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STATE OF SOUTH CAROLINA

S.C. Supreme Court

IN THE SUPREME COURT

Appeal from Williamsburg County

George C. James, Jr., Circuit Court Judge

MICHAEL L. MCFADDEN

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-000121

APPENDIX

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THE STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

GENERAL SESSSIONS COURT

THE STATE OF SOUTH CAROLINA,
PLAINTIFFS

TRANSCRIPT OF RECORD
92-GS-45-80

VS.

MICHAEL DION MCFADDIN,
DEFENDANT

APRIL 6, 1992
APRIL 7, 1992
KINGSTREE, S.C.

BEFORE THE HONORABLE D. MARION SHULER, JUDGE.

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

MR. CLIFTION NEWMAN,
ASSISTANT SOLICITOR FOR THE STATE

MR. WELLS DICKSON,
ASSISTANT SOLICITOR FOR THE STATE

MR. LEGRAND CARRAWAY,
ATTORNEY FOR THE DEFENDANT

MARGARET T. SULLIVAN,
COURT REPORTER

	<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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2	MICHAEL GRAHAM				
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EXHIBITS

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1 MR. NEWMAN: THE STATE CALLS INDICTMENT NUMBER
2 45-80, THE STATE VERSUS MICHAEL DION MCFADDEN, FOR
3 ARMED ROBBERY AND POSSESSION OF A WEAPON DURING A VIOLENT
4 CRIME, AND KIDNAPPING.

5 THE COURT: LADIES AND GENTLEMEN OF THE JURY PANEL,
6 WE'RE ABOUT TO BEGIN A TRIAL, DRAW A JURY, AND BEGIN
7 A TRIAL IN A CASE ENTITLED THE STATE OF SOUTH CAROLINA VERSUS
8 MICHAEL DION MCFADDEN. MR. MCFADDEN, WOULD YOU STAND
9 AND FACE THE JURY PANEL. ALL RIGHT, YOU MAY BE SEATED.
10 MR. MCFADDEN IS CHARGED WITH ARMED ROBBERY, POSSESSION OF
11 A WEAPON DURING A VIOLENT CRIME, AND KIDNAPPING. THREE
12 SEPARATE AND DISTINCT CHARGES. ALL THREE OF WHICH HE
13 HAS PLED NOT GUILTY TO. ALL THREE OF WHICH HE SEEKS A
14 TRIAL AT YOUR HANDS.

15 I'LL TELL YOU VERY BRIEFLY THAT ON OR -- THAT IT
16 IS ALLEGED THAT ON OR ABOUT THE 28TH DAY OF OCTOBER
17 1991, WHILE ARMED WITH A DEADLY WEAPON, A KNIFE, IT
18 IS ALLEGED THAT HE TOOK FROM THE PERSON OF MELISSA
19 ROGERS BY FORCE OR INTIMIDATION, SOME GOODS OR MONEY
20 FROM CLEMMINGS VIDEO STORE: \$300 IN CASH, TWO NECKLACES,
21 A WATCH, AND A CLASS RING. AND THAT'S THE ALLEGATION
22 AS TO THE ARMED ROBBERY. IT'S ALSO ALLEGED THAT ON
23 OCTOBER 28TH '91, THAT HE POSSESSED A KNIFE AND DISPLAYED
24 A KNIFE DURING THE COMMISSION OF, OF A -- OF A CRIME.
25 AND FINALLY, AND THAT WOULD BE THE SECOND CHARGE OF

1 POSSESSION OF A WEAPON DURING A VIOLENT CRIME. AND THIRD,
2 IT'S ALLEGED THAT ON OCTOBER THE 28TH '91, HE DID
3 UNLAWFULLY SEIZE, CONFINED, INVEIGLE, DECOY, KIDNAP,
4 ABDUCT -- ABDUCT, OR CARRY AWAY MELISSA ROGERS WITHOUT
5 AUTHORITY OF LAW. AND THOSE ARE THE LEGAL TERMS OR
6 WORDS USED TO ALLEGE THE CRIME OF KIDNAPPING.

7 AND AS I SAY, HE HAS PLED NOT GUILTY OF EACH OF THOSE
8 COUNTS, AND SEEKS A TRIAL AT YOUR HANDS. POSSIBLE WITNESSES
9 FOR THE STATE, MIKE KIRBY FROM THE TOWN OF KINGSTREE
10 POLICE DEPARTMENT. JOSEPH M. GRAHAM, KINGSTREE POLICE
11 DEPARTMENT. WOULD YOU GIVE ME THE -- MR. HAZEL'S FIRST
12 NAME. I'M SORRY, JUST CAN'T -- SEMOND HAZEL. ALL RIGHT.
13 IS THAT CYNTHIA BROWN? CYNTHIA BROWN, PATSY POWELL,
14 MELISSA ROGERS, KEITH PRESSLEY, MELINDA HAMMOND,
15 SANDRA PENDERGRASS, FRANCES WAGNER, AND BARBARA
16 WARD.

17 NOW THOSE PERSON ARE POSSIBLE OR POTENTIAL WITNESSES
18 FOR THE STATE. NOW, LADIES AND GENTLEMEN, WITH THOSE
19 THINGS IN MIND, LET ME ASK YOU THESE QUESTIONS: IS
20 THERE ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD OR
21 CONNECTED BY MARRIAGE TO MICHAEL DION MCFADDEN? IF
22 SO, PLEASE STAND.

23 (NO RESPONSE.)

24 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL
25 RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO THE

1 ALLEGED VICTIM IN THIS CRIME OR THESE CRIMES, MELISSA
2 ROGERS? IF SO, PLEASE STAND.

3 (NO RESPONSE.)

4 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL
5 A CLOSE PERSONAL FRIEND OF EITHER MR. MCFADDEN, OR MS.
6 ROGERS? IF SO, PLEASE STAND.

7 (NO RESPONSE.)

8 THE COURT: IS THERE ANY PERSON ON THE JURY PANEL
9 WHO IS RELATED BY BLOOD OR MARRIAGE, TO ANY OR A CLOSE
10 PERSONAL FRIEND OF ANY OF THE WITNESSES WHOSE NAMES
11 I'VE CALLED? IF SO, PLEASE STAND.

12 (NO RESPONSE.)

13 THE COURT: IS THERE ANY PERSON WHO HAS FORMED OR
14 EXPRESSED AN OPINION AS TO THE GUILT OR THE INNOCENCE
15 OF THIS DEFENDANT? IF YOU HAVE, PLEASE STAND.

16 (NO RESPONSE.)

17 THE COURT: IS THERE ANY PERSON WHO IS AWARE
18 OR CONSCIOUS OF ANY BIAS OR PREJUDICE, FOR OR AGAINST
19 THE DEFENDANT? IF SO, PLEASE STAND.

20 (NO RESPONSE.)

21 THE COURT: IS THERE ANY PERSON ON THIS PANEL WHO
22 COULD NOT GIVE BOTH THE STATE OF SOUTH CAROLINA AND
23 THE DEFENDANT A FAIR AND AN IMPARTIAL TRIAL? IF
24 YOU COULD NOT, PLEASE STAND.

25 (NO RESPONSE.)

1 THE COURT: ANYTHING FURTHER FROM THE STATE?

2 MR. NEWMAN: NO, SIR.

3 THE COURT: THE DEFENDANTS?

4 MR. CARRAWAY: NONE, YOUR HONOR.

5 THE COURT: ALL RIGHT, GIVE US A JURY. LADIES AND
6 GENTLEMEN, WHEN YOUR NAME IS CALLED, ONE AT A TIME, YOUR,
7 YOUR NAME WOULD BE DRAWN AT RANDOM FROM THIS BOX HERE.
8 WHEN YOUR NAME IS CALLED, PLEASE COME DOWN TO THE FRONT.
9 STAND IN FRONT OF THE CLERK HERE, AND TURN AROUND AND FACE
10 THE -- FACE THE AUDIENCE JUST FOR A MINUTE. AND THE
11 ATTORNEYS WILL, WILL EITHER PRESENT YOU OR NOT. AND THE
12 CLERK WILL TELL YOU WHETHER YOU ARE TO BE SEATED AS A JUROR.

13 THE CLERK: NUMBER 48, ELMA WALLACE: F/B.

14 THE COURT: FIVE AND TEN NOW.

15 THE CLERK: TURN AROUND.

16 THE COURT: FIVE AND TEN.

17 MR. CARRAWAY: PLEASE SEAT MS. WALLACE.

18 THE CLERK: MS. WALLACE HAVE A SEAT IN THE PETIT JURY
19 BOX. YOU WANT TO GET YOUR POCKETBOOK?

20 MS. WALLACE: YES.

21 THE CLERK: SHE'S NUMBER 48. NUMBER 40, PEARLINE
22 HEYWARD: F/B.

23 MR. NEWMAN: PRESENT THE JUROR.

24 MR. CARRAWAY: PLEASE SEAT MS. HEYWARD.

25 THE CLERK: OKAY. HAVE A SEAT IN THE PETIT JURY

1 BOX, MS. HEYWARD. NUMBER 49, RUTHENA CHANDLER: F/B.

2 MR. NEWMAN: PRESENT THE JUROR.

3 MR. CARRAWAY: PLEASE SEAT MS. CHANDLER.

4 THE CLERK: HAVE A SEAT IN THE PETIT JURY BOX,

5 MS. CHANDLER. NUMBER 60, SUSAN A. DOLLARD WILLIAMS: F/B.

6 MR. NEWMAN: PRESENT THE JUROR.

7 MR. CARRAWAY: PLEASE SEAT MS. DOLLARD.

8 THE CLERK: HAVE A SEAT IN THE PETIT JURY BOX, MS.

9 DOLLARD. NUMBER 24, REBECCA G. WALLACE: F/B.

10 MR. NEWMAN: PRESENT THE JUROR.

11 MR. CARRAWAY: PLEASE EXUSE MS. DOLLARD.

12 THE CLERK: YOU ARE EXCUSED. HAVE A SEAT BACK IN THE
13 COURTROOM. NUBMER 62, AMY J. GLOVER: F/W.

14 MR. NEWMAN: PRESENT THE JUROR.

15 MR. CARRAWAY: PLEASE EXCUSE MS. GLOVER.

16 THE CLERK: YOU'RE EXCUSED. HAVE A SEAT BACK IN THE
17 COURTROOM. NUMBER 41, LOUIS K. TISDALE: M/W.

18 MR. NEWMAN: PRESENT THE JUROR.

19 MR. CARRAWAY: PLEASE SEAT MR. TISDALE.

20 THE CLERK: HAVE A SEAT IN THE PETIT JURY BOX. NUMBER
21 36, MARTHA EASTER: F/W.

22 MR. NEWMAN: PRESENT THE JUROR.

23 MR. CARRAWAY: PLEASE EXCUSE MS. EASTER.

24 THE CLERK: YOU'RE EXCUSED, HAVE A SEAT BACK IN THE
25 COUTROOM. NUMBER 6, CYNTHIA MONTGOMERY: F/B.

8

1 MR. NEWMAN: PRESENT THE JUROR.

2 MR. CARRAWAY: PLEASE SEAT MS. MONTGOMERY.

3 THE CLERK: HAVE A SEAT IN THE PETIT JURY BOX. NUMBER
4 72, JOHN C. TAYLOR: M/W.

5 MR. NEWMAN: PRESENT THE JUROR.

6 MR. CARRAWAY: PLEASE EXCUSE MR. TAYLOR.

7 THE CLERK: YOU'RE EXCUSED. NUMBER 3, LILLIE M.
8 CESAR: F/B.

9 MR. DICKSON: WHAT WAS THE NUMBER, MADAM CLERK?

10 THE CLERK: THREE.

11 MR. NEWMAN: EXCUSE THE JUROR FOR THIS CASE.

12 THE CLERK: YOU'RE EXCUSED. HAVE A SEAT BACK IN THE
13 COURTROOM. NUMBER 65, MARY E. WILLIAMS: F/B.

14 MR. NEWMAN: PRESENT THE JUROR.

15 MR. CARRAWAY: PLEASE SEAT MS. WILLIAMS.

16 THE CLERK: HAVE A SEAT IN THE PETIT JURY BOX. NUMBER
17 27, MARY L. SCOTT: F/B.

18 MR. NEWMAN: PRESENT THE JUROR.

19 MR. CARRAWAY: PLEASE SEAT MS. SCOTT.

20 THE CLERK: HAVE A SEAT IN THE PETIT JURY BOX. NUMBER
21 64, GERTRUDE SALTERS: F/B.

22 MR. NEWMAN: EXCUSE THE JUROR FOR THIS CASE.

23 THE CLERK: YOU'RE EXCUSED. HAVE A SEAT BACK IN THE
24 COURTROOM. NUMBER 31, JOSEPH: M/W.

25 MR. NEWMAN: PRESENT THE JUROR.

1 MR. CARRAWAY: PLEASE EXCUSE MR. LEE.

2 THE CLERK: YOU'RE EXCUSED. HAVE A SEAT BACK IN
3 THE COURTROOM. NUMBER 13, JEFFREY TISDALE: M/W.

4 MR. NEWMAN: PRESENT THE JUROR.

5 MR. CARRAWAY: PLEASE EXCUSE MR. TISDALE FROM THE
6 TRIAL.

7 THE CLERK: YOU'RE EXCUSED. HAVE A SEAT BACK IN THE
8 COURTROOM. NUMBER 58, BARBARA G. WILLIAMS: F/B.

9 MR. NEWMAN: PRESENT THE JUROR.

10 MR. CARRAWAY: PLEASE SEAT MS. WILLIAMS.

11 THE CLERK: HAVE A SEAT IN THE PETIT JURY BOX. NUMBER
12 20, PATRICIA A. STRONG: F/W.

13 MR. NEWMAN: PRESENT THE JUROR.

14 MR. CARRAWAY: PLEASE EXCUSE MS. STRONG.

15 THE CLERK: YOU'RE EXCUSED. NUMBER 50,
16 STERRICK WRIGHT, III: M/B.

17 MR. NEWMAN: EXCUSE THE JUROR FOR THIS CASE.

18 THE CLERK: YOU'RE EXCUSED. HAVE A SEAT BACK IN THE
19 COURTROOM. NUMBER 67, SARAH P. SCOTT: F/B.

20 MR. NEWMAN: PRESENT THE JUROR.

21 MR. CARRAWAY: PLEASE SEAT MS. SCOTT.

22 THE CLERK: HAVE A SEAT IN THE PETIT JUROR BOX. NUMBER
23 10, OLLA M. NESMITH: F/B.

24 MR. NEWMAN: PRESENT THE JUROR.

25 MR. CARRAWAY: PLEASE SEAT MS. NESMITH.

1 THE CLERK: HAVE A SEAT IN THE PETIT JURY BOX. NUMBER
2 12, ELIZABETH C. WOODWARD: F/W.

3 MR. NEWMAN: PRESENT THE JUROR.

4 MR. CARRAWAY: PLEASE EXCUSE MS. WOODARD.

5 THE CLERK: YOU'RE EXCUSED. NUMBER 56, MAMIE PAGE: F/B.

6 MR. NEWMAN: EXCUSE THE JUROR FOR THIS CASE.

7 THE CLERK: YOU'RE EXCUSED. NUMBER 37, WARREN B.
8 CALLAHAN: F/W.

9 MR. NEWMAN: PRESENT THE JUROR.

10 MR. CARRAWAY: PLEASE EXCUSE MS. CALLAHAN.

11 THE CLERK: YOU'RE EXCUSED. NUMBER 32, SYLVIA COKELY --
12 SYLVIA CUMBIE: F/W.

13 MR. NEWMAN: PRESENT THE JUROR.

14 MR. CARRAWAY: EXCUSE MS. CUMBIE.

15 THE CLERK: YOU'RE EXCUSED. NUMBER 74, WANDA F. GILES:
16 F/B.

17 MR. NEWMAN: PRESENT THE JUROR.

18 MR. CARRAWAY: PLEASE SEAT MS. GILES.

19 THE COURT: MS. GILES, SERVE AS FORELADY FOR ME, PLEASE,
20 MA'AM, IF YOU WILL. Y'ALL JUST STAY IN THAT SEAT THROUGHOUT
21 THE TRIAL. THE REST OF YOU MAY SIT ANYWHERE YOU'D LIKE TO
22 SIT. LET'S DRAW AN ALTERNATE, TWO AND ONE.

23 THE CLERK: NUMBER 34, WILLIAM D. PERRY: M/W.

24 MR. NEWMAN: PRESENT THE JUROR.

25 MR. CARRAWAY: PLEASE EXCUSE MR. PERRY.

1 THE CLERK: YOU'RE EXCUSED. NUMBER 17, FAYE H. WILSON:
2 F/W.

3 MR. NEWMAN: PRESENT THE JUROR.

4 MR. CARRAWAY: PLEASE SEAT MS. WILSON.

5 THE CLERK: HAVE A SEAT IN THE PETIT JURY BOX.

6 THE COURT: MS. WILSON, WOULD YOU SI -- MAINTAIN
7 THAT. JUST STAY IN THAT SEAT THROUGHOUT THE TRIAL, IF
8 YOU WILL. AND, MS. GILES, IF Y'ALL, Y'ALL USE THE SEAT.
9 IF Y'ALL STAY IN YOUR SEAT THROUGHOUT THE TRIAL. AND
10 EVERYONE ELSE MAY SIT ANYWHERE YOU'D LIKE IF YOU COME AND
11 GO.

12 ANYTHING BEFORE WE SWEAR THE JURY FROM THE STATE?

13 MR. NEWMAN: NO, SIR.

14 THE COURT: THE DEFENDANT?

15 MR. CARRAWAY: MAY WE APPROACH THE BENCH?

16 THE COURT: YES, SIR.

17 (THEREUPON, THE ATTORNEYS APPROACH THE BENCH AND CONFER
18 WITH JUDGE.)

19 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, IF YOU
20 WILL STAND AND BE SWORN.

21 THE CLERK: STAND AND RAISE YOUR RIGHT HAND.

22 THE COURT: WAIT, WAIT, WAIT.

23 THE CLERK: STAND AND RAISE YOUR RIGHT HANDS.

24 (THEREUPON, THE JURY IS SWORN.)

25 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. LADIES

1 AND GENTLEMEN, ARE WE GOING TO -- ARE WE GOING TO NEED TO
2 TAKE UP A MATTER OUTSIDE THE JURY'S PRESENCE TO BEGIN
3 WITH, OR CAN WE DO THAT AT SOME -- AT SOME POINT DURING
4 THE TRIAL?

5 MR. NEWMAN: I THINK WE CAN DO IT DURING THE COURSE OF
6 THE TRIAL.

7 THE COURT: ALL RIGHT, SIR. LADIES AND GENTLEMEN, Y'ALL
8 OF COURSE, HAVE BEEN SELECTED NOW AS 12 IMPARTIAL JURORS.
9 THERE 12 OF YOU OBVIOUSLY, AT THIS POINT. THERE WILL BE
10 12 WHO WILL DECIDE THE CASE ULTIMATELY. LET ME VERY BRIEFLY
11 TELL YOU WHAT, WHAT YOU ARE SUPPOSED TO DO. AND WE'LL GET
12 STARTED.

13 MR. MCFADDEN HAS BEEN CHARGED WITH THREE SEPARATE
14 AND DISTINCT CRIMES. HE HAS PLED NOT GUILTY. THAT MEANS
15 THAT THE STATE OF SOUTH CAROLINA IS REQUIRED TO PROVE HIS
16 GUILT ON EACH OF THOSE CRIMES OR ANY ONE OF THOSE CRIMES,
17 BECAUSE THEY ARE SEPARATE AND DISTINCT. PROVE GUILT OF
18 THOSE CRIMES BEYOND A REASONABLE DOUBT. I WILL TELL YOU
19 AT THE END OF THE TRIAL WHAT THAT MEANS. BUT I TELL YOU
20 NOW THAT THE BURDEN IS UPON THE STATE OF SOUTH CAROLINA
21 TO PROVE HIS GUILT. AND THE REASON THAT I TELL YOU THAT
22 NOW IS BECAUSE THE STATE HAS TO GO FIRST, BECAUSE THE
23 BURDEN OF PROVING GUILT. THEREFORE, THE STATE IS GOING
24 TO PUT EVIDENCE UP FIRST.

25 WHAT YOU LADIES AND GENTLEMEN ARE, ARE HAVE SWORN

1 TO DO, IS TO LISTEN TO THE EVIDENCE PRESENTED DURING THE
2 COURSE OF THE TRIAL. MOST OF THAT EVIDENCE WILL COME
3 FROM WITNESSES WHO TESTIFY. THAT'S WHERE YOU DECIDE THIS
4 CASE. AND YOU 12 JURORS, ARE THE JUDGES OF THE FACTS OF
5 THE CASE. I WON'T HAVE ANYTHING TO DO WITH THE FACTS
6 OF THE CASE. I WON'T TELL YOU WHAT I BELIEVE THE FACTS
7 ARE, WHO'S TELLING THE TRUTH OR WHO ISN'T. OR WHAT IS RIGHT
8 AND WHAT IS WRONG. THAT'S NOT MY JOB. THAT'S YOUR JOB.
9 AND I'M NOT GOING TO EVEN -- I CAN'T. THE LAW AND
10 RULES WILL NOT ALLOW ME TO INDICATE TO YOU THAT I HAVE
11 ANY OPINION ABOUT THE FACTS. ALL 12 OF YOU TOGETHER
12 WILL DECIDE WHERE THE TRUTH LIES. AND YOU DO THAT OBVIOUSLY,
13 BY LISTENING TO THE TESTIMONY AND USING YOUR COMMON SENSE,
14 YOUR GOOD JUDGMENT. AND YOU DECIDE WHAT THE TRUTH IS.

15 AT THE END OF THE TRIAL, I'LL TELL YOU WHAT THE
16 LAW IS. AND THEN WHAT YOU DO IS YOU WITH YOUR FACTS,
17 TAKE MY LAW, PUT THE TWO TOGETHER AND YOU ARRIVE AT A
18 VERDICT. YOU ARE NOT CALLED TO HAVE ANY SPECIAL SKILL, OTHER
19 THAN COMMON SENSE AND GOOD JUDGMENT. YOU DON'T HAVE TO
20 GO TO ANY SPECIAL SCHOOL TO BE A JUROR. YOU JUST SIMPLY
21 HAVE TO LISTEN AND APPLY THE SENSE THAT YOU HAVE, THE
22 COMMON SENSE THAT YOU HAVE. AND ALL 12 OF YOU WILL,
23 WILL, WILL BE ABLE TO DO THAT AND TO REACH A VERDICT IN THIS
24 CASE.

25 THE LAWYERS ARE GOING TO STAND BEFORE YOU, VERY

1 BRIEFLY. AND VERY BRIEFLY, AND TELL YOU WHAT THEY INTEND
2 THE STATE WILL TELL YOU, WHAT IT INTENDS TO PROVE. WHAT
3 THE SOLICITOR TELLS YOU IS NOT EVIDENCE. BUT HE WANTS --
4 HE'S GOING TO SORT OF TELL YOU WHAT DIRECTION HE'S GOING
5 SO Y'ALL UNDERSTAND ABOUT WHAT THE CASE IS ABOUT TO BEGIN
6 WITH. AND THEN THE DEFENDANT'S LAWYER, IF HE WOULD LIKE
7 TO, MAY MAKE A SHORT OPENING STATEMENT. HE WILL SIMPLY
8 TELL YOU WHAT HE BELIEVES THE EVIDENCE WILL SHOW. ALTHOUGH
9 HE DOESN'T EVEN HAVE TO MAKE A STATEMENT. BECAUSE THE
10 DEFENDANT DOESN'T HAVE ANYTHING TO PROVE.

11 ONCE THOSE ATTORNEYS MAKE THEIR OPENING STATEMENT,
12 AS I SAY, THAT WILL BE BRIEF. TWO OR THREE MINUTES A PIECE.
13 THEN THE STATE WILL CALL WITNESSES. AFTER EACH WITNESS
14 TESTIFIES ON DIRECT EXAMINATION, THE DEFENDANT WILL HAVE
15 THE ABILITY TO CROSS-EXAMINE, OR THE RIGHT TO CROSS
16 EXAMINE THOSE WITNESSES. AND SO ON. THAT'S HOW THE
17 TRIAL WILL, WILL GO. AT THE END OF THE TRIAL THEN,
18 THE ATTORNEYS WILL STAND BEFORE YOU AGAIN ARGUE, AND
19 TRY TO CONVINCE YOU TO SEE THE CASE ONE WAY OR THE OTHER.
20 AND THAT'S THEIR RIGHT. BUT WHAT YOU ARE TO DO, IS
21 TO DECIDE THIS CASE BASED ONLY ON THE EVIDENCE THAT YOU
22 HEAR FROM THIS WITNESS STAND AND FROM THE EXHIBITS
23 WHICH ARE INTRODUCED MAYBE, DURING THE COURT OF THE TRIAL.

24 ALL RIGHT, SOLICITOR.

25 MR. NEWMAN: PLEASE THE COURT.

1 THE COURT: YES, SIR.

2 MR. NEWMAN: MADAM FORELADY AND MEMBERS OF THE JURY,
3 MY NAME IS CLIFTON NEWMAN, AND I'M DEFENDING THE STATE.
4 IN THIS CASE, MICHAEL MCFADDEN, OVER THERE TALKING TO
5 HIS LAWYER, IS CHARGED WITH THREE VERY SERIOUS CRIMINAL
6 OFFENSES. HE IS CHARGED WITH ARMED ROBBERY, KIDNAPPING,
7 AND POSSESSION OF A WEAPON DURING A VIOLENT CRIME. THIS
8 CASE HAPPENED OUT ON HIGHWAY 52. THIS YOUNG LADY,
9 MS. MELISSA ROGERS, WAS WORKING AT CLEMMONS VIDEOD PLACE
10 WHERE THEY RENT VIDEOS OUT ON 52 IN THE TOWN OF KINGSTREE.

11 AND ON THE NIGHT IN QUESTION WAS OCTOBER 28TH AROUND
12 NINE, OR NINE O'CLOCK TO 9:30, WHEN MICHAEL MCFADDEN CAME
13 IN THE STORE DURING THE TIME WHEN THERE WAS NO OTHER
14 CUSTOMERS. AND WITH A KNIFE, ROBBED THIS YOUNG LADY
15 OF \$300. AND TIED HER UP. AND FLED LEAVING HERE TIED
16 UP. SHE WAS FOUND IN A STATE OF BEING TIED UP. AND
17 THE POLICE DEPARTMENT FOLLOWED UP WITH AN INVESTIGATION
18 AND AS RESULTED IN ARRESTING HIM FOR THIS CRIME. AND
19 YOU WILL HEAR FROM MS. ROGERS ABOUT THE ROBBERY ITSELF.
20 IT WAS A VERY TERRIFYING EXPERIENCE THAT SHE HAD,
21 WHAT HE PUT HER THROUGH. Y'ALL HEAR TESTIMONY ALSO
22 FROM THE POLICE OFFICERS WORKING THE CASE. AND VARIOUS
23 OTHER PEOPLE WHO BECAME WITNESSES IN THIS CASE AS A RESULT
24 OF THIS DEFENDANT TRAVELING ABOUT THE TOWN WITH THE
25 STUFF THAT HE HAD STOLEN FROM THIS DEFENDANT. I'M SORRY,

1 THIS VICTIM.

2 AND WE JUST SIMPLY ASK YOU TO LISTEN TO ALL THE
3 TESTIMONY FROM THE ALL THE WITNESSES. AND LISTEN CLOSELY TO
4 WHAT EVERYONE HAS TO SAY. AND I THINK YOU SHOULD BE
5 SATISFIED THAT HE IS GUILTY AS CHARGED WITH THE THREE
6 OFFENSES. I JUST WANT TO POINT OUT THE, THE ONE THING ABOUT
7 THE KIDNAPPING. AND I'M SURE Y'ALL KNOW WHAT ARMED ROBBERY
8 IS. IT'S SIMPLY ROBBING A PERSON WHILE ARMED WITH A
9 DEADLY WEAPON. AND KIDNAPPING IS THE UNLAWFUL RESTRAINT
10 OF A PERSON AGAINST THEIR WILL. IN ORDER FOR ONE TO
11 BE GUILTY OF KIDNAPPING, THE JUDGE WILL INSTRUCT YOU AS TO
12 THE LAW AT THE END OF THE CASE. BUT IN ORDER TO BE
13 GUILTY OF KIDNAPPING, IT DOESN'T MEAN THAT YOU HAVE
14 TO TIE SOMETHING UP AND THROW THEM IN THE TRUNK OF THE
15 CAR AND DRIVE THEM ALL AROUND THE TOWN. BUT IT IS
16 KIDNAPPING IF ONE IS TIED UP AND RESTRAINED AGAINST THEIR
17 WILL. DEPRIVED OF THEIR FREEDOM. AND THAT'S THE ESSENCE
18 OF THE CHARGE OF KIDNAPPING.

19 AND THEN THE THIRD CHARGE IS HAVING A WEAPON. THE
20 STATE PASSED A LAW THAT SAYS ANYONE WHO COMMITS A CRIME
21 WITH A DEADLY WEAPON WILL BE SEPARATELY CHARGED FOR THAT.
22 IN THAT, HE HAD A KNIFE WITH HIM WHEN HE ROBBED HER.

23 THE COURT: OKAY. MR. CARRAWAY.

24 MR. CARRAWAY: IF IT PLEASE THE COURT.

25 THE COURT: YES, SIR.

1 MR. CARRAWAY: MR. NEWMAN: LADIES AND GENTLEMEN OF
2 THE JURY, MY NAME IS LEGRAND CARRAWAY. I'M THE PUBLIC
3 DEFENDER HERE IN KINGSTREE. AND I'M HAPPY TODAY, IT'S MY
4 JOB TO REPRESENT MICHAEL MCFADDEN. AND I'M HAPPY TO
5 DO THAT HERE TODAY. AND MICHAEL MCFADDEN AS YOU'VE HEARD,
6 IS CHARGED WITH ARMED ROBBERY, KIDNAPPING, AND POSSESSION OF
7 A WEAPON DURING A VIOLENT CRIME.

8 NOW THE STATE HAS A BURDEN. MICHAEL MCFADDEN COMES
9 IN TO THIS COURT TODAY. HE COMES IN HERE AN INNOCENT
10 MAN IN HERE TODAY. HE IS INNOCENT. HE IS WHAT WE CALL
11 WHEN HE COMES IN HERE WITH A CLOAK OF INNOCENCE ON HIM.
12 HE IS INNOCENT UNTIL THE STATE PROVES HIM GUILTY BEYOND
13 ALL REASONABLE DOUBT.

14 AND I'M GOING TO ASK YOU TO LISTEN TO ALL THE EVIDENCE
15 IN THIS CASE. LISTEN TO THE TESTIMONY. I WANT YOU TO
16 REVIEW THE EVIDENCE. AND I AM CERTAIN THAT AFTER
17 YOU LISTEN TO THE TESTIMONY, AND SEE ALL THE EVIDENCE,
18 AND REVIEW ALL THE EVIDENCE IN THIS CASE HERE TODAY,
19 THAT YOU'RE GOING TO HAVE SOME VERY SERIOUS DOUBTS
20 ABOUT THE STATE'S CASE ABOUT MICHAEL MCFADDEN. NOW
21 IT HAS BEEN SAID A REASONABLE DOUBT IS ANY DOUBT THAT YOU
22 MIGHT HAVE IN YOUR MIND THAT WOULD MAKE HESITATE TO
23 ACT.

24 AND IF THERE'S ANY DOUBTS RAISED IN YOUR MIND HERE
25 IN THIS COURT TODAY, I WOULD SU -- I WOULD SUBMIT TO

18

1 YOU, THAT MAKE YOU PAUSE OR HESITATE, TO BE CERTAIN IN
2 YOUR MIND THAT MICHAEL MCFADDEN IS GUILTY OF ALL OF THESE
3 CRIMES THAT HE IS CHARGED IN HERE. ALL THREE OF THESE
4 CRIMES HE IS CHARGED UP HERE TODAY. THEN YOU MUST FIND
5 HIM INNOCENT OF THESE CHARGES.

6 AND AS I'VE SAID, I AM CERTAIN AFTER YOU HEAR ALL THE
7 TESTIMONY AND REVIEW ALL THE EVIDENCE IN THIS TRIAL, YOU
8 WILL HAVE SERIOUS DOUBTS. YOU WILL FIND THAT THERE IS
9 SERIOUS DOUBTS ABOUT THE CASE THE STATE IS BRINGING BEFORE
10 YOU HERE TODAY, AND THAT YOU WILL FIND MICHAEL MCFADDEN
11 INNOCENT OF THESE CHARGES HERE TODAY THAT HE IS CHARGED
12 WITH. HE REMAINED AN INNOCENT MAN. HE CAME IN HERE
13 AN INNOCENT, AND HE WILL GO OUT OF THIS COURTROOM AS
14 AN INNOCENT MAN. THANK YOU.

15 THE COURT: ALL RIGHT.

16 MR. NEWMAN: WE CALL MICHAEL GRAHAM.

17 JOSEPH MICHAEL GRAHAM, BEING
18 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MR. NEWMAN:

20 Q TELL US YOUR FULL NAME.

21 A JOSEPH MICHAEL GRAHAM.

22 Q AND, MR. GRAHAM, WHERE DO YOU WORK

23 A I'M THE DEPUTY OF THE KINGSTREE POLICE DEPARTMENT.

24 Q AND HOW LONG HAVE YOU BEEN WORKING IN THE LAW
25 ENFORCEMENT?

1 A AROUND SIX YEARS.

2 Q AND DID YOU PARTICIPATE IN INVESTIGATING THE ROBBERY
3 AT CLEMMONS VIDEO?

4 A YES, SIR, I DID.

5 Q ON -- ON OCTOBER 28TH---

6 A YES, SIR.

7 Q ----OF 1991? AND TELL US HOW YOU INITIALLY GOT
8 INVOLVED IN THE INVESTIGATION OF THIS ROBBERY.

9 A I WAS SENT TO CLEMMONS VIDEO THROUGH THE RADIO DISPATCH
10 ON A REPORT OF AN ARMED ROBBERY. AND I ARRIVED THERE.
11 THAT'S WHEN I SPOKE WITH THE VICTIM, MS. ROGERS, THERE.

12 Q OKAY. AND AROUND WHAT TIME OF DAY OR NIGHT WAS IT?

13 A I'M NOT RIGHT SURE OF THE EXACT. I KNEW IT WAS AROUND
14 NINE O'CLOCK OR SO.

15 Q IT WAS NIGHTTIME.

16 A YES, SIR.

17 Q AND WHEN YOU GOT THERE, WHAT DID YOU FIND?

18 A I FOUND MS. ROGERS. SHE WAS CRYING, VERY UPSET. SHE
19 JUST TOLD ME ABOUT WHAT HAPPENED.

20 Q OKAY. AND WHAT DID SHE TELL YOU?

21 A SHE SAID THAT A GENTLEMAN HAD CAME IN THE STORE WEARING
22 A PURPLE OR ODD COLORED JACKET WITH SOME WRITING ON THE FRONT
23 OF IT. SAID THAT HE ASKED FOR A MEMBERSHIP AT THE VIDEO
24 PLACE. SAID SHE WENT AROUND THE COUNTER TO GET THE
25 MEMBERSHIP CARD, AND THE SUBJECT FOLLOWED HER AROUND THE

1 COUNTER. PULLED OUT A KNIFE, AND PUT IT INTO HER FACE. AND
2 TOLD HER
3 THAT HE WANTED THE MONEY. SHE SAID THAT SHE, SHE GAVE HIM
4 THE MONEY. AND HE TOLD HER TO GO INTO A BACK ROOM. HE
5 TOOK TO THE BACK ROOM, AND THEN HE TIED HER UP WITH SOME
6 ROPE. AND SHE GAVE ME SOME ROPE SHE SAID HE USED.

7 Q DO YOU KNOW WHO FOUND HER AFTER THE ROBBERY?

8 A. BRYAN FORTNER CAME BY THE VIDEO STORE. SOMEBODY
9 THE NAME OF BRYAN FORTNER, IF I'M NOT MISTAKEN. AND
10 THAT'S HOW THE POLICE GOT CONTACTED.

11 Q OKAY.

12 A RIGHT AFTER HE CAME BY THERE.

13 Q AND SO HOW MUCH MONEY WAS REPORTED TO HAVE BEEN TAKEN?

14 A I'M NOT EXACTLY SURE OF THE AMOUNT. I HAVE TO LOOK
15 IN MY FILE.

16 Q THE WARRANT SAYS \$300. \$300.74.

17 A YES, SIR. YES, SIR, THAT'S CORRECT.

18 Q OKAY. NOW AFTER LEARNING OF THE ROBBERY AT CLEMMONS
19 VIDEO, AND THAT'S IN THE TOWN LIMITS OF KINGSTREE?

20 A YES, SIR.

21 Q WHAT DID YOU DO?

22 A I PROCEEDED ON AT THE NIGHTCLUBS AND STUFF, LOOKING FOR
23 A PERSON THAT FIT THE DESCRIPTION OF -- THAT SHE GAVE ME.

24 Q OKAY.

25 A I WENT TO UM, WARD'S GROCERY, WHICH IS JUST OUTSIDE

1 THE CITY LIMITS ON US 52. AND I GAVE THE DESCRIPTION TO A
2 MS. WARD, AND ASKED HER IF SHE HAD SEEN ANYONE FITTING
3 THAT DESCRIPTION.

4 Q AND YOU WENT TO MS. WARD, YOU SAY---

5 A YES, SIR.

6 Q ---AT WARD'S GROCERY. AND IS SHE IN -- THE LADY MS.
7 WARD, IS SHE HERE IN THE COURTROOM?

8 A YES, SIR, SHE IS.

9 Q WHO IS SHE?

10 A THIS IS HER RIGHT HERE WITH THE PINK SHIRT ON.

11 Q OKAY. AND WHAT, WHAT DID YOU FIND OUT UP THERE, OR
12 WHAT DID YOU DO AS A RESULT OF THE INFORMATION YOU GATHERED
13 UP THERE?

14 A I WENT AND STARTED LOOKING FOR A UH, UM, SOMEONE WHO
15 FIT THE DESCRIPTION. AND UH, SHE ALSO GAVE ME A NAME.
16 WHICH I ALSO STARTED LOOKING FOR THAT SUBJECT.

17 Q OKAY. AND WHERE DID YOU GO?

18 A DOWN BEHIND WARDS. BACK IN THAT GEN -- YOU KNOW, HOLE
19 IN THE WALL CLUB AND DIFFERENT PLACES. AND UH, I NEVER DID
20 LOCATE ANYONE THAT FIT THE DESCRIPTION.

21 Q OKAY. NOW I'M NOT SURE WHETHER ALL OF THESE JURORS KNOW
22 ABOUT THE SPOTS THAT YOU'RE TALKING ABOUT. YOU MENTIONED
23 A CLUB.

24 A YES, SIR. IT'S A LITTLE ROAD THAT YOU TURN BY WARD'S
25 GROCERY, AND GO DOWN THAT ROAD AND Y'ALL TAKE ANOTHER RIGHT

1 THE WITNESS: AS A RESULT OF WHAT HE TOLD ME, I WENT
2 AND TALKED WITH MS. PENDERGRASS OVER HERE IN THE PURPLE
3 DRESS.

4 Q OKAY. AND THAT SAME, YOU ARE STILL ON THE SAME NIGHT?

5 A NO, SIR, THIS IS TWO DAYS LATER I BELIEVE IT WAS.

6 Q OKAY. SO DURING THIS ENTIRE PERIOD OF TIME, YOU ARE
7 WORKING, INVESTIGATING THIS CASE, AND TRYING TO LOCATE
8 A SUSPECT.

9 A YES, SIR.

10 Q OKAY. AND THE SUSPECT. AND TELL THE JURY ALL ABOUT
11 YOUR INVESTIGATION OF THIS CASE THAT LED UP TO THIS
12 DEFENDANT'S ARREST.

13 A I WENT TO MS. PENDERGRASS' RESIDENCE AND ASKED HER
14 IF SHE HAD SEEN THIS SUBJECT. AND SHE GAVE ME TWO RINGS.
15 SAID THE NIGHT THAT HE STAYED THERE, HE GAVE HER THESE
16 RINGS.

17 Q OKAY. NOW HOW MANY DAYS AFTER THE ROBBERY IS THAT
18 NOW?

19 A I'LL HAVE TO LOOK AT MY LITTLE NOTE THERE ON THE
20 EVIDENCE---

21 Q GO AHEAD.

22 A ---TO SEE WHAT DATE IT WAS.

23 Q YOU CAN DO THAT.

24 A THIS WAS ON NOVEMBER 1, 1991, I TALKED TO MS.
25 PENDERGRASS.

1 Q OKAY. THE ROBBERY HAPPENED OCTOBER 28TH, AND NOVEMBER
2 21ST YOU TALKED WITH THIS LADY HERE IN THE BLUE OR
3 PURPLISH.

4 A IT HAPPENED THE 28TH, AND I TALKED TO HER NOVEMBER
5 THE 1ST.

6 Q OKAY.

7 A BUT I'M NOT THAT SURE HOW MANY DAYS.

8 Q AND YOU SAID YOU RECEIVED SOME ITEMS FROM, FROM HER?

9 A YES, SIR, I DID.

10 MR. NEWMAN: LET ME JUST HAVE THIS MARKED FOR
11 IDENTIFICATION. JUDGE, I JUST WANT TO MARK---

12 THE COURT: ALL RIGHT.

13 MR. NEWMAN: ---SOME OF THESE ARE EXHIBITS RIGHT---

14 THE COURT: ALL RIGHT.

15 MR. NEWMAN: ---AND FOR IDENTIFICATION PURPOSES.

16 THE COURT: OKAY.

17 MR. NEWMAN: I WANT TO MARK THIS AS STATE'S EXHIBIT,
18 IDENTIFICATION 1. THIS WILL BE MARKED SEPARATE. MARK
19 THIS SEPARATE. MARK THAT TOGETHER, I GUESS.

20 (STATE'S EXHIBITS 1-5 MARKED FOR IDENTIFICATION ONLY.)

21 Q BEFORE I GO THROUGH EACH ONE OF THESE, I WANT YOU
22 TO JUST EXPLAIN EVERYTHING FIRST TO THE JURY, AND THEN
23 I'LL GO BACK AND IDENTIFY 'EM -- IDENTIFY THEM. YOU
24 SAID YOU RECEIVED SOMETHING FROM HER? FROM MS. PENDERGRASS?

25 A YES, SIR, I DID.

1 Q OKAY. WHAT WAS IT?

2 A SHE GAVE ME TWO RINGS AND AN IDENTIFICATION CARD.

3 A OKAY. AND WHERE DID YOU FIND MS. PENDERGRASS?

4 A AT HOME.

5 Q AND WERE YOU ABLE TO ASCERTAIN THE RELATIONSHIP, IF ANY,
6 BETWEEN MCFADDEN AND MS. PENDERGRASS?

7 A JUST ACQUAINTANCES, IS WHAT I UNDERSTAND.

8 Q OKAY. THEN TELL THE JURY ABOUT THE REST OF YOUR
9 INVESTIGATIONS THAT LED TO HIS ARREST.

10 A ONCE I RECEIVED THE RINGS AND THE IDENTIFICATION CARD
11 SHE SAID THAT SHE HAD GOTTEN FROM MR. MCFADDEN, I WENT TO AND
12 TRIED TO MAKE A PHOTO LINEUP OF THE DEFENDANT. I MADE A
13 LINEUP AND SHOWED IT TO MS. ROGERS. AND SHE SAID---

14 THE COURT: HO, HO, HO. HO, HO, HO. ARE YOU GOING TO
15 GET INTO THAT NOW?

16 MR. NEWMAN: YES, SIR.

17 THE COURT: LADIES AND GENTLEMEN, PLEASE STEP
18 TO YOUR JURY ROOM. DON'T DISCUSS THE CASE. JUST
19 STEP TO YOUR JURY ROOM.

20 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
21 PRESENCE OF THE JURY.)

22 THE COURT: ALL RIGHT.

23 Q MR. GRAHAM, WE WERE ABOUT TO GET INTO -- YOU TALKED
24 ABOUT A LINEUP?

25 A YES, SIR.

1 Q TELL US ABOUT THE LINEUP THAT YOU DID.

2 A I OBTAINED A PICTURE OF. MR. MCFADDEN THROUGH ANOTHER
3 AGENCY, AND MADE A PHOTO LINEUP TO SHOW MS. MS. ROGERS.

4 Q OKAY. AND WHAT TYPE OF PHOTO LINEUP DID YOU DO?

5 A IT'S A POLAROID PHOTO LINEUP. IT'S GOT SIX PICTURES
6 IN IT, AND I SHOWED IT TO MS. ROGERS.

7 Q AND, AND WHAT ARE YOU'RE DATES? WHAT DATE WAS THAT?

8 A THIS IS THE DAY AFTER I GOT THE JEWELRY BACK, WOULD
9 BE THE 2ND.

10 Q OKAY. AND WHERE DID THE LINEUP TAKE PLACE?

11 A I BELIEVE IN MY OFFICE.

12 Q OKAY.

13 A I'M NOT EXACTLY SURE.

14 Q AT THE KINGSTREE POLICE DEPARTMENT?

15 A YES, SIR.

16 Q AND WHAT TYPE OF PICTURE DID YOU COLLECT TO MAKE
17 UP YOUR LIST OF PHOTOS?

18 A JUST POLAROID PICTURES THAT I HAD IN THE OFFICE.
19 TRYING TO MAKE SOME PEOPLE LOOK CLOSE -- A LOT ALIKE.

20 Q OKAY. SO WERE THEY ALL BLACK MALES?

21 A YES, SIR.

22 Q AND WERE THEY ALL IN SIMILAR AGE AND APPEARANCE?

23 A YES, SIR.

24 Q WAS THAT YOUR INTENT IN COLLECTING THIS---

25 A YES, SIR.

28

1 Q ---THIS LINEUP? THIS PHOTO LINEUP?

2 A YES, SIR, IT WAS.

3 Q OKAY. AND DID YOU ASK HER TO, TO REVIEW -- WHAT DID YOU
4 SAY TO HER AS FAR AS THE LINEUP ITSELF?

5 A I ASKED HER TO LOOK AT THE LINEUP AND SEE IF SHE
6 COULD PICK THE PERSON OUT THAT ROBBED HER.

7 Q OKAY. AND AT THAT TIME WAS SHE ABLE TO?

8 A NO, SIR, SHE WASN'T.

9 Q AT SOME LATER TIME, DID YOU DO ANOTHER PHOTO LINEUP?

10 A YES, SIR. RIGHT AFTER WE ARRESTED MR. MCFADDEN.

11 Q OKAY. AND AT THAT TIME, DID YOU GET A CURRENT
12 PHOTOGRAPH OF HIM?

13 A YES, SIR, I DID.

14 Q AND DO YOU KNOW HOW MANY YEARS HAD PASSED BETWEEN THE
15 FIRST PICTURE AND THE SECOND PICTURE? OR WAS THE PICTURE
16 TAKEN AFTER---

17 A WELL, I'M NOT EXACTLY SURE. FIVE OR SIX YEARS.

18 Q THE PREVIOUS PHOTOGRAPH YOU BELIEVE TO BE -- HE
19 WAS FIVE OR SIX YEARS YOUNGER?

20 A YES, SIR.

21 Q AND AT THE TIME OF THE SECOND LINEUP WHAT TYPE OF
22 PHOTO COLLECTION DID YOU DO?

23 A A POLAROID LINEUP OF INMATES OVER AT THE COUNTY JAIL.

24 Q WERE THEY -- DID THEY HAVE ON JAIL UNIFORMS OR ANYTHING
25 OF THAT NATURE?

1 A ONLY TEE SHIRTS.

2 Q DO YOU KNOW WHETHER THEY WERE CURRENT JAIL INMATES
3 DR...

4 A YES, SIR, ALL OF THEM CURRENT INMATES.

5 Q OKAY. AND WERE THEY SIMILAR IN COLOR, AGE, AND BUILD
6 TO THIS DEFENDANT?

7 A YES, SIR, THE BEST I COULD GET.

8 Q OKAY. AND WHAT DID YOU SAY TO MS. ROGERS PRIOR TO
9 SHOWING HER THAT LINEUP?

10 A I JUST TOLD HER TO LOOK AT THIS LINEUP AND SEE IF SHE
11 SAW THE GUY ON THERE THAT ROBBED HER.

12 Q OKAY. AND WAS SHE ABLE TO IDENTIFY ANYONE?

13 A YES, SIR, RIGHT AWAY.

14 Q AND DID, DID YOU SUGGEST TO HER IN ANY WAY ANY
15 PHOTO TO PICK?

16 A NO, SIR, I DIDN'T.

17 Q OKAY. AND WHOSE PHOTO DID SHE PICK?

18 A MR. MICHAEL MCFADDEN'S.

19 Q DID ANYTHING ELSE HAPPEN AT THAT LINEUP?

20 A NO, SIR.

21 MR. NEWMAN: YOUR HONOR, I THINK THAT THIS IS WHAT
22 THE MOTION IS CONCERNING,---

23 THE COURT: YES, SIR.

24 MR. NEWMAN: ---I BELIEVE.

25 THE COURT: YES, SIR.

1 MR. NEWMAN: AND I DON'T HAVE OTHER QUESTIONS AT, AT
2 THIS TIME.

3 CROSS EXAMINATION BY MR. CARRAWAY:

4 Q WHEN WAS THE -- WHEN WAS THE FIRST LINEUP EVEN SHOWN TO
5 MS. ROGERS?

6 A UM, ON THE 2ND. RIGHT AFTER I GOT THE JEWELRY BACK
7 THE NEXT DAY.

8 Q AND TELL ME WAS SHE ABLE TO PICK ANYBODY OUT THAT FIRST
9 TIME?

10 A NO, SIR, SHE COULDN'T.

11 Q OKAY.

12 THE COURT: YOU DON'T HAVE THAT LINEUP WITH YOU.
13 YOU DON'T---

14 THE WITNESS: YES, SIR. I HAVE BOTH LINEUPS.

15 THE COURT: YOU HAVE THEM?

16 THE WITNESS: YES.

17 THE COURT: LET'S LOOK AT THEM. TELL, TELL ME WHICH
18 ONE IS WHICH, IF YOU DON'T MIND.

19 THE WITNESS: THIS HERE WAS THE FIRST LINEUP.

20 THE COURT: THERE'S YOUR FIRST LINEUP. DID YOU
21 HAVE THE NAME ON THE TOP---

22 THE WITNESS: NO, SIR.

23 THE COURT: ---OF PHOTO WHEN YOU SHOWED IT TO HER?

24 THE WITNESS: NO, SIR, I DIDN'T.

25 BY MR. CARRAWAY:

1 Q BUT AT THE TIME -- WHEN WAS THE SECOND -- WHEN DID
2 YOU -- WHEN WAS THE SECOND LINEUP?

3 A 7-14-91.

4 THE COURT: GO AHEAD, MR. CARRAWAY.

5 MR. CARRAWAY: YOUR HONOR, THE WHOLE THING BASICALLY
6 IS, SHE IS NOT ABLE TO PICK THE GUY OUT TWO DAYS AFTER
7 THIS HAPPENED.

8 THE COURT: YES, SIR.

9 MR. CARRAWAY: AND THEN TWO WEEKS LATER---

10 THE COURT: ALL RIGHT.

11 MR. CARRAWAY: ---YOU'VE GOT.

12 THE COURT: WELL THAT'S A -- OF COURSE, THAT'S
13 A -- THAT'S A QUESTION FOR THE JURY AS TO WHETHER OR
14 NOT SHE HAS THE ABILITY TO PICK HIM OUT AT ANY POINT AND
15 TIME. BECAUSE THE ONLY QUESTION IN MY MIND FOR
16 SUPPRESSION, IS WHETHER OR NOT THERE WAS SOME SUGGESTION
17 OF BECAUSE OF THE MAKEUP OF THE -- OF THE IDENTIF --
18 PHOTO LINEUP, WHETHER OR NOT THERE WAS -- THERE IS A
19 -- BASICALLY UNDER THE TOTALITY OF THE CIRCUMSTANCES
20 WHETHER THERE IS A SUBSTANTIAL LIKELIHOOD OF
21 MISIDENTIFICATION. AND---

22 MR. CARRAWAY: THE FACT IS---

23 THE COURT: ---THE FACT -- THE FACT THAT SHE MAY NOT
24 HAVE BEEN ABLE TO ONE TIME AND COULD AT SOME LATER TIME,
25 OF COURSE, THE QUESTION WHICH THE JURY IS GOING TO HAVE

1 TO DECIDE WHETHER SHE ACTUALLY COULD DO IT. BUT AS FAR
2 AS THE SUPPRESSION IS CONCERNED, I THINK IT GOES ONLY
3 TO WHETHER OR NOT THAT LINEUP, THE COMPOSITION OF THAT
4 LINEUP IS SO SUGGESTIVE, THAT SHE WAS, WAS ABLE TO
5 CHOOSE HIM BECAUSE OF SOMETHING SOMEONE SAID OR DID.
6 OR BECAUSE OF THE PHOTOGRAPH -- THE PHOTOGRAPHS THEMSELVES
7 WHICH, WHICH WOULD SUGGEST THAT HE'S THE MAN. AND IF
8 THAT -- IF THAT IS NOT THE CASE THEN OBVIOUSLY, I'M GOING
9 TO HAVE TO RULE. BUT I'D BE GLAD FOR YOU TO ASK ANYTHING
10 ELSE AS TO THE SUGGESTIVENESS OF IT. IF YOU---

11 MR. CARRAWAY: ALL RIGHT. I DON'T HAVE ANYTHING ELSE
12 TO ASK HIM.

13 THE COURT: ALL RIGHT, I -- ALL RIGHT, I FIND BY, BY
14 A VIEW OF THE PHOTOGRAPHS THEMSELVES THAT THEY'RE UNDER
15 THE TOTALITY OF THE CIRCUMSTANCES, THAT THERE IS NOT A
16 LIKELIHOOD OF IRREPARABLE MISIDENTIFICATION EITHER
17 BECAUSE THE OFFICER HIMSELF SUGGESTED, OR WHEN HE
18 PREPARED THOSE LINEUPS THAT HE DID SOMETHING IN THE LINEUP
19 ITSELF TO SUGGEST THAT MICHAEL DION MCFADDEN SHOULD BE
20 PICKED. AND ALSO APPARENTLY FROM WHAT HE HAS SAID ABOUT
21 THE, THE MANNER IN WHICH HE PICKED THAT PHOTOGRAPH
22 OUT THE SECOND TIME, THAT THERE WAS NOTHING SUGGESTIVE
23 ABOUT IT.

24 I'VE LOOKED AT THE PHOTOGRAPHS. THE ONLY QUESTION THAT
25 I HAVE WELL, THERE ARE THREE THINGS THAT I -- THAT I WANT

1 TO BE SURE THAT WE DO NOT HAVE THIS JURY HEAR. FIRST
2 OF ALL, I DON'T WANT THEM TO HEAR ANYTHING ABOUT GETTING
3 A PHOTOGRAPH FROM ANOTHER AGENCY. IF, IF YOU COULD JUST
4 SAY I GOT ANOTHER PHOTOGRAPH. BUT WHEN YOU SAY FROM
5 ANOTHER AGENCY, THAT SOUNDS AS THOUGH HE HAS GOT A RECORD
6 OR SOMETHING OF THAT NATURE. AND YOU WENT TO SOME OTHER
7 DEPARTMENT AND GOT A PHOTOGRAPH OF HIM. SO SIMPLY
8 CUT THAT ANSWER SHORT AND SAY THAT YOU'VE GOT ANOTHER
9 PHOTOGRAPH. THAT WAS THE FIRST -- IN THE FIRST LINEUP.

10 SECONDLY, THE OTHER THING THAT WORRIES ME A LITTLE
11 BIT IS, THAT ONE OF THOSE PERSONS IN THAT FIRST PHOTOGRAPH
12 HAS, HAS AN ORANGE SUIT, A JAIL SUIT, BUT IT DOESN'T HAPPEN
13 TO BE MR. MCFADDEN. AND SO I DON'T THINK THE FACT THAT
14 HE HAS GOT AN ORANGE SUIT ON, EVEN THOUGH THAT, THAT
15 MAYBE SUGGESTIVE IN AND OF ITSELF, IT SUGGESTS IT'S SOMEBODY
16 ELSE AND NOT HIM. AND SHE DID NOT PICK EITHER -- ANYONE
17 OUT IN THAT PHOTOGRAPH, PHOTOGRAPH LINEUP. AND SO I
18 DON'T FIND THAT THAT IS SUGGESTIVE. ON THE OTHER LINEUP,
19 THERE IS ONE PERSON NUMBER TWO, WHO HAS A NUMBER WRITTEN
20 ACROSS THE TOP OF HIS TEE-SHIRT. I'M NOT SURE WHETHER
21 THAT'S A JAIL NUMBER OR WHAT. BUT THE -- BUT THE -- NONE
22 OF THEM HAVE ORANGE UNIFORMS ON. ONE SIMPLY HAS A, A
23 TEE-SHIRT WITH THE NUMBER ON THE TOP OF IT. THAT IS NOT
24 MR. MCFADDEN. AND SHE DID NOT PICK HIM OUT, AND I DON'T
25 FIND THAT THAT IS SUGGESTIVE.

1 AND THEN FINALLY ON THE TOP OF THAT FILE THERE IS THE
2 NAME MICHAEL MCFADDEN. I ASKED THE OFFICER WHETHER OR NOT
3 THAT NAME WAS ON THE FILE WHEN HE SHOWED IT TO HER. SHE
4 SAID -- HE SAYS NOT. AND WHAT I WANT TO DO IS JUST TAKE
5 THE SCISSORS AND CUT THAT NAME OFF SO IF THE JURY IS
6 ALLOWED TO SEE IT, THAT THEY WON'T SEE THAT NAME ON IT.
7 BECAUSE I DON'T WANT THAT TO BE SUGGESTIVE. AND THEN THE
8 FINAL THING IS THIS: WELL, THERE ARE TWO MORE THINGS.
9 YOU SAID THAT YOU GOT A PHOTOGRAPHIC LINEUP OF OTHER
10 INMATES, OR FROM INMATES. I WOULD JUST SIMPLY SAY,
11 YOU'VE GOT PHOTOGRAPHS OF OTHER PERSONS FOR THE SAME,
12 YOU, YOU DESCRIBE WHAT YOU GOT. BUT I DON'T WANT YOU
13 TO SUGGEST THAT ANYONE IN THOSE PHOTOGRAPHS WAS AN
14 INMATE TO THESE -- TO THESE JURORS.

15 AND THEN THERE'S ONE OTHER THING YOU SAID, I CAUGHT
16 IN YOUR TESTIMONY. AND I DON'T KNOW WHETHER MR. CARRAWAY
17 IS GOING TO PICK UP ON IT ON CROSS EXAMINATION. BUT YOU
18 SAID SHE SAID DION CAME IN AND DID SO AND SO. NOW, I, I
19 DON'T KNOW WHETHER SHE SAID DION DID SOMETHING, OR WHETHER
20 YOU, OR WHETHER SHE DIDN'T SAY IT. IF SHE -- IF SHE SAID
21 DION DID IT, I WANT HER TO SAY DION DID IT. IF SHE DIDN'T
22 SAY DION DID IT, I DON'T WANT YOU TO SAY DION DID IT.
23 YOU FOLLOW ME?

24 THE WITNESS: YES, SIR.

25 THE COURT: OKAY.

1 MR. NEWMAN: JUDGE, YOU WANT TO OFFER THESE. CAN
2 WE JUST HAVE THESE SUBMITTED AS A COURT'S EXHIBIT OR---

3 MR. CARRAWAY: SCISSORS, ALREADY CUT?

4 THE COURT: YES, SIR.

5 MR. NEWMAN: OF COURSE, I GUESS WE DIDN'T -- WELL,
6 I GUESS WE INTENDED TO THEM.

7 THE COURT: WELL, YOU CAN -- WHAT YOU CAN DO IS JUST
8 GO THROUGH IT, AND GO THROUGH THE SAME QUESTIONS. AND,
9 AND MR. CARRAWAY WILL DO -- OBVIOUSLY HAVE THE RIGHT TO
10 ASK THE SAME TYPE OF QUESTIONS THAT HE WANTS TO ASK AS
11 TO THE VOLUNTARINESS OF IT. NOT THE VOLUNTARINESS OF IT.
12 A LACK OF---

13 MR. NEWMAN: SUGGESTION.

14 THE COURT: ---SUGGESTION. YOU'VE GOT THE RECORD
15 PRESERVED ON THAT. YOU DON'T HAVE TO DO IT, YOU DO WHAT
16 YOU WANT TO DO. AND I'M NOT GOING TO STOP YOU FROM DOING
17 THAT. OF COURSE YOU HAVE GOT THE RIGHT TO CROSS-EXAMINE
18 ON ANY OF THEM. ONCE, ONCE THEY COME IN JUST OFFER THEM,
19 AND THEN I'LL RULE AT THAT TIME. EVERYBODY STRAIGHT
20 ON WHERE WE'RE GOING?

21 MR. NEWMAN: YES, SIR.

22 THE COURT: MR. CARRAWAY?

23 MR. CARRAWAY: YES.

24 THE COURT: YOU ARE?

25 MR. CARRAWAY: YES, SIR.

1 THE COURT: ALL RIGHT, SIR. LET'S BRING THE JURY.

2 MR. NEWMAN: CAN WE JUST A HAVE A COUPLE OF MINUTES?

3 THE COURT: LET'S TAKE -- LET'S TAKE -- LET'S TAKE
4 A SECOND.

5 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

6 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
7 PRESENCE OF THE JURY.)

8 THE COURT: JUST VERY BRIEFLY. I REALIZE THAT
9 SOME OF YOU HAVE NOT SERVED AS A JUROR BEFORE. NO ONE
10 IS TRYING TO KEEP ANYTHING FROM YOU. I REALIZE WHEN I
11 SEND YOU OUT LIKE THAT, YOU MAY THINK THAT I'M ONE OF
12 THESE LAWYERS THAT ARE TRYING TO KEEP YOU FROM HEARING
13 SOMETHING THAT'S IMPORTANT. THAT'S NOT THE CASE. NO
14 ONE IS TRYING TO DO THAT. YOU'RE GOING TO HAVE ALL THE
15 FACTS YOU NEED TO DECIDE THE CASE. BUT CERTAIN
16 TIMES I HAVE TO RULE ON MATTERS OF LAW. IT HAS NOTHING
17 TO DO WITH THE FACTS OF THE CASE, IT'S LAW. AND IT
18 VERY OFTEN SOMETHING IS SAID WHICH, WHICH YOU JUST --
19 YOU WOULDN'T NEED TO HEAR. AND SO I'M, I'M CALLED
20 ON TO MAKE A RULING OF LAW AND THEN BRING YOU BACK
21 AND, AND WE GO FORWARD WITH THE TRIAL.

22 SO DON'T HOLD IT AGAINST ANYONE. IF YOU'RE GOING TO
23 BE MAD WITH SOMEBODY OR UPSET, TAKE IT OUT ON ME. BECAUSE
24 I'M THE ONE WHO HAS TO DO THAT, NOT, NOT THESE LAWYERS OR
25 THE PARTIES. THEY, THEY, THEY'RE -- NOBODY WANTS TO

1 KEEP ANYTHING FROM YOU. ALL RIGHT, SIR.

2 MR. NEWMAN: THANK YOUR HONOR.

3 THE COURT: YES, SIR.

4 DIRECT EXAMINATION CONTINUES BY MR. NEWMAN:

5 Q OFFICER GRAHAM, YOU HAD MENTIONED THAT YOU RECOVERED
6 TWO RINGS FROM MS. PENDERGRASS. AND YOU WERE GOING TO TALK
7 ABOUT THE NEXT STEP IN YOUR INVESTIGATION.

8 A YES, SIR.

9 Q WHAT WAS THAT?

10 A AS A RESULT OF RECOVERING THE RINGS, I OBTAINED SOME
11 PHOTOS. ONE OF MR. MCFADDEN AND FIVE OTHER PHOTOS FOR
12 A PHOTO LINEUP. AND I TOOK THE LINEUP TO MS. ROGERS,
13 THE VICTIM, AND SHOWED HER THE LINEUP. AND ASKED HER
14 IF SHE COULD IDENTIFY THE GUY IN THE LINEUP THAT ROBBED
15 HER.

16 Q OKAY. AND THE -- WAS SHE ABLE TO PICK ANY AT THAT
17 POINT?

18 A NO, SIR, SHE COULDN'T.

19 Q OKAY. HAD HE BEEN ARRESTED AT THAT POINT AND TIME?

20 A NO, SIR, HE WASN'T.

21 Q AND THE PHOTO THAT YOU HAVE OF HIM, DO YOU -- DID YOU
22 KNOW HOW MANY YEARS OLD THAT PHOTO HAD BEEN?

23 A FIVE OR SIX YEARS OLD. I'M NOT EXACTLY SURE RIGHT NOW.
24 FIVE OR SIX THOUGH.

25 Q AND THEN WHAT DID YOU DO?

38

1 A THEN I TOOK THE PHOTO BACK TO MY OFFICE, AND PUT IT ON
2 FILE AND CONTINUED TO LOOK FOR THE DEFENDANT.

3 Q AND WHERE DID YOU LOOK?

4 A RIGHT IN THE ROCKTOWN AREA.

5 Q OKAY. TELL US, THE JURY, SPECIFIC PLACES YOU WENT
6 AND THE PEOPLE YOU TALKED WITH OF ANY SIGNIFICANCE ON THIS
7 CASE.

8 A ON THE 14TH. I THINK IT WAS THE 14TH. THE DAY
9 THAT WE RECEIVED A CALL. AND AS A RESULT OF THE CALL, WE
10 WENT TO A CLUB. AND MR. MCFADDEN WAS IN THIS CLUB.
11 AND WE ARRESTED HIM ON THE WARRANTS WE HAD.

12 Q OKAY.

13 A AND AS A RESULT OF ARRESTING HIM, I OBTAINED ANOTHER
14 PHOTO LINEUP.

15 Q SO YOU GOT A CURRENT PHOTO OF HIM?

16 A YES, SIR.

17 Q AND YOU HAVE GOT A CURRENT PICTURE. YOU DID ANOTHER
18 PHOTO LINEUP?

19 A YES, SIR, I DID.

20 Q OKAY. AND TELL THE JURY WHAT IS A PHOTO LINEUP.

21 A YOU MAKE -- YOU HAVE AT LEAST SIX DIFFERENT PICTURES
22 OF INDIVIDUALS INCLUDING THE PERSON THAT YOU BELIEVE
23 WHO DID THE CRIME. AND THEN WHOEVER THE VICTIM IS LIKE
24 FOR A RAPE OR ROBBERY OR WHAT NOT, YOU SHOW THEM THOSE
25 PICTURES. AND SEE IF THEY CAN IDENTIFY THE PERSON THAT

1 COMMITTED THE CRIME AGAINST THEM.

2 Q AND CAN YOU, YOU GOT YOUR -- THE LINEUP THAT YOU PUT
3 TOGETHER WITH A CURRENT PICTURE OF HIM, WHAT OTHER
4 INDIVIDUALS, TYPE INDIVIDUALS, WERE THERE IN THE PHOTO
5 LINEUP, MEANING RACE, AGE, COMPLEXION AND SO---

6 A UM---

7 Q ---FORTH?

8 A ---WE TRIED TO GET PEOPLE WHO LOOKED A LOT LIKE THE
9 DEFENDANT SO THEY WOULD HAVE A GOOD...

10 Q OKAY. YOU MEAN THE SAME AGE?

11 A YES, SIR.

12 Q RACE? PHYSICAL -- GENERAL PHYSICAL APPEARANCE?

13 A YES, SIR.

14 Q AND WHEN YOU -- BEFORE SHOWING HER THAT LINEUP, DID
15 YOU SUGGEST ANYTHING TO HER IN ANY WAY AS TO WHETHER THE
16 PERSON THAT ROBBED HER WAS IN THE LINEUP?

17 A NO, SIR, I DIDN'T.

18 Q OR TO SUGGEST IN ANY WAY WHO SHE SHOULD PICK?

19 A NO, SIR.

20 Q OKAY. JUST TELL THE JURY ABOUT THE LINEUP AND THE
21 PHOTOGRAPH. A LINEUP OF THE CURRENT PICTURE.

22 A UM, I HAD HER COME DOWN TO THE POLICE DEPARTMENT. AND
23 I LAID THE LINEUP IN FRONT OF HER AND ASKED HER IF SHE
24 SAW THE GUY ON THERE THAT, THAT HAD ROBBED HER.

25 Q OKAY. AND.

1 A AND UM, SHE PICKED ONE OF THE PICTURES RIGHT OUT
2 OF THE LINEUP WITH NO PROBLEM.

3 Q ANY HESITATION AT ALL?

4 A NO, SIR.

5 Q AND UH, WHO DID SHE SUGGEST?

6 A NUMBER THREE ON THIS LINEUP HERE. IT'S A PHOTOGRAPH
7 OF MR. MCFADDEN.

8 Q AND UM, THE -- AFTER THAT PIECE OF INVESTIGATIVE
9 WORK, WHAT ELSE DID YOU DO?

10 A I WENT BACK TO TALK WITH MS. PENDERGRASS. AND AS
11 RESULT OF TALKING TO HER, I TALKED WITH MR. BROWN. AND
12 AS A RESULT OF TALKING TO MR. BROWN, I CAME INTO CONTACT
13 WITH MR. FRANCIS WAGNER.

14 Q OKAY. YOU MENTIONED MS. BROWN. CYNTHIA BROWN?

15 A YES, SIR.

16 Q THE LADY IN THE PRETTY GOLD OUTFIT OVER THERE?

17 A YES, SIR.

18 Q OKAY. AND AFTER -- AS A RESULT OF TALKING WITH HER,
19 WHO DID YOU TALK WITH?

20 A MR. FRANCIS WAGNER.

21 Q AND WHERE DID YOU FIND FRANCIS?

22 A UM, HE WAS WORKING AT COLONIAL RUBBER WHEN I TALKED WITH
23 HIM.

24 Q AND UM, WHAT HAPPENED AS A RESULT OF TALKING TO MR.
25 WAGNER?

1 A MR. WAGNER GAVE ME A CHAIN WITH A LITTLE EMBLEM ON IT.
2 A CROSS, I BELIEVE IT WAS. AND I TOOK THE CROSS TO MS.
3 ROGERS, THE CHAIN AND CROSS. AND UM, SHE IDENTIFIED IT
4 AS BEING THE ONE THAT WAS STOLEN FROM HER THAT NIGHT.

5 Q AND UM, ANYTHING ELSE AS PART OF YOUR INVESTIGATION
6 THAT -- UM, LET ME ASK YOU THIS. UM, I'M GOING TO HAND
7 WHAT'S BEEN MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT
8 NUMBER 1. CAN YOU TELL US IF YOU CAN IDENTIFY THAT?

9 A YES, SIR, THESE ARE THE RINGS THAT MS. PENDERGRASS GAVE
10 ME.

11 Q UH-HUH. (AFFIRMATIVE.)

12 A AND I TOOK THESE RINGS AND SHOWED THEM TO MS. ROGERS.

13 Q OKAY. AND COULD, COULD SHE IDENTIFY THEM?

14 A YES, SIR, SHE COULD.

15 Q AND YOU KEPT THESE IN YOUR EXCLUSIVE CARE, CUSTODY,
16 AND CONTROL FROM THE TIME THAT YOU RECEIVED FROM MS.
17 PENDERGRASS UNTIL, UNTIL COURT TODAY?

18 A YES, SIR. MYSELF AND OFFICER KIRBY HAS A VAULT. AND
19 WE BOTH HAVE ACCESS TO THIS VAULT. WE'RE THE ONLY ONE
20 TO HAVE ACCESS TO IT.

21 Q ARE THEY THE SAME RINGS? DID ANYBODY PUT---

22 A YES, SIR.

23 Q ---IN OR TAKE ANY OUT?

24 A YES, SIR, THAT WAS THE SAME RING.

25 Q AND I'M HANDING YOU WHAT HAS BEEN MARKED FOR

1 IDENTIFICATION AS STATE'S EXHIBIT NUMBER TWO, AND TELL US,
2 CAN YOU IDENTIFY THAT?

3 A YES, SIR. THIS IS THE NECKLACE AND CROSS I RECEIVED
4 FROM MR. WAGNER.

5 Q OKAY. AND COULD MS. ROGERS IDENTIFY THAT?

6 A YES, SIR, SHE COULD.

7 Q AND STATE'S EXHIBIT NUMBER THREE.

8 A THIS IS AN I.D. CARD AND THE NAME BILAL A. -- ALHAGG.

9 Q UH-HUH. (AFFIRMATIVE.)

10 A I RECEIVED THIS CARD FROM MS. PENDERGRASS. SHE SAID
11 THAT THE SUBJECT LEFT THE RINGS AND I.D. CARD. THAT WAS
12 HIS I.D.

13 Q OKAY. AND THE -- THIS BILAL A. ALHAGG AND THE, THE
14 PICTURE ON IT IS WHOSE PICTURE?

15 A THIS IS UM, MR. MICHAEL MCFADDEN.

16 Q STATE'S EXHIBIT NUMBER FOUR.

17 A THIS THE PIECE OF NYLON ROPE I RECEIVED FROM MS. ROGERS.
18 WHERE SHE SUPPOSEDLY TIED UP WITH.

19 Q AND STATE'S EXHIBIT NUMBER FIVE.

20 A THIS IS UM, UH A CIGARETTE WHICH WAS LEFT ON THE
21 FLOOR THE NIGHT OF THE ROBBERY. AND THAT'S UM---

22 THE COURT: MR. NEWMAN, YOU'VE GOT A BAG HERE.
23 THE OFFICER INDICATES TO ME -- THE LAST ONE YOU SHOWED
24 HIM. THE OFFICER INDICATES TO ME THAT THERE'S A KNIFE
25 IN THERE, I BELIEVE.

1 MR. NEWMAN: YES, SIR.

2 THE COURT: HE SAYS THAT HAS NOTHING TO DO WITH THE
3 CASE.

4 MR. NEWMAN: I WOULD ASK -- I'LL WITHDRAW THIS ONE.

5 THE COURT: ALL RIGHT.

6 MR. NEWMAN: THIS EXHIBIT.

7 THE COURT: IS THAT CORRECT, OFFICER?

8 THE WITNESS: YES, SIR.

9 THE COURT: I MEAN YOU -- THAT KNIFE IN THAT BAG
10 THERE, HOW DID THE -- HOW DID THE KNIFE GET IN THE BAG?

11 THE WITNESS: I PUT IT IN THAT BAG.

12 THE COURT: ALL RIGHT.

13 MR. NEWMAN: OKAY.

14 THE COURT: BUT IT'S NOT -- IT'S, IT'S, IT'S -- IT
15 HAS NOTHING TO DO WITH THIS PARTICULAR---

16 THE WITNESS: NO, SIR.

17 THE COURT: --- CASE. ALL RIGHT, SIR.

18 MR. NEWMAN: THEN I WOULD JUST ASK THAT STATE'S --
19 HAVE THIS MARKED INSTEAD AS STATE'S EXHIBIT NUMBER FIVE.

20 BY MR. NEWMAN:

21 Q CAN YOU IDENTIFY THIS EXHIBIT?

22 A THIS IS A JACKET THAT MR. KIRBY BROUGHT TO THE POLICE
23 DEPARTMENT.

24 Q OKAY. MR. KIRBY, WAS HE WORKING WITH YOU IN CONNECTION
25 WITH INVESTIGATING THIS CASE?

1 A YES, SIR, HE WAS.

2 Q OKAY. AND IS THAT A PIECE OF EVIDENCE THAT HE
3 RECOVERED?

4 A YES, SIR.

5 Q OKAY. NOW ALL OF THOSE EXHIBITS THAT I'VE PUT UP
6 THERE BEFORE YOU, HAVE THEY BEEN KEPT UNDER THE EXCLUSIVE,
7 CARE, AND CONTROL OF YOU AND MR. KIRBY? IN---

8 A YES, SIR.

9 Q ---YOUR LOCKER? THEY HAVE NOT BEEN TAMPERED WITH IN
10 ANY WAY?

11 A NO, SIR.

12 Q AND THE ARREST OF MR. MICHAEL DION MCFADDEN ON NOVEMBER
13 14, 1991, DID YOU PARTICIPATE IN THAT ARREST?

14 A YES, SIR, I DID.

15 Q AND, AND WHERE DID YOU FIND HIM?

16 A HE WAS AT A CLUB ONE BLOCK FROM WARD'S GROCERY. RIGHT
17 ON THE -- AT THE INTERSECTION RIGHT ON THE CORNER.

18 Q OKAY. AND IS THAT THE SAME AREA THAT CLEMMONS VIDEO
19 IS IN?

20 A YES, SIR.

21 Q THE SAME GENERAL VICINITY.

22 A YES, SIR.

23 Q OKAY. AND THE SAME GENERAL VICINITY OF THE HOUSE
24 ON KINDER ROAD THAT YOU WENT TO?

25 A YES, SIR.

1 MR. NEWMAN: AND UM, I BELIEVE THAT'S ALL I HAVE
2 OF THIS OFFICER.

3 THE COURT: ALL RIGHT, CROSS EXAMINATION.

4 CROSS EXAMINATION BY MR. CARRAWAY:

5 Q OFFICER GRAHAM, WOULD YOU DESCRIBE THE FIRST LINEUP
6 AGAIN?

7 A UM, SIX PICTURES INCLUDING ONE OF THE DEFENDANT,
8 MR. MCFADDEN.

9 Q OKAY. THE FIRST LINEUP. WHICH IS THE FIRST?

10 A THIS RIGHT HERE.

11 Q THIS IS THE FIRST?

12 A YES, SIR.

13 Q THE PHOTOGRAPH OF THE SECOND PICTURE WAS TAKEN AFTER
14 HE WAS ARRESTED, CORRECT?

15 A YES, SIR.

16 Q WHAT DID MS. ROGERS SAY WHEN YOU -- WHEN YOU HAD -- WHEN
17 YOU WERE AT THE FIRST LINEUP? WHAT, WHAT HAPPENED THERE?
18 DESCRIBE WHAT SHE SAID THEN.

19 A SHE SAID UM, THAT SHE COULDN'T TELL IF HE WAS ON
20 THERE OR NOT.

21 Q OKAY. SO THIS WAS TWO DAYS AFTER THIS AND SHE
22 COULDN'T TELL.

23 A YES, SIR.

24 Q IS THAT TWO DAYS AFTER?

25 A YES, SIR.

1 Q OKAY. HOW MUCH LATER WAS IT THAT YOU -- I BELIEVE,
2 AM I NOT -- I BELIEVE YOU MISSPOKE A LITTLE WHILE AGO.
3 DID YOU NOT SAY THAT YOU TOOK A PICTURE OFF OF HIS I.D.
4 AND PUT IT IN HERE?

5 A NO, SIR.

6 Q WELL, I THOUGHT YOU SAID YOU USED AN I.D. PICTURE
7 AND PUT IT IN. THAT'S---

8 A NO, SIR.

9 Q ---NOT THE ONE. AND WHEN WAS THE SECOND LINEUP?

10 A THE SECOND LINEUP WAS ON THE 14TH.

11 Q OKAY. SO THAT WAS---

12 A AROUND THE 14TH.

13 Q SO THAT WAS ABOUT 12 DAYS LATER.

14 A YES, SIR.

15 Q AND YOU COULDN'T IDENTIFY HIM THE FIRST TIME. BUT
16 THEN WHAT -- 12 DAYS LATER SHE DIDN'T HAVE ANY PROBLEM
17 PICKING HIM OUT, IS THAT RIGHT?

18 A THAT'S CORRECT.

19 Q OKAY. WHEN SHE -- AT THE FIRST LINEUP WHAT, WHAT
20 WOULD YOU SAY HER CONDITION? WOULD, WOULD YOU SAY SHE
21 WAS IN FAIRLY GOOD SPIRITS AT THE FIRST LINEUP, OR
22 WAS SHE STILL, STILL NERVOUS OR WHAT?

23 A SHE WAS FAIRLY NERVOUS AT BOTH OF THEM.

24 Q AT BOTH OF THEM?

25 A YES, SIR.

1 Q OKAY. WOULD YOU SAY THERE WAS DIFFERENCE BETWEEN
2 HER, HER DEMEANOR AT THE FIRST LINEUP THAN THE
3 SECOND? OR WOULD YOU SAY THEY WERE PRETTY MUCH THE SAME,
4 SHE WAS A LITTLE NERVOUS?

5 A PRETTY, PRETTY MUCH THE SAME.

6 Q OKAY. NOT REAL NERVOUS, JUST A LITTLE NERVOUS AT
7 BOTH LINEUPS?

8 A YES, SIR.

9 Q OKAY. AND THAT'S, THAT'S YOUR ANS -- HOW WAS SHE AT, AT
10 EACH ONE? I WANT YOU TO SAY?

11 A SHE WAS NERVOUS AT BOTH LINEUPS.

12 Q OKAY. BUT NOT VERY NERVOUS YOU WOULDN'T SAY?

13 A I DON'T KNOW WHAT YOU MEAN BY VERY OR NOT.

14 Q WAS SHE EXTREMELY NERVOUS, OR WAS SHE JUST LITTLE
15 NERVOUS JUST A LITTLE?

16 A SHE WASN'T FALLING APART. BUT, BUT, BUT SHE, SHE WAS
17 AS IF SHE WAS SCARED.

18 Q OKAY. AT BOTH OF THEM.

19 A YES, SIR.

20 Q THE FIRST AND THE SECOND.

21 A YES, SIR.

22 Q ALL RIGHT, WHEN DID YOU GO -- WHEN DID YOU GET A UM,
23 CALL ABOUT THIS? WHEN DID YOU GET A CALL THAT SOMEBODY
24 WHO -- YOU SAID KEITH PRESSLEY CALLED YOU? WHEN DID HE
25 CALL YOU?

48

1 A UM, I'M NOT EXACTLY SURE. I, I TALKED. HE DIDN'T CALL
2 ME, I TALKED WITH HIM ON THE STREET.

3 Q OKAY. SO YOU ARE NOT SURE WHEN YOU -- WHEN YOU TALKED
4 TO HIM. AND ABOUT WHAT DATE WAS IT THAT YOU WENT OVER AND
5 GET -- GOT THIS JEWELRY FROM FAYE FRANKLIN?

6 A IT WAS ON NOVEMBER 1, 1991.

7 Q OKAY. DID YOU -- WHEN DID YOU SHOW MS. ROGERS ANY OF
8 THIS JEWELRY? WHEN DID YOU TAKE IT BACK TO HER? WHEN DID
9 YOU TAKE IT BACK TO MS. ROGERS SO SHE COULD SEE IF IT WAS
10 HERS?

11 A AS SOON AS I GOT THE JEWELRY, I TOOK IT TO HER.

12 Q OKAY. SO YOU WENT RIGHT BACK. IT WAS TWO OR THREE
13 DAYS LATER YOU TOOK THE JEWELRY BACK OVER THERE?

14 A YES.

15 Q OKAY. WHEN YOU WENT OUT THAT NIGHT TO UM, THE NIGHT
16 OF THIS ROBBERY OR WHATEVER, YOU WENT OUT. YOU WENT DOWN
17 TO WARD'S, AND THEN YOU WENT TO SOME CLUBS AND THINGS?

18 A YES, SIR.

19 Q ALL RIGHT. WERE YOU ABLE TO FIND -- WERE YOU ABLE
20 TO FIND MICHAEL MCFADDEN AT THAT TIME?

21 A NO, SIR, I COULD NOT LOCATE HIM.

22 Q OKAY. DID YOU GO BUY THE HOUSE OVER AT KINDER STREET?

23 A YES, SIR, I DID.

24 Q ALL RIGHT. DID YOU GO IN AND LOOK THEN?

25 A YES, SIR.

1 Q ALL RIGHT. HOW MANY OTHER TIMES DID YOU GO BACK
2 AFTER THAT TO THE HOUSE ON KINDER STREET? OR WAS THAT
3 THE ONLY TIME YOU WENT THERE?

4 A I WENT BACK PROBABLY THREE OR FOUR TIMES.

5 Q OKAY. OVER WHAT PERIOD OF TIME?

6 A TWO WEEKS.

7 Q NEXT TWO WEEKS. AND YOU SAID YOU ARRESTED MICHAEL
8 MCFADDEN ON THE 14TH AT A CLUB?

9 A I THINK IT WAS THE 14TH. BUT I HAVE TO LOOK---

10 Q OKAY.

11 A ---AT MY FILE TO---

12 Q BUT----

13 A ---CHECK THE DATE.

14 Q ---SOME. ALL RIGHT. WAS ANYBODY ELSE THERE WITH HIM?

15 A THERE WERE UM, THREE OR FOUR PEOPLE SITTING AROUND THE
16 TABLE. I DON'T KNOW WHO -- EXACTLY WHO THEY WERE.

17 Q ALL RIGHT. WHAT DID MR. MCFADDEN TELL YOU WHEN YOU
18 ARRESTED HIM?

19 A HE SAID THAT HE KNEW WE WAS LOOKING FOR HIM.

20 Q DIDN'T HE TELL AFTER YOU GOT -- AFTER YOU GOT HIM IN
21 THE CAR THAT A MICHAEL JOHNSON HAD DONE THIS?

22 A HE TOLD US THAT AT THE POLICE STATION.

23 Q OKAY. HE TOLD YOU HE WAS SITTING THERE WITH A MICHAEL
24 JOHNSON ALSO, DIDN'T HE?

25 A YES, SIR.

50

1 Q OKAY. DID YOU GO BACK AND LOOK FOR THIS FELLOW?

2 A NO, SIR, I DIDN'T.

3 Q DID YOU TRY TO?

4 A YES.

5 Q YOU DID TRY TO? SOMEBODY MADE AN EFFORT TO GO BACK---

6 A NO, SIR, HE---

7 Q ---AND COULDN'T FIND HIM, IS THAT NOT RIGHT?

8 A YES, SIR. HE TOLD ME THAT THE GUY AT THE TABLE
9 WAS THE GUY THAT HE, HE GOT A COAT FROM, A GUY AT THE TABLE
10 WHEN WE WENT TO LEAVE. AND HE TOLD ME THAT THAT WAS THE
11 GUY THAT HAD DID IT. AND THAT GUY WASN'T EVEN CLOSE TO
12 THE DESCRIPTION. HE WAS MUCH SHORTER. AND A LOT THINNER.

13 Q BUT YOU SAID -- HOW MANY PEOPLE YOU SAID WERE SITTING
14 AT THE TABLE WITH HIM?

15 A ABOUT FOUR.

16 Q ABOUT FOUR PEOPLE?

17 A YES, SIR.

18 Q AND HE DIDN'T TELL YOU UNTIL YOU GOT TO THE POLICE
19 STATION, THAT THERE WAS A MICHAEL JOHNSON, AND HE WAS THE
20 GUY SITTING AT THE TABLE, RIGHT?

21 A YES, SIR, BUT---

22 Q SO YOU REALLY DIDN'T KNOW WHO YOU WERE LOOKING FOR
23 WHEN YOU---

24 A ---HE TOLD---

25 Q ---WENT BACK.

1 A ---ME IT WAS THE ONE THAT HE GOT A COAT FROM.

2 Q OKAY. ALL RIGHT. AND EVERYBODY WAS SITTING AT THE
3 TABLE.

4 A YES, SIR.

5 Q SO NOBODY STOOD UP AT THE TABLE. EVERYBODY WAS
6 SITTING DOWN.

7 A YES, SIR.

8 Q OKAY. BUT Y'ALL CAME BACK AND Y'ALL MADE AN EFFORT TO
9 FIND THIS PERSON, DIDN'T YOU?

10 A NO, SIR, I DIDN'T GO BACK THAT FAR.

11 Q NOBODY MADE IT -- NOBODY MADE AN EFFORT. TO YOUR
12 KNOWLEDGE, NO POLICE OFFICERS MADE AN EFFORT TO EVEN GO
13 LOOK FOR THIS PERSON?

14 A NO, SIR.

15 Q DIDN'T MAKE AN EFFORT. BUT HE DID TELL YOU AT THAT
16 TIME. HE TOLD YOU WHEN HE GOT BACK FROM THE JAIL HE SAID
17 THAT MICHAEL JOHNSON DID THIS.

18 A YES, SIR. AND HE'D ALSO SAID THAT HE, HE WAS DERRICK
19 CONYERS AND HE WAS NOT MICHAEL MCFADDEN.

20 MR. CARRAWAY: OKAY. I DON'T HAVE ANY FURTHER
21 QUESTIONS. THANK YOU.

22 THE COURT: ALL RIGHT. REDIRECT?

23 REDIRECT EXAMINATION BY MR. NEWMAN:

24 Q DID YOU EVER RECOVER THE WATCH THAT WAS STOLEN FROM
25 MS. ROGERS DURING THE ROBBERY?

52

1 A NO, SIR, I DIDN'T.

2 MR. CARRAWAY: EXCUSE ME, I DIDN'T HEAR THE QUESTION.

3 Q AND YOU NEVER RECOVERED THE WATCH THAT WAS STOLEN.

4 A NO, SIR.

5 MR. NEWMAN: NO OTHER QUESTIONS.

6 THE COURT: ALL RIGHT, YOU MAY STEP DOWN.

7 MR. NEWMAN: WE CALL MS. WARD.

8 BARBARA WARD,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION BY MR. NEWMAN:

11 Q AND YOUR FULL NAME, MA'AM.

12 A BARBARA WARD.

13 Q MS. WARD, YOU WORK AT WARD'S GROCERY?

14 A THAT'S RIGHT.

15 Q IS THAT YOUR STORE?

16 A MY HUSBAND.

17 Q YOUR HUSBAND'S STORE. HOW LONG HAVE Y'ALL BEEN
18 OPERATING WARD'S GROCERY?

19 A ABOUT 22 YEARS.

20 Q 22 YEARS. AND IS THAT OUT ON 52?

21 A THAT'S RIGHT.

22 Q AND DO YOU KNOW WHERE CLEMMONS VIDEO IS?

23 A YES, I DO.

24 Q HOW FAR AWAY IS THAT FROM YOUR STORE?

25 A I WOULD SAY ABOUT A FOURTH OF A MILE OR SOMETHING LIKE

1 THAT.

2 Q DO YOU KNOW MICHAEL WHOSE SITTING OVER THERE NEXT
3 TO MR. CARRAWAY?

4 A YES, I DO.

5 Q AND DO YOU KNOW THE NIGHT THAT CLEMMONS VIDEO WAS
6 ROBBED?

7 A YES.

8 Q AND CAN YOU TELL US WHETHER OR NOT YOU SAW MICHAEL
9 MCFADDEN THAT DAY OR NOT?

10 A I HAD SEEN HIM ON THE SIDE OF THE STORE THAT AFTERNOON.

11 Q OKAY. WHEN HE WAS ON THE SIDE OF THE STORE THAT
12 AFTERNOON, HOW WAS HE DRESSED?

13 A UM, I'M NOT REALLY POSITIVE ABOUT THAT. I DO KNOW UM,
14 I'VE KNOWN HIM A LONG TIME. I DON'T REALLY RECALL EXACTLY
15 WHAT HE HAD ON THAT DAY.

16 Q OKAY. LET ME HAND YOU STATE'S EXHIBIT NUMBER 5, AND
17 TELL US WHETHER OR NOT YOU HAVE ANY RECOLLECTION OF THIS
18 JACKET IN RELATION TO MICHAEL MCFADDEN?

19 A YES, I'VE SEEN HIM WITH THAT JACKET ON. WHETHER
20 IT'S THAT EXACT JACKET OR ONE WITH THE SAME COLOR ORNAMENT.

21 Q CHARLOTTE HORNETS JACKET?

22 A YES.

23 Q AND YOU HAVE SEEN MICHAEL MCFADDEN WEAR ONE?

24 A YES.

25 Q AND CAN YOU TELL US WHETHER HE HAD -- WHETHER HE HAD

1 IT ON THAT AFTERNOON?

2 A I DON'T REMEMBER.

3 Q OKAY. AND ON THE AFTERNOON, HE WAS AROUND YOUR STORE?

4 A YES.

5 Q IN THE -- DID HE ESTABLISH A PATTERN OF HANGING
6 NEAR -- IN AND AROUND YOUR STORE?

7 A HE HAD BEEN UP THERE IN AND UM, I KNOW HE HAD BEEN
8 THERE ON SUNDAY. AND HE WAS THERE ON MONDAY.

9 Q OKAY. THIS HAPPENED ON.

10 A I BELIEVE THIS WAS ON A MONDAY.

11 Q OKAY.

12 A BUT I KNOW HE WAS THERE ON SUNDAY, AND I SAW HIM
13 IN THE AFTERNOON OF THE VIDEO ROBBERY. BECAUSE THAT SAME
14 AFTERNOON, OUR LAUNDROMAT CAUGHT ON FIRE.

15 Q FOLLOWING THIS ROBBERY AT CLEMMONS, DID HE COME
16 BACK THERE?

17 A NOT TO MY KNOWLEDGE. I DIDN'T SEE HIM.

18 Q YOU DIDN'T SEE HIM ANY -- OUT THERE ANYMORE BEFORE
19 THE ARREST?

20 A NO, I DIDN'T.

21 MR. NEWMAN: NO OTHER QUESTIONS.

22 THE COURT: WAIT. WAIT ONE SECOND, MS. WARD.

23 CROSS EXAMINATION BY MR. CARRAWAY:

24 Q ALL RIGHT. YOUR TESTIMONY IS, THAT YOU HAD SEEN HIM A
25 GOOD BIT BEFORE THIS? I MEAN, THE WEEKS LEADING UP TO THIS

1 OR WHATEVER? HAD YOU SEEN HIM A GOOD BIT BEFORE, HANGING
2 AROUND THE STATION? YOU SAID YOU SAW -- OR THE STORE. YOU
3 SAID YOU SAW HIM A FEW DAYS BEFORE AND THEN THAT DAY.

4 A I SAW HIM THE SAME DAY OF THE VIDEO ROBBERY. BECAUSE
5 THAT SAME DAY OUR LAUNDROMAT CAUGHT ON FIRE ABOUT SIX
6 IN THE AFTERNOON.

7 Q DID YOU SEE HIM ANY OTHER TIMES? I MEAN---

8 A HE'D BEEN IN AND OUT OF THE STORE, YES.

9 Q I'M NOT TALKING ABOUT -- I KNOW HE LIVES AROUND THE
10 AREA. BUT I'M TALKING ABOUT IF YOU WERE -- FOR THE WEEK
11 ANY -- DID YOU SEE HIM ANY THE WEEK BEFORE THAT, OR THE
12 WEEK AFTER?

13 A I HAD SEEN HIM, I DON'T REMEMBER EXACT DAYS. BUT
14 I KNOW---

15 Q HOW MANY TIMES WOULD YOU SAY YOU SAW HIM THE PREVIOUS
16 WEEK? I THINK YOU MENTIONED YOU SAW HIM ON A SUNDAY OF
17 A DIFFERENT DAY BEFORE THAT.

18 A UM, I'M NOT POSITIVE. I WOULDN'T WANT TO SAY, IT'S BEEN
19 A GOOD WHILE. I'M -- I KNOW I HAD SEEN HIM IN THE AREA. HE
20 HAD BEEN IN THE STORE. HE HAD BEEN IN THE LIQUOR STORE.

21 Q OKAY. YOU WOULD SAY -- SO YOU DON'T KNOW THAT YOU
22 SAW HIM AT ALL---

23 A I DON'T KNOW---

24 Q ---BEFORE---

25 A ---I KNOW THAT---

1 Q ----THAT. YOU ONLY KNOW---

2 A ---I SAW HIM.

3 Q ---THAT YOU SAW HIM.

4 A YES, I SAW HIM BEFORE THEN.

5 Q YOU SAW HIM A COUPLE OF TIMES -- I MEAN WITHIN THE
6 WEEK BEFORE THAT. YOU HAD SEEN HIM A COUPLE OF TIMES
7 BEFORE THAT, THAT WEEK.

8 A YES. YES.

9 Q SO YOU HAVE. OKAY. ARE YOU SURE OF THAT?

10 A YES.

11 Q AND I ASK YOU FOUR TIMES AND YOU WEREN'T SURE. BUT NOW
12 SUDDENLY YOU ARE SURE, IS THAT RIGHT?

13 A THAT'S RIGHT.

14 Q OKAY. ALL RIGHT.

15 A WELL, I DON'T WANT TO TELL YOU A STORY.

16 Q WELL, I'M NOT ASKING YOU TO TELL ME A STORY. AND I
17 ASKED YOU A QUESTION, AND I WANTED YOU TO ANSWER IT. AND
18 YOU ARE NOT SUPPOSED TO ANSWER UP HERE WHAT YOU GUESS, OR
19 WHAT YOU THINK, OR WHAT MIGHT HAVE HAPPENED.

20 A THAT'S WHY I DIDN'T TELL---

21 Q I ASKED YOU THREE -- WELL, FINALLY YOU SAID YES, I
22 AM POSITIVE I SAW HIM TWO OR THREE TIMES.

23 MR. NEWMAN: YOUR HONOR----

24 THE COURT: YES, SIR.

25 MR. NEWMAN: ---WE---

1 THE COURT: YES, SIR.

2 MR. NEWMAN: ---OBJECT TO---

3 THE COURT: YES, SIR.

4 MR. NEWMAN: ---MR. CARRAWAY ARGUING WITH THE WITNESS.

5 THE COURT: YES, SIR. DON'T ARGUE WITH HER. JUST,
6 JUST ASK THE QUESTION.

7 Q AND ALSO YOU'RE POSITIVE YOU SAW HIM THAT DAY, RIGHT?
8 BUT YOU DON'T HAVE ANY IDEA WHETHER HE WAS WEARING THIS
9 JACKET OR NOT, DO YOU?

10 A WELL, I KNOW HE HAD---

11 Q I MEAN.

12 A ---THAT JACKET, THOUGH.

13 Q YOU SAID HE -- I THOUGHT YOU JUST TESTIFIED YOU
14 DIDN'T---

15 A I DON'T KNOW---

16 THE COURT: WAIT A MINUTE. NOW WAIT---

17 A ---WHETHER HE.

18 Q ---WHAT HE HAD ON THAT DAY.

19 THE COURT: ---A MINUTE. LET ONE ANSWER AND ONE ASK.
20 DON'T DO IT ALL AT THE SAME TIME.

21 Q DID YOU NOT JUST TES---

22 A I HAVE SEEN HIM WEARING THAT JACKET. WHETHER HE HAD
23 IT ON AT THE PARTICULAR TIME I SAW HIM INSIDE THE STORE,
24 I DO NOT KNOW.
25

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1 Q ALL RIGHT, SAW HIM WELL. BUT YOU DON'T REMEMBER
2 WHETHER HE WAS WEARING THIS JACKET OR NOT.

3 A NO, I DON'T.

4 Q ALL RIGHT. ISN'T IT A FACT THAT YOU -- ALL RIGHT,
5 DID YOU SEE HIM AT ALL AFTER THIS? IN THE WEEK AFTER
6 THIS OR IN THE TWO WEEKS AFTER THIS OR ANYTHING?

7 A NO, I DID NOT.

8 Q ISN'T IT A FACT THAT YOU REPEATEDLY CALLED A POLICE
9 STATION AND TOLD THEM THAT HE WAS AROUND YOUR STORE,
10 AND TO COME BY THERE, BUT THEY NEVER COULD FIND HIM?
11 ISN'T THAT WHAT AN EMPLOYEE OF YOURS WILL TESTIFY?
12 THE GIRL THAT WORKS FOR DAY SHIFT AT YOUR STORE WILL
13 SAY THAT YOU CALLED ON NUMEROUS OCCASIONS AFTER THAT.
14 AND THE POLICE WERE ALWAYS TOO SLOW TO GET THERE TO
15 PICK HIM UP. ISN'T THAT---

16 A NO, SIR,---

17 Q ---A FACT?

18 A ---I DID NOT.

19 Q ALL RIGHT. THAT'S YOUR TESTIMONY. THAT YOU DIDN'T --
20 YOU DIDN'T DO ANY OF THAT.

21 A I WAS NOT THE ONE THAT CALLED, NO.

22 Q YOU WEREN'T THE ONE. ALL RIGHT, WHO DID CALL?

23 A SEVERAL PEOPLE AROUND THAT SAW HIM ON THE SIDE OF THE
24 STORE.

25 Q SEVERAL PEOPLE. AND THAT WAS FOR WEEKS AFTER THAT

1 OR WHATEVER.

2 A NO, NOT WEEKS.

3 Q I'M, I'M TALKING ABOUT THE WEEK AFTER OR WHATEVER.

4 A DURING THAT WEEK?

5 Q DURING THE FOLLOWING WEEK.

6 A IN FACT, SOME OF HIS VERY NEIGHBORS CAME IN THE STORE,
7 AND SAID HE WAS OUT THERE. TO CALL THE POLICE STATION.

8 Q ALL RIGHT. BUT YOU DENY THAT YOU CALLED---

9 A I WAS NOT THERE.

10 Q ---POLICE STATION. ALL RIGHT---

11 A I DON'T---

12 Q ---YOU DIDN'T CALL THEM AT ALL.

13 A ---WORK DAY SHIFT.

14 Q ALL RIGHT, YOU DIDN'T CALL THEM.

15 A I DON'T WORK SHIFT.

16 Q OKAY. THAT'S NOT WHAT I ASKED YOU. I SAID,
17 DID YOU CALL THE POLICE STATION. NOW, YOU ARE NOT---

18 A I,---

19 Q ---SURE.

20 THE COURT: WAIT---

21 A ---I MAY---

22 THE COURT: ---A MINUTE.

23 A ---HAVE CALLED ONE TIME.

24 Q OKAY. YOU MAY HAVE CALLED ONE TIME.

25 A UH-HUH. (AFFIRMATIVE.)

60

1 Q OKAY. WE SIT HERE---

2 A I BELIEVE SOMEBODY---

3 Q ---WITH NO---

4 A ---CAME AND TOLD ME THEY HAD SEEN HIM.

5 Q OKAY, SO YOU DIDN'T EVEN SEE HIM THEN. BUT YOU CALLED
6 THE POLICE ON HIM ANY WAY. RIGHT? IS THAT NOT RIGHT?

7 A MAYBE ONCE.

8 Q MAYBE ONCE. ARE YOU SURE YOU CALLED ONCE?

9 A I'M POSITIVE.

10 Q ALL RIGHT. THAT'S WHAT I WANT TO HEAR.

11 A OKAY.

12 Q ALL RIGHT, AFTER A WHILE HERE. I WANT TO -- I WANT
13 TO GET THAT MEMORY DOWN.

14 A I SAID IT'S BEEN AWHILE, YOU KNOW.

15 MR. CARRAWAY: I DON'T HAVE ANY FURTHER QUESTIONS.

16 THE COURT: ALL RIGHT. ANYTHING, MR. NEWMAN?

17 MR. NEWMAN: NO, SIR.

18 THE COURT: ALL RIGHT---

19 MR. NEWMAN: I'D LIKE FOR HER TO BE EXCUSED, YOUR HONOR,
20 PLEASE.

21 THE COURT: ALL RIGHT, THANK YOU, MA'AM.

22 MR. NEWMAN: STAYING AWAY FROM HER STORE FOR US.

23 THE COURT: ALL RIGHT, THANK YOU.

24 MR. NEWMAN: WE CALL MELISSA ROGERS.

25 THE COURT: ALL RIGHT, MS. ROGERS.

MR. NEWMAN: MELISSA ROGERS.

MELISSA ROGERS, BEING

FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. NEWMAN:

Q TELL US YOUR FULL NAME, MA'AM.

A DAWN MELISSA ROGERS.

Q AND, MS. ROGERS, ARE YOU FROM KINGSTREE?

A YES.

Q AND WHERE DO YOU WORK?

A CLEMMONS VIDEO.

Q ARE YOU MARRIED OR SINGLE?

A SINGLE.

Q AND HOW OLD ARE YOU?

A 19.

Q AND WHAT MONTH IS YOUR BIRTHDAY?

A SEPTEMBER.

Q AND AT THE TIME OF THIS ROBBERY, YOU HAD JUST TURNED FROM 18 TO 19?

A YES, SIR.

Q AND HOW LONG HAVE YOU BEEN EMPLOYED AT CLEMMONS

VIDEO?

A TWO YEARS.

Q TELL THE FOLKS ON THE JURY ABOUT CLEMMONS VIDEO.

THE TYPE STORE IT IS, AND WHAT Y'ALL---

A WE UM---

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- 1 Q ---DO THERE.
- 2 A WE RENT MOVIES, VCR'S, AND STUFF LIKE THAT. BASICALLY
- 3 ALL WE DO.
- 4 Q IT'S A VCR RENTAL PLACE?
- 5 A YES, SIR. AND MOVIE RENTALS.
- 6 Q AND DURING OCTOBER OF '91, WHAT SHIFT WERE YOU
- 7 WORKING?
- 8 A. NIGHT SHIFT.
- 9 Q AND WHAT TIME DID YOU GO TO WORK, AND WHAT TIME
- 10 YOU GOT OFF?
- 11 A I'M NOT SURE WHAT TIME WE WENT IN, BUT WE CLOSE AT TEN.
- 12 Q AND UM, GENERALLY HOW MANY HOURS DID YOU -- DO YOU
- 13 WORK PER DAY?
- 14 A PER DAY?
- 15 Q YES.
- 16 Q SEVEN/EIGHT HOURS.
- 17 Q SO YOU'D WORK FROM THREE TO TEN, FOUR TO TEN THEREABOUT?
- 18 A YES, SIR.
- 19 Q AND DO YOU WORK EVERY DAY, OR DO YOU HAVE OTHER
- 20 PEOPLE THAT WORK THERE?
- 21 A IT ROTATES.
- 22 Q IT ROTATES. DID YOU WORK THE NIGHT BEFORE THIS
- 23 ROBBERY?
- 24 A NO, SIR.
- 25 Q AND UM, THE NIGHT OF THE ROBBERY, WERE THERE

1 ANY OTHER PEOPLE WORKING THERE OTHER THAN YOU?

2 A NO, SIR.

3 Q AND GENERALLY WHAT TYPE OF TRAFFIC DO YOU HAVE COMING
4 IN AND OUT OF THERE?

5 A IT'S PRETTY BUSY.

6 Q OKAY.

7 A ON THE WEEKENDS. IT'S SLOW DURING THE WEEKDAYS.

8 Q OKAY. WHAT DAY OF THE WEEK DID THIS ROBBERY HAPPEN?

9 A MONDAY.

10 Q ON A MONDAY NIGHT?

11 A YES, SIR.

12 Q AND IS MONDAY NIGHT GENERALLY PRETTY BUSY?

13 A NO, SIR.

14 Q AND MONDAY NIGHT IS A SLOW NIGHT?

15 A YES, SIR.

16 Q AND ON THIS PARTICULAR MONDAY NIGHT, YOU SAID YOU
17 WERE WORKING ALONE?

18 A YES, SIR.

19 Q AND THE MEETING UP AROUND 8:30 OR NINE O'CLOCK, AND
20 THEREABOUTS, WHAT TYPE -- KIND OF DESCRIBE FOR THE JURY
21 THE TRAFFIC YOU HAD COMING IN.

22 A I WASN'T BUSY AT ALL. I WAS -- AROUND THAT TIME OF THE
23 EVENING, WE CLEAN UP THE STORE WHEN WE'RE NOT BUSY.

24 Q WHAT TIME DO YOU START CLEANING UP?

25 A AROUND 8:30, NINE O'CLOCK.

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1 Q EIGHT-THIRTY. DO Y'ALL GENERALLY HAVE MUCH MONEY
2 ON HAND AT THE STORE?

3 A WE KEEP \$110 IN THE REGISTER. THE REST IS WHAT
4 WE BRING IN THAT DAY, THE ENTIRE DAY.

5 Q YOU START THE DAY WITH \$110?

6 A YES, SIR.

7 Q AND THEN WHATEVER ELSE YOU COLLECT THAT DAY IS HOW
8 MUCH YOU WOULD---

9 A YES, SIR.

10 Q ---GENERALLY HAVE, AND COUNT UP AT THE END OF THE
11 NIGHT?

12 A YES, SIR.

13 Q AROUND, WE -- SAY STARTING AT NINE O'CLOCK, KIND OF
14 TAKE US THROUGH THE EVENING.

15 A AT UM, WE STARTED CLEANING UP THE STORE. I WAS
16 PUTTING MOVIES BACK OUT ON THE SHELF, AND STRAIGHTENING
17 UP THE SHELF SO I COULD CLOSE. GET EVERYTHING STRAIGHT
18 BY THE TIME WE CLOSED. AND UM, I WAS IN THERE BY MYSELF.
19 THERE WASN'T -- THERE WAS CUSTOMERS IN THERE WHILE I WAS
20 STRAIGHTENING UP. AND WHEN THEY HAD LEFT, THAT'S WHEN
21 HE HAD CAME IN.

22 Q OKAY. HOW LONG HAD THE LAST CUSTOMERS, GONE OUT
23 BEFORE HE CAME IN?

24 A NOT LONG.

25 Q OKAY. AND THOSE CUSTOMERS WERE GONE?

1 A YES. WELL, I SUPPOSE THEY WERE GONE. I DIDN'T PAY
2 ANY ATTENTION TO WHETHER OR NOT THEY HAD LEFT---

3 Q YOU DIDN'T SEE---

4 A ---THE PARKING LOT.

5 Q ---THEM DRIVE OFF OR ANYTHING?

6 A NO, SIR.

7 Q YOU KNOW THEY HAD LEFT OUT OF---

8 A THEY WERE OUT THE DOOR.

9 Q ---STORE. AND THERE WAS NO ONE LEFT IN THE STORE BUT
10 YOU?

11 A YES, SIR.

12 Q AND WHERE WERE YOU IN THE STORE?

13 A I WAS OUT IN THE FLOOR STRAIGHTENING UP THE SHELVES.

14 Q OKAY. AND THEN TELL THE PEOPLE ON THE JURY WHAT
15 HAPPENED.

16 A HE CAME IN, AND HE HAD TOLD ME HE HAD BEEN IN THE
17 NIGHT BEFORE. AND THE GIRL THAT WAS WORKING THAT NIGHT,
18 HAD TOLD HIM HE NEEDED A SOUTH CAROLINA DRIVER'S LICENSE
19 TO GET A MEMBERSHIP. AND I SUPPOSE HE DIDN'T HAVE IT
20 ON HIM, OR HE WAS JUST LOOKING AROUND. BUT SHE SAID HE
21 STAYED UP AT THE COUNTER FOR A WHILE, AND THEN HE LEFT OUT.
22 AND THEN HE CAME IN THE NEXT NIGHT, AND HE---

23 Q OKAY. LET'S -- JUST TAKE YOUR TIME THERE FOR ME,
24 IF YOU WILL. WHEN YOU SAID HE, WHO ARE YOU REFERRING
25 TO?

66

- 1 A MR. MCFADDEN.
- 2 Q PARDON ME?
- 3 A MICHAEL MCFADDEN.
- 4 Q -- OKAY. YOUR HONOR, LET THE RECORD REFLECT. DO YOU SEE
- 5 HIM IN THE COURTROOM?
- 6 A YES, SIR.
- 7 Q WHERE?
- 8 A RIGHT...
- 9 Q PARDON ME?
- 10 A RIGHT THERE.
- 11 Q OKAY. NEXT TO MR. CARRAWAY?
- 12 A YES, SIR.
- 13 Q AND LET THE REFLECT, YOUR HONOR,---
- 14 THE COURT: ALL RIGHT.
- 15 Q ---SHE'S, SHE'S IDENTIFIED HIM. YOU, YOU, YOU MENTIONED
- 16 THAT HE SAID HE HAD BEEN IN THE STORE THE NIGHT BEFORE?
- 17 A YES.
- 18 Q AND UM, FOR WHAT PURPOSE?
- 19 A TO GET A MEMBERSHIP.
- 20 Q WHO WAS WORKING THE NIGHT BEFORE?
- 21 A UM, SIMONE HASELDON. SHE DOESN'T WORK THERE ANYMORE.
- 22 Q OKAY. AND, AND WHAT DID HE SAY ABOUT HIS VISIT
- 23 THERE THE NIGHT BEFORE?
- 24 A HE SAID THAT SHE HAD TOLD HIM THAT HE NEEDED A MEM --
- 25 A DRIVER'S LICENSE TO GET A MEMBERSHIP. AND THEN I ASKED

1 HIM, I SAID, WELL DO YOU WANT TO GET A MEMBERSHIP, AND HE
2 TOLD ME YES. AND SO I WALKED BACK AROUND THE COUNTER,
3 AND I NOTICED HE WAS FOLLOWING ME. SO I TURNED AROUND.
4 AND HE PULLED A KNIFE OUT OF HIS POCKET. AND I WENT TO
5 BACK AWAY FROM HIM, AND HE GRABBED MY ARM.

6 Q OKAY. LET ME STOP YOU THERE. WHEN YOU WENT AROUND
7 THE COUNTER, IS THE COUNTER SAY LIKE---

8 A YES.

9 Q ---A COUNTER LIKE THIS, PERHAPS?

10 A OPEN RIGHT UP IN THERE.

11 Q FOR THE CASH REGISTER ON THE COUNTER. AND THE CUSTOMERS
12 ARE SUPPOSED TO STAND ON ONE SIDE OF IT?

13 A YEAH.

14 Q AND YOU'D GO AROUND THE OTHER SIDE. AND YOU SAID
15 HE CAME AROUND THE COUNTER?

16 A YES, SIR, HE FOLLOWED ME. I NOTICED WHEN I GOT TO THE
17 EDGE OF GOING AROUND THE THING, HE WAS BEHIND ME.

18 Q OKAY.

19 A AND HE GRABBED MY ARM. AND HE TOLD ME TO UM, I KIND
20 OF BACKED AWAY FROM HIM. AND HE PULLED ME BACK TOWARD HIM,
21 AND TOLD ME TO OPEN UP THE REGISTER. SO I DID. AND UM,
22 HE ASKED ME, HE SAID, ISN'T THERE A BACK ROOM TO THIS
23 PLACE. AND I TOLD HIM THERE WAS. HE OPENED UP THE DOOR.
24 AND WE HAVE A, A TANNING SALON WITH THE TANNING BOOTHS
25 IN IT. AND HE TOOK ME INTO THAT ROOM. AND HE SAT ME

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1 DOWN IN THE CORNER. AND HE TIED UP MY ANKLES. AND HE PULLE
2 A ROPE OUT OF HIS POCKET. HE TIED UP MY ANKLES. AND THEN
3 HE UM, ASKED ME FOR MY JEWELRY. AND SO I TOOK MY JEWELRY
4 OFF. AND I RECKON I WAS DOING IT TOO SLOW FOR ME. HE JUST
5 REACHED UP AND POPPED THEM OFF, MY NECKLACE. BROKE
6 MY NECKLACE, AND GOT MY WATCH. AND THEN HE TIED MY
7 ARMS AROUND MY BACK. AND HE PUT THE STUFF IN HIS POCKETS.
8 HE GOT UP AND TOLD ME IF I SCREAM, HE WAS GOING TO COME
9 BACK IN THERE. AND HE SHUT THE DOOR AND WALKED OUT.

10 AND I DON'T KNOW HOW LONG -- HE LEFT AT THAT
11 OR WHAT HE DID, BUT I STAYED IN THAT ROOM.

12 Q HAD YOU EVER SEEN THIS DEFENDANT BEFORE THAT NIGHT,
13 AS YOU CAN RECALL?

14 A NO, SIR.

15 Q OKAY. BUT HE SAID HE HAD BEEN IN THE NIGHT BEFORE.

16 A YES, SIR.

17 Q AND THAT NIGHT BEFORE, YOU WEREN'T WORKING.

18 A NO, SIR.

19 Q WHEN HE PULLED OUT THE, THE KNIFE ON YOU, DID -- COULD
20 YOU SEE OR BE ABLE TO KIND OF DESCRIBE THE KIND OF KNIFE
21 HE HAD?

22 A NOT REALLY. IT WAS A KNIFE. THAT'S ALL I KNOW.

23 Q OKAY. AND THE ROPE THAT YOU REFERRED TO.

24 A THAT'S THE ROPE RIGHT THERE.

25 Q THIS IS THE ROPE THAT HE HAD?

1 A YES.

2 Q UH, HE HAD IT WITH HIM ALREADY?

3 A HE PULLED IT OUT OF HIS POCKET.

4 Q DURING THIS ENTIRE PERIOD OF TIME BEFORE HE LEFT, DID
5 ANY -- WHILE HE WAS THERE ROBBING YOU, DID ANY CUSTOMERS COME
6 IN?

7 A NO, SIR.

8 Q DID HE OPEN THE REGISTER OR DID HE---

9 A I OPENED IT.

10 Q ---FORCE YOU? YOU OPENED THE REGISTER.

11 A YES.

12 Q AND UM, DO YOU KNOW HOW MUCH MONEY WAS TAKEN?

13 A ABOUT \$300 I BELIEVE, IS WHAT IT WAS.

14 Q OKAY. AND HOW WERE YOU ABLE TO KNOW THE AMOUNT OF
15 MONEY THAT WAS TAKEN?

16 A WELL, THEY HAD CALLED THE MANAGER. AND SHE CAME, AND
17 SHE RAN AN, AN ACTIVITY REPORT OFF OF THE COMPUTER THAT
18 WE USED TO KEEP TRACK OF THE MONEY---

19 Q OKAY.

20 A THAT'S HOW WE RECALL HOW MUCH WE HAD DONE THAT DAY.

21 Q SO ACCORDING TO THE PRINTOUT THAT'S KEPT INSIDE THE
22 REGISTER, THAT WOULD BE THE AMOUNT OF MONEY THAT---

23 A YES, SIR.

24 Q ---WAS THERE? AND HE TOOK ALL THE MONEY.

25 A THAT WE HAD, YES.

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1 Q HE TOOK ALL THE MONEY FROM THE REGISTER?

2 A YES, SIR.

3 Q AND THE -- YOU MENTIONED RINGS. HE TOOK THESE OFF
4 YOUR FINGERS?

5 A NO, I TOOK THEM OFF. HE JUST TOOK MY NECKLACE.

6 Q OKAY. AND TELL US WHAT RINGS ARE, ARE THESE?

7 A THE RINGS I HAD ON, AN ONYX RING. AND MY FILIGREE
8 RING I HAD GOTTEN FOR CHRISTMAS ABOUT TWO YEARS AGO.

9 THE COURT: ARE YOU INTRODUCING THOSE?

10 MR. NEWMAN: YES, SIR. I'D LIKE TO OFFER THIS
11 INTO EVIDENCE. STATE'S EXHIBIT NUMBER 1, YOUR HONOR.

12 THE COURT: OBJECTION TO THAT, MR. CARRAWAY?

13 MR. CARRAWAY: ALL RIGHT, WITHOUT OBJECTION.

14 (RINGS MARKED AS STATE'S EXHIBIT NO. 1 INTO EVIDENCE.)

15 Q HOW MANY RINGS WERE TAKEN FROM YOU?

16 A FIVE IN ALL.

17 Q A TOTAL OF FIVE RINGS?

18 A YES.

19 Q WHAT OTHER RINGS DID -- YOU HAD FIVE? A RING ON EACH
20 FINGER?

21 A I HAD THOSE TWO. AND MY CLASS RING, A NUGGET RING
22 THAT I WAS WEARING, AND A LITTLE PINKY RING.

23 Q WHAT HIGH SCHOOL DID YOU GO TO?

24 A KINGSTREE SENIOR HIGH.

25 Q OKAY. AND HE TOOK YOUR HIGH SCHOOL RING?

1 A YES, SIR.

2 Q AND HAS IT EVER BEEN RECOVERED?

3 A NO, SIR.

4 Q I NOTICE YOU HAVE, HOW MANY RINGS ON NOW?

5 A SOME I HAD.

6 Q FIVE RINGS NOW?

7 A YES, SIR.

8 Q YOU LIKE TO WEAR RINGS.

9 A YES, SIR.

10 Q AND HE TOOK FIVE RINGS FROM YOU THAT NIGHT.

11 A YES, SIR.

12 Q THE OTHER RINGS THAT WERE NOT RECOVERED, TELL US

13 WHAT THEY WERE.

14 A A CLASS RING. THERE UM, THERE'S A GOLD NUGGET

15 RING KIND OF LIKE. AND A LITTLE SILVER PINKY RING.

16 Q AND YOU MENTIONED ABOUT THE NECKLACE.

17 A YES.

18 Q LET ME ASK YOU WHETHER YOU CAN IDENTIFY THIS STATE'S

19 EXHIBIT 2.

20 A YES, SIR.

21 Q WHAT IS THAT?

22 A THAT'S MY NECKLACE THAT MY GRANDMOTHER AND GRANDFATHER

23 GAVE FOR MY 17TH BIRTHDAY.

24 Q OKAY. AND HOW DID HE TAKE THIS FROM YOU?

25 A HE POPPED IT OFF MY NECK.

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1 Q HE RIPPED IT OFF?

2 A YES, SIR.

3 THE COURT: OBJECTION TO THAT?

4 MR. CARRAWAY: NONE, YOUR HONOR.

5 THE COURT: ALL RIGHT, SIR.

6 MR. NEWMAN: 2.

7 (NECKLACE MARKED AS STATE'S EXHIBIT NO. 2 INTO
8 EVIDENCE.)

9 MR. NEWMAN: AND STATE'S EXHIBIT NUMBER 4, THE
10 ROPE.

11 MR. CARRAWAY: NO OBJECTION.

12 THE COURT: ALL RIGHT.

13 (ROPE MARKED AS STATE'S EXHIBIT NO. 4 INTO EVIDENCE.)

14 Q WHEN HE ROBBED YOU AT THE REGISTER, GO WITH US AGAIN,
15 AS FAR AS TAKING YOU FROM ONE PLACE IN THE STORE TO
16 THE NEXT.

17 A HE ASKED ME IF THERE WAS A BACK ROOM TO THE STORE. AND
18 I SAID YES. AND I, I OPENED UP THE DOOR. TOOK ME INTO THAT
19 LITTLE ROOM. AND THAT'S WHERE HE, HE TOOK ALL MY JEWELRY
20 WAS IN THE BACK ROOM.

21 Q WHAT WAS GOING THROUGH YOUR MIND WHEN HE WANTED TO
22 KNOW IF THERE WAS A BACK ROOM TO THE STORE?

23 A I WAS SCARED.

24 Q AND WHEN YOU GOT TO THE BACK ROOM DID -- WHAT TYPE
25 -- HE TIED YOU IN A CHAIR?

1 A NO, SIR, I WAS IN THE FLOOR.

2 MR. CARRAWAY: HE'S LEADING, YOUR HONOR.

3 THE COURT: ALL RIGHT, SIR. HOW WERE YOU TIED UP?

4 THE WITNESS: MY HANDS WERE BEHIND MY BACK. AND
5 MY FEET, YOU KNOW, KIND OF LIKE IN A FETAL POSITION KIND
6 OF LIKE ON THE FLOOR IN THE CORNER.

7 Q FACE DOWN?

8 A NO, I WAS -- I WAS SITTING UP. KIND OF LIKE, YOU KNOW,
9 WITH MY HANDS LIKE THIS. BUT HE DIDN'T TIE MY ARMS VERY
10 TIGHT. I WAS ABLE TO UNDO THEM. AND, AND LOCKED THE TANNING
11 ROOM BECAUSE I WAS SCARED HE WAS GOING TO COME BACK IN.

12 Q AND DID YOU HAVE ON A WATCH?

13 A YES.

14 Q YOU HAD ON A WATCH?

15 A YES, SIR.

16 Q AND WHAT TYPE OF WATCH WAS IT?

17 A IT WAS A MICKEY MOUSE WATCH.

18 Q OKAY. AND TO YOUR KNOWLEDGE, HAS THAT BEEN RECOVERED?

19 A NO, SIR.

20 Q WHEN HE WAS ABOUT TO LEAVE, WHAT DID -- WHAT DID HE
21 SAY?

22 A HE TOLD IF I SCREAMED, HE WAS GOING TO COME BACK IN
23 THERE AND GET ME.

24 Q COME BACK AND GET YOU?

25 A YES, SIR.

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1 MR. NEWMAN: I WANT -- I HAVE TWO PICTURES I WANT
2 TO OFFER, I THINK, WITHOUT OBJECTION.

3 THE COURT: ALL RIGHT.

4 (PICTURES MARKED AS STATE'S EXHIBIT NOS. 6 & 7 INTO
5 EVIDENCE.)

6 Q I'M GOING TO HAND YOU WHAT'S BEEN PUT INTO EVIDENCE
7 AS STATE'S EXHIBIT 6 AND 7. TELL US WHAT THOSE ARE
8 PICTURES OF, PLEASE.

9 A MY WRIST OF WHERE THE ROPE.

10 Q OKAY. ARE THOSE THE PICTURES? THE REDNESS IN THE
11 PICTURES, WHAT DO THEY SHOW?

12 A THE ROPE BURNS FROM THE ROPE.

13 THE COURT: A LITTLE LOUDER. I CAN'T HEAR YOU.

14 THE WITNESS: FROM---

15 THE COURT: SHOW YOU WHAT?

16 THE WITNESS: THE ROPE BURNS.

17 THE COURT: ALL RIGHT.

18 THE WITNESS: FROM THE ROPE.

19 Q THE ROPE BURNS?

20 A YES.

21 Q OKAY. NOW UM, WHEN MR. MCFADDEN CAME IN THE STORE
22 AND ROBBED YOU, HOW WAS HE DRESSED?

23 A HE HAD ON A HAT AND A COAT AND A PAIR OF JEANS.

24 Q OKAY. WHAT KIND OF COAT HE HAD ON?

25 A HE HAD ON THAT ONE.

1 Q PARDON ME?

2 A HE HAD ON THAT COAT.

3 Q THIS CHARLOTTE HORNET JACKET?

4 A YES, SIR.

5 Q AND THIS WAS THE TYPE OF JACKET THAT HE HAD ON?

6 A YES, SIR.

7 MR. NEWMAN: I'D LIKE TO OFFER THIS IN, INTO EVIDENCE.

8 THE COURT: LET, LET ME SEE. WHAT IS THAT. OBJECTION?

9 MR. CARRAWAY: NO OBJECTION, YOUR HONOR.

10 (JACKET MARKED AS STATE'S EXHIBIT NO. 5 INTO EVIDENCE.)

11 Q HOW WERE YOU ABLE TO GET FREE, MS. ROGERS?

12 A HE DIDN'T TIE MY HANDS VERY TIGHTLY, AND I WAS ABLE
13 TO UNDO MY HANDS. AND I WAS SCARED HE WAS STILL IN THE
14 STORE, SO I LOCKED THE DOOR TO THE TANNING BEDROOM AND
15 I STAYED IN THERE UNTIL I HEARD A CUSTOMER COME IN.

16 Q AND WHO WAS THAT CUSTOMER?

17 A MS. PATSY POWELL.

18 Q PATSY POWELL?

19 A YES.

20 Q OKAY. IS SHE IN---

21 A NO, SIR.

22 Q ---THE COURTROOM?

23 A SHE'S NOT HERE TODAY.

24 Q OKAY. AND THEN WHAT, WHAT DID Y'ALL DO?

25 A I WASN'T SURE WHO IT WAS AT FIRST UNTIL I HEARD HER

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1 CALLING OUT FOR SOMEBODY. SHE WAS RETURNING SOME MOVIES.
2 AND SO I CAME OUT THE BACK ROOM.

3 Q YOU CAME OUT AFTER YOU HEARD HER VOICE CALLING OUT?

4 A YES.

5 Q OKAY.

6 A AND UM, BRYAN FORTNER, THE BOSS, WAS OUT THERE. HE
7 CAME IN TO RETURN SOME MOVIES TOO, BUT I NEVER HEARD HIM
8 IN THE STORE. I DIDN'T KNOW HE WAS IN THERE. AND UM, HE WAS
9 STANDING UP AT THE COUNTER WHEN I CAME OUT TALKING TO
10 MS. POWELL. AND UM, I HAD THE ROPE IN MY HAND. AND I HAD
11 UNTIED MY FEET. AND I WAS UPSET. I COULDN'T TELL HIM
12 WHAT WAS WRONG AT FIRST. BUT THEN I WAS -- I CALMED DOWN --
13 I CALMED DOWN A LITTLE. HE CALLED THE POLICE FOR ME.

14 Q COULD YOU TELL WHEN MICHAEL MCFADDEN CAME IN,
15 WHETHER HE WAS WALKING OR DRIVING?

16 A NO, SIR. I BELIEVE -- I CAN'T REALLY SAY, YOU KNOW.

17 Q OKAY. AND UH, THE POLICE CAME AND YOU TOLD THEM
18 WHAT HAD HAPPENED.

19 A YES, SIR.

20 Q OKAY. AND WHEN IS THE NEXT TIME YOU HAD CONTACT WITH
21 THE POLICE DEPARTMENT?

22 A I BELIEVE IT WAS LIKE---

23 Q YOU NEED---

24 THE COURT: A LITTLE LOUDER NOW. EVERYBODY'S GOT
25 TO HEAR YOU. I CAN'T HEAR A THING.

1 THE WITNESS: WHEN THEY SHOWED ME THE LINEUP.

2 Q OKAY. AND APPROXIMATELY HOW MANY DAYS AFTER
3 THAT HAD IT BEEN?

4 A TWO DAYS.

5 Q OKAY. IN THE MEANTIME BEFORE THE POLICE ARRIVED---
6 MR. CARRAWAY: EXCUSE ME, I DIDN'T HEAR THE ANSWER.

7 THE WITNESS: TWO DAYS.

8 MR. NEWMAN: APPROXIMATELY TWO DAYS.

9 Q IN THE MEANTIME AFTER -- IN THE MEANTIME BETWEEN
10 THE TIME OF THE ROBBERY AND THE POLICE SHOWED YOU THE LINEUP,
11 HAD BEEN YOU BEEN CONTACTED BY TELEPHONE OR OTHERWISE
12 BY----

13 A YES, SIR. I DID NOT GO BACK TO WORK THE NEXT DAY.
14 BUT ON THE DAY I RETURNED TO WORK, HE CALLED ME. MICHAEL
15 MCFADDEN CALLED ME.

16 Q AND WHERE DID HE CALL YOU?

17 A HE CALLED ME AT WORK. I DON'T KNOW WHERE HE CALLED ME
18 FROM.

19 Q AND THAT DAY WHEN HE CALLED YOU, DID YOU RECOGNIZE
20 THE VOICES?

21 A NO, NOT AT FIRST.

22 Q OKAY.

23 A AND HE HAD SAID SOMETHING ABOUT MY FRIEND BEING
24 IN THERE. HE SAID, MY FAT FRIEND. AND I COULDN'T FIGURE
25 OUT WHO HE WAS TALKING ABOUT. AND THEN AFTER THE ARREST

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1 HE WAS TALKING ABOUT MS. POWELL, THE WOMAN THAT FOUND ME.
2 AND I DIDN'T QUITE UNDERSTAND THE CONVERSATION, SO I
3 HUNG UP ON HIM. I DIDN'T UNDERSTAND WHAT THEY WERE TALKING
4 ABOUT, BECAUSE IT WAS KIND OF BUSY. AND THEN HE CALLED
5 BACK. AND HE TOLD ME IT WOULD BE IN MY BEST INTEREST
6 IF I TALKED TO HIM BECAUSE HE HAD SOME STUFF THAT BELONGED
7 TO ME. AND THEN HE ASKED ME IF I REMEMBERED WHO HE WAS.
8 AND I DIDN'T REALLY SAY ANYTHING. I GOT KIND OF UPSET.
9 AND HE WANTED ME TO MEET HIM SOMEWHERE AND REIMBURSE
10 HIM FOR WHATEVER IT COST HIM.

11 AND I HUNG UP. AND MY MANAGER CAME IN, AND I GOT
12 HER TO CALL AT THE POLICE DEPARTMENT. AND FOR THEM
13 TO SEND SOMEBODY DOWN THERE, FOR ME TO TELL THEM WHAT
14 HAD HAPPENED.

15 Q AND WHEN YOU GOT THE PHONE CALL DID -- AFTER DURING
16 THE TIME THAT YOU DID TALK WITH HIM ABOUT HIM WANTING
17 YOU TO MEET HIM SOME PLACE, DID YOU RECOGNIZE THAT VOICE
18 AS BEING MICHAEL MCFADDEN THAT HAD ROBBED YOU?

19 A AFTER HE SAID HE HAD SOMETHING THAT BELONGED TO
20 ME, THEN I REALIZED WHO I WAS TALKING TO.

21 Q AND THE LINEUP THEN CAME, THE FIRST SET OF PICTURES
22 THE POLICE WANTED TO LOOK AT?

23 A YES, SIR.

24 Q AND WHEN -- WHERE DID THAT TAKE PLACE?

25 A AT THE POLICE DEPARTMENT.

1 Q OKAY. AND TELL THE JURY ABOUT THAT LINEUP AND
2 WHAT HAPPENED THERE.

3 A WELL, THEY SHOWED ME THE GROUP OF PICTURES. I, I
4 COULDN'T PICK IT OUT. I WASN'T SURE.

5 Q OKAY. AND TELL US WHAT YOU TOLD THE POLICE, AND HOW
6 YOU -- HOW YOU WERE FEELING THAT DAY AND SO FORTH.

7 A I WAS STILL A LITTLE SHAKEN UP AND NERVOUS
8 ABOUT EVERYTHING AND HAVING TO GO DOWN THERE. I JUST
9 COULDN'T PICK IT OUT. I WASN'T SURE.

10 Q OKAY. WHAT DID YOU TELL THE POLICE?

11 A THAT I WASN'T SURE IF IT WAS -- WHO, YOU KNOW, IF
12 IT WAS ONE OF THEM.

13 Q OKAY.

14 A FROM THE PICTURE.

15 Q AND THE -- WHAT HAPPENED NEXT AS FAR AS THE CASE
16 IS CONCERNED?

17 A WELL, I JUST CAME BACK TO WORK. AND IF THEY HAD
18 ANYTHING TO TELL ME, THEY WOULD COME BY THE STORE, OR
19 THEY WOULD CALL ME. I REALLY DIDN'T HEAR THAT MUCH FROM
20 THEM UNTIL THEY FOUND SOME OF MY JEWELRY, YOU KNOW.

21 Q AND WHO FOUND -- WHO MADE CONTACT WITH YOU ABOUT THE
22 JEWELRY? AND ARE YOU TALKING ABOUT THE JEWELRY THAT
23 YOU'VE NOW IDENTIFIED?

24 A YES, SIR.

25 Q OKAY.

80

1 A OFFICER GRAHAM AND OFFICER KIRBY, THEY WOULD COME
2 IN WHEN THEY FOUND IT. THEY BROUGHT IT TO ME. SHOWED
3 IT TO ME.

4 Q AND UM, AND THAT'S THE JURY THAT WE HAVE HERE IN
5 COURT TODAY?

6 A YES, SIR.

7 Q AND UH, DID THEY ASK YOU TO COME LOOK AT SOME ADDITIONAL
8 PICTURES?

9 A YES, SIR.

10 Q SOMETIME LATER?

11 A THEY WANTED, YOU KNOW, THEY WANTED ME TO LOOK AT SOME
12 MORE PICTURES.

13 Q OKAY. AND WHEN YOU WENT TO LOOK AT THAT SET OF PICTURES
14 WHERE, WHERE, WHERE WAS THAT AT, THE POLICE STATION
15 AGAIN?

16 A YES, SIR.

17 Q AND WERE YOU STILL UPSET?

18 A WELL, I REALLY TO THE POINT I WASN'T AS UPSET AS I
19 WAS. I WAS A LITTLE BIT MORE CLEAR ABOUT THINGS.

20 THE, THE THOUGHT OF IT WOULD, YOU KNOW, UPSET ME A LITTLE
21 BIT.

22 Q HAD YOU EVER BEEN ROBBED BEFORE?

23 A NO, SIR.

24 Q HAD YOU EVER GONE THROUGH THAT TRAUMA BEFORE IN
25 YOUR LIFE?

1 A NO, SIR.

2 Q HAD YOU EVER BEEN AS UPSET BEFORE?

3 A NO, SIR.

4 Q HAD ANYONE PULLED A KNIFE AND POINTED A KNIFE AT
5 YOU IN A THREATENING POSITION BEFORE?

6 A NO, SIR.

7 Q HAD ANYONE EVER TIED YOU UP BEFORE?

8 A NO, SIR.

9 Q THE -- AFTER SOME TIME HAD PASSED, YOU SAY THE
10 SECOND LINEUP, WERE YOU MORE CALM AT THAT THAN YOU
11 WERE BEFORE?

12 A YES, SIR.

13 Q AND WHEN YOU LOOK AT THAT SET OF PICTURES, DID THEY
14 IN ANY WAY SUGGEST ANYTHING TO YOU ABOUT THE PICTURES?

15 A NO, SIR.

16 Q OKAY. TELL THE JURY ABOUT THAT LINEUP.

17 A I GUESS IT JUST REALLY -- WHEN I LOOKED AT IT,
18 I KNEW IT WAS, AND I WAS ABLE TO PICK HIM OUT.

19 Q OKAY. AND THE FIRST TIME THEY HAD YOU LOOK AT THE
20 PICTURES, FROM THIS GROUP OF PICTURES, YOU COULDN'T --
21 WHAT DID YOU TELL THEM ABOUT THESE PICTURES?

22 A I TOLD THEM I DIDN'T KNOW. COULDN'T PICK IT OUT.

23 Q OKAY. AND THEN HE SHOWED YOU THESE PICTURES ON
24 THE 14TH THEN...

25 A THEN I WAS---

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1 THE COURT: MA'AM.
2 A ---ABLE---
3 THE WITNESS: I WAS ABLE TO PICK IT OUT.
4 Q OKAY. AND WHICH ONE DID YOU PICK?
5 A NUMBER THREE.
6 Q OKAY. AND THAT'S THE -- IS THAT THE PERSON THAT
7 ROBBED YOU?
8 A YES, SIR.
9 Q HAD MICHAEL MCFADDEN CONTACTED YOU ANYMORE?
10 A NO, SIR.
11 Q HAVE YOU SEEN HIM ANYMORE?
12 A NO, SIR.
13 Q HAD YOU SEEN HIM IN ANY OTHER COURT HEARINGS OR...
14 A YES, SIR.
15 Q PARDON ME?
16 A I'M NOT SURE WHICH -- WHAT IT WAS.
17 Q YOU SAW HIM AT THE PRELIMINARY HEARING.
18 A YES, SIR.
19 Q THAT HE HAD OVER IN THE COMPLEX NEXT DOOR.
20 A I BELIEVE IT WAS IN HERE.
21 Q IN THIS BUILDING.
22 A YES, SIR.
23 Q OKAY. HAS HE HAD CONTACTED YOU ANYMORE?
24 A NO, SIR.
25 Q DO YOU HAVE ANY QUESTION IN YOUR MIND THAT, THAT THIS

1 IS THE PERSON THAT ROBBED YOU?

2 A NO, SIR.

3 Q IS YOUR IDENTIFICATION OF HIM -- ARE YOU CERTAIN ABOUT
4 IT?

5 A YES, SIR.

6 Q ARE YOU POSITIVE ABOUT IT?

7 A POSITIVE.

8 Q ANY QUESTION WHATSOEVER IN YOUR MIND?

9 A NO, SIR.

10 Q DO YOU HAVE ANY REASON WHATSOEVER IN THE WORLD, TO
11 SAY ANYTHING OTHER THAN WHAT THE TRUTH IS?

12 A NO, SIR.

13 Q DO YOU HAVE ANY RESERVATIONS WHATSOEVER IN PUTTING YOUR
14 HAND ON THE BIBLE AND SAYING THIS IS THE PERSON THAT ROBBED
15 ME?

16 A NO, SIR. I AM TELLING THE TRUTH.

17 Q DO YOU THINK YOU COULD EVER FORGET THAT FACE?

18 A NO, SIR.

19 Q THE -- IS THERE ANYTHING AT ALL DIFFERENT ABOUT HIM,
20 AS HE SITS THERE TODAY, THAN THERE WAS WHEN HE CAME IN AND
21 ROBBED YOU WITH THE KNIFE?

22 A NO, SIR. JUST THE WAY HE'S DRESSED.

23 Q OTHER THAN HIS DRESS. UM, NOW HE -- YOU SAY HE
24 MENTIONED TO YOU THAT HE HAD BEEN IN THE STORE THE NIGHT
25 BEFORE AND ASKED ABOUT A, A MEMBERSHIP?

84

1 A YES, SIR.

2 Q UH, AFTER BEING ROBBED, DID YOU DISCUSS THAT FACT
3 WITH YOUR CO-WORKER?

4 A YES, SIR.

5 Q OKAY. AND DID YOU DISCUSS WITH HER THAT HE HAD IN
6 FACT BEEN IN THERE THE NIGHT BEFORE AS WELL?

7 A YES, SIR.

8 MR. NEWMAN: NOTHING FURTHER FOR THIS WITNESS, YOUR
9 HONOR.

10 THE COURT: ALL RIGHT, MR. CARRAWAY.

11 CROSS EXAMINATION BY MR. CARRAWAY:

12 Q WHEN YOU TALKED -- WHEN YOU TALKED ABOUT YOUR CO-WORKER
13 -- WELL, YOU GOT TOGETHER WITH YOUR CO-WORKER OR WHATEVER,
14 AND SHE SAID SHE HAD SEEN THIS PERSON EARLIER, RIGHT?

15 A YES, SIR.

16 Q WHEN DID THEY UM -- DID, DID THEY -- DID THEY BRING
17 YOU THE RINGS AND THE NECKLACE AND ALL THAT? IS THAT --
18 WHEN DID HE COME BRING YOU ALL THAT?

19 A I'M NOT QUITE SURE HOW LONG IT WAS AFTER THAT.

20 Q OKAY. HE BROUGHT YOU ALL THIS STUFF TOGETHER, THOUGH?

21 A NO, SIR, SEPARATE.

22 Q AND WHAT DID---

23 A HE BROUGHT ME THE RINGS FIRST.

24 Q ABOUT WHEN DID HE BRING YOU THE RINGS, WOULD YOU SAY?

25 A A COUPLE OF DAYS AFTERWARDS. IT WASN'T LONG.

1 Q WHEN DID HE BRING YOU THE NECKLACE?

2 A I GUESS IT HAD BEEN ABOUT A WEEK -- A WEEK AND A HALF
3 MAYBE.

4 Q OKAY. TELL ME WHAT HAPPENED WHEN YOU UM, -- WHEN YOU
5 PICKED THE PICTURES THE FIRST TIME?

6 A I JUST COULDN'T PICK IT OUT.

7 Q WHAT DID YOU DO, YOU JUST LOOKED AT THE PICTURES AND
8 SAID---

9 A I WASN'T SURE.

10 Q OKAY. ISN'T IT A FACT THAT YOU DID PICK SOMEBODY OUT
11 THE FIRST TIME?

12 A SIR?

13 Q ISN'T IT A FACT THAT YOU DID PICK SOMEBODY OUT THE
14 FIRST TIME?

15 A I WASN'T SURE ABOUT IT.

16 Q DIDN'T YOU PICK SOMEBODY OUT THE FIRST TIME?

17 A THE FIRST TIME?

18 Q DIDN'T YOU PICK A PICTURE THE FIRST TIME?

19 A I'M NOT SURE. I MIGHT HAVE. BUT I TOLD THEM---

20 Q YOU MIGHT HAVE.

21 A ---I WASN'T SURE.

22 Q ALL RIGHT. DID YOU NOT SAY AT THE PRELIMINARY HEARING
23 THAT THEY TOLD YOU, YOU PICKED THE WRONG PICTURE WHEN
24 YOU PICKED SOMEBODY OUT?

25 A YES, SIR, I WASN'T SURE.

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1 Q OKAY. YOU PICKED THE PICTURE, AND THEY TOLD YOU IT
2 WAS THE WRONG ONE. IS THAT RIGHT?

3 A YES, SIR.

4 Q THEY TOLD YOU, YOU PICKED THE WRONG PICTURE. ALL RIGHT.
5 HOW LONG DID YOU STUDY THESE PICTURES WHEN YOU LOOKED AT
6 THEM?

7 A WHICH ONE?

8 Q THE FIRST TIME. WELL, THIS IS THE FIRST ONE. HOW
9 LONG DID YOU STUDY THEM?

10 A TEN MINUTES.

11 Q TEN MINUTES? YOU LOOKED AT ALL OF THEM REAL CLOSE?

12 A YES, SIR.

13 Q AND YOU WERE TOO UPSET TO PICK ANY PICTURES THAT DAY,
14 RIGHT?

15 A YES, SIR.

16 Q OKAY. BUT YOU WERE EVEN MORE UPSET THE NIGHT THIS
17 HAPPENED, WEREN'T YOU?

18 A YES, SIR.

19 Q OKAY. AS A MATTER OF FACT, YOU WERE SO UPSET YOU
20 COULDN'T DIAL THE PHONE THOUGH, RIGHT? SOMEBODY ELSE
21 DIALED IT FOR YOU.

22 A YES, SIR.

23 Q IS THAT RIGHT? HAVE YOU EVER BEEN ANY -- IS THAT
24 THE SCAREDEST YOU HAVE EVER BEEN IN YOUR LIFE?

25 A YES, SIR.

1 Q AND YOU WERE SO SCARED TWO DAYS LATER, YOU WERE
2 STILL SO UPSET ABOUT IT, THAT YOU COULDN'T FOCUS TWO
3 DAYS LATER AND THINK ABOUT AND PICK ANY, ANYBODY OUT,
4 IS THAT RIGHT?

5 A YES, SIR.

6 Q OKAY. BUT YOU LOOKED AT THE PICTURES FOR A GOOD HARD
7 TEN MINUTES THAT DAY, RIGHT?

8 A YES, SIR.

9 Q OKAY. THEN YOU CAME BACK LATER AND YOU PICKED OUT --
10 THE ONLY PERSON THAT WAS IN THIS LINEUP. THIS -- THERE'S
11 NOT ANYBODY IN THIS LINEUP, IN THE FIRST LINEUP, THAT'S
12 IN THE SECOND LINEUP, EXCEPT MICHAEL MCFADDEN, ISN'T HE?
13 HE'S THE ONLY PERSON THERE.

14 A YES.

15 Q ALL RIGHT, HE'S THE ONLY---

16 A YES.

17 Q ---THE ONLY PERSON HERE. WHAT KIND OF CAP WAS HE
18 WEARING?

19 A I'M NOT SURE.

20 Q IS IT -- IS IT A BA -- I MEAN, IT WAS BASEBALL TYPE
21 GAP. PULL DOWN OR WHAT?

22 A IT WAS LIKE A BASEBALL GAP.

23 Q DID HE HAVE IT PULLED DOWN A LONG WAY, OR WHAT?

24 A IT WAS KIND OF PULLED DOWN.

25 Q KIND OF PULLED DOWN? ALL RIGHT. NOW HOW OLD DID

88

1 THE POLICE TELL YOU THE PICTURES -- THESE PICTURES WERE?
2 THESE PICTURES WERE?

3 A I DON'T REMEMBER THEM QUITE SAYING. HE JUST TOLD ME
4 THEY WERE A COUPLE OF YEARS OLD.

5 Q HE TOLD YOU THEY WERE COUPLE OF YEARS OLD. HE
6 TOLD YOU THEY WERE TWO YEARS OLD IS WHAT YOU TESTIFIED TO
7 AT THE PRELIMINARY HEARING, IS THAT NOT RIGHT?

8 A YES, SIR. I'M NOT SURE.

9 Q OKAY. CAN I PRESENT THESE -- CAN I SHOW THESE TO
10 THE JURY?

11 THE COURT: WELL, THE -- NO, SIR, UNLESS YOU WANT TO
12 INTRODUCE THEM INTO EVIDENCE.

13 MR. CARRAWAY: I'D LIKE TO INTRODUCE THEM INTO
14 EVIDENCE.

15 THE COURT: YOU GOT ANY OBJECTION TO IT?

16 MR. NEWMAN: NO, SIR, YOUR HONOR. WE, WE'D OFFER
17 THEM AS WELL.

18 THE COURT: ALL RIGHT.

19 MR. CARRAWAY: I'D LIKE TO INTRODUCE THESE---

20 THE COURT: ALL RIGHT---

21 MR. CARRAWAY: ---INTO EVIDENCE.

22 THE COURT: ---LET'S LET HER MARK THEM BOTH.

23 (PHOTOGRAPHS MARKED AS STATE'S EXHIBIT NO. 1 & 2 INTO
24 EVIDENCE.)

25 MR. CARRAWAY: I WOULD LIKE THE JURY TO KNOW THAT THE

1 FIRST ONES I'M PASSING AROUND, THAT IS THE FIRST SET THEY
2 SHOWED THERE. ALL RIGHT, AND YOU WILL NOTICE MICHAEL
3 MCFADDEN---

4 THE COURT: DON'T, DON'T, COMMENT, MR. CARRAWAY. JUST
5 SHOW THEM THE PICTURES. AND, AND SHOW THEM WHICH ONE IS
6 FIRST AND WHICH IS -- WHICH ONE IS THE SECOND.

7 MR. CARRAWAY: THAT'S THE SECOND ONE THAT WE'RE PASSING
8 AROUND.

9 THE COURT: ALL RIGHT. YOU ASK HER -- YOU CAN ASK
10 HER ANY QUESTIONS YOU'D LIKE TO ASK ONCE THEY LOOK.

11 BY MR. CARRAWAY:

12 Q HOW MANY PICTURES DID THEY SHOW YOU THE FIRST TIME?

13 A SIX.

14 Q HOW MANY PICTURES DID THEY SHOW YOU THE SECOND TIME?

15 A SIX.

16 Q HOW MANY PICTURES DID YOU TELL ME AT THE PRELIMINARY
17 HEARING THEY SHOWED YOU? DIDN'T YOU TELL ME THEY JUST
18 SHOWED YOU JUST THREE THE SECOND TIME?

19 A I DON'T REMEMBER.

20 Q LET ME REFRESH YOUR MEMORY.

21 A THEY MAY HAVE.

22 Q YOU SAID THEY MAY HAVE SHOWN YOU THREE.

23 A THEY MAY HAVE.

24 Q BUT YOU DON'T KNOW. HOW IS IT AT THE PRELIMINARY
25 HEARING THAT THERE WAS NO MENTION THAT THIS WAS A CHARLOTTE

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1 JACKET? ALL YOU MENTIONED WAS THE COLOR HERE. HE HAD THIS
2 CUT -- HE HAD THIS JACKET BUTTONED UP, RIGHT?

3 A YES, SIR.

4 Q ISN'T THIS IS A FACT, THAT YOU WERE SO EXCITED THAT
5 NIGHT, AND YOU WERE SO UPSET THAT NIGHT, THAT YOU COULDN'T
6 FOCUS ON ANYTHING, NO FACE, MUCH LESS THE NAME CHARLOTTE
7 ACROSS THIS. YOU DIDN'T EVEN KNOW IT WAS A CHARLOTTE
8 HORNETS JACKET. YOU DIDN'T STATE ANYTHING ABOUT WOULDN'T
9 THAT HAVE -- WOULDN'T THAT HAVE -- WHEN WE ASKED YOU TO
10 DESCRIBE, OR WHAT KIND OF JACKET HE HAD ON, ALL YOU SAID
11 WAS I THINK IT'S LIGHT BLUE. NOW WOULDN'T THAT --
12 HOW COME YOU COULDN'T TELL THAT IT WAS A CHARLOTTE
13 JACKET?

14 A I DON'T KNOW MUCH ABOUT BASKETBALL.

15 Q I DIDN'T KNOW ASK YOU ABOUT BASKETBALL. YOU KNOW
16 SOMETHING ABOUT CITIES. YOU HAVE HEARD OF CHARLOTTE,
17 HAVEN'T YOU?

18 A YES, SIR.

19 Q ALL RIGHT. BUT YOU DIDN'T MENTION. YOU DIDN'T
20 KNOW WHAT WAS WRITTEN ON THIS, DID YOU?

21 A NO, SIR.

22 Q BUT YET YOU'RE TRYING -- YOU, YOU WANT THIS JURY
23 TO BELIEVE THAT YOU GOT THIS PICTURE OF THIS GUY'S FACE
24 BURNED INTO YOUR MIND, RIGHT? BUT YOU---

25 A YES, SIR.

1 Q ---DON'T HAVE -- BUT YOU COULDN'T TELL ANYTHING ABOUT
2 HIM THE NEXT DAY. THE ONLY -- ISN'T IT A FACT THAT THE
3 ONLY WAY---

4 THE COURT: WELL, WAIT A MINUTE. WAIT A MINUTE, WAIT
5 A MINUTE. YOU COULDN'T TELL ANYTHING ABOUT THE NEXT DAY?

6 MR. CARRAWAY: YOU COULDN'T PICK HIM OUT OF A LINEUP
7 TWO DAYS LATER. IS THIS---

8 THE COURT: YES OR NO. WAIT A MINUTE, HOLD IT NOW.
9 YES OR NO. YOU COULDN'T PICK HIM OUT OF A LINEUP TWO
10 DAYS LATER? THAT'S THE QUESTION.

11 THE WITNESS: NO, SIR.

12 THE COURT: HE'S ASKED ABOUT -- I'M TRYING TO GET
13 HER ANSWER -- ASK ONE AT A TIME.

14 BY MR. CARRAWAY:

15 Q NOT ONLY COULD YOU NOT PICK HIM OUT OF THE LINEUP
16 THE NEXT DAY, TWO DAYS LATER, YOU PICKED SOMEONE ELSE
17 TWO DAYS LATER, DIDN'T YOU?

18 A YES.

19 Q AND THEN THE POLICE TOLD YOU NO, THAT'S NOT -- THAT
20 YOU PICKED THE WRONG ONE, RIGHT? DIDN'T THEY TELL YOU THAT?

21 A YES, SIR.

22 Q ISN'T IT A FACT ALSO AT THE PRELIMINARY, THAT YOU DIDN'T
23 EVEN KNOW WHETHER THERE WERE THREE PICTURES THEY SHOWED
24 YOU THE SECOND TIME, OR SIX? ISN'T THAT RIGHT?

25 A YES, SIR.

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1 Q AND YOU DIDN'T KNOW THAT CHARLOTTE WASN'T WRITTEN
2 ON THE FRONT OF THIS.

3 A NO, SIR.

4 Q AND ISN'T IT A FACT THAT THE ONLY WAY YOU WERE ABLE
5 TO PICK HIM OUT OF THE LINEUP THE SECOND TIME, IS AFTER
6 STUDYING THOSE PICTURES FOR TEN MINUTES THE FIRST TIME,
7 HE WAS THE ONLY PERSON IN THE SECOND LINEUP THAT WAS
8 IN THE FIRST LINEUP. NOW ISN'T THAT RIGHT? YOU DON'T
9 REALLY REMEMBER ANYTHING -- YOU DON'T REMEMBER ANYTHING ABOUT
10 THAT.

11 MR. NEWMAN: JUDGE, I OBJECT TO THIS.

12 THE COURT: YES, SIR.

13 Q ISN'T THAT RIGHT?

14 A NO, SIR.

15 THE COURT: WAIT A MINUTE. WAIT A MINUTE. WAIT MINUTE.
16 HO. OBJECTION.

17 MR. NEWMAN: I OBJECT TO THIS LONG DRAWN OUT SENTENCES
18 HE'S GIVING, WITHOUT ASKING HER ANY QUESTIONS AND MAKING
19 SOME---

20 THE COURT: THE QUESTION IS---

21 MR. NEWMAN: ---KIND OF SPEECH.

22 THE COURT: ---THIS. THE QUESTION HE ASKED YOU IS
23 THIS. YOU STUDIED THE FIRST LINEUP FOR TEN MINUTES I
24 BELIEVE YOU SAID.

25 THE WITNESS: YES, SIR.

1 THE COURT: AND YOU SAY -- AND HE SAYS THAT THE ONLY
2 REASON -- HIS QUESTION TO YOU IS, THE ONLY REASON THAT
3 YOU WERE ABLE TO PICK OUT THE PICTURE FROM -- DURING THE
4 SECOND LINEUP, WAS BECAUSE YOU HAD STUDIED THE PICTURE
5 IN THE FIRST LINEUP AND THAT WAS THE ONLY PICTURE WHICH
6 APPEARED TWICE.

7 THE WITNESS: NO, SIR.

8 BY MR. CARRAWAY:

9 Q SO YOU ARE SO SURE ABOUT THIS SECOND LINEUP, RIGHT?

10 A YES.

11 Q BUT YOU DON'T KNOW HOW MANY PICTURES WERE IN THE
12 SECOND LINEUP, DO YOU? YOU DON'T KNOW WHETHER THERE
13 IS THREE OR SIX IN IT?

14 A NO, SIR.

15 Q YOU DIDN'T KNOW WHETHER THERE WERE THREE OR SIX. EXCUSE
16 ME?

17 A NO, SIR.

18 THE COURT: BUT WHAT? YOU SAID.

19 Q YOU DON'T -- YOU DIDN'T KNOW---

20 THE COURT: NO, NO. WAIT A MINUTE. WHAT DID YOU
21 SAY?

22 THE WITNESS: I WASN'T SURE.

23 Q YOU WEREN'T SURE WHETHER THERE WERE THREE OR SIX
24 PICTURES IN THE SECOND LINEUP.

25 A THAT'S RIGHT.

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1 Q YOU SAID HE PULLED THIS ROPE OUT OF THE POCKET
2 OF WHAT?

3 A HIS COAT.

4 Q OUT OF HIS COAT. AND WAS IT -- WAS IT A BIG BULKY
5 COAT HE HAD ON?

6 A NO, SIR.

7 Q IT WASN'T A BIG BULKY COAT?

8 A NO, SIR.

9 Q HOW DID THE COAT FIT HIM? DID IT FIT HIM JUST RIGHT,
10 DID YOU SAY?

11 THE COURT: YOUR ANSWER WAS YES?

12 THE WITNESS: YES.

13 THE COURT: ALL RIGHT.

14 Q TELL ME SOMETHING ABOUT THE KNIFE. I THINK YOU
15 TESTIFIED EARLIER YOU DIDN'T REMEMBER MUCH ABOUT THE
16 KNIFE?

17 A YES, SIR.

18 Q IS THAT CORRECT, YOU DON'T REMEMBER TOO MUCH ABOUT THE
19 KNIFE? YOU DON'T REMEMBER WHAT IT LOOKED LIKE?

20 A THE KNIFE?

21 Q YEAH.

22 A NO, SIR.

23 Q OKAY. HOW BIG WAS IT? WAS IT BIG OR SMALL OR AVERAGE,
24 OR WHAT?

25 A AVERAGE SIZE, I SUPPOSE. ALL I SAW REALLY WAS THE

1 BLADE.

2 Q CAN YOU TELL ME ANYTHING MORE ABOUT IT?

3 A NO, SIR.

4 Q AND I THINK I ASKED YOU ALSO AT THE PRELIMINARY HEARING.
5 YOU WERE ASKED, DO YOU RECOGNIZE ANY PICTURES IN THE SECOND
6 LINEUP THAT, THAT WERE IN THE FIRST LINEUP, RIGHT? IF THE
7 SA -- IF THE SAME PERSON YOU PICKED OUT OF THE FIRST LINEUP
8 WAS IN THE SECOND LINEUP, IS THAT RIGHT?

9 THE COURT: THE QUE -- THE QUESTION -- THE QUESTION IS,
10 HE SAID AT THE PRELIMINARY HEARING. DO YOU RECALL THAT?

11 THE WITNESS: YES, SIR.

12 THE COURT: AT THE PRELIMINARY HEARING HE ASKED YOU
13 IF YOU PICKED, PICKED OUT A PICTURE IN THE SECOND LINEUP
14 THAT WAS IN THE FIRST LINEUP. DID HE ASK YOU THAT AT
15 THE PRELIMINARY HEARING?

16 THE WITNESS: I DON'T REMEMBER.

17 Q DIDN'T YOU TELL ME AT THE PRELIMINARY HEARING THAT
18 YOU BELIEVE THE PERSON YOU PICKED OUT OF THE FIRST LINEUP
19 IS ONE OF THE THREE PICTURES IN THE SECOND LINEUP?

20 A COULD YOU REPEAT IT?

21 Q I ASKED YOU IF THEY SHOWED YOU AN UPDATED PICTURE
22 OF THE PERSON YOU PICKED OUT OF THE FIRST LINEUP. AND YOU
23 SAID I BELIEVE THEY DID. YOU SAID THE SAME PERSON YOU PICKED
24 OUT OF THE FIRST LINEUP YOU THOUGHT WAS IN THE SECOND LINEUP.

25 A I MIGHT HAVE.

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1 MR. CARRAWAY: I DON'T HAVE ANY FURTHER QUESTIONS.

2 THE COURT: ALL RIGHT.

3 MR. CARRAWAY: THANK YOU, MA'AM.

4 REDIRECT EXAMINATION BY MR. NEWMAN:

5 Q DO YOU HAVE ANY DOUBT IN YOUR MIND THAT THIS IS THE
6 PERSON THAT ROBBED YOU AT CLEMMONS VIDEO ON OCTOBER 28TH?

7 A NO, SIR.

8 Q IS THIS THE PERSON?

9 A YES, SIR.

10 Q ARE YOU CERTAIN ABOUT IT?

11 A YES, SIR.

12 Q ARE YOU POSITIVE ABOUT IT?

13 A YES, SIR.

14 Q DO YOU SWEAR TO THE BIBLE THAT HE IS THE PERSON?

15 A YES, SIR.

16 Q ARE YOU TELLING THE TRUTH?

17 A YES, SIR.

18 MR. NEWMAN: THANK YOU.

19 MR. CARRAWAY: I DON'T HAVE ANY FURTHER QUESTIONS.

20 THE COURT: ALL RIGHT, YOU MAY STEP DOWN. LADIES
21 AND GENTLEMEN, WE ARE GOING TO STOP AT THIS TIME. IT'S
22 A QUARTER TILL SIX, 20 TILL SIX. LET'S START IN THE
23 MORNING AT 9:30. I'LL ASK YOU LADIES AND GENTLEMEN, PLEASE,
24 TO REPORT DIRECTLY TO THE JURY WHERE YOU SPENT A LITTLE
25 WHILE THIS AFTERNOON. IF Y'ALL BE HERE BY 9:30, I'M

1 GOING TO -- I'LL BE ON THIS BENCH AT 9:30 IN THE MORNING,
2 AND BRING YOU RIGHT OUT, AND WE'LL GET STARTED AND FINISH
3 THIS CASE UP QUICKLY.

4 WE'VE DONE PRETTY WELL THIS AFTERNOON AND WE'LL FINISH
5 IT TOMORROW I'M SURE, SOMETIME. DO NOT DISCUSS THE CASE
6 WITH EACH OTHER WHEN YOU LEAVE. DON'T DISCUSS IT WHILE
7 YOU'RE IN THE JURY ROOM. DON'T -- PLEASE DON'T DISCUSS
8 IT WITH ANYONE AT HOME. DON'T EVEN TELL THEM WHAT YOU'RE
9 DOING. JUST TELL THEM YOU'RE INVOLVED IN A TRIAL, AND
10 Y'ALL LET THEM KNOW WHEN YOU FINISH WITH IT TOMORROW.
11 BECAUSE, WHAT WILL HAPPEN IS, SOMEBODY -- THEY'LL TELL
12 YOU SOMETHING ABOUT THE CASE. AND THEY DON'T KNOW ANYTHING
13 ABOUT IT. Y'ALL ARE THE JURORS WHO ARE GOING TO DECIDE
14 THIS AND NOT ANYBODY AT HOME, OR OUT THERE ON THE STREET.

15 SO JUST HAVE A GOOD AFTERNOON, AND I'LL SEE YOU
16 FIRST THING IN THE MORNING. AND WE'LL FINISH UP
17 THE CASE. THANK YOU. ANYTHING BEFORE I RELEASE THE
18 JURY NOW, FROM THE STATE?

19 MR. NEWMAN: YOUR HONOR, I HAVE SOMETHING TO TAKE
20 UP AFTER THE JURY IS GONE.

21 THE COURT: ALL RIGHT. OKAY. THE DEFENDANT, ANYTHING
22 FOR THE JURY?

23 MR. CARRAWAY: NONE, YOUR HONOR.

24 THE COURT: ALL RIGHT, THANK YOU VERY MUCH, LADIES
25 AND GENTLEMEN.

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1 (THEREUPON, THE JURY IS DISMISSED AT 5:35 P.M.)

2 MR. NEWMAN: YOUR HONOR, I JUST WANTED TO BE SURE
3 AND CHECK MY WITNESS, WITNESS LIST AND MAKE SURE THAT ALL
4 -- THE WITNESSES ARE HERE. AND THEY ARE AWARE THAT THEY'RE
5 UNDER SUBPOENA, AND THAT THEY'RE REQUIRED TO BE HERE TOMORROW
6 MORNING---

7 THE COURT: ALL RIGHT, SIR.

8 MR. NEWMAN: ---AT NINE O'CLOCK.

9 THE COURT: ALL RIGHT, SIR.

10 MR. NEWMAN: WE HAVE FRANCIS WAGNER IS HERE. CYNTHIA
11 BROWN. SANDRA PENDERGRASS AND SIMONE HASELDON, WHICH WE
12 WANT THE SHERIFF -- I MEAN THE OFFICER TO BE SURE THEY'RE
13 HERE. AND PATSY POWELL IS NOT HERE AT THIS TIME. JUST THE
14 WITNESSES THAT ARE -- THAT ARE HERE, YOUR HONOR, I JUST
15 WANT THEM TO KNOW THAT THEY ARE UNDER SUBPOENA, THAT THEY
16 MUST BE HERE AT NINE---

17 THE COURT: YOU NEED BE HERE AT 9:30 IN THE MORNING.

18 MR. NEWMAN: 9:15 IN THE MORNING.

19 THE COURT: ALL RIGHT, SIR.

20 (THEREUPON, THE TRIAL COMMENCES AT 9:30 A.M., TUESDAY,
21 APRIL 7, 1992.)

22 THE COURT: ALL RIGHT, MR. NEWMAN, CALL YOUR NEXT
23 WITNESS, PLEASE.

24 MR. NEWMAN: WE CALL MICHAEL GRAHAM. MICHAEL---

25 THE COURT: KIRBY.

1 MR. NEWMAN: ---KIRBY.

2 (THEREUPON THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE
3 OF THE JURY.)

4 MICHAEL CHALMERS KIRBY, BEING
5 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MR. NEWMAN:

7 Q YOUR FULL NAME, PLEASE.

8 A MICHAEL CHALMERS KIRBY.

9 Q AND WHERE DO YOU WORK?

10 A KINGSTREE POLICE DEPARTMENT.

11 Q AND WHAT'S YOUR JOB AT THE KINGSTREE POLICE DEPARTMENT?

12 A I'M A DETECTIVE.

13 Q AND HOW LONG HAVE YOU WORKED IN LAW ENFORCEMENT?

14 A ABOUT THREE AND A HALF YEARS.

15 Q DID YOU PARTICIPATE IN INVESTIGATING A CASE INVOLVING
16 THE ROBBERY OF CLEMMONS VIDEO, AND THE ARREST OF MICHAEL
17 DION MCFADDEN FOR ARMED ROBBERY, KIDNAPPING, AND POSSESSION
18 OF WEAPON DURING A VIOLENT CRIME?

19 A YES, SIR.

20 Q AND WHEN DID YOU FIRST GET INVOLVED IN THIS CASE?

21 A I FIRST GOT INVOLVED THE NIGHT OF THE INCIDENT. I
22 WAS AT HOME. I GOT A CALL FROM MY DISPATCHER TELLING US --
23 TELLING WE HAD AN ARMED ROBBERY AT CLEMMONS VIDEO, AND
24 THEY HADN'T CAUGHT THE SUSPECT YET AND NEEDED SOME HELP.
25 I CAME OUT THAT NIGHT.

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1 Q AND YOU GOT OUT THAT NIGHT. WHICH OTHER POLICE OFFICERS
2 WERE YOU WORKING ALONG WITH?

3 A DETECTIVE GRAHAM MAINLY. THE PATROL OFFICERS WERE
4 OUT DOING OUR WORK MAINLY.

5 Q OKAY. WERE SOME OFFICERS FROM THE SHERIFF'S DEPARTMENT
6 ALSO HELPING?

7 A I BELIEVE THERE WERE SOME OUT IN THE AREA. I'M, I'M --
8 I'M NOT SURE. I ARRIVED PROBABLY ABOUT 20 MINUTES AFTER
9 EVERYBODY ELSE DID.

10 Q THE -- WERE YOU ABLE TO UM GET A DESCRIPTION OF THE
11 PERSON WHO HAD DONE THE ROBBERY?

12 A YES, SIR. I OBTAINED THE DESCRIPTION AND STUFF, FROM
13 DETECTIVE GRAHAM ONCE I ARRIVED ON THE SCENE.

14 Q OKAY. AND WERE YOU ABLE TO FIND ANYTHING -- FIND HIM
15 THAT NIGHT, OR ANYONE THAT NIGHT?

16 A NO, SIR, WE DIDN'T FIND ANYBODY THAT NIGHT.

17 Q OKAY..

18 A ANY PERSON.

19 Q SO THE NEXT DAY, WHAT DID YOU DO?

20 A THE NEXT DAY -- WELL, WE STAYED OUT A PRETTY GOOD WHILE
21 THAT NIGHT. AND THEN THE NEXT AFTERNOON WE WERE BACK OUT
22 AGAIN WORKING ON IT. I WAS IN THE AREA PROBABLY ABOUT AN
23 EIGHTH OF A MILE OR A QUARTER OF A MILE FROM THE CRIME
24 SCENE. BEHIND BELKS IN THIS BIG OPEN FIELD BACK THERE.
25 AND BEHIND WARD'S GROCERY BACK IN THE ROCKTOWN AREA. I

1 FOUND A JACKET THAT FAIRLY MATCHED THE DESCRIPTION OF, OF
2 WHAT THE SUSPECT WAS SUPPOSED TO BE WEARING.

3 Q OKAY. AND STATE'S EXHIBIT NUMBER 5, YOU CAN IDENTIFY
4 IT?

5 A YES, SIR.

6 Q OKAY. WHAT IS IT?

7 A THAT'S THE JACKET I FOUND ON THE EDGE OF A -- OF A
8 FIELD BEHIND, BEHIND WARD'S GROCERIES.

9 Q OKAY. YOU FOUND IT THE DAY AFTER?

10 A YES, SIR. ABOUT FOUR O'CLOCK THAT AFTERNOON.

11 Q AND UH, KIND OF TELL THE JURY WHERE YOU FOUND THE
12 JACKET.

13 A THE JACKET WAS LAYING ON THE EDGE OF A FIELD, THAT IS,
14 BETWEEN THE CRIME SCENE AND WHERE MR. MCFADDEN'S PARENTS
15 LIVED. SORT OF IN THE -- IN THE DIRECT ROUTE OF THAT AREA.

16 Q OKAY.

17 A AND IT'S PROBABLY -- FROM THE CRIME SCENE, PROBABLY
18 AN EIGHTH OF A MILE FROM THE CRIME SCENE.

19 Q AND THE ROUTE FROM CLEMMONS VIDEO TO WHERE THE JACKET
20 WAS FOUND, WAS THAT A ROUTE ALONG 52 UP TO WARD'S AND THEN
21 BACK IN ROCKTOWN OR---

22 A WELL, THERE'S,---

23 Q ---BEHIND BELKS?

24 A ---THERE'S SEVERAL HOUSING ROUTES AND EVERYTHING. BUT
25 IF YOU WENT THAT WAY, YOU COULD GO IN THE BEHIND THE A & P.

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1 YOU WOULD LEAVE CLEMMONS VIDEO WHICH IS RIGHT ON 52.

2 Q UH-HUH. (AFFIRMATIVE.)

3 A AND GO BEHIND THE A & P, BEHIND BELKS, AND AROUND INTO
4 ROCKTOWN WHERE THE WATER TOWER IS.

5 Q SO IT WASN'T FOUND ON THE STREET?

6 A NO, SIR.

7 Q IT WAS -- IT WAS SOME PATH OR ROUTE BACK BEHIND THE
8 STORES.

9 A IT WAS BACK BEHIND -- IT WAS CLOSE TO A STREET, BUT
10 NOT, NOT 52. IT WAS CLOSE TO ONE OF THE CROSS STREETS
11 IN THERE.

12 Q OKAY. AND NOW THE AREA THAT MCFADDEN'S MOTHER -- FAMILY
13 LIVES IN, IS THAT THE SAME AREA THAT THE HOLE IN THE ONE
14 CLUB, OR CLUB HUGO---

15 A YES, SIR,---

16 Q ---IS LOCATED?

17 A ---THAT'S ALL, ALL RIGHT IN THE SAME AREA. PROBABLY
18 3 OR 400 YARDS DISTANCE.

19 Q AND UH, BY THIS TIME THAT NEXT DAY, HAD YOU ALSO
20 TALKED WITH OTHER PEOPLE, AND DID -- AND BY THAT TIME,
21 DID YOU COME UP WITH A NAME OF A SUSPECT?

22 A YES, SIR. WE HAD TALKED WITH SEVERAL PEOPLE. WE
23 HAD TALKED TO MR. WARD UP AT WARD'S GROCERIES. WE HAD
24 TALKED WITH UH, I THINK HER NAME'S -- I THINK MS.

25 PENDERGRASS, I BELIEVE, OVER IN FRIERSON HOMES, I BELIEVE,

1 THAT AFTERNOON. WE, WE HAD TALKED WITH SEVERAL PEOPLE.
2 AND FROM TALKING WITH THOSE PEOPLE, WE CAME UP WITH THE
3 NAME OF MICHAEL MCFADDEN. THEY HAD -- THEY HAD SEEN HIM
4 BEFORE THE CRIME WITH THOSE CLOTHES AND THAT -- AND FITTING
5 THAT DESCRIPTION AND IN THE AREA. UH, FROM TALKING WITH
6 MS., MS. PENDERGRASS UH---

7 Q DON'T TELL US WHAT SHE SAID, BUT WHAT SHE TOLD YOU.

8 A SHE SAID THAT HE STAYED THERE THAT NIGHT AFTER THE
9 CRIME TOOK PLACE. AND THAT'S THE AREA THAT WE RECOVERED
10 SOME OF THE RINGS THAT WERE IDENTIFIED BY, BY THE VICTIM
11 AS BEING HER RINGS. WE ALSO IDENTIFIED A -- RECOVERED
12 AN ID CARD FROM THAT RESIDENCE THAT BELONGED TO MR. MCFADDEN.

13 Q OKAY. AND DID YOU TALK WITH OTHER EMPLOYEES AT THE
14 CLEMMONS VIDEO OTHER THAN THE YOUNG LADY THAT WAS ROBBED?

15 A YES, SIR. I BELIEVE IT WAS THE NEXT DAY WE TALKED
16 WITH UH -- WITH UH, SIMONE. I -- HASELDON, I BELIEVE
17 IT IS.

18 Q OKAY. THIS YOUNG LADY RIGHT HERE?

19 A YES, SIR.

20 Q OKAY. AND AFTER TALKING WITH ALL OF THEM, AND GETTING
21 THE NAME OF THE SUSPECT, MICHAEL MCFADDEN, AND ALL, DID
22 YOU DO ANYTHING IN REGARD TO A PHOTO LINEUP INVOLVING
23 MS. HASELDON?

24 A YES, SIR. ONCE, ONCE WE HAD A NAME OF A SUSPECT,
25 WE OBTAINED SOME PICTURES TO PREPARE A PHOTO LINEUP TO

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1 SHOW TO WHO, WHOEVER NEEDED TO BE SHOWN. TO SEE IF
2 WE COULD GET A POSITIVE IDENTIFICATION ON THE -- ON THE
3 SUSPECT.

4 Q AND TELL US ABOUT THE PHOTO LINEUP INVOLVING MS.
5 HASELDON.

6 A WE WENT DOWN -- I BELIEVE IT WAS DOWN AT CLEMMONS
7 VIDEO. WE WENT DOWN TO, TO THE STORE. MS. HASELDON
8 HAD SEEN THE SUSPECT THE NIGHT BEFORE. HE APPARENTLY
9 CAME IN AND ASKED ABOUT A MEMBERSHIP, HOW TO OBTAIN A
10 MEMBERSHIP. SO WE WERE PRETTY SURE THAT IT WAS THE
11 SAME GUY, AND THAT SHE HAD SEEN HIM THE NIGHT BEFORE.
12 WE WALKED IN WITH THE LINEUP. SHE WAS STANDING BEHIND
13 THE COUNTER. I LAID THE LINEUP ON THE COUNTER. ASKED
14 HER WHICH GUY HAD COME IN THERE THE NIGHT BEFORE. AND SHE
15 IMMEDIATELY PICKED, PICKED OUT THE PICTURE.

16 Q OKAY. SO STATE'S EXHIBIT NUMBER 2, IS THAT A -- TELL
17 US WHAT -- WHETHER THAT'S THE LINEUP THAT SHE WAS SHOWN.

18 A YES, SIR. THAT'S THE FIRST LINEUP THAT WE MADE IN THIS
19 CASE.

20 Q OKAY. AND MS. HASELDON PICKED HIM, THE DEFENDANT,
21 FROM THAT LINEUP?

22 A YES, SIR. SHE WAS STANDING BEHIND THE COUNTER. AND
23 I WALKED IN AND LAID IT UP, AND ASKED HER WHICH ONE OF
24 THOSE GUYS WAS IN THERE THE NIGHT. THE ONE THEY WERE
25 TALKING ABOUT TRYING TO OBTAIN THE MEMBERSHIP CARD. AND

1 SHE IMMEDIATELY, IMMEDIATELY POINTED RIGHT TO THE PICTURE.

2 Q OKAY. NOW UM, YOU'VE HEARD SOME TESTIMONY ABOUT THE
3 LINEUP THAT -- THE FIRST LINEUP MS. ROGERS WAS SHOWN.

4 CAN YOU TELL US ABOUT THAT LINEUP?

5 A YES, SIR. SHE WAS -- SHE WAS SHOWN THE SAME LINEUP.
6 THERE WAS NO DIFFERENCE IN IT, NO CHANGE IN IT.

7 Q OKAY. IT WAS AT DIFFERENT TIMES AND DIFFERENT---

8 A IT---

9 Q ---PLACES?

10 A ---WAS A DIFFERENT TIME AND DIFFERENT PLACE. YES, SIR.
11 SHE UM -- SHE CAME DOWN TO THE POLICE DEPARTMENT. AND
12 BASICALLY, I DID THE SAME THING AS I DID MS. HASELDON.
13 SHE WAS SITTING THERE AT THE TABLE, AND I WALKED UP AND
14 LAID IT DOWN. AND ASKED HER IF, IF ONE OF THOSE GUYS
15 WAS THE GUY THAT ROBBED HER. AND SHE COULDN'T PICK OUT
16 DEFINITELY WHO IT WAS. SHE THOUGHT IT WAS ONE GUY, BUT
17 SHE WASN'T SURE. SO SHE, SHE NEVER COULD MAKE A DEFINITE
18 YES OR A DEFINITE NO. SHE JUST WASN'T SURE.

19 Q OKAY. AND WHAT WAS HER STATE OF MIND AT THAT TIME, IF
20 YOU COULD TELL?

21 A SHE WAS SCARED. SHE WAS NERVOUS AND SHE WAS SCARED.
22 SHE WAS NERVOUS AND SCARED FOR THREE OR FOUR DAYS AFTERWARDS.
23 EVERY TIME WE'D TALK WITH HER, SHE WAS -- SHE WAS STILL
24 SCARED.

25 Q UM, WHAT'S THE NEXT THING HAPPENED OF SUBSTANCE,

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1 CONCERNING YOUR INVESTIGATION OF THE CASE?

2 A WELL, AFTER RECOVERY OF SOME OF THE JEWELRY, I REALLY
3 DIDN'T DO MUCH MORE ON THE CASE UNTIL THE -- UNTIL THE
4 NIGHT OF THE ARREST.

5 Q OKAY. TELL US ABOUT THAT.

6 A WELL WE HAVE BEEN RECEIVING PHONE CALLS. BECAUSE WE,
7 WE HAD PUT THE WORD OUT ON THE STREET TO EVERYBODY WE
8 KNEW THAT, THAT WE WERE LOOKING FOR MCFADDEN, THAT WE
9 HAD TO FIND HIM. AND UH, YOU KNOW, SO WE WERE RECEIVING
10 PHONE CALLS LEFT AND RIGHT. AND WE WERE RUNNING HERE
11 AND RUNNING THERE. I BELIEVE IT WAS ABOUT SIX OR
12 SEVEN O'CLOCK. I'M, I'M NOT REAL SURE ABOUT THE TIME.
13 I KNOW IT WAS DARK ON, I BELIEVE, ON THE 13TH.

14 WE RECEIVED A PHONE CALL THAT HE WAS DOWN, I THINK
15 IT'S CALLED MS. LILLIE'S CLUB. RIGHT ON THE CORNER.
16 IF YOU ARE GOING 52 NORTH, AND TAKE A LEFT RIGHT BY
17 WARD'S GROCERIES AND GO TO THE STOP SIGN, THERE'S A LITTLE
18 CLUB SITTING ON THE RIGHT. IT'S A LITTLE WHITE BLOCK CLUB.
19 WE GOT A CALL THAT HE WAS SITTING THERE. WE LEFT THE
20 POLICE DEPARTMENT AND CALLED THE SHERIFF'S DEPARTMENT
21 TO HAVE SOME PEOPLE MEET US OUT THERE. AND WENT OUT THERE
22 TO THE SCENE, WHERE HE WAS SITTING.

23 HE WAS SITTING AT A TABLE UP AGAINST THE WALL KIND OF
24 IN THE CORNER. HE WAS SITTING, SITTING DOWN IN THE LEFT
25 HAND SIDE. AND WE WALKED UP AND KIND OF BLOCKED HIM IN,

1 BECAUSE WE DIDN'T -- HE HAD BEEN RUNNING FROM US, YOU KNOW,
2 FOR TWO WEEKS. SO WE DIDN'T KNOW WHETHER HE WAS GOING TO
3 RUN THEN OR NOT. ASKED HIM FOR SOME IDENTIFICATION. HE
4 REACHED OVER TO THE GUY THAT WAS SITTING AT THE END OF
5 THE TABLE, AND TOOK SOME ID OUT OF A JACKET THAT WAS --
6 THAT HE WAS WEARING. AND HANDED US THE ID. AND THE ID
7 WAS DERRICK CONYERS.

8 Q HE, HE, HE TOOK THE ID OUT OF SOMEONE ELSE'S JACKET?

9 A YES, SIR.

10 Q A JACKET THAT SOMEONE ELSE HAD ON?

11 A THE, THE OTHER SUBJECT SITTING THERE HAD THAT JACKET
12 ON.

13 Q OKAY.

14 A HE REACHED IN -- REACHED IN. IT WAS A LEATHER JACKET.
15 I BELIEVE IT WAS FROM AN INSIDE POCKET. HE REACHED IN AND
16 PULLED OUT THE ID FROM THE INSIDE POCKET THAT THE GUY --
17 THE JACKET THE GUY WAS WEARING AND HANDED IT TO US. AND
18 THE ID WAS AN ID OF DERRICK CONYERS. NEITHER ONE OF THOSE
19 GENTLEMEN WERE DERRICK CONYERS. MYSELF AND DETECTIVE
20 GRAHAM BOTH KNOW HIM. I MEAN, NEITHER ONE OF THEM WERE
21 HIM.

22 Q OKAY. DID, DID MICHAEL MCFADDEN CLAIM TO BE
23 DERRICK CONYERS?

24 A I DON'T KNOW WHETHER EV -- WHETHER HE EVER CLAIMED
25 IT OR NOT. I KNOW HE HANDED THE ID. I DON'T REMEMBER

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1 WHETHER HE EVER SAID, YOU KNOW, THAT'S, THAT'S ME. UH,
2 I DON'T REMEMBER THAT. I KNOW HE HANDED US THE ID.

3 Q OKAY. AND UH, YOU SAY THAT YOU KNEW DERRICK.

4 A YES, SIR. WELL, WE KNEW THAT NEITHER OF THEM --
5 WELL, WE ALSO KNEW THAT THAT WAS MR. MCFADDEN, BECAUSE WE
6 WERE STANDING THERE HOLDING A PICTURE OF HIM. LOOKING
7 AT HIM AND LOOKING AT THE PICTURE, YOU KNOW. SO WE KNEW
8 THAT'S WHO WE WERE LOOKING FOR.

9 Q OKAY. CONCERNING THIS NAME, ABDULLAH ALHAGG, OR, OR
10 WHATEVER THAT PARTICULAR NAME. THROUGH THE COURSE OF YOUR
11 INVESTIGATION, DID YOU FIND OUT WHERE THAT NAME CAME
12 IN TO PLAY AS FAR AS THIS DEFENDANT?

13 A YES, SIR. BUT I STILL CAN'T PRONOUNCE IT. IT'S
14 BILAL ABDULLAH ALHAGG, OR SOMETHING LIKE THAT. I QUESTIONED
15 HIM ABOUT THAT AT THE JAIL. ABOUT THE ID CARD. BECAUSE IT
16 HAS HIS PICTURE ON IT, AND THAT NAME. AND HE STATED TO
17 THE EFFECT THAT, THAT HE HAD CHANGED HIS RELIGION AND NAME.
18 NOW I DON'T KNOW IF HE CHANGED HIS NAME OFFICIALLY OR
19 NOT. BUT IT'S ON THAT ID CARD.

20 Q OKAY. THAT ID CARD, WHERE WAS THAT GOTTEN FROM?

21 A THIS ID CARD WAS FOUND AT HOMES.
22 I BELIEVE THAT'S MS. PENDERGRASS' RESIDENCE. THAT'S --
23 IT WAS FOUND THE SAME NIGHT THAT WE FOUND THE RINGS, THAT
24 MS. ROGERS IDENTIFIED AS HERS.

25 MR. NEWMAN: OKAY. JUDGE, I DON'T THINK WE OFFERED

1 THIS, OR PUT THIS IN YESTERDAY.

2 THE COURT: ALL RIGHT, SIR. OBJECTION TO THAT? ALL
3 RIGHT. WITHOUT OBJECTION.

4 (ID MARKED AS STATE'S EXHIBIT NO. 3 INTO EVIDENCE.)

5 Q CONCERNING ANY FINGERPRINT EVIDENCE, OR ANYTHING THAT
6 MIGHT HAVE BEEN AT THE SCENE, DID THE - WAS AN EFFORT
7 MADE TO OBTAIN ANY?

8 A YES, SIR.

9 Q AND WERE YOU ABLE TO GET ANY?

10 A YES, SIR. WE PULLED A PRETTY GOOD BIT OF PRINTS.
11 LIEUTENANT HANNAH FROM SLED CAME OUT THAT NIGHT AND PROCESSED
12 THE CRIME SCENE. WE PULLED PRINTS FROM SEVERAL DIFFERENT
13 LOCATIONS. AND UM, JUST NONE OF THEM MATCHED UP. THE PLACES
14 WE PULLED FROM, WERE LIKE THE FRONT DOOR, WHERE PEOPLE PUSHED
15 THE DOOR. AND PULLED THE---

16 Q OKAY.

17 A ---DOOR TO OPEN IT AND SHUT IT. BUT, AND THERE WERE
18 SO MANY PRINTS, AND THEY WERE SMEARED SO BAD, YOU KNOW,
19 FROM THE TRAFFIC IN AND OUT. AND THE PRINTS WE GOT OFF THE
20 COUNTER WERE SMEARED. AND THERE WAS JUST SO MANY PEOPLE
21 IN AND OUT OF THE STORE THAT'S IT'S, IT'S REALLY HARD
22 TO GET---

23 Q IS THERE---

24 A ---RESULTS.

25 Q ---ANYTHING BASED ON YOUR EXPERIENCE AS A LAW

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1 ENFORCEMENT OFFICER, IS THERE ANYTHING UNCOMMON ABOUT NOT
2 BEING ABLE TO, TO OBTAIN PRINTS FROM A PUBLIC PLACE?

3 A NO, SIR, THERE'S NOTHING UNCOMMON ABOUT IT. THEY'RE
4 NOT AS EASY TO OBTAIN AS MOST PEOPLE THINK. THEY'RE,
5 THEY'RE PRETTY TRICKY, SOME OF THEM.

6 Q AND UM, CONCERNING THE PHOTO LINEUP INVOLVING THE
7 CURRENT NOVEMBER THE 14TH, DATE OF THE 14TH, WERE YOU
8 THERE WHEN MS. ROGERS WENT TO -- WAS SHOWN THAT LINEUP?

9 A YES, SIR, I, I WAS PRESENT AT BOTH LINEUPS.

10 Q OKAY. TELL US ABOUT THAT ONE.

11 A JUST LIKE IN THE FIRST LINEUP, WE OBTAINED SIX
12 MORE PICTURES. AND WHAT WE DID IS, WE TRIED TO GET PICTURES
13 OF SUSPECTS THAT LOOKED FAIRLY ALIKE. I MEAN, YOU KNOW, THE
14 SAME, SAME SEX, SAME SEX. CLOSE TO THE SAME SKIN TONE.
15 WE TRY AND HAVE NOTHING THAT REALLY STANDS OUT. THAT'S HARD
16 TO DO SOMETIMES, BUT WE, WE TRY AND PULL A BUNCH OF PHOTOS
17 THAT EVERYBODY LOOKS FAIRLY COMMON.

18

19 UH, ON THE SECOND LINEUP AS SAME AS THE FIRST, JUST
20 WALKED UP AND LAY IT THERE IN FRONT OF HER, AND ASK HER,
21 YOU KNOW, WAS ONE OF THOSE SIX GUYS THE GUYS THAT ROBBED
22 HER. AND SHE IMMEDIATELY POINTED TO NUMBER, NUMBER 3.
23 SHE SAID, YOU KNOW, THAT'S HIM.

24 Q WAS SHE AS SHOOK UP, OR WHAT WAS HER DEMEANOR AT THAT
25 TIME?

1 A SHE, SHE WAS STILL NERVOUS. I MEAN, SHE WASN'T LIKE
2 THE DAY AFTER. BECAUSE I, I THINK IT UPSET HER REAL, YOU
3 KNOW, PRETTY BAD. BECAUSE SHE, SHE WASN'T AS BAD AS THE
4 DAY AFTER. BUT SHE, YOU KNOW, SHE'S BEEN NERVOUS EVERY
5 TIME WE'VE TALKED WITH HER. IF SHE WAS AT THE STORE WORKING,
6 AND WE WALKED IN AND TOLD HER A PIECE OF NEWS, SHE GOT
7 NERVOUS. I MEAN, THAT'S -- YOU KNOW, HOW, HOW BAD IT
8 EFFECTED HER.

9 MR. NEWMAN: I HAVE NO OTHER QUESTIONS OF THIS
10 WITNESS.

11 CROSS EXAMINATION BY MR. CARRAWAY:

12 Q WELL, THAT'S ASTOUNDING. AND MS. HASELDON, WHEN
13 SHE LOOKED AT THE PHOTOS SHE WENT RIGHT TO IT AND PICKED
14 IT RIGHT OUT, DIDN'T SHE? AND THEN MS. ROGERS, SHE LOOKED
15 AT IT, AND PICKED IT RIGHT OUT. WENT RIGHT TO IT. THAT
16 HAPPENS ALL THE TIME WITH Y'ALL, DOESN'T IT? EVERYBODY
17 ALWAYS PICKS----

18 THE COURT: WAIT A MINUTE. WAIT A MINUTE---

19 MR. CARRAWAY: ---THEM RIGHT OUT---

20 THE COURT: WAIT A MINUTE. WAIT A MINUTE---

21 MR. CARRAWAY: ---ISN'T THAT TRUE?

22 THE COURT: WAIT A MINUTE. THAT HAPPENS ALL THE
23 TIME, DOESN'T IT?

24 THE WITNESS: NO, SIR.

25 Q EVERY SINGLE TIME.

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- 1 A NO, SIR, IT DOESN'T HAPPEN EVERY TIME.
- 2 Q YOU -- ARE YOU TELLING ME YOU HAVE BEEN IN THIS
- 3 COURTROOM BEFORE ON AN ID, AND YOU'VE SAID ONE TIME THAT
- 4 SOMEBODY DIDN'T GO RIGHT TO THAT PICTURE?
- 5 A I SAID IT EARLIER. THE FIRST LINEUP SHE COULDN'T GO
- 6 RIGHT TO IT.
- 7 Q WELL, THAT'S BECAUSE SHE PICKED THE WRONG PICTURE
- 8 THE FIRST---
- 9 A NO, SHE DIDN'T---
- 10 Q ---TIME TOO.
- 11 A ---PICK ANY PICTURE.
- 12 Q YOUR TESTIMONY IS, THAT SHE DIDN'T PICK ANY PICTURE
- 13 THE FIRST TIME?
- 14 A THAT'S RIGHT. SHE WASN'T SURE OF ANY OF THEM.
- 15 Q DID SHE PICK A PICTURE THE FIRST TIME?
- 16 A NO, SIR, SHE WASN'T SURE ABOUT ANY OF THEM.
- 17 Q I DIDN'T ASK YOU THAT. I SAID DID SHE PICK A PICTURE
- 18 THE FIRST TIME.
- 19 A NO, SIR.
- 20 Q ALL RIGHT. YOUR TESTIMONY IS, SHE DIDN'T PICK A PICTURE
- 21 OUT.
- 22 A THAT'S RIGHT.
- 23 Q IS THAT RIGHT, OKAY. AND YOUR TESTIMONY IS, THAT NOBODY
- 24 TOLD HER YOU PICKED THE WRONG PICTURE THE FIRST TIME. IS
- 25 THAT RIGHT?

1 A NOBODY SAID THAT.

2 Q NOBODY SAID THAT.

3 A NOBODY---

4 Q SHE'S---

5 A ---SAID THAT.

6 Q ---MISTAKEN. OKAY. NOW HOW DID THIS COME UP ABOUT
7 MS. HASELDON HERE? HOW DID THIS COME UP ABOUT HER?
8 HOW DID -- HOW DID -- HOW DID Y'ALL PRESENT THIS TO HER,
9 THAT SHE WAS SUPPOSED TO BE PICKING SOMEBODY OUT OF A
10 LINEUP?

11

12 A BECAUSE SHE HAD APPARENTLY SEEN THE SAME GUY THE NIGHT
13 BEFORE WHEN HE CAME IN AND ASKED FOR AN APPLICATION FOR A
14 MEMBERSHIP TO THE VIDEO CLUB. AND WE WERE PRETTY SURE THAT
15 THE GUY THE NIGHT BEFORE WAS THE SAME GUY THAT ROBBED THEM.
16 BECAUSE I GUESS UH---

17 Q NO, NOT WHAT YOU GUESS. WHAT YOU KNOW.

18 A THAT'S WHAT I KNOW.

19 Q WHAT DO YOU KNOW?

20 A THAT SHE APPARENTLY---

21 Q THAT'S NOT WHAT I -- I WANT WHAT YOU KNOW. NOT WHAT'S
22 -- WHAT'S APPARENT. HOW'S SHE SUPPOSED TO KNOW THIS?

23 A I DON'T KNOW HOW SHE KNEW IT. I KNOW---

24 Q OKAY.

25 A ---I TOOK THE LINEUP---

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1 Q THAT'S IT. YOU'RE---

2 A ---IN.

3 Q ---YOU'VE ANSWERED. YOU---

4 MR. NEWMAN: JUDGE,----

5 Q ---DON'T KNOW.

6 MR. NEWMAN: ---I OBJECT TO THIS.

7 THE COURT: WAIT A MINUTE NOW, HE CAN EXPLAIN IT.

8 ASK HIM THE QUESTION, MR. CARRAWAY. AND HE CAN ANSWER

9 IT YES OR NO. AND THEN HE CAN EXPLAIN---

10 Q HOW---

11 THE COURT: ---IT.

12 Q ---DID THIS COME ABOUT THAT SHE'S SUPPOSED TO BE PICKING
13 A PICTURE OUT?

14 A THAT'S WHAT I WAS TRYING TO EXPLAIN. THIS---

15 Q JUST TELL ME WHAT YOU KNOW.

16 A I KNOW THAT MS. HASELDON HAD SAID THAT THE SAME GUY
17 CAME IN EARLIER, THE NIGHT BEFORE. ASKED FOR AN APPLICATION
18 FOR A MEMBERSHIP TO THE VIDEO CLUB. IT BEING THE SAME GUY,
19 WE LET HER LOOK AT THE PHOTO LINEUP ALSO, TO SEE IF SHE COULD
20 IDENTIFY THE GUY.

21 Q HOW DOES SHE KNOW IT WAS THE SAME GUY? SHE WASN'T
22 THERE THE NEXT NIGHT?

23 A I DON'T KNOW.

24 Q OKAY. IT'S JUST IMPOSSIBLE FOR HER TO KNOW, ISN'T IT?
25 WHAT DO YOU MEAN THE SAME GUY? SHE TOLD YOU THE SAME

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1 GUY CAME IN THE NIGHT BEFORE AND ASKED FOR A MEMBERSHIP.
2 SHE WASN'T THERE THE NEXT NIGHT. SHE DOESN'T KNOW WHO
3 CAME IN THE NEXT NIGHT. ISN'T THAT RIGHT?

4 A I DON'T KNOW.

5 Q WHAT DO YOU MEAN YOU DON'T KNOW?

6 A I DON'T KNOW.

7 THE COURT: WAIT A MINUTE NOW, MR. CARRAWAY. WAIT A
8 MINUTE, YOU NEED TO CALM DOWN A LITTLE BIT. HE SAYS HE
9 DOESN'T KNOW.

10 Q SHE WASN'T THERE THE SECOND NIGHT, RIGHT?

11 A NO, SIR.

12 Q OKAY. SHE WAS THERE THE FIRST NIGHT.

13 A YES, SIR.

14 Q YET YOU JUST TESTIFIED THAT SHE SAID THAT THE GUY
15 WHO CAME IN AND ASKED FOR A MEMBERSHIP, WAS THE SAME GUY
16 THAT CAME IN THE NEXT NIGHT. SO ISN'T IT IMPOSSIBLE FOR
17 HER TO KNOW THAT?

18 A NO, SIR. WHAT I WAS TRYING TO SAY, WAS APPARENTLY
19 SHE KNEW, THAT THEY HAD DISCUSSED THE MATTER BETWEEN
20 THEMSELVES. AND THEY HAD CAME TO THE CONCLUSION THAT
21 IT WAS THE SAME GUY. SO WE LET HER LOOK AT THE PHOTO
22 LINEUP.

23 Q ONLY MS. ROGERS WAS THERE THE SECOND NIGHT, IS THAT
24 RIGHT?

25 A YES, SIR.

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1 Q MS. ROGERS. MS. HASELDON WAS NOT THERE THE SECOND
2 NIGHT, RIGHT?

3 A CORRECT.

4 Q OKAY. WHAT ABOUT THESE FINGERPRINTS? WE -- ALL, A
5 BUNCH OF SMUDGES ALL OVER THE PLACE. EVERYTHING IS
6 SMUDGED.

7 A YES, SIR.

8 Q BECAUSE PEOPLE ARE ALL OVER THE STORE, IS THAT RIGHT?
9 PEOPLE ARE PUTTING THEIR HANDS ALL OVER THE PLACE, IS THAT---

10 A YES, SIR. IT'S---

11 Q ---RIGHT?

12 A ---IT'S A PUBLIC BUSINESS. I MEAN PEOPLE---

13 Q IT'S A PUBLIC---

14 A ---WALK IN.

15 Q ---BUSINESS. THAT BACK ROOM THAT SHE WAS LOCKED --
16 THAT SHE WAS PUT IN, IS NOT A PUBLIC PLACE, IS IT?
17 PEOPLE DON'T GO BACK AND FORTH IN THERE, DO THEY?

18 A WE DIDN'T GET ANY FINGERPRINTS OUT OF THERE. THERE'S
19 A TANNING BED ALSO THAT PEOPLE DO GO IN---

20 Q YEAH, THERE'S A DOORKNOB BACK THERE TOO, ISN'T IT?

21 A YES, SIR.

22 Q ALL RIGHT. AND SHE'S TESTIFIED, DIDN'T SHE -- AND SHE,
23 AND, AND IT'S BEEN STATED THAT HE CLOSED THAT DOOR ON HER
24 BACK THERE, RIGHT?

25

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1 A I BELIEVE SHE STATED SHE CLOSED THE DOOR AND LOCKED
2 IT.

3 Q SHE STATED SHE LOCKED IT. HE CLOSED IT.

4 MR. NEWMAN: YOUR HONOR, OBJECTION.

5 THE COURT: YES, SUSTAINED.

6 Q ALL RIGHT, SIR. NOTHING -- HOW MANY PEOPLE GO IN
7 THE CASH REGISTER? DID YOU TAKE ANYTHING OFF THE
8 CASH REGISTER?

9 A YES, SIR,---

10 Q DID YOU GET---

11 A --- WE, WE DUSTED---

12 Q ---ANY PRINTS OFF OF THERE?

13 A ---THE WHOLE BUS -- THE WHOLE BUSINESS.

14 Q BUT YOU DIDN'T COME UP ON THE CASH REGISTER. SHE
15 HAD BEEN WORKING THERE ALL DAY. NOW YOU'RE SAYING
16 EVERYBODY IS IN THERE. HOW MANY PEOPLE WERE GETTING
17 THEIR HANDS IN THE CASH REGISTER?

18 A I DON'T KNOW.

19 Q ALL RIGHT. BUT YOU'RE TESTIMONY WAS, THAT WHOEVER
20 WENT IN THERE AND ROBBED THIS PLACE, TOOK MONEY OUT OF THE
21 CASH REGISTER, RIGHT?

22 MR. NEWMAN: OBJECTION, YOUR HONOR, THAT'S NOT THE
23 TESTIMONY. SHE SAID SHE OPENED THE CASH REGISTER.

24 THE COURT: YES, SIR.

25 Q ANY FINGERPRINTS ANYWHERE AROUND THE CASH REGISTER

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- 1 OF, OF ANYONE ELSE?
- 2 A THERE WAS SOME PRINTS LEFT. NONE OF THE PRINTS MATCHED
- 3 THE SUSPECT.
- 4 Q OKAY. AND ONE OF THE FINGERPRINT IN THE BACK ROOM BACK
- 5 THERE, DOORKNOB AND ALL THIS BACK THERE, AND THE CHAIR SHE
- 6 WAS TIED UP IN AND ALL THIS. Y'ALL DIDN'T GET ANY
- 7 FINGERPRINTS OFF OF THAT, DID YOU?
- 8 A THE ONES---
- 9 Q OF THIS PERSON.
- 10 A THE ONES WE LIFTED THAT WERE CLASSIFIABLE, DID NOT MATCH
- 11 THE SUSPECT.
- 12 Q OKAY. SO YOU, YOU HAD ALL THESE PLACES HERE. AND THE
- 13 DOOR THERE ALSO. AND ALL THESE PLACES THERE, YOU DIDN'T
- 14 GET ANY FINGERPRINTS OF THIS PERSON, DID YOU?
- 15 A NO, SIR. WHEN YOU TURN THE DOORKNOB, YOU SMEAR
- 16 FINGERPRINTS.
- 17 Q WHEN YOU TURN A DOORKNOB YOU SMEAR, SMEAR FINGERPRINTS.
- 18 A YES, SIR.
- 19 Q OKAY. IT HAPPENS -- YOU CAN'T -- IT'S IMPOSSIBLE TO
- 20 LIFT THEM OFF A DOORKNOB. IS THAT WHAT YOU'RE SAYING?
- 21 A NO, I DIDN'T SAY IT WAS IMPOSSIBLE. BUT THEY WERE
- 22 SMEARED. BECAUSE WHEN YOU TURN A DOORKNOB, YOU SMEAR
- 23 FINGERPRINTS NINE TIMES OUT OF TEN.
- 24 Q BUT YOU LIFTED PRINTS BACK THERE OUT OF---
- 25 A WE LIFTED A---

1 Q ---THAT BACK ROOM, DIDN'T YOU?

2 A ---LOT OF SMEARS, AND WE LIFTED SOME PRINTS.

3 Q OKAY. AND NONE OF THEM WERE HIS, IS THAT RIGHT?

4 A THAT'S RIGHT.

5 Q OKAY. AND YOUR TESTIMONY ABOUT THIS JACKET, THIS IS
6 THE VERY NEXT DAY, YOU WENT OVER AND PICKED THIS UP OFF
7 A FENCE, IS THAT RIGHT? ABOUT FOUR O'CLOCK THE AFTERNOON
8 AFTER THIS ROBBERY OCCURRED, IS THAT RIGHT?

9 A YES, SIR, THE 29TH. FOUR O'CLOCK P.M.

10 MR. CARRAWAY: OKAY. I DON'T HAVE ANY FURTHER
11 QUESTIONS, THANK YOU.

12 MR. NEWMAN: NOTHING FURTHER.

13 THE COURT: STEP DOWN.

14 MR. NEWMAN: WE CALL MS. HASELDON.

15 SIMONE HASELDON, BEING
16 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY MR. NEWMAN:

18 Q YOUR FULL NAME, PLEASE?

19 A SIMONE ANN HASELDON.

20 Q AND, MS. HASELDON, HOW OLD ARE YOU?

21 A 18.

22 Q AND WHERE DO YOU WORK?

23 A I DON'T WORK NOW.

24 Q OKAY. WHAT DO YOU DO NOW?

25 A I GO TO SCHOOL.

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- 1 Q AND WHERE DO YOU GO TO SCHOOL?
- 2 A WILLIAMSBURG TECHNICAL COLLEGE.
- 3 Q OKAY. ON OCTOBER THE 28TH WERE YOU EMPLOYED AT
- 4 CLEMMONS VIDEO?
- 5 A YES, I WAS.
- 6 Q AND WHAT DID YOU DO THERE?
- 7 A I WAS A CASHIER. A CLERK.
- 8 Q AND DO YOU GENERALLY WORK ALONE?
- 9 A MOST OF THE TIME, YES.
- 10 Q WERE YOU WORKING -- ON OCTOBER 27TH?
- 11 A YES, I WAS.
- 12 Q AND WERE YOU WORKING DURING THE DAY OR DURING THE
- 13 NIGHT?
- 14 A IT WAS AT NIGHT.
- 15 Q OKAY. AND WHILE WORKING AT NIGHT, DID YOU HAVE ANY
- 16 OCCASION TO ENCOUNTER MICHAEL MCFADDEN?
- 17 A YES. HE CAME IN THAT NIGHT, AND ASKED FOR A MEMBERSHIP.
- 18 AND I TOLD HIM I HAD TO HAVE A SOUTH CAROLINA DRIVER'S
- 19 LICENSE, OR AN ID. AND HE WALKED AROUND THE STORE
- 20 AND LOOKED AROUND, AND THEN HE LEFT.
- 21 Q NOW THE NIGHT OF THE 27TH WHEN HE CAME IN, WERE THERE --
- 22 WERE THERE OTHER PEOPLE IN THE STORE AT THAT TIME?
- 23 A THERE WAS, I THINK, ABOUT THREE OR FOUR PEOPLE STANDING
- 24 IN THE BACK CORNER JUST TALKING AT THE VERY BACK OF THE
- 25 STORE.

1 Q JUST KIND OF TELL US WHAT HE -- WHAT HE DID WHILE HE WAS
2 IN THERE ON THAT NIGHT. JUST KIND OF TELL US---

3 A HE WALKED---

4 Q ---WHAT HE DID.

5 A ---AROUND. AND HE LOOKED LIKE HE WAS LOOKING AT THE
6 MOVIE. AND THEN HE CAME UP TO THE FRONT DESK. AFTER
7 I HAD PUT THE MOVIES OUT ON THE SHELF, HE CAME TO THE FRONT.
8 AND HE ASKED ABOUT A MEMBERSHIP. AND HE WAS JUST LOOKING
9 AROUND. JUST LIKE ANYBODY ELSE ASKING FOR A MEMBERSHIP.

10 Q OKAY. THE OTHER PEOPLE THAT WERE IN THE STORE,
11 WERE THEY STILL THERE DURING THE ENTIRE PERIOD OF TIME
12 THAT HE WAS THERE?

13 A YES.

14 Q AND TELL US, IF YOU CAN, HOW WAS HE DRESSED THAT NIGHT?

15 A HE HAD ON THE JACKET THAT THEY FOUND. HE HAD ON A
16 JACKET JUST LIKE THAT. AND HE HAD ON A DARK HAT. AND HE --
17 I THINK HE HAD ON JEANS AND TENNIS SHOES.

18 Q AND THE JACKET THAT HE HAD ON, DESCRIBE IT, TELL US
19 ABOUT IT.

20 A IT WAS A CHARLOTTE HORNETS JACKET. IT WAS BRIGHT
21 BLUE. AND IT HAD WHITE ON IT. AND IT HAD A BEE ON THE
22 BACK OF IT FOR SOMETHING.

23 Q YOU SAID A, A BEE. YOU MEAN A BEE AS IN A SYMBOL OF A
24 BEE?

25 A YEAH.

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1 Q OKAY. A HORNET?

2 A YEAH.

3 Q AND DOES THIS APPEAR TO BE THE JACKET THAT HE HAD ON?

4 A YES, SIR, IT DOES.

5 Q AND THE BEE IS ON WHAT PART OF IT?

6 A IT'S ON -- IT WAS ON THE BACK SHOULDER PART OF IT.

7 Q YOU MEAN THE SLEEVE.

8 A YES.

9 Q THE FOLLOWING DAY THAT THE STORE WAS ROBBED, WERE YOU

10 WORKING THAT DAY?

11 A NO, I WAS NOT.

12 Q OKAY. AND WHEN WERE YOU NOTIFIED ABOUT THE FACTS

13 ABOUT THE ROBBERY?

14 A I WAS CALLED THAT NIGHT, AND TOLD ABOUT IT.

15 Q AND WHO CALLED YOU?

16 A MARY GOSS CALLED ME.

17 Q THE UH -- YOU -- WERE YOU ASKED WITH THE -- DID THE

18 POLICE TALK ABOUT IT, ABOUT THE FACTS OF THE ROBBERY

19 AT SOME POINT AND TIME?

20 A NOT THAT NIGHT THEY DIDN'T.

21 Q OKAY.

22 A LATER THEY DID. AFTER I WENT IN THE NEXT DAY AND TALKED

23 TO MELISSA, AND SHE TOLD ME WHAT HAD HAPPENED.

24 Q UH-HUH. (AFFIRMATIVE.)

25 A AND I TOLD HER -- SHE DESCRIBED TO HIM WHAT HE HAD ON.

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1 AND I SAID WELL, I HAD A GUY COME IN LAST NIGHT WHO LOOKED
2 JUST LIKE THE WAY YOU DESCRIBE ASKING FOR A MEMBERSHIP.
3 I SAID BUT THERE PEOPLE IN THERE, YOU KNOW, WHENEVER
4 HE CAME IN.

5 Q OKAY. WAS THERE ANY DISCUSSION THAT AFTERNOON ABOUT
6 THE JACKET?

7 A UH-HUH. (AFFIRMATIVE.)

8 Q OKAY.

9 A WE TALKED ABOUT THE JACKET. WE TALKED ABOUT HOW HE
10 LOOKED. EVERYTHING HE HAD ON. AND THAT'S WHEN I TOLD HER
11 SOMEBODY WHO LOOKED JUST LIKE THAT, CAME IN THE NIGHT
12 BEFORE.

13 Q OKAY. WERE YOU ASKED AT SOME POINT TO IDENTIFY THIS
14 JACKET BEFORE NOW?

15 A UH-HUH. (AFFIRMATIVE.)

16 Q OKAY. WHEN WAS THAT?

17 A I DON'T KNOW THE DATE. THEY BROUGHT IT INTO THE STORE
18 THE AFTERNOON THEY FOUND IT. AND THEY ASKED IF THAT WAS
19 -- IF THAT WAS THE ONE HE HAD HAD ON. AND IT WAS THE SAME
20 ONE HE HAD ON WHENEVER HE CAME IN ON THE 27TH.

21 Q OKAY. AND WERE YOU ASKED AT SOME POINT TO LOOK AT
22 SOME PICTURES?

23 A UH-HUH. (AFFIRMATIVE.) AFTER WE DISCUSSED IT, AND
24 WE THOUGHT IT MIGHT BE THE SAME PERSON, THEY CAME IN
25 WITH ABOUT SIX PHOTOGRAPHS AND ASKED ME TO PICK THE

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1 ONE IT WAS THAT CAME IN THE NIGHT BEFORE.

2 Q OKAY. AND WERE YOU ABLE TO DO THAT?

3 A UH-HUH. (AFFIRMATIVE.)

4 Q OKAY. WOULD YOU LOOK AT THIS STATE'S EXHIBIT NUMBER
5 2, AND TELL US WHETHER OR NOT THAT APPEARED TO BE
6 THE LINEUP THAT YOU WERE SHOWN?

7 A YES, SIR, THE SAME ONE I WAS SHOWN.

8 Q AND UH, WHICH PERSON WERE YOU ABLE TO PICK?

9 A THE MIDDLE ONE ON THE TOP.

10 Q OKAY. THIS ONE?

11 A YES.

12 MR. NEWMAN: YOUR HONOR, LET THE RECORD REFLECT THAT
13 SHE PICKS THE PHOTO OF THE DEFENDANT.

14 THE COURT: ALL RIGHT, SIR.

15 MR. NEWMAN: ANSWER MR. CARRAWAY'S QUESTIONS.

16 CROSS EXAMINATION BY MR. CARRAWAY:

17 Q HOW LONG DID YOU WORK FOR CLEMMONS VIDEO?

18 A UM, ANYWHERE FROM FOUR TO SIX MONTHS. I'M NOT SURE.

19 Q ALL RIGHT, UP UNTIL THAT TIME?

20 A UH-HUH. (AFFIRMATIVE.)

21 Q AND BEFORE THAT YOU HAD WORKED---

22 A UH-HUH. (AFFIRMATIVE.)

23 Q ---HOW MANY MONTHS UP UNTIL THEN? FOUR TO SIX MONTHS
24 UP UNTIL THAT TIME?

25 A I THINK ABOUT THREE.

1 Q YOU WORKED ABOUT THREE MONTHS UP UNTIL THAT TIME. AND
2 WHEN YOU WERE IN THE STORE YOU WERE THERE. YOU WERE ONLY ONE
3 GIRL IN THERE BY THEMSELVES THE WHOLE TIME?

4 A UH-HUH. (AFFIRMATIVE.)

5 Q AND HOW MANY PEOPLE WOULD YOU SAY YOU SAW -- WOULD
6 YOU SAY THAT YOU SAW A DAY DURING THAT TIME?

7 A DURING THE WHOLE DAY?

8 Q DURING EACH DAY WHEN YOU WORKED THERE. WHAT'S THE
9 AVERAGE A DAY, THAT YOU SEE IN THERE A DAY?

10 A MAYBE 25 ON---

11 Q MAYBE---

12 A ----AN AVERAGE.

13 Q ---25 AND A HALF?

14 A UH-HUH. (AFFIRMATIVE.)

15 Q WELL, IS IT FAIR TO SAY THAT UM, WELL, -- WHEN'S THE --
16 YOU SAW THIS, AND YOU SHOWED THIS HOW MANY DAYS AFTER?

17 A I THINK IT WAS TWO OR THREE DAYS AFTERWARDS. EITHER
18 THAT MONDAY OR TUESDAY.

19 Q OKAY. AND OF COURSE, THEY NEVER -- ONCE YOU, YOU -- YOU
20 JUST LIKE -- YOU JUST PICKED HIM RIGHT OUT. YOU JUST WENT---

21 A IT WAS THE GUY---

22 Q ----RIGHT TO HIM.

23 A ---WHO CAME IN THAT SATURDAY.

24 Q OKAY. BUT YOU PICKED HIM RIGHT OUT.

25 A UH-HUH. (AFFIRMATIVE.)

1 Q YOU SAID -- YOU SAID SOMETHING ABOUT A GUY THAT
2 CAME IN THAT SATURDAY.
3 A WELL, THE 27TH.
4 Q OKAY.
5 A AND HE ASKED FOR A MEMBERSHIP. WE DON'T HAVE VERY
6 MANY PEOPLE THAT ASK FOR A MEMBERSHIP.
7 Q OKAY. I THINK THE 27TH IS, IS A SUNDAY.
8 A OKAY. WELL, IT WAS---
9 Q OKAY.
10 A ---THE 27TH.
11 Q OKAY. SO -- NO, IT WAS THE 26TH YOU MEAN. HE CAME
12 IN ON A SUNDAY OR A SATURDAY?
13 A ON THE 27TH.
14 Q OKAY. SO HE CAME IN ON A SUNDAY,---
15 A UH-HUH. (AFFIRMATIVE.)
16 Q ---IS THAT RIGHT? OKAY. NOW YOU -- OKAY. AND YOU
17 HAVEN'T SEEN THIS LINEUP SINCE, HAVE YOU? THEY NEVER HAD TO
18 SHOW IT TO YOU, HAVE THEY?
19 A UH-UH. (NEGATIVE.)
20 Q BUT, BUT YOU DIDN'T HAVE ANY PROBLEM. THAT WAS
21 FIVE MONTHS AGO. BUT I NOTICE AS SOON AS HE PUT THAT DOWN,
22 YOU SAID YES. YOU SAID THIS IS THE ONE I'VE SHOWED YOU. YOU
23 JUST IMMEDIATELY RECOGNIZED IT, DIDN'T IT? YOU JUST -- I
24 MEAN IT'S JUST---
25 A YES.

1 Q ---A PHOTOGRAPHIC MEMORY. YOU JUST REMEMBER THIS
2 IS EXACT. YOU DIDN'T EVEN HAVE TO LOOK AT IT, DID YOU?
3 YOU JUST GLANCED AT IT, AND YOU KNEW IT WAS EXACTLY
4 THE SAME ONE. AND ALL THESE PICTURES ARE IN THE SAME
5 SPOT AND EVERYTHING. ISN'T THAT WHAT YOU KNEW?

6 A UH-HUH. (AFFIRMATIVE.)

7 Q AND WERE YOU ABLE TO TELL. JUST LIKE THAT.

8 THE COURT: YOUR ANSWER WAS WHAT NOW?

9 THE WITNESS: YES, SIR.

10 Q YOUR ANSWER IS THAT AT A GLANCE, YOU WERE ABLE TO
11 TELL THAT THIS -- THAT THESE ARE ALL THESE---

12 A I LOOKED AT IT, I DIDN'T GLANCE AT IT.

13 Q ALL RIGHT. ALL RIGHT, YOU LOOKED AT IT JUST NOW.
14 OKAY. I THINK THE JURY SAW WHAT YOU DID. ALL RIGHT,
15 BUT JUST AT A LOOK, YOU ARE ABLE TO TELL THAT ALL THESE
16 PICTURES ARE THE SAME PICTURES THAT WERE IN THERE BEFORE,
17 AND THEY'RE IN THE SAME SPOT, RIGHT?

18 A YES.

19 Q OKAY. I JUST WANTED TO MAKE SURE. THAT'S FIVE
20 MONTHS AGO, RIGHT, THAT YOU SAW THIS? YOU HAVEN'T
21 SEEN IT SINCE THEN.

22 A I SEEN IT THIS MORNING.

23 Q OKAY. YOU SAW IT THIS MORNING. BUT YOU HADN'T SEEN
24 IT SINCE THEN ANYWAY, RIGHT?

25 A NO.

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1 Q OKAY. BUT YOU'VE WORKED THERE FOR THREE OR FOUR
2 MONTHS, AND YOU'VE SEEN ABOUT 25 PEOPLE A DAY COMING IN
3 THE STORE, RIGHT?

4 A UH-HUH. (AFFIRMATIVE.) YES.

5 Q ALL RIGHT. AND HAD YOU EVER SEEN THIS PERSON BEFORE
6 COMING IN THE STORE THAT DAY?

7 A NO.

8 Q SO THAT WAS THE ONLY TIME YOU EVER SAW HIM WAS THAT DAY.
9 AND THERE WERE THREE OTHER PEOPLE IN THE STORE, RIGHT?

10 A YES.

11 Q AND YOU -- AND YOU'VE NEVER SEEN HIM SINCE UNTIL --
12 YOU'VE NEVER SEEN -- YOU'VE NEVER SEEN THIS PERSON,---

13 A NO,---

14 Q ---THIS IS THE ONLY TIME.

15 A ---I'VE ONLY SEEN A PHOTOGRAPH OF HIM.

16 Q OKAY. BUT EVEN JUST THEN, HE WAS WEARING -- THE
17 PERSON THAT CAME IN WAS WEARING THIS JACKET, RIGHT?

18 A OR EITHER A JACKET THAT LOOKED JUST LIKE---

19 Q OKAY.

20 A ---THAT ONE.

21 Q WHAT TIME OF NIGHT WAS THAT, THAT THE PERSON CAME
22 IN?

23 A ABOUT NINE. ALMOST---

24 Q WHAT TIME---

25 A ---NINE.

1 Q ---DO Y'ALL CLOSE? WHAT TIME DO YOU CLOSE?

2 A TEN O'CLOCK ON SUNDAYS.

3 Q OKAY. WHAT TIME DO YOU CLOSE DURING THE WEEK?

4 A NINE.

5 Q WELL, YOU WORK TOGETHER WITH MS. ROGERS, DON'T YOU?
6 DO YOU KNOW MS. ROGERS WELL?

7 A YES.

8 Q ARE Y'ALL FRIENDS?

9 A YES.

10 Q YOU'D LIKE TO HELP MS. ROGERS IN HERE TODAY, WOULDN'T
11 YOU?

12 A WHAT DO YOU MEAN HELP HER?

13 Q WELL, WOULDN'T YOU LIKE TO HELP HER IN HERE TODAY?

14 A BE MORE SUPPORT TO HER, YES.

15 MR. CARRAWAY: I DON'T HAVE ANY FURTHER QUESTIONS.

16 MR. NEWMAN: NOTHING FURTHER.

17 THE COURT: ALL RIGHT.

18 MR. NEWMAN: WE'D CALL CYNTHIA BROWN.

19 CYNTHIA BROWN, BEING

20 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. NEWMAN:

22 Q WHAT'S YOUR FULL NAME, PLEASE.

23 A CYNTHIA BROWN.

24 Q CYNTHIA BROWN. DO YOU KNOW MS. ROGERS?

25 A YES.

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- 1 Q ARE YOU FRIENDS WITH HER?
- 2 A WELL, NOT REALLY. SHE WAS A CLASSMATE.
- 3 Q OKAY. YOU'RE HERE TO HELP HER TODAY?
- 4 A IF I COULD.
- 5 Q YOU'RE HERE TO -- DO YOU KNOW MS. HASELDON?
- 6 A NO.
- 7 Q ARE YOU HERE TO HELP HER TODAY?
- 8 A I DON'T KNOW.
- 9 Q ARE YOU HERE TO TELL THE TRUTH ABOUT WHAT YOU KNOW ABOUT
- 10 THIS CASE?
- 11 A YES, SIR.
- 12 Q DO YOU KNOW MICHAEL MCFADDEN?
- 13 A YES, SIR.
- 14 Q HOW LONG HAVE YOU KNOWN HIM?
- 15 A PROBABLY A YEAR AND A HALF.
- 16 Q DO YOU RECALL THE TIME THAT THE CLEMMONS VIDEO WAS
- 17 ROBBED?
- 18 A YES, SIR.
- 19 Q AROUND THAT TIME, DID YOU SEE MICHAEL MCFADDEN?
- 20 A YES, SIR.
- 21 Q AND WHERE DID YOU SEE HIM?
- 22 A AT CLUB HUGO.
- 23 Q AND CLUB HUGO IS IN ROCKTOWN?
- 24 A YES, SIR.
- 25 Q AND HOW -- WHAT TIME OF NIGHT WOULD YOU SEE HIM?

1 A 1:30, TWO O'CLOCK.

2 Q AND TELL THE JURY ABOUT THAT.

3 A I WAS OUT WITH SONdra PENDERGRASS AND ANOTHER ONE OF MY
4 FRIENDS. AND MICHAEL CAME IN, AND HE ASKED US WHAT WE WERE
5 DRINKING. AND WE TOLD HIM. AND AFTER WE TOLD HIM, WE GOT --
6 HE WENT AND BROUGHT IT. AND HE TOLD US THAT WE WASN'T GOING
7 TO DRINK -- WE WAS GOING TO GO TO SONdra'S HOUSE AND DRINK
8 IT. AND WE WENT TO SONdra'S HOUSE AND UM...

9 Q HAD HE EVER OFFERED TO BUY YOU A DRINK BEFORE?

10 A NO.

11 Q DID YOU SEE HIM WITH ANY MONEY?

12 A YES.

13 Q TELL THE JURY ABOUT THAT.

14 A HE JUST HAD SOME MONEY. I'M NOT SURE HOW MUCH.

15 Q OKAY. DID YOU GET THE IMPRESSION THAT IT WAS A LITTLE
16 BIT OR A LOT OF MONEY?

17 A A LOT.

18 MR. CARRAWAY: OBJECTION, YOUR HONOR. SHE DOESN'T
19 HAVE ANY---

20 THE COURT: YES, SIR. ALL RIGHT, SUSTAINED.

21 MR. NEWMAN: PRESENCE SENSE IN THE QUESTION, YOUR
22 HONOR.

23 THE COURT: WELL THE QUESTION IS LEADING. DID YOU GET
24 AN IMPRESSION, PERIOD, ABOUT WHETHER -- WHAT HE -- WHAT
25 HE HAD?

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1 THE WITNESS: NO.

2 THE COURT: WELL, HOW DID YOU GET AN IMPRESSION? HUH?

3 THE WITNESS: I DIDN'T EVEN GET ONE.

4 BY MR. NEWMAN:

5 Q HOW MUCH -- HOW MUCH, I KNOW YOU DIDN'T COUNT IT. HOW
6 MUCH MONEY DID HE HAVE?

7 A I DON'T KNOW.

8 Q OKAY, TELL -- DESCRIBE THE MONEY THAT HE HAD.

9 A HE JUST HAD SOME MONEY.

10 Q OKAY. WELL, COULD YOU TELL US WHETHER OR NOT AS YOU --
11 AS YOU SAW THAT, WHETHER HE HAD A LITTLE BIT OR A LOT?

12 A A LOT. A LOT.

13 Q AND YOU DIDN'T COUNT IT, THOUGH.

14 A NO.

15 Q AND DID YOU SEE HIM WITH ANYTHING ELSE, ANY JEWELRY?

16 A YES, SIR.

17 Q TELL US ABOUT THAT.

18 A THAT WAS THE GIRL THAT WAS WITH HIM THAT NIGHT. SHE
19 WAS AROUND IN SONDRAS KITCHEN WITH MICHAEL AND ANOTHER GUY.
20 AND SHE WAS THE ONE WHO SAW THE RINGS THAT MICHAEL HAD.
21 AND SHE TOLD MICHAEL, ASKED MICHAEL, WHY DON'T HE -- SINCE
22 THEY WERE ONE OF THE RINGS, WHY WON'T HE GIVE THEM TO
23 FAYE. WHY WON'T HE LEFT HER HAVE ONE AT LEAST. AND HE
24 GAVE HER ONE IN MY PRESENCE. AND THE OTHER ONE HE MUST HAVE
25 GAVE HER AFTER I WENT HOME. BUT I DID SEE HIM THE NEXT

1 DAY.

2 Q YOU SAW...

3 A THE RINGS.

4 Q THE RINGS THE NEXT DAY? AND UM, THE PERSON THAT HE
5 GAVE THEM TO WAS?

6 A SONDRA PENDERGRASS.

7 Q THE LADY SITTING BACK HERE?

8 A YES, SIR.

9 MR. NEWMAN: THAT'S ALL I HAVE OF THIS WITNESS.

10 CROSS EXAMINATION BY MR. CARRAWAY:

11 Q NOW DO YOU MEAN THAT HE HAD A LOT OF MONEY, OR DID YOU
12 JUST SEE A LOT OF BILLS?

13 A I SAW A LOT OF BILLS.

14 Q YOU SAW A LOT OF BILLS. BUT YOU DON'T KNOW WHETHER THEY
15 WERE 1'S OR WHETHER---

16 A YES, I KNOW---

17 Q ---THEY WERE 10'S---

18 A ---WHAT I---

19 Q ---OR 20'S.

20 A ---I KNOW WHAT I SAW. I SAW 20'S, 10'S, 1'S, 5'S,
21 WHATEVER.

22 Q WELL, HOW MANY?

23 A I DON'T KNOW.

24 Q AND THIS RING EXCHANGE, THIS TOOK PLACE AT FAYE
25 FRANKLIN'S HOUSE?

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1 A YES.

2 Q OKAY.

3 MR. CARRAWAY: THANK YOU. I DON'T HAVE ANY FURTHER
4 QUESTIONS.

5 THE COURT: ALL RIGHT, YOU MAY STEP DOWN.

6 MR. NEWMAN: MS. PENDERGRASS.

7 SONDR FAYE PENDERGRASS,
8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION BY MR. NEWMAN:

10 Q WHAT'S YOUR FULL NAME?

11 A SONDR FAYE PENDERGRASS.

12 Q AND WHAT'S YOUR MAIDEN NAME?

13 A FRANKLIN.

14 Q AND YOU -- THEY CALL YOU FAYE FRANKLIN?

15 A FAYE.

16 Q AND YOUR MAIDEN NAME IS FRANKLIN. AND WHERE DO YOU
17 LIVE?

18 A HOME.

19 Q DO YOU KNOW MICHAEL DION MCFADDEN?

20 A YES.

21 Q UH, DO YOU KNOW HIM BY THIS NAME ABDULLAH ALHAGG, OR---

22 A NO.

23 Q ---LET ME GET IT STRAIGHT. BILAL A. ALHAGG?

24 A NO.

25 Q YOU DON'T KNOW HIM BY THAT NAME? UM, DID YOU GIVE

1 THIS---

2 A YES.

3 Q ---PICTURE TO THE POLICE?

4 A YES.

5 Q AND HOW DID YOU GET IT?

6 A IT WAS AT MY HOUSE.

7 Q HOW DID IT GET TO YOUR HOUSE?

8 A HE MUST HAVE BROUGHT IT.

9 THE COURT: WHAT DID YOU SAY?

10 THE WITNESS: HE MUST HAVE BROUGHT IT.

11 THE COURT: HE MUST HAVE BROUGHT IT. OKAY.

12 Q WHEN YOU SAY HE,---

13 A HE BROUGHT---

14 Q ---WHO?

15 A MICHAEL.

16 Q WHEN?

17 A THAT NIGHT. THAT NIGHT.

18 Q HOW WELL DO YOU KNOW MICHAEL MCFADDEN?

19 A WELL.

20 Q NOT WELL. YOU USED TO GO WITH HIM ONE TIME?

21 A YES.

22 Q AND UH, ARE Y'ALL STILL FRIENDS? OR YOU DON'T GO

23 TOGETHER ANY MORE.

24 A NO.

25 Q DO YOU RECALL THE -- BEING AT THE HOLE IN THE WALL

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1 CLUB, OR CLUB HUGO? BASICALLY RICHARD DAVIS' CLUB IN
2 ROCKTOWN---

3 A YES.

4 Q ---LATE ONE NIGHT WITH CYNTHIA BROWN AND OTHERS?

5 A YES.

6 Q YES. AND UM, DID YOU SEE MICHAEL MCFADDEN THAT NIGHT?

7 A YES.

8 Q AND DURING THAT SAME NIGHT, DID THESE OFFICERS COME
9 BY? UH, WHO, WHO CAME BY?

10 A RANDY GRAYSON AND MCCULLOUGH.

11 Q UH-HUH. (AFFIRMATIVE.) AND DO YOU KNOW WHETHER OR
12 NOT IT WAS THE SAME NIGHT CLEMMONS VIDEO HAD BEEN ROBBED?

13 A I DIDN'T KNOW IT WAS ROBBED.

14 Q AT THE TIME YOU DIDN'T KNOW?

15 A NO.

16 Q PARDON ME?

17 A NO. I DIDN'T KNOW.

18 Q AND UH, WHEN THEY CAME BY, WAS MICHAEL MCFADDEN
19 THERE AT THAT TIME?

20 A NO.

21 Q WHAT TIME DID YOU SEE HIM?

22 A MICHAEL?

23 Q YES

24 A BETWEEN TWO AND THREE.

25 Q OKAY. AND UM, Y'ALL WERE STAYING OUT PRETTY LATE

1 THAT NIGHT.

2 A YES.

3 Q WAS THAT A MONDAY NIGHT?

4 A I THINK SO. I'M NOT SURE.

5 Q AND UH, TELL US WHAT YOU WERE DOING IN THERE AROUND
6 THAT TIME? JUST GIVE US A PICTURE OF WHAT WAS GOING ON.

7 A WELL, I WAS COMING FROM THE BATHROOM WHEN I SAW
8 HIM, AND HE WAS ASKING WHERE I WAS. AND I LOOKED AT HIM.
9 HE TALKED TO ME. AND HE SAID Y'ALL WANT SOMETHING TO DRINK.
10 AND I SAID YEAH. AND WE GOT SOMETHING TO DRINK, AND HE SAID
11 WE'LL GO TO YOUR HOUSE. AND WE WENT OVER TO MY HOUSE AND
12 WE DRANK AND TALKED.

13 Q OKAY. AND UM, HAD YOU SEEN MUCH BEFORE THEN?

14 A NO.

15 Q HAD HE BEEN IN TOWN VERY LONG?

16 A I DON'T KNOW. I DON'T THINK -- HE WAS IN BOSTON, AND I
17 DON'T KNOW WHEN HE CAME BACK.

18 Q UH-HUH. (AFFIRMATIVE.) HE WAS THERE WITH SOME OF
19 CYNTHIA'S PEOPLE?

20 A I THINK SO.

21 Q AND SO YOU SAW HIM THERE AT THE CLUB THAT NIGHT.

22 A YES.

23 Q AND WENT OVER TO YOUR HOUSE IN FRIERSON'S?

24 A YES.

25 Q AND HE BOUGHT Y'ALL SOME DRINKS?

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- 1 A YES.
- 2 Q AND WHO WAS DOING THE SPENDING?
- 3 A HE WAS.
- 4 Q AND HE DID HE GIVE YOU ANYTHING?
- 5 A HE GAVE ME SOME RINGS.
- 6 A ALL RIGHT. DID HE TELL YOU WHERE HE GOT THEM FROM?
- 7 A NO.
- 8 Q NOW, WHEN WERE YOU FIRST CONTACTED BY THE POLICE?
- 9 A IT WAS ON THE 1ST. THEY CAME TO MY HOUSE THAT NIGHT,
- 10 AND I WAS SITTING WATCHING TV. AND THEY KNOCKED ON THE
- 11 DOOR.
- 12 Q THAT WOULD BE NOVEMBER 1ST?
- 13 A I THINK IT WAS.
- 14 Q OKAY. AND THEY CAME ON NOVEMBER 1ST. YOU HAD THE
- 15 RING HOW LONG?
- 16 A SINCE THE NIGHT I WAS WITH MICHAEL.
- 17 Q OKAY. AND JUST IN TERMS OF DAYS I THINK -- I KNOW YOU
- 18 PROBABLY -- LOOKING BACK, CAN'T SAY WHAT NIGHT OCTOBER 27TH
- 19 WAS, WHAT NIGHT OCTOBER 28TH WAS, WHAT NIGHT THE 1ST.
- 20 DO YOU KNOW WHAT NIGHT OF THE WEEK THE 1ST WAS?
- 21 A NO.
- 22 Q OKAY. DO YOU KNOW WHAT NIGHT IT WAS THAT YOU WERE AT
- 23 RICHARD'S PLACE?
- 24 A I'M NOT SURE.
- 25 Q IT WASN'T A SATURDAY OR SUNDAY?

1 A I DON'T THINK.

2 Q YOU DON'T REMEMBER.

3 A NO.

4 Q OKAY, SO THAT'S WHY I'M ASKING YOU. TELL ME IN TERMS OF
5 DAYS HOW LONG DID YOU HAVE THESE RINGS BEFORE THE POLICE
6 CAME?

7 A FROM THE NIGHT THAT I SAW MICHAEL UNTIL THE 1ST.

8 Q OKAY. DID YOU GET THEM FROM HIM THE DAY BEFORE,
9 OR TWO OR THREE DAYS BEFORE?

10 A THAT NIGHT.

11 Q I, I'M SORRY. YOU GOT THEM DURING THE NIGHT. WAS IT --
12 WAS IT A COUPLE OF NIGHTS BEFORE, OR A PREVIOUS NIGHT?

13 A THE NIGHT THAT WE WERE TOGETHER---

14 THE COURT: HOW MANY -- HOW MANY DAYS PASSED FROM THE
15 DAY THAT YOU GOT THEM UNTIL THE POLICE CAME TO GET THEM?
16 HOW MUCH TIME ELAPSED BETWEEN THE TIME YOU GOT THEM IN YOUR
17 HAND FROM HIM, AND THE POLICE CAME AND GOT THEM FROM YOU?
18 ONE DAY, TWO DAYS, THREE DAYS,---

19 THE WITNESS: THREE OR---

20 THE COURT: ---SIX MONTHS?

21 THE WITNESS: ---FOUR.

22 THE COURT: HUH?

23 THE WITNESS: ABOUT THREE OR FOUR DAYS.

24 THE COURT: THREE OR FOUR DAYS.

25 Q AND WHEN THE POLICE CAME AND THEY QUESTIONED YOU ABOUT

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1 THEM, AND YOU -- DID YOU COOPERATE WITH THE POLICE?

2 A YES.

3 Q WHAT DID YOU TELL THEM?

4 A I TELL THEM THAT HE GAVE ME SOME -- THEY ASKED ME
5 ABOUT SOME JEWELRY. AND I TOLD THEM HE GAVE ME TWO RINGS.

6 Q OKAY. AND YOU -- AND YOU GAVE THEM TO THEM.

7 A YES.

8 Q OKAY. I AM HANDING YOU WHAT HAS BEEN MARKED FOR
9 IDENTIFICATION AS STATE'S EXHIBIT NUMBER, NUMBER 1.

10 CAN YOU TELL US WHETHER YOU CAN IDENTIFY IT?

11 A YES.

12 Q WHAT, WHAT ARE THEY?

13 A THE TWO RINGS THAT I HAD.

14 Q OKAY. THAT MICHAEL GIVE TO YOU?

15 A YES.

16 Q WHY DID HE GIVE YOU THESE RINGS?

17 A UM, LIKE CYN -- MELANA SAID, WHY DON'T YOU GIVE THEM TO
18 FAYE. AND THEN HE GAVE THEM TO ME.

19 Q HOW MANY DID HE HAVE?

20 A I SAW THESE TWO. AND I DON'T KNOW...

21 Q HAVE YOU SEEN ANY MORE SINCE THEN?

22 A THE RINGS?

23 Q MICHAEL MCFADDEN.

24 A UM, HE CAME TO MY HOUSE. AND I ASKED HIM WAS THE POLICE
25 STILL LOOKING FOR HIM. HE SAID NO. BUT I TELL HIM HE

1 HAVE TO GO.

2 Q YOU TOLD HIM HE HAD TO GET OUT OF THERE.

3 A YES.

4 Q DID YOU SEE HIM ANY MORE?

5 A I WENT AND VISITED HIM.

6 Q IN THE JAIL?

7 A UH-HUH. (AFFIRMATIVE.)

8 Q AND YOU WERE SUBPOENAED TO COME HERE AS A WITNESS. THE
9 POLICE CAME AND SERVED A SUBPOENA ON YOU, AND SAID YOU HAD
10 TO COME TO COURT AND TELL US WHAT YOU KNOW?

11 A YES.

12 Q THIS PICTURE NOW, TELL US ABOUT HOW YOU GOT IT?

13 A HE LEFT IT AT MY HOUSE, AND I SAW IT.

14 Q UH-HUH. (AFFIRMATIVE.)

15 A AND I CALLED THE POLICE AND TELL THEM HE LEFT IT.

16 Q DID YOU GIVE THEM THIS, THE SAME TIME YOU GAVE THEM
17 THE RINGS?

18 A NO.

19 Q YOU CALLED UP A LITTLE LATER AND SAID HE LEFT THIS
20 TOO? DID HE SPEND THE NIGHT WITH YOU THAT NIGHT?

21 A YES.

22 Q OKAY. AND UM, AND DURING THE COURSE OF IT ALL, HE
23 GAVE YOU THOSE RINGS.

24 A YES.

25 Q AND GAVE THAT TO YOU. ARE YOU FAMILIAR WITH HIM

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1 SPENDING ANY TIME IN CHARLOTTE?

2 A WELL, I KNEW HIM A LONG TIME AGO WHEN HE USED TO
3 GO TO CHARLOTTE.

4 Q TO CHARLOTTE?

5 A UH-HUH. (AFFIRMATIVE.)

6 MR. NEWMAN: NOTHING FURTHER, YOUR HONOR.

7 CROSS EXAMINATION BY MR. CARRAWAY:

8 Q NOW, THE NIGHT HE STAYED WITH YOU, THERE WAS SOME OTHER
9 PEOPLE -- THERE WERE SOME OTHER PEOPLE AT YOUR HOUSE, SOME
10 OTHER FELLOWS THERE. AND HE WENT OFF WITH THEM FOR AWHILE,
11 DIDN'T HE?

12 A YES.

13 Q AND HE CAME BACK.

14 A YES.

15 Q OKAY. UM, WE'RE TALKING ABOUT THESE DATES. YOU'RE
16 NOT SURE -- YOU'RE NOT SURE WHETHER IT WAS THE 1ST, OR
17 HOW MANY DAYS, OR WHEN THE POLICE CAME BY, IS THAT NOT
18 TRUE?

19 A I KNOW IT WAS DAYS LATER. THREE OR FOUR DAYS LATER.

20 Q IT WAS THREE OR FOUR DAYS LATER. BUT YOU DON'T KNOW
21 ANY DAYS OR DATES, IS THAT NOT CORRECT? OKAY. YOU MENTIONED
22 BEFORE THAT IT WAS SOMETHING ABOUT THE 1ST. BUT YOU'RE
23 NOT SURE WHETHER IT WAS NOVEMBER 1ST THAT THE POLICE
24 CAME BY?

25 A I KNOW THEY CAME BY THREE DAYS LATER. I DON'T---

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1 Q THREE OR FOUR DAYS LATER. IS THAT NOT WHAT YOU SAID?

2 A RIGHT.

3 Q THREE OR FOUR DAYS LATER.

4 A RIGHT.

5 Q THAT'S WHAT YOU KNOW, IT WAS THREE OR FOUR DAYS LATER.

6 A RIGHT.

7 Q OKAY. NOW THIS -- AND THEY CAME BY THREE OR FOUR
8 DAYS AFTER YOU GOT THE RINGS,---

9 A YES.

10 Q ---IS THAT RIGHT? OKAY. BUT -- AND YOU DON'T KNOW
11 WHEN A ROBBERY OCCURRED, DO YOU?

12 A NO.

13 Q YOU DON'T KNOW. YOU JUST HEARD THAT THERE WAS A ROBBERY
14 OR WHATEVER. BUT YOU DON'T KNOW WHEN OR WHAT DAY, OR
15 ANYTHING ABOUT, DO YOU?

16 A NO.

17 Q YOU DON'T ANYTHING ABOUT IT. OKAY.

18 MR. CARRAWAY: I DON'T HAVE ANY MORE QUESTIONS.

19 THE COURT: ALL RIGHT, YOU MAY STEP DOWN.

20 MR. NEWMAN: FRANCES WAGNER.

21 FRANCIS LEE QUINCEY WAGNER,
22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 Q AND YOUR FULL NAME IS?

24 A FRANCIS LEE QUINCEY WAGNER.

25 Q FRANCIS LEE QUINCEY WAGNER. AND YOU'RE FROM ROCKTOWN

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- 1 ORIGINALLY?
- 2 A YES.
- 3 Q RIGHT, RIGHT UNDER THE WATER TOWER?
- 4 A YES.
- 5 Q AND WHERE DO YOU WORK NOW?
- 6 A COLONIAL RUBBER.
- 7 Q AND DO YOU KNOW MICHAEL MCFADDEN?
- 8 A YES.
- 9 Q HOW LONG HAVE YOU KNOWN HIM?
- 10 A WELL, PROBABLY -- PRACTICALLY GREW UP TOGETHER.
- 11 Q HAVE YOU KNOWN HIM ABOUT -- ARE Y'ALL ABOUT THE SAME
- 12 AGE?
- 13 A NO, HE'S MUCH YOUNGER THAN I AM.
- 14 Q HE'S MUCH YOUNGER THAN YOU ARE? AND UM, -- THE CLUB,
- 15 THE HOLE IN THE WALL CLUB, CLUB HUGO, THAT'S RUN BY RICHARD
- 16 DAVIS?
- 17 A YES.
- 18 Q AND HE LIVES WITH HIS SISTER?
- 19 A YEAH.
- 20 Q OR SHE LIVES -- OR THEY LIVE TOGETHER. AND UM, DO
- 21 YOU REMEMBER WHEN THIS VIDEO PLACE WAS ROBBED?
- 22 A NO, I HEARD ABOUT IT A COUPLE OF DAYS AFTER.
- 23 Q DID YOU SEE MICHAEL MCFADDEN AROUND THAT TIME?
- 24 A AROUND WHAT TIME?
- 25 Q AROUND THE TIME THAT YOU HEARD THE PLACE WAS ROBBED.

1 A YEAH, I SAW MICHAEL.

2 Q OKAY. WHERE DID YOU SEE HIM?

3 A I WAS IN FRIERSON HOME ONE NIGHT, AND MICHAEL CAME AND
4 TALKED TO ME.

5 Q YOU WERE IN FRIERSON HOME?

6 A YES.

7 Q AND WHAT PLACE AROUND THERE WERE YOU?

8 A I WAS AT A FRIEND'S HOUSE.

9 Q OKAY. AND UM, HE CAME AND TALKED WITH YOU?

10 A YEAH.

11 Q ABOUT WHAT?

12 A MY CHILDREN NEED SOME MONEY.

13 Q HE -- SO, BY THIS TIME -- WELL HE WAS -- HE SAID HE
14 NEEDED SOME MONEY.

15 A YES.

16 Q AND UH, DID YOU GIVE HIM ANY?

17 A WELL, MIKE HAD OWED ME SOME MONEY BEFORE, AND UH, ME
18 AND HIM TALKED. AND UM, THAT'S WHEN HE TOLD ME UH, HE HAD A
19 GOLD CHAIN AND WHAT COULD I GET FOR HIM.

20 Q HE SAID HE HAD A GOLD CHAIN?

21 A YEAH.

22 Q DID HE SAY WHERE HE GOT THAT GOLD CHAIN FROM?

23 A NAH.

24 Q HE DIDN'T SAY. HOW DID THE POLICE CONTACT YOU
25 ABOUT THIS CASE?

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1 A I WAS AT WORK AND UM, THE POLICE CAME TO THE JOB.

2 Q OVER AT COLONIAL RUBBER?

3 A YES. AND THEY CALLED ME OVER TO PERSONNEL. AND UM,
4 AND WHEN I WENT INTO PERSONNEL, THEY ASKED ME UM, WE HAVE TO
5 TALK TO YOU ABOUT RABBIT EARS. AND I SAID WHO. AND THEY
6 SAID MICHAEL MCFADDEN.

7 Q THEY CALL HIM RABBIT EARS?

8 A YEAH.

9 Q OKAY.

10 A AND THEY ASKED ME WHAT DO I KNOW ABOUT HIM. SO I TOLD
11 THEM, IT'S MY NEIGHBOR. AND THEN UM, THAT'S WHEN THEY ASKED
12 ME ABOUT SOME JEWELRY THAT I HAD. THAT I HAD GOTTEN,
13 SUPPOSED TO GET FROM MICHAEL. AND I TOLD THEM I HAD IT.
14 SO THEY ASKED ME TO BRING IT OVER, BUT I WAS AT WORK.
15 AND I ASKED THEM WHETHER THEY WANTED ME TO GET OFF WORK,
16 YOU KNOW, TO GET IT. SO HE TOLD ME NO, STAY AND MAKE THE
17 DAY, AND THEN BRING IT AFTER I GOT OFF.

18 Q OKAY. DID YOU DO THAT?

19 A YES.

20 Q OKAY. AND I'M GOING TO HAND YOU WHAT'S BEEN MARKED
21 STATE'S EXHIBIT NUMBER 2. CAN YOU EXAMINE IT AND TELL US
22 WHETHER YOU WILL BE ABLE TO IDENTIFY IT? CAN YOU?

23 A YES.

24 Q WHAT IS IT?

25 A THAT'S THE UM, NECKLACE AND THE CROSS THAT I GOT.

1 Q FROM MICHAEL?

2 A YES.

3 Q AND THE -- YOU TURNED IT OVER TO THE POLICE.

4 A YEAH, I TOOK IT DOWN THERE.

5 Q WAS IT IN THIS SAME SHAPE WHEN HE GAVE IT TO YOU?

6 A YES.

7 Q AND UH, WAS IT POPPED ANYWHERE?

8 MR. CARRAWAY: OBJECTION, YOUR HONOR.

9 THE COURT: I'LL ALLOW IT.

10 Q WAS THERE ANY BREAKS IN IT? WAS IT POPPED?

11 A IT WAS JUST LIKE THIS WHEN I GOT IT.

12 Q OKAY. DID YOU HAVE ANY CONVERSATION WITH HIM ABOUT
13 THE CONDITION OF IT? THE CONDITION OF IT NOT BEING
14 RIGHT?

15 A WELL, YEAH, I, I ASKED HIM ABOUT, ABOUT WHERE IT
16 WAS HOOKED UP RIGHT HERE.

17 Q UH-HUH. (AFFIRMATIVE.)

18 A AND HE TOLD ME HE WAS IN A FIGHT, AND IT GOT POPPED.

19 MR. NEWMAN: THAT'S ALL.

20 CROSS EXAMINATION BY MR. CARRAWAY:

21 Q IT'S A FACT, HE CAME TO YOU THAT NIGHT AND HE TOLD
22 YOU HE NEEDED MONEY, DIDN'T HE?

23 A RIGHT.

24 Q OKAY. AND HE WANTED TO SELL YOU THAT NECKLACE, DIDN'T
25 HE?

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1 A YES.

2 Q AND YOU TOLD HIM AT FIRST THAT YOU DIDN'T WANT THAT
3 NECKLACE, YOU WANTED YOUR MONEY INSTEAD.

4 A RIGHT.

5 Q ISN'T THAT WHAT YOU TOLD HIM?

6 A RIGHT.

7 Q AND HE OWED YOU \$40, DIDN'T HE?

8 THE COURT: SIR?

9 THE WITNESS: YES.

10 Q AND HE OWED YOU \$40.

11 A YES.

12 Q AND ISN'T IT WHAT HAPPENED, HE SAID -- AND YOU SAID
13 I WANT MY MONEY, I DON'T WANT THE NECKLACE. RIGHT?

14 ISN'T THAT WHAT YOU SAID FIRST ANYWAY?

15 A YEAH.

16 Q OKAY. AND ISN'T IT TRUE THAT THEN Y'ALL WORKED A DEAL
17 TO WHERE---

18 A YES.

19 Q ---YOU GAVE HIM \$20?

20 A \$20.

21 Q AND YOU FORGAVE THE DEBT HE OWED YOU,---

22 A YES,---

23 Q ---RIGHT?

24 A ---I HOLD THE NECKLACE.

25 Q YOU, YOU HELD A NECKLACE FOR THE OTHER 40. SO YOU

1 WERE HOLDING IT, BUT YOU GAVE HIM \$20---

2 A YES.

3 Q ---FOR IT, AND HE OWED YOU 40. RIGHT?

4 A YES.

5 Q OKAY. NOW AM I TO UNDERSTAND THAT THAT WAS SORT
6 OF IN EXCHANGE FOR THE DEBT, OR HE WAS GOING TO --
7 OR, OR, OR YOU WERE GOING TO SELL IT BACK TO HIM AT
8 ANOTHER TIME?

9 A I WAS GOING TO GIVE IT---

10 Q OR WERE YOU GOING---

11 A ---BACK TO HIM.

12 Q YOU WERE GOING TO GIVE IT BACK TO HIM FOR THE
13 \$40?

14 A WHEN I GOT MY MONEY.

15 Q OKAY. BUT YOU WERE HOLDING IT. YOU GAVE HIM
16 \$20---

17 A YES.

18 Q ---THAT NIGHT. HE TOLD YOU HE NEEDED MONEY, RIGHT?

19 A YES.

20 MR. CARRAWAY: OKAY. I DON'T HAVE ANY FURTHER
21 QUESTIONS. THANK YOU.

22 THE COURT: ALL RIGHT.

23 REDIRECT EXAMINATION BY MR. NEWMAN:

24 Q BUT YOU DON'T KNOW EXACTLY WHAT DATE HE GAVE IT TO
25 YOU, DO YOU? OR WHAT DATE THAT HE WAS THERE?

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1 A NO, I DON'T.

2 MR. NEWMAN: NOTHING FURTHER.

3 THE COURT: ALL RIGHT YOU MAY STEP DOWN.

4 MR. NEWMAN: YOUR HONOR, WE MAKE CERTAIN THAT WE
5 OFFER ALL THE ITEMS OR EXHIBITS INTO EVIDENCE.

6 THE COURT: ALL RIGHT. ALL RIGHT, LADIES AND GENTLEMEN,
7 I'M GOING TO ASK YOU TO STEP TO YOUR JURY ROOM FOR JUST A
8 MINUTE. I HAVE TO TAKE UP A MATTER OF LAW OUTSIDE OF YOUR
9 PRESENCE. IT WILL TAKE ME ABOUT TWO MINUTES, AND I WILL
10 BRING YOU RIGHT BACK.

11 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
12 PRESENCE OF THE JURY.)

13 MR. NEWMAN: I SUBPOENAED SOME PEOPLE, AND I WANT TO
14 RELEASE THEM. THESE FOLKS ON THE FRONT ROW, MS. POWELL
15 AND MR. FORTNER.

16 THE COURT: FORTNER? ALL RIGHT.

17 MR. NEWMAN: I DON'T THINK I'M GOING TO USE THEM IN
18 THIS CASE.

19 THE COURT: ALL RIGHT. OKAY. THAT'S THE STATE'S CASE,
20 IS THAT CORRECT?

21 MR. NEWMAN: YES, SIR.

22 THE COURT: ALL RIGHT. MOTION FOR A DIRECTED VERDICT?

23 MR. CARRAWAY: YES, YOUR HONOR.

24 THE COURT: ALL RIGHT, SIR.

25 MR. CARRAWAY: I BELIEVE IN THIS CASE, YOUR HONOR,

1 I DON'T BELIEVE THERE'S ANY -- I DON'T BELIEVE THERE'S ANY
2 EVIDENCE LINKING HIM. YOU KNOW, HE'S LINKED TO THE JEWELRY
3 AFTER THIS CRIME, BUT I DON'T THINK THERE IS ANY EVIDENCE,
4 REALLY ANY CREDIBLE EVIDENCE. I THINK AS FAR AS THE
5 IDENTIFICATION OR WHATEVER, I THINK, YOU KNOW, I THINK
6 THERE'S SERIOUS DOUBTS ABOUT THOSE. AND UM, I BELIEVE
7 IT ADDS UP TO NO EVIDENCE.

8 THE COURT: ALL RIGHT, SIR. I RESPECTFULLY DENY THE
9 MOTION FOR A DIRECTED VERDICT. I FIND THAT THE EVIDENCE
10 IS SUFFICIENT IN A -- IN A LIGHT MOST FAVORABLE TO THE
11 STATE. THE LIGHT -- THE EVIDENCE IS SUFFICIENT TO --
12 FROM WHICH A JURY COULD FIND GUILT AT THIS TIME. AND WOULD
13 RESPECTFULLY DENY THE MOTION.

14 ALL RIGHT, NOW YOU WANT TO -- YOU WANT TO PROFFER SOME
15 TESTIMONY, OR MAKE A MOTION AS TO IDENTIFICATION, I BELIEVE,
16 DO YOU NOT?

17 MR. CARRAWAY: YES, YOUR HONOR.

18 THE COURT: ALL RIGHT, TELL ME ABOUT THAT.

19 MR. CARRAWAY: ALL RIGHT. I BELIEVE I MADE A REQUEST
20 TO YOU, THAT WE BE ALLOWED TO BRING IN AN EYE WITNESS EXPERT.

21 THE COURT: YES, SIR.

22 MR. CARRAWAY: AND A---

23 THE COURT: I DID NOT -- I DID NOT GET A -- WHAT
24 YOU HANDED ME YESTERDAY, I BELIEVE, AT THE BEGINNING OF
25 THIS TRIAL WAS JUST AN ORDER. DID YOU HAVE A PETITION

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1 AS WELL? BECAUSE THIS SAYS, GRANTED----

2 MR. CARRAWAY: I PUT THE PETITION ALONG WITH THAT,
3 YOUR HONOR. I---

4 THE COURT: I -- THE ONLY THING I -- THE ONLY THING
5 THAT YOU HANDED ME WAS A PROPOSED ORDER. AND YOU SAID
6 BASICALLY IN THAT ORDER, IT'S ORDERED THAT THE DEFENSE
7 OF INDIGENCE ACT, RULE 51, THAT THE -- THAT THE PUBLIC
8 DEFENDER'S OFFICE HAVE PERMISSION TO REQUEST SERVICES
9 OF DR. SPURGEON COLE. AND, AND IS GRANTED BASED UPON THE
10 ATTACHED AFFIDAVIT. AND I JUST -- I DIDN'T GET THE
11 AFFIDAVIT. SO I DON'T KNOW EXACTLY WHAT, WHAT IT WAS
12 THAT YOU WERE BASING YOUR AFFIDAVIT.

13 BUT I UNDERSTAND THAT WHAT YOU'RE SAYING BASICALLY
14 IS, THAT SINCE THERE WAS AN IDENTIFICATION -- THERE IS
15 AN IDENTIFICATION QUESTION IN THE CASE, THAT YOU WANT TO, TO
16 HAVE DR. COLE HERE. AND WHAT WOULD HE TESTIFY TO?

17 MR. CARRAWAY: WELL, I GO AS FAR AS TO SAY THAT I
18 THINK THIS IDENTIFICATION IS THE CRUCIAL PART OF THIS
19 CASE. AND I BELIEVE WHAT THE LAW STATES, YOUR HONOR,
20 IS THE LAW, I BELIEVE, IF YOU LOOK CLOSELY, IT DOES
21 NOT STATE THAT THE ONLY TIME YOU CAN ALLOW AN EYE
22 WITNESS EXPERT, IS WHEN YOU HAVE SOMEONE WHO IS --
23 HAS A PHYSICAL OR MENTAL INFIRMITY, OR SOMETHING
24 WRONG WITH THEIR EYESIGHT OR WHATEVER. OR THE OTHER
25 CASE IS, WHEN THAT IS THE ONLY EVIDENCE BEING PUT

1 FORTH IS THE EYE WITNESS.

2 BUT I DON'T -- THE LAW -- I THINK THAT THE
3 CAREFUL READING OF THE LAW, SHOWS THAT IT DOES NOT SAY
4 THAT THOSE ARE THE ONLY TWO TIMES YOU CAN USE AN EYE WITNESS
5 EXPERT. WHAT THE LAW SAYS IS, THAT IT'S AN ABUSIVE OR
6 DISCRETION IF IN THOSE TWO CASES, THE JUDGE DOES NOT
7 ALLOW AN EYE WITNESS EXPERT TO TESTIFY. I THINK THE
8 LAW GOING ON FURTHER TO SAY THAT A LOT OF -- IF YOU LOOK
9 IN THIS PARTICULAR CASE TO WEIGH THE CASE, IT WILL STATE
10 THAT UM, CROSS, RACIAL NATURE OF THE IDENTIFICATION.
11 YOU KNOW, CERTAIN UM, YOU KNOW, STRESS FACTORS INVOLVED.
12 ALL MITIGATE TOWARDS ALLOWING AN EYE WITNESS EXPERT.

13 THE COURT: ALL RIGHT, SIR. MY UNDERSTANDING
14 IS, OF THAT WHALEY CASE, IS THAT, IF THERE IS NO OTHER
15 COMPETENT EVIDENCE OTHER THAN THE FACT THAT YOU HAVE
16 AN IDENTIFICATION ISSUE, THE VICTIM SAYS THAT IS THE PERSON
17 WHO PERPETRATED THE CRIME, AND NOTHING ELSE. AND YOU
18 HAVE A SITUATION WHERE IT'S A -- IT'S A, A -- THE VICTIM
19 IS OF, OF ONE RACE AND THE DEFENDANT MAY BE OF ANOTHER.
20 THEN IN THAT SITUATION, IT WOULD BE AN ABUSE OF DISCRETION
21 NOT TO ALLOW YOU TO HAVE AN EXPERT AS TO IDENTIFICATION
22 TO COME FORWARD.

23 AND I ASSUME WHAT DR. COLE WOULD SAY IN THIS CASE,
24 IS WHAT HE SAYS IN EVERY CASE. GENERALLY, IT'S, IT'S---

25 MR. CARRAWAY: IT'S VERY DIFFICULT---

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1 THE COURT: ---DIFFICULT FOR---

2 MR. CARRAWAY: ---AND SUPPOSEDLY UM, BLACKS HAVE FEWER
3 CUE FEATURES, OR QUALITY FEATURES THAT STAND OUT OR WHATEVER
4 AS WHITES---

5 THE COURT: THE SAME -- THE SAME -- THE SAME TESTIMONY
6 THAT HE USED IN THE LAST CASE WHEN I ALLOWED---

7 MR. CARRAWAY: EXACTLY.

8 THE COURT: ---HIM TO COME TESTIFY.

9 MR. CARRAWAY: EXACTLY.

10 THE COURT: ALL RIGHT. WELL, I FOUND IN THIS CASE,
11 OF COURSE, THERE'S, THERE'S A DIFFERENCE BECAUSE OF THE
12 FACT THAT YOU HAVE GOT OTHER TESTIMONY BESIDES THE,
13 THE, THE VICTIM'S TESTIMONY. IT'S TRUE THAT SHE
14 WAS NOT ABLE TO PICK HIM OUT OF A LINEUP TO BEGIN WITH.
15 AND IT'S TRUE THAT SHE THEN PICKED HIM OUT OF A LINEUP
16 SOMETIME LATER. AND A PICTURE LINEUP. ONE THING, THERE'S,
17 THERE'S A PICTURE LINEUP IS DIFFERENT FROM A, A EYE WITNESS
18 IDENTIFICATION OF HIM. THAT IS TO SAY, I SAW HIM AT THE
19 TIME, AND I SEE HIM NOW AGAIN. OR I SAW HIM AT A GROCERY
20 STORE SOMETIME IN BETWEEN.

21 AND WHAT YOU HAVE IN THIS CASE, IS INDEPENDENT TESTIMONY
22 FROM, FROM SOMEONE ELSE WHO HAPPENED TO PICK THE PICTURE
23 OUT. AND THESE OTHER WITNESSES WHO SAID THAT THEY BROUGHT
24 HIM -- OR BROUGHT THEM THESE ARTICLES, WHICH APPARENTLY
25 WERE STOLEN. AND ALL OF THAT TOGETHER, I THINK, GOES

1 BEYOND THIS ONE SINGLE ISSUE OF IDENTIFICATION. AND FOR
2 THAT REASON, I WOULD NOT PERMIT DR. COLE TO TESTIFY. I
3 DON'T BELIEVE THAT I'M ABUSING MY DISCRETION IN THAT
4 REGARD. I DO BELIEVE THAT IF, IF, IF THE ONLY ISSUE
5 WAS IDENTIFICATION BY THIS ONE VICTIM OF THAT ONE DEFENDANT
6 ON THAT OCCASION, THAT I WOULD ALLOW IT.

7 MR. NEWMAN: JUDGE, ISN'T THE SECONDARY ISSUE ALSO
8 WHETHER IN ALL OF THESE CASES, THE COUNTY SHOULD HAVE
9 TO PAY TO BRING THIS MAN FROM CLEMSON TO, TO TESTIFY
10 ON, ON EVERY CASE WHERE UH---

11 THE COURT: WELL,---

12 MR. NEWMAN: ---YOU HAVE TO IDENTIFY---

13 THE COURT: WELL,---

14 MR. NEWMAN: ----WHO ROBBED YOU---

15 THE COURT: ---THE PROBLEM -- THE PROBLEM IS, OF COURSE,
16 IS THAT IN EVERY CASE, THE STATE HAS GOT TO PROVE THAT
17 THE PERSON THAT THEY'VE CHARGED WITH THE CRIME, DID THE
18 CRIME. I MEAN, THERE'S NOT A CASE THAT YOU TRY, THAT
19 YOU DON'T HAVE TO MAKE THAT, THAT PROOF. AND, AND
20 OBVIOUSLY, IF, IF, YOU KNOW, 99 OUT OF 100 TIMES, SOMEBODY
21 HAS GOT TO COME FORWARD AND PUT A FINGER ON THE DEFENDANT,
22 AND SAY THIS IS THE PERSON WHO PERPETRATED THIS CRIME.
23 AND THEN, OF COURSE, IT BECOMES MOST OF THE TIME AN IDENTITY
24 KIND, KIND OF A QUESTION. AND I -- AND I -- OBVIOUSLY, WE
25 COULDN'T -- WE COULDN'T HAVE AN EXPERT COME IN THOSE CASES.

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1 AND I THINK THAT'S THE REASON THE SUPREME COURT WENT
2 SO FAR AS TO SAY, IF THE ONLY ISSUE IS, IS CRITICAL,
3 CRUCIAL, I -- IDENTITY QUESTION, ABSENT EVERYTHING
4 ELSE, THEN WE'RE GOING TO ALLOW HIM TO COME DO SO. BECAUSE
5 IT'S JUST TOO MUCH OF A CHANCE THAT SOMEBODY MAY MAKE
6 A MISTAKE. BUT I THINK WHERE YOU HAVE OTHER INDEPENDENT
7 EVIDENCE OF THAT -- IN THAT SITUATION, UH, IT WOULD --
8 IT WOULD NOT BE RE -- HE WOULD NOT BE REQUIRED TO---

9 MR. CARRAWAY: WELL, I BELIEVE ACTUALLY WHAT THE LAW
10 SAYS, IS THAT, YOU MUST HAVE IT. YOU MUST ALLOW IN THOSE
11 CASES. AND THAT YOU CAN, IT'S, IT'S IN YOUR DISCRETION---

12 THE COURT: IT'S DIS---

13 MR. CARRAWAY: ---TO ALLOW HIM TO---

14 THE COURT: ---IT'S DISCRETIONARY---

15 MR. CARRAWAY: ---LEAD THAT.

16 THE COURT: ---ANYTIME.

17 MR. CARRAWAY: YES, SIR.

18 THE COURT: BUT AS I SAY, IN, IN THIS PARTICULAR CASE,
19 I WOULD NOT, BECAUSE OF THE FACT THAT THERE'S SO MUCH OTHER
20 CORROBORATING TESTIMONY. AND, AND THERE WOULDN'T BE ANY
21 NEED TO COME FORWARD.

22 MR. NEWMAN: I DON'T KNOW IF YOU HAVE TO ADDRESS IN
23 THE ORDER, JUDGE. BUT I THOUGHT THAT HIS SPECIFIC THINGS,
24 THAT UNDER THIS DEFENSE OF INDIGENT ACT, THE COUNTY MUST,
25 NOT ONLY DOES SHE ALLOW IT, BUT THE COUNTY MUST PAY FOR

1 IT.

2 THE COURT: I'M NOT EVEN SURE WHO PA -- THE LAST TIME
3 I DID IT, I BELIEVE, I DON'T KNOW WHO PAYS FOR IT. IF
4 YOU WERE -- IF YOU'RE -- DEPENDING -- PAYING FOR IT, THEY
5 WON'T PAY FOR ANYTHING, I DON'T BELIEVE.

6 MR. CARRAWAY: WELL, THE STATE ADMINISTRATION PAYS FOR
7 IT.

8 THE COURT: THE STATE PAID THE LAST TIME I ORDERED THE
9 STATE TO PAY IT. BUT I DON'T BELIEVE THIS COUNTY---

10 MR. CARRAWAY: YOUR HONOR, I WOULD CERTAINLY---

11 THE COURT: ---WILL PAY IT.

12 MR. CARRAWAY: ---I WOULD CERTAINLY ARGUE EQUAL
13 PROTECTION THAT'S EQUAL PROTECTION. THAT, THAT -- THE
14 FACT THAT IT SHOULD NOT ENTER INTO ANY DECISION.

15 THE COURT: WELL, I, I DIDN'T LET IT ENTER INTO
16 MY DECISION IN THIS CASE---

17 MR. CARRAWAY: OKAY. YES, SIR.

18 THE COURT: AS I SAY, I, I ORDERED THAT THE STATE PAY
19 IT. I BELIEVE UN -- I UNDERSTOOD FROM YOU THAT THE
20 STATE HAD PAID IT,----

21 MR. CARRAWAY: THEY'VE ALREADY PAID IT.

22 THE COURT: OR WAS GOING TO PAY IT.

23 MR. CARRAWAY: YES, SIR.

24 THE COURT: ALL RIGHT. ALL RIGHT, LET'S BRING THE
25 JURY, PLEASE, SIR.

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1 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
2 PRESENCE OF THE JURY.)

3 THE COURT: ALL RIGHT, THE STATE RESTS, IS THAT CORRECT.

4 MR. NEWMAN: YES, SIR.

5 MR. CARRAWAY: THE DEFENSE WOULD CALL D. W. RICHARDSON.

6 D. W. RICHARDSON,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWED:

8 DIRECT EXAMINATION BY MR. CARRAWAY:

9 Q WOULD YOU STATE YOUR NAME FOR THE JURY, PLEASE.

10 A D. W. RICHARDSON.

11 Q AND WHAT IS YOUR OCCUPATION?

12 A FUNERAL DIRECTOR.

13 Q DID YOU HAVE AN OPPORTUNITY LAST FALL TO SIGN A BOND
14 PAPER FOR A MICHAEL MCFADDEN?

15 A YES, I DID.

16 Q OKAY. AND WHAT CHARGE WAS THAT, THAT YOU UNDERSTOOD
17 THAT WAS FOR, AND WHERE?

18 MR. NEWMAN: YOUR HONOR, WE---

19 THE COURT: YES, SIR.

20 MR. NEWMAN: ---NEED TO TAKE THIS UP.

21 (THEREUPON, THE ATTORNEYS CONFER WITH JUDGE.)

22 THE COURT: ALL RIGHT, GO AHEAD.

23 Q AND WHAT DID YOU UNDERSTAND THIS CHARGE TO BE, AND
24 WHERE WAS THIS CHARGE?

25 A I THINK THE CHARGE WAS IN GEORGETOWN COUNTY. AND

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1 I THINK HE WAS CHARGED WITH DRIVING DUS, I BELIEVE, FIRST
2 OR SECOND. AND UH, OPERATED A MOTORCYCLE, I THINK, WITH
3 INVALID LICENSE.

4 Q WITH, WITHOUT A LICENSE.

5 A RIGHT.

6 Q OKAY. AND DID YOU HAVE SOME OPPORTUNITY, DID THE
7 AUTHORITIES OR WHATEVER -- DID YOU CON -- DID YOU HAVE AN
8 OPPORTUNITY -- DID YOU HAVE OCCASION TO CONTACT THE
9 FAMILY ABOUT THIS SITUATION, ABOUT WHERE WAS HE?

10 A WELL, IT WAS A FAMILY MEMBER. HIS FATHER HAD CONTACTED
11 ME AND ASKED ME TO GO TO BOND ON HIM.

12 Q OKAY.

13 A AND I RECEIVED A LETTER FROM THE SOLICITOR'S OFFICE
14 OUT OF GEORGETOWN COUNTY, STATING THAT HE DID NOT SHOW
15 UP THE DATE HE WAS SUPPOSED TO APPEAR FOR BOND, FOR THE
16 COURT. AND I WENT TO CONTACT HIS FATHER AND HIS SISTER,
17 AND ASKED ABOUT MICHAEL'S WHEREABOUTS. AND THEY INFORMED
18 ME THEY WASN'T CERTAIN WHERE HE WAS. THEY THOUGHT HE
19 WAS IN CHARLOTTE. AND ONE OF THEM SAID THEY THOUGHT HE
20 WAS UP IN BOSTON.

21 Q OKAY. SO YOU WENT TO -- YOU TALKED TO HIS FATHER,
22 AND YOU WENT TO THE HOUSE AND TALKED TO HIS SISTER.

23 A I CERTAINLY.

24 Q OKAY. ALL RIGHT. AND YOU ASKED THEM TO CONTACT MICHAEL
25 ABOUT THIS MATTER, AND TELL THEM THEY HAD TO REPORT TO

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1 COURT, IS THAT CORRECT?

2 A. WELL, I WAS TRYING TO LOCATE HIM, BECAUSE THE COURT
3 INSTRUCTED ME IF I DIDN'T LOCATE HIM, THE BOND THAT I SIGNED
4 IN LIEU OF THAT, I HAD TO TAKE CARE OF IT. SO I WAS
5 TRYING TO LOCATE HIM.

6 Q OKAY.

7 MR. CARRAWAY: I DON'T HAVE ANY FURTHER QUESTIONS.

8 THANK---

9 THE COURT: ALL RIGHT.

10 MR. CARRAWAY: ---YOU.

11 CROSS EXAMINATION BY MR. NEWMAN:

12 Q D.W. RICHARDSON, YOU DON'T ANYTHING ABOUT THIS CASE
13 INVOLVING THE ROBBERY OF CLEMMONS VIDEO, DO YOU?

14 A NO, I DON'T.

15 MR. NEWMAN: NO OTHER QUESTIONS.

16 THE COURT: ALL RIGHT, SIR. YOU MAY STEP DOWN.

17 MR. CARRAWAY: ALL RIGHT, THE DEFENSE WOULD CALL
18 PATRICIA MCFADDEN TO THE STAND.

19 PATRICIA ANN GAMBLE MCFADDEN,
20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. CARRAWAY:

22 Q STATE YOUR NAME AND AGE FOR THE JURY?

23 A PATRICIA ANN GAMBLE MCFADDEN.

24 Q OKAY. AND WHAT RELATION ARE YOU TO MICHAEL MCFADDEN?

25 A SISTER-IN-LAW.

1 Q SISTER-IN-LAW. DID MR. D.W. RICHARDSON COME TO YOUR
2 HOUSE AND CONTACT YOU ON AN OCCASION?

3 A YES, HE STOPPED BY THE HOUSE. AND---

4 Q AND WHAT DID -- WHAT DID HE TELL YOU---

5 MR. NEWMAN: YOUR HONOR,-----

6 Q ---TELL YOU ON THAT QUESTION?

7 MR. NEWMAN: ---YOUR HONOR, HIS QUESTION, DID D.W.
8 CONTACT HIM ON AN OCCASION. I WOULD ASK HIM TO RESTRICT
9 THE TIME AND PLACE SO THAT IN ORDER FOR US TO KNOW WHETHER
10 IT'S RELEVANT TO THIS CASE OR NOT.

11 THE COURT: ALL RIGHT, SIR, CAN YOU DO THAT?

12 Q DID HE CONTACT YOU IN THE MID TO LATTER PART OF OCTOBER?
13 MR. D.W. RICHARDSON?

14 A YES.

15 Q AND WHAT DID HE TELL YOU WHEN HE CAME TO YOUR HOUSE?

16 A OKAY. WHEN HE STOPPED BY THE HOUSE, HE ASKED ME
17 WAS MR. MARTY MCFADDEN THERE. AND I TOLD HIM NO, THAT MR.
18 MARTY DID NOT LIVE THERE ANYMORE. AND HE ASKED ME HAVE
19 I SEEN MICHAEL MCFADDEN. AND I TOLD HIM NO. AND HE
20 ASKED ME WHETHER OR NOT DID I KNEW WHETHER OR NOT
21 MICHAEL HAD TO MEET HIS BOND HEARING OR SOMETHING THE NEXT
22 DAY. I TELL HIM I DID NOT KNOW.

23 SO I GAVE HIM MR. MARTY MCFADDEN PHONE NUMBER. WHETHER
24 HE CONTACT HIM, I DO NOT KNOW.

25 Q OKAY. AND YOU'RE AWARE OF THIS PROBLEM MICHAEL HAD

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1 IN GEORGETOWN.

2 A YES, I KNEW IT THEN.

3 Q OKAY. AND WHAT DID YOU UNDERSTAND THAT PROBLEM TO
4 BE?

5 A THAT HE WAS CATCH IN GEORGETOWN DRIVING A MOTORCYCLE
6 WITHOUT A LICENSE.

7 Q OKAY. AND YOU, YOU PASSED THIS ON TO MR. MONT? YOU
8 TOLD---

9 A NO, I DIDN'T---

10 Q ---LAMONT MCFADDEN?

11 A NO, I TOLD HIS SISTER THAT D.W. HAD STOPPED BY THE
12 HOUSE, AND ASKED ABOUT MICHAEL.

13 Q YOU TOLD MARY BROWN THAT?

14 A UH-HUH. (AFFIRMATIVE.)

15 Q OKAY. ALL RIGHT. UM, WERE THERE ANY LIVING
16 ARRANGEMENTS IN YOUR HOUSE THAT WHAT DID -- DOES MICHAEL
17 EVER COME AND STAY AT YOUR HOUSE?

18 A YES, HE HAVE A ROOM THERE IN THE HOUSE. JUST LIKE A
19 FAMILY HOUSE, SO HE HAVE A ROOM THERE.

20 Q AND GENERALLY WHEN HE'S IN TOWN, HE STAYS AT YOUR
21 HOUSE?

22 A YES.

23 Q HE HAS A ROOM THERE. HAVE YOU EVER SEEN MICHAEL
24 MCFADDEN WEARING A JACKET LIKE THIS?

25 A NO.

1 MR. CARRAWAY: OKAY. I DON'T HAVE ANY FURTHER
2 QUESTIONS.

3 THANK YOU.

4 CROSS EXAMINATION BY MR. NEWMAN:

5 Q MS. MCF -- MCFADDEN, YOU'RE THE SISTER-IN-LAW, TO THE
6 DEFENDANT IN THIS CASE?

7 A YES.

8 Q NOW AS I UNDERSTAND YOUR TESTIMONY, HE HAS ANOTHER
9 CASE, OTHER CHARGES IN GEORGETOWN COUNTY.

10 A UH-HUH. (AFFIRMATIVE.)

11 Q AND HE WAS ORDERED TO APPEAR IN COURT, AND HE FAILED
12 TO APPEAR.

13 A YES.

14 Q AND THE FOLKS FROM GEORGETOWN WERE LOOKING FOR HIM.

15 A YES, I GUESS SO.

16 Q PARDON ME?

17 A YES, I ASSUME SO.

18 Q YOU ASSUME SO.

19 A ALL I KNOW THAT D.W. CAME BY AND WAS ASKING ME WHETHER
20 OR NOT DID I SEE HIM. AND I TOLD HIM NO.

21 Q NOW, DO YOU WHETHER OR NOT THAT WAS BEFORE THIS VIDEO
22 PLACE WAS ROBBED OR NOT?

23 A THAT WAS BEFORE THAT.

24 Q SO SOMETIME BEFORE THIS ROBBERY, D.W. WAS LOOKING FOR
25 MCFADDEN FOR CHARGES IN GEORGETOWN.

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1 A UH-HUH. (AFFIRMATIVE.)

2 Q NOW, IS IT TRUE THAT MICHAEL WAS LIVING IN CHARLOTTE?

3 A YES, HE WAS---

4 Q CHARLOTTE,---

5 A ---LIVING IN CHARLOTTE.

6 Q ---NORTH CAROLINA. AND HE WAS THERE FOR SOME PERIOD OF

7 TIME.

8 A UH-HUH. (AFFIRMATIVE.)

9 Q AND WAS IN BOSTON, MASSACHUSETTS.

10 A I KNOW NOTHING ABOUT BO -- HIM BEING IN BOSTON.

11 Q YOU DON'T KNOW ANYTHING ABOUT THAT?

12 A NO, UH-UH. (NEGATIVE.) NOT BEING IN BOSTON.

13 Q UH-HUH. (AFFIRMATIVE.) WELL, NOW THE HOUSE THAT YOU'RE

14 TALKING ABOUT, THAT'S A FAMILY HOUSE. WHERE IS IT LOCATED?

15 A IN ROCKTOWN. ROAD.

16 Q UH-HUH. (AFFIRMATIVE.) AND FOR THE PAST -- FOR THE

17 PAST MANY YEARS, HE HASN'T REALLY BEEN TO KINGS -- IN

18 KINGSTREE THAT MUCH.

19 A WELL, I JUST MARRIED AND MOVED TO KINGSTREE. I JUST

20 BEEN LIVING HERE THREE YEARS. MY HOME ISN'T---

21 Q UH-HUH. (AFFIRMATIVE.)

22 Q ---FROM KINGSTREE. MY HOME IS FROM SUMTER. AND I

23 JUST MARRIED AND MOVED TO KINGSTREE.

24 Q AND WELL, LET'S -- IN THE PAST -- WITHIN THE PAST THREE

25 YEARS, HE HADN'T REALLY BEEN IN THAT HOUSE, STAYING IN THE

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1 HOUSE MUCH, HAS HE?

2 A BACK AND FORTH.

3 Q BACK AND FORTH.

4 A UH-HUH. (AFFIRMATIVE.) STAYING IN THE HOUSE.

5 Q BACK AND FORTH?

6 A HE WAS STAYING AT THE HOUSE, AND HE WOULD STAY SOMEWHERE
7 ELSE IF HE IN KINGSTREE. BUT SO FAR AS HIM BEING IN
8 BOSTON, I KNOW NOTHING ABOUT BOSTON.

9 Q OKAY. YOU DON'T KNOW NOTHING ABOUT IT.

10 A NO.

11 Q DO YOU REMEMBER WHEN THIS VIDEO WAS ROBBED?

12 A NO, I DID NOT KNOW ANYTHING ABOUT THE VIDEO PLACE
13 BEING ROBBED.

14 Q UH-HUH. (AFFIRMATIVE.) WELL, YOU SAY HE STAYS
15 BACK AND FORTH IN KINGSTREE. HE STAYS AND HE STAYS
16 WHERE ELSE?

17 A I DON'T KNOW WHERE ELSE HE STAY. WHEN HE COMES HE
18 STAYS AT THE HOUSE, BECAUSE HE HAVE A ROOM THERE.

19 Q HE'S JUST -- HE'S GOT A ROOM THERE. DOES HE OFFICIALLY
20 LIVE THERE?

21 A WHEN HE COMES HE STAYS THERE. YES.

22 Q AND WHEN HE -- AND OTHER TIMES HE STAYS WHERE? YOU DON'T
23 KNOW---

24 A I DON'T KNOW---

25 Q ---WHERE?

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1 A ---WHERE ELSE. BUT WHEN HE COMES HE STAYS THERE.

2 Q WHEN YOU MEAN -- WHAT DO YOU MEAN YOU SAY WHEN HE
3 COMES?

4 A WHEN HE COMES, LIKE IT'S A FAMILY HOUSE. SO WHEN,
5 WHENEVER HE COMES THERE. WHERE ELSE HE STAY, I DO NOT
6 KNOW. ALL I KNOW IS THAT HE STAYS AT THE HOUSE.

7 Q AND HE CAN STAY -- WHAT YOU'RE REALLY SAYING, IS THAT,
8 SINCE IT'S HIS PEOPLE'S HOUSE---

9 A YES.

10 Q --- HE HAS A RO -- HE CAN STAY THERE SOMETIMES. HE
11 CAN STAY---

12 A YEAH,---

13 Q ---THERE.

14 A ---WELL ONE -- HE HAVE THE RIGHT TO STAY THERE.

15 Q HE HAS A RIGHT TO STAY THERE.

16 A YES.

17 Q YEAH. BUT, YOU DON'T KEEP TRACK OF HIM. YOU'RE
18 NOT HERE TO VERIFY, THAT YOU CAN VERIFY HIS WHEREABOUTS,
19 AND HIS COMING AND GOINGS AND WHAT HE DOES, DO YOU?

20 A NO.

21 Q BECAUSE HE'S, HE'S IN AND HE'S OUT.

22 A YES.

23 Q HE'S THERE AND HE'S NOT.

24 A RIGHT.

25 Q AND WHEN'S HE NOT, YOU MIGHT SEE HIM IN KINGSTREE,

1 BUT HE DOESN'T LIVE THERE.

2 A RIGHT. HE COULD BE IN KINGSTREE, BUT HE'S NOT -- HE
3 MIGHT NOT COME BY THE HOUSE AND STAY THERE.

4 Q HE MAY STAY WITH SOMEONE ELSE.

5 A RIGHT.

6 Q NOW AS FAR AS THIS CASE IS CONCERNED, DID YOU SEE ANY OF
7 THE JEWELRY? DID YOU SEE HIM WITH THIS JEWELRY?

8 A NO.

9 Q DO YOU KNOW ABOUT HIM USING THIS NAME, ABDULLAH AL --
10 BILAL ALHAGG?

11 A NO.

12 Q YOU DON'T KNOW ANYTHING ABOUT THAT?

13 A NO.

14 Q DID YOU SEE HIM WITH THREE OR FOUR OTHER RINGS THAT
15 THE POLICE DIDN'T RECOVER?

16 A NO.

17 Q DID YOU SEE HIM WITH A WATCH THAT THE POLICE DIDN'T
18 RECOVER?

19 A NO.

20 Q YOU SAW HIM WITH A KINGSTREE SENIOR HIGH RING THAT THE
21 POLICE DIDN'T RECOVER?

22 A NO.

23 Q YOU DON'T KNOW ANYTHING ABOUT THIS CASE.

24 A NO, I DON'T KNOW ANYTHING ABOUT THE CASE.

25 MR. NEWMAN: NO FURTHER QUESTIONS.

16B

1 THE COURT: ALL RIGHT, SIR. YOU MAY STEP DOWN.

2 MARY ELIZABETH BROWN, BEING FIRST
3 DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MR. CARRAWAY:

5 Q MS. BROWN, WOULD YOU STATE YOUR NAME FOR THE JURY?

6 A MARY ELIZABETH BROWN.

7 Q AND WHERE DO YOU WORK, MS. BROWN?

8 A AT BAXTER.

9 Q AT BAXTER. YOU'RE TAKING THE DAY OFF HERE TODAY.

10 A YES.

11 Q UM, WHAT WAS MICHAEL MCFADDEN DOING IN CHARLOTTE THAT---

12 A HE WAS---

13 Q ---YOU -- AS FAR AS YOU KNOW?

14 A ---GOING TO COMPUTER SCHOOL.

15 Q COMPUTER SCHOOL. AND WOULD YOU TELL, TELL -- LOOK
16 AT THIS, AND TELL ME WHAT THIS IS?

17 MR. NEWMAN: YOUR HONOR, BEFORE SHE TESTIFIES ABOUT
18 A, A DOCUMENT, I'D LIKE TO SEE IT.

19 MR. CARRAWAY: OKAY.

20 THE COURT: ALL RIGHT.

21 Q WOULD YOU TELL THE JURY WHAT THIS IS, MS. BROWN?

22 A UM,---

23 MR. NEWMAN: JUDGE, I --HE IS---

24 A ---THIS IS----

25 MR. NEWMAN: ---SHOWING HER SOMETHING ABOUT A

1 LOAN APPLICATION. AND I FAIL TO SEE THE RELEVANCE THAT
2 THAT HAS TO THIS CASE.

3 MR. CARRAWAY: IT BECOMES CLEARER, YOUR HONOR.

4 THE COURT: ALL RIGHT, GO AHEAD AND ASK IT. I'LL
5 LET HIM GO WITH. WE'LL SEE.

6 Q GO AHEAD.

7 A WELL, THIS IS THE APPLICATION FROM THE SCHOOL
8 THAT HE WAS GOING TO. THE LADY CALLED ME AND ASKED ME---

9 THE COURT: WELL, WAIT A MINUTE NOW. WAIT A MINUTE.
10 HOW DO YOU KNOW ABOUT THIS ANYWAY?

11 THE WITNESS: WELL---

12 THE COURT: ARE YOU HIS MOTHER?

13 THE WITNESS: NO, I'M HIS SISTER.

14 MR. CARRAWAY: SHE'S HIS SISTER.

15 THE WITNESS: AND THEY'LL COME TO MY HOUSE. WHAT
16 HAPPENED, THE LADY WAS CALLING.

17 THE COURT: ALL RIGHT. BUT NOT -- YOU CAN'T TESTIFY TO
18 WHAT THE LADY ASKED YOU, BECAUSE THAT---

19 THE WITNESS: OH.

20 THE COURT: ---WOULD BE HEARSAY, YOU SEE.

21 THE WITNESS: OH, OKAY.

22 BY MR. CARRAWAY:

23 Q ARE YOU A -- ARE YOU A COSIGNER?

24 A YEAH, I CONSIGNED FOR HIM.

25 Q OKAY. ALL RIGHT, AND YOU UNDERSTAND THAT'S FROM A

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1 COMPUTER SCHOOL---

2 A UH-HUH. (AFFIRMATIVE.)

3 Q ---THAT HE WAS GOING TO IN CHARLOTTE.

4 A YES.

5 Q AND YOU UNDERSTAND THAT HE WAS ALSO WORKING IN
6 CHARLOTTE FOR A---

7 A YEAH,---

8 Q ---COMPANY.

9 A ---HE, HE WAS WORKING THERE.

10 Q OKAY. DID D.W. RICHARDSON CONTACT YOU ABOUT, ABOUT A
11 BOND?

12 A YEAH, HE -- MY SISTER-IN-LAW HAD TOLD ME THAT MICHAEL --
13 THAT D.W. HAD COME TO THE HOUSE. AND I WORK ON DAY SHIFT.
14 SO HE CALLED ME, AND HE HAD TOLD ME THAT MICHAEL WAS ON THE
15 BOND. SO I TOLD HIM THAT I DID NOT KNOW WHERE MICHAEL WAS,
16 BUT I WOULD TRY -- YOU KNOW, IF I HAD SEEN HIM, I WOULD
17 GET ON HIM AND MAKE HIM COME DOWN THERE.

18 Q ALL RIGHT. AND DID YOU -- DID YOU TELL THIS TO
19 MICHAEL, THAT D.W. RICHARDSON WAS LOOKING FOR HIM?

20 A YEAH. WELL---

21 Q OKAY.

22 A ---HAPPENED---

23 Q WELL, THAT'S ALL. YOU---

24 A OKAY.

25 Q ---YOU TOLD HIM THAT, THAT D.W. RICHARDSON HAS BEEN

1 LOOKING FOR HIM.

2 A YES.

3 MR. CARRAWAY: ALL RIGHT, I DON'T HAVE ANY FURTHER
4 QUESTIONS. THANK YOU, MA'AM.

5 CROSS EXAMINATION BY MR. NEWMAN:

6 Q MS. BROWN, DID YOU KNOW ABOUT THE KINGSTREE POLICE
7 DEPARTMENT WERE LOOKING FOR MICHAEL FOR ROBBING THE CLEMMONS
8 VIDEO PLACE?

9 A NO, I DID NOT KNOW ABOUT THAT. UM, THE DAY THEY
10 LOOKED UP MICHAEL UP, I HADN'T SEEN MICHAEL FOR A LONG TIME.
11 HE CAME IN MY DOOR, AND I WAS ANGRY.

12 Q YOU WERE ANGRY AT, AT -- WHO CAME TO YOUR DOOR?

13 A MICHAEL CAME IN THE HOUSE AND UM---

14 Q AND HE WAS -- AND YOU WERE ANGRY AT MICHAEL.

15 A NO, WHAT HAPPENED, THE POLICE HAD BEEN THERE.

16 Q BEEN LOOKING FOR HIM?

17 A YEAH. AND THEY WENT ALL THROUGH THE HOUSE, AND ALL UP
18 IN LOFT AND EVERYWHERE. ALL AROUND THE NEIGHBORS. AND WHEN
19 I GOT HOME, THE NEIGHBORS WAS SCARED. AND THE LITTLE GIRL
20 HAD TOLD ME, SAID THE POLICE TRIED TO STEAL HER BICYCLE.
21 AND---

22 MR. NEWMAN: YOUR HONOR,---

23 A ---ALL THIS. AND JUST AGGRAVATING.

24 MR. NEWMAN: ---YOUR HONOR, I --- YOUR HONOR, I---

25 A SO---

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1 MR. NEWMAN: ---ASK THAT THAT TESTIMONY---

2 THE COURT: YES, SIR.

3 A YEAH.

4 MR. NEWMAN: ---BE STRICKEN.

5 THE COURT: YES, SIR.

6 A AND SO AS I GO WALKING IN MY DOOR---

7 MR. NEWMAN: WHY DON'T YOU ANSWER MY QUESTIONS.

8 THE WITNESS: OKAY.

9 MR. NEWMAN: AND THEN I THINK MAYBE---

10 THE WITNESS: ALL RIGHT.

11 MR. NEWMAN: ---WE'LL BE ON SAFER GROUND THERE.

12 Q THE QUESTION THAT I ASKED YOU WAS, WERE YOU AWARE OF THE

13 POLICE LOOKING FOR MICHAEL FOR ROBBING CLEMMONS VIDEO?

14 A NO, I DID NOT KNOW THAT.

15 Q OKAY. NOW, THE POLICE CAME TO YOUR HOUSE AT SOME POINT

16 AND TIME LOOKING---

17 A NO, THEY DIDN'T---

18 Q ---FOR MICHAEL.

19 A ---NEVER CAME TO MY HOUSE.

20 Q THEY NEVER CAME TO YOUR HOUSE. SO YOU'RE NOW ABOUT TO

21 SAY SOMETHING ABOUT SOME NEIGHBORS TOLD YOU.

22 A MY -- YEAH.

23 Q OKAY. WELL, I'M NOT ASKING YOU ABOUT THAT. DO YOU KNOW

24 ANYTHING ABOUT THIS CASE?

25 A NO, NOT REALLY. I DIDN'T---

1 Q OKAY.

2 A ---I HEARD A LOT. THE MOST I HEARD ABOUT THIS CASE---

3 Q WELL, I'M NOT ASKING WHAT YOU HEARD. I'M ASKING YOU
4 WHAT YOU KNOW. DO YOU KNOW ANYTHING ABOUT THIS CASE?

5 A NO. NOT, NOT OFF HAND.

6 Q THE ONLY THING YOU CAN VERIFY IS THAT HE WAS IN
7 CHARLOTTE FOR SOME PERIOD OF TIME.

8 A UH-HUH. (AFFIRMATIVE.)

9 MR. NEWMAN: I HAVE NOTHING FURTHER.

10 THE COURT: ALL RIGHT.

11 MR. CARRAWAY: I'D LIKE TO CALL PEARLISTINE MCFADDEN
12 TO THE STAND.

13 PEARLISTINE MCFADDEN, BEING
14 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MR. CARRAWAY:

16 Q MS. MCFADDEN, I WANT YOU TO TELL THE JURY WHAT YOU
17 KNOW ABOUT THIS JACKET.

18 A NOTHING.

19 Q YOU NEVER SAW THIS JACKET? YOU'VE NEVER SEEN MICHAEL
20 MCFADDEN WITH A JACKET LIKE THIS?

21 A (NODS IN THE NEGATIVE.)

22 Q OKAY. DO YOU SEE HIM QUITE OFTEN WHEN HE'S HOME?

23 A NO.

24 THE COURT: ARE YOU HIS MOTHER?

25 THE WITNESS: SISTER-IN-LAW.

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1 MR. CARRAWAY: SISTER-IN-LAW.

2 THE COURT: YOU DIDN'T TELL US THAT, DID YOU?

3 THE WITNESS: NO.

4 THE COURT: OKAY, I JUST ASKED.

5 Q WHAT DO YOU KNOW ABOUT THIS NAME ABDUL? THIS, THIS
6 NAME THAT MICHAEL, MICHAEL HAS? WHAT DO YOU KNOW ABOUT---

7 A I NEVER---

8 Q ---THAT?

9 A ---HEARD THAT NAME BEFORE.

10 Q EXCUSE ME?

11 A I NEVER HEARD THAT NAME BEFORE.

12 Q YOU NEVER HEARD IT BEFORE?

13 A (WITNESS NODS IN THE NEGATIVE.)

14 MR. CARRAWAY: OKAY. I DON'T HAVE ANY FURTHER
15 QUESTIONS. THANK YOU.

16 CROSS EXAMINATION BY MR. NEWMAN:

17 Q MA'AM, I MISSED YOUR FIRST NAME.

18 A PEARLISTINE MCFADDEN.

19 Q PEARLISTINE MCFADDEN. YOU'RE MICHAEL'S SISTER-IN-LAW?

20 A YES.

21 Q AND YOU SAID WHENEVER HE'S IN KINGSTREE, YOU DON'T EVER
22 SEE HIM TOO MUCH?

23 A I DON'T SEE MICHAEL.

24 Q YOU DON'T SEE HIM. AND YOU DON'T KNOW NOTHING ABOUT
25 THIS CASE.

1 A I SURE DON'T.

2 MR. NEWMAN: I HAVE NO OTHER QUESTIONS.

3 THE COURT: ALL RIGHT.

4 MR. CARRAWAY: LEROY MCFADDEN.

5 LEROY MCFADDEN, BEING

6 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. CARRAWAY:

8 Q WHAT DO YOU KNOW ABOUT THIS JACKET BEING ON THE BACK
9 FENCE, BACK BEHIND THE HOUSE BACK THERE?

10 A I DON'T KNOW ANYTHING ABOUT IT.

11 Q YOU DON'T KNOW ANYTHING ABOUT IT? HAVE YOU EVER SEEN
12 MICHAEL WITH A JACKET LIKE THIS?

13 A NO, I HAVEN'T.

14 Q OKAY. WHAT DO YOU KNOW ABOUT THIS NAME HERE, THAT HE
15 HAS HERE?

16 A I DON'T KNOW NOTHING ABOUT THAT NAME THERE.

17 Q IS IT NOT TRUE THAT HE HAD -- HE DOES NOT HAVE A MUSLIM
18 NAME? YOU DON'T KNOW ANYTHING ABOUT HIM TAKING A MUSLIM
19 NAME FIVE OR SIX YEARS BEFORE?

20 A NO.

21 THE COURT: SIR?

22 THE WITNESS: MUSLIM NAME, NO, I DON'T.

23 THE COURT: WHAT IS YOUR RELATIONSHIP TO MICHAEL
24 MCFADDEN?

25 THE WITNESS: I'M MICHAEL MCFADDEN'S BROTHER.

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1 THE COURT: BROTHER. ALL RIGHT. AND WHERE DO
2 YOU LIVE?

3 THE WITNESS: I LIVE IN ROCKTOWN.

4 THE COURT: ROCKTOWN.

5 THE WITNESS: YES.

6 Q WHAT DO YOU UNDERSTAND THAT MICHAEL WAS DOING UP IN
7 CHARLOTTE?

8 A HE WAS ENROLLED IN SCHOOL. COMPUTER SCHOOL.

9 Q MICHAEL HAVE ANY NICKNAMES?

10 Q YES, HE DO.

11 Q WHAT'S HIS NICKNAME?

12 A RABBIT EARS.

13 Q WHY DO THEY CALL HIM RABBIT EARS?

14 A BIG EARS, I GUESS.

15 Q OKAY. NOW DID D. W. GRIFFITH -- GRIFFIN -- D. W.
16 RICHARDSON CONTACT YOU ABOUT THIS, OR DID YOU HEAR FROM
17 MARY BROWN THAT D.W. RICHARSON WAS LOOKING FOR MICHAEL?

18 A UH, MY FATHER CONTACT, CONTACTED ME THAT D.W. RICHARDSON
19 WANTED TO TALK TO ME.

20 Q OKAY.

21 A I MEAN, TALK TO MIKE. AND I SEEN MICHAEL. MAKE SURE
22 HE GET IN TOUCH WITH HIM, OR D.W. RICHARDSON.

23 Q ALL RIGHT, THAT'S -- AND DID YOU UNDERSTAND THAT MICHAEL
24 HAD A PROBLEM WITH A MOTORCYCLE OVER THERE?

25 A YES.

1 Q OKAY. YOU KNEW THE POLICE WERE LOOKING FOR MICHAEL
2 RIGHT THERE. THEY COME AROUND LOOKING FOR HIM.

3 A YES.

4 Q BUT YOU DIDN'T KNOW ANYTHING ABOUT CLEMMONS VIDEO
5 OR ANYTHING. IS THAT NOT CORRECT?

6 MR. CARRAWAY: I DON'T HAVE ANY FURTHER QUESTIONS.
7 THANK YOU.

8 CROSS EXAMINATION BY MR. NEWMAN:

9 Q MR. MCFADDEN, THIS IS YOUR BROTHER?

10 A YES, SIR.

11 Q YOUR BROTHER. AND WAS THAT YOUR WIFE THAT WAS UP HERE
12 A LITTLE EARLIER?

13 A (WITNESS NODS IN THE AFFIRMATIVE.)

14 Q AND NOW YOU SAY THAT YOU KNOW SOMETHING ABOUT HIM
15 TAKING SOME CLASSES AT A SCHOOL IN CHARLOTTE?

16 A YES.

17 Q AND YOU, YOU KNOW THAT.

18 A YES. I KNOW HE WAS CHARL -- CHARLOTTE AND, AND TALKING
19 TO THE FAMILY. HE'S ENROLLED IN SCHOOL. AND SAYING THAT
20 I KNOW FOR SURE, YOU KNOW, THAT -- AND THE PAPERWORK AND
21 ALL THAT, NO, I DIDN'T SEE THAT PART. HE WAS---

22 Q WELL, WHEN HE WAS PICKED UP THIS CASE IN GEORGETOWN,
23 WAS HE IN SOME KIND OF BREAK IN SCHOOL?

24 A I THINK UM, HE WAS OUT OF SCHOOL. HE UM -- WELL, UH,
25 HE WAS SHORT ON MONEY.

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1
2 Q HE WAS OUT OF SCHOOL.
3 A I, I DON'T KNOW FOR SURE.
4 Q WELL, TELL US. YOU SAID YOU THINK HE WAS SHORT ON MONEY
5 AND OUT OF SCHOOL.
6 A YES.
7 Q THAT'S WHEN HE PICKED UP THE CASE IN GEORGETOWN.
8 A THAT'S WHEN HE WAS IN KINGSTREE.
9 Q WELL, YOU DIDN'T KNOW ABOUT HIM WORKING ANY PLACE,
10 DID YOU?
11 A WELL, I HEARD HE HAD A JOB IN CHARLOTTE AT THE TIME.
12 AND THE JOB MOVED, OR I REALLY DON'T KNOW WHY -- WHAT---
13 Q WHEN D.W. RICHARDSON WAS LOOKING FOR HIM, YOU DIDN'T
14 KNOW ANYTHING ABOUT HIM WORKING ANY PLACE, DID YOU?
15 A HE WASN'T WORKING AT THE TIME.
16 Q HE WAS UNEMPLOYED. AND AS FAR AS YOU KNOW, HE
17 WAS NOT IN SCHOOL. AND WHEN WAS THAT IN RELATION TO
18 THIS ROBBERY? WAS THAT A MONTH BEFORE?
19 A JUST BEFORE THAT.
20 Q BEFORE THAT. SOMETIME BEFORE THEN. DO YOU KNOW ABOUT
21 HIM GOING TO BOSTON?
22 A I DON'T KNOW NOTHING ABOUT THAT.
23 Q YOU DON'T NOTHING ABOUT IT. YOU DIDN'T KEEP TRACK OF
24 HIM TOO WELL, DID YOU?
25 A NO, I DIDN'T.

1 Q SO IF HE WENT THERE FOR TWO OR THREE WEEKS AND
2 STAYED WITH CYNTHIA BROWN'S FOLKS, YOU WOULD KNOW
3 NOTHING ABOUT THAT, THOUGH HE'S YOUR BROTHER?

4 A WHO?

5 Q IF, IF HE -- IF HE WENT TO CHARLOTTE AS -- TO BOSTON
6 AS CYNTHIA BROWN SAID, AND STAYED WITH HER PEOPLE UP THERE
7 FOR TWO OR THREE WEEKS, AND YOU DON'T KNOW NOTHING ABOUT
8 THAT, THOUGH HE'S YOUR BROTHER?

9 A I DON'T KNOW CYNTHIA.

10 Q WELL, I, I KNOW YOU DON'T, DON'T KNOW THAT. I'M
11 TALKING ABOUT WHAT YOU KNOW ABOUT YOUR BROTHER.

12 A THE ONLY THING I KNOW THAT HE WAS LIVING IN CHARLOTTE
13 AND MOVED -- I MEAN, CAME BACK HOME. AND HE GOT PICKED
14 UP IN -- RIGHT THERE IN GEORGETOWN. WHAT THAT'S ABOUT, I
15 DON'T KNOW.

16 Q WELL, I KNOW. YOU DON'T -- YOU DON'T NOTHING ABOUT
17 HIM, THREE OR FOUR -- TWO OR THREE WEEKS BEFORE ROBBING
18 THIS VIDEO PLACE. YOU DON'T KNOW ANYTHING ABOUT HIM HAVING
19 BEEN IN BOSTON FOR THAT PERIOD OF TIME.

20 A NO, I DON'T.

21 Q AND, AND IS IT YOUR TESTIMONY THAT YOU DON'T KNOW
22 ANYTHING ABOUT THE POLICE LOOKING FOR HIM FOR ROBBING THIS
23 VIDEO PLACE?

24 A NO, I DON'T.

25 Q DO YOU LIVE AT THE HOUSE THERE ON KINDER ROAD?

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1 A NO, I LIVE RIGHT AT MY HOUSE. STREET.
2 THAT'S A BLOCK AWAY.
3 Q SO YOU DON'T LIVE AT THE HOUSE---
4 A NO, I DON'T.
5 Q ---THAT YOUR WIFE WAS TESTIFYING TO THAT HE HAD A ROOM
6 AT.
7 A THAT'S NOT MY WIFE, THAT'S MY SISTER-IN-LAW.
8 Q ALL RIGHT. THE LADY THAT TESTIFIED BEFORE YOU,
9 IS NOT YOUR WIFE. SHE IS YOUR SISTER-IN-LAW.
10 A YES.
11 Q OKAY. YOU DON'T KNOW ANYTHING ABOUT THIS CASE, DO YOU?
12 A NO, I DON'T.
13 MR. NEWMAN: NO OTHER QUESTIONS.
14 THE COURT: ALL RIGHT, SIR. YOU MAY STEP DOWN.
15 MR. CARRAWAY: THE DEFENSE WOULD CALL COREY FULTON TO THE
16 STAND.
17 COREY FULTON, BEING
18 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
19 DIRECT EXAMINATION BY MR. CARRAWAY:
20 Q MR. COREY, WOULD YOU DESCRIBE FOR THE JURY WHAT HAPPENED
21 ON AN EVENING IN THE LATTER PART OF OCTOBER OR EARLY NOVEMBER
22 OF THIS PAST YEAR?
23 A WELL, ME AND THIS GUY HERE, HE ASKED ME TO TALK WITH
24 HIM UM---
25 Q WHAT WAS THE GUY'S NAME?

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1 A MICHAEL JONES. HE ASKED ME TO WALK HIM OVER TO FRIERSON
2 HOMES. AND THEN I ASKED HIM WHAT HE WAS GOING THERE FOR.
3 HE SAID HE JUST HAD WANTED ME TO WALK HIM OVER THERE. SO
4 I WALKED WITH HIM OVER THERE. AND THEN WE GOT OVER THERE,
5 WE SAW MICHAEL MCFADDEN STANDING RIGHT THERE AT THE CORNER,
6 YOU KNOW. AND THEN WE APPROACHED MICHAEL JOHN -- MICHAEL
7 MCFADDEN AND ASKED HIM WHERE MICHAEL -- WELL, MICHAEL,
8 MICHAEL JOHNSON ASKED MICHAEL MCFADDEN DID HE KNOW
9 ANYBODY WHO WANTED SOME JEWELRY. SO UM, UM MICHAEL
10 MCFADDEN SAID NO, NOT REALLY.

11 AND THEN, THEN MICHAEL MCFADDEN ASKED HIM TO LET HIM
12 SEE JEWELRY. SO HE HAD LET HIM SEE THE JEWELRY. AND THEN
13 MICHAEL MCFADDEN ASKED HIM WHAT, WHAT DID HE WANT FOR
14 THE JEWELRY. SO HE SAID HE HAD WANTED 20, \$20 FOR THE
15 JEWELRY. IT WAS A RING AND TWO OF THOSE. IT WAS A NECKLACE
16 AND TWO RINGS. AND THEN AFTER THAT MICHAEL, MICHAEL MCFADDEN
17 GIVE HIM THE MONEY FOR THE JEWELRY AND THEN WE HAD LEFT.
18 AND MICHAEL, MICHAEL MCFADDEN WAS STILL STANDING THERE.
19 AND WE LEFT, AND THEN WE WENT BACK UP THE TRACK.

20 Q WHAT DOES MICHAEL JOHNSON LOOK LIKE?

21 A HE'S KIND OF -- HE'S KIND OF SKINNY LIKE. AND LOOKS
22 SOMETHING, SOMETHING -- HE ALMOST LOOKS LIKE MICHAEL
23 MCFADDEN BUT, YOU KNOW, MICHAEL, MICHAEL, JUST HAVE BIG,
24 BIGGER EARS THAN HIM.

25 Q SO THAT'S THE DIFFERENCE BETWEEN THEM. ONE'S GOT BIG

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1 EARS, AND ONE DOESN'T.

2 A YES.

3 Q ALL RIGHT. NOW YOU'RE IN JAIL WITH MICHAEL MCFADDEN
4 OVER THERE RIGHT NOW, AREN'T YOU?

5 A YES.

6 Q ALL RIGHT. HAS MICHAEL MCFADDEN PUT YOU UP TO SAYING
7 ANY OF THIS?

8 A NO. I DON'T EVEN KNOW MICHAEL MCFADDEN.

9 Q WELL HOW DID THIS COME? TELL THE JURY HOW THIS CAME
10 ABOUT THAT, THAT YOU'RE TELLING THIS STORY. HOW DID THIS
11 COME ABOUT?

12 A WELL UM, I WAS TALKING TO SOMEONE, SOMEONE ELSE WHAT
13 MICHAEL, MICHAEL JOHNSON HAD DID. AND SO MICHAEL, MICHAEL
14 MCFADDEN HAD HEARD ME TALKING TO SOMEONE ELSE. AND THEN
15 HE ASKED ME WAS UM, -- I WAS WITH MICHAEL, MICHAEL JOHNSON
16 THAT NIGHT. AND THEN I TOLD HIM YEAH.

17 Q ALL RIGHT, NOW ARE YOU TELLING THE TRUTH TO THIS
18 JURY, OR DID HE PUT YOU UP TO THIS? AND HAVE YOU MADE
19 THIS WHOLE STORY UP?

20 A I'M TELLING THE TRUTH.

21 Q Y'ALL MET AT FRIERSON HOME.

22 A YES.

23 Q AND MICHAEL JOHNSON ASKED MICHAEL MCFADDEN IF HE
24 WANTED TO BUY SOME JEWELRY.

25 A YES.

1 Q ARE YOU SURE OF THAT?

2 A YES. I WAS RIGHT THERE STANDING UP.

3 Q AND HE SAID NO.

4 A YES.

5 Q AND THEN HE ASKED -- THEN MICHAEL MCFADDEN ASKED TO SEE

6 IT?

7 A YES.

8 Q IS THAT RIGHT?

9 A YES.

10 Q AND WERE YOU CLOSE ENOUGH TO SEE WHAT HE SHOWED HIM?

11 A YES, I WAS.

12 Q ALL RIGHT. AND WHAT DID YOU SEE?

13 A I SAW HIM HAND MICHAEL, MICHAEL MCFADDEN, A RING --

14 TWO UM, RINGS AND ONE NECKLACE.

15 Q AND DID MICHAEL MCFADDEN THEN SAY HE WANTED IT? DID

16 HE SAY HE DIDN'T -- THAT THEN THAT HE WANTED IT?

17 A YEAH, I SEE---

18 Q AND DID YOU---

19 A HUH?

20 Q ---SAW HIM GIVE HIM \$20 FOR THAT?

21 A YES, HE GIVE HIM \$20 FOR IT.

22 Q NOW, YOU'RE ABSOLUTELY CERTAIN THIS IS WHAT YOU SAW.

23 A I'M POSITIVE. I KNOW---

24 Q ALL RIGHT.

25 A ---I SAW IT.

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1 Q AND AIN'T NOBODY PUT YOU UP TO THIS TO COME IN HERE
2 AND TELL THIS. YOU'RE NOT LYING TO THIS JURY.

3 A NO, AIN'T NOBODY SAID NOTHING.

4 Q NOW YOU LOOK AT THIS JURY AND ANSWER IF YOU'RE TELLING
5 THE TRUTH. LOOK AT THEM AND TELL THEM. ARE YOU TELLING
6 THE TRUTH, OR ARE YOU LYING?

7 A I'M TELLING THE TRUTH.

8 MR. CARRAWAY: I DON'T HAVE ANY MORE QUESTIONS.

9 CROSS EXAMINATION BY MR. NEWMAN:

10 Q YOUR NAME IS COREY FULTON?

11 A COREY JEAN FULTON.

12 Q PARDON ME?

13 A COREY JEAN FULTON.

14 Q COREY JEAN FULTON?

15 A YES, SIR.

16 Q HOW OLD ARE YOU?

17 A 20.

18 Q 20?

19 A YEAH.

20 Q AND YOU GRADUATED FROM SCHOOL?

21 A YES, SIR.

22 Q WHAT SCHOOL YOU WENT TO?

23 A I BEEN TO JOB CORPS TWO TIMES. AND I GOT A STATE G.E.D.

24 Q YOU GRADUATED FROM HIGH SCHO -- ARE YOU FROM KINGSTREE?

25 A NO, SIR.

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1 Q YOU GRADUATED FROM HIGH SCHOOL HERE?

2 A NO, NOT, NOT FROM HIGH SCHOOL HERE. JOHNSTON. I
3 GRADUATED FROM NORTH CAROLINA. I WAS IN JOHNSTON.

4 Q WHAT TIME DID YOU QUIT SCHOOL HERE?

5 A I QUIT IN TENTH GRADE.

6 Q NOW, YOUR TESTIMONY, OF COURSE, IS THAT YOU WERE
7 WITH A FELLOW NAMED MICHAEL JOHNSON?

8 A YES, SIR.

9 Q AND HE IS A FRIEND OF YOURS.

10 A YES, SIR.

11 Q MICHAEL JOHNSON IS YOUR FRIEND.

12 A WELL, ASSOCIATE. I DON'T REALLY HAVE NO FRIENDS.
13 I JUST KNOW HIM FROM THE STREET, YOU KNOW.

14 Q HE'S NOT YOUR---

15 A I USED TO BEAT ON HIM---

16 Q ---FRIEND.

17 A ---SOMETIMES. YOU KNOW, DRINKING ON HIM AND STUFF LIKE
18 THAT. I JUST SEE HIM UP THE TRACK. RIGHT UP THERE.

19 Q UP WHICH TRACK?

20 A UP THERE BY MAE DICKEY.

21 Q ON THORN AVENUE?

22 A YES, SIR.

23 Q AND YOU AND MICHAEL JOHNSON, YOUR -- HE'S A DRINKING
24 BUDDY---

25 A YEAH.

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1 Q ---OF YOURS.

2 A YEAH.

3 Q THAT LIVES UP THE TRACK NEAR WHERE YOU---

4 A I DON'T KNOW WHERE HE LIVES AT. I JUST KNOW HIM FROM,

5 FROM BEING UP THERE.

6 Q AND UM, THAT THE TWO OF YOU WERE TOGETHER. YOU AND

7 MICHAEL JOHNSON...

8 A YES, SIR.

9 Q AT WHICH PLACE?

10 A WELL, WE HAD -- WE HAD WALK OVER TO FRIERSON'S.

11 Q AND WHEN WAS THAT?

12 A IT WAS ABOUT THE I'D SAY, ABOUT THE END OF OCTOBER AND

13 THE FIRST OF NOVEMBER.

14 Q AND HOW DO YOU REMEMBER THAT?

15 A IT WAS -- IT WAS DURING THE WEEK DAY OR A WEEKEND.

16 I REMEMBER THAT.

17 Q PARDON ME?

18 A IT WAS A FRIDAY OR A SATURDAY, SOMETHING LIKE THAT.

19 Q WELL, HOW DO YOU REMEMBER THAT?

20 A BECAUSE I THINK WHAT -- I THINK IT WAS RAINING, YOU

21 KNOW. IT WAS RAINING.

22 Q YOU REMEMBER THAT IT WAS FRIDAY OR A SATURDAY, BECAUSE

23 IT WAS RAINING?

24 A YEAH, BECAUSE IT WAS ABOUT TO BE 12 OR ONE. RIGHT

25 BEFORE MIDNIGHT.

1 Q IT WAS ABOUT MIDNIGHT ON A -- ON A FRIDAY OR SATURDAY
2 NIGHT.

3 A YEAH. AND UM---

4 Q PARDON ME?

5 A IT WAS BETWEEN FRIDAY AND SATURDAY.

6 Q OKAY FRIDAY AND SATURDAY.

7 A YEAH, YOU KNOW, LIKE, LIKE FRIDAY AND THEN IT---

8 Q I UNDERSTAND BETWEEN FRIDAY AND SATURDAY. NOW, WELL
9 WHAT I WANT TO, TO, TO -- FOR YOU TO TELL ME, IS HOW DO
10 YOU SPECIFICALLY REMEMBER? I MEAN, HAD Y'ALL BEEN
11 OUT TO A CLUB, THE NEW BREED, OR SOME SPOT, WHICH YOU
12 CAN SPECIFICALLY REMEMBER WAS OPEN THAT FRIDAY OR SATURDAY?
13 IS THAT HOW YOU CAN REMEMBER?

14 A YEAH, I WAS JUST MESSING AROUND.

15 Q YEAH. BUT TELL ME, YOU KNOW, I THINK, YOU KNOW, YOU
16 CAN KIND OF UNDERSTAND THAT ON SAY THURSDAY NIGHT, THE NEW
17 BREED IS A CLUB THAT'S OPEN IN TOWN. AND FRIDAY NIGHT
18 IS MAYBE SOME PLACE ELSE. TELL ME HOW YOU CAN REMEMBER
19 THAT IT WAS FRIDAY OR SATURDAY NIGHT.

20 A WELL, WE HAD -- I KNOW IT WAS THE WEEKEND, BECAUSE I
21 WAS PLANNING TO GO OUT.

22 Q YOU WERE PLANNING TO GO OUT.

23 A YES.

24 Q SO THEREFORE, YOU'RE POSITIVE THAT IT'S THE WEEKEND.

25 A YES.

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1 Q AND YOU CAN LOOK AT THE JURY AS MR. CARRAWAY HAD YOU
2 DO, YOU CAN LOOK AT THEM AND SAY I'M POSITIVE IT WAS THE
3 WEEKEND.

4 A I'M POSITIVE IT WAS A WEEKEND.

5 Q OKAY. SO YOU'RE POSITIVE THAT ON A FRIDAY OR A SATURDAY
6 NIGHT, THAT YOU AND MICHAEL JOHNSON WAS TOGETHER.

7 A YES.

8 Q IN FRIERSON HOME.

9 A YES.

10 Q AROUND 12 OR ONE O'CLOCK.

11 A YES.

12 Q WALKING IN THE RAIN.

13 A YES.

14 Q WALKING---

15 A IT WAS DRIZZLING LIKE, YOU KNOW.

16 Q IT WAS -- Y'ALL WERE WALKING IN THE RAIN.

17 A YES. WE HAD NO RIDE.

18 Q AND WHERE DID Y'ALL WALK FROM?

19 A WE WALKED FROM UP THE TRACK ON THORN AVENUE.

20 Q Y'ALL WALKED TO THORN AVENUE DOWN, DOWN WHICH WAY?

21 A TO FRIERSON.

22 Q WHICH WAY DID YOU GO?

23 A WE CAME OUT THORN AVENUE.

24 Q DOWN THORN AVENUE---

25 A AND WENT TO FRIERSON.

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1 Q OKAY. BY W. MENDERSON SCHOOL?

2 A YES.

3 Q UP LEXINGTON AND THEN TO FRIERSON.

4 A I REALLY DON'T KNOW THE NAME OF THE STREET. BUT I
5 JUST KNOW WE WENT TO FRIERSON.

6 Q WELL, YOU'RE FROM TOWN HERE, AIN'T YOU?

7 A YEAH, BUT, YOU KNOW, BUT I DON'T KNOW ALL THE -- ALL
8 THE---

9 Q YOU DON'T KNOW WHERE LEXINGTON AVENUE IS?

10 A NO.

11 Q YOU KNOW WHERE THE SCHOOL IS.

12 A YEAH.

13 Q Y'ALL WALKED PASS THE SCHOOL AND WENT IN TO FRIERSON.

14 A YEAH.

15 Q NOW WHERE DID Y'ALL FIND MICHAEL MCFADDEN?

16 A HE WAS -- HE WAS STANDING RIGHT THERE ON THE CORNER
17 BY HIS SELF.

18 Q HE WAS STANDING IN THE RIGHT.

19 A YES, HE WAS STANDING OUT THERE, YOU KNOW, BY HIS
20 SELF.

21 Q STANDING -- JUST STANDING IN THE RAIN?

22 A YEAH.

23 Q AND HOW LONG HAD IT BEEN RAINING?

24 A IT -- OKAY, IT HAD REALLY JUST STARTED DRIZZLING, YOU
25 KNOW WHAT I'M SAYING. IT HAD REALLY JUST STARTED DRIZZLING.

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1 Q IT STARTED DRIZZLING BEFORE Y'ALL STARTED WALKING?

2 A WE WAS AT THE CORNER AND IT STARTED DROPPING A LITTLE
3 BIT. DRIZZLING.

4 Q WHERE DID Y'ALL LEAVE? WHAT SPOT ON THE THORN AVENUE
5 DID YOU LEAVE?

6 A WE LEFT FROM UM, YOU KNOW WHERE ERNEST, ERNEST MCBRIDE
7 SHOP AT?

8 Q ERNEST MCBRIDE'S CLUB.

9 A YES.

10 Q WHAT WERE Y'ALL DOING---

11 A IT WAS THE WEEKEND. ACROSS FROM THERE.

12 Q OKAY. Y'ALL WERE IN THE CLUB DRINKING.

13 A YEAH.

14 Q Y'ALL WERE DRINKING IN ERNEST'S PLACE.

15 A YES.

16 Q WHAT DID YOU HAVE TO DRINK?

17 A I WAS DRINKING A COUPLE OF BEERS. A LITTLE BIT OF
18 GIN.

19 Q WHAT DID YOU HAVE A BULL OR?

20 A A BULL.

21 Q HOW MANY YOU HAD?

22 A A COUPLE.

23 Q HOW MANY: DID YOU HAVE SOME 12 OUNCE, 16 OUNCE?

24 A 16 OUNCE.

25 Q YOU HAD A COUPLE OF 16 OUNCE BULLS.

1 A YEAH.

2 Q YOU HAD TWO? PARDON ME?

3 A I'D SAY ABOUT ONE OR TWO.

4 Q OKAY. ALL RIGHT, YOU DRANK YOUR BULLS AT ERNEST'S
5 PLACE, AND WHEN DID IT START RAINING?

6 A ON OUR WAY WALKING COMING TO FRIERSON. GOING TO
7 FRIERSON.

8 Q NOW YOU'RE IN JAIL NOW, RIGHT?

9 A YES, SIR.

10 Q FOR BURGLARY.

11 A ATTEMPTED.

12 Q ATTEMPTING TO BREAK IN TO HIOTT'S PLACE.

13 A YEAH.

14 Q AND HOW LONG HAVE YOU BEEN IN THERE?

15 A HOW LONG HAVE I BEEN IN JAIL NOW?

16 Q YEAH.

17 A A MONTH.

18 Q FOR A MONTH. OKAY. SO YOU WERE NOT IN JAIL
19 DURING THAT TIME.

20 A NO.

21 Q NOW YOU WERE TAKING A WALK, AND IT, IT TAKES ABOUT
22 HOW LONG A WALK FROM ERNEST MCBRIDE'S PLACE DOWN THORN
23 AVENUE BY THE ALPHONSO'S BARBER SHOP, TURN LEFT THERE, PASS
24 JOE GORDON'S HOUSE, UP TO W. MANDERSON SCHOOL, TURN LEFT,
25 TO GO -- TO WALK UP IN TO FRIERSON HOME. HOW LONG DID

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1 IT TAKE YOU DO THAT?

2 A WELL, I'D SAY ABOUT FIVE -- I'D SAY ABOUT FIVE OR
3 SEVEN MINUTES. IF, IF, IF YOU DON'T -- IF YOU DON'T BE
4 THINKING ABOUT IT, IT DON'T -- IT DON'T TAKE THAT LONG---

5 MR. CARRAWAY: YOUR HONOR---

6 A ---TO WALK.

7 MR. CARRAWAY: ---THIS IS IRRELEVANT. THIS DOESN'T
8 HAVE ANYTHING TO DO WITH---

9 THE COURT: I DON'T KNOW. I'M GOING TO LET HIM GO.

10 Q NOW WHERE WERE Y'ALL GOING?

11 A I TOLD YOU, THE GUY ASKED ME TO WALK HIM OVER TO
12 FRIERSON.

13 Q WELL, I KNOW. THAT'S A -- THAT'S THE NAME OF SOME
14 PROJECTS. I UNDERSTAND. BUT WHERE WERE YOU GOING?

15 A FRIERSON HOME.

16 Q WHERE IN FRIERSON HOME?

17 A WE WAS GOING -- JUST GOING OVER THERE. HE SAID HE WAS
18 -- HE WAS GOING TO CHECK SOMETHING OUT. I DON'T KNOW WHAT
19 HE WAS GOING OVER THERE FOR. I JUST WALKED WITH, WITH HIM.

20 Q THAT HE WAS GOING TO CHECK SOMETHING OUT---

21 A YES.

22 Q ---AT FRIERSON HOMES.

23 A YES.

24 Q AND YOU WERE WALKING WITH HIM.

25 A YES.

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1 Q NOW WHAT DID HE CHECK OUT IN FRIERSON HOME WHEN HE
2 GOT TO FRIERSON HOME?

3 A WHAT I -- WHAT I JUST TOLD YOU. HE HAD -- HE HAD
4 WANT TO GET RID OF SOME JEWELRY.

5 Q SO DID HE TELL YOU WHERE HE GOT THEM FROM?

6 A NO, HE DIDN'T.

7 Q DID YOU KNOW -- DID HE TELL YOU HOW LONG HE HAD THEM?

8 A I DIDN'T REALLY KNOW HE HAD NO JEWELRY UNTIL WE
9 GOT OVER THERE. AND THEN HE APPROACHED MICHAEL MCFADDEN
10 AND UM, ASKED HIM THAT. I DIDN'T KNOW HE HAD NO JEWELRY
11 THERE.

12 Q JUST OUT OF THE BLUE SKY -- OUT OF THE BLUE SKY ON
13 A FRIDAY OR SATURDAY NIGHT, YOU WERE AT THE CLUB PARTYING,
14 DRINKING SOME BULLS, AND SOMEONE ASKED YOU HEY, WALK
15 WITH ME OVER TO FRIERSON HOMES SO I CAN CHECK SOMETHING
16 OUT?

17 A WHAT YOU MEAN, MAN?

18 Q THAT'S MY QUESTION.

19 A HEY, I TOLD YOU. I WAS DRINKING WITH THEM MORE THAN
20 THAT TIME, YOU KNOW. OKAY. IT WASN'T LIKE THE FIRST -- LIKE
21 THE FIRST TIME. ASKING ABOUT WHAT?

22 Q WELL, Y'ALL HAD BEEN DRINKING OTHER TIMES. HE'S YOUR
23 DRINKING BUDDY. WE'VE ESTABLISHED THAT. BUT I'M SAYING THAT
24 FOR JUST OUT OF THE BLUE SKY, MICHAEL JOHNSON ASKED YOU TO
25 STOP PARTYING AT ERNEST MCBRIDE'S PLACE.

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1 A I WASN'T PARTYING. I WAS JUST IN THERE, YOU KNOW, JUST,
2 JUST COOLING IT.

3 Q CHILLING.

4 A YEAH, CHILLING---

5 Q COOLING.

6 A YEAH.

7 Q OKAY. AND OUT OF THE BLUE SKY, HE WANTS YOU TO WALK
8 UP TO FRIERSON'S PLACE TO CHECK -- FRIERSON'S HOME TO CHECK
9 SOMETHING OUT.

10 A YES.

11 Q AND IT JUST SO HAPPENS, HE DIDN'T TELL YOU HE WAS GOING
12 TO SEE MICHAEL MCFADDEN.

13 A NO, HE DIDN'T.

14 Q IT JUST---

15 A I DON'T KNOW WHAT HE WAS GOING TO DO---

16 Q ---IT JUST SO HAPPENS THAT AS Y'ALL WERE WALKING ALONG
17 IN THE RAIN ON THIS FRIDAY OR SATURDAY NIGHT, WHEN YOU GOT
18 THERE, IT JUST SO HAPPENS THAT MICHAEL MCFADDEN WAS STANDING
19 OUT THERE IN THE RAIN. AND THAT'S WHO HE WAS GOING TO SEE.

20 A MUST BE. I DON'T KNOW WHO HE WAS GOING TO SEE. I, I
21 JUST, YOU KNOW, TOLD YOU WHAT I SAW.

22 Q WELL, WHAT DID Y'ALL DO AT THAT POINT?

23 A WHAT YOU MEAN?

24 Q WHAT DID Y'ALL DO AFTER HE -- AFTER HE CHECKED OUT,
25 WHAT HE WAS GOING TO FRIERSON'S TO CHECK OUT?

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1 A I TOLD YOU, WE, WE CAME BACK AND WALKED BACK UP THE
2 TRACK.

3 Q SO THEN AFTER HE WALKS UP THERE, AND SEES MICHAEL
4 MCFADDEN STANDING IN THE RAIN AND GET ADVICE. AND WHAT
5 DOES HE DO WITH MICHAEL MCFADDEN?

6 A WHEN HE -- WHEN HE -- WHEN HE FIRST -- WHEN HE FIRST
7 APPROACH MICHAEL MCFADDEN, HE ASKED HIM DID HE KNOW ANYBODY
8 WHO WANTED SOME JEWELRY. MICHAEL MCFADDEN SAID NO. AND
9 SO -- AND SO MICHAEL MCFADDEN ASKED HIM TO LET HIM SEE THE
10 JEWELRY.

11 Q UH-HUH. (AFFIRMATIVE.)

12 A YEAH.

13 Q UH-HUH. (AFFIRMATIVE.)

14 A AND THEN HE, HE LEFT. MICHAEL MCFADDEN SAID WHAT HE
15 WANTED FOR THE JEWELRY. HE TOLD HIM HE HAD WANTED \$20
16 FOR THE JEWELRY.

17 A UH-HUH. (AFFIRMATIVE.)

18 Q NOW, IN YOUR TESTIMONY, YOU DON'T KNOW MICHAEL
19 MCFADDEN?

20 A NO, I DON'T REALLY KNOW HIM.

21 Q YOU DON'T KNOW HIM?

22 A NO, I JUST DON'T WANT TO SEE THE MAN GO TO JAIL FOR---

23 Q YOU DON'T -- NO, THAT'S NOT MY QUESTION. MY QUESTION
24 IS WHETHER YOU KNOW HIM.

25 A NO, I DON'T REALLY KNOW HIM.

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1 Q YOU'VE BEEN IN JAIL WITH HIM---

2 A I'VE SEEN HIM AROUND AND STUFF.

3 Q YOU'VE SEEN HIM AROUND WHERE?

4 A AROUND, YOU KNOW, HOME. BUT, YOU KNOW, WHERE HE STAY
5 AT OR WHATEVER, I, I DON'T REALLY KNOW HIM THAT WELL.

6 Q LET'S EXAMINE YOU'RE SEEING HIM AROUND THEN. YOU'VE
7 SEEN HIM AROUND WHERE?

8 A AROUND LIKE AT WARD'S STORE. LIKE I GO TO WARD'S
9 AND I GET GAS OR WHATEVER. AND HE BE OUT THERE GETTING GAS.
10 LIKE THAT.

11 Q DO YOU KIND OF HANG AROUND WARD'S STORE SOMETIMES?

12 A NO, I DON'T HANG AROUND WARD'S STORE TOO MUCH. ONCE
13 I GO, LIKE I GET GAS OR CIGARETTES OR SOMETHING LIKE THAT.

14 Q UH-HUH. (AFFIRMATIVE.) AND THAT'S WHERE YOU KNOW
15 MICHAEL MCFADDEN FROM?

16 A YEAH, I SEEN HIM AROUND THERE.

17 Q YOU KNOW HIM FROM WARD'S PLACE. DO YOU GO TO THE
18 HOLE IN THE WALL?

19 A YEAH, EVERY, EVERY ONCE IN A WHILE.

20 Q DO YOU KNOW HIM FROM THE HOLE IN THE WALL?

21 A I'VE NEVER SEEN HIM BACK THERE.

22 Q DO YOU KNOW HIM -- WELL, THAT'S WHERE HIS FOLKS LIVE
23 OVER THERE, ISN'T IT?

24 A WELL, I SAY, I GO EVERY NOW AND THEN.

25 Q WELL, DO YOU KNOW HIM FROM THE HOLE IN THE WALL?

- 1 A NO, I DON'T.
- 2 Q DO YOU GO TO LIBBY'S PLACE OVER THERE?
- 3 A NO.
- 4 Q YOU DON'T GO THERE?
- 5 A I, I DON'T MESS AROUND OVER THERE.
- 6 Q WELL, YOU KNOW HIM FROM ERNEST MCBRIDE'S PLACE?
- 7 A NO.
- 8 Q YOU'VE NEVER SEEN HIM OVER THERE.
- 9 A NO.
- 10 Q NOW, YOU KNOW HE IS MICHAEL MCFADDEN.
- 11 A YES.
- 12 Q AND HOW MANY YEARS HAVE YOU KNOWN HIM?
- 13 A WELL, I DON'T -- I DON'T REALLY -- WELL I'VE SEEN HIM
- 14 OFF AND ON, YOU KNOW.
- 15 Q MY QUESTION, IS HOW MANY---
- 16 A ABOUT---
- 17 Q ---YEARS?
- 18 A I'D SAY ABOUT -- I'D SAY ABOUT A YEAR. SOMETHING
- 19 LIKE THAT.
- 20 Q WHERE, WHERE DID YOU MEET HIM?
- 21 A YOU MEAN, WHEN DID I MEET HIM?
- 22 Q WHERE DID YOU MEET HIM?
- 23 A WHERE DID I MEET HIM?
- 24 Q YES.
- 25 A I DIDN'T REALLY -- I JUST TALKED TO HIM LIKE -- OKAY,

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1 LIKE. OKAY. LIKE I -- LIKE I JUST SAID, I SEE HIM AT
2 WARD'S AND I SPEAK TO HIM LIKE THAT. THAT'S IT. AND THEN
3 I CAME TO JAIL AND I SAW HIM, YOU KNOW. AND THEN ONCE LION
4 HEARD, HEARD ME TALKING TO SOMEONE ELSE ABOUT, YOU KNOW,
5 ABOUT MICHAEL JOHNSON.

6 Q YEAH.

7 A THEN HE ASKED ME---

8 Q WELL---

9 A ---HE ASKED ME WAS -- I WAS THE GUY WITH MICHAEL JOHNSON
10 THAT NIGHT.

11 Q WELL, WHAT'S THE BIG DEAL ABOUT MICHAEL JOHNSON?
12 JUST -- YOU JUST HAPPENED TO BE TALKING WITH SOMEONE THAT
13 ONE NIGHT YOU AND MICHAEL JOHNSON, ON A FRIDAY OR SATURDAY
14 AND WAS WALKING IN THE RAIN. AND, AND, AND Y'ALL WALKED INTO
15 MICHAEL MCFADDEN? WHAT WAS SIGNIFICANT ABOUT THAT, THAT
16 CAUSED YOU TO BE TALKING WITH SOMEONE ABOUT MICHAEL
17 JOHNSON?

18 A I DIDN'T TALK TO NOBODY ABOUT NOTHING.

19 Q PARDON ME?

20 A I DIDN'T TALK TO NOBODY ABOUT NOTHING. THE ONLY
21 THING CAREY TOLD ME TO DO, IS TELL THE TRUTH.

22 Q WELL, I UNDERSTAND. BUT I'M SAYING THAT -- I MEAN,
23 HE'S NOT OVER IN THE JAIL WITH YOU AND MICHAEL MCFADDEN.
24 I UNDERSTAND THAT. MY QUESTION IS, WHAT WAS SO SIGNIFICANT
25 ABOUT THAT, THAT YOU IN THE JAIL FOR BURGLARY, WOULD BE

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1 OVER AT THE JAIL TALKING WITH SOMEONE ABOUT THIS THAT NIGHT,
2 ON A FRIDAY OR SATURDAY NIGHT, WHEN YOU AND MICHAEL MCFADDEN
3 WERE WALKING IN THE RAIN?

4 A ME AND MICHAEL JOHNSON.

5 Q MICHAEL JOHNSON, YEAH. WHAT'S SIGNIFICANT ABOUT THAT,
6 THAT CAUSED YOU TO BE TALKING ABOUT THAT, THAT DAY?

7 A I JUST JUMP ON THE CONVERSATION AND THAT'S IT.

8 Q NOW WHERE IS THIS -- WHERE IS MICHAEL JOHNSON?

9 A I DON'T KNOW WHERE HE AT. I, I WAS IN JAIL. I HAVE
10 -- WELL, I WAS SAYING SOMETHING LIKE -- I'D SAY LIKE THE
11 MIDDLE OF NOVEMBER.

12 Q WELL, DOES HE LIVE IN KINGSTREE?

13 A I GUESS SO. I GUESS HE STILL DO. I DON'T KNOW.

14 Q WELL, WHERE DOES HE LIVE?

15 A I DON'T KNOW.

16 Q HE'S YOUR FRIEND, ISN'T HE?

17 A ASSOCIATE. I DON'T HAVE NO FRIENDS.

18 Q YOU DON'T KNOW WHERE HE LIVES?

19 A NO.

20 Q WHAT'S HIS MOTHER'S NAME?

21 A I DON'T KNOW.

22 Q WHAT'S HIS FATHER'S NAME?

23 A I DON'T KNOW.

24 Q WHAT'S HIS BROTHER'S NAME?

25 A I DON'T KNOW.

200

- 1 Q HOW OLD IS HE?
- 2 A HE'S ABOUT 25 -- ABOUT 26, SOMETHING LIKE THAT.
- 3 Q WHERE DOES HE WORK?
- 4 A I DON'T KNOW. I, I DON'T THINK HE WORKS. BECAUSE EVERY
5 TIME I SEE HIM, HE BE UP THE TRACK MESSING AROUND UP THERE.
- 6 Q UH-HUH. (AFFIRMATIVE.) NOW, AFTER THIS SUPPOSED
7 TRANSACTION WAS THAT YOU'RE TALKING ABOUT, WHAT DID Y'ALL
8 DO?
- 9 A WHAT DO YOU MEAN, AFTERWARDS?
- 10 Q YES.
- 11 A WE UM -- WE, WE UM WENT BACK UP THE TRACK. AND THEN
12 ALL RIGHT, HE SAID HE WAS -- HE WAS GOING UP TO WARD'S.
13 SO I SAY I WASN'T GO OVER TO WARD'S STORE. SO I STAYED
14 OUT THERE.
- 15 Q WHY DIDN'T YOU GO IN WARD'S STORE?
- 16 A I DON'T MESS AROUND OVER THERE AT, AT -- AROUND WARD'S
17 STORE AT ALL. BACK THERE IN ROCKTOWN.
- 18 Q OKAY. NOW YOU'RE -- Y'ALL WALKED UP THE TRACK, BACK
19 TO ERNEST MCBRIDE'S PLACE.
- 20 A YES.
- 21 Q AND BY THIS TIME, IT WOULD BE ABOUT WHAT, THREE O'CLOCK
22 IN THE MORNING?
- 23 A YEAH, I'D SAY -- YEAH, SOMETHING LIKE THAT.
- 24 Q WHAT DID Y'ALL DO THEN? WAS THE PLACE STILL OPEN?
- 25 A NO, ERNEST WAS CLOSED.

1 Q WHAT TIME DID HE CLOSE?

2 A I BEEN OUT THERE WITH UM -- WITH UM MICHAEL JOHNSON. HE
3 BEEN GOING TO WARD'S STORE. SO I TOLD HIM I'D GET UP WITH
4 HIM LATER.

5 Q Y'ALL WERE STILL WALKING IN THE RAIN.

6 A NO. I SAID ONCE, ONCE WE GOT BACK UP THE TRACK, HE
7 TOLD ME HE WAS GOING TO WARD'S STORE. HE ASKED ME WAS
8 I GOING. I TOLD HIM NO. I THINK---

9 Q WAS IT STILL RAINING?

10 A HUH?

11 Q WAS IT STILL RAINING?

12 A IT WAS DONE SLACKED DOWN NOW.

13 Q HUH, DID YOU SEE THE WATCH?

14 A NO, I DIDN'T SEE NO WATCH.

15 Q DID YOU SEE THE KINGSTREE SENIOR HIGH RING?

16 A I -- THE ONLY THING I KNOW, IT WAS A RING. I, I'M
17 SORRY. I DON'T KNOW WHAT KIND IT WAS. I THINK IT WAS
18 A GOLD RING.

19 Q WELL, DID YOU SEE---

20 A I DON'T KNOW----

21 Q THE QUESTION WAS, DID YOU SEE KINGSTREE SENIOR HIGH---

22 A I WASN'T---

23 Q ---RING?

24 A ---SUPPOSED TO SEE NO -- WHAT KIND OF NAME IT WAS ON
25 IT. I DON'T -- I DIDN'T SEE. I DON'T KNOW WHAT---

202

1 Q HOW MANY---

2 A ---KIND OF RING IT WAS.

3 Q ---HOW MANY DID YOU SEE?

4 A I SAW ONE RING AND TWO NECKLACES.

5 Q ONE RING---

6 A I MEAN TWO NECKLACES AND ONE RING.

7 Q YEAH, THAT'S WHAT YOU SAID. TWO NECKLACES---

8 A AND ONE RING.

9 Q YOU SAW TWO NECKLACES AND ONE RING.

10 A YES.

11 Q DESCRIBE THE TWO NECKLACES YOU SAW.

12 A IT WAS KIND OF LIKE GOLD AND THEN -- THE RING WAS

13 GOLD.

14 Q WELL HOW ABOUT THE OTHER NECKLACES. YOU SAID YOU SAW

15 TWO NECKLACES.

16 A I JUST SAID THE NECKLACE WAS GOLD.

17 Q WELL, BOTH OF THEM WERE?

18 A YES.

19 Q HE HAD TWO GOLD NECKLACES. AND HE BOUGHT TWO GOLD

20 NECKLACES---

21 A AND THE RING.

22 Q ---AND ONE RING FOR \$20.

23 A YES.

24 Q ALL RIGHT. WHEN YOU LEFT MICHAEL'S -- YOU AND MICHAEL

25 JOHNSON WENT BACK UP TO MCBRIDE'S PLACE ABOUT THREE O'CLOCK.

1 WOULD THAT BE THREE O'CLOCK SATURDAY MORNING, OR THREE
2 O'CLOCK SUNDAY MORNING?

3 A WELL, IT WASN'T -- IT WAS ABOUT -- IT HAD TO HAVE
4 BEEN THREE O'CLOCK SATURDAY MORNING.

5 Q THREE O'CLOCK SATURDAY MORNING. NOW GIVE ME A DATE
6 FOR THAT UH---

7 A I CAN'T GIVE YOU NO DEFINITE DATE. BECAUSE THE ONLY
8 THING I KNOW IT WAS THEY ENTER -- IT HAD TO HAVE BEEN LIKE
9 THE FIRST -- THE FIRST WEEK IN NOVEMBER.

10 Q THE FIRST WEEKEND IN NOVEMBER. DO YOU HAVE A '91
11 CALENDAR ANY, ANYWHERE WITH '91 ON IT? BY THE WAY,
12 LET ME JUST ASK YOU THIS, WHILE WE FIND US A '91 CALENDAR.
13 NOW YOU, YOU SAW THAT -- YOU GOT BACK, YOU STOOD AROUND
14 ERNEST -- OUT, OUT THERE ON THORN AVENUE?

15 A I STOOD AROUND FOR A FEW MINUTES. THEN I WENT---

16 Q UH-HUH. (AFFIRMATIVE.

17 A ---HOME.

18 Q ANYBODY SMOKING ANY CRACK OUT THERE?

19 A I DON'T KNOW WHAT THEY WAS DOING.

20 Q WELL, YOU WERE OUT THERE. I'M JUST ASKING.

21 A I SAW THEM GOING BACK IN THE HOLE BECAUSE, YOU KNOW,
22 I WASN'T REALLY WATCHING THEM TO SEE WHAT THEY WAS DOING.

23 Q WHAT WERE YOU, YOU WERE JUST STANDING AROUND?

24 A YEAH.

25 Q AND YOU SAW PEOPLE GOING IN THE HOLE WHERE THEY SMOKE

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1 CRACK.

2 A YES. I STAYED RIGHT THERE.

3 Q AND YOU DIDN'T SMOKE NO CRACK.

4 A NAH.

5 Q OKAY. NOW THE -- THIS IS A '91 CALENDAR WE ARE LOOKING
6 AT. SO YOU'RE SAYING THAT IT WAS THE FIRST WEEKEND IN
7 NOVEMBER?

8 A I SAID -- I SAID IT ABOUT THE ENDING WEEK IN OCTOBER,
9 OR THE -- OR THE FIRST WEEK IN NOVEMBER.

10 Q OKAY. NOW THE LAST SATURDAY IN OCTOBER WAS THE
11 26TH. AND THE FIRST SATURDAY IN NOVEMBER WAS THE SECOND.

12 A RIGHT.

13 Q NOW WHICH ONE WAS IT?

14 A I CAN'T GIVE YOU NO DEFINITE DATE NOW.

15 Q WELL, WHICH ONE? YOU, YOU'RE TALKING TO THE JURY AND
16 WANT THEM TO BELIEVE WHAT YOU'RE TALKING ABOUT. WHICH ONE
17 WAS IT?

18 A IT WAS PROBABLY THAT SATURDAY. I MEAN I'M NOT SURE, YOU
19 KNOW, BECAUSE I CAN'T GIVE YOU NO DEFINITE DATES THAT IT
20 WAS.

21 Q YOU DON'T KNOW.

22 A NO, SIR.

23 Q YOU DON'T KNOW WHETHER IT WAS BEFORE OR AFTER THE STORE
24 WAS ROBBED?

25 A I DON'T KNOW NOTHING ABOUT NO STORE.

1 Q YOU DON'T BEFORE -- IT WAS BEFORE MS. CLEMMONS -- MS.
2 ROGERS WAS ROBBED.

3 A I DON'T KNOW NOTHING ABOUT NO STORE.

4 Q WELL NOW, IF IT WAS SATURDAY MORNING ON THE 2ND,
5 THAT'S WHAT YOU'RE SAYING?

6 A YEAH.

7 Q SO YOU BELIEVE THAT IT WAS -- YOU KNOW IT WAS A SATURDAY
8 MORNING.

9 A UH-HUH. (AFFIRMATIVE.) THREE O'CLOCK A.M. BETWEEN A
10 FRIDAY AND A SATURDAY.

11 Q YEAH. THAT YOU TOLD THE JURY YOU KNOW IS TRUE.

12 A YEAH.

13 Q BUT DID YOU KNOW BY THAT TIME THE POLICE HAD RECOVERED
14 THE STUFF THAT HAD BEEN ROBBED FROM HER?

15 A I DON'T KNOW. HEY, LIKE I SAID, I CAN'T GIVE YOU
16 NO DEFINITE DATE.

17 Q WELL, DID YOU KNOW THAT BY THAT TIME THE POLICE HAD
18 ALREADY RECOVERED THE THINGS THAT YOU IN HERE ARE TESTIFYING
19 TO, THAT YOU KNOW IS NOT TRUE?

20 A I DON'T KNOW NO DEFINITE DATE, MAN. WHY ARE YOU TRYING
21 TO MAKE ME SAY SOMETHING WHAT I DON'T KNOW?

22 Q NO, THAT'S, THAT'S MY POINT. YOU DIDN'T KNOW THAT
23 THE POLICE HAD ALREADY GOTTEN THE STUFF BACK---

24 A HEY THE ONLY---

25 Q ---BY THIS DATE YOU TALKING ABOUT.

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1 A ---THE ONLY THING I TOLD YOU, WHAT I SAW.

2 Q AND YOU ARE IN HERE FOR BURGLARY NOW OF THE HIOTT PLACE.
3 BUT YOU HAVE A PRIOR CRIMINAL RECORD FOR BURGLARIZING
4 THAT SAME PLACE BEFORE, DON'T YOU?

5 A YEAH, ATTEMPT. I DIDN'T WENT IN. I DIDN'T.

6 Q YEAH, YOU BURGLARIZED THE FIRST TIME. AND YOU HAVE
7 BEEN THROUGH THIS SAME SITUATION IN COURT BEFORE, AND
8 CONVICTED IN THIS VERY COURTROOM OF BURGLARY OF THAT STORE.
9 WHEN WAS THAT?

10 A WHEN WAS THAT?

11 Q WHEN YOU BURGLARIZED THAT MAN'S STORE?

12 A YOU MEAN, THE LAST TIME.

13 Q WELL, WHICHEVER TIME YOU WANT TO TELL US ABOUT. HOW
14 MANY TIMES HAS IT BEEN?

15 A YOU MEAN HOW MANY TIMES HAVE IT BEEN---

16 Q THAT YOU BURGLARIZED THE STORE.

17 A NOT BUT TWO TIMES.

18 Q WHEN WAS THE FIRST TIME?

19 A IT WAS BACK IN OCTOBER OR SOMETHING LIKE THAT.

20 Q YEAH. THE SAME MONTH THAT HE ROBBED---

21 A I GOT ON BOND. I WASN'T IN JAIL. I GOT ON BOND IN
22 30 MINUTES.

23 MR. NEWMAN: NOTHING FURTHER.

24 REDIRECT EXAMINATION BY MR. CARRAWAY:

25 Q ARE YOU TELLING THE TRUTH ABOUT THIS, WHAT YOU SAW?

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1 MR. NEWMAN: OBJECTION, YOUR HONOR.

2 THE COURT: I'LL LET HIM TELL IT.

3 MR. CARRAWAY: NO FURTHER QUESTIONS.

4 THE COURT: ALL RIGHT. STEP DOWN.

5 MR. CARRAWAY: I'D LIKE FOR MICHAEL MCFADDEN TO
6 COME UP HERE AND TRY THIS COAT ON, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 (MR. MCFADDEN TRYING ON COAT.)

9 MR. CARRAWAY: BUTTON IT UP IF YOU WOULD. OKAY. THAT
10 IS THE DEFENSE'S CASE, YOUR HONOR.

11 THE COURT: ANYTHING IN REPLY?

12 MR. NEWMAN: NO, SIR.

13 THE COURT: IT'S 12:30. Y'ALL WANT TO START AT TWO
14 O'CLOCK. OR DO YOU WANT TO ARGUE NOW AND THEN BREAK?

15 MR. CARRAWAY: START AT TWO.

16 THE COURT: DOES THAT SUIT YOU, MR. NEWMAN?

17 LADIES AND GENTLEMEN, YOU'VE HEARD ALL THE TESTIMONY
18 YOU'RE GOING TO HEAR IN THIS CASE. ALL THE EVIDENCE YOU'RE
19 GOING TO HEAR IS IN. THE ONLY THING THAT REMAINS IS THAT
20 THESE ATTORNEYS ARE GOING TO MAKE A FINAL ARGUMENT TO YOU,
21 AFTER WHICH I'M GOING TO CHARGE YOU THE LAW. IT'S 12:30.
22 WHY DON'T WE BREAK NOW AND COME BACK AT TWO O'CLOCK.

23 AND I'M NOT GOING TO KEEP YOU BACK THERE, I PROMISE
24 YOU. I KNOW I TOLD YOU YESTERDAY I WOULDN'T. BUT I HAD
25 ABOUT SEVEN OR EIGHT PLEAS, I TOOK THIS MORNING IN THAT

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1 30 MINUTES. BUT I'M NOT GOING TO DO THAT THIS AFTERNOON.
2 AT TWO O'CLOCK, WE ARE GOING TO START THIS CASE AND
3 FINISH IT. BY THREE O'CLOCK HOPEFULLY, YOU'LL HAVE THIS
4 CASE. OR THREE-THIRTY I'LL HAVE THIS CASE IN YOUR HAND --AND
5 YOU CAN -- AND YOU CAN DELIBERATE. BUT DO NOT DELIBERATE
6 NOW. DON'T EVEN TALK ABOUT THE CASE AT THIS POINT, BECAUSE
7 YOU STILL HAVEN'T HEARD THE LAW. NOR HAVE YOU HEARD THESE
8 FINAL ARGUMENTS. AND YOU NEED TO DO THAT. ALL OF YOU
9 NEED TO BE TOGETHER BEFORE YOU -- BEFORE YOU DECIDE THE CASE.

10 SO DON'T DISCUSS IT. DON'T LET ANYONE TALK TO YOU
11 ABOUT THE CASE. AND IF YOU WILL, EVERYONE ELSE REMAIN
12 SEATED. I WANT THE JURY TO LEAVE. AND, AND ASK YOU TO
13 BE BACK IF YOU WILL, IN YOUR JURY ROOM AT TWO O'CLOCK.
14 AND I'LL BRING YOU RIGHT OUT AT THAT TIME.

15 (THEREUPON, THE JURY IS DISMISSED FOR LUNCH AT
16 12:33 P.M.)

17 (THEREUPON, THE COURT BREAKS FOR LUNCH.)

18 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
19 PRESENCE OF THE JURY.)

20 THE COURT: LADIES AND GENTLEMEN, THE CLOSING ARGUMENTS
21 OF THESE LAWYER, IS NOT EVIDENCE. IT'S IMPORTANT, BUT
22 IT'S NOT EVIDENCE. Y'ALL ARE TO TRY THIS CASE BASED
23 ON WHAT YOU HEAR FROM THIS WITNESS STAND AND THE EXHIBITS
24 THAT YOU WILL HAVE IN YOUR JURY ROOM. BUT CLOSING ARGUMENTS
25 ARE PERMITTED BY OUR RULES. AND YOU JUST NEED TO UNDERSTAND

1 THAT THESE ATTORNEYS HAVE THE RIGHT TO ARGUE TO TRY TO
2 CONVINCE YOU TO SEE THE EVIDENCE ONE WAY OR THE OTHER.
3 BUT WHILE THEY ARE IMPORTANT, WHAT IS -- WHAT IS -- WHAT
4 YOU'RE TO DO IS TO TRY THIS CASE BASED ON WHAT YOU HEAR
5 FROM THESE WITNESSES WHO TESTIFIED.

6 ALL RIGHT. DO YOU WAIVE OPENING? MR. CARRAWAY.

7 MR. CARRAWAY: IF THE PLEASE THE COURT, YOUR HONOR, MR.
8 NEWMAN. NOW, LADIES AND GENTLEMEN OF THE JURY, I TOLD
9 YOU WHEN THIS TRIAL BEGAN, AND THE JUDGE WILL EXPLAIN TO
10 YOU THAT MICHAEL MCFADDEN IS INNOCENT UNTIL HE IS PROVEN
11 GUILTY BEYOND A REASONABLE DOUBT BY THE STATE. THE JUDGE
12 WILL TELL YOU THAT A REASONABLE DOUBT IS ANY DOUBT THAT
13 WOULD CAUSE YOU TO HESITATE TO ACT. IN THIS CASE, ANY
14 REASONABLE DOUBT YOU HAVE GOT IN THIS CASE, THAT WOULD
15 CAUSE YOU TO HESITATE TO ACT. TO FIND THIS MAN GUILTY
16 MEANS THAT YOU MUST FIND HIM INNOCENT IN THIS CASE.
17 THEY HAVE TO REMOVE ALL REASONABLE DOUBT IN THIS CASE FROM
18 MR. MCFADDEN. HE CAME IN HERE INNOCENT, AND AS I TOLD YOU,
19 I BELIEVE HE WILL WALK OUT OF THIS CASE INNOCENT. HE'LL
20 LEAVE THIS JURY. HE'LL LEAVE THIS TRIAL AN INNOCENT
21 MAN.

22 AND I SUBMIT TO YOU THERE ARE MANY AREAS OF REASONABLE
23 DOUBT IN THIS CASE. WE'VE NEVER DOUBT -- WE'VE NEVER DENIED
24 IN THIS CASE, WE'VE NEVER SAID IN THIS CASE, THAT MICHAEL
25 MCFADDEN DID NOT GIVE SOME JEWELRY TO A GIRL AFTER THIS

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1 HAPPENED. AND THAT HE SOLD SOME JEWELRY TO A GUY AFTER
2 THIS HAPPENED. IT CAME FROM THIS ROBBERY. THE STRONGEST
3 PIECE OF EVIDENCE THAT THE STATE IS OFFERING IN THIS CASE,
4 IS THE EYE WITNESS TESTIMONY OF THE GIRL FROM THE VIDEO
5 STORE.

6 I WANT YOU TO REMEMBER, THAT SHE STATED SHE WAS
7 SO FRIGHTENED THAT NIGHT. NEVER BEEN SO FRIGHTENED
8 IN HER LIFE. MORE FRIGHTENED THAN SHE'D EVER BEEN
9 IN HER LIFE THAT NIGHT. TWO DAYS LATER, SHE WAS NOT ABLE TO
10 PICK -- THIS IS THE FIRST SET OF PHOTOGRAPHS RIGHT HERE.
11 SHE WAS NOT ABLE TO PICK ANYONE ON HERE. SHE PICKED THE
12 WRONG PERSON THE FIRST DAY. ALL RIGHT. AND IT WAS THE
13 SECOND DAY WHEN THEY CAME BACK ABOUT TWO WEEKS LATER,
14 THAT SHE PICKED THIS PERSON OUT OF THE LINEUP. I WANT
15 YOU TO STUDY THESE PICTURES YOURSELF. AND I WANT YOU TO
16 TELL WHICH IS THE CLEAREST PICTURE HERE. WHEN WOULD HAVE
17 BEEN IN HER MIND, TWO DAYS LATER, OR TWO WEEKS LATER,
18 TO PICK THIS PICTURE AND PICK THE CORRECT PERSON.

19 I WANT YOU TO ASK YOURSELF, THIS PERSON COULD NOT EVEN
20 TELL -- SHE COULD TELL THIS WAS A BLUE JACKET. BUT SHE
21 COULDN'T EVEN REMEMBER -- SHE COULDN'T FORM THE MENTAL
22 PICTURE TO TELL YOU THAT CHARLOTTE WAS WRITTEN ON THE
23 FRONT OF THIS JACKET. I SUBMIT TO YOU THAT EACH AND
24 EVERYONE OF YOU -- WHEN MICHAEL MCFADDEN, AND WHEN I
25 HELD THAT JACKET UP THE OTHER DAY, Y'ALL HAVE A FRESH,

1 MENTAL PICTURE OF THAT JACKET. AND THAT INCLUDED CHARLOTTE
2 ACROSS THE FRONT. THIS GIRL DIDN'T HAVE THAT MENTAL
3 PICTURE. SHE STATED THAT SHE COULDN'T TELL THAT. SHE
4 STATED SHE DIDN'T REMEMBER WHAT WAS WRITTEN ACROSS THE
5 FRONT. THEN SHE STATED WELL, I DON'T KNOW ABOUT BASKETBALL.
6 WELL, CHARLOTTE. NOBODY SAID ANYTHING ABOUT THIS BEING
7 BASKETBALL. SHE MENTIONED THAT IT WAS BASKETBALL. THAT IS
8 JUST CHARLOTTE ACROSS THE FRONT. SHE COULD RECALL IF THERE
9 WAS ANY LETTERS ACROSS THE FRONT.

10 TWO DAYS LATER -- AND I ALSO WANT YOU TO REMEMBER WHAT
11 HAPPENED HERE, AND I WANT ASK YOURSELF IF THEY'RE PLAYING
12 WITH YOU, AND IF THEY WANTED TO TELL YOU EVERYTHING
13 THAT HAPPENED HERE. YOU KNOW GOOD AND WELL THEY TRIED
14 TO HIDE FROM YOU THE FACT, THAT SHE PICKED THE WRONG
15 PICTURE THE FIRST TIME. YOU KNOW ALL THEY SAID WAS,
16 WELL SHE JUST COULDN'T -- SHE, SHE COULDN'T PICK
17 ANYBODY OR SHE DIDN'T RECOGNIZE ANYBODY. THEN IT WAS
18 ONLY AFTER USING WHAT SHE SAID AT THE PRELIMINARY HEARING
19 THAT TRANSCRIPT, THAT IT CAME OUT THAT NO, SHE HAD PICKED
20 THE WRONG PICTURE OUT. SHE PICKED SOMEONE, IT WAS THE
21 WRONG PERSON.

22 THEN TWO WEEKS LATER, COME UP HERE, AND SHE IS ABLE
23 TO PICK THE PERSON OUT. THERE WAS NO MENTAL PICTURE
24 FROM THAT NIGHT IN THIS GIRL'S MIND OF ANYTHING. IF
25 SHE PICKED HIM OUT AT ALL, I WANT -- I WANT TO ASK YOU THIS.

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1 ALSO, WE ALWAYS GET THIS ALL THESE ID'S EVERY SINGLE
2 TIME. SOMEBODY WENT RIGHT TO IT. YEP, HAD NO PROBLEM.
3 WENT RIGHT TO IT, NO PROBLEM. ANY OF Y'ALL BELIEVE THAT?
4 EVERY SINGLE TIME SOMEBODY WENT RIGHT TO IT. NO HESITATION
5 AT ALL. HOW THIS GIRL COULD POSSIBLY HAVE GONE TO THIS TWO
6 WEEKS LATER AFTER THIS AND GONE STRAIGHT THROUGH THIS? THERE
7 IS NO WAY THAT COULD HAVE HAPPENED.

8 I WANT YOU TO ASK YOURSELF ALSO. Y'ALL OBSERVED THIS
9 GIRL ON THE STAND. DID SHE SEEM TO BE THE TYPE PERSON
10 WHEN SHE'S UNDER PRESSURE LIKE THAT, THAT SHE GOING TO STARE
11 THIS PERSON IN THE FACE, AND LOOK CLOSELY AT THIS PERSON'S
12 FACE, AND TRY TO -- AND TRY TO RECALL HIS FACE, AND LOOK
13 RIGHT AT HIM? IS SHE GOING TO LOOK AT HIM, OR DO YOU
14 THINK SHE'S KIND OF THE PERSON THAT IS SORT OF LOOKING AWAY,
15 AND DIVERT HER EYES AWAY FROM THIS PERSON.

16 THIS IS STRONGEST PIECE OF EVIDENCE THEY HAVE RIGHT
17 HERE, IS THIS ID. IF THEY'RE TRYING TO DECEIVE YOU IN
18 THIS, IF THEY'RE TRYING -- AND OBVIOUSLY THEY TRIED TO
19 DECEIVE IN THIS. THEY TRIED TO KEEP THIS FROM YOU, THAT
20 YOU'VE PICKED THE WRONG PICTURE THE FIRST TIME. WHAT
21 ELSE ARE THEY HIDING FROM YOU IN THIS CASE? THAT'S
22 WHAT I WANT TO KNOW. GOT ALL THESE STUFF ABOUT
23 THESE DATES AND EVERYTHING, WHEN EVERYTHING HAPPENED
24 AND SHIFTING AROUND. BUT NOBODY'S REALLY SURE. YOU HEARD
25 FAYE FRANKLIN ON THERE. WELL, IT WAS FOUR DAYS LATER, IT

1 WAS TWO DAYS LATER WHEN HE WAS THERE AND HERE, AND THEN
2 FOUR DAYS LATER. NONE OF THAT FIT TOGETHER. AND NOBODY
3 CAN REALLY REMEMBER WHEN THESE DATES DURING THIS TRIAL
4 OR WHEN THESE EVENTS OCCURRED.

5 WE'RE NOT SAYING THAT ANYBODY IS COMING IN HERE AND
6 INTENTIONALLY LYING OR ANYTHING. BUT WHAT'S HAPPENING
7 HERE, IS THAT THEY DID FIND A JURY THAT NIGHT. THEY DID
8 TRACE IT BACK TO MICHAEL MCFADDEN. SO NOW WHAT'S HAPPENING
9 IS, EVERYBODY IS TRYING TO COME TOGETHER ON THIS, TRYING
10 TO BRING THIS ALL TOGETHER AND PUT THIS TOGETHER INTO
11 THESE PICTURES OR WHATEVER. HOW MUCH PRESSURE DO YOU
12 THINK WAS ON THAT GIRL AND ON MIKE GRAHAM THE SECOND
13 TIME WHEN THEY COME UP HERE TO LOOK AT THESE PICTURES OR
14 WHATEVER. HERE SHE KNEW THE FIRST TIME THAT THE JEWELRY
15 HAD ALREADY RECOVERED. SHE KNEW SOMEBODY WHO ROBBED --
16 WHO SUPPOSEDLY ROBBED THE STORE THE FIRST TIME. SHE
17 PICKED THE WRONG PERSON OUT.

18 I WANT YOU TO REMEMBER THE NAME RABBIT EARS RIGHT HERE
19 TOO. DO YOU SEE ANYBODY IN HERE WITH BIG EARS, BUT ONE
20 PERSON HERE? AND ONE PERSON HERE. WHICH REALLY IS THE
21 CLEAREST PICTURE RIGHT HERE? THAT'S WHAT I WANT YOU TO
22 ASK YOURSELF. DO YOU THINK SHE WAS LOOKING FOR A LITTLE
23 BIT OF HELP WHEN SHE LOOKED HERE THE SECOND TIME,
24 FOR WHO THIS WAS? WHAT IF SHE PICKED THE WRONG PERSON
25 THE SECOND TIME, AND THEN WE'D BE STUCK HERE. THEN

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1 THEY'D HAVE SOMEBODY THAT ENDED UP WITH THE JURY, WITH
2 SOMEBODY ELSE THAT SHE PICKED OUT OF THE LINEUP. DO
3 YOU THINK SHE WAS LOOKING FOR A BIT OF HELP? HOW MUCH
4 PRESSURE DO YOU THINK WAS ON MIKE GRAHAM WHEN THIS
5 WAS MADE THE SECOND TIME? DO YOU THINK HE MIGHT
6 HAVE HELPED HER A LITTLE ON THIS? I DIDN'T HEAR ANYBODY
7 SAY THAT THIS -- WAS THIS -- THE SET OF PHOTOGRAPHS THERE
8 THE SECOND TIME ALSO. HE'S THE ONLY PERSON IN BOTH
9 PHOTOGRAPHS.

10 I JUST ASK YOU TO LOOK AT THESE PHOTOGRAPHS RIGHT
11 HERE. AND WHAT IS THE DIFFERENCE? THEY MADE A BIG DEAL
12 OUT OF SIX YEARS. REMEMBER THEY TRIED TO SAY FIVE
13 OR SIX YEARS APART. THAT THAT WAS THE AGE OF THE PICTURES.
14 WELL ACTUALLY WHAT HAPPENED, AND THE GIRL SAID, THEY TOLD
15 HER THEY WERE THREE YEARS OLD. I WANT YOU TO LOOK AND SEE
16 HOW MUCH DIFFERENCE IT IS IN THESE PICTURES. THEN YOU
17 GET A GIRL HERE THAT WORKED THERE THE NIGHT BEFORE. HOW
18 DID THAT WORK TOGETHER? THEY GOT -- WELL, SHE SAID IT WAS
19 THE SAME GUY IN THE NEXT NIGHT. WELL, SHE WASN'T THERE
20 THE NEXT NIGHT. HOW DID SHE KNOW IT WAS THE SAME GUY?
21 IT, IT, IT WAS AS IF SHE'S SAYING YEAH. AS IF SHE WAS
22 THERE BOTH NIGHTS. SHE WASN'T THERE BOTH NIGHTS. SHE'S
23 NOT REMEMBERING ANYTHING ABOUT THIS. BUT IT JUST SEEMS LIKE
24 EVERY TIME, BOY, THEY JUST ALWAYS GO RIGHT TO IT. AND
25 POINTED IT RIGHT. DO Y'ALL BELIEVE THAT?

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1 I WANT YOU TO EXAMINE THE LOGIC OF THE STATE'S CASE.
2 AND HERE'S WHAT YOU'VE GOT. YOU'VE GOT A COMPUTER STUDENT
3 HERE, GOING TO SCHOOL UP IN CHARLOTTE. SO HERE'S WHAT HE'S
4 GOING TO DO. HERE'S THE WAY HE PLANS OUT THIS ROBBERY.
5 BECAUSE THEY'VE SUGGESTED THAT HE PLANNED THIS. HERE IS
6 THE WAY YOU DO. YOU'RE, YOU'RE FROM UP FROM CHARLOTTE AND
7 YOU'RE BACK HERE IN THE NEIGHBORHOOD. SO WHAT YOU'RE GOING
8 TO DO, IS YOU'RE GOING TO GO A BLOCK AWAY FROM WHERE YOU
9 LIVE, AND YOU'RE GOING TO WEAR THAT CHARL -- A CHARLOTTE
10 JACKET AROUND FOR A COUPLE OF DAYS. WHAT YOU GOING TO
11 DO AROUND WARD'S GROCERY AND EVERYTHING, BECAUSE EVERYBODY
12 CAN RECOGNIZE YOU. THEN WHAT YOU'RE GOING TO DO, IS YOU'RE
13 GOING TO GO IN THE STORE THE NIGHT BEFORE WITH THE CHARLOTTE
14 JACKET ON, AND YOU'RE GOING TO WALK IN AND YOU'RE GOING TO
15 LOOK AROUND A LITTLE. AND YOU'RE GOING TO GO UP AND TALK
16 TO THIS PERSON THAT WORKS IN THERE.

17 THEN YOU ARE GOING TO COME BACK THE NEXT NIGHT, ONCE
18 AGAIN, IN THE CHARLOTTE JACKET, AND WALK IN AGAIN. AND THEN
19 YOU'RE GOING TO ROB THE PLACE. AND THEN WHAT YOU'RE GOING
20 TO DO IS, YOU'RE GOING TO GO RUNNING OUT OF THE PLACE THEN.
21 AND SUDDENLY WHEN YOU GET OUT OF THE PLACE GEE, I BETTER
22 GET RID OF THIS CHARLOTTE JACKET. SOMEBODY RECOGNIZE
23 IT OR WHATEVER. SO THEN WHAT ARE YOU GOING TO DO? WHERE
24 ARE YOU GOING TO HID THIS CHARLOTTE JACKET? WELL, WHAT
25 YOU DO IS YOU GO -- WHERE WOULD BE A GOOD PLACE. AND KEEP

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1 IN MIND, THIS IS A MAN WITH SOME BRAINS RIGHT HERE. WHERE
2 WOULD BE A GOOD PLACE FOR HIM TO HID THIS CHARLOTTE JACKET.
3 I TELL YOU WHAT I'LL DO, I'LL PUT IT ON A FENCE RIGHT
4 HERE AT THE BACK OF MY PARENT'S HOUSE. THAT'S A GOOD
5 PLACE TO PUT IT. AND THAT'S WHAT THEY'RE ASKING YOU TO
6 BELIEVE HERE. AND THEN WHAT I'LL DO IS, I THINK RIGHT
7 AFTER THIS, I'LL GO OUT TO A CLUB RIGHT NEAR HERE AND
8 FLASH A LOT OF MONEY AROUND.

9 WELL, YOU HEARD TESTIMONY HERE. YOU HEARD IT FROM
10 FRANCIS WAGNER HERE, THAT HE TRIED TO -- THAT HE SOLD
11 HIM A NECKLACE. TOLD HIM HE DIDN'T HAVE ANY MONEY,
12 AND WANTED MONEY. SOLD HIM A NECKLACE THAT WAS WORTH
13 A GOOD BIT. SOLD IT TO HIM FOR \$20. HE GAVE HIM \$20
14 FOR IT.

15 NOW DOES THAT SEEM LIKE SOMETHING AN INTELLIGENT
16 PERSON WOULD DO, THAT HE WOULD WEAR THIS CHARLOTTE JACKET
17 IN THERE, AND THEN DITCH RIGHT HERE IN THIS PLACE. DOES THIS
18 -- OR DOES THIS CHARLOTTE JACKET REALLY FIT INTO THIS AT
19 ALL. WAS THERE REALLY A CHARLOTTE JACKET THERE THAT NIGHT,
20 OR DID THEY JUST FIND SOMEBODY'S JACKET BACK THERE ON A
21 FENCE. YOU KNOW, WAY BACK DOWN A PATH OR WHATEVER. OR IS
22 THE KIND OF PERSON WHO WAS REALLY LIVING IN CHARLOTTE.
23 EVERYBODY -- NOT A WHOLE BUNCH OF PEOPLE AROUND FROM
24 CHARLOTTE. SO HE IS GOING TO COME DOWN HERE. HE'S
25 GOING TO WEAR A CHARLOTTE JACKET AROUND. WEAR IT ALL

1 AROUND. AND THEN GO INTO THE CLUB. AND THEN HANG AROUND
2 WARD'S. AND GO INTO THE VIDEO STORE. AND THEN HE IS
3 GOING TO ROB THE PLACE WITH THIS JACKET ON. DOES THAT
4 MAKE SENSE? IS THAT THE KIND OF THING. BECAUSE IT WAS
5 PLANNED. BECAUSE SUPPOSEDLY WHOEVER WENT IN THERE,
6 CASED THE PLACE THE NIGHT BEFORE. LOOKED AROUND, AND
7 THEN WENT BACK IN.

8 SO DOES THAT SOUND LIKE SOMETHING SOMEBODY WOULD
9 DO? AND IS THAT THE PLACE YOU WOULD DITCH THIS JACKET?
10 WOULD YOU BURY IT? WOULD YOU TAKE IT SOMEWHERE? WOULD YOU
11 BURN IT, OR WOULD YOU HAVE SET IT ON A FENCE BEYOND
12 YOUR PARENT'S HOUSE? IS THAT WHAT YOU'D DO? I DON'T
13 THINK SO. THAT'S WHAT THEY'RE ASKING YOU TO BELIEVE
14 THOUGH. NOW WHERE -- AS I SAID, WE'VE NEVER DENIED THAT
15 HE HAS SOLD THIS JEWELRY TO THESE -- THAT HE'S -- THAT HE'S
16 GAVE A RING TO FAYE FRANKLIN. AND THAT HE SOLD A NECKLACE
17 TO A FRANCIS WAGNER. WE'VE NEVER DENIED THAT. BUT HE'S
18 NOT IN HERE CHARGED WITH RECEIVING STOLEN GOODS. HE'S
19 CHARGED WITH ARMED ROBBERY WITH A KNIFE, AND KIDNAPPING,
20 AND TRYING TO TIE SOMEBODY UP. ANOTHER THING YOU ALWAYS GET
21 IN THESE CASES TOO.

22 I TELL YOU, THEY NEED TO DO AWAY WITH FINGERPRINTS.
23 BECAUSE I HAVE NEVER SEEN ANY FINGERPRINTS LIFTED OUT OF
24 ANYWHERE. THEY JUST CAN'T PULL THEM OUT. HERE HE IS AROUND
25 THE CASH REGISTER. GOING INTO A CASH REGISTER TO GET SOME

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1 MONEY OUT. SOMEBODY SAID THAT SOMEBODY ELSE OPENED IT. BUT
2 WOULDN'T YOU THINK, NOBODY SAID HE HAD ANY GLOVES ON. HE
3 GOES IN THERE TO THE BACK ROOM AND TIES HER UP IN A CHAIR.
4 HE LEAVES THE BACK ROOM. GOES OUT, AND HE CLOSES THE DOOR.
5 THAT'S WHAT I REMEMBER THE TESTIMONY WAS. I REMEMBER HER
6 TESTIMONY WAS, THAT HE CLOSED THE DOOR. AND SHE GOT UP AND
7 LOCKED THE DOOR, IS WHAT I REMEMBER. SEE IF YOU RECALL IT
8 THAT WAY.

9 BUT YOU KNOW WHAT, THEY COULDN'T GET ANY FINGERPRINTS
10 OFF THE BACK DOOR. AND YOU KNOW WHAT THEY TOLD YOU, THEY
11 SAID GOSH, THESE FINGERPRINTS ON THESE DOORKNOBS ARE ALWAYS
12 SMUDGED. ALWAYS. AND IT'S ALWAYS THAT SO MANY PEOPLE
13 ARE AROUND IN HERE SMUDGING UP ALL THESE FINGERPRINTS. WELL,
14 AND THEY SAID THEY LIFTED A LOT OF FINGERPRINTS. YOU
15 NOTICE THAT. THEY LIFTED A LOT OF FINGERPRINTS. THEY
16 DIDN'T SAY THEY DIDN'T GET ANY FINGERPRINTS. THEY SAID
17 THEY LIFTED FINGERPRINTS. BUT WHAT? NONE OF THEM MATCHED
18 HIM. AND THEY LIFTED FINGERPRINTS. I'M SURE THAT THEY
19 KNEW WHO WAS IN THE BACK ROOM. I'M SURE THEY KNEW
20 THAT IT WAS OFF THAT BACK HANDLE. IT WAS THAT DOOR HANDLE
21 BACK THERE.

22 I WANT TO KNOW WHOSE FINGERPRINTS THEY PICKED OFF OF
23 THAT DOOR HANDLE. WHO OUTSIDE OF THESE WORKERS IN HERE THEY
24 PICKED OFF OF THAT. BUT THEY DIDN'T WANT TO TELL YOU.
25 JUST LIKE THEY DIDN'T WANT TO TELL YOU, THE CRUCIAL THING

1 HERE THAT SHE PICKED THE WRONG PICTURE OUT HERE. THEY
2 WANTED TO LET YOU KNOW. YOU HEARD ALL OF THEM. YOU HEARD
3 EVERY SINGLE ONE OF THEM COME IN AND SAY GEE, SHE JUST, JUST
4 COULDN'T PICK ANYBODY. SHE JUST COULDN'T TELL. BUT YOU
5 HEARD HER SAY AND ADMIT, THAT SHE SAID AT THE PRELIMINARY
6 HEARING, THAT I HAD PICKED THE WRONG -- THAT I PICKED
7 SOMEBODY OUT HERE. AND WHAT DID THEY TELL HER, YOU PICKED
8 THE WRONG PERSON. YOU HEARD HER TELL YOU THAT THAT'S WHAT
9 SHE REMEMBERS THEM SAY. YOU HEARD HER TELL THAT THAT'S WHAT
10 HAPPENED.

11 YOU KNOW WHEN YOU THINK OF THESE THINGS, YOU THINK
12 OF IN THESE CASES, DID THIS JACKET HAVE ANYTHING TO DO
13 WITH ANYTHING. AND YOU'RE THINKING. YOU LISTEN TO THIS
14 CASE OR WHATEVER. AND YOU LOOK AND YOU THINK. YOU KNOW, YOU
15 JUST -- WHAT COULD HAVE HAPPENED. YOU TRY TO FIGURE WHAT
16 HAPPENED HERE. I KNOW ONE THING, IF THIS MAN WOULD HAVE BEEN
17 STUPID ENOUGH TO GO IN THERE WITH A CHARLOTTE JACKET, HANG
18 AROUND THE NEIGHBORHOOD, GO INTO THE STORE TWO STRAIGHT
19 NIGHTS, AND THEN LEAVE IT IN HIS PARENT'S BACKYARD. THEY
20 KNOW THAT. SO YOU WONDER WHAT REALLY HAPPENED.

21 DID THAT JACKET HAVE ANYTHING TO DO WITH IT AT ALL, OR
22 DID IT HAVE NOTHING? IF IT HAD SOMETHING TO DO WITH IT,
23 YOU KNOW, YOU THINK, HOW WILD IS IT. THAT'S UNBELIEVABLE
24 THAT HE WOULD DO THAT. IS IT ANYMORE UNBELIEVABLE MICHAEL
25 JOHNSON KNOWS THIS GUY. CHARLOTTE JACKET. YOU THINK ALSO,

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1 YOU GET UP, COREY FULTON TOLD YOU THAT IT WAS RIGHT IN
2 FRIERSON'S HOMES. FRIERSON HOMES IS RIGHT ACROSS FROM
3 WHERE FAYE FRANKLIN LIVED, THAT HE SOLD MICHAEL MCFADDEN
4 THIS JEWELRY OR WHATEVER. SO YOU GOT HIM POPPING UP
5 HERE. COREY FULTON, I WISH COREY FULTON WAS -- I WISH HE
6 WAS A -- I WISH -- I WISH HE WAS A BETTER, YOU KNOW, A
7 PREACHER OR A BETTER PERSON OR SOMEBODY THAT YOU
8 COULD ABSOLUTELY, YOU KNOW, HE WAS THE POPE THAT WE COULD
9 PUT UP HERE. BUT HE'S NOT. HE'S JUST A PERSON. AND YOU
10 HAVE TO JUDGE FOR YOURSELF.

11 NOW YOU MIGHT SAY, THE SERIOUS QUESTION IS WHETHER THAT
12 GUY IS TELLING THE TRUTH OR NOT. BUT DO YOU KNOW BEYOND
13 A REASONABLE DOUBT THAT HE'S LYING. THAT'S THE WHOLE
14 QUESTION HERE. THAT'S THE KEY -- THAT'S, THAT'S THE BURDEN.
15 IF YOU THINK THERE'S A CHANCE, IF YOU'RE NOT CONVINCED BEYOND
16 A REASONABLE DOUBT THAT HE'S LYING, THEN YOU -- THEN THERE'S
17 A REASONABLE DOUBT IN MIND. BECAUSE IF HE'S TELLING THE
18 TRUTH, AND YOU HAVE GOT A REASONABLE DOUBT ABOUT HIM TELLING
19 THE TRUTH, THEN THIS MAN IS INNOCENT.

20 MICHAEL JOHNSON, YOU KNOW, THEY GOT A CALL THAT NIGHT.
21 THEY DIDN'T SAY WHO IT WAS FROM. BUT SOMEBODY IS SAYING
22 THAT MICHAEL MCFADDEN WAS WITH FAYE FRANKLIN WHO WAS
23 RIGHT OUT THERE. WHO MIGHT HAVE KNOWN THAT. WHO CALLED
24 IT. WHO WOULD HAVE KNOWN THERE WAS A ROBBERY OR WHATEVER.
25 BECAUSE A ROBBERY IS OVER ON THE OTHER SIDE OF THE TRACK.

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1 BUT HERE OVER IN FRIERSON HOMES JUST A LITTLE LATER, JUST
2 AN HOUR OR SO LATER, SOMEBODY IS SAYING, I THINK IT WAS
3 FAYE FRANKLIN. IS THAT ANYMORE UNBELIEVABLE THAN MICHAEL
4 JOHNSON? IS THERE A MICHAEL JOHNSON? DID HE DO -- IS
5 THAT ANY MORE UNBELIEVABLE THAT SOME IDIOT WOULD WALK
6 AROUND IN A NEIGHBORHOOD A COUPLE OF BLOCKS FROM HIS
7 HOUSE IN A CHARLOTTE JACKET FOR TWO OR THREE DAYS,
8 GOING IN THE STORE TWO OR THREE TIMES, AND THEN ROB
9 A PLACE. AND THEN GO DROP THE JACKET BEHIND HIS HOUSE?

10 THAT DOESN'T MAKE ANY SENSE EITHER. BUT THIS MICHAEL --
11 AND ANOTHER THING ABOUT THIS MICHAEL JOHNSON GUY, WHEN
12 MICHAEL MCFADDEN WAS FINALLY PICKED UP AT THIS CLUB,
13 SOMEBODY CALLED AND TOLD HIM HE WAS THERE. WHO WAS SITTING
14 THERE WITH MICHAEL MCFADDEN AT THAT TIME? MICHAEL JOHNSON
15 SITTING RIGHT THERE. HE TOLD THEM THAT DAY. THIS IS NOT
16 ANYTHING -- HE TOLD THEM THAT DAY. MICHAEL JOHNSON'S
17 HERE. AND REMEMBER THEY TOLD YOU THAT AS THEY WENT ON
18 IN AND THEY WENT ON IN THE STORE -- AS THEY WENT ON IN TO
19 THE STATION THAT'S WHEN HE TOLD HIM. BUT THAT -- I SUBMIT
20 TO YOU, THAT'S WHEN HE INFORMED HIM OF THESE CHARGES
21 OR WHATEVER. AND THAT'S WHEN HE PUT THIS TOGETHER ABOUT
22 THAT'S WHO -- THAT'S WHERE I GOT THIS JEWELRY FROM. SO
23 THAT'S WHO MUST HAVE ROBBED THIS PLACE OR WHATEVER. AND
24 YOU'VE GOT CORROBORATION ON THIS PARTICULAR STORY OF
25 WHAT HAPPENED THERE.

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1 NOW I'M NOT SAYING THAT SOMEBODY CAME IN AND YOU'D SAY
2 BOY THAT'S -- YOU'RE RIGHT, THAT'S EXACTLY WHAT HAPPENED.
3 WHAT IS MORE LIKELY TO HAPPEN HERE. THIS THING ABOUT THIS
4 CHARLOTTE JACKET AND THIS IDIOCY OF WEARING SOMETHING
5 LIKE THAT. A BLUE CHARLOTTE JACKET INTO A STORE. WEARING
6 IT ALL AROUND. PROBABLY THE ONLY GUY FROM CHARLOTTE
7 IN THE NEIGHBORHOOD. AND THEN WHAT'S HE GOING TO DO,
8 HE'S GOING TO WEAR THIS ALL AROUND FOR A FEW DAYS.

9 AND THEN HE'S GOING TO GO INTO THE VIDEO STORE ONE
10 NIGHT. AND HE'S GOING TO GO BACK IN THERE. AND THEN ONLY
11 AFTER HE GETS OUT OF THERE, HE'S GOING TO SAY GEE, YOU
12 KNOW, I SHOULDN'T HAVE WORN THIS JACKET HERE. SOMEBODY
13 MIGHT RECOGNIZE WHAT'S HAPPENING HERE. THEY MIGHT BE
14 ABLE TO SAY THAT THIS IS MINE OR WHATEVER. BECAUSE I'VE
15 BEEN WEARING THIS THING AROUND ALL THIS TIME. I'M GOING
16 TO GET RID OF THIS THING. HOW AM I GOING TO GET RID OF IT?
17 I KNOW WHAT I'LL DO, I'LL PUT IT RIGHT HERE ON THE FENCE.
18 RIGHT HERE ON A PAD RIGHT BEHIND MY PARENT'S HOUSE.
19 NO ONE WILL EVER BE ABLE TO LINK IT TO ME THAT WAY.

20 NOW THAT'S, THAT'S WHAT THERE CASE IS. THAT'S WHAT
21 THEY'RE TELLING YOU. NOW HOW UNBELIEVABLE IS THAT? IS
22 THAT ANYMORE -- THAT'S MORE UNBELIEVABLE THAN THIS OTHER
23 STORY, I'LL TELL YOU THAT. I'M NOT SAYING -- I'M JUST
24 SAYING IS THERE A DOUBT IN YOUR MIND AS TO WHAT HAPPENED
25 HERE. WHO IS HE RUNNING FROM? YOU HEARD D.W. RICHARDSON

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1 UP HERE. YEAH, THEY TRIED TO ACT LIKE HE WAS RUNNING.
2 KNEW WE WERE LOOKING FOR HIM. HE WAS RUNNING, HE WAS
3 HIDING. HE WAS DUCKING. HE WAS RUNNING FROM US. AND
4 STOPPED BY AND EVERYTHING, BECAUSE HE KNEW WE WERE LOOKING
5 FOR HIM FOR THIS ROBBERY IN THE VIDEO STORE.

6 WELL YOU KNOW ACTUALLY WHAT YOU HEARD FROM UP HERE
7 WAS, HE WAS -- WHAT HE WAS ACTUALLY RUNNING FROM, AND
8 THEY SAID THAT THE BOND -- THEY SAID THE POLICE WERE LOOKING
9 FOR HIM. HE HAD MISSED A DAY. THE POLICE WERE LOOKING
10 FOR HIM. HE'D MISSED A BOND OVER IN GEORGETOWN. FOR WHAT,
11 HE WAS RIDING A MOTORCYCLE WITHOUT A LICENSE. THAT'S WHAT
12 HE WAS HIDING -- THAT'S, HE WAS SORT OF RUNNING FROM ON
13 THIS. HE HAD ALREADY MISSED BOND AS A MATTER OF FACT.
14 YOU MAY QUESTION WELL GEE, I DON'T THINK HE WAS RUNNING ON
15 THAT. BUT HE HAD ALREADY MISSED BOND BE -- BEFORE THIS
16 EVEN HAPPENED. THE BOND PEOPLE, THE AUTHORITIES
17 IN GEORGETOWN, HAD INFORMED HIS BONDSMAN, D.W. RICHARDSON,
18 THAT HE HADN'T SHOWN UP FOR COURT OVER THERE. AND THEY
19 NEEDED TO FIND HIM OR WHATEVER.

20 AND YOU MAY SAY GEE, WHY WOULDN'T GEORGETOWN COME OVER
21 HERE AND LOOK FOR HIM. WELL I THINK LOGIC -- I THINK
22 SOMEONE MAY THINK THAT MAY NOT BE THE CASE. BUT I THINK
23 SOMEONE MAY THINK THAT GEORGETOWN MIGHT CONTACT THE
24 AUTHORITIES OVER HERE IN KINGSTREE FOR A LITTLE HELP, WHO
25 KNOW THE AREA A LITTLE MORE. YOU'VE GOT SOMEBODY AROUND.

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1 HE'S SORT OF SLIDING AROUND OR WHATEVER. HOW'S GEORGETOWN
2 GOING TO COME OVER HERE AND FIND SOMEONE? DON'T YOU THINK
3 THE KINGSTREE SHERIFF'S DEPARTMENT WITH THE INFORMANTS,
4 AND THE PEOPLE THEY HAVE AROUND, AND KNOWING THE NEIGHBORHOOD
5 AND KNOWING WHERE SOMEBODY IS FROM, AND KNOWING THEIR
6 FRIENDS OR WHATEVER. DON'T YOU THINK THAT'S WHAT WOULD
7 HAPPEN? SO DON'T YOU THINK IF THE POLICE CAME BY THE
8 HOUSE, AS EVERYBODY -- AS THEY'VE STATED, LOOKING FOR
9 MICHAEL MCFADDEN. YOU DIDN'T HEAR ANYBODY SAY THAT THEY
10 TOLD THEM. EVERYONE HAS SAID THEY DIDN'T TELL THEM WHAT
11 FOR. THEY JUST SAID THEY WERE LOOKING FOR HIM.

12 YOU KNOW, YOU GOT ANOTHER DOUBT HERE TOO. YOU
13 LOOK HERE, EVERYBODY IS TALKING ABOUT THIS HAPPENED
14 OCTOBER 28TH, AND TWO DAYS THEY GOT THESE RINGS FROM
15 FAYE FRANKLIN. THESE WARRANTS ARE EVIDENCE, ARE THEY
16 NOT, JUDGE?

17 THE COURT: NO, SIR.

18 MR. CARRAWAY: EXCUSE ME?

19 THE COURT: NO, SIR, THEY AREN'T IN EVIDENCE.

20 MR. CARRAWAY: WE GET THE DATE THAT THE WARRANT WAS
21 WRITTEN FOR, WAS NOVEMBER 4TH, WHICH IS A MONDAY. HERE
22 THEY'RE TALKING ABOUT, ON THE PREVIOUS MONDAY THERE WAS
23 A ROBBERY. AND TWO DAYS LATER, THEY GOT THE RINGS ON A
24 WEDNESDAY. WHY DO THEY WAIT SO LONG TO GET A WARRANT,
25 IF THEY ARE SO SURE ABOUT WHAT'S GOING ON HERE?

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1 MR. NEWMAN: JUDGE, I THINK MR. CARRAWAY IS ATTEMPTING
2 TO MISLEAD THE JURY. YOU DON'T HAVE TO SHOW ME ANYTHING.

3 THE COURT: YES, SIR. YES, SIR. SEE, YOU CAN'T
4 ARGUE SOMETHING THAT'S NOT IN EVIDENCE. NOW, IF IT'S
5 IN EVIDENCE, YOU CAN ARGUE---

6 MR. CARRAWAY: WELL, I'M NOT TRYING TO MISLEAD ANYBODY.
7 THAT'S---

8 THE COURT: ALL RIGHT. WELL---

9 MR. CARRAWAY: ---EXACTLY WHAT IT IS.

10 THE COURT: WELL, YEAH, BUT THE POINT OF IT IS,
11 IF IT'S NOT IN EVIDENCE, YOU CAN'T ARGUE. YOU CAN'T
12 TALK ABOUT SOMETHING THAT'S NOT IN EVIDENCE.

13 MR. CARRAWAY: IT'S FOR YOU TO JUDGE WHAT HAPPENED.
14 WHAT, WHAT'S THE EVIDENCE IN THIS CASE. IT'S FOR YOU
15 TO JUDGE WHETHER SHE CAN REALLY TWO WEEKS LATER, CAN
16 ACCURATELY PICK OUT WHO THIS PERSON IS, OUT OF THIS LINEUP.
17 YOU HEARD EVERYTHING THAT HAPPENED THAT DAY. YOU HEARD SHE
18 COULDN'T DO IT THE FIRST TIME. YOU SAW HOW FRIGHTENED
19 SHE WAS. YOU SAW HOW FRIGHTENED SHE WAS THE SECOND
20 TIME. AND YOU SAW THAT SHE COULDN'T RECOGNIZE EITHER
21 -- REMEMBER THAT CHARLOTTE WAS ACROSS THE FRONT OF THIS
22 JACKET. HOW COULD SHE CLEARLY AT THAT POINT, MAKE A MENTAL
23 PICTURE OF THIS PERSON'S FACE? I SUBMIT TO YOU, SHE'S
24 NOT THE TYPE PERSON LOOKING IN SOMEBODY'S FACE UNDER
25 PRESSURE. SHE'S LOOKING AWAY FROM THIS PERSON. SHE'S

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1 NOT GOING TO STARE RIGHT AT THIS GUY, AND LOOK RIGHT
2 BACK AT HIM LIKE THAT, WHEN SHE'S SCARED LIKE THIS.
3 THAT'S NOT THE KIND OF THE PERSON. SHE HAS NO IDEA WHO
4 THIS PERSON IS. WE ALREADY KNOW THEY COACHED HER THE
5 FIRST TIME ON THIS. THEY TOLD HER THAT WHO SHE PICKED
6 WASN'T THE RIGHT PERSON. AND I SUGGEST TO YOU, THAT THEY
7 COACHED HER THE SECOND TIME ALSO.

8 IF SOMEBODY WANTS TO BET ANY MONEY, WE COULD PULL THESE
9 PICTURES OUT OF HER AND HAVE THEM DONE AGAIN. NO WAY. THAT
10 WOULD HAVE NEVER HAPPENED. AND AS FOR THIS OTHER GIRL
11 COMING IN HERE WHO HAS NO IDEA, NO MEMORY OF ANYTHING,
12 TRYING TO SAY THAT -- THEY TRIED TO MAKE IT ACT LIKE SHE
13 WAS THERE. THAT YEAH, THIS WAS THE GUY WHO WAS IN HERE
14 BOTH NIGHTS OR WHATEVER. THEY DIDN'T KNOW THIS PERSON.
15 SHE DIDN'T KNOW THAT PERSON WAS IN THERE THE SECOND NIGHT
16 OR ANYTHING. SHE SAID YEAH, THIS IS THE PERSON THAT CAME
17 IN AND DID THIS. YOU HEARD WHAT THEY TRIED TO SAY ON
18 THAT. IT'S ALWAYS EVERYBODY IS EXACTLY CERTAIN OF THIS.

19 BUT YOU KNOW THEY TRIED TO DECEIVE YOU. THEY ALL
20 GOT UP THERE, AND TRIED TO MAKE YOU BELIEVE THAT SHE
21 HADN'T PICKED ANYBODY. SHE JUST COULDN'T DO THAT. YOU
22 HEARD THEM ALL SAY IT. AND EVEN AFTER SHE DID SA -- ADMIT
23 THAT I PICKED THE WRONG PERSON, THEY TOLD ME THE WRONG
24 PERSON. ONE OF THEM STILL GOT UP THERE AFTERWARDS AND
25 SAID NO, SHE DIDN'T PICK THE WRONG PERSON. THEY SAID NO

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1 SHE DIDN'T PICK ANYBODY. YOU HEARD THEM SAY THAT. AND
2 WHAT ELSE ARE THEY TRYING TO FINAGLE AROUND ON THIS.
3 I SUBMIT TO YOU THAT ALL YOU'VE GOT IN THIS CASE,
4 YOU HAVE GOT A ZERO IDENTIFICATION. NOTHING. ARE
5 YOU BEYOND A REASONABLE DOUBT THAT THIS PERSON HAS PICKED
6 THIS PERSON OUT? YOU LOOK AT THESE PICTURES. THIS
7 IS THE ONLY GUY. RABBIT EARS. THIS IS THE ONLY GUY
8 WITH BIG EARS.

9 THE PICTURE SHE LOOKED AT EARLIER, IS CLOSER AND CLEARER
10 THAN THIS PICTURE. AND YOU LOOK AND SEE IF THERE IS ANY
11 DIFFERENCE IN THIS. AND YOU JUDGE WITHIN THOSE 14 DAYS
12 LATER, SUDDENLY NEVER SEEN HIM AGAIN. SHE'S SURE.
13 THE OTHER GIRL IN THE STORE HAD NEVER SEEN HIM BEFORE. SAID
14 SHE HAD NEVER SEEN HIM BEFORE OR SINCE. BUT NO EVERYBODY
15 ALWAYS WANTS TO BE SURE. WHY? BECAUSE THEY'VE ALREADY
16 TOLD YOU HERE, THEY LET HER KNOW, YOU PICKED THE WRONG ONE
17 THERE. HE'S THE ONLY ONE IN BOTH OF THESE THINGS. YOU
18 THINK THIS IS A PICTURE SHE REMEMBERS RIGHT HERE? SHE SAID
19 SHE STUDIED THESE THINGS FOR 10 MINUTES. YOU THINK THIS IS
20 THE ONLY ONE SHE RECOGNIZES OUT OF THIS? OR DO YOU THINK
21 IT HASN'T BEEN ALL? DO YOU THINK THEY HELPED HER ALONG?
22 DO YOU THINK UNDER PRESSURE THEY ARE GOING TO LET A CASE
23 LIKE THIS FALL APART OVER SOMETHING LIKE THIS? SHE WANTS
24 SOME HELP, AND THEY WANT TO HELP HER. YOU CAN BET ON
25 THAT.

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1 COREY FULTON, YOU'RE GOING TO HAVE -- YOU JUDGE FROM
2 UP ON -- YOU JUDGE WHAT HE SAID UP ON THE STAND. YOU JUDGE
3 WHAT HE SAID. EVERYBODY IS MIXED UP OVER THESE DATES.
4 EVERYBODY IS MIXED UP ON THESE TIMES. HE GOT TURNED AROUND
5 ON NECKLACES AND RINGS WHETHER IT WAS TWO OR ONE. BUT
6 YOU HEARD WHAT HE SAID, HE SAID IT WAS ONE NECKLACE AND
7 TWO RINGS. YOU HEARD THAT'S WHAT HE SAID.

8 I SUBMIT TO YOU THAT THIS MAN HAS NOT DONE ANYTHING.
9 THIS MAN REALLY -- HERE'S WHAT YOU HAVE TO REMEMBER. THE
10 LOGIC OF THIS. I KEEP GOING BACK TO THIS CHARLOTTE HORNETS
11 JACKET HERE. WEARING THIS THING ALL AROUND. GOING IN THE
12 STORE TWO DIFFERENT TIMES. AND THEN SUDDENLY DECIDING GEE,
13 I DIDN'T GET RID OF IT. THAT IS UNBELIEVABLE RIGHT THERE.
14 THAT, THAT IS -- THAT IS BEYOND A REASONABLE DOUBT THAT
15 THAT COULD HAPPEN. I CAN TELL YOU THAT.

16 AND KEEP IN MIND, NO ONE HERE HAS SAID THAT THIS MAN --
17 THAT THEY SAW ANY JEWELRY ON THIS PERSON UNTIL HE GOT
18 TO FAYE FRANKLIN'S HOUSE. PEOPLE SAID THEY SAW SOME
19 MONEY OR WHATEVER. SOMEBODY SAID SHE SAW SOME MONEY. BOY
20 SAW A WHOLE BUNCH. WELL, BOY HOW MANY TIMES -- SAW 20'S,
21 30'S, YOU KNOW, 5'S, 10'S, 20'S SAW ALL THIS. HOW MANY
22 TIMES DID YOU LOOK AND SEE HOW MUCH -- CAN YOU REMEMBER THE
23 LAST TIME YOU LOOKED AT SOMEBODY AND WERE ABLE TO LOOK
24 THERE AND TELL HOW MUCH MONEY THEY HAD? THAT DON'T HAPPEN.
25 AND THAT DIDN'T HAPPEN THEN. SHE JUST SAW HE HAD SOME MONEY.

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1 SHE DIDN'T KNOW HOW MUCH HE HAD.

2 WHAT YOU DO IS, YOU GET -- WHEN YOU GET A THEORY IN A
3 CASE LIKE THIS, YOU GET A GUY THAT ENDS UP WITH A JURY
4 AND THEN EVERYBODY -- YOU SAW EVERYBODY WORK. HOW MANY --
5 HOW MANY SOLICITORS DO THEY HAVE OVER HERE WORKING ON
6 THIS CASE? HOW MANY DIFFERENT SOLICITORS DID YOU SEE SITTING
7 HERE, FOUR OR FIVE? HOW MANY DIFFERENT COPS DID YOU SEE COME
8 IN HERE, FIVE OR SIX? HAD FIVE MONTHS HERE.

9 I SUBMIT TO YOU THAT AS IDENTIFICATION TO THIS GIRL,
10 THAT, THAT IT WAS AT LEAST -- SHE IS DOING THE BEST. SHE'S
11 NOT LYING. SHE IS TRYING TO DO HER BEST. SHE'S UNDER
12 PRESSURE. SHE WANTS TO SEE WHOEVER ROBBED HER BROUGHT TO
13 JUSTICE. AND IT'S NOT THIS MAN RIGHT HERE. I SUBMIT TO YOU
14 THAT, IT'S
15 A CERTAINLY A REASONABLE DOUBT AS TO HIS ID. THERE'S NO
16 QUESTION ABOUT IT. AND I ALSO SUBMIT TO YOU, THAT THIS
17 MAN IS NOT A MORON. HE'S NOT GOING TO BE IN FROM CHARLOTTE
18 RIGHT THERE IN THE NEIGHBORHOOD, IS NOT GOING TO WEAR THAT
19 JACKET ALL AROUND THE NEIGHBORHOOD AND INTO THAT STORE
20 TWICE. AND THEN DROP IT BEHIND HIS PARENT'S HOUSE. HE'S
21 A, A FOOL. AND THAT'S WHAT IT WOULD TAKE FOR HIM TO DO
22 THAT.

23 I WOULD SUBMIT TO YOU THAT COREY FULTON IS TELLING THE
24 TRUTH. AND THAT SOME NIGHT BACK AROUND THAT TIME, HE
25 DON'T REMEMBER ANY DATES. HE DON'T KNOW ANY -- HE DON'T

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1 REMEMBER ANYTHING LIKE THAT. BUT HE DOES KNOW MICHAEL
2 JOHNSON. AND HE DOES KNOW MICHAEL MCFADDEN A LITTLE.
3 BECAUSE YOU SAW HIM UP THERE ON THAT STAND TESTIFYING
4 TO WHAT HE SAW. HE SAID HE SAW ONE NECKLACE AND TWO
5 RINGS. HE SAID HE SAW MICHAEL JOHNSON SELL THOSE TO
6 MICHAEL MCFADDEN. AND WHERE DID IT HAPPENED TO BE?
7 RIGHT IN FRONT OF FAYE FRANKLIN'S. IF SOMEBODY CALLED
8 THAT NIGHT, AND SAID HE WAS OVER THERE, WHO WOULD HAVE
9 KNOWN THERE WAS A ROBBERY. IT'S A GOOD DISTANCE AWAY. WHO
10 WOULD HAVE KNOWN THERE WAS A ROBBERY. AND HAD -- THAT THERE
11 HAD JUST BEEN A ROBBERY. THEY WERE RIGHT THERE. HE'S RIGHT
12 THERE. AND WHO LATER ON WAS SITTING RIGHT BESIDE HIM WHEN
13 HE WAS PICKED UP AT THAT CLUB?

14 I SUBMIT TO YOU THAT MICHAEL JOHNSON DOES EXIST. AND
15 THAT IT WAS MICHAEL JOHNSON THAT ROBBED THIS PLACE. AND THEY
16 HAVE PRESENTED NO EVIDENCE WHATSOEVER TO SHOW HE
17 CONTRIBUTED TO IT. REMEMBER THIS ID. REMEMBER MICHAEL
18 JOHNSON. REMEMBER COREY FULTON UP HERE. AND REMEMBER HOW
19 ABSURD IT WOULD BE FOR SOMEBODY TO WEAR THIS JACKET AND TO
20 ROB A PLACE. TO PLAN TO DO IT. BECAUSE HE WORE IT BOTH
21 NIGHTS THEY SAY. WORE IT ALL AROUND THAT WEEK. AND THEN
22 DROPPED IT BEHIND HIS PARENT'S HOUSE. IT DIDN'T HAPPEN.
23 THANK YOU, LADIES AND GENTLEMEN.

24 MR. NEWMAN: MADAM FOREMAN AND MEMBERS OF THE JURY,
25 I, I TRUST THAT YOU'RE NOT BUYING THIS GARBAGE FROM

1 MR. CARRAWAY. I TRUST THAT YOU'RE NOT BUYING THAT GARBAGE
2 ONE BIT. HE COMES BEFORE YOU AND HE ACTS AS IF HE WAS
3 JUST LIKE COREY FULTON. NOW THE PROBLEM WITH COREY FULTON
4 IS THAT HE WAS IN JAIL AND HE WAS NOT HERE TO LISTEN TO THE
5 TESTIMONY. SO THEREFORE, WHEN IT COMES TO THE FACT THAT
6 THE ROBBERY OCCURRED MONDAY NIGHT ON THE 28TH AND THE ITEMS
7 WERE RECOVERED ON FRIDAY DURING THE DAY. COREY FULTON
8 DIDN'T KNOW THAT. SO THEREFORE, EVEN THOUGH HE STAYED
9 OVER IN THE JAIL WITH THIS DEFENDANT AND TRY TO CONCOCT
10 A STORY TO COME OVER HERE AND LIE FOR HIM, HIS PROBLEM
11 WAS THAT HE DIDN'T HAVE THE FACTS.

12 NOW MR. CARRAWAY, AS TO THE REASON WHY HE WOULD COME
13 HERE AND TRY TO VOUCH FOR THOSE THINGS AND MISSTATE THE
14 FACTS TO YOU, I DON'T KNOW. BUT I JUST TOOK THAT YOU'RE
15 NOT BUYING THAT GARBAGE. BECAUSE IT'S CLEAR BASED ON
16 THE EVIDENCE THAT COREY FULTON WAS LYING. IT'S CLEAR
17 BASED ON THE EVIDENCE. NOW THE EVIDENCE IN THIS CASE,
18 IS NOT COMPLICATED. IT'S NOT SOMETHING THAT THE SOLICITOR'S
19 OFFICE IS TRYING TO MAKE UP SOME KIND OF TESTIMONY TO PRESENT
20 ON THIS. WHAT MR. CARRAWAY WOULD WANT YOU TO BELIEVE
21 TO BE A COMPUTER STUDENT. WHO IS NOT A COMPUTER STUDENT.
22 WHO IS NOTHING BUT A KIDNAPPER AND A ROBBER.

23 WE HAVE NO INTEREST IN MAKING UP ANYTHING ON ANYONE.
24 OUR JOB IS TO PRESENT THE WITNESSES, PRESENT THE EVIDENCE,
25 PRESENT THIS TESTIMONY, AND FOR Y'ALL TO MAKE A DECISION.

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1 NOW WHEN YOU COME TO JURY DUTY, WE PICK A JURY. WE EACH
2 COME UP HERE. IN THIS CASE THE STATE WOULD HAVE A RIGHT
3 TO STRIKE FIVE. MR. CARRAWAY HAS A RIGHT TO STRIKE 10
4 PEOPLE. AND YOU TOOK THE STRIKES. Y'ALL ARE SELECTED
5 AS JURORS IN THIS CASE, TO LISTEN TO THE EVIDENCE, TO
6 APPLY YOUR COMMON EVERY DAY SENSE, TO DO YOUR JOB, AND
7 UPHOLD THE OATH OF OFFICE THAT YOU TOOK IN SWEARING TO
8 BE A JUROR. AND IT'S THE STATE'S BURDEN TO PROVE THE
9 CASE BEYOND A REASONABLE DOUBT. WE ACCEPT THAT BURDEN.
10 AND WE HAVE PROVEN THIS CASE BEYOND A REASONABLE DOUBT.
11 PROVEN THAT HE IS GUILTY OF ARMED ROBBERY. IN THAT,
12 HE WENT IN CLEMMON'S VIDEO, AND BY FORCE, WITH THE USE
13 OF A KNIFE, ROBBED HER OF SOMETHING OF VALUE. THE
14 AMOUNT AND THE VALUE DOESN'T MATTER. HE ROBBED HER
15 OF SOMETHING OF VALUE.

16 THE TESTIMONY WAS \$300 IN CASH, WATCH, NECKLACES,
17 RINGS. AND THE SECOND THING WAS KIDNAPPING. THAT HE
18 FORCIBLY CONFINED HER. THAT'S WHAT KIDNAPPING IS. AND
19 I MENTIONED IN OPENING STATEMENT, HE DOESN'T HAVE TO TAKE
20 HER FROM ONE SPOT TO THE NEXT. HE DOESN'T HAVE TO UM,
21 BLINDFOLD KEEP HER TWO OR THREE DAYS. BUT THE PAIN
22 THAT A PERSON GOES THROUGH IN BEING FORCIBLY CONFINED
23 AGAINST HER WILL. AND YOU CAN TELL THE PAIN THAT SHE
24 WENT THROUGH, THROUGH HER TESTIMONY TODAY. YESTERDAY.
25 IN SPITE OF ALL OF THE BADGERING BY MR. CARRAWAY, THE

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1 WAY HE JUST TREATED HER LIKE DIRT. THAT IN SPITE ALL
2 OF THAT, HER TESTIMONY CAME ACROSS CLEAR AND IN TRUTH.
3 SHE DIDN'T MAKE UP ANYTHING. SHE DIDN'T COME IN HERE
4 SAYING UH YES, AS SOON AS THEY SHOWED HIM TO ME. YES,
5 THAT'S HIM. YES, THIS IS HIM. YES, THIS IS HIM. SHE DIDN'T
6 DO THAT. SHE CAME IN AND SHE TRUTHFULLY TESTIFIED.
7 YOU HAVE A NUMBER OF DIFFERENT LINEUPS. IF YOU WATCH
8 TV OR, OR ANYTHING. YOU HAVE A PHOTO LINEUP. AND THE
9 MOST COMMON AND THE MOST EFFECTIVE KIND OF LINEUP IS AN
10 IN PERSON LINEUP.

11 IF SOMEONE ROBS YOU AND YOU LINE FIVE OF THEM
12 UP IN PERSON THEN OBVIOUSLY, IT'S MUCH EASIER TO
13 IDENTIFY A PERSON IN PERSON THAN IT IS LOOKING THROUGH
14 SOME PICTURES THAT MAY BE FADED OUT, OR SOMETHING THAT
15 THE POLICE MIGHT HAVE HAD. OR MIGHT HAVE COLLECTED OR
16 SOMETHING THAT'S CERTAINLY MUCH MORE EFFECTIVE WHEN
17 A PERSON SEES SOMEONE IN PERSON. AND SHE'S MADE HER
18 IDENTIFICATION THROUGH THE PHOTO LINEUP, THE SECOND
19 PHOTO LINEUP, AND IN PERSON IN COURT. AND I BELIEVE
20 HER TESTIMONY WAS CONVINCING.

21 THE OTHER YOUNG LADY THAT WORKED THERE THE NIGHT
22 BEFORE. SHE IDENTIFIED HIM THROUGH THE VERY FIRST
23 LINEUP, THAT THIS IS THE PERSON THAT WAS IN THERE THE
24 NIGHT BEFORE. NOW, IT'S NOT YOUR RESPONSIBILITY AS
25 JURORS TO FIGURE OUT WHAT IS IN THE MIND OF THE PERSON

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1 WHO IS A ROBBER. IT'S NOT YOUR JOB AS JURORS TO
2 TRY TO GO BEYOND MR. CARRAWAY'S ARGUMENT, THAT SAYS
3 WHETHER OR NOT IT'S IDIOTIC THAT THIS GUY WOULD GO IN
4 HERE TWO DAYS IN A ROW WITH A JACKET ON, WITH THE SAME
5 MODUS OPERANDI, THE SAME APPROACH, TO ASK ABOUT MEMBERSHIP.
6 TO TRY TO HANG AROUND IN THERE THE FIRST TIME PEOPLE
7 IN THERE. THE SECOND NIGHT HE FOUGHT THE GIRL ALONE.

8 IT'S NOT IN YOUR MIND TO FIGURE OUT WHY HE WOULD
9 COMMIT A CRIME IN A CERTAIN WAY. TO FIGURE OUT WHY
10 HE DIDN'T WEAR A SKI MASK. TO FIGURE OUT WHY HE DIDN'T
11 KILL HER, SO SHE WOULDN'T BE A WITNESS TO COME IN TO
12 COURT. TO FIGURE OUT WHY HE WOULD WEAR A HORNETS JACKET.
13 TO FIGURE OUT WHY HE WOULD THEN GET RID OF THE JACKET.
14 THE ONLY THING WE WANT YOU TO DO HOWEVER, IS TO LISTEN
15 TO THE TESTIMONY AND TO CONSIDER THE EVIDENCE AS YOU
16 SEE FIT.

17 NOW, Y'ALL NOTICE THAT AFTER SHE WAS ROBBED, TIED
18 UP, SHE GOT A CALL THE NEXT NIGHT. AND THE CALL MENTIONS,
19 THIS DEFENDANT MENTIONS, THAT ABOUT THE FAT LADY THAT WAS
20 COMING INTO THE STORE, THAT CAME IN THE STORE. THAT HE
21 SAW COMING INTO THE STORE. AND NOW WE DIDN'T CALL
22 MS. POWELL AS A WITNESS. AND SHE WAS SUBPOENAED AND SHE'S
23 ON THE SECOND ROW THERE. AND HE SAW HER. HE DIDN'T KNOW
24 WHETHER SHE SAW HIM. BUT HE REALIZED THAT IF SHE
25 SAW HIM---

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1 MR. CARRAWAY: OBJECTION, YOUR HONOR. THIS DIDN'T
2 COME INTO EVIDENCE AT ALL. NONE OF THIS.

3 THE COURT: IT'S---

4 MR. CARRAWAY: SHE DIDN'T---

5 THE COURT: ---IT'S---

6 MR. CARRAWAY: ---TESTIFY.

7 THE COURT: ---IT'S, IT'S PROPER -- IT'S PROPER THUS
8 FAR.

9 MR. NEWMAN: SHE -- THE DEFENDANT REALIZED THAT IF
10 THE LADY, AND HE CALLED HER. HE CALLED HER THE NEXT NIGHT,
11 AND MENTIONED, DON'T TELL ANYBODY, I'M GOING TO COME BACK
12 AND GET YOU. HE MENTIONED TO THIS WITNESS WHO TESTIFIED
13 ABOUT THE, THE FAT LADY AS HE SAID, THAT CAME IN THERE.
14 AND HE SAID, TALK -- DON'T TELL ANYBODY AND SO FORTH.
15 NOW YOU CAN INFER FROM THE EVIDENCE WHAT YOU WISH.
16 AND THAT'S WHAT I'M DOING IN MY ARGUMENT HERE.
17 YOU CAN INFER FROM THAT, THAT HE REALIZED OR THOUGHT
18 THAT THIS LADY SAW HIM, AND HE DECIDED THAT HE BETTER
19 GET RID OF HIS, HIS JACKET.

20 AND THEN, NOT AS MR. CARRAWAY WOULD COME AND
21 MISREPRESENT TO YOU ABOUT HIM PUTTING THE JACKET ON THE
22 POST IN HIS FATHER'S BACK -- HIS FAMILY'S BACKYARD. BUT
23 AN OFFICER KIRBY TESTIFIED SOMEWHERE HALF WAY OR SO BETWEEN
24 CLEMMONS VIDED AND THAT PLACE ON KINDER ROAD, HE FOUND THE
25 JACKET ON THE EDGE OF THE WOODS -- THE WOOD LINE SOME PLACE.

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1 HE DIDN'T SAY ANYTHING ABOUT THE JACKET BEING IN ANYONE'S
2 BACKYARD. AND MR. CARRAWAY KNOWS IT. NOW WHY WOULD HE COME
3 AND TELL YOU SOMETHING THAT DELIBERATELY HE KNOWS A WITNESS
4 HAS NOT TESTIFIED TO. I HAVE TO LET HIM DEAL WITH THAT.
5 BUT THE TESTIMONY CLEARLY WAS, THAT OFFICER KIRBY FOUND
6 THE JACKET THE NEXT AFTERNOON. AND THESE PEOPLE IDENTIFIED,
7 AND THEY IDENTIFIED THE DEFENDANT.

8 NOW WHAT DID THE DEFENDANT DO IMMEDIATELY AFTER THE
9 ROBBERY? WELL, IT'S QUITE APPARENT THAT HE HUNG OUT FOR A
10 WHILE. YOU KNOW, HE GOT SOME CASH NOW. HE HUNG OUT FOR
11 A WHILE. AND -- BUT AROUND ONE OR TWO O'CLOCK HE IS HANGING
12 OUT IN THE VERY SAME NEIGHBORHOOD WHERE THESE TWO GIRLS
13 THAT YOU HEARD FROM, CYNTHIA BROWN AND FAYE FRANKLIN
14 PENDERGRASS. AND WHAT DOES HE DO? HE'S GOT A ROLL
15 OF MONEY. HE'S GOT THE POWER AT THAT POINT. READY
16 TO SPEND IT. WHAT Y'ALL DRINKING. I'LL BUY YOU A ROUND.
17 WHAT ARE Y'ALL DRINKING. AND THEY NOTICE HE HAD THE RINGS
18 THE VERY SAME NIGHT THE ROBBERY OCCURRED. THE VERY SAME
19 NIGHT.

20 NOW MR. CARRAWAY WANTS YOU TO BANK YOUR WHOLE
21 DECISION ON COREY FULTON'S STORY ABOUT THEM BEING UP
22 AT ERNEST MCBRIDE'S CLUB AND WALKING AROUND IN THE RAIN
23 IN, IN FRIERSON HOMES AND ALL THAT. BUT THE PROBLEM IS,
24 THIS, THE WITNESS WHO WAS HIS GIRLFRIEND, EX-GIRLFRIEND,
25 SAYS -- THAT SHE HAD THE RINGS THREE OR FOUR DAYS. BECAUSE

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1 YOU HEARD HER HERE TESTIFY. THREE OR FOUR DAYS. AND
2 MR. CARRAWAY, WELL HE DON'T WANT Y'ALL TO BELIEVE ANY
3 OF THAT. HE WANTS YOU TO SAY THAT THE POLICE DON'T KNOW
4 NOTHING ABOUT THE DAYS. HE WOULD HAVE YOU BELIEVE
5 THAT MS. ROGERS DOESN'T KNOW WHEN SHE WAS ROBBED.
6 THAT IT WASN'T THE 28TH. SHE DOESN'T KNOW WHEN IT
7 WAS. AND THE LADY SAID WELL, SHE HAD THE RINGS THREE
8 OR FOUR DAYS AND THE POLICE CAME AND UH -- AND QUESTIONED
9 HER ABOUT IT. AND GOT IT FROM HER.

10 BUT YOU KNOW, THE REASON WHY POLICE OFFICERS HAVE
11 TO KEEP NOTES, IS SO THAT WHEN PEOPLE QUESTION THEIR
12 CREDIBILITY AND COME IN TO COURT AND JUST PRESUME
13 THAT EVERY POLICE OFFICER, EVERY WITNESS, ANYONE WHO
14 TESTIFIED IS GOING TO LIE. THEY WRITE NOTES. THEY
15 MADE RECORDS. AND CLEAR AS DAY, RIGHT WHEN THEN RECOVERED
16 IT -- RECOVERED FROM FRIERSON'S NOVEMBER THE 1ST, 1991.
17 MR. CARRAWAY DIDN'T LOOK AT THIS PIECE OF EVIDENCE THAT
18 THEY WROTE DOWN. WHEN THEY RECOVERED IT ON NOVEMBER
19 THE 1ST.

20 NOW THAT CONFINES OUR ENTIRE ISSUE INVOLVING THOSE
21 TWO RINGS BETWEEN THE 28TH, MONDAY NIGHT, WHEN THEY WERE
22 STOLEN AND THE 1ST, FRIDAY, DURING THE DAY THAT THEY
23 WERE RECOVERED FROM THE GIRL WHO SAID THAT SHE HAD THEM
24 THREE OR FOUR DAYS. AND HE HAD GIVEN THEM TO HER THAT
25 NIGHT. I MEAN, WHAT MORE EVIDENCE. HOW MORE CLEAR

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1 CAN IT BE. HOW CLEARER CAN IT BE. NOW HE SPENT THE NIGHT,
2 STAYED WITH HER. YOU KNOW, UM BLOWS THE MONEY THAT HE
3 ROBBED WITH. LEFT THIS PICTURE ID. AND WE DON'T
4 KNOW IF ALL THIS ABOUT A NAME. BUT HE, HE HAD AN
5 ID. PRESENTED NO EVIDENCE TO DISPUTE THAT THIS IS
6 HIM RIGHT HERE ON THE THING. REGARDLESS OF WHETHER
7 HE USES HIS NAME AT SOME POINT OR NOT.

8 NOTICE IT SAYS, UNARMED, NOT PERMITTED TO CARRY A
9 WEAPON. BUT WE GOT TO THIS EVIDENCE HERE THAT WAS RECOVERED,
10 AND THIS IS WRITTEN DOWN. 11-15-91, FRANCIS WAGNER.
11 BY THAT TIME, HE'S SLAM BROKE. BUT STILL HUSTLING THIS
12 LADY'S PROPERTY. AND WHO KNOWS WHAT ELSE IN BETWEEN.

13 MR. CARRAWAY: THAT'S NOT -- THAT'S NOT A FACT. HE
14 WAS ARRESTED ON THE 14TH. THAT SAYS THE 15TH. HE'S, HE'S
15 IMPLYING HERE ON THE 15TH HE WAS -- HE SOLD THIS THING. HE
16 WAS ARRESTED ON THE 14TH.

17 THE COURT: THE JURY CAN DETERMINE WHEN IT WAS THAT THE
18 ARREST WAS MADE AND WHAT TOOK PLACE AS FAR AS DATES ARE
19 CONCERNED.

20 MR. NEWMAN: MR. CARRAWAY HAD HIM PUT -- HIM PUT ON
21 THE JACKET. AND IT FITS HIM TO A TEE. IT COULDN'T FIT
22 ANY BETTER THAN IF IT WERE TAILOR MADE. OF THE -- YOU
23 KNOW, IT'S A LARGE. AND I GUESS THEY MAKE THEM LARGE.
24 AN EXTRA LARGE. I GUESS HE -- I DON'T KNOW BUT, BUT
25 THAT, THAT BIT OF EVIDENCE IS CLEAR. THEN IF YOU WANT

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1 TO KIND OF ENGAGE THINGS WHEN, WHEN THE OFFICER ARRESTED
2 HIM AND HE PRETENDED TO BE DERRICK CONYERS. AND GAVE
3 THE OFFICER A FALSE NAME. HIS IDENTITY.

4 THEN KIND OF THINK ABOUT THE DEFENSE THAT WAS PUT
5 UP IN RESPONSE TO THE STATE'S EVIDENCE THAT CLEARLY
6 ESTABLISHED THAT THROUGH BOTH LADIES IDENTIFICATIONS
7 AND THROUGH THE POLICE TRACKING EVERYTHING TO HIM AND THE
8 NIGHT AFTER THE -- MS. WARD TESTIFYING ABOUT HIM BEING
9 THERE AT THAT DAY, AT HER STORE, AROUND HER STORE, WITH
10 THAT JACKET ON. COMMITTING THE ROBBERY. THE WITNESS
11 WHO HAD, HAD HIM THERE THE NIGHT BEFORE---

12 MR. CARRAWAY: THAT'S WRONG. MS. WARD DID NOT SAY
13 HE HAD THE JACKET---

14 THE COURT: MR., MR.,---

15 MR. CARRAWAY: ---ON.

16 THE COURT: ---MR.---

17 MR. CARRAWAY: SHE SAID---

18 THE COURT: ---MR. CARRAWAY---

19 MR. CARRAWAY: ---HE DID NOT.

20 THE COURT: ---MR. CAR -- MR. CARRAWAY, MR. CARRAWAY,
21 THIS IS NOT MATLOCK, JUDGE FOR THE DEFENSE, OR ANYTHING
22 LIKE THAT. THIS IS NOT TV. HE CAN ARGUE THE CASE BASED
23 ON WHAT HE BELIEVES THE EVIDENCE SHOWS. THE JURY IS
24 GOING TO DECIDE. THEY ARE GOING TO DECIDE WHETHER OR
25 NOT THAT'S TRUE OR NOT. THEY GOT TO DECIDE EVERY FACT

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1 IN THIS CASE. THAT'S WHAT THEY'RE HERE TO DO.

2 MR. NEWMAN: YOU HEARD THE EVIDENCE FROM MS. WARD
3 THAT HE WAS THERE. SHE HAD SEEN HIM WITH THE JACKET ON.

4 MR. CARRAWAY: THAT IS WRONG ---

5 THE COURT: MR. CARRAWAY---

6 MR. CARRAWAY: ---THAT IS THE EVIDENCE.

7 THE COURT: MR. CARRAWAY, IF YOU STAND UP AGAIN, I'M
8 GOING TO CARRY YOU OUT OF HERE. NOW SIT DOWN. SIT DOWN.
9 GO AHEAD.

10 MR. NEWMAN: THAT THE WITNESSES CLEARLY IDENTIFIED
11 HIM AND SET HIS MOTIVE AND MEANS OF WHICH HE OPERATED
12 THROUGH THEIR TESTIMONY. AND IN RESPONSE TO US CLEARLY
13 PROVING THAT HE DID, THEN HE BRINGS IN THIS PARADE OF
14 PEOPLE THAT KNOW NOTHING ABOUT THE CASE. THAT, THEY
15 HAVE NO EVIDENCE THAT THEY CAN VERIFY EXCEPT FOR THIS
16 ONE THING THAT I WANT YOU TO KIND OF CONSIDER.

17 NOW I HAVE NO QUESTION IN MY MIND AND THAT SOME OF THOSE
18 PEOPLE ARE GOOD PEOPLE. UH, SOME OF THE MCFADDEN'S. BUT
19 IT'S VERY, VERY DIFFICULT TO GET A GOOD MAN TO COME IN TO
20 COURT, OR A GOOD WOMAN TO COME IN TO COURT, AND TO PUT THEIR
21 REPUTATION ON THE LINE -- ON THE LINE FOR A CROOK. AND
22 THEY WOULD NOT -- THEY WOULD NOT WHEN THEY TOOK THAT WITNESS
23 STAND, THEY WOULD NOT VOUCH FOR HIM. BECAUSE THEY KNEW
24 I MEAN, MR. CARRAWAY WOULD HAVE THEM COME IN HERE AS IF
25 THEY KNEW SOMETHING ABOUT THIS CASE. AND THEY -- MOST OF

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1 THEM, I DON'T -- WHEN HE COMES TO TOWN, I DON'T EVEN SEE
2 HIM. I DON'T SEE HIM. OR HE STAYS HERE. HE'S HERE AND
3 HE'S THERE. HE'S IN THE STREETS, HE'S EVERYWHERE.

4 THE ONLY PERSON HE CAN GET TO COME IN HERE TO TRY
5 TO VOUCH FOR HIM IN ANY WAY, IS ANOTHER CROOK. A TWO-TIME
6 BURGLAR THAT'S IN JAIL WITH HIM. NOW WHAT ARE THEY SUPPOSED
7 TO TRADE FOR EACH OTHER WHEN THE OTHER GUY COMES AND FACE
8 HIS TRIAL. A TWO-TIME BURGLAR THAT HAS HAD ABSOLUTELY
9 NOT ONE IOTA OF CREDIBILITY. YOU KNOW, AND WHEN A PERSON
10 IS TRYING TO SELL YOU A LIE, YOU PRESS THEM FOR DETAILS.
11 WHEN THEY'RE LYING TO YOU, YOU PRESS THEM FOR DETAILS. AND
12 WHEN AS I PRESSED HIM FOR DETAILS, HE MADE UP HIS STORY
13 AS HE WAS GOING ALONG.

14 BUT HIS PROBLEM WAS ONE THING, HE HADN'T BEEN IN
15 THE COURTROOM DURING THE TRIAL. IF HE WAS SITTING OUT
16 THERE BEHIND HIM FOR THE PAST TWO DAYS, WHEN DO YOU THINK
17 HE WOULD HAVE CLAIMED THAT THEY SAW THOSE RINGS, ON THE
18 29TH OR LATER THAT NIGHT. SOME OTHER LIE. HE WAS MAKING
19 UP THAT LIE AS HE WAS GOING ALONG. AND I TRUST THAT
20 YOU SERVING AS JURORS IN THIS CASE AND REPRESENTING ALL
21 THE PEOPLE OF WILLIAMSBURG COUNTY, WOULD DECIDE THIS
22 CASE BASED ON THE EVIDENCE AS IT HAS BEEN PRESENTED.
23 AND IF YOU DO THAT, I'M SATISFIED. MY JOB IS COMPLETE.
24 AND I'VE PRESENTED THE EVIDENCE. I'VE ARGUED THE CASE.
25 AND I'VE BROUGHT FORTH THE WITNESSES. HE IS GUILTY AS

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1 HE CAN BE. AND HE KNOWS IT, AND KNOW YOU KNOW IT.

2 THE COURT: LADIES AND GENTLEMEN, AT THIS
3 TIME, I'M GOING TO CHARGE YOU THE LAW. I DON'T WANT
4 ANYBODY COMING IN THE COURTROOM, OR LEAVE THE COURTROOM
5 PLEASE, MADAM BAILIFF.

6 THE STATE HAS CHARGED MICHAEL DION MCFADDEN WITH
7 THREE CRIMES. THREE OFFENSES. FIRST IS KIDNAPPING. THE
8 SECOND IS ARMED ROBBERY. AND THE THIRD, POSSESSION OF
9 A KNIFE, FOR A DISPLAYING OF A KNIFE DURING THE COMMISSION
10 OF A VIOLENT CRIME. YOU SHOULD DISTINCTLY UNDERSTAND
11 THAT THE INDICTMENT WHICH I READ TO YOU AT THE BEGINNING
12 OF THE TRIAL CONTAINS ONLY THE ALLEGATIONS. THE INDICTMENT
13 IS NOT EVIDENCE, AND MAY NOT BE -- MUST NOT BE CONSIDERED
14 BY YOU IN, IN ANY WAY AS EVIDENCE AGAINST MR. MCFADDEN.
15 THE ONLY EVIDENCE IN THIS CASE, IS THE TESTIMONY FROM THE
16 WITNESSES AND THE EXHIBITS WHICH WERE INTRODUCED DURING
17 THE COURSE OF THE TRIAL.

18 NOW TO THIS INDICTMENT WITH THE THREE CHARGES, MR.
19 MCFADDEN HAS PLED NOT GUILTY, WHICH PLACES A BURDEN UPON
20 THE STATE OF SOUTH CAROLINA TO PROVE HIS GUILT, AND TO
21 PROVE THAT GUILT BEYOND A REASONABLE DOUBT. A DEFENDANT
22 CHARGED WITH A CRIME, IS NEVER REQUIRED TO COME TO THE
23 COURTHOUSE AND PROVE HIMSELF INNOCENT. AND I TELL YOU, IT
24 IS A VITAL, IMPORTANT RULE OF LAW THAT NO MATTER HOW
25 GREAT OR SERIOUS A CRIME MAY BE WITH WHICH SOMEONE IS

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1 CHARGED, THAT THAT PERSON IS PRESUMED AND MUST ALWAYS
2 BE PRESUMED TO BE INNOCENT UNTIL PROVEN -- UNTIL HIS
3 GUILT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT. HIS
4 PRESUMPTION OF INNOCENT REMAINS WITH HIM THROUGHOUT THE
5 TRIAL, AND IS NOT REMOVED UNTIL THE STATE REMOVES IT
6 BY EVIDENCE BEYOND A REASONABLE TO YOUR SATISFACTION.

7 SO, LADIES AND GENTLEMEN, IF YOU ARE NOT CLEARLY
8 CONVINCED OF GUILT BEYOND A REASONABLE DOUBT TO THE
9 CONTRARY, THEN YOU ARE TO FIND THIS DEFENDANT NOT GUILTY.
10 THE BURDEN IS UPON THE STATE OF SOUTH CAROLINA TO PROVE
11 BY EVIDENCE, OR TO ESTABLISH BY EVIDENCE TO YOUR
12 SATISFACTION, THE GUILT OF THIS DEFENDANT BEYOND A REASONABLE
13 DOUBT. I'M NOT GOING TO DEFINE REASONABLE DOUBT. IT'S
14 WHAT YOU DECIDE IT IS. I CAN TELL YOU THAT A REASONABLE
15 DOUBT, IS A KIND OF DOUBT THAT WOULD CAUSE A REASONABLE
16 PERSON TO HESITATE TO ACT. IT MAY ARISE FROM THE EVIDENCE,
17 OR FROM THE LACK OF EVIDENCE. IF THE STATE HAS REMOVED
18 ALL REASONABLE DOUBT, IT'S YOUR DUTY TO FIND THE
19 DEFENDANT GUILTY. ON THE OTHER HAND, IF YOU ARE LEFT WITH A
20 REASONABLE DOUBT, THEN IT IS YOUR DUTY TO FIND THE DEFENDANT
21 NOT GUILTY.

22 NOW, LADIES AND GENTLEMEN, UNDER OUR LAWS, YOU 12 JURORS
23 ARE THE SOLE JUDGES OF THE FACTS OF THE CASE. THAT MEANS
24 THAT I HAVE NO RIGHT TO PASS MY OPINION ON TO YOU, AS TO
25 WHAT I THINK THE FACTS SHOW, OR WHO'S TELLING THE TRUTH

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1 AND WHO ISN'T. THAT SIMPLY IS NOT MY JOB. IT'S YOUR
2 JOB. AND OUR LAW MAKES IT YOUR JOB. SO THOUGH, I'VE
3 MADE SOME RULINGS DURING THE COURSE OF THE TRIAL, THOUGH
4 I MAY HAVE MADE SOME COMMENTS DURING THE COURSE OF THE
5 TRIAL DO NOT -- DO NOT INFER FROM ANYTHING THAT I HAVE
6 SAID DURING THIS TRIAL, ANYTHING, THAT I HAVE ANY OPINION
7 ABOUT THE FACTS OF THE CASE. BECAUSE I DO NOT HAVE AN
8 OPINION ABOUT THE FACTS OF THIS CASE.

9 AS JUDGES OF THE FACTS OF THE CASE, YOU HAVE TO
10 JUDGE THE CREDIBILITY, WHICH MEANS THE BELIEVABILITY OF
11 WITNESSES. AND YOU DO THAT BY USING YOUR COMMON SENSE
12 AND YOUR GOOD JUDGMENT. YOU CAN USE YOUR COMMON SENSE
13 AND ASK SOME QUESTIONS IF YOU'D LIKE TO. FIRST OF
14 ALL, YOU HAVE GOT THE RIGHT TO CONSIDER THE Demeanor,
15 WHICH MEANS OBVIOUSLY THE MANNER IN WHICH A PERSON
16 TESTIFIES. THAT'S SOMETHING YOU CAN LOOK AT IF YOU
17 WANT TO. YOU HAVE THE RIGHT TO ASK YOURSELF THIS QUESTION:
18 WAS THE WITNESS BIASED OR PREJUDICE. IN OTHER WORDS,
19 DOES A WITNESS HAVE SOMETHING TO GAIN OR LOSE BY WHAT HE
20 OR SHE SAYS.

21 YOU MAY ASK YOURSELF THIS QUESTION. WAS THE WITNESSES
22 TESTIMONY MADE WEAKER, OR WAS IT MADE STRONGER BY SOME OTHER
23 TESTIMONY. WAS IT CORROBORATED OR WAS IT CONTRADICTED
24 BY SOMETHING SOMEBODY ELSE SAID. AND THEN YOU MIGHT ASK
25 YOURSELF THIS QUESTION. WHAT WAS THE WITNESSES OPPORTUNITY

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1 TO KNOW ABOUT WHAT HE OR SHE TESTIFIED TO. THAT PERSON'S
2 OPPORTUNITY TO OBSERVE AND TO KNOW THE MATTERS ABOUT
3 WHAT HE OR SHE TESTIFIED TO. YOU DO NOT COUNT WITNESSES.
4 YOU MAY BELIEVE ONE WITNESS AGAINST SEVERAL, SEVERAL
5 WITNESSES AGAINST ONE. YOU MAY BELIEVE ALL OF WHAT A WITNESS
6 TELLS YOU, OR PART OF WHAT A WITNESS TELLS YOU, OR NONE
7 OF WHAT A WITNESS TELLS YOU. BASICALLY WHAT YOU ARE TO
8 DO, IS TO FIND THE TRUTH NO MATTER WHAT THE SOURCE IS, AND
9 GIVE THE BENEFIT OF EVERY REASONABLE DOUBT TO THE DEFENDANT
10 IN, IN SO DOING.

11 NOW, THE SAME LAW THAT MAKES YOU THE JUDGES OF THE
12 FACTS, MAKES ME THE JUDGE OF THE LAW. AND WHAT THAT MEANS
13 VERY SIMPLY IS, THAT YOU ARE REQUIRED UNDER YOUR OATH,
14 TO TAKE THE LAW AS I GIVE IT TO YOU AS CORRECT. YOU'RE
15 NOT TO BE CONCERNED WITH WHAT YOU THINK THE LAW IS, OR
16 WHAT YOU HOPE THE LAW IS OR BELIEVE THE LAW TO BE. BUT
17 RATHER WHAT I TELL YOU THE LAW IS. YOU FIND THE FACTS AND
18 YOU TAKE THE LAW AS I GIVE IT TO YOU AS CORRECT, AND
19 APPLY IT TO THE LAW THAT I GIVE TO YOU.

20 NOW, LADIES AND GENTLEMEN, THERE ARE TWO TYPES OF
21 EVIDENCE IN SOUTH CAROLINA. WE HAVE THE TYPE OF EVIDENCE
22 WE CALL DIRECT EVIDENCE. WHEN SOMEONE TESTIFIES, I SAW
23 SOMETHING, I HEARD SOMETHING, OR I SMELLED SOMETHING, OR
24 I TASTED SOMETHING. SOME -- ONE OF THE SENSES. THAT IS
25 A, A FORM OF DIRECT EVIDENCE. AND WE ALSO HAVE WHAT

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1 WE CALL CIRCUMSTANTIAL OR INDIRECT EVIDENCE. AND A CRIMINAL
2 CASE MAY BE BASED UPON A CHAIN OF CIRCUMSTANTIAL EVIDENCE.
3 BY INDIRECT OR CIRCUMSTANTIAL EVIDENCE IS MEANT THE PROOF
4 OF SOME OTHER FACTS OR FACT -- FACT OR FACTS FROM WHICH,
5 EITHER TAKEN SINGLY OR COLLECTIVELY THE EXISTENCE OF A
6 PARTICULAR FACT IN QUESTION MAY BE INFERRED AS A NECESSARY
7 CONSEQUENCE.

8 WHERE THE STATE RELIES SOLELY UPON CIRCUMSTANTIAL
9 EVIDENCE, IT IS NECESSARY THAT EVERY CIRCUMSTANCE BE
10 PROVEN BEYOND A REASONABLE DOUBT. AND ALL THE CIRCUMSTANCES
11 SO PROVEN MUST BE CONSISTENT WITH EACH OTHER. AND TAKEN
12 TOGETHER MUST POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED,
13 AND THAT TO THE EXCLUSION OF EVERY OTHER REASONABLE
14 HYPOTHESIS. IT IS NOT SUFFICIENT THAT CIRCUMSTANTIAL
15 EVIDENCE CREATES A PROBABILITY EVEN THOUGH IT IS A STRONG
16 PROBABILITY. AND IN THE CONSIDERATION OF CIRCUMSTANTIAL
17 EVIDENCE, YOU MUST SEEK SOME REASONABLE EXPLANATION
18 OTHER THAN THE GUILT OF THE ACCUSED, AND IF SUCH REASONABLE
19 EXPLANATION CAN BE FOUND, THEN YOU ARE NOT ALLOWED TO
20 CONVICT UPON CIRCUMSTANTIAL EVIDENCE ALONE.

21 CRIMINAL INTENT IS A NECESSARY ELEMENT OF, OF EVERY
22 CRIME WHICH MUST BE PROVEN BY THE STATE BEYOND A REASONABLE
23 DOUBT. CRIMINAL INTENT IS A MATTER THAT MUST BE DETERMINED
24 BY YOU FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION.
25 THERE IS NO WAY TO PROVE CIRCUMSTANTIAL -- EXCUSE ME, TO

1 PROVE INTENT TO A MATHEMATICAL CERTAINTY. BECAUSE THERE IS
2 NO POSSIBLE WAY THAT WE COULD LOOK INTO A PERSON'S BRAIN AND
3 KNOW WHAT ONE IS THINKING OR WHAT ONE INTENDS TO DO. SO
4 THE LAW SAYS, THAT YOU MAY -- THE STATE MAY PROVE INTENT
5 BY THE CIRCUMSTANCES WHICH ARE SHOWN TO HAVE EXISTED AT
6 THE TIME. AND THIS IS HOW YOU MAKE A DETERMINATION
7 AS TO WHETHER OR NOT THE ELEMENT OF INTENT IS PRESENT.

8 CRIMINAL INTENT IS A STATE OF MIND, WHICH OPERATED
9 JOINTLY WITH AN ACT IN THE COMMISSION OF A CRIME. CRIMINAL
10 INTENT IS A MENTAL STATE. A CONSCIOUS WRONGDOING. SO
11 IT IS UP TO YOU TO DETERMINE WHAT THE DEFENDANT INTENDED
12 TO DO, BASED ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.
13 I TELL YOU THAT STATE MUST PROVE CRIMINAL INTENT BEYOND
14 A REASONABLE DOUBT, JUST AS THE STATE MUST PROVE EVERY
15 ELEMENT OF EACH CRIME BEYOND A REASONABLE DOUBT.

16 KIDNAPPING. I'M GOING TO TELL YOU WHAT KIDNAPPING
17 IS FIRST. KIDNAPPING IS SET OUT IN OUR STATUTORY LAW.
18 ONE OF THESE BOOKS HERE. AND IT SAYS: WHOEVER SHALL
19 UNLAWFULLY SEIZE, CONFINED, INVEIGLE, DECOY, KIDNAP,
20 ABDUCT, OR CARRY AWAY ANY OTHER PERSON BY ANY MEANS
21 WHATSOEVER, WITHOUT AUTHORITY OF LAW, EXCEPT WHEN A MINOR
22 IS SEIZED BY A PARENT, SHALL BE GUILTY OF A FELONY. AND
23 THAT, THAT PERSON SHALL BE GUILTY OF KIDNAPPING. THERE
24 ARE THREE ESSENTIAL ELEMENTS TO THE CRIME OF KIDNAPPING.
25 AND AS I SAY, THE STATE MUST PROVE EACH ONE OF THOSE

24B

1 ELEMENTS BEYOND A REASONABLE DOUBT. FIRST, THERE MUST
2 BE SOME POSITIVE ACT OR CONDUCT ON THE PART OF THE KIDNAPPER
3 WHICH RESULTS IN A TAKING OR A CARRYING AWAY, OR A SEIZURE
4 OR A DETENTION OF A VICTIM. SECONDLY, THE TAKING, CARRYING
5 AWAY, SEIZURE OR DETENTION OF THAT PERSON, MUST BE
6 ACCOMPLISHED WITHOUT ANY LAWFUL WARRANT, OR ANY
7 AUTHORITY. THAT IS, IT MUST HAVE BEEN UNLAWFUL. AND
8 FINALLY, THE TAKING, CARRYING AWAY, SEIZURE, OR DETENTION,
9 MUST HAVE BEEN ACCOMPLISHED BY FORCE AND AGAINST THE WILL
10 OF THE VICTIM. IN OTHER WORDS, THE VICTIM MUST NOT HAVE
11 CONSENTED IN A LEGALLY VALID MANNER. WHILE THE USE OF
12 PHYSICAL FORCE OR VIOLENCE WILL SATISFY THAT REQUIREMENT,
13 SUCH PHYSICAL FORCE OR VIOLENCE IS NOT AN ESSENTIAL
14 TO THE COMMISSION OF THE CRIME OF KIDNAPPING.

15 FOR KIDNAPPING, IT IS SUFFICIENT THAT A THREAT IS
16 USED, IF IT IS OF SUFFICIENT FORCE TO PUT AN ORDINARILY
17 PRUDENT PERSON IN FEAR OF THAT PERSON'S PERSONAL SAFETY.
18 AND I TELL YOU THAT A KIDNAPPING COMMENCES WHEN ONE IS
19 LAWFULLY DEPRIVED OF HIS FREEDOM, AND THAT CONTINUES
20 UNTIL THAT FREEDOM HAS BEEN RESTORED. NOW, AS TO ARMED
21 ROBBERY. OUR LAW IN SECTION 16-11-330, SAYS ARMED ROBBERY
22 IS THE TAKING OF PERSONAL PROPERTY OF ANOTHER FROM HIS
23 PERSON, OR HIS IMMEDIATE PRESENCE ACCOMPANIED BY FORCE,
24 OR PUTTING THE PERSON IN FEAR OF ARM, AND WITH THE INTENT
25 TO STEAL THE PROPERTY WHILE ARMED WITH A DEADLY WEAPON.

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1 THERE ARE FOUR ELEMENTS TO THE CRIME OF ARMED ROBBERY.
2 THE STATE MUST PROVE THOSE FOUR ELEMENTS BEYOND A REASONABLE
3 DOUBT. FIRST, LARCENY FROM A PERSON OR FROM HIS PRESENCE
4 OR PERSONAL PROPERTY, LARCENY MEANS STEALING. TAKE
5 SOMETHING, TO STEAL SOMETHING FROM THAT PERSON OR FROM HIS
6 PRESENCE. IS -- LARCENY IS THE FELONIOUS TAKING AND CARRYING
7 AWAY OF GOODS OF ANOTHER, AGAINST THE WILL AND WITHOUT THAT
8 PERSON'S CONSENT. SECONDLY, THE USE OF FORCE OR
9 INTIMIDATION. THIRD, WITH THE INTENT TO STEAL. AND FOURTH,
10 WHILE ARMED WITH A PISTOL, KNIFE, SLINGSHOT, METAL KNUCKLES,
11 RAZOR, OTHER DEADLY WEAPON.

12 NOW ANY DEVICE OR INSTRUMENT CAPABLE OF INFLECTING
13 SERIOUS BODILY INJURY OR DEATH AND WOULD PLACE A REASONABLE
14 PERSON IN FEAR OF SUCH HARM OR DEATH IF USED IN A THREATENING
15 MANNER, IS DEFINED AS A DEADLY WEAPON. FINALLY, THE
16 DEFENDANT IS CHARGED WITH VISIBLY DISPLAYING A KNIFE
17 DURING THE COMMISSION OF A VIOLENT CRIME. TO PROVE THIS
18 CRIME, THE STATE MUST PROVE TWO ELEMENTS BEYOND A REASONABLE
19 DOUBT. THE FIRST, IS THAT THE DEFENDANT COMMITTED A VIOLENT
20 CRIME. AND I TELL YOU THAT KIDNAPPING AND ARMED ROBBERY,
21 BOTH ARE VIOLENT CRIMES.

22 SO, THE STATE MUST FIRST PROVE THAT THE DEFENDANT
23 COMMITTED A VIOLENT CRIME. AND SECONDLY, THAT WHILE
24 COMMITTING THAT VIOLENT CRIME, THE DEFENDANT VISIBLY
25 DISPLAYED A KNIFE. AND A KNIFE IS DEFINED AS AN INSTRUMENT

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1 OR A TOOL CONSISTING OF A SHARP CUTTING BLADE WHETHER OR NOT
2 FASTENED TO A HANDLE, WHICH IS CAPABLE OF BEING USED TO
3 INFLICT A CUT, SLASH, OR WOUND. IF THE STATE FAILS TO
4 PROVE EITHER OR BOTH OF THE ELEMENTS OF THIS CHARGE, THEN
5 YOU MUST FIND THE DEFENDANT NOT GUILTY ON THIS PARTICULAR
6 CHARGE. ALSO, IF YOU FIND THAT THE DEFENDANT IS NOT
7 GUILTY OF KIDNAPPING AND ARMED ROBBERY, THEN OF COURSE
8 YOU COULD NOT FIND HIM GUILTY OF VISIBLY DISPLAYING A
9 KNIFE DURING THE COMMISSION OF A VIOLENT CRIME. BECAUSE
10 THE STATE WOULDN'T HAVE PROVED THE TWO VIOLENT CRIMES,
11 OR ONE OR, OR THE OTHER OF, OF THE VIOLENT CRIMES, WHICH
12 THEY HAVE, HAVE ALLEGED.

13 IF YOU FIND THE STATE HAS PROVEN THIS CHARGE BEYOND
14 A REASONABLE DOUBT THEN OF COURSE, YOU MUST FIND THE
15 DEFENDANT GUILTY ON THIS CHARGE. NOW AS YOU -- AS YOU KNOW
16 IN THIS CASE, THE DEFENDANT IS CHARGED WITH THREE SEPARATE
17 CRIMES AS I'VE TOLD YOU SEVERAL TIMES. KIDNAPPING, ARMED
18 ROBBERY, POSSESSION OF A KNIFE DURING THE COMMISSION OF
19 A CRIME. YOU ARE TO CONSIDER EACH OF THESE SEPARATELY,
20 AND DISTINCTLY. YOU DO NOT HAVE TO CONSIDER ONE BEFORE
21 THE OTHER, EXCEPT OBVIOUSLY YOU WANT TO CONSIDER EITHER
22 KIDNAPPING OR ARMED ROBBERY BEFORE YOU CONSIDER THE
23 CHARGE OF DISPLAYING THE KNIFE. BECAUSE YOU MUST
24 DECIDE WHETHER OR NOT THERE IS A VIOLENT CRIME, OR
25 A VIOLENT CRIME HAS BEEN COMMITTED.

1 IF THE UH EVIDENCE WARRANTS IT, OF COURSE, YOU MAY
2 CONVICT ON ALL THREE. IF THE WARRANTS -- IF THE EVIDENCE
3 WARRANTS IT, YOU MAY ACQUIT ON ALL THREE. OR YOU MAY
4 CONVICT ON ONE OR, OR MORE. IT IS SIMPLY UP TO YOU,
5 BECAUSE YOU ARE TO LOOK AT EACH ONE OF THOSE OFFENSES
6 SEPARATELY AND DECIDE EACH ONE SEPARATELY.

7 NOW, LADIES AND GENTLEMEN, ONE OF THE ISSUES IN THIS
8 CASE IS THE IDENTIFICATION OF THE DEFENDANT AS A PERPETRATOR
9 OF THE CRIME. THE STATE HAS PROV -- HAS THE BURDEN OF
10 PROVING THE IDENTITY OF THAT PERSON BEYOND A REASONABLE
11 DOUBT. IT'S NOT ESSENTIAL THAT THE WITNESS HIMSELF BE
12 FREE FROM DOUBT, AS TO THE CORRECTNESS OF HIS STATEMENT,
13 OR HER STATEMENT. HOWEVER, YOU MUST BE SATISFIED BEYOND
14 A REASONABLE DOUBT AS TO THE ACCURACY OF THE IDENTIFICATION
15 OF THE DEFENDANT BEFORE YOU MAY CONVICT HIM. IF YOU
16 ARE NOT CONVINCED BEYOND A REASONABLE DOUBT THAT THE
17 DEFENDANT WAS THE PERSON WHO COMMITTED THE CRIME, THEN
18 YOU MUST FIND THE DEFENDANT NOT GUILTY.

19 IDENTIFICATION TESTIMONY IS AN EXPRESSION OR -- OF
20 BELIEF OR AN IMPRESSION BY A WITNESS. IT'S VALUE DEPENDS
21 ON THE OPPORTUNITY THE WITNESS HAD TO OBSERVE THE
22 DEFENDANT -- THE OFFENDER AT THE TIME OF THE OFFENSE, AND
23 TO MAKE A RELIABLE IDENTIFICATION LATER. IN APPRAISING
24 THE IDENTIFICATION TESTIMONY OF A WITNESS, YOU MAY CONSIDER
25 THE FOLLOWING. FIRST OF ALL, DID THE WITNESS HAVE THE

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1 CAPACITY AND AN ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER.
2 WHETHER THE WITNESS HAD AN ADEQUATE OPPORTUNITY TO OBSERVE
3 THE OFFENDER AT THE TIME OF THE OFFENSE, WILL BE EFFECTED
4 BY SUCH MATTERS AS, HOW LONG OR SHORT OF TIME IS AVAILABLE.
5 HOW FAR OR HOW CLOSE THE WITNESS WAS, OR HOW BAD, OR HOW
6 GOOD THE LIGHTING CONDITIONS WERE.

7 IN GENERAL, THE WITNESS BASES ANY IDENTIFICATION HE
8 MAKES ON HIS PERCEPTION THROUGH THE USE OF HIS FIVE SENSES.
9 USUALLY THE SENSE OF SIGHT. BUT THAT IS NOT NECESSARILY SO,
10 BECAUSE HE MAY USE THE OTHER SENSES AS WELL. AND THEN
11 SECONDLY, WAS THE IDENTIFICATION MADE BY THE WITNESS
12 SUBSEQUENT TO THE -- TO THE OFFENSE, THE PRODUCT OF HIS OWN
13 RECOLLECTION. YOU MAY TAKE INTO ACCOUNT BOTH THE STRENGTH
14 OF THE IDENTIFICATION AND THE CIRCUMSTANCES UNDER WHICH
15 THE IDENTIFICATION WAS MADE. IF THE IDENTIFICATION
16 BY THE WITNESS WAS INFLUENCED BY THE CIRCUMSTANCES
17 UNDER WHICH THE DEFENDANT WAS PRESENTED TO, TO HIM OR
18 HER FOR IDENTIFICATION, YOU SHOULD SCRUTINIZE THE
19 IDENTIFICATION WITH CARE. YOU MAY ALSO CONSIDER THE
20 LENGTH OF TIME THAT LAPSED BETWEEN THE OCCURRENCE OF THE
21 CRIME, AND THE NEXT OPPORTUNITY THE WITNESS HAD TO
22 SEE THE DEFENDANT, AS A FACTOR BEARING ON THE RELIABILITY
23 OF THE IDENTIFICATION.

24 AND THEN FINALLY, YOU MAY TAKE INTO ACCOUNT ANY
25 OCCASIONS IN WHICH THE WITNESS FAILED TO MAKE AN

1 IDENTIFICATION OF THE DEFENDANT OR MAKE AN IDENTIFICATION
2 INCONSISTENT WITH HIS IDENTIFICATION HERE AT TRIAL. AS
3 I SAID EARLIER, THE BURDEN IS UPON THE STATE. AND THAT
4 EXTENDS TO EVERY ELEMENT OF THE CRIMES CHARGED. AND
5 THIS INCLUDES THE IDENTITY OF THE DEFENDANT AS THE
6 PERPETRATOR OF THE CRIMES WITH WHICH HE STANDS CHARGED.
7 AFTER EXAMINING THE TESTIMONY, YOU HAVE A -- IF YOU HAVE
8 A REASONABLE DOUBT AS TO THE ACCURACY OF THE IDENTIFICATION,
9 THEN YOU MUST FIND THE DEFENDANT NOT GUILTY.

10 NOW, LADIES AND GENTLEMEN, I INSTRUCT YOU, I EMPHASIZE
11 TO YOU, THAT THE FACT THAT A DEFENDANT DOES NOT TESTIFY
12 IN HIS OWN DEFENSE OR IN HIS OWN BEHALF IN A CRIMINAL
13 TRIAL, MUST NOT BE CONSIDERED BY YOU IN ANY WAY IN
14 YOUR DELIBERATION. YOU MUST NOT CONSIDER THE FACT THAT
15 DEFENDANT HAS CHOSEN NOT TO TESTIFY, BECAUSE HE HAS A
16 CONSTITUTIONAL RIGHT NOT TO TESTIFY. THE STATE OF
17 SOUTH CAROLINA HAS THE BURDEN OF PROOF, AND A DEFENDANT
18 IS NOT REQUIRED TO PROVE HIMSELF INNOCENT.

19 SO THE FACT THAT A PERSON ASSERTS THE CONSTITUTIONAL
20 RIGHT TO REMAIN SILENT, CANNOT AND MUST NOT BE CONSIDERED
21 IN YOUR DELIBERATIONS. AND AS I SAY, YOU MUST NOT UH, UH
22 EVEN DISCUSS THAT IN YOUR -- IN YOUR JURY ROOM. THE
23 BURDEN IS UPON THE STATE AND NOT UPON THE -- NOT UPON THE
24 DEFENDANT. SO AGAIN, I EMPHASIZE THE FACT THAT A DEFENDANT
25 DOES NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU

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1 IN DETERMINING HIS GUILT OR INNOCENCE AND SHOULD
2 NOT BE USED IN ANY IN YOUR DELIBERATIONS.

3 NOW YOU LADIES AND GENTLEMEN YOU HAVE BEEN SELECTED AS
4 FAR AND IMPARTIAL JURORS SWORN TO TRY THIS CASE IMPARTIALLY,
5 AND TO REACH A VERDICT WHICH SPEAKS THE TRUTH. AND ONCE
6 YOU HAVE DONE THAT, YOU WILL HAVE FULLY DISCHARGED YOUR
7 DUTIES. NO ONE WILL HAVE THE RIGHT TO CRITICIZE YOU OF
8 YOUR DECISION. THERE ARE -- THERE IS A VERDICT FORM WHICH
9 I'M GOING TO SEND IN TO YOUR JURY ROOM AND IT STAT -- IT IS
10 SET OUT LIKE THIS: THE STATE OF SOUTH CAROLINA VERSUS
11 MICHAEL DION MCFADDEN, DEFENDANT. WE THE JURY FIND THE
12 DEFENDANT A., B., C. I'VE GOT IT BROKEN DOWN THREE
13 WAYS, MADAM, MADAM FORELADY.

14 THERE IS NO SIGNIFICANCE IN, IN THE ONES I PUT FIRST,
15 SECOND OR THIRD. OR THE MANNER IN WHICH I HAVE WRITTEN THEM
16 DOWN. WE JUST FLIP A COIN. AND, AND WE HAVE TO WRITE
17 SOMETHING FIRST AND SOMETHING SECOND. SO THE FACT THAT
18 I'VE GOT ONE THING BEFORE THE OTHER HAS NO SIGNIFICANCE.
19 A., I'VE GOT GUILTY OF KIDNAPPING. A., I'VE GOT 1., GUILTY
20 OF KIDNAPPING. 2., NOT GUILTY OF KIDNAPPING. SO OBVIOUSLY
21 YOU HAVE TO CONSIDER THAT ONE, AND CHECK THE APPROPRIATE
22 LINE ON THAT ONE. AND THEN B., I'VE GOT AND B., GUILTY OF
23 ARMED ROBBERY, OR NOT GUILTY OF ARMED ROBBERY. AND C.,
24 GUILTY OF DISPLAYING KNIFE, NOT GUILTY OF DISPLAYING
25 A KNIFE DURING THE COMMISSION OF A VIOLENT CRIME.

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1 AND THEN A LINE SIGNED FORELADY. AND IF YOU WOULD,
2 MADAM FORELADY, YOU WOULD SIGN YOUR NAME, SIMPLY TO THAT
3 LINE AND CHECK ONE OF -- ONE UNDER A., ONE UNDER B.,
4 AND ONE UNDER C. AND ONCE YOU'VE REACHED A VERDICT,
5 IF Y'ALL KNOCK ON THE DOOR, WE'LL REC -- WE'LL HAVE YOU
6 COME IN AND RECEIVE THE VERDICT FROM YOU. YOU WON'T HAVE
7 TO READ IT. THE CLERK WOULD, WOULD DO THAT FOR YOU.
8 YOUR VERDICT MUST BE UNANIMOUS. ALL 12 OF YOU MUST AGREE.
9 MADAM FORELADY, OF COURSE, YOU ARE THE -- HAVE NO --
10 YOUR VOTE IS THE SAME AS OBVIOUSLY AS THE OTHER 11. BUT
11 YOU WOULD, WOULD SIMPLY BE THE SPOKESPERSON FOR THE GROUP,
12 AND WOULD SIGN THE VERDICT FORM AND BE IN CHARGE OF, OF, OF
13 YOUR DELIBERATIONS.

14 I'M GOING TO ASK YOU TO STEP TO YOUR JURY ROOM, BUT
15 NOT BEGIN DELIBERATION UNTIL I'VE TALKED TO THESE LAWYERS
16 FOR A MINUTE. I MAY HAVE LEFT SOMETHING OUT, OR MAY NEED
17 TO CHANGE SOMETHING. MAY HAVE MADE A MISTAKE. AND IF I
18 HAVE, I WANT TO BRING YOU BACK AND GIVE THAT INSTRUCTION
19 BEFORE I, I LET YOU BEGIN YOUR DELIBERATIONS. IF I DO NOT,
20 WHAT I'LL DO, IS SEND THIS VERDICT FORM. SEND THE EXHIBITS
21 IN, AND THE BAILIFF WILL TELL YOU TO BEGIN YOUR
22 DELIBERATIONS. AND THEN Y'ALL JUST KNOCK ON THE DOOR
23 WHEN YOU FINISH.

24 (THEREUPON, THE JURY GOES TO THE JURY ROOM, AND THE
25 FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

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1 (THE ALTERNATE IS EXCUSED.)

2 THE COURT: ANY ADDITIONS OR EXCEPTIONS BY THE
3 STATE?

4 MR. NEWMAN: NO, SIR.

5 THE COURT: THE DEFENDANT?

6 MR. CARRAWAY: NONE, YOUR HONOR.

7 THE COURT: ALL RIGHT, SIR. LET'S TELL THEM TO
8 BEGIN THEIR DELIBERATIONS. Y'ALL WANT TO LOOK AT THESE
9 VERDICT -- THIS VERDICT FORM AND ALSO THE EXHIBITS.

10 ALL RIGHT, LET'S TAKE ABOUT FIVE OR TEN MINUTES
11 BEFORE WE GET STARTED.

12 (THEREUPON, THE JURY COMMENCES THEIR DELIBERATIONS AT
13 3:20 P.M.)

14 (THEREUPON, AT 3:53 P.M. JURY REACHED A VERDICT.)

15 THE COURT: ALL RIGHT. MR. CARRAWAY AND THE DEFENDANT.

16 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
17 PRESENCE OF THE JURY.)

18 THE CLERK: MADAM FORELADY, HAVE YOU REACHED A
19 VERDICT? IS IT UNANIMOUS?

20 MS. GILES: YES.

21 THE COURT: YOU MAY PUBLISH IT.

22 THE CLERK: THE STATE VERSUS MICHAEL DION MCFADDEN,
23 VERDICT: GUILTY OF KIDNAPPING. GUILTY OF ARMED ROBBERY.
24 GUILTY OF VISIBLE DISPLAYING A KNIFE DURING THE COMMISSION
25 OF A VIOLENT CRIME. SIGNED WANDA F. GILES, FORELADY.

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1 IF THIS IS YOUR VERDICT, SO SAY YOU ALL?

2 (JURORS AFFIRM.)

3 THE COURT: ALL RIGHT, REQUEST POLLING OF THE JURY,
4 MR. CARRAWAY?

5 MR. CARRAWAY: YES, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 THE CLERK: ALMA WALLACE, IS THIS YOUR VERDICT, AND IS
8 THIS STILL YOUR VERDICT?

9 MS. WALLACE: YES, SIR.

10 THE CLERK: PEARLINE HEYWARD, IS THIS YOUR VERDICT,
11 AND IS THIS STILL YOUR VERDICT?

12 MS. HEYWARD: YES, IT'S MY VERDICT.

13 THE CLERK: RUTHENE CHANDLER, IS THIS YOUR VERDICT AND
14 IS THIS STILL YOUR VERDICT?

15 MS. CHANDLER: YES.

16 THE CLERK: SUSAN DOLLARD WILLIAMS, IS THIS YOUR
17 VERDICT, AND IS THIS STILL YOUR VERDICT?

18 MS. WILLIAMS: YES.

19 THE CLERK: LOUISE -- LOUIS TISDALE, IS THIS YOUR
20 VERDICT AND IS THIS VERDICT?

21 MR. TISDALE: YES, IT IS.

22 THE CLERK: CYNTHIA MONTGOMERY, IS THIS YOUR VERDICT
23 AND IS THIS STILL YOUR VERDICT?

24 MS. MONTGOMERY: YES, IT IS.

25 THE CLERK: MARY WILLIAMS, IS THIS YOUR VERDICT AND

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1 IS THIS STILL YOUR VERDICT?

2 MS. WILLIAMS: YES, IT IS.

3 THE CLERK: MARY SCOTT, IS THIS YOUR VERDICT AND IS
4 THIS STILL YOUR VERDICT?

5 MS. SCOTT: YES, IT IS.

6 THE CLERK: BARBARA WILLIAMS, IS THIS YOUR VERDICT
7 AND IS THIS STILL YOUR VERDICT?

8 MS. WILLIAMS: YES, IT IS.

9 THE CLERK: SARAH SCOTT, IS THIS YOUR VERDICT AND
10 IS THIS STILL YOUR VERDICT?

11 MS. SCOTT: YES.

12 THE CLERK: ILA NESMITH, IS THIS YOUR VERDICT AND
13 IS THIS STILL YOUR VERDICT?

14 MS. NESMITH: YES, IT IS.

15 THE CLERK: WANDA GILES, IS THIS YOUR VERDICT AND IS
16 THIS STILL YOUR VERDICT AND IS THIS STILL YOUR VERDICT?

17 MS. GIELS: YES, IT IS.

18 THE COURT: ALL RIGHT. MOTION FOR A NEW TRIAL OR---

19 MR. CARRAWAY: YES, YOUR HONOR.

20 THE COURT: AND -- ALL RIGHT, LET THE RECORD REFLECT
21 THEN THAT THE DEFENDANT HAS MADE A MOTION FOR A NEW TRIAL
22 OR AN ARREST OF JUDGMENT BASED UPON INSUFFICIENCY OF
23 EVIDENCE. AND OF THOSE SAME MOTIONS WHICH HE MADE,
24 THE SAME GROUNDS HE MADE AT THE CLOSE OF THE STATE'S
25 CASE. AND I WOULD RESPECTFULLY DENY THE MOTIONS. ALL RIGHT,

1 SIR.

2 MR. NEWMAN: JUDGE, HE WAS CONVICTED---

3 THE COURT: COME ON, MR. MCFADDEN. COME ON UP.

4 MR. NEWMAN: HE WAS -- HE WAS CONVICTED IN 1985, HERE
5 IN THIS COURTROOM FOR ARMED ROBBERY.

6 THE COURT: HOW MUCH TIME DID HE GET IN '85?

7 MR. NEWMAN: I BELIEVE IT WAS IN THIS COURTROOM. THE
8 SENTENCE TO 15 YEARS. AND OTHER RECORD CONVICTIONS OF
9 DUI AND DISORDERLY CONDUCT.

10 THE COURT: YES, SIR. ALL RIGHT. DID I REPRESENT YOU
11 THEN?

12 MR. MCFADDEN: YEAH, YOU WERE MY LAWYER.

13 THE COURT: I DEFENDED YOU IN 1985?

14 MR. MCFADDEN: YES, SIR.

15 THE COURT: GOT 15 YEARS.

16 MR. MCFADDEN: 1984.

17 THE COURT: '84.

18 MR. MCFADDEN: YES, SIR.

19 THE COURT: WAS THAT THE UH -- WAS THE LIQUOR STORE
20 ON, ON -- HELMS LIQUOR RIGHT THERE ON LONG STREET?

21 MR. MCFADDEN: I THINK IT'S LONG STREET. I DON'T
22 KNOW---

23 THE COURT: HIGHWAY 52. RIGHT THERE ACROSS FROM --
24 RIGHT THERE AT PARK CIRCLE.

25 MR. MCFADDEN: YES, SIR, I PLEAD GUILTY.

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1 THE COURT: YOU PLED GUILTY?

2 MR. MCFADDEN: YES, SIR.

3 THE COURT: MR. CARRAWAY, ANYTHING YOU WANT TO TELL ME,
4 SIR?

5 MR. CARRAWAY: WELL, I'D JUST LIKE TO TELL YOU THAT HE
6 IS A 26-YEAR-OLD MAN HERE. I THINK IN THE LAST FEW YEARS
7 HE HAS TRIED TO GET HIS LIFE TOGETHER. I THINK HE'S --
8 HE HAS MADE A LOT OF PROCESS. HE WAS GOING TO SCHOOL
9 UP IN CHARLOTTE. HE HAD GOTTEN HIMSELF INTO COMPUTER SCHOOL
10 UP THERE. MR. MCFADDEN IS A VERY LIKEABLE FELLOW. I'VE
11 GOT TO KNOW HIM PRETTY WELL IN THESE LAST FEW MONTHS.
12 AND I LIKE HIM VERY MUCH. UM, I, I THINK YOU'VE HAD
13 SOME DEALINGS WITH HIM IN THE PAST. I WOULD JUST -- I WOULD
14 ASK THAT YOU PLEASE BE AS LENIENT AS POSSIBLE WITH HIM,
15 YOUR HONOR.

16 THE COURT: ALL RIGHT, MR. MCFADDEN, ANYTHING YOU WANT
17 TO TELL ME, SIR.

18 MR. MCFADDEN: WELL, UH FROM THE BEGINNING WELL I --
19 WELL I, I DIDN'T TAKE THE STAND BECAUSE I KNEW THAT, THAT,
20 THAT ROBBERY WOULD COME UP. YOU KNOW, THAT I HAD DID IN THE
21 PAST. AND I DIDN'T WANT TO, YOU KNOW, I WANTED THE CASE TO
22 BE JUDGED ON JUST THE EVIDENCE. AND I KNOW I WASN'T GUILTY
23 OF ROBBING THE PLACE, BUT, YOU KNOW, THE JURY. AND I
24 WAS WILLING, WILLING TO PLEAD GUILTY TO THAT. SO SINCE
25 I COULDN'T GET THE SOLICITOR TO AGREE TO THAT, YOU KNOW,

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1 I HAD NO OTHER CHOICE BUT TO GO FOR A TRIAL, BECAUSE
2 I KNOW I HADN'T, HADN'T COMMITTED ANY ROBBERY. BUT I
3 DID HAVE THE JURY AND I ADMITTED THAT FROM THE BEGINNING.
4 SO.

5 MR. NEWMAN: JUDGE, MR., UM, CARRAWAY MENTIONED HOW
6 HE'S CLEANED UP HIS ACT AND SO FORTH. HE -- WELL, I'LL
7 JUST LEAVE THAT ALONE.

8 THE COURT: WELL ONE -- HOW IS IT THAT IF YOU GOT
9 15 YEARS, HOW IS IT THAT YOU'RE OUT OF JAIL, AND BACK
10 IN THIS TROUBLE?

11 MR. MCFADDEN: HOW IS IT?

12 THE COURT: UH-HUH. (AFFIRMATIVE.) HOW DID THEY LET
13 YOU OUT OF JAIL IF YOU HAVE GOT A 15-YEAR SENTENCE? HOW
14 LONG DID YOU STAY IN JAIL?

15 MR. MCFADDEN: I STAYED IN JAIL FOR FIVE YEARS AND
16 EIGHT MONTHS.

17 THE COURT: YOU'RE ON PAROLE RIGHT NOW?

18 MR. MCFADDEN: YES, SIR. AS A MATTER OF FACT, WHEN
19 THIS CRIME -- WHEN THIS CRIME HAPPENED, I CAME HOME THAT
20 THURSDAY TO VISIT MY LITTLE BOY. AND I ENDED UP BUYING
21 THAT, THAT JEWELRY THAT NEXT UM, NEXT DAY. MY PAROLE IS IN
22 CHARLOTTE. NOT, NOT SOUTH CAROLINA.

23 THE COURT: SENTENCE ON INDICTMENT 92-GS-45-80,
24 KIDNAPPING, 30 YEARS. SENTENCE ON 92-GS-45-80, ARMED
25 ROBBERY, 25 YEARS. SENTENCE ON POSSESSION OF A WEAPON

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1 DURING THE COMMISSION OF A VIOLENT CRIME, 5 YEARS.
2 ALL OF THEM ARE TO CONSECUTIVE. CONSECUTIVE TO EACH
3 OTHER. EACH CRIME IS TO RUN CONSECUTIVE, I WANT TO
4 SEE HOW LONG THEY ARE GOING TO KEEP YOU THIS TIME.

5 ALL RIGHT, SIR.

6 - - - - --END OF REQUESTED TRANSCRIPT OF RECORD- - - - -
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FORM 5

12

CP 45

1 97

STATE OF SOUTH CAROLINA)

County of Williamsburg)Michael D. Mcfadden#126806)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

A CERTIFIED

COPY

CAROLYN F. WILLIAMS
CLERK OF COURT

WILLIAMSBURG COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Allendale Correctional Institution, Fairfax, South Carolina.
2. Name and location of Court which imposed sentence Court of General Sessions, Williamsburg County, Kingstree, South Carolina.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 92-65-45-80 (kidnapping)
 - (b) 92-65-45-82 (Armed Robbery)

- (c) Possession of a weapon during commission of a crime
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 7, 1992 (30 years)
- (b) April 7, 1992 (25 years confinement consecutive to 92-80)
- (c) April 7, 1992 (5 years consecutive to 92-80 and 82)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty No
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere No
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Supreme Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 1, 1994
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unknown to applicant
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Not applicable
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: (S.C.Rules Civ.P.60(b)(2))
- (a) Newly Discovered Evidence (S.C.Code of Law §17-27-20(a)(4))
- (b) Actual Innocence
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) A witness for the state has come forward with new information that vindicates applicant of the charges against him
- (b) (same)
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Application for post-conviction relief
- ii. PCR
- iii. PCR
- iv. Habeas Corpus
- (b) the name and location of the Court in which each was filed:
- i. Court of common pleas
- ii. Court of common pleas
- iii. Court of common pleas
- iv. District Court

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: (S.C.Civ.P.60(b)(2))
- (a) Newly Discovered Evidence (S.C.Code of Law §17-27-20(a)(4))
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Legrand Carrowy, Public Defender, P.O.Box 86, Kingstree, S.C. 29556
- ii. Robert Dudek, S.C. Office Appellate Def., 1122 Lady St., Col, S.C. 29201
- iii. Charles Barr, 104 S. Academy St., Kingstree, S.C. 29556
Gordon Jenkins, Kingstree, S.C. 29556
- (b) the proceedings at which each such attorney represented you:
- i. Carroway; Arraignment, trial, sentencing
- ii. Dudek; Direct Appeal to S.C. Supreme Court
- iii. Barr; First Post-Conviction
Jenkins; Second Post-Conviction

19. State clearly the relief you seek in filing this application:

Vacate Judgement and sentence and grant new trial, and for any
other relief deemed just and proper.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Allendale)

VERIFICATION

I, MICHAEL D. McFADDEN #126806, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael D. McFadden

SWORN to and subscribed before me this 4
 day of April, 2012.

H. P. Freeman
 Notary Public

(L.S.)

My Commission Expires: 5/18/14

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Michael D. McFadden, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Michael D. McFadden
Applicant

SWORN or affirmed to and subscribed before me this

4 day of April, 2012

Harold P. Freeman
Notary Public

My Commission Expires: 5/18/14

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

Michael D. McFadden, #126806,

) Case No. 2012-CP-45-197
)

) Applicant,
)

) v.
)

) **RETURN AND MOTION TO DISMISS**
)

) State of South Carolina,
)

) Respondent.
)

In response to the post-conviction relief application filed April 12, 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to order of commitment of the Clerk of Court for Williamsburg County. The Applicant was indicted at the February 1992 term of the Williamsburg County Grand Jury for armed robbery, possession of a weapon during a violent crime, and kidnapping (1996-GS-31-255). He was represented on the charges by Legrand Carraway, Esquire. On April 6-7, 1992, Applicant proceeded to trial by jury, where he was convicted as indicted on all three charges. The Honorable M. Duane Shuler sentenced applicant to confinement for thirty years for kidnapping, twenty five years consecutive for armed robbery, and five years consecutive for possession of a weapon during a violent crime.

A timely notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Supreme Court affirmed Applicant's conviction and sentence. State v. McFadden, Op. No. 94-MO-21 (S.C. Sup. Ct. filed February 1, 1994).

Applicant filed his first application for post-conviction relief on February 14, 1994, alleging that he was being held in custody unlawfully based on ineffective assistance of counsel. The State filed its Return on September 6, 1994. An evidentiary hearing was convened on November 2, 1994, at which the Applicant was present and was represented by Charles Barr, Esquire. The Honorable Thomas W. Cooper, Jr. denied and dismissed Applicant's application by written Order dated January 20, 1995. Following the written order, a second evidentiary hearing was convened on March 28, 1995 with respect to the allegation of ineffective assistance of appellate counsel, which was not addressed at the November hearing. However, Applicant withdrew this allegation at the second hearing and the matter was dismissed. The Applicant did not appeal the denial of his first application for post-conviction relief.

The Applicant subsequently filed a second application for post-conviction relief on December 1, 1995. The Applicant raised the following issues in his second application:

1. Post-conviction relief counsel was ineffective for failing to seek appellate review of Applicant's first Post-conviction relief action;
2. Denial of due process of law in sentencing court not having jurisdiction to sentence consecutively;
3. Ineffective assistance of trial counsel; and
4. Ineffective assistance of appellate (direct appeal) counsel.

The State filed its Return and Motion to Dismiss on June 13, 1996. An evidentiary hearing was convened on February 6, 1997 at the Sumter County Courthouse. Applicant was present and was represented by Gordon B. Jenkinson, Esquire. By Order dated July 3, 1997, the Honorable Alexander S. Macaulay denied and dismissed Applicant's second application for post-conviction relief. The Applicant did not appeal the denial of his second application.

The Applicant subsequently filed a third application for post-conviction relief on September 29, 1997. The applicant raised the following issues in his third application:

1. Ineffective assistance of counsel;
2. After discovered evidence; and
3. Novel issues.

The State filed its Return and Motion to Dismiss on August 14, 1998. The Honorable Thomas W. Cooper, Jr. issued an Order of Dismissal denying and dismissing the Applicant's third application on February 20, 1999. The South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari by written Order dated January 10, 2001. The Remittitur was sent on January 26, 2001.

The Applicant subsequently filed a Petition for Writ of Habeas Corpus. The United States District Court denied relief pursuant to the recommendation of the magistrate judge. (McFadden v. Harrison, No. CA-00-3934-9-25BG, D.S.C filed August 29, 2002 and entered August 30, 2002).

On February 10, 2005, Applicant filed his fourth application for post-conviction relief, alleging that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. "Sentencing court not having jurisdiction to sentence applicant consecutively";
3. "Violation of Rule 501, SCACR, and Cannon III;"
4. "Invalid Indictment;"
5. "No warrant for possession of a weapon during the commission of a violent crime;"
6. "Fifth, Sixth, and Fourteenth Amendment violations;" and
7. "Revocation of parole (double jeopardy)."

The State filed its Return and Motion to Dismiss on January 7, 2006. The Honorable R. Ferrell Cothran, Jr. denied and dismissed the application by written Order dated November 19, 2009 and filed November 25, 2009.

II.

In his current and fifth Application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

1. Newly Discovered Evidence; and
 - a. "A witness for the state has come forward with new information that vindicated the applicant of the charges against him."
2. Actual Innocence.

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant

bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior four post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on April 7, 1992. This Application was filed on April 9, 2012, nearly six years after the statutory filing period (July 1, 1996) had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the

pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Applicant's assertion that he is entitled to a new trial based upon after-discovered evidence is without merit. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. The Court should summarily dismiss this allegation.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:

Megan E. Harrigan
Attorneys for the Respondents

September 6, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	
	)	
	)	2012-CP-45-0197
	)	
MICHAEL D. MCFADDEN, 126806,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Michael D. McFadden, #126806
Allendale Correctional Institution
Post Office Box 1151
Fairfax, SC 29827**

DATED this 6th day of September, 2012.


Lauren Meara, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2012CP4500197

Michael D McFadden vs. State of South Carolina

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR
ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Kingstree, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 26th day of April, 2013, and a copy mailed first class this 6th day of May, 2013,
to attorneys of record or to parties (when appearing pro se) as follows:

Michael D McFadden ,

ATTORNEY(S) FOR THE PLAINTIFF(S)

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

Dave Spencer

ATTORNEY(S) FOR THE DEFENDANT(S)

Sharon W. Stiggen
Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Michael D. McFadden, #126806,

Applicant,

v.

State of South Carolina,

Respondent.

Case No. 2012-CP-45-0197

CONDITIONAL ORDER OF DISMISSAL

FILED
12 OCT 24 PM 3:01
CLERK OF COURT
WILLIAMSBURG
S.C.

This matter comes before this Court by way of an application for post-conviction relief filed April 9, 2012. In its return, the Respondent requested the application be summarily dismissed.

PROCEDURAL HISTORY

Before this Court are the records of the Williamsburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and records from Applicant's previous applications for post-conviction relief. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Williamsburg County. The Applicant was indicted at the February 1992 term of the Williamsburg County Grand Jury for armed robbery, possession of a weapon during a violent crime, and kidnapping (1996-GS-31-255). He was represented on the charges by Legrand Carraway, Esquire. On April 6-7, 1992, Applicant proceeded to trial by jury, where he was convicted as indicted on all three charges. The Honorable M. Duane Shuler sentenced applicant to confinement for thirty years for kidnapping, twenty five years consecutive for armed robbery, and five years consecutive for possession of a weapon during a violent crime.

A timely notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Supreme Court affirmed Applicant's conviction and sentence. State v. McFadden,

Op. No. 94-MO-21 (S.C. Sup. Ct. filed February 1, 1994).

Applicant filed his first application for post-conviction relief on February 14, 1994, alleging that he was being held in custody unlawfully based on ineffective assistance of counsel. The State filed its Return on September 6, 1994. An evidentiary hearing was convened on November 2, 1994, at which the Applicant was present and was represented by Charles Barr, Esquire. The Honorable Thomas W. Cooper, Jr. denied and dismissed Applicant's application by written Order dated January 20, 1995. Following the written order, a second evidentiary hearing was convened on March 28, 1995 with respect to the allegation of ineffective assistance of appellate counsel, which was not addressed at the November hearing. However, Applicant withdrew this allegation at the second hearing and the matter was dismissed. The Applicant did not appeal the denial of his first application for post-conviction relief.

The Applicant subsequently filed a second application for post-conviction relief on December 1, 1995. The Applicant raised the following issues in his second application:

1. Post-conviction relief counsel was ineffective for failing to seek appellate review of Applicant's first Post-conviction relief action;
2. Denial of due process of law in sentencing court not having jurisdiction to sentence consecutively;
3. Ineffective assistance of trial counsel; and
4. Ineffective assistance of appellate (direct appeal) counsel.

The State filed its Return and Motion to Dismiss on June 13, 1996. An evidentiary hearing was convened on February 6, 1997 at the Sumter County Courthouse. Applicant was present and was represented by Gordon B. Jenkinson, Esquire. By Order dated July 3, 1997, the Honorable Alexander S. Macaulay denied and dismissed Applicant's second application for post-conviction relief. The Applicant did not appeal the denial of his second application.

The Applicant subsequently filed a third application for post-conviction relief on September

29, 1997. The applicant raised the following issues in his third application:

1. Ineffective assistance of counsel;
2. After discovered evidence; and
3. Novel issues.

The State filed its Return and Motion to Dismiss on August 14, 1998. The Honorable Thomas W. Cooper, Jr. issued an Order of Dismissal denying and dismissing the Applicant's third application on February 20, 1999. The South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari by written Order dated January 10, 2001. The Remittitur was sent on January 26, 2001.

The Applicant subsequently filed a Petition for Writ of Habeas Corpus. The United States District Court denied relief pursuant to the recommendation of the magistrate judge. (McFadden v. Harrison, No. CA-00-3934-9-25BG, D.S.C filed August 29, 2002 and entered August 30, 2002).

On February 10, 2005, Applicant filed his fourth application for post-conviction relief, alleging that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. "Sentencing court not having jurisdiction to sentence applicant consecutively";
3. "Violation of Rule 501, SCACR, and Cannon III;"
4. "Invalid Indictment;"
5. "No warrant for possession of a weapon during the commission of a violent crime;"
6. "Fifth, Sixth, and Fourteenth Amendment violations;" and
7. "Revocation of parole (double jeopardy)."

The State filed its Return and Motion to Dismiss on January 7, 2006. The Honorable R. Ferrell Cothran, Jr. denied and dismissed the application by written Order dated November 19, 2009 and filed November 25, 2009.

II.

In his current and fifth Application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

1. Newly Discovered Evidence; and
 - a. "A witness for the state has come forward with new information that vindicated the applicant of the charges against him."
2. Actual Innocence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because the Applicant's assertion that he is entitled to a new trial based upon after-discovered evidence is without merit. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. Accordingly, the Application is denied and dismissed.

This Court finds that the current application for post-conviction relief must also be summarily dismissed because it is successive to his prior applications for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which

for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous four applications for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448, 409 S.E.2d 392; Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834.

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on April 7, 1992. This Application was filed on April 9, 2012, nearly six years after the statutory filing period (July 1, 1996)

had expired.

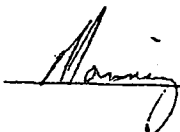
A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have, factual or legal, with the Williamsburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Megan E. Harrigan, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 17 day of Oct, 2012.


R. FERRELL COTHAN, JR.
Chief Judge for Administrative Purposes
Third Judicial Circuit

, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

#126806
MICHAEL D. McFADDEN,
Applicant,

vs.

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

CASE NO# 2012-CP-45-197

APPLICANTS MOTION TO DENY
RESPONDENTS MOTION TO
DISMISS APPLICATION.

IN RESPONSE TO THE RESPONDENTS MOTION TO DISMISS
APPLICANTS POST-CONVICTION RELIEF APPLICATION, THE APPLICANT
WOULD SHOW THIS COURT:

1). THAT THE APPLICANT IS CURRENTLY CONFINED AT
THE ALLENDALE CORRECTIONAL INSTITUTION LOCATED IN FAIRFAX,
SOUTH CAROLINA. THE APPLICANT WAS INDICTED AT THE FEB-
RUARY 1992 TERM OF THE WILLIAMSBURG COUNTY GRAND
JURY FOR ARMED ROBBERY, KIDNAPPING, AND POSSESSION
OF A WEAPON. THE APPLICANT WAS REPRESENTED BY
ATTORNEY LEBRAND CARROWAY. ON APRIL 6, 1992, APPLI-
CANT PROCEEDED TO TRIAL BY JURY, WHERE HE WAS
CONVICTED OF ARMED ROBBERY AND FOUND GUILTY ON
ALL THREE CHARGES. THE HONORABLE DUANE M. SHULER,
WHO HAD REPRESENTED APPLICANT ON A PREVIOUS CHARGE
FOR WHICH HE WAS CURRENTLY ON PAROLE DURING THE
TIME OF TRIAL, AND THAT HAD ENDED WITH THE APPLI-
CANT AND JUDGE SHULER IN AN ADVERSE RELATIONSHIP,

SENTENCED APPLICANT TO CONFINEMENT FOR THIRTY YEARS FOR KIDNAPPING, TWENTY FIVE YEARS CONSECUTIVE FOR ARMED ROBBERY, AND FIVE YEARS CONSECUTIVE FOR POSSESSION OF A WEAPON DURING A VIOLENT CRIME.

A TIMELY NOTICE OF APPEAL WAS FILED, AND THE SOUTH CAROLINA SUPREME COURT AFFIRMED APPLICANT'S CONVICTION AND SENTENCE. STATE V. MCFADDEN, OP. NO. 94-MO-21 (S.C. SUP. CT. FILED FEBRUARY 1, 1994).

APPLICANT THEN FILED AN APPLICATION FOR POST-CONVICTION RELIEF ON FEBRUARY 14, 1994, FOR UNLAWFULLY BEING HELD IN CUSTODY DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL. AN EVIDENTIARY HEARING WAS HELD ON NOVEMBER 2, 1994. THE APPLICANT WAS REPRESENTED BY ATTORNEY CHARLES BARR. THE HONORABLE THOMAS W. COOPER, JR. DENIED AND DISMISSED APPLICANT'S APPLICATION BY WRITTEN ORDER DATED JANUARY 20, 1995. A SECOND EVIDENTIARY HEARING WAS CONVENED ON MARCH 28, 1995 IN REGARDS TO INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, AN ISSUE NOT ADDRESSED AT THE NOVEMBER 2, 1994 HEARING. IN CONFLICT WITH COUNSEL, THE APPLICANT WITHDREW ALLEGATIONS IN REGARDS TO APPELLATE COUNSEL AND THE MATTER WAS DISMISSED.

ON DECEMBER 1, 1995, THE APPLICANT FILED A SECOND APPLICATION FOR POST-CONVICTION RELIEF. THE

APPLICANT RAISED THE ISSUES OF:

- 1). POST-CONVICTION RELIEF COUNSEL WAS INEFFECTIVE FOR FAILING TO SEEK APPELLATE REVIEW OF APPLICANT'S FIRST POST-CONVICTION RELIEF APPLICATION;
- 2). DENIAL OF DUE PROCESS IN SENTENCING COURT NOT HAVING JURISDICTION TO SENTENCE HIM CONSECUTIVELY;
- 3). INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL;
- 4). INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.

AN EVIDENTIARY HEARING WAS HELD ON FEBRUARY 6, 1997 AT THE SUMTER COUNTY COURTHOUSE. APPLICANT WAS PRESENT AND WAS REPRESENTED BY GORDON B. JENKINSON, ESQUIRE. BY ORDER DATED JULY 3, 1997, THE HONORABLE ALEXANDER S. MACALAY DENIED AND DISMISSED APPLICANT'S SECOND APPLICATION FOR POST-CONVICTION RELIEF.

ON SEPTEMBER 29, 1997 THE APPLICANT FILED A THIRD APPLICATION FOR POST-CONVICTION RELIEF. THE APPLICANT RAISED THE FOLLOWING ISSUES IN THAT APPLICATION:

- 1). INEFFECTIVE ASSISTANCE OF COUNSEL
- 2). AFTER DISCOVERED EVIDENCE, AND
- 3). NOVEL ISSUES

ON FEBRUARY 20, 1999, THE HONORABLE THOMAS W. COOPER, JR. ISSUED AN ORDER OF DISMISSAL DENYING AND DISMISSING THE APPLICANT'S THIRD APPLICATION. THE SOUTH CAROLINA SUPREME

COURT DENIED APPLICANTS PETITION FOR WRIT OF HABEAS CORPUS BY WRITTEN ORDER DATED JANUARY 10, 2001.

THE APPLICANT FILED A PETITION FOR WRIT OF HABEAS CORPUS. THE UNITED STATES DISTRICT COURT DENIED RELIEF PURSUANT TO THE RECOMMENDATION OF THE MAGISTRATE JUDGE. (McFADDEN V. HARRISON, NO. CA-00-3934-9-2586, D.S.C FILED AUGUST 29, 2002 AND ENTERED AUGUST 30, 2002).

ON FEBRUARY 10, 2005, APPLICANT FILED A FOURTH APPLICATION FOR POST-CONVICTION RELIEF, ON THE GROUNDS THAT HE IS BEING HELD IN CUSTODY UNLAWFULLY FOR THE FOLLOWING REASONS:

1. INEFFECTIVE ASSISTANCE OF COUNSEL
2. SENTENCING COURT NOT HAVING JURISDICTION TO SENTENCE APPLICANT CONSECUTIVELY
3. VIOLATION OF RULE 501, SCACR, AND CANNON III
4. INVALID INDICTMENT
5. NO WARRANT FOR POSSESSION OF A WEAPON DURING COMMISSION OF A VIOLENT CRIME.
6. FIFTH, SIXTH, AND FOURTEENTH AMENDMENT VIOLATIONS
7. REVOCATION OF PAROLE (DOUBLE JEOPARDY)

THE STATE FILED ITS RETURN AND MOTION TO DISMISS ON JANUARY 7, 2006. THE HONORABLE R. FERRELL COTHMAN, JR. DENIED AND DISMISSED THE APPLICATION BY WRITTEN ORDER DATED NOVEMBER 19, 2009 AND FILED NOVEMBER 25, 2009.

IN HIS CURRENT AND FIFTH APPLICATION FOR POST

CONVICTION RELIEF, APPLICANT SUBMITS TO THIS COURT THAT HE IS BEING HELD IN CUSTODY UNLAWFULLY BASED ON THE FOLLOWING REASONS:

- 1). NEWLY DISCOVERED EVIDENCE, (S.C. CODE OF LAWS § 17-27-20(a)(4), AND (S.C. RULES CIV. P. 60(b)(2), AND
- 2). ACTUAL INNOCENCE

CONCLUSION

THE APPLICANT ASSERTS THAT HE IS ENTITLED TO A NEW TRIAL BASED UPON AFTER DISCOVERED EVIDENCE.

THE LAW SAYS A DEFENDANT REQUESTING A NEW TRIAL BASED ON AFTER DISCOVERED EVIDENCE MUST SHOW THAT THE EVIDENCE:

- 1). IS SUCH AS WOULD PROBABLY CHANGE THE RESULTS IF A NEW TRIAL WAS HAD; 2). HAS BEEN DISCOVERED SINCE THE TRIAL; 3). COULD NOT BY THE EXERCISE OF DUE DILIGENCE HAVE BEEN DISCOVERED BEFORE THE TRIAL; 4). IS MATERIAL TO THE ISSUE OF GUILT OR

INNOCENCE; AND 5). IS NOT MERELY CUMULATIVE OR IMPEACHING. HAYDEN V. STATE, 278 S.C. 610, 611-12, 299 S.E. 2d 854, 855 (1983).

THE APPLICANT, WHO IS WITHOUT LEGAL COUNSEL, WOULD RESPECTFULLY SHOW THIS COURT THAT THERE IS A GENUINE ISSUE OF MATERIAL FACT, THAT LITIGATED BY SKILLED COUNSEL WOULD RESULT IN THE APPLICANT RECEIVING A NEW TRIAL.

ENCLOSED, THE APPLICANT HAS SUBMITTED TO THIS COURT AN AFFIDAVIT FROM A WITNESS FOR THE STATE IN THIS CASE, CONTAINING INFORMATION THAT EXONERATES APPLICANT OF THE CHARGES AGAINST HIM.

THE INFORMATION CONTAINED IN THE AFFIDAVIT OF MR. PRESSLEY CONFIRMS TESTIMONY PRESENTED AT TRIAL BY A WITNESS WHO TESTIFIED FOR THE DEFENSE, AND COULD HAVE ONLY BEEN DISCOVERED BY KEITH PRESSLEY OR THE INVESTIGATING OFFICERS COMING FORWARD WITH THIS INFORMATION.

THE STATUTE OF LIMITATION HAS NOT EXPIRED SINCE THE TIME OF DISCOVERY OF THIS INFORMATION AND FILING IS WITHIN THE MANDATED GUIDELINES.

THE CURRENT APPLICATION IS NOT SUCCESSIVE BECAUSE IT PRESENTS A NEW ISSUE TO THE COURT THAT COULD NOT HAVE BEEN DISCOVERED BEFORE THE TRIAL, AND WOULD PROBABLY CHANGE THE RESULT IF A NEW TRIAL IS HAD. THE APPLICANT DID NOT KNOWINGLY, VOLUNTARILY, OR INTELLIGENTLY NOT RAISE THE GROUNDS PRESENTED IN THE CURRENT APPLICATION FOR A NEW TRIAL.

THE STATE IS NOT ENTITLED TO JUDGEMENT AS A MATTER OF LAW, AND THE AFFIDAVIT BY MR. KEITH PRESSLEY CLEARLY PRESENTS A GENUINE ISSUE OF MATERIAL FACT.

REFUSAL TO CONSIDER APPLICANT'S CLAIMS WOULD RESULT IN A FUNDAMENTAL MISCARriage OF JUSTICE. THE FUNDAMENTAL MISCARriage OF JUSTICE EXCEPTION REQUIRES A SHOWING THAT "IN LIGHT OF THE NEW EVIDENCE, NO JUROR, ACTING REASONABLY, WOULD HAVE

VOTED TO FIND HIM GUILTY BEYOND A REASONABLE DOUBT." SCHUP V. DELO, 513 U.S. 298, 329, 115 S. CT. 851, 130 L. ED. 2D 808 (1995). MARTIN V. MITCHELL, 280 F. 3d 594 (6th Cir. 2002). THE AFFIDAVIT OF KEITH PRESSLEY, HAVING BEEN SWORN TO BEFORE A NOTARY PUBLIC FOR SOUTH CAROLINA, AND SUBMITTED TO THE COURT IN THESE PAPERS, AFFIRMS THAT THE APPLICANT HAS MET THE REQUIREMENTS IN ORDER TO BE GRANTED A NEW TRIAL, AND THAT THE STATES MOTION SHOULD BE DENIED.

THE APPLICANT IS A LAYMEN IN THE LAW, AND PLEADS WITH THE COURT TO APPOINT COUNSEL TO REPRESENT HIM. THE APPLICANT HAS AN EXTENSIVE HISTORY WITH HIS CASE, AND THE SKILLED HANDS OF COUNSEL IS REQUIRED IN ORDER TO PROPERLY PREPARE AND ARGUE THE ISSUES PRESENTED IN ORDER TO PREVENT A MISCARriage OF JUSTICE. U.S. V. CHRONIC; STRICKLAND V. WASHINGTON, 466 U.S. 668, 686, 104 S. CT. 2052, 80 L. ED 2D 674 (1984); MARTINEZ V. RYAN, 566 U.S. —, 132 S. CT. 1309, 182 L. ED 2D 272 (2012).

DUE TO THE FOREGOING REASONS AND THE
 AFFIDAVIT SUBMITTED BY THE APPLICANT,
 THE APPLICANT RESPECTFULLY REQUESTS
 THAT THE COURT DENY THE STATES ORDER
 TO DISMISS HIS APPLICATION AND GRANT
 HIM A NEW TRIAL.

Respectfully Submitted,

NOVEMBER 27, 2012
 FAIRFAX, SOUTH CAROLINA 29827

S/ Michael D. McFadden #12680
 MICHAEL D. McFADDEN #12680 PRO SE
 ALENDALE CORRECTIONAL INST. - F4A28
 P.O. BOX 1151
 FAIRFAX, S.C. 29827

CC: CLERK OF COURT
 WILLIAMSBURG COUNTY
 ° ATTORNEY MEGAN E. HARRIGAN
 OFFICE OF THE ATTORNEY GENERAL
 ° APPLICANTS FILE

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

MICHAEL D. McFADDEN #126806
APPLICANT,

V.

STATE OF SOUTH CAROLINA,
DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

C/A. NO# 2012-CP-45-0197

CERTIFICATE OF SERVICE

I, THE APPLICANT, MICHAEL D. McFADDEN #126806, BEING DULY SWORN, DESPOSES AND SAYS, THAT I HAVE MAILED A COPY OF THE APPLICANTS MOTION TO DENY RESPONDENTS MOTION TO DISMISS APPLICATION, BY PLACING SAME IN THE PRISON MAILROOM WITH PROPER POSTAGE AFFIXED THERETO AND MAILED TO THE BELOW LISTED ADDRESS:

OFFICE OF THE ATTORNEY GENERAL
ATTN: MEGAN E. HARRIGAN, ESQUIRE
P.O. BOX 11549
COLUMBIA, SOUTH CAROLINA 29211

FAIRFAX, SOUTH CAROLINA 29827
NOVEMBER 27, 2012

Respectfully Submitted

S/ Michael D. McFadden #126806
MICHAEL D. McFADDEN #126806 PRO SE
Aiken State Correctional Inst. - F428
P.O. BOX 1151
FAIRFAX, S.C. 29827

THE STATE OF SOUTH CAROLINA
THE COUNTY OF ALLENDALE

Affidavit Of Keith Pressley

RE: Michael D.Mcfadden vs.State Of South Carolina

I, Keith Pressley, Keith Pressley, Being duly sworn, deposes and says: That for my conscience sake, Im writting this affidavit so that the truth will be made known, and in order to correct the wrong that has been done. Over 20 years ago, Michael Mcfadden and I were sitting outside of his girlfriend Cassandra Pendergrass house in the Frieson Homes Project. Mr.Mcfadden had just came home to Kingstree,S.C. We had not seen each other for quite some time and had been together most of the day. While sitting in my car at the Rec. Center across from Ms.Pendergrass apartment, two guys approached the car and asked if we wanted to buy some jewelry? Apparently, one of the guys knew Mr.Mcfadden. After taking a look at the jewelry, both me and Mr.Mcfadden told them that we didn't want to buy it. Before the two guys could get away Mr.Mcfadden called them back and offered to buy the jewelry from them, and he did. Later I left Mr.Mcfadden in the project With Ms.Pendergrass and one of her female friends. I came back later that night to pick Mr.Mcfadden up from Ms.Pendergrass apartment. We rode over to the Rocktown community, and I left Mr.Mcfadden inside a club we were at in order to go buy some cigarettes from Wards grocery. I left Mr.Mcfadden ther in order to call officers Michael Graham and Michael Kirby, because they had busted me earlier with drugs. In order to go free of the charge I gave them Michael Mcfadden's name and told them that he had done it, but did not tell them I was with Mr.Mcfadden when he purchased the jewelry from the two guys. Officers Graham and Kirby had caught me selling drugs out the trunk of my car, and because they had asked me about a robbery and some jewelry, I lied in order not to be prosecuted for the drugs that they took from me that afternoon. Im very sorry about what I did, and I pray that Michael and His family will find it in their hearts to forgive me for what I did.

Under the penalty of perjury, I swear that the above information is true and accurate.

sworn and subscribed to before
me this 31 day of Jan, 2012.

Notary Public for S.C. Cynthia G. Sanders

My commission expires 3/9/21.

SI Keith Pressley
Keith Pressley

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Michael D. McFadden, #126806,

Case No.: 2012-CP-45-197

Applicant,

v.

FINAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED
13 APR 26 PM 1:25
CLERK OF COURT
WILLIAMSBURG, S.C.

This matter comes before the Court pursuant to an application for post-conviction relief filed April 12, 2012. The State made its Return and Motion to Dismiss on September 6, 2012, requesting that the application be summarily dismissed as successive, barred by the one-year statute of limitations, and failure to allege that his newly discovered evidence meets any of the requirement for after-discovered evidence. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed October 17, 2012 and filed October 24, 2012, provisionally denying and dismissing this action. This Court gave Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated November 13, 2012, serving the aforementioned Conditional Order of Dismissal on the Applicant.

Applicant responded to the Conditional Order of Dismissal in a document captioned "Applicant's Motion To Deny Respondents Motion to Dismiss Application" dated November 27, 2012. In his response, Applicant alleges that he has newly-discovered evidence in the form of an affidavit from "Keith Pressley." Mr. Pressley states that he was with Applicant over 20 years ago. Mr. Pressley further stated that he left the Applicant in a club and proceeded to call Officers

[Handwritten signature]

Graham and Kirby, who had recently “caught (Mr. Pressley) selling drugs out of the trunk” of his car. Mr. Pressley stated that the officers had questioned him about a robbery and stolen jewelry. Mr. Pressley stated that he “lied in order not to be prosecuted for the drugs that they took from me that afternoon.”

Applicant sent a second response to the Conditional Order of Dismissal in a letter dated March 25, 2013. In the letter the Applicant stated that his current post-conviction relief application 2012-CP-45-00197 “was misconstrued as a post-conviction relief application.” Applicant further stated, he “never intended for this action to be a ‘PCR,’ and did not file any paperwork necessary to file post-conviction.”¹ Applicant states that he is asking to be taken off the sex offender registry list as his kidnapping charge stemmed from an armed robbery and “there is no criminal sexual offense allegation at all.” PCR is not the proper avenue to pursue Applicant’s request to be removed from the sex offender registry list. However, this Court notes Applicant may seek removal from the sex offender registry list through a declaratory judgment. Hazel v. State, 377 S.C. 60, 659 S.E.2d 137 (2008).

This Court has reviewed the Applicant’s response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds that sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

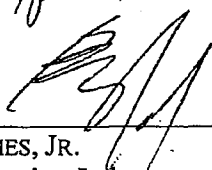
IT IS THEREFORE ORDERED that, for the reasons set forth in the Court’s Conditional Order of Dismissal and the reason set forth in this order, the application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR.

¹ Applicant filed a post-conviction relief application April 9, 2012 alleging newly discovered evidence.

Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 21 day of April, 2013.



GEORGE C. JAMES, JR.
Chief Administrative Judge
Third Judicial Circuit Court

Sumter, South Carolina.

WITNESSES

KINGSTREE PD

Mike Kirby

Joseph M. Graham

Gamon's Hazzel

Cynthia Brown

Patsy Powell

Melissa Rodgers

Mellina Howard

Sandra Paul Jones

Evelyn Wiggins

Betty's Ward

ARREST WARRANT NO. C 968622 & C 968647

11/14/91

ACTION OF GRAND JURY

True Bill

James D. White

Foreman of Grand Jury

VERDICT

Mandal S. Miller Standby

vs. Clarity "

Mandal S. Miller 4/1/92

Foreman of Petit Jury

Date:

DOCKET NO.

72-00-43-00

The State of South Carolina,

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

FEBRUARY

TERM 1992

THE STATE

vs.

MIKE DION MCFADDEN

a/k/a/ MICHAEL MCFADDEN

Indictment for

ARMED ROBBERY, POSSESSION OF A
WEAPON DURING A VIOLENT CRIME
AND KIDNAPPING.

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT FOR

ARMED ROBBERY, POSSESSION OF A WEAPON DURING
 A VIOLENT CRIME AND KIDNAPPING

At a Court of General Sessions, convened on February 3, 1992,
 the Grand Jurors of Williamsburg County present upon their oath:

COUNT ONE - ARMED ROBBERY

/ aka MICHAEL MCFADDEN

That one MIKLE DION MCFADDEN did in Williamsburg County on or about
 October 28, 1991, while armed with a deadly weapon, to wit: knife, feloniously
 take from the person or presence of Melissa Rodgers by means of force or
 intimidation goods or monies of Melissa Rodgers and/or Clemmons Video Store,
 such goods or monies being described as follows: \$300.74 cash, two (2)
 necklaces, one (1) watch and one (1) class ring.

COUNT TWO - POSSESSION OF A WEAPON DURING A VIOLENT CRIME

/ aka MICHAEL MCFADDEN

That one MIKLE DION MCFADDEN did in Williamsburg County on or about
 October 28, 1991, possess or visibly display a knife during the commission
 or attempted commission of a violent crime, in violation of § 16-23-490,
 Code of Laws of South Carolina (1976), as amended.

COUNT THREE - KIDNAPPING

/ aka MICHAEL MCFADDEN

That one MIKLE DION MCFADDEN did in Williamsburg County on or about
 October 28, 1991, unlawfully seize, confine, inveigle, decoy, kidnap, abduct
 or carry away Melissa Rodgers without authority of law, in violation of
 § 16-3-910, South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and
 provided.

A CERTIFIED TRUE COPY

Carolyn F. Williams
 CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

Wade S. Kolb, Jr.

SOLICITOR WADE S. KOLB, JR.