, ma'am.

7 Q. Okay. And then as a result of that, you did write out
8 a statement to the police?

9 A. Yes.

10 Q. Is that correct?

11 A. Yes.

12 Q. You gave your statement on September 7th, is that
13 correct?

14 A. That's correct.

15 Q. Okay. And that was the day that you met with the
16 officer, one of the officers on the scene?

17 A. Yes.

18 Q. Okay. And you wrote out your statement or he wrote out
19 your statement?

20 A. I wrote out my own statement.

21 Q. Okay. And when you wrote out your statement, you wrote
22 everything that you could think of?

23 A. Yes, that's correct.

24 Q. And he told you you could read back your statement --

25 A. No.

1 Q. -- when you were done writing it?

2 A. Yes.

3 Q. To make sure there was no changes you had to make,
4 right?

5 A. He just told me to make sure it was, you know, all in
6 order.

7 Q. And all correct?

8 A. Uh-huh.

9 Q. Okay.

10 A. Yes.

11 MS. INZERILLO: May I approach the witness, Your
12 Honor?

13 THE COURT: Yes.

14 BY MR. INZERILLO:

15 Q. Ms. Parker, I'm handing you two pieces of paper.

16 A. Okay.

17 Q. Take a good look at that for me.

18 Do you recognize this piece of paper?

19 A. Yes, I do.

20 Q. The first page is the first statement that you gave,
21 right?

22 A. That's correct.

23 Q. And that was before you were taken up to Charlotte, is
24 that right?

25 A. That's correct.

1 Q. And the second page is the statement that you gave
2 after you identified the person in Charlotte, is that
3 correct?

4 A. I believe so, yes. Yes, ma'am.

5 Q. Okay. I'm going to have you go through something with
6 me here at the bottom.

7 That's your signature at the bottom, is that correct?

8 A. Yes, that's correct.

9 Q. The date -- did you date it?

10 A. Correct.

11 Q. And there is a time that you gave, although maybe the
12 officer wrote that in.

13 A. I didn't write that time on it.

14 Q. Okay. At the bottom of this statement it says that
15 "this statement is made of my own free will," right?

16 A. Yes.

17 Q. "No one has threatened me in any way or promised me
18 special treatment to cause me to make this statement,"
19 right?

20 A. That's correct.

21 Q. "I'm signing my name in this space below to show that
22 it is my statement and it is the truth."

23 A. That's correct.

24 Q. Right. Then underneath you signed it?

25 A. Correct.

1 Q. That language is on both pieces of paper and you signed
2 underneath both, correct?

3 A. Yes.

4 Q. And that's very similar to the oath that you just put
5 here on the clerk's desk today, right?

6 A. Yes.

7 Q. And you signed your name at the bottom of the statement
8 that night indicating that it was the truth?

9 A. Yes, ma'am.

10 Q. Okay. Now, as you indicated, on the September 7th you
11 worked at the Shell station?

12 A. Yes.

13 Q. Okay. And on this particular night you were sort of
14 going through your routine duties, is that fair?

15 A. Yeah.

16 Q. You were, I think at one point, washing windows?

17 A. Well, we were slow that night, so we kind of got bored,
18 so I started cleaning.

19 Q. Okay. So you cleaned the windows?

20 A. Yes.

21 Q. And you went in the store and got some trash bags to
22 clean out the trash cans?

23 A. Yes, that's correct.

24 Q. All right. When you go outside to clean the trash
25 cans, the trash cans are by the gas pumps, is that correct?

1 A. Correct, yes.

2 Q. And when you go out to clean the trash cans, you look
3 down in the trash cans and see if it needs to be cleaned,
4 right?

5 A. Yes.

6 Q. You pull out the liner, right?

7 A. Yes.

8 Q. Set it down, tie it up, is that right?

9 A. Yes.

10 Q. And then you carry a third bag with you to the second
11 pump, right?

12 A. Yes.

13 Q. You looked in the second trash can to see if it needs
14 to be changed, right?

15 A. Yes.

16 Q. Pull out the liner, right?

17 A. Yes.

18 Q. Tie it?

19 A. Yes.

20 Q. And then repeat?

21 A. Yes.

22 Q. And that's the essentially what you were doing this
23 night?

24 A. Yes, ma'am.

25 Q. Nothing different about the way that you were going

1 about your business that night?

2 A. No, ma'am.

3 Q. Okay. So when you were doing that, your focus was on
4 the trash can?

5 A. Well, I was looking around the parking lot, because
6 anytime we run out to do trash, we always looked out for
7 each other to make sure each other was safe.

8 Q. Okay.

9 A. So I was standing looking around the parking lot the
10 whole time I was changing trash.

11 Q. Okay. Is it fair to say that this is a pretty busy gas
12 station?

13 A. Yeah, but we weren't busy that night. Like I said, we
14 had got slow and that's why I started cleaning.

15 Q. But because it's a gas station by I-77, there were a
16 number of cars coming in and out, right?

17 A. Yes.

18 Q. And there were a number customers that come in and out,
19 correct?

20 A. Yes.

21 Q. So up until the shooting there was really no reason to
22 remember any of the hundreds of customers that came in or
23 any of the hundreds of cars that came through, is that fair?

24 A. Yeah, that's fair.

25 Q. And by this time at night you had been on shift for

1 about eight hours?

2 A. Yes, that's correct.

3 Q. Okay. You were drawing the trash, right?

4 A. Yes.

5 Q. And you moved sort of systematically down each gas
6 pump, is that right?

7 A. Yes.

8 Q. As you were doing that, before the shooting you had no
9 reason to look inside the red car --

10 A. No.

11 Q. -- is that right?

12 A. No.

13 Q. So you didn't have any reason to study inside the red
14 car, right?

15 A. No, but I was staring on him. There was a guy sitting
16 in the driver's seat just staring at me. So, yeah, I was
17 going to stare back.

18 Q. And that's the guy that you have testified today was a
19 short haired guy with the white hat?

20 A. The driver, yes, that's correct.

21 Q. Now, again, going to back your statement, you never
22 mentioned that driver in your statement, did you?

23 A. No.

24 Q. Okay. You never mentioned the fact that he had short
25 hair in your statement, did you?

1 A. No.

2 Q. You never mentioned the fact that he had a white cap
3 on?

4 A. No, I didn't mention him at all, because they didn't
5 really ask about the driver.

6 Q. But you understood that they needed to know all the
7 details of that evening, is that correct?

8 A. Yes.

9 Q. And that would have been a detail from that evening
10 correct?

11 A. Yes.

12 Q. Okay. Now, I believe you testified a couple minutes
13 ago that you noticed two cars - a burgundy car and a black
14 SUV?

15 A. Yes.

16 Q. And in the burgundy car, you noticed the three black
17 males?

18 A. Yes, that's correct.

19 Q. And in the black SUV you noticed a black female and a
20 black male?

21 A. Yes, that's correct.

22 Q. Now, then I believe you said, and correct me if I'm
23 wrong, that you saw a black male walk over to the SUV?

24 A. Yes, that's correct.

25 Q. Is that right, okay.

1 Now, today you testified that you saw him walk up to
2 the SUV?

3 A. That's correct.

4 Q. You hear a pop?

5 A. Yes.

6 Q. And then he ran -- you saw him run back to the car, is
7 that correct?

8 A. Yes, that's correct.

9 Q. Do you remember testifying under oath yesterday in a
10 hearing in here?

11 A. Yes.

12 Q. And when I say under oath, that was with the same
13 promise that you made to tell the truth today, right?

14 A. Yes.

15 Q. And yesterday you testified that you didn't just see
16 him walk around to the car and walk back, but you heard a
17 struggle between the two?

18 A. I seen the struggle.

19 Q. Okay.

20 A. It looked like they were playing around and I seen a
21 struggle.

22 Q. Okay. You did testify to that yesterday?

23 A. Yes.

24 Q. And, again, that was not in your original statement
25 either, though?

1 A. Yes.

2 Q. Now, you testified -- I'm sorry, you put in your
3 statement that you noticed that the man who walked over
4 there was a young black man, is that correct?

5 A. Yes, that's correct.

6 Q. And he had dreads, right?

7 A. Correct.

8 Q. You did not provide the color of his clothing, right?

9 A. That's correct.

10 Q. You didn't provide weight in your statement?

11 A. No.

12 Q. Right.

13 A. I don't know how to weigh somebody by looking at them.

14 Q. Okay. His build?

15 A. No.

16 Q. Whether he had any markings on him, like tattoos,
17 right?

18 A. That's right.

19 Q. And anything about his face, any facial features he may
20 have had?

21 A. No.

22 Q. Okay. Now, today you testified that you first noticed
23 the person inside in the store because of he wouldn't make
24 eye contact with you?

25 A. That's right.

1 Q. Is that correct?

2 A. Yeah, that's correct.

3 Q. And you kept calling that person Travis, is that right?

4 A. Yes.

5 Q. And by Travis, you were referring to Travis Robinson?

6 A. Yes, that's correct.

7 Q. But you are calling him Travis today, but you don't
8 know Travis Robinson, right?

9 A. No, I don't know him.

10 Q. You have never met him before?

11 A. Never.

12 Q. You never saw him before this date?

13 A. Never.

14 Q. And in the last year you haven't seen him since?

15 A. Not since it happened, no.

16 Q. You first testified -- I'm sorry, you testified that
17 you first noticed him because you got a bad feeling from
18 him, is that correct?

19 A. Yes, because he wouldn't make eye contact with me.

20 Q. And that he walked right past you?

21 A. Exactly.

22 Q. Okay. So you had a good chance to look at the person's
23 face?

24 A. Correct.

25 Q. And, again, that was a detail that you never put in

1 your original statement, is that correct?

2 A. That's correct.

3 Q. Okay. And when you looked at him that closely, there
4 aren't details in your original statement about anything,
5 facial feature, is that correct?

6 A. Yes, that's correct.

7 Q. Color of clothing, is that correct?

8 A. That's correct.

9 Q. And your estimation as to height or weight, or anything
10 like that?

11 A. That's correct.

12 Q. You are also -- let's see. Yesterday when you
13 testified you mentioned that a person did have a scar on his
14 face, is that correct?

15 A. I believe so, yes.

16 Q. And you called it a scar?

17 A. Uh-huh.

18 Q. Is that right?

19 A. Yes.

20 Q. And, again, that was a detail that was never put in
21 your statement?

22 A. Yes.

23 Q. In your first statement, the one that you gave before
24 going to Charlotte --

25 A. Uh-huh.

1 Q. -- you never mentioned that the person had on a gray
2 T-shirt, is that right?

3 A. Well, I wasn't too worried about what he had on. I was
4 shaken up, I was upset. When they pulled out of the
5 parking lot, they about hit my mother and my child head-on,
6 so I was pretty upset at this time. I wasn't paying no
7 attention to their clothes. I didn't care what they had on.

8 Q. Okay. So you never gave a description to the police --

9 A. No, I did not.

10 Q. -- of what they were wearing?

11 A. No, I did not.

12 Q. When you noticed him earlier in the evening, you said
13 you got a bad feeling from --

14 A. Yes, I did.

15 Q. -- that person.

16 Based on that bad feeling, you didn't turn around to
17 Ms. Macomson and say "hey, keep an eye on this guy"?

18 A. No, I did not.

19 Q. You didn't say "maybe I won't go out and change the
20 trash until that car leaves," right?

21 A. No, I did not.

22 Q. You didn't call your momma and tell her not to bring
23 your son around because there was a guy at the gas station
24 you are not real sure about?

25 A. No, she was already on her way.

1 Q. Okay. Now, help me out with some sort of geography at
2 the gas station, okay? Right before you hear the pop, you
3 were at pump one and two?

4 A. Exactly.

5 Q. Correct?

6 A. Yes.

7 Q. And you were emptying out the trash can?

8 A. Yes.

9 Q. And the trash can is closest to the convenience store
10 side, right?

11 A. What do you mean? Repeat that.

12 Q. Like the trash -- the trash can, it was on the
13 convenience store side?

14 A. Yes, right.

15 Q. So if I'm standing at the trash can and I'm facing pump
16 three and four, there would be a red car between me and pump
17 three and four?

18 A. Yes.

19 Q. Okay. And then right past the red car would be the gas
20 pumps?

21 A. Exactly, yes.

22 Q. And then right past the gas pumps would be the black
23 SUV?

24 A. Yes.

25 Q. Now, you testified I believe that you saw a passenger

1 inside. The door of the SUV was open?

2 A. Yes.

3 Q. Okay. Then you heard a pop, is that right?

4 A. I saw them struggling and I heard a pop, yes --

5 Q. Okay.

6 A. -- that's correct.

7 Q. And then what did you see?

8 A. Mr. Dodd got out and ran in the store and the other
9 ones jump in the car and left.

10 Q. So after you hear the pop and the time it takes for the
11 man to walk around the car to get back in the burgundy
12 car --

13 A. He didn't walk. He ran.

14 Q. He ran?

15 A. He jumped in the car, yes, that's correct.

16 Q. So about what, a second or two that you saw him?

17 A. Yeah, about five seconds, yeah.

18 Q. Five seconds, or one or two seconds?

19 A. I'm not sure. It could have been in between one and
20 five seconds.

21 Q. Okay. Then after that you see the car pull out of the
22 parking lot?

23 A. Yes, that's correct.

24 Q. And then that's when you get a good look at the car, is
25 that right?

1 A. Yeah, I seen the car pulling off.

2 Q. And you noticed that it was a small car?

3 A. Yes.

4 Q. It was burgundy, is that correct?

5 A. That's correct.

6 Q. And in your initial statement that evening you said it
7 had a busted out back window, is that right?

8 A. I thought it did, yes.

9 Q. But you didn't write in your statement that it looked
10 like it was busted out. You wrote "the back window on the
11 driver's side was busted out."

12 A. Okay.

13 Q. Isn't that --

14 A. Yes, that's correct.

15 Q. Then did you immediately follow Mr. Dodd back into the
16 store?

17 A. No, I went to my mom and told her to leave the parking
18 lot. Then I went in the store.

19 Q. Your mom had pulled in by this point?

20 A. Yes, my mother and my son had pulled in the parking
21 lot. I was trying to get them out of the parking lot,
22 because I didn't know what was going to happen, so I told
23 her to get out of the parking lot. Then I went in the
24 store.

25 Q. How long do you think that took?

1 A. Not very long, because I didn't even go up to the van.
2 I just told her to get out of the parking lot. I was
3 screaming at her to leave.

4 Q. Okay. That was once you ran inside the store?

5 A. Yes.

6 Q. And that's when you heard Ms. Macomson calling 911?

7 A. Yes.

8 Q. And while she was talking to the dispatcher, you were
9 next to her giving her the details of what you had seen?

10 A. No, I wasn't.

11 Q. Were you near her?

12 A. I was on the floor with Mr. Dodd.

13 Q. But you were yelling out the details?

14 A. Yes.

15 Q. And you yelled that there were three black guys, right?

16 A. That's correct.

17 Q. In a burgundy car?

18 A. That's correct.

19 Q. Is that correct, okay.

20 Let me show you -- when the -- when the police got on
21 the scene, you were still at the gas station?

22 A. Yes, that's correct.

23 Q. And you told them at the time that you had seen the
24 person on tape that you had seen at the gas station, is that
25 correct?

1 A. Repeat the question.

2 Q. You had told them at that time that this was the person
3 on the surveillance video that you had seen?

4 A. I didn't even look at the surveillance video before I
5 went to Charlotte or any of that.

6 Q. Do you remember testifying again yesterday under oath
7 that you did view the surveillance video before going up to
8 Charlotte?

9 A. I did when I got back from Charlotte.

10 Q. You were told that you needed to ride to Charlotte
11 because they needed you to ID someone, is that right?

12 A. Yes.

13 Q. And they told you that they had the shooter, correct?

14 A. They said they had caught them. They didn't say who
15 they caught.

16 Q. Okay. Do you remember testifying under oath yesterday
17 that you were told that they caught the shooter?

18 A. They said they caught them. They wanted me to come
19 identify them.

20 Q. Okay. Do you remember testifying under oath yesterday
21 that you were told by Detective Miller that they had caught
22 the shooter?

23 A. Yes.

24 Q. So by hearing that, you rode up to Charlotte with
25 Detective Miller?

1 A. Yes.

2 Q. Okay. And he took you to Charlotte to an apartment
3 complex?

4 A. Yes.

5 Q. When he got to the apartment complex, you never got out
6 of the car --

7 A. No.

8 Q. -- is that right.

9 And you saw a young man get out of the patrol car, a
10 Charlotte-Mecklenburg car, is that correct?

11 A. Yes.

12 Q. He was in handcuffs?

13 A. Yes.

14 Q. And he was told to stand in the headlights of the car
15 which you were sitting in?

16 A. Yes, that's correct.

17 Q. And you told the officer, the York County officer, you
18 ID'd that person?

19 A. Yes.

20 Q. Did that York County officer then turn around to the
21 Charlotte-Mecklenburg patrol officer and told him that you
22 had identified him?

23 A. He just gave him a thumbs up.

24 Q. Okay. And then a Charlotte-Meck officer outside gave a
25 thumbs up --

1 A. Yes.

2 Q. -- where the person was standing?

3 A. Yes.

4 Q. And at that point the young man was taken and put back
5 into the Charlotte-Meck patrol car?

6 A. Yes.

7 Q. And he was still handcuffed?

8 A. Yes.

9 Q. The person that you identified was a black male --

10 A. Yes.

11 Q. -- right?

12 Had dreadlocks?

13 A. Yes.

14 Q. And I believe that you testified yesterday he had a
15 white cut-off shirt?

16 A. Yes.

17 Q. Did you see the blue jeans shorts that he was wearing?

18 A. No, I wasn't paying too much attention to it.

19 Q. Did you see the bright orange and yellow shoes that he
20 was wearing?

21 A. No, I wasn't looking at his shoes.

22 Q. On your way back down to Fort Mill, you were taken by a
23 Charlotte-Meck --

24 A. Yes, that's correct.

25 Q. -- patrol officer?

1 And you and Mr. Dodd's friend rode back together?

2 A. Yes, that's correct.

3 Q. You were never asked that night to give a photo lineup,
4 is that right?

5 A. No, I was not.

6 Q. You have not been asked since then to view a photo
7 lineup?

8 A. No, I have not.

9 Q. And did you view the surveillance footage yesterday?

10 A. Yes, a little bit of it.

11 Q. Just one final point, Ms. Parker.

12 In your statement that you wrote down for the police
13 that night, the only description that you give is three
14 young black males, is that true?

15 A. That's correct.

16 Q. And that one black male had dreads?

17 A. That's correct.

18 Q. Is that true?

19 A. Yes.

20 MS. INZERILLO: I have no further questions, Your
21 Honor.

22 THE COURT: Mr. Dunn?

23 MR. DUNN: If it please the court, Your Honor.

24 CROSS EXAMINATION BY MR. DUNN:

25 Q. Ms. Parker, when you said that you saw or you heard a

1 struggle going on in the black SUV between Mr. Dodd and the
2 person you said had dreadlocks, was there anybody else
3 involved in that struggle?

4 A. No, sir.

5 Q. You earlier testified that you recognized Mr. Tobbie as
6 having been at that gas station that night, correct?

7 A. Yes, sir, that's correct.

8 Q. He wasn't involved in that struggle, was he?

9 A. Excuse me?

10 Q. He was not involved in that struggle?

11 A. No, sir.

12 Q. He wasn't anywhere -- he wasn't with the person with
13 the dreadlocks pointing the gun at Mr. Dodd, correct?

14 A. That's correct.

15 Q. And the time that the individual was pointing the gun
16 at Mr. Dodd, Mr. Tobbie was getting back into the car, is
17 that correct?

18 A. That's correct.

19 Q. You saw both individuals come into the store?

20 A. Yes, I did.

21 Q. They didn't come in at the same time, did they?

22 A. They come spaced out a little bit, but he was behind
23 him. Travis came in first.

24 Q. The person of Travis came in first?

25 A. Yes.

1 Q. And then Mr. Tobbie came in second, is that correct?

2 A. Yes.

3 Q. When Mr. Tobbie came in, he was actually talking on his
4 cell phone, wasn't he?

5 A. Yes, he was.

6 Q. And you don't know what happened once they went through
7 the doors, is that correct?

8 A. No, I do not.

9 Q. You were outside?

10 A. I was outside.

11 Q. And when everybody came back outside, you didn't hear
12 either the individual with the dreadlocks or Mr.. Tobbie
13 talking, correct?

14 A. No, I did not.

15 Q. At any time point between the time that they walked out
16 the door and the time he got in the car, you never saw them
17 talking, correct?

18 A. No, I did not.

19 Q. And when Tobbie got back into the car, into the red
20 car, he got into the rear passenger's side?

21 A. That's correct.

22 Q. And that was away from --

23 A. That was on the opposite side of the pump.

24 Q. Okay. The night that -- at the time at the gas station
25 when Mr. Tobbie came in, he was wearing a black shirt,

1 right?

2 A. That's correct.

3 Q. Dark?

4 A. Dark color, uh-huh. Yes.

5 Q. And then when they took you up to Charlotte -- when the
6 police officer took you up to Charlotte, again, they gave
7 you an opportunity to see Mr. Tobbie, correct?

8 A. That's correct.

9 Q. At that time what was he wearing?

10 A. A white T-shirt.

11 Q. In the statement that you gave to the police officers,
12 you never mentioned anything about Mr. Tobbie, correct?

13 A. No, sir.

14 Q. In fact, the only person that you mentioned -- there
15 was three black males, right?

16 A. That's correct.

17 Q. And you also mentioned an individual who had dreads?

18 A. That's correct.

19 Q. Nothing at all whatsoever about Mr. Tobbie?

20 A. No, sir.

21 Q. Earlier you testified that you were staring at the
22 driver because he was staring at you?

23 A. Yes, that's correct.

24 Q. As you were I think changing the trash?

25 A. Yes, that's correct.

1 Q. Did you ever bother to see if there was anybody else in
2 the vehicle?

3 A. There was nobody else in the car. He was the only
4 person sitting there.

5 Q. Did you look around the rest of the car?

6 A. Yeah, I was looking all around it, because he was
7 standing there staring at me, so I was staring back at him
8 and looking in the car. I wasn't but two feet away from him
9 when I was changing the trash.

10 Q. The night of the shooting, it happened about, what,
11 around 10:50, 10:45, is that right?

12 A. About 10:40.

13 Q. And into the next morning, either one of those days,
14 did you ever -- were you ever shown any photo lineup of Mr.
15 Tobbie?

16 A. No, I was not.

17 Q. Ever shown any -- were you -- in fact, were you shown
18 any other individuals except for these two?

19 A. No, I was not.

20 Q. No other individuals were pointed out to you in the --

21 A. No, there was not.

22 Q. You earlier said that when you were giving your
23 statement, that the cops didn't ask you about the driver?

24 A. No, they just really wanted to know -- they wanted to
25 know all about them, but I didn't really see the driver,

1 like what he had on, or how tall he was, so I didn't write
2 anything about him on there.

3 Q. Really the only two people the cops were interested in
4 were the two people that had been picked up from Charlotte,
5 is that right?

6 A. That had came in the store, yes, that's correct.

7 Q. Since that time -- not counting the two days -- you
8 know, the shooting and the next day, the next morning, since
9 that time have cops shown you or anybody from the State
10 shown you a photo lineup of Mr. Tobbie?

11 A. No, they have not.

12 Q. Before yesterday had you seen the video, the
13 convenience store surveillance video?

14 A. I seen a little bit of it when I got back from
15 Charlotte that morning, about two o'clock -- one o'clock,
16 two o'clock, but I didn't stand around and watch all of it.
17 I was too upset.

18 Q. Where did you see it at?

19 A. At the store, when they were trying to make a copy for
20 the police.

21 Q. That was back in September, right?

22 A. That's the night it happened.

23 Q. And then yesterday. But between those two times you
24 haven't seen any photos?

25 A. Yeah, I seen them yesterday for the first time.

1 Q. Before yesterday, I'm sorry.

2 A. No.

3 Q. You didn't see any other videos, right?

4 A. No, sir.

5 Q. You really hadn't had any contact, a whole lot of
6 contact, with regards to this case until --

7 A. No, I have not.

8 MR. DUNN: I don't have any further questions,
9 Your Honor.

10 MR. SPRINGS: Nothing further.

11 THE COURT: You can step down and be excused. We
12 appreciate your time.

13 All right, call your next witness.

14 SAVALAS TODD, having been first duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION BY MR. SPRINGS:

17 Q. You have a very soft voice, Mr. Dodd, so I'm going to
18 ask you to speak up nice and loud. I know that you are
19 nervous, but keep your voice up so we can all hear you, and
20 let's start with your name. What is your name, sir?

21 A. Savalas Dodd.

22 Q. I want to ask you about the night of September the 7th
23 of last year, about 10:40 at night. Did something bad
24 happen to you?

25 A. Yes, sir.

1 Q. What bad happened to you that night?

2 A. I was shot in the stomach.

3 Q. Will you ever forget that night?

4 A. No.

5 Q. Now, before we go any further, I don't mean to
6 embarrass you, but in your past were you convicted of a
7 felony up in New Jersey and convicted here locally of drug
8 distribution and cocaine?

9 A. Yes.

10 Q. All right. I didn't mean to embarrass you.

11 Let's go back to you getting shot. Whereabouts were
12 you when you got shot the night of September 7th of last
13 year?

14 A. Gold Hill Road at a Shell station.

15 Q. Had you ridden there to the Shell station with someone?

16 A. Yes.

17 Q. Who were you with that night?

18 A. Nicole. Nicole Howie.

19 Q. Is she a friend of yours?

20 A. Yeah.

21 Q. Did you go in your car or her car?

22 A. Her car.

23 Q. And when you first got into the Shell station, did you
24 park at a gas pump or come up and park in front of the
25 store?

1 A. A pump.

2 Q. Who was driving Ms. Howie's car?

3 A. She was.

4 Q. So after you parked, who got out of the car?

5 A. I did.

6 Q. Did she ever get out of the car?

7 A. No. I mean, after -- after he shot me, yes, but until
8 then, no.

9 Q. Okay. Up until the time that you got shot, Nicole
10 Howie never got out of the car?

11 A. No.

12 Q. Did you go in the store after you parked your car?

13 A. Yes.

14 Q. Did you prepay your gas?

15 A. Yes.

16 Q. And how many times did you go back and forth between
17 Ms. Howie's car and the store? How many times did you go in
18 the store?

19 A. Twice.

20 Q. And as you are coming and going, did you notice anybody
21 watching you, or did you see people following you? Did you
22 sense that?

23 A. No.

24 Q. And were you using cash or a credit card to pay for
25 your gas and your things that you bought in the store?

1 A. Cash.

2 Q. And where were you keeping it, in a pocket or a wallet?

3 A. Yeah, a pocket.

4 Q. Did you have it loose in some kind of a billfold?

5 A. Loose.

6 Q. And after you came out of the store the second time,
7 did you come back to Ms. Howie's car?

8 A. Yes.

9 Q. The black SUV?

10 A. Yes.

11 Q. And after you finished pumping the gas, did you start
12 to get back in the car?

13 A. Yes.

14 Q. And you're still going to be the passenger and she's
15 still going to be the driver and she's in the driver's seat?

16 A. Yes.

17 Q. As you start to get into her car, what happened, Mr.
18 Dodd, as you start to get into her car?

19 A. After I pumped the gas?

20 Q. After you pumped the gas and you were getting ready to
21 go, you were getting back in the car thinking that you were
22 going to leave.

23 A. No, I pumped the gas, forgot an item, went back in.
24 They didn't have what I wanted, so I came back to the car
25 and got inside, closed the door.

1 Q. Okay.

2 A. That's when Mr. Robinson came and opened my door.

3 Q. Okay. Let me stop you there. You had gotten the door
4 shut?

5 A. Yes.

6 Q. And you say Mr. Robinson opened the door?

7 A. Yes.

8 Q. So he was close to you?

9 A. Yes.

10 Q. Was he holding anything in his hand?

11 A. Yes.

12 Q. What was he holding in his hand?

13 A. A pistol.

14 Q. Could you tell what kind of a pistol it was, whether it
15 was an automatic pistol or a revolver pistol?

16 A. Revolver.

17 Q. What did he say to you after he opened -- after he
18 opened your door?

19 A. "Give me that money."

20 Q. And what was your first reaction looking at the gun and
21 hearing him say "give me your money"?

22 A. "All right. Cool. Whoa. Hold you. Got me straight.
23 You got me."

24 Q. And then in slow motion, tell us what happened then.

25 In your own words, what happened after you through up your

1 hands?

2 A. I threw my hands up, looked at him in his eyes. I
3 seen -- I seen he was nervous and scared, so I'm slow.
4 "Hold up. Take your time. You are good. You are good." I
5 reached in my pocket.

6 Q. The pocket with your money?

7 A. The pocket with the money.

8 Q. Were you going to give him your money?

9 A. Exactly. I mean, of course. I don't have a pistol.
10 I'm not -- I mean, I don't have nothing. I don't have a
11 bat, a stick. He got a gun, "give me your money." Of
12 course, let go of your money.

13 Q. So you are putting your hand in your pocket?

14 A. My pocket to get the money.

15 Q. Then what happens?

16 A. I'm still slow. I can tell he's scared.

17 As I turned, I'm like "hold up. Hold up. You got me."
18 I'm giving him eye contact and I'm -- I go slower, because I
19 could see the fear. I ain't going to move too fast to scare
20 him.

21 Q. Yes, sir.

22 A. You see, I ain't trying to get killed.

23 And as I go in my pocket, I'm coming out. He is
24 telling me "you are moving too slow," which he ain't been
25 there 30 seconds, but I guess that wasn't fast enough for

1 him, and he shot me.

2 Q. Where did the bullet hit you?

3 A. In my -- in my abdomen, right here.

4 Q. When you heard that shot and that bullet hit you,
5 what -- what did you do?

6 A. I turned to her, I say "this boy done shot me."

7 I looked at him again, asked him "what is you doing?"

8 We went from a robbery to -- I could have died, to almost a
9 homicide, and he just looked at me, looking dumbfounded at
10 me. He stood there looking dumbfounded. And I even forgot
11 about her. I just took off running into the store. I mean,
12 I forgot about her completely and went into the store.

13 Q. When you went into the store, did the folks there call
14 for help?

15 A. Yes.

16 Q. And did an ambulance come and take you away?

17 A. Yes.

18 Q. And did the people at the hospital work on you?

19 A. Yes.

20 Q. Would you be embarrassed to show this jury the scar or
21 where that bullet hit you?

22 A. No.

23 Q. Come on down here and show this jury.

24 (Witness off the witness stand)

25 A. I'm sorry, I can't --

1 BY MR. SPRINGS:

2 Q. Have you still got trouble because of this? Where did
3 the bullet hit you?

4 A. Here.

5 Q. This big scar, is this where the doctors had to sew
6 your innards up inside?

7 A. Yeah, they had to cut me.

8 Q. Okay.

9 COURT REPORTER: I can't hear him.

10 THE COURT: Yeah, you got to speak up.

11 A. They cut me open and I lost half my small intestines.

12 BY MR. SPRINGS:

13 Q. Small intestines. Okay. Go ahead and sit back down.

14 (Witness back on the witness stand)

15 BY MR. SPRINGS:

16 Q. Mr. Dodd, you have been talking about Travis Robinson,
17 the man that got right there eyeball to eyeball when he shot
18 you, if you see him in this courtroom, point him out.

19 A. Right there with the suit on.

20 Q. You are pointing to Mr. Robinson, the defendant?

21 A. Yeah.

22 Q. Thank you Mr. Dodd.

23 THE COURT: Mr. Lemel.

24 CROSS EXAMINATION BY MR. LEMEL:

25 Q. All right, Mr. Dodd, you and Ms. Howie were in the car

1 together?

2 A. Yeah.

3 Q. And you needed gas?

4 A. Yes.

5 Q. So you pulled into the Shell station?

6 A. Yes.

7 Q. And you were not a regular customer at that Shell
8 station, were you?

9 A. What do you mean?

10 Q. Well, how many times had you been to that Shell station
11 before?

12 A. Plenty.

13 Q. Many times before?

14 A. Yeah.

15 Q. Do you consider yourself a regular patron of that Shell
16 station?

17 A. Once a week.

18 Q. Once a week. Okay.

19 And she was driving?

20 A. Yeah.

21 Q. You were in the front passenger seat?

22 A. Yes.

23 Q. And you pulled up next to the pump?

24 A. Yeah.

25 Q. And the fuel tank for that car is on the same side as

1 that passenger's side?

2 A. Yeah.

3 Q. So you would have pulled up and opened your door, your
4 door would have been opening out towards the pump itself?

5 A. Yeah.

6 Q. Okay. You get out of the car?

7 A. Yes.

8 Q. Go into the store?

9 A. Yes.

10 Q. Spend a couple minutes inside the store getting some
11 stuff?

12 A. Yes.

13 Q. A beer?

14 A. Yes.

15 Q. Some peanuts?

16 A. Yeah.

17 Q. And you go out to the car?

18 A. Yes.

19 Q. Okay. Pump gas?

20 A. Yes.

21 Q. Come on back in the store looking for some other item?

22 A. Yes.

23 Q. Did the clerk direct you around to look in a place?

24 A. Uh-huh.

25 Q. But you don't buy anything else?

1 A. No.

2 Q. All that is going on?

3 A. Yeah.

4 Q. Okay. Nothing unusual had happened at that point?

5 A. No.

6 Q. No reason for it to be any different than any other of
7 the times that you had pumped gas before?

8 A. No.

9 Q. You testified -- and Mr. Springs asked you to slow down
10 like it was in slow motion. Do you remember when he asked
11 you that?

12 A. Yes.

13 Q. This didn't happen like slow motion. This was a
14 relatively short period of time.

15 A. I moved in slow motion. I mean --

16 Q. That's not what I asked you.

17 A. Correct.

18 Q. The whole time, from the second that door was open,
19 okay?

20 A. Yes.

21 Q. The second that you start running in the store, not a
22 long period of time, was it?

23 A. No. No.

24 Q. It's probably took you a lot longer to describe
25 everything that happened than actually took to occur?

1 A. Yeah.

2 Q. It took several minutes, in fact. That's not how long
3 this happened?

4 A. No.

5 Q. Pretty quick?

6 A. Yeah.

7 Q. Okay. Pretty stunning and startling when this
8 happened?

9 A. Yes.

10 Q. Because you get into the car?

11 A. Yeah.

12 Q. Close the door?

13 A. Yeah.

14 Q. The next thing you know the door is being opened?

15 A. Yeah.

16 Q. Which in itself is pretty startling?

17 A. Yes.

18 Q. And the next thing that you know after that there is a
19 gun pointed right at you?

20 A. Yeah.

21 Q. Which again is stunning?

22 A. Yes.

23 Q. Startling?

24 A. Yes.

25 Q. You looked at that gun?

1 A. Yeah.

2 Q. I imagine that was drew your attention pretty strongly?

3 A. Yes.

4 Q. And somebody is saying to you "give me that money.
5 Give me that money"?

6 A. Yes.

7 Q. Correct.

8 And that's what you want to do. At that point in time
9 your thought process is, as you said, "I don't want to get
10 killed here. I'm going to give him this money"?

11 A. Yes.

12 Q. So you go slowly to try to reach in?

13 A. Yeah.

14 Q. And then that's not fast enough for him. He tells you
15 to move foster, some sort of words like that?

16 A. Yes.

17 Q. And, again, this must have heightened your concern at
18 that point in time because he is saying "move a little bit
19 faster"?

20 A. Yes.

21 Q. Now, you, yourself, testified you put your hands up
22 initially?

23 A. Yeah.

24 Q. And then slowly down to the car?

25 A. Yes.

1 Q. So you are going to your pocket?

2 A. Yes.

3 Q. You didn't get out of the car at that point in time?

4 A. No.

5 Q. Right. You didn't try to wrestle him with the gun, for
6 the gun?

7 A. No.

8 Q. Didn't try to grab the gun?

9 A. No.

10 Q. Didn't struggle with him in any way at the pumps?

11 A. No.

12 Q. The next thing that you know, bam, you had been shot?

13 A. Yeah.

14 Q. And you look over at Ms. Howie and say "I have been
15 shot"?

16 A. Yeah.

17 Q. Look back at him and you say he's just standing there
18 still in the door, correct?

19 A. Yeah. He had backed up a little bit.

20 Q. Okay. He backed up?

21 A. He is in sight.

22 Q. Okay.

23 A. Looking.

24 Q. You had not said that before, did you?

25 A. Say what?

1 Q. That he had backed up at that point?

2 A. I wasn't asked that.

3 Q. Okay. But you didn't say it when you were describing
4 what happened?

5 A. I wasn't asked that.

6 Q. My question to you is not whether you were asked it,
7 but did you say that?

8 A. No.

9 Q. Okay. And at that point in time you get out and run
10 into the store?

11 A. Yes.

12 Q. And we see you on the videotape running in the store?

13 A. Yeah.

14 Q. And you saw that?

15 A. Yeah.

16 Q. Is that the first time that you have seen that
17 videotape?

18 A. Yeah.

19 Q. Did you watch it yesterday?

20 A. No, I seen the pictures yesterday.

21 Q. So somebody was showing you pictures off that
22 videotape?

23 A. Yeah.

24 Q. Okay. Now, since this entire incident happened, you
25 never spoke with the police officers, did you?

1 A. In the hospital.

2 Q. At the hospital, or in the year since this trial
3 started on Monday?

4 A. In the hospital, yes.

5 Q. You spoke with somebody at the hospital?

6 A. Yeah.

7 Q. From the York County sheriff's office?

8 A. I don't know where she was from.

9 Q. Were they in uniform or in plainclothes?

10 A. Plainclothes.

11 Q. But you never wrote out a statement to them?

12 A. No.

13 Q. Did anybody ever come to you with a photo lineup and
14 ask you to look at pictures?

15 A. No.

16 Q. And you said -- you testified earlier that you looked
17 right in the eyes of whoever was standing in your door,
18 right? Looking right at their eyes is what you said.

19 A. Yes.

20 Q. And you never gave anyone, law enforcement, a
21 description of that person's face?

22 A. I was never asked.

23 Q. Nobody ever asked you?

24 A. No.

25 Q. Nobody ever asked you to look at the pictures neither?

1 A. No.

2 Q. Nobody has ever asked you about the clothes that he was
3 wearing?

4 A. No.

5 Q. But you were told that an arrest was made?

6 A. Yes.

7 Q. As a matter of fact, you were told that they got him?

8 A. Yes...

9 Q. Right?

10 A. Yes.

11 Q. And then you were told you had to come to court and
12 testify about it?

13 A. Yeah.

14 Q. Right.

15 And you were here in court on Monday, right, when this
16 case was called?

17 A. Yes.

18 Q. You were sitting right in the back back there, right?
19 Sitting in the back of this courtroom?

20 A. No, I was sitting in the front.

21 Q. You were sitting up front here?

22 A. Yeah.

23 Q. Okay. Right over there, when the judge asked Travis to
24 stand up and look at the jury, right?

25 A. No, I wasn't here then.

1 Q. You weren't in the courtroom for that?

2 A. No.

3 Q. You were in the courtroom when this case was called?

4 A. Not -- no jury was out there, no.

5 Q. You were here when the judge introduced Travis about
6 the case?

7 A. No.

8 Q. Okay. What about now, in this whole courtroom, how
9 many young men with dreadlocks are there?

10 A. Two.

11 Q. Where?

12 A. Right here and right there.

13 Q. Right where?

14 A. Beside you right there.

15 Q. Uh-huh. Who is the other fellow?

16 A. Travis.

17 Q. So there is one young man with dreadlocks in this room,
18 right?

19 A. I got them myself.

20 Q. Okay. You are including yourself --

21 A. Yeah.

22 Q. -- having corn rows?

23 A. Yes.

24 Q. Those are corn rows, aren't they? They are not
25 dreadlocks?

1 A. They are becoming dreads.

2 Q. Okay. Right now, not counting dreads, how many young
3 men black men with dreadlocks are in this room?

4 A. One.

5 Q. And he's sitting here next to -- you already pointed at
6 him, right?

7 A. Yes.

8 Q. Sitting at the table.

9 Were you run up in this room by the prosecutor
10 beforehand, before the trial got started, shown around?

11 A. Say again.

12 Q. Did anyone ever bring you in this room before the trial
13 started to show what the courtroom was going to be looking
14 like?

15 A. Oh, no.

16 Q. Okay. But you know he's sitting here with his defense
17 attorneys, right?

18 A. Right.

19 Q. And that's the person that you picked out and pointed
20 to right now?

21 A. That's the person that done it.

22 Q. Okay. Having never been shown a photo lineup?

23 A. No.

24 Q. Having never given anyone a description of the
25 individual that you said that you looked in the eyes?

1 A. No.

2 Q. Having never told this jury as you had this happen to
3 you any particular feature of the person that shot you?

4 A. No.

5 Q. And as Mr. Springs said, this isn't your first time in
6 court, is it?

7 A. No.

8 Q. You were convicted of a felony in New Jersey?

9 A. Yeah -- no, no, no, no, no, a misdemeanor.

10 Q. A misdemeanor?

11 A. It got dropped to a misdemeanor.

12 Q. And that was in New Jersey?

13 A. Yes.

14 Q. In 1999?

15 A. Yes.

16 Q. And in this courtroom or this county --

17 A. Uh-huh.

18 Q. -- you were convicted of trafficking in crack cocaine?

19 A. Yeah.

20 Q. And received a sentence of five years for that?

21 A. Yes.

22 Q. And you were also convicted at the same time for
23 possessing crack cocaine with intent to distribute within
24 proximity of a school, park, or playground?

25 A. Yeah.

1 Q. And got the same thing?

2 A. Yeah.

3 MR. LEMEL: Begging the court's diligence.

4 (Off the record)

5 (Back on the record)

6 MR. LEMEL: No further questions.

7 MR. DUNN: If it please the court.

8 CROSS EXAMINATION BY MR. DUNN:

9 Q. Mr. Dodd, Mr. Tobbie didn't shoot you, right?

10 A. No.

11 Q. At the time that the individual with the dreadlocks was
12 pointing a gun at you, Mr. Tobbie wasn't standing next to
13 him, correct?

14 A. No, sir.

15 Q. In fact, during the time that you were outside your
16 car, Mr. Tobbie wasn't anywhere around your car, was he?

17 A. I don't -- I don't -- no, sir.

18 Q. You don't remember?

19 A. No, sir.

20 Q. In fact --

21 A. I didn't notice him.

22 Q. And the time that you were standing in line in the
23 convenience store before you got shot, Mr. Tobbie wasn't
24 standing behind you in the line, right?

25 A. He was -- I mean, not directly. He was in the store.

1 Not directly.

2 Q. He was in the store, but he wasn't behind you?

3 A. No. No.

4 Q. You never talked to him in the store?

5 A. No.

6 Q. And you didn't see him talking to anybody else in the
7 store?

8 A. No.

9 Q. You didn't see Mr. Tobbie talk to anybody outside,
10 correct?

11 A. No.

12 Q. In fact, the first time that you have seen Mr. Tobbie
13 since -- do you remember seeing Mr. Tobbie in the store last
14 year?

15 A. Yes.

16 Q. Or do you remember seeing a black guy with short hair?

17 A. Mr. Tobbie.

18 Q. Are you sure?

19 A. Yeah.

20 Q. Since that time, have the police ever shown you a
21 lineup of him?

22 A. No.

23 Q. Ever shown a video with him in it?

24 A. No.

25 Q. Pictures with him in it?

1 A. No.

2 Q. So before yesterday when we showed up to court to start
3 this trial, you hadn't seen Mr. Tobbie since last year, have
4 you?

5 A. No.

6 Q. You live in North Carolina?

7 A. Yeah.

8 Q. Does Ms. Howie live in North Carolina?

9 A. Yeah.

10 Q. And yet you said that you come down to that gas station
11 all the time?

12 A. Once -- I got three of them.

13 Q. How much gas did you get that night?

14 A. Thirty, forty dollars.

15 Q. Gas was what, 2.50, three bucks a gallon last year
16 about this time?

17 A. Maybe \$3, I don't know.

18 Q. Have you ever given a written statement to the police
19 officers?

20 A. No.

21 Q. In fact, you never told the cops at all anything about
22 Mr. Tobbie, did you?

23 A. No.

24 Q.

25 MR. DUNN: Indulge the court one second.

1 (Off the record).

2 (Back on the record)

3 BY MR. DUNN:

4 Q. At the time that you got shot and the red car pulled
5 away, you weren't paying attention to who was inside that
6 red car, correct?

7 A. No.

8 Q. In fact, you were running inside. I think you got
9 inside before the car got out of the parking lot, right?

10 A. Yeah.

11 Q. So you don't know who was in that car, right?

12 A. I don't know what?

13 Q. You don't know who -- besides the person who jumped --
14 besides the shooter who jumped in the car, you don't know if
15 anybody else was in the car, right?

16 A. I know there was in there, but I don't know who it was.

17 MR. DUNN: I don't have any further questions,
18 Your Honor.

19 REDIRECT EXAMINATION BY MR. SPRINGS:

20 Q. Mr. Dodd, how many men in this courtroom got up in your
21 face with a revolver and pumped a bullet into your guts?

22 A. In this courtroom, one.

23 Q. One man in this courtroom?

24 A. Yeah.

25 Q. Mr. Dodd, will you ever forget the man who shot you in

1 the gut?

2 A. Never. Never would I forget this. Never.

3 Why did you shoot me?

4 MR. LEMEL: Objection.

5 THE COURT: Yeah, just -- let's don't go into
6 that.

7 Have you got any more questions?

8 MR. SPRINGS: No, sir.

9 THE COURT: You can step down. We appreciate your
10 time. Thank you.

11 Call your next witness.

12 MR. SPRINGS: Would you ask Ms. Howie to come in?
13 She's in the waiting room.

14 NICOLE HOWIE, having been first duly sworn,
15 testified as follows:

16 DKRECT EXAMINATION BY MR. SPRINGS:

17 Q. Ma'am, you have a soft voice. I'm going to ask you to
18 keep your voice up nice and loud.

19 A. Okay.

20 Q. Because everyone wants to hear everything that you have
21 to say.

22 Tell us your name.

23 A. Nicole Howie.

24 Q. I'm want to ask you about the things that happened the
25 night of September the 7th of last year. Do you remember

1 that night?

2 A. Yes, I do.

3 Q. Around 10:40 that night who were you with?

4 A. Savalas Dodd.

5 Q. And did you drive somewhere with him?

6 A. Yes, I did.

7 Q. Where did you go?

8 A. To the Shell gas station.

9 Q. Was it your car that you were in?

10 A. Yes.

11 Q. What color is your car?

12 A. Black.

13 Q. And was it just the two of in your black car?

14 A. Yes, sir.

15 Q. All right. And were you driving?

16 A. Yes, I was.

17 Q. When you got there, did you park at the pumps or park
18 in front of the store?

19 A. At the pumps.

20 Q. And who got out of the car, you or Mr. Dodd, or both of
21 you?

22 A. Mr. Dodd.

23 Q. And did he go inside the store?

24 A. Yes, he did.

25 Q. Do you remember if there was another car parked right

1 on the other side of the gas pumps next to you?

2 A. Yes, I do.

3 Q. Do you remember what color that car was?

4 A. Burgundy.

5 Q. And do you remember how many people were in the car?

6 A. Three.

7 Q. Was it men, or women, or a mixture?

8 A. Men.

9 Q. And do you recall if any of those three people got out
10 of that car?

11 A. Yes, they did.

12 Q. How many of them got out?

13 A. Two.

14 Q. And those two, where did they go?

15 A. In the store.

16 Q. All right. Do you remember if Mr. Dodd went in the
17 store first or they went in the store first?

18 A. Mr. Dodd went in first.

19 Q. All right. Was there anything about the hair style of
20 these two men that you recall?

21 A. Yes, I do.

22 Q. Tell us about that.

23 A. One had dreadlocks and one was short.

24 Q. Okay. You said there was a third man?

25 A. Yes.

1 Q. Did he ever get out of the car?

2 A. No, he didn't.

3 Q. What seat in the car was he sitting in seated in,
4 sitting in?

5 A. The driver's seat.

6 Q. When Mr. Dodd came back from the store for the last
7 time and came back to your car, do you remember him starting
8 to get in your car?

9 A. Yes, I do.

10 Q. As he was getting into your car, did someone come to
11 your car?

12 A. Yes.

13 Q. And had you seen that person a little bit earlier that
14 night?

15 A. Yes, I did.

16 Q. Who was that person that you saw?

17 A. The gentleman sitting over there.

18 Q. You are pointing to Travis Robinson?

19 A. Yes.

20 Q. Was he the fellow that you said had dreadlocks a little
21 while ago that had gotten out of the burgundy car?

22 A. Yes, sir.

23 Q. And when he came to your car, did he have something in
24 his hand?

25 A. Yes, he did.

1 Q. What did he have in his hand?

2 A. A gun.

3 Q. Just to be real clear, did he come up on Mr. Dodd's
4 side of the car or on your side of the car?

5 A. Mr. Dodd's.

6 Q. What did he say when he got up to Mr. Dodd's side of
7 the car?

8 A. "Give me that money".

9 Q. And gun he was holding, do you recall if he was holding
10 it dead steady, or moving it, or pointing it? How was he
11 doing it, holding the gun?

12 A. He was moving it.

13 Q. What did you think when you saw this? How did this
14 affect you?

15 A. It scared me.

16 Anyway, he came up to the car and we both raised our
17 hands.

18 Q. You and Mr. Dodd?

19 A. Yes.

20 Q. Could you see this man with the dreadlocks clearly?

21 A. Yes, I could.

22 Q. Was the light good?

23 A. Yes.

24 Q. Did you look just at the gun, or did you look at his
25 face?

1 A. I looked at his face and at the gun.

2 Q. Did he have your full attention as he pointed the gun?

3 A. Yes, he did.

4 Q. Did the gun go off?

5 A. Yes.

6 Q. When the gun went off, what did Mr. Dodd do?

7 A. He was seated in the passenger's seat of my truck and
8 he looked at me and said "I have been shot." He jumped out
9 of my truck and he ran in the store.

10 Q. And the man with the gun that shot Mr. Dodd was Travis
11 Robinson. What did he do? Where did he go?

12 A. By that time they were already gone.

13 MS. INZERILLO: Your Honor, I have a renewal of
14 the previous objection.

15 THE COURT: All right. Overruled.

16 BY MR. SPRINGS:

17 Q. What vehicle did Travis Robinson jump into?

18 A. The vehicle that was on my passenger's side of my car.

19 Q. The burgundy car?

20 A. Yes.

21 Q. Do you remember if he got in the front or the back?

22 A. I don't remember.

23 Q. Did the police arrive a little while later?

24 A. Yes.

25 Q. And did an ambulance take Mr. Dodd away?

1 A. Yes, they did.

2 Q. Did you notice the burgundy car leaving the parking
3 lot?

4 A. Yes.

5 Q. Did they leave slowly or quickly?

6 A. Quickly.

7 (Photograph marked as State's Exhibit No. 30 for
8 identification)

9 (Photograph marked as State's Exhibit No. 31 for
10 identification)

11 (Photograph marked as State's Exhibit No. 32 for
12 identification)

13 BY MR. SPRINGS:

14 Q. Ms. Howie, I'm showing you what's been marked State's
15 Exhibit 32, and 31, and 30. Look at those three and see if
16 they accurately depict things that happened that night.

17 A. (Witness viewing photographs)

18 Yes, sir.

19 MR. SPRINGS: Your Honor, at this time we do offer
20 into evidence State's Exhibit 32, 31 and 30.

21 THE COURT: Any objection?

22 MS. INZERILLO: No, Your Honor.

23 MR. DUNN: No, sir.

24 THE COURT: Received without objection.

25 BY MR. SPRINGS:

1 Q. I'm showing you what's been marked State's Exhibit 31.
2 Do you recognize the person facing the camera in that shot?

3 A. Yes, I do.

4 Q. Who is that?

5 A. Myself.

6 Q. And is that after Mr. Dodd got shot?

7 A. Yes, sir.

8 Q. And are you running to him?

9 A. Yes, I am.

10 Q. After the shooting, as the police came and the
11 ambulance came, did you move your car?

12 A. Yes.

13 Q. And State's Exhibit 32, does it show where you moved
14 your car to?

15 A. Yes, it does.

16 Q. Which one of these cars is yours?

17 A. This black car.

18 Q. That little black SUV?

19 A. Yes.

20 Q. And you say you did see the getaway car leaving?

21 A. Yes, I did.

22 Q. Quickly?

23 A. Yes.

24 Q. State's Exhibit 30, what does that show? Does it show
25 their getaway car?

1 A. Yes, it does.

2 Q. And if you would point to the getaway car here.

3 A. (Witness pointing).

4 Q. That burgundy car?

5 A. Yes, sir.

6 Q. After an ambulance took Mr. Dodd, did you go over to
7 Charlotte to look at something? Did you go to Charlotte?

8 A. Where people was --

9 Q. I'm sorry, you may have -- forget the answer.

10 Did you go to Charlotte that evening to look at
11 something?

12 A. Yes.

13 Q. Okay. And when you got to Charlotte, did the police
14 show you someone?

15 A. Yes, they did.

16 Q. How many people did they show you?

17 A. Two.

18 Q. Let's talk about the first person the police showed
19 you.

20 When you got to Charlotte, how close was that person to
21 you when you looked at them? Were they further away than I
22 am from you, or closer?

23 A. About where you are standing.

24 Q. About where I'm standing.

25 And was there good light on that person, that first

1 person that the police showed you?

2 A. Yes, there was.

3 Q. Was the person handcuffed, do you remember?

4 A. Yes.

5 Q. As the police showed you that person, did any police
6 officer say "Ms. Howie, you are going to recognize this
7 person. Yes, you are."

8 A. No.

9 Q. Did anybody instruct you about that?

10 A. No.

11 Q. When you looked at that person, did you recognize him?

12 A. Yes, I did.

13 Q. Had you seen him earlier that evening?

14 A. Yes.

15 Q. And if you see that person you saw out there with the
16 Charlotte police, point him out.

17 A. Right there with the dreadlocks in his hair.

18 Q. You are pointing to Travis Robinson.

19 And go ahead if you see the person in this courtroom
20 that shot Mr. Dodd. Point him out.

21 A. It's the person with the dreads.

22 Q. Pointing out Mr. Travis Robinson.

23 How certain are you that Travis Robinson is the person
24 that you saw right there at your car shoot Mr. Dodd?

25 A. I'm a hundred percent sure.

1 Q. Thank you, ma'am. The defense attorneys are going to
2 ask you some questions.

3 CROSS EXAMINATION BY MS. INZERILLO:

4 Q. All right, Ms Howie, on September 7th, you went to the
5 Shell station on Gold Hill Road?

6 A. Yes, I did.

7 Q. And you witnessed the events that took place on
8 September 7th?

9 A. Yes, I did.

10 Q. And you spoke to the police about the case?

11 A. Yes.

12 Q. And that night you gave them details about what you had
13 seen?

14 A. Yes.

15 Q. And you gave them all the details that you could think
16 of?

17 A. I gave them what I remembered at that time.

18 Q. Okay. You talked to officers on the scene?

19 A. I don't recall.

20 Q. Did you talk to officers until the next couple of hours
21 from the --

22 A. Yes.

23 Q. -- time it happened?

24 A. Yes.

25 Q. And when you talked to those officers, you talked to

1 them about what happened because they were not on the scene
2 to see what had happened?

3 A. Correct.

4 Q. Okay. And that evening you gave police a statement?

5 A. Yes, I did.

6 Q. Okay. And you gave that statement to a uniformed
7 officer?

8 A. Yes, I did.

9 Q. And you told him what happened?

10 A. Yes.

11 Q. And when it happened?

12 A. Yes.

13 Q. And how it happened?

14 A. Yes.

15 Q. Who was involved?

16 A. Yes.

17 Q. And they asked you questions, right?

18 A. Yes.

19 Q. And then you answered their questions?

20 A. Yes.

21 Q. They wanted to know everything that you knew, isn't
22 that right?

23 A. Yes, I believe so.

24 Q. So you told them everything that you could tell them
25 about the details that night?

1 A. At that time.

2 Q. Okay. They told you to give them as many details as
3 you could?

4 A. I believe.

5 Q. And when you were talking to these police officers,
6 they were nice to you?

7 A. Yes.

8 Q. They were polite?

9 A. Yes.

10 Q. They didn't put any pressure on you one way or another?

11 A. No.

12 Q. They didn't coerce you?

13 A. No.

14 Q. And ultimately you ended up writing out a statement for
15 them?

16 A. Yes, I did.

17 Q. Let's talk about that statement for a moment, okay?

18 A. Okay.

19 Q. You gave this statement on the 8th of September at 1:16
20 in the morning?

21 A. Yes, ma'am.

22 Q. So that was couple of hours after this all happened at
23 the gas station?

24 A. Yes.

25 Q. And he -- when you gave the statement, he told you to

1 put in the statement all the details that you had?

2 A. I don't recall.

3 Q. He told you to tell them everything that you knew?

4 A. Right, I don't recall that.

5 Q. When he had you fill out the -- actually write the
6 statement, he was still polite to you?

7 A. Yes.

8 Q. He didn't put any pressure on you?

9 A. No.

10 Q. He didn't tell you what to write?

11 A. No, he did not.

12 Q. And he started to write something down, he didn't tell
13 you to erase it and change it?

14 A. No.

15 Q. Okay. After you wrote out your statement, he told you
16 to look over it?

17 A. Uh-huh.

18 Q. Make sure there was -- anything that needed to be
19 corrected could be corrected?

20 A. Yes, ma'am.

21 Q. And --

22 MS. INZERILLO: Your Honor, may I approach?

23 THE COURT: Yes.

24 BY MR. SPRINGS:

25 Q. I'm handing you two pieces of paper. Just take a look

1 at those for me and tell me if you recognize them?

2 A. Yes.

3 Q. Are those the two separate statement forms that you
4 filled out that evening?

5 A. Yes, it is.

6 Q. Okay. The first page is your description of the events
7 that evening, right?

8 A. Yes.

9 Q. And then the second page is the -- when you went up and
10 identified the person who shot, right?

11 A. Yes.

12 Q. At the bottom of the page -- make sure I'm not the
13 reading this incorrectly, okay? On each page it says "the
14 statement above is made of my own free will," right?

15 A. Uh-huh.

16 Q. "No one has threatened me in any way or promised me
17 special treatment to cause me to make this statement."

18 A. That's correct.

19 Q. "I am signing my name in the space below to show that
20 it is my statement and it is the truth."

21 A. That's true.

22 Q. And in this space below you signed, right?

23 A. Yes, I did.

24 Q. Both statements?

25 A. Yes.

1 Q. And that oath is similar to what you just took coming
2 into court today promising to tell the truth?

3 A. Yes.

4 Q. All right.

5 Okay. Now, getting back to the Shell station. You
6 went there that evening on a fairly routine errand of
7 getting some gas?

8 A. What do you mean by routine?

9 Q. I mean, there is nothing unusual about having to stop
10 and get gas for your car?

11 A. Right.

12 Q. Okay. And not to rehash each individual detail, but
13 essentially Mr. Dodd got out of the car, paid for the gas,
14 pumped the gas, bought some things from the convenience
15 store?

16 A. That's correct.

17 Q. Okay. In fact, you told him to pump the midway gas?

18 A. Yes.

19 Q. And that was more of a particular fact that you had put
20 in your initial statement of --

21 A. Yes.

22 Q. -- things that happened?

23 The gas pump for your SUV is on the passenger's side of
24 the car?

25 A. That's correct.

1 Q. So that would mean that if you are pumping gas at that
2 pump, your car is facing the convenience store?

3 A. That's correct.

4 Q. All right. Today when you testified that you noticed
5 the car on the other side of the pump?

6 A. Yes.

7 Q. Is that correct?

8 A. Yes.

9 Q. But you never put that detail in your statement that
10 evening, did you?

11 A. No, I did not.

12 Q. You never described in your statement the car on the
13 other side of the pump?

14 A. No, I did not.

15 Q. You never described who was in it in your statement
16 that you gave that night?

17 A. No, I did not.

18 Q. Okay. Mr. Dodd came over and sat in the passenger's
19 seat when he was done shopping and pumping gas, is that
20 right?

21 A. Yes.

22 Q. So he sat down in your SUV, right?

23 A. Yes.

24 Q. Okay. The passenger door was open at this point?
25 Still open, or was it closed?

1 A. I don't recall.

2 Q. You don't recall if it was open or closed?

3 A. No, I don't.

4 Q. Then I believe you testified someone came up to the
5 SUV?

6 A. Yes.

7 Q. Right.

8 And said give "me that money." --

9 A. Yes.

10 Q. -- right?

11 And that person was standing on the outside of your
12 SUV?

13 A. No.

14 Q. They were inside your --

15 A. They wasn't in the car, if that's what you are asking.

16 Q. But they were -- so if they are not inside the SUV,
17 they are outside the SUV?

18 A. The door was open.

19 Q. Today you testified that you looked that person
20 straight in the eye?

21 A. Yes, I did.

22 Q. Okay. And that was a detail that you didn't put in
23 your statement that night either?

24 A. That's correct.

25 Q. That night in your statement you never gave a

1 description of the person that shot Mr. Dodd, isn't that
2 right?

3 A. That's correct.

4 Q. You didn't know in your statement his race?

5 A. No, I did not.

6 Q. You did not know that his hairstyle?

7 A. No, I did not.

8 Q. You didn't know of his height, is that right?

9 A. That's correct.

10 Q. His weight?

11 A. That's correct.

12 Q. His build?

13 A. That's correct.

14 Q. Any facial features he had?

15 A. No, I did not.

16 Q. Any features, like a birthmark, or anything like that?

17 A. No.

18 Q. Any tattoos or any other markings on him?

19 A. No.

20 Q. But you did notice the gun?

21 A. Yes.

22 Q. You noticed, regarding the gun, that it was black,
23 right?

24 A. Yes.

25 Q. It was small, right?

1 A. Yes.

2 Q. And I believe later in your statement that when you saw
3 the gun, you couldn't move?

4 A. That's correct.

5 Q. And you couldn't move because someone puts a gun in
6 your face, that's what you are going to see?

7 A. Right.

8 Q. Is that fair?

9 A. Yes.

10 Q. Okay. Then I think the next detail, he was waving the
11 gun in the air?

12 A. Uh-huh.

13 Q. And then you heard a pop?

14 A. Yes.

15 Q. Now, at that point, when you are heard the pop and Mr.
16 Dodd looked over to you and said "I have been shot"?

17 A. Yes.

18 Q. And your first thought at that moment was I got to get
19 him help, is that right?

20 A. That's correct.

21 Q. Okay. And so you were focused the next little bit on
22 getting him help?

23 A. Yes.

24 Q. He ran into the store?

25 A. Yes, he did.

1 Q. And you moved your car at that time from the gas pump
2 to the parking space?

3 A. Yes.

4 Q. Even though you testified earlier when Mr. Springs was
5 questioning you that you moved it after the police got
6 there?

7 A. It was before they came.

8 Q. It was before they got there?

9 A. Yeah.

10 Q. And you moved it out of the way because you were
11 frantic to get inside the store to check on Mr. Dodd?

12 A. Yes.

13 Q. Okay. Now, you were inside when 911 was called?

14 A. Yes.

15 Q. And you were still on the scene when the EMT's and the
16 police arrived?

17 A. Yes.

18 Q. An EMT checked out Mr. Dodd?

19 A. Yes.

20 Q. And decided that they needed to take him to the
21 hospital?

22 A. That's correct.

23 Q. And you rode with them to the hospital?

24 A. Yes, I did.

25 Q. And the hospital he went to was CMC in Charlotte?

1 A. Yes.

2 Q. So while you were at the hospital, you were approached
3 by a Charlotte-Meck patrol officer telling you that they had
4 some suspects in custody, they needed you to ID them?

5 A. That's correct.

6 Q. And you agreed to go see them?

7 A. Yes.

8 Q. And you rode with the uniformed police officer in the
9 patrol car, a marked patrol car?

10 A. Yes.

11 Q. And he took you up to an apartment complex in
12 Charlotte?

13 A. Yes.

14 Q. When you got out at the apartment complex, you -- you
15 actually got out of the car?

16 A. Uh-huh.

17 Q. And I believe you testified that you were about from
18 where you are sitting to about the end of the jury box --

19 A. Yes.

20 Q. -- away from him?

21 A. Yes.

22 Q. They -- as you were standing there, you saw uniformed
23 police officers take a young man out of a marked patrol car?

24 A. Yes.

25 Q. And they placed him under a street light?

1 A. Yes.

2 Q. And, to your knowledge, he was the only non-law
3 enforcement person out there?

4 A. Yes.

5 Q. You told the patrol officer that you were with that he
6 was the shooter?

7 A. Yes, I did.

8 Q. And that person identified was a black male?

9 A. Yes.

10 Q. He had dreads?

11 A. Yes.

12 Q. Gray shirt?

13 A. Yes.

14 Q. Long blue jean shorts?

15 A. Blue jean shorts -- blue jeans.

16 Q. Blue jeans?

17 A. Uh-huh.

18 Q. All right. Orange and yellow shoes?

19 A. I have no idea what color his shoes was.

20 Q. Okay. Again, going back to your statement, you never
21 noted any of those details in the first statement that you
22 gave?

23 A. That is correct.

24 Q. Okay. You that night were never asked to do a photo
25 lineup?

1 A. No, I was not.

2 Q. You have not been asked to do a photo lineup since
3 then?

4 A. No, I have not.

5 Q. Did you tell Mr. Dodd that evening, or sometime
6 afterward, that you had ID'd the shooter in the case?

7 A. Yes, I did.

8 Q. And since then, you have reviewed the video in this
9 case?

10 A. Yesterday.

11 Q. Yesterday?

12 A. Yes.

13 MS. INZERILLO: No further questions, Your Honor.

14 MR. DUNN: Your Honor, at this point would it be
15 appropriate to take a break?

16 THE COURT: Okay, we will take our afternoon
17 break. If you will go to the jury room, we will send for
18 you momentarily.

19 (The following takes place outside the presence of
20 the jury panel)

21 THE COURT: Ms. Howie, you can sit there or you
22 can stand down and use the restroom, have something to
23 drink, whatever you want. Just don't talk to Mr. Dodd or
24 anybody about your testimony during the break. You are
25 under oath and you are subject to cross-examination.

1 All right. We will take about a ten minute break.

2 (Whereupon, proceedings were recessed)

3 (Whereupon, proceedings were reconvened)

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

5 (The following takes place in the presence of the
6 jury room)

7 THE COURT: You may continue, Mr. Dunn.

8 MR. DUNN: Your Honor, I don't have any questions
9 for the witness.

10 THE COURT: All right.

11 MR. SPRINGS: Your Honor.

12 MR. SPRINGS: Your Honor, if I may, I forgot to
13 ask her two questions. May I redirect her briefly for two
14 questions?

15 THE COURT: Any objection?

16 MR. DUNN: It depends upon what they are, Your
17 Honor.

18 THE COURT: Well, we don't know until we ask them.

19 Go ahead, but just -- you said two, so I'm going
20 to hold you to two, because you have already had direct.

21 MR. SPRINGS: That's right.

22 REDIRECT EXAMINATION BY MR. SPRINGS:

23 Q. Over in Charlotte when you were shown two people, the
24 second person the Charlotte police showed you, had you seen
25 that person before and who was he?

1 A. Yes, I had seen him before. It's the defendant over
2 there.

3 Q. Okay.

4 MR. SPRINGS: One question.

5 THE COURT: Okay. Any?

6 MS. INZERILLO: No, Your Honor.

7 MR. DUNN: I have, Your Honor.

8 THE COURT: Okay.

9 MR. DUNN: May it please the court?

10 THE COURT: Sure.

11 RECROSS EXAMINATION BY MR. DUNN:

12 Q. Ms. Howie, so you are saying that you saw Mr. Quinton
13 up in Charlotte, correct?

14 A. Yes.

15 Q. He was the second person that they showed you?

16 A. Yes, sir.

17 Q. When they showed you Mr. Quinton -- excuse me, Mr.
18 Tobbie, was he wearing a black shirt?

19 A. I don't recall.

20 Q. You don't remember?

21 A. Uh-uh.

22 Q. Do you know if he was -- was he wearing the same thing
23 that he was wearing in Fort Mill?

24 A. I couldn't tell you.

25 Q. You really can't remember?

1 A. No.

2 Q. Do you remember testifying this morning?

3 A. Uh-huh.

4 Q. This morning do you remember testifying that he was
5 wearing the same thing at both locations?

6 A. He had on a T-shirt and some dark pants.

7 Q. Okay. The question was, do you remember this morning
8 that you testified that -- you testified that he was wearing
9 the same thing at both locations?

10 A. Okay.

11 Q. Is that a yes?

12 A. Yes.

13 Q. Since that time you saw him in Charlotte last year, did
14 the police show you any pictures of him?

15 A. No.

16 Q. Did they show you any video cameras of him -- any video
17 film of him?

18 A. Yes.

19 Q. Yesterday, right?

20 A. Yesterday.

21 Q. Besides yesterday's, any video film of him?

22 A. No.

23 Q. So besides in Charlotte last year, the video that you
24 saw yesterday, whenever you saw it, and actually seeing him
25 in court yesterday morning -- or, excuse me, yesterday

1 afternoon when we started, you haven't seen Mr. Tobbie since
2 since then, correct?

3 A. No, I have not.

4 MR. DUNN: No further questions, Your Honor.

5 THE COURT: You can step down. You can be
6 excused. We appreciate your help.

7 MR. SPRINGS: Would you ask Deputy Randy Gibson to
8 come in here?

9 DEPUTY WILLIAM R. GIBSON, II, having been first
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. EPTING:

12 Q. Would you please state your name for the record?

13 A. Yes, sir, William R. Gibson, II.

14 Q. Mr. Gibson, how are you employed?

15 A. Currently employed with the York County sheriff's
16 office.

17 Q. What position do you hold there?

18 A. Currently I'm assigned to the Highway Interdiction
19 Team.

20 Q. What does the Highway Interdiction Team do?

21 A. We are a two-man team, elite team, that's been assigned
22 or hand picked by the sheriff. Basically we conduct
23 criminal enforcement on the major highways. We mainly work
24 the interstate. We usually -- we are the two black cars
25 that sit perpendicular to the interstate.

1 Q. Are there any interstates that you work here?

2 A. Yes, sir, I-77.

3 Q. Any particular reason that y'all work I-77?

4 A. Yes, sir, we -- like I said, we look for criminal -- we
5 do criminal enforcement out there. We look for people that
6 came -- that come through hauling illegal items, such as
7 guns, large amounts of drugs, U.S. currency, things of that
8 nature.

9 Q. Are you also qualified to handle a canine?

10 A. I didn't understand.

11 Q. Are you qualified to handle a canine?

12 A. Yes, sir, I am.

13 Q. Were you working on the night of September 7th, 2007?

14 A. I was.

15 Q. Did you have your dog with you?

16 A. Yes, sir, I did.

17 Q. Where was he?

18 A. He was behind me. I drive a Crown Vic with a kennel
19 that's -- basically we don't have a back seat. It's an
20 in-car kennel.

21 Q. Did you receive a call on the radio for officers to be
22 on the lookout that night?

23 A. I did.

24 Q. What did the dispatcher say?

25 A. The dispatcher notified all units that were working

1 that evening by sending out a tone. It's a beeping tone
2 that goes over the radio. When we hear it, we know
3 something bad has happened in the county. So at that point
4 in time we stopped and was listening to what was coming over
5 the radio and they advised that there had been a
6 robbery/shooting at the Shell station located on Gold Hill
7 Road.

8 Q. Did they give a description of the getaway car?

9 A. Yes, they did. They said it was a small red or a red
10 vehicle with no tag displayed on it.

11 Q. Did you start looking?

12 A. Yes, sir, immediately.

13 Q. What highway were you watching as you looked for that
14 car?

15 A. What highway was I on?

16 Q. What highway -- yeah, what highway were you on when you
17 were --

18 A. I was actually on Carowinds Boulevard. I actually had
19 a car stopped at Carowinds Boulevard at the entrance ramp to
20 northbound 77. I had -- I had just arrested two
21 individuals. They were placed in my partner's car, because
22 my partner transports, since I can't with my canine. When
23 the tones went off I immediately told my partner, I said
24 "I'm going to go up on the interstate and see if I see this
25 car heading back toward North Carolina." So I immediately

1 jumped in my car, went up the ramp and I turned
2 perpendicular, watching the cars go by northbound.

3 Q. Did you locate the car matching the description of the
4 vehicle given earlier over dispatch?

5 A. I did.

6 Q. Was it on I-77?

7 A. Yes, sir.

8 Q. Did you give pursuit?

9 A. I did.

10 Q. Did you turn on your blue lights and siren?

11 A. I did.

12 Q. And did the small red car pull over?

13 A. No, sir, at that time it started traveling at a very
14 high rate of speed, very erratically, in an attempt to get
15 away from me.

16 Q. Did you radio dispatch to let them know what was going
17 on?

18 A. Immediately I did.

19 Q. Now, to your knowledge, were they notifying the
20 Charlotte-Mecklenburg police?

21 A. To my knowledge, yeah.

22 Q. Did you get your supervisor's permission to continue
23 this pursuit?

24 A. Yes, sir, I was advised by my supervisor to continue
25 this pursuit.

1 Q. So you chased the car?

2 A. Correct, I did.

3 Q. To your knowledge, was there a license tag on the back
4 of that car?

5 A. There was no license tag.

6 Q. Could you tell me how many people were in the car?

7 A. I really couldn't tell, but it was more than one,
8 because I saw someone in the back seat. But the way the car
9 was driving erratically, bouncing around, I don't know if
10 the person in the back seat -- bouncing back and forth, I
11 don't know if it was two or three people, but it was more
12 than one.

13 Q. So you chased them.

14 What sort of areas did you chase them into?

15 A. I chased them up 77. They got off on Arrowwood Road.
16 When they got off on Arrowwood they made the right. They
17 went just a short distance, made a left onto some -- into a
18 residential area. And at that point they just started
19 making left and right turns. I mean, there is no doubt that
20 they knew where they were at, because I didn't know where I
21 was at. I couldn't drive as fast as they were.

22 Q. You say it was a residential area?

23 A. Correct.

24 Q. Were those streets wide, or were they just wide enough
25 for two cars?

1 A. Just regular old two-lane streets, like driving, you
2 know, in a -- just a regular residential neighborhood.

3 Q. During the course of this chase did that red car that
4 you were pursuing come to any intersections?

5 A. Several.

6 Q. Did they come to any of the stop signs?

7 A. Several, yeah.

8 Q. Did they stop for the stop signs?

9 A. No.

10 Q. Was the car going fast?

11 A. Very.

12 Q. Did you keep up?

13 A. No.

14 Q. Why not?

15 A. Well, I had a lot on my plate. I knew I was chasing
16 some folks that had just robbed and shot somebody. I had a
17 reserve officer with me. I had a canine in the back and you
18 can't drive very erratically with a dog in the car, because
19 he can't -- he can't hold onto anything. So I had a lot of
20 responsibility at that point in time in my life, so I was
21 doing the best I can to what I had in front of me.

22 Q. Was your car in good driving condition?

23 A. Yes, sir.

24 Q. Did you have any problems with your brakes?

25 A. They overheated and I couldn't -- it -- during the

1 chase I noticed they were very overheated and they wouldn't
2 stop for me, as if they were good and fresh.

3 Q. Well, ultimately did you catch the little red car?

4 A. Ultimately we did, yeah.

5 Q. And when you realized that you had lost them, did you
6 return to York County?

7 A. Yes, sir, I did.

8 Q. Were the Charlotte-Mecklenburg police, did they arrive
9 that night?

10 A. Yeah, it was no time that they were -- there were
11 several, several, Charlotte-Meck officers in that general
12 area.

13 Q. So they were looking for that same red getaway car?

14 A. Same car, yeah.

15 Q. And was that getaway car located?

16 A. Yes, sir, it was.

17 Q. Was it located a long time later, or was it located
18 that night?

19 A. From the time I lost it to the time that the
20 Charlotte-Meck officer told me that they had a car fitting
21 the description that I had pursued, I'm going to say it was,
22 give or take, half an hour, 30 minutes.

23 Q. Did you go over to where they had the car and take a
24 look at it?

25 A. Yeah, they specifically wanted me to go to the location

1 where the car was at, because they wanted me to verify if
2 that was indeed the car that I was pursuing, and I
3 responded. The car came in -- the car that I was pursuing,
4 when they parked, they didn't pull into the parking space.
5 They went into it at an angle. The car was up on the -- up
6 on the curb almost into the apartment. It was -- it was
7 clearly the car was driven there at a high rate of speed
8 before they bailed out and ran.

9 (Photograph marked as State's Exhibit No. 33 for
10 identification)

11 (Photograph marked as State's Exhibit No. 34 for
12 identification)

13 (Photograph marked as State's Exhibit No. 35 for
14 identification)

15 (Photograph marked as State's Exhibit No. 36 for
16 identification)

17 (Photograph marked as State's Exhibit No. 37 for
18 identification)

19 (Photograph marked as State's Exhibit No. 38 for
20 identification)

21 (Photograph marked as State's Exhibit No. 40 for
22 identification)

23 (Photograph marked as State's Exhibit No. 41 for
24 identification)

25 (Photograph marked as State's Exhibit No. 42 for

1 identification)

2 BY MR. SPRINGS:

3 Q. I'm going to hand you what's been marked as State's
4 Exhibit No. 33 -- excuse me.

5 I'm going to hand you what's been marked State's
6 Exhibit 37 through 41.

7 A. Okay.

8 MR. SPRINGS: We offer this into evidence pursuant
9 to stipulation from both defense.

10 MS. INZERILLO: Yes, Your Honor.

11 MR. DUNN: Yes.

12 THE COURT: They are admitted without objection.

13 BY MR. EPTING:

14 Q. Look at those and tell me if you recognize what you
15 see.

16 A. Small red vehicle with damage to the left back door.

17 A picture of the right front vehicle.

18 And then a picture of the whole vehicle itself.

19 Q. Do you find anything peculiar about the way that car is
20 parked?

21 A. Oh, yeah, that's exactly the way I just testified it
22 was.

23 Q. Would you come down and show the jury?

24 A. Sure.

25 MR. EPTING: Your Honor, may he step down?

1 THE COURT: Yes:

2 (Witness off the witness stand).

3 A. This is the vehicle. It's not the proper way that you
4 park a vehicle. It was apparent they just pulled in there
5 at a very high rate of speed.

6 MR. EPTING: Take your seat.

7 (Witness back on the witness stand)

8 BY MR. EPTING:

9 Q. To your knowledge, did the Charlotte-Mecklenburg police
10 locate anyone when they found that car?

11 A. I was advised that the Charlotte-Meck officers --

12 MS. INZERILLO: Objection, Your Honor, to hearsay.

13 THE COURT: Yeah, I sustain the objection.

14 BY MR. EPTING:

15 Q. Was the car towed?

16 A. Yes, sir, it was.

17 Q. Do you know where it was towed to?

18 A. It was towed back here to the York County sheriff's
19 office for photo processing.

20 Q. Did you follow the wrecker back to the county?

21 A. I did.

22 Q. Does your police car have a video camera to make
23 movies?

24 A. It does.

25 Q. Was your video camera operational on the night of

1 September 7th, 2007?

2 A. It was.

3 Q. Did it produce a disc?

4 A. It made a movie. Yes, sir, it did.

5 Q. Have you a had to review the document?

6 A. I have.

7 Q. Is it fair and accurate depiction of what happened that
8 night?

9 A. Exactly.

10 (Chase Videotape marked as State's Exhibit No. 43
11 marked for identification)

12 BY MR. EPTING:

13 Q. I'm going to hand you what's been marked State's
14 Exhibit 43. Do you recognize that?

15 A. Yes, sir.

16 MR. EPTING: Your Honor, the State offers into
17 evidence State's Exhibit 43.

18 MS. INZERILLO: No objection.

19 MR. DUNN: No objection.

20 THE COURT: It would be received without
21 objection.

22 MR. EPTING: Your Honor, may I publish.

23 MR. DUNN: Your Honor may we move again?

24 THE COURT: Yes, sir.

25 (Whereupon, State's Exhibit No. 43 was played to

1 the jury panel)

2 A. The reason there is no audio, this thing right here
3 that I wear on my belt, this is the microphone. There is a
4 switch on the back on and off. If I cut it off if I'm
5 outside the car when I'm parking, there is nothing going on
6 to the tape. It's still recording, but it's no audio.

7 And the reason this was cut off that night is when I --
8 I had just locked up two individuals at the Carowinds
9 Boulevard, as I stated earlier. They were already -- you
10 see, our intentions was we was getting ready to head to the
11 detention center.

12 The two individuals that I had just arrested were
13 placed in the back of my partner's patrol car. The video
14 was still running. We always make it a habit of taking this
15 off and cutting it off. That way you don't get -- the
16 police officers are talking and just a lot of nonsense that
17 don't really need, it's not pertinent to the case, so I took
18 this off my belt. I cut it off, thinking I was getting
19 ready to head onto the detention center to follow him.

20 When the tones went off, I jumped on the interstate,
21 headed up to find this vehicle, I did not think to turn this
22 back on. So, therefore, that's the reason for there is no
23 sound.

24 BY MR. EPTING:

25 Q. As to we begin to look at this tape, where are we, what

1 road?

2 A. I-77.

3 Q. That's the suspect vehicle in view?

4 A. I can't really tell. Can I come out and look?

5 THE COURT: Yeah, you can.

6 THE WITNESS: Thank you, Your Honor.

7 BY MR. EPTING:

8 Q. You can come down if you need to see that.

9 (Witness off the witness stand)

10 A. That's the vehicle right there in front of me that just
11 switched lanes. It got back over into this lane. It's
12 getting off Arrowwood Road right now.

13 Q. About how fast would you say that you are going right
14 now?

15 A. I would probably say about 60, 65. Right there it
16 about T-boned me.

17 That's the Gaston people right there.

18 We are on Arrowwood Road. We are going up Arrowwood.

19 I know very little about Charlotte. As you can see, as
20 he's -- he's going back and forth. That's two lanes right.
21 There is some people traveling down the road.

22 He kept traveling --

23 MS. INZERILLO: Your Honor, we would just ask to
24 the let the video play.

25 THE COURT: Okay.

1 MR. EPTING: Your Honor, I believe we it would
2 help the jury if he would actually narrate it.

3 THE COURT: I'll let him narrate and tell what he
4 saw. He was in the car driving. I'll let him talk about
5 it.

6 MR. EPTING: Thank you.

7 THE WITNESS: Thank you, Your Honor.

8 Right there he made a left. This is where they
9 went into the neighborhood. As you can see, it's a two-lane
10 street. This is where it really got hairy for me, me
11 driving the vehicle with my dog, the brakes overheating.
12 You will there is -- there is a couple speed bumps, curves,
13 stops at intersection.

14 He just made one left turn. He just made a left
15 turn there, blew a stop sign. There was another speed bump.
16 He just made another left turn and another -- there was no
17 stop sign there.. Made a left turn. Right here I don't know
18 which way he went. I thought he might have. That's him up
19 there. He just made a right turn. And then again there is
20 a stop.

21 There was no way he could stop at these stop signs
22 as fast as he was going. Just made another turn. Left
23 turn.

24 Pretty much at this point I'm lost.

25 I'm traveling at a pretty high rate of speed as

1 well, and he's obviously driving faster than me so I
2 couldn't catch him.

3 BY MR. EPTING:

4 Q. When you say high rate of speed, could you guess how
5 fast he ran?

6 A. You see that, it was probably maybe 65, maybe 70. It
7 takes a lot to overheat them brakes in a Crown Vic that they
8 put on your car.

9 Right there about wrecked myself. That's where I go
10 off my brakes, because I came up over that crest and I hit
11 my brakes and I actually went up into somebody's yard.

12 Q. So at this point have you lost them?

13 A. At this point I'm searching for them.

14 As I stated earlier, they knew the neighborhood by the
15 way they were driving.

16 At this point I'm just riding in the neighborhood
17 seeing if I can hopefully find them.

18 Q. At this point did you turn your blue lights off?

19 A. I just cut them off, yes.

20 Turned them back on.

21 Q. What are you doing here?

22 A. I don't know if that -- at some point there was a
23 Charlotte officer that pulled up beside me. And that --
24 that's probably when that one car pulled up and pulled off.
25 I think there was a Charlotte officer that pulled kind of up

1 beside me blocking the rode as the car pulled up.

2 That might have been the point in time that he told me
3 that there was a vehicle that they had just located fitting
4 the description that I was chasing, and I was actually, you
5 now, out asking him how I could get there, and the car was
6 probably less than a couple minutes away.

7 Q. And earlier you testified that you followed the tow
8 truck?

9 A. Yes, I followed the tow truck back to York County.

10 Q. Is this the tow truck that you followed?

11 A. Yeah, that's the tow truck and the vehicle.

12 Q. That's the suspect vehicle?

13 A. The very last car on the left.

14 Q. All right.

15 A. The one without a tag on it.

16 Q. Thank you. You can have a seat. The defense may ask
17 you some questions.

18 A. Yes, sir.

19 (Witness back on the witness stand)

20 THE COURT: Ms. Inzerillo.

21 CROSS EXAMINATION BY MS. INZERILLO:

22 Q. Officer Gibson, I believe you testified that you were
23 on routine patrol on September 7th, 2007?

24 A. I was working that evening, yes.

25 Q. And you heard the tones come across the radio about a

1 car possibly associated with a robbery, is that correct?

2 A. Correct.

3 Q. And the description of that car was that it was red,
4 right?

5 A. Correct.

6 Q. Small, correct?

7 A. Correct.

8 Q. And it hit no tag?

9 A. Correct.

10 Q. Okay. And that one of the glass windows was out,
11 busted out?

12 A. I don't -- I don't recall that. May have, but I don't
13 recall it.

14 Q. Do you recall doing an investigative statement form in
15 regards to this case?

16 A. Yeah, I do.

17 Q. Would it refresh your memory on that fact to review
18 that?

19 A. Yeah.

20 (Witness looking at document)

21 Q. Okay. Do you state in that statement that one of
22 the --

23 A. Yes, I do.

24 Q. -- glass windows was busted out?

25 A. Yes. Do you need me to read it out loud?

1 Q. No, I just wanted you to verify it.

2 A. Yes.

3 Q. There was no specific information, though, as to which
4 window, is that right?

5 A. Correct.

6 Q. There is no information about the direction the car was
7 traveling, according to your statement?

8 A. Yeah, they didn't know which way the car went out at
9 the time.

10 Q. There was no description of the driver, right?

11 A. They stated it was a black male occupant.

12 Q. Okay.

13 A. That the shooter was a black male.

14 Q. You didn't put that in your statement, though?

15 A. I did or didn't?

16 Q. Did not.

17 A. Okay.

18 Q. Is that right?

19 A. No, I don't see it in there.

20 Q. And no description likewise of the passengers?

21 A. Correct.

22 Q. No make of the car? No model?

23 A. No.

24 Q. Okay. So, based on this description that you had at
25 the time, it was a small red car with no tag and a busted

1 out window, you started patrolling I-77 north, is that
2 right?

3 A. That's incorrect. I started marking traffic. I wasn't
4 patrolling.

5 Q. Okay. But you were sort of actively looking out for
6 that car --

7 A. Correct.

8 Q. -- is that fair?

9 A. That's fair to say.

10 Q. Okay. And then you did see a red car go past?

11 A. I did.

12 Q. You pulled up next to it, right?

13 A. I didn't pull up next to it, no.

14 Q. Does it state in your statement that the suspect car,
15 you attempted to pull up beside it?

16 A. There was two red cars that went by as I was sitting
17 perpendicular. I pulled out on two red vehicles prior to
18 pulling out on him.

19 Q. Okay. Yeah. Let's talk about that, though.

20 A. Okay.

21 Q. The first red car of the two, you pulled up beside it
22 and determined that was not the car?

23 A. I pulled up to check to see if it had a tag on it. I
24 was marking the tag on the vehicle, to see if that was a car
25 with no tag.

1 Q. But you excluded that car as not fitting the
2 description?

3 A. Exactly. It had a tag on it.

4 Q. All right. And then there was a second car, same
5 scenario? You pulled up on it and --

6 A. Correct.

7 Q. -- it didn't fit the description?

8 A. Correct.

9 Q. So --

10 A. Tag, correct.

11 Q. And then that's when you pulled up on the third car, is
12 that right?

13 A. Yeah, the one that the suspect was driving, or in.

14 Q. Okay. You saw that it was red, right? It didn't have
15 a tag on it, right?

16 A. Correct.

17 Q. But you didn't note anything in your statement about
18 having a busted out window, is that right?

19 A. When it went by, it was dark. I couldn't tell if it
20 had a busted out window or not.

21 Q. Okay.

22 A. I was looking for a small red car with no tag. That
23 was the suspect vehicle description.

24 Q. Okay. All right.

25 So you decided in your mind "I'm going to put on my

1 blue lights and pull this car over"?

2 A. Because it fit the description of a vehicle that had
3 just been involved in a shooting.

4 Q. Okay. Well, it was --

5 At that time point when you saw that car, you decided
6 you were going to put on your blue lights and pull the car
7 over, because you thought it matched the description, is
8 that right?

9 A. It did match the description.

10 Q. Okay. At that point you are in North Carolina?

11 A. Correct.

12 Q. Okay. And North Carolina is outside your jurisdiction?

13 A. Correct.

14 Q. But before you could actually activate your blue
15 lights, the car made an erratic movement and it exited off
16 onto Arrowwood drive?

17 A. Yes.

18 Q. Is that right?

19 A. Uh-huh.

20 Q. And Arrowwood Drive again is in Charlotte?

21 A. Correct.

22 Q. And you followed the car --

23 A. Correct.

24 Q. -- as we just saw on the video?

25 A. I chased the vehicle, pursued the vehicle.

1 Q. And as we just saw on the video, ultimately you lost
2 track of the car?

3 A. Yes.

4 Q. And then a car was found at an apartment complex in
5 Charlotte?

6 A. Correct.

7 Q. And it was parked there?

8 A. Correct.

9 Q. And that was these pictures that you were given?

10 A. Correct.

11 Q. That you showed.

12 You didn't see whoever was driving pull in and park
13 there, is that right?

14 A. That's correct.

15 Q. So you didn't see how many people jumped out of the
16 car?

17 A. That's correct.

18 Q. Okay. You don't know what those people were wearing?

19 A. That's correct.

20 Q. The car that was found at the apartment complex, in
21 those pictures, was a red car, right?

22 A. Correct.

23 Q. Four-door, right?

24 A. Correct.

25 Q. But that car did not have a busted out window, is that

1 right?

2 A. To be best of my knowledge, no, it didn't.

3 Q. Okay. And as you stated in your statement, that was
4 part of the initial description given by the traffic radioed
5 in from the gas station?

6 A. Correct.

7 Q. And that that car that you did find did have some
8 damage to the side of it, a scratch on the back --

9 A. That's more than a scratch. That's a --

10 Q. Big dent?

11 A. -- big dent.

12 Q. But there is a big dent on the back driver's side of
13 the passenger door?

14 A. Correct.

15 Q. Right?

16 A. Yeah.

17 Q. And that was a detail that was not relayed by
18 who relayed it from the gas station?

19 A. That's correct.

20 MS. INZERILLO: No further questions, Your Honor.

21 MR. DUNN: May it please the court?

22 CROSS EXAMINATION BY MR. DUNN:

23 Q. Officer Gibson, when you got in behind the red car that
24 you chased, they were already traveling on the interstate,
25 right?

1 A. Yeah, they were already northbound.

2 Q. And they were -- I mean, you were aware that they were
3 at a right rate of speed? Would that be fair to
4 characterize it?

5 A. Before they -- are you talking about --

6 Q. We were watching that video and that blue light gets
7 kicked on, we started seeing them -- seeing -- you know, the
8 car -- as you were chasing them, they were going pretty
9 fast, right?

10 A. Yeah, I was sitting on the left shoulder of the road
11 because I had done got into North Carolina.

12 Q. Right.

13 A. I had done got into North Carolina. After I had pulled
14 out on these other two cars, I done traveled enough I was in
15 North Carolina, so I yielded to the left.

16 Q. When you started --

17 A. When I saw that car go by, I could tell it didn't have
18 no tags on it.

19 Q. I'm not even asking you about the tags at this point.

20 A. Okay.

21 Q. When you saw them on the interstate, they were moving,
22 right?

23 A. They were moving. Not at a high rate of speed, but
24 they were moving.

25 Q. The minimum speed on the interstate is 55, 60?

1 A. Yeah, correct.

2 Q. And then I think you testified that you once they got
3 off onto Arrowwood, the Arrowwood Road I think it was --

4 A. When I pulled out to go stop this vehicle, they
5 obviously were watching me.

6 Q. My question was, when they exited the interstate, they
7 exited on Arrowwood Road?

8 A. In an erratic manner, yes, sir, they did.

9 Q. And from there they immediately made a left-hand turn
10 into some neighborhoods, right?

11 A. Correct.

12 Q. The whole time that you were in pursuit of that car,
13 that car never stopped, correct?

14 A. Correct.

15 Q. The whole time that you were in pursuant of that car,
16 there was never an opportunity for any passengers who wanted
17 to bail to bail, correct?

18 A. Refrain that, ask me that again.

19 Q. The car is moving the whole time?

20 A. Correct.

21 Q. If somebody were -- if somebody wanted to jump out,
22 there wouldn't have been enough time given for those people
23 to get out of the car, correct? The driver was -- the
24 driver --

25 A. That's a matter of opinion. I see people jump out of

1 vehicles at high rate of speeds, sir.

2 Q. And they usually get hurt when they jump out at a high
3 rate of speed, people, don't they?

4 A. Not in every case.

5 Q. All right. The two hours in between the time that your
6 tape is cut off the first time and I believe back on as the
7 probability, what were you doing?

8 A. When I pulled up to the scene?

9 Q. Uh-huh, yes, sir, when you pulled up to the scene.

10 A. At some point in time I cut my record off.

11 Q. Well, I'm just asking what you were doing during the
12 time?

13 A. Oh, during the time?

14 Q. Yes.

15 A. On the scene giving my statements to certain people
16 that supervisors that showed up on the scene. I was helping
17 out on the scene. I think I assisted in the search of the
18 vehicle. I was looking inside the vehicle, things of that
19 nature. Doing police work.

20 Q. You didn't see that car pull up to the apartment
21 complex, right?

22 A. No, I didn't see it pull up.

23 Q. You didn't see anybody get out of that car?

24 A. I did not.

25 MR. DUNN: I have no further questions, Your

1 Honor.

2 MR. EPTING: No redirect.

3 THE COURT: You can step down and be excused. We
4 appreciate your time. Thank you.

5 THE WITNESS: Thank you Your Honor.

6 THE COURT: Call your next witness.

7 MR. SPRINGS: Would you ask Sergeant John Booth to
8 come in.

9 SERGEANT JOHN BOOTH, having been first duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION BY MR. SPRINGS:

12 Q. Sir, would you tell this jury your name and how you are
13 employed?

14 A. Sergeant John W. Booth. I'm employed with the
15 Charlotte-Mecklenburg police department.

16 Q. Sergeant Booth, what shift do you work?

17 A. Third shift.

18 Q. The grave yard shift, the night shift?

19 A. Yes, sir.

20 Q. Were you on duty working the night shift around eleven
21 o'clock the night of September the 7th, 2007?

22 A. Yes, sir.

23 Q. Around eleven, or a little before eleven, did
24 Charlotte-Mecklenburg police get word from York County about
25 a York County officer chasing a suspect into Charlotte?

1 A. Yes, sir, we did.

2 Q. And what was the nature of the crime reported, do you
3 remember, sir?

4 A. It was an armed robbery.

5 Q. And where did the Charlotte -- what streets was the
6 York County officer said to be pursuing him to?

7 A. I-77 up to Arrowwood, and then across Nations Ford,
8 down to Farmhurst.

9 Q. Were you in that area yourself that night?

10 A. I was, sir.

11 Q. Were you in a police car?

12 A. I was, sir.

13 Q. And you were hearing over your police radio about the
14 York officer. Could you hear anything in your environment,
15 in the neighborhood around you?

16 A. I could hear the sirens approaching and -- I could hear
17 the sirens approaching in my area.

18 Q. And at some point did you actually spot the York police
19 car?

20 A. Yes, sir, as they crossed Nations Ford Road, I saw the
21 back of the police car. I activated my blue lights to catch
22 up to that unit.

23 Q. Okay. And at that point were other
24 Charlotte-Mecklenburg officers converging on the area?

25 A. Yes, sir, they were.

1 Q. Okay. Do you know if the York County officer caught
2 the car he was chasing?

3 A. He did not.

4 Q. Did you speak with the York County officer?

5 A. Yes, sir, I did.

6 Q. And the car the York car officer had been chasing, was
7 it located?

8 A. Yes, sir, it was.

9 Q. And what agency, what police department, located it?

10 A. Charlotte located the vehicle.

11 Q. What sort of street or building was the car found in?

12 A. It was located in an apartment complex right off of
13 Farmhurst.

14 Q. What's the name of that apartment complex?

15 A. The Tree Top Apartments.

16 (Photograph marked as State's Exhibit No. 44 for
17 identification)

18 BY MR. SPRINGS:

19 Q. I'm showing you what's been marked State's Exhibit 44
20 for identification. Do you recognize the area shown in that
21 aerial photo?

22 A. Yes, sir, it's an aerial photo of the Farmhurst and the
23 Tree Top Apartments.

24 Q. Is it a fair and accurate aerial photo of that area of
25 the Tree Top Apartments?

1 A. Yes, sir, it is.

2 Q. And is that -- does it show the area where the car was
3 found?

4 A. Yes, sir, it does.

5 Q. All right.

6 MR. SPRINGS: Your Honor, we do offer into
7 evidence State's Exhibit 44.

8 THE COURT: Any objection?

9 MR. LEMEL: No objection, Your Honor.

10 MR. DUNN: No, sir.

11 THE COURT: It would be received without
12 objection.

13 BY MR. SPRINGS:

14 Q. Sergeant Booth, would you take my ink pen and make a C
15 where the car was found?

16 A. (Witness marking exhibit)

17 Q. Thank you, sir.

18 Now, did you go over there where the car was found?

19 A. Yes, sir, I responded to that.

20 Q. Were there any people with it, the getaway car? Was it
21 abandoned or was anyone with it?

22 A. It was abandoned, sir.

23 Q. Did you speak with anyone there right near the
24 abandoned car?

25 A. Yes, sir.

1 Q. And you saw the Charlotte-Mecklenburg officers, after
2 speaking with these people around there, did you start
3 looking for the people that had been in the car?

4 A. Yes, sir, we did.

5 Q. How many suspects, how many people were you looking
6 for?

7 A. Three.

8 MR. LEMEL: Objection, Your Honor, hearsay basis
9 for this particular information that's about to be relayed.
10 We may need to have a hearing outside.

11 THE COURT: What was the question again?

12 MR. SPRINGS: How many people -- how many suspects
13 were you looking for?

14 THE COURT: I'll let the jury go out for a minute
15 while we take it up.

16 Mr. Ivey, if you will take the jury to the room
17 just for a minute.

18 (The following takes place outside the presence of
19 the jury panel.

20 THE COURT: All right, Mr. Lemel.

21 MR. LEMEL: Judge, I object to this as follows.
22 This is clearly inadmissible -- in the officer's report
23 there is clearly inadmissible hearsay at this point in the
24 report for him to say pulled on the report, just as ask by
25 Mr. Springs, and that the hearsay statement is three people

1 get out of the car. So now having established that he just
2 spoke to somebody, now he is going to ask "how many people
3 were you looking for?" Three people. That's established.
4 The basis of that is inadmissible hearsay. It's basically
5 just his manner of getting around the hearsay element of it.
6 But the foundation of that is inadmissible hearsay. And
7 because the foundation of it is inadmissible hearsay, the
8 motivation is irrelevant. It still comes off inadmissible
9 hearsay comment, and it's improper to bring it in through
10 the back door that way. That's his only basis at this point
11 in time for the number of people that he's looking for.

12 THE COURT: All right.

13 MR. SPRINGS: I think, Your Honor, he's
14 entitled -- I could have asked were the people that had hold
15 you to explain why he started looking for three people and
16 not 30, or 40, or one. Not for the truth of the matter of
17 what he was told, but to explain why he took the actions
18 that he did.

19 THE COURT: What difference does it make how many
20 he was looking for?

21 MR. SPRINGS: It's going to make a difference when
22 he sees the car with three people come down right there
23 where he starts looking in the abandoned car, three people
24 is getting his attention, because he's looking for three
25 people. So it doesn't --

1 MR. LEMEL: Judge, regardless, it's at that point
2 in time it's not three people. It's that one of them has
3 dreadlocks, and that he has been communicated at that point
4 in time separately through this fact that we have got the
5 records of that one of them that communicated to him
6 dispatched at that point in time that one of them had
7 dreadlocks and actually there were two other black males
8 involved. The car eventually has two black and a black
9 female, so it doesn't even match that description, but
10 according from what I have got from Officer Booth, the
11 motivation at that point in time was there was an individual
12 that had dreadlocks.

13 So, I mean, we're -- there is a whole intervening
14 section that happens with that car before then. There is
15 other information communicated to him.

16 At this point in time when he's being asked, the
17 only information that he would have gotten is the officer's
18 report --

19 THE COURT: Let me -- make a proffer and let me
20 see where we are going with this.

21 MR. SPRINGS: All right.

22 THE COURT: To be honest, I'm lost.

23 BY MR. SPRINGS:

24 Q. Officer, after you found the abandoned car, were you on
25 the scene there after the abandoned car was found?

1 A. Yes, sir, I was.

2 Q. Were people that live right there nearby spoken to?

3 A. Yes, sir.

4 Q. Residents of the apartment?

5 A. Yes, sir.

6 Q. After you talked with those people, did you start

7 looking for suspects?

8 A. We did.

9 Q. How many suspects were you looking for?

10 A. Three.

11 Q. Did you get some communication, further information

12 through your radio, as to the particulars on who you might

13 be looking for, a description and such?

14 A. Yes, sir, we did.

15 Q. And what sort of descriptions of people and anything

16 did you get descriptions of over the radio?

17 A. Initially it was one subject had dreads. One subject

18 had close cut hair with a white ball cap, and that's --

19 that's all I can recall at this point, sir.

20 Q. Okay. Did someone go get a description of a third guy?

21 A. Yes, sir.

22 Q. And did you in the immediate vicinity of the abandoned

23 car see something or someone that got your attention that

24 made you think that maybe they might have some connection

25 with the abandoned car?

1 A. Yes, sir.

2 Q. What did you see that got your attention that thought
3 might be connected to the abandoned car?

4 A. Initially I saw a gray Tempo approaching at a slow
5 pace. Due to the lighting conditions, as the vehicle -- it
6 was occupied three times. As a vehicle approached, I saw a
7 black male in the right front passenger's seat with
8 dreadlocks, and I instructed another officer to stop the
9 vehicle.

10 Q. All right. And was that right there close by the
11 abandoned car?

12 A. Yes, sir, it was probably within 150 feet.

13 Q. Okay.

14 MR. SPRINGS: There is our proffer.

15 THE COURT: Do you have any questions first that
16 you want to ask him, or do you want to just --

17 MR. LEMEL: No, sir, that's what's in his report
18 as well.

19 THE COURT: Tell me again your --

20 MR. LEMEL: The problem that we have at this
21 stage --

22 THE COURT: I know there is no question it's
23 hearsay.

24 MR. LEMEL: Right.

25 THE COURT: No question about that.

1 MR. LEMEL: But at the time that Mr. Springs asked
2 him "when you began your search, what were you looking for,"
3 the only information that he had was the inadmissible
4 hearsay of three people got out of the car. So when he says
5 three people, the only reason why he's saying that is
6 because of the information that he received at his basis is
7 inadmissible hearsay. We don't have that person to
8 confront. And it's basically the foundation of his comment
9 is the inadmissible hearsay.

10 THE COURT: Well, but the question is he's
11 testifying as to why he did what he did, not for the truth
12 the matter that he was -- he is relating -- that he is
13 relating what his action was based on the information he
14 had, not vouching for the information, or anything like
15 that.

16 MR. LEMEL: Well, what we have here, Your Honor,
17 is he talked to somebody and then he inserts the three
18 people in it. There is a direct link between those two
19 things. It goes beyond -- he's not saying why he began --
20 or why he began looking in Charlotte was that York County
21 had asked for help, but what he's looking for is directly
22 related to the inadmissible hearsay. The what, not the why,
23 why he is looking in York County.

24 THE COURT: Do you have any case law from either
25 side that might --

1 MR. SPRINGS: I would like run to my office and
2 get numerous cases that dispatch calls describing certain
3 things, the dispatcher is not hearsay. It's merely offered
4 to explain why the officer started looking for a short fat
5 man with purple hair, for explain, to explain why he took
6 the steps he did. In this case I'm not -- he's not saying
7 what people said. He said he saw some people and then he
8 starts looking for three people. It's to explain why he's
9 looking for three people and not third, or one, or two.

10 MR. DUNN: Well, obviously, Your Honor, he is
11 looking for three people because a witness at the apartment
12 complex said -- he's looking -- that car stopped and three
13 people jumped out of it. That's hearsay.

14 MR. SPRINGS: I -- I tell you what. I will
15 withdraw -- I'm going to ask you "did you talk to some
16 people? Did you start looking for suspects?"

17 I'll withdraw the number three. And later --

18 THE COURT: All right. Bring in the jury.

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: You may proceed.

22 MR. SPRINGS: Thank you, Judge Hayes.

23 BY MR. SPRINGS:

24 Q. Now, Sergeant Booth, did you start looking for
25 suspects?

1 A. Yes, sir, we did.

2 Q. And by radio did you get a description of some
3 suspects?

4 A. Yes, sir, we did.

5 Q. How many descriptions did you get? How many people
6 were described to you over the radio?

7 A. Three.

8 Q. All right. And did you bring a copy of the
9 Charlotte-Mecklenburg dispatch radio traffic log with you?

10 A. Yes, sir, I have an event chronology.

11 Q. All right. If you need to refer to that to refresh
12 your memory, feel free.

13 Let me ask you first the description given for the
14 first of the three?

15 A. The first subject, it says had long dreads and dark
16 skin, the first subject.

17 Q. Had dreads?

18 A. Yes, sir, long dreads.

19 Q. And the next one?

20 A. The second subject was described as a young black male,
21 low haircut, white baseball cap.

22 And the third subject would have been a black male,
23 close haircut, dark skin, dark colored T-shirt.

24 Q. All right. So, as you are in the area of the abandoned
25 getaway car, did you see something or someone that got your

1 attention?

2 A. Yes, sir, I did.

3 Q. And what or who did you see that got your attention as
4 you are looking for these three suspects?

5 A. I saw a dark gray color approaching car approaching the
6 area in which we were searching on an area -- on a driveway
7 in the apartment complex. The vehicle was occupied three
8 times, and I observed one subject that had a gray T-shirt
9 and long dreadlocks.

10 Q. All right. Now, is this soon after finding the
11 abandoned getaway car, or days later?

12 A. It was approximately 30 to 45 minutes after the initial
13 contact with the vehicle.

14 Q. And is that -- did you say gray colored car?

15 A. Yes, sir.

16 Q. As that car comes up and you see that there are three
17 people in it and one had some dreadlocks, what did you do,
18 sir?

19 A. I instructed an officer that was with me to stop the
20 vehicle. I approached the right side of that vehicle.

21 Q. All right. What did you say to the people in the car?

22 A. I instructed the subjects inside the vehicle to put
23 their hands so I could see them. The subject in the right
24 front seat hesitated and then he complied.

25 Q. The man in the right front hesitated. Was he the

1 fellow with the dreadlocks?

2 A. Yes, sir, he was.

3 Q. And did he ever stay in the car, or did you ask these
4 folks to step out?

5 A. At that point I asked them to step outside the vehicle.

6 Q. And did you ask the man with the dreadlocks his name?

7 A. Yes, sir, I did.

8 Q. What did he say his name was?

9 A. He said his name was Travis.

10 Q. How did he appear? Was there anything kind of a little
11 different about him, his looking?

12 A. Yes, sir. I observed him to be sweating profusely and
13 he had a strong odor of body odor -- strong bowed odor.

14 Q. And you said that the suspect crime, was it -- you said
15 armed robbery?

16 A. Yes, sir.

17 Q. So did you pat down these folks to see if they were
18 armed?

19 A. I did, sir.

20 Q. The fellow with dreadlocks that hesitated to show his
21 hands, did he have anything?

22 A. Yes, sir.

23 Q. Was he armed?

24 A. Yes, sir, he was.

25 Q. What was he armed with?

1 A. He was armed with a mid-sized blue semiautomatic pistol
2 and it was located in his right rear pocket.

3 Q. His right back pocket?

4 A. Yes, sir, right rear pocket.

5 Q. You said he had a semiautomatic, not a revolver?

6 A. That's correct sir.

7 (Gun marked as State's Exhibit No. 45 for
8 identification)

9 BY MR. SPRINGS:

10 Q. Look inside the bag that's now marked State's Exhibit
11 45 and tell the jury if you recognize what that thing in
12 there is.

13 A. Yes, sir, that's the semiautomatic I took out of the
14 person with the long dreadlocks and the gray T-shirt's right
15 rear pocket.

16 Q. Have you since learned that guy's name?

17 A. Yes, sir.

18 Q. What's his name?

19 A. His name is Travis. I'll have to refer back. Travis
20 Robinson.

21 Q. All right. Will you go ahead and pull that pistol out.
22 Has it been made safe?

23 A. Yes, sir, it has.

24 Q. Was it loaded when you pulled it out of Travis
25 Robinson's back right pocket?

1 A. Yes, sir.

2 Q. That's the pistol?

3 A. Yes, sir, it is.

4 Q. Is that the clip?

5 A. Yes, sir.

6 Q. Is that the bullets?

7 A. Yes, sir.

8 MR. SPRINGS: Without the bullets, Your Honor, we
9 do offer State's Exhibit 45 into evidence.

10 MR. LEMEL: Without objection.

11 MR. DUNN: No objection.

12 THE COURT: It will be received.

13 BY MR. SPRINGS:

14 Q. Would you with my ink pen make an S where you saw the
15 car with the suspects in it, the three people?

16 A. (Witness marking photo)

17 MR. SPRINGS: Ms. Court Reporter, has that been
18 offered completely into evidence, 44?

19 Your Honor, we are going to offer the aerial. I'm
20 not sure if I have offered it before, State's Exhibit 44,
21 the aerial photograph we would offer into evidence.

22 MR. LEMEL: Your Honor, he had done that
23 previously. It's previously been entered without objection.

24 THE COURT: I thought so.

25 MR. SPRINGS: Okay.

1 BY MR. SPRINGS:

2 Q. Let's talk about the other two people in the car
3 because you said there were three. Tell us about the driver
4 of the car. Man or woman?

5 A. It was a heavysset female.

6 Q. All right. And did you learn she had some relationship
7 with Travis Robinson, the man with the dreadlocks and the
8 gun?

9 A. Yes, sir. She described her relationship as his
10 mother.

11 Q. And the last person, the third person in the car, who I
12 assume was sitting in the back, did you learn his name?

13 A. Yes, sir.

14 Q. What's his name?

15 A. His last name is Tobbie, and --

16 Q. That will do. Thank you.

17 Now, did some York County officers come down there with
18 some -- with two women?

19 A. Yes, sir, they did.

20 Q. And were the women shown Travis Robinson and Mr.
21 Tobbie?

22 A. Yes, sir, they were.

23 Q. Were you present when they were shown these fellows?

24 A. Yes, sir, I was.

25 Q. And did both women identify both fellows?

1 A. Yes, sir, they did.

2 Q. The lady that was driving the gray car who you said was
3 Travis Robinson's mother, did you officers talk with her?

4 A. Yes, sir, we did.

5 Q. Did you suspect that lady of being involved in any
6 crime at all?

7 A. No, sir, we didn't.

8 Q. Okay. So she went on her way?

9 A. Yes, sir.

10 Q. Sergeant, thank you very much. Thank for coming.
11 Answer any questions that these defense attorneys have.

12 THE COURT: Mr. Lemel?

13 MR. LEMEL: Thank you.

14 CROSS EXAMINATION BY MR. LEMEL:

15 Q. Now, Sergeant Booth, have we established your what's
16 the equivalent of the patrol division in Charlotte?

17 A. Yes, sir.

18 Q. Is that what they call that, the patrol division?

19 A. Yes, sir.

20 Q. Okay. Which means you operate a marked police car?

21 A. That's correct.

22 Q. With decals down the sides?

23 A. Yes.

24 Q. Light bar on top?

25 A. Yes, sir.

1 Q. And you are currently working the third shift, the
2 night shift?

3 A. That's correct, sir.

4 Q. Okay. Now, in this particular case you were primarily
5 assisting York County officers?

6 A. That's correct.

7 Q. And as a part of that you typed up a statement for some
8 York County officers?

9 A. Yes, sir.

10 Q. You actually did that on September 10th?

11 A. Yes, sir.

12 Q. Roughly two days after you actually got the call, the
13 morning of -- very early morning of the 8th, right?

14 A. Yes, sir.

15 Q. It would have been right about midnight that you got
16 called, between the 7th and the 8th?

17 A. Yes, sir.

18 Q. Okay. So it was what, about two days?

19 A. Yes, sir.

20 Q. Two, three.

21 And you typed that up for Officer Miller of York
22 County, correct?

23 A. Detective Miller, yes, sir.

24 Q. Detective Miller.

25 And you were trying to give him information?

1 A. That's correct, sir.

2 Q. You knew that he would be depending on it when he was
3 making his case?

4 A. Yes, sir.

5 Q. And you knew that he was going to be using it as part
6 of his case file?

7 A. Yes, sir.

8 Q. That would be reviewed by him and other officers?

9 A. That's correct sir.

10 Q. And that you, yourself, might need it as some point in
11 time down the road?

12 A. That's correct.

13 Q. To refresh your recollection if the case ever went to
14 trial?

15 A. Yes, sir.

16 Q. And I notice that you have been looking at something in
17 your lap fairly consistently. Is that, in fact, the
18 statement that you wrote?

19 A. Yes, sir, it is.

20 Q. So you have been referring to that to refresh your
21 recollection throughout this case?

22 A. Yes, sir.

23 Q. Okay. So you took some time to type that thing out?

24 A. That's correct.

25 Q. It's a couple pages long?

1 A. That's correct, sir.

2 Q. Fairly detailed?

3 A. Yes, sir.

4 Q. Because you wanted to get all this information down
5 while it was still fresh in your memory?

6 A. Yes, sir.

7 Q. So you would agree that is the best time to get stuff
8 down, when it's fresh in your memory?

9 A. Yes, sir.

10 Q. It's kind of hard to remember what might happen a year
11 later?

12 A. That's correct.

13 Q. Now, also you retrieved something called an event
14 chronology, correct?

15 A. Yes, sir.

16 Q. And that is basically produced by the computers at the
17 Charlotte-Mecklenburg police department?

18 A. Yes, sir, the dispatcher enters comments as relevant
19 items happen on there.

20 Q. So it's a communication between the officers and the
21 dispatch entered into the computer?

22 A. Yes, sir.

23 Q. And that is done automatically as it goes? I mean --

24 A. Right, dispatchers are constantly updating that and
25 they are adding remarks to the call.

1 Q. And maybe automatically is the wrong way to put it.
2 It's done as part of the normal way that you do things in
3 Charlotte-Mecklenburg?

4 A. That's correct, sir.

5 Q. Okay. So they are still -- it's not automatically
6 typed up, but they do that for every statement that comes
7 across, right?

8 A. Anytime there is pertinent information there.

9 Q. It gets there as it's produced, as it's said?

10 A. Yes, sir.

11 Q. And shows the times the communications begin?

12 A. Correct.

13 Q. It shows information passing back and forth?

14 A. It captures the main comments of call, yes, sir.

15 Q. Not every little detail, but important things that are
16 going back and forth?

17 A. That's correct, sir.

18 Q. And in doing that it creates a pretty good timeline of
19 what actually is happening?

20 A. Yes, sir.

21 Q. Okay. And until you actually arrive on the scene and
22 start doing one yourself, basically what you are relying on
23 is the information that you receive via dispatch?

24 A. That's correct.

25 Q. And that's the information that would be contained in

1 your chronology?

2 A. Yes, sir.

3 Q. You know, in this case do you have the chronology in
4 front of you?

5 A. I do sir.

6 Q. We see numbers on the chronology because it's not names
7 associated, because there is not names associated with it,
8 but says operator and has numbers. Is 2850, is that the
9 dispatch?

10 A. 2850 is generally the dispatcher. It's the operator.

11 Q. Okay.

12 A. The terminal numbers -- they are assigned a terminal
13 number and 2850 could be whoever would be assigned to that
14 terminal.

15 Q. So where it has the 2850 on this, we could assume
16 that's a dispatcher statement?

17 A. That's correct.

18 Q. And the various officers have different numbers
19 assigned to them?

20 A. Yes, sir.

21 Q. Are you 3647, do you know?

22 A. No, sir.

23 Q. What number are you?

24 A. 1625.

25 Q. 1625.

1 Okay. So we don't really see a whole lot from you on
2 here?
3 A. I'm also -- they have also listed my call sign one
4 time, which is 1025 --
5 Q. Okay.
6 A. -- as well as.
7 Q. So as I read this correctly, the chronology, the first
8 reading that comes in at ten minutes -- or excuse me, 10
9 hours at night, 57 minutes and 42 seconds in, right?
10 A. Oh, yes, sir.
11 Q. 10:57:42.
12 It says "York County needs assistance"?
13 A. That's correct, sir.
14 Q. "With a burgundy car"?
15 A. Yes, sir.
16 Q. "Involved in a shooting at a gas station"?
17 A. That's -- yes, sir.
18 Q. It says 10:58:19, and then comment "shot someone at gas
19 station in York County"?
20 A. Yes, sir.
21 Q. So dropping on down to 10:58:51, the comment is that
22 "York County has lost sight of the car"?
23 A. That's correct, sir.
24 Q. Which is roughly a minute after the first
25 communication?

1 A. That's correct.

2 Q. Okay. Now, at 11:03:52, okay, get down to there. Are
3 you with me?

4 A. Yes, sir.

5 Q. All right. That's where we have the first description
6 coming over dispatch, right?

7 A. Yes, sir.

8 Q. And this is just six minutes after that initial call
9 came over?

10 A. Yes, sir.

11 Q. Okay. And it says he has long dreads and dark skin?

12 A. Yes, sir.

13 Q. So that's where you got that information you are
14 basing, this initial call?

15 A. Yes, sir.

16 Q. But at this point in time that's the only description
17 that's given out over the radio?

18 A. That's correct.

19 Q. No mention of height?

20 A. No, sir.

21 Q. No mention of weight?

22 A. No, sir.

23 Q. No mention of clothing?

24 A. Not at this point, sir.

25 Q. No mention of facial features?

- 1 A. No, sir.
- 2 Q. Birthmarks?
- 3 A. No, sir.
- 4 Q. Anything to distinguish long dreads, dark skin, black
- 5 male from literally thousands of men up in Charlotte, right?
- 6 A. That's correct, sir.
- 7 Q. Okay. Now, the Charlotte-Mecklenburg police begin to
- 8 search the apartments, around Tree Top Apartments, right?
- 9 A. Yes, sir, we did.
- 10 Q. Based off the information that you received from York
- 11 County?
- 12 A. Yes, sir.
- 13 Q. And you assisted with that?
- 14 A. That's correct, sir.
- 15 Q. As part of that search, a number of apartments were
- 16 searched, correct?
- 17 A. Yes, sir.
- 18 Q. But nothing was found there?
- 19 A. That's correct.
- 20 Q. And during the course of this search, a vehicle is
- 21 headed out of the complex?
- 22 A. Yes, sir.
- 23 Q. Gray vehicle, you said it was?
- 24 A. Gray Ford Tempo.
- 25 Q. Okay. And as it passed by, you saw that it had a young

1 man in it?

2 A. Yes, sir.

3 Q. With dreads?

4 A. Yes, sir.

5 Q. In the front passenger's seat?

6 A. That's correct.

7 Q. So you had some other officers stop the car?

8 A. Yes.

9 Q. And it stopped?

10 A. Right.

11 Q. Okay. And you went up to it?

12 A. Approached the right side of the vehicle.

13 Q. That means you walked up to it?

14 A. Yes, sir.

15 Q. And at this point in time you are understandably a
16 little bit cautious, right?

17 A. Yes, sir.

18 Q. Okay. You have already had a report that there has
19 been a shooting. That's basically what you are out there
20 involved with?

21 A. Right.

22 Q. So one of your first priorities at that point in time
23 is going to be your own safety?

24 A. That's correct.

25 Q. And that's understandable?

- 1 A. Yes, sir.
- 2 Q. Anytime guns are involved, you want to make sure you
- 3 are safe?
- 4 A. Yes, sir.
- 5 Q. Okay. So you ask everyone to put their hands up?
- 6 A. Yes, sir.
- 7 Q. And you said the front passenger hesitated?
- 8 A. Right.
- 9 Q. But he did it?
- 10 A. Yes, sir.
- 11 Q. He didn't try to hide his hands or anything like that?
- 12 There were just some hesitation in raising them?
- 13 A. Right.
- 14 Q. Okay. Do you remember him having a cigarette in his
- 15 hand?
- 16 A. No, sir, I don't.
- 17 Q. Do you remember whether you asked him "would you put
- 18 the cigarette out first?"
- 19 A. I don't recall that, sir.
- 20 Q. Okay. Just remembered that there was some hesitation?
- 21 A. Yeah, again, I was trying to focus on the right side of
- 22 the vehicle.
- 23 Q. Now, we are talking about the gentleman in the right
- 24 side you said hesitated?
- 25 A. Yes, sir.

1 Q. And that's all it was was a hesitation?

2 A. Yes, sir.

3 Q. Okay. So after he's got his hands up, you asked him to
4 get out of the car?

5 A. He did. Yes, sir, I did.

6 Q. Which he did?

7 A. Yes, sir.

8 Q. You asked him to face away from you?

9 A. Yes, sir.

10 Q. And pat him down?

11 A. Yes, sir.

12 Q. And he faced away from you?

13 A. Yes, sir.

14 Q. He didn't try to run away from you?

15 A. No, sir.

16 Q. Didn't make any motions to try to evade you at all?

17 A. No, sir, he didn't.

18 Q. Didn't argue with you?

19 A. No, sir.

20 Q. Didn't give you any trouble at all?

21 A. No, sir.

22 Q. Okay. You asked him his name?

23 A. Yes, sir.

24 Q. And he told you his name?

25 A. Yes, sir.

1 Q. Travis?

2 A. That's correct.

3 Q. Which was the truth?

4 A. Yes, sir.

5 Q. He didn't try to hide who he was from you?

6 A. No, sir, he didn't.

7 Q. Okay. Did you ask him to put his hands up on his head
8 for him to be frisked, do you remember?

9 A. In -- I have always been trained to always take
10 people's hands and put them behind them and hold them,
11 almost like I'm going to handcuff them.

12 Q. Okay. So as I have demonstrated here, you had them
13 behind --

14 A. Yes.

15 Q. -- where you had control of their hands?

16 A. Yes, sir.

17 Q. Did you do that in this case, do you think?

18 A. Yes, sir.

19 Q. And, again, did he fight you or try to pull away from
20 you?

21 A. No, sir.

22 Q. And you began to do a pat down I think at that point?

23 A. I did.

24 Q. And that's basically looking for weapons?

25 A. Yes, sir.

1 Q. And he didn't try to pull away from you?

2 A. No, sir.

3 Q. Or avoid your search?

4 A. No, sir.

5 Q. And in your -- and how long have you been a police
6 officer?

7 A. 13 years.

8 Q. In your experience of 13 years as a police officer, you
9 have had some people try to sling away from the search as
10 it's going down?

11 A. I have had individuals do that, sir.

12 Q. But Travis didn't?

13 A. No, sir.

14 Q. Okay. And at that point you felt a pistol?

15 A. That's correct.

16 Q. This semiautomatic pistol that you have identified
17 earlier?

18 A. Yes, sir.

19 Q. All right. Blue steel I think you described it as?

20 A. Yes, sir.

21 Q. Okay. And so you took possession of that immediately,
22 right?

23 A. I did, sir.

24 Q. And before that you had placed him under arrest?

25 A. Yes, sir.

1 Q. For unlawfully carrying that pistol?

2 A. At that point I had detained it as part of the
3 investigation.

4 Q. But if nothing else happened that evening, he would
5 have been arrested for unlawful carrying of a pistol, right?

6 A. Yes, sir.

7 Q. Okay. You put him in handcuffs?

8 A. Yes, sir.

9 Q. And he didn't fight you with that either?

10 A. No, sir.

11 Q. Didn't try to, you know, pull his hands away, or
12 anything of that nature?

13 A. No, sir.

14 Q. Fully cooperated. Okay.

15 After you arrested Travis, put him in detention, had
16 handcuffs on him, whatever you want to call it, he wasn't
17 free to go at that point in time?

18 A. He was part of an active investigation.

19 Q. And he was not free to go?

20 A. That's correct.

21 Q. Okay. You put him in the back of the patrol car?

22 A. Yes, sir.

23 Q. And he was alone in the back of that patrol car, right?

24 A. That's correct, sir.

25 Q. Mr. Tobbie was not placed in the patrol car with him?

1 A. No, sir, they were separated.

2 Q. So there was never a chance for them to talk in the
3 back of the patrol car, for example, at that point in time?

4 A. No, sir.

5 Q. When he's in the back of the patrol car, he didn't
6 fight you getting into it?

7 A. No, sir, he did not.

8 Q. He didn't try to kick out a window or bang on the
9 window when he was inside of it?

10 A. No, sir, he did not.

11 Q. Sat there the entire time appropriately?

12 A. Yes, sir.

13 Q. And was cooperative?

14 A. Yes, sir.

15 Q. Okay. He stayed in that car for a couple of hours,
16 didn't he?

17 A. I don't -- I don't -- I don't recall the exact time
18 frame, but I don't believe -- it doesn't seem to be a couple
19 of hours.

20 Q. Would you agree with me it was an extended period of
21 time that he sat in the back?

22 A. However, we were conducting an active investigation
23 from the time that we notified York County to get the
24 witnesses there as part of the investigation. I'm not sure
25 exactly the entire time frame, but it was an active ongoing

1 investigation, so it wasn't an extreme time frame, you know,
2 of undue time.

3 Q. Okay. But we are talking a period that took you to
4 arrest him and to bring people up from South Carolina, all
5 that time he's sitting in the back of the patrol car in
6 handcuffs?

7 A. Yes, sir.

8 Q. Okay. Now, after arresting him, you go back into those
9 apartments, right?

10 A. Yes, sir.

11 Q. And you actually looked at some of the apartments in
12 there?

13 A. That's correct.

14 Q. And one of those apartments had some what you described
15 in your report as recent damage to the door?

16 A. Yes, sir.

17 Q. And that apartment was searched?

18 A. Yes, sir.

19 Q. You said nobody was in that apartment?

20 A. That's correct.

21 Q. Nothing was taken from that apartment?

22 A. It was a vacant apartment.

23 Q. I mean, was it totally unoccupied, or just there
24 wasn't anybody in it?

25 A. It was totally unoccupied.

1 Q. Did anybody from York County ever follow up with you
2 about that apartment?

3 A. No, sir.

4 Q. Did anybody ever follow up with you from York County
5 about any apartment in that complex?

6 A. Not to my recollection, sir.

7 Q. Asked y'all for assistance in searching it?

8 A. No, sir.

9 Q. Trying to find out who lived around there?

10 A. Who would have occupied that apartment?

11 Q. Or any of the apartments in there, in that complex.

12 A. Not to my recollection, sir.

13 Q. Okay. At some point in time Detective Miller arrives
14 on the scene?

15 A. Yes, sir.

16 Q. Okay. He's got a lady in the car?

17 A. Yes, sir.

18 Q. And at some point in time a Charlotte-Mecklenburg
19 officer arrives with another lady in the car with him?

20 A. Yes, sir.

21 Q. Okay. And if you can go back to the chronology, I'm
22 looking at 1:43:05. Are you looking at that time?

23 A. 1:43:05?

24 Q. Yes, sir.

25 A. Yes, sir.

1 Q. At that point in time it says "giving a ride to two
2 females Gold Hill Road in South Carolina"?

3 A. Yes, sir.

4 Q. Okay. Is that the time that that transport was taking
5 place?

6 A. Yes, sir.

7 Q. So that's roughly three hours after the initial call
8 comes in?

9 A. However, anytime that we transport a civilian in a
10 vehicle, we call it in. Also it says earlier in the
11 chronology that they were -- the other individuals were
12 transported back to the district office, along with -- along
13 with the York County detective, if you looked earlier.

14 Q. Maybe I misunderstood. I'm sorry.

15 A. If you look, it's right at the top of the page.

16 Q. What time? Give me a time marker.

17 A. It's 1:27:05.

18 Q. 1:27:05?

19 A. Yes.

20 Q. And at that point in time they are taken back to the
21 district office up in Charlotte, the sub office?

22 A. Yes, sir.

23 Q. So that's about two and a half hours after the initial
24 call?

25 A. Well, it's actually 1:26.

1 Q. About two and a half hours?

2 A. Yes, sir, roughly.

3 Q. Okay. But when Detective Miller arrived, he has pulled
4 his car over near where Travis was being held, right?

5 A. I'm not sure which car he was or what cars coming in,
6 so to say that it was his car specifically, I couldn't
7 testify to that, sir.

8 Q. A car was pulled up near where Travis was being held in
9 the back of the patrol car?

10 A. Yes, sir.

11 Q. Okay. And do you remember that that car was pointed so
12 that its headlights were facing towards where Travis was
13 being held?

14 A. Just from the angle of how the vehicles were
15 positioned, it would have -- I'm sure it would have been,
16 sir.

17 Q. And Travis was then taken out of the patrol -- of the
18 Mecklenburg police car?

19 A. Yes, sir.

20 Q. With handcuffs still on him?

21 A. Yes, sir.

22 Q. With other officers around him?

23 A. About an officer around him.

24 Q. Okay. There was nobody who wasn't an officer around
25 him?

- 1 A. That's correct.
- 2 Q. And that was showed to whoever was in the car?
- 3 A. Yes, sir.
- 4 Q. Okay. Do you remember getting some sort of signal or
- 5 thumbs up, or do you remember seeing a signal or thumbs up
- 6 signal being communicated back and forth between the two
- 7 officers?
- 8 A. They did positively identify them.
- 9 Q. Simply asking thumbs up?
- 10 A. I'm not sure. I don't recall if it was a thumbs up, or
- 11 if it was a verbal, but there was a confirmation that that's
- 12 who it was.
- 13 Q. Between the officers?
- 14 A. Yes, sir.
- 15 Q. And that indicated that the person had identified
- 16 Travis?
- 17 A. That's correct.
- 18 Q. And then Travis was put back in the police car?
- 19 A. That's correct, sir.
- 20 Q. And the other individual left?
- 21 A. Yes, sir.
- 22 Q. And at that point in time you said that you traveled
- 23 over to the substation?
- 24 A. Yes.
- 25 Q. District office?

1 A. That's correct.

2 Q. Where he was processed and actually was arrested by --

3 A. Yes, that's correct.

4 Q. At any point in time during that whole process did
5 anybody ask you for help in creating a lineup?

6 A. Did they ask me?

7 Q. Yes.

8 A. No, sir, they did not ask me.

9 Q. Any other identification procedure asked for?

10 A. Not to my knowledge, sir.

11 Q. Okay. Now, Travis was taken out of the car one other
12 time too, right?

13 A. I don't recall, sir.

14 Q. Do you remember some people from York County forensics
15 getting there?

16 A. Yes, sir, I do.

17 Q. And they -- he was taken out of the car?

18 A. Yes, sir.

19 Q. And pictures were taken of Travis at that point in
20 time?

21 A. At that point another officer was with him. I'm trying
22 to manage the other scene, get a lot of that, so I'm not
23 aware of all the details that were transpiring out there.

24 Q. So you don't remember exactly what was done to him by
25 forensics?

1 A. No, sir, I don't.

2 Q. Just that forensics arrived and did some things there?

3 A. Yes, sir.

4 Q. And in all this time Travis didn't try to run away?

5 A. No, sir, he didn't.

6 Q. Was cooperative with you guys the whole time?

7 A. No, sir -- to answer your question about forensics, I
8 know they processed the vehicle. They towed it back to York
9 County and they took a pistol from my possession.

10 Q. But in terms of Travis' behavior with you, he was
11 cooperative?

12 A. As far as I know, he was cooperative. Both subjects
13 were cooperative.

14 MR. LEMEL: Beg the court's indulgence for one
15 minute.

16 (Off the record)

17 (Back on the record)

18 MR. LEMEL: No further questions.

19 MR. DUNN: May it please the court?

20 CROSS EXAMINATION BY MR. DUNN:

21 Q. Sergeant, you didn't see the red car actually park in
22 the parking lot, correct?

23 A. I did see the car in the parking lot.

24 Q. And you saw it in the parking lot, but you didn't see
25 it actually get there and park?

1 A. No, sir.

2 Q. And you didn't see how that door and in the apartment
3 was kicked in?

4 A. Well, actually I went up later and looked at it.

5 Q. I mean, you didn't see somebody actually doing the
6 kicking?

7 A. No, sir, I did not.

8 Q. You just saw evidence that it looked like somebody had
9 forced their way into it, correct?

10 A. Yes.

11 Q. In your incident report you indicated that the right
12 rear passenger was cooperative?

13 A. Yes, sir.

14 Q. That's true?

15 A. That's true, sir.

16 Q. Okay. And that that person was wearing a white T-shirt
17 and dark pants?

18 A. Yes, sir.

19 Q. What was that right rear passenger, what was he
20 arrested for? Did you arrest him?

21 A. I did not. I got him out and detained him as part of
22 the active investigation.

23 Q. To your knowledge, did anybody get arrested at the
24 scene?

25 A. To my knowledge, no, sir. Once they left the scene, I

1 was still there managing the scene, and they were later
2 charged after being identified by York -- by the witnesses.

3 Q. So at the scene he wasn't charged with anything. He
4 was just taken away down to the substation?

5 A. He was -- he was -- well, at that point they
6 established that he was part of that.

7 Q. Did you ever find the second individual that was
8 described to you as this young black male with a white ball
9 cap? Did you ever find him?

10 A. No, sir.

11 MR. DUNN: I don't have any further questions.

12 MR. SPRINGS: Nothing further.

13 THE COURT: You can step down and be excused. We
14 appreciate your time.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Call your next witness.

17 MR. SPRINGS: We call SLED Agent Simmons.

18 SLED AGENT ILA SIMMONS, having been first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. SPRINGS:

21 Q. Ma'am, tell everybody your name, please.

22 A. My name is Ila Simmons.

23 Q. What do you do for a living?

24 A. I work at the South Carolina Law Enforcement Division,
25 also known as SLED, in the forensics laboratory trace

1 evidence department.

2 Q. All right. As part of your duties, do you work on
3 gunshot residue kits?

4 A. Yes, sir, I did.

5 Q. And have you ever testified as an expert in gunshot
6 residue in a court such as this?

7 A. Yes, sir, over 125 times.

8 Q. All right.

9 MR. SPRINGS: Your Honor, would both defendants
10 stipulate that Ms. Simmons is an expert in gunshot residue
11 testing and analysis?

12 MR. LEMEL: Your Honor, I have no objection to the
13 court finding her qualified as an expert.

14 MR. DUNN: I'll leave it to the court's discretion
15 as well, Your Honor.

16 THE COURT: I find she is qualified.

17 BY MR. SPRINGS:

18 Q. Ms. Simmons, were you sent a gunshot residue test kit
19 from York County by forensics officer Kevin Tolson, samples
20 that he took herein related to a shooting?

21 A. Yes, sir, I was.

22 Q. And what's the last name to the fellow, the suspect
23 that he took those samples from?

24 A. One gunshot residue kit was collected from Robinson and
25 one gunshot residue kit was collected from Tobbie.

1 Q. Okay. What day did he collect them? Does that say?

2 A. Yes, sir, it does. It has the date and the time of the
3 collection.

4 The date for Robinson is 9-8-07, at approximately 12:10
5 a.m..

6 Q. Okay.

7 A. And for Tobbie, it is 9-8-07, at 12:13 a.m..

8 Q. A little bit after midnight?

9 A. Yes, sir.

10 Q. And those kits were sent to you?

11 A. Yes, sir.

12 Q. And I'm going to ask you the results in a minute, but
13 first of all, please give this jury a quick education.

14 What is gunshot residue?

15 A. Gunshot residue is a mixture of microscopic chemicals
16 that come out of a gun when it is fired. It comes from the
17 bullet projectile that is placed in the gun. When the
18 hammer falls and strikes the primer end of the cartridge, it
19 creates a small explosion. This ignites the gunpowder
20 that's in the cartridge, building up pressure in the gun,
21 pushing the projectile or bullet out of the gun. Well, when
22 this comes out of the gun, it comes out in a plume-shaped,
23 cone-shaped cloud. It can get on the hands of the person
24 firing the gun or anything in close proximity to the weapon
25 when it goes off.

1 Q. Okay. Now, the gunshot residue that you looked for,
2 are you looking for the stuff that comes out of the end of
3 barrel, or from some other place?

4 A. 98 percent of the gunshot residue comes out of the
5 muzzle end of the barrel, yes, sir.

6 Q. Now, the tests that were sent to you in this case, they
7 were taken from these fellows hands?

8 A. Yes, sir, they were. That's where a standard gunshot
9 residue kit is collected from. It's collected -- one sample
10 is collected from the right palm. Another sample is
11 collected from the back of the right hand. A sample is
12 collected from the left palm, and a sample is collected from
13 the back of the left hand.

14 Q. Okay. And the forensics officer, does he have a swab
15 or something that he wipes them down?

16 A. Yes, sir, it's a two-part test. They have particle
17 lifts which are pieces of double-sided sticky tape on a
18 small handle, and they use that and they put it in a vial
19 and close it and seal it down.

20 And then they take two cotton swabs and put a small
21 amount of dilute acid on it and finish off by rubbing that
22 over the same areas of the hands and sealing them in test
23 tubes.

24 Q. And then when you get it, you look and see if there was
25 any gunshot residue on his hands, is that right?

1 A. Yes, sir.

2 Q. Now, what are some of the things pursuant to your
3 training and experience that can affect whether if somebody
4 had actually shot a pistol?

5 What are some of the things that could affect whether a
6 forensics agent is going to find some gunshot residue on
7 that hand? Could you tell us about that?

8 A. Gunshot residue has the consistency of salt. So if you
9 get it on your hand, it's very easily removed. If you begin
10 to wipe your hands, that could remove gunshot residue. If
11 you touch something with moisture on it, that could remove
12 gunshot residue. Washing your hands will remove it. If you
13 begin to sweat, that will remove the gunshot residue from
14 the hands.

15 Q. Sweating can wash it off?

16 A. Yes, sir.

17 Q. How about wiping your hands on your clothes or
18 something else?

19 A. Yes, sir, putting your hands in and out of your pockets
20 of something of that nature. As long as there is a wiping
21 action on the hands, it can remove the gunshot residue.

22 Q. Somebody taking off, say, a T-shirt or a sweatshirt
23 like that, could they be wiping their hands?

24 A. Yes, sir, if it wipes across the hands, it can remove
25 the gunshot residue.

1 Q. And somebody handcuffed behind their back sitting on
2 their hands in the back of a police car for awhile, could
3 they wipe off any gunshot residue that might have been
4 there?

5 A. Yes, sir, that is a possibility.

6 Q. Now, did you test the sample that were taken off the
7 hands of Mr. Robinson?

8 A. Yes, sir, I did.

9 Q. And did you find gunshot residue?

10 A. The quantities of metals that we look for, we look for
11 three specific metals. We did not find significant amounts
12 to say that gunshot residue was present. So, no, we did not
13 say that gunshot residue was present on the hands.

14 Q. Okay. How about Mr. Tobbie, did you find any gunshot
15 residue on the wipings taken off of his hands?

16 A. No, sir, I did not.

17 Q. All right. Thank you very much.

18 If you would answer any questions that the defense
19 attorneys have for you.

20 CROSS EXAMINATION BY MR. LEMEL:

21 Q. I want to talk to you a little bit before we get to the
22 actual testing of the actual kits themselves, okay?

23 These kits that were used in this case, based upon what
24 you had before you were what is referred to as combo kits?

25 A. Yes, sir, they are.

1 Q. Have you heard that phrase before?

2 A. Yes, sir.

3 Q. And the reason why they are called combo kits is that
4 they actually have two possible tests inside?

5 A. Yes, sir.

6 Q. And I think you referred to them briefly before. There
7 is one has where there is some sort the disc or sticky tape
8 and you said it's actually patted over the hands?

9 A. Yes, sir.

10 Q. And that test, I'm going to ask you about the language
11 here, sometimes referred to as an A test, or is the SEM
12 test?

13 A. That's the SEM test. They call it that because the
14 particle lifts that we use are viewed under a scanning
15 electron microscope, SEM.

16 Q. So when you dab the hands with those first tests, what
17 you are looking for is bigger particles?

18 A. Yes, sir.

19 Q. That could be picked up on these?

20 A. Yes, sir.

21 Q. Just like if somebody was picking gum out of the
22 carpet? Sometimes they use a piece of tape to pull that up?

23 A. Yes, sir.

24 Q. Same concept?

25 A. Yes.

1 Q. And it's SEM for scanning electron microscope?

2 A. Yes, sir.

3 Q. The second test is the test where you take a swab, wet
4 it down a little bit with diluted acid and you literally run
5 it over all parts of the hands, is that correct?

6 A. Yes, sir.

7 Q. And you actually also do a test on that where you take
8 it from, for instance, the back or somebody other part of
9 the body as a control?

10 A. Yes, we call that a control, and that's taken so that
11 you can take into consideration any materials that may be on
12 on someone's body all the time. If they work in a metal
13 factory or something of that nature, they are going to have
14 higher levels of metals at all times.

15 Q. So it's actually five swabs that are taken on the test?

16 A. Yes, sir, and all five tested.

17 Q. And the process of actually doing that or washing the
18 hands in the acid actually would remove gunshot residue?

19 A. Yes, sir, it would remove the metals that are --

20 Q. Now, in this particular case there was a lot of
21 possibilities given out, okay, a lot of possible ways why
22 gunshot residue could not be found?

23 A. Yes, sir.

24 Q. Okay. This whole list, okay.

25 Can you testify in this case whether that was done,

1 whether the hands were washed before, whether the hands were
2 rubbed, whether the hands were brushed on clothing? Do you
3 have any knowledge of that?

4 A. No, sir, I do not.

5 Q. So all that is just speculation?

6 A. Yes, sir, those are all things that can remove gunshot
7 residue that's present.

8 Q. And if a hand is actually washed, then, okay, you are
9 not going to really find any traces of those metals at all,
10 the antimony, the barium and the lead, or very, very low
11 levels?

12 A. No, the lower levels. However, it depends on how long
13 it has been since the washing of the hands. If you wash
14 your hands, but then you go back and you touch something
15 else that has metals on it, it can start raising these
16 levels immediately.

17 Q. Okay. But in a relatively short period of time
18 somebody was to just wash their hands and they get picked
19 up, for example, their basic -- their values for these
20 things that you are looking for is going to be basically
21 zero?

22 A. It's going to be low. It's not going to be to our
23 threshold levels, no, sir.

24 Q. And your threshold levels is 180 now, right?

25 A. 170 for the lead, barium, and antimony, yes.

1 Q. Okay. For all three of them?

2 A. For the lead. The barium is 170, and for the antimony
3 it is 10 to 217.

4 Q. So for two of them it's 170, and for one of them it's
5 basically 17?

6 A. Yes, sir.

7 Q. And that's parts per --

8 A. Billion.

9 Q. -- billion --

10 A. Yes, sir.

11 Q. -- on that first test, okay.

12 So the second test in this particular event, that only
13 related to the A test, correct?

14 A. Yes.

15 Q. The A test, you are just looking for the presence of
16 those three metals on levels that you set at SLED?

17 A. Yes.

18 Q. And you actually have just recently taken those numbers
19 down? Wasn't it at 220, and now you have reduced those
20 levels down now?

21 A. Yes, sir, because we began to fire different weapons
22 with different ammunition.

23 Q. And you didn't even get to those levels at all on them?

24 A. No, sir.

25 Q. Now, it's not a case that they had none of these metals

1 on their hands, correct?

2 A. Correct.

3 Q. They actually had, for instance, barium. Barium is in
4 everything, isn't it?

5 A. Yes, it's in a lot of materials.

6 Q. And they naturally had barium on their hands?

7 A. Yes, sir.

8 Q. Correct?

9 A. Yes, sir.

10 Q. Which would be normal?

11 A. Yes, sir.

12 Q. Okay. And they had antimony on their hands?

13 A. Yes, they had a small amount.

14 Q. And they had lead on their hands?

15 A. Yes.

16 Q. Because lead is in a lot of stuff around?

17 A. It can be, yes, sir.

18 Q. That's all typical normal stuff?

19 A. Yes, sir, it can be found in other environmental.

20 Q. And, in fact, in this case when did you the tests on
21 the hands, sort of normal and you said environmental levels
22 were found?

23 A. Yes, they were.

24 Q. Okay. And, again, if the hands had been washed or
25 scrubbed recently, you wouldn't even expect to find those

1 levels, would you?

2 A. If they had been washed immediately before taking the
3 test, we would not have expected to find those levels.

4 Q. Or somebody had, for instance, had been rubbing their
5 hands to get the stuff off immediately before the test, you
6 would not expect to find any levels?

7 A. If the hands were being actively rubbed, no, sir, we
8 shouldn't have found them.

9 Q. But that's not what you had in this case. You had
10 those environmental levels?

11 A. Yes, sir, we had some levels.

12 Q. And you didn't even bother doing the scanning
13 electronic test at this point?

14 A. No, because with our protocol, if the first test comes
15 back without any results at all, without any concentrations
16 of metals, we don't go onto the scanner.

17 Q. So you didn't even bother to look at what shape of the
18 metals are?

19 A. No, sir.

20 Q. And that's what the scanning microscope does?

21 A. Yes.

22 Q. Once you have established those metals are there, you
23 can actually go and take a look and see what shape those
24 metals are in?

25 A. Yes, sir, because the SEM can see down a hundred

1 thousand times better than the human eye can see.

2 Q. Right.

3 And, in fact, they are sort of a perfect ball you look
4 for in some situations, right?

5 A. Yes, sir, they are.

6 Q. Because when that explosive goes off inside the bullet,
7 it causes these metals to combine, almost like chemical
8 level, right?

9 A. Yes.

10 Q. So the perfect evidence of gunshot residue is little
11 tiny balls? I mean, when I say little tiny, we are talking
12 micro microscopic?

13 A. Yes.

14 Q. But it can be seen by the microscope?

15 A. Yes, sir, it can.

16 Q. It is a combination of antimony, lead and barium?

17 A. That's correct.

18 Q. And it makes a very specific little ball is how it
19 looks like?

20 A. Yes, sir.

21 Q. That's really only formed -- that little ball is only
22 really formed by some sort of explosive or gunshot?

23 A. That's correct.

24 Q. If you find that, you know you've got it?

25 A. Yes, it is specific to gunshot residue.

1 Q. Gunshot residue?

2 A. Yes.

3 Q. That's the Holy Grail of gunshot residue? That's it,
4 right?

5 A. Yes.

6 Q. And in this particular case you didn't even have to go
7 look for that, did you?

8 A. No, sir, the levels were so low that we did not go onto
9 the second portion of this test.

10 Q. So there was no point in you looking for those Holy
11 Grail of gunshot residue?

12 A. No, sir.

13 Q. Wasn't any point in it?

14 A. No, we don't do that, according to our protocol. If
15 our levels are very low, we don't go onto the SEM.

16 MR. LEMEL: Begging the court's indulgence.

17 (Off the record)

18 (Back on the record)

19 BY MR. LEMEL:

20 Q. Now, within the AA test, there are other swabs that can
21 be done from other areas outside the body, correct?

22 A. Yes, I have received other swabs from areas other than
23 the hands.

24 Q. I'm sorry?

25 A. Other than the hands.

1 Q. Other than the hands?

2 A. Uh-huh.

3 Q. And specifically one thing that can be done is like
4 areas could be swabbed, like a steering wheel?

5 A. Yes, sir. If it is believed that a gun is fired within
6 a vehicle, we will analyze this.

7 Q. Or -- let me ask you this. If a person has fired a gun
8 around the steering wheel, their has hands on the steering
9 wheel, it's possible that GSR maybe transferred off the
10 steering wheel?

11 A. Yes, sir, but we do not do -- we do not analyze samples
12 for secondary transfer.

13 Q. But you could have a swab taken of that?

14 A. Yes, sir, but we wouldn't have analyzed it, if it was
15 sent to SLED.

16 Q. You could have a swab that was taken, though, to look
17 for gunshot residue within a vehicle?

18 A. Yes, sir, if the vehicle was -- if the gun was fired
19 within the vehicle, yes, sir.

20 Q. And in this particular case all that speculation that
21 you have about things that could have happened, ultimately
22 in this case that's all that is, is speculation, about what
23 could have happened?

24 A. Yes, sir, those are things that can remove gunshot
25 residue that is present.

1 Q. But the scientific tests that you did shows that there
2 was no gunshot residue?

3 A. That's correct, there were not threshold levels.

4 Q. And the levels that you did find were below the
5 threshold levels do not support the idea that it was just
6 rubbed off?

7 A. Immediately before.

8 Had someone rubbed their hands immediately before the
9 GSR kit was collected, then the gunshot residue could have
10 been removed.

11 However, if any time passed between a rubbing or a
12 washing, this metal -- these metals can begin to develop
13 again on the hands.

14 Q. Again?

15 A. Yes, sir.

16 Q. Okay.

17 MR. LEMEL: No further questions.

18 MR. DUNN: May it please the court?

19 CROSS EXAMINATION BY MR. DUNN:

20 Q. As far as it relates to Mr. Tobbie, you didn't find any
21 of the lead, barium, and the antimony were found within --
22 go over that threshold either, correct?

23 A. No, sir.

24 Q. But he did have some on his hands?

25 A. Yes, sir, there were some metals on the hands, yes.

1 Q. That would fall within normal environmental, correct?

2 A. Yes, sir, they could.

3 MR. DUNN: No further questions.

4 MR. SPRINGS: Just one followup, two followup.

5 REDIRECT EXAMINATION BY MR. SPRINGS:

6 Q. Gunshot residue, is that an infallible science? And by
7 that I mean is it possible that somebody could shoot a
8 pistol, immediately get tested and gunshot residue not be
9 found?

10 A. We have had that happen one time from a gun that had
11 just been -- just been made. Someone fired a bullet, one
12 bullet, out of the gun and no gunshot residue was found.

13 Q. So it's not infallible? It's not --

14 A. It isn't always deposited on the hands and sometimes it
15 can be removed.

16 Q. Thank you.

17 RECROSS EXAMINATION BY MR. LEMEL:

18 Q. So the time that you tested one very unique case where
19 the gun had never been fired before on one single shot?

20 A. That's the only time I have seen gunshot residue not be
21 produced by a weapon.

22 MR. LEMEL: I have no further questions.

23 MR. DUNN: No, sir.

24 THE COURT: All right, you can step down and be
25 excused. We appreciate your time. Thank you.

1 THE WITNESS: Yes, sir.

2 MR. SPRINGS: Would you ask Todd Gardner to come
3 in.

4 OFFICER TODD GARDNER, having been first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. EPTING:

7 Q. Good afternoon.

8 Please state your name for the record?

9 A. Yes. My name is Todd Gardner.

10 Q. Mr. Gardner, what do you do for a living?

11 A. I am a police officer with the City of Rock Hill
12 currently assigned to the York County Forensic Services
13 Unit.

14 Q. So you are in forensic service?

15 A. Yes, I am.

16 Q. How long have you been there?

17 A. I have been doing forensic since 1992.

18 Q. And you said that you are also a police officer?

19 A. I am a police officer.

20 Q. Could you tell the jury what training that you have, as
21 well as any experience that you have, in the area of
22 fingerprint identification?

23 A. I am currently the range master for the Rock Hill
24 police officer required -- my responsibilities there are to
25 conduct all firearms training for the Rock Hill Police

1 Department. And I also do conduct firearms training for
2 other agencies also throughout our county, and even some of
3 our state agencies come and work down at our firearms
4 raining.

5 I graduated the academy me in 1983 for basic law
6 enforcement. In that class, in that nine week period there,
7 I had crime scene processing classes. I had really basic,
8 basic fingerprint classes.

9 As my career went on, I decided I wanted to specialize
10 in something, so I began studying the field of latent
11 fingerprints, or fingerprints in general.

12 I have had an opportunity to take classes from our
13 state academy in basic fingerprints. I have also taken
14 classes from the FBI in advanced fingerprints.

15 Also during that course of study in that field there, I
16 ventured out into the crime scene processing. I have gone
17 to the University of Louisville to the Southern Police
18 Institute, a two-week school there on homicide
19 investigations.

20 I visited the University of North Florida down in
21 Jacksonville, Florida, and I have taken classes there,
22 advanced crime scene processing, buried body and surface
23 skeletons, recovery of buried bodies and surface skeletons.

24 I have been through the police academy in North
25 Carolina and took classes in palm print identification, and

1 have had several other small seminars on latent fingerprints
2 and also crime scenes processing and homicide
3 investigations.

4 MR. EPTING: Your Honor, the State seeks to have
5 Officer Gardner admitted as an expert in fingerprint
6 identification.

7 MR. LEMEL: No objection, Your Honor.

8 MR. DUNN: Yes, sir, no objection.

9 THE COURT: I find he's qualified.

10 BY MR. EPTING:

11 Q. Officer Gardner, were you called out to a crime scene
12 the night of September 7th, 2007?

13 A. Yes, I was.

14 Q. Do you recall where that crime scene was located?

15 A. Yes, it happened on Gold Hill Road at Woody's Shell
16 Station on Gold Hill Road, in Fort Mill.

17 Q. Do you recall what places there at the Shell station
18 itself making a check for fingerprints? Just run down a
19 list of the places that you checked.

20 A. When I arrived at the scene, I was advised that there
21 was a vehicle involved, supposedly the victim's vehicle. I
22 processed the passenger door, because -- the information I
23 had that night was that possibly the suspect may have come
24 in contact with that passenger door, so I processed the
25 passenger side the vehicle looking for latent prints.

1 I also processed a gas pump, pump number three, because
2 the information that I had that night was that the suspects
3 possibly pumped gas that night from pump number three.

4 Also in the inside of the store I processed the
5 bathroom area, because, again, information I received that
6 night from officers on the scene was that the suspects went
7 into the men's room, so I processed the door, the exterior
8 side of the door of the men's room, the interior side door
9 of the men's room. I processed the urinal area.

10 And then I believe one of the clerks there stated that
11 one of the suspects tried to get into the office door, which
12 was just adjacent to the men's bathroom, and I processed it
13 for fingerprints also.

14 Q. Did you find any identifiable prints?

15 A. I did not find any identifiable prints at the scene
16 that night.

17 Q. Usually on TV police detectives find identifiable
18 prints all over the place, quality prints. Can you explain
19 to the jury why you might not find an identifiable print?

20 A. There are numerous reasons why. I wish it was that
21 easy. Unfortunately it's not.

22 Especially the areas that I checked for fingerprints,
23 for instance, on the gas pump itself. Since gas is a
24 petroleum product, which means that it has some type of oil
25 base to it, and the number of people that actually touched

1 that gas pump would cause me not to find fingerprints, for
2 the simple fact you have print on print on print on print.
3 Some may be perfect. Some may be smudged. And ones that
4 are perfect, the next person comes in right behind it could
5 just move their hands slightly and smudge every one of the
6 useful latent prints. In this case that's basically what
7 happened, especially on the gas pump. I found nothing but
8 smudges.

9 A smudge is an area where if you just lay your hand
10 down and pick it back up, straight up -- I just left
11 fingerprints on that table right there, on top of that
12 banister. But if I did this and just slightly moved my hand
13 backwards, the fingerprints that I left are now smudges.
14 And that's what I located on the car and in the area of the
15 bathroom.

16 Q. Do the surface that you are checking figure into it?

17 A. That -- the surface is a big issue with us. We like
18 the good smooth surfaces that -- glass, and maybe the metal
19 on vehicles. That's -- plastics are not really a good thing
20 to try to locate fingerprints off of, unless it's a real
21 smooth piece of plastic, but the surface type will -- it
22 will either allow me to get good fingerprints or disallow me
23 to get good fingerprints.

24 Q. Would the use of the thing that you were checking? Say
25 a door handle, would that affect finding an identifiable

1 quality print?

2 A. Absolutely. Remember, on a door handle -- a door
3 handle on say, for instance a vehicle, you really have a
4 limited surface there. Most people won't put all five
5 fingers on the door handle, lift up on it, so there is
6 really hardly no prints on the exterior side of the door
7 handle. But up under the bottom of it, you would think you
8 would find fingerprints, but keep in mind everybody who
9 touches that leaves a fingerprint, and now I have got
10 fingerprint on fingerprint on fingerprint and basically I
11 have smudges.

12 Painted surfaces, like doors -- the door on the
13 bathroom generally is a good place, but that bathroom is a
14 public bathroom and I have got hundreds of people going into
15 that bathroom and all my latent prints that night where
16 smudges.

17 Q. So you did find fingerprints in these places, they just
18 weren't identifiable?

19 A. I found smudges. And as a matter of fact, I found
20 nothing that I would lift to bring back to the office to
21 compare, because they were all smudges or multiple prints on
22 top of each other. Not enough to identify.

23 Q. The suspect getaway vehicle, that was located by the
24 police?

25 A. Yes, it was.

1 Q. Do you recall what kind of car it was and what color?

2 A. If I could refer to my reports I could tell you, but
3 right off the top of my head I don't remember what type of
4 car it was.

5 Q. Would it refresh your recollection to have a look at
6 your report?

7 A. Yes, it would.

8 The suspects vehicle was a Hyundai four-door, red in
9 color.

10 Q. Did you process that vehicle, by which I mean did you
11 process it for fingerprints?

12 A. Yes, I did. The vehicle was brought back to the Moss
13 Justice Center and placed in our evidence bay. Our office
14 actually has a garage downstairs. It was pulled in there
15 and kept there until we had time to process it for
16 fingerprints.

17 Q. Did you take photographs while you were checking?

18 A. Yes, I did. I photographed. And when I process, it's
19 our policy, we process the scene, no matter how minor or how
20 major, we always photograph it. We photograph everything
21 that we do.

22 Q. Did another forensics officer assist you in processing
23 this car?

24 A. Yes, there was.

25 Q. Do you recall his name?

1 A. Yes, it's Investigator Brian Bagwell.

2 Q. And is he also a trained and experienced fingerprint
3 technician?

4 A. Yes, he is.

5 MR. EPTING: Approach with a photograph?

6 Your Honor, Mr. Lemel and Mr. Dunn have stipulated
7 that State's Exhibit 33, 34, 35, 36, and 42 should be
8 entered into evidence.

9 MR. LEMEL: That was previously done, Your Honor.

10 MR. DUNN: Yes, sir, Your Honor.

11 THE COURT: It may.

12 BY MR. EPTING:

13 Q. For the record I'm handing you State's Exhibit 33, 34,
14 35, 36, and 42. Would you take a look -- if you would, take
15 a look at those and let me know when you are ready.

16 A. (Witness examining photographs)

17 Yes, sir.

18 Q. If you would step in front of the jury, our projector
19 is broken, and using those pictures describe to the jury
20 what they are.

21 (Witness off the witness stand)

22 A. This is State's Exhibit 33. This is the driver's side
23 rear door. If you notice in the -- it looks laying in the
24 seat there is a red container, which is actually looks like
25 it's a cigar container. I processed it for latent prints.

1 Also there is a Icehouse beer can and it's actually in
2 the front seat in between -- in the console, in the cup
3 holder. I processed it for latent prints.

4 This is State's Exhibit 34. This shows the driver's
5 side front seat. You can actually see the Icehouse beer can
6 in this photograph here. There is a cell phone in the
7 floorboard. I processed it for latent prints. There is a
8 Newport cigarette pack. I processed it for latent prints.

9 State's Exhibit 35, this is the passenger side rear
10 door open, a photograph of it. And this photograph here
11 there is a North Carolina license plate on the floorboard.
12 It was processed for latent prints. There is also a pair of
13 white sunglasses in the back seat laying in the seat. It
14 was also processed for latent prints.

15 State Exhibit 36 shows the back seat again. You can
16 see -- you can see the Icehouse beer can in the front
17 console seat there in the cup holder. And actually you can
18 see the sunglasses sitting back there in the corner.

19 State Exhibit 42 is the outside driver's side of -- the
20 driver's side rear door and you can see the driver's door
21 itself. It shows some damage. The exterior portion of this
22 vehicle was also processed for latent prints.

23 BY MR. EPTING:

24 Q. You can have a seat.

25 (Witness back on the witness stand)

1 BY MR. EPTING:

2 Q. Now, Officer Bagwell (sic), in processing this car, did
3 you -- did you locate any identifiable --

4 THE COURT: Is this Officer Bagwell or Officer
5 Gardner?

6 THE WITNESS: Gardner.

7 MR. EPTING: Gardner, excuse me.

8 BY MR. EPTING:

9 Q. Did you locate any identifiable quality fingerprints?

10 A. I didn't hear the first part of the question, sir.

11 Q. In processing the car did you locate any identifiable
12 quality fingerprints?

13 A. In processing the vehicle itself, the exterior of the
14 vehicle, I did.

15 The stuff I described to you in the -- that was found
16 inside the car, other than some CD's that we also processed,
17 the other stuff, besides the CD's and the exterior of the
18 car, I did not find fingerprints, but from the CD's and the
19 exterior of the vehicle I did. I found identifiable what we
20 consider A.F.I.S. quality prints.

21 Q. And apart from those, did you find any nonidentifiable
22 prints, or smudges, like you described earlier?

23 A. Absolutely. We found a bunch of those too.

24 Q. Tell the jury where you found that identifiable prints
25 and who those matched to.

1 A. We found -- let me refer to my report again, please.

2 On a CD, a Mark Shai, S-H-A-I, I found a latent print
3 and it was positively identified to the number seven left
4 finger of -- number seven left index finger. And the way we
5 put numbers on it, starting with your right hand, your thumb
6 is number one, and go through number five. The thumb on
7 your left hand is six, and your index finger on your left
8 hand is number seven.

9 The number seven left index finger of Manno Heshumi
10 Beam.

11 Also a -- excuse me one moment.

12 (Off the record)

13 (Back on the record)

14 A. Another latent print was found on the hood area on the
15 driver's side. It was confirmed to be the number one, the
16 right thumb of Hiawatha Carol Beam, Jr..

17 Another one from a CD labeled TI I'm serious, it was
18 actually found in the center console with the Hyundai. It
19 was positively identified as the number eight middle finger
20 of Manno Heshumi Beam.

21 And I believe that was also latent prints that I
22 identified from the vehicle.

23 BY MR. EPTING:

24 Q. Hiawatha Beam and Manno Beam?

25 A. Hiawatha and Manno.

1 Q. Do you know if they are related?

2 A. I'm not sure.

3 Q. Were you interested in finding out where they were
4 from?

5 A. I have -- I have latent print cards. I had to call --
6 one thing that you we do, if we make an A.F.I.S. hit, we
7 just don't -- we just don't go by what that computer says.
8 We have to physically get a latent or an inked 10 print card
9 with that person's name on it and then compare our latent
10 prints again to that person to make sure that what the
11 computer says is actually truth, and that's what I did. I
12 took an inked 10 print card and actually compared the latent
13 prints that I had to the inked 10 print cards.

14 I did have to send off for 10 print cards, because we
15 didn't have it, and the -- I have one that was on Hiawatha
16 Beam from Charlotte, North Carolina. It was actually the --
17 I'm going to only guess it's the county police department,
18 Mecklenburg County police department, and the other one I'm
19 sure, but it doesn't give me any -- it doesn't give me an
20 arresting agency other than a North Carolina State ID
21 number, so it was a North Carolina arrest.

22 Q. Officer Gardner, do you, yourself, do yourself have any
23 idea when or how Hiawatha Beam could have touched that?

24 A. I have no earthly idea. I do not know.

25 Q. Do you know if Mr. Beam, Hiawatha, is a close friend of

1 relative to the car's owner?

2 A. I do not know that either.

3 Q. You said that three prints on the music CD's were left
4 by Manno Beam. Do you know if he's a close friend or
5 relative of the car's owner?

6 A. I don't know that either, sir.

7 Q. Do you know if Hiawatha or Manno Beam are in the car
8 detailing business or auto mechanics or parking lot
9 business?

10 A. I don't know that.

11 Q. To your knowledge, did the forensic services recover a
12 bullet from Mr. Dodd after it had been extracted from the
13 surgery?

14 A. Yes, sir, we did.

15 (Bullet marked as State's Exhibit No. 46 for
16 identification)

17 MR. EPTING: Your Honor, the State offers State's
18 Exhibit 46 into evidence per stipulation from both defense
19 counsel.

20 MR. LEMEL: No objection, Your Honor.

21 MR. DUNN: No objection.

22 THE COURT: All right. It's in evidence.

23 BY MR. EPTING:

24 Q. To your knowledge, was this bullet sent to SLED for
25 analysis?

1 A. Yes, it was.

2 Q. You stated at the beginning of this direct examination
3 that you were a police officer also?

4 A. Yes, I am.

5 Q. Do you have the power of arrest?

6 A. Yes, I do.

7 Q. At any time during your career have you carried a
8 firearm?

9 A. I carry one just about every day.

10 Q. Have you ever carried more than one?

11 A. Yes, I have.

12 Q. When was that?

13 A. At the start of my career when I was actually on patrol
14 and I was a short stint of three and a half years in the
15 narcotics I carried more than one gun.

16 Q. When you carried more than one, did they use the same
17 type of gun, or was one different?

18 A. I carried a different type of weapon.

19 Q. Could you explain how they are different?

20 A. Well, I carried -- my weapon, the first couple of years
21 of my career they were the same. Then we transitioned to a
22 semiautomatic pistol, and I was carrying a revolver as my
23 backup weapon. So I had a revolver and a semiautomatic. My
24 revolver was my backup and the semiautomatic pistol was my
25 duty weapon.

1 Q. Why a revolver?

2 A. Because it doesn't fail. It always shoots. The only
3 time it don't shoot is when you are out of ammo or you have
4 an ammo issue.

5 Q. Have you brought a revolver with you today?

6 A. Yes, I have.

7 Q. Would you mind coming down off that bench and -- off
8 that witness stand, showing the jury a little bit about how
9 that gun operates?

10 A. Sure.

11 (Witness off the witness stand)

12 BY MR. EPTING:

13 Q. Is the gun secure?

14 A. Yes, it is.

15 This is a revolver and it's quite different from a
16 semiautomatic pistol. It still does the same thing as a
17 semiautomatic, but the operation of it is different.

18 With a revolver, a revolver has a cylinder. And this
19 is actually where -- the cylinder actually has six chambers.
20 You load your ammo into the cylinder. And once it's loaded,
21 then you shut it. And every time you pull the trigger, this
22 cylinder will rotate counter-clockwise. And what it does,
23 the first round goes off. And you pull the trigger again,
24 it rotates a fresh round to the top where it winds up in the
25 barrel.

1 Q. After you pull the trigger and the bullet is expelled,
2 what happened to the shell in the chamber?

3 A. It remains inside the cylinder.

4 When you finally finish shooting all six rounds, you
5 roll it out and you push the extractor, the ejector rod, and
6 push the ammo out, the spent rounds out.

7 Q. Could you explain how that is different from this type
8 of weapon?

9 A. This is a semiautomatic pistol. It's basically a
10 semi-auto loading pistol, because you don't have to do
11 anything. You don't have the cylinder to load bullets into.
12 You have what's called a magazine. A magazine is a device
13 that holds the ammunition. The magazine fits into this area
14 here. The magazine well loads up into it. And what happens
15 is the bullet will sit right here at this angle. From this
16 slide -- this slide is this device here that moves back and
17 forth. This is the slide. Once the slide goes forward, a
18 fresh round is picked up from the magazine and put into the
19 chamber. This has six chambers. This last one.

20 When the weapon is fired, the extractor is located --
21 on this particular weapon here is located on top of this
22 slide. It's actually a hook that hooks around the rim of
23 the bullet. When you fire it, the gasses from the round
24 being fired pushes this slide all the way to the rear,
25 almost in the condition it's in right now. Well, that hook

1 pulls out this spent round. And at the very back inside --
2 then inside the injection pull here, there is a pin sitting
3 there, which is called the ejector. The back of the -- the
4 face of the bullet strikes that ejector, the ejector, and
5 that round is now kicked out of the gun. At the same time
6 the slide goes back forward and loads another round into the
7 weapon. That's a semiautomatic pistol.

8 Q. At a shooting where a single shot is fired, would you
9 expect to find a spent shell?

10 A. I would expect to find one.

11 Q. In a semiautomatic weapon?

12 A. From a semiautomatic.

13 Q. From a revolver?

14 A. No.

15 Q. All right. If you would, go back to the stand.

16 (Witness back on the witness stand)

17 BY MR. EPTING:

18 Q. Please answer any questions that the defense counsel
19 may have for you.

20 CROSS EXAMINATION BY MR. LEMEL:

21 Q. This revolver --

22 A. Yes, sir.

23 Real quick, just one second.

24 Q. I appreciate you making it safe for me.

25 This doesn't have anything to do with this case, does

1 it?

2 A. No.

3 Q. This wasn't recovered as part of this case?

4 A. No.

5 Q. It's just a demonstrator model you brought by?

6 A. That's correct.

7 Q. So this has absolutely nothing to do with this case,
8 other than you brought it by to show how cylinders work and
9 how rounds go in the cylinders and how they are ejected and
10 things like that?

11 A. That's correct.

12 Q. Okay. So this doesn't really tell us anything about
13 the guns or the rounds in this case?

14 A. It just demonstrates the type of weapon it is.

15 Q. All right. And you also testified that in your past as
16 a police officer you often carried two pistols?

17 A. No, no, I didn't say that. I said that I have carried
18 two pistols.

19 Q. Okay, I apologize. In your capacity as a police
20 officer in the past you have carried two pistols?

21 A. That's correct.

22 Q. That's in your capacity as a police officer, correct?

23 A. That's correct.

24 Q. In your normal walking around in the daylight do you
25 usually carry around two pistols?

1 A. I used to. I don't any more.

2 Q. Okay. So why don't you do that?

3 A. It hurts my hip.

4 Q. It's pretty easy for you as a police officer to acquire
5 a firearm? You go through normal process, normal channels
6 and usually acquire your firearms?

7 A. That's correct.

8 Q. Now, let's talk a little -- let's go back from all that
9 fancy stuff and let's just talk a little bit more about
10 forensics.

11 Forensics is basically the collection and processing of
12 physical evidence, right?

13 A. That's definitely part of it.

14 Q. At its most basic core?

15 A. At the most basic core.

16 Q. Right. And physical evidence can consist of a lot of
17 different things?

18 A. That's correct.

19 Q. Fingerprints is one example of physical evidence?

20 A. That's correct.

21 Q. DNA would be another example of physical evidence?

22 A. That's correct.

23 Q. Weapons?

24 A. Correct.

25 Q. Bullets?

- 1 A. Correct.
- 2 Q. Both fired and unfired bullets?
- 3 A. That's correct.
- 4 Q. Shell casings?
- 5 A. That's right.
- 6 Q. Clothing?
- 7 A. Yes, sir.
- 8 Q. Blood samples?
- 9 A. Yes, sir.
- 10 Q. Hair samples?
- 11 A. Yes, sir.
- 12 Q. And you are trained how to look for these things?
- 13 A. That's correct.
- 14 Q. That's what being a forensic services officer basically
- 15 means is it you have the training to go out and look for
- 16 these items of a physical type that are related to criminal
- 17 evidence?
- 18 A. That's correct.
- 19 Q. Okay. And not only how to look for them, but to
- 20 collect them?
- 21 A. Yes, sir.
- 22 Q. In some cases how to process them?
- 23 A. Yes, sir.
- 24 Q. And how to document what you find and what you don't
- 25 find?

1 A. That's correct.

2 Q. And in this particular case you were the primary person
3 to process the scene out at the Shell station?

4 A. That's correct.

5 Q. At the Shell station, as you indicated, you looked for
6 fingerprints in a large number of places?

7 A. I did.

8 Q. The gas pumps, the door to the men's room, inside the
9 men's room? A long list?

10 A. Yes, sir.

11 Q. And at no point in time anywhere around that station
12 did you find a single fingerprint that matched up with
13 Travis', right?

14 A. I did not find -- the only fingerprints identifiable
15 that I identified was from Hiawatha Beam and Manno Beam.

16 Q. And those were in the car. I'm talking about the Shell
17 station.

18 A. Right.

19 Q. Well, do you have any information brought before this
20 jury that that night there was anything that Travis was ever
21 outside of the car?

22 A. I do not find his fingerprints.

23 Q. Okay. You also looked for other physical evidence?

24 A. I did.

25 Q. Which would have included making a sketch of the scene

1 as you found it. Do you have that sketch?

2 A. I do.

3 Q. That was introduced.

4 You weren't shown that just now?

5 A. I haven't seen it, no, sir.

6 Q. And as you found Mr. Dodd's vehicle at that point in
7 time had been pulled up to the store?

8 A. Yes, sir, it was pulled up to the front of the store.

9 Q. Not by a pump?

10 A. Right at the front door.

11 Q. Okay. The car was not by the pump?

12 A. No, sir.

13 Q. Anybody told you that the car had been moved?

14 A. No, sir, they did not.

15 Q. Okay. And, now, you examined the area for shell
16 casings, right?

17 A. Yes, sir, I did.

18 Q. Okay. There was a lot of talk about how that works. I
19 want to talk to you a little bit about shells and shell
20 casings, just in case the jury needs it. I sort of made a
21 crude mock up here. I hope you don't mind that.

22 Basically modern bullets come in a form like this,
23 correct, where you have the front of the actual bullet part?

24 A. That's the projectile.

25 Q. The projectile, we'll call it, and the casing part.

1 A. That's correct.

2 Q. Basically the propellant, whatever, explosive,
3 whatever, goes back to the casing, the projectile goes on
4 the top, and it goes into the gun like this?

5 A. Yes, sir, that's -- that's very similar looking.

6 Q. All right. Pretty accurate?

7 A. Yes, sir.

8 Q. Some sort of pin hits the back of the casing?

9 A. The firing pin hits, strikes the primer.

10 Q. Right.

11 Primer goes off?

12 A. There is the first explosion.

13 Q. Right.

14 Second explosion happens when the propellant goes off?

15 A. That's correct.

16 Q. The bullet leaves the casing?

17 A. The gasses causing the bullet to leave the casing down
18 the barrel.

19 Q. Goes out, out here somewhere?

20 A. Yes, sir.

21 Q. And this is what's left behind?

22 A. That's correct.

23 Q. And as you discussed all this information about how
24 this works out of this weapon, right? And obviously this

25 would not fit in there, but what you are talking -- when you

1 say the shell casing, the shell casing is ejected out of
2 this, the back part?

3 A. That's correct, the fired casing.

4 Q. And this exact same shell casing is what stays in a
5 revolver as it goes around? This is the part that's left
6 behind?

7 A. That's right.

8 Q. And it's basically an empty shell at the point in time
9 after it's been fired? There is nothing left in it?

10 A. That's right, the projectile or bullet is now gone to
11 wherever it was aimed at.

12 Q. And the explosive is all gone too?

13 A. Yes.

14 Q. It's empty?

15 A. It's an empty shell.

16 Q. It looks a little bit like a cup, just a lot smaller?

17 A. Yes, sir.

18 Q. And in this particular case, as you said, you did not
19 find any shell casings at the scene?

20 A. I did not find any shell casings at the scene.

21 Q. And as you have already testified to, if a
22 semiautomatic had been used, you would expect to find shell
23 casings, unless somebody had bothered to stop and pick it up
24 as they went?

25 A. Well, there is other ways too. And the other ways

1 would be -- we have found shell casings embedded in tires
2 where people run over them and they stick into the grooves
3 in the tire.

4 The other way is someone picks it up and walks off with
5 it.

6 Q. Or, I guess, just depending how far it's ejected out,
7 it could go five feet?

8 A. It's hard to tell what a shell casing is going to do,
9 or what it the will do when it strikes a hard surface, such
10 as concrete, or the asphalt, metal. It could travel. It
11 could travel five, ten feet.

12 Q. More sometimes?

13 A. Sometimes, depending on where -- you know, if you are
14 on a hill or something like that.

15 Q. But in this particular case no shell casing was found?

16 A. I did not find any shell casings.

17 Q. Which would suggest a couple -- one -- a couple of
18 possibilities. One, somebody stopped and picked it up,
19 right?

20 A. Correct.

21 Q. Two, it was somehow carried off far away by another car
22 or bouncing far away, right?

23 A. I wouldn't say bouncing far away, because we searched
24 the entire parking lot.

25 Q. So we'll count that out. So we'll just say --

1 A. It could be --

2 Q. -- rolled over by another car?

3 A. It could have been picked up by somebody else's tire
4 tracks.

5 Q. Okay. Or, and would be the most likely scenario is, it
6 was a revolver that was used?

7 A. I think that's a good possibility.

8 Q. Okay. And probably just all these being equal, the
9 simply explanation is a revolver was used?

10 A. A high probability that a revolver was used.

11 Q. I'll take the high probability.

12 You were also the primary person who processed the red
13 vehicle, correct?

14 A. I was.

15 Q. Okay. You examined the outside of the car for
16 fingerprints?

17 A. Yes, sir.

18 Q. All parts.

19 And, again, found absolutely nothing that would link
20 Travis to that car?

21 A. I did not find his fingerprints.

22 Q. Okay. You processed the interior of the car for
23 fingerprints?

24 A. Yes, sir.

25 Q. And, again, absolutely nothing that would indicate that

1 Travis was in that car?

2 A. I did not find his fingerprints.

3 Q. The fingerprints that you did find were for two other
4 individuals?

5 A. I did find two other individuals fingerprints.

6 Q. And from inside the car, those were from CD's that were
7 located between the front seats?

8 A. Yeah, if my memory serves me correct, it was in like
9 the console that was between the seats.

10 Q. In the area was typically --

11 A. Right.

12 Q. -- lifted up by somebody in the front seats?

13 A. Right.

14 Q. That typically who accessed that area?

15 A. That's -- that's -- that's how you access it is lifting
16 it up.

17 Q. Right. Now, you also did a couple of swabbings, did
18 you not, inside the car?

19 A. Let me just refer to my report.

20 Q. And to try to help you out a little bit, if you look at
21 the last part of your first paragraph on page two and the
22 last line of your third paragraph on page three.

23 A. (Witness examining document)

24 Q. Would it help you if I --

25 A. Yes, sir, it would, because it's a very lengthy report.

1 Q. I understand. That's fine.

2 Turn to page two and three. Is that your report that
3 you -- is that the report that you put together?

4 A. Yes, sir.

5 Q. Okay. And this is something that you typed up,
6 correct?

7 A. Yes.

8 Q. I want to focus you on page two. The second to the
9 last sentence of this paragraph says what?

10 A. "No useable latent prints were found."

11 Q. Second to the last sentence, starting there.

12 A. "RO also collected a swab from the opening of the
13 Icehouse beer can." So I took a clean sterile cotton swab
14 and swabbed the opening of the beer can.

15 Q. So RO, that's you?

16 A. The reporting officer.

17 Q. Would that mean that you swabbed the mouth of the beer
18 can?

19 A. I did.

20 Q. Okay. And also bringing your attention to the third
21 paragraph. You see it now?

22 A. Yes, sir.

23 Q. What else did you swab?

24 A. "RO also -- "reporting officer also collected a swab
25 from the steering wheel."

1. Q. Now, was that a GSR test swab, or what type of swab was
2 that?

3 A. That was a swab for touch DNA, a sterile swab.

4 Q. So you selected both those swabs?

5 A. I did.

6 Q. And put them into whatever you put them in?

7 A. I put them into their -- our swabs have a little snap
8 caps on top of them that keep them protected. So we just
9 stuck them right into a manila envelope or one of our
10 evidence envelopes and I submitted it to evidence.

11 Q. To your knowledge, was either one of these swabs ever
12 tested in any way?

13 A. To my knowledge, I do not know.

14 Q. You have no knowledge if they had been tested?

15 A. I have no knowledge of them being tested.

16 Q. Now, in addition to the work that you did here in York
17 County, the Forensic Services Unit collected evidence up in
18 Charlotte, is that correct?

19 A. That's correct.

20 (Off the record)

21 (Back on the record)

22 (Photograph was marked as Defendant Robinson
23 Exhibit No. 1 for identification)

24 (Photograph was marked as Defendant Robinson.
25 Exhibit No. 2 for identification)

1 (Photograph was marked as Defendant Robinson
2 Exhibit No. 3 for identification)

3 (Photograph was marked as Defendant Robinson
4 Exhibit No. 4 for identification)

5 (Photograph was marked as Defendant Robinson
6 Exhibit No. 5 for identification)

7 (Photograph was marked as Defendant Robinson
8 Exhibit No. 6 for identification)

9 BY MR. LEMEL:

10 Q. As indicated to you earlier, some pictures were taken
11 by the Forensic Services Unit up in Charlotte, correct?

12 A. Correct.

13 MR. LEMEL: Your Honor, at this point in time,
14 pursuant to any previously discussed stipulation, we seek to
15 introduce Defense Exhibits 1 through 6, those pictures.

16 MR. EPTING: That's correct, Your Honor.

17 THE COURT: Without objection.

18 BY MR. LEMEL:

19 Q. Now, those pictures that were taken -- not by you,
20 correct?

21 A. That's correct.

22 Q. They were taken by Investigator Tolson with your
23 office?

24 A. That's correct.

25 Q. Is he still the head of the Forensic Services Unit?

1 A. Yes, sir, he's our director.

2 Q. So basically your boss was up there taking these
3 pictures?

4 A. I called him out that night.

5 Q. And do you hold some kind of standard pictures that you
6 take? You say you take pictures of a lot of stuff. When
7 you take pictures of a lot of stuff, when you are taking
8 pictures with someone out there, do you sort of have
9 standard pictures that you want to take?

10 A. Yes, sir, we do.

11 Q. Describe those for us.

12 A. We try to take close up of the face, full frontal
13 picture, a profile view from both sides, a full side-view, a
14 back -- complete back view. And then, of course, we go back
15 on the other side and do the left or the right side.

16 Q. Now, in addition to that in those pictures, there is
17 one other picture, isn't there, of all of those views?

18 A. Some shoes.

19 Q. The picture taken of the shoes?

20 A. Yes, sir.

21 Q. Okay. And would those be the pictures, to your
22 knowledge, that were taken by Investigator Tolson of Travis
23 Robinson that night?

24 A. Yes, sir, they are.

25 Q. Okay. Thank you.

1 And so do you know about what time Investigator Tolson,
2 Officer Tolson was up there in Charlotte?

3 A. I -- I don't know. I don't know the exact time. I
4 really don't. You kind of lose time while you are working a
5 scene and the only time that you look at your watch is when
6 you are going to indicate what time that you actually picked
7 up something as evidence.

8 Q. So this would have been that very same night?

9 A. Yeah, it was definitely the same night.

10 Q. Okay. While he was in custody of the
11 Charlotte-Mecklenburg police department?

12 A. I assume so, since he is standing there with the
13 Charlotte-Mecklenburg police car.

14 Q. And that's where Investigator Tolson went to take
15 pictures, correct?

16 A. That's correct.

17 Q. And he didn't just take pictures there, that's also
18 where he took the gunshot residue swabs?

19 A. That's correct.

20 Q. That were processed later on?

21 A. That's correct.

22 Q. Those were processed later on?

23 A. That's correct.

24 MR. LEMEL: Your Honor, permission to publish
25 these to the jury?

1 THE COURT: All right.

2 MR. LEMEL: Beg the court's indulgence.

3 (Off the record)

4 (Back on the record)

5 BY MR. LEMEL:

6 Q. And just to close it out, officer, the other thing that
7 Detective Tolson recovered in this case, in addition to the
8 fingerprints and the gunpowder residue test, was the bullet
9 that's been placed up here?

10 A. That's correct.

11 Q. And this was sent off for some processing, right?

12 A. Yes, it was definitely sent to SLED.

13 Q. Now, you testified earlier that you do a lot of firearm
14 in Rock Hill, right?

15 A. I do.

16 Q. The range instructor, I think you said?

17 A. That's true.

18 Q. Part of a SWAT team as sniper, or something like that?

19 A. I'm retired from the SWAT team.

20 Q. But that's what you did?

21 A. Yes, I was 17 years on the SWAT team.

22 Q. You have a lot of experience with all sorts of
23 different types of firearms, is that right?

24 A. Yes, I do.

25 Q. Okay. Now, various calibers of bullets are typically

1 associated with various types of weapons? Would you agree
2 with me on that?

3 A. Well, if I understood you right, you are correct. I
4 mean, if you have a 22-caliber pistol revolver, you have to
5 shoot 22-caliber ammunition in it, so the ammunition is
6 specific for a firearm.

7 Q. Right.

8 But also certain calibers are more apt to be found with
9 certain types of weapons. For example, a .44 round is
10 typically going to be something that is mostly going to be
11 found coming out of a semiautomatic pistol, right?

12 A. Not --

13 Q. No, not all of them?

14 A. No. A .44 round is generally associated with a
15 revolver, a big-bore revolver.

16 Q. Okay. Sorry.

17 Other rounds that may be associated with a revolver,
18 most typically a .357 round, for example?

19 A. That's correct.

20 Q. And a .38 round, like a .38 Special round?

21 A. That's correct.

22 Q. That's the old police -- when you see the old seventies
23 police shows, they are using the .38 revolvers?

24 A. That's correct.

25 Q. Is that what you were talking about that you used to

1 carry back in the day?

2 A. I actually carried a .38 revolver.

3 Q. Whereas, other types of rounds may be found
4 semiautomatic pistols more commonly? A .380, for example?

5 A. That's correct.

6 Q. A .45, like the old 1911, the Army pistol that we see
7 in all the old John Wayne movies?

8 A. You can get .45 in semiautomatic and a .45 in a
9 revolver.

10 Q. But most typically the .357 -- I know there may be some
11 minor exceptions to that, but the .357 round and .38 rounds
12 are going to be coming out of a pistol that is a revolver?

13 A. That's correct.

14 Q. As opposed to a .380 round that's going to be coming
15 out of a pistol that's a semiautomatic?

16 A. That's correct.

17 Q. Thank you very much, officer.

18 MR. LEMEL: No further questions.

19 MR. DUNN: Briefly, Your Honor.

20 MR. LEMEL: I apologize, Your Honor, that I took
21 those away from the jury before they saw them. I apologize.
22 I thought they made it all the way down. I'm sorry.

23 CROSS EXAMINATION BY MR. DUNN:

24 Q. Mr. Gardner, you didn't recover any fingerprints from
25 the Shell station that related to Mr. Tobbie, correct?

1 A. That's correct.

2 Q. You didn't recover any kind of DNA samples from Mr.
3 Tobbie?

4 A. I did not.

5 Q. Nor did Mr. Tolson -- or did Officer Tolson, as far as
6 you know, is that correct?

7 A. That's correct.

8 Q. Mr. Lemel showed you some pictures of his client, Mr.
9 Robinson.

10 MR. DUNN: Could I have these marked, please?

11 (Photograph marked as Defendant Tobbie Exhibit No.
12 7 for identification)

13 (Photograph marked as Defendant Tobbie Exhibit No.
14 8 for identification)

15 (Photograph marked as Defendant Tobbie Exhibit No.
16 9 for identification)

17 (Photograph marked as Defendant Tobbie Exhibit No.
18 10 for identification)

19 BY MR. DUNN:

20 Q. I'm going to show you what's been marked as Defendant's
21 Exhibit 7, 8, 9 and 10.

22 Do those appear to be photographs of Mr. Tobbie taken
23 by Officer Tolson?

24 A. Yes, these are photographs that Investigator Tolson
25 took that night.

1 Q. And they were taken up in Charlotte?

2 A. Yes, sir.

3 Q. When he showed them to the other witness, is that
4 correct?

5 A. That's correct.

6 Q. In that picture, what is Mr. Tobbie wearing?

7 A. Mr. Tobbie is wearing a white T-shirt that has a pocket
8 on the left chest. He has on a pair of blue jeans. It
9 looks like under his blue jeans he has a silver pair of
10 shorts. I only assume they are shorts. I can't see the
11 bottom of them.

12 Q. If I told you they were gym shorts, is that what they
13 look like?

14 A. That's what I was thinking. And he looks like he has
15 on dark colored tennis shoes.

16 Q. All right. Thank you.

17 Besides these pictures that were taken, you don't have
18 any other physical evidence of Mr. Tobbie on that night, do
19 you?

20 A. I do not.

21 Q. And as far as you know, Officer Tolson, besides these
22 photographs and any other photographs that he may have taken
23 then, he didn't have any other physical evidence of Mr.
24 Tobbie that night, is that correct?

25 A. That's correct, other than the GSR kit, I think.

1 Q. I'm sorry, the GSK kit, we have already discussed that.

2 MR. DUNN: Your Honor, with permission, I'm going
3 to publish these to the jury.

4 MR. SPRINGS: Are they in evidence?

5 MR. DUNN: Oh, I'm sorry. Your Honor, I move to
6 introduce these into evidence.

7 THE COURT: Any objection?

8 (No response)

9 THE COURT: Hearing none, they are entered without
10 objection.

11 MR. EPTING: No objection.

12 MR. DUNN: Publish them, Your Honor.

13 THE COURT: Yes.

14 MR. DUNN: I don't have any further questions.

15 THE COURT: Any redirect?

16 MR. EPTING: Not from the State, Your Honor.

17 MR. LEMEL: Nothing.

18 THE COURT: We are going to let the jury look at
19 those, but you can step down and be excused. Thank you.

20 We are going to stop for the day. It's 6:15.

21 We'll let the jury look at the pictures. Then we
22 will stop for the day.

23 (Off the record)

24 (Back on the record)

25 THE COURT: All right. We are going to stop for

1 the evening. Keep in mind what I have told you about not
2 discussing the case or making up your mind.

3 We will see you back at 9:30. We will try to
4 start as promptly at 9:30 as we can. Thank you. Have a
5 pleasant evening.

6 (The following takes place outside the presence of
7 the jury panel)

8 THE COURT: We are adjourned until 9:30. I have a
9 hearing at nine, but I should be through well before 9:30.
10 It's a rerun of something I have already heard, so we will
11 see y'all at 9:30.

12 (Whereupon, proceedings were adjourned to August
13 6, 2008)

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2008-GS-46-854
6 TRAVIS DENIELE) 2008-GS-46-855
7 ROBINSON,) 2008-GS-46-856
8 QUINTON LAWRENCE) 2008-GS-46-1304
9 TOBBIE,) 2008-GS-46-2770
10 DEFENDANTS.) AUGUST 6, 2008
11 YORK, SOUTH CAROLINA

12 (VOLUME III)

13 B E F O R E:

14 THE HONORABLE JOHN C. HAYES, III, JUDGE. ; And a Jury.

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

16 E.B. SPRINGS, IV, ASSISTANT SOLICITOR
17 CHRIS EPTING, ASSISTANT SOLICITOR
18 ATTORNEYS FOR THE STATE

19 GARY LEMEL, ASSISTANT PUBLIC DEFENDER
20 MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER
21 ATTORNEYS FOR DEFENDANT TRAVIS DENIELE ROBINSON

22 GEOFF DUNN, ESQUIRE
23 ATTORNEY FOR DEFENDANT QUINTON LAWRENCE TOBBIE

24 MICHAEL R. WATTS
25 CIRCUIT COURT REPORTER

INDEX

(AUGUST 4, 2008)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 16

(JACKSON V. DENNO HEARING)

LT. W.J. MILLER, II (SW)

DIRECT EXAMINATION BY MR. SPRINGS 43

CROSS EXAMINATION BY MR. DUNN 52

DIRECT EXAMINATION BY MR. SPRINGS 58

CROSS EXAMINATION BY MR. LEMEL 63

CROSS EXAMINATION BY MR. DUNN 70

REDIRECT EXAMINATION BY MR. SPRINGS 70

(NEIL V. BIGGERS HEARING)

SAVALAS DODD (SW)

DIRECT EXAMINATION BY MR. SPRINGS 77

CROSS EXAMINATION BY MS. INZERILLO 83

CROSS EXAMINATION BY MR. DUNN 91

MELINDA PARKER (SW)

DIRECT EXAMINATION BY MR. SPRINGS 97

CROSS EXAMINATION BY MS. INZERILLO 105

CROSS EXAMINATION BY MR. DUNN 122

INDEX

(AUGUST 5, 2008)

WITNESSES

PAGE

(NEIL V. BIGGERS HEARING)

NICOLE HOWIE (SW)

DIRECT EXAMINATION BY MR. SPRINGS 141

CROSS EXAMINATION BY MS. INZERILLO 151

CROSS EXAMINATION BY MR. DUNN 164

(JURY TRIAL)

JURY SWORN -- PAGE 173

OPENING STATEMENT BY MR. SPRINGS -- PAGE 177

OPENING STATEMENT BY MR. LEMEL -- PAGE 180

OPENING STATEMENT BY MR. DUNN -- PAGE 186

SGT. DOUGLAS WAYNE SMITH (SW)

DIRECT EXAMINATION BY MR. EPTING 188

CROSS EXAMINATION BY MR. LEMEL 200

CROSS EXAMINATION BY MR. DUNN 214

PAMELA MACOMSON (SW)

DIRECT EXAMINATION BY MR. EPTING 216

CROSS EXAMINATION BY MR. LEMEL 236

CROSS EXAMINATION BY MR. DUNN 258

MELINDA PARKER (SW)

DIRECT EXAMINATION BY MR. SPRINGS 270

CROSS EXAMINATION BY MS. INZERILLO 283

CROSS EXAMINATION BY MR. DUNN 258

1	INDEX	
2	(AUGUST 5, 2008)	
3	WITNESSES	PAGE
4	SAVALAS DODD (SW)	
5	DIRECT EXAMINATION BY MR. SPRINGS	311
6	CROSS EXAMINATION BY MR. LEMEL	318
7	CROSS EXAMINATION BY MR. DUNN	331
8	REDIRECT EXAMINATION BY MR. SPRINGS	334
9	NICOLE HOWIE (SW)	
10	DIRECT EXAMINATION BY MR. SPRINGS	335
11	CROSS EXAMINATION BY MS. INZERILLO	345
12	(NO CROSS EXAMINATION BY MR. DUNN)	
13	REDIRECT EXAMINATION BY MR. SPRINGS	359
14	RECROSS EXAMINATION BY MR. DUNN	360
15	DEPUTY WILLIAM R. GIBSON, II (SW)	
16	DIRECT EXAMINATION BY MR. EPTING	362
17	CROSS EXAMINATION BY MR. INZERILLO	377
18	CROSS EXAMINATION BY MR. DUNN	384
19	SGT. JOHN BOOTH (SW)	
20	DIRECT EXAMINATION BY MR. SPRINGS	388
21	CROSS EXAMINATION BY MR. LEMEL	405
22	CROSS EXAMINATION BY MR. DUNN	427
23		
24		
25		

INDEX

(AUGUST 5, 2008).

WITNESSES

PAGE

SLED AGENT ILA SIMMONS (SW)

DIRECT EXAMINATION BY MR. SPRINGS 429

CROSS EXAMINATION BY MR. LEMEL 434

CROSS EXAMINATION BY MR. DUNN 444

REDIRECT EXAMINATION BY MR. SPRINGS 445

RE CROSS EXAMINATION BY MR. LEMEL 445

DR. TODD GARDNER (SW)

DIRECT EXAMINATION BY MR. EPTING 446

CROSS EXAMINATION BY MR. LEMEL 462

CROSS EXAMINATION BY MR. DUNN 480

INDEX

(AUGUST 5, 2008)

WITNESSES

PAGE

LT. WILLIAM J. MILLER, II (SW)

DIRECT EXAMINATION BY MR. SPRINGS 495

CROSS EXAMINATION BY MR. LEMEL 509

CROSS EXAMINATION BY MR. DUNN 538

STATE RESTS -- PAGE 547

DR. LORI VAN WALLENDael (DW)

DIRECT EXAMINATION BY MR. LEMEL 560

VOIR DIRE EXAMINATION BY MR. SPRINGS 569

CONT'D DIRECT EXAMINATION BY MR. LEMEL 576

CROSS EXAMINATION BY MR. SPRINGS 605

(NO CROSS EXAMINATION BY MR. DUNN)

REDIRECT EXAMINATION BY MR. LEMEL 608

JEFF HOLLIFIELD (DW)

DIRECT EXAMINATION BY MR. LEMEL 609

CROSS EXAMINATION BY MR. SPRINGS 618

(NO CROSS EXAMINATION BY MR. DUNN)

REDIRECT EXAMINATION BY MR. SPRINGS 622

OFFICER CHERYL GOSEMAN (DW)

DIRECT EXAMINATION BY MR. LEMEL 625

(NO CROSS EXAMINATION BY MR. SPRINGS)

(NO CROSS EXAMINATION BY MR. DUNN)

INDEX

(AUGUST 6, 2008)

WITNESSES

PAGE

SLED AGENT KENNETH WHITLER (DW)

DIRECT EXAMINATION BY MR. LEMEL 630

(NO CROSS EXAMINATION BY MR. SPRINGS)

(NO CROSS EXAMINATION BY MR. DUNN)

DEFENDANT ROBINSON RESTS -- PAGE 638

DEFENDANT TOBBIE RESTS -- PAGE 638

CLOSING ARGUMENT BY MR. LEMEL -- PAGE 651

CLOSING ARGUMENT BY MR. DUNN -- PAGE 684

FINAL ARGUMENT BY MR. SPRINGS -- PAGE 692

JURY INSTRUCTIONS -- PAGE 703

JURY VERDICT -- PAGE 736

SENTENCING -- PAGE 752

REPORTER'S CERTIFICATE -- PAGE 754

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-1	QUINTON TOBBIE'S STATEMENT		508
4	S-2	TRAVIS ROBINSON STATEMENT		603
5	S-3	PHOTOGRAPH		559
6	S-4	PHOTOGRAPH		559
7	S-5	PHOTOGRAPH		559
8	S-6	PHOTOGRAPH		559
9	S-7	PHOTOGRAPH		559
10	S-8	PHOTOGRAPH		191
11	S-9	PHOTOGRAPH		191
12	S-10	PHOTOGRAPH		191
13	S-11	PHOTOGRAPH		192
14	S-12	PHOTOGRAPH		192
15	S-13	PHOTOGRAPH		193
16	S-14	PHOTOGRAPH		194
17	S-15	PHOTOGRAPH		194
18	S-16	PHOTOGRAPH		195
19	S-17	PHOTOGRAPH		197
20	S-18	PHOTOGRAPH		197
21	S-19	PHOTOGRAPH		198
22	S-20	PHOTOGRAPH		222
23	S-20-A	PHOTOGRAPH		222
24	S-21	PHOTOGRAPH		222
25	S-22	PHOTOGRAPH		222

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-23	PHOTOGRAPH		222
4	S-24	PHOTOGRAPH		222
5	S-25	PHOTOGRAPH		222
6	S-26	PHOTOGRAPH		222
7	S-27	PHOTOGRAPH		222
8	S-28	911 TAPE		229
9	S-29	STORE VIDEO		230
10	S-30	PHOTOGRAPH		341
11	S-31	PHOTOGRAPH		341
12	S-32	PHOTOGRAPH		341
13	S-33	PHOTOGRAPH		453
14	S-34	PHOTOGRAPH		453
15	S-35	PHOTOGRAPH		453
16	S-36	PHOTOGRAPH		453
17	S-37	PHOTOGRAPH		370
18	S-38	PHOTOGRAPH		370
19	S-39	PHOTOGRAPH		370
20	S-40	PHOTOGRAPH		370
21	S-41	PHOTOGRAPH		370
22	S-42	PHOTOGRAPH		453
23	S-43	CHASE VIDEO		373
24	S-44	PHOTOGRAPH		391
25	S-45	GUN		403

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-46	BULLET		458
4				
5	D-1	PHOTOGRAPH		475
6	D-2	PHOTOGRAPH		475
7	D-3	PHOTOGRAPH		475
8	D-4	PHOTOGRAPH		475
9	D-5	PHOTOGRAPH		475
10	D-6	PHOTOGRAPH		475
11	D-7	PHOTOGRAPH		483
12	D-8	PHOTOGRAPH		483
13	D-9	PHOTOGRAPH		483
14	D-10	PHOTOGRAPH		483
15	D-11	JEANS SHORTS		628
16	D-12	SHIRT		628
17	D-13	SHOES		628
18	D-14	SLED REPORT		638
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, August 6, 2008)

2 THE COURT: Okay. Let's bring in the jury.

3 (The following takes place in the presence of the
4 jury panel)

5 THE COURT: All right, members of the jury panel,
6 I have excused Ms. Ladrach from further service as a juror.
7 She didn't do anything wrong. These things sometimes happen
8 and that's why we have alternates.

9 We have had a random draw between the two
10 alternates, which is the way our law requires us to seat
11 alternates, and Ms. Gunter, you are now on the jury. You
12 are not an alternate any more.

13 Mr. Sawyer, you will remain an alternate. You can
14 just sit right there, but from now on y'all can move down
15 one when. Don't do it now, but -- well, go ahead and do it
16 now you will be closer. It just works a little better.

17 All right. Call your next witness.

18 MR. SPRINGS: If it pleases the court, our next
19 and last witness is William J. Miller.

20 Please come forward and be sworn.

21 DETECTIVE WILLIAM J. MILLER, II, having been first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. SPRINGS:

24 Q. Nice and loud, detective, tell this jury your name.

25 A. William John Miller, II.

1 Q. Who do you work for?

2 A. The York County sheriff's office.

3 Q. What's your rank?

4 A. Lieutenant.

5 Q. How long have you been in law enforcement, whether it's
6 with this department or any department, altogether?

7 A. 14 years.

8 Q. All right. On I believe the night of September the
9 7th, 2007, were you on call?

10 A. Yes, sir.

11 Q. And were you called out?

12 A. Yes, sir.

13 Q. And did you go over to Charlotte to interview two men?

14 A. Yes, sir.

15 Q. Who were the two men that you interviewed over in
16 Charlotte?

17 A. Mr. Robinson and Mr. Tobbie.

18 Q. Is it fair to say the interview took place in the
19 middle of the night?

20 A. Yes, sir, it was over in the morning.

21 Q. All right. I want to ask you about that, but before I
22 do, I want to ask you if you know the name of the owner of
23 the burgundy Hyundai that we have talked about in this case?

24 A. Yolanda Kinard.

25 Q. All right. Let's get to the interview.

1 When you interviewed Mr. Robinson, and let's talk about
2 him first, whereabouts did you interview him?

3 A. We were at the substation in Charlotte.

4 Q. Okay. And approximately what time -- I don't care
5 about the minute, but roughly what time did you talk to him
6 and interview him?

7 A. This is Mr. Robinson?

8 Q. This is Mr. Robinson, and I'm going to put a couple of
9 things up here that you are welcome to refer to, and one is
10 State's 1 and the other is State's 2.

11 A. Mr. Robinson was interviewed at 03:37, which is 3:37 in
12 the morning.

13 Q. Okay. At the Charlotte police station?

14 A. At the substation.

15 Q. Okay. And when you met with him to interview him, was
16 he hurt or was he injured?

17 A. He was in good health.

18 Q. Was he awake and sober?

19 A. Yes, sir.

20 Q. And did you actually talk to him?

21 A. Yes, sir.

22 Q. Did he seem to be fairly intelligent?

23 A. Yes, sir.

24 Q. Was anybody threatening him or being mean to him?

25 A. No, sir.

1 Q. Was anybody pointing a gun at him?

2 A. No, sir.

3 Q. Was there anybody threatening him?

4 A. No, sir.

5 Q. Any kind of problem?

6 A. No, sir.

7 Q. When you interview him, do you recall if he was
8 handcuffed or not?

9 A. No, sir, I do not remember if he was handcuffed or not.

10 Q. Do you have a fairly well established routine when you
11 interview people?

12 A. Yes, sir.

13 Q. Generally when you interview -- I know this was late
14 September, but generally your standard procedure, do you
15 take the cuffs off people when you interview them?

16 A. We -- if -- if for no other reason we take them off
17 from behind them and put them in front. He would not have
18 been handcuffed behind, had he -- during the interview, if
19 he was handcuffed, it would have been in front.

20 Q. All right. And he wasn't hurt?

21 A. No, sir.

22 Q. He wasn't in chains?

23 A. No, sir.

24 Q. The whole time that you were with him, did he complain
25 about anything?

1 A. No, sir..

2 Q. All right. Did you read him his rights, according to
3 Miranda?

4 A. Yes, sir, I did.

5 Q. Tell the jury exactly the rights you read to him,
6 according to Miranda.

7 A. "Before I ask you any questions, I want to advise you
8 of your rights.

9 "1. You have right to remain silent..

10 "2. Anything that you say can and will be used against
11 you in a court of law.

12 "3. You have the right to talk to an attorney and have
13 him or her present with you while you are being questioned.

14 "4. If you cannot afford to hire an attorney, one will
15 be appointed to represent you before any questioning, if you
16 wish.

17 "You can decide at any time to exercise these rights
18 and not answer any questions or make any statements.

19 "Do you understand these rights as I have explained
20 them to you?"

21 Q. Let's stop there. Did he indicate he understood those
22 rights?

23 A. Yes, sir.

24 Q. And you say that he seemed to be fairly intelligent?

25 A. Yes, sir.

1 Q. All right. Keep going.

2 A. At that time when I get through him reading his rights,
3 there is a block here for you to check yes or no if you
4 understand your rights and another place for your signature
5 and the date.

6 After that is taken care of, I go down to the waiver of
7 rights, which is right below. It says "I'm willing to talk
8 to the police and answer questions. I do not want an
9 attorney at this time. I understand and know what I'm
10 doing. No promises or threats have been made to me and no
11 pressure of any kind has been placed upon me."

12 They also get the opportunity to read this so that they
13 will understand it and see that if everything that I just
14 told them was true and correct, and I ask them to sign it,
15 and we dated it again and then I witness it.

16 Q. He said he was willing to talk to you?

17 A. Yes, sir.

18 Q. He was willing to be interviewed?

19 A. Right.

20 Q. And did he tell you some things about what had happened
21 that night?

22 A. Yes, sir, he gave me a verbal statement and I wrote it
23 down.

24 Q. At any time did he exercise his right to shut up and
25 remain silent, or did he ever ask for a lawyer?