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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

Opinion No. 2012-UP-098 (S.C. Ct. App. filed 2/22/2012)
08-GS-43-0853

THE STATE,

RESPONDENT,

V.

ANDRE MAURICE MASSEY,

PETITIONER

APPENDIX

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Andre Maurice Massey,

Appellant.

Appeal From Sumter County
George C. James, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-098
Submitted February 1, 2012 – Filed February 22, 2012

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney John W. McIntosh, Assistant Deputy
Attorney General Salley W. Elliott, and Assistant
Attorney General Mark R. Farthing, all of Columbia;

and Solicitor Ernest A. Finney, III, of Sumter, for Respondent.

PER CURIAM: Andre Maurice Massey appeals his convictions for armed robbery and possession of a weapon during the commission of a violent crime, arguing the trial court erred in: (1) denying Massey's suppression motion and motion for a mistrial based on evidence obtained in violation of section 24-21-290 of the South Carolina Code (2007), and (2) sentencing Massey to life without parole when the notice was deficient because it did not include the words "without parole." We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the trial court erred in denying Massey's motion to suppress and motion for a mistrial: S.C. Code Ann. § 24-21-290 (2007) ("All information and data obtained in the discharge of his official duty by a probation agent is privileged information, is not receivable as evidence in a court, and may not be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive reports unless ordered by the court or the director."); State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("The trial [court]'s factual findings on whether evidence should be suppressed due to a Fourth Amendment violation are reviewed for clear error."); State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005) ("The decision to grant or deny a mistrial is within the sound discretion of the trial [court]."); Hutto v. State, 387 S.C. 244, 250, 692 S.E.2d 196, 199 (2010) (holding that even if a disclosure is made in violation of section 24-21-290, the exclusionary rule would not apply to a statutory right).

2. As to whether the trial court erred in sentencing Massey to life without parole when the notice was deficient because it did not include the words "without parole": S.C. Code Ann. § 17-25-45(H) (Supp. 2011) ("Where the solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and defendant's counsel not less than ten days before trial."); James v. State, 372 S.C. 287, 294, 641 S.E.2d 899, 903 (2007) ("[S]o long as

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

the defendant and his counsel, at least ten days prior to trial, possess actual notice of the State's intention to seek a sentence under South Carolina's recidivist statute, the statute has been satisfied."); State v. Burdette, 335 S.C. 34, 39-40, 515 S.E.2d 525, 528 (1999) ("Once the indictment informs a defendant of the charges against him, section 17-25-45(H) only requires the solicitor to inform the defendant that the recidivist sentencing statute will be applied upon conviction." (emphasis added)).

AFFIRMED.

WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ANDRE MAURICE MASSEY,

APPELLANT

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

Opinion No. 2012-UP-098

PETITION FOR REHEARING

The Court of Appeals affirmed the above named appellant's conviction and sentence on February 22, 2012. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, appellant submits the following:

Massey argued on appeal three issues: (1) the trial court erred in denying appellant's motion to suppress the evidence against him which included his second statement to police, the search warrant, and the evidence obtained through the search warrant at his home because they were all obtained through information provided by appellant's parole agent in violation of S.C. Code Section 24-21-290; (2) the trial court erred in denying appellant's motion for a mistrial because all of the

evidence against appellant was the fruit of the poisonous tree due to an illegal search warrant because the affidavit for the search warrant was based on information obtained in violation of S.C. Code Section 24-21-290; (3) the trial court erred in sentencing appellant to life without parole (LWOP) when the Notice for LWOP was deficient in that it did not include the words "without parole".

The Court of Appeals combined Issues One and Two and held that even if a disclosure was made in violation of Section 24-21-290, the exclusionary rule would not apply to a statutory right. The Court held that the decision to grant or deny a mistrial was within the sound discretion of the trial court. On Issue Three, the Court of Appeals held that as long as the defendant and his attorney, at least ten days before trial, had actual notice of the State's intention to seek a sentence under South Carolina's recidivist statute, the statute has been satisfied citing State v. Burdette, 335 S.C. 34, 39-40, 515 S.E.2d 525, 528 (1999). The Court also wrote that once the indictment informs a defendant of the charges against him, Section 17-25-45(h) only requires the solicitor to inform the defendant that the recidivist sentencing statute will be applied upon conviction.

The Court of Appeals misapprehended the issue and the arguments presented on this issue.

ISSUE ONE and TWO: Detective Irene Culick, who was the lead investigator on this case, testified that she received a dispatch call on June 7, 2007, that an armed robbery (AR) had occurred at the Total Living Store on Dugan Street in Sumter. R.167, ll. 10 – 25; R.168, ll. 1 – 17; R.5, ll. 1 – 9. When she arrived at the scene, she talked with Mr. Herbert Huff who was the operator of the store at the time of the robbery. Mr. Huff told her that a young man came in the store just before closing that day which was the second time he had been in that day. When Mr. Huff closed the door, the young man pulled a gun on him, which he described as a black derringer, and demanded

cash from Mr. Huff's wallet and from the cash register. The young man then left, and Mr. Huff called 911. R.168, ll. 18 – 25; R.169, ll. 1 – 25; R.170, ll. 1 – 25; R.110, ll. 1 – 25.

Mr. Huff told Detective Culick that the young man's face was not covered; he wore a white tan top and black pants with a white stripe, and had a tattoo on his left arm. The young man had been in the store earlier that day with Ms. Latrell Billie, who worked next door. R.171, ll. 1 – 25; R.172, ll. 1 – 2.

Detective Culick then talked with Ms. Billie who told her that she did know a young man named Andre Massey who came to see her at her work occasionally because she often helped with employment. She did see him in Total Living that day when she went in that store earlier. R. 172, ll. 1 – 19; R. 71, ll. 1 – 25. She described Massey as wearing the same clothing that Mr. Huff described and as having a tattoo. R. 172, ll. 20 – 25.

At the in-camera hearing, Detective Culick testified that Ms. Billie told her that Massey was on probation and was on the sex offender registry. Detective Culick then contacted probation and talked with Massey's probation agent, Agent Sumter, who provided Massey's address to Detective Culick. Agent Sumter went to the address first and called Detective Culick and told her that Massey was at home. Detective Culick, along with other officers, went to that address and arrested Massey. R. 23, ll. 1 – 25; R. 24, ll. 1 – 25; R. 25, ll. 1 – 25; R. 26, ll. 1 – 8.

Detective Culick said the officers asked Massey for permission to search his home, but Massey told them no as he did not want them to search his apartment. Then the police obtained a search warrant, and did search Massey's home. R.31, ll. 21 – 25; R.32, ll. 25; R.33, ll. 1 – 9. During the search of Massey's home, Detective Tod Sims said the officers found a 22 derringer pistol on a bed in the bedroom; a knit cap, and a pair of black pants with a white stripe down the leg. R.54, ll. 1 – 25; R.55, ll. 1 – 13. Detective Sims described the process he followed in getting the magistrate to

sign the search warrant. He read the affidavit which stated that state probation and parole provided the address for Massey. R.50, ll. 1 – 25; R.51, ll. 1 – 25; R.52, ll. 1 – 25; R.53, ll. 1 – 25.

Detective Culick took Massey to the police department after he was arrested. She read his *Miranda* rights to him. He then gave his first statement where he denied any involvement with the robbery. R.85, ll. 1 – 25; R.86, ll. 1 – 25; R.87, ll. 1 – 25; R.88, ll. 1 – 25; R.89, ll. 1 – 25.

Detective Culick called the officers performing the search at Massey's house and learned of the evidence they obtained. R.90, ll. 1 – 25. When she confronted Massey with the evidence found in his house which included the gun and clothing, he then gave a second statement confessing to the crime. He said he was sorry, and started crying. He and his fiancée were about to be evicted, and the lights had been turned off in his apartment. He said it was really hard to find a job, and he had been turned down 130 times. R.91, ll. 1 – 25.

Defense counsel made a pretrial motion to suppress the arrest of Massey, the search of his house, all evidence seized during the search, his confession, and everything resulting from the information provided by agent Sumter to police because the information was tainted because Agent Sumter violated the statute-S.C. Code Section 24-21-290 which provided that information received by probation agents was privileged. R.81, ll. 1 – 16; R.79, LL. 1 – 18; R.77, ll. 14 – 25; R.78, ll. 1 – 25.

Defense counsel argued after the Jackson v. Denno, 378 U.S. 368 (1964), hearing that Massey's second statement should be suppressed because it was the result of information the police received from Agent Sumter in violation of Code 24-21-290. R.92, ll. 4 -11.

The judge denied defense counsel's motion because he said the statute said that the information was inadmissible but that everything derived from the privileged information was not inadmissible. He said it was not admissible in court so he was not going to allow Agent Sumter to

testify. The judge said that Detective Culick testified that DMV had Massey's address also. R.79, ll. 19 – 25; R.80, ll. 1 – 25; R.81, ll. 1 – 9.

When the judge asked if the record were clear concerning the issue of discovery of Massey's address, the state recalled Detective Culick to question her in camera regarding this issue. R.93, ll. 19 – 25; R.94, ll. 1 – 11. Detective Culick testified that she called the probation office first to obtain Massey's address. While she was waiting to hear from probation, she checked DMV records. DMV had two addresses, one of which was the same as the one obtained from probation. R.94, ll. 10 – 25; R.95, ll. 1 – 3. Her testimony was:

And so pretty much Agent----A lot of times DMV records are wrong. I mean, that's just my case. A lot of people don't update their records where they're staying, but in my experience, 11 years, probation and parole has a good address for a defendant.

R. 95, ll. 4 – 8.

The judge ruled that the statute was clear and that the case of State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (2003) held that the restrictive language of the statute had no exception. However, it was his conclusion that the DMV records would have led the officers to Massey's address. R.99, ll. 7 – 25. Therefore, the violation of the statute did not foreclose "his examination of whether or not they would still have located Massey at that same address." He denied the defense motion. R.100, ll. 13 – 22.

Counsel argued that the search warrant was illegal because, he stated:

..... the affidavit for the search warrant stated that state probation and parole was given the information gathered from the witness and then gave law enforcement a location of Andre Massey's residence.

R.278, ll. 1 – 11.

Counsel argued that this information received by the magistrate was in violation of the statute 24-21-290 which provided that the information received by probation agents was privileged. R.278, ll. 12 – 25.

S.C. Code Section 24-21-290 provides:

All information and data obtained in the discharge of his official duty by a probation agent is privileged information, is not receivable as evidence in a court, and may not be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive reports unless ordered by the court or the director.

S.C. Code Section 24-21-290.

In State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (2003), the Supreme Court held that this statute relating to privileged nature of information received by a probation officer in his official capacity prohibits the admission in court for any purpose, including impeachment, of a probationer's statement to the probation agent, regardless of whether the statement is voluntarily or involuntarily given.

In the post-conviction relief case of Hutto v. State, 387 S.C. 244, 692 S.E.2d 196 (2010), the Supreme Court held that any violation of section 24-21-290, which made all information obtained by the probation agent in discharge of his official duties privileged, by probation agent's disclosure to the police officer that the defendant had cuts on his arms and hands did not warrant exclusion of the evidence obtained from the information disclosed; the statute only created a statutory privilege and did not implicate a constitutional right.

In Hutto v. State, *id.* Hutto allegedly broke into an elderly woman's home cutting his hands and arms in the process. The woman was sexually assaulted and robbed. A month later, Agent Ronnie Bends who was Hutto's probation agent from a previous conviction, completed a routine visit to Hutto's home. Agent Bends was accompanied by another agent, James Harris. Agent Harris

noticed the cuts on Hutto's arms and hands. Later, Investigator Hubert Nimau, asked Agent Bends about any injuries and Agent Bends called Agent Harris who described to the investigator the cuts he observed on Hutto. Hutto was eventually arrested as a result, with Agent Harris testifying at his trial. The Supreme Court held that the legislature did not intend this statute to have such a broad application that it would cover anything the probation agent saw when visiting his client. The Court also wrote that the purpose of the statute was to foster open lines of communication between the probation agent and his client. In addition, the court stated that there was overwhelming guilt of Hutto's guilt without Agent Harris testimony so there was no prejudice to Hutto.

In his dissent, Justice Pleicones wrote that the statute did not exempt information and data received by the agent's sense of sight from privilege. He wrote that the statute barred the disclosure of "all information and data" obtained directly or indirectly to anyone other than the judge. Justice Pleicones said the statute recognized that there would be situations where the privilege must yield to policy but that the statute provided a mechanism to do that which included the agent being ordered by the court or director to release the information.

Justice Pleicones wrote that the privilege was a question of legislative intent and not constitutional law. He wrote:

The statute expressly states that information and data obtained in the discharge of the agent's duty is "not receivable as evidence in court," and thus the evidentiary exclusion arises from the terms of the statute creating the privilege, not the application of the exclusionary rule. To permit information or data obtained directly or indirectly as a result of a violation of the statute to be received as evidence in court defeats the legislative intent in creating this privilege.

Massey's case is distinguished from State v. Hutto, Id. In that the information disclosed in Hutto was something the agent observed. Massey's case was concerned with the disclosure of language. Defense counsel argued for the exclusion of evidence based on the evidentiary exclusion

created by the statutory privilege. There was no other evidence of guilt other than the evidence obtained from the information disclosed by Agent Sumter. Detective Culick relied on the information from the probation agent as being accurate and only the state probation and parole were included in the affidavit for the search warrant. Thus the magistrate issuing the search warrant relied only on the information obtained from probation and parole.

In State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987), the Supreme Court held that exclusion of evidence was the proper remedy for improperly issued search warrant, where the state was unable to demonstrate a good-faith attempt to comply with the warrant statute. The Court wrote that the evidence in this case was excluded on the basis of a statutory violation and not on constitutional grounds so any good-faith exception to the exclusionary rule did not apply.

Agent Sumter providing Massey's address to the police, which led to Massey's arrest, without following the procedure provided in the statute, clearly violated the intent of the legislature which was to promote open lines of communication between the agent and his client.

On Issue Two, defense counsel moved for a mistrial based on the violation of Massey's Fourth Amendment right to remain free from unreasonable search and seizure after the testimony of Detective Tod Sims, who obtained the search warrant for Massey's apartment. Counsel argued that the search warrant was invalid because it was based on a violation of S.C. Code Section 24-21-290. R.251, ll. 13 – 25; R.252, ll. 1 – 25. R.276, ll. 15 – 25; R.277, ll. 1 – 25. Counsel argued:

..... the affidavit for the search warrant stated that state probation and parole was given the information gathered from the witness and then gave law enforcement a location of Andre Massey's residence.

R.278, ll. 1 – 11.

Defense counsel also argued the exclusion of evidence based on a Fourth Amendment illegal search. Counsel argued that since the search warrant was invalid because it was based on an

affidavit that relied on information obtained illegally or in violation of Section 24-21-290, then all evidence obtained as a result of the search warrant should have been excluded including Massey's confession. R.277, ll. 1 – 25; R.278, ll. 1 – 25; R.282, ll. 1 – 25; R.283, ll. 1 – 25.

The judge denied defense counsel's motion stating there were no Fourth Amendment implications. R.284, ll. 8 – 25; R.285, ll. 1 – 25.

The Fourth Amendment to the United States Constitution provides that the people have a right to be secure in their persons and homes against unreasonable searches and seizures, and no warrants shall issue, but with probable cause, supported by oath and affirmation, describing the place to be searched and the things to be seized:

Any evidence seized in violation of the Fourth Amendment must be excluded. State v. Brown, 389 S.C. 473, 698 S.E.2d 811 (Ct. App. 2010). An appellate court's review in Fourth Amendment search and seizure cases is limited to determining whether any evidence supports the trial court's finding. State v. Willard, 374 S.C. 129, 647 S.E.2d 252 (Ct. App. 2007).

If the police exploit an unlawful search to seize evidence that would not have otherwise come to light, that evidence is the "fruit of the poisonous tree," and is not admissible. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407 (1963); State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999).

Search warrants may be issued "only upon an affidavit sworn to before the magistrate...establishing the grounds for the warrant." S.C. Code Ann. Section 17-13-140 (1985).

Whether to grant or deny a mistrial motion is a matter within the trial court's sound discretion, and the court's decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law. State v. Culbreath, 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008);

citing State v. Council, 335 S.C. 1, 12-13, 515 S.E.2d 508, 514 (1999). In order to receive a mistrial, a defendant must show error and resulting prejudice. Id.

A mistrial should be granted only if there is a manifest necessity or the ends of public justice are served, and trial courts should first exhaust other methods to cure the possible prejudice before declaring a mistrial. State v. Brown, 389 S.C. 84, 697 S.E.2d 622 (2010).

Massey was prejudiced by the trial court not granting a mistrial because the evidence found at his home and his second statement to police were admitted as evidence when they were the fruit of the poisonous tree or the illegal search warrant. The trial court committed an error of law by admitting evidence which was based on the state's violation of a state law. The ends of public justice required the mistrial be granted because the state cannot be allowed to benefit from breaking the laws established by the Legislature.

ISSUE THREE: In a pretrial hearing, Massey's defense counsel moved to quash the notice that the state was seeking a life without parole sentence pursuant to S.C. Code Section 17-25-45. R.40, ll 4 – 25. Counsel argued that the notice was insufficient because it did not include the words "without parole" and only stated "life imprisonment." R.14, ll. 18 – 24.

The state argued that the notice referenced the statute, and that the statute contained the words "without parole" in its enumeration. The state also argued that under James v. State, 372 S.C. 287, 641 S.E.2d 899 (2007), written notice was not required as actual notice was sufficient. R.16, ll. 1 – 25; R.17, ll. 1 – 10.

The state also argued that he discussed with Massey's attorney that he was seeking life without parole. The solicitor said he knew from their conversations that defense counsel had discussed this with Massey, and therefore, Massey had notice. Defense counsel objected to the

solicitor saying what he had told his client as that was privileged information. R.17, ll. 20 – 25; R.18, ll. 1 – 17.

The trial judge said he did not know of any law in South Carolina or any other state on this point. R.17, ll. 8 – 19. However, he said that if he quashed the notice, the state would simply serve a corrected notice within thirty days and proceed with a trial. R.15, ll. 15 – 22.

After the verdict, the trial judge told defense counsel that the judge was taking notice during the sentencing phase of counsel's objection to a life sentence under 17-25-45 based on counsel's earlier motion to quash the notice of LWOP. R.324, ll. 24 – 25; R.325, ll. 1 – 8. The judge acknowledged that the lack of the terminology "without parole" may "well be an appellate issue." R.328, ll. 1 – 25.

The state then listed the prior most serious conviction which included armed robbery, burglary first degree, five counts of kidnapping, and assault and battery with intent to kill, all from the same date of October 7, 1995. R.326, ll. 1 – 25; R.9, ll. 1 – 25.

Defense counsel called as a witness during the in camera hearing, Detective Irene Culick, who was the lead investigator in the case. R.4, ll. 13 – 25. She testified that the solicitor told her he must seek LWOP according to the law if there were a second most serious offense. She did not know of any plea offer made to Massey. She was not opposed to a plea offer where Massey would get less than a life sentence. R.5, ll. 1 – 25; R.6, ll. 1 – 25.

Andre Massey testified during the pretrial hearing that he had never been offered a plea arrangement, as he would have taken it. R.7, ll. 1 – 25. He did not know about the two strikes law and life without parole as no one discussed that with him after his guilty pleas in 1995 to the most serious offenses. R.8, ll. 1 – 23.

South Carolina Code Section 17-25-45 (A) provides:

Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has one or more prior convictions for

The state served a document entitled **Notice of Intention to Seek Life Imprisonment.**

This document stated:

Pursuant to S.C. Code Ann. Section 17-25-45, the State hereby notifies the Defendant Andre M. Massey of the State's intention to seek life imprisonment if the Defendant is convicted of Armed Robbery under indictment number 2008-GS-43-0843.

The basis of this notice is that on October 17th, 1995, the Defendant was convicted of Assault and Battery with Intent to Kill and five counts of kidnapping under indictment number 1995-GS-43-0587. Also on October 17th, 1995, the Defendant was convicted of burglary in the first Degree under indictment number 1995-GS- 43-0636 and another separate count of burglary in the First Degree under indictment number 1995-GS-43-0105. Each aforementioned charge for which a conviction is stated above, is defined as a Most Serious offense under S.C. Code Ann. Section 17-25-45. Certified copies of both the Defendant's Plea sheets and the indictments in the above mentioned convictions are attached to this notice.

Court Exhibit Five- Notice of Intent to Seek Life Imprisonment.

In James v. State, *supra*, the Supreme Court held that so long as the defendant and his counsel, at least ten days prior to trial, possess actual notice of the state's intention to seek a sentence under the recidivist sentencing statute, the statute's notice requirements were satisfied. In that PCR case, defense counsel failed to object when written notice of the state's intention to seek LWOP, was not served.

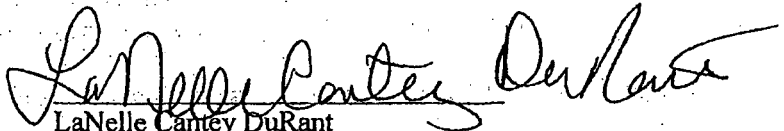
Massey's case is distinguished because written notice was served on Massey, but the notice did not give him notice of life "without parole." The notice was not sufficient as the notice did not conform to the statute. Massey did not have a law degree and there was no evidence that he had access to law books or understood if he did. No reliable evidence was presented that Massey's attorney told him specifically that the notice meant life without parole. Because a life sentence could

have meant to Massey a possibility of parole as was the historical situation in South Carolina, it was prejudicial to him for the state not to make it clear to him that there was no possibility of parole if he were convicted at trial.

The Court of Appeals misapprehended the issues. On Issues One and Two, the purpose of Section 24-21-290 is to foster open communication between the defendant and his probation agent. The statute clearly provides that the information is privileged and is not receivable as evidence in court. On Issue Three, Section 17-25-45(H) simply provides that the solicitor must give written notice to the defendant and his counsel not less then ten days before trial when the solicitor is required to seek sentencing of life without parole.

THEREFORE, we respectfully ask the Court of Appeals to reconsider its rulings.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

This 8th day of March, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

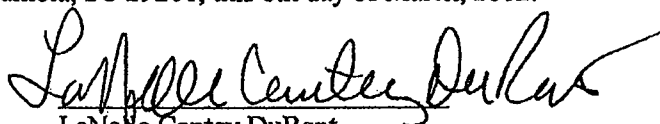
V.

ANDRE MAURICE MASSEY,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 8th day of March, 2012.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 8th day
of March, 2012.


(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

The South Carolina Court of Appeals

The State,

Respondent,

v.

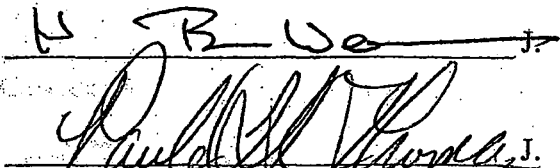
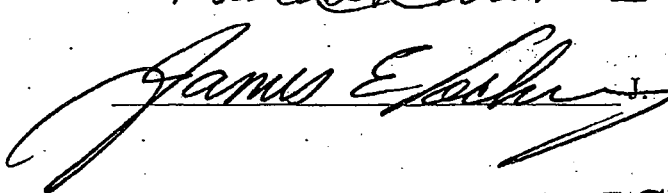
Andre Maurice Massey,

Appellant.

The Honorable George C. James Jr.
Sumter County
Trial Court Case No. 2008-GS-43-00853

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

RECEIVED

Columbia, South Carolina

APR 13 2012

SC OFFICE OF
APPELLATE DEFENSE

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FILED

April 13, 2012

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANDRE MAURICE MASSEY,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

2008-CP-43-0853

THE STATE OF SOUTH CAROLINA

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

ANDRE M. MASSEY

:

AUGUST 3 - 5, 2009

SUMTER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE GEORGE C. JAMES, JR., JUDGE, AND
JURY.

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

MARTIN D. SPRATLIN, ESQUIRE
ATTORNEY FOR THE STATE

CALVIN HASTIE, ESQUIRE
ARTHUR WILDER, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DAPHNE D. HELMS
CIRCUIT COURT REPORTER

1 (COURT REPORTER'S NOTE: COURT REPORTER MARGARET
2 SULLIVAN WAS THE COURT REPORTER PRESENT FOR THE JURY
3 QUALIFICATION AND IMPANELING OF THE JURY.)

4 THE COURT: ALL RIGHT. HAVE A SEAT. THANK YOU. OKAY.
5 OF COURSE, THIS IS JUST -- Y'ALL MAKE A NOTE THAT WE HAVE A
6 SECOND COURT REPORTER. THIS IS THE STATE VERSUS MASSEY. IN
7 CASE THERE'S ANY ISSUE PERTAINING -- APPELLATE ISSUE
8 PERTAINING TO JURY SELECTION, THAT WAS WITH MARGARET
9 SULLIVAN. ALL RIGHT. ANY AGREEMENT ON THE ORDER WE ADDRESS
10 THE PENDING MOTIONS?

11 MR. SPRATLIN: YOUR HONOR, I DON'T BELIEVE WE HAVE
12 REACHED AN AGREEMENT. THE STATE HAS A WITNESS ISSUE WITH THE
13 MOTION TO SUPPRESS. MR. BILLY LYONS IS ONE OF THE WITNESSES
14 ON THAT CASE. HE IS TESTIFYING FIRST UP IN THE MURDER TRIAL
15 TAKING PLACE NEXT DOOR. HIS TESTIMONY, FROM TALKING WITH MS.
16 FANT AND FROM TALKING WITH HIM, SHOULD NOT TAKE MORE THAN 30
17 OR 40 MINUTES IN THE MURDER CASE. WE WOULD ACTUALLY ASK THAT
18 THE MOTION TO SUPPRESS GO LAST SO WE CAN ACCOMMODATE MR.
19 LYONS AS MUCH AS POSSIBLE AND THE MURDER CASE GOING NEXT DOOR
20 AS MUCH AS POSSIBLE.

21 THE COURT: OKAY. WELL, YOU MIGHT WANT TO GO DOWN THE
22 HALL AND SEE WHETHER OR NOT THAT MURDER CASE IS GOING TO
23 START TODAY, IF AT ALL, BECAUSE THERE'S A CONTINUANCE MOTION
24 THAT'S BEEN MADE IN THAT CASE, TOO. SO I'LL -- I'M HAPPY TO
25 ADDRESS THESE IN ANY ORDER THAT Y'ALL WANT TO, AND WE CAN DO

1 IT THAT WAY.

2 MR. SPRATLIN: YOUR HONOR, I THINK OBVIOUSLY THE FIRST
3 MATTER SHOULD BE THE MOTION FOR A CONTINUANCE MADE BY THE
4 DEFENSE IN THIS CASE.

5 THE COURT: ALL RIGHT. AFTER -- AFTER THAT MOTION, WE
6 HAVE A MOTION TO QUASH THE LIFE-WITHOUT-PAROLE NOTICE?

7 MR. HASTIE: YES, YOUR HONOR.

8 THE COURT: ALL RIGHT. THEN WE HAVE A MOTION TO
9 SUPPRESS EVIDENCE OBTAINED DURING THE SEARCH?

10 MR. SPRATLIN: YES, YOUR HONOR.

11 MR. HASTIE: YES, YOUR HONOR.

12 THE COURT: THEN WE HAVE A JACKSON VERSUS DENNO?

13 MR. HASTIE: YES, SIR.

14 THE COURT: AND ANY OTHER ONES?

15 MR. SPRATLIN: WE HAD A MOTION REGARDING THE IN-COURT
16 IDENTIFICATION, YOUR HONOR, REGARDING THE VICTIM IN THIS
17 CASE.

18 THE COURT: OKAY.

19 MR. HASTIE: AND I WANT TO RENEW MY BRADY MOTION, YOUR
20 HONOR.

21 MR. WILDER: PUT THAT ONE FIRST.

22 MR. HASTIE: I'D LIKE TO DO THAT FIRST, YOUR HONOR.

23 THE COURT: ALL RIGHT. GO AHEAD AND MAKE THAT MOTION,
24 PLEASE, MR. HASTIE, ABOUT RENEWAL OF THE BRADY AND RULE 5.

25 MR. HASTIE: YES, SIR. MAY IT PLEASE THE COURT? YOUR

1 PARTICULAR CHARGE. THEN I CAN TALK WITH MY CLIENT. WE CAN
2 REVIEW THE EVIDENCE AND PREPARE A BETTER DEFENSE FOR HIM.
3 THANK YOU.

4 THE COURT: OKAY. ALL RIGHT. THE NEXT MOTION WOULD BE
5 A MOTION -- THESE AREN'T IN ANY PARTICULAR ORDER, JUST THE
6 ONES THAT YOU MENTIONED: A MOTION TO QUASH THE LIFE-WITHOUT-
7 PAROLE NOTICE. WE HAVE THE IN-COURT IDENTIFICATION. JACKSON
8 VERSUS DENNO, MOTION TO SUPPRESS THE SEARCH WARRANT. WHICH
9 ONE DO Y'ALL WANT TO DO NEXT? QUASH THE L-WOP NOTICE?

10 MR. SPRATLIN: I BELIEVE THAT PROBABLY WOULD BE BEST,
11 YOUR HONOR.

12 MR. HASTIE: YES.

13 THE COURT: OKAY. MR. HASTIE, HOW ABOUT THE LIFE-
14 WITHOUT-PAROLE NOTICE?

15 MR. HASTIE: YOUR HONOR, I WOULD LIKE TO CALL A WITNESS
16 IF I COULD AT THIS TIME.

17 THE COURT: ALL RIGHT.

18 MR. HASTIE: OFFICER CULICK.

19 IRENE CULICK, AFTER BEING DULY SWORN, TESTIFIED AS
20 FOLLOWS IN CAMERA:

21 THE CLERK: HAVE A SEAT UP HERE, PLEASE. STATE YOUR
22 FULL NAME AND SPELL YOUR LAST NAME, PLEASE.

23 THE WITNESS: IT'S IRENE CULICK. C-U-L-I-C-K.
24
25

DIRECT EXAMINATION

BY MR. HASTIE:

Q. GOOD AFTERNOON.

A. GOOD AFTERNOON.

Q. WHAT WAS YOUR ROLE IN THE APPREHENSION OF THE DEFENDANT
HERE IN THIS PARTICULAR CASE?

A. I WAS THE LEAD INVESTIGATOR ON THE CASE. I RESPONDED TO
THE SCENE WHEN THE ARMED ROBBERY CALL CAME OUT, FOLLOWED UP
ON LEADS THAT LED ME TO MR. ANDRE MASSEY, AND ARRESTED HIM.

Q. OKAY. DO YOU HAVE ANY INFORMATION CONCERNING WHEN THE
OFFER OF LIFE WITHOUT PAROLE WAS ACTUALLY MADE?

A. I JUST FOUND OUT RECENTLY THAT HE WAS GETTING -- WELL,
THEY HAD SERVED HIM WITH A LIFE WITHOUT PAROLE. I DIDN'T
KNOW AHEAD OF TIME THAT HE WAS SERVED WITH IT.

Q. DO YOU HAVE ANY KNOWLEDGE OF ANY OTHER PLEA THAT WAS
OFFERED TO THIS CLIENT?

A. I KNOW -- NO, NO OTHER KNOWLEDGE OF A PLEA. I KNOW HIS
ATTORNEY, MR. HOWLE, AT THE PRELIMINARY HEARING, AFTER I HAD
PRESENTED ALL THE EVIDENCE THAT WAS THERE AGAINST HIM, HAD
STATED HE NEEDED TO GO AHEAD AND PLEAD AND HAVE IT RUN
CONCURRENT WITH HIS 14 YEARS PAROLE, AND THAT STOOD OUT
BECAUSE I HAD NEVER HEARD AN ATTORNEY IN A PRELIMINARY
HEARING TELL THEIR CLIENT THEY NEEDED TO PLEAD GUILTY AT THAT
TIME.

Q. DO YOU KNOW WHO IN THE SOLICITOR'S OFFICE ASKED FOR THIS

1 LIFE-WITHOUT-PAROLE CHARGE?

2 A. WHEN I TALKED TO MR. MARTIN SPRATLIN WHO HAS THE CASE, I
3 ASKED HIM ABOUT IT, AND HE TOLD ME THAT THE LAW STATES THAT
4 YOU MUST, IF IT'S THE SECOND OFFENSE WHICH IS SOMETHING I
5 DIDN'T KNOW -- I HAVE NOT WORKED ONE OF THESE OR HAD THIS
6 BEFORE COME UP.

7 Q. IF THERE WAS A LESSER PLEA OFFERED TO MY CLIENT, WOULD
8 YOU BE OPPOSED TO IT?

9 A. A LESSER PLEA? LESSER THAN LIFE?

10 Q. LESSER THAN LIFE, YES.

11 A. I WOULD NOT BE OPPOSED.

12 Q. YOU WOULD NOT BE OPPOSED. NO FURTHER QUESTIONS, YOUR
13 HONOR.

14 THE COURT: ANY QUESTIONS, MR. SPRATLIN?

15 MR. SPRATLIN: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU CAN STEP
17 DOWN.

18 THE WITNESS: THANK YOU.

19 THE COURT: ANY OTHER WITNESSES, MR. HASTIE?

20 MR. HASTIE: YES, YOUR HONOR. I WOULD LIKE TO CALL MY
21 CLIENT, MR. MASSEY, TO THE STAND.

22 THE COURT: ALL RIGHT. MR. MASSEY, YOU CAN COME ON UP.

23 ANDRE M. MASSEY, AFTER BEING DULY SWORN, TESTIFIED
24 AS FOLLOWS IN CAMERA:

25 THE CLERK: HAVE A SEAT OVER THERE.

1 THE COURT: ALL RIGHT.

2 THE CLERK: STATE YOUR FULL NAME, AND SPELL YOUR LAST
3 NAME, PLEASE.

4 THE WITNESS: ANDRE MAURICE MASSEY. M-A-S-S-E-Y.

5 DIRECT EXAMINATION

6 BY MR. HASTIE:

7 Q. MR. MASSEY, WHEN WERE YOU -- WHEN DID YOU LEARN THAT
8 THIS OFFER OF LIFE WITHOUT PAROLE WAS MADE IN YOUR BEHALF?

9 A. FORTY-EIGHT HOURS BEFORE I CAME TO THE COUNTY.

10 Q. FORTY-EIGHT HOURS. WHEN DID YOU COME TO THE COUNTY?

11 A. I CAME HERE WEDNESDAY, AND I GOT THE PAPERS THAT MONDAY.

12 COURT REPORTER: I CAN'T HEAR YOU.

13 THE WITNESS: I CAME WEDNESDAY AND I CAME -- I GOT THE
14 PAPERS THAT MONDAY.

15 BY MR. HASTIE:

16 Q. DID ANYONE TALK WITH YOU ABOUT ANY TYPE OF PLEA---

17 A. NO, SIR.

18 Q. ---ARRANGEMENT?

19 A. NO, SIR.

20 Q. IF YOU WERE OFFERED A PLEA TO A LESSER CHARGE, WOULD YOU
21 HAVE TAKEN IT?

22 A. YES, SIR.

23 Q. COURT'S INDULGENCE, YOUR HONOR. AND, MR. MASSEY, YOU
24 AND I HAVE HAD SOME CONVERSATION ABOUT THIS TWO STRIKE.

25 A. YES, SIR.

1 Q. NOW, WHEN YOU WERE CONVICTED YEARS AGO -- 1995?

2 A. YES, SIR.

3 Q. 1995. DID ANYONE TELL YOU THAT THIS WOULD BE A FIRST
4 MOST SERIOUS OFFENSE AND IF YOU GOT ONE MORE THAT YOU COULD
5 POSSIBLY SERVE A LIFE-WITHOUT-PAROLE SENTENCE?

6 A. NO, SIR.

7 Q. NO ONE TALKED WITH YOU ABOUT THAT.

8 A. NO, SIR.

9 Q. MR. JACK HOWLE DIDN'T TALK WITH YOU ABOUT THAT.

10 A. NO, SIR.

11 Q. HOW OFTEN DID YOU MEET WITH MR. JACK HOWLE?

12 A. AT THE PRELIMINARY HEARING.

13 THE COURT: ON THIS CASE OR THE OTHER CASE?

14 MR. HASTIE: FOR THIS CASE.

15 THE COURT: ALL RIGHT.

16 THE WITNESS: FOR THIS CASE.

17 BY MR. HASTIE:

18 Q. AT THE PRELIMINARY HEARING -- YOU'RE GOING TO HAVE TO
19 SPEAK UP. YOUR ONLY CONVERSATION WITH MR. JACK HOWLE WAS AT
20 THE PRELIMINARY HEARING? IS THAT CORRECT?

21 A. YES, SIR.

22 MR. HASTIE: OKAY. YOUR HONOR, I HAVE NO FURTHER
23 QUESTIONS OF THIS WITNESS.

24 MR. SPRATLIN: JUST BRIEFLY, YOUR HONOR.

25

CROSS-EXAMINATION

1
2 BY MR. SPRATLIN:

3 Q. MR. MASSEY?

4 A. YES, SIR.

5 Q. ON OCTOBER 17, 1995, YOU WERE CONVICTED OF FIVE COUNTS
6 OF KIDNAPPING AND ONE COUNT OF ASSAULT AND BATTERY WITH
7 INTENT TO KILL. CORRECT?

8 A. YES, SIR.

9 Q. ON THAT SAME TIME DATE YOU WERE CONVICTED OF TWO COUNTS
10 OF BURGLARY IN THE FIRST DEGREE. CORRECT?

11 A. YES, SIR.

12 Q. OKAY. AND YOU WERE REPRESENTED ON THOSE GUILTY PLEAS,
13 WERE YOU NOT?

14 A. YES, SIR.

15 Q. WHO WERE YOU REPRESENTED BY?

16 A. MR. JOHN CLARKE.

17 MR. SPRATLIN: OKAY. YOUR HONOR, AT THIS TIME I WOULD
18 LIKE TO TENDER THESE INTO EVIDENCE. THESE ARE CERTIFIED
19 COPIES OF THE CONVICTIONS THAT I'VE REFERENCED, INDICTMENT
20 NUMBER---

21 THE COURT: ANY OBJECTION TO THOSE?

22 MR. HASTIE: NONE, YOUR HONOR.

23 THE COURT: ALL RIGHT. THOSE WOULD BE COURT'S EXHIBITS.

24 (COURT'S EXHIBITS 2 THROUGH 4 MARKED FOR IDENTIFICATION
25 ONLY.)

1 BY MR. SPRATLIN:

2 Q. NOW, MR. MASSEY, YOU SAID THAT YOU WERE SERVED WITH THE
3 NOTICE OF LIFE OR THAT YOU FOUND OUT ABOUT LIFE TWO DAYS
4 BEFORE YOU CAME HERE TO SUMTER COUNTY.

5 A. YES, SIR.

6 Q. WOULD THAT HAVE BEEN ON JUNE THE 15TH -- I MEAN, JULY
7 THE 15TH?

8 A. YES, SIR.

9 Q. I'M SORRY?

10 A. THAT SOUNDS ABOUT RIGHT. I'M NOT A HUNDRED PERCENT SURE
11 ABOUT THE DATE, BUT THAT SOUNDS ABOUT RIGHT.

12 Q. AND WERE YOU, IN FACT, GIVEN A COPY OF -- LET ME SHOW
13 YOU THIS DOCUMENT. IF WE COULD MARK THIS FOR IDENTIFICATION
14 PURPOSES.

15 (STATE'S EXHIBIT 1 WAS MARKED FOR IDENTIFICATION ONLY.)

16 BY MR. SPRATLIN:

17 Q. I SHOW YOU THAT DOCUMENT, MR. MASSEY. DO YOU RECOGNIZE
18 THE DOCUMENT I JUST HANDED YOU?

19 A. YES, SIR.

20 Q. IS THAT THE SAME DOCUMENT OR A SIMILAR COPY OF A
21 DOCUMENT THAT YOU RECEIVED AT THE KERSHAW CORRECTIONAL
22 INSTITUTE?

23 A. A SIMILAR COPY.

24 MR. SPRATLIN: OKAY. THANK YOU. YOUR HONOR, AT THIS
25 TIME I WOULD TENDER THIS CERTIFIED COPY FROM THE CLERK'S

1 OFFICE INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 1?

2 THE COURT: OKAY. WELL, IT'S NOT FOR THE JURY THOUGH.

3 MR. SPRATLIN: NO, YOUR HONOR. IT'S JUST FOR THIS
4 HEARING.

5 THE COURT: IF IT'S STATE'S NUMBER 1, IT'S GOING TO BE
6 IN FRONT OF THE JURY. SO LET'S JUST CALL IT ANOTHER COURT
7 EXHIBIT.

8 MR. SPRATLIN: YES, YOUR HONOR.

9 THE COURT: BECAUSE I'M THE ONLY ONE THAT'S GOING TO SEE
10 IT.

11 MR. SPRATLIN: YES, YOUR HONOR.

12 (COURT'S EXHIBIT 5 WAS MARKED FOR IDENTIFICATION ONLY.)

13 MR. SPRATLIN: YOUR HONOR, IF I COULD APPROACH WITH THE
14 DOCUMENT.

15 BY MR. SPRATLIN:

16 Q. NOW, MR. MASSEY, THAT DOCUMENT WAS SERVED ON YOU BY A
17 MS. CAROLINE SANDERS, WAS IT NOT?

18 A. YES, SIR.

19 Q. IT WAS SERVED ON YOU BY A CORRECTIONS OFFICER?

20 A. YES, SIR.

21 Q. OKAY.

22 THE COURT: JUST FOR THE RECORD, THIS COURT'S EXHIBIT 5
23 SAYS CERTIFIED COPIES OF THE PLEA SHEETS AND THE INDICTMENTS
24 IN THE ABOVE-MENTIONED CONVICTIONS ARE ATTACHED TO THIS
25 NOTICE. COURT'S EXHIBIT 5 DOESN'T HAVE THOSE, BUT ARE THOSE

1 1 THROUGH 4?

2 MR. SPRATLIN: YES, YOUR HONOR. THOSE ARE COURT'S
3 EXHIBITS 1 THROUGH 4.

4 THE COURT: ALL RIGHT.

5 MR. SPRATLIN: YOUR HONOR, I WOULD ALSO LIKE TO MARK
6 THIS AS A COURT EXHIBIT. IT IS A CERTIFIED COPY FROM THE
7 CLERK'S OFFICE OF THE PROOF OF SERVICE FILLED OUT BY MS.
8 CAROLINE SANDERS, SWORN AND ASCRIBED.

9 THE COURT: OKAY. IT WILL BE NUMBER 6.

10 (COURT'S EXHIBIT 6 WAS MARKED FOR IDENTIFICATION ONLY.)

11 MR. SPRATLIN: AND, YOUR HONOR, FOR THE RECORD, THIS
12 SERVICE SAYS, "PERSONALLY APPEARED BEFORE ME, CAROLINE
13 SANDERS, WHO UPON FIRST BEING DULY SWORN DEPOSES AND STATES
14 THAT SHE DID SERVE THE NOTICE OF INTENTION TO SEEK LIFE
15 IMPRISONMENT UPON THE DEFENDANT, ANDRE MASSEY, BY PERSONALLY
16 DELIVERING A COPY OF SAME TO THE DEFENDANT AT THE KERSHAW
17 CORRECTIONAL INSTITUTE, 4848 GOLD MINE HIGHWAY, KERSHAW,
18 SOUTH CAROLINA, 29067." IT IS SIGNED BY CAROLINE SANDERS.
19 SHE DID PRINT HER NAME BELOW IT, AND IT IS SWORN AND AFFIRMED
20 BEFORE CATHERINE A. AMOS WHO IS A NOTARY PUBLIC.

21 THE COURT: THANK YOU.

22 MR. SPRATLIN: AND LASTLY, YOUR HONOR, IF I COULD HAVE
23 THIS DOCUMENT MARKED AS A COURT'S EXHIBIT.

24 (COURT'S EXHIBIT 7 WAS MARKED FOR IDENTIFICATION ONLY.)

25 MR. SPRATLIN: YOUR HONOR, AT THIS TIME I'D LIKE TO

1 TENDER INTO EVIDENCE A CERT -- THIS IS A CERTIFIED COPY FROM
2 THE CLERK'S OFFICE. IT'S A PUBLIC DOCUMENT UNDER SEAL
3 TITLED, "RECEIPT OF SERVICE OF ACKNOWLEDGEMENT," AND IT'S
4 RECEIPT OF THE ABOVE-REFERENCED NOTICE OF INTENTION TO LIFE
5 IMPRISONMENT IN THE ABOVE-CAPTIONED CASE. IT'S HEREBY
6 ACKNOWLEDGED THE 30TH DAY OF JUNE, 2009. IT IS SIGNED BY AN
7 EMPLOYEE OF THE PUBLIC DEFENDER'S OFFICE FOR CALVIN HASTIE.

8 THE COURT: OKAY. THESE -- THE NOTICES WERE PREPARED BY
9 YOUR OFFICE?

10 MR. SPRATLIN: THEY WERE PREPARED BY ME PERSONALLY AND
11 FILED AND THEN SERVED. THANK YOU, YOUR HONOR. THAT'S ALL
12 THE QUESTIONS I HAVE AT THIS TIME.

13 THE COURT: ANY FOLLOW-UP, MR. HASTIE, OF THIS WITNESS?

14 MR. HASTIE: NONE, YOUR HONOR.

15 THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN. ANY
16 ADDITIONAL WITNESSES?

17 MR. HASTIE: NOT ON THIS MOTION, YOUR HONOR.

18 THE COURT: OKAY. WOULD Y'ALL COME AROUND FOR JUST A
19 SECOND?

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

21 THE COURT: WE'LL TAKE FIVE MINUTES.

22 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

23 THE COURT: OKAY. ALL RIGHT. ANYTHING ELSE ON THE --
24 WELL, ANY ARGUMENT THAT YOU HAVE ON THE LIFE-WITHOUT-PAROLE
25 NOTICE, MR. HASTIE? THE STATUTE REQUIRES THAT IT ONLY BE

1 GIVEN WITHIN TEN DAYS OF THE TRIAL; THAT'S ALL IT SAYS. IT
2 DOESN'T -- IT HAS NOTHING TO DO WITH THE TRIAL OF THE CASE.
3 IT JUST HAS TO DO WITH WHAT THE SENTENCE MIGHT BE IF A
4 DEFENDANT IS CONVICTED. SO, ACCORDING TO THE INFORMATION
5 THAT I'VE BEEN GIVEN, THE NOTICE WAS SERVED ON MR. MASSEY
6 WELL BEFORE THE TEN DAYS, AND I DON'T KNOW ABOUT SERVICE ON
7 MR. HASTIE. HE'S -- WAS HE GIVEN NOTICE OF IT, TOO?

8 MR. SPRATLIN: YOUR HONOR, HE WAS. IN FACT, THE
9 SECOND -- I THINK IT WAS THE LAST COURT'S EXHIBIT I HANDED UP
10 TO YOU WAS A CERTIFICATE OF -- OR ACKNOWLEDGMENT OF SERVICE
11 BY MR. HASTIE'S OFFICE.

12 THE COURT: I SEE.

13 MR. SPRATLIN: AND I'M NOT -- LET ME CHECK WHAT THE DATE
14 WAS.

15 THE COURT: JUNE 30TH.

16 MR. SPRATLIN: YES, YOUR HONOR, AGAIN MORE THAN TEN DAYS
17 OUT.

18 THE COURT: OKAY. ALL RIGHT. ANY -- WHAT'S YOUR
19 POSITION ON THE -- WHY ARE YOU ENTITLED TO HAVE THE NOTICE
20 QUASHED?

21 MR. HASTIE: YOUR HONOR, BECAUSE OF THE INSUFFICIENCY OF
22 THE NOTICE, BECAUSE THE NOTICE DOES SAY LIFE IMPRISONMENT AND
23 NOT LIFE WITHOUT PAROLE.

24 THE COURT: ANYTHING ELSE?

25 MR. HASTIE: YES, SIR. I'M CONCERNED ABOUT THIS CASE

1 BECAUSE I WANT TO RENEW MY CONTINUANCE MOTION BECAUSE I DID
2 NOT GET THE DISCOVERY FOR ALMOST A TWO-YEAR PERIOD OF TIME.
3 THEN I DID NOT GET THIS -- EVEN THOUGH IT DOES SAY THE TEN
4 DAYS, HE WAS NEVER GIVEN AN OPPORTUNITY TO PLEAD TO A LESSER
5 CHARGE. HIS---

6 THE COURT: WHY SHOULD HE BE GIVEN AN OPPORTUNITY TO
7 PLEAD TO A LESSER CHARGE? WHY IS THAT -- WHAT -- LIKE COMMON
8 LAW ROBBERY? IN OTHER WORDS, DOES ANY DEFENDANT HAVE A RIGHT
9 TO PLEAD TO A LESSER CHARGE?

10 MR. HASTIE: THEY DON'T HAVE A RIGHT. THEY GET THAT
11 RIGHT ALL THE TIME RIGHT HERE IN THIS COURTROOM.

12 THE COURT: ARE YOU GOING TO OFFER HIM A PLEA TO COMMON
13 LAW ROBBERY?

14 MR. SPRATLIN: NO, YOUR HONOR.

15 THE COURT: OKAY. WELL, THAT ANSWERS THAT, UNLESS THEY
16 CHANGE THEIR MIND. NOW, IF I WERE TO QUASH THE NOTICE, I'M
17 SURE MR. -- IF I WERE TO QUASH THE NOTICE FOR FAILURE TO SAY
18 SEEK IMPRISONMENT -- LIFE IMPRISONMENT WITHOUT SAYING --
19 WITHOUT PAROLE, THEN I'M SURE HE WOULD NOT CALL THIS CASE FOR
20 TRIAL AND THEN JUST SIMPLY SERVE THE CORRECT NOTICE WITHIN
21 THE NEXT 30 DAYS WHICH MIGHT IN THE END GET WHAT -- THE
22 CONTINUANCE YOU WANTED.

23 SO THE CASE LAW ON 17-25-45 IS -- I GUESS THE BEST WORD
24 TO DESCRIBE IT: SOMETIMES UNCERTAIN. FOR EXAMPLE, I KNOW
25 THERE'S A CASE OUT THERE THAT SAYS: THE STATUTE SAYS WRITTEN

1 NOTICE, BUT ACTUAL NOTICE IS FINE. I DON'T REMEMBER WHICH
2 CASE SAYS THAT. AND MR. SPRATLIN IS GOING TO ARGUE THAT EVEN
3 THOUGH THE NOTICE ITSELF DOESN'T SAY WITHOUT PAROLE, THE
4 FIRST WORDS OF THE NOTICE ARE PURSUANT TO S.C. CODE 17-25-45
5 AND THEN IT SAYS SEEKS LIFE IMPRISONMENT. HE SAYS THE
6 "WITHOUT PAROLE" IS INCORPORATED IN IT. ISN'T THAT WHAT YOU
7 SAID?

8 MR. SPRATLIN: YOUR HONOR, I WOULD ARGUE THAT SINCE THE
9 NOTICE ACTUALLY REFERENCES THE STATUTE -- AND THE STATUTE
10 ITSELF CALLS IT A LIFE SENTENCE FOR A PERSON CONVICTED OF
11 CERTAIN CRIMES, AND IT'S ONLY IN THE ENUMERATION OF THE
12 STATUTE THAT THE WORD "WITHOUT PROBATION OR PAROLE" IS
13 MENTIONED. I ALSO HAVE THAT CASE, YOUR HONOR, I WAS
14 DISCUSSING. IT'S JAMES V. STATE. IT'S 372 SOUTH CAROLINA
15 287. IT DOES SAY IN RELEVANT PORTION: SO LONG AS THE
16 DEFENDANT AND HIS COUNSEL AT LEAST TEN DAYS PRIOR TO TRIAL
17 POSSESS ACTUAL NOTICE OF THE STATE'S INTENTION TO SEEK A
18 SENTENCE UNDER RECIDIVIST SENTENCING STATUTE, THE STATUTE'S
19 NOTICE REQUIREMENTS HAVE BEEN SATISFIED.

20 THE COURT: AND ACTUAL NOTICE WOULD BE CALLING MR.
21 HASTIE UP AND TELLING HIM ON THE PHONE.

22 MR. SPRATLIN: THAT'S CORRECT, YOUR HONOR.

23 THE COURT: AND TELLING THE DEFENDANT IN OPEN COURT OR
24 IN THE HOLDING CELL.

25 MR. SPRATLIN: YES, YOUR HONOR.

1 **THE COURT:** JUST HOLLERING BACK THERE, "HEY, WE'RE
2 SEEKING LIFE WITHOUT PAROLE ON THIS..." OKAY. AND SO THE
3 WORD "WRITTEN" UNDER THE JAMES CASE MEANS LITTLE OR NOTHING.
4 OKAY. WHEN WE GET -- AND YOU'RE WILLING TO TAKE A CHANCE ON
5 THAT LIFE-WITHOUT-PAROLE INCORPORATION THAT YOU'VE SAID.
6 YOU'RE WILLING TO GO THROUGH THIS TRIAL AND HAVE THIS HOLD UP
7 AS PROPER NOTICE.

8 **MR. SPRATLIN:** YES, YOUR HONOR, AND WE FEEL THAT IT
9 WOULD HOLD UP AS PROPER NOTICE, ESPECIALLY GIVEN THE COURT'S
10 RECENT DECISION IN JAMES AND...

11 **THE COURT:** WELL, I DON'T HAVE ANY -- ANY -- OF COURSE,
12 WE DON'T HAVE ANY LAW IN THIS STATE ON THAT. I DON'T KNOW OF
13 ANY LAW IN ANY OTHER STATE ON THAT POINT. OKAY. ANYTHING
14 ELSE -- AND, MR. HASTIE, THE ONLY PART OF YOUR MOTION THAT I
15 WOULD GRANT IT ON WOULD BE THE FAILURE TO INCLUDE THAT
16 LANGUAGE IN THE WRITTEN NOTICE UNLESS THERE WAS SOME EVIDENCE
17 OF ACTUAL NOTICE OF "WITHOUT PAROLE." I DON'T KNOW ABOUT
18 THAT. I'M NOT ASKING FOR ANY EVIDENCE OF IT UNLESS YOU'VE
19 GOT SOMETHING.

20 **MR. SPRATLIN:** YOUR HONOR, IT WOULD JUST BE A PROFFER TO
21 THE COURT ABOUT A CONVERSATION I'VE HAD WITH MR. HASTIE.

22 **THE COURT:** THAT WOULD BE A PROFFER FROM YOU.

23 **MR. SPRATLIN:** YES, YOUR HONOR, THAT I DID INFORM MR.
24 HASTIE PERSONALLY THAT WE WERE SEEKING LIFE WITHOUT PAROLE IN
25 THIS CASE, AND I FELT I DIDN'T HAVE AN OPTION BUT TO SEEK

1 LIFE WITHOUT PAROLE, GIVEN THE WORDING OF THE STATUTE WHERE
2 UNDER THE THREE-STRIKE LAW IT APPEARS THAT IT IS
3 DISCRETIONARY. HOWEVER, UNDER THE PROVISIONS OF THE TWO-
4 STRIKE LAW, THE STATUTE USES THE TERMS "SHALL BE MANDATORY."

5 THE COURT: YEAH.

6 MR. SPRATLIN: AND I TALKED TO MR. HASTIE AT LENGTH
7 BEFORE -- EVEN WHEN I FIRST GOT THIS CASE THAT WE WERE GOING
8 TO BE SEEKING LIFE WITHOUT PAROLE, AND I KNOW FROM HIS
9 CONVERSATIONS TO ME, WHAT HE TOLD ME HE TOLD HIS CLIENT, THAT
10 HE HAD INFORMED HIS CLIENT---

11 MR. HASTIE: OBJECTION, YOUR HONOR.

12 MR. SPRATLIN: ---OF THAT.

13 THE COURT: OBJECTION TO WHAT?

14 MR. HASTIE: BASED ON WHAT HE'S SAYING WHAT I TOLD MY
15 CLIENT. THAT'S PRIVILEGED INFORMATION.

16 MR. SPRATLIN: I'M SIMPLY SAYING WHAT MR. HASTIE TOLD ME
17 THAT HE TOLD HIS CLIENT.

18 THE COURT: OKAY. WHAT'S NEXT ON YOUR LIST OF MOTIONS?

19 MR. SPRATLIN: YOUR HONOR, I THINK IF WE COULD DO THE
20 IDENTIFICATION---

21 THE COURT: OKAY.

22 MR. SPRATLIN: ---HEARING NEXT. I ACTUALLY HAVE SOME
23 CASE LAW THAT WE SHOULD PROBABLY DISCUSS PRIOR TO THIS. AS
24 YOUR HONOR KNOWS, DURING THE IN-CHAMBERS HEARING WE DISCUSSED
25 THAT THERE WAS NO OUT-OF-COURT IDENTIFICATION DONE IN THIS

1 IDENTIFICATION WHICH WE HAVE TO SAFEGUARD AGAINST. THE
2 AVENUE AND THE PROTECTION OF THE DEFENDANT'S RIGHTS REGARDING
3 THE IDENTIFICATION MADE IN COURT BY MR. HUFF IS THE CROSS-
4 EXAMINATION PROCESS, AND SO WE WOULD STATE THAT MR. WILDER OR
5 MR. HASTIE HAVE AN AMPLE OPPORTUNITY TO CROSS-EXAMINE MR.
6 HUFF ABOUT HIS IDENTIFICATION AND WHY HE NEVER MADE AN
7 OUT-OF-COURT IDENTIFICATION.

8 THE COURT: ALL RIGHT. THE DEFENDANT'S MOTION IS DENIED
9 ON THAT POINT. YOU CAN CROSS-EXAMINE THE WITNESS ON THE VERY
10 ISSUES THAT YOU'VE RAISED. OKAY. EXCUSE ME. YOU CAN CROSS-
11 EXAMINE THE VICTIM ON THE VERY ISSUES YOU'VE RAISED. ALL
12 RIGHT. WHAT DO WE HAVE NEXT? MOTION TO SUPPRESS SEARCH
13 WARRANT AND JACKSON VERSUS DENNO ARE THE ONLY TWO LEFT. IS
14 THAT RIGHT?

15 MR. SPRATLIN: I BELIEVE SO, YOUR HONOR. WE WOULD LEAVE
16 IT UP TO THE COURT'S PREFERENCE AS TO WHICH TO DO NEXT.

17 THE COURT: LET'S DO THE SEARCH WARRANT.

18 MR. SPRATLIN: OKAY. YOUR HONOR, THE STATE WOULD FIRST
19 CALL DETECTIVE IRENE CULICK TO THE STAND.

20 THE CLERK: YOU'VE ALREADY BEEN SWORN. HAVE A SEAT.

21 IRENE CULICK, HAVING BEEN PREVIOUSLY SWORN AND
22 REMAINING UNDER OATH, TESTIFIED AS FOLLOWS IN CAMERA:

23 DIRECT EXAMINATION

24 BY MR. SPRATLIN:

25 Q. INVESTIGATOR CULICK, HOW LONG HAVE YOU BEEN -- WHERE ARE

1 YOU EMPLOYED?

2 A. I'M EMPLOYED AT THE SUMTER POLICE DEPARTMENT.

3 Q. HOW LONG HAVE YOU BEEN EMPLOYED THERE?

4 A. ELEVEN YEARS. A LITTLE OVER 11 YEARS.

5 Q. OKAY. WHERE WERE YOU EMPLOYED PRIOR TO THAT?

6 A. D.H.E.C.

7 Q. OKAY. WAS THAT IN A LAW ENFORCEMENT CAPACITY AS WELL?

8 A. NO, IT WASN'T.

9 Q. OKAY. SO HAVE YOU BEEN -- HOW LONG HAVE YOU BEEN A LAW
10 ENFORCEMENT OFFICER?

11 A. I'VE BEEN EMPLOYED WITH THEM SINCE FEBRUARY OF '98 AND
12 WENT TO THE ACADEMY IN 2000.

13 Q. OKAY.

14 A. SO NINE YEARS.

15 Q. HOW LONG HAVE YOU BEEN A DETECTIVE IN THE POLICE
16 DEPARTMENT?

17 A. SEVEN YEARS.

18 Q. SEVEN YEARS? OKAY. REAL BRIEFLY, WHAT IS YOUR ROLE IN
19 THIS CASE THAT WE'RE HERE ABOUT TODAY?

20 A. LIKE WE STATED EARLIER, I'M THE LEAD DETECTIVE. I WAS
21 ASSIGNED THIS CASE---

22 Q. OKAY.

23 A. ---AND RESPONDED WHEN IT HAPPENED.

24 Q. IF YOU WOULD, TAKE THE STATE -- I MEAN, TAKE THE COURT
25 REAL BRIEFLY THROUGH HOW THE INVESTIGATIVE PROCESS WENT IN

1 THIS CASE.

2 A. THE CALL CAME OUT - I BELIEVE IT WAS A THURSDAY LATE IN
3 THE AFTERNOON, AFTER 6:00---

4 Q. UH-HUH.

5 A. ---OF AN ARMED ROBBERY THAT HAPPENED AT TOTAL LIVING
6 LOCATED AT 25 DUGAN STREET BEHIND SUMTER CUT RATE WHICH IS
7 CLOSE TO THE LAW ENFORCEMENT CENTER. I RESPONDED TO THIS
8 CALL. AT THAT TIME I SPOKE WITH THE VICTIM IN THIS CASE WHO
9 WAS A MR. HUFF. PART OF WHAT WE DO IS WE RESPOND, FIND
10 VICTIMS, WITNESSES, AND START TRYING TO INTERVIEW AND DEVELOP
11 LEADS IF A SUSPECT IS NOT ON THE SCENE AND ARRESTED RIGHT
12 AWAY.

13 AT THAT TIME THEY HAD DOGS THAT WERE TRYING TO TRACK THE
14 SCENT WHERE MR. HUFF STATED THE SUSPECT RAN. I INTERVIEWED
15 MR. HUFF WHO GAVE ME A DESCRIPTION OF THE SUSPECT. AT THAT
16 POINT HE ALSO TOLD ME THAT HE HAD SEEN THE SUSPECT BEFORE
17 WITH A FEMALE THAT WORKS NEXT DOOR AT THE TIME WATEREE AIDS
18 TASK FORCE OFFICE.

19 Q. WERE YOU ABLE TO -- WERE YOU ABLE TO FIND OUT WHO THAT
20 FEMALE WAS?

21 A. YES, I WAS ABLE TO FIND OUT WHO HE WAS TALKING ABOUT
22 THAT WORKED AT THAT STORE.

23 Q. WHAT WAS HER NAME?

24 A. HER NAME WAS LATRICE -- LATRELL BILLIE. EXCUSE ME.

25 Q. OKAY. WHAT HAPPENED NEXT?

1 A. AFTER THAT, WE WERE ABLE TO COME INTO CONTACT WITH MS.
2 BILLIE. WE WENT TO HER RESIDENCE. WE SPOKE TO HER ABOUT THE
3 EVENTS OF THAT DAY, ASKED HER WHAT SHE DID, WHO SHE CAME IN
4 CONTACT WITH. SHE TOLD US. SHE GAVE US THE NAME ANDRE
5 MASSEY, STATED THAT SHE HAD SEEN HIM EARLIER IN THE STORE
6 NEXT DOOR. SHE SPOKE WITH -- SHE KNEW HIM FOR SEVERAL
7 MONTHS, HAD SPOKE TO HIM EARLIER THAT DAY.

8 WE ASKED HER TO DESCRIBE MR. MASSEY TO US, AND SHE
9 DESCRIBED HIM THE SAME WAY THAT MR. HUFF DESCRIBED HIM, WHAT
10 HE WAS WEARING THAT DAY, HIS PHYSICAL APPEARANCE, TATTOOS,
11 EARRINGS, AND FROM THAT SHE ALSO TOLD US THAT HE WAS ON
12 PROBATION AT THE TIME. WE CALLED PROBATION TO CONFIRM THAT.
13 SHE DID ALSO STATE THAT HE WAS ON THE SEX OFFENDER REGISTRY
14 ALSO.

15 Q. OKAY.

16 A. SO WE CALLED PROBATION. WE GOT IN TOUCH WITH AGENT
17 SUMTER WHO WAS ACTUALLY OVER HIS -- HE WAS HIS PROBATION
18 OFFICER, PAROLE OFFICER. HE WAS ABLE TO TELL US WHERE MR.
19 MASSEY LIVED. I BELIEVE HE TOLD US THAT HE WAS SUPPOSED TO
20 COME SEE HIM THAT DAY, DID NOT SHOW UP, GAVE US AN ADDRESS.
21 MR. SUMTER -- I DON'T KNOW IF YOU WANT ME TO KEEP GOING OR...

22 Q. WELL, LET'S GO BACK FOR A SECOND. NOW, MS. BILLIE TOLD
23 YOU THAT SHE HAD RUN INTO MR. MASSEY EARLIER THAT DAY IN THE
24 STORE; CORRECT?

25 A. CORRECT, AT TOTAL LIVING. THIS IS THE STORE THAT WAS

1 ROBBED.

2 Q. AND WAS THAT CONSISTENT WITH THE STATEMENTS GIVEN BY MR.
3 HUFF TO YOU?

4 A. YES. MR. HUFF STATED THAT THE INDIVIDUAL THAT HAD
5 ROBBED HIM WAS IN HIS STORE EARLIER, AND HE WAS WITH THE
6 FEMALE THAT WORKS NEXT DOOR.

7 Q. OKAY. AND NOW WAS MR. HUFF ABLE TO ACTUALLY TELL YOU
8 THAT IT WAS LATRELL BILLIE OR...

9 A. NO. HE JUST KNEW IT WAS THE FEMALE THAT WORKED NEXT
10 DOOR.

11 Q. OKAY. HE SAID THAT MS. BILLIE---

12 A. HE WAS ABLE TO TELL US WHAT SHE DROVE.

13 Q. OKAY. AND WAS -- DID MS. BILLIE DRIVE THE SAME CAR THAT
14 -- I MEAN, DID MS. BILLIE DRIVE THE CAR THAT THE VICTIM HAD
15 STATED THAT SHE DROVE?

16 A. SHE DID HAVE -- I THINK SHE DID HAVE THAT VEHICLE IN THE
17 YARD.

18 Q. OKAY. NOW, IN SPEAKING WITH MS. BILLIE, WAS HER
19 DESCRIPTION OF MR. MASSEY SIMILAR TO THE ONE THAT MR. HUFF
20 GAVE?

21 A. YES, IT WAS.

22 Q. HOW SIMILAR?

23 A. THEY BOTH STATED THAT THE DEFENDANT WAS WEARING A WHITE
24 TANK TOP.

25 Q. UH-HUH.

1 A. THAT HE HAD ON DARK PANTS. THEY STATED THAT HE HAD A
2 TATTOO. SHE STATED -- MR. HUFF STATED HE HAD TATTOO ON HIS
3 ARM. HE DESCRIBED IT AS A CIRCLE WITH POINTS COMING OUT OF
4 IT. SHE STATED THAT HE DID HAVE A TATTOO THAT MATCHED THAT
5 DESCRIPTION ON HIS ARM, ALONG WITH OTHER TATTOOS. SHE STATED
6 THAT HE HAD AN EARRING. MR. HUFF STATED THAT HE HAD AN
7 EARRING. THEIR HEIGHT, ABOUT 5'10, IS WHAT MR. HUFF HAD
8 DESCRIBED, AND SHE STATED HE WAS SIMILAR IN THAT HEIGHT.
9 WEIGHT: HE WAS MUSCULAR. MR. HUFF HAD DESCRIBED HIM AS
10 MUSCULAR, MEDIUM COMPLEXION, AND THE SAME AGE RANGE, LATE
11 TWENTIES, EARLY THIRTIES.

12 Q. OKAY. AND NOW YOU STATED THAT YOU MADE CONTACT WITH
13 AGENT SUMTER WITH PAROLE AND PROBATION.

14 A. YES.

15 Q. DO YOU REMEMBER WHAT ADDRESS AGENT SUMTER TOLD YOU?

16 A. I BELIEVE IT WAS 1 -- IT WAS ON SALEM STREET, APARTMENT
17 NUMBER 2. 107 POSSIBLY.

18 Q. OKAY. IS THERE ANYTHING THAT WOULD REFRESH YOUR
19 RECOLLECTION SO YOU COULD BE SURE?

20 A. YES, AND IF YOU COULD LET ME LOOK AT MY FILE, PLEASE.
21 YES, IT WAS 107 NORTH SALEM AVENUE, APARTMENT NUMBER 2.

22 Q. OKAY. NOW, HOW WERE YOU ABLE TO DETERMINE THAT THAT
23 WAS, IN FACT, THE DEFENDANT'S RESIDENCE?

24 A. IN SPEAKING WITH MR. SUMTER---

25 Q. UH-HUH.

1 A. ---HE WAS ABLE TO TELL US THAT THAT'S THE ADDRESS THAT
2 HE WAS USING AT THAT TIME. IT IS ALSO HIS ADDRESS THROUGH
3 THE D.M.V.

4 Q. OKAY. OKAY. AT SOME POINT DID YOU HAVE A CHANCE TO GO
5 OVER TO 107 NORTH SALEM STREET?

6 A. YES, WE DID. AGENT SUMTER WENT BY FIRST AND CALLED US,
7 STATED THAT HE WAS THERE. HE WAS WEARING CLOTHES -- THE SAME
8 CLOTHES THAT WE DESCRIBED TO HIM THAT THE SUSPECT WAS WEARING
9 DURING THE ROBBERY. AT THAT POINT WE WENT TO THE RESIDENCE
10 THERE AND HE WAS LOCATED AT THE RESIDENCE.

11 Q. OKAY. NOW, WHEN YOU WENT TO THE RESIDENCE, WHAT WAS THE
12 PURPOSE OF GOING TO THE RESIDENCE?

13 A. THE PURPOSE OF GOING TO THE RESIDENCE WAS TO PICK UP MR.
14 ANDRE MASSEY.

15 Q. OKAY. AND WHAT WAS THE BASIS OF TAKING MR. MASSEY INTO
16 CUSTODY?

17 A. ALL THE INFORMATION THAT WAS GIVEN TO US PRIOR TO THIS
18 EVENT IN REFERENCE TO THE ARMED ROBBERY, MR. HUFF'S
19 STATEMENTS TO US AS THE INDIVIDUAL THAT ROBBED HIM, AND MS.
20 BILLIE CONFIRMING WHAT MR. HUFF SAID.

21 Q. OKAY. DID YOU FEEL THAT THAT ROSE TO PROBABLE CAUSE TO
22 MAKE -- TO TAKE THE DEFENDANT INTO CUSTODY?

23 A. YES, BASED ON ALL OF THAT AND ALSO AGENT SUMTER WHO DID
24 CONFIRM THE TATTOOS ALSO AND THE EARRING.

25 Q. OKAY. WHAT HAPPENED WHEN YOU ARRIVED AT THE RESIDENCE?

1 A. WHEN WE ARRIVED AT THE RESIDENCE, OFFICERS WENT IN. HE
2 WAS OUTSIDE WHEN AGENT SUMTER RODE BY AND SPOKE WITH HIM, BUT
3 WHEN OFFICERS GOT THERE, HE WAS INSIDE. KNOCKED ON THE DOOR.
4 HE CAME TO THE DOOR. HE WAS PLACED IN HANDCUFFS. OFFICERS
5 DID A PROTECTIVE SWEEP TO MAKE SURE, BECAUSE OF THE GUN
6 SITUATION, THAT THERE WAS NO ONE ELSE IN THE BACK IN
7 REFERENCE TO THIS, AND OFFICERS -- AT THAT TIME WE TOOK HIM
8 TO THE STATION TO INTERVIEW HIM IN REFERENCE TO THIS.

9 Q. OKAY. NOW, WHEN YOU SAY PROTECTIVE SWEEP, WHAT DO YOU
10 EXACTLY MEAN?

11 A. ANY TIME WE GO AND WE MAKE AN ARREST IN REFERENCE TO A
12 SUSPECT THAT'S JUST COMMITTED AN ARMED ROBBERY AND WE KNOW
13 FROM THE VICTIM THAT THERE WAS A GUN INVOLVED, JUST IN THE
14 PROCESS OF MAKING THE ARREST AND, YOU KNOW, GETTING THE
15 SUBJECT INTO CUSTODY, WE ALWAYS, YOU KNOW, CHECK OUR
16 SURROUNDING AREAS TO MAKE SURE THAT THERE'S NO POTENTIAL
17 DANGER FOR OFFICER SAFETY OUT THERE AND BYSTANDERS.

18 Q. WHAT KIND OF DANGERS ARE Y'ALL CONCERNED ABOUT?

19 A. SOMEONE ELSE GETTING THE GUN, IF SOMEONE ELSE IS
20 INVOLVED. LOVED ONES, YOU KNOW, THAT DON'T WANT TO SEE THEIR
21 LOVED ONE GO TO JAIL, THINGS LIKE THAT.

22 Q. IS THE PURPOSE OF A PROTECTIVE SWEEP TO OBTAIN EVIDENCE?

23 A. NO, IT'S NOT.

24 Q. OKAY.

25 A. AND WE DID NOT IN THIS CASE.

1 Q. IN THIS CASE NO EVIDENCE WAS OBTAINED AS A RESULT OF THE
2 PROTECTIVE SWEEP?

3 A. NO, IT WASN'T.

4 Q. OKAY. WHO ACTUALLY EXECUTED THE PROTECTIVE SWEEP, IF
5 YOU REMEMBER?

6 A. IT WAS DETECTIVE LYONS - HE WAS PART OF THE N.E.T. TEAM
7 AT THAT TIME - AND ANOTHER OFFICER WHO IS NO LONGER WITH US,
8 DETECTIVE SHANE LYNES. THEY HAVE THE SAME LAST NAME, NOT
9 RELATED, BUT HE'S NOW AN A.T.F. AGENT.

10 Q. OKAY. OKAY. AND ALL THE EVENTS DESCRIBED TODAY, DID
11 THOSE OCCUR IN SUMTER COUNTY?

12 A. YES, THEY DID.

13 Q. I THINK THAT'S ALL THE QUESTIONS I HAVE AT THIS TIME,
14 INVESTIGATOR CULICK.

15 A. THANK YOU.

16 MR. SPRATLIN: MR. HASTIE MAY HAVE A COUPLE.

17 THE COURT: WELL, ISN'T THE MOTION TO SUPPRESS THE
18 WARRANT?

19 MR. SPRATLIN: YOUR HONOR---

20 THE COURT: WHAT'S YOUR MOTION TO SUPPRESS IN THIS
21 INSTANCE? SUPPRESS WHAT?

22 MR. HASTIE: THE WARRANT.

23 THE COURT: OKAY. ALL RIGHT. YOU'RE NOT GOING TO ASK
24 HER ANY QUESTIONS ABOUT THAT?

25 MR. SPRATLIN: YOUR HONOR, MS. CULICK DID NOT ACTUALLY

1 GET THE WARRANT.

2 THE COURT: OKAY. ALL RIGHT. THEN YOU CAN GO AHEAD.

3 I'M SORRY. I APOLOGIZE.

4 MR. HASTIE: THANK YOU, YOUR HONOR.

5 CROSS-EXAMINATION

6 BY MR. HASTIE:

7 Q. I WOULD LIKE TO BACK UP -- BEFORE I ASK YOU ABOUT THE
8 WARRANT, I WOULD LIKE TO BACK UP AND TALK ABOUT: HOW DID YOU
9 GET NOTICE OF THIS PARTICULAR INCIDENT? THERE WAS A CALL
10 THAT WENT OUT?

11 A. YES, IT WAS DISPATCHED OUT. THERE WAS -- WHEN A 9-1-1
12 CALL IS MADE, OUR DISPATCHERS TAKE THAT CALL AND THEN THEY
13 CALL IT OUT OVER THE RADIO THAT THERE'S AN ARMED ROBBERY AND
14 WHAT LOCATION.

15 Q. SO YOU ALL WENT TO THE STORE FIRST, I PRESUME.

16 A. YES.

17 Q. NOW, HOW DID YOU GET INFORMATION ABOUT THE LOCATION OF
18 MR. MASSEY, ONCE AGAIN WHERE HE LIVED?

19 A. FROM AGENT SUMTER.

20 Q. FROM AGENT SUMTER. AND WHO CONTACTED AGENT SUMTER
21 CONCERNING MR. MASSEY?

22 A. I DID.

23 Q. YOU DID?

24 A. YES, SIR.

25 Q. YOU KNEW THAT HE WAS CONNECTED TO MR. MASSEY SOMEHOW?

1 A. BASED ON WHAT MS. BILLIE TOLD US THAT HE WAS ON
2 PROBATION, YES, SIR, AND THAT HE WAS ALSO A SEX OFFENDER. HE
3 WAS ON THE SEX OFFENDER REGISTRY.

4 Q. OKAY. NOW, MS. BILLIE TALKED ABOUT THE TATTOOS OR
5 IDENTIFYING MARKS. SHE SAID THERE WERE SEVERAL TATTOOS?

6 A. YES.

7 Q. DID SHE DESCRIBE THE OTHER TATTOOS?

8 A. SHE STATED THAT HE HAD MORE THAN ONE, AND I DON'T
9 REMEMBER WHAT SHE TOLD ME ABOUT THE OTHER TATTOOS ON HIM.
10 SHE MIGHT HAVE DESCRIBED THEM.

11 Q. OKAY. NOW, HOW WAS MR. SUMTER HELPFUL IN THIS IN
12 GETTING THE ADDRESS AND ALL OF THAT?

13 A. HE WAS HELPFUL IN US CONTACTING -- WHEN WE CONTACTED AND
14 FOUND OUT THAT HE WAS THE AGENT THAT WAS HANDLING IT, HE WAS
15 ABLE TO GIVE US HIS ADDRESS RIGHT AWAY, WHERE HE LIVED, TOLD
16 US HE WAS STILL IN SUMTER. HE TOLD US THAT HE DID NOT SHOW
17 UP TODAY, THAT DAY IN PARTICULAR ON THE 7TH OF JUNE.

18 Q. OKAY.

19 A. HE HAD AN APPOINTMENT TO MEET WITH HIM AND HE DIDN'T. A
20 LOT OF TIMES I'VE SEEN THAT HAPPEN. DEFENDANTS ARE SUPPOSED
21 TO SHOW UP AND THEY DON'T, AND THEN SOMETHING OCCURS WHEN
22 THEY'RE SUPPOSED TO BE THERE OR OWE FEES. IT'S NOT UNCOMMON.
23 BUT HE RODE BY, CONFIRMED THAT HE WAS THERE. MR. MASSEY WAS
24 AT THE RESIDENCE. CONFIRMED WHAT HE WAS WEARING WHICH
25 MATCHED THE DESCRIPTION THAT WAS GIVEN TO US BY MR. HUFF AND

1 ALSO MS. BILLIE.

2 Q. OKAY.

3 A. SO HE WAS HELPFUL.

4 Q. SO BUT FOR MR. SUMTER'S TESTIMONY, YOU WOULD NOT HAVE
5 REALLY KNOWN WHERE MR. MASSEY LIVED AT THAT PARTICULAR TIME.

6 A. YEAH. WELL, DUE TO THE -- DUE TO THE NAME THAT WE HAD,
7 YES, BECAUSE D.M.V. ALSO HAD HIM LISTED WITH THAT ADDRESS.

8 Q. AND YOU KNEW AT THE TIME THAT MR. SUMTER WAS THE
9 PROBATION OFFICER?

10 A. YES. YES, I'VE WORKED WITH HIM BEFORE.

11 Q. NOW, WHAT WAS MR. MASSEY WEARING AT THE TIME YOU DID
12 LOCATE HIM?

13 A. WHEN WE LOCATED HIM, HE HAD ON A WHITE TANK TOP THAT WAS
14 DESCRIBED BY MR. HUFF AND MS. BILLIE AND ALSO AGENT SUMTER,
15 AND HE HAD ON BLUE JEANS AT THE TIME. HE HAD CHANGED PANTS.

16 Q. SO HE DID HAVE ON BLUE JEANS AT THE TIME.

17 A. YES, SIR.

18 Q. NOW, WHEN YOU ALL ARRIVED AT THIS HOUSE, DID YOU KNOCK
19 ON THE DOOR OR HOW DID Y'ALL GET ACCESS? WHAT HAPPENED?

20 A. I DID NOT GO TO THE DOOR.

21 Q. OKAY.

22 A. OTHER OFFICERS WENT TO THE DOOR AND KNOCKED ON IT.

23 Q. OKAY.

24 A. I BELIEVE MR. -- I BELIEVE DETECTIVE SIMS WAS ALSO AT
25 THE DOOR---

1 Q. OKAY.

2 A. ---AT THE TIME, SO YOU WOULD HAVE TO TALK TO HIM. HE'LL
3 BE UP HERE IN REFERENCE TO THE SEARCH WARRANT.

4 Q. OH, OKAY.

5 A. YEAH.

6 Q. THAT'S WHAT I'M ABOUT TO ASK, ABOUT THE SEARCH WARRANT.

7 A. CORRECT.

8 Q. BUT YOU WERE THERE ON SITE.

9 A. YES, JUST IN MY VEHICLE. I DIDN'T WANT TO GO UP AS FAR
10 AS THE ARREST AND STUFF BECAUSE I WAS GOING TO BE THE
11 INTERVIEWING OFFICER.

12 Q. SO YOU DON'T KNOW WHETHER MR. -- WHO ANSWERED THE DOOR?
13 DO YOU KNOW WHETHER MR. MASSEY CAME TO THE DOOR OR NOT?

14 A. I DON'T KNOW IF HE ANSWERED THE DOOR. I KNOW THAT HE
15 DID -- HE DID COME UP AND WAS PUT IN CUFFS AND BROUGHT OUT.

16 Q. NOW, THIS PROTECTIVE SWEEP THAT YOU TALKED ABOUT -- AND
17 THAT IS DONE TO PROTECT THE POLICE OFFICERS?

18 A. AND ALSO PEOPLE WHO LIVE IN THE AREA, PASSERBYERS (SIC),
19 THINGS LIKE THAT, YES, SIR. IT'S AN APARTMENT COMPLEX, SO, I
20 MEAN, THERE'S PEOPLE ON -- THAT LIVE BESIDE HIM.

21 Q. ARE YOU PREPARED TO TALK ABOUT THE WARRANT OR SHOULD I
22 BE ASKING SOMEONE ELSE? DO YOU KNOW---

23 A. I HELPED DETECTIVE SIMS. AS FAR AS THE AFFIDAVIT, HE
24 ACTUALLY PREPARED IT, BUT AS FAR AS WHAT WE WERE LOOKING FOR,
25 I DID GIVE HIM INFORMATION THAT WAS GIVEN TO ME FROM THE

1 VICTIM AS FAR AS THE GUN THAT WAS DESCRIBED THAT WE WERE
2 LOOKING FOR, THE PANTS THAT WERE DESCRIBED THAT WE WERE
3 LOOKING FOR, THINGS LIKE THE CURRENCY THAT WAS MISSING.
4 THINGS LIKE THAT IS WHAT WE PUT DOWN ON THE SEARCH WARRANT.
5 SO I DID TELL HIM WHAT THE VICTIM HAD TOLD ME.

6 Q. YOU WERE THERE---

7 A. BUT HE WAS THE ONE WHO ACTUALLY PREPARED THE DOCUMENT
8 AND TOOK IT TO THE JUDGE AND WAS SWORN AND SIGNED IT.

9 Q. DID YOU HAVE A SEARCH WARRANT WHEN YOU WENT TO MR.
10 MASSEY'S HOME?

11 A. NO, WE DID NOT, JUST PROBABLE CAUSE.

12 Q. YES, MA'AM. WHEN WAS MR. MASSEY ARRESTED?

13 A. HE WAS -- HE WAS ARRESTED THEN---

14 Q. HE WAS ARRESTED THEN?

15 A. ---WHEN WE WENT TO THE HOME. HE WAS PUT IN CUFFS, TAKEN
16 TO THE STATION. HE WAS NOT FREE TO LEAVE AT THAT TIME AND
17 BROUGHT DOWN AND ASKED IF HE WOULD TALK TO US.

18 Q. DID YOU ASK MR. MASSEY PERMISSION TO SEARCH HIS HOME?

19 A. HE WAS ASKED PERMISSION TO SEARCH HIS HOME, AND HE DID
20 NOT WANT US TO SEARCH HIS HOME.

21 Q. SO HE SAID NO.

22 A. HE SAID NO TO OTHER OFFICERS, YES, NOT TO ME. THAT'S
23 WHY WE OBTAINED A SEARCH WARRANT. IF HE WOULD HAVE SAID,
24 "YES, YOU CAN COME IN AND SEARCH," WE WOULD HAVE HAD HIM SIGN
25 A CONSENT FORM TO LET US SEARCH.

1 Q. TO YOUR KNOWLEDGE, DID ANY OFFICERS GO INTO HIS HOME
2 PRIOR TO YOU ALL GETTING A SEARCH WARRANT?

3 A. NOT TO SEARCH THE RESIDENCE, NO, SIR. OFFICERS WENT IN
4 THE HOME BUT NOT TO SEARCH THE RESIDENCE. THEY WENT IN THE
5 HOME TO MAKE SURE NOBODY ELSE WAS THERE WHEN HE WAS TAKEN
6 INTO CUSTODY, AND THAT WAS IT.

7 Q. OKAY.

8 A. NO ONE WENT BACK INTO THAT RESIDENCE UNTIL A SEARCH
9 WARRANT WAS OBTAINED.

10 Q. WHO ELSE WAS IN THE HOME THAT DAY?

11 A. HIS GIRLFRIEND WAS THERE, AND ALSO ANOTHER SUBJECT WAS
12 THERE, ROBINSON, A FRIEND OF HIS, I BELIEVE. JERMAINE
13 ROBINSON? I BELIEVE---

14 Q. WERE THEY ARRESTED?

15 A. NO.

16 Q. NOT AS ACCOMPLICE OR ANYTHING. SO THEY WERE NOT
17 ARRESTED.

18 A. WE WERE NOT TOLD ABOUT ANYONE ELSE. MR. HUFF JUST
19 STATED THERE WAS ONE INDIVIDUAL INVOLVED THAT HE KNEW OF THAT
20 WAS IN THE STORE THAT PUT THE GUN IN HIS FACE, ROBBED HIM.
21 HE DIDN'T TELL US ABOUT ANOTHER PERSON IN THE STORE OR SEEING
22 HIM JUMP IN A CAR WITH SOMEBODY ELSE. SO WE HAD NO REASON TO
23 BELIEVE THEY WERE INVOLVED AT THE TIME.

24 Q. SO WHEN THIS PROTECTIVE SWEEP WAS COMPLETED, ARE YOU
25 SAYING THAT THE OFFICERS THEN REMAINED OUTSIDE OF MR.

1 MASSEY'S HOME UNTIL YOU ALL GOT THE SEARCH WARRANT OR WHAT
2 HAPPENED?

3 A. YEAH. TO MY KNOWLEDGE, THEY WERE OUTSIDE. NOW, I LEFT
4 SHORTLY AFTER WITH MR. MASSEY, AND WE WENT TO THE POLICE
5 DEPARTMENT, AND THAT'S WHERE WE TALKED.

6 Q. AND DID THEY LEAVE THE TWO OCCUPANTS IN THE HOME?

7 A. NO, THEY WERE NOT -- THEY WERE NOT IN THE HOME. THEY
8 WERE STANDING WITH OFFICERS, I BELIEVE, OUTSIDE THE HOME---

9 Q. THEY WERE---

10 A. ---IN FRONT OF THE RESIDENCE.

11 Q. WERE THEY DETAINED?

12 A. YES.

13 Q. THEY WERE DETAINED.

14 A. I BELIEVE THEY WERE DETAINED.

15 Q. WERE THEY---

16 A. WELL, THEY WERE NOT FREE TO GO BACK IN THE HOME. SO TO
17 ME THAT IS DETAINED.

18 Q. SO YOU WEREN'T THERE WHEN THE ARREST WARRANT WAS
19 OBTAINED.

20 A. ARREST WARRANT OR SEARCH?

21 Q. I'M SORRY. SEARCH WARRANT.

22 A. NO, I WASN'T THERE WHEN THE SEARCH WARRANT -- WELL, I
23 WAS THERE WHEN HE WAS TYPING IT. I WASN'T THERE WHEN HE WENT
24 AND SWORE TO THE JUDGE.

25 Q. OKAY. AND DURING THE SEARCH, YOU WEREN'T THERE WHEN

1 THEY SEARCHED HIS HOME.

2 A. CORRECT.

3 MR. HASTIE: OKAY. COURT'S INDULGENCE, YOUR HONOR?

4 THE COURT: YES, SIR.

5 BY MR. HASTIE:

6 Q. ONE LAST QUESTION. CAN YOU IDENTIFY OR NAME THE OFFICER
7 THAT DID GO INTO THE HOUSE FOR THAT PROTECTIVE SWEEP?

8 A. AS I STATED EARLIER, DETECTIVE LYONS AND THE OTHER LYNES
9 THAT AREN'T RELATED---

10 Q. UH-HUH.

11 A. ---I KNOW THEY WENT IN, AND I KNOW DETECTIVE SIMS WAS
12 THERE BECAUSE HE PUT THE CUFFS ON MR. MASSEY, BUT I DON'T
13 THINK HE DID THE PROTECTIVE SWEEP. I THINK HE JUST PUT HIM
14 IN CUFFS, AND I BELIEVE IT WAS DETECTIVE LYONS AND ANOTHER
15 DETECTIVE LYNES SPELLED A DIFFERENT WAY THAT'S WITH A.T.F.
16 NOW.

17 Q. TO YOUR KNOWLEDGE, AT LEAST THREE PEOPLE DID THE
18 PROTECTIVE SWEEP.

19 A. TO MY KNOWLEDGE, TWO. I DON'T -- YOU CAN ASK DETECTIVE
20 SIMS IF HE DID. I DON'T THINK HE DID, BUT HE'LL BE
21 TESTIFYING NEXT.

22 MR. HASTIE: OKAY. THANK YOU. YOUR HONOR, I HAVE NO
23 FURTHER QUESTIONS OF THIS WITNESS.

24 MR. SPRATLIN: JUST REAL BRIEFLY ON REDIRECT, YOUR
25 HONOR.

REDIRECT EXAMINATION

BY MR. SPRATLIN:

Q. DETECTIVE CULICK, JUST TO CLARIFY: WAS THERE ANY EVIDENCE AT ALL OBTAINED AS A RESULT OF THIS PROTECTIVE SWEEP?

A. NO.

Q. WAS ANY OF THE -- WAS ANY INFORMATION GATHERED DURING THIS PROTECTIVE SWEEP THAT WAS LATER USED TO OBTAIN A SEARCH WARRANT?

A. NO. THE ONLY -- THE ONLY THINGS IN THE SEARCH WARRANT ARE THINGS THAT WE WERE -- THAT WE HAD KNOWLEDGE OF AHEAD OF TIME BEFORE GOING TO THE RESIDENCE THAT WE KNEW ABOUT THE ARMED ROBBERY AND THAT WE WANTED TO SEARCH FOR.

Q. AND WAS INVESTIGATOR SIMS ALONG WITH YOU FOR THIS INVESTIGATION?

A. YES, HE WAS THERE THAT NIGHT AND ASSISTED.

Q. OKAY. ALL RIGHT. THANK YOU. THAT'S ALL I HAVE.

A. THANK YOU.

THE COURT: ALL RIGHT. YOU CAN STEP DOWN. THANK YOU.

THE WITNESS: THANK YOU.

MR. SPRATLIN: YOUR HONOR, THE STATE WOULD NEXT CALL DETECTIVE BILLY LYONS TO THE STAND.

WILLIAM LYONS, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS IN CAMERA:

THE CLERK: HAVE A SEAT, PLEASE. STATE YOUR FULL NAME.

1 SPELL YOUR LAST NAME, PLEASE.

2 THE WITNESS: WILLIAM LYONS. L-Y-O-N-S.

3 DIRECT EXAMINATION

4 BY MR. SPRATLIN:

5 Q. MR. LYONS, WHERE ARE YOU EMPLOYED?

6 A. SUMTER POLICE DEPARTMENT.

7 Q. WHAT'S YOUR JOB TITLE THERE?

8 A. I'M CURRENTLY A DETECTIVE IN THE INVESTIGATIVE SERVICES
9 DIVISION.

10 Q. HOW LONG HAVE YOU BEEN A DETECTIVE?

11 A. SINCE 2007.

12 Q. OKAY. WHEN IN 2007 DID YOU BECOME A DETECTIVE?

13 A. TOWARDS THE END OF JULY, AROUND JULY 24TH I THINK IT
14 WAS.

15 Q. OKAY. WERE YOU WORKING WITH THE SUMTER POLICE
16 DEPARTMENT BACK ON JUNE 7TH, 2007?

17 A. YES, I WAS.

18 Q. WHAT WAS YOUR JOB, OCCUPATION, AT THAT POINT?

19 A. AT THAT POINT IN TIME I WAS ASSIGNED TO A SPECIALIZED
20 TEAM CALLED THE NEIGHBORHOOD ENFORCEMENT TEAM, MYSELF AND
21 THREE OTHERS, ASSIGNED TO WORK BASICALLY STREET CRIMES,
22 RESPOND TO INCIDENCES OF VIOLENCE SUCH AS THE ARMED ROBBERY
23 THAT OCCURRED ON THAT DAY, STREET-LEVEL DRUG TRANSACTIONS,
24 THINGS OF THAT NATURE.

25 Q. ON THAT DAY, JUNE 7TH, 2007, DID YOU HAVE A CHANCE TO

1 ASSIST IN THE ARREST OF A SUSPECT AT 107 NORTH SALEM STREET,
2 APARTMENT 2?

3 A. YES, I DID. AS A MATTER OF FACT, I BELIEVE OUR TEAM WAS
4 WORKING THAT DAY, AND WE ACTUALLY WERE KIND OF WITH THEM
5 THROUGHOUT THE WHOLE PROCESS. WE ACTUALLY TRIED TO ASSIST
6 THEM IN EFFECTING HIS ARREST AT MULTIPLE LOCATIONS.

7 Q. OKAY. WHAT HAPPENED AT THE 107 NORTH SALEM STREET,
8 APARTMENT NUMBER 2?

9 A. MYSELF AND FORMER DETECTIVE SHANE LYNES WHO'S NOW A
10 SPECIAL AGENT WITH THE A.T.F.---

11 THE COURT: JUST FOR THE RECORD, HE'S L-Y-N-E-S?

12 THE WITNESS: THAT IS CORRECT, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 THE WITNESS: WE WENT UP TO THE FRONT, ALONG WITH
15 DETECTIVE TOD SIMS. DETECTIVE SIMS MADE CONTACT AT THE DOOR.
16 THE DOOR WAS OPENED. MR. MASSEY WAS TAKEN INTO CUSTODY AND
17 DETAINED. THE OTHER TWO OCCUPANTS I DO NOT KNOW THEIR NAMES
18 - I WASN'T FAMILIAR WITH THEM - WERE ASKED TO COME OUT.
19 MYSELF AND DETECTIVE LYNES AT THAT TIME ENTERED THE
20 RESIDENCE. WE MADE A QUICK SWEEP OF THE RESIDENCE, CHECKING
21 FOR ADDITIONAL PERSONS IN THE RESIDENCE THAT MAY POSE A
22 DANGER TO US OR A DANGER TO THE COMMUNITY OR EVEN TO MR.
23 MASSEY HIMSELF. AS, YOU KNOW, DETECTIVE CULICK STATED,
24 OFTENTIMES FAMILY MEMBERS GET UPSET. CERTAINLY WE WANT TO
25 MAKE SURE THERE'S NO ONE IN THERE THAT COULD POSSIBLY DESTROY

1 ANY EVIDENCE THAT THEY MIGHT HAVE NEEDED TO LOOK FOR.

2 BY MR. SPRATLIN:

3 Q. OKAY. AND WHERE WHEN YOU WERE SEARCHING THIS -- WHEN
4 YOU WERE DOING THIS PROTECTIVE SWEEP OF THE HOUSE, WHERE WERE
5 YOU LOOKING?

6 A. WHEN WE GO IN, WE JUST LOOK -- WE MAKE QUICK LOOKS INTO
7 ROOMS. WE CHECK EACH ROOM VISUALLY. WE OPEN CLOSET DOORS TO
8 MAKE SURE NO ONE IS HIDING IN A CLOSET, CHECK BATHROOMS.
9 IT'S QUICK, IN AND OUT IN A MINUTE OR TWO. IT'S NOT AN
10 EXTENSIVE---

11 Q. OKAY.

12 A. ---LOOK. IT'S JUST A QUICK SWEEP.

13 Q. AND, AGAIN, WHAT IS THE PURPOSE OF THIS?

14 A. BASICALLY IT'S -- FIRST, IT'S PROTECTION OF OFFICERS.

15 Q. OKAY.

16 A. ALSO---

17 Q. AND WHY -- WHY WAS PROTECTION OF OFFICERS AN ISSUE IN
18 THIS CASE?

19 A. BECAUSE THE ALLEGED DEFENDANT HAD COMMITTED A CRIME
20 WHILE ARMED WITH A HANDGUN.

21 Q. OKAY. SO IT'S PRETTY MUCH STANDARD PROCEDURE WHEN
22 YOU'RE DOING AN ARREST LIKE THAT TO DO A PROTECTIVE SWEEP?

23 A. ABSOLUTELY. WE HAVE TRAINING AND OUR TEAM HAD TRAINING
24 IN THAT, AND THAT WAS -- THAT WAS PART OF WHAT WE DID.

25 Q. OKAY. WAS -- TO YOUR KNOWLEDGE, WAS ANY EVIDENCE

1 OBTAINED DURING THIS PROTECTIVE SWEEP?

2 A. NO, NONE WHATSOEVER.

3 Q. WAS ANY INFORMATION OBTAINED IN YOUR PROTECTIVE SWEEP
4 WHICH WAS LATER USED IN THE SEARCH WARRANT?

5 A. NO, SIR, NOT TO MY KNOWLEDGE.

6 Q. OKAY. THANK YOU, DETECTIVE LYONS. I THINK THAT'S ALL
7 THE QUESTIONS I HAVE RIGHT NOW.

8 A. OKAY.

9 CROSS-EXAMINATION

10 BY MR. HASTIE:

11 Q. OKAY. OFFICER LYONS, I JUST WANT TO MAKE SURE THAT I'M
12 CLEAR ON WHO ACTUALLY WENT INTO THE HOME AND DID THAT
13 PROTECTIVE SWEEP, BUT LET'S START AT YOUR ENTRANCE INTO THE
14 HOME. DID YOU ALL KNOCK ON THE DOOR?

15 A. YES, SIR.

16 Q. WHO ANSWERED THE DOOR?

17 A. I DO NOT KNOW. TOD SIMS KNOCKED ON THE DOOR. DETECTIVE
18 SIMS IS THE ONE WHO MADE CONTACT WITH THE PEOPLE AT THE DOOR,
19 AND MYSELF AND DETECTIVE LYNES -- FORMER DETECTIVE LYNES,
20 L-Y-N-E-S, WERE ON THE OUTSIDE BEHIND HIM, AND ONCE MR.
21 MASSEY CAME OUT OF THE RESIDENCE AND WAS PLACED INTO
22 HANDCUFFS AND THE OTHER TWO OCCUPANTS CAME OUT, WE STEPPED IN
23 AND MADE THE QUICK PROTECTIVE SWEEP.

24 Q. BUT YOU DON'T KNOW WHO ANSWERED THE DOOR. YOU WERE
25 RIGHT THERE WITH HIM.

1 A. I WAS RIGHT THERE. I---

2 Q. YOU DON'T KNOW WHETHER MR. MASSEY ANSWERED THE DOOR OR
3 ANYONE.

4 A. I WENT THERE TO ASSIST AND TO EFFECT AN ARREST.

5 Q. OKAY. NOW, SO YOU ENTERED THE HOME TO REALLY PROTECT
6 THE OFFICERS AND FAMILY MEMBERS AS WELL.

7 A. CORRECT.

8 Q. OKAY. YOU MADE A SWEEP OF THE HOME. WHAT DID YOU SEE
9 IN YOUR SWEEP OF THE HOME? BECAUSE YOU WENT IN THERE BECAUSE
10 YOU WERE FEARFUL THERE MAY HAVE BEEN A GUN INVOLVED IN A
11 ROBBERY. SO YOU CERTAINLY WERE LOOKING FOR A GUN.

12 A. NO, SIR, WE WERE NOT LOOKING FOR A GUN. WE WERE THERE
13 LOOKING FOR ADDITIONAL PEOPLE.

14 Q. ADDITIONAL PEOPLE.

15 A. BECAUSE GUNS LAYING AROUND BY THEMSELVES DON'T HURT
16 PEOPLE; IT'S THE PEOPLE THAT PICK UP THE GUNS. SO WE WANT TO
17 MAKE SURE THAT THERE'S NO ADDITIONAL BODIES IN THERE THAT ARE
18 GOING TO COME OUT AFTER WE'VE GOT MR. MASSEY AND THE OTHER
19 TWO OCCUPANTS OUT OF THE HOUSE. YOU KNOW, WE DON'T WANT A
20 SURPRISE, SOMEBODY ELSE COME RUNNING OUT WITH A GUN OR, YOU
21 KNOW, SOMEBODY GETTING UPSET. YOU KNOW, WE LIKE TO MAKE SURE
22 THAT THERE'S -- THAT THE PEOPLE THAT WE'RE TALKING TO,
23 WHETHER THEY BE SITTING ON THE INSIDE OR ON THE OUTSIDE,
24 THOSE ARE THE ONLY PEOPLE THAT ARE THERE.

25 WE DON'T LIKE SURPRISES. SO WE DO A QUICK SWEEP AND

1 MAKE SURE THERE'S -- AND WE ANNOUNCED OURSELVES: "POLICE.
2 POLICE." YOU KNOW, ANYBODY ELSE IN THERE? SO THAT'S...

3 Q. THERE WAS NO ONE ELSE BUT THE TWO PEOPLE THAT YOU SAW
4 WHEN YOU FIRST WENT IN THERE.

5 A. MR. MASSEY AND HE HAD TWO ADDITIONAL PEOPLE THAT WERE
6 DETAINED AS WELL. I DON'T KNOW THEIR NAMES. I'M NOT
7 FAMILIAR WITH THEM.

8 Q. AND I ASSUME THAT YOU DID GO INTO THE BEDROOMS JUST TO
9 CHECK FOR OTHER PEOPLE.

10 A. YES, SIR, JUST A QUICK SWEEP. I OPENED THE DOORS,
11 LOOKED AROUND. I OPENED CLOSET DOORS TO MAKE SURE THERE WAS
12 NO ONE IN THE CLOSET AND MOVED RIGHT ON THROUGH.

13 Q. DID YOU SEE A DERRINGER DURING YOUR PROTECTIVE SWEEP OF
14 THAT HOME?

15 A. NO, SIR.

16 Q. YOU DID NOT SEE A GUN AT ALL.

17 A. NO, SIR.

18 Q. DO YOU RECALL WHETHER OR NOT YOU SAW THE BLACK PANTS
19 WITH SOME WHITE STRIPES ON THEM IN THAT HOME? DO YOU RECALL?

20 A. NO, SIR, I DO NOT RECALL AT ALL.

21 Q. HOW LONG DID THIS PROTECTIVE SWEEP TAKE?

22 A. PROBABLY IN AND OUT OF THE HOUSE IN LESS THAN TWO
23 MINUTES.

24 Q. TWO MINUTES? YOUR HONOR, I HAVE NO FURTHER QUESTIONS OF
25 THIS WITNESS.

1 THE COURT: ANYTHING ELSE?

2 MR. SPRATLIN: JUST REAL BRIEFLY.

3 REDIRECT EXAMINATION

4 BY MR. SPRATLIN:

5 Q. DETECTIVE LYONS, WHAT DID YOU DO ONCE THE SWEEP WAS
6 OVER?

7 A. REMAINED THERE WITH DETECTIVE SIMS AND DETECTIVE LYNES
8 AS THEY HAD THE OTHER TWO PEOPLE IN CUSTODY AND WE WERE
9 WAITING ON THE ARRIVAL OF THE SEARCH WARRANT.

10 Q. OKAY. WHERE WERE Y'ALL WAITING?

11 A. ON THE OUTSIDE. WE WERE SITTING RIGHT THERE ON THE
12 FRONT DOOR STEP OR JUST RIGHT OUTSIDE THE HOUSE WE SAT
13 AROUND. I KNOW THERE WAS SOME OTHER FOLKS THERE, BUT WE SAT
14 AROUND AND JUST TALKED TO THEM UNTIL---

15 Q. OKAY.

16 A. ---THEY CAME BACK---

17 Q. SO Y'ALL WERE NOT -- Y'ALL WERE NOT IN THE HOUSE AFTER
18 THE PROTECTIVE SWEEP.

19 A. NO, SIR.

20 Q. YOU BASICALLY SWEEPED THE HOUSE AND THEN...

21 A. YES, SIR.

22 MR. SPRATLIN: THANK YOU. THAT'S ALL THE QUESTIONS I
23 HAVE.

24 THE COURT: ANYTHING ELSE?

25 MR. HASTIE: YES, SIR.

RECROSS EXAMINATION

BY MR. HASTIE:

Q. AT THE TIME OF THE PROTECTIVE SWEEP, WAS MR. MASSEY
ALREADY APPREHENDED?

A. YES, SIR. HE WAS -- HE WAS IN HANDCUFFS WHEN -- I
BELIEVE WHEN THE DOOR FIRST OPENED HE WAS ONE OF THE FIRST
ONES THAT WAS PLACED INTO HANDCUFFS.

Q. WHERE WERE THE OTHER TWO PEOPLE IN THE HOUSE? WERE THEY
OUTSIDE?

A. WHEN WE GOT THERE, THERE WAS NO ONE ON THE OUTSIDE.
THEY WERE ON THE INSIDE AS WELL.

Q. I'M TALKING ABOUT: WHEN YOU DID THE PROTECTIVE SWEEP,
WERE THE TWO OTHER PEOPLE OUTSIDE OR STILL IN THE HOUSE?

A. OH, WERE THEY REMAINING INSIDE? NO, SIR. MR. MASSEY
AND THE OTHER TWO FOLKS WERE ON THE OUTSIDE OF THE HOME WHILE
WE MADE THE PROTECTIVE SWEEP THROUGH THE HOUSE.

Q. OKAY. SO NOW IS THAT POLICE POLICY? THE PEOPLE WHO ARE
OUTSIDE THE HOME DON'T HAVE A SEARCH WARRANT -- THAT YOU CAN
GO INTO SOMEONE'S HOME WITHOUT A SEARCH WARRANT AND DO THIS
PROTECTIVE SWEEP? DID YOU ASK THEM WAS ANYONE ELSE IN THE
HOME?

A. I DON'T KNOW IF WE DID OR NOT, BUT WE'RE THERE TO EFFECT
THE ARREST OF THE PERSON WHO IS INVOLVED IN A VIOLENT FELONY.
OBVIOUSLY WE HAVE THE RIGHT TO PROTECT OURSELVES AND PROTECT
THE GENERAL PUBLIC BY STEPPING IN AND DOING A PROTECTIVE

1 SWEEP. IT'S NOT A SWEEP TO SEARCH FOR EVIDENCE OR ANYTHING
2 LIKE THAT. IT'S SIMPLY A SWEEP TO SEARCH FOR ADDITIONAL
3 FOLKS THAT COULD POSSIBLY HARM US OR THE GENERAL PUBLIC.

4 MR. HASTIE: THANK YOU. NO FURTHER QUESTIONS, YOUR
5 HONOR.

6 THE COURT: ALL RIGHT. STEP DOWN.

7 MR. SPRATLIN: NOTHING FURTHER OF THIS WITNESS. YOUR
8 HONOR, MAY MR. -- MAY DETECTIVE LYONS BE EXCUSED? HIS
9 TESTIMONY WILL NOT BE NEEDED AT THE JURY TRIAL IN THIS CASE.

10 THE COURT: ALL RIGHT. YOU CAN HAVE -- YOU CAN BE
11 EXCUSED.

12 THE WITNESS: THANK YOU, YOUR HONOR.

13 THE COURT: YOUR NEXT WITNESS?

14 MR. SPRATLIN: YOUR HONOR, THE STATE WOULD NEXT CALL
15 DETECTIVE TOD SIMS TO THE STAND.

16 TOD A. SIMS, AFTER BEING DULY SWORN, TESTIFIED AS
17 FOLLOWS IN CAMERA:

18 THE CLERK: HAVE A SEAT UP THERE, PLEASE. STATE YOUR
19 FULL NAME AND SPELL YOUR LAST NAME, PLEASE.

20 THE WITNESS: IT'S TOD ALLEN SIMS. S-I-M-S.

21 DIRECT EXAMINATION

22 BY MR. SPRATLIN:

23 Q. MR. SIMS, WHERE ARE YOU EMPLOYED?

24 A. I'M EMPLOYED AT THE CITY OF SUMTER POLICE DEPARTMENT.

25 Q. HOW LONG HAVE YOU BEEN EMPLOYED THERE?

1 A. A TOTAL OF 18 YEARS.

2 Q. WHAT'S YOUR JOB TITLE THERE?

3 A. I'M A SENIOR DETECTIVE.

4 Q. OKAY. WHAT DOES THAT JOB ENTAIL?

5 A. I AM OVERSEER OF THE PROPERTY CRIMES DIVISION AND ALSO
6 NEXT IN COMMAND UP UNDER THE SERGEANT.

7 Q. WERE YOU WORKING OR ON DUTY THE DAY OF JUNE 7, 2007?

8 A. YES, SIR, I WAS.

9 Q. WHAT WERE YOU DOING THAT DAY?

10 A. GENERAL DUTIES AS FAR AS FOLLOWING UP ON CASES ASSIGNED
11 TO ME THROUGH MY SERGEANT OR LIEUTENANT.

12 Q. OKAY. WHAT WAS YOUR INVOLVEMENT IN THE CASE AT HAND?

13 A. WE WERE NOTIFIED OF THE SITUATION OF THE ARMED ROBBERY
14 THAT TOOK PLACE OVER OFF OF DUGAN STREET. ADDITIONAL
15 DETECTIVES WERE ASKED TO COME AND START SEARCHING FOR THE
16 INDIVIDUAL THAT COMMITTED THE CRIME.

17 Q. AND DID YOU RESPOND?

18 A. THAT'S CORRECT; I DID.

19 Q. WHO ELSE RESPONDED WITH YOU?

20 A. MYSELF, ALONG WITH DETECTIVE RICHBURG AND DETECTIVE
21 BRIAN CHRISTMAS AND SOME OTHER ONES THAT WERE AROUND.

22 Q. OKAY. NOW, YOU HEARD -- YOU WERE IN THE COURTROOM
23 EARLIER WHEN DETECTIVE CULICK GAVE HER STATEMENT OF THE
24 INVESTIGATION LEADING UP TO THE ARREST OF ANDRE MASSEY. IS
25 THAT A FAIR AND ACCURATE STATEMENT OF THE EVENTS AS YOU

1 REMEMBER THEM?

2 A. THAT'S CORRECT.

3 Q. OKAY. IS THERE ANYTHING YOU WOULD LIKE TO OMIT OR ADD
4 TO THAT -- THOSE FACTS?

5 A. EVERYTHING WAS CORRECT.

6 Q. OKAY. NOW, ON THAT DATE DID YOU HAVE A CHANCE TO GO TO
7 107 NORTH SALEM STREET, APARTMENT NUMBER 2?

8 A. YES, SIR, I DID.

9 Q. AND WHY WERE Y'ALL GOING THERE?

10 A. WE WERE GOING THERE TO MAKE AN EFFECTIVE ARREST ON MR.
11 ANDRE MASSEY.

12 Q. OKAY. AND WHAT WAS YOUR ROLE IN EFFECTUATING THIS
13 ARREST?

14 A. I WAS DRIVING ONE OF THE VEHICLES ALONG WITH ANOTHER
15 SUBJECT WITH THE N.E.T. TEAM TO GO SET UP AND ARREST MR.
16 MASSEY.

17 Q. OKAY. AND WHAT HAPPENED WHEN YOU ARRIVED AT 107 NORTH
18 SALEM STREET?

19 A. I WENT TO THE FRONT OF THE RESIDENCE. MR. CALVIN
20 FULMORE WAS WITH ME. HE WAS THE ONE THAT WENT TO THE REAR OF
21 THE APARTMENT. I THEN WENT AND KNOCKED ON THE DOOR. AT THAT
22 TIME THE DOOR OPENED AND A GENTLEMAN CAME FORTH, AND AT THAT
23 TIME I PLACED CUFFS ON HIM AND I ESCORTED HIM OUTSIDE OF THE
24 RESIDENCE.

25 Q. WAS THE GENTLEMAN WHO OPENED THE DOOR -- WAS THAT ANDRE

1 MASSEY?

2 A. THAT'S CORRECT.

3 Q. OKAY. WAS ANYONE ELSE IN THE RESIDENCE THAT YOU WERE
4 AWARE OF?

5 A. YES, SIR. THERE WAS ANOTHER GENTLEMAN AND A FEMALE AT
6 THE RESIDENCE OR APARTMENT.

7 Q. OKAY. DID Y'ALL -- DID YOU OR ANY OF THE OTHER OFFICERS
8 THERE THAT YOU KNOW OF KNOW WHO THOSE INDIVIDUALS WERE?

9 A. IT WAS A FRIEND OF MR. MASSEY, A LAST NAME OF ROBINSON,
10 AND A FEMALE I BELIEVE TO BE HIS GIRLFRIEND.

11 Q. OKAY. WHAT HAPPENED AFTER MR. MASSEY WAS PLACED INTO
12 HANDCUFFS?

13 A. HE WAS SEARCHED FOR ANY WEAPONS OF ANY SORT AT THAT
14 TIME. I SAW THE TWO GENTLEMEN - DETECTIVE LYNES AND
15 DETECTIVE LYONS - ENTER THE APARTMENT DOING A PROTECTIVE
16 SWEEP. THEY CAME OUT WITH NO RESULTS. AT THAT TIME I WENT
17 TO THE LAW ENFORCEMENT CENTER TO OBTAIN A SEARCH WARRANT.

18 MR. SPRATLIN: OKAY. CAN I HAVE THIS MARKED AS A
19 COURT'S EXHIBIT?

20 (COURT'S EXHIBIT 8 WAS MARKED FOR IDENTIFICATION ONLY.)

21 MR. SPRATLIN: YOUR HONOR, PERMISSION TO APPROACH THE
22 WITNESS?

23 THE COURT: YES, SIR.

24 BY MR. SPRATLIN:

25 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS

1 WHAT'S BEEN MARKED COURT'S EXHIBIT NUMBER 8. DETECTIVE SIMS,
2 DO YOU RECOGNIZE THE DOCUMENT I JUST HANDED YOU?

3 A. YES, SIR, I DO.

4 Q. WHAT IS IT?

5 A. THIS IS A SEARCH WARRANT FOR A RESIDENCE.

6 Q. IS THAT A CERTIFIED COPY?

7 A. YES, SIR, IT IS.

8 Q. IS THERE A RAISED SEAL ON THAT SEARCH WARRANT?

9 A. YES, SIR, THERE IS.

10 Q. OKAY. IF YOU WOULD, PLEASE LOOK THROUGH THAT EXHIBIT.

11 A. (THE WITNESS COMPLIES.) OKAY, SIR.

12 Q. PLEASE, IF YOU WOULD, TAKE US THROUGH THE PROCESS FROM
13 WHICH THAT SEARCH WARRANT WAS OBTAINED.

14 A. OKAY. THIS SEARCH WARRANT FIRST WAS OBTAINED DUE TO THE
15 FACT THAT THE RESIDENTS THERE WOULD NOT GIVE US A CONSENT TO
16 SEARCH. SO, THEREFORE, WE OBTAINED A SEARCH WARRANT OF THE
17 APARTMENT COMPLEX, SPECIFICALLY NUMBER 2.

18 Q. UH-HUH.

19 A. THE -- IN LINE -- THE FIRST SEARCH WARRANT INDICATES A
20 CASE NUMBER WHICH WE PUT ON A SEARCH WARRANT SO WE CAN
21 IDENTIFY WHICH CASE IT BELONGS TO. THEN THERE'S A
22 DESCRIPTION OF THE PREMISES, THE PREMISES TO BE SEARCHED,
23 WHICH ENTAILS THE ADDRESS OF THE APARTMENT, THE STREET
24 LOCATION AND THE NUMBER ON THE APARTMENT AND ALSO THE
25 LOCATION -- A DETAILED LOCATION POSSIBLY THE SAME, LIKE IN

1 HERE, A CORNER OF A STREET OR SO FORTH, AND IT WOULD ACTUALLY
2 DESCRIBE THAT APARTMENT. THE NEXT PART WOULD BE A
3 DESCRIPTION OF THE PROPERTY SOUGHT.

4 Q. OKAY. NOW, BEFORE YOU WENT TO THE MAGISTRATE JUDGE,
5 WHAT DID YOU DO TO PREPARE TO ASK FOR THE SEARCH WARRANT?

6 A. I GOT WITH DETECTIVE CULICK.

7 Q. OKAY. AND DID YOU PREPARE ANYTHING?

8 A. I PREPARED AN AFFIDAVIT.

9 Q. OKAY. WAS THAT AFFIDAVIT IN WRITING?

10 A. IT WAS TYPED, SIR; YES, SIR.

11 Q. IS THAT AFFIDAVIT THERE IN FRONT OF YOU?

12 A. YES, SIR. IT'S ATTACHED TO THIS SEARCH WARRANT.

13 Q. OKAY. WHAT -- IF YOU WOULD, PLEASE READ TO THE COURT
14 THE CONTENTS OF YOUR AFFIDAVIT.

15 A. THE CONTENTS OF THE AFFIDAVIT CONSISTS OF: "ON JUNE
16 THE 7TH, 2007, APPROXIMATELY 18:49 HOURS, MR. HERBERT HUFF
17 NOTIFIED LAW ENFORCEMENT THAT HE WAS ROBBED AT GUNPOINT AT
18 HIS BUSINESS, TOTAL LIVING, LOCATED AT 25 DUGAN STREET IN THE
19 CITY OF SUMTER. MR. HUFF STATED THAT A BLACK MALE ENTERED
20 THE BUSINESS AS IF HE WAS SHOPPING. AFTER ALL THE CUSTOMERS
21 HAD LEFT, THE SUSPECT PRESENTED A SMALL HANDGUN AND DEMANDED
22 MONEY. THE SUBJECT REMOVED ALL THE CURRENCY FROM THE
23 REGISTER AND MR. HUFF'S WALLET. THE SUBJECT FLED ON FOOT
24 FROM THE STORE. THE SUBJECT WAS APPROXIMATELY 5'10", HEAVY-
25 SET, MUSCULAR BUILT, WEARING A WHITE TANK TOP TEE SHIRT,

1 BLACK PANTS WITH A WHITE STRIPE DOWN THE SIDES, AND A DARK
2 KNIT CAP WITH A KNOT ON TOP. THE SUBJECT IS MEDIUM IN
3 COMPLEXION WITH A TATTOO ON THE LEFT ARM OF A CIRCLE WITH
4 POINTS COMING OUT.

5 "MR. HUFF STATED THAT JUST BEFORE THE ROBBERY HE SAW A
6 BLACK FEMALE WHO WORKS NEXT DOOR ENTER HIS BUSINESS AND THEN
7 WALK OUTSIDE WITH THE SUSPECT. MR. HUFF FURTHER STATED THAT
8 HE WAS SEEN WITH A FEMALE ON ANOTHER OCCASION. THROUGH
9 FURTHER INVESTIGATION, THE FEMALE WAS IDENTIFIED AS LATRELL
10 BILLIE. SHE ADVISED LAW ENFORCEMENT THAT THE SUBJECT IN
11 QUESTION WAS AN ANDRE MASSEY. SHE HAS CONFIRMED THAT SUSPECT
12 AS WEARING THE SAME CLOTHING DESCRIBED BY MR. HUFF.

13 "THE STATE PROBATION AND PAROLE WAS GIVEN THE
14 INFORMATION GATHERED FROM THE WITNESS AND GAVE LAW
15 ENFORCEMENT A LOCATION OF ANDRE MASSEY'S RESIDENCE WHICH IS
16 107 NORTH SALEM AVENUE, APARTMENT 2. LAW ENFORCEMENT LOCATED
17 MASSEY AT THE RESIDENCE AND TOOK HIM INTO CUSTODY. AT THE
18 TIME OF ARREST, MASSEY WAS WEARING A WHITE TANK TOP TEE SHIRT
19 AND DID HAVE THE TATTOO DESCRIBED ON HIS LEFT ARM. IT IS
20 THIS OFFICER'S BELIEF THAT THE ITEMS SOUGHT THAT WERE USED IN
21 THE ARMED ROBBERY WOULD BE FOUND AT THE SAID PREMISES."

22 Q. OKAY. AND DID YOU SWEAR TO THAT AFFIDAVIT?

23 A. I SURE DID, SIR.

24 Q. AND DID YOU SIGN IT IN FRONT OF THE MAGISTRATE JUDGE?

25 A. I DID, SIR.

1 Q. OKAY.

2 THE COURT: IS THAT ALL AN EXHIBIT NOW?

3 MR. SPRATLIN: YES, YOUR HONOR. THE ENTIRE SEARCH
4 WARRANT HAS BEEN MARKED AS A COURT'S EXHIBIT. I HAVE A COPY
5 IF YOUR HONOR WOULD LIKE TO LOOK.

6 THE COURT: ALL RIGHT.

7 MR. SPRATLIN: YOUR HONOR, AT THIS TIME I WOULD TENDER
8 THAT INTO EVIDENCE AS A COURT'S EXHIBIT IN THIS CASE.

9 THE COURT: ANY OBJECTION?

10 MR. HASTIE: NONE, YOUR HONOR.

11 THE COURT: ALL RIGHT. WHAT NUMBER IS THAT?

12 MR. SPRATLIN: IT WOULD BE NUMBER 8, I BELIEVE, YOUR
13 HONOR.

14 BY MR. SPRATLIN:

15 Q. NOW, DETECTIVE SIMS, WHAT WERE YOU HOPING TO FIND IN THE
16 SEARCH BY EXECUTING A SEARCH WARRANT?

17 A. WE WERE HOPING TO FIND THE HANDGUN THAT WAS USED IN THE
18 ARMED ROBBERY, THE CLOTHING THAT THE SUSPECT WAS WEARING.

19 Q. OKAY. BESIDES YOUR AFFIDAVIT, WERE THERE ANY OTHER
20 FACTS THAT YOU ORALLY TOLD THE MAGISTRATE IN THIS CASE?

21 A. NO, SIR.

22 Q. OKAY. AND WERE YOU ABLE TO OBTAIN A SEARCH WARRANT?

23 A. YES, SIR, I DID.

24 Q. OKAY. AND WHAT -- AND JUST, IF YOU WOULD, READ FOR THE
25 RECORD THE DESCRIPTION OF THE PREMISES AND PERSON AND PLACES

1 AND THINGS THAT YOU WERE ALLOWED TO SEARCH.

2 A. THE DESCRIPTION OF THE PREMISES TO BE SEARCHED WAS --
3 THE PREMISES TO BE SEARCHED WAS LOCATED AT 107 NORTH SALEM
4 AVENUE, APARTMENT NUMBER 2, IN THE CITY OF SUMTER, STATE OF
5 SOUTH CAROLINA. THE APARTMENT IS LIGHT GREEN IN COLOR,
6 MEDIUM GREEN TRIM WITH DARK GREEN SHUTTERS. THE APARTMENTS
7 ARE AT THE CORNER OF HAMPTON AVENUE AND NORTH SALEM AVENUE.
8 THE RENTER OF THE RESIDENCE IS ANDRE MASSEY. THE APARTMENT
9 HAS THE NUMBER 2 BESIDE THE FRONT DOOR. THE SEARCH IS ALSO
10 TO INCLUDE ANY AND ALL VEHICLES AND ALL OUTBUILDINGS ON SAME
11 PREMISES.

12 Q. OKAY. AND IF YOU WOULD READ THE DESCRIPTION OF THE
13 PROPERTY SOUGHT.

14 A. THE DESCRIPTION OF THE PROPERTY SOUGHT WERE HANDGUNS,
15 AMMUNITION, A BLACK KNIT CAP WITH A BALL ON TOP, A PAIR OF
16 BLACK PANTS WITH WHITE STRIPE DOWN THE SIDES, APPROXIMATELY
17 \$500 IN CASH, AND ANY OTHER ITEMS USED IN THE CRIME OF ARMED
18 ROBBERY.

19 Q. OKAY. AND WAS THIS SEARCH WARRANT SIGNED BY A
20 MAGISTRATE?

21 A. YES, SIR.

22 Q. WHO SIGNED IT?

23 A. JUDGE TINDAL.

24 Q. OKAY. AND WHEN DID SHE SIGN IT?

25 A. SHE SIGNED THE AFFIDAVIT, COMPLETED IT. I WENT OUT TO

1 HER RESIDENCE TO SIGN IT, AND SHE SIGNED IT APPROXIMATELY ON
2 JUNE THE 8TH, 2007, AT 1:20 A.M.

3 Q. OKAY. NOW, HOW SOON AFTER THIS SEARCH WARRANT WAS
4 OBTAINED WAS IT EXECUTED?

5 A. WHEN I ARRIVED BACK TO THE SCENE.

6 Q. OKAY. AND WHO WAS WITH YOU DURING THE EXECUTION OF THE
7 SEARCH WARRANT?

8 A. MYSELF ALONG WITH AT THAT TIME DETECTIVE KEN NESBITT AND
9 BRIAN CHRISTMAS.

10 Q. OKAY. NOW, WHAT WERE EACH OF YOUR -- DID YOU EACH HAVE
11 ROLES OR DUTIES IN THE EXECUTION OF THE SEARCH WARRANT?

12 A. MOST OF THE TIME WHEN WE -- WHEN WE ARRIVED THERE, WHEN
13 WE GOT THERE TO DO IT, LIEUTENANT KEN NESBITT WAS THE ONE
14 THAT WAS GOING TO -- I EXECUTED. HE DID THE PHOTOGRAPHY AND
15 WE ALSO -- IN LOCATING ANY ITEMS INSIDE THE RESIDENCE... AT
16 THAT TIME DETECTIVE CHRISTMAS ACTUALLY STOOD BY WITH THE
17 FEMALE INSIDE OF THE -- THAT WAS INSIDE THE RESIDENCE WHILE
18 WE WERE SEARCHING.

19 Q. OKAY. SO DETECTIVE CHRISTMAS DID NOT TAKE PART IN THE
20 ACTUAL SEARCH.

21 A. PRETTY MUCH, NO, SIR.

22 Q. OKAY. WHAT ITEMS DID YOU FIND DURING THE EXECUTION OF
23 THE SEARCH WARRANT THAT MATCHED WHAT YOU WERE SEARCHING FOR?

24 A. DURING THE SEARCH, WE LOCATED A -- IT APPEARED TO BE
25 LIKE A PEARL-HANDLE 22 DERRINGER ON A BED IN A BEDROOM, THE

1 KNIT CAP THAT WAS FOUND LOCATED ON THE COUCH, AND A PAIR OF
2 DARK-COLORED PANTS WITH A WHITE STRIPE DOWN THE LEG IN THE
3 BEDROOM NEAR WHERE THE DERRINGER WAS FOUND.

4 Q. OKAY. AND WAS A RETURN PROVIDED OR PREPARED?

5 A. THAT'S CORRECT, SIR.

6 Q. OKAY. NOW, WHEN YOU PREPARE A RETURN, WHAT DO YOU DO?

7 A. AFTER I DO THE RETURN, I GO BACK TO THE MAGISTRATE,
8 SWEAR TO WHAT I HAVE FOUND, AND THEY KEEP THE ORIGINAL COPY.

9 Q. OKAY. AND WHEN WAS THE SEARCH WARRANT RETURNED TO THE
10 MAGISTRATE?

11 A. IT WAS RETURNED ON THE 8TH OF JUNE.

12 Q. SO IT WAS RETURNED THE SAME DAY THAT IT WAS TAKEN OUT.

13 A. THAT'S CORRECT.

14 MR. SPRATLIN: OKAY. THANK YOU. THAT'S ALL THE
15 QUESTIONS I HAVE RIGHT NOW.

16 CROSS-EXAMINATION

17 BY MR. HASTIE:

18 Q. HOW ARE YOU DOING?

19 A. HOW ARE YOU DOING, SIR?

20 Q. ALL RIGHT. SO YOU WERE THE PARTY THAT WENT AND GOT THE
21 SEARCH WARRANT---

22 A. THAT'S CORRECT.

23 Q. ---THAT'S BEEN IN QUESTION. AND WERE YOU THERE -- AND
24 YOU WERE THERE WHEN THIS PROTECTIVE SWEEP TOOK PLACE.

25 A. YES, SIR, I WAS OUTSIDE THE RESIDENCE.

1 Q. BUT YOU DID NOT TAKE PART IN THAT.

2 A. NO, SIR.

3 Q. SO IT OBVIOUSLY DIDN'T TAKE YOU VERY LONG TO GO GET THIS
4 SEARCH WARRANT SIGNED.

5 A. NO, SIR. I MEAN, WE HAD TO GO TO THE OFFICE AND I HAD
6 TO TYPE IT UP.

7 Q. HOW LONG DO YOU THINK IT TOOK?

8 A. PROBABLY ABOUT AN HOUR.

9 Q. ABOUT AN HOUR?

10 A. A LITTLE OVER AN HOUR.

11 Q. OKAY. YOU CAME BACK TO THIS RESIDENCE WITH THE SEARCH
12 WARRANT---

13 A. THAT'S CORRECT.

14 Q. ---AND YOU KNOCKED ON THE DOOR?

15 A. WITH THE SEARCH WARRANT?

16 Q. DID YOU---

17 A. I MEAN, PRIOR TO THE SEARCH WARRANT, YEAH, I KNOCKED ON
18 THE DOOR.

19 Q. AND WHEN YOU CAME BACK WITH THE SEARCH WARRANT, WHAT
20 HAPPENED?

21 A. WE SEARCHED THE RESIDENCE.

22 Q. WERE -- I GUESS EVERYBODY WAS APPREHENDED AT THAT TIME.

23 A. THEY WERE OUTSIDE; YES, SIR.

24 Q. OKAY.

25 A. MR. MASSEY HAD ALREADY BEEN TAKEN TO THE LAW ENFORCEMENT

1 CENTER.

2 Q. LET'S BACK UP BECAUSE YOU WERE THERE AT THE BEGINNING.
3 NOW, DID MR. MASSEY TRY TO RUN FROM YOU ALL WHEN YOU FIRST
4 ARRIVED?

5 A. NO, SIR. HE WOULDN'T HAVE HAD TIME.

6 Q. HE WOULDN'T HAVE HAD TIME.

7 A. NO, SIR.

8 Q. HE DIDN'T TRY TO RUN OUT THE BACK DOOR OR ANYTHING LIKE
9 THAT?

10 A. NO, SIR.

11 Q. HE CAME TO THAT FRONT DOOR AND---

12 A. THAT'S CORRECT.

13 Q. OKAY. NOW, YOU WENT IN AND YOU FOUND SEVERAL THINGS.
14 YOU FOUND THE -- YOU DID FIND THE DERRINGER.

15 A. FOLLOWING THE SEARCH WARRANT, YES, SIR.

16 Q. WHERE IN THE HOUSE WAS THIS DERRINGER?

17 A. IT WAS ON A BED IN A BEDROOM, AND IT WAS ACTUALLY UP
18 UNDER A SHIRT LAYING ON TOP OF A PAIR OF SHORTS.

19 Q. WHAT ABOUT THE PANTS THAT'S BEEN DESCRIBED?

20 A. RIGHT THERE ON THE SIDE OF THE BED RIGHT WHERE THE
21 DERRINGER WAS FOUND.

22 Q. NOW, HOW MANY FOLKS WENT INTO THE HOUSE? YOU TESTIFIED
23 ABOUT, OF COURSE, OFFICER CHRISTMAS?

24 A. ARE YOU TALKING ABOUT AS FAR AS SERVING THE SEARCH
25 WARRANT?

1 Q. SERVING THE SEARCH WARRANT.

2 A. THAT'S CORRECT, MYSELF AND DETECTIVE CHRISTMAS AND
3 LIEUTENANT NESBITT.

4 Q. WHAT WAS RICHBURG'S ROLE?

5 A. HE WAS JUST DRIVING THE CAR WITH THE GUYS THAT WAS GOING
6 TO DO -- SURROUNDING THE HOUSE. HE LEFT AND HE WENT TO THE
7 LAW ENFORCEMENT CENTER.

8 Q. SO HE NEVER DID ENTER THE HOUSE.

9 A. NO, SIR.

10 Q. HE DIDN'T PARTICIPATE IN THE SEARCH.

11 A. NO, SIR. HE WAS ASSISTING WITH DETECTIVE CULICK.

12 Q. DID YOU SEE ANYTHING ELSE IN THE HOUSE BESIDES WHAT YOU
13 MENTIONED? BECAUSE THERE WAS SOME DISCUSSION AT LEAST HERE
14 TODAY ABOUT DRUGS BEING SEEN IN THE HOUSE.

15 A. I CAN'T RECALL ANY, TO MY KNOWLEDGE, SIR. IF THERE WAS
16 ANY IN THERE, IT COULD HAVE BEEN, BUT I DIDN'T NOTICE NO
17 DRUGS MYSELF.

18 Q. OKAY. BUT IF YOU HAD NOTICED DRUGS, THEY WOULD HAVE
19 BEEN ON THIS RETURN, I WOULD THINK?

20 A. YES, SIR. YES, SIR. YES, SIR, IT SHOULD -- COULD HAVE
21 BEEN, YEAH. OUR MAIN GOAL WASN'T NARCOTICS. OUR MAIN GOAL
22 WAS THE WEAPON AND CLOTHING IN QUESTION.

23 Q. I KNOW, BUT AS POLICE OFFICERS YOU MIGHT BE LOOKING FOR
24 WEAPONS, BUT IF YOU WALK IN AND SEE DRUGS IN THE ROOM, YOU
25 ARE GOING TO TAKE ACTION, I PRESUME.

1 A. YEAH. PRETTY MUCH, YES, SIR.

2 Q. YOU'RE GOING TO CONFISCATE THEM.

3 A. YES, SIR.

4 Q. AND HAVE THEM TESTED.

5 A. YES, SIR. IF IT CALLED FOR IT, YES, SIR.

6 Q. WHAT ABOUT PILLS? WERE THERE ANY PILLS SEEN IN THE
7 ROOM?

8 A. I CAN'T -- I CAN'T REALLY SAY IF ANYTHING -- IF THERE
9 WAS ANY PRESCRIPTION MEDICATION, I'D HAVE TO LOOK AT THE
10 OVERALL PICTURES THAT WE TOOK, SIR.

11 Q. UH-HUH. AND FINALLY, TO YOUR KNOWLEDGE, THERE WERE NO
12 DRUGS FOUND BY YOU AT LEAST IN THAT HOME---

13 A. BY ME AT LEAST, SIR---

14 Q. ---DURING THAT WARRANT.

15 A. I'D HAVE TO SAY THAT, YES, SIR, BY ME.

16 Q. AND YOU HAVE NO KNOWLEDGE THAT THERE WERE ANY DRUGS
17 FOUND BY ANYONE ELSE BECAUSE IT WOULD HAVE BEEN ON THIS LIST.

18 A. IT'S BEEN TWO YEARS AGO. IF I WOULD HAVE FOUND ANY, IT
19 WOULD HAVE BEEN ON THE LIST.

20 Q. IT WOULD HAVE BEEN ON THIS LIST. IS THAT CORRECT?

21 A. YES, SIR.

22 MR. HASTIE: OKAY. THANK YOU VERY MUCH. NO FURTHER
23 QUESTIONS, YOUR HONOR.

24 THE COURT: MR. SPRATLIN?

25 MR. SPRATLIN: JUST REAL BRIEFLY ON REDIRECT.

REDIRECT EXAMINATION

BY MR. SPRATLIN:

Q. DETECTIVE SIMS, I DON'T THINK I COVERED THIS WITH YOU EARLIER. WAS ANY INFORMATION USED IN THAT SEARCH WARRANT THAT WAS OBTAINED BY THE OFFICERS DURING THE PROTECTIVE SWEEP?

A. NO, SIR, NOT AT ALL.

Q. OKAY. WAS ANYTHING THAT THEY SAW USED IN TRYING TO OBTAIN THAT SEARCH WARRANT?

A. NO, SIR.

Q. WAS THAT SEARCH WARRANT BASED ENTIRELY OFF THE INVESTIGATIVE PROCESS LEADING UP TO THE DEFENDANT'S ARREST?

A. THAT'S CORRECT.

MR. SPRATLIN: OKAY. THANK YOU. THAT'S ALL I HAVE.

RE CROSS EXAMINATION

BY MR. HASTIE:

Q. YOU LEFT A COPY OF THE SEARCH WARRANT AT THE RESIDENCE?

A. WITH THE FEMALE THAT WAS THERE.

Q. WITH THE FEMALE THAT WAS THERE?

A. YEAH. ACCORDING TO -- HER NAME IS RIGHT HERE. MS. DIONETTA PRINCE IS WHO I LEFT A COPY OF IT WITH.

MR. HASTIE: THANK YOU.

THE COURT: ALL RIGHT. YOU CAN STEP DOWN. ANY OTHER WITNESSES ON THIS ISSUE?

MR. SPRATLIN: THE LAST WITNESS THE STATE WOULD HAVE ON

1 THIS ISSUE WOULD BE LIEUTENANT KEN NESBITT.

2 THE COURT: AND JUST LOOKING AHEAD, WHO ARE YOUR JACKSON
3 VERSUS DENNO WITNESSES?

4 MR. SPRATLIN: YOUR HONOR, THAT'S DETECTIVES RICHBURG
5 AND CULICK. THAT SHOULD GO A LITTLE FASTER SINCE WE WON'T
6 HAVE TO RECITE FACTS---

7 THE COURT: ALL RIGHT.

8 MR. SPRATLIN: ---AND WE WON'T HAVE TO GO THROUGH THE
9 ARREST AGAIN.

10 THE COURT: OKAY.

11 THE CLERK: STATE YOUR NAME, PLEASE.

12 MR. NESBITT: KENNETH LEE NESBITT, SR.

13 KENNETH L. NESBITT, SR., AFTER BEING DULY SWORN,
14 TESTIFIED AS FOLLOWS IN CAMERA:

15 THE CLERK: HAVE A SEAT. STATE YOUR FULL NAME AND SPELL
16 YOUR LAST NAME, PLEASE.

17 THE WITNESS: THE LAST NAME IS NESBITT. N-E-S-B-I-T-T.
18 KENNETH LEE, SR.

19 DIRECT EXAMINATION

20 BY MR. SPRATLIN:

21 Q. MR. NESBITT, WHERE ARE YOU EMPLOYED?

22 A. WITH THE SUMTER POLICE DEPARTMENT.

23 Q. AND WHAT'S YOUR JOB THERE?

24 A. CURRENTLY I'M THE TRAINING OFFICER.

25 Q. OKAY. WHAT'S YOUR RANK?

1 A. LIEUTENANT.

2 Q. OKAY. HOW LONG HAVE YOU BEEN EMPLOYED BY SUMTER?

3 A. JUST OVER 25 YEARS.

4 Q. OKAY. AND HAVE YOU BEEN -- IS THAT THE BASIS OF YOUR
5 ENTIRE LAW ENFORCEMENT CAREER OR WERE YOU SOMEWHERE ELSE
6 BEFOREHAND?

7 A. NO. IN 2007 I WAS ACTUALLY ONE OF THE TWO FORENSICS
8 OFFICERS WITH THE DEPARTMENT, AND I'VE BEEN IN FORENSICS
9 EITHER FULL-TIME OR PART-TIME FOR ABOUT 15 YEARS.

10 Q. OKAY. WERE YOU ON DUTY BACK ON JUNE THE 7TH AND JUNE
11 THE 8TH OF 2007?

12 A. YES.

13 Q. OKAY. WHAT WERE YOU DOING THAT DAY?

14 A. I WAS CALLED TO ASSIST WITH WHAT WE GENERALLY CALL
15 PROCESSING, DOING THE CRIME SCENE FORENSICS PROCESSING---

16 Q. OKAY.

17 A. ---AT AN ARMED ROBBERY ON DUGAN STREET.

18 Q. ALL RIGHT. IS IT PRETTY COMMON FOR YOU TO BE CALLED
19 INTO THESE SITUATIONS?

20 A. DURING THAT TIME IT WAS; YES, SIR.

21 Q. OKAY. IS THAT BECAUSE YOU WERE ALSO DOING FORENSICS?

22 A. THAT'S CORRECT.

23 Q. OKAY. AT SOME POINT DID YOU HAVE AN OPPORTUNITY TO
24 SERVE A SEARCH WARRANT?

25 A. I ASSISTED DETECTIVE SIMS IN SERVING A SEARCH WARRANT ON

1 SALEM STREET AT THE APARTMENTS; YES, SIR.

2 Q. OKAY. AND NOW WHO ALL WAS INVOLVED IN EXECUTING THE
3 SEARCH WARRANT?

4 A. THE ONLY ONES I RECALL WAS DETECTIVE SIMS AND DETECTIVE
5 CHRISTMAS AND MYSELF AS FAR AS THE ACTUAL SERVICE OF THE
6 WARRANT.

7 Q. AND WHAT WERE YOUR JOB DUTIES DURING THE EXECUTION OF
8 THIS WARRANT?

9 A. MINE WOULD HAVE BEEN TO DOCUMENT THE SCENE WITH
10 PHOTOGRAPHS AND TO ASSIST IN SEARCHING FOR EVIDENCE AND
11 COLLECTING THE EVIDENCE, PACKAGING THE EVIDENCE, AND
12 TRANSPORTING IT TO THE POLICE DEPARTMENT TO BE TURNED IN TO
13 THE EVIDENCE ROOM.

14 Q. OKAY. AND WHAT WERE -- WHAT WERE THE JOB
15 RESPONSIBILITIES OR THE DUTIES OF DETECTIVE CHRISTMAS?

16 A. HE WOULD HAVE BEEN EITHER ASSISTING IN THE SEARCH OR
17 STANDING BY WITH SOMEONE THAT WAS HOME. THERE WAS A YOUNG
18 LADY IN THE HOME AT THE TIME THAT DETECTIVE CHRISTMAS STAYED
19 WITH DURING THE SEARCH.

20 Q. AND WHAT ABOUT DETECTIVE SIMS? WHAT WERE HIS DUTIES?

21 A. HE ASSISTED IN THE SEARCH ALSO WITH ME; YES, SIR.

22 Q. OKAY. DURING THE EXECUTION OF THE SEARCH WARRANT, WERE
23 ABLE TO OBTAIN EVIDENCE?

24 A. YES, WE WERE.

25 Q. WHAT EVIDENCE DID YOU OBTAIN?

1 A. I RECOVERED A PISTOL, A DERRINGER, A BLACK WITH WHITE
2 HANDLE 22 DERRINGER ON THE BED.

3 Q. OKAY.

4 A. IT WAS NOT READILY VISIBLE WHEN I WALKED IN. I ALWAYS
5 TAKE PHOTOGRAPHS OF THE SCENE THAT WE'RE SEARCHING BEFORE I
6 MOVE ANYTHING. SO I TOOK PHOTOGRAPHS, BEFORE THE GUN WAS
7 VISIBLE, OF THE BED, AND AS I MOVED A SHIRT OFF OF A PAIR OF
8 PANTS ON THE BED, THE DERRINGER BECAME PLAINLY VISIBLE. I
9 PHOTOGRAPHED IT THERE AND THEN COLLECTED IT.

10 Q. OKAY. AND WHAT OTHER EVIDENCE DID YOU FIND?

11 A. THERE WAS A PAIR OF DARK-COLORED PANTS WITH A WHITE
12 STRIPE RIGHT BESIDE THE BED ON THE FLOOR THAT WAS COLLECTED.

13 Q. OKAY. AND WAS THERE ANYTHING ELSE FOUND?

14 A. THERE WAS A DARK-COLORED RAG COMMONLY CALLED A DOO RAG
15 THAT WAS RECOVERED FROM THE COUCH IN THE DEN AREA.

16 Q. OKAY. WHAT DID YOU DO WITH ALL THIS EVIDENCE ONCE YOU
17 OBTAINED IT?

18 A. I TOOK IT TO THE POLICE DEPARTMENT INTO THE FORENSICS
19 LAB AND PHOTOGRAPHED IT AND PROCESSED FOR FINGERPRINTS. I
20 ACTUALLY TRIED TO GET LATENT FINGERPRINTS OFF OF THE PISTOL,
21 THE DERRINGER, AND THEN THOSE ITEMS WERE TURNED OVER TO MR.
22 JIM ALSBROOKS IN THE EVIDENCE ROOM.

23 Q. OKAY. WERE YOU ABLE TO OBTAIN ANY FINGERPRINTS OFF THAT
24 DERRINGER?

25 A. NO, SIR, NO IDENTIFIABLE PRINTS. I'M ALSO A LATENT

1 FINGERPRINT EXAMINER, AND SO THERE WERE NO FINGERPRINTS OF
2 ANY VALUE FOR IDENTIFICATION FOUND ON THE HANDGUN.

3 Q. OKAY. WERE YOU -- ACTUALLY, I THINK THAT'S ALL THE
4 QUESTIONS I HAVE. THANK YOU.

5 THE COURT: MR. HASTIE?

6 MR. HASTIE: THANK YOU, YOUR HONOR.

7 CROSS-EXAMINATION

8 BY MR. HASTIE:

9 Q. NOT TO BELABOR THE POINT, YOU DID PARTICIPATE IN THE
10 SEARCH OF THE PREMISES THERE?

11 A. THAT'S CORRECT.

12 Q. ONE OF YOUR PRIMARY DUTIES WAS TO TAKE PICTURES OF THE
13 HOUSE.

14 A. THAT'S CORRECT.

15 Q. RIGHT? DO YOU HAVE ANY IDEA HOW MANY PICTURES DID YOU
16 TAKE?

17 A. I DON'T KNOW. A NUMBER OF THEM, YES.

18 Q. QUITE A FEW, HONESTLY---

19 A. YES.

20 Q. ---FROM WHAT I'VE SEEN. WHEN DID YOU PROVIDE THE STATE
21 A COPY OF THOSE PICTURES?

22 A. I DIDN'T, AND IT WOULDN'T HAVE NORMALLY BEEN MY DUTY TO
23 DO THAT. ONCE I TURN THEM IN TO THE EVIDENCE ROOM OR THE
24 EVIDENCE CUSTODIAN, I'M NORMALLY NOT INVOLVED IN THE
25 TRANSFERRING OF COPIES OR EVIDENCE TO THE DEFENSE. THAT'S

1 USUALLY HANDLED BY THE...

2 Q. THIS WAS IN 2007. WHEN WERE THEY DEVELOPED? WERE THEY
3 AUTOMATICALLY DEVELOPED?

4 A. THEY WERE PROBABLY DIGITAL PHOTOGRAPHS; I'D HAVE TO GO
5 BACK AND LOOK. SO IT WOULD HAVE JUST BEEN A PROCESS OF DOWN-
6 LOADING THEM ON A DISK, AND I DON'T KNOW EXACTLY WHEN THAT
7 OCCURRED.

8 Q. NOW, FINGERPRINTS, I THINK YOU SAID THERE WERE NO
9 FINGERPRINTS OF ANY VALUE. IS THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. WERE THERE ANY FINGERPRINTS, PERIOD?

12 A. I REALLY DON'T RECALL, AND BECAUSE I AM TRAINED AND
13 QUALIFIED TO LOOK AT FINGERPRINTS OR PARTIAL PRINTS AND
14 DETERMINE WHETHER THEY'RE OF ANY VALUE, THEN I -- IF THEY
15 WERE OBVIOUSLY OF NO VALUE FOR IDENTIFICATION, THEN I WOULD
16 NOT HAVE KEPT THEM. SOMETIMES YOU CAN HAVE A PRINT THAT MAY
17 OR MAY NOT BE OF VALUE, AND IT TAKES SOME TIME TO ACTUALLY
18 STUDY IT UNDER A MICROSCOPE OR A MAGNIFYING GLASS, I'M
19 SORRY---

20 Q. I GUESS---

21 A. ---BEFORE YOU CAN DETERMINE THAT. IN THIS CASE THERE
22 WERE NONE. THERE WERE EITHER NONE AT ALL OR THERE WERE NONE
23 OF ANY IDENTIFIABLE VALUE SO---

24 Q. BUT YOU'RE SAYING THERE MAY HAVE BEEN FINGERPRINTS ON
25 THAT -- ON THAT DERRINGER.

1 A. THERE COULD HAVE BEEN SOME FINGERPRINT RESIDUE---

2 Q. UH-HUH.

3 A. ---WHICH MEANS IT'S SOME RESIDUE TRANSFERRED FROM A
4 FINGERTIP ON TO THE WEAPON BUT NOTHING OF ANY PATTERN THAT
5 WOULD HAVE BEEN OF ANY VALUE FOR IDENTIFICATION.

6 Q. DID YOU TAKE ANY PICTURES OF ANY DRUGS IN THIS HOME AT
7 ALL?

8 A. NOT TO MY KNOWLEDGE, NO, SIR. THE REASON -- LET ME
9 CLEAR THAT UP. THE REASON I SAY THAT: THERE'S A PHOTOGRAPH
10 OF -- OVERALL PHOTOGRAPHS OF DIFFERENT AREAS OF THE HOME, AND
11 UNLESS THERE'S -- YOU MENTIONED EARLIER SOMETHING ABOUT MAYBE
12 SOME PILLS. UNLESS THERE WERE SOME LOOSE PILLS ON SOMETHING
13 THAT I PHOTOGRAPHED THAT I DIDN'T SEE OR DIDN'T NOTICE; THEN
14 THAT'S POSSIBLE, BUT I DON'T RECALL TAKING ANY AND DIDN'T SEE
15 ANY THAT I WOULD HAVE RECOGNIZED AS CONTRABAND BECAUSE, AS
16 YOU SAID EARLIER, THEY WOULD HAVE BEEN ON THE RETURN.

17 Q. HOW LONG -- I KNOW THIS WAS TWO YEARS AGO. HOW LONG
18 WERE YOU IN THE HOUSE DOING YOUR JOB?

19 A. AT LEAST AN HOUR, POSSIBLY TWO TO TWO AND A HALF HOURS.

20 MR. HASTIE: THANK YOU. NO FURTHER QUESTIONS OF THIS
21 WITNESS.

22 MR. SPRATLIN: NOTHING FURTHER OF THIS WITNESS, YOUR
23 HONOR.

24 THE COURT: THANK YOU, SIR. MR. NESBITT, YOU CAN STEP
25 DOWN.

1 THE WITNESS: THANK YOU.

2 MR. SPRATLIN: IN REGARDS TO THIS MOTION, YOUR HONOR,
3 THE STATE WOULD REST AT THIS TIME.

4 THE COURT: OKAY. WHAT'S THE DEFENDANT'S POSITION ON
5 THE -- YOUR MOTION IS TO EXCLUDE THE ITEMS OBTAINED---

6 MR. HASTIE: YOUR HONOR---

7 THE COURT: THE CAP, THE GUN. I CALL IT A CAP. I THINK
8 I SAW SOMEBODY REFER TO IT AS A CAP. THE HEAD-WEAR, LET'S
9 CALL IT, THE GUN AND THE PANTS?

10 MR. HASTIE: YES, SIR.

11 THE COURT: ALL RIGHT. ON WHAT BASIS?

12 MR. HASTIE: YOUR HONOR, I'M CONCERNED ABOUT HIS FOURTH
13 AMENDMENT RIGHTS. I STILL SAY THIS WAS AN IMPROPER SEARCH.
14 HE ASKED -- HE TOLD THEM NOT TO SEARCH HIS HOUSE. THEY DID
15 EVENTUALLY GO INTO THIS HOUSE. I KNOW THEY SAID THEY DID NOT
16 REMOVE ANYTHING FROM THE HOUSE, YOUR HONOR, BUT I JUST THINK
17 HIS FOURTH AMENDMENT RIGHTS WERE VIOLATED CONCERNING THIS
18 PARTICULAR SEARCH AND SEIZURE.

19 THE COURT: ALL RIGHT.

20 MR. HASTIE: THERE'S EVIDENCE THAT THERE WAS SOME
21 FINGERPRINTS FOUND ON THE GUN.

22 THE COURT: NO, HE SAID THERE WAS NOTHING OF ANY VALUE.

23 MR. HASTIE: NOTHING OF ANY VALUE.

24 THE COURT: THERE MIGHT HAVE BEEN SOME RESIDUE BUT
25 NOTHING OF VALUE.

1 MR. HASTIE: YOUR HONOR, MAY I CALL ANOTHER WITNESS
2 CONCERNING THIS MATTER BEFORE WE...

3 THE COURT: OH, YES, SIR.

4 MR. HASTIE: I WOULD LIKE TO CALL MS. BILLIE.

5 THE COURT: ALL RIGHT. IS LATRELL BILLIE IN THE
6 COURTROOM?

7 MR. HASTIE: YES, SIR.

8 THE COURT: IS THIS ON THE -- IS THIS ON THE SEARCH
9 WARRANT ISSUE?

10 MR. SPRATLIN: YOUR HONOR, I'M GOING TO OBJECT ON THE
11 GROUNDS OF RELEVANCY.

12 THE COURT: WELL, I DON'T KNOW. I DON'T KNOW. MS.
13 BILLIE -- IS THIS RELEVANT TO THE SEARCH WARRANT ISSUE?

14 MR. HASTIE: SHE DID IDENTIFY HIM AND---

15 THE COURT: HAS THAT GOT ANYTHING TO DO WITH THE
16 WARRANT?

17 MR. HASTIE: IT SPECIFICALLY LED TO THEM GOING TO HER --
18 GETTING THIS PARTICULAR SEARCH WARRANT.

19 THE COURT: WELL, AS I UNDERSTAND IT, SHE DIDN'T PROVIDE
20 AN ADDRESS. SHE JUST SAID HE WAS ON PROBATION, AND THAT LED
21 SOMEBODY TO CALL MR. SUMTER WHO SAID, "I'VE GOT A FELLOW
22 NAMED ANDRE MASSEY AS ONE OF MY PAROLEES." IS THAT WHAT YOU
23 WANT TO TALK TO HER ABOUT?

24 MR. HASTIE: I WANT TO TALK TO HER ABOUT -- AND I MAY BE
25 NOT -- MAY NOT BE ABLE TO AT THIS TIME -- ABOUT HER TESTIMONY

1 CONCERNING THAT SHE GAVE THE POLICE ABOUT ANDRE MASSEY, WHAT
2 HE WAS WEARING WHICH LED TO THIS---

3 THE COURT: WELL, THAT'S FINE. BRING HER ON UP. MIGHT
4 AS WELL GET IT ALL IN.

5 MR. HASTIE: YES, SIR.

6 LATRELL M. BILLIE, AFTER BEING DULY SWORN,
7 TESTIFIED AS FOLLOWS IN CAMERA:

8 THE CLERK: HAVE A SEAT UP THERE, PLEASE, MA'AM. STATE
9 YOUR FULL NAME AND SPELL YOUR LAST NAME, PLEASE.

10 THE WITNESS: LATRELL MICHELLE BILLIE. B-I-L-L-I-E.

11 DIRECT EXAMINATION

12 BY MR. HASTIE:

13 Q. GOOD AFTERNOON, MS. BILLIE.

14 A. HI.

15 Q. MS. BILLIE, WHERE DO YOU WORK?

16 A. I WORK FOR D.H.E.C. I WAS LOCATED AT -- HOUSED AT THE
17 WATEREE TASK FORCE ON DUGAN STREET.

18 Q. WHAT STREET IS THAT?

19 A. DUGAN.

20 Q. ALSO DUGAN STREET. HOW LONG HAVE YOU---

21 THE COURT: WATEREE AIDS TASK FORCE?

22 THE WITNESS: YES.

23 BY MR. HASTIE:

24 Q. AIDS TASK FORCE?

25 A. AIDS.

1 Q. HOW LONG HAVE YOU WORKED FOR THE AIDS TASK FORCE?

2 A. WELL, THAT'S MY VOLUNTEER WORK. I WORK FOR D.H.E.C. BUT
3 HOUSED AT THE AIDS TASK FORCE, AND THAT WAS 2006, 2006 WHEN I
4 STARTED WITH THAT.

5 Q. 2006. HOW LONG HAVE YOU KNOWN MR. MASSEY?

6 A. AROUND LATE 2006.

7 Q. LATE 2006?

8 A. YES, IF I'M NOT MISTAKEN.

9 Q. NOW, DID HE COME TO YOUR FACILITY FOR---

10 A. HE CAME TO SEE WHAT TYPE OF BUSINESS WE WERE DOING, AND
11 I EXPLAINED TO HIM WHAT TYPE OF BUSINESS WE DO, AND HE
12 CAME -- HE SAY HE WAS LOOKING FOR A JOB, AND WE ALSO HELP
13 WITH EMPLOYMENT.

14 Q. OKAY.

15 A. SO I KNEW THAT GOLD KIST WAS HIRING, AND I TOLD HIM HE
16 NEEDED TO CHECK WITH GOLD KIST.

17 Q. OKAY. THANK YOU. DID HE TAKE AN AIDS TEST?

18 A. I DON'T THINK SO.

19 Q. YOU DON'T KNOW FOR SURE WHETHER OR NOT HE---

20 A. I'M NOT SURE.

21 Q. HOW CAN YOU FIND THAT OUT? YOU ALL KEEP RECORDS?

22 A. YEAH, WE HAVE RECORDS.

23 Q. AND YOU CAN'T TELL US TODAY WHETHER OR NOT HE TOOK AN
24 AIDS TEST---

25 A. I DON'T THINK SO.

1 Q. ---AT YOUR FACILITY.

2 A. NOT TO MY KNOWLEDGE HE DIDN'T. AS I RECALL, I DON'T
3 THINK SO.

4 Q. SO NOW HE CAME BY YOUR WORKPLACE ON THE DAY OF THIS
5 EVENT.

6 A. UH-HUH.

7 Q. CORRECT?

8 THE COURT: YOU NEED TO SAY YES OR NO.

9 THE WITNESS: YEAH. YES, SIR.

10 BY MR. HASTIE:

11 Q. WHAT DID HE COME BY THERE FOR?

12 A. WELL, HE CALLED ME ON MY CELL PHONE AND LET ME KNOW THAT
13 HE WAS COMING BY BECAUSE USUALLY HE JUST -- ON HIS WAY HOME
14 HE'LL STOP BY TO ALWAYS THANK US FOR HELPING HIM FIND A JOB.

15 Q. OKAY.

16 A. AND HE CALLED AND SAID -- ASKED ME WHAT TIME I WAS
17 GETTING OFF WORK, AND I TOLD HIM 5, AND HE SAY HE WAS COMING.
18 SO I SAID OKAY.

19 Q. OKAY. NOW, CONCERNING THIS INCIDENT, WHO CONTACTED YOU
20 ABOUT THERE HAD BEEN SOME TYPE OF ROBBERY IN YOUR AREA?

21 A. THE LAW ENFORCEMENT CAME BY MY HOUSE.

22 Q. CAME BY YOUR HOUSE.

23 A. UH-HUH.

24 Q. OKAY. AND WHAT DID THEY ASK YOU?

25 A. THEY ASKED ME BASICALLY WHAT WAS I DOING THAT PARTICULAR

1 DAY AND WHO I WAS WITH THAT PARTICULAR DAY.

2 Q. AND YOU TOLD THEM THAT MR. MASSEY HAD BEEN BY?

3 A. YEAH. THEY ASKED ME WHO WAS THE LAST PERSON I WAS WITH,
4 AND I TOLD THEM THAT I WAS TALKING TO A GUY THAT WALKED ME TO
5 MY CAR.

6 Q. OKAY. DID MR. MASSEY -- EXCUSE ME. DID MR. MASSEY
7 MENTION ANYTHING TO YOU ABOUT ROBBING A PLACE?

8 A. OH, NO. NO.

9 Q. NOTHING ABOUT ANY TYPE OF ROBBERY.

10 A. NO.

11 Q. AT ALL.

12 A. NO.

13 Q. OKAY. IF MR. MASSEY HAD TAKEN AN AIDS TEST FROM YOUR
14 FACILITY, WOULDN'T THAT BE CONFIDENTIAL INFORMATION?

15 A. YEAH.

16 Q. AND YOU WOULD NOT BE ALLOWED TO DISCUSS---

17 A. NO, SIR.

18 Q. ---THAT HE HAD TAKEN AN AIDS TEST---

19 A. I CANNOT---

20 Q. ---OR ANYTHING LIKE THAT WITH ANYONE. IS THAT CORRECT?

21 A. NO, WITH ANYONE. I COULD NOT SAY THAT.

22 Q. OKAY. AND TO YOUR KNOWLEDGE, YOU'RE SAYING TODAY YOU
23 BELIEVE THAT HE DID NOT TAKE AN AIDS TEST AT YOUR FACILITY.
24 IS THAT YOUR TESTIMONY?

25 A. UH-HUH. UH-HUH.

1 Q. BUT YOU'RE NOT 100 PERCENT SURE, ARE YOU?

2 A. I CAN'T REMEMBER. I CAN'T REMEMBER.

3 MR. HASTIE: NO FURTHER QUESTIONS.

4 THE COURT: MR. SPRATLIN?

5 MR. SPRATLIN: JUST REAL BRIEFLY.

6 CROSS-EXAMINATION

7 BY MR. SPRATLIN:

8 Q. JUST REAL BRIEFLY. MS. BILLIE, WHEN THE POLICE CAME TO
9 YOUR RESIDENCE TO ASK ABOUT MR. MASSEY---

10 A. UH-HUH.

11 Q. ---WHAT DID YOU TELL THEM HE WAS WEARING THAT DAY?

12 A. A WHITE TANK TOP LIKE A WHITE SHIRT AND BLACK SKI PANTS.

13 Q. OKAY.

14 THE COURT: BLACK WHAT?

15 THE WITNESS: SKI PANTS.

16 THE COURT: OKAY.

17 BY MR. SPRATLIN:

18 Q. OKAY. AND WHAT DID YOU TELL THEM -- TELL THE POLICE IN
19 REGARDS TO TATTOOS?

20 A. THAT HE HAD ONE ON HIS SHOULDER.

21 Q. OKAY. AND WHAT ABOUT EARRINGS?

22 A. YEAH, HAD A DIAMOND OR SOMETHING.

23 Q. OKAY. I THINK THAT'S ALL THE QUESTIONS I HAVE FOR RIGHT
24 NOW, MS. BILLIE. WE'RE STILL GOING TO NEED YOUR TESTIMONY
25 DURING THE TRIAL OF THE CASE, BUT THAT'S ALL THE QUESTIONS I

1 HAVE RIGHT NOW.

2 THE COURT: ANYTHING ELSE, MR. HASTIE, OF THIS WITNESS?

3 MR. HASTIE: NONE, YOUR HONOR.

4 THE COURT: THANK YOU, MA'AM. YOU CAN STEP DOWN FOR THE
5 TIME BEING. YOU'RE STILL UNDER SUBPOENA THOUGH.

6 THE WITNESS: OKAY.

7 THE COURT: ALL RIGHT. ANY OTHER WITNESSES ON THIS
8 ISSUE, MR. HASTIE?

9 MR. HASTIE: NONE, YOUR HONOR.

10 THE COURT: ALL RIGHT. I'M JUST CURIOUS: WHAT'S THE
11 SIGNIFICANCE OF THE TESTIMONY ABOUT WHETHER OR NOT HE TOOK AN
12 AIDS TEST?

13 MR. HASTIE: REALLY THE CONFIDENTIALITY OF THAT AIDS
14 TEST AND SHE TOLD THE POLICE THAT HE HAD TAKEN AN AIDS TEST;
15 HE HAD AIDS I BELIEVE THAT THERE'S SOMEWHERE...

16 THE COURT: WELL, I DIDN'T HEAR -- I MAY HAVE TOTALLY
17 MISSED IT, BUT I DIDN'T HEAR -- DID AN OFFICER TESTIFY TO
18 THAT TODAY, MR. SPRATLIN?

19 MR. SPRATLIN: NO, YOUR HONOR. I BELIEVE MR. HASTIE IS
20 REFERRING TO MS. BILLIE'S STATEMENT WHERE SHE MENTIONED THAT
21 SHE HAD TALKED TO THE DEFENDANT ABOUT POSSIBLY TAKING AN AIDS
22 TEST.

23 THE COURT: OKAY.

24 MR. SPRATLIN: NOT THAT HE DID TAKE AN AIDS TEST.

25 MR. HASTIE: IT'S ON THERE.

1 MR. SPRATLIN: NOT THAT HE HAS TAKEN AN AIDS TEST.

2 THE COURT: ALL RIGHT. WHAT'S YOUR ARGUMENT ON THE
3 SEARCH WARRANT OTHER THAN -- I MEAN, TALKING ABOUT THE FOURTH
4 AMENDMENT COMPONENT, ANYTHING THAT THIS WITNESS ADDS TO THAT,
5 MR. HASTIE?

6 MR. HASTIE: NOT AFTER HER TESTIMONY, YOUR HONOR, OTHER
7 THAN THAT AIDS TEST AND CONFIDENTIALITY WHICH I WAS TRYING TO
8 GET INTO THAT.

9 THE COURT: ALL RIGHT. WHAT'S THE STATE'S POSITION ON
10 THE WARRANT?

11 MR. SPRATLIN: YOUR HONOR, THE STATE WOULD CONTEND THAT
12 THE WARRANT IS, IN FACT, VALID. I DO HAVE SEVERAL CASES
13 SHOWING THAT A PROTECTIVE SWEEP IS ALLOWED, THE MAIN ONE
14 BEING STATE V. ABDULLA WHERE THE COURT SAID THAT A
15 WARRANTLESS SEARCH IS JUSTIFIED UNDER EXIGENT DOCTRINE TO
16 PREVENT A SUSPECT FROM FLEEING OR WHERE THERE IS A RISK OF
17 DANGER TO THE POLICE OR OTHERS OUTSIDE THE DWELLING.

18 THE COURT: THIS WASN'T A SEARCH THOUGH.

19 MR. SPRATLIN: IT WASN'T A SEARCH, YOUR HONOR, SO THIS
20 IS EVEN LESS THAN THEY DID IN THIS CASE. IN THIS CASE THEY
21 ACTUALLY FOUND EVIDENCE DURING THE PROTECTIVE SWEEP, EVIDENCE
22 IN PLAIN VIEW. YOUR HONOR, HERE WE HAVE EVIDENCE FROM EVERY
23 LAW ENFORCEMENT OFFICER THAT TESTIFIED SHOWING THAT NOTHING
24 WAS GAINED DURING THIS PROTECTIVE SWEEP THAT WAS LATER USED
25 TO OBTAIN THE SEARCH WARRANT. THE SEARCH WARRANT IS NOT THE

1 FRUIT OF ANY POISONOUS TREE. THUS, THE SEARCH WARRANT --
2 AND, YOUR HONOR, YOU MUST DECIDE WHETHER OR NOT THE SEARCH
3 WARRANT -- IF THERE WAS ENOUGH EVIDENCE IN THE AFFIDAVIT ON
4 ITS FACE TO PROVIDE THE MAGISTRATE JUDGE WITH PROBABLE CAUSE
5 TO BELIEVE THAT EVIDENCE WOULD BE FOUND. WE WOULD SUBMIT TO
6 THE COURT THAT THERE IS, GIVEN THE TESTIMONY OF MR. SIMS
7 ABOUT WHAT HE TOLD THE MAGISTRATE, GIVEN THE AFFIDAVIT ITSELF
8 WHICH IS IN EVIDENCE. WE FEEL THAT WE HAVE ESTABLISHED THAT
9 THE WARRANT WAS PROPERLY ISSUED BY THE MAGISTRATE. IT WAS
10 BASED ON AN AFFIDAVIT IN WRITING, AND IT WAS RETURNED TO THE
11 MAGISTRATE WITHIN TEN DAYS OF BEING ISSUED.

12 THE COURT: ALL RIGHT. ANYTHING IN RESPONSE, MR.
13 HASTIE?

14 MR. HASTIE: YES, SIR. I WOULD LIKE TO ADDRESS -- I'M
15 SURE CODE 24-21-290 TALKS ABOUT INFORMATION RECEIVED BY
16 PROBATION AGENTS. IT'S PRIVILEGED INFORMATION. AND THE
17 OFFICER SAID ON THE STAND BUT FOR THE TESTIMONY OF MR. SUMTER
18 TELLING THEM THE INFORMATION ABOUT MR. MASSEY, WHERE HE
19 LIVED, ABOUT HIS BEING ON PAROLE WITH THEM, HE PRETTY MUCH
20 GUIDED THEM, DIRECTED THEM, TO MR. MASSEY.

21 THE COURT: SO YOU'RE SAYING THAT A PAROLE AGENT CAN
22 NEVER PROVIDE THAT TYPE OF ASSISTANCE IN LOCATING A SUSPECT
23 BASED ON THAT STATUTE?

24 MR. HASTIE: I MEAN, I MAY NOT SAY NEVER, BUT THAT'S
25 WHAT THE STATUTE SAYS HERE, YOUR HONOR.

1 MR. SPRATLIN: YOUR HONOR, IF I COULD -- MR. HASTIE,
2 WHAT STATUTE -- WHAT WAS THAT STATUTE AGAIN?

3 MR. HASTIE: CODE 24-21-290.

4 THE COURT: ALL RIGHT. ANYTHING ELSE, MR. HASTIE?

5 MR. HASTIE: NO, SIR.

6 THE COURT: OKAY. ALL RIGHT. IT'S 5:25, AND WE STILL
7 HAVE TO DEAL WITH THE JACKSON VERSUS DENNO MATTER, AND I'M
8 NOT LOOKING FOR ANY TYPE OF LOW ESTIMATE. I'M LOOKING FOR AN
9 HONEST ESTIMATE OF HOW LONG THIS IS GOING TO TAKE.

10 MR. SPRATLIN: I WOULD ESTIMATE, YOUR HONOR, AT LEAST AS
11 LONG AS THE SUPPRESSION HEARING.

12 THE COURT: ALL RIGHT. YOU TOLD ME IT WASN'T GOING TO
13 TAKE NEARLY AS LONG.

14 MR. SPRATLIN: WELL, IT WON'T TAKE AS LONG---

15 THE COURT: BUT WE'RE TALKING AN HOUR BECAUSE WE STARTED
16 THAT---

17 MR. SPRATLIN: WE'RE TALKING---

18 THE COURT: THEN WE'RE GOING TO STOP.

19 MR. SPRATLIN: WE'RE TALKING ABOUT 45 MINUTES.

20 THE COURT: ALL RIGHT. WELL, THEN WE'LL STOP. OKAY.
21 WE'LL STOP FOR THE DAY. IF YOU WOULD BE BACK HERE AT 9:15,
22 WE'LL BEGIN AT THAT TIME. AND LEAVE YOUR -- LEAVE YOUR
23 TELEPHONE NUMBERS THIS EVENING WITH MY LAW CLERK, AND I'LL
24 CALL YOU AND I'LL LET YOU KNOW THIS EVENING ABOUT THE
25 CONTINUANCE.

1 MR. HASTIE: YES, SIR.

2 MR. SPRATLIN: YES, YOUR HONOR.

3 THE COURT: OKAY. THANK Y'ALL. THANK YOU FOR DOING
4 THAT IN AN ORDERLY FASHION.

5 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AT 5:29 P.M.
6 AND RESUMED THE FOLLOWING DAY, AUGUST 4TH, 2009 AS FOLLOWS.)

7 THE COURT: ALL RIGHT. HAVE A SEAT. THANK YOU VERY
8 MUCH. ALL RIGHT. MR. HASTIE AND MR. WILDER, LET ME ASK YOU
9 THIS QUESTION: 24-21-290 SAYS ALL DATA AND INFORMATION
10 OBTAINED IN THE DISCHARGE OF HIS OFFICIAL DUTY BY A PROBATION
11 AGENT. WAS MR. SUMTER ACTING AS A PROBATION AGENT IN THIS
12 CASE OR WAS HE ACTING AS A COMMUNITY SUPERVISION AGENT?

13 MR. WILDER: IF IT PLEASE THE COURT, ARTICLE 3 OF THE
14 CODE MAKES HIM -- I MEAN, HIS EMPLOYMENT, I BELIEVE, IS AS A
15 PROBATION/PAROLE AGENT. ALL OF THAT PROBATION, PAROLE, AND
16 PARDON IS ALL PART OF THE SAME STATUTORY SCHEME. HE IS A
17 PROBATION AGENT, AND I BELIEVE THE LANGUAGE OF THAT STATUTE
18 INTENDS TO APPLY TO MR. SUMTER.

19 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO.
20 NOW, WE'VE TALKED ABOUT THE PRACTICALITIES OF TRYING THIS
21 CASE. THE MOTION FOR A CONTINUANCE IS DENIED . THE
22 SOLICITOR CALLING THE CASE IS NOT GOOD CAUSE FOR A
23 CONTINUANCE, AND SOME MAY QUESTION WHY IT'S BEEN CALLED WITH
24 THESE WARTS, IF YOU WILL, ON THE CASE, BUT THAT'S -- THAT
25 DOESN'T FALL UNDER MY ANALYSIS.

1 I'M NOT -- AND I KNOW MR. SPRATLIN THAT YOU DISAGREE
2 WITH MY INTERPRETATION OF WHAT THE COURT IN STATE VERSUS HOOK
3 SAID. IT SAYS THAT 24-21-290 MAKES INFORMATION GIVEN BY A
4 PROBATIONER TO HIS PROBATION AGENT, PROBATION AGENT -- HE'S
5 NOT A PROBATION AGENT, BUT THAT MAY BE JUST A MISSPEAK BY THE
6 COURT -- INADMISSIBLE WITH NO EXCEPTION. AND I'M SURE THAT
7 THE GENERAL COUNSEL FOR THE DEPARTMENT WOULD TAKE ISSUE WITH
8 THAT, BUT THE GENERAL COUNSEL WOULD BE WRONG. A PLAIN
9 READING OF THE STATUTE LEAVES NO ROOM FOR GRAFTING ONTO IT AN
10 EXCEPTION TO EXCLUSION WHEN THE EVIDENCE IN THAT CASE WAS
11 USED FOR IMPEACHMENT PURPOSES.

12 NOW, IN MY VIEW DETECTIVE CULICK TESTIFIED THAT THEY
13 ALSO HAD MR. MASSEY'S ADDRESS FROM D.M.V. RECORDS. SO THEY
14 WOULD HAVE FOUND HIM ANYWAY. SO I'M NOT GOING TO RULE OUT
15 THE FRUITS OF THE SEARCH BECAUSE OF THAT. ALSO, THIS STATUTE
16 SAYS THAT THE INFORMATION GIVEN IS INADMISSIBLE. IT DOESN'T
17 SAY IT RENDERS EVERYTHING DERIVED FROM IT INADMISSIBLE. IT
18 SAYS THAT -- IT BASICALLY SAYS IT'S NOT RECEIVABLE AS
19 EVIDENCE IN A COURT. SO I'M NOT GOING TO ALLOW AGENT SUMTER
20 TO TESTIFY. AND, MR. SPRATLIN, YOU CAN WALK THE LINE, AS YOU
21 SEE FIT, WHEN YOU QUESTION DETECTIVE CULICK ON HOW THEY GOT
22 HIS ADDRESS OR, EXCUSE ME, HOW -- ALL THEY HAVE TO SAY IS
23 THAT THEY HAD A NAME AND THEY WENT TO HIS RESIDENCE AND
24 ARRESTED HIM.

25 NOW, THEY'RE GOING TO HAVE AN ISSUE AT SOME POINT AS TO

1 WHETHER OR NOT THE WHOLE SEARCH IS POISONED BECAUSE IT CAME
2 -- BECAUSE THE ADDRESS INFORMATION CAME FROM A PROBATION
3 AGENT WHO OBTAINED THE GENTLEMAN'S ADDRESS IN THE DISCHARGE
4 OF HIS OFFICIAL DUTY. THAT'S THE ONLY REASON MR. SUMTER
5 WOULD HAVE HAD A REASON TO HAVE MR. MASSEY'S ADDRESS. SO IF
6 YOU WANT TO WALK THAT LINE, YOU CAN WALK IT AND TAKE YOUR
7 CHANCES WHEN IT COMES UP ON APPEAL, BUT I'M GOING TO ALLOW --
8 I'M NOT GOING TO GRANT YOUR CERT -- YOUR MOTION TO DISMISS
9 THE FRUITS OF THE SEARCH. YES, SIR, MR. WILDER?

10 MR. WILDER: AND THAT'S WHAT I WANT TO MAKE SURE, YOUR
11 HONOR, WITH MR. HASTIE'S PERMISSION AND THE COURT'S
12 PERMISSION. THE MOTION IS TO SUPPRESS THE ARREST OF THE
13 DEFENDANT BECAUSE IT WAS BASED ON TAINTED INFORMATION THAT
14 CAME IN VIOLATION OF THIS COURT -- IN THIS VIOLATION OF THE
15 STATUTE.

16 THE COURT: I SEE.

17 MR. WILDER: THE SEIZURE OF THE DEFENDANT, HIS
18 CONFESSION, THE SEARCH OF HIS HOUSE, EVERYTHING RESULTING
19 FROM THE INFORMATION THAT MR. SUMTER GAVE WE BELIEVE IS ALL
20 FRUIT OF THE POISONOUS TREE, AND THE WHOLE THING SHOULD
21 UNRAVEL BECAUSE OF THE STATE'S VIOLATION OF THIS CODE
22 SECTION.

23 THE COURT: ALL RIGHT.

24 MR. WILDER: AND THAT'S WHAT WE WANT TO MAKE SURE THE
25 RECORD IS PROTECTED.

1 THE COURT: FOR THE RECORD, YESTERDAY THE MOTION WAS
2 ONLY AS FAR AS THE SEARCH WAS CONCERNED, NOT THE SEIZURE OR
3 THE ARREST AND THE STATEMENTS, BUT I DISAGREE WITH YOUR
4 BROADER INTERPRETATION OF 24-21-290. IT DOESN'T SAY THAT --
5 THERE IS NO AUTHORITY FOR THE PROPOSITION THAT EVERYTHING
6 RECEIVED AS A RESULT OF THAT IS THE FRUIT OF THE POISONOUS
7 TREE, ESPECIALLY BECAUSE THIS DOESN'T -- TO ME IT DOESN'T
8 IMPLICATE THE FOURTH AMENDMENT.

9 MR. WILDER: RESPECTFULLY, YOUR HONOR, THE SEARCH
10 WARRANT HAS TO BE BASED ON EVIDENCE THAT THEY PRESENT TO A
11 MAGISTRATE, AND THAT IS -- THAT'S SOMETHING THAT THE
12 MAGISTRATE RECEIVED IN ORDER TO ISSUE THE SEARCH WARRANT.
13 THE PROBABLE CAUSE, YOUR HONOR, WE SUBMIT -- BUT, ANYWAY I
14 RESPECT THE COURT'S RULING. I'M NOT TRYING TO ARGUE WITH YOU
15 IN ANY SENSE.

16 THE COURT: NO. THAT SUITS ME FINE IF YOU DO.

17 MR. WILDER: WELL, I WOULD NEVER DO THAT, YOUR HONOR.

18 THE COURT: THE STATUTE---

19 MR. WILDER: BUT TO---

20 THE COURT: ---TO ME AS A PRACTICAL MATTER MAKES NO
21 SENSE, BUT THAT'S NOT FOR ME TO DECIDE BECAUSE THE SUPREME
22 COURT HAS SAID THAT. THAT'S WHAT THE LEGISLATURE SAYS, AND I
23 CAN -- I KNOW, WITHOUT EVEN LOOKING OVER THERE, MR. SUMTER IS
24 ABOUT TO JUMP OUT OF HIS SKIN.

25 MR. WILDER: WELL, YOU KNOW, IT'S OUR POSITION THAT HE

1 ACTED UNLAWFULLY BY GIVING THEM ANY INFORMATION AT ALL.

2 **THE COURT:** OKAY.

3 **MR. WILDER:** AND HE'S STILL OVER THERE GIVING THEM
4 INFORMATION, AND WE OBJECT TO THAT, TOO. BUT BE THAT AS IT
5 MAY, WE DO ASK THE RECORD TO BE PROTECTED SO THAT THE ISSUE
6 CAN BE ADDRESSED BY AN APPELLATE COURT.

7 **THE COURT:** WELL, ANYTHING THAT HE'S GIVING TO THEM IS
8 NOT RECEIVABLE AS EVIDENCE IN COURT, BUT IN THIS CASE -- AND
9 I WOULD ASSUME THAT MR. SPRATLIN IS THE ONE WHO'S MAKING SURE
10 THAT DOESN'T OCCUR---

11 **MR. SPRATLIN:** (NODDED HEAD UP AND DOWN.)

12 **THE COURT:** ---OR THAT THE INFORMATION... IT'S NOT
13 AGAINST THE LAW FOR HIM TO GIVE THEM INFORMATION. IT'S JUST
14 NOT RECEIVABLE IN COURT. IN MY VIEW, FROM DETECTIVE CULICK'S
15 TESTIMONY, THEY WOULD HAVE FOUND HIM ANYWAY AT THAT ADDRESS,
16 AND I WOULD ASSUME THAT HER TESTIMONY ON THAT IS TRUE, AND
17 I'LL HAVE TO ACCEPT IT AS TRUE BASED ON HER STATEMENTS
18 YESTERDAY.

19 **MR. WILDER:** YOUR HONOR, NOT TO BELABOR THE POINT, BUT
20 THE STATUTE AS IT'S READ IN THE BODY SAYS ANY---

21 **THE COURT:** YOU'RE RIGHT. IT SAYS MAY NOT BE DISCLOSED
22 DIRECTLY OR INDIRECTLY.

23 **MR. WILDER:** IS PRIVILEGED INFORMATION, IS NOT
24 RECEIVABLE AS EVIDENCE, AND MAY NOT BE DISCLOSED DIRECTLY OR
25 INDIRECTLY TO ANYONE, AND THAT'S THE LANGUAGE AND THAT'S ALL

1 WE'RE ASKING IS THAT THE RECORD BE PROTECTED.

2 THE COURT: WELL, IF THERE IS A FINDING OF GUILT IN THIS
3 CASE, THEN THIS IS GOING TO BE AN ISSUE---

4 MR. WILDER: YES, SIR.

5 THE COURT: ---AND ALONG WITH CERTAIN OTHER ISSUES THAT
6 MR. SPRATLIN IS FULLY AWARE OF.

7 MR. WILDER: YOUR HONOR, WE WILL -- I'LL TRY TO PROMPT
8 MR. HASTIE, AND I KNOW HE INTENDS TO OBJECT AT EVERY STAGE.
9 MAY THE RECORD BE PROTECTED THROUGHOUT ON THIS ISSUE?

10 THE COURT: EVEN IF I SAID IT WAS, THERE'S A CASE THAT
11 CAME OUT RECENTLY THAT SAYS I CAN'T -- EVEN IF I SAY THAT,
12 THEN IT'S NOT PROTECTED. Y'ALL CAN OBJECT THE FIRST TIME
13 THAT IT'S OFFERED IN FRONT OF THE JURY, AND THEN AFTER THAT
14 YOUR OBJECTION CAN CARRY THROUGH, BUT YOU WILL HAVE TO
15 OBJECT.

16 MR. WILDER: THANK YOU, YOUR HONOR, AND WE'RE NOT---

17 THE COURT: AND I'LL TAKE NO OFFENSE AT ANY TIME A
18 LAWYER IS TRYING TO PROTECT THE RECORD.

19 MR. WILDER: THANK YOU. THAT'S ALL WE'RE TRYING TO DO.

20 THE COURT: NO PROBLEM ON MY END.

21 MR. SPRATLIN: YOUR HONOR---

22 THE COURT: ALL RIGHT. ALL RIGHT. IS ALL THE JURY
23 HERE, MR. HERRING?

24 THE CLERK: YES, SIR.

25 THE COURT: ALL RIGHT. IF YOU WOULD -- IF YOU WOULD --

1 CORRECT?

2 A. CORRECT.

3 Q. AND YOU'VE ALREADY ESTABLISHED WHAT THE INVESTIGATIVE
4 PROCESS WAS LEADING UP TO THE ARREST OF THE DEFENDANT, ANDRE
5 MASSEY.

6 A. YES.

7 Q. CORRECT? WHEN THE DEFENDANT WAS ARRESTED, WHAT DID YOU
8 DO?

9 A. WHEN THE DEFENDANT WAS ARRESTED, HE WAS TRANSPORTED TO
10 THE POLICE DEPARTMENT. ONCE AT THE POLICE DEPARTMENT, HE WAS
11 TAKEN TO OUR INTERVIEW ROOM WHERE MYSELF AND DETECTIVE
12 RICHBURG WENT IN TO TALK TO HIM. HE WAS FIRST GIVEN HIS
13 WAIVER OF RIGHTS FORM THAT WE HAVE AT THE SUMTER POLICE
14 DEPARTMENT.

15 (STATE'S EXHIBIT 1 WAS MARKED FOR IDENTIFICATION ONLY.)

16 MR. SPRATLIN: YOUR HONOR, PERMISSION TO APPROACH THE
17 WITNESS?

18 THE COURT: ALL RIGHT.

19 BY MR. SPRATLIN:

20 Q. DETECTIVE CULICK, DO YOU RECOGNIZE THAT DOCUMENT I JUST
21 HANDED YOU?

22 A. YES.

23 Q. WHAT IS THAT DOCUMENT?

24 A. THIS IS THE SUMTER POLICE DEPARTMENT'S INTERVIEW FORM
25 THAT HAS THE DEFENDANT'S RIGHTS ON IT, AND THIS IS WHAT WE

1 USE TO EXPLAIN THE RIGHTS TO DEFENDANTS BEFORE WE QUESTION
2 THEM IN REFERENCE TO A CRIME OR INFORMATION IN REFERENCE TO A
3 CRIME.

4 MR. SPRATLIN: YOUR HONOR, AT THIS TIME I'D LIKE TO MARK
5 THAT EXHIBIT AS STATE'S EXHIBIT NUMBER 1 FOR IDENTIFICATION
6 PURPOSES AT THIS TIME.

7 THE COURT: ALL RIGHT. THAT'S THE WAIVER FORM?

8 MR. SPRATLIN: YES, YOUR HONOR.

9 THE COURT: ANY OBJECTION? THIS IS JUST FOR I.D.

10 MR. HASTIE: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 BY MR. SPRATLIN:

13 Q. NOW, DETECTIVE CULICK, WHAT IS THE PROCESS IN WHICH YOU
14 GO OVER THE RIGHTS WITH THE DEFENDANTS?

15 A. WHAT WE DO IS WE SHOW THEM THE FORM AND EXPLAIN TO THEM
16 THAT THIS IS THEIR RIGHTS AND THAT WE'RE GOING TO READ IT TO
17 THEM LINE BY LINE. EVEN IF THEY CAN READ, THEY'RE JUST TO
18 FOLLOW ALONG WITH US.

19 Q. UH-HUH.

20 A. I READ HIS RIGHTS TO HIM, MR. MASSEY. THE FORM WAS
21 PLACED IN FRONT OF HIM, AND THEN I READ LINE BY LINE TO HIM.
22 I STATED, "BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST
23 UNDERSTAND YOUR RIGHTS." HE WAS EXPLAINED, "YOU HAVE THE
24 RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN BE USED AGAINST
25 YOU IN COURT. YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR

1 ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM OR HER
2 WITH YOU DURING THE QUESTIONING. IF YOU CANNOT AFFORD A
3 LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING
4 IF YOU WISH, AND IF YOU DECIDE TO ANSWER ANY QUESTIONS NOW
5 WITHOUT A LAWYER PRESENT, YOU STILL HAVE THE RIGHT TO STOP
6 ANSWERING AT ANY TIME UNTIL YOU TALK WITH A LAWYER." AND
7 THEN WE FILL OUT THE NEXT SECTION. WE EXPLAIN TO THEM,
8 "BEFORE ANY QUESTIONING, I WAS FURNISHED THE ABOVE STATEMENTS
9 OF MY RIGHTS AT," AND IT WAS AT 11:36 P.M. ON JUNE THE 7TH,
10 2007, AT THE SUMTER POLICE DEPARTMENT BY DETECTIVE CULICK OF
11 THE SUMTER POLICE DEPARTMENT.

12 Q. YOUR HONOR---

13 A. AND I READ TO HIM, "I HAVE READ OR HAD READ TO ME THIS
14 STATEMENT OF MY RIGHTS. I UNDERSTAND WHAT MY RIGHTS ARE.
15 I'M WILLING TO ANSWER QUESTIONS AT THIS TIME WITHOUT A LAWYER
16 PRESENT. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO
17 PRESSURE HAS BEEN USED AGAINST ME." MR. MASSEY STATED HE
18 UNDERSTOOD THOSE RIGHTS. HE AGREED THAT NOBODY HAD
19 THREATENED HIM OR PROMISED HIM ANYTHING, AND HE SIGNED
20 STATING HE DID WANT TO TALK TO US.

21 Q. AND WHO ELSE SIGNED THAT FORM?

22 A. MYSELF AND DETECTIVE RICHBURG WHO WAS IN THE ROOM WHEN
23 THIS WAS DONE.

24 Q. WAS ALL THAT DONE IN YOUR PRESENCE?

25 A. YES.

1 Q. SO ALL SIGNATURES WERE OBTAINED IN YOUR PRESENCE.

2 A. YES.

3 MR. SPRATLIN: OKAY. YOUR HONOR, AT THIS TIME I WOULD
4 TENDER STATE'S EXHIBIT NUMBER 1 FOR IDENTIFICATION PURPOSES
5 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 1.

6 THE COURT: YOU'LL HAVE TO DO THAT IN FRONT OF THE JURY,
7 SO LET'S JUST LEAVE IT FOR I.D. RIGHT NOW.

8 MR. SPRATLIN: YES, YOUR HONOR.

9 BY MR. SPRATLIN:

10 Q. NOW, DETECTIVE CULICK, AFTER ADVISING THE DEFENDANT OF
11 HIS RIGHTS, DID HE ASK -- DID HE INVOKE ANY OF THOSE RIGHTS?

12 A. NO.

13 Q. DID HE ASK FOR A LAWYER?

14 A. NO, HE DIDN'T.

15 Q. DID HE STATE THAT HE WISHED TO REMAIN SILENT?

16 A. NO.

17 Q. DID HE, IN FACT, JUST REMAIN SILENT?

18 A. NO. HE TALKED WITH US.

19 Q. OKAY. IN YOUR OPINION, DID HE DO ANYTHING TO INDICATE
20 THAT HE DID NOT WISH TO PARTAKE IN THE INTERVIEW WITH YOU?

21 A. NO. HE WAS VERY COOPERATIVE, TALKATIVE, WANTED TO --
22 WANTED TO GET THE SITUATION RESOLVED.

23 Q. OKAY. NOW, WHEN YOU FIRST BEGAN QUESTIONING THE
24 DEFENDANT, WHAT WERE YOU QUESTIONING HIM ABOUT?

25 A. WE WERE ASKING HIM JUST BASIC QUESTIONS: WHAT DID YOU

1 DO TODAY? WHERE WERE YOU AT? DO YOU WORK ANYWHERE,
2 QUESTIONS ALONG THOSE LINES JUST TO ESTABLISH A TIMELINE,
3 WHAT HE WAS DOING DURING THE DAY.

4 Q. OKAY. AND WHEN YOU WERE FIRST QUESTIONING HIM, WHAT DID
5 HE TELL YOU?

6 A. WHEN WE WERE FIRST QUESTIONING HIM ABOUT WHAT HE DID
7 THAT DAY, HE KNEW THAT WE WERE QUESTIONING HIM ABOUT A
8 ROBBERY THAT TOOK PLACE AT TOTAL LIVING ON 25 DUGAN STREET.
9 HE KNEW WHERE WE WERE TALKING ABOUT. HE KNEW WHERE THE
10 BUSINESS WAS. HE KNEW THE FEMALE THAT WORKED NEXT DOOR. HE
11 TALKED TO US ABOUT BEING AROUND THE STORE THAT DAY AND
12 OVERHEARING A CONVERSATION THAT TOOK PLACE WITH THE -- HE
13 REFERRED TO HIM AS THE OLD DUDE THAT WORKED AT THE STORE AND
14 SOMETHING ABOUT A CONVERSATION THAT TOOK PLACE BETWEEN HIM
15 AND ANOTHER PERSON IN REFERENCE TO MAYBE A SCAM THAT THEY
16 WERE TRYING TO DO.

17 Q. OKAY. WAS THIS INITIAL STATEMENT GIVEN IN WRITING?

18 A. YES, HE DID.

19 MR. SPRATLIN: OKAY. MARK THAT AS STATE'S EXHIBIT
20 NUMBER 2.

21 (STATE'S EXHIBIT 2 WAS MARKED FOR IDENTIFICATION ONLY.)

22 MR. SPRATLIN: YOUR HONOR, PERMISSION TO APPROACH THE
23 WITNESS?

24 THE COURT: ALL RIGHT.

25

1 YOU DO THEN?

2 A. AFTER THIS INITIAL STATEMENT WAS GIVEN, I CALLED THE
3 DETECTIVES THAT WERE AT THE -- AT MR. MASSEY'S RESIDENCE THAT
4 DID THE SEARCH WARRANT TO ASK, YOU KNOW, HAD THEY FOUND ANY
5 ITEMS THAT WERE RELATED TO THIS ARMED ROBBERY. ALSO, THEY
6 WERE TALKING TO THE WITNESSES AT THE HOME, HIS GIRLFRIEND AND
7 ANOTHER FRIEND THAT WAS THERE, WHAT THEY HAD SAID ABOUT THE
8 EVENTS OF THE DAY. WERE THEY WITH HIM DURING THE TIME OF THE
9 ROBBERY? THINGS LIKE THAT. I TALKED TO DETECTIVE SIMS WHO
10 STATED THAT THEY HAD LOCATED THE GUN THAT WAS DESCRIBED BY
11 OUR VICTIM, A TWO-SHOT DERRINGER, IN MR. MASSEY'S BEDROOM.
12 THEY HAD LOCATED PANTS THAT MATCHED THE DESCRIPTION MR. HUFF
13 GAVE WHICH WAS BLACK PANTS WITH A WHITE STRIPE DOWN THE SIDE,
14 AND ALSO THEY LOCATED A DOO RAG THAT HAD A KNOT TIED IN IT---

15 Q. OKAY.

16 A. ---THAT WAS SIMILAR TO WHAT MR. HUFF SAID THE SUSPECT
17 WAS WEARING.

18 Q. AND WHAT DID YOU DO WITH THIS INFORMATION?

19 A. I WENT BACK AND TOLD ANDRE MASSEY ABOUT WHAT THEY HAD
20 FOUND IN HIS RESIDENCE.

21 Q. AND WAS THE EVIDENCE THEY FOUND IN HIS RESIDENCE
22 CONSISTENT WITH THE STATEMENT THAT HE GAVE YOU, THE FIRST
23 STATEMENT THAT HE GAVE YOU?

24 A. NO, IT WASN'T.

25 Q. OKAY.

1 A. THERE WERE A LOT OF INCONSISTENCIES, AND SO WE WENT OVER
2 THERE, AND I EXPLAINED TO HIM THE INCONSISTENCIES AND WHAT
3 WAS FOUND AT THE RESIDENCE.

4 Q. HOW SOON AFTER THAT FIRST STATEMENT WAS GIVEN DID THE
5 SECOND STATEMENT OCCUR?

6 A. SHORTLY AFTER. MR. MASSEY STARTED TALKING. HE GOT
7 UPSET. HE STARTED CRYING. HE STARTED TALKING ABOUT -- IF
8 YOU'LL LET ME LOOK AT THE OTHER STATEMENT TO REFRESH MY
9 MEMORY. HE STARTED TALKING ABOUT HOW HARD IT WAS BEING ON
10 PROBATION AND PAROLE, AND IT'S HARD TO FIND A JOB. HE
11 STARTED TALKING ABOUT THE RENT WAS DUE. HE THOUGHT HIS
12 GIRLFRIEND WAS PREGNANT AT THE TIME. THEY WERE -- HE WAS
13 WORRIED THEY WERE GOING TO BE EVICTED. I BELIEVE THE LIGHTS
14 WERE TURNED OFF.

15 I BELIEVE HE SAID HE WENT TO 130 JOB INTERVIEWS, AND HE
16 HAD BEEN TURNED DOWN 130 TIMES BECAUSE OF HIS RECORD, AND IT
17 WAS JUST REALLY HARD FOR HIM. HE DIDN'T WANT TO DO IT.

18 I HAD ALSO TALKED TO HIM ABOUT MR. HUFF, THE VICTIM, AND
19 HOW I REALLY DIDN'T THINK MR. HUFF WAS INVOLVED WITH A SCAM
20 OR TRYING TO PLAN A ROBBERY TO THE BUSINESS BECAUSE HE STATED
21 TO MR. MASSEY AS HE WAS LEAVING AFTER THE ARMED ROBBERY THAT
22 HE WOULD PRAY FOR HIM. AND SO HE JUST -- HE STARTED JUST
23 TELLING US ABOUT ALL THESE PROBLEMS HE WAS HAVING WITH MONEY
24 AND THAT HE WAS SORRY.

25 Q. NOW, YOU MENTIONED THE VICTIM RUNNING A SCAM. WAS THAT

1 SURROUNDING -- THE SURROUNDINGS IN WHICH THE STATEMENTS WERE
2 GIVEN ARE CONDUCIVE WITH A VOLUNTARY AND FREELY-GIVEN
3 STATEMENT, AND WE WOULD ASK FOR THE COURT TO FIND AS SUCH.

4 THE COURT: ALL RIGHT. MR. HASTIE?

5 MR. HASTIE: THANK YOU, YOUR HONOR. YOUR HONOR, WE FEEL
6 THAT THIS STATEMENT SHOULD NOT BE ALLOWED. THESE STATEMENTS
7 ARE A RESULT OF THE INFORMATION THEY RECEIVED FROM MR.
8 SUMTER, IN VIOLATION OF THE CODE 24-21-290. WE FEEL THAT
9 EVEN THE ARREST WAS IMPROPER AND -- BECAUSE EVERYTHING THAT
10 THEY GOT TO INCLUDE ON THESE STATEMENTS HERE TODAY WAS THE
11 RESULT OF THE INFORMATION THAT THEY RECEIVED FROM MR. SUMTER.

12 THE COURT: ALL RIGHT. HOW ABOUT THE JACKSON VERSUS
13 DENNO ISSUES, THE VOLUNTARINESS, FREE FROM -- MADE WITHOUT
14 HIM BEING COERCED, SO FORTH AND SO ON? ANY POINTS YOU'D LIKE
15 TO MAKE ALONG THOSE LINES?

16 MR. HASTIE: YES, SIR. I STILL BELIEVE THAT HE WAS --
17 HE WAS COERCED. YOU HEARD THEM TESTIFY THAT HE WAS NOT
18 ALLOWED TO MAKE ANY PHONE CALLS. NOW WE'VE GOT TESTIMONY
19 THAT HE WAS ALLOWED TO MAKE A PHONE CALL. HE CALLED TO MS.
20 PRINCE'S PHONE. HE WAS ALLOWED TO MAKE A PHONE CALL TO HIS
21 GIRLFRIEND AND---

22 THE COURT: WHICH CUTS IN HIS FAVOR, DOESN'T IT?

23 MR. HASTIE: WELL, IT CUTS IN HIS FAVOR BECAUSE I'M
24 SAYING THAT HE WAS COERCED BECAUSE HE SAID THAT: LET ME CALL
25 MY GIRLFRIEND, AND I'LL TELL YOU WHAT I NEED TO KNOW -- YOU

1 AGREE IT'S MY OFFICE. I AGREE THAT I'M ACCOUNTABLE FOR WHAT
2 THE OTHER SOLICITOR DID BEFORE ME, AND I UNDERSTAND THAT.
3 BUT, YOUR HONOR, THE FACT THAT THE DEFENDANT HAS SHOWN NO
4 PREJUDICE GIVEN---

5 THE COURT: AND ALL THIS COULD BE CURED -- AND, AGAIN,
6 I'M GOING ON THE LACK OF PREJUDICE. ARGUABLY, ALL THIS COULD
7 BE CURED IF THIS CASE WEREN'T CALLED THIS WEEK. IT COULD BE
8 CURED.

9 MR. SPRATLIN: YOUR HONOR, I UNDERSTAND THAT. HOWEVER,
10 GIVEN THE FACT THAT WE HAVE ALL OF OUR WITNESSES HERE---

11 THE COURT: ARE THEY GOING ANYWHERE?

12 MR. SPRATLIN: THEY COULD, YOUR HONOR.

13 THE COURT: THEY COULD BE GONE IN TWO YEARS WHEN THIS
14 CASE COMES BACK OFF APPEAL. COULD BE REALLY GONE THEN.

15 MR. SPRATLIN: I UNDERSTAND. I UNDERSTAND THAT, YOUR
16 HONOR, AND I HAVE DISCUSSED IT WITH MY SUPERIORS AND
17 DISCUSSED IT THOROUGHLY. I FEEL WE MUST GO FORWARD WITH THIS
18 CASE AT THIS TIME.

19 THE COURT: ALL RIGHT. AND THE SECOND POINT I STILL --
20 YOU THINK THE RECORD IS CLEAR AT THIS TIME ABOUT THE
21 INEVITABLE DISCOVERY OF THE ADDRESS OF THE DEFENDANT.

22 MR. SPRATLIN: YOUR HONOR, I WOULD JUST ASK---

23 THE COURT: AND THIS IS IN THE CONTEXT OF 24-21-290.

24 MR. SPRATLIN: I WOULD, YOUR HONOR. I WOULD ACTUALLY
25 ASK TO BE ABLE TO CALL DETECTIVE CULICK BACK TO THE STAND ON

1 THAT ISSUE JUST TO MAKE SURE THAT THERE IS A SUFFICIENT
2 RECORD ON THAT.

3 THE COURT: ALL RIGHT. COME ON BACK UP, DETECTIVE.
4 YOU'RE STILL UNDER OATH.

5 MR. SPRATLIN: WE ARE GOING TO BE DISCUSSING AGENT
6 SUMTER HERE. OBVIOUSLY DURING THE TRIAL OF THE MATTER, AGENT
7 SUMTER'S NAME WILL NOT BE MENTIONED. HOWEVER---

8 THE COURT: THIS IS -- NO JURY IS IN HERE, SO YOU CAN GO
9 AHEAD.

10 IRENE CULICK, HAVING BEEN PREVIOUSLY SWORN AND
11 REMAINING UNDER OATH, TESTIFIED AS FOLLOWS IN CAMERA:

12 DIRECT EXAMINATION

13 BY MR. SPRATLIN:

14 Q. DETECTIVE CULICK, WHEN YOU CENTERED IN ON ANDRE MASSEY
15 AS A SUSPECT, WHAT DID YOU DO TO TRY TO LOCATE ANDRE MASSEY?

16 A. WHEN WE LEARNED THAT ANDRE MASSEY WAS ON PAROLE, HE ALSO
17 WAS A SEX OFFENDER. WE CALLED, OF COURSE, THE PROBATION AND
18 PAROLE OFFICE. WE HAD TO GET PERSON ON CALL'S NUMBER, AND WE
19 WERE WAITING FOR THEM TO CALL BACK TO FIND OUT WHO WAS THE
20 AGENT WHO COULD ASSIST US. AND THEN WE WENT WITH OUR D.M.V.
21 RECORDS, WHAT THEY HAD, AND THROUGH THE SEX OFFENDER
22 REGISTRY---

23 Q. OKAY.

24 A. ---WHAT THEY HAD HIM REGISTERED AS. AND THROUGH D.M.V.
25 HE HAD THE ADDRESS THAT WE WENT TO, THE 107 SALEM STREET

1 ADDRESS, AND I BELIEVE THERE WAS ANOTHER ADDRESS WHICH I
2 DON'T HAVE WITH ME THAT WAS ALSO LISTED.

3 Q. OKAY.

4 A. AND SO PRETTY MUCH AGENT -- A LOT OF TIMES D.M.V.
5 RECORDS ARE WRONG. I MEAN, THAT'S JUST MY CASE. A LOT OF
6 PEOPLE DON'T GO AND UPDATE THEIR RECORDS WHERE THEY'RE
7 STAYING, BUT IN MY EXPERIENCE, 11 YEARS, PROBATION AND PAROLE
8 ALWAYS HAS A GOOD ADDRESS FOR A DEFENDANT, SO...

9 Q. OKAY.

10 A. I MEAN, WE -- WE WOULD HAVE BEEN AT THOSE RESIDENCE
11 WHETHER WE COULD HAVE GOTTEN IN TOUCH WITH AGENT SUMTER THAT
12 NIGHT, WHO WAS HANDLING THE CASE, OR NOT.

13 Q. SO, DETECTIVE CULICK, AGENT SUMTER BASICALLY
14 ELIMINATED---

15 A. CONFIRMED.

16 Q. ---ONE OF THOSE ADDRESSES FOR YOU.

17 A. RIGHT, AND CONFIRMED.

18 Q. BUT YOU ALREADY HAD BOTH ADDRESSES EVEN PRIOR TO
19 SPEAKING WITH AGENT SUMTER.

20 A. CORRECT.

21 Q. OKAY. AND SO WHAT WOULD HAVE BEEN YOUR NEXT STEP IN THE
22 PROCESS HAD YOU NOT TALKED TO AGENT SUMTER?

23 A. MY NEXT STEP IN THE PROCESS?

24 Q. YEAH.

25 A. KNOCKING ON THE DOOR.

1 Q. WHICH DOOR?

2 A. THE SAME THING WE DID---

3 THE COURT: WHICH DOOR?

4 THE WITNESS: THE 107.

5 THE COURT: ALL RIGHT.

6 MR. SPRATLIN: OKAY. THANK YOU, DETECTIVE CULICK.

7 THE WITNESS: IF HE WAS WASN'T THERE -- I MEAN, BOTH
8 DOORS IF WE HADN'T TALKED TO HIM, I MEAN.

9 THE COURT: OKAY.

10 MR. SPRATLIN: THANK YOU.

11 THE COURT: MR. HASTIE?

12 MR. HASTIE: THANK YOU, YOUR HONOR.

13 CROSS-EXAMINATION

14 BY MR. HASTIE:

15 Q. MS. CULICK, YOU MENTIONED KNOCKING ON THE DOOR AT 107.
16 107, WHERE IS THAT?

17 A. 107 SALEM STREET.

18 Q. HE LIVED AT APARTMENT -- WHICH APARTMENT?

19 A. NUMBER 2.

20 Q. NUMBER 2. OKAY. HOWEVER, YOU ALL DID INVOLVE MR.
21 SUMTER IN LOCATING MASSEY'S APARTMENT.

22 A. YEAH. WE CALLED AGENT SUMTER FOR A NUMBER OF REASONS.

23 Q. OKAY.

24 A. ONE IS, YOU KNOW, CONFIRM WHERE HE IS LIVING. DOES HE
25 STILL HAVE THAT ADDRESS LISTED OR IS IT THE -- I THINK IT WAS

1 ANOTHER STREET. I DON'T KNOW IF IT WAS SUMTER STREET OR --
2 I'M GOING FROM MEMORY.

3 Q. OKAY.

4 A. AND THEN WE ALSO ASKED: HAS HE BEEN SHOWING UP? WHEN
5 IS THE LAST TIME YOU SAW HIM? THINGS LIKE THAT.

6 Q. UH-HUH. UH-HUH.

7 A. AND WE WERE TOLD THAT HE WAS SUPPOSED TO COME SEE HIM
8 THAT DAY. HE DID NOT SHOW UP TO SEE AGENT SUMTER, AND AGENT
9 SUMTER SAID HE WOULD BE GLAD -- HE WAS STILL IN SUMTER. HE
10 WOULD BE GLAD TO RIDE BY AND SEE IF HE WAS THERE AT THE
11 RESIDENCE.

12 Q. OKAY. OKAY. SO AGENT SUMTER REALLY SORT OF CONFIRMED
13 BECAUSE YOU DID SAY THAT OFTENTIMES THE D.M.V. RECORDS ARE
14 WRONG.

15 A. OFTENTIMES THEY ARE. A LOT OF PEOPLE DON'T UPDATE OR
16 THEY PUT THEIR PARENTS' ADDRESS DOWN AND ACTUALLY LIVE WITH A
17 GIRLFRIEND OR SOMEWHERE ELSE. SO OFTENTIMES I FIND D.M.V. IS
18 WRONG.

19 Q. SO TO MAKE SURE THAT YOU CAN FIND THE ADDRESS OF MR.
20 MASSEY THAT---

21 A. WE WOULD HAVE GONE TO ALL THE ADDRESSES WE HAD. WE'D
22 HAVE LOOKED INTO JAIL FILES. WE'D HAVE LOOKED INTO AN
23 ACCURINT WEBSITE THAT WE HAVE. WE WOULD HAVE LOOKED INTO
24 EVERY RESOURCE THAT WE COULD TO LOCATE HIM, AND IF HE WASN'T
25 THERE, DID HE LIVE HERE AT ONE TIME? DO YOU KNOW HIM? ARE

1 YOU A RELATIVE? WE WOULD HAVE FOUND MR. MASSEY.

2 Q. BUT YOU DID CALL MR. SUMTER FIRST.

3 A. I DID. I CALLED MR. SUM -- WELL, I CALLED PROBATION AND
4 PAROLE, GOT A SUPERVISOR THAT WAS ON CALL.

5 Q. ON CALL. RIGHT.

6 A. AND THEY CALLED MR. SUMTER WHO CALLED ME.

7 Q. AND MR. SUMTER SHARED THE INFORMATION EXACTLY WHERE HE
8 LIVED AND DID HE---

9 A. WHAT HE HAD ON HIS RECORDS.

10 Q. ON HIS RECORD. HE HAD BEEN BY THERE THAT DAY, YOU
11 TESTIFIED TO?

12 A. NO. HE DID NOT SHOW UP THAT DAY, BUT AGENT SUMTER SAID
13 HE WAS IN TOWN. IF WE WOULD LIKE HIM TO, HE WOULD RIDE BY
14 AND SEE IF HE WAS THERE.

15 Q. OKAY. SO IN ASSISTING YOU, AGENT SUMTER DECIDED TO RIDE
16 BY HIS HOME TO ASSIST YOU ALL ---

17 A. YEAH, THAT'S SOMETHING THAT HE DOES AS A PROBATION AND
18 PAROLE OFFICER IS RIDE BY AND CHECK ON HIS CLIENTS, AND IT'S
19 NOT UNCOMMON FOR HIM TO GO BY, ESPECIALLY IF THEY DON'T SHOW
20 UP.

21 Q. BUT THIS PARTICULAR TIME HE WAS ASSISTING YOU---

22 A. HE WAS -- YOU'RE CORRECT. YES, HE WAS.

23 Q. ---IN YOUR INVESTIGATION.

24 A. HE ASSISTED AS FAR AS THAT, BUT NONE OF THAT WAS USED
25 AND HE'S NOT TESTIFYING TODAY TO USE THAT.

1 Q. YEAH, WE KNOW THAT BUT... THANK YOU, YOUR HONOR. NO
2 FURTHER QUESTIONS.

3 A. THANK YOU.

4 MR. SPRATLIN: NOTHING ON REDIRECT.

5 THE COURT: THANK YOU, MA'AM. YOU CAN STEP DOWN.

6 THE WITNESS: THANK YOU.

7 THE COURT: ALL RIGHT. THE STATUTE IS CLEAR. IT SAYS
8 THAT ALL INFORMATION AND DATA OBTAINED IN THE DISCHARGE OF
9 HIS OFFICIAL DUTY BY A PROBATION AGENT IS PRIVILEGED
10 INFORMATION, IS NOT RECEIVABLE -- RECEIVABLE AS EVIDENCE IN
11 COURT, AND MAY NOT BE DISCLOSED DIRECTLY OR INDIRECTLY TO
12 ANYONE. I'M PERPLEXED AT WHY THAT'S THERE SINCE IN MANY
13 INSTANCES PROBATION AGENTS SEEM TO KNOW WHERE PEOPLE ARE, BUT
14 THAT'S WHAT THE STATUTE SAYS. AND THE FACT THAT MR. SUMTER
15 WOULD ROUTINELY ASSIST LAW ENFORCEMENT OFFICERS IN THAT
16 REGARD IS CERTAINLY UNDERSTANDABLE, BUT IT SEEMS TO BE
17 CONTRARY TO THE STATUTE. AND THE COURT -- THE SUPREME COURT
18 SAID IN THE -- I BELIEVE IT'S THE HOOK CASE THAT THAT
19 RESTRICTIVE LANGUAGE HAS NO EXCEPTION.

20 IN THIS CASE I'M SURE IT WILL BE AN ISSUE HEREAFTER,
21 DEPENDING UPON THE JURY'S VERDICT IN THIS CASE, BUT IT'S MY
22 CONCLUSION THAT THE D.M.V. RECORDS WOULD HAVE LED THE
23 OFFICER -- OFFICERS TO THE SAME ADDRESS, AND I WILL ALSO NOTE
24 THAT THERE WAS SOME TESTIMONY THAT THE DEFENDANT WAS ON THE
25 SEX OFFENDER REGISTRY. THAT'S NOT INFORMATION OBTAINED BY A

1 PAROLE AGENT, BUT IN MY VIEW THAT CERTAINLY IS EXTREMELY AND
2 UNDULY PREJUDICIAL TO THE DEFENDANT.

3 IF THE DEFENDANT MOVES, I'M SURE THE STATE WOULD
4 PROBABLY AGREE THAT THAT WON'T BE A SOURCE OF INFORMATION OF
5 HOW TO FIND THE GENTLEMAN. I THINK THAT THE INFORMATION THAT
6 HE WAS -- IS A SEX OFFENDER -- DID THAT COME FROM MR. SUMTER,
7 TOO?

8 MR. SPRATLIN: NO, YOUR HONOR. I BELIEVE---

9 THE COURT: THAT CAME FROM MS. BILLIE.

10 MR. SPRATLIN: WELL, YES, YOUR HONOR, IT DID COME FROM
11 MS. BILLIE IN THEIR CONVERSATIONS TO HIM AS WELL AS THE
12 OFFICERS' ROUTINE INVESTIGATION.

13 THE COURT: ALL RIGHT. SO I THINK THAT THE VIOLATION,
14 IF YOU WILL, OF THE TITLE 24 STATUTE DOESN'T FORECLOSE MY
15 EXAMINATION OF WHETHER OR NOT THEY WOULD HAVE STILL LOCATED
16 MR. MASSEY AT THAT ADDRESS. I'M GOING TO NOT GRANT YOUR
17 MOTION ON THAT BASIS, MR. HASTIE. ALL RIGHT. BUT MAKE SURE
18 THAT THE WITNESSES ARE CAUTIONED, AND IF MR. HASTIE CHOOSES
19 TO PUSH THE ISSUE ON CROSS ABOUT HOW THEY FOUND HIM, THEN WE
20 HAVE AN ISSUE OF WHETHER OR NOT THE SEX OFFENDER DOOR IS
21 OPENED, AND SO THE QUESTIONS WOULD BE -- HAVE TO BE TAILORED
22 ACCORDINGLY.

23 NOW, I'VE ALREADY RULED ON THE JACKSON VERSUS DENNO
24 MATTER. I'M STILL A LITTLE DISTURBED ON THE TWO-YEAR ISSUE,
25 BUT I DON'T SEE ANY PREJUDICE RESULTING IN THIS CASE. IT

1 JUST -- I JUST DON'T UNDERSTAND.

2 MR. SPRATLIN: I UNDERSTAND, YOUR HONOR.

3 THE COURT: IT MAKES NO SENSE, AND SOME OTHER JUDGE MAY
4 WELL IN HIS OR HER DISCRETION SAY, "YOU CALLED THE CASE.
5 FINE. BUT YOUR STATEMENTS ARE SUPPRESSED."

6 MR. SPRATLIN: YES, YOUR HONOR, I UNDERSTAND.

7 THE COURT: AND THAT MAY ALSO BE AN ISSUE LATER ON.
8 YES, SIR?

9 MR. HASTIE: JUDGE, DO YOU HAVE THE AUTHORITY TO REQUEST
10 THAT THEY PUT THIS TRIAL ON THE NEXT TERM WHICH IS SEPTEMBER?

11 THE COURT: CERTAINLY I DO. THAT'S IN YOUR MOTION FOR A
12 CONTINUANCE WHICH I HAVE DENIED, AND THAT IS ALSO A MATTER OF
13 DISCRETION IN YOUR ARGUMENT ON APPEAL. IT WOULD BE THAT I
14 ABUSED MY DISCRETION IN SEVERAL WAYS. ONE, ALLOWING THE CASE
15 TO GO TO TRIAL ON THIS TECHNICALLY DEFECTIVE L-WOP NOTICE.
16 TWO, NOT CONTINUING THE CASE IN THE FACE OF THEIR TWO-YEAR
17 DELAY IN TURNING OVER DISCOVERY TO YOU AND, THREE, NOT
18 SUPPRESSING THE STATEMENT WHEN IT WAS HANDED OVER AFTER THEY
19 HAD IT FOR TWO YEARS.

20 SO I'M EXERCISING MY DISCRETION IN DETERMINING THAT
21 THERE'S NO PREJUDICE DEMONSTRATED FOR THE FAILURE TO TURN THE
22 DOCUMENTS OVER IN DISCOVERY; AT LEAST NONE HAS BEEN SHOWN TO
23 ME. AND IF -- IF THAT RULING IS TO BE DISTURBED, THEN THE
24 APPELLATE COURTS CAN CERTAINLY DO IT. ALL RIGHT?

25 MR. SPRATLIN: AND, YOUR HONOR, FOR THE RECORD, THE

1 FIRST WITNESS.

2 MR. SPRATLIN: YOUR HONOR, THE STATE WOULD FIRST CALL
3 MR. HERBERT HUFF TO THE STAND.

4 HERBERT HUFF, SR., AFTER BEING DULY SWORN,
5 TESTIFIED AS FOLLOWS:

6 THE CLERK: HAVE A SEAT UP HERE. WATCH YOUR STEP.
7 STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR ME, PLEASE.

8 THE WITNESS: HERBERT HUFF. H-U-F-F. HUFF.

9 DIRECT EXAMINATION

10 BY MR. SPRATLIN:

11 Q. THANK YOU, MR. HUFF. MR. HUFF, HOW LONG HAVE YOU LIVED
12 IN SUMTER?

13 A. FROM THE TIME I WAS 29 YEARS OLD UP UNTIL NOW. I'M 76
14 YEARS OLD.

15 Q. SO YOU'RE 76 YEARS?

16 A. NOT QUITE SEVEN YEARS.

17 Q. AND WHAT ARE YOU CURRENTLY DOING FOR A LIVING?

18 A. WHAT AM I CURRENTLY DOING FOR A LIVING? I'M RETIRED.

19 Q. OKAY. WHERE WERE YOU WORKING BACK IN JUNE OF 2007?

20 A. AT THE TOTAL LIVING STORE, 25 DUGAN STREET, SUMTER,
21 SOUTH CAROLINA.

22 Q. OKAY. AND DO YOU KNOW IF THAT IS IN SUMTER COUNTY?

23 A. YES, IT IS.

24 Q. OKAY. AND WHAT KIND OF BUSINESS IS THE TOTAL LIVING
25 STORE?

1 A. IT'S A CLOTHING -- WELL, IT WAS A -- TOTAL LIVING WAS A
2 -- STARTED OUT AS A VARIETY STORE, BUT NOW WE GOT MORE STOCK
3 OF CLOTHING IN, SO IT'S A CLOTHING STORE REALLY. WE SELL
4 MORE CLOTHING THAN ANYTHING ELSE, SO WE JUST SAY IT'S A
5 CLOTHING STORE.

6 Q. OKAY. AND YOU SAID THAT IT WAS LOCATED OFF OF DUGAN
7 STREET?

8 A. 25 DUGAN STREET.

9 Q. OKAY. WHAT WAS YOUR JOB AT TOTAL LIVING?

10 A. I MANAGED THE STORE.

11 Q. OKAY. WHAT ALL DID THAT ENTAIL?

12 A. OH, KEEPING THE RECORDS, KEEPING THE FINANCES STRAIGHT,
13 AND SELLING THE ITEMS IN THE STORE.

14 Q. OKAY. NOW, MR. HUFF---

15 A. KEEPING INVENTORY.

16 Q. THANK YOU. SORRY TO INTERRUPT YOU. MR. HUFF, WERE YOU
17 WORKING AT THE STORE BACK ON JUNE 7TH, 2007?

18 A. I WAS.

19 Q. WHAT WERE YOU DOING THAT DAY?

20 A. SELLING MY MERCHANDISE.

21 Q. OKAY. WERE YOU THE ONLY EMPLOYEE WORKING THAT DAY?

22 A. I WAS THE ONLY EMPLOYEE WORKING AT THAT TIME.

23 Q. OKAY. AT SOME POINT DID YOU HAVE A CHANCE TO COME INTO
24 CONTACT WITH THE DEFENDANT, ANDRE MASSEY, ON THAT DATE?

25 A. HE CAME IN THE STORE THAT AFTERNOON EARLIER.

1 Q. WHAT WAS HE DOING THE FIRST TIME HE CAME INTO THE STORE?

2 A. LOOKING AROUND MAINLY AT MEN'S CLOTHING.

3 Q. OKAY. HOW LONG WAS HE IN THE STORE FOR?

4 A. NOT VERY LONG. NOT VERY LONG BECAUSE THE YOUNG LADY
5 CAME IN AND CALLED HIM OUT OR CALLED TO HIM THAT SHE WAS
6 READY TO GO OR SOMETHING LIKE THAT.

7 Q. OKAY. AND DO YOU KNOW WHO THAT YOUNG LADY WAS?

8 A. I DIDN'T KNOW HER NAME. NO, I DID NOT.

9 Q. DID YOU KNOW WHERE SHE WORKED?

10 A. YES, I KNEW HER PLACE OF WORK.

11 Q. AND WHERE WAS THAT?

12 A. THAT WAS NEXT DOOR TO MY STORE.

13 Q. OKAY. AND DO YOU KNOW WHAT KIND OF BUSINESS THAT WAS?

14 A. THAT WAS CALLED WAFT (PHONETIC), WATEREE AIDS TASK
15 FORCE.

16 Q. NOW, SIR, DID YOU KNOW THE DEFENDANT, MR. MASSEY, BEFORE
17 THIS INCIDENT?

18 A. I DID NOT.

19 Q. OKAY. HOW MANY TIMES WOULD YOU SAY MR. MASSEY CAME INTO
20 THE STORE THAT DAY?

21 A. THAT TIME AND THE SECOND -- THE LAST TIME.

22 Q. OKAY.

23 A. THAT WOULD BE TWO TIMES.

24 Q. OKAY. WHEN WOULD YOU ESTIMATE THAT MR. MASSEY CAME INTO
25 THE STORE FOR THE LAST TIME THAT DAY?

1 A. IT WOULD BE BEFORE CLOSING.

2 Q. OKAY. WHAT TIME WOULD YOU SAY THAT WOULD BE?

3 A. WELL, I ALWAYS CLOSE AT 6, SO I'M GOING TO HAVE TO SAY
4 IT WAS AROUND 5:30.

5 Q. OKAY. WAS ANYONE ELSE IN THE STORE AT THE TIME THAT MR.
6 MASSEY CAME IN?

7 A. I HAD CUSTOMERS IN THE STORE. I HAD THE LADY AND TWO --
8 SHE HAD TWO GIRLS AND A BOY, I THINK THREE CHILDREN, AND I
9 HAD MORE CUSTOMERS THAT WAS IN THE STORE, AND I JUST REMEMBER
10 -- WELL, THERE WAS THREE OTHER -- I BELIEVE THERE WAS THREE
11 OTHER WOMEN OTHER THAN THE LADY THAT CAME IN.

12 Q. OKAY. DO YOU REMEMBER THE NAME OF THE LADY THAT WAS IN
13 THE STORE THAT YOU WERE REFERENCING?

14 A. I KNOW HER NAME IS CAROL BRUNSON.

15 Q. OKAY. AND HOW DO YOU KNOW CAROL BRUNSON?

16 A. WE MADE ACQUAINTANCE IN THE STORE.

17 Q. OKAY. DID YOU KNOW HER FROM ANYTHING -- IN ANY WAY
18 OUTSIDE OF THE STORE?

19 A. NO, I DID NOT.

20 Q. OKAY. NOW, WHILE ALL THOSE PEOPLE WERE IN THE STORE,
21 WHAT WAS MR. MASSEY DOING?

22 A. HE WAS LOOKING AT THE MEN'S LINES OF CLOTHING.

23 Q. OKAY. DO YOU REMEMBER SPECIFICALLY WHAT HE WAS LOOKING
24 AT?

25 A. WELL, THE LAST TIME HE CAME -- ARE YOU TALKING THE FIRST

1 OR THE LAST?

2 Q. THE LAST TIME, SIR.

3 A. THE LAST TIME HE CAME IN HE WAS LOOKING AT -- HE WENT
4 SPECIFICALLY -- HE ASKED FOR A SIZE 44---

5 Q. OKAY.

6 A. ---IN SUITS. DID I HAVE A SIZE 44 IN SUITS? AND I
7 SHOWED HIM SOME, AND HE CONTINUED TO LOOK AT THEM.

8 Q. OKAY. AND ARE YOU CERTAIN ABOUT THAT?

9 A. PARDON?

10 Q. ARE YOU CERTAIN ABOUT THAT?

11 A. YES, I AM.

12 Q. OKAY. NOW, WHEN MR. MASSEY WAS LOOKING AT THESE SUITS
13 THAT YOU DESCRIBED, HOW WAS HE ACTING TOWARDS YOU? WAS HE
14 BEING FRIENDLY OR WHAT WAS HE DOING?

15 A. I REALLY DIDN'T PAY ANY ATTENTION -- I HAD MORE
16 CUSTOMERS IN THERE TO PAY ATTENTION TO, SO I DIDN'T PUT TOO
17 MUCH ATTENTION ON HIS ACTIONS TOWARDS ME.

18 Q. OKAY. AT SOME POINT DID THE OTHER CUSTOMERS LEAVE?

19 A. PARDON? YES. YES, AT SOME POINT THE OTHER -- ALL THE
20 OTHER CUSTOMERS LEFT INCLUDING MS. CAROL.

21 Q. OKAY.

22 A. AND I HAD ALREADY MADE THE -- I HAD ALREADY STARTED THE
23 ATTEMPTING TO CLOSE UP. THAT'S WHY MY BLINDS WAS CLOSED---

24 Q. UH-HUH.

25 A. ---AND MY DOOR WAS CLOSED.

1 Q. OKAY. WAS THIS SOMETHING YOU DID PRETTY MUCH EVERY
2 NIGHT AT CLOSING TIME?

3 A. EVERY EVENING, YES, I CLOSED MY BLINDS, TURNED MY SIGN
4 ON "CLOSED," AND CLOSED THE DOOR.

5 Q. OKAY.

6 A. AND IF I HAD CUSTOMERS IN THERE, I HAD IT LOCKED. THE
7 CUSTOMERS ON THE OUTSIDE COULDN'T GET IN---

8 Q. OKAY.

9 A. ---BUT I LET THE CUSTOMERS OUT.

10 Q. OKAY. AND WHEN WOULD YOU SAY THAT MS. BRUNSON LEFT THE
11 STORE?

12 A. BEFORE I CLOSED UP, I WENT AND -- I'M GOING TO SAY
13 BEFORE CLOSING TIME BECAUSE---

14 Q. OKAY.

15 A. ---MY CLOSING TIME IS 6:00 SO...

16 Q. OKAY. AND WHAT HAPPENED -- HOW DID MS. BRUNSON COME TO
17 LEAVE THE STORE? DID SHE JUST LEAVE OR WAS SHE HELPED OUT
18 OR...

19 A. I ESCORTED HER OUT THE LAST TIME. SHE CAME IN THE
20 STORE, SHE AND HER CHILDREN, AND THEN HER PURCHASING. THEN
21 SHE WENT OUT AND PUT THE CHILDREN IN THE CAR. SHE CAME BACK
22 IN AND SHE PURCHASED ANOTHER BAR OF SOAP.

23 Q. SO SHE ACTUALLY LEFT THE STORE AND CAME BACK?

24 A. THEN I ESCORTED HER OUT THE LAST TIME.

25 Q. SO SHE ACTUALLY LEFT THE STORE AND CAME BACK.

1 A. YES.

2 Q. OKAY. WHAT HAPPENED AFTER YOU ESCORTED MS. BRUNSON OUT
3 OF THE STORE?

4 A. I CLOSED THE DOOR AND ATTEMPTED TO WALK BACK TOWARDS THE
5 COUNTER. THAT'S WHEN I WAS PRESENTED -- MR. -- THE -- MR.
6 MASSEY PRESENTED THE HANDGUN---

7 Q. OKAY.

8 A. ---AND TOLD ME TO -- YOU KNOW, "DON'T MAKE ME WANT TO
9 HAVE TO SHOOT YOU. I JUST WANT YOUR CASH," AND HE BEGAN TO
10 SEARCH MY POCKETS FOR MY CASH.

11 Q. WHEN HE TOLD YOU THAT, DID YOU BELIEVE HIM?

12 A. YES, I DID BELIEVE HIM.

13 Q. WHY DID YOU BELIEVE HIM?

14 A. WELL, HE WASN'T CRACKING A SMILE, AND HE WAS VERY COLD
15 LOOKING AT ME, COLD-LOOKING, STARING AT ME WITH THE GUN IN MY
16 FACE.

17 Q. WHAT WAS THE FIRST THING HE DID WHEN HE HAD THE GUN ON
18 YOU?

19 A. THE FIRST THING HE DID WAS TO GO INTO MY POCKETS AND GET
20 THE CASH OUT.

21 Q. OKAY. WHAT DID HE TAKE FROM YOUR POCKETS?

22 A. A TWENTY AND TWO DOLLARS FROM MY WALLET.

23 Q. OKAY. WHAT DID HE DO THEN?

24 A. HE ASKED ME TO GO TO THE CASH REGISTER.

25 Q. OKAY.

1 A. OPEN THE CASH REGISTER.

2 Q. AND DID YOU?

3 A. I DID.

4 Q. OKAY. WHAT HAPPENED AT THE CASH REGISTER?

5 A. I OPENED THE CASH REGISTER, AND HE PROCEEDED TO TAKING
6 THE MONIES OUT OF THE CASH REGISTER. HE KNEW WHERE IT ALL
7 WAS.

8 Q. OKAY.

9 A. HE PROCEEDED TO TAKING IT OUT.

10 Q. AND DO YOU KNOW ABOUT HOW MUCH MONEY WAS TAKEN FROM THE
11 CASH REGISTER?

12 A. \$389 WAS TAKEN FROM THE CASH REGISTER IN PAPER MONEY.

13 Q. OKAY. DID HE SAY ANYTHING TO YOU WHILE HE WAS DOING
14 THIS?

15 A. YES, HE ASKED ME FOR A TOWEL -- A TOWEL.

16 Q. AND---

17 A. I GAVE HIM A PAPER TOWEL.

18 Q. OKAY. WAS THE GUN STILL POINTED AT YOU AT THIS POINT IN
19 TIME?

20 A. YES, IT WAS.

21 Q. OKAY. WHAT DID HE DO WITH THE TOWEL THAT YOU GAVE HIM?

22 A. HE PROCEEDED TO WIPE DOWN THE ITEMS HE HAD TOUCHED.

23 Q. OKAY. AND WHAT ALL WERE THOSE ITEMS, IF YOU REMEMBER?

24 A. I WOULD SAY THE CASH REGISTER, COUNTER, AND AFTER HE
25 OPENED THE DOOR, THE DOORKNOB.

1 Q. OKAY. AND WAS THE DOOR -- NOW, YOU SAID EARLIER THAT
2 YOU LOCKED IT SO THAT PEOPLE COULDN'T COME IN. WAS HE ABLE
3 TO LEAVE WITHOUT UNLOCKING IT?

4 A. ON THE INSIDE YOU CAN DO THAT.

5 Q. OKAY. WHEN HE WAS LEAVING, DID YOU HAPPEN TO SAY
6 ANYTHING TO HIM?

7 A. YES.

8 Q. WHAT DID YOU TELL HIM?

9 A. I TOLD HIM, "YOUNG MAN, I'M GOING TO PRAY FOR YOU."

10 Q. DID HE SAY ANYTHING BACK TO YOU?

11 A. HE DID. HE SAID, "YES, PRAY FOR ME BECAUSE I'M GOING
12 STRAIGHT TO HELL."

13 Q. OKAY. WHAT DID YOU DO AFTER HE LEFT, MR. HUFF?

14 A. I CALLED 9-1-1 IMMEDIATELY.

15 Q. OKAY. ALL RIGHT. NOW, MR. HUFF, I WANT TO GO BACK AND
16 TALK TO YOU A LITTLE BIT ABOUT THE MAN THAT ROBBED YOU AND
17 THE GUN THAT WAS USED. WHAT KIND OF GUN WAS IT?

18 A. IT WAS A DERRINGER.

19 Q. HOW BIG WOULD YOU SAY IT IS?

20 A. JUST LIGHT ENOUGH TO HOLD -- YOU CAN HOLD IT IN THE PALM
21 OF YOUR HAND. IF YOU PUT THE OTHER HAND OVER IT, YOU
22 COULDN'T SEE IT.

23 THE COURT: LAWYERS, Y'ALL COME AROUND FOR JUST A
24 MOMENT.

25 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

1 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, IF YOU
2 WOULD PLEASE STEP TO YOUR JURY ROOM FOR JUST A MOMENT. YOU
3 MAY NOT DISCUSS CASE, AND WHEN YOU COME BACK IN, IF YOU WANT
4 TO BRING YOUR COFFEE OR WATER OR WHATEVER WITH YOU, THAT'S
5 PERFECTLY FINE.

6 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
7 11:54 A.M.)

8 THE COURT: ALL RIGHT. MR. HUFF, YOU CAN STEP DOWN FOR
9 JUST A MOMENT. YOU CAN'T DISCUSS THE CASE WITH ANYBODY.
10 OKAY? ALL RIGHT. THANK YOU, SIR. YOU CAN STEP DOWN.

11 ALL RIGHT. DO YOU WANT TO BE TALKING ABOUT -- YOU'RE
12 GOING TO BE TALKING ABOUT THE WEAPON OBVIOUSLY?

13 MR. SPRATLIN: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT. LET'S SET SOME GROUND RULES FOR
15 THAT. DO YOU HAVE THE WEAPON HERE?

16 MR. SPRATLIN: I DO, YOUR HONOR. IT'S IN POSSESSION OF
17 THE EVIDENCE CUSTODIAN, JIM ALSBROOK.

18 THE COURT: ALL RIGHT. MR. ALSBROOK, CAN YOU COME ON
19 UP, PLEASE, SIR?

20 MR. ALSBROOK: DO YOU WANT ME TO BRING THE WEAPON, SIR?

21 THE COURT: YES, SIR. CAN YOU CONFIRM FOR ME THAT IT'S
22 UNLOADED?

23 MR. ALSBROOK: IT IS, SIR.

24 THE COURT: OKAY. IS IT OPEN OR IS IT---

25 MR. ALSBROOK: IT'S OPEN.

1 THE COURT: IT WILL -- IT WILL REMAIN OPEN. MR.
2 SPRATLIN, THE WEAPON WILL REMAIN OPEN, AND YOU'VE CHECKED THE
3 -- ON A DERRINGER DO YOU CALL THAT A CHAMBER OR WHAT DO YOU
4 CALL THAT WHERE THE PROJECTILE COMES OUT? I KNOW THAT'S
5 THE---

6 MR. RICHBURG: THE CHAMBER OR THE BARREL.

7 MR. ALSBROOK: THE BARREL.

8 THE COURT: ALL BULLETS HAVE BEEN REMOVED AND SO FORTH.

9 MR. ALSBROOK: YES, SIR.

10 THE COURT: OKAY. NOW, YOU'RE GOING TO SHOW IT TO THE
11 WITNESS NOW TO ESTABLISH A FOUNDATION FOR ITS ADMISSIBILITY?

12 MR. SPRATLIN: WELL, YOUR HONOR, I INTEND ON CALLING --
13 I INTEND ON ADMITTING IT UNDER A DIFFERENT WITNESS, MR. KEN
14 NESBITT. I SIMPLY AM GOING TO INQUIRE OF THE WITNESS---

15 THE COURT: SHOW IT TO THIS WITNESS.

16 MR. SPRATLIN: YES, TO ESTABLISH THAT -- IF THIS IS A
17 SIMILAR GUN TO THE ONE THAT WAS USED IN THE ROBBERY.

18 THE COURT: ALL RIGHT. AND DURING ANY RECESS, ONCE IT'S
19 BEEN REFERRED TO, YOU CAN MARK IT WITH A STICKER FOR I.D.
20 PURPOSES, BUT THEY'RE GOING TO BE KEPT LOCKED IN A SECURED
21 CABINET, BUT ALL OTHER TIMES IT WILL BE KEPT UP HERE WITH THE
22 COURT REPORTER.

23 MR. SPRATLIN: YES, YOUR HONOR.

24 THE COURT: ALL RIGHT. OKAY.

25 MR. SPRATLIN: I WOULD LIKE TO GO AHEAD AND MARK IT AS A

1 STATE'S EXHIBIT.

2 THE COURT: ALL RIGHT. AND HANDLE IT BY THE BARREL, IF
3 YOU WILL.

4 MR. SPRATLIN: I WILL, YOUR HONOR.

5 THE COURT: OKAY. AND IF ANYBODY WANTS TO USE IT DURING
6 ANY CLOSING ARGUMENT, YOU NEED TO GET MY PERMISSION FIRST AND
7 CLEAR THAT WITH ME.

8 MR. SPRATLIN: YES, YOUR HONOR.

9 THE COURT: OKAY. WHAT WILL THIS BE? STATE'S NUMBER 3
10 FOR I.D.?

11 COURT REPORTER: NO, NUMBER 4.

12 MR. SPRATLIN: I BELIEVE NUMBER 4, YOUR HONOR.

13 THE COURT: AND AT SOME POINT IF YOU WANT TO -- I DON'T
14 KNOW IF ON A DERRINGER WHETHER OR NOT THERE'S ANYTHING TO
15 LOOP A STRING AROUND TO ATTACH A TAG TO, BUT RIGHT NOW YOU
16 CAN JUST PUT THE IDENTIFYING STICKER ON THE HANDLE OR ON A
17 STRING THAT WILL BE ATTACHED TO THE HANDLE.

18 MR. SPRATLIN: YES, YOUR HONOR.

19 THE COURT: OKAY. THIS IS NUMBER 4?

20 MR. SPRATLIN: IT IS, YOUR HONOR.

21 COURT REPORTER: IT'S NOT EVEN STICKING, JUDGE.

22 THE COURT: OKAY. SO WHAT WE CAN DO IS DURING A BREAK
23 -- IT'S MARKED FOR I.D. NOW. JUST GET A STRING AND ATTACH
24 THE STICKER TO IT, AND THEN IT WILL BE IN THAT FASHION.

25 OKAY. ALL RIGHT. Y'ALL READY FOR JURY?

1 MR. SPRATLIN: YES, YOUR HONOR.

2 MR. HASTIE: YES, SIR, YOUR HONOR. YOUR HONOR, OF
3 COURSE, I WOULD LIKE TO OBJECT TO THAT GUN COMING IN BECAUSE
4 OF THE PREJUDICIAL VALUE THAT IT WOULD HAVE UPON THE JURY AND
5 TO -- IT ALSO WAS PART OF THE SEARCH THAT I MENTIONED IN MY
6 EARLIER OBJECTION.

7 THE COURT: ALL RIGHT.

8 MR. HASTIE: SO I WOULD OBJECT AT THIS TIME.

9 THE COURT: THAT OBJECTION IS OVERRULED.

10 MR. SPRATLIN: YOUR HONOR, I ALSO INTEND ON THROUGH THIS
11 WITNESS ASKING HIM AGAIN, FOR DEMONSTRATION PURPOSES, IF
12 THESE -- THE PANTS THAT WERE TAKEN DURING THE SEARCH WARRANT
13 ARE SIMILAR TO THE PANTS THAT THE ROBBER WAS WEARING THAT
14 DAY.

15 THE COURT: ALL RIGHT. WELL, IT SUITS ME FINE THAT ONCE
16 YOU OBJECT TO THE GUN THAT THE OBJECTION TO ANYTHING FOUND
17 DURING THE SEARCH WILL CONTINUE..

18 MR. HASTIE: OKAY.

19 THE COURT: NOW, WHEN THE WITNESS IDENTIFIES MR. MASSEY,
20 YOU'LL HAVE TO RENEW YOUR IDENTIFICATION OBJECTIONS---

21 MR. HASTIE: YES, SIR.

22 THE COURT: ---AND THAT WILL RUN THROUGHOUT. BUT,
23 AGAIN, I WON'T TAKE ANY OFFENSE IF YOU THINK, WELL, MAYBE I
24 HAVEN'T DONE IT ENOUGH OR I HAVEN'T DONE IT RIGHT. DON'T
25 FEEL SELF-CONSCIOUS ABOUT STANDING UP BECAUSE I UNDERSTAND

1 WHAT YOU HAVE TO DO---

2 MR. HASTIE: YES, SIR.

3 THE COURT: ---AS FAR AS PRESERVING THE RECORD. OKAY.

4 MAKE SURE THAT ANY WITNESS WHO HOLDS THIS GUN -- FIRST OF
5 ALL, BEFORE YOU PASS IT TO A WITNESS, GET MY PERMISSION.

6 MR. SPRATLIN: YES, YOUR HONOR.

7 THE COURT: I WOULD PREFER THAT YOU NOT PASS IT TO MR.
8 HUFF.

9 MR. SPRATLIN: I DO NOT INTEND TO.

10 THE COURT: AND ANY OBJECTION TO ME TELLING THE LADIES
11 AND GENTLEMEN THAT THE WEAPON IS NOT LOADED AND THAT IT IS
12 BROKEN DOWN, SO TO SPEAK? OKAY? OR IT'S OPEN.

13 MR. SPRATLIN: THANK YOU, YOUR HONOR.

14 THE COURT: ALL RIGHT. YOU CAN BRING IN THE JURY.

15 (STATE'S EXHIBIT 4 WAS MARKED FOR IDENTIFICATION ONLY.)

16 BAILIFF: CAN MR. HUFF TAKE THE STAND, PLEASE?

17 THE COURT: YES, SIR. MR. HUFF, DO YOU WANT TO COME
18 BACK UP?

19 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
20 12:00 NOON.)

21 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, SOME
22 REFERENCE MAY BE MADE TO A FIREARM AT THIS POINT. I WANTED
23 TO MAKE SURE YOU UNDERSTAND THIS: IT IS UNLOADED AND IT WILL
24 BE IN AN OPEN POSITION AT ALL TIMES, AND IT WILL BE HANDLED
25 BY THE BARREL, AND ALL THE WITNESSES OR, EXCUSE ME, THE

1 ATTORNEYS HAVE BEEN INSTRUCTED IN THAT FASHION. SO I JUST
2 DIDN'T WANT YOU TO TAKE ANY OR HAVE ANY RESERVATIONS ABOUT
3 THAT. YOU CAN GO AHEAD, MR. SPRATLIN.

4 MR. SPRATLIN: THANK YOU, YOUR HONOR.

5 BY MR. SPRATLIN:

6 Q. NOW, MR. HUFF, YOU MENTIONED -- PLEASE DESCRIBE FOR THE
7 JURY AGAIN WHAT KIND OF GUN WAS IT THAT WAS USED DURING THE
8 ROBBERY.

9 A. IT WAS A SMALL DERRINGER.

10 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S
11 EXHIBIT -- FOR IDENTIFICATION STATE'S EXHIBIT NUMBER 4.
12 I'M -- I'M NOT ALLOWED TO HAND IT TO YOU, BUT JUST LOOKING AT
13 IT: DOES THIS APPEAR TO BE A GUN OR THE GUN OR SIMILARLY --
14 OR A SIMILAR GUN TO THE ONE THAT WAS USED IN THE ROBBERY?

15 A. IT'S BLACK JUST LIKE THE ONE THERE---

16 Q. OKAY.

17 A. ---THAT I HAD POINTED IN MY FACE. YES, IT SEEMS TO BE
18 THE RIGHT GUN.

19 MR. SPRATLIN: OKAY. YOUR HONOR, PERMISSION TO TURN THE
20 FIREARM OVER TO THE COURT REPORTER?

21 THE COURT: ALL RIGHT. AND THE I.D. TAG WILL STAY ON
22 THE HANDLE.

23 MR. SPRATLIN: YES, YOUR HONOR, AND WE WILL GET A
24 STRING.

25 THE COURT: OKAY.

1 BY MR. SPRATLIN:

2 Q. NOW, MR. HUFF, HOW GOOD A LOOK DURING THE ROBBERY DID
3 YOU GET AT THE PISTOL?

4 A. OH, IT WAS RIGHT IN MY FACE. I COULDN'T HELP BUT SEE
5 IT.

6 Q. OKAY. HOW LONG WAS IT IN YOUR FACE?

7 A. THE WHOLE TIME.

8 Q. OKAY. AND HOW LONG WOULD YOU ESTIMATE THE ROBBERY TOOK
9 PLACE?

10 A. I WOULD SAY FIVE TO SIX MINUTES HE WAS IN AND OUT. IT
11 WAS DONE.

12 Q. NOW, WHEN YOU SAY IT WAS IN YOUR FACE, HOW CLOSE TO YOU
13 WAS THE PISTOL?

14 A. ARM'S LENGTH.

15 Q. WAS IT YOUR ARM'S LENGTH AWAY---

16 A. HUH?

17 Q. ---OR...

18 A. HUH?

19 Q. HOW FAR FROM YOUR FACE WOULD YOU SAY THE BARREL OF THE
20 PISTOL WAS?

21 A. OH, FROM MY FACE?

22 Q. YES, SIR.

23 A. OH, WELL, IT WAS ABOUT -- YES, I WOULD -- NOT ARM'S
24 LENGTH, MY ARM'S LENGTH, BUT HE HAD -- THE LENGTH OF HIS ARM
25 HE WAS -- HE WAS FROM ME THE LENGTH OF HIS ARM, SO HE WAS

1 RIGHT IN MY FACE WITH THE PISTOL.

2 Q. OKAY. SO THE GENTLEMAN HOLDING THE PISTOL WAS AT ARM'S
3 LENGTH FROM YOU.

4 A. YES.

5 Q. OKAY.

6 A. THAT'S WHAT IT WAS.

7 Q. AND WOULD YOU -- COULD YOU PROVIDE AN ESTIMATE FOR THE
8 COURT ON HOW FAR AWAY THE BARREL OF THE GUN WAS FROM YOUR
9 FACE?

10 A. OKAY. I WOULD SAY IT WASN'T TOUCHING BUT, SAY, FROM SIX
11 TO EIGHT.

12 Q. SIX OR EIGHT?

13 A. INCHES AWAY FROM MY FACE.

14 Q. OKAY. NOW, THE MAN WHO WAS HOLDING THAT GUN IN YOUR
15 FACE, WAS HIS FACE OBSCURED IN ANY WAY?

16 A. NO, HIS FACE WAS NOT OBSCURED IN ANY WAY.

17 Q. DID IT APPEAR TO YOU THAT HE WAS DOING ANYTHING TO TRY
18 TO HIDE HIS IDENTITY?

19 A. NO, HE WAS NOT TRYING TO HIDE HIS IDENTITY.

20 Q. OKAY. DID HE HAVE ON A HAT OR ANYTHING AS SUCH?

21 A. HE HAD ON A DOO RAG, WE CALL IT.

22 Q. NOW, WHEN YOU SAY DOO RAG, WHAT DO YOU MEAN?

23 A. IT'S A HEAD RAG THAT'S GOT A LONG STRING -- STRAP ON IT
24 THAT YOU TIE AROUND YOUR HEAD.

25 Q. OKAY. DOES THAT COVER UP THE FACE AT ALL?

1 A. NO, IT DID NOT.

2 Q. OKAY. NOW, SIR, HOW GOOD OF A LOOK WOULD YOU SAY YOU
3 GOT AT THE FACE OF THE PERSON THAT ROBBED YOU?

4 A. I GOT A GOOD LOOK AT THE FACE BECAUSE, LIKE I SAID, HIS
5 FACE WASN'T COVERED ENOUGH TO SEE THAT HE HAD EARRINGS ON. I
6 SAW AN EARRING ON, BUT I DIDN'T SEE TWO EARRINGS.

7 Q. OKAY. AND NOW DO YOU SEE THE INDIVIDUAL THAT WAS
8 HOLDING THAT GUN IN FRONT OF YOUR FACE? DO YOU SEE HIM IN
9 THE COURTROOM TODAY?

10 A. YES, SIR, I DO.

11 MR. HASTIE: OBJECTION, YOUR HONOR.

12 THE COURT: ALL RIGHT. THE OBJECTION IS OVERRULED.

13 BY MR. SPRATLIN:

14 Q. WOULD YOU PLEASE POINT THAT PERSON OUT AND DESCRIBE AN
15 ARTICLE OF CLOTHING THAT HE IS WEARING?

16 A. YES, THE YOUNG MAN SITTING RIGHT OVER THERE IN THE SEAT
17 WITH THE BROWN PANTS ON, THE WHITE SHIRT, THE GRAY-AND-BLACK
18 TIE WITH HIS HANDS LACED.

19 Q. OKAY. PLEASE LET THE RECORD REFLECT THAT THE WITNESS
20 HAS IDENTIFIED THE DEFENDANT. NOW, DURING THE ROBBERY, WHAT,
21 IF ANY, DISTINGUISHING MARKS OR TATTOOS DID YOU NOTICE ON THE
22 DEFENDANT -- ON THE DEFENDANT?

23 A. OKAY. I DISTINCTLY SAW UP ON THE SHOULDER HERE A ROUND
24 CIRCLE WITH POINTS AROUND IT.

25 Q. OKAY. AND WAS THAT HIS RIGHT OR LEFT SHOULDER?

1 A. THAT WAS THE LEFT SHOULDER.

2 Q. OKAY.

3 (STATE'S EXHIBIT 5 WAS MARKED FOR IDENTIFICATION ONLY.)

4 MR. SPRATLIN: PERMISSION TO APPROACH THE WITNESS, YOUR
5 HONOR?

6 THE COURT: YES, SIR.

7 BY MR. SPRATLIN:

8 Q. MR. HUFF, WOULD YOU MIND TAKING THAT PHOTOGRAPH FOR A
9 SECOND?

10 A. (THE WITNESS COMPLIES.)

11 Q. WHAT IS THAT -- THE ITEM PICTURED IN THAT PHOTOGRAPH,
12 DOES APPEAR TO YOU TO BE A SIMILAR TATTOO TO THE ONE YOU SAW
13 THAT DAY?

14 A. IT IS.

15 Q. OKAY. AND, YOUR HONOR, I'D LIKE TO SHOW IT FOR THE
16 RECORD THAT I'M SHOWING WHAT'S BEEN MARKED FOR IDENTIFICATION
17 PURPOSES AS STATE'S EXHIBIT NUMBER 5. I WILL TENDER IT INTO
18 EVIDENCE AT A LATER TIME, BUT FOR NOW LET'S MARK IT AS
19 IDENTIFICATION PURPOSES. OKAY. NOW, MR. HUFF, YOU WEAR
20 GLASSES OBVIOUSLY; CORRECT?

21 A. YES, I WEAR GLASSES.

22 Q. ARE YOU ABLE TO SEE TODAY?

23 A. YES, I AM.

24 Q. DO YOU FEEL THAT YOUR VISION IS IN ANY WAY IMPAIRED?

25 A. NO, IT'S NOT.

1 Q. OKAY. BACK ON JUNE 7TH, 2007, WERE YOU WEARING GLASSES?

2 A. YES, I WERE.

3 Q. OKAY. WAS IT THE SAME PAIR OF GLASSES?

4 A. IT'S THE SAME PAIR.

5 Q. DID YOU HAPPEN TO NOTICE -- BESIDES THE TATTOO, BESIDES
6 THE EARRING AND THE HEAD SCARF, DID YOU HAPPEN TO NOTICE WHAT
7 KIND OF CLOTHING THE PERSON THAT ROBBED YOU -- WHAT THEY WERE
8 WEARING?

9 A. YES. HE HAD ON A TANK TOP SHIRT WITH -- THEN HE HAD ON
10 BLACK PANTS A WHITE STRIPE DOWN THEM.

11 Q. OKAY.

12 THE COURT: MR. HASTIE, YOUR OBJECTION WILL CONTINUE AS
13 TO THESE ITEMS AS WELL.

14 MR. HASTIE: THANK YOU, YOUR HONOR.

15 (STATE'S EXHIBIT 6 WAS MARKED FOR IDENTIFICATION ONLY.)
16 BY MR. SPRATLIN:

17 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS
18 WHAT HAS BEEN MARKED FOR IDENTIFICATION PURPOSES AT THIS TIME
19 AS STATE'S EXHIBIT NUMBER 6. MR. HUFF, THIS PAIR OF PANTS,
20 DOES THIS APPEAR TO BE EITHER THE SAME PANTS OR A
21 SUBSTANTIALLY SIMILAR PAIR OF PANTS AS THE PERSON THAT ROBBED
22 YOU THAT DAY WAS WEARING?

23 A. THEY SEEM TO BE THE SAME PANTS.

24 Q. WOULD YOU NEED TO HOLD THEM OR HAVE A CLOSER LOOK AT
25 THEM?

1 A. NO, I DON'T.

2 Q. OKAY. BEG THE COURT'S INDULGENCE FOR ONE SECOND. NOW,
3 JUST FOR CLARIFICATION, SIR, DID YOU FEEL THAT IF YOU DIDN'T
4 DO EVERYTHING THAT MAN TOLD YOU THAT HE WOULD SHOOT YOU?

5 A. OH, I FEEL THAT HE WOULD HAVE DONE JUST WHAT HE SAID HE
6 WOULD DO.

7 Q. OKAY. THANK YOU, SIR. THAT'S -- ACTUALLY, I DO HAVE A
8 COUPLE MORE QUESTIONS. I ACTUALLY... CAN I GET THESE
9 MARKED?

10 (STATE'S EXHIBITS 7 THROUGH 19 WERE MARKED FOR
11 IDENTIFICATION ONLY.)

12 MR. SPRATLIN: YOUR HONOR, PERMISSION TO APPROACH?

13 THE COURT: YES, SIR.

14 BY MR. SPRATLIN:

15 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS
16 WHAT HAS BEEN MARKED AS STATE'S EXHIBIT NUMBER 7 AT THIS
17 POINT FOR IDENTIFICATION PURPOSES. MR. HUFF, CAN YOU TELL
18 THE COURT WHAT THAT IS A PHOTOGRAPH OF?

19 A. YES. THIS IS THE PHOTOGRAPH OF THE TOTAL LIVING STORE,
20 25 DUGAN STREET.

21 Q. IS THAT A FAIR AND ACCURATE REPRESENTATION OF HOW THE
22 TOTAL LIVING STORE APPEARED BACK ON JUNE 7TH---

23 A. YES, IT IS.

24 Q. ---2007?

25 A. YES.

1 MR. SPRATLIN: YOUR HONOR, AT THIS TIME I WOULD TENDER
2 THAT PHOTOGRAPH INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 7.

3 THE COURT: ANY OBJECTION?

4 MR. HASTIE: NONE, YOUR HONOR.

5 THE COURT: ALL RIGHT. NUMBER 7 IS IN WITHOUT
6 OBJECTION.

7 (STATE'S EXHIBIT 7 WAS RECEIVED IN EVIDENCE.)

8 MR. SPRATLIN: THANK YOU, YOUR HONOR.

9 BY MR. SPRATLIN:

10 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS
11 WHAT HAS BEEN MARKED STATE'S EXHIBIT NUMBER 8 FOR
12 IDENTIFICATION PURPOSES. SIR, COULD YOU PLEASE TELL THE
13 COURT WHAT THAT IS A PHOTOGRAPH OF?

14 A. THIS IS -- THIS PHOTOGRAPH IS OF THE MEN'S SECTION OF
15 THE TOTAL LIVING STORE.

16 Q. IS THAT A FAIR AND ACCURATE REPRESENTATION OF THE WAY
17 THE STORE APPEARED ON JUNE 7TH, 2007?

18 A. YES, IT IS.

19 MR. SPRATLIN: AT THIS TIME, YOUR HONOR, I WOULD TENDER
20 THAT PHOTOGRAPH INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 8.

21 MR. HASTIE: NO OBJECTION.

22 THE COURT: ALL RIGHT. THAT'S IN.

23 (STATE'S EXHIBIT 8 WAS RECEIVED IN EVIDENCE.)

24 BY MR. SPRATLIN:

25 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS

1 WHAT HAS BEEN MARKED STATE'S EXHIBIT NUMBER 9 FOR
2 IDENTIFICATION PURPOSES. SIR, WOULD YOU PLEASE TELL THE
3 COURT WHAT THAT IS A PHOTOGRAPH OF?

4 A. OKAY. THIS IS A PHOTOGRAPH OF BEHIND THE COUNTER, THE
5 COUNTER, THE CASH REGISTER.

6 Q. AND IS THAT A FAIR AND ACCURATE REPRESENTATION OF HOW
7 EVERYTHING APPEARED ON JUNE 7TH, 2007?

8 A. YES, IT IS.

9 MR. SPRATLIN: YOUR HONOR, AT THIS TIME I WOULD TENDER
10 THAT PHOTOGRAPH INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 9.

11 THE COURT: ANY OBJECTION?

12 MR. HASTIE: NONE, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 (STATE'S EXHIBIT 9 WAS RECEIVED IN EVIDENCE.)

15 THE COURT: THAT'S A PHOTO OF WHAT?

16 MR. SPRATLIN: THE CASH REGISTER, YOUR HONOR. IT'S THE
17 CASH REGISTER AND THE COUNTER.

18 THE COURT: OKAY.

19 BY MR. SPRATLIN:

20 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS
21 WHAT HAS BEEN MARKED STATE'S EXHIBIT NUMBER 10 FOR
22 IDENTIFICATION PURPOSES. SIR, COULD YOU PLEASE TELL THE
23 COURT WHAT THAT IS A PHOTOGRAPH OF?

24 A. OKAY. THIS IS THE FRONT VIEW OF THE CASH REGISTER FROM
25 THE PURCHASER'S SIDE OF THE COUNTER.

1 Q. IS THAT, SIR, A PICTURE -- IS THAT PICTURE A FAIR AND
2 ACCURATE REPRESENTATION---

3 A. YES.

4 Q. ---OF HOW IT APPEARED ON JUNE 7TH?

5 A. YES, IT IS.

6 MR. SPRATLIN: THANK YOU. AT THIS TIME, YOUR HONOR, I
7 WOULD TENDER THIS PHOTOGRAPH INTO EVIDENCE AS STATE'S EXHIBIT
8 NUMBER 10.

9 MR. HASTIE: NO OBJECTION, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 (STATE'S EXHIBIT 10 WAS RECEIVED IN EVIDENCE.)

12 BY MR. SPRATLIN:

13 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS
14 WHAT HAS BEEN MARKED STATE'S EXHIBIT NUMBER 11 FOR
15 IDENTIFICATION PURPOSES. SIR, WOULD YOU PLEASE TELL THE
16 COURT WHAT THAT IS A PHOTOGRAPH OF?

17 A. OKAY. THIS IS THE SUITS THAT'S ON A RACK.

18 Q. OKAY. AND WHERE WAS THAT PHOTOGRAPH TAKEN, IF YOU KNOW?

19 A. THIS IS ON THE LEFT SIDE OF THE STORE AS YOU GO IN THE
20 DOOR.

21 Q. AND IS---

22 A. IT'S THE MEN'S SUIT RACK.

23 Q. AND, AGAIN, IS THAT A FAIR AND ACCURATE REPRESENTATION
24 OF HOW IT APPEARED ON JUNE 7TH, 2007?

25 A. IT IS.

1 MR. SPRATLIN: THANK YOU. AT THIS TIME, YOUR HONOR, I
2 WOULD TENDER THAT PHOTOGRAPH INTO EVIDENCE AS STATE'S EXHIBIT
3 NUMBER 11.

4 MR. HASTIE: WITHOUT OBJECTION.

5 THE COURT: IT'S IN. NO OBJECTION.

6 (STATE'S EXHIBIT 11 WAS RECEIVED IN EVIDENCE.)

7 BY MR. SPRATLIN:

8 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS
9 WHAT HAS BEEN MARKED STATE'S EXHIBIT NUMBER 12. SIR, COULD
10 YOU PLEASE DESCRIBE FOR THE COURT WHAT THAT IS A PHOTOGRAPH
11 OF?

12 A. OKAY. THIS IS ANOTHER MEN'S SUIT RACK WITH SHOES DOWN
13 AT THE BOTTOM OF IT, YES.

14 Q. AND IS THAT A FAIR AND ACCURATE REPRESENTATION OF THE
15 TOTAL LIVING STORE ON JUNE 7TH, 2007?

16 A. THIS IS.

17 MR. SPRATLIN: AT THIS TIME, YOUR HONOR, I'D MOVE---

18 THE COURT: ANY OBJECTION TO THAT?

19 MR. HASTIE: NONE, YOUR HONOR.

20 THE COURT: OKAY. IT'S IN.

21 MR. SPRATLIN: I WOULD ENTER IT AS STATE'S EXHIBIT
22 NUMBER 12.

23 (STATE'S EXHIBIT 12 WAS RECEIVED IN EVIDENCE.)

24 BY MR. SPRATLIN:

25 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS

1 WHAT'S BEEN MARKED AS STATE'S EXHIBIT 13 FOR IDENTIFICATION
2 PURPOSES. COULD YOU BRIEFLY DESCRIBE TO THE COURT WHAT THAT
3 IS A PHOTOGRAPH OF?

4 A. OKAY. THIS IS THE FULL LEFT SIDE -- CORRECTION. I'M
5 SAYING LEFT SIDE, BUT IT'S THE FULL RIGHT SIDE OF THE STORE.
6 I KEEP SAYING LEFT SIDE, BUT THIS IS THE FULL RIGHT SIDE OF
7 THE STORE.

8 Q. AND IS THAT A FAIR AND ACCURATE REPRESENTATION OF HOW
9 THE STORE APPEARED ON JUNE 7TH, 2007?

10 A. YES, IT IS.

11 MR. SPRATLIN: AT THIS TIME I TENDER THAT INTO EVIDENCE,
12 YOUR HONOR, AS NUMBER 13.

13 THE COURT: NO OBJECTION?

14 MR. HASTIE: NO OBJECTION.

15 (STATE'S EXHIBIT 13 WAS RECEIVED IN EVIDENCE.)

16 BY MR. SPRATLIN:

17 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS
18 WHAT HAS BEEN MARKED STATE'S EXHIBIT 14 FOR IDENTIFICATION
19 PURPOSES. WOULD YOU PLEASE BRIEFLY, MR. HUFF, DESCRIBE TO
20 THE COURT WHAT THAT IS A PHOTOGRAPH OF?

21 A. OKAY. THIS IS A SHOE RACK. IT'S LADIES' SHOES, AND
22 IT'S RIGHT AT THE EDGE OF THE SUIT RACK ON THE RIGHT SIDE OF
23 THE STORE.

24 Q. OKAY. AND, MR. HUFF, IS THAT A FAIR AND ACCURATE
25 REPRESENTATION OF HOW THE STORE APPEARED ON JUNE THE 7TH,

1 2007?

2 A. YES, IT IS.

3 THE COURT: ANY OBJECTION?

4 MR. HASTIE: NONE, YOUR HONOR.

5 THE COURT: THAT'S NUMBER 14.

6 MR. SPRATLIN: THANK YOU, YOUR HONOR.

7 (STATE'S EXHIBIT 14 WAS RECEIVED IN EVIDENCE.)

8 BY MR. SPRATLIN:

9 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS
10 WHAT HAS BEEN MARKED NUMBER 15 FOR IDENTIFICATION PURPOSES.
11 COULD YOU PLEASE TELL THE COURT WHAT THAT IS A PHOTOGRAPH OF?

12 A. OKAY. THIS ALMOST A FULL VIEW OF THE STORE. IT IS
13 SHOWING THE JEWELRY RACK AND THE WHOLE RIGHT SIDE AS A
14 PORTION OF THE LEFT SIDE AND THE AISLE -- IT'S IN THE AISLE
15 OF THE STORE.

16 Q. IS THAT A FAIR AND ACCURATE REPRESENTATION OF HOW THE
17 STORE APPEARED ON JUNE THE 7TH, 2007?

18 A. YES, IT IS.

19 THE COURT: ANY OBJECTION TO THAT?

20 MR. HASTIE: NONE, YOUR HONOR.

21 MR. SPRATLIN: YOUR HONOR, I BELIEVE THAT WOULD BE
22 NUMBER 15.

23 (STATE'S EXHIBIT 15 WAS RECEIVED IN EVIDENCE.)

24 BY MR. SPRATLIN:

25 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS

1 WHAT HAS BEEN MARKED NUMBER 16 FOR IDENTIFICATION PURPOSES.

2 WHAT IS THAT A PHOTOGRAPH OF, SIR?

3 A. THIS IS A FLOWER IDENTIFIED -- I USED TO KNOW THE NAME
4 OF IT, BUT RIGHT NOW I CAN'T PULL THE NAME OF IT UP. BUT
5 IT'S AN AFRICAN PLANT THAT IS IN THE LEFT SIDE OF THE STORE
6 AS YOU COME IN THE STORE.

7 Q. AND IS THAT A FAIR AND ACCURATE REPRESENTATION OF HOW
8 THE STORE APPEARED ON JUNE THE 7TH?

9 A. YES, IT IS.

10 MR. SPRATLIN: THANK YOU. I TENDER THAT INTO EVIDENCE,
11 YOUR HONOR, AS STATE'S EXHIBIT 16.

12 THE COURT: ALL RIGHT. THAT'S IN WITHOUT OBJECTION.

13 (STATE'S EXHIBIT 16 WAS RECEIVED IN EVIDENCE.)

14 BY MR. SPRATLIN:

15 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS
16 WHAT HAS BEEN MARKED NUMBER 17 FOR IDENTIFICATION PURPOSES.
17 WOULD YOU BRIEFLY DESCRIBE THAT PHOTOGRAPH FOR THE JURY AND
18 THE COURT?

19 A. OKAY. THIS IS THE WOMEN'S CLOTHING DEPARTMENT --
20 SECTION, AND IT IS ON THE LEFT SIDE. NOW, THIS IS ON THE
21 LEFT SIDE OF THE STORE.

22 Q. OKAY. IS THAT A FAIR AND ACCURATE REPRESENTATION OF HOW
23 THE STORE APPEARED---

24 A. YES.

25 Q. ---ON JUNE THE 7TH?

1 A. IT IS.

2 THE COURT: ANY OBJECTION TO THAT?

3 MR. HASTIE: I HAVE NONE.

4 (STATE'S EXHIBIT 17 WAS RECEIVED IN EVIDENCE.)

5 MR. SPRATLIN: YOUR HONOR, AT THIS TIME LET THE RECORD
6 SHOW -- REFLECT THAT I'M SHOWING THE WITNESS WHAT HAS BEEN
7 MARKED STATE'S EXHIBIT NUMBER 18 FOR IDENTIFICATION---

8 THE COURT: YOU CAN JUST SAY THAT YOU'RE HANDING IT TO
9 HIM. THE RECORD WILL JUST GO BY WHAT YOU SAY.

10 MR. SPRATLIN: YES, YOUR HONOR.

11 BY MR. SPRATLIN:

12 Q. WHAT IS THAT A PHOTOGRAPH OF, MR. HUFF?

13 A. OKAY. THIS IS A -- I SEE A GLASS COUNTER WHICH IT'S ON
14 THE LEFT SIDE, AND THIS IS THE FLOWER PLANT AND THE WOMEN'S
15 RACK THAT'S ON THE LEFT SIDE OF THE STORE.

16 Q. IS THAT A FAIR AND ACCURATE REPRESENTATION OF THE STORE
17 ON JUNE 7TH, 2007?

18 A. YES, IT IS.

19 Q. THANK YOU.

20 THE COURT: ANY OBJECTION?

21 MR. HASTIE: NONE, YOUR HONOR.

22 (STATE'S EXHIBIT 18 WAS RECEIVED IN EVIDENCE.)

23 BY MR. SPRATLIN:

24 Q. AND FINALLY, MR. HUFF, STATE'S 19, COULD YOU PLEASE
25 DESCRIBE THAT PHOTOGRAPH FOR THE JURY---

1 A. OKAY.

2 Q. ---AND THE COURT?

3 A. THIS IS ANOTHER VIEW OF THE WOMEN'S AREA, AND IT IS ON
4 THE LEFT SIDE OF THE STORE.

5 Q. AND IS THAT A FAIR AND ACCURATE REPRESENTATION OF HOW
6 THE STORE APPEARED---

7 A. YES, IT IS.

8 Q. ---ON JUNE THE 7TH?

9 THE COURT: ANY OBJECTION TO THAT?

10 MR. HASTIE: NONE, YOUR HONOR.

11 THE COURT: OKAY. THAT'S IN.

12 (STATE'S EXHIBIT 19 WAS RECEIVED IN EVIDENCE.)

13 BY MR. SPRATLIN:

14 Q. NOW, MR. HUFF, THE ONE THING THAT STRUCK ME WHEN I WAS
15 LOOKING AT THESE PHOTOGRAPHS: THIS TOTAL LIVING IS NOT A
16 VERY LARGE STORE, WAS IT?

17 A. NO, IT'S NOT.

18 Q. OKAY. SO WITH TWO PEOPLE IN THE STORE, THE DEFENDANT
19 WOULD NEVER HAVE BEEN VERY FAR FROM YOU, WOULD HE?

20 A. HE WOULDN'T HAVE.

21 MR. SPRATLIN: OKAY. THANK YOU. YOUR HONOR, PERMISSION
22 TO PUBLISH THESE EXHIBITS TO THE JURY?

23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, IF A
24 PHOTOGRAPH OR EXHIBIT IS PUBLISHED TO YOU, THAT MEANS IT'S
25 SIMPLY BEING SHOWN TO YOU. YOU MAY PASS IT THROUGH THE JURY

1 BOX OR BETWEEN EACH OTHER, BUT PLEASE MAKE SURE THAT YOU
2 CONTINUE TO PAY VERY CLOSE ATTENTION TO THE TESTIMONY OF THE
3 WITNESSES.

4 MR. SPRATLIN: I'LL START OVER HERE. THAT'S ALL THE
5 QUESTIONS I HAVE FOR MR. HUFF RIGHT NOW.

6 THE COURT: ALL RIGHT. MR. HASTIE, WOULD YOU LIKE TO
7 WAIT UNTIL THE EXHIBITS HAVE BEEN PASSED THROUGH THE JURY
8 BOX?

9 MR. HASTIE: YES, I WOULD, YOUR HONOR.

10 THE COURT: ALL RIGHT. WHILE THEY'RE DOING THAT,
11 LAWYERS, IF YOU WOULD COME AROUND FOR JUST A SECOND.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

13 THE COURT: ALL RIGHT. MR. HASTIE?

14 MR. HASTIE: THANK YOU, YOUR HONOR.

15 CROSS-EXAMINATION

16 BY MR. HASTIE:

17 Q. GOOD AFTERNOON, MR. HUFF.

18 A. GOOD AFTERNOON.

19 Q. NOW, THE STORE THAT YOU WORKED AT, HOW LONG HAD YOU
20 WORKED AT THE STORE BEFORE THIS INCIDENT HAPPENED?

21 A. A YEAR AND EIGHT MONTHS I WAS WORKING AT THAT -- BEFORE
22 THE INCIDENT HAPPENED, I WOULD SAY A YEAR AND ABOUT SEVEN
23 MONTHS BEFORE THE INCIDENT HAPPENED.

24 Q. OKAY. OKAY. DURING YOUR TIME AT THE STORE, HAS THE
25 STORE EVER BEEN ROBBED BEFORE?

1 A. NO.

2 Q. NEVER ROBBED BEFORE. NOW, WHO IS THE OWNER OF THE
3 STORE?

4 A. RANDOLPH BLACK AND REVEREND BLACK.

5 Q. SO YOU WERE HIRED BY THE BLACKS TO WORK AT THE STORE?

6 A. YES.

7 Q. OKAY. LET'S LOOK AT THE DAY THAT THIS INCIDENT
8 HAPPENED. YOU SAID THERE WERE OTHER PEOPLE IN THE STORE.
9 THERE WAS A LADY WITH HER THREE CHILDREN, I BELIEVE YOU
10 TESTIFIED TO?

11 A. YES.

12 Q. DID YOU KNOW THAT LADY---

13 A. BY NAME, NO, I DID NOT.

14 Q. ---BY NAME? AND HAD SHE BEEN A CUSTOMER IN YOUR STORE
15 BEFORE, THIS LADY AND HER THREE CHILDREN?

16 A. I DON'T THINK SO.

17 Q. YOU DON'T RECALL HER.

18 A. I DON'T RECALL.

19 Q. BUT THERE WAS SOMEONE IN THE STORE THAT YOU KNEW AND
20 THAT WAS MS. CAROL BRUNSON? IS THAT CORRECT?

21 A. THAT'S THE LADY WITH THE THREE CHILDREN THAT I WAS
22 TALKING ABOUT; I DIDN'T KNOW HER. WE INTRODUCED OURSELVES IN
23 THE STORE.

24 Q. WAS THAT MS. CAROL BRUNSON?

25 A. THAT'S CORRECT.

1 Q. OH, OKAY. SO YOU'D JUST MET HER IN THE STORE.

2 A. UH-HUH.

3 Q. OKAY. WHAT DID MS. BRUNSON -- WHAT WAS SHE WEARING THAT
4 DAY?

5 A. NOW, TWO YEARS BACK, I WOULDN'T SWEAR TO WHAT SHE WAS
6 WEARING THAT DAY.

7 Q. HOW MANY CHILDREN DID SHE HAVE? HOW MANY CHILDREN? DID
8 SHE HAVE THREE, YOU SAID?

9 A. YES.

10 Q. YOU THINK THREE. WHAT WERE HER CHILDREN WEARING THAT
11 DAY?

12 A. I WOULDN'T SWEAR TO THAT EITHER.

13 Q. BUT YOU HAVE SWORN THAT YOU REMEMBER WHAT MR. MASSEY WAS
14 WEARING THAT DAY. IS THAT CORRECT?

15 A. YES, I DO. I DO REMEMBER THAT BECAUSE I DESCRIBED IT TO
16 THE OFFICERS WHEN THEY CAME AND ASKED ME. THAT'S WHY I COULD
17 REMEMBER THAT, YES.

18 Q. DID YOU SEE MR. MASSEY -- HAVE YOU SEEN MR. MASSEY
19 BEFORE THIS DAY?

20 A. HAVE I SEEN HIM?

21 Q. SEEN HIM, YES, SIR.

22 A. I'VE SEEN HIM A NUMBER OF TIMES BACKWARDS AND FORTH IN
23 GOING -- YES.

24 Q. BUT YOU DIDN'T KNOW -- DID YOU KNOW MR. MASSEY?

25 A. NO. NO.

1 Q. YOU DIDN'T KNOW HIM.

2 A. HUH-UH.

3 Q. OKAY. NOW, AFTER THIS ROBBERY, DID THE POLICE EVER COME
4 AND SHOW YOU A LINE-UP AT ALL?

5 A. NO, THEY DID NOT.

6 Q. SO THEY DIDN'T SHOW YOU A LINE-UP AT ALL, DID THEY?

7 A. NO.

8 Q. AND YOU REALLY DIDN'T KNOW MR. MASSEY PRIOR TO THIS
9 INCIDENT.

10 A. NO, I DID NOT.

11 Q. YOU HAD NO IDEA WHO HE WAS.

12 A. NO.

13 Q. NO LINE-UP WAS SHOWN; RIGHT? SO YOUR FIRST
14 IDENTIFICATION OF MR. MASSEY THEN WAS IN THIS COURTROOM TODAY
15 SINCE THAT INCIDENT?

16 A. MY FIRST IDENTIFICATION OF MR. MASSEY WAS IN THIS
17 COURTROOM?

18 Q. YES. YOUR FIRST TIME SEEING HIM AFTER THE INCIDENT WAS
19 IN THE COURTROOM TODAY.

20 A. THE FIRST TIME SEEING HIM AFTER THE INCIDENT---

21 Q. YES, SIR.

22 A. ---WAS IN THIS COURTROOM, YES. OKAY. AFTER THE
23 INCIDENT.

24 Q. AFTER THE INCIDENT WAS THIS IN-COURT IDENTIFICATION.

25 A. IN THE COURTROOM, YES.

1 Q. NOW, LET'S TALK ABOUT THE ROBBERY ITSELF. YOU SAID HE
2 APPROACHED YOU WITH A DERRINGER IN HIS HAND. CORRECT?

3 A. YES.

4 Q. WHICH HAND WAS THE DERRINGER IN? DO YOU RECALL?

5 A. NOW, YOU'RE SAYING WHICH HAND WAS THE DERRINGER IN? THE
6 DERRINGER WAS IN MY FACE. I MEAN, AS FAR AS WHICH HAND THE
7 DERRINGER WAS IN, I WAS ASSUMING IT WAS IN THE RIGHT HAND.

8 Q. YOU THINK IT MIGHT HAVE BEEN IN THE RIGHT HAND.

9 A. UH-HUH.

10 Q. AND HE ASKED YOU DID YOU HAVE ANY MONEY. HE TOOK MONEY
11 FROM YOU; CORRECT?

12 A. YES.

13 Q. HOW MUCH MONEY DID HE TAKE FROM YOU?

14 A. TWENTY AND TWO DOLLARS.

15 Q. TWENTY AND TWO DOLLARS.

16 A. THAT WAS A WAD.

17 Q. THAT WAS A WAD. SO HE HAD A DERRINGER IN HIS RIGHT
18 HAND. YOU WERE IN THE STORE. YOU WEREN'T BEHIND THE
19 COUNTER. YOU WERE IN THE STORE AT THAT TIME.

20 A. I WAS IN -- YEAH, WE WAS IN THE AISLE.

21 Q. THE GUN WAS IN YOUR FACE. AND DID HE REACH IN YOUR
22 POCKET FOR YOUR WALLET OR YOU GAVE HIM YOUR WALLET?

23 A. NO, HE REACHED IN AND GOT IT HIMSELF.

24 Q. HE PROBABLY REACHED IN WITH HIS LEFT HAND AND TOOK YOUR
25 WALLET.

1 A. WELL, THAT'S PROBABLY... IF THE GUN WAS IN THE RIGHT
2 HAND, HE WOULD HAVE TO REACH WITH HIS LEFT HAND AND GET IT.

3 Q. OKAY. THEN HE ASKED YOU, "LET'S GO TO THE CASH
4 REGISTER." CORRECT?

5 A. YES.

6 Q. OKAY. YOU WENT TO THE CASH REGISTER. HOW MUCH MONEY
7 WAS TAKEN FROM THE CASH REGISTER?

8 A. IT WAS \$389. I'D ALREADY COUNTED THE MONEY UP.

9 Q. YOU COUNTED THE MONEY UP?

10 A. UH-HUH.

11 Q. DO YOU ALL HAVE RECEIPTS TO -- HAVE THE RECEIPTS TO SHOW
12 THAT THAT AMOUNT OF MONEY WAS TAKEN OR THAT AMOUNT OF MONEY
13 WAS -- THOSE ITEMS WERE SOLD FOR THAT AMOUNT OF MONEY THAT
14 DAY? DO YOU HAVE ANY RECEIPTS OF THE MONEY?

15 A. WE HAVE A LEDGER, A TOTAL LEDGER, OF WHAT WAS PUT IN THE
16 BOOKS. I BELIEVE IT SHOULD BE THERE.

17 Q. OKAY.

18 A. FOR TAX PURPOSES, I BELIEVE IT WAS THERE.

19 Q. YOU MENTIONED IN YOUR TESTIMONY THAT HE WAS WEARING ON
20 THAT DAY A PAIR OF BLACK TROUSERS WITH WHITE STRIPES. IS
21 THAT CORRECT?

22 A. UH-HUH.

23 Q. OKAY. NOW, THESE TROUSERS THAT WERE SHOWN TO YOU TODAY,
24 CAN YOU SEE WHAT COLOR THESE STRIPES ARE?

25 A. I SEE THE WHITE STRIPES.

1 Q. DO YOU SEE ANOTHER STRIPE?

2 A. I SEE GRAY AND LOOKS LIKE CHARCOAL GRAY STRIPES.

3 Q. OKAY. SO YOU DO SEE DIFFERENT STRIPES ON THERE. THERE
4 ARE THREE DIFFERENT STRIPES ON THIS PAIR OF PANTS PRESENTED
5 TO YOU TODAY.

6 A. UH-HUH.

7 THE COURT: YOU NEED TO ANSWER OUT LOUD, PLEASE, SIR,
8 MR. HUFF.

9 THE WITNESS: PARDON?

10 THE COURT: YOU NEED TO ANSWER THE QUESTION OUT LOUD SO
11 THE COURT REPORTER CAN HEAR YOU.

12 THE WITNESS: OH.

13 BY MR. HASTIE:

14 Q. GLASSES. I SEE YOU'RE WEARING GLASSES TODAY; RIGHT?

15 A. YES.

16 Q. WERE YOU WEARING GLASSES ON THE DAY OF THE ROBBERY?

17 A. YES, I WERE.

18 Q. OKAY. WERE THOSE -- ARE THOSE THE SAME GLASSES YOU HAVE
19 ON TODAY THAT YOU HAD ON THAT DAY?

20 A. YES, THEY ARE.

21 MR. HASTIE: OKAY. YOUR HONOR, MAY WE APPROACH?

22 THE COURT: YES, SIR.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

24 THE COURT: ALL RIGHT. YOU CAN CONTINUE, MR. HASTIE.

25 MR. HASTIE: THANK YOU, YOUR HONOR.

1 BY MR. HASTIE:

2 Q. NOW, YOU'RE SAYING THOSE ARE THE SAME GLASSES THAT YOU
3 HAD ON IN 2007, THE DAY OF THE ROBBERY?

4 A. YES.

5 Q. OKAY. DID YOUR PRESCRIPTION CHANGE FOR THOSE GLASSES?

6 A. DID MY PRESCRIPTION CHANGE?

7 Q. CHANGE FOR THOSE GLASSES, YES, SIR.

8 A. WELL, I HAD JUST GOTTEN A NEW PAIR OF GLASSES YESTERDAY,
9 AND I PUT THEM ON AND THEY WERE INCORRECT, SO I HAD TO -- I
10 SENT A LETTER TO SEND THEM BACK.

11 Q. OKAY. SO THE GLASSES YOU HAD ON YESTERDAY ARE NOT THE
12 GLASSES THAT YOU HAVE ON TODAY.

13 A. WHEN I WAS IN THE COURT?

14 Q. YES, SIR.

15 A. EARLIER?

16 Q. YES, SIR.

17 A. THE GLASSES I HAD ON YESTERDAY, NO, WERE NOT THE GLASSES
18 I HAVE -- I HAD TO PUT MY OLD GLASSES BACK ON.

19 Q. OKAY. OKAY. THAT'S WHY I WAS ASKING YOU ABOUT IT.

20 A. THAT'S IT. OKAY.

21 Q. THAT'S WHY YOU WERE HAVING A DIFFERENT PAIR OF GLASSES
22 ON YESTERDAY.

23 A. RIGHT.

24 Q. OKAY. THANK YOU VERY MUCH. SO HE ASKED YOU -- SO YOU
25 HAD THIS GUN IN YOUR FACE. HE TOOK THE MONEY FROM THE CASH

1 REGISTER, AND HE THEN WIPE DOWN THE COUNTER, I BELIEVE YOU
2 SAID. WIPE DOWN THE CASH REGISTER, NOT THE COUNTER.

3 A. CASH REGISTER.

4 Q. CASH REGISTER. WHAT DID HE WIPE IT DOWN WITH?

5 A. A PAPER TOWEL.

6 Q. WHERE DID HE GET THE PAPER TOWEL FROM?

7 A. I GAVE IT -- HE ASKED ME TO GIVE HIM A TOWEL.

8 Q. OKAY. WHERE WAS THE PAPER TOWEL -- YOU WERE STANDING
9 BEHIND THE COUNTER. WHERE WAS THE PAPER TOWEL IN PROXIMITY
10 TO WHERE YOU WERE STANDING?

11 A. FROM WHERE I WAS STANDING?

12 Q. YEAH.

13 A. OH, RIGHT IN HAND REACH. ALL I HAD TO DO IS TURN AROUND
14 AND GIVE HIM THE PAPER---

15 Q. JUST GIVE HIM THE PAPER TOWEL.

16 A. YEAH.

17 Q. WHAT DID HE DO WITH THE PAPER TOWEL?

18 A. PARDON?

19 Q. WHAT DID HE DO WITH THE PAPER TOWEL?

20 A. HE WIPE DOWN THE THINGS HE TOUCHED.

21 Q. AND WHAT DID HE TOUCH, IF YOU CAN RECALL?

22 A. WELL, IT WOULD HAVE BEEN THE CASH REGISTER, AND I DO
23 BELIEVE THAT HE DID TOUCH THE COUNTER, AND I KNOW HE TOUCHED
24 THE DOOR, AND HE WIPE DOWN THE CASH REGISTER, THE COUNTER,
25 THE DOORKNOB.

1 Q. NOW, YOU ALSO MENTIONED ABOUT TATTOOS THAT HE WAS -- YOU
2 SAW ON HIS ARM, I BELIEVE. HE HAD A TATTOO---

3 A. YES.

4 Q. CAN YOU DESCRIBE THE TATTOO, PLEASE, SIR?

5 A. WELL, I DESCRIBED IT AS A CIRCLE WITH POINTS STICKING
6 OUT FROM IT.

7 Q. UH-HUH. DID YOU NOTICE ANY OTHER TATTOOS ON HIS BODY?

8 A. NO, I DID NOT.

9 Q. YOU DID NOT.

10 A. I JUST SAW THE TOP ONE.

11 Q. OKAY. DID YOU NOTICE WHETHER HE WAS WEARING ANY
12 EARRINGS?

13 A. YES, I DID SEE AN EARRING IN HIS LEFT EAR.

14 Q. JUST ONE EARRING---

15 A. THAT'S ALL I SAW.

16 Q. ---ON THE LEFT EAR?

17 A. UH-HUH.

18 Q. OKAY. HE DID HAVE ON A WHITE TANK TOP, I THINK YOU
19 TESTIFIED TO?

20 A. YES.

21 Q. OKAY. AND JUST -- JUST IN CLOSING, I JUST WANT TO
22 REITERATE ONCE AGAIN: THE POLICE AT NO TIME SHOWED YOU A
23 LINE-UP AT ANY TIME OF MR. MASSEY AFTER THE ROBBERY.

24 A. NONE. AT NO TIME.

25 Q. AND YOU DID NOT IDENTIFY TO THE POLICE, TO THEM, WHO

1 ROBBED THE STORE BECAUSE YOU DIDN'T KNOW WHO MR. MASSEY WAS,
2 IS THAT CORRECT, AT THAT TIME?

3 A. YOU'RE SAYING BECAUSE I DIDN'T KNOW WHO HE WAS?

4 Q. YOU DIDN'T---

5 A. I DIDN'T KNOW BY NAME WHO HE WAS, BUT I HAD SEEN HIM
6 BEFORE.

7 Q. UH-HUH.

8 A. THAT WHOLE WEEK I SEEN HIM OFF AND ON WITH THE YOUNG
9 LADY.

10 Q. OKAY. SO YOU COULD NOT TELL THEM HIS NAME AT THE TIME
11 OF THE ROBBERY.

12 A. NO, I COULD NOT.

13 Q. OKAY. THANK YOU VERY MUCH.

14 A. UH-HUH.

15 THE COURT: REDIRECT?

16 MR. SPRATLIN: REAL BRIEFLY.

17 REDIRECT EXAMINATION

18 BY MR. SPRATLIN:

19 Q. MR. HUFF, IS THERE ANY DOUBT IN YOUR MIND THAT MR.
20 MASSEY IS THE ONE WHO PUT THE GUN IN YOUR FACE THAT DAY?

21 A. THERE'S NO DOUBT IN MY MIND, SIR.

22 Q. OKAY. AND BACK ON JUNE 7TH, 2007, WERE YOU ABLE TO SEE
23 WHAT WAS GOING ON?

24 A. YES, I WAS ABLE TO SEE.

25 Q. WAS YOUR VISION FINE THAT DAY?

1 A. MY VISION WAS FINE THAT DAY.

2 Q. AND IS YOUR VISION FINE HERE TODAY?

3 A. YES, IT IS.

4 Q. OKAY. NOW, SIR, MR. HASTIE DID ASK YOU ABOUT WHAT OTHER
5 PEOPLE WHO WERE IN THE STORE -- WHAT THEY WERE WEARING, AND
6 YOU COULD NOT REMEMBER WHAT MS. BRUNSON WAS WEARING THAT DAY.
7 CORRECT?

8 A. THAT'S CORRECT.

9 Q. OKAY. BUT -- BUT YOU ARE 100 PERCENT SURE ABOUT WHAT
10 THE DEFENDANT WAS WEARING THAT DAY.

11 A. YES, BECAUSE I HAD ALREADY IDENTIFIED THAT TO THE
12 OFFICERS THAT CAME ON THE SCENE. I COULD REMEMBER TO KEEP
13 THAT IN MY REMEMBRANCE.

14 Q. WHEN YOU SHUT YOUR EYES AND THINK ABOUT THAT ROBBERY,
15 CAN YOU PICTURE THE DEFENDANT?

16 A. WHEN I SHUT MY EYES AND THINK ABOUT IT -- I DREAMED
17 ABOUT THAT ROBBERY ALL LAST NIGHT, AND I COULDN'T SEE NOTHING
18 BUT THAT DEFENDANT WITH THE GUN IN MY FACE. YES, I...

19 Q. AND THAT'S THE MAN SITTING RIGHT THERE?

20 A. THAT IS HIM SITTING RIGHT THERE.

21 MR. SPRATLIN: THANK YOU.

22 THE COURT: ANY ELSE, MR. HASTIE?

23 MR. HASTIE: NOTHING, YOUR HONOR.

24 THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN. ALL

25 RIGHT. MR. SPRATLIN, YOU INDICATED YOU HAD A WITNESS THAT

1 COULD BE CONCLUDED BY 1?

2 MR. SPRATLIN: I BELIEVE SO, YOUR HONOR. MS. CAROL
3 BRUNSON.

4 THE COURT: MS. BRUNSON, YOU CAN COME FORWARD.

5 CAROL J. BRUNSON, AFTER BEING DULY SWORN, TESTIFIED
6 AS FOLLOWS:

7 THE CLERK: HAVE A SEAT UP THERE, PLEASE, MA'AM. STATE
8 YOUR FULL NAME AND SPELL YOUR LAST NAME, PLEASE.

9 THE WITNESS: CAROL J. BRUNSON. B-R-U-N-S-O-N.

10 DIRECT EXAMINATION

11 BY MR. SPRATLIN:

12 Q. GOOD MORNING OR I SHOULD SAY AFTERNOON NOW, MS. BRUNSON.
13 HOW ARE YOU DOING?

14 A. FINE. AND YOU?

15 Q. I'M DOING PRETTY WELL. HOW LONG HAVE YOU LIVED IN
16 SUMTER?

17 A. ALL OF MY LIFE.

18 Q. ALL RIGHT. AND WHERE ARE YOU WORKING CURRENTLY?

19 A. AT PILGRIM'S PRIDE.

20 COURT REPORTER: I'M SORRY. COULD YOU REPEAT THAT?

21 THE WITNESS: PILGRIM'S PRIDE.

22 THE COURT: PILGRIM'S PRIDE?

23 THE WITNESS: UH-HUH.

24 BY MR. SPRATLIN:

25 Q. BACK IN 2007, DID YOU HAVE AN OPPORTUNITY TO VISIT THE

1 STORE CALLED TOTAL LIVING?

2 A. YEAH. QUITE A FEW TIMES WHEN MR. BLACK WAS WORKING
3 THERE I VISIT THERE.

4 Q. OKAY. AND DID YOU KNOW A GENTLEMAN BY THE NAME OF
5 HERBERT HUFF?

6 A. YEAH, I MET HIM IN THE STORE.

7 Q. WAS HE WORKING THERE?

8 A. YEAH.

9 Q. DID YOU HAPPEN TO GO INTO THE STORE BACK ON JUNE THE
10 7TH, 2007, IF YOU REMEMBER?

11 A. YEAH.

12 Q. OKAY.

13 A. UH-HUH.

14 Q. WHAT WAS DIFFERENT ABOUT THAT DAY THAN ANY OF THE OTHER
15 TIMES YOU WENT IN THERE?

16 A. WELL, WHEN I ENTERED THE STORE, I HAD BEEN LOOKING
17 AROUND TO SEE WHAT I REALLY WANT. I REALLY WENT IN THERE FOR
18 SOME WATERMELON, AND I SAW A GENTLEMAN WALKING AROUND BACK
19 AND FORTH IN THE STORE AND I GOT SUSPICIOUS. I WAS KIND OF
20 AFRAID BECAUSE I SAID SOMETHING SEEMED STRANGE, SO I WAS KIND
21 OF SCARED. I WAS LOOKING AROUND. I THINK I ASKED -- I ASKED
22 HIM WHAT HE WAS LOOKING FOR. I THINK HE TOLD ME HE WAS
23 LOOKING FOR A SUIT.

24 Q. SO YOU ACTUALLY ASKED THE GENTLEMAN THAT WAS WALKING
25 AROUND THE STORE?

1 A. UH-HUH.

2 Q. OKAY.

3 A. SO I WALKED BACK OUT OF THE STORE, AND I CAME BACK
4 BECAUSE I SAID, "I HOPE NOBODY DON'T DO ANYTHING FUNNY IN
5 HERE," BECAUSE I'M KIND OF AFRAID FOR HIM, HIS LIFE.

6 Q. WHOSE LIFE WERE YOU AFRAID FOR?

7 A. MR. HUFF.

8 Q. OKAY.

9 A. BECAUSE I -- IT LOOKED LIKE -- YOU KNOW, I KNEW
10 SOMETHING WASN'T (UNINTELLIGIBLE WORD SPOKEN), YOU KNOW,
11 WEARY. SO I'M KIND OF AFRAID.

12 Q. WHO ELSE WAS IN THE STORE WITH YOU THAT DAY?

13 A. DURING THE TIME, IT WAS ME AND MY DAUGHTER AND MY LITTLE
14 GRANDS WAS IN THERE.

15 Q. WHEN YOU SAY GRANDS---

16 A. THEY WERE KIND OF SUSPICIOUS, TOO. THEY WERE KIND OF
17 SUSPICIOUS.

18 Q. AND SO YOU ACTUALLY CAME BACK INTO THE STORE?

19 A. YEAH, TO LOOK AND SEE WHETHER, YOU KNOW, IF EVERYTHING
20 BE ALL RIGHT.

21 Q. OKAY.

22 A. UH-HUH.

23 Q. NOW, YOU MENTIONED THAT YOU ACTUALLY SPOKE WITH THE
24 GENTLEMAN YOU WERE CONCERNED ABOUT.

25 A. UH-HUH.

1 Q. DO YOU -- I KNOW IT'S OVER TWO YEARS NOW, BUT DO YOU
2 REMEMBER THAT GENTLEMAN?

3 A. I'M SORRY. I SEEN HIM, BUT, YOU KNOW, HE LOOKS KIND OF
4 DIFFERENT THOUGH.

5 Q. HOW DOES -- HOW DOES HE LOOK DIFFERENT?

6 A. HE HAD ON DIFFERENT CLOTHES, THE CLOTHES HE WORE LIKE...

7 Q. DO YOU REMEMBER WHAT CLOTHES HE WAS WEARING?

8 A. NOT REALLY. I KNOW HE HAD SOMETHING OVER HIS HEAD, BUT
9 I DON'T REALLY KNOW WHAT KIND OF CLOTHES HE HAD ON.

10 Q. OKAY. NOW, THIS IS THE FIRST TIME YOU'VE BEEN ASKED TO
11 DESCRIBE THIS INCIDENT; CORRECT?

12 A. UH-HUH.

13 Q. OKAY. LAW ENFORCEMENT NEVER EVEN HAD THE OPPORTUNITY TO
14 TALK TO YOU.

15 A. NO, NOT REALLY.

16 Q. OKAY. SO PRETTY MUCH JUST OUT OF THE BLUE---

17 A. YEAH.

18 Q. ---WE CALLED YOU AND ASKED YOU TO COME HERE.

19 A. YEAH. UH-HUH. THE STATE DID.

20 Q. AND I UNDERSTAND THAT -- I UNDERSTAND YOU CAN'T BE
21 CERTAIN. IS IT POSSIBLE THAT THIS MAN COULD BE THE PERSON
22 THAT YOU SAW IN THE STORE THAT DAY?

23 MR. HASTIE: OBJECTION.

24 THE COURT: BASED ON SPECULATION?

25 MR. HASTIE: YES, SIR.

1 THE COURT: MR. SPRATLIN, YOU CAN REPHRASE THE QUESTION.

2 MR. SPRATLIN: OKAY.

3 THE COURT: THAT OBJECTION IS SUSTAINED, BUT YOU CAN
4 REPHRASE IT.

5 MR. SPRATLIN: YES, YOUR HONOR. IF YOU WOULD, WOULD YOU
6 PLEASE POINT OUT THE PERSON THAT YOU BELIEVE WAS THE PERSON
7 IN THE STORE THAT DAY?

8 MR. HASTIE: OBJECTION.

9 (THE WITNESS POINTS TO THE DEFENDANT.)

10 MR. HASTIE: OBJECTION, YOUR HONOR.

11 THE COURT: YES, SIR.

12 MR. HASTIE: IT'S IN-COURT IDENTIFICATION.

13 THE COURT: ALL RIGHT. THE OBJECTION IS OVERRULED. YOU
14 CAN CROSS-EXAMINE ON THAT POINT.

15 MR. HASTIE: YES, SIR.

16 BY MR. SPRATLIN:

17 Q. WOULD YOU PLEASE POINT OUT THE PERSON, IF YOU WOULD, IF
18 YOU KNOW? IF NOT, THAT'S---

19 A. YEAH, I DON'T KNOW.

20 Q. OKAY. YOU CAN'T BE CERTAIN?

21 A. NO, NOT REALLY.

22 Q. OKAY. ALL RIGHT. WELL, BUT YOU DID SEE SOMEONE WALKING
23 AROUND THE STORE THAT DAY?

24 A. UH-HUH. YEAH.

25 Q. AND YOU WERE CONCERNED ENOUGH THAT YOU ACTUALLY CAME

1 BACK IN THE STORE?

2 A. YEAH, I WAS CONCERNED.

3 Q. AND HE WAS WEARING SOMETHING ON HIS HEAD.

4 A. YEAH.

5 Q. AND THAT YOU CAN BE CERTAIN OF.

6 A. YEAH.

7 MR. SPRATLIN: OKAY. THANK YOU. THAT'S ALL THE
8 QUESTIONS I HAVE.

9 THE COURT: MR. HASTIE?

10 MR. HASTIE: THANK YOU, YOUR HONOR.

11 CROSS-EXAMINATION

12 BY MR. HASTIE:

13 Q. GOOD AFTERNOON.

14 A. GOOD AFTERNOON.

15 Q. YOU WORK AT PILGRIM'S PRIDE?

16 A. UH-HUH.

17 Q. HOW LONG HAVE YOU BEEN WORKING THERE?

18 A. FOURTEEN YEARS.

19 Q. A LONG TIME. NOW, YOU OFTEN EVIDENTLY GO BY MR. BLACK'S
20 STORE.

21 A. YEAH.

22 Q. YEAH?

23 A. UH-HUH.

24 Q. DO YOU KNOW MR. BLACK PERSONALLY?

25 A. VERY WELL.

1 Q. DO YOU?

2 A. YEAH.

3 Q. OKAY. OKAY. ON THIS PARTICULAR DAY YOU SAID YOU REALLY
4 WENT DOWN THERE TO LOOK FOR SOME WATERMELONS.

5 A. UH-HUH.

6 Q. YOU LIKE WATERMELONS?

7 A. OH, YEAH.

8 Q. NOW, DO THEY SELL WATERMELONS INSIDE THE STORE?

9 A. IT WAS ON THE OUTSIDE. THEY USED TO HAVE IT INSIDE THE
10 STORE, BACK WHEN THEY USED TO HAVE WATERMELONS, BANANAS.
11 THERE WAS A LOT OF PRODUCTS AND STUFF.

12 Q. BUT ON THIS PARTICULAR DAY, THE WATERMELONS WERE LOCATED
13 OUTSIDE THE STORE. IS THAT CORRECT?

14 A. YEAH. UH-HUH.

15 Q. SO YOU DID GO INSIDE THE STORE TO LOOK FOR WHAT?

16 A. TO LOOK FOR, YOU KNOW, LIKE SOAP.

17 Q. JUST LOOK AROUND---

18 A. UH-HUH.

19 Q. ---SO FORTH.

20 A. ALL THE PRODUCTS.

21 Q. DO YOU NORMALLY STOP PEOPLE WHEN YOU GO INTO A STORE
22 THAT YOU DON'T KNOW TO SAY, "WHAT ARE YOU LOOKING FOR?" YOU
23 DON'T WORK THERE, DO YOU?

24 A. NO.

25 Q. LET ME -- DO YOU NORMALLY STOP PEOPLE----

1 A. YEAH, I USUALLY STOP THERE LIKE ON FRIDAYS WHEN I GET
2 OFF AND JUST SOMETIMES DURING THE WEEK AND SEE WHAT THEY
3 HAVE.

4 Q. YES, MA'AM. BUT DO YOU NORMALLY ASK CUSTOMERS WHAT ARE
5 THEY LOOKING FOR WHEN YOU GO TO A STORE?

6 A. CLOTHES.

7 Q. CLOTHES?

8 A. CLOTHES, LIKE WEAR SHOES AND PURSES AND STUFF.

9 Q. OKAY. MY QUESTION AGAIN IS: WHEN YOU GO TO ANY STORE,
10 DO YOU NORMALLY STOP PEOPLE THAT YOU DON'T KNOW---

11 A. OH, YEAH. YEAH.

12 Q. ---AND ASK THEM WHAT ARE THEY LOOKING FOR?

13 A. NO. THAT PARTICULAR TIME IT WAS A SUSPICION.

14 Q. SUSPICION.

15 A. YEAH.

16 Q. WHAT WAS SUSPICIOUS ABOUT THIS PARTICULAR STORE?

17 A. I MEAN, JUST, YOU KNOW, WALKING BACK AND FORTH, WALKING
18 IN AND BACK. YOU KNOW, YOU KNOW SOMETHING WAS UP.

19 Q. OKAY. YOU REALLY---

20 A. YOU...

21 Q. EXCUSE ME. ARE YOU FINISHED?

22 A. YEAH. GO AHEAD.

23 Q. BUT YOUR TESTIMONY HERE TODAY IS THAT YOU CANNOT TODAY
24 IDENTIFY WHO THAT SUSPICIOUS PERSON WAS WALKING BACK AND
25 FORTH, CAN YOU?

1 A. BUT IT SEEM LIKE HIM.

2 Q. SEEMS LIKE HIM.

3 A. IT LOOK LIKE -- LIKE, YOU KNOW (UNINTELLIGIBLE WORDS
4 SPOKEN).

5 COURT REPORTER: CAN YOU REPEAT THAT?

6 THE WITNESS: IT SEEMS LIKE THE GUY RIGHT THERE. LOOKS
7 MORE LIKE HIM.

8 BY MR. HASTIE:

9 Q. BUT YOU'RE NOT 100 PERCENT SURE.

10 A. NO, I'M NOT A HUNDRED PERCENT.

11 Q. WAS ANYONE ELSE WALKING AROUND IN THE STORE AT THAT
12 TIME? ANYBODY ELSE IN THE -- ANY OTHER CUSTOMERS IN THE
13 STORE?

14 A. YEAH. IF I REMEMBER, MY DAUGHTER WAS THERE, AND I THINK
15 ANOTHER GENTLEMAN -- ANOTHER PERSON WAS IN THERE.

16 Q. OKAY. DID THIS OTHER PERSON LOOK SUSPICIOUS TO YOU?

17 A. NO.

18 Q. BUT YOU JUST GOT A SUSPICIOUS FEELING---

19 A. YEAH.

20 Q. ---THERE WAS SOMETHING.

21 A. YEAH.

22 Q. BUT YOU'RE NOT SURE WHAT.

23 A. HUH-UH. I JUST GOT A SUSPICION LIKE SOMETHING -- LIKE
24 SOMETHING REALLY WAS GOING TO HAPPEN OR SOMETHING, YOU KNOW.

25 I DON'T KNOW. I JUST HAVE THAT FEELING SOMETHING WASN'T

1 RIGHT THAT DAY:

2 Q. OKAY. THANK YOU VERY MUCH.

3 A. UH-HUH.

4 MR. HASTIE: NO FURTHER QUESTIONS, YOUR HONOR.

5 THE COURT: MR. SPRATLIN?

6 MR. SPRATLIN: NO REDIRECT, YOUR HONOR.

7 THE COURT: THANK YOU, MA'AM. YOU CAN STEP DOWN.

8 THE WITNESS: THANK YOU.

9 MR. SPRATLIN: YOUR HONOR, MAY THIS WITNESS BE EXCUSED?

10 THE COURT: ANY OBJECTION, MR. HASTIE?

11 MR. HASTIE: NO, YOUR HONOR.

12 THE COURT: MS. BRUNSON, YOU'RE EXCUSED. OKAY? YOU CAN
13 LEAVE OR STAY, WHICHEVER YOU'D LIKE. ALL RIGHT. ANY
14 WITNESSES BEFORE LUNCH, MR. SPRATLIN?

15 MR. SPRATLIN: NO, YOUR HONOR. I DON'T THINK WE HAVE
16 ANY WITNESSES THAT WE COULD GET IN BETWEEN NOW AND THE LUNCH
17 HOUR.

18 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
19 GOING TO TAKE A LUNCH BREAK NOW. I WANT TO CAUTION YOU,
20 HOWEVER, THAT YOU MAY NOT DISCUSS THIS CASE WITH ANYBODY.
21 THAT INCLUDES FRIENDS, FAMILY, CO-WORKERS, ANYBODY YOU MAY BE
22 IN CONTACT WITH. I WANT YOU TO BE BACK IN YOUR JURY ROOM AT
23 2:15. THAT CLOCK SAYS 20 MINUTES 'TIL 1. YOUR CLOCK MAY BE
24 DIFFERENT; MINE IS. BUT YOU HAVE AN HOUR AND 35 MINUTES FOR
25 LUNCH, WHATEVER THAT FALLS ON YOUR WATCH.

1 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, WE ARE
2 READY TO MOVE FORWARD WITH THE PRESENTATION OF EVIDENCE, AND
3 I KNOW THAT MOST OF YOU PROBABLY DID HAVE LUNCH, BUT IF
4 YOU'RE -- IF YOU HAVE A TENDENCY TO GET A LITTLE GROGGY IN
5 THE AFTERNOONS, TRY TO RESIST THAT, BUT WE WILL BE TAKING A
6 BREAK IN ABOUT AN HOUR. ALL RIGHT. MR. SPRATLIN?

7 **MR. SPRATLIN:** THANK YOU, YOUR HONOR. THE STATE WOULD
8 NEXT CALL MS. LATRELL BILLIE TO THE STAND.

9 LATRELL M. BILLIE, AFTER BEING DULY SWORN,
10 TESTIFIED AS FOLLOWS:

11 **THE CLERK:** STATE YOUR FULL NAME AND SPELL YOUR LAST
12 NAME, PLEASE.

13 **THE WITNESS:** LATRELL MICHELLE BILLIE, B-I-L-L-I-E.

14 DIRECT EXAMINATION

15 BY MR. SPRATLIN:

16 Q. MS. BILLIE, GOOD AFTERNOON.

17 A. HEY.

18 Q. HOW LONG HAVE YOU LIVED IN SUMTER?

19 A. ALL MY LIFE, 30 YEARS.

20 Q. OKAY. AND WHAT DO YOU DO FOR A LIVING?

21 A. I'M A HUMAN SERVICE COORDINATOR FOR D.H.E.C., AND I
22 VOLUNTEER FOR THE WATEREE TASK FORCE.

23 Q. I'M SORRY. WHAT WAS THAT AGAIN?

24 A. I VOLUNTEER AT THE WATEREE AIDS TASK FORCE.

25 Q. THE WATEREE AIDS TASK FORCE?

1 A. UH-HUH.

2 Q. OKAY. AND WHERE IS THAT LOCATED?

3 A. CURRENTLY IT'S LOCATED AT 108 WEST LIBERTY STREET.

4 Q. YOU SAY CURRENTLY.

5 A. UH-HUH.

6 Q. WAS IT LOCATED SOMEWHERE DIFFERENT PREVIOUSLY?

7 A. YEAH, 25 DUGAN STREET.

8 Q. OKAY. WHAT BUSINESSES WERE NEAR THE WATEREE AIDS TASK
9 FORCE WHEN IT WAS LOCATED AT 25 DUGAN STREET?

10 A. NEXT DOOR, TOTAL LIVING.

11 Q. OKAY.

12 A. AND KUT-RATE.

13 Q. ALL RIGHT. MS. BILLIE, DO YOU KNOW A MAN BY THE NAME OF
14 HERBERT HUFF?

15 A. UH-HUH.

16 Q. HOW DO YOU KNOW HIM?

17 A. HE WORKED NEXT DOOR.

18 Q. DO YOU KNOW WHERE -- WHEN YOU SAY NEXT DOOR, WHAT DO YOU
19 MEAN?

20 A. AT TOTAL LIVING.

21 Q. OKAY. AND HOW DO YOU KNOW HIM?

22 A. FROM IN AND OUT -- HE COMES IN AND OUT OF THE STORE JUST
23 TO SPEAK TO SEE HOW WE'RE DOING FROM TIME TO TIME.

24 Q. AND, MS. BILLIE, DO YOU KNOW THE DEFENDANT, ANDRE
25 MASSEY?

1 A. YES, SIR.

2 Q. OKAY. HOW DO YOU KNOW HIM?

3 A. HE CAME TO OUR BUSINESS THE END OF 2006, AROUND THAT
4 TIME FRAME, WANTING TO KNOW WHAT TYPE OF BUSINESS WE DO.

5 Q. OKAY. AND WHAT, IF ANYTHING, DID Y'ALL -- DID YOU HELP
6 HIM DO?

7 A. I HELPED HIM FIND A JOB.

8 Q. OKAY. AND WHERE DID YOU HELP HIM FIND A JOB?

9 A. I GAVE HIM SOME INFORMATION. GOLD KIST WAS HIRING, SO
10 HE WENT DOWN THERE AND HE GOT THE JOB.

11 Q. OKAY. AFTER HELPING HIM GET A JOB, DID YOU SEE MR.
12 MASSEY AGAIN?

13 A. YEAH, HE WOULD COME IN AND OUT OF THE STORE.

14 Q. OKAY. DO YOU KNOW WHY HE WAS COMING BACK TO YOUR STORE?

15 A. JUST TO THANK US.

16 Q. OKAY. WAS THERE ANYTHING ELSE THAT WOULD BE BRINGING
17 HIM TO THAT AREA BESIDES JUST THANKING Y'ALL, TO YOUR
18 KNOWLEDGE?

19 A. I KNOW HE STAY OR HIS PARENTS STAY ACROSS THE STREET.

20 Q. OKAY. WAS THAT THE ENTIRE NATURE OF YOUR RELATIONSHIP
21 WITH MR. MASSEY?

22 A. YEAH.

23 Q. OKAY. LET ME DIRECT YOUR ATTENTION TO THE DAY OF
24 JUNE 7TH, 2007. DID YOU HAVE AN OPPORTUNITY TO SEE MR.
25 MASSEY ON THAT DATE?

1 A. YES, SIR.

2 Q. OKAY. WHERE DID YOU FIRST SEE MR. MASSEY?

3 A. INSIDE TOTAL LIVING.

4 Q. OKAY. NOW, LEADING UP TO YOUR SEEING MR. MASSEY THERE
5 AT TOTAL LIVING, DID YOU HAVE A CHANCE TO HAVE A CONVERSATION
6 WITH HIM EARLIER THAT DAY?

7 A. BRIEFLY. HE CALLED ME TO ASK ME WHAT TIME I WAS GETTING
8 OFF, AND I TOLD HIM AROUND 5.

9 Q. OKAY.

10 A. AND HE TOLD ME THAT HE WOULD COME TO THE STORE.

11 Q. DO YOU KNOW WHY HE WAS COMING TO YOUR STORE?

12 A. NO. HE ALWAYS JUST COMES JUST TO SEE HOW WE WAS DOING.

13 Q. OKAY. AND WAS IT NORMAL FOR HIM TO CALL YOU BEFOREHAND?

14 A. YEAH, CALLED OR STOPPED BY.

15 Q. OKAY. NOW, WHEN YOU SAW MR. MASSEY IN TOTAL LIVING THAT
16 DAY, WHY WERE YOU GOING INTO THE STORE?

17 A. I TOLD REVEREND BLACK THAT I WOULD PURCHASE A WATERMELON
18 FROM HIM.

19 Q. AND WHO IS REVEREND BLACK?

20 A. HE'S THE OWNER OF TOTAL LIVING.

21 Q. OKAY. ALL RIGHT. AND WHEN YOU WENT INTO THE STORE WHEN
22 YOU SAW MR. MASSEY THERE, WHAT, IF ANYTHING, DID YOU DO?

23 A. NOTHING. HE WALKED -- WHEN I TOLD MR. HUFF THAT---

24 Q. UH-HUH.

25 A. ---TO TELL REVEREND BLACK THAT I WOULD BE BACK THE NEXT

1 DAY TO PAY FOR MY WATERMELON, AS I WALKED OUT OF THE STORE
2 ANDRE FOLLOWED ME.

3 Q. OKAY. AND WHAT HAPPENED AFTER Y'ALL GOT OUT OF THE
4 STORE?

5 A. HE WALKED ME TO MY CAR.

6 Q. ALL RIGHT. WHAT DID Y'ALL TALK ABOUT AS YOU WERE
7 WALKING TO YOUR CAR?

8 A. WE WERE -- JUST BASICALLY GENERAL CONVERSATION AND HE
9 MENTIONED ABOUT A PICTURE THAT WAS EXPENSIVE, AND I SAID THAT
10 I WOULDN'T PAY THAT MUCH FOR -- PERSONALLY I WOULDN'T PAY
11 THAT MUCH FOR A PICTURE.

12 Q. OKAY. NOW, MS. BILLIE, WHAT TIME OF DAY WOULD YOU SAY
13 IT WAS THAT YOU AND MR. MASSEY PARTED WAYS?

14 A. WHAT TIME IT WAS?

15 Q. YEAH.

16 A. 5 BECAUSE I GOT OFF AT 5.

17 Q. HOW CAN YOU BE CERTAIN THAT IT WAS RIGHT AROUND 5?

18 A. BECAUSE I GET OFF AT 5 AND I PICK UP MY KIDS FROM DAY
19 CARE BY 5:15.

20 Q. OKAY. WHEN YOU LEFT TOTAL LIVING, HOW DID YOU -- OR THE
21 AREA AROUND TOTAL LIVING, HOW DID YOU LEAVE?

22 A. I LEFT IN MY CAR GOING TO -- WHERE THE CITY OFFICE IS
23 AT, I WENT THAT WAY.

24 Q. OKAY. AND WAS MR. MASSEY IN THE CAR WITH YOU?

25 A. NO, SIR.

1 Q. OKAY. DID YOU SEE HOW HE LEFT?

2 A. YEAH. HE GOT ON HIS BIKE AND RODE HIS BIKE UP TOWARDS
3 MAIN STREET.

4 Q. OKAY. SO YOU TWO PARTED WAYS AT THIS POINT IN TIME.

5 A. UH-HUH.

6 Q. WHEN WAS THE NEXT TIME, FROM TALKING WITH MR. MASSEY,
7 THAT YOU WERE GOING TO SEE HIM AGAIN?

8 A. SATURDAY.

9 Q. AND WHY WERE YOU GOING TO SEE HIM ON SATURDAY?

10 A. BECAUSE I ASKED HIM COULD HE VACUUM MY CAR OUT.

11 Q. AND WHAT DID HE SAY WHEN YOU ASKED HIM TO DO THAT?

12 A. AND HE SAID, "YEAH."

13 Q. ALL RIGHT. NOW, I KNOW IT'S TWO YEARS AGO, BUT DO YOU
14 REMEMBER WHAT MR. MASSEY WAS WEARING WHEN YOU SAW HIM THAT
15 DAY?

16 A. YEAH.

17 Q. WHAT WAS HE WEARING?

18 A. A WHITE WIFE BEATER SHIRT.

19 COURT REPORTER: WHAT KIND OF SHIRT?

20 THE WITNESS: WIFE BEATER. IT'S A TANK TOP.

21 BY MR. SPRATLIN:

22 Q. OKAY. AND DO YOU REMEMBER WHAT KIND OF PANTS HE HAD ON?

23 A. BLACK SKI PANTS.

24 Q. OKAY. AND HOW DO YOU REMEMBER THAT FROM TWO YEARS AGO?

25 A. BECAUSE THAT'S JUST -- WHAT, REMEMBER IT?

1 Q. UH-HUH.

2 A. I JUST REMEMBER THAT DAY BECAUSE OF BEING QUESTIONED---

3 Q. OKAY.

4 A. ---ABOUT IT.

5 Q. SO THE WAY YOU REMEMBER IT IS WHEN THE OFFICER HAD
6 QUESTIONED YOU ABOUT IT, WHEN IT WAS MORE FRESH IN YOUR MIND.

7 A. YEAH.

8 Q. AND YOU REMEMBER WHAT YOU TOLD THE OFFICERS.

9 A. YEAH.

10 Q. AND WERE YOU ACCURATE IN YOUR DESCRIPTION TO THE
11 OFFICERS AT THAT TIME?

12 A. YES, SIR.

13 Q. NOW, MS. BILLIE, HAVE YOU HAD THE OPPORTUNITY TO OBSERVE
14 THE DEFENDANT'S ARMS?

15 A. YEAH.

16 Q. HAVE YOU NOTICED WHETHER OR NOT HE HAS TATTOOS?

17 A. YEAH.

18 Q. OKAY. AND DID YOU TELL THE POLICE THAT THE DEFENDANT
19 HAD TATTOOS?

20 A. YEAH.

21 Q. OKAY. AND YOU TOLD THE POLICE WHAT THE DEFENDANT WAS
22 WEARING THAT DAY.

23 A. YEAH.

24 MR. SPRATLIN: OKAY. BEG THE COURT'S INDULGENCE FOR ONE
25 SECOND. NO MORE QUESTIONS AT THIS TIME, YOUR HONOR.

1 THE COURT: MR. HASTIE?

2 MR. HASTIE: THANK YOU, YOUR HONOR.

3 CROSS-EXAMINATION

4 BY MR. HASTIE:

5 Q. GOOD AFTERNOON, MS. BILLIE.

6 A. HEY.

7 Q. I JUST WANT -- LET'S GO BACK. YOU MENTIONED EARLIER

8 ABOUT HE CAME TO OUR BUSINESS. WHAT TYPE OF BUSINESS WAS

9 THAT AGAIN?

10 A. IT'S A BUSINESS. WE DO S.T.D. AND H.I.V. PREVENTION AND

11 AWARENESS. WE DO JOB SEARCH.

12 Q. OKAY. AND JOB SEARCH.

13 A. UH-HUH.

14 Q. AND YOU DID HELP HIM FIND A JOB.

15 A. YEAH. I GAVE HIM THE INFORMATION THAT I KNOW PLACES

16 THAT HIRE -- THAT WAS HIRING AT THE TIME. I GAVE HIM THE

17 INFORMATION.

18 Q. DID HE GET A JOB AS A RESULT OF YOUR HELP?

19 A. YES, SIR.

20 Q. HE DID?

21 A. UH-HUH.

22 Q. WHERE?

23 A. GOLD KIST.

24 Q. OKAY. AT GOLD KIST. WHAT SPECIFICALLY IS YOUR JOB AT

25 THIS -- YOUR PLACE OF BUSINESS?

1 A. MY JOB?

2 Q. YES.

3 A. I'M THE HELPER CASE MANAGER AND THEY DO---

4 Q. WHAT TYPE OF CASE?

5 A. IT'S HOUSING OPPORTUNITY FOR PERSONS LIVING WITH AIDS.

6 Q. OKAY.

7 A. I HELP THEM WITH HOUSING, AND I ALSO WAS LIKE THE OFFICE
8 ADMINISTRATOR AT THAT TIME.

9 Q. YOU MENTIONED THAT HIS PARENTS STAYED ACROSS THE STREET?

10 A. UH-HUH.

11 THE COURT: YOU NEED TO SAY EITHER YES OR NO.

12 THE WITNESS: YES, SIR. OKAY.

13 THE COURT: NOT UH-HUH OR HUH-UH.

14 THE WITNESS: YES, SIR.

15 BY MR. HASTIE:

16 Q. HIS PARENTS DID STAY ACROSS THE STREET?

17 A. YES, SIR.

18 Q. WOULD HE COME TO YOUR PLACE OF BUSINESS WHILE GOING TO
19 VISIT HIS PARENTS FROM TIME TO TIME?

20 A. YES. I GUESS ON HIS WAY HOME HE WOULD STOP BY BECAUSE
21 HE ALWAYS STOPPED BY AND TELL US HOW THANKFUL HE WAS FOR US
22 HELPING HIM WITH THE JOB.

23 Q. DO YOU ON OCCASION ASK HIM TO VACUUM YOUR CAR OR WASH
24 YOUR CAR? HOW OFTEN DO YOU DO THAT -- HAVE YOU DONE THAT?

25 A. THAT WAS MY FIRST TIME ASKING.

1 Q. THAT WAS YOUR FIRST TIME?

2 A. YES, SIR.

3 Q. AND HE AGREED TO WASH YOUR CAR.

4 A. UH-HUH.

5 Q. DID HE WASH IT AT YOUR PLACE OF BUSINESS OR AT YOUR---

6 A. NO, HE WAS GOING TO DO IT THAT SATURDAY.

7 Q. WHERE?

8 A. AT THE CAR WASH ON PINEWELL STREET.

9 Q. OKAY. ON PINEWELL STREET. WHERE DID HE GET THE CAR?
10 AT YOUR HOME?

11 A. WHERE WOULD HE GET THE CAR?

12 Q. YES, MA'AM.

13 A. I WAS GOING TO PICK HIM UP TO TAKE HIM OR EITHER HE
14 WOULD MEET ME. HE TOLD ME -- I TOLD HIM TO CALL ME THAT
15 SATURDAY.

16 Q. OKAY. SO THIS PARTICULAR SATURDAY DID YOU GO TO HIS
17 APARTMENT AND PICK HIM UP?

18 A. NO, NO. I HAVE NOT SPOKEN TO HIM BECAUSE I'M ASSUMING
19 THAT HE WAS PICKED UP.

20 Q. OKAY. EXCUSE ME.

21 A. UH-HUH.

22 Q. I'M TALKING ABOUT THE DAY HE VACUUMED YOUR CAR OUT.

23 A. NO, HE DIDN'T VACUUM MY CAR OUT. HE WAS SUPPOSED TO
24 VACUUM MY CAR OUT---

25 Q. SO THAT NEVER HAPPENED.

1 A. THAT NEVER HAPPENED.

2 Q. OKAY. OKAY. I'M SORRY ABOUT THAT. NOW, THIS STORE --
3 TOTAL LIVING IS IT CALLED?

4 A. YES, SIR.

5 Q. IT'S SORT OF ACROSS THE STREET OR NEXT DOOR TO WHERE YOU
6 WORKED?

7 A. NEXT DOOR.

8 Q. NEXT DOOR?

9 A. UH-HUH.

10 Q. AND DO YOU -- YOU FREQUENT THAT STORE PRETTY OFTEN, I
11 CAN IMAGINE.

12 A. YEAH. BASICALLY ON MY WAY OUT, I WOULD STOP IN AND LOOK
13 AT THE PERFUME, AND USUALLY REVEREND BLACK AND MR. HUFF WILL
14 COME IN FROM TIME TO TIME, JUST GENERAL CONVERSATION WITH US.

15 Q. YOU'VE KNOWN MR. HUFF A PRETTY GOOD WHILE.

16 A. YEAH.

17 Q. AND REVEREND BLACK.

18 A. YES, SIR.

19 Q. SO YOU WENT THERE AND YOU GOT A WATERMELON?

20 A. WELL, I DIDN'T ACTUALLY PURCHASE IT BECAUSE OF ALL OF
21 THE STUFF THAT WENT ON, BUT I TOLD HIM THAT I WOULD COME BACK
22 THE NEXT DAY TO PAY FOR THE WATERMELON, TO BUY THE
23 WATERMELON.

24 Q. TO BUY.

25 A. YES.

1 Q. YOU DIDN'T TAKE A WATERMELON WITH YOU---

2 A. NO.

3 Q. ---AND PAY FOR IT THE NEXT DAY.

4 A. WELL, I NEVER WENT BACK IN THE STORE SINCE THEN BECAUSE
5 OF THIS STUFF.

6 Q. ALL RIGHT. THE WATERMELONS THAT YOU'RE SPEAKING OF,
7 WERE THEY IN THE STORE OR OUTSIDE THE STORE?

8 A. OUTSIDE THE STORE.

9 Q. THEY WERE OUTSIDE THE STORE.

10 A. YEAH.

11 Q. THEY'RE NOT IN THE STORE.

12 A. NO.

13 Q. AT ANY TIME DID MR. MASSEY MENTION TO YOU ANYTHING ABOUT
14 A ROBBERY?

15 A. NO. NO, SIR.

16 Q. THAT HE WAS CONSIDERING A ROBBERY.

17 A. NO, SIR.

18 Q. AT NO TIME.

19 A. NO, SIR.

20 MR. HASTIE: NO FURTHER QUESTIONS, YOUR HONOR.

21 THE COURT: MR. SPRATLIN?

22 REDIRECT EXAMINATION

23 BY MR. SPRATLIN:

24 Q. MS. BILLIE, WHEN YOU WERE OUTSIDE TALKING WITH THE
25 DEFENDANT AFTER LEAVING THE STORE, WHAT, IF ANYTHING, DID HE

1 TELL YOU ABOUT MR. HUFF?

2 A. THE ONLY THING HE SAY, HE MENTIONED THAT -- HE MADE A
3 STATEMENT. AT THAT POINT -- AT THAT TIME I DIDN'T THOUGHT
4 ANYTHING, BUT HE STATED THAT IT'S EASY TO ROB HIM BECAUSE HE
5 ALWAYS SLEEP, AND I SAID, "UH-HUH," AND THAT'S IT.

6 Q. AND WHAT DID YOU DO WHEN HE SAID THAT?

7 A. I SAID, "UH-HUH," AND THAT'S IT, AND HE TOTALLY CHANGED
8 THE SUBJECT.

9 Q. WERE YOU AT THAT POINT CONCERNED FOR MR. HUFF OR
10 ANYTHING LIKE THAT?

11 A. NO.

12 Q. DID YOU THINK IT WAS KIND OF AN OFF-THE-CUFF STATEMENT?

13 A. YEAH.

14 Q. NOW, FOLLOWING YOUR LEAVING MR. MASSEY -- AND I ASSUME
15 GOING TO PICK YOUR CHILDREN UP FROM DAY CARE?

16 A. UH-HUH.

17 Q. DID YOU HAVE A CHANCE LATER THAT NIGHT TO TALK TO ANY
18 LAW ENFORCEMENT OFFICERS?

19 A. YEAH, THEY CAME TO MY HOUSE.

20 Q. OKAY. AND YOU BASICALLY DESCRIBED TO THEM ALL THE
21 DETAILS THAT YOU'VE TOLD US HERE IN COURT TODAY?

22 A. YES, SIR.

23 MR. SPRATLIN: ALL RIGHT. THANK YOU. THAT'S ALL THE
24 QUESTIONS I HAVE.

25 MR. HASTIE: NONE.

1 THE COURT: THANK YOU, MA'AM. YOU CAN STEP DOWN.

2 MR. SPRATLIN: YOUR HONOR, MAY THE WITNESS BE EXCUSED?

3 THE COURT: ANY OBJECTION, MR. HASTIE?

4 MR. HASTIE: NONE, YOUR HONOR.

5 THE COURT: YOU CAN BE EXCUSED, MA'AM. THANK YOU.

6 MR. SPRATLIN: YOUR HONOR, THE STATE WOULD NEXT CALL

7 DETECTIVE IRENE CULICK TO THE STAND.

8 IRENE CULICK, AFTER BEING DULY SWORN, TESTIFIED AS
9 FOLLOWS:

10 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST
11 NAME, PLEASE.

12 THE WITNESS: IT'S IRENE CULICK, C-U-L-I-C-K.

13 DIRECT EXAMINATION

14 BY MR. SPRATLIN:

15 Q. MS. CULICK, WHERE ARE YOU EMPLOYED?

16 A. I'M EMPLOYED AT THE SUMTER POLICE DEPARTMENT.

17 Q. OKAY. WHAT IS YOUR JOB THERE?

18 A. I'M A SENIOR DETECTIVE OVER THE VIOLENT CRIMES DIVISION.

19 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE SUMTER CITY
20 POLICE DEPARTMENT?

21 A. ELEVEN YEARS.

22 Q. OKAY. IN ALL THAT TIME HAVE YOU BEEN A DETECTIVE?

23 A. NO. I STARTED OUT IN EVIDENCE AND WORKED THAT FOR A
24 COUPLE OF YEARS, AND THEN I WORKED ON THE ROAD AS A PATROL
25 OFFICER FOR A COUPLE OF YEARS, AND THE LAST SEVEN YEARS I'VE

1 BEEN ASSIGNED TO THE DETECTIVE DIVISION.

2 Q. HOW MANY CASES WOULD YOU SAY YOU'VE INVESTIGATED OVER
3 THOSE SEVEN YEARS?

4 A. THOUSANDS.

5 Q. OKAY. WERE YOU ON DUTY BACK IN JUNE 7TH OF 2007?

6 A. YES, SIR, I WAS.

7 Q. WHAT WERE YOU DOING ON THAT DAY?

8 A. I WAS AT THE STATION WORKING WHEN AN ARMED ROBBERY CALL
9 CAME OUT.

10 Q. OKAY. DO YOU REMEMBER WHERE THAT ARMED ROBBERY CALL
11 CAME FROM?

12 A. YES. DISPATCH CALLED OUT AN ARMED ROBBERY AND STATED
13 THERE WAS ONE AT 25 DUGAN STREET WHICH IS THE BUSINESS TOTAL
14 LIVING.

15 Q. OKAY. AND DO YOU KNOW WHAT COUNTY THAT BUILDING IS IN?

16 A. IT'S IN SUMTER COUNTY. IT'S BEHIND THE SUMTER KUT-RATE
17 DRUGSTORE ON MAIN STREET.

18 Q. OKAY. AND FROM YOUR INVESTIGATION, WHEN YOU ARRIVED AT
19 THE SCENE WHAT DID YOU DO?

20 A. WHEN I ARRIVED AT THE SCENE, PATROL OFFICERS WERE THERE
21 ALREADY. USUALLY THEY'RE THE FIRST TO ARRIVE ON THE SCENE,
22 AND THEY WERE CALLING OUT A CANINE TO TRY TO TRACK THE TRACE
23 WHERE THE SUSPECT RAN. AT THAT POINT MR. HUFF, WHO WAS
24 VICTIM IN THIS CASE, WAS OUTSIDE OF THE BUSINESS. WE ALWAYS
25 BRING THE VICTIMS OUTSIDE SO WE CAN KEEP THE AREA SECURE FOR

1 PROCESSING AFTER THE DOG GETS THROUGH BECAUSE THEY NEED A
2 SCENT AND THEY DON'T NEED OUR OFFICERS' SCENTS OR THE
3 VICTIMS' SCENTS TO TRY TO PICK UP ON. AT THAT TIME I
4 INTERVIEWED MR. HUFF IN REFERENCE TO WHAT HAPPENED IN THE
5 BUSINESS TO TRY TO GAIN FURTHER INFORMATION TO HELP US
6 DEVELOP A SUSPECT.

7 Q. OKAY. AND WHEN YOU WERE TALKING WITH MR. HUFF, WHAT WAS
8 HIS DEMEANOR THAT DAY? HOW DID HE APPEAR TO YOU?

9 A. HE WAS SHAKEN UP. HE HAD REPORTED TO ME THAT HE HAD
10 JUST BEEN ROBBED AT GUNPOINT, AND NOTHING LIKE THAT HAD EVER
11 HAPPENED TO HIM BEFORE---

12 Q. OKAY.

13 A. ---AND HE WAS SHAKEN UP.

14 Q. WAS MR. HUFF ABLE TO PROVIDE YOU WITH ANY KIND OF
15 INFORMATION ABOUT THE IDENTITY OF THE MAN THAT ROBBED HIM?

16 A. YES. I ASKED HIM ABOUT THE IDENTITY AND WHAT ACTUALLY
17 HAPPENED, AND HE WAS ABLE TO TELL ME THAT HE WAS IN THE STORE
18 WITH SOME OTHER CUSTOMERS AND THAT WHEN HE CLOSED THE DOOR
19 AFTER ONE CUSTOMER LEFT, THE SUSPECT WAS STILL IN THE STORE
20 AT THE TIME. HE LOCKED THE DOOR OR HE HAD CLOSED THE DOOR
21 BACK, AND WHEN HE TURNED AROUND, THE SUSPECT HAD A GUN IN HIS
22 FACE. HE DESCRIBED THE GUN AS A BLACK GUN. HE SAID IT WAS A
23 TWO-SHOT DERRINGER. HE SAID THAT IT WAS THE TYPE THAT HAD
24 ONE BARREL ON TOP AND UNDERNEATH WHICH IS UNUSUAL. WE DON'T
25 GET A LOT LIKE THAT.

1 Q. OKAY.

2 A. I THEN ASKED HIM WHAT HAPPENED NEXT. HE STATED THAT THE
3 PERSON TOLD HIM NOT TO MAKE ANY FUNNY MOVES, THAT HE WOULD
4 SHOOT HIM, THAT HE WAS JUST THERE FOR THE CASH. HE DIDN'T
5 WANT ANY CHECKS, ANY CREDIT CARDS. HE STATED THAT THE
6 SUSPECT WENT THROUGH NOT ONLY THE CASH REGISTER BUT HIS
7 WALLET AND/OR POCKETS, TOOK MONEY OUT OF HIS POCKETS AND OUT
8 OF THE CASH REGISTER.

9 WE TALKED TO HIM ABOUT WHAT THE SUBJECT TOUCHED INSIDE
10 THE STORE SO WE COULD DO PROCESSING FOR FINGERPRINTS, THINGS
11 LIKE THAT. HE INDICATED THAT THE SUSPECT TOLD HIM AFTER HE
12 GOT THE MONEY TO GIVE HIM A PAPER TOWEL AND THAT HE ACTUALLY
13 WIPED DOWN THINGS TO PREVENT US FROM GETTING FINGERPRINTS.

14 Q. WERE YOU ABLE TO GET ANY FINGERPRINTS FROM THE STORE, TO
15 YOUR KNOWLEDGE?

16 A. LIEUTENANT NESBITT PROCESSED THE STORE AND, NO, NOT TO
17 MY KNOWLEDGE.

18 Q. ALL RIGHT. NOW, AT SOME POINT DURING YOUR
19 INVESTIGATION, WERE YOU ABLE TO CENTER IN ON A SUSPECT?

20 A. YEAH. HE CONTINUED TO TELL ME THINGS THAT HAPPENED IN
21 THE STORE. HE STATED THAT THE SUSPECT LEFT OUT WITH THE
22 MONEY, THE GUN, WIPING DOWN THE DOOR AFTERWARDS. HE STATED
23 THAT HE TOLD THE SUSPECT THAT HE WOULD PRAY FOR HIM AND THAT
24 THE SUSPECT TOLD HIM, "YES, PRAY FOR ME BECAUSE I'M GOING
25 STRAIGHT TO HELL." HE TOLD ME THAT HE BELIEVED THE SUSPECT

1 WOULD SHOOT HIM; THAT'S WHY HE COMPLIED.

2 HE STATED THAT THE SUSPECT WAS SHORTER THAN HIM,
3 APPROXIMATELY 5'10". HE STATED HE WAS IN HIS LATE TWENTIES,
4 EARLY THIRTIES. HE STATED THAT HE HAD A MUSCULAR BUILD. HE
5 STATED THE SUSPECT WAS WEARING A WHITE TANK TOP AND BLACK
6 PANTS, AND HE REMEMBERED A WHITE STRIPE DOWN THE SIDE. I
7 ASKED HIM ABOUT ANY TYPE OF HAIR OR EARRINGS, TATTOOS, ANY
8 OTHER IDENTIFIABLE MARKS. HE STATED THE SUSPECT DID HAVE A
9 TATTOO ON HIS LEFT ARM. HE STATED IT WAS A CIRCLE WITH
10 POINTS COMING OUT FROM IT, POSSIBLY THE SUN. HE ALSO STATED
11 THAT HE REMEMBERED SEEING AN EARRING IN THE EAR AND THAT THE
12 DEFENDANT HELD THE GUN IN HIS LEFT HAND.

13 Q. OKAY.

14 A. THAT'S WHAT HE TOLD ME. HE THEN STATED THAT HE HAS SEEN
15 THE SUSPECT BEFORE. I ASKED IF HIS FACE WAS COVERED IN ANY
16 KIND OF WAY, AND HE SAID "NO." HE STATED THAT HE HAD SEEN
17 THE SUSPECT BEFORE, DID NOT KNOW HIS NAME, BUT THAT HE HAD
18 SEEN THE SUSPECT WITH THE GIRL THAT WORKS NEXT DOOR.

19 Q. OKAY. NOW, GIVEN ALL THE INFORMATION YOU RECEIVED FROM
20 MR. HUFF, WHAT DID YOU DO NEXT?

21 A. THEN I STARTED WORKING ON WHO WORKS -- WHO'S EMPLOYED
22 NEXT DOOR AT THE WATEREE AIDS TASK FORCE AND TRIED TO FIND
23 THE PERSON THAT HE HAD SEEN THE DEFENDANT IN THE STORE WITH
24 THAT DAY, THAT HE HAD SEEN, YOU KNOW, THE DEFENDANT IN THE
25 STORE WITH A FEMALE THAT WORKS NEXT DOOR, AND SO WE WERE ABLE

1 TO FIND OUT THAT MS. LATRELL BILLIE THAT JUST TESTIFIED
2 BEFORE ME DID WORK NEXT DOOR, AND WE WENT TO SEE HER.

3 Q. OKAY. AND WHEN YOU WENT TO SEE MS. BILLIE, WHAT DID SHE
4 HAVE TO TELL YOU?

5 A. WELL, WHEN I WENT TO SEE MS. BILLIE, I WASN'T SURE IF
6 SHE WAS INVOLVED IN THIS IN ANY KIND OF WAY. HE SAID THAT HE
7 HAD SEEN THEM BEFORE TOGETHER. HE HAD SEEN THE DEFENDANT
8 VISITING HER NEXT DOOR BECAUSE A LOT OF TIMES HE WOULD SIT
9 OUTSIDE THE STORE. HE TOLD ME THAT -- SO JUST IN MY MIND I
10 DIDN'T KNOW IF MAYBE SHE WAS INVOLVED IN ANY KIND OF WAY
11 BECAUSE THEY WERE IN THE STORE BEFORE THIS ROBBERY HAPPENED.

12 SO WHEN I WENT OUT THERE TO TALK TO HER, I JUST
13 BASICALLY ASKED HER WHERE SHE WORKED, WHERE SHE WAS THAT DAY,
14 WHO WAS SHE WITH, THINGS LIKE THAT, AND JUST AFTER TALKING TO
15 HER I DID NOT FEEL LIKE SHE WAS INVOLVED AT ALL. SHE WAS
16 VERY FORTHCOMING, STATED SHE DID GO INTO TOTAL LIVING THAT
17 DAY, THAT AFTERNOON, WHEN SHE GOT OFF. SHE STATED THERE WAS
18 AN ANDRE MASSEY THERE THAT SHE KNEW AND SHE SPOKE WITH HIM,
19 AND HE EXITED THE STORE. SHE TALKED TO HIM.

20 I ASKED WHAT HE WAS WEARING. SHE TOLD ME HE WAS WEARING
21 A WHITE TANK TOP AND BLACK SKI PANTS. I ASKED HER IF HE HAD
22 ANY TATTOOS OR ANY DISTINGUISHING MARKS, AND SHE STATED HE
23 DID HAVE TATTOOS, NOT ONLY A TATTOO ON HIS SHOULDER BUT MORE
24 TATTOOS. SHE STATED HE DID HAVE EARRINGS. SHE STATED THAT
25 HE -- SHE DIDN'T KNOW HIS ADDRESS, BUT SHE STATED THAT HE HAD

1 FAMILY ACROSS THE STREET AND SHE GAVE ME A CELL PHONE NUMBER
2 OF HIS.

3 Q. BASED ON THE INFORMATION YOU HAD BEEN ABLE TO GARNER
4 FROM YOUR INVESTIGATION, WERE YOU -- DID YOU FEEL YOU HAD
5 ENOUGH EVIDENCE TO MAKE AN ARREST ON MR. ANDRE MASSEY?

6 A. YES, I DID.

7 Q. OKAY. AND HOW DID YOU GO ABOUT LOCATING MR. MASSEY?

8 A. WE WENT BACK AND PULLED UP MR. MASSEY'S D.L.

9 Q. UH-HUH. WHAT'S THAT?

10 A. DRIVER'S LICENSE.

11 Q. OKAY.

12 A. THROUGH THE D.M.V. AND WERE ABLE TO LOCATE AN ADDRESS ON
13 HIM AND WE WENT TO THAT ADDRESS TO SEE IF HE WAS THERE.

14 Q. OKAY. DO YOU REMEMBER WHAT ADDRESS THAT WAS?

15 A. YES, SIR. IT WAS 107 SALEM STREET, APARTMENT NUMBER 2.

16 Q. OKAY. NOW, WHEN YOU WENT TO THAT APARTMENT, WAS THE
17 DEFENDANT THERE?

18 A. YES, HE WAS.

19 Q. OKAY. AND WERE YOU ABLE TO TAKE HIM INTO CUSTODY?

20 A. HE WAS TAKEN INTO CUSTODY.

21 Q. OKAY. WHAT HAPPENED WHEN THE DEFENDANT WAS TAKEN INTO
22 CUSTODY? WHAT DID YOU DO THEN?

23 A. WHEN HE WAS TAKEN INTO CUSTODY, IT WAS BY ANOTHER
24 DETECTIVE. AT THAT POINT HE WAS BROUGHT DOWN TO THE POLICE
25 DEPARTMENT WHERE MYSELF AND DETECTIVE RIDGEWAY INTERVIEWED

1 HIM.

2 Q. OKAY.

3 A. AND WHILE WE WERE DOING THAT, OFFICERS WERE STILL AT HIS
4 HOUSE. WE HAD ASKED FOR CONSENT, IF HE WOULD CONSENT TO LET
5 US SEARCH THE RESIDENCE. AT THE TIME THAT HE WAS PLACED
6 UNDER ARREST---

7 Q. DETECTIVE CULICK, AT THIS POINT WE -- WE'LL TALK ABOUT
8 THAT WITH AN OFFICER LATER ON IN REGARDS TO THE WARRANT.
9 NOW, WHEN MR. MASSEY WAS TAKEN INTO CUSTODY, WHAT DID YOU DO?

10 A. WHEN HE WAS TAKEN INTO CUSTODY, HE WAS WEARING A WHITE
11 TANK TOP, THE SAME THAT WAS DESCRIBED BY MR. HUFF AND ALSO
12 MS. BILLIE. HE WAS BROUGHT TO THE POLICE DEPARTMENT AT THAT
13 TIME, AND MYSELF AND DETECTIVE RIDGEWAY, WE READ HIM HIS
14 RIGHTS AND EXPLAINED TO HIM WE WANTED TO TALK TO HIM ABOUT AN
15 ARMED ROBBERY THAT HAD OCCURRED THAT AFTERNOON.

16 Q. ALL RIGHT. BACK IT UP FOR A SECOND. DID YOU HAPPEN TO
17 NOTICE -- YOU SAID THAT HE WAS WEARING A WHITE TANK TOP?

18 A. YES.

19 Q. WERE HIS ARMS BARE?

20 A. YES, THEY WERE.

21 Q. DID YOU HAPPEN TO NOTICE ANY TATTOOS ON THE DEFENDANT?

22 A. YES, I DID.

23 Q. WHAT TATTOO DID YOU NOTICE---

24 A. HE HAD---

25 Q. ---IN PARTICULAR?

1 A. ---A TATTOO ON HIS LEFT UPPER SHOULDER, AND IT'S CIRCLES
2 WITH POINTS COMING OUT, LIKE THE VICTIM DESCRIBED. IT WASN'T
3 A SUN THOUGH; IT WAS ACTUALLY A SPIDER WEB.

4 Q. OKAY.

5 A. HE ALSO HAD SOME OTHER TATTOOS VISIBLE ON HIS ARM AND
6 EARRINGS.

7 Q. OKAY. NOW, SO YOU SAID THAT YOU TOOK HIM BACK TO THE
8 POLICE STATION.

9 A. YES.

10 Q. BEFORE WE GET INTO QUESTIONING, LET ME JUST MAKE SURE
11 WE'RE TALKING ABOUT THE SAME PERSON. DO YOU SEE THE
12 INDIVIDUAL THAT YOU KNOW AS ANDRE MASSEY HERE IN THE
13 COURTROOM TODAY?

14 A. YES.

15 Q. WOULD YOU PLEASE POINT HIM OUT AND THE ARTICLE OF
16 CLOTHING THAT HE IS WEARING?

17 A. YES. IT'S THE DEFENDANT SITTING AT THE TABLE WITH THE
18 WHITE SHIRT, TIE, AND KHAKI PANTS.

19 Q. OKAY. PLEASE LET THE RECORD REFLECT THAT THE WITNESS
20 HAS IDENTIFIED THE DEFENDANT IN THIS CASE. NOW, DETECTIVE
21 CULICK, YOU STATED THAT YOU WENT OVER HIS RIGHTS WITH HIM
22 PRIOR TO AN INTERVIEW. WHY IS THAT NECESSARY?

23 A. WE GO OVER -- EVERY TIME WE INTERVIEW SOMEBODY THAT'S IN
24 CUSTODY OR WE FEEL IS CHARGED OR INVOLVED IN A CRIME, WE READ
25 THEM THEIR RIGHTS.

1 Q. OKAY.

2 A. AND IN THIS CASE WE WEREN'T OUT ON THE STREET; WE WERE
3 ACTUALLY IN THE OFFICE. SO I DIDN'T JUST VERBALLY... I
4 ACTUALLY HAVE IT ON PAPER WHERE I READ HIM HIS RIGHTS AND HE
5 SIGNED ACKNOWLEDGING THAT HE UNDERSTOOD HIS RIGHTS.

6 Q. OKAY.

7 A. COMMONLY KNOWN AS MIRANDA RIGHTS.

8 Q. LET ME SHOW YOU WHAT'S BEEN ALREADY BEEN MARKED AS
9 STATE'S EXHIBIT -- OR STATE'S EXHIBIT NUMBER 1 FOR PURPOSES
10 OF IDENTIFICATION AT THIS POINT. DO YOU RECOGNIZE THAT
11 DOCUMENT I JUST HANDED YOU?

12 A. YES, I DO.

13 Q. WHAT IS THAT DOCUMENT?

14 A. THIS IS OUR INTERVIEW FORM THAT WE USE AT THE POLICE
15 DEPARTMENT THAT HAS HIS RIGHTS OR THE DEFENDANT'S RIGHTS ON
16 THEM.

17 Q. OKAY.

18 A. THAT WE...

19 Q. HOW WAS THAT FORM USED IN THE INTERVIEW PROCESS?

20 A. BEFORE WE INTERVIEW ANYONE, WE GO OVER THEIR RIGHTS WITH
21 THEM. I ALWAYS READ THEM JUST TO MAKE SURE. SOME PEOPLE ARE
22 EMBARRASSED TO TELL ME IF THEY CAN'T READ, AND SO I READ THEM
23 TO THEM AND MAKE SURE THAT THEY UNDERSTAND THEIR RIGHTS AND
24 ASK THEM IF THEY WOULD LIKE TO TALK TO ME.

25 Q. OKAY. NOW, WOULD YOU PLEASE READ THAT FORM FOR THE JURY

1 JUST SO THEY KNOW EXACTLY WHAT THE DEFENDANT WAS ADVISED THAT
2 HE HAD THE RIGHTS OF?

3 A. YES. I ADVISED HIM THIS WAS THE SUMTER POLICE
4 DEPARTMENT INTERVIEW FORM, AND BEFORE WE ASK YOU ANY
5 QUESTIONS YOU MUST UNDERSTAND YOUR RIGHTS. YOU HAVE THE
6 RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN BE USED AGAINST
7 YOU IN COURT. YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR
8 ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM OR HER
9 WITH YOU AT ANY TIME DURING THE QUESTIONING. IF YOU CANNOT
10 AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY
11 QUESTIONING IF YOU WISH. IF YOU DECIDE TO ANSWER ANY
12 QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE
13 THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK WITH A
14 LAWYER.

15 AND THEN IT STATES, "WAIVER OF RIGHTS. BEFORE ANY
16 QUESTIONING, I WAS FURNISHED THE ABOVE STATEMENTS OF MY
17 RIGHTS AT," AND AT THAT TIME IT WAS 11:36 P.M., AND THIS WAS
18 ON JUNE THE 7TH, 2007, AT THE SUMTER POLICE DEPARTMENT BY
19 DETECTIVE CULICK OF THE SUMTER POLICE DEPARTMENT. AND THEN I
20 READ TO HIM THAT: I HAVE READ OR HAD READ TO ME THIS
21 STATEMENT OF MY RIGHTS. I UNDERSTAND WHAT MY RIGHTS ARE.
22 I'M WILLING TO ANSWER QUESTIONS AT THIS TIME WITHOUT A LAWYER
23 PRESENT. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO
24 PRESSURE HAS BEEN USED AGAINST ME.

25 Q. AND DID THE DEFENDANT ACKNOWLEDGE THAT HE UNDERSTOOD

1 THOSE RIGHTS IN ANY WAY?

2 A. YES, HE DID.

3 Q. HOW DID HE DO THAT?

4 A. HE WANTED TO TALK, AND HE ACKNOWLEDGED BY SIGNING.

5 Q. OKAY. WHO ELSE SIGNED THAT FORM?

6 A. I ALSO SIGNED IT AND DETECTIVE RICHBURG SIGNED IT.

7 Q. OKAY. NOW, YOU MENTIONED EARLIER DETECTIVE RIDGEWAY.

8 A. DID I? I'M SORRY. RICHBURG.

9 Q. OKAY.

10 A. WE ALSO HAVE A DETECTIVE RIDGEWAY. THAT'S MY PARTNER
11 NOW.

12 Q. JUST TO CLARIFY, WHO WAS THE DETECTIVE IN THE ROOM WITH
13 YOU DURING ALL THIS?

14 A. DETECTIVE RICHBURG. SORRY.

15 Q. AND WAS---

16 A. HE'S HERE.

17 Q. ---DETECTIVE RICHBURG IN THE ROOM WHEN THE RIGHTS WERE
18 READ TO THE DEFENDANT?

19 A. YES, HE WAS AND HE SIGNED.

20 MR. SPRATLIN: OKAY. ALL RIGHT. YOUR HONOR, AT THIS
21 TIME I WOULD TENDER WHAT'S ALREADY BEEN MARKED AS STATE'S
22 EXHIBIT NUMBER 1 FOR IDENTIFICATION PURPOSES INTO EVIDENCE AS
23 STATE'S NUMBER 1.

24 THE COURT: MR. HASTIE? SAME OBJECTION PREVIOUSLY?

25 MR. HASTIE: YES, YOUR HONOR.

1 THE COURT: ALL RIGHT. THAT'S IN EVIDENCE AS EXHIBIT 1.

2 MR. SPRATLIN: THANK YOU, YOUR HONOR.

3 (STATE'S EXHIBIT 1 WAS RECEIVED IN EVIDENCE.)

4 BY MR. SPRATLIN:

5 Q. NOW, AFTER BEING ADVISED OF HIS RIGHTS, DID THE
6 DEFENDANT -- DID HE IN ANY WAY ASSERT ANY OF THOSE RIGHTS?

7 A. NO, HE DIDN'T.

8 Q. DID HE ASK FOR A LAWYER?

9 A. NO, HE DIDN'T.

10 Q. DID HE INVOKE HIS RIGHT TO REMAIN SILENT?

11 A. NO, HE DIDN'T.

12 Q. DID HE SIMPLY NOT SPEAK TO YOU?

13 A. NO, HE TALKED.

14 Q. DID HE IN ANY WAY INDICATE TO YOU THAT HE DID NOT WISH
15 TO TALK TO YOU OR DETECTIVE RICHBURG?

16 A. NO, HE DIDN'T.

17 Q. OKAY. NOW, WHEN YOU BEGAN TALKING TO THE DEFENDANT,
18 WHAT SORT OF QUESTIONS WERE YOU ASKING HIM?

19 A. IN THE BEGINNING WE WERE JUST ASKING HIS NAME, HIS
20 ADDRESS, WHAT HE DID THAT DAY, BASICALLY A TIMELINE, WHAT HE
21 WAS DOING, WHERE WAS HE, QUESTIONS LIKE THAT.

22 Q. OKAY. AND AT SOME POINT DID THE DEFENDANT STATE THAT HE
23 WISHED TO GIVE YOU A STATEMENT?

24 A. YES.

25 Q. OKAY. AND WHAT -- LET ME SHOW YOU -- OKAY. LET ME SHOW

1 YOU WHAT'S ALREADY BEEN MARKED AS STATE'S EXHIBIT NUMBER 2
2 FOR THE PURPOSES OF IDENTIFICATION. DETECTIVE CULICK, DO YOU
3 RECOGNIZE THAT DOCUMENT I JUST HANDED YOU?

4 A. YES, I DO.

5 Q. WHAT IS THAT DOCUMENT?

6 A. THIS IS A STATEMENT FORM THAT WE DID WITH MR. ANDRE
7 MASSEY AFTER WE TALKED WITH HIM. HE TOLD US WHAT HAPPENED
8 THAT DAY. HE TOLD US WHAT HE KNEW, AND I ASKED HIM IF HE
9 WOULD PUT HIS VERBAL STATEMENT EITHER IN WRITING OR HAVE US
10 TYPE IT FOR HIM OR RECORD IT, AND HE STATED THAT WE COULD
11 TYPE AS HE TALKED AND TOLD US HIS STATEMENT AS TO THE EVENTS
12 THAT HAPPENED THAT DAY.

13 Q. OKAY. AND SO WHO WAS DOING THE TYPING ON THAT
14 STATEMENT?

15 A. I WAS.

16 Q. OKAY. AND WERE YOU SIMPLY TYPING WHAT THE DEFENDANT WAS
17 SAYING?

18 A. YES.

19 Q. OKAY.

20 A. AS HE TALKED, I TYPED.

21 Q. AND IS THAT DOCUMENT IN YOUR HAND -- IS THAT THE
22 ORIGINAL STATEMENT GIVEN BY THE DEFENDANT?

23 A. YES, IT IS.

24 Q. OKAY. IS IT SIGNED BY HIM?

25 A. YES, IT IS.

1 Q. IS IT SIGNED BY ANYONE ELSE?

2 A. YES. IT'S SIGNED BY DETECTIVE RICHBURG.

3 MR. SPRATLIN: OKAY. YOUR HONOR, AT THIS TIME I WOULD
4 TENDER WHAT'S ALREADY BEEN MARKED STATE'S EXHIBIT NUMBER 2
5 INTO EVIDENCE.

6 THE COURT: ANY OBJECTIONS OTHER THAN THE PREVIOUSLY-
7 NOTED OBJECTIONS?

8 MR. HASTIE: NONE, YOUR HONOR.

9 THE COURT: ALL RIGHT. THAT'S IN AS NUMBER 1, EXCUSE
10 ME, NUMBER 2. I APOLOGIZE.

11 (STATE'S EXHIBIT 2 WAS RECEIVED IN EVIDENCE.)

12 MR. SPRATLIN: AT THIS TIME, YOUR HONOR, I WOULD ASK
13 THAT DETECTIVE CULICK BE ALLOWED TO READ THAT STATEMENT ALOUD
14 TO THE JURY.

15 THE COURT: ALL RIGHT.

16 THE WITNESS: OKAY. IT SAYS---

17 THE COURT: THIS WILL BE -- THE OBJECTION WILL CONTINUE
18 THROUGHOUT.

19 THE WITNESS: OKAY. IT SAYS, "SUSPECT STATEMENT. I,
20 ANDRE M. MASSEY, OF 107 NORTH SALEM AVENUE, APARTMENT NUMBER
21 2, SUMTER, SOUTH CAROLINA, HAVE BEEN ADVISED OF MY
22 CONSTITUTIONAL RIGHTS AND, HAVING SIGNED A WAIVER OF THOSE
23 RIGHTS, DO HEREBY GIVE THE FOLLOWING STATEMENT FREELY AND
24 VOLUNTARILY, WITHOUT FEAR OR THREAT OR PROMISE OF REWARD TO
25 DETECTIVE CULICK WHO HAS IDENTIFIED HERSELF AS A POLICE

1 OFFICER OF THE SUMTER POLICE DEPARTMENT." IT HAS HIS NAME,
2 ANDRE M. MASSEY, ADDRESS 107 NORTH SALEM AVENUE---

3 THE COURT: NO NEED TO PUBLISH THE SOCIAL SECURITY
4 NUMBER.

5 THE WITNESS: NUMBER TWO -- OKAY. DATE OF BIRTH WAS
6 12/12/75 AND THE PHONE NUMBER.

7 BY MR. SPRATLIN:

8 Q. OKAY.

9 A. IT STATES, "THIS AFTERNOON AROUND 2 P.M. BUT BEFORE 4
10 P.M. CATS WAS TALKING, THE OLD DUDE AND THE OTHER DUDE. THE
11 OLD DUDE IS THE ONE THAT WORKS AT THE STORE, THE ONE THAT WAS
12 ROBBED. THE OTHER DUDE THEY CALL T-DOG, BUT HIS REAL NAME IS
13 TYRONE. I CALL HIM T-Y OR TY. THEY WERE TALKING, STANDING
14 OUTSIDE THE STORE LIKE THEY WAS LOOKING AT WATERMELONS. HE
15 HAD A SHOPPING CART WHERE THE WATERMELONS WERE AT. THE OLD
16 DUDE WAS TELLING TY THAT TOMORROW IS HIS LAST DAY AND THAT
17 SOMEBODY OR WHOEVER RUNS THE STORE IS GOING TO TURN IT INTO A
18 WAREHOUSE OR A WHOLE STORE.

19 "SO TY ASKED HIM WHAT WAS UP WITH WHAT THEY TALKED
20 ABOUT, AND THE OLD MAN SAID SOMETHING REAL LOW, BUT I DON'T
21 KNOW WHAT HE SAID. TY STARTED LAUGHING AND SAID, 'OKAY.' SO
22 AFTER THAT TY TOLD HIM, 'I'LL SEE YOU LATER.' SO THEN AFTER
23 THAT, THAT IS WHEN I WENT NEXT DOOR AND HOLLERED AT MY LITTLE
24 FRIEND. I LEFT AND TOLD HER I WOULD BE RIGHT BACK. I WENT
25 TO THE BARBERSHOP, CAUGHT UP WITH TY, AND I ASKED HIM WHAT

1 WAS GOING ON. HE WAS LIKE, 'WHAT YOU MEAN?' I SAID,
2 'BETWEEN YOU AND THE OLD MAN.' HE WAS LIKE, 'NOTHING. ME
3 AND THE OLD MAN GOT SOME BUSINESS TO HANDLE.' SO I ASKED
4 WHAT ABOUT, AND HE TOLD ME THAT HIM AND THE OLD MAN WAS
5 PULLING A SCAM. THEN HE SAID IT WAS REAL EASY AND IT WAS
6 GOOD MONEY IN IT. HE SAID THE OLD MAN DID IT BEFORE BECAUSE
7 THE OLD MAN HAD GOT A LADY OR SOMETHING TO ROB HIM, TO TAKE
8 SOME SHOES. THEN HE SAID THAT WHAT HE WAS DOING WAS
9 SOMETHING LIKE THAT, BUT IT WAS MORE MONEY INVOLVED,
10 ESPECIALLY WHEN THE OLD MAN GOT PAID. I TOLD HIM HE WAS
11 CRAZY, AND I WENT HOME. WELL, WE SAT THERE AND CHITCHATTED
12 ABOUT BULL SHIT.

13 "I LEFT AND WENT HOME. I FORGOT. I WENT BACK TO SEE MY
14 FRIEND, AND THAT IS WHEN WE WENT INTO THE STORE. WE WENT
15 THERE ABOUT 4:45 P.M. I STARTED TRIPPING ABOUT A \$450
16 PICTURE, AND HE SAID IT WAS HANDMADE FROM AFRICA AND THAT'S
17 WHY IT COST SO MUCH. WE LEFT AND I WENT HOME AROUND 5:15
18 P.M. SHE DROPPED ME OFF ON THE CORNER OF WASHINGTON AND
19 HAMPTON. SHE DRIVES RED CAR, A LITTLE BURGUNDY. I WALKED
20 HOME AND SEEN JERMAINE ROBINSON ON THE WAY. WE WALKED AND
21 TALKED AND BULL SHIT. I ASKED HIM WHERE HE WAS GOING, AND HE
22 SAID, 'TO THE BARBERSHOP.' HE ASKED ME WHAT BARBERS WAS UP
23 THERE AND I TOLD HIM. HE ASKED ME IF IT WAS FULL AND I TOLD
24 HIM, 'NO. JUST TYRONE AND TWO LITTLE KIDS.'

25 "MY FIANCEE, DIONETTA PRINCE, CAME HOME AROUND 5:30 OR 6

1 P.M. I DID NOT ROB THE MAN AT ALL. I THINK HE IS TRYING TO
2 USE ME AS AN ESCAPE GOAT. I DO NOT HAVE A GUN. I HAVE ABOUT
3 \$400 IN MY POCKET. IT IS FROM HER AND MY PAYCHECK COMBINED.
4 I WORK AT RED BONE ALLEY."

5 Q. THANK YOU, DETECTIVE CULICK. NOW, ONCE THAT STATEMENT
6 WAS TYPED AND PREPARED AND PRINTED OUT, WAS IT READ TO THE
7 DEFENDANT JUST LIKE YOU READ IT HERE TODAY?

8 A. YES. I WENT OVER IT WITH HIM TO MAKE SURE THAT THIS WAS
9 CORRECT, THAT IF HE WANTED TO ADD ANYTHING OR CHANGE ANYTHING
10 WE COULD DO THAT, AND HE STATED THIS WAS CORRECT, AND HE
11 SIGNED HIS NAME AND DATED IT TO SHOW THAT IT WAS CORRECT AND
12 THIS WAS HIS STATEMENT.

13 Q. I THINK WE ALREADY COVERED IT, BUT JUST TO MAKE SURE:
14 WHO ELSE SIGNED THAT FORM?

15 A. MYSELF AND DETECTIVE RICHBURG.

16 Q. OKAY. NOW, AT ANY TIME DURING THE TIME THAT THE
17 DEFENDANT WAS GIVING YOU THAT STATEMENT, DID HE ASK FOR A
18 LAWYER?

19 A. NO.

20 Q. DID HE STATE THAT HE WISHED TO TERMINATE THE INTERVIEW?

21 A. NO.

22 Q. DID HE SIMPLY JUST STOP TALKING?

23 A. NO.

24 Q. DID HE DO ANYTHING THAT INSINUATED TO YOU THAT HE WISHED
25 TO NOT TALK TO YOU?

1 A. NO.

2 Q. OKAY. AT THE TIME THAT HE GAVE YOU THAT STATEMENT --
3 BEFORE HE GAVE YOU THAT STATEMENT OR AT ANY TIME DURING THE
4 STATEMENT, WAS HE PROMISED ANY SORT OF LENIENCY IN EXCHANGE
5 FOR THAT STATEMENT?

6 A. NO.

7 Q. DID HE -- WAS HE -- DID YOU OR ANYONE IN YOUR PRESENCE
8 INTIMIDATE OR THREATEN VIOLENCE UPON THE DEFENDANT TO GET HIM
9 TO PROVIDE THAT STATEMENT?

10 A. NO, SIR.

11 Q. IN YOUR OPINION, DID YOU OR ANYONE IN YOUR PRESENCE PUT
12 ANY SORT OF DURESS ON THE DEFENDANT TO MAKE HIM PROVIDE THAT
13 STATEMENT?

14 A. NO, WE DID NOT.

15 Q. OKAY. NOW, ONCE HE GAVE THAT YOU STATEMENT, WHAT DID
16 YOU DO THEN?

17 A. AFTER HE GAVE ME THE STATEMENT, AT THAT POINT I CALLED
18 DETECTIVES THAT WERE DOING A SEARCH WARRANT THAT I TALKED
19 ABOUT EARLIER---

20 Q. UH-HUH.

21 A. ---TO ASK IF THEY HAD FOUND ANYTHING OR LOCATED ANYTHING
22 THAT COULD HAVE BEEN INVOLVED IN THIS CRIME.

23 Q. AND WHAT, IF ANYTHING, DID THOSE OFFICERS TELL YOU THAT
24 YOU LATER USED IN YOUR INTERROGATION OR IN THE INTERVIEW?

25 A. I WAS TOLD THAT THEY LOCATED A 22---

1 THE COURT: THE SAME OBJECTION WILL CONTINUE.

2 MR. HASTIE: SAME OBJECTION, YOUR HONOR.

3 THE WITNESS: ---22 DERRINGER PISTOL-TYPE, BLACK. THAT
4 WAS DESCRIBED BY THE VICTIM. I WAS TOLD THAT SOME BLACK
5 PANTS WERE FOUND WITH A WHITE STRIPE DOWN THE SIDE, AND I WAS
6 TOLD THEY ALSO FOUND A BLACK DOO RAG AT THE HOUSE THAT HAD A
7 KNOT TIED IN IT.

8 BY MR. SPRATLIN:

9 Q. OKAY. NOW, WHY WERE THESE PARTICULAR ITEMS IMPORTANT TO
10 YOU?

11 A. THESE WERE IMPORTANT BECAUSE THESE ARE THE SAME ITEMS
12 THAT THE VICTIM HAD DESCRIBED EARLIER THAT THE SUSPECT USED
13 IN THE ARMED ROBBERY.

14 Q. OKAY. ONCE YOU GOT THAT INFORMATION, WHAT DID YOU DO
15 THEN?

16 A. AT THAT TIME I TOLD ANDRE MASSEY WHAT THEY FOUND WHEN
17 THEY DID THE SEARCH WARRANT, WHAT THEY FOUND IN HIS ROOM,
18 ABOUT THE GUN, ABOUT THE PANTS. I TALKED TO HIM ABOUT THE
19 INCONSISTENCIES IN HIS STATEMENT. I LET HIM KNOW THAT I KNEW
20 WHO THE LITTLE FRIEND WAS NEXT DOOR, THAT I KNEW IT WAS MS.
21 BILLIE AND I HAD ALREADY SPOKE TO HER. SHE HAD CONFIRMED
22 WHAT HE WAS WEARING. SHE STATED THAT SHE WAS NOT -- SHE DID
23 NOT DROP HIM OFF ANYWHERE. THAT WAS DIFFERENT THAN WHAT WAS
24 IN THE STATEMENT.

25 I ALSO LET HIM KNOW THAT THE FRIEND THAT HE SAID HE SAW

1 ON THE WAY HOME, JERMAINE ROBINSON, HAD SPOKE WITH DETECTIVES
2 ON THE SCENE. HE WAS AT HIS HOUSE WHEN WE WENT THERE TO
3 ARREST HIM, AND HE SPOKE TO OFFICERS ON THE SCENE AND STATED
4 THAT HE WAS AT WORK UNTIL 9:30 THAT NIGHT. SO I JUST TALKED
5 TO HIM ABOUT ALL THESE DIFFERENT INCONSISTENCIES. I SPOKE TO
6 HIM ABOUT WHAT THE VICTIM SAID TO HIM ABOUT THAT HE WOULD
7 PRAY FOR HIM AND THAT I JUST REALLY DID NOT FEEL LIKE HE WAS
8 INVOLVED IN ANY TYPE OF ROBBERY AND THAT WE WOULD BE
9 FOLLOWING UP TRYING TO FIND THIS TYRONE, T-DOG, TY.

10 WE WOULD GO TO THE BARBERSHOP, AND WE WOULD JUST BE
11 INVESTIGATING ALL THE THINGS THAT HE SAID BUT THAT IT'S FUNNY
12 THAT THE VICTIM ONLY SAID ONE PERSON WAS IN HIS STORE. HE
13 DESCRIBED THAT PERSON. HE MATCHES IT TO A T., AND ALL THESE
14 ITEMS ARE FOUND IN HIS HOUSE, AND HE HAD 300 AND I BELIEVE
15 \$88 AND SOME CHANGE IN HIS POCKET AND FROM A CHECK THAT HE
16 DIDN'T GET PAID THAT DAY. SO USUALLY I DON'T HAVE THAT MUCH
17 AFTER I'M PAID A WEEK. SO JUST -- WE JUST TALKED ABOUT ALL
18 THESE INCONSISTENCIES, AND I JUST REALLY DID NOT FEEL LIKE
19 MR. HUFF WAS INVOLVED WITH ANYBODY ELSE IN A ROBBERY AND HE
20 STARTED -- THAT'S WHEN HE STARTED TALKING ABOUT MONEY
21 PROBLEMS AND---

22 Q. OKAY. BEFORE GETTING INTO THE SUBSTANCE OF THAT, IS IT
23 UNUSUAL IN AN INTERVIEW PROCESS TO DO WHAT YOU DID HERE AFTER
24 A SUSPECT GIVES A FIRST STATEMENT?

25 A. NO, IT'S NOT UNUSUAL.

1 Q. WHY IS THAT?

2 A. TO BE HONEST, IT'S HARD TO CONFESS THAT YOU'VE ROBBED
3 SOMEBODY OR YOU'VE DONE A CRIME. IT'S HARD TO TELL THOSE
4 THINGS. YOU JUST -- YOU DON'T WANT TO. YOU JUST -- YOU JUST
5 -- FOR A NUMBER OF DIFFERENT REASONS BUT WE SEE IT A LOT.
6 RARELY DO WE HAVE PEOPLE WHO COME IN AND SIT DOWN AND SAY,
7 "YES, I DID IT."

8 Q. WERE YOU CONVINCED BY -- DID YOU BELIEVE THE DEFENDANT'S
9 FIRST STATEMENT TO YOU?

10 A. NO, I DIDN'T, BUT IF THIS IS THE STATEMENT HE WANTED TO
11 GIVE, THEN THAT'S THE STATEMENT I WAS GOING TO TAKE AND
12 THEN---

13 Q. OKAY.

14 A. ---I WOULD FOLLOW UP AFTERWARDS TO PROVE OR DISPROVE.

15 Q. OKAY. AFTER CONFRONTING HIM WITH THE STATEMENTS, THE
16 INCONSISTENCIES IN HIS STATEMENT AND THE EVIDENCE OBTAINED
17 DURING THE SEARCH WARRANT AS YOU'VE TESTIFIED TO EARLIER,
18 WHAT DID THE DEFENDANT DO?

19 A. HE JUST STARTED SAYING THAT HE HAD GONE TO 130 JOB
20 INTERVIEWS AND THAT HE HAD BEEN TURNED DOWN 130 TIMES. HE
21 STARTED TALKING TO US ABOUT BEING EVICTED. RENT WAS DUE. HE
22 WAS BEHIND ON BILLS.

23 Q. DID HE PREPARE ANOTHER STATEMENT?

24 A. YES, HE DID.

25 Q. OKAY. AND HOW WAS THAT STATEMENT TAKEN?

1 A. THE SAME WAY. I TYPED AS HE TALKED TO ME AND WAS
2 TELLING ME ABOUT ALL THIS.

3 Q. OKAY.

4 THE COURT: BRING IT AROUND HERE FOR A SECOND.

5 (STATE'S EXHIBIT 20 WAS MARKED FOR IDENTIFICATION ONLY.
6 A BENCH CONFERENCE WAS HELD.)

7 THE COURT: ALL RIGHT. YOU CAN CONTINUE QUESTIONING THE
8 WITNESS, MR. SPRATLIN.

9 MR. SPRATLIN: THANK YOU, YOUR HONOR. NOW, LET ME SHOW
10 YOU, DETECTIVE CULICK, WHAT'S BEEN MARKED AS STATE'S EXHIBIT
11 NUMBER 20 FOR IDENTIFICATION PURPOSES AT THIS TIME.

12 THE COURT: TWENTY?

13 MR. SPRATLIN: YES, YOUR HONOR.

14 THE COURT: OKAY.

15 BY MR. SPRATLIN:

16 Q. WHAT IS THAT DOCUMENT I JUST HANDED YOU?

17 A. THIS IS THE SECOND STATEMENT THAT WAS TAKEN.

18 Q. OKAY. AND, AGAIN, IS THAT THE STATEMENT YOU DESCRIBED
19 EARLIER, THE SECOND STATEMENT THAT YOU DESCRIBED EARLIER?

20 A. YEAH. THIS IS WHAT I WAS STARTING TO DESCRIBE, YES.

21 Q. OKAY. AND, AGAIN, HOW WAS THAT STATEMENT PREPARED?

22 A. THE SAME WAY THE OTHER ONE WAS. HE TALKED AS I TYPED.

23 Q. AND WAS HE GIVEN A CHANCE TO READ THAT STATEMENT?

24 A. YES, HE WAS.

25 Q. AND WAS IT READ TO HIM?

1 A. HE READ IT. I READ IT TO HIM, MADE SURE THAT THIS WAS
2 EVERYTHING; THIS WAS THE CORRECT STATEMENT. HE HAD TOLD US
3 ALL HE DIDN'T WANT TO ADD ANY MORE, AND HE STATED THAT WAS IT
4 AND SIGNED AND DATED. I ALSO SIGNED AND DETECTIVE RICHBURG
5 SIGNED.

6 Q. OKAY. AND WAS ALL THAT DONE IN YOUR PRESENCE?

7 A. YES, EVERYTHING WAS IN MY PRESENCE.

8 MR. SPRATLIN: OKAY.. AT THIS TIME, YOUR HONOR, I WOULD
9 TENDER STATE'S EXHIBIT NUMBER 20 FOR I.D. INTO EVIDENCE AS
10 STATE'S EXHIBIT NUMBER 20.

11 THE COURT: ANY ADDITIONAL OBJECTIONS?

12 MR. HASTIE: NONE, YOUR HONOR.

13 THE COURT: ALL RIGHT. IT'S IN AS NUMBER 20.

14 (STATE'S EXHIBIT 20 WAS RECEIVED IN EVIDENCE.)

15 MR. SPRATLIN: AND, YOUR HONOR, AT THIS TIME I WOULD ASK
16 THAT DETECTIVE CULICK BE ALLOWED TO READ THAT EXHIBIT AND
17 PUBLISH IT TO THE JURY IN THAT MANNER.

18 THE COURT: ALL RIGHT.

19 THE WITNESS: IT'S "SUSPECT STATEMENT" AND IT STATES,
20 "I, ANDRE M. MASSEY, OF 107 NORTH SALEM AVENUE, APARTMENT
21 NUMBER 2, SUMTER, SOUTH CAROLINA, HAVE BEEN ADVISED OF MY
22 CONSTITUTIONAL RIGHTS AND, HAVING SIGNED A WAIVER OF THOSE
23 RIGHTS, DO HEREBY GIVE THE FOLLOWING STATEMENT FREELY AND
24 VOLUNTARILY WITHOUT FEAR OR THREAT OR PROMISE OF REWARD TO
25 DETECTIVE CULICK WHO HAS IDENTIFIED HERSELF AS A POLICE

1 OFFICER OF THE SUMTER POLICE DEPARTMENT."

2 AND IT STATES "ANDRE M. MASSEY" AND HIS ADDRESS, 107
3 NORTH SALEM AVENUE, APARTMENT NUMBER 2, HIS DATE OF BIRTH AND
4 SOCIAL AND HIS PHONE NUMBER. IT STATES, "I HAVE GONE TO 130
5 JOB INTERVIEWS AND I HAVE BEEN TURNED DOWN 130 TIMES. I
6 SWEAR FOR GOD, MAN, I WAS TRYING TO DO GOOD. I FEEL BAD,
7 MAN. THAT SHIT HURT ME. I DID NOT WANT TO DO THAT MAN LIKE
8 THAT. REALLY, I WAS SHOCKED AND SURPRISED AT HOW MUCH MONEY
9 I GOT. I DIDN'T KNOW IT WAS GOING TO BE THAT MUCH. IT WAS
10 WHATEVER I HAD IN MY POCKETS MINUS ABOUT EIGHT DOLLARS" IS
11 WHAT HE GOT FROM THE BUSINESS.

12 "THAT'S THE ONLY REASON I DID IT, TO GET MY HEAD ABOVE
13 WATER AND GET OUT OF THE RED. I TRIED EVERYTHING I COULD,
14 EVERY AVENUE THAT I KNEW POSSIBLE. I WENT TO TEMP SERVICES
15 AND ALL. I FELT BAD BECAUSE THE MAN SAID HE WAS GOING TO
16 PRAY FOR ME, AND I WAS WALKING HOME WITH MY HANDS IN MY
17 POCKETS IN A DAZE. I WANTED TO TURN AROUND AND GO BACK TO
18 THE STORE BECAUSE I WANTED TO GIVE HIM THE MONEY BACK BECAUSE
19 I DIDN'T FEEL RIGHT.

20 "MY GIRL ASKED ME, 'WHAT'S WRONG?' AND I TOLD HER, 'I
21 JUST DON'T FEEL RIGHT.' I WALKED HOME AND DECIDED I WAS JUST
22 GOING TO GO HOME AND CHILL, AND THEN TOMORROW I WAS GOING TO
23 GO HANDLE MY BUSINESS, PAY MY BILLS, PAY SOME HERE, PAY SOME
24 THERE AND SPREAD IT OUT. THAT WAY PEOPLE WOULD SAY, 'AT
25 LEAST YOU'RE MAKING AN EFFORT.' THE LIGHTS AND THE WATER

1 WERE ABOUT TO BE CUT OFF. I WAS ABOUT TO BE EVICTED FROM MY
2 APARTMENT, AND YOU HAVE TO HAVE A PLACE TO LIVE. RENT IS DUE
3 BY THE 1ST OF THE MONTH, AND THEY GIVE A FIVE-DAY GRACE
4 PERIOD, AND THEN YOU HAVE TO PAY A \$30 FEE AFTER THE 5TH BUT
5 BEFORE THE 7TH. ON THE 8TH OF THE MONTH THEY WILL EVICT YOU.

6 "I BORROWED A GUN. IT WAS A TWO-SHOT" - IT SAYS
7 DILLINGER - "22 CALIBER, TODAY, 6/7/08. I WALKED TO THE
8 MAN'S BUSINESS, AND WHEN I WENT INSIDE THERE WERE PEOPLE IN
9 THERE. THERE WERE TWO LADIES AND A LITTLE GIRL IN THE STORE.
10 IT WAS AFTER 6 P.M. THIS WAS MY SECOND TRIP TO THE STORE. I
11 WENT THERE EARLIER WITH MY FRIEND, LATRELL BILLIE. I WAITED
12 INSIDE THE STORE UNTIL THEY LEFT.

13 "AFTER THEY LEFT, I WAITED FOR ABOUT ANOTHER GOOD 10 TO
14 15 MINUTES. THAT'S WHEN IT WENT DOWN. I PULLED THE GUN OUT
15 AND TOLD POP TO OPEN THE REGISTER. I TOLD HIM I WAS NOT
16 GOING TO HURT HIM OR DO NOTHING TO HIM. I TOLD HIM I DID NOT
17 WANT NO CREDIT CARDS OR CHECKS. I JUST WANTED THE CASH AND I
18 WOULD BE GONE. HE GAVE ME THE CASH AND TOLD ME THAT HE WOULD
19 PRAY FOR ME. I TOLD HIM, 'PLEASE DO BECAUSE I'M GOING TO
20 HELL.'

21 "BEFORE I LEFT THE STORE, I GOT A PAPER TOWEL THAT WAS
22 SITTING RIGHT THERE AND WIPED DOWN THE LITTLE GLASS CASE IN
23 FRONT BY THE CASH REGISTER, AND THEN I WALKED TO THE DOOR AND
24 WIPED IT DOWN. I THREW THE BLACK STOCKING CAP IN THE TRASH
25 RIGHT BEHIND KUT-RATE RIGHT AFTER I LEFT THE STORE. I WALKED

1 TO LIBERTY STREET BY THE PAINT PLACE AND THE DOUGHNUT SHOP,
2 WALKED TO WASHINGTON STREET BEHIND THE KANGAROO AND WENT
3 THROUGH THE WACHOVIA PARKING LOT TOWARDS HOME.

4 "I SAT AT HOME FOR A LITTLE WHILE UNTIL MY GIRL,
5 DIONETTA PRINCE, GOT HOME, AND THEN I WENT TO THE STORE,
6 KANGAROO, AND BOUGHT SOME BEER, ABOUT EIGHT DOLLARS, AND BEEN
7 AT HOME EVER SINCE. AFTER I BOUGHT THE BEER, I WENT HOME AND
8 CHANGED MY PANTS. I WAS WEARING SOME OLD BLACK SWEATS. I
9 THREW THE GUN IN A ROOM SOMEWHERE. I AM SORRY FOR WHAT I
10 DID. I DIDN'T WANT TO ROB HIM."

11 BY MR. SPRATLIN:

12 Q. THANK YOU, DETECTIVE---

13 A. "ANDRE MASSEY."

14 Q. THANK YOU, DETECTIVE CULICK. AND THAT STATEMENT WAS
15 READ TO HIM JUST LIKE IT WAS READ HERE?

16 A. CORRECT.

17 Q. AND HE DID, IN FACT, SIGN IT.

18 A. RIGHT.

19 Q. THANK YOU.

20 A. AND I HAD ALSO TALKED TO HIM ABOUT THE FACT THAT I
21 THOUGHT THAT HE WANTED TO GET CAUGHT BECAUSE HE---

22 MR. HASTIE: OBJECTION, YOUR HONOR. SHE HAS NOT BEEN
23 ASKED A QUESTION. SHE'S---

24 THE COURT: SUSTAINED.

25 BY MR. SPRATLIN:

1 Q. DETECTIVE CULICK, LET ME REAL BRIEFLY ASK YOU A COUPLE
2 OF QUESTIONS ABOUT THAT STATEMENT. PRIOR TO OR AT ANY TIME
3 DURING THAT STATEMENT, DID THE DEFENDANT ASK FOR AN ATTORNEY?

4 A. NO.

5 Q. AT ANY POINT PRIOR TO OR DURING THAT STATEMENT, DID THE
6 DEFENDANT SAY THAT HE DID NOT WISH TO TALK TO YOU?

7 A. NO. HE WAS -- HE WAS -- HE WAS CRYING, UPSET,
8 REMORSEFUL FOR WHAT HE HAD DONE.

9 Q. AT ANY POINT DID THE DEFENDANT DO ANY ACTION THAT
10 INDICATED TO YOU THAT HE WISHED TO TERMINATE THE INTERVIEW?

11 A. NO.

12 Q. OKAY. PRIOR TO OR DURING THAT STATEMENT, WAS THE
13 DEFENDANT PROMISED ANY SORT OF LENIENCY IN EXCHANGE FOR
14 PROVIDING THAT STATEMENT?

15 A. NO, HE WASN'T.

16 Q. OKAY. PRIOR TO OR DURING THAT INTERVIEW, DID YOU OR
17 ANYONE IN YOUR PRESENCE DO ANYTHING WHICH WOULD PUT THE
18 DEFENDANT IN FEAR OF RECEIVING INJURY PRIOR TO -- IN EXCHANGE
19 FOR THAT STATEMENT?

20 A. NO, WE DIDN'T.

21 Q. DID YOU OR ANYONE IN YOUR PRESENCE DO ANYTHING THAT
22 WOULD PUT THE DEFENDANT UNDER DURESS?

23 A. NO.

24 Q. OKAY. NOW, LET ME ASK YOU ABOUT THE DEFENDANT'S
25 DEMEANOR. HOW WAS HE ACTING THAT DAY?

1 A. AT FIRST HE WAS JUST ACTING NORMAL. HE WAS IN THERE
2 TALKING. HE ANSWERED QUESTIONS WELL, APPROPRIATELY. HE
3 ASKED QUESTIONS OF US. AND THEN AFTER WE GOT INTO IT, THE
4 INCONSISTENCIES, WHAT WAS FOUND AT HIS HOUSE, WHAT I WAS
5 TRYING TO SAY IS I HAD TOLD HIM: YOU WENT IN THE STORE AND
6 DIDN'T TRY TO COVER YOUR FACE, YOUR TATTOOS. YOU HAD BEEN IN
7 THERE BEFORE AND WITH THE GIRL THAT WORKS NEXT DOOR. YOU
8 KNOW, IT SEEMED TO ME LIKE HE ALMOST WANTED TO GET CAUGHT,
9 AND WE JUST TALKED ABOUT THAT AND HE JUST -- HE GOT UPSET AND
10 STATED HE HAD JUST HAD A HARD TIME, HAD BILLS AND JUST---

11 Q. OKAY.

12 A. ---JUST DID IT.

13 Q. DID HE APPEAR TO HAVE ANY TROUBLE UNDERSTANDING YOU AT
14 ALL THAT DAY?

15 A. NO, I DIDN'T.

16 Q. DID HE HAVE ANY TROUBLE UNDERSTANDING YOU?

17 A. NO, HE DIDN'T HAVE ANY TROUBLE UNDERSTANDING ME, AND I
18 DIDN'T HAVE ANY TROUBLE UNDERSTANDING HIM.

19 Q. OKAY. DID HE APPEAR TO SPEAK ENGLISH PROFICIENTLY?

20 A. OH, YES.

21 Q. OKAY.

22 A. AND HE COULD WRITE -- HE SIGNED HIS NAME. HE SIGNED THE
23 WAIVER AND THE STATEMENTS LEFT-HANDED.

24 Q. AND I APOLOGIZE, DETECTIVE CULICK. I BELIEVE YOU SAID
25 YOU'VE BEEN IN LAW ENFORCEMENT FOR 11 YEARS? CORRECT?

1 A. YES.

2 Q. HOW OFTEN WOULD YOU SAY DURING THOSE 11 YEARS YOU'VE HAD
3 AN OPPORTUNITY TO COME IN CONTACT WITH SOMEONE WHO IS UNDER
4 THE INFLUENCE OF DRUGS OR ALCOHOL?

5 A. SEVERAL -- NUMEROUS TIMES.

6 Q. DID THE DEFENDANT APPEAR TO YOU TO BE UNDER THE
7 INFLUENCE OF ANY SORT OF DRUGS OR ALCOHOL AT THE TIME HE
8 PROVIDED EITHER OF THOSE STATEMENTS?

9 A. NO, HE DIDN'T.

10 Q. OKAY. WAS HE RESPONDING TO THE QUESTIONS THAT WERE
11 ACTUALLY BEING ASKED?

12 A. YES.

13 Q. WAS HE IN ANY WAY ACTING EITHER TOO EXCITED OR TOO
14 DEPRESSED?

15 A. NO, HE WAS JUST ACTING NORMAL TO ME.

16 Q. OKAY. DID HE APPEAR---

17 A. HE WASN'T BELLIGERENT, NOT CONFUSED NOT SLURRING.

18 Q. OKAY.

19 A. NOT SLUMPED OVER, NOT TRYING TO FALL ASLEEP, JUST
20 NORMAL.

21 Q. DETECTIVE CULICK, ALL IN ALL HOW LONG WOULD YOU SAY THE
22 INTERVIEW OF MR. MASSEY TOOK?

23 A. THE TOTAL PROCESS WAS PROBABLY AROUND FOUR HOURS, AND
24 THAT WAS FROM THE ARREST AND THE PHOTOGRAPHING. I TOOK
25 PHOTOS OF HIM, THINGS LIKE THAT.

1 Q. OKAY.

2 A. COLLECTED THE MONEY ON HIM THAT HE STATED CAME FROM THE
3 BUSINESS. SO ABOUT A TOTAL TIME OF FOUR HOURS.

4 Q. OKAY. AND DURING THAT TIME WAS THE DEFENDANT DENIED
5 ACCESS TO WATER?

6 A. NO, HE HAD A DRINK, THE REST ROOM THERE.

7 Q. WAS HE DENIED ACCESS TO ANY FOOD, IF HE WANTED IT?

8 A. NO, HE WAS NOT.

9 Q. OKAY. WAS THE DEFENDANT GIVEN THE SLIGHTEST HOPE OF
10 BENEFIT IN EXCHANGE FOR EITHER ONE OF THE STATEMENTS YOU
11 DESCRIBED TODAY?

12 A. NO, I HAD NOTHING TO OFFER FOR HIM.

13 Q. WAS HE PUT IN THE REMOTEST FEAR OF INJURY, OF RECEIVING
14 INJURY?

15 A. NO.

16 Q. OKAY. ALL RIGHT. AND NOW AFTER THE STATEMENTS WERE
17 DONE, YOU SAID THAT YOU TOOK SOME PHOTOGRAPHS?

18 A. YES, I DID.

19 Q. OKAY. AND WHAT WERE THOSE PHOTOGRAPHS OF?

20 A. I TOOK PHOTOGRAPHS OF MR. MASSEY. I TOOK PHOTOGRAPHS OF
21 HIS TATTOO THAT WAS DESCRIBED BY MR. HUFF, AN OVERALL
22 PICTURE. I TOOK A PICTURE TO SHOW HIM HIM WEARING THE WHITE
23 TANK TOP THAT WAS DESCRIBED, TO SHOW THE EARRING IN HIS
24 EAR---

25 Q. OKAY.

1 A. ---AND THE MONEY - I THINK I SAID THAT - THAT WAS IN HIS
2 POCKET.

3 Q. OKAY.

4 THE COURT: LADIES AND GENTLEMEN, IF YOU WANT TO, WHY
5 DON'T YOU JUST STAND IN PLACE WHERE YOU ARE RIGHT NOW AND
6 STRETCH? WE'LL BE TAKING A BREAK IN JUST A FEW MINUTES
7 ANYWAY. YOU DON'T HAVE TO, BUT IF YOU WANT TO, YOU CAN STAND
8 AND STRETCH RIGHT WHERE YOU ARE.

9 (STATE'S EXHIBITS 21 THROUGH 27 WERE MARKED FOR
10 IDENTIFICATION ONLY.)

11 THE COURT: ARE THOSE NEWLY-NUMBERED EXHIBITS?

12 MR. SPRATLIN: ALL EXCEPT FOR ONE, YOUR HONOR. ONE WAS
13 PREVIOUSLY NUMBERED, BUT THE OTHER ONES ARE NEWLY NUMBERED,
14 AND I BELIEVE THEY'RE NUMBERED EFFECTIVELY STATE'S EXHIBIT 21
15 THROUGH 27.

16 THE COURT: ALL FOR I.D. AT THIS TIME?

17 MR. SPRATLIN: ALL FOR IDENTIFICATION AT THIS POINT IN
18 TIME, YOUR HONOR.

19 THE COURT: OKAY.

20 MR. SPRATLIN: YOUR HONOR, PERMISSION TO APPROACH THE
21 WITNESS?

22 THE COURT: YEAH.

23 BY MR. SPRATLIN:

24 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS
25 WHAT HAS BEEN MARKED STATE'S EXHIBIT NUMBER 5 FOR

1 IDENTIFICATION PURPOSES. DETECTIVE CULICK, WOULD YOU PLEASE
2 IDENTIFY THAT PHOTOGRAPH?

3 A. YES. THIS IS A PHOTOGRAPH OF ANDRE MASSEY'S LEFT ARM
4 WHICH SHOWS THE SPIDER WEB ON THE UPPER LEFT SHOULDER AREA.

5 Q. OKAY. IS THAT A FAIR AND ACCURATE REPRESENTATION OF THE
6 WAY MR. MASSEY'S SHOULDER APPEARED ON THE DATE IN JUNE? I
7 BELIEVE THIS WOULD HAVE ACTUALLY HAPPENED JUNE 8TH SINCE IT
8 WAS AFTER MIDNIGHT; IS THAT CORRECT?

9 A. CORRECT.

10 Q. IS THAT A FAIR AND ACCURATE REPRESENTATION OF HOW HIS
11 SHOULDER APPEARED ON JUNE 8, 2007?

12 A. YES, IT IS.

13 MR. SPRATLIN: AT THIS TIME, YOUR HONOR, I TENDER THIS
14 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 5.

15 THE COURT: MR. HASTIE?

16 MR. HASTIE: NO OBJECTION.

17 THE COURT: ALL RIGHT. THAT'S IN WITHOUT OBJECTION.

18 (STATE'S EXHIBIT 5 WAS RECEIVED IN EVIDENCE.)

19 BY MR. SPRATLIN:

20 Q. IF YOU WOULD, JUST SIT IT RIGHT HERE AND THEN I'LL
21 PRESENT THEM TO THE JURY IN A MINUTE. PLEASE LET THE RECORD
22 REFLECT I'M SHOWING EXHIBIT 21 FOR I.D. PURPOSES. DETECTIVE
23 CULICK, WOULD YOU PLEASE IDENTIFY THAT PHOTOGRAPH?

24 A. IT'S JUST ANOTHER PHOTOGRAPH PRETTY MUCH OF THE SAME
25 THING. IT'S THE LEFT SHOULDER AREA THAT SHOWS THE TATTOO,

1 AND THIS ACTUALLY HAS THE SIDE OF HIS FACE IN IT, AS YOU CAN
2 SEE THE EARRING ALSO, MR. MASSEY'S FACE.

3 Q. IS THAT A FAIR AND ACCURATE REPRESENTATION OF HOW MR.
4 MASSEY APPEARED ON JUNE 8, 2007?

5 A. YES.

6 MR. SPRATLIN: AT THIS TIME, YOUR HONOR, I WOULD TENDER
7 THAT INTO EVIDENCE AS STATE'S EXHIBIT 21.

8 THE COURT: MR. HASTIE?

9 MR. HASTIE: NO OBJECTION, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 (STATE'S EXHIBIT 21 WAS RECEIVED IN EVIDENCE.)

12 BY MR. SPRATLIN:

13 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING EXHIBIT NUMBER
14 22 FOR I.D. PURPOSES. WOULD YOU PLEASE DESCRIBE THAT PHOTO,
15 DETECTIVE CULICK?

16 A. YES. THIS IS A PICTURE OF THE RIGHT SIDE OF MR. ANDRE
17 MASSEY.

18 Q. OKAY. IS THAT---

19 A. HIS UPPER SHOULDER AREA AND SIDE -- THE RIGHT SIDE OF
20 HIS FACE.

21 Q. AND IS THAT A FAIR AND ACCURATE REPRESENTATION OF HOW
22 THE DEFENDANT APPEARED ON JUNE 7 -- JUNE 8, 2007?

23 A. YES, IT IS.

24 MR. SPRATLIN: AT THIS TIME I TENDER THAT INTO EVIDENCE,
25 YOUR HONOR, AS STATE'S EXHIBIT 22.

1 THE COURT: ANY OBJECTION?

2 MR. HASTIE: NO OBJECTION.

3 (STATE'S EXHIBIT 22 WAS RECEIVED IN EVIDENCE.)

4 BY MR. SPRATLIN:

5 Q. LET THE RECORD REFLECT I'M SHOWING STATE'S EXHIBIT 23
6 FOR IDENTIFICATION PURPOSES. WOULD YOU PLEASE TELL THE COURT
7 WHAT THAT IS A PHOTOGRAPH OF, DETECTIVE CULICK?

8 A. THAT IS AN OVERALL FULL-BODY PHOTOGRAPH OF MR. ANDRE
9 MASSEY AS HE APPEARED.

10 Q. IS THAT HOW HE APPEARED ON JUNE 7TH -- JUNE 8TH---

11 A. THE 7TH AND THE 8TH, YES.

12 MR. SPRATLIN: AT THIS TIME I'D TENDER THAT INTO
13 EVIDENCE, YOUR HONOR, AS STATE'S EXHIBIT 23.

14 THE COURT: ANY OBJECTION?

15 MR. HASTIE: NO OBJECTION, YOUR HONOR.

16 (STATE'S EXHIBIT 23 WAS RECEIVED IN EVIDENCE.)

17 BY MR. SPRATLIN:

18 Q. ABOUT FOUR MORE, DETECTIVE CULICK.

19 A. OKAY.

20 Q. LET THE RECORD REFLECT I'M SHOWING THE WITNESS WHAT'S
21 BEEN MARKED STATE'S EXHIBIT 24 FOR IDENTIFICATION PURPOSES.
22 DETECTIVE CULICK, WHAT IS THAT A PHOTOGRAPH OF?

23 A. THIS IS KIND OF LIKE AN I.D. SHOT TO LET OUR EVIDENCE
24 TECH KNOW WHAT THIS MONEY GOES WITH, WHAT CASE, AND I'VE GOT
25 THE CASE NUMBER ON THE TOP UP HERE: ARMED ROBBERY, TOTAL

1 LIVING, ANDRE MASSEY, THE DATE OF THE ROBBERY, AND THE MONEY
2 THAT WAS SEIZED FROM HIS POCKET. IT'S KIND OF A TOP OVERALL
3 PICTURE.

4 Q. IS THAT A FAIR AND ACCURATE REPRESENTATION OF THE MONEY
5 THAT WAS TAKEN OUT OF THE DEFENDANT'S POCKET ON THAT DATE?

6 A. YES, IT IS.

7 THE COURT: ANY OBJECTION?

8 MR. HASTIE: NONE, YOUR HONOR.

9 (STATE'S EXHIBIT 24 WAS RECEIVED IN EVIDENCE.)

10 BY MR. SPRATLIN:

11 Q. LET THE RECORD REFLECT I'M SHOWING THE WITNESS WHAT HAS
12 BEEN MARKED STATE'S EXHIBIT 25 FOR I.D. PURPOSES. PLEASE
13 DESCRIBE THAT PHOTO.

14 A. THIS IS JUST ANOTHER PICTURE -- THE OTHER ONE WAS A
15 CLOSE-UP. THIS IS JUST ANOTHER PICTURE OF ALL THE MONEY THAT
16 WAS TAKEN OUT OF HIS POCKETS, HOW IT LOOKED, YOU KNOW, AS WE
17 TOOK IT OUT.

18 Q. AGAIN, IS THAT A FAIR AND ACCURATE REPRESENTATION OF THE
19 MONEY AS YOU REMEMBER IT?

20 A. YES.

21 Q. LET ME SHOW YOU -- LET ME GO AHEAD AND JUST SHOW YOU
22 BOTH STATE'S EXHIBIT 26 AND STATE'S EXHIBIT 27. YOUR HONOR,
23 I'D MOVE STATE'S EXHIBIT 25 INTO EVIDENCE.

24 THE COURT: ANY OBJECTION TO 25?

25 MR. HASTIE: NONE, YOUR HONOR.

1 (STATE'S EXHIBIT 25 WAS RECEIVED IN EVIDENCE.)

2 BY MR. SPRATLIN:

3 Q. EXHIBIT 26 AND 27, DETECTIVE CULICK, WHAT ARE THOSE
4 PHOTOGRAPHS OF?

5 A. THEY'RE JUST MORE SHOTS OF THE MONEY.

6 Q. OKAY.

7 A. IT JUST SHOWS THE DENOMINATIONS AND...

8 Q. AND ARE THEY FAIR AND ACCURATE REPRESENTATIONS OF THE
9 SCENE AS YOU REMEMBER IT?

10 A. YES.

11 MR. SPRATLIN: AT THIS TIME I WOULD TENDER THOSE TWO
12 EXHIBITS INTO EVIDENCE AS WELL, YOUR HONOR.

13 MR. HASTIE: NO OBJECTION, YOUR HONOR.

14 THE COURT: OKAY.

15 (STATE'S EXHIBITS 26 AND 27 WERE RECEIVED IN EVIDENCE.)

16 BY MR. SPRATLIN:

17 Q. I'LL PUBLISH THOSE IN A SECOND. DETECTIVE CULICK, THE
18 PICTURES OF THE MONEY, WHERE DID THAT MONEY COME FROM?

19 A. ANDRE MASSEY'S POCKETS.

20 Q. OKAY. AND WHERE DID HE TELL YOU THAT HE GOT THAT MONEY?

21 A. FROM TOTAL LIVING AND MR. HUFF.

22 Q. THAT WAS IN HIS SECOND STATEMENT; CORRECT?

23 A. CORRECT.

24 Q. AND---

25 A. MINUS EIGHT DOLLARS THAT HE SPENT AT THE STORE.

1 Q. AND DO YOU KNOW WHAT HAPPENED TO THAT MONEY?

2 A. YES, IT WAS RETURNED TO THE VICTIM.

3 Q. OKAY.

4 A. THE VICTIMS. EXCUSE ME.

5 Q. SO WE DON'T HAVE IT IN COURT TODAY.

6 A. NO, WE DON'T HAVE THAT. IT WAS RETURNED.

7 Q. BUT WE DO HAVE THE PHOTOGRAPHS.

8 A. CORRECT.

9 MR. SPRATLIN: OKAY. YOUR HONOR, AT THIS TIME AT THIS
10 TIME I'D ASK TO BE ABLE TO PUBLISH THESE PHOTOGRAPHS TO THE
11 JURY, AND I HAVE NO FURTHER QUESTIONS OF DETECTIVE CULICK AT
12 THIS TIME.

13 THE COURT: ALL RIGHT. MR. HASTIE, DO YOU WANT TO
14 CROSS-EXAMINE WHILE THE PHOTOS ARE BEING PUBLISHED.

15 MR. HASTIE: NO, SIR.

16 THE COURT: ALL RIGHT. WE'LL WAIT FOR JUST A FEW
17 MOMENTS AND... LET'S DO THIS. MR. FOREMAN, IF YOU WOULD PUT
18 THE PHOTOS RIGHT BACK UP THERE. WE'LL TAKE A BREAK. THEN
19 WE'LL COME BACK IN MOMENTARILY. LADIES AND GENTLEMEN, PLEASE
20 DO NOT DISCUSS CASE. ALL RIGHT.

21 MR. SPRATLIN: YOUR HONOR, MAY DETECTIVE CULICK STEP
22 DOWN?

23 THE COURT: IN JUST A MOMENT.

24 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 3:27
25 P.M.)

1 THE COURT: ALL RIGHT. YOU CAN STEP DOWN. YOU CAN'T
2 DISCUSS YOUR TESTIMONY WITH ANYBODY.

3 THE WITNESS: THANK YOU.

4 THE COURT: ALL RIGHT. YES, SIR, DID YOU HAVE A...

5 MR. HASTIE: NO.

6 THE COURT: ALL RIGHT. WE'LL TAKE A BREAK FOR LET'S SAY
7 ABOUT 10 MINUTES.

8 MR. SPRATLIN: THANK YOU, YOUR HONOR.

9 MR. HASTIE: THANK YOU, YOUR HONOR.

10 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

11 THE COURT: OKAY. MR. SPRATLIN, ARE YOU READY?

12 MR. SPRATLIN: YES, YOUR HONOR, THE STATE'S READY.

13 THE COURT: MR. HASTIE?

14 MR. HASTIE: YES, SIR.

15 THE COURT: ARE YOU READY?

16 MR. HASTIE: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT. YOU CAN BRING IN THE JURY.

18 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 3:45
19 P.M.)

20 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
21 READY TO MOVE FORWARD. MR. HASTIE, YOU CAN CROSS-EXAMINE THE
22 WITNESS.

23 MR. HASTIE: THANK YOU, YOUR HONOR.

24 MR. SPRATLIN: YOUR HONOR, IF I MAY, I THINK THERE WAS
25 STILL THE PUBLICATION OF THE EXHIBITS THAT WERE ENTERED INTO

1 EVIDENCE TO THE JURY.

2 THE COURT: ALL RIGHT. YOU CAN PASS THOSE AROUND. MR.
3 FOREMAN AND LADIES AND GENTLEMEN, YOU CAN TAKE A LOOK AT
4 THOSE. MR. HASTIE, YOU CAN WAIT UNTIL THEY FINISH IF YOU'D
5 LIKE TO.

6 MR. HASTIE: YES, SIR, I WOULD LIKE TO.

7 THE COURT: ALL RIGHT.

8 (PAUSE IN PROCEEDINGS WHILE THE JURY VIEWS THE
9 PHOTOGRAPHS.)

10 THE COURT: ALL RIGHT. MR. HASTIE?

11 MR. HASTIE: THANK YOU, YOUR HONOR.

12 CROSS-EXAMINATION

13 BY MR. HASTIE:

14 Q. GOOD AFTERNOON, DETECTIVE.

15 A. GOOD AFTERNOON.

16 Q. FIRST LET'S TALK ABOUT -- WE HEARD TESTIMONY THIS
17 MORNING FROM MR. HUFF SAYING THAT HE REALLY DID NOT KNOW MR.
18 MASSEY BEFORE THIS PARTICULAR DAY. IS THAT CORRECT?

19 A. THAT HE HAD SEEN HIM I BELIEVE WAS THE TESTIMONY BUT HE
20 DIDN'T KNOW HIM BY NAME.

21 Q. DIDN'T KNOW HIM BY NAME. THAT'S CORRECT. AND THEN WE
22 HEARD TESTIMONY FROM MS. BILLIE DESCRIBING THAT SHE KNEW HIM
23 AND SHE HELPED HIM AND -- AND THAT HE HAD BEEN IN THE STORE,
24 SHE TESTIFIED, THAT PARTICULAR DAY. WAS THERE A LINE-UP DONE
25 FOR MR. HUFF AT ANY TIME?

1 A. NO, THERE WAS NOT.

2 Q. DON'T YOU ALL NORMALLY DO LINE-UPS FOR THIS TYPE CASE?

3 A. IT DEPENDS ON THE TYPE OF CASE THAT WE HAVE. WE HAVE
4 SOME CASES WHERE A VICTIM MIGHT KNOW SOMEBODY BY A NICKNAME
5 OR THEY MIGHT KNOW AN ADDRESS OR WE MIGHT DEVELOP A SUSPECT
6 AND WE MIGHT -- WE MIGHT GET A PHOTO LINE-UP WHERE WE TAKE
7 THE INDIVIDUAL -- THE SUSPECT'S PICTURE AND THEN WE'LL PUT IT
8 ON A PAGE ALONG WITH FIVE OTHER PICTURES, SO WE HAVE A TOTAL
9 OF SIX, AND SHOW IT TO A VICTIM AND SAY, "DO YOU RECOGNIZE
10 THE PERSON THAT DID THIS?"

11 Q. OKAY.

12 A. YES, WE DO DO THAT SOMETIMES.

13 Q. ANY REASON YOU DID NOT DO A LINE-UP IN THIS CASE?

14 A. I DID NOT FEEL THAT WE NEEDED TO DO A LINE-UP. I FELT
15 LIKE I HAD ENOUGH PROBABLE CAUSE AT THAT TIME BASED ON THE
16 FACTS THAT WERE GIVEN ME FROM MR. HUFF AND BY MS. BILLIE, AND
17 IT WAS 11 SOMETHING AT NIGHT. LINE-UPS ARE -- YOU KNOW, IT
18 TAKES AWHILE TO DO LINE-UPS. WE REQUEST OURS THROUGH
19 S.L.E.D., THE STATE LAW ENFORCEMENT DIVISION IN COLUMBIA, AND
20 DUE TO THE FACT THAT IT WAS THAT TIME OF NIGHT, I WANTED TO
21 MAKE AN ARREST BEFORE ANY OTHER ARMED ROBBERIES POSSIBLY TAKE
22 PLACE BY THIS INDIVIDUAL AND TO ALSO TRY TO OBTAIN FURTHER
23 EVIDENCE OF THIS CRIME. THE LONGER IT GOES BEFORE YOU EFFECT
24 AN ARREST, THE LONGER THE PERSON HAS TO GET RID OF EVIDENCE.
25 Q. AREN'T YOU ALL TRAINED ABOUT WHEN AND HOW TO DO LINE-UPS

1 IN YOUR DETECTIVE TRAINING?

2 A. WE ARE -- WE ARE TRAINED ON HOW TO WORK CASES.

3 Q. OKAY.

4 A. AND SOME CASES REQUIRE LINE-UPS. SOME CASES DON'T
5 REQUIRE LINE-UPS.

6 Q. OKAY.

7 A. BUT ALL CASES, WHERE AN ARREST IS INVOLVED, REQUIRE
8 PROBABLE CAUSE, AND I FELT LIKE WE HAD ENOUGH PROBABLE CAUSE
9 TO GO AHEAD AND PICK MR. ANDRE MASSEY UP.

10 Q. WHAT TYPE CASES REQUIRE LINE-UPS, FOR EXAMPLE?

11 A. A TYPE OF CASE THAT WOULD REQUIRE A LINE-UP IS JUST LIKE
12 I SAID EARLIER. IF A VICTIM KNOWS SOMEBODY BUT THEY ONLY
13 KNOW THEM BY A NICKNAME OR A STREET NAME, THEN I WOULD GO
14 BACK AND LOOK UP AND TRY TO FIND OUT IN OUR NICKNAME LIST:
15 DO WE HAVE THAT PERSON LISTED? MAYBE A REAL NAME OR, YOU
16 KNOW, RESEARCH, ASK PEOPLE IN THE AREA OF THE COMMUNITY, "DO
17 YOU KNOW THIS PERSON'S REAL NAME?" THEN IF I ESTABLISH A
18 REAL NAME, THEN I WOULD PUT THAT IN A PHOTO LINE-UP, AND I
19 WOULD SHOW IT TO THE VICTIM AND SAY, "DO YOU SEE THE PERSON
20 THAT YOU CALL T-DOG IN HERE?" YOU KNOW, THAT'S -- THAT WOULD
21 BE ONE INSTANCE.

22 Q. AND MS. BILLIE TESTIFIED THAT SHE KNEW HIM, BUT SHE KNEW
23 NOTHING OF ANY TYPE OF ROBBERY OR HE DID NOT SHARE ANYTHING
24 ABOUT PARTICIPATING IN A ROBBERY WITH HER. IS THAT CORRECT?

25 A. CORRECT. SHE -- SHE KNEW HIM. SHE KNEW HIS NAME. SHE

1 KNEW THAT HE WAS IN THE STORE WITH HER.

2 Q. OKAY.

3 A. THE TIME FRAME SHE GAVE IS THE SAME AS WHAT MR. HUFF
4 GAVE AS FAR AS THEM BEING IN THE STORE; SO THAT MATCHED UP.
5 THE TATTOOS, THE CLOTHING, THE EARRING, JUST THE PHYSICAL
6 CHARACTERISTICS, ALL OF THOSE MATCHED UP---

7 Q. OKAY.

8 A. ---THAT SHE SAID, ON TOP OF JUST -- MR. HUFF JUST MADE
9 ME FEEL LIKE I HAD ENOUGH PROBABLE CAUSE TO GO PICK HIM UP
10 FOR THIS INCIDENT.

11 Q. AND THE WAY THAT YOU LEARNED HOW AND WHERE TO PICK HIM
12 UP WAS FROM THE D.M.V. RECORDS?

13 A. CORRECT.

14 Q. OKAY. SO YOU CONTACTED D.M.V.?

15 A. NO. WE HAVE ACCESS -- DURING THE NIGHT, WE RUN TAGS,
16 D.L.'S ON PEOPLE'S NAMES, THINGS LIKE THAT. IF WE STOP
17 SOMEBODY AND THEY SAY, "I LEFT MY LICENSE AT HOME; HERE IS MY
18 NAME," WE CAN RUN IT BY THAT TO INSURE THEY DO HAVE A
19 LICENSE, THINGS LIKE THAT.

20 Q. SO YOU WERE ABLE TO OBTAIN HIS ADDRESS FROM THE D.M.V.
21 RECORDS.

22 A. CORRECT.

23 Q. OKAY. SO YOU WENT TO 107 SALEM STREET? WHAT'S THE NAME
24 OF THAT STREET?

25 A. YES.

1 Q. SALEM STREET?

2 A. 107 SALEM STREET, APARTMENT 2.

3 Q. ABOUT WHAT TIME OF NIGHT WAS THAT?

4 A. APPROXIMATELY 11.

5 Q. AROUND 11:00 AT NIGHT? DID YOU HAVE A SEARCH WARRANT TO
6 ENTER HIS PREMISES?

7 A. NO, WE DIDN'T HAVE A SEARCH WARRANT AT THAT TIME. WE
8 JUST WENT TO PICK UP MR. ANDRE MASSEY IN REFERENCE TO THIS,
9 IF HE WAS THERE. IF NOT, POSSIBLY ASK IF -- OR IF ANYONE WAS
10 HOME, WHERE WAS HE? WHERE COULD WE FIND HIM?

11 Q. WHEN YOU PICKED HIM UP, DID YOU PUT HIM UNDER ARREST?

12 A. YEAH, HE WAS CUFFED AND TAKEN TO THE STATION. HE WAS
13 NOT ALLOWED TO -- YES.

14 Q. SO HE WAS PUT UNDER ARREST. DID ANYONE READ HIM HIS
15 RIGHTS AT THE TIME OF HIS ARREST?

16 A. NO, HE WAS NOT QUESTIONED AT THAT TIME. NOT UNTIL WE
17 WERE GOING TO QUESTION HIM WAS HE READ HIS RIGHTS.

18 Q. SO HE WAS NOT READ HIS RIGHTS AT THAT TIME.

19 A. NO, WE DIDN'T QUESTION HIM ABOUT THE CRIME OR ANYTHING
20 THERE.

21 Q. OKAY. SO AT THE STATION -- WHILE HE WAS AT THE STATION,
22 YOU AND DETECTIVE RICHBURG WERE THE DETECTIVES THAT
23 QUESTIONED HIM?

24 A. YES.

25 Q. OKAY. DO YOU ALL WEAR YOUR WEAPONS WHEN YOU QUESTION A

1 CLIENT?

2 A. NO.

3 Q. SO YOU DIDN'T HAVE THE WEAPONS WITH YOU AT THAT TIME.

4 A. CORRECT, WE DO NOT.

5 Q. NOW, IN HIS FIRST STATEMENT HE TALKED ABOUT SOMEONE

6 NAMED T-DOG, TYRONE, I BELIEVE. DID YOU DO ANY INVESTIGATION

7 TO TRY TO LOCATE THIS PERSON NAMED TYRONE?

8 A. NO, I DIDN'T.

9 Q. WHY NOT?

10 A. IF HE WOULD HAVE JUST GIVEN US ONE STATEMENT, THAT FIRST

11 STATEMENT THAT HE GAVE, THEN I WOULD HAVE TRIED TO LOCATE WHO

12 HE WAS TALKING ABOUT, AND THAT WOULD BE A CASE WHERE I WOULD

13 DO A PHOTO LINE-UP AND I WOULD GO BACK AND SHOW HIM AND SAY,

14 "IS THIS THE TYRONE THAT YOU'RE TALKING ABOUT OR TY THAT

15 WORKS AT THE GREAT STEAK?" I WOULD -- THAT WOULD BE A CASE

16 THAT I WOULD DO THAT BECAUSE THEY DIDN'T KNOW A LAST NAME.

17 IT WAS JUST A FIRST NAME, NICKNAMES, THINGS LIKE THAT, AND I

18 WOULD HAVE FOLLOWED THROUGH WITH THAT ASKING HIM, "DID YOU

19 SEE HIM? WERE YOU INVOLVED? DID YOU TALK TO MR. HUFF THAT

20 DAY?" BUT SINCE HE GAVE A SECOND STATEMENT AND WHAT HE TOLD

21 US I FELT WAS THE TRUTH AND FROM HIS HEART AND IT MATCHED UP

22 WITH WHAT MR. HUFF HAD STATED, I DID NOT FEEL LIKE THERE WAS

23 A NEED TO GO FIND A TY OR T-DOG.

24 Q. SO EVEN THOUGH HIS TESTIMONY TALKED ABOUT A SCAM THAT

25 WAS BEING RUN AT THE STORE, YOU FELT THE NEED NOT TO

1 INVESTIGATE ANY OF THAT.

2 A. NO, NOT WHEN HE GAVE US THE SECOND STATEMENT. IF HE
3 WOULD NOT HAVE GIVEN US THE SECOND STATEMENT ADMITTING TO
4 DOING THIS CRIME, THEN I WOULD HAVE GONE OUT AND TRIED TO
5 FIND WHO HE WAS TALKING ABOUT AND ALL THE WITNESSES IN THE
6 CASE.

7 Q. NOW, MR. HUFF TESTIFIED THIS MORNING THAT THE GENTLEMAN
8 THAT WAS IN THE STORE REQUESTED TO LOOK AT A SIZE 44 SUIT.

9 A. CORRECT.

10 Q. DO YOU RECALL THAT?

11 A. CORRECT.

12 Q. DO YOU HAVE ANY IDEA WHAT SIZE SUIT MR. MASSEY MIGHT
13 WEAR?

14 A. AT THIS TIME I WOULDN'T KNOW. BACK WHEN HE WAS ARRESTED
15 TWO YEARS AGO, AS YOU CAN SEE FROM THE PHOTOS, HE WAS
16 MUSCULAR AND HE WAS THICK ACROSS THE CHEST AREA, AND THAT
17 COULD HAVE BEEN HIS SIZE BACK THEN. MY HUSBAND IS LARGER UP
18 TOP AND MUSCULAR AND DOES WEAR IN THE FORTIES AND HAS TO GET
19 IT TAILORED DOWN IN THE WAIST AREA SO...

20 Q. OKAY. THANK YOU. YOU DID READ HIM HIS RIGHTS AT THE --
21 WHEN YOU ALL INTERROGATED HIM, JUST BEFORE YOU INTERROGATED
22 HIM.

23 A. YES, I DID.

24 Q. AND HE CLEARLY UNDERSTOOD WHAT HE WAS DOING.

25 A. YES, IT APPEARED THAT HE DID.

1 Q. IT APPEARED THAT WAY.

2 A. IT APPEARED THAT HE UNDERSTOOD WHAT WE WERE TALKING
3 ABOUT, HE UNDERSTOOD HIS RIGHTS, AND THAT HE WANTED TO TALK.

4 Q. OKAY. DID HE ASK FOR AN ATTORNEY AT THAT TIME?

5 A. NO, AT NO TIME.

6 Q. OKAY. DID HE ASK TO MAKE A PHONE CALL AT ANY TIME?

7 A. NOT THAT I RECALL.

8 Q. YOU DON'T RECALL WHETHER OR NOT HE ASKED TO USE A PHONE
9 TO---

10 A. IF HE ASKED ME TO USE A PHONE TO CALL AN ATTORNEY, THEN,
11 YES, THEN I WOULD HAVE MADE NOTE OF THAT AND MENTIONED. BUT,
12 NO, HE DID NOT ASK ME AS FAR AS ANY KIND OF PHONE CALL FOR AN
13 ATTORNEY OR SOMEONE TO REPRESENT HIM OR, "I DON'T WANT TO
14 TALK ANYMORE; I JUST WANT TO MAKE A PHONE CALL." NOW,
15 SOMETIMES AFTER WE INTERVIEW PEOPLE, WE HAVE A LOT THAT SAY,
16 "CAN I MAKE A PHONE CALL BEFORE I'M TRANSPORTED OR BEFORE YOU
17 TAKE ME OUT TO THE DETENTION CENTER?" YOU KNOW, AND WE WILL
18 LET PEOPLE MAKE PHONE CALLS IF THEY REQUEST THAT. NOW, IN
19 THIS CASE I CAN'T REMEMBER IF HE ASKED TO USE ONE BEFORE HE
20 WENT TO THE CORRECTIONAL CENTER OR NOT SO... BUT AS FAR AS
21 AN ATTORNEY OR ANYTHING LIKE THAT, NO, HE DID NOT.

22 Q. WHAT ABOUT HIS GIRLFRIEND? DID HE ASK TO CALL HIS
23 GIRLFRIEND AT ANY TIME?

24 A. I DON'T KNOW. I HEARD MENTION OF THAT EARLIER AND --
25 AND I DON'T KNOW. I KNOW THAT HE ASKED TO GIVE HIS CELL

1 PHONE -- HE ASKED IF WE NEEDED THAT. HE KNEW THAT THE MONEY,
2 OF COURSE, WE WERE TAKING BECAUSE THAT'S WHAT HE TOOK FROM
3 THE BUSINESS, BUT HE ALSO HAD A CELL PHONE ON HIM AT THE
4 TIME. I KNOW HE ASKED IF SHE COULD GET THAT, AND I STATED
5 SHE COULD, IN WHICH SHE CAME UP AT A LATER DATE AND PICKED
6 THAT UP.

7 Q. IF YOU ALL DID ALLOW A PHONE CALL FROM HIM THAT NIGHT
8 WHILE YOU ALL HAD HIM IN CUSTODY, HE WOULD HAVE HAD TO CALL A
9 DETECTIVE, I PRESUME, TO TALK TO HIS GIRLFRIEND BECAUSE SHE
10 WAS APPREHENDED AS WELL, WASN'T SHE?

11 A. SHE WASN'T APPREHENDED. SHE WAS AT THE RESIDENCE WHEN
12 HE WAS ARRESTED, AND EVERYBODY THAT WAS INSIDE WAS BROUGHT
13 OUTSIDE AND DETAINED UNTIL THE SEARCH WARRANT WAS THROUGH FOR
14 OFFICER SAFETY.

15 Q. WAS SHE HANDCUFFED?

16 A. I BELIEVE SHE WAS.

17 Q. OKAY. SO SHE WAS HANDCUFFED AT THE TIME.

18 A. YEAH, SHE WAS DETAINED. SHE WAS NOT ARRESTED. SHE WAS
19 DETAINED. SHE WASN'T BEING CHARGED WITH ANYTHING, BUT IT'S
20 JUST FOR OFFICER SAFETY BECAUSE WHEN YOU HAVE AN ARMED
21 ROBBERY AND A GUN, YOU KNOW, FOR OFFICER SAFETY AND THE
22 COMMUNITY'S SAFETY, WE ALWAYS DO THAT. AND SOMETIMES YOU
23 HAVE GIRLFRIENDS' FAMILY MEMBERS GET UPSET WHEN YOU'RE
24 ARRESTING SOMEBODY THAT THEY LOVE OR A FAMILY MEMBER, AND
25 THEY COULD HAVE KNOWLEDGE OF THE GUN OR WHERE IT'S AT, SO WE

1 DO THAT FOR SAFETY.

2 Q. SO NOW IF A PHONE CALL WAS MADE FROM YOUR LOCATION, IT
3 WOULD HAVE TO BE MADE TO A DETECTIVE BECAUSE SHE WOULD
4 HAVE---

5 A. IT DEPENDS WHEN THE PHONE CALL WAS MADE. IF IT WAS MADE
6 AT THE POLICE DEPARTMENT AND IT WAS BEFORE HE WENT BACK, SHE
7 COULD HAVE BEEN BACK IN THE APARTMENT BY THEN AND FINISHED
8 WITH THE INVESTIGATION. HE COULD HAVE CALLED THE RESIDENCE.
9 IF SHE HAS A CELL PHONE, HE COULD HAVE CALLED HER CELL PHONE.
10 I DON'T KNOW IF THAT'S THEIR ONLY CELL PHONE, THE ONE HE HAD.
11 I WOULDN'T KNOW ABOUT THAT, OR IF HE CALLED FROM THE JAIL,
12 I'M NOT SURE.

13 Q. WHEN YOU ALL ARRIVED AT HIS HOUSE, YOU DID NOT HAVE A
14 SEARCH WARRANT.

15 A. NO, SIR.

16 Q. ALL RIGHT. DID ANYONE ENTER THE HOME PRIOR TO GETTING A
17 SEARCH WARRANT?

18 A. WHEN HE WAS ARRESTED? AT THE SAME TIME THAT HE WAS
19 TAKEN INTO CUSTODY, A PROTECTIVE SWEEP WAS DONE TO MAKE SURE
20 THAT NO ONE ELSE WAS IN THE RESIDENCE. THERE WAS ANOTHER
21 GENTLEMAN AT THE RESIDENCE AND A FEMALE, HIS GIRLFRIEND, AND
22 THEY WERE TAKEN OUTSIDE OF THE RESIDENCE AND TOLD THAT THEY
23 HAD TO WAIT OUTSIDE OF THE RESIDENCE UNTIL -- AND NO ONE ELSE
24 WENT BACK INSIDE THE RESIDENCE. PEOPLE -- THE OFFICERS STOOD
25 BY UNTIL A SEARCH WARRANT WAS DONE AND SIGNED BY A

1 MAGISTRATE---

2 Q. OKAY.

3 A. ---TO MAKE ENTRY INTO THE HOME TO SEARCH FOR THE ITEMS
4 LISTED IN THE SEARCH WARRANT.

5 Q. OKAY. BUT YOU WEREN'T THERE DURING THIS PROTECTIVE
6 SWEEP, WERE YOU?

7 A. YES, I WAS.

8 Q. YOU WERE THERE DURING THE PROTECTIVE SWEEP?

9 A. I DID NOT GO IN THERE, BUT I WAS OUTSIDE OF THE
10 APARTMENT.

11 Q. OKAY. WHEN DID YOU LEAVE THAT LOCATION?

12 A. ALL THAT WAS DONE WITHIN A MATTER OF A MINUTE. HE'S
13 PLACED INTO CUFFS, AND OFFICERS LOOK AND GLANCE REAL QUICK:
14 IS ANYBODY IN HERE? ANYONE IN THIS ROOM? AND THEY'RE OUT.
15 AND THEY WERE OUTSIDE. MR. MASSEY WAS OUTSIDE. HE WAS
16 PATTED DOWN.

17 Q. OKAY.

18 A. I PATTED HIM DOWN AGAIN TO MAKE SURE HE HAD NO WEAPONS
19 ON HIM BEFORE WE TRANSPORTED HIM, AND THEN I LEFT TO TAKE HIM
20 BACK TO THE STATION.

21 Q. SO ABOUT A MINUTE. SO THIS HAD TO BE AROUND WHAT?
22 11:30 SOMETHING MAYBE?

23 A. SOMEWHERE IN THERE BECAUSE -- I KNOW THIS BECAUSE HE
24 SIGNED HIS WAIVER OF RIGHTS AROUND 11:36, 11:37, SOMEWHERE IN
25 THERE. SO IT WAS SHORTLY BEFORE THAT.

1 Q. SO AFTER YOU LEFT THE SITE THERE, YOU REALLY HAVE NO
2 KNOWLEDGE WHETHER OR NOT ANYONE ENTERED THAT HOUSE AFTER YOU
3 LEFT OR NOT.

4 A. OTHER THAN WHAT OFFICERS HAVE STATED.

5 Q. NOW, AT THE STORE MR. HUFF STATED THAT THIS MAN HAD THE
6 GUN IN HIS RIGHT HAND. DO YOU RECALL THAT TESTIMONY THIS
7 MORNING?

8 A. I HEARD HIS TESTIMONY; I DID.

9 Q. AND I NOTICED YOU SAID HE MUST HAVE TOLD YOU THAT THE
10 GUN WAS IN THE LEFT HAND?

11 A. HE DID TELL ME. HE TOLD ME THE GUN -- AND I TALKED TO
12 HIM MINUTES AFTER THE ARMED ROBBERY HAPPENED, AND I ASKED HIM
13 SPECIFICALLY WHICH HAND THE GUN WAS IN, AND HE TOLD ME IN THE
14 LEFT HAND. THE GUN WAS IN THE LEFT HAND, AND THE TATTOO WAS
15 ON THE LEFT UPPER SHOULDER AREA. AND WHEN WE ARRESTED MR.
16 MASSEY, HE HAD THE TATTOO ON HIS LEFT UPPER SHOULDER AREA AND
17 HE SIGNED WITH HIS LEFT HAND.

18 Q. NOW, ONE OF THE STATEMENTS SAID HE HAD SOME TYPE OF A
19 BLACK CAP ON HIS HEAD. WAS THAT FOUND AT HIS HOME?

20 A. THERE WAS A DOO RAG THAT WAS FOUND AT THE RESIDENCE ON
21 THE SEARCH WARRANT, AND IT HAD A KNOT TIED IN IT.

22 Q. OKAY. IN HIS SECOND STATEMENT I NOTICED HE SAID THAT HE
23 THREW THIS BLACK CAP IN THE TRASH -- IN THE DUMPSTER BEHIND
24 KUT-RATE DRUGSTORE.

25 A. CORRECT; THAT'S WHAT HE SAID.

1 Q. DID YOU QUESTION HIM ABOUT THAT AT THAT TIME AS TO --
2 BECAUSE THE CAP, THE BLACK CAP---

3 A. WELL, YEAH, BECAUSE THERE WAS A DOO RAG AT THE HOUSE---

4 Q. THAT'S RIGHT.

5 A. ---AND HE'S SAYING HE THREW IT IN THERE. WE WENT BACK
6 THERE TO TRY TO FIND DUMPSTERS BEHIND KUT-RATE AND STUFF, AND
7 WE COULD NOT -- JUST FROM LOOKING -- NOW, I DIDN'T CLIMB IN
8 THE DUMPSTER, BUT JUST FROM LOOKING, I DIDN'T SEE ANYTHING ON
9 THE TOP AS FAR AS A CAP IN THE TRASH CAN.

10 Q. OKAY. SO YOU DID -- SOMEONE DID GO AND LOOK IN THE
11 DUMPSTERS.

12 A. YES, BEFORE I WENT HOME I SURE DID.

13 Q. AND THAT WAS NOT FOUND.

14 A. I DID NOT FIND IT.

15 Q. NOW, YOU ALSO MENTIONED ABOUT THE FIRST STATEMENT THAT
16 HE MADE YOU DIDN'T REALLY BELIEVE THAT HE WAS TELLING THE
17 TRUTH AT THAT TIME.

18 A. I DIDN'T, BUT THAT'S THE STATEMENT HE WANTED TO GIVE ME
19 AND THAT'S THE STATEMENT I TOOK. IT'S NOT FOR ME TO TELL HIM
20 WHAT HIS STATEMENT IS.

21 Q. BUT AFTER YOU STARTED RECEIVING SOME PHONE CALLS FROM
22 THE OFFICERS THAT DID GO IN THE HOUSE TO CONDUCT A SEARCH
23 AFTER THE SEARCH WARRANT ARRIVED, THEY STARTED TELLING YOU A
24 DIFFERENT STORY.

25 A. YEAH. I CALLED THEM.

1 Q. YOU CALLED THEM?

2 A. YES, TO FIND OUT IF THEY HAD LOCATED ANYTHING, IF THERE
3 WAS ANYTHING I COULD USE THERE TO GO BACK IN THERE AND SAY,
4 "LOOK. YOU KNOW, THIS IS WHAT THEY FOUND," AND THAT'S WHAT I
5 DID.

6 Q. OKAY. AND THEY DESCRIBED TO YOU -- THEY DID FIND THE
7 DERRINGER?

8 A. YES.

9 Q. THE CAP?

10 A. YES.

11 Q. THE BLACK PANTS?

12 A. YES.

13 Q. I GUESS HE HAS A WHITE TOP?

14 A. HE HAD THE WHITE TOP ON, AND THEY FOUND EVERYTHING ELSE.
15 AND I WAS LIKE, YEAH, IT'S NOT OFTEN THAT WE GET A CASE WHERE
16 WE FIND EVERYTHING LIKE THAT. WE FIND BITS AND PIECES AND
17 YOU HAVE TO PUT IT ALL TOGETHER, BUT, I MEAN, THAT WAS A LOT,
18 YOU KNOW, TO FIND.

19 Q. NOW, BACK AT THE STORE, MR. HUFF TALKED THIS MORNING
20 ABOUT HIM WIPING DOWN THE COUNTER. DID YOU ALL FINGERPRINT
21 -- DID ANYONE FINGERPRINT THE COUNTER AT ALL?

22 A. LIEUTENANT NESBITT WILL BE HERE TESTIFYING AND HE
23 WILL -- HE PROCESSED THE SCENE.

24 Q. HE DID?

25 A. AND HE WILL -- HE WILL BE ABLE TO TELL YOU WHAT HE DID

1 INSIDE THE BUSINESS; YES, SIR.

2 Q. SO HE'LL BE ABLE TO TESTIFY WHETHER OR NOT THERE WERE
3 FINGERPRINTS ON THE WEAPON ITSELF, ON THE DERRINGER, OR
4 ANYWHERE IN THE STORE?

5 A. YES, SIR, HE'LL BE ABLE TO TESTIFY TO THAT.

6 Q. OKAY. NOW, YOU DID ASK MR. HUFF ABOUT HOW MUCH MONEY
7 WAS TAKEN FROM THE STORE.

8 A. CORRECT.

9 Q. OKAY. BECAUSE I SEEN IN ONE OF THE STATEMENTS BY HIM
10 THE NUMBER WAS \$500?

11 A. \$500?

12 Q. YES.

13 A. I BELIEVE IT WAS 389.

14 Q. RIGHT.

15 A. AND \$22 TAKEN OUT OF HIS POCKET, BUT I THINK HE HAD 389
16 FROM THE BUSINESS.

17 Q. THAT'S RIGHT. COURT'S INDULGENCE, YOUR HONOR. AND AT
18 THE TIME YOU READ HIM HIS RIGHTS---

19 A. YES, SIR.

20 Q. ---THERE WAS -- WAS THERE ANY SMELL OF ALCOHOL ON HIM AT
21 ALL THAT YOU COULD DETECT?

22 A. NOT THAT I COULD DETECT. I MEAN, I WASN'T---

23 Q. IN HIS FACE?

24 A. ---IN HIS FACE, BUT JUST FROM -- YOU KNOW, PROBABLY FROM
25 HERE TO OVER HERE, NO, I COULD NOT SMELL---

1 Q. ALL RIGHT.

2 A. ---ALCOHOL, MARIJUANA. I DID NOT SMELL ANY OF THAT---

3 Q. THAT'S WHAT I WAS---

4 A. ---PRESENT ON HIM.

5 Q. ---GOING TO ASK, BUT BEING A DETECTIVE 11 YEARS OR SO,
6 CERTAINLY IF SOMEONE WAS UNDER THE INFLUENCE OF ALCOHOL OR
7 HAD SMOKED SOME MARIJUANA, YOU PROBABLY WOULD HAVE BEEN ABLE
8 TO DETECT THAT BY THEIR MOTIONS, THEIR MOVEMENT?

9 A. IT DEPENDS ON HOW MUCH AND HOW FREQUENT OR HOW USED TO
10 THEY ARE WITH DRINKING. SOME PEOPLE CARRY THEIRSELF (SIC)
11 BETTER, BUT IN ALL MY YEARS EXPERIENCE, IF SOMEBODY IS
12 IMPAIRED FROM ALCOHOL OR DRUGS, YOU KNOW, THEY ARE SLURRING.
13 THEY ARE UNSTEADY ON THEIR FEET. THEY ARE NOT TALKING LIKE
14 YOU AND I ARE TALKING. THEIR SPEECH IS SLURRED OR THEY MIGHT
15 NOT ANSWER APPROPRIATE, JUST TIRED, FALLING OVER. HE DIDN'T
16 DISPLAY ANY OF THOSE CHARACTERISTICS OR MAKE ME THINK THAT HE
17 WAS UNDER THE INFLUENCE OF ANYTHING.

18 Q. DURING YOUR INTERVIEW, DID HE ASK FOR CIGARETTES OR
19 ANYTHING LIKE THAT?

20 A. I CAN'T REMEMBER. WE HAVE A LOT OF SUSPECTS THAT ASK
21 FOR CIGARETTES. WE DO KEEP CIGARETTES ON HAND JUST FOR THAT
22 REASON IN THE OFFICE. WE'VE HAD SOME BREAK-INS AT DIFFERENT
23 STORES, AND IF WE RECOVER SOME, SOMETIMES THE STORES LET US
24 KEEP THEM AND SOMETIMES WE BUY OUR OWN, BUT IF HE ASKED, WE
25 PROBABLY LET HIM.

1 Q. SO JUST IN CLOSING, IN REVIEW, NO LINE-UP WAS DONE IN
2 THIS PARTICULAR CASE.

3 A. NO, SIR. I JUST DID NOT FEEL THAT---

4 Q. DIDN'T FEEL IT WAS NECESSARY.

5 A. I DIDN'T FEEL LIKE WE NEEDED IT.

6 MR. HASTIE: THANK YOU. NO FURTHER QUESTIONS, YOUR
7 HONOR.

8 THE COURT: REDIRECT?

9 MR. SPRATLIN: REAL BRIEFLY, YOUR HONOR.

10 REDIRECT EXAMINATION

11 BY MR. SPRATLIN:

12 Q. DETECTIVE CULICK, NOW IN REGARDS TO THE LINE-UP, YOU
13 STATED THAT IT WAS LATE AT NIGHT. CORRECT?

14 A. CORRECT.

15 Q. AFTER TALKING WITH THE DEFENDANT AND GETTING HIS
16 CONFESSION, DID YOU FEEL THERE WAS ANY NEED FOR A LINE-UP?

17 A. NO, I DIDN'T.

18 Q. OKAY. AND IT WAS MENTIONED, WHEN MR. HASTIE TALKED
19 ABOUT THE ARREST, A PROTECTIVE SWEEP. JUST SO THE JURY IS
20 CLEAR ON WHAT EXACTLY THAT IS, WHAT IS A PROTECTIVE SWEEP AND
21 WHY IS IT DONE?

22 A. A PROTECTIVE SWEEP IS DONE -- JUST LIKE I WAS SAYING, IF
23 YOU HAVE SOMEBODY THAT'S CHARGED WITH ARMED ROBBERY AND YOU
24 KNOW THERE WAS A GUN INVOLVED AND YOU GO TO MAKE AN ARREST OF
25 THAT PERSON, THEN, YOU KNOW, YOU'RE GOING TO CHECK AND MAKE

1 SURE THAT THERE'S NO ONE ELSE AROUND OR NEARBY THAT COULD
2 GRAB A GUN OR SOMETHING ELSE AND SHOOT AN OFFICER, HURT US,
3 HURT A SUSPECT, OR INNOCENT BYSTANDERS OR NEIGHBORS WHILE
4 THIS IS GOING ON. BUT IT'S MAINLY FOR A SAFETY REASON ONLY,
5 AND OFFICERS ONLY GLANCE AND LOOK. IT IS NOT A SEARCH OF THE
6 HOUSE WHERE YOU'RE PICKING UP THE MATTRESS, MAKING SURE
7 NOBODY IS HIDING OR UNDER THE BED. YOU GLANCE QUICKLY IN THE
8 OPEN AREAS, A CLOSET, A ROOM, A BATHROOM TO MAKE SURE NO ONE
9 IS IN THERE THAT COULD HARM YOU.

10 Q. AND THAT'S AN AUTHORIZED POLICE PROCEDURE; CORRECT?

11 A. CORRECT.

12 Q. OKAY. AND THE LAST THING I WANTED TO ADDRESS WITH YOU:
13 THE DEFENDANT'S STATEMENT. YOU TYPED IT AS HE SPOKE IT;
14 CORRECT?

15 A. CORRECT.

16 Q. AND YOU TYPED EXACTLY WHAT HE SAID.

17 A. CORRECT.

18 Q. ANY GRAMMATICAL ERRORS OR STUFF LIKE -- OR SUCH OTHER
19 KIND OF PROBLEMS WITH THAT STATEMENT, THAT'S BECAUSE THE
20 DEFENDANT SAID IT THAT WAY, IS IT NOT?

21 A. HE SAID IT THAT WAY. HE READ IT, AND HE STATED IT WAS
22 OKAY. EVERYTHING WAS HIS.

23 MR. SPRATLIN: THANK YOU, DETECTIVE CULICK. THAT'S ALL
24 THE QUESTIONS I HAVE.

25 THE COURT: ANYTHING ELSE, MR. HASTIE?

1 MR. HASTIE: NONE, YOUR HONOR.

2 THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN.

3 THE WITNESS: THANK YOU.

4 THE COURT: NEXT WITNESS.

5 MR. SPRATLIN: YOUR HONOR, THE STATE WOULD NEXT CALL
6 DETECTIVE ROBERT RICHBURG TO THE STAND.

7 ROBERT RICHBURG, AFTER BEING DULY SWORN, TESTIFIED
8 AS FOLLOWS:

9 THE CLERK: HAVE A SEAT UP HERE, PLEASE. STATE YOUR
10 FULL NAME AND SPELL YOUR LAST NAME, PLEASE, SIR.

11 THE WITNESS: ROBERT RICHBURG, R-I-C-H-B-U-R-G.

12 DIRECT EXAMINATION

13 BY MR. SPRATLIN:

14 Q. MR. RICHBURG, WHERE ARE YOU EMPLOYED?

15 A. SUMTER CITY POLICE DEPARTMENT.

16 Q. AND WHAT'S YOUR JOB TITLE?

17 A. CURRENTLY I'M ASSIGNED TO THE INVESTIGATIVE SERVICES
18 DIVISION AS A DETECTIVE.

19 Q. OKAY. AND, DETECTIVE RICHBURG, HOW LONG HAVE YOU BEEN
20 WITH SUMTER COUNTY -- I MEAN SUMTER CITY?

21 A. SEVEN -- WITH THE CITY, I'VE BEEN WITH THE CITY OF
22 SUMTER FOR SEVEN YEARS NOW, AND I WAS PRIOR IN SUMMERTON
23 POLICE DEPARTMENT FOR TWO YEARS.

24 Q. SO YOU'VE BEEN IN LAW ENFORCEMENT FOR NINE YEARS?

25 A. YES, SIR.

1 Q. OKAY. HOW MANY OF THOSE YEARS HAVE YOU BEEN A
2 DETECTIVE?

3 A. WITH THE CITY OF SUMTER, I'VE BEEN IN INVESTIGATIONS NOW
4 GOING ON MY FIFTH YEAR.

5 Q. OKAY. WERE YOU ON DUTY, DETECTIVE, BACK ON JUNE 7TH,
6 2007?

7 A. YES, SIR, I WAS.

8 Q. WHAT WERE YOU DOING THAT DAY?

9 A. NORMAL DAILY ACTIVITIES, FOLLOWING UP ON CASES, WHEN
10 THIS CALL WAS DISPATCHED. SENIOR DETECTIVE SIMS AND I WENT
11 TO THE AREA AND WAS RIDING THE AREA LOOKING FOR THE SUSPECT.

12 Q. IS THAT STANDARD PROCEDURE?

13 A. YES, SIR.

14 Q. OKAY. WHAT WAS YOUR ROLE IN THE INVESTIGATION OF THE
15 CASE?

16 A. OTHER THAN JUST BEING WITH DETECTIVES AND CHECKING
17 AREAS, FOLLOWING UP ON THE LEADS, WE WENT AND MADE THE ARREST
18 OF MR. MASSEY. I ACCOMPANIED SENIOR DETECTIVE CULICK TO THE
19 LAW ENFORCEMENT CENTER FOR QUESTIONING.

20 Q. WHO IS THE LEAD INVESTIGATOR ON THIS CASE?

21 A. SENIOR DETECTIVE CULICK IS THE LEAD INVESTIGATOR.

22 Q. OKAY. YOU ACCOMPANIED DETECTIVE CULICK TO THE LAW
23 ENFORCEMENT FACILITY, I THINK YOU SAID?

24 A. YES, SIR.

25 Q. WHAT WAS THE PURPOSE OF YOUR ACCOMPANYING HER?

1 A. WHEN WE INTERVIEW, WE GENERALLY INTERVIEW IN TEAMS.
2 THAT'S DONE SO ONE WILL TALK AND THE OTHER ONE WILL TAKE
3 NOTES. ALSO, OFTEN WE HAVE TO LEAVE THE ROOM TO GET WITH
4 OTHER DETECTIVES WHO MAY BE PROCESSING A SCENE OR FOLLOWING
5 UP ON STUFF TO PASS ON INFORMATION. THAT WAY THERE IS A
6 DETECTIVE IN CONTACT WITH THE SUSPECT AT ALL TIMES, AND IT'S
7 ALSO AN OFFICER SAFETY ISSUE.

8 Q. AND IN FURTHERANCE OF THE INVESTIGATION OF THIS ARMED
9 ROBBERY AT THE TOTAL LIVING STORE, WHO WERE YOU INTERVIEWING
10 THAT DAY?

11 A. MR. ANDRE MASSEY.

12 Q. OKAY. DO YOU SEE THE INDIVIDUAL THAT YOU KNOW AS ANDRE
13 MASSEY HERE IN THE COURTROOM?

14 A. YES, SIR, I DO.

15 Q. WOULD YOU PLEASE POINT HIM OUT AND IDENTIFY AN ARTICLE
16 OF CLOTHING THAT HE'S WEARING?

17 A. HE'S WEARING A WHITE SHIRT WITH KHAKI PANTS.

18 Q. PLEASE LET THE RECORD REFLECT THE WITNESS HAS IDENTIFIED
19 THE DEFENDANT IN THIS CASE. NOW, DETECTIVE, DO YOU KNOW
20 ABOUT WHAT TIME THE INTERVIEW PROCESS BEGAN?

21 A. IT WAS IN THE BALLPARK OF 11, 11:30.

22 Q. AND WHAT WAS THE FIRST THING THAT WAS DONE DURING THE
23 INTERVIEW PROCESS?

24 A. HE WAS READ HIS RIGHTS.

25 Q. OKAY. LET ME GO AHEAD AND SHOW YOU WHAT'S ALREADY BEEN

1 MARKED AND ENTERED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
2 1 -- NUMBER 1, YES. DO YOU RECOGNIZE THAT DOCUMENT I JUST
3 HANDED YOU?

4 A. YES, SIR. THIS IS OUR SUMTER POLICE DEPARTMENT
5 INTERVIEW FORM.

6 Q. OKAY. IT'S ALREADY BEEN READ BY DETECTIVE CULICK INTO
7 EVIDENCE, BUT REAL BRIEFLY, WERE YOU IN THE ROOM WHEN THAT
8 FORM WAS GONE OVER WITH THE DEFENDANT?

9 A. YES, SIR, I WAS AND I SIGNED AT THE BOTTOM AS A WITNESS.

10 Q. WHO WENT OVER THAT FORM WITH THE DEFENDANT?

11 A. SENIOR DETECTIVE CULICK DID.

12 Q. WERE YOU PRESENT AT ALL TIMES WHEN SHE WAS READING THE
13 RIGHTS ON THAT FORM?

14 A. YES, SIR, I WAS.

15 Q. OKAY. AT ANY POINT DID SHE DISCUSS ANYTHING WHERE YOU
16 WEREN'T WITHIN EARSHOT?

17 A. NO, SIR.

18 Q. OKAY. THANK YOU. OKAY. NOW, WHEN YOU FIRST BEGAN
19 TALKING WITH MR. MASSEY, WHAT WAS -- WHAT WAS YOUR -- WERE
20 YOU -- WERE ONE OF YOU ASKING QUESTIONS AND ONE OF YOU TYPING
21 OR WHAT WAS THE PROCEDURE GOING ON?

22 A. WHENEVER WE FIRST DID THE INTERVIEW, SENIOR DETECTIVE
23 CULICK WAS TALKING AND I WAS TAKING SOME NOTES, JOTTING SOME
24 NOTES DOWN.

25 Q. OKAY. AND WHERE DID THIS INTERVIEW TAKE -- THESE

1 INTERVIEWS TAKE PLACE?

2 A. WE BEGAN IN OUR INTERVIEW ROOM, BUT WHENEVER IT COME TO
3 THE POINT WHERE HE WAS ASKED IF HE WANTED TO PUT IT ON TAPE,
4 IT MOVED TO MY OFFICE.

5 Q. WHY IS THAT?

6 A. BECAUSE MY OFFICE IS -- WE HAVE A COMPUTER AND THERE'S A
7 BATHROOM THERE. IT'S A LITTLE BIT MORE OPEN THAN WHAT SENIOR
8 DETECTIVE CULICK'S OFFICE IS.

9 Q. OKAY. SO IN THE INTERVIEW ROOM THERE'S NO COMPUTER---

10 A. NO, SIR.

11 Q. ---OR BATHROOM.. OKAY. NOW, WHEN THE DEFENDANT WAS
12 FIRST BEING ASKED ABOUT THE CRIME AT ISSUE HERE, WHAT DID HE
13 TELL YOU AND DETECTIVE CULICK?

14 A. THE ORIGINAL STATEMENT WAS IS THAT IT WAS A SET-UP BY
15 THE MAN THAT OWNS THE STORE, THAT HE HEARD SOME PEOPLE
16 TALKING ABOUT IT AND DENIED ANY KNOWLEDGE OR ANY INVOLVEMENT
17 IN IT.

18 Q. OKAY. LET ME SHOW YOU WHAT'S ALREADY BEEN MARKED AS
19 STATE'S -- AND ENTERED INTO EVIDENCE AS STATE'S EXHIBIT
20 NUMBER 2. DO YOU RECOGNIZE THE DOCUMENT I JUST HANDED YOU?

21 A. YES, SIR.

22 Q. WHAT IS THAT DOCUMENT?

23 A. THIS IS THE FIRST STATEMENT THAT WAS GIVEN BY MR.
24 MASSEY.

25 Q. OKAY. WAS THAT DOCUMENT PREPARED IN YOUR PRESENCE?

1 A. YES, SIR, IT WAS.

2 Q. HOW WAS IT PREPARED?

3 A. IT WAS TYPED ON MY COMPUTER BY SENIOR DETECTIVE CULICK.

4 Q. OKAY. AND WAS THAT STATEMENT READ TO THE DEFENDANT IN
5 YOUR PRESENCE?

6 A. YES, SIR, IT WAS.

7 Q. ALL RIGHT. AND IN YOUR PRESENCE DID THE DEFENDANT DO
8 ANYTHING TO STATE THAT THAT WAS HIS STATEMENT?

9 A. YES, SIR. HE SIGNED IT AT THE BOTTOM.

10 Q. OKAY. AND WHO ELSE SIGNED THAT?

11 A. I SIGNED IT AND SENIOR DETECTIVE CULICK SIGNED IT.

12 Q. OKAY. AND YOU'RE SURE THAT THE DEFENDANT WAS READ THAT
13 STATEMENT.

14 A. YES, SIR.

15 Q. OKAY. AND ALL THAT WAS DONE IN YOUR PRESENCE.

16 A. YES, SIR.

17 Q. ALL RIGHT. NOW, PRIOR TO OR DURING THE WRITING OF THAT
18 STATEMENT, DID THE DEFENDANT ASK FOR AN ATTORNEY?

19 A. NO, SIR, HE DID NOT.

20 Q. DID THE DEFENDANT STATE THAT HE WISHED TO REMAIN SILENT?

21 A. NO, SIR, HE DID NOT.

22 Q. DID THE DEFENDANT DO ANYTHING THAT MADE YOU BELIEVE THAT
23 HE WISHED TO TERMINATE THE INTERVIEW?

24 A. NO, SIR.

25 Q. PRIOR TO OR DURING THAT STATEMENT, WAS THE DEFENDANT

1 PROMISED ANY SORT OF LENIENCY IN EXCHANGE FOR THAT STATEMENT?

2 A. NO, SIR.

3 Q. PRIOR TO OR DURING THAT STATEMENT, WAS THE DEFENDANT
4 THREATENED WITH ANY KIND OF HARM IF HE DID NOT PROVIDE A
5 STATEMENT?

6 A. NO, SIR.

7 Q. WAS THE DEFENDANT GIVEN THE SLIGHTEST HOPE OF BENEFIT IN
8 EXCHANGE FOR THAT STATEMENT?

9 A. NO, SIR, HE WAS NOT.

10 Q. WAS THE DEFENDANT, IN YOUR OPINION, PUT IN THE REMOTEST
11 FEAR OF INJURY?

12 A. NO, SIR.

13 Q. OKAY. AND WERE YOU PRESENT AT ALL TIMES DURING THE
14 INTERVIEW PROCESS?

15 A. YES, SIR.

16 Q. SO HAD ANY KIND OF VIOLENCE BEEN THREATENED OR ANY SORT
17 OF PROMISES BEEN MADE, YOU WOULD HAVE BEEN PRESENT TO HEAR
18 THAT.

19 A. YES, SIR, I WOULD HAVE.

20 Q. OKAY. NOW, WHAT HAPPENED AFTER THE DEFENDANT SIGNED
21 THAT STATEMENT RIGHT THERE?

22 A. SENIOR DETECTIVE CULICK STEPPED OUT. AS I SAID, THAT'S
23 WHY WE DO TEAMS. THAT WAY IF SOMEBODY NEEDS TO STEP OUT AND
24 COMPARE INFORMATION WITH PEOPLE ON THE SCENE... SHE COME
25 BACK IN, AND HE WAS CONFRONTED WITH THE STUFF THAT WAS

1 RECOVERED AT THE HOUSE AND THE INCONSISTENCIES IN HIS FIRST
2 STATEMENT.

3 Q. AND WHAT HAPPENED WHEN HE WAS CONFRONTED WITH THOSE
4 INCONSISTENCIES?

5 A. HE GAVE US THE SECOND STATEMENT IN WHICH HE ADMITTED TO
6 THE ARMED ROBBERY.

7 Q. LET ME SHOW YOU WHAT HAS ALREADY BEEN MARKED AND ENTERED
8 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 20. DO YOU RECOGNIZE
9 THAT DOCUMENT I JUST HANDED YOU?

10 A. YES, SIR. THIS IS THE SECOND STATEMENT THAT WAS DONE.

11 Q. OKAY. WAS THAT STATEMENT PREPARED IN YOUR PRESENCE?

12 A. YES, SIR.

13 Q. OKAY. AND WAS THAT STATEMENT -- I KNOW DETECTIVE CULICK
14 ALREADY READ IT. WAS THAT STATEMENT READ TO THE DEFENDANT IN
15 YOUR PRESENCE?

16 A. YES, SIR.

17 Q. WAS THE DEFENDANT GIVEN AN OPPORTUNITY TO READ THAT
18 STATEMENT HIMSELF?

19 A. YES, SIR, HE WAS.

20 Q. AND DID THE DEFENDANT DO ANYTHING TO STATE THAT THAT
21 WAS, IN FACT, HIS STATEMENT?

22 A. YES, SIR, HE SIGNED IT. THE SAME -- IT WAS SIGNED BY ME
23 AND SENIOR DETECTIVE CULICK AS WELL.

24 Q. AND ALL THAT WAS DONE IN YOUR IMMEDIATE PRESENCE.

25 A. YES, SIR.

1 Q. OKAY. NOW, PRIOR TO OR DURING THAT STATEMENT, DID THE
2 DEFENDANT ASK TO SPEAK TO A LAWYER?

3 A. NO, SIR.

4 Q. PRIOR TO OR DURING THAT STATEMENT, DID THE DEFENDANT
5 INVOKE HIS RIGHT TO REMAIN SILENT?

6 A. NO, SIR.

7 Q. PRIOR TO OR DURING THAT STATEMENT, DID THE DEFENDANT DO
8 ANYTHING THAT WOULD HAVE LED YOU TO BELIEVE THAT HE WISHED TO
9 TERMINATE THIS INTERVIEW?

10 A. NO, HE DID NOT.

11 Q. OKAY. NOW, AGAIN, PRIOR TO OR DURING THAT STATEMENT,
12 WAS THE DEFENDANT PROMISED ANY SORT OF LENIENCY IN EXCHANGE
13 FOR HIS STATEMENT?

14 A. NO, SIR, HE WASN'T.

15 Q. WAS HE PUT IN FEAR OF RECEIVING HARM IF HE DIDN'T
16 PROVIDE A STATEMENT?

17 A. NO.

18 Q. WAS HE GIVEN THE SLIGHTEST HOPE OF BENEFIT OR THE
19 REMOTEST FEAR OF INJURY IF HE DID NOT COMPLY WITH THAT
20 STATEMENT?

21 A. NO.

22 Q. NOW, REAL BRIEFLY, DETECTIVE RICHBURG, I WANT TO ASK YOU
23 ABOUT THE DEFENDANT'S DEMEANOR THAT DAY. HOW WAS HE ACTING
24 DURING THE INTERVIEW PROCESS?

25 A. THE FIRST -- DURING THE FIRST STATEMENT, IT WAS JUST

1 CASUAL CONVERSATION. HE WAS RESPONSIVE TO OUR QUESTIONS. WE
2 ASKED QUESTIONS. THE SECOND ONE HE WAS VERY REMORSEFUL AND
3 EMOTIONAL.

4 Q. WHEN YOU SAY EMOTIONAL, HOW WAS HE BEHAVING?

5 A. HE CRIED SOME, AND HE WAS APOLOGIZING FOR WHAT HE HAD
6 DONE.

7 Q. OKAY. DID THE DEFENDANT HAVE ANY -- APPEAR TO HAVE ANY
8 TROUBLE UNDERSTANDING YOU THAT DAY?

9 A. NO, SIR, HE DIDN'T.

10 Q. DID IT APPEAR TO YOU THAT HE SPOKE ENGLISH PROFICIENTLY?

11 A. YES, SIR.

12 Q. DID IT APPEAR TO YOU THAT THE DEFENDANT WAS FOLLOWING
13 ALONG WITH DETECTIVE CULICK WHEN SHE WAS READING THAT
14 STATEMENT?

15 A. YES, SIR.

16 Q. OKAY. AND NOW, DETECTIVE RICHBURG, YOU SAID YOU'VE BEEN
17 IN LAW ENFORCEMENT FOR NINE YEARS?

18 A. YES, SIR.

19 Q. HOW OFTEN WOULD YOU SAY DURING THOSE NINE YEARS YOU'VE
20 HAD AN OPPORTUNITY TO COME INTO CONTACT WITH PEOPLE WHO ARE
21 UNDER THE INFLUENCE OF DRUGS OR ALCOHOL?

22 A. QUITE FREQUENTLY.

23 Q. OKAY. WAS THE DEFENDANT DOING ANYTHING THAT WOULD LEAD
24 YOU TO BELIEVE THAT HE WAS UNDER THE INFLUENCE OF DRUGS OR
25 ALCOHOL TO THE EXTENT THAT HE COULD NOT PROVIDE A PROPER

1 STATEMENT?

2 A. NO, HE DID NOT.

3 Q. OKAY. WAS HE RESPONDING TO THE QUESTIONS THAT WERE
4 ACTUALLY BEING ASKED OF HIM?

5 A. YES, HE WAS.

6 Q. AND DID HE APPEAR TO YOU TO BE EITHER TOO EXCITED OR TOO
7 DEPRESSED?

8 A. NO.

9 Q. DID HE APPEAR IN ANY WAY TO BE IN A CONFUSED STATE?

10 A. NO.

11 Q. WAS HIS SPEECH SLURRED AT ALL?

12 A. NO, SIR.

13 Q. OKAY. AND, DETECTIVE RICHBURG, DO YOU KNOW ABOUT HOW
14 LONG THE INTERVIEW OF MR. MASSEY TOOK PLACE?

15 A. THE INTERVIEW ITSELF -- THE WHOLE PROCESS FROM WHEN WE
16 PHOTOGRAPHED, FINGERPRINTED, THE WHOLE PROCESS WAS BETWEEN
17 THREE AND A HALF TO FOUR HOURS.

18 Q. OKAY. AND, AGAIN, HE NEVER ASKED FOR AN ATTORNEY DURING
19 THAT ENTIRE TIME.

20 A. NO, SIR.

21 Q. HE NEVER INVOKED HIS RIGHT TO REMAIN SILENT.

22 A. NO, SIR.

23 Q. WAS HE DENIED ACCESS TO ANY SORT OF FOOD?

24 A. NO, SIR, BECAUSE WHEN WE GO FROM THE INTERVIEW ROOM TO
25 MY OFFICE, THERE'S ACTUALLY A VENDING MACHINE AND A DRINK

1 MACHINE RIGHT THERE, AND INSIDE MY OFFICE THERE'S A BATHROOM
2 THAT THE DOOR STAYS OPEN, THAT YOU COULD ACTUALLY SEE THE
3 COMMODE FROM MY DESK.

4 Q. HAD HE REQUESTED -- I KNOW IT WAS LATE AT NIGHT, BUT HAD
5 HE REQUESTED ANY FOOD, WOULD SOME HAVE BEEN PROVIDED?

6 A. NO, SIR. IF HE HAD REQUESTED? YES, SIR, WE WOULD HAVE
7 PROVIDED IT.

8 Q. DID HE REQUEST ANY FOOD?

9 A. NO, SIR.

10 Q. OKAY. AT ANY POINT DURING THE ENTIRE INTERVIEW PROCESS,
11 DID THE DEFENDANT ASK FOR SOMETHING THAT WAS NOT GIVEN TO
12 HIM?

13 A. NO, HE DID NOT.

14 Q. OKAY. AND HE WAS NOT PROMISED ANY SORT OF LENIENCY IN
15 EXCHANGE FOR GIVING A STATEMENT OR AT ANY POINT DURING THE
16 INTERVIEW PROCESS.

17 A. NO.

18 Q. CORRECT? AND HE WAS NOT PUT UNDER DURESS OF PHYSICAL
19 INJURY OR ANY KIND OF INJURY DURING THE COURSE OF THIS
20 INTERVIEW.

21 A. NO.

22 Q. IN YOUR OPINION, DETECTIVE RICHBURG, WERE BOTH
23 STATEMENTS BY THE DEFENDANT GIVEN FREELY AND VOLUNTARILY?

24 A. YES, THEY WERE.

25 MR. SPRATLIN: OKAY. THANK YOU. THAT'S ALL THE

1 QUESTIONS I HAVE RIGHT NOW.

2 THE COURT: MR. HASTIE?

3 MR. HASTIE: THANK YOU, YOUR HONOR.

4 CROSS-EXAMINATION

5 BY MR. HASTIE:

6 Q. GOOD AFTERNOON, DETECTIVE.

7 A. GOOD AFTERNOON, MR. HASTIE.

8 Q. YOU HAVE BEEN WITH THE SUMTER POLICE DEPARTMENT SEVEN
9 YEARS YOU SAID?

10 A. YES.

11 Q. AND SUMMERTON TWO YEARS.

12 A. YES, SIR.

13 Q. HOW MANY LINE-UPS HAVE YOU PARTICIPATED IN DURING THIS
14 SEVEN-YEAR PERIOD HERE IN SUMTER?

15 A. I COULDN'T ANSWER THAT. NUMEROUS.

16 Q. NUMEROUS LINE-UPS.

17 A. HAVE I PARTICIPATED IN OR HAVE I HAD MADE AND SHOWN TO
18 SOMEBODY?

19 Q. MADE AND SHOWN TO SOMEBODY.

20 A. SEVERAL. NUMEROUS. NUMEROUS.

21 Q. WHEN YOU SAY NUMEROUS, ARE YOU TALKING ABOUT TEN?
22 FIFTY? A HUNDRED?

23 A. I COULDN'T PUT A NUMBER ON IT, TO BE HONEST WITH YOU.

24 Q. OKAY. WE'LL STAY WITH NUMEROUS. OKAY. DO YOU RECALL
25 DURING THIS INTERVIEW PERIOD WHETHER OR NOT MR. MASSEY ASKED

1 TO SPEAK TO HIS GIRLFRIEND AT ALL?

2 A. I DON'T RECALL.

3 Q. YOU DON'T RECALL?

4 A. NO, SIR, I DON'T REMEMBER---

5 Q. YOU DON'T RECALL---

6 A. ---HIM ASKING.

7 COURT REPORTER: I CAN'T TAKE YOU BOTH AT THE SAME TIME.

8 BY MR. HASTIE:

9 Q. YOU DON'T RECALL?

10 A. I DON'T REMEMBER HIM ASKING THAT; NO, SIR.

11 Q. YOU SAID HE DID NOT ASK FOR ANYTHING TO EAT OR DRINK.

12 A. NOT TO MY KNOWLEDGE, NO, SIR. HE WAS GIVEN A DRINK AT
13 SOME POINT IN TIME.

14 Q. HE WAS GIVEN A DRINK?

15 A. YES, SIR.

16 Q. OKAY. WHAT KIND OF DRINK WAS HE GIVEN?

17 A. I DON'T REMEMBER.

18 Q. DO YOU KNOW WHAT TIME IT WAS?

19 A. NO.

20 Q. IT STARTED AT 11:30 AT NIGHT, AROUND ABOUT FOUR HOURS.

21 SO WE'RE TALKING ABOUT 3:00 IN THE MORNING THAT THIS

22 INTERVIEW IS STILL GOING ON?

23 A. AROUND ABOUT. IT WAS FOUR HOURS.

24 Q. YES. AND DURING THAT TIME HE WAS ONLY OFFERED OR SEEN
25 HAVING A DRINK? IS THAT YOUR TESTIMONY?

1 A. I REMEMBER THAT HE HAD A DRINK BECAUSE NORMALLY IF I SIT
2 IN THE INTERVIEW FOR THREE OR FOUR HOURS, EVERYONE CAN LOOK
3 AT ME -- I DON'T GO LONG WITHOUT FOOD OR DRINK MYSELF, SO I
4 WOULD HAVE ONE AND I WOULD OFFER HIM ONE.

5 Q. WOULD YOU HAVE SOMETHING TO EAT AS WELL?

6 A. NOT ALL THE TIME, NO, SIR. IF HE WOULD HAVE ASKED, HE
7 WOULD HAVE GOT IT.

8 Q. WERE YOU AT MR. MASSEY'S HOME THAT NIGHT WHEN HE WAS---

9 A. WHENEVER WE FIRST WENT TO THE HOUSE, I WAS DRIVING
10 SOMEBODY ELSE'S VEHICLE.

11 Q. LET ME ASK A QUESTION. WERE YOU AT MR. MASSEY'S
12 HOUSE---

13 A. YES, I WAS.

14 Q. OKAY. THANK YOU. HOW DID THE INITIAL ENTRANCE INTO HIS
15 HOME TAKE PLACE?

16 A. I WAS AT THE VEHICLES. AS I WAS SAYING, I WAS DRIVING
17 ONE OF THE VEHICLES THAT WAS CONTAINING A COUPLE OF THE OTHER
18 OFFICERS SO SHOULD SOMEONE RUN -- I'M NOT REALLY KNOWN FOR
19 BEING FAST ON FOOT, SO I DROVE, STOPPED, LET THEM OUT, AND I
20 MAINTAINED RIGHT THERE AT THE VEHICLES---

21 Q. OKAY.

22 A. ---UNTIL THEY WERE FINISHED.

23 Q. DID ANYONE RUN OUT OF THE HOUSE---

24 A. NO, SIR.

25 Q. ---DURING THIS PERIOD OF TIME? OKAY. SO SOMEONE WENT

1 TO THE DOOR, I PRESUME?

2 A. YES, SIR.

3 Q. YOU COULD SEE THE DOOR---

4 A. SENIOR DETECTIVE SIMS MADE---

5 THE COURT: WAIT A MINUTE. YOU'VE GOT TO LET HIM FINISH

6 THE QUESTION. EVEN THOUGH YOU MIGHT KNOW WHAT IT'S GOING TO

7 BE, YOU'VE GOT TO LET HIM FINISH. GO AHEAD, MR. HASTIE.

8 BY MR. HASTIE:

9 Q. YOU COULD SEE THE DOOR FROM WHERE YOU WERE SITTING?

10 A. YES, SIR.

11 Q. OKAY. WHO WENT TO THE DOOR AND KNOCKED ON THE DOOR?

12 A. SENIOR DETECTIVE SIMS KNOCKED ON THE DOOR.

13 Q. SIMS KNOCKED ON THE DOOR.

14 A. YES, SIR.

15 Q. WHO CAME TO THE DOOR?

16 A. MR. MASSEY CAME TO THE DOOR.

17 Q. MR. MASSEY CAME TO THE DOOR.

18 A. YES, SIR.

19 Q. OKAY. I'M SURE YOU COULDN'T HEAR THE CONVERSATION.

20 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.)

21 Q. WE'LL GET TO HIM AT THAT POINT. MR. MASSEY CAME TO THE
22 DOOR.

23 A. YES, SIR.

24 Q. HOW LONG FROM THE TIME PERIOD THAT HE WALKED TO THE DOOR

25 'TIL HE WAS TAKEN INTO CUSTODY? THAT MAY BE THE WRONG WORD.

1 A. HOW LONG FROM THE TIME?

2 Q. YES.

3 A. AS SOON AS SENIOR DETECTIVE SIMS MADE CONTACT WITH HIM,
4 HE PLACED HIM IN CUFFS.

5 Q. THEY ARRESTED HIM IMMEDIATELY. WELL, TOOK HIM INTO
6 CUSTODY IMMEDIATELY.

7 A. RIGHT.

8 Q. THEN DID ANYONE ELSE COME OUT OF THE HOUSE AT THAT TIME?

9 A. THE -- THERE WAS A FEMALE AND A MALE THERE AT THE HOUSE.

10 Q. SO TWO OTHER PEOPLE CAME OUT OF THE HOUSE.

11 A. RIGHT. RIGHT.

12 Q. THEY ALSO WERE TAKEN INTO CUSTODY.

13 A. YES, SIR.

14 Q. DO YOU KNOW WHETHER ANY OF THEM WERE READ THEIR RIGHTS?

15 A. I WASN'T THERE WHENEVER THEY DID ALL THAT STUFF.

16 Q. BUT YOU WERE SURE THAT THERE WAS---

17 A. THERE WAS NO QUESTIONING BEING GONE ON BY THE CRIME --
18 THERE WAS NO NEED TO READ THEM THEIR RIGHTS. THEY WERE NOT
19 BEING QUESTIONED ON THE SCENE. AS HE WAS QUESTIONED AT THE
20 OFFICE, AND THAT'S WHEN HE WAS READ HIS RIGHTS.

21 Q. OKAY. YOU WERE SURE AT THAT TIME THAT YOU ALL DID NOT
22 HAVE A SEARCH WARRANT. IS THAT CORRECT?

23 A. SAY THAT AGAIN.

24 Q. YOU WERE SURE AT THAT TIME THAT YOU ALL DID NOT HAVE A
25 SEARCH WARRANT WHEN THEY WERE ORIGINALLY---

1 A. WHEN WE WENT TO THE -- WHEN WE WENT TO THE RESIDENCE,
2 NO, WE DID NOT HAVE A SEARCH WARRANT.

3 Q. DID NOT A SEARCH WARRANT.

4 A. YES.

5 Q. THANK YOU. THE SWEEP -- THIS PROTECTIVE SWEEP THAT
6 WE'RE HEARING ABOUT, DID YOU PARTICIPATE IN THE PROTECTIVE
7 SWEEP?

8 A. NO, SIR, I DID NOT.

9 Q. DO YOU KNOW WHO PARTICIPATED IN THE PROTECTIVE SWEEP?

10 A. IT WAS OFFICER BILLY LYONS AND OFFICER SHANE LYNES WHO
11 WERE MEMBERS OF OUR NEIGHBORHOOD ENFORCEMENT TEAM AT THAT
12 TIME.

13 Q. AND THIS PROTECTIVE SWEEP TAKES ABOUT ONE MINUTE?

14 A. SMALL APARTMENT.

15 Q. SMALL APARTMENT? THREE PEOPLE GOING IN ONE APARTMENT?

16 A. TWO.

17 Q. TWO? AND IN THE PROTECTIVE SWEEP THEY NORMALLY LOOK FOR
18 WHAT?

19 A. OTHER PEOPLE.

20 Q. OTHER PEOPLE. BUT THERE WERE TWO ALREADY OUTSIDE;
21 CORRECT?

22 A. THAT'S CORRECT.

23 Q. DID THEY FIND ANY OTHER PEOPLE, TO YOUR KNOWLEDGE?

24 A. NO, SIR.

25 Q. SO THEN YOU LEFT WITH MR. MASSEY AND DETECTIVE CULICK, I

1 PRESUME AT SOME POINT, AND YOU ALL WENT BACK TO THE STATION.

2 A. THAT'S RIGHT.

3 Q. OKAY. THEN AT THE STATION THIS IS WHERE HE WAS READ HIS
4 RIGHTS AT THAT TIME.

5 A. YES, SIR.

6 Q. OKAY. DID YOU READ HIM HIS RIGHTS?

7 A. NO, SIR.

8 Q. DETECTIVE CULICK DID.

9 A. THAT'S RIGHT.

10 Q. BUT YOU WERE PRESENT.

11 A. I WAS IN THE ROOM; YES, SIR.

12 Q. AND I HATE TO BE REDUNDANT, BUT I JUST WANT TO MAKE SURE
13 I COVER EVERYTHING. WHEN HE WAS BEING READ HIS RIGHTS, IN
14 YOUR OPINION HE WAS CLEAR MINDED; HE SEEMED TO UNDERSTAND
15 WHAT HE WAS DOING.

16 A. YES, SIR, HE DID.

17 Q. AT ANY TIME DID HE ASK FOR AN ATTORNEY?

18 A. NO.

19 Q. AT ANY TIME HE SAID, "I DON'T WANT TO TALK TO YOU GUYS
20 ANYMORE"?

21 A. NO.

22 Q. AND AT ANY TIME DID HE ASK FOR CIGARETTES?

23 A. I DON'T RECALL.

24 Q. YOU DON'T RECALL.

25 A. HUH-UH.

1 Q. AND THIS INTERVIEW AND READING HIM HIS RIGHTS TOOK ABOUT
2 FOUR HOURS.

3 A. NO, THE WHOLE PROCESS.

4 Q. THE WHOLE PROCESS.

5 A. WE PHOTOGRAPHED HIM. WE FINGERPRINTED HIM AND
6 EVERYTHING ELSE. THAT WHOLE PROCESS WAS IN THE BALLPARK OF
7 FOUR HOURS.

8 Q. OKAY. THEN HE WAS TAKEN WHERE AFTER THE INTERVIEW?

9 A. TO THE DETENTION CENTER.

10 Q. SO YOU TOOK HIM TO THE DETENTION CENTER ABOUT 3 OR 4:00
11 IN THE MORNING.

12 A. YES.

13 Q. ALL RIGHT. DID YOU GO WITH HIM---

14 A. APPROXIMATELY. NO, SIR, HE WAS TRANSPORTED AT THAT TIME
15 BY PATROL -- SENIOR DETECTIVE CULICK, AND I ACCOMPANIED HER
16 TO LOOK THROUGH THE DUMPSTERS AND LOOK IN THE STUFF FOR THE
17 DOO RAG THAT SHE SAID SHE... IT WAS THE TWO OF US TOGETHER
18 AFTER WE FINISHED.

19 Q. SO YOU ALL WENT AND LOOKED IN THE DUMPSTERS AT 3 OR 4:00
20 IN THE MORNING?

21 A. YES, SIR.

22 Q. OKAY.

23 A. OUR JOB ISN'T ALWAYS CONVENIENT. SOMETIMES WE HAVE TO
24 DO STUFF LIKE THAT.

25 Q. BUT YOU DIDN'T FIND IT CONVENIENT ENOUGH TO DO A LINE-UP

1 BECAUSE IT WAS LATE AT NIGHT AND---

2 A. SENIOR DETECTIVE CULICK HAS ALREADY ANSWERED THAT
3 QUESTION.

4 Q. THE DUMPSTER -- WHAT DID YOU FIND IN THE DUMPSTER?

5 A. NOTHING.

6 Q. DID YOU GO IN THE DUMPSTER?

7 A. NO, SIR. WE CHECKED ON THE TOP. SHOULD THERE HAVE BEEN
8 ANYTHING THAT APPEARED AS IF IT COULD HAVE BEEN, YES, SIR, I
9 WOULD HAVE.

10 Q. SO YOU JUST LOOKED ON THE TOP OF THE DUMPSTERS.

11 A. THAT'S WHERE IT WOULD HAVE BEEN. THAT TIME OF THE
12 AFTERNOON TO WHERE WE'RE AT, THAT'S NOT THAT MUCH BUSINESS,
13 NOT THAT MUCH TIME, NOT THAT MUCH STUFF GOING IN THOSE
14 DUMPSTERS.

15 Q. MEANING TIME OF NIGHT.

16 A. RIGHT.

17 Q. SO YOU DIDN'T OPEN THE LID OF THE DUMPSTERS OR---

18 A. WE CHECKED IN THE TOP. YOU CAN SLIDE UNDERNEATH AT THE
19 TOP -- WHENEVER WE CHECKED, WE LOOKED IN THE TOP OF THE
20 DUMPSTERS.

21 Q. AT 3 OR 4:00 IN THE MORNING I ASSUME YOU HAD A
22 FLASHLIGHT.

23 A. YES, SIR.

24 MR. HASTIE: THANK YOU. NO FURTHER QUESTIONS, YOUR
25 HONOR.

1 THE COURT: REDIRECT?

2 MR. SPRATLIN: JUST BRIEFLY, YOUR HONOR.

3 REDIRECT EXAMINATION

4 BY MR. SPRATLIN:

5 Q. DETECTIVE RICHBURG, IN YOUR EXPERIENCE AND OPINION AS A
6 DETECTIVE, IS IT NECESSARY TO DO A LINE-UP AFTER A SUSPECT
7 HAS CONFESSED TO THE CRIME?

8 A. NO, SIR, IT'S NOT.

9 Q. AND ARE YOU AWARE IF A LINE-UP WOULD EVEN BE AVAILABLE
10 AT 11:30 AT NIGHT?

11 A. NO. WE HAVE TO SEND IT OFF TO S.L.E.D. AND THAT IS --
12 WE'RE AT THEIR DISCRETION, AND SOMETIMES IT COULD BE TWO OR
13 THREE DAYS BEFORE WE GET A LINE-UP. SOMETIMES WE GET IT BACK
14 THE SAME DAY. ESPECIALLY THAT TIME OF NIGHT, THERE WOULD
15 HAVE BEEN NO ONE AT S.L.E.D. TO PROCESS THAT REQUEST.

16 Q. S.L.E.D. HAS TO KEEP MORE REGULARLY WORKING HOURS THAN
17 THE SUMTER POLICE---

18 A. AT THAT TIME IT WAS ALL DONE THROUGH THE S.L.E.D.
19 FORENSIC PHOTOGRAPHY. SO THEY'RE WORKING, YOU KNOW, NORMAL
20 BUSINESS DAYS. IT WOULD HAVE HAD TO HAVE BEEN SENT OFF TO
21 THEM, AND IT WOULD HAVE BEEN NORMAL BUSINESS DAYS BEFORE WE
22 HAD A RESPONSE.

23 Q. OKAY. AND MR. HASTIE BROUGHT UP THE ISSUE OF THE OTHER
24 PEOPLE NOT BEING READ THEIR MIRANDA RIGHTS. IS IT NECESSARY
25 TO READ RIGHTS TO A PERSON?

1 A. NO, SIR. THAT'S ONLY NECESSARY IF THEY'RE BEING
2 QUESTIONED ABOUT A CRIME, AND THEY WERE NOT.

3 Q. AND WAS THE DEFENDANT READ HIS RIGHTS BEFORE BEING
4 QUESTIONED ABOUT ANY CRIME?

5 A. NO, SIR, HE WAS NOT.

6 Q. WAS THE DEFENDANT READ HIS RIGHTS?

7 A. HE WAS READ HIS RIGHTS BEFORE HE WAS QUESTIONED ABOUT
8 THE CRIME. HE WAS NOT READ THEM UNTIL -- HE WASN'T
9 QUESTIONED UNTIL WE READ HIM HIS RIGHTS.

10 MR. SPRATLIN: OKAY.

11 THE COURT: ANY OTHER QUESTIONS?

12 MR. SPRATLIN: NO, YOUR HONOR. I HAVE NO FURTHER
13 QUESTIONS.

14 THE COURT: MR. HASTIE?

15 MR. HASTIE: JUST ONE QUESTION.

16 RECROSS EXAMINATION

17 BY MR. HASTIE:

18 Q. YOU MENTIONED THAT IT WAS NOT NECESSARY TO DO A LINE-UP
19 AFTER SOMEONE CONFESSED? THAT'S WHAT YOU JUST SAID?

20 A. THAT'S RIGHT. HE CONFESSED TO THE CRIME. HE
21 INCRIMINATED HISSELF (SIC).

22 Q. BUT YOU NORMALLY DON'T WAIT FOR SOMEONE TO CONFESS TO DO
23 A LINE-UP---

24 A. IT ALL DEPENDS ON IF THEY---

25 THE COURT: WAIT. YOU'VE GOT TO LET HIM FINISH THE

1 QUESTION.

2 THE WITNESS: I THOUGHT YOU WERE FINISHED. I'M SORRY.

3 BY MR. HASTIE:

4 Q. YOU NORMALLY DON'T DO LINE-UPS -- YOU DON'T WAIT UNTIL
5 SOMEONE CONFESSES TO DO A LINE-UP, AND YOU TELL ME, BECAUSE I
6 HAVEN'T BEEN THROUGH TRAINING -- I WOULD THINK YOU'D DO A
7 LINE-UP WHEN YOU'RE TRYING TO IDENTIFY WHETHER SOMEONE
8 COMMITTED A CRIME OR NOT.

9 A. AS SENIOR DETECTIVE CULICK TESTIFIED TO EARLIER, THERE
10 WAS NO NEED. SHE FELT NO NEED. SHE FELT SHE HAD ENOUGH TO
11 IDENTIFY HIM, AND AFTER HE CONFESSED, HE INCRIMINATED
12 HISSELF.

13 Q. SO CERTAINLY AFTER A CONFESSION, THERE IS NEED FOR A
14 LINE-UP. RIGHT?

15 A. NO. NO, SIR.

16 MR. HASTIE: THANK YOU.

17 THE COURT: ALL RIGHT. YOU CAN STEP DOWN. THANK YOU
18 VERY MUCH. OKAY. MR. SPRATLIN?

19 MR. SPRATLIN: YOUR HONOR, THE STATE WOULD NEXT CALL
20 DETECTIVE TOD SIMS TO THE STAND.

21 THE COURT: IS EVERYBODY ON THE JURY OKAY? IF YOU NEED
22 TO TAKE A BREAK, JUST RAISE YOUR HAND.

23 TOD A. SIMS, AFTER BEING DULY SWORN, TESTIFIED AS
24 FOLLOWS:

25 THE CLERK: HAVE A SEAT UP HERE, PLEASE, SIR. STATE

1 YOUR FULL NAME AND SPELL YOUR LAST NAME, PLEASE.

2 THE WITNESS: IT'S TOD ALLEN SIMS, S-I-M-S.

3 MR. SPRATLIN: BEG THE COURT'S INDULGENCE FOR ONE
4 SECOND.

5 COURT REPORTER: HOW DO YOU SPELL YOUR FIRST NAME?

6 THE WITNESS: T-O-D.

7 DIRECT EXAMINATION

8 BY MR. SPRATLIN:

9 Q. MR. SIMS, WHERE ARE YOU EMPLOYED?

10 A. I'M EMPLOYED WITH THE CITY OF SUMTER POLICE DEPARTMENT.

11 Q. AND WHAT IS YOUR JOB THERE?

12 A. I'M A SENIOR DETECTIVE IN THE INVESTIGATIVE SERVICE
13 DIVISION.

14 Q. OKAY. AND HOW LONG HAVE YOU BEEN IN THAT JOB?

15 A. AT THE INVESTIGATION I'VE BEEN A DETECTIVE FOR 12 YEARS.

16 Q. TWELVE YEARS? AND WHAT ARE THE DUTIES OF A DETECTIVE AT
17 THE SUMTER POLICE DEPARTMENT?

18 A. WELL, WITH MY JOB I'M OVER WHAT WE CALL THE PROPERTY
19 CRIMES DIVISION. I OVERSEE ALL THE BURGLARIES, ALL THE
20 THEFTS, B&E AUTOS. I HAVE TWO OTHER DETECTIVES WORKING UP
21 UNDER ME. I GET ALSO ASSIGNED REPORTS AND HAVE TO
22 INVESTIGATE MY TYPE OF CRIMES THAT I DEAL WITH.

23 Q. OKAY. AND WERE YOU WORKING ON THE DAY OF JUNE 7, 2007?

24 A. YES, SIR, I WAS.

25 Q. OKAY. AND WHAT HAPPENED THAT DAY?

1 A. WELL, WE RESPONDED TO AN ARMED ROBBERY CALL AT 25 DUGAN
2 STREET, AND WE WERE THERE TO ASSIST DETECTIVE -- SENIOR
3 DETECTIVE CULICK IN ANY NEEDS THAT SHE NEEDED.

4 Q. OKAY. SO YOU WERE ASSISTING DETECTIVE CULICK AT THIS
5 POINT?

6 A. THAT'S CORRECT.

7 Q. OKAY. AT SOME POINT DID THAT INVESTIGATION CENTER ON A
8 SUSPECT?

9 A. YES, SIR. AS I SPOKE EARLIER, MYSELF AND DETECTIVE
10 RICHBURG WENT OUT AND ACTUALLY CIRCULATED A -- LOCATED A
11 SUSPECT. THEN WE WERE CALLED BACK TO THE SCENE, AND THEN WE
12 FOLLOWED UP WITH DETECTIVE -- SENIOR DETECTIVE CULICK IN
13 GOING OUT TO LOOK AND TO APPREHEND THE SUSPECT IN THE ARMED
14 ROBBERY.

15 Q. OKAY. AND WHERE DID Y'ALL GO TO APPREHEND THE SUSPECT?

16 A. WE WENT TO NUMBER 107 SALEM STREET, APARTMENT NUMBER 2.

17 Q. OKAY. AND WHEN YOU WENT THERE, WERE YOU ABLE TO
18 APPREHEND THE SUSPECT IN QUESTION?

19 A. THAT'S CORRECT.

20 Q. OKAY. AND WHO WAS THAT SUSPECT?

21 A. THAT'S MR. ANDRE MASSEY.

22 Q. AND DO YOU SEE THE MAN YOU KNOW AS ANDRE MASSEY HERE IN
23 THE COURTROOM TODAY?

24 A. YES, SIR, I DO.

25 Q. IF YOU WOULD, PLEASE POINT HIM OUT AND IDENTIFY AN

1 ARTICLE OF CLOTHING HE'S WEARING.

2 A. HE'S THE BLACK MALE SITTING AT THE TABLE RIGHT OVER
3 THERE WEARING A WHITE SHIRT, KHAKI PANTS, AND A MULTICOLORED
4 TIE.

5 Q. THANK YOU. PLEASE LET THE RECORD REFLECT THE WITNESS
6 HAS IDENTIFIED THE DEFENDANT AS BEING THE PERSON HE KNOWS AS
7 ANDRE MASSEY. NOW, DETECTIVE SIMS, WE'VE ALREADY HEARD
8 TESTIMONY THAT DETECTIVE CULICK AND DETECTIVE RICHBURG TOOK
9 THE DEFENDANT BACK TO THE LAW ENFORCEMENT CENTER. WHAT DID
10 YOU DO?

11 A. UPON ARRIVAL?

12 Q. UPON ARRIVAL, YES.

13 A. UPON ARRIVAL, I WENT TO THE FRONT DOOR ALONG WITH TWO
14 OTHER OFFICERS. I THEN KNOCKED ON THE DOOR. AS THE DOOR
15 OPENED, A BLACK MALE CAME TO THE DOOR WHICH I IDENTIFIED AS
16 MR. ANDRE MASSEY. AT THAT TIME I PLACED HIM IN HANDCUFFS AND
17 PLACED HIM UNDER CUSTODY.

18 Q. OKAY. AND NOW WHAT HAPPENED NEXT?

19 A. AT THAT TIME THERE WAS TWO OTHER SUBJECTS INSIDE THE
20 HOUSE THAT HAD EXITED THE HOUSE AS WELL. THEY WERE PLACED IN
21 CUFFS AND DETAINED FOR OUR SAFETY.

22 Q. OKAY. AND WHAT HAPPENED AS FAR AS THE RESIDENCE GOES?

23 A. AS FAR AS THE RESIDENCE GOES, OFFICER LYONS AND LYNES,
24 SPELLING TWO DIFFERENT LAST NAMES, ENTERED THE RESIDENCE TO
25 DO WHAT WE CALL A PROTECTIVE SWEEP.

1 Q. OKAY. AND WHAT DO YOU MEAN BY PROTECTIVE SWEEP?

2 A. THEY GO INTO THE RESIDENCE TO SEE IF ANYBODY IS INSIDE
3 THE RESIDENCE THAT MIGHT HARM US AND NOT JUST EVEN US, EVEN
4 THE SUBJECTS WE'VE GOT IN HANDCUFFS.

5 Q. NOW, IS THE PURPOSE OF A PROTECTIVE SWEEP TO OBTAIN
6 EVIDENCE?

7 A. NO.

8 Q. WHAT IS IT---

9 A. NO, SIR.

10 Q. WHAT IS IT?

11 A. IT'S TO SEE IF ANY OTHER PERSONS ARE INSIDE THE
12 RESIDENCE THAT WOULD HARM US OR ANYONE ELSE.

13 Q. OKAY. AND DURING THIS PROTECTIVE SWEEP, WAS ANY SORT OF
14 EVIDENCE GAINED?

15 A. NO, SIR.

16 Q. OKAY. WHAT DID YOU DO NEXT IN THE PROCESS?

17 A. AFTER THE SUBJECTS WERE THEN DETAINED AND SENIOR
18 DETECTIVE CULICK AND DETECTIVE RICHBURG LEFT THE APARTMENT
19 WITH THE SUSPECT, I THEN WENT AND OBTAINED A SEARCH WARRANT
20 TO THE APARTMENT.

21 Q. OKAY. AND JUST REAL BRIEFLY, NOT TO GET TOO TECHNICAL,
22 BUT HOW DOES ONE OBTAIN A SEARCH WARRANT?

23 A. FIRST OF ALL, YOU HAVE TO GIVE A BRIEF DESCRIPTION OF
24 THE RESIDENCE. THEN I GO TO THE LAW ENFORCEMENT CENTER, SIT
25 DOWN AT MY COMPUTER, TYPE UP THAT SEARCH WARRANT, GIVE A

1 DESCRIPTION OF THE PREMISES TO BE SOUGHT AND ALSO A
2 DESCRIPTION OF THE ITEMS THAT WE WERE GOING TO BE LOOKING
3 FOR.

4 Q. OKAY. AND WHO DO YOU GO TO TO GET THE SEARCH WARRANT?

5 A. FIRST OF ALL, I GO TO MY OFFICE, BUT TO GET IT SWORN IN,
6 I HAVE TO GO BEFORE A MAGISTRATE JUDGE.

7 Q. WHICH JUDGE DID YOU GO TO?

8 A. I WENT TO JUDGE TINDAL.

9 Q. OKAY. AND WAS THIS -- WHAT TIME OF NIGHT WAS THIS?

10 A. IT WAS AROUND -- AROUND -- A LITTLE AFTER 1:00 IN THE
11 MORNING.

12 Q. ALL RIGHT. SO ONCE YOU GOT THE SEARCH WARRANT -- I'M
13 SORRY. WAS A SEARCH WARRANT ISSUED IN THIS CASE?

14 A. THAT'S CORRECT; IT WAS.

15 Q. ONCE YOU GOT THE SEARCH WARRANT, WHAT DID YOU DO THEN?

16 A. I CAME BACK TO THE RESIDENCE WHERE OFFICERS WERE
17 STANDING BY OUTSIDE OF THE RESIDENCE, AND THEN I EXECUTED A
18 SEARCH WARRANT.

19 Q. OKAY. AND WHEN YOU SAY EXECUTED A SEARCH WARRANT, WHAT
20 EXACTLY DO YOU MEAN?

21 A. THAT MEANS BY A DOCUMENT I CAN ACTUALLY ENTER THAT
22 RESIDENCE.

23 Q. OKAY. AND DID YOU ENTER THAT RESIDENCE?

24 A. THAT'S CORRECT.

25 MR. SPRATLIN: ALL RIGHT. I'M GOING TO NEED TO MARK

1 SOME PHOTOGRAPHS.

2 THE COURT: MR. HASTIE, YOUR OBJECTION WILL CONTINUE---

3 MR. HASTIE: YES, IT WILL.

4 THE COURT: ---IN THIS LINE OF QUESTIONING?

5 MR. HASTIE: YES.

6 MR. SPRATLIN: MR. HASTIE, DO YOU WANT TO COME UP?

7 (STATE'S EXHIBITS 28 THROUGH 41 WERE MARKED FOR
8 IDENTIFICATION ONLY.)

9 BY MR. SPRATLIN:

10 Q. NOW, DETECTIVE SIMS, LET ME GO AHEAD AND -- WE'LL SHOW
11 YOU THE PICTURES IN A MINUTE. BUT WHEN YOU ENTERED THE
12 RESIDENCE, WHAT'S THE FIRST THING YOU NOTICED?

13 A. THE FIRST THING I NOTICED?

14 Q. UH-HUH.

15 A. IS THAT THE -- IT WAS UNOCCUPIED. NO ONE WAS IN THERE.

16 Q. OKAY. AND WHEN YOU BEGAN SEARCHING THROUGH THE
17 RESIDENCE, WHAT, IF ANYTHING, DID YOU FIND OF INTEREST TO
18 THIS CASE?

19 A. THE FIRST THING I NOTICED OF INTEREST WAS A -- WHAT WE
20 CALL A DOO RAG LAYING ON THE COUCH IN THE LIVING ROOM AREA.

21 Q. OKAY. LET ME GO AHEAD AND SHOW YOU... PLEASE LET THE
22 RECORD REFLECT I'M SHOWING THE WITNESS WHAT HAS BEEN MARKED
23 STATE'S EXHIBIT NUMBER 28 FOR IDENTIFICATION PURPOSES. COULD
24 YOU PLEASE DESCRIBE TO THE COURT AND THE JURY WHAT THAT IS A
25 PHOTOGRAPH OF?

1 A. THIS IS A PHOTOGRAPH THAT WAS TAKEN OF THE EXTERIOR OF
2 THE APARTMENT. YOU NOTICE THERE'S A STORM DOOR, NUMBER 2 ON
3 THE SIDE OF THE DOOR, INDICATING APARTMENT NUMBER 2.

4 Q. IS THAT A FAIR AND ACCURATE REPRESENTATION OF HOW THAT
5 APARTMENT APPEARED TO YOU---

6 A. YES, SIR.

7 Q. ---ON JUNE 8, 2007?

8 A. YES, SIR, IT IS.

9 MR. SPRATLIN: AT THIS TIME I WOULD TENDER THAT INTO
10 EVIDENCE, YOUR HONOR, AS STATE'S EXHIBIT NUMBER 28.

11 THE COURT: ANY OBJECTION OTHER THAN THE EARLIER
12 OBJECTION, MR. HASTIE?

13 MR. HASTIE: NONE. AND NONE ON ANY OF THEM, YOUR HONOR.

14 THE COURT: ALL RIGHT. SO ALL OF THOSE YOU OBJECT TO
15 BASED ON THE SAME PARTICULARS YOU SET FORTH EARLIER, AND
16 THAT'S 28 THROUGH WHAT?

17 MR. SPRATLIN: 28 THROUGH 41, YOUR HONOR.

18 THE COURT: AND THESE PHOTOS WERE PREVIOUSLY PROVIDED TO
19 THE DEFENDANT?

20 MR. SPRATLIN: YES, YOUR HONOR. THEY WERE PROVIDED IN
21 DISCOVERY.

22 THE COURT: ALL RIGHT. PROVIDED THE PROPER FOUNDATION
23 IS LAID ABOUT THEM BEING AN ACCURATE DEPICTION OF WHAT HE
24 SAW, MR. HASTIE'S OBJECTIONS ARE OVERRULED.

25 BY MR. SPRATLIN:

1 Q. DETECTIVE SIMS, LET ME GET YOU TO LOOK THROUGH THOSE
2 PHOTOGRAPHS. I WANT TO GIVE YOU A MINUTE TO LOOK THROUGH
3 THEM, AND THEN I'M JUST GOING TO ASK YOU A QUESTION ABOUT
4 THEM.

5 A. (THE WITNESS LOOKS THROUGH THE PHOTOGRAPHS.) YES, SIR.

6 Q. DETECTIVE SIMS, ARE ALL THOSE PHOTOGRAPHS A FAIR AND
7 ACCURATE REPRESENTATION OF THE RESIDENCE AT 107 NORTH SALEM
8 STREET, APARTMENT NUMBER 2, AS YOU REMEMBER IT FROM THAT
9 NIGHT?

10 A. YES, SIR, THEY ARE.

11 MR. SPRATLIN: AT THIS TIME, YOUR HONOR, I WOULD TENDER
12 ALL OF THOSE PHOTOGRAPHS INTO EVIDENCE AS STATE'S EXHIBITS.
13 I BELIEVE IT IS STATE'S EXHIBIT NUMBER 28 THROUGH 41.

14 THE COURT: ALL RIGHT. THOSE ARE IN OVER THE
15 DEFENDANT'S OBJECTION.

16 MR. SPRATLIN: THANK YOU.

17 (STATE'S EXHIBITS 28 THROUGH 41 WERE RECEIVED IN
18 EVIDENCE.)

19 BY MR. SPRATLIN:

20 Q. NOW, DETECTIVE SIMS, YOU SAID EARLIER BEFORE I SHOWED
21 YOU THE PHOTOGRAPHS THAT THE FIRST THING OF INTEREST YOU
22 FOUND WHEN ENTERING THE HOUSE WAS A DOO RAG.

23 A. THAT'S CORRECT, SIR.

24 Q. OKAY. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 36. WHAT
25 IS THAT A PHOTOGRAPH OF?

1 A. IT'S A PHOTOGRAPH OF A DOO RAG SITTING BESIDE A REMOTE
2 CONTROL.

3 Q. OKAY. NOW, REAL QUICKLY, LET ME GO BACK A MINUTE. HOW
4 WERE THE PHOTOGRAPHS TAKEN? WHAT WAS THE STANDARD DURING THE
5 SEARCH WARRANT FOR HOW THE PHOTOGRAPHS WERE TAKEN?

6 A. WELL, THE STANDARD ANY TIME WE DO A SEARCH WARRANT IS TO
7 GO IN, TO PHOTOGRAPH EVERYTHING AS IT IS BEFORE WE DO ANY
8 TYPE OF SEARCHING.

9 Q. AND SO WOULD THAT PHOTOGRAPH BE THE WAY THAT THE DOO RAG
10 WAS UPON Y'ALL'S ENTRY INTO THE RESIDENCE?

11 A. YES, SIR, IT WAS.

12 MR. SPRATLIN: OKAY. CAN I MARK THIS FOR IDENTIFICATION
13 PURPOSES?

14 (STATE'S EXHIBIT 42 WAS MARKED FOR IDENTIFICATION ONLY.)

15 MR. SPRATLIN: YOUR HONOR, PERMISSION TO APPROACH THE
16 WITNESS?

17 THE COURT: OKAY.

18 BY MR. SPRATLIN:

19 Q. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS
20 WHAT HAS BEEN MARKED FOR IDENTIFICATION PURPOSES AS STATE'S
21 EXHIBIT NUMBER 42. DETECTIVE SIMS, COULD YOU PLEASE IDENTIFY
22 THE ITEM THAT IS IN YOUR HANDS CURRENTLY?

23 A. THIS RIGHT HERE IS A KNIT-TYPE CAP, WHAT THEY CONSIDER
24 AS A DOO RAG.

25 Q. OKAY. DOES IT APPEAR TO BE SUBSTANTIALLY SIMILAR OR THE

1 SAME DOO RAG AS WAS LOCATED AT THE RESIDENCE AT 107 NORTH
2 SALEM STREET, APARTMENT 2?

3 A. YES, SIR, IT IS.

4 MR. SPRATLIN: OKAY. YOUR HONOR, AT THIS TIME I WOULD
5 TENDER STATE'S EXHIBIT NUMBER 42 INTO EVIDENCE.

6 THE COURT: ANY ADDITIONAL OBJECTIONS OTHER THAN THE
7 ONES VOICED EARLIER?

8 MR. HASTIE: NONE, YOUR HONOR.

9 THE COURT: THAT'S IN OVER THE DEFENDANT'S OBJECTION.
10 AND THAT'S 42?

11 MR. SPRATLIN: YES, SIR.

12 (STATE'S EXHIBIT 42 WAS RECEIVED IN EVIDENCE.)

13 BY MR. SPRATLIN:

14 Q. NOW, DETECTIVE SIMS, AFTER LOCATING THE DOO RAG THAT
15 GAVE YOU -- THAT WAS THE FIRST ITEM OF INTEREST. WHAT'S THE
16 NEXT THING YOU FOUND IN THE RESIDENCE THAT WAS OF INTEREST TO
17 YOU?

18 A. THE NEXT THING WE FOUND INSIDE THE RESIDENCE WAS THE
19 BLACK PANTS - I CONSIDER THEM LIKE SWEAT-TYPE PANTS - INSIDE
20 A BEDROOM ON THE FLOOR.

21 Q. OKAY. LET ME SHOW YOU WHAT HAS BEEN ALREADY MARKED AND
22 ENTERED INTO EVIDENCE AS STATE'S EXHIBIT 32, 33, AND 37. IF
23 YOU WOULD, PLEASE POINT OUT TO THE JURY AS BEST YOU CAN WHERE
24 THOSE BLACK PANTS WERE LOCATED IN THAT PHOTOGRAPH, IF YOU SEE
25 THOSE BLACK PANTS.

1 A. OKAY. THIS IS THE PICTURE OF THE BEDROOM; RIGHT HERE IS
2 THE BED. IF YOU LOOK AT THE BOTTOM END OF THE PHOTOGRAPH,
3 THERE'S A PAIR OF BLACK PANTS RIGHT THERE WITH A WHITE STRIPE
4 ON THEM. THIS IS A DOWNWARD PICTURE OF THE PANTS, SAME BED,
5 THE PANTS LAYING THERE ON THE FLOOR. THIS IS A---

6 THE COURT: IF YOU SAY "THIS," MAKE SURE YOU REFER TO A
7 NUMBER.

8 THE WITNESS: OKAY. YES, SIR. I'M SORRY. THIS IS
9 EXHIBIT NUMBER 33, A FURTHER-AWAY PICTURE OF THE PANTS ON THE
10 FLOOR RIGHT UP UNDER THE BED. THIS LAST PICTURE RIGHT HERE,
11 EXHIBIT NUMBER 37, IS A CLOSE-UP PICTURE OF THE PANTS ON THE
12 FLOOR RIGHT UP UNDER THE BED.

13 BY MR. SPRATLIN:

14 Q. THANK YOU, DETECTIVE SIMS. LET ME SHOW YOU WHAT HAS
15 BEEN ALREADY MARKED AS STATE'S EXHIBIT NUMBER 6. LET ME HAND
16 THESE OVER TO YOU. IF YOU WOULD, PLEASE TELL THE COURT AND
17 THE RECORD WHAT ITEM YOU'RE CURRENTLY HOLDING.

18 A. I AM HOLDING STATE'S EXHIBIT NUMBER 6 WHICH IS THE BLACK
19 PANTS WITH THE WHITE STRIPE THAT WE FOUND ON THE FLOOR IN THE
20 APARTMENT BY THE BED.

21 MR. SPRATLIN: OKAY. AT THIS TIME, YOUR HONOR, I WOULD
22 TENDER STATE'S EXHIBIT NUMBER 6 FOR I.D. PURPOSES INTO
23 EVIDENCE AS STATE'S EXHIBIT NUMBER 6.

24 THE COURT: ANY OBJECTION OTHER THAN THE ONES VOICED
25 EARLIER?

1 MR. HASTIE: NONE, YOUR HONOR.

2 THE COURT: ALL RIGHT. THOSE ARE ---THAT EXHIBIT IS
3 ENTERED.

4 MR. SPRATLIN: THANK YOU.

5 (STATE'S EXHIBIT 6 WAS RECEIVED IN EVIDENCE.)

6 BY MR. SPRATLIN:

7 Q. THANK YOU, DETECTIVE SIMS. NOW, DETECTIVE SIMS, WHY
8 WERE THESE PANTS OF INTEREST IN THIS CASE?

9 A. THESE WERE THE PANTS THAT WERE DESCRIBED FROM THE VICTIM
10 INVOLVED IN THE ARMED ROBBERY, AND THE DESCRIPTION WAS GIVEN
11 TO ME.

12 Q. OKAY. AND WHEN YOU FOUND THE PANTS, WHAT ELSE DID YOU
13 FIND?

14 A. A MORE CONDENSED SEARCH WAS DONE. THAT'S WHEN WE
15 LOCATED A -- LIKE I SAID, A PEARL-HANDLED TWO-SHOT DERRINGER.

16 Q. OKAY. LET ME -- DETECTIVE SIMS, LET ME SHOW YOU WHAT'S
17 BEEN ALREADY MARKED AND ENTERED INTO EVIDENCE AS STATE'S
18 EXHIBITS NUMBER 34, 35, 39, AND 40. ON THOSE PHOTOGRAPHS, DO
19 YOU SEE THE LOCATION WHERE YOU LOCATED THE GUN IN QUESTION
20 HERE?

21 A. YES, SIR, I DO.

22 Q. IF YOU WOULD, PLEASE, TO THE BEST OF YOUR ABILITY,
23 IDENTIFYING WHICH EXHIBIT YOU'RE USING, POINT OUT TO THE JURY
24 WHERE IN THOSE PHOTOGRAPHS THE GUN WAS FOUND.

25 A. OKAY. THIS FIRST ONE RIGHT HERE IS STATE'S EXHIBIT

1 NUMBER 34. THIS IS A PICTURE OF THE BED. THIS IS A PAIR OF
2 SHORTS AND A BLUE MULTICOLORED SHIRT RIGHT THERE THAT WAS
3 LAYING ON TOP OF THE BED, AND JUST UP UNDER THAT SHIRT IS
4 WHERE THE DERRINGER WAS FOUND.

5 Q. OKAY. IF YOU WOULD, MOVE ALONG TO THE NEXT PICTURE.

6 A. THE NEXT PICTURE IS STATE'S EXHIBIT NUMBER 35. THIS IS
7 ANOTHER PICTURE FROM ANOTHER ANGLE OF THE BED, AND YOU NOTICE
8 THE BLACK PANTS AND THE SHIRT THERE A LITTLE BIT MORE CLOSER
9 UP, AND THIS IS WHERE -- RIGHT UP UNDER THAT SHIRT IS WHERE
10 THE DERRINGER WAS FOUND.

11 Q. OKAY.

12 A. THE NEXT ONE IS STATE'S EXHIBIT NUMBER 39. THIS IS A
13 PICTURE OF THE BED, THE DARK-COLORED SHORTS. THE SHIRT HAS
14 BEEN REMOVED, AND THERE LAID UP UNDER THE SHIRT WAS THE WHITE
15 OR PEARL-HANDLED TWO-SHOT DERRINGER THAT WAS UP UNDER THE
16 SHIRT. THE LAST PHOTO HERE IS STATE EXHIBIT NUMBER 40, AND
17 THIS IS ACTUALLY A CLOSE-UP PICTURE OF THE TWO-SHOT DERRINGER
18 THAT WAS FOUND HIDDEN.

19 Q. OKAY. THANK YOU, DETECTIVE SIMS. LET ME SHOW YOU
20 WHAT'S BEEN MARKED FOR IDENTIFICATION PURPOSES AT THIS TIME
21 ONLY AS STATE'S EXHIBIT NUMBER 4. JUST FOR THE RECORD,
22 THIS -- THERE WERE SEVERAL CABLE TIES ADDED TO THIS WEAPON TO
23 INSURE THAT IT WOULD NOT BE USED AS A FIREARM AND COULD NOT
24 BE USED AS A FIREARM AT THIS TIME. LET ME PRESENT THIS
25 EXHIBIT TO YOU. YOUR HONOR, MAY I HAVE PERMISSION TO---

1 THE COURT: YES, SIR.

2 MR. SPRATLIN: ---GIVE THIS TO THE OFFICER?

3 THE COURT: YES, SIR. PLEASE HOLD IT BY THE BARREL AND
4 KEEP IT POINTED DOWN, PLEASE, SIR.

5 THE WITNESS: YES, SIR.

6 BY MR. SPRATLIN:

7 Q. DETECTIVE SIMS, IF YOU WOULD BRIEFLY LOOK OVER STATE'S
8 EXHIBIT 4 FOR IDENTIFICATION PURPOSES. DOES THAT APPEAR TO
9 BE THE SAME GUN OR A SUBSTANTIALLY SIMILAR GUN TO THE ONE YOU
10 LOCATED IN THE DEFENDANT'S RESIDENCE?

11 A. YES, SIR, IT IS.

12 Q. OKAY. THANK YOU. NOW, WHO ACTUALLY TOOK POSSESSION OF
13 THAT GUN FROM THE RESIDENCE?

14 A. THAT WOULD BE LIEUTENANT KEN NESBITT.

15 Q. OKAY. WAS THERE ANY OTHER EVIDENCE FOUND DURING THE
16 SEARCH OF THE RESIDENCE?

17 A. PICTURES WERE TAKEN AND ALSO WE TOOK PHOTOS OF BILLS
18 WITH THE DEFENDANT'S NAME ON IT, HIS ADDRESS, PICTURES OF HIS
19 WALLET CONSISTING OF HIS DRIVER'S LICENSE AS WELL WITH HIS
20 ADDRESS ON IT.

21 Q. LET ME SHOW YOU STATE'S EXHIBITS NUMBER 41 AND 38. IF
22 YOU WOULD, PLEASE IDENTIFY TO THE JURY AND THE COURTROOM WHAT
23 THOSE ARE PHOTOGRAPHS OF.

24 A. STATE EXHIBIT NUMBER 38 IS A PICTURE OF MR. ANDRE
25 MASSEY'S DRIVER'S LICENSE THAT WAS FOUND IN HIS WALLET THAT

1 WAS FOUND ON A DRESSER IN THE ROOM. THIS---

2 Q. I'M SORRY. I'M SORRY. REAL BRIEFLY, WOULD THAT BE THE
3 SAME ROOM THAT THE GUN WAS FOUND?

4 A. THAT'S CORRECT.

5 Q. OKAY.

6 A. STATE'S EXHIBIT NUMBER 34 IS A PHOTO OF A STATE
7 IDENTIFICATION CARD BELONGING TO MR. ANDRE MASSEY THAT WAS
8 FOUND IN THE RESIDENCE AS WELL.

9 Q. OKAY.

10 THE COURT: WHAT NUMBER WAS THAT?

11 THE WITNESS: NUMBER 41, SIR.

12 BY MR. SPRATLIN:

13 Q. THANK YOU, DETECTIVE SIMS. I'LL JUST GO AHEAD AND PUT
14 ALL THESE BACK TOGETHER. I'LL PUBLISH THOSE TO THE JURY IN A
15 MINUTE. DETECTIVE SIMS, WHEN YOU WENT INTO THE RESIDENCE,
16 WAS ANYONE ELSE TO SEARCH THE RESIDENCE? WAS ANYONE ELSE IN
17 THE RESIDENCE?

18 A. AS FAR AS LAW ENFORCEMENT OR PERSONS?

19 Q. ANYBODY.

20 A. AS FAR AS LAW ENFORCEMENT, THE ONES THAT ENTERED THE
21 RESIDENCE TO SEARCH WAS MYSELF, LIEUTENANT KEN NESBITT, AND
22 ALSO DETECTIVE BRIAN CHRISTMAS.

23 Q. OKAY. NOW, DID YOU EACH HAVE A DIFFERENT ROLE DURING
24 THE EXECUTION OF THE SEARCH WARRANT?

25 A. YES, SIR, WE DID. AS A MATTER OF FACT, AT THAT TIME WE

1 BROUGHT THE FEMALE BACK INSIDE AND LET HER SIT INSIDE
2 COMFORTABLY INSIDE OF HER RESIDENCE WHILE DETECTIVE CHRISTMAS
3 STOOD WATCH OVER HER FOR OUR PROTECTION WHILE WE CONTINUED
4 DOING THE SEARCH. MY JOB WAS DOING THE LOOKING AND THE
5 SEARCHING. ONCE WE FOUND THE ITEM THAT NEEDED TO BE
6 PHOTOGRAPHED AND DOCUMENTED, LIEUTENANT KEN NESBITT WOULD
7 TAKE THE PHOTOS AS WE WOULD LOCATE ITEMS.

8 Q. OKAY. AND WERE YOU PRESENT DURING THE PROTECTIVE SWEEP
9 THAT'S BEEN REFERRED TO EARLIER?

10 A. I WAS OUTSIDE; YES, SIR.

11 Q. OKAY. AND, AGAIN, HOW LONG WOULD YOU SAY THAT TOOK?

12 A. A MINUTE, MAYBE A MINUTE AND A HALF, SIR.

13 Q. OKAY. AND WAS KEN NESBITT -- WAS HE ASKED TO ASSIST IN
14 THIS CASE, LIEUTENANT NESBITT, BECAUSE OF HIS EXPERTISE IN
15 PROCESSING CRIME SCENES?

16 A. THAT'S CORRECT. HE'S THE -- HE WAS THE -- I CONSIDER
17 HIM THE FORENSIC GURU. HE'S BEEN DOING IT FOR A LONG TIME.
18 HE DID THE FORENSICS AT THE CRIME SCENE, AND WE ASKED HIM TO
19 ASSIST US WHEN THE SEARCH WARRANT WAS EXECUTED.

20 Q. OKAY. AND MR. -- DETECTIVE SIMS, ALL THE EVENTS YOU'VE
21 DESCRIBED HERE TODAY, DID THEY OCCUR WITHIN THE BOUNDARIES OF
22 SUMTER COUNTY?

23 A. THAT'S CORRECT, SIR.

24 MR. SPRATLIN: THANK YOU, DETECTIVE SIMS. THAT'S ALL
25 THE QUESTIONS I HAVE AT THIS TIME.

1 THE COURT: MR. HASTIE?

2 MR. HASTIE: THANK YOU, YOUR HONOR.

3 CROSS-EXAMINATION

4 BY MR. HASTIE:

5 Q. GOOD AFTERNOON, DETECTIVE SIMS.

6 A. GOOD AFTERNOON, MR. HASTIE.

7 Q. NOW, WHEN YOU ARRIVED AT MR. MASSEY'S HOME, WHO ACTUALLY
8 ANSWERED THE DOOR?

9 A. WHEN I APPROACHED THE DOOR AND KNOCKED ON THE DOOR, THE
10 ONE THAT OPENED THE DOOR WAS MR. ANDRE MASSEY.

11 Q. MR. MASSEY DID OPEN THE DOOR?

12 A. THAT'S CORRECT, SIR.

13 Q. ALL RIGHT. DID YOU INFORM HIM WHAT YOU WERE THERE FOR?

14 A. NO, SIR, I DID NOT. ONCE HE CAME TO THE DOOR, I KNEW
15 THAT HE WAS WANTED FOR AN ARMED ROBBERY. I THEN PLACED HIM
16 -- BROUGHT HIM OUTSIDE AND PLACED HIM IN HANDCUFFS AND
17 DETAINED HIM RIGHT THERE.

18 Q. DID YOU ASK HIM HIS NAME?

19 A. NO. BASED ON THE DESCRIPTION THAT WE HAD ALREADY
20 RECEIVED, THE TATTOO -- WHEN I PULLED HIS ARM OUT, THE TATTOO
21 WAS SHINING RIGHT THERE, SO I KNEW WHO IT WAS.

22 Q. SO ANY AFRICAN AMERICAN THAT HAPPENED TO HAVE A TATTOO
23 ON HIS ARM THAT NIGHT YOU WOULD HAVE---

24 A. WELL, WE KNEW HE WAS -- WE KNEW HE WAS---

25 THE COURT: LET HIM FINISH THE QUESTION.

1 THE WITNESS: I APOLOGIZE.

2 BY MR. HASTIE:

3 Q. IF YOU WOULD HAVE THOUGHT THAT THAT WAS MR. ANDRE

4 MASSEY, YOU WOULD HAVE ARRESTED HIM IMMEDIATELY.

5 A. I DIDN'T ARREST HIM IMMEDIATELY, SIR. I SAID I DETAINED
6 HIM.

7 Q. DETAINED HIM.

8 A. THAT'S CORRECT, SIR.

9 Q. BUT DETENTION DOES INVOLVE PUTTING HANDCUFFS ON HIM.

10 A. YES, SIR, NOT JUST EVEN HANDCUFFS. EVEN IF I PHYSICALLY
11 HOLD YOU, IT'S DETAINING YOU.

12 Q. BUT THIS PARTICULAR NIGHT---

13 A. WAS HANDCUFFS.

14 Q. ---HE WAS HANDCUFFED.

15 A. THAT'S CORRECT, SIR.

16 Q. YOU JUST SAW THIS TATTOO---

17 A. THAT'S CORRECT.

18 Q. ---AND ASSUMED THAT WAS MR. MASSEY.

19 A. I ASSUMED HE KNEW WHO WAS COMING TO THE DOOR. WE WERE
20 THERE TO ARREST ANYONE WHO WAS IN THE RESIDENCE, AND THAT WAS
21 MR. MASSEY THAT ANSWERED THE DOOR.

22 Q. NOW, YOU DIDN'T GO TO THE ADDRESS TO ARREST WHOEVER WAS
23 IN THE RESIDENCE. IT COULD HAVE BEEN -- THERE WERE CERTAIN
24 PEOPLE---

25 A. THERE WERE ACTUALLY THREE IN THE RESIDENCE.

1 Q. YOU WENT THERE TO ARREST MR.---

2 A. MR. MASSEY.

3 Q. ---MASSEY.

4 A. THAT'S CORRECT. HE WAS THE ONLY ONE THAT WAS ARRESTED.

5 Q. OKAY. YOU DIDN'T HAVE A SEARCH WARRANT AT THIS TIME.

6 A. NO, SIR, NOT AT THAT TIME.

7 Q. OKAY. THIS IS THE PROTECTIVE SWEEP. OKAY. NOW, THIS

8 PROTECTIVE SWEEP, LYONS AND LYNES PARTICIPATED IN THE

9 PROTECTIVE SWEEP.

10 A. THAT'S CORRECT, SIR.

11 Q. IT LASTED ABOUT A MINUTE AND A HALF.

12 A. YES, SIR, IF THAT.

13 Q. AND THEN A PURPOSE IS TO -- FOR THE PROTECTION OF THE
14 POLICE OFFICERS.

15 A. NOT JUST THE POLICE OFFICERS. ANYBODY ELSE THAT MIGHT
16 BE EVEN OUTSIDE.

17 Q. OKAY. THEN YOU TALKED ABOUT PICTURES WERE TAKEN. I
18 GUESS THAT'S AFTER YOU ALL GOT THE ARREST WARRANT, NOT DURING
19 THE PROTECTIVE SWEEP.

20 A. NO, NOT DURING THE PROTECTIVE SWEEP. AFTER THE SEARCH
21 WARRANT.

22 Q. SO YOU GOT THIS SEARCH WARRANT. THEN YOU WENT IN, YOU
23 AND CHRISTMAS AND NESBITT.

24 A. THAT'S CORRECT.

25 Q. LIEUTENANT NESBITT?

1 A. THE PICTURES ARE EVEN TAKEN BEFORE WE WENT IN. AS THE
2 FIRST PHOTO INDICATED, WE TAKE A PICTURE BEFORE WE GO IN, AND
3 AS WE GO IN, WE TAKE PICTURES OF EVERYTHING, HOW EVERYTHING
4 IS.

5 Q. DID YOU TAKE PICTURES AFTER YOU OBTAINED THE SEARCH
6 WARRANT?

7 A. THAT'S CORRECT.

8 Q. SO AFTER YOU GOT THE SEARCH WARRANT, THE FIRST THING YOU
9 DID WAS, "LET'S TAKE PICTURES."

10 A. THAT'S CORRECT.

11 Q. IN FACT, THEN YOU AND CHRISTMAS STARTED -- YOU STARTED A
12 ROOM-TO-ROOM SEARCH OF THIS APARTMENT.

13 A. PRETTY MUCH. IT STARTED THAT WAY. WE BROUGHT THE
14 FEMALE BACK IN, AND DETECTIVE CHRISTMAS STOOD WITH HER.

15 Q. THAT'S RIGHT. SO YOU PRETTY MUCH DID THE---

16 A. MYSELF AND LIEUTENANT KEN NESBITT.

17 Q. NESBITT. OKAY. YOU SAW THIS DOO RAG---

18 A. YES.

19 Q. ---ON THE BED.

20 A. NO, SIR. THE DOO RAG WAS FOUND ON THE COUCH.

21 Q. ON THE COUCH. ON THE COUCH. OKAY. NOW, WHAT TIME --
22 APPROXIMATELY WHAT TIME ARE WE SPEAKING OF ABOUT NOW?

23 A. THIS IS 1:30-ISH BY NOW BECAUSE I'VE ALREADY WENT AND
24 OBTAINED THE SEARCH WARRANT AND GOT IT SIGNED. IT WAS SIGNED
25 A LITTLE AFTER 1, MAYBE A FEW MINUTES AFTER 1, AND THEN WE

1 WENT AND SERVED -- STARTED SEARCHING.

2 Q. OKAY. YOU HEARD THE TESTIMONY OF DETECTIVE RICHBURG,
3 AND HE TALKED ABOUT LOOKING FOR A DOO RAG IN THE DUMPSTER.
4 BUT IF YOU ALREADY HAD A DOO RAG FROM HIS HOME, DID YOU TELL
5 HIM THAT YOU ALREADY HAD A DOO RAG AT THE SITE?

6 A. THEY WERE ADVISED OF WHAT WE FOUND. THAT'S STILL NOT TO
7 SAY THEY HAVE TO FOLLOW THROUGH WITH WHAT HIS STATEMENT WAS,
8 SIR.

9 Q. OKAY. THANK YOU. DID YOU ASK MR. MASSEY FOR PERMISSION
10 AT ANY TIME TO SEARCH HIS HOME?

11 A. NO, SIR.

12 Q. YOU DID NOT ASK HIM.

13 A. I DID NOT, SIR, NO.

14 Q. DO YOU HAVE KNOWLEDGE OF ANYONE ASKING MR. MASSEY TO
15 SEARCH HIS HOME?

16 A. TO MY KNOWLEDGE, YES, SIR, THERE WAS AT ONE TIME. YES.

17 Q. SO SOME POLICE OFFICER ASKED MR. MASSEY COULD THEY
18 SEARCH HIS HOME.

19 A. THAT'S CORRECT, SIR.

20 Q. AND DO YOU HAVE KNOWLEDGE OF WHAT WAS MR. MASSEY'S
21 RESPONSE?

22 A. NO.

23 Q. HE TOLD HIM NOT TO SEARCH HIS HOME.

24 A. THAT'S CORRECT, SIR. THAT'S WHY A SEARCH WARRANT WAS
25 OBTAINED.

1 Q. BUT WE DID SEND SOMEONE IN HIS APARTMENT TO DO A
2 PROTECTIVE SWEEP.

3 A. THAT WAS BEFORE HE WAS ASKED. THAT WAS FOR PROTECTION
4 OF OFFICERS AND THE SUSPECT.

5 Q. THE PROTECTIVE SWEEP WAS PERFORMED BEFORE HE WAS ASKED?

6 A. YES, SIR. AS SOON AS WE BROUGHT THE OCCUPANTS OUT OF
7 THE RESIDENCE, THE TWO OFFICERS WENT IN TO DO A PROTECTIVE
8 SEARCH TO MAKE SURE NO ONE ELSE WAS IN THE RESIDENCE BASED ON
9 WHY WE WERE THERE, BASED ON AN ARMED ROBBERY, A WEAPON,
10 POSSIBLY COULD STILL BE INSIDE THE RESIDENCE, DIDN'T KNOW IF
11 ANYBODY ELSE WAS IN THERE. I MEAN, I'LL BE HONEST WITH YOU.
12 I WANT TO GO HOME TO MY FAMILY. SO, THEREFORE, WE WENT AND
13 MADE SURE THAT YOUR NOBODY WAS INSIDE.

14 Q. DID ANYONE TELL MR. MASSEY AFTER HE SAID, "DO NOT SEARCH
15 MY HOME," THAT, "WE'RE NOT REALLY SEARCHING YOUR HOME. WE'RE
16 JUST GOING IN TO DO A PROTECTIVE SWEEP"?

17 A. THAT WASN'T EVEN ASKED THEN. IT WAS AUTOMATICALLY IN
18 CUFFS. WE WENT TO CHECK TO MAKE SURE NO ONE ELSE WAS INSIDE
19 THE RESIDENCE. THEN WHEN THEY CAME OUT, THEN IT WAS ASKED
20 FOR A CONSENT TO SEARCH. WE WENT THERE TO SEARCH FOR
21 EVIDENCE. WHEN THE TEAM WENT IN, THEY WERE THERE TO SEARCH
22 FOR BODIES.

23 Q. OKAY. OKAY. LET'S GO TO THE PICTURES. NOW, ALL THESE
24 PICTURES WE'VE SEEN HERE, THAT YOU'VE SEEN HERE TODAY, THEY
25 WERE TAKEN BY LIEUTENANT NESBITT?

1 A. SOME OF THEM. SOME OF THEM WERE TAKEN BY SENIOR
2 DETECTIVE CULICK AT THE OFFICE. NOW, AS FAR AS THE SCENE AT
3 THE RESIDENCE, IT WAS DONE BY LIEUTENANT KEN NESBITT.

4 Q. OKAY. AND YOU SAY HE IS KNOWN TO YOU AS THE FORENSIC
5 GURU?

6 A. THAT'S CORRECT, SIR.

7 Q. DOES HE HAVE AN OFFICIAL TITLE?

8 A. HE IS -- RIGHT KNOW HE'S A TRAINING OFFICER, BUT AT THAT
9 TIME HE WAS IN INVESTIGATIONS.

10 Q. OKAY.

11 A. NOW HE'S NOW OVER TRAINING.

12 Q. NOW, WHEN PICTURES ARE TAKEN AND HE GOES IN AND TAKES
13 PICTURES---

14 A. UH-HUH.

15 Q. WHEN PICTURES ARE TAKEN, IF DRUGS ARE FOUND IN THAT
16 APARTMENT, I ASSUME YOU ALL WOULD TAKE CONTROL OF THOSE
17 DRUGS?

18 A. THAT'S CORRECT, SIR.

19 Q. THAT'S CORRECT? IF THERE ARE ANY TYPE OF PILLS THAT ARE
20 PROBABLY ILLEGAL, YOU ALL WOULD TAKE PICTURES---

21 A. YES, SIR. MOST OF THE TIME, YES, SIR, WE DO.

22 Q. WHAT ABOUT DURING THE PROTECTIVE SWEEP? IF THEY WOULD
23 JUST RUSH IN, THEY'RE NOT LOOKING FOR DRUGS OR MARIJUANA OR
24 ANYTHING LIKE THAT.

25 A. NO, SIR, JUST LOOKING FOR PEOPLE.

1 Q. BUT IF THEY EVEN SAW THAT GUN ON THE BED, THEY WOULDN'T
2 DO ANYTHING?

3 A. THEY WOULDN'T TOUCH IT.

4 Q. THEY WOULDN'T TOUCH IT.

5 A. COULD NOT TOUCH IT, SIR.

6 Q. IF THEY SAW MARIJUANA ON THE DRESSER, THEY WOULDN'T
7 TOUCH IT.

8 A. NO, SIR.

9 Q. THEIR JOB IS JUST TO MAKE SURE EVERYTHING IS SAFE.

10 A. THAT'S CORRECT, SIR.

11 Q. BUT YOU DO HAVE KNOWLEDGE THAT MASSEY SAID DO NOT -- "I
12 DO NOT GIVE YOU PERMISSION TO SEARCH MY APARTMENT."

13 A. NOT TO THAT EXTENT. HE SAID -- WHEN HE WAS ASKED IF
14 THEY COULD GO AND DO A CONSENT TO SEARCH, HE SAID, "NO."

15 Q. HE DID SAY NO. OKAY. DID ANYONE ASK HIM, TO YOUR
16 KNOWLEDGE, WHOSE APARTMENT IS -- WAS THIS EVEN HIS APARTMENT?

17 A. NO, SIR. WE KNEW IT WAS HIS APARTMENT, ACCORDING TO HIS
18 D.L., DRIVER'S LICENSE.

19 Q. HIS DRIVER'S LICENSE. DO YOU HAVE KNOWLEDGE ABOUT
20 THE -- WHETHER OR NOT THE HANDGUN WAS FINGERPRINTED?

21 A. NOT TO MY KNOWLEDGE. YOU'D HAVE TO ASK THE QUESTION TO
22 LIEUTENANT KEN NESBITT.

23 MR. HASTIE: OKAY. THANK YOU. THANK YOU. NO FURTHER
24 QUESTIONS, YOUR HONOR.

25 THE COURT: MR. SPRATLIN?

1 MR. SPRATLIN: JUST REAL BRIEFLY.

2 REDIRECT EXAMINATION

3 BY MR. SPRATLIN:

4 Q. MR. HASTIE ASKED ABOUT DRUGS IN THE RESIDENCE. WERE ANY
5 DRUGS FOUND IN THE RESIDENCE?

6 A. NO, SIR.

7 Q. OKAY. AND HE ALSO ASKED ABOUT THE OFFICERS DOING THE
8 PROTECTIVE SWEEP.

9 A. YES, SIR.

10 Q. AND THAT THE DEFENDANT WAS NOT ASKED CONSENT TO DO A
11 PROTECTIVE SWEEP.

12 A. NO.

13 Q. DO YOU EVER ASK -- I MEAN, THE PURPOSE OF A PROTECTIVE
14 SWEEP -- DO YOU EVER ASK THE PEOPLE WHOSE HOUSE IT IS FOR THE
15 RIGHT TO DO A PROTECTIVE SWEEP?

16 A. NO, SIR.

17 Q. AND WHY IS THAT?

18 A. THE REASON BEING IS THE PROTECT SWEEP IS NOT TO LOOK FOR
19 EVIDENCE. IT'S TO ACTUALLY LOOK FOR ANY PERSONS THAT ARE
20 INSIDE THAT RESIDENCE THAT CAN HARM AN OFFICER OR A PERSON
21 THAT WE MIGHT HAVE DETAINED.

22 Q. AND OFFICERS ARE TRAINED TO -- WHAT ARE OFFICERS TRAINED
23 TO DO DURING THE PROTECTIVE SWEEP?

24 A. AND I HAVE BEEN ON THE FORM -- IN MY YEARS OF LAW
25 ENFORCEMENT: GOING IN, DO QUICK LOOKS IN BATHROOMS, BEHIND

1 SHOWER CURTAINS, CLOSETS AND SO FORTH, AND THEN IF WE DON'T
2 FIND NOBODY, WE EXIT OUT OF THE RESIDENCE.

3 Q. OKAY. AND NOW MR. HASTIE TALKED ABOUT THE GUN AND WHY
4 THE PROTECTIVE SWEEP DID NOT UNCOVER THE GUN. WAS THE GUN IN
5 EXPLAIN VIEW?

6 A. NO, SIR, THE GUN WAS NOT IN PLAIN VIEW.

7 Q. WHERE AGAIN WAS THE GUN?

8 A. THE GUN WAS ACTUALLY ON THE BED LAYING ON A PAIR OF
9 SHORTS UP UNDER A SHIRT IN THE BEDROOM.

10 Q. OKAY. AND MR. HASTIE ASKED ABOUT THE DEFENDANT'S
11 ADDRESS. LET ME SHOW YOU WHAT'S BEEN MARKED OR ENTERED INTO
12 EVIDENCE AS STATE'S EXHIBIT NUMBER 38. WHAT IS THAT A
13 PHOTOGRAPH OF AGAIN?

14 A. THIS IS A PHOTOGRAPH OF HIS SOUTH CAROLINA DRIVER'S
15 LICENSE.

16 Q. AND WHAT ADDRESS IS LISTED ON THAT SOUTH CAROLINA
17 DRIVER'S LICENSE?

18 A. 107 NORTH SALEM, APARTMENT NUMBER 2.

19 Q. AND WAS THAT THE APARTMENT YOU WERE SEARCHING THAT
20 NIGHT?

21 A. THAT'S CORRECT, SIR.

22 MR. SPRATLIN: THANK YOU.

23 THE COURT: ANYTHING ELSE?

24 MR. HASTIE: YES, SIR.

25 THE COURT: ALL RIGHT. YOU CAN GO AHEAD.

RECROSS EXAMINATION

BY MR. HASTIE:

Q. I WOULD JUST LIKE TO TAKE A LOOK AT THAT DRIVER'S
LICENSE YOU JUST SPOKE OF. WHAT'S THE WEIGHT THIS DRIVER'S
LICENSE SAYS OF MR. MASSEY?

A. RIGHT THERE IT SAYS 172 SAYS, SIR.

Q. WHAT DOES IT SAY ABOUT HIS HEIGHT?

A. 5'7".

Q. 5'7". YOU HEARD THE TESTIMONY EARLIER THAT WHEN HE WAS
IN THE STORE HE ASKED FOR A SIZE 44.

A. YES, SIR.

Q. NOW, ON THIS PROTECTIVE SWEEP -- SO YOU'RE SAYING IF
SOMEONE CALLED YOU, IF I LIVED IN YOUR AREA, AND TOLD YOU
THAT SOMEONE NAMED CALVIN HASTIE HAD COMMITTED AN OFFENSE,
YOU COULD COME TO MY HOUSE, AND IF I'M THE FIRST ONE TO
ANSWER THE DOOR AND I FIT THAT DESCRIPTION, YOU COULD PUT ME
INTO CUSTODY.

A. REPHRASE YOUR QUESTION. YOU SAID IF SOMEONE HAD CALLED
ME AND TOLD ME THAT YOU HAD COMMITTED AN OFFENSE?

Q. THOUGHT THAT I HAD COMMITTED AN OFFENSE.

A. WE WOULDN'T HAVE REACTED ON THAT. WE HAD PROBABLE CAUSE
TO KNOW THAT THE DEFENDANT HAD COMMITTED THE OFFENSE. BY
THAT TIME HE HAS NOW BECAME A SUSPECT AND WOULD HAVE BEEN
APPREHENDED UPON SIGHT.

Q. AND YOU REALLY WEREN'T EVEN SURE THAT THAT WAS ANDRE

1 MASSEY THAT YOU HANDCUFFED THAT NIGHT.

2 A. BASED ON THE DESCRIPTION THAT WAS GIVEN TO ME UPON
3 SENIOR DETECTIVE CULICK, THE FULL DESCRIPTION - THE TATTOO,
4 THE WIFE BEATER, WHITE TEE SHIRT, WHAT HE HAD ON, AND WHEN HE
5 CAME TO THE DOOR, THAT'S WHAT I SAW AND THAT'S WHEN I
6 HANDCUFFED HIM.

7 Q. WAS THERE A LIGHT ON THE -- ON HIS---

8 A. ON THE PORCH.

9 Q. THERE WAS A LIGHT ON?

10 A. LIGHT ON THE FRONT PORCH.

11 Q. THERE WAS A LIGHT ON IN THE HOUSE WHEN YOU CAME TO THE
12 DOOR?

13 A. FROM MY KNOWLEDGE, YES, SIR, IT WAS.

14 MR. HASTIE: NO FURTHER QUESTIONS, YOUR HONOR.

15 THE COURT: ALL RIGHT. YOU CAN STEP DOWN. ALL RIGHT.
16 BREAK FOR THE DAY, MR. SPRATLIN AND MR. HASTIE?

17 MR. SPRATLIN: YOUR HONOR, THE STATE DOES HAVE ONE MORE
18 LAW ENFORCEMENT OFFICER. WE CAN ALWAYS HANDLE THAT IN THE
19 MORNING.

20 THE COURT: WE'LL DO THAT THE MORNING. ALL RIGHT.
21 LADIES AND GENTLEMEN, WE'RE GOING TO BREAK FOR THE DAY. YOU
22 MAY NOT DISCUSS THE CASE. PLEASE REMEMBER MY EARLIER
23 INSTRUCTIONS THAT YOU'RE NOT TO OBTAIN ANY INFORMATION
24 THROUGH ANY OTHER SOURCE AT ALL OTHER THAN WHAT YOU SEE AND
25 HEAR IN THIS COURTROOM. I'LL SEE YOU TOMORROW MORNING AT

1 CLEAR UP WITH THE COURT. WE COULD DO IT IN CHAMBERS IF THAT
2 WOULD BE PREFERABLE.

3 THE COURT: ALL RIGHT. RIGHT NOW?

4 MR. SPRATLIN: IT MAY BE BEST, YOUR HONOR.

5 THE COURT: OKAY. ALL RIGHT. THEN WE'LL TAKE SOME TIME
6 TO DO THAT TOMORROW MORNING, AND WE'LL -- IF THE LAWYERS
7 COULD BE BACK HERE TOMORROW MORNING AT 9---

8 MR. HASTIE: YES, SIR.

9 THE COURT: ---AND PLEASE MAKE SURE IF YOU HAVE ANYTHING
10 THAT YOU NEED TO PUT ON THE RECORD BEFORE 9:30 THAT YOU LET
11 ME KNOW AT 9:00.

12 MR. SPRATLIN: YES, YOUR HONOR.

13 MR. HASTIE: YES, SIR.

14 THE COURT: OKAY? ALL RIGHT. THANK Y'ALL.

15 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AT 5:11 P.M.
16 AND RESUMED THE FOLLOWING DAY, AUGUST 5, 2009, AS FOLLOWS.
17 STATE'S EXHIBITS 43 THROUGH 48 WERE MARKED FOR IDENTIFICATION
18 ONLY.)

19 THE COURT: HAVE A SEAT. THANKS. MR. WILDER AND MR.
20 HASTIE, THERE'S A MOTION?

21 MR. WILDER: YES, YOUR HONOR. IF IT PLEASE THE COURT,
22 ON BEHALF OF THE DEFENDANT AND WITH MR. HASTIE'S PERMISSION
23 AND WITH THE COURT'S PERMISSION, AT THIS POINT ON BEHALF OF
24 THE DEFENDANT I'D LIKE TO MAKE A MOTION FOR A MISTRIAL. YOUR
25 HONOR, THE MISTRIAL MOTION IS BASED ON THE SITUATION THAT WE

1 HAVE NOW THAT OVER THE MOTION TO SUPPRESS THE -- THE ARREST,
2 THE PROTECTIVE SWEEP, THE SEARCH WARRANT, AND THE ALLEGED
3 STATEMENTS BEING GIVEN BY THE DEFENDANT, IN PARTICULAR THE
4 SECOND STATEMENT WHEN CONFRONTED WITH THE RESULTS OF THE
5 SEARCH WARRANT, THE COURT HAS ALLOWED OVER MR. HASTIE'S
6 OBJECTION EVIDENCE TO COME IN THAT WAS TAKEN FROM THE
7 DEFENDANT, BOTH BY WAY OF HIS ARREST AND THEN SUBSEQUENT
8 INTERROGATION AND THE SEARCH AND SEIZURE RESULT.

9 YOUR HONOR, THE GROUNDS FOR THIS MOTION WOULD BE THE
10 VIOLATION OF THE FOURTH AMENDMENT RIGHTS TO REMAIN FREE FROM
11 UNREASONABLE SEARCH AND SEIZURE GUARANTEED BY THE UNITED
12 STATES CONSTITUTION AND BILL OF RIGHTS AND ALSO ANALOGOUS
13 STATE CONSTITUTION RIGHTS TO REMAIN FREE FROM UNREASONABLE
14 SEARCH AND SEIZURE AND DUE PROCESS, YOUR HONOR. THE GROUNDS
15 FURTHER FOR THE MOTION WOULD BE IN SUPPORT OF THAT, YOUR
16 HONOR, THE COURT'S EXHIBIT NUMBER 8, THE AFFIDAVIT---

17 THE COURT: I'VE GOT IT AS NUMBER 7.

18 MR. WILDER: WELL, YOUR HONOR, I'LL DEFER TO THE COURT'S
19 DISCRETION---

20 THE COURT: STICKER? OKAY. LET ME SEE -- LET ME SEE
21 THE FRONT OF IT.

22 MR. WILDER: YES, SIR.

23 THE COURT: OKAY. I MUST HAVE WRITTEN IT DOWN WRONG.
24 I'VE GOT IT WRITTEN DOWN AS NUMBER 7. WHAT DO YOU HAVE THE
25 SEARCH WARRANT DOWN AS? EIGHT?

1 (PAUSE IN PROCEEDINGS.)

2 MR. WILDER: YOUR HONOR, BASED ON EXHIBIT NUMBER 8,
3 COURT'S EXHIBIT NUMBER 8, THE AFFIDAVIT ATTACHED THERETO HAS
4 NOTHING IN REFERENCE TO AN AFFIDAVIT UNDER THE SECTION
5 "REASON FOR AFFIANT'S BELIEF THAT PROPERTY SOUGHT IS ON
6 SUBJECT PREMISES." THIS WAS THE INFORMATION RECEIVED BY THE
7 MAGISTRATE ON JUNE 8, 2007, PRESENTED BY SENIOR DETECTIVE TOD
8 SIMS. THE THIRD PARAGRAPH STATES, "STATE PROBATION AND
9 PAROLE WAS GIVEN THE INFORMATION GATHERED FROM THE WITNESSES
10 AND GAVE LAW ENFORCEMENT A LOCATION OF ANDRE MASSEY'S
11 RESIDENCE WHICH IS 107 NORTH SALEM STREET, APARTMENT NUMBER
12 2. LAW ENFORCEMENT LOCATED MASSEY AT HIS RESIDENCE AND TOOK
13 HIM INTO CUSTODY. AT THE TIME OF THE ARREST, MASSEY WAS
14 WEARING A WHITE TANK TOP TEE SHIRT AND DID HAVE A TATTOO
15 DESCRIBED ON HIS LEFT ARM AND, THEREFORE, THE OFFICER
16 BELIEVES THAT THE ITEMS" -- AND, YOUR HONOR, I'M PARAPHRASING
17 NOW.

18 HOWEVER, YOUR HONOR, THE OPERATIVE INFORMATION RECEIVED
19 BY THE MAGISTRATE AT THE TIME WE ASSERT WAS IN VIOLATION OF
20 CODE SECTION 24-21-290 WHICH PROVIDES THAT INFORMATION
21 RECEIVED BY PROBATION AGENTS IS PRIVILEGED, AND AS THE COURT
22 POINTED OUT EARLIER ON THE RECORD, THAT STATE VERSUS HOOK HAS
23 CONSIDERED THIS SECTION, AND THERE ARE NO EXCEPTIONS TO THIS.
24 BUT THE POINT BEING, YOUR HONOR, THAT THE SEARCH WARRANT ON
25 ITS FACE IS INVALID AND THAT, THEREFORE, WE SUBMIT THAT ANY

1 INFORMATION RECEIVED BY THE MAGISTRATE AT THAT TIME IN
2 CONTRADICTION TO THAT STATUTE OR CONTRAVENTION OF THAT
3 STATUTE WOULD HAVE BEEN IMPROPERLY RECEIVED BY THE MAGISTRATE
4 AT THAT TIME. IT WAS EX PARTE PROCEEDINGS, NOBODY THERE TO
5 REPRESENT THE DEFENDANT. THE DEFENDANT HAD CLEARLY, BY THE
6 TESTIMONY, NOT GIVEN CONSENT TO ANY SEARCH.

7 FIRST OF ALL, YOUR HONOR, THE SEARCH INCIDENT TO ARREST
8 WE WOULD STATE WAS IMPROPERLY CONDUCTED BECAUSE THE AREA THAT
9 THE DEFENDANT WAS ARRESTED IN, BY THE UNCONTROVERTED
10 TESTIMONY, WAS OUTSIDE THE RESIDENCE. HE CAME TO THE DOOR;
11 HE CAME OUT. THEY ESCORTED HIM OUT. THEY PUT HIM IN
12 HANDCUFFS; THEY PUT HIM UNDER ARREST. THEN THEY GO INTO THE
13 APARTMENT---

14 THE COURT: WELL, THAT'S NOT PART OF THE MISTRIAL
15 MOTION.

16 MR. WILDER: YES, SIR, IT IS.

17 THE COURT: THE PROTECTIVE SWEEP?

18 MR. WILDER: YES, YOUR HONOR.

19 THE COURT: YOU'RE SAYING THAT'S NOT LEGITIMATE?

20 MR. WILDER: YES, YOUR HONOR. WE ARGUE THAT THAT'S NOT
21 SEARCH INCIDENT TO ARREST. THAT'S---

22 THE COURT: THEY DIDN'T SEARCH ANYTHING EXCEPT FOR
23 PEOPLE.

24 MR. WILDER: THEY SAY THEY WENT IN.

25 THE COURT: AND THERE ARE CASES THAT CLEARLY SAY A

1 PROTECTIVE SWEEP IS PROPER, BUT YOU'RE SAYING THAT IT'S NOT
2 IN THIS CASE?

3 MR. WILDER: I'M SAYING THAT A PROTECTIVE SWEEP OF THE
4 AREA INCIDENT TO ARREST IS PROPER, BUT THAT'S OUTSIDE THE
5 RESIDENCE.

6 THE COURT: SO THEY CAN -- THE ONLY THING THEY CAN DO IS
7 LOOK ON THE STEPS AND UNDERNEATH THE STEPS AND AROUND IN THE
8 BUSHES.

9 MR. WILDER: WELL, YOUR HONOR, I'VE BEEN IN CASES BEFORE
10 WHERE THEY ARREST INSIDE THE HOUSE. THEY GET TO SEARCH
11 AROUND IN THE ROOM WHERE THEY MADE THE ARREST. THAT'S -- THE
12 QUESTION IS SUBJECTIVELY: WHAT IS THE AREA INCIDENT TO
13 ARREST?

14 THE COURT: ALL RIGHT. FROM A COMMON-SENSE STANDPOINT,
15 YOU'RE TELLING ME THAT THEY DO A PROTECTIVE SWEEP OF THE
16 IMMEDIATE AREA ON THE OUTSIDE, THAT THEY JUST HAVE TO ASSUME
17 THAT ANY BAD GUYS IN THERE ARE GOING TO SAY, "OKAY. WELL,
18 UNDER THE CASE LAW WE'RE NOT GOING TO SHOOT THESE PEOPLE
19 BECAUSE THEY'RE ONLY DOING A PROTECTIVE SWEEP OF THE OUTSIDE,
20 AND IT REALLY WOULDN'T BE FAIR TO SHOOT THEM BECAUSE THEY
21 CAN'T COME IN HERE."

22 MR. WILDER: MY ARGUMENT IS THAT, YOUR HONOR, IN THE
23 FACTS OF THIS CASE, THEY MADE THE ARREST OUTSIDE AND,
24 THEREFORE, THEY SHOULDN'T BE PERMITTED TO SEARCH INSIDE---

25 THE COURT: THAT QUESTION ON THAT BASIS IS DEFINITELY

1 DENIED.

2 MR. WILDER: YOUR HONOR, WE WOULD THEN FURTHER INDICATE
3 THAT THE -- ON ITS FACE OUR ARGUMENT IS THE SEARCH WARRANT IS
4 INVALID, THAT, THEREFORE, THE SEARCH INCIDENT TO THE SEARCH
5 WARRANT IS INVALID, YOUR HONOR, AND THAT IF THAT'S INVALID
6 AND OVER THE OBJECTION OF THE DEFENDANT AND OVER THE
7 OBJECTION OF MR. HASTIE, THIS EVIDENCE WAS ADMITTED INTO --
8 BEFORE THE JURY DURING THE TRIAL OF THE CASE THAT -- YOUR
9 HONOR, THAT, THEREFORE, THE JURY HAS HEARD INFORMATION,
10 EVIDENCE, OVER OUR OBJECTION THAT WE BELIEVE WAS GATHERED IN
11 VIOLATION OF THE DEFENDANT'S FOURTH AMENDMENT RIGHTS AND
12 THAT, THEREFORE, A MISTRIAL SHOULD BE GRANTED. YOUR HONOR,
13 THIS IS COMPOUNDED, WE BELIEVE IN THIS CASE, BECAUSE WHEN THE
14 DEFENDANT WAS IN CUSTODY, HE WAS CONFRONTED BY THE FRUITS, WE
15 BELIEVE, OF THE UNLAWFUL SEARCH.

16 THE COURT: AND THAT MAY BE CONTESTED.

17 MR. WILDER: AND THAT ALLEGEDLY WAS THE GROUNDS ON WHICH
18 THEY TESTIFIED THAT HE CHANGED HIS STATEMENT FROM
19 EXCULPATORY, NOT I-DIDN'T-DO-IT KIND OF STATEMENT, TO
20 INCULPATORY -- I-DID-DO-IT STATEMENT AND THAT THE SEARCH
21 WARRANT, THEREFORE, BEING INVALID LED TO A SITUATION WHERE
22 THE DEFENDANT GAVE A STATEMENT THAT WAS AGAINST HIS PENAL
23 INTERESTS AND, THEREFORE, THE STATEMENT ALSO SHOULD BE
24 SUPPRESSED, BUT HAVING NOT BEEN AND NOW BEFORE THE JURY, WE
25 BELIEVE THAT A MISTRIAL WOULD BE AN APPROPRIATE REMEDY.

1 YOUR HONOR, I WOULD ALSO LIKE TO HAND UP TO THE COURT A
2 RESIDENTIAL RENTAL AGREEMENT WHICH WAS PROVIDED AT SOME POINT
3 TO THE DEFENDANTS---

4 THE COURT: THAT'S NOT IN EVIDENCE, SO HOW CAN YOU MAKE
5 THAT A BASIS FOR---

6 MR. WILDER: IS IT IN EVIDENCE?

7 THE COURT: NO.

8 MR. WILDER: HOWEVER, YOUR HONOR, I WOULD LIKE FOR IT TO
9 BE A COURT'S EXHIBIT BECAUSE IT INDICATES THAT MR. MASSEY HAS
10 A CONSTITUTIONALLY-PROTECTED RIGHT TO BE AT 107 NORTH SALEM
11 SECOND -- APARTMENT NUMBER 2.

12 THE COURT: THAT'S NOT IN THE RECORD.

13 MR. WILDER: WELL, I WOULD LIKE TO MAKE IT.

14 THE COURT: BUT THERE'S ALREADY TESTIMONY THAT IT WAS
15 HIS APARTMENT.

16 MR. WILDER: RIGHT.

17 THE COURT: SO...

18 MR. WILDER: AND THERE IS A DRIVER'S LICENSE IN EVIDENCE
19 THAT ESTABLISHES THAT ALSO IN FRONT OF THE JURY. HOWEVER,
20 YOUR HONOR, IN AN ABUNDANCE OF CAUTION, I WOULD LIKE THE
21 COURT TO RECEIVE THIS EXHIBIT BECAUSE IT INDICATES---

22 THE COURT: OVER THE STATE'S OBJECTION. JUST PUT --
23 JUST PUT A STICKER ON IT, AND IT'S OVER THE STATE'S OBJECTION
24 BECAUSE THERE'S NO FOUNDATION LAID FOR IT AND IT'S A HEARSAY
25 DOCUMENT.

1 MR. SPRATLIN: YES, YOUR HONOR.

2 (COURT'S EXHIBIT 9 WAS MARKED FOR IDENTIFICATION ONLY.)

3 MR. WILDER: YOUR HONOR, THEN OVER THEIR OBJECTION I'D
4 HAND THIS UP TO THE COURT. IT'S JUST TO INDICATE, YOUR
5 HONOR, THAT THERE WAS A LANDLORD/TENANT AGREEMENT IN EFFECT
6 WHICH GAVE MR. MASSEY THE RIGHT TO BE THE TENANT THERE,
7 LAWFULLY IN POSSESSION OF THE PREMISES. THAT WAS HIS HOME.
8 IT'S ESTABLISHED BY THE DRIVER'S LICENSE THE STATE PUT UP,
9 AND THIS WAS INFORMATION PROVIDED TO THE DEFENDANT BY THE
10 STATE AS PART OF DISCOVERY.

11 THE COURT: ALL RIGHT.

12 MR. WILDER: YOUR HONOR, AND THOUGH -- SO FOR ALL THOSE
13 REASONS, YOUR HONOR, WE BELIEVE THAT IT HAS BEEN ESTABLISHED
14 THAT THE DEFENDANT HAD -- HAS STANDING TO RAISE A FOURTH
15 AMENDMENT ISSUE OF BEING FREE FROM UNREASONABLE SEARCH AND
16 SEIZURE IN HIS OWN HOME. THIS IS NOT EVEN LIKE ON THE STREET
17 OR IN THE CAR OR SOMEPLACE. THIS IS -- THIS IS HIS OWN HOME.
18 THEREFORE, A SEARCH OF HIS HOME, YOUR HONOR, SHOULD BE, WE
19 BELIEVE, SUBJECT TO THE HIGHEST CONSTITUTIONAL LEVEL OF
20 PRIVILEGE THAT THERE IS AGAINST UNREASONABLE SEARCH AND
21 SEIZURE. AND SO FOR ALL THOSE REASONS, YOUR HONOR, WE
22 BELIEVE THAT A MISTRIAL WOULD NOW BE APPROPRIATE, THAT THE
23 JURY HAVING HEARD THIS OVER OUR MOTION TO SUPPRESS AND NOW
24 OVER MR. HASTIE'S OBJECTION AND CONTINUING OBJECTION TO THIS
25 EVIDENCE COMING IN THAT THERE IS -- THERE'S SUFFICIENT

1 GROUND TO WARRANT THAT MY CLIENT, MR. MASSEY, CANNOT GET A
2 FAIR -- SUBSTANTIALLY FAIR TRIAL WITH THE JURY HAVING HEARD
3 ALL OF THIS TAINTED EVIDENCE. THANK YOU.

4 THE COURT: ALL RIGHT. YOUR MOTION IS DENIED UNLESS,
5 MR. SPRATLIN, YOU AGREE. DO YOU AGREE?

6 MR. SPRATLIN: NO, YOUR HONOR, I DO NOT AGREE WITH THE
7 DEFENDANT.

8 THE COURT: ALL RIGHT. THE MOTION IS DENIED. IN MY
9 VIEW -- AND I STILL CAN'T WRAP MY ARMS AROUND THE WHERE OR
10 WHY OF THE STATUTE, AND I'M SURE THAT THE DEPARTMENT OF
11 PROBATION, PAROLE, AND PARDON SERVICES AND THE LAW
12 ENFORCEMENT ENTITIES EMPHATICALLY DISAGREE WITH MY REFUSAL TO
13 LET MR. SUMTER PROVIDE A LINK IN THE CHAIN, SO TO SPEAK, FOR
14 HOW MR. MASSEY WAS LOCATED ADDRESS-WISE. THE STATUTE SAYS
15 AND THE HOOK CASE SAYS THERE'S NO EXCEPTION. IT SAYS THAT
16 INFORMATION OR DATA OBTAINED BY A PROBATION AGENT IN THE
17 COURSE OF HIS OFFICIAL DUTY IS NOT RECEIVABLE INTO EVIDENCE.
18 THAT MEANS IT DOESN'T COME IN, NO MATTER WHAT, EVEN IF
19 THERE'S A DOOR OPENING OR IMPEACHMENT ANGLE. IT ALSO SAYS IT
20 MAY NOT BE DISCLOSED TO ANYONE OTHER THAN THE JUDGE AT THE
21 PROBATION HEARING.

22 TO ME THAT DOES NOT IMPLICATE THE FOURTH AMENDMENT
23 INsofar AS A FRUIT-OF-THE-POISONOUS-TREE ANALOGY IS
24 CONCERNED. IT SIMPLY SAYS IT'S NOT RECEIVABLE INTO EVIDENCE
25 AND IT MAY NOT BE DISCLOSED. I DON'T KNOW WHAT THE HEREAFTER

1 IS, IF THE AGENT DOES DISCLOSE IT IN TECHNICAL VIOLATION OF
2 THAT STATUTE. I DON'T KNOW BECAUSE THE STATUTE DOESN'T
3 PROVIDE A REMEDY.

4 IT'S THE DEFENDANT'S POSITION THAT THE ONLY LOGICAL
5 ANSWER TO THAT QUESTION IS THAT ANY FRUIT OBTAINED BY GIVING
6 THAT INFORMATION NECESSARILY HAS TO BE SUPPRESSED. I
7 DISAGREE WITH THAT, BUT YOUR ARGUMENT IS MADE CLEAR FOR THE
8 RECORD. SO, IN MY VIEW, THE APPELLATE COURT WOULD TAKE ONE
9 OF THREE POSITIONS, ONE OF WHICH IS THAT, WELL, THEY WOULD
10 HAVE FOUND HIM ANYWHERE BECAUSE THE TESTIMONY WAS CLEAR THAT
11 THEY HAD HIS ADDRESS FROM D.M.V. AND THE SEX OFFENDER
12 REGISTRY INFORMATION WHICH IS NOT PRIVILEGED; AT LEAST I'VE
13 NOT BEEN SHOWN ANYTHING THAT SAYS IT WAS. THAT LATTER PART
14 WAS KEPT OUT FOR PREJUDICIAL REASONS IN FRONT OF THE JURY.

15 THE SECOND THING THE APPELLATE COURT COULD DO IS EXACTLY
16 WHAT YOU SAY, THAT EVERYTHING IS -- THE FRUIT OF IT HAS GOT
17 TO BE SUPPRESSED. THE THIRD THING IS THE APPROACH THAT I
18 JUST MENTIONED IS THAT IT -- WHILE IT MAY BE IN TECHNICAL
19 VIOLATION OF THE STATUTE, THERE ARE NO FOURTH AMENDMENT
20 IMPLICATIONS. SO YOUR MOTION IS DENIED.

21 YOU CAN CONTINUE TO OBJECT, IF YOU'D LIKE, WHEN THE
22 ISSUE IS BROUGHT, BUT I THINK IT'S -- THAT WILL BE -- THAT
23 WILL BE UP TO YOU. NOW, BEFORE I FORGET, ON THE TWO
24 STATEMENTS, IF YOU WOULD REDACT ALL BUT THE LAST FOUR DIGITS
25 OF THE SOCIAL SECURITY NUMBER.

1 MR. SPRATLIN: YES, YOUR HONOR. I CAN ACTUALLY DO THAT
2 RIGHT NOW.

3 THE COURT: ALL RIGHT. JUST MAKE SURE WE DO THAT BEFORE
4 THE STATEMENT GOES INTO THE JURY ROOM. ALL RIGHT. ANYTHING
5 ELSE BEFORE WE BRING THE JURY IN?

6 MR. HASTIE: NOTHING FROM DEFENSE, YOUR HONOR.

7 THE COURT: ANYTHING ELSE, MR. SPRATLIN?

8 MR. SPRATLIN: NOTHING, YOUR HONOR.

9 THE COURT: ALL RIGHT. YOU CAN BRING IN THE JURY.

10 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 9:46
11 A.M.)

12 THE COURT: THANK YOU, LADIES AND GENTLEMEN. WE'RE
13 READY TO CONTINUE NOW WITH THE PRESENTATION OF EVIDENCE. MR.
14 SPRATLIN, YOU CAN CALL YOUR NEXT WITNESS.

15 MR. SPRATLIN: THANK YOU, YOUR HONOR. THE STATE NEXT
16 CALLS LIEUTENANT KEN NESBITT TO THE STAND.

17 KENNETH L. NESBITT, SR., AFTER BEING DULY SWORN,
18 TESTIFIED AS FOLLOWS:

19 THE CLERK: HAVE A SEAT UP THERE, PLEASE, SIR. STATE
20 YOUR FULL NAME AND SPELL YOUR LAST NAME, PLEASE.

21 THE WITNESS: KENNETH LEE NESBITT, SR. LAST NAME IS
22 SPELLED N-E-S-B-I-T-T.

23 DIRECT EXAMINATION

24 BY MR. SPRATLIN:

25 Q. OKAY. MR. NESBITT, WHERE ARE YOU EMPLOYED?

1 A. I'M EMPLOYED BY THE SUMTER POLICE DEPARTMENT.

2 Q. AND WHAT'S YOUR TITLE THERE?

3 A. CURRENTLY THE TRAINING OFFICER.

4 Q. AND WHAT'S YOUR RANK?

5 A. LIEUTENANT.

6 Q. OKAY. NOW, LIEUTENANT NESBITT, WERE YOU -- WHAT ALL DO
7 YOU DO FOR THE SUMTER POLICE DEPARTMENT IN YOUR CAPACITY?

8 A. MY PRIMARY DUTIES AT THIS TIME ARE THE TRAINING OFFICER.
9 HOWEVER, FOR THE LAST 14 YEARS I HAVE EITHER BEEN THE --
10 YEARS AGO I WAS ACTUALLY THE FULL-TIME FORENSICS OFFICER
11 WHICH MEANT I DID FINGERPRINTS. I PROCESSED THE
12 FINGERPRINTS, EXAMINED FINGERPRINTS TO TRY TO DETERMINE WHO
13 THEY BELONG TO, PHOTOGRAPHED CRIME SCENES AND SUCH AS THAT,
14 LIKE YOU SEE ON T.V. ON THE C.S.I. SHOWS, SIMILAR TO THAT.
15 THAT WAS MY FULL-TIME DUTIES BACK FROM '95 TO '98. BUT SINCE
16 '98, I'VE HAD AT LEAST PART-TIME DUTIES AS A FORENSICS
17 OFFICER, THE BACK-UP OFFICER WHEN THE FULL-TIME OFFICER
18 WASN'T AVAILABLE.

19 Q. OKAY. IS PART OF THE DUTIES OF A FORENSIC OFFICER --
20 EXCUSE ME. IS PART OF THE DUTIES AS A FORENSICS OFFICER TO
21 TRY TO OBTAIN FINGERPRINTS FROM EVIDENCE?

22 A. YES, IT IS.

23 Q. ALL RIGHT. AND WHAT TRAINING HAVE YOU HAD IN OBTAINING
24 FINGERPRINTS FROM EVIDENCE?

25 A. I'VE HAD NUMEROUS CLASSES TAUGHT BY THE SOUTH CAROLINA

1 CRIMINAL JUSTICE ACADEMY AS WELL AS THE STATE LAW ENFORCEMENT
2 DIVISION AND THE FEDERAL BUREAU OF INVESTIGATION. I'VE GOT A
3 LIST OF THEM HERE. I'LL BE GLAD TO...

4 Q. IF YOU WOULD, PLEASE, JUST TELL THE JURY WHAT TRAINING
5 YOU'VE HAD.

6 A. OKAY. MY CRIME SCENE OR FORENSICS TRAINING ACTUALLY
7 STARTED BACK IN 1983 DURING MY BASIC LAW ENFORCEMENT TRAINING
8 AT THE POLICE ACADEMY. EVERYONE GETS A MINIMAL AMOUNT OF
9 FINGERPRINT TRAINING DURING THAT TIME.

10 I ALSO RECEIVED IN 1987 BASIC FINGERPRINT TRAINING, A
11 SEPARATE CLASS AT THE CRIMINAL JUSTICE ACADEMY. IN 1996 I
12 ATTENDED LATENT FINGERPRINT IDENTIFICATION TRAINING AT THE
13 POLICE ACADEMY AGAIN WHICH WAS TAUGHT BY A FEDERAL BUREAU OF
14 INVESTIGATIVE -- OF INVESTIGATIONS FINGERPRINT EXPERT. IN
15 1999 I ATTENDED A FORENSIC SCIENCE TRAINING PROGRAM AT THE
16 STATE LAW ENFORCEMENT DIVISION WHICH MEANT THAT I ACTUALLY
17 WORKED IN THE LAB WITH THEM AND WENT ON CRIME SCENES WITH THE
18 STATE LAW ENFORCEMENT CRIME SCENE PEOPLE FOR THREE WEEKS, AND
19 I ALSO WORKED IN THE LAB WITH THEM. DURING THAT TIME I
20 SUCCESSFULLY COMPLETED PROFICIENCY TESTING IN LATENT PRINT
21 EXAMINATION ALSO.

22 IN 1999 I ATTENDED THE F.B.I.'S ADMINISTRATIVE ADVANCED
23 LATENT FINGERPRINT SCHOOL IN QUANTICO, VIRGINIA. IN 2005 I
24 ATTENDED THE ADVANCED PALM PRINT IDENTIFICATION TRAINING AT
25 THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY TAUGHT BY RON

1 SMITH AND ASSOCIATES. IN 2005 I SUCCESSFULLY COMPLETED
2 COMPETENCY TRAINING IN THE AUTOMATED FINGERPRINT
3 IDENTIFICATION SYSTEM BETTER KNOWN AS A.F.I.S. IT'S A
4 COMPUTER SYSTEM THAT SEARCHES FINGERPRINTS. THAT WAS AT THE
5 STATE LAW ENFORCEMENT DIVISION.

6 IN 2006 I ATTENDED A FORENSIC RIDGEOLOGY COURSE IN
7 COLUMBIA, SOUTH CAROLINA, AGAIN BY RON SMITH AND ASSOCIATES,
8 AND THAT DEALS WITH FINGERPRINT IDENTIFICATION, SPECIFICALLY
9 WITH FINGERPRINT IDENTIFICATION. FROM 1997 TO 2005, WHILE
10 WORKING AS THE FORENSICS OFFICER AT THE SUMTER POLICE
11 DEPARTMENT, I MADE APPROXIMATELY -- ACTUALLY IT WAS EXACTLY
12 70 LATENT FINGERPRINT EXAMINATIONS ON MY OWN IN OUR
13 DEPARTMENT, AND I SENT THOSE FINGERPRINTS, ALONG WITH MY
14 RESULTS, TO S.L.E.D. TO HAVE THEM VERIFY MY RESULTS SORT OF
15 AS A TRAINING PROGRAM, AND ALL OF MY IDENTIFICATIONS THERE
16 WERE AGREED UPON BY THE S.L.E.D. EXAMINERS. AND FROM 2005 TO
17 2007 I MADE LATENT PRINT IDENTIFICATIONS ON APPROXIMATELY 200
18 CASES AT OUR DEPARTMENT, AND ALL OF MY FINDINGS WERE VERIFIED
19 BY ANOTHER QUALIFIED LATENT PRINT EXAMINER. IN SEPTEMBER OF
20 '07 I WAS QUALIFIED AS AN EXPERT IN LATENT PRINT
21 IDENTIFICATION BY JUDGE COTHRAN HERE IN THE SUMTER COUNTY
22 COURTHOUSE ON A CRIMINAL CASE.

23 Q. SO YOU HAVE BEEN QUALIFIED AS AN EXPERT IN FORENSIC
24 FINGERPRINTING---

25 A. YES, SIR.

1 Q. ---IN COURT. YOUR HONOR, AT THIS TIME I WOULD TENDER
2 LIEUTENANT NESBITT AS AN EXPERT IN THE AREA OF FORENSIC
3 FINGERPRINTING?

4 THE COURT: ANY QUESTIONS AT THIS TIME, MR. HASTIE?

5 MR. HASTIE: NONE, YOUR HONOR.

6 THE COURT: ANY OBJECTION?

7 MR. HASTIE: NO OBJECTION.

8 THE COURT: AND THE PARTICULAR FIELD AGAIN, MR.
9 SPRATLIN?

10 MR. SPRATLIN: FORENSIC FINGERPRINTING, YOUR HONOR.

11 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, LET ME
12 HAVE YOUR ATTENTION FOR JUST A MOMENT. NORMALLY A WITNESS
13 WHO TESTIFIES IN A CASE CANNOT OFFER ANY OPINIONS, AND MOST
14 OF THE TIME WITNESSES CAN TESTIFY TO WHAT THEY ACTUALLY
15 OBSERVE. THERE IS AN EXCEPTION UNDER OUR RULES OF EVIDENCE
16 FOR EXPERT WITNESSES AND ESSENTIALLY -- AND I'LL TELL YOU
17 ABOUT THIS IN MORE DETAIL LATER. SOMEONE WHO IS QUALIFIED BY
18 REASON OF EDUCATION, TRAINING, OR EXPERIENCE MAY OFFER
19 OPINIONS IN HIS OR HER PARTICULAR FIELD OF EXPERTISE. THAT
20 DOES NOT MEAN YOU HAVE TO ACCEPT THE TESTIMONY OF THE PERSON
21 WHO'S QUALIFIED AS AN EXPERT SIMPLY BECAUSE THE TESTIMONY
22 COMES FROM AN EXPERT. YOU WEIGH THE EVIDENCE THE SAME AS YOU
23 WOULD ANY OTHER WITNESS, AND YOU'RE NOT NECESSARILY BOUND BY
24 THE OPINION. THIS WITNESS IS QUALIFIED AS AN EXPERT IN THE
25 FIELD OF FORENSIC FINGERPRINTING. ALL RIGHT.

1 BY MR. SPRATLIN:

2 Q. NOW, LIEUTENANT NESBITT, WHAT WAS YOUR ROLE IN THE CASE
3 WE'RE HERE TODAY TALKING ABOUT?

4 A. I ACTUALLY WAS CALLED TO THE SCENE OF THE ROBBERY TO
5 PROCESS -- WHAT WE GENERALLY CALL PROCESS THE SCENE. IT
6 MEANS LOOK FOR ANY FINGERPRINTS THAT MAY BE THERE, TAKE
7 PHOTOGRAPHS, AND COLLECT ANY EVIDENCE AT THE SCENE, AND I
8 ALSO WAS CALLED TO THE RESIDENCE WHEN A SEARCH WARRANT WAS
9 SERVED TO GO TO THE RESIDENCE AND PHOTOGRAPH---

10 MR. HASTIE: OBJECTION, YOUR HONOR. EXCUSE ME. I WOULD
11 LIKE TO RENEW OUR MOTION CONCERNING THE SEARCH WARRANT.

12 THE COURT: ALL RIGHT. YOUR OBJECTION IS OVERRULED, AND
13 THAT CAN CONTINUE THROUGHOUT THE QUESTIONING OF THIS WITNESS.
14 ALL RIGHT.

15 BY MR. SPRATLIN:

16 Q. NOW, LIEUTENANT NESBITT, PLEASE, IF YOU WOULD, TAKE THE
17 JURY BRIEFLY THROUGH HOW YOU SECURED AND PROCESSED THE SCENE
18 OF THE CRIME.

19 A. I ASSISTED OTHER DETECTIVES DURING THIS SEARCH WARRANT
20 WHICH MEANS THAT THEY ACTUALLY OBTAINED THE SEARCH WARRANT,
21 BROUGHT IT TO THE SCENE, WENT INTO THE RESIDENCE, AND I
22 ACCOMPANIED THEM INTO THE RESIDENCE AND WHERE IT WAS MY JOB
23 TO TAKE PHOTOGRAPHS OF ANYTHING OF INTEREST TO US IN THE
24 RESIDENCE AS WELL AS TO COLLECT THE EVIDENCE, IF THERE WAS
25 ANY EVIDENCE RECOVERED. IT WAS MY JOB TO COLLECT IT AND TAKE

1 IT INTO THE POLICE DEPARTMENT AND DO ANY FURTHER PROCESSING
2 THAT WE MAY HAVE NEEDED TO DO ON THAT EVIDENCE AND THEN TURN
3 IT OVER TO OUR EVIDENCE CUSTODIAN TO STORE UNTIL COURT LATER.

4 Q. GOING BACK FOR A SECOND, LIEUTENANT NESBITT, TO THE
5 ACTUAL SCENE OF THE ROBBERY: WHAT DID YOU DO THERE?

6 A. I WENT TO THE ROBBERY SCENE AND ACTUALLY WHAT WE CALL
7 PROCESSED AGAIN WHICH MEANS BASICALLY THAT I TOOK FINGERPRINT
8 POWDER AND DUSTED SOME ITEMS AT THE STORE THAT I WAS TOLD THE
9 SUSPECT MAY HAVE TOUCHED WHEN HE WAS IN THERE, AND I ALSO
10 TOOK SOME PHOTOGRAPHS OF THE BUSINESS.

11 Q. AND WERE YOU ABLE TO OBTAIN ANY PRINTS AS A RESULT OF
12 THIS?

13 A. NO, I WAS NOT.

14 Q. OKAY. AND LET ME GO AHEAD AND SHOW YOU WHAT'S BEEN
15 MARKED AND ENTERED INTO EVIDENCE AS STATE'S EXHIBITS NUMBER 7
16 THROUGH 24. ARE THESE THE PHOTOGRAPHS THAT YOU TOOK AT THE
17 STORE THAT DAY?

18 THE COURT: WHAT NUMBERS ARE THOSE?

19 MR. SPRATLIN: 7 THROUGH 24, YOUR HONOR.

20 THE WITNESS: SOME OF THESE WERE THE ONES I TOOK, BUT
21 THERE WAS SOME HERE THAT I DIDN'T TAKE.

22 BY MR. SPRATLIN:

23 Q. OKAY.

24 A. THOSE I DIDN'T TAKE.

25 Q. I'M SORRY. THESE WERE ACTUALLY EXHIBITS 24, 21, 22, AND

1 23 WHICH I BELIEVE THAT DETECTIVE CULICK ALREADY TESTIFIED
2 THAT SHE TOOK. I APOLOGIZE FOR THAT. BUT ALL THE
3 PHOTOGRAPHS OF THE STORE, ARE THOSE THE ONES THAT YOU TOOK?

4 A. YES, SIR.

5 Q. OKAY. NOW, YOU SAID YOU WEREN'T ABLE TO GET ANY PRINTS
6 FROM THE STORE THAT WERE USABLE; CORRECT?

7 A. THAT'S CORRECT.

8 Q. OKAY. WHAT WAS YOUR NEXT ROLE IN THE INVESTIGATION OF
9 THIS CASE?

10 A. ACTUALLY I DIDN'T TAKE PART IN THE INVESTIGATION UNTIL
11 THE SEARCH WARRANT WAS OBTAINED ONCE I LEFT THE STORE AND I
12 WAS CALLED TO MEET WITH THE DETECTIVES AT THE RESIDENCE AND
13 GO IN AND DOCUMENT THE SCENE AND COLLECT EVIDENCE THERE.

14 Q. OKAY. GOING BACK FOR ONE SECOND -- I HATE TO KEEP
15 JUMPING AROUND, BUT BACK TO THE SCENE OF THE ROBBERY: IF A
16 TOWEL OR SOME OTHER KIND OF CLOTH ITEM WAS USED TO WIPE DOWN
17 THE AREAS WHERE SOMEONE TOUCHED, WOULD THAT AFFECT YOUR
18 ABILITY TO BE ABLE TO GET PRINTS?

19 A. ABSOLUTELY IT WOULD. A FINGERPRINT IS LEFT WHEN RESIDUE
20 FROM SOMEONE'S HAND OR FINGERTIPS OR ANY PART OF THE
21 UNDERSIDE OF THE HAND OR FINGERS TOUCHES A SURFACE, AND THE
22 RESIDUE IS TRANSFERRED FROM THE SURFACE ON TO -- FROM THE
23 HAND ON TO THAT SURFACE AND REMAINS THERE WHEN THEY MOVE
24 THEIR HAND. JUST LIKE IF YOU WOULD TO TAKE AN INK STAMPER
25 AND STAMP IT IN AN INK PAD AND STAMP ON A PIECE OF PAPER, IT

1 JUST TRANSFERS RESIDUE FROM ONE SURFACE TO ANOTHER. AND IF
2 -- SO NATURALLY IF YOU THINK ABOUT, SAY, A GLASS SURFACE OR A
3 PLASTIC SURFACE, IF YOU PUT YOUR HAND DOWN ON IT, IT WILL
4 LEAVE RESIDUE. THEN YOU WIPE IT OFF. IT'S JUST LIKE WIPING
5 DUST OFF A COUNTER WITH A RAG. IT WOULD ERASE THE PRINT.

6 Q. OKAY. THANK YOU. NOW, GETTING BACK TO THE SEARCH
7 WARRANT, YOU SAID THAT YOU ACTUALLY TOOK POSSESSION OF
8 SEVERAL ITEMS?

9 A. YES, I DID.

10 Q. OKAY. DO YOU REMEMBER WHAT ALL ITEMS YOU TOOK
11 POSSESSION OF?

12 A. YES, SIR. THERE WAS A DERRINGER WHICH IS A SMALL
13 HANDGUN---

14 THE COURT: YES, SIR?

15 MR. HASTIE: YOUR HONOR, OUT OF AN ABUNDANCE OF CAUTION
16 I JUST WANT TO MAKE SURE THAT IT'S CLEAR TO THE COURT FOR THE
17 RECORD THAT MY OBJECTION IS BASED ON THE SEARCH WARRANT IS A
18 VIOLATION OF MY DEFENDANT'S FOURTH AMENDMENT RIGHT.

19 THE COURT: YOUR OBJECTION IS OVERRULED, AND THAT WILL
20 CONTINUE AS I SAID A MINUTE AGO. THAT'S FINE.

21 MR. HASTIE: YES, SIR.

22 BY MR. SPRATLIN:

23 Q. I'M SORRY, LIEUTENANT NESBITT. PLEASE CONTINUE.

24 A. I RECOVERED OR SEIZED A BLACK HANDGUN THAT'S COMMONLY
25 DESCRIBED AS A DERRINGER. IT HAS TWO BARRELS. THE BARREL IS

1 THE PART OF THE GUN THAT THE BULLET EXITS WHEN IT'S FIRED.
2 ONE BARREL IS ON TOP OF THE OTHER. IT'S A VERY DISTINCT-
3 LOOKING WEAPON. VERY UNUSUAL, OVER MY YEARS IN LAW
4 ENFORCEMENT, TO SEE A WEAPON LIKE THAT, TO COME IN CONTACT
5 WITH IT. I SEIZED THAT AS WELL AS A PAIR OF BLACK PANTS THAT
6 I WOULD DESCRIBE AS LIKE JOGGING PANTS OR ATHLETIC WORKOUT-
7 TYPE LONG PANTS. BLACK PANTS WITH A WHITE-AND-GRAY STRIPE
8 DOWN THE LENGTH OF THE PANT, THE LEGS.

9 THE GUN ACTUALLY HAD TWO BULLETS IN IT, TWO UNFIRED .22
10 CALIBER BULLETS, AND ALSO A BLACK -- WHAT I COMMONLY REFER TO
11 AS A DOO RAG. IT'S A SORT OF SILKY-TYPE BLACK CLOTH THAT HAD
12 A KNOT TIED IN IT. IT'S WHAT THE PEOPLE WEAR OVER THEIR
13 HEAD. THAT WAS THE OTHER ITEM THAT I RECOVERED.

14 MR. SPRATLIN: YOUR HONOR, PERMISSION TO RETRIEVE THE
15 FIREARM?

16 THE COURT: YES, SIR. JUST MAKE SURE YOU HOLD IT BY THE
17 BARREL AND KEEP IT POINTED DOWN.

18 MR. SPRATLIN: YES, YOUR HONOR. YOUR HONOR, PERMISSION
19 TO APPROACH THE WITNESS?

20 THE COURT: YES, SIR. AND, MR. NESBITT, DO THE SAME.
21 LADIES AND GENTLEMEN, THERE'S A -- THERE'S A GUARD IN THE
22 BARREL OF THE WEAPON NOW THAT, AS I TOLD YOU THE OTHER DAY,
23 MAKES IT INOPERABLE AT THIS POINT. YOU CAN -- YOU CAN HAND
24 IT TO HIM.

25 MR. SPRATLIN: THANK YOU, YOUR HONOR. PLEASE LET THE

1 RECORD REFLECT I'M HANDING THE WITNESS WHAT HAS ALREADY BEEN
2 MARKED STATE'S EXHIBIT NUMBER -- I BELIEVE IT IS 4.

3 THE COURT: FOR I.D.?

4 MR. SPRATLIN: FOR I.D. PURPOSES SO FAR, YOUR HONOR.
5 BY MR. SPRATLIN:

6 Q. LIEUTENANT NESBITT, DO YOU RECOGNIZE THE ITEM I JUST
7 HANDED YOU?

8 A. I JUST NEED TO CHECK THE PAPERWORK THAT HAS THE NUMBER
9 ON IT---

10 Q. IS THAT---

11 A. ---FOR IDENTIFICATION. IT DOES LOOK LIKE THE HANDGUN
12 THAT I RECOVERED, BUT I WOULD NEED TO LOOK AT THAT---

13 Q. OKAY. WHAT IS THAT---

14 A. ---TO MAKE SURE.

15 Q. WHAT WOULD YOU NEED TO LOOK AT TO REFRESH YOUR
16 RECOLLECTION?

17 A. THE CHAIN OF CUSTODY OR THE SEARCH WARRANT RETURN. IT
18 MAY BE LISTED ON THERE. IT HAS THE NUMBER, THE SERIAL
19 NUMBER, ON THE WEAPON. OR ACTUALLY IT MAY BE ON ONE OF THESE
20 PICTURES, TOO; I JUST REMEMBERED.

21 Q. SO YOU DID TAKE PHOTOGRAPHS OF THE GUN THAT YOU SEIZED?

22 A. I DID.

23 Q. ALL RIGHT. LET ME---

24 A. IT WOULD BE IN SOME PHOTOGRAPHS THAT HAVEN'T BEEN SHOWN
25 TO ME YET.

1 Q. WELL, LET ME -- LET ME GO OVER THIS REAL QUICK FIRST
2 THEN. PLEASE LET THE RECORD REFLECT I'M SHOWING THE WITNESS
3 WHAT HAS BEEN MARKED STATE'S EXHIBIT NUMBER 43 FOR
4 IDENTIFICATION PURPOSES AT THIS TIME.

5 A. THERE IS ACTUALLY ANOTHER PICTURE THAT -- FROM THE TOP
6 THAT'S GOT -- THAT SHOWS THE NUMBER I'M WANTING TO DOUBLE-
7 CHECK.

8 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S
9 EXHIBIT NUMBER 44 FOR IDENTIFICATION PURPOSES.

10 A. THAT NUMBER IS NOT VISIBLE ACTUALLY ON THE PICTURE
11 EITHER. I'M SORRY. BUT IT IS NOTED ON THE CHAIN OF CUSTODY.

12 Q. OKAY.

13 A. YOU CAN'T SEE IT ON THERE.

14 Q. AND WE HAVE SOMEONE GOING TO RETRIEVE THE CHAIN OF
15 CUSTODY AS WE SPEAK. LET ME GO AHEAD AND SHOW YOU THESE
16 EXHIBITS. IT'S GOING TO BE STATE'S EXHIBIT NUMBER 44,
17 STATE'S EXHIBIT NUMBER 43, STATE'S EXHIBIT NUMBER 45, 46, 47,
18 AND 48. THEY'RE MARKED RIGHT NOW AS IDENTIFICATION EXHIBITS.
19 LET ME HAND THOSE OVER TO YOU. DO YOU---

20 MR. HASTIE: YOUR HONOR---

21 MR. SPRATLIN: ---RECOGNIZE THOSE PHOTOGRAPHS?

22 THE COURT: YES, SIR?

23 THE WITNESS: YES, SIR.

24 THE COURT: WAIT JUST A MOMENT.

25 MR. HASTIE: I HAVE NOT SEEN THOSE EXHIBITS. I OBJECT

1 TO THEM.

2 MR. SPRATLIN: I JUST SHOWED THEM TO YOU.

3 MR. HASTIE: LET ME TAKE A LOOK AT THEM.

4 THE COURT: PLEASE HAND THEM TO HIM.

5 MR. HASTIE: YOUR HONOR, MAY WE APPROACH?

6 THE COURT: YES, SIR.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

8 THE COURT: LADIES AND GENTLEMEN, IF YOU WOULD PLEASE
9 STEP TO YOUR JURY ROOM. WE'LL HAVE YOU BACK MOMENTARILY.
10 LET ME TELL YOU THIS: OF COURSE, YOU MAY NOT DISCUSS THE
11 CASE. IF THERE'S ANYTHING YOU WANT, SOFT DRINK - I THINK
12 THAT'S ABOUT ALL WE'VE GOT, NO ORANGE JUICE OR ANYTHING -
13 THAT YOU DON'T HAVE IN YOUR JURY ROOM, LET YOUR FOREMAN KNOW.
14 HE'LL LET THE BAILIFF OUTSIDE THE DOOR KNOW. PLEASE DO NOT
15 DISCUSS THE CASE.

16 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
17 10:04 A.M.)

18 THE COURT: ALL RIGHT. FIRST. IS THAT DOOR SHUT?
19 FIRST, MR. HASTIE, NOTE THE NUMBERS OF THE EXHIBITS THAT YOU
20 OBJECT TO.

21 MR. HASTIE: YES, SIR. STARTING WITH NUMBER 44, YOUR
22 HONOR.

23 THE COURT: AND?

24 MR. HASTIE: NUMBER 43 AND NUMBER 45.

25 THE COURT: 43, 44, AND 45 ARE ALL FOR I.D. AT THIS

1 POINT, AND YOUR OBJECTION IS WHAT?

2 MR. HASTIE: MY OBJECTION IS THAT THESE PICTURES ARE
3 ENLARGED SO TO THE POINT, YOUR HONOR, THAT THEY'RE LARGER
4 THAN WHAT THE WEAPON REALLY IS, ESPECIALLY THIS ONE -- THIS
5 FIRST ONE HERE, NUMBER 44, AND IT MAY UNDULY PREJUDICE THE
6 JURY.

7 THE COURT: ALL RIGHT. HAND ME THE WEAPON AND THE
8 PICTURES.

9 (MR. HASTIE HANDS THE PHOTOGRAPHS TO THE COURT, AND THE
10 WITNESS HANDS THE WEAPON TO THE COURT.)

11 THE COURT: ALL RIGHT. THE OBJECTION -- THE OBJECTION
12 IS OVERRULED. THE GUN ITSELF WILL CLEARLY INDICATE THAT THE
13 PHOTOS ARE BLOW-UPS. I DON'T THINK 403 IS IMPLICATED.
14 SPECIFICALLY 403 SAYS THAT EVEN THOUGH IT'S RELEVANT,
15 EVIDENCE IS NOT ADMISSIBLE IF THE PROBATIVE VALUE IS
16 SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE.
17 MR. SPRATLIN, TO CURE ANY ISSUE, HAVE THE WITNESS TELL THE
18 JURY THAT THESE ARE OBVIOUSLY ENLARGEMENTS.

19 MR. SPRATLIN: YES, YOUR HONOR. I'LL HAVE THAT TOLD TO
20 THE JURY.

21 THE COURT: AND IF YOU WOULD, USE THE WORD ENLARGEMENT
22 SO THE DEFENDANT WON'T BE PREJUDICED BY THE TERM BLOW-UP, IF
23 THAT WOULD BE OBJECTIONABLE TO THE DEFENDANT. SO JUST CALL
24 IT ENLARGEMENTS, AND I THINK IN THE SCHEME OF THINGS THAT
25 WILL BE OBVIOUS ANYWAY.

1 MR. SPRATLIN: YES, YOUR HONOR.

2 THE COURT: SO YOUR OBJECTION, MR. HASTIE, IS NOTED AND
3 IT'S OVERRULED. OKAY? ALL RIGHT.

4 MR. HASTIE: YOUR HONOR, BEFORE WE BRING THEM BACK IN,
5 THE DEFENDANT HAS TO GO TO THE REST ROOM. WOULD THIS BE A
6 GOOD TIME TO DO THAT?

7 THE COURT: YES, SIR. GO AHEAD. AND LET'S JUST MAKE IT
8 QUICK.

9 MR. HASTIE: YES, SIR.

10 THE COURT: LESS THAN FIVE MINUTES. I'M NOT GOING TO
11 LEAVE THE COURTROOM.

12 (PAUSE IN PROCEEDINGS.)

13 MR. HASTIE: THANK YOU, YOUR HONOR.

14 THE COURT: ALL RIGHT. READY FOR THE JURY, MR. HASTIE?

15 MR. HASTIE: YES, SIR.

16 THE COURT: MR. SPRATLIN?

17 MR. SPRATLIN: YES, SIR.

18 THE COURT: ALL RIGHT. YOU CAN BRING THEM IN IF THEY'RE
19 READY. IF THEY'RE NOT, WE'LL WAIT ON THEM.

20 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
21 10:10 A.M.)

22 THE COURT: ALL RIGHT. MR. SPRATLIN, YOU CAN CONTINUE.

23 MR. SPRATLIN: THANK YOU, YOUR HONOR.

24 BY MR. SPRATLIN:

25 Q. LIEUTENANT NESBITT, WE LEFT OFF TRYING TO DETERMINE IF

1 THAT WAS, IN FACT, THE SAME GUN THAT YOU RECOVERED FROM THE
2 RESIDENCE OF MR. MASSEY. IS THERE ANYTHING THAT WOULD
3 DEFINITELY TELL YOU WHETHER THAT'S THE SAME GUN?

4 A. MY CHAIN OF CUSTODY WOULD BE A DOCUMENT THAT WOULD
5 HAVE---

6 Q. OKAY.

7 A. ---SOME IDENTIFYING INFORMATION ON IT THAT WOULD HELP ME
8 SAY FOR SURE.

9 Q. OKAY. LET ME SHOW YOU...

10 A. (THE WITNESS LOOKS AT A DOCUMENT.) OKAY, SIR. THAT IS
11 THE SAME WEAPON. I CAN TELL BY THE SERIAL NUMBER THAT I PUT
12 DOWN ON MY PAPER AND ALSO THAT NUMBER STAMPED ON THIS WEAPON.

13 MR. SPRATLIN: LET ME GO AHEAD AND MOVE THIS INTO
14 EVIDENCE. MAY I HAVE THIS MARKED AS A STATE'S EXHIBIT?

15 (STATE'S EXHIBIT 49 WAS MARKED FOR IDENTIFICATION ONLY.)
16 BY MR. SPRATLIN:

17 Q. LIEUTENANT NESBITT, LET ME GO AHEAD AND SHOW YOU WHAT'S
18 BEEN MARKED RIGHT NOW FOR IDENTIFICATION PURPOSES AS STATE'S
19 EXHIBIT NUMBER 49. WHAT IS THAT DOCUMENT?

20 A. THIS IS A SUMTER POLICE DEPARTMENT CHAIN OF CUSTODY.
21 IT'S THE PAPERWORK THAT ANY TIME EVIDENCE IS RECOVERED AND
22 TURNED IN TO THE EVIDENCE ROOM OR GIVEN TO THE EVIDENCE
23 CUSTODIAN TO KEEP TO HOLD FOR COURT OR DISPOSITION, THIS IS
24 THE OFFICIAL DOCUMENT WHERE WE IDENTIFY THAT PROPERTY AND
25 TURN IT IN WITH THE EVIDENCE.

1 Q. OKAY. AND NOW HOW -- WHEN IS THAT DOCUMENT PREPARED?

2 A. THIS IS PREPARED WHEN THE ITEMS ARE TURNED IN TO THE
3 EVIDENCE ROOM, AT THAT TIME OR PRIOR TO THAT TIME.

4 Q. OKAY.

5 A. THIS IS ACTUALLY THE DOCUMENT THAT I FILLED OUT AFTER I
6 RECOVERED THE ITEMS THAT I TESTIFIED TO A LITTLE WHILE AGO.
7 THE FOUR ITEMS -- THERE WERE THREE ITEMS, PLUS THE BULLETS
8 WOULD HAVE BEEN THE FOURTH ITEM, AND THIS IS THE CHAIN THAT I
9 USED TO IDENTIFY THOSE ITEMS AND TURN IT IN WITH THE PROPERTY
10 TO THE EVIDENCE ROOM.

11 MR. SPRATLIN: YOUR HONOR, AT THIS TIME I WOULD TENDER
12 STATE'S EXHIBIT NUMBER 49 INTO EVIDENCE.

13 THE COURT: ANY OBJECTION, MR. HASTIE?

14 MR. HASTIE: NO OBJECTION, YOUR HONOR.

15 THE COURT: ALL RIGHT. 49 IS IN EVIDENCE.

16 (STATE'S EXHIBIT 49 WAS RECEIVED IN EVIDENCE.)

17 BY MR. SPRATLIN:

18 Q. AND NOW -- I'M GOING TO LEAVE THAT UP THERE WITH YOU.
19 NOW, COMPARING THE INFORMATION ON THE EVIDENCE CHAIN WITH THE
20 GUN, ARE YOU ABLE TO SAY FOR CERTAIN THAT THAT IS, IN FACT,
21 THE SAME GUN?

22 A. YES, I AM. IT'S GOT THE SERIAL NUMBER 1269 STAMPED ON
23 IT AS WELL AS SOME OTHER INFORMATION, BUT THAT'S THE
24 INFORMATION THAT I USED TO BE SURE IT'S THE SAME WEAPON.

25 MR. SPRATLIN: YOUR HONOR, AT THIS TIME I WOULD TENDER

1 THE PISTOL, STATE'S EXHIBIT NUMBER 4 FOR IDENTIFICATION
2 PURPOSES, INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 4.

3 THE COURT: SUBJECT TO YOUR PRIOR OBJECTION, ANY OTHER
4 OBJECTIONS, MR. HASTIE?

5 MR. HASTIE: NONE, YOUR HONOR.

6 THE COURT: ALL RIGHT. THAT'S IN. NUMBER 4 IS IN
7 EVIDENCE OVER THE DEFENDANT'S OBJECTION.

8 (STATE'S EXHIBIT 4 WAS RECEIVED IN EVIDENCE. STATE'S
9 EXHIBIT 50 WAS MARKED FOR IDENTIFICATION ONLY.)
10 BY MR. SPRATLIN:

11 Q. LIEUTENANT NESBITT, LET ME SHOW YOU WHAT'S BEEN MARKED
12 FOR IDENTIFICATION PURPOSES AS STATE'S EXHIBIT NUMBER 50.
13 CAN YOU IDENTIFY WHAT I JUST HANDED YOU? AND IF YOU NEED TO
14 OPEN UP THE PACKAGE, GO RIGHT AHEAD.

15 A. OKAY. THE OUTSIDE OF THE ENVELOPE I CAN TELL IS MY
16 WRITING, MY HANDWRITING, DATED JUNE 13TH OF '07, AND IT'S
17 DESCRIBED AS TWO .22 CALIBER BULLETS, AND IT HAS THE SAME
18 CASE NUMBER ON IT AS THIS CHAIN OF CUSTODY THAT I FILLED OUT
19 WHICH GOES WITH THE CASE WE'RE DISCUSSING HERE. IT'S GOT MY
20 INITIALS.

21 Q. HAS THAT BEEN OPENED BEFORE TODAY, TO YOUR KNOWLEDGE?

22 A. NOT TO MY KNOWLEDGE. IT'S ACTUALLY TAPED UP NOW WITH
23 CLEAR TAPE.

24 Q. OKAY.

25 A. OKAY. THERE ARE TWO .22 CALIBER BULLETS UNFIRED THAT

1 APPEAR TO BE THE SAME BULLETS THAT I TOOK OUT OF THE GUN WHEN
2 I SEIZED IT.

3 MR. SPRATLIN: YOUR HONOR, AT THIS TIME I WOULD TENDER
4 STATE'S EXHIBIT NUMBER 50 INTO EVIDENCE.

5 THE COURT: THOSE ARE IN THAT EXHIBIT AS WELL?

6 MR. SPRATLIN: STATE'S EXHIBIT NUMBER 50, YOUR HONOR.

7 THE COURT: ALL RIGHT. ANY OBJECTION OTHER THAN THE
8 PREVIOUS ONES?

9 MR. HASTIE: NONE, YOUR HONOR.

10 THE COURT: ALL RIGHT. NUMBER 50 IS IN. THERE ARE TWO
11 IN QUANTITY?

12 THE WITNESS: YES, SIR.

13 (STATE'S EXHIBIT 50 WAS RECEIVED IN EVIDENCE.)

14 BY MR. SPRATLIN:

15 Q. NOW, LIEUTENANT NESBITT, LET ME GO AHEAD AND SHOW YOU
16 STATE'S EXHIBIT NUMBER 48 -- 43, 44, 45, 46, 47, AND 48.
17 RIGHT NOW THEY'RE JUST MARKED FOR IDENTIFICATION PURPOSES.
18 IF YOU WOULD, LOOK THROUGH THOSE PHOTOGRAPHS AND IF YOU COULD
19 TELL ME WHETHER THEY'RE A FAIR AND ACCURATE RECOLLECTION OF
20 WHAT YOU PHOTOGRAPHED THAT DAY.

21 A. YES, THEY ARE.

22 MR. HASTIE: OBJECTION, YOUR HONOR.

23 THE WITNESS: WITH ONE---

24 THE COURT: THE OBJECTION IS OVER -- THE -- MR.
25 SPRATLIN, YOU CAN CLARIFY.

1 BY MR. SPRATLIN:

2 Q. HAVE THOSE -- ARE THOSE PHOTOGRAPHS SLIGHTLY LARGER THAN
3 THE ACTUAL ITEMS WERE?

4 A. THEY WERE. I WAS ABOUT TO CORRECT THAT. ONE OF THE
5 PHOTOGRAPHS OF THE GUN IS ACTUALLY AN ENLARGED PHOTOGRAPH OF
6 THE GUN.

7 Q. OKAY.

8 A. IT'S MUCH LARGER, AS YOU CAN TELL FROM LOOKING AT THIS,
9 THAN THE REAL GUN.

10 THE COURT: YOUR OBJECTION IS NOTED. ALL RIGHT.

11 MR. HASTIE: THANK YOU, YOUR HONOR.

12 THE COURT: YOU CAN PROCEED.

13 BY MR. SPRATLIN:

14 Q. LIEUTENANT NESBITT, WHEN YOU FOUND THAT GUN, WAS IT
15 LOADED?

16 A. YES, IT WAS.

17 MR. SPRATLIN: OKAY. YOUR HONOR, AT THIS TIME I WOULD
18 TENDER INTO EVIDENCE STATE'S EXHIBITS NUMBER -- I BELIEVE
19 IT'S 44, 45, 46, 47, AND 48 -- 43 THROUGH 48.

20 THE COURT: ALL RIGHT. THOSE ARE IN, AND THE OBJECTION
21 IS NOTED.

22 (STATE'S EXHIBITS 43 THROUGH 48 WERE RECEIVED IN
23 EVIDENCE.)

24 BY MR. SPRATLIN:

25 Q. LIEUTENANT NESBITT, IF YOU WOULD, ON STATE'S EXHIBIT

1 NUMBER 45, PLEASE HOLD THAT UP FOR THE JURY AS BEST YOU CAN
2 AND TELL THEM WHAT THAT IS A PHOTOGRAPH OF.

3 A. THIS IS A PHOTOGRAPH OF THE DERRINGER WITH THE BULLETS
4 IN IT BEFORE THEY HAD BEEN REMOVED. AS YOU CAN TELL, THIS
5 GUN IS IN A POSITION THAT WE CALL THE ACTION HAS BEEN OPENED
6 ON IT WHICH JUST MEANS THAT THE BARREL HAS BEEN SWIVELLED
7 DOWNWARDS WHICH IS THE ONLY WAY YOU CAN LOAD OR UNLOAD THIS
8 GUN. SO IT COULD NOT BE FIRED FROM THIS POSITION, AND THAT'S
9 THE SAME POSITION IT'S IN HERE -- ONCE I OPENED THE ACTION IS
10 THE TERM WE NORMALLY USE. YOU CAN SEE THE BULLETS STILL IN
11 THE CHAMBER OF THE GUN, THE UNFIRED BULLETS.

12 Q. LET ME GET YOU TO SHOW YOU THE JURY AND DISCUSS BRIEFLY
13 WHAT'S IN PHOTOGRAPH -- STATE'S EXHIBIT NUMBER 43.

14 A. THIS IS A PHOTOGRAPH OF THE SAME DERRINGER WITH THE
15 ACTION CLOSED. IN OTHER WORDS, THIS IS IN THE POSITION THAT
16 IT WOULD BE IN IF YOU WERE TO FIRE THE WEAPON. AND ALSO I
17 WANTED TO EXPLAIN TO YOU THERE IS A RULER IN THE PHOTOGRAPH
18 WHICH I PUT IN THERE SO THAT YOU WOULDN'T BE ABLE TO LOOK AT
19 IT AND THINK THAT THIS WAS A LIFE-SIZE PICTURE. SO THE RULER
20 ACTUALLY GIVES YOU A CORRECT IDEA OF WHAT SIZE THE GUN
21 ACTUALLY IS. THE SCALE -- WE USE IT AS A SCALE.

22 Q. NOW STATE'S EXHIBIT NUMBER 46.

23 A. THIS PHOTOGRAPH HAS PART OF THE DERRINGER IN IT IN THE
24 ACTION-OPEN POSITION AND ALSO THE TWO BULLETS AFTER THEY'VE
25 BEEN REMOVED, THE TWO UNFIRED BULLETS.

1 Q. OKAY. AND STATE'S EXHIBIT NUMBER 44?

2 A. THIS IS AGAIN AN ENLARGED PICTURE OF THE TOP OF THE
3 BARREL WHICH HAS THE WORDS "DOUBLE DEUCE U.S.A." IT'S THE
4 BRAND NAME OF THIS GUN. HOWEVER, THE SERIAL NUMBER THAT I
5 READ TO YOU IS ON THE BOTTOM OF THE BARREL. THAT'S WHY IT'S
6 NOT VISIBLE HERE. IT'S ON THE UNDERSIDE OF THAT BARREL.

7 Q. AND THEN JUST FOR SIMPLIFICATION, STATE'S EXHIBIT 48?

8 A. THIS WOULD BE THE DOO RAG, AS WE CALL IT, THE SILKY-TYPE
9 SCARF, HEAD SCARF, THAT WAS RECOVERED FROM THE RESIDENCE ON
10 SALEM.

11 Q. OKAY. AND STATE'S EXHIBIT NUMBER 47.

12 A. THIS WOULD BE A PHOTOGRAPH THAT I TOOK OF THE PANTS
13 AFTER I GOT THEM BACK TO THE POLICE DEPARTMENT IN OUR LAB, IN
14 OUR FINGERPRINT LAB, THE BLACK PANTS WITH THE GRAY-AND-WHITE
15 STRIPE DOWN THE SIDE RECOVERED FROM SALEM.

16 Q. OKAY. NOW, LIEUTENANT NESBITT, WHEN YOU TOOK THE
17 FIREARM INTO YOUR CUSTODY, WHAT, IF ANY TESTS DID YOU PERFORM
18 ON THE FIREARM?

19 A. ONCE I TOOK THE HANDGUN TO THE POLICE DEPARTMENT AND
20 PHOTOGRAPHED IT, WHAT WE NORMALLY CALL PROCESSING IT FOR
21 FINGERPRINTS -- WHICH BASICALLY MEANS THAT I USE FINGERPRINT
22 POWDER TO -- AND WIPE IT ON THE SURFACE OF THE GUN TO TRY TO
23 DETERMINE IF THERE WERE ANY FINGERPRINTS FOR IDENTIFICATION
24 ON THE WEAPON. I ALSO FINGERPRINTED THE BULLETS ONCE I
25 REMOVED THEM FROM THE GUN.

1 Q. WERE YOU ABLE TO LOCATE ANY FINGERPRINTS?

2 A. NO, SIR. THERE WERE NO FINGERPRINTS OF IDENTIFICATION
3 VALUE FOUND ON THE GUN OR THE BULLETS. WHAT THAT MEANS IS
4 THAT, AS I MENTIONED EARLIER, ANY TIME YOU HAVE A RESIDUE ON
5 YOUR HAND AND YOU TOUCH A SURFACE, YOU MAY -- IF YOU EXAMINE
6 IT FOR FINGERPRINTS BY PUTTING POWDER ON IT, YOU MAY SEE SOME
7 RESIDUE FROM THAT TRANSFER FROM YOUR HAND. QUITE OFTEN, IT'S
8 NOT ACTUALLY IN A FORM THAT WOULD REALLY BE OF ANY VALUE FOR
9 IDENTIFICATION. IN OTHER WORDS, IT DOESN'T REALLY LOOK LIKE
10 A FINGERPRINT, BUT IT IS A SMUDGE OR A SMEAR OR SOME TYPE OF
11 RESIDUE THAT WAS PUT THERE BY A HAND OR A FINGER. AND SO IF
12 THERE'S NOTHING BUT A SMUDGE THERE, IF THERE'S NOTHING THAT
13 WOULD HAVE HAD ANY VALUE FOR IDENTIFICATION THAT WOULDN'T
14 HELP YOU IN DETERMINING WHO LEFT IT THERE, THEN NORMALLY WE
15 DON'T PUT THOSE INTO EVIDENCE, IF WE CAN TELL THAT. IF THERE
16 ARE ANY PARTIAL PRINTS LIFTED THAT MAY OR MAY NOT BE OF VALUE
17 ONCE YOU STUDY THEM UNDER AN ENLARGED -- WITH AN ENLARGED
18 PHOTO OR WITH A MICROSCOPE - I'M SORRY, NOT A MICROSCOPE BUT
19 A MAGNIFYING GLASS - THEN WE WOULD KEEP THOSE PRINTS, TURN
20 THEM IN TO EVIDENCE, AND HAVE THEM EXAMINED BY AT LEAST TWO
21 FINGERPRINT EXAMINERS TO DETERMINE IF THEY COULD BE
22 IDENTIFIED. IN THIS CASE THERE WERE NO RIDGE DETAILS OR NO
23 FINGERPRINTS OF IDENTIFICATION VALUE RECOVERED ON EITHER THE
24 GUN OR THE BULLET WHICH IS NOT UNUSUAL.

25 Q. SO THERE WERE NO FINGERPRINTS FOUND FROM ANYONE---

1 A. THAT'S CORRECT.

2 Q. ---ON THAT GUN.

3 A. THAT'S CORRECT.

4 Q. OKAY. AND THERE WERE NO FINGERPRINTS FOUND FROM ANYONE
5 ON THOSE BULLETS.

6 A. THAT'S CORRECT.

7 Q. OKAY. IS IT UNUSUAL TO NOT FIND FINGERPRINTS?

8 A. IT'S NOT. IT'S BEEN MY EXPERIENCE DOING FINGERPRINTS,
9 AS I SAID EARLIER, FOR 14 YEARS: QUITE OFTEN YOU DON'T FIND
10 FINGERPRINTS. IT'S NOT LIKE YOU SEE ON T.V. THEY WOULD HAVE
11 TO BELIEVE, A LOT OF THESE POLICE SHOWS, THAT EVERY TIME
12 SOMEBODY TOUCHES SOMETHING YOU HAVE TO FIND FINGERPRINTS OR
13 IT MEANS IT'S BEEN WIPE DOWN. WELL, THAT'S NOT TRUE,
14 ALTHOUGH WHEN THEY WIPE IT DOWN, IT PROBABLY WILL GET RID OF
15 THE FINGERPRINTS. IT'S ALSO VERY LIKELY THAT SOMEBODY HAS
16 TOUCHED AN ITEM AND YOU STILL WON'T FIND THEIR FINGERPRINTS,
17 AND THERE'S VARIOUS REASONS. THERE'S NO ONE SCIENTIFIC
18 REASON WHY YOU DON'T FIND FINGERPRINTS SOMETIMES, BUT FROM
19 PRACTICAL EXPERIENCE, I KNOW FOR A FACT YOU JUST DON'T ALWAYS
20 FIND PRINTS ON ANY TYPE SURFACE EVEN THOUGH IT'S BEEN
21 HANDLED.

22 Q. AND WOULD THE CONDITION OF THE GUN MAKE A DIFFERENCE IN
23 YOUR ABILITY TO FIND ANY PRINTS?

24 A. IT COULD. IF THE SURFACE IS NOT VERY SMOOTH, THAT COULD
25 HAVE AN EFFECT ON IT. IF THE SURFACE HAS BEEN HANDLED AN

1 AWFUL LOT, SUCH AS A TELEPHONE RECEIVER OR A DOORKNOB, A LOT
2 OF TIMES YOU WON'T FIND IDENTIFIABLE PRINTS BECAUSE THERE'S A
3 BUILD-UP OF RESIDUE ON THERE IF IT'S NOT CLEANED REGULARLY.
4 AND SO WHEN YOU TOUCH IT, IT'S NOT REALLY CONDUCTIVE -- IT'S
5 NOT A GOOD SURFACE FOR THE RESIDUE TO STICK FROM YOUR HAND ON
6 TO BECAUSE MAYBE THERE'S A BUILD-UP OF SOME TYPE OF RESIDUE
7 ALREADY ON THERE. SO THERE ARE ACTUALLY NUMEROUS REASONS
8 THAT COULD BE RESPONSIBLE, BUT THE FACT IS YOU JUST DON'T
9 FIND FINGERPRINTS ALL THE TIME, EVEN THOUGH SOMEBODY HAS
10 TOUCHED SOMETHING, WHETHER OR NOT THEY'VE WIPED IT OFF.

11 Q. SO, FOR INSTANCE, IF SOMEONE WERE TO TOUCH A GUN AND
12 THEN SHOVE IT IN THEIR POCKET, WOULD THAT AFFECT YOUR ABILITY
13 TO GET PRINTS?

14 A. IT COULD. ONE OF THE REASONS YOU MIGHT NOT FIND PRINTS
15 IF THEY WERE THERE BEFORE IS IF SOMETHING RUBS AGAINST IT.
16 IF THEY PUT IT IN THEIR POCKET, THAT MAY SERVE JUST AS THOUGH
17 THEY WERE WIPING IT OFF AND IT WOULD BE THE SAME RESULTS.
18 ANY TIME THE SURFACE THAT A PRINT MAY BE ON BRUSHES OR RUBS
19 UP AGAINST SOMETHING, IT'S GOING TO REDUCE THE CHANCE OF
20 FINDING ANY FINGERPRINT AT ALL OR AT LEAST ANYTHING OF ANY
21 VALUE. I HAVE TOUCHED THAT GUN MYSELF AND I DIDN'T FIND ANY
22 -- YOU KNOW, I DIDN'T FIND ANYTHING THAT COULD PROVE THAT I
23 TOUCHED IT. I KNOW I TOUCHED IT SEVERAL TIMES BEFORE IT WAS
24 ACTUALLY...

25 MR. SPRATLIN: BEG THE COURT'S INDULGENCE FOR ONE

1 SECOND. THAT'S ALL THE QUESTIONS I HAVE RIGHT NOW, YOUR
2 HONOR.

3 THE COURT: MR. HASTIE?

4 MR. HASTIE: THANK YOU, YOUR HONOR.

5 CROSS-EXAMINATION

6 BY MR. HASTIE:

7 Q. GOOD MORNING, LIEUTENANT NESBITT.

8 A. GOOD MORNING, SIR.

9 Q. YOU SAID YOU HAVE 14 YEARS WITH THE SUMTER COUNTY POLICE
10 DEPARTMENT?

11 A. NO, SIR, 14 YEARS DOING FORENSICS.

12 Q. FORENSICS?

13 A. I'VE BEEN WITH THE DEPARTMENT FOR 25 YEARS ACTUALLY.

14 Q. OKAY. NOW, IN THIS PARTICULAR SITUATION YOU ARRIVED AT
15 THE LOCATION, 107 SALEM STREET, WITH THE GROUP THAT DID HAVE
16 A SEARCH WARRANT. IS THAT CORRECT?

17 A. I DON'T BELIEVE I ARRIVED THERE WITH THEM. I THINK I
18 MAY HAVE COME UP AFTER THEY GOT THERE, TO BE HONEST WITH YOU.
19 I KNOW I WAS NOT INVOLVED IN THE -- OR AT THE RESIDENCE AT
20 THE TIME OF THE ARREST. I CAME UP AFTERWARDS TO GO IN AND DO
21 THE SEARCH.

22 Q. OKAY. YOU'RE PRETTY SURE THEY DID HAVE A SEARCH WARRANT
23 AT THAT TIME.

24 A. I JUST KNOW THEY HAD ONE WHEN I WENT INTO THE HOUSE.

25 Q. THAT'S WHAT I MEANT.

1 A. YES, SIR. YES, SIR.

2 Q. SO, NOW, WHAT IS YOUR RESPONSIBILITY? ONCE YOU GET TO
3 THE HOUSE, WHAT IS YOUR RESPONSIBILITY?

4 A. MY RESPONSIBILITY IS TO ASSIST IN THE -- ACTUALLY THE
5 SEARCHING OF THE HOUSE, TO PHOTOGRAPH IT AND TO COLLECT
6 EVIDENCE AND TO TAKE THAT EVIDENCE INTO THE POLICE DEPARTMENT
7 AND EITHER FURTHER PROCESS IT, IF NECESSARY, OR PACKAGE IT
8 AND TURN IT IN TO THE EVIDENCE ROOM TO BE HELD FOR COURT OR
9 FOR THE DISPOSITION.

10 Q. OKAY. YOU TOOK A LOT OF PICTURES AT THIS LOCATION. IS
11 THAT CORRECT?

12 A. YES, SIR, QUITE A NUMBER.

13 Q. DO YOU HAVE ANY IDEA HOW MANY? ARE WE TALKING HUNDREDS
14 OF PICTURES? THOUSANDS OF PICTURES?

15 A. IT WOULD -- IT WOULD NOT HAVE BEEN HUNDREDS, BUT I DON'T
16 KNOW THE EXACT NUMBER.

17 Q. OKAY. OKAY. SO WHEN YOU ARRIVED AT THE HOUSE, ISN'T IT
18 YOUR -- ISN'T THE PROCEDURE THAT YOU TAKE PICTURES FIRST
19 BEFORE ANYBODY STARTS MOVING ANYTHING AROUND? IS THAT THE
20 PROPER PROCEDURE?

21 A. IF NOTHING HAS BEEN MOVED WHEN I GET THERE, THEN I DON'T
22 MOVE ANYTHING, UNLESS IT'S AN EMERGENCY-TYPE SITUATION, UNTIL
23 IT'S BEEN PHOTOGRAPHED.

24 Q. BUT THAT IS THE PROCEDURE. THEY SHOULD BE IN PLACE.
25 YOU TAKE THE PICTURES FIRST. THEN THEY PROCEED WITH THE

1 SEARCH.

2 A. USUALLY, UNLESS THERE'S A GOOD REASON NOT TO DO IT IN
3 THAT ORDER. YES, SIR.

4 Q. OKAY. DID YOU FIND THE GUN IN QUESTION?

5 A. I DID.

6 Q. YOU DID FIND IT? WHERE WAS THE GUN LOCATED?

7 A. THE GUN WAS ON THE BED UNDERNEATH A SHIRT ON TOP OF A
8 PAIR OF DARK SHORTS BUT UNDER A SHIRT SO THAT I DID NOT SEE
9 IT IN MY FIRST PHOTOGRAPH OF THE BED. I HAD TO MOVE THE
10 SHIRT TO SEE THE GUN.

11 Q. OKAY. AND WHEN YOU FOUND THE GUN, WHAT DID YOU DO? DID
12 YOU PICK IT UP?

13 A. I PHOTOGRAPHED IT FIRST IN PLACE WHERE I FOUND IT WHICH
14 IS MY NORMAL PROCEDURE, AND THEN I COLLECTED THE GUN.

15 Q. OKAY. HOW DO YOU COLLECT THE GUN? THERE'S A LOT OF US
16 THAT WATCH TELEVISION. I SEE THEM WITH RUBBER GLOVES AND
17 PLASTIC BAGS.

18 A. RIGHT. I WILL PICK IT UP AND USUALLY I'LL HAVE GLOVES
19 ON. I PICK IT UP, BUT WHETHER I'VE GOT ON GLOVES OR NOT,
20 THOUGH, I WILL PICK UP THE GUN USUALLY BY AN AREA THAT'S
21 LEAST LIKELY TO RENDER FINGERPRINTS. IN OTHER WORDS, IF
22 THERE'S AN AREA THAT'S NOT REALLY SMOOTH, IF THERE'S A
23 CHECKERED AREA OR AN UNEVEN SURFACE, THERE'S A LESSER CHANCE
24 OF FINDING A PRINT THERE, SO I WILL TOUCH IT THERE. THE
25 REASON I SAY THAT IS: EVEN WITH GLOVES ON, YOU CAN ACTUALLY

1 LEAVE A FINGERPRINT ON AN ITEM. SO THAT'S SOMETHING ELSE
2 THAT T.V. IS MISLEADING ABOUT. SO JUST BECAUSE YOU WEAR
3 GLOVES DOESN'T MEAN YOU WON'T LEAVE A FINGERPRINT ON AN ITEM
4 NECESSARILY.

5 Q. DID YOU HAVE GLOVES ON THIS DAY?

6 A. I DON'T REMEMBER FOR SURE, BUT I PROBABLY DID BECAUSE
7 IT'S MY GENERAL PRACTICE TO DO SO.

8 Q. OKAY. CAN YOU DEMONSTRATE TO THE JURY HOW YOU PICKED UP
9 THIS PARTICULAR GUN SAFELY?

10 A. I CAN'T SAY FOR SURE; NO, SIR. BUT I CAN TELL YOU HOW
11 NORMALLY I WOULD, AND SO THIS IS THE GREATEST LIKELIHOOD THAT
12 I WOULD HAVE PICKED IT UP BY JUST HOLDING THE EDGE OF THE
13 GRIP. THE GRIP IS NOT A REAL SMOOTH SURFACE AND WOULD NOT BE
14 AS LIKELY TO YIELD AN IDENTIFIABLE FINGERPRINT AS THE SMOOTH
15 PART OF IT. SO USUALLY I WOULD PICK IT UP BY AN AREA SUCH AS
16 THAT. SO THAT'S MOST LIKELY HOW I PICKED IT UP, BUT I CAN'T
17 SAY 100 PERCENT.

18 Q. I WOULD THINK IF SOMEONE WAS HOLDING A GUN THAT THEIR
19 PALM PRINT WOULD BE ON THE HANDLE THAT YOU JUST PICKED UP.

20 A. WELL, IT'S JUST LIKE I JUST SAID: THAT WOULD BE LESS
21 LIKELY TO YIELD AN IDENTIFIABLE PRINT ON THIS AREA THAN THE
22 SMOOTH AREA. I'M NOT SAYING IT'S IMPOSSIBLE; I'M JUST SAYING
23 IT'S LESS LIKELY.

24 Q. LESS LIKELY.

25 A. YES, SIR.

1 Q. THANK YOU. YOU TALKED ABOUT -- SO THERE WERE NO
2 FINGERPRINTS OF VALUE, I THINK YOU SAID.

3 A. THAT'S CORRECT.

4 Q. NO FINGERPRINTS OF VALUE. SO THERE WERE SOME
5 FINGERPRINTS ON THE GUN:

6 A. NO, SIR, I'M NOT SAYING THAT. WHAT I'M SAYING IS:
7 BECAUSE THERE WERE NO FINGERPRINTS TURNED IN TO THE EVIDENCE
8 ROOM, THEN I KNOW THAT I DIDN'T SEE ANYTHING THAT WAS --
9 COULD BE CONSIDERED OF ANY VALUE TO TRY TO DETERMINE WHO IT
10 BELONGED TO. SO THAT MEANS THERE COULD HAVE BEEN SOME
11 SMUDGES OR SMEARS, LIKE I TALKED ABOUT EARLIER, IN OTHER
12 WORDS, SOME RESIDUE THAT PROBABLY WAS TRANSFERRED FROM A HAND
13 OR A FINGER BUT NOTHING WITH ANY RIDGE DETAIL THAT COULD BE
14 LOOKED AT AND COMPARED TO DETERMINE WHO IT BELONGED TO.
15 THAT'S WHAT I MEAN WHEN I SAY NONE OF ANY VALUE.

16 Q. OKAY. YOU MENTIONED A SERIAL NUMBER EARLIER THAT WAS ON
17 THE GUN.

18 A. YES, SIR.

19 Q. THAT'S ON YOUR PAPERWORK THERE.

20 A. THAT'S CORRECT.

21 Q. DID YOU RUN THE SERIAL NUMBER OR CHECK ON THE SERIAL
22 NUMBER TO SEE WHO THE GUN BELONGED TO?

23 A. NO, SIR, I DIDN'T. THAT WOULD NOT NORMALLY BE MY JOB TO
24 DO ONCE I COLLECT IT. THAT WOULDN'T BE SOMETHING I WOULD DO.
25 NORMALLY SOMEONE ELSE IN THE INVESTIGATION PROCESS WOULD DO

1 THAT.

2 Q. DO YOU KNOW WHETHER OR NOT ANYONE RAN THE SERIAL NUMBER
3 ON THIS PARTICULAR GUN TO SEE WHO IT BELONGED TO?

4 A. I DON'T KNOW, SIR.

5 Q. NOW, AT THE HOUSE YOU TOOK MANY PICTURES. I DID SEE A
6 PICTURE OF MISS PRINCE, THE BLACK LADY THAT WAS IN THE HOUSE.
7 DID YOU TAKE A PICTURE OF HER?

8 A. I REALLY DON'T RECALL. I'LL BE GLAD TO LOOK BACK
9 THROUGH THEM AND SEE IF THERE WAS -- IF SHE WAS IN ONE OF THE
10 PICTURES, BUT I DON'T RECALL.

11 Q. DO YOU HAVE THE PICTURES THERE THAT YOU CAN GO BACK AND
12 TAKE A LOOK?

13 A. I'VE GOT SOME OF THEM HERE. ACTUALLY THESE ARE ALL JUST
14 FROM THE STORE. I WOULD NEED TO SEE THE PHOTOGRAPHS FROM THE
15 APARTMENT.

16 Q. BUT NORMALLY IF SOMEONE WAS IN THE HOUSE YOU WOULD TAKE
17 A PICTURE OF THAT PERSON.

18 A. NOT NECESSARILY, NO, SIR, UNLESS THERE WAS SOME REASON
19 THAT IT WAS IMPORTANT FOR ME TO TAKE THEIR PICTURE. I WOULD
20 NOT NECESSARILY DO SO.

21 MR. HASTIE: COURT'S INDULGENCE, YOUR HONOR.

22 THE COURT: YES, SIR.

23 MR. HASTIE: YOUR HONOR, MAY I APPROACH?

24 THE COURT: WHAT NUMBER?

25 MR. HASTIE: THERE IS NO NUMBER ON THIS ONE.

1 THE COURT: I'M SORRY. ALL RIGHT. GO AHEAD.

2 BY MR. HASTIE:

3 Q. DID YOU TAKE THIS PARTICULAR PICTURE?

4 A. YES, SIR.

5 Q. YOU DID TAKE THIS PARTICULAR PICTURE?

6 A. I WOULD HAVE TAKEN IT. ALL THESE PICTURES FROM THE
7 RESIDENCE I WOULD HAVE BEEN THE ONE TO TAKE THEM, YES, SIR.

8 Q. WHO IS THIS A PICTURE OF?

9 A. THIS IS -- ACTUALLY IT'S WHAT WE CALL A DISTANT PHOTO.
10 THAT WAS NOT A PICTURE INTENDED TO SHOW THIS LADY FOR ANY
11 PARTICULAR REASON. SHE JUST HAPPENED TO BE IN THE AREA THAT
12 I WAS PHOTOGRAPHING MY OVERALL PICTURE. THAT WOULD BE AN
13 OVERALL PICTURE OF THAT AREA OF THAT -- OF THE DEN, THE FIRST
14 ROOM YOU WALKED INTO.

15 Q. SO NOW -- BUT YOU DO KNOW THAT THIS LADY WAS AT THE
16 HOUSE OBVIOUSLY WHEN YOU STARTED TAKING PICTURES.

17 MR. SPRATLIN: YOUR HONOR, I'M GOING TO OBJECT TO THE
18 DEFENDANT USING -- THE DEFENSE ATTORNEY USING PHOTOGRAPHS
19 WHICH ARE NOT INTO EVIDENCE AT THIS POINT. IF HE WISHES TO
20 QUESTION THE WITNESS ON IT---

21 THE COURT: WELL, IT CAN BE MARKED FOR I.D. AND NOT COME
22 IN, BUT YOUR OBJECTION IS OVERRULED.

23 MR. SPRATLIN: YES, YOUR HONOR.

24 THE COURT: HE CAN HANDLE THE CROSS IN THAT FASHION, SO
25 THAT'S OVERRULED. AND WOULD YOU REPEAT THE QUESTION, PLEASE,

1 MR. HASTIE? IS IT A CUSTOM TO TAKE PHOTOGRAPHS? THAT WAS
2 THE PREMISE OF IT.

3 MR. HASTIE: THAT'S RIGHT.

4 BY MR. HASTIE:

5 Q. IS IT YOUR CUSTOM TO TAKE PHOTOGRAPHS OF EVERYONE THAT'S
6 AT A SCENE OR IN THE APARTMENT WHEN YOU ARRIVE AS A FORENSIC
7 EXPERT?

8 A. AS I SAID A MOMENT AGO, NOT NECESSARILY. IF THERE'S NOT
9 A PARTICULAR REASON THAT THE INVESTIGATORS WORKING THIS CASE
10 FEEL LIKE IT'S IMPORTANT FOR ME TO PHOTOGRAPH THAT PERSON, I
11 MAY NOT PHOTOGRAPH THEM. AND IN THE PICTURE YOU SHOWED ME,
12 AS I SAID, THAT WAS NOT TAKEN BECAUSE SHE WAS IN THERE. IF
13 SHE WASN'T IN THERE, I WOULD HAVE HAD THE SAME PICTURE WITH
14 THE CHAIR EMPTY. SHE JUST HAPPENED TO BE SITTING IN THE AREA
15 THAT I NEEDED TO DOCUMENT WITH THE PHOTOGRAPH.

16 Q. DO YOU HAVE KNOWLEDGE THAT SHE WAS ONE OF THE THREE
17 PEOPLE THAT WERE APPREHENDED THAT NIGHT?

18 A. I DON'T. THE ONLY KNOWLEDGE I HAVE ABOUT HER BASICALLY
19 IS WHEN I WENT INSIDE TO DO MY PART IN THE SEARCH, SHE WAS IN
20 THE HOUSE.

21 Q. OKAY.

22 A. OTHER THAN THAT, I REALLY DON'T KNOW, SIR.

23 Q. NOW, IN YOUR PICTURE-TAKING, DID YOU TAKE ANY PICTURES
24 OF ANYTHING OUTSIDE THE HOUSE? I SEE THERE'S SEVERAL
25 PICTURES OF THE FRONT OF THE HOUSE.

1 A. YES, SIR. I WOULD HAVE TAKEN -- AND THAT'S NORMAL, TOO,
2 IS BEFORE I GO IN I'LL USUALLY TAKE SOME PICTURES OF THE
3 ENTRANCE OF THE RESIDENCE, TOO.

4 Q. OKAY. DID YOU TAKE ANY PICTURES OF MR. MASSEY, THE
5 OWNER OF THE HOUSE?

6 A. NO, SIR, I DIDN'T TAKE ANY PICTURES OF ANYBODY OTHER
7 THAN THE LADY THAT WAS IN THAT PICTURE THAT HAPPENED TO BE IN
8 THE RESIDENCE WHEN I WAS IN THERE.

9 Q. OKAY. WERE YOU -- ARE YOU AWARE -- WERE YOU AWARE THAT
10 THERE WERE THREE PEOPLE AT THE HOUSE AT THE TIME OF THE
11 SEARCH WARRANT BEING SERVED AND YOU ENTERING THE PREMISES?

12 A. NO, SIR. I HAD NO PERSONAL KNOWLEDGE OF THAT, ONLY WHAT
13 I'VE HEARD IN THE COURTROOM ACTUALLY ABOUT THAT.

14 Q. SO JUST IN MY FINAL QUESTIONS -- SO, IN REVIEW, YOU DID
15 NOT RUN THE SERIAL NUMBER AT ALL ON THIS PARTICULAR GUN.

16 A. THAT'S CORRECT. THAT WOULD NOT HAVE BEEN SOMETHING I
17 WOULD NORMALLY DO. SOMEONE ELSE WOULD DO THAT.

18 Q. SO WE HAVE NO IDEA -- YOU HAVE NO IDEA WHO THIS GUN
19 BELONGED TO.

20 A. I DON'T PERSONALLY; NO, SIR.

21 Q. AND AS FAR AS FINGERPRINTS ON THE GUN, THERE CERTAINLY
22 WEREN'T ANY FINGERPRINTS OF MR. MASSEY ON THE GUN.

23 A. NONE THAT I COULD FIND OF ANYONE'S, NO, SIR. THAT'S
24 CORRECT.

25 MR. HASTIE: THANK YOU. NO FURTHER QUESTIONS.

1 THE COURT: REDIRECT?

2 MR. SPRATLIN: BEG THE COURT'S INDULGENCE. NO REDIRECT,
3 YOUR HONOR.

4 THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN.

5 THE WITNESS: THANK YOU.

6 THE COURT: ALL RIGHT. IF YOU COULD RETURN THE...

7 BAILIFF: I'LL GET IT.

8 THE COURT: MR. SPRATLIN, YOU CAN CALL YOUR NEXT
9 WITNESS.

10 MR. SPRATLIN: YOUR HONOR, AT THIS TIME THE STATE WOULD
11 REST.

12 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THE STATE
13 HAS RESTED ITS CASE WHICH MEANS THE STATE HAS PRESENTED ALL
14 THE EVIDENCE THAT IT'S GOING TO PRESENT IN ITS CASE IN CHIEF.
15 THE RULES THAT WE HAVE REQUIRE ME TO TAKE A RECESS AT THIS
16 POINT. I'LL HAVE YOU BACK OUT SHORTLY. PLEASE DO NOT
17 DISCUSS CASE. YOU'VE NOT HEARD EVERYTHING THAT THERE IS TO
18 HEAR IN THE FORM OF HOW THE CASE IS PRESENTED UNDER OUR
19 RULES. SO IF YOU WOULD PLEASE GO TO YOUR JURY ROOM. I'LL
20 HAVE YOU BACK OUT MOMENTARILY.

21 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
22 10:37 A.M.)

23 THE COURT: ALL RIGHT. MR. HASTIE, MR. WILDER, ANY
24 MOTIONS AT THIS TIME?

25 MR. HASTIE: YES, YOUR HONOR. AT THIS TIME I WOULD LIKE

1 TO MAKE A MOTION FOR A DIRECTED VERDICT ON BEHALF OF THE
2 DEFENDANT BECAUSE I FEEL THAT THE STATE HAS NOT PROVED ALL
3 THE ELEMENTS OF THE CHARGES AGAINST MY PARTICULAR CLIENT. AS
4 FAR AS IDENTIFICATION IS CONCERNED, YOUR HONOR, EVEN TWO OF
5 THEIR OWN WITNESSES SAID THAT THEY WEREN'T SURE THAT MY
6 CLIENT WAS THE ONE THAT WAS IN THE STORE THAT DAY. YOU KNOW
7 MY CONCERN IS ABOUT ANY INFORMATION RECEIVED PURSUANT TO THE
8 ARREST WARRANT.

9 THE COURT: SEARCH WARRANT?

10 MR. HASTIE: THE SEARCH WARRANT. I'M SORRY. THAT THAT
11 WAS OBTAINED BY INFORMATION OF MR. SUMTER AND WE'VE TALKED
12 ABOUT THAT IN THE PAST. YOU'VE DENIED IT IN THE PAST, BUT I
13 STILL THINK THAT'S GROUNDS FOR A DIRECTED VERDICT IN THIS
14 PARTICULAR SITUATION. I THINK IT VIOLATES MY CLIENT'S RIGHT
15 TO REMAIN FREE UNDER THE FOURTH AMENDMENT. I THINK IT
16 VIOLATES HIS FOURTH AMENDMENT RIGHTS OF PROPER SEARCH AND
17 SEIZURE. SO AT THIS TIME I WOULD LIKE TO MOVE THAT WE BE
18 GRANTED A DIRECTED VERDICT.

19 THE COURT: ALL RIGHT. HOW ABOUT THE IN-COURT
20 IDENTIFICATION MADE BY MR. HUFF OF THE DEFENDANT? SAME
21 MOTION?

22 MR. HASTIE: SAME MOTION, YOUR HONOR.

23 THE COURT: AND THE -- YOU MENTIONED THE EVIDENCE SEIZED
24 FROM WHAT YOU CALLED THE IMPROPER SEARCH.

25 MR. HASTIE: YES, SIR.

1 THE COURT: THE IN-COURT IDENTIFICATION. HOW ABOUT THE
2 MOTION, EXCUSE ME, THE LIFE-WITHOUT-PAROLE NOTICE? TO THE
3 EXTENT THAT IS SOMETHING YOU WOULD MOVE FOR A DIRECTED
4 VERDICT ON, YOU REPEAT THAT AS WELL?

5 MR. HASTIE: YES, SIR, I DO, YOUR HONOR.

6 THE COURT: AND THE STATE -- STATEMENT GIVEN BY THE
7 DEFENDANT IN THE JACKSON VERSUS DENNO HEARING, YOU OBJECTED
8 SAYING THAT WAS NOT THE PRODUCT OF HIS FREE AND UNCONSTRAINED
9 WILL AND SO FORTH?

10 MR. HASTIE: YES, SIR, I DO.

11 THE COURT: ALL RIGHT. ALL RIGHT. ALL THOSE MOTIONS
12 ARE DENIED. I THINK THIS IS A JURY ISSUE. IT WILL BE UP TO
13 THE JURY TO DETERMINE WHETHER OR NOT THE STATE HAS PROVEN ALL
14 THE ELEMENTS OF THE CRIME BEYOND A REASONABLE DOUBT. MY
15 EARLIER RULINGS ON THE IDENTIFICATION, THE SEARCH WARRANT,
16 AND THE LIFE WITHOUT PAROLE NOTICE STILL STAND, AND IT'S ALSO
17 A JURY ISSUE AS TO WHETHER OR NOT THE WITNESS'S, EXCUSE ME,
18 THE DEFENDANT'S STATEMENT WAS GIVEN VOLUNTARILY AND SO FORTH,
19 AND THE JURY WILL BE CHARGED APPROPRIATELY ON THAT. ALL
20 RIGHT. ANYTHING ELSE, MR. HASTIE, ON -- AS FAR AS DIRECTED
21 VERDICT MOTIONS ARE CONCERNED?

22 MR. HASTIE: NONE, YOUR HONOR.. I WOULD LIKE TO RENEW
23 THE MOTION MADE EARLIER FOR A MISTRIAL ON THE SAME GROUNDS.

24 THE COURT: ALL RIGHT. THAT MOTION IS DENIED. ALL
25 RIGHT. COME ON UP, PLEASE, MR. MASSEY. COME ON AROUND AND

1 THE VERDICT IS I DON'T WANT THERE TO BE ANY VISUAL OR AUDIBLE
2 -- VISIBLE OR AUDIBLE RESPONSE TO WHAT THE VERDICT IS. ALL
3 RIGHT. YOU CAN BRING IN THE JURY.

4 (WHEREUPON, THE JURY RETURNED TO OPEN COURT WITH A
5 VERDICT AT 2:03 P.M.)

6 THE COURT: ALL RIGHT. MR. FOREMAN, HAS THE JURY
7 REACHED A VERDICT?

8 FOREMAN: WE HAVE, YOUR HONOR.

9 THE COURT: AND IS IT UNANIMOUS?

10 FOREMAN: YES, IT IS, SIR.

11 THE COURT: YOU CAN HAND THE FORM TO MR. HERRING. ALL
12 RIGHT. MR. MASSEY, IF YOU COULD PLEASE STAND. MR. HERRING,
13 YOU CAN PUBLISH THE VERDICT.

14 THE CLERK: CASE NUMBER 2008-GS-43-0853, THE STATE OF
15 SOUTH CAROLINA VERSUS ANDRE M. MASSEY. AS TO COUNT ONE AS TO
16 THE CHARGE OF ARMED ROBBERY: WE, THE JURY, UNANIMOUSLY FIND
17 THE DEFENDANT GUILTY. AS TO COUNT TWO AS TO THE CHARGE OF
18 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
19 CRIME: WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT GUILTY,
20 SIGNED HARRY LASH, FOREPERSON, DATED AUGUST THE 5TH, 2009.
21 IF THIS BE YOUR VERDICT, SO SAY YOU ALL BY RAISING YOUR RIGHT
22 HAND. THANK YOU.

23 THE COURT: ALL RIGHT. Y'ALL CAN HAVE A SEAT. ANY --
24 ANY MATTERS BEFORE THE JURY IS DISCHARGED? FROM THE STATE?

25 MR. SPRATLIN: NONE, YOUR HONOR.

1 RELEASED THIS WEEK AS YOU -- AS YOU THINK IS APPROPRIATE.
2 ALL RIGHT. IF ANYONE WOULD LIKE TO LEAVE AT THIS TIME WHILE
3 THE SENTENCING IS CONDUCTED, YOU MAY LEAVE AT THIS TIME OR
4 YOU CAN STAY IN THE JURY BOX IF YOU WOULD LIKE.

5 ALL RIGHT. OKAY. MR. SPRATLIN AND MR. HASTIE, ARE YOU
6 READY TO PROCEED TO SENTENCING?

7 MR. SPRATLIN: YES, YOUR HONOR.

8 THE COURT: ALL RIGHT. MR. HASTIE?

9 MR. HASTIE: YES, YOUR HONOR.

10 THE COURT: ALL RIGHT. UNDER -- UNDER THE RULES - I
11 BELIEVE IT'S RULE 29 -- LOOK AT THOSE RULES, AND I WILL ALLOW
12 THE DEFENDANT 10 DAYS TO FILE ANY POST-TRIAL MOTIONS.

13 MR. HASTIE: THANK YOU.

14 THE COURT: MAKE SURE THAT YOU READ -- I THINK IT'S
15 29(A) THAT SAYS IT HAS TO BE DONE WITHIN 10 DAYS, AND I
16 CAUTION YOU TO MAKE SURE THAT YOU DON'T FILE ANY NOTICE OF
17 APPEAL PRIOR TO FILING OR EVEN AFTER FILING THE POST-TRIAL
18 MOTIONS BECAUSE THEN THE COURT LOSES JURISDICTION. ALL
19 RIGHT. MR. SPRATLIN?

20 MR. SPRATLIN: YES, YOUR HONOR. AS YOU KNOW, YOUR
21 HONOR, WE'VE ALREADY ENTERED SEVERAL OF THE ISSUES OF
22 SENTENCING INTO EVIDENCE AS COURT'S EXHIBITS DURING THE
23 PRETRIAL, SO LET ME FIND THE APPROPRIATE ONES.

24 THE COURT: MR. HASTIE, I WILL TAKE NOTICE AT THIS TIME
25 IN THE SENTENCING PHASE THAT YOU ARE CONTESTING IMPOSITION OF

1 A SENTENCE UNDER 17-25-45 IN LIGHT OF YOUR EARLIER MOTION TO
2 QUASH THAT NOTICE?

3 MR. HASTIE: YES, SIR.

4 THE COURT: THAT MAY ALSO BE PART OF YOUR POST-TRIAL
5 MOTIONS, BUT SINCE YOU'VE ADEQUATELY RAISED IT IN THE
6 PRETRIAL PROCEEDINGS, I DO TAKE NOTICE THAT YOU ARE
7 CONTESTING THE FORM OF THE NOTICE ITSELF, THE TERMINOLOGY
8 USED IN THE NOTICE---

9 MR. HASTIE: RIGHT.

10 THE COURT: ---AND ALSO THE FACT THAT IT WAS NOT
11 PROPERLY SERVED AND THAT YOU AND YOUR CLIENT DID NOT HAVE
12 PROPER NOTICE AND ANY OTHER ARGUMENTS THAT YOU WANT TO RAISE.
13 I'M NOT CUTTING YOU OFF. I'M JUST ANTICIPATING WHAT YOU
14 MIGHT SAY.

15 MR. HASTIE: YES, SIR.

16 THE COURT: ALL RIGHT. MR. SPRATLIN?

17 MR. SPRATLIN: YOUR HONOR, THE FIRST EXHIBIT I WOULD
18 HAVE FOR THE COURT IN REGARDS TO SENTENCING HAS ALREADY BEEN
19 MARKED AS COURT'S EXHIBIT NUMBER 5 EARLIER. IT IS THE NOTICE
20 OF INTENTION TO SEEK LIFE IMPRISONMENT. AS YOUR HONOR IS
21 AWARE, 17-25-45, I BELIEVE IT IS -- LET ME MAKE SURE I'M
22 PULLING THE RIGHT STATUTE ON THAT.

23 THE COURT: IT IS. THAT'S THE RIGHT ONE.

24 MR. SPRATLIN: THAT ALLOWS AND ACTUALLY REQUIRES THE
25 STATE TO SEEK LIFE IMPRISONMENT FOR CERTAIN OFFENDERS UNDER

1 THE RECIDIVIST STATUTE. NAMELY, YOUR HONOR, ARMED ROBBERY IS
2 A MOST SERIOUS OFFENSE, AND THE STATUTE REQUIRES THAT ANYONE
3 CONVICTED OF A PRIOR MOST SERIOUS OFFENSE, IN THIS CASE THE
4 DEFENDANT HAVING BEEN CONVICTED OF ONE COUNT OF BURGLARY
5 FIRST DEGREE BACK IN 2 -- BACK IN 1995, OCTOBER 17, 1995, IS
6 THE DATE ON THE SENTENCING SHEET, YOUR HONOR, AND I'LL HAND
7 UP A CERTIFIED COPY OF THAT CONVICTION, COURT'S EXHIBIT
8 NUMBER 4.

9 HE WAS CONVICTED ON THE SAME DATE OF ANOTHER COUNT OF
10 BURGLARY IN THE FIRST DEGREE. I HAVE A COPY OF THE CERTIFIED
11 -- A COPY OF THE CERTIFIED CONVICTION OF THAT AS WELL, YOUR
12 HONOR, COURT'S EXHIBIT NUMBER 3. AND LASTLY, YOUR HONOR, THE
13 DEFENDANT HAS ALSO BEEN CONVICTED OF FIVE COUNTS OF
14 KIDNAPPING AND ONE COUNT OF ASSAULT AND BATTERY WITH INTENT
15 TO KILL. THAT WAS ON THE SAME DATE AS THOSE BURGLARY IN THE
16 FIRST DEGREES, YOUR HONOR: OCTOBER 17, 1995. I HAVE THE
17 CERTIFIED COPY OF THOSE CONVICTIONS, CERTIFIED WITH A RAISED
18 SEAL AS ALL THE CONVICTIONS ARE.

19 THUS, YOUR HONOR, UNDER THE LAWS OF THE STATE OF SOUTH
20 CAROLINA -- IN ADDITION, YOUR HONOR, LET ME GO AHEAD AND
21 INTRODUCE THE COPY OF THE CERTIFICATE OF SERVICE OR PROOF OF
22 SERVICE FILLED OUT BY MS. CAROLINE SANDERS STATING THAT SHE
23 FIRST BEING DULY SWORN DEPOSES -- STATES THAT SHE DID SERVE
24 THE NOTICE OF INTENTION TO SEEK LIFE IMPRISONMENT UPON THE
25 DEFENDANT, ANDRE MASSEY, BY PERSONALLY DELIVERING A COPY OF

1 THE SAME TO THE DEFENDANT AT THE KERSHAW CORRECTIONAL
2 INSTITUTE LOCATED AT 4848 GOLD MINE HIGHWAY, KERSHAW, SOUTH
3 CAROLINA, 29067. THAT IS SIGNED BY HER, YOUR HONOR, AND IT
4 WAS SWORN TO AND AFFIRMED BEFORE A NOTARY, CATHERINE A. AMOSA
5 - I BELIEVE THAT'S THE WAY HER NAME IS PRONOUNCED - WHOSE
6 COMMISSION EXPIRES BACK ON DECEMBER 22ND, 2018. IT'S ALREADY
7 BEEN MARKED AS COURT'S EXHIBIT NUMBER 6.

8 THE COURT: ALL RIGHT. AND I BELIEVE IN THE PRETRIAL
9 THE DEFENDANT TESTIFIED THAT HE HAD RECEIVED THAT NOTICE.

10 MR. HASTIE: YES, SIR.

11 MR. SPRATLIN: YES, YOUR HONOR. AND THERE'S ALSO, YOUR
12 HONOR, ANOTHER CERTIFIED COPY FROM THE CLERK'S OFFICE TITLED,
13 "ACCEPTANCE OF SERVICE OF NOTICE OF INTENT TO SEEK LIFE
14 IMPRISONMENT. RECEIPT OF SERVICE ACKNOWLEDGMENT. RECEIPT
15 FOR THE ABOVE-REFERENCED NOTICE OF INTENT TO SEEK LIFE
16 IMPRISONMENT IN THE ABOVE-CAPTIONED CASE IS HEREBY
17 ACKNOWLEDGED THIS 30TH DAY OF JUNE 2009." IT'S SIGNED FOR BY
18 AN EMPLOYEE OF THE PUBLIC DEFENDER'S OFFICE FOR MR. HASTIE.
19 IT IS A CERTIFIED, TRUE, AND ACCURATE COPY. IT HAS ALREADY
20 BEEN MARKED AS COURT'S EXHIBIT NUMBER 7.

21 THE COURT: ALL RIGHT. AND, MR. HASTIE, WHAT WAS YOUR
22 POSITION AS TO WHETHER OR NOT YOU RECEIVED THE NOTICE?

23 MR. HASTIE: I DID RECEIVE THE NOTICE, YOUR HONOR.

24 THE COURT: ALL RIGHT. OKAY. 17-25-45 STATES THAT
25 UNDER SUB H. WHEN THE SOLICITOR'S REQUIRED TO SEEK OR THE

1 ATTORNEY IS TO SEEK SENTENCING UNDER THIS SECTION, WRITTEN
2 NOTICE MUST BE GIVEN BY THE SOLICITOR TO THE DEFENDANT AND
3 THE DEFENDANT'S COUNSEL NOT LESS THAN 10 DAYS BEFORE TRIAL,
4 AND BASICALLY THOSE THINGS HAVE BEEN ACCOMPLISHED HERE. AND
5 JUST FOR THE RECORD, WE'LL NOTE THAT WE HAVE A TWO-STRIKES
6 LAW AND A THREE-STRIKES LAW.

7 THE TWO-STRIKES LAW IS WHAT WE -- FALLS UNDER THE
8 CATEGORY OF MOST SERIOUS, AND THE CODE SECTION DOES ESTABLISH
9 THAT KIDNAPPING AND BURGLARY AND ASSAULT AND BATTERY WITH
10 INTENT TO KILL ARE ALL MOST SERIOUS OFFENSES. SO THIS
11 CONVICTION OF ARMED ROBBERY WHICH IS ALSO A MOST SERIOUS
12 OFFENSE DOES CONSTITUTE A SECOND STRIKE, AND THAT REQUIRES
13 THE SOLICITOR TO SEEK LIFE IMPRISONMENT WITHOUT PAROLE.

14 THE DEFENDANT HAS EARLIER RAISED THE ISSUE THAT THE
15 NOTICE ITSELF SAID THAT THE STATE WAS SEEKING OR -- EXCUSE
16 ME. "THE STATE HEREBY NOTIFIES THE DEFENDANT OF THE STATE'S
17 INTENTION TO SEEK LIFE IMPRISONMENT." THE DEFENDANT'S
18 POSITION WAS THAT THE NOTICE DID NOT INCLUDE THE PROVISIO
19 "WITHOUT THE POSSIBILITY OF PAROLE." I'VE ALREADY RULED
20 THAT, SINCE THE NOTICE SAID OR INCLUDED THE TERMINOLOGY
21 PURSUANT TO S.C. CODE ANNOTATED SECTION 17-25-45, THAT THE
22 NOTICE WAS APPROPRIATE. THAT MAY WELL BE AN APPELLATE ISSUE,
23 BUT THAT JUST REPEATS MY EARLIER RULING WHICH I GUESS
24 PROBABLY WAS SOMETIME MONDAY OR TUESDAY. MR. HASTIE, DID I
25 STATE YOUR OBJECTION IN THAT REGARD CORRECTLY?

1 MR. HASTIE: YES, YOU DID, YOUR HONOR.

2 THE COURT: ALL RIGHT. IS THERE ANY OTHER OBJECTION TO
3 -- AT THIS STAGE TO THE PROPRIETY OF SENTENCING THE DEFENDANT
4 UNDER THAT CODE SECTION?

5 MR. HASTIE: NO, YOUR HONOR.

6 THE COURT: ALL RIGHT. ALL RIGHT. MR. SPRATLIN, IS
7 THERE ANYTHING ELSE THE STATE WANTS TO SAY ABOUT SENTENCING?

8 MR. SPRATLIN: NO, YOUR HONOR.

9 THE COURT: MR. HUFF, AS THE VICTIM, UNDER THE LAW DOES
10 HAVE THE RIGHT TO SPEAK EVEN THOUGH THE SENTENCING WOULD
11 APPEAR TO BE MANDATORY. SO, MR. HUFF -- MR. HUFF, YOU DO
12 HAVE THE RIGHT TO SPEAK UNDER THE LAW. YOU NEED NOT SPEAK IF
13 YOU DON'T WANT TO, BUT YOU CERTAINLY MAY. MY ONLY REQUEST OF
14 YOU IS THAT IF YOU DO SPEAK THAT YOU ADDRESS YOUR STATEMENTS
15 TO ME AND NOT TO THE DEFENDANT.

16 MR. HUFF: NOT AT THIS TIME, YOUR HONOR.

17 THE COURT: THANK YOU, SIR. ALL RIGHT. ANYTHING ELSE,
18 MR. SPRATLIN?

19 MR. SPRATLIN: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT. ANYTHING FROM THE DEFENSE OR THE
21 DEFENDANT BEFORE SENTENCING IS IMPOSED?

22 MR. HASTIE: JUST A MOMENT.

23 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN MR.
24 HASTIE AND MR. MASSEY.)

25 MR. HASTIE: NOTHING FROM THE DEFENDANT, YOUR HONOR. OF

1 COURSE, I WOULD LIKE TO RENEW ALL THE MOTIONS I MADE EARLY ON
2 ON THE FIRST DAY OF THIS TRIAL.

3 THE COURT: AND YOU'LL HAVE -- YOU'LL HAVE THE
4 ADDITIONAL 10 DAYS TO NOTE THOSE AGAIN, BUT ALL OF THOSE, AT
5 LEAST INSOFAR AS SENTENCING ARE CONCERNED, ARE DENIED. I
6 THINK IT'S -- IT WILL BE AN INTERESTING QUESTION AS TO
7 WHETHER OR NOT THE SPECIFIC TERMINOLOGY OF "WITHOUT THE
8 POSSIBILITY OF PAROLE" IS TECHNICALLY REQUIRED IF THE NOTICE
9 SAYS PURSUANT TO THAT CODE SECTION. THAT WILL BE FOR THE
10 APPELLATE COURT TO RESOLVE. MR. HASTIE, I THINK YOUR EARLIER
11 ARGUMENT WAS THAT THAT WAS SUFFICIENT.

12 MR. HASTIE: THIS IS CORRECT.

13 MR. SPRATLIN: YOUR HONOR, MR. SPRATLIN I BELIEVE YOU
14 MEAN.

15 THE COURT: WHAT DID I SAY?

16 MR. SPRATLIN: YOU SAID MR. HASTIE.

17 THE COURT: OKAY. WELL...

18 MR. SPRATLIN: YES, YOUR HONOR. WE FEEL THAT IT IS
19 SUFFICIENT, ESPECIALLY IN LIGHT OF THE RECENT CASE LAW THAT
20 SAYS THAT WRITTEN NOTICE IS NOT ACTUALLY REQUIRED. SIMPLE
21 ACTUAL NOTICE IS SUFFICIENT, BUT MOST IMPORTANTLY JAMES V.
22 STATE, 372 SOUTH CAROLINA 287, WHICH STATES IN PART: THE
23 PURPOSE OF 17-25-45(H) IS---

24 COURT REPORTER: WHOA. SLOW DOWN.

25 MR. SPRATLIN: I'M SORRY?

1 COURT REPORTER: SLOW DOWN.

2 THE COURT: IF YOU'RE READING FROM SOMETHING, WE CAN'T
3 LISTEN ANY FASTER.

4 MR. SPRATLIN: OKAY. YOUR HONOR, THE PURPOSE OF
5 17-25-45 (H) IS TO INSURE THAT A DEFENDANT AND HIS COUNSEL
6 HAVE ACTUAL NOTICE THAT THE STATE IS SEEKING A SENTENCE UNDER
7 THE RECIDIVIST STATUTE AT LEAST 10 DAYS PRIOR TO TRIAL.
8 ACCORDINGLY, SO LONG AS THE DEFENDANT AND HIS COUNSEL AT
9 LEAST 10 DAYS PRIOR TO TRIAL POSSESS ACTUAL NOTICE OF STATE'S
10 INTENTION TO SEEK A SENTENCE UNDER SOUTH CAROLINA RECIDIVIST
11 STATUTE, THE STATUTE HAS BEEN SATISFIED.

12 THE COURT: ALL RIGHT. OKAY. MR. MASSEY COULD YOU
13 PLEASE STAND, SIR. DO YOU HAVE A SENTENCING SHEET, MR.
14 SPRATLIN?

15 MR. SPRATLIN: YOUR HONOR, I ACTUALLY WILL HAVE ONE
16 PREPARED FOR YOU IN ONE SECOND.

17 THE COURT: ALL RIGHT. MR. MASSEY, UNDER THE CURRENT
18 STATE OF THE LAW, SOUTH CAROLINA CODE SECTION 17-25-45
19 REQUIRES THE STATE, THE SOLICITOR, TO GIVE YOU NOTICE OF LIFE
20 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE IF YOU'RE
21 CONVICTED OF THIS SECOND OR SUBSEQUENT MOST SERIOUS OFFENSE.
22 IN OTHER WORDS, THE STATE COULD NOT DO ANYTHING OTHER THAN
23 THAT. THE STATE HAS NO DISCRETION.

24 SO WHEN IT COMES TO ME UPON YOUR FINDING -- THE JURY
25 FINDING YOU GUILTY OF THIS CHARGE, I TAKE NO PLEASURE IN

1 DOING IT, BUT I'M REQUIRED BY LAW TO COMMIT YOU TO THE SOUTH
2 CAROLINA DEPARTMENT OF CORRECTIONS FOR THE BALANCE OF YOUR
3 LIFE WITHOUT THE POSSIBILITY OF PAROLE. YOU CAN CONSULT WITH
4 YOUR ATTORNEYS ABOUT THE POST-TRIAL MOTIONS AND ANY APPELLATE
5 ISSUES, BUT THOSE WILL BE HANDLED IN THE ORDINARY COURSE OF
6 THE PROCEDURE, BUT I WILL SIGN A SENTENCING SHEET THAT DOES
7 IMPOSE THAT LIFE SENTENCE WITHOUT PAROLE.

8 AND THAT, AGAIN, JUST FOR THE RECORD IS IN LIGHT OF YOUR
9 EARLIER CONVICTIONS FOR BURGLARY IN THE FIRST DEGREE WHICH
10 WAS OCTOBER 17, 1995, THE SAME DATE A CONVICTION OF ASSAULT
11 AND BATTERY WITH INTENT TO KILL, KIDNAPPING, KIDNAPPING AGAIN
12 AND ANOTHER COUNT OF KIDNAPPING, ANOTHER COUNT OF KIDNAPPING
13 AND ANOTHER COUNT OF KIDNAPPING. I WILL SIGN THAT SENTENCING
14 SHEET, MR. SPRATLIN.

15 MR. SPRATLIN: YES, YOUR HONOR. I'M PREPARING ONE RIGHT
16 NOW AS WE SPEAK. I JUST NEED TO CHECK THESE C.D.R. CODES.

17 THE COURT: ALL RIGHT. OKAY. ANYTHING AT THIS TIME,
18 MR. HASTIE?

19 MR. HASTIE: NOTHING, YOUR HONOR.

20 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. ALL RIGHT.
21 LADIES AND GENTLEMEN, WE'LL ALLOW THE DEFENDANT TO LEAVE THE
22 COURTROOM. MR. HASTIE, YOU AND MR. WILDER CAN CONSULT WITH
23 HIM ABOUT THE MOTIONS AND SO FORTH.

24 (PAUSE IN PROCEEDINGS.)

25 THE COURT: SENTENCING FOR POSSESSION OF A WEAPON DURING

1 THE COMMISSION OF A VIOLENT CRIME IS NOT POSSIBLE UNDER THAT
2 STATUTE, 16-23-490, BECAUSE SUBSECTION A. SAYS THE FIVE-YEAR
3 SENTENCE DOES NOT APPLY IN CASES WHERE THE DEATH PENALTY OR A
4 LIFE SENTENCE WITHOUT PAROLE IS IMPOSED. SO I'M MARKING THE
5 SENTENCING SHEET. HE'S COMMITTED TO THE DEPARTMENT OF
6 CORRECTIONS FOR A DETERMINATE TERM OF NOT APPLICABLE, AND
7 THEN AT THE BOTTOM I'LL WRITE, "PURSUANT TO S.C. CODE SECTION
8 16-23-490, NO SENTENCE IS IMPOSED."

9 MR. SPRATLIN: YES, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)
12
13
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25

WITNESSES

SUMTER PD

Doug Brannon

Rodney Wolfe

E 175147, 175149 & 175150
ARREST WARRANT NO.

4-26-95

ACTION OF GRAND JURY

*True Bill**Edwin E. [Signature]*
Foreman of Grand Jury

VERDICT

Petit Jury

Date:

DOCKET NO. 95-GS-43 636

The State of South Carolina,

County of SUMTER

COURT OF GENERAL SESSIONS

JUNE TERM 1995

THE STATE

VS.

DARRYL JOHNSON

ANDRE MASSEY

Indictment for

BURGLARY FIRST DEGREE,
GRAND LARCENY &
CRIMINAL CONSPIRACYCERTIFIED TRUE COPY
OF ORIGINAL FILED*James C. Campbell*CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

INDICTMENT FOR

BURGLARY - FIRST DEGREE, GRAND LARCENY &
CRIMINAL CONSPIRACY

At a Court of General Sessions, convened on June 19, 1995

the Grand Jurors of Sumter County present upon their oath:

COUNT ONE - BURGLARY - FIRST DEGREE

That one DARRYL JOHNSON and one ANDRE MASSEY did in Sumter County on or about October 20, 1994, wilfully and unlawfully enter the dwelling of Rodney Wolfe without consent and with intent to commit a crime therein, and the defendants entered or remained therein in the nighttime, in violation of S.C. Code § 16-11-311, as amended.

COUNT TWO - GRAND LARCENY

That one DARRYL JOHNSON and one ANDRE MASSEY did in Sumter County on or about October 20, 1994, feloniously take and carry away the personal goods of Rodney Wolfe, of the value of more than Five Thousand Dollars, described as follows: electronics and other personal property, with intent to deprive the owner permanently of such property.

COUNT THREE - CRIMINAL CONSPIRACY

That DARRYL JOHNSON and ANDRE MASSEY did in Sumter County on or about October 20, 1994, unlawfully and wilfully unite, combine, conspire, confederate, agree and have tacit understanding with each other and/or with other persons, whose names are unknown to the Grand Jurors, for the purpose of stealing the property of Rodney Wolfe and selling it, in violation of S.C. § 16-17-410, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Wade A. Kolb, Jr.
SOLICITOR GENERAL

CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

WITNESSES

SUMTER PD

Eugene Williams

Nichelle Myers

Devonne Myers

Eric Dinkins

Jacquetta Myers

Raheem Myers

ARREST WARRANT NO.

D 768566
E 540327-28
E 540332-34

3-23-94

ACTION OF GRAND JURY

Tamm Bill

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO.

95-GS-43 587

The State of South Carolina,

County of SUMTER

COURT OF GENERAL SESSIONS

JUNE

TERM 1995

THE STATE

VS.

✓ ANDRE M. MASSEY

Indictment for

ASSAULT & BATTERY WITH INTENT TO KILL,
POSSESSION OF WEAPON DURING VIOLENT
CRIME & KIDNAPPING - FIVE COUNTS

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER) - FIVE COUNTS

INDICTMENT FOR ASSAULT & BATTERY WITH INTENT TO KILL,
POSSESSION OF WEAPON DURING VIOLENT CRIME & KIDNAPPING

At a Court of General Sessions, convened on June 19, 1995, teh Grand Jurors of Sumter County present upon their oath:

COUNT ONE - ASSAULT & BATTERY WITH INTENT TO KILL

That one ANDRE M. MASSEY did in Sumter County on or about March 20, 1995, with malice aforethought commit an assault and battery upon one Nichelle Myers by shooting the victim with a deadly weapon, to wit: .32 caliber revolver with intent to kill the said victim, in violation of S.C. Code § 16-3-620.

COUNT TWO - POSSESSION OF WEAPON DURING VIOLENT CRIME

That one ANDRE M. MASSEY did in Sumter County on or about March 20, 1995, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: .32 caliber revolver, in violation of § 16-23-490, Code of Laws of South Carolina, (1976), as amended.

COUNT THREE - KIDNAPPING

That one ANDRE M. MASSEY did in Sumter County on or about March 20, 1995, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Nichelle Myers without authority of law and by force with the use of a deadly weapon, to wit: .32 caliber revolver, in violation of § 16-3-910, South Carolina Code of Laws (1976), as amended.

COUNT FOUR - KIDNAPPING

That one ANDRE M. MASSEY did in Sumter County on or about March 20, 1995, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Devonne Myers without authority of law and by force with the use of a deadly weapon, to wit: .32 caliber revolver, in violation of § 16-3-910, South Carolina Code of Laws (1976), as amended.

WITNESSES

SHERIFF'S DEPT.

Dana Wingate

Ray McLessey

J. E. Slaton Larry Florence

Walters Black

Willard Massey

Susan Mabel Black

ARREST WARRANT NO.

Direct Presentment

ACTION OF GRAND JURY

True Bill 1/12/95

Edw E. [Signature]
Foreman of Grand Jury

VERDICT

Petit Jury

Date:

DOCKET NO. 95-GS-43 105

The State of South Carolina,

County of SUMTER

COURT OF GENERAL SESSIONS

JANUARY

TERM

1995

THE STATE

VS.

✓ ANDRE MAURICE MASSEY

Indictment for

BURGLARY - FIRST DEGREE,
PETIT LARCENY,
AGGRAVATED ASSAULT & BATTERY
& LARCENY OF VEHICLE

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James C. Campbell

CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

BURGLARY - FIRST DEGREE, PETIT LARCENY, AGGRAVATED ASSAULT
& BATTERY & LARCENY OF VEHICLE

At a Court of General Sessions, convened on January 16, 1995, the Grand Jurors of Sumter County present upon their oath:

COUNT ONE - BURGLARY - FIRST DEGREE

That one ANDRE MAURICE MASSEY did in Sumter County on or about August 22, 1994, wilfully and unlawfully enter the dwelling of Waiters Black without consent and with intent to commit a crime therein, and in effecting entry, while therein, or in immediate flight therefrom, the defendant caused physical injury to Waiter Black, to wit: struck the said victim with a stick, and the defendant entered or remained therein in the nighttime, in violation of Code § 16-11-311, as amended.

COUNT TWO - PETIT LARCENY

That one ANDRE MAURICE MASSEY did in Sumter County on or about August 22, 1994, feloniously take and carry away the personal goods of Waiter Black, described as follows: \$150.00 cash, with intent to deprive the owner permanently of such property, in violation of Code § 16-13-30, as amended.

COUNT THREE - AGGRAVATED ASSAULT AND BATTERY

That one ANDRE MAURICE MASSEY did in Sumter County on or about August 22, 1994, commit an assault and battery upon the victim, Waiters Black, constituting an unlawful act of violent injury to the person of the said victim, accompanied by circumstances of aggravation, to wit: infliction of serious bodily injury with intent to commit a felony by striking the victim with a stick, resulting in cuts to the head and a swollen right eye.

COUNT FOUR - LARCENY OF VEHICLE

That one ANDRE MAURICE MASSEY did in Sumter County on or about August 22, 1994, feloniously take and carry away the personal property of Waiters Black, described as follows: 1975 Chevrolet Caprice, valued at \$600.00, with intent to deprive the owner permanently of such property, in violation of Code § 16-13-30, as amended.

Against the peace and dignity of the State and contrary to the Statute in such case as made and provided.

CERTIFIED TRUE AND CORRECT
OF ORIGINAL FILEDCLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA
Wade S. [Signature]
1995 JAN 16 PM 4:17

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER 2009 JUL 24 PM 2:33

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NO.: 2008-GS-43-0853

The State,

v.

ANDRE M. MASSEY.

Defendant.

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ACCEPTANCE OF SERVICE
OF NOTICE OF INTENT TO
SEEK LIFE IMPRISONMENT

RECEIPT OF SERVICE ACKNOWLEDGEMENT

Receipt for the above referenced Notice of Intent to Seek Life Imprisonment in the above captioned case is hereby acknowledged this 30th day of June, 2009.

OSS for CH
Calvin Hastie, Sr., Esq.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James C. Campbell

CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

RECORDED

IN THE COURT OF
GENERAL SESSIONS

COUNTY OF SUMTER

2009 JUL 24 PM 2:33

State of South Carolina

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Indictment No. 2008-GS-43-853

vs.

PROOF OF SERVICE

ANDRE M. MASSEY

Personally appeared before me, Carolyn Sanders, who upon first being duly sworn deposes and states that s/he did serve the Notice of Intention to Seek Life Imprisonment upon the Defendant Andre M. Massey by personally delivering a copy of same to the Defendant at the Kershaw Correctional Institution, 4848 Goldmine Highway, Kershaw, SC 29067.

Carolyn Sanders
Carolyn Sanders
 (print name)

Sworn to and subscribed before me
 this 15 day of July, 2009

Catherine A. Amason
 Notary Public for South Carolina
 My commission expires: December 22, 2018

CERTIFIED TRUE COPY
 OF ORIGINAL FILED

James C. Campbell

CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

RECEIVED BY <u>JMM</u>
JUL 17 2009
OFFICE OF SOLICITOR 3RD JUDICIAL CIRCUIT, SUMTER

MDS

0001/005

ULENK-UF-COURT

0000000000

12.000 1.000

12.000 1.000

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

CITY OF SUMTER

SEARCH WARRANT

CASE # 07062553

Date: June 08, 2007

SR/DET. T. A. SIMS

CERTIFIED TRUE COPY OF ORIGINAL

Margaret A. Hodge *Summary Court Clerk*
SUMTER COUNTY SUMMARY COURT

DATE 7-23-09

CEL# 1000

CERTIFIED TRUE COPY OF ORIGINAL

3 of 5

Form Approved by
S. C. Attorney General
Section 17-13-160
March 15, 1978

*Sumter
Clerk*

Margaret E. Hodge
SUMTER COUNTY SUMMARY COURT

DATE 7-23-09

CASE # 07062553

STATE OF SOUTH CAROLINA

SEARCH WARRANT

COUNTY OF SUMTER

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF SUMTER.

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

THE PREMISES TO BE SEARCHED IS LOCATED AT 107 N. SALEM AVENUE APARTMENT #2 IN THE CITY OF SUMTER STATE OF S.C. THE APARTMENT IS LIGHT GREEN IN COLOR, MEDIUM GREEN TRIM WITH DARK GREEN SHUTTERS. THE APARTMENTS ARE AT THE CORNER OF HAMPTON AVENUE AND NORTH SALEM AVENUE. THE RENTOR OF THE RESIDENCE IS ANDRE MASSEY. THE APARTMENT HAS A NUMBER 2 BESIDE THE FRONT DOOR. THE SEARCH IS ALSO TO INCLUDE ANY AND ALL VEHICLES AND ALL OUT BUILDINGS ON SAID PREMISES.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT
(SECTION B)

HANDGUNS, AMMUNITION, BLACK KNIT CAP WITH A BALL ON TOP AND A PAIR OF BLACK PANTS WITH A WHITE STRIPE DOWN THE SIDES, APPROXIMATELY \$500.00 IN CASH AND ANY OTHER ITEMS USED IN THE CRIME OF ARMED ROBBERY.

This Search Warrant shall not be valid for more than ten days from date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

ISSUING JUDGE

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of premises searched at the time of such search if practicable, and if not, to such person as soon thereafter as is practicable; in the event the identify of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to prominent place on such premises.

SUMTER

, S. C.

June 8 2007
1:30 AM

Lucie L. Lida (L.S.)

06/08/2007 1:06 AM

Signature of Judge

SCCA/513
(3-78)

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF SUMTER

Personally appeared before me, one SR/DET. T. A. SIMS who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

HANDGUNS, AMMUNITION, BLACK KNIT CAP WITH A BALL ON TOP AND A PAIR OF BLACK PANTS WITH A WHITE STRIPE DOWN THE SIDES, APPROXIMATELY \$500.00 IN CASH AND ANY OTHER ITEMS USED IN THE CRIME OF ARMED ROBBERY.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

THE PREMISES TO BE SEARCHED IS LOCATED AT 107 N. SALEM AVENUE APARTMENT #2 IN THE CITY OF SUMTER STATE OF S.C. THE APARTMENT IS LIGHT GREEN IN COLOR, MEDIUM GREEN TRIM WITH DARK GREEN SHUTTERS. THE APARTMENTS ARE AT THE CORNER OF HAMPTON AVENUE AND NORTH SALEM AVENUE. THE RENTOR OF THE RESIDENCE IS ANDRE MASSEY. THE APARTMENT HAS A NUMBER 2 BESIDE THE FRONT DOOR. THE SEARCH IS ALSO TO INCLUDE ANY AND ALL VEHICLES AND ALL OUT BUILDINGS ON SAID PREMISES.

REASON FOR AFFIANTS BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

SEE ATTACHED AFFIDAVIT

Sworn to and Subscribed before me

This 8 day of June, 2007

Signature of Judge

CERTIFIED TRUE COPY OF ORIGINAL

Margaret Hodge
SUMTER COUNTY SUMMARY COURTDATE 17-23-09

T. A. Sims
Affiant
Sr/Det. T. A. SIMS
Address 107 E. Hampton Ave.
Sumter, SC
Phone 436-2790

06/08/2007 1:06 AM

5 of 5

**REASON FOR AFFIANTS BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

On June 07, 2007 at 1849 hrs Mr. Herbert Huff notified Law Enforcement that he was robbed at gun point in his business (Total Living) located at 25 Dugan Street in the City of Sumter. Mr. Huff stated that a black male entered his business as if he was shopping. After all the customers had left the suspect presented a small handgun and demanded money. The subject removed all the currency from the register and Mr. Huff's wallet. The subject fled on foot from the store. The subject was approximately 5'10", heavy set, muscular built, wearing a white tank top tee-shirt, black pants with white stripe down the sides and a dark knit cap with a knot on top. The subject is medium complexion with a tattoo on the left arm of a circle with points coming out.

Mr. Huff stated that just before the robbery he saw a black female who works next door enter his business then walk outside with the suspect. Mr. Huff further stated that he has seen the suspect with the female on other occasions. Through further investigation the female was identified as Latrell Billie. She advised Law Enforcement that the subject in question was a Andre Massey. She has confirmed that suspect was wearing the same clothing described by Mr. Huff.

State Probation and Parole was given the information gathered from the witnesses and gave Law Enforcement a location of Andre Massey's residence, which is 107 N. Salem Avenue apartment # 2. Law Enforcement located Massey at his residence and took him into custody. At the time of arrest Massey was wearing a white tank top tee-shirt and did have a tattoo described on his left arm. It is this officer's belief that the items sought that were used in the arm robbery will be found on the said premises.

Sworn to and Subscribed before me

This 8 day of June 2007

[Signature] (L.S.)
Signature of Judge

1:20 AM

[Signature]
Affiant

Sr/Det. T. A. SIMS

Address 107 E. Hampton Ave.
Sumter, SC

Phone 436-2790

CERTIFIED TRUE COPY OF ORIGINAL

Margaret Z. Hoyle
SUMTER COUNTY SUMMARY COURT

DATE 7-23-09

06/08/2007 1:06 AM

CASE # 07062553

RETURN

I received the attached Search Warrant June 8th, 2007, and have executed it as follows:

On June 8th, 2007 at 1:45 o'clock A M, I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with Dionetta Y. Prince
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Returned JFF 6-8-07
1- Black ~~mailed~~ bike

- 1- Black hair cloth - found on couch in living room
- 1- pair of Black pants w/ white stripes on legs - found on floor in bedroom by bed
- 1- Black/Grey 2 shot handgun with white grips - found on bed under shorts

JAB

JAB

This inventory was made in the presence of Lt. K. Mackitt, Det Christmas,
AND Sgt. Det T. Sims

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this the 8th

day of June, 2007

[Signature] (L.S.)

[Signature]

(Signature of Officer Executing Warrant)

CERTIFIED TRUE COPY OF ORIGINAL

Margaret A. Hoxby Summary Court Clerk
JUNTER COUNTY SUMMARY COURT

DATE 7-23-09

06/08/2007 1:06 AM

STATE OF SOUTH CAROLINA **RECORDED**
 COUNTY OF SUMTER 2009 JUL 24 PM 2:32

IN THE COURT OF
 GENERAL SESSIONS

State of South Carolina

vs.

ANDRE M. MASSEY

JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

Indictment No. 2008-GS-43-0853

**NOTICE OF INTENTION TO
 SEEK LIFE IMPRISONMENT**

To: Andre M. Massey and his Attorney of Record Calvin Hastie, Sr.:

Pursuant to S.C. Code Ann. §17-25-45, the State hereby notifies the Defendant Andre M. Massey of the State's intention to seek life imprisonment if the Defendant is convicted of Armed Robbery under indictment number 2008-GS-43-0843.

The basis of this notice is that on October 17th, 1995 the Defendant was convicted of Assault and Battery with Intent to Kill and five (5) counts of Kidnapping under indictment number 1995-GS-43-0587. Also on October 17th, 1995 the Defendant was convicted of Burglary in the First Degree under indictment number 1995-GS-43-0636 and another separate count of Burglary in the First Degree under indictment number 1995-GS-43-0105. Each aforementioned charge for which a conviction is stated above, is defined as a Most Serious offense under S.C. Code Ann. §17-25-45.

Certified copies of both the Defendant's Plea Sheets and the indictments in the above mentioned convictions are attached to this notice.

Martin D. Spratlin

Martin D. Spratlin, SC Bar# 77061
 Assistant Solicitor, Sumter, S.C.
 Sumter County Courthouse
 141 North Main St.
 Sumter, SC 29150
 (803) 436-2185

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

State of South Carolina,

Plaintiff,

vs.

Andre M. Massey,

Defendant.

RECORDED

2009 SEP 28 AM 9:04

IN THE COURT OF GENERAL SESSIONS

CASE NO. 2008-GS-43-0853
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ORDER

This matter is before the court on motion of the defendant for a new trial. The defendant was convicted of armed robbery on August 13, 2009, and was sentenced to life in prison without the possibility of parole (LWOP), pursuant to SC Code Ann. §17-25-45. The defendant does not dispute that this was his second conviction for a "most serious offense". For the reasons set forth herein, the defendant's motion is denied.

Ground I - Deficiency of LWOP Notice

The defendant argues that he was unlawfully sentenced to life without the possibility of parole. The defendant claims the notice served upon him and his attorney, though timely, was defective in that it simply stated that the State would be seeking a sentence of "life imprisonment", with no mention of such sentence being "without the possibility of parole". The notice was entitled "Notice of Intention to Seek Life Imprisonment" and stated:

Pursuant to S.C. Code Ann. §17-25-45, the State hereby notifies the Defendant Andre M. Massey of the State's intention to seek life imprisonment if the Defendant is convicted....

The defendant maintains that the omission of any reference in the Notice that the sentence would be life without the possibility of parole constitutes lack of notice as

required by §17-25-45(H). The State contends the prefatory statement that the notice was given "pursuant to" §17-25-45 constitutes sufficient notice that any life sentence would be without the possibility of parole. I agree.

The notice recited that the defendant was previously convicted of several counts of kidnapping, one count of assault and battery with intent to kill, and two counts of burglary in the first degree. The reference to §17-25-45 clearly put the defendant and his attorney on notice that the prison convictions exposed the defendant to sentencing "pursuant to §17-25-45", and any reading of the statute reflects only that the mandatory sentence would be life without parole.

Also, the defendant can demonstrate no prejudice resulting from any defect in the notice. In James v State, 372 S.C. 81, 641 S.E.2d 899 (2007), our Supreme Court considered the question of whether written notice of sentencing under §17-25-45 had been given. In this PCR case, the court noted that even if trial counsel had objected to the lack of written notice, the solicitor could have simply postponed the trial in order to provide proper notice. The same could have been done in the instant case, and, thus, there is no prejudice.

Ground II - Court's Denial of Motion for Continuance

Calvin Hastie, Esq., began representing the defendant approximately six months prior to trial. The armed robbery occurred on June 7, 2007. The defendant gave two written statements to the police on June 30, 2007, the first denying any involvement, and the second admitting the crime in substantial detail. Rule 5, SCRCrP and Brady motions were served by original defense counsel on the State in October 2007. However, the defendant's statements, the photographs, and other Rule 5 material were not turned over

to Mr. Hastie or any other defense attorney until June 30, 2009. Assistant Solicitor Spratlin explained that he took over the file from another assistant in late June 2009 and immediately realized no responses had been made to the Rule 5 and Brady motions. The June 30, 2009 responses were then made by Mr. Spratlin.

There can be no dispute that the State failed to timely respond to the Rule 5 and Brady motions. However, nothing in the statements, photographs, and other materials eventually turned over were unknown to defense counsel. The defendant claims he was denied sufficient time to coordinate with his attorney to prepare for trial. However, once the material was turned over on June 30, counsel and the defendant had five weeks to review the material and prepare accordingly. All the circumstances indicate that a continuance until the next term, September 14, 2009, would have made no difference insofar as the discovery material is concerned.

Though no good reason exists for the failure to timely respond to the discovery and Brady motions, the defendant suffered no prejudice.

Ground III - Court's Denial of Motion to Suppress

Defendant argues that the admission of evidence seized from his home pursuant to the search warrant obtained by police was a violation of his Fourth Amendment rights against unlawful search and seizure.

Initial investigation led the police to interview Latrelle Billie, a young lady who had encountered the defendant earlier on the day of the robbery. She confirmed the defendant had a tattoo similar to the one referenced by the victim, and she confirmed the defendant had on the clothing identified by the victim. She provided the defendant's name to the police and told officers she did not know where he lived, but that she knew

Handwritten signature and number 3

he was on probation and was a sex offender. Officers contacted the Sumter office of the Department of Probation, Parole and Pardon Services and learned the defendant was on parole. The defendant's parole agent provided the defendant's address to the police, and officers went to that location, 108 N. Salem Avenue. The defendant was home and was apprehended without incident. The police obtained a search warrant for 108 N. Salem Avenue and the search yielded the distinctive weapon indentified by the victim and the clothing identified by the victim and Ms. Billie.

Defendant contends that the information was given in violation of S.C. Ann. §24-21-290 and that the evidence seized pursuant to the warrant should be suppressed as "fruit of the poisonous tree". While I agree that the information given by the probation officer was given in violation of the statute, I do not agree that the defendant's Fourth Amendment rights were implicated. State v. Sheldon, 344 S.C. 340, 543 S.E.2d 585 (Ct. App. 2001), makes clear that "exclusion of evidence is limited to violations of constitutional rights and not to statutory violations at least where the defendant cannot demonstrate prejudice resulting from the violation." Under South Carolina law, evidence obtained in violation of S.C. Code Ann. 24-21-290 has never been held to rise to the level of a violation of the Fourth Amendment. Therefore, I find that the violation of the statute did not require exclusion of the evidence obtained pursuant to the search warrant.

In addition, police also requested and obtained the defendant's address from the Department of Motor Vehicles. I find that here, as in State v. Hurto, 376 S.C. 77, 654 S.E.2d 846 (Ct. App. 2007), even if the violation of the statute did rise to the level of a Fourth Amendment violation, the independent source doctrine would apply to make the seized evidence admissible.

[Handwritten signature]

I find that the admission of the evidence seized pursuant to the search warrant, even where information was obtained in violation of a statute, was properly admitted.

Ground IV – Court's Refusal to Charge Jury on the Lesser Included Offense of Common Law Robbery

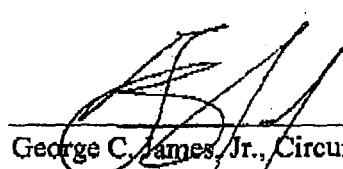
Defendant maintains that the court erred in failing to charge the jury on the lesser included offense of common law robbery. Evidence presented at trial was that the perpetrator pulled a gun on the victim and ordered the victim to turn over money in the store register. There was no evidence that a gun was not used in the commission of the crime. Defendant seems to argue that it is possible that the jury would disbelieve the evidence presented by the State that a gun was used. However, in State v. Funchess, 267 S.C. 427, 229 S.E.2d 331(1976), our Supreme Court held it would be improper to submit a lesser included offense to the jury "unless there is testimony tending to show that the defendant is only guilty of the lesser offense." The Court further stated that the "presence of evidence to sustain the crime of a lesser degree determines whether it should be submitted to the jury and the 'mere contention' that the jury might accept the State's evidence in part and might reject it in part will not suffice".

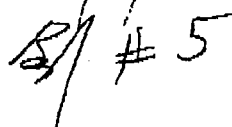
Since the defendant solely relied on the possibility that the jury might disbelieve the State's evidence, the defendant was not entitled to a charge on the lesser included offense of common law robbery.

Based on the foregoing, the defendant's Motions for a New Trial and Motion to Reconsider are **Denied**.

AND IT IS SO ORDERED.

September 27, 2009


George C. James, Jr., Circuit Court Judge



STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2009 AUG 13 AM 11:59
2008-GS-43-0853

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT

State of South Carolina,

Plaintiff,

vs.

Andre M. Massey,

Defendant.

JAMES C. CAMPBELL
CLERK OF COURT
SUMNER CO. N.Y. S.D.

NOTICE OF MOTION FOR A NEW TRIAL, MOTION TO RECONSIDER & REQUEST FOR HEARING PURSUANT TO RULE 29, SCRCrimP.
(Defendant's Post Trial Motion)

*** * * * ***

TO: The Honorable George C. James, Jr., Circuit Court Judge; C. Kelly
Jackson, Third Circuit Solicitor

Please Be Advised and Take Notice, that the above named Defendant, through counsel, and in accordance with instructions of the trial court as to entering its motions within ten days, hereby moves (and respectfully requests that this Honorable Court do convene and conduct an appropriate hearing on motions of your Defendant) for a judgment N. O. V. of not guilty, for a new trial, and renews his mistrial motion and a motion of reconsideration of sentence and of various matters ruled upon and not ruled upon in connection with the August 13, 2009, trial;

Your Defendant presents these motions for the purposes of providing the Court an opportunity to reconsider its rulings and sentence and or protecting and preserving his rights of appeal.

The Defendant was charged with one count of Armed Robbery and one count of Possession of a Firearm in the Commission of a Violent Crime. The Defendant was found guilty of both offences and the Court sentenced the Defendant to Life Without the Opportunity of

Parole.

The Defendant was not served with a Notice to Seek Life Imprisonment until June 30th, 2009. Even though the alleged offense took place on June 7, 2007, the Defendant wasn't given his discovery until June 30th, 2009, more than two years later and was served the same day with the Notice to Seek Life Imprisonment. The Defendant asserts that this two year delay by the State prohibited him from providing an adequate defense. The Defendant asserts that he did not have enough time to coordinate with his attorney to prepare for his trial. The Defendant submits to the court that this two year delay is in violation of Brady v. Maryland, 378 U.S. 83 (1963) and Rule 5. Rule 5 specifically gives the trial court the authority to fashion a remedy when the rule is violated. The State has conceded in oral argument that Rule 5 was violated. Defendant asserts that the proper remedy under the circumstances previously confronting the court before the jury was sworn was to have granted defendant's motion for a continuance. However, defendant now asserts that the proper remedy is to grant the defendant a new trial, now that the defendant has suffered the further prejudice of an unfair trial and conviction.

The Defendant also renews its request and motion that the Court suppress all evidence pursuant to the improper Arrest, "Protective sweep", confession of the defendant, Search Warrant and the further confession of the defendant specifically resulting from being confronted with evidence gathered from the illegal search and issue appropriate resulting rulings based on the lack of legally obtained evidence. The testimony of Detective Irene Culick and the written affidavit on which the Search Warrant was based clearly state that the State Probation and Parole provided information that led them to the residence and person of the Defendant. This action is in direct violation of SC Code 24-21-290 and the right of the defendant to have all information

gathered by or in the possession of his probation agent kept privileged and confidential. The defendant asserts that his arrest without a warrant was illegal and all resulting evidence obtained directly or indirectly was "fruit of the poisonous tree" from the State's reliance on illegally obtained information from defendant's probation and parole agent William Sumter.

Defendant also requests a new trial and/ or to quash the life without parole sentence based on improper notice. The noticed served on the Defendant on June 30, 2009 erroneously states that "the State hereby notifies the Defendant of the State's intention to Seek Life Imprisonment if the Defendant is convicted of Arm Robbery." However, the Defendant was actually tried on a Life Without the Opportunity of Parole charge.

Further, defendant would assert that the court's failure to charge the jury as to the lesser included offense of strong armed robbery and also as to the particulars of identification as he duly and timely requested in writing, was error and which, together with the courts failure to sustain each and all of his objections and motions made during the trial, denied him a fundamentally fair trial.

For all of the foregoing the defendant did not receive a fundamentally fair trial, was denied due process and his constitutionally protected rights under the Fourth, Fifth, and Sixth Amendments of the United States Consitution and analogous State Constitutional provisions were violated.

WHEREFORE, your Defendant hereby moves and respectfully requests that this Court do issue its rulings and Orders granting Defendant any and all of the following relief, to wit:

- 1.) The Court vacate the guilty verdict and grant to the defendant a verdict of not guilty; or grant the defendant a new trial; or, alternatively, reconsider and reverse its previous

356

rulings as to the defendant's mistrial motion ; and sentencing for the Defendant; and

or

- 2.) The Court vacate the conviction and allow the Defendant to plea to a lesser included charge.

Respectfully submitted,

Calvin K. Hastie, Sr.

CALVIN K. HASTIE, SR.

Attorney for the Defendant

7 East Hampton Avenue

Sumter, SC 29150

803-774-7776/803-775-6727

Sumter, South Carolina

August 13, 2009

2

SUSPECT STATEMENT

I, ANDRE M. MASSEY, OF 107 N. SALEM AVE APT #2, SUMTER S.C, HAVE BEEN ADVISED OF MY CONSTITUTIONAL RIGHTS AND HAVING SIGNED A WAIVER OF THOSE RIGHTS, DO HEREBY GIVE THE FOLLOWING STATEMENT, FREELY, AND VOLUNTARILY, WITHOUT FEAR OR THREAT OR PROMISE OF REWARD TO DETECTIVE CULICK, WHO HAS IDENTIFIED HERSELF AS A POLICE OFFICER OF THE SUMTER POLICE DEPARTMENT.

ANDRE M. MASSEY

Name

12-12-75

465

DOB

SSN

Phone #

This afternoon after 2:00 PM but before 4:00 PM Cats was talking, the old dude and the other dude. The old dude is the one that works at the store (the one that was robbed). The other dude they call T-Dog but his real name is Tyrone. I call him Ty. The were talking standing outside the store like they was looking at watermelons. He had a shopping cart where the watermelons were at. The old dude was telling Ty that tomorrow is his last day and that somebody or whoever runs the store is going to turn it into a warehouse or whole store. So Ty asked him what was up with what they talked about and the old man said something real low, but I don't know what he said. Ty started laughing and said okay. So after that Ty told him I'll see you later. So then after that, that is when I went next door and hollered at my little friend. I left and told her I would be right back. I went to the barber shop caught up with Ty and I asked him what was going on. He was like what you mean? I said between you and the old man. He was like nothing, me and the old man got some business to handle. So I asked what about and he told me that him and the old man was pulling a scam. Then he said it was real easy and it was good money in it. He said old man did it before because the old man had got a lady or something to rob him, to take some shoes. Then he said that what he was doing was something like that but it was more money involved especially when the old man got paid. I told him he was crazy and I went home. Well we sat there and chit chatted about bullshit. I left and went home. I forgot I went back to see my friend and that is when we went into the store. We went there about 4:45PM. I started tripping about a \$450.00 picture and he said it was hand made from Africa and that's why it cost so much. We left and I went home around 5:15PM. She dropped me off on the corner of Washington and Hampton. She drives a red car a little burgundy. I walked home and seen Jermaine Robinson on the way. We walked and talked and bullshit. I asked him where he was going and he said to the barber shop. He asked me what barbers was up there and I told him. He asked me if it was full and I told him no just Tyrone and 2 little kids. My fiancé Dionetta Prince came home around 5:30 PM or 6:00 PM.

I did not rob the man at all. I think he is trying to use me as an escape goat. I do not have a gun. I have about \$400.00 in my pocket it is from her and my paycheck combined. I work at Red Bone Alley.

NAME: Andre M. MasseyDATE: 6/08/07WITNESS: L. O. CulickWITNESS: [Signature]

3

SUSPECT STATEMENT

I, ANDRE M. MASSEY, OF 107 N. SALEM AVE APT #2, SUMTER S.C, HAVE BEEN ADVISED OF MY CONSTITUTIONAL RIGHTS AND HAVING SIGNED A WAIVER OF THOSE RIGHTS, DO HEREBY GIVE THE FOLLOWING STATEMENT, FREELY, AND VOLUNTARILY, WITHOUT FEAR OR THREAT OR PROMISE OF REWARD TO DETECTIVE CULICK, WHO HAS IDENTIFIED HERSELF AS A POLICE OFFICER OF THE SUMTER POLICE DEPARTMENT.

ANDRE M. MASSEY

Name

Address

12-12-75

DOB

SSN

Phone #

I have gone to 130 job interviews and I have been turned down 130 times. I swear for God man I was trying to do good. I feel bad man that shit hurt me, I did not want to do that man like that. Really I was shocked and surprised at how much money I got. I didn't know it was going to be that much. It was whatever I had in my pockets minus about \$8.00. I was think that I could pay my [REDACTED] That's the only reason I did it to get my head above water and get out of the red. I tried everything I could, every avenue that I knew possible. I went to temp services and all. I felt bad because the man said he was going to pray for me and I was walking home with my hands in my pockets in a daze. I wanted to turn around and go back to the store because I wanted to give him the money back because I didn't feel right. My girl asked me what's wrong and I told her I just don't feel right. I walked home and decided I was just going to go home and chill and then tomorrow I was going to go handle my business - pay my bills. Pay some here, pay some there and spread it out. That way people would say at least you're making an effort. The lights and the water were about to be cut off, I was about to be evicted from my apartment and [REDACTED] you have to have a place to live. Rent is due by the 1st of the month and they give a 5 day grace period and then you have to pay a \$30.00 fee after the 5th but before the 7th. On the 8th of the month they will evict you. I was behind on my [REDACTED] fees by 8 payments. I borrowed a gun - it was a 2 shot Dillinger .22 cal today (6-7-08). I walked to the man's business and when I went inside there were people in there. There were 2 ladies and a little girl in the store. It was after 6:00 PM. This was my second trip to the store. I went there earlier with my friend Latrell Billie. I waited inside the store until they left. After they left I waited for about another good 10 - 15 minutes. That's when it went down. I pulled the gun out and told "pop" to open the register. I told him I was not going to hurt him or do nothing to him. I told him I did not want no credit cards or checks. I just wanted the cash and I would be gone. He gave me the cash and told me that he would pray for me. I told him "please do because I'm going to hell". Before I left the store I got a paper towel that was sitting right there and wiped down the little glass case in the front by the cash register and then I walked to the door and wiped it down. I threw the black stocking cap in the trash right behind Cut Rate right after I left the store. I walked to Liberty Street by the paint place and the doughnut shop. I walked to Washington Street behind the Kangaroo and went through the Wachovia Parking lot towards home. I sat at home for a little while until my girl (Dionetta Prince) got home and then I went to the store (Kangaroo) and bought some beer \$8.00 and been at home ever since. After I bought the beer I went home and changed my pants. I was wearing some old black sweats. I threw the gun in the room somewhere. I am sorry for what I did. I didn't want to rob him.

NAME: Andre MasseyDATE: 12-12-75WITNESS: [Signature]WITNESS: [Signature]

20

SUSPECT STATEMENT

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ANDRE M. MASSEYER

Name

Address

12-12-75

[REDACTED] 65

DOB

SSN

Phone #

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NAME: [REDACTED]

DATE: 6/8/08

WITNESS: [REDACTED]

WITNESS: [REDACTED]

WITNESSES

SPD

Culick

ARREST WARRANT NUMBER

J302502

D/A: 06/08/07

ACTION OF GRAND JURY

True Bill

William Bonito
Foreperson of Grand Jury
Date: *7/10/08*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-43- 853

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

JULY TERM 2008

THE STATE

vs.

ANDRE MAURICE MASSEY

Indictment for

ARMED ROBBERY, POSSESSION OF
FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) INDICTMENT FOR
ARMED ROBBERY, POSSESSION OF FIREARM
OR KNIFE DURING THE COMMISSION OF A
VIOLENT CRIME

At a Court of General Sessions, convened on July 17, 2008, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – ARMED ROBBERY

That ANDRE MAURICE MASSEY did in Sumter County on or about June 7, 2007, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a handgun, did feloniously take from Herbert Huff at the Total Living Store, 25 Dugan Street, in the presence of Herbert Huff, by means of force or violence, goods or monies of the said Herbert Huff, such goods or monies being described: U. S. currency.

COUNT TWO – POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

That ANDRE MAURICE MASSEY in Sumter County on or about June 7, 2007, was in possession of and did visibly display a firearm during the commission of a violent crime as defined in Section 16-1-60, to-wit: a handgun during the commission of armed robbery, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

P. Kelly Jackson

SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Sumter
STATEvs.
Andre M. Massey

AKA:

Race: black Sex: M Age: 33DOB: 12/15/75 SS#:

Address:

City, State, Zip: Sumter SC

DL# SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or, ☐ PLEADSTO: Poss weapon during Comm of violent crimeIn violation of § of the S.C. Code of Laws, bearing CDR Code # 0349☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Martin Spattin

Solicitor

SC Bar #

Defendant

Calvin Hastie

Attorney for Defendant

12045

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of N/A days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other:

Pursuant to SC Code§16-23-490(4) no sentence is☐ Appointed PD or appointed other counsel, impose
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2143

Sentence Date

8/5/29

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$100	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7(SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/Deputy Clerk
Court Reporter:James C. Campbell
Daphne Helms

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

363

COUNTY OF SUMTER

INDICTMENT/CASE#: 2008-GS-43-0853

STATE VS.

ANDRE MAURICE MASSEY

A/W#: J302502

AKA:

Date of Offense: June 07, 2007

Race: Black

Sex: Male

Age:

S.C. Code §: 16-11-0330(A)

DOB: December 12, 1975

SS" ---

CDR Code #: 0139

Address:

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Armed RobberyIn violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0, 1, 3, 9☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☒ §17-25-45w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Martin Sprattlin
Solicitor

Defendant

Calvin Hester 12045
Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of Life w/parole - SC Code § 17-25-45 or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-208 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§90.11 TP (SCCJA Surcharge)

TOTAL

James C. Camacho II
Clerk of Court/ Deputy Clerk

Court Reporter:

Daphne Nelms

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

Mandatory LWOP under§17-25-45☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

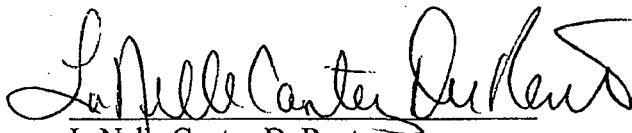
Sentence Date:

SCCA/217 (10/2007)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 15th, 2011



LaNelle Cantey DuRant
Appellate Defender

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PO Box 11589
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(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANDRE MAURICE MASSEY,

APPELLANT

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in denying appellant's motion to suppress the evidence against appellant which included his second statement to police, the search warrant, and the evidence obtained through the search warrant at his home because they were all obtained through information provided by appellant's parole agent in violation of S.C. Code Section 24-21-290?
2. Did the trial court err in denying appellant's motion for a mistrial because all of the evidence against appellant was the fruit of the poisonous tree due to an illegal search warrant because the affidavit for the search warrant was based on information obtained in violation of S.C. Code Section 24-21-290?
3. Did the trial court err in sentencing appellant to life without parole (LWOP) when the Notice for LWOP was deficient in that it did not include the words "without parole"?

STATEMENT OF THE CASE

On July 17, 2008, the Sumter County Grand Jury indicted Andre Maurice Massey on the charges of armed robbery (AR) and possession of a firearm during the commission of a violent crime. On June 30, 2009, the state served appellant with notice of life without parole (LWOP) based on S.C. Code Section 17-25-45 which required LWOP based on two most serious convictions. R.12 – 13. On August 3 – 5, 2009, appellant proceeded to trial before the Honorable George C. James, Jr. and a jury. He was represented by Calvin Hastie, Esquire, and Arthur Wilder, Esquire. The jury returned a verdict of guilty as indicted. Judge James sentenced appellant to life without parole. Appellant's attorney filed a motion for a new trial. Judge James issued an order on September 28, 2009 denying appellant's motion for a new trial and for reconsideration. Appellant's attorneys filed a notice of appeal. This appeal follows.

ARGUMENT

I.

The trial court erred in denying appellant's motion to suppress the evidence against appellant which included his second statement to police, the search warrant, and the evidence obtained through the search warrant at his home because they were all obtained through information provided by appellant's parole agent in violation of S.C. Code Section 24-21-290.

Detective Irene Culick, who was the lead investigator on this case, testified that she received a dispatch call on June 7, 2007, that an armed robbery (AR) had occurred at the Total Living Store on Dugan Street in Sumter. R.167, ll. 10 – 25; R.168, ll. 1 – 17; R.5, ll. 1 – 9. When she arrived at the scene, she talked with Mr. Herbert Huff who was the operator of the store at the time of the robbery. Mr. Huff told her that a young man came in the store just before closing that day which was the second time he had been in that day. When Mr. Huff closed the door, the young man pulled a gun on him, which he described as a black derringer, and demanded cash from Mr. Huff's wallet and from the cash register. The young man then left, and Mr. Huff called 911. R.168, ll. 18 – 25; R.169, ll. 1 – 25; R.170, ll. 1 – 25; R.110, ll. 1 – 25.

Mr. Huff told Detective Culick that the young man's face was not covered; he wore a white tan top and black pants with a white stripe, and had a tattoo on his left arm. The young man had been in the store earlier that day with Ms. Latrell Billie, who worked next door. R.171, ll. 1 – 25; R.172, ll. 1 – 2.

Detective Culick then talked with Ms. Billie who told her that she did know a young man named Andre Massey who came to see her at her work occasionally because she often

helped with employment. She did see him in Total Living that day when she went in that store earlier. R. 172, ll. 1 – 19; R. 71, ll. 1 – 25. She described Massey as wearing the same clothing that Mr. Huff described and as having a tattoo. R. 172, ll. 20 – 25.

At the in-camera hearing, Detective Culick testified that Ms. Billie told her that Massey was on probation and was on the sex offender registry. Detective Culick then contacted probation and talked with Massey's probation agent, Agent Sumter, who provided Massey's address to Detective Culick. Agent Sumter went to address first and called Detective Culick and told her that Massey was at home. Detective Culick, along with other officers, went to that address and arrested Massey. R. 23, ll. 1 – 25; R. 24, ll. 1 – 25; R. 25, ll. 1 – 25; R. 26, ll. 1 – 8.

Detective Culick said the officers asked Massey for permission to search his home, but Massey told them no as he did not want them to search his apartment. Then the police obtained a search warrant, and did search Massey's home. R.31, ll. 21 – 25; R.32, ll. 25; R.33, ll. 1 -9. During the search of Massey's home, Detective Tod Sims said the officers found a 22 derringer pistol on a bed in the bedroom; a knit cap, and a pair of black pants with a white stripe down the leg. R.54, ll. 1 – 25; R.55, ll. 1 – 13. Detective Sims described the process he followed in getting the magistrate to sign the search warrant. He read the affidavit which stated that state probation and parole provided the address for Massey. R.50, ll. 1 – 25; R.51, ll. 1 – 25; R.52, ll. 1 – 25; R.53, ll. 1 – 25.

Detective Culick took Massey to the police department after he was arrested. She read his *Miranda* rights to him. He then gave his first statement where he denied any involvement with the robbery. R.85, ll. 1 – 25; R.86, ll. 1 – 25; R.87, ll. 1 – 25; R.88, ll. 1 – 25; R.89, ll. 1 – 25.

Detective Culick called the officers performing the search at Massey's house and learned of the evidence they obtained. R.90, ll. 1 – 25. When she confronted Massey with the evidence found in his house which included the gun and clothing, he then gave a second statement confessing to the crime. He said he was sorry, and started crying. He and his fiancée were about to be evicted, and the lights had been turned off in his apartment. He said it was really hard to find a job, and he had been turned down 130 times. R.91, ll. 1 – 25.

Defense counsel made a pretrial motion to suppress the arrest of Massey, the search of his house, all evidence seized during the search, his confession, and everything resulting from the information provided by agent Sumter to police because the information was tainted because Agent Sumter violated the statute-S.C. Code Section 24-21-290 which provided that information received by probation agents was privileged. R.81, ll. 1 – 16; R.79, LL. 1 – 18; R.77, ll. 14 – 25; R.78, ll. 1 – 25.

Defense counsel argued after the Jackson v. Denno, 378 U.S. 368 (1964), hearing that Massey's second statement should be suppressed because it was the result of information the police received from Agent Sumter in violation of Code 24-21-290. R.92, ll. 4 -11.

The judge denied defense counsel's motion because he said the statute said that the information was inadmissible but that everything derived from the privileged information was not inadmissible. He said it was not admissible in court so he was not going to allow Agent Sumter to testify. The judge said that Detective Culick testified that DMV had Massey's address also. R.79, ll. 19 – 25; R.80, ll. 1 – 25; R.81, ll. 1 – 9.

When the judge asked if the record were clear concerning the issue of discovery of Massey's address, the state recalled Detective Culick to question her in camera regarding

this issue. R.93, ll. 19 – 25; R.94, ll. 1 – 11. Detective Culick testified that she called the probation office first to obtain Massey's address. While she was waiting to hear from probation, she checked DMV records. DMV had two addresses, one of which was the same as the one obtained from probation. R.94, ll. 10 – 25; R.95, ll. 1 – 3. Her testimony was:

And so pretty much Agent-----A lot of times DMV records are wrong. I mean, that's just my case. A lot of people don't update their records where they're staying, but in my experience, 11 years, probation and parole has a good address for a defendant.

R. 95, ll. 4 – 8.

The judge ruled that the statute was clear and that the case of State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (2003) held that the restrictive language of the statute had no exception. However, it was his conclusion that the DMV records would have led the officers to Massey's address. R.99, ll. 7 – 25. Therefore, the violation of the statute did not foreclose "his examination of whether or not they would still have located Massey at that same address." He denied the defense motion. R.100, ll. 13 – 22.

Counsel argued that the search warrant was illegal because, he stated:

..... the affidavit for the search warrant stated that state probation and parole was given the information gathered from the witness and then gave law enforcement a location of Andre Massey's residence.

R.278, ll. 1 – 11.

Counsel argued that this information received by the magistrate was in violation of the statute 24-21-290 which provided that the information received by probation agents was privileged. R.278, ll. 12 – 25.

S.C. Code Section 24-21-290 provides:

All information and data obtained in the discharge of his official duty by a probation agent is privileged information, is not receivable as evidence in a court, and may not be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive reports unless ordered by the court or the director.

S.C. Code Section 24-21-290.

In State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (2003), the Supreme Court held that this statute relating to privileged nature of information received by a probation officer in his official capacity prohibits the admission in court for any purpose, including impeachment, of a probationer's statement to the probation agent, regardless of whether the statement is voluntarily or involuntarily given.

In the post-conviction relief case of Hutto v. State, 387 S.C. 244, 692 S.E.2d 196 (2010), the Supreme Court held that any violation of section 24-21-290, which made all information obtained by the probation agent in discharge of his official duties privileged, by probation agent's disclosure to the police officer that the defendant had cuts on his arms and hands did not warrant exclusion of the evidence obtained from the information disclosed; the statute only created a statutory privilege and did not implicate a constitutional right.

In Hutto v. State, id. Hutto allegedly broke into an elderly woman's home cutting his hands and arms in the process. The woman was sexually assaulted and robbed. A month later, Agent Ronnie Bends who was Hutto's probation agent from a previous conviction, completed a routine visit to Hutto's home. Agent Bends was accompanied by another agent, James Harris. Agent Harris noticed the cuts on Hutto's arms and hands. Later, Investigator Hubert Nimau, asked Agent Bends about any injuries and Agent Bends called Agent Harris

who described to the investigator the cuts he observed on Hutto. Hutto was eventually arrested as a result, with Agent Harris testifying at his trial. The Supreme Court held that the legislature did not intend this statute to have such a broad application that it would cover anything the probation agent saw when visiting his client. The Court also wrote that the purpose of the statute was to foster open lines of communication between the probation agent and his client. In addition, the court stated that there was overwhelming guilt of Hutto's guilt without Agent Harris testimony so there was no prejudice to Hutto.

In his dissent, Justice Pleicones wrote that the statute did not exempt information and data received by the agent's sense of sight from privilege. He wrote that the statute barred the disclosure of "all information and data" obtained directly or indirectly to anyone other than the judge. Justice Pleicones said the statute recognized that there would be situations where the privilege must yield to policy but that the statute provided a mechanism to do that which included the agent being ordered by the court or director to release the information.

Justice Pleicones wrote that the privilege was a question of legislative intent and not constitutional law. He wrote:

The statute expressly states that information and data obtained in the discharge of the agent's duty is "not receivable as evidence in court," and thus the evidentiary exclusion arises from the terms of the statute creating the privilege, not the application of the exclusionary rule. To permit information or data obtained directly or indirectly as a result of a violation of the statute to be received as evidence in court defeats the legislative intent in creating this privilege.

Massey's case is distinguished from State v. Hutto, Id. In that the information disclosed in Hutto was something the agent observed. Massey's case was concerned with

the disclosure of language. Defense counsel argued for the exclusion of evidence based on the evidentiary exclusion created by the statutory privilege. There was no other evidence of guilt other than the evidence obtained from the information disclosed by Agent Sumter. Detective Culick relied on the information from the probation agent as being accurate and only the state probation and parole were included in the affidavit for the search warrant. Thus the magistrate issuing the search warrant relied only on the information obtained from probation and parole.

In State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987), the Supreme Court held that exclusion of evidence was the proper remedy for improperly issued search warrant, where the state was unable to demonstrate a good-faith attempt to comply with the warrant statute. The Court wrote that the evidence in this case was excluded on the basis of a statutory violation and not on constitutional grounds so any good-faith exception to the exclusionary rule did not apply.

Agent Sumter providing Massey's address to the police, which led to Massey's arrest, without following the procedure provided in the statute, clearly violated the intent of the legislature which was to promote open lines of communication between the agent and his client.

ARGUMENT

II.

The trial court erred in denying appellant's motion for a mistrial because all of the evidence against appellant was the fruit of the poisonous tree due to an illegal search warrant because the affidavit for the search warrant was based on information obtained in violation of S.C. Code Section 24-21-290.

After the testimony of Detective Tod Sims, who obtained the search warrant for Massey's apartment, defense counsel moved for a mistrial based on the violation of Massey's Fourth Amendment right to remain free from unreasonable search and seizure. He argued that the search warrant was invalid because it was based on a violation of S.C. Code Section 24-21-290. R.251, ll. 13 – 25; R.252, ll. 1 – 25. R.276, ll. 15 – 25; R.277, ll. 1 – 25. Counsel argued:

..... the affidavit for the search warrant stated that state probation and parole was given the information gathered from the witness and then gave law enforcement a location of Andre Massey's residence.

R.278, ll. 1 – 11.

Defense counsel also argued the exclusion of evidence based on a Fourth Amendment illegal search. Counsel argued that since the search warrant was invalid because it was based on an affidavit that relied on information obtained illegally or in violation of Section 24-21-290, then all evidence obtained as a result of the search warrant should have been excluded including Massey's confession. R.277, ll. 1 – 25; R.278, ll. 1 – 25; R.282, ll. 1 – 25; R.283, ll. 1 – 25.

The judge denied defense counsel's motion stating there were no Fourth Amendment implications. R.284, ll. 8 – 25; R.285, ll. 1 – 25. .

The Fourth Amendment to the United States Constitution provides that the people have a right to be secure in their persons and homes against unreasonable searches and seizures, and no warrants shall issue, but with probable cause, supported by oath and affirmation, describing the place to be searched and the things to be seized.

Any evidence seized in violation of the Fourth Amendment must be excluded. State v. Brown, 389 S.C. 473, 698 S.E.2d 811 (Ct. App. 2010). An appellate court's review in Fourth Amendment search and seizure cases is limited to determining whether any evidence supports the trial court's finding. State v. Willard, 374 S.C. 129, 647 S.E.2d 252 (Ct. App. 2007).

If the police exploit an unlawful search to seize evidence that would not have otherwise come to light, that evidence is the "fruit of the poisonous tree," and is not admissible. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407 (1963); State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999).

Search warrants may be issued "only upon an affidavit sworn to before the magistrate...establishing the grounds for the warrant." S.C. Code Ann. Section 17-13-140 (1985).

Whether to grant or deny a mistrial motion is a matter within the trial court's sound discretion, and the court's decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law. State v. Culbreath, 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008); citing State v. Council, 335 S.C. 1, 12-13, 515 S.E.2d 508, 514 (1999). In order to receive a mistrial, a defendant must show error and resulting prejudice. Id.

A mistrial should be granted only if there is a manifest necessity or the ends of public justice are served, and trial courts should first exhaust other methods to cure the possible prejudice before declaring a mistrial. State v. Brown, 389 S.C. 84, 697 S.E.2d 622 (2010).

Massey was prejudiced by the trial court not granting a mistrial because the evidence found at his home and his second statement to police were admitted as evidence when they were the fruit of the poisonous tree or the illegal search warrant. The trial court committed an error of law by admitting evidence which was based on the state's violation of a state law. The ends of public justice required the mistrial be granted because the state cannot be allowed to benefit from breaking the laws established by the Legislature.

ARGUMENT

III.

The trial court erred in sentencing appellant to life without parole (LWOP) when the Notice for LWOP was deficient in that it did not include the words “without parole”.

In a pretrial hearing, Massey’s defense counsel moved to quash the notice that the state was seeking a life without parole sentence pursuant to S.C. Code Section 17-25-45. R.40, ll 4 – 25. Counsel argued that the notice was insufficient because it did not include the words “without parole” and only stated “life imprisonment.” R.14, ll. 18 – 24.

The state argued that the notice referenced the statute, and that the statute contained the words “without parole” in its enumeration. The state also argued that under James v. State, 372 S.C. 287, 641 S.E.2d 899 (2007), written notice was not required as actual notice was sufficient. R.16, ll. 1 – 25; R.17, ll. 1 – 10.

The state also argued that he discussed with Massey’s attorney that he was seeking life without parole. The solicitor said he knew from their conversations that defense counsel had discussed this with Massey, and therefore, Massey had notice. Defense counsel objected to the solicitor saying what he had told his client as that was privileged information. R.17, ll. 20 – 25; R.18, ll. 1 – 17.

The trial judge said he did not know of any law in South Carolina or any other state on this point. R.17, ll. 8 – 19. However, he said that if he quashed the notice, the state would simply serve a corrected notice within thirty days and proceed with a trial. R.15, ll. 15 – 22.

After the verdict, the trial judge told defense counsel that the judge was taking notice during the sentencing phase of counsel’s objection to a life sentence under 17-25-45 based

on counsel's earlier motion to quash the notice of LWOP. R.324, ll. 24 – 25; R.325, ll. 1 – 8. The judge acknowledged that the lack of the terminology "without parole" may "well be an appellate issue." R.328,, ll. 1 – 25.

The state then listed the prior most serious conviction which included armed robbery, burglary first degree, five counts of kidnapping, and assault and battery with intent to kill, all from the same date of October 7, 1995. R.326, ll. 1 – 25; R.9, ll. 1 – 25.

Defense counsel called as a witness during the in camera hearing, Detective Irene Culick, who was the lead investigator in the case. R.4, ll. 13 – 25. She testified that the solicitor told her he must seek LWOP according to the law if there were a second most serious offense. She did not know of any plea offer made to Massey. She was not opposed to a plea offer where Massey would get less than a life sentence. R.5, ll. 1 – 25; R.6, ll. 1 – 25.

Andre Massey testified during the pretrial hearing that he had never been offered a plea arrangement, as he would have taken it. R.7, ll. 1 – 25. He did not know about the two strikes law and life without parole as no one discussed that with him after his guilty pleas in 1995 to the most serious offenses. R.8, ll. 1 – 23.

South Carolina Code Section 17-25-45 (A) provides:

Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has one or more prior convictions for

The state served a document entitled **Notice of Intention to Seek Life Imprisonment.**

This document stated:

Pursuant to S.C. Code Ann. Section 17-25-45, the State hereby notifies the Defendant Andre M. Massey of the State's intention to seek life imprisonment if the Defendant is convicted of Armed Robbery under indictment number 2008-GS-43-0843.

The basis of this notice is that on October 17th, 1995, the Defendant was convicted of Assault and Battery with Intent to Kill and five counts of kidnapping under indictment number 1995-GS-43-0587. Also on October 17th, 1995, the Defendant was convicted of burglary in the first Degree under indictment number 1995-GS- 43-0636 and another separate count of burglary in the First Degree under indictment number 1995-GS-43-0105. Each aforementioned charge for which a conviction is stated above, is defined as a Most Serious offense under S.C. Code Ann. Section 17-25-45.

Certified copies of both the Defendant's Plea sheets and the indictments in the above mentioned convictions are attached to this notice.

Court Exhibit Five- Notice of Intent to Seek Life Imprisonment.

In James v. State, *supra*, the Supreme Court held that so long as the defendant and his counsel, at least ten days prior to trial, possess actual notice of the state's intention to seek a sentence under the recidivist sentencing statute, the statute's notice requirements were satisfied. In that PCR case, defense counsel failed to object when written notice of the state's intention to seek LWOP, was not served.

Massey's case is distinguished because written notice was served on Massey, but the notice did not give him notice of life "without parole." The notice was not sufficient as the notice did not conform to the statute. Massey did not have a law degree and there was no evidence that he had access to law books or understood if he did. No reliable evidence was presented that Massey's attorney told him specifically that the notice meant life without parole. Because a life sentence could have meant to Massey a possibility of parole as was the historical situation in South Carolina, it was prejudicial to him for the state not to make it clear to him that there was no possibility of parole if he were convicted at trial.

CONCLUSION

Based on the above, the convictions and sentences should be reversed, and the case remanded for a new trial.

Respectfully submitted,



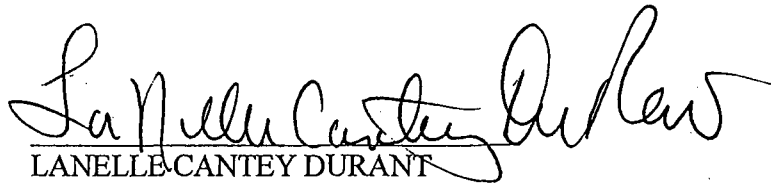
LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of July, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

A handwritten signature in black ink, reading "Lanelle Canthey Durant", is written over a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

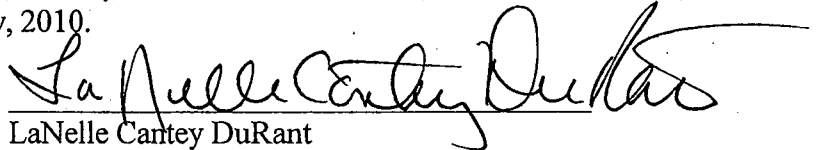
V.

ANDRE MAURICE MASSEY,

APPELLANT

CERTIFICATE OF SERVICE

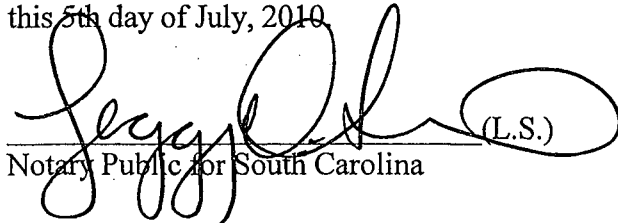
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201; and upon Mr. Andre M. Massey, #229492, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 5th day of July, 2010.


LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of July, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
Honorable George C. James, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

ANDRE MAURICE MASSEY,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly denied Appellant's suppression motion and motion for a mistrial because the probation agent's disclosure of Appellant's address did not constitute a violation of S.C. Code Ann. § 24-21-290 and the exclusionary rule did not apply to such a violation even assuming one occurred. Furthermore, even if the exclusionary rule did apply to a violation of the statute, all of the evidence obtained during Appellant's arrest and the search of his apartment would have inevitably been discovered through information already obtained by the officers prior to the agent's disclosure.

II.

The trial judge properly sentenced Appellant to a mandatory sentence of life without parole following his armed robbery conviction after the solicitor served timely pre-trial written notice to Appellant and his counsel notifying them of the State's intention to seek a life sentence pursuant to the recidivist offender statute.

STATEMENT OF THE CASE

Appellant Andre Maurice Massey was arrested following an investigation into an armed robbery. In July of 2008, the Sumter County grand jury indicted Appellant for armed robbery and possession of a firearm or knife during the commission of a violent crime. Based on Appellant's earlier convictions, the solicitor notified Appellant and his counsel prior to trial of his intentions to seek a sentence of life imprisonment pursuant to S.C. Code Ann. § 17-25-45 if Appellant was convicted. On August 3, 2009, a jury trial was commenced in the Sumter County court of general sessions with the Honorable George C. James, Jr., circuit court judge, presiding. At the conclusion of trial, Appellant was convicted as indicted. The trial judge sentenced Appellant to life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45 for the armed robbery conviction. Based on the imposition of a life sentence, Appellant was not sentenced for the firearm offense. Appellant then filed several post-trial motions, and the motions were denied in an order dated September 27, 2009. Appellant subsequently filed a timely notice of appeal.

STATEMENT OF FACTS

On the afternoon of June 7, 2007, Herbert Huff was working at the Total Living Store in Sumter, S.C., when Appellant Andre Maurice Massey entered the store. (R. pp. 102-103). Once inside, Appellant looked around at the store's selection of men's clothing before going outside to speak with Latrell Billie, a woman who worked for an organization located next to Huff's store.¹ (R. p. 104; pp. 154-158). Appellant then walked Billie to her car and casually told her it would be easy for him to rob Huff because Huff was always asleep. (R. p. 166). Billie parted ways with Appellant around 5:00 p.m. and observed him ride away on a bicycle. (R. pp. 158-159).

At around 5:30 p.m., Appellant re-entered the Total Living Store as Huff was preparing to close for the day. (R. p. 105). Carol Brunson and her children were shopping in the store at the time. (R. p. 105; pp. 145-146). Upon entering, Appellant asked to see the men's suits, and Huff directed him to them. (R. p. 106). Shortly thereafter, Brunson and her children completed their purchases and left, and Huff began closing up the store for the evening. (R. p. 106). Brunson then returned to purchase another item and to make sure everything was okay based on her belief Appellant had been behaving suspiciously. (R. p. 107; p. 146). Brunson bought a bar of soap, and Huff escorted her to the door. (R. pp. 107-108). After Brunson was gone, Huff turned around to walk back to the check-out counter. (R. p. 108).

Suddenly, Appellant approached Huff, pulled out a small handgun, pointed it at Huff's face from roughly six to eight inches away, warned him not to do anything, and demanded his cash. (R. p. 108; p. 110; p. 118). While keeping the firearm aimed at

¹ Billie's organization assisted people with job searches. (R. p. 161). During trial, Billie testified she knew Appellant through helping him find a job. (R. pp. 155-156; p. 161). She further testified he regularly came back to thank her for her assistance. (R. p. 156).

Huff, Appellant removed Huff's wallet and took out approximately \$22 in cash. (R. p. 108; p. 117). Appellant then took \$389 in cash from the store's cash register. (R. pp. 108-109). After securing the money, Appellant asked for a towel and wiped down every surface he had touched, including the cash register, the counter, and the doorknob. (R. p. 233). Appellant then fled from the store. (R. p. 110). Immediately thereafter, Huff called 911. (R. p. 110).

Subsequently, Detective Irene Culick, a senior detective in the violent crimes division of the Sumter Police Department, was dispatched to the robbery scene and spoke with Huff. (R. pp. 167-168). Although shaken by the crime, Huff informed Detective Culick he had been robbed by a man armed with a black two-shot Derringer pistol who took the store's cash and then wiped down the store to remove fingerprints. (R. pp. 168-170). Huff described the suspect as a muscular male in his late twenties to early thirties, approximately 5'10" tall, with a shoulder tattoo and earring, and wearing a white tank top along with white-striped black pants and a "doo rag." (R. pp. 118-121; p. 141; p. 171). Huff further advised the officer he saw Appellant speak with Billie earlier in the day. (R. p. 171). Detective Culick then contacted Billie and spoke with her about the incident. (R. pp. 171-172). Billie confirmed the details of Huff's description of Appellant and provided the circumstances of her encounter with Appellant that afternoon. (R. pp. 72-73; pp. 159-160; p. 166; p. 172). Billie also revealed Appellant was on probation and registered as a sex offender. (R. p. 22).

After speaking with Billie, Detective Culick attempted to contact Appellant's probation agent. (R. p. 94). While waiting to hear back from the agent, Detective Culick accessed Department of Motor Vehicle records and the sex offender registry and obtained two addresses for Appellant. (R. pp. 94-95). Subsequently, Appellant's probation agent

contacted the officer and confirmed which of the officer's addresses for Appellant was correct. (R. p. 22; p. 24; p. 30; p. 95). The probation agent then drove by Appellant's home and determined he was there. (R. p. 25; p. 29).

Subsequently, multiple officers responded to Appellant's apartment and arrested him when he answered their knock on the front door. (R. p. 35; p. 38; p. 47; p. 250). Appellant was wearing a white tank top, had a shoulder tattoo, and had \$388 in cash in his pocket at the time of his arrest. (R. p. 30; pp. 174-175; p. 187). Officers asked Appellant for consent to search the residence, and he declined. Several officers then secured the apartment while Detective Tod Sims and Detective Culick transported Appellant to the law enforcement center and obtained a search warrant.² (R. p. 48; p. 50; pp. 173-174; p. 251).

At the law enforcement center, Detective Sims prepared a search warrant affidavit. (R. p. 50). The warrant affidavit recounted the details of the incident and the subsequent law enforcement investigation and identified Appellant as the perpetrator of the armed robbery. (R. pp. 50-51). Regarding Appellant's address, the affidavit stated: "The State Probation and Parole was given the information gathered from the witness and gave law enforcement a location of [Appellant's] residence which is [the address of Appellant's apartment]. Law enforcement located [Appellant] at the residence and took him into custody." (R. p. 51). A magistrate issued the warrant at 1:20 a.m. on June 8, 2007, and officers quickly returned to the apartment to execute the warrant. (R. pp. 52-54; p. 252). During the ensuing search, officers found a black two-shot Derringer pistol

² Immediately following Appellant's arrest, officers detained two other occupants of the apartment and performed a brief protective sweep of the premises. (R. pp. 33-35; p. 38; p. 42; p. 48; p. 250). No evidence or information was obtained during the roughly one-minute protective sweep. (R. p. 36; p. 40; p. 48; p. 60; p. 251; p. 258).

under a shirt on Appellant's bed, white-striped black pants nearby, and a knit cap or "doo rag" on the couch. (R. pp. 54-55; p. 64; p. 253; pp. 257-259; pp. 294-295).

Meanwhile, Detective Culick informed Appellant of his rights and interviewed him back at the law enforcement center. (R. pp. 173-174; p. 177). Initially, in his first statement, Appellant claimed the robbery was actually a scam perpetrated by "Tyrone" and Huff, the "old man." (R. pp. 182-183; p. 357). Appellant denied any responsibility for the robbery and asserted he was an "escape goat." (R. pp. 183-184; p. 228; p. 357). Following Appellant's initial statement, Detective Culick contacted the officers who performed the search of Appellant's apartment and learned about the evidence discovered there. (R. pp. 185-186). She then confronted Appellant about the inconsistencies in his initial statement and the evidence discovered in his home, and he offered a revised statement. (R. p. 186; p. 188; pp. 230-231). In his second statement, Appellant expressed remorse and admitted he committed the robbery while confirming the specific details of the crime. (R. pp. 191-192; p. 231; p. 358). Subsequently, Appellant was indicted for armed robbery and possession of a firearm or knife during the commission of a violent crime, and he proceeded to trial. (R. pp. 2-3; pp. 360-361).

Several weeks before trial, the solicitor served written notice on Appellant and his counsel of the State's intention to seek life imprisonment pursuant to S.C. Code Ann. § 17-25-45 if Appellant was convicted of armed robbery. (R. p. 347). The notice was served on Appellant's counsel on June 30, 2009, and was served on Appellant on July 15, 2009. (R. p. 340; p. 341). Subsequently, prior to trial, Appellant moved to quash the solicitor's notice. (R. p. 4). In a pre-trial hearing, Appellant claimed he did not learn he was facing life imprisonment without parole until the previous Monday before trial. (R. p. 7). However, he conceded he spoke with his counsel at some point about "two strikes"

and acknowledged he had been served with written notice on July 15, 2009. (R. p. 7; p. 10). Appellant then sought to have the notice quashed based on the fact it did not specify the sentence would be "without parole." (R. p. 14). The trial judge took the matter under advisement. (R. pp. 17-18).

Subsequently, Appellant challenged the propriety of the search and search warrant. (R. p. 19; p. 68). During an ensuing pre-trial hearing, Detective Culick testified she confirmed Appellant's address with the assistance of his probation agent, and Detective Sims acknowledged he included that information in the search warrant affidavit. (R. pp. 22-24; pp. 50-51). In response, Appellant asserted his constitutional rights were violated by the search based on the fact the warrant affidavit contained privileged information obtained in violation of S.C. Code Ann. § 24-21-290.³ (R. p. 77).

After reviewing the statute, the trial judge concluded the information provided by the probation agent was inadmissible. (R. p. 80). However, the trial judge found the statute did not render everything derived from the privileged information inadmissible. (R. p. 80). The trial judge further concluded Appellant would have inevitably been discovered and arrested based on the fact Detective Culick had obtained his address from the D.M.V. records. (R. p. 80). Therefore, the trial judge declined to suppress the evidence obtained in the investigation as the fruits of an unlawful search. (R. p. 81).

Subsequently, Detective Culick testified further on how she obtained Appellant's address. (R. p. 93). Detective Culick stated she checked D.M.V. records and the sex offender registry and obtained two addresses for Appellant, one of which was the address where Appellant was arrested, prior to speaking to the probation agent. (R. pp. 94-95).

³ Appellant also claimed his Fourth Amendment rights were violated because he denied consent to search the apartment and it was eventually searched anyway. (R. p. 68).

She further testified officers would have simply gone to both addresses to arrest Appellant if the probation agent had not confirmed which address was accurate. (R. p. 95).

Following the testimony, the trial judge ruled the probation agent's information was privileged and could not be disclosed. (R. p. 99). However, he determined the officers would have been led to Appellant's address by the D.M.V. records and the sex offender registry regardless of the probation agent's disclosure. (R. p. 99). Based on the inevitability of Appellant's discovery and arrest, the trial judge again denied Appellant's suppression motion. (R. p. 100). However, he ruled the probation agent's information could not be introduced during trial. (R. p. 100).

Subsequently, during trial, Huff testified about the circumstances of the robbery and conclusively identified Appellant in court as the perpetrator. (R. pp. 108-109; p. 119; p. 142). Additionally, the officers testified about their investigation, Appellant's arrest, and Appellant's incriminating statements. (R. p. 173; p. 184; p. 191; p. 249). Likewise, the items recovered in the search of Appellant's apartment were introduced over Appellant's objection. (R. pp. 257-258; p. 303). Following Detective Sims' testimony, Appellant moved for a mistrial based on an alleged violation of his constitutional rights. (R. pp. 276-277). Appellant asserted the warrant affidavit contained privileged information in violation of the statute and was, therefore, invalid. (R. pp. 278-279). Appellant further argued everything recovered after the invalid warrant was obtained should have been excluded. (R. p. 281). However, Appellant conceded the address on his driver's license was the same as the address of his apartment, which was the location of his arrest. (R. p. 283). The trial judge denied the motion, finding the technical

violation of S.C. Code Ann. § 24-21-290 did not implicate any Fourth Amendment concerns. (R. pp. 284-285).

At the conclusion of trial, Appellant was convicted of armed robbery and possession of a weapon during the commission of a violent crime. (R. p. 323). The trial judge took notice of Appellant's objection to the imposition of a sentence pursuant to S.C. Code Ann. § 17-25-45 but found the written notice was sufficient based on the inclusion of language specifically referencing the statute. (R. pp. 324-325; p. 328). Based on Appellant's prior convictions for two counts of first-degree burglary, five counts of kidnapping, and one count of assault and battery with intent to kill, the trial judge sentenced Appellant to a mandatory sentence of life without parole. (R. p. 9; p. 326; pp. 331-332).

Subsequently, in a post-trial motion, Appellant contended the trial judge erred in denying his suppression motion and his motion to quash the statutory life without parole notice. (R. p. 354-355). In a subsequent order, the trial judge denied the motion. (R. p. 348). Regarding the sentencing notice, the trial judge found the notice provided was sufficient to fully advise Appellant of his potential sentencing exposure upon conviction. (R. p. 348-349). Regarding the denial of the suppression motion, the trial judge ruled the statutory violation of S.C. Code Ann. § 24-21-290 did not constitute a violation of Appellant's Fourth Amendment rights and did not warrant exclusion of the evidence. (R. pp. 350-351). Furthermore, the trial judge found the evidence would have been admissible under the independent source rule even if the violation had implicated Appellant's constitutional rights. (R. pp. 351-352). Therefore, Appellant's motion was denied. (R. p. 352).

ARGUMENT

I.

The trial judge properly denied Appellant's suppression motion and motion for a mistrial because the probation agent's disclosure of Appellant's address did not constitute a violation of S.C. Code Ann. § 24-21-290 and the exclusionary rule did not apply to such a violation even assuming one occurred. Furthermore, even if the exclusionary rule did apply to a violation of the statute, all of the evidence obtained during Appellant's arrest and the search of his apartment would have inevitably been discovered through information already obtained by the officers prior to the agent's disclosure.

Appellant contends the trial judge erred in denying his suppression motion and motion for a mistrial. Appellant maintains the probation agent violated S.C. Code Ann. § 24-21-290 by disclosing Appellant's address to the officers. Appellant further maintains the alleged violation rendered his arrest and all subsequent evidence inadmissible as the fruits of an unlawful arrest and search. Initially, the probation agent's disclosure did not constitute a violation of Section 24-21-290 because Appellant's address was not the type of information intended to be privileged under the statute. Furthermore, even if the information was privileged, the trial judge properly denied Appellant's suppression motion and mistrial motion because the exclusionary rule did not apply to a violation of the statute, meaning all the evidence obtained was admissible regardless of any alleged statutory violation. Additionally, even if the exclusionary rule had been implicated, all of the challenged evidence would have inevitably been discovered based on the information already obtained by the officers, which included Appellant's name and address, and was, therefore, properly admitted. Appellant's conviction and sentence should be affirmed.

A. Alleged Violation of the Statutory Privilege Regarding Probation Agents

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the

trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Decisions on the admissibility of evidence are within the trial judge's discretion, and, therefore, evidentiary rulings of the trial court will not be reversed on appeal absent an abuse of discretion or the commission of a prejudicial legal error. State v. Mansfield, 343 S.C. 66, 77, 538 S.E.2d 257, 263 (Ct. App. 2000). "A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995).

The grant or denial of a mistrial lies within the sound discretion of the trial court, and the ruling will not be disturbed on appeal absent an abuse of discretion or an error of law. State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627-628 (2000). A mistrial should not be granted unless absolutely necessary, and instead, all other methods to cure any possible prejudice should be exhausted before granting the motion. State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). "The granting of a motion for mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way." State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999); see State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983) ("The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment.").

Pursuant to S.C. Code Ann. § 24-21-290, information received by probation agents during the discharge of their duties is privileged. The statute instructs:

All information and data obtained in the discharge of his official duty by a probation agent is privileged information, is not receivable as evidence in a court, and may not be disclosed directly or indirectly to anyone other

than the judge or others entitled under this chapter to receive reports unless ordered by the court or the director.

S.C. Code Ann. § 24-21-290. The purpose of this statute “is to foster open lines of communication between the probation agent and client.” Hutto v. State, 387 S.C. 244, 248, 692 S.E.2d 196, 198 (2010); see, e.g., 98 C.J.S. Witnesses § 366 (“[I]n some jurisdictions, a statutory privilege does attach to information and data obtained in the discharge of official duties by probation and parole agents, the purpose of which is to permit interviewees to express themselves fully without fear of disclosure or reprisal.”). In order to achieve the goal of the statute of fostering open communication, information given by a probationer to his probation agent is “inadmissible as evidence in court with no exception.” State v. Hook, 356 S.C. 421, 425, 590 S.E.2d 25, 27 (2003) (emphasis added).

However, “Section 24-21-290 only creates a statutory privilege and does not implicate a constitutional right[.]” Hutto, 387 S.C. at 250, 692 S.E.2d at 199. The exclusionary rule does not apply and is not triggered by a violation of the statute. Id. Thus, even where a technical violation of the statute has occurred, such a violation does not warrant the exclusion of any evidence obtained as a result of the disclosure of privileged information. Id. In the context of the application of the exclusionary rule, the “exclusion of evidence should be limited to violations of constitutional rights and not to statutory violations, at least where the appellant cannot demonstrate prejudice at trial resulting from the failure to follow statutory procedure.” State v. Chandler, 267 S.C. 138, 143, 226 S.E.2d 553, 555 (1976).

In Hutto v. State, Hutto cut his arms and hands while breaking into the home of a 91-year-old woman. Id., 387 S.C. at 246, 692 S.E.2d at 197. Hutto then sexually-

assaulted and robbed the elderly woman before fleeing. Id. About a month later, Hutto's probation agent visited his home on a routine visit and observed the cuts on Hutto's arms and hands. Id. at 246-247, 692 S.E.2d at 197. Subsequently, the probation agent provided this information to law enforcement when he learned they were looking for a suspect with similar injuries. Id. at 247, 692 S.E.2d at 197. Using this information, officers were able to obtain a positive identification of Hutto from the victim and obtain a warrant for a sample of Hutto's blood. Id. Testing confirmed Hutto's blood matched the evidence collected from the crime scene, and he was convicted of numerous offenses. Id.

Following his conviction, Hutto sought post-conviction relief on the basis his trial counsel was ineffective for failing to seek the suppression of the testimony and evidence related to the probation agent's observations. Id. On appeal, the South Carolina Supreme Court affirmed the denial of Hutto's application for relief, finding the agent's observations were not intended to be covered by the statutory privilege of Section 24-21-290. Id. at 248, 692 S.E.2d at 198. The Court concluded the information obtained was not reliant upon the probation agent's relationship with Hutto, meaning its exclusion was not intended by the legislature and would not serve the goals of the statute. Id. The Supreme Court further rejected Hutto's contention the statutory exclusion should have been applied to everything obtained through the use of the allegedly privileged information, including the identification evidence leading to Hutto's arrest and the evidence obtained through the execution of the search warrant. Id. at 250, 692 S.E.2d at 198-199. The Court specifically held the exclusionary rule did not apply to a violation of the statute and no constitutional rights were implicated by a violation even assuming one had occurred. Id. at 250, 692 S.E.2d at 199.

In the case sub judice, Appellant's probation agent provided Appellant's address to Detective Culick to assist in the investigation by confirming which of the two addresses the officer already had for Appellant was correct. The probation agent's act of providing Appellant's address to the officer did not constitute a violation of Section 24-21-290. Much like in Hutto, Appellant's address was not the kind of information intended to be privileged by the legislature. Section 24-21-290 is designed to encourage open lines of communication between a probation agent and probationer. However, a probationer is required to provide his address to a probation agent, and an open relationship between the two is in no way impacted by a probationer providing purely administrative information like a name or address to his agent. See S.C. Code Ann. § 24-21-430 (listing conditions of probation and requiring a probationer to permit a probation agent to visit his home)⁴. Therefore, the statute's goal of encouraging open lines of communications between the parties is not weakened, jeopardized, or affected by the agent disclosing basic administrative information like an address to law enforcement.

Appellant's address was a piece of information readily available from multiple sources and should not be afforded privileged status merely because it was also available through the probation agent. Appellant's disclosure of his address to the probation agent had no connection to the legislative intent behind the statute of fostering open lines of communication between Appellant and his agent. Furthermore, the probation agent's ability to obtain Appellant's address was not reliant upon the openness of the agent's relationship with Appellant. See Hutto, 387 S.C. at 248, 692 S.E.2d at 198 ("The

⁴ Notably, although not applicable to Appellant's case, the legislature amended S.C. Code Ann. 24-21-430 subsequent to Appellant's conviction to require all probationers to submit to the warrantless search and seizure of their person, vehicle, and possessions when requested by either a probation agent or any law enforcement officer. Therefore, under the current law, Appellant would not have had standing to deny consent to search his apartment upon his arrest and the officers would not have been required to obtain a warrant to conduct the search.

information obtained was not reliant upon the probation agent/client relationship.”).

Instead, Appellant was required to initially provide his address along with other basic administrative information to his agent before their relationship could even begin. Thus, there is no reason to afford administrative information such as a name or address privileged status under the statute.

The legislature did not intend the statutory privilege to prevent a probation agent from confirming a suspect’s address during a police investigation, and the goals of the statute would not be served by such a ruling. Instead, an overly broad application of the statute in this manner would achieve an absurd result not intended by the legislature and entirely disconnected from the goals of the statute. See State v. Sweat, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008) (“Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.”). Therefore, Appellant’s address should not have been considered privileged information, and its disclosure by the probation agent did not constitute a violation of the statute.

However, assuming arguendo a statutory violation occurred, the trial judge correctly determined Appellant was not entitled to suppression of the evidence. As the Supreme Court instructed in Hutto, Appellant’s constitutional rights were not implicated by a statutory violation even if one did occur. Assuming the probation agent was not statutorily permitted to provide Appellant’s address to the officers, the agent’s disclosure did not entitle Appellant to the exclusion of any evidence obtained with the allegedly privileged information. See Hutto, 387 S.C. at 250, 692 S.E.2d at 199 (“[A]ssuming arguendo there was a violation, such violation would not warrant the exclusion of evidence obtained from the information disclosed.”). Just as the subsequently-obtained

identification evidence and search warrant were not tainted by the disclosure of alleged privileged information in Hutto, Appellant's arrest, his statements to law enforcement, and the search warrant were not tainted by his probation agent's disclosure of his address to law enforcement.⁵ Therefore, regardless of whether or not the probation agent violated the statute by revealing Appellant's address, none of the evidence obtained afterwards was rendered inadmissible during trial. The trial judge properly denied Appellant's suppression motion and motion for a mistrial. Appellant's conviction and sentence should be affirmed.

B. Inevitable Discovery and the Independent Source Doctrine

The inevitable discovery doctrine has been adopted as an exception to the exclusionary rule. Nix v. Williams, 467 U.S. 431, 444 (1984). If the prosecution can establish by a preponderance of the evidence that information or evidence would have

⁵ To the extent Appellant is contending the warrant was rendered invalid by a statutory violation of S.C. Code Ann. § 24-21-290, the search warrant was properly issued after the officers presented substantial information to the magistrate establishing a probable cause basis for the issuance of the warrant. See State v. Weston, 329 S.C. 287, 293, 494 S.E.2d 801, 804 (1997) ("Suppression is appropriate in only a few situations, including when an affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' " (quoting United States v. Leon, 468 U.S. 897, 923 (1984))). The information in the affidavit established Appellant committed the armed robbery, was arrested at his apartment, and possibly could have concealed evidence of the crime there. The fact officers confirmed the address of Appellant's known residence through his probation agent was entirely unnecessary to establish a probable cause basis for the issuance of the search warrant. See State v. Herring, 387 S.C. 201, 212, 692 S.E.2d 490, 496 (2009) ("We find the affidavit sufficient to establish probable cause for police to look for Herring, a murder weapon, and the Toyota Forerunner at his known residence."). Additionally, although a violation of the warrant statute itself can potentially render a warrant invalid, the officers in Appellant's case complied with the requirements of the warrant statute in obtaining the search warrant by submitting a written warrant affidavit. See State v. McKnight, 291 S.C. 110, 113-114, 352 S.E.2d 471, 473 (1987) (finding exclusion appropriate where the officers made no good faith efforts to comply with the requirements of the warrant statute by failing to prepare a written warrant affidavit). Furthermore, even assuming the agent's disclosure of allegedly privileged information rendered the warrant affidavit defective or invalid, the officers reasonably believed the search warrant was valid after fully complying with the requirements of the warrant statute and acted in good faith when they executed the search warrant. See Herring, 387 S.C. at 215, n. 6, 692 S.E.2d at 497 ("Given our recognition of an exception for officers' good faith attempt to comply with the affidavit requirement, we find no reason not to extend such a good faith exception to a warrant reasonably believed to be valid, but later determined invalid. Accordingly, even if we were to determine the affidavit was improper, we would find the SLED agents acted in good faith and reasonably believed the warrant valid, such that the search should be upheld."). Therefore, the evidence discovered after the execution of the search warrant was properly admitted during trial.

inevitably been discovered by lawful means, then the discovered evidence, even if obtained by unlawful means, is admissible. Id. "Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial." Id. at 446. Likewise, "the independent source doctrine allows admission of evidence that has been discovered by means wholly independent of any constitutional violation." Id. at 443. "[T]he prosecution is not to be put in a better position than it would have been in if no illegality had transpired. By contrast, the derivative evidence analysis ensures that the prosecution is not put in a worse position simply because of some earlier police error or misconduct." Id.

In Appellant's case, Appellant contends the probation agent's disclosure of his address violated Section 24-21-290 and warranted the exclusion of all the evidence obtained afterwards, including his arrest, his statements to law enforcement, and everything recovered during a search of his apartment. Appellant maintains the search warrant was rendered invalid because it contained the information provided by the probation agent. Assuming the probation agent's actions violated the statute and even assuming the exclusionary rule was triggered by the violation, all the evidence recovered following the agent's disclosure of the allegedly privileged information would have inevitably been discovered regardless of the claimed statutory violation.

Prior to the involvement of the probation agent in the investigation, Detective Culick identified Appellant as the perpetrator of the armed robbery and obtained two addresses for Appellant from D.M.V. records and the sex offender registry. Assuming the probation agent had not confirmed which address Appellant actually resided at, the officers would have gone to both addresses to arrest Appellant. Furthermore, Appellant conceded the address on his driver's license was the correct address where he resided.

Therefore, the officers unquestionably had all the information they needed to located Appellant and would have arrested him for the crime regardless of the probation agent's disclosure and confirmation of Appellant's correct address. The probation agent's disclosure merely enabled law enforcement to complete their investigation in the most efficient manner possible under the circumstances and in no way violated Appellant's constitutional rights. Exclusion of the evidence was not warranted and would have unfairly placed the officers in a far worse position than they would have been if no statutory violation occurred. See Id. at 444 ("If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense.").

Based on the information obtained by the officers from independent sources with no connection to any statutory privilege, Appellant's arrest was inevitable with or without the assistance of his probation agent. If the address provided by the probation agent had not been included in the search warrant affidavit, the officers would have independently determined the correct address from the information they had already obtained from other sources and included that address in the warrant affidavit. Thus, the officers had probable cause for the search and sufficient information to obtain a search warrant independent of the alleged statutory violation. Therefore, even if a statutory violation occurred, the evidence subsequently obtained through the investigation was properly admitted under the inevitable discovery and independent source doctrines. See Hutto, 387 S.C. at 250, 692 S.E.2d at 199 (ruling evidence obtained after an alleged violation of Section 24-21-290 was properly admitted where the disclosure of the privileged

information was not the only source that led to the discovery of the evidence). The trial judge properly denied Appellant's suppression motion and mistrial motion. Appellant's conviction and sentence should be affirmed.

II.

The trial judge properly sentenced Appellant to a mandatory sentence of life without parole following his armed robbery conviction after the solicitor served timely pre-trial written notice to Appellant and his counsel notifying them of the State's intention to seek a life sentence pursuant to the recidivist offender statute.

Appellant contends the trial judge improperly sentenced him to a sentence of life without parole under S.C. Code Ann. § 17-25-45 because he allegedly did not received proper notice of the State's intention to seek the sentence prior to trial. Although Appellant has acknowledged he received written notice that referenced the recidivist offender statute and that indicated the State would seek life imprisonment pursuant to the statute upon conviction, Appellant maintains the notice was insufficient because it did not explicitly include the words "without parole." Regardless of Appellant's contentions, the written notice was not defective despite the absence of the language desired by Appellant. The language included in the notice was fully sufficient to convey the State's intentions regarding sentencing to Appellant. Appellant received timely notice prior to trial of his eligibility for a life sentence pursuant to the recidivist offender statute, and the trial judge properly sentenced him accordingly. Appellant's conviction and sentence should be affirmed.

Under S.C. Code Ann. § 17-25-45(A), a defendant convicted of a most serious offense must be sentenced to life imprisonment without the possibility of parole if the defendant has one or more prior convictions for a most serious offense or two or more prior convictions for a serious offense. Armed robbery, kidnapping, first-degree burglary, and assault and battery with intent to kill are all considered to be "most serious" offenses. S.C. Code Ann. § 17-25-45(C)(1).

Before a defendant can be sentenced to life imprisonment pursuant to the statute, “[t]he State is required by law to inform [the] defendant that it plans to apply the recidivist statute.” State v. Burdette, 335 S.C. 34, 38, 515 S.E.2d 525, 527 (1999). The notice requirement is codified under S.C. Code Ann. § 17-25-45(H), which instructs: “Where the solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and defendant’s counsel not less than ten days before trial.” However, the statute does not enunciate any required language or contents that must be included in such notice. Burdette, 335 S.C. at 39, 515 S.E.2d at 527.

“The purpose of § 17-25-45(H) is to assure that a defendant and his counsel have actual notice that the State is seeking a sentence under the recidivist statute at least ten days prior to trial.” James v. State, 372 S.C. 287, 294, 641 S.E.2d 899, 903 (2007). In order to meet the statutory notice requirements, the solicitor is only required to notify the defendant that the recidivist sentencing statute will be applied upon sentencing. Burdette, 335 S.C. at 39-40, 515 S.E.2d at 528. Actual notice is sufficient even where written notice is not provided. James, 372 S.C. at 294-295, 641 S.E.2d at 903.

In the case at bar, Appellant and his counsel were timely notified in writing more than ten days before trial of the State’s intentions to seek a life sentence pursuant to the recidivist offender statute upon Appellant’s conviction for armed robbery. The written notice listed Appellant’s prior convictions along with his new indictment for armed robbery and instructed him the State would be seeking life imprisonment while specifically referencing S.C. Code Ann. § 17-25-45. Nothing more was required of the State to place Appellant on notice of his eligibility for a life sentence under the recidivist offender statute.

To the extent Appellant is challenging the written notice as statutorily deficient based on the absence of language stating the life sentence would be “without parole,” there is no requirement such language must be included in the solicitor’s notice. See Burdette, 335 S.C. at 39, 515 S.E.2d at 527 (“The statute, however, does not address the content requirement of such notice.”). Instead, the solicitor was only required to notify Appellant the State intended to apply the recidivist offender statute upon his conviction, and the solicitor unquestionably met that burden in this case by including a direct reference to the applicable statutory provision in the notice. See, e.g., Id., 335 S.C. at 40, 515 S.E.2d at 528 (“Specifically listing the triggering charge from the current case is unnecessary because Defendant has been fully informed of the charges against him in the indictment, and he has been informed that the State will apply the recidivist statute.”).

To the extent Appellant is asserting the notice was deficient because it did not put him on actual notice the State was seeking life imprisonment without parole as opposed to a life sentence with the possibility of parole, the notice given informed him the State was seeking a sentence pursuant to the recidivist offender statute, which mandated a sentence of life imprisonment without parole. Nothing more was required or necessary to inform Appellant of the sentence he was facing upon conviction.

Furthermore, even assuming Appellant did not actually understand his sentence would be for life without the possibility of parole, his ignorance of the law affords him no relief. See Gregory v. Gregory, 292 S.C. 587, 589-590, 358 S.E.2d 144, 146 (Ct. App. 1987) (“The legal axiom that ignorance of the law is no excuse has long been the law of this nation and state.”); see also State v. Latimore, 390 S.C. 88, 98, 700 S.E.2d 456, 462 (Ct. App. 2010) (“[E]ven if we presume Latimore was not notified of the changes to the statutory scheme, ignorance of the law is no excuse”). Assuming any confusion

regarding the potential sentence existed, Appellant simply needed to ask his counsel or refer to the statute cited in the written notice to understand the nature of the life sentence.⁶ Compare with Burdette, 335 S.C. at 40, 515 S.E.2d at 528 (“Determining which of the indicted offenses triggers the statute merely requires looking at the list of offenses listed in section 17-25-45.”). Appellant’s alleged failure to do so did not render the notice provided to him deficient.

Based on the timely provision of written notice to Appellant and his counsel notifying them Appellant would be sentenced under the recidivist offender statute if convicted, the trial judge properly sentenced Appellant to life imprisonment without the possibility of parole when Appellant was convicted of armed robbery, which constituted a subsequent conviction for a most serious offense. The solicitor completely satisfied the statutory notice requirements by serving written notice, and Appellant was properly sentenced for his crimes. Appellant’s challenge to his sentence is entirely without merit. Appellant’s conviction and sentence should be affirmed.

⁶ Notably, Appellant conceded he received timely notice and was aware he was potentially facing life imprisonment without the possibility of parole prior to trial. (R. p. 7; p. 10). Furthermore, Appellant acknowledged he discussed “two strikes” with his counsel. (R. p. 7). However, defense counsel refused to specifically disclose what he told Appellant about the recidivist offender statute or about Appellant’s sentencing exposure. (R. p. 18).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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June 16, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County
Honorable George C. James, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

ANDRE MAURICE MASSEY,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 16th day of June, 2011.



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