

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Kristi Lea Harrington, Circuit Court Judge

ORIGINAL

RECEIVED

MAR 12 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARVIN BOWENS GREEN,

APPELLANT

APPELLATE CASE NO. 2012-212739

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT ANNE WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting St., Ste. 400
Charleston, SC 29401-2214
fax (843) 740-5858
(843) 958-1900

Attorneys for Respondent

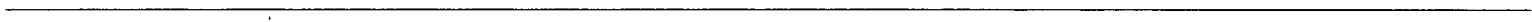
INDEX

INDEX.....	i
TRIAL TRANSCRIPT DATED JUNE 11 & 12, 2012	1
OPENING STATEMENT BY MR. GROEBER	2
TESTIMONY	
NATUBHAI PATEL	
Direct examination by Mr. Durant.....	5
Cross examination by Mr. Groeber	23
DHRUVAL PATEL	
Direct examination by Mr. Durant.....	29
Cross examination by Mr. Groeber	37
Redirect examination by Mr. Durant.....	40
DUSTIN LUCKADOO	
Direct examination by Mr. Durant.....	43
Cross examination by Mr. Groeber	53
Redirect examination by Mr. Durant.....	58
CHARLES LAWRENCE	
Direct examination by Mr. Durant.....	62
Cross examination by Mr. Grimes.....	78
Redirect examination by Mr. Durant.....	122
JOSEPH L. WEST	
Direct examination by Mr. Durant.....	134
OBJECTION TO PHOTOGRAPHS	145
RULING BY THE COURT	149
TESTIMONY	
JAMES PERKINS	
Direct examination by Mr. Durant.....	150
Cross examination by Mr. Groeber	163
Redirect examination by Mr. Durant.....	176

JAGRUTI PATEL	
Direct examination by Mr. Durant.....	178
Cross examination by Mr. Groeber	186
Redirect examination by Mr. Durant.....	194
OBJECTION TO PHOTOGRAPH	195
RULING BY THE COURT	198
TESTIMONY	
JENNIFER BEAUDRY	
Direct examination by Mr. Groeber.....	199
Cross examination by Mr. Durant	258
Redirect examination by Mr. Groeber.....	286
Recross examination by Mr. Durant.....	289
CHARGE CONFERENCE.....	290
CLOSING ARGUMENT BY MR. GROEBER.....	292
CLOSING ARGUMENT BY MR. DURANT.....	305
CHARGE ON THE LAW.....	321
RENEWAL OF REQUESTS TO CHARGE	335
VERDICT	343
SENTENCING	351
STATE’S EXHIBIT # 3 (PHOTO LINEUP)	354
STATE’S EXHIBIT # 5 (PHOTO).....	355
STATE’S EXHIBIT # 5A (PHOTO).....	356
STATE’S EXHIBIT # 6 (PHOTOGRAPHS).....	357
COURT’S EXHIBIT # 9 (DEFENDANT’S REQUESTED JURY CHARGES).....	388
DEFENDANT’S MOTION TO VACATE SENTENCE	397
ORDER REGARDING ALL POST-TRIAL MOTIONS	403
NOTICE OF INTENT TO SEEK LIFE WITHOUT PAROLE.....	410

INDICTMENTS AND SENTENCE SHEETS	414

CERTIFICATE OF COUNSEL.....	420



State of South Carolina) Transcript of Record
)
 V.) 2011-GS-10-2338 & 2339
)
Marvin Bowens Green,) * Volume I *
)
 Defendant.)

June 11 & 12, 2012

Charleston, South Carolina

B E F O R E:

The Honorable Kristi L. Harrington, Judge; and a Jury.

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

D. Bruce Durant, Chief Deputy Solicitor

Rutledge Durant, Assistant Solicitor

Attorneys for the State

Andrew Grimes, Assistant Public Defender

Cody Groeber, Assistant Public Defender

Attorneys for the Defendant

SHARON L. VIZER

CIRCUIT COURT REPORTER

1 That's not in case. This case is a who done it, and
2 you're going to be asked to determine if who done it is
3 Marvin Green.

4 There's no doubt that Mr. Patel, who is sitting in
5 the courtroom over here, was robbed on December 24th,
6 2010. There's no doubt that a young black man came in,
7 pointed a gun at him, pointed at him for more than a
8 minute. The gun was cocked. It looked like a real gun.

9 That young black man had a hat on that covered his
10 hair and his hairline. He had sunglasses on that
11 covered his eyes, and he had a hoodie on that covered
12 his ears. Mr. Patel was scared, and no one would blame
13 him. He was looking down the barrel of a gun and his
14 heart was racing.

15 Finally, the young man left and Mr. Patel, as
16 Mr. Durant told you, has video cameras in his store, and
17 he watched those video cameras and he gave it to the
18 police. And we're here today because Mr. Patel, and the
19 police officers, and the solicitor's office all think
20 that the person on that video is Marvin Green. There's
21 only one problem, Marvin Green says it's not.

22 It will be up to you to determine if the State can
23 prove its case, and the way that they are going to try to
24 prove its case is to parade in front of you witnesses who
25 will testify about what they believe, who they believe it

1 was on the video, and Mr. Patel will say he believes that
2 it was him from his experience. But you will have no
3 hard evidence to corroborate that.

4 They will have witnesses that will testify that he
5 resembled the person on the video but they have no
6 evidence that proves an identity of the person on the
7 video. They will have no fingerprints, they will have no
8 DNA. They will not have the gun that was used in the
9 robbery. They will not have the clothes that were worn
10 when the crime was committed. They will not have the
11 hat, they will not have the hoodie, they will not have
12 the sunglasses, and you'll find out the reason why,
13 because they believed they knew who was on the video.
14 They didn't want to do any more evidence -- any more
15 search for evidence.

16 What they have are two faces, one on a video and
17 one on my client. But you will hear expert testimony in
18 this case by Dr. Jennifer Beaudry. She is a professor of
19 psychology at the University of South Carolina in
20 Beaufort. Dr. Beaudry's specialty is the study of human
21 memory and of eyewitness identifications and how the two
22 interact. She's a scientist. And what she will do is
23 educate you about what science says about how her memory
24 works, and especially how it works in the context of
25 eyewitness identifications.

1 Mr. Patel will testify he's sure that it's Marvin Green,
2 and Dr. Beaudry will give you the ability to understand
3 what science says about confidence.

4 She'll also tell you how we can transfer familiar
5 faces from one memory to the next. And she'll educate
6 you about lineup procedures and the best practices that
7 the police should use when they do them.

8 Now, she will not testify about her opinion on a
9 certain witness's memory in this case. That is not her
10 role. That is your role, to evaluate the witnesses, to
11 evaluate their memories, to evaluate the factors that
12 would affect their memories, and she will tell you what
13 you need to be looking out for in evaluating those
14 memories.

15 At the end of the day we're confident that after
16 you hear all the evidence that you will find Marvin Green
17 not guilty. Thank you.

18 THE COURT: Call your first witness.

19 MR. RUTLEDGE DURANT: Thank you, Your Honor. May
20 it please the Court. The State calls Natubhai Patel.

21 (WHEREUPON, the interpreter, Vasandika Isadas, was
22 duly sworn.)

23 THE CLERK: Please state your full name.

24 THE INTERPRETER: Vasandika Isadas.

25 NATUBHAI PATEL, after having been duly

1 sworn, testified as follows:

2 THE CLERK: Please state your full name and spell
3 your name.

4 THE WITNESS: Natubhai Patel. Spelling, P-a-t-e-l.

5 THE CLERK: Please have a seat.

6 DIRECT EXAMINATION

7 BY MR. RUTLEDGE DURANT:

8 (Through the interpreter.)

9 Q. Mr. Patel, good afternoon.

10 A. Good afternoon.

11 Q. Will you please tell the jury how old you are.

12 A. Fifty-two years.

13 Q. Do you live in Charleston?

14 A. Yes, I live in Charleston.

15 Q. Where were you born?

16 A. India.

17 Q. When did you come to the United States?

18 A. October 11th, 2003.

19 Q. Why?

20 A. I came here to work and for my family.

21 Q. Are you married?

22 A. Yes, I'm married.

23 Q. Who is your wife?

24 A. Jagruti Patel.

25 Q. How long have you been married?

- 1 A. Seventeen years.
- 2 Q. Do you have any children?
- 3 A. Yes, I have children.
- 4 Q. How many?
- 5 A. Two.
- 6 Q. How old are they?
- 7 A. The older one is 14.
- 8 Q. What about the younger one?
- 9 A. The younger one is six.
- 10 Q. What do you do for a living?
- 11 A. I work behind a register at my store.
- 12 Q. What is the name of your store?
- 13 A. 5737 Savannah Highway, Ravenel town.
- 14 Q. Is it called the Quick Stop?
- 15 A. Quick Stop convenience store and gas station.
- 16 Q. And you manage the store?
- 17 A. I own the store.
- 18 Q. How many employees do you have?
- 19 A. Just me and my wife.
- 20 Q. And where is your wife right now?
- 21 A. She's at the store working.
- 22 Q. So both of you cannot be here at the same time?
- 23 A. No, we cannot.
- 24 Q. Because somebody needs to be at the store?
- 25 A. No.

1 THE INTERPRETER: I don't think he understood your
2 question.

3 Q. Are you and your wife the only people who work at
4 your store?

5 A. Yes, me and my wife.

6 Q. And if neither of you are at the store the store
7 cannot be open; is that right?

8 A. Yes. If both of us are not there we have to close
9 the store.

10 Q. Do you recall the morning of December 24th, 2010?

11 A. Yes. A man had entered with a gun.

12 Q. Was that at approximately 7:45 that morning?

13 A. Yes, 7:45 in the morning.

14 Q. What time did you open the store that morning?

15 A. I open my store Monday through Friday 6:30 in the
16 morning.

17 Q. If you would, please describe to the jury what the
18 man with the gun was wearing.

19 A. He was wearing sunglasses, a red hat, a black
20 jacket, and khaki pants.

21 Q. Were you able to see the man's face?

22 A. Yes. I saw his complete face. There was only
23 sunglasses there but the rest of the face was open.

24 Q. Had you ever seen that man before?

25 A. Yes. I know him since the past one year.

1 Q. And how do you know him for the past one year?

2 A. He used to come to my store to buy cigarettes, gas,
3 and lottery tickets.

4 Q. How often would he come to your store?

5 A. He would come at least three times a week.

6 Q. Did you ever speak with the man?

7 A. We always spoke and he would joke around about an
8 ID with President Obama's signature on it.

9 Q. Do you see the man who came into your store with
10 the gun on December 24th, 2010, in the courtroom today?

11 MR. GROEBER: Objection, Your Honor.

12 THE COURT: Basis?

13 MR. GROEBER: Previously made.

14 THE COURT: Overruled. You may answer.

15 A. (Indicated). He's the one in the white.

16 Q. This man sitting over here (indicated)?

17 A. The one who's sitting by his lawyer.

18 Q. The man in the middle?

19 A. The man in the middle, yes.

20 Q. Are you certain that that's the man who had come to
21 your store for approximately a year before this incident?

22 A. I'm a hundred percent sure.

23 Q. Are you certain that he is the man who came into
24 your store and robbed you at gunpoint?

25 A. I'm completely certain.

1 MR. RUTLEDGE DURANT: Let the record reflect that
2 the victim has identified the defendant.

3 THE COURT: It will.

4 Note your objection.

5 BY MR. RUTLEDGE DURANT:

6 (Through the interpreter.)

7 Q. What did the man do when he came into your store
8 with a gun that morning?

9 A. He walked in and asked me to give the cash. I gave
10 him \$60. He asked me to give him my wallet. There was
11 no money in the wallet, and then he asked for cigarettes.
12 And before leaving he said, Don't call the police.

13 Q. And did he take money from you?

14 A. Yes, \$60, he took from me.

15 Q. And did he take the cigarettes from you?

16 A. Yes, Newport cigarettes.

17 Q. What did you do when the man left?

18 A. I called the police right after he left.

19 Q. Did the police respond to your store?

20 A. The police responded to my call and they stayed at
21 my store for two hours. I had closed the store at that
22 time. We were checking the video.

23 Q. Is your store equipped with a video surveillance
24 system?

25 A. Yes, it is.

1 Q. Was your video surveillance system able to capture
2 the robbery on video?

3 A. Yes. It captured everything. He was standing by
4 my register for a minute and a half.

5 (WHEREUPON, State's Exhibit Number 1, a
6 Surveillance Video of the Robbery, was marked for
7 identification only.)

8 BY MR. RUTLEDGE DURANT:

9 (Through the interpreter.)

10 Q. Mr. Patel, I'm showing you what the State has
11 labeled State's Exhibit 1 for identification.

12 A. Yes. Okay.

13 Q. I ask you to take a look at it and let me know if
14 you recognize it.

15 A. Yes, he will tell you.

16 That is my signature. That is my son's signature.

17 Q. And have you had an opportunity to view this disc?

18 A. Yes. Yes, I have seen it.

19 Q. And what does it depict?

20 A. It has the robbery on it, how the man came and how
21 I gave him money. I've seen that.

22 Q. Does this disc fairly and accurately depict the
23 robbery as it occurred in your store on December 24th,
24 2010?

25 A. Yes, very clearly.

1 MR. RUTLEDGE DURANT: Your Honor, at this time the
2 State moves for the admission of State's 1.

3 THE COURT: Any objection?

4 MR. GROEBER: No, Your Honor.

5 THE COURT: State's 1 into evidence without
6 objection.

7 (WHEREUPON, State's Exhibit Number 1, a
8 Surveillance Video of the Robbery, was admitted into
9 evidence.)

10 MR. RUTLEDGE DURANT: Your Honor, may we approach?

11 THE COURT: You may.

12 (WHEREUPON, the following bench conference was
13 reported.)

14 MR. RUTLEDGE DURANT: I'd like just a second to set
15 up the TV to play it for the jury.

16 THE COURT: All right.

17 (WHEREUPON, the bench conference was concluded.)

18 (PAUSE.)

19 MR. RUTLEDGE DURANT: Your Honor, if the witness
20 could step down to explain what's on the video.

21 (The witness stepped down from the witness stand.)

22 THE COURT: Mr. Patel, you're going to have you
23 speak very loudly because you're away from the
24 microphone.

25 THE INTERPRETER: Yes, ma'am.

1 MR. RUTLEDGE DURANT: On second thought, maybe the
2 witness should take the stand while we play the video.

3 (The witness returned to the witness stand.)

4 MR. RUTLEDGE DURANT: And, Your Honor, at this time
5 the State requests to publish State's 1.

6 THE COURT: You have permission to publish State's
7 1.

8 MR. RUTLEDGE DURANT: Thank you.

9 (WHEREUPON, State's Exhibit Number 1, a
10 Surveillance Video of the Robbery, was played for the
11 jury.)

12 BY MR. RUTLEDGE DURANT:

13 (Through the interpreter)

14 Q. Mr. Patel, did you recognize the man with the gun
15 as a regular customer in your store?

16 A. Yes. I completely recognized him as a regular
17 customer.

18 Q. Did you know the man's name?

19 A. I never asked him his name, ever. He would always
20 joke around with me.

21 Q. Did you tell the responding officers that you
22 recognized him as a customer?

23 A. Yes, I did.

24 Q. After the robbery who did you call?

25 A. I called the police.

- 1 Q. Did you call anybody else?
- 2 A. Yes. I called my wife and my son.
- 3 Q. Which son?
- 4 A. Dhruval Patel.
- 5 Q. How old was Dhruval at the time?
- 6 A. He was 12 at that time.
- 7 Q. Who was the person in the store who knew how to
- 8 operate the video surveillance system?
- 9 A. My son.
- 10 Q. Dhruval was the person who operated it?
- 11 A. Dhruval Patel, yes.
- 12 Q. Is that why you wanted Dhruval to come to the
- 13 store?
- 14 A. Yes. That's why I had called my wife to bring my
- 15 son with her when she came.
- 16 Q. And how long was the store closed that morning?
- 17 A. Around two hours.
- 18 Q. After you met with the police that day, December
- 19 24th, 2010, did you meet with them again on a later date?
- 20 A. December 29th, two cops came.
- 21 Q. You met with two police officers on December 29th?
- 22 MR. GROEBER: Objection.
- 23 THE COURT: Hold on one second. What's your
- 24 objection?
- 25 MR. GROEBER: Prior. Previously raised.

1 THE COURT: Overruled. You may answer.

2 Mr. Durant, you may need to repeat your question.

3 BY MR. RUTLEDGE DURANT:

4 (Through the interpreter.)

5 Q. Did you meet with two police officers on December
6 29th 2010?

7 A. Yes. I met with two police officers on December
8 29th 2010, at Citadel Mall outside of Sears parking lot.

9 Q. Who were you with?

10 A. With my son.

11 Q. And do you know what the purpose in meeting with
12 those officers was?

13 A. The officers had called my wife, and she called me
14 to let me know that two officers were coming to meet me
15 at the Citadel Mall outside in the parking lot.

16 (WHEREUPON, State's Exhibit Numbers 2 and 3,
17 previously Court's Exhibit Numbers 5 and 6, were marked
18 for identification only.)

19 Q. Mr. Patel, I'm showing you what the State has
20 labeled State's Exhibit 2 for identification. I ask that
21 you take a look at it.

22 A. Yes. I will look at it.

23 Q. And let me know if you recognize it.

24 A. I will see.

25 This is my signature.

- 1 Q. Do you recognize that document?
- 2 A. Yes, I do recognize.
- 3 Q. Where have you seen it before?
- 4 A. When I had seen it --
- 5 THE INTERPRETER: I'm sorry.
- 6 A. -- I had seen it outside of the parking lot at the
- 7 Citadel Mall.
- 8 Q. Who presented this document to you?
- 9 A. Two police officers give it to me. My son read it,
- 10 explained it to me and then I signed.
- 11 Q. Do your initials appear on this document?
- 12 A. Yes, they are mine.
- 13 Q. Are you able to read English well?
- 14 A. I don't read it well. That's why my son had to
- 15 read it and explain it to me.
- 16 Q. This is obvious, but does your son read English
- 17 well?
- 18 A. Yes, my son reads English.
- 19 Q. And was he able to help you understand what this
- 20 document said?
- 21 A. Yes. I only signed after he clearly explained what
- 22 is written in this document.
- 23 Q. And what happened after you went over this document
- 24 with the police officer?
- 25 A. They showed me some pictures and I circled one.

1 Q. Mr. Patel, I'm showing you what the State has
2 labeled State's Exhibit 3 for identification. I ask that
3 you take a look at it.

4 A. I will see.

5 Q. And please let me know if you recognize it.

6 A. I will tell you.

7 Q. Do you recognize State's 3?

8 A. Yes, I recognize it.

9 Q. How do you recognize it?

10 A. I've seen this man at my store. I don't know
11 anybody else.

12 Q. Were these the pictures that were presented to you
13 by the officers?

14 A. Yes. This was the same thing and I signed it, too.

15 Q. Why did you circle the photograph that you circled?

16 A. Because he's my regular customer. I know for a
17 fact. I am a hundred percent sure that that was the same
18 man.

19 Q. Is that the same man that robbed you at the store
20 on December 24th?

21 A. Yes, he's that same man.

22 Q. Are you positive?

23 A. I'm a hundred percent positive.

24 Q. Is there any doubt in your mind?

25 A. There is no doubt in my mind, and that was the only

1 one I saw.

2 Q. Did the police do anything -- did the police tell
3 you to circle this picture?

4 A. The police didn't ask me to circle anything. They
5 just gave me the paper and immediately I circled around
6 that picture.

7 Q. Did the police do anything to influence you to
8 circle anyone's picture?

9 A. The police officer did not say anything to me. He
10 just handed me the sheet and as soon as I saw I circled
11 it.

12 Q. How many officers actually went over the form and
13 showed you the pictures?

14 A. Two had come.

15 Q. You met two police officers there that day; is that
16 correct?

17 A. Yes, I met two.

18 Q. Did both of those officers administer this
19 photographic identification procedure with you?

20 A. They were not together when they went over the
21 document and the pictures with me.

22 Q. So was it just one person who did this with you?

23 A. The police officer explained it to me but I did not
24 understand so my son helped me, and then as soon as I saw
25 the picture I circled it. He did not say anything else

1 to me.

2 Q. After you circled the man's photograph did the
3 police tell you that you had done a good job?

4 A. They did not say anything. After I was done I left
5 to go to my store.

6 Q. Did the police tell you that you had picked the
7 right guy?

8 A. They did not say anything to me. After the work
9 was done I went to go -- I left to go to my store.

10 Q. How quickly were you able to identify the defendant
11 when the photos were shown to you?

12 A. Within a half second. As soon as I saw it I
13 recognized the face and I circled it.

14 MR. RUTLEDGE DURANT: Your Honor, permission to
15 publish to the jury?

16 THE COURT: You may.

17 MR. GROEBER: Your Honor, I don't believe they've
18 been admitted.

19 THE COURT: Oh, that's correct.

20 Mr. Durant, you need to admit them.

21 MR. RUTLEDGE DURANT: State moves for the admission
22 of State's 2 and 3.

23 MR. GROEBER: Objection previously raised.

24 THE COURT: Let me see 2. Counsel, approach and
25 bring 3.

1 (WHEREUPON, the following bench conference was
2 reported.)

3 THE COURT: You object and don't think it's
4 admissive. I need to know what the reason for your
5 objection is. Are you admitting -- are you objecting to
6 the foundation of this?

7 MR. GROEBER: No. I think the foundation has been
8 laid.

9 THE COURT: Just as to the use and to how we got to
10 the production of the lineup, correct?

11 MR. GROEBER: Yes. I mean, it's part of the lineup
12 and it's part of the procedures.

13 THE COURT: Are you going to have the SLED guy?

14 MR. RUTLEDGE DURANT: I mean, we can but I don't
15 think it's necessary to say who assembled the
16 photographic lineup.

17 THE COURT: You're not challenging the lineup
18 itself. You're challenging how he got there, right? I
19 just want to make -- we need to put that on the record
20 because I think if you're challenging the preparation of
21 the lineup I may not have done it. All right.

22 (WHEREUPON, the bench conference was concluded.)

23 THE COURT: Two and 3 admitted over your objection.
24 I'm going to allow you outside the presence of the jury
25 to articulate your objection on the record, Mr. Groeber.

1 (WHEREUPON, State's Exhibit Numbers 2 and 3 were
2 admitted into evidence.)

3 MR. RUTLEDGE DURANT: Thank you, Your Honor.

4 THE COURT: Mr. Durant, Mr. Groeber, just for
5 scheduling.

6 (WHEREUPON, a bench conference was had, not on the
7 record.)

8 BY MR. RUTLEDGE DURANT:

9 Q. Mr. Patel, how close were you to the gunman during
10 the robbery?

11 A. Around two feet (indicated). He was very close to
12 the register and I was standing behind the counter.

13 Q. Is it well lit inside your store?

14 A. Yes, it is well lit.

15 Q. What did the defendant say to you during the
16 robbery?

17 MR. GROEBER: Objection, Your Honor. Assuming
18 facts not in evidence.

19 THE COURT: I'm going to allow it. Thank you.
20 Overruled.

21 A. He asked for money, then asked for my wallet, and
22 asked for cigarettes, then said, Don't call the police,
23 and then left.

24 Q. Were you able to recognize his voice?

25 A. Yes. I could completely recognize his voice. He

1 is a regular customer.

2 Q. Were you able to get a clear look at his face?

3 A. Yes. I could clearly see his face even if he was
4 wearing sunglasses. I'm used to it. So many customers
5 wear sunglasses in my store all the time.

6 Q. And were you able to get a look at his face even
7 though he had a gun pointed at you for a minute and a
8 half?

9 A. Yes. I could clearly see his face. He was
10 standing very close to me and he was asking me to give
11 him the money quickly.

12 Q. What percentage of your customers would you say are
13 African Americans?

14 A. Eighty percent African Americans, 20 percent white
15 people, and 2 or 3 percent Mexicans.

16 Q. So do you interact with African American people on
17 a daily basis?

18 A. Yeah. The African Americans provide me with my
19 business. There is a lot of African American customers I
20 deal with every day.

21 Q. And again, are you positive that this is the man
22 who robbed you?

23 MR. GROEBER: Objection, Your Honor. Asked and
24 answered.

25 THE COURT: Sustained.

1 BY MR. RUTLEDGE DURANT:

2 Q. Do you have any problem recognizing your normal
3 African American customers?

4 A. If it's the dead of the night and very dark and
5 there are no lights then I may have a problem recognizing
6 my African American customers but otherwise I don't.

7 Q. And is that because you are not able to see them
8 well?

9 A. I can't see in the dark.

10 Q. So you would have the same problem recognizing an
11 Indian customer?

12 A. If I see Indian people I recognize them instantly
13 because of the hair and the way they have a mark on their
14 forehead.

15 Q. And how about Caucasian people? Are you able to
16 recognize your Caucasian customers?

17 MR. GROEBER: Objection, Your Honor, leading.

18 THE COURT: Overruled. You may answer.

19 A. Yes, I can recognize them.

20 Q. Do you know whether or not your store is located in
21 Charleston County?

22 A. Yes, it is in Charleston County.

23 Q. Thank you, sir. Please answer any questions the
24 defense may have.

25 A. Yes, I will.

1 Mr. Groeber, your witness.

2 MR. GROEBER: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. GROEBER:

5 (Through the interpreter.)

6 Q. Good afternoon, Mr. Patel.

7 A. Good afternoon.

8 Q. I will try to ask my questions so that you can give
9 a yes or no answer for simplicity sake.

10 A. Does that mean you will only ask me questions that
11 I don't need to explain?

12 Q. If you need to explain you will be allowed to.

13 A. Okay.

14 Q. But I will try to keep it simple.

15 A. All right.

16 Q. Mr. Patel, you opened the store that morning at
17 6:30?

18 A. Monday through Friday I open at 6:30.

19 Q. And around 7:45 a young black man came in the
20 store?

21 A. Yes, with a gun.

22 Q. And he pointed that gun at you?

23 A. Yes, he pointed it at me.

24 Q. And you were scared?

25 A. Everybody will get scared when there is a gun.

- 1 Q. And you were very scared?
- 2 A. Yes. I was scared but I was standing right there
- 3 and I gave him the money.
- 4 Q. The robber was wearing a hat?
- 5 A. Yes.
- 6 Q. And it covered his hair?
- 7 A. It was a small hat so I could see the hair, not a
- 8 big hat. It stopped right here (indicated).
- 9 Q. You were not able to see his hairline in the front
- 10 because of the hat?
- 11 A. I could see his face. The cap was pushed slightly
- 12 back.
- 13 Q. He was wearing a black jacket?
- 14 A. Yes.
- 15 Q. And the jacket had a hood on it?
- 16 A. A gun was pointed at me for one and a half minutes.
- 17 I don't remember the details about how the hood was,
- 18 where it was. I just remember the color of the jacket
- 19 and that he had worn a red hat.
- 20 Q. You could not see the robber's ears?
- 21 A. I could see his ears.
- 22 Q. The robber was wearing sunglasses?
- 23 A. Yes, he was wearing sunglasses.
- 24 Q. And they were big enough to cover all of his eyes?
- 25 A. That is why people wear sunglasses, to cover their

1 eyes.

2 Q. And my question to you, Mr. Patel, and I'm not
3 trying to be difficult, is did they cover all of his
4 eyes?

5 A. His eyes were covered but he was looking at me from
6 on top of the sunglasses so I could see his eyes from
7 time to time (indicated).

8 Q. Now, the robber had a gun?

9 A. Yes.

10 Q. And you thought it was a real gun?

11 A. He didn't give it in my hand to inspect whether it
12 was a real or a fake gun. I just saw the gun and that
13 was it.

14 Q. And I'm asking if you thought it was a real gun?

15 A. Yes.

16 Q. It was black?

17 A. Yes, it was black.

18 Q. Was it a revolver?

19 A. I've never seen guns before in my life so I can't
20 tell them apart. Whether it's a gun or a revolver, it's
21 all same to me. I don't know what is a gun or a
22 revolver.

23 Q. And when the gun was pointed at you, you were very
24 scared?

25 A. Yes, I was scared. Everybody will be scared.

1 Q. All right. I would like to speak with you now
2 about who you talked about the robbery with.

3 A. I've spoken to my wife and my son about the
4 robbery.

5 Q. You talked with your wife the morning it happened?

6 A. Yes, I told her. She came to the store. We
7 watched the video and I told her that this was the same
8 man.

9 Q. And you talked with her the days between the
10 robbery and the photo lineup?

11 A. Whenever anybody sees the gun they are bound to
12 talk about it.

13 Q. And so you talked with your wife about this for
14 several days?

15 A. For a week we talked about it and then we tried to
16 forget it.

17 Q. You've watched the -- I'd like to talk to you about
18 the video now. You've watched the video several times?

19 A. Yes.

20 Q. You watched it a few times the day it happened?

21 A. I even have the video on my cell phone. So I had
22 seen it a number of times.

23 Q. I want to talk to you about the lineup procedure
24 now. That happened at the mall?

25 A. All right. I'll answer you.

1 Q. Your wife -- it happened at the mall?

2 THE INTERPRETER: I'm sorry?

3 Q. The lineup happened at the mall?

4 A. Not inside the mall, outside the mall.

5 Q. And you knew that the police were coming because
6 your wife called you to tell you?

7 A. I had no idea that the police were coming to speak
8 to me. So my wife called and told me that they were
9 looking for me, and she had informed them that I was at
10 the Citadel Mall.

11 Q. And when they came they told you they had some
12 pictures they wanted you look at?

13 A. They didn't say anything to me.

14 Q. They told you they wanted you to look at pictures,
15 correct?

16 A. They told me about the pictures but they did not
17 tell me to circle anyone. I saw them myself and I
18 circled it on my own.

19 Q. Before you looked at the pictures they read you
20 some instructions?

21 A. They showed me this document. My son read it,
22 explained it to me and I signed it (indicated).

23 Q. You couldn't read it yourself, could you?

24 A. I could read it but I could not understand some of
25 the words. They were difficult words.

1 Q. And when you looked at the photographs you felt it
2 was your job to help the police catch the robber?

3 A. Yes. I wanted to work with the police to help
4 catch the robber so I could put him in.

5 Q. And the photo lineup had six pictures on one page?

6 A. Yes.

7 MR. GROEBER: May I have one moment, Your Honor.

8 THE COURT: You may.

9 (PAUSE.)

10 MR. GROEBER: No further questions at this time.

11 Thank you, Your Honor.

12 Thank you, Mr. Patel.

13 THE WITNESS: Okay.

14 THE COURT: Redirect?

15 MR. RUTLEDGE DURANT: The State has no more
16 questions.

17 THE COURT: You may step down. Thank you.

18 Call your next witness.

19 MR. RUTLEDGE DURANT: The State calls Dhruval
20 Patel.

21 DHRUVAL PATEL, after having been duly sworn,
22 testified as follows:

23 THE CLERK: Say your full name and then spell your
24 last name.

25 THE WITNESS: Dhruval Patel, P-a-t-e-l.

1 DIRECT EXAMINATION

2 BY MR. RUTLEDGE DURANT:

3 Q. Dhruval, good afternoon.

4 A. Good afternoon.

5 Q. Would you please tell the jury how old you are.

6 A. Fourteen.

7 Q. Are you in school?

8 A. Yes.

9 Q. How far have you gone in school?

10 A. Going to ninth.

11 Q. You just finished eighth grade?

12 A. Yes.

13 Q. So you're going to high school next year?

14 A. Yes.

15 Q. You make good grades?

16 A. Yes.

17 Q. What kind of grades do you make?

18 A. Ninety and above.

19 Q. Who's your father?

20 A. Natubhai Patel.

21 Q. What does he do for a living?

22 A. He owns a gas station.

23 Q. And who is your mother?

24 A. Jagruti Patel.

25 Q. Does she work?

- 1 A. Yes.
- 2 Q. What does she do?
- 3 A. She also owns a gas station.
- 4 Q. Do you ever help your father at the store?
- 5 A. Yes.
- 6 Q. What kind of things do you do?
- 7 A. Anything that they ask me to.
- 8 Q. What language is your father most comfortable
- 9 speaking?
- 10 A. Gujarati.
- 11 Q. And is that a dialect of Hindi?
- 12 A. Yes.
- 13 Q. Do you speak Gujarati as well?
- 14 A. Yes.
- 15 Q. And do you speak Hindi?
- 16 A. No.
- 17 Q. What about your mother? What does she speak the
- 18 best?
- 19 A. Gujarati.
- 20 Q. Does she speak English?
- 21 A. About the same level as my mother -- or my father.
- 22 Q. And I think you obviously speak English pretty
- 23 good, right?
- 24 A. Yes.
- 25 Q. At the store, does the store have a video

1 surveillance system?

2 A. Yes.

3 Q. And who operates that system mostly?

4 A. I do.

5 Q. Did you help install it?

6 A. Yes.

7 Q. And what kind of things did you do to help get that
8 system installed at the store?

9 A. I set the time, date, set the focuses on the
10 camera.

11 Q. And does the system accurately capture what goes on
12 in the store?

13 A. Yes.

14 Q. And you've had an opportunity to look at what it
15 actually captures from the store --

16 A. Yes.

17 Q. -- and determine that?

18 Do you recall going to the store on the morning of
19 December 24th, 2010?

20 A. Yes.

21 Q. What do you remember about that?

22 A. My dad called my mom and said that there was a
23 robbery, so me and my mom rushed to the store.

24 Q. Why did you go?

25 A. The police needed to view the incident, and to help

1 my father communicate with the police.

2 Q. And did you go help your father communicate with
3 the police that day?

4 A. Yes.

5 Q. Did you also help the officers to be able to view
6 the video?

7 A. Yes.

8 Q. And after that day, did you interact with the
9 police again after the day of the robbery?

10 A. Yes.

11 Q. And if you would, tell the jury where that took
12 place.

13 A. Citadel Mall at Sears.

14 Q. Who were you with?

15 A. My father.

16 Q. And what do you recall about meeting with the
17 police that day? How many police officers did you meet
18 with?

19 A. Two.

20 Q. Do you know what they wanted to meet with you
21 about?

22 A. They wanted to show my father a lineup.

23 Q. I'm showing you -- and it's already in evidence as
24 State's Number 2. I'm going to ask you to take a look at
25 that and let me know if you recognize that.

1 A. Yes.

2 Q. And why do you recognize State's Number 2?

3 A. I helped my father -- I interpreted this for my
4 father so he could know what they wanted.

5 Q. And did you read these items to your father?

6 A. Yes.

7 Q. And did you interpret to him what is said there in
8 English in Gujarati for your father?

9 A. Yes.

10 Q. And if you could, could you read those seven
11 admonitions to the jury so they know what you helped your
12 father understand.

13 A. I am going to show you a series of photographs or
14 physical lineups of individuals or an array of six
15 photographs of individuals. Circle the appropriate one.
16 The photograph that I am about to show you are placed in
17 no special order.

18 These photographs may or may not contain the person
19 who committed the crime. It is just as important to
20 clear innocent people as it is to identify the possible
21 suspects. Whether or not you identify someone the police
22 will not continue -- will continue the investigation.

23 After you are done I will not be able to provide
24 you with any feedback or comment on the results of the
25 process. Do not discuss this identification procedure or

1 the results with other witnesses in this case.

2 Focus on the event, the place, viewing, lighting,
3 your frame of memory, etcetera. Take as much time as you
4 need. People may not appear exactly as they did at the
5 time of the event because features such as clothing
6 style, hair color, hairstyle, etcetera may change even in
7 a short period of time.

8 As you look at the photographs tell me if you
9 recognize the person in -- if you recognize the person in
10 them. If you do not, please tell me how you know the
11 person -- or if you do, please tell me how you know the
12 person, in your own words how sure are you of the
13 identification.

14 Q. And did your father understand everything that you
15 just read to the Court?

16 A. Yes.

17 Q. And how did he indicate that he understood that?

18 A. Usually he asked me a question if he does not
19 understand or if he wants me to repeat, and we've had
20 that for years since I interpret mostly everything.

21 Q. And did he initial beside each of those admonitions
22 that you read?

23 A. Yes.

24 Q. Indicating that he understood?

25 A. Yes.

- 1 Q. And how many officers -- you testified that you met
2 two out there at the mall, right?
- 3 A. Yes.
- 4 Q. How many officers actually went over this form with
5 you and your father?
- 6 A. One of them.
- 7 Q. Just one?
- 8 A. Yes.
- 9 Q. And the other one was somewhere close by?
- 10 A. Yes.
- 11 Q. But he wasn't actually administering this --
- 12 A. Yes.
- 13 Q. -- is that right? And what happened after the
14 officer went over this form with your father?
- 15 A. He showed my father the lineup.
- 16 Q. What was your father's reaction when he viewed the
17 lineup?
- 18 A. He immediately circled one person.
- 19 Q. Did the officer tell your father who to circle?
- 20 A. No.
- 21 Q. Did he do anything to indicate that he should
22 circle any of the pictures there?
- 23 A. No.
- 24 Q. Did your father just do it on his own?
- 25 A. Yes.

- 1 Q. And do you recall an officer, I think earlier that
2 day, who had come out to the store, a female officer?
- 3 A. Yes.
- 4 Q. And that's December 29th?
- 5 A. Yes.
- 6 Q. Did you help that officer download the video from
7 the system that day?
- 8 A. Yes.
- 9 Q. It was just one officer who came out there?
- 10 A. Yes.
- 11 Q. Did she bring her own equipment?
- 12 A. Yes.
- 13 Q. And did you help her get the video off of y'all's
14 system and onto her system?
- 15 A. Yes.
- 16 Q. Were you able to do it on the first try?
- 17 A. No.
- 18 Q. What about the second try?
- 19 A. Yes.
- 20 Q. And in regard to your system, how long -- how long
21 does your system keep video -- how long does it keep a
22 video on it?
- 23 A. Ten days.
- 24 Q. And then what happens?
- 25 A. It tapes over it.

1 Q. So if you want to get it off of there you need to
2 get it off within 10 days; is that right?

3 A. Yes.

4 Q. Did you suggest to your father which photo to pick
5 out?

6 A. No.

7 Q. Or influence him in any way which photo to pick
8 out?

9 A. No.

10 MR. RUTLEDGE DURANT: Thanks, Dhruval. Answer any
11 questions defense may have.

12 THE COURT: Mr. Groeber?

13 CROSS-EXAMINATION

14 BY MR. GROEBER:

15 Q. Good afternoon, Dhruval.

16 A. Goods afternoon.

17 Q. You remember when the robbery happened?

18 A. Yes.

19 Q. You were 12 at the time?

20 A. Yes.

21 Q. And your parents called you that morning -- or your
22 dad called?

23 A. Yes.

24 Q. And you went to the store?

25 A. Yes.

- 1 Q. And you watched the video that morning?
- 2 A. Yes.
- 3 Q. You were the one who actually booted it up?
- 4 A. Yes.
- 5 Q. And you spoke -- you watched the video that day
- 6 with your father?
- 7 A. Yes.
- 8 Q. And a couple police officers?
- 9 A. Yes.
- 10 Q. And your mother?
- 11 A. She also watched it.
- 12 Q. And you watched it with your mom and your dad
- 13 several times that day?
- 14 A. About two.
- 15 Q. You've watched the video with them after that day?
- 16 A. Yeah.
- 17 Q. And about five or six times you've seen it?
- 18 A. Yes.
- 19 Q. And every time that you've watched it you were
- 20 watching it with your parents?
- 21 A. Yes.
- 22 Q. It's fair to say that your dad understands some
- 23 English, right?
- 24 A. Yes.
- 25 Q. And enough to kind of deal with customers in his

1 store?

2 A. Yes.

3 Q. But he does struggle with more complicated English?

4 A. Yes.

5 Q. And the same is true for your mom?

6 A. Yes.

7 Q. And that's why you don't translate for them

8 sometimes?

9 A. Yes.

10 Q. Dhruval, what is the Hindi word for array?

11 A. I don't speak Hindi.

12 Q. What is the -- I'm sorry. What's the language that
13 you speak?

14 A. Gujarati.

15 Q. What is the Hindi word -- Gujarati, is that
16 correct?

17 A. Gujarati.

18 Q. What is the Gujarati word for array?

19 A. I don't know.

20 Q. Okay.

21 MR. GROEBER: May I have one moment, Your Honor?

22 THE COURT: You may.

23 (PAUSE.)

24 MR. GROEBER: No further questions. Thank you,

25 Your Honor.

1 THE COURT: Redirect?

2 MR. RUTLEDGE DURANT: Just briefly.

3 REDIRECT EXAMINATION

4 BY MR. RUTLEDGE DURANT:

5 Q. Dhruval, you've also watched the video with me,
6 haven't you?

7 A. Yes.

8 Q. And I've come out to visit you and your mom and dad
9 at the store; isn't that right?

10 A. Yes.

11 Q. And you've helped me in talking with your
12 parents --

13 MR. GROEBER: Objection, Your Honor.

14 Q. -- is that correct?

15 THE COURT: Hold on one second. What's the basis?

16 MR. GROEBER: Outside the scope of redirect.

17 THE COURT: Overruled. You may answer.

18 BY MR. RUTLEDGE DURANT:

19 (Through the interpreter.)

20 Q. And you've helped me in talking with your parents;
21 is that right?

22 MR. GROEBER: Objection, Your Honor.

23 THE COURT: Basis?

24 MR. GROEBER: Bolstering and the prosecutor is
25 possibly making himself a witness.

1 THE COURT: Overruled. You may answer.

2 MR. RUTLEDGE DURANT: Thank you, Your Honor.

3 BY MR. RUTLEDGE DURANT:

4 (Through the interpreter.)

5 Q. Because we've gone over your testimony; is that
6 right?

7 A. Yes.

8 Q. And in so doing it was important for us to watch
9 that video, wasn't it?

10 A. Yes.

11 Q. All right. With this admonition, and this is
12 State's 2 -- well, just for number one. If you would,
13 read number one to the jury.

14 A. I am going to show you a series of photographs or
15 physical lineups of individuals or an array of six
16 photographs of individuals. Circle the appropriate one.
17 The photographs that I am about to show you are placed in
18 no special order.

19 Q. All right. And you just read the word array in
20 that sentence, right?

21 A. Yes.

22 Q. So if you would, could you speak in Gujarati the
23 same words that you were able to tell your father what
24 number one meant.

25 A. (The witness complied).

1 Q. Now, is there an exact translation word for word
2 for everything that there's a word for in English and
3 everything that there is a word for in Gujarati?

4 A. No.

5 Q. But nevertheless, you can capture the essence of
6 what is intended; is that correct?

7 A. Yes.

8 Q. And were you able to tell your father the essence
9 of what number one said?

10 A. Yes.

11 MR. RUTLEDGE DURANT: Thank you.

12 THE COURT: Mr. Groeber?

13 MR. GROEBER: No, Your Honor. Thank you.

14 THE COURT: You may step down. Thank you.

15 Call your next witness.

16 MR. RUTLEDGE DURANT: Your Honor, can we ask that
17 Mr. Patel and his son can be excused for the day?

18 THE COURT: Any objection?

19 MR. GROEBER: No, Your Honor.

20 THE COURT: They may be excused. Thank you.

21 MR. RUTLEDGE DURANT: The State calls Deputy Dustin
22 Luckadoo.

23 DUSTIN LUCKADOO, after having been duly
24 sworn, testified as follows:

25 THE CLERK: Be seated. Please state your full name

1 and spell your last name for the record.

2 THE WITNESS: My name is Dustin Luckadoo,
3 L-u-c-k-a-d-o-o.

4 DIRECT EXAMINATION

5 BY MR. RUTLEDGE DURANT:

6 Q. Good afternoon, Deputy Luckadoo. Will you please
7 tell the jury where you are employed.

8 A. Charleston County Sheriff's Office.

9 Q. And how long have you been employed with the
10 Charleston County Sheriff's Office?

11 A. Eight years.

12 Q. What is your current position?

13 A. Patrol deputy in the South District.

14 Q. What are your duties and responsibilities as a
15 patrol deputy in the South District?

16 A. Handle calls, patrol neighborhoods, and just
17 general duties.

18 Q. And how long has that been your position?

19 A. Eight years.

20 Q. You write traffic tickets?

21 A. Yes, sir.

22 Q. Respond to 9-1-1 calls?

23 A. I do.

24 Q. And that was your position in December of 2010?

25 A. Yes, sir.

1 Q. And in that capacity did you become involved in the
2 investigation of an armed robbery that occurred at the
3 convenience store located at 5737 Savannah Highway in
4 Ravenel?

5 A. Yes, sir.

6 Q. How did you become involved in this case?

7 A. The supervisors on duty sent me over there to
8 assist.

9 Q. Do you recall approximately what time you arrived?

10 A. Shortly after eight o'clock in the morning.

11 Q. And what county is that convenience store located
12 in?

13 A. Charleston County.

14 Q. What did you observe upon arrival?

15 A. Observed the victim who told us that, you know, he
16 had been robbed and had a video surveillance that he was
17 trying to get pulled up when I arrived.

18 Q. Was Mr. Patel able to tell you any details about
19 the robbery?

20 A. Just that he --

21 MR. GROEBER: Objection, Your Honor, hearsay and
22 bolstering.

23 THE COURT: Rephrase your question. Thank you.

24 BY MR. RUTLEDGE DURANT:

25 Q. What was Mr. Patel's demeanor when you arrived?

1 A. He had calmed down from the initial shock of the
2 robbery.

3 Q. But nevertheless, did he still appear to be a
4 little shocked?

5 MR. GROEBER: Objection, Your Honor, leading.

6 THE COURT: Rephrase your question. Sustained as
7 to leading.

8 BY MR. RUTLEDGE DURANT:

9 Q. So his demeanor, what was his demeanor at that
10 time?

11 A. Like I said, he was calm. He was able to give us a
12 good description of the individual and let us know that
13 he thought the individual to be a prior customer of his.

14 MR. GROEBER: Objection, Your Honor. He's
15 beginning to testify as to hearsay.

16 THE COURT: All right. Counsel approach.

17 (WHEREUPON, the following bench conference was
18 reported.)

19 MR. RUTLEDGE DURANT: This is all information
20 that's pertinent to his investigation from the very
21 get-go. It's a description, something the officers used
22 to go on in their investigation and it takes place right
23 after an initial excited event, initial excited event to
24 an armed robbery that happened minutes before, and he
25 said in that time, right after the robbery. And there's

1 no argument that that just happened, and that's when
2 Mr. Patel said that it was a regular customer, and it is
3 absolutely relevant.

4 MR. GROEBER: It's both hearsay and bolstering.
5 Mr. Patel has already testified. The State has already
6 gotten that fact out. Nobody challenged, you know,
7 whether or not he said he was a regular customer so...

8 MR. RUTLEDGE DURANT: It is not.

9 MR. GRIMES: Sanchez vs. State --

10 MR. RUTLEDGE DURANT: It is the very essence of an
11 excited utterance right after an armed robbery.

12 THE COURT: If you're going to do this you need to
13 lay a foundation because you said he had calmed down by
14 the time they had gotten there.

15 MR. RUTLEDGE DURANT: From the time frame was
16 important right there.

17 THE COURT: All right. Well, you're going to need
18 to lay -- because I can't -- I don't make a ruling on
19 excited utterance if he said he had calmed down. All
20 right?

21 MR. RUTLEDGE DURANT: He said he had initially
22 calmed down but the truth of the matter is he needs to
23 elaborate on --

24 THE COURT: If he can say that, otherwise then --

25 MR. RUTLEDGE DURANT: Okay.

1 THE COURT: What's the exception to hearsay?

2 MR. RUTLEDGE DURANT: State of mind, present sense
3 impression.

4 MR. GROEBER: He's not talking about his state of
5 mind or his present sense impression. He's trying to
6 testify what he said.

7 MR. RUTLEDGE DURANT: And it's offered for the
8 identity.

9 THE COURT: Offered for what?

10 MR. RUTLEDGE DURANT: Offered for his identity, and
11 the description. It's relevant to the investigation.

12 THE COURT: See if you can lay a better foundation.
13 Thank you.

14 (WHEREUPON, the bench conference was concluded.)

15 BY MR. RUTLEDGE DURANT:

16 Q. All right. Detective Luckadoo, you said that he
17 appeared to have calmed down from the initial shock of
18 being robbed?

19 A. Yes, sir.

20 Q. Was he completely calm as a cucumber?

21 A. No.

22 MR. GROEBER: Objection, Your Honor, leading.

23 THE COURT: Overruled.

24 Q. What was your understanding of the amount of time
25 that took place between this robbery that was called in

1 and your arrival?

2 A. My arrival was probably 30 minutes afterwards.

3 (WHEREUPON, State's Exhibit Number 4, an Incident
4 Report, was marked for identification only.)

5 BY MR. RUTLEDGE DURANT:

6 Q. Did you write a report in this case?

7 A. No, sir, I did not.

8 Q. Who did you respond to the store with?

9 A. Deputy Kjellman was already on the scene and Deputy
10 Roberson was on the scene.

11 Q. Are you aware of whether either of those officers
12 wrote an initial report in that case -- in this case?

13 A. Deputy Kjellman did.

14 Q. And so why did you not write a report in the case?

15 A. Because I was not responding -- the first
16 responding deputy.

17 Q. If you viewed Deputy Kjellman's report would that
18 refresh your recollection as to how quickly you responded
19 to the scene after it was called in?

20 A. Sure.

21 Q. Showing you what the State has labeled State's 4
22 for identification only. Do you recognize it?

23 A. Yes, sir.

24 Q. And is that Deputy Kjellman's report?

25 A. Yes, sir, it is.

1 Q. If you would, I'd ask that you read that and let me
2 know if you are sufficiently refreshed.

3 A. Read it out loud?

4 Q. No. Just read it to yourself.

5 (PAUSE.)

6 Q. All right. Now are you refreshed?

7 A. Yes, sir.

8 Q. All right. Now having looked over the initial
9 responding report, can you now tell the jury
10 approximately how long after the robbery was called in
11 that you arrived?

12 A. Thirty minutes, I arrived.

13 Q. That you arrived?

14 A. Yes.

15 Q. All right. And you did speak to the victim at that
16 time; is that correct?

17 A. Yes, sir.

18 Q. Did you have any trouble talking to him?

19 A. No, sir.

20 Q. Do you speak Hindi?

21 A. No, sir.

22 Q. Was he able to talk perfectly fluent English to
23 you?

24 A. Not perfectly fluent.

25 Q. Were you able to understand the essence of what he

1 was saying?

2 A. Yes, sir.

3 Q. What did you do after talking to the victim?

4 A. Walked back into the back office to review the tape
5 with him.

6 Q. And the tape of what?

7 A. Tape of the incident, the armed robbery.

8 Q. Do you recall who was around when you did that?

9 A. Myself, Deputy Kjellman and Mr. Patel.

10 Q. And did you view the tape?

11 A. Yes, sir, I did.

12 Q. And at that time, viewing that tape, was there
13 anything about that tape that was helpful to you and the
14 investigation of this case?

15 MR. GROEBER: Objection, Your Honor.

16 THE COURT: Basis?

17 MR. GROEBER: Prior made objections at pretrial.

18 THE COURT: Overruled. You may answer.

19 A. Upon looking at the videotape, seeing the suspect I
20 recognized --

21 THE COURT: I need you to speak up again. Thank
22 you.

23 A. After reviewing the tape I recognized the suspect.

24 Q. You recognized the man with a gun?

25 A. Man with a gun, yes.

- 1 Q. Who did you recognize him to be?
- 2 A. I recognized him to be Marvin Bowens.
- 3 Q. And how were you certain that it was Marvin Bowens?
- 4 A. Just through general dealings with Mr. Bowens.
- 5 Q. Had you ever had personal contact with him before?
- 6 A. Yes.
- 7 Q. Had you?
- 8 A. Yes, on a traffic stop.
- 9 Q. Did you let any of the other officers at the scene
- 10 know that you had recognized the man in the video?
- 11 A. Yes, sir, I did.
- 12 Q. And did you let Deputy Kjellman know that?
- 13 A. Yes, sir, I did.
- 14 Q. And is that noted in his report?
- 15 A. Yes, sir, it is.
- 16 Q. And do you see Marvin Bowens or Marvin Bowens Green
- 17 in this courtroom today?
- 18 MR. GROEBER: Objection, Your Honor.
- 19 THE COURT: Basis?
- 20 MR. GROEBER: Mischaracterization of the facts in
- 21 evidence.
- 22 THE COURT: Overruled. You may answer.
- 23 A. Can you repeat the question?
- 24 Q. Do you see the man that you recognize in the video
- 25 in this court today?

1 A. Yes, sir, I do.

2 Q. Where is he?

3 A. Sitting right there in the white shirt (indicated).

4 Q. If you would, point to him and identify him.

5 A. (Indicated) right there, Mr. Marvin Bowens Green.

6 Q. It's just a procedure we have to do.

7 MR. RUTLEDGE DURANT: Let the record reflect the
8 witness has identified the defendant.

9 THE COURT: The record will reflect. Thank you.

10 BY MR. RUTLEDGE DURANT:

11 Q. How certain are you of this identification?

12 A. A hundred percent.

13 Q. And again, just so the jury knows, if you would
14 just tell them again what area of the county you are
15 assigned to.

16 A. I'm assigned to what they call District Eight,
17 which was the South District; Ravenel, Hollywood, Edisto,
18 those general areas.

19 Q. So the south end of the county?

20 A. South end of the county, yes, sir.

21 Q. Now, is that just primarily or is that all the
22 time?

23 A. All the time.

24 Q. And the North District would be what, Mount
25 Pleasant and above?

1 A. Mount Pleasant, North Charleston, Ladson,
2 Lincolnville.

3 Q. And there's another area. Is West Ashley in your
4 district?

5 A. That's known as District Seven.

6 Q. And that's not your district?

7 A. That's not where I work, no sir.

8 Q. What about James Island?

9 A. No, sir.

10 Q. Johns Island?

11 A. No, sir.

12 Q. So primarily the Ravenel, Edisto, that kind of
13 area?

14 A. Yes, sir, that's the area I work.

15 Q. And you've worked that area for eight years?

16 A. Yes, sir.

17 MR. RUTLEDGE DURANT: Thank you, sir. Please
18 answer any questions the defense may have.

19 THE COURT: Mr. Groeber?

20 MR. GROEBER: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. GROEBER:

23 Q. Good afternoon, Mr. -- Deputy Luckadoo. Excuse me.
24 I want to talk to you first about when you watched the
25 video and where you watched it. You arrived on the scene

1 and when you arrived was Mr. Patel watching the video?

2 A. He was trying to get it pulled up when I arrived.

3 Q. Okay. And he was successful at doing that?

4 A. Yes, sir.

5 Q. And you were in the room with him watching the
6 video?

7 A. Yes, sir.

8 Q. And I believe you testified that a couple of
9 deputies were at the scene. Were they in the room
10 watching the video?

11 A. I can recall Deputy Kjellman being beside me
12 watching the video.

13 Q. And was Dhruval Patel there watching the video with
14 you?

15 A. Not at the time, no.

16 Q. And you watched it several times?

17 A. Yes.

18 Q. That day, that morning?

19 A. Yes, sir.

20 Q. And you say that you recognize Marvin Bowens as the
21 person in the video?

22 A. Yes, sir.

23 Q. You also testified about the communication of
24 Mr. Patel. You said that you had no problem
25 communicating with him.

1 A. No, sir. He understood me, I understood him.

2 Q. So he understood the English that he spoke to you

3 -- or that you spoke to him rather?

4 A. Yes.

5 Q. And you had no problems conversing with him?

6 A. No, sir.

7 Q. When you reviewed the tape did you say, Oh, look, I

8 recognize that person?

9 A. To Deputy Kjellman, yes. That's why I walked him
10 into the hallway and told him.

11 Q. So let's talk a little bit about the store.

12 There's a cash register kind of in the middle of the
13 store, right?

14 A. Right.

15 Q. And there's a hallway behind the cash register and
16 it goes to an office?

17 A. Directly behind the cash register, yes.

18 Q. And y'all watched the videos in the office?

19 A. Yes.

20 Q. And fair to say it's probably -- the hallway is 15
21 to 20 feet long?

22 A. No, it's not very long at all. Probably from this
23 over here to the desk (indicated). Probably six, seven
24 feet, maybe.

25 Q. Six or seven feet?

- 1 A. Uh-huh.
- 2 Q. And the office is a small office?
- 3 A. Yes.
- 4 Q. And you were speaking with Deputy Kjellman telling
- 5 him that you recognized the person in the video when you
- 6 were in the hallway?
- 7 A. Yes.
- 8 Q. And Mr. Patel was in the office at that time?
- 9 A. Yes.
- 10 Q. Now, after you had identified Mr. Bowens you said
- 11 -- you told other people that you recognized him, right?
- 12 You told Deputy Kjellman?
- 13 A. Uh-huh.
- 14 Q. And you also told Detective Lawrence?
- 15 A. Yes.
- 16 Q. And you told him specifically who you recognized?
- 17 A. Yes, sir.
- 18 Q. Each -- well, Charleston County Sheriff's Office is
- 19 a pretty big organization, you would agree?
- 20 A. Yes.
- 21 Q. And just like other big organizations they have a
- 22 policy manual?
- 23 A. Right.
- 24 Q. And you all get training on that policy manual when
- 25 you become deputies?

- 1 A. Yes.
- 2 Q. And you have to read the whole thing?
- 3 A. Yes.
- 4 Q. Do you have a test on it?
- 5 A. No.
- 6 Q. No, test, okay. And periodically you get updates
- 7 about that?
- 8 A. Yes.
- 9 Q. And you read those?
- 10 A. Yes, sir.
- 11 Q. And part of being a good deputy is keeping up with
- 12 the policy manual?
- 13 A. Yes.
- 14 Q. And you try to do that?
- 15 A. I try to do that, yes.
- 16 Q. And so you are familiar that the Charleston County
- 17 Sheriff's Office has a policy on photo lineup
- 18 identifications?
- 19 A. Yes, I am.
- 20 Q. And you're familiar that there's -- that the policy
- 21 talks about the difference between simultaneous and
- 22 sequential lineups?
- 23 A. Yes.
- 24 Q. Well, you had some hesitation. Are you familiar
- 25 with that or not?

1 A. It's been a while since I've glanced at the lineup
2 policy so...

3 Q. You know that in -- but you know that in
4 identification cases it's important to do a photo lineup?

5 A. Sure.

6 Q. And that's part of good police work?

7 A. Right.

8 Q. And you didn't ask for Detective Lawrence to
9 prepare a photo lineup with Mr. Bowens in the picture,
10 did you?

11 A. That was his decision to do that.

12 Q. But you didn't ask him to, did you?

13 A. I don't have to ask him to do that.

14 Q. I'm sorry?

15 A. I don't have to ask him to do that.

16 Q. Okay.

17 MR. GROEBER: May I have one moment, Your Honor?

18 THE COURT: You may.

19 (PAUSE.)

20 MR. GROEBER: Thank you, Your Honor. No further
21 questions.

22 Thank you, Deputy.

23 MR. RUTLEDGE DURANT: Briefly, Your Honor.

24 REDIRECT-EXAMINATION

25 BY MR. RUTLEDGE DURANT:

1 Q. At the store that day you said there were two other
2 officers in there were you?

3 A. Yes.

4 Q. And, again, who were they?

5 A. Deputy Kjellman and Deputy Roberson.

6 Q. And I think your testimony is that you told both of
7 those officers that you identified the man in the video?

8 A. Yes, I did.

9 Q. Did they also view the video?

10 A. Yes.

11 Q. Did they recognize the man?

12 MR. GROEBER: Objection, Your Honor.

13 THE COURT: Basis?

14 MR. GROEBER: Withdrawn.

15 A. No, sir.

16 Q. So you were the only one?

17 A. Yes, sir.

18 Q. And in talking about the organization of the
19 sheriff's office there are different departments, right?

20 A. Right.

21 Q. You are a road deputy, right?

22 A. Yes.

23 Q. And there's also a detective division?

24 A. Yes, sir.

25 Q. And the detective division's job is to investigate

1 cases like this; is that right?

2 A. Yes, sir, it is.

3 Q. And even though often times is the case you may be
4 a first responder on a scene like this; is that right?

5 A. That's correct.

6 Q. And then there are other divisions of the sheriff's
7 office as well, right?

8 A. Yes.

9 Q. They have divisions that handle crime on the water?

10 A. Right.

11 Q. And there's a crime scene unit?

12 A. Yes.

13 Q. And even further inside the detectives division
14 they operate on a particular kind of crime basis?

15 A. Right.

16 Q. There's a division for sex crimes?

17 A. Right.

18 Q. There's a division for violent crimes?

19 A. Right.

20 Q. There's a division for property crimes?

21 A. (There was no audible response).

22 THE COURT: Was that a response deputy?

23 A. Yes.

24 THE COURT: I'm sorry. I'm having a hard time
25 hearing you which means to me that half the jurors can't.

1 So you're going to have to speak up.

2 A. Yes, ma'am.

3 Q. And, you know, as part of your duties and
4 responsibilities how often do you present photographic
5 lineups?

6 A. Very little, if any.

7 Q. How many times have you done it in the past year?

8 A. None.

9 Q. Past two years?

10 A. None.

11 Q. Whose responsibility does that fall to to do
12 something like that?

13 A. Usually the detective's office.

14 Q. And is your understanding that the detective's
15 office was notified about this case?

16 A. Yes, sir.

17 Q. And so any identification procedure would be done
18 by them; is that right?

19 A. Yes, sir, it would.

20 Q. And are you positive that this is the man that you
21 recognized as the gunman?

22 A. A hundred percent positive.

23 Q. Look at the jury and tell them.

24 A. A hundred percent positive.

25 MR. GROEBER: Objection, Your Honor. Asked and

1 answered.

2 THE COURT: Sustained.

3 MR. RUTLEDGE DURANT: Thank you.

4 THE COURT: Recross?

5 MR. GROEBER: No, Your Honor.

6 THE COURT: You may step down. Thank you.

7 Call your next witness.

8 MR. RUTLEDGE DURANT: The State calls Detective

9 Charles Lawrence.

10 CHARLES LAWRENCE, after having been duly

11 sworn, testified as follows:

12 THE CLERK: State your full name and spell your

13 last name for the record.

14 THE WITNESS: Yes, sir. Charles Lawrence,

15 L-a-w-r-e-n-c-e.

16 DIRECT EXAMINATION

17 BY MR. RUTLEDGE DURANT:

18 Q. Good afternoon, Detective Lawrence.

19 A. Good afternoon.

20 Q. Will you please tell the jury where you are

21 employed.

22 A. Yes, sir. Charleston County Sheriff's Office.

23 Q. And how long have you been employed at Charleston

24 County Sheriff's Office?

25 A. A little over eight years. Since 2003.

1 Q. What is your current position?

2 A. Violent crimes detective in the South District,
3 Hollywood to Edisto Island.

4 Q. How long has that been your position?

5 A. Since July 25th, 2007.

6 Q. Fairly specific date?

7 A. That's my birthday. That's the only reason I
8 remember.

9 Q. Before you were a detective in the violent crimes
10 unit at the Sheriff's Office --

11 A. Yes, sir.

12 Q. -- you were employed with the sheriff as well?

13 A. That's correct.

14 Q. And what was your position at that time?

15 A. I was a road deputy in the same district.

16 Q. And if you would, tell the jury what district that
17 is.

18 A. Again, that's South District, the south end of
19 Charleston County, which goes from Hollywood almost
20 across Reynolds Ridge (verbatim), from Hollywood to
21 Colleton County on 17, and at Colleton County on Highway
22 174.

23 Q. Does that include Edisto?

24 A. Edisto, Megget, Youngs Island, Adams Run,
25 Hollywood, Ravenel, and anything else that I may have

1 missed, but I believe I got it all.

2 Q. And what are your duties and responsibilities as a
3 detective in the violent crimes unit?

4 A. Initially, we get incident reports. We get
5 assigned cases from our supervisor, which would be my
6 sergeant. Once we get the case we review the incident
7 report that we are assigned, at which time we ascertain a
8 victim witness and possible suspect.

9 Q. What kind of crimes do you investigate?

10 A. Violent crimes of persons. All the violent crimes
11 to include from stabbings to homicides.

12 Q. Murders?

13 A. Murders, yes, yes. Homicides, suicides, armed
14 robberies. Anything that you can do to a person I
15 investigate.

16 Q. And that was your position in December of 2010?

17 A. Yes, sir. That's correct.

18 Q. And in that capacity did you become involved in the
19 investigation of an armed robbery that occurred at 5737
20 Savannah Highway in Ravenel?

21 A. I did.

22 Q. How were you brought into this case?

23 A. I was assigned the case by my sergeant. It was
24 right around December -- right around Christmastime
25 July -- I'm sorry, Christmas in 2010.

1 Q. Did you actually respond to the scene?

2 A. No, sir, I did not.

3 Q. And you said you were assigned the case.

4 A. That's correct.

5 Q. And what does that mean?

6 A. Okay. The crime occurred in Ravenel, South
7 Carolina, which is in the area that I cover, in the South
8 District. Again, when I was a road deputy I was from
9 Hollywood to Edisto and now that I'm in detective
10 division I'm still in that area. I'm still a detective
11 in that same district, and Ravenel is included in my
12 district. Since I'm familiar with the persons that are
13 there, I built a rapport with them, I was assigned that
14 case.

15 Q. And does that mean that you are the case agent?

16 A. That's correct.

17 Q. And what does it mean to be the case agent for a
18 particular case?

19 A. The case agent means you are totally exclusively
20 assigned that case from the moment you are assigned to it
21 to the disposition of it.

22 Q. So you are the kind of manager for the case?

23 A. Yes, sir.

24 Q. And is that the situation even though other
25 detectives may assist you on the case?

1 A. Yes, sir.

2 Q. And do you assist other detectives in your office
3 when they are the case agent?

4 A. I do.

5 Q. It's just that one person is assigned to be the
6 case agent on a case?

7 A. That is correct.

8 Q. And you are the case agent on this case?

9 A. Yes, sir, that's correct.

10 Q. So how did you begin to investigate this case?

11 A. Once it was assigned to me, again, it was around
12 Christmastime in 2010, I think we were maybe off for
13 Christmas and maybe the day after, I got assigned the
14 case. I read the narrative from the responding officers
15 with responding deputies which revealed that it was an
16 armed robbery that occurred at 5737 Savannah Highway. In
17 fact, we had a victim, which is Mr. Patel. The first
18 name started with an N. Okay. And in the statement
19 advised -- Mr. Patel advised the responding deputy --

20 MR. GRIMES: Objection. Hearsay. Confrontation
21 clause.

22 THE COURT: Sustained.

23 BY MR. RUTLEDGE DURANT:

24 Q. Did you review the initial incident report?

25 A. I did.

1 Q. And was there anything about the case that you were
2 waiting on?

3 A. Yes. There was in fact a video footage, video
4 surveillance was -- it captured the armed robbery,
5 however it wasn't available at that time.

6 Q. Did you want to see that?

7 A. I did.

8 Q. Did you eventually see it?

9 A. Yes, sir, I did.

10 Q. And do you recall when you saw it?

11 A. Yes, sir. It was December 29th, 2010.

12 Q. And how did that video come into your custody?

13 A. Investigator Kjellman from Forensic Service Unit
14 was able to retrieve the video surveillance from 5737
15 Savannah Highway, and at which time she contacted me.
16 And I met with her at the lab, and that's where all of
17 our videos are kept in evidence and reviewed first, then
18 put in evidence for cases.

19 Q. And you testified that this was December 29th,
20 2010?

21 A. Yes, sir, December 29th, 2010.

22 Q. And so that's five days after this armed robbery?

23 A. That's correct.

24 Q. And did you view the video surveillance tape at
25 that time?

1 A. I did.

2 Q. And was that video helpful to you in the
3 investigation of this case?

4 A. Absolutely.

5 Q. Why?

6 MR. GRIMES: I apologize, Your Honor. Per the
7 pretrial motions we made, and Mr. Groeber's brief we
8 renew our objections.

9 THE COURT: Overruled.

10 Q. Why was that video helpful to you in investigation
11 of this case?

12 A. The video was helpful because it allowed me to see
13 the subject that was committing the armed robbery. As I
14 reviewed the video I saw him and knew him to be Marvin
15 Bowens Green.

16 Q. And now why do you know that the man in the video
17 was Marvin Bowens Green?

18 A. Well, I know him and I've had the opportunity to
19 talk with him for hours at a time while patrolling the
20 South District area when I was on patrol. I've had
21 interactions with him, not because he was in trouble or
22 anything. He was a young juvenile then. So I've known
23 him for quite sometime, I'd say from 2004 to the present.

24 Q. And so you've had a lot of opportunity to have
25 personal time with him one on one?

1 A. Yes, sir, that's correct.

2 Q. And in those encounters have you had the
3 opportunity to view his face?

4 A. Yes, sir, I have.

5 Q. Have you had the opportunity to not only hear him
6 talk but to watch him talk?

7 A. Yes, sir, all of his mannerisms. I'm very, very,
8 very familiar with him.

9 Q. Have you had the opportunity to watch him walk?

10 A. Yes, sir, I have.

11 Q. How would you characterize how well you knew him?

12 A. I know him very well. Again, I've had the
13 opportunity to sit down and talk with him for hours at a
14 time, okay, and during that discussion I observed his
15 behavior, his walks, the way he talks, the way he acts,
16 all of his mannerisms, for what all of that's worth.

17 Q. Now, you are aware that the man on the video has a
18 hoodie pulled up over his head?

19 A. Yes, sir.

20 Q. Has on sunglasses?

21 A. That's correct.

22 Q. So what about that video were you able to look at
23 and make your determination that you knew who that man
24 was?

25 A. Okay. After viewing the video I observed the walk,

1 his walk. He has a distinctive walk which confirmed --
2 while looking at the video when he was pointing the
3 handgun at the victim, Mr. Patel, he glanced to the right
4 a couple of occasions at which time displayed his face.

5 He has a distinctive nose as well as his height and
6 weight. Watching him come in the -- watching him come in
7 it's a match for his height. However, once he turned to
8 the right he looked at the mirror and that just confirmed
9 the identity of him.

10 So the totality of the circumstance between his
11 walk, height, weight and the structure of his face
12 concluded that I knew him and I was positive. And I've
13 talked to him on, like again, many times, and we talked
14 for hours at time so I've known him and know him and I'm
15 one hundred percent positive that that was him.

16 Q. Was there any one thing or was it just everything?

17 A. It's a total of everything.

18 Q. How quickly were you able to look at this video and
19 recognize that the man you were seeing was Marvin Bowens
20 Green?

21 A. Once I saw him, the up close at the register
22 pointing the handgun, I could see his face then, but once
23 he turned and looked to the right that confirmed his
24 identity. And once he walked in and out of the
25 convenience store located in Ravenel that confirmed his

1 walk as well.

2 Q. Is there any doubt in your mind that the man you
3 saw on that video is that man (indicated)?

4 A. None whatsoever. I am absolutely positive --

5 MR. GRIMES: Objection.

6 THE COURT: When there's an objection I need you to
7 stop.

8 THE WITNESS: I'm sorry. I didn't hear.

9 THE COURT: What's the basis?

10 MR. GRIMES: Asked and answered.

11 THE COURT: Overruled. You may answer.

12 BY MR. RUTLEDGE DURANT:

13 Q. Is there any doubt in your mind that you can tell
14 this jury that you have a doubt that that is the man that
15 you saw on the video?

16 A. There is no doubt in my mind. I'm one hundred
17 percent absolutely, positively sure that that's the man
18 that committed this crime, Marvin Bowens Green.

19 Q. And is that because you knew him?

20 A. Yes, sir, that's correct.

21 Q. After you viewed that video that morning what did
22 you do?

23 A. After reviewing the video I generated a six-person
24 photo lineup. I did that through SLED, State Law
25 Enforcement Division. I sent them an email with his

1 pertinent information and they responded back with a
2 photo of him with five other similar persons.

3 Q. Why did you request that photo ID through SLED?

4 A. It's to confirm the identity of him. That's a tool
5 that we use at the sheriff's office to confirm the
6 identity of a subject. Not me seeing him alone isn't
7 going to do, so I wanted to further my investigation at
8 which time I requested the photo lineup. And once SLED
9 sent it back, once I got it back from State law
10 enforcement I then contacted the victim and arranged to
11 meet with him at the Citadel Mall to show him the photo
12 lineup.

13 Q. Is it because you wanted to see if the victim could
14 pick him out of the lineup?

15 A. That's correct.

16 Q. Did you, yourself, administer this photo lineup?

17 A. No, sir, I did not.

18 Q. Did anybody go with you?

19 A. Detective Perkins from the investigations division
20 went with me.

21 Q. And what was his job?

22 A. His job was to provide the photo lineup to
23 Mr. Patel, which is what he did.

24 Q. Now, why didn't you do it?

25 A. Because I knew the victim -- correction. I knew

1 who the suspect was and the policy prohibits us from --
2 law enforcement officer knowing who the suspect is to
3 administer the six-person photo lineup, whether it be an
4 array or six individuals.

5 Q. Did you tell Detective Perkins who the suspect was?

6 A. No, sir never.

7 Q. Did you talk to Detective Perkins about this case?

8 A. No, sir, not about the case.

9 Q. What did you tell him you wanted him to do?

10 A. That I needed him to show a six-person photo lineup
11 to a victim of a crime.

12 Q. And was that done?

13 A. Yes, sir, it was done.

14 Q. What day was that done?

15 A. The same day. It was December 29th, 2010.

16 Q. Where was it done?

17 A. It was conducted at the Citadel Mall, Charleston,
18 South Carolina, in the parking lot outside of the Sears.

19 Q. Did you arrive with Detective Perkins out there?

20 A. As a matter of fact, I drove and he rode with me.

21 Q. Who did you meet?

22 A. I met Mr. Patel and his son, the younger Mr. Patel.

23 Q. Where did you meet them?

24 A. Initially met on the inside of the store. To
25 conduct business we walked outside of the store and the

1 photo lineup was showed by Detective Perkins in the
2 parking lot area.

3 Q. And we're talking about the Sears?

4 A. The Sears, yes, sir, outside of the Sears.

5 Q. And so you said you went outside to the parking lot
6 to conduct the photo lineup?

7 A. Yes, sir, that's correct.

8 Q. Who conducted the photographic lineup?

9 A. Detective James Perkins.

10 Q. And where were you when it was administered?

11 A. I was within proximity but I was away from the
12 procedure that was going on.

13 Q. So you, yourself, did not conduct the lineup
14 procedure?

15 A. That is correct.

16 Q. And is it your understanding that the procedure was
17 conducted?

18 A. Yes, sir.

19 Q. Are you aware of whether Mr. Patel was able to make
20 an identification?

21 A. At the time, no.

22 Q. Did there come a time when you became aware of
23 whether or not he was able to make an identification?

24 A. Once I gathered the paperwork from Detective
25 Perkins I did.

1 Q. And did he in fact make an identification?

2 A. He did.

3 Q. And based on his identification what did you do?

4 A. Okay. Based on the totality of circumstances being
5 positive identification from Mr. Patel from the
6 six-person photo lineup and my positive recognition of
7 Mr. Bowens Green I generated an arrest warrant for his
8 arrest.

9 MR. RUTLEDGE DURANT: Your Honor, may we approach?

10 THE COURT: You may.

11 (WHEREUPON, the following bench conference was
12 reported.)

13 MR. RUTLEDGE DURANT: I think we probably are going
14 to have a matter of law outside the presence of the jury
15 on the booking photo.

16 THE COURT: On the booking photo? Why?

17 MR. RUTLEDGE DURANT: Because we want to put the
18 booking photo in because it's relevant. It shows his
19 side profile, it's from when he was arrested from this
20 instance so it's not a prior incident. It has nothing to
21 do with 404(b) but it's relevant so the jury can see him
22 and be able to look at this and look at the video.

23 THE COURT: Let me see.

24 What's your objection?

25 MR. GRIMES: The booking photo. I was researching

1 lineups last night --

2 THE COURT: Which is different --

3 MR. GRIMES: I understand, and I was going through
4 some South Carolina cases on booking photos --

5 THE COURT: You can't use booking photos if it
6 looks like a booking photo. Is that what this is?

7 MR. RUTLEDGE DURANT: No, that is not the one from
8 the lineup. That is when he was arrested for this
9 incident.

10 MR. GRIMES: I think it's a reversible error. I
11 think it's an error to admit a booking photo.

12 THE COURT: You think it's an error to admit a
13 booking photo?

14 MR. GRIMES: Yes, ma'am.

15 THE COURT: All right. Do you have a case for me
16 on this?

17 MR. GRIMES: If I get five or ten minutes I'll have
18 Cody look through Lexis real fast.

19 THE COURT: Okay.

20 MR. RUTLEDGE: I don't have a problem if you want
21 me to cut those photos, cut the top half off.

22 MR. GRIMES: Yeah, but, I mean, it still shows it's
23 a booking photo.

24 THE COURT: Let's just mark it for identification.

25 MR. RUTLEDGE DURANT: That's fine.

1 THE COURT: We can do this later.

2 Let's move it on, Mr. Durant.

3 (WHEREUPON, State's Exhibit Number 5, a Photograph
4 of the Defendant, was marked for identification only.)

5 BY MR. RUTLEDGE DURANT:

6 Q. Detective, you said based on Mr. Patel's
7 identification of the defendant you prepared an arrest
8 warrant?

9 A. That's correct.

10 Q. And was the defendant arrested?

11 A. Yes, sir.

12 Q. And were you, yourself, involved in that arrest?

13 A. Yes, sir.

14 Q. I'm showing you what the State has labeled State's
15 Exhibit 5 for identification and ask you to take a look
16 at it. Do you recognize it?

17 A. I do.

18 Q. Does that picture fairly and accurately depict the
19 defendant on the day that he was arrested?

20 A. Yes, sir, it does.

21 Q. At this time, the State moves for the admission of
22 State's 5?

23 MR. GRIMES: We object under Rule 404(b).

24 THE COURT: Overruled. You may not publish at this
25 time though, Mr. Durant.

1 Five into evidence over defense objection.

2 MR. RUTLEDGE DURANT: Thank you.

3 (WHEREUPON, State's Exhibit Number 5, a Photograph
4 of the Defendant, was admitted into evidence.)

5 BY MR. RUTLEDGE DURANT:

6 Q. Detective, please answer any questions the defense
7 may have for you.

8 A. Yes, sir.

9 THE COURT: This would be an appropriate time for
10 us to stop if you all need another break, just let me
11 know.

12 (WHEREUPON, the jurors discussed taking a break
13 among themselves.)

14 THE FOREMAN: Keep going, Judge.

15 THE COURT: All right. Mr. Grimes?

16 CROSS-EXAMINATION

17 BY MR. GRIMES:

18 Q. Good afternoon. Good afternoon, Detective
19 Lawrence.

20 A. Good afternoon, Mr. Grimes.

21 Q. I imagine there's a few things we can agree on
22 today, correct?

23 A. Yes, sir.

24 Q. One of those things we can agree on is that Deputy
25 Luckadoo described Mr. Green, said his name was Marvin

1 Bowens when he said he viewed the video of the person who
2 robbed the store on December 24th, 2010, correct?

3 A. That's correct.

4 Q. And this is Marvin Bowens Green, the gentleman
5 here, correct?

6 A. That's correct.

7 MR. RUTLEDGE DURANT: Objection, Your Honor. May
8 we approach?

9 THE COURT: You may.

10 (WHEREUPON, the following bench conference was
11 reported.)

12 MR. RUTLEDGE DURANT: I don't want to use too
13 strong of a language but this defendant has commonly and
14 people knew him as Marvin Bowens Green, Marvin Bowens,
15 and Marvin Green. So I don't want a fraud to be
16 perpetrated on this Court in that somebody doesn't know
17 somebody because of their name, and that is common and I
18 think you know that.

19 THE COURT: Okay. So what's your objection?

20 MR. RUTLEDGE DURANT: That there's a
21 mischaracterization about Deputy Luckadoo and that he
22 didn't know him as the same person, and that's just
23 false. That is not accurate.

24 THE COURT: What do you want me to do? What's the
25 basis of your objection?

1 MR. RUTLEDGE DURANT: Well, I think he's pursuing
2 him and created it as fraudulent.

3 MR. GRIMES: He's definitely testified as Marvin
4 Bowens.

5 THE COURT: Okay.

6 MR. GRIMES: I don't appreciate your calling it a
7 fraud.

8 MR. RUTLEDGE DURANT: I'm not saying --

9 THE COURT: The both of you can go outside of the
10 courtroom and take care of this issue, but right now I
11 need you to address the Court.

12 MR. GRIMES: Well, he hasn't stated a ground for an
13 objection, as far as I know.

14 THE COURT: I listen with a grain of salt, all
15 right, and if I felt there was an issue with fraud I
16 would have directly addressed it, all right. Now, let me
17 hear from you, as to the issue.

18 MR. GRIMES: The issue? I'm not sure what the
19 issue is.

20 THE COURT: What I assume the issue is going to be
21 is that you are going to twist it and make it seem
22 because he didn't know his full name that he didn't know
23 who this individual was.

24 Is that what you're saying?

25 MR. GRIMES: I mean, the question is ID.

1 THE COURT: I think you need to be careful --

2 MR. GRIMES: I'm sorry.

3 THE COURT: All right. As of now I don't even know
4 what the objection is.

5 MR. RUTLEDGE DURANT: And I don't want to accuse.
6 I just want to bring to the Court's attention that if he
7 didn't know then that is very common that people know him
8 as both. You can ask this detective as well, and if it
9 was an overreaction -- I'll say this, maybe it was an
10 overreaction for me to come up here but I felt strong
11 about it.

12 THE COURT: All right. Thank you.

13 (WHEREUPON, the bench conference was concluded.)

14 THE COURT: Mr. Grimes, your witness.

15 MR. GRIMES: Thank you, Your Honor.

16 BY MR. GRIMES:

17 Q. And this is Marvin Bowens Green, correct?

18 A. That's correct.

19 Q. And he has a brother named Marvin Bowens, doesn't
20 he?

21 A. I'm not correct on the name. Something similar,
22 yes, sir.

23 Q. Okay. You say you've known Marvin since 2004?

24 A. Correct.

25 Q. Approximately eight years, correct?

- 1 A. Correct.
- 2 Q. Know him well?
- 3 A. Yes, sir.
- 4 Q. You know Marvin's father?
- 5 A. I do.
- 6 Q. In fact, he's -- some may describe him as a
- 7 community leader in Ravenel, Jacksonboro area?
- 8 A. Yes, sir.
- 9 Q. Sometimes when you are investigating crimes you
- 10 talk to him, Mr. Bowens, Marvin's father?
- 11 A. That's correct.
- 12 Q. In the past he's given you some helpful
- 13 information?
- 14 A. That's correct.
- 15 Q. In the past he's given you information that would
- 16 help clear people?
- 17 A. That's correct.
- 18 Q. And you know the family well, don't you?
- 19 A. I do.
- 20 Q. But you're not certain Marvin Green has a brother
- 21 named Marvin Bowens?
- 22 A. All their names are similar, like Marvin, Melvin.
- 23 All of them are similar. As far as Marvin Bowens Green,
- 24 I'm certain of him.
- 25 Q. All right. I understand. And being brothers they

- 1 look similar, too, don't they?
- 2 A. Which one you referring to now?
- 3 Q.. The brothers that you know.
- 4 A. Yeah, the younger brother looks taller and bigger.
- 5 Q. Okay. And he apparently has 12 brothers and
- 6 sisters, correct?
- 7 A. I'm sorry?
- 8 Q. He has 12 brothers and sisters, correct?
- 9 A. I don't know about that many.
- 10 Q. But if I could show you Court's Exhibit 8 would
- 11 that help you refresh your memory as to what Marvin
- 12 Bowens looks like?
- 13 A. Marvin Bowens Green or Marvin --
- 14 Q. Marvin Bowens.
- 15 A. Sure.
- 16 MR. RUTLEDGE DURANT: Objection, Your Honor. The
- 17 witness has no idea what Court's Exhibit whatever it was
- 18 is called.
- 19 THE COURT: Could you clarify that for him.
- 20 MR. GRIMES: Yes, ma'am.
- 21 THE COURT: State's Exhibit; is that correct?
- 22 State's Exhibit 1.
- 23 MR. GRIMES: I believe it's Court's Exhibit 8, at
- 24 this point.
- 25 THE COURT: No, no, no, no. Counsel, approach.

1 (WHEREUPON, the following bench conference was
2 reported.)

3 THE COURT: You moved on to a different hearing so
4 everything is renumbered.

5 MR. GRIMES: Okay.

6 THE COURT: So if you need to refer to it those are
7 all marked from a previous hearing, and we're going to
8 keep them marked. And the Court's Exhibits, I reserve
9 them for different things. So that's a Court's Exhibit.

10 MR. GRIMES: Would it be okay if I make it a
11 defense exhibit.

12 THE COURT: You can do that if that's what you
13 choose to do, Mr. Grimes, but unless you can lay a better
14 foundation you're going to get the same result.

15 MR. GRIMES: May I at least see if I can ask him
16 while he's under oath in front of the jury?

17 THE COURT: Don't start flashing it around.

18 MR. GRIMES: I'm not flashing it around.

19 THE COURT: All right. Thank you.

20 (WHEREUPON, the bench conference was concluded.)

21 MR. GRIMES: I'd like to mark this as a defense
22 exhibit.

23 (WHEREUPON, Defendant's Exhibit Number 7, a
24 Photograph, was marked for identification only.)

25 BY MR. GRIMES:

1 Q. I'll show you what's been marked Defendant's
2 Exhibit 7. So if you could review that and see if that
3 refreshes your memory as to what Marvin Bowens, Marvin
4 Green's brother looks like?

5 MR. RUTLEDGE DURANT: Objection, Your Honor.

6 THE COURT: Basis?

7 MR. RUTLEDGE DURANT: You want me to state it right
8 here or approach?

9 THE COURT: Can you just give me the foundation
10 without any speaking objection?

11 MR. RUTLEDGE DURANT: No foundation.

12 THE COURT: All right, Counsel. Counsel.

13 (WHEREUPON, a bench conference was had, not on the
14 record.)

15 BY MR. GRIMES:

16 Q. Let me see if I can rephrase my question, Detective
17 Lawrence.

18 THE COURT: Thank you, Mr. Grimes.

19 MR. GRIMES: Thank you, Your Honor.

20 BY MR. GRIMES:

21 Q. Do you recognize who's in the picture, Number 7 --
22 or Defense Exhibit Number 7?

23 A. Well, this picture is a blur, Attorney Grimes, so
24 it's hard to recognize because it's a big blur. No, sir,
25 I can't.

1 Q. Okay. Thank you.

2 THE COURT: Thank you.

3 Q. I'm going to ask you a few questions about
4 eyewitnesses, okay?

5 A. Yes, sir.

6 Q. Eyewitnesses do make mistakes, correct?

7 A. Yes, sir.

8 Q. And you investigated cases where you've had an
9 eyewitness and it turns out that person had an alibi or
10 the person who was identified was being cleared, correct?

11 A. Yes, sir.

12 Q. Now, I want to ask you a few questions about some
13 of your training -- well, a lot of questions about your
14 training, okay?

15 A. Yes, sir.

16 Q. To become a certified sheriff, deputy sheriff with
17 arrest powers you have to go through the South Carolina
18 Criminal Justice Academy?

19 A. Yes, sir. That's correct.

20 Q. And I know the elective courses have changed but it
21 used to be eight weeks?

22 A. Yes, sir.

23 Q. When you went through was it eight weeks or 12
24 weeks?

25 A. It was eight weeks when I went through, yes, sir.

1 Q. And at the Criminal Justice Academy they kind of
2 teach you the basics of being a police officer or a
3 deputy?

4 A. That's correct.

5 Q. They teach you some of the summaries of law, like
6 probable causes, how to get a search warrant?

7 A. Yes, sir.

8 Q. How to make arrests, how to conduct proper
9 interviews?

10 A. Yes, sir.

11 Q. And then when you become -- when you pass the
12 Criminal Justice Academy you work with some deputies in
13 the field, field training officers?

14 A. That's correct.

15 Q. And they teach you sort of more hands-on
16 experience?

17 A. Yes, sir.

18 Q. And then you get training -- you go to training
19 every year, correct?

20 A. That's correct.

21 Q. To become a better police officer?

22 A. To keep your certification.

23 Q. And you also want to become better, correct?

24 A. That's correct.

25 Q. Solve more crimes?

1 A. Yes, sir.

2 Q. Protect the public?

3 A. Yes, sir.

4 Q. And I'm going to ask you a few questions about
5 report writing. Is that an important part of being a
6 police officer?

7 A. Report writing?

8 Q. Yes, sir.

9 A. Yes, sir.

10 Q. And one reason it's important is because it may
11 take a while for a case to come to court?

12 A. That's correct.

13 Q. For example, this case happened December 2010?

14 A. That's correct.

15 Q. And you probably investigated a lot of cases since
16 December 2010, haven't you?

17 A. I have.

18 Q. And you probably assisted other deputies in
19 investigating cases?

20 A. That's correct.

21 Q. And names and stuff can run together over time,
22 correct?

23 A. Yes, sir.

24 Q. And if you write a good report then you can refresh
25 your memory, like you've done today?

1 A. Yes, sir.

2 Q. And you want the reports to be written fairly,
3 correct?

4 A. That's correct.

5 Q. You want to make sure that the guilty go to jail
6 and the innocent go free?

7 A. That is correct.

8 Q. Wouldn't want an innocent man to go to jail?

9 A. Correct.

10 Q. As Mr. Groeber said, you have an innocent man in
11 jail and a guilty person still out there doing whatever
12 he was doing, correct?

13 A. That's what he said.

14 Q. And you wouldn't want that, would you?

15 A. I wouldn't want it, no, sir.

16 Q. And you want the reports to be accurate?

17 A. Correct.

18 Q. So if someone was an eyewitness and someone had a
19 scar on their face you would want to include the scar in
20 your report?

21 A. Can you say that again.

22 Q. If an eyewitness gave you a description of a robber
23 and a robber -- he said the robber had a scar over his
24 eye you would put that in your report, correct?

25 A. Are you referring to this case or any case?

- 1 Q. Any case.
- 2 A. Yes, sir.
- 3 Q. Speaking generally right now.
- 4 A. Yes, sir.
- 5 Q. Because that would help you identify the robber?
- 6 A. That's correct.
- 7 Q. And if someone didn't have a scar then he wouldn't
- 8 be the robber, correct?
- 9 A. Now, are you looking at current picture or -- help
- 10 me out, Mr. Grimes.
- 11 Q. I'll move on.
- 12 A. Okay.
- 13 Q. And now you are a case agent, correct?
- 14 A. Yes, sir.
- 15 Q. So report writing would also apply to Deputy
- 16 Luckadoo or Deputy Kjellman, correct?
- 17 A. Yes, sir, that's correct.
- 18 Q. So the initial responding officers try to get as
- 19 much detail as they can from the victims of the crime?
- 20 A. That's correct.
- 21 Q. And that also applies to 9-1-1 operators, correct?
- 22 A. Correct.
- 23 Q. That's when people have first contact with the
- 24 police at that point, right?
- 25 A. Are you talking about the initial responders or --

1 Q. The 9-1-1 call.

2 A. 9-1-1, yes, sir.

3 Q. And at that point if the suspect is unknown you
4 want to get as good a description of the suspect as you
5 can?

6 A. That's common practice, yes, sir.

7 Q. So you know where -- who you are looking for,
8 correct?

9 A. Correct.

10 Q. And you don't waste time on leads that aren't
11 fruitful?

12 A. Correct.

13 Q. Now, I'm going to ask you a few questions about
14 this case. As the case agent on this case part of your
15 job is to review, like, all reports and everything that
16 comes to -- has been done in the case, correct?

17 A. Yes, sir, that's correct.

18 Q. And did you review the 9-1-1 tape?

19 A. I'm sure I did, yes, sir.

20 Q. Okay. And when Mr. Patel called 9-1-1 what
21 description of the robber did he give?

22 A. I haven't heard the tape since maybe 2010. I can't
23 answer that right now.

24 Q. Well, you've had plenty of notice this case was
25 coming up for trial, haven't you?

1 A. I did.

2 Q. Did you listen to it with Mr. Durant or anyone else
3 getting ready for the trial?

4 A. I did not.

5 Q. Did you listen to it in helping you prepare the
6 photographic lineup?

7 A. In reference to the 9-1-1 tape?

8 Q. Yes, sir.

9 A. No, sir. I hadn't heard the 9-1-1 tape since it
10 was requested.

11 Q. Okay. Do you have a copy of it in your case file?

12 A. It should be there, yes, sir.

13 Q. You mind showing me where it is so we could review
14 it and see what's on there?

15 A. If I have it, it will be in the case file. That's
16 what I'm saying, Mr. Grimes. I haven't heard the 9-1-1
17 tape. That's what I'm saying to you merely.

18 Q. Okay. Well, what I'd like to know is what
19 description Mr. Patel gave of the robber on the 9-1-1
20 tape.

21 A. I can't answer that. I can't answer that right now
22 because I haven't heard the tape, Mr. Grimes.

23 Q. Okay. Well, if we call you back tomorrow and give
24 you overnight to listen to it would that be fair?

25 A. I can, yes, sir.

1 Q. Now, we've gone over the incident report, initial
2 incident report, that was prepared by Deputy Kjellman?

3 A. Yes, sir.

4 Q. And I think Deputy Luckadoo responded out there?

5 A. That's his testimony. Yes, sir.

6 Q. And Deputy Roberson?

7 A. That's Deputy Luckadoo's testimony, yes, sir.

8 Again, I didn't respond to the scene. I didn't get this
9 until days later.

10 Q. I understand.

11 A. Okay.

12 Q. And when you -- and that day of the robbery you got
13 a call from Deputy Luckadoo saying Mr. Marvin Bowens is
14 who committed the robbery, correct?

15 A. Yes, sir.

16 Q. And at that point you didn't take out an arrest
17 warrant for Marvin Bowens?

18 A. No, sir.

19 Q. And at that point that was on December 24th?

20 A. Yes, sir.

21 Q. And you didn't go out to the store to watch the
22 video there, did you?

23 A. I did not.

24 Q. So December 25th, did you take out a warrant then?

25 A. I did not.

- 1 Q. Go to the store to watch the video?
- 2 A. I did not.
- 3 Q. You waited several days to do that, correct?
- 4 A. Not so much as wait. The tape wasn't available
- 5 until December 29th. That was the first availability for
- 6 the tape, and that's when I was first informed that it
- 7 was ready at which date and time I did go and review the
- 8 tape then.
- 9 Q. I'm a little confused. Obviously it was available
- 10 at the store.
- 11 A. Okay.
- 12 Q. Deputy Luckadoo watched it there, correct?
- 13 A. That's his testimony, yes, sir.
- 14 Q. All right. And I guess you didn't get assigned to
- 15 the case that day but you got assigned a couple days
- 16 later?
- 17 A. Correct. Normally Christmas and the day after
- 18 Christmas are considered holidays, so days off. So I
- 19 didn't probably get the case until the 27th, 28th.
- 20 Q. All right. And then by the 27th had the tape been
- 21 taken into evidence?
- 22 A. Had not.
- 23 Q. So it was still at the store?
- 24 A. That's correct.
- 25 Q. On the December 27th when you had the case and you

1 were working did you go out to the store to watch the
2 tape?

3 A. I inquired about the tape and it was not available
4 yet.

5 Q. Was it at the store or was it in evidence?

6 A. It was at the store, sir.

7 Q. And why wasn't it available?

8 A. You have to ask the technician from forensic
9 service, sir.

10 Q. Well, now I'm a little confused again. If it's at
11 the store why would forensic services have the tape?

12 A. Okay. Let me explain this for the record. I did
13 not respond to the scene.

14 Q. I understand.

15 A. Okay. Therefore, I wasn't aware of this case until
16 I got assigned the case. Okay. I got a call from
17 Luckadoo but I had no knowledge of the case, from Deputy
18 Luckadoo, okay, but I had no further knowledge of the
19 case. When I got assigned the case I read the incident
20 report and I went from there.

21 The first time that the tape was available for
22 Detective Lawrence to review was December 29th, early
23 that morning, and that's when I reviewed it, and it was
24 at 3505 Pine Haven Drive, North Charleston, South
25 Carolina, not on 5737 Savannah Highway, Ravenel.

- 1 Q. Okay.
- 2 A. Okay.
- 3 Q. And so you talked to Deputy Luckadoo and he told
- 4 you it was Marvin Bowens who robbed the store?
- 5 A. Yes, sir.
- 6 Q. And you got a copy of the incident report?
- 7 A. Yes, sir.
- 8 Q. And on there it had Mr. Bowens' name?
- 9 A. That's correct.
- 10 Q. And on there it was actually Marvin Bowens Green,
- 11 correct?
- 12 A. Marvin Bowens Green, correct.
- 13 Q. And then I think you did your own report on January
- 14 11th, 2012?
- 15 A. Yes, sir.
- 16 Q. And in doing your report you would sort of
- 17 investigate the case when you got it on the 27th,
- 18 watching the video, interviewing any witnesses, then do
- 19 your report?
- 20 A. On the 29th.
- 21 Q. Yes, sir.
- 22 A. Yes, sir.
- 23 Q. And then you requested the case to be closed on
- 24 December 11th, correct?
- 25 A. Yes, sir.

- 1 Q. January 11th.
- 2 A. January 11th, yes, sir.
- 3 Q. Because you had finished your investigation?
- 4 A. Yes, sir.
- 5 Q. All right. And your investigation was being done
- 6 fairly, accurately, completely on January 11th?
- 7 A. Yes, sir.
- 8 Q. Now, I'm going to ask you a few questions about
- 9 that. I believe you testified before you like to go the
- 10 extra step?
- 11 A. That is correct.
- 12 Q. And in this case you went the extra step, correct?
- 13 A. Yes, sir.
- 14 Q. You got a search warrant from Mr. Green's house?
- 15 A. That's not correct.
- 16 Q. You didn't get a search warrant to try to find a
- 17 black hooded sweatshirt?
- 18 A. No, sir.
- 19 Q. You didn't get a search warrant to try to find
- 20 khaki cargo pants?
- 21 A. No, sir.
- 22 Q. You didn't get a search warrant to look for dark
- 23 sunglasses?
- 24 A. No, sir.
- 25 Q. Or a red-billed baseball cap?

- 1 A. No, sir.
- 2 Q. Didn't get any -- did you talk to his father?
- 3 A. I did.
- 4 Q. All right. And when did you talk to his father?
- 5 A. Maybe the 30th of December -- or 29th of December
- 6 or the 30th.
- 7 Q. And you made arrangements for him to turn his son
- 8 in?
- 9 A. That's correct.
- 10 Q. And he turned his son in?
- 11 A. He did.
- 12 Q. Cooperatively?
- 13 A. Without incident.
- 14 Q. No problems?
- 15 A. None.
- 16 Q. He didn't try to run or anything, or hide?
- 17 A. No, sir.
- 18 Q. And so you probably didn't need a search warrant.
- 19 His father probably would let you search the house when
- 20 he turned him in, correct?
- 21 A. That's speculation.
- 22 Q. Did you talk to his mother?
- 23 A. I don't recall.
- 24 Q. Okay. Do you remember talking to his girlfriend?
- 25 A. I don't recall that either.

1 Q. In your incident report you didn't make any mention
2 of talking to Ms. Patel, did you?

3 A. I did not. I believe I dealt solely with the
4 husband, the victim.

5 Q. Okay. Because he was basically the eyewitness in
6 the case?

7 A. That's correct.

8 Q. And as far as you know Ms. Patel had no knowledge
9 of the case?

10 A. Correct.

11 Q. And if she had knowledge of the case you would have
12 wanted to talk to her, correct?

13 A. That is correct.

14 Q. And you never got a statement from her?

15 A. No, sir.

16 Q. Have you ever talked to Ms. Patel?

17 A. On the phone when I was inquiring the whereabouts
18 of her husband.

19 Q. Okay. And that was on December 29th, 2010?

20 A. Yes, sir, that's correct.

21 Q. In the approximately a year and a half since then
22 have you talked to her?

23 A. No, sir.

24 Q. Now, you were in here for Mr. Patel's testimony,
25 correct?

1 A. I'm sorry.

2 Q. You were in here for Mr. Patel's testimony,
3 correct?

4 A. Yes, sir.

5 Q. I want to ask you a few questions about that and
6 your report.

7 A. Okay.

8 Q. We heard Mr. Patel testify that Mr. Green was a
9 regular customer?

10 A. He did.

11 Q. And in your report you stated that Mr. Patel told
12 deputies that he had been robbed by an unknown assailant?

13 A. That's correct.

14 Q. And Mr. Patel testified that Mr. Green would joke
15 around about having a license signed by President Obama?

16 A. That is correct.

17 Q. I think we can probably agree that's probably not a
18 very common joke. It's probably something unique, isn't
19 it?

20 A. I guess we can agree to that, Mr. Grimes.

21 Q. And there's no mention of that in your report, is
22 there?

23 A. Not at the time, no, sir.

24 Q. Not on January 11th, 2011?

25 A. No, sir. I had the facts of my case. Once I

- 1 closed my case upon arrest I had all of the facts met.
- 2 Q. You had all the facts met?
- 3 A. That is correct.
- 4 Q. Okay. You made up your mind then?
- 5 A. The totality of the circumstances, yes, sir.
- 6 Q. Case closed, ready to move on?
- 7 A. Yes, sir.
- 8 Q. You've done all the extra steps in the case?
- 9 A. If you will, yes, sir.
- 10 Q. And we heard Mr. Patel today testify I think on
- 11 cross-examination, not on direct examination, that he was
- 12 able to see Mr. Green's eyes when he kind of, like,
- 13 looked down or looked over the glasses?
- 14 A. That's correct.
- 15 Q. That's not in your report, is it?
- 16 A. No, sir.
- 17 Q. I think we also heard him testify he was able to
- 18 recognize Mr. Green's voice?
- 19 A. That's correct.
- 20 Q. And there's nothing of that in your report, is
- 21 there?
- 22 A. It's not.
- 23 Q. And I believe you testified you were able to sort
- 24 of pick out Mr. Green because of the way he walked?
- 25 A. That's one of the features, yes, sir.

1 Q. Okay. One of the features, part of the totality of
2 the circumstances?

3 A. The walk, the nose, all of the above, yes, sir.

4 Q. Okay. And there's nothing about his walk in your
5 report, is there?

6 A. No, sir.

7 Q. And when you see him in sort of the second view at
8 the cash register on the video you can just basically see
9 waist up, correct?

10 A. That is correct.

11 Q. And you see him kind of walking very briefly at the
12 beginning, very briefly walking out?

13 A. Yes, sir, that's correct.

14 Q. And based upon that you're, I think you said a
15 hundred percent, absolutely, positively --

16 A. One hundred percent. Yes, sir. One hundred
17 percent.

18 Q. And you testified you can tell from his nose it was
19 Mr. Green?

20 A. Yes, sir.

21 Q. Did he have a piercing in his nose?

22 A. No, sir, no piercing. It's somewhat pointed.

23 Again, I've had the opportunity to sit down with him for
24 hours at a time. He and I have talked, I've seen his
25 demeanor, I've seen the way he moves, all of those. You

- 1 know, I observed that in the video, okay. All the times
2 that we spent together I observed all of those motions in
3 the video surveillance.
- 4 Q. You said he had a pointy nose?
- 5 A. Somewhat.
- 6 Q. And you were able to observe all his motions --
- 7 A. Yes, sir.
- 8 Q. So the video shows someone walking into the store,
9 correct?
- 10 A. Yes, sir, that's correct.
- 11 Q. And kind of leaning over with a gun and looked back
12 and look around?
- 13 A. Yes, sir.
- 14 Q. All right. Now I'm going to change topics a little
15 bit and ask you about some training on some crime scene
16 investigation.
- 17 A. Yes, sir.
- 18 Q. Was crime scene called out to the store?
- 19 A. Crime scene did respond.
- 20 Q. And they took fingerprints?
- 21 A. Yes, they did.
- 22 Q. And no fingerprints matched up with Mr. Green?
- 23 A. None matched up to Mr. Green, that's correct.
- 24 Q. And I take it there was no DNA found?
- 25 A. None.

1 Q. And part of the duty of crime scene is when crime
2 scene is called out you want to prevent the crime scene
3 from being tampered with, correct?

4 A. Yes, sir, that's correct.

5 Q. You wouldn't want fingerprints to get smudged?

6 A. That's correct.

7 Q. DNA to get lost?

8 A. Right, to preserve the scene as much as possible.

9 Yes.

10 Q. And as part of preserving the scene you also like
11 to keep witnesses separated from each other, correct?

12 A. Yes, sir.

13 Q. Because if witnesses start talking they contaminate
14 each other's memories, correct?

15 A. That's correct.

16 Q. Now, in this case the witnesses weren't kept
17 separate from each other, were they?

18 A. There was only one witness.

19 Q. Okay. So who was the one witness?

20 A. Mr. Patel, the older Mr. Patel.

21 Q. Seemed like they called Deputy Luckadoo as a
22 witness.

23 A. He was categorized as a witness; however, he and
24 Mr. Patel -- his findings of the video surveillance he
25 never discussed with Mr. Patel.

1 Q. He did testify to that, they were -- they watched
2 the video together, correct?

3 A. According to his testimony, yes.

4 Q. And then they went -- and Deputy Luckadoo went in
5 the hallway and talked to Deputy Kjellman?

6 A. Yes, sir.

7 Q. And then Mr. Patel was in office, correct?

8 A. Yes, sir.

9 Q. And then Mr. Patel watched the video with his wife,
10 correct?

11 A. According to his -- yes, sir.

12 Q. And my understanding, they are calling his wife as
13 a witness?

14 A. I'm sorry?

15 Q. It's your understanding they were going to call his
16 wife as a witness?

17 A. Is it my understanding that they will call his wife
18 as a witness?

19 Q. As a witness.

20 A. Not to my knowledge.

21 Q. But she's not testifying in this case?

22 A. I'm uncertain.

23 MR. RUTLEDGE DURANT: Objection, Your Honor.

24 THE COURT: Basis?

25 MR. RUTLEDGE DURANT: We've gone down this road of

1 lack of personal knowledge, it seems like long enough.

2 THE COURT: All right. So your objection is lack
3 of personal knowledge?

4 MR. RUTLEDGE DURANT: That's correct.

5 THE COURT: All right. Sustained.

6 BY MR. GRIMES:

7 Q. And you are the case agent in this case?

8 A. I am.

9 Q. And you're supposed to know all the witnesses?

10 A. Directly?

11 Q. You told Mr. Durant you are managing sort of this
12 case, correct?

13 A. That is correct. I don't issue out subpoenas. We
14 receive them.

15 Q. I understand.

16 A. They come from the solicitor.

17 Q. And from us sometimes?

18 A. Yes, sir.

19 Q. So you don't know if -- well, I'll move on. And
20 Mr. Patel has also watched the video with his son,
21 correct?

22 A. That's his testimony, yes, sir.

23 Q. And I want to ask you some questions about lineup
24 procedures.

25 A. Yes, sir.

1 Q. The sheriff's office has procedures for conducting
2 lineups, correct?

3 A. We do.

4 Q. And something you want to follow?

5 A. Yes, sir.

6 Q. Because if a lineup is done improperly it could
7 lead to an innocent person going to jail?

8 A. That's very correct.

9 Q. And I think these guidelines or policies were
10 revised in December of 2009?

11 A. You're more current with it than I am. It's in
12 front of you, sir.

13 Q. Yes, sir.

14 MR. GRIMES: May I approach, Your Honor?

15 THE COURT: You may.

16 BY MR. GRIMES:

17 Q. I'm going to hand you what's been marked as Defense
18 Exhibit 2.

19 A. All right.

20 Q. Do you recognize what that document is?

21 A. I do.

22 Q. Are those procedures we are talking about?

23 A. Yes, sir.

24 Q. And they were revived in December of 2009?

25 A. 12-8-2009, that is correct.

1 Q. Now, are you familiar with the Eyewitness Evidence,
2 the Guide to Law Enforcement published by the Department
3 of Justice?

4 A. The eyewitness? No, sir, I'm not familiar with it.

5 Q. So you don't know if your guidelines are based upon
6 what the Department of Justice wants?

7 A. This is our Bible here. The standard operating
8 procedures. This is what we go by.

9 Q. And do you know what the difference is between a
10 sequential lineup and simultaneous lineup?

11 A. I do.

12 Q. And sequential lineup is when you show one picture
13 at a time and flip it over?

14 A. That's correct.

15 Q. Simultaneous lineup is the one we have here where
16 you have six pictures shown?

17 A. Yes, sir, that's correct.

18 Q. And are you aware of any studies or anything from
19 your training on what produces bad results, sequential
20 lineups or simultaneous lineups?

21 A. Not as far as studies. SLED is considered non
22 biased. That's why I did my photo lineup through them.
23 I could have gotten a six-person photo through Charleston
24 County Detention Center based on his archives, however, I
25 don't know who knows him and I wanted to be non biased,

1 and that's the reason why I took the extra step to go
2 through SLED. They are located in Columbia and they have
3 no knowledge of this case.

4 Q. All right. Now, I'll ask you a few questions about
5 the procedures there, okay?

6 A. Yes, sir.

7 Q. The reason I was asking you before about the 9-1-1
8 tape, reviewing that, I believe the procedures require or
9 ask you to put in people who fit the description given by
10 the victim at the time of the crime, correct?

11 A. Yes, sir, that's correct.

12 Q. As opposed to finding six people who look -- maybe
13 closely resemble the suspect?

14 A. Again, we just -- we request it, and SLED assembles
15 it and they send it back to us.

16 Q. But there's a role for the initial description of
17 the -- it's a factor in making out the lineup, is the
18 initial description of the suspect, correct?

19 A. That's not always so. I didn't see who the -- I
20 didn't confirm the identity until the 29th of December
21 and that's why I'm here standing in front of you guys
22 today, this jury of 13 people and the defense now because
23 once I confirm the identity of Mr. Bowens Green I then
24 requested a six-person photographic lineup, and once it
25 was confirmed and sent back to me I then arranged to meet

1 with the victim, Mr. Patel, the older Mr. Patel --

2 Q. I understand that but I was asking you something
3 different.

4 A. Okay.

5 Q. Now, direct your attention to page three.

6 A. Okay.

7 Q. Subsection -- paragraph five, procedure 83.

8 A. Eighty-three, okay.

9 Q. Is it fair to say as part of that policy the deputy
10 sheriff will select fillers that can only fit the
11 witness's description of the perpetrator?

12 A. They say when there's limited or inadequate
13 description of the perpetrator provided by the witness or
14 when the perpetrator differs significantly from the
15 appearance of the suspect fillers should resemble the
16 suspect and significant features. And the photo, the
17 six-person photo lineup there is consistent with this.

18 Q. Well, I understand but what I'm asking you is a
19 little more precise than that.

20 A. Okay. Can you dumb it down a little bit for me
21 then, Attorney Grimes, so I can understand the answer.

22 Q. I'll try to.

23 A. Thank you.

24 Q. It says the deputy sheriff, which would be you.

25 A. Correct.

1 Q. Will select fillers. Those would be five people
2 who we know could have committed the crime, correct?

3 A. That's correct.

4 Q. Who generally fit the witness's description of the
5 perpetrator, and that would be the witness who called
6 9-1-1 and said he's a five-eight, white male with brown
7 hair. You would try to find white males who are about
8 five-eight with brown hair?

9 A. That's correct. That's correct what you are saying
10 there.

11 Q. And then you don't get a good description of the
12 person or -- and then as soon as you pick up a
13 fingerprint then you may use what you do here, correct?

14 A. So, so.

15 Q. But you didn't get the -- the witness never gave a
16 description of the initial suspect, correct?

17 A. That is correct.

18 Q. So he never said the person who robbed me was
19 five-six, or five-eight, six-foot, did he?

20 A. Well, he gave -- he provided information that he
21 knew as to his relationship with the defendant, okay.
22 That's what he gave. It wasn't confirmed until the video
23 was actually -- the video surveillance actually was seen,
24 and, you know, we can go all day with what you are
25 asking.

1 The fact is, we don't request the photo lineups.
2 It's either done through SLED, which I did because they
3 are non biased, or if I really wanted it that quick I
4 could have sent it off to Charleston County Detention
5 Center, and again, I don't know who he knows at the
6 Detention Center and I didn't want to risk that coming up
7 in court. That's the reason why I went to the non biased
8 agency, based on particulars.

9 Q. All right. Well, let me just ask you one thing
10 sort of about height.

11 A. Yes, sir.

12 Q. Mr. Patel is five-four, correct?

13 A. He's rather short.

14 Q. If I showed you a copy of the incident report would
15 that refresh your memory?

16 A. Yes, sir.

17 (A document was handed to the witness.)

18 Q. He's about five-four?

19 A. Yes, sir. According to the incident report, yes,
20 sir.

21 Q. And according to the incident report Mr. Green is
22 about five-six?

23 A. According to that, yes, sir.

24 Q. So, for example, if he robbed him he'd say, Yeah,
25 this guy is a regular customer, he's just a couple inches

1 taller than me; he could have easily figured out he was
2 five-six, correct?

3 A. In Mr. Patel's testimony he says that 80 percent of
4 his clients are African Americans, you see? So we will
5 be going at this all day long trying to reach your point,
6 Attorney Grimes.

7 Q. Well, I don't mean to be disrespectful but I asked
8 you about height. I didn't ask you about 80 percent of
9 his customers?

10 A. Right. If we were to go into that bank that you
11 are asking we would -- I mean, my thing is we don't know
12 what suspect we're looking for. I can put it in the bank
13 with all the fillers that you are asking but I don't know
14 who the defendant is so I don't know who I'm looking for.
15 That's why I'm merely saying to you based on the
16 description that the victim gave, Mr. Patel, I don't know
17 who I'm looking for.

18 Once I confirm the person that he was talking
19 about, now I know who I'm looking for and that's when I
20 requested it through SLED. But I can go by the fillers
21 that you're saying but I'll be beating a dead horse
22 because I honestly don't know who I'm looking for.

23 Q. Well, so when Deputy Luckadoo told you he saw the
24 person, and called you and told you that, you put it in
25 the incident report?

1 A. Yes, sir.

2 Q. You just discounted that totally?

3 A. I did because he's a road deputy. I appreciate
4 that information but once I confirm who he was that's
5 when I move forward because I knew that I was going to be
6 on the stand. Deputy Luckadoo is going to be here for
7 what he said but I ultimately have the responsibility of
8 this case.

9 Q. All right. So just to be clear, you discount what
10 Deputy Luckadoo testified to?

11 A. Until it was confirmed, yes, sir, by myself.

12 Q. And then you testified earlier that your word alone
13 is enough, that's why you elected to go do the lineup,
14 correct?

15 A. Yes, sir. That's correct.

16 Q. And then we heard Mr. Patel testify that the person
17 in the picture was a regular customer?

18 A. Yes, sir.

19 Q. And there was no one else who was a regular
20 customer in the lineup, correct?

21 A. Yes, sir, according to his testimony.

22 Q. And there's nothing in your incident report about
23 Mr. Patel giving a description saying his nose stood out
24 to him?

25 A. No, sir. Mr. Patel never mentioned that. That was

1 my observation of talking to him and that's one of his
2 mannerisms that I discovered.

3 Q. There's nothing in there about him saying he got a
4 great look at his face, is there?

5 A. According to the statement I believe it says that
6 he recognized him to be a customer, has been a customer
7 on prior occasions, yes, sir.

8 Q. Recognized him to be a customer because of through
9 his voice or face?

10 A. Sir? I'm sorry?

11 Q. He also testified he recognized his voice, correct?
12 Testifying, not in the incident report.

13 A. Yes, sir. Yes, sir. He did testify to his voice,
14 correct, as well as seeing his eyes over -- as he was
15 looking down, over the shades, and him getting the same
16 type of cigarettes.

17 Q. And yet in your incident report you said, Victim
18 advised deputies he had been robbed by unknown assailant.

19 A. Yes, sir, and --

20 Q. Thank you.

21 A. Yes, sir.

22 MR. RUTLEDGE DURANT: Your Honor, I think the
23 witness wanted to explain that answer. He was cut off.

24 THE COURT: All right. You may explain your
25 answer.

1 A. Thank you, Your Honor.

2 An unknown meaning not knowing by name.

3 Q. And in the incident report it says stranger,
4 correct?

5 A. If he doesn't know him by name he would be
6 considered a stranger, yes.

7 Q. That's what's in the incident report as categorized
8 as, correct?

9 A. That's correct. He doesn't know him by name so he
10 wouldn't be considered -- he's not an acquaintance if he
11 doesn't know him.

12 MR. RUTLEDGE DURANT: May we approach?

13 THE COURT: All right. Counsel, you may approach.

14 (WHEREUPON, the following bench conference was
15 reported.)

16 MR. RUTLEDGE DURANT: I thought we covered this in
17 our pretrial hearing, that there is no way that --

18 MR. BRUCE DURANT: And for him to pick out the word
19 stranger that's twice he's mischaracterized what's out.

20 MR. GRIMES: May I?

21 THE COURT: You may.

22 (WHEREUPON, the bench conference was concluded.)

23 BY MR. GRIMES:

24 Q. For clarification.

25 A. Yes, sir.

1 Q. On the first page of the incident report do you
2 guys see the place where it has the box for Marvin Bowens
3 Green?

4 A. Yes, sir.

5 THE COURT REPORTER: I'm sorry, Your Honor. I
6 can't understand him.

7 THE COURT: Mr. Grimes, when you are looking down
8 it's hard for the court reporter because you are talking
9 straight into that podium.

10 Q. In the box you see where it says Marvin Bowens
11 Green?

12 A. Yes, sir, I do.

13 Q. And there's, like, relationship to the subject?

14 A. Yes, sir.

15 Q. And under that it says stranger?

16 A. That's correct.

17 Q. Thank you. Sorry for jumping around a little bit
18 too much. To go back to the lineup procedures, part of
19 the admonition form is not to discuss your identification
20 procedure or what happened afterwards, correct?

21 A. That is correct.

22 Q. And you did the identification on December 29th?

23 A. Yes, sir.

24 Q. And you heard Mr. Patel, the robbery proceeded on
25 December 24th?

1 A. Yes, sir.

2 Q. And you heard Mr. Patel testify he discussed it
3 with his wife about a week?

4 A. I think he said they reviewed the video for about a
5 week then they left it alone because --

6 Q. Tried to forget about it?

7 A. Yes, sir, they tried to forget about it.

8 Q. Then they discussed it with Mr. Durant and his
9 investigators?

10 A. Yes, sir. That was after apprehension was made,
11 yes, sir.

12 Q. Okay. And then the lineup procedures -- or
13 admonition form, it also asked the witness to state how
14 certain he is on the form, correct?

15 A. Yes, sir, that's correct.

16 Q. And this was explained thoroughly to Mr. Patel?

17 A. According to his testimony, yes.

18 Q. And according to his son?

19 A. Yes, sir.

20 Q. And there's a place on the lineup -- or
21 identification form for him to make comments, correct?

22 A. Yes, sir, that is correct.

23 Q. And he didn't state anything as certainty on there,
24 did he?

25 A. He didn't, but according to his testimony as well

1 -- according to his testimony is once he was showed -- as
2 soon as he was showed it he automatically pointed at
3 (indicated) and circled Mr. Marvin Bowens Green.

4 Q. All right.

5 A. Without hesitation.

6 Q. But he didn't say I'm a hundred percent sure this
7 is Marvin Bowens Green?

8 A. He didn't say, however, he implied that as soon as
9 he saw the lineup he knew Mr. Marvin Bowens Green was the
10 subject who had him at gunpoint and robbed him of \$60 and
11 a pack of cigarettes.

12 Q. And the policies also give you the option of sort
13 of recording these -- how these procedures are done,
14 correct?

15 A. I'm sorry, sir?

16 Q. Your policies also give you the option about
17 recording of the lineup procedures, correct?

18 A. Recording this incident in the parking lot?

19 Q. Yes, sir, or wherever you wanted to do it at?

20 A. Well, if it's at the station it's reasonable to do
21 but this is 2010 and I don't know what kind of phone I
22 had back then. I don't know what kind of phone Detective
23 Perkins had back then. He was the person actually
24 administering the admonition.

25 Q. I understand you may not have had a phone out there

1 to do it with.

2 A. Right.

3 Q. That's probably not the best way to record it but
4 Mr. Patel was cooperative with you, correct?

5 A. Yes, sir, he was.

6 Q. And it's, what, a 10, 15-minute ride from Citadel
7 Mall to Pine Haven?

8 A. Yes, sir, it's safe to say.

9 Q. So you could have easily taken him back to Pine
10 Haven where you had facilities to do that?

11 A. We could have, yes, sir.

12 Q. Then there would be really no question about
13 translation whether he understood what arraignment or
14 this was accurately translated to him?

15 A. That's very well true, but once we got a positive
16 identification for him and the nature of the crime we
17 were -- it was essential to obtain an arrest warrant.

18 Q. It may be like taking an extra step to take him
19 back to Pine Haven and record it, correct?

20 A. In your words, Mr. Grimes, yes, sir.

21 Q. I believe you testified you took all the extra
22 steps, correct?

23 A. Yes, sir. I obtained the six-person photo lineup
24 and he positively identified him, and that certainly
25 qualifies for taking the extra step.

1 Q. And your policy gives you the options of recording
2 it, correct?

3 A. He could have merely refused to go.

4 Q. He could have but you really think he would have?

5 A. I don't know. He was trying to get back to his
6 wife.

7 Q. Okay. And in the past when you've had
8 opportunities to record stuff you have -- you've said the
9 solicitor's office has directed you not to, correct?

10 A. Wow. That was the past but we did rectify that.

11 Q. Okay.

12 MR. GRIMES: May I have one moment, Your Honor?

13 THE COURT: You may.

14 (PAUSE.)

15 BY MR. GRIMES:

16 Q. Let me ask you one final comment.

17 A. Yes, sir, Mr. Grimes.

18 Q. Were you aware Mr. Green lived in Jacksonboro at
19 the time of this incident?

20 A. Mr. Green has multiple addresses, and that's the
21 reason why a search warrant wasn't done on him.

22 Q. And the address you had in your arrest warrant was
23 for Jacksonboro, correct?

24 A. That is correct.

25 Q. And that address is about 14 miles from the Sunoco?

1 A. Safe to say that, yes, sir, approximately.

2 Q. There's a fair amount of stores between his address
3 and that Sunoco?

4 A. Yes, sir.

5 MR. GRIMES: Thank you, Your Honor. No further
6 questions.

7 THE COURT: Redirect?

8 MR. RUTLEDGE DURANT: Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. RUTLEDGE DURANT:

11 Q. Detective, you testified that he lived at an
12 address in Jacksonboro, is one of the addresses that was
13 listed for him?

14 A. Yes, sir, that's correct.

15 Q. And you testified that there were more addresses
16 listed for him?

17 A. Yes, sir.

18 Q. Did you have a firm understanding of where he
19 lived?

20 A. I did not.

21 Q. Would you have liked to have executed a search
22 warrant on this case?

23 A. Yes, sir. I sure would have.

24 Q. And would you have done that if you had a firm
25 address?

1 A. Yes, I would have.

2 Q. Do you know whether or not he lived with his
3 father?

4 A. He was back and forth with his mother and father.

5 Q. And do you know -- well, where did his father live?

6 A. His father stayed in Adams Run. His father stayed
7 in Adams Run or his mother stayed in Colleton County, or
8 vice versa, but I know one of them resided in Colleton
9 County and the other one stayed -- resided in Adams Run,
10 which is located in Charleston County.

11 Q. And were there other addresses as well?

12 A. Yes, sir. I've met his father off of Old
13 Orangeburg -- I mean, Orangegrove, located in the City of
14 Charleston right over the north bridge. I met him at a
15 residence over there. So Mr. Bowens has numerous
16 addresses. That's just some of the few that I know of.

17 Q. Did you ever have any hard information on where he
18 may stay at this time?

19 A. No, sir, not at this time I did not.

20 Q. And if you did what would you have done?

21 A. I would have executed a search warrant for the hat
22 that he had, the sunglasses that he was wearing, as well
23 as the hoodie and any other clothing, to include the
24 handgun.

25 Q. And you testified about the results of the

1 fingerprints in this case?

2 A. Yes, sir.

3 Q. And you are aware of those results, right?

4 A. I am.

5 Q. And you are aware that the only fingerprints that
6 ever came back came back to a white man?

7 A. That's correct, yes, sir.

8 Q. Was a white man ever a suspect in this case?

9 A. No, sir, never.

10 Q. And in regard to the report that Mr. Grimes had you
11 look at, and you told the Court that stranger was listed
12 beside --

13 A. Yes, sir.

14 Q. -- Marvin Bowens Green's name?

15 A. Yes, sir.

16 Q. Was that the only way he was identified in that
17 report?

18 A. There's not many options that you list in this
19 block. If he's not an acquaintance or he's not a family
20 member he's considered a stranger, and that's just one of
21 the few options that we have, and that's the reason for
22 stranger being in there.

23 MR. DURANT RUTLEDGE: And, Your Honor, at this time
24 the State would move to enter the report under Rule 106?

25 MR. GRIMES: We would object.

1 THE COURT: All right. We'll take that up outside
2 the presence of jury. You may continue.

3 MR. RUTLEDGE DURANT: And, Your Honor, may we
4 approach briefly?

5 THE COURT: You may.

6 (WHEREUPON, the following bench conference was
7 reported.)

8 THE COURT: Do you have any witnesses after this
9 one?

10 MR. RUTLEDGE DURANT: We do.

11 THE COURT: All right, who?

12 MR. RUTLEDGE DURANT: We've got Perkins, we've got
13 Milz, we've got Kjellman, and we've got Joe West. They
14 are all here but, you know, they can come tomorrow as
15 well.

16 If it's all right, I'd like for him to be able to
17 read just parts of it and we'll leave some out, and I'll
18 have to introduce it as long as we can get -- you know,
19 in fairness, he's not identified in this thing as just a
20 stranger. He's identified as a regular customer, but the
21 problem is it also mentions that he had been identified
22 from a prior robbery, and I will instruct the witness not
23 to read that part. But in fairness it would not be right
24 to have this jury understand that he was only a stranger
25 identified by the victim.

1 THE COURT: I think that stranger meant in relation
2 to identifying him.

3 MR. RUTLEDGE DURANT: That was in his report. He
4 had a different report about unknown assailant and he
5 said that that was because he didn't have a name, but to
6 let stranger fall dead in this Court is not accurate, and
7 this would make it fair to have the jury understand this
8 and that at the same time through this report.

9 THE COURT: Why can't you just ask him if he was a
10 stranger to the victim?

11 MR. RUTLEDGE DURANT: I'll do that and I'll also
12 ask him that he had told him that it was noted in this
13 report that he was a customer on prior occasions.

14 THE COURT: You're objecting to that report going
15 in, correct?

16 MR. GRIMES: Yes, I am.

17 THE COURT: All right.

18 MR. BRUCE DURANT: The whole report, we don't want
19 the whole report but I think that part is fair rebuttal
20 under what he brought out under 106 because he's trying
21 to present -- portray to this jury that the person was a
22 stranger to the victim. Well, the fact of the matter is
23 the victim told the person that he was a regular customer
24 in the store so I think it's fair.

25 He also made a big deal about how there was no

1 description of the suspect but on the first page he gives
2 the same description of the suspect that he gave to the
3 Court.

4 THE COURT: Any response?

5 MR. GRIMES: Basically it's impeachment of their
6 witness, Mr. Patel, when he says regular customer.

7 THE COURT: All right. Is that a copy?

8 MR. BRUCE DURANT: Yeah.

9 MR. GRIMES: And I think Mr. Patel's testimony
10 covers that --

11 THE COURT: Why can't you just cross out the first
12 statement to the person and just have him read that one
13 sentence, if that's what you want? All right.

14 MR. RUTLEDGE DURANT: Where the description was
15 given, all of that; baseball cap, red-billed cap, all of
16 that? Suspect was wearing dark sunglasses. And that was
17 all from Mr. Patel, his description.

18 THE COURT: And again, I understand you have an
19 issue to the stranger issue. How is that --

20 MR. RUTLEDGE DURANT: He made a big deal about the
21 victim didn't give a description.

22 MR. BRUCE DURANT: That there was no description in
23 the incident report from which to compose a photographic
24 lineup was the point he was making except he ignores the
25 fact that they knew who the suspect was.

1 MR. RUTLEDGE DURANT: I promise not to read the
2 danger part.

3 MR. GRIMES: I think this is improper bolstering.

4 THE COURT: I deny it and I will allow you to put
5 in on the record. That statement we'll not have. Let me
6 think about the other statement. Thank you.

7 MR. RUTLEDGE DURANT: Thank you.

8 (WHEREUPON, the bench conference was concluded.)

9 THE COURT: As to the second statement, Mr. Durant,
10 make sure you lay a foundation for me. Thank you.

11 BY MR. RUTLEDGE DURANT:

12 Q. I think we talked about -- Mr. Grimes had elicited
13 from you that Marvin Bowens Green was listed on the
14 record, initial report, as a stranger as well, right?

15 A. Yes, sir, that's correct.

16 Q. And that was not the only characterization of
17 Mr. Bowens Green in the initial responding report, was
18 it?

19 A. That is correct.

20 Q. Because in the narrative it states the suspect had
21 also been a customer on prior occasions?

22 A. That is correct.

23 Q. And that was written in the initial responding
24 report?

25 A. It's on page two, yes, sir, in the narrative.

1 Q. Eyewitness identifications, procedures, they occur
2 in a variety of ways; isn't that right?

3 A. Yes, sir.

4 Q. Sometimes a person who's asked to view a photo has
5 never seen the person before; is that correct?

6 A. That is correct.

7 Q. Sometimes the person has seen the person before?

8 A. Correct.

9 Q. And sometimes they even know them?

10 A. That is correct.

11 Q. And in all those situations have you had the
12 opportunity to administer lineup identifications?

13 A. Yes, sir.

14 Q. And I believe you testified that you have had cases
15 where you have had people mistaken on their
16 identifications?

17 A. Yes, sir.

18 Q. And in what situations -- what do you do, first of
19 all, when there is a mistaken identification?

20 A. Well, wasn't so much as a mistaken it was prior to
21 the case going to trial they -- the terminology is they
22 retracted their statement, okay, and that's what
23 happened. I've had cases like that. They retracted
24 their statement prior to going to court, said, Well, that
25 wasn't the right person or the information they gave

1 wasn't correct. And in an event that someone does that,
2 if they admit that they lied on a document then we charge
3 them for filing a false report, okay.

4 On other hand, if we have someone who's known -- in
5 some cases I get they've known them for life, and if you
6 know someone for a lifetime there's no need to waste time
7 to show you a six-person photo lineup if you are 40 years
8 old and you've known this person 40 years. It's a waste
9 of time to show it. So in that capacity we show them a
10 single person lineup, okay. Does that help?

11 Q. And a single person lineup is different than a six
12 pack --

13 A. Yes, sir. That's one person, photo of one person,
14 and who do you know this person to be, and we see what
15 they state.

16 Q. But Mr. Patel was shown six photos; is that right?

17 A. Yes, sir, he was shown a six person.

18 Q. Detective, concerning Mr. Marvin Bowens Green's
19 name.

20 A. Yes, sir.

21 Q. Does he always go by that exact name, Marvin Bowens
22 Green?

23 A. No, sir.

24 Q. Are you aware of any other names that he goes by?

25 A. Yes, sir, I am.

1 Q. And what are those?

2 A. Chuckie, he's called himself Charles, he would go
3 by Marvin Green, or Marvin Bowens. The correct name is
4 Marvin Bowens Green. Those are all the names I've known
5 him to associate himself and they are also in his rap --

6 MR. GRIMES: Objection.

7 THE COURT: What's -- I'm sorry.

8 MR. GRIMES: 404(b), relevant.

9 THE COURT: All right. Counsel, approach.

10 (WHEREUPON, the following bench conference was
11 reported.)

12 THE COURT: What was he going to say?

13 MR. RUTLEDGE DURANT: I thought he was about to go
14 somewhere bad so I'd like for him to just stop right
15 there with that inquiry.

16 THE COURT: I am just concerned --

17 MR. RUTLEDGE DURANT: Yeah, we're not going any
18 further.

19 THE COURT: All right.

20 MR. RUTLEDGE DURANT: Thank you.

21 (WHEREUPON, the bench conference was concluded.)

22 THE COURT: All right. Mr. Durant, ask your next
23 question. Thank you.

24 MR. RUTLEDGE DURANT: Your Honor, I think that's
25 all the questions I have for the detective. Thank you.

1 put me -- is going to yell at me. So please, please,
2 please just go home and have a restful evening.

3 We will begin -- if you will be in your jury room
4 at 9:15 we'll begin promptly once all of you are here.
5 Please have a wonderful evening. Thank you.

6 Please rise for the jury.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 5:22 p.m.)

9 THE COURT: Thank you. Be seated.

10 MR. RUTLEDGE DURANT: Your Honor?

11 THE COURT: Yes.

12 MR. RUTLEDGE DURANT: I just want to bring it to
13 the Court's attention that we might have that in-camera
14 hearing with Ms. Patel that might last a little bit
15 tomorrow just in case you want to bring the jury back a
16 little later.

17 THE COURT: It's too late now, Counsel. You got to
18 remind me of these things. I'm not going go -- we're on
19 the record. How long do you think it will take?

20 MR. BRUCE DURANT: Hopefully not as long since we
21 worked out the kinks on the last one.

22 THE COURT: All right. Why don't we be -- we'll
23 just do this one at 8:45 then.

24 MR. RUTLEDGE DURANT: That sounds good, Your Honor.

25 THE COURT: All right. You all need to redact

1 State's 5. So go ahead. Here's my scissors.

2 Anything else?

3 MR. GRIMES: Your Honor, I was just referring to
4 Mr. Durant about some information we received from
5 Walterboro that may help lay the foundation for
6 Defendant's Exhibit 7 for identification. So I imagine
7 they are going to have some objections about that.

8 MR. RUTLEDGE DURANT: I have no idea what I'm going
9 to have.

10 THE COURT: Okay. We'll deal with that when it
11 comes up.

12 All right. Anything further from the State?
13 Anything further?

14 MR. RUTLEDGE DURANT: Nothing from the State, Your
15 Honor.

16 THE COURT: Mr. Grimes, anything further?

17 MR. GRIMES: No, ma'am.

18 THE COURT: That's State's 5. If you can just let
19 her mark it.

20 MR. GRIMES: That just seems so obvious.

21 MR. BRUCE DURANT: I mean, we could probably do
22 something a little better overnight.

23 THE COURT: If you all don't object to it, but
24 that's what needs to go back, just those two photos. All
25 right.

1 Please the Court. The State calls Joe West.

2 JOSEPH L. WEST, after having been duly
3 sworn, testified as follows:

4 THE CLERK: Please state your full name and spell
5 your last name for the record.

6 THE WITNESS: Joseph L. West, W-e-s-t.

7 DIRECT EXAMINATION

8 BY MR. RUTLEDGE DURANT:

9 Q. Mr. West, good morning.

10 A. Morning.

11 Q. Would you please tell the jury where you are
12 employed.

13 A. I am an investigator at the South Carolina Law
14 Enforcement Division. I've been there approximately 21
15 years. I've worked in narcotics in the past five, has
16 been specifically related to technical investigations,
17 that is things that deal with audio, video and pictures.

18 Q. And what are some of your responsibilities and
19 duties in your position right now?

20 A. Well, frequently agencies bring in videos that were
21 obtained during crime scene and during the robbery. If
22 there was a store video, a lot of times we see stolen
23 credit cards are used in different stores and they'll
24 bring the video in. So what we do essentially is try to
25 -- if they have a suspect in the video we try to capture

1 the best image possible, a still shot, if you will, of
2 the subject they're looking for. So basically what we're
3 doing is freezing the video through our software,
4 capturing a picture and providing this picture to law
5 enforcement or prosecution.

6 Q. And in that capacity did you become involved in the
7 investigation of this case?

8 A. Yes, sir.

9 Q. And I believe you were brought the video in this
10 case?

11 A. That's correct.

12 Q. From investigator Matt Cayce?

13 A. Yes, sir.

14 Q. On April 24th of this year?

15 A. Yes, sir.

16 Q. What, if anything, did you do with the video in
17 this case?

18 A. Again, you know, part of my responsibility as an
19 agent is to process videos, and this video related to an
20 armed robbery that occurred at a convenience store. It
21 was a pretty good video. There was a length of time that
22 the robbery did occur. It was probably a minute and a
23 half, couple minutes. It wasn't very long.

24 So what they wanted to obtain through our services
25 that day was to get still photos of the subject who was

1 in the store, who came to rob the store, and then
2 basically that becomes the evidence, that becomes
3 something you can look at versus watching it on TV.

4 So on that day we produced many photographs. I'd
5 say there were 20 or 30 pages of photographs with two
6 pictures per page on there. So many photographs of the
7 subject as he walked in the door and as he conducted the
8 robbery and as he left.

9 We like to get, obviously, the best shot we can for
10 prosecution, but sometimes as the nature of the video is
11 it's not like your home video camera where you have this
12 great resolution and when you freeze the frame it looks
13 like a picture you took with a digital camera.

14 The nature, again, of surveillance store videos is
15 that they want a store often more content on there than
16 they do high quality for different reasons. They'd
17 rather have five days of content versus two days of
18 really good stuff.

19 So what we did with this video was simply, we call
20 it ripping the pictures from there. You freeze the
21 frame, you create an image of the still picture on the
22 screen and then you save that to a DVD or CD-ROM and
23 print off the pictures.

24 Q. Now, is your job to enhance a photograph?

25 A. You know, that is a term, enhancement, that is used

1 often but essentially what we are doing is this. The
2 software is not this thing that -- like you see on TV
3 when they say the tag across the street or here is a
4 picture of a person in somebody's sunglasses. So it's
5 not this really cool magical software where you can bring
6 out these photographs in people's pictures that really
7 aren't there.

8 So what we do, I guess forensically, is just like
9 your TV has a brightness setting and a contrast setting,
10 so we are going to adjust those images with bright, more
11 brighter, darker and the contrast again making it
12 brighter or darker.

13 But as far as enhancing, you can't really put
14 anything that's not there. So another step we do as you
15 may see in the pictures is that you can zoom in onto the
16 picture if you capture it on the screen. And the problem
17 there is that a still picture has so many pixels or dots
18 on the page or on the screen so when you zoom in the
19 small dots become big dots.

20 So again, when you see on TV when they enhance
21 these things they zoom in and they press this button and
22 the picture becomes clear, that just doesn't happen in
23 real life. So more or less we just capture the screen
24 shots versus enhance the photographs.

25 Q. So do you do actually anything to manipulate the

1 picture to show something that would not otherwise
2 naturally be there?

3 A. No, sir. Again, it's just really an issue of, you
4 know, brightness settings and contrast settings and
5 zooming in to get a better picture, but we do not add nor
6 subtract anything to the photograph.

7 Q. And were you able to produce still photos from the
8 video in this case?

9 A. Yes, sir.

10 Q. And on those photos did you pay any particular
11 attention to areas within a particular photograph?

12 A. You know, we like to go for the faces because
13 that's the most identifiable thing and sometimes it's
14 just not going to happen if you have someone who is
15 trying to conceal themselves. You're not going to get
16 that nice driver's license photograph like you want to.

17 So then we focus on other things, as we'll see in
18 the photographs, the build of the person, their stature,
19 you know, what kind of shoes they have on. If they have
20 a weapon what kind of weapon was it? Was it a pistol,
21 was it a shotgun, was it a rifle, was is a revolver?

22 So we will see in the photographs that there's not
23 only pictures of the suspects whole body but we try to go
24 for the head, sometimes the hands, sometimes the feet,
25 just trying to add all these things together to get the

1 best identity possible.

2 Q. And if you would, explain to the jury what a
3 particular circle type area in a photograph that you
4 pulled off this video indicates?

5 A. Well, the software that we use allows us to, you
6 know, if you have a little picture of a screen and we
7 want to say that my interest here on this particular shot
8 is on this hand, you can actually have -- it's a circle
9 around the portion of the screen we're looking at.

10 Perhaps you've seen this on TV when you have four
11 people in a picture and they want to show one of them
12 there will be, you know, the rest of the screen is kind
13 of black or darker and the person of interest has a white
14 circle around them. It's a clear shot.

15 So that's what we do with the pictures, again. We
16 may go for the hands, the face, the weapon that was used
17 and just add the circle on there to say, Hey, this is
18 what we're looking at in this picture.

19 (WHEREUPON, State's Exhibit Number 6, Photographs,
20 were marked for identification only.)

21 MR. RUTLEDGE DURANT: Thank you.

22 BY MR. RUTLEDGE DURANT:

23 Q. Mr. West, I'm handing you what the State has
24 labeled State's Exhibit 6 for identification, and I ask
25 you to take a look at it. And let me know when you are

1 finished doing that.

2 (PAUSE.)

3 A. Yes, sir.

4 Q. Do you recognize State's Exhibit 6?

5 A. Yes, sir.

6 Q. And what is it?

7 A. These are essentially a group of photographs we
8 took of the incident.

9 MR. GROEBER: Objection.

10 MR. RUTLEDGE DURANT: We're not going to show it to
11 the jury yet.

12 MR. GROEBER: He's publishing to the jury and
13 describing the contents.

14 THE COURT: All right. Continue, Mr. Durant.
15 Please do not publish to the jury. It's not been
16 admitted. Thank you.

17 MR. RUTLEDGE DURANT: Yes, ma'am.

18 BY MR. RUTLEDGE DURANT:

19 Q. Are those the photographs that you were able to
20 take from the video in this case?

21 A. Yes, sir.

22 Q. And I believe that there were 31 pages in your hand
23 and 62 photographs?

24 A. Yes, sir.

25 Q. Do these photographs accurately reflect what was

1 taken from the video?

2 A. Yes, sir.

3 Q. And fairly reflect that as well?

4 A. Yes, sir.

5 Q. Are any of these photographs a misrepresentation of
6 anything that was on that video?

7 A. No, sir.

8 Q. And those are your photographs?

9 A. Yes, sir.

10 MR. RUTLEDGE DURANT: Your Honor, at this time the
11 State moves for the introduction of State's 6.

12 MR. GROEBER: We would object, Your Honor.

13 THE COURT: And subject to your previous
14 objections?

15 MR. GROEBER: No.

16 THE COURT: I'm sorry?

17 MR. GROEBER: New objection.

18 THE COURT: All right. Come forward.

19 (WHEREUPON, a bench conference was had, not on the
20 record.)

21 THE COURT: We'll take the objection as to State's
22 6 up outside of the presence of the jury, but my
23 understanding is you may continue, Mr. Durant.

24 MR. RUTLEDGE DURANT: Thank you, Your Honor.

25 BY MR. RUTLEDGE DURANT:

1 Q. And, Mr. West, have you testified in this regard
2 before?

3 A. Related to this case or other cases?

4 Q. Other cases.

5 A. Yes, sir.

6 Q. Have you had that opportunity to create still
7 photographs from crime scene videos?

8 A. Yes, sir.

9 Q. And have you performed the same analysis on those
10 videos as you did in this case?

11 A. Yes, sir.

12 Q. And did you testify in court about those
13 photographs?

14 A. Yes, sir.

15 Q. And did those photographs also include areas with
16 particular concentration that we could observe a circle
17 on?

18 A. Yes, sir.

19 Q. And was that testimony allowed into evidence?

20 A. Yes, sir.

21 MR. RUTLEDGE DURANT: Your Honor, I think that
22 would be the extent of the State's direct examination of
23 Mr. West.

24 THE COURT: All right. Reserving the matter of
25 State's 6, Mr. Groeber?

1 MR. GROEBER: May I have one moment, Your Honor?

2 (PAUSE.)

3 MR. GROEBER: I have no questions for this witness.

4 Thank you.

5 THE COURT: Sir, you may step down. I ask that you
6 remain with us for just a few moments.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Thank you. You may stay in the
9 courtroom if you wish.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Mr. Durant, call your next witness.

12 MR. RUTLEDGE DURANT: The State calls Jim Milz.

13 JAMES T. MILZ, after having been duly sworn,
14 testified as follows:

15 THE CLERK: Please state your full name and spell
16 your last name for the record.

17 THE WITNESS: My full name is James Thomas Milz,
18 M-i-l-z.

19 THE COURT: Mr. Durant.

20 DIRECT EXAMINATION

21 BY MR. RUTLEDGE DURANT:

22 Q. Mr. Milz, will you please tell the jury where you
23 are employed.

24 A. Sir, Charleston County Sheriff's Office, sir.

25 Q. And what is your position with the Charleston

1 Mr. Groeber:

2 MR. GROEBER: I'm trying to remember them all. I
3 know that one was the pictures that the State introduced.

4 THE COURT: All right. I'm going to do those last.
5 So whatever else you need to place on the record.

6 MR. GROEBER: And you are speaking only about --

7 THE COURT: As to State's 6, which is what Mr. West
8 testified to.

9 MR. GROEBER: Okay. Thank you, Your Honor. We
10 would argue that the introduction of those photographs --

11 THE COURT: So that's the only remaining issue,
12 Mr. Groeber?

13 MR. GROEBER: I believe that is.

14 THE COURT: All right. Thank you. Seems like you
15 all were approaching so many times I thought we had
16 something else to put on the record.

17 MR. GROEBER: It did. I mean, maybe --

18 THE COURT: Oh, and then Mr. Grimes does have a
19 proffer. That's what I was thinking of.

20 MR. GROEBER: The proffer of my expert witness, is
21 that what you're talking about?

22 THE COURT: Yes. Yes.

23 MR. GROEBER: When it comes to Mrs. Patel?

24 THE COURT: Yes.

25 MR. GROEBER: Yes, Your Honor, we're ready.

1 THE COURT: So we have that one, too. But let's
2 address the pictures so that Mr. West can go.

3 MR. GROEBER: Thank you, Your Honor. As to the
4 pictures in their entirety we would have two objections.
5 First would be that they were not -- none of them are
6 relevant because the State has introduced testimony from
7 witnesses that they watched the video and then made an
8 identification based on that video. There's been no
9 testimony or evidence that they looked at these
10 individual photographs.

11 We believe that also the introduction of these
12 photographs would be cumulative, and I would point Your
13 Honor to State V. Stokes, which is 339 S.C. 154, which it
14 was a child abuse case, and in that case the Court found
15 that the introduction of the child when photographs of
16 the child had already been introduced into evidence was
17 cumulative.

18 Now, the Court of Appeals did a harmless error
19 analysis after that. That of course is not for Your
20 Honor to consider. So we think this case is similar to
21 State V. Stokes and that introduction of the photographs,
22 60 something of them, would be cumulative.

23 Our third objection would be that in particular
24 some of those photographs have been lightened or there's
25 a circle that's been lightened to focus the looker's

1 attention on certain areas. We think that that is --
2 first of all, that really does not go -- it kind of
3 attacks whether or not it's a fair and accurate picture
4 because it has been altered. And we've heard no
5 testimony about -- from the witness about the software
6 used to do that, its reliability. So we think there is
7 some foundational issues as well with those particular
8 ones that have highlighted circles.

9 And if I may have one moment?

10 THE COURT: You may.

11 (PAUSE.)

12 MR. GROEBER: And as far as cumulative goes,
13 there's a lineup photo that's supposedly been entered
14 into evidence --

15 THE COURT: I'm sorry. What was the last thing?

16 MR. GROEBER: There's been a lineup photo that's
17 been entered into evidence of the defendant, the video
18 obviously is in. Now there are pictures of the scene
19 that are in that accurately depict the scene and the
20 lighting and all that, and we think it would be
21 cumulative. Thank you, Your Honor.

22 THE COURT: Mr. Durant, why are these pictures not
23 cumulative?

24 MR. RUTLEDGE DURANT: Your Honor, if there were
25 more eyewitnesses to this scene we would have called

1 them, too... The fact of the matter is cumulative evidence
2 has nothing to do with what's relevant and what's needed
3 to be before this jury.

4 The defense has made a big attempt to trying to
5 undermine the State's case that they failed to go the
6 extra mile. They elicited that through cross-examination
7 of several witnesses, especially including Detective
8 Lawrence on his perceived failure to execute a search
9 warrant and do other things. And this is another way to
10 show that we are going the extra mile.

11 We've taken this video up to SLED. We've given it
12 to a professional at South Carolina Law Enforcement
13 Division who commonly does exactly what he did in this
14 case, has testified the exact same way in other courts
15 and that was relevant from taking photographs from a
16 crime scene video.

17 It's relevant, it's necessary for the jury to
18 understand that this case is taken serious. They can
19 also use these photographs when they consider all the
20 evidence in this case. It's not overly cumulative.

21 And in regard to the software used, there was
22 testimony about what was done, and the defense had an
23 opportunity to cross-examine for any perceived deficiency
24 for a lack of foundation. But Mr. West testified exactly
25 about what he did, what the result of what he did was,

1 and essentially it was lighting conditions.

2 And he testified that what he did and what he's
3 showing to this jury and what's involved in these
4 pictures does not manipulate the picture to show
5 something that was not ordinarily there, that was
6 directly there as a result of the video taking what
7 actually happened in the robbery. And it's relevant and
8 it needs to be admitted.

9 THE COURT: Mr. Groeber?

10 MR. GROEBER: Thank you, Your Honor. I think the
11 State has shown, at least in this particular instance,
12 that they did go the extra mile. They sent them off and
13 they got the pictures taken.

14 Whether or not the pictures come into evidence
15 doesn't address whether or not they did that and went the
16 extra mile. So it would be foolish for me to argue that
17 they didn't go the extra mile when it comes to the video
18 and having someone from SLED look at it.

19 Secondly, whether or not he's testified before on
20 this is completely different. We don't know what those
21 cases were about, and it's really for the Court to
22 determine whether or not his testimony -- or these
23 pictures should be admitted.

24 Finally, that I had an opportunity to cross on his
25 foundational arguments. It's not my job to lay the

1 foundation for him and I don't need to cross-examine in
2 order to prove that he hasn't laid the foundation. Thank
3 you, Your Honor.

4 THE COURT: All right. I believe the arguments
5 have been thoroughly articulated. I have viewed the
6 photographs, listened to the testimony of Mr. West, and
7 State's 6 will be admitted over the defendant's
8 objection. I do find the testimony was that they were
9 still photos taken in order to assist in the
10 investigation, which is State's Number 1, which was
11 admitted without an objection.

12 I do not find that they are a waste of time,
13 misleading, prejudicial or confusing even given the
14 consideration that there are a few that have the circle,
15 and the testimony from the officer indicated why that
16 was. I note your exception for the record.

17 (WHEREUPON, State's Exhibit Number 6, Photographs,
18 were admitted into evidence.)

19 THE COURT: And let's go ahead and do your profer.

20 MR. GROEBER: Okay. Thank you.

21 THE COURT: How many more witnesses do you have?

22 MR. RUTLEDGE DURANT: Thank you, Your Honor. The
23 State has two witnesses, Your Honor, Detective Perkins
24 and Mrs. Patel.

25 THE COURT: All right. Let's do Perkins and then

1 approximately 11:00 a.m.)

2 THE BAILIFF: The jury is presence, Your Honor.

3 THE COURT: Thank you. Please be seated.

4 Call your next witness.

5 MR. RUTLEDGE DURANT: Thank you, Your Honor. The
6 State calls Detective James Perkins.

7 JAMES PERKINS, after having been duly sworn,
8 testified as follows:

9 THE CLERK: If you'll please state your full name
10 then spell your last name for the record.

11 THE WITNESS: James Perkins, P-e-r-k-i-n-s.

12 THE COURT: Mr. Durant.

13 MR. RUTLEDGE DURANT: Thank you, Your Honor.
14 Please the Court.

15 DIRECT EXAMINATION

16 BY MR. RUTLEDGE DURANT:

17 Q. Good morning.

18 A. Good morning, sir.

19 Q. Will you please tell the jury where you are
20 employed.

21 A. Charleston County Sheriff's Office.

22 Q. And what is your position at the Charleston County
23 Sheriff's Office?

24 A. I'm a violent crimes detective.

25 Q. And how long has that been your position?

1 A. For approximately six years.

2 Q. And what kind of crimes do you investigate as a
3 violent crimes detective?

4 A. Usually violent or major crimes like shootings,
5 armed robberies, homicides, things of that nature.

6 Q. And was that -- I guess that was your position in
7 December of 2010?

8 A. Yes, sir.

9 Q. And in that capacity did you become involved in the
10 investigation of a robbery that occurred at 5737 Savannah
11 Highway in Ravenel?

12 A. It was a case that Detective Lawrence, who was the
13 case agent, was investigating, basically, and he asked me
14 to assist him.

15 THE COURT: Detective Perkins, could I have you
16 speak up just a little bit louder.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Thank you.

19 BY MR. RUTLEDGE DURANT:

20 Q. So this was not your case as the case agent; is
21 that correct?

22 A. No, sir.

23 Q. Do you handle your own cases?

24 A. Yes, sir.

25 Q. And are you the case agent on different kinds of

1 cases?

2 A. Yes, sir.

3 Q. Different armed robberies?

4 A. Yes, sir.

5 Q. And commonly you assist other detectives and they
6 assist you?

7 A. Yes, sir, that's correct.

8 Q. Do you recall when you were brought into this case?

9 A. Yes, sir. It was on the 29th of December. We was
10 in the office, myself and Detective Lawrence, and of
11 course we don't sit directly beside each other in the
12 office, and he was yelling on the side of the office,
13 Perkins, I need you to come with me.

14 And I said, Okay.

15 And he said, I need you to do a lineup.

16 And of course, I mean, that's a normal practice.

17 So I said, Okay.

18 We got in the car and I got in the vehicle with him
19 and we rode to the Citadel Mall.

20 Q. Now, why were you asked to conduct a photo lineup?

21 A. Well, I had no knowledge about the incident or the
22 case.

23 Q. And is that important?

24 A. Yes.

25 Q. And why?

1 A. Well, because I'm just a neutral party. I don't
2 know anything about the case, the subjects, suspects or
3 anything. I actually have my own cases, so I'm deeply
4 involved with my cases not with Detective Lawrence's
5 case. So for him to ask me I'm a neutral person.

6 Q. What is a six pack photo array?

7 A. A six pack photo array is six pictures, one of the
8 six pictures include the subject or suspected suspect
9 that we show the victims or witnesses during the
10 investigation.

11 Q. And have you had the opportunity to administer a
12 six-pack photo array previous to this day?

13 A. Numerous times.

14 Q. And if you would, tell the jury how you go about
15 doing that.

16 A. We pretty much have a form that's somewhat like an
17 incident report for the sheriff's office. At the very
18 top it has the case number, it will have the case agent,
19 which in this case would be Detective Lawrence. It would
20 have the location where you're administering the photo.
21 It will also have the time that you are administering it.

22 And after you read each line, you have to read each
23 line, and after you've read each line they have to
24 initial advising that they understand. When you complete
25 that you show them the six pictures.

1 After they advise if they notice or do not notice
2 anyone on the photograph they would acknowledge that and
3 you would just check if a photo identification has been
4 made or if it has not been made.

5 Q. So it's important for you to let the witness that
6 you are about to give this photo lineup, to have them
7 read these admonishments and understand them; is that
8 right?

9 A. Yes.

10 Q. Now, did you actually conduct a photo array lineup
11 procedure that day?

12 A. Yes.

13 Q. Did you know who the suspect was in the photo array
14 when you presented that lineup?

15 A. No.

16 Q. And why not?

17 A. Well, we are broken down into districts.
18 Charleston is a very big county. So I'm assigned more so
19 to the north area, which is North Charleston, Mount
20 Pleasant, Awendaw. So I usually don't go into some of
21 the other areas like James Island, areas like that. So I
22 don't have a vast knowledge of the guys in that area, and
23 that was one of the reasons I think Detective Lawrence
24 used me, because I don't normally go into that area.

25 Q. Did you know anything about this armed robbery he

1 was investigating?

2 A. No.

3 Q. And you didn't know the suspect?

4 A. No.

5 Q. And for those reasons you were chosen to conduct
6 this procedure?

7 A. Yes.

8 Q. Is that right?

9 A. Uh-huh.

10 Q. And where did you go to conduct it?

11 A. We went to the Citadel Mall, Sears in West Ashley.

12 Q. And who did you go with?

13 A. I went with Detective Lawrence. He was actually
14 driving. I was in the passenger seat.

15 Q. Who did you meet with there?

16 A. We met with Mr. Patel and his son.

17 Q. And what did you do? If you would, just tell the
18 jury how you interacted with them and then began to get
19 into the procedure of showing the lineup.

20 A. When we got there Detective Lawrence approached
21 them and greeted them, explained that I -- you know, who
22 I am, explained that I will be showing a photo because of
23 course Mr. Patel didn't know me. After he did that I
24 went and shook his hand and told him who I was, explained
25 to him that I was showing the photo. He understood.

1 His son was there, his 12-year-old son who spoke
2 English very well. Mr. Patel did but you could tell that
3 there was somewhat of a language barrier, but he could
4 understand what I was saying to him. Do you want me to
5 go on procedurally what I done?

6 Q. We're interested in the exact way it was carried
7 out.

8 A. Okay. I pretty much -- like I initially stated, I
9 pretty much read line for line the purpose of me being
10 there, that the photographs that I'm about to show you
11 may or may not have the person or persons that committed
12 the crime.

13 I told him -- of course, reading it it would say to
14 view -- when you view the photographs it may not appear
15 exactly as it would appear when the incident happened
16 because of the lighting, because of time frame, different
17 things likes that, etcetera.

18 After I explained all that to him, each line that I
19 explained to him, he verbalized that he understood by
20 saying yes. That's a requirement. Everybody that I read
21 that to I make -- every line, I read line one and say, Do
22 you understand. And I don't take nodding. You have to
23 verbalize yes. You have to say yes. And he said that to
24 each number. And when we finished I signed and
25 initialled it and he was shown the lineup.

1 When I showed him the lineup he immediately pointed
2 to number four. At that time I didn't know if it was the
3 suspect or not. I told him, I said, Well, thank you,
4 Mr. Patel. Someone from the sheriff's office will be in
5 contact with you, and I left. I handed it over to
6 Detective Lawrence and went back to the car. I was
7 trying to get back to the office because I had some cases
8 pending.

9 Q. All right. Now, let me ask you just a little bit
10 more and with some specificity. Where exactly at the
11 Citadel Mall did this take place?

12 A. It was in the parking lot area.

13 Q. And where was Detective Lawrence when you
14 administered this lineup procedure?

15 A. He was standing -- he was standing a distance away
16 from me while I was administering it. He wasn't right
17 there. To my knowledge, I don't think that he could tell
18 what I was saying or what Mr. Patel was saying either.

19 Q. Did he participate in any way in conducting this
20 lineup procedure?

21 A. No. He just introduced him. He introduced me. He
22 just -- that was pretty much all he did.

23 Q. And I'm showing you what's already in evidence as
24 State's Number 2 and ask you to take a look at that. And
25 do you recognize State's Number 2?

- 1 A. Yes, sir.
- 2 Q. And what is State's Number 2?
- 3 A. It is the photo lineup report that I completed.
- 4 Q. Is it the admonition?
- 5 A. Yes.
- 6 Q. Is that the exact document you used to admonish
- 7 Mr. Patel?
- 8 A. Yes.
- 9 Q. Before showing him the photos?
- 10 A. Yes, sir.
- 11 Q. And you went over all these admonishments with him?
- 12 A. Yes.
- 13 Q. Did you let him know that he was free to not choose
- 14 anybody?
- 15 A. Yes.
- 16 Q. Did you tell him the suspect may or may not be in
- 17 the photos you were going to present to him?
- 18 A. Yes.
- 19 Q. Did you tell him he had to circle somebody?
- 20 A. No.
- 21 Q. And is it your testimony that his son was able to
- 22 help him understand?
- 23 A. Yes.
- 24 Q. And acknowledge that?
- 25 A. Uh-huh.

- 1 THE COURT: Is that a yes?
- 2 A. Yes.
- 3 THE COURT: Thank you.
- 4 Q. And did you feel comfortable that he understood?
- 5 MR. GROEBER: Objection, Your Honor, leading.
- 6 THE COURT: Just rephrase it. Thank you.
- 7 BY MR. RUTLEDGE DURANT:
- 8 Q. Did you feel comfortable that the witness
- 9 understood what you were telling him?
- 10 A. Yes.
- 11 Q. And did he indicate that?
- 12 A. Yes.
- 13 Q. And how did he indicate that?
- 14 A. By initialling and verbalizing yes.
- 15 Q. And after you went over this form with him what did
- 16 you do?
- 17 A. I then showed him that picture of the -- the
- 18 six-picture array of photographs.
- 19 Q. What was his reaction when you showed him the six
- 20 pictures?
- 21 A. He immediately pointed (indicated) and said, That's
- 22 him, that's him. And he was pointing like repeatedly
- 23 (indicated). And I was like, Okay. I said, Well circle
- 24 it and put your initials and put the time on there.
- 25 So you time that it starts. If you look at the

1 form here it has the time that you start reading
2 everything that he had to initial and then at the end
3 there's a time that it's conducted. So it's a
4 four-minute time span from the time that I began this to
5 the time that he was shown the photograph and circled and
6 initialled it.

7 Q. Now, did the fact that he had circled somebody's
8 photograph confirm or deny anything to you?

9 A. No.

10 Q. And if Mr. Patel had not chosen anybody what would
11 you have done?

12 A. Went back to the office, work on my cases.

13 Q. Would it have been noted?

14 A. That he didn't? I'm sorry.

15 Q. Would it have been noted that he didn't choose
16 anybody?

17 A. On here?

18 Q. Yes.

19 A. Yes.

20 Q. And, in fact, have you administered procedures
21 where people have not chosen people?

22 A. Numerous times.

23 Q. And do you note that on that form?

24 A. Yes.

25 Q. On a form just like that?

1 A. Yes.

2 Q. And I'm showing you what's already in evidence as
3 State's 3. Do you recognize State's 3?

4 A. Yes, sir.

5 Q. And what do you recognize that as?

6 A. This is the photo lineup that he was shown and the
7 one he circled, initialed, dated and put the time on.

8 Q. And is that the exact photo array that he was
9 shown?

10 A. Yes, sir.

11 Q. And does it contain the picture that Mr. Patel
12 circled?

13 A. Yes.

14 Q. Did you or Detective Lawrence say anything to him
15 such as, Good job, you chose the right person?

16 A. No. I didn't know if it was the right person or
17 not, sir.

18 Q. Did you or Detective Lawrence give any kind of
19 assurance to Mr. Patel that he had chosen correctly?

20 A. No, sir.

21 Q. Would you have done that?

22 A. No.

23 Q. Do you do that --

24 A. No.

25 Q. -- when you administer procedures?

1 And why do you not do that?

2 A. Well, as far as me being an independent
3 administrator the first thing is I don't know -- he could
4 have picked the wrong person with me not even knowing
5 because I didn't know who the person was. So I didn't
6 have a dog in the fight so-to-speak.

7 Q. And what, if anything, was told to Mr. Patel after
8 he circled photo number four?

9 A. I advised him that someone would be contacting him.

10 Q. Did you influence him in any way to pick out photo
11 number four?

12 A. No, sir.

13 Q. Did you tell him to pick out photo number four?

14 A. No, sir.

15 Q. Did anyone involved in this process or right there
16 when you administered the procedure tell him to pick
17 photo number four?

18 A. No, sir.

19 Q. Is it your testimony that Mr. Patel chose photo
20 number four on his own free will?

21 A. Yes, sir, it is.

22 MR. RUTLEDGE DURANT: Thank you.

23 THE COURT: Thank you.

24 Mr. Groeber?

25 MR. GROEBER: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. GROEBER:

3 Q. Good morning, Detective.

4 A. Morning.

5 Q. I'd like to ask you a few questions. You've been a
6 detective for about six years?

7 A. Seven.

8 Q. Seven years. Okay. And part of being a police
9 officer is being familiar with the policies of the
10 office?

11 A. Yes.

12 Q. And Charleston County Sheriff's Office has a policy
13 manual?

14 A. Yes.

15 Q. And that's pretty much true of most big
16 organizations, right?

17 A. I'm -- yes.

18 Q. You work hard at your job?

19 A. I'm sorry?

20 Q. You work hard at your job, right?

21 A. Yes, uh-huh.

22 Q. And you studied the policy manual?

23 A. Yes.

24 Q. Part of probably your training in becoming a deputy
25 at the very first time you are hired or even a detective

1 would be to study the manual, correct?

2 A. Yes.

3 Q. And you're probably given updates about changes in
4 the policy?

5 A. Yes.

6 Q. And you have to pay attention to all of that,
7 right?

8 A. Yes.

9 Q. Because it's important?

10 A. Yes.

11 Q. Because it's basically your boss telling you how
12 you need to do your job?

13 A. Yes.

14 Q. And you do that, right? You pay attention to the
15 policies and the updates?

16 A. For the most part, yes, sir.

17 Q. Are you familiar with your office's policy 8-06 on
18 show-ups, photo identifications and lineups?

19 A. Yes.

20 Q. And the reason that you all have that policy is
21 because it's important to ensure reliable accurate
22 identifications?

23 A. Yes.

24 Q. And the policy itself says that, right?

25 A. Yes.

- 1 Q. And it's important to -- it's also important to
2 prepare a lineup in a non suggestive manner, right?
- 3 A. Yes.
- 4 Q. And the policy says that's so that a suspect does
5 not unduly stand out from the other people in the lineup?
- 6 A. Yes.
- 7 Q. And you know the difference between a sequential
8 and a simultaneous photo lineup, right?
- 9 A. Of course.
- 10 Q. A sequential one is where you present witnesses
11 with six photographs one at a time?
- 12 A. Yes.
- 13 Q. And I guess you can do more than six?
- 14 A. Uh-huh.
- 15 Q. A simultaneous one is where you present the witness
16 with what we call a six pack?
- 17 A. Yes.
- 18 Q. Right? And that's what you did in this case?
- 19 A. Yes, sir.
- 20 Q. It was a simultaneous, a six pack?
- 21 A. Uh-huh.
- 22 Q. Now, there is actually as part of your policy it
23 tells you how to go about conducting the photo lineup,
24 right?
- 25 A. Yes.

1 Q. And first the policy says that in either kind of
2 lineup, simultaneous or a sequential one, that it's got
3 to be done in a fair, reliable and objective way, right?

4 A. Yes.

5 Q. And you tried to do that?

6 A. Yes.

7 Q. And you --

8 A. I do that.

9 Q. And you tried to do it in this case, too?

10 A. I did it in this case.

11 Q. Okay. You served as what's called an independent
12 administrator in this --

13 A. That's correct.

14 Q. So you don't know who the person is --

15 A. Suspect --

16 THE COURT: Please don't speak over each other.

17 Thank you.

18 BY MR. GROEBER:

19 Q. Part of your job as the independent administrator
20 is to read some instructions --

21 A. Yes.

22 Q. -- correct?

23 MR. GROEBER: May I approach the witness?

24 THE COURT: You may.

25 BY MR. GROEBER:

1 Q. I can't remember if it's State's 2 or 3, which one
2 is which.

3 A. You talking about 6?

4 Q. State's 2 is identification, right, the
5 identification form?

6 A. Yes.

7 Q. Okay. And State's 3 would be the six pack, photo
8 lineup?

9 A. Yes.

10 Q. Okay. And you testified about how you did that in
11 this case, right?

12 A. Yes.

13 Q. What you do is that you read the information to the
14 witness?

15 A. Yes.

16 Q. And you make sure they understand each single
17 sentence?

18 A. Yes.

19 Q. And the way you document that is if after you think
20 they understand the sentence and they tell you verbally
21 that they understand the sentence --

22 A. After he or she --

23 Q. He or she. Thank you.

24 A. -- understands it.

25 Q. Then --

- 1 A. He or she will initial it.
- 2 Q. Okay. And they'll initial and that says I
- 3 understand?
- 4 A. Yes.
- 5 Q. And that's after they verbally told you that?
- 6 A. Yes.
- 7 Q. And they are asked after you read them all the
- 8 instructions to sign the form?
- 9 A. They are --
- 10 Q. He or she?
- 11 A. Yes, signs this form after the lineup has been
- 12 shown.
- 13 Q. And he prints his full name on it, too, right?
- 14 A. Yes.
- 15 Q. And there's a space for her or him to write
- 16 comments?
- 17 A. Yes. Uh-huh.
- 18 Q. And this case was a little unique, wasn't it,
- 19 because you had a translator?
- 20 A. I wouldn't -- I mean, he assisted him but he was
- 21 not a translator.
- 22 Q. Okay. And this was Dhruval Patel?
- 23 A. Yes, the son. Uh-huh.
- 24 Q. You asked him to help you to help his father
- 25 understand?

1 A. Yeah. I said, Would you assist your dad in case I
2 come across something that he has difficulty
3 understanding, and he did that.

4 Q. Okay. So you would read each paragraph or sentence
5 to Dhruval or to the dad?

6 A. To the dad.

7 Q. Okay. And then Dhruval would translate?

8 A. No, not necessarily.

9 Q. Okay. So he didn't translate every single one of
10 the seven?

11 A. No.

12 Q. But he did translate some of them to his dad?

13 A. I can't -- I know that there was communication but
14 I don't know at what point or which one he translated or
15 assisted him.

16 Q. You didn't do a report in the case, right?

17 A. Well, this is the report.

18 Q. Okay. You didn't do another report other than
19 that?

20 A. Well, this is the only involvement I had with it.

21 Q. Okay. And, I mean, you know how to write a report,
22 correct?

23 A. Well, of course.

24 Q. You write reports all the time?

25 A. Of course.

1 Q. That's probably -- you spend most of your time
2 writing reports?

3 A. Yes.

4 Q. So you know how to do one, right?

5 A. Yes. Uh-huh.

6 Q. And you didn't document on that piece of paper
7 anywhere saying which ones Dhruval helped and which ones
8 he didn't help on?

9 A. Well, he was communicating. I don't speak that
10 language.

11 Q. Hindi.

12 A. So I don't know exactly what was being said to him.

13 Q. Okay.

14 A. So it's hard for me -- I mean, throughout the
15 process he was communicating with him. I don't know if
16 it was relating to this or relating to something else.
17 So I think it would be --

18 Q. But you didn't make any notes about when Dhruval
19 was talking about a particular sentence or not --

20 A. No.

21 Q. -- did you?

22 A. No, I didn't.

23 Q. And you started the procedure at 3:01, correct?

24 A. Yes.

25 Q. And that's on the form with the questions that says

- 1 when you started and it's written right on there, 3:01?
- 2 A. Yes.
- 3 Q. And you wrote that?
- 4 A. Yes. That's my handwriting.
- 5 Q. And then Mr. Patel, you read all the instructions,
- 6 correct?
- 7 A. Yes.
- 8 Q. He indicated that he understood them all?
- 9 A. Yes.
- 10 Q. And Dhruval was talking to him during this
- 11 sometimes?
- 12 A. Yes.
- 13 Q. And he circled -- he looks at the photo lineup?
- 14 A. Yes.
- 15 Q. He circles number four?
- 16 A. Yes.
- 17 Q. And then he writes the time?
- 18 A. Yes.
- 19 Q. And that was 3:05?
- 20 A. Yes.
- 21 Q. Okay. Now, the policy also instructs you not to
- 22 provide any feedback to the witness, correct?
- 23 A. Yes.
- 24 Q. And you didn't give any feedback in this case?
- 25 A. No.

1 Q. It also instructs you to ask the witness to provide
2 a level of confidence, correct?

3 A. Yes. Uh-huh.

4 Q. And you didn't ask for a level of confidence in
5 this case?

6 A. He was adamant, but I did not. If your question is
7 -- I did not.

8 Q. You didn't ask him that question?

9 A. No.

10 Q. Your policy also says that you are to instruct them
11 not to discuss the case with other witnesses.

12 A. Uh-huh.

13 Q. Including the media, right?

14 A. Yes.

15 Q. And that's important because you don't want people
16 to influence each other?

17 A. Yes.

18 Q. Witnesses to influence each other?

19 A. Yes.

20 Q. Or some other outside person influencing the
21 witness?

22 A. You are correct.

23 Q. And you told him that in this case?

24 A. Uh-huh.

25 Q. Both Dhruval and Mr. Patel?

1 A. Yes.

2 Q. Now, finally, your policy has a paragraph about
3 documenting procedures, right?

4 A. I'm sorry?

5 Q. Your policy has a paragraph about how to document a
6 lineup procedure?

7 A. Yes.

8 Q. And you were supposed to document it by saying the
9 source of the photos used?

10 A. What do you mean?

11 Q. You're supposed to document where the photos came
12 from, right?

13 A. Yeah, not me, the case agent.

14 Q. Okay.

15 A. Yeah. The only thing that I'm here to do was
16 administer the lineup. Outside of that, you would have
17 to discuss that with Detective Lawrence?

18 Q. Okay. Do you have a copy of your -- the policies
19 for Charleston County?

20 A. No, I do not.

21 Q. If you took a look -- if I showed you a copy would
22 that refresh your recollection on whether -- how you're
23 supposed to document your procedures?

24 A. It may be helpful.

25 MR. GROEBER: Okay. Your Honor, may I approach the

1 witness?

2 THE COURT: You may.

3 BY MR. GROEBER:

4 Q. I'm handing you what's been marked as Defense
5 Exhibit 2. Do you recognize that?

6 A. It looks familiar.

7 Q. What is it?

8 A. I'm sorry?

9 Q. What is it?

10 A. It's the policy.

11 Q. Okay. The Charleston County Sheriff's Office
12 policy?

13 A. Yes.

14 Q. And specifically the policy on show-ups, photo
15 identification and lineups?

16 A. Yes.

17 Q. And I think you testified earlier that you were the
18 independent administrator in this lineup, right?

19 A. Uh-huh.

20 Q. I refer you to page six of 11.

21 A. Okay.

22 Q. Paragraph 16, and I'd ask you to read that and look
23 up when you are finished, please.

24 A. The independent administrator will document all
25 lineup procedures including the source and photos used,

1 the date and time the lineup was conducted and the names
2 of all persons present when the lineup was shown.

3 Any lineup that an independent administrator shows
4 to a witness regardless of whether the witness makes
5 identification of the suspect will become part of the
6 investigative file.

7 And in the case of the sequential lineup, will
8 include documentations as to the order of which photos
9 were shown to the witness.

10 Q. Okay. So your policy contemplates that you
11 document all the procedures used in the lineup, right?

12 A. Yes. Uh-huh.

13 Q. And what you did, you thought to fulfill that that
14 you just filled out -- helped Mr. Patel fill out the
15 form, right, with the instructions?

16 A. Yes. Yes. Uh-huh.

17 Q. The sheriff's office has access to a video camera,
18 right?

19 A. Yes.

20 Q. And recording devices like audio recording, tape
21 recorders?

22 A. Of course, yeah.

23 Q. And you did not use any video or audio to record
24 this particular lineup?

25 A. No.

1 MR. GROEBER: May I have one moment, Your Honor?

2 THE COURT: You may.

3 MR. GROEBER: No further questions. Thank you,

4 Your Honor.

5 BY MR. GROEBER:

6 Q. Thank you, Detective.

7 A. Yes.

8 THE COURT: Mr. Durant?

9 MR. RUTLEDGE DURANT: Briefly.

10 REDIRECT EXAMINATION

11 BY MR. RUTLEDGE DURANT:

12 Q. The six-pack photo array, that's one identification
13 procedure; is that correct?

14 A. That's correct.

15 Q. There are other procedures?

16 A. That's correct.

17 Q. What are some of the other procedures that you've
18 ever conducted or that you are aware of?

19 A. You mean as far as the photos being shown?

20 Q. As far as just a witness identifying somebody.

21 A. We've done numerous different kinds; physical,
22 we've done sequential. I mean, it's numerous lineups
23 that we've done. Just in this one we did a six-picture
24 lineup.

25 Q. Ever had the opportunity to just show one single

1 picture to a witness?

2 A. Oh, of course.

3 Q. And in what situation would that more commonly be
4 done?

5 A. That would be done if, for instance, they've known
6 them for an extended period of time, that would be done.

7 Q. And that they've told you their name?

8 A. Yes.

9 Q. Maybe commonly a wife saying my husband did this?

10 A. Yes.

11 Q. But there are a lot of different ways to go about
12 doing it, right?

13 A. That's correct.

14 Q. Did you think that you had suggested in any way
15 that Mr. Patel needed to pick out number four?

16 A. No.

17 MR. RUTLEDGE DURANT: Thank you.

18 MR. GROEBER: No further questions, Your Honor.

19 THE COURT: You may step down. Thank you.

20 THE WITNESS: Thank you.

21 THE COURT: Call your next witness.

22 MR. RUTLEDGE DURANT: The State calls Jagruti
23 Patel.

24 THE COURT: Madam Interpreter, if you'd come
25 forward. I remind you that you are still under oath.

1 MR. GROEBER: Your Honor, at this time I'd renew my
2 pretrial objections.

3 THE COURT: Thank you. They are so noted.

4 Ma'am, please come forward and take the oath.

5 JAGRUTI PATEL, after having been duly sworn,
6 testified as follows:

7 THE CLERK: Please be seated. Speak into the mic
8 and please say your full name and spell your last name.

9 THE WITNESS: Jagruti Patel, P-a-t-e-l.

10 THE COURT: Mr. Durant.

11 MR. RUTLEDGE DURANT: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. RUTLEDGE DURANT:

14 (Through the interpreter.)

15 Q. Mrs. Patel, how old are you?

16 A. Thirty-nine.

17 Q. Do you live in Charleston?

18 A. Yes.

19 Q. Where were you born?

20 A. India.

21 Q. When did you come to the United States?

22 A. October 11th, 2003.

23 Q. Why?

24 A. For job and family.

25 Q. Are you married?

- 1 A. Yes.
- 2 Q. Who is your husband?
- 3 A. Natubhai Patel.
- 4 Q. How long have you been married?
- 5 A. Seventeen years.
- 6 Q. Do you have any children?
- 7 A. Yes, two children.
- 8 Q. How old are they?
- 9 A. One of them is 14 and the other is six.
- 10 Q. What do you do for a living?
- 11 A. Behind the register at a store.
- 12 Q. Where is that store located?
- 13 A. 5737 Savannah Highway, Ravenel.
- 14 Q. Do you and your husband own that store?
- 15 A. Yes.
- 16 Q. How long have you owned it?
- 17 A. Four years.
- 18 Q. Do you also work at the store?
- 19 A. Yes.
- 20 Q. And what do you do when you work at the store?
- 21 A. Behind the register.
- 22 Q. Do you interact with customers?
- 23 A. Yes.
- 24 Q. Do you sell things to customers?
- 25 A. Yes.

- 1 Q. I want to take you back to December 24th, 2010.
- 2 A. Okay.
- 3 Q. Do you recall going to the store that morning?
- 4 A. I was at home.
- 5 Q. Did you go to the store that morning?
- 6 A. After my husband called I went there.
- 7 Q. What was going on at the store when you got there
- 8 that morning?
- 9 A. My husband called to tell me about a robbery that
- 10 had taken place, so I just went there, to the store.
- 11 Q. Who did you go with?
- 12 A. With my older son, Dhruval.
- 13 Q. Why did Dhruval go to the store?
- 14 A. He was the only one knowledgeable about the video
- 15 processes.
- 16 Q. And your store has a video surveillance system?
- 17 A. Yes.
- 18 Q. Did this video surveillance system capture the
- 19 robbery at the store?
- 20 A. Yes.
- 21 Q. Did you view this video?
- 22 A. Yes.
- 23 Q. When did you view it?
- 24 A. When I went to the store.
- 25 Q. Who all was around when you viewed it the first

- 1 time?
- 2 A. My husband, myself, my son, and the police.
- 3 Q. Did you recognize the man in the video?
- 4 A. Yes.
- 5 Q. What was the man doing in the video that you
- 6 recognized?
- 7 A. He walked into the store with a gun and asked my
- 8 husband for money.
- 9 Q. Had you seen that man before?
- 10 A. Yes. I've seen him before. He used to come.
- 11 Q. Where had you seen him?
- 12 A. At my store. He used to come.
- 13 Q. How often did he come to your store?
- 14 A. At least once a day.
- 15 Q. For how long?
- 16 A. I don't remember very well but around six months.
- 17 Q. So to be clear, your testimony is that you remember
- 18 the man in the video coming to your store every day for
- 19 approximately six months?
- 20 A. Yes, he would come regularly.
- 21 Q. What would he do when he would come to the store?
- 22 A. He would come buy Newport cigarettes, ten-dollar
- 23 lottery tickets, and sometimes gas.
- 24 Q. Would you sell these items to him?
- 25 A. Yes.

1 Q. Would you ever speak with him?

2 A. Yes, I would talk to him because it is my job to
3 check the identification of the person who buys
4 cigarettes and I would ask him for his ID, and he would
5 joke about Obama having signed his ID.

6 Q. Are you certain that you recognized the man in the
7 video as the man who would buy all of these items from
8 you at your store?

9 A. Yes.

10 Q. And when he would purchase these items from you at
11 the store would you see his face?

12 A. Yes.

13 Q. Would you not only hear him talk but see him talk?

14 A. Yes.

15 Q. Did you have an opportunity at those times to see
16 the man walk?

17 A. Yes.

18 Q. And is it your testimony that the man in that video
19 was someone that you had seen often?

20 A. Yes.

21 Q. Did you recognize the man in the video as a regular
22 customer?

23 A. Yes.

24 Q. How quickly did you recognize that fact when you
25 saw the video the first time?

1 A. We watched the video about four or five times, me
2 and my husband, and talked about it and then we were very
3 sure that this was the man.

4 Q. Are you certain that the man that you saw in that
5 video is your regular customer?

6 A. Yes.

7 Q. Is there any doubt in your mind that he was a
8 regular customer in your store?

9 MR. GROEBER: Objection, Your Honor. Asked and
10 answered.

11 THE COURT: I'm going to allow this question.
12 Thank you.

13 You may answer.

14 A. He is that man.

15 Q. Is there any doubt in your mind the man that you
16 saw on that video was the man who had joked with you
17 about Obama having signed his license?

18 A. He is that man.

19 Q. Do you know that because your husband told you it
20 was that man or do you know that because of your previous
21 experience with that man?

22 MR. GROEBER: Objection, leading.

23 MR. RUTLEDGE DURANT: It's not.

24 THE COURT: Counsel. Overruled.

25 You may answer.

1 MR. RUTLEDGE DURANT: Let me repeat it.

2 BY MR. RUTLEDGE DURANT:

3 (Through the interpreter.)

4 Q. Do you know that the man in that video was your
5 regular customer because your husband told you it was
6 your regular customer or because of your previous
7 experience with that man?

8 A. I realized it myself.

9 Q. Do you see your regular customer, the man that you
10 saw in that video in this courtroom today?

11 MR. GROEBER: Objection, Your Honor, previously
12 made.

13 THE COURT: You may answer.

14 Overruled, subject to our previous rulings.

15 THE INTERPRETER: Could you ask it again, please?

16 BY MR. RUTLEDGE DURANT:

17 (Through the interpreter.)

18 Q. Do you see the man that you recognized as your
19 regular customer who is the same man in that video in
20 this courtroom today?

21 A. Yes, he's here.

22 Q. Please point to him and describe what he is
23 wearing.

24 A. (Indicated). That's him in the white shirt and
25 tie.

1 MR. RUTLEDGE DURANT: Let the record reflect that
2 the witness has identified the defendant.

3 THE COURT: It will.

4 I'll note your exception. Thank you.

5 BY MR. RUTLEDGE DURANT:

6 (Through the interpreter.)

7 Q. Mrs. Patel, are you certain that this man was your
8 regular customer who bought Newport cigarettes from you,
9 lottery tickets from you, sometimes gasoline, and joked
10 with you that Obama had signed his license?

11 A. Yes.

12 Q. Is there any doubt in your mind?

13 A. No.

14 Q. And is that the same man that you recognize as
15 being in that video?

16 A. Yes.

17 Q. And do you know that because your husband told you
18 that or do you know that based on your previous
19 experience with him?

20 MR. GROEBER: Objection, leading.

21 THE COURT: Overruled, as to leading.

22 A. I know he's my regular customer.

23 MR. RUTLEDGE DURANT: Thank you.

24 THE COURT: Mr. Groeber?

25 MR. GROEBER: Thank you, Your Honor. May it please

1 the Court.

2 CROSS-EXAMINATION

3 BY MR. GROEBER:

4 (By the interpreter.)

5 Q. Good morning, Mrs. Patel.

6 A. Good morning.

7 Q. I'd like to ask you a few questions about your
8 testimony today.

9 A. Okay.

10 Q. You were not at the scene at the time of the
11 robbery?

12 A. I wasn't there.

13 Q. You received a phone call from your husband that
14 morning?

15 A. Yes.

16 Q. And he told you that there had been a robbery?

17 A. Yes.

18 Q. And he told you on the phone that he recognized the
19 man that had robbed him?

20 A. He didn't tell me that on the phone.

21 Q. You watched the video when you got to the gas
22 station?

23 A. Yes.

24 Q. And you were in the office in the gas station?

25 A. Yes.

- 1 Q. And your son, Dhruval, was there?
- 2 A. Yes.
- 3 Q. And your husband was there?
- 4 A. Yes.
- 5 Q. And there were two police officers there?
- 6 A. Yes.
- 7 Q. You all watched the video that morning?
- 8 A. Yes.
- 9 Q. Several times?
- 10 A. Yes.
- 11 Q. And you and your husband spoke about the video?
- 12 A. Yes. We watched it and I was sure that that was
- 13 that man.
- 14 Q. But you all discussed it together?
- 15 A. We have a business so we had to work.
- 16 Q. And my question is, you and your husband talked --
- 17 I think you testified earlier that you and your husband
- 18 looked at the video together and talked about it
- 19 together?
- 20 A. We did not have a very long discussion about it
- 21 because we have a business and we had to go back to it.
- 22 Q. But you did talk about it?
- 23 A. Yes, we did talk but not for too long.
- 24 Q. And it's your testimony that on that day you
- 25 recognized who the robber was?

- 1 A. Yes, I knew him.
- 2 Q. And you told the police that?
- 3 A. Yes.
- 4 Q. You watched the video several times that day,
- 5 you've already said.
- 6 A. Yes.
- 7 Q. And you watched it several times after that day?
- 8 A. I didn't watch it more than four or five times
- 9 because I have a business and I have housework to do.
- 10 Q. Okay. And I'm not asking about the day of the
- 11 robbery. I'm asking the days after the robbery if you
- 12 watched it anymore.
- 13 A. I don't remember very well how many times I watched
- 14 it after that day.
- 15 Q. Now, you testified that you recognized my client as
- 16 the customer and the person in the video, correct?
- 17 A. Yes.
- 18 Q. And the video that you watched you saw only the
- 19 front door?
- 20 A. Yes.
- 21 Q. You didn't see any video other than one that showed
- 22 the front door?
- 23 A. There was no need for me to watch any of the video
- 24 because as soon as I saw this video I recognized the man.
- 25 Q. How did you recognize him from that video?

- 1 A. By his walk.
- 2 Q. Anything else?
- 3 A. His walk, his mannerisms and his body language.
- 4 Q. You testified about this matter under oath before,
- 5 correct?
- 6 A. Yes.
- 7 Q. And I asked you that same question.
- 8 A. Yes.
- 9 Q. And you said in that testimony that you recognized
- 10 him by his voice.
- 11 A. He used to come almost every day to my store and I
- 12 could make out the way he walked and talked, based on
- 13 that.
- 14 Q. And my question to you is I asked you this -- I
- 15 have asked you before about this, correct?
- 16 A. Yes.
- 17 Q. And you were under oath?
- 18 A. Yes.
- 19 Q. And you said that you recognized his voice?
- 20 A. Yes. I said that I recognized his voice and the
- 21 way he walked.
- 22 Q. When you watched the video on the day of the
- 23 robbery was there any sound?
- 24 A. I did not say that I recognized the voice from the
- 25 video. I was referring to the fact that I knew how he

1 talked and how he walked when I saw the video based on my
2 previous experience with the man.

3 Q. Okay. My question was when you watched the video
4 on the day of the robbery did you hear any sound?

5 A. No.

6 MR. GROEBER: May I have one moment, Your Honor?

7 THE COURT: You may.

8 (PAUSE.)

9 BY MR. GROEBER:

10 (Through the interpreter.)

11 Q. Do you remember when I asked you that question
12 before?

13 A. Yes.

14 Q. And you were under oath?

15 A. Yes.

16 Q. And you said that you could not remember if there
17 was sound?

18 A. But now I'm saying that I am recollecting that he
19 used to come to my store all the time and I was familiar
20 with his voice and the way he talked. That's why I'm
21 telling you now.

22 Q. Okay. But you did not remember the previous time
23 that you did testify?

24 A. I did say I knew that I was familiar with the way
25 he talked and walked based on my previous experience with

1 him.

2 Q. And you said -- and I'd like to talk a little bit
3 about your previous experience. Do you remember what
4 kind of shoes your regular customer who joked about Obama
5 wore?

6 A. There are too many customers who come to my store
7 and I don't look at all of their shoes.

8 Q. When you --

9 MR. GROEBER: May I have one moment, Your Honor?

10 THE COURT: Take all the time you need.

11 BY MR. GROEBER:

12 (Through the interpreter.)

13 Q. You testified earlier that the person who came in
14 your store frequently, who you think is my client, would
15 buy cigarettes?

16 A. Yes.

17 Q. And you always identified -- you asked for his ID?

18 A. Yes.

19 Q. Mrs. Patel, you testified that you recognized my
20 client from the video?

21 A. Yes.

22 Q. And in the video the robber was wearing a hat,
23 sunglasses, and a hoodie jacket?

24 A. Yes.

25 Q. Do you believe that you could look at a photograph

1 of a young black man wearing sunglasses and a hoodie over
2 his head and tell if it is my client?

3 MR. RUTLEDGE DURANT: Objection.

4 THE COURT: She may answer that question.

5 A. Why would I want to see another photograph?

6 Q. Do you believe that you can look at another
7 photograph of a young black man wearing sunglasses and a
8 hoodie over his head and tell if it is my client?

9 A. When we are talking about this man why would I want
10 to look at a picture of another man?

11 MR. GROEBER: One moment, Your Honor.

12 THE COURT: Yes, sir.

13 (PAUSE.)

14 BY MR. GROEBER:

15 (Through the interpreter.)

16 Q. Mrs. Patel, today you've identified my client,
17 Marvin Green, as the person who robbed you in the store,
18 correct?

19 A. Yes.

20 Q. And you never -- the police never gave you a set of
21 pictures to look at, did they?

22 A. No.

23 Q. Now, I'd like you to look around in the courtroom
24 and other than the jury box how many young black men are
25 in the courtroom right now?

1 A. Why should I look?

2 MR. GROEBER: Your Honor, I'd ask that you instruct
3 the witness to answer the question, please.

4 THE COURT: Mrs. Patel, I need you to answer the
5 question.

6 A. Why are they asking me this?

7 THE COURT: Mrs. Patel, I need you to answer that
8 question.

9 A. I do not know why you are asking me this question.
10 If you tell me why you are asking me this question maybe
11 I will answer it.

12 Q. It's true that there is only one young black male
13 in the courtroom right now?

14 A. I never said that.

15 Q. You pointed out Mr. Green who's sitting at this
16 table, correct?

17 A. Yes.

18 Q. And he's not sitting at this table where the
19 solicitors are sitting at, is he?

20 A. No.

21 MR. GROEBER: One moment, Your Honor?

22 THE COURT: Yes, sir.

23 MR. GROEBER: No further questions.

24 Thank you, Mrs. Patel.

25 THE COURT: Mr. Durant?

1 REDIRECT EXAMINATION

2 BY MR. RUTLEDGE DURANT:

3 (Through the interpreter.)

4 Q. Do you want to be tricked?

5 A. No, I never want that.

6 Q. Why are you here saying what you are saying?

7 A. I don't understand you very well.

8 Q. Are you here to tell the truth?

9 A. Yes.

10 Q. Are you here to tell the jury that you are certain
11 that this is the man you recognized on the video?

12 A. Yes.

13 Q. If you were not certain would you tell that to the
14 jury?

15 A. But I have not doubts. He is that man.

16 Q. But if you did only merely think it was your
17 regular customer would you tell that to the jury?

18 A. I don't even have the slightest doubt.

19 MR. RUTLEDGE DURANT: Thank you.

20 THE COURT: Mr. Groeber?

21 MR. GROEBER: Nothing further, Your Honor.

22 THE COURT: You may step down. Thank you.

23 Call your next witness.

24 MR. RUTLEDGE DURANT: Your Honor, at this time the
25 State rests its case.

1 MR. GRIMES: I just need one point of clarification
2 on some exhibits.

3 THE COURT: Yes.

4 MR. GRIMES: I know there was an issue on the
5 booking photo.

6 THE COURT: I have your case. I had requested a
7 case. Based upon my understanding of the admissibility
8 of why it was asked to be requested -- that's State's
9 Number 5, Madam Court Reporter?

10 I thought you all were going to give me a better --

11 MR. GRIMES: Well, I believe they have rested now,
12 Your Honor.

13 THE COURT: I'm sorry?

14 MR. GRIMES: I believe that they have rested.

15 THE COURT: No. We had talked about it yesterday
16 that they were going to get one that was in conformity
17 with the size. Not a different picture but in conformity
18 with the size, after redacted pursuant to my
19 understanding of the case, prior to giving it to me.

20 MR. GRIMES: I don't recall. Was it admitted, not
21 allowed to be published or --

22 THE COURT: It was admitted, not published until it
23 was redacted and --

24 MR. GRIMES: Well, at the State's case we did
25 object to the photo coming in but do understand the

1 Court's ruled.

2 THE COURT: Do you have an objection to that
3 photograph?

4 MR. GRIMES: Yes, ma'am.

5 THE COURT: I understand you have an objection to
6 all of it but, Mr. Grimes, a black and white was shown
7 yesterday now this is a color.

8 MR. GRIMES: I mean, the State's exhibit -- I
9 forget which number it was.

10 THE COURT: Five.

11 MR. GRIMES: Five was shown to the jury.

12 THE COURT: It was not shown to the jury.

13 MR. GRIMES: And we believe we have sort of a front
14 picture, side pictures. Any jury can -- any reasonable
15 juror can infer that's a booking photo.

16 THE COURT: But that's not standard, is it? That's
17 not what I'm concerned with. We can infer anything from
18 anything and the case that you provided indicates that it
19 was a different type of photo. It was the actual booking
20 photo. We all know that he was arrested and there was
21 indication that he was booked, and the case that you
22 provided me it was from a -- the date was around his neck
23 on his booking photo, which was prior to the arrest that
24 he was being tried for.

25 MR. GRIMES: Yes, Your Honor. Basically, when you

1 look at the three factors in the case we don't believe
2 the evidence need to introduce the photograph.

3 THE COURT: The reason that they indicated to the
4 Court that they needed it is because they needed a side
5 profile picture. When we approached at the bench there
6 was a discussion, because I'm not sure if it was on the
7 record, there was a discussion on what would be
8 admissible.

9 Mr. Groeber indicated that his major objection was
10 to the top and to the bottom row because it clearly then
11 indicated that it came from Charleston County. There's
12 absolutely no distinguishing marks on the remaining two
13 photographs. There's nothing to indicate that they --
14 he's in a jail suit or anything around the neck as in the
15 case that you provided, and so I made the decision to cut
16 the top and the bottom off of those pictures. So back to
17 my initial question, Mr. Grimes.

18 MR. GRIMES: Yes, ma'am.

19 THE COURT: They have a larger picture of what I
20 have had redacted. Okay. So it's now -- that picture is
21 a full page. There was an objection because during the
22 redaction now it's a smaller page.

23 MR. GRIMES: Yes, ma'am.

24 THE COURT: So which would you prefer me,
25 preserving all of your objections, give the bigger page

1 so that it's in conformity with all the other paper page
2 sizes or the smaller page that's black and white?

3 MR. GRIMES: Preserving everything we prefer the
4 bigger photo to go back.

5 THE COURT: All right. If we will, just so the
6 record is clear, we will mark that as 5-A. Five does not
7 go back.

8 Did you understand, Mr. Grimes? Did you hear what
9 I said?

10 MR. GRIMES: They are substituting the --

11 THE COURT: I'm not substituting because I want the
12 record to be thoroughly preserved. This will be 5-A, and
13 5, the redaction that I did cutting, it will not go back
14 but it will remain as 5. The one 5-A will go back.

15 MR. GRIMES: Thank you.

16 (WHEREUPON, State's Exhibit Number 5-A, a
17 Photograph, was marked and admitted into evidence.)

18 THE COURT: Thank you. Anything further before we
19 break for lunch?

20 MR. RUTLEDGE DURANT: Nothing from the State.

21 MR. GROEBER: Nothing from the defense.

22 THE COURT: All right. Mr. Green, please stand.

23 Sir, I remind you that you are still under oath.
24 Do you remember me placing you under oath yesterday?

25 THE DEFENDANT: Yes, ma'am.

JENNIFER BEAUDRY - DIRECT BY MR. GROEBER 593

1 MR. GRIMES: I have no questions.

2 THE COURT: You may step down. Thank you.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Call your next witness.

5 MR. GROEBER: Thank you, Your Honor. The defense
6 would call Dr. Jennifer Beaudry.

7 THE COURT: Come forward and be sworn. Is it
8 Dr. Beaudry?

9 THE WITNESS: It is.

10 DR. JENNIFER BEAUDRY, after having been duly
11 sworn, testified as follows:

12 THE CLERK: If you'll please speak into the mic and
13 state your full name and spell your last name for the
14 record.

15 THE WITNESS: Jennifer Beaudry, B-e-a-u-d-r-y.

16 DIRECT EXAMINATION

17 BY MR. GROEBER:

18 Q. Good afternoon, Dr. Beaudry.

19 A. Good afternoon.

20 Q. How are you?

21 A. I'm good.

22 Q. Good. Please tell the jury what your occupation
23 is.

24 A. I'm an assistant professor of psychology.

25 Q. Where do you Teach?

1 A. At the University of South Carolina Beaufort.

2 Q. Which campuses, are there one or two campuses?

3 A. There are two my campuses. My office is on the
4 Bluffton Campus but I teach at both campuses.

5 Q. All right. How long you been at USC Beaufort?

6 A. Since 2008.

7 Q. Please describe for the jury your educational
8 background.

9 A. I have my Bachelor of Arts in Psychology, and I
10 earned that in 2000 from the Laurentian University which
11 is in Sudbury, Ontario, Canada. Then in 2002 I started
12 my graduate studies and I earned my Master's in Social
13 Psychology from Queens University in 2004, and then in
14 2008 I earned my Ph.D. in Social Psychology as well, also
15 from Queens University.

16 Q. What did you write your dissertation about in order
17 get your Ph.D.?

18 A. I wrote my dissertation about eyewitness
19 identification procedures and people's perceptions of
20 those procedures, whether they believe them or not.

21 Q. What classes do you teach at the University of
22 South Carolina Beaufort?

23 A. I teach a number of different classes, introduction
24 to psychology, I teach social psychology, I teach
25 research methods, then I also teach a special topics

1 course on psychology in the law.

2 Q. What type of topics or issues do you deal with in
3 your courses on -- well, that you deal with in your
4 courses?

5 A. I deal with so many different topics but relevant
6 to this issue I focus on eyewitness identifications, the
7 different procedures police use with eyewitnesses,
8 different tricks that our memories can play on us and
9 also people's belief of that evidence.

10 Q. Do you supervise any students?

11 A. I do. I have a research laboratory at the
12 University of South Carolina Beaufort and I supervise
13 about two students every semester who conduct research
14 with me.

15 Q. Do you have any areas of specialization in the
16 general area of psychology?

17 A. I do. Social psychology is my general area, then
18 specifically my research is eyewitness identifications
19 and eyewitness memory.

20 Q. When you speak of eyewitness identification tell
21 the jury what you mean.

22 A. Eyewitness identification refers to somebody's
23 ability to remember somebody that they had previously
24 seen, recall information about an event, and also
25 recognize somebody that they may have previously seen.

1 Q. Now, does that include voice recognition by
2 witnesses as well?

3 A. It does.

4 Q. Have you written any articles or book chapters on
5 these topics?

6 A. I have.

7 Q. What are some of the articles that you've written?

8 A. One recent article looked at disguise and how that
9 affects your ability to recognize somebody. Another
10 article -- two articles, actually, looked at the
11 difference between simultaneous and sequential lineup
12 procedures and how they affect witnesses, and another
13 article looked at the police procedures that were used by
14 Ontario police and whether or not they were practicing
15 current best standards.

16 Q. Have all of your articles been peer reviewed?

17 A. They have.

18 Q. Can you explain to the jury what peer review means.

19 A. Yeah. Basically peer reviewed means that before
20 the manuscript is accepted for publication, right before
21 the paper you've written is accepted for publication it's
22 sent out to a panel of experts in your area so they can
23 evaluate it, and they evaluate how the study was
24 conducted, they evaluate the statistical tasks that you
25 used in that study to make sure that was appropriate and

1 they also evaluate the conclusions that you've drawn
2 based on that study, whether or not what you conclude is
3 actually valid based on what the study found.

4 Q. What are some examples of original research that
5 you've done?

6 A. I've done over two dozen studies in this area of
7 psychology in the law looking at the effect of disguise,
8 looking at distinguishing characteristics and how that
9 will affect eyewitnesses.

10 I've looked at trying to determine or trying to
11 create new ways of conducting police procedures to see if
12 we can get even better than what we already have. I've
13 also looked at different methodological issues regarding
14 lineup fairness and things like that.

15 Q. Have any of your studies been funded by national
16 agencies?

17 A. They have. My dissertation was funded -- it was
18 conducted in Canada and it was funded by the Social
19 Sciences and Humanities Research Counsel of Canada, and
20 then I've also done a study funded by The National
21 Science Foundation looking at attorneys' perceptions of
22 eyewitness evidence and how that affects their plea
23 bargaining decisions.

24 Q. How do you stay current in your field?

25 A. I talk with colleagues, I publish my own research,

1 I read other people's research, and I also attend
2 conferences every year.

3 Q. Have you ever testified in court before?

4 A. I have not. This is my first time.

5 MR. GROEBER: May I approach the witness, Your
6 Honor?

7 THE COURT: You may.

8 MR. GROEBER: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MR. GROEBER:

11 Q. I'm going to hand you what's been marked as
12 Defendant's Exhibit Number 1. Tell me if you recognize
13 that.

14 A. I do.

15 Q. What is it?

16 A. It is my CV, which is my academic resumé.

17 Q. Does it fairly and accurately portray your
18 educational work experience, articles you published, and
19 the training that you described for the jury?

20 A. It does.

21 MR. GROEBER: Your Honor, I'd move to admit
22 Dr. Beaudry's CV into evidence.

23 MR. RUTLEDGE DURANT: There is no objection, and
24 the State would actually consent to Dr. Beaudry being an
25 expert in this field.

1 MR. GROEBER: And that was my next question, to
2 have her admitted as an expert in human memory and
3 eyewitness identification.

4 THE COURT: Defense 1 into evidence without
5 objection.

6 (WHEREUPON, Defendant's Exhibit Number 1, the CV of
7 Dr. Beaudry, was admitted into evidence.)

8 THE COURT: And the specific area, Mr. Groeber,
9 that you wish --

10 MR. GROEBER: Human memory and eyewitness
11 identification.

12 THE COURT: And, Mr. Durant, you have no objection?

13 MR. RUTLEDGE DURANT: My colleague thinks that I
14 might should but I'm going to go ahead and consent.
15 Thank you.

16 THE COURT: All right. This witness will be
17 qualified in those areas as an expert and is simply
18 evidence for you to use in any way that you see fit.

19 You may continue. Thank you.

20 MR. GROEBER: Thank you, Your Honor.

21 BY MR. GROEBER:

22 Q. Dr. Beaudry, this case is about an armed robbery
23 that took place on Christmas Eve in 2010.

24 A. It is.

25 Q. Were you present at the time?

1 A. I was not.

2 Q. Have you spoken with any of the eyewitnesses?

3 A. No, I haven't.

4 Q. Are you being paid for your testimony?

5 A. I am.

6 Q. And what is your hourly rate?

7 A. I'm paid \$150 an hour.

8 Q. How does that hourly rate compare to other experts
9 in your field?

10 A. It's a little less than other experts in the field
11 because you base your hourly wage on experience, and this
12 is my first time testifying so I can't charge as much as
13 somebody who's testified in 50 different cases.

14 Q. Okay. Does the fact that my office pays you for
15 your opinion in any way influence your expert opinion or
16 the findings that you'll have or anything that you'll
17 discuss today?

18 A. No, it doesn't. My opinion is based on the
19 research.

20 Q. Doctor, you going to give any opinions about the
21 accuracy of any of the witnesses today?

22 A. No, I won't.

23 Q. Is that your role?

24 A. No, it's not.

25 Q. Why not?

1 A. My role is to educate the Court on the research in
2 this area not to comment on any of the specific
3 witnesses.

4 Q. All right. Could you give the jury -- let's kind
5 of get into memory.

6 A. Okay.

7 Q. Could you give the jury a general overview of how
8 human memory works in the context of eyewitness
9 identification?

10 A. Sure. So what we need to recognize is that memory
11 doesn't work like a video recorder, all right. There are
12 basically three general stages in the memory process.

13 So the first stage is acquisition. This is when
14 you first encounter information and it's first being
15 written into your brain. If you can think of the last
16 time you took a test, studying for that test would be the
17 acquisition phase.

18 The second phase would be the retention phase, it's
19 called, and so that refers to the period between when you
20 studied that information and -- or when you were exposed
21 to that information and when you actually have to recall
22 or remember that information. Okay. So thinking back to
23 studying for a test, it's the time between when you
24 studied that material and when you actually have to write
25 the test. That would be your retention phase.

1 And then the third stage is the retrieval phase,
2 when you actually try to recall or remember that
3 information to use that information. So when you're
4 actually writing the test, that's your retrieval stage.

5 Q. Does your research indicate, are there any common
6 misconceptions about how our memory works?

7 A. Yes, it does.

8 Q. And what are some of those common misconceptions?

9 A. A common misconception is that your memory does
10 work like a video camera, that you can just record
11 something and then play it back at a later date whenever
12 you want and have it play to the exact same thing that
13 you saw originally.

14 Another common misconception is that a traumatic
15 event would be more memorable to you, and it's true that
16 you would remember that event happened. All right.
17 You're not going to forget that somebody raped you or
18 that you witnessed a crime but you're not necessarily
19 going to be able to remember the details of that event as
20 well as you would if it was a nontraumatic episode.

21 Q. What groups of people do the studies show suffer
22 from these misconceptions?

23 A. Everybody who doesn't study this has these
24 misconceptions in general. So that includes lawyers,
25 that includes police officers who haven't taken any

1 training in memory, that includes judges, and that
2 includes juries as well.

3 Q. Doctor, has there ever been any scientific research
4 on eyewitness accuracy and the factors that affect the
5 accuracy of memory?

6 A. There has been.

7 Q. And before we discuss those I want to kind of talk
8 about how you go about doing your studies and your
9 research and how you as scientists study this area, okay?

10 A. Okay.

11 Q. What are kind of the ways that you go about
12 studying this?

13 A. There are three major ways that we approach the
14 study of eyewitness identification and eyewitness memory.

15 Q. All right. What's the first one?

16 A. The first one are laboratory studies. So in
17 laboratory studies we have generally college students.
18 We have them act as our participants. And in those
19 laboratory studies we try to control everything except
20 what we are interested in.

21 So, for example, if we're interested in the effect
22 of a weapon on your memory then we would have half of our
23 students watch a crime video in which there's a weapon
24 present and then half the students would watch a crime
25 video without a weapon, and then we would compare your

1 identification rates.

2 And so if we see a difference between the
3 identifications of somebody who watched a video without a
4 weapon and somebody who watched a video with a weapon
5 then because of the level of control that we have we can
6 generally conclude that the difference is the result of
7 the presence of a weapon.

8 Q. Why are college students used?

9 A. College students are used because the majority of
10 researchers in this area are university professors and so
11 college students are readily available to us.

12 Q. Does that in any way limit or affect the accuracy
13 of the tests and the research?

14 A. It doesn't. Memory is memory. So my memory is
15 going to be the same as your memory, or going to be the
16 same as a college student's memory. The only time it
17 would be an issue is if we are interested in a specific
18 group. Like if we are interested in children's memory
19 then we wouldn't look to college students.

20 Q. Is there another way that you kind of go about --
21 the science goes about studying this area?

22 A. There is. So the second general category looks at
23 archival studies. There's always a question as to
24 whether or not research done with college students would
25 actually apply to the real world and so then we go out

1 into the real world and do archival studies.

2 Q. When you say archival studies what do you mean?

3 A. So archival studies are studies that are done by
4 looking at existing data or existing records. So an
5 eyewitness -- an eyewitness research, the researcher
6 would go and look at police reports and police files, and
7 they would look at the identification patterns in those
8 files.

9 Q. And then what would they try to do with that
10 information?

11 A. They would try to see if we see the same general
12 patterns in real police files with real police witnesses
13 that we see in the lab, and in general they find that we
14 do.

15 Q. And those are real cases, right?

16 A. Those are real cases.

17 Q. And sometimes that includes wrongful convictions?

18 A. Sometimes that includes wrongful convictions.

19 Q. All right. What's the third way that you go about
20 studying this science?

21 A. The third way that we go about studying the science
22 is a statistical technique called a meta-analysis. So in
23 a meta-analysis if you are interested in, say, weapon
24 presence, again, let's just continue with that one, then
25 you would take all of the studies that have looked at

1 weapon presence and do an overall analysis and that way
2 you can get a sense of the general patterns that are
3 there in the data. So rather than dealing with the
4 specific manipulation in each study you get an idea of
5 how robust this finding actually is.

6 Q. So when you read -- and how broad are these
7 meta-analyses?

8 A. They include every study that's been done on that
9 issue. So it doesn't matter what country it was done in,
10 it doesn't matter what year it was done in it's going to
11 be incorporated into a meta-analysis.

12 Q. And when you read an article, or a book, or a
13 report, something that's studying human memory and
14 eyewitness identification one of these three methods
15 would be used?

16 A. Yes, that's right, as long as it's an empirical
17 study.

18 Q. Okay. Doctor, could you tell us why it is that
19 scientists are interested in studying eyewitness
20 identification and human memory?

21 A. Different scientists have different reasons for
22 studying it. Some people are just simply fascinated by
23 the process and just really want to understand how your
24 brain works. Other scientists are interested in the more
25 applied nature and so how this research can affect the

1 procedures that police actually use. But in general
2 regardless of whether you're looking to just understand
3 or whether you're looking to apply the general idea is to
4 educate people on what's actually going on.

5 Q. And what do scientists do with this information?

6 A. Scientists publish articles, of course. They also
7 educate juries. Some scientists teach prosecutors, and
8 defense attorneys, and judges about these issues. I also
9 teach all of my students in my classes about these
10 issues.

11 Q. Has the government published any reports on -- that
12 have used these laboratory results?

13 A. They have.

14 Q. And what's one of those?

15 A. One of the publications would be a publication by
16 the National Institute of Justice looking at the best --
17 the current best practice for how to conduct police
18 procedures with eyewitnesses.

19 Q. And when you say the National Institute of Justice,
20 who runs that?

21 A. The Department of Justice.

22 Q. The U. S. Department of Justice?

23 A. That's right.

24 Q. Why did the National Institute of Justice publish
25 this report?

1 A. Well, in 1998 Attorney General Janet Reno was in
2 charge and at that point I think about 28 DNA exoneration
3 cases had come forward where people were in jail for
4 crimes that they had not committed and that DNA evidence
5 demonstrated that they did not commit. And in the vast
6 majority of those cases there was a mistaken eyewitness
7 identification. So she was concerned about eyewitness
8 error and wanted to ensure that all of the science that
9 had been done for the last nearly 30 years was
10 incorporated into police procedures.

11 Q. Who did she invite to be participants in that
12 study?

13 A. She had prosecutors, she had defense attorneys, and
14 she had law enforcement officials, and she also had
15 researchers from Canada and the United States.

16 Q. Did they make any suggestions about the best
17 practices?

18 A. They did. They published an entire report on the
19 best practices.

20 Q. And you are familiar with that report?

21 A. I am.

22 Q. And they issued it based on the science, right?

23 A. That's right. They incorporated the science into
24 procedures that the police could actually conduct, so
25 they wanted to make sure that it was -- that it wasn't

1 putting an undue burden on the police officers but that
2 they could still do their job and still investigate
3 crimes.

4 Q. Let's try to get kind of into the nitty-gritty of
5 the three factors that you mentioned.

6 A. Okay.

7 Q. Acquisition, retention, and retrieval, right?

8 A. Yes.

9 Q. Let's talk about the first one, acquisition.

10 Please remind the jury what acquisition is.

11 A. So acquisition is that first stage when you are
12 first exposed to somebody or you're first studying for
13 that test.

14 Q. Are there certain factors that affect our ability
15 to acquire memories?

16 A. There are.

17 Q. What are some of those factors?

18 A. So the level of attention, how much attention
19 you're paying to something affects your ability to encode
20 that information. All right. If you're not listening to
21 me speak, you're not paying attention to me speaking then
22 you're not going to remember that information later
23 because you never brought it into your brain to begin
24 with.

25 The presence of a weapon affects your ability to

1 encode information. Whether or not somebody is wearing a
2 disguise affects your ability to encode information
3 because if my face is covered and you've never seen my
4 face then you're not going to be able to encode that
5 information into your brain.

6 How long you're exposed to something affects your
7 ability to encode that information. Whether or not the
8 perpetrator and the witness are of the same race affects
9 your ability to encode that information.

10 Q. How about the lighting?

11 A. Lighting affects your ability to encode, distance
12 affects your ability to encode.

13 Q. How about stress?

14 A. Stress affects your ability to encode. There are a
15 number of factors. The police have no control over
16 whether this happens. All right. This is just what
17 happens when the crime occurs, but all of these factors
18 play a role in your ability to acquire that information.

19 Q. What is exposure time?

20 A. Exposure time refers to how long you saw that
21 information for. So remember studying for a test? If
22 you studied for a test for half hour then your exposure
23 time or your duration would be 30 minutes.

24 Q. And when we talk about exposure time in the context
25 of eyewitness identification what are we talking about?

1 A. We're talking about how long they saw that
2 perpetrator's face for.

3 Q. Or heard their voice?

4 A. Or heard their voice.

5 Q. And how does exposure time affect accuracy?

6 A. Exposure time affects accuracy in that the longer
7 you are exposed to something the more likely you are to
8 remember it.

9 Q. How much -- you've watched the video in this case?

10 A. I have.

11 Q. How much exposure time did Mr. Patel have?

12 A. I know that the perpetrator was in the store for
13 about a minute 30 seconds but you can't see Mr. Patel on
14 the video the entire time, so I don't know if Mr. Patel
15 was looking at the perpetrator for the whole time. So I
16 can't tell how long his exposure time was.

17 Q. Let's talk about weapon focus now. Does it matter
18 if the perpetrator has a weapon?

19 A. It does.

20 Q. Okay, and how?

21 A. Some remember you have to pay attention to
22 something to encode that information. Well, it turns out
23 that a weapon draws your attention and so you focus your
24 attention on the weapon rather than focussing your
25 attention on the perpetrator's face, and so the presence

1 of a weapon actually reduces your ability to then
2 identify somebody.

3 Q. Does weapon focus affect only the person at the
4 scene of the crime?

5 A. It doesn't. So in our studies we can't put a -- we
6 can't put a weapon in our students' faces. We can't
7 threaten our students with a gun so we just show them
8 videos of people who have guns, and even in that
9 situation, even when there's no personal threat to you
10 whatsoever that weapon still draws your attention.

11 Q. All right. Let's talk about stress. I think most
12 people would think that when we're stressed we have
13 stronger memories. What does the science say about that?

14 A. The science says that that's not right.

15 Q. Okay.

16 A. So that is a general belief but it's an erroneous
17 belief. It's not supported by the science. So just like
18 the presence of a weapon reduces your identification
19 accuracy your ability to later recognize somebody's face,
20 stress has the same effect.

21 Q. Do you know of any particular studies of stress?

22 A. I do.

23 Q. Okay. What study was that?

24 A. There was a study -- well, stress is difficult to
25 study in the laboratory because we can't put our students

1 under these really stressful situations that would mimic
2 the type of stress that you would feel if somebody was
3 threatening you with a weapon, or raping you, or
4 something to that effect. All right. We just can't
5 recreate that in the lab.

6 But what we can do is partner up with people who do
7 put people under that level of stress. And so one of
8 those partners was the Army and the researchers got
9 involved in prisoner of war simulations where military
10 personnel were going through these training simulations
11 to make sure that they wouldn't crack during a prisoner
12 war interrogation.

13 And so in this Morgan 2004 study what they did is
14 they had military personnel undergo two types of
15 interrogations. One was a low stress interrogation, and
16 one was a high stress interrogation in which there was
17 even a physical confrontation between the interrogator
18 and the prisoner of war. And in this 40-minute
19 interrogation they were obviously exposed to their
20 interrogator for a long period of time.

21 A day later researchers presented them with a
22 lineup and asked them to pick out their interrogator and
23 in the low stress conditions people were pretty good at
24 that. Seven out of 10 of the prisoners of war were able
25 to recognize their interrogator.

1 But under those high stress conditions when there
2 was a lot of physiological arousal their ability to later
3 recognize their interrogator actually decreased quite a
4 bit to 37 percent. So less than 4 out of 10 of those
5 people were able to recognize somebody that was in their
6 face interrogating them, involved in a physical
7 confrontation with them for 40 minutes.

8 Q. And even when it was low stress only 7 out of 10
9 picked out their interrogator?

10 A. That's right, 7 out of 10.

11 Q. So that's a 40-minute interrogation?

12 A. That's right.

13 Q. All right. Let's talk about cross-racial issues.

14 You said that cross-racial identification affects
15 accuracy. What do you mean when you talk -- when you say
16 cross-racial identifications?

17 A. So the research shows that we're much better at
18 identifying someone of our own race than identifying
19 somebody of a different race, and this has been
20 repeatedly shown regardless of what races we're taking
21 about, so it's been shown with white witnesses to black
22 perpetrators, black witnesses to white perpetrators.
23 It's been shown with whites and Asians, and it's also
24 shown with whites and Hispanics.

25 Q. Have there ever been any specific studies about the

1 situation we have in this case where there's an Indian
2 and an African American?

3 A. There haven't been any specific studies looking at
4 the ability of an Indian witness to pick out a black
5 witness.

6 Q. But it's fair to say that in all the studies where
7 they have had some kind of cross-racial identification
8 that it has affected accuracy?

9 A. That's right. And more than that, it's not just
10 that it affects your ability to recognize somebody, it
11 also increases your chances of falsely identifying
12 somebody else.

13 Q. All right. Let's talk about disguises and how they
14 might affect your acquisition of memory. Are you
15 familiar with any studies about that?

16 A. I am. I've done one.

17 Q. All right. How did you do the study?

18 A. So in this study that we did, again, it was a
19 laboratory study so we were able to create the crime
20 videos and we had four different. We had the no-disguise
21 conditions, so you could see the person's face perfectly.
22 We had a condition in which they wore a toque. I'm from
23 Canada. So hat or beanie. All right. Something
24 covering their full -- forehead then also their hairline,
25 or they were wearing sunglasses. So that was a third

1 condition. So you could see their hair but you couldn't
2 see their eyes. Or the fourth condition was they had the
3 hat on and they were also wearing sunglasses. And so we
4 looked at all those four conditions in one study.

5 We also did a second study looking at the effect of
6 a stocking. So a woman's nylon pulled over your head to
7 varying degrees, and we looked to see whether
8 participants exposed to various videos could later
9 recognize the person from a lineup.

10 Q. All right. How did people do?

11 A. Well, they had a good exposure to our targets.
12 They saw a head-on shot. They were exposed to them for
13 about 30 seconds, clear perfect shot, and immediately
14 after that video they were asked to make their lineup
15 identification. So in the no-disguise condition they did
16 great. About 87 percent were able to recognize the
17 person that they saw.

18 Q. How about wearing the beanie?

19 A. With the beanie the -- sorry. Beanie just -- toque
20 sounds much more reasonable to me, but with the beanie
21 when they could not see their hairline their
22 identification accuracy dropped to 78 percent, so still
23 pretty good.

24 Q. How about when they were wearing glasses? And what
25 kind of glasses were they wearing? You say glasses?

1 A. Wearing sunglasses, so glasses that hid their eyes.

2 Q. All right.

3 A. When they were wearing glasses their identification
4 accuracy dropped even more, now to 69 percent.

5 Q. All right. How about when they are wearing glasses
6 and the toque or beanie?

7 A. When they wore the glasses and the hat their
8 identification accuracy dropped to the lowest rate which
9 was 55 percent.

10 Q. And you published that study?

11 A. We did.

12 Q. Okay. Where did you publish it?

13 A. We published it in Law and Human Behavior, which
14 was the journal for the American Psychology Law Society.

15 Q. And that you say was peer reviewed?

16 A. It was.

17 Q. Now, you studied you said with the hat and the
18 hairline. Tell the jury why that's important.

19 A. Well, those are important cues that we rely on when
20 we're trying to recognize somebody. All right. So in
21 general we find that you look to the outside of the face
22 then to the interior of the face. Specifically, you
23 spend a lot of time looking at somebody's eyes and you
24 use that information to then recognize them.

25 So the hat and sunglasses was actually more

1 effective as a disguise than simply pulling the stocking
2 over your face, and that we think is a really effective
3 disguise. All right. Our common sense belief is that if
4 you cover your face with a stocking and totally smush up
5 your face and obscure the cues that that would be more
6 effective. In fact it's not. The hat and sunglasses
7 were more effective.

8 Q. Okay. We talked a lot about factors that affect
9 the ability to kind of grab the memory. Let's talk about
10 some factors that affect our ability to hold onto it.

11 What's the second phase called again, of memory?

12 A. The second phase was our retention stage.

13 Q. And what's that again?

14 A. So that's the time between when you're exposed to
15 that event or that information and when you later try to
16 remember that information.

17 Q. Does the length of interval between the event and
18 the identification affect accuracy?

19 A. It does.

20 Q. How?

21 A. Basically we have what's called our forgetting
22 curve, and this applies to any type of memory that you
23 are thinking of. So we're pretty accurate immediately
24 after the event but then our accuracy drops off very
25 sharply and you see this huge decline, and that's called

1 the forgetting curve.

2 Q. How fast is this decline?

3 A. In a meta-analysis on identification accuracy
4 specifically Steve Penrod and his colleagues actually
5 found that it drops off after about two hours?

6 Q. How about the length of time -- or the length of
7 time between the event and the court case?

8 A. The same forgetting curve applies.

9 Q. Now, it makes sense that our memories get weaker
10 over time. I think probably everybody would agree with
11 that. Can they change over time?

12 A. They can change over time.

13 Q. How does that happen?

14 A. Basically any information that your are exposed to
15 during that retention interval can be incorporated into
16 your memory. So not only does your memory get weaker
17 over time but if you accept other information that's been
18 presented to you then you can actually change what you
19 think or what you remember.

20 Q. Is there a term that you use when you talk about
21 this other information?

22 A. There is. Post-event information is a general
23 term. So it's information that you've experienced after
24 the event.

25 Q. What are some sources of post-event information?

1 A. Post-event information can really come from
2 anywhere. It can come from discussions that you've had
3 with other people, it can come from reading something, it
4 can come from watching something on TV, it can even come
5 from questions that are being asked of you.

6 Q. What kind of effect does it have on memory?

7 A. It can change your memory. You can incorporate
8 somebody else's piece of information into your own
9 memory, and if that information is inaccurate, or wrong,
10 or misleading then it can change what was originally an
11 accurate memory and change it into an inaccurate memory
12 or a memory that contains inaccurate details.

13 Q. Do people realize that that's happened?

14 A. No. We have no idea. Our mind plays so many
15 tricks on us and we are never even aware that this is
16 happening.

17 Q. Can people recognize where the information even
18 comes from?

19 A. No, they can't. So in one famous study
20 participants looked at different scenes, and in one scene
21 there was a car pulled up to a stop sign. Later on
22 participants were asked -- some participants, about half,
23 were asked, Did you see the car at the yield sign?

24 All right. So we've changed one detail of the
25 event from a stop sign to a yield sign. And then later

1 on they are asked, Did you see a stop sign or did you see
2 a yield sign? And the participants who were exposed to
3 information asking about the yield sign reported the
4 wrong information about -- I think about 60 percent of
5 the time. So to further figure out if they realized that
6 their information -- or if they realized that their
7 memory has changed they asked, Did you actually see that
8 stop sign in the crime -- or in the slide? Did you see
9 it in the questionnaire or see it in both, and people
10 would report that they saw it in both.

11 So they actually believed. Not only did they just
12 incorporate that information but they believed that
13 that's what they had originally seen in the first place.

14 Q. Okay. I think I'm going to ask you to give us an
15 everyday example.

16 A. Okay.

17 Q. If you can.

18 A. I can. So I'm sitting back here trying to think
19 about what everyday event I would give because some of
20 this is esoteric and isn't necessarily real world or
21 isn't necessarily common sense, and so thinking about my
22 family, and my parents got divorced when I was very young
23 and my brother went and lived with my father. And so I
24 was two years old when this happened but this is a story
25 that my mother has told over, and over, and over again,

1 all right, but I am two.

2 The science says I could never remember what
3 happened at that time. But I picture myself sitting in
4 this orange rocking chair that we had, my blue shag rug
5 carpet because it's the 1970's, and my brother is walking
6 out dragging this garbage bag of his belongings. There's
7 no way I could remember that but because she has told it
8 so many times this is now the image I have in my head.

9 Q. When you think about that you picture yourself --

10 A. I picture myself sitting in this chair, exactly,
11 but there's no way that that's my memory.

12 Q. This post event information, it can affect the
13 reliability of eyewitness identifications?

14 A. It can.

15 Q. Could you give an example -- well, let's move on to
16 recalling the memory, and what's that called again?

17 A. Okay. That would be our retrieval phase, when
18 we're trying to remember something or use that
19 information.

20 Q. All right. And when does the retrieval stage
21 happen?

22 A. The retrieval stage happens in an eyewitness case
23 when they are trying to report that information, when you
24 are up on the stand testifying about that information or
25 when the police are presenting you with an identification

1 procedure, with a lineup.

2 Q. How about if you look at pictures from the event or
3 watch video from the event?

4 A. Yep, sure. That would be part of their -- well,
5 that's not necessarily the retrieval phase unless you are
6 being asked to make a decision about that.

7 Q. Okay. In psychological terms how do you retrieve
8 memory?

9 A. Basically every time you try to remember something
10 you're reconstructing that memory. You're bringing all
11 of information that you have about it, whether you
12 actually experienced it or whether it was presented to
13 you at some other point you're bringing that all in and
14 you are kind of reconstructing that event.

15 Q. All right. What are some of the factors that
16 affect retrieval?

17 A. So all of these factors that we've talked about,
18 anything that affects acquisition, all right, anything
19 that affects your ability to encode that information
20 affects your ability to then use that information.

21 Retention interval also affects your retrieval as
22 well. But additional factors play a role in that. So
23 the types of questions that you are being asked, that can
24 affect your retrieval. The types of pictures that are
25 being presented to you in a lineup can affect your

1 retrieval. How those pictures are presented to you can
2 affect your retrieval.

3 Q. All right. Now, has there been any studies about
4 the confidence of witnesses?

5 A. There have been.

6 Q. Okay. Is there any relationship between how
7 confident a witness is and how accurate they are?

8 A. There is a relationship but it's a weak
9 relationship. So there's a weak correlation or a weak
10 association between how confident somebody is and how
11 accurate they are. You can be very confident and be
12 wrong. You could also be right but not be very
13 confident.

14 Q. Are there any factors that can affect the
15 relationship between confidence and accuracy?

16 A. There are.

17 Q. Okay. What are those?

18 A. Simply being asked questions about your memory can
19 influence your confidence. You can become more confident
20 the more times you say something. That's part of why we
21 rehearse speeches before we have to give them. You can
22 also become more confident by receiving confirmation. By
23 realizing that somebody else thinks you're right you can
24 become more confident in your decision.

25 Q. Can you tell the jury about any real life cases

1 you've studied in which confirmation played a role?

2 A. Sure. There is the well known case of Jennifer
3 Thompson and Ronald Cotton. Jennifer Thompson --

4 MR. RUTLEDGE DURANT: Objection. May we approach?

5 THE COURT: You may.

6 (WHEREUPON, the following bench conference was
7 reported.)

8 THE COURT: What's your objection?

9 MR. RUTLEDGE DURANT: Is this a criminal case? I
10 think the case law is pretty clear we don't get into
11 specific cases or wrongful convictions.

12 MR. GROEBER: There's what?

13 MR. RUTLEDGE DURANT: The case law is pretty
14 specific we don't get into wrongful convictions on a
15 specific case. Is that where this is going?

16 MR. GROEBER: Yeah. So what's the case law?

17 MR. RUTLEDGE DURANT: I'll go get it so we're all
18 on the same page.

19 MR. GROEBER: And just for scheduling, I'm about
20 halfway through if you want to take a break now.

21 THE COURT: I'm sorry? What did you say?

22 MR. GROEBER: I said I don't know if you wanted to
23 see if the jury wanted to take a break now or --

24 THE COURT: Okay. Do you have the case?

25 MR. RUTLEDGE DURANT: I don't have it right now

1 but, I mean, maybe that shuts me down because I really
2 thought we were all on the same page with that.

3 THE COURT: It's going to take Mr. Durant a minute
4 to look for that then.

5 (WHEREUPON, the bench conference was concluded.)

6 THE COURT: Do you all need a break?

7 THE FOREMAN: Yes, ma'am.

8 THE COURT: I could see that note. Please remember
9 all of my admonitions. We are going to take about 15
10 minutes. My chambers is on the fourth floor so it takes
11 me a long time to get up and down, up and down. So we're
12 going to take 15 minutes this time. Please remember all
13 my admonitions.

14 Please rise for the jury. Thank you.

15 (WHEREUPON, the jury leaves the courtroom at
16 approximately 3:25 p.m.)

17 THE COURT: Thank you. Be seated.

18 You may not discuss your testimony with anyone.
19 That includes anyone on defense or with the State; you
20 understand?

21 THE WITNESS: I do.

22 THE COURT: All right. Thank you. You may step
23 down.

24 Fifteen minutes.

25 MR. RUTLEDGE DURANT: Thank you, Your Honor.

1 (WHEREUPON, a brief recess was taken.)

2 THE COURT: Mr. Durant, do you have case law for
3 me?

4 MR. RUTLEDGE DURANT: Your Honor, I do not. I went
5 back over to the office. I don't have the law in front
6 of me. We would simply contend that real life examples,
7 unless the doctor would be able to link it up to some
8 type of empirical research that would be used by not only
9 herself but others like her in that profession, as she
10 indicates, I believe that she could.

11 If she could lay that foundation I think it might
12 be proper at that point, but simply just to let die in
13 the courtroom that people are wrongfully convicted based
14 on eyewitness identifications and give examples of people
15 and how long they've been in prison because of it, it
16 really goes to sentencing, which is not a proper
17 consideration for the jury.

18 And we do have a case that's similar in vein, it's
19 State V. Myers, 359 S.C. 40, which essentially discusses
20 limiting the expert in the realm of false confession
21 expert testimony, which the Court viewed there and
22 limited specifics about specific cases because there was
23 no need, it wasn't relevant, didn't talk about sentencing
24 and the repercussions of a conviction, or a false
25 conviction, wrongful conviction, if you will; simply the

1 expert, I believe, is called upon to educate the Court,
2 felt what is reliable, what seems to be more accurate and
3 what is not in the realm of eyewitness identifications
4 and not give any anecdotal accounts unless they are
5 factually similar to our case.

6 THE COURT: All right. Anything? I don't need
7 anything because there's not an objection before me but I
8 think I just needed to know. My actual question to
9 Mr. Durant was do you have any case law. So there is no
10 case law so --

11 MR. BRUCE DURANT: Your Honor, we would ask you to
12 read the Myers case dealing with that issue.

13 THE COURT: We're pulling it up. Thank you.

14 Please feel free to object at the appropriate time
15 that she has testified to that you feel is inappropriate.

16 All right. Let's bring in the jury.

17 (WHEREUPON, the jury enters the courtroom at
18 approximately 3:45 p.m.)

19 THE COURT: Thank you. Be seated.

20 Yes. You may continue.

21 MR. GROEBER: Thank you, Your Honor.

22 BY MR. GROEBER:

23 Q. All right, Dr. Beaudry. We were talking about the
24 factors that affect the relationship between confidence
25 and accuracy, right?

1 A. We were.

2 Q. Part of your study includes studying real life
3 cases, right?

4 A. It does.

5 Q. And a lot of the articles and studies take real
6 life cases and draw conclusions from studying them; is
7 that correct?

8 A. They do. They take real life cases and then often
9 try to study those in the lab so that we can take from
10 one example and see if this pattern holds.

11 Q. Are there any examples that you studied and other
12 people have studied about the effect of the relationship
13 between confidence and accuracy?

14 A. Yeah. Basically every study done with eyewitness
15 identification takes a measure of confidence. So that
16 relationship is studied in every study.

17 Q. Is there a specific case example that you could
18 discuss that would help the jury understand that better?

19 A. I could.

20 Q. Okay. What would that be?

21 A. That would be the case of Jennifer Thompson and
22 Ronald Cotton. So Jennifer Thompson was a college
23 student in North Carolina, and in 1984 she was raped.
24 Somebody had broken into her apartment and raped her, and
25 while she was being raped she studied his face. She

1 wanted to study his face in case she had the chance to
2 later identify him she wanted to be able to do it.

3 So at a certain point, after about an hour and a
4 half, she convinced him to let her go and get him a glass
5 of water or something to drink, and then she ran out of
6 the house, and that's how she got away from him.

7 They created a composite so -- like a sketch of
8 the perpetrator's face, and they put that out. And based
9 on that composite somebody said, Oh, Ronald, Ronald
10 Cotton, that looks like you. You should go clear your
11 name. You should go see the police and let them know
12 that wasn't you.

13 And the investigation continued. Jennifer Thompson
14 was shown a lineup, a six-person lineup, simultaneous,
15 like you saw in this case, and from that lineup she
16 identified Ronald Cotton. And then the police brought
17 her to do a live lineup where everybody was in person,
18 and when she picked Ronald Cotton from that photo the
19 police said, You got him. That's the same guy that you
20 picked out of the photo lineup.

21 And based on that she said, I knew it. That's when
22 I knew I got the guy.

23 So Ronald Cotton immediately went to jail and at a
24 certain point another person was convicted of rapes. His
25 name was Bobby Pool, and he was brought into the same

1 prison as Ronald Cotton. People were confusing them.
2 People would call Ronald Cotton Pool or Bobby and based
3 on that --

4 MR. RUTLEDGE DURANT: Objection, Your Honor.

5 THE COURT: Sustained. Let's move on.

6 BY MR. GROEBER:

7 Q. All right. Let's talk about expectancy. Can you
8 tell the jury what that means.

9 A. Sure. Perceptual expectancy just has to do with
10 the fact that if you expect something to happen you
11 actually believe that it is happening. So if you expect
12 your phone to be ringing, sometimes you might be in the
13 other room and you hear the phone ring. Then you rush to
14 the phone and it's not ringing at all. So that's
15 expectancy or expectation.

16 Q. And how does that affect accuracy for
17 identifications?

18 A. Well, that can affect identifications in that if
19 you are looking at something and you expect to see
20 something there it can actually change your perception of
21 it.

22 Q. Okay. How about have you ever heard the term
23 unconscious transference?

24 A. I have.

25 Q. All right. What does that mean?

1 A. Unconscious transference is just a fancy term to
2 say you that you can transfer somebody's face from one
3 event to another event. So you could have encountered
4 somebody in one situation and then later you believe that
5 you had actually seen them at some other point.

6 Q. And so we can transfer familiar faces from one
7 memory to the next?

8 A. That's right.

9 Q. Can we do that without knowing it?

10 A. We can. That's why it's called unconscious
11 transference. So we're not actually conscious of it or
12 aware that this is happening.

13 Q. All right. You've talked to us about different
14 factors that can affect the accuracy of eyewitness
15 identifications and our memory. Are there certain
16 guidelines that you are aware of for law enforcement as
17 to how to get eyewitness identification info and how to
18 avoid some of these problems?

19 A. There are. There's that National Institute of
20 Justice Eyewitness Evidence Guide for Law Enforcement
21 that we talked about.

22 Q. And when was that published?

23 A. That was published in 1999.

24 Q. And how did they disseminate that study. Did they
25 just put it online or...

1 A. It's online but they also mailed a hardcopy to
2 every police agency in the United States.

3 Q. Let's talk about some of those best practices for
4 lineups specifically.

5 A. Okay.

6 Q. What's the whole point of doing a lineup?

7 A. The whole point of doing a lineup is to gather
8 evidence. It's basically a test of the witness's memory
9 to see if the person that they saw, all right, the person
10 that they have a memory of, to see if whether that is the
11 actual suspect that the police have in mind. All right.
12 So the police have a suspect and it's a test of whether
13 or not that person is actually the perpetrator that the
14 witness viewed originally.

15 Q. Are there any studies about photo lineups?

16 A. There are.

17 Q. Are you familiar with those?

18 A. I am.

19 Q. What do the studies suggest about how photo lineups
20 relate to the accuracy of eyewitness identification?

21 A. Basically the way the lineup was presented, the
22 instructions that are given with that lineup and who is
23 in that lineup can affect your accuracy.

24 Q. What is the difference between a simultaneous
25 lineup and sequential lineup?

1 A. Okay. So a simultaneous lineup is the lineup that
2 you traditionally see. So if you picture a lineup you
3 might picture six people presented on one sheet of paper
4 presented to the witness all at once.

5 A sequential lineup is a different technique
6 completely. In a sequential lineup each lineup photo is
7 presented to the witness one at a time. The witness
8 doesn't know how many lineup photos they are going to see
9 and that way they don't feel any pressure to choose, they
10 don't know that they are coming to the end and have to
11 make a choice.

12 So for each photo that's presented the witness has
13 to make a yes or no decision. Yes, that is the guy I
14 saw, or no, it's not. And they can't see the photos
15 again, and the sequential lineup is presented by an
16 independent investigator, somebody separate from the case
17 who has no idea who the suspect is.

18 Q. Which one is better?

19 A. The sequential lineup has been found to be better.

20 Q. Why?

21 A. Because it reduces false identifications. In a
22 simultaneous lineup basically what the witness tends to
23 do is they tend to compare all of the lineup members to
24 each other and see who best matches their memory, and
25 then if that person is a good enough match, if they

1 closely resemble them enough then think they'll choose
2 that person.

3 In a sequential lineup rather than comparing the
4 lineup members to each other people compare each face
5 that's being presented to their memory of the
6 perpetrator. And so it's a better test of their -- or
7 it's a better indicator of reliability.

8 Q. Are you familiar with the Steblay, Dysart and Wells
9 Study?

10 A. I am.

11 Q. Did I pronounce those right?

12 A. Steblay, Dysart and Wells.

13 Q. Who were they?

14 A. So Nancy Steblay is an eyewitness researcher in
15 Minnesota. She is an eyewitness expert but also an
16 expert in meta-analysis, that statistical technique that
17 I told you about.

18 Jennifer Dysart went to graduate school with me,
19 and she is now at the John Jay College of Criminal
20 Justice in New York and she is also an eyewitness
21 identification researcher.

22 And Gary Wells is perhaps the best known eyewitness
23 researcher, and he is at Iowa State.

24 Q. All right. And what is their study?

25 A. In 2011, they published meta-analysis. So again,

1 it's that statistical summary that's showing us the
2 general pattern of the results. And in that
3 meta-analysis they compared 72 different tests of the
4 difference between simultaneous lineups and sequential
5 lineups.

6 Q. And where are those tests from?

7 A. From any journal article that examined simultaneous
8 and sequential lineups.

9 Q. In the U. S., Canada?

10 A. Around the world.

11 Q. What did they find in their meta-analysis of
12 simultaneous versus sequential lineups.

13 A. In their meta-analysis they found that the
14 sequential lineup is superior, that there are similar
15 correct identification rates for the simultaneous and
16 sequential lineup; meaning, if that perpetrator is in the
17 lineup then people are going to generally pick him out at
18 the same rate. But if that perpetrator is not in the
19 lineup, if the lineup is made up of completely innocent
20 people who were not in that crime video then the
21 simultaneous lineup produces a higher false
22 identification rate than the sequential lineup.

23 Q. Okay. I'm going to try to slow it down a little.

24 What do you mean when you say that the perpetrator is not
25 in the lineup?

1 A. Okay. So one of the benefits of doing these
2 laboratory studies is that we can control who's in that
3 lineup. We can control if the perpetrator is in that
4 lineup or if the perpetrator is replaced with an innocent
5 person, somebody that looks like him but isn't actually
6 him. And that way we can look at accurate decisions,
7 correct identifications. All right. So you saw the guy
8 in the video and he's in the lineup and you picked him
9 out. That's a correct identification.

10 But we can also look at false identifications. You
11 saw this guy in the lineup, we put this other guy -- or
12 sorry. You saw this guy in the video and we put this
13 other guy in the lineup. Are you still going to pick
14 somebody from that lineup even though the perpetrator
15 isn't there? If you do that's a false positive or a
16 false identification.

17 Q. So when the perpetrator is not in the lineup --

18 A. Right.

19 Q. -- what's an accurate answer?

20 A. To say that he's not there, to reject that lineup.

21 Q. And when the perpetrator is not there people got it
22 correct how much of the time?

23 A. So in a sequential procedure people rejected that
24 lineup 68 percent of the time.

25 Q. Okay. So in a sequential lineup with the best

1 practice when only innocent people were in the lineup

2 people still got it wrong three out of ten times?

3 A. That is right. So three out of ten people still

4 chose an innocent person even when it was presented

5 sequentially.

6 Q. And when it was a simultaneous lineup five out of

7 those times they picked out a totally innocent person?

8 A. That's right. They did. So the false

9 identification rates were higher with the simultaneous

10 lineup.

11 Q. Okay. Let's move on to the instructions in the

12 lineups. We've discussed the factors that affect

13 accuracy and retrieval. Let's talk about those and how

14 they affect the instructions of an identification. Okay?

15 A. Okay.

16 Q. How important are the instructions that are given

17 to the witness before they look at the lineup?

18 A. Those instructions are extremely important.

19 Q. Okay. How can they affect accuracy?

20 A. They can affect accuracy because they can affect

21 whether or not you're going to choose from that lineup.

22 If you feel pressured in some way to choose from that

23 lineup and the perpetrator isn't there then you are going

24 to be more likely to make a false identification.

25 Q. Okay. How about whether or not there's an

1 independent administrator?

2 A. That can also have an effect.

3 Q. Tell the jury what an independent person or
4 administrator is?

5 A. So an independent administrator would be somebody
6 who is uninvolved in the case in that they have no idea
7 who that police suspect is, and that's important because
8 you don't want people to have intentional or
9 unintentional influence on that witness. You want that
10 witness to make that decision based on only their memory,
11 not based on any outside factors.

12 Q. Okay. Let's talk a little bit about documenting.
13 the procedure itself, the lineup procedure itself. Are
14 there any recommendations from the publications that we
15 discussed before or from the studies about how police
16 should document the lineup?

17 A. There are. In those National Institute of Justice
18 guidelines they recommend that at the very least that
19 procedure be audio recorded but ideally that the
20 procedure be video recorded.

21 Q. Why?

22 A. Basically we want a record of what happened during
23 that event. We want to know who was there. We want to
24 know not only what was said to the witness but also what
25 the witness said, and we want to have an idea of how

1 quickly the witness made their decision and whether they
2 received any feedback or any confirmation of their
3 identification.

4 Q. Okay. What is the difference between an
5 out-of-court identification and an in-court
6 identification?

7 A. So an out-of-court identification would be these
8 lineup procedures that we are talking about, when police
9 have a suspect and they bring the witness a lineup and
10 ask them if they can recognize anybody in that lineup.
11 That would be an out-of-court identification.

12 An in-court identification would be when a witness
13 sits here in court and makes an identification, makes a
14 determination that they recognize somebody.

15 Q. Which of the two is preferred?

16 A. The out-of-court identification is preferred.

17 Q. Why?

18 A. Because that out-of-court identification if done
19 properly is actually a test investigating the witness's
20 memory, all right, whether or not that police suspect
21 matches the witness's memory. And so that's preferred
22 because that's less suggestive. It's going to be more
23 reliable than an in-court identification in which the
24 suspect is obvious.

25 Q. When you say suggestive what do you mean by that?

1 A. Suggestive refers to the fact that it's obvious to
2 the witness who the police the suspect is -- who the
3 police believe committed that crime.

4 Q. Are you aware of any studies about our ability to
5 recognize people from pictures or videos?

6 A. I am.

7 Q. What do those studies suggest about our ability to
8 do that?

9 A. The studies generally suggest that we are not very
10 good at picking out people who are unfamiliar to us.

11 Q. Okay. And what about studies with people that are
12 familiar to us?

13 A. When we are familiar with somebody we are pretty
14 good at recognizing them.

15 Q. Okay. When you say familiar, how do they define
16 familiar in those studies?

17 A. Generally what they do is they would show people
18 that the witnesses really know or the participants really
19 know. So in one study I'm thinking of they used their
20 professors. So these were college students and they
21 showed them videos of their professors walking into the
22 building and the video was, like, the security footage of
23 them walking through the building.

24 Q. Okay. Are there any studies about -- are there any
25 studies that would -- about the effect of a disguise on

1 our ability to recognize someone familiar with us?

2 A. There are no studies looking at our ability to
3 recognize somebody that we know but is wearing a
4 disguise.

5 Q. Okay. What about any studies where a face would be
6 hidden?

7 A. There are.

8 Q. Okay.

9 A. So in one study the researchers used familiar
10 people and they showed them under a variety of
11 conditions. So they either showed them with nothing
12 affected whatsoever, it was just that video of them
13 walking through, or they disguised their body and showed
14 just their face. All right.

15 So they put this big black box around their body
16 and showed just their face walking through or they
17 covered their face and showed just their body walking
18 through. And they found that accuracy was very good when
19 you could see the entire person, when nothing was blocked
20 whatsoever. People were performing about the 80 or 90
21 percent when their body was covered but they could still
22 see their face, they were again about 80 or 90 percent.

23 But when their face was covered and they could only
24 see their body and they could only see them walking
25 through this hallway accuracy dropped to 30 percent. So

1 they were much less accurate when they could not view a
2 person's face.

3 Q. Has there been any research done that looks at
4 people's ability to recognize voices?

5 A. There has been.

6 Q. And has the research studied people's ability to
7 recognize voices of people that they are familiar with?

8 A. There has been.

9 Q. Please tell the jury about that research.

10 A. Okay. So a study was done with four different
11 levels of familiarity. So people that you were
12 completely unfamiliar with, a strangers voice talking and
13 there's low familiarity. Moderate and high familiarity
14 they defined as either your neighbor or an associate of
15 yours. Moderate familiarity was a friend of the
16 participant or a teammate of the participant, and then
17 high familiarity was a family member.

18 And so they played varying clips, various clips of
19 these people talking and asked people to identify who
20 they were. And they found that with the moderate
21 familiarity, so a friend, and also the high familiarity
22 with a family member people were pretty good at this.
23 About eight out of ten of the participants could identify
24 who that was that the speaking to them.

25 But with the low familiarity, a neighbor or an

1 associate, people were performing at the same level as a
2 total stranger. So they were about five out of ten
3 people who got their choices right.

4 And then even more concerning was what they did
5 when they were wrong. All right. So they could say, I
6 have no idea who this person is, or they could say, Yeah,
7 I know that voice. It's John. But, in fact, it was Joe.
8 All right. So they said that they recognized them but
9 they got the source wrong, and they did that -- I believe
10 with the low familiarity condition they did that about
11 four out of ten times.

12 Q. Okay. I'm going try break that up a little bit.

13 A. Okay.

14 Q. People who could recognize the voice of people that
15 they were very familiar with, and what is very familiar
16 defined as in the study?

17 A. The high familiarity was a family member.

18 Q. Okay. And eight of ten people could identify the
19 voice?

20 A. That's right.

21 Q. But two times they got it wrong?

22 A. Two times got it wrong. Twenty percent of the time
23 they got it wrong.

24 Q. And then some people with some familiarity, what
25 was the number on that?

1 A. So people that they knew, the low familiarity, they
2 knew them but they hadn't had a lot of experience with
3 them, they were able to correctly identify their voice
4 five times out of ten.

5 Q. And so five times they got it wrong?

6 A. So five times they got it wrong.

7 Q. Did this study examine the confidence and accuracy
8 relationship that we talked about when we were talking
9 about eyewitness identification?

10 A. They did, and they found the same weak correlation,
11 that you could be very confident but still be wrong.

12 Q. And this study was published in the applied
13 cognitive -- I'm sorry. Did they study whispering
14 voices?

15 A. Oh, they did study whispering voices. So that was
16 another study that they did and they manipulated now
17 whether people were talking normally or whether they were
18 whispering, and people performed generally worse when
19 they were whispering. But the figures that I reported
20 have to do with the normal tone voices.

21 Q. Where was this study published?

22 A. It was published in Applied Cognitive Technology, I
23 believe, or Applied Cognitive Psychology.

24 Q. Okay. And is that a peer review journal?

25 A. That is.

1 Q. And you relied on it in your testimony?

2 A. I have.

3 Q. Would you say that it's reliable authority in your
4 field?

5 A. I would.

6 MR. GROEBER: Okay. May I have a moment, Your
7 Honor?

8 THE COURT: You may.

9 BY MR. GROEBER:

10 Q. Who wrote that study? Yarmey, Yarmey and Yarmey?

11 A. Oh, yeah. Daniel Yarmey and his two daughters, and
12 then a coauthor or parliament.

13 (WHEREUPON, Defendant's Exhibit Number 12, a
14 Document, was marked for identification only.)

15 Q. I'm going to hand you what's been marked --

16 MR. RUTLEDGE DURANT: Your Honor, may we approach?

17 THE COURT: You may.

18 (WHEREUPON, the following bench conference was
19 reported.)

20 MR. GROEBER: I intend to ask her to read one
21 paragraph from this.

22 THE COURT: State your objections.

23 MR. RUTLEDGE DURANT: This is irrelevant and has
24 nothing to do with this case. It's on a whisper and it's
25 merely one person on what they did on a specific incident

1 in time. It's not --

2 MR. BRUCE DURANT: Actually, it's not --

3 THE COURT: One at a time. One at a time.

4 MR. GROEBER: It comes in under rule --

5 THE COURT: That's not my issue, whether it comes
6 in or not --

7 MR. GROEBER: Sure.

8 THE COURT: -- because I'm sure she's going to say
9 her view on this as an expert. I got that. It's the
10 testimony about whispering, whispering and --

11 MR. GROEBER: Well, I'm fine -- okay. I'm fine
12 taking out the sentence on whispering. I understand that
13 objection. I would ask that she read, Another
14 participant listening to an identical twin normal --

15 THE COURT: This is talking about whispering.

16 MR. GROEBER: Not in that sentence.

17 THE COURT: Okay.

18 MR. RUTLEDGE DURANT: So you're talking about
19 something different now than you have highlighted.

20 MR. GROEBER: I'll redact the part about
21 whispering.

22 THE COURT: What is whispering in relation to?

23 MR. GROEBER: They've presented evidence that he
24 recognized voices, and I presented expert testimony
25 through her about voice identification. This is a study

1 specifically on that and people's ability to do so and I
2 believe I'm entitled to have her read from this, and it's
3 Rule 803-18.

4 MR. RUTLEDGE DURANT: I mean it's laughable,
5 actually. Actually it's hearsay --

6 THE COURT: Well, that's not the -- she's been
7 qualified as an expert so she says relying on everything.
8 This is a study and I haven't read it but it's a study
9 that is about -- during whispering.

10 MR. GROEBER: Yeah, it's a study and it has two
11 separate witnesses. One it's about whispering. It's
12 about voice recognition. One of the studies focused on
13 whispering and one focused on normal tones.

14 THE COURT: All right. But it's about a high
15 familiarity and a known familiarity, right?

16 MR. GROEBER: Yes.

17 THE COURT: And what you want to say is -- you want
18 to say -- we don't have a high familiar here, right? So
19 why are you getting into high familiar?

20 MR. GROEBER: Well, I think it shows that even high
21 familiar people make mistakes.

22 THE COURT: I understand that but has she described
23 for me the difference here, and I've given you extreme
24 latitude.

25 MR. GROEBER: Even people that were highly familiar

1 make mistakes and that is what this --

2 THE COURT: I don't care about high familiar people
3 because we don't have high familiar people here. All
4 right. I haven't heard her tell me that high familiar
5 people make the same amount of mistakes as non familiar
6 people.

7 MR. GROEBER: No. She testified that higher
8 familiar people make mistakes 20 percent of the time, two
9 out of 10 times.

10 THE COURT: All right. Well, what's -- I'm sorry?

11 MR. RUTLEDGE DURANT: And that's the basis of what
12 she's allowed to get into. She's testified to that. Now
13 it's basically getting into what this doctor, what this
14 research said happened. One time here on earth has
15 nothing to do with anything and it is hearsay.

16 THE COURT: It may be hearsay but it's in this
17 courtroom because she's going to rely on it as an expert,
18 over that hump. My hump is further than that because now
19 we are beyond -- we are comparing things that are not in
20 this case.

21 MR. GROEBER: And that would be great for them to
22 argue in closing.

23 THE COURT: I'm sorry?

24 MR. GROEBER: And that's great for them to argue in
25 closing. I think that would be a perfect time for them

1 to do that.

2 THE COURT: No. I'm the gatekeeper.

3 MR. GROEBER: I understand that, Your Honor.

4 THE COURT: And so we can sit here for the next 20
5 weeks and have her come up with hypotheticals, but if
6 they are not pertinent to this case I'm not letting them
7 in. I've given you extreme latitude to lay it out. I
8 haven't heard, and maybe I missed it because my retention
9 isn't so good right now, but let me just tell you, I
10 haven't heard it.

11 If you want to lay a foundation as to how low and
12 high are similar, if you want to make a record for me
13 that's fine, or if you want to tell me what we had here
14 was a high frequency then that's fine. All right?

15 MR. GROEBER: Okay.

16 THE COURT: But I think you're trying to get in
17 something, have her say something that is not in this
18 case. All right. You cannot compare apples and oranges
19 and try and convince the jury that you have an apple when
20 it's truly an orange.

21 MR. GROEBER: I understand your ruling.

22 (WHEREUPON, the bench conference was concluded.)

23 THE COURT: Thank you.

24 BY MR. GROEBER:

25 Q. Okay. Just a few more questions, Dr. Beaudry.

1 A. Okay.

2 Q. Are you against the use of photo lineups in police
3 procedures?

4 A. No. I'm not against the use of properly conducted
5 photo lineups.

6 Q. Why not?

7 A. Because they can offer us some evidence.

8 Q. Okay. Are you against eyewitness identifications
9 being allowed in the justice system?

10 A. No, I'm not.

11 Q. Why not?

12 A. We have to rely on eyewitnesses. It's a major
13 piece of evidence. The issue is whether that's the only
14 piece of evidence, and so we would argue that that
15 evidence needs some corroboration.

16 Q. Why have you sought out to study and testify in
17 this area?

18 A. I think this is a fascinating area. Any dad is a
19 police officer so I've been brought up in the law
20 enforcement tradition all my life, and also because many
21 of these findings are so counter intuitive I think
22 that --

23 MR. RUTLEDGE DURANT: Objection. This is not
24 relevant.

25 THE COURT: Overruled. I'll give her a little

1 leeway. Thank you.

2 A. I think that it's important to educate people on
3 these issues.

4 MR. GROEBER: No further questions.

5 Q. Thank you, Dr. Beaudry.

6 A. Thank you.

7 Q. Please answer any questions that the State may
8 have.

9 THE COURT: Mr. Durant?

10 MR. RUTLEDGE DURANT: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. RUTLEDGE DURANT:

13 Q. Good evening, Doctor.

14 A. Good evening.

15 Q. All right. I want to start with -- well, I guess
16 start with the premise for you being here.

17 A. Okay.

18 Q. And that is not to tell the Court whether any of
19 the witnesses who testified in this trial knew this man
20 before the crime that we are here to talk about on
21 December 24th, right?

22 A. Right.

23 Q. Because you can't say anything about that?

24 A. No, I can't.

25 Q. And you don't know.

- 1 A. No, I don't.
- 2 Q. And I think it's been well gone over but you were
- 3 contacted by the defense and you've been assisting them
- 4 in this trial, right?
- 5 A. I was contacted by the defense, yes.
- 6 Q. And you've been here all week?
- 7 A. I have.
- 8 Q. And, of course, you're being paid. You're a
- 9 professional, right?
- 10 A. Right.
- 11 Q. And this is your first time as an expert witness?
- 12 A. This is my first time.
- 13 Q. On the stand?
- 14 A. That's right.
- 15 Q. Congratulations.
- 16 A. Thank you.
- 17 Q. And you've never met the victim in this case?
- 18 A. No, I haven't.
- 19 Q. Or had a conversation with him?
- 20 A. No, I haven't.
- 21 Q. And you've never met the witnesses in this case or
- 22 had conversations with them?
- 23 A. No.
- 24 Q. And I think you would agree with me that despite
- 25 all the research in this area for just eyewitness

1 identification that there is no way you can predict how
2 accurate any specific eyewitness is?

3 A. I would agree with that.

4 Q. And I want to talk about ecological validity.

5 A. Okay.

6 Q. I don't think that's a term you've addressed yet,
7 is it?

8 A. No, it's not.

9 Q. But that is a term that is relevant in your field?

10 A. It is.

11 Q. And if you would, could you tell the jury what
12 ecological validity means.

13 A. I can. So ecological validity basically refers to
14 whether or not those studies in the laboratory actually
15 generalize or apply to the real world settings.

16 Q. And it's that degree of studying this research in,
17 like a lab, and how that situation is accurately --

18 A. Yes.

19 Q. -- in the real world?

20 A. Right. So, like I mentioned, we couldn't recreate
21 these really stressful experiences for our participants.
22 That is an issue for ecological validity.

23 Q. And so obviously to you and your colleagues in this
24 area it's important to really avoid big sweeping
25 generalities. Would you say that's correct?

1 A. To a certain extent I would.

2 Q. And most of the studies in this area are conducted
3 or they involve simulation research?

4 A. Most of those studies do involve simulation
5 research which is why we also rely on archival studies to
6 demonstrate that the same patterns hold.

7 Q. And you've said this but, of course, you aren't
8 actually able to create an event where you can determine
9 the accuracy of someone who has had a gun in their face?

10 A. Right.

11 Q. And made to feel like they could die?

12 A. That's true.

13 Q. And then able to determine whether the person who
14 was two and a half feet away from them was a person that
15 they saw in a lineup?

16 A. That's right.

17 Q. That cannot be done?

18 A. Ethically it cannot be done.

19 Q. And so your studies often times are with college
20 students, right?

21 A. That's right.

22 Q. And they occur in a classroom, usually?

23 A. Or a lab, yep.

24 Q. Or a lab. And it would be common in some of these
25 studies that say somebody runs into a room of psychology

1 students and takes the teacher's purse and runs out?

2 A. Right.

3 Q. And so the classroom is unsuspected of when this
4 event is going to happen, right?

5 A. That's right.

6 Q. And then they are asked later, at a later time,
7 either immediately after or another day, if they could
8 identify that person?

9 A. That's one of the ways that we do those studies.
10 That's right.

11 Q. And that's one of the ways it's relied upon for
12 this type of research?

13 A. Uh-huh.

14 Q. And, I mean, usually in that situation the teacher
15 is not in on it; is that correct?

16 A. No. Often the teacher is in on it.

17 Q. The teacher is in on it. So the teacher know's
18 what's going to happen?

19 A. Right.

20 Q. So you are measuring the witness's ability to be
21 accurate?

22 A. You are measuring the witnesses, not the teacher's
23 ability but the witness's.

24 Q. The witnesses. And these are witnesses who are not
25 victims?

1 A. That's right.

2 Q. That the event didn't happen to them?

3 A. That's right.

4 Q. That they had no stress of actually thinking their
5 life could end?

6 A. In some of the cases that's right.

7 Q. In some of the cases?

8 A. Well, I would say that in that Morgan study I
9 described.

10 Q. The Morgan study?

11 A. With the prisoner of war simulation.

12 Q. Yeah, what was going on with that? Let's talk
13 about that.

14 A. Okay.

15 Q. What did that involve again?

16 A. It's military personnel, and those were the
17 participants. All right. So they are going through
18 training and they underwent a prisoner of war simulation
19 where they were being interrogated for 40 minutes to see
20 if they would crack under that pressure.

21 Q. And so those participants knew that this was part
22 of their training?

23 A. They knew it was part of their training but it
24 still is a stressful interrogation with physical
25 confrontation between the interrogator and the prisoners.

1 Q. Sure. But they didn't think that they were
2 undergoing a crime, did they?

3 A. They didn't.

4 Q. And a person, you would agree with me, I believe,
5 who is actually being robbed at gunpoint at a convenience
6 store, let's say, they might actually be under the
7 impression that they are living through a crime?

8 A. Definitely.

9 Q. And so that is a different situation than a
10 prisoner of war and the stress at the prisoner of war
11 training -- prison; is that correct?

12 A. Yes. It would be a different situation.

13 Q. So these are different factors, right?

14 A. Uh-huh.

15 Q. And you do your best to control your factors when
16 you study this type of ability to identify someone,
17 right?

18 A. Right.

19 Q. But you just can't -- I think we keep coming back
20 to just can't recreate what it is actually like to be
21 looking down the other end of a gun and being robbed.

22 A. That's right. So probably our studies
23 underestimate the impact that the presence of that gun
24 has on the witness's ability to remember.

25 Q. That they may underestimate it?

- 1 A. Underestimate the impact. That's right.
- 2 Q. That's possible?
- 3 A. Uh-huh.
- 4 Q. And so it's possible that a real life event might
- 5 actually cause someone to be more accurate in their
- 6 identification?
- 7 A. I guess it's possible.
- 8 Q. It's possible because you aren't able to study
- 9 that, are you?
- 10 A. That's right. We're not.
- 11 Q. Are there any studies that take into account
- 12 individual characteristics of the witness, and
- 13 specifically look into that, like level of education?
- 14 A. Not that I'm aware of, no.
- 15 Q. There's no research that indicates that somebody
- 16 who's got more of an education would be more accurate or
- 17 less accurate?
- 18 A. Not that I'm aware of, no study that's specifically
- 19 designed to test how a level of education affects
- 20 eyewitness accuracy.
- 21 Q. What about race?
- 22 A. The cross-race situation that we talked about.
- 23 Q. Well, are there any racial groups of people that
- 24 are better than others at picking people out?
- 25 A. No.

1 Q. No. Has that ever been studied?

2 A. It's compared. So what matters is the race of the
3 witness and the race of perpetrator in that interaction.

4 Q. And you're talking about cross-racial
5 identification?

6 A. I am.

7 Q. And isn't it true that the less often someone has
8 to interact with a member of another race lowered their
9 accuracy, maybe, on identifying someone?

10 A. With relation to the cross-race scenario
11 specifically?

12 Q. Right. Right.

13 A. That has been put forth. It's called the contact
14 hypothesis, that basically the more contact you have with
15 somebody of another race the more accurate you should be,
16 but that hasn't actually held up.

17 Q. Have there been professionals in your field who
18 have written about that?

19 A. Yeah. That was one explanation for why the
20 cross-race effect occurs.

21 Q. And so I believe that there is literature by
22 professionals in your field also that indicates that the
23 more contact a particular person from a particular racial
24 group has with an individual from a different racial
25 group or people from the other racial group the higher

1 their ability to be accurate becomes?

2 A. There have been, I think, one of two studies that I
3 have found that, but in the general meta-analysis that
4 was done, again, analyzing all of the studies in the area
5 the contact hypothesis could not explain the data. So
6 familiarity with another race didn't remove the
7 cross-race effect from occurring.

8 Q. So you are just saying that members of different
9 races are not good at picking out members of another
10 race?

11 A. That's right.

12 Q. Can't be done?

13 A. No. Not that it can't be done. That we're worse
14 at it than picking out somebody of our own race.

15 Q. But very well can be done, right?

16 A. Yeah. Some people can do it.

17 Q. And, in fact, I think research has shown that some
18 people are actually very good at picking out members of a
19 different racial group?

20 A. Compared to picking out people of their own racial
21 group?

22 Q. No, just in general, just picking out somebody of a
23 different racial group. Some people are really pretty
24 good at that?

25 A. Yeah, it can be done.

1 Q. It can be done. And some people are not so good?

2 A. And some people are not so good. On average we're
3 worse if somebody is of a different race than us.

4 Q. Because I think the fact of the matter is some
5 people do quite well in making identifications; is that
6 right?

7 A. Nobody has been found to be a super identifier but
8 we can be -- we can be out there.

9 Q. So are you saying that there are not studies that
10 show and people involved in these studies who weren't a
11 lot better than other people involved in the studies at
12 making identifications?

13 A. Generally in identification research people make
14 one decision. So some people are accurate and some
15 people are inaccurate. Do you know what I mean? It's
16 not that one person who is consistently accurate and
17 really good at doing this.

18 Q. But nevertheless, some people are very good at
19 making identification, right?

20 A. Some people can make an accurate identification.

21 Q. In the experiments or studies conducted by you or
22 others would you agree that accuracy rates depend heavily
23 on the conditions of the experiment?

24 A. They depend on things like exposure, duration,
25 retention interval, yep.

1 Q. Lighting conditions?

2 A. Lighting conditions, certainly.

3 Q. And exposure to the person they are trying to
4 identify?

5 A. That's right.

6 Q. The length of viewing?

7 A. That's right.

8 Q. A lot of different factors go into --

9 A. That's right.

10 Q. -- these conditions, right, the conditions of the
11 experiment?

12 A. Uh-huh.

13 Q. And these experiments are all different?

14 A. Right.

15 Q. And isn't it also true that these conditions are
16 generally deliberately arranged so that accuracy is low?

17 A. No, that's not true.

18 Q. No?

19 A. No.

20 Q. And there are conditions when people are given the
21 opportunity to see people for a good length of time, say
22 a minute and half, see their total face and then asked to
23 see if they can identify them later --

24 A. Sure.

25 Q. -- in good lighting conditions? And those people

1 do generally pretty well?

2 A. Pretty well.

3 Q. And isn't it true that many subjects make accurate
4 identifications even under difficult situations such
5 as --

6 A. Can you define difficult situations?

7 Q. Well, such as poor lighting conditions or a low
8 exposure rate, like maybe just a split second?

9 A. The worse the exposure, the worse your
10 identification accuracy in general.

11 Q. And nevertheless, in some of those what we would
12 call difficult situations where the lighting is low and
13 the exposure is low some people are able to make accurate
14 identifications?

15 A. That's right.

16 Q. Can be done?

17 A. Can be done.

18 Q. You talked about weapon focus, and that's an area
19 of study by you and others?

20 A. That's right.

21 Q. But you are not telling the jury that a person who
22 has a gun pointed at them would not be able to identify
23 the person who pointed it at them, are you?

24 A. No. What I'm telling you is are less accurate than
25 if there was no gun there.

1 Q. But I thought that you said that you couldn't
2 actually recreate the actual event of a victim being
3 under that kind of situation when they thought they were
4 going to die?

5 A. The gun is present, is what -- I'm sorry. I
6 misspoke. You're right because I don't know. That study
7 has not been done if a gun is pointed directly at you and
8 your life is being threatened.

9 Q. So it's possible, and I think you testified
10 earlier, that because that study hadn't been done it's
11 entirely possible that accuracy could be even better in
12 that situation?

13 A. We don't know.

14 Q. So it's possible?

15 A. It's possible.

16 Q. Because I believe you testified that the situations
17 that you are describing of gun presence, and correct me
18 if I'm wrong, but I thought you said that there was a
19 classroom where half were able to watch a video where
20 there was a gun present and the other half were able to
21 watch a video where there was no gun present?

22 A. That's right.

23 Q. And that was the example that you gave to this
24 jury?

25 A. That's right.

1 Q. And from that you said that accuracy got lower in
2 that situation of people just watching a video with gun
3 presence?

4 A. That's right.

5 Q. And that is an entirely different situation than
6 actual real life crime, right?

7 A. Yes.

8 Q. And you would agree that a person who knows
9 somebody would be more likely to make an accurate
10 identification of that person than someone who does not
11 know the person who is pointing a gun at them?

12 A. I would.

13 Q. That's something we can agree to?

14 A. It is.

15 Q. And you would agree that the more opportunities
16 someone has to interact with someone the more likely they
17 would be to make an accurate identification?

18 A. I would.

19 Q. So there is a correlation between the amount of
20 time someone has to interact with someone and the
21 accuracy of their ability to identify that person?

22 A. Yes.

23 Q. So it is entirely possible that a victim who is
24 robbed at gunpoint would be able to identify the person
25 who robbed him?

1 A. It is possible.

2 Q. And that's possible even if that person had never
3 seen the robber previous to the robbery?

4 A. That's right.

5 Q. But if the victim had known the gunman previously
6 the reliability of that identification would go up
7 accordingly?

8 A. Yes. We would imagine. The study hasn't been
9 done.

10 Q. And identifications made by people who know people,
11 there has been some research in this area. But I think
12 you did say there have been no studies on the ability to
13 recognize someone we know wearing a disguise?

14 A. That's right. I haven't read anything. I haven't
15 been able to find anything.

16 Q. You're married, right?

17 A. I'm sorry?

18 Q. You're married, right?

19 A. I was married.

20 Q. And not to put you in a different position, I'm
21 married, too. If I guess the person you had been married
22 to was standing two and a half feet away from you with a
23 hood up over their head and with sunglasses for a minute
24 and a half --

25 MR. GROEBER: Objection, Your Honor.

1 THE COURT: Sustained.

2 BY MR. RUTLEDGE DURANT:

3 Q. Is it possible -- you're not telling this jury they
4 wouldn't be able to recognize their child or their loved
5 one or somebody if they are standing --

6 MR. GROEBER: Objection, Your Honor.

7 Q. -- two and a half feet in front of them wearing --

8 MR. GROEBER: Objection. Objection.

9 Q. -- a hood over their head and sunglasses over their
10 head --

11 THE COURT: Counsel. Approach.

12 (WHEREUPON, the following bench conference was
13 reported.)

14 THE COURT: Just like I had them wait until
15 Mr. Grimes finished his I need him to finish it so I have
16 a proper diagnosis of hearing it the first time. All
17 right. Now, it's getting very late. I understand that,
18 but I think we are all under the same spoon method. And
19 so every time you objected and it wasn't exactly as to
20 the occasion or the case you gave me I interjected. And
21 it totally applies to why I did what I did, all right?

22 MR. GROEBER: Okay.

23 THE COURT: What are your objections to this?

24 There was so much going on you're going to need to tell
25 me again.

1 MR. GROEBER: I mean, she's not supposed to testify
2 about particular facts of this case and that's exactly
3 what he's trying to do, put her in the facts of this
4 case.

5 MR. RUTLEDGE DURANT: Absolutely not. It is her
6 opinion which is exactly why she's been called to
7 testify. She's been more than qualified to say this.

8 MR. BRUCE DURANT: It's a hypothetical question,
9 Judge. That's what you use with experts.

10 THE COURT: All right. I was very careful in my
11 ruling when you objected as to outside and didn't give
12 the specifics, okay? Then I sustained your objection and
13 told him to move on. Okay. All right?

14 MR. RUTLEDGE DURANT: Right, but he covered this
15 disguise stuff.

16 THE COURT: I haven't ruled on that one yet. Just
17 making sure because it's not just as to hypothetical
18 because if it's any hypothetical we need to let him go
19 back and have another crack at it.

20 MR. BRUCE DURANT: Your Honor, he gets another
21 crack anyway.

22 THE COURT: He gets another crack at redirect,
23 which is different.

24 All right, Counsel. What was your question --

25 MR. RUTLEDGE DURANT: I was saying --

1 THE COURT: -- that he objected to three times.

2 MR. GROEBER: I'll try not to do that again.

3 MR. RUTLEDGE DURANT: Well, I was saying you're not
4 telling this jury that they wouldn't be able to recognize
5 someone that they know who are two and a half feet in
6 front of them in light talking to them for a minute and a
7 half with only sunglasses on and a hood over their head.

8 MR. GROEBER: That's asking her something personal
9 as to her.

10 MR. RUTLEDGE: I'm asking a hypothetical question.

11 THE COURT: All right. I'm going to allow it
12 because she said -- testified and that's what she said,
13 in a nutshell. So you may object. I'm going to sustain
14 your objection. Thank you.

15 (WHEREUPON, the bench conference was concluded.)

16 THE COURT: Mr. Groeber, I'm going to sustain --
17 overrule your objection one time. Thank you. You may --
18 you probably need to ask your question again.

19 MR. RUTLEDGE DURANT: Thank you, Your Honor.

20 THE COURT: Thank you.

21 BY MR. RUTLEDGE DURANT:

22 Q. I'm going to rephrase it slightly.

23 A. Okay.

24 Q. Would you expect someone who had been married 20
25 years with all their faculties that are registered

1 right -- I mean, there's nothing wrong with their
2 hearing, there's nothing wrong with their sight, just a
3 regular person, would you expect a person married 20
4 years to their spouse to be able to make an accurate
5 identification regarding whether it was their spouse they
6 were talking to for a minute and a half standing
7 approximately two and a half feet from each other,
8 looking at each other if the spouse was wearing a hoodie
9 up over the top of their head, sunglasses over their eyes
10 and you could see the bottom of their face from under
11 their eyes, including their nose?

12 A. I would imagine that they could.

13 Q. You would expect that they could make that
14 identification. I would, too.

15 The sequential -- I want to talk about the photo
16 lineup procedures now.

17 A. Okay.

18 Q. There are a lot of different ones that have been
19 studied by you and others in the field?

20 A. Yes.

21 Q. If terms of what's reliable and what seems to
22 produce more accurate results?

23 A. Right.

24 Q. And again, I believe it's in the very end of your
25 testimony on direct examination that I think you said --

1 I think you said exactly, Not against the use of photo
2 identifications, not against the use of eyewitnesses?

3 A. Right.

4 Q. But you said that you would argue for
5 corroboration?

6 A. Corroboration of that evidence, yeah.

7 Q. Corroboration of that eyewitness?

8 A. That's right.

9 Q. And corroboration of one eyewitness could be
10 another eyewitness?

11 A. An independent eyewitness.

12 Q. An independent eyewitness. Certainly one
13 eyewitness is corroborated by someone else who's an
14 eyewitness, that's corroborative evidence; isn't that
15 right?

16 A. If it's independent.

17 Q. If it's independent. And the more eyewitnesses you
18 have the more corroboration you have of one eyewitness;
19 isn't that right?

20 A. The more independent witnesses you have.

21 Q. The more independent witnesses.

22 A. As long as they haven't influenced one another,
23 that's right.

24 Q. But nevertheless, the more eyewitnesses you have
25 after one eyewitness independently --

1 A. Independently.

2 Q. -- that's corroboration, that's just the essence of
3 corroboration, right?

4 A. Correct.

5 Q. And so in regard to the different ways that
6 procedures can be given you say that accuracy goes up and
7 it is desirable when the procedure is administered by
8 somebody who knows nothing about the case?

9 A. Right.

10 Q. Who knows that the suspect -- who does not know the
11 identity of the suspect?

12 A. Right.

13 Q. Which is the situation in this case with Mr. Patel.
14 You've been in the courtroom this whole week, right?

15 A. I have.

16 Q. And you said that it's good, it's a better thing,
17 it's more ideal in terms of the accuracy increasing when
18 officers don't comment or make any comments after a
19 witness has made or not made an identification?

20 A. It doesn't affect the accuracy because they've
21 already made that decision. All right. They've already
22 made the identification or not, but it can affect their
23 confidence.

24 Q. And that's in terms of being able to come to court
25 and make the in-court identification?

1 A. That's in terms of their testimony, certainly.

2 Yes.

3 Q. And you argue that the sequential photo lineup, you
4 say it's better?

5 A. Right.

6 Q. But really, that's an unsettled kind of opinion in
7 the field; isn't that correct?

8 A. Some argue against it, that's right.

9 Q. I mean, equally educated experts in the field such
10 as yourself have an opposite opinion about this; isn't
11 that correct?

12 A. They have a slightly different opinion.

13 Q. Well, they argue, do they not, that sequential
14 lineups are not just the best procedure available?

15 A. They argue that they want to know why. So I
16 explained the sequential lineup and that there were
17 multiple components to it, all right, not feeling that
18 pressure to choose, having to make a decision for each
19 picture. So there are several different factors that
20 might affect identification accuracy different than the
21 simultaneous lineup. And so Roy Malpass, if that's who
22 you are referring to, I assume it is --

23 Q. That might be the guy.

24 A. -- he argues that we need to understand what it is
25 that works before we recommend this as an ideal

- 1 procedure.
- 2 Q. Yes. Roy Malpass?
- 3 A. Yes.. Okay.
- 4 Q. Does he critique your work?
- 5 A. Yes, he has.
- 6 Q. And actually wrote a response to your sequential
- 7 lineup presentation fact and policy?
- 8 A. Yeah. We both wrote two articles against one
- 9 another over it, discussing this issue.
- 10 Q. And so the opinion in the field is mixed?
- 11 A. It's mixed.
- 12 Q. And there are opinions in the field by experts such
- 13 as yourself that a six-pack photo array is a legitimate
- 14 means and procedure for determining whether a witness
- 15 make be accurate?
- 16 A. There are some that believe that..
- 17 Q. And you don't argue that it's not accurate?
- 18 A. I don't argue that it's not accurate. I argue that
- 19 the sequential lineup is more reliable.
- 20 Q. Just superior because we're working in a society
- 21 where we're trying to do better and better?
- 22 A. That's right.
- 23 Q. Always. And so the work in this field is not going
- 24 to stop after today?
- 25 A. No, it's not.

1 Q. Keep looking into it?

2 A. That's right.

3 Q. Because it's unsettled?

4 A. Because we want to get even better than the
5 sequential.

6 Q. We want to get better.

7 A. So three out of ten is still three out of ten
8 making a wrongful or a mistaken identification. So we're
9 trying to get even better than that.

10 Q. I think I understood what you said.

11 A. The sequential lineup isn't the best that's out
12 there. We need to design something that's even better
13 than that, but the sequential lineup is the best we've
14 got right now.

15 Q. Okay. And you've studied memory and you've
16 testified about how memory works and the three phases;
17 the acquisition phase, the retention phase, and the
18 retrieval phase?

19 A. Yes.

20 Q. And certainly we've all experienced a situation
21 where we've forgotten something?

22 A. Right.

23 Q. We wish we could remember?

24 A. Right.

25 Q. And certainly we've all experienced memories that

1 are actually very true and very real, and actually very
2 well did happen --

3 A. Sure.

4 Q. -- and we remember them accurately?

5 A. Right.

6 Q. And it is entirely possible and indeed likely that
7 we would remember an event that for whatever reason is
8 more memorable, such as a wedding day; you would agree?

9 A. Sure. Compared to an everyday event?

10 Q. Compared to walking in the hall at 2:30 yesterday?

11 A. Yes. Yes.

12 Q. And because we are stimulated by certain events as
13 humans?

14 A. Yes.

15 Q. And certainly a stimulating event would be being
16 robbed by a man who's pointing a gun at your face two and
17 a half feet away?

18 A. It would be.

19 Q. And with regard to memory, and regarding specific
20 events, sometimes you may remember one thing about a
21 specific event much more than something different from
22 that event. An example -- I guess you need an example?

23 A. I do need an example.

24 Q. Like we've agreed that a wedding day would be a
25 memorable event.

1 A. Sure.

2 Q. You might remember getting married but you might
3 not necessarily remember who made the shoes you wore?

4 A. Sure.

5 Q. Or you know different smaller things like that; is
6 that right?

7 A. That's right.

8 Q. Or what kind of belt you wore?

9 A. Right.

10 Q. Or exactly who made the jewelry -- I don't know,
11 maybe a woman would remember that.

12 A. They probably would.

13 Q. I mean no offense by that. But there are things
14 about memorable events that are more memorable than
15 others?

16 A. Yes.

17 Q. Such as it's entirely possible for somebody who's a
18 victim of an armed robbery, entirely possible to remember
19 a face rather than to remember if a hood was up over
20 their head or not; possible?

21 A. Possible.

22 Q. All right. Doctor, I'm about done.

23 A. Okay.

24 Q. Just a few more. Would the fact that the victim in
25 this case knew or said he knew the person who robbed them

1 for approximately a year increase his ability to
2 accurately identify the man?

3 A. I would expect that it would.

4 Q. And would the fact that he not only knew him for a
5 year but possibly for two to three times per week he came
6 to his store and had face-to-face conversations with him
7 each and every week increase the ability of him to
8 accurately identify him?

9 A. I would expect that it would.

10 Q. Would the fact that for over a year and two to
11 three times a week that all of these conversations that
12 the victim said he had with the defendant occurred in a
13 well lit environment increase his ability to accurately
14 identify the man who robbed him?

15 A. I would agree.

16 Q. And that all of that occurred at close range?

17 A. Yes.

18 Q. And the fact if he could identify his voice, would
19 that increase, under all those other circumstances, his
20 ability to accurately identify him?

21 A. Well, according to that study I would think that he
22 would still fall under that low familiarity, and so we
23 performed -- participants in that study performed at the
24 same level as somebody who they were unfamiliar with.

25 Q. And the fact of the matter is, like we said in the

1 beginning, you can't say whether or not the
2 identifications in this case were accurate or not?

3 A. No, I can't. That's not my role.

4 MR. RUTLEDGE DURANT: Thank you.

5 THE COURT: Mr. Groeber, Redirect?

6 MR. GROEBER: Thank you.

7 REDIRECT EXAMINATION

8 BY MR. GROEBER:

9 Q. Just a few short questions. I know you're tired.
10 I know the jury is tired. When is it important to
11 document the confidence of the witness?

12 A. It's important to document the confidence of the
13 witness right after that identification decision.

14 Q. Okay.

15 A. So they make an identification and then you are
16 supposed to ask them how confident they are in that
17 identification.

18 Q. And how important is it to show someone a photo
19 lineup quickly after the event?

20 A. Yep. As soon as you can show that photo lineup you
21 should show that photo lineup. All right. So we had our
22 forgetting curve, so you want to stop that forgetting
23 curve as soon as possible.

24 Q. So if you could show the same day that would be
25 better than five days later?

- 1 A. That would be.
- 2 Q. The prosecutor also asked you about corroborative
3 evidence and how separate witnesses could be -- could
4 corroborate other witnesses, correct?
- 5 A. Right, separate and independent witnesses.
- 6 Q. And when you say independent what do you mean?
- 7 A. I mean that the memories of each witness are their
8 own. They haven't be influenced by discussion with other
9 witnesses or discussion with the police or seeing
10 something in the newspaper. All right. It's their
11 uncontaminated memory of what happened.
- 12 Q. How about watching the video together, could that
13 contaminate it?
- 14 A. That could contaminate your memory..
- 15 Q. The prosecutor also asked you about how difficult
16 it was to recreate stress and that you can't -- you
17 really can't do that in the real word, right?
- 18 A. Right.
- 19 Q. And that's why scientists like yourself do these
20 archival studies, right?
- 21 A. Right.
- 22 Q. And remind the jury again what archival studies do.
- 23 A. Archival studies allow researchers to look at real
24 police cases, real police files with real witnesses and
25 to look at how the witnesses behaved in those cases.

1 Q. Would those cases include armed robberies?

2 A. They would.

3 Q. Would they include murders?

4 A. They would.

5 Q. Would they include rape?

6 A. They would.

7 Q. Stressful cases.

8 A. Yes.

9 Q. And the archival studies, how do they match up to
10 the lab studies?

11 A. They match up pretty well to the lab studies. The
12 problem with archival studies is we don't know if that
13 suspect is the guilty. All right. They are a police
14 suspect whereas in the lab we can control whether or not
15 the perpetrator is actually in that lineup so we can look
16 at accuracy.

17 With archival studies what we have to rely on are
18 people's identifications of other people in the lineup,
19 so you have one suspect who may or may not be the actual
20 perpetrator then you have usually five other people who
21 are innocent, and the police know they are innocent and
22 that's why they put them in the lineup.

23 And so what they can do in archival studies is look
24 at identification rates of those known innocent people,
25 and we see very similar identification rates. In the lab

1 about 20 percent of people choose these fillers, choose
2 these known innocents, and in archival studies about 20
3 percent also choose the fillers. And so that's how we
4 can compare lab studies to archival studies.

5 MR. GROEBER: Thank you. No further questions.

6 THE COURT: Mr. Durant?

7 RECROSS-EXAMINATION

8 BY MR. RUTLEDGE DURANT:

9 Q. Doctor, isn't it true that none of your research in
10 this area applies to facts of this case because the
11 witnesses in this case know the defendant?

12 MR. GROEBER: Objection, commenting on the facts.

13 THE COURT: Overruled. You may answer.

14 A. That's right. My research is not with the people
15 who are familiar with perpetrators.

16 MR. RUTLEDGE DURANT: Thank you very much.

17 THE COURT: You may step down. Thank you.

18 Just for scheduling approach.

19 (WHEREUPON, a bench conference was had, not on the
20 record.)

21 THE COURT: Mr. Foreman, we've got just a quick
22 matter of law that I need to take up outside of your
23 presence. I'd like to go until six tonight. So I'm
24 going to excuse you. If there's anybody that cannot stay
25 until six if you'll immediately alert the bailiff and

1 it in.

2 Anything else that you are requesting? Any other
3 lesser includes? I cannot think on the possession of a
4 firearm if it's of a lesser included.

5 MR. GRIMES: No. No lesser included. The charges
6 that I emailed Your Honor and copied Mr. Durant on from
7 Utah and identification we would like to have. I'm not
8 sure if every factor applies but a large degree of those
9 factors charged, and I would think -- I was thinking
10 allowing it would sort of be like a self defense case
11 where you look at various factors. It's case specific as
12 to whatever is testified to by an expert or by witnesses
13 should be included in the Utah --

14 THE COURT: Are you saying Utah?

15 MR. GRIMES: Yes, ma'am.

16 THE COURT: All right. Thank you. Anything
17 further?

18 MR. RUTLEDGE DURANT: I just haven't had a chance
19 to look over the email that Mr. Grimes sent this morning.

20 THE COURT: All right. I'm charging my standard
21 identification charge which lists all of those elements,
22 Mr. Grimes, that those are factors that may be considered
23 among others. All right.

24 MR. GRIMES: Yes, ma'am.

25 THE COURT: Thank you. Anything else?

1 MR. RUTLEDGE DURANT: Not from the State.

2 THE COURT: I think the only issue at this point is
3 the strong armed. We're at ease. So 9:45 to be here
4 then we'll begin at 10:00, unless there are some other
5 issues. Please just come look at the verdict form.
6 We're at ease.

7 (WHEREUPON, the trial of this case was recessed for
8 the day.)

9 Thursday, June 14, 2012

10 THE COURT: Mr. Grimes, I have received your email
11 this morning. You have requested jury charges. I'm
12 going to mark it as Court's Number 9, just for the
13 record. They are printed out. So that will be Court's
14 9. I have reviewed them and I will again be charging the
15 standard charges that we discussed. Thank you.

16 MR. GRIMES: Thank you Your Honor.

17 (WHEREUPON, Court's Exhibit Number 9, Defense's
18 Request for Charges, was marked and made a part of the
19 record.)

20 THE COURT: And my understanding is, Mr. Grimes,
21 that you have withdrawn your request for --

22 MR. GRIMES: Strong armed robbery.

23 THE COURT: Yes.

24 MR. GRIMES: Yes, ma'am.

25 THE COURT: So you are no longer requesting a

1 There's nothing worse than a guilty man going free,
2 except an innocent man taking his place.

3 Now, it's been a long slog through a lot of facts
4 and I know that as you deliberate that you'll keep that,
5 the serious weight of your decision in your mind.

6 Now, this case is really about memory testing.
7 Now, there is a video and the video does not lie but it
8 does not tell the whole truth. What are some things
9 that would help you find the whole truth in this case?
10 Fingerprints. Now, Investigator Milz told you that he
11 did take fingerprints. He told you that he took some at
12 the register and he said that they didn't come back to
13 my client.

14 Now, he also said that he watched the video and he
15 watched as the robber came in the door, that his hand
16 appeared to be in his sleeve, and I think that's what
17 that shows. I agree with him. But he didn't take the
18 extra step to watch the end of the video because when the
19 robber leaves you can't see where his hand is and what he
20 touches as he leaves the shot.

21 He could have taken an extra step to dust that
22 area. They also could have taken an extra step to dust
23 or to set up crime scene tape around the door or at least
24 around the register to prevent contamination,
25 contamination from customers who could have come in and

1 out of the store and from the police officers who were in
2 the store.

3 They could have taken an extra step when they found
4 the gun. One of the steps they could have taken was to
5 fingerprint it. Another step they could have taken would
6 have been to run it to see who maybe owned it. Perhaps
7 they could have taken the extra step to look at the bank
8 videos from where that gun was found.

9 The prosecutor told you, Well, it might be the gun,
10 might not be. We don't know. Don't you want to know?
11 Wouldn't you think that was important?

12 They could have taken an extra step to get a search
13 warrant from my client's mom's house once he was the
14 suspect. Detective Lawrence knew where he was. He
15 decided not to take that step.

16 They could have taken an extra step to get a search
17 warrant at his dad's house, where Detective Lawrence knew
18 where he lived. They didn't take that step. In fact,
19 Detective Lawrence even told you his dad would have let
20 him probably searched without a warrant, and he didn't
21 take that step.

22 They didn't take an extra step by getting a photo
23 lineup as soon as possible. They waited five days to do
24 one. They didn't take an extra step to show a photo
25 lineup to Mrs. Patel.

1 Now, don't you want to see how she would have
2 performed with a six-pack photo lineup, at the very
3 least, perhaps a simultaneous one. They failed to take
4 those extra steps.

5 Now, the prosecutor might say that he wishes the
6 officers had done a better job. No one wishes that more
7 than Marvin Green, but we don't have that evidence. So
8 we have to deal with memories. We have to deal with
9 memories of people that we have left; Mr. Patel,
10 Mrs. Patel, Detective Lawrence, and Deputy Luckadoo.

11 Now, how do we test -- how do we test the memories?
12 In a trial we test it by what people say here in the
13 witness stand, compare it to what people said before,
14 what they didn't say before. We compare what one person
15 in the witness stand says against what another person in
16 the witness stand says. That's your whole job, is to
17 test the witnesses, and in this case it's about testing
18 their memories. Now, that is a hard job because you've
19 got to get inside people's minds and that is difficult.

20 Let's talk about Mr. Patel's memory. And let's
21 test his memory with the video that doesn't lie.
22 Mr. Patel said in his testimony that the robber did not
23 have a hoodie on top of the hat. The video shows that he
24 did. Mr. Patel said in his testimony that he was wearing
25 a small hat, the robber was. That's not what the video

1 shows. It's a pretty big hat.

2 Mr. Patel said that he could see the ears of the
3 robber, and when you watch that video you see the hood
4 pulled up on top of the hat. You'll see he couldn't have
5 seen his ears. Mr. Patel said that he saw the robber's
6 eyes because at one point the glasses slipped and he
7 could see down and see his eyes. Watch that video. It
8 is not there.

9 Now, why would he make those mistakes and why would
10 he make them despite the fact that he has watched that
11 video who knows how many times? It is because his memory
12 remembers what he thinks it is.

13 Science gives us an answer as to why he remembers
14 things that way. Weapon focus. Mr. Patel gave you the
15 very same answer that science does. He said, and I'll
16 quote it, A gun was pointed at me. I could not remember
17 the details. And who could blame him?

18 Now, there are other ways that we can evaluate
19 memory, his memory. What was documented that he said
20 when the initial report was made? Did you hear anything
21 in the initial report about lottery tickets, about an
22 Obama joke, about Newports, about recognizing the voice?
23 No. What you have in the incident report is he was a
24 customer. These later details come out after he's had an
25 opportunity and he's been talking with his wife and they

1 are trying to figure out who it was.

2 Now, if he had said to the responding officer, Man,
3 I think it's that customer who joked about Obama, that is
4 such a unique thing to remember. Okay. And that is why
5 the prosecutor is going to point that out to you a lot
6 and why he did so. All right. Don't you think if he had
7 told the officers that that day that fact would have made
8 it in a report? It is so unique, but it's not there.

9 The truth is that Mr. Patel wanted and he needed to
10 find out who it was and after watching the video four,
11 five times with his wife that morning he needed it, he
12 needed to know who it was, and so his mind shows a
13 familiar face to put behind those sunglasses and
14 underneath that hat.

15 Now, how does the lineup fit in all this? We know
16 that lineups are important and we know that not only
17 because Dr. Beaudry came here and testified about it but
18 we know because the Charleston County Sheriff's Office
19 has an entire policy dedicated to it, dedicated to the
20 proper way of doing a lineup.

21 We also know it's important because the U. S.
22 Department of justice issued a study that Dr. Beaudry
23 told you about. And that study, as she told you, was
24 issued because people had been exonerated through DNA and
25 many of those cases were based on faulty eyewitness

1 identifications. That's why it's important.

2 Now, in this case they did some things right, okay,
3 with the lineup. The main thing they did right was get
4 the Detective Perkins, who didn't know who the suspect
5 was, to do the lineup procedure. Okay. I'll give them
6 credit for that, but there are some problems.

7 First of all, translation. Now, when Mr. Patel and
8 Mrs. Patel sat on this witness stand and testified they
9 had a translator behind them to make sure that what they
10 said was accurately interpreted to you. That was not
11 done with the photo lineup. Now, the police tried. They
12 had Dhruval there, a 12-year-old boy who tried his best
13 to interpret the instructions.

14 Now, let's talk a little bit about those
15 instructions and how it went. They read the right
16 instructions. They read some good instructions but they
17 were poorly given. Now, how do we know that?

18 Detective Perkins testified that it took four
19 minutes from the time that he began to read those
20 instructions, and that included what happened was he
21 would read a paragraph, stop, Dhruval would interpret it.
22 He would ask Mr. Patel if he understood, Mr. Patel would
23 initial it. They would go to the next one. He would
24 read the paragraph, it would have to be interpreted, he
25 would ask him if he understood it and would go to the

1 next one. There's seven of those. Okay.

2 When they finished that Mr. Patel would get the
3 paper, he had to print his name, he had to sign it.
4 Detective Perkins had to print his name and he had to
5 sign it. After that he looked at the photo lineup. He
6 circled one. He circled number four. He had to circle,
7 initial, date, time. Do you really think that that took
8 four minutes? And if it did what does that tell you
9 about the quality of the understanding of the translation
10 of the instructions themselves?

11 Another problem. Why do they wait five days?
12 Dr. Beaudry testified that our memories drastically
13 deteriorate after only two hours. They waited five days.
14 That was five days that Mr. Patel had to sit around and
15 talk with his wife about what happened, to watch the
16 video again and again over the phone and to try to figure
17 out who it was.

18 Dr. Beaudry also told you that the preference would
19 be for sequential, not simultaneous. That's because when
20 you get a simultaneous one you try to pick out the one
21 who looks the most likely.

22 One of the biggest problems with that lineup is
23 that there's only one person in the whole lineup that's a
24 customer, and that's my client. So of course he's going
25 to pick out the only one regular customer he has.

1 Finally, what detective told Mr. Patel after he had
2 finished, Detective Lawrence testified that he said, I
3 will let you know when an arrest is made.

4 What does that communicate to Mr. Patel? It means
5 you did right, you did good and I'll let you know when we
6 go arrest him. That kind of confirmation, as Dr. Beaudry
7 testified to, affects confidence. That's part of the
8 reason that he says he's so confident that it was Marvin
9 Green.

10 How about Mrs. Patel? How about her memory? Now,
11 she testified that my client came in every day for six
12 months. Now, Mr. Patel said something different. He
13 said two or three times a week.

14 You heard from Detective Lawrence that my client
15 lived in Jacksonboro with his mom. That's 14 miles away
16 from the gas station. You heard that he lived in Adams
17 Run with his dad. Now, if he lives 14 miles away why in
18 the world would he be a daily customer at that particular
19 gas station?

20 Now, Detective Lawrence also said, Well, he jumps
21 around a lot. Okay. Let's take that one. If he jumps
22 around a lot and lives at different places why would he
23 be going into the same store every single day? What that
24 tells us is that her memory about how frequent he was
25 there is probably incorrect because, first of all,

1 Mr. Patel says it's different. So we don't know for sure
2 how frequent of a customer my client was.

3 What else did she say to you about when he came in
4 the store? One of the things I thought was very
5 interesting was that she came into court and she
6 testified that she recognized him in the video. She's
7 sure of that. She's a hundred percent sure.

8 If she's so sure that she can recognize him why
9 would she card him for cigarettes every single time he
10 came in? Maybe it's because she couldn't recognize him
11 that well, and maybe it's because that store has about 80
12 percent customers who are African American, maybe it's
13 because a lot of black men come in wearing a hoodie or
14 sunglasses?

15 She also testified that the only video that she saw
16 was the one that showed the door. That means that she
17 saw only the person coming in and the person coming out.
18 And if that's all she saw how can she testify that she
19 remembers the way he talked? There's a snippet of some
20 words said by the robber but it's a little bit. She did
21 not watch the video where the robber is at the cash
22 register, and she couldn't have seen him talk.

23 I want to talk a little bit about what Dr. Beaudry
24 testified about. And what struck me about some of the
25 figures is not necessarily how bad people were when the

1 certain factor was present, when a weapon was present, or
2 when stress was present, or when it was cross-racial.
3 What affected me is that even in those studies when a
4 weapon wasn't present, for example, she said, Well,
5 people did pretty good. Then she said like 80 percent.
6 Well, that means two people got it wrong.

7 So what's the margin of error? What's the margin
8 of error in a criminal case when you have to believe that
9 someone is guilty beyond a reasonable doubt? Two of 10
10 people getting it wrong might be enough for a non
11 conviction.

12 I want to talk a little bit about stress and the
13 Morgan study that she discussed. Okay. Now, the
14 solicitor will argue, and he did argue with her a little
15 bit, that there's no way that you can recreate a
16 stressful event, at least this particular stressful event
17 that Mr. Patel went through, and that is absolutely true.
18 But we can study how stress affects our memory.

19 And the Morgan study that took two groups of
20 people, half of them had a high stress interrogation for
21 40 minutes and they were shown a photographic lineup
22 right after, the other half had a low stress
23 interrogation for 40 minutes, face-to-face, and then they
24 were shown a photo lineup.

25 And what were the results? For the low stress 3

1 out of 10 people still picked the wrong person. And for
2 the high stress 6 out of 10 people got the wrong person.
3 Now, that confirms that stress affects our memory. It
4 affects our ability to grab data and to accurately
5 acquire.

6 Now, there was some critique, there was a critique
7 by this, by the prosecutor, but what the studies show
8 when they do a meta-analysis, where they look at all the
9 studies and average them out, is that this is a problem,
10 and it's a problem that you should consider in your
11 deliberations.

12 Now, let's talk a little bit about what really
13 happened in this case. Mr. Patel was robbed. He was
14 terrified. He saw a weapon. He was stressed but he
15 can't remember the details that well. He said that.

16 He called his wife. She came to the store. They
17 watched the video and they tried to figure out who it
18 was. They decided together that it was a customer.
19 Their minds place that customer's face behind the
20 sunglasses and underneath the hat.

21 In the days after the robbery and before the lineup
22 they kept talking about which customer it was, which
23 customer. It must be the one, the Obama joker. It must
24 be the one who buys the Newport cigarettes all the time.
25 And they spoke to each other, and that speaking is called

1 contamination. It is a source that affects our memory.

2 Now, when Mr. Patel was shown the lineup there was
3 not a pure translation and he probably struggled to
4 understand it. He picked out the only person in that
5 lineup that he has seen as a customer before and he did
6 that because, as he told you, he thought it was his job
7 to pick that out and to help the police.

8 Now, Deputy Luckadoo also took a look at that video
9 and he made a guess that it was Marvin Bowens. That's
10 what he said. And Lawrence discredited what he said.
11 How do we know that? First of all, Lawrence told you.
12 Second of all, they didn't do a search warrant that day.
13 Deputy Lawrence or Detective Lawrence did not do it the
14 day he was assigned the case.

15 They didn't look to see if there were fingerprints
16 on the gun that was found. They didn't make an arrest
17 warrant that day. And when Detective Lawrence looked at
18 the video he'd already had planted in his mind who it was
19 because he read the incident report and it said Marvin
20 Bowens Green. So he had an expectation of who he was
21 going to see and that was it. That was all they needed.
22 They were satisfied with what they had done. Detective
23 Lawrence said, I closed my case, and when I do that I
24 have all the facts I need.

25 What facts didn't they have? The fingerprints, the

1 door on the inside or outside, no attempt to get DNA.

2 They found a gun that matched, looked like the gun
3 in the robbery. They didn't do fingerprints, they didn't
4 run it to see who owned it, didn't do a search warrant at
5 the mom's house. Lawrence knew where that was. They
6 didn't do a search warrant at the dad's house. Lawrence
7 knew where that was.

8 They waited five days to do a photographic lineup,
9 and they didn't do a photo lineup for Mrs. Patel. And
10 don't you want to see how she would have done? Wouldn't
11 you like to see if she can accurately identify my client
12 from a photo of a young black man in sunglasses and with
13 a hoodie on?

14 That was not a trick question. There's nothing
15 tricky about that question. That question asks her if
16 she could do in court what she has already done, look at
17 photograph or a video and say if it's Marvin Green. She
18 would not even look at the photograph. What does that
19 say about her belief about her own memory? It shows that
20 she doubts it.

21 Ladies and gentlemen, these memories are too prone
22 to error, too prone to manipulation, too prone to
23 contamination to trust them to convict in this case.

24 The State wants you to believe that you should
25 convict because the witnesses corroborated each other.

1 They have no hard evidence to corroborate but they want
2 you to believe because they've got a parade of witnesses
3 coming up here to testify that you should convict. The
4 problem is that there is so much contamination of
5 memories in this case that you cannot believe which
6 memory came from where.

7 And as Dr. Beaudry said, we are not all that good
8 at recognizing people on a video, and when a face is
9 obscured we are not even good at recognizing familiar
10 people. In the study she talked about when the face was
11 obscured of a familiar person walking into a room shown
12 from a surveillance video only 3 out of 10 people could
13 identify the familiar person. That means 7 out of 10
14 could not.

15 This doubt that is raised is reasonable and it's
16 significant and Mr. Green deserves the benefit of it,
17 just like anyone else who would be sitting in his place.
18 We ask you to send this innocent man home. Thank you.

19 THE COURT: Mr. Durant?

20 MR. RUTLEDGE DURANT: Thank you, Your Honor. May
21 it please the Court.

22 Ladies and gentlemen, this didn't take much
23 planning. It wasn't intricately planned out. It's just
24 a gun, a hood pulled up over a ball cap on a head, a man
25 wearing sunglasses. It's pretty easy to commit a crime

1 and who cares that someone is terrified? Who cares if
2 someone thinks they will die, never see their family
3 again? Just a simple act of terror.

4 And that's not all this case is about. It's
5 certainly about what Mr. Patel went through that morning
6 from a man that wore a thin disguise, and he doesn't get
7 the benefit of that thin disguise.

8 But maybe the thinking was who would believe this
9 immigrant anyway. Who would believe this man who
10 couldn't even come into this courtroom and couldn't speak
11 English. I don't know if that's what was thought but if
12 that was he is dead wrong.

13 He was a customer at my store. He was a customer
14 at my store. Mr. Patel told the first officers at the
15 scene that morning, that very morning, He was a customer
16 at my store. He did not mince his words, and those words
17 were not lost in translation to officers who did not
18 speak Hindi.

19 He did not say he thought the man had been a
20 customer that morning. He did not say the man may have
21 been a customer that morning. He was my customer. That
22 is all Mr. Patel knew that morning. And he was specific
23 and he was certain about that.

24 And, ladies and gentlemen, as much as the defense
25 has tried to cast doubt on anything and everything in

1 this case to make you think you cannot trust memories, to
2 make you think people don't know people, when you go back
3 there and you think about all this you will find you will
4 reach the right decision and it really will be easy
5 because you will think about all of it, everything you've
6 been told from that witness stand from every witness.

7 You will take into conversation defense counsel's
8 words and I think you'll take into consideration my
9 words. I'm confident you'll reach the right decision
10 here. I'm confident you'll think about all that, and I
11 have a lot more to say.

12 The essence of this case is not about people
13 identifying strangers, about people identifying people
14 they don't know. This case is about people who do know
15 this man and they know him for a variety of reasons in a
16 whole lot of ways, unlike you because you don't know him.

17 You haven't interacted with him, you haven't had
18 conversations with him. These witnesses have. All of
19 them have. Not one and not two. You heard them all.
20 There were four. Four people who knew him. They told
21 you they knew him.

22 And this case is about people who knew this man,
23 and because they knew this man they were able to tell you
24 that it was this man who came into the store at 7:45 on
25 December 24th and for a minute and 32 seconds held a gun

1 at Mr. Patel, a citizen of Charleston, husband and a
2 father, a man who speaks Hindi, a recent immigrant to the
3 Country, just a simple citizen doing a simple job making
4 money at his store that he owns with his wife.

5 And he's here in the courtroom right now. He's
6 anxious about this case. His wife would like to be here
7 as well but they both can't be here because one of them
8 has to be at the store, but they are anxious to know if
9 you will believe them. These identifications are only
10 possible because these people knew this man. They are
11 not based on anything else.

12 So let's talk about what we know in this case. I'm
13 going to start with the video. We know from the video
14 that Mr. Patel was there alone at the register. There
15 wasn't anybody else in there. We know from the video
16 obviously that the store is equipped with a video
17 surveillance system and captured the incident on video.

18 We know that the man walked in with a cap over his
19 head, with a hood over that cap and he was wearing
20 sunglasses. The man was not wearing a hockey mask, or a
21 gas mask, or a Halloween mask, nothing that covered his
22 entire face.

23 It is clear that the only thing covering any part
24 of his face is a simple pair of sunglasses. Other than
25 that his entire face is exposed. His lips are exposed,

1 his cheeks are exposed, his chin is exposed, his mouth is
2 exposed. His face is entirely exposed except for a
3 simple pair of sunglasses. It was exposed from the
4 second he walked in that door.

5 Now, as defense counsel said, it is very clear on
6 that video that that man never touched that door on the
7 way in, and that he wiggled his hand out of his left
8 sleeve as soon as he got in that door. He was careful
9 about that. So that door wasn't dusted.

10 And on the way out you'll see that you can't tell.
11 You cannot tell whether he touched the door or not. You
12 know he was careful getting in but all you have to do is
13 push it to get out.

14 Would we have liked to done more in this case? You
15 bet. You can always do more. There's always another
16 step. There is no end to trying to take another step, to
17 trying to make things better and it should be done in
18 every single case. And just because everything that you
19 can think of that we would like to do in all the cases
20 that we have doesn't mean that he is any less guilty.

21 After the man entered the store for the next minute
22 and 32 seconds there was a gun pointed directly at
23 Mr. Patel. It is right up in his face, two and a half
24 feet away from him. The hammer is back. It's a
25 revolver. It was careless, it was reckless.

1 For those of you that don't know, I'm sure some do,
2 a revolver is a lot easier to fire when the hammer is
3 back because it pulls the trigger back even more and
4 makes it easier to shoot. And that hammer was back and
5 it was pointed right at him, right at Dhruval's dad.
6 That's very real. It's a very real matter.

7 You can see him move. This isn't just still
8 photos, but you have still photos of this video. The man
9 is moving on this video. He's moving his face, he's
10 moving his body. He's walking. His mouth is moving.
11 People who have seen it before have seen him move his
12 mouth before. People who have talked to him have seen
13 him talk before. Not only have they seen him talk but
14 they've heard him talk.

15 And I want you to see this video. I'm going play
16 it for you now. You're going to have it with you back in
17 the jury room. I don't know if you will initially have
18 this TV back in the jury room. Request it, ask for it,
19 get it and take it back there.

20 Before I show it to you though I don't think all of
21 you are going to be able to identify this man, obviously.
22 I don't think that can be done, and that is just what
23 Dr. Beaudry was telling you about. Strangers have a
24 lower level of being able to identify somebody. So just
25 because all of you can't, and some of you may, does not

1 mean you have reasonable doubt. This case is based on
2 the witnesses who knew him, not on your ability to look
3 at this video and determine if it is him.

4 I'm going to start when he comes in. Maybe you can
5 see it now, maybe you can't. Maybe when you see it later
6 you'll see that the hammer is back on this gun. You can
7 clearly see the man has the hood pulled up over his head.

8 The defense counsel made a big deal that Mr. Patel
9 couldn't tell you whether that hat was on his head or
10 not. Dr. Beaudry said between big events you may not
11 remember all the other details. You remember being
12 involved, you remember seeing that man's face that's
13 clearly exposed.

14 And you know what? Just because defense counsel
15 says that Mr. Patel didn't say it it wasn't on that
16 video, and that is ridiculous. That is about two and a
17 half feet from Mr. Patel.

18 Watch it as much as you want. It's a conscious
19 deliberation. That's what people do when they are
20 seeking the truth. They don't just watch it once.
21 Mrs. Patel didn't just watch it once, Mr. Patel didn't
22 just watch it once.

23 Why would you do that? If you'd been robbed you'd
24 watch this. You'd watch it as many times as you wanted
25 to because you own this, because you put a video

1 surveillance camera in your store for this reason, not
2 because you would never use it.

3 And there are a lot of things I've got written down
4 that I want to cover with you, but defense counsel got up
5 here and he's parading numbers and he's parading this
6 defense expert and he threw out a number of 80 percent
7 were able to accurately identify somebody, 20 weren't.
8 So 20 percent means some people couldn't do it and
9 therefore you should have reasonable doubt.

10 So if 10 people came in here and were telling you
11 that this was the man you would have eight people who
12 actually knew it was him and two people who didn't,
13 according to just that statistic. And statistics can
14 tell you anything you want them to, but there would be
15 eight people, even according to that doctor, who knew, if
16 you want to use that statistic.

17 There are four people in this case who told you
18 they know. If you want to take off 20 percent take one
19 and a half people. They are all telling you they know.
20 They are not all mistaken. They are actually all
21 correct.

22 And that statistic that she was telling you was
23 based on people who don't know the person they are trying
24 to identify. They are trying to identify a person
25 they've never seen before, a stranger. Those were her

1 statistics. Dr. Beaudry told you throughout her whole
2 examination that her research is based on strangers. The
3 fact that people know somebody does not apply to anything
4 she was telling you. Listen to her testimony again, if
5 you need to, you can request that.

6 She's a perfectly nice lady. It was good enough to
7 have a good psychological discussion with her but it does
8 not apply in this case. Nothing she said about
9 identifications apply in this case.

10 She can possibly tell you about what she knows
11 about procedures for a lineup. And as defense counsel
12 told you there were plenty of things about this procedure
13 with Mr. Patel five days later that were very good, in
14 her opinion. One of them was that there was an
15 independent administrator, Detective Perkins, who didn't
16 know the suspect. It's an extra precaution. He
17 administered the lineup, and it was told to him.

18 Dhruval told you he told his dad exactly what was
19 on this form. Dhruval testified for you. Mr. Patel said
20 I understood. They all testified about this procedure.
21 And he picked him right out. And the interesting thing
22 that defense counsel says is -- now, the one flaw defense
23 counsel says is that the only person they put in this
24 photograph that was a regular customer was my client.

25 The problem with that logic is that the police

1 didn't know he was a regular customer when they put him
2 in that lineup. Only Mr. Patel could confirm that once
3 he identified him. Think about that. That is logical.

4 The police recognized him as somebody they knew.
5 They had no idea if he was the regular customer or not.
6 They wanted to know if Mr. Patel could tell him that, and
7 so they had an independent administrator come out and
8 administrate the lineup.

9 And Mr. Patel is not an idiot, obviously. Of
10 course he speaks Hindi but he understands and he was able
11 to understand this and he pointed over and over, and over
12 again, and he circled. This is my regular customer. And
13 he told you details how he knows him. And he said from
14 the very beginning this is my regular customer. This is
15 my customer, to the first officers at the store that day.
16 He didn't know his name, didn't know if he would ever be
17 shown a photograph with this man's picture in it.

18 If Detective Lawrence or Deputy Luckadoo had not
19 recognized the man as somebody they knew he may have
20 never been in a lineup and Mr. Patel may never have had
21 the opportunity to say that's my customer, that's the
22 man. I told you the man that did this to me was my
23 customer. This is my customer. This is the man.

24 And he is not mincing his words, and you do not
25 just have Mr. Patel telling you that. You have three

1 other people telling you that with specificity and
2 certainty and they look you in the eye and they told you
3 what they know, and you can believe it. And they know
4 they have the foundation for how they know it.

5 And just because they weren't able to take an exact
6 translation there that day at the scene about this is the
7 man who comes in and buys Newport cigarettes, usually a
8 lottery ticket, sometimes gas and he jokes with us about
9 Obama does not mean it, didn't happen.

10 You judge their credibility and you determine if
11 they are lying to you, and they are not. Why would they?
12 Why would they go through a lie to frame somebody and say
13 things they don't know? This isn't about their
14 credibility. They are telling you the truth.

15 They want you to just think that they are mistaken,
16 and they are not. There's a lot to think about, and when
17 you sort it out you'll arrive at the right conclusion and
18 you will know beyond a reasonable doubt.

19 You don't have to see all of somebody to know
20 exactly who they are, people that you know well. If your
21 mother or father was standing two and a half feet away
22 from you with sunglasses on and a hood over their head
23 and speaking to you for a minute and 32 seconds in a well
24 lit area you would be under no false impression there.
25 You would know exactly who it was, and it would be easy.

1 And this is ridiculous, too. Nobody is thinking
2 this is anything other than the statute of liberty
3 because you can't see her face. You don't have to see
4 her face to know exactly what that is. It is not
5 reasonable doubt that you cannot see all of this person.

6 Just because you don't see all of my pen doesn't
7 mean you don't know exactly what this is. It is a pen
8 even though you can't see the bottom. These aren't any
9 tricks. These are just what we know. This is what we
10 bring to the table as people. It's what you bring to the
11 table with what you naturally have, your common sense.
12 You're able to sort this through.

13 And I'm going to talk about all these eyewitnesses.
14 Maybe I don't need to but I am. They are very important
15 to the case because they know him. They've told you they
16 know him. So we'll start with the first one, Deputy
17 Dustin Luckadoo. He was a first responding officer along
18 with Deputy Donald Kjellman.

19 He saw the video. He told you he knew the man in
20 the video as the defendant and he told you he was
21 certain. He based his identification on his knowing him,
22 on personal interaction with him. And he is the entire
23 reason that this man was ever listed in the reports in
24 the very beginning. He knew it. He was certain. He
25 identified him in this courtroom.

1 He is not lying to you. He's telling you about
2 something he knows. Not because he recognized him from a
3 fleeting moment, because he knows him. That's Deputy
4 Luckadoo, the first responding officer, the first
5 responding officer who understood from Mr. Patel that the
6 man who robbed him was a customer.

7 Detective Lawrence, he's been in this trial every
8 day, his case, detective with the sheriff's office. He
9 tries to do the best job he can as we would expect,
10 admits you can always do better. You can always do more.
11 He told you he saw the video. He told you, I knew that
12 man. No bones about it. I knew that man.

13 He said, I understood that Deputy Luckadoo said it
14 was him in the report. It's not good enough for me. I
15 need to see it. I know him, had personal experience with
16 him, spent hours talking to him, knowing him for years,
17 had plenty of opportunities in my life to know this man.
18 He told you he was not mistaken. He was certain. And he
19 didn't stop there. He wanted more. He called the South
20 Carolina Law Enforcement Division and arranged for them
21 to assemble a photographic lineup.

22 Detective Lawrence did not know that this man was a
23 customer at the store. That is not something he knew.
24 What he knew was this was the man he recognized in the
25 store. He knew him as a man at that moment, as a man he

1 knew and a man who robbed the store, clearly not a
2 customer. Only Mr. Patel could say if this was the
3 customer or not. They admit he was a customer.

4 There's no suggestive intent to put a customer of
5 Mr. Patel's in this lineup so that he can pick him out
6 because the detective didn't know that.

7 And you judge for yourself, but I think that's a
8 fairly good representation of people with similar
9 characteristics, and they have intentionally taken the
10 color off, it's a black and white photo, to give it even
11 more of a bare bones generality.

12 So at that point Deputy Luckadoo knew him. That's
13 in the report. Detective Lawrence who's known him for
14 years sat with him for hours, seen his face for a
15 significant amount of time, had the opportunity to see
16 him walk, talk, move, move his lips, see his cheeks, see
17 his nose, see all of that. He even knows his family,
18 talked with his father, put him in the lineup to see if
19 we get more, see what Mr. Patel does.

20 He had Detective Perkins come with him. I need you
21 to help me. I need you to be an independent
22 administrator, didn't know the person in the lineup. No
23 other reason for Detective Perkins to be in this case,
24 independent, didn't know, and Mr. Patel picked him right
25 out with Dhruval right beside him.

1 So you have three people, and that case made its
2 way to my office. Three people who knew him. But you
3 heard from a fourth person. You heard from Mrs. Patel,
4 and you'll decide to believe her or not. There's every
5 reason in the world to believe her.

6 She told you she was certain. We know that. She
7 told you she was sure. We know that. She told you why
8 she knew him. We know all those reasons and they pretty
9 much mirror Mr. Patel's except she says she thought it
10 was about six months before the incident that she had
11 known him; two, three times a week, sometimes every day.
12 Mr. Patel said for about a year. She knew him as a
13 customer. She came and she told you that.

14 There was no Hindi translator out there that day.
15 There was no officer who spoke Hindi out there that day.
16 You decide for yourself what happened. Does she know or
17 is she lying? She is not.

18 It is the search for truth. She came in here and
19 she was positive. She came in here and I pointed at this
20 man. I wanted to know absolutely sure if she could look
21 at you and say this with as much meaning and conviction
22 as she could. Could she tell you that? Could she look
23 at you and say that? And that's important. And she did.

24 You'll sort all that out. You'll go through that,
25 confident of that. You can believe all those witnesses

1 and you can believe the truth in this case. And it's
2 beyond a reasonable doubt, and that's my burden. My
3 burden is not an absolute certainty. It's beyond a
4 reasonable doubt, as it should be.

5 If you knew with certainty what happened in this
6 case you wouldn't be sitting where you are. You would
7 have taken the witness stand, told the jury what you
8 knew. People who are certain have certain information.
9 They know. And certain people take that stand.

10 Reasonable people listen to what the State's
11 evidence is and they decide if that's reasonable, and
12 that's what we want. And it should come with a
13 meaningful deliberation where you think about all of it,
14 and I know you will, and you go over all of it, and I
15 know you will. And I'm confident you'll reach the right
16 decision because you all took an oath at the beginning of
17 this case, and raised your right hand, took an oath to
18 find the truth.

19 And the truth in this case is simple. This man was
20 known and because he was known people were able to see
21 him and know who he was through his thin disguise, and
22 sunglasses do not cut it. I ask you to return verdicts
23 of guilty on armed robbery and possession of a pistol
24 during a violent crime.

25 THE COURT: Mr. Durant, if you could move the

1 bottom of your cart. Fabulous. And then we can just
2 wheel that whole cart in.

3 MR. GROEBER: Your Honor?

4 THE COURT: Yes.

5 MR. GROEBER: I'm still yet unable to find the
6 exact copy of the Yarmey report, it's the highlighted
7 portion we proffered. What I've done is I have another
8 copy. I've highlighted and bracketed the same exact
9 sections and I would ask that we mark it as 12-A, Defense
10 12-A, for the record.

11 (WHEREUPON, Defendant's Exhibit Number 12-A, the
12 Yarmey Report, was marked and made a part of the record.)

13 THE COURT: Thank you. And, Mr. Groeber, those are
14 the exhibits and you had no objection to the exhibits
15 going back?

16 MR. GROEBER: Correct.

17 THE COURT: All right. Let's bring in the jury.
18 Thank you.

19 (WHEREUPON, the jury enters the courtroom at
20 approximately 11:20 a.m.)

21 THE BAILIFF: All seated, Your Honor.

22 THE COURT: Ladies and gentlemen, we have now
23 reached the stage of the trial where I will instruct you
24 on the law applicable to this case.

25 I remind you that during this trial you and I have

1 had certain duties to perform. As the trial judge it is
2 my responsibility to preside over the trial of this case
3 and I also have the duty to rule on the admissibility of
4 the evidence that has been offered throughout this trial.

5 You are to consider only the confident evidence
6 before you. If there was any testimony ordered stricken
7 from the record you must disregard that testimony. You
8 are to consider only the testimony which has been
9 presented from the witness stand, as well as the exhibits
10 that have been admitted, as well as any stipulations of
11 counsel.

12 I have the additional duty to charge you the law
13 applicable to this case. As the presiding judge, I am
14 the sole judge of the law of this case. It is your duty
15 as jurors to accept the law and apply the law as I state
16 it to you now.

17 If you have any idea as to what the law is or what
18 the law ought to be and it does not agree with what I
19 tell you now you must abandon your own idea because you
20 were sworn to accept the law and apply the law exactly as
21 I state it to you now.

22 In every case tried in this Court before a jury the
23 jury becomes the sole and exclusive judges of the facts.
24 A trial judge may not make any comment regarding the
25 facts in this case.

1 Do not think that anything that I have said or done
2 throughout the progress of this trial or during the
3 charge on the law that I have any opinion about the facts
4 in this case. The law does not allow me to have an
5 opinion about the facts in this case.

6 Ladies and gentlemen, that becomes a matter solely
7 for you to determine. As jurors it is your duty to
8 determine the effect, value and weight, and the truth of
9 the evidence that is presented during this trial.

10 The indictments in this case charge the defendant
11 with armed robbery and possession of a firearm during the
12 commission of a violent crime. I remind you that the
13 fact that the defendant was arrested, charged and
14 indicted in this case is not evidence in this case and
15 cannot be considered by you as evidence of guilt in this
16 case, nor does it create any presumption or inference of
17 guilt. An indictment is simply the formal written
18 instrument which contains the charge made against the
19 defendant. It is the formal document by which this case
20 is brought into this Court.

21 Just as the indictments in this case are not
22 evidence any terminology or labels used to refer to the
23 individuals in this case cannot be considered as
24 evidence. For example, the use of the words defendant
25 and victim are merely formal labels and may not be

1 considered by you as evidence in this case.

2 The defendant has pled not guilty to each
3 indictment. The burden is on the State to prove the
4 defendant guilty. A person charged with committing a
5 criminal offense in South Carolina is never required to
6 prove himself innocent.

7 I charge you it is an important rule of the law
8 that the defendant in a criminal trial no matter what the
9 seriousness of the charge may be will always be presumed
10 to be innocent of the crime for which the indictment was
11 issued unless guilt has been proven by evidence
12 satisfying you of that guilt beyond a reasonable doubt.

13 This presumption of innocence does not end when you
14 begin your deliberations but it accompanies the defendant
15 throughout the trial until you reach a verdict of guilt
16 based upon evidence satisfying you of that guilt beyond a
17 reasonable doubt.

18 The presumption of innocence is like a robe of
19 righteousness that is placed around the shoulders of the
20 defendant which remains with the defendant until it has
21 been stripped from the defendant by evidence satisfying
22 you of the defendant's guilt beyond a reasonable doubt.

23 This presumption of innocence is not a mere legal
24 theory, it is not just a legal phrase. It is a
25 substantial right to which every defendant is entitled

1 unless you, the jury, are satisfied of the evidence from
2 the defendant's guilt beyond a reasonable doubt.

3 The State has the burden of proving the defendant
4 guilty beyond a reasonable doubt. Some of you may have
5 served as jurors before in civil cases where you were
6 told it was only necessary to prove that a fact is more
7 likely true than not true, such as by a greater weight or
8 preponderance of the evidence. In criminal cases the
9 State's proof must be more powerful than that. It must
10 be beyond a reasonable doubt.

11 Proof beyond a reasonable doubt is proof that
12 leaves you firmly convinced of the defendant's guilt.
13 There are very few things in this world that we know with
14 absolute certainty and in criminal cases the law does not
15 require proof that overcomes every possible doubt.

16 If based upon your consideration of the evidence
17 you are firmly convinced that the defendant is guilty of
18 the crime charged you must find the defendant guilty.
19 If, on the other hand, you think there is a real
20 possibility that the defendant is not guilty you must
21 give the defendant the benefit of the doubt and find him
22 not guilty.

23 There are two types of evidence which are generally
24 presented during a trial; direct evidence and
25 circumstantial evidence.

1 Direct evidence is the testimony of a person who
2 claims to have actual knowledge of a fact such as an
3 eyewitness. It is evidence which immediately establishes
4 the main fact to be proved.

5 Circumstantial evidence is proof of a chain of
6 facts and circumstances indicating the existence of a
7 fact. It is evidence which immediately establishes
8 collateral facts from which the main fact may be
9 inferred. Circumstantial evidence is based on inference
10 and not on personal knowledge or observation.

11 The law makes absolutely no distinction between the
12 weight or value to be given either direct or
13 circumstantial evidence, nor is a greater degree of
14 certainty required of circumstantial evidence than that
15 of direct evidence.

16 You should weigh all of the evidence in this case
17 and after weighing all of the evidence if you are not
18 convinced of the guilt of the defendant beyond a
19 reasonable doubt you must find the defendant not guilty.

20 Necessarily, you must determine the credibility of
21 the witnesses who have testified in this case.

22 Credibility simply means believability. It bottoms your
23 duty as jurors to analyze and to evaluate the evidence
24 and determine which evidence convinces you of its truth.

25 In determining the believability of the witnesses

1 who have testified in this case you may believe one
2 witness over several witnesses or several witnesses over
3 one witness. You may believe a part of the testimony of
4 a witness and reject the remaining part of the testimony
5 of that same witness..

6 You may believe the testimony of a witness in its
7 entirety or reject the testimony of a witness in its
8 entirety. You may consider whether the witness has
9 exhibited to you any interest, bias, prejudice or other
10 motive in this case. You may also consider the
11 appearance and manner of a witness while on the witness
12 stand.

13 The rules of evidence ordinarily do not permit
14 witnesses to testify to opinions or to conclusions. An
15 exception to this rule exists for witnesses we call
16 expert witnesses.

17 A witness who by education and experience has
18 become expert in some art, science, profession or calling
19 may state an opinion as to relevant and material matter
20 in which the witness claims to be an expert and may also
21 state the reasons for that opinion.

22 You should consider any expert opinion received in
23 evidence in this case and like any other evidence give it
24 the weight you think it deserves. If you decide that the
25 opinion of an expert witness is not based on sufficient

1 education and experience or if you conclude that the
2 reasons given in support of the opinion are not sound, or
3 that the opinion is outweighed by other evidence you may
4 disregard the opinion entirely.

5 An expert witness's testimony is to be given no
6 greater weight than that of other witnesses simply
7 because the witness is an expert. Further, you are not
8 required to accept an expert's opinion even though it is
9 not contradicted.

10 I instruct you and emphasize, the fact that the
11 defendant did not testify is not a factor to be
12 considered by you in any way in your deliberation and in
13 your consideration on the question of the guilt of the
14 defendant. It must not be considered by you in any way
15 whatever. A defendant has the constitutional right to
16 remain silent and the assertion of this right must not be
17 considered by you in your deliberations.

18 I repeat, under your oath you are to draw no
19 conclusion whatsoever from the fact that the defendant in
20 this case did not testify. The fact that this defendant
21 did not testify should not even be discussed in the jury
22 room. The burden of proof as I have stated to you is on
23 the State. The defendant is not required to prove his
24 innocence. The burden of proof remains on the State to
25 prove guilt beyond a reasonable doubt.

1 In order to establish criminal liability criminal
2 intent is required. For example, the mental state
3 required to be proven by the State for a particular crime
4 might be purpose, intent, knowledge, recklessness or
5 criminal negligence.

6 Criminal intent must be proven by the State beyond
7 a reasonable doubt. Criminal intent is always a matter
8 that must be determined by the jury from the
9 circumstances surrounding the situation.

10 There is no way to prove intent to a mathematical
11 certainty. There is no way medical science can dissect a
12 person's brain and determine what the person has in mind.
13 So the law says that criminal intent may be inferred from
14 the circumstances shown to have existed. This is how you
15 make a determination of whether or not the element
16 requiring intent was present.

17 It is not necessary to establish intent by direct
18 and positive evidence but intent may be established by
19 inference in the same way as any other fact by taking
20 into consideration the acts of the parties and all the
21 facts and circumstances of the case.

22 Criminal intent is a mental state, a conscious
23 wrongdoing. It is up to you to determine what the
24 defendant intended to do based upon the circumstances
25 shown to have existed. Criminal intent can arise from

1 action or a failure to act. It may arise from
2 negligence, recklessness or an indifference to duty or to
3 consequences that is considered by law to be the
4 equivalent of criminal intent.

5 An issue in this case is the identification of the
6 defendant as the person who committed the crime charged.
7 The State has the burden of proving identity beyond a
8 reasonable doubt. You must be satisfied beyond a
9 reasonable doubt of the accuracy of the identification of
10 the defendant before you may convict the defendant.

11 Identification testimony is an expression of belief
12 or impression by a witness. You must determine the
13 accuracy of the identification of the defendant. You
14 must consider the believability of each identification
15 witness in the same way as any other witness.

16 You may consider whether the witness had an
17 adequate opportunity to observe the offender at the time
18 of the offense. This will be affected by things like how
19 long or short a time was available, how far or close the
20 witness was, the lighting conditions, and whether the
21 witness had a chance to see or know the person in the
22 past.

23 Once again, I instruct you, the burden of proof on
24 the State extends to every element of the crime charged
25 and this specifically includes the burden of proving

1 beyond a reasonable doubt the identity of the defendant
2 as the person who committed the crime.

3 If after examining the testimony you have a
4 reasonable doubt as to the accuracy of the identification
5 you must find the defendant not guilty.

6 The indictments in this case allege two different
7 offenses against the defendant. The charges are
8 indictment number one, in no particular order, armed
9 robbery; and indictment number two, possession of a
10 firearm during the commission of a violent crime.

11 Each indictment charges a separate and distinct
12 offense. You must decide each indictment separately on
13 the evidence and the law applicable to it uninfluenced by
14 your decision as to any other indictment. The defendant
15 may be convicted or acquitted on any or all of the
16 offenses charged.

17 You will be asked, Mr. Foreperson, to write a
18 separate verdict of guilty or not guilty for each
19 indictment.

20 The defendant is charged with armed robbery.
21 In order to prove this offense the State must first prove
22 beyond a reasonable doubt that the defendant took
23 personal property from the person or presence of another
24 person.

25 Property is in the presence of a person if it is

1 within the person's reach, inspection, observation or
2 control so that the person could if not overcome with
3 violence or prevented by fear keep possession of the
4 property.

5 The State must also prove beyond a reasonable doubt
6 that the defendant carried the property away intending to
7 permanently deprive the owner of the property and to keep
8 the property for the defendant's own use.

9 The slightest removal of the property with the
10 complete possession of the property even for an instant
11 by the defendant is sufficient to show a taking and
12 carrying away of the property. The taking and carrying
13 away of the property must have been done with violence or
14 by putting the owner of the property in the fear of the
15 violence.

16 Finally, the State must prove beyond a reasonable
17 doubt that the defendant was armed with a deadly weapon
18 during the robbery. A deadly weapon is any article,
19 instrument or substance which is likely to cause death or
20 great bodily harm. Whether an instrument has been used
21 as a deadly weapon depends on the facts and circumstances
22 of each case.

23 The following are examples of instruments which may
24 be deadly weapons; a pistol, a shotgun, a rifle, a dirk,
25 a dagger, a knife, a fire bomb or Molotov cocktail. A

1 gun may be a deadly weapon even if it is not operating.

2 The defendant is also charged with possession of a
3 firearm during the commission of a violent crime. The
4 State must prove beyond a reasonable doubt that the
5 defendant was in possession of a firearm or visibly
6 displayed what appeared to be a firearm during the
7 commission of a violent crime.

8 A firearm means a machine gun, automatic rifle,
9 revolver, pistol or any weapon which is designed to or
10 may be readily converted to expel a projectile.

11 In order to find the defendant guilty of possession
12 of a weapon during the commission of a violent crime you
13 must first find the defendant guilty of either committing
14 a violent crime or attempting to commit a violent crime.
15 For purposes of this offense armed robbery is a violent
16 crime.

17 Ladies and gentlemen, I'll now go over the verdict
18 forms with you.

19 Mr. Foreman, it is your responsibility to sign and
20 date the verdict form once you have -- once the jury has
21 reached a unanimous decision, meaning all 12 of you must
22 agree on the verdict.

23 As I indicated to you there are two indictments.
24 Each must be considered separately of each other. Ladies
25 and gentlemen, please also know that there's no

1 significance in the way I read either indictment first or
2 how the decisions are placed on the paper. It's simply
3 something must go on the paper first.

4 Ladies and gentlemen, in the Court of Common Pleas
5 -- excuse me. In the Court of General Sessions, Ninth
6 Judicial Circuit, 2011-GS-10-2338, State of South
7 Carolina vs. Marvin Bowens Green. On the indictment for
8 armed robbery we, the jury, find the defendant not guilty
9 or we, the jury, find the defendant guilty.

10 Again, once you have reached a unanimous decision
11 on that indictment you will sign the verdict form
12 indicating all 12 of you have reached the verdict, and
13 sign it and date it.

14 In the Court of General Sessions, Ninth Judicial
15 Circuit, 2011-GS-10-2339. On the indictment for
16 possession of a firearm during the commission of a
17 violent crime we, the jury, find the defendant not guilty
18 or we, the jury, find the defendant guilty.

19 Once again, once you have reached a unanimous
20 decision you will sign and date that verdict form. Once
21 you have completed both of the verdict forms you will
22 alert the bailiff that you have reached a decision and we
23 will receive you back into the courtroom.

24 Ladies and gentlemen, this will be the last time I
25 say this to you; do not begin your deliberations, do not

1 discuss this case amongst yourselves. We will be
2 gathering the verdict forms and the evidence to go back
3 to you. We're going to send the television so that you
4 may watch the video if you need to do so. Once all that
5 has been gathered the bailiff will instruct you when you
6 may begin your deliberations.

7 Madam alternate, this completes your service to
8 this case but I ask until you are released do not discuss
9 this case with anyone and do not begin thinking about
10 anything in case that I would need you before -- at some
11 point to put you in with the other jurors. But at this
12 time please remember all the admonitions and I will
13 release you at the appropriate time.

14 Please rise for the jury.

15 (WHEREUPON, the jury leaves the courtroom at
16 approximately 11:38 a.m.)

17 THE COURT: Thank you. Be seated.

18 From the State, any objection to the charges read?

19 MR. RUTLEDGE DURANT: No, Your Honor.

20 THE COURT: Reserving all your previous objections
21 that I have marked as a court's exhibit, your proposed
22 jury charges, anything as read, Mr. Grimes?

23 MR. GRIMES: Yes, ma'am. I think I'm a little
24 confused. I think for the record I need to state the
25 grounds as to why we're requesting these charges. I'd

1 like to have a few minutes to be able to do that.

2 THE COURT: All right.

3 MR. GRIMES: Thank you, Your Honor. We did submit
4 request to charge number one on identification. And on
5 the second paragraph of that charge the Court erred in
6 not charging that. Specifically the language, You don't
7 have to believe that the identification witness was lying
8 or not sincere to find the defendant not guilty. It's
9 enough that --

10 THE COURT: You may need to come to the podium,
11 Mr. Grimes.

12 MR. GRIMES: Thank you, Your Honor.

13 As highlighted by the closing arguments in this
14 case Mr. Groeber testified -- well, argued that this was
15 a tested memory, witness making an honest mistake.
16 Mr. Durant basically implied that we said the witnesses
17 were lying. And as Dr. Beaudry testified witnesses can
18 make honest mistakes and just not realize that they are
19 mistaken. They have an honest sincere belief that what
20 they saw was accurate.

21 And given Dr. Beaudry's testimony and as issues
22 were presented in this case I believe the admission of
23 this charge provides Mr. Green a right to a fair trial
24 and by a jury of his peers.

25 As to paragraph one on the bottom of that page, I

1 believe the Court charged the length of time the witness
2 observed the person, the distance between the witness and
3 the person. I do not recall the Court charging factor C
4 to the extent that the person's features were visible and
5 undisguised. Again, that given Dr. Beaudry's testimony,
6 and the video, cross-examination of the witnesses I
7 believe that charge is supported and should be given.

8 I believe the Court did charge lighting conditions.
9 Paragraph E, whether there were any distractions
10 occurring during observation. That would be some of what
11 Dr. Beaudry testified about weapons focus.

12 And if you watch in the video when the robber asked
13 for money out of the wallet he's looking down. Mr. Patel
14 is looking down looking in the cash register. He is
15 distracted, and I believe there's evidence in the record
16 to support that charge. Again, the omission of those
17 three deprived Mr. Green to the right to a fair trial,
18 the Sixth Amendment right to a jury trial by his peers.

19 I don't believe the Court charged paragraph two. I
20 do note that the fact they had listed and italicized C, D
21 and E I don't think applied to this case. There's no
22 testimony that Mr. Patel or any other witness had
23 uncorrected visual defects, they were either fatigued or
24 injured, or under the influence of any drug or alcohol.

25 However, there was testimony from Mr. Patel that he

1 was under stress or fright at the time of his
2 observation. As Mr. Durant eloquently argued, he
3 believed his life was in fear and, you know, went to the
4 emotion of the case rather than so much the facts of the
5 case. So we believe in personal motivations, biases or
6 prejudices I believe when Mr. Patel testified his job was
7 to help the police catch the person that showed personal
8 motivation in this case and I believe that should be
9 charged.

10 If the Court wanted to admit biases or prejudices
11 or clarify that, and we're not arguing he was racially
12 prejudiced or had any ongoing animist with Mr. Green or
13 any motive bias, creating a bias of wanting to catch
14 somebody that could be corrected.

15 Paragraph three on the cross-racial, that was
16 elicited by both the State and through their questions of
17 Mr. Patel talking about Mr. Patel's customer base 80
18 percent African Americans, where most of their clients
19 come from. Dr. Beaudry testified that race is a factor,
20 and we believe that charge is supported by the evidence
21 in the record.

22 As to paragraph four, I don't recall that being
23 charged. As Mr. Groeber argued and brought out during
24 trial, on paragraph A there was at least five days that
25 passed in this case, and Dr. Beaudry testified memory

1 loss happens rather quickly after an incident.

2 I don't believe there's any evidence on Mr. Patel's
3 mental capacity as being -- perhaps that could be struck
4 but the state of mind at the time of the identification I
5 think may need to go in there, especially with sort of
6 the translation issues and his wanting to help the police
7 catch the robber.

8 Paragraph C, the exposure of witnesses to opinions;
9 there's ample testimony in the record that Mr. Patel and
10 Mrs. Patel talked about the case for a week after the
11 incident and they watched the video at least four or five
12 times for identification, and then evidence in the record
13 that Mr. Durant was interviewing Mrs. Patel and talked
14 with her about the case as his role as an investigator,
15 and I believe that would go to that part of it.

16 I don't believe there's any information about the
17 photographs, never shown any photograph of Mr. Green, so
18 that could be stricken. And the part about any other
19 information or influence that may have affected
20 independence, that identification of the defendant by the
21 witness could go to perhaps them overhearing the officers
22 in the hallway talking. Again, goes to his talking to
23 Mrs. Patel.

24 Paragraph D, I don't believe there weren't any
25 instances where there would be misidentification.

1 Paragraph E, there's ample testimony that there was
2 never a description of the person that was given and we
3 have testimony that's sort of inconsistent. There was
4 the pointy nose issue, the walk issue, mannerisms.

5 You know, there was a change of testimony
6 throughout the trial, sort of the one witness like
7 Mr. Patel, for example, during direct never said he could
8 clearly see Mr. Green's face. He never said he could
9 testify -- he never testified that he could see his eyes
10 over the glasses. That came out in cross. So that shows
11 an evolving just change of description, and the truth
12 simply doesn't evolve. So we believe that should be
13 charged.

14 And paragraph F, the circumstances under which the
15 defendant was presented to the witness for
16 identification. Given the translation issues and the
17 child, the youngest Patel basically not being able to
18 translate everything, for example, he didn't know what an
19 array was, and sort of the other rights. And Officer
20 Perkins testified he didn't know what was said. They
21 could be talking about anything.

22 Then you have the four-minute issue, as Mr. Groeber
23 pointed out with that, sufficient evidence for that to be
24 charged.

25 I believe paragraph five should be charged.

1 Paragraph six should be charged, especially since three
2 of the witnesses only saw this on the video recording.

3 Paragraph seven should be charged. Dr. Beaudry
4 testified that a witness's level of confidence, it really
5 isn't relevant to whether they observed accurately. You
6 can be a hundred percent sure something happened and be
7 wrong. I know I've had that happen to me several times.

8 That would complete my argument on the
9 identification charges as our major argument.

10 THE COURT: All right. Mr. Grimes, I believe you
11 have thoroughly articulated the basis and they are marked
12 as a court's exhibit, and I believe that by doing so we
13 have preserved any argument and objection to the Court's
14 charge. Thank you.

15 MR. GRIMES: Thank you, Your Honor. We also
16 requested charge number two.

17 THE COURT: I understand. They are all marked,
18 Mr. Grimes. You've made your argument. I am not
19 changing my charge. My charges are law. I have, again,
20 marked your charges, your proposed charges as a court's
21 exhibit. I understand that you have objected to the
22 charge as given by the Court and these are the proposed
23 charges. Thank you.

24 MR. GRIMES: I don't mean -- my concern is that if
25 I don't state my grounds for the record, the appellate

1 court is not going to know why I'm arguing. And if you
2 say well, we've reviewed the charge, and they say well,
3 Mr. Grimes never said, you know, what basis on the record
4 supported this --

5 THE COURT: Mr. Grimes, you have thoroughly
6 articulated and all of your charges are interrelated. So
7 I believe that you have thoroughly articulated the
8 grounds and the basis for your objection. Thank you.

9 MR. GRIMES: Thank you, Your Honor.

10 THE COURT: All right. Anything further from the
11 State?

12 MR. RUTLEDGE DURANT: No, Your Honor.

13 THE COURT: All right. We're at ease.

14 (WHEREUPON, the jury was instructed to begin their
15 deliberations at approximately 11:50, and court was in
16 recess while awaiting a verdict from the jury.)

17 THE COURT: All right. Mr. Durant, you ready by
18 yourself?

19 MR. DURANT: Yes, Your Honor.

20 THE COURT: All right. I received a note. Juror
21 95 has met Detective Lawrence before on another case.
22 She didn't realize until he said what job he had. She
23 met him in April 2012 and do you need to talk to her?
24 Signed the foreperson.

25 MR. RUTLEDGE DURANT: I'm not requesting any.

1 MR. RUTLEDGE DURANT: No, Your Honor.

2 THE COURT: Mr. Groeber?

3 MR. GROEBER: No, Your Honor.

4 THE COURT: And, Mr. Groeber, I understand there
5 are some -- assuming, I don't know what the verdict is,
6 but there may be a sentencing issue, we'll need to have a
7 hearing?

8 MR. GROEBER: Yes, Your Honor. We may need to
9 delay sentencing for the reasons that we would argue.

10 THE COURT: All right, thank you.

11 Please rise for the jury.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 2:52 p.m.)

14 THE BAILIFF: All seated, Your Honor.

15 THE COURT: Thank you. Please be seated.

16 Mr. Foreman, I understand the jury has reached a
17 verdict. If you'll hand the verdict forms to the
18 bailiff. Thank you.

19 Mr. Green, please rise.

20 THE CLERK: The verdict in the matter of the State
21 of South Carolina vs. Marvin Bowen Green, defendant, on
22 the indictment for possession of a firearm during the
23 commission of a violent crime we, the jury, find the
24 defendant guilty. Signed by the foreperson of the jury
25 on June 14, 2012.

1 Ladies and gentlemen of the jury, if this was your
2 verdict please raise your right hand.

3 Thank you. Please let the record reflect that all
4 12 jurors raised their right hand.

5 On the indictment for armed robbery, we, the jury,
6 find the defendant guilty. Signed by the foreperson of
7 the jury on June 14, 2012.

8 Ladies and gentlemen of the jury, if this was your
9 verdict please raise your right hand.

10 Thank you. Please let the record reflect that all
11 12 jurors raised their right hand.

12 THE COURT: Thank you. You may be seated, unless,
13 Mr. Groeber, you have any further requests of the jury.

14 MR. GROEBER: We'd ask that the jury be polled,
15 Your Honor, please.

16 (WHEREUPON, the jury was polled.)

17 THE CLERK: Your Honor, the jury has been polled
18 and the verdicts stand.

19 THE COURT: Thank you.

20 Mr. Groeber, anything further required of this
21 jury?

22 MR. GROEBER: No, Your Honor. Thank you.

23 THE COURT: Anything further required of this jury?

24 MR. RUTLEDGE DURANT: No, Your Honor.

25 THE COURT: Is the State prepared to go forward

1 with sentencing at this time?

2 MR. RUTLEDGE DURANT: Yes, Your Honor.

3 THE COURT: Is the defendant ready to go forward
4 with sentencing at this time?

5 MR. GRIMES: No, ma'am.

6 THE COURT: And, Mr. Grimes, when will the
7 defendant be ready for sentencing?

8 MR. GRIMES: It's my understanding that the United
9 States Supreme Court is considering the Eighth Amendment
10 Challenge to imposing a life sentence on juveniles.
11 Given that impact of this case, we'd prefer to wait for
12 that case to come out.

13 It's argued, I think, in February or January.
14 Usually the court's term ends in June. I can't think
15 when that would come out. The decision should come out
16 in the next few weeks. That should provide guidance. As
17 of now the United States Court has held that a juvenile
18 can not get life without parole for a non murder offense.

19 THE COURT: All right. Mr. Durant, how old is the
20 defendant?

21 MR. RUTLEDGE DURANT: Your Honor, he was born on
22 June the 29th of 1991.

23 THE COURT: And so, Mr. Grimes, how old is the
24 defendant currently?

25 MR. GRIMES: He's 20. And the basis of our

1 challenge, the prior conviction he has, which is serving
2 as the mechanism for the State to give him life without
3 parole, occurred when he was 17. And given that that's
4 the juvenile aspect of it, and before that prior
5 sentencing he'd only be looking at 10 to 30, we believe a
6 life sentence would violate the Eighth Amendment under
7 impartiality clause per se the Eighth Amendment, and we
8 want some more time to see what that case says. As of
9 now they are considering whether you can give a juvenile
10 life without parole for a murder offense.

11 THE COURT: But your client is currently not a
12 juvenile and was not a juvenile when this crime was
13 committed; is that correct, Mr. Grimes?

14 MR. GRIMES: Yes, ma'am.

15 THE COURT: All right. We'll go forward with
16 sentencing today. Do you have your sentencing sheets
17 prepared?

18 MR. RUTLEDGE DURANT: We do, Your Honor.

19 THE COURT: Ladies and gentlemen of the jury, I am
20 about to impose sentence on Mr. Green. You are released
21 from service, if there's anyone who wishes to be released
22 at this time. Sentencing, we will just go on to
23 sentencing. Is there anyone that wishes to leave?

24 (There was no response.)

25 THE COURT: All right. Thank you.

1 All right. Mr. Durant, I have listened to the
2 facts over the past four days. I do not need to hear the
3 facts again. Does the victim wish to address the Court?
4 Is there anything, victim impact statement or anything of
5 that nature?

6 MR. BRUCE DURANT: Your Honor, the victim is at his
7 store. We were not able to get him here in time. So we
8 wish to proceed.

9 THE COURT: All right. As the record is clear,
10 we've had a pretrial hearing and he testified, as did his
11 wife and his son. I have an understanding of the impact
12 of this crime on the victim.

13 Let me hear the prior history, the prior criminal
14 convictions from Mr. Green.

15 MR. RUTLEDGE DURANT: Your Honor, he was convicted
16 this same month last year of a different armed robbery in
17 front of a different jury, and that is his only
18 conviction. There is another pending armed robbery in
19 our office. There is another pending armed robbery
20 against this defendant in Colleton County as well.

21 THE COURT: Well, as we know, Mr. Durant, he is
22 presumed innocent of those two. What did he receive on
23 the conviction? What was the sentence?

24 MR. RUTLEDGE DURANT: He was sentenced to 20 years
25 for the conviction last year, and as we've gone over, the

1 State had made an offer of concurrent time, that he would
2 do absolutely no more time than what he had been
3 sentenced to on the prior armed robbery, and in light of
4 that he understood well that the State was serving a
5 notice of life without parole.

6 THE COURT: And, Mr. Durant, it's your position
7 that the possession of weapon during a crime is to be
8 served consecutive to the life sentence or may I run them
9 concurrent?

10 MR. RUTLEDGE DURANT: I think you can run them
11 concurrent, Your Honor.

12 THE COURT: What are you requesting?

13 MR. RUTLEDGE DURANT: Concurrent is fine.

14 THE COURT: Anything further from the State?

15 MR. RUTLEDGE DURANT: No, Your Honor.

16 THE COURT: Mr. Groeber, I'll be happy to hear from
17 you regarding sentencing. The jury has spoken. There is
18 a notice for life without parole. Based upon my review
19 of the previous conviction, which was most serious and
20 this being a most serious as well, the imposition will be
21 life without parole pursuant to the notice.

22 You indicated there was no challenge to the notice
23 portion of that and my understanding is the only
24 challenge that you have at this point is to the
25 constitutionality of the prior conviction, and as such I

1 am continuing with sentence. So I'll be happy to hear
2 from you.

3 MR. GROEBER: Okay. Could I have one moment, Your
4 Honor, please?

5 THE COURT: You may. And, Mr. Groeber, I'll be
6 happy to hear from you as to whether or not the
7 possession -- at some point it becomes really a moot
8 issue but whether or not the possession of a weapon must
9 run consecutive or concurrent. Thank you.

10 MR. GROEBER: Thank you, Your Honor.

11 (PAUSE.)

12 MR. GRIMES: I apologize, Your Honor. I'm trying
13 to find a research email on this.

14 THE COURT: Concerning?

15 MR. GRIMES: The Eighth Amendment Challenge. It
16 should take about two minutes, at the most.

17 THE COURT: All right. Thank you.

18 (PAUSE.)

19 MR. GROEBER: Thank you, Your Honor. I think that
20 you heard the Eighth Amendment argument. I want to
21 preserve that. Grand V. Florida is the case, a United
22 States Supreme Court case. He was 17 at the time he was
23 convicted of a prior charge. He was 19 at the commission
24 of this charge. He's 20 now.

25 You saw his mother and father were in the

1 courtroom, and his brothers. He's grown up in the area,
2 grew up in Jacksonboro. He lived there most of his life,
3 in Colleton County, in there and around Ravenel.

4 I don't know that Your Honor has discretion when it
5 comes to sentencing but he's been a great client. He's
6 always been easy to work with for me. And I think what
7 we'll do is that we will try to draft a memo maybe as
8 part of our motion to reconsider, to preserve that issue
9 with the Court.

10 THE COURT: And, Mr. Groeber, am I correct in
11 assuming that you have advised Mr. Green not to address
12 the Court?

13 MR. GROEBER: That is correct, Your Honor. And I'm
14 sorry. On the concurrent I do think that when a life
15 sentence is imposed it should be run concurrent. That's
16 my understanding.

17 THE COURT: It is within my discretion so I am
18 going to, just for simplicity sake, run them concurrent.

19 Mr. Groeber, you have advised your client of his
20 right to appeal and he must do so within ten days?

21 MR. GROEBER: Yes, Your Honor.

22 THE COURT: You advised him of that?

23 MR. GROEBER: Yes, Your Honor.

24 THE COURT: Have you advised also your client that
25 the armed robbery is considered a violent and a most

1 serious offense?

2 MR. GROEBER: Yes, Your Honor.

3 THE COURT: Did your client appear to understand
4 his appellate rights?

5 MR. GROEBER: Yes, Your Honor.

6 THE COURT: Thank you.

7 Mr. Green, please rise. I'm going to impose
8 sentence. Mr. Green, at this time the State, as you know
9 prior to entering into and beginning this trial the State
10 has filed, based upon your prior record, a notice to seek
11 life without the possibility of parole. The jury has
12 spoken. They have listened to the facts and you have
13 been convicted of both armed robbery and possession of a
14 weapon during a crime.

15 It's the order of the Court on indictment
16 2011-GS-10-2339 that you be committed to the State
17 Department of Corrections for a term of five years. I'll
18 give you credit for any time that you have served. That
19 is concurrent to the controlling indictment,
20 2011-GS-10-2338, that you be sentenced to the South
21 Carolina Department of Corrections for a term of life
22 without the possibility of parole. Good luck to you,
23 sir.

24 THE DEFENDANT: Thank you.

25 THE COURT: Ladies and gentlemen, this completes

1 your matters. If you would please go to your jury room.

2 I will be in there in just a few moments. Thank you.

3 (WHEREUPON, the jury leaves the courtroom at
4 approximately 3:10 p.m.)

5 THE COURT: They took your client away before I
6 addressed you about some things. That's fine,
7 Mr. Groeber. I just wanted to take this opportunity to
8 let you know and to express, Mr. Durant, Mr. Durant,
9 Ms. McCoy, Mr. Groeber, and Mr. Grimes, I know that this
10 was a very difficult and emotionally charged trial as
11 well. All of you were extremely prepared and
12 professional to the Court and I think you set a really
13 good example for the multitude of 403s that have been in
14 and out of this courtroom and for that I thank you.

15 You both zealously represented your clients to the
16 best of your ability, and I think that both sides did a
17 wonderful job in your representation. So thank you for
18 that. On behalf of the State of South Carolina and on
19 behalf of my courtroom I appreciate everything that all
20 five of you have done in representing the State of South
21 Carolina.

22 So I appreciate that, and I just wanted to let you
23 know in no way, either way the verdict had come out,
24 neither one of you -- no one should walk out of here
25 feeling that they did a poor job. Everyone has been

1 exceptionally prepared. I know that every time I've
2 asked you, I've emailed you at nine or ten o'clock in the
3 evening and there has been responses as well. So I
4 appreciate your very, very hard work.

5 So I will await your motion to reconsider, and with
6 that I'm going to excuse the jury. Thank you. Good luck
7 to you all.

8 (WHEREUPON, trial of this case was concluded.)

9

10

11

12

13

14

15

16

17

18

19

20

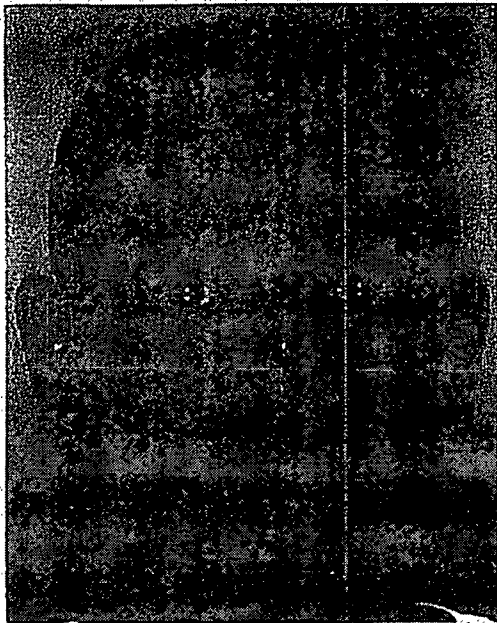
21

22

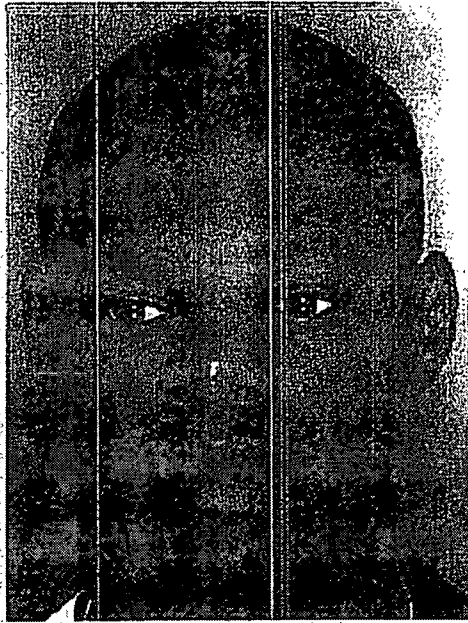
23

24

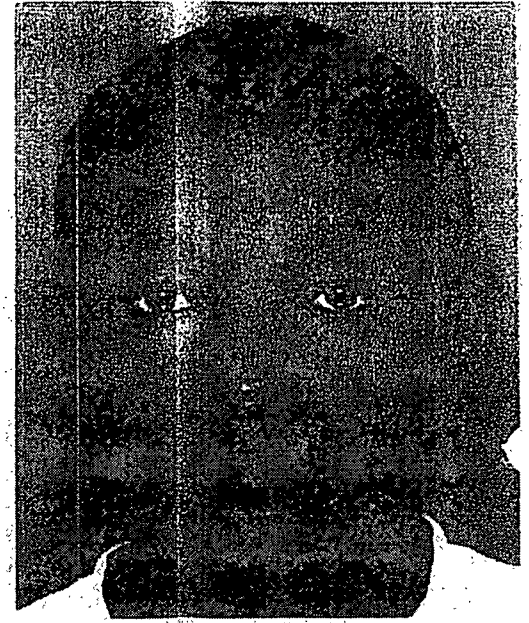
25



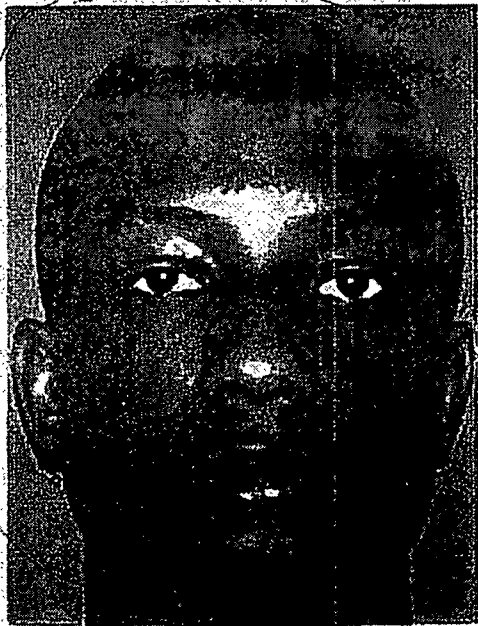
1



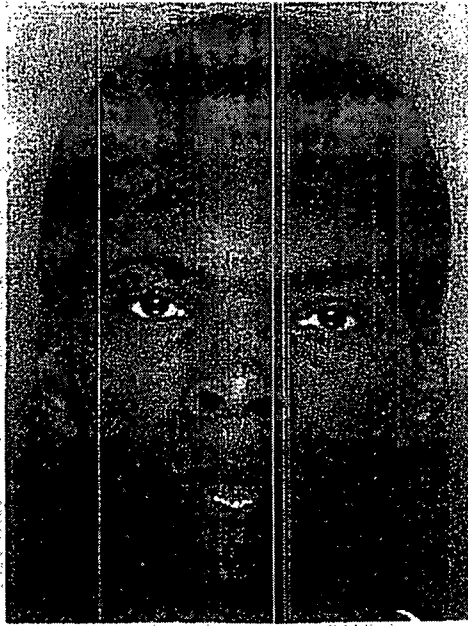
2



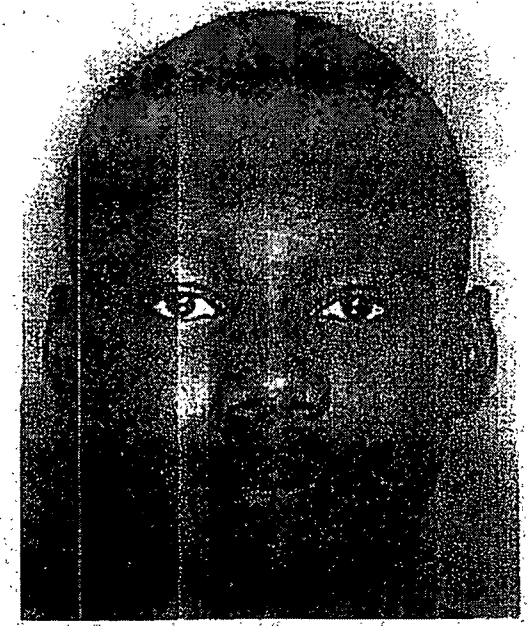
3



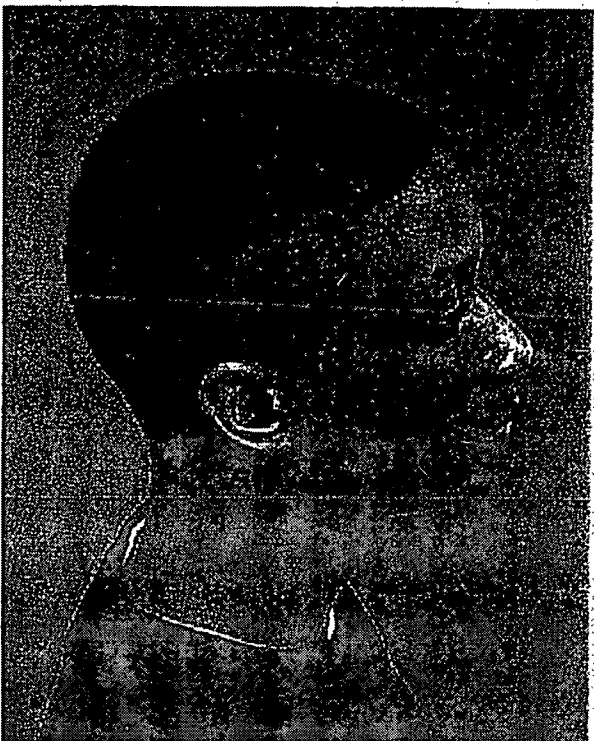
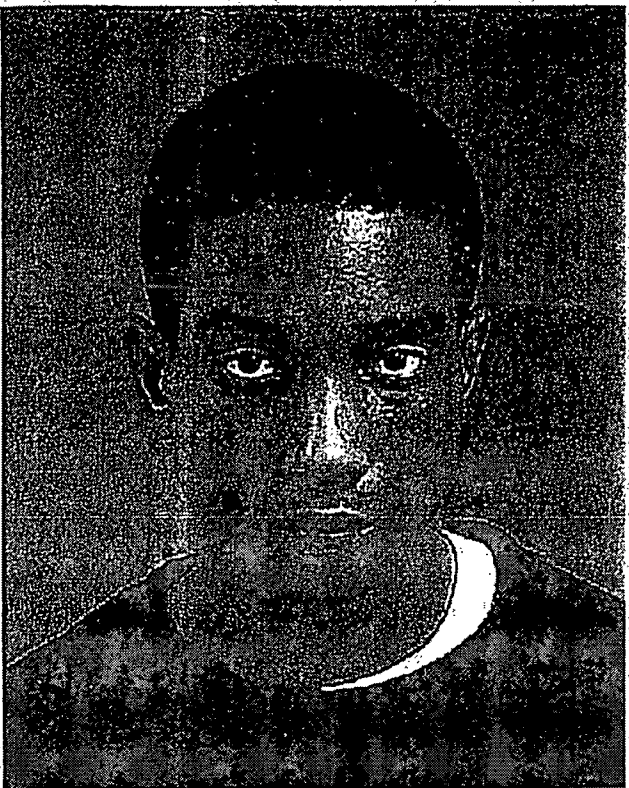
4

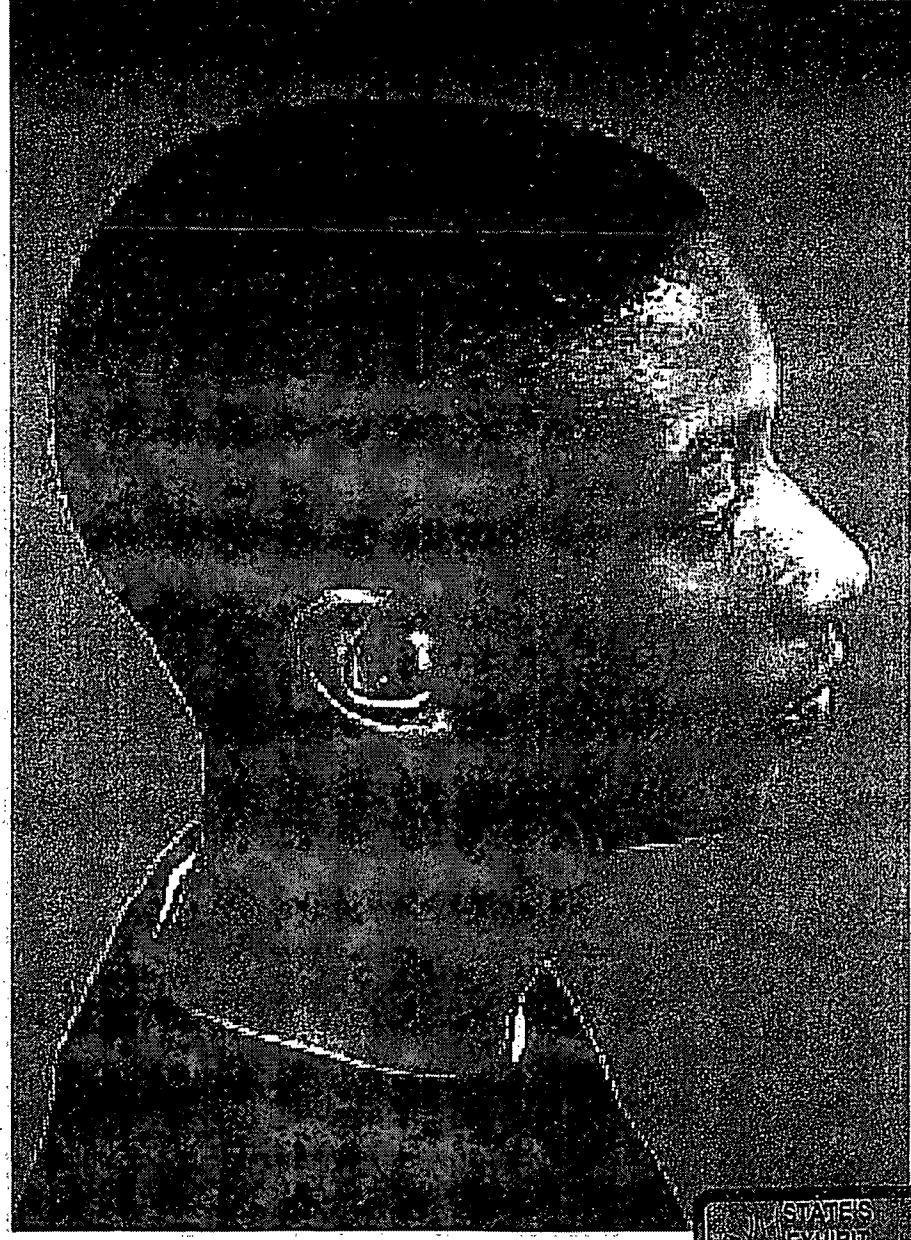
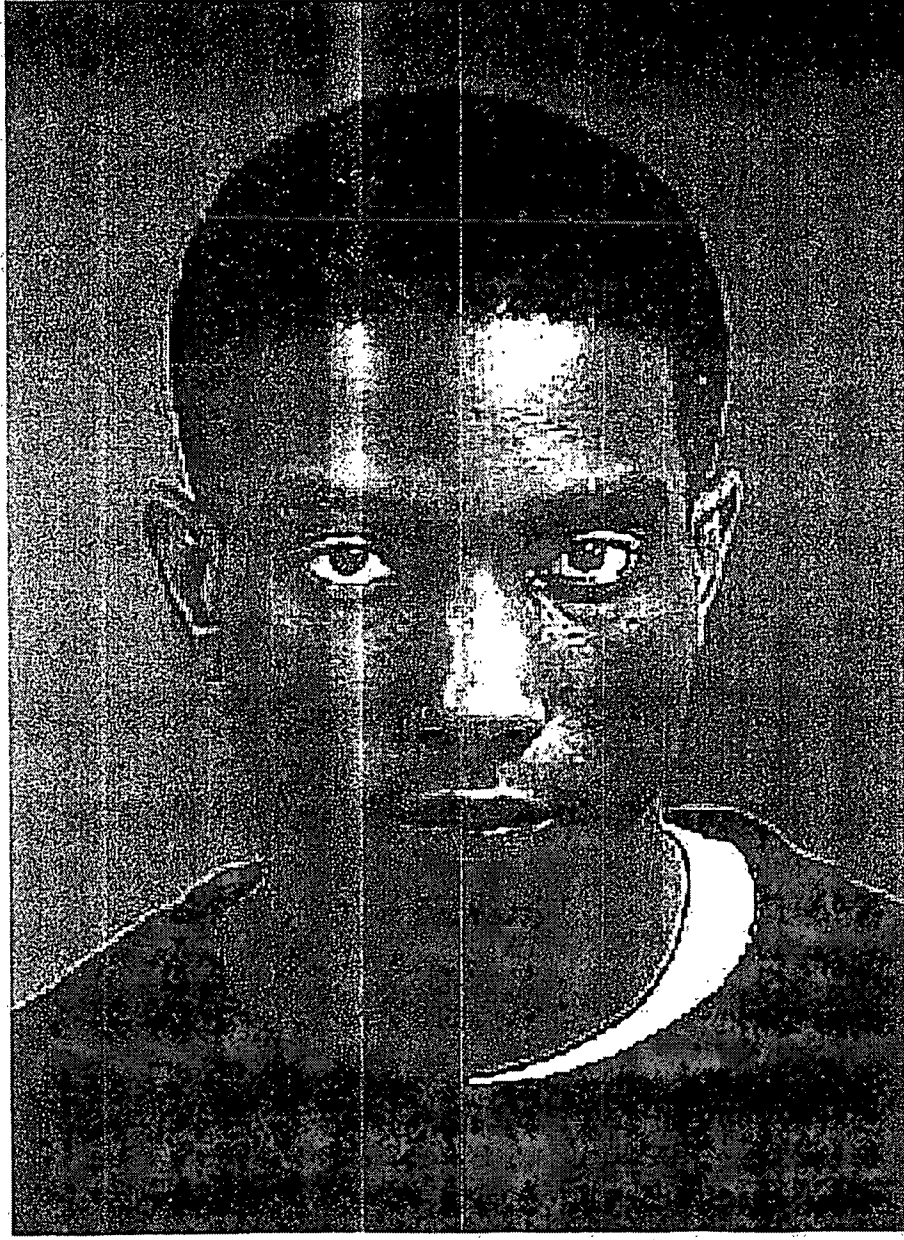


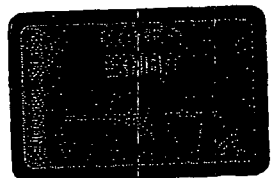
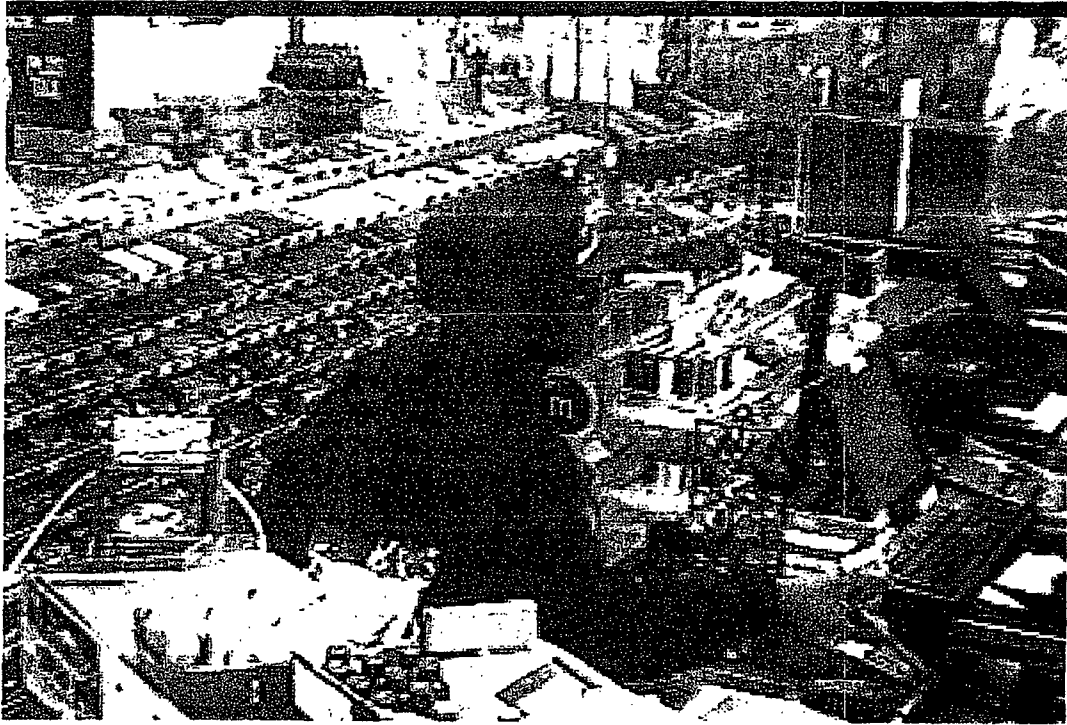
5



6





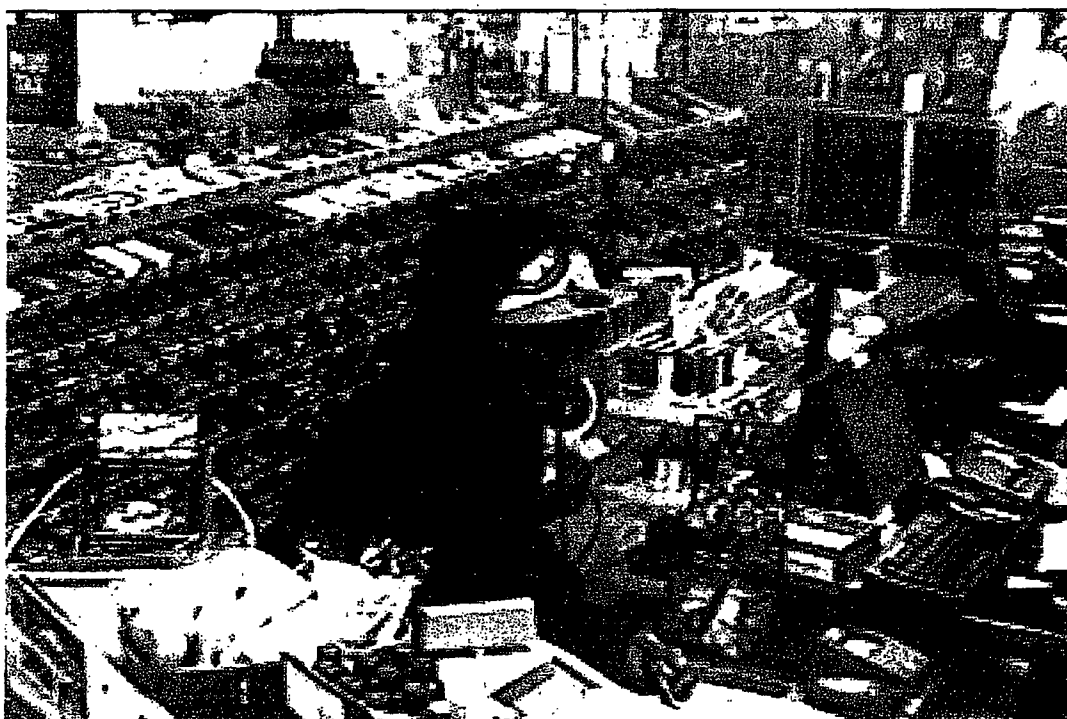


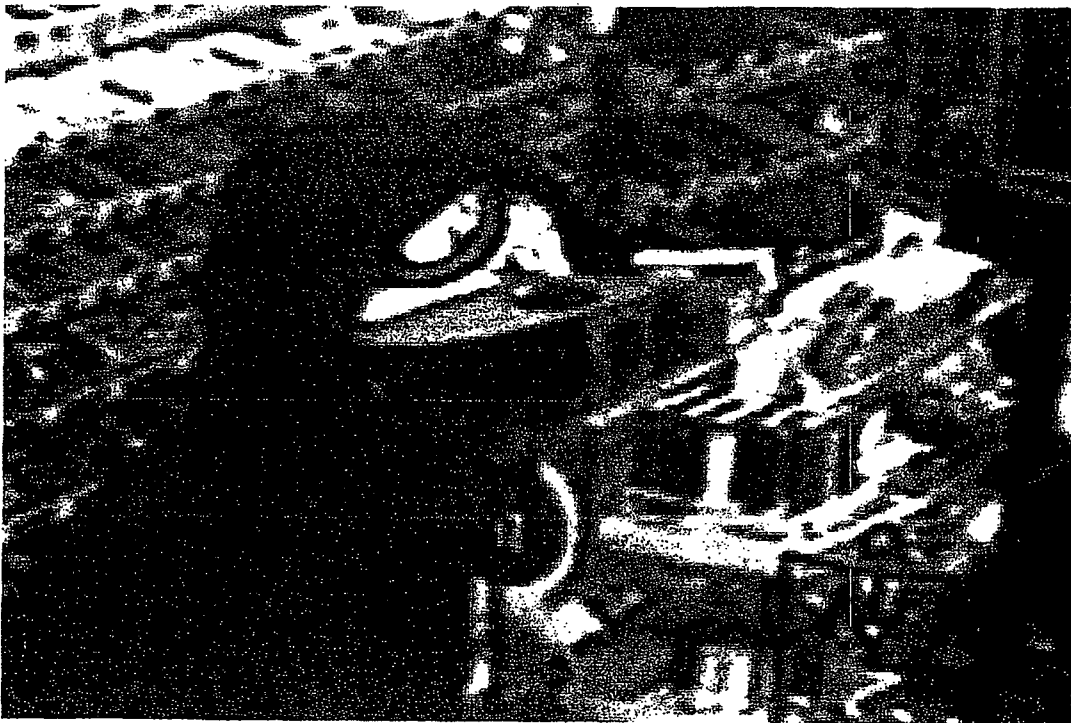
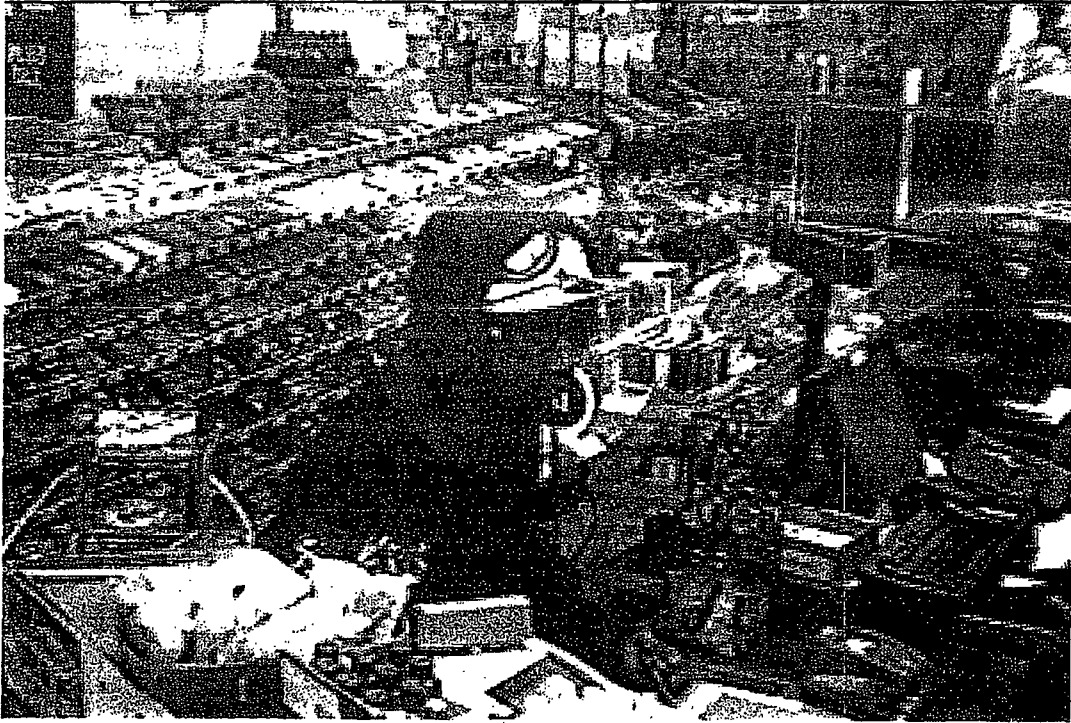




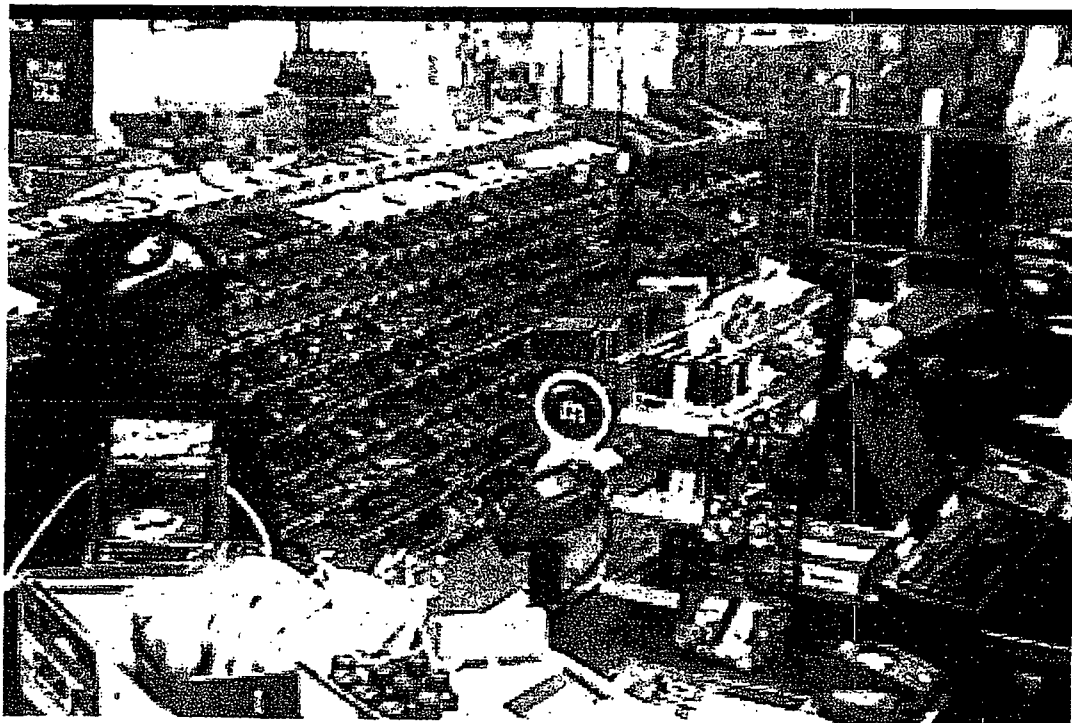
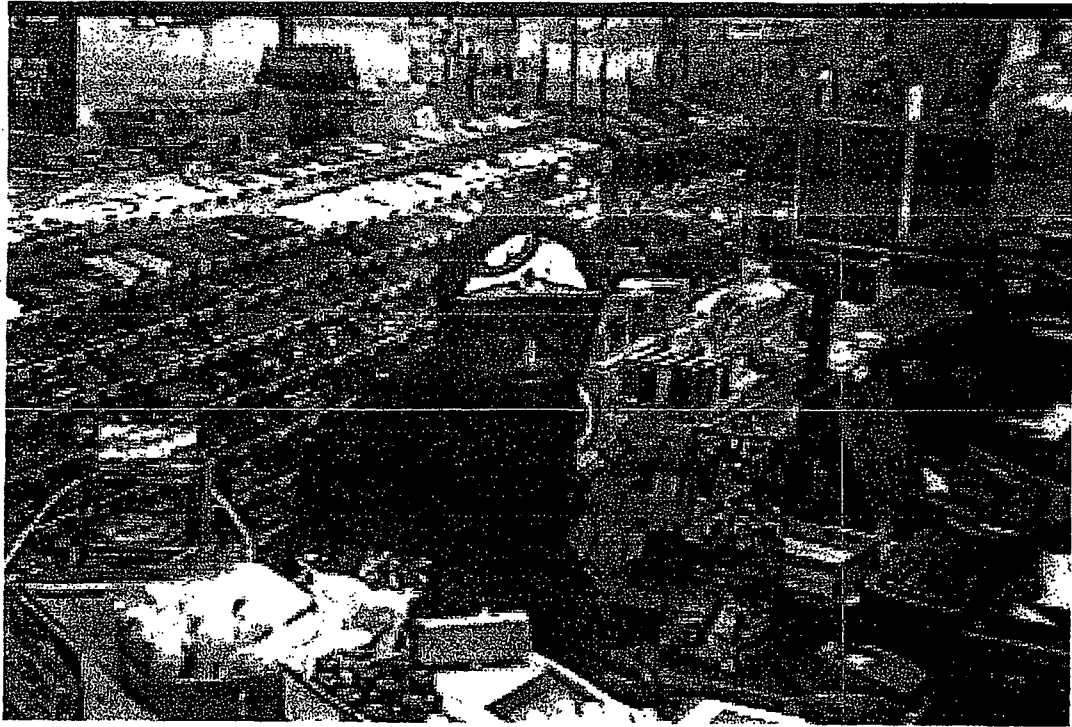


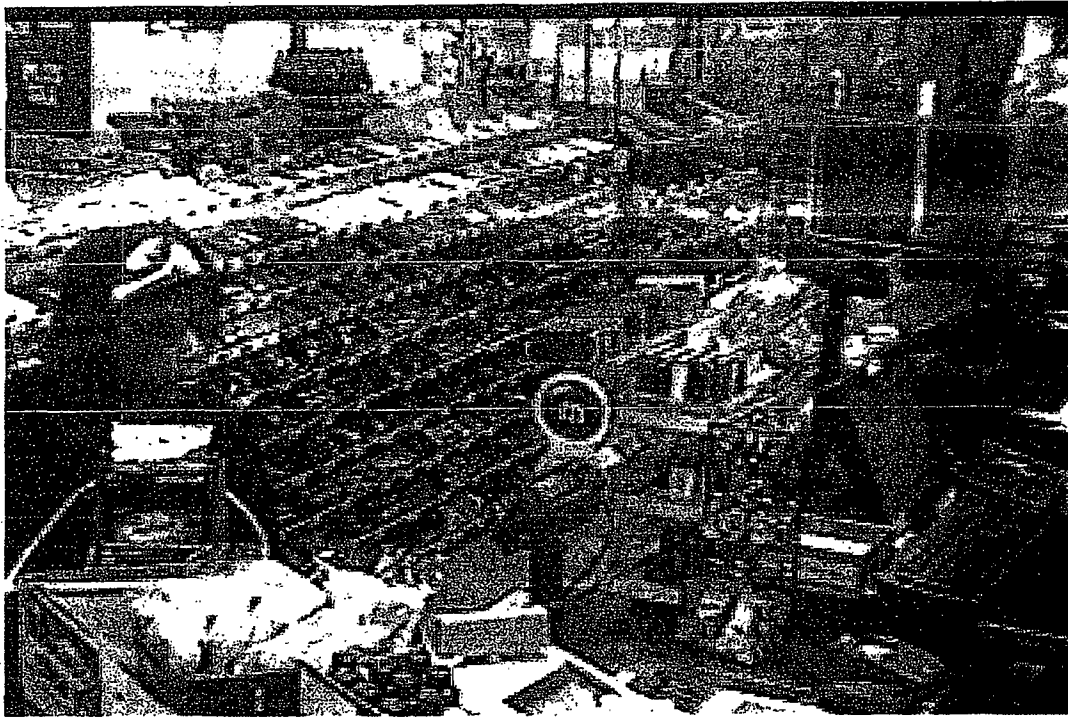




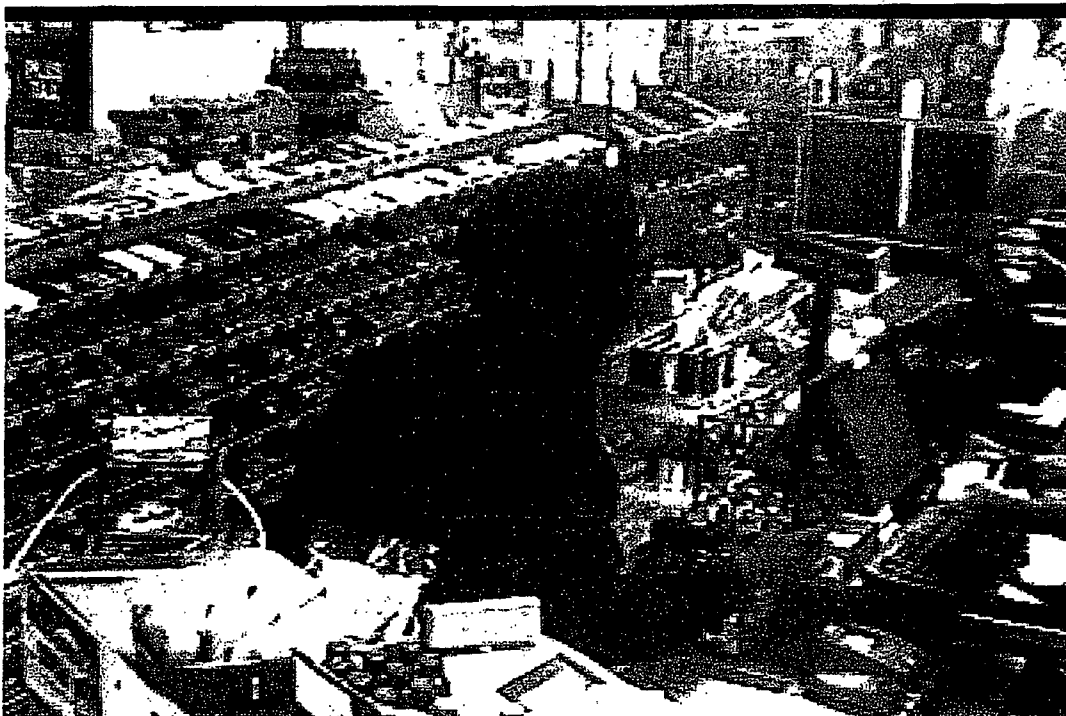
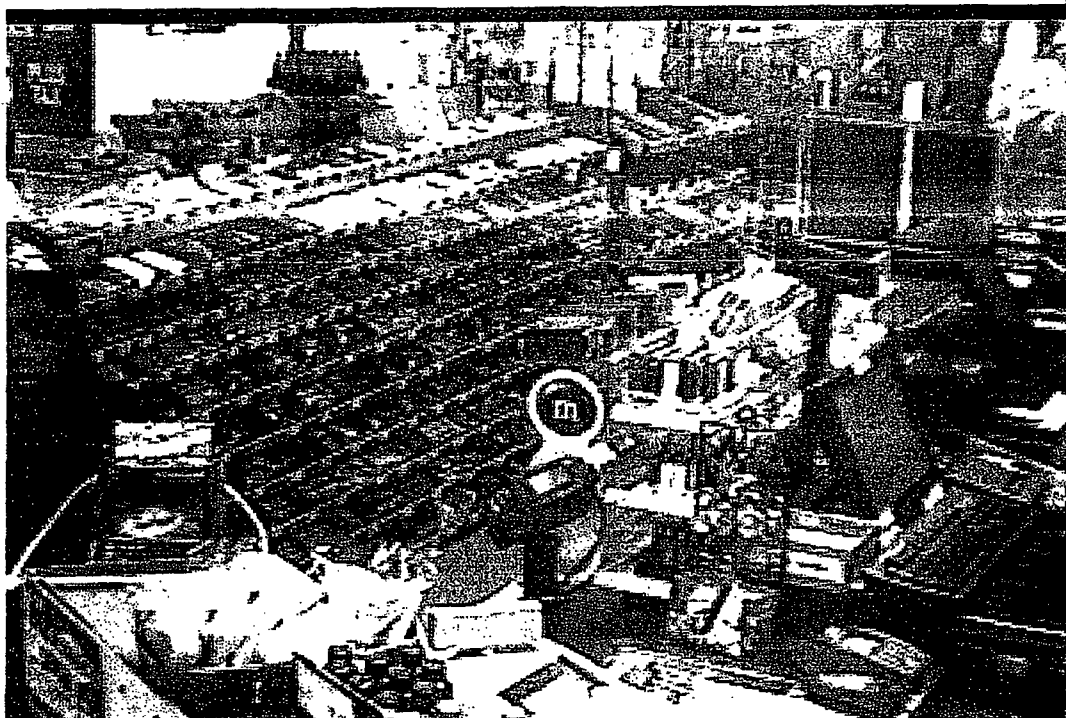


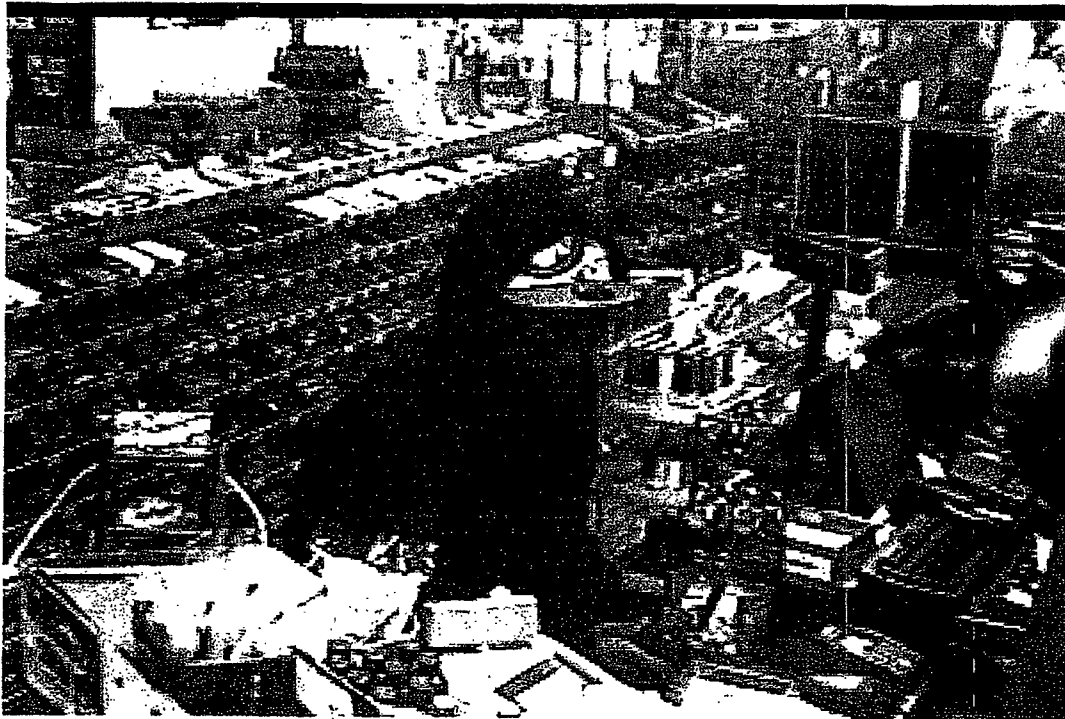


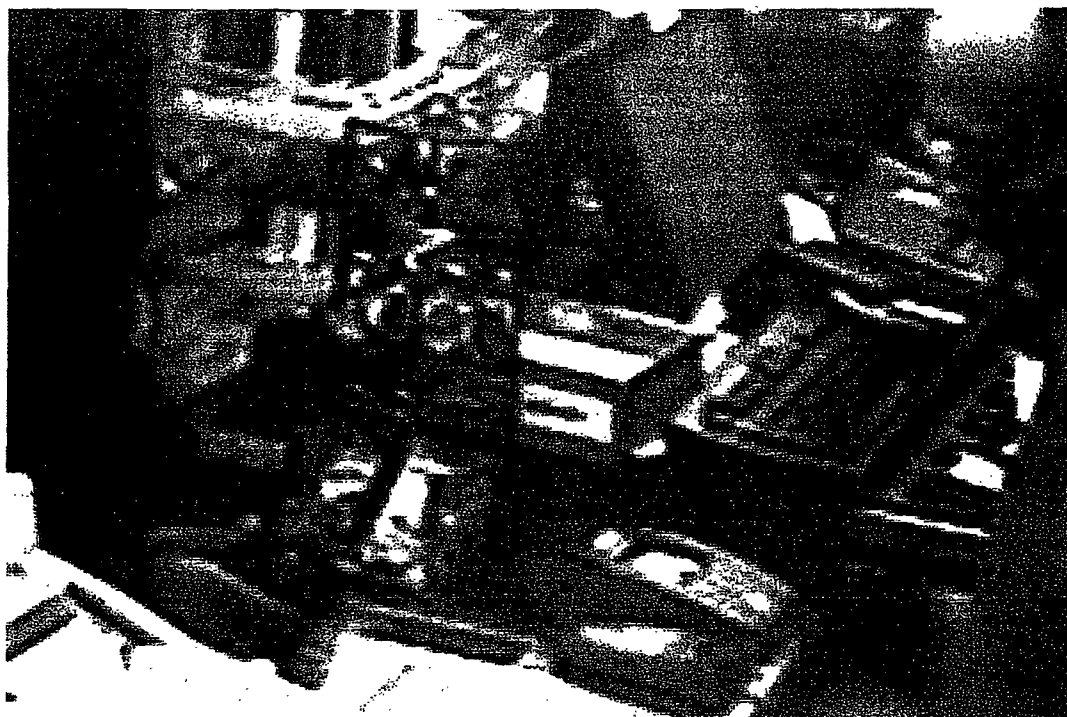
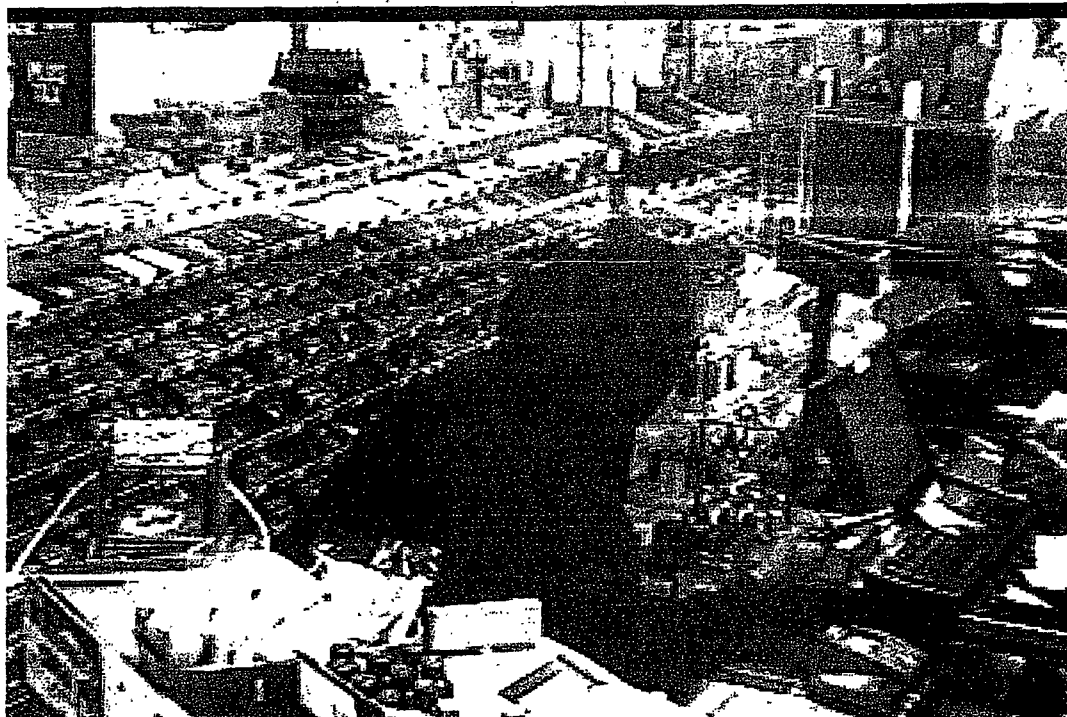


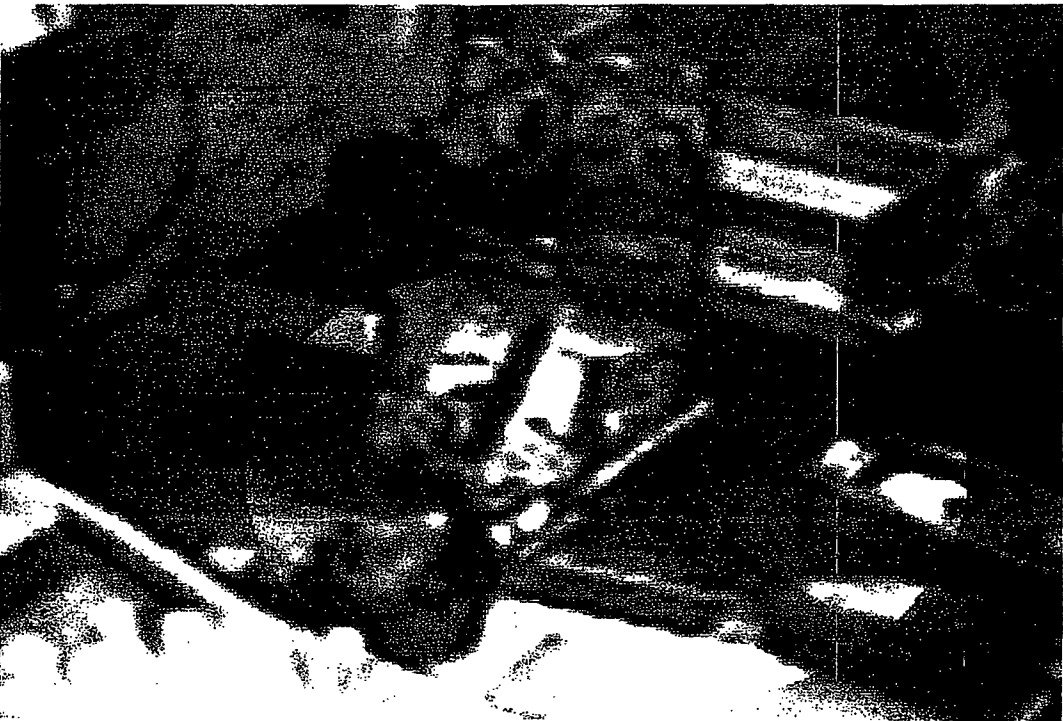


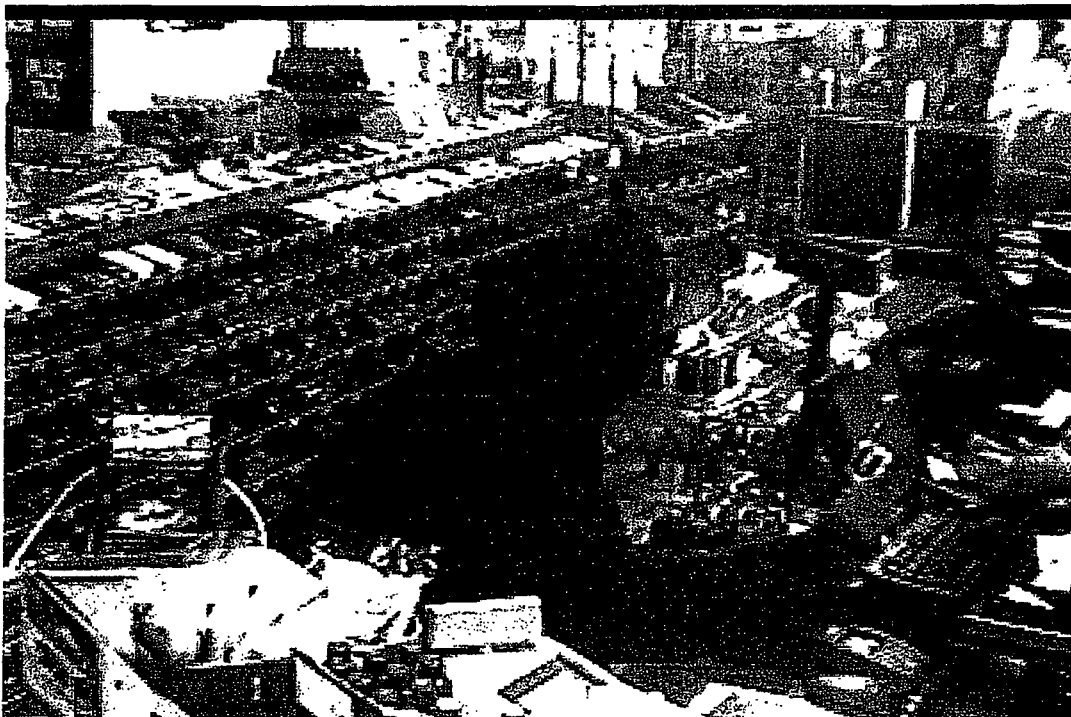
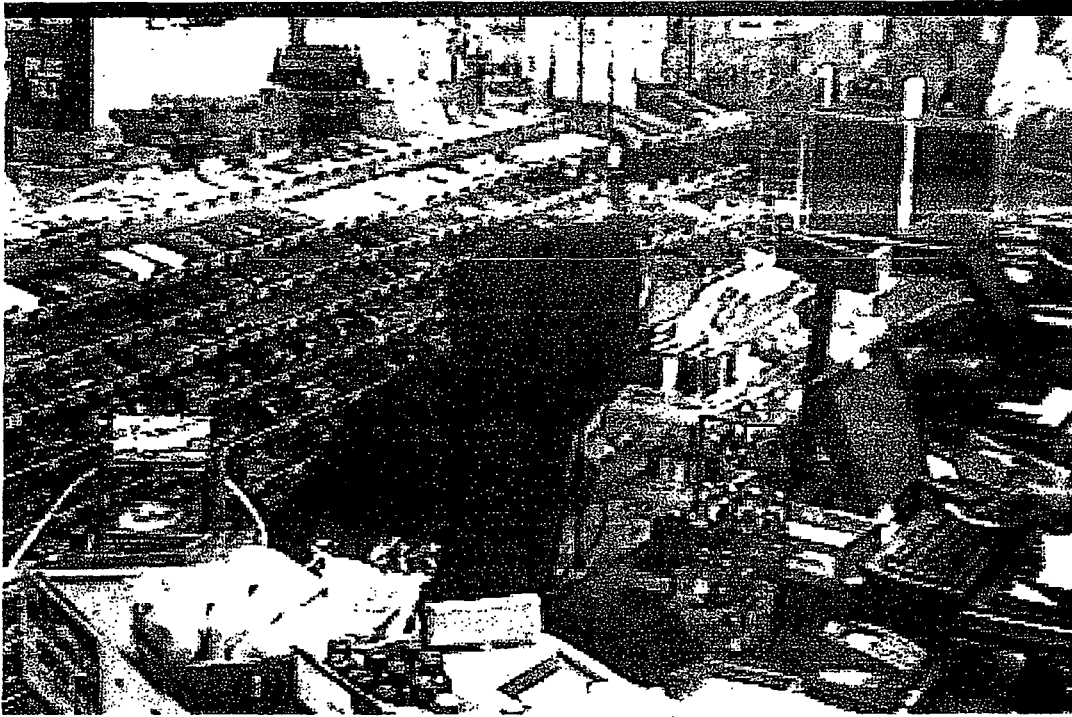


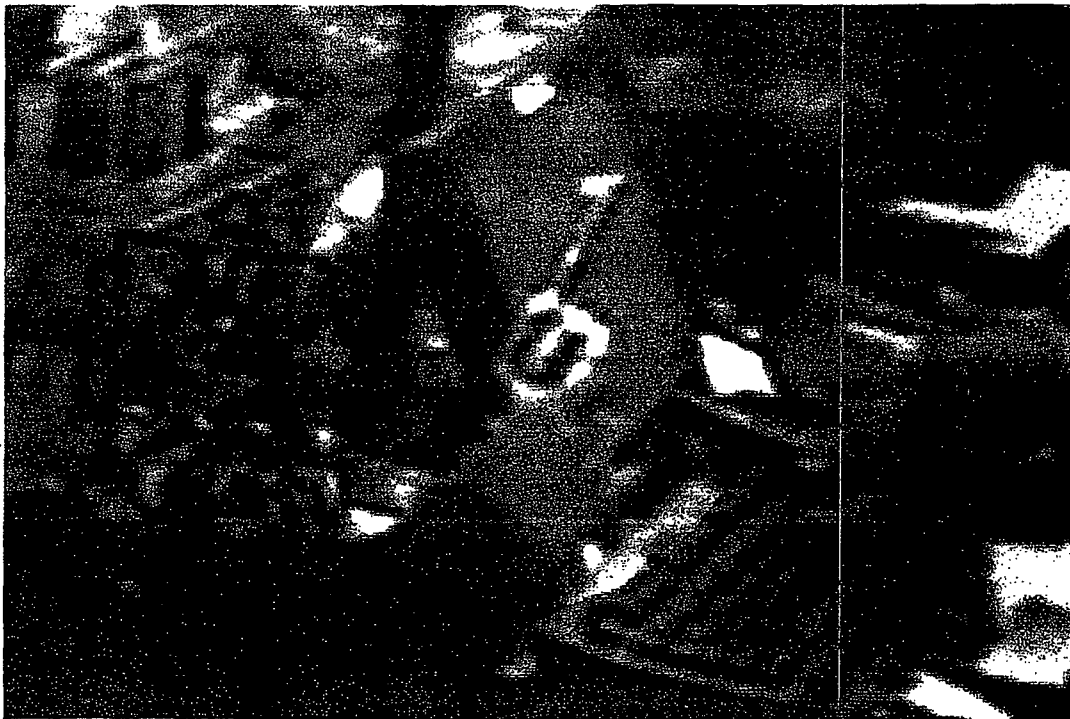
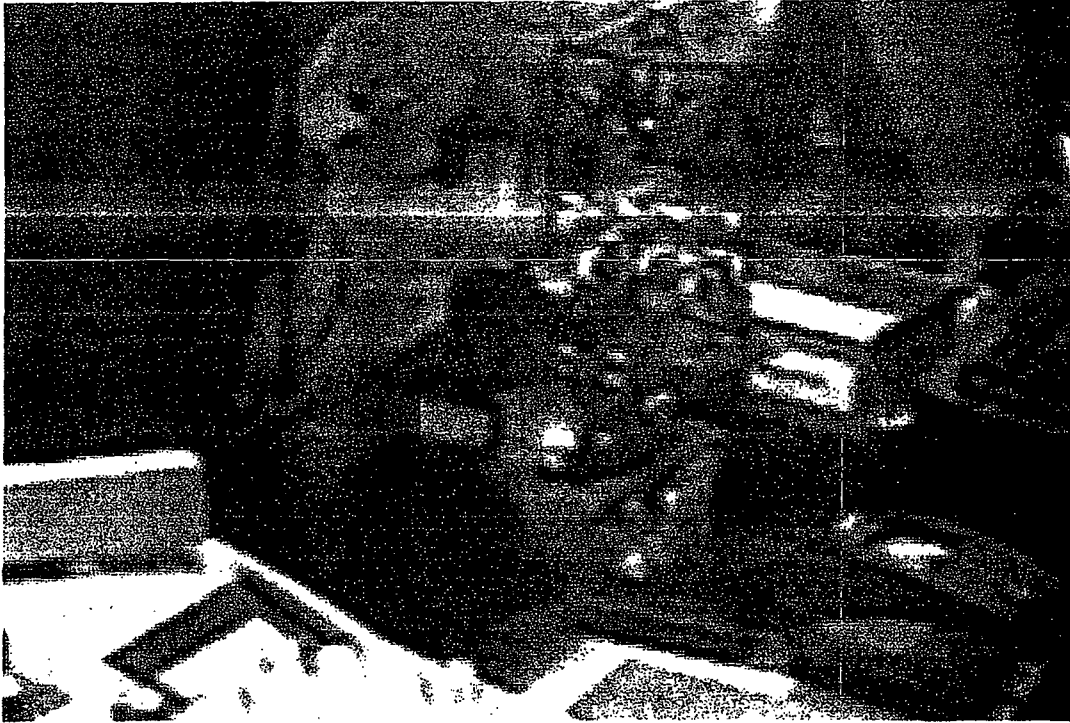


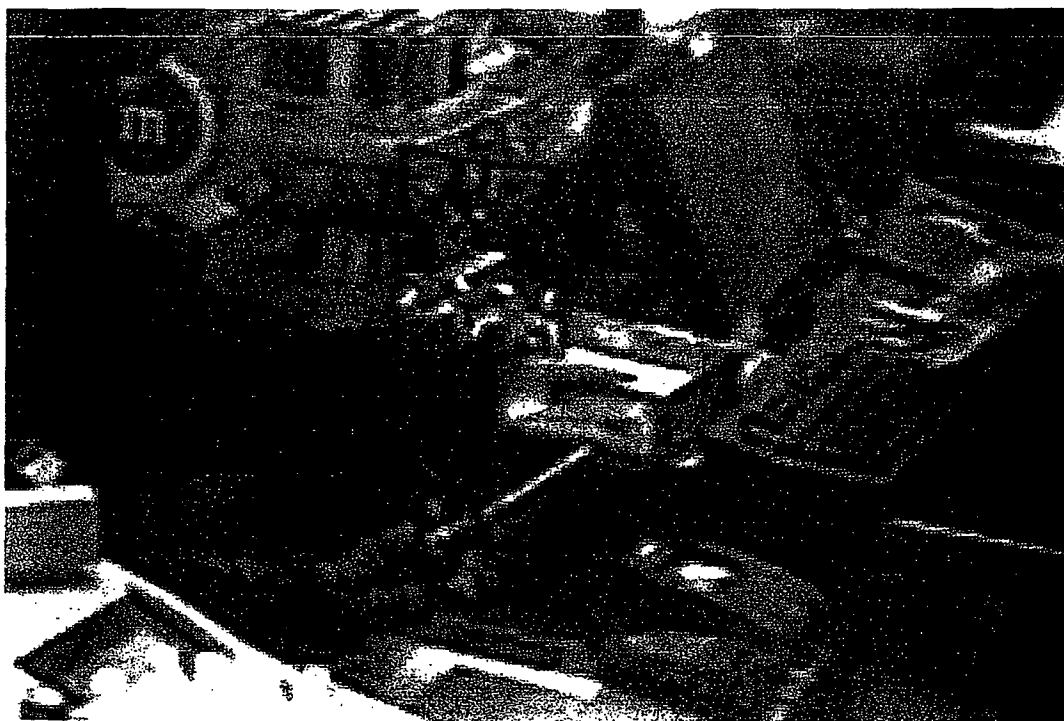
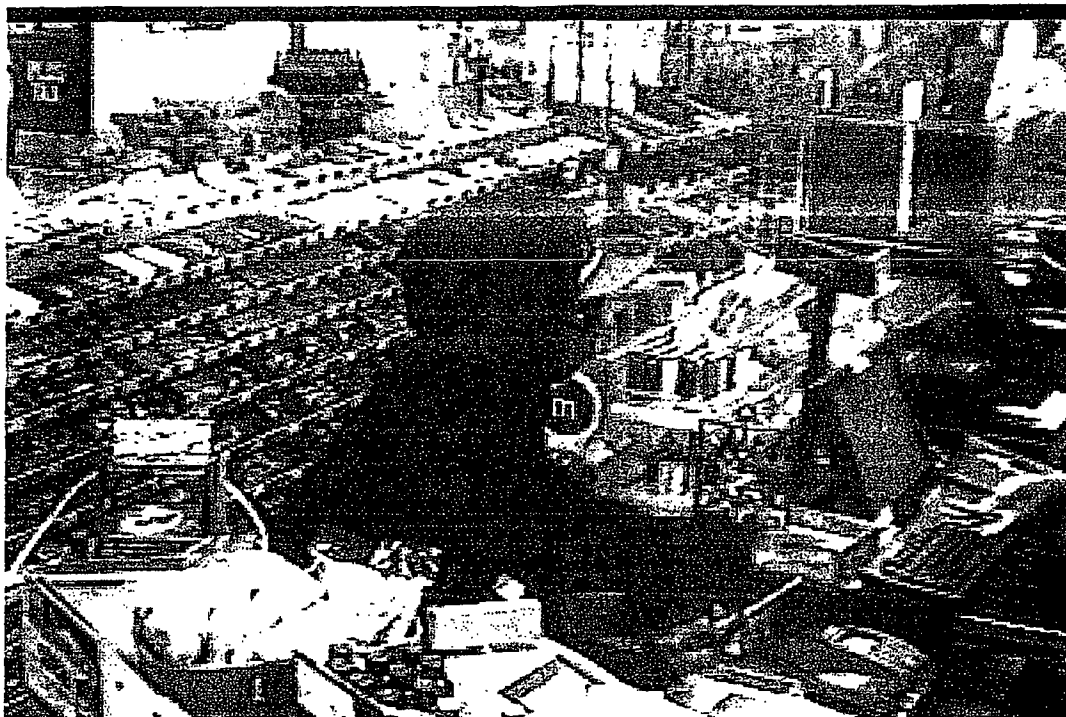


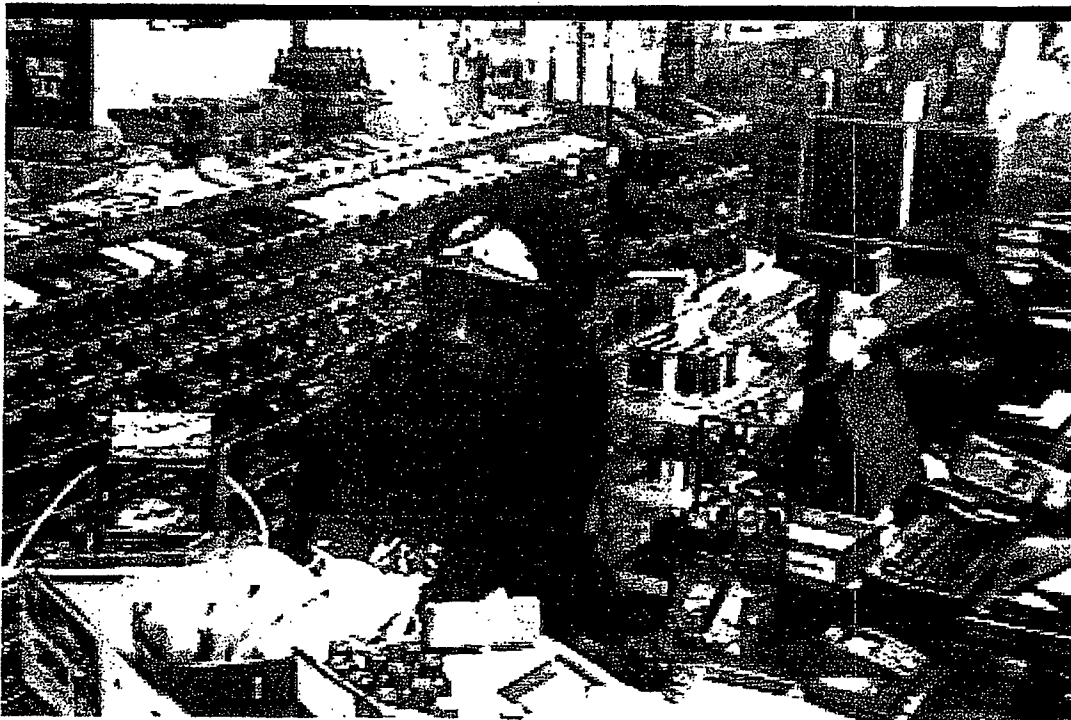


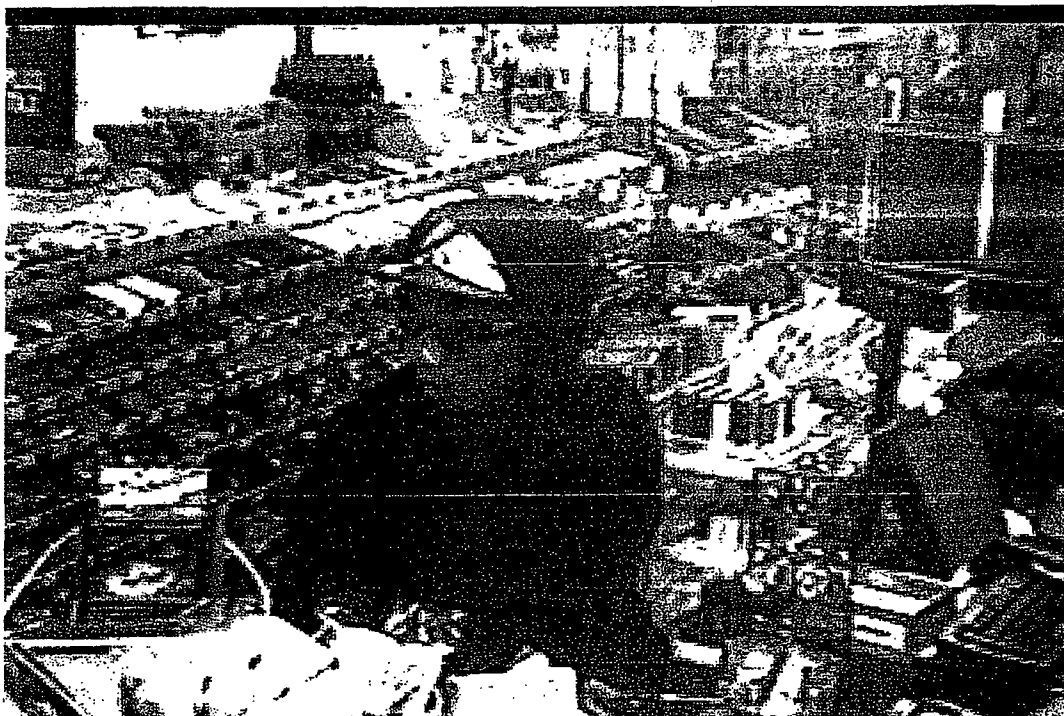


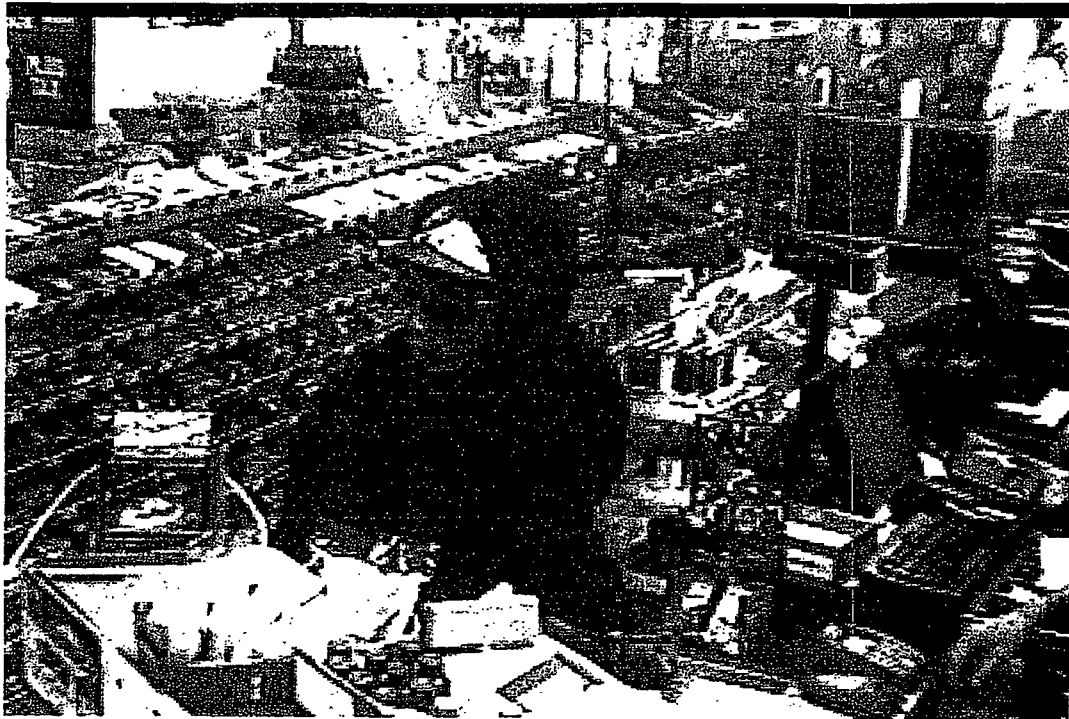






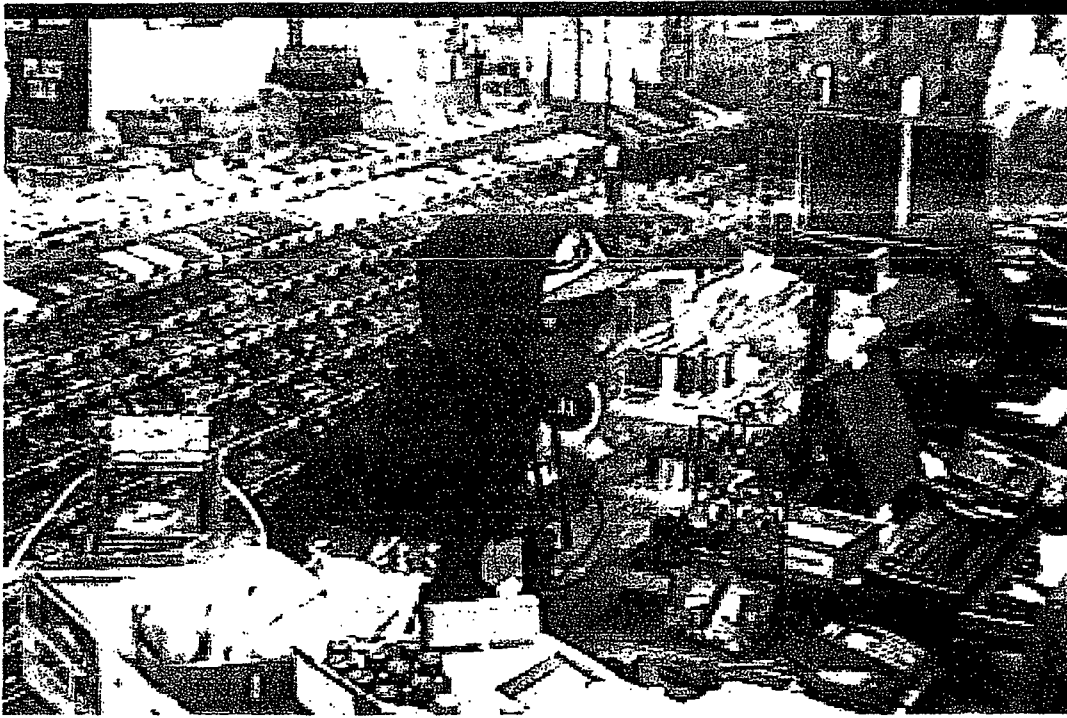


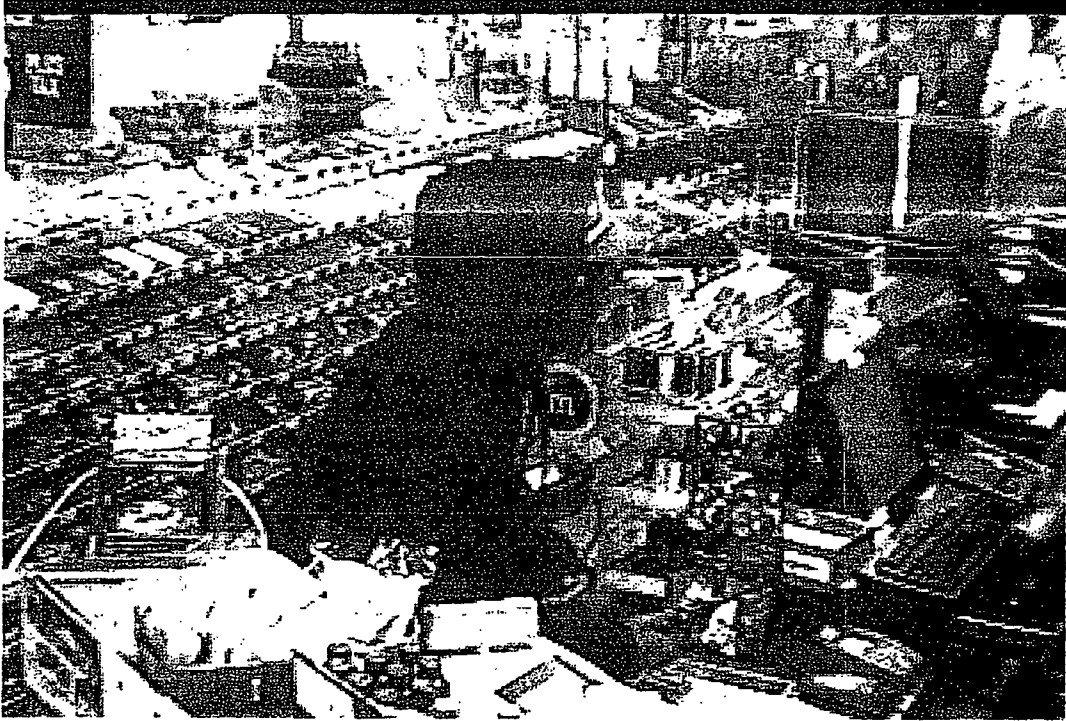


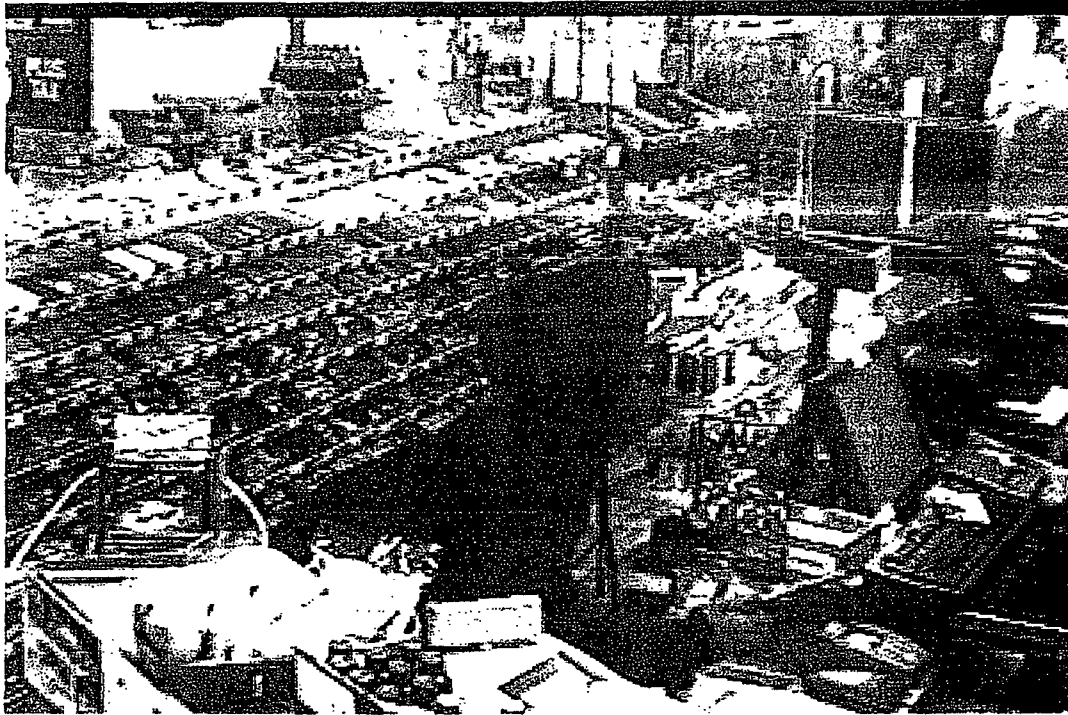


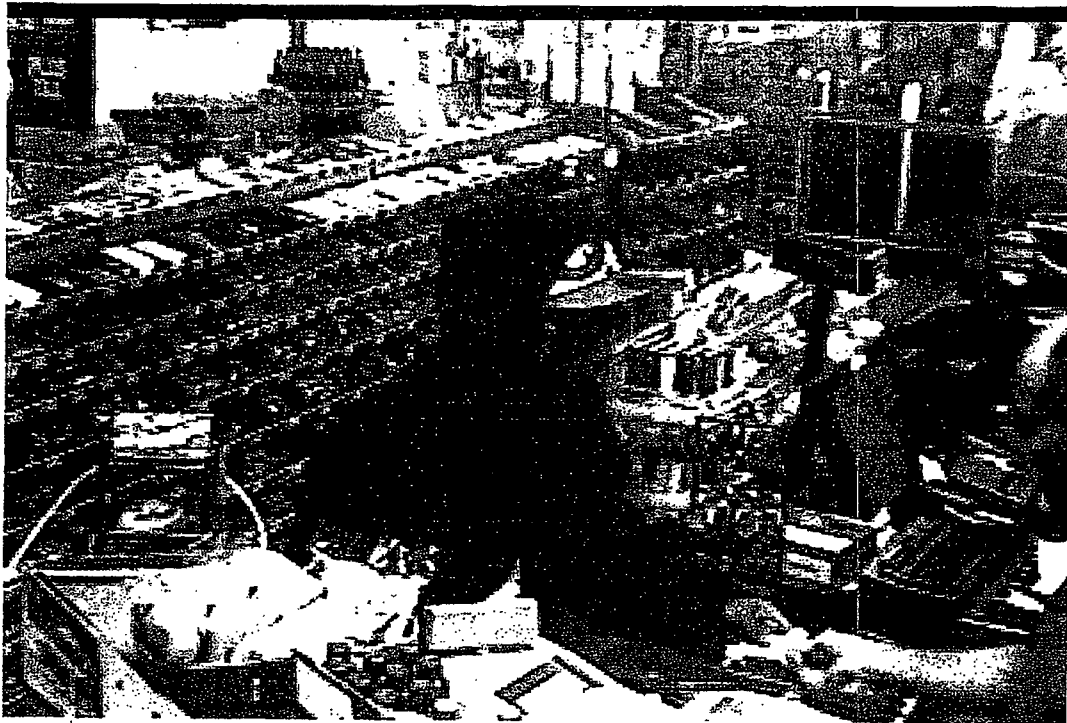
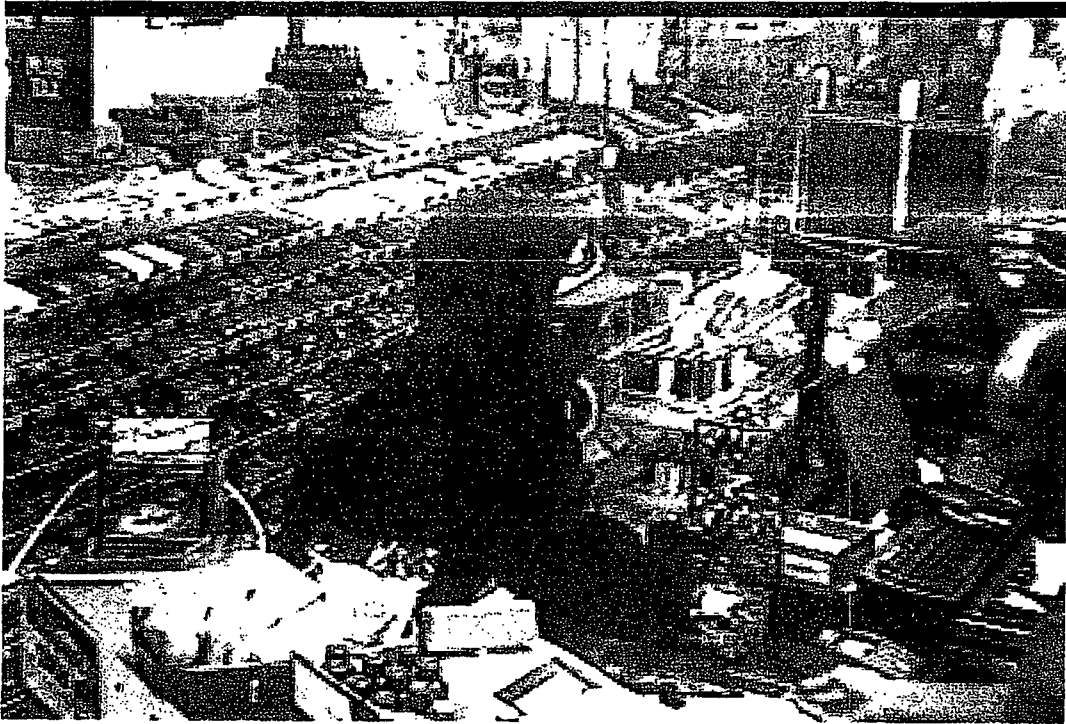




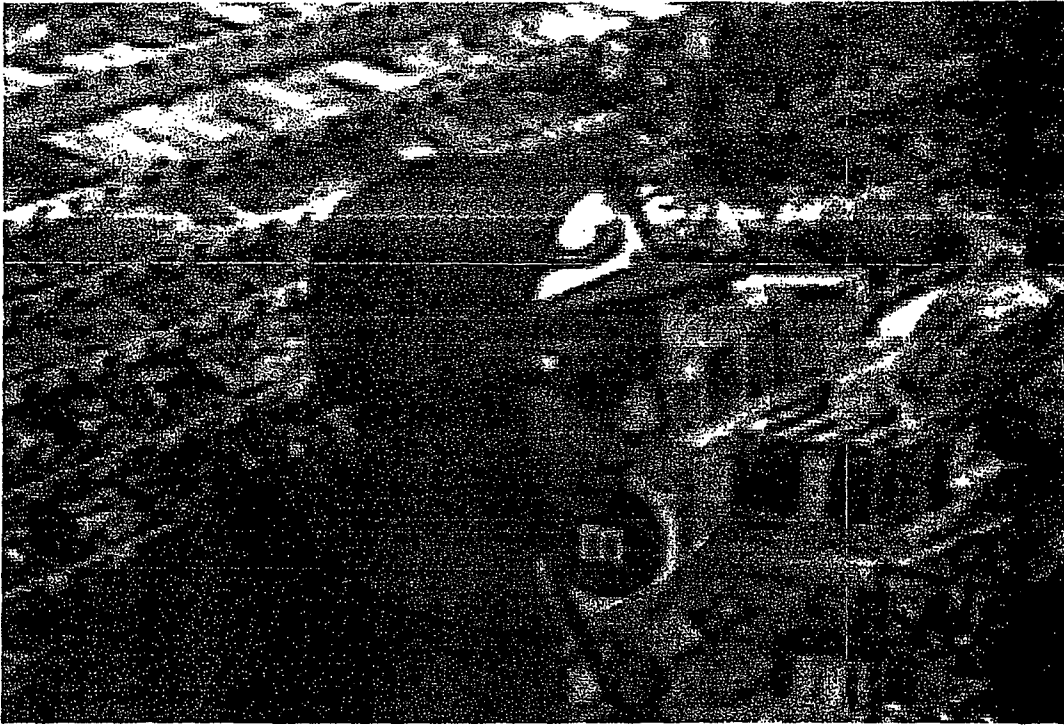


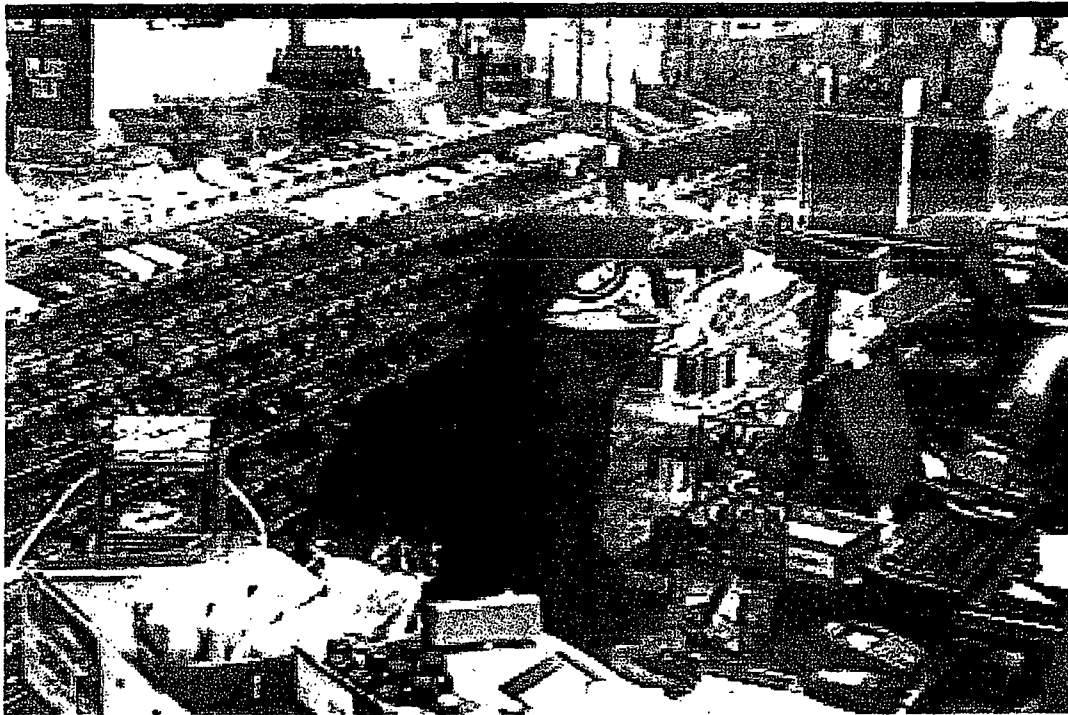


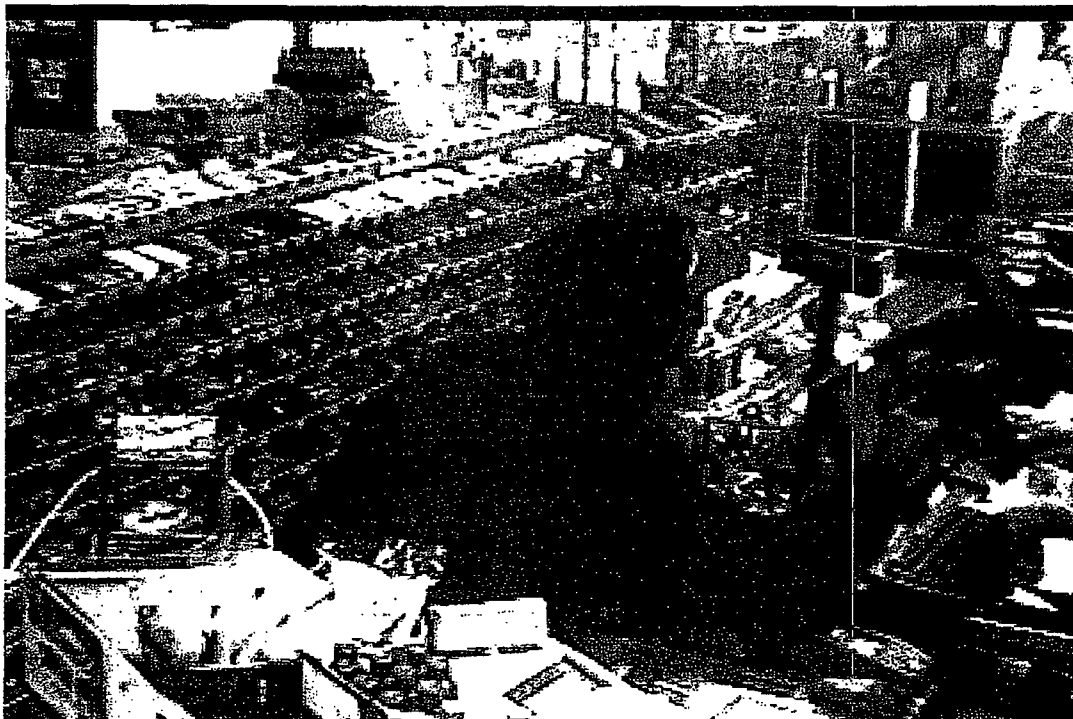












STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,) Indictment Nos.:
)
-vs-)
)
MARVIN BOWENS GREEN,)
)
Defendant.)
)

DEFENDANT'S REQUESTED JURY CHARGES

The Defendant, Marvin Bowens Green, by and through his undersigned attorneys, Cody Groeber and Andrew D. Grimes, respectfully moves the Court to charge the jury with the following instructions on the law based upon the testimony elicited during the trial and arguments of counsel.

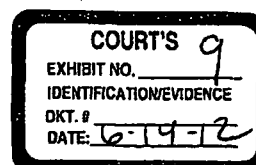
Respectfully submitted,

Andrew Barnes

Cody Groeber
Andrew D. Grimes
101 Meeting Street
Fifth Floor
Charleston, SC 29401
(843) 958-1850
ATTORNEYS FOR MARVIN BOWENS GREEN

Charleston, South Carolina

June 14, 2012



REQUEST TO CHARGE NUMBER ONE

An important question in this case is the identification of the defendant as the person who committed the crime. The prosecution has the burden of proving beyond a reasonable doubt that the crime was committed AND that the defendant was the person who committed the crime. If you are not convinced beyond a reasonable doubt that the defendant is the person who committed the crime, you must find the defendant not guilty.

The testimony you have heard concerning identification represents the witness's expression of (his) (her) belief or impression. You don't have to believe that the identification witness was lying or not sincere to find the defendant not guilty. It is enough that you conclude that the witness was mistaken in (his) (her) belief or impression.

Many factors affect the accuracy of identification. In considering whether the prosecution has proven beyond a reasonable doubt that the defendant is the person who committed the crime, you should consider the following:

(1) Did the witness have an adequate opportunity to observe the person who committed the crime? In answering this question, you should consider:

- (a) the length of time the witness observed that person;
- (b) the distance between the witness and that person;
- (c) the extent to which that person's features were visible and undisguised;
- (d) the lighting conditions at the time of observation;
- (e) whether there were any distractions occurring during the observation;

(f) any other circumstance that affected the witness's opportunity to observe the person committing the crime.

(2) Did the witness have the capacity to observe the person committing the crime? In answering this question, you should consider whether the capacity of the witness was impaired by:

- (a) stress or fright at the time of observation;
- (b) personal motivations, biases or prejudices;
- (c) *uncorrected visual defects;*
- (d) *fatigue or injury;*
- (e) *drugs or alcohol.*

3. You should also consider whether the witness is of a different race than the person identified. Identification by a person of a different race may be less reliable than identification by a person of the same race.

(4) Was the witness's identification of the defendant completely the product of the witness's own memory? In answering this question, you should consider:

- (a) the length of time that passed between the witness's original observation and the time the witness identified the defendant;
- (b) the witness's mental capacity and state of mind at the time of the identification;

- (c) the exposure of the witness to opinions, to photographs, or to any other information or influence that may have affected the independence of the identification of the defendant by the witness;
- (d) any instances when the witness either identified or failed to identify the defendant;
- (e) any instances when the witness gave a description of the person that was either consistent or inconsistent with the defendant's appearance;
- (f) the circumstances under which the defendant was presented to the witness for identification.

5. You may take into account that an identification made by picking the defendant from a group of similar individuals is generally more reliable than an identification made from the defendant being presented alone to the witness.

6. You may also take into account that identifications made from seeing the person are generally more reliable than identifications made from a photograph or a video recording.

7. A witness's level of confidence in (his) (her) identification of the perpetrator is one of many factors that you may consider in evaluating whether the witness correctly identified the perpetrator. However, a witness who is confident that (he) (she) correctly identified the perpetrator may be mistaken.

Again, I emphasize that it is the prosecution's burden to prove beyond a reasonable doubt that the defendant is the person who committed the crime.

Authority

State v. Guzman, 2006 UT 12, ¶¶15-23, 133 P.3d 363.

State v. Long, 721 P.2d 483, 487-95 (Utah 1986).

R. Sanders, *Helping the Jury Evaluate Eyewitness Testimony: The Need for Additional Safeguards*, 12 Am. J. Crim. L. 189, 222-24 (1984).

Request to Charge Number 2

In deciding this case you will need to decide how believable each witness was. Use your judgment and common sense. Let me suggest a few things to think about as you weigh each witness's testimony:

- ☐ How good was the witness's opportunity to see, hear, or otherwise observe what the witness testified about?
- ☐ Does the witness have something to gain or lose from this case?
- ☐ Does the witness have any connection to the people involved in this case?
- ☐ Does the witness have any reason to lie or slant the testimony?
- ☐ Was the witness's testimony consistent over time? If not, is there a good reason for the inconsistency? If the witness was inconsistent, was it about something important or unimportant?
- ☐ How believable was the witness's testimony in light of other evidence presented at trial?
- ☐ How believable was the witness's testimony in light of human experience?
- ☐ Was there anything about the way the witness testified that made the testimony more or less believable?

In deciding whether or not to believe a witness, you may also consider anything else you think is important.

You do not have to believe everything that a witness said. You may believe part and disbelieve the rest. On the other hand, if you are convinced that a witness lied, you may disbelieve anything the witness said. In other words, you may believe all, part, or none of a witness's testimony. You may believe many witnesses against one or one witness against many.

In deciding whether a witness testified truthfully, remember that no one's memory is perfect. Anyone can make an honest mistake. Honest people may remember the same event differently.

Authority

Utah Code Ann. § 78B-1-128.

United States v. McKissick, 204 F.3d 1282, 1289 (10th Cir. 2000).

Toma v. Utah Power & Light Co., 365 P.2d 788, 792-793 (Utah 1961).

State v. Shockley, 80 P. 865, 879 (1905).

75 Am. Jur.2d Trial § 819.

Request to Charge Number 3

You have heard the testimony of a law enforcement officer. The fact that a witness is employed in law enforcement does not mean that (his) (her) testimony deserves more or less consideration than that of any other witness. It is up to you to give any witness's testimony whatever weight you think it deserves.

Authority

Utah Code Ann. § 78B-1-128.

United States v. McKissick, 204 F.3d 1282, 1289 (10th Cir. 2000).

Toma v. Utah Power & Light Co., 365 P.2d 788, 792-793 (Utah 1961).

State v. Shockley, 80 P. 865, 879 (1905).

75 Am. Jur.2d Trial § 819.

Request to Charge No. 4

You may find from the evidence that a witness is interested in the outcome of this case because of his involvement in the arrest and his treatment of the Defendant. "If so, you should examine his testimony with care and caution in light of that interest. If, after doing so, you believe his testimony in whole or in part, you should treat what you believe the same as any other believable evidence."

North Carolina v. Black, 239 S.E.2d 276 (N.C. Ct. App. 1977) (reversing the trial court for failing to give North Carolina's standard charge on "scrutiniz[ing] the evidence of a paid detective and make proper allowances for the bias likely to exist in one having such an interest in the outcome of the prosecution.").

STATE OF SOUTH CAROLINA) **FILED** IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) 2012 JUN 25 PM 4:48 FOR THE NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA, JULIE D. ARMSTRONG Indictment Nos.: 2011-GS-10-02338
CLEK OF COURT 2011-GS-10-02339

-VS-

BY) mt

MARVIN BOWENS GREEN,

Defendant.

DEFENDANT'S MOTION TO VACATE SENTENCE

The Eighth Amendment forbids the imposition of "mandatory life without parole for those under the age of 18 at the time of their crimes." *Miller v. Alabama*, No. 10-9646 at 2 (June 25, 2012). See also *Graham v. Florida*, 130 S. Ct. 2011 (2010). In this case, the Court of General Sessions sentenced Marvin Green to a sentence of mandatory life without parole based solely upon his having been convicted of two most serious offenses under South Carolina law. See S.C. Code § 17-25-45. The court violated the Eighth Amendment when it imposed this sentence because Marvin was a 17 year old child at the time of his first strike.¹ Accordingly, the circuit court should vacate the sentence of mandatory life without parole and hold a hearing to resentence Marvin.

I. EIGHTH AMENDMENT

The Supreme Court has held "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders." *Miller v. Alabama*, No. 10-9646 at 16. Under South Carolina law at the time of the sentencing, South Carolina law mandated that Marvin "die in prison even if a judge or jury would have thought that

¹For purposes of the Eighth Amendment and Equal Protection Clause discussion, the undersigned will assume that Marvin has a prior conviction for armed robbery.

his youth and its attendant characteristics, along with the nature of his crime, made a lesser sentence (for example, life with the possibility of parole) more appropriate.” *Id.* at 1. The sentencing scheme that was used by the circuit court in this case violated the Eighth Amendment because it does not allow the circuit court to consider any mitigating factor on Marvin’s behalf, see *Miller v. Alabama*, and forbids the circuit court from following the established tradition of fashioning a sentence that fits the individual defendant. See *Peppers v. United States*, 131 S. Ct. 1229 (2011).

A. Categorical Challenge

A sentence of mandatory life without parole that is imposed on a twenty year old based upon his having a prior conviction for armed robbery is contrary to and is an unreasonable application of the Eighth Amendment. The sentence violates the established principles of penological policy based on the Eighth Amendment values recently outlined by the Supreme Court in *Miller v. Alabama* and *Graham v. Florida*, for the following reasons:

1. The circuit court failed to consider that Marvin Green “has a twice diminished moral culpability” because of his age and because he did not intend to kill Mr. Patel, *Graham*, 130 S. Ct. at 2027.
2. The circuit court ignored the reality of imposing a life sentence upon Marvin for an actions he committed while 17 and 19 years old, *Id.* at 2028 (“Life without parole is an especially harsh punishment for a juvenile. Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only.”).

3. The circuit court ignored well established law that there is no legitimate penological justification for sentencing a juvenile to prison until the juvenile dies, *Id.* at 2028 ("With respect to life without parole for juvenile nonhomicide offenders, none of the goals of penal sanctions that have been recognized as legitimate--retribution, deterrence, incapacitation, and rehabilitation provides an adequate justification.") (citation omitted).
4. The circuit court's reliance on Marvin's prior juvenile conviction to justify sending him to prison until he dies violates the Eighth Amendment because it allows the Court to do indirectly what it cannot do directly.

For these reasons, along with the reasoning in *Miller v. Alabama*, the circuit court should grant the motion to vacate the sentence and hold a resentencing hearing.

B. Proportional Challenge

The sentence of mandatory life without parole violates the Eighth Amendment because this extreme sentence is grossly disproportionate to the crime of armed robbery. A mandatory life sentence imposed upon a 20 year old for committing an armed robbery because of a crime that was convicted of that occurred when he was 17 is grossly disproportionate to his crime for the following reasons:

1. The normal sentencing range for armed robbery is 10-30 years;
2. Absent the prior conviction, Marvin's maximum exposure would have been 30 years;
3. Marvin would not die in prison but for the prior conviction that arose out of an incident that occurred when he was 17;
4. There was no battery during the incident
5. No one was physically injured during the instant incident;

6. There is no allegation that the gun was actually fired or discharged in any way;
7. The State never charged Marvin with any type of assault;
8. There is no evidence that Marvin ever actually intended to shoot Mr. Patel;
9. No one was physically hurt;
10. Marvin was not able to present any evidence that his father may have physically abused him;
11. Marvin was not able to offer evidence about his family background;
12. Marvin was not able to put forward other meaningful evidence to mitigate his conduct or to show why he did not deserve a life sentence.

II. EQUAL PROTECTION

The sentence of mandatory life without parole also violates the Equal Protection Clause of the Fourteenth Amendment because South Carolina treats 17 year old offenders differently than other states. The Eighth Amendment's prohibition on cruel and unusual punishment should not be influenced on diverse state laws. Thus, Marvin should not be treated differently because he lives in a state that treats 17 year olds as an adult rather than a state that may treat a 17 year old as a juvenile in family court.

Under our federal system, states may differ in their assessments of when crimes should be treated as having been committed by juveniles or adults. States generally make the distinction based on the perpetrator's age, with the distinction being made anywhere from age sixteen to age nineteen. See Samuel M. Davis, *Rights of Juveniles* § 2.1 (2d ed. 1980 & Supp. 1990). Decisions are made, however, to try some persons of juvenile age as adults, and persons of adult age as juveniles, in specified situations. *Id.* at §§ 2.8-2.10. These situations range from mandatory adult trials when juveniles are charged with certain offenses, see IND. CODE § 316-2-1.1(d) (1992)

(requiring adult trials for murder, kidnapping, rape, and aggravated robbery), to the exercise of guided discretion by a prosecutor. *See Wyo. Stat.* §§ 14-6-203(c) – (f), 14-6-237(b) (1986) (granting discretion for a prosecutor to try seventeen- to nineteen year-olds as either adults or juveniles).

On the other hand, our federal system does not allow the individual states to decide what is cruel and unusual punishment under the Eighth Amendment. Thus, the circuit court violated the Equal Protection Clause when it imposed a life sentence upon Marvin because Marvin's prior conviction may not have counted as a strike if he had lived in another state that kept his prior offense in family court.

III. Green Does Not Have a Prior Strike

The circuit court erred in concluding that Marvin had a prior, valid conviction for armed robbery. Under Supreme Court precedent, a criminal conviction becomes final when "a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied." *United States v. Johnson*, 457 U.S. 537, 542 n.8 (1982). *See also McDowell v. South Carolina Dep't of Social Services*, 300 S.C. 24, 386 S.E.2d 280 (Ct. App. 1989) (noting that the final disposition of a case occurs when the clerk of the appellate court returns the remittitur to the lower court for filing). In this case, there is no evidence that Green has exhausted his appeals or that the appellate court has returned the remitter to the clerk of court. Thus, the prior conviction relied upon by the court to impose a life sentence is not final. Accordingly, the sentence of mandatory life without parole should be vacated.

IV. Conclusion

For all of the foregoing reasons, the circuit court should grant the Defendant's motion, vacate the sentence, and hold a resentencing hearing.

Respectfully submitted,

Andrew Grimes

Cody Groeber

Andrew D. Grimes

101 Meeting Street

Fifth Floor

Charleston, SC 29401

(843) 958-1850

ATTORNEYS FOR MARVIN BOWENS GREEN

Charleston, South Carolina

June 25, 2012

FILED
2012 JUN 25 PM 4:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY XLS

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 2012 JUL 31) PM 3: NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON)

JULIE J. ARMSTRONG, Clerk of Court
 STATE OF SOUTH CAROLINA) Indictment No(s): 2011-GS-10-2338
 2011-GS-10-2339

v.

**ORDER REGARDING ALL
 POST-TRIAL MOTIONS**

MARVIN BOWENS GREEN

Defendant.

THIS MATTER IS BEFORE THE COURT upon the Defendant's Motion to Vacate Sentence and Motion for a Mistrial, both filed on June 25, 2012. For the reasons below, the Defendant's Motions are DENIED.

RELEVANT FACTS

Marvin Bowens Green (hereinafter "the Defendant") was born on June 29, 1991. He was indicted at the April 2011 term of the Charleston County Grand Jury for Armed Robbery (2011-GS-10-2338) and Possession of a Firearm During the Commission of a Violent Crime (2011-GS-10-2339). The incident took place on or about December 24, 2010, at the Sunoco convenience store located at 5737 Savannah Highway, Ravenel, South Carolina when the Defendant was nineteen years old. On June 14, 2012, the jury found the Defendant guilty on both charges, and he was sentenced to a mandatory sentence of life without parole pursuant to S.C. Code Ann. § 17-25-45 for armed robbery and five years for Possession of a Firearm During to Commission of a Violent Crime, to run concurrent to 2011-GS-10-2338.

The Defendant was previously indicted at the July 2009 term of the Charleston County Grand Jury for Armed Robbery (2009-GS-10-5376) that occurred at the Road Runner Gas Station located at 5221 Highway 165 in Hollywood, South Carolina on or about December 20,

1017
 7/31/12

2008. At that time, the Defendant was seventeen years old. A jury found the Defendant guilty as indicted, and he was sentenced to a term of twenty years for this offense on June 24, 2011.

I. Motion to Vacate Sentence

ANALYSIS

A. Eighth Amendment

S.C. Code Ann. § 17-25-45(A)(1)(a) states that:

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

Pursuant S.C. Code Ann. § 17-25-45(C)(1), armed robbery, defined under S.C. Code Ann. § 16-11-330(A), is classified as a “most serious” offense. On June 14, 2012, this Court sentenced the Defendant to life without parole for armed robbery because he was convicted of two “most serious” offenses.¹

In light of the United States Supreme Court’s ruling in Miller v. Alabama, No. 10-9646 (U.S. June 25, 2012) (opinion written together with Jackson v. Hobbs, No. 10-9647 (U.S. June 25, 2012)), the Defendant argues that his mandatory sentence of life without parole violates the Eighth Amendment of the United States Constitution because he was seventeen, and therefore a juvenile, at the time of the first armed robbery. In both instances addressed in the Supreme Court’s opinion in Miller, a fourteen-year-old was convicted of murder and sentenced to a mandatory term of life imprisonment without the possibility of parole. Id. at 1. In its ruling, the Court analyzed two “strands of precedent.” Id. The first line resulted in Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183 (2005), holding that the Eighth Amendment bars capital punishment for

¹ As required by S.C. Code § 17-25-45(H), the Solicitor provided the Defendant and Defense Counsel with Notice of Intention to Seek a Sentence of Life Without Parole dated and filed on April 10, 2012.

2 of 7
7/31/12

children, and Graham v. Florida, 560 U.S. ___, 130 S.Ct. 2011 (2010), holding that the Eighth Amendment prohibits a sentence of life without parole for a juvenile convicted of a non-homicide offense. After Graham, which compared life without parole for juveniles to the death penalty, a second line of cases requiring sentencing authorities to consider the characteristics of a defendant and the details of his offense before sentencing him to death resulted. Miller, No. 10-9646 at 1. From its analysis, the Miller Court held that “the confluence of these two lines of precedent leads to the conclusion that mandatory life without parole for juveniles violates the Eighth Amendment.” Id.

S.C. Code Ann. § 63-19-20(1) defines a child or juvenile as “a person less than seventeen years of age.” The statute further limits the definition of a juvenile to someone under sixteen for certain felony charges, including a Class A, B, C, or D felony as defined in S.C. Code Ann. § 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. S.C. Code Ann. § 63-19-20(1). The Defendant was seventeen years old on the date of the armed robbery that led to his first conviction, and thus, was not a juvenile by statutory definition. On June 24, 2011, the Defendant was found guilty of armed robbery, which resulted in his first “most serious” conviction for purposes of S.C. Code Ann. § 17-25-45.

On December 24, 2012, the date of the second armed robbery, the Defendant was nineteen years old. At the age of nineteen, he is not considered a juvenile under Miller. Although the Defendant’s first armed robbery occurred when he was seventeen, he was tried as an adult and was convicted of this “most serious” offense. When applying Miller, this Court finds no alternative than to look to the Defendant’s age at the time of the crime of his second armed robbery. Because the Defendant was not a juvenile at the time of his second armed robbery and received a prior “most serious” conviction, the Court has no other alternative but to

3 of 7
HCH
7/31/12

sentence the Defendant to mandatory life without parole pursuant to S.C. Code Ann. § 17-25-45. This Court finds that sentencing the Defendant under the mandatory life without parole sentence is not a violation of the Eighth Amendment. See Harmelin v. Michigan, 501 U.S. 957, 965, 996, 111 S.Ct. 2680, 2686, 2702 (1991) (holding that, “[t]he Eighth Amendment contains no proportionality guarantee” and “[w]e have drawn the line of required individualized sentencing at capital cases, and see no basis for extending it further”).

B. Equal Protection Clause

Next, the Defendant argues that the mandatory life without parole sentence violates the Equal Protection Clause of the Fourteenth Amendment because South Carolina treats seventeen-year-old offenders differently than other states. More specifically, the Defendant states that the Eighth Amendment’s prohibition on cruel and unusual punishment should not be influenced on diverse state laws, and the Defendant should not be treated differently because he lives in a state that treats seventeen-year-olds as an adult rather than a state that treats seventeen-year-olds as a juvenile in family court.

There is no legal basis to support the Defendant’s argument of an Equal Protection Clause violation on the grounds that the Defendant’s first offense may not have resulted in a “strike” if he had lived in another state. The Constitution does not require criminal punishments to be identical for the same crimes from state to state. States have the ability to make and carry out criminal laws that are in conformity with the United States Constitution. The Defendant does not and would not be able to claim that the laws of South Carolina applied to him do not apply evenly to all persons, regardless of race, gender, or age. Therefore, his argument under the Equal Protection Clause fails.

[Handwritten signature]
7/31/12

C. Prior Strike

Lastly, the Defendant argues that this Court erred in finding that the Defendant has a prior, valid conviction for armed robbery because there is no evidence that the Defendant exhausted his appeal or that the appellate court has returned the remitter to the Clerk of Court. Quoting United States v. Johnson, 457 U.S. 537, 542 n.8, 102 S.Ct. 2579, 2583 (1982), the Defendant urges the Court to adopt the rule that for purposes of S.C. Code Ann. § 17-25-45, a criminal conviction becomes final when “a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.” In Johnson, the Court applied the definition quoted above to determine whether the Defendant’s state court conviction was final in the context of retroactive application of a Supreme Court decision construing the Fourth Amendment. Id. at 548, 102 S.Ct. at 2586. The Johnson Court held that the decision was to be retroactively applied to “all convictions that were not yet final at the time the decision was rendered.” Id. at 562, 102 S.Ct. at 2594.

Under S.C. Code Ann. § 17-25-45(C)(3), “conviction” is defined as “any conviction, guilty plea, or plea of nolo contendere.” In addition, in S.C. Code Ann. § 17-25-45(F), the legislature clarifies its intent by stating:

For the purpose of determining a prior or previous conviction under this section and Section 17-25-50, a prior or previous conviction shall mean the defendant has been convicted of a most serious or serious offense, as may be applicable, on a separate occasion, prior to the instant adjudication. There is no requirement that the sentence for the prior or previous conviction must have been served or completed before a sentence of life without parole can be imposed under this section.

When applying S.C. Code Ann. § 17-25-45 to this case, this Court finds the Defendant was “convicted” of his first armed robbery charge on June 24, 2011. Furthermore, this Court finds that this conviction is entirely separate and distinct from the adjudication currently before it. Based upon the plain reading of the statute, the Defendant had a prior conviction of a “most

5 of 7


serious" offense. A sentence of life without parole for the Defendant's second "most serious" offense of armed robbery is therefore mandatory.

II. Motion for a Mistrial

At the close of the State's case and after the Defense rested, the Defendant made a Motion for Mistrial on the following grounds: the Court erred (1) when it found Vasantika Isadas was qualified to interpret during the trial; (2) in not suppressing the in court identifications made by Mr. Patel, Mrs. Patel, Deputy Luckadoo, and Detective Lawrence; (3) in not admitting a photograph of a young black male wearing dark sunglasses and a hat (Defense Exhibit # 7); (4) in not declaring a mistrial after a juror notified the Court after deliberations had begun that she has previously known the lead detective in the case; and (5) in not charging the Defendant's requested jury charges.

On June 25, 2012, the Defendant filed a Motion for Mistrial on each of the grounds stated above and on the additional ground that the assistant solicitor appealed to the emotions of the jurors in his closing arguments by highlighting the fact that the victim in the case was an immigrant and misrepresented a fact in evidence when he stated Detective Lawrence did not know that the Defendant was a customer in the store when he placed him in the lineup. The State filed a Reply to the Defendant's Motion for a Mistrial on June 28, 2012.

The granting or refusing of a motion for a mistrial lies within the sound discretion of the trial court and its ruling will not be disturbed on appeal absent an abuse of discretion amounting to an error of law. State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000) (citing State v. Council, 335 S.C. 1, 12, 515 S.E.2d 508, 514 (1999)). A mistrial should only be granted when absolutely necessary, and in order to receive a mistrial, the defendant must show error and resulting prejudice. Id.

5/17
JH
7/31/12

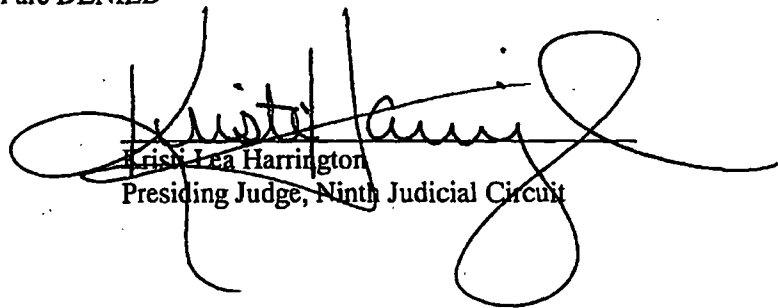
Each of the Defendant's grounds for a mistrial were addressed by the Court at the close of the State's case and after the Defense rested except for the ground that the assistant solicitor appealed to the emotions of the jurors in his closing argument. The Court finds that this argument was not properly raised contemporaneously with the statement made during the State's closing argument. Regarding the grounds for a mistrial made at the close of the State's case and after the Defense rested, the Court stands by its ruling for not granting a mistrial placed on the record. For all six grounds raised by the Defendant, the Court finds that no prejudicial error resulted.

CONCLUSION

For the reasons set forth above, this Court finds that the Defendant's Motion to Vacate Sentence and Motion for a Mistrial are DENIED.

IT IS SO ORDERED.

July 31, 2012
Charleston, South Carolina


Kristi Lea Harrington
Presiding Judge, Ninth Judicial Circuit

FILED
2012 JUL 31 PM 3:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

410

STATE OF SOUTH CAROLINA

FILED

COUNTY OF CHARLESTON

2012 APR 30

IN THE COURT OF
GENERAL SESSIONSINDICTMENT NO(S). 2011-GS-10-2338,
2339

STATE OF SOUTH CAROLINA

JULIE J. ARMSTRONG
CLERK OF COURT

-versus-

BY

**NOTICE OF INTENTION TO SEEK A
SENTENCE OF LIFE WITHOUT
PAROLE**

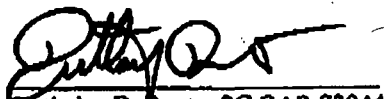
MARVIN BOWENS GREEN

Warrant No(s): K684608, K684609

Defendant.

Charge(s): Armed Robbery, Possession of a
Pistol During a Violent CrimeTO: MARVIN BOWENS GREEN, DEFENDANT, AND CODY GROEBER, ATTORNEY FOR
THE DEFENDANT:

PLEASE TAKE NOTICE that the trial of the above-entitled action, to be scheduled on a date at least ten (10) days hence, of which you will be timely notified, the State will seek the Defendant to be sentenced to a term of imprisonment for life without the possibility of parole, pursuant to the South Carolina Code of Laws Section 17-25-45 (1995) as amended.


 Rutledge Durant - SC BAR 73944
 Assistant Solicitor

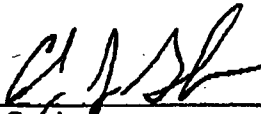
Charleston, South Carolina

DATE: 3/27, 2012

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF
COUNTY OF CHARLESTON) GENERAL SESSIONS
2012 APR 10) AND DOCUMENT NO(S). 2011-GS-10-2338,
JULIE J. ARMSTRONG) 2339
CLERK OF COURT)
STATE OF SOUTH CAROLINA)
BY)
-versus-)
MARVIN BOWENS GREEN)
Defendant.)
NOTICE OF INTENTION TO SEEK A
SENTENCE OF LIFE WITHOUT
PAROLE
Warrant No(s): K684608, K684609
Charge(s): Armed Robbery, Possession of a
Pistol During a Violent Crime

SERVICE OF THE Notice of Intention to Seek a Sentence of Imprisonment for Life without the
Possibility of Parole acknowledged, and copies retained this 10th day of April, 2012.


Cody Greeber
Assistant Public Defender

Charleston, South Carolina

DATE: 4-10, 2012.

MAR-10-412

FILED

INDICTMENT NO(S). 2011-GS-10-2338,

2012 APR 10 AM 10:23:39

RODINA J. ARMSTRONG
CLERK OF COURT

Warrant No(s): K684608, K684609

**Charge(s): Armed Robbery, Possession of a
Pistol During a Violent Crime**

SERVICE OF THE Notice of Intention to Seek a Sentence of Imprisonment for Life without the Possibility of Parole acknowledged, and copies retained this 10th day of April, 2012.

Marvin Bowens Green
Defendant

Charleston, South Carolina

DATE: 4-10, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

-versus-

MARVIN BOWENS GREEN

Defendant.

IN THE COURT OF
GENERAL SESSIONS
INDICTMENT NO(S). 2011-GS-10-2338,

FILED
2012 APR 10 AM 10:59

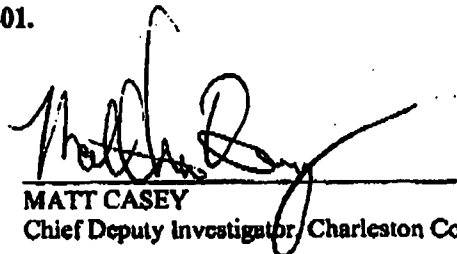
JULIE J. ARMSTRONG
CLERK OF COURT
AFFIDAVIT of SERVICE

BY

Warrant No(s): K684608, K684609

Charge(s): Armed Robbery, Possession of a
Pistol During a Violent Crime

MATT CASEY, being duly sworn, states that on April 10th, 2012, he delivered a Notice of Intention to Seek a Sentence of Life without Parole to one MARVIN BOWENS GREEN, c/o Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010 as well as a copy to the attorney for the defendant, CODY GROEBER, Assistant Public Defender, 101 Meeting Street, Suite 500, Charleston, South Carolina 29401.


MATT CASEY

Chief Deputy Investigator, Charleston County Solicitor's Office

SWORN to and subscribed before me
this date of April 10, 2012.

Notary Public

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: September 23, 2014

GRD20110100053

414

WITNESSES

LAWRENCE

Charleston County Sheriff

AGENCY CASE NUMBER

2010021305B

ARREST WARRANT NUMBER

K684608

DATE OF ARREST

December 30, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: APR 04 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2011GS1002338

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

vs.

MARVIN BOWENS GREEN

B/M

Indictment for

Armed Robbery

FILED

4/15/2011 3:37:29 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

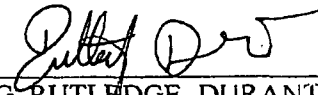
INDICTMENT

At a Court of General Sessions, convened on April 4, 2011 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about December 24, 2010, in Charleston County, South Carolina, at 5737 Savannah Highway, Charleston, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a .38 Colt revolver, serial #82846, the Defendant, MARVIN BOWENS GREEN, did take and carry away goods and/or monies from the person or immediate presence of Natubhai Patel with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) 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.


G. RUTLEDGE DURANT
ASSISTANT SOLICITOR

416

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
MARVIN BOWENS GREEN

AKA:

Race: BLACK Sex: M Age: 20DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: JACKSONBORO, SC 294520000DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ARMED ROBBERY

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1002338A/W#: K684608Date of Offense: 12/30/2010S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

DuRant, G. Rutledge23944
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of Life without the Possibility of Parole ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

\$

\$3.90

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Sharon-Vize-Hanks

SCCA/217 (03/2011)

Presiding Judge

Judge Code: Sentence Date: 6/14/12

GRD20110100053

WITNESSES

LAWRENCE

Charleston County Sheriff

AGENCY CASE NUMBER

2010021305B

ARREST WARRANT NUMBER

K684609

DATE OF ARREST

December 30, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 04 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2011GS1002339

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

vs.

MARVIN BOWENS GREEN

B/M

Indictment for

Possession Of A Firearm During The
Commission Of A Violent Crime

417

FILED

4/15/2011 3:37:29 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

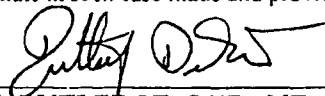
INDICTMENT

At a Court of General Sessions, convened on April 4, 2011 the Grand Jurors of Charleston County present upon their oath:

Possession Of A Firearm During The Commission Of A Violent Crime

That in Charleston County, South Carolina, on or about December 24, 2010, the Defendant, MARVIN BOWENS GREEN, did possess a .38 Colt revolver, serial #82846 or visibly display what appeared to be a firearm during the commission, or attempted commission, of Armed Robbery, a violent crime. 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.


G. RUTLEDGE DURANT
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

419

COUNTY OF Charleston
 STATE VS.
MARVIN BOWENS GREEN

AKA:

Race: BLACK Sex: M Age: 20DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: JACKSONBORO, SC 294520000DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: POSS OF WEAPON DURING CRIMEINDICTMENT/CASE#: 2011GS1002339A/W#: K684609Date of Offense: 12/30/2010S.C. Code §: 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADSin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

DuRan, G. Rutledge73944
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2011-GS-10-2338☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/ea

\$5

\$

\$

\$100.00

\$25.00

\$5.00

\$3.90

\$133.90

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Sharon

SCCA/217 (03/2011)

Presiding Judge

Judge Code 2151Sentence Date: 6/14/12

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 12th, 2014

A handwritten signature in cursive script, reading "Susan B. Hackett", is written over a horizontal line.

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 12th, 2014

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

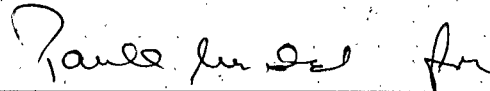
V.

MARVIN BOWENS GREEN,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of March, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 12th day of March, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022

RECEIVED
MAR 12 2014
SC Court of Appeals