

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LANCASTER COUNTY

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSHUA WILKS,

APPELLANT

APPELLATE CASE NO. 2013-001827

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE OF SOUTH CAROLINA,

4 Plaintiff,

5 Case No.

6 -against-

2012-GS-29-550

7 JOSHUA XAZIER WILKS,

8 Defendant.

9 -----x

10 August 12, 2013

11 Lancaster, S.C.

12
13 B E F O R E:

14 HONORABLE PAUL M. BURCH

15
16 A P P E A R A N C E S:

17 DOUGLAS BARFIELD, Esquire

18 Solicitor for the State

19
20 MARK GRIER, Esquire

21 Attorney for the Defendant

22
23 Aileen Butler

24 Official Court Reporter

25

1		<u>I N D E X</u>		
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	Craig Greenlee			
4	Mr. Barfield	17		
5	Mr. Grier		34	
6	Scott Grant			
7	Mr. Barfield	42		55
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E X H I B I T S

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1 MR. BARFIELD: Your Honor, while Mr. Wilkes
2 is being brought up, Mr. Grier and I have this
3 case for trial this morning, Joshua Xazier Wilks
4 charged with armed robbery and possession of a
5 firearm during the commission of a violent crime.
6 We are not taking this issue up at this point but
7 we do need to do a Blair hearing before we start,
8 actually start the trial. In connection with
9 that Mr. Grier and I both have copies of a
10 competency to stand trial evaluation report and a
11 McNaughton evaluation report which are fairly
12 lengthy and I will give you these ahead of time
13 to give you a chance to look at before we have a
14 hearing.

15 (Documents handed to the Court.)

16 Your Honor, concerning Mr. Wilkes case,
17 there are a couple of things that I would like to
18 do before we get into the jury selection process
19 in a couple of minutes, and the first is this.

20 Mr. Wilkes is indicted in 2012-GS-29-550
21 with armed robbery and in 2012-GS-29-551 with
22 possession of a fire arm during the commission of
23 a violent crime.

24 The armed robbery indictment alleges that he
25 was armed, actually armed with a deadly weapon.

1 The investigation reveals that there are some
2 possibility that he was armed with pellet pistol
3 instead of an actually deadly weapon. So last
4 week the Grand Jury met and I submitted an
5 amended indictment alleging armed robbery using
6 -- actually using a deadly weapon or a
7 representation of a deadly weapon.

8 I have served a certified copy of this
9 amended indictment which is 2012-550 upon Mr.
10 Wilkes in the detention center. Mr. Grier knew I
11 was doing this last week and at this time I need,
12 I guess, to have Mr. Wilkes arraigned on the
13 amended indictment and then while he is up here
14 we have got a couple of other matters about the
15 indictment that I would like to take up, so if
16 you and Mr. Wilkes will come up I would
17 appreciate it.

18 MR. GRIER: Certainly judge I object for the
19 record to it. I understand the law on that is
20 not very helpful, but for the record it is a bit
21 of a surprise and I don't know -- I can't really
22 state any prejudice which I think would be
23 necessary for me. That would be my burden, would
24 be to show prejudice and it is not going to
25 change anything with our defense but simply there

1 is another matter for us to have contend with in
2 terms of his defense, and I would like to note
3 that on the record.

4 THE COURT: All right. I will note your
5 objection. Of course I will overrule that.
6 Come on around and we'll see what we got going
7 here.

8 MR. BARFIELD: Mr. Wilkes, as to Indictment
9 2012-GS-29-550, the amended indictment which was
10 served upon you in the detention center I think
11 probably last Friday, which alleges that you on
12 or about January 6, 2012 while armed with a
13 deadly weapon, to wit, a handgun or while using
14 a representation of a deadly weapon or an object
15 which the victim reasonably believed to be a
16 deadly weapon and alleging by actions or words
17 that you were armed with a deadly weapon
18 feloniously take and carry away from the person
19 or presence of William Moore by means of force,
20 threats or intimidation goods or money of
21 William Moore such goods and money being
22 described as follows; \$120, with the intent to
23 deprive the owner permanently of such property
24 in violation of the law of the State of South
25 Carolina.

1 With regard to that charge Mr. Wilkes how
2 do you plead, guilty or not guilty.

3 THE DEFENDANT: Not guilty.

4 MR. BARFIELD: All right. And how do you
5 desire to be tried?

6 THE DEFENDANT: By God and my country.

7 MR. BARFIELD: Thank you, sir.

8 Your Honor, that is the arraignment
9 process on that amended indictment. There is
10 another matter about the indictments which Mr.
11 Grier was also made aware of I think Friday.
12 Last week anyway.

13 We now have indictment, number 550, which
14 is original armed robbery indictment.

15 Indictment 550 which is the amended version of
16 that indictment alleging representation of a
17 deadly weapon and indictment number 551 which
18 alleges use of a firearm during the commission
19 of a violent crime.

20 Your Honor, in reviewing the file and
21 getting ready for trial, Thursday or Friday, I
22 noticed that the indictments alleged that the
23 events occurred on January 6th of 2012. We
24 prepare indictments based on warrants and the
25 warrants for these two charges issued by the

1 city judge also reflected the incident date was
2 January 6th of 2012. In reviewing all of this
3 information I was reading through the file and
4 in fact the incident occurred on January 16 of
5 2012. And I am moving to amend all three
6 indictments of the date of the event from
7 January 6th to January 16 of 2012. And I can
8 -- I think Mr. Grier objects. I guess I should
9 probably just go ahead and make my arguments in
10 that regard. He has told me he is going to
11 object.

12 MR. GRIER: I can't consent, Your Honor.

13 THE COURT: Let me take a look at those.
14 It says on or about. That is close proximity
15 time wise, at least the older you get it gets
16 closer.

17 MR. BARFIELD: Can I put some other
18 matters on the record about that, for the
19 purpose of the record.

20 THE COURT: All right.

21 MR. BARFIELD: Your Honor, to justify the
22 motion to amend, first an indictment is notice
23 document. It is simply designed to give the
24 defendant notice of what he is charged with and
25 what he faces. And in that connection, again

1 let me just run through some factual information
2 from the file. The warrants again alleged
3 January 6th of 2012 and because the warrants
4 alleged that date the indictments alleged January
5 6th of 2012. However, the incident report
6 indicates the date and time of the offense was
7 1-16 of 12, at 9:45pm. The dispatch time was
8 1-16-12 at 9:45pm. Officer Johnson with the city
9 police department did a supplement indicating
10 that he went out when this incident got
11 dispatched and his supplement indicates a date of
12 1-16 of 12. The victim in the case was -- he
13 actually self-reported or went to the police
14 department to report this incident that night.
15 Was talked to by Investigator Tim Witherspoon,
16 that night. Gave a brief written statement that
17 night, which is dated 1-16 of 12.

18 The initial discovery packet to Mr. Grier
19 which included all of the documents that I
20 referred to was provided to him on three 3-14 of
21 12. I needed to get some additional information
22 on the case and did get that from the police
23 department and sent it to Mr. Grier on 4-24 of
24 2012.

25 In addition to that Your Honor, Mr. Wilkes

1 gave a statement in this case which related to
2 more than just this single incident and he was
3 primarily being talked to about an incident that
4 had occurred -- let me back up.

5 He was being questioned about an incident
6 that occurred on 1-23 of 12 and Captain Scott
7 Grant of the police department started talking
8 to him about the incident that we are going on
9 trial here today which occurred a week before and
10 Captain Grant led into the questions concerning
11 this armed robbery by saying I want to talk to
12 you about the incident that happened a week
13 earlier at the BB&T ATM. In fact January 16th,
14 is precisely one week earlier than January 23rd
15 which is the date of the incident that he was
16 being primarily questioned about when they first
17 started talking to him.

18 So, based upon all of that, Your Honor, I
19 would simply argue that Mr. Grier and Mr. Wilkes
20 certainly have notice that what we are we are
21 trying for him today actually occurred on January
22 16 of 2012 rather than January 6 of 2012 as
23 stated in the warrants and based upon all of that
24 I would move to amend the indictments.

25 MR. GRIER: Judge, as Judge Hayes said

1 eloquently told me during a trial with Mr.
2 Barfield one time my job is to wreck the train.
3 So I can not consent to that. I can not argue
4 that we have not received all the documents that
5 were dated as Mr. Barfield has indicated. Simply,
6 the technical aspects of the indictment have not
7 been complied with and that would be my
8 objection.

9 THE COURT: Okay. All right. All of them
10 say on or about and obviously what you said there
11 is sufficient notice. Sounds like to me it was a
12 scrivener's error. Sixth would have a t h and
13 16th would have a t h, so somebody dropped the
14 one somewhere.

15 MR. BARFIELD: Just dropped the one. That is
16 the way I read it. I don't think there was ever
17 an allegation -- any real allegation that it
18 occurred on the 6th. I think whoever -- two
19 different officers actually got the two different
20 warrants and I think they both just picked the
21 wrong date.

22 THE COURT: All right. Any objection on
23 that is overruled.

24 MR. BARFIELD: Your Honor, I will manually
25 change the date from 6 to 16 and put my initials

1 on it. Is that proper?

2 THE COURT: Either you or I.

3 MR. BARFIELD: I will let you. On all three
4 of them.

5 THE COURT: Well, let me straighten it out.
6 I said t h. It didn't have a t h. So let that
7 be reflected. That even makes it maybe a
8 stronger argument it is a scrivener's error
9 there.

10 MR. BARFIELD: It is just the numbers, not
11 the words.

12 THE COURT: Okay.

13 MR. BARFIELD: I will give them back to the
14 clerk and when the Court is ready we can proceed
15 to the jury assembly room, I suppose, and begin
16 that process.

17 Is that okay? Can you all deal with the
18 people who were left here that have other
19 business to be taken care of.

20 THE COURT: All right.

21 Madame clerk, will go down there and I will
22 be back in chambers if you need me.

23 MR. BARFIELD: We will come get you.

24 (Whereupon there was a brief recess.)

25 MR. BARFIELD: Your Honor, we are ready to

1 proceed with Mr. Wilks' case. Again, there are a
2 couple of other matters we need to get resolved
3 before we actually launch into the trial.

4 Number one, we need to do a Blair Hearing.
5 Mr. Wilks was examined pursuant to two separate
6 orders. One for competency to stand trial and
7 one for criminal responsibility in a capacity to
8 perform.

9 This morning I handed you up the two
10 reports. Actually it was really one evaluation
11 but they generated two different reports as
12 understand it. I handed you those reports. I
13 read them. I am sure Mr. Grier has.

14 The State has nothing further to offer
15 concerning his competency and his criminal
16 responsibility and absent Mr. Grier having some
17 argument to the contrary, at the appropriate time

18 I would ask you to make the requisite
19 findings on the record so that we may proceed.

20 MR. GRIER: Judge, I think the reports speak
21 for themselves. Certainly under the
22 circumstances after the initial contact with Mr.
23 Wilks there was reason to be concerned that there
24 might be a Blair issue and potential for
25 McNaughton issue in this case. You saw that

1 there is some reference to voluntarily use of
2 drugs in the line of questions and such and of
3 course that is not an issue with Blair, but most
4 certainly my experience with Mr. Wilks subsequent
5 to everything that we have done in that case is
6 that I would have nothing additional to challenge
7 the findings in that evaluation. So, I won't be
8 presenting any additional evidence.

9 If the judge feels out of abundance of
10 caution you would want to conduct any kind of
11 examination or for me to conduct any examination
12 pertaining to his ability to assist counsel, we
13 could do that, but I don't believe it would be
14 necessary.

15 THE COURT: Well, with that said, if you
16 don't find any reason to take those extra steps
17 after having discussed this case with him and
18 after these reports were done, I will make both
19 of these reports Court exhibits and based on the
20 findings within the report I find that Mr. Wilks
21 is competent to stand trial and he is quite
22 capable at this time to assist you in his legal
23 defense.

24 (Court's Exhibit 1 & 2, Evaluations, marked
25 in evidence as of this date.)

1 MR. BARFIELD: Your Honor, the next matter
2 is a Jackson v Denno. I am prepared to offer
3 some testimony concerning the statement that Mr.
4 Wilks made on 2-8 of 12, and I guess we are clear
5 there are no jurors in the courtroom, I presume.

6 Your Honor, Mr. Wilks, I got to give you a
7 just a very brief background on this. Mr. Wilks
8 is charged with crimes with three separate
9 incidents and the statement that he gave upon
10 questioning by two detectives with police
11 department on 2-8 of 12 addresses all three
12 incidents that he got charges on. I have number
13 1 the original statement if the Court wants to
14 examine -- if Mr. Grier wants to examine I got
15 the original statement which I will give back to
16 the police department and proceed with copies if
17 that is proper. Second thing is, over the lunch
18 break redacted the statements to delete any
19 reference to the other two events that led to
20 charges against Mr. Wilks and the copy that I
21 have I think Mr. Grier still got it in his hand,
22 I've shown him the way I redacted it and it is
23 basically just this much concerning this
24 incident. The rest of it is just a boiler plate
25 on the statement form and signature line on the

1 Miranda warnings. So with that said, I am ready
2 to go forward with two witnesses concerning the
3 statement.

4 MR. GRIER: Judge, absent something coming
5 out of our Jackson versus Denno that I do not
6 anticipate and that I do see in that, I don't --
7 I do not believe I would have any argument for
8 any further redactions. Obviously we reserve all
9 objections and see what happens on the stand here
10 and reserve objections for that going into
11 evidence for a later time.

12 THE COURT: All right.

13 MR. BARFIELD: Call Craig Greenly.

14 MR. GRIER: If I could add one thing for the
15 benefit of my client and his family. They may
16 not understand what was just said by the
17 solicitor about Mr. Wilks being charged with
18 three crimes. That is unavoidable for the Court
19 to know that and I don't know that they really
20 understand. That is not something the jury is
21 going to be become aware of those issues. He is
22 certainly challenging the charges in those other
23 cases. The jury won't hear anything about that.
24 Just to put that on the record to make sure the
25 family understands you are not the jury and the

1 jury is not going to hear anything about these
2 other pending charges.

3 THE COURT: Okay, and I will add to that by
4 saying in South Carolina the jury is the finders
5 of the facts. I don't get involved in that.

6 MR. GRIER: Yes, sir.

7 CRAIG GREENLEE, called as a witness, having
8 been duly sworn by The Clerk, was examined
9 and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BARFIELD:

12 Q. Tell us your name please, sir.

13 A. Craig Greenlee.

14 Q. And you are a lieutenant with the Lancaster
15 Police Department?

16 A. Yes, sir.

17 Q. And how long have you been employed by the
18 Lancaster Police Department?

19 A. Since 2003.

20 Q. And have you been -- had you been in law
21 enforcement before 2003?

22 A. Yes, sir.

23 Q. Where did you work in law enforcement then?

24 A. In the State of Florida.

25 Q. How long have you been in law enforcement career

1 wise?

2 A. Twenty-six years.

3 Q. All right. Were you a detective?

4 MR. GRIER: Mr. Solicitor, I am sorry to
5 throw another wrench. I don't want to waive any
6 objection to a sequester motion I will be making
7 at some point. If now is the proper time to make
8 that, judge, that motion. You know since we do
9 have officers in here and the purpose of a
10 sequester motion is to prevent further witnesses
11 from testifying consistent with what they hear
12 from the stand it might be appropriate and I
13 apologize to Mr. Greeley, I should have made this
14 prior to you taking the stand. This might be the
15 appropriate time that we deal with that issue.
16 It occurs to me that I think if I will make the
17 motion now is probably the time to do it and not
18 to upset Mr. Barfield's procedure, but judge, I
19 do believe that -- I understand that the lead
20 officer and I think Officer Greeley is the lead
21 officer, has the absolute right to remain in the
22 courtroom. No one else, as I understand the law,
23 has the right that would be a witness
24 necessarily, that is something for the Court to
25 determine but, most certainly the testimony in

1 this case is going to be critical as it is in
2 every case, and to give me the opportunity to
3 properly, I believe, cross examine all the
4 witnesses as to the facts. I believe it would be
5 most appropriate if we had a sequester order in
6 this case.

7 THE COURT: Okay.

8 MR. BARFIELD: Can I explain a couple
9 things real quick. I am not going to yell and
10 scream because you will grant the motion I am
11 sure.

Technically Lieutenant Greenlee is not the principle investigating officer in this incident, but he was in one of the other incidents which led him to be the first officer to start questioning Mr. Wilks. So my purpose in having Lieutenant Greenlee on the stand is simply for the initiation of the statement process. Captain Scott Grant is going to be the other witness on the statement who actually questioned him about this incident. And I got Officer Burlingame began who is not going to testify at all about this incident, but he is going to testify about the arrest of Mr. Wilks later.

25 I got Officer Hirtle who was the primary

1 responding officer the night of the armed
2 robbery. Of course, I got Mr. Moore, the victim,
3 who is on the back row back there and I think he
4 has got the absolute right to be in there the
5 whole time and I got two witnesses coming back at
6 3:15, who heard something but didn't see
7 anything. So, with that said we will do whatever
8 you tell us we need to do.

9 THE COURT: The Captain can stay. We will
10 let the rest of them step out.

11 MR. GRIER: And I understand that applies to
12 the defense too. I will double check and make
13 sure we don't have any intention of calling --

14 THE COURT: And also the officers involved
15 don't be discussing this case amongst each other.

16 THE COURT: All right. The victim and the
17 Captain is still hear. The two civilians are
18 going to be one and two witnesses live in front
19 of the jury so I will wife in first and let her
20 go and bring the husband in. We are ready to go.

21 MR. GRIER: Is there some reason Mr. Moore
22 would not be subject to sequestration?

23 MR. BARFIELD: Because he's the victim. He
24 has got an absolute right to be in the courtroom
25 the whole time.

1 MR. GRIER: I believe your right.

2 THE COURT: All right.

3 DIRECT EXAMINATION

4 CON'T BY MR. BARFIELD:

5 Q. Lieutenant Greenlee were you employed as a
6 detective or investigator for the police department back
7 in January of 2012 when the events that bring us here
8 today occurred?

9 A. Yes, sir.

10 Q. Did you on February 8th -- by February 8th had
11 Joshua Wilks been taken into custody, at least a suspect
12 in the incident we are here for today?

13 A. Yes, sir.

14 Q. Were you investigating other matters relating to Mr.
15 Wilks?

16 A. Yes, sir, I was.

17 Q. Did you have occasion to interview Mr. Wilks on
18 February 8th of 2012?

19 A. Yes, sir.

20 Q. Did you ultimately take a written statement from
21 Mr. Wilks?

22 A. Yes, sir, I did.

23 Q. Did any other investigator or supervisor
24 participate in your interview of Mr. Wilks on February
25 8th?

1 A. Yes, sir, Captain Grant was with me.

2 Q. Is that Scott Grant?

3 A. Yes, sir.

4 Q. Now, I will ask you some questions, specifically
5 related to the that statement. Was Mr. Wilks had he
6 been arrested within hours of when were you talking to
7 him?

8 A. That is correct, sir.

9 Q. The night before or the day of?

10 A. Not the night before.

11 Q. Okay. Where had he been housed since his arrest
12 the night before?

13 A. In our holding area in the jail area.

14 Q. At the police department?

15 A. Yes, sir.

16 Q. What time was it on February 8th when you started
17 talking to Mr. Wilks?

18 A. It was approximately 10:01am.

19 Q. And how do you know it was 10:01am? Is there
20 some record made of that?

21 A. Yes, sir, I have a form that I file out.

22 Q. And is that the Miranda form?

23 A. Yes, sir.

24 Q. Where at the police department were you
25 interviewing Mr. Wilks?

1 A. I interviewed him in the investigation division.

2 Q. In an office or in a secure holding cell of some
3 sort?

4 A. In our office.

5 Q. And is there a desk in the office?

6 A. Yes, sir.

7 Q. Are there chairs in the office?

8 A. Yes, sir.

9 Q. All right. Did you determine -- well, let me
10 back up. Did you make it known to Mr. Wilks why you and
11 he were in the same room talking about things?

12 A. Yes, sir, I did.

13 Q. Did you read him his Miranda warnings?

14 A. Yes.

15 Q. Do you have a form that you use to do that?

16 A. Yes, sir, I do.

17 Q. I will show you four pages stapled together,
18 which look probably a little different from yours, but
19 do you recognize what those four pages are?

20 A. Yes, sir, I do.

21 Q. And is it accurate to say that is a redacted
22 version of the full statement that Mr. Wilks eventually
23 gave you?

24 A. Yes, sir.

25 Q. Now, you look at your Miranda form and I will ask

1 you some specifics about it.

2 Did you determine from Mr. Wilks in your
3 conversation with him how much education he had?

4 A. Yes, sir, I did.

5 Q. And how much did he have?

6 A. He answered ninth grade education at that time.

7 Q. Did you have any interest to know whether he was
8 under the influence of any alcohol or drugs?

9 A. Yes, sir, I asked him.

10 Q. Did he say yes or no?

11 A. He replied no.

12 Q. Did you ask him if he understood and could read
13 and write the English language?

14 A. Yes, sir, I did. He said he could.

15 Q. Read for the Court what you read to Mr. Wilks
16 about his rights. Well, let me ask you this in general.
17 Is it sort of a check-off document, the Miranda form?

18 A. Yes, sir, it is.

19 Q. And your procedure was to do what in getting
20 through those Miranda warnings?

21 A. Upon reading him his rights each right that I am
22 reading him he is initialing that he fully understands.

23 Q. And after you read him one of the rights did you
24 ask him if understood?

25 A. Yes, sir.

1 Q. And if he said he did what did you ask him to do
2 next?

3 A. I asked him to place his initials next to the
4 particular statement.

5 Q. And did you do that statement after statement or
6 through the whole thing and get him to do I all the
7 initials at once?

8 A. I read them and it was statement after statement.

9 Q. He initialed after each part of his Miranda
10 warnings?

11 A. That's correct, sir.

12 Q. Read for the Court what you read him his rights
13 were?

14 A. You have right to remain silent. Anything you
15 say can and will be used against you in a court of law.
16 You have the right to talk to a lawyer and have him
17 present with you while you are being questioned. If you
18 can not afford to hire a lawyer one will be appointed to
19 represent you. Before any questioning, if you wish, you
20 can decide at any time to exercise these rights and not
21 answer any questions or make any statements.

22 Q. Now, lets stop there. Did you read each of those
23 statements to Mr. Wilks?

24 A. Yes, sir.

25 Q. And did you ask him as to each one whether he

1 understood what you had read to him?

2 A. Yes, sir, I did.

3 Q. Did he indicate as to each one that he did or did
4 not?

5 A. He did understand stand.

6 Q. Did he initial each one of those statements?

7 A. Yes, sir, he did.

8 Q. What did you next tell him off the form or ask
9 him?

10 A. You can decide at any time to exercise these
11 rights and not answer any questions or make any
12 statements and then I went on to say do you understand
13 each of these rights as I have explained them to you.

14 Q. What did he say when you asked him that?

15 A. He said he did.

16 Q. Did you ask him to initial it?

17 A. Yes, sir, I did.

18 Q. Did he?

19 A. Yes, he did.

20 Q. What did you do next?

21 A. Having these rights in mind are you willing to
22 talk to us at this time.

23 Q. And did he answer that question?

24 A. Yes, sir, he did.

25 Q. What was his answer?

1 A. He said he was willing to talk at this time.

2 Q. Did he initial that part of the form also?

3 A. Yes, sir, he did.

4 Q. Did you read him the last paragraph what is
5 delineated as waiver of rights at the bottom of the
6 form?

7 A. Yes, sir.

8 Q. Read that for the Court?

9 A. I have read this statement of my rights and I
10 understand what my rights are. I am willing to make a
11 statement and answer questions. I do not want a lawyer
12 at this time. I understand and know what I am doing.
13 No promises or threats have been made to me and no
14 pressure or coercion of any kind has been used against
15 me.

16 Q. Did you ask him if understood all that?

17 A. Yes, sir.

18 Q. Did he indicate that he did or did not?

19 A. He indicated that he did understand it.

20 Q. What time again was it on February 8th when you
21 began the Miranda warning process?

22 A. Approximately 10:01am.

23 Q. Did Mr. Wilks -- did you offer for him to sign
24 the Miranda warnings and waiver form?

25 A. Yes, sir, did I.

1 Q. Did he sign them?

2 A. Yes, sir, he did.

3 Q. What time did he sign?

4 A. It was ten 11am.

5 Q. Did you sign as a witness?

6 A. Yes, sir.

7 Q. Did somebody else sign as a witness?

8 A. Captain Scott Grant did.

9 Q. Now, did he waive his rights to silence and
10 rights to an attorney and talk to you and give you a
11 statement?

12 A. Yes, sir, he did.

13 Q. Now, let me ask some additional questions.

14 Did you and Mr. Wilks have any problems
15 communicating with each other?

16 A. We did not. We communicated very I well.

17 Q. Did you have any difficulty understanding the
18 words and phrases he was using to express things to you?

19 A. I did not.

20 Q. Did he appear to have any difficulty
21 understanding the words and phrases you were using to
22 express things to him?

23 A. No, sir.

24 Q. Did Mr. Wilks ask you any questions about his
25 rights that you had just read to him?

1 A. He had no questions.

2 Q. Did Mr. Wilks say or do anything to lead you to
3 believe that he did not understand what his rights were
4 understand the constitution?

5 A. No, he did not.

6 Q. About -- well, let's get into some details about
7 the circumstances. You and Captain Grant, anybody other
8 than the two of you all and Mr. Wilks in the office?

9 A. No, sir.

10 Q. Do you recall what type generally of clothing you
11 and Captain Grant were wearing that day?

12 A. We were wearing dress clothing. Normal
13 investigation attire.

14 Q. Did you have a badge on somewhere?

15 A. Yes, sir.

16 Q. Did you have firearm?

17 A. Yes, sir, I did.

18 Q. Would there have been any question -- was it
19 clear from your appearance that you were police officer?

20 A. Yes, sir.

21 Q. Were any other officers in and out of the room
22 during any part of the questioning?

23 A. No, sir.

24 Q. At any point did you or Captain Grant unholster
25 your sidearm and use your handguns in any fashion as

1 part of the process of taking the statement?

2 A. No, sir.

3 Q. Do you recall -- what was Mr. Wilks wearing?

4 A. He was wearing regular street clothes.

5 Q. What he had gotten arrested in?

6 A. Yes, sir.

7 Q. When someone is detained in the city jail --

8 well, first of all, does the city police department have
9 a long term detention facility?

10 A. No, sir, it is a holding facility.

11 Q. Where do they go from the municipal justice
12 center if they are going to be arrested and booked in
13 somewhere?

14 A. They are transported to county.

15 Q. Do you all dress them out at your facility before
16 they go to the county?

17 A. No, sir.

18 Q. Do you recall whether Mr. Wilks while he was in
19 the office being questioned was restrained in any
20 fashion?

21 A. He was not.

22 Q. Was not. Not handcuffed in shackles or anything?

23 A. No, sir.

24 Q. Did he at any time ask for connection or contact
25 with the outside world; use the telephone, call my mama,

1 I want to get up and leave hear. Anything like that?

2 A. No, sir.

3 Q. Did he ask for any -- do you recall whether you
4 all gave him anything, creature comforts; bathroom
5 breaks or a drink or cup of coffee or something to eat?
6 Do you remember whether there was anything like that
7 provided to him?

8 A. No, sir.

9 Q. Did Mr. Wilks ask for anything. I want to go to
10 the bathroom did he ask?

11 A. No, he didn't.

12 Q. Did he ask to smoke a cigarette?

13 A. No, he didn't

14 Q. Did he ask to have have a drink?

15 A. No, sir.

16 Q. Did he ask to have something to eat?

17 A. No, sir.

18 Q. Did he appear to be in any physical distress?

19 A. No, sir.

20 Q. Did he have any injuries that you were aware of?

21 A. No, sir.

22 Q. Was he complaining of any pain or discomfort of
23 any kind?

24 A. No, sir.

25 Q. At any time during this process did Mr. Wilks say

1 I am done talking. I don't want to talk any more?

2 A. No, sir.

3 Q. At any time during this process did Mr. Wilks say
4 I think I need a lawyer or I know I need a lawyer or get
5 me a lawyer?

6 A. He, did not.

7 Q. At any point did he say I want to talk to my
8 momma or somebody else before I talk to you at all?

9 A. No, sir.

10 Q. How would you describe the tenor of the
11 conversation between yourself and Mr. Wilks and Captain
12 Grant and Mr. Wilks?

13 A. Just answer question. No confrontational type
14 conversation whatsoever.

15 Q. There were no outbursts by anybody?

16 A. No, sir.

17 Q. There was no fists pounding on the table or
18 anything like that?

19 A. No.

20 Q. Were there any threats made to Mr. Wilks to get
21 him to talk to you all?

22 A. No.

23 Q. Was there any promises to Mr. Wilks to get you to
24 talk to him?

25 A. No, sir.

1 Q. Anybody pushing any buttons we are speaking of to
2 get Mr. Wilks to talk to you all?

3 A. No, sir.

4 Q. And did he really talk to you about the incident,
5 the primary incident you were investigating?

6 A. Yes, sir, he did.

7 Q. At some point did you leave the room?

8 A. Yes, sir, I did.

9 Q. And were you actually present when Captain Grant
10 was talking to Mr. Wilks about the case that we are here
11 for today?

12 A. No, sir, I wasn't.

13 Q. And is this again -- where is my stapled
14 comments.

15 Is this a photo copy redacted version of the
16 full statement that you got from Mr. Wilks on
17 February the 8th of 2012?

18 A. Yes, sir.

19 MR. BARFIELD: Your Honor, I guess at this
20 point I would offer the statement as a Court's
21 exhibit or at this point for identification.
22 Whichever you need it to be.

23 MR. GRIER: I don't think I can object to it
24 for identification purposes. If that is going to
25 be considered towards your determination I

1 certainly think you will you have to see it to
2 determine the critical issue in this Jackson
3 versus Denno hearing.

4 THE COURT: At this point it is marked for
5 identification purposes.

6 (Court's Exhibit 3, statement, marked for
7 identification only as of this date.)

8 MR. BARFIELD: That is all the questions I
9 have for Lieutenant Green.

10 MR. GRIER: Your Honor, beg the Court's
11 indulgence, if I may.

12 CROSS EXAMINATION

13 BY MR. GRIER:

14 Q. Detective Greenlee, the initial -- I know you
15 weren't the initial contact with Mr. Wilks, but Mr.
16 Wilks was questioned by another officer before you,
17 wasn't he.

18 A. I am not sure.

19 Q. Okay, well --

20 A. In the police report?

21 Q. Yes. This is Burlingame's contact, Officer
22 Burlingame's contact and if you could kind of read
23 through that?

24 (Document handed to witness)?

25 Well, my question about it, that really doesn't

1 have anything to do with this case directly, does it?

2 A. That was initiating the beginning of initiating
3 another case.

4 Q. Okay. But it did involve a stop and some
5 questioning by an officer about another -- without
6 Mirandized -- without a Miranda statement at least on
7 the face of the police report. The officer is asking
8 questions about another incident without Mirandizing
9 him?

10 A. I wasn't there. I can' --

11 Q. Well, from what you see in the police report?

12 A. From what I see, no, I can't.

13 Q. So, the initial contact on the face of what is in
14 this police report, which the initial contact there is
15 no appearance that there was any kind of Miranda in the
16 initial questioning of Mr. Wilks and yet Mr. Wilks
17 acknowledged some contact with the crime scene. Denied
18 any wrong doing but put himself in a location that you
19 all believed another crime occurred; basically, and so
20 he had made some concessions that implied -- that would
21 -- that defense lawyers would prefer their clients not
22 make without being Mirandized, is that true?

23 A. I don't know. I wasn't on the scene.

24 Q. All right. Well, he was booked. You met with
25 him about ten o'clock in the morning?

1 A. Yes, sir.

2 Q. And he was arrested the night before?

3 A. Yes, sir.

4 Q. So he spent the night before. Do you know what
5 the process was for when Burlingame picked him up to
6 take him to the county or any of the logistics of what
7 Mr. Wilks journey through law enforcement channels had
8 been prior to you your meeting with him?

9 A. No, sir, I don't.

10 Q. Did you pick him up or who picked him up at the
11 county detention center or were you aware that he had
12 been picked up or had been taken to the detention
13 center?

14 A. I transported him from our cell area to our
15 investigation division. I don't know.

16 Q. All you know is he was there. Your job was to
17 follow up on, you know, on this initial case that he had
18 already made some statements about though.

19 A. I was following up on another case I was
20 investigating.

21 Q. And which one was that?

22 A. This was a sexual assault case.

23 Q. Okay. How did we get from those two cases to a
24 armed robbery case? How was -- as far as internally
25 with the police department how does that happen? Why

1 was he even asked about an armed robbery case?

2 A. The handgun that was collected that evening,
3 looked very similar to the one that we had pictures of.

4 Q. Okay. The pellet gun?

5 A. Yes, sir.

6 Q. And so that made you suspicious and opened the
7 door for that?

8 A. That and his photographs that we had, yes.

9 Q. From BB&T?

10 A. No, sir, from my case.

11 Q. Okay. Did you record the statements; audio,
12 video, anything recorded?

13 A. No, sir.

14 Q. Is that still the practice of the city not to
15 record statements?

16 A. I don't know if they made changes as of this
17 date.

18 Q. Okay. Do you know how long Mr. Wilks was at the
19 Lancaster Police Department before you spoke with him?
20 You didn't pick him up?

21 A. No, sir, I did not.

22 Q. From the county, so do you have any idea of how
23 long he had been sitting at the city before you talked
24 to him?

25 A. No, sir.

1 Q. Okay. Do you know if anybody had any contact
2 with him prior to your speaking with him at all?

3 A. No, sir.

4 Q. Okay. He is 17 years old at the time?

5 A. Seventeen, 18, yes.

6 Q. Police report says 17?

7 A. Yes, sir.

8 Q. Okay. And would you not under any circumstances
9 -- let me back up before I ask that question.

10 Did he strike you as being a mature young man?
11 How did you size him up after the initial how are you
12 doing stuff?

13 A. Just general conversation, how are you doing and
14 he answered very politely. Appeared to be confident.

15 Q. How long -- you don't know how long he had been
16 at the Lancaster Police Department. Other people could
17 have talked to him before you as well?

18 A. Not that I am aware of.

19 Q. You are not aware of. Okay.

20 How long did you speak with him? How long was he
21 interrogated?

22 A. Approximately an hour.

23 Q. Do you know anything about, you know -- you don't
24 know anything about the night he spent --

25 A. No, sir.

1 Q. -- in custody prior to your speaking with him?

2 A. No, sir.

3 Q. Okay. Do you make any kind of notes or anything
4 about how your sizing him up, you know, the apparent
5 competence and I know he has been determined to be
6 competent by the Court, but as far as his faculties and
7 the way to approach him and his understanding other than
8 just you have been doing this a long time and you just
9 size him up on per case basis or is there a system?

10 A. He communicated very well.

11 Q. Okay. He didn't say anything that gave you any
12 cause?

13 A. No, sir.

14 Q. About his ability to -- okay. No reason to
15 believe that.

16 From a law enforcement point of view, when do you
17 decide, you know, I need to talk with this person's
18 parents before I talk to him? What would make an
19 officer make a decision that you might need to speak
20 with someone's parents or have someone in the family
21 communicate with him and learn a little bit about their
22 background before communicating with them?

23 A. Well, I spoke with him he appeared to be
24 competent. He is 17 years of age.

25 Q. Okay. Would there be any circumstances where you

1 would try to contact family or something?

2 A. If he were a juvenile.

3 Q. Okay.

4 A. Considered a juvenile I would be in contact with
5 his parents.

6 Q. Okay. What if there was some appearance of
7 incompetence or something of that nature how would you
8 handle that?

9 A. Well, that didn't occur here so...

10 Q. Okay. All right. Was he searched as far as you
11 know at the Lancaster Police Departments prior to your
12 questioning him?

13 A. Prior to placing him in the cell they were
14 checked carefully.

15 Q. If he had -- I know you weren't part of that, but
16 if he come from the county he would have been checked
17 before he came to the county and would he been checked
18 again before he came to your facility?

19 A. When he was placed under arrest he was
20 transported to our station.

21 Q. Okay. All right. One seconds please.

22 Do you know what time he was initially arrested by
23 Burlingame?

24 A. I am not sure of the time.

25 Q. Okay. Would this report -- it was the night

1 before for certain or would that answer the question, or
2 do you feel comfortable responding based on that police
3 report?

4 A. It says approximately 8:20pm.

5 Q. Okay.

6 A. Or 9pm.

7 Q. All right. So that was about 14 hours before you
8 met with him? Something like 14, 13?

9 A. I am not sure. Something like that.

10 Q. Let's say it is nine o'clock and you met with him
11 like at ten o'clock the next morning. That's in
12 neighborhood of 13 hours?

13 A. That's correct.

14 Q. He couldn't have been kept at the municipal
15 center that length of time. So he had to go to county,
16 didn't he?

17 A. I don't know if he was transported. I made
18 contact with him in our cell.

19 Q. Okay. Would you say he was in street clothes?

20 A. Yes, sir.

21 MR. GRIER: Okay. Thank you.

22 MR. BARFIELD: That is all for this witness.

23 Call Captain Scott Grant.

24 (Witness excused.)

25 SCOTT GRANT, called as a witness, having been

1 duly sworn by the clerk, was examined and testified as
2 follows:

3 DIRECT EXAMINATION.

4 BY MR. BARFIELD:

5 Q. Tell us your name, please?

6 A. Thomas Grant.

7 Q. And most people call you Scott?

8 A. Yes, sir.

9 Q. And you are employed by whom?

10 A. Lancaster Police Department.

11 Q. And what is your rank with the police department?

12 A. I am a captain.

13 Q. What is your job at the police department?

14 A. I am the commander of Special Operations
15 Division.

16 Q. Does that include detective division, drug
17 division, other elements of the police structure?

18 A. Yes, sir.

19 Q. Is that what you were doing back in January of
20 2012?

21 A. Yes, sir.

22 Q. Were you involved in the questioning of Joshua
23 Wilks on 2-8 of 12?

24 A. I was.

25 Q. A couple of background questions.

1 Do you know whether Wilks had ever been -- let me
2 back up.

3 Was Wilks under arrest some time the night before
4 through the interview process?

5 A. Yes.

6 Q. And where did he get arrested generally speaking?

7 A. Somewhere in the area of Main Street I believe.

8 Q. In the city of Lancaster?

9 A. Yes.

10 Q. And was he charged with a crime by the time you
11 and Captain/Lieutenant Greenlee interviewed him?

12 A. Yes.

13 Q. Not the crime we are here for today but another
14 crime?

15 A. Correct.

16 Q. When he got taken -- do you about what time it
17 was that he got taken into custody the night before?

18 A. No, sir.

19 Q. Was that Officer Burlingame took him into
20 custody?

21 A. Yes.

22 Q. Did he ever to your knowledge go from being on
23 the street, after he was dealt with by Officer
24 Burlingame, did he ever go to the Lancaster County
25 Detention Center?

1 A. I don't believe he did.

2 Q. Okay. Does the Lancaster Police Department have
3 a holding facilities to temporarily detain folks?

4 A. Yes.

5 Q. And to your knowledge is that where Wilks had
6 been from the time he got taken in by Burlingame until
7 you all questioned him the next morning?

8 A. I think so, yes.

9 Q. All right. Do you all feed folks at the police
10 department holding cells?

11 A. We do.

12 Q. And do you have a specific recollection as to
13 whether Mr. Wilks got anything that night or the next
14 morning for breakfast?

15 A. I wouldn't know the answer.

16 Q. That's fine.

17 Did you -- at the time Mr. Wilks had been
18 taken -- by the time Mr. Wilks had been taken into
19 custody was the Lancaster Police Department investigating an
20 alleged armed robbery with the fella named Bill Moore at
21 the BB&T ATM three or four blocks up the street which
22 occurred on 1-16-2012.

23 A. We were, yes.

24 Q. Had anyone been charged with that crime at that
25 point?

1 A. No.

2 Q. Did Mr. Wilks after he was taken into custody on
3 I guess 2-7 of 12 become somebody you all were
4 interested concerning Mr. Moore's robbery at the BB&T
5 robbery?

6 A. Yes.

7 Q. And Mr. Grier asked this of Lieutenant Greenlee a
8 minute ago. Why did you all start tying him to BB&T ATM
9 robbery?

10 A. That morning when I came in as I always do, the
11 first thing I do is read the reports from the night
12 before. I read that report. There was a lot of things
13 in that report that got my attention.

14 Q. You are talking about the Burlingame incident?

15 A. Yes. One was the description of the arrested
16 person and the other was the weapon that had been
17 recovered and the description of the weapon.

18 Q. Let's just jump ahead to the weapon. It wasn't a
19 real pistol, was it?

20 A. No.

21 Q. Did it look like a real pistol?

22 A. Yes.

23 Q. Okay. Did you have photographs showing the
24 pistol from the BB&T ATM by the time you all talking to
25 Mr. Wilks on 2/8/12?

1 A. Yes.

2 Q. Did you make any connection between the actually
3 BB pistol and what was shown in the photographs?

4 A. I did. The first thing I did, well one of the
5 first things I did was go recover the pistol out of
6 evidence and compare it to the photographs that we had.

7 Q. Now, they aren't the best photographs in the
8 world is that true?

9 A. That's true.

10 Q. Did it look like that was the pistol that was
11 shown in the photographs?

12 A. Yes.

13 Q. Now, did you have some interest in talking to Mr.
14 Wilks about BB&T ATM robbery in conjunction with
15 Lieutenant Greenlee talking to him about the CSC case?

16 A. Yes.

17 Q. Now, lets talk about the statement for a minute.
18 Were you present pretty much the whole time Mr. Wilks
19 was being interviewed on 2/8/12?

20 A. Absolutely.

21 Q. Now I am going to ask you some of the same
22 questions but not all of them. Were you present when
23 Lieutenant Greenlee went through the Miranda form?

24 A. Yes.

25 Q. During that process did you see anything that

1 gave you any concern about Mr. Wilks's ability and
2 competence to talk to you all about these events?

3 A. No.

4 Q. Did Mr. Wilks -- did you have any difficulty
5 understanding Mr. Wilks's words and phrases as he
6 conversed with you?

7 A. No.

8 Q. Did he appear to have any difficulty
9 understanding your words and phrases as you conversed
10 with him?

11 A. No.

12 Q. Did he appear to be under any distress other than
13 I guess anybody who is locked up for something is under
14 distress. Was he crying?

15 A. At some point during our interview, yes, he did
16 start crying.

17 Q. Uncontrolled crying or just shed some tears?

18 A. He was crying, but he wasn't -- I don't know what
19 the term to use, but he was not uncontrollable. He was
20 certainly showing some emotion.

21 Q. Was there any outbursts by him; jumping up,
22 beating himself on the head, banging his head on the
23 wall, throwing chairs around or anything like that?

24 A. No, sir. No.

25 Q. Did he appear to be in any physical distress?

1 Meaning did he complain of any pain, any injuries or did
2 you notice any injuries about his person?

3 A. No.

4 Q. Had anything rough gone on with him during his
5 detention the night before?

6 A. Not that I am aware of. Nothing to indicate
7 anything.

8 Q. Was he in street clothes or do you recall?

9 A. He was in street clothes, yes, sir.

10 Q. Was he restrained during the interview process or
11 do you recall?

12 A. No, he was restrained as he was escorted from the
13 detention center -- the detention cell area back to our
14 office and then the restraints were removed.

15 Q. Okay. How long did the interview process last
16 approximately?

17 A. Around an hour.

18 Q. Did he ask any questions about his rights when
19 the Miranda form was read to him?

20 A. No, sir.

21 Q. Did he say or do anything that led you to believe
22 that he did not understand what his rights were?

23 A. No.

24 Q. At any time during the process did he say I don't
25 want to talk to you about all these things?

1 A. No, sir. He was very forthcoming actually.

2 Q. At any time during the process did he say I don't
3 want to talk to you all without a lawyer present during
4 any part of this process?

5 A. No, sir.

6 Q. Did he ever ask to reach out to the outside
7 world; call his momma, call some family friend, a sister
8 or anything like that?

9 A. No.

10 Q. Do you recall him making any requests of you all
11 that were denied like I got to go pee, I want a smoke, I
12 want a drink, I want something to eat?

13 Did he ever ask for anything that you all didn't
14 give him?

15 A. No.

16 Q. Anybody other than you and Lieutenant Greenlee
17 involved in this interview?

18 A. No.

19 Q. Any other officers in or out on of the office?

20 A. No, sir.

21 Q. Did you or did anybody in your presence promise
22 Mr. Wilks anything to get him to talk to you all about
23 these cases?

24 A. No.

25 Q. Did you or anybody in your presence make any

1 threats or exert any coercions on Mr. Wilks to get him
2 to talk you about these cases?

3 A. No, sir.

4 Q. How would you describe the tenor of the
5 conversation between Mr. Wilks and you and Lieutenant
6 Greenlee?

7 A. Well, considering the circumstances and what we
8 were talking about I think it was very amicable
9 conversation. He was, as I said earlier, he was very
10 forthcoming and actually it seemed like he wanted to
11 talk and get this stuff off his chest.

12 Q. Any outbursts by you or Lieutenant Greenlee
13 during the interview process to alarm Mr. Wilks or shake
14 him into talking to you?

15 A. No.

16 Q. Did he talk to you about the BB&T ATM robbery?

17 A. Yes, he did.

18 Q. Without getting into I details did he admit that
19 he did that?

20 A. He did.

21 Q. Did you have the photographs in your possession
22 when you were talking to Mr. Wilks about the BB&T ATM
23 robbery meaning the photographs from the BB&T ATM
24 security system?

25 A. Yes.

1 Q. Did you confront him with those photographs?

2 A. I did.

3 Q. Did you ask him if it was him?

4 A. I did.

5 Q. And did he answer?

6 A. He said it was.

7 MR. BARGIELD: Thank you. Answer
8 anything Mr. Grier has.

9 MR. GRIER: Beg the Court's indulgence a
10 second.

11 CROSS EXAMINATION

12 BY MR. GRIER:

13 Q. Captain, how long can you hold someone at the
14 detention center?

15 A. At the detention?

16 Q. In the detention facilities?

17 A. How long can we hold someone?

18 Q. What are the rules?

19 A. I honestly don't know what the golden hour is. I
20 know that we try to maintain six-hour turn around, but I
21 can't tell you if that is regulation or not.

22 Q. Well, do you believe that Mr. Wilks had been in
23 the police department since about whatever your report
24 says, the contact was made at eight o'clock on the prior
25 night. Assuming it took two hours to get there. I mean

1 would you all have held him for 12 hours up there?

2 A. If that is what the paperwork says I guess that
3 is what they did.

4 Q. Okay.

5 A. I don't have any knowledge, sir.

6 Q. I understand.

7 MR. GRIER: Your Honor, may I see the
8 statement?

9 (Document handed to counsel)

10 Q. Officer, you said you read the report when you
11 got in in the morning?

12 A. Yes.

13 Q. Okay. And you were the one than first picked up
14 there is a connection here to this other situation?

15 A. Yes.

16 Q. And so you also read that Burlingame had made
17 contact with him the night before, in that report
18 presumably?

19 A. I would imagine, yes.

20 Q. Okay. All right. You know, did you have any
21 concerns after reading that report about some contact
22 being made and some questions being asked and elicited
23 without any Miranda being made about the other -- about
24 the pointing and presenting?

25 A. I am not sure what you are asking.

1 Q. Well, I mean did anything come up about in your
2 conversations, you know, in pursuing this that he had
3 already been questioned and not Mirandized?

4 A. No.

5 Q. Do you know whether he had been or, you know,
6 anything about that?

7 A. I don't.

8 Q. Well, if he had been Mirandized initially when
9 Burlingame made contact with him would he have put it in
10 the police report? Would you expect him to?

11 A. Would I expect him to?

12 Q. Yes.

13 A. I can't comment whether he did or not he did.

14 Q. Okay. Okay. Was there anything in the police
15 report that suggests that Officer Burlingame's inquiry
16 about that pointing and presenting case had -- that he
17 had Mirandized Mr. Wilks when he started asking
18 questions?

19 A. No, sir. I don't see anything in here that would
20 necessarily require Miranda at that point.

21 Q. So, if you were asking someone about whether they
22 were at a crime scene you wouldn't believe that it would
23 require perhaps a Miranda warning?

24 A. Not if you are trying to gather initial
25 information if they were involved in criminal activity.

1 Q. Okay. All right.

2 You are not aware of anybody speaking with Mr.
3 Wilks prior to Lieutenant Greenlee and then you speaking
4 with him?

5 A. No, sir.

6 Q. Okay. All right. Thank you. Hold on just one
7 second.

8 Did you tell Mr. Wilks you had DNA on him? That
9 you had DNA on him that would implicate him in a crime?

10 A. Did I tell him that?

11 Q. Yeah.

12 A. I don't remember telling him anything like that.

13 Q. Okay. All right.

14 A. We certainly wouldn't have been discussing DNA on
15 this case. I don't think.

16 Q. Okay. All right. Did you tell him you would
17 help him in any way if he would cooperate?

18 A. I don't know that I would tell him anything that
19 frank. I'm certain I told him like I tell everybody,
20 being honest and forthright is probably the best option
21 at this point, yes.

22 Q. Did you say anything that could be construed as
23 suggesting that he did not need to have an attorney
24 present?

25 A. No.

1 Q. Did you tell him that he was facing the potential
2 to spend his life in prison?

3 A. Yes.

4 Q. Okay. Did you tell him you could help him avoid
5 that?

6 A. No.

7 MR. GRIER: Okay. Thank you.

8 MR. BARFIELD: One quick followup.

9 REDIRECT EXAMINATION

10 BY MR. BARFIELD:

11 Q. Have you read Officer Burlingame's report
12 concerning Mr. Wilks detention and arrest from the night
13 before?

14 A. Just now, yes.

15 Q. And does the report indicate that Officer
16 Burlingame questioned Mr. Wilks about anything other
17 than that one incident that he was taken into custody
18 for the night before?

19 A. No. It only appears that he conducted a field
20 interview during that stop. It doesn't appear that he
21 questioned him anything beyond that. Certainly not
22 after the arrest.

23 Q. Does the report indicate that Officer Burlingame
24 questioned Mr. Wilks specifically about the BB&T ATM
25 robbery?

1 A. Say that again please.

2 Q. Does Burlingame's report indicate that he
3 questioned Mr. Wilks at all about the BB&T ATM robbery?

4 A. No.

5 Q. Or the CSC that occurred as to the next of the
6 last incident?

7 A. No.

8 MR. BARFIELD: Okay. That is all. Thank
9 you.

10 RECROSS EXAMINATION

11 BY MR. GRIER:

12 Q. Again, in that vein, I don't want to drag this
13 out any more, judge, but that report indicates the
14 questioning took place after they had taken a handgun
15 off of Mr. Wilks, doesn't it?

16 A. After they took a BB gun off him, yes.

17 Q. All right. So you don't believe he was in
18 custody at that point?

19 A. I think he was still being detained, yes.

20 MR. GRIER: Okay. Thank you.

21 MR. BARFIELD: Nothing further from this
22 witness.

23 THE COURT: You may step down.

24 MR. BARFIELD: And nothing further from the
25 State on the issue.

1 THE COURT: Anything the defense wants to
2 offer.

3 MR. GRIER: Judge, I think I will put Mr.
4 Wilks up. Testimony here. Call Joshua Wilks.

5 JOSHUA WILKS, called as a witness, having
6 been duly sworn by the clerk, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. GRIER:

10 Q. Please state your name?

11 A. Joshua Wilks..

12 Q. Joshua how old are you now?

13 A. Eighteen.

14 Q. All right. How old were you at the time when you
15 arrested here?

16 A. Same thing.

17 Q. Are you from Lancaster?

18 A. No, sir.

19 Q. Did you know any of the police that you initiated
20 contact with?

21 A. No, sir.

22 Q. How long have you lived in Lancaster?

23 A. Just for a few months. I was in the academy
24 before then.

25 Q. Mr. Wilks, do you recall the evening when officer

1 Burlingame and you met each other?

2 A. Yes, I was walking that night and it seemed like
3 they were following me so I turned around. He just
4 pulled over started asking me questions.

5 Q. Okay. And how did it come to the point where he
6 took a pellet gun off of you?

7 A. He asked me to come and search. He wanted to
8 search me.

9 Q. And then he asked you more questions after
10 searching you?

11 A. Yes, sir.

12 Q. Did he Mirandize you? Did he give you any
13 warnings about your right to have a lawyer present when
14 he was questioning you?

15 A. No, sir.

16 Q. He didn't ask you anything about the armed
17 robbery at that point, did he?

18 A. No.

19 Q. And we can't argue that he did. But he did
20 initiate questioning of you.

21 Did you feel like you were free to go at this
22 time?

23 A. Yes, sir.

24 Q. You felt you can walked away from him after he
25 took the pellet gun?

1 A. Yes, sir.

2 Q. You could have walked away?

3 A. I could have.

4 Q. Okay. All right. Well, what happened next, if
5 you could have walked away how did you end up in
6 custody?

7 A. He called dispatch. He called on the radio and
8 next thing I knew another car was coming up. Then after
9 that he had arrested me and put me in the back seat of
10 the car. Then another police officer came up at the
11 stop light. He pulled me out and other officer shined a
12 light in my face and he said something over the radio
13 and then he told me I was being arrested for pointing
14 and presenting a fire arm.

15 Q. Okay. And from there where did you go?

16 A. I went to Municipal Court for the city.

17 Q. The city court?

18 A. Yes, sir.

19 Q. Or the city jail. And did anybody ask you
20 questions or anything there?

21 A. No, sir.

22 Q. All right. How long did you stay?

23 A. Maybe for -- it was a while. A couple hours.

24 Q. All right. So you didn't spend the night there?

25 A. No, sir.

1 Q. Where did you spend the night?

2 A. I went to the Lancaster County Detention Center.

3 Q. All right. How long prior to meeting Mr. --
4 Lieutenant Greenlee was it before you were picked up at
5 the detention center?

6 A. It was the next morning.

7 Q. Okay.

8 A. Around ten.

9 Q. What were you wearing?

10 A. Orange jumpsuit.

11 Q. You weren't in street clothes?

12 A. No, sir.

13 Q. But no doubt in your mind you were booked into
14 the detention center --

15 A. Yes.

16 Q. -- prior to that.

17 Do you know who transported you back to the city,
18 the officer?

19 A. No, sir.

20 Q. It wasn't Greenlee or Grant though?

21 A. No, sir.

22 Q. All right.

23 Mr. Wilks, do you believe -- you have seen the
24 statement. We have been through that. You got a copy
25 of that and everything?

1 A. Yes, sir.

2 Q. How did it come about that you made this
3 statement?

4 A. I was being interrogated on one case and after of
5 Sergeant Greenlee left out Captain Grant got in the
6 chair and started interrogated me on the next case.

7 Q. And did you - do you believe that was a free and
8 voluntary statement that you made?

9 A. At the time.

10 Q. What else happened to that prior to you being
11 interrogated that you told me about?

12 A. Before the interrogation started I had sat down.
13 Detective Grant told me, he said, we know a lot about
14 DNA. I asked him what he was talking about. He said we
15 got DNA off the car.

16 Q. Okay. But now we are talking this other case?

17 A. Yes, sir.

18 Q. All right. So nothing came up about the BB&T
19 case, the armed robbery allegations prior to -- at that
20 time?

21 A. No, sir.

22 Q. They just said they had DNA on you?

23 A. Yes, sir.

24 Q. Were you by yourself for some period of time
25 prior to that?

1 A. I was in a holding cell.

2 Q. What did you do while were you in that cell?

3 A. I had a bag of cocaine and I was snorting.

4 Q. What were you doing with that cocaine?

5 A. Just calm my nerves down. I had a bad drug
6 problem.

7 Q. How did you manage to get that in?

8 A. I had it in the waistband in my boxers.

9 Q. And what kind of effect did that have on you?

10 A. It really didn't have me in my right state of
11 mind.

12 Q. And why do you say that?

13 A. Because I was nervous. I was paranoid. Scared

14 Q. Well, was anything said about what was going to
15 happen to Joshua Wilks by the officers that were
16 interrogating you?

17 A. Yes, sir. He told me just come clean right now
18 and just be honest. They will help me in court. And
19 that if I don't I will end up spending some time in
20 jail.

21 Q. Well, I mean, did you come clean on it? Did he
22 suggest anything to you?

23 A. No, sir.

24 Q. Did you bring up -- I mean, who brought up BB&T
25 case?

1 A. Mr. Grant.

2 Q. And, you know, did he suggest that would be of
3 any benefit to you if you would take responsible for
4 that?

5 A. He said he'd help me out in court. Make me look
6 better.

7 Q. Okay. Well, why did you make that statement
8 without a lawyer present?

9 A. I wasn't in my right state of mind. I didn't
10 know nothing about the justice system.

11 Q. All right. Have you ever been arrested before?

12 A. No, sir.

13 Q. Not for anything? No juvenile, no anything?

14 A. Juvenile record, but those charges were
15 dismissed.

16 Q. Okay. All right. Had you ever given a statement
17 before?

18 A. No, sir.

19 Q. Have you ever been asked to give a state
20 statement before?

21 A. No, sir.

22 Q. How did you feel under those circumstances? Did
23 you feel like you were free to talk and say anything or
24 did you feel any pressure?

25 A. Yes, sir.

1 Q. What kind of pressure did you feel?

2 A. The way that he kept looking at me and just
3 suggesting that I might come clean about it.

4 Q. Okay. All right. Well, did you ultimately tell
5 them what they wanted to hear?

6 A. Yes, sir.

7 Q. Was what you told them truthful?

8 A. No, sir.

9 Q. Okay. Why did you do it?

10 A. I was afraid. I didn't know what to do.

11 Q. All right. How do you think it would benefit
12 you?

13 A. I thought I might be able to go home.

14 Q. All right. Thank you.

15 Answer any questions. Mr. Barfield is going to
16 ask you questions now Mr. Wilks.

17 CROSS EXAMINATION

18 BY MR. BARFIELD:

19 Q. You were snorting cocaine in the holding cell in
20 the Municipal Justice Center or at the county?

21 A. At the county and at the Municipal Center.

22 Q. So you came in to the police department with
23 cocaine on you; is that right?

24 A. Yes, sir.

25 Q. And you kept the cocaine on you through whatever

1 period of time you stayed at the police department that
2 night; is that correct?

3 A. I did not have it on me the night I got arrested.
4 I got it at the county jail.

5 Q. So somebody gave you cocaine at the county jail?

6 A. Yes, sir.

7 Q. After you had been at the police department
8 initially; is that correct?

9 A. Yes, sir.

10 Q. And you brought the cocaine back with you to the
11 police department and did some of it at the police
12 department while you were waiting to be questioned by
13 Greenlee and Grant; is that correct?

14 A. Yes, sir.

15 Q. So you lied when you told him that you weren't
16 under the influence of alcohol or drugs?

17 A. I was nervous. I didn't know what to do.

18 Q. Well, my question is, did you lie to them when
19 they asked you are you under the influence of alcohol or
20 drugs and you said no. Were you lying or telling the
21 truth?

22 A. Lying.

23 Q. Okay. That is all. Thank you.

24 MR. GRIER: I have nothing further. Nothing
25 else.

1 THE COURT: You may step down.

2 MR. GRIER: That would be all Your Honor.

3 THE COURT: Anything else?

4 MR. BARFIELD: Nothing.

5 THE COURT: All right. Based on the
6 testimony before the Court, the statements I will
7 allow in based on my finding that the Miranda
8 rights, the entirety was covered by evidence of
9 page one of exhibit one and even though there is
10 some conflicting testimony about the -- I guess
11 the best way to term it would be the sobriety of
12 the defendant. It appears everything taken as a
13 whole that his statement was voluntary and it was
14 intelligently given at that time. On behalf of
15 the law enforcement involved I don't see that
16 there was any improper duress or coercion or
17 threats made that would cause the Court a
18 problem. The statement appears to be relatively
19 short and concise.

20 Therefore, I am going to allow the statement
21 into evidence.

22 Anything else?

23 MR. BARFIELD: Nothing else from the State
24 on this issue.

25 MR. GRIER: Nothing else from the defense,

1 Your Honor.

2 THE COURT: All right. Mr. Grier, you have
3 been at this job a long time. You are an
4 excellent attorney and I don't want to say to
5 much, but at this time having nothing to do now
6 but a Denno Hearing I want you to take a little
7 time and talk with your client and make sure he
8 is clear about the fact that South Carolina Law
9 voluntarily intoxication is not a defense.

10 MR. GRIER: Your Honor, we have discussed
11 that in great detail. I can assure the Court I
12 have had that conversation with him and the
13 implications that perhaps it might have. Of
14 course that is separate issue. The night of the
15 incident, the statement indicates that, and so I
16 appreciate the Court recognizing that. And I
17 understand we got a jury out. I don't want to
18 burden anybody anymore than I have too, but we
19 probably need to take a few minutes for me to
20 kind of round up the wagons and make sure, you
21 know, determine where we are at and what we need
22 to do going forward.

23 THE COURT: The reason I did say it, was at
24 that point from what he said in the statement
25 about -- he said, "I was not in my right state of

1 mind." I am not referring to anything about the
2 Denno issue I am just saying what he say
3 happened.

4 MR. GRIER: Certainly that is something that
5 we discussed and, you know, it might be an issue
6 for mitigation but it ain't one for a defense and
7 he understands that one hundred percent.

8 THE COURT: All right. Well, you all take a
9 few minutes. If there is any wiggle room here,
10 any negotiations you can do that might resolve
11 it. It will be easier for the three of you to
12 resolve this situation, if it can be resolved,
13 rather than turn it over to 12 individuals. So,
14 that is all I will say in regards to that.

15 Solicitor, is there anything you need to
16 add?

17 MR. BARFIELD: I just need to show Mr. Grier
18 I got rap sheets on my witnesses. I will share
19 them so he can look at them during the short
20 break.

21 THE COURT: We will take ten minutes.

22 (Whereupon, a short recess was taken.)

23 THE COURT: Are we ready?

24 MR. BARFIELD: Your Honor, this has not come
25 up until today. I don't want to surprise anybody.

1 with anything and this is an issue we need to
2 take up without a jury. The victim in the case
3 was never shown a line-up or anything. I believe
4 based on my brief conversation I had with him
5 today when he is on witness stand he is probably
6 going to point to Mr. Wilks and say he is the
7 man.

8 THE COURT: Okay.. Ready?

9 MR. GRIER: Yes, I guess we are ready to go
10 Your Honor.

11 THE COURT: Okay. Get the jury.

12 (Whereupon the jury enters the courtroom.)

13 THE COURT: You maybe seated. Thank you.

14 THE COURT: Ladies and gentlemen of the
15 jury, let me begin by apologizing to you about
16 the timing. I asked you to be back here at 3:15
17 and you all met your obligation there and I
18 appreciate that. What often happens is we have
19 preliminary matters we have to cover. We were
20 back here even earlier then I anticipated and got
21 started and it just took longer than we thought.
22 That happens sometimes. Sometimes it doesn't
23 take quite that long.

24 As I will tell you later on I am the judge
25 of the law and have I to handle the matters of

1 law, you are the triers of fact. So you all have
2 to handle that.

3 First thing we got to do to get you started
4 here is now put you under oath and I will ask
5 madame clerk to put you under oath and as she
6 prepares to do that Mr. Cannon I will ask you to
7 be the foreperson. Can you keep that seat now
8 and then later on or after a break or tomorrow
9 morning they will show you which seat they
10 normally take.

11 Madame clerk.

12 THE CLERK: Yes, sir.

13 (Whereupon the jurors were placed under
14 oath.)

15 THE COURT: I will take a few minutes to
16 brief you on how we are going to proceed with
17 this case.

18 As you are already aware we are trying any
19 criminal cases that are pending here in Lancaster
20 County here which is called Court of General
21 Sessions which is strictly General Sessions this
22 week.

23 First thing going to happen I will allow
24 both sides if they so desire to make opening
25 statements to you. An opening statement is

1 basically to outline their position in the case.
2 Don't have to make an opening statement. Most of
3 the time they do. It is not required. After
4 opening statements will be the evidentiary
5 portion of the trial where you receive the
6 evidence. The Evidence may take different forms.
7 It may be testimony from this witness stand to my
8 left. It may be documents. It may be
9 photographs. It may be physical type items.
10 Whatever the evidence is, it is your duty as
11 jurors to listen and observe the evidence because
12 you will be the triers of facts in the case and
13 you will have to seek the truth.

14 So, the only way can you do that is to keep
15 up with what is going on. Make close observation
16 of the witnesses. Review the evidence and thus
17 find what the truth is in the case. I already
18 told you the end result of any case is to reach a
19 verdict. That word verdict is Latin derivative
20 which means search for the truth. And you will
21 apply the law of the case that I will give to you
22 during the judges charge to the facts as you find
23 them and thus reach a verdict.

24 When you are asked to deliberate this case I
25 will tell you once again that your verdict will

1 have to be unanimous verdict on each of these
2 indictments. Everybody will have to be in
3 agreement on whatever the verdict maybe.
4 Whenever you are asked to deliberate all will be
5 expected to take part in the deliberations.
6 Please do not deliberate until the close of the
7 case when I instruct you that you may do so.
8 With that said don't even be talking about this
9 case amongst yourselves. Don't allow any
10 outsiders to approach you to discuss this case.
11 Don't even go home and discuss this case with
12 your spouse, or your children, your parents.
13 That would be improper. Deliberations of course
14 come at the end of the case.

15 This is a criminal case and the burden of
16 proof is upon the State of South Carolina to
17 prove to you the guilt of the defendant beyond a
18 reasonable doubt. All defendants in the United
19 States coming to court are presumed innocent.
20 That presumption stays with them throughout any
21 trial. Stays with them right through all
22 deliberations and would only end once you have
23 reached a verdict.

24 The next phase of the trial will be an
25 opportunity for counsel on both sides to make

1 closing arguments to you where they will review
2 the evidence with you. Try to persuade you to
3 see the evidence as they see it. What the
4 attorney says are not necessarily evidence. They
5 may refer back to the evidence or quote the
6 evidence or quote testimony but you have to be
7 careful and keep aware of that because what an
8 attorney may inject into the case may not
9 necessarily be evidence and that is unless they
10 are directly repeating it some way.

11 Evidence comes from the witness stand and
12 from exhibits. Closing arguments normally don't
13 take that long and then we go straight into what
14 we call the judge's charge of the law or I will
15 provide the law of the State of South Carolina to
16 you at that time.

17 Basically that is how we proceed. Simply
18 stated. Since the burden of proof is on the
19 State we will now turn it over to the solicitor
20 for opening statement if he so desires.

21 MR. BARFIELD: If the Court please, Mr.
22 Grier. It is 4:25 in the afternoon so you can
23 rest assured I am not going to talk for long
24 right now. The main reason is what I am telling
25 you is not evidence anyway. I am simply here to

1 tell you sort of a prelude to what's to come and
2 I hesitate to say this sometimes but in some
3 cases I do say this. This case isn't going to
4 take very long from the stand point I don't have
5 45 witnesses and they will be hour apiece. This
6 will be a fairly quick moving case with a limited
7 number of witnesses. So don't worry that you are
8 going to be tied up here until Friday afternoon
9 on this thing. This isn't going to take that
10 long. With that said it is still a very, very
11 important case for the folks on this side of the
12 courtroom, the State of South Carolina, and for
13 the folks on the other side of the courtroom
14 Joshua Wilks. So this is what it is about in a
15 nutshell. What I am fixing to tell you is what
16 you are going to hear when witnesses get on the
17 witness stand. In a nutshell is what this is all
18 about. The who, what, when, where and the why.
19 The first paragraph of a newspaper article.
20 There is a BB&T bank at your back about three
21 blocks up the street and behind that BB&T there
22 is an ATM that I call the money machine. I tell
23 my folks I am going to the money machine. I will
24 be back in a minute.

25 A guy name Bill Moore lives in Lancaster and

1 banks at BB&T and on Monday night, January 16th
2 of 2012 at about quarter to ten Mr. Moore had a
3 couple of things he had on his mind. He wanted
4 number one to go to BB&T to get \$20 dollars out
5 and to check his balance and he also wanted to
6 ride up the road to Wendy's to get his wife one
7 of those little ninety-nine cent salads because
8 she wanted a salad that night. So he went to
9 BB&T. Pulled up to the ATM and he'll tell you
10 his routine when he goes to the ATM. And as he
11 is sitting at the ATM and he punched his numbers
12 in with his -- used his card, punched his numbers
13 in and the machine spits out his \$20 bill he
14 grabs the \$20 bill from the money slot and
15 reaches his hands up to grab the receipt and
16 about that time hears a tap on the door post of
17 his car and low and behold the State says is
18 Joshua Wilks standing there with what Mr. Moore
19 believed to be a 45 caliber handgun saying give
20 me your money. And Wilks took the 20 out of Mr.
21 Moore's hand and said get the rest of it out and
22 so Mr. Moore puts his card back in and draws out
23 five more 20's and reaches back and hands them to
24 Mr. Wilks who still got that gun and at about
25 that time Mr. Wilks takes off. Disappears into

1 the darkness.

2 Mr. Moore does what he should have done. He
3 left there. He went straight to the police
4 department and he reported this. And the police
5 went out that night, and again January 16th of
6 2012, and searched the area. Did not arrest
7 anybody that night. I will tell you that Mr.
8 Wilks was arrested some time later. And was
9 taken into custody for this event and I will tell
10 you that at some point subsequent to his arrest
11 he talked to the police about this case involving
12 Mr. Moore the BB&T ATM and we will offer some
13 evidence about that conversation between Mr.
14 Wilks and the police and Mr. Moore's robbery at
15 the BB&T.

16 Now, that is kind of nutshell. I call two
17 people first who live near BB&T and they didn't
18 see who robbed Mr. Moore and they can't identify
19 anybody but they heard the robbery going on and
20 they will tell you what they heard. Then I am
21 going to call Mr. Moore who is going to probably
22 very factitiously step-by-step take you through
23 what happened to him that night and then the rest
24 of what I got is some police officers who worked
25 on this case an investigated. Again, it is just

1 not going to take terribly long. But even though
2 it is not going to be terribly long, it is still
3 very important to everybody who is involved in
4 this case in this courtroom. I ask to you do two
5 things and I don't mean to sound like I am
6 lecturing, but pay attention because everybody
7 who is involved in this case and has been
8 involved in this case knows everything there is
9 to know about the case. We wouldn't be doing our
10 jobs correctly if we didn't. You don't know
11 anything about the case, which means everything
12 you learn about this case has to come from the
13 witness stand in this courtroom. So everything
14 that is said is important and it is said for a
15 reason and that's why I ask you to pay careful
16 attention.

17 Second thing I ask you to do is be patient
18 because even though there aren't 85 witnesses in
19 this case it is going to seem kind of tedious
20 because you don't know anything about it and we
21 will ask the questions in a structure. We'll lay
22 it all for you. And then the third thing I ask
23 you to do is just use your common sense. You
24 come in here you get picked as jurors. You been
25 living a long time. Some longer than others, but

1 we all have experience from being alive and we
2 have common sense and we learned things about,
3 you know, what is what in the world as we lived
4 and loved and grown up in this world. So use
5 your common sense and I submit to you if you do
6 those things after you have heard all the
7 evidence in this case, probably some time
8 tomorrow, when we make closing arguments in the
9 case I will get back up here in front of you.
10 Probably talk a little bit longer. The last
11 thing I am going to say to you, the last thing I
12 am going to ask you to do is to find that man
13 over there guilty of these two charges which are
14 armed robbery and possession of firearm during
15 the commission of a violent crime because I
16 submit to you the State is going to prove that to
17 you beyond a reasonable doubt.

18 Thank you very much.

19 MR. GRIER: If it please the Court, ladies
20 and gentlemen of the jury, I am Mark Grier. I
21 represent Joshua.

22 What the solicitor just told you is very
23 important. That you listen to everything before
24 you deliberate and for the reason -- most
25 important reason from the defense's perceptive is

1 what you heard so far since you known anything
2 about this case. Well, you heard my client has
3 been charged with a crime. You heard -- you
4 heard the solicitor point fingers and so we
5 already dragged him in front of you. Held him up
6 for the hanging and made accusations before
7 anything has come out of the shoot to say or to
8 present in his defense and so, as far as
9 principles of justice goes, the founders of our
10 country recognize how prejudicial it is to pull
11 somebody into Court and make accusations against
12 them and our constitution as framed was built
13 with the mechanism to try and prevent people from
14 getting railroaded and that mechanism is called
15 the presumption of innocence, first of all. When
16 someone is accused of a crime in our system the
17 burden of proof they are presumed innocent and
18 only people in this world that can remove that
19 shroud of innocence, that cloak of innocence is a
20 jury, and to do that you got to consider all the
21 evidence. The State has the burden of proof.
22 That is the other mechanism. One of the buzz
23 words you will hear. You heard it before and the
24 State has the burden of proof of proving the
25 guilty of the accused beyond a reasonable doubt.

1 And the judge will give you the law. I am just
2 going to go ahead and put it out there because it
3 is important that it be said and focused on by
4 the people that are implying that as a tool and
5 that is what you are charged with doing.

6 Now again, you know, my point about not
7 rushing to judgement, you already heard bad
8 stuff, accusations against my client. The other
9 mechanism in our constitutional system is of
10 course the State gets to do that, and to go first
11 and the defense doesn't present any evidence then
12 the defense gets to go last. I don't know if we
13 will present any evidence or not, but the State
14 typically gets to go first. So they get your ear
15 first. And the State typically if the defense
16 chooses to present any evidence they get to go
17 last. So that the first thing you hear and the
18 last thing you hear so that's a psychological
19 aspect of that. That has some impact. But, most
20 certainly you will learn things through facts and
21 there are going to be things presented in this
22 case that will have a lot of bearing on the
23 outcome. Each of you in some sense a little
24 independent jury. Each of you must come to your
25 own conclusion about the evidence in this case.

1 I mean if you just say, you know, Joe over here
2 it sounds like knows what he is talking about. I
3 will go with Joe goes. Do we really need a jury?
4 If that is the case each of you must size the
5 evidence up and come to your own conclusions and
6 you should listen to what your fellow jurors have
7 to say and take that into consideration. You
8 shouldn't just adopt what somebody else says if
9 it is contrary to what you believe is. Whether
10 it be for the benefit of my client or whether it
11 be for the benefit of the State.

12 Mr. Wilks is -- he knows nothing about the
13 system and I am just advocate. I am guide for
14 Mr. Wilks. Just like Carl is the your guide as
15 bailiff around this courthouse. I don't think
16 you all just wandered in and knew exactly where
17 to go and what to do and how to deal with, you
18 know, where you come back too and all that. So
19 Mr. Night, is your guide through this courtroom.
20 In a sense I am the guide for Mr. Wilks to make
21 sure that things are done properly and present
22 his defense and ask you to consider the evidence
23 that I believe will show that he is not guilty of
24 the accusations that are made.

25 Mr. Wilks is a young man. At the time he

1 was arrested in this case he was 17 years old.
2 He had misfortune of having substance abuse
3 problem, as well. When someone comes into
4 contact with the police and Mr. Barfield alluded
5 to a statement that will be made and that will be
6 evidence and you will have to make decisions
7 about what you believe about that statement as
8 well and that will be pretty critical for this
9 case. There will be other things. I am not
10 going to get into the details of it, but I think
11 you will have to weigh heavily in favor of the
12 defense in deciding what your verdict is. But
13 the -- a couple things that I want to mentions is
14 this is a criminal case. The burden of proof is
15 beyond a reasonable doubt. The burden of proof
16 in a civil case is merely more likely then not
17 and so if Mr. Wilks was being sued for money
18 today and you believed that whoever was suing him
19 for money might be owed that money that wouldn't
20 be enough evidence to make Mr. Wilks pay that
21 money. But if you believed Mr. Wilks probably
22 owed that person that money that would be enough
23 evidence in a civil case for -- to meet the
24 burden of proof in a civil case. Because that is
25 merely more likely then not a preponderance of

1 the evidence. The judge will mention this to you
2 to not to confuse those things. But what happens
3 in a civil case, you are take away somebody's
4 money. In a criminal case, what are you doing,
5 you are taking somebody's freedom. Our founding
6 fathers took that so seriously that is where we
7 get back around the circle to the burden of proof
8 being beyond a reasonable doubt. If you take
9 away my money, I can well, hopefully I get out
10 there and many make more money. But if you take
11 away my freedom I really can't do anything. It
12 is the most important thing. It is the most
13 cherished possession that we have and that is why
14 the burden of proof is beyond a reasonable doubt.
15 And it is not any kind of get out of jail free
16 card. It is a serious way to deal with our
17 protective freedom under our constitution. You
18 will hear a lot more about that.

19 The judge will tell you that the proof, the
20 proof beyond a reasonable doubt is the kind doubt
21 that would make a person hesitate to act. In
22 other, words, if you find -- if you hesitate as a
23 result of the evidence you hear today to convict
24 in essence the State has met their burden of
25 proof.

1 To arrest somebody you got to have a
2 suspicion of guilt and that is called probable
3 cause. In other words they might be guilty. To
4 convict someone have you to show that there is
5 not even a real possibility that they might be
6 innocent. And I submit to you Mr. Wilks is not
7 guilty. You are going to hear evidence that I
8 think will demonstrate that today and most
9 certainly the State is not going to meet their
10 burden of proof and I ask that upon hearing all
11 the evidence and deliberating and giving your
12 careful consideration that any person that is
13 faced with being charged with a criminal act
14 would want on their behalf. That is all we can
15 ask is that you listen to what the judge tells
16 you about the law and you apply the facts and
17 return a verdict. And I believe that will be a
18 verdict of not guilty.

19 Thank you.

20 THE COURT: Call your first witness.

21 MR. BARFIELD: Linda Robinson. She will be
22 out there.

23 LINDA ROBINSON, called as a witness, having
24 been duly sworn by the clerk, was examined and
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MR. BARFIELD:

3 Q. Tell us your name please?

4 A. Linda Robinson.

5 Q. Miss Robinson I don't want your address but will
6 I ask you some questions kind of narrow it down.

7 What town do you leave in?

8 A. Lancaster.

9 Q. What street?

10 A. Catawba.

11 Q. Which is the street that runs behind the
12 courthouse?

13 A. Yes.

14 Q. You live north of the court house or south?

15 A. North.

16 Q. Do you know where the BB&T bank is?

17 A. Yes, sir.

18 Q. Do you know the First Citizen's bank os?

19 A. Yes.

20 Q. Are they side by side?

21 A. Yes, sir.

22 Q. Is there a street that runs between them?

23 A. Yes, sir.

24 Q. Off main street?

25 A. Yes, sir.

1 Q. Do you know the name of that street?

2 A. No.

3 Q. This ain't a test. Don't worry.

4 How long have you lived in the house -- well, in
5 relation to BB&T and First Citizen's which one of them
6 do you live nearer too?

7 A. First Citizens.

8 Q. Do you live on the same side of the street as the
9 back side of First Citizen or on opposite side of the
10 street on the back side of First Citizen?

11 A. Back side.

12 Q. Okay. You live on the opposite side of the
13 street?

14 Q. Are you married?

15 A. Yes, sir.

16 Q. What is husband's name?

17 A. Willie Robinson.

18 Q. Does he live there with you?

19 A. Yes, sir.

20 Q. Mr. Moore. Raise your hand Mr. Moore. Do you
21 know this fella back here?

22 A. No.

23 Q. Ever see him before?

24 A. No, sir.

25 Q. Thank you.

1 Did you and your husband go somewhere Monday
2 night January 16th of 2012?

3 A. Yes, sir.

4 Q. Where had you all been?

5 A. Walmart.

6 Q. When you left Walmart where were you headed?

7 A. Back home.

8 Q. When you came home from Walmart what street did
9 you use?

10 A. Catawba.

11 Q. Well, before you got to Catawba, did you go the
12 back way?

13 A. No, we came in front of BB& T turned and right on
14 the light.

15 Q. Do you know the name of the street in front of
16 BB&T?

17 A. No.

18 Q. That's fine. And when you turned at the light
19 what street were you on in relations to BB&T and First
20 Citizens?

21 A. Catawba.

22 Q. You turned off Main. Was it a right turn or left
23 turn off main?

24 A. Left -- right. Right at the light.

25 Q. All right. And when you got to the end of that

1 block between the two banks what street is that?

2 A. Catawba.

3 Q. And which way did you turn on to Catawba to go to
4 your house?

5 A. Right.

6 Q. Right or left?

7 A. Right. Go to my house?

8 Q. Go to your house.

9 A. Oh, left.

10 Q. Now, when you got to your house, what did you do?

11 A. We pulled up on the back patio.

12 Q. Is that behind the house?

13 A. Behind the house.

14 Q. Did you get out of the car?

15 A. Yes.

16 Q. And I don't want you to speak for your husband.

17 I want you speak for you, when you got out car -- let me
18 back up.

19 When you go by between First Citizens and BB&T --

20 A. Yes.

21 Q. -- on that side street. Did you notice anything
22 at BB&T?

23 A. I always look that way. I noticed there was a
24 car at the teller machine.

25 Q. Could you see who was in the car?

1 A. No.

2 Q. Did you see anybody outside?

3 A. No, sir.

4 Q. Was there anything usually about seeing a car at
5 the BB&T --

6 A. No, sir.

7 Q. -- teller machine?

8 A. No, sir.

9 Q. When you got out of your car on the patio on the
10 back side of your house, did you hear anything?

11 A. Yes, sir.

12 Q. All right. And whatever way you want to say it
13 tell the jury what you heard?

14 A. I heard someone say give me all the mother
15 fuck'in money right now.

16 Q. From what direction was that voice coming?

17 A. BB&T.

18 Q. Could you see anybody at that point?

19 A. No, sir.

20 Q. What did you do did after you heard what you just
21 told the jury you heard?

22 A. We went in the house and looked out window and I
23 was worried about it. So I told my husband let's get in
24 the car. Go back out and get in the car and go see if
25 we can find the person that was getting record. We

1 wanted to make sure they was all right.

2 Q. Did you think that was what was going on? That
3 somebody was getting robbed?

4 A. Not until we opened the car door at the house.

5 Q. When you heard what you heard what did you think
6 was going on?

7 A. Someone was getting robbed.

8 Q. Did you and your husband get back in the car?

9 A. Not right then after we went in the house.

10 Q. You went in the house and did you come back out
11 of the house?

12 A. Yes, sir.

13 Q. And when you came out of the house did you get in
14 your car?

15 A. Yes, sir.

16 Q. Where did you go when you got in your car?

17 A. We went up about Texico.

18 Q. Up main street?

19 A. Yes, sir.

20 Q. Did you go out the same way that you would come
21 in?

22 A. Yes, sir.

23 Q. Did you drive between First Citizen and BB&T?

24 A. Yes, sir. We turn left at the light.

25 Q. And when you were between First Citizen's and

1 BB&T, number 1, did you see the the car you had
2 previously seen?

3 A. No, sir.

4 Q. Did you see any car?

5 A. No, sir.

6 Q. Did you see anybody walking around the BB&T ATM
7 out in the parking lot?

8 A. No, sir.

9 Q. Okay. How far did you all go up Main Street?

10 A. Well, we went up to Texico and we turned around
11 and came back up. That's when we saw the highway man
12 ride up and down our street.

13 Q. The police?

14 A. Yes.

15 Q. Now again, tell the jury what was your purpose in
16 getting in the car and riding up the street.

17 A. We wanted to make sure that the person getting
18 robbed was all right.

19 Q. Okay. Did you ever see that car again that
20 night?

21 A. No, sir.

22 Q. And again, that night did you ever see Mr. Moore,
23 the fella that raised his hand?

24 A. No, sir.

25 Q. Did the police end up in your neighborhood?

1 A. Yes, sir.

2 Q. Did you talk to a police officer and tell him
3 what what you just told the jury?

4 A. Yes, sir.

5 MR. BARFIELD: Thank you, ma'am. Answer
6 anything Mr. Grier has.

7 CROSS EXAMINATION

8 BY MR. GRIER:

9 Q. Did you try to call the police?

10 A. No, sir.

11 Q. Okay. Did you have a phone?

12 A. Not on me.

13 Q. Okay. All right. You didn't see the person?

14 A. No, sir. I didn't see the person that was doing.

15 I only heard him say give you all my money. Give me the

16 F'in money. I day see the person.

17 Q. All right. Thank you.

18 A. Your welcome.

19 (WITNESS EXCUSED).

20 MR. BARFIELD: Call Willie Robinson.

21 THE COURT: You may step down.

22 WILLIE D. ROBINSON: Called as a witness,
23 having been duly sworn by the clerk, was examined
24 and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BARFIELD:

2 A. I do.

3 Q. Tell us your name please sir?

4 A. Willie Robinson.

5 Q. Mr. Robinson, I forgot to ask your wife this.

6 Are you married?

7 A. Yes.

8 Q. What is wife name?

9 A. Linda.

10 Q. The lady who just walked out here a minute ago?

11 A. Yes.

12 Q. Okay. Where do you work?

13 A. I work for Lancaster Public Works.

14 Q. And does your wife work? I forget to ask her
15 that?

16 A. Yes.

17 Q. Where does she work?

18 Q. She work at Guardian Glass?

19 Q. That is over in Chester County?

20 A. Richburg.

21 Q. Richburg. Okay.

22 Were you and your wife together on Monday night
23 January 16th of 2012?

24 A. Yes.

25 Q. And had you all been somewhere that night?

1 A. We had went to Walmart and we was on our way back
2 home.

3 Q. And when you got back home did anything usually
4 occur?

5 A. Yeah. Well, as soon as we pull in the yard and
6 we pull like I got a little cement patio in the back and
7 we pull up there and I was getting out of the car and we
8 heard real loud, you know give me your blank, blank
9 money. You know I ain't saying just like he said, but
10 give me your "um" money.

11 Q. You are using different words then what you he
12 was using?

13 A. Yeah. Yeah. So I was kind of shook up so I went
14 in the house.

15 Q. Let me interrupt you for a minute.

16 Where was the noise coming from? Where was this
17 voice coming from.

18 A. It was coming from the bank.

19 Q. Which bank?

20 A. BB&T.

21 Q. When you heard that voice could you see BB&T?
22 See who was doing the talking?

23 A. No.

24 Q. All right. You went in the house then what
25 happened?

1 A. Well, we were in the house and the wife was
2 saying, you know, she said well somebody could be got
3 hurt or something. Lets go and see if we can see if the
4 people is all right. And I was reluctant about that,
5 but I went on with her and she rode to the gas station
6 and then after we didn't see anybody we came on back.
7 That's when we saw the police.

8 Q. Did you ever see the person who got robbed?

9 A. No.

10 Q. Did you ever see the person who did the robbing?

11 A. No.

12 Q. Mr. Moore, raise your hand. This fella, I will
13 tell you his name. It is Bill Moore. Have you ever
14 scene that man, know him or met him?

15 A. No.

16 Q. Did the police -- di you talk to the police some
17 time that night?

18 A. Yes.

19 Q. And how did that come about?

20 A. They were coming down the road and we were just
21 pulling back in from coming up by the gas station.

22 Q. And how did that encounter occur. Did you flag
23 them down?

24 A. Yeah, I flagged him down.

25 Q. Did you tell the police what you had heard?

1 A. Yeah.

2 MR. BARFIELD: Thank you. Answer any
3 anything Mr. Grier has.

4 MR. GRIER: No questions for Mr. Robinson.

5 THE COURT: Thank you. Sir, you may step
6 down.

7 (Witness excused.)

8 MR. GRIER: May we approach?

9 THE COURT: All right. It is getting close
10 to five. Talking to counsel will take a little
11 while for the next series of witnesses so we will
12 stop for the evening.

13 I would say 9:30 but last week I had to
14 schedule a matter in the morning that has nothing
15 to do with this case but it is scheduled and it
16 won't take but about two or three minutes. I
17 told him to be here about five to ten. So you
18 all plan on coming in a little before ten and we
19 will try our best as soon as we can get clear of
20 that matter, which as I said will be very brief.
21 We will fire back up.

22 You all have a good night. Remember my
23 instructions. Don't discuss the case with
24 anyone. Should anybody make an attempt in any
25 kind of form or fashion don't communicate with

1 them and notify the sheriff's department of any
2 such attempt. Everybody else will remain seated
3 while the jury departs for the evening.

4 (Jury is excused for the day.)

5 THE COURT: Anything before we stop?

6 MR. BARFIELD: No, sir.

7 MR. GRIER: No, Your Honor.

8 THE COURT: See you in the morning.

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Lancaster County, South Carolina, on the 12th day of August, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 30, 2013

Aileen Butler

1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE OF SOUTH CAROLINA,

4 Plaintiff,

5 Case No.

6 -against-

2012-GS-29-550

7 JOSHUA XAZIER WILKS,

8 Defendant.

9 -----x

10 August 13, 2013

11 Lancaster, S.C.

12

13 B E F O R E:

14 HONORABLE PAUL M. BURCH

15

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

17 DOUGLAS BARFIELD, Esquire

18 Solicitor for the State

19

20 MARK GRIER, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
State's 1	Miranda warnings	5	
State's 2-5	Photographs	40	
State's 6	Photograph	44	

1 THE COURT: Solicitor, Mr. Grier are you ready to
2 go?

3 MR. BARFIELD: I think things will move fairly
4 fast this morning. My plan this morning is to call my
5 first witness out of order, who is is Lieutenant
6 Greenlee concerning the statement and I don't intend to
7 get into the substance of the statement with Lieutenant
8 Greenlee, but the Miranda stuff primarily. He has got
9 to leave town at 11, and I want to do him first. The
10 next witness would be the victim in the case and Mr.
11 Grier has informed me a few minutes ago he has an issue
12 about the in-court identification and if we could get
13 that resolved before we bring the jury in if it's
14 possible to get take resolved and then we can just jump
15 right in and go from there.

16 THE COURT: Okay. Mr. Grier.

17 MR. GRIER: Well judge, I think the solicitor is
18 going to have to -- I guess I am requesting a Bigger's
19 hearing. My understanding until I see what is going to
20 happen I am not quite sure, you know, how I challenge
21 something that I haven't seen. What is going to
22 transpire. My thoughts are we need to have the
23 solicitor put up what he intends to put up and I am
24 certainly prepared to argue why it shouldn't be allowed
25 right now if that is the way you want to handle it.

1 THE COURT: We can do that.

2 MR. BARFIELD: I am ready to go forward.

3 THE COURT: You don't want to go ahead and get the
4 lieutenant out of the way.

5 MR. BARFIELD: I can do that. It just requires
6 bringing the jury in and sending them back out. That is
7 fine with me if it is okay with you.

8 THE COURT: We might better go ahead and do that.
9 Bring the jury in.

10 MR. BARFIELD: Please mark this for identification
11 as State's One.

12 (State's Exhibit one, Miranda document, marked for
13 identification as of this date.)

14 (Jury enters the courtroom.)

15 THE COURT: Good morning, ladies and gentlemen.

16 (Jurors respond good morning.)

17 THE COURT: Hope everyone had a pleasant evening.
18 Everybody accounted for and we are ready to go
19 solicitor.

20 MR. BARFIELD: Yes, sir. Call Lieutenant Craig
21 Greenlee. He is out of order. This will make sense
22 later.

23 CRAIG GREENLEE, called as a witness, having been
24 duly sworn by The Clerk, was examined and testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MR. BARFIELD:

3 Q Tell us your name please, sir.

4 A Craig Greenlee.

5 Q And Lieutenant Greenlee by whom are you employed?

6 A City of Lancaster Police Department.

7 Q All right. How long have you been employed by the
8 police department?

9 A Since 2003.

10 Q How long have you been in law enforcement?

11 A Twenty-six years.

12 Q Where were you in law enforcement before you came to
13 the Lancaster Police Department?

14 A In the State of Florida.

15 Q In January and February of 2012 were you working for
16 the Lancaster Police Department?

17 A Yes.

18 Q What was your job for the Lancaster Police Department
19 specifically on February 8, 2012?

20 A I was working investigations.

21 Q All right. Are you currently working investigations
22 for the police department?

23 A Patrol division.

24 Q Okay. Lieutenant over a shift?

25 A Yes, sir.

1 Q Did you meet a young man that you came to know as
2 Joshua Xazier Wilks on or before February 8, 2012?

3 A Yes, sir, I did.

4 Q And do you see the person in the courtroom today that
5 you now know as Joshua Wilks?

6 A Yes, sir, I do.

7 Q Where is he sitting and what is he wearing?

8 A He is wearing a dark blue shirt. Has a tie on. He is
9 sitting next to the attorney right there.

10 Q All right. When did you first met Mr. Wilks?

11 A The morning of February 8th approximately ten o'clock
12 in the morning.

13 Q Was he in custody at that time?

14 A Yes, sir, he was.

15 Q Had he been developed as a suspect in the case of the
16 robbery of Mr. Moore at the BB&T ATM on 1-16 of 12?

17 A Yes, sir.

18 Q And what was your purpose in meeting Mr. Wilks on
19 February 8, 2012 at about ten o'clock in the morning?

20 A I wanted to discuss information on another case.

21 Q Okay. Did you talk to Mr. Wilks about what his rights
22 were concerning being questioned by the police?

23 A Yes, sir, I did.

24 Q I am going to show you a document which has been marked
25 for identification purposes as as States Exhibit One and just

1 let you hang on that for a few minutes if you will.

2 A Did you, tell Mr. Wilks what is his constitutional
3 rights were under the Miranda case.

4 A Yes, I did.

5 Q Do you have a document that you routinely use to
6 accomplish that objective?

7 A Yes, sir.

8 Q And what do you call that do you mean?

9 A It is a Miranda warning document.

10 Q Is that the first page of the document that I handed
11 you States Exhibit Number One for ID?

12 A Yes, sir, it is.

13 Q Is that document a printed form?

14 A Yes, sir.

15 Q Does it have spaces on it for number 1, date, time and
16 location?

17 A Yes, sir.

18 Q Does it have a spaces on it for a person being
19 questioned to put initials by certain elements of the form?

20 A Yes, sir.

21 Q Does it have a space on it for the person being
22 questioned to sign the form at some point?

23 A Yes, sir.

24 Q Does it have a space on it for you and anybody else who
25 is a witness to sign on the form?

1 A Yes, sir.

2 Q Did you go over that form with Mr. Wilks?

3 A Yes, sir, I did.

4 Q All of it?

5 A Yes, sir.

6 Q Would you, generally speaking are there -- what is it
7 -- strike that.

8 Did Mr. Wilks have certain rights concerning talking to
9 you and concerning having a lawyer present during this
10 proceeding?

11 A Yes, sir.

12 Q Does that form cover those rights?

13 A Yes, sir, it does.

14 Q Are the rights listed separately, individually on the
15 form?

16 A Yes, sir.

17 Q Did you go through each one of those rights on that
18 form with Mr. Wilks?

19 A Yes, sir, I did.

20 Q Before getting into the rights with Mr. Wilks did you
21 determine how old he was?

22 A Yes, sir, I did.

23 Q And how old was he?

24 A Seventeen years of age.

25 Q Did you determine how much education he had?

1 A Yes, sir, I did.

2 Q How much education did you have?

3 A Ninth grade.

4 Q Did you indicate where this was going on which we talk
5 more about in a little bit?

6 A Yes, sir.

7 Q Where was it going on?

8 A In our investigation division office.

9 Q At the Municipal Justice Center?

10 A Yes, sir.

11 Q Is that what MJC stands for on the form?

12 A Yes, sir.

13 Q Did you indicate the date?

14 A Yes, sir.

15 Q The date you indicated was?

16 A February the 8, 2012.

17 Q Did you indicate the time that you began the Miranda
18 warning process?

19 A Yes, sir.

20 Q What time was that?

21 A 10:01 a.m..

22 Q Now, did you read each of the rights to Mr. Wilks?

23 A Yes, sir, I did.

24 Q Do you do them straight down the line or did you read
25 one right and talk to him about it?

1 A Yes, sir, I did. I read each one and he initialed each
2 one.

3 Q All right. Read off the form the first one. We will
4 go through them one by one.

5 What did you tell Mr. Wilks first?

6 A You have the right to remain silent.

7 Q Did you ask him if he understood that?

8 A Yes, sir.

9 Q Did he indicated he did or did not?

10 A He indicated that he did and initialed next to it.

11 Q What you did you next tell him?

12 A Anything you say can and will be used against you in a
13 court of law.

14 Q Did you ask him if understood that?

15 A Yes, sir.

16 Q Did he indicate that he did or did not?

17 A He did.

18 Q Did he initial?

19 A Yes, he did.

20 Q What did you next tell him?

21 A You have the right to talk to you a lawyer and have him
22 present with you while you are being questioned.

23 Q Did you ask him if he understood that?

24 A Yes, sir.

25 Q Did he say he did or did not?

1 A He did.

2 Q Did he initial?

3 A Yes, he did.

4 Q What did you next tell him?

5 A If you can not afford to hire a lawyer one will be
6 appointed to represent you before any questioning if you wish.

7 Q Did you ask him if he understood that?

8 A Yes, sir.

9 Q Did he or didn't he?

10 A He did.

11 Q Did he initial?

12 A And he initialed.

13 Q Next right.

14 A You can decide at any time to exercise these rights and
15 not answer any questions or make any statements.

16 Q Did you ask him if he understood that?

17 A Yes, sir.

18 Q Did he indicate that he did or did not?

19 A He did and he initialed.

20 Q Next right or next statement that you made to him?

21 A Do you understand each of these rights as I have
22 explained them to you.

23 Q And what was his response to that question?

24 A He said yes.

25 Q Did he initial?

1 A He initialed.

2 Q What did you next tell Mr. Wilks?

3 A And having these rights in mind are you willing to talk
4 to us at this time.

5 Q Did he answer that question?

6 A Yes, he did.

7 Q What did he answer?

8 A Yes.

9 Q Did he initial?

10 A Yes, sir.

11 Q Now, did he waive his rights and subsequently make a
12 statement?

13 A Yes, sir, he did.

14 Q Did you read him the bottom paragraph on that form?

15 A Yes, sir, I did...

16 Q Read for the jury what you read him on the bottom
17 paragraph?

18 A I have read this statement of my rights and I
19 understand what my rights are. I am willing to make a statement
20 and answer questions. I do not want a lawyer at this time. I
21 understand and know what I am doing. No promises or threats
22 have been made to me and no pressure or coercion of any kind has
23 been used against me.

24 Q Did Mr. Wilks sign the waiver of rights form?

25 A Yes, sir, he did.

1 Q Did you put the time when he signed waiver of rights
2 form on the form?

3 A Yes, sir.

4 Q What time did he sign his waiver of rights form?

5 A 10:11 a.m..

6 Q And did you sign as a witness?

7 A Yes, sir, I did.

8 Q Was anybody else present with you when this was going
9 on?

10 A Yes, sir.

11 Q Who?

12 A Captain Grant.

13 Q Did Captain Grant sign as a witness?

14 A Yes, sir, he did.

15 Q All right. Did you you have any difficulty
16 understanding the words and phrases Mr. Wilks was using in
17 relaying information to you?

18 A No, I did not.

19 Q Did he appear to have any difficulty understanding the
20 words and phrases you were using in relaying information to him?

21 A He did not.

22 Q Was there any problem, did anything occur during this
23 interview process that lead you to believe Mr. Wilks did not
24 understand what his rights were and what was being done?

25 A No. He was understanding and confidently speaking.

1 Q Was there any problem in the communication between you
2 and Mr. Wilks?

3 A No problems.

4 Q Did Mr. Wilks ask any questions about his
5 constitutional rights?

6 A He did not.

7 Q Did he say or do anything to indicate to you that he
8 did not understand what was happening?

9 A He did not.

10 Q Now, lets talk a little bit about the mechanics.
11 Immediately before you started talking to Mr. Wilks where had
12 Mr. Wilks been to your knowledge?

13 A He was in our holding cell area.

14 Q All right. Which is a jail?

15 A Yes, sir.

16 Q When he was before you for the interview where was he?

17 A He was in our office in the investigation division.

18 Q Is the office -- of course the whole police department
19 is secure I presume, but is the office a jail cell?

20 A No, sir, it is not.

21 Q Do you all have cubicles? Back then when this was done
22 was the office divided up into cubicles with partitions?

23 A Yes, sir.

24 Q Did you have a desk?

25 A Yes, sir.

1 Q Was there a chair for you to sit in?

2 A Yes, sir.

3 Q Was there a chair for Mr. Wilks to sit in?

4 A Yes, sir, there was.

5 Q Was there a chair for Captain Grant to sit in?

6 A Yes, sir.

7 Q Okay. Were any other officers present during the
8 interview of Mr. Wilks in the immediate vicinity? I presume
9 there are people in and out of the police department all the
10 time, but were there any other officer right there with you and
11 Captain Grant and Mr. Wilks when this interview was being
12 conducted?

13 A No, it was just Captain Grant and I.

14 Q Was Mr. Wilks restrained in any fashion during the
15 interview process? Did he have handcuffs? Did he have leg
16 shackles? Did he have any devices to restrict his movement?

17 A No, sir, he was not.

18 Q What generally speaking what were you and Captain Grant
19 wearing? What do the detectives wear at the Lancaster Police
20 Department?

21 A Our dress clothes.

22 Q Like you all got on today?

23 A Yes, sir.

24 Q Are you all suppose to wear ties unless you are some
25 special operation?

1 A Yes, sir.

2 Q Did you have a badge on and did Captain Grant have a
3 badge on?

4 A Yes, sir, we did.

5 Q Do you all have side arms on?

6 A Yes, sir.

7 Q At any time during the interview did either one of you
8 all pull out a sidearm, lay it on the table, do anything to
9 indicate some threat with your sidearm during this interview
10 process?

11 A No, sir.

12 Q Was there a telephone near Mr. Wilks?

13 A Yes, sir.

14 Q Did you -- do you recall whether Mr. Wilks asked for
15 anything that I characterize as creature comforts; a drink of
16 water, a cup of coffee, a coke a cola, pack of crackers,
17 something to eat, a smoke break, a bathroom break?

18 Did he make any, to your recollection, did he make any
19 requests for something to make him comfortable?

20 A He did not.

21 Q Do you recall whether you all offered him anything to
22 make him comfortable?

23 A No, sir.

24 Q Did you deny him anything to make him comfortable?

25 A No, sir.

1 Q Did Mr. Wilks appear -- did he have anything that you
2 observed and would describe as any physical injury to his person
3 or body?

4 A No, sir.

5 Q Did he complain of any physical discomfort? Hurting?
6 Anything like that?

7 A No, sir.

8 Q Generally speaking how would you describe the
9 communication between yourself and Captain Grant and Mr. Wilks
10 not what was being said, but how was the conversation?

11 A Very comfortable atmosphere.

12 Q Was there at any time on behalf of Mr. Wilks did he
13 ever get fired up? Get outraged? Get belligerent? Beat himself
14 in the head? Bang his head against the wall? Have any outbursts
15 or anything like that?

16 A No, sir.

17 Q Did you and Captain Grant get loud, bang your hands on
18 the table or do anything like that?

19 A No, sir.

20 Q Did you or Captain Grant or anybody else during this
21 interview process make any promises to Mr. Wilks to get him to
22 talk to you?

23 A No, sir.

24 Q Did you or Captain Grant or anybody else during this
25 process make any threats against Mr. Wilks to get him to talk to

1 you?

2 A No, sir.

3 Q Did anybody put any -- exercise any undo coercion
4 toward Mr. Wilks to get him to talk?

5 A No, sir.

6 Q Did Mr. Wilks at any time during the process say from
7 start to finish I don't want to talk?

8 A No, sir.

9 Q At any time during the process after he had started
10 talking did he say I am going to stop talking?

11 A No, sir.

12 Q At any time during the process did Mr. Wilks say I want
13 a lawyer?

14 A No, sir.

15 Q Or I want to use the phone to call a lawyer?

16 A No, sir.

17 Q Or I don't want to talk any more before I talk to a
18 lawyer?

19 A No, sir.

20 Q Or I want to call my momma, my sister or some relative
21 or friend?

22 A No, sir.

23 Q Did he ask to do any of those things?

24 A No, sir.

25 MR. BARFIELD: Thank you, sir. Answer anything

1 Mr. Grier has.

2 CROSS EXAMINATION

3 BY MR. GRIER:

4 Q Lieutenant, how long has Mr. Wilks been in custody to
5 best of your knowledge?

6 A I believe it was 12 or 14 hours. Something like that.

7 Q Okay. And do you where during the time -- prior to
8 your speaking with him. I guess that was understood.

9 Do you know where he was detained during that time?

10 A In our cell area.

11 Q Okay. You are certain of that? You are certain he was
12 contained at the Municipal --

13 A That's where I make contact with him first.

14 Q Okay. All right. But do you know if he was taken to
15 the county or --

16 A No, sir.

17 Q You just don't know?

18 A I don't no.

19 Q Okay. All right. I guess you would grant that Mr.
20 Wilks is a young man, 17 years old?

21 A Yes, sir.

22 Q Pretty young. Did you size him up for his intelligence
23 or learn anything about -- I mean, it's your testimony about his
24 communication and, you know, your continuing with the interview
25 process that he had the capacity to and the maturity to actually

1 act as adult. Was that a determination that you made based on
2 the amount of education? He had a ninth grade education.

3 A We had a very comfortable conversation.

4 Q Were there any preliminary type questions not regarding
5 this case? Any inquiries that you made that you recall about
6 just so that you could size him up? About his family? About
7 his hobbies? Anything to size him up?

8 A Our conversation was just general and very comfortable
9 atmosphere.

10 Q All right. Did you make any contact with any of his
11 family?

12 A No, sir, I didn't.

13 Q Okay. You may have answered this if you. What was he
14 wearing at the time?

15 A Just general street clothes.

16 Q Okay. And you are certain of that?

17 A Yes, sir.

18 Q Was restrained during the conversation?

19 A He was not restrained.

20 Q And when you do these type of interviews I assume you
21 have to size up who you are dealing with, but is the practice to
22 have suspects unrestrained when you are interviewing them or to
23 restrain? How is that determination made?

24 A It is based on whether or not somebody is going to run
25 or if there is a risk of somebody getting not under control if

1 you will. Potential risk of that.

2 Q All right. You didn't actually conduct the questioning
3 about the case?

4 A No, sir.

5 Q Grant did that?

6 A Yes, sir.

7 Q All right. Were you involved in any way? There was
8 another suspect in this case prior to Mr. Wilks, correct? Are
9 you aware of that?

10 A No, sir, I wasn't involved in his case.

11 Q But were you aware that there was another suspect in
12 the case?

13 A No, sir, I wasn't.

14 Q What is the practice for -- what is the recording
15 procedure when you do interviews with -- of this nature? What
16 is the department policy on recording the statements made by
17 folks in these type of interviews?

18 A The interviews are going to be starting to record them.
19 We hadn't recorded that particular interview.

20 Q Okay. Why wouldn't you record the interview?

21 A We hadn't been recording interviews.

22 Q Why wouldn't you record an interview? Isn't that
23 important?

24 A It is just something we are starting to do.

25 Q Because it is a better practice?

1 A I would say that is just a different way of doing it.

2 Q All right. Well, if you weren't doing it at this time
3 and you are going to do it now why would you change the way you
4 are doing it?

5 A Because they hadn't recorded interviews at that
6 particular times.

7 Q Are there advantages to recording them?

8 A I would say probably have a better recollection, if you
9 will.

10 Q Okay. No other reason you can think of that recording
11 them is advantageous as to not recording them?

12 A No, sir.

13 Q How expensive is a recording device?

14 A I am not sure.

15 Q Seen them at Walmart for 20 bucks before, a little tape
16 recorder?

17 A Yes, sir.

18 Q Thank you.

19 MR. GRIER: That is all. Thank you.

20 REDIRECT EXAMINATION

21 BY MR. BARFIELD:

22 Q In this particular case in lieu of recording audio or
23 video or both, is there a written statement that Mr. Wilks gave
24 and signed.

25 A Yes, sir.

1 MR. BARFIELD: That is all the questions I have.

2 THE COURT: Mr. Grier, anything else?

3 MR. GRIER: No, Your Honor.

4 THE COURT: Thank you. You may stand down.

5 (Witness excused.)

6 MR. BARFIELD: I would ask that he be excused if
7 that is okay?

8 THE COURT: Mr. Grier?

9 MR. GRIER: No objection.

10 THE COURT: The witness is excused.

11 MR. BARFIELD: I think my next witness is going to
12 lead us into the matter that we need to take up outside
13 of the jury's presence.

14 THE COURT: Ladies and gentlemen, I need to take
15 up a matter of law. If you all step back to your room
16 please and we will have you back in hopefully in a few
17 minutes.

18 (Jurors retire to the jury room.)

19 MR. GRIER: Judge, prior to us getting to that
20 there is a matter of law that I think I need to bring up
21 concerning Mr. Greenlee's testimony.

22 Judge, rather than bring it up, I think this is
23 contemporaneous enough to meet any requirements on
24 Appellant review. And my tactical reason for not
25 bringing it up-immediately is because I don't think the

1 jury -- I think it is a negative to often times to bring
2 up objections. It re-enforces exactly what the jury
3 should not hear when you object to them if you are not
4 successful. Judge, I move for a mistrial.

5 Officer Greenlee testified that he was talking to
6 Mr. Wilks about another case. I think that is
7 prejudicial to the defense. Our agreement was that
8 there would be no mention and the officers would not
9 mention that Mr. Wilks is facing jeopardy from other
10 pending cases. It is highly prejudicial for a jury to
11 hear that and and I think certainly the Court would
12 agree that has some potential for the defense of being
13 negative. I think merely the jury hearing that Mr.
14 Wilks is being interviewed pertaining to another case is
15 highly prejudicial and I think it taints the whole
16 proceeding in terms of the jury being exposed to
17 information that they would not, should not, should not
18 have been allowed to hear. And I am asking that you
19 declare a mistrial based on the jury hearing something
20 that was not suppose to happen in this courtroom.

21 MR. BARFIELD: Your Honor, Mr. Grier is absolutely
22 correct in that we all agreed that evidence of other
23 matters pending relating to Mr. Wilks are not admissible
24 in this trial. I talked to all my witnesses yesterday
25 and I reiterated that to them again. I do not think

1 that Officer Greenlee intentionally tried to interject
2 some other matter into this case. I was surprised when
3 he said what he said. I too tried not to draw any
4 attention to it. Just jumped right in to something
5 else. I think it was a fleeting comment. I'm sure if
6 the jury was listening they heard it. I can't imagine
7 that they would attribute any great significance to
8 that. Also it was "another matter" which I think were
9 the two words he used. There was no indication of what
10 the other matter was. There is no indication of the
11 nature of the other matter. There is no indication that
12 the other matter resulted in any charges against Mr.
13 Wilks. I just don't think it rises to the level of
14 granting a mistrial in this case at this point.

15 Now, if you agree and are not going to grant a
16 mistrial then we are faced with the two options. One is
17 just let it go and not say anything to the jury about it
18 or give the jury a curative instruction. I'm good with
19 everything like it is. I just don't think this is a
20 mistrial issue.

21 THE COURT: I don't either. Police officers talk
22 to defendants in one case not only the possibility as
23 Mr. Grier points out it could be some accusation against
24 them, that they could have been a witness in another
25 case or had some knowledge of some other matter that had

1 absolutely nothing to do with them. I don't see that
2 it's that prejudicial and I think to try to do anything
3 -- you all handled it very well. I think you did the
4 right thing. I would have done the same thing both of
5 you are doing now. Not emphasis it any. No, I don't
6 think it goes to the degree of a mistrial and I think
7 any curative instruction or mention of it would be a
8 mistake. Because like I say there wasn't any mention of
9 any accusations against the defendant or his
10 involvement. It was just a simple statement he was
11 talking to him about another case. That could be a vast
12 array of any type of information. Okay.

13 MR. GRIER: Judge, I am not going to argue with
14 you, but just another point. The Court has probably
15 considered just in the event you haven't, Your Honor,
16 coming right out of the box with the first thing, is
17 what is bothersome to the defense. It's really the very
18 first thing they heard almost that he is being
19 questioned about another case. In which I think it is
20 germane and I am just asking you to consider that aspect
21 of the problem. I know you already ruled and I am not
22 arguing against what your ruling is, just something that
23 I didn't get an opportunity or didn't express when I was
24 bringing it up and whether that would have any bearing
25 just the timing of that was about the worse possible

1 timing from the perceptive of the defense right out of
2 the box like that.

3 THE COURT: You haven't violated any rules because
4 I really hadn't made as official ruling on it. That was
5 just my feeling.

6 MR. GRIER: Yes, sir.

7 THE COURT: Unless he really got deeper into it.
8 Come out with questioning him about another armed
9 robbery or another grand larceny, something specific
10 that was point go the figure at him I would agree with
11 you, but just that general statement. Like I said it
12 could be a vast array of matters that he was talking to
13 him about.

14 MR. GRIER: Judge, just for a clean record also I
15 just point out that I do agree with your analysis that a
16 curative instruction is more harmful then helpful. The
17 only cure that, you know, would make any sense would be
18 if it were a mistrial and I respect your ruling and I am
19 not arguing against, but just for a clear reason so that
20 I could state my tactical reason for not asking for a
21 curative instruction I agree with the Court that a
22 curative instruction is going to do exactly what I
23 avoided by waiting until the jury had left and not
24 emphasizing the fact that it happened.

25 THE COURT: So, officially I will deny the motion.

1 for a mistrial.

2 MR. GRIER: Thank you.

3 THE COURT: That is all I will say about that.

4 MR. GRIER: Thank you.

5 MR. BARFIELD: I am ready to go forward on the
6 identification issue and I will call witnesses.

7 THE COURT: Okay.

8 MR. BARFIELD: I call Mr. Moore. Bill Moore if
9 you will please come up please sir.

10 WILLIAM H. MOORE, called as a witness, having been
11 duly sworn by the clerk, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. BARFIELD:

15 Q Mr. Moore, you are going to get to talk twice, so we
16 won't go through all of the details right now, but I do need to
17 cover some things that I am giving you some heads up on.

18 Did you get robbed at the BB&T ATM on 1-16 of 12 about
19 quarter to ten at night?

20 A I did.

21 Q How much money got taken from you?

22 A One hundred and 20 dollars.

23 Q Were you alone other than the robber were you alone
24 when you got robbed?

25 A I was.

1 Q And how many robbers were there?

2 A One.

3 Q Was the robber a man or a woman?

4 A Man.

5 Q Was the robber a black person or a white person?

6 A A black person.

7 Q Was the robber young or old?

8 A Young.

9 Q About how young did you give?

10 A I said 18 to 22 in my statement.

11 Q That is fine. Did you give some description of the
12 clothing the robber was wearing?

13 A I did.

14 Q And how did you describe the robber's clothing?

15 A Light jacket or sweater and blue jeans.

16 Q Okay. Do you now know that the robber had something on
17 his hands?

18 A I do now.

19 Q Did you notice that when it occurred?

20 A I did not.

21 Q Okay. Why didn't you notice something on the robber's
22 hands when it occurred?

23 A Probably because I was looking at the pistol.

24 Q Did the robber have something that you believed to be a
25 pistol?

1 A He did.

2 Q Was it a big pistol or little pistol?

3 A It was a big pistol.

4 Q Did it appear to be -- are you familiar with firearms
5 and handguns?

6 A I am.

7 Q Did it appear to be a semi-automatic pistol or
8 revolver?

9 A Semi-automatic 45.

10 Q It looked like a 45?

11 A It did.

12 Q Okay. Was it blue meaning black looking or was it
13 chrome or nickle plated?

14 A It looked to be chrome.

15 Q Okay. Long barrel or short barrel?

16 A It was it like a 45 long. It was a big large gun.

17 Q Okay. Now, did you ever have your hands on this
18 pistol?

19 A No, I had my head on it.

20 Q Well, explain that. How did -- did this pistol come in
21 contact with your body?

22 A It did.

23 Q How and where?

24 A Twice he put it against my head. Pushed my head over
25 with the barrel of it.

1 Q I am going to ask you some stupid questions. Now you
2 said you are alone I assume you are behind the wheel of your
3 car?

4 A I was.

5 Q And I presume your car is an American made or not an
6 American made but an American configured car with the steering
7 wheel on the left hand side?

8 A That's correct.

9 Q Was your window up or down? Another stupid question,
10 was you window up or down when you got robbed?

11 A It was down.

12 Q The robber came to you from which direction? Relating
13 to your car -- let me back up.

14 Your car is parked an ATM like anybody's car would be
15 at the ATM?

16 A Correct.

17 Q And the ATM machine is actually outside your driver's
18 side window to the left?

19 A That's correct.

20 Q Is there some gap between your car and the machine?

21 A Very little.

22 Q From with you direction front or back of the car did
23 this robber approach you?

24 A He came from the back.

25 Q And how did you first know this robber was there?

1 A When I was reaching for the money, just about good
2 timing, I saw him in my left side mirror. I had got the 20
3 dollar bill. Reached up waiting on the receipt. The time the
4 receipt came out he was there. So I saw him at the time I got
5 the receipt.

6 Q So he was there meaning how did you know he was there
7 first?

8 A I saw him in my mirror. He was tapping the gun on the
9 window post and he was reaching for the 20 dollar bill all at
10 the same time.

11 Q All right, let's break that down.

12 You saw him in your mirror. What part of him did you
13 see in the mirror?

14 A I saw his body.

15 Q Could you see his face in the mirror at that point?

16 A No.

17 Q He tapped on the window door post?

18 A Right.

19 Q Is that post of your automobile behind your left
20 shoulder?

21 A Right.

22 Q And did you take it to be an incidental contact with
23 the car or intentional contact?

24 A Intentional.

25 Q And what was touching your car?

1 A What do you mean?

2 Q What was making the tap on your car?

3 A The gun was.

4 Q Okay. What did you do when that occurred? What did
5 you do? Where did you look? What did you see?

6 A Well, I new it was metal at the time it hit and I just
7 turned my head. First thing I saw was the gun. I looked to see
8 if there was any read or orange on it, trying to see if it was
9 fake or if it was a toy.

10 Q Did you see any read or orange --

11 A I did not.

12 Q -- on the muzzle end of that gun?

13 A I did not.

14 Q Go ahead.

15 A Then I came on up.. This was in one motion. I came
16 right on up and I looked directly at his face.

17 Q And did you see the face of the person that was robbing
18 you?

19 A I did.

20 Q Then what?

21 A And he already grabbed the 20.

22 Q Okay.

23 A And pushed the gun, pushed my head back around.

24 Q With the gun?

25 A With the barrel of the gun. He entered right here and

1 he pushed my head back around and he told me something like get
2 all of it and hurry. Words to that effect.

3 Q So, what did you do?

4 A I told him I said, son, I am going to get you some more
5 money, but you stay calm.

6 Q Okay. And did you get him some more money?

7 A I did.

8 Q How much more money?

9 A One hundred dollars.

10 Q Twenties?

11 A Yes.

12 Q And how did he get his hands on the I presume five
13 twenties for the other hundred bucks? How did he end up with
14 his hands on that?

15 A When it came out I had my hand out there and I
16 got the twenties and I kind of reached back. My hands backwards
17 and his hand met mine and he got the twenties out of my hand.

18 Q All right. What happened after he got the twenties?

19 A He ran off.

20 Q Now, you told us that you saw his face, face to face,
21 when you looked back after he grabbed the first 20. Did you see
22 his face at any other time?

23 A No, I didn't.

24 Q All right. I will show you some pictures.

25 MR. BARFIELD: Mr. Grier, can I just simply ask

1 you do you have an objection to the admissibility of
2 the four photographs that I shared with you earlier.
3 Not the line-up but --

4 MR. GRIER: Yeah, I object to them. I think that
5 testimony is sufficient. I think the pictures are more
6 prejudicial then probative, Your Honor. I don't think
7 they prove anything that Mr. Moore hasn't testified to.
8 I mean, certainly under Rule 403 I believe more
9 prejudicial then probative in terms of certainly I
10 understand Mr. Moore's anxiety and the fear, but I think
11 that he went through and I respect what horrific
12 experience it was for him but I do believe the pictures
13 to be more prejudicial than probative under rule 403.

14 MR. BARFIELD: I talk to him about the pictures
15 and I will show you the pictures after I get them marked
16 in a minute. Clearly they are prejudicial. I hope
17 there're prejudicial as do do, but they are certainly
18 probative because they prove a robbery was going on.
19 Let me just ask Mr. Moore about the pictures.

20 Q I will show you four printed photographs. Take them in
21 your hand and look at them for a minute.

22 MR. GRIER: I am not sure whether my objection is
23 even germane in this type hearing without the jury being
24 present.

25 THE COURT: I am sitting here analyzing all this.

1 and how this is going to be handled later if what I do
2 on this.

3 MR. GRIER: Judge, but in that vein assuming this
4 is the appropriate time to deal with it, I would say the
5 defense would stipulate to everything that has been
6 testified to as far as what Mr. Moore has stated about
7 what happened and the facts and his opportunity to -- to
8 -- I wouldn't challenge the fact -- any testimony about
9 Mr. Moore's opportunity and, you know, his version of
10 the facts. I wouldn't challenge any of that. So to the
11 extent any challenge to that would be germane to what
12 the solicitor is trying to prove with these photographs
13 I submit that they are unnecessary and that they are
14 more prejudicial than probative.

15 Does that make sense?

16 THE COURT: With that said, now, are you saying we
17 don't need to go any further with this hearing?

18 MR. GRIER: No, sir, you know, because I am saying
19 in terms of his opportunity which is a Bigger's issue,
20 the challenge of the eye-witness identification. I am
21 simply saying I wouldn't challenge anything that has
22 been testified to about what Mr. Moore experienced and
23 his opportunity to, you know, to see what what he saw.
24 I certainly am going to argue that that was not
25 sufficient opportunity to make a reliable

1 identification, but I am not going to challenge his
2 version of the facts. I am not even going to probably
3 cross examine him about that.

4 I am simply saying that I don't believe the
5 pictures are necessary to prove what Mr. Moore has
6 testified to and that they are simply more prejudicial
7 as opposed to probative.

8 THE COURT: I haven't seen the pictures yet, but I
9 can certainly take it into consideration on a Bigger's
10 hearing as to the lighting condition, the surrounding
11 area as far as any obstructions, whatever, I mean, you
12 know if the solicitor wants to get into that, but --

13 MR. BARFIELD: My initial question to Mr. Grier
14 about the pictures was just trying to see if he agreed
15 that the pictures were admissible to cut some time out
16 of this. I can mark them for identification. There is
17 no question and I will. I think they certainly are
18 probative on the Bigger's issue concerning things that
19 we talked about; the lighting, the space. All of that
20 the pictures show what is going on. They showed how
21 much light there was and the space between the car and
22 the machine and all that stuff.

23 I simply asked him about the pictures to see if I
24 could go ahead and get them introduced to cut a little
25 bit of time out of the process when the jury comes back.

1 But I do need to ask him some more questions about these
2 matters.

3 THE COURT: All right. I am going to let you to
4 proceed and have we will have to take it step by step.
5 Mr. Grier will have to decide at the appropriate time
6 when you attempt to get them into evidence by whatever
7 source they came from and he has got some concerns about
8 that. For right now go ahead.

9 EXAMINATION CONT'D

10 BY MR. BARFIELD:

11 Q All right. Mr. Moore, you had these four pictures in
12 your hands just a minute ago.

13 A Yes.

14 Q Are you familiar with the scenes depicted in these
15 pictures?

16 A Yes, sir.

17 Q And what are these pictures pictures of?

18 A Of him robbing me.

19 Q Any doubt about that at all?

20 A No.

21 Q Do these pictures accurately show what you describe
22 just a minute ago as having occurred to you at BB&T ATM on 1-16
23 of 12?

24 A I do.

25 Q Is that your -- I am just showing you one of them.

1 Well, let me go ahead and mark them for identification as
2 State's two through five, if that is okay.

3 (State's two through five, pictures, marked for
4 identification only as of this date.)

5 Q Mr. Moore, before I hand you these pictures back I will
6 ask you some general questions. Is will light in the parking
7 lot of the BB&T bank?

8 A Yes.

9 Q Is the ATM machine in the same general area where the
10 drive-up window and the drive-up I assume they got those vacuum
11 slots?

12 A Yes.

13 Q Is it in the same area?

14 A Yes.

15 Q Is the ATM the farthest thing out from the actual
16 building in relation to the drive-up window or is it closer to
17 the drive-up window?

18 A It is out further.

19 Q Is is the area where the drive through is and the ATM
20 is it covered?

21 A It is.

22 Q Are there lights under the canopy?

23 A Yes.

24 Q Are there lights around the ATM machine?

25 A Well lighted..

1 Q Did you have any trouble seeing what was going on with
2 the lighting conditions as they were where your car was parked?

3 A Absolutely not.

4 Q All right. I will show you picture Number 1, States
5 Exhibit Number Two, for identification, is your car shown in
6 that picture?

7 A It is.

8 Q And is it the only car shown in that picture?

9 A That is connect.

10 Q And what kind of car?

11 A It was Kia Serento.

12 Q It is a SUV?

13 A Yes.

14 Q Two-door or four-door?

15 A Four door.

16 Q And I will show you State's Exhibit Three for
17 identification. What is shown in that picture?

18 A That is showing where I just got the \$20 bill and the
19 receipt.

20 Q Are you shown in that picture?

21 A I am.

22 Q Is part of the robber shown in that picture?

23 A He is and the gun.

24 Q And the gun. I will show you State's Exhibit Number
25 Four for identification. What is shown in that picture?

1 A My automobile, the robber, his gun and I can't tell if
2 that is where I had the money or not.

3 Q All right. States Exhibit Number Five for
4 identification what is shown in that picture generally?

5 A My automobile again and the robber and the gun.

6 Q All right. This is kind of a cut to the chase kind of
7 question, but between January 16, 2012 and the night you got
8 robbed here and yesterday, had you ever seen anybody -- well,
9 let me back up. Let me ask this question first.

10 Do you see the person in the courtroom today who robbed
11 you at the BB&T ATM on 1-16 of 12 at 9:45?

12 A I do.

13 Q Where is he sitting and what he is wearing?

14 A He is wearing the blue shirt right there.

15 Q At the other table next to Mr. Grier?

16 A That's correct.

17 Q Between 1-16 of 12 at 9:45 p.m. at the BB&T ATM and
18 yesterday had you ever seen that person?

19 A No, I haven't.

20 Q Between those two times?

21 A No, I haven't.

22 Q Did you see that person yesterday?

23 A I did.

24 Q Did you see the person you identified as Mr. Wilks
25 yesterday?

1 A I did.

2 Q The first time you seen him yesterday was when?

3 A In that other jury assembly room.

4 Q Okay. At any time between you being robbed and
5 yesterday and the jury assembly room did anybody show you
6 pictures of somebody named Joshua Wilks?

7 A No.

8 Q Did the police ever come to you and show a single
9 picture of Joshua Wilks?

10 A No.

11 Q Did the police ever come to you and show you a series
12 of pictures one of which was Joshua Wilks?

13 A No.

14 Q Okay. Did the police Brenner Hartley with the police
15 department come to you on February 1st, I believe it was of
16 2012, with a series of pictures?

17 A He came to me with some pictures. I don't remember the
18 date.

19 Q I will show you --

20 MR. BARFIELD: Again, I am going to ask that this
21 piece of paper with six photographs on it be marked
22 for identification purposes as State's Exhibit Number
23 Six.

24 MR. GRIER: I am familiar with it, Your Honor.

25 THE COURT:-- Okay.

1 (States Exhibit Number Six, marked for
2 identification as of this date.)

3 Q Mr. Moore, I am going to show you what has been marked
4 for identification as State's Exhibit Number Six. Have you ever
5 seen that before?

6 A Yes.

7 Q And you said you don't remember the date but do you
8 remember where you saw that before?

9 A This was in my living room.

10 Q And do you know -- who you need to slide up a little
11 bit because you are kind of soft spoken.

12 Who showed you that at some time before this trial?

13 A Again I think you said it was Officer Brenner.

14 Q Was it a police officer with the city of Lancaster?

15 A It was a police officer, yes. I don't remember his
16 name.

17 Q White guy or black black guy?

18 A White guy.

19 Q Kind of heavy set, ball headed?

20 A Right.

21 Q Did he ask you if you could identify your robber among
22 the six pictures shown on that piece of paper?

23 A Something similar to that. In so many words.

24 Q Okay. Did you with absolutely certainty -- well, did
25 you indicate to him that anybody on that piece of paper looked

1 like the person that robbed you to some degree?

2 A I told him I didn't see the guy that robbed me on here.

3 Q What did you tell him?

4 A I told him that this guy right here second -- first row
5 second from the top in the middle looked more like him than any
6 of the rest of them.

7 Q And did you give him any percentage of certainty on
8 that?

9 A I told him 95% that he looked more like him than any of
10 the rest of them.

11 Q All right, now let me borrow that piece of paper a
12 minute. This is State's Exhibit Number Six for identification.
13 I will put my figure on this picture right here.

14 Is that the picture you are talking about you said -- -

15 A That is the picture I am talking about.

16 Q -- looked more like him?

17 A Your right hand. Your right finger.

18 Q My index finger on this hand?

19 A Yeah. I said that is the one that looked more like him
20 then any of those other people, yes.

21 MR. BARFIELD: All right. And Your Honor, for
22 the record my figure is on and Mr. Moore's indicated
23 that he is talking about middle row picture on the
24 left.

25 Q Did you say that that is the person that robbed you?

1 A No. No. But he more common look of him more than the
2 rest of those guys did.

3 Q All right.

4 A No, I knew that wasn't the guy that robbed me.

5 Q Did you go through any other identification process
6 with law enforcement or me and anybody in my office concerning
7 trying to find out who had robbed you other than what we talked
8 about so far?

9 A No.

10 Q Did anybody with the police department or my office or
11 me yesterday point out Mr. Wilks and tell you he is the guy that
12 robbed you?

13 A No.

14 Q How certain are you that the guy in the blue shirt over
15 there is the fella that robbed you?

16 A One hundred percent.

17 Q How come you are so certain today? That is kind of
18 stupid question, but how come are you so certain?

19 A Because you don't forget a face in that situation.

20 Q Are you a -- we talked the other day and you kind of
21 told me about your routine at the ATM. Tell the judge about
22 your routine at the ATM?

23 First of all I will ask you a question. I don't mean
24 to offend you. Why in the world are you going to the ATM at a
25 quarter to ten at night?

1 A Well one thing it is open. I can go to the ATM if I
2 want to.

3 Q That is fine. I mean no offense by my question.

4 A Yeah, I understand that, but I went to ATM for two
5 reasons. I needed a \$20 bill to get some food for my wife and
6 I. She wanted one of those small side salads from Wendy's. We
7 had a light dinner and both of us were hungry. So I was going
8 to get a \$20 bill go to Wendy's and get her side salad and I
9 like those little Jr. bacon cheese burgers from Wendy's and two,
10 I wanted to look at my balance in my checking account to see if
11 I needed to transfer any money.

12 I don't keep a lot of money in that checking account.
13 I only keep enough to have some bills drafted and keep some
14 spending money in there for the month. And so I needed to make
15 sure I had ample money in it to last out to the end of the
16 month.

17 Q What is your routine when you go to the ATM
18 particularly at night if it is any different?

19 A At night I always, always, enter from the Spring Street
20 direction.

21 Q Spring street is which street in relation to BB&T and
22 First Citizens?

23 A It is between those two banks.

24 Q Why you go in that side?

25 A I go in that side because you turn in and you go around

1 the front of the bank and when I turn in there I put my
2 headlights on bright and I drive slowly and I scan both sides of
3 the bank, the roadway there and see if I see anyone. I drive
4 slowly all around the bank, the north side of the bank. There
5 is small hedges there and what have you, shrubbery, trees, and I
6 go around the bank. When I get to the ATM I pull up there as
7 close as I can. At that night I didn't get as close for some
8 reason. I think I was tired. I didn't get as close as I
9 normally do. But when I got to the ATM I sit there. I don't
10 start my transaction immediately at night unless somebody is
11 behind me. If they are behind me I will go ahead and do it if
12 the people behind me look okay. But at night I will sit there.
13 No one is behind me I will sit there and I will scan my mirrors
14 from left to right; left mirror, center mirror, the right
15 mirror. Then I look over to the right because there is a
16 dumpster over there and I looked at it to make sure I don't see
17 anyone over there. Then I will scan the mirrors back the same
18 way; the right mirror, the center mirror and the left mirror.
19 And then I go back and do the same thing again; left to right
20 and back again and then when I am satisfied I will pull my card
21 out of my pocket, roll the window down and if I am careful I
22 will look again right quick. Then I will put it in. The card
23 comes back out. Punch in my pin number. Punch in the amount I
24 want and the money comes out and I get the money and usually I
25 will leave my hand out because with the money in it because the

1 receipt will come out within I don't know probably three seconds
2 and I will just raise my hand up and get the receipt at the same
3 time. Pull it back in. Hit the button. Raise the mirror and
4 pull up there to the road and then count the money.

5 Q Raise the mirror or raise the window?

6 A Raise the window.

7 Q You don't stay there at the machine and count the
8 money?

9 A I pull out to the road and count the money and make
10 sure it is correct. Of course in this case it was going to be a
11 \$20 bill and I don't need to count it.

12 Q Maybe get a tip. They made a mistake.

13 Did you do all that on this night that you got robbed?

14 A I did ever bit of it. The same thing.

15 Q Did you see anybody in the parking lot during your
16 sweep of the parking lot or anywhere near the dumpster?

17 A I did not. I say no one.

18 Q Did you see anyone before the robber grabbed the \$20
19 out of your hand?

20 A I did not. It was just bam, bam hit me right there.

21 (Indicating)

22 Q Were you armed that night?

23 A I was.

24 Q Did you do anything with your pistol when this was
25 going on?

1 A I did.

2 Q What did you do?

3 A I had it between my legs with the safety off.

4 Q How did it get between your legs with the safety off.

5 Explain that to me. Where had it been before?

6 A In my console.

7 Q And how did it come out of your console?

8 A I picked my console up, grabbed my hand in. Put it
9 between my thighs, right here flipped my safety off. Put my
10 right hand and release the button on my -- on my --

11 Q Shoulder harness?

12 A Shoulder harness.

13 Q Did you do all of that once you knew you were being
14 robbed, or before you ever pulled up to the machine?

15 A Well, I already had it loose. I had it loose but it
16 wasn't up and out.

17 Q Okay.

18 Q Is that part of your precaution at the ATM?

19 A Yes, it is.

20 Q All right. Now, did you contemplate presenting your
21 handgun when you were presented with a handgun by a robber?

22 A No. Not at that time.

23 Q At some point did you I guess is what I am saying?

24 A If he had said the wrong thing, yes.

25 Q You never -- did you ever show your gun?

1 A I did not.

2 Q Could something have happened that would made you show
3 your gun? It could have.

4 Q Like what?

5 A If he had said the wrong thing.

6 Q Okay. How would you describe your degree of alertness
7 during this event on 1-16 of 12?

8 A Very alert.

9 MR. BARFIELD: Thank you, sir. Answer anything
10 Mr. Grier or the judge has.

11 Q Let me ask one more question before I sit down.

12 The robbery took how long, from the minute you knew
13 somebody was there up to no good up until you got out of the
14 parking, how long was that?

15 A Probably two minutes. I would say. That is a rough
16 estimate. I don't know. You know, at a time something like
17 that is happening it is difficult to judge time, at least it was
18 for me.

19 MR. BARFIELD: That is fine. Answer anything Mr.
20 Grier or the judge has.

21 CROSS EXAMINATION

22 BY]MR. GRIER:

23 Q Okay. Mr. Moore, you were presented with this State's
24 Exhibit Six. Do you recall which person that you did pick?

25 A Yes.

1 Q You said looked the most like the person that robbed
2 you. Okay.

3 Do you recall being asked, you know, on a scale of one
4 to one hundred, do you recall being asked on a scale of out of
5 all the pictures -- excuse me. On a scale of one to one hundred
6 percent was this the suspect that robbed him, do you recall
7 responding I am 95% sure?

8 A No. I didn't say that. I never said that. That
9 wasn't what I said.

10 Q Okay. All right. At what point did you get a direct
11 look at the robber? Did you see his face in the mirror or did
12 you just see somebody is coming up?

13 A I looked at him. I looked at him when he hit the
14 barrel of the gun -- I guess it was the barrel of the gun --
15 when he hit the gun on the window post.

16 Q Yes, sir.

17 A And when I looked at the gun I came on up and I looked
18 at him directly in the face and he was very, very close to me.

19 Q Okay. How long do you think that event happened where
20 you were looking at him directly in the face?

21 A Two seconds.

22 Q Okay. All right. Was there any other direct
23 face-to-face contact during this exchange?

24 A I don't recall. There may have been, but don't I don't
25 recall.

1 Q Yes, sir. Okay.

2 A There may have you been when I told him, son, stay
3 calm. I will get you some more money. It seems like there was,
4 but I am not going to say there was because I don't really
5 remember.

6 Q Mr. Moore, you said depending on how what transpired
7 you were prepared to use your gun are you that if he was trying
8 to abduct you you would have used your gun to keep him from
9 abducting you? Is that -- that's what I translating that. Is
10 that what you were thinking?

11 A Or if he said, you know, if he had said get me \$1,000
12 or I am going to kill you.

13 Q Yes, sir.

14 A Certainly that is my right.

15 Q All right. I am not challenging that Mr. Moore. At
16 all.

17 A But I wouldn't kill that young man or anyone over \$120.

18 Q I understand.

19 MR. GRIER: Thank you, Mr. Moore.

20 REDIRECT EXAMINATION

21 BY MR. BARFIELD:

22 Q Mr. Grier asked you something that led you to say just
23 a minute ago you were looking at his face and you were close.
24 How close was your eyeballs to his eyeballs when you saw his
25 face?

1 A Three, three and a half feet.

2 Q Okay. All right that is good.

3 MR. BARFIELD: Thank you. Thank you, sir. That
4 is all. I don't have any other questions of this
5 witness if Mr. Grier does.

6 MR. GRIER: Nor do I.

7 THE COURT: Mr. Moore, you can step back down for
8 now.

9 MR. BARFIELD: Brenner Hartley.

10 BRENNER HARTLEY, called as a witness, having been
11 duly sworn by the clerk, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. BARFIELD:

15 Q Your name please, sir?

16 A Brenner Hartley.

17 Q And Mr. Hartley, by whom are you employed?

18 A City of Lancaster Police Department.

19 Q How long have you been employed by the police
20 department?

21 A Thirteen and a half years.

22 Q What do you do for the police department?

23 A I'm a detective.

24 Q Were you a detective with the police department in
25 January and February of 2012?

1 A Yes, sir.

2 Q Were you aware of the robbery of Bill Moore at the BB&T
3 ATM on one 16. of 12?

4 A Yes, sir.

5 Q Did the police department develop a suspect in that
6 case at some point --

7 A Yes.

8 Q -- before Mr. Wilks comes into the picture? No pun
9 intended?

10 A Yes, sir.

11 Q What's that suspect's name?

12 A At the time it was Garrett, I believe, Johnson. I
13 believe that is how you pronounce his name.

14 Q Did you at any time attempt an identification procedure
15 with Bill Moore concerning who had robbed him at the BB&T ATM?

16 A Yes, sir.

17 Q Do you remember the date you did that?

18 A I believe it was right around the first of February.

19 Q Of '12?

20 A Yes, sir, 2012.

21 Q Do you recall where you did that?

22 A Yes, sir.

23 Q Where?

24 A Mr. Moore's home.

25 Q Did you take -- what was the identification procedure

1 going to be?

2 A It was a photograph. Excuse me, a computer generated
3 photograph line-up.

4 Q I am showing you what has been marked for
5 identification States Exhibit Number Six. Can you tell us what
6 that is?

7 A Yes, sir, this is a photograph of the line-up.

8 Q The line-up that you took to Mr. Moore?

9 A Yes.

10 Q I will show you another piece of paper -- well, I will
11 show you another piece of paper which is not marked for anything
12 right now. What is that piece of paper?

13 A It is a line-up image detail sheet.

14 Q Which gets generated from what?

15 A Once we create a line-up in our computer system it
16 gives us the information of each picture that is generated in
17 the line-up.

18 Q All right. And the image, line-up image details is
19 that specific information related to each person who is picture
20 appears on the line-up?

21 A Yes, sir.

22 Q And are the blurbs of information on each person who
23 picture appears in the line-up numbered?

24 A Yes, sir.

25 Q And how many number blurbs of information are on the

1 image detail sheet?

2 A Six.

3 Q Do they match specifically concerning State's ID number
4 Six and the image detail sheet, do the blurbs about specific
5 people match the specific people shown in the line-up itself?

6 A Yes.

7 Q Now, is the line-up, States Number Six for
8 Identification are the pictures in that line-up number on the
9 piece of paper in front of you are they numbered?

10 A Yes, sir.

11 Q What is the numbering system and will I hold it up and
12 you point how do you number -- how do you know who the people on
13 the image detail are on this sheet? How are they numbered on
14 the line-up itself?

15 A We number them in the top left hand corner left to
16 right top to bottom.

17 A You put your figure on them and you count them one to
18 six how they would be numbered.

19 A One, two, three, four, five, six.

20 Q All right.

21 MR. BARFIELD: Your Honor, at this time I will I
22 guess offer to annex the line-up image details to
23 State's Number Six for Identification and have that as
24 one exhibit?

25 MR. GRIER: No objection.

1 THE COURT: Okay.

2 MR. BARFIELD: State's Number Six for ID will now
3 include the line-up and the details. Thank you.

4 Q Now, let me ask you this, Detective Hartley, was Joshua
5 Wilks a suspect in any crime in the City of Lancaster or in
6 Lancaster county to your knowledge on 2-1-12 when you say you
7 showed this line-up to Mr. Moore?

8 A No, sir.

9 Q Is Joshua Wilks's picture in this line-up, State's
10 Exhibit Number Six?

11 A No, sir.

12 Q Is the fella that you referred to a minute ago as
13 Garrett Johnson in this line-up?

14 A Yes.

15 Q And in which picture in this line-up by you pointing to
16 it is the picture of Garrett Johnson?

17 A He would be number three.

18 Q Did you show this line-up to Mr. Moore?

19 A I did.

20 Q And did he pick anybody out with certainty as his
21 robber at the BB&T ATM on 1-16 of '12?

22 A No, sir.

23 Q Did you question him about --

24 MR. GRIER: I am sorry, what was the response;
25 yes or no?

1 THE WITNESS: No, sir.

2 MR. GRIER: He didn't pick anybody out?

3 THE WITNESS: No, sir.

4 Q Did he indicate anything about any one OF those six
5 pictures?

6 A Yes, sir.

7 Q Which picture did he indicate about?

8 A Number three.

9 Q And number three is the picture of who?

10 A Garrett Johnson.

11 Q And what did the picture of number three, Garrett
12 Johnson?

13 A Out of the six folks Mr. Johnson was the one that as
14 closely resembled the person who robbed him.

15 Q Did he ever say Garrett Johnson was the person that
16 robbed him?

17 A No, sir.

18 Q Did he put some percentage on questioning by you?

19 A Yes, sir.

20 Q What was the percentage?

21 A Ninety-five percent.

22 Q All right. As looking closer then any of the others as
23 the person that robbed him, is that what he said?

24 A Yes, sir.

25 Q I will ask somebody else about this later.

1 Was Garrett Johnson eventually eliminated as a suspect
2 in this particular case?

3 A Yes, sir.

4 Q Did you at any time do any other identification
5 proceeding or procedures with Mr. Moore concerning who robbed
6 him?

7 A No, sir.

8 Q Did you become aware that Joshus Wilks eventually gave
9 a statement admitting to robbing Mr. Moore?

10 A Yes, sir.

11 Q Did you all go back to Mr. Moore with a line-up with
12 Wilks in it after -- did anybody in the police department to
13 your knowledge go back to Mr. Moore with a line-up with Wilks's
14 picture in after Wilks was arrested and admitted committing this
15 robbery?

16 A No, sir

17 Q Thank you. Answer anything Mr. Grier has and I will
18 take number six for ID back from you.

19 CROSS EXAMINATION

20 BY MR. GRIER:

21 Q Okay. Do you recall asking Mr. Moore the question on a
22 scale of one to one hundred percent was this the suspect that
23 robbed him in reference to the person he picked out on this
24 line-up?

25 A He didn't pick anyone out. He said that was the person

1 that most closely resembled the person.

2 Q All right. Do you recall asking the question on a
3 scale of one to one hundred percent was this the suspect that
4 robbed him? That was in reference to the person that he said
5 looked most likely the person that robbed him, right?

6 A Yes.

7 Q And do you recall asking the question, on a scale of
8 one to one hundred percent was this the suspect that robbed him?

9 A Is that what it says?

10 Q I don't know. Do you want to read that into the
11 record?

12 A I can if you like.

13 Q I mean, whatever -- in that paragraph whatever you feel
14 is relevant and responsive to that question.

15 A The victim asked out of all -- excuse me. The victim
16 stated out of all the pictures number 1 looks most like the man
17 that robbed me. I asked him the victim on a scale of one to one
18 hundred percent is the suspect that robbed him. I am 95% sure.

19 Q So, you know, what did you interpret that statement to
20 mean I am 95% sure?

21 A That he was one hundred percent sure of who robbed him.

22 Q Okay. And do you require %100 certainty?

23 A Yes, sir.

24 Q You do?

25 A In certain cases like this, yes, sir, it is very

1 important.

2 Q Okay. So when was Garrett Johnson eliminated as
3 suspect?

4 A I am not sure.

5 Q Well, as a result of this conversation that didn't
6 eliminate him as suspect?

7 A We still have certain things to follow up on in the
8 investigation.

9 Q Okay.

10 A Well, I am not exactly sure what date or time he was
11 eliminated.

12 Q All right. Well who would I need to ask about that?

13 A I am not sure.

14 Q Okay. Well, what was your role then in this
15 investigation?

16 A I was an investigator.

17 Q And who all were the investigators?

18 A Myself, Captain Grant, Detective Greenlee and Detective
19 Hall and Detective Witherspoon.

20 Q Okay. Out of that crowd any of those could have been
21 the person or the investigator that eliminated Garrett?

22 A I assume so. It would have been one of us. Yes, sir.
23 It wasn't me.

24 Q Okay. All right.

25 A It wasn't me.

1 Q Well, do you recall -- well, it has nothing to do with
2 Biggers hearing. I deal with the other issues later. Okay.

3 REDIRECT EXAMINATION

4 BY MR. BARFIELD:

5 Q As a result of the identification procedure with Mr.
6 Moore at his house concerning the State's Exhibit Six for
7 identification, he said -- whatever he said with a 95% number
8 being thrown out there, as a result of any and all of that was
9 Garrett Johnson ever charged with Mr. Moore's armed robbery?

10 A No, sir..

11 MR. BARFIELD: Thank you that is all. Nothing
12 further for this witness..

13 MR. GRIER: Nothing further from the defense.

14 THE COURT: You may step down.

15 MR. BARFIELD: That is all I got on this issue,
16 Your Honor.

17 THE COURT: Anything else for the record?

18 MR. GRIER: Your Honor, I don't see any other
19 evidence the defense could inquire about or anybody that
20 I need to call. I think that is everything that is
21 germane to the issue on Bigger's hearing.

22 THE COURT: I have to review the totality of the
23 circumstances, determine whether the identification is
24 reliable and that to a certain degree satisfies the
25 Court and that it should go on to the jury and for them

1 to weigh as evidence. Things I to look at is
2 opportunity of the witnesses to view the accused, the
3 witnesses degree of attention, the accuracy of the
4 witnesses prior description, the level of certainty
5 demonstrated by the witness and the concentration and
6 the length of time between the crime and the
7 confrontation.

8 I have reviewed all of that and I have listened
9 very carefully to the testimony. The Court finds there
10 is certainly enough reliability here in the Court's
11 opinion to certainly let a jury weigh it.

12 Okay. I think Court staff needs about five
13 minutes. All right. We got the jury out there. Let's
14 hold it for five minutes.

15 (Whereupon a brief recess was taken.)

16 MR. BARFIELD: Your Honor, we have a change of
17 plea by Mr. Wilks. You all come up. That is fine.

18 JOSHUA XA WILKS, called as a witness, having been
19 duly sworn by the clerk, was examined and testified as
20 follows:

21 MR. BARFIELD: This is Joshua Wilks, again
22 represented by Mr. Grier, case where in the middle of
23 trial, 2012-GS-29-550, the indictment alleges armed
24 robbery and it alleges that on January 16th of 2012 he
25 robbed William Moore of \$120 either by use a hand gun

1 or a representation of a deadly weapon.

2 He is pleading guilty straight up, absolutely
3 straight up on that charge. No recommendation
4 whatsoever and no negotiation whatsoever. He as
5 related indictment 2012-GS-29-551 which charges him
6 with use of a firearm during the commission of a
7 violent crime. It had been my theory proceeding into
8 this trial that the instrument used to commit the
9 robbery was the bee bee pistol or the pellet pistol
10 we have all been talking about Mr. Wilks' through Mr.
11 Grier tells me that that is in fact what he used to
12 robbed Mr. Moore. I have no information to the
13 contrary and based upon Mr. Wilks willingness to admit
14 this crime and tell us that he used a pellet pistol I
15 am going to dismiss the firearm during the commission
16 of a violent crime.

17 I will hand you a sentence sheet and the original
18 of the indictment.

19 THE COURT: Mr. Grier, I few questions to post to
20 you. Even though we are well in the way of this trial,
21 there has been some testimony offered. I still need to
22 get established on the record a few things.

23 In your opinion does Mr. Wilks understand the
24 charge that remains against him here, the possibly
25 punishment and all of his constitutional rights

1 concerning trial by jury.

2 MR. GRIER: Certainly we have been through all of
3 that, Your Honor.

4 THE COURT: All right and he understands?

5 MR. GRIER: And he does. I didn't actually answer
6 your question, but yes, he does. We have been through
7 it and he does understand.

8 THE COURT: The maximum possibly penalty of thirty
9 years?

10 MR. GRIER: Yes.

11 THE COURT: How does he now indicate to you that
12 he desires to plead?

13 MR. GRIER: Judge, he decides to plead guilty.

14 THE COURT: All right now the sentencing sheet I
15 have in front of me indicates that he is 18. What is
16 his education?

17 MR. GRIER: Well, I think you heard accurately it
18 is 9th grade.

19 THE COURT: So that is accurate. And his
20 occupation?

21 MR. GRIER: Judge, Mr. Wilks really had not -- he
22 had been at this academy and really hadn't entered into
23 occupational of any sort. Really haven't had any
24 opportunity to work.

25 THE COURT: I can understand that at that age.

1 Mr. Wilks, you heard your attorney state that he
2 advised you of the charge that is in this indictment,
3 the possible punishment that can be given to you and
4 that understand the charge and possible punishment; is
5 that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And I will go over that once more with
8 you. The charge is for armed robbery occurring in
9 Lancaster on or about January the 16th, 2012; when you
10 were armed with a weapon which appeared to be a deadly
11 weapon to the victim; a handgun-type weapon or
12 representation of a deadly weapon which the victim
13 reasonably believed to be a deadly weapon and thereby
14 alleging by actions or words that you were armed with a
15 deadly weapon you feloniously take -- you did
16 feloniously take, carry away from the person or presence
17 of William Moore by means of force, threats or
18 intimidation, money, of William Moore, and that was
19 described in indictment as \$120 all done with the intent
20 to deprive the owner permanently of that property. This
21 in violation ever 1611 three thirty eight code of laws
22 of South Carolina of 1976 as amended. You heard you
23 could receive up to the maximum of up to thirty years on
24 that particular charge.

25 Any questions about what I gone over with you?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you understand the charge and
3 possibly punishment?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And how do you plead to this?

6 THE DEFENDANT: Guilty, sir.

7 THE COURT: Do you understand by entering this plea
8 you are giving up your constitutional rights to remain
9 silent.

10 THE COURT: Yes, sir.

11 THE DEFENDANT: Do you understand that by entering
12 this plea that you are giving up your constitutional
13 right to a jury trial.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now even though we are in the mist of
16 that trial, I will go over this with you to make sure
17 that you do understand is that. You understand that we
18 went on with this trial you would have a right to
19 confront the witnesses against you and the State of
20 South Carolina would have to establish your guilt beyond
21 a reasonable doubt and that you could put up such
22 evidence or defenses that you have?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that you are
25 presumed to be innocent and that presumption stays with

1 you throughout any trial?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand you would have the
4 right to testify in your own defense, however, if you
5 elected not to testify it couldn't be held against you
6 and I would even instruct the jury of that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: That is your 5th amendment right under
9 the United States constitution to remain silent. Before
10 you could convicted all 12 jurors would have to agree
11 that you are guilty and also in the event that they did
12 convict you you would have right to appeal just as you
13 can appeal a guilty plea sentence as long as you file a
14 Notice of Appeal within ten days of sentence.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand if I agree to accept
17 the plea that is before me that you in effect have said
18 I do not wish to proceed with this trial. I want to
19 give up that right and proceed to plead guilty, is that
20 what you are saying.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I ask you now after we gone over this,
23 understanding those rights you do understand them?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you want to continue with this trial

1 or did you wish to go forward with this plea?

2 THE DEFENDANT: Go forward with this plea.

3 THE COURT: Has anyone promised you anything, held
4 out any hope or reward or threatened you in manner to it
5 get you to enter into this plea?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you understand there is no
8 recommendation or negotiations that have been stated to
9 the court.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you satisfied with Mr. Grier's
12 representation?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has he advised you to your
15 satisfaction?

16 THE COURT: Yes, sir.

17 THE DEFENDANT: Has he answered all of your
18 questions?

19 THE COURT: Yes, sir.

20 THE DEFENDANT: Contacted everybody you asked him
21 to contact if any?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Any problem with his representation I
24 want to hear it now.

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you today up the influence of any
2 intoxicating liquors or drugs or otherwise are you aware
3 of any physical emotional or nervous disorder that might
4 be keeping you from understanding what you are doing?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you have any complaints about anyone
7 mistreating you concerning this trial.

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you entering this plea of your own
10 free will and accord?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I think I asked you this. Nobody has
13 threatened you or promised you anything?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. What are you pleading to?

16 THE DEFENDANT: Armed robbery.

17 THE COURT: I find that your decision to change
18 your plea to guilty at this time is freely, voluntarily
19 and intelligently made and that you have the advice of
20 counsel of a competent lawyer with whom you say you are
21 satisfied a plea of guilty is accepted at this time.

22 All right. One further question. You heard the
23 evidence put up to the State at this point especially,
24 Mr. Moore's, do you disagree with those facts in any
25 way?

1 THE DEFENDANT: Sir, I did not push the pellet gun
2 towards his head. I didn't reach in the car whatsoever.

3 THE COURT: As far as putting it to him?

4 THE DEFENDANT: I didn't put it to his head, sir.

5 THE COURT: Anything else?

6 THE DEFENDANT: No, sir.

7 THE COURT: And it was a pellet gun?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. At this time I will prefer
10 to get the jury back in here because I am sure they are
11 interested to know we have been doing here for the last
12 couple of hours.

13 MR. BARFIELD: I have some things to say and Mr.
14 Moore will have some things to say.

15 (WHEREUPON, the jury enters the courtroom.)

16 THE COURT: Mr. Forman, ladies and gentlemen of the
17 jury, I can look into your eyes and the question you
18 have is why have we been back there in that jury room
19 probably for about two hours. I can assure you that we
20 have not been out here drinking coffee and eating donuts
21 and having a good time. We have been steadily going at
22 and what has transpired we proffered some evidence and
23 what proffer means is, there was some evidence that was
24 taken by the Court on matters of law outside your
25 presence for me to make some determination and the

1 victim in this case was required to give testimony in
2 this matter and after that testimony was given the
3 defendant and his attorney have discussed this situation
4 and they have changed their plea from not guilty to
5 guilty. So therefore, the burden of trying this case is
6 lifted off of your shoulders and now behind that,
7 through that phrase and accept the plea. I have
8 accepted the plea. We will now go into the mitigation
9 where I will hear from both sides concerning the
10 sentences.

11 You all are free to leave at this time if you would
12 like, however, I think you will have to call back in. I
13 haven't gotten to that point yet. Because of the nature
14 of this case, what you already heard I would certainly
15 invite you to stay here if you will and see what happens
16 from here on out as to what the parties may want to say.
17 The mitigation of it. Okay. That is what went on. We
18 didn't get but a five minute break during that period.
19 So, I don't want you all to think that we were having a
20 good time out here. We were instead diligently grinding
21 it out. Okay.

22 Before we get into this I want to thank both
23 attorneys for this able efforts in getting this case to
24 this point. This is a serious matter and both of them
25 once again done an excellent job in doing what they are

1 required to do, all right. Solicitor.

2 MR. BARFIELD: Your Honor, brief recap of the
3 facts without rehashing a whole bunch of the stuff.

4 The victim in case is William H. Moore Jr. Bill
5 Moore. Mr. Moore lives here in town, banks at BB&T. He
6 is married. On January 16th of 2012, which was Monday
7 night, had a need to go to ATM and BB&T to get \$20 out
8 and to check his balance and then go up to Wendy's and
9 get his wife and himself something to eat. He is a very
10 cautious man and as you heard him testify earlier. He
11 has a procedure that is unparallel I guess with folks
12 using ATM's about security and checking the premises out
13 and making sure everything is good especially at night
14 before he pulls up to an ATM. He did all those things.
15 Didn't see anything that gave him any concern in the
16 bank parking lot. Pulled up to the ATM. Rolls his
17 window down. Put his card in. Punched his pin in I
18 presume to get \$20 and as all that was going on noticed
19 this young man walking up from behind his car between
20 the car and the ATM. Saw him in the driver's side
21 exterior rear view mirror. This young man grabbed \$20
22 bill out of Mr. Moore's hand. He had previously tapped
23 what we will talk about in a minute on the side of the
24 car or made contact with the car with this hand gun that
25 we will talk about. That also drew Mr. Moore's

1 attention. He demanded from Mr. Moore to give him the
2 rest of the money and give it to him quick. Mr. Moore
3 put his card back in. Drew out \$100, five more
4 twenties. Handed that back to Mr. Wilks. Again he had
5 a good look at Mr. Wilks' face and was prepared in the
6 courtroom and did previously outside the jurors presence
7 point to Mr. Wilks and say he is the man than robbed me.
8 Mr. Wilks took off on running. Mr. Moore pulled his car
9 up. Rolled his window up, pulled his car up. Gathered
10 his wits about him. Although they were pretty much in
11 tack from the get go. Immediately drove to the police
12 department and reported this incident.

13 Wilks was arrested on 2-7 of 12, I believe, in an
14 unrelated matter, in the city of Lancaster by the
15 Lancaster City Police Department. He was accosted by
16 Dustynn Burlingame of the city police department, who
17 got a report Mr. Wilks fit a description of somebody
18 who allegedly committed another offense in the city and
19 and Officer Burlingame accosted Mr. Wilks and for
20 security padded him down and took from his waistband
21 this Crossman pellet pistol which I will hand up to the
22 Court. It is very realistic looking. As Mr. Moore
23 indicated in his testimony not capped in orange or red
24 at the end to clearly say that to many folks it is toy
25 or not a real pistol. Mr. Moore is very familiar with

1 firearms. Recognized this as a 45 caliber handgun.
2 Clearly believed it looked like 45 caliber. It has got
3 a lot of weight to it. It's got some metal in it I
4 presume. I haven't opened it up, but it appears to have
5 a good bit of metal in it. Mr. Moore certainly thought
6 Mr. Wilks meant business with than hand gun, although it
7 was a pellet pistol.

8 THE COURT: Let the jury take a look at it.

9 MR. BARFIELD: Your Honor, that factually is about
10 all that I need to add to the events that occurred on
11 the 1-16 of 12. I will tell you Mr. Wilks was 17 when
12 this happened. He is soon to turn 19 I think the first
13 of next month. He does not have any prior arrests as an
14 adult. He does have three juvenile referrals which did
15 not result in adjudications of delinquency, but he was a
16 participate in the DJJ juvenile process.

17 That is all I got to say at this point. I am sure
18 Captain Grant and Mr. Moore want to talk about the
19 sentence when you are ready to hear about that.

20 THE COURT: Let me reserve them to the last. I
21 want Mr. Moore to have the last say.

22 MR. BARFIELD: Thank you, very much.

23 MR. GRIER: Thank you, judge, and I appreciate
24 your comment about lawyers doing what they have to do
25 because that has been a factor in how far we had to go

1 this case to get it resolved, Your Honor. Certainly two
2 of the important things from the defense perspective
3 were, bottom line without my client's statement, you
4 know, the State really didn't have much of a case and --
5 or at least when we walked into this courtroom not
6 knowing what Mr. Moore was going to say and based on the
7 Discovery the statement was critical to the defense and
8 so from the defense's perspective it was unavoidable that
9 we had to have a Jackson versus Denno and challenge that
10 statement and that was a lawyer's decision and not a
11 decision -- I say decision. Certainly after advice from
12 counsel he agreed that most certainly that was in his
13 best interest to take his lawyer's advice, and so that
14 was the reason, most certainly that we got to the
15 Jackson versus Denno and as far as the Bigger's hearing
16 involving the testimony and the identification issue, as
17 the Court heard and really in a sense we obtained more
18 Discovery during that Bigger's hearing that the defense
19 was unaware of in terms of what was in the police
20 reports and from everything we had been provided. The
21 implication from Mr. Moore's interview was that he
22 picked out another individual and had said he was 95%
23 sure that it was the prior suspect who had been named
24 and so those being paramount issues from the defense and
25 that was -- those were things that had to be sorted out

1 to get to the point where my client could really have
2 advice from his lawyer about what his prospects were for
3 the State being able to prove guilt beyond a reasonable
4 doubt.

5 I don't think -- I think often times and I don't
6 mean the people get an a confused ideas about what
7 really the way Court runs based on what they see in
8 television and such, and so, again, I appreciate that
9 comment about us doing what we had to do. We had to
10 jump through those hoops as a result of the lawyering
11 that I had to do to advocate and to pursue every avenue
12 of defense possible for my client. As for Mr. Wilks,
13 Your Honor, when I first met him he was in -- and I will
14 just put emotionally disarray to the point where we of
15 course felt that he had some psychological issues that
16 we needed to deal with and had an evaluation done
17 because he, you know, reported hearing and seeing things
18 and having, you know, issues with his competence that we
19 dealt with. I met with Mr. Wilks at least ten times and
20 we have been through every nuance and every avenue in
21 this case. Mr. Wilks of course at this time was 17-year
22 old who had unfortunately had the misfortune of having
23 encountered and become a drug user and used crack
24 cocaine and prior to this, and something that you didn't
25 get the chance to hear, but some times we try cases that

1 are called slow pleas because we are fairly comfortable
2 -- or I shouldn't maybe say comfortable is not the word,
3 but the outcome is evident. There is evidence,
4 mitigation evidence, that is better suited for the
5 defense to come from the stand then to just tell the
6 Court but you didn't get to hear a couple of those
7 things because we this didn't go that far. But he gives
8 in his confession he talks about the -- his inability to
9 be productive for his family and to help his family and
10 that is not an excuse or rational explanation but we had
11 a young man who got substance abuse issues, who is kind
12 of hopeless already at this point in his life, Your
13 Honor, or at that time.

14 Judge, I think as you know certainly there is
15 mandatory minimum and we talked about it over and over,
16 and I believe the mandatory minimum takes -- should
17 factor in how much of a criminal record someone has and
18 certainly I think that minimum for someone who has no
19 record as Mr. Wilks who stands here before you today.
20 He certainly meets that criteria. Your Honor, while Mr.
21 Moore that was horrific experience. I never had to face
22 it. I don't want too. It was a terrible experience for
23 him and certainly he had -- based on, you know, looking
24 at that gun I think anybody looking at it I am not very
25 experienced with guns and I certainly wouldn't be able

1 to distinguish guns and I don't think he did. He
2 thought it was a real gun. But I think it is something
3 in mitigation I believe that is important in this case.
4 While Mr. Moore at the time would have experienced the
5 physic injury of believing you were faced with a gun,
6 the fact the intent of Mr. Wilks at that time was what
7 is important to the mitigation of this case and is that
8 he really was not in any position to cause significant
9 harm to Mr. Moore, and in fact as Mr. Moore testified
10 apparently Mr. Moore was prepared to deal with it and
11 Mr. Wilks as it turns out was apparently lucky that Mr.
12 Moore was unable -- did not use his firearm on Mr.
13 Wilks.

14 All that being said, Your Honor, I am asking you to
15 consider the minimum because I think that is why we have
16 a mandatory minimum. It is for folks who run afoul of
17 the law and it is serious crime. He is going to do 85%
18 of it, and you know it is non-parolable. And you know
19 if the Court feels like the mandatory minimum is simply
20 not enough I would ask the Court to consider a sentence
21 that would allow Mr. Wilks to remain under some sort of
22 supervision for some period of time with any balance of
23 the mandatory ten, so that we can find out what kind of
24 person Mr. Wilks is going to be when he gets through
25 doing his time. And if he is not able to he has talked

1 about -- he understands there are opportunities, I would
2 say for him to get electrical, plumbing all kinds of
3 vocational and he's expressed that is how he will use
4 his time and to use that time to do what he can to
5 better himself and ask the Court if you believe that
6 beyond ten years is something that you have to do, then
7 I ask that you suspend that time. Test Mr. Wilks
8 through some kind of probationary sentence that would
9 allow him to keep from serving that time if he is able
10 to do what he is says he is going to do which is get
11 turned around. There is no reason to believe he can't
12 do that.

13 Your Honor, we are asking that you sentence him to
14 mandatory minimum. I think that would be appropriate
15 under the circumstance.

16 His mother and his sister are here. Of course as
17 you might imagine as all folks are in this situation
18 where a love one is confronted with what Mr. Wilks is
19 confronted with are upset, but they did indicate they
20 wanted to speak and I would like to give them the
21 opportunity to. Would you care to speak?

22 MS. WITHERSPOON: Well, my brother he is not --
23 what he did was very wrong, but he is not a bad person
24 at all. He use to wake up every morning before he go to
25 school and give me my medicine. I have got like six

1 diseases that I have to take medicine for every day and
2 he use to get up and get me my medicine and watch the
3 kids and do anything we ask him. And I feel like it is
4 really pretty much -- I mean, what he done is his fault,
5 because he done it, but I feel like it is my fault
6 because I was the one that was paying the bills and
7 everything and I told him, you know, well, I am not
8 going to take care of a grown person. So you got to get
9 a job. And he couldn't get one. He tried but he
10 couldn't get one. I wish I could pay him Mr. Moore like
11 three times as much as he got from him just so my
12 brother could come home, but I feel like it is pretty
13 much my fault because if I hadn't put so much on him I
14 feel like wouldn't have did it. Because okay, he got in
15 trouble in school but when he got in trouble in school
16 it bathroom fights and and took he took a little bit of
17 liquor to school in a soda bottle. But, you know, I
18 mean I done stuff in school too. I am sure everybody
19 has. I never skipped class or nothing like that. But I
20 am sure everybody did a lot of things, but he is not a
21 bad person. He's really a good person and I feel like
22 if I hadn't been so hard on him it wouldn't have turn
23 out this bad and my brother is going to go away for a
24 long time, a very long time and the only thing I had to
25 do was just take care of him and I just wanted him to

1 get a job and be a man, but I am not a man so I can't
2 show him how to be a man. And my momma raised him by
3 herself. She raised us by herself. I was just trying
4 to make him be a man. Make him get a job. Make him do
5 his own stuff. Grow up. And the only thing I had to do
6 was take care of him and he wouldn't have done this.
7 And I feel like my whole live is just leaving,, he has
8 been my best friend forever. He took care of me when I
9 was sick and I couldn't move and I couldn't even open a
10 soda bottle. He would open it for me. He has been
11 therefore for me my baby. My baby daddy he don't do
12 nothing with my baby. He been there with my baby -- he
13 been with my baby since she has been born. And I feel
14 like my whole live I wish I could pay him. I wish I
15 could pay him. I wish I could pay,, I can't pay him. I
16 wish that I could pay him so my brother could come home
17 because he not a bad person. He really is not.
18 Everybody messes up. And he just messed up big time.
19 And I wish I could help him. I can't. Thank you.

20 THE COURT: Thank you, for being here.

21 MS. WILKS: Every parent wish that a child do
22 nothing wrong and he did and I always told him you did
23 something wrong you got to pay the time. I mean, I am
24 always there for him. I have been there every Sunday
25 and it is something I can't help him with. I wish I

1 could, but I can't. All I can say to him is that I am
2 sorry that I didn't raise him right. Because I always
3 told him never take anything from anybody. You got to
4 earn whatever you want.

5 Thank you.

6 THE COURT: Mrs. Wilks don't take that too hard
7 because there is a lot of parents out there that have
8 done everything they could possibly do to raise
9 children, but with the many temptations and shape we are
10 in right now in society no matter how hard you try and
11 what you do some times it is just does not work.

12 MR. GRIER: Thank you, Your Honor. Do you wish to
13 say anything.

14 THE DEFENDANT: Your Honor, there is nobody here to
15 blame except me and I take responsibility for my
16 actions. It was unethical and I immature of what I did.
17 I am sorry for what happened to Mr. Moore and I am sorry
18 what I did to him. I can repay him. I was in the
19 process of getting my GED, but I didn't have the
20 transportation to get my GED, so I turned to drugs. The
21 only thing that could help me. I am not using that as
22 an excuse, because there is no excuse for was I did, but
23 all I can say is I am sorry for what I did. I am sorry
24 for bringing the jury here on this and I am sorry for
25 wasting everybody's time that is in this courtroom right

1 now.

2 My mom, she raised me right even though she was a
3 single mom. I had a step dad. Even though he did try
4 to help me I know a little bit about everything but I
5 never did put my mind to it because it was always the
6 drugs right there in front of me and the group I was
7 hanging around and the county I was staying at in that
8 point of time.

9 I am a bright kid, Your Honor. I mean, I starting
10 going to high school to go to military academy so I
11 could go go in the military, but I graduated but I
12 didn't. I missed the test by one. I missed a math test
13 and that is all I had to retake to get my GED. I was
14 going to do that but the drugs got in front of me and
15 like you said, Your Honor, there is so many temptations
16 out there. Some you can't resist and some you can.
17 Drugs was part of the ones that I couldn't.

18 THE COURT: Okay.

19 MR. GRIER: Thank you, Your Honor.

20 MR. BARFIELD: Just a couple other things from me
21 and then Captain Grant I think will speak and Mr. Moore
22 will speak.

23 The jury doesn't know this, but Mr. Wilks did give
24 a statement to police on 2-8-12 admitting that he
25 committed this offense. He indicated that he hid behind

1 or around the dumpster behind BB&T, was crouched down,
2 popped up when Mr. Moore came up. He also as shown in
3 the photographs which we were working with during the
4 trial this morning, was wearing what appears to be
5 hospital gloves and in the statement also admitted that
6 he had taken the gloves from the hospital room when he
7 was there visiting his sister one time. He did use an
8 instrument that very realistically looked like a firearm
9 to anybody who is on the wrong end of it.

10 Your Honor, based upon all those things certainly
11 there is a big range in this case. I would ask you not
12 to give the mandatory minimum. Captain Grant will
13 address whatever he needs to talk about and I think Mr.
14 Moore then would speak.

15 THE COURT: The Court recognizes Captain Grant.

16 CAPTAIN GRANT: Yes, sir. I don't know what
17 happened to Mr. Wilks in the last year. I can say that
18 I spoke to Mr. Wilks. I talked to him in my office that
19 morning. That young man was very forthcoming. He was
20 very remorseful and I truly felt that he regretted what
21 he had done. At that point he was willing to do
22 whatever he had to do to stay in front of it and go from
23 there. I can't make Mr. Wilks out to be monster. I am
24 not trying to do that. He is a very young man, but he
25 is also capable of doing very terrible things and I

1 think that is where I need to leave it.

2 THE COURT: Mr. Moore.

3 MR. MOORE: Well, I am sorry Mr. Wilks messed his
4 life up doing what he did. I feel bad for him. I
5 really do, but I feel worse for his mother and sister.
6 I know Mr. Wilks is young, has limited education and
7 maybe messed up on drugs. But as careful as I was and
8 am when I go after dark to the ATM, Mr. Wilks was very
9 cunning, very smart, as young as he is, to get to me as
10 quickly as he did and put that weapon to my head. And I
11 was thinking the whole time why is he not covering up
12 his face unless he is going to shoot me. The only place
13 he could shoot me was in the head and if he shot me in
14 the head it was going to be a closed casket. That is
15 what was going through my head is what I was thinking
16 about. And it seemed like this day and time if a young
17 person gets a gun they want to shoot someone.

18 My rights were taken away that night. Maybe five
19 years of my life. It is not nice to have a gun put to
20 your head like that, the barrel of it, and your head
21 pushed over a couple of different times. He maybe young
22 but he was smart enough to know what he wanted that
23 night. He was smart enough to tell me what he wanted
24 and he meant to have it.

25 It is not right for people in South Carolina and

1 especially in Lancaster County or anyone to be robbed at
2 gunpoint like that. And messages need to be sent that
3 we will not tolerate it. It doesn't need to be slap on
4 the wrist. No matter who it is, no matter how young, no
5 matter the limit of education, no matter if they are on
6 drugs. That is the way I feel about it and I am going
7 to leave it at that.

8 THE COURT: I have been at this job a long time.
9 Believe it or not as young and as handsome as my face is
10 I am the senior circuit judge in this State. In 22
11 years and few months you said one of the most admirable
12 things in your testimony a few minutes ago that I have
13 ever heard. You had the full ability to reverse this
14 thing and take this young's man's life and you stated
15 that you didn't want to do that over \$120 and you are to
16 be commended for that attitude and wisdom, but on the
17 other end if you had shot him nobody could have blamed
18 you for anything. In fact a lot of people would have
19 given a lot of praise to you for doing that. But you
20 had wisdom enough from your life and the years that you
21 have been here not to do that and I fully understand
22 what you meant when you said if he would have said the
23 wrong thing it would have backed you in a corner that
24 you couldn't have gotten out of without taking his life.
25 But I wanted to tell you that looking at you eyeball to

1 eyeball that was one of the most admirable things I have
2 ever heard.

3 MR. MOORE: Thank you.

4 THE COURT: And I am not going to sit up here and
5 preach a sermon to you, but you are extremely lucky that
6 your brains were not blown all over that ATM machine
7 that night.

8 THE DEFENDANT: Yes, sir. Lieutenant Grant told me
9 the same thing.

10 THE COURT: Mr. Grier, have you got his
11 incarceration date?

12 MR. GRIER: I don't, Your Honor.

13 MR. BARFIELD: It will be 2-7-12 is the night they
14 picked him up.

15 MR. GRIER: I don't have the number. We do have a
16 jail list right here if you want to put the number of
17 days.

18 THE COURT: I can just date it back to 2-7-12.

19 MR. GRIER: Okay.

20 THE COURT: Will all of you that practiced law any
21 time and all of you been in law enforcement know about
22 me. My general philosophy is I mitigate a plea when you
23 stand up here and take your medicine. I usually go the
24 middle route and add to or subtract from the middle
25 range. Mr. Moore is right, you know. This kind of

1 behavior has got to stop. I watched in our area and I
2 am not going to sit here and criticize the politicians
3 but in my opinion some very unwise moves was made many
4 years ago that caused demise of industry in our area,
5 especially the textile area in Lancaster, Chester,
6 Pageland area just devastated the economy. People
7 struggling to find jobs and I can understand the dire
8 straits, but what I don't understand Mr. Wilks is why
9 someone no matter how dire the straits they are, why do
10 you mess with drugs and then fall to temptation to pull
11 a stunt like you did that night. That is what bothers
12 me. So, that mitigates against you. Now, what
13 mitigates for you is how that you are young. You still
14 can make something out of your life, but I can not
15 afford to you have on the streets of Lancaster or
16 anywhere else in this State for quite some time. I hope
17 you will take advantage of the good things, not that
18 there are many, but there are vocational opportunities
19 and educational opportunities that will be available to
20 you where you can come out and maybe stay out of prison
21 the rest of your life or you could go down there and get
22 with the "big dogs" as we say and learn a lot more
23 criminality and come back and probably wind up six feet
24 under or in prison for the rest of your life. I will
25 give you 20 years State Department of Correction and you

1 will get credit back to February the 7, 2012.

2 Sheriff, take him into custody please.

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Lancaster County, South Carolina, on the 13th day of August, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 30, 2013

Aileen Butler

WITNESSES

Witherspoon - LPD #12-837

DOCKET NO. 2012-GS-29-550

The State of South Carolina

County of Lancaster

FILED
OFFICE OF CLERK
OF COURT

2013 AUG -8 PM 3:15

CLERK OF COURT
LANCASTER, SC

COURT OF GENERAL SESSIONS

AUGUST TERM 2013

ARREST WARRANT NUMBER/DOA

M701603 (DOA-2-9-12)

ACTION OF GRAND JURY

THE STATE
vs.

Joshua Xazier Wilks

Wanda L. Linder
Foreperson of Grand Jury
Date: AUG 08 2013

VERDICT

CERTIFIED TO BE A TRUE COPY

Jeff Hammond

JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.

TRUE BILL

ARMED ROBBERY

SC Code: 16-11-0330(A)
CDR Code: 0139
Class: Felony A

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)

AMENDED
 INDICTMENT

At a Court of General Sessions, convened on August 8, 2013, the Grand Jurors of Lancaster County present upon their oath:

ARMED ROBBERY

That Joshua Xazier Wilks did in Lancaster County on or about January 6, 2012, while armed with a deadly weapon, to wit: handgun, or while using a representation of a deadly weapon or an object which the victim reasonably believed to be a deadly weapon, and alleging by actions or words that he was armed with a deadly weapon, feloniously take and carry away from the person or presence of William Moore by means of force, threats or intimidation goods or money of William Moore such goods or money being described as follows: \$120.00, with the intent to deprive the owner permanently of such property in violation of Section 16-11-0330(A) of the *Code of Laws of South Carolina*. (pmf)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



 Douglas A. Barfield, Jr., SOLICITOR

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

Paul Burch, Circuit Court Judge

Case No(s): 2012GS2900550

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SC Court of Appeals

FILED
CLERK OF COURT
LANCASTER, SC
OCT 31 PM 3:38

The State of South Carolina,

v.

Respondent.

Joshua Wilks,

Appellant.

EXPLANATION OF APPEAL

Defendant appeals the sentence imposed in this case. The Defendant pleaded guilty to Armed Robbery and a sentence of 20 years was imposed by the Honorable Paul Burch on August 13, 2013.

Defendant is informed and believes that the sentence imposed is excessive and unconstitutional pursuant to the Eighth Amendment prohibition of "cruel and unusual punishment" espoused in the United States Constitution.

The crime of Armed Robbery carries a potential sentence ranging from a minimum ten (10) years to a potential thirty (30) years and should be vacated due to the failure of the Court to properly apply the Proportionality Principle to the uncontested mitigating factors applicable in this case. The Proportionality Principle was first recognized by the United States Supreme Court in *Weems v. United States*, 217 U.S. 349 (1910). This tenet was interpreted to prohibit sentencing "grossly disproportionate to the nature of the offense" in *Solem v. Helm* 463 U.S. 277 (1983).

The minimum sentence that could have been imposed was ten (10) years and would logically be applicable to cases where there are momentous mitigating factors to be considered. In the instant case the undisputed mitigating factors presented by the Defendant during his plea were:

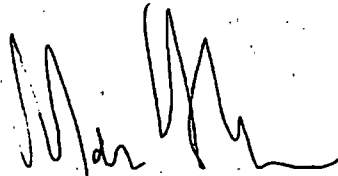
- 1) Defendant was seventeen (17) years of age at the time of the crime; and
- 2) Defendant had no criminal record; and
- 3) Defendant used a toy gun in the commission of the crime and did not expose the victim to

genuine danger:

The South Carolina Legislature mandated a harsh minimum sentence of ten (10) years for the serious crime of Armed Robbery. It is hard to imagine more significant mitigating factors than are present in the instant case. Therefore the imposition of a twenty (20) year sentence in this case constitutes cruel and unusual punishment prohibited by the Eighth Amendment to the United Constitution and said sentence should be vacated.

Defendant is informed and believes that Arguments were made by counsel presenting all of the mitigating factors stated herein to the Court during the plea of the Defendant and therefore, the issue was properly raised and ruled upon by the Court and is reviewable on Appeal.

Date: October 30, 2013



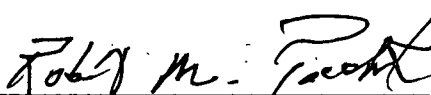
Mark Grier, Esq.
Public Defender
Post Office Box 1809
Lancaster, SC 29721
S.C. Bar #15145

Other Counsel of Record:
Douglas Barfield, Esq.
Solicitor, Sixth Circuit
Post Office Box 607
Lancaster, SC 29721

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."

December 30, 2013

A handwritten signature in black ink, appearing to read "Robert M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Lancaster County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

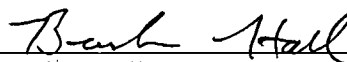
V.

JOSHUA WILKS,

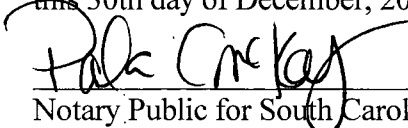
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 30th day of December, 2013.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 30th day of December, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

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DEC 30 2013
SC Court of Appeals