

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2012-212968

RECEIVED

FEB 18 2014

SC Court of Appeals

The STATE.....Respondent,

vs.

Eugene THOMAS.....Appellant.

RECORD ON APPEAL

ALAN WILSON
Attorney General
NORMAN MARK RAPOPORT
Special Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803)734-3727

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit
305 East North Street Ste. 325
Greenville, South Carolina 29601
(843)467-8282

ATTORNEYS FOR RESPONDENT

TIMOTHY L. GEHRET
Timothy L. Gehret, Attorney at Law, LLC
P.O. Box 12494
Charleston, South Carolina 29422
(843) 408-0626

ROBERT M. DUDEK
Chief Appellate Defender
SC Commission on Indigent Defenses
1330 Lady Street Suite 401
Columbia, South Carolina 29201
(803)734-1330

ATTORNEYS FOR RESPONDENT

INDEX

I. SENTENCE.....	4
II. INDICTMENTS.....	5-10
1. Indictment 2009GS2309348.....	5
2. Indictment 2009GS2309349.....	7
3. Indictment 2009GS2309350.....	10
III. PRETRIAL MATTERS.....	11 -71
1. Motions in Limine	11-14
2. Suppression Hearing re: out of court identification.....	15-71
A. Witness Det. Collis Flavell.....	19-34
i. State's Direct Examination.....	19-30
ii. Defense's Cross Examination.....	30-34
B. Witness Michael Gordon.....	34-50
i. State's Direct Examination.....	34-48
ii. Defense's Cross Examination.....	48-58
iii. State's Redirect.....	58-59
C. Witness J.C. Bradley.....	59-66
i. State's Direct Examination.....	59-65
ii. Defense's Cross Examination.....	66
3. Motion	67-71
IV. TRIALTRANSCRIPT	71-242
1. Opening Statements	71-80
A. State's Opening.....	71
B. Defense's Opening.....	78

2. Testimony & Motions	78-258
A. Witness Michael Gordon.....	78-124
i. State's Direct Examination.....	78-120
ii. Defense's Cross Examination.....	121-124
B. Witness J.C. Bradley.....	125-133
i. State's Direct Examination.....	125-132
ii. Defense's Cross Examination.....	133
C. Witness Douglas Smith.....	142-155
i. State's Direct Examination.....	142-152
ii. Defense's Cross Examination.....	153-169
D. Witness Chris Gary.....	170-155
i. State's Direct Examination.....	155-168
ii. Defense's Cross Examination.....	168-169
E. Witness Jennifer Hallex.....	170-187
i. State's Direct Examination.....	170-185
ii. Defense's Cross Examination.....	185-187
F. Witness Greg Byrum.....	187-191
i. State's Direct Examination.....	187-191
G. Witness Det. Collis Flavell.....	195-215
i. State's Direct Examination.....	195-212
ii. Defense's Cross Examination.....	212-215
H. Witness Ofc. Mike Aiken.....	216-235
i. State's Direct Examination.....	216-229
ii. Defense's Cross Examination.....	229-232

iii.	State's Redirect.....	233-235
I.	Examination of Defendant.....	239-241
J.	State's Requests to Charge.....	243-249
K.	State Rests.....	251
L.	Motion For Directed Verdict.....	252-253
M.	Defense's Requests to Charge.....	254-258
3.	Closing Statements.....	258-278
A.	State's Closing.....	265
B.	Defense's Closing.....	271
4.	Jury Charges.....	278-297
5.	Verdict.....	299
6.	Sentencing.....	300-306
7.	Exhibits.....	307-331
A.	State's 1 (Photo Lineup).....	307
B.	State's 2 (Photo Lineup).....	308
C.	State's 5 (Exterior Photo of Apt. Bldg.).....	309
D.	State's 6 (Exterior Photo of Apt. Bldg. Door).....	310
E.	State's 8 (Exterior Photo of Right side of Apt. Bldg.).....	311
F.	State's 9 (Exterior Photo of Opened Apt. Bldg. Door).....	312
G.	State's 10 (Interior Photo of Apt. Kitchen).....	313
H.	State's 11 (Interior Photo of Apt. Kitchen).....	314
I.	State's 12 (Interior Photo of Apt. Kitchen).....	315
J.	State's 13 (Interior Photo of Apt. Front Door).....	316
K.	State's 17 (Defendant's Booking Photo).....	317
L.	State's 18 (Defendant's Booking Photo).....	318
M.	State's 19 (Latent Print Analysis Report).....	319
N.	Court's 2 (Court Docs 1981 St. Lucie Co. FL).....	320-324
V.	CERTIFICATE OF COUNSEL	325

1 doesn't matter what may opinion is on what the appropriate
2 sentence would or should be. Life without parole and the
3 notice of that on the basis of two strikes, is clear in
4 the law. And I took an oath to follow and apply that law.
5 So for those reasons, the sentence of the Court on
6 2009-9350, count one is life in prison without the
7 possibility of parole. Sentence of the Court on count 2,
8 that's the possession of a weapon during the commission of
9 a violent crime is five years. It is concurrent. Credit
10 for time served. Sentence of the Court on 2009-9349, the
11 burglary third, is five years, it is concurrent. And
12 credit for time served.

13 Court's Exhibit 2 for purposes of this sentence,
14 is a packet that was handed to me, including the certified
15 copy of the prior offense of murder in the second degree.
16 The Court does believe that that does constitute a strike
17 under our law. And therefore, I -- and clearly attempted
18 armed robbery is clearly a strike under our statute.
19 Therefore, the life without parole is a proper sentence.
20 Thank you.

21 Good luck to you, sir.

22 MS. TESSITORE: Thank you, Your Honor.

23 THE COURT: Anything further from the State?

24 MS. TESSITORE: Nothing from the State.

25 THE COURT: Anything further from the Defendant?

WITNESSES

C. Flavell *CHF*
Greenville Police Department
9/28/2009

DOCKET NO. 2009-GS-23-

JRT

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2009

THE STATE

vs.

EUGENE THOMAS

ARREST WARRANT NUMBER

M380130

ACTION OF GRAND JURY

TRUE BILL

Ann Shorette

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT.

Indictment for

0122

POINTING AND PRESENTING A FIREARM

VIOLATION § 16-23-0410

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POINTING AND PRESENTING A FIREARM

At a Court of General Sessions, convened on

MAY 04 2010

the Grand Jurors of Greenville

County present upon their oath:

That EUGENE THOMAS did in Greenville County, on or about the 22nd day of July 2009, present or point a firearm, to wit: a handgun, at MICHAEL GORDON. This is in violation of §16-23-410 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

C. Flavell

Greenville Police Department

9/28/2009

DOCKET NO. 2009-GS-23-
JRT

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May TERM 2009

THE STATE

vs.

EUGENE THOMAS

ARREST WARRANT NUMBER

M380131

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0427

BURGLARY THIRD DEGREE

VIOLATION § 16-11-0313

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY THIRD DEGREE

At a Court of General Sessions, convened on **MAY 04 2010** the Grand Jurors of Greenville
County present upon their oath:

That EUGENE THOMAS did in Greenville County, on or about the 22nd day of July 2009, willfully and
unlawfully enter an apartment located at 119 D Forest Street, Greenville, South Carolina, without consent, and
with the intent to commit a crime therein. This is in violation of §16-11-313 of the South Carolina Code of Laws
(1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

C. Flavell *CH*
Greenville Police Department
9/28/2009

DOCKET NO. 2009-GS-23-
JRT

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2009

THE STATE

vs.

EUGENE THOMAS

ARREST WARRANT NUMBER

COUNT I - M380128 COUNT II - M380129

ACTION OF GRAND JURY

TRUE BILL

Ann Shaverette

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0139 and 0549

ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

Foreperson of Petit Jury

Date:

VIOLATION § 16-11-0330 and § 16-23-0490

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY and POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **MAY 04 2010** the Grand Jurors of Greenville
County present upon their oath:

COUNT I

That EUGENE THOMAS did in Greenville County, on or about the 22nd day of July 2009, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a lottery ticket, from the person or presence of MICHAEL GORDON. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT II

That EUGENE THOMAS did in Greenville County, on or about the 22nd day of July 2009, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: ARMED ROBBERY. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Paul Treasiter
SOLICITOR

1 hearing as well as, I believe, a suppression hearing on
2 items that were found.

3 THE COURT: How long do you anticipate all of
4 that to take?

5 MR. ROBINSON: Your Honor, I have several
6 suppression motions.

7 THE COURT: Okay.

8 MR. ROBINSON: Basically regarding the line-up
9 and different manners of the plan of suppressing on behalf
10 of Mr. Thomas. Time wise, I don't know, may take a little
11 longer, I don't know, depending on the testimony.

12 MS. TESSITORE: Maybe if we had time, Your
13 Honor, maybe just have the jury come back after lunch.

14 THE COURT: Well I'm going to do that, that's no
15 problem.

16 MS. TESSITORE: Okay. But--

17 THE COURT: I just with -- what I'm just trying
18 to figure I want to make sure the court staff gets a lunch
19 and just how long to give the jury. But we'll see when we
20 select them where we are. That's fine.

21 MS. TESSITORE: I think we have three witnesses
22 that would probably be...

23 THE COURT: Okay. Other than that, anything
24 else? That you know of that needs to be addressed? Any
25 other legal matters?

1 MS. TESSITORE: I don't think so.

2 THE COURT: What are your motions to suppress?

3 MR. ROBINSON: Your Honor, the motion to
4 suppress go to the line-up in this case. There was a
5 photo line-up that was done. We believe that it was
6 extremely suggestive, very -- it happened obviously the
7 testimony part of this--

8 THE COURT: Sure, I understand. So you want to
9 suppress to identification of the line-up.

10 MR. ROBINSON: Yes. And as far as the
11 fingerprints, there was some fingerprints taken at the
12 scene, then about a while later they got some other
13 fingerprints. And I'm concerned about those fingerprints
14 in this matter. And also as well as far in limine keeping
15 out testimony regarding other arrests and so forth that
16 they made in this case.

17 THE COURT: Other arrests of whom?

18 MR. ROBINSON: They went to the hotel room at
19 some point, motel. And they got a thing of dice and a
20 loaded gun, a loaded gun that they're trying to connect to
21 this guy saying it was the same type of gun. And
22 fingerprints are the same fingerprints taken from a door
23 at the scene. The linkage is kind of really speculative
24 at best. I would like to suppress anything with regards
25 to that at this point. Any sort of testimony that would

1 indicate how they went about getting the pictures from the
2 line-up in this case. I'm very concerned about that as
3 far as if the prosecution puts up anything that would have
4 the jury believe that this Defendant had a prior record or
5 that he was -- as far as why they have this picture of
6 him.

7 THE COURT: Well I assume, first of all,
8 concerning that is you're not going to ask any questions
9 about where they got the pictures. I doubt very seriously
10 the State's going to say we got it from the mug shot.
11 I've never heard that testimony given before so I would
12 think that that really is in your hands more than it is
13 the State's hands.

14 MR. ROBINSON: Of course, Your Honor, of course.

15 THE COURT: So anyway, that's fine.

16 MS. TESSITORE: Just on the issue, Your Honor, I
17 think what Mr. Robinson is getting to, the photo that was
18 actually used in the photo array was the photo that had
19 been recently taken within about a month.

20 THE COURT: It doesn't matter if it's not unduly
21 suggestive to have being in custody.

22 MS. TESSITORE: Correct. And we do have a
23 redacted photo array so that I was going to go over that
24 with the Court as well. We have one, as far as the photo
25 array and suppression hearing, the original, obviously,

1 that has been brought to court. But in the event that the
2 word Mug Shot being on the photo array and--

3 THE COURT: Solicitor, I can help you. If I
4 find it to be unduly suggestive, I'm not going to let you
5 redact it.

6 MS. TESSITORE: No, no, no. Assuming that the
7 Court finds that it is not unduly suggestive, and that the
8 identification--

9 THE COURT: What would the redacted one have
10 anything to do with that then?

11 MS. TESSITORE: Just as far as going to the
12 jury, Your Honor.

13 THE COURT: I'm losing you but maybe it will be
14 clear once I see it so that's fine, that's okay. All
15 right.

16 All right, we'll be ready to do that as soon
17 as -- the witnesses are ready to go as soon as we pick the
18 jury?

19 MS. TESSITORE: Yes, Your Honor.

20 THE COURT: Okay, that's fine. All right, we'll
21 be at ease then for a few moments until the jury panel
22 comes up. You submitted voir dire?

23 The State have any voir dire?

24 MS. TESSITORE: No, Your Honor.

25 THE COURT: Okay.

1 THE COURT: Thank you, sir.

2 All right, anything else before we proceed?
3 I'll be happy to hear from you now concerning the first
4 issue. Whichever you want to take.

5 MS. TESSITORE: Yes, Your Honor. I think we can
6 probably -- we'll if we're breaking at 12:30, I think it's
7 probably, perhaps, more prudent to address the issues that
8 Mr. Robinson raised as to the -- I think his expression,
9 he had concerns, he had a motion in limine as to the gun.
10 And, Your Honor, just to clarify, I'm not sure if he's --
11 sounded like he was talking more about the relevance of
12 the gun, was not necessarily the--

13 THE COURT: I don't know what -- let me hear
14 from him as to why I should suppress the gun. What is it,
15 you want to exclude the gun?

16 MR. ROBINSON: May it please the Court?

17 THE COURT: Yes, sir.

18 MR. ROBINSON: Your Honor, I think what, and I
19 appreciate Ms. Tessitore trying to understand what I say
20 but what I'm getting at, Your Honor, as far as -- there
21 was -- my understanding from what they have, they don't
22 have a gun from the scene that connects it to Mr. Thomas.
23 There was not a gun found at the scene. A month or
24 sometime later they went to a motel and they got a gun and
25 some dice. A loaded gun, it was a dart gun. And they are

1. trying to connect -- they're saying that this gun looks
2. like the gun that was used at the time of the crime.

3. THE COURT: Mr. Robinson, that's not going to be
4. something I'm going to be able to rule on pre-maturely
5. because I've got to hear the evidence. They can testify
6. to finding the gun. Whether or not it's admitted depends
7. on what sort of foundation has been established. We had
8. it last week. They never found the gun but somebody could
9. identify the gun and everybody described it. Showed them
10. a picture of the gun. But the State wanted to introduce
11. it and I sustained the objection because it's not
12. relevant. Just because it's a gun that looks like a gun
13. that may have been used, it had nothing to do with
14. anything.

15. MR. ROBINSON: Yes, sir.

16. THE COURT: So I don't know what the testimony
17. is going to be but we'll cross that bridge when we come to
18. it. I'm not going to rule on that before the trial.

19. MR. ROBINSON: Yes, sir.

20. THE COURT: I'm not going to prevent the State
21. from presenting evidence. I'll certainly sustain
22. objections about evidence that may or may not be relevant
23. and may or may not met the 403 test. But whatever, I'm
24. not going to pre-try the case in that sense. Thank you,
25. sir.

1 MR. ROBINSON: Yes, sir, Your Honor.

2 THE COURT: So there's no gun issue unless --
3 that I know of at this point. There may be a gun issue
4 but it's not something to deal with in limine.

5 MS. TESSITORE: Yes, sir. I didn't know if
6 Mr. Robinson was going to make a motion to suppress as far
7 as--

8 THE COURT: If he's making a motion that you're
9 going to have to problem with, he may be right. I don't
10 know what your proof is. But I'm not going -- again, I'll
11 deal with that as it comes up.

12 MS. TESSITORE: Yes, sir.

13 THE COURT: Thank you.

14 MS. TESSITORE: Your Honor, then I think the
15 next probably most brief issue is just, and this may fall
16 along the same lines, but the motion in limine regarding
17 some third party guilt evidence that the State would
18 believe is inadmissible.

19 THE COURT: They may be, may not be, I don't
20 know.

21 MS. TESSITORE: If I could hand this up, Your
22 Honor. This is the State's motion, I provided it to--

23 THE COURT: I don't know that I can rule on that
24 until I hear the case. We're talking about something that
25 obviously will come up, I assume, standpoint of a witness

1 is going to testify to somebody else being responsible, is
2 that?

3 MS. TESSITORE: Well it is that the -- there was
4 a neighbor in a nearby apartment. This was Unit D, she
5 was in Unit C. She was not present during the incident,
6 however, there was, I believe, that this witness is on the
7 Defense's witness list, Ms. Earley, Lucy Earley. And
8 there was an interview, very brief, between the detective
9 who went out to talk with her. And basically I
10 understand her testimony would be that she saw some black
11 male with dreadlocks riding around on a bike around that
12 time period. So there was no other connection with regard
13 to her seeing him there just before the robbery or just
14 after or anything--

15 THE COURT: Solicitor, this is precisely why you
16 don't rule on those beforehand. I don't know what they're
17 going to testify to. I understand what somebody may have
18 said but frankly I hope the day will come when we'll have
19 this in General Sessions, it ought to be maybe on a case
20 by case basis but I assure you if you ever worked in the
21 civil side, it's not uncommon to have not only statements
22 of what somebody said but they're under oath. And low in
23 behold they get on the stand, they don't testify the same
24 way. So I'm not about to rule on that in a vacuum. Thank
25 you, very much. We'll take up when it comes up.

1 MS. TESSITORE: Yes, sir.

2 THE COURT: Thank you.

3 MS. TESSITORE: Your Honor, I think that really
4 just leaves the photo line-up.

5 THE COURT: Okay. We'll have those witnesses --
6 why don't we do this. Let's go ahead on recess and we'll
7 be back at 1:30 and do the line-up.

8 MS. TESSITORE: Yes, sir.

9 THE COURT: Thank you, very much.

10 (WHEREUPON, a lunch break was taken.)

11 THE COURT: All right, let the record reflect
12 Mr. Thomas is present.

13 The State is ready to proceed?

14 MS. TESSITORE: Yes, Your Honor.

15 THE COURT: You may call your first witness.

16 MS. TESSITORE: Your Honor, the State calls
17 Detective Collis Flavell.

18 THE CLERK: Sir, please place your left hand on
19 the Bible, raise your right hand.

20 COLLIS FLAVELL, after being duly sworn,
21 testified as follows:

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

24 THE WITNESS: Collis Flavell.

25 DIRECT EXAMINATION

- 1 BY MS. TESSITORE:
- 2 Q Good afternoon, Detective Flavell. Can you tell the
- 3 Court where you work?
- 4 A Greenville City Police Department.
- 5 Q What do you do there?
- 6 A I'm an investigator.
- 7 Q How long have you been working with the city police?
- 8 A A little over 20 years.
- 9 Q In what capacity?
- 10 A Right now I'm in the detective division. I started
- 11 out in uniform patrol.
- 12 Q How long have you been in the detective division?
- 13 A Approximately 15 years.
- 14 Q In your capacity as detective in that division, have
- 15 you had the opportunity to be involved in photo array
- 16 identification procedures?
- 17 A Yes.
- 18 Q Okay. Approximately, if you know, how many photo
- 19 arrays have you shown?
- 20 A I don't know if I can answer that. Several.
- 21 Q Okay. Less than a hundred, more than a hundred?
- 22 A I'd say probably more than a hundred.
- 23 Q Okay. And you were involved in investigating this
- 24 case that brings us here today?
- 25 A Yes.

1 Q And that was the -- taking you back to the incident
2 date of July 22nd, 2009. Did you meet with the
3 victim, Mr. Gordon, in this case?

4 A I did.

5 Q And when did you meet with him? Do you recall?

6 A On July 28th.

7 Q So six days after the incident?

8 A Yes.

9 Q And was that the first time that you had met with
10 Mr. Gordon, the victim, in this case?

11 A Yes.

12 Q And when you met with him, where did you meet with
13 him?

14 A In the law enforcement center in the city detective
15 division in my office.

16 Q Who else was there?

17 A Just myself and Mr. Gordon.

18 Q And where did you show him the photo array? What
19 type of an office?

20 A In my office.

21 Q And what, if anything, did you tell the victim before
22 you showed him the photos?

23 A First I asked him if he had ever viewed a six person
24 photo line-up. He stated that he had not. I
25 explained to him that in six person photo line-up was

1 just that, six photos of individuals. That the
2 person may or may not be in the line-up. I asked
3 him -- I told him not to feel like he had to pick
4 someone out of the line-up just because I was showing
5 him the line-up. He then viewed the line-up.

6 Q Okay. If you could, I guess go back and tell the
7 Court how you created the photo array.

8 A Computer generated search at the Law Enforcement
9 Center. Just set the computer. You can set the
10 perimeters for height, weight. We normally use a
11 range on height and weight. Look for physical
12 characteristics such as hair. You pick long hair,
13 short hair, faded, boxed, there's all different.

14 Q Okay. And what, I guess, what did the victim -- what
15 did you base the picking those photographs as far as
16 the physical characteristics? What information did
17 you have that then helped you decide which photos to
18 use?

19 A The physical characteristics in this case was a black
20 male, dark skin, dreadlocks, neatly trimmed, goatee,
21 mustache, some facial hair. In this particular case
22 what I based this line-up off of was a fingerprint
23 identification. So I had a possible suspect. So the
24 other five photos, I tried to make them as similar as
25 I could to the subject photo.

1 Q Okay. Had you spoken with Mr. Gordon prior to
2 putting this photo array together?

3 A I spoke with him on the 24th, I believe two days
4 after the incident.

5 Q Was he able to provide you a description?

6 A He did.

7 Q Physical description?

8 A He did.

9 Q Okay. And how many photos did you select for the
10 photo array?

11 A Six total.

12 Q Okay.

13 THE COURT: Is this one we're going to have to
14 do...

15 MS. TESSITORE: Yes, Your Honor.

16 THE COURT: Let's get both of them marked for ID
17 at this point. State's 1-A and 1-B will be the redacted
18 one.

19 MS. TESSITORE: Yes, Your Honor.

20 THE COURT REPORTER: Judge, if we could just use
21 numbers --

22 THE COURT: Just Exhibit A and Exhibit B?

23 THE COURT REPORTER: No, sir. Exhibit 1 and
24 Exhibit 2.

25 THE COURT: Keep them separate?

1 THE COURT REPORTER: Yes, sir.

2 THE COURT: Okay, whatever works best for you.
3 If you want to do one and two, we'll do one and two.

4 THE COURT REPORTER: Please.

5 THE COURT: Okay, Exhibits one and two.

6 THE COURT REPORTER: Thank you, Judge.

7 (WHEREUPON, State's Exhibits Nos. 1 & 2 were
8 marked for identification only.)

9 BY MS. TESSITORE:

10 Q So, I'm showing you State's Exhibit No. 1 for
11 identification. Would you take a look at that. Do
12 you recognize that?

13 A I do.

14 Q Okay, what is that?

15 A Photo line-up that I compiled in this case.

16 Q Okay. Are there any identifying marks on it that
17 that you may have put on there?

18 A Has my initials that I put on there in the bottom,
19 right corner along with the time I actually showed
20 the line-up. Along with the item number that I
21 assigned to it for property and evidence purposes the
22 date the line-up was obtained.

23 Q Okay, that's your handwriting?

24 A Yes.

25 Q Approximately what time did you show this to him?

- 1 A At 1:50 p.m.
- 2 Q And as you as you look at that, I think you explained
3 to the Court as far as the identifying nature of the
4 line-up, is that a fair and accurate representation
5 of the array that you showed to Mr. Gordon?
- 6 A Yes.
- 7 Q How did you indicate the different photos?
- 8 A They're numbered one through six.
- 9 Q Okay. And did it -- when you showed it to Mr. Gordon
10 did it have any writing on it as far as -- what
11 writing was on it when you showed it to him?
- 12 A Just the Greenville County Sheriff's Office top label
13 that's automatically assigned to the line-ups when we
14 print them. That the print information that comes
15 off the computer. The actual handwriting was after
16 the line-up was viewed, was added.
- 17 Q Who's handwriting is that?
- 18 A The victim, Mr. Gordon.
- 19 Q Okay. And any other -- did he sign that?
- 20 A He did. He initialed the photo that he selected of
21 the person that robbed him.
- 22 Q Okay. So how did you, if you could tell the Court,
23 how you presented that photo array to him?
- 24 A He was in my office, sitting across the desk from me.
25 Got him to come in, I think he left work early that

1 day to come meet with me. Once he got there, I
2 brought him up to my office, I sat him down, asked
3 him if he had viewed a line-up before. He stated he
4 had not. I then explained to him what a six person
5 photo line-up was. Six individuals. I further
6 explained to him that the person that robbed him may
7 or may not be in this line-up and not to feel like he
8 had to pick someone just because I was showing him
9 this line up. In fact, he stated he understood, that
10 he did not want a innocent person charged. I then
11 handed him the line-up, he viewed the line-up and
12 selected the photo number five as the person that
13 robbed him.

14 Q Okay. Let's go back to when you handed him the photo
15 array, did you indicate to him as you handed it to
16 him anything on there as far as any particular
17 picture or?

18 A No.

19 Q Okay. And how do you -- you said you've shown a lot
20 of photo arrays, how do you typically hand it to the
21 victim or witness?

22 A Face down.

23 Q Okay. Then what did he do?

24 A He flipped it over, looked at it, said, That's the
25 guy.

1 Q Okay. And when he looked at it and said, That's the
2 guy, who did point to?

3 A Photo number five, which is the Defendant.

4 Q Okay. How long did he actually look at the
5 photographs before he selected number five?

6 A Seconds. He was very confident in his selection.

7 Q Okay. Had he seen any photographs -- had you shown
8 any photographs prior to this procedure?

9 A No, I did not.

10 Q Had you shown him any other arrays?

11 A No, I did not.

12 Q Did he see any kind of line-ups before this?

13 A Not involving this case. Not that I'm aware of, no.
14 Definitely not in this case.

15 Q And when he selected the photo number five, did --
16 did he say -- let me rephrase that. How sure was he?

17 MR. ROBINSON: Objection, Your Honor, calls for
18 speculation.

19 THE COURT: Overruled. I'll allow him to answer
20 his observations.

21 THE WITNESS: He was very confident in the
22 selection.

23 He said, That's the guy.

24 I asked him a follow up question of how sure he
25 was that that was the guy.

1 And he said, I'm almost -- I'm almost just about
2 100 percent that that's the guy. Is what he stated.

3 BY MS. TESSITORE:

4 Q And how recent was the photo that was used in that
5 array of the Defendant?

6 A It was within a month.

7 Q Okay.

8 Now, at this point I would ask the Court -- like
9 to admit State's Exhibit No. 1 for purposes of this
10 hearing.

11 THE COURT: Okay, any objection?

12 MR. ROBINSON: Not for purposes of this hearing.

13 THE COURT: Very well, State's Exhibit 1 is
14 admitted for the purposes of this proceeding.

15 (WHEREUPON, State's Exhibit No. 1 was admitted
16 into evidence.)

17 BY MS. GOODE:

18 Q If you would just read what the victim wrote down
19 there.

20 A States, Person number five is the person who walked
21 in on me washing my hands and pulled a pistol and
22 told me to get on the floor. Then went through my
23 wallet looking for money. When I turned my head, he
24 put the pistol between my shoulder blades and said,
25 Look at the floor. Signed Michael Gordon. Photo

1 number five is initialed by MG above the photo.

2 Q And is this substantially the same condition as it

3 was when you finished the procedure?

4 A Yes.

5 Q Okay. And has it been altered in any way?

6 A No.

7 Q Okay. The I'll just ask you to look at State's

8 Exhibit No. 2. Who prepared that, State's Exhibit

9 No. 2?

10 A I did.

11 Q Okay, what is that?

12 A It's a copy of the original photo line-up with

13 redacted at the bottom of the original from the

14 print, from the system we use to process line-ups.

15 It's got a file number, photo manage number, PRT.HPM

16 which are mug shots. So I redacted that by placing a

17 piece of paper over it. I also placed a piece of

18 paper over the collars of the shirts that is visible

19 in the original line-up. Photo copied it again this

20 morning, covering up the shirts and covering up the

21 mug shot name at the bottom.

22 Q Okay. And did you bring both of those with you here

23 today?

24 A I did.

25 Q And with respect to State's Exhibit No. 1, where has

1 that been since -- since you showed him the array?

2 A In property and evidence.

3 Q Okay. And -- and did the victim make any notations
4 regarding number five in State's Exhibit 1?

5 A By his initials are above the photo.

6 Q Okay. Who put those there?

7 A He did.

8 Q Okay. All right. Just one minute. Detective
9 Flavell, did you ever suggest to him in any way,
10 shape or form which photo to select in this array?

11 A I did not.

12 MS. TESSITORE: Thank you.

13 Your witness.

14 THE COURT: Cross-examine.

15 CROSS-EXAMINATION

16 BY MR. ROBINSON:

17 Q Officer Flavell, you took a copy -- or you did get
18 the statement from the victim, isn't that correct?

19 A I did what now?

20 Q You got the statement from the victim, you took the
21 statement from the victim; is that right?

22 A At the time of the incident?

23 Q You took a statement, I believe July 28th 2009; is
24 that correct? From the victim.

25 A After he viewed the line-up.

- 1 Q All right. And you would agree with me that the
2 victim said he wasn't 100 percent this was the guy?
3 That's what he said, isn't it?
- 4 A He did not say he was 100 percent, he said he was
5 almost 100 percent that that was the guy who robbed
6 him.
- 7 Q He said, Almost positive and I'm just about a hundred
8 percent, correct?
- 9 A That's correct, that's what he said.
- 10 Q He didn't tell you conclusively that the guy, did he?
- 11 A He did not say that one hundred percent that this is
12 the guy.
- 13 Q Okay. Now, you actually -- it was about six days
14 after the incident that you went to him or he came in
15 and you got a statement with this line-up, is that
16 correct?
- 17 A That is correct.
- 18 Q Okay. The fingerprint that was that recovered from
19 the scene.
- 20 A Yes.
- 21 Q You got the fingerprint and you were able to link
22 that fingerprint to Mr. Thomas, correct?
- 23 A I did not get the fingerprint but the fingerprint was
24 collected and it was matched to Mr. Thomas, yes.
- 25 Q And you have that information prior to talking to the

1 victim about this line-up, didn't you?

2 A I did.

3 Q You did. So would you agree with me that prior to

4 this line-up that you put together, that you had

5 information that Mr. Thomas' fingerprint was found at

6 the scene on the door, is that correct?

7 A That is correct.

8 Q Okay. Now, let's talk about how you put together

9 this line-up in this case. Did you take any notes or

10 anything like that of your conversation with the

11 victim in this case?

12 A Yes.

13 Q You did. Because you make a -- you make a statement

14 in your direct examination about the victim saying

15 that he doesn't want to convict an innocent man?

16 A That is correct.

17 Q Is that any place -- that's not any place in your --

18 your file, is it?

19 A Yes, sir, it is.

20 Q So you put that in your file?

21 A I did.

22 Q All right.

23 A It's in my supplemental report.

24 Q Supplemental report, all right.

25 A 7/28/09. It's about the second paragraph -- third

1 full paragraph of the supplemental report.

2 Q Okay. Now you have the -- you have the -- the first
3 statement of the victim which was on 7/22/09, is that
4 correct. Got that there?

5 A Do not have that with me, no.

6 MR. ROBINSON: Can I approach the witness, Your
7 Honor?

8 THE COURT: Yes.

9 BY MR. ROBINSON:

10 Q Is this a copy of the statement? Can you identify
11 this for me?

12 A Yes, it appears to be a copy of the statement taken
13 by Officer Bradley who responded to the original
14 incident, yes.

15 Q That statement -- hold that for a second. In that
16 statement, you would agree with me that the victim in
17 this case also mentioned that the person who
18 committed this crime had a goatee as well, didn't he?

19 A Yes, he did.

20 Q And there nothing in that statement that he gave to
21 you that mentions anything about his beard or
22 mustache being neatly trimmed, was it?

23 A In this statement?

24 Q Yes.

25 MS. TESSITORE: Your Honor, I'm going to object,

1 the victim is going to be called to testify.

2 THE COURT: I'll allow the question.

3 THE WITNESS: No, there's not.

4 BY MR. ROBINSON:

5 Q Okay. So that's something that you omitted, isn't
6 that correct?

7 THE COURT: No, sir, I'm not going to say that.
8 We don't know what the victim is going to say at this
9 point.

10 MR. ROBINSON: I withdraw it, Your Honor.

11 THE COURT: Thank you.

12 MR. ROBINSON: That's all the questions I have,
13 Your Honor.

14 THE COURT: Redirect.

15 MS. TESSITORE: No more questions, Your Honor.

16 THE COURT: Okay. You may step down.

17 MS. GOODE: State would call Michael Gordon.

18 THE CLERK: Sir, if you'd pause at the end of
19 the bench. Place your left hand on the Bible, raise your
20 right.

21 MICHAEL GORDON, after being duly sworn,
22 testified as follows:

23 THE CLERK: Thank you, please be seated. State
24 your name for the record.

25 THE WITNESS: Michael Gordon.

DIRECT EXAMINATION

1
2 BY MS. TESSITORE:

3 Q Good afternoon, Mr. Gordon?

4 A Hi.

5 Q Can you tell the Court what you do for a living?

6 A I work at America Tire Distributors, drive a truck,
7 delivering tires.

8 Q How long have you done that?

9 A Six years.

10 Q And have you ever been a victim of armed robbery
11 before?

12 A Before this?

13 Q Yes, sir?

14 A No.

15 Q Okay. Had you ever seen or have you ever been
16 presented with a photo array other than in this case?

17 A No.

18 Q Okay. I'm going to take you back to Wednesday
19 July 22nd, 2009 and the incident that brings us here
20 today. And, Mr. Gordon, I'm going to ask you,
21 where -- could you tell the Court about 3:30 that
22 afternoon where you were and what you were doing.

23 A Forrest Street, I was painting an apartment.

24 Q Okay. Can you tell the Court just like generally as
25 far as the apartment you were painting and then just

1 generally the structure there?

2 A There's basically four apartments, there's like two
3 buildings. Four apartments. Marked A, B, C, D. I
4 was painting apartment A. I had been painting
5 approximately a week or so and it did not have no
6 water in it. And the lady that's the property
7 manager, she had a apartment D that was vacant also.
8 But I had the lock boxes on the door. I had the
9 combination to both lock boxes. And she told me I
10 could do down there if I needed water or anything to
11 clean up my brushes from painting. But basically
12 just four apartments side by side.

13 Q And so they're all connected?

14 A Well there two separate buildings but there two
15 apartments next to the other, two connected.

16 Q Okay. And was this a second job that you were doing
17 as far as -- was this for the tire company or?

18 A Yeah, it was just a side job.

19 Q And where did you go? What unit did you go to to
20 wash your hands?

21 A Apartment D.

22 Q Were you working with anyone else?

23 A No, I was by myself that day.

24 Q And what were you -- when you went into apartment D,
25 was anyone else in apartment D?

- 1 A No, not that I saw.
- 2 Q Okay. Tell the Court when you went in as far as what
3 the -- what the lighting was like in there.
- 4 A Well it was 3:30 in the afternoon, roughly the time.
5 It was sunny. And apartment D, it was vacant at the
6 time. And it didn't have no blinds. The sliding
7 glass door did not have no blinds. And there was a
8 window right in front of the sink. So it was pretty
9 well lit.
- 10 Q And when you went in there, did you shut the door
11 behind you?
- 12 A No. I just kind of pushed it and it never did
13 completely shut.
- 14 Q Okay. And what happened as you were in there, was
15 anyone else in there when you went in?
- 16 A No.
- 17 Q What did you do when you went in there?
- 18 A I went straight to the sink and started washing my
19 hands.
- 20 Q Approximately how far is the sink from the door?
- 21 A Approximately 12, 12-foot.
- 22 Q Okay. Did you -- while you were washing your hands,
23 what did you observe?
- 24 A Well I seen the door kind of move. And I thought it
25 was just the wind so I went back to washing my hands.

1 Then the door swung open.

2 Q And when you're standing -- when you were standing at
3 the sink, where was the door in relation to where you
4 were facing?

5 A To my right.

6 Q And you said about 12-feet from the sink to the door?

7 A Yeah, approximately 12-feet.

8 Q What did you see when the door opened?

9 A I saw a man come in, standing there. And I turned
10 around, looked and said, Can I help you?

11 Q Okay. Did you -- were you able to see the man
12 clearly?

13 A Oh, yeah. There was a window right at the door.
14 And, I mean, he just walked in the door. And it was
15 broad daylight. I didn't have no problem seeing.

16 Q What did you observe about his -- how would you
17 describe what he looked like?

18 A A black male, I figured roughly 5'10, looked like to
19 me, I mean, I'm not good with ages but late 30's
20 early 40's is what I figured. And long dreadlocks.
21 Mustache and goatee.

22 Q Okay. And when you say mustache and goatee, how
23 would you describe that in kind of comparing to your
24 facial hair? Was it--

25 A Well when I call a mustache and goatee, it's

- 1 basically hair between your upper lip and nose is a
2 mustache and any kind of hair on your chin is a
3 goatee.
- 4 Q And do you recall what color it was?
- 5 A It was dark.
- 6 Q And anything distinctive about his hair?
- 7 A It was long dreadlocks.
- 8 Q Did he have anything concealing any part of his face
9 or head?
- 10 A No.
- 11 Q What was he wearing?
- 12 A A black tank top and black shorts.
- 13 Q Did he have anything in his hands?
- 14 A Not when he first walked in the door.
- 15 Q Well after he first walked in the door, did he close
16 the door?
- 17 A He just kind of pushed it. I'm not sure if it ever
18 completely closed or not but you have to push the
19 door open.
- 20 Q All right. When he stood there, what did he do?
- 21 A He pull a pistol out of his left, front pocket and
22 told me to lay on the floor.
- 23 Q Were you able to see what type of pistol he had?
- 24 A All I could tell you it was a black automatic pistol.
- 25 Q And how do you know it was automatic?

1 A Because it didn't have a cylinder for the revolver.
2 Q Are you familiar with guns?
3 A Yes.
4 Q Did -- how close did he get to you when he was
5 holding the gun?
6 A He was just -- just inside the door. So
7 approximately 8 to 10 feet.
8 Q All right. Did -- did you -- how tall are you?
9 A 6'2.
10 Q And approximately how tall did you think he was?
11 A 5'10.
12 Q As far as his skin tone, was there anything -- you
13 said he was a black male, how would you describe his
14 skin tone?
15 A Just dark, black male.
16 Q Did -- do you remember what his clothing was?
17 A Black tank top and black shorts.
18 Q Had you ever seen him before?
19 A No.
20 Q And how did you respond to what he did?
21 A Well he told me to lay on floor and I didn't figure I
22 had much of a choice so I laid down.
23 Q When you laid down, what happened then?
24 A He come behind me and straddled my legs and grabbed
25 my wallet through my pants.

1 Q Were was your wallet?

2 A In my right, back pocket.

3 Q And what did you do then?

4 A I laid there.

5 Q What was he doing?

6 A He got my wallet and said he was going through it,
7 looking for money.

8 Q And did you -- could you see him from where you were
9 laying on the floor there?

10 A No, I had turned my head a little because he had said
11 something. And that's when he stuck the gun between
12 my shoulder blades.

13 Q Did he say anything?

14 A Just to -- he said, I'm not here to kill you, I just
15 want some money.

16 Q Did -- so at that point did you have any other
17 opportunity to see him before -- well see him again?

18 A No.

19 Q In the kitchen?

20 A (The witness shook his head.)

21 Q Was this the -- what room was it primarily where you
22 were when you were lying on the floor?

23 A It was -- repeat that, please.

24 Q What room were you in when you were lying on the
25 floor?

1 A It was the kitchen.

2 Q So all took place in the kitchen?

3 A Uh-huh.

4 THE COURT: Was that a yes?

5 THE WITNESS: Pardon?

6 THE COURT: Was that a yes?

7 THE WITNESS: Yes.

8 THE COURT: Thank you.

9 BY MS. TESSITORE:

10 Q What happened after he took -- went through your

11 wallet?

12 A He laid everything up on the counter and he told me

13 he was wiping everything down, not to look up for a

14 few minutes.

15 Q Then what happened?

16 A Then he went out the door.

17 Q Did you -- what did you do at that point?

18 A Well I laid for a minute. I got up. I just grabbed

19 everything, I didn't try to put it back in my wallet

20 or nothing, I just rolled everything up. I went out

21 the door, locked the door behind me, went to my truck

22 and that's when I called 911.

23 Q All right. And in response to that 911 call, did an

24 officer come out to the scene?

25 A Yes.

1 Q Do you recall how long it was before the officer got
2 there?

3 A I really couldn't tell you. I -- I was just...

4 Q Did you speak to the officer as soon as he got there?

5 A Yes.

6 Q And what did you -- what -- were you able to provide
7 him with a physical description that you just gave?

8 A Yes.

9 Q And did you speak to -- did you also provide a
10 description of a gun to Officer Bradley?

11 A Yes.

12 Q Did you provide a statement to Officer Bradley at the
13 time?

14 A Yes.

15 Q And what was the -- why did he get a statement from
16 you as far as on the scene there?

17 A He just asked me what had happened.

18 Q Okay. And did you speak to Detective Flavell a
19 couple of days later?

20 A Yes.

21 Q Did you give him a description of the suspect when
22 you spoke to him?

23 A Yes.

24 Q Did he provide you any names or indicate in any way
25 who might have committed the crime?

1 A No.

2 Q And did you -- had you ever seen this man before this
3 incident, the robber?

4 A No.

5 Q Did you have a chance to meet with Detective Flavell
6 six days later to view a photo line-up?

7 A Yes.

8 Q Okay. Now, where did you meet him?

9 A At the penitentiary or I guess you call it, his
10 office. It was his office.

11 Q Law Enforcement Center?

12 A Yes.

13 Q And was anyone else present?

14 A No.

15 Q When you met with him, did he -- how did he begin the
16 meeting?

17 A I met him and we went to his office.

18 Q And did he -- you said you had never seen an array
19 before, photo array?

20 A No.

21 Q Did he explain to you what he was going to do and how
22 he was going to show it to you?

23 A Yes.

24 Q What did he say?

25 A He said he was going to show me a line-up. And that

1 I didn't have to pick any of the pictures on the
2 line-up.

3 Q Okay. How did he -- let me just ask, was anyone else
4 present when you were looking at the array?

5 A No.

6 Q And I'm showing you what's been marked as State's
7 Exhibit No. 1, if you'd take a look at that. Do you
8 recognize that?

9 A Yes.

10 Q What is that?

11 A That's the line-up Mr. Flavell showed me.

12 Q All right. How do you know -- do you recognize any
13 handwriting on there?

14 A Yes, that's my handwriting.

15 Q All right. How did -- did Detective Flavell show
16 that to you? How did he present it to you?

17 A He turned it over and handed it to me.

18 Q Then what did you do? Show the Court how you looked
19 at it, what you did when you looked at it.

20 A I picked it up and just looked at it.

21 Q And did you do anything after you looked at it?

22 A I laid it down and I pointed at number five.

23 Q Okay. How did you -- well who was number five? I
24 mean, why did you pick number five?

25 A Because I was pretty sure that that was the guy that

1 robbed me.

2 Q Okay. Did you give a statement to Detective Flavell?

3 A Yes.

4 Q Okay. Is that provided on the -- is that also

5 present on the array?

6 A Yes.

7 Q Did -- approximately how long did it take you to pick

8 number five?

9 A Not long.

10 Q Did -- was there anything -- had you seen any photos

11 before that array was shown to you?

12 A No.

13 Q Had you seen any other arrays or any form of any kind

14 of line-up of the suspects or people that may or may

15 not contain the suspect?

16 A No.

17 Q Did Detective Flavell, as he met with you, did he

18 suggest anyone of those six?

19 A No.

20 Q Did he influence you or did you feel pressured in any

21 way?

22 A No.

23 Q To pick number five? Or to even pick one at all?

24 A He told me I didn't have to pick nobody.

25 Q Okay. And how did you indicate your selection there

1 as number five?

2 A I don't understand.

3 Q I'm sorry. Did you -- what writing did you place on
4 that?

5 A Number five, my initials.

6 Q Okay. What else did you place on there?

7 A This here.

8 Q When you say this here, what is that?

9 A Where I wrote like a small statement. I signed it.

10 Q So that's your signature?

11 A Yes.

12 Q All right. And is that substantially in the same
13 condition as you last saw it?

14 A Yes.

15 Q Is the person that you picked there present in the
16 courtroom?

17 A Yes.

18 Q Okay, can you identify him?

19 A He's sitting over there.

20 Q Can you describe what he's wearing?

21 A A suit.

22 Q Okay.

23 A White shirt, yellow tie.

24 MS. TESSITORE: All right, let the record
25 reflect that the witness has identified the Defendant.

1 THE COURT: He has.

2 MS. TESSITORE: Answer any questions that
3 Mr. Robinson may have, please.

4 MR. ROBINSON: May it please the Court?

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. ROBINSON:

8 Q Mr. Gordon, let's talk about time. Now you go down
9 there to the apartment and when this all happened --
10 when this happened, when the person came to the door,
11 did you see them come to the door? Did you actually
12 watch them come up to the door?

13 A No.

14 Q You didn't. Is -- was you back to them when they
15 came in?

16 A No.

17 Q Okay. How, if you didn't see him frontally coming to
18 the door, how did you see him?

19 A Side.

20 Q Out of the corner of your eye? Out of the corner of
21 your eye you saw somebody?

22 A Yeah.

23 Q How soon -- this whole event, how long do you think
24 it took? A minute, two minutes, how long you think
25 the whole thing took?

- 1 A I don't understand, you're talking about the whole
2 situation?
- 3 Q Yeah. From the time this person came in and you saw
4 the person out of the corner of your eye, to the time
5 the person left, how long you think it took?
- 6 A I really don't know.
- 7 Q Pretty short period of time, you agree with that?
- 8 A I guess.
- 9 Q This person just wasn't sitting in the apartment with
10 you and talking to you, was he?
- 11 A No.
- 12 Q And this was during the day, right?
- 13 A Yes.
- 14 Q So first you see him out of the corner of your eye.
15 At what point does this person tell you to get down?
16 Almost immediately?
- 17 A Yes, pretty much immediate.
- 18 Q After you look out the corner of your eye to see this
19 person, is that the point they tell you to get down?
- 20 A No.
- 21 Q What point do they do it?
- 22 A Because I asked, I said, Can I help you?
- 23 Q Okay.
- 24 A Then after I said that, then that's when he said --
25 he pulled the gun out and said, You can get down on

1 the floor.

2 Q So you see him out of the corner of your eye, he
3 comes in and you're looking at him straight on,
4 correct?

5 A Yes.

6 Q Face-to-face, right.

7 A Yes.

8 Q About 8 to 10 feet away?

9 A Yes.

10 Q So pretty close. Now do you wear glasses?

11 A No.

12 Q Do you have a prescription for contacts or for
13 glasses?

14 A No.

15 Q What's your vision?

16 A I'm not sure.

17 Q Okay. Anything else -- now you were doing an
18 apartment, you were painting that day, is that
19 correct?

20 A Yes.

21 Q Okay. And you were going to come down to this
22 apartment to get a drink or get some water then go
23 back to the apartment, is that correct?

24 A No.

25 Q What were you going to do?

- 1 A Just wash my hands.
- 2 Q Wash your hands and go, is that right?
- 3 A (The witness nods.)
- 4 Q Okay. We you on a deadline to get something done at
- 5 that point or anything like that?
- 6 A No.
- 7 Q Okay. And that was during the afternoon, what time?
- 8 A Roughly 3:30.
- 9 Q What time do you leave, typically?
- 10 A What time do I leave?
- 11 Q What time do you leave? When does it end? What's
- 12 the end of the day for you at that point?
- 13 A Whenever I get done.
- 14 Q Okay. Now you described this person as being 5'10
- 15 and in the late 30's to 40's, is that correct?
- 16 A Yes.
- 17 Q You describe a goatee, this goatee we're talking
- 18 about, was it a goatee like your goatee but black or
- 19 dark or was it a short goatee?
- 20 A It was just -- all I could see was hair. He had
- 21 hair. I mean, I describe a goatee as anybody with
- 22 hair up underneath your chin.
- 23 Q Okay. So it wasn't shaved -- wasn't shaved, it was
- 24 hair.
- 25 A Yeah, it was hair. I mean, any kind of hair. It

1 wasn't like a clean shave.

2 Q It was dark hair, is that correct?

3 A Yes.

4 Q And this person you said was dark, black male?

5 A Yes.

6 Q Not a light skin but a dark skin, black male.

7 A Uh-huh.

8 THE COURT: Is that a yes?

9 THE WITNESS: Yes.

10 THE COURT: Thank you.

11 BY MR. ROBINSON:

12 Q Now, you recall you gave a statement to Officer
13 Flavell, isn't that correct?

14 A Yes.

15 MR. ROBINSON: May I approach the witness, Your
16 Honor?

17 THE COURT: You may.

18 BY MR. ROBINSON:

19 Q Can you identify this document?

20 A Yes.

21 Q Okay. And that document, you actually aren't certain
22 about this person, Mr -- the person in this line-up,
23 the line-up being the person that--

24 MS. TESSITORE: Objection, Your Honor.

25 MR. ROBINSON: -- did this--

1 THE COURT: What's your objection?

2 MS. TESSITORE: He's testifying. He's saying
3 that he's not certain and he's --

4 THE COURT: He's on cross-examination, he can
5 ask him any way he wants. The witness can answer any way
6 he wants to.

7 If you'd repeat.

8 MR. ROBINSON: Yeah.

9 BY MR. ROBINSON:

10 Q You would agree with me, looking at that, your
11 statement to the officer, that you're not certain of
12 that picture that you saw in the line-up was the
13 person who did this attack?

14 A No.

15 Q Well that is your statement, is that correct?

16 A Yes.

17 Q In your statement -- you say in that statement that
18 you're almost positive, correct?

19 A Yes.

20 Q And not a hundred percent?

21 A Almost a hundred percent.

22 Q But you would agree that you did not say in your
23 statement that you were a hundred percent certain?

24 A Yes, I agree.

25 Q Okay.

1 A I also agree I'm not hundred percent that the Lord is
2 not going to take me out of here with a heart attack
3 before I walk out of here either.

4 Q Let's hope that doesn't happen.

5 A That's me. I'm not a hundred percent pretty much on
6 nothing.

7 Q And I think you said there was a mustache as well?

8 A Pardon?

9 Q A mustache.

10 A Yeah, a mustache.

11 Q And that's looking at -- identify this statement?

12 A Yes.

13 Q Okay. In that statement you mention a mustache, is
14 that correct?

15 A Yes.

16 Q Are you talking -- when we talk about a mustache, are
17 we talking about a thick mustache --

18 THE COURT: Mr. Gordon, [sic] Mr. Gordon [sic].

19 You need to mark that so we'll have a reference to what
20 he's looking at.

21 MR. ROBINSON: May I do that, Your Honor? Thank
22 you.

23 THE COURT: That would be Defendant's Exhibit 1.

24 MR. ROBINSON: Can I get this marked as
25 Defendant's Exhibit 1 for identification purposes?

1 (WHEREUPON, Defendant's Exhibit No. 1 was marked
2 for identification only.)

3 BY MR. ROBINSON:

4 Q Show you what's been marked as Defendant's Exhibit
5 No. 1 for identification purposes. You describe a
6 mustache, is that correct?

7 A Yes.

8 Q Was that a lot of hair in the mustache or a little
9 bit of hair?

10 A Just not a whole lot.

11 Q Not a whole lot of hair. All right.

12 A I mean, my definition of a lot of hair might be
13 different. I mean, a mustache to me is just
14 noticeable hair above and between your upper lip and
15 nose.

16 Q Okay. And when this person left, the apartment that
17 you in were, were you still on the floor or had you
18 gotten up?

19 A I was still on the floor.

20 Q What did they touch as they were going out? Did they
21 touch the doorknob or the door, what did they do?

22 A I'm not sure.

23 Q Not sure. I'm going to go back again and make sure I
24 get this marked as a Defendant's Exhibit for
25 identification purposes. Do you recognize this

1 document?

2 A Yes.

3 MR. ROBINSON: I'd like to get this marked as
4 Defendant's Exhibit No. 2 for identification purposes.

5 (WHEREUPON, Defendant's Exhibit No. 2 was marked
6 for identification only.)

7 BY MR. ROBINSON:

8 Q Want to go back to what's been mark as Defendant's
9 Exhibit No. 2: And that statement, you recognize
10 that statement?

11 A Yes.

12 Q Is that your signature, is that correct?

13 A Yes.

14 Q In that statement, you agree with me, I asked you
15 this before but I want to make sure I put this on the
16 record, you stated in that statement that you were
17 almost positive, correct?

18 A Yes.

19 Q And that you were just about a hundred percent,
20 correct?

21 A Yes.

22 Q And that's exhibit number 2 for identification
23 purposes?

24 A Yes.

25 Q Okay.

1 MR. ROBINSON: Beg the Court's indulgence for
2 one second.

3 THE COURT: Certainly.

4 BY MR. ROBINSON:

5 Q When this person first came in the apartment, you
6 said you saw him out of the corner of your eye,
7 correct?

8 A Yes.

9 Q Did you -- was the door opened or was it closed?

10 A The door was --

11 THE COURT: Wait a minute.

12 Mr. Robinson, you need to clarify what you're
13 talking about.

14 MR. ROBINSON: Thank you, Your Honor.

15 BY MR. ROBINSON:

16 Q When the person first came in.

17 A Yes.

18 Q Okay. When you saw this person out of the corner of
19 your eyes?

20 A Yes.

21 Q Did they go -- was the door opened or was the door
22 closed before they came in?

23 A The door was closed but not shut.

24 Q So it was ajar, is that correct?

25 A Yes, I mean, not -- how you -- it was opened just a

1 little bit.

2 Q All right.

3 MR. ROBINSON: Thank you, that's all I have.

4 THE COURT: Redirect.

5 REDIRECT EXAMINATION

6 BY MS. TESSITORE:

7 Q Mr. Gordon, I know Mr. Robinson kept stressing the
8 fact that you only say this person out of the corner
9 of your eye, when -- once the perpetrator walked in,
10 did you turn your body?

11 A Yes.

12 Q Did you face him?

13 A Yes.

14 Q Is that when he pulled the gun out?

15 A Yes.

16 Q How did your attention change or -- let me ask it
17 this way. How did you feel at that point when he
18 pulled the gun?

19 A I felt like I was about to get shot.

20 Q Okay. Did -- did you have an opportunity to get a
21 good look at his face?

22 A Yes.

23 Q And was there anything between you and him at that
24 moment when he pulled the gun and you asked him --
25 this was after you asked him, Can I help you?

1 A No, there was nothing between us.

2 Q And there was no problem with the lighting at all?

3 A No.

4 MS. TESSITORE: No further questions.

5 THE COURT: Recross, Mr. Robinson?

6 MR. ROBINSON: No recross, Your Honor.

7 THE COURT: Thank you, Mr. Gordon, you may step
8 down, sir.

9 Any additional witnesses, Solicitor?

10 MS. TESSITORE: Can I have just one moment, Your
11 Honor?

12 THE COURT: Certainly.

13 MS. TESSITORE: Your Honor, the State would call
14 Officer Bradley.

15 THE COURT: Okay.

16 THE CLERK: Sir, please place your left hand on
17 the Bible and raise your right hand.

18 J.C. BRADLEY, after being duly sworn, testified
19 as follows:

20 THE CLERK: Please be seated. Please state your
21 name for the record.

22 THE WITNESS: J.C. Bradley.

23 DIRECT EXAMINATION

24 BY MS. TESSITORE:

25 Q Officer Bradley, where do you work?

1 A Greenville County Police Department.

2 Q What do you do there?

3 A I'm currently assigned to resource officer division
4 of Greenville Senior High Academy.

5 Q How long have you been with the city police?

6 A Twenty-five years.

7 Q Before you were assigned as a school resource
8 officer, what did you do before that?

9 A I was assigned to uniform patrol division prior to
10 being in community services. Prior to then vice and
11 narcotics and uniform patrol.

12 Q As part of your duties in uniform patrol, did you
13 respond to a call about a armed robbery at 119
14 Forrest Street, Unit D?

15 A Yes, ma'am, I did.

16 Q And that was on July 22, 2009?

17 A That is correct.

18 Q In the afternoon hours?

19 A Yes.

20 Q And how long did it take you to respond to the scene,
21 approximately?

22 A I was working across town on East side. Forrest
23 Street is on the West side of town so it took me
24 about 15 minutes to get there.

25 Q And when you arrived was that in response to the 911

1 call?

2 A Yes, it was.

3 Q And when you arrived, what did you find?

4 A I was met in the parking lot by Mr. Gordon, the

5 victim.

6 Q And was he anyone else with him?

7 A No, he was alone.

8 Q Where was he when you found him?

9 A He was approaching my vehicle in the parking lot.

10 Q Did he have a vehicle with him?

11 A I'm sure he did but I don't recall where it was.

12 Q All right. What did you do once you got there?

13 A Once I arrived I exited my vehicle and made inquiry

14 as to what took place.

15 Q Okay. How would you describe Mr. Gordon's demeanor

16 when you arrived?

17 A Mr. Gordon was visibly nervous, his hands were

18 shaking. He said it was a pretty scary incident. At

19 which point in time he began to describe what took

20 place.

21 Q Was he able to describe the events clearly to you.

22 A Yes.

23 Q Did you have any trouble understanding him?

24 A I did not.

25 Q Did he indicate which unit the incident had occurred

1 in?

2 A Yes, ma'am.

3 Q At some point did you -- did you enter the unit where
4 this had occurred?

5 A To prevent the crime scene from being disturbed we
6 stayed on the outside until forensics arrived.

7 Q Okay, when forensics arrived were you able to view
8 the area where this happened?

9 A Once the forensics technician had entered and
10 gathered evidence, yes I went inside.

11 Q And what -- how would you describe the -- when you
12 walked in the door, how would you describe the
13 lighting?

14 A It was very well lit. As I stated it was about 3:30
15 in the afternoon where you could see everything
16 clearly. There were windows there were not any
17 blinds on any of the windows. So it was very clear.

18 Q Was the apartment being lived in at that time?

19 A It was vacant.

20 Q And did the victim, Mr. Gordon, did he provide to you
21 a physical description of the man that he said robbed
22 him?

23 A Yes, ma'am. That's one of the first things I
24 requested for. The purpose to BOLO information to
25 responding units.

1 Q BOLO meaning?

2 A Meaning all area broadcast to responding units to
3 look out for the subject that fit the description.

4 Q Did he indicate if he was able to see how the --
5 whether the Defendant fled on foot or by vehicle or
6 any?

7 A No, he just said -- gave a description of the
8 gentleman that approached him.

9 Q Okay. So what was the description that he did give
10 to you right there on the scene?

11 A Mr. Gordon described a black male, dark skin, 5'10 in
12 height wearing a black tank top and black shorts with
13 dreadlocks.

14 Q Did he indicate whether he had any facial hair?

15 A He may have, I did not put that in my report for the
16 purpose of just BOLOin' information out to the units
17 as quickly as possible.

18 Q Okay. Did you also -- when he spoke to you, did you
19 take a statement from him?

20 A I did.

21 Q And when you spoke to him immediately after this
22 incident, did he indicate to you whether he observed
23 any facial hair?

24 A I did inquire as to whether or not Mr. Gordon could
25 read and write adequately to write a statement.

1 After which point he began to write his statement, I
2 think he made reference to facial hair in his
3 statement.

4 Q Okay. Do you recall what he said in that statement
5 or do you need to refresh your recollection?

6 A I think actually it's right here. This is actually
7 Officer Flavell -- Detective Flavell. No, this is
8 the one. Okay, he makes reference to a goatee and
9 mustache.

10 Q Okay. Let me just--

11 A Yeah, this is it.

12 Q So Defendant's Exhibit No. 1 is the statement that
13 you took from the victim?

14 A It is.

15 Q And that's where he indicated that he had dreadlocks,
16 a goatee and a mustache?

17 A Yes, ma'am.

18 Q Did he also describe the gun that he saw?

19 A He did.

20 Q What did he tell you about gun?

21 A He advised that it was a black auto pistol. I asked
22 him if he knew the difference between a revolver and
23 automatic pistol. He advised that there was no
24 cylinder to hold the bullets. So he did know it was
25 a auto pistol.

1 Q Okay. And were there any other details that he was
2 able to provide other than the detailed, physical
3 description that he gave?

4 A He told me of the sequence of events that took place,
5 what the suspect instructed him to do, to lie on the
6 floor. That he placed the firearm between his --
7 blades of his shoulders and that he took his wallet
8 out of his back pocket. He went through it. He
9 advised that he didn't get his money because his
10 money was hidden in a separate compartment in his
11 wallet and that he only got a lottery ticket valued
12 at one dollar.

13 Q Okay. Did he indicate if there was anything
14 obscuring the robbers face at all when this happened?

15 A No, ma'am, he did not.

16 Q Did he indicate if he had anything on his head?

17 A No, ma'am, he did not.

18 Q Other than the long dreadlocks?

19 A No, ma'am.

20 MS. TESSITORE: Answer any questions that
21 Mr. Robinson may have, please.

22 THE COURT: You may cross-examine.

23 MR. ROBINSON: May it please the Court.

24 CROSS-EXAMINATION

25

1 BY MR. ROBINSON:

2 Q Officer, going back to what he told you, look at one
3 of the Defense Exhibits there, what exhibit are you
4 referring when testifying?

5 A I'm sorry?

6 Q What Defendant's Exhibit were you mentioning there
7 when you were answering Ms. Tessitore?

8 A Appears to be 1A, it's a statement that Mr. Gordon
9 gave to me on the scene, a copy of it.

10 Q Okay. In that statement, which is State's Exhibit A?

11 A It says 1A.

12 Q Okay. That also mentions in there a slender build,
13 is that correct?

14 A That is correct.

15 Q And a goatee, is that correct?

16 A No, sir, it doesn't refer to his build, only that he
17 had dreadlocks, a goatee and mustache.

18 Q You did a report, didn't you Officer Bradley?

19 A I did.

20 Q Do you have a copy of your file?

21 A I can recall.

22 Q Okay. I'm going to approach and let you --

23 Approach the bench, Your Honor?

24 THE COURT: Yes.

25

1 BY MR. ROBINSON:

2 Q So there was a vacant apartment, right?

3 A Yes.

4 Q And did you note whether there was a for rent sign
5 anywhere around it?

6 A No, sir, I did not.

7 Q Was this a pretty highly traveled area?

8 A It is, yes, sir.

9 Q And you would agree with me, I think you testified,
10 before he gave his statement he was nervous; is that
11 what you testified to?

12 A Yes, sir. He was very nervous when I approached him.

13 MR. ROBINSON: That's all the questions I have.

14 Thank you.

15 THE COURT: Redirect?

16 MS. TESSITORE: No redirect, Your Honor.

17 THE COURT: You may step down, thank you, sir.

18 Call your next witness.

19 MS. TESSITORE: Your Honor, that's the State's
20 evidence regarding the line-up.

21 THE COURT: Thank you. I thought that's what we
22 were doing.

23 All right, any additional witnesses from the
24 Defendant?

25 MR. ROBINSON: I have no witnesses at this

1 point.

2 THE COURT: Very well, be happy to hear from you
3 as to why I should suppress it.

4 MR. ROBINSON: May it please the Court, Your
5 Honor. I'm looking at State v. Mack case which goes to
6 the different parts of what the State needs to establish
7 in order to put this in -- put in this line-up. First of
8 all, the length of time between the incident and when the
9 line-up was done was six days in this case. It was kind
10 of a long length, six days.

11 THE COURT: Does that case say six days is a
12 long length of time?

13 MR. ROBINSON: It just gives the elements, Your
14 Honor.

15 THE COURT: I understand that, I'm familiar with
16 the elements, Mr. Robinson, that's your assessment, okay.

17 MR. ROBINSON: But, Your Honor, as far as the
18 accuracy of what he said, he gave -- he didn't as far as a
19 mentioning a goatee and so forth in this case, were
20 different -- different statements regarding the build and
21 so forth like that. It wasn't exactly on target each time
22 he talked to the officers. But as far as the degree of
23 attention, he testified that he saw this person out of the
24 corner of his eye and then he saw him at some point when
25 he got put down on the ground. He didn't testify as far

1 as how long it took in this case. But I'd ask the Court
2 to consider that -- all four factors -- or five factors in
3 this case. When we don't think that...

4 THE COURT: Certainly the factors are important
5 but the true question here is that whether or not the
6 identification was unduly suggestive. And if it was then
7 reliable, so reliable that there's no substantial
8 likelihood of misidentification. This is a question the
9 jury will have to access whether the identification is
10 sufficient. That's a jury question. I find that's
11 nothing unusual about the photo array. That the fact that
12 really is totally not suggestive at all. And I find the
13 witness testified and he indicates the length of time that
14 he had and his focus was certainly there. He had every
15 reason to be looking at him. He said he thought he was
16 going to be shot. So I think that's probably a heightened
17 awareness of what was going on. And he certainly had that
18 opportunity to view him straight face-to-face. And had a
19 period of time to observe this man. So I find there's
20 nothing unreliable about it and therefore I deny your
21 motion. Thank you.

22 Okay, what else? Any other legal issues?

23 MS. TESSITORE: Your Honor, I think one was just
24 the issue of sequestration and I'm not sure...

25 THE COURT: I haven't heard.

1 MR. ROBINSON: I'd would like to have the
2 witnesses sequestered, Your Honor.

3 THE COURT: All witnesses will be sequestered,
4 Defense and State's.

5 MS. TESSITORE: Other than the victim.

6 THE COURT: Other than the victim.

7 MS. TESSITORE: And the investigating officer.

8 THE COURT: And the investigating officer.

9 Detective Flavell, is that the investigator --

10 MS. TESSITORE: Yes, sir.

11 MR. ROBINSON: Your Honor, I do have one motion
12 in limine, Your Honor, when she finishes with her stuff.

13 THE COURT: Okay.

14 MR. ROBINSON: May it please the Court?

15 THE COURT: Yeah.

16 MR. ROBINSON: Your Honor, Officer Flavell
17 stated that he, in his notes, he had a statement from this
18 individual regarding -- regarding -- he said that it was
19 you know, in his statement he says that, I don't want to
20 have an innocent person convicted. I think that's a
21 self-serving statement in this case.

22 THE COURT: Well I appreciate that. You can
23 cross-examine him all day long. It's not any statement.
24 If he wants to testify he can testify to anything he wants
25 to Mr. Robinson. Thank you, sir. I'm not restricting a

1 person from testifying. Thank you. He doesn't have to
2 put it in his statement to be able to testify to it.
3 Appreciate that, motion's denied.

4 What else? Any other motions?

5 MS. TESSITORE: None from the State, Your Honor.

6 THE COURT: Okay, we have our jury present?

7 THE BAILIFF: Yes, sir, Your Honor.

8 THE COURT: All right, State ready to proceed?

9 MS. TESSITORE: Yes, sir.

10 THE COURT: Defendant's ready to proceed?

11 MR. ROBINSON: Defense is ready, Your Honor.

12 THE COURT: Okay, let's bring in our jury,
13 please.

14 (WHEREUPON, the jury came into open court at
15 approximately 2:40 p.m.)

16 THE COURT: Thank you, very much, ladies and
17 gentlemen. I hope you had a good lunch. We're ready now
18 to continue the process that we started before we recessed
19 for lunch. Let me talk to you about the seating
20 arrangements. Get my list if I could. There's nothing
21 magic about any of the seats really. They're three seats
22 that are designated, two right now. One will be occupied by
23 Mr. Jenkins. Is Mr. Jenkins on the end?

24 Mr. Jenkins -- no, excuse me, not Mr. Jenkins.
25 No wonder. I don't think y'all are in Hampton, that was

1 elements of those crimes. Then after hearing that you
2 will be instructed to return to your jury room and resolve
3 this case fairly and impartially as I know that you will.
4 It's an honor to serve with you as a Judge. Thank you for
5 your attention to my remarks. I ask you to give that same
6 attention now to the attorneys as they give their opening
7 statements.

8 Solicitor.

9 MS. TESSITORE: Thank you, Your Honor. May it
10 please the Court.

11 THE COURT: Yes, ma'am.

12 OPENING STATEMENT

13 MS. TESSITORE: Mr. Thomas.

14 Good afternoon, ladies and gentlemen of the
15 jury. I'm going to talk to you a little bit about three
16 things. The first is going to be basically the business
17 at hand. The second thing is going to be a road map of
18 the case so you'll have an idea of where we're going. And
19 then finally a elements checklist of sorts as, Your Honor,
20 told you. He's going to give you the law at the end of
21 this case. But the State sometimes will provide you a
22 quick road map of those elements just so you'll have them
23 in mind and you can use them as a checklist as you hear
24 the evidence. And you can say, Oh, did they prove that he
25 was robbed? Did they prove that something was taken? So

1 there's going to be those elements where you're going to
2 use those.

3 But first, I just want to start with the idea of
4 a lottery ticket. Some people buy lottery tickets because
5 they feel lucky. Some people buy lottery tickets because
6 they hope they'll get lucky. Some people buy lottery
7 tickets because they open a fortune cookie and there's
8 some numbers on the back and they figure, I should go buy
9 a lottery ticket. In this case, Mr. Gordon, Michael
10 Gordon, the victim in this case, he went and he was hoping
11 he would get lucky and bought a lottery ticket back in
12 July of 2009. He put that ticket in his pocket, hoping
13 that he would get lucky so he wouldn't have to work the
14 second job that he was working when this incident
15 occurred. He was doing some painting for a property
16 manager here in Greenville on Forrest Street in the city
17 limits.

18 And he went to that job with his lottery ticket
19 in his wallet, tucked away. And it turns out, as he'll
20 tell you at the end of this case, or excuse me, when he
21 testifies, he'll get up here and say the only thing he
22 really felt lucky about was being able to walk out of that
23 unit where he was washing up after he had painted.
24 Because he really was only armed with a paint brush goes
25 down to Unit D. And you'll hear the victim testify that

1 when he got there he just went to wash his hands and
2 that's when the Defendant walked in.

3 And the evidence will show that the Defendant
4 was there and he was there to mean business, serious
5 business. He demanded the victim to get down on the
6 floor, he ordered him at gun point, the evidence will show
7 that it was a black automatic handgun. He told him to get
8 on the floor and he went through his wallet, tried to take
9 whatever he had in the wallet. And the victim will tell
10 you that what he was doing is he was riffling through his
11 wallet. And what he was thinking. And what he tried to
12 do as he laid on the floor hoping that he will be able to
13 walk out of there.

14 The State has business, too. And in this case
15 the State's business is to seek justice for the people of
16 Greenville County and for this victim, Mr. Gordon. That's
17 what we're here for. Your business is, as the Judge said,
18 to be the finders of facts, the judges of the facts.
19 You're not here to judge any particular person. You're
20 here to judge the facts, the evidence that the State's
21 going to present to you. Then you determine, with your
22 common sense, whether -- and your logic and everything
23 else, Your Honor told you, you know, just the basics.
24 Something that you can't carry in here in a suitcase. You
25 can't bring in here with a fancy phone that as all sorts

1 of apps on it. There's no apps or common sense. You
2 haven't -- and that's why you were chosen today to be on
3 this jury. And with that you will decide -- that will be
4 your tool as you decide the facts of this case.

5 Now, the road map that I'm going to give you,
6 essentially, so you'll know what to expect. You're going
7 to hear from the fact witness, first of all. That's going
8 to be Mr. Gordon. He's going to tell you, again, what
9 happened that day. Why he was there, what he saw. And
10 he's going to explain to you, you know, what -- what was
11 taken out his wallet. He's going to explain to you what
12 he did as a result as soon as this happened. He called
13 911. And the evidence will show that then this officer
14 arrived, Officer Bradley. And you'll here from two
15 investigating officers. You're going to hear from Officer
16 Bradley who responded out to the victim and met with the
17 victim, shaking, got to the description out of him. And
18 he was able to relay that law enforcement to try to put
19 that out to other officers so they could be on the lookout
20 for this other person. And gave a good, physical
21 description of him.

22 The next witness that you're going to hear from
23 is Detective Flavell. Detective Flavell, who's seated
24 here at the State's table, he was assigned to investigate
25 this case based on what Officer Bradley was able to find,

1 based upon what the victim told him and based on something
2 that this Defendant left behind at Unit D where the victim
3 was held up at gun point. And you're going to hear them
4 tell you about a photo array process. And you'll hear
5 Detective Flavell testify about the victim's
6 identification in this case. And how sure he was.

7 MR. ROBINSON: Objection, Your Honor, I think
8 this is going to argument.

9 THE COURT: Overruled.

10 MS. TESSITORE: You'll also hear from the
11 forensic witness. Witnesses who came to retrieve certain
12 evidence there from the crime scene. You're going to hear
13 from the arresting officer, Officer Mike Aiken, who found
14 this Defendant two months later at a motel room. And he's
15 going to tell you what he found at that hotel room with
16 this defendant. You're also going to hear a chain of
17 custody witnesses, people who work in property and
18 evidence department down at the Law Enforcement Center
19 where they maintain records, they maintain evidence in the
20 case to make sure it's not tampered with, that it's
21 secured, that it can be tested, that it can be tested at a
22 later time. And you'll hear from those witnesses as well.

23 And finally, a forensic expert who will tell you
24 about what the tests were that were conducted and what the
25 results were. And how those results lead to this

1 Defendant. All of those witnesses, probably about ten,
2 maybe a couple more, maybe a few less, hopefully. Will
3 tell you about what, when, where and most importantly in
4 this case, the who. That's the main case, the main issue
5 in this case is identity. So the Defendant in this case,
6 he answered these questions by his own actions as
7 Mr. Gordon with tell you. He, as I said, left his
8 identity behind. He left his physical description etched
9 in Mr. Gordon's memory.

10 The checklist that you will -- I'd ask you to
11 keep in mind as far as the law goes, is well, first of
12 all, the charges the Judge told you at the beginning.
13 Armed robbery, possession of a weapon during the
14 commission of the armed robbery and burglary, third
15 degree. Let's start with burglary, third degree. Very
16 simply. Entering a building without consent of a person
17 who owns it and with the intent to go in to commit a crime
18 inside. Three elements. Very simple checklist right
19 there. The armed robbery is unlawful taking of money,
20 goods or other personal property of any value from the
21 person of another by violence or putting that person in
22 fear while armed with a deadly weapon or what appears to
23 be a deadly weapon. And finally, the possession of a
24 firearm during the commission of a violent crime is
25 exactly what it says, possession of that firearm,

1 physically displaying it during the commission of a
2 violent crime, being armed robbery. So that's the
3 elements checklist.

4 And you're, as the Judge said, this Defendant is
5 presumed innocent until and unless the State provides the
6 firm grounds, the firm solid footing upon which you could
7 base a verdict. If you're firmly convinced that he is
8 guilty, then the State has done its job. And I would
9 submit that as Mr. Gordon was hoping to get lucky that
10 day, the Defendant was also hoping to get lucky. And he
11 did because he found Mr. Gordon all by himself.

12 The evidence will show that there was a crime of
13 opportunity, he took the opportunity but his luck has run
14 out. And the evidence -- that luck began running out when
15 the evidence started to match. And that is left at the
16 scene and then the evidence that you will hear from each
17 subsequent witness, until the end of this case when I'll
18 stand before you and provide you the evidence to plead to
19 you to enter a true verdict at the end of this case. And
20 that would be guilty. Thank you.

21 THE COURT: Thank you, Ms. Tessitore.

22 Mr. Robinson.

23 OPENING STATEMENT

24 MR. ROBINSON: Good afternoon, my name is Scott
25 Robinson. Mr. Thomas is innocent. You may look at him

1 and think, well he's got deadlocks and so forth but he's
2 innocent. When you come into this courtroom all you
3 really have to have is common sense. And you take your
4 life experiences and so forth, look at all evidence
5 presented by each party and make a decision based on
6 common sense.

7 As the Judge told you a few moments ago, this
8 issue, this idea of beyond a reasonable doubt in this
9 case, the State cannot establish to you beyond a
10 reasonable doubt of Mr. Thomas' guilt. Why? Many of you
11 when you were kids may have had horse shoes, played horse
12 shoes with your father, mother, friends and so forth. And
13 the idea was that if a horse shoe was leaning up against a
14 post or something like that, it was almost there and that
15 was good enough. In this case, almost is not good enough.
16 It's beyond a reasonable doubt. And you are the persons
17 who have to look at the facts in this case and determine
18 whether or not the State has proven their case beyond a
19 reasonable doubt.

20 And the statements that I want you to pay
21 attention to are from the victim. Almost positive, I'm
22 just about a hundred percent, pretty sure. Ladies and
23 gentlemen, that counts in horse shoes and hand grenades my
24 dad use to say, it doesn't count in a court of law.

25 Now many of you may have seen different car

1 accident cases and so forth and different administrative
2 cases where the standard of proof is lower. It's
3 preponderance of the evidence. A little bit more means
4 that they're liable. That's off the table, that's not the
5 case. When you took an oath a few moments ago, that's
6 gone. It's beyond a reasonable doubt. I ask you in this
7 case, to look at the evidence and look at the lack of
8 evidence in this case. As I told you before, almost,
9 positive, just about a hundred percent sure, pretty sure,
10 is not enough. This is not a popularity contest we're
11 talk about, this is a court of law. Mr. Thomas is
12 innocent on these charges by the State. I ask you to
13 return to a verdict that speaks the truth and that he is
14 not guilty of these charges. Thank you.

15 THE COURT: Thank you, Mr. Robinson.

16 You may call your first witness, Solicitor.

17 MS. TESSITORE: Thank you, Your Honor.

18 Michael Gordon.

19 THE CLERK: Mr. Gordon, if you'd, please, come
20 forward. If you'd pause at the end of the bench. Place
21 your left hand on the Bible, raise your right.

22 MICHAEL GORDON, after being duly sworn,
23 testified as follows:

24 THE CLERK: Thank you, please be seated. State
25 your name for the record.

1 THE WITNESS: Michael Gordon.

2 DIRECT EXAMINATION

3 BY MS. TESSITORE:

4 Q Mr. Gordon, can you tell the jury where you work?

5 A America Tire Distributors in Mauldin.

6 Q What do you do there?

7 A I drive a truck, delivering tires basically in the
8 upstate.

9 Q How long have you lived in the upstate?

10 A Pardon?

11 Q How long have you lived in the upstate?

12 A Seven years.

13 Q And where did you live before that?

14 A In Hendersonville, North Carolina.

15 Q What do you do as far as -- well let me take you back
16 to 2009? What kind of work were you doing then?

17 A I was doing a side job painting.

18 Q In addition to the --

19 A American Tire.

20 Q And did you hold the same position with the tire
21 company?

22 A Yes.

23 Q What were your hours at that time at the tire
24 company?

25 A I'd go in about 4:00 and get off -- 4:00 in the

1 morning and get off between most time around 1:00 --

2 between 1:00 and 2:00.

3 Q So you had time to do a second job?

4 A Yes.

5 Q All right. Tell the jury how you come to have this
6 second job that took you to Forrest Street where this
7 incident happened?

8 A I met a guy that his wife was a property manager and
9 she needed some assistance on fixing up some of the
10 apartments as people moved in and out of them as
11 painting them, doing -- just fixing certain --
12 whatever.

13 Q Okay. How many units were there?

14 A Four.

15 Q And just generally describe for the jury what kind of
16 apartment structure we're talking about.

17 A It was basically two different buildings with two
18 apartments at each building. They was two stories.
19 It was a three bedroom apartment. There was a
20 kitchen, dinning room and bath.

21 Q Okay. And -- and had you -- how long had you been
22 working out there prior to the incident date of
23 July 22nd?

24 A Approximately a week.

25 Q And what kind of work were you doing?

1 A Panting.

2 Q Now, had you worked the week before this incident
3 or -- I mean, what was your typical schedule going
4 out there to Forrest Street to do this panting?

5 A I would do it basically in my spare time. When I had
6 time to do it. I mean, I wasn't out there everyday.

7 Q What specifically took you out there on July 22nd?

8 A Because I was trying to get it finished up.

9 Q When you say, It finished up, what exactly are you?

10 A Painting in apartment A.

11 Q Okay. And how -- how about -- how long did it take
12 you to paint apartment A?

13 A Roughly a week.

14 Q Okay. Did you work on the weekends?

15 A Yes.

16 Q So is this Wednesday that this happened?

17 A Yes.

18 Q So you would be done about week before that?

19 A Yeah, roughly. Like I said, I didn't work everyday.
20 It was just when I got a chance.

21 Q Did you work by yourself?

22 A Yes.

23 Q Any helpers at all?

24 A No.

25 Q Did -- where did you do the painting at Unit A?

1 A I...

2 Q I mean, inside, outside?

3 A Inside apartment A.

4 Q All right. And did you have a vehicle?

5 A Yes.

6 Q Where would that vehicle -- typically where would you

7 park it?

8 A Outside in the front of the units.

9 Q All right. And while you were there working on this

10 paint job, did you ever, while you were in Unit A,

11 did you ever have any perspective -- well let me back

12 up. Unit A, was it vacant?

13 A Yes.

14 Q All right. And while you were there at Unit A, did

15 you ever have anybody come up and ask to look at the

16 apartment?

17 A No.

18 Q All right. Let me show you -- first, just to give

19 the -- one minute.

20 Can you mark this?

21 THE COURT REPORTER: Yes.

22 (WHEREUPON, State's Exhibit No. 3 was marked for

23 identification only.)

24 BY MS. TESSITORE:

25 Q Okay. Mr. Gordon, I'm showing you what's been marked

1 as State's Exhibit No. 3. Just ask you to take a
2 look at that. Do you recognize that?

3 A Yes.

4 Q What is that?

5 A That's Forrest Street apartments that I was at.

6 Q All right. Is that a fair and accurate description
7 of the area in question?

8 A Yes.

9 MS. TESSITORE: And at this time I would move,
10 State's Exhibit No. 3 into evidence.

11 THE COURT: Any objection?

12 MR. ROBINSON: No objection.

13 THE COURT: Without objection State's Exhibit 3
14 is admitted.

15 MS. TESSITORE: Thank you.

16 (WHEREUPON, State's Exhibit No. 3 was admitted
17 into evidence.)

18 BY MS. TESSITORE:

19 Q Mr. Gordon, if you could just step down here...

20 THE COURT: Mr. Gordon, I'll ask while you're
21 down if you'd keep your voice elevated, please. Thank
22 you.

23 BY MS. TESSITORE:

24 Q Mr. Gordon, if you could point out for the jury the
25 apartments that we're talking about.

- 1 A Located right here. Right in here.
- 2 Q Okay. And which -- which is apartment A? Where were
3 you?
- 4 A Well from a bird's-eye view you have to look,
5 apartment A would be right here on this end.
- 6 Q Okay. And what are the other apartments?
- 7 A And this roughly right in here would be apartment B.
8 Here's C and here's D.
- 9 Q Okay. And is this area, were you familiar with this
10 area?
- 11 A Yeah.
- 12 Q If you could, tell the jury where, roughly, where
13 this is in Greenville?
- 14 A This is Washington Street, which the post office is
15 back up here. Then right here is the train trestle,
16 here's the train station right in here. To get here
17 you have to come up right up in here to the train
18 station, make a hard left turn by it, then come back
19 down Forrest Street here. And there's actually a
20 parking lot here but it's hard to tell but there's
21 dirt and that's the way I also went to park, right in
22 front of all the apartments.
- 23 Q So that's where you would park?
- 24 A Yes, right in front.
- 25 Q Okay. Just describe as far as the amount of foot

- 1 traffic when you were out there.
- 2 A You'd see people walking, riding bicycles, cars on
- 3 Washington Street a lot.
- 4 Q Are there any bus stops around there?
- 5 A Yes, I think the bus stop's somewhere right in here,
- 6 not exactly sure from the overhead view.
- 7 Q Okay. All right, you can take your seat, thank you.
- 8 A (The witness complies.)
- 9 Q And who was the property manager?
- 10 A Jennifer Hallex.
- 11 Q Jennifer Hallex. And would she go out there with
- 12 you?
- 13 A No.
- 14 Q And how did you gain access into the apartments when
- 15 she wasn't with you?
- 16 A She had lockboxes on the door.
- 17 Q Is that on all the doors or just the vacant ones?
- 18 A Just the vacant ones.
- 19 Q Okay. While the Court Reporter is marking those, let
- 20 me ask you, what time when -- when you were out there
- 21 when this incident occurred, approximately what time
- 22 did you head out to those apartments to work that day
- 23 on Wednesday July 22nd?
- 24 A I was out there approximately 3:00, 3:30.
- 25 Q Okay, how long did you work on Unit A?

- 1 A I didn't work long that day.
- 2 Q Okay. What did you do once you finished up?
- 3 A I went from apartment A to apartment D to wash my
- 4 hands.
- 5 Q Okay. And why didn't you wash your hands in A?
- 6 A Apartment A did not have water, running water.
- 7 Q And so tell the jury what you did to go wash your
- 8 hands.
- 9 A I went down to apartment D and the lockbox was on the
- 10 door. I had the combination, unlocked the lockbox,
- 11 got the key and went in. And basically went to the
- 12 sink to wash my hands.
- 13 Q Okay. When you first got over to Unit D and opened
- 14 the lockbox, was that unit also vacant or?
- 15 A Yes, it was vacant.
- 16 Q And did -- did there -- was there any evidence of any
- 17 kind of problems or tampering with the lockbox?
- 18 A No.
- 19 Q Anything that you observed about the door or when
- 20 your entered, anything disturbed?
- 21 A No.
- 22 Q Was there furniture in the apartment?
- 23 A No.
- 24 Q And what was the first room that you see when you
- 25 walk in unit D?

1 A The kitchen, living room, it's pretty much a opened
2 floor plan.

3 Q And are all the units like that?

4 A Well I'm not sure about B and C but yeah, A and D's
5 pretty much the same.

6 Q Okay. I'm going to show you -- one minute..

7 (WHEREUPON, State's Exhibits Nos. 4-13 were
8 marked for identification only.)

9 BY MS. TESSITORE:

10 Q Mr. Gordon, I'm showing you what's been marked as
11 Exhibits 4, 5, 6, 7, and 8. Just ask you to go ahead
12 and take a look at those. You can look at them one
13 by one. And let me know when you're done looking at
14 them.

15 A Okay.

16 Q All right. And looking at those, what are those?

17 A This is a picture of the front of the apartments.

18 Q You're talking about State's Exhibit 4?

19 A Yes. This is a picture of Apartment A as State's
20 Exhibit 5. This is the front door of Apartment D,
21 State's Exhibit 6. This is standing in the front of
22 Apartment D, looking to the right, be Exhibit 7. And
23 this is in front of Apartment D around the corner,
24 going towards the other side of the apartment,
25 Exhibit 8.

1 Q Okay. And are those photograph, are those fair and
2 accurate depictions of the way it appeared back in
3 July of 2009, roughly?

4 A Yes.

5 MS. TESSITORE: State would move Exhibit 4
6 through 8 into evidence.

7 THE COURT: Any objection?

8 MR. ROBINSON: No objection, Your Honor.

9 THE COURT: Without objection, State's Exhibits
10 4 through 8 are admitted, each being a photograph.

11 (WHEREUPON, State's Exhibits Nos. 4-8 were
12 admitted into evidence.)

13 BY MS. TESSITORE:

14 Q So, looking at State's Exhibit No. 4 -- actually
15 might be easier if you just step down. Can you
16 explain to the jury what State's Exhibit No. 4?

17 A This is the front of the apartments which A would be
18 here, B, C and D would be right here.

19 Q Okay, and number 5?

20 A Number 5, that's just the front door of the Apartment
21 A.

22 Q That's where you were doing the...

23 A That's where I was doing the painting.

24 Q Okay. And would your vehicle -- where would your
25 vehicle be?

1 A It would be -- it's right here. Right up here.

2 Q And State's Exhibit No. 6?

3 A That's the front door of Apartment D where I got
4 robbed.

5 Q Okay. And is that -- what around the corner from...

6 A There's just trees. I think there's a house back up
7 in here. That's basically it.

8 Q Okay. And now that does not have a lockbox on the
9 knob. Did it at the time?

10 A It did at the time.

11 Q Okay. Was -- let's see, looking at number 7?

12 A That would be standing in front, the apartment would
13 be right here. That would be standing in the
14 apartments looking straight, basically.

15 Q Okay. And No. 8, what is that view?

16 A That's the door to Apartment B would be here and
17 that's just going around the corner to go around the
18 whole apartment.

19 Q Okay. So that's the exterior around the unit where
20 you were?

21 A Yes.

22 Q When you got robbed. Okay. You can take your seat
23 back.

24 A (The witness complies.)

25 MS. TESSITORE: Your Honor, the State would

1 request to publish these to the jury.

2 THE COURT: I think they've seen them but that's
3 fine.

4 Ladies and gentlemen, from time to time exhibits
5 that are introduced may be handed to you. If you'd just
6 look at them, pass them along. But know that any exhibits
7 that are introduced into evidence will accompany you to
8 your jury room. You can study them in more detail, in
9 depth, at that time.

10 BY MS. TESSITORE:

11 Q Now, I'm just going to run through, showing you
12 State's Exhibit 9, 10, 11 and 12 and 13. If you'd
13 just take a look at those. Do you recognize those?

14 A I'm not sure what that one is.

15 Q Okay. Which ones -- looking at State's 9 through 12,
16 do you recognize those?

17 A Yes.

18 Q Okay. And what are those?

19 A That's the apartment D.

20 Q Okay. And what is -- let me ask you this. Are those
21 fair and accurate depictions of the way the unit
22 appeared just as far as when you walk in the door and
23 what you would see regarding the countertops, kitchen
24 area?

25 A Yes. I mean, everything except -- besides the

1 apartment was vacant at the time.

2 Q Okay.

3 MS. TESSITORE: State would move 9 through 12
4 into evidence.

5 THE COURT: Any objection?

6 MR. ROBINSON: If I can see them.

7 THE COURT: Certainly.

8 MR. ROBINSON: No objection, Your Honor.

9 THE COURT: Without objection State's 9 through
10 12 are admitted, each being a photograph.

11 (WHEREUPON, State's Exhibits Nos. 9-12 were
12 admitted into evidence.)

13 BY MS. TESSITORE:

14 Q Mr. Gordon, what I want you to do is tell the jury
15 when you went in to wash your hands, what was the
16 lighting like in that unit D that you went into?

17 A It was well lit.

18 Q Was there electricity?

19 A Yes.

20 Q Were there windows?

21 A Yes, there were two windows and a big sliding glass
22 door.

23 Q Were there curtains on the windows?

24 A No.

25 Q At the time. And did you -- where did you go once

1 you went in the apartment?

2 A Straight to the sink.

3 Q And what did you do at the sink?

4 A Washed my hands.

5 Q Did you have anything that you brought in with you?

6 A No.

7 Q And was anyone inside that apartment or around that

8 you noticed when you went in?

9 A No.

10 Q Had you seen anything suspicious or particular before

11 you went in there?

12 A No.

13 Q And what happened as you were washing your hands

14 there at window?

15 A The door kind of swung opened.

16 Q Well when you -- let me back up. When you went in,

17 did you close the door behind you?

18 A No, I just pushed the door.

19 Q Did it shut all the way?

20 A It did not shut, it just kind of closed.

21 Q Closed meaning?

22 A It did not latch.

23 Q Okay. So you didn't hear -- you didn't hear the

24 latch or door closing completely?

25 A No.

1 Q All right. And so as you're washing your hands --
2 I'm sorry I interrupted you, what happened?
3 A As I was washing my hands the door moved. I thought
4 it was the wind so I just kept washing my hands.
5 Then the door come open.
6 Q Okay. What did you see when the door opened?
7 A I saw him standing in the door.
8 Q Okay. And had you ever seen him before?
9 A No.
10 Q What happened?
11 A I looked at him, I said, Can I help you?
12 Q Okay. When he came in, how was he dressed?
13 A In a black tank top and black shorts.
14 Q And did he -- did you get a good look at him at that
15 moment?
16 A Yes.
17 Q What was -- how would you describe him physically?
18 A Black male, long dreadlocks, mustache, goatee,
19 approximately 5'10.
20 Q What about his build?
21 A Just a medium build.
22 Q Was there anything unique about him that stood out to
23 you?
24 A Just the dreadlocks and I don't know. Other than
25 that I don't guess.

1 Q Okay. Did he have anything in his hands when he
2 first came in?

3 A No.

4 Q And when you asked him, Can I help you? Did you know
5 why he was there at first?

6 A Had no idea.

7 Q Did you turn away from the sink at all when you spoke
8 to him.

9 A No, I just turned my head when I spoke.

10 Q Okay. And you turned your head in which direction?

11 A To the right.

12 Q And that would be towards the -- so where were you
13 looking at him?

14 A He was standing in the door.

15 Q Okay, so he was still in the doorway?

16 A He stepped in the door.

17 Q All right. Did he shut the door behind him?

18 A No, he just pushed it, I guess. Because it was
19 basically like I did, it never did latch.

20 Q And so then what happened at the point when you asked
21 him, Can I help you?

22 A He pulled a gun out of his left front pocket, told me
23 to get on the floor.

24 Q And what was your response to that?

25 A I done what he said.

1 Q Did you have to move away from the sink?

2 A No, I was turned and I just laid -- went straight
3 down to the floor.

4 Q Okay. I'm going to show you State's Exhibit No. 12.
5 And again, what does that show?

6 A That's the kitchen.

7 Q Okay.

8 A Front of the sink.

9 Q All right. And how -- approximately how far away was
10 he from you when you first saw him?

11 A 10, 12 feet.

12 Q Okay. Was there any other window other than the
13 window over the sink?

14 A Yes, there's another window here beside the
15 refrigerator.

16 Q Okay.

17 A And the sliding glass door.

18 Q And the sliding glass door, is that in the kitchen?

19 A Just offhand to the living room.

20 Q Okay. If you could, probably just easier, if you
21 could step down. So everybody can hear you. And
22 just describe, if you could, just stand with your
23 back this way and that way, there you go. Describe
24 to the jury where you were and where he was and what
25 happened there?

1 A Roughly right in here is the sink. Here is the door,
2 that you see the door handle. And he walked in, he's
3 standing approximately right here when he first
4 walked in.

5 Q And where were you when he first walked in?

6 A I was standing at the sink.

7 Q Okay. Then when -- when he told you to get on floor,
8 where did you go?

9 A I laid face down. My head was kind of this way
10 towards the door. I was laying face down right here
11 on the floor.

12 Q And what was he doing while you were on floor?

13 A He walked in and straddled my legs as I was laying
14 face down.

15 Q Why did he do that?

16 A He grabbed my wallet.

17 Q Where was your wallet?

18 A In my right, back pocket.

19 Q Okay. Did he grab anything else?

20 A My cell phone.

21 Q What happened at that point?

22 A He said something I couldn't understand and I kind of
23 turned my head. And when I did, he poked the pistol
24 between my shoulder blades. And he started looking
25 through everything in my wallet. And he told me-- I

1 asked him not to kill me. I have a wife and kids.

2 And he said, I ain't here to kill you, I just
3 want your money.

4 Q And so were you able to look at him after that? Did
5 you make any attempt to?

6 A No, I was afraid I was going to get shot.

7 Q Could you tell what he was doing while you were
8 laying on the ground?

9 A He laid my wallet up on the counter, I could hear him
10 scuffling around and stuff. And then he said he was
11 wiping stuff down, told me not to look up for a few
12 minutes. I heard him go out the door.

13 Q Did you hear the door -- when you got up were you
14 able to see out the door?

15 A No, the door was pulled to.

16 Q Was it closed all the way?

17 A No.

18 Q What did you do?

19 A I just -- I got up and all my stuff was laying on the
20 counter. I didn't bother to put it back up, I just
21 grabbed everything up and went to the truck. As I
22 come out the door I did lock the door. I went to the
23 truck and called 911.

24 Q Okay. Take your seat.

25 A (The witness complies.)

1 MS. TESSITORE: Your Honor, the State would
2 request to publish 9 through 12 to the jury.

3 THE COURT: You may do so.

4 BY MS. TESSITORE:

5 Q Now, Mr. Gordon, when you say you got your stuff off
6 the counter, gathered it up, went out and called 911,
7 what was it that was on the counter there?

8 A I had like Lowe's, Home Depot card, I had a debit
9 card, just receipts. Just like little business
10 cards, stuff like that.

11 Q Okay. Did you have any cash in there?

12 A I did realize that I had \$26.00 tucked away. I
13 didn't realize it at the time until I started putting
14 everything back together.

15 Q Okay. Can you describe to the jury just a little bit
16 about the wallet that you had and where the money was
17 and...

18 A It was a -- at the time I had a trifold wallet. I
19 don't know if you understand what a trifold is but --
20 can I pull my wallet out?

21 Q Sure.

22 A I've got a bifold wallet now and it's got little
23 pockets like right in here. I had like 26 bucks hid
24 back in here. Hiding it from my wife, I guess.

25 But -- but I didn't realize it until I was out there

1 putting everything back in my wallet.

2 Q And where was the lottery ticket?

3 A The lottery ticket was just up front. I mean, it was
4 like right here. Just down where you stick your
5 money.

6 Q So --

7 A And I put the lottery ticket in the same place I put
8 it every time I buy it, right there. That way when I
9 know it's time to check them, I know where it's at.

10 Q All right. What kind of lottery ticket was that?

11 A Power Ball.

12 Q When was the drawing for that?

13 A It was that night, it was that Wednesday night..

14 Q So you don't know if teffs even a winning ticket yet?

15 A No.

16 Q Do you recall how much you paid for it?

17 A Three dollars.

18 Q So how quickly did he go through your wallet and the
19 items inside?

20 A It was, I would say it was pretty quick. I mean, you
21 know, I just -- I had all kinds of things going
22 through my mind, I didn't set there with a watch and
23 try to time everything.

24 Q Of course. Did -- so what was missing? Were you
25 able to figure out what was missing?

1 A The only thing I figured out was missing -- I mean, I
2 had my debit card. That was the only thing of value.
3 And I still had it. The only thing I figured out was
4 my lottery ticket was gone.

5 Q So no quick cash if someone were to go in your wallet
6 to try to find it quickly?

7 A No.

8 Q And when you went out and called 911, where did you
9 go out to call 911 from?

10 A I went out to my truck.

11 Q Was anyone out there when you went out there?

12 A No.

13 Q Were you able to see how the robber left or how, you
14 know, as far as foot, car?

15 A No, I could not tell.

16 Q Did -- so you went to your vehicle and called 911.
17 And what kind of response did you get?

18 A Dispatcher come and asked me where I was, what I
19 needed, excuse me, and where I was at.

20 Q So did an officer come out?

21 A Yes.

22 Q And were you able to -- was that Officer Bradley?

23 A Yes.

24 Q And when you met with Officer Bradley -- about how
25 long did it take them to get out there,

1 approximately?

2 A Like I said, I'm not exactly sure. I couldn't tell
3 you. I was nervous and I that part I don't remember.

4 Q Okay. Were you still feeling the effects of what had
5 just happened?

6 A Yes.

7 Q And when Officer Bradley got out there, what did you
8 do?

9 A Well I was still on the phone with dispatch and
10 they -- I seen him coming so I told them -- then I
11 got out of the truck, he was pulling into the parking
12 lot.

13 Q Okay.. Did you speak to him?

14 A Yes.

15 Q Did you tell him what had happened?

16 A Yes.

17 Q Were you able to provide him the description that you
18 gave here today?

19 A Yes.

20 Q And did he take a statement from you as well?

21 A Yes.

22 Q Did you try to provide that information in the
23 statement?

24 A Yes.

25 Q Did -- how would -- you how would you describe the --

1 you said a mustache and a goatee, right?

2 A Yes.

3 Q How would you describe it compared to, I guess, the

4 width and shape?

5 A It was just --

6 Q Of yours.

7 A -- to me a mustache is a mustache and a goatee is any

8 type of hair you can see down here on your chin.

9 Q Okay. And was it -- was there anything about it as

10 far as was it thick, was it thin? I mean, what --

11 can you describe it just as far as?

12 A I mean, it was just dark. It wasn't real full.

13 Q Did it look like it had been trimmed or did it look

14 scruffy?

15 A No, it had been trimmed.

16 Q Okay. Did -- did he have any glasses on or anything

17 or obscuring his face?

18 A No.

19 Q Anything on his head?

20 A No.

21 Q Other than the dreadlocks?

22 A No.

23 Q And were you able to look at him more than just out

24 the corner of your eye?

25 A Yes, I turned my head.

1 Q At some point did you ever face him face-to-face?

2 A Yes.

3 Q When was that?

4 A While I was standing at the sink. Then when I said,
5 Can I help you? And then I turned. And that's when
6 he pulled the gun out and said, You need to get down
7 on the floor on your face. And I think I asked him
8 again, I said, Do what?

9 He said, You can get down on the floor on your
10 face.

11 Q Okay. Did -- were you able to see what he had in his
12 hand? You said it was a gun?

13 A All I could tell it was black pistol and I knowed
14 [sic] it was an automatic.

15 Q Did -- are you familiar with guns?

16 A Yes.

17 Q Okay. Just one moment, please. Okay. Now, as this
18 was going on, did you make any effort to try alert
19 anyone as it was happening?

20 A No.

21 Q And why not?

22 A Well I had a gun pointed at me. If I screamed or
23 hollered, I'd likely got shot.

24 Q And when you came out, did you go to the neighbors,
25 did you see anyone or try to talk to anyone before--

1 A No, I went straight to the truck because of the way
2 the apartment was, I -- I didn't know if he was
3 waiting outside or not. I went straight to the
4 truck.

5 Q And did -- after Officer Bradley got out there, spoke
6 with you, got the description, did -- did any other
7 officers come out there?

8 A Yes, forensics came out and took fingerprints.

9 Q And did you talk to that officer?

10 A Yes. I took him back into the apartment. So he
11 could do what he had to do.

12 Q And when you went into the apartment, did you speak
13 with him in there?

14 A I just -- I told him where I was at and where all my
15 stuff was and that he had said, you know, that he was
16 wiping everything down.

17 Q Okay. So you showed him where this took place?

18 A Yes.

19 Q All right. And after--

20 THE COURT: Solicitor, at this point let's take
21 a break. I hate to interrupt your examination.

22 Ladies and gentlemen, I'm going to let you go to
23 your jury room, do not begin your deliberations, do not
24 discuss the case. We'll with you in about 10 minutes.
25 Thank you, you may retire to your jury room.

1 (WHEREUPON, the jury left open court at
2 approximately 3:50 p.m.)

3 THE COURT: Sorry, to interrupt you, Solicitor.
4 We've been here -- Ms. Herron has been very patient and
5 kind, been going for over two hours. So I think it's time
6 to give her a break and me a break and you and everybody
7 else a break. So I apologize for the interruption.

8 Mr. Gordon, during this break you may have step
9 down but do not have any conversation with any of the
10 lawyers, please.

11 We'll be ease for 10 minutes, please.

12 Anything from the State before we recess?

13 MS. TESSITORE: Your Honor, just briefly. This
14 is -- we're getting close to the point where I will be
15 showing the witnesses the gun that has been -- that was
16 seized.

17 THE COURT: You're welcome to show him whatever
18 you want to show him.

19 MS. TESSITORE: Yes, sir.

20 THE COURT: But I don't know that he'll be able
21 to identify it. Just have it marked for identification.

22 MS. TESSITORE: Right. But I just wanted to
23 alert the Court just because of the firearms policy. It's
24 all strapped down into a box.

25 THE COURT: That's fine. Okay.

1 MS. TESSITORE: Okay.

2 THE COURT: All right, anything from the
3 Defendant before we recess?

4 MR. ROBINSON: No, Your Honor.

5 THE COURT: We'll be at ease for 10 minutes,
6 please.

7 THE WITNESS: May I go to the bathroom?

8 THE COURT: Yes, sir, you're sure can. Just
9 don't have any conversation with any of the attorneys.

10 (WHEREUPON, a short break was taken.)

11 MR. ROBINSON: Your Honor, before the jury comes
12 in, if I could just -- I think in a few moments she's
13 going to try to use the gun.

14 MS. TESSITORE: I'm not going to use--

15 MR. ROBINSON: Show the gun they found in the
16 hotel room. I'm going to object that -- to much of that.

17 THE COURT: Okay.

18 All right, let the record reflect Mr. Thomas is
19 present.

20 What's the firearm that you're going to show?

21 MS. TESSITORE: Your Honor, it is a black with
22 some silver on the grip, automatic pistol that was seized
23 when the Defendant was arrested, two months later, he was
24 in a motel room. No one else was in the motel room but
25 him. And there was a pouch within his grabbing area that

1 was seen by the officer who was making the arrest. For
2 officers safety, he picked up the pouch, felt like what
3 was inside was a gun. he opened it, there was a black
4 semi-automatic pistol that was similar in color and style
5 as far as it being automatic and not a revolver. And it
6 was seized.

7 What the State will as show later in this case
8 is that there was also -- well they -- the gun was dusted
9 for print, no prints were found on the gun. However, they
10 went back and looked at a dice game package that was in
11 the same pouch with the gun, and the forensic officer was
12 able to lift a print and that print came back to this
13 Defendant. So there is a fingerprint that the State
14 intends to introduce that makes it even more relevant and
15 highly probative that this was this Defendant's gun, the
16 gun matched the description. The State can proffer the
17 testimony of the victim but that, you know, it's -- I was
18 just going to show the item marked as State's Exhibit for
19 identification 14. And I--

20 THE COURT: How is it going to be shown to the
21 jury?

22 MS. TESSITORE: I was simply going to have
23 the -- I can show, Your Honor. It's in a box and just
24 have him look at the box, open the box, look at it and
25 tell me if he recognizes it, does he know what it is.

1 THE COURT: We'll that's the problem, he can't
2 recognize that. He doesn't know that that's the gun. I
3 mean, it's premature. First of all, for him to say I
4 recognize it, how is he going to recognize that gun as
5 being the gun that was in any way connected to him? To
6 the Defendant? At this point. For him to do that you
7 really are kind of -- you can ask him what does that look
8 like? Does that look like the gun that you saw? That --
9 there was a photograph in the case I was telling you about
10 that I tried last week. He said, Yeah, that looks like
11 the gun. And it was mark marked for 'identification.' But
12 he can't ask him if he recognizes that gun. I'm not going
13 to allow him to speculate. Because he's got to speculate
14 as to whether or not that was the gun or not.

15 MS. TESSITORE: Well I think that -- well I can
16 certainly ask him, Does look like the gun that was used?
17 And then introduce this through the arresting officer.

18 THE COURT: All right, as along as it's not
19 shown to the jury.

20 MS. TESSITORE: Correct.

21 THE COURT: And you can object to it at that
22 time, Mr. Robinson.

23 MR. ROBINSON: I will have an objection when the
24 officer comes forward about this.

25 THE COURT: I'll sure they will, that's fine. I

1 don't know what he's going to testify to yet. But I'll
2 deal with that as it arises. Thank you. Okay.

3 State ready to continue?

4 MS. TESSITORE: Yes, sir.

5 THE COURT: Defendant ready to continue?

6 MR. ROBINSON: Defense is ready, Your Honor.

7 THE COURT: All right, let's bring in our jury,
8 please.

9 (WHEREUPON, the jury came into open court at
10 approximately 4:05 a.m.)

11 MS. TESSITORE: Your Honor, can I just get this
12 premarked?

13 THE COURT: Sure, sure.

14 (WHEREUPON, State's Exhibit No. 14 was marked
15 for identification only.)

16 THE COURT: Very well. I kind of suspected
17 that.

18 Ms. Dunlap, as I understand you've been selected
19 as the presiding juror?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Thank you, very much.

22 Thank you, ladies and gentlemen.

23 That, of course, will be your seat for the
24 balance of the trial. I appreciate it.

25 Thank you, please give your attention now to

1 this witness that's continuing. And I apologize to you.
2 We try to -- I told you when we were qualifying you about
3 hour an a half. And we didn't go quite an hour that you
4 were in here but we started at 1:30. So the Court
5 Reporter and other staff and me included, we needed a
6 short break. So I apologize to you. Thank you.

7 Thank you, Solicitor, you may continue
8 examination.

9 MS. TESSITORE: Thank you, Your Honor.

10 BY MS. TESSITORE:

11 Q Mr. Gordon, going back to the gun that you saw in the
12 Defendant's hand, did -- how did -- can you show the
13 jury how he held that gun when you saw it? How he
14 was holding it?

15 A Just pointing it straight.

16 Q Okay. And was there anything about length of it or
17 size of it that you recall?

18 A All I could see was the barrel. I could tell it was
19 black. I could not tell the length of it.

20 Q Okay. Nothing distinctive about the butt of the gun?

21 A No. I could tell it was not a revolver.

22 Q Okay. And how could you tell that?

23 A A revolver has got a cylinder that turns that as it
24 revolves the shells around and this was flat.

25 Q Okay. I'm going to show you what's been marked as

1 State's Exhibit No. 14. I'm going to ask you to go
2 ahead and just take a look at that.

3 A (The witness complies.)

4 Q If you could just turn it, there you can go. And
5 does that appear similar to the gun that was held in
6 hand?

7 A Yes. I'm not saying that is gun but it's similar to
8 it.

9 Q Okay. You didn't have time to ask for the serial
10 number?

11 A No.

12 Q All right. Let's talk about when -- did you meet
13 with Investigator Flavell after -- let me take you
14 back one step. After you met with the forensics
15 officer, who was the second one to come out there and
16 retrieved evidence, where did you go from there?

17 A I went home.

18 Q Okay. And when you got home did you talk to anybody
19 or talk to the?

20 A No. I got home and I reckon it hit me as to what
21 could have really happened. And I sat down on the
22 porch and just started balling. And I called my
23 momma. Because my wife wasn't home from work yet.

24 MR. ROBINSON: Objection, Your Honor, relevance.

25 THE COURT: I'm going to allow some -- allow a

1 little bit of this but I understand your objection. Let
2 him finish his answer.

3 You may complete your answer.

4 THE WITNESS: But my wife wasn't home from work
5 yet so I didn't have nobody else to talk to. It just, I
6 guess, it just hit me what could have really happened.

7 BY MS. TESSITORE:

8 Q Did you talk with Detective Flavell that day?

9 A No.

10 Q Okay. Did he get in contact with you after that day?

11 A Yes.

12 Q All right. Do you recall meeting with him -- let's
13 see -- well did you speak with him on the phone?

14 A Yes.

15 Q And when did you speak with him on the phone in
16 relation to when this happened?

17 A It was a couple of days later. I'm not exactly sure
18 which day.

19 Q And when you spoke to him a couple days later, were
20 you able to provide him the physical description that
21 you gave Officer Bradley?

22 A Yes.

23 Q And did he schedule a time for y'all to meet?

24 A No, that I recall.

25 Q Did you meet Detective Flavell at the Law Enforcement

1 Center?

2 A Yes.

3 Q Do you recall when that was?

4 A That was six days later.

5 Q All right.. And prior -- well when you met Detective
6 Flavell six days later, where did you meet him?

7 A At the Law Enforcement Center.

8 Q And was anyone else with you?

9 A No.

10 Q Was there any other officer there with Detective
11 Flavell?

12 A No. I mean, there was other officers there but.

13 Q All right.. And when you got there and met with
14 Detective Flavell, what happened?

15 A He took me to his office.

16 Q And what did you do when you got to his office?

17 A He sat down and started telling me -- asking if I had
18 ever seen a photo array. And no. He told me he was
19 going to show me one.

20 Q All right. Did he explain to you what a photo array
21 was?

22 A Yes.

23 Q What did he tell you about that photo array?

24 MR. ROBINSON: Objection, Your Honor, hearsay.

25 THE COURT: Sustained.

1 BY MS. TESSITORE:
2 Q Okay, when you met with him, did he show you a photo
3 array?
4 A Yes.
5 Q And how -- do you recall how many pictures were in
6 the array?
7 A Six.
8 Q I'm going to show you -- in just one moment I'm going
9 to show you State's Exhibit No. 2 and ask you to take
10 a look at that. Do you recognize that?
11 A Yes.
12 Q What is that?
13 A That's the photo array that the Detective Flavell
14 showed me.
15 Q Okay. And did you place any markings on that?
16 A I did.
17 Q What did you -- well first of all, how did Detective
18 Flavell show that to you?
19 A He had it upside down, gave it to me across his desk,
20 laid it front of me.
21 Q Then what did you do?
22 A I picked it up and looked at it.
23 Q Show the jury when you did look at it, how you looked
24 at it and what you did.
25 A I just looked at it, pointed at number five.

1 Q Okay. What -- by pointing on number five, what were
2 you saying?

3 A That that was the guy that robbed me.

4 Q Had you seen any other photographs before that photo
5 array that was shown to you?

6 A No.

7 Q Had you seen any type of line-ups of any kind?

8 A No.

9 Q And had you ever seen a photo array -- have you ever
10 been a victim in a case before?

11 A No.

12 Q Did -- after you indicated your selection, number
13 five, what did -- how did you indicate that number
14 five was your selection?

15 A I put my initial in the box.

16 Q Okay. And did you -- is there any other writing that
17 you recognize on that?

18 A Yes.

19 Q What writing is on that?

20 A Below it I wrote that -- would you like for me to
21 read it?

22 Q Sure.

23 A Person number five is the person who walked in on me
24 washing my hands, pulled a pistol, told me to get on
25 the floor. Then went through my wallet looking for

1 money. And when I turned my head, he put a pistol
2 in my shoulder blades, said, Look at the floor. Then
3 I signed it.

4 Q So your name appears on there?

5 A Yes.

6 Q All right. And did you see any other photo arrays
7 after this?

8 A No.

9 Q Did Detective Flavell make you feel, when you were
10 there, any kind of pressure that you had to make a
11 selection?

12 A None at all.

13 Q Did Detective Flavell suggest any of those pictures?

14 A No.

15 Q When you came in? Did Detective Flavell provide you
16 any information about the name of the suspect or
17 anything identifying?

18 A No.

19 Q Did -- when you selected number five, how certain
20 were you that that was the person who robbed you?

21 A I was pretty sure. I mean, I was almost a hundred
22 person.

23 Q Did -- do you see that person in the courtroom here
24 today?

25 A Yes, I do.

1 Q Could you point him out, please?

2 A Yes.

3 Q And you're pointing to? Can you describe what he's
4 wearing?

5 A Jacket, white shirt and yellow tie, glasses.

6 MS. TESSITORE: Let the record reflect that the
7 victim has identified the Defendant.

8 THE COURT: So reflects.

9 BY MS. TESSITORE:

10 Q Now, Mr. Gordon, did the picture that you -- excuse
11 me, the pictures that you looked at, what could you
12 see about him in that picture?

13 A Dreadlocks, his face features, just, I mean, when you
14 got a gun pointed at you, looking at him eye to eye,
15 I reckon, you know, that's burnt there.

16 Q And would you say when he pulled that gun, what was
17 your attention level at that point?

18 A I was well aware, you know. I got a gun pointed at
19 me, I'm paying attention to what's going on.

20 Q Were you able to tell in that photo as far as height,
21 weight or anything like that?

22 A I mean, I didn't have a tape measure or set of scales
23 but, I mean, he looked roughly around 5'10. I was
24 figuring late 30's, early 40's, had a black tank top
25 and black shorts on.

1 Q In the photographs that you were shown, how much of
2 the individual is shown in that?

3 A Just basically just his head.

4 Q Okay. Just one moment. Did you -- when you were
5 discussing the procedure with Detective Flavell, was
6 explaining the procedure of how he was going to show
7 you this photo array, did you make any statements to
8 him about what you expected or what -- let me ask it
9 this way. Did you appreciate the seriousness of what
10 you were about to do?

11 A Yes, I did.

12 MR. ROBINSON: Your Honor, objection, relevance
13 in this case.

14 THE COURT: Overruled.

15 BY MS. TESSITORE:

16 Q And when you made your selection, did you say
17 anything to Detective Flavell about your selection?

18 A Told him I don't want nobody innocent being convicted
19 of it.

20 Q Okay.

21 MS. TESSITORE: All right, please, answer any
22 questions that Mr. Robinson may have.

23 THE COURT: You may cross-examine.

24 MR. ROBINSON: May it please the Court.

25 CROSS-EXAMINATION

1 BY MR. ROBINSON:

2 Q Mr. Gordon, do you recall giving two different
3 statements? One to Officer Bradley, one to Detective
4 Flavell, is that correct?

5 A Yes, sir.

6 Q I'm going to ask you to look at what's been marked as
7 Defense No. 1, is that your statement there to
8 Officer Bradley?

9 MS. TESSITORE: Your Honor.

10 THE COURT: Yes, ma'am.

11 MS. TESSITORE: At this point the State would
12 object. He hasn't even spoken with the victim
13 regarding --

14 THE COURT: What's the basis -

15 MS. TESSITORE: -- the --

16 THE COURT: No, excuse me.

17 MS. TESSITORE: Sorry.

18 THE COURT: What's the basis of your objection?
19 If you need to discuss it with me, we'll do a sidebar.
20 What's the basis of your objection?

21 MS. TESSITORE: I'll withdraw it at this point.

22 THE COURT: Thank you. Thank you.

23 THE WITNESS: Yes.

24 BY MR. ROBINSON:

25 Q That's your statement?

1 A Yes.

2 Q Now, looking at that statement, and that has been
3 marked Defendant's Exhibit No. 1 for identification
4 purposes, you don't mention anything in that
5 statement about a lottery ticket, do you?

6 A About what?

7 Q A lottery ticket.

8 A No.

9 Q You didn't mention anything in that statement about
10 money being taken either, do you?

11 A No.

12 Q But you do mention in the statement which has been
13 marked Defendant's No. 1, you did mention in that
14 statement that the person had a goatee, is that
15 right?

16 A Yes.

17 Q All right. And let's look at what's been marked --
18 excuse me, you recognize what's been marked Defense
19 No. 2 for identification purposes, don't you?

20 A Yes.

21 Q And that is your statement to Officer Flavell?

22 A Yes.

23 Q Is that correct? Now, when you gave that statement
24 or -- you were under oath, weren't you? You were
25 told to tell the truth, weren't you?

- 1 A Yes, sir.
- 2 Q And you took that very seriously to make sure that
- 3 you told the truth and everything you said was right,
- 4 isn't that correct?
- 5 A Yes..
- 6 Q And you weren't under the influence of any drugs or
- 7 alcohol when you gave that statement, were you?
- 8 A No.
- 9 Q You were clear minded, you knew what you were doing?
- 10 A Yes.
- 11 Q And you were going to tell the truth, isn't that
- 12 correct?
- 13 A Yes.
- 14 Q Now, in your statement to Officer Flavell, which was
- 15 under oath, and I believe if you could, please,
- 16 looking at Defendant's, for identification only, No.
- 17 2, what is printed on the bottom of the statement?
- 18 A I reviewed the above statement, one of one page and
- 19 it is true and correct as best I recall.
- 20 Q All right. Now, in the statement you state that you
- 21 have a 12th grade education, is that correct?
- 22 A Yes.
- 23 Q And you can read and write, right?
- 24 A Yes.
- 25 Q And in that statement, in response to Officer

1 Flavell's questioning about how competent are you
2 that the photo in number five, which is marked in
3 State's Exhibit No. 1, how competent you were, why
4 don't you tell the jury what your response to that
5 was to Officer Flavell.

6 A I'm almost positive that that's guy the. And just
7 about one hundred percent that this is the guy.

8 Q Okay.

9 THE COURT: Mr. Robinson, you can leave those
10 right there with the Court Reporter.

11 MR. ROBINSON: Thank you, Judge.

12 BY MR. ROBINSON:

13 Q I think you also stated to Jennifer Tess --
14 Ms. Tessitore, that nothing of value was taken from
15 you, isn't that correct?

16 A A three dollar lottery ticket.

17 MR. ROBINSON: That's all I have, thank you.

18 THE COURT: Redirect?

19 MS. TESSITORE: No, Your Honor.

20 THE COURT: Thank you, you may come down.
21 Call your next witness, please.

22 MS. TESSITORE: Your Honor, the State calls
23 Officer Bradley.

24 THE CLERK: Officer Bradley, if you'd come
25 forward. Place your left hand on the Bible, raise your

1 right hand.

2 J.C. BRADLEY, after being duly sworn, testified
3 as follows:

4 THE CLERK: Thank you, please be seated. State
5 your name for the record.

6 THE WITNESS: Officer J.C. Bradley.

7 DIRECT EXAMINATION

8 BY MS. TESSITORE:

9 Q Officer Bradley, where do you work?

10 A Greenville City Police Department.

11 Q What do you do there?

12 A I am assigned as a School Resource Officer to
13 Greenville Senior High Academy.

14 Q And how long have you been in that position?

15 A I've been in that position for three years.

16 Q What did you do before that?

17 A I was a training officer in the uniform patrol
18 division.

19 Q How long did you do that for?

20 A About five years.

21 Q And what other training and experience do you have?

22 A Prior to that I was assigned in community services,
23 vice and narcotics. As I said, I'm a field training
24 officer for new recruits. Narcotics identification,
25 accident investigation, incident report writing,

- 1 communications, pretty much done it all.
- 2 Q All right. As part of your duties, tell the jury
- 3 what your duties are in uniform patrol.
- 4 A Uniform patrol we respond to call response. We go to
- 5 calls in progress, report of an armed robbery, banks,
- 6 accident investigation, anything that's reported to
- 7 911 call, we respond to things like that.
- 8 Q Okay. Were you working in uniform patrol back in
- 9 July of 2009?
- 10 A Yes, ma'am, I was.
- 11 Q And did you receive a call out to 119 Forrest Street?
- 12 A I did.
- 13 Q In Greenville city?
- 14 A Yes, ma'am.
- 15 Q What was the nature of the call?
- 16 A The call came out as an armed robbery. I work across
- 17 town. So that side of town was very busy so I
- 18 responded. I was dispatched to the call.
- 19 Q Approximately how long did it take you to respond?
- 20 A Took about 15 minutes because I was off Laurens Road.
- 21 And this was by the Amtrak Station off West
- 22 Washington Street.
- 23 Q And generally how well -- what did you find when you
- 24 got there?
- 25 A I was met -- once I arrived I was met by the victim

1 who advised he had been robbed at gun point.

2 Q Where did you find the victim when you arrived there?

3 A As I pulled into the parking lot, the gravel parking
4 lot outside of another one that was that paved, he
5 was approaching my car.

6 Q Is this the location that we're talking about, 119
7 Forrest Street, is that in Greenville County?

8 A Yes, it's in the city limits of Greenville County.

9 Q Okay. When you got there -- about what time did the
10 incident occur?

11 A I believe dispatch time was 15:28 but I think I
12 arrived probably, maybe, before then.

13 Q So 15:28?

14 A That being military time 3:28.

15 Q So 3:28 in afternoon?

16 A Yes.

17 Q All right. Was -- do you recall generally the
18 weather that day?

19 A It was very sunny, it was clear.

20 Q When you found the victim, describe his demeanor when
21 you found him.

22 A As he approached I think his hand was shaking and he
23 had looked like shocked. His hand was shaking and he
24 was very upset. Visibly.

25 Q Was he able to communicate with you?

1 A Yes, he was able to communicate very clearly, yes.

2 Q And when you found him there was anyone else around
3 there?

4 A No, no one else was around.

5 Q And you spoke with him about what had happened?

6 A Yes, I wanted to get as much information as possible
7 so we could BOLO, to be on the lookout for the
8 suspect.

9 Q So that's what BOLO stands for?

10 A Just broadcast.

11 Q Bulletin?

12 A Yeah.

13 Q So the information that you relaid to dispatch to
14 relay to other officers, why was it so important that
15 you get information out?

16 A Time was of the essence. We didn't know when it
17 happened. Just in case another officer, whether in
18 our jurisdiction or another, came across the
19 individual fitting the physical description.

20 Q What physical description did you have at that point
21 in time to relay?

22 A The victim relaid that it was a black male, dark skin
23 with dreadlocks, 5'10 in height, late 30's, early
24 40's, wearing a black tank top, had black shorts and
25 a black auto pistol.

1 Q And I may have missed it. Did he describe his build?

2 A He advised he was slender build.

3 Q Did he, I may have missed it as well as, height?

4 A 5'10.

5 Q Approximately?

6 A Yes, ma'am.

7 Q Was he able to give you -- give you any indication as
8 far as how he left the area? By foot or by car or
9 anything?

10 A He advised, generally, that he was painting in
11 Apartment A, had no running water. He went down to
12 Apartment D, which was on the same side, to wash his
13 hands. The gentleman came in, gave him instructions
14 to lay on the floor after pulling out a firearm, went
15 through his pocket, got his wallet, got a lottery
16 ticket out of his wallet, didn't find the money
17 because it was hidden in a compartment in his wallet,
18 then exited out the front door.

19 Q Did he -- did he give any information regarding how
20 he left as far as on foot or?

21 A On foot. He said he left the apartment. I assume he
22 left on foot. He didn't say he got into a car.

23 Q And were there any other suspects -- or did you have
24 any suspects at that time?

25 A I did not.

1 Q Did -- did you -- let me step back. Did you go into
2 the unit where this occurred?

3 A Well because it's a crime scene, I didn't enter the
4 apartment where he said it took place. I instead
5 called for forensic unit and waited for their arrival
6 so they could process the scene.

7 Q So when he -- when the forensics officer did arrive
8 at that point, do you recall going into Unit D?

9 A After he processed the scene, I went in afterwards,
10 yes.

11 Q Are you familiar with this area by the way?

12 A Oh yes, I was community patrol officer there for many
13 years.

14 Q And just generally, what -- how would you describe
15 this area there as far as traffic and traffic volume?

16 A If you're familiar with West Washington Street area,
17 it's right across from the Amtrak Station. Forrest
18 Street is a small street that goes off to your left
19 if you're traveling down West Washington Street under
20 the trestle where the train tracks go. So it's well
21 traveled as far as foot traffic.

22 Q Okay. I'm showing you State's Exhibit No. 11, take a
23 look at that. Do you recognize that?

24 A I do not. The apartment was vacant. This one
25 clearly is occupied. But I wouldn't be able to tell

1 if it was this apartment or not. Because there were
2 no appliances or anything inside of it at that time.

3 Q So it was vacant?

4 A It was vacant, yes, ma'am.

5 Q Okay. As far as when you were out there, do you
6 recall the layout?

7 A The kitchen -- as soon as you enter the kitchen was
8 directly in front of you. I can't recall what was to
9 the right but the kitchen was to the left, as I
10 recall.

11 Q All right. Do you recall what the lighting was like?

12 A It was very lit. There was no blinds, no curtains,
13 as I stated it was vacant so it was very well lit.

14 Q And did you have any trouble understanding the victim
15 as he described what happened and what he saw?

16 A He was extremely nervous but it was very articulate
17 and he was able to write the statement to that
18 effect.

19 Q And once forensics arrived, did you have any other
20 involvement -- any other involvement in the case?

21 A Other than the statement, providing the victim with a
22 victim witness notification, no, ma'am, that was my
23 involvement completely.

24 Q Did Mr. Gordon indicate whether he had ever scene
25 this man before?

1 A No, he did not indicate that he had ever saw him
2 before.

3 MS. TESSITORE: Just one moment, please.

4 THE COURT: Certainly.

5 BY MS. TESSITORE:

6 Q I'm going to show you State's Exhibit 4, 6 and 9 and
7 just ask you to take a look at those. Do you
8 recognize those?

9 A Yes. A would be to the far left and D would be at
10 very end, right there.

11 Q So those the apartments that we're talking about
12 here?

13 A Yes, these are the apartments.

14 Q And you're familiar with that property there?

15 A I am.

16 Q And what is State's Exhibit No. 9?

17 A I believe this one to be Apartment D, where the
18 incident took place.

19 Q As you look in, what's the first thing you saw?

20 A Stove, kitchen to the left, yes.

21 MS. TESSITORE: Please answer any questions that
22 Mr. Robinson may have.

23 THE COURT: You may cross-examine, Mr. Robinson.

24 MR. ROBINSON: May it please the Court?

25 THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. ROBINSON:

Q Officer, in your investigation you're speaking with an alleged victim in this case, he never indicated who the person --

A I'm sorry, sir, I didn't hear you.

Q He never mentioned gloves or anything or that nature, is that correct?

A No, sir, not that I recall.

MR. ROBINSON: Okay, that's all I have, thank you.

THE COURT: Redirect.

MS. TESSITORE: None from the State, Your Honor.

THE COURT: Thank you, Officer you, may step down.

You wish the witness be excused, Solicitor?

MS. TESSITORE: Yes, Your Honor.

THE COURT: Any objection?

MR. ROBINSON: No, Judge.

THE COURT: You are free to leave, as well Mr. Bradley.

THE WITNESS: Thank you, Your Honor.

THE COURT: Yes, sir.

Call your next witness, please.

MS. TESSITORE: Your Honor, may we approach?

1 THE COURT: Sure.

2 MS. TESSITORE: Thank you.

3 (WHEREUPON, a bench conference was held
4 off-the-record and in the presence of the jury
5 but out of the hearing of the jury.)

6 THE COURT: All right, ladies and gentlemen of
7 the jury, at this point due to the length of the next
8 witness, I think the better thing to do is give you a
9 little break a little early today. Please remember that
10 you're not at liberty to talk about this case among
11 yourselves. Certainly you're not at liberty or should you
12 permit anybody to talk about the case in your presence or
13 talk directly to you about serving on this case. And that
14 would include anyone that might be at home tonight when
15 you go home. Imagine the first question is going to be,
16 What are you doing? What's the case about? Great
17 temptation to talk about it. But if you do you will have
18 violated the oath that you took today. Because you would
19 have started your deliberations by discussing this case.
20 Because obviously unless you're going to give word for
21 word, which I don't think we're capable of doing, you're
22 starting to summarize the case mentally. And that's
23 normal human trait but you haven't concluded or
24 articulated anything. So refrain from doing that. You'll
25 finish this case this week. Then if you want to talk

1 about it you may do so. But until then talk anything else
2 but this case.

3 Please also, and any of you that might have
4 children, as you know, the last thing you want to do is;
5 tell a child not do something because that's the first
6 thing they want to do. At least my children did, I don't
7 know about yours. But so sometimes we're adults but we
8 really still -- I use to always say we're sophisticated
9 children. But one thing we have to remember, we live in a
10 information society. But you're not at liberty to do any
11 independent research in this area. In any aspect of it.
12 And if you do, you will jeopardize all the efforts and
13 energy we've spent thus far.

14 I'll share this with you just to show you it's
15 perfectly innocent. But we had a case years ago in my
16 home circuit and right before we went to the jury with
17 closing arguments and charge, the case was resolved. And
18 I stepped back to tell the jury that the matter had been
19 resolved and they were excused. And one juror said, Well
20 I'm delighted to know that because I was wondering after I
21 went online last night and read some law, how they were
22 going to get around this particular issue. And I just
23 shook my head and thanked the good Lord we resolved it.
24 Because it would have just been off and done. So don't do
25 any independent research. If you finish and you want to

1 look at something, please feel free to do so. But right
2 now you must refrain from doing that.

3 Have a great evening, be back in your jury room,
4 please, at 9:30 in the morning. Don't call the number
5 tonight because that message will not apply to you. So
6 see you in the morning at 9:30. Thank you.

7 (WHEREUPON, the jury left open court at
8 approximately 4:40 p.m.)

9 THE COURT: All right, anything from the State
10 before we recess?

11 MS. TESSITORE: No, Your Honor.

12 THE COURT: Anything from the Defendant?

13 MR. ROBINSON: Your Honor, may it please the
14 Court?

15 THE COURT: Yes, sir.

16 MR. ROBINSON: Your Honor, in her opening
17 statement she mentioned something about, if I'm hearing
18 this right, something found in the motel room or arrested
19 at a later point or something like that. I'm really
20 concerned about her -- she got the gun and she identified
21 it look like this, similar, and so forth. But I'm really
22 concerned about her going into this alleged arrest and
23 what they found at the that scene as far as the dice and
24 so forth. There's no indication of any lottery ticket or
25 anything connecting this gun to this particular incident.

1 I'm concerned that the jury may get the impression that
2 this guy is a criminal or whatever, has had another arrest
3 is some motel room. Just concerned about that part of it.
4 As far as objecting, as far as relevance go.

5 THE COURT: Well I appreciate your objection. I
6 I guess you and I have a different understanding and
7 appreciation of what circumstantial evidence means. But
8 the bottom line is I will hear your objection at the
9 appropriate time.

10 MR. ROBINSON: Yes, sir.

11 THE COURT: I understand that if there's some --
12 I don't believe it's against the law, unless he's a
13 convicted felon, to have a firearm in your motel room. I
14 don't believe there's anything wrong with that. If you
15 were otherwise entitled to have it, I believe that room
16 when you, at least my understanding of the law and having
17 been trying cases in Horry County, the first time I
18 encountered it, where there was a burglary of a motel
19 room. Because the person rented the motel room it became
20 their premises. Therefore, when they entered it, it's
21 burglary.

22 So if a person has access to those premises and
23 has a firearm, then it's the same thing as having a
24 firearm in their home. So I don't think see anything
25 illegal about that. Having dice, nothing wrong with

1 having dice. So there's no crime outside of this. Is
2 there a connection to this, that's for the juror to
3 determine. Whether or not there's a link. So I
4 appreciate it. I'm not going to restrict the State from
5 proving circumstantial evidence.

6 MR. ROBINSON: Yes, sir.

7 THE COURT: Thank you, sir. But I'll certainly
8 entertain any objections that you may have.

9 MR. ROBINSON: Yes, sir, Your Honor.

10 THE COURT: Thank you.

11 MR. ROBINSON: Thank you.

12 (WHEREUPON, the proceedings were concluded for
13 the day to be reconvened on September 11, 2012.)
14
15
16
17
18
19
20
21
22
23
24
25

September 11, 2012

MS. TESSITORE: Judge, I think it seems that we may have been able to arrive at a stipulation as to some of the fingerprint evidence. And if you would just indulge me, I just need a little bit of time to try to sort out what I need to -- how I can trim it.

THE COURT: You want to do that before we start?

MS. TESSITORE: That would be my first witness. So if...

THE COURT: Okay, take your time.

MS. TESSITORE: It will save time if I take a little time.

THE COURT: Yes, ma'am, go ahead.

Let the record reflect that Mr. Thomas is present.

Good morning, Mr. Thomas.

MR. THOMAS: Good morning, Your Honor.

MS. TESSITORE: Thank you, Your Honor.

THE COURT: And you've had conversation with your attorney concerning that stipulation?

MR. THOMAS: I like to ask him --

Scott could I ask --

MR. ROBINSON: Judge, may I?

THE COURT: Sure. I just want to be sure that you were privy to that.

1 (WHEREUPON, an off-the-record conversation was
2 had between Mr. Robinson and Mr. Thomas.)

3 (WHEREUPON, State's Exhibits Nos. 15-18 were
4 marked for identification only.)

5 MR. ROBINSON: I spoke to him again. I spoke to
6 him previously but he is in agreement.

7 THE COURT: Okay, that's fine.

8 MR. THOMAS: Yes, Your Honor.

9 THE COURT: Thank you, sir.

10 MS. TESSITORE: Your Honor, I can go prepare the
11 written stipulation so that it would spell out each and
12 every -- as to what the Defense is agreeing to.

13 THE COURT: Can't we do that at a later point to
14 just supplement the record with that?

15 MS. TESSITORE: Sure.

16 THE COURT: We can just move on. We just won't
17 be asking those questions of this witness. Or is this
18 witness not necessary?

19 MS. TESSITORE: This witness -- I would just --
20 he would be necessary for a very little bit.

21 THE COURT: Okay, just ask those questions and
22 then when we have a break, you can prepare that. And then
23 I'll explain to the jury when we read it what a
24 stipulation is.

25 MS. TESSITORE: Okay, great. Thank you.

1 THE COURT: Sure.

2 (WHEREUPON, State's Exhibits Nos. 19-20 were
3 marked for identification only.)

4 THE COURT: Is the State ready?

5 MS. TESSITORE: Your Honor, if I could just have
6 one minute, I'm sorry.

7 THE COURT: That's fine.

8 MS. TESSITORE: Thank you, Your Honor. Thank
9 you for that extra five minutes.

10 THE COURT: Yes, ma'am.

11 Defense ready?

12 MR. ROBINSON: Yes, sir, Your Honor.

13 THE COURT: Very good. Let's bring in our jury.
14 Thank you.

15 (WHEREUPON, the jury came into open court at
16 approximately 9:41 a.m.)

17 THE COURT: Thank you, very much, ladies and
18 gentlemen. Good morning to you, I hope you had a restful
19 evening. We're now ready to continue the matter we
20 started yesterday.

21 Solicitor, good morning, you may call your next
22 witness.

23 MS. TESSITORE: Thank you, Your Honor. The
24 State calls Doug Smith.

25 THE COURT: Okay.

1 THE CLERK: Mr. Smith, please come forward.
2 Place your left hand on the Bible, raise your right hand.
3 DOUG SMITH, after being duly sworn, testified as
4 follows:

5 THE CLERK: Thank you, please be seated. State
6 your name for the record.

7 THE WITNESS: Douglas Smith.

8 DIRECT EXAMINATION

9 BY MS. TESSITORE:

10 Q Mr. Smith, where do you work?

11 A Currently I work for Ogletree Deakins.

12 Q What is Ogletree Deakins?

13 A It's a law firm.

14 Q And what are you doing at that law firm?

15 A I'm a computer analyst.

16 Q And when did you begin working with Ogletree Deakins?

17 A May of this year.

18 Q And before you began working there, where do you
19 work?

20 A Greenville County Forensics Division.

21 Q How long did you work with the forensics division?

22 A Just a little over eight years.

23 Q Eight years?

24 A Yes, ma'am.

25 Q And in those eight years, what were your titles and

1 what kind of work does that involve?

2 A I was a Senior Forensics analyst. My job was to
3 process crime scenes, locate, collect, preserve
4 forensic evidence related to crimes.

5 Q And so how many crime scenes do you think in your
6 whole career, do you think you processed?

7 A A little over 6000.

8 Q And as part of your duties, did you -- what kind of
9 training and -- I guess training did you have?

10 A I have a Bachelor's of Science in Criminal Justice.
11 I'm a graduate of the South Carolina Criminal Justice
12 Academy. I had a nine week training with the South
13 Carolina Criminal Justice Academy. I had a 26 week
14 FTO program with the Greenville Police Department. I
15 did three years on the road with Greenville Police
16 Department. I did a six month FTO program with
17 Greenville County Forensics. Been to numerous
18 advance training and processing for fingerprints.
19 Advance photography, digital, computer forensics.
20 Shooting reconstruction. Just on-going training the
21 eight year tenure in the forensics division.

22 Q So with all that fun, what led you to leave the
23 forensics to go the job that you're in now?

24 A Personal reasons, family.

25 Q Okay. What kind of hours did you work when you were

1 working with the forensics division?

2 A Typically 12 hour shifts. Rotating nights, weekends,
3 every two weeks.

4 Q With a family? Do you have family?

5 A Yes, two small kids. Makes it difficult.

6 Q So going back to when you were working with the
7 forensics division back in July of 2009, is that
8 correct?

9 A Yes.

10 Q And what was your title at that point?

11 A I was a Senior Forensics Investigator.

12 Q And did you respond to the call at Unit D, 119
13 Forrest Street in Greenville?

14 A Yes, I did.

15 Q Is that in Greenville County?

16 A It's in Greenville city.

17 Q Okay. Is that within Greenville County?

18 A Yes.

19 Q When you responded to that call, approximately what
20 time did you arrive?

21 A I arrived a few minutes after four o'clock in the
22 afternoon.

23 Q What was the -- what was the lighting like there?

24 A It was middle of the day, bright, very few clouds.

25 Q Okay. I'm going to show you State's Exhibit 6 and

1 ask you to take a look at that and tell the jury what
2 that is.

3 A Do I need to show them?

4 Q Well take a look at it, do you recognize it?

5 A Yes, that's Apartment D, 119 Forrest Street.

6 Q Is that the unit that you responded to?

7 A Yes.

8 Q All right. And what is State's Exhibit 9, do you
9 recognize that?

10 A It's the same door, just opened for Apartment D.

11 Q I'm sorry?

12 A It's Apartment D.

13 Q Apartment D. And I'm showing you State's Exhibit No.
14 10, do you recognize that?

15 A Yes that's inside the Apartment D. The only
16 difference is it's occupied now.

17 Q When you were there, what was the condition of that
18 apartment?

19 A It was an unoccupied apartment, ready for rent.

20 Q Okay. Did -- did you take photographs when you were
21 out there?

22 A No, I did not.

23 Q And why didn't you take photographs?

24 A After speaking with the victim, he advised that he
25 had no visible injuries, there were no torn

1 impressions. There was nothing substantial to be
2 photographed at that point.

3 Q Okay. So these photographs were taken after?

4 A Yes, ma'am.

5 Q Now, when you arrived on the scene, what -- tell the
6 jury what your focus is and what you did.

7 A Upon arriving on the scene, I spoke with Officer
8 Bradley originally. He advised that --

9 MR. ROBINSON: Objection, Your Honor, hearsay.

10 BY MS. TESSITORE:

11 Q Without getting into what Officer Bradley told you --

12 THE COURT: Sustained.

13 BY MS. TESSITORE:

14 Q Did you speak with the Officer Bradley?

15 A Yes, I did.

16 Q Okay. And based on the information that he relaid to
17 you, what did you do then?

18 A I spoke with the victim and first inquired if he had
19 any visible injuries. He advised he did not. At
20 that point I had him take me to the thresh hold of
21 the apartment, Apartment D and advised exactly what
22 had transpired, what had taken place so I could
23 identify what my next course of action would be.
24 Whether I needed to take pictures, whether I needed
25 to process the floor, whether I needed to process the

1 door. What parts of the apartment I would actually
2 be able to assist processing.

3 Q Okay. When you say processing, can you explain to
4 the jury, what does that mean?

5 A Processing is looking for fingerprints. Whether they
6 be latent fingerprints -- once you can't see patent
7 prints which are visible or plastic prints, which are
8 3D model of the fingerprint soft surface, is just
9 trying to identify what surfaces the suspect could
10 have handled. Which would be areas I would
11 concentrate to actually process for fingerprints.

12 Q What areas were those in this crime scene?

13 A In this instance the first thing I did before we went
14 back into the apartment is called a bleb lighting
15 technique to make sure there were no footwear
16 impressions before I walked into the apartment. The
17 apartment had linoleum floor. We identified the
18 door. The surrounding area around the door and the
19 countertops as potential areas that we could process
20 for fingerprints.

21 Q Okay. And that's basically the information you
22 received from Officer Bradley?

23 A That's based off information I received from the
24 victim.

25 Q Now, were you able to locate any prints?

1 A I located prints on the exterior and interior of the
2 front door.

3 Q Okay. Had you -- what was the first thing that you
4 processed?

5 A Would have been the front door.

6 Q Front door.

7 A The area around the front door, the front door.

8 Q Okay. And can you describe just as far as when you
9 processed that door, what do you use to process?
10 What did you use to process that door?

11 A Typically we have several different types of powder.
12 I'm sure y'all have seen crime scene on T.V, they
13 have different color powder for different surfaces.
14 This one it would just be a standard charcoal gray,
15 it's a carbon powder basically flat color. Process
16 it with a camel hair brush, a light brush. And I
17 would do the area typically about eye level to about
18 knee level, all the way around the door, door frame.
19 In this instance the side of the apartment complex
20 was not suitable for processing textured surface.
21 The only thing I was able to process was the door,
22 the door frame and the door handles on both sides.
23 Q Okay. So you process both the interior side and the
24 exterior side?

25 A Yes.

1 Q Okay. I'm going to show you -- I'm going to show you
2 State's Exhibit No. 15 and 16. And just have you
3 take a look at those. And what are those?

4 A This would be a latent envelope that I sealed on the
5 scene after the lifting three latent prints from the
6 incident location.

7 Q Okay. Is that State's Exhibit No. 16 you're
8 referring to?

9 A Yes.

10 Q Okay. And is your handwriting on there?

11 A Yes.

12 Q Okay, when was that filled out?

13 A On scene at 4:35. It gets filled out as soon as I
14 clear the scene and sealed.

15 Q Okay. Now, let's go back to the other State's
16 Exhibit No.?

17 A Fifteen.

18 Q Fifteen, what is this?

19 A This is a latent lift, one of three, from the
20 interior side of the door.

21 Q Okay. When you say latent lift, what does that mean?

22 A It is a tape lift that physically transfers the
23 latent prints that become patent due to powder
24 processing on to the back of a card. It gives it the
25 ability to submit to our latent division.

1 Q Okay. What I would like you to do is, if you could
2 step down in front of the jury and use your art
3 skills. Just diagram, we're going to focus on the
4 interior of the door where you had lifted the one
5 print there.

6 A Print was lifted between the deadbolt, which is a
7 double deadbolt lock to the door handle to the
8 interior side of the door.

9 Q And so what was the door knob?

10 A This is the key lock, this is the actual handle.

11 Q Okay. And were you able to find any other prints
12 around that area on this interior?

13 A On the interior side, no.

14 Q Okay. Did -- did you also, when you were out on the
15 scene, how do you -- how do you document that print
16 that you found?

17 A As I find the print, it's covered with a latent tape
18 lift. As it's lifted off it's placed right on the
19 card. That card is filled out at the time that the
20 latent is placed on the back of it with the
21 corresponding information. The case information,
22 date information, incident location and the
23 description of where the print was physically lifted
24 from. Inside the door, what part of the door.

25 Q Were you working alone?

1 A Yes.

2 Q And who filled that out?

3 A I did. I can tell because that my handwriting on the
4 cards.

5 Q All right... And when you lifted that print, how do
6 you go about if they're other prints that you lift?
7 In what order as far as writing on the card and
8 documenting that?

9 A Typically, outside edge. Front door is processed. I
10 lifted the first one. I identified the front door as
11 the only location that had any prints that I was
12 going to the lift. As I left the apartment I
13 processed the tape lifts from the inside of the door
14 out on my way out. So one was from interior side and
15 two and three were from the outside as I left the
16 apartment.

17 Q Okay. And once you lifted it off the interior of the
18 door, do you immediately fill out the card?

19 A Yes, the cards filled out as the tape lift is
20 physically taken. These are in packs of 50. As
21 they're physically taken off the door, they're placed
22 on the back of the card. The card is then flipped
23 over and filled out. The diagram, and I know it
24 doesn't seem like a lot but this had three on the
25 scene, had 150. So it -- you have to fill them out

1 as you lift the print to help keep up with them or
2 you would never be able to keep them straight.

3 Q Okay. So documentation is pretty crucial?

4 A Yes.

5 Q And let's see, what did you -- you can go ahead and
6 take the witness stand.

7 A (The witness complies.)

8 Q What did you do with the latent lift that you did --
9 well let me step back one more step. Did you process
10 the countertops?

11 A Yes.

12 Q Okay. And what was your -- did you find any prints
13 there on the countertop?

14 A No, I did not.

15 Q Did -- what did you do with the cards once you
16 prepared those?

17 A Once you leave the scene, I can't speak for what
18 other technicians do, but as soon as I leave the
19 scene, and just like latent cards, sometimes you'll
20 work 10, 15 crime scenes a day, the card is filled
21 out on the scene, sitting in your truck in a
22 controlled environment. The cards are cleaned up,
23 filled out, sealed on the back, my initials are on
24 the back, sealed from the scene.

25 Q Okay. And then where do you go from there?

- 1 A Depends on the day. Other times I may go to
2 different crime scenes or may go back to the crime
3 scene office.
- 4 Q And when you get back to the office, what do you do
5 with those prints?
- 6 A These are placed into a locked box for the latent
7 print division to pick up every morning. No one has
8 access, not even in our department, once they're
9 submitted in the box.
- 10 Q Okay. And once they are put in the box there, where
11 do they go from there?
- 12 A Latent Prints Division comes pick them up every
13 morning, every weekday morning.
- 14 Q Who has access to that box there?
- 15 A Latent Prints Division only.
- 16 Q Did you collect any other prints from anyone on the
17 scene while you were there?
- 18 A I rolled a set of elimination prints from the victim.
19 That would be all 10 fingers and both palms. Just so
20 we could eliminate him from any print that was
21 actually lifted off the front door.
- 22 Q Did you have any other involvement in this case?
- 23 A No, I did not.
- 24 Q All right.
- 25 MS. TESSITORE: Answer any questions that

1 Mr. Robinson may have, please.

2 MR. ROBINSON: May it please the Court?

3 THE COURT: You may cross-examine.

4 CROSS-EXAMINATION

5 BY MR. ROBINSON:

6 Q Doug, the prints on the outside of the door, those
7 were also sent for -- sent to be tested, is that
8 correct?

9 A Yes, sir, they're sent up in that envelope.

10 Q And that would be exhibit number what?

11 A The envelope would be 16. I don't know what they've
12 been identified as. I don't think they have been.

13 Q So those are prints from the outside of the door,
14 correct?

15 A Yes. There two tape lifts from the exterior side of
16 the front door.

17 Q Okay. And you're not sure what age of the prints,
18 you don't know how long they've been there, anything
19 like that, is that correct?

20 A That's correct.

21 Q They could have been there for weeks, days, you don't
22 really know how long?

23 A I'm not allowed to testify to that, no.

24 MR. ROBINSON: Thank you.

25 THE COURT: Redirect?

1 MS. TESSITORE: No questions, Your Honor.

2 THE COURT: All right, you may come down.

3 You wish Mr. Smith to be excused?

4 MS. TESSITORE: Yes, Your Honor.

5 THE COURT: Any objection?

6 MR. ROBINSON: No, sir, Your Honor.

7 THE COURT: Mr. Smith, you're free to leave,

8 sir.

9 THE WITNESS: Thank you.

10 THE COURT: Thank you.

11 You may call your next witness.

12 MS. TESSITORE: Thank you, Your Honor. The

13 State would call Chris Gary.

14 THE CLERK: Mr. Gary, come forward, please.

15 Pause at the end of the bench. Place your left hand on

16 the Bible, raise your right hand.

17 CHRIS GARY, after being duly sworn, testified as
18 follows:

19 THE CLERK: Thank you, you may be seated. State
20 your name for the record.

21 THE WITNESS: Christopher Adam Gary.

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MS. TESSITORE:

25 Q Good morning, Mr. Gary.

1 A Good morning.

2 Q If you could, just speak up nice and loud. And if
3 you need to pull the microphone in a little bit just
4 to make sure all the jurors can hear you all the way
5 over here. Where do you work, Mr. Gary?

6 A I work for the Greenville County Department of Public
7 Safety in the Forensics Division.

8 Q And how long have you worked there?

9 A I've worked for full-time for over three years.

10 Q What is that -- what's your title?

11 A I'm a latent print examiner.

12 Q What does that entail?

13 A What I do is, I take latent fingerprint evidence as
14 well as tire track evidence and footwear impressions
15 from the crime scene section. And I analyze them for
16 quality and I compare them to any known standards
17 that I have. And I issue reports based on my
18 findings.

19 Q And can you describe as far as your -- well, before
20 we get into that, how long have you been working
21 there?

22 A Over three years, full-time.

23 Q Before that where did you work?

24 A Before that I had the opportunity to work for
25 Greenville County part-time for three years as well

1 in the apprentice style training program. It was
2 almost like a internship so to speak. And I also had
3 the opportunity to work for North Charleston
4 Forensics in the same capacity. Just learning the
5 trade because it's a very specialized field. Just
6 learning the trade from other examiners that had much
7 more experience than I had at that point.

8 Q Okay. And what type of specialized training and
9 education do you have as it relates to fingerprint
10 analysis?

11 A Well in 2009 I was actually selected -- I was one of
12 15 in the country to be selected by the national
13 government to go down to Florida to take part in a
14 program that was sponsored by the National Institute
15 of Justice. And it was a latent fingerprint program.
16 It was 10 weeks long, that was about 400 hours of
17 training. Where we went through everything in
18 fingerprints regarding how to compare them. We went
19 through different exercises on how to compare, what
20 to look for. And everything from the very basics of
21 fingerprints tall the way up to expert testimony.

22 I also had the opportunity to go to Marshall
23 University for a 40 hour training program there that
24 dealt with the other types of impression evidence as
25 well.

1 Q And after receiving all of that, do you hold any
2 certifications?

3 A Yes, I'm certified by the International Association
4 for Identification. Which is the highest
5 certification that you can hold in the field of
6 latent prints.

7 Q What do you have to do to become certified?

8 A Well to become certified, it's not as simple as
9 taking a test. You have to actually have to meet
10 very numerous prerequisites. You have to have 80
11 hours of acknowledged training in the field. And you
12 also have to have been examining latent fingerprints
13 for a minimum of two years. Once you have met those
14 requirements you can apply to take the test, where
15 they can accept or reject your application. The test
16 is a three part test, it tests your knowledge and it
17 tests your developing of techniques for fingerprints
18 as well as a comparison exercise. That is a total of
19 a 80 hour test. And once you pass the test you're
20 issued a certificate that you're certified by the
21 board.

22 Q And do you receive on-going training as well?

23 A Yes, I'm actually a member the International
24 Association for Identification. And I'm sent
25 articles and I'm also annually tested just to make

1 sure that I'm keeping up-to-date on everything that I
2 need to do to continue to be an examiner.

3 Q And approximately how many latent prints have you
4 analyzed or print comparisons have you conducted?

5 A I conducted ten of thousands of examinations.

6 Q Have you ever been qualified as an expert in latent
7 print analyst?

8 A Yes, I have.

9 MS. TESSITORE: At this point the State would
10 move Mr. Gary be declared as an expert the latent print
11 examination comparison and identification.

12 THE COURT: Wish to examine him as to the
13 qualifications?

14 MR. ROBINSON: I don't, Your Honor.

15 THE COURT: Very well, he will be permitted to
16 render opinions in that area.

17 BY MS. TESSITORE:

18 Q Okay. Mr. Gary, can you describe for the jury what
19 we're talking through and all these CSI terms out
20 there, break it down, what does latent print mean?

21 A All right, a latent print is what we refer to is a
22 fingerprint from a crime scene. If you look at the
23 surface of your hand, your entire surface of your
24 hand is -- it has all these little ridges on it.
25 Kind of like a rubber stamp that we use to have as

1 kids or maybe we still use. And sweat, oil, your
2 makeup, things like that, that's ink for that stamp.
3 So anytime you're coming in contact with something,
4 you're stamping your personal identity on to those
5 objects. And later the crime scene office has to
6 come and look for those prints.

7 Q How do you develop -- how is a latent print
8 developed?

9 A Well, like I said, you're stamping but your not
10 visibly seeing the fingerprint. Because the word
11 latent means hidden. When the crime scene office
12 comes to look for these fingerprints, they have to
13 use a thin -- it's a ground up graphite that actually
14 adheres to the moisture, makeup or whatever you left
15 on to an object. Once it adheres to the object, you
16 can see it, it turns black. And there's also other
17 techniques such as chemical techniques that change
18 those ridges into different colors. So that you can
19 see them. And once they are they're captured either
20 with a camera or captured with a thin, almost like
21 scotch tape that we use at home. We lift it, put it
22 on the back of the card so that there's contrast.

23 Q And how -- tell the jury what is a known print.

24 A Well a known print is, you might have heard of inked
25 print. And that's where we take a standard -- known

1 standard from an individual. We'll roll their
2 fingerprints either electronically or with black
3 printers ink, place it on to a fingerprint card.
4 Where we will put all their personal information
5 including their name, social security number, date of
6 birth and gender, race and any other personal
7 identifiers that are unique to that person. Because
8 we know if these fingerprints belong to this person
9 in front of us.

10 Q What type of equipment do you use to conducted your
11 comparisons?

12 A Well you'll see on CSI where they have all the fancy
13 tools, unfortunately it's not like that in real life.
14 We use a simple specialized magnifier that's
15 especially made for latent print evidence.

16 Q And how many examiners are in your office currently?

17 A Currently, there are myself and three other
18 examiners.

19 Q What type of, I guess, quality control procedures do
20 you have within the office?

21 A Every report that I write or issue based on a case is
22 peer reviewed by another examiner. And all reports
23 go through the captain.

24 Q Okay. So let's talk about why are fingerprints a
25 positive means of identification?

1 A Well fingerprints are a positive means of
2 identification because no two people have the same
3 fingerprints. Not even twins, identical twins. They
4 share the same DNA but they do not share the same
5 fingerprints. Fingerprints are unique to every
6 person.

7 Q And unique to each finger?

8 A Yes, they are. They're actually -- if you were to
9 look at each finger, each finger for every person has
10 a different fingerprint. So each finger is unique.

11 Q What factors effect whether a fingerprint will be
12 left on an object?

13 A Well there's, you know, it's not like CSI where every
14 time you touch an object, you're leaving prints.
15 That's why when the crime scene comes out, they're
16 looking for things that have been tampered with so
17 that they can process it. "There's actual a variety
18 of reasons why someone may or may not leave a
19 fingerprint. Weather is an example of that. If it's
20 cold outside we don't sweat as much when it's cold.
21 So we're not putting as much ink on that stamp so to
22 speak. And when we touch objects, we're not leaving
23 our fingerprints behind.

24 If a surface has been painted over or cleaned,
25 any fingerprints that were there have been

1 obliterated, they're not present anymore. Items such
2 as say a gun for example, guns are normally very
3 dirty, they're not very clean. They have grease and
4 they have dust on them. Whenever you touch a gun, on
5 top of all the ridges, all the handling of a weapon,
6 you're not leaving fingerprints like you would think
7 because of the texture of that weapon.

8 Q And if a weapon has a grip or any type of?

9 A Anything --

10 Q I'm sorry, go ahead.

11 A Anything that has like a textured surface or a very
12 dirty surface, you're not going to leave prints on
13 very often at all.

14 Q And what about the effect of if a print were left on
15 a object and someone were to paint it. What's the
16 effect of paint?

17 A Well paint would absolutely cover up a fingerprint.
18 If a fingerprint was left on a surface and someone
19 came along and painted that surface, any fingerprints
20 that were there would not be there anymore. It would
21 essentially be a clean slate with no fingerprints on
22 a fresh painted door or object.

23 Q Okay. And if there hasn't been anything to effect
24 that print, how long can a print stay on a object?

25 A There's no scientific basis for how long a

1 fingerprint can last. And we can't, as examiners,
2 judge that. All we can say is that that fingerprint
3 was there and that person came in contact with that
4 object at some point in time.

5 Q And so if an item were placed in a closed
6 environment, secured and there's a print on that
7 object, would you -- is that print able to be lifted
8 from an object such as that?

9 A Yes. It depends on the condition. I mean, if
10 someone is handling an object, they could rub that
11 print off or if they're washing that object they
12 could certainly take that print off. But if a print
13 is left on an object and no one comes along to
14 manipulate it, move it and it's just left in a
15 storage type condition and it's not harmed, there's
16 no amount of time that it couldn't last. It could be
17 there much later.

18 Q Did -- as part of your duties in July of 2009, were
19 you asked to conduct a fingerprint comparison in this
20 case?

21 A Yes, I was.

22 Q Okay. I'm going to show you State's Exhibit 15 and
23 State's Exhibit 16 in just one minute.

24 (WHEREUPON, State's Exhibits Nos. 21 & 22 were
25 marked for identification only.)

1 BY MS. TESSITORE:

2 Q And I'm going to show to you State's Exhibit 21 and
3 22. And do you recognize those?

4 A Yes, I do.

5 Q What are those?

6 A These are the latent fingerprint lifts that I was
7 speaking of earlier when I was talking about how we
8 collect fingerprints. We place them onto a white
9 backing card and we have the tape lift from the
10 fingerprint where the fingerprint was actually lift
11 and placed on that object.

12 Q How many prints were you asked to examine?

13 A On this specific date on 7/23 of 2009, I was
14 requested to examine three latent fingerprints.

15 Q And who collected those from the crime scene?

16 A Officer Smith.

17 Q And how did -- well, how did they get to you?

18 A Once the crime scene technician collects a latent
19 fingerprint or any latent evidence, they place them
20 into a secured lock drop box. Where only myself and
21 three other examiners, that I speak of before, have a
22 key to it. Every morning that evidence is unlocked
23 by myself or the other three examiners. It's all
24 collected and taken back to my office where it's kept
25 until today.

1 Q And did you examine those three lifts?

2 A Yes, ma'am, I did.

3 Q Okay. And were you provided the known prints of the
4 Defendant?

5 A Yes, I was.

6 Q And what about the prints of the victim?

7 A Yes, I was also provided the victim's elimination
8 prints.

9 Q And as far as the results of your examination as to
10 the latent lift two and three, which would be State's
11 Exhibit 21 and 22, what was your -- what was the
12 result of your analysis?

13 A Latent lift number two was from the exterior side of
14 the door between the lock. So it was of the outside
15 of the door. And I did not make an identification.
16 Latent lift number three was also on the exterior
17 side of the front door and no identifications was
18 made on that print as well.

19 Q And as to latent print number one?

20 A Latent print number one was from the interior side of
21 the front door above the handle, on the inside of the
22 front door. And it was identified as being the
23 number 10, which is the left little finger of Eugene
24 Thomas.

25 Q And did you issue a report as to the results?

1 A Yes, I did.

2 Q Did you prepare that the day that you conducted the
3 comparison?

4 A Yes, ma'am, I did.

5 Q And just one moment. Showing you State's Exhibit
6 number 20, take a look at that. And do you recognize
7 that?

8 A Yes, I do.

9 Q What is that?

10 A This is the latent print report that I issued for
11 this case. It details out where the latent lift was
12 from. As I say, it was from the interior to the
13 door. It describes the individual that I matched,
14 Eugene Thomas. With all the known descriptors, like
15 I was saying, of the known standard such as your date
16 of birth, your gender and race. As well as your
17 name. And it also says that my boss, Andy Renee
18 Sherbert, my sergeant, peer reviewed and approved the
19 issued report.

20 MS. TESSITORE: State would move State's Exhibit
21 No. 20 into evidence based on the stipulation.

22 THE COURT: Any objection?

23 MR. ROBINSON: No objection.

24 THE COURT: Without objection it is admitted.

25 State's Exhibit 20.

1 (WHEREUPON, State's Exhibit No. 20 was admitted
2 into evidence.)

3 MS. TESSITORE: Thank you, Your Honor.

4 BY MS. TESSITORE:

5 Q Did you have any other involvement as to as to any
6 other -- let me rephrase that. Did that conclude
7 your examination as far as these prints that were
8 found that day on July 22, 2009?

9 A Yes, it did.

10 Q Okay.

11 Your Honor, may we approach?

12 THE COURT: Sure.

13 (WHEREUPON, a bench conference was held
14 off-the-record and in the presence of the jury
15 but out of the hearing of the jury.)

16 MS. TESSITORE: Answer any questions that
17 Mr. Robinson may have, please.

18 THE COURT: You may cross-examine.

19 MR. ROBINSON: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. ROBINSON:

22 Q Good morning.

23 A Good morning.

24 Q Let me ask you, you would agree with me that looking
25 at what's been marked State's Exhibit No. 20, which

1 was taken from the inside of the door, you don't know
2 exactly the age of how long these prints had been
3 there or anything like that do you?

4 A No, I do not.

5 Q Could have been weeks, could have been months, you
6 really don't know, do you?

7 A I can testify to the age of a print.

8 Q So you just don't know.

9 A No, sir. The prints, there's no way it's not
10 scientific to state an age for a print.

11 Q So based on your experience, based on your
12 background, you cannot to a reasonable degree of
13 medical [sic] certainty, you cannot say the age of
14 the print, can you?

15 A No, you cannot.

16 Q You also were given prints from the outside of the
17 door that did not match Mr. Thomas, is that correct?

18 A That is correct.

19 MR. ROBINSON: Okay, that's all I have. Thank
20 you.

21 THE COURT: Redirect?

22 MS. TESSITORE: Nothing on redirect, Your Honor.

23 THE COURT: You may step down at this time but
24 you're subject to recall so stay in touch with the
25 Solicitor, please. Thank you.

1 MS. TESSITORE: Thank you, Your Honor.

2 THE COURT: You may call your next witness.

3 MS. TESSITORE: Thank you, Your Honor, the State
4 would call Jennifer Hallex.

5 THE CLERK: Ma'am, if you'd come forward.
6 Please pause at the end of the bench. Place your left
7 hand on the Bible, raise your right hand.

8 JENNIFER HALLEX, after being duly sworn,
9 testified as follows:

10 THE CLERK: Thank you, you may be seated.
11 Please state your name for the record.

12 THE WITNESS: Jennifer Hallex.

13 CROSS-EXAMINATION

14 BY MS. TESSITORE:

15 Q Good morning, Ms. Hallex, how are you today?

16 A Good.

17 Q Are you familiar with the units out at 119 Forrest
18 Street in Greenville?

19 A Yes.

20 Q How are you familiar with that?

21 A I'm the property manager.

22 Q And is that what you do now?

23 A Yes.

24 Q How long have you been the property manager for that
25 property?

1 A Since October of 2008.

2 Q Okay. How is it -- just tell the jury a little bit
3 about how -- kind of what your duties are and how you
4 came to be the manager for that property, just give
5 them a little background?

6 A My duties -- well first how I became manager of the
7 property I have property owners contact me via
8 website or however to ask me to do services of
9 managing the property. Which includes soliciting for
10 new tenants, showing the property, taking their
11 application. If they are proved, then, you know, I
12 collect their security deposit and rent or lease and
13 collect the rent each month to the pay the owner at
14 the end of each month for the term of the management
15 agreement, however long that may be.

16 Q Okay. And what is the size of your operation, of
17 your company?

18 A It's just me. I'm the owner and I run it myself.
19 So.

20 Q Okay. Did you have anyone helping you back in
21 July 2009?

22 A No, I did not.

23 Q And do you now?

24 A I do have a new part-time person that just started
25 approximately a month ago.

1 Q All right. Who actually owns the units that we're
2 talking about?

3 A A gentlemen named Mark Green.

4 Q And where is he located?

5 A He lives in New Jersey.

6 Q So are you -- I guess you're familiar with the
7 property out there?

8 A Yes.

9 Q And what kind -- of as far as going out to the units,
10 how much contact or how often would you go out there?

11 A It varies based on phone calls from people who might
12 be interested in viewing the property. It really
13 fluctuates. I could go once a week, three time a
14 week, once a month. It just depends, you know, how
15 often I need to go by or to inspect the property to
16 make sure the grass is being mowed, that type of
17 thing.

18 Q Did -- did you -- well let me ask you this. Did
19 those units out at 119 Forrest Street, they're four
20 units out there?

21 A Correct.

22 Q Okay. And at the time back in -- well let's focus on
23 Apartment A. Can you describe how you came into
24 contact with Michael Gordon, first of all, the victim
25 in this case?

- 1 A Yes, Unit A was vacant. And I hired him to repair a
2 leak in the downstairs bathroom ceiling. And it
3 needed to be cut out, patched and painted in the
4 bathroom.
- 5 Q Okay. And that's Unit A?
- 6 A That's in Unit A, yes.
- 7 Q Where is that in relation to D?
- 8 A Well you have A and B in one building, then building
9 beside is D and C. So A is here, D is here if you're
10 facing the doors of the building.
- 11 Q Did you hire him to do any work on any of the other
12 units?
- 13 A No, I did not.
- 14 Q And how did he have access to those units?
- 15 A On unit D, because I have a lockbox that's hanging on
16 it, I had a key in it for Unit A and D. Because they
17 were vacant. And I keep keys in there for repair
18 maintenance to be able to access to get into the
19 units to do repairs.
- 20 Q Okay. Who would be the person that would make a
21 decision about who was going to be hired and who was
22 going to be out there doing this work?
- 23 A Just me.
- 24 Q Did you have any prior -- did Mr. Gordon do any prior
25 work for you before July of '09?

- 1 A No, actually that was the first thing that I had
2 asked him to do. That I recall on any property. I
3 believe that was the first little job I had given him
4 through me.
- 5 Q I'm going to -- I'm going to show you State's Exhibit
6 9. And do you recognize that?
- 7 A Yes.
- 8 Q What is that?
- 9 A That's the front door at Unit D.
- 10 Q If you could speak up just a little bit.
- 11 A The front door of Unit D.
- 12 Q Okay. And looking at State's Exhibit 12, what is
13 that?
- 14 A That is standing in the doorway looking into the
15 unit. You view the kitchen and part of the living
16 room area.
- 17 Q Okay. And State's Exhibit 11, what is that?
- 18 A That is standing in the living hall' area facing the
19 kitchen wall with the front door to the right.
- 20 Q Now, and these are all of unit D?
- 21 A Yes.
- 22 Q And at the time that back in July of 2009, was this
23 apartment -- did it appear this way as far as
24 curtains and personal items?
- 25 A No, it wasn't furnished because it was vacant. And

- 1 the only thing that is furnished are the
2 refrigerator, the dishwasher, a stove and the
3 microwave over the stove.
- 4 Q And did this unit become rented shortly after this
5 crime was committed in unit D?
- 6 A It was rented August, I believe, 8th of 2009 is when
7 the tenant actually moved in.
- 8 Q Okay. So, do you know who took these pictures?
- 9 A I took the pictures.
- 10 Q And when you took the pictures, are those fair and
11 accurate representations of how it appeared when you
12 were able to take those pictures?
- 13 A Yes.
- 14 Q Okay. I'm going to show you State's Exhibit No. 13
15 and ask you if you recognize that?
- 16 A It's the interior side of the front door.
- 17 Q Of which unit?
- 18 A Of unit D.
- 19 Q Okay. Who took the picture?
- 20 A I did.
- 21 Q All right. Is that a fair and accurate depiction of
22 how this door appeared when you took the picture that
23 day?
- 24 A Yes.
- 25 Q Just as far as the size of the door, the color, the

1 locks?

2 A Correct.

3 Q Is that how it appeared generally on July 22 of 2009?

4 A Yes.

5 MS. TESSITORE: All right, the State would move
6 State's Exhibit No. 13 into evidence.

7 THE COURT: Any objection?

8 MR. ROBINSON: No objection.

9 THE COURT: Without objection it's admitted.

10 (WHEREUPON, State's Exhibit No. 13 was admitted
11 into evidence.)

12 Q Now, Ms. Hallex, I'm going to talk to you a little
13 bit about the history of Unit D because that's what
14 we're going to focus on here today. That's what
15 we've been focusing on. Who decides who those units
16 are going to be rented to?

17 A I do after going through a screening process.

18 Q And what is that screening process entail, just
19 generally?

20 A I collect application, I run criminal credit and
21 eviction history. Then I have a scoring system where
22 I give them points. Then if they meet the criteria,
23 then they qualify.

24 Q And do you typically meet them face-to-face?

25 A Yes.

- 1 Q So you become quite familiar with the people that's
2 going to be in those units?
- 3 A Yes.
- 4 Q As far as their financial history and things like
5 that, of that nature?
- 6 A Yes.
- 7 Q Do you -- do you always talk to them about who might
8 be living in there with them?
- 9 A Yes. Occupants have to be listed on the application
10 itself.
- 11 Q And how long had Unit D been in existence to be
12 rented?
- 13 A Well, the previous tenant had been evicted middle of
14 November, 2008. We cleaned and changed the locks in
15 January. And I had it fully painted in February.
- 16 Q Of?
- 17 A I'm sorry, of 2009.
- 18 Q Okay. Is that just, as far as after a tenant is
19 evicted, is that kind of the normal?
- 20 A It is. I just have to go through a procedure to get
21 approval from the owner to do each phase.
- 22 Q Okay. And do you recall whether -- do you recall who
23 the tenant was back in 2008 that was evicted?
- 24 A Yes. Actually his name was Fred Cannon.
- 25 Q Okay. Have you -- looking at -- looking at

- 1 Mr. Thomas, who's seated here next to Mr. Robinson,
2 have you ever scene Mr. Thomas before as far as--
3 A Not in --
4 Q -- renting out an apartment?
5 A No, not showing a unit to, no.
6 Q Okay. Did you ever employee him to do any work?
7 A No.
8 Q Did you -- did you ever see him out at Unit D?
9 A No.
10 Q Did -- when Mr. Gordon -- well let me go back. Is
11 his name familiar as far as receiving any call or
12 information being requested by Eugene Thomas?
13 A No.
14 Q For renting Unit D?
15 A No.
16 Q Or renting any unit there?
17 A No.
18 Q Or any of your properties?
19 A No.
20 Q Did -- just one moment. You said that you had had
21 some folks paint the unit in February of 2009 while
22 it was vacant?
23 A That is correct.
24 Q And who did you hire to do that painting in Unit D?
25 A Greg and his wife, Debbie Byrum.

- 1 Q And how do you know Greg and Debbie Byrum?
- 2 A They had been doing work for me such as painting and
3 repairs since 2007.
- 4 Q And how often did you use them for your properties?
- 5 A Weekly.
- 6 Q For different properties?
- 7 A Yes. Yes. Different repairs. You know, plumbing,
8 pretty much anything and everything. They're all
9 around handyman type people.
- 10 Q Okay. What kind of -- did they have a company or
11 what?
- 12 A They're independent contractors. Yes, they have
13 their own repair company.
- 14 Q And who -- in all your dealings with them, did they
15 ever have any other employees with them?
- 16 A Not that I'm aware of.
- 17 Q Okay.
- 18 A I never saw anyone.
- 19 Q Did -- did you ever -- do you know if they ever hired
20 Mr. Thomas to do any work?
- 21 A I do not believe so, no.
- 22 Q Did -- did they do the work that you hired them to
23 do?
- 24 A Yes.
- 25 Q And what exactly did you hire them to do as far as

1 Unit D?

2 A They were hired to paint all the walls, trim, doors,
3 anything and everything that needed to be painted in
4 the unit to make it ready again and presentable for a
5 now have tenant.

6 Q And did they do all that work?

7 A Yes, they did.

8 Q Did you pay them?

9 A Yes, I did.

10 Q How much did you pay them?

11 A I believe it was -- can I reference my notes?

12 Q Sure.

13 A \$950.00.

14 MS. TESSITORE: If you could mark this for
15 identification.

16 (WHEREUPON, State's Exhibit No. 23 was marked
17 for identification only.)

18 BY MS. TESSITORE:

19 Q Okay, I'm showing you State's Exhibit No. 23, if you
20 could take a look at that. Do you recognize that?

21 A Yes.

22 Q What is that?

23 A That is an invoice that was given to me for payment
24 to the Byrum's for the work they did. Painting the
25 interior walls, doors and trim.

1 Q When did they complete the job?

2 A They completed it at the end of February, 2009.

3 Q All right. Did you pay them all at once or?

4 A No, actually they took a draw on the job as they
5 progressed through. So they were paid in three
6 installments.

7 Q Do you recall when the last installment was?

8 A I don't remember exactly the date, no, I do not.

9 Q Is that -- where -- is that an invoice that would be
10 kept as part of your records as a property manager?

11 A Yes.

12 Q Was it prepared around the time that the work was
13 done?

14 A Yes.

15 Q Who prepared that?

16 A This invoice?

17 Q Yes.

18 A It looks like Debbie's handwriting.

19 Q Is that something that you've had in part of your
20 records?

21 A Yes.

22 Q All right. And the -- well the --

23 MS. TESSITORE: The state would move State's
24 Exhibit 23 into evidence.

25 THE COURT: Any objection?

1 MR. ROBINSON: No objection, Your Honor.

2 THE COURT: Without objection, it's admitted.

3 (WHEREUPON, State's Exhibit No. 23 was admitted
4 into evidence.)

5 BY MS. TESSITORE:

6 Q Now, once they finished panting there, I guess before
7 you describe that, you had this lockbox?

8 A Yes.

9 Q And so -- did you give the Byrum's the combination
10 for the door?

11 A Yes. To give them access, yes.

12 Q And while they were there, did they have any
13 permission -- or did they have any permission to show
14 the unit to any perspective renters?

15 A Absolutely not. Absolutely not.

16 Q Did the -- did the Unit D become available for rent
17 at some point after March?

18 A Yes. When they completed their job and I did an
19 inspection. Which would have probably been around
20 the first part of March, 2009. That's when it was
21 available for showings.

22 Q And who would show it?

23 A Me.

24 Q And when you went out there and showed it, did --
25 just generally, how would you show the unit?

1 A I would just meet the perspective tenant at the
2 property. And I would access the lockbox, remove the
3 key, open the door and allow the perspective tenant
4 to enter the property. And I'd tour the property
5 with the perspective tenant..

6 Q Did you ever show the Defendant this unit?

7 A No.

8 Q Did he have --

9 Well strike that.

10 Was there much interest in Unit D during the
11 time between March and when this incident happened
12 July 22?

13 A Not a tremendous amount, no.

14 Q Do you recall how many times you may have shown Unit
15 D?

16 A I don't recall how many. I honestly do not know how
17 many times I showed it.

18 Q Okay. Well just as far as the people that you did
19 show that unit to, was Mr. Thomas ever present with
20 any of them?

21 A No.

22 Q And at what point did you find a tenant for that
23 unit?

24 A I actually collected an application for a tenant
25 named Kelly Green who did went it on July 21st, 2009.

1 Q So you said she rented on July 21st. So she was --
2 the apartment, when was it available to be moved
3 into?

4 A It was available then when she completed the
5 application.

6 Q Okay. Was the lockbox was still on the door on the
7 22nd, correct?

8 A Yes.

9 Q Okay. And so as far as her having the key and moving
10 in, when did that occur?

11 A That did not occur until the date in August,
12 August 8th, 2009 when she paid her rent.

13 Q Okay. And did you actually show her the apartment?

14 A Yes, I did.

15 Q Just generally, where did she come from and?

16 A She actually moved from Washington, D.C.

17 Q Okay. And did she have any family members?

18 A Yes.

19 Q Okay. Did you meet them or?

20 A She had--

21 THE COURT: Solicitor, let's move on, please.

22 MS. TESSITORE: Okay.

23 THE COURT: Thank you.

24 BY MS. TESSITORE:

25 Q When you -- when you were out there on the property,

1 did you observe anything as far as any problems
2 regarding that unit before this incident as far as
3 the inside, or the door, or lockbox, or anything like
4 that?

5 A No.

6 Q And did -- did the Defendant, Eugene Thomas, have any
7 reason to be out at Unit D during that time that it
8 was vacant between March and July 22 of 2009?

9 A No.

10 Q As far as you know?

11 A Not as far as I know, no.

12 MS. TESSITORE: Please answer any questions that
13 Mr. Robinson may have.

14 THE COURT: You may cross-examine.

15 MR. ROBINSON: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. ROBINSON:

18 Q Good morning, ma'am.

19 A Hi.

20 Q And ma'am you got your --

21 A I'm sorry?

22 Q You got your records with you?

23 A Yes, sir.

24 Q Who was living in Apartment A at that time?

25 A That was actually vacant.

1 Q Vacant, too?

2 A Yes, sir.

3 Q And I think, looking at this over here, this is a
4 picture of the development or 119 Forrest Street.

5 How many apartments are there?

6 A There are four.

7 Q Four. And you don't live on site, do you?

8 A No, sir.

9 Q Okay. So you're not there 24/7 watching what's going
10 on and so forth, right?

11 A No, I am not.

12 Q Okay. So when Ms. Tessitore asked you as far as
13 whether you saw anything during this period of time
14 regarding Mr. Thomas on the site, since you weren't
15 there 24 hours a day, seven days a week, you couldn't
16 tell when you weren't there if he was there or not;
17 could you?

18 A No, I can't.

19 MR. ROBINSON: Thank you.

20 THE COURT: Redirect?

21 MS. TESSITORE: No further questions, Your
22 Honor.

23 THE COURT: Thank you, you may step down.

24 You wish the witness to be excused?

25 MS. TESSITORE: Yes, sir.

1 THE COURT: Any objection?

2 MR. ROBINSON: No objection.

3 THE COURT: You're also free to leave. Thank
4 you.

5 Call your next witness, please.

6 MS. TESSITORE: Your Honor, the State calls Greg
7 Byrum.

8 THE CLERK: Mr. Byrum, if you'd please come
9 forward. Place your left hand on the Bible, raise your
10 right hand.

11 GREG BYRUM, after being duly sworn, testified as
12 follows:

13 THE CLERK: Thank you, please be seated. State
14 your name for the record.

15 THE WITNESS: Greg Byrum, B-Y-R-U-M.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MS. TESSITORE:

19 Q Still morning, good morning, Mr. Byrum, how are you?

20 A Fine, thank you.

21 Q Could you tell the jury where you work?

22 A Right now I work in Greer for Honeywell, MS Company.

23 Q What do you do there?

24 A I report a CMM machine.

25 Q What is that?

- 1 A It is a contour measuring machine that measures the
2 blades on turbine engines. And measures different
3 dimensions on the blade.
- 4 Q Do you work full-time?
- 5 A Yes.
- 6 Q How long have you been working for Honeywell?
- 7 A I've been with Honeywell for three and a half months
8 but the MS company is who I work through to get to
9 Honeywell. And I have been there for a year.
- 10 Q Did you -- what did you do before you began working
11 for Honeywell?
- 12 A I worked for myself.
- 13 Q Doing what?
- 14 A Remodeling, working with property managers, getting
15 house turnkey for new clients.
- 16 Q And is Jennifer Hallex one of the property managers
17 that you worked for?
- 18 A Yes, that was Absolute Property Services, that's
19 correct.
- 20 Q How long did you do work for Absolute Property?
- 21 A Did work for Absolute Property Services for probably
22 a total of six years.
- 23 Q And are you familiar with 119 Forrest Street, Units A
24 through D?
- 25 A Yes, ma'am, they're right down here past the old post

- 1 office. I know exactly where they're at.
- 2 Q Okay. I'm going to show you State's Exhibit No. 4,
- 3 ask you do you recognize that?
- 4 A That's the apartments on Forrest Street.
- 5 Q Okay. And State's Exhibit 6, what is that?
- 6 A That's Apartment D, it's the one on the far
- 7 right-hand side.
- 8 Q All right. Did you do some work there in Unit D?
- 9 A A couple of times. We went originally for eviction,
- 10 to clear out the contents of the apartment. Then
- 11 after that was taken care of and everything was done,
- 12 we went back and did the painting and cleaning
- 13 inside. We actually painted the columns and the
- 14 outside of the front door, too.
- 15 Q Okay, let's talk about the painting that you did do.
- 16 That was in February of 2009?
- 17 A Correct.
- 18 Q Okay. And what were you hired to do specifically as
- 19 far as the painting job?
- 20 A That particular job was painting interior walls,
- 21 trim, doors, exterior of the front door and the two
- 22 columns.
- 23 Q Did you do that work?
- 24 A Yes, we did.
- 25 Q Do you have any -- who else works with you?

1 A My wife helps me on occasion. But I don't have any
2 employees. We're very small, it was just me.
3 Q Okay. So Byrum and Byrum?
4 A Yes.
5 Q Or mostly just Byrum?
6 A She helped more with the cleaning. She helped with
7 the cleaning and painting. I did all the hard stuff.
8 Q Did you have anyone help you with respect to Unit D
9 other than your wife?
10 A No, ma'am, just my wife.
11 Q Have you ever seen the Defendant, Mr. Thomas, here
12 before? Seated next to--
13 A No, ma'am.
14 Q -- Mr. Robinson?
15 A No, ma'am.
16 Q Okay. Ever hire him?
17 A No, ma'am.
18 Q Never seen him?
19 A No.
20 Q Do you -- do you recall when -- while you were
21 painting that unit, did any perspective renters come
22 by while you were at Unit D, painting there?
23 A No, ma'am.
24 Q Did -- if someone had come by, what is your policy as
25 far as showing the units?

1 A Nobody was allowed in, insurance wouldn't cover it.
2 You have to give them the name of the property
3 manager. They have to call the property manager and
4 arrange a showing. We don't do anything as far as
5 showing. We don't let anybody -- when we're working
6 a property, they're even allowed inside.

7 Q And was there any other work that you did with
8 respect to Unit D after the painting in February?

9 A We painted the front door and after that we were
10 done.

11 Q When you say you painted the front door, did you
12 paint both sides or?

13 A Yes, ma'am, inside and outside.

14 Q Okay. And do you recall what color you painted it?

15 A White.

16 Q Did -- one moment. As far as getting into the and
17 the access there, how would you access the unit?

18 A The property manager had put a lockbox on the front
19 door. She gave me the code that was changed each
20 time we moved to a different property. But I had the
21 code to get in and out.

22 Q Okay. Did -- did you notice any type of problems
23 with the lockbox or tampering or anything with that
24 lockbox on Unit D?

25 A No, ma'am.

1 Q How many times would you say you had been out 119
2 Forrest Street doing work? Just generally.

3 A Well I've done probably four, five individual jobs
4 but there were multiple days, not just D, I did work
5 on B also. So we were out there for multiple days.
6 If I had to count the number of days, I probably say
7 a total of, time we spent, time we worked there, 15,
8 20 times total.

9 Q All right. In all those times that you were out
10 there, did you ever see this Defendant?

11 A No, ma'am.

12 MS. TESSITORE: No further questions.

13 THE COURT: Cross-examination.

14 MR. ROBINSON: I have no questions for this
15 witness, Your Honor.

16 THE COURT: Thank you, you may step down, sir.

17 MS. TESSITORE: Ask the witness be excused.

18 THE COURT: Any objection?

19 MR. ROBINSON: No objection.

20 THE COURT: You're also free to leave, sir.

21 Thank you, sir.

22 All right, ladies and gentlemen, at this point
23 we'll take a recess. Please do not begin your
24 deliberations, don't discuss the case. We'll be with you
25 in about 10, 15 minutes. Thank you.

1 (WHEREUPON, the jury left open court at
2 approximately 10:50 a.m.)

3 THE COURT: All right, anything from the State
4 before recessing?

5 MS. TESSITORE: None, Your Honor.

6 THE COURT: Anything from the Defendant?

7 MR. ROBINSON: No, Your Honor.

8 THE COURT: We'll be at ease for about 10
9 minutes, please.

10 (WHEREUPON, a short break was taken.)

11 (WHEREUPON, State's Exhibit No. 24 was marked
12 for identification only.)

13 THE COURT: All right, you ready, Solicitor?

14 MS. TESSITORE: Your Honor, let me just make
15 sure that my next witness is here.

16 THE COURT: Okay, hopefully they are.

17 MR. ROBINSON: Your Honor, just one pre-trial
18 matter, not pre-trial matter. Ms. Tessitore's showing me
19 some pictures here where he was arrested. One picture is
20 the location of the InTown Suites. The other two pictures
21 looks like a picture of the room that he was arrested in.
22 And I'm not really seeing the relevance of this in terms
23 of --

24 THE COURT: I appreciate that. I, again, I
25 appreciate your pre trying it. I'm just not a Judge

1 that's going to give a heads-up. You put it in, I'll make
2 the ruling. That's why they have the Rules of Evidence.

3 MR. ROBINSON: I'm just one of these guys --

4 THE COURT: I wanted to know too. And I
5 understand why. You want to avoid the possible jury
6 hearing. But I just think that's part of the trial
7 process.

8 MR. ROBINSON: Thank you.

9 THE COURT: Thank you, sir. Don't know. I'll
10 let you know -- I'll let you know when she offers it.

11 MR. ROBINSON: Thank you, I appreciate that.

12 THE COURT: Solicitor, you ready now?

13 MS. TESSITORE: Very ready, Your Honor.

14 THE COURT: All right, let the record reflect
15 Mr. Thomas is present.

16 Excuse me, are y'all ready?

17 MR. ROBINSON: Defense is ready, Your Honor.

18 THE COURT: Excuse me, Mr. Thomas, for
19 interrupting, sir.

20 Let's bring in our jury.

21 (WHEREUPON, the jury came into open court at
22 approximately 11:14 a.m.)

23 THE COURT: Thank you, very much, ladies and
24 gentlemen. We're ready to continue.

25 Solicitor, you may call your next witness.

1 MS. TESSITORE: Your Honor, the State calls
2 Collis Flavell.

3 THE CLERK: Mr. Flavell, place your left hand on
4 the Bible raise, your right hand.

5 COLLIS FLAVELL, after being duly sworn,
6 testified as follows:

7 THE CLERK: Thank you, please be seated. State
8 your name for the record.

9 THE WITNESS: Collis Flavell.

10 DIRECT EXAMINATION

11 BY MS. TESSITORE:

12 Q Detective Flavell, where do you work?

13 A Greenville City Police Department.

14 Q What do you do for the city police department?

15 A I'm currently assigned to the crimes against persons
16 unit in the detective division.

17 Q What kind of crime does that include?

18 A It's all violent crimes, any kind of violent crime
19 that's to a person we investigate.

20 Q How long have you been an investigator with the city
21 police?

22 A Approximately 15 years.

23 Q What are your duties as a detective?

24 A Uniform patrol responds to the original call.

25 Whether it be a 911 call, call to our dispatch center

1 and they take a report. Depending on the nature of
2 the crime, we either respond to the crime or it's
3 forwarded to us the next day via a incident report.

4 Q And once you get the incident report and it's
5 assigned to you, what are your general duties at that
6 point?

7 A We start following up with leads, investigate the
8 incident and try to identify -- first identify if a
9 crime occurred and then identify the potential
10 suspect in that crime.

11 Q In your time with the city police department, how
12 many cases would you say you've been assigned and
13 worked?

14 A In general?

15 Q (Ms. Tessitore nods.)

16 A Thousands.

17 Q Okay. Did you -- did you become involved in the
18 investigation in this case?

19 A Yes, I did.

20 Q And when did you become involved?

21 A I actually became involved on the 23rd. It actually
22 happened on the 22nd. And the report was forwarded
23 to me on the next day. The 23rd is when I received
24 it.

25 Q Okay. And once you received the report, what did you

1 do first?

2 A Actually, I received a notification from our
3 forensics division, latent section, via email, his
4 report on a fingerprint match prior to me even
5 actually getting started on this investigation.

6 Q And is that the fingerprint match that we talked
7 about earlier with the latent print examiner?

8 A It is. Latent Print Examiner Gary forwarded me his
9 findings from a match that he made on the
10 fingerprint.

11 Q And which print was that?

12 A It was a print taken off the door of Apartment D..

13 Q Okay. Do you recall if it was the interior or
14 exterior?

15 A Interior.

16 Q And what did you do once you got that information?

17 A I followed up with the information that Gary provided
18 me in his report. He identified a print that matched
19 Eugene Thomas. I then took the description that was
20 given by the victim, compared it to Mr. Thomas and
21 determined that they were very similar.

22 Q And if they had not been, what would you have done?

23 A Just continue to investigate the case and see why his
24 print was on that door.

25 Q Okay. Did you get in contact with the victim at some

1 point?

2 A I did. I actually called him on the 24th.

3 Q And did you speak with him?

4 A I did.

5 Q Was he able to provide you a description of the
6 suspect on the phone?

7 A I did. I did a phone interview with him, asked him
8 to explain to me what had happened and give me a
9 description of the suspect. He was able to do that
10 over the phone. Said it was a dark skinned, black
11 male with dreadlocks. Had a neatly trimmed -- he
12 said, Neatly trimmed mustache and a goatee.

13 Q Provided his approximate height and weight?

14 A I believe he said it was around 5'10. I don't recall
15 if he gave me a weight or not.

16 Q Did you--

17 A I don't think he actually gave me a weight.

18 Q And what kind -- any approximate age?

19 A I noticed in the original report, I believe the
20 original report, was late 30's.

21 Q Okay. Did -- did he -- that was when you spoke to
22 him on Friday?

23 A The 24th.

24 Q Okay. And so this was two days after the incident
25 occurred, is that correct?

1 A That is correct.

2 Q All right. Now once you spoke with him and confirmed
3 the identification or excuse me, the description that
4 he gave you said, at that point what did you do next?

5 A Well, I made a -- on the 28th is when I got back in
6 touch with the victim. His work he had that weekend
7 Saturday, Sunday, Monday, his work schedule he was
8 able to come in on Tuesday and meet with me. On
9 Tuesday I compiled a six person photo line-up and met
10 with the victim in my office.

11 Q Okay. When you say you compiled a six person photo
12 array, was that something that you did prior to the
13 to victim arriving there?

14 A Yes.

15 Q Okay. Explain to the jury how you go about doing
16 that?

17 A Basically a photo line-up is a computer generated
18 document. We're able to, of course -- this line-up I
19 had a potential suspect. So the line-up was built
20 around that suspect. What we try to do is as close
21 as we can is to match physical descriptions. Hair,
22 skin tone, facial features, try to get similar photos
23 in a line-up. And we were able to -- the computer
24 gives us our original five photos to go with the
25 suspect photo. And I'm able to manipulate that

1 photo. If it doesn't match, I can kick the photo,
2 generate another photo in its place. And we just
3 keep doing that until we get a line-up that we feel
4 is similar in nature that doesn't make the subject
5 photo stand out.

6 Q Okay. I'm showing you State's Exhibit No. 17, do you
7 recognize that?

8 A I do.

9 Q What is that?

10 A That's a photo of the Defendant that I used for the
11 photo array or the line-up.

12 Q And is that -- is that a fair and accurate depiction
13 of the Defendant?

14 A Yes.

15 Q Did you -- were you able to determine how recent that
16 picture was in relation to when the crime was
17 committed?

18 A Approximately three weeks prior.

19 Q Okay. And so with that recent picture, what did you
20 do? You said you compiled a -- so State's Exhibit
21 17, is the photo that you used in the array?

22 A Yes.

23 Q Okay.

24 MS. TESSITORE: The State would move State's
25 Exhibit 17 into evidence.

1 MR. ROBINSON: No, objection, Your Honor.

2 THE COURT: Without objection State's Exhibit 17
3 is admitted, a photo.

4 (WHEREUPON, State's Exhibit No. 17 was admitted
5 into evidence.)

6 BY MS. TESSITORE:

7 Q Okay, that's -- going to the photo array that you
8 created, how did you -- once you generated the
9 picture and determined which pictures you're going to
10 use, how did you then set that up to be able to show
11 it to the victim?

12 A Printed the document. I knew the victim was coming
13 in that day. So about an hour, a little bit before
14 he got there, I printed the document. When he got
15 there, I met with him in my office and did the photo
16 line-up.

17 Q Okay. I'm going to show you State's Exhibit No. 2,
18 and what is that?

19 A This is the photo line-up that I showed the victim.

20 Q And that was on July 28th?

21 A Correct, approximately 1:50 in the afternoon.

22 Q Is that in substantially the same condition as when
23 you conducted that array, the line-up for him?

24 A Yes, it is.

25 Q Okay.

1 MS. TESSITORE: And at this time the State would
2 move State's Exhibit No. 2 into evidence.

3 MR. ROBINSON: Subject to my previous objection.

4 THE COURT: Previous objection made and
5 discussed and argued on the record.

6 That's State's Exhibit?

7 MS. TESSITORE: Number 2, Your Honor.

8 THE COURT: Number 2. Okay, State's Exhibit 2
9 is admitted subject to your objection.

10 MS. TESSITORE: Thank you, Your Honor.

11 (WHEREUPON, State's Exhibit No. 2 was admitted
12 into evidence.)

13 BY MS. TESSITORE:

14 Q Detective Flavell, I'm going to try to --

15 Could you dim the lights for me?

16 THE COURT: But hold on just one second. With
17 respect -- excuse me just one second, Solicitor.

18 With respect to State's 2, we argued that issue,
19 ruling's made, the Court will supplement the record though
20 concerning State's 2 at the first break. Thank you.

21 MS. TESSITORE: Thank you, Your Honor. Your
22 Honor, may we approach?

23 THE COURT: Uh-huh, you may.

24 (WHEREUPON, a bench conference was held
25 off-the-record, in the presence of the jury but

1 out of the hearing of the jury.)

2 THE COURT: Ladies and gentlemen, what happens
3 when we have a bench conference is we talk about matters
4 of law. They're two ways of accomplishing that. One is
5 excuse you, then discuss it fully in the courtroom. The
6 other is to have them approach and we do that. You heard
7 me say, I will place my ruling on the record. That's just
8 to avoid having to send you out. That's a matter for me.
9 It should not concern you. And you don't need to be
10 concerned with that fact. Thank you, very much.

11 Thank you, Solicitor.

12 MS. TESSITORE: Thank you, Your Honor.

13 BY MS. TESSITORE:

14 Q See if I can get the --

15 Could you give me a little so -- just so I can
16 read the buttons, please. Very good, thank you.

17 Okay, Detective Flavell, if you could, explain
18 to the jury as far as when you showed this photo
19 array to the victim, did -- how -- as far as the
20 numbers that are placed on there, can you describe
21 what you had put on there prior to the victim putting
22 his writing on there?

23 A Yes. The only handwriting that would have been on
24 that document prior to the victim viewing it would be
25 the numbers 1 through 6. We only number the

1 photographs so that we are confident on which number
2 so he can identify the number to me. Which photo did
3 you pick? He can assign a number to it. The number
4 handwritten at the top would have been written after
5 I showed it. All that simply is is a case number
6 that assigns that line-up to this case. As far as
7 our records go.

8 The writing at the bottom, the paragraph with
9 the signature, that's actually the victim's
10 handwriting and statement. Then the initials in
11 photo number five just, above the left side of the
12 head, is the victim's initials where he identified
13 that photograph. Prior to me showing him a
14 photograph, a lot of times people we deal with as
15 victim has never been through this process. So the
16 first thing I do is explain to him, I ask if he's
17 ever viewed a six person photo line-up. A lot of us
18 have not. In this case he had not viewed a six
19 person photo line-up. So I explained to him what it
20 was, that it was six photographs of six individuals.
21 I further explained to him that the person who robbed
22 him may or may not be in this line-up. And not to
23 feel like he had to pick someone just because I was
24 showing him a line-up. He stated he understood. In
25 fact, he made the statement he did not--

1 MR. ROBINSON: Objection, Your Honor, hearsay,
2 relevance.

3 THE COURT: I sustain the objection.

4 BY MS. TESSITORE:

5 Q Did he seem to understand what you were explaining to
6 him?

7 A He did.

8 Q Did he also seem to understand the seriousness of
9 what he was doing?

10 A He did.

11 Q Was he by himself?

12 A He was him and I in my office at the law enforcement
13 center.

14 Q And if we can get the lights back on.

15 I'm going to hand you back State's Exhibit No.

16 2. And if you could, just show the jury how you
17 presented the array to him and then what he did with
18 it when he received that.

19 A The actual photo array would have been out of sight
20 while I was explaining the process to him. Once he
21 understood what we were doing, I would hand him the
22 line-up face down. When he got ready to flip it
23 over, he flipped it up. He looked at the line-up, he
24 laid it down on my desk and said, That's the guy and
25 pointed to photo number five.

1 Q And did he -- did he have any other information
2 regarding any of the individuals in that array before
3 looking at it?

4 A No.

5 Q Did he -- had he seen any pictures? Did you show him
6 any pictures prior to the photo array?

7 A No, I did not.

8 Q And when he pointed to number five -- well first of
9 all, could you tell if he had looked at all six
10 pictures?

11 A I mean, he took -- it wasn't a very long length of
12 time, it was seconds. I handed him the line-up. You
13 know, you can see him scanning the line-up. He laid
14 it down and said, That's was the guy. Within seconds
15 he identified photo number five being the person that
16 robbed him.

17 Q Do you ever have situations where a victim or witness
18 can't pick somebody out?

19 A Quite often.

20 Q What is your procedure if that happens?

21 A We just document we showed them a photographic
22 line-up in our report, the line-up stays with the
23 file. We just document they were unable to pick
24 anyone from the line-up.

25 Q Do you have victims and witnesses who hedge between--

- 1 A Yes, we do.
- 2 Q Before they make any selection, if they make it at
3 all?
- 4 A Yes.
- 5 Q Did Mr. Gordon seem to hedge or hesitate or have any
6 hesitation as he -- before he pointed to number five?
- 7 A Not at all.
- 8 Q Did he point to any other pictures?
- 9 A He did not.
- 10 Q And how did you have him document his selection?
- 11 A I asked him to initial the photo that he selected,
12 which he did initial above the photo. Then I asked
13 him to write a small summary below indicating that.
14 And he did, he wrote a short paragraph and signed it.
- 15 Q And that was in your presence?
- 16 A Yes, it was.
- 17 Q And who did he identify?
- 18 A The Defendant, Eugene Thomas.
- 19 Q After the identification of Mr. Thomas -- and by the
20 way, this was just six days after the incident?
- 21 A Yes, it was on the 28th.
- 22 Q I'm sorry, I cut you off.
- 23 A It was on 28th.
- 24 Q On the 28th, okay. What did you do as a result of
25 that identification? What did you at that point as

1 far as -- well let me back up. After he made this
2 identification, did you obtain -- did you obtain
3 warrants in this case?

4 A I did.

5 Q And were you able to -- did you have any information
6 from Officer Bradley or any other officers that had
7 been relaid the information regarding his
8 description? Was there any type of other, I guess,
9 information regarding which way -- or whether they
10 found anybody matching the description that day this
11 occurred or any activity that would have helped you
12 find where he was?

13 A No. What I received was the original incident report
14 that the officer took. What the information in that
15 report's what I had. There was no indication of,
16 understanding what you're asking me, direction of
17 travel after the incident, where the suspect was, who
18 he was, nothing until the next day when I got the
19 report from the latent examiner.

20 Q So there was -- on one was -- there were no other
21 suspects at that time?

22 A No.

23 Q Okay. And as a result of your further investigation
24 of obtaining warrants, what did you do after you
25 obtained the warrants?

1 A I'm not sure what you're asking me.

2 Q Well, after you got the warrants in this case, was
3 there any other -- was there anything else that you
4 did as far as finding the Defendant or looking for
5 the Defendant?

6 A Yes, I'm sorry, yes. Once I obtained the warrants on
7 a case of a violent offense, we place those warrants
8 on NCIC which is -- all agencies in the United States
9 are members of NCIC. And if someone runs a name, any
10 agency runs a name, if they're on NCIC, they'll get a
11 hit that that person's wanted out of Greenville.

12 MR. ROBINSON: Your Honor, objection, relevance
13 in this case.

14 THE COURT: Sustained.

15 BY MS. TESSITORE:

16 Q Okay. Just as far as after you obtained the
17 warrants, were you involved in locating the
18 Defendant?

19 A No.

20 Q Okay. And who was involved in that?

21 A It was turned over to U.S. Marshals Task Force. We
22 have an officer--

23 MR. ROBINSON: Your Honor, objection, relevance,
24 again.

25 THE COURT: Sustained.

1 BY MS. TESSITORE:

2 Q Okay, Detective Flavell, at some point were the
3 warrants served on the Defendant?

4 A Yes, they were.

5 Q When -- approximately when were they served on the
6 Defendant?

7 A September. Not sure exact date, a couple months
8 later.

9 Q Okay. Did you receive information as to -- excuse me
10 one second. Okay, did you have an opportunity to
11 view the Defendant once he was served with those
12 warrants?

13 A I did.

14 Q And at that point in time, this was two months later,
15 how did he compare as far as his -- or just describe
16 his physical appearance at that time.

17 A Well he looked pretty much the same as the photo used
18 in the photo line-up, except his hair was grayer.

19 Q Okay. And I'm showing you State's Exhibit 18. Do
20 you recognize that?

21 A I do.

22 Q What is that? Or let me ask you this -- strike that
23 question. Who is that?

24 A Eugene Thomas.

25 Q Is that a fair and accurate depiction of how he

1 appeared when you saw him?

2 A Yes.

3 Q Okay.

4 MS. TESSITORE: At this point the State would
5 move State's Exhibit No. 18 into evidence.

6 THE COURT: Any objection?

7 MR. ROBINSON: No objection.

8 THE COURT: Without objection, it's admitted.

9 (WHEREUPON, State's Exhibit No. 18 was admitted
10 into evidence.)

11 BY MS. TESSITORE:

12 Q Detective Flavell, how -- based on how he appeared
13 then and how he appears now, how has he changed in
14 appearance?

15 A He has -- now he has a full beard and his hair is
16 grayer.

17 Q Okay.

18 A And no glasses. He's wearing glasses today.

19 Q What about generally his height -- well obviously his
20 height. His weight, I'm sorry, his build?

21 A Looks pretty much the same.

22 Q Okay. Now --

23 Just one moment, please.

24 THE COURT: Certainly.

25

1 BY MS. TESSITORE:

2 Q Okay, Detective Flavell, I'm just going to take you
3 back for a second as far as when Mr. Gordon was
4 looking at the array, did you influence or suggest to
5 him?

6 A No, I did not.

7 Q Anyone force--

8 MR. ROBINSON: Your Honor, object.

9 THE COURT: What's the basis of your objection?

10 MR. ROBINSON: It's duplicative.

11 THE COURT: Sustained.

12 You covered that, Solicitor.

13 MS. TESSITORE: Okay.

14 THE COURT: He's testified to that, fully.

15 MS. TESSITORE: All right.

16 Detective Flavell, if you could answer any
17 questions that Mr. Robinson may have.

18 THE COURT: You may cross-examine.

19 MR. ROBINSON: May it please the Court?

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. ROBINSON:

23 Q Officer Flavell, you sat in the courtroom the entire
24 time that we've been here since yesterday, correct?

25 A That's correct.

- 1 Q Now, in your investigation in this case, did you --
2 you didn't see whether or not this lotto ticket was
3 ever turned in, did you?
- 4 A No.
- 5 Q So wouldn't it have made sense that this person, this
6 perpetrator, that took this alleged ticket from the
7 victim -- and the victim testified, you heard the
8 victim testify that it was for that night, the Power
9 Ball, wouldn't it have made sense for that person to
10 look to see whether that person try to cash that
11 Power Ball ticket? Wouldn't that be a prime suspect
12 in this case?
- 13 A If there was a winning number, yeah it would be smart
14 to turn it in. But if it was not a winning number,
15 you would throw it in the trash.
- 16 Q But wouldn't that person go -- wouldn't logically
17 that person go and check to see whether or not that
18 number was good or not? Say a store that would give
19 him or her an idea of the ticket was good or not?
- 20 A Again, you're asking me to speculate to how the
21 lottery system operates. I'm not sure -- it's my
22 understanding that they print the numbers across the
23 T.V. screen a night on the news. So I don't know
24 where you would go to check to see if the numbers
25 were accurate.

1 Q Did you -- in your investigation, did you ever check
2 to see whether or not a lotto ticket, a Power Ball
3 ticket had ever been sold to this victim?

4 A No.

5 Q So you really don't know whether or not a lotto
6 ticket was ever even sold to the victim, do you?

7 A No, I don't. But I'm not sure how you would know
8 that. You don't use an ID to buy a lottery ticket.

9 Q Well you said a few minutes ago that you're not
10 familiar with the lottery system?

11 A That's correct.

12 Q True. So you don't know?

13 A I don't know. I don't know how you buy a lottery
14 ticket.

15 Q Now you've been a police officer -- I this you told
16 the jury, you'd been a police officer, how many
17 years?

18 A Twenty.

19 Q Twenty years. And in all time you never had any
20 exposure to getting a lottery ticket--

21 THE COURT: You've covered that as far as I'm
22 going to allow you under 611(a).

23 MR. ROBINSON: Thank you, Judge.

24 THE COURT: All right, move on.

25

1 BY MR. ROBINSON:

2 Q In the -- what's been noted [sic] as Exhibit 2 --
3 excuse me, there's no mention in the statement by
4 that victim about any goatee, was there?

5 A In the statement, no.

6 Q And you would agree with me that the picture of
7 Eugene Thomas in this line-up that was taken, does
8 not have a goatee, you would agree?

9 A Does not have a full goatee.

10 Q And that would be Exhibit 2, correct?

11 A Yes.

12 Q And with Exhibit 18, which is what you -- 18 and 17,
13 these also don't have a goatee, is that correct?

14 A Eighteen has no facial hair other than a mustache.
15 And 17 does not have a full goatee, no.

16 Q Okay. The --

17 MR. ROBINSON: That's all I have, thank you.

18 THE COURT: Redirect, Solicitor?

19 MS. TESSITORE: No further questions, Your
20 Honor.

21 THE COURT: You may come down, thank you, sir.
22 Call your next witness please.

23 MS. TESSITORE: Thank you, Your Honor. The
24 State would call Officer Mike Aiken.

25 THE CLERK: Officer Aiken, please come forward.

1 Sir, if you'd, please, place your left hand on the Bible,
2 raise your right hand.

3 MIKE AIKEN, after being duly sworn, testified as
4 follows:

5 THE CLERK: Thank you, please be seated. State
6 your name for the record.

7 THE WITNESS: James Michael Aiken. My family
8 and friends call me Mike.

9 DIRECT EXAMINATION

10 BY MS. TESSITORE:

11 Q Good morning, Mike, how are you?

12 A I'm good, thank you.

13 Q Where do you work, Office Aiken?

14 A I'm currently part-time working with the Greenville
15 County Sheriff's Office and part-time retired for
16 medical purposes.

17 Q Okay. And what do you do for the -- in your
18 part-time job?

19 A Investigations with the Greenville County Sheriff's
20 Office.

21 Q And how -- before that what did you do?

22 A I was with the Greenville Police Department for 19
23 years. In my final five to six years, I worked in
24 the warrant division. My job primarily was to locate
25 and apprehend people with active warrants for their

1 arrest.

2 Q Okay. And that -- did you have position back in

3 September 28th of 2009?

4 A Yes, ma'am, I did.

5 Q And that was with the Greenville Police Department?

6 A That's correct. At that current time I was a

7 Greenville police officer but I was assigned to the

8 U.S. Marshals Task Force. That is a group of

9 officers from different agencies that work together

10 in serving warrants.

11 Q And I'm going to take you to September 28th of 2009

12 and ask you, did you have warrants for this

13 Defendant?

14 A I did..

15 MR. ROBINSON: I'm going to object to relevance,

16 Your Honor.

17 THE COURT: I'll allow it.

18 BY MS. TESSITORE:

19 Q Were you able to locate this Defendant as to the

20 charges that brings us here today?

21 A Yes, ma'am, I was.

22 Q Okay. Where did you locate him?

23 A I located him at the InTown Suites which is a hotel

24 located on Wade Hampton Boulevard in Greenville

25 County.

1 Q And just generally, what led you to that location?

2 A I had cases that were assigned to me that were long
3 term cases. And I was working this and received
4 information that he was possibly there.

5 Q Okay. When you got there, what did you do?

6 A I did some very brief surveillance on the hotel room
7 that I suspected he was staying in. After confirming
8 someone was inside the room, I knocked and announced
9 who I was and Mr. Thomas came to the door.

10 Q Okay. And explain to the jury or just describe for
11 the jury, what happened at that point?

12 A Normally I wore plain clothes so I displayed my
13 badge. And when he come to the door, I announced who
14 I was, showed my credentials, told him that he was
15 under arrest for armed robbery. It was kind of a
16 strange situation because the door was partially
17 opened. And he was nude. He was wet, he had just
18 gotten out of the shower. And so instead of
19 immediately handcuffing him, I allowed him to sit
20 with his hands on his knees, on a chair, right inside
21 the hotel room, where we could put some clothes on
22 him before handcuffing him and that type of thing.
23 And going through our protocol for transporting him.

24 Q Okay. Was there anyone else in the room with him?

25 A No, he was alone in the room.

1 Q And what -- what type of room was this? Queen bed,
2 one bed, two beds, what size of room was it?

3 A I don't know the size of the room but there was only
4 one bedroom. I mean, it was a -- one bed in the
5 room. When you looked into the door, the door opened
6 to the left, I could see the bed, a chair and then
7 the bathroom was directly in front to me. The door
8 went open and went straight back into the bathroom.

9 Q Was anyone in the bathroom?

10 A No, they were not.

11 Q Okay. So at that point, what did you do -- well let
12 me ask you this. What did you observe as far as just
13 generally? Where there other -- what did you observe
14 about the room?

15 A Well I noticed in the room there was assorted
16 clothing lying around, television set going, some
17 food was inside the room. Once I had Mr. Thomas sit
18 in a chair, I picked up some clothing and allowed him
19 to get dressed. But I wanted to hand it to him to
20 make sure there was nothing in the pockets or
21 anything that would be a danger to me or the officers
22 that were with me. So there was a lot of clothing
23 lying around in the room.

24 Q Okay. And did you -- what did you do once he got
25 dressed?

1 A Well during the process -- as he was getting dressed,
2 I remember filling the pockets of the pants that I
3 gave to him to put on, make sure there was nothing in
4 there that would be a danger to anyone. And as he
5 was sitting in the chair, the bed was probably five
6 to six feet, the corner of it from where we were, I
7 noticed a blue, small zipper bag. And I didn't know
8 what was in it so I picked it up in case it was
9 something that could be a danger to me because it was
10 within arms reached. And picket it up and held it to
11 me.

12 Q What did you -- how would you describe the items that
13 you picked up?

14 A It was heavy and it was a soft bag. So feeling
15 through the bag and picking it up, it felt like a
16 firearm to me. It felt like a pistol.

17 Q Okay. So what did you do in response to that?

18 A I opened the zipper bag and discovered the contents
19 within was a pistol, two men's watches and a dice
20 game.

21 Q Okay. What did you do with those items?

22 A I placed them into property and evidence.

23 Q Before you did that did you do anything with respect
24 to the pistol?

25 A Yeah. When I put the pistol and the items into

1 property and evidence, I did a form to try to get
2 fingerprints off of the items as well to see if it
3 would assist with this case. I contacted Detective
4 Flavell, who was the investigator assigned to this
5 case, and notified him.

6 Q Okay. Before we get to that point, let me just go
7 ahead and show you -- I'm showing you State's
8 Exhibit -- can you go ahead and open that? Do you
9 need scissors? Let me get this marked first.

10 (WHEREUPON, State's Exhibit No. 27 was marked
11 for identification only.)

12 BY MS. TESSITORE:

13 Q I'm showing you State's Exhibit No. 27 and take a
14 look at that. Do you recognize that?

15 A I do.

16 Q Okay, what is that?

17 A That is the zipper bag that was sitting on the bed
18 that I retrieved while Mr. Thomas was getting
19 dressed.

20 Q Where has that been since you put it into you said
21 P&E?

22 A I put it in -- we have a room called property and
23 evidence. That once we seize an item, we have to log
24 it into property and evidence where it's secured for
25 safe keeping for court purposes.

1 Q Okay. And if you could, just go ahead and open that
2 up. Without taking the items out, just look in there
3 and see, do you recognize those items?

4 A I do.

5 Q Okay. That's the same items, the two watches and the
6 dice game.

7 (WHEREUPON, State's Exhibit No. 28 was marked
8 for identification only.)

9 BY MS. TESSITORE:

10 Q I'm showing you what's been marked as State's Exhibit
11 28, and do you recognize that?

12 A I do.

13 Q What is that?

14 A That's the dice game that was in the zipper bag at
15 the time I retrieved it. Everything looks exactly
16 the same absent the firearm is not in here.

17 Q Okay. The -- and can you just describe as far as
18 the -- well why did you -- why did you seize all
19 these items?

20 A The reason I seized this is because I didn't know
21 exactly what was connected to the case at the time.
22 All -- at that time I was serving a warrant and I
23 didn't know what was supposedly taken or anything
24 like that. So just for general, to be safe, I took
25 these items to put in evidence. And that's when I

1 notified Investigator Flavell in case there was
2 something connected to the case that I was unaware
3 of.

4 Q Yes, sir. Did you know whether there was any type of
5 weapon involved in the alleged robbery?

6 A Yes. I was informed that there was a--

7 MR. ROBINSON: Objection, Your Honor, hearsay.

8 BY MS. TESSITORE:

9 Q Without going into the description of that--

10 THE COURT: She's withdrawing the question?

11 MS. TESSITORE: Yes, sir.

12 THE COURT: All right.

13 BY MS. TESSITORE:

14 Q The firearm that you found in the motel room, can you
15 describe that?

16 A It is a mostly black with some silver color on it,
17 semi-automatic handgun.

18 Q Okay. And did you also retrieve that item?

19 A I did.

20 Q Okay.

21 Your Honor, may we approach?

22 THE COURT: Okay.

23 (WHEREUPON, a bench conference was held
24 off-the-record and in the presence of the jury
25 but out of the hearing of the jury.)

1 BY MS. TESSITORE:

2 Q Officer Aiken, I'm showing you what's been marked as
3 State's Exhibit No. 14. And the evidence sheet that
4 goes along with that. Could you take a look at those
5 items?

6 A Sure.

7 Q And do you recognize that Exhibit?

8 A I do.

9 Q Okay, what is that?

10 A That is the handgun that was in the bag that I seized
11 on this particular day. And this property and
12 evidence sheet is the sheet that I completed after
13 the arrest and when placing these items into property
14 and evidence.

15 Q Okay. Is there a way that you record anything
16 identifying about the -- the weapon to ensure that
17 it's -- it can be tracked?

18 A Yes. What we have to do is we have to assign it an
19 item number, which would be my initials. And we
20 would start with a number one. Then we would give a
21 model number. But more distinctly we put a serial
22 number on our property and evidence sheet that is on
23 this gun. And the serial number does match the one
24 that I put on the property and evidence. So this is
25 the same gun.

1 Q And did it appear to be in working order when you
2 seize the gun that day?

3 A It appeared to be in working order. And it was
4 loaded. And I am the one that actually took the
5 ammunition out and unloaded the weapon and secured it
6 for safe keeping in property and evidence.

7 Q Is that part of your policy and procedures?

8 A Yes, it is.

9 Q Okay. And has that item been altered in any way
10 since you put it into property and evidence?

11 A No, it appears to be in the same condition.

12 Q Okay.

13 MS. TESSITORE: At this time the State would
14 move State's Exhibit 14 into evidence.

15 THE COURT: Any objection?

16 MR. ROBINSON: Objection, to relevance, Your
17 Honor.

18 THE COURT: Okay, subject to the objection of
19 counsel it's admitted. State's Exhibit 14.

20 (WHEREUPON, State's Exhibit No. 14 was admitted
21 into evidence.)

22 BY MS. TESSITORE:

23 Q Now, Officer Aiken, the you stated that the address
24 where he was located was on Wade Hampton Boulevard?

25 A That's correct. It's actually 2540 Wade Hampton

1 Boulevard which is InTown Suites.

2 Q I'm showing you marked as State's Exhibit 24, take a

3 look at that. What is that?

4 A That's an aerial view of where it would actually be

5 located. The hotel itself.

6 Q Is that a fair and accurate depiction of that area

7 between -- with 119 Forrest Street and then the

8 location where he was apprehended?

9 A Yes.

10 Q Okay.

11 MS. TESSITORE: The State would move State's

12 Exhibit No. 24 into evidence.

13 MR. ROBINSON: No objection.

14 THE COURT: Without objection, State's 24

15 photograph is admitted.

16 (WHEREUPON, State's Exhibit No. 24 was admitted

17 into evidence.)

18 BY MS. TESSITORE:

19 Q I'm showing you State's Exhibit 17, and ask you if

20 you recognize that?

21 A Yes, I do.

22 Q Okay. Is that a fair and accurate -- well who is

23 that?

24 A That's Mr. Thomas.

25 Q Is that a fair and accurate depiction of how he

1 appeared the day that you arrested him?

2 A Yes.

3 Q A little bit dryer?

4 A I was going to say absent the wet hair, yes.

5 Q Okay, thank you.

6 A His hair is very long and took a while to dry.

7 Q All right. Just one moment. Did -- going back to

8 State's Exhibit No. 28, did you also place that into

9 property and evidence?

10 A Yes, I did.

11 Q Did you also fill out the sheet for that?

12 A Yes. That would be item number JMA, which would be

13 my initials dash 6. That would be the number assign

14 to that when I put it into property and evidence.

15 Q When did you put it in property and evidence for

16 storage?

17 A I actually put it in on September the 28th at 3 p.m.

18 Q Okay. So that same day?

19 A Same day.

20 Q And did you request any processing as far as those

21 two items? The weapon in State's No. 14 and 28?

22 A I requested the firearm only to be processed for

23 latent prints.

24 Q And do you know if they were able to locate any

25 prints on the gun?

- 1 A To my knowledge they were not.
- 2 Q Okay. Did the -- did they also try to locate prints
3 on the magazine?
- 4 A Of the handgun?
- 5 Q Yes, sir.
- 6 A I'm unaware. I do not know.
- 7 Q Okay.
- 8 A I would assume they did but do not know for sure.
- 9 Q And all those items were submitted together?
- 10 A Yes, ma'am.
- 11 Q Now when you were in the room with Mr. Thomas, did he
12 have the opportunity at any point in time to put his
13 hands on the dice game or touch any of these items
14 while he was being...
- 15 A No, absolutely not. They were in a sealed bag. As
16 soon as he was dressed, I handcuffed him and he was
17 handcuffed behind his back. The only person that
18 touched these items in the meantime were me.
- 19 Q Okay. And do you know whether the dice game was
20 submitted for analysis at a later point in time?
- 21 A It was submitted at a later point in time.
- 22 Q Okay.
- 23 MS. TESSITORE: At this point the State would
24 move State's Exhibit 28 into evidence.
- 25 THE COURT: Any objection?

1 MR. ROBINSON: No objection.

2 THE COURT: Without objection. State's Exhibit
3 28 is admitted.

4 (WHEREUPON, State's Exhibit No. 28 was admitted
5 into evidence.)

6 BY MS. TESSITORE:

7 Q All right. As far as the -- well strike that. How
8 does his appearance now compare to when you saw him
9 that day when you arrested him?

10 A A little more gray hair, maybe just a little heavier.

11 Q What about facial hair?

12 A He has a little more facial hair than he did at the
13 time and it's lighter in color, a little more gray.

14 Q Okay.

15 MS. TESSITORE: All right, please answer any
16 questions that Mr. Robinson may have.

17 THE COURT: You may cross-examine.

18 CROSS-EXAMINATION

19 BY MR. ROBINSON:

20 Q Good morning, Officer. Let me ask you, InTown
21 Suites, that's like Extended Stay Motel, is that
22 correct?

23 A From what I understand people stay there longer
24 periods of time than your average hotel.

25 Q So there was nothing unusual about a number of

1 clothes being there, correct? Nothing unusual about
2 that?

3 A I have seen that before.

4 Q As far as the -- there's nothing unusual about a
5 person staying at InTown Suites? You find nothing
6 wrong with that, do you?

7 A No.

8 Q And when you came to serve papers on Mr. Thomas, he
9 didn't run or hide, did he?

10 A He did not.

11 Q He was cooperative?

12 A He was.

13 Q Didn't try to hide anything?

14 A No. He opened the door and allowed us in. At that
15 point he was cooperative.

16 Q How old was he at the time?

17 A How old was he?

18 Q Yeah.

19 A I put in my report he was born in '61, 1961. The
20 paper work I have had September 6th, 1961.

21 Q And that puts him how old?

22 A Well that was three years ago, I believe. Math's
23 correct, 48.

24 Q Forty-eight. And how tall did you put down? Did you
25 put down his measurements and so forth in your

- 1 report?
- 2 A In my report I put that he was 5'8, approximately 160
- 3 pounds.
- 4 Q Okay. In terms of the gun, there's nothing wrong
- 5 with a person having a gun, is there? A normal
- 6 person -- people can own guns, correct?
- 7 A Under certain situations.
- 8 Q Okay. People can have dice, is that correct?
- 9 A Yes.
- 10 Q Okay. And people can have a blue zipper bag,
- 11 correct?
- 12 A Yes.
- 13 Q And people can own two watches, correct?
- 14 A They can.
- 15 Q Okay. You didn't find any lottery tickets there, did
- 16 you, when you're searching his duffel bag and stuff?
- 17 A No, I did not.
- 18 Q Okay. And the gun, I think, that you found there,
- 19 you described it as being silver and black, is that
- 20 correct? Is what that you said?
- 21 A Most of it's black but it's black with some silver
- 22 color. I don't remember if it was chrome or nickel
- 23 or what.
- 24 MR. ROBINSON: Beg the Court's indulgence.
- 25 THE COURT: Yes, sir.

1 BY MR. ROBINSON:

2 Q And when you went there to serve your papers or

3 arrest Mr. Thomas, that was about two months after

4 that alleged incident, correct?

5 A Yes, sir, approximately.

6 Q Like in October, is that correct?

7 A No, I went to arrest him in September.

8 Q September, excuse me.

9 A September 28th.

10 MR. ROBINSON: Okay, thank you.

11 THE COURT: Redirect?

12 MS. TESSITORE: No, Your Honor.

13 THE COURT: You may come down, thank you, sir.

14 MS. TESSITORE: We ask that the witness be

15 excused.

16 THE COURT: Any objection?

17 MR. ROBINSON: No objection, Your Honor.

18 THE COURT: You are also free to leave. Thank

19 you.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Call your next witness, please.

22 MS. TESSITORE: Your Honor, at this time the

23 State would recall Chris Gary.

24 THE COURT: Okay.

25 MR. ROBINSON: Your Honor, I have a matter I

1 need to take up outside the presence of the jury. Or we
2 could approach the sidebar.

3 THE COURT: Approach the sidebar, please.

4 Mr. Gary, come on forward. Remind you, sir,
5 that when you take your seat, that you're still under oath
6 in this matter.

7 MR. GARY: Yes, sir.

8 (WHEREUPON, a bench conference was held
9 off-the-record and in the presence of the jury
10 but out of the hearing of the jury.)

11 MR. ROBINSON: Thank you, Judge.

12 THE COURT: Okay.

13 REDIRECT EXAMINATION

14 BY MS. TESSITORE:

15 Q Mr. Gary, did you have the opportunity to examine
16 another latent print in this case after Mr. Thomas
17 was arrested?

18 A Yes, I did.

19 Q Okay. And do you have the -- that latent print that
20 you examined?

21 A Yes, I do.

22 Q Who provided the -- let me ask you this. Who
23 provided the print to you?

24 A Lieutenant Mike Pettersen.

25 Q Who is Lieutenant Mike Pettersen?

- 1 A Lieutenant Mike Pettersen, is the lieutenant, which
2 is the head of the crime scene unit.
- 3 Q How did he provide that to you?
- 4 A Same way as the prints were provided by Doug Smith.
5 They were dropped into a locked, secured lockbox and
6 then I picked them up the following morning.
- 7 Q And how many print cards did he provide to you for
8 analysis?
- 9 A There was only one fingerprint provided in this
10 instance.
- 11 Q And who actually collected the print?
- 12 A Lieutenant Mike Pettersen.
- 13 Q And from what surface did that print come? If you
14 want to go ahead and take it out.
- 15 A This print was lifted from the back of a glow dice
16 game package, item JMA-6.
- 17 Q Okay, so just one print?
- 18 A Yes, just one fingerprint.
- 19 Q Did you have an opportunity to compare it to the
20 known prints of this Defendant?
- 21 A Yes, I did.
- 22 Q Okay. And results of that examination?
- 23 A I identified the number 2 finger, which is the right
24 index finger to Eugene Thomas.
- 25 Q Did you also issue a report as to that comparison?

1 A Yes, I did.

2 Q Okay. Just one moment. I'm showing you State's
3 Exhibit No. 19, do you recognize that?

4 A Yes, I do.

5 Q And what is that?

6 A This a fingerprint match report that I issued based
7 on my findings on this case. I stated that I --
8 Lieutenant Mike Pettersen had submitted the latent
9 prints and that is the latent was from the back of a
10 glow dice package game. And I identified the number
11 two, right index finger, to Eugene Thomas. And that
12 it was peer reviewed by my captain and peer reviewed
13 by Captain Jackie Kellet.

14 Q So that report contained your conclusion?

15 A Yes, it does.

16 MS. TESSITORE: That State's Exhibit No. 19, I
17 would move that into evidence.

18 THE COURT: Any objection?

19 MR. ROBINSON: No objection, Your Honor.

20 THE COURT: Without objection, it's admitted.

21 (WHEREUPON, State's Exhibit No. 19 was admitted
22 into evidence.)

23 MS. TESSITORE: Answer any questions

24 Mr. Robinson may have.

25 THE COURT: Cross-examination?

1 MR. ROBINSON: I have no questions, Your Honor.

2 THE COURT: Thank you, you may step down.

3 Now you wish the witness to be excused?

4 MR. ROBINSON: Your Honor.

5 THE COURT: You're also free to leave, sir.

6 Thank you.

7 You may call your next witness.

8 MS. TESSITORE: Your Honor, may we approach?

9 THE COURT: You may.

10 (WHEREUPON, a bench conference was held
11 off-the-record, in the presence of the jury but
12 out of the hearing of the jury.)

13 THE COURT: All right, thank you, ladies and
14 gentlemen. At this point, we need to take our recess for
15 lunch. Do not begin your deliberations, do not discuss
16 this case among yourselves. Of course, while you're out,
17 do not permit anyone to talk with you about the case or
18 talk about it in your presence. I'd ask you return to
19 your jury room, please, by 1:45, we'll resume the trial at
20 that time. Thank you.

21 (WHEREUPON, the jury left open court at
22 approximately 12:15 p.m.)

23 THE COURT: All right, before we recess, we had
24 a sidebar concerning the recall of Mr. Gary. And, of
25 course, I understand the concern expressed by

1 Mr. Robinson. The recall was permitted primarily because
2 we could not -- it was not appropriate, given the concern
3 expressed by the Defendant through counsel of the possible
4 prejudice and possible fact that it was not relevant, to
5 have testimony concerning an exhibit and the evaluation of
6 that exhibit until that exhibit had been duly admitted.
7 Or obviously, should that been submitted, the testimony
8 would have been inappropriate. For that reason, and I
9 understand that the witness testified to prints found at
10 the scene which clearly was subject to -- and properly
11 admitted without objection. The Court allowed the witness
12 to stand down. And I believe the record reflects that I
13 advised him to remain subject to recall.

14 The Court has exercised its right under 611(d).
15 Just out of an abundance of caution, to protect the
16 Defendant, without having an opportunity to hear all the
17 evidence, I did not want to make any ruling pre-maturely.
18 At a later point I was provided with information and
19 certainly made a ruling based on -- overruled the
20 relevance objection. But I would not be comfortable doing
21 that at that stage, at that stage Mr. Gary had earlier
22 testified. So that was the reason for allowing the
23 witness to be recalled.

24 Anything else supplementing the record,
25 Mr. Robinson?

1 MR. ROBINSON: No, sir, Your Honor.

2 THE COURT: Thank you, very much.

3 Solicitor, anything else from the State?

4 MS. TESSITORE: Not from the State, Your Honor.

5 THE COURT: All right, as I understand from our
6 sidebar, is you will resting after you publish the
7 stipulation upon our return. Having said that, does the
8 Defendant intend to present any testimony or exhibits for
9 the jury's consideration?

10 MR. ROBINSON: May it please the Court, Your
11 Honor. I spoke with him last Thursday about his right to
12 testify and so forth. He wanted a little more time to
13 talk to me about it.

14 THE COURT: All right. Let's plan to be back at
15 1:30 so we can discuss that at that time. And we'll
16 then --

17 Mr. Thomas, at that time I'll discuss with you
18 your understanding of your rights and your decision, sir.
19 Okay. Thank you, sir.

20 Thank you, we'll be at ease until 1:30.

21 MS. TESSITORE: Thank you, Your Honor.

22 (WHEREUPON, a lunch break was taken.)

23

24 THE COURT: All right, let the record reflect
25 Mr. Thomas is present.

1 When we recessed for lunch you indicated that
2 you were going to talk with your client, Mr. Robinson.
3 Have you discussed with him his right to testify and not
4 to testify?

5 MR. ROBINSON: I have, Your Honor.

6 THE COURT: Has he made a decision?

7 MR. ROBINSON: I believe he has, Your Honor.

8 THE COURT: What is that decision, sir?

9 MR. ROBINSON: Not to testify.

10 EXAMINATION

11 BY THE COURT:

12 Q Mr. Thomas, you may remain seated, sir. Good
13 afternoon. You talked with your lawyer about your
14 right to testify and not to testify, is that correct?

15 A Yes, sir.

16 Q And he explained to you, of course, that you have the
17 absolute right to not to testify. And as I've
18 already indicated to the jury, you heard me in my
19 opening statement, you have absolutely nothing to
20 prove or disprove in this case. As I even said, you
21 don't have to present any evidence for their
22 consideration. But it's still your right to do so if
23 you choose to. Do you understand that, sir?

24 A Yes, sir.

25 Q Of course, if you choose to take the stand, then you

1 would be subject to cross-examination just as you've
2 observed each witness the State has called and
3 Mr. Robinson has had the opportunity to cross-examine
4 them and challenge that testimony. Do you understand
5 that as well?

6 A Yes, sir.

7 Q Of course, if you choose not to testify, I will
8 further instruct the jury that they may not consider
9 that, they may not even discuss that in their jury
10 room. And you would be entitled to that charge, do
11 you understand that as well?

12 A Yes, sir.

13 Q Have you had sufficient time to reflect on your
14 decision about testifying or not testifying?

15 A Yes, sir, I have.

16 Q Are you comfortable with your decision today, sir?

17 A Yes, sir, I am.

18 Q Are you satisfied with which the manner that your
19 lawyer has advised you concerning your right to
20 testify not to testify?

21 A Yes, sir, I'm satisfied.

22 Q Okay. Are you under the influence, sir, of any
23 medication or any type of alcohol or drugs?

24 A No, Your Honor.

25 Q Have you consumed any of those substances in the last

1 24 hours?

2 A No, Your Honor.

3 Q Do you know of anything that's affecting your ability
4 to think and reason about making a decision at this
5 hearing?

6 A No, Your Honor.

7 THE COURT: Thank you, Mr. Thomas.

8 I find Mr. Thomas has had the benefit of
9 competent counsel. He's indicated he's satisfied in the
10 manner in which he's advised concerning his rights. I
11 find that Mr. Thomas has demonstrated by his responses,
12 that he fully understands and appreciates those rights and
13 has made the decision not to testify in this proceeding.
14 And I find that decision to be one that he's making
15 freely and voluntarily, knowingly and intelligently.

16 And thank you, very much, Mr. Thomas.

17 MR. THOMAS: You're welcome, Your Honor.

18 THE COURT: Do you intend to present any
19 witnesses?

20 MR. ROBINSON: May it please the Court?

21 THE COURT: Yes, sir.

22 MR. ROBINSON: Your Honor, at lunch time I met
23 with Mr. Thomas down at the visiting area downstairs. And
24 we talked at length about the pros and cons of each
25 witness and so forth. I was under the understanding that

1 the one witness we were going to use in this case, an
2 alibi witness in this case, that she had a fraudulent
3 check conviction. I went back and looked at that and she
4 does not. I advised him of that it. And it hasn't
5 changed the decision that we've made in this case. We
6 went over the positives and negatives of putting up a
7 case, putting in evidence and so forth as far as last
8 argument, not having last argument and so forth. And he
9 came to the conclusion -- I came to the conclusion that we
10 would rest without presenting testimony.

11 THE COURT: Very well.

12 MS. TESSITORE: Can I interject one moment, Your
13 Honor?

14 THE COURT: Sure.

15 MR. ROBINSON: I just advised him, Your Honor,
16 Ms. Tessitore has showed me that she did have a fraudulent
17 check from 2005. Conviction.

18 THE COURT: Okay, Mr. Thomas, you -- and you
19 don't have to share with me your discussions with your
20 lawyer but you agree that you and your lawyer have talked
21 about strategy?

22 MR. THOMAS: Yes, sir.

23 THE COURT: Of presenting evidence and not
24 presenting evidence?

25 MR. THOMAS: Yes, sir.

1 THE COURT: And you're comfortable with the
2 strategy that he's articulated?

3 MR. THOMAS: Yes, sir.

4 THE COURT: Very well, thank you, so much,
5 Mr. Thomas. Thank you, I appreciate it.

6 Thank you, Mr. Robinson.

7 All right, when the jury comes back then we'll
8 do the publication of the stipulation. Do you all need
9 further time to organize your thoughts?

10 MS. TESSITORE: Yes, sir.

11 THE COURT: Before -- all right, well -- I'll
12 give you about 10, 15 minutes to do that after we send the
13 jury out.

14 Any specific request to charge from the State.

15 MS. TESSITORE: Your Honor, as far as charges, I
16 think, obviously, the issue of the value came up and then
17 there is the -- I can get that for you, it's the case as
18 to--

19 THE COURT: The value is not -- it has to be
20 some property item. It has, to be transportation of
21 property item but it doesn't have to have any significant
22 value.

23 MS. TESSITORE: Just any value?

24 THE COURT: Any value. It doesn't matter. If
25 it belonged to somebody and it was taken from that person

1 with a firearm and through intimidation, then it would
2 meet the elements. The significance of the value has
3 nothing to do with it. So I'm going to charge just a
4 general charge on that particular issue.

5 MS. TESSITORE: Yes, sir. Obviously
6 circumstantial evidence.

7 THE COURT: I'll charge that.

8 MS. TESSITORE: Eye witness.

9 THE COURT: I'm going to charge identification.

10 MS. TESSITORE: The -- I guess one question,
11 Your Honor, and it may be a little premature, but as far
12 as whether the jury would be charged on a lesser included
13 of attempted, if the jury determines --

14 THE COURT: That's -- I'm not going to charge
15 attempted because you presented evidence that there was a
16 firearm. And you could have indicted him on attempted and
17 then it wouldn't have been necessary. I don't think that
18 would...

19 MS. TESSITORE: Well, if they determine that
20 the--

21 THE COURT: I'm not going to charge -- I'm not
22 going to charge a lesser included when the evidence --
23 just because they don't believe there was a firearm.

24 MS. TESSITORE: Well the issue not being the
25 firearm, Your Honor, but the actually taken of--

1 THE COURT: You charged that he took it. I'm
2 sorry, you could have easily presented this as attempted.

3 MS. TESSITORE: Right.

4 THE COURT: Or, I guess, you could have -- I
5 guess you could have indicted him on both, I don't know
6 but I'll look at it. I don't think that's there. I think
7 you have -- they have to disbelieve that portion of it. I
8 don't know that that would trigger any crime. Where there
9 was an attempt -- which could be an attempt if you could
10 present evidence simply because the fact that the jury
11 doesn't believe there was -- didn't believe there was any
12 actual robbery. So I don't believe that to be the case.

13 MS. TESSITORE: No, I think I was just more
14 focused on the issue of did the lottery have any value.

15 THE COURT: Well value doesn't have anything to
16 do with it.

17 MS. TESSITORE: Right.

18 THE COURT: So that doesn't make it attempt.
19 You have him taking a lottery ticket or you didn't have
20 one at all.

21 MS. TESSITORE: But if they determine that it's
22 not an item of value.

23 THE COURT: Doesn't matter, it's property.

24 MS. TESSITORE: Yes, sir.

25 THE COURT: You're going to argue that, I'm

1 going to charge it.

2 MS. TESSITORE: Yes, sir.

3 THE COURT: Okay. You just told me value
4 doesn't matter and then you now arguing that value does
5 matter, which way you going, Solicitor?

6 MS. TESSITORE: Well I'm just paying attention--

7 THE COURT: No, not paying attention. Which way
8 are you advocating for your client, the State of South
9 Carolina? It doesn't have to have value.

10 MS. TESSITORE: Right.

11 THE COURT: If the jury disbelieves that then
12 you're going to prove -- then there's no robbery. I mean,
13 there's nothing.

14 MS. TESSITORE: Yes, sir.

15 THE COURT: Okay. Pointing a firearm but you
16 didn't charge him with that you. You charged him with
17 possession of a violent crime. So if you don't find armed
18 robbery, there's no charge for that, we go to burglary and
19 we charged him with burglary?

20 MS. TESSITORE: Yes.

21 THE COURT: And what evidence do we have of
22 that? That he went in and commit a robbery?

23 MS. TESSITORE: Yes, sir.

24 THE COURT: Okay. All right. You want -- let's
25 assuming -- let's go ahead, we'll do that after you rest.

1 I'll give you motions at that point.

2 MR. ROBINSON: Yes, sir.

3 THE COURT: Thank you. We have all of them,
4 missing one. Good, we'll be at ease.

5 MS. TESSITORE: Your Honor, I was just going to
6 say we could probably go ahead and address the
7 stipulation. At this point. Off the record as far as
8 just discussions and --

9 THE COURT: Well y'all talk about it, I don't
10 need to be privy to that.

11 MS. TESSITORE: Yes, sir.

12 THE COURT: Whatever y'all agree upon is fine
13 with me.

14 MS. TESSITORE: Thank you.

15 THE COURT: Solicitor, have you resolved the
16 stipulation? We need to bring the juror in so you can
17 read it.

18 MS. TESSITORE: Your Honor, will you be
19 publishing the stipulation?

20 THE COURT: I can. Be happy to.

21 MS. TESSITORE: Okay. I think we've got this
22 stipulation with respect to the chain on the item JMA-6,
23 the dice game. The only question remaining, Your Honor,
24 was State's Exhibit 15, which is the fingerprint card.
25 Based on what I understood as Mr. Robinson's agreement,

1 that the -- since I called the witness that the foundation
2 was laid as far as him identifying the cards and that he
3 prepared it. But I was waiting until we completed it to
4 admit the card. So I would move to admit this card,
5 State's Exhibit No. 15.

6 THE COURT: Any objection?

7 MR. ROBINSON: No objection.

8 THE COURT: So admitted.

9 MS. TESSITORE: Okay.

10 THE COURT: And we'll mark that as Court's
11 Exhibit No. 1.

12 (WHEREUPON, State's Exhibit No. 15 was admitted
13 into evidence.)

14 (WHEREUPON, Court's Exhibit No. 1 was marked for
15 identification and received into evidence.)

16 THE COURT: And the stipulation.

17 MS. TESSITORE: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. ROBINSON: Judge.

20 THE COURT: Yes, sir.

21 MR. ROBINSON: As far as the -- they'll rest,
22 then I'll rest.

23 THE COURT: That's correct.

24 MR. ROBINSON: And as far as the charge goes,
25 should I ask you now for the charge?

1 THE COURT: We'll talk about it.

2 MR. ROBINSON: Yes, sir.

3 THE COURT: I'll be happy to.

4 MR. ROBINSON: Yes, sir, thank you.

5 THE COURT: Entertain any requests you have.

6 MR. ROBINSON: Thank you.

7 THE COURT: And Mr. Thomas, until I turn to
8 Mr. Robinson and ask him -- what I'm going to ask is Does
9 Mr. Thomas wish to present additional witnesses for the
10 jury's consideration? Until that is done, he tells me no.
11 If you change you're mind, just let Mr. Robinson know,
12 I'll excuse the jury and we'll revisit our earlier
13 discussion. But if I don't hear from you, I'll assume
14 that you're still comfortable with your decision not to
15 testify.

16 MR. THOMAS: Thank you, Your Honor.

17 THE COURT: Very well.

18 Bring in your jury, please.

19 (WHEREUPON, the jury came into open court at
20 approximately 1:49 p.m.)

21 THE COURT: State has a stipulation, is that
22 correct?

23 MS. TESSITORE: That's correct, Your Honor.

24 THE COURT: Which is now Court's Exhibit No. 1.

25 Ladies and gentlemen, it's not uncommon for

1 parties, through their attorneys, to stipulate to certain
2 testimony rather than bringing a witness in, have that
3 witness testify, they stipulate to what the witness would
4 have said had they been present. A stipulation is
5 evidence that you would consider with all other evidence
6 in this case when you evaluate, assess the credibility or
7 believability of the evidence and the testimony of the
8 witnesses. I'm going to share this stipulation with you
9 now. If I could have your attention.

10 (WHEREUPON, Court's Exhibit No. 1, a
11 stipulation, was published to the jury.)

12 THE COURT: Having published that and it is
13 admitted into evidence, what was it State's Exhibit the
14 card, 16? That we talked about, the fingerprint card.

15 MS. TESSITORE: No, Your Honor, may we approach?

16 THE COURT: You didn't admit that?

17 MS. TESSITORE: No, Your Honor, not that one.

18 THE COURT: No, I'm talking about one that you
19 asked that was admitted.

20 MS. TESSITORE: Yes, I'm sorry.

21 THE COURT: I'm not talking about that one.

22 MS. TESSITORE: Yes, sir, State's Exhibit No.

23 15.

24 THE COURT: State Exhibit 15, which is the
25 fingerprint card, has been admitted without objection as

1 well, thank you.

2 MS. TESSITORE: Thank you, Your Honor.

3 THE COURT: You bet.

4 All right, anything further from the State,
5 Ms. Tessitore?

6 MS. TESSITORE: Nothing further from the State,
7 Your Honor.

8 THE COURT: All right.

9 MS. TESSITORE: The State rests.

10 THE COURT: Okay, preserving motions, having had
11 a discussion and just to accommodate the jury, as you
12 recall, ladies and gentlemen, the only -- when I discussed
13 with you when we started this, the only party that had any
14 burden of prove was the State of South Carolina. And I
15 further informed you that Mr. Thomas, had no
16 responsibility to prove or disapprove anything. He
17 certainly does not have to prove his innocence. But he
18 would nevertheless have the right, if he chose to, present
19 testimony after the State's case.

20 Mr. Robinson, at this time, does Mr. Thomas wish
21 to present any additional testimony for the jury's
22 consideration?

23 MR. ROBINSON: No, sir.

24 THE COURT: Very well.

25 Ladies and gentlemen, at this point there's some

1 matters of law then that I must take up out of your
2 presence. I'm going to ask that you go to your jury room.
3 When you return, we will move into the two final portions
4 of this process. You will not hear anymore evidence.
5 You have heard all the evidence that you're going to
6 evaluate. But it would still be inappropriate for you to
7 begin your deliberations, collectively or individually.
8 So do not discuss this case, do not begin to decide
9 anything and we'll be with you as quickly as we can.
10 Thank you.

11 (WHEREUPON, the jury left open court at
12 approximately 1:56 p.m.)

13 THE COURT: All right, any motions from the
14 State at this point, Ms. Tessitore?

15 MS. TESSITORE: None from the State, Your Honor.

16 THE COURT: Mr. Robinson, any motions?

17 MR. ROBINSON: May it please the Court?

18 THE COURT: Yes, sir.

19 MR. ROBINSON: At this time, Your Honor, we make
20 a motion for a directed verdict of acquittal as to the
21 charges in this case, armed robbery, burglary in the third
22 degree and possession of a weapon during the commission of
23 a violent crime. It's our position that the -- that
24 obviously the burden is on the Defendant [sic] in this
25 case and the we don't think there's any evidence -- the

1 weight of the evidence in this case. But, Your Honor,
2 they have put forth a lottery ticket that we don't -- or
3 it's the Defendant's contention that that is not property,
4 has no value and so forth as far as armed robbery claimed.
5 And with the other charges we ask that the Court grant a
6 directed verdict of acquittal in this case.

7 THE COURT: Thank you. Based on the testimony
8 of the witnesses and the light most favorable to the State
9 as I'm required to take it, I would respectfully deny your
10 motion. I think there is sufficient evidence for the jury
11 to conclude that the crime of armed robbery was committed,
12 including property, transportation. I also find that is
13 the jury believes the testimony of Mr. Gordon, clearly
14 they established a firearm, they also by circumstantial
15 evidence linked that and put it in Mr. Thomas' possession.
16 Potentially. No question there's no conclusive evidence
17 of that but again, a logical deduction would be if the
18 jury were to find that, would be that it was his and
19 could well have been because it was identified by
20 Mr. Gordon as the gun that looked like the gun that was
21 presented to him at that time. The jury convicts him of
22 armed robbery and therefore, they believe the testimony of
23 Mr. Gordon, clearly is that the State has met its burden
24 of proof as to being in possession of a weapon during the
25 commission of a violent crime, armed robbery being a

1 violent crime.

2 Then as to burglary third, obviously, I believe
3 his testimony her entered Apartment 119, didn't have any
4 permission and if they believe that he committed armed
5 robbery, then he entered with the intent to commit a
6 crime. So that all the elements of that have been
7 established. So I must respectfully deny your motion for
8 those reasons.

9 All right now, any requests to charge from
10 Mr. Thomas?

11 MR. ROBINSON: Yes, Your Honor, at this time,
12 Judge, we would request a charge of strong armed robbery
13 in this case. As you know, the elements of strong armed
14 robbery, use of force, intimidation take place, to take
15 personal property from a person or intermediate possession
16 without permission of another person, with the intent to
17 deprive them of possession of the property taken. We'd
18 ask for the charge of strong armed robbery.

19 THE COURT: What's the State's position?

20 MS. TESSITORE: Your Honor, I think based on the
21 victim's testimony, he looked at what appeared to be to
22 him a deadly weapon. So even if they find that -- I
23 just -- I just don't think--

24 THE COURT: It's a gun. It doesn't even have to
25 be loaded.

1 MS. TESSITORE: Right.

2 THE COURT: It can constitute an armed robbery.
3 It's one of those things, yeah, I guess a jury goes back
4 to what I said, a jury could disbelieve that he had a gun
5 but that he threatened him. And therefore, would warrant
6 strong armed robbery. But I just don't think that's the
7 way we deal with any lesser included offenses. It has to
8 be some evidence of it. Something for the Court to
9 conclude that the jury could disbelieve that. And
10 evidence supports the other. I think that would warrant
11 as charged in almost any crime that could occur. For that
12 matter it could be petit larceny. If they believe he
13 didn't threaten him, he just took his -- he just took his
14 lottery ticket. I'm certainly not going to charge petit
15 larceny. So, I mean, it just -- at some point we have to
16 draw a line. And based on the evidence, and I would note
17 your request but I must respectfully deny that. I don't
18 think the evidence supports it. That there's any
19 reasonable interference to charge the elements to support
20 that.

21 MS. TESSITORE: Yes, sir, Your Honor. I think
22 if it would have been covered up or even some testimony
23 about--

24 THE COURT: He never saw it--

25 MS. TESSITORE: -- being concealed.

1 THE COURT: -- maybe thought he had it, sure.
2 There's a possibility. But this one he said, I saw the
3 firearm, I was looking at it. And I think that would be
4 sufficient to take it out of strong armed robbery.

5 Now, grant it, you can argue, if they don't
6 believe it was a firearm then they must return a verdict
7 of not guilty. It's -- that's the interesting issue but I
8 think that's the way it is. And the State has the burden
9 of proving the crime that it sought to pursue.

10 So any other requests to charge?

11 MR. ROBINSON: No, Your Honor, just as along as
12 we have something regarding his decision not to testify.

13 THE COURT: Oh, I'm going to definitely charge
14 that. You'll hear that probably -- that follows the
15 second -- that follows the presumption of innocence.

16 MR. ROBINSON: Thank you, Judge.

17 THE COURT: Okay. Thank you.

18 All right, we'll be at ease then for about 15
19 minutes.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: The charge of attempt -- of
22 attempted armed robbery and also made that a lesser
23 included offense of armed robbery.

24 MS. TESSITORE: Thank you, Your Honor.

25 THE COURT: Well I don't know whether you thank

1 me or not. You sure that's what you want to do? I mean,
2 I think they have a request and you can request it but you
3 know what that means. Because attempt is not a strike.

4 MS. TESSITORE: Well, my understanding was it
5 would be a strike.

6 THE COURT: How is it a strike? It's a
7 lesser -- it's a 20 year sentence.

8 MS. TESSITORE: I believe -- I thought it was
9 designated as a most serious.

10 THE COURT: Attempted armed robbery is? I mean,
11 I defer to the statute, I've never looked at it so I don't
12 know.

13 All right, are you ready? Or you need a minute?

14 MS. TESSITORE: One of the shorter minutes, Your
15 Honor.

16 THE COURT: Is that like 45 seconds?

17 MS. TESSITORE: Your Honor, the State's ready.

18 THE COURT: Very well, thank you.

19 Bring them in.

20 (WHEREUPON, the jury came into open court at
21 approximately 2:30 p.m.)

22 THE COURT: Thank you, ladies and gentlemen,
23 we're ready now to move into the third phase of this
24 process where the attorneys have their second opportunity
25 to speak to you. Unlike the opening statements, you've

1 heard the evidence. But now it's proper for them to
2 discuss that evidence with you and suggest reasonable
3 inferences that you may draw from that evidence. I'm very
4 confident that you will find those remarks to be extremely
5 helpful when you begin the process of resolving this case.
6 So please, give them your attention, but, of course, as
7 you know and as I've stated throughout, their remarks,
8 just as my remarks, are not evidence. Thank you, very
9 much for your attention thus far. If you'll give your
10 attention now to the attorneys.

11 Solicitor.

12 MS. TESSITORE: May it please the Court?

13 THE COURT: Yes, ma'am.

14 CLOSING STATEMENT

15 MS. TESSITORE: Mr. Robinson.

16 When I began this case, ladies and gentlemen, we
17 talked about luck and playing the lottery, buying a
18 lottery ticket. And as you've heard, based on everything
19 you've heard over the course of the last two days, the
20 State would submit that this Defendant, Eugene Thomas,
21 thought he was going to get lucky. And he found a crime
22 of opportunity, this is a crime of opportunity, found a
23 victim, so that's the first thing he got lucky about. He
24 was looking for quick cash, obviously. Rifling through a
25 wallet, not finding any, grabs whatever he can. So he

1 doesn't leave empty handed, I guess.

2 He's lucky because the victim was buy himself,
3 he wasn't work with anyone. So there were no witnesses
4 around. He was lucky because the victim was just there,
5 wet hands, just put down the paint brush, he is just
6 completely vulnerable, he's all by himself, and he doesn't
7 put up any kind of fight. He's completely vulnerable.
8 And he does what the Defendant ordered him to do. And
9 what he ordered him to do with this, a black, automatic
10 pistol, mostly black, some silver, the silver as you'll
11 see, is where his hand would be holding the grip. The
12 grip had a textured, obviously not a good surface for
13 lifting any kind of prints.

14 He was lucky because he was able to leave there
15 without being detected as far as where he went and what he
16 did after that. And we don't know if the lottery ticket
17 was a winning ticket. I would submit that this
18 Mr. Robinson think's some type of tracing system to the
19 lottery. As you can imagine Mr. Gordon, when he went and
20 bought that ticket, he probably didn't keep his receipt
21 and save it for later just in case he had to prove that he
22 bought a lottery ticket. He testified, I bought them all
23 the time. And he was just hoping to get lucky.

24 Well, this a not about the lottery ticket, it's
25 not about the value what he took. Clearly it had value.

1 Even the victim testified that he bought the ticket, he
2 didn't steal it, nobody gave it to him. He clearly had an
3 item of some value. He was hoping it was of a huge value
4 but he'll never know either. So the lottery ticket,
5 that's not the point. It's the point only that it was an
6 item that was taken. And he told Officer Bradley when he
7 came out three, that's the only thing that was taken. He
8 didn't take my money, you know, he didn't take anything
9 else. Nothing that would trace him back to being the
10 suspect of this crime.

11 But, it's not about what he took, as I told you
12 at the beginning of this case, it's what he left behind.
13 And what did he leave behind? And that's where his luck
14 started to run out, ladies and gentlemen. When he, as you
15 heard the testimony, the forensics officer came out and
16 he -- he went through the apartment in Unit D. And Doug
17 Smith looked at the area where he may have touched, he
18 talked to the victim as well as the officer. And he went
19 out there and he was able to lift their prints. And as he
20 described and drew up here, that print was on the inside
21 of the door between the deadbolt and between the doorknob.
22 Right in between. Not on the doorknob, not anywhere else
23 but a place where if you were going in a door or if you
24 were trying to push a door behind you, that would be an
25 area that he would have touched. And it was his pinky

1 finger, left pinky finger.

2 So, as you heard the victim describe, he came
3 in, first the door just kind of opened gradually.
4 Mr. Thomas is not going to alert his victim, he's trying
5 to sneak in quietly so that he can pull the gun on him and
6 get the job done. Now, he also, the victim also testified
7 that he pushed the door as he came in and then he pulled
8 the gun out in his left hand. At that point, he pushed
9 the door, left pinky finger on the door, maybe, that's
10 when it got there. You don't know. Either it was when he
11 was opening the door and peered in or maybe when he was
12 pulling the door. Or maybe after he went to the counter
13 and took all the items out and put them on the counter and
14 went through his wallet, trying to find things. And then
15 he went back out the last time he was seen by the victim
16 and he pulled the door. So there's really three
17 possibilities at that point where he could have put his
18 pinky finger on that door and left that evidence behind.

19 He told the victim he was wiping down the
20 counter as he was gathering up and getting ready to leave.
21 There were no prints found on the counter. But the print
22 that he wasn't thinking about, to worry about where he
23 might leave was on the inside of that door. Because he
24 wasn't thinking about that at that point. He was thinking
25 about getting in and getting that gun out and making sure

1 he had control of the situation and getting out as fast as
2 he could.

3 So, you heard Doug Smith testify about that
4 fingerprint, where it was found. That fingerprint was
5 then compared to the known print of Mr. Thomas. And you
6 heard Chris Gary, the latent printed examiner, who
7 testified that he compared the prints. And in his
8 conclusion, was that it was this Defendant. So there you
9 go. So those three pieces of evidence you'll have back
10 there, you can look at those and you can look at the first
11 layer of evidence.

12 Secondly -- well let me just add one more thing.
13 With Greg Bryum, who was the painter and the property
14 manager, you might have been wondering, why are they here
15 to testify? Well they were here to let you know and they
16 told you that this apartment was vacant. And that door
17 had been painted in February. There were no tenants after
18 that, so therefore there were no tenants, no tenant
19 visitor. Nobody had reason to be in there except for the
20 painter and Mr. Gordon, where he can go and wash his hands
21 because he had just finished painting in A. And he needed
22 running water and he was just trying to clean up. So
23 Mr. Thomas had no reason to be in Unit D. Except to rob
24 the victim, Michael Gordon.

25 That door was like a blank canvas and he put his

1 fingerprint on it. He put his identity. And you heard
2 the property manager say he never worked for her, she'd
3 never seen him before. You heard the painter say that he
4 didn't hire anybody, it was just he and his wife. And he
5 never showed the apartment to anybody. The property
6 manager said I never showed it to this guy. I never
7 showed it to anyone with whom this guy was hanging around
8 and apartment hunting. So that is -- that is important to
9 let you know that you're looking at that time period
10 between February, when the door was painted and July, when
11 this incident occurred. There's no traffic like a normal
12 apartment where you might say, Oh, well, he could have
13 been visiting there, you know. That paint, as you heard
14 the expert testify, would have covered over any prints
15 that were there from prior tenants and prior -- anybody,
16 you know, coming in, visiting, party goers, whatever.

17 MR. ROBINSON: Objection, Your Honor, that's
18 fact not in evidence in this case.

19 THE COURT: The jury's already been instructed
20 that your remarks are not -- and I overrule your
21 objection. Thank you.

22 MS. TESSITORE: Okay, secondly, the second layer
23 of evidence that you have to consider is that when
24 Mr. Gordon was right there on the scene, right after this
25 happened, he gave a description. First he gave it to 911

1 who then relayed it to Officer Bradley. And Officer
2 Bradley came and told you the description that he gave.
3 First of all, Mr. Gordon had a great opportunity to view
4 him. You'll see in the pictures that there's lots of
5 windows. You heard from several witnesses that lighting
6 was not an issue. That at the time it was vacant, there
7 weren't any curtains, there were the blinds, the mini
8 blinds, the sliding glass door, you can see. As you look,
9 even with the blinds that are on there, how well lit that
10 is. And he had great opportunity to see him, it was in
11 the afternoon, it was sunny, no problem. Nothing
12 concealing his face.

13 He was so brazen that when he came in there, he
14 didn't even make an attempt to cover his face or anything
15 like that. He just figured, I got the gun, I'm going to
16 get it done. So, you look at the description that he
17 gave. Obviously his attention is quite heightened at this
18 point when she says, Can I help you? Doesn't know who he
19 is, doesn't know why he's there, he didn't invite him in.
20 He didn't have consent to come into that apartment. And
21 he said, Can I help you? And at that point he started
22 today to realize when he said, Get down on the floor, and
23 this Defendant pulled out the gun, with his left hand and
24 said, Get on the floor. At that point, Mr. Gordon was
25 paying attention. He had a family, he has a family and he

1 wanted to be able to go home to that family. So he did
2 what he said. He got down on the floor, he let this
3 Defendant go through his pockets, pull out his wallet and
4 his cell phone and at that point he was taking orders.

5 He was able to describe him as a dark skinned
6 black man. Had long dreadlocks. And a very distinctive
7 set of dreadlocks I might add, as you can see as he sits
8 in the courtroom. He was -- at that time the victim
9 described he had a mustache. And he saw a neatly trimmed
10 goatee or some type of hair coming down, depending on how
11 you would define a goatee, around, under his bottom lip.
12 He described him in his late 30's early 40's. You know,
13 age is a difficult thing to judge. And his build was
14 slender and he was about 5'10.

15 Now you heard that when he was arrested, he was
16 about slender build, long dreadlocks, dark skin, he had a
17 mustache, he didn't have a goatee. But as you know, a
18 goatee can be shaven. Facial hair can be changed. If you
19 look at him here today, he has a full beard. So he knows
20 how to change his appearance. And all he has to do is
21 pull out a razor. He's trying, as you look at the many
22 faces of Mr. Thomas, you can see this was three weeks
23 prior, this was two months later when he was arrested.
24 And then you look at him now. So he has changed quite a
25 bit in the last three years. So he has changed. But that

1 doesn't mean that he can change his fingerprints. And
2 that goes back to the first lawyer of evidence,
3 fingerprints don't change. His hair can, his face can but
4 certainly not his fingerprint.

5 Mr. Gordon was able to give that description to
6 police and then that description is what Detective Flavell
7 took when he pulled that -- when he was able to get the
8 picture that he used in the array and he looked at it, he
9 compared it to what the victim told him. And how he
10 looked much differently, he wouldn't have been showing him
11 an array. It was because the description matched the man
12 at the other end of the fingerprint. He matched him.
13 Then when he showed that array to Mr. Gordon and gave him
14 other pictures to look at and he put it down in front of
15 the victim and he said, You know, he may not be in there,
16 you don't have to pick anybody, no pressure, he understood
17 how serious it was. And he told you, he didn't want a
18 innocent person to be charged. And he looked at it and he
19 said, That's the man who robbed me. That was his first
20 words when he looked at this array. He didn't hesitate.

21 And Mr. Robinson kind of focused on this idea
22 that, well, he was, you know, he was almost 100 percent.
23 Knowing that when he put his finger right there, he said,
24 That's the man who robbed me. And then when he talked to
25 Detective Flavell he said, I'm just about 100 percent.

1 Well, ladies and gentlemen, just about 100 percent, it's
2 not like horseshoes. This isn't a game. It's not about
3 luck and fortune and throwing a horseshoe. This is about
4 being firmly convinced that this is the man who committed
5 this crime. It all goes back to identity. And when he
6 picked him out and he said, That's the man. He had seen
7 him so he was -- there was no question in Mr. Gordon's
8 mind.

9 And essentially, the -- the eye witness
10 identification when he looked at those pictures and he
11 said, I'm just about 100 percent, the fingerprint is what
12 takes it to 100 percent. So that's what I'm going to
13 bring you to. Okay, it's not just about him saying, I saw
14 this guy, this is what he looked like and they go out and
15 they find someone who matches the description, that's not
16 how it went. As you heard, it started with the
17 fingerprint. And that fingerprint then led to the victim
18 looking at a group of men, who looked very similar and
19 having on hesitation. So with that fingerprint, that
20 takes it 100 percent.

21 The gun, that's the next layer of evidence. You
22 look at the fact that he was arrested two months later,
23 because he was in a motel. He was not with friends and
24 family in that hotel room, he was just there in that hotel
25 at Wade Hampton Boulevard. Just down the road from 119

1 Forrest Street. So it's all within the city limits. And
2 you can look at that and see how close that was. The gun
3 was found in a pouch. The pouch is what contained this
4 gun, two watches. There were no watches taken in this
5 case so the State did not introduce those as evidence.
6 But this matches the description when the victim looked at
7 it on the stand and said, Yeah, that looks like it. He
8 doesn't know for sure. He didn't check the serial number.
9 But he can tell you that he saw a black automatic pistol
10 and it matches the description and it matches the one that
11 you get to look at back in the jury room.

12 That gun -- he was the only one in the motel
13 room and it was within his reach. He was clearly in
14 possession of that item and you can consider that. You
15 can also consider that in that pouch was the dice game
16 that he had. And that dice game was with the gun, with
17 the watches in the pouch. And this dice game had his
18 fingerprints on it. And it was lifted from this dice
19 game. So that even should confirm it even more for you
20 that if there was any question that that maybe wasn't his
21 gun and it was somebody else's, they just left it there,
22 this should take you to that next step of, okay, his
23 fingerprint's here too. And it's with the gun and it's in
24 the pouch and it's in a motel room where the Defendant is.
25 You had the latent print examiner tell you about that as

1 well. And that came back as the right index finger of
2 this Defendant.

3 So you have basically five layers of evidence
4 that you can consider, that taken all together, should
5 convince you firmly, that this a not a bunch of
6 coincidences. This is not about lightening striking.
7 multiple times this Defendant right here, that's not what
8 it's about. It's not about coincidences, it's not about
9 fortune, it's about evidence. And the layers that the
10 State has provided to you so that you can take it all with
11 you and go back to the checklist that we talked about at
12 the beginning of this case. The Judge is going to
13 instruct you as to those elements.

14 And I'm just going to very briefly touch on a
15 few of those elements just so that it will be nice and
16 fresh when you do it hear it from the Court. Burglary
17 third degree, he went in the building, he did not have
18 consent to be there, with a intent to commit a crime
19 inside. That crime, armed robbery. The unlawful taken of
20 money, goods or other personal, private property of any
21 value, the lottery ticket, it's got some value. And it
22 was his property. So -- so we've met -- the State has
23 provided you the evidence as to that.

24 But, ladies and gentlemen, it's -- it's not
25 about the value. As you can see, this crime is about

1 taking from the person of another by violence or putting
2 that person in fear of death or serious bodily injury
3 while they're armed with a deadly weapon or what he
4 thought was a deadly weapon. You take a look at this.
5 When you go back there in the jury room, you take a look
6 at this and you decide, does that look like a deadly
7 weapon? I ask you to use your common sense and answer
8 that question. And Mr. Gordon at that point, that was not
9 his biggest concern of what he lost, it was what he gained
10 which was the ability to walk out of there, to go home and
11 sit on the front step and digest everything that had just
12 happened to him. And what could have happened.

13 Finally, possession of a firearm during the
14 commission of a violent crime. If you determine that he
15 did, in fact, was in possession of a firearm, then did he
16 visibly displayed it? Did he possess it? And was it in
17 the commission of a violent crime? Well you heard the
18 testimony of Mr. Gordon. So that should be -- there was
19 no question of about what he saw as he was describing the
20 gun. It wasn't concealed in any way. In fact, it was
21 held and he showed you how he pointed it. And he pointed
22 it straight at the victim. He pointed it and he looked at
23 him and said, Get down on the floor. So there's no
24 question that Mr. Gordon saw a gun.

25 And the amount of fear that Mr. Gordon felt was

1 not calibrated on the value of the property. So I just
2 want that to be clear. As far as the contrast in that, I
3 would just note for you to consider is that you got the
4 victim out there, working a second job, trying to support
5 his family and he's just trying to use a paint brush to do
6 that. On the other hand, you have this Defendant, Eugene
7 Thomas, who goes out and his tool, his way of earning a
8 living is buy using that gun, right there and just taking
9 a crime -- taking an opportunity to rob the victim.

10 Ladies and gentlemen, as I again, in the opening
11 statement, the State is here to seek justice for the
12 victim and for the people of Greenville County. And based
13 on these layers of evidence, the State would ask you to
14 find a verdict of guilty as to all crimes. Thank you.

15 THE COURT: Thank you.

16 Mr. Robinson.

17 MR. ROBINSON: May it please the Court?

18 THE COURT: Yes, sir.

19 CLOSING STATEMENT

20 MR. ROBINSON: Good afternoon, again. As I said
21 before, my name is Scott Robinson, I practice in
22 Greenville. After listening to the Solicitor's closing
23 statement, I would submit that it would kind of make
24 everyone a little bit upset to me because she left out
25 some extremely important points in this case. She makes

1 out this whole, like this five layer that she wants to
2 talk about as far as evidence. But let's talk about what
3 she doesn't talk about in her closing statement. First,
4 let's talk about the two forensic persons that they had on
5 the stand. There was not one person that came in here, no
6 one from forensic people ever said, she never asked them
7 one question about the effect of paint on a fingerprint.
8 Nothing was ever asked about that.

9 MS. TESSITORE: Objection, Your Honor.

10 THE COURT: Okay.

11 MS. TESSITORE: Your Honor, the witness,
12 Mr. Gary testified--

13 THE COURT: Solicitor, I appreciate that. I've
14 instructed the jury that y'all's comments are not--

15 MS. TESSITORE: Yes, sir.

16 THE COURT: -- evidence. They can go with their
17 recollection, I'll remind them of it.

18 Overruled.

19 MS. TESSITORE: Yes, sir.

20 MR. ROBINSON: He also -- what he did say was
21 that he could not tell how long that fingerprint of
22 Mr. Thomas had been there. Had no idea how long it had
23 been there. Now we do know that the son that lived there
24 previously was evicted. But what we don't know, what we
25 really don't know is what kind of relationship that

1 Mr. Thomas may have had with this person. Was he in some
2 sort of relationship? Was he in -- did he attend a party
3 there or something? Did he have friends visit there? The
4 explanation is that they got no idea when that fingerprint
5 got there, and how old it was. And if you listen to the
6 expert, the person they had, he couldn't say how old it
7 was. It could have been weeks, maybe longer.

8 So what's more interesting is that the victim
9 himself, besides the forensics establishing this case, the
10 victim himself said, on the stand, and you heard him on
11 the stand, he said that the door was ajar and he heard the
12 door swing open in this case. Which is the front of the
13 door, the door swings -- is ajar, it swings open, sees the
14 guy out of the corner of his eye. That's what he says.
15 And he also says that the door was left opened. And he
16 also said, his testimony was, if you can recall this, that
17 the perpetrator never touched the inside of the door. He
18 said he just left. Left it open. There was no testimony
19 that the perpetrator ever touched the inside of this door.
20 Not one. Not one time. By the victim.

21 Think about that. If the victim testifies that
22 the perpetrator didn't touch the inside of the door, then
23 they're saying, Well, since Mr. Thomas' fingerprint was
24 there, it must be him. How does that make sense? How
25 does it make sense? As I said at the beginning of this.

1 case, use your common sense. If the victim himself says
2 that the door was ajar, he kind of pushed the door opened,
3 then he left without closing the door.

4 But here's the interesting thing that they did
5 leave out in their closing statement, if you remember
6 this. They left out this little issue of the fact that
7 there were other prints taken in this case on the front of
8 the door. They left that out. Why? Why? Because they
9 can't connect it to the Mr. Thomas, they can't connect it
10 to Eugene. They have nothing. You listened to the
11 testimony, those prints were not Eugene's prints on the
12 front of that door. Why did they leave that out of their
13 closing statement?

14 And you'll get an opportunity to listen to the
15 testimony of this victim, when they showed this gun and
16 tried to connect this gun in this case, the victim didn't
17 identify this gun as the gun. He didn't say that it was
18 the gun. He said it may be similar. Well there are a lot
19 of guns that are similar. Lots of them. Millions of
20 them. But he never said this was the gun. And the State
21 is trying to put together two separate incidents. They
22 have the one that allegedly occurred at this place, this
23 apartment complex. That interestingly, mention too, is
24 that there's not one witness through this whole thing, you
25 heard the officer in the start of this case, the officer,

1 the big guy, testified it's a heavily -- a lot of foot
2 travel, a lot of people around and so forth. Where are
3 these people that could say something? Where are these
4 people? In the middle of the day, broad daylight, not one
5 person saw anything. Not one person saw anything.

6 So you can look at the forensics, the
7 forensics -- all the forensic information establishes is
8 that one, the prosecution cannot link the outside of the
9 door prints to Eugene Thomas. Two, these prints on the
10 inside of the door, they don't know how long they've been
11 there. And then the -- these pictures that they talked
12 about here, all these pictures regarding what Mr. Thomas
13 looks like and so forth, pictures of the inside of the
14 apartment months afterwards, that's great but it doesn't
15 establish that Mr. Thomas had anything to do with this.
16 And the victim himself, he's the one that reveals the
17 whole -- he talks about the whole situation. The guy
18 never touched the inside of door. He left in a huff, bam.
19 Outside of the door, he touched. But interestingly, all
20 this exhibits and so forth in this case, there is not one
21 piece of information from the State regarding whose prints
22 were on the front of that door. That's the person that
23 did this. Not Mr. Thomas. The victim himself in this
24 case said it wasn't the person -- the perpetrator did not
25 touch the inside of the door. And if he didn't touch the

1 inside of the door, it sure as heck wasn't Mr. Thomas.

2 So we got this faulty attempt to try to put
3 together two events, two or three months apart. This gun
4 was not connected to this. The victim himself said looks
5 similar but can't say it's connected to this. You didn't
6 see anything, lottery ticket Mr. Thomas had. And you know
7 something, it's interesting, I asked the officer on
8 cross-examination, tell me if this guy was cooperative.
9 Or did he try to run or anything like that. It is normal
10 at InTown Suites to have clothes, things like that. It's
11 not illegal -- it's not illegal to have a gun, it's not
12 illegal to have clothes.

13 So I'd ask you to look at the forensics which
14 establishes -- that they really haven't established
15 anything. And the victim's own statement in this case.
16 And you know something, I appreciate, I appreciate the
17 prosecutor talking about how we're not talking about
18 horseshoes and hand grenades and all that stuff. I
19 appreciate it. And I think that's great. Well, here's
20 the thing, y'all took an oath when you came in here, okay.
21 You took an oath. And, you know, when you go home and you
22 see things, you read the paper, look at the internet, do
23 certain things, you may think, Well the police got
24 somebody, they're guilty. Well, that's not really the
25 standard that you have in a criminal case. The standard

1 is the State has to prove each and every element of their
2 case beyond a reasonable doubt. It's not -- and this is
3 using the victim's words in this case. It's not almost
4 positive. It's not just about 100 percent. It's just
5 about or pretty sure. That's not beyond a reasonable
6 doubt. That's not beyond a reasonable doubt.

7 You use your common sense in this case. And I
8 know y'all really don't -- when you come into a courtroom
9 on a weekday, it's probably not the most enjoyable thing
10 but in peace time, outside of a lot of things, it's one of
11 biggest things you can do. Because we have the greatest
12 justice system in the world. And it takes 12 people that
13 come from different backgrounds and so forth, that come
14 together and use your common sense in this case. If you
15 can do that and you look at what the State has shown, has
16 not shown, what they're not putting forth in their closing
17 statement and so forth in this case, it does come down to
18 reasonable doubt.

19 And the State, I would submit, has not presented
20 the case that establishes beyond a reasonable doubt that
21 Eugene Thomas did any of these crimes. And I appreciate
22 all you've done in considering this case. And I hope that
23 you return a verdict that speaks the truth. And the
24 standard again is beyond a reasonable doubt. It's not
25 almost positive, just about, pretty sure, that's not

1 reasonable doubt. Thank you.

2 THE COURT: Thank you, Mr. Robinson.

3 JURY CHARGE

4 Ladies and gentlemen of the jury, if I can have
5 your attention now, it becomes my responsibility, of
6 course, as the judge of the law to give you the law that
7 you have promised to accept and apply fairly and
8 impartially to the facts that you will determine very
9 shortly when you begin your evaluation of the evidence.
10 And certainly, the State, Mr. Thomas, respect that you
11 will very shortly evaluate that evidence and determine the
12 effect, value, weight and truth of the evidence in this
13 case. And you will thereby, honor your oath by
14 determining the true facts and then take the law and apply
15 it fairly to those facts. And I would suggest that when
16 you've done that, both the State and Mr. Thomas have had a
17 fair and impartial determination. Which is what we talked
18 about Monday. The ultimate goal is to honor that
19 commitment that we both made.

20 This isn't a result oriented process. We're
21 here, the only result, only aspect, is we determine the
22 truth and take the law as I give it, apply it fairly and
23 impartially. Now, please understand that during this
24 instruction you may hear me use the term Defendant. You
25 probably heard me use it during the trial. That term is

1 just a term that we use to destinate a party against whom
2 a claim is made. Or it's for identification only, it
3 means nothing else. Synonomous with Mr. Thomas. So when
4 I use that term, just know that I'm referring to
5 Mr. Thomas.

6 As I mentioned to you, he's been accused in
7 these two documents that I have, we call them Indictments.
8 They're the formal charging or the formal charging
9 documents. One document accuses him of committing the
10 offense of armed robbery and possession of a weapon during
11 the commission of a violent crime. The other accuses him
12 of committing the offense of burglary in the third degree.
13 These documents will not accompany you to your jury room
14 because they're not evidence. And to these charges,
15 Mr. Thomas has rendered a plea of not guilty. Which
16 places upon the State, of course, the burden of proving
17 his guilt beyond a reasonable doubt. For as I stated at
18 the onset, persons of this State and this country, who
19 have been accused of committing a criminal offense such as
20 Mr. Thomas is today, are never required to come in and
21 prove themselves innocent. They're not required to
22 disprove, explain. They have no duty whatsoever because
23 the law says that those persons are so accused, are
24 presumed innocent. And each of you is required under your
25 oath to actively presume that Mr. Thomas is not guilty.

1 The presumption of innocence is maintained at
2 all times throughout the trial of this case and may only
3 be removed when and if the State brings enough evidence to
4 persuade you beyond a reasonable doubt that he is guilty
5 of one or more of these offenses. Obviously, ladies and
6 gentlemen, since a person is so accused have no burden to
7 prove or disprove anything, the fact that a person accused
8 of a criminal offense does not cast a fight in his or her
9 own behalf, cannot and must not be considered against that
10 person under any circumstances or any manner whatsoever.

11 A defendant has the absolute Constitutional
12 right to remain silent. And the assertion of that right
13 cannot and must not be considered by a jury in its
14 deliberations. Under your oath and you are to reach no
15 inference and draw no conclusion whatsoever from the fact
16 that the Defendant in this case did not himself testify.
17 His failure to testify shouldn't even be discussed in the
18 jury room. If you do you will have violated the oath that
19 you took. Know, as I stated throughout, the burden is on
20 the State to prove his guilt beyond a reasonable doubt.
21 And his -- he has no burden whatsoever in that. So
22 therefore, you must evaluate the evidence solely on the
23 basis of what has been presented. And determine whether
24 you're convinced beyond a reasonable doubt.

25 What is a reasonable doubt? A reasonable doubt

1 is doubt which would make an honest, sincere,
2 conscientious juror who's searching for the truth in a
3 case to hesitate to act. Prove beyond a reasonable doubt
4 is prove that leaves you firmly convinced of the
5 Defendant's guilt. I would further instruct you that
6 there are very few things in this life and in this world
7 that we know with absolute certainty. And in criminal
8 disputes such as this, the law does not require proof that
9 overcomes every possible doubt. And based on your
10 consideration of the evidence, you are firmly convinced
11 that Mr. Thomas is guilty of one or more of the crimes
12 charged, then you must return a verdict of guilty. If on
13 the other hand, you think there's a real possibility that
14 he's not guilty, then you must give him the benefit of
15 that doubt and return a verdict of not guilty.

16 I would instruct you that reasonable doubt may
17 arise from the evidence which is in a case or the lack or
18 absence of the evidence in a case. It's up to you to
19 determine whether or not a reasonable doubt exists as to
20 the guilt of this Defendant. I charge you that he's
21 entitled to every reasonable doubt arising in the whole
22 case. And that means simply this. If upon any issue of
23 fact which would be essential for you to return a verdict
24 of guilt or convict him of that particular crime, if you
25 should have a reasonable doubt as to how that issue should

1 be resolved, it would be your duty to resolve that in his
2 favor.

3 Now, the evidence which you are to consider
4 consists of the testimony of the witnesses and the
5 exhibits that were introduced through their testimony.
6 Now, please understand something in that regard. Where we
7 say evidence that was introduced, it means that it was
8 admitted into evidence. There are time in a trial, and it
9 may have been some in this one, when a witness was shown a
10 document and the document was identified by giving a
11 number. But that document was not actually admitted. The
12 fact that it was not admitted shouldn't be considered by
13 you. You consider the testimony about that document but
14 the document, if it was not admitted, will not accompany
15 you to your jury room. And that's perfectly normal,
16 that's not uncommon. You are to evaluate the testimony of
17 the witnesses and the exhibits that were introduced
18 through their testimony.

19 Now, please remember also that any time during
20 the trial if you heard the term or attorneys say,
21 Objection, Your Honor. That was proper. That's precisely
22 how matters of law are presented. And as I mentioned to
23 you one time, during the trial, sometimes we have to
24 excuse you to deal with matters of law, sometimes we did
25 it at a bench conference. The fact that the attorney made

1 an objection, the fact that I may have ruled and indicated
2 a ruling in your presence, should not be considered by you
3 at all. Because it's very proper as officers of the court
4 for the attorneys to make those objections and to raise
5 those matters for my consideration.

6 I think probably the greatest example I can give
7 to a jury, of how we work together, comes about when I
8 would have -- an objection was made and I overruled the
9 objection. Just because I overruled it, doesn't mean that
10 you have to accept it. Really, it stops the moment I say,
11 I overruled, I've said as a matter of law, I'm going to
12 permit the question and the response. But then it shifts
13 to you. You have to decide whether you believe it or not.
14 And if so, how old strongly you believe it. So it really
15 does demonstrate how we work together. But other than
16 that, you're to place no significance whatsoever from any
17 ruling or the fact that anything was given. Likewise,
18 anything that I may have said or any actions or body
19 language you noticed from me during the trial, you must
20 disregard that as well. Again, I have nothing to do with
21 the determination of the evidence. That's your
22 determination based on the testimony of the witnesses.

23 Also, as you've heard me say throughout, the
24 remarks of the attorneys are very helpful, very important
25 as officers of this court. But their remarks should never

1 be considered evidence. If their remarks differs, for
2 instance, what a witness said or didn't say differs from
3 your recollection, you're instructed to disregard their
4 remarks in its entirety. Likewise, if their remarks
5 differ from the law, differ from what I tell you the law
6 is, you must disregard their remarks in its entirety.
7 Why? Because as to the evidence, as to the facts, you and
8 you alone are the sole judges of the facts. As to the
9 law, for purposes of this proceeding today, I'm the sole
10 judge of the law. You must accept the law as I give it to
11 you.

12 Now, ladies and gentlemen, evidence is presented
13 for a jury's consideration, basically, using two types of
14 evidence. And it's not uncommon to have both present.
15 It's not always but it's not uncommon to have both types
16 present for a jury's consideration. One is direct
17 evidence and the other indirect evidence. But the more
18 popular name for that is circumstantial evidence. Direct
19 evidence is a name were the party suggest generally a
20 sensually perception. I saw something, I heard something,
21 I felt something of the like. And if you're firmly
22 convinced of the truthfulness of that testimony,
23 credibility of that testimony, then it establishes that
24 particular fact or circumstance.

25 Circumstantial evidence would be when a person

1 testifies to a number of factors. And you're firmly
2 convinced as to each of those factors. And when you link
3 them, either through inductive or deductive reasoning, it
4 leads you to a logical conclusion, that's circumstantial
5 evidence. And that is likewise, equally proper for both
6 direct and circumstantial evidence maybe used. And our
7 law makes absolutely no distinction between the weight or
8 the value to be given to direct or circumstantial
9 evidence. Nor is any greater degree of certainty required
10 of circumstantial evidence than direct evidence. You're
11 instructed to weigh all of the evidence in this case and
12 decide what you find to be credible and believable.

13 Now, I would instruct you concerning that, that
14 if in your consideration of all the facts and
15 circumstances, it leads you to the conclusion that the
16 Defendant's guilt is strongly suspicious of guilt or the
17 circumstances are such that his guilt is probably,
18 remember that's not sufficient. Because it has to be more
19 than being suspected of being committing a crime or
20 probably committing a crime. It has to be proof that
21 convinces you beyond a reasonable doubt.

22 Now, how do you make a decision on what you find
23 to be credible and believable? It is a common sense
24 exercise. You've done it many, many times in your life.
25 And that's all you're expected to do now. Applying your

1 life experiences, your sense of logic and reason, fairly
2 and impartially analyzing the evidence or testimony of the
3 witnesses. Because you see, the fact that testimony in a
4 case is not contradicted directly, does not necessarily
5 render it undisputed. Because there always remains the
6 inherent credibility and probability of what one testifies
7 to. And that's where you have to access in applying that
8 common sense, common sense application.

9 Now, there are many factors that we consider to
10 assist us and I'm going to discuss some of them with you
11 now. But if I don't mention a method or factor that you
12 used in your life that you found reliable, please use it
13 when you begin your deliberations. You may consider the
14 appearance of the witness, how did they appear to you?
15 Straightforward or hesitant in answering questions. Was
16 the testimony of the witness strengthened or weakened by
17 other evidence in the case? Was it consistent or
18 inconsistent? How did the witness come to know the facts
19 that he or she testified to? And what was the ability of
20 that witness to have that knowledge? To develop that
21 knowledge? Is there some reason for a witness to give
22 testimony which maybe helpful or detrimental to one side
23 or the other? In other words, was the witness bias or
24 prejudice in any fashion?

25 In making these determinations of credibility

1 and believability, you're giving very broad discretions,
2 wide latitude. You have the right to believe one witness
3 against many. Many witnesses against one. You have the
4 right to believe all of a witness' testimony--

5 (WHEREUPON, a cell phone interrupted the court
6 proceedings.)

7 THE COURT: Ma'am, can you leave the courtroom,
8 please?

9 UNIDENTIFIED LADY: I'm sorry.

10 THE COURT: Well, ma'am, we'll talk about that
11 when we finish. Don't leave the building, please.

12 UNIDENTIFIED LADY: I apologize, I thought I had
13 it off.

14 THE COURT: Yes, ma'am.

15 UNIDENTIFIED LADY: I'm sorry.

16 THE COURT: Precisely why they're not allowed.
17 Good example of it.

18 Excuse me, ladies and gentlemen, I think we were
19 talking about your wide latitude and who you can believe
20 and you can believe one witness against many, many
21 witnesses against one. You have a right to believe all of
22 a witness' testimony, parts of a witness' testimony or
23 none of a witness' testimony. Now, of course, you don't
24 make these decisions arbitrarily but if there's a reason
25 in the record in this case of taking that position, you

1 have that prerogative. Because your objective from the
2 onset has been to determine the truth regardless of the
3 source of the evidence.

4 Now, an issue in this case is the identification
5 of Mr. Thomas as the person who committed the crime or
6 crimes charged. And the State has the burden of proving
7 identity beyond a reasonable doubt. You must be satisfied
8 beyond a reasonable doubt of the accuracy of the
9 identification of the Defendant before you may convict
10 him. Identification testimony is an expression, a belief
11 or impression by a witness. You must determine the
12 accuracy of the identification and you may consider the
13 believability of each identification witnesses in the same
14 way as any other witness. You may consider whether the
15 witness had an adequate opportunity to observe the
16 Defendant at the time of the offense. This will be
17 effected by like things like how long or short of time was
18 available. How close or how far the witness was. The
19 lighting conditions. Whether the witness had a chance to
20 see or know the person in the past.

21 Once again, I instruct you that the burden of
22 proof on the State extends to every element of the crime
23 charged. And specifically this includes the burden of
24 establishing the Defendant's identity. If after examining
25 the testimony you have a reasonable doubt as to accuracy

1 of the identification, then you must return a verdict of
2 not guilty. If on the other hand, you find that you are
3 firmly convinced of the identification, then you will need
4 to consider, of course, the crimes charged and the
5 elements of whether the State has met its burden of proof.

6 Now, a lot of you are given very wide latitude,
7 broad discretions in determining the believability of
8 witnesses and facts of the case. Remember you don't enjoy
9 the same with the law. Because you've promised just as I
10 have nothing to do with the facts, you have nothing to do
11 with the law. And this means that is if you came here with
12 your own idea of what the law was or what it should be, I
13 respect your right to feel that way. And you may leave
14 after this, leaving and saying now I don't believe what
15 the Judge said. But for purposes of this proceeding,
16 you've promised that you will set aside whatever your
17 beliefs may be and you will accept the law as I give it to
18 you. And apply that law fairly to the facts. And I'm
19 confident that you will do that. Please remember, also
20 that the order of my instruction means absolutely nothing.
21 I had to put them in some order. And don't consider any
22 one part more than you consider any other part. Consider
23 the charge as a whole.

24 Now, let's look at the crimes charged. As I've
25 mentioned to you, I would explain to you each crime and

1 give you the elements of each crime. First, I'd like to
2 look at the offense of armed robbery. The Defendant is
3 charged in this matter with armed robbery. And in order
4 to prove this offense, the State must prove beyond a
5 reasonable doubt that Mr. Thomas took personal property
6 from the person or presence of another. The property is
7 in the presence of a person if it is within the persons
8 reach, inspection, observation or control. So that the
9 person could, if not overcome with violence or prevented
10 by fear, keep possession of the property. The State must
11 also prove beyond a reasonable doubt that the Defendant
12 carried the property away, intending to permanently
13 deprive the owner of the property and to keep the property
14 for the Defendant's own use. The slightest removal of the
15 property or the complete possession of the property, even
16 for an instant by the Defendant, is sufficient to show a
17 taking and carrying away of the property. The taking and
18 carrying away of the property must have been done with
19 violence or by putting the owner to the property in fear
20 of violence.

21 Finally, the State must prove beyond a
22 reasonable doubt, that the Defendant was armed with a
23 deadly weapon during the robbery. A deadly weapon is any
24 article, instrument or substance which is likely to cause
25 death or great bodily harm. Whether an instrument has

1 been used as a deadly weapon depends on the facts and
2 circumstances shown in each case. And example of a deadly
3 weapon would be a pistol. A gun may be a deadly weapon
4 even though it's not operated or loaded.

5 Now, the next crime is possession of a weapon
6 during a violent crime. In this case Section 16-23-490 of
7 our Code of Laws which provides that if a person is in
8 possession of a firearm or visibly displays what appears
9 to be a firearm, during the commission of a violent crime
10 and is convicted of committing or attempting to commit a
11 violent crime, as defined in Section 16-160, then the
12 person would be guilty of this offense. I would instruct
13 you that armed robbery is a violent crime. The term
14 firearm is defined in this section as any machine gun,
15 automatic rifle, revolver, pistol or any weapon which will
16 or is designed to or may readily be converted to expel a
17 projectile.

18 Now, in addition to armed robbery, should you
19 find that the State has failed to establish beyond a
20 reasonable doubt that the crime was fully committed, fully
21 consummated, you may consider as a lesser included
22 offense, an attempted armed robbery. An attempt is an
23 effort to accomplish a crime which does not succeed. An
24 attempt includes a specific intent to do a particular
25 criminal act, along with an act falling short of the act

1 intended. The State must prove more than mere preparation
2 and intent, there must be some overt act committed in
3 effort to commit the crime. Intent means intending the
4 result which actually occurred. Not accidentally or
5 involuntarily. Intent may be shown by acts and conducted
6 of the person and other circumstances for which you may
7 naturally and reasonably infer intent. And I would
8 further instruct you that attempted armed robbery, just as
9 armed robbery, is a violent crime as defined by our law.

10 Now, the third offense which you're going to
11 consider is the offense of burglary third. In order to
12 prove burglary third, the State must first prove beyond a
13 reasonable doubt that Mr. Thomas entered a building
14 without consent. A building is any structure, where any
15 person lodges or lives or where people assemble for the
16 purpose of business, government, education, religion,
17 entertainment, public transportation or public use or
18 where goods are stored. In order to prove the Defendant
19 entered the building, the State does not have to prove --
20 does not have to show the Defendant's entire body entered
21 the building. The smallest entry is sufficient. It may
22 be any part of the body such as a hand, foot or even an
23 instrument. In addition, the State does not have to prove
24 that force was used to gain entry. If a person enters a
25 building by using deception, artifice, trick or

1 misrepresentation to get the consent to enter, this is an
2 entry without a consent.

3 Next the State must prove beyond a reasonable
4 doubt that the Defendant intended to commit a crime.
5 Either a felony or a misdemeanor at the time of the entry
6 to be guilty of burglary. The mere entry into a building
7 without consent is not burglary if the intent to commit a
8 crime is formed after the entry. It is not burglary on
9 the other hand if the Defendant intended to commit a crime
10 at the time -- no excuse me, let me restate that. It
11 is -- it would be burglary if the Defendant intended to
12 commit a crime at the time of entry, even if the attempt
13 was abandoned after the entry. It does not matter that
14 the intended crime was completed or not. Again, intent
15 may be shown from all circumstances which have been shown
16 to exist from which you may reasonably infer or make your
17 logical deduction.

18 Ladies and gentlemen, you were selected to be
19 fair and impartial judges with me in deciding this case.
20 You were not selected to be partisans or advocates for
21 either side. You certainly don't have any friends to
22 reward, nor do you have any enemies to punish. You really
23 were selected to not be not be motivated by anything other
24 than your sense of logic and reason. And that has to be
25 fairly and impartially performed. That means without

1 human emotion. And as we talked, that's not always easy.
2 But one thing we have to do as judges is we have to make a
3 conscious effort to do that. And you will do the same
4 when you begin your deliberations. You will methodically
5 analyze the evidence and decide what you believe to be the
6 true facts. And then once deciding those facts, you'll
7 take the law as I give it to you -- as I have given to it
8 you and apply it to those facts and report your decision.

9 Ms. Dunlap, in assisting you in reporting that
10 decision, I wish to discuss the verdict forms now with you
11 and the other jurors. There will be three. And each one
12 sets out the crime itself to know that's the one you're
13 working with. You'll note that all three of them are
14 captioned -- captioned basically the same, that doesn't
15 mean anything to you. That's just to facilitate the
16 filing of the document, that's the reason that's there.
17 The first form that I want to discuss is the armed
18 robbery. The other two have two choice. And I would
19 state also the order in which they appear means nothing.
20 This one has three.

21 It says, We, the jury, by unanimous consent find
22 the Defendant, Eugene Robinson [sic] on the charge of
23 armed robbery, the first choice guilty. The second choice
24 of a lesser included offense is attempted armed robbery or
25 third, not guilty. Then a place for you to sign it where

1 it says, Presiding Juror. And a place for you to write
2 the date. Which ever your choice, I'd ask you to, please,
3 place a check or cross -- or probably a check in the box
4 proceeding it, circle it, we'll know that's your choice,
5 then sign it.

6 As to this form what you will be saying?
7 Obviously if it's guilty, you've evaluated the evidence
8 and are firmly convinced that the State's met its burden
9 of proof, established the identity of Mr. Thomas,
10 established each element of the crime of armed robbery,
11 and you're firmly convinced of that and that is your
12 decision. The lesser included offense of attempted would
13 mean that you established that there was some overt act,
14 that there was an attempt to commit a crime but it was not
15 completed. But all other elements have been established
16 beyond a reasonable doubt and that would be your second.
17 Then not guilty would mean that you've analyzed it and you
18 find the State has failed to prove each element. They if
19 fail on one, then you must return a verdict of not guilty.
20 If they fail on the necessary elements for the offense
21 charged.

22 The next two forms, burglary third, again, We by
23 unanimous consent find the Defendant Eugene Robinson [sic]
24 on burglary third, guilty or not guilty. As we discussed,
25 guilty means you analyzed it, you're firmly convinced as

1 to each of those elements that we discussed and that is
2 your verdict. Not guilty, the State failed on one or more
3 of those elements that we discussed. Whichever, again,
4 place a check mark and circle it.

5 The third form, possession of a weapon during
6 the commission of a violent crime, that's the other
7 charge, two choices, guilty or not guilty. Guilty means
8 that the State has established either beyond a reasonable
9 doubt armed robbery or attempted armed robbery. And you
10 found beyond a reasonable doubt that the Defendant was
11 armed with a death penalty or something that appeared to
12 be a weapon or presented a weapon. Not guilty would mean
13 that if you find the Defendant not guilty on armed
14 robbery, you cannot return a verdict of guilty on the
15 weapon during the commission of a violent offense because
16 you've not found him guilty of a violent offense. Or you
17 found the armed robbery was committed but he didn't
18 present a weapon. So whichever your choice, you'll just
19 again check it.

20 What does unanimous consent mean? That means 12
21 to zero. Eleven to 1 is not sufficient. Now I need to
22 ask you, ladies and gentlemen, if you feel that the first
23 12 feel that you can complete this process, if anyone does
24 not, please raise your hand.

25 There was no response.

1 My alternates, thank you, very much. It appears
2 that the first 12 will be able to continue. So as far as
3 when the jury's excused, Mr. Rhine, I'm going to ask that
4 you not join them in the jury room. They'll take you to
5 another room and I'll be in very shortly to discuss how
6 much longer you need to remain with us.

7 I know you're anxious to get started and you're
8 almost there. I told you the last thing that I would tell
9 you is when you may start. I need to excuse you now to
10 discuss my charge with the attorneys. It may be necessary
11 to return you to the courtroom to give you some additional
12 instruction or clarification. If so, we'll return all of
13 you. If there aren't any additions, then we'll gather the
14 exhibits and deliver them to you. When you receive the
15 exhibits, then you may begin your deliberations, not
16 before. Now, once the deliberations commence, the only
17 restriction is this. If any juror has to leave the table
18 for any reason, you must stop deliberating. The law says
19 that 12 of you must deliberate. Other than that, ladies
20 and gentlemen, you can proceed as you wish. I thank you
21 for your attention, please retire to your jury room and
22 await for the exhibits before you begin your
23 deliberations.

24 (WHEREUPON, the jury left open court at
25 approximately 3:34 p.m.)

1 THE COURT: Exception or additions from the
2 State?

3 MS. TESSITORE: Nothing from the State, Your
4 Honor.

5 THE COURT: Exception or additions from Mr.
6 Thomas other than your request for strong armed robbery?

7 MR. ROBINSON: No, sir.

8 THE COURT: Very well. Thank you all, we'll be
9 at ease. I appreciate the manner in which you presented
10 this case.

11 MS. TESSITORE: Thank you, Your Honor.

12 THE COURT: All right, the lady with the phone,
13 I want her back in here in just a minute, I'll be with
14 her.

15 (WHEREUPON, deliberations began at approximately
16 3:40 p.m.)

17 THE COURT: Ms. McAbee, you're aware that you're
18 not supposed to have a phone active in the courthouse?

19 MS. MCABEE: Yes, sir, I didn't mean to do it.

20 THE COURT: Well it doesn't matter about you
21 meaning to do it. You know that doesn't have anything to
22 do with it. You brought a phone in and it was activated
23 and it disrupted the proceeding.

24 MS. MCABEE: I'm sorry.

25 THE COURT: Well ma'am, I appreciate you being

1 The verdict forms have been properly completed.

2 Mary, if you would publish them for us, please.

3 VERDICT

4 THE CLERK: Your Honor, in the case of
5 2009-GS-23-9349, the State of South Carolina vs. Eugene
6 Thomas, we, the jury, by unanimous consent find the
7 Defendant, Eugene Thomas, on the charge of burglary third
8 degree, guilty. In the case of 2009-GS-23-9350, we, the
9 jury, by unanimous consent find the Defendant, Eugene
10 Thomas, on the charge of possession of a weapon during the
11 commission of a violent crime, guilty. Also, in the case
12 of 2009-GS-23-9350, we, the jury, by unanimous consent
13 find the Defendant, Eugene Thomas, on the charge of armed
14 robbery, guilty of a lesser discharge of attempted armed
15 robbery. These are all signed by Ms. Dunlap, our
16 foreperson.

17 THE COURT: Thank you, Ms. Troupe.

18 If the clerk has accurately published your
19 verdicts, ladies and gentlemen, please indicate that by
20 raising your right hand. Thank you, you may put them
21 down.

22 Let the record reflect that each juror raised
23 his or her right hand in response to the Court's inquiry.

24 Anything further from the jury panel from
25 Mr. Thomas?

1 Thank you.

2 All right, the State ready to proceed with
3 sentencing?

4 MS. TESSITORE: Yes, sir, Your Honor.

5 THE COURT: Okay.

6 Is the Defendant ready to proceed with
7 sentencing?

8 MR. ROBINSON: Yes, sir, Your Honor.

9 THE COURT: Okay, I'll be happy to hear from
10 you, from the State. Do you believe that he was served
11 with life without parole?

12 MS. TESSITORE: Yes, Your Honor. I will hand up
13 to the Court what has been provided to Mr. Robinson and
14 also filed the documents regarding the notice of intention
15 to seek life without parole. And that was filed on
16 September 8th. It was served on the Defendant on
17 July 15th, 2010, hand delivered to him. There's an
18 Affidavit of Service. It was also served on his first
19 attorney, Randy Chambers, on July 16th, 2010 with an
20 Affidavit of Service. A letter to Mr. Robinson. That
21 also includes the letter including a copy of the notice as
22 well as the second notice of the intention, which was
23 served on Mr. Robinson on February 10th, 2011 and that
24 Affidavit of Service.

25 I will also hand up to the Court the certified

1 conviction from St. Lucie County, Florida in which the
2 Defendant was convicted of murder in the second degree.
3 And I've also provided that to defense counsel.

4 THE COURT: Very well. And you take the
5 position that attempted armed robbery is a most serious
6 offense?

7 MS. TESSITORE: Yes, sir.

8 THE COURT: You want to give me the statute that
9 provides that, please?

10 MS. TESSITORE: Yes, sir. Under South Carolina
11 code 17-25-45(C)(1), under the definition of most serious
12 offense that includes attempted armed robbery Section
13 16-11-330(B).

14 THE COURT: Thank you. I concur with your
15 reading of that.

16 MS. TESSITORE: And, Your Honor, under
17 17-25-45-(A)(2), a out-of-state conviction of an offense
18 classified as a most serious offense under this section.
19 Clearly this is an out-of-state conviction.

20 THE COURT: Clearly. But it would probably fall
21 in the category of manslaughter.

22 MS. TESSITORE: Yes, Your Honor. He pled nolo
23 contendere, which again, under that statute, it includes a
24 nolo contendere plea. The Florida statute 782.04,
25 Subjection 3, which is Florida's felony murder statute,

1 provides any killing during the perpetration of attempt to
2 perpetrate any felony as listed in the Subsections A
3 through Q, is guilty of murder in the second degree.
4 Which constitutes a felony in the first degree and is
5 punishable for a term of years not exceeding life.

6 If, Your Honor -- I can get into the facts that
7 are clearly indicated in the certified conviction that
8 indicates that he, along with co-defendants, unlawfully
9 attempted to perpetrate a robbery, they killed a human
10 being by shooting him with a gun. And this out-of-state
11 murder conviction would qualify as most serious since both
12 murder and voluntary manslaughter--

13 THE COURT: Are --

14 MS. TESSITORE: Excuse me?

15 THE COURT: Clearly voluntary manslaughter is a
16 most serious offense. And I would believe that murder in
17 the second degree would be similar if not identical to
18 voluntary manslaughter.

19 MS. TESSITORE: Yes, sir. And the reference to
20 the nolo contendere plea, 17-25-45(C)(3) which is
21 conviction meaning a conviction of guilty or a plea of
22 nolo contendere.

23 THE COURT: Okay.

24 MS. TESSITORE: So the State has complied with
25 the written notice requirement well in advance of this

1 trial.

2 THE COURT: And all of the documents that you
3 referenced on the record are part a of this file in the
4 Clerk's Office, is that correct?

5 MS. TESSITORE: Yes, sir.

6 THE COURT: Very well.

7 MS. TESSITORE: Well, the only exception being a
8 letter to Mr. Robinson.

9 THE COURT: You may want to file that as well.

10 MS. TESSITORE: Yes, sir.

11 THE COURT: If you'll do that as well.

12 Mr. Robinson, you received the letter, though,
13 did you not?

14 MR. ROBINSON: Yes, yes, sir.

15 THE COURT: Anything else from the State?

16 Do you have the sentencing sheet?

17 THE CLERK: I do, sir. But we need the correct
18 code since it's not armed robbery but attempted armed
19 robbery.

20 MS. TESSITORE: I'm sorry, Your Honor.

21 THE COURT: Thank you, Mary, pretty sharp.

22 THE CLERK: If you would make this Court's
23 Exhibit 2.

24 (WHEREUPON, Court's Exhibit No. 2 was marked for
25 identification and received into evidence.)

1 MS. TESSITORE: Your Honor, I don't have the CDR
2 code for attempted armed robbery.

3 THE COURT: That's all right, we'll get it.

4 MS. TESSITORE: Thank you, Your Honor.

5 THE COURT: No problem.

6 Mr. Robinson, I'll be happy to hear from you
7 now.

8 MR. ROBINSON: May it please the Court?

9 THE COURT: Yes, sir.

10 MR. ROBINSON: Your Honor, just for appeal
11 purposes in this case, Your Honor -- Your Honor, when he
12 was convicted or nolo contendere in Florida back in 1981,
13 I believe he was in his early 20's at that time. I saw
14 some stuff that Ms. Tessitore gave me regarding the range
15 of sentencing at that time.

16 If I can see that.

17 But, Your Honor, if what I'm looking at from
18 what she gave me, it was a range between -- I think the
19 maximum of a certain number of years, 10 years, 15 years,
20 something like that. But it's going to be -- we would
21 submit that this does not qualify as a strike, this
22 conviction from 20 something years ago. Or actually 30
23 years ago. As well as the description of this offense,
24 while it was a conviction for murder, the actual
25 sentencing range was in the -- was a lesser charge from

1 South Carolina, I believe. I think the Court mentioned
2 voluntary manslaughter. But we would submit that this
3 does not qualify as a strike based on the age of the
4 conviction in Florida. And based on the description of
5 this particular offense in this case. Thank you.

6 THE COURT: Thank you, sir.

7 Mr. Thomas, is there anything you wish to say,
8 sir?

9 MR. THOMAS: Your Honor, I was listening to the
10 Solicitor, Your Honor, when she said that -- she was
11 incorrect, Your Honor, when she speak that back then I
12 tried to rob somebody, Your Honor. That was not the case,
13 Your Honor.

14 THE COURT: Okay.

15 We believe, you can check, but we believe the
16 CDR code is 26. Attempted robbery. It was attempted
17 armed robbery. Twenty-six. You can verify that if you
18 want.

19 MS. TESSITORE: Yes, sir.

20 SENTENCING

21 THE COURT: Mr. Thomas, as we talked prior to
22 the commencement of this proceeding, what you just said
23 certainly could be -- have significance in fashioning a
24 sentence if the Court had discretion. But the Court does
25 not have any discretion. As I mentioned to you, it

1 doesn't matter what may opinion is on what the appropriate
2 sentence would or should be. Life without parole and the
3 notice of that on the basis of two strikes, is clear in
4 the law. And I took an oath to follow and apply that law.
5 So for those reasons, the sentence of the Court on
6 2009-9350, count one is life in prison without the
7 possibility of parole. Sentence of the Court on count 2,
8 that's the possession of a weapon during the commission of
9 a violent crime is five years. It is concurrent. Credit
10 for time served. Sentence of the Court on 2009-9349, the
11 burglary third, is five years, it is concurrent. And
12 credit for time served.

13 Court's Exhibit 2 for purposes of this sentence,
14 is a packet that was handed to me, including the certified
15 copy of the prior offense of murder in the second degree.
16 The Court does believe that that does constitute a strike
17 under our law. And therefore, I -- and clearly attempted
18 armed robbery is clearly a strike under our statute.
19 Therefore, the life without parole is a proper sentence.
20 Thank you.

21 Good luck to you, sir.

22 MS. TESSITORE: Thank you, Your Honor.

23 THE COURT: Anything further from the State?

24 MS. TESSITORE: Nothing from the State.

25 THE COURT: Anything further from the Defendant?

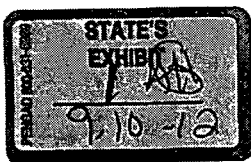
GREENVILLE COUNTY SHERIFF'S OFFICE



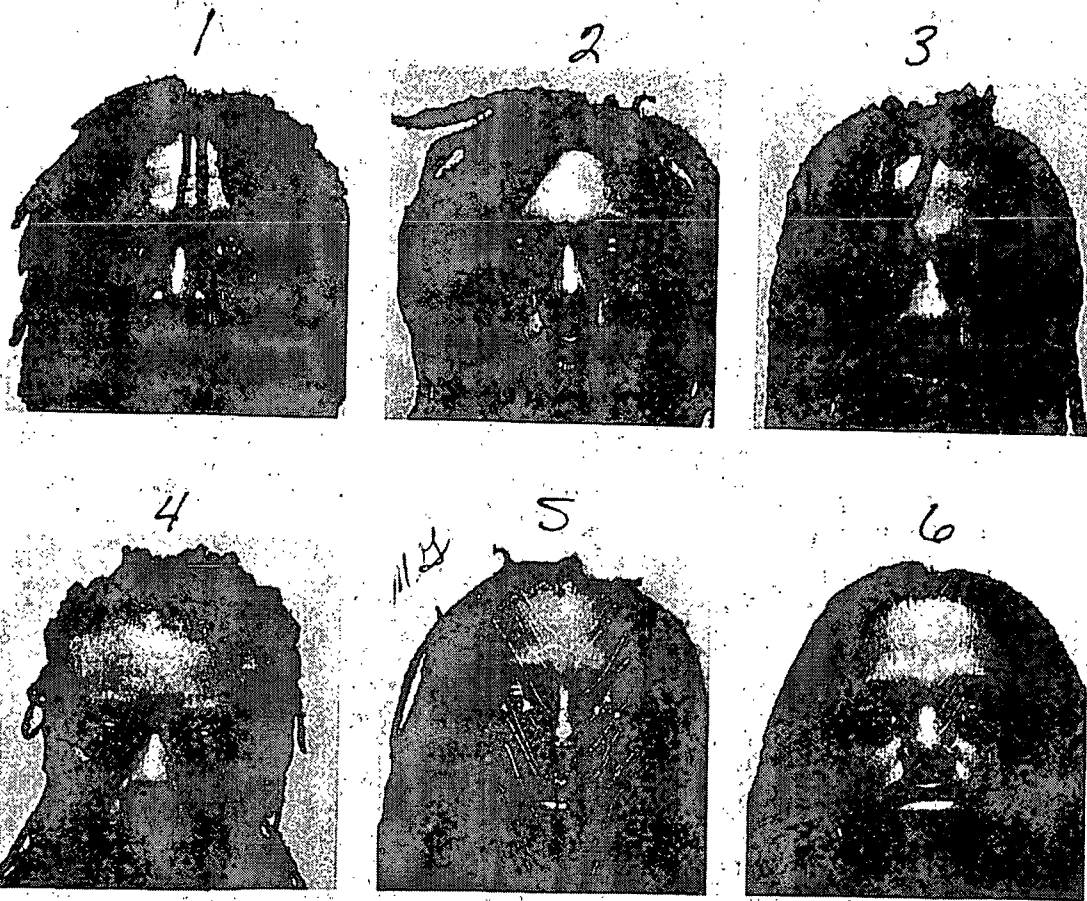
Printed: Tuesday, July 28, 2009 11:28 AM

person number 5 is the person who walked in on me washing my hand and pulled a pistol and told me to get on the floor then went through my wallet looking for money and when I turned my head he put the pistol between my shoulder blades and said look at the floor.

Michael Fowler



GREENVILLE COUNTY SHERIFF'S OFFICE



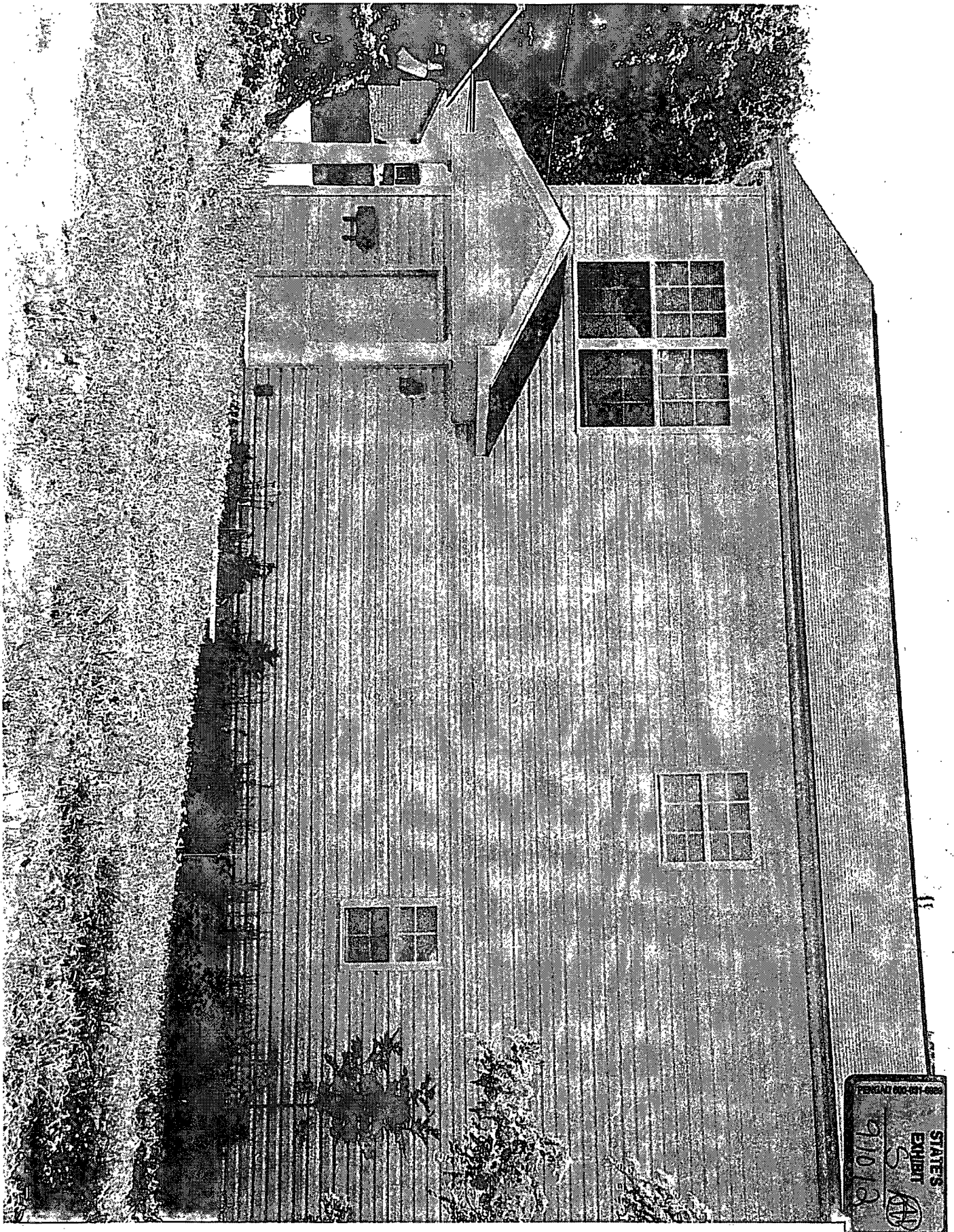
person Number 5 is the person who walked in on me washing
my hand and pulled a pistol and told me to get on the floor
then went through my wallet looking for money and when
I turned my head he put the pistol between my shoulder
blades and said look at the floor.

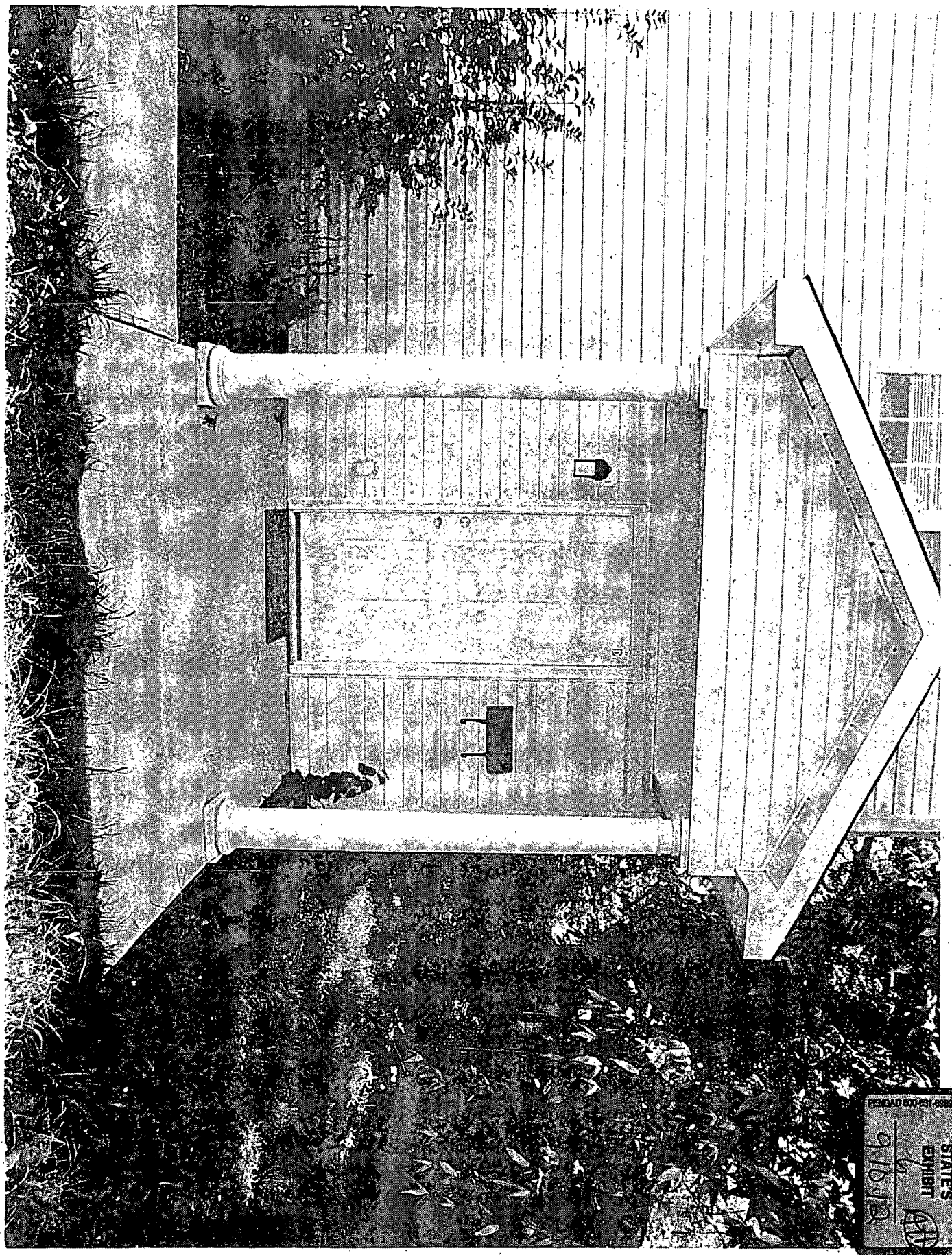
Michael Foster



ORIGINAL

11/17 1350
CFI
7/28/2009

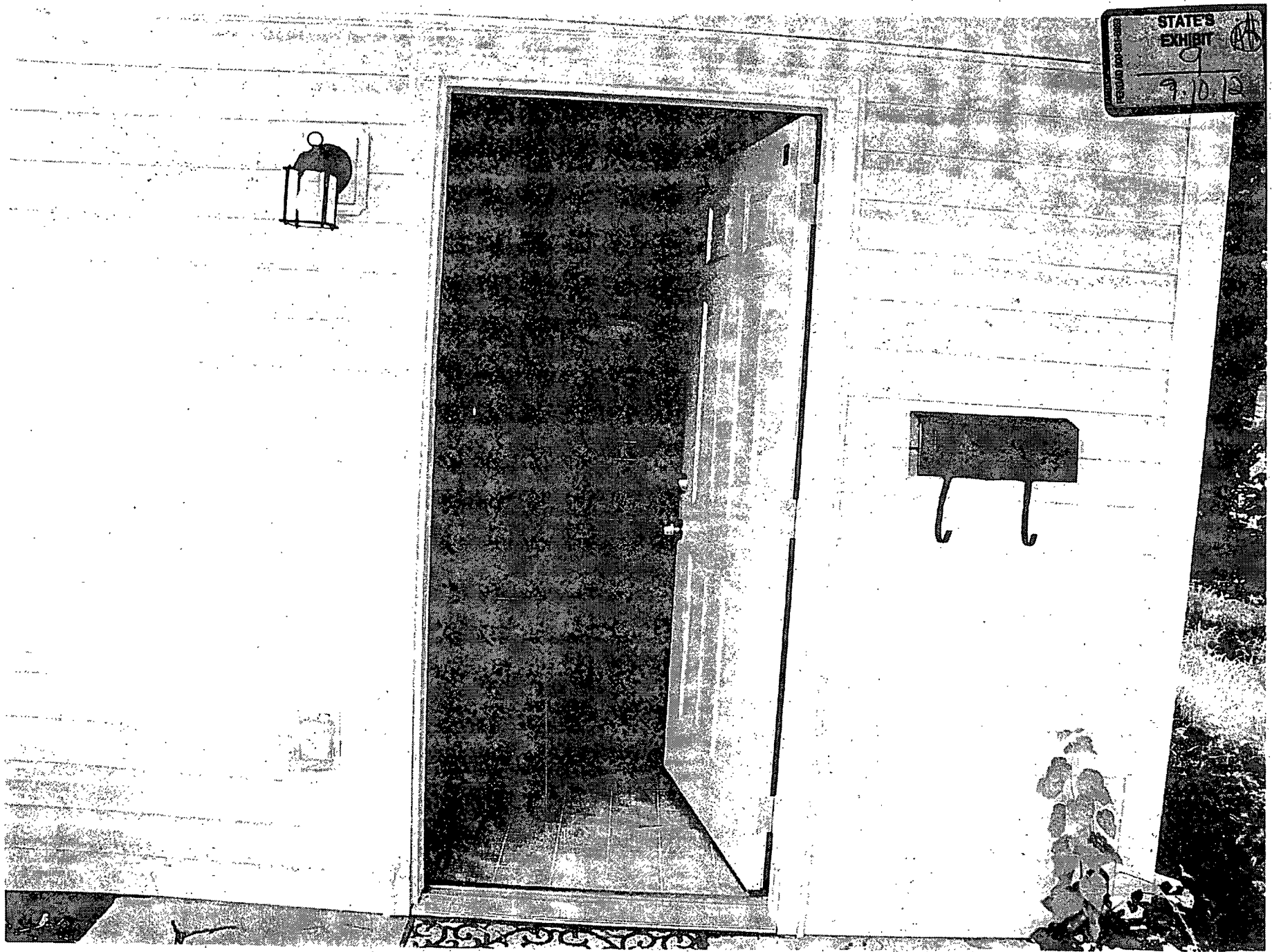




STATES
EXHIBIT
6
91612
APD
PERIOD 001-001-0000



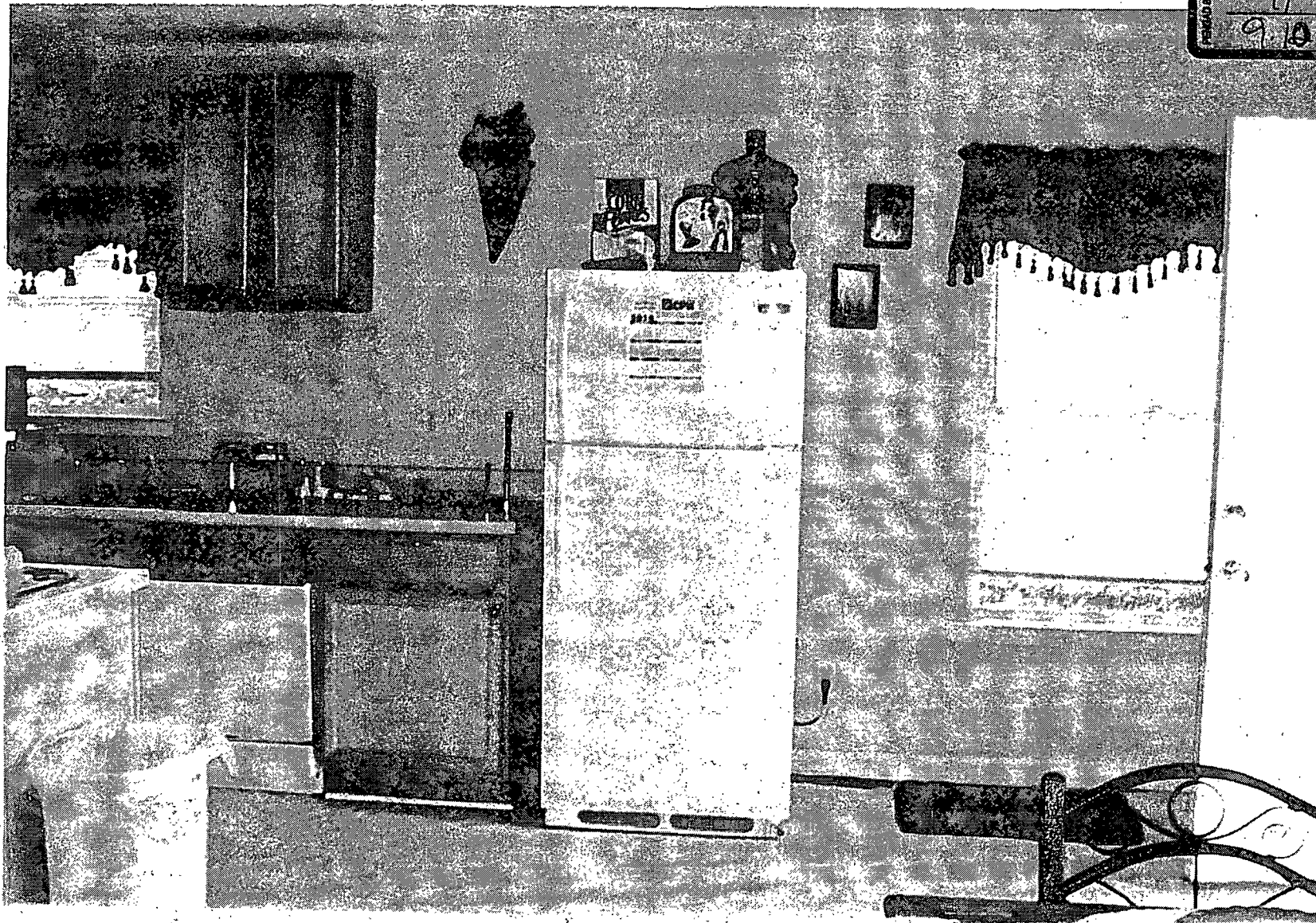
STATE'S EXHIBIT 7/10/12



STATE'S
EXHIBIT
9
9.10.12



STATE'S
EXHIBIT
10
9.10.12



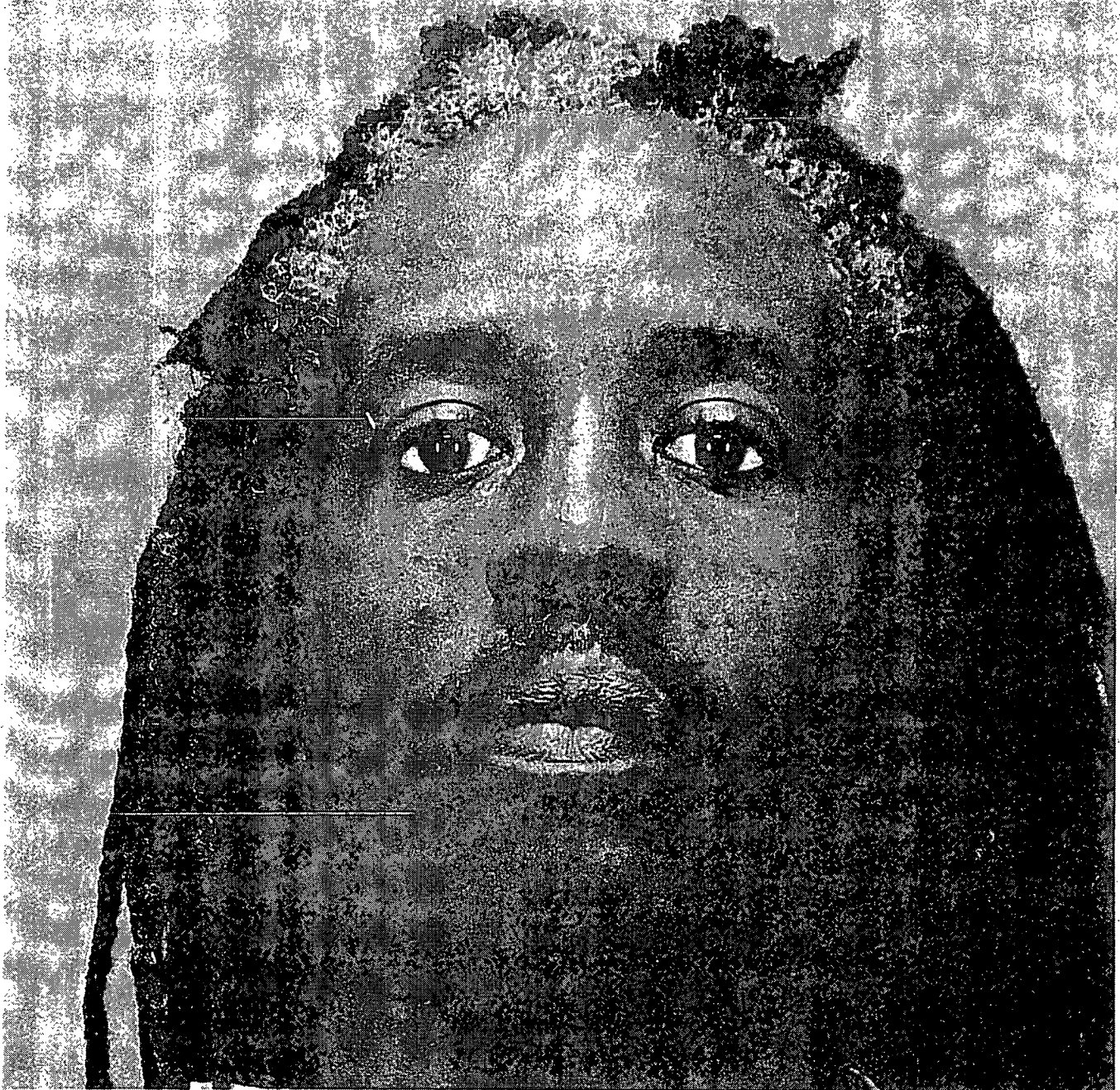
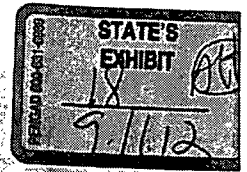


STATE'S
EXHIBIT
12
9/10/12



STATE'S
EXHIBIT
13
9.10.12







County of Greenville

"...At Your Service"

DEPARTMENT OF PUBLIC SAFETY



FORENSIC LATENT PRINT ANALYSIS REPORT

AGENCY: Greenville Police Department
AREA:

CASE NUMBER: 2-09-060175

INCIDENT TYPE:	Armed Robbery (Follow Up) / Latent Print Identification	INCIDENT LOCATION:	
VICTIM:	GORDON - Michael	ADDRESS:	119 Forest Street, Apt. D Greenville, SC
COMPLAINANT:		ADDRESS:	
INV. OFFICER	Det. Flavell	UNIT NUMBER	51

INCIDENT SUMMARY/ACTION(S) TAKEN:

PAGE 1 of 1

Additional latent prints in this case were developed by Forensic Lieutenant Mike Petersen on July 22, 2010. Lieutenant Petersen also provided possible suspect information in this case. As a result of a latent print examination the following was determined:

Latent Lift # 1 - Developed on the back of Glo-Dice game package (Item JMA-6) - is identified as being made by the # 2 (right index) finger of the following individual:

Known prints are identified as those of:

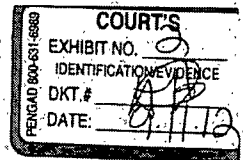
THOMAS - Eugene
B/M, DOB 09/06/1961
ID Pack # 130 364

Captain Kellett verified this identification. Detective Flavell was notified of the results of this examination. Investigation to continue.

0930 Hours

REPORTING OFFICER	Christopher Gary	STAR #	8991	UNIT #	931	DATE	07/23/10
REPORTING OFFICER		STAR #		UNIT #		DATE	
APPROVING SUPERVISOR	Captain J. F. Kellett	STAR #	8032	UNIT #	910	DATE	07/23/10

IN THE CIRCUIT COURT
NINETEENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR ST. LUCIE COUNTY



State of Florida

vs.

EUGENE THOMAS

CASE No. 80-1111-CF-C

STATE OF FLORIDA
ST. LUCIE COUNTY

THIS IS TO CERTIFY THAT THIS IS A
TRUE AND CORRECT COPY OF THE
ORIGINAL.

JOSEPH E. SMITH, CLERK

By R. E. Smith
Deputy Clerk

Date 6-26-16



JUDGMENT

YOU, EUGENE THOMAS, being now before the
Court, attended by your attorney, SPECIAL ASST. PUBLIC DEFENDER RUSSELL FERRARO
and you having () been tried and found guilty of () pleaded guilty to (X) pleaded nolo contendere
to MURDER IN THE SECOND DEGREE

as set forth or included in the (X) indictment () information filed in this court, the court adjudges that
you are guilty of said offense.

FILED AND RECEIVED
ST. LUCIE COUNTY, FLA.

SENTENCE

RECEIVED COURT

JUN 12 5 00 PM '81

Inquiry having been made of the defendant why sentence should not now be imposed and the
defendant saying nothing that could influence the Court in its decision, it is further ADJUDGED that said
defendant be sentenced to:

custody of the Department of Corrections and imprisoned for a term
of Ten (10) Years. This Defendant is to serve a mandatory minimum

of Three (3) Years on this sentence. Jail time of 224 days is hereby
credited on this sentence. \$10.00 to be paid to the Crimes Compensation*

DONE AND ADJUDGED in open court at Fort Pierce, Florida, this the 12th

day of June, 1981

Commission through the Clerk's office.

C. P. Smith
JUDGE

FINGERPRINTS OF DEFENDANT

Left Four Fingers Taken Simultaneously

Left Thumb

Right Thumb

Right Four Fingers Taken Simultaneously



I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the
defendant, EUGENE THOMAS

and that they were placed thereon by said defendant in my presence, in open court, this the 12th day
of June, 1981

C. P. Smith
JUDGE

COURT CASE NUMBERS

80-1113-CF

USE SEPARATE FORMS FOR EACH DEFENDANT AND FOR MULTIPLE
OFFENSES OCCURRING AT DIFFERENT TIME, DATE OR LOCATION

ARREST AFFIDAVIT

BOOKING OFFICER		JAIL NUMBER		DEFENDANT NAME (LAST, FIRST, MIDDLE)		CHECK TRUE NAME		DEFENDANT NAME (LAST, FIRST, MIDDLE)		ARREST INITIATION	
				Thomas Eugene						☐ CRIME SCENE ☐ WALK-IN ☐ TURNED SELF IN ☐ WARRANT / CAPTAS (ENTER NUMBER)	
AGENCY CASE NO.		DATE OF BIRTH		PERMANENT ADDRESS (STREET NO. STREET NAME CITY)		STATE		ZIP CODE		CNTY	
80-105830		9/16/61		2902 Ave J Ft. Price		FL		33450		SL	
DEFENDANT REQUIRED TO APPEAR IN CIRCUIT COURT		SEX		HEIGHT		WEIGHT		RACE		EYE COLOR	
ON		M		5'7"		140		W		BLK	
AT		AM/PM		263		615		799		12	
DEFENDANT REQUIRED TO APPEAR IN COUNTY COURT		ARREST DATA		DATE		MILITARY TIME		SECTOR		STREET ADDRESS	
ON		11								16 & Ave D Ft. Price	
AT		AM/PM		10:48		1951				FL SL	
OFFENSES (LIST STATUTE NUMBERS WITH OFFENSE NAMES)		SOCIAL SECURITY NUMBER		OCCUPATION OR EMPLOYER		DISTINGUISHING MARKS		STATUTE NUMBER			
1. E M J		263 615 799 12		None				782.04			
2. F M J											
3. F M J											
4. F M J											
VICTIM		ADDRESS		PHONE		OCT 3		RECORDED		FILED AND	
Ambrosio Ramirez		442 N 16 St								ST. LUCIE CO. CLERK	
CLERK COURT COPY		PRINCIPAL ARRESTING OFFICER/AGENCY (PRINT)		OFFICER ID NO		BONDSMAN/SURETY NAME		BOND AMOUNT		RECORDED	
		Barnes		SP911						OCT 3 1980	
CO-DEFENDANTS (LAST NAME, FIRST, MIDDLE)		A		B		C		D		E	
Richard Hall						Jeffrey Sanders					
William Earl Footman						John Cooper					

PROBABLE CAUSE

SUMMARY OF OFFENSES AND PROBABLE CAUSE AFFIDAVIT

The above named defendant was arrested for the following reasons:

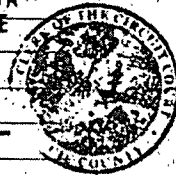
Defendant & Co-Defendant on 10-24-80 did unlawfully take the life of Ambrosio Ramirez a mex male of 442 N 16 St by shooting him in the left shoulder with a small cal. pistol which cause victim to die. Defendant and Co-Defendant was observed by wit struggling with victim and several other mex male as victim ran he was shot in the back, wit don't know who did the shooting but saw several gm leave the area running. Def is now in jail for robbery of Wendy on 10-26-80.

STATE OF FLORIDA
ST. LUCIE COUNTYTHIS IS TO CERTIFY THAT THIS IS A
TRUE AND CORRECT COPY OF THE
ORIGINAL

JOSEPH E. SMITH, CLERK

By: B. F. O'Hara
Deputy Clerk

Date: 5-26-80



The preceding is true to the best of my present knowledge or belief.

Signature

David Barnes

NOTARY ASA

John A. March

Agency

F.P.D.

Notarization: Sworn & Subscribed before me this ____ day of

10-1111-CF-A-E. Footman
80-1111-CF-B-J. Sanders
80-1111-CF-C-E. Thomas
80-1111-CF-D-R. Hall

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA:

IN THE CIRCUIT COURT of the Nineteenth Judicial Circuit of the State of Florida for ST. LUCIE County, at the FALL Term, thereof, in the year 1981, ST. LUCIE County, to wit: The Grand Jurors of the State of Florida: inquiring in and for the body of the County of ST. LUCIE, upon their oaths do present that EARL FOOTMAN, JEFF SANDERS, EUGENE THOMAS and RICHARD HALL late of the County of ST. LUCIE aforesaid, in the Circuit and State aforesaid, did on the 24th day of OCTOBER, 1980 with force and arms, at and in the County of ST. LUCIE aforesaid did

agree, conspire, combine or confederate with one another and a person named JOHN COOPER, an unindicted co-conspirator, to commit an offense, to wit: to rob persons who were mexicans who were in the vicinity of N. 16th St. and Ave D in Ft. Pierce, St. Lucie County, Florida, by utilizing a firearm during said robbery and that said EARL FOOTMAN, JEFF SANDERS, EUGENE THOMAS, RICHARD HALL and JOHN COOPER on October 24, 1980 did travel together to the vicinity of N. 16th St. and Ave D, Ft. Pierce, St. Lucie County, Florida in furtherence of said conspiracy in violation of Florida Statute 777.04(3) and Florida Statute 812.13;

COUNT II

IN THE CIRCUIT COURT of the Nineteenth Judicial Circuit of the State of Florida for ST. LUCIE County, at the FALL Term, thereof, in the year 1981, ST. LUCIE County, to wit: The Grand Jurors of the State of Florida: inquiring in and for the body of the County of ST. LUCIE, upon their oaths do present that EARL FOOTMAN, JEFF SANDERS, EUGENE THOMAS and RICHARD HALL late of the County of ST. LUCIE aforesaid, in the Circuit and State aforesaid, did on the 24th day of OCTOBER, 1980 with force and arms, at and in the County of ST. LUCIE aforesaid did

unlawfully in an attempt to perpetrate a robbery, did kill and murder one AMBROCIO RAMIREZ, a human being, by shooting the said AMBROCIO RAMIREZ with a firearm, to wit: A GUN, causing his death in violation of Florida Statute 782.04;

STATE OF FLORIDA
ST LUCIE COUNTY
THIS IS TO CERTIFY THAT THIS IS A
TRUE AND CORRECT COPY OF THE
ORIGINAL

JOSEPH E. SMITH, CLERK

By B. Fortun
Deputy Clerk

Date 5-26-12



IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA:

COUNT III

IN THE CIRCUIT COURT of the Nineteenth Judicial Circuit of the State of Florida for ST. LUCIE County, at the FALL Term thereof, in the year of our Lord one thousand nine hundred and EIGHTY-ONE, ST. LUCIE County, to-wit: The Grand Jurors of the State of Florida: inquiring in and for the body of the County of ST. LUCIE, upon their oaths do present that EARL FOOTMAN, JEFF SANDERS, EUGENE THOMAS and RICHARD HALL

late of the County of ST. LUCIE aforesaid, in the Circuit and State aforesaid, DID on the 24th day of OCTOBER, in the year of Our Lord one thousand nine hundred and EIGHTY with force and arms, at and in the County of ST. LUCIE aforesaid did unlawfully by force, violence,

assault or putting in fear, attempt to take certain property, to wit: LAWFUL CURRENCY OF THE UNITED STATES OF AMERICA, the property of FILIBERTO MARTINEZ, as owner or custodian, from the person or custody of FILIBERTO MARTINEZ, and in the course of attempting to commit said robbery did carry a firearm, to wit: A GUN, in violation of Florida Statute 777.04 and Florida Statute 812.13;

against the form of the Statute in such case made and provided, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

JOHN E. FENNELLY, Assistant
I, ~~ROBERT E. FENNELLY~~, State Attorney for the Nineteenth Judicial Circuit hereby certify that I have advised the Grand Jury in above-referenced case.

Assistant

John E. Fennelly
State Attorney for the Nineteenth Judicial Circuit of Florida, Prosecuting for said State

FD-1111 CP-A E. Footman
FD-1111 CP-B

No. _____

IN CIRCUIT COURT

Nineteenth Judicial Circuit of Florida

ST. LUCIE County

THE STATE OF FLORIDA

VS.

EARL FOOTMAN, JEFF SANDERS,

EUGENE THOMAS, RICHARD HALL

INDICTMENT FOR

CT. I - CONSPIRACY TO COMMIT
ARMED ROBBERY F.S. 777.04(3),
812.13; CT. II - FELONY MURDER
F.S. 782.04 and CT. III - ATTEMPTED
ARMED ROBBERY 777.04- 812.13
Found 1st Grand Term, A. D. 1981

A TRUE BILL

Timothy S. O'Connor
Foreman of the Grand Jury

Presented in Open Court and Filed this

15th day of January, 1981

ROGER POITRAS

Clerk

By R. E. Stone D.C.

ROBERT E. STONE

State Attorney, Nineteenth Judicial Circuit
State of Florida

STATE WITNESSES

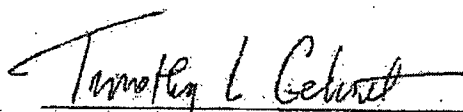
RAY KLEJBUECK
RONALD MCCORKLE
DOUG HEINMILLER
ROBERT TRACY NOBLE
FILIBERTO MARTINEZ
AMABILIA ESTERADA
BOBBY JEAN LAMPKIN
GENEVA SHERFIELD
CATHY DeGRAFF
JOHN COOPER
BARBARA ANN SANDERS
DAVID BARNES

FILED AND RECORDED
ST. LUCIE COUNTY, FLA.
CLERK ROGER POITRAS
RECEIVED IN OPEN COURT
JAN 15 3 48 PM '81

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 18, 2014



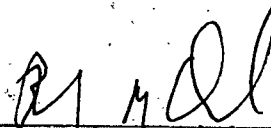
TIMOTHY L. GEHRET

Timothy L. Gehret, Attorney at Law, LLC

P.O. Box 12494

Charleston, SC 29422

(843) 408-0626



ROBERT M. DUDEK

Chief Appellate Defender

SC Commission on Indigent Defense

1330 Lady Street Suite 401

Columbia, SC 29201

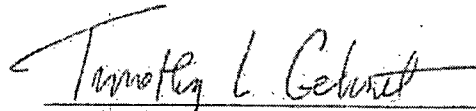
(803) 734-1330

ATTORNEYS FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 18, 2014



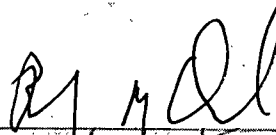
TIMOTHY L. GEHRET

Timothy L. Gehret, Attorney at Law, LLC

P.O. Box 12494

Charleston, SC 29422

(843) 408-0626



ROBERT M. DUDEK

Chief Appellate Defender

SC Commission on Indigent Defense

1330 Lady Street Suite 401

Columbia, SC 29201

(803) 734-1330

ATTORNEYS FOR APPELLANT

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

Appeal from Greenville County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

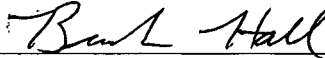
EUGENE THOMAS,

APPELLANT

APPELLATE CASE NO. 2012-212968

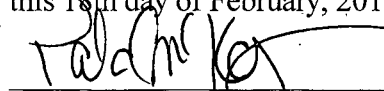
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Norman Mark Rapoport, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of February, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 18th day of February, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.

RECEIVED

FEB 18 2014

SC Court of Appeals