

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County
R. Lawton McIntosh, Circuit Court Judge

RECEIVED

JUL 14 2014

S.C. Supreme Court

JEFFREY SCOTT EVANS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002585

APPENDIX

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STATE OF SOUTH	)	IN THE COURT OF GENERAL
CAROLINA	)	SESSIONS
	)	
COUNTY OF ANDERSON	)	INDICTMENT NO:
	)	2007-GS-04-2532, COUNT 1 AND
	)	COUNT 2

STATE OF SOUTH	)	
CAROLINA,	)	
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	TRIAL
-VS-	)	
	)	
JEFFERY SCOTT EVANS,	)	
	)	
DEFENDANT.	)	

AUGUST 4 AND AUGUST 5, 2008
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A
JURY.

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

CATHERINE T. HUEY, ESQ.
JAN BYFORD, ESQ.
ASSISTANT 10TH CIRCUIT SOLICITORS
ATTORNEYS FOR THE STATE

ANDREW POTTER, ESQ.
ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

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Anderson County Courthouse

RANDOM STRIKE SHEET

2A

3

JUDGE NAME :

TRIAL TYPE :

PANEL ID : AUGUST 4, 2008

COURTROOM CTR

DESCRIPTION : STATE VS JEFFERY S. EVANS

Sorted by: Random Nbr

Trial

NAME	BIRTH	RACE	SEX	SM	HT	WT	REMARKS
1 Gambrell, Danny R	57	W	M	()	()	()	
2 Decker, William H	41	W	M	()	(X)	()	
3 Miles, Gerald L	121	W	M	()	(X)	()	
4 Kirby, Nancy H	106	W	F	()	()	()	Forelady
5 Lewis, Charles G	112	W	M	()	()	()	
6 Johnson, Ann W	95	W	F	()	(X)	()	
7 Lee, Harold V	111	W	M	()	(X)	()	
8 Littlefield, Amber R	114	W	F	()	()	()	
9 Bailey, Beth A	6	W	F	()	()	()	
10 Kelly, Janie G	102	W	F	()	()	()	
11 SHOTTON, PENELOPE G	82	W	F	()	(X)	()	
12 Hartwig, Frederick J	76	W	M	(X)	()	()	
13 Rowlands, Thomas C	154	W	M	()	(X)	()	
14 Dick, Kimberly R	43	W	F	()	()	()	
15 Williamson, Jason M	180	W	M	()	()	()	
16 Evans, Sylvia B	54	W	F	(X)	()	()	
17 Smoak, Bailey A	164	W	F	()	(X)	()	
18 Duckett, Andrea G	47	W	F	()	()	()	
19 Chong, Young S	32	A	F	()	()	()	
20 Parker, Rena E	132	B	F	(X)	()	()	
21 Cheatwood, Virginia A	31	W	F	()	()	()	
22 Roose, Pamela J	152	W	F	()	(X)	()	
23 Coker, John A	33	W	M	()	()	()	

Anderson County Courthouse

RANDOM STRIKE SHEET

2B

JUDGE NAME :

TRIAL TYPE :

PANEL ID : AUGUST 4, 2008

COURTROOM CTR

DESCRIPTION : STATE VS JEFFERY S. EVANS

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	STIPULATED	DEF	CRIM	REMARKS
24 Hollingsworth, Trevor T	86	W	M	()	(X)	()	<u>Alternate</u>
25 Elrod, Jamie M	51	W	F	()	()	()	
26 Bates, Sue E	12	W	F	()	()	()	
27 Latimer, Gloria R	109	B	F	()	()	()	
28 Keown, Albert M	103	W	M	()	()	()	
29 Pohl, Ellen L	139	W	F	()	()	()	
30 Donald, Ardell L	45	B	F	()	()	()	
31 Rainey, Weston M	144	W	M	()	()	()	
32 Knisley, Charles R III	107	W	M	()	()	()	
33 Whitner, Joann	175	B	F	()	()	()	
34 Pierce, Steven L	136	W	M	()	()	()	
35 Shew, Brandy L	159	W	F	()	()	()	
36 Montgomery, Rena M	123	B	F	()	()	()	
37 Beck, Mark J	15	W	M	()	()	()	
38 Gilliland, Marcie S	61	W	F	()	()	()	
39 Todd, Catherine G	169	W	F	()	()	()	
40 Morrison, Judith	127	W	F	()	()	()	

Total Number of Jurors:

40

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1 ***** START OF REQUESTED TRANSCRIPT *****

2 JURY VOIR DIRE:

3 **THE COURT:** WE ARE GETTING READY TO DRAW THE
4 JURY IN THE FIRST CASE. NOW, LADIES AND GENTLEMEN, THIS
5 IS A TERM OF GENERAL SESSIONS COURT, SOMETIMES CALLED
6 CRIMINAL COURT. ITS PURPOSE IS TO RESOLVE QUESTIONS OF
7 ALLEGED CRIMINAL CONDUCT ARISING BETWEEN THE STATE OF
8 SOUTH CAROLINA AND THE DEFENDANT IN A FASHION WHICH WILL
9 ENSURE THAT JUSTICE UNDER THE LAW IS ACCOMPLISHED.

10 A TRIAL BEGINS WITH THE SELECTION OF A JURY.
11 BOTH THE STATE AND THE DEFENDANTS ARE ENTITLED TO JURORS
12 WHO APPROACH THE CASES WITH AN OPEN MIND. A TRIAL JURY
13 MUST BE AS FREE AS HUMANLY POSSIBLE FROM BIAS,
14 PREJUDICE, OR SYMPATHY FOR EITHER SIDE AND FREE FROM ANY
15 PRECONCEIVED IDEAS ON THE FACTS OF THE CASE OR THE LAW
16 OF THE CASE.

17 THEREFORE, CERTAIN QUESTIONS WILL BE ASKED
18 OF YOU, THE PETIT JURY PANEL. THE QUESTIONS WHICH WILL
19 BE ASKED ARE DESIGNED TO ASSURE EACH SIDE HAS A FAIR AND
20 IMPARTIAL JURY.

21 NOW, I MIGHT NOTE THAT YOU HAVE BEEN SWORN
22 AS JURORS FOR THE COURT OF GENERAL SESSIONS HERE IN
23 ANDERSON COUNTY THIS WEEK AND, THEREFORE, NO ONE WILL BE
24 PERMITTED TO INTERFERE WITH YOUR SERVICE AS JURORS.
25 THEREFORE, IF ANYBODY SHOULD TRY TO TALK WITH YOU OR ASK

1 YOU ABOUT ANY CASE SCHEDULED FOR TRIAL THIS WEEK, YOU
2 SHOULD REPORT THEM IMMEDIATELY SO I MIGHT TAKE THE
3 APPROPRIATE ACTION.

4 NOW, CAN EVERYONE HEAR ME? IF ANYONE CANNOT
5 HEAR ME, PLEASE RAISE YOUR HAND. (NO RESPONSE).

6 THAT'S AN INTERESTING QUESTION BECAUSE IF
7 YOU COULDN'T HEAR, YOU WOULDN'T KNOW TO RAISE YOUR HAND.
8 IF YOU SEE MY LIPS MOVING AND YOU DON'T QUITE
9 UNDERSTAND, ESPECIALLY YOU, MR. BURRELL, PLEASE RAISE
10 YOUR HAND AND I'LL TRY TO SPEAK MORE DISTINCTLY AND
11 LOUDER.

12 MADAM SOLICITOR, YOU MAY CALL YOUR FIRST
13 CASE.

14 MS. HUEY: THANK YOU, YOUR HONOR, MAY IT
15 PLEASE THE COURT, THE STATE CALLS JEFFERY EVANS,
16 INDICTED FOR ARMED ROBBERY AND POSSESSION OF A KNIFE
17 DURING THE COMMISSION OF A VIOLENT CRIME,
18 2007-GS-04-2532.

19 THE COURT: COUNT 2?

20 MS. HUEY: YES, SIR, YOUR HONOR, ARMED
21 ROBBERY AND POSSESSION OF A WEAPON.

22 THE COURT: COUNT 1 AND 2.

23 MS. HUEY: YES, SIR.

24 THE COURT: LADIES AND GENTLEMEN OF THE
25 JURY, AS YOU HEARD THE SOLICITOR CALL THE CASE, THIS

1 WILL BE THE CASE OF THE STATE OF SOUTH CAROLINA VERSUS
2 JEFFERY SCOTT EVANS, CHARGED IN INDICTMENT NUMBER
3 2007-GS-04-2532, COUNT 1, ARMED ROBBERY, AND COUNT 2,
4 POSSESSION OF A KNIFE DURING THE COMMISSION OF A VIOLENT
5 CRIME. THE STATE WILL BE REPRESENTED BY MS. HUEY.

6 PLEASE STAND AND INTRODUCE YOURSELF AND
7 ANYBODY THAT WILL BE ASSISTING YOU IN THE TRIAL OF THIS
8 CASE.

9 MS. HUEY: THANK YOU, JUDGE. AGAIN, MY NAME
10 IS CATHERINE HUEY, I'M AN ASSISTANT SOLICITOR FOR
11 ANDERSON COUNTY. SEATED AT THE TABLE WITH ME WILL BE
12 JAN BYFORD, ALSO AN ASSISTANT SOLICITOR HERE IN ANDERSON
13 COUNTY.

14 THE COURT: THE DEFENDANT, MR. JEFFERY SCOTT
15 EVANS, WILL BE REPRESENTED BY MR. POTTER.

16 MR. POTTER, IF YOU WOULD PLEASE STAND AND
17 INTRODUCE YOURSELF AND YOUR CLIENT AND ANYONE ELSE THAT
18 WILL BE ASSISTING YOU DURING THE TRIAL OF THE CASE.

19 MR. POTTER: THANK YOU, YOUR HONOR, IF IT
20 PLEASE THE COURT, I'M ANDREW POTTER, I'LL BE
21 REPRESENTING THE ACCUSED, JEFFERY EVANS, WHO IS HERE
22 TODAY. NOBODY WILL BE ASSISTING ME.

23 THE COURT: NOW, IS THERE ANY MEMBER OF THE
24 JURY PANEL WHO IS RELATED BY BLOOD OR MARRIAGE, NOW OR
25 FORMERLY, CLOSE PERSONAL FRIENDS OR BUSINESS ASSOCIATES

1 OF THE DEFENDANT, JEFFERY SCOTT EVANS? IF SO, PLEASE
2 STAND. (NO RESPONSE.)

3 NOW I'M ALSO GOING TO READ OUT A LIST OF
4 POTENTIAL WITNESSES IN THIS CASE. NOW, THESE ARE
5 WITNESSES WHO MAY BE CALLED BUT DO NOT HAVE TO BE
6 CALLED. SO LISTEN CAREFULLY, AND IF YOU DO NOT
7 UNDERSTAND MY PRONUNCIATION OF THE NAME, RAISE YOUR HAND
8 AND I'LL TRY TO CLARIFY IT.

9 AGAIN, IF ANY OF THESE POTENTIAL **WITNESSES**
10 ARE IN THE COURTROOM, I WOULD ASK THAT THEY STAND WHEN
11 THEIR NAMES ARE CALLED.

12 THE REASON FOR THAT, OF COURSE, IS TODAY YOU
13 ARE NOT AS FAMILIAR WITH EACH OTHER BY NAME AS MUCH AS
14 WE MIGHT RECOGNIZE SOMEBODY THAT WE HAVE HAD CONTACT OR
15 ASSOCIATION WITH. AGAIN, I'LL BE CALLING, READING A
16 LIST OF POTENTIAL WITNESSES.

17 ALLEN HENDRIX, ANDERSON COUNTY SHERIFF'S
18 OFFICE.

19 PETE NORMANDIN, ANDERSON COUNTY SHERIFF'S
20 OFFICE.

21 KEVIN MATHESON, ANDERSON COUNTY SHERIFF'S
22 OFFICE.

23 STAN ASHLEY, ANDERSON COUNTY SHERIFF'S
24 OFFICE.

25 PAUL TURNER, ANDERSON COUNTY SHERIFF'S

1 OFFICE.

2 TODD CARON, ANDERSON COUNTY SHERIFF'S

3 OFFICE.

4 CHRIS SCOTT, ANDERSON COUNTY SHERIFF'S

5 OFFICE.

6 MARK PATTERSON, ANDERSON COUNTY SHERIFF'S

7 OFFICE.

8 CHAD MCBRIDE, ANDERSON COUNTY SHERIFF'S

9 OFFICE.

10 CHRIS BEUSSE, ANDERSON COUNTY SHERIFF'S

11 OFFICE.

12 JAY LINDSEY, ANDERSON COUNTY SHERIFF'S

13 OFFICE.

14 JASON CARTEE, ANDERSON COUNTY SHERIFF'S

15 OFFICE.

16 TOMMY CLAMP, ANDERSON COUNTY SHERIFF'S

17 OFFICE.

18 MARGARET PEARL DEAN.

19 JAIKUMAR DESAI.

20 DHARMISHTHA DESAI.

21 BARBARA A. COOLEY.

22 PRISCILLA HUMAN.

23 STANISLAV MYSHKOUSKIY.

24 PATRICIA EVANS.

25 PAT FRENCH.

1 ERICA SALLEY.

2 STEPHANIE MCCLELLAN.

3 DANIEL LATHAM.

4 MATTHEW RICHARDS.

5 SUZANNE SHIRLEY.

6 PAULA AYERS.

7 SCOTT MESSENGER.

8 IS THERE ANY MEMBER OF THE JURY PANEL
9 RELATED BY BLOOD OR MARRIAGE, NOW OR FORMERLY, CLOSE
10 PERSONAL FRIENDS OR BUSINESS ASSOCIATE OF ANY OF THE
11 POTENTIAL WITNESSES IN THIS CASE THAT I'VE JUST READ?
12 IF SO, PLEASE STAND.

13 YES, MA'AM, IF YOU WOULD PLEASE STAND.

14 PROSPECTIVE JUROR: CHRIS BEUSSE IS MY
15 BROTHER, HE WORKS FOR THE SHERIFF'S DEPARTMENT.

16 THE COURT: CHRIS...

17 PROSPECTIVE JUROR BUESSE: BEUSSE.

18 THE COURT: OH, I'M SORRY, BUESSE.

19 PROSPECTIVE JUROR: YES, SIR.

20 THE COURT: IS YOUR BROTHER?

21 PROSPECTIVE JUROR: IS MY BROTHER.

22 STEPHANIE BEUSSE.

23 THE COURT: I'M GOING TO EXCUSE YOU ON THE
24 TRIAL OF THIS CASE, MS. BEUSSE, BUT STAY WITH US IF YOU
25 WOULD, PLEASE.

1 YES, SIR.

2 PROSPECTIVE JUROR: EXCUSE ME. I BELIEVE
3 I'M JUROR NUMBER 41. I WAS PERSONAL FRIENDS WITH JAY
4 LINDSEY OF THE ANDERSON COUNTY SHERIFF'S OFFICE.

5 THE COURT: BUT THERE'S NO RELATION BY BLOOD
6 OR MARRIAGE, JUST A CLOSE PERSONAL FRIEND?

7 PROSPECTIVE JUROR: (NODS HEAD.)

8 THE COURT: WOULD THAT IN ANY WAY INTERFERE
9 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
10 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

11 PROSPECTIVE JUROR: I DON'T BELIEVE SO.

12 THE COURT: NOW I NEED TO KNOW. THE REASON
13 FOR THAT, AND THE QUESTION IS TWOFOLD. FIRST OF ALL, OF
14 COURSE, IT'S FOR ME TO ASSURE THAT BOTH PARTIES, THE
15 STATE AND DEFENDANT, HAVE A FAIR AND IMPARTIAL JURY.
16 BUT THE SECOND PART OF THE QUESTION -- OR THE SECOND
17 PURPOSE OF THE QUESTION IS NONE OF YOU ASKED TO BE HERE,
18 AND I DON'T WANT TO PUT YOU IN ANY SORT OF SITUATION OR
19 POSITION WHERE YOU MIGHT HAVE TO CONSIDER SOMETHING ELSE
20 OTHER THAN JUST THE CASE ITSELF, IN OTHER WORDS, NOT IN
21 ANY SORT OF NOT COMPROMISE, BUT JUST A QUESTION ABOUT,
22 BECAUSE OF SOME PRIOR ASSOCIATION.

23 SO I WOULD ASK YOU AGAIN: WOULD THIS IN ANY
24 WAY INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE
25 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

1 **PROSPECTIVE JUROR:** NO.

2 **THE COURT:** VERY GOOD. THANK YOU SIR. YOU
3 CAN STAY WITH US.

4 ANYONE ELSE? (NO RESPONSE.)

5 WAS ANY MEMBER OF THE JURY PANEL A MEMBER OF
6 THE GRAND JURY THAT FOUND AND RETURNED THE INDICTMENT IN
7 THIS CASE, WHICH WAS 2007? IF SO, PLEASE STAND. (NO
8 RESPONSE).

9 IS ANYONE RELATED TO OR HAVE A CLOSE
10 PERSONAL RELATIONSHIP WITH ANY MEMBER OF LAW
11 ENFORCEMENT? IF SO, PLEASE STAND.

12 YES, SIR.

13 **PROSPECTIVE JUROR:** MY SON-IN-LAW IS A
14 DEPUTY FOR CLEMSON CITY.

15 **THE COURT:** YOUR NAME, PLEASE?

16 **PROSPECTIVE JUROR BLACK:** JEFFERY BLACK,
17 JUROR 18.

18 **THE COURT:** WOULD THAT IN ANY WAY INTERFERE
19 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
20 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

21 **PROSPECTIVE JUROR:** NO, SIR.

22 **THE COURT:** VERY GOOD, THANK YOU.

23 MS. BEUSSE, I SAW YOU STAND, BUT THAT WON'T
24 BE NECESSARY, I'VE ALREADY EXCUSED YOU ON THE TRIAL OF
25 THIS CASE.

1 YES, SIR?

2 PROSPECTIVE JUROR: MY BROTHER-IN-LAW WORKS
3 FOR THE SHERIFF'S DEPARTMENT.

4 THE COURT: ALL RIGHT. AND YOUR NAME, SIR?

5 PROSPECTIVE JUROR: RICHARD HUCKABY II.

6 THE COURT: WOULD THAT IN ANY WAY INTERFERE
7 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
8 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

9 PROSPECTIVE JUROR HUCKABY: NO, SIR.

10 THE COURT: VERY GOOD. THANK YOU. AGAIN --
11 YES, MA'AM.

12 PROSPECTIVE JUROR: MY SON IS AN OFFICER,
13 HE'S A STATE TROOPER.

14 THE COURT: ALL RIGHT. AND YOUR NAME,
15 PLEASE, MA'AM?

16 PROSPECTIVE JUROR: SANDRA RAGSDALE.

17 THE COURT: WOULD THAT IN ANY WAY INTERFERE
18 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
19 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

20 PROSPECTIVE JUROR RAGSDALE: NO.

21 THE COURT: VERY GOOD. THANK YOU, MA'AM.
22 YES, MA'AM.

23 PROSPECTIVE JUROR: MY NIECE'S HUSBAND IS A
24 DEPUTY AT ANDERSON COUNTY SHERIFF'S OFFICE.

25 THE COURT: WOULD THAT IN ANY WAY INTERFERE

1 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
2 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

3 **PROSPECTIVE JUROR:** NO.

4 **THE COURT:** YOUR NAME, PLEASE, MA'AM?

5 **PROSPECTIVE JUROR BATES:** SUE BATES.

6 **THE COURT:** ALL RIGHT. VERY GOOD.

7 BY THE WAY, EACH TIME YOU RESPOND I'M GOING
8 TO ASK YOU TO STAND AND GIVE ME YOUR NAME, EVEN THOUGH
9 YOU RESPOND TO MORE THAN ONE QUESTION. THE REASON FOR
10 THAT IS EVERYTHING IS DONE IN COURT THE COURT REPORTER
11 TAKES DOWN, AND THE ONLY WAY WE KNOW WHO IS TALKING OR
12 SPEAKING AT THE TIME IS, OF COURSE, IF THEY ARE
13 IDENTIFIED ON THE RECORD. SO EVEN THOUGH YOU RESPOND TO
14 MORE THAN ONE QUESTION, EACH TIME YOU DO RESPOND, IF YOU
15 WOULD STAND AND GIVE ME YOUR NAME AND THEN ASK YOUR
16 QUESTION -- OR RESPOND TO THE QUESTION.

17 NOW, HAS ANYONE WORKED AS A CASHIER? IF SO,
18 PLEASE STAND. ANY MEMBER OF THE JURY PANEL WHO HAS
19 WORKED AS A CASHIER.

20 YES, MA'AM, YOUR NAME, PLEASE?

21 **PROSPECTIVE JUROR MERRITT:** ANGELA MERRITT,
22 JUROR NUMBER, 120. I WORKED AS A CASHIER.

23 **THE COURT:** ALL RIGHT. WOULD THAT IN ANY
24 WAY INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE
25 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

1 PROSPECTIVE JUROR MERRITT: NO, SIR.

2 THE COURT: MA'AM, DID YOU GET THE ANSWER?

3 COURT REPORTER: NO, SIR.

4 THE COURT: MA'AM, THIS IS NOT A GOOD
5 COURTROOM FOR ---

6 PROSPECTIVE JUROR MERRITT: OH, I'M SORRY,
7 YOUR HONOR. MY NAME IS ANGELA MERRITT, I'M JUROR NUMBER
8 120, AND I WORKED AT CITY MART.

9 THE COURT: AND YOU SAID IT WOULD NOT
10 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND
11 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

12 PROSPECTIVE JUROR MERRITT: NO, SIR.

13 THE COURT: VERY GOOD. THANK YOU, MA'AM.
14 YES, MA'AM.

15 PROSPECTIVE JUROR DONALD: ARDELL DONALD,
16 J.C. PENNEY'S CLERK.

17 THE COURT: ALL RIGHT. WOULD THAT IN ANY
18 WAY INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE
19 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

20 PROSPECTIVE JUROR DONALD: NO.

21 THE COURT: VERY GOOD. THANK YOU, MA'AM.
22 YES, MA'AM.

23 PROSPECTIVE JUROR SHEW: BRANDI SHEW. I
24 PREVIOUSLY WORKED AS A CASHIER.

25 THE COURT: ALL RIGHT. WOULD THAT IN ANY

1 WAY INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE
2 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

3 PROSPECTIVE JUROR SHEW: NO, SIR.

4 THE COURT: VERY GOOD. THANK YOU, MA'AM.
5 YES, MA'AM.

6 PROSPECTIVE JUROR BAGWELL: SANDRA BAGWELL,
7 JUROR NUMBER FIVE. OF COURSE, I HAVE A RESTAURANT.

8 THE COURT: WOULD THAT IN ANY WAY INTERFERE
9 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
10 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

11 PROSPECTIVE JUROR BAGWELL: NO.

12 THE COURT: VERY GOOD. THANK YOU, MA'AM.
13 YES, MA'AM.

14 PROSPECTIVE JUROR HANER: MY NAME IS RUTHI
15 HANER. I'VE WORKED AS A CASHIER AT SEVERAL JOBS IN THE
16 PAST, BUT IT WOULD NOT INTERFERE.

17 THE COURT: IT WOULDN'T INTERFERE WITH YOUR
18 ABILITY TO GIVE THE STATE AND THE DEFENDANT A FAIR AND
19 IMPARTIAL TRIAL?

20 PROSPECTIVE JUROR HANER: NO, SIR.

21 THE COURT: VERY GOOD. THANK YOU, MA'AM.
22 YES, MA'AM.

23 PROSPECTIVE JUROR JOHNSON: I'M ANN JOHNSON,
24 JUROR NUMBER 95, I'M A PART-TIME SALES CLERK WITH BELK.

25 THE COURT: WOULD THAT IN ANY WAY INTERFERE

1 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
2 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

3 PROSPECTIVE JUROR JOHNSON: NO.

4 THE COURT: VERY GOOD. THANK YOU, MA'AM.
5 ANYONE ELSE? (NO RESPONSE.)

6 NOW, HAS ANYONE BEEN ON A JURY BEFORE,
7 WHETHER FEDERAL, STATE, OR MAGISTRATE LEVEL, CIVIL OR
8 CRIMINAL? IF SO, PLEASE STAND.

9 ALL RIGHT. LET'S START ON THIS SIDE.

10 PROSPECTIVE JUROR KNISLEY: CHARLES KNISLEY.

11 THE COURT: AND WHAT SORT OF JURY DID YOU
12 SERVE ON?

13 PROSPECTIVE JUROR KNISLEY: IT WAS A GENERAL
14 SESSIONS COURT LIKE THIS HERE. IT WAS ABOUT FOUR OR
15 FIVE YEARS AGO.

16 THE COURT: WOULD THAT IN ANY WAY INTERFERE
17 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
18 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

19 PROSPECTIVE JUROR KNISLEY: NO, SIR.

20 THE COURT: VERY GOOD. THANK YOU, SIR.
21 YES, MA'AM.

22 PROSPECTIVE JUROR EVANS: SYLVIA EVANS,
23 NUMBER 54, AND I SERVED ON A JURY OVER HERE A COUPLE
24 YEARS AGO.

25 THE COURT: DO YOU REMEMBER WHAT KIND OF

1 COURT IT WAS?

2 THE WITNESS: IT WAS CRIMINAL.

3 THE COURT: ALL RIGHT. WOULD THAT IN ANY
4 WAY INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE
5 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL IN THIS
6 CASE?

7 PROSPECTIVE JUROR EVANS: NO.

8 THE COURT: VERY GOOD. THANK YOU, MA'AM.
9 YES, MA'AM.

10 PROSPECTIVE JUROR: YES. I SERVED ON JURY
11 DUTY MAYBE TEN YEARS AGO IN FLORIDA, AND IT WAS CIRCUIT
12 COURT, IT WAS CRIMINAL; AND THEY NEVER DID THE TRIAL
13 BECAUSE THEY ACCEPTED A PLEA.

14 THE COURT: I UNDERSTAND. WOULD THAT IN ANY
15 WAY INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE
16 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

17 PROSPECTIVE JUROR: NO, SIR.

18 THE COURT: VERY GOOD. THANK YOU, MA'AM.
19 YES, SIR.

20 PROSPECTIVE JUROR: MY NAME IS DANNY ALLEN,
21 I WAS ON A GRAND JURY [SIC] MURDER TRIAL IN 1996 HERE IN
22 ANDERSON.

23 THE COURT: WOULD THAT IN ANY WAY INTERFERE
24 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
25 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

1 PROSPECTIVE JUROR ALLEN: NO.

2 THE COURT: IF YOU WOULD PLEASE GIVE ME YOUR
3 NAME AGAIN.

4 PROSPECTIVE JUROR ALLEN: DANNY ALLEN.

5 THE COURT: ALL RIGHT. MR. ALLEN?

6 PROSPECTIVE JUROR ALLEN: ALLEN.

7 THE COURT: ALL RIGHT. VERY GOOD. THANK
8 YOU, SIR.

9 YES, MA'AM.

10 PROSPECTIVE JUROR KIRBY: NANCY KIRBY, JUROR
11 106. I SERVED IN A CIVIL TRIAL IN RICHLAND COUNTY, IT
12 WAS PROBABLY 25 YEARS AGO.

13 THE COURT: ALL RIGHT. WOULD THAT IN ANY
14 WAY INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE
15 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

16 PROSPECTIVE JUROR KIRBY: NO, NOT AT ALL.

17 THE COURT: VERY GOOD. THANK YOU, MA'AM.

18 YES, MA'AM.

19 PROSPECTIVE JUROR DUCKETT: ANDREA DUCKETT,
20 A FEDERAL TRIAL LAST YEAR.

21 THE COURT: WAS IT CRIMINAL OR CIVIL?

22 PROSPECTIVE JUROR DUCKETT: CRIMINAL.

23 THE COURT: WOULD THAT IN ANY WAY INTERFERE
24 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
25 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

1 **PROSPECTIVE JUROR DUCKETT:** NO, SIR.

2 **THE COURT:** VERY GOOD. THANK YOU, MA'AM.

3 NOW I'M GOING TO ASK THREE QUESTIONS, AND AS
4 I DID DURING THE QUALIFICATION PROCESS EARLIER TODAY,
5 I'M GOING TO ASK YOU TO WAIT UNTIL I ASK YOU TO COME
6 FORWARD AFTER I'VE GONE THROUGH THE THREE QUESTIONS
7 TWICE, AND THEN I'LL INQUIRE FROM YOU PRIVATELY WITH THE
8 CLERK. AGAIN, LISTEN TO THE QUESTIONS AND I'LL GO
9 THROUGH THEM TWICE BEFORE I ASK YOU TO STAND AND
10 RESPOND.

11 HAS ANY ONE OF YOU EVER BEEN A VICTIM OF A
12 CRIME? HAS ANY ONE OF YOU EVER HAD A CLOSE FAMILY
13 MEMBER BEEN A VICTIM OF A CRIME? HAS ANY MEMBER OF THE
14 JURY PANEL EVER BEEN THE VICTIM OF A CRIME OR HAS ANY
15 MEMBER OF THE JURY PANEL'S CLOSE FAMILY MEMBERS BEEN THE
16 VICTIM OF A CRIME? IF SO, PLEASE STAND AT THIS TIME.

17 (A JUROR APPROACHED THE BENCH AND CONFERRED
18 WITH THE COURT.)

19 **THE COURT:** ALL RIGHT. ONE FROM EACH SIDE.
20 YES, SIR, YOUR NAME, PLEASE?

21 **PROSPECTIVE JUROR LEE:** HAROLD LEE, AND I'M
22 NUMBER 111. AND MY MOTHER WAS INVOLVED IN THE DALTON
23 GANG ROBBERIES IN GREENVILLE A FEW YEARS AGO.

24 **THE COURT:** BANK ROBBERIES?

25 **PROSPECTIVE JUROR LEE:** IT WASN'T BANK

1 ROBBERIES, IT WAS, THEY WERE ROBBING CONVENIENCE STORES.

2 THE COURT: CONVENIENCE STORES. WOULD THAT
3 IN ANY WAY INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE
4 STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

5 PROSPECTIVE JUROR LEE: NO, IT WOULDN'T.

6 MR. POTTER: MAY IT PLEASE THE COURT, MAY I
7 ASK A QUESTION?

8 (MR. POTTER QUESTIONS THE JUROR OUTSIDE THE
9 PRESENCE OF THE COURT REPORTER AND THE COURT
10 REPORTER ASKED MR. POTTER TO REPEAT HIS
11 QUESTION.)

12 MR. POTTER: I WITHDRAW THE QUESTION.

13 THE COURT: THE FACT THAT YOUR MOTHER WAS A
14 VICTIM OF THOSE CRIMES WOULD NOT INTERFERE WITH YOUR
15 ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A FAIR
16 AND IMPARTIAL TRIAL?

17 PROSPECTIVE JUROR LEE: NO.

18 THE COURT: THANK YOU VERY MUCH, SIR.

19 (PROSPECTIVE JUROR LEE LEAVES THE BENCH.)

20 (A JUROR APPROACHED THE BENCH AND CONFERRED
21 WITH THE COURT.)

22 THE COURT: YES, SIR. YOUR NAME, PLEASE?

23 PROSPECTIVE JUROR WILLIAMSON, JR.: JASON
24 WILLIAMSON, JUNIOR. AND MY AUNT AND UNCLE AND MY MOTHER
25 AND FATHER WERE VICTIMS OF A THEFT.

1 **THE COURT:** WOULD THAT IN ANY WAY INTERFERE
2 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
3 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

4 **PROSPECTIVE JUROR WILLIAMSON:** NO, SIR.
5 (PROSPECTIVE JUROR WILLIAMSON LEFT THE
6 BENCH.)

7 (PROSPECTIVE JUROR BURRISS AND HIS GRANDSON
8 APPROACHED THE BENCH AND CONFERRED WITH THE
9 COURT.)

10 **THE COURT:** MR. BURRISS, THIS IS YOUR SON?

11 **PROSPECTIVE JUROR BURRISS:** GRANDSON.

12 **THE COURT:** GRANDSON?

13 **PROSPECTIVE JUROR BURRISS:** MY STEPSON WAS
14 CONVICTED OF A CRIME.

15 **THE COURT:** WOULD THAT IN ANY WAY INTERFERE
16 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
17 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

18 **PROSPECTIVE JUROR BURRISS:** NO, SIR.

19 **THE COURT:** ALL RIGHT. VERY GOOD, THANK
20 YOU.

21 (PROSPECTIVE JUROR BURRISS LEFT THE BENCH.)

22 (A JUROR APPROACHED THE BENCH AND CONFERRED
23 WITH THE COURT.)

24 **PROSPECTIVE JUROR SHOTTON:** PENELOPE

25 SHOTTON, JUNIOR NUMBER 82. YEARS AGO MY DAUGHTER WAS A

1 VICTIM OF AN ASSAULT AND SHE WAS INJURED; AND SIX YEARS
2 AGO MY HUSBAND WAS THE VICTIM OF AN ARMED ROBBERY, HE
3 WASN'T HURT.

4 THE COURT: WOULD EITHER OF THOSE INSTANCES
5 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND
6 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

7 PROSPECTIVE JUROR SHOTTON: NO, SIR.

8 THE COURT: VERY GOOD. THANK YOU, MA'AM.

9 (PROSPECTIVE JUROR SHOTTON LEFT THE BENCH.)

10 (A JUROR APPROACHED THE BENCH AND CONFERRED
11 WITH THE COURT.)

12 PROSPECTIVE JUROR MILES: GERALD MILES,
13 NUMBER 121. I'VE BEEN INVOLVED IN A HIT-AND-RUN. I WAS
14 HIT. AND I'VE ALSO BEEN INVOLVED WITH THEFT, HAD TWO
15 OUTBOARD MOTORS STOLEN AND A BREAK-IN OF MY HOME.

16 THE COURT: WOULD ANY OF THOSE EXPERIENCES
17 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND
18 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

19 PROSPECTIVE JUROR MILES: NO.

20 THE COURT: VERY GOOD. THANK YOU, SIR.

21 (A JUROR APPROACHED THE BENCH AND CONFERRED
22 WITH THE COURT.)

23 PROSPECTIVE JUROR HANER: HANER, NUMBER 71.
24 MY DAUGHTER WAS RAPED AS A SIX-YEAR-OLD CHILD. IT WAS
25 JUST PROSECUTED SIX YEARS AGO.

1 **THE COURT:** IT HAS BEEN RESOLVED, AT LEAST
2 THAT PART OF IT?

3 **PROSPECTIVE JUROR HANER:** YES.

4 **THE COURT:** WOULD THAT IN ANY WAY INTERFERE
5 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
6 DEFENDANT IN THIS CASE A FAIR AND IMPARTIAL TRIAL?

7 **PROSPECTIVE JUROR HANER:** NO, SIR.

8 **THE COURT:** VERY GOOD. THANK YOU, MA'AM.

9 (PROSPECTIVE JUROR HANER LEFT THE BENCH.)

10 (A JUROR APPROACHED THE BENCH AND CONFERRED
11 WITH THE COURT.)

12 **PROSPECTIVE JUROR PARKER:** MY NAME IS RENA
13 PARKER, I'M JUROR NUMBER 132. MY SON WAS INVOLVED IN A
14 DRUGS AND WAS CONVICTED AND SERVED SOME TIME IN JAIL.

15 **THE COURT:** WOULD THAT IN ANY WAY INTERFERE
16 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
17 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

18 **PROSPECTIVE JUROR PARKER:** NO.

19 **THE COURT:** VERY GOOD. THANK YOU, MA'AM.

20 (PROSPECTIVE JUROR PARKER LEFT THE BENCH.)

21 (A JUROR APPROACHED THE BENCH AND CONFERRED
22 WITH THE COURT.)

23 **THE COURT:** YES, MA'AM.

24 **PROSPECTIVE JUROR SHEW:** BRANDI SHEW, 159.

25 I'VE BEEN A VICTIM OF DOMESTIC VIOLENCE, AND MY HUSBAND

1 RUNS THE AARON'S STORES, AND THEY HAD LIKE SIX OF THEM
2 ROBBED.

3 THE COURT: ALL RIGHT. WOULD THAT IN ANY
4 WAY INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE
5 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

6 PROSPECTIVE JUROR SHEW: NO.

7 THE COURT: VERY GOOD. THANK YOU, MA'AM.

8 (PROSPECTIVE JUROR SHEW LEFT THE BENCH.)

9 (A JUROR APPROACHED THE BENCH AND CONFERRED
10 WITH THE COURT.)

11 PROSPECTIVE JUROR HOLLINGSWORTH: TREVOR
12 HOLLINGSWORTH, NUMBER 86. A CLOSE COUSIN OF MINE WAS
13 ROBBED AND SEXUALLY ASSAULTED AT KNIFEPOINT LAST YEAR.

14 THE COURT: WOULD THAT IN ANY WAY INTERFERE
15 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
16 DEFENDANT ---

17 PROSPECTIVE JUROR HOLLINGSWORTH: I DON'T
18 THINK SO.

19 THE COURT: NO, I NEED TO KNOW NOW.

20 PROSPECTIVE JUROR HOLLINGSWORTH: NO.

21 THE COURT: VERY GOOD. THANK YOU, SIR.

22 (PROSPECTIVE JUROR HOLLINGSWORTH LEFT THE
23 BENCH.)

24 (A JUROR APPROACHED THE BENCH AND CONFERRED
25 WITH THE COURT.)

1 **THE COURT:** YES, SIR, YOUR NAME, PLEASE?

2 **PROSPECTIVE JUROR ARRINGTON:** LEE ARRINGTON,
3 JUROR NUMBER 4.

4 **THE COURT:** YES, SIR.

5 **PROSPECTIVE JUROR ARRINGTON:** I NEVER KNOW
6 HOW TO PHRASE IT, BUT ONE OF MY -- GO AHEAD.

7 **MS. HUEY:** YOUR HONOR, I ACTUALLY
8 PROSECUTED...

9 **PROSPECTIVE JUROR ARRINGTON:** MY EX-WIFE'S
10 HUSBAND WAS INAPPROPRIATE WITH MY DAUGHTER.

11 **THE COURT:** I'LL EXCUSE YOU ON THE TRIAL
12 BECAUSE I THINK IT'S OBVIOUSLY PRIOR EXPERIENCE WITH THE
13 SOLICITOR'S OFFICE.

14 **PROSPECTIVE JUROR ARRINGTON:** SHOULD I
15 REMEMBER THAT IN THE FUTURE?

16 **THE COURT:** IF THE QUESTION IS ASKED. BUT
17 STAY WITH US -- WELL, I'M GOING TO EXCUSE HIM.

18 **MS. HUEY:** I WOULD PROBABLY BE SITTING ON
19 THE NEXT TRIAL.

20 **THE COURT:** I'LL EXCUSE YOU. YOU'RE DONE
21 FOR THE DAY AND DONE FOR THE WEEK.

22 (PROSPECTIVE JUROR ARRINGTON WAS EXCUSED FROM
23 JURY SERVICE FOR THE WEEK.)

24 (A JUROR APPROACHED THE BENCH AND CONFERRED
25 WITH THE COURT.)

1 **THE COURT:** YES, SIR.

2 **PROSPECTIVE JUROR STEPHENS:** GOOD MORNING,
3 YOUR HONOR. MY NAME IS RICHARD STEPHENS, JUROR NUMBER
4 165. I HAVE TWO I GUESS YOU WOULD SAY DEFENDANTS THAT
5 ARE COMING UP FOR CIRCUIT COURT FOR LARCENY. IT'S NOT
6 IN THIS SESSION. I WAS TOLD BY MY VICTIM'S ADVOCATE.

7 **THE COURT:** I'M GOING TO SUGGEST THAT -- I
8 WILL EXCUSE YOU ON BOTH OF THESE CASES. WE HAVE ANOTHER
9 CASE WE'LL PROBABLY BE TRYING, TOO. UNTIL THOSE CASES
10 ARE RESOLVED. BUT THIS WILL TAKE CARE OF YOUR SERVICE,
11 SO YOU ARE EXCUSED, YES, SIR.

12 (PROSPECTIVE JUROR STEPHENS WAS EXCUSED FROM
13 JURY SERVICE FOR THE WEEK.)

14 (A JUROR APPROACHED THE BENCH AND CONFERRED
15 WITH THE COURT.)

16 **THE COURT:** GOOD MORNING.

17 **PROSPECTIVE JUROR LITTLEFIELD:** MY NAME IS
18 AMBER LITTLEFIELD, JUROR 114. I'VE HAD MY HOUSE BROKEN
19 INTO SEVERAL TIMES, AND MY HUSBAND'S STEPFATHER TRIED TO
20 MURDER HIM A FEW YEARS AGO. I DON'T FEEL IT WOULD HAVE
21 ANY ---

22 **THE COURT:** WOULD THOSE EXPERIENCES HAVE ANY
23 EFFECT ON YOUR ABILITY TO ---

24 **PROSPECTIVE JUROR LITTLEFIELD:** NO.

25 **THE COURT:** --- SERVE AS A FAIR AND IMPARTIAL

1 JUROR FOR BOTH THE DEFENDANT AND FOR THE STATE?

2 PROSPECTIVE JUROR LITTLEFIELD: NO.

3 (POTENTIAL JUROR LITTLEFIELD LEFT THE BENCH.)

4 (A JUROR APPROACHED THE BENCH AND CONFERRED
5 WITH THE COURT.)

6 PROSPECTIVE JUROR EVANS: SYLVIA EVANS,
7 NUMBER 54. AND MY BROTHER-IN-LAW, HE EMBEZZLED MONEY
8 FROM A COMPANY HE WORKS WITH, SO HE'S SERVING TIME.

9 THE COURT: WOULD THAT IN ANY WAY INTERFERE
10 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
11 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

12 PROSPECTIVE JUROR EVANS: NO.

13 THE COURT: VERY GOOD. THANK YOU, MA'AM.

14 (A JUROR APPROACHED THE BENCH AND CONFERRED
15 WITH THE COURT.)

16 PROSPECTIVE JUROR SMOAK: I'M BAILEY SMOAK
17 AND I'M JUROR NUMBER 164. I WAS A VICTIM OF SEXUAL
18 HARASSMENT.

19 THE COURT: WOULD THAT IN ANY WAY INTERFERE
20 WITH YOUR ABILITY TO GIVE THE STATE AND THE DEFENDANT A
21 FAIR AND IMPARTIAL TRIAL?

22 PROSPECTIVE JUROR SMOAK: NO, SIR. AND
23 ALSO -- I ALMOST FORGOT -- I HAVE A DISTANT UNCLE WHO IS
24 A JUDGE.

25 THE COURT: WOULD THAT IN ANY WAY INTERFERE

1 WITH YOUR ABILITY TO BE FAIR AND IMPARTIAL TOWARDS BOTH
2 THE STATE AND THE DEFENDANT?

3 PROSPECTIVE JUROR SMOAK: NO.

4 THE COURT: VERY GOOD. THANK YOU, MA'AM.
5 YES, MA'AM.

6 (A JUROR APPROACHED THE BENCH AND CONFERRED
7 WITH THE COURT.)

8 PROSPECTIVE JUROR CHONG: MY NAME IS YOUNG
9 S. CHONG, I'M TRIAL JUROR NUMBER 52. I WORK AT A
10 PROFESSIONAL DRY CLEANERS ON 81, AND A FEW YEARS AGO
11 SOMEONE BREAK INTO MY STORE AND ROBBED MY STORE.

12 THE COURT: WOULD THAT IN ANY WAY INTERFERE
13 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
14 DEFENDANT A FAIR AND IMPARTIAL TRIAL IN THIS CASE?

15 PROSPECTIVE JUROR CHONG: NO.

16 THE COURT: VERY GOOD. THANK YOU, MA'AM.

17 (PROSPECTIVE JUROR CHONG LEFT THE BENCH.)

18 (A JUROR APPROACHED THE BENCH AND CONFERRED
19 WITH THE COURT.)

20 THE COURT: GOOD MORNING.

21 PROSPECTIVE JUROR BELANGER: GOOD MORNING.
22 I'M CAROLE BELANGER.

23 THE COURT: YES, MA'AM.

24 PROSPECTIVE JUROR BELANGER: THIS IS
25 SOMETHING THAT HAPPENED LIKE 25 YEARS AGO. MY

1 SISTER-IN-LAW AND MOTHER-IN-LAW WERE AT AN ATM, WERE
2 FOLLOWED HOME AND WERE ASSAULTED.

3 THE COURT: WOULD THAT IN ANY WAY INTERFERE
4 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
5 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

6 PROSPECTIVE JUROR BELANGER: I DON'T BELIEVE
7 SO.

8 THE COURT: NOW I WANT YOU TO FEEL
9 COMFORTABLE, NOW. WOULD THAT IN ANY WAY INTERFERE WITH
10 YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A
11 FAIR AND IMPARTIAL TRIAL IN THIS CASE?

12 PROSPECTIVE JUROR BELANGER: I DON'T BELIEVE
13 SO.

14 THE COURT: I'M GOING TO EXCUSE YOU ON THE
15 TRIAL OF THIS CASE, BUT I THANK YOU FOR BRINGING IT TO
16 MY ATTENTION.

17 PROSPECTIVE JUROR BELANGER: IT HAPPENED SO
18 LONG AGO, BUT THE NATURE OF IT...

19 THE COURT: THAT'S JUST IT. I JUST WANT TO
20 BE SURE THAT WHATEVER YOU DECIDE IS BASED ENTIRELY ON
21 WHAT YOU HEAR IN THIS COURTROOM. THANK YOU SO MUCH.

22 (PROSPECTIVE JUROR BELANGER WAS EXCUSED FROM
23 THIS CASE ONLY.)

24 (A JUROR APPROACHED THE BENCH AND CONFERRED
25 WITH THE COURT.)

1 **THE COURT:** YES, MA'AM.

2 **PROSPECTIVE JUROR LATIMER:** GLORIA LATIMER,
3 NUMBER 109. SOMEONE BROKE IN MY HOUSE ABOUT SIX YEARS
4 AGO.

5 **THE COURT:** WOULD THAT IN ANY WAY INTERFERE
6 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
7 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

8 **PROSPECTIVE JUROR LATIMER:** NO, SIR.

9 **THE COURT:** VERY GOOD. THANK YOU, MA'AM.
10 (PROSPECTIVE JUROR LATIMER LEFT THE BENCH.)
11 (A JUROR APPROACHED THE BENCH AND CONFERRED
12 WITH THE COURT.)

13 **THE COURT:** YES, MA'AM.

14 **PROSPECTIVE JUROR ROOSE:** PAM ROOSE, NUMBER
15 152. WE OWN A LOCAL BURGER KING, SO WE'VE HAD QUITE A
16 FEW ROBBERIES AND THEFTS.

17 **THE COURT:** WOULD THAT IN ANY WAY INTERFERE
18 WITH YOUR ABILITY TO GIVE BOTH THE STATE AND THE
19 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

20 **PROSPECTIVE JUROR ROOSE:** NO.

21 **THE COURT:** YOU ARE SURE?

22 **PROSPECTIVE JUROR ROOSE:** YES.

23 **THE COURT:** VERY GOOD. THANK YOU, MA'AM.

24 (A JUROR APPROACHED THE BENCH AND CONFERRED
25 WITH THE COURT.)

1 **THE COURT:** YES, MA'AM.

2 **PROSPECTIVE JUROR POHL:** GOOD MORNING. MY
3 NAME IS ELLEN POHL, JUROR NUMBER 139, AND I HAD MY PURSE
4 TAKEN FROM AN UNLOCKED CAR.

5 **THE COURT:** AND WOULD THAT IN ANY WAY
6 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND
7 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

8 **PROSPECTIVE JUROR POHL:** NO.

9 **THE COURT:** VERY GOOD. THANK YOU, MA'AM.
10 ALL RIGHT. ANYONE ELSE? (NO RESPONSE.)

11 NOW, HAS ANY MEMBER OF THE PANEL FORMED OR
12 EXPRESSED AN OPINION ABOUT THIS CASE? IF SO, PLEASE
13 STAND. (NO RESPONSE).

14 IS ANY MEMBER OF THE PANEL AWARE OF
15 INTEREST, BIAS, OR PREJUDICE TOWARD EITHER THE DEFENDANT
16 OR THE STATE OF SOUTH CAROLINA? IF SO, PLEASE STAND.
17 (NO RESPONSE).

18 DOES ANY MEMBER OF THE PANEL KNOW OF ANY
19 REASON WHY HE OR SHE COULD NOT GIVE BOTH THE STATE OF
20 SOUTH CAROLINA AND THE DEFENDANT A FAIR AND IMPARTIAL
21 TRIAL? IF SO, PLEASE STAND. (NO RESPONSE).

22 ANY FURTHER QUESTIONS FROM THE STATE?

23 **MS. HUEY:** NO, SIR, YOUR HONOR.

24 **THE COURT:** FROM THE DEFENDANT?

25 **MR. POTTER:** NONE, YOUR HONOR.

1 JURY SELECTION:

2 THE COURT: LADIES AND GENTLEMEN, THE WAY WE
3 DRAW A JURY IN GENERAL SESSIONS COURT IS THAT THE CLERK
4 HAS YOUR NAMES -- YOUR NAMES WILL BE PRINTED OUT
5 RANDOMLY, AND AS THE NAMES APPEAR, YOU WILL BE CALLED
6 AND YOU WILL COME FORWARD TO THE FRONT OF THE COURTROOM
7 AND FACE THE BACK OF THE COURTROOM.

8 ALSO, AS YOUR NAMES ARE CALLED, OR IF YOUR
9 NAME IS CALLED, PLEASE BRING WITH YOU WHATEVER YOU MIGHT
10 HAVE BY WAY OF PERSONAL EFFECTS. I THINK WE HAVE JUST A
11 DELAY HERE, SO JUST RELAX IF YOU DON'T MIND SITTING IN
12 YOUR PLACE, WE'LL BE AT EASE.

13 THE CLERK: LADIES AND GENTLEMEN, AS I CALL
14 YOUR NAME, IF YOU WOULD PLEASE COME FORWARD AND PRESENT
15 YOURSELVES BETWEEN THE TWO TABLES.

16 I MIGHT NOTE, THE WAY ALSO YOU ARE SELECTED
17 IS WHEN YOU COME FORWARD AND PRESENT YOURSELF TO BOTH
18 SIDES, THE STATE WILL GO FIRST, THE STATE WILL EITHER
19 SAY "EXCUSE THE JUROR" OR "PRESENT THE JUROR." THEN THE
20 DEFENDANT WILL HAVE THE SECOND CHOICE THE SECOND TIME
21 AND WILL EITHER SAY, "SWEAR THE JUROR" OR "EXCUSE THE
22 JUROR."

23 MR. POTTER: MAY I APPROACH REAL QUICK?

24 THE COURT: YES, SIR.

25 (DISCUSSION AT SIDEBAR.)

1 **THE COURT:** ALL RIGHT. THE STRIKES ARE FIVE
2 AND TEN.

3 IS THAT CORRECT, MADAM SOLICITOR?

4 **MS. HUEY:** YES, SIR, YOUR HONOR.

5 **THE COURT:** MR. POTTER?

6 **MR. POTTER:** YES, SIR.

7 **THE COURT:** VERY GOOD.

8 **THE CLERK:** JUROR NUMBER 57, DANNY GAMBRELL,
9 NUMBER 57 (WHITE MALE).

10 WHAT SAY YOU FOR THE STATE?

11 **MS. HUEY:** PLEASE PRESENT THIS JUROR.

12 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

13 **MR. POTTER:** PLEASE SWEAR MR. GAMBRELL.

14 **THE CLERK:** IF YOU WILL PLEASE HAVE A SEAT
15 IN THE JURY-BOX, MR. GAMBRELL.

16 LADIES AND GENTLEMEN, I FAILED TO TELL YOU,
17 BUT IF YOU WOULD PLEASE, AS YOU COME UP, BRING ANY
18 PERSONAL BELONGINGS THAT YOU HAVE WITH YOU, BRING IT AS
19 YOU COME UP, ALSO. THANK YOU.

20 NUMBER 41, WILLIAM DECKER, JUROR NUMBER 41
21 (WHITE MALE).

22 WHAT SAY YOU FOR THE STATE?

23 **MS. HUEY:** PLEASE PRESENT THIS JUROR.

24 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

25 **MR. POTTER:** PLEASE EXCUSE MR. DECKER.

1 **THE CLERK:** NUMBER 121, GERALD MILES, NUMBER
2 121 (WHITE MALE).

3 WHAT SAY YOU FOR THE STATE?

4 **MS. HUEY:** PLEASE PRESENT THIS JUROR.

5 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

6 **MR. POTTER:** PLEASE EXCUSE MR. MILES FROM
7 THIS CASE.

8 106, NANCY KIRBY, 106 (WHITE FEMALE).

9 WHAT SAY YOU FOR THE STATE?

10 **MS. HUEY:** PLEASE PRESENT THIS JUROR.

11 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

12 **MR. POTTER:** PLEASE SWEAR MS. KIRBY.

13 **THE CLERK:** MS. KIRBY, IF YOU WILL HAVE A
14 SEAT RIGHT UP THERE IN THE JURY-BOX, PLEASE, MA'AM.

15 NUMBER 112, CHARLES LEWIS, 112. (WHITE
16 MALE).

17 WHAT SAY YOU FOR THE STATE?

18 **MS. HUEY:** PLEASE PRESENT THIS JUROR.

19 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

20 **MR. POTTER:** PLEASE SWEAR MR. LEWIS.

21 **THE CLERK:** HAVE A SEAT IN THE JURY-BOX,
22 PLEASE, MR. LEWIS.

23 NUMBER 95, ANN JOHNSON, NUMBER 95 (WHITE
24 FEMALE).

25 WHAT SAY YOU FOR THE STATE?

1 MS. HUEY: PLEASE PRESENT THIS JUROR.
2 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?
3 MR. POTTER: PLEASE EXCUSE MS. JOHNSON.
4 THE CLERK: NUMBER 111, HAROLD LEE, 111
5 (WHITE MALE).
6 WHAT SAY YOU FOR THE STATE?
7 MS. HUEY: PLEASE PRESENT THIS JUROR.
8 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?
9 MR. POTTER: PLEASE EXCUSE MR. LEE.
10 THE CLERK: NUMBER 114, AMBER LITTLEFIELD,
11 NUMBER 114 (WHITE FEMALE).
12 WHAT SAY YOU FOR THE STATE?
13 MS. HUEY: PLEASE PRESENT THIS JUROR.
14 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?
15 MR. POTTER: PLEASE SWEAR MS. LITTLEFIELD.
16 THE CLERK: IF YOU WILL HAVE A SEAT, PLEASE,
17 MA'AM, IN THE JURY-BOX.
18 JUROR NUMBER 6, BETH BAILEY, NUMBER 6 (WHITE
19 FEMALE).
20 WHAT SAY YOU FOR THE STATE?
21 MS. HUEY: PLEASE PRESENT THIS JUROR.
22 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?
23 MR. POTTER: PLEASE SWEAR MS. LITTLEFIELD.
24 THE CLERK: IF YOU WILL HAVE A SEAT, PLEASE,
25 MA'AM, IN THE JURY-BOX.

1 NUMBER 102, JANIE KELLY, 102 (WHITE FEMALE).

2 WHAT SAY YOU FOR THE STATE?

3 MS. HUEY: PLEASE PRESENT THIS JUROR.

4 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?

5 MR. POTTER: PLEASE SWEAR MS. KELLY.

6 THE CLERK: HAVE A SEAT IN THE JURY-BOX,

7 PLEASE, MA'AM.

8 NUMBER 82, PENELOPE SHOTTON, NUMBER 82

9 (WHITE FEMALE).

10 WHAT SAY YOU FOR THE STATE?

11 MS. HUEY: PLEASE PRESENT THIS JUROR.

12 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?

13 MR. POTTER: PLEASE EXCUSE THIS JUROR.

14 THE CLERK: 76, FREDERICK HARTWIG, JUROR

15 NUMBER 76 (WHITE MALE).

16 WHAT SAY YOU FOR THE STATE?

17 MS. HUEY: PLEASE EXCUSE THIS JUROR.

18 THE CLERK: 154, THOMAS ROWLANDS, NUMBER 154

19 (WHITE MALE).

20 WHAT SAY YOU FOR THE STATE?

21 MS. HUEY: PLEASE PRESENT THIS JUROR.

22 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?

23 MR. POTTER: PLEASE EXCUSE THIS JUROR.

24 THE CLERK: NUMBER 43, KIMBERLY DICK, NUMBER

25 43 (WHITE FEMALE).

1 WHAT SAY YOU FOR THE STATE?

2 MS. HUEY: PLEASE PRESENT THIS JUROR.

3 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?

4 MR. POTTER: PLEASE SWEAR MS. DICK.

5 THE CLERK: PLEASE HAVE A SEAT IN THE

6 JURY-BOX.

7 NUMBER 180, JASON WILLIAMSON, NUMBER 180

8 (WHITE MALE).

9 WHAT SAY YOU FOR THE STATE?

10 MS. HUEY: PLEASE PRESENT THIS JUROR.

11 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?

12 MR. POTTER: PLEASE SWEAR MR. WILLIAMSON.

13 THE CLERK: PLEASE HAVE A SEAT, SIR, IN THE

14 JURY-BOX.

15 NUMBER 54, SYLVIA EVANS, NUMBER 54 (WHITE

16 FEMALE).

17 WHAT SAY YOU FOR THE STATE?

18 MS. HUEY: PLEASE EXCUSE THIS JUROR.

19 THE CLERK: NUMBER 164, BAILEY SMOAK, 164

20 (WHITE FEMALE).

21 WHAT SAY YOU FOR THE STATE?

22 MS. HUEY: PLEASE PRESENT THIS JUROR.

23 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?

24 MR. POTTER: PLEASE EXCUSE MS. SMOAK.

25 THE CLERK: 47, ANDREA DUCKETT, NUMBER 47

1 (WHITE FEMALE).

2 WHAT SAY YOU FOR THE STATE?

3 MS. HUEY: PLEASE PRESENT THIS JUROR.

4 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?

5 MR. POTTER: PLEASE SWEAR MS. DUCKETT.

6 THE CLERK: IF YOU WILL PLEASE HAVE A SEAT
7 IN THE JURY-BOX, MS. DUCKETT.

8 NUMBER 32, YOUNG CHONG, NUMBER 32 (ASIAN
9 FEMALE).

10 WHAT SAY YOU FOR THE STATE?

11 MS. HUEY: PLEASE PRESENT THIS JUROR.

12 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?

13 MR. POTTER: PLEASE SWEAR MS. CHONG.

14 THE CLERK: IF YOU WILL HAVE A SEAT, PLEASE,
15 MA'AM, IN THE JURY-BOX.

16 NUMBER 132, RENA PARKER, NUMBER 132 (BLACK
17 FEMALE).

18 WHAT SAY THE STATE?

19 MS. HUEY: PLEASE EXCUSE THIS JUROR.

20 THE CLERK: YOU MAY RETURN TO YOUR SEAT.

21 THANK YOU, MS. PARKER.

22 NUMBER 31, VIRGINIA CHEATWOOD, NUMBER 31,
23 (WHITE FEMALE).

24 WHAT SAY YOU FOR THE STATE?

25 MS. HUEY: PLEASE PRESENT THIS JUROR.

1 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?
2 MR. POTTER: PLEASE SWEAR MS. CHEATWOOD.
3 THE CLERK: HAVE A SEAT IN THE JURY-BOX,
4 PLEASE, MADAM.
5 NUMBER 152, PAMELA ROOSE, 152 (WHITE
6 FEMALE).
7 WHAT SAY YOU FOR THE STATE?
8 MS. HUEY: PLEASE PRESENT THIS JUROR.
9 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?
10 MR. POTTER: PLEASE EXCUSE MS. ROOSE.
11 THE CLERK: NUMBER 33, JOHN COKER, NUMBER 33
12 (WHITE MALE).
13 WHAT SAY YOU FOR THE STATE?
14 MS. HUEY: PLEASE PRESENT THIS JUROR.
15 THE COURT: WHAT SAY YOU FOR THE DEFENDANT?
16 MR. POTTER: PLEASE SWEAR MR. COKER.
17 THE COURT: WE'LL HAVE ONE ALTERNATE. ON
18 THE ALTERNATE, TWO AND ONE.
19 MS. HUEY: YES, SIR.
20 THE COURT: MR. POTTER?
21 MR. POTTER: YES, JUDGE.
22 THE COURT: NUMBER 86, TREVOR HOLLINGSWORTH,
23 NUMBER 86 (WHITE MALE).
24 WHAT SAY YOU FOR THE STATE?
25 MS. HUEY: PLEASE PRESENT THIS JUROR.

1 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?

2 MR. POTTER: PLEASE EXCUSE THE GENTLEMAN.

3 THE CLERK: JUROR NUMBER 51, JAMIE ELROD,
4 NUMBER 51 (WHITE FEMALE).

5 WHAT SAY YOU FOR THE STATE?

6 MS. HUEY: PLEASE PRESENT THIS JUROR.

7 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?

8 MR. POTTER: PLEASE SWEAR MS. ELROD.

9 THE CLERK: IF YOU WILL HAVE A SEAT ON THE
10 SECOND ROW, YOU WILL BE OUR ALTERNATE JUROR, MS. ELROD.

11 THE COURT: IS THERE ANY REASON THIS JURY
12 CANNOT BE SWORN FOR THE TRIAL OF THIS CASE, FROM THE
13 STATE?

14 MS. HUEY: NO, SIR, YOUR HONOR.

15 THE COURT: FROM THE DEFENDANT?

16 MR. POTTER: NO, YOUR HONOR.

17 THE COURT: MS. KIRBY, I'M GOING TO ASK YOU
18 TO SERVE AS FOREPERSON OF THIS JURY, SO YOU WILL BE
19 SITTING IN -- WE'LL BE TRYING THIS CASE IN THE COURTROOM
20 BELOW, BUT IT HAS TWO ROWS, AND YOU WILL BE SITTING IN
21 THE END SEAT; IN OTHER WORDS, ON THIS END ON THAT FIRST
22 ROW.

23 AND MS. ELROD, YOU ARE THE ALTERNATE, YOU
24 WILL SIT ON THE END SEAT ON THE SECOND ROW. THAT WILL
25 BE THE ALTERNATE SEAT.

1 THOSE ARE THE ONLY TWO PARTICULAR PLACES
2 THAT ARE RESERVED. EVERYBODY ELSE CAN SIT WHEREVER THEY
3 WANT TO IN THE JURY-BOX, BUT I SUGGEST YOU SIT CLOSE TO
4 THE END SO YOU CAN SEE AND HEAR THE WITNESS.

5 I'M GOING TO ASK YOU AT THIS TIME TO GO TO
6 THE -- YOU'LL BE USING THE ONE DOWNSTAIRS.

7 **THE BAILIFF:** YES, SIR.

8 **THE COURT:** CAN YOU TAKE THEM DOWNSTAIRS SO
9 THEY CAN SEE THAT JURY ROOM AND THEN BRING THEM BACK IN
10 JUST A FEW MINUTES? GO AHEAD AND PUT THEM IN THE JURY
11 ROOM UP HERE AND BEFORE LUNCH I'LL ASK YOU TO TAKE THEM
12 DOWN TO THE OTHER ONE.

13 AGAIN, LADIES AND GENTLEMEN, MY INSTRUCTIONS
14 THROUGHOUT THE TRIAL IN ANY CASE WE TRY IN GENERAL
15 SESSIONS COURT IS YOU ARE NOT TO UNDERTAKE DISCUSSION OF
16 THE CASE AMONG YOURSELVES IN ANY WAY, EVEN PERSONALITIES
17 OR ANYTHING ELSE, UNTIL THE CASE IS FINALLY GIVEN TO YOU
18 FOR YOUR DELIBERATIONS AT THE CONCLUSION OF THE CASE.

19 THE REASON FOR THAT IS YOU NEVER KNOW WHAT
20 IS GOING TO BE THE MOST IMPORTANT PART OF THE CASE: IT
21 MIGHT BE THE OPENING STATEMENTS, THE FIRST OR THE LAST
22 WITNESS, OR THE CLOSING ARGUMENTS, OR THE CHARGE ON THE
23 LAW, SO YOU NEED TO HAVE AN OPEN MIND THROUGHOUT THE
24 TRIAL OF THE CASE, SO DO NOT DISCUSS ANYTHING ABOUT THE
25 CASE OR ANYTHING ELSE EXCEPT WHAT'S BEING TRIED UNTIL

1 IT'S GIVEN TO YOU FOR YOUR DECISION, AS I SAY.

2 WITH THAT I'M GOING TO EXCUSE YOU FOR A FEW
3 MINUTES WHILE I TAKE SOME MATTERS UP WITH THE ATTORNEYS
4 AND THE BALANCE OF THE JURY PANEL. IF YOU WOULD PLEASE
5 GO WITH THE BAILIFF.

6 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
7 11:52 A.M.)

8 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN
9 OF THE JURY PANEL THAT HAVE NOT BEEN SELECTED ON THE
10 TRIAL OF THIS CASE, I'M GOING TO EXCUSE YOU UNTIL 2:00.
11 I UNDERSTAND THAT WE WILL BE DRAWING ANOTHER JURY AT
12 THAT TIME. THE REASON WE TRY TO DRAW ALL THE JURORS
13 THAT WE'LL BE USING THIS WEEK AT ONE TIME SO THOSE WILL
14 KNOW WHO WILL NEED TO REPORT BACK OR NOT.

15 SO I'M GOING TO EXCUSE YOU UNTIL 2:00. AND
16 THEN COME BACK JUST SO -- WELL, LET'S SEE -- AT 2:00
17 WE'LL BE DOWNSTAIRS, WON'T WE?

18 **THE CLERK:** THAT'S CORRECT, YOUR HONOR.

19 **THE COURT:** AT 2:00 YOU WILL COME BACK TO
20 THE THIRD FLOOR COURTROOM. AGAIN, WE MIGHT NEED
21 SOMEBODY TO...

22 **THE CLERK:** THE BAILIFFS TO TAKE THEM DOWN,
23 YOUR HONOR, AND SHOW THEM?

24 **THE COURT:** AND SHOW THEM THE COURTROOM WE
25 WILL BE USING.

1 SO AT 2:00, IF YOU WOULD PLEASE COME BACK TO
2 THE COURTROOM BELOW US, THE COURTROOM ON THE THIRD
3 FLOOR. IF YOU WILL GO WITH THE BAILIFF, HE'LL SHOW YOU
4 WHERE TO COME, AND THAT WILL BE AT 2:00. BUT YOU WILL
5 BE EXCUSED UNTIL THAT TIME FOR LUNCH OR WHATEVER YOU
6 MIGHT WANT TO DO.

7 AGAIN, I LOOK FORWARD TO WORKING WITH YOU
8 THIS WEEK, AND I THANK YOU FOR YOUR PATIENCE THIS
9 MORNING. Y'ALL ARE EXCUSED. THANK YOU SO MUCH.

10 EVERYONE ELSE REMAIN SEATED WHILE THE JURY
11 RETIRES FROM THE COURTROOM.

12 (THE JURY PANEL EXCUSED UNTIL 2:00 AT 11:54
13 A.M.)

14 **THE COURT:** ALL RIGHT. MADAM SOLICITOR,
15 MR. POTTER, I'M GOING TO BRING THE JURY BACK AND THEN
16 EXCUSE THEM FOR LUNCH UNTIL 2:00. WE MIGHT WANT TO
17 SWEAR THEM AT THIS TIME. AND I UNDERSTAND YOU HAVE
18 MOTIONS?

19 **MS. HUEY:** YES, YOUR HONOR. THERE'S A
20 JACKSON V. DENNO HEARING.

21 **THE COURT:** VERY GOOD. WHEN WILL YOUR
22 OFFICERS BE HERE?

23 **MS. HUEY:** BOTH OF MY OFFICERS ARE HERE, IF
24 I COULD JUST HAVE A SHORT BREAK?

25 **THE COURT:** WE'LL LET THE JURY GO AND THEN

1 YOU MAY PROCEED. I'D LIKE TO DO IT BEFORE WE GO TO
2 LUNCH, THOUGH.

3 MS. HUEY: YES, SIR.

4 THE COURT: ASK THE JURY TO JOIN US, PLEASE.

5 MR. POTTER: YOU'RE NOT GOING TO SWEAR THEM
6 JUST YET?

7 THE COURT: NO.

8 MR. POTTER: THANK YOU, JUDGE.

9 MS. HUEY: JUDGE, MAY I?

10 THE COURT: YES, MA'AM.

11 (DISCUSSION AT SIDEBAR.)

12 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
13 11:57 A.M.)

14 THE COURT: MADAM FORELADY, LADIES AND
15 GENTLEMEN OF THE JURY, ONE OF THE THINGS THAT WE ARE
16 TRYING TO DO IS DECIDE HOW WE ARE GOING TO BEST UTILIZE
17 YOUR TIME AND THE COURT'S FACILITIES WITHOUT -- WITH THE
18 LEAST INCONVENIENCE. WE ARE GOING TO BE DRAWING ANOTHER
19 JURY, AND THE REASON WE'RE GOING TO DO THAT IS SO THAT
20 THOSE OF YOU WHO WILL BE SERVING ON A JURY WILL KNOW IT.
21 SO WE'LL BE DRAWING ANOTHER JURY AT 2:00 THIS AFTERNOON
22 FROM THE PANEL THAT WAS NOT DRAWN ON THIS FROM THE
23 REMAINDER OF THE PANEL.

24 IN ORDER THAT WE HAVE ENOUGH TIME TO DO
25 THAT, AND YOU DON'T HAVE TO SIT IN THE JURY ROOM WHILE

1 WE'RE DOING THAT, WHILE WE'RE IN THAT PROCESS, I'M GOING
2 TO SUGGEST THAT YOU TAKE A LONG, LONG LUNCH AND COME
3 BACK AT 3:00, AND THAT WAY WE'LL BE ABLE TO HAVE THE
4 OTHER JURY OUT OF THE WAY BEFORE WE COME BACK.

5 NOW, THE BAILIFF WILL TAKE YOU TO THE JURY
6 ROOM THAT YOU WILL BE USING BECAUSE, AS I SAID --
7 THEY'RE IN THAT JURY ROOM NOW -- I MEAN IN THAT
8 COURTROOM. THEY ARE USING THAT COURTROOM NOW. SO YOU
9 WON'T BE ABLE TO SEE THE COURTROOM. BUT WHEN YOU COME
10 BACK AT 3:00, YOU WILL BE ACROSS FROM THE COURTROOM
11 WE'LL BE USING ON THE THIRD FLOOR.

12 SO IF YOU WOULD PLEASE GO WITH THE BAILIFF,
13 THEY'LL SHOW YOU THE JURY ROOM THAT YOU WILL BE USING,
14 THE ONE YOU WILL COME BACK TO AT 3:00. YOU WON'T COME
15 BACK TO THIS ONE UP HERE BUT THE JURY ROOM ON THE THIRD
16 FLOOR.

17 NOW, AGAIN AS I SAID EARLIER, MY
18 INSTRUCTIONS ARE THAT YOU ARE NOT EVEN TO DISCUSS THE
19 CASE AMONG YOURSELVES AND ESPECIALLY NOT TO LET ANYBODY
20 DISCUSS IT WITH YOU. IF THEY DO, YOU SHOULD REPORT IT
21 AND I'LL TAKE THE APPROPRIATE ACTION. WITH THAT I'LL
22 EXCUSE YOU AND DO ENJOY YOUR LUNCH AND I'LL SEE YOU BACK
23 AT 3:00.

24 EVERYONE ELSE REMAIN SEATED WHILE THE JURY
25 RETIRES FROM THE COURTROOM.

1 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
2 12:00 P.M.)

3 THE COURT: I'LL BE ACROSS THE HALL. JUST
4 LET ME KNOW WHEN YOU ARE READY FOR THE JACKSON V. DENNO
5 HEARING.

6 MS. HUEY: THANK YOU, JUDGE.

7 (WHEREUPON, A RECESS WAS TAKEN.)

8 (STATE'S EX. # 1 ADVISORY/WAIVER OF RIGHTS,
9 WAS MARKED FOR IDENTIFICATION.)

10 (STATE'S EX. # 2, STATEMENT OF DEFENDANT, WAS
11 MARKED FOR IDENTIFICATION.)

12 (DISCUSSION AT SIDEBAR.)

13 THE COURT: WE'RE BACK ON THE STATE VERSUS
14 JEFFERY SCOTT EVANS, 2007-GS-04-2532. THE JURY HAS BEEN
15 DRAWN, SELECTED, BUT NOT SWORN. IT'S MY UNDERSTANDING
16 THAT THERE ARE SOME MOTIONS IN THIS CASE?

17 MS. HUEY: YES, SIR, YOUR HONOR, THERE IS AN
18 ADMISSION FROM THE DEFENDANT, SO AT THIS TIME WE WOULD
19 LIKE TO DO A JACKSON V. DENNO HEARING.

20 THE COURT: ALL RIGHT. ARE YOU READY TO GO
21 FORWARD, MR. POTTER?

22 MR. POTTER: YES, YOUR HONOR.

23 JACKSON V. DENNO HEARING:

24 THE COURT: CALL YOUR WITNESS.

25 MS. HUEY: THE STATE CALLS KEVIN MATHESON.

1 (WHEREUPON, THE WITNESS WAS SWORN BY THE
2 CLERK.)

3 THE CLERK: PLEASE STATE YOUR FULL NAME AND
4 SPELL YOUR LAST NAME FOR THE RECORD.

5 THE WITNESS: KEVIN DAVID MATHESON --
6 M-A-T-H-E-S-O-N.

7 WHEREUPON,

8 KEVIN MATHESON,
9 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
10 FOLLOWS:

11 DIRECT EXAMINATION BY MS. HUEY:

12 Q. MR. MATHESON, WHERE DO YOU WORK?

13 A. I WORK FOR THE ANDERSON COUNTY SHERIFF'S OFFICE.

14 Q. HOW LONG HAVE YOU BEEN THERE?

15 A. I'VE BEEN THERE APPROXIMATELY TEN YEARS.

16 Q. AND WHAT POSITION DO YOU HAVE THERE?

17 A. A DETECTIVE.

18 Q. AS A DETECTIVE, WHAT ARE SOME OF YOUR DUTIES?

19 A. I AM ASSIGNED CASES FROM THE ROAD PATROL UNITS
20 WHERE THEY TAKE THE REPORTS THEMSELVES AND I'M OUT THERE
21 ASSIGNED THE FOLLOW-UP, AND I GET THOSE FOLLOW-UPS IN
22 INVESTIGATIVE CRIMES.

23 Q. DO YOU ALSO HAVE OCCASION TO ACTUALLY SPEAK WITH
24 DEFENDANTS?

25 A. YES, QUITE OFTEN.

1 Q. DID YOU TALK WITH THE DEFENDANT IN THIS CASE,
2 MR. JEFFERY EVANS?

3 A. YES, MA'AM, I DID.

4 Q. DID YOU DO SO IN AN EFFORT TO OBTAIN A STATEMENT
5 FROM HIM?

6 A. YES, MA'AM.

7 Q. DID YOU ADVISE HIM OF RIGHTS?

8 A. YES, MA'AM.

9 Q. AND HOW DID YOU DO THAT?

10 A. I HAVE A SHEET WITH THE MIRANDA WARNINGS ON THEM,
11 WHICH IS MIRANDA V. ARIZONA, IT'S THE FIFTH AND SIXTH
12 AMENDMENT RIGHTS THAT WE ARE ENTITLED TO.

13 I EXPLAIN THOSE RIGHTS THE SAME WAY TO EVERY
14 PERSON I SPEAK WITH, AND THEY INITIAL A PORTION OF THAT
15 SHEET TO REMIND ME THAT THEY CAN READ AND WRITE. I THEN
16 READ THE REST OF THE MIRANDA WARNINGS TO THEM AND ASK
17 THEM TO STOP ME AT ANY TIME THEY DON'T UNDERSTAND
18 ANYTHING.

19 Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED AS STATE'S
20 EXHIBIT 1. PLEASE TAKE A LOOK AT THAT.

21 A. YES, MA'AM.

22 Q. NOW, DO YOU RECOGNIZE THAT FORM?

23 A. YES, MA'AM, I DO.

24 Q. ALL RIGHT. IS THAT THE FORM YOU USED WHEN
25 SPEAKING WITH MR. EVANS?

1 A. YES, MA'AM, IT IS.

2 Q. AND HOW ARE YOU ABLE TO TELL THAT?

3 A. BY THE SIGNATURES, THE DATE, AND THE ANDERSON
4 COUNTY SHERIFF'S OFFICE ADVISORY OF RIGHTS FORM
5 INDICATED AT THE TOP.

6 Q. NOW, ABOUT WHAT TIME DID THIS WAIVER TAKE PLACE?

7 A. AROUND 6:52 P.M.

8 Q. AND WHERE DID IT TAKE PLACE?

9 A. AT THE ANDERSON COUNTY SHERIFF'S OFFICE IN MY
10 OFFICE.

11 Q. IN YOUR OFFICE? CAN YOU TELL ME A LITTLE BIT
12 ABOUT YOUR OFFICE?

13 A. YES, MA'AM. THE OFFICE THAT I HAD AT THE TIME
14 WAS A RATHER LARGE OFFICE WITH TWO DESKS; IT WAS PRETTY
15 MUCH OFFICE SPACE FOR TWO DETECTIVES, AND I WAS ONE OF
16 THE DETECTIVES.

17 Q. AND WHO ELSE WAS WITH YOU IN THE ROOM, IF ANYONE?

18 A. DETECTIVE CHAD MCBRIDE.

19 Q. AND IS THIS CUSTOMARY TO HAVE ANOTHER
20 INVESTIGATOR THERE?

21 A. YES. AS OFTEN AS WE CAN, WE LIKE TO HAVE ANOTHER
22 PERSON THERE AS A WITNESS.

23 Q. NOW, TELL ME A LITTLE BIT ABOUT THE DEFENDANT,
24 MR. EVANS. WAS HE IN HANDCUFFS?

25 A. HE WAS IN HANDCUFFS ORIGINALLY WHEN HE WAS

1 BROUGHT INTO THE OFFICE. TO THE BEST OF MY
2 RECOLLECTION, WE REMOVED THE HANDCUFFS ONCE INSIDE.

3 Q. AT ANY TIME DID MR. EVANS ASK FOR SOMETHING TO
4 EAT OR DRINK OR ANYTHING ALONG THOSE LINES?

5 A. WITHOUT HAVING MY NOTES IN FRONT OF ME, I'M NOT
6 EXACTLY SURE; BUT IF SO, WE WOULD HAVE PROVIDED THAT FOR
7 HIM.

8 Q. OKAY. NOW, IF YOU COULD, MR. MATHESON, WHAT
9 EXACTLY ARE THE RIGHTS THAT YOU INFORMED THE DEFENDANT
10 OF?

11 A. AS I SAID BEFORE, THE FIFTH AND SIXTH AMENDMENT
12 RIGHTS AFFORDED TO HIM BY THE CONSTITUTION. THE FIRST
13 TWO IS THE RIGHT TO REMAIN SILENT, ANYTHING THAT YOU SAY
14 MAY BE USED AGAINST YOU IN YOUR COURT. THOSE ARE THE TWO
15 LINES THAT I ACTUALLY HAVE THE DEFENDANT READ OUT LOUD
16 TO ME SO THAT I CAN SEE THAT THEY CAN READ AND WRITE AND
17 COMPREHEND BECAUSE I ALWAYS ASK THEM IF THEY UNDERSTAND
18 THE FIRST TWO.

19 IF THE ANSWER IS YES, THEN HE WOULD INITIAL THOSE
20 TWO LINES, I PROCEED TO THE NEXT, WHICH IS THE SIXTH
21 AMENDMENT RIGHTS, WHICH ARE THE RIGHT TO COUNSEL. I
22 READ THOSE, AND AFTER I FINISHED, EVEN IF THEY HAVEN'T
23 INTERRUPTED ME, I ASK IF THEY UNDERSTOOD THOSE RIGHTS;
24 AND IF SO, THEN I ASK THEM TO SIGN BELOW THAT AND THAT'S
25 JUST STATING THAT THEY DO UNDERSTAND IT.

1 Q. SO HE ACTUALLY READ PART OF THAT FORM ALOUD
2 HIMSELF THEN?

3 A. YES, MA'AM.

4 Q. OKAY. AND YOU READ THE REST OF IT ALOUD?

5 A. YES, MA'AM.

6 Q. DID HE SEEM TO UNDERSTAND THOSE RIGHTS?

7 A. YES, MA'AM.

8 Q. OKAY. AND WHAT DID HE DO TO INDICATE THAT HE DID
9 UNDERSTAND THOSE?

10 A. HE VERBALLY TOLD US HE DID UNDERSTAND THEM AND HE
11 SIGN THE FORM SAYING THAT HE UNDERSTOOD THE RIGHTS.

12 Q. AND SO IN YOUR OPINION DID HE UNDERSTAND THE
13 RIGHTS?

14 A. YES, MA'AM.

15 Q. DID HE SEEM TO BE UNDER THE INFLUENCE OF ANYTHING
16 AT THIS TIME?

17 A. NO, MA'AM.

18 Q. DRUGS OR ALCOHOL?

19 A. NO, MA'AM.

20 Q. WERE ANY THREATS OR PROMISES MADE IN ORDER TO GET
21 HIM TO SIGN THE FORM?

22 A. NO, MA'AM.

23 Q. ANY INTIMIDATION AT ALL?

24 A. NO, MA'AM.

25 Q. SO WAS HIS WAIVER OF RIGHTS VOLUNTARY?

1 A. YES, MA'AM. HE WAS VERY COOPERATIVE.

2 Q. AFTER THE WAIVER OF RIGHTS, DID HE THEN INDICATE
3 HE WANTED TO MAKE A STATEMENT?

4 A. YES, MA'AM.

5 Q. AND WAS THAT STATEMENT PUT IN WRITING?

6 A. YES, MA'AM, IT WAS.

7 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
8 STATE'S 2. IF YOU COULD PLEASE TAKE A LOOK AT THAT.

9 A. YES, MA'AM.

10 Q. DO YOU RECOGNIZE THAT?

11 A. I DO.

12 Q. AND HOW ARE YOU ABLE TO DO THAT?

13 A. BY THE, THE INITIALS AND THE SIGNATURES AT THE
14 BOTTOM OF EACH PAGE, THE DATE, AND THE NAME OF THE
15 DEFENDANT. THIS WAS A STATEMENT THAT I WROTE.

16 Q. AND CAN YOU TELL ME A LITTLE BIT ABOUT HOW
17 LOGISTICALLY THE STATEMENT CAME ABOUT?

18 A. YES, MA'AM. AFTER READING THE DEFENDANT HIS
19 RIGHTS AND OBTAINING THE WAIVER OF RIGHTS, WE BEGAN TO
20 TALK AT LENGTH ABOUT WHAT HAPPENED. I ASKED IF HE
21 WANTED HIS SIDE OF THE STORY TO NATURALLY BE HEARD,
22 WHICH HE DID ANSWER IN THE AFFIRMATIVE.

23 AT THAT TIME WHAT I USUALLY DO, AND I BELIEVE I
24 DID IN THE DEFENDANT'S CASE, IS I ALLOWED HIM TO TALK
25 FIRST, I JUST ASKED HIM TO TELL ME WHAT HAPPENED. AND I

1 TRIED TO LISTEN, I TRIED TO TAKE NOTES, I JUST TRY TO
2 GIVE THE PERSON MY ATTENTION. AND AFTER I'VE HEARD
3 THEIR RENDITION OF THE FACTS THAT TOOK PLACE, I MAY ASK
4 HIM ADDITIONAL QUESTIONS AT THAT TIME TO BETTER
5 UNDERSTAND WHAT THEY ARE TRYING TO CONVEY TO ME.

6 Q. NOW, DOES THE DEFENDANT TYPICALLY WRITE THE
7 STATEMENT HIMSELF OR DO YOU DO IT FOR HIM?

8 A. NO, MA'AM. I ALWAYS WRITE THE STATEMENT MYSELF.
9 AND AT THE FRONT OF THE STATEMENT I PUT: DETECTIVE
10 KEVIN MATHESON IS WRITING IN MY OWN WORDS SO THERE IS
11 NOT ANY MISUNDERSTANDING THAT THE DEFENDANT DID NOT
12 ACTUALLY TYPE OR WRITE THE STATEMENT HIMSELF. AND THE
13 REASON BEING IS BECAUSE OFTENTIMES WHEN WE'RE TAKING THE
14 STATEMENT, THE CHRONOLOGICAL EVENTS ARE OUT OF ORDER
15 SOMETIMES, SO I LIKE TO KEEP THEM IN ORDER AND THAT WAY
16 I'M TRYING TO KEEP THEM ON TRACK AS TO WHAT WE ARE
17 ASKING.

18 Q. AND IN THIS PARTICULAR CASE IS THIS A HANDWRITTEN
19 STATEMENT?

20 A. NO. THIS IS ACTUALLY A TYPED STATEMENT, YES,
21 MA'AM.

22 Q. SO DO YOU HAVE A COMPUTER WITH YOU THEN IN THE
23 ROOM WITH YOU?

24 A. YES, MA'AM, THAT'S CORRECT.

25 Q. NOW, ONCE THEN YOU TYPE OUT THE STATEMENT, DO YOU

1 READ IT BACK TO THEM OR HAND IT TO THEM TO READ, HOW
2 DOES THAT WORK?

3 A. YES, MA'AM. USUALLY I GO AHEAD AND PRINT IT OFF
4 IN ONE OR TWO WAYS. BUT WE ALWAYS JUST READ THE
5 STATEMENT OVER. I GIVE THE LIEUTENANT A CHANCE TO LOOK
6 AT IT. WE READ IT OUT LOUD SOMETIMES, SOMETIMES THE
7 DEFENDANTS CHOOSE TO READ SILENTLY. BUT WHATEVER CASE.
8 THEY TEND TO READ THE STATEMENT OR HEAR THE STATEMENT TO
9 MAKE SURE THAT IS EXACTLY WHAT THEY WOULD LIKE TO GIVE
10 AS A STATEMENT.

11 Q. AND SO DID THE DEFENDANT IN THIS CASE INDICATE
12 THAT THAT WAS HIS STATEMENT?

13 A. YES, MA'AM.

14 Q. AND HOW DID HE DO THAT?

15 A. AFTER THE STATEMENT WAS OVER, WE ASKED IF HE
16 WOULD LIKE TO ADD ANYTHING TO THE STATEMENT, TAKE
17 ANYTHING AWAY FROM THE STATEMENT, OR MAKE ANY CHANGE TO
18 THE STATEMENT. AND THAT'S STANDARD WITH EVERY INTERVIEW
19 THAT I HAVE. ACTUALLY THIS DEFENDANT WANTED TO ADD TO
20 HIS STATEMENT, BEING APOLOGETIC TO WHAT HE HAD DONE.

21 Q. SO THE DEFENDANT WAS COOPERATIVE, THEN,
22 THROUGHOUT THE PROCESS?

23 A. YES, MA'AM, HE WAS VERY COOPERATIVE. WE HAD NO
24 PROBLEM WITH HIM AT ALL. HE WAS VERY PLEASANT. IT WAS
25 A VERY, VERY NICE ATMOSPHERE DURING THE INTERVIEW.

1 MS. HUEY: THAT'S ALL I HAVE FOR THIS
2 WITNESS, JUDGE.

3 THE COURT: CROSS-EXAMINE?

4 MR. POTTER: THANK YOU, JUDGE, IF IT PLEASES
5 THE COURT.

6 CROSS-EXAMINATION BY MR. POTTER:

7 Q. DETECTIVE, WERE YOU THE ONE WHO PICKED UP JEFF
8 EVANS?

9 A. YES, SIR, ALONG WITH TWO OTHER UNIFORMED
10 DEPUTIES.

11 Q. I'M SORRY. SAY THAT AGAIN?

12 A. ALONG WITH TWO OTHER UNIFORMED DEPUTIES, YES.

13 Q. OKAY. NOW, THIS INCIDENT THAT YOU SPOKE WITH
14 JEFFERY ABOUT HAPPENED ABOUT MAY 24TH, 2007; IS THAT
15 RIGHT?

16 A. CORRECT.

17 Q. AND THAT YOU WERE THE ONE THAT WAS ASSIGNED THE
18 INVESTIGATION OF THIS PARTICULAR INCIDENT; IS THAT
19 CORRECT?

20 A. THAT'S CORRECT.

21 Q. AND YOU MET WITH JEFF EVANS ON JUNE 1ST, 2007; IS
22 THAT CORRECT?

23 A. YES, SIR.

24 Q. AND SO YOU AND TWO UNIFORMED OFFICERS PICKED HIM
25 UP. WHERE DID YOU PICK HIM UP AT?

1 A. HIS RESIDENCE AT GEORGE ALBERT LAKE ROAD. I
2 BELIEVE IT'S -- I'VE GOT HERE. I'M TRYING TO
3 REMEMBER IF IT WAS ACTUALLY HIS RESIDENCE, BUT WAS ON
4 GEORGE ALBERT LAKE ROAD.

5 Q. IT WAS A RESIDENCE?

6 A. YES, THAT'S CORRECT.

7 Q. DID YOU CARRY HIM BACK OR WAS HE PUT IN A
8 DIFFERENT CAR?

9 A. I BELIEVE HE WAS TRANSPORTED, BUT I RARELY
10 TRANSPORT MYSELF. ANOTHER UNMARKED VEHICLE IN THE CASE.

11 Q. OKAY. NOW YOU GOT BACK TO YOUR OFFICE. AT THAT
12 POINT IN TIME HE WAS UNDER ARREST; IS THAT CORRECT?

13 A. THAT'S CORRECT.

14 Q. ALL RIGHT. AND THEN YOU GET BACK TO THE
15 SHERIFF'S DEPARTMENT. DID YOU PROCESS HIM OR SERVE HIM
16 WITH THE WARRANT AT THAT TIME?

17 A. I WOULD HAVE TO LOOK AT THE WARRANT. I CAN'T
18 REMEMBER IF WE ACTUALLY SERVED THE WARRANT, TOO, OR
19 AFTERWARDS. I'M PRETTY MUCH THE WARRANT WAS SERVED ON
20 HIM AT THE TIME. HE KNEW WHAT HE WAS BEING CHARGED
21 WITH; WHETHER OR NOT WE ACTUALLY SERVED THE PAPERWORK
22 THEN OR AFTERWARDS, I REALLY CAN'T REMEMBER.

23 Q. I'M GOING TO HAND YOU AN EXHIBIT --

24 YOU CAN MARK THIS DEFENDANT'S 1, PLEASE.

25 (DEFENDANT'S EX. # 1, WARRANT, WAS MARKED

1 FOR IDENTIFICATION.)

2

3 BY MR. POTTER:

4 Q. IT'S A COPY THAT WAS PROVIDED TO ME FROM THE
5 SOLICITOR'S OFFICE. IS THAT THE WARRANT YOU DID ON THIS
6 DEFENDANT?

7 A. YES, SIR, IT IS.

8 Q. AND SINCE IT'S SIGNED, AND IT LOOKS LIKE IT WAS
9 SIGNED BY THE JUDGE ON JUNE 1ST?

10 A. YES, SIR.

11 Q. OKAY. AND YOU ARE THE ONE WHO IS THE AFFIANT OF
12 THAT WARRANT, CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND IT WAS SERVED ON JUNE 1ST, AS WELL?

15 A. THAT'S CORRECT.

16 Q. IS THERE ANY INDICATION WHEN THE TIME WHEN THE
17 JUDGE SIGNED THAT WARRANT?

18 A. NO, SIR, I DON'T BELIEVE SO.

19 Q. OKAY. SINCE YOU WERE THE AFFIANT OF THAT
20 PARTICULAR WARRANT, DO YOU RECALL WHEN YOU WENT TO GO
21 SEE THE JUDGE TO GET IT SIGNED?

22 A. I WENT TO SEE THE JUDGE TO GET IT SIGNED PRIOR TO
23 ATTEMPTING TO LOCATE MR. EVANS.

24 Q. OKAY. DO YOU KNOW WHOSE SIGNATURE THAT IS WHO
25 SERVED THE WARRANT?

1 A. I BELIEVE THAT IS -- I MAY BE WRONG, I'M TRYING
2 TO MAKE IT OUT -- I THINK IT'S JAY LINDSEY, TO BE
3 CONSISTENT, BECAUSE HE'S ONE OF THE TWO DEPUTIES THAT
4 WENT WITH ME.

5 Q. OKAY. SO IT'S NOT YOUR SIGNATURE?

6 A. NO, SIR.

7 Q. NOW, YOURSELF AND DETECTIVE MCBRIDE WERE IN YOUR
8 OFFICE?

9 A. THAT'S CORRECT.

10 Q. AND IT WAS ABOUT 6:00, 7:00 AT NIGHT WHEN YOU
11 WERE MEETING WITH MR. EVANS, CORRECT?

12 A. I BELIEVE SO, YES, SIR.

13 Q. THAT'S WHAT YOUR WARRANT SAYS, ABOUT THAT TIME?

14 A. YES, SIR.

15 **MR. POTTER:** IF I COULD HAVE A MOMENT,
16 PLEASE, JUDGE? (NO RESPONSE). MAY IT PLEASE THE COURT,
17 MAY I HAVE A BRIEF MOMENT?

18 **THE COURT:** OH, YES, SIR.

19 **MR. POTTER:** THANK YOU, JUDGE.

20 (THERE WAS A PAUSE IN THE PROCEEDINGS.)

21 BY MR. POTTER:

22 Q. DETECTIVE, WERE ANY VIDEOTAPE APPARATUSES OR
23 VIDEO CAMERAS IN YOUR OFFICE?

24 A. NO, SIR.

25 Q. NO TAPE RECORDERS OR AUDIO RECORDING EQUIPMENT OF

1 ANY TYPE?

2 A. NO, SIR.

3 Q. APART FROM THE WRITTEN STATEMENT -- OR EXCUSE
4 ME -- THE TYPEWRITTEN STATEMENT THAT YOU TYPED OUT FOR
5 THE DEFENDANT, IS THERE ANY OTHER NOTES INDICATING YOU
6 WRITING DOWN WHAT HE WAS TELLING YOU DURING THIS
7 INTERVIEW?

8 A. IF I DID, IT'S IN THE CASE FILE. AS I SAID
9 BEFORE, I USUALLY LISTEN AND GIVE MY FULL ATTENTION TO
10 THE ACTUAL PERSON DOING THE INTERVIEW.

11 Q. AND WHEN YOU ARE DOING THE INTERVIEW, INITIALLY
12 YOU ARE TALKING, AND THEN AT SOME POINT IN TIME YOU
13 DECIDE TO FLIP ON THE COMPUTER AND START WRITING OUT THE
14 STATEMENT FOR HIM?

15 A. CORRECT.

16 Q. AND YOU ARE THE ONE TYPING THE STATEMENT FOR HIM;
17 IS THAT CORRECT?

18 A. YES, SIR.

19 Q. DO YOU RECALL HOW LONG THIS INTERVIEW TOOK?

20 A. NO, SIR, I DON'T RECALL. IT WASN'T TOO AWFUL
21 LONG.

22 Q. DID MR. EVANS INDICATE THAT HE HAD BEEN UP FOR A
23 SIGNIFICANT AMOUNT OF TIME SMOKING CRACK AND SMOKING
24 ICE?

25 A. I BELIEVE HE DID, HE DID LIST DRUG USE. WHAT WAS

1 ACTUALLY SAID, I CAN'T RECALL. BUT HE SAID ICE.

2 Q. DID HE INDICATE TO YOU AT THAT TIME HE WAS STILL
3 HIGH ON DRUGS OR WAS HE STRUNG OUT ON DRUGS?

4 A. I DID ASK HIM IF HE WAS HIGH AT THE MOMENT. HE
5 SAID, NO, I'M VERY TIRED, THINGS OF THAT NATURE. BUT HE
6 SEEMED EXTREMELY WORRIED. HE KNEW WHAT WE WERE TALKING
7 ABOUT AND HE SEEMED TO BE VERY AWARE OF WHAT WAS
8 HAPPENING.

9 MR. POTTER: I UNDERSTAND.

10 NOTHING FURTHER, JUDGE.

11 THE COURT: RE-EXAM?

12 MS. HUEY: I DON'T HAVE ANYTHING FURTHER FOR
13 THIS WITNESS, JUDGE.

14 THE COURT: VERY GOOD. YOU MAY STEP DOWN.

15 (WITNESS LEAVES STAND.)

16 MS. HUEY: YOUR HONOR, THE STATE CALLS CHAD
17 MCBRIDE TO THE STAND NEXT.

18 (WHEREUPON, THE WITNESS WAS SWORN BY THE
19 CLERK.)

20 THE CLERK: PLEASE STATE YOUR FULL NAME AND
21 SPELL YOUR LAST NAME FOR THE RECORD.

22 THE WITNESS: CHRISTOPHER CHAD MCBRIDE, THE
23 LAST NAME IS SPELLED M-C-B-R-I-D-E.

24 WHEREUPON,

25 CHRISTOPHER CHAD MCBRIDE,

1 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
2 FOLLOWS:

3 DIRECT EXAMINATION BY MS. HUEY:

4 Q. MR. MCBRIDE, WHERE ARE YOU CURRENTLY EMPLOYED?

5 A. AT THE ANDERSON COUNTY SHERIFF'S OFFICE.

6 Q. AND WHAT IS YOUR POSITION THERE?

7 A. I'M DETECTIVE OF OFFICE OF PROFESSIONAL STANDARDS
8 AND INFORMALLY A DETECTIVE IN THE CRIMINAL INVESTIGATIVE
9 DIVISION.

10 Q. WERE YOU THEN IN THE INVESTIGATIVE UNIT IN MAY OF
11 2007?

12 A. YES, MA'AM.

13 Q. DID YOU ACTUALLY SPEAK WITH THE DEFENDANT IN THIS
14 CASE REGARDING TAKING A STATEMENT FROM HIM?

15 A. YES, MA'AM, I SPOKE TO HIM.

16 Q. WERE YOU BY YOURSELF WHEN THIS HAPPENED OR WERE
17 YOU WITH SOMEONE ELSE?

18 A. WITH DETECTIVE KEVIN MATHESON.

19 Q. AND WERE YOU CONSIDERED THE LEAD INVESTIGATOR IN
20 THIS CASE OR OTHERWISE?

21 A. NO, MA'AM. I WAS BASICALLY INVOLVED WITH THE
22 INTERVIEW WITH DETECTIVE MATHESON AND HE ASKED ME TO
23 WITNESS THE INTERVIEW WITH HIM.

24 Q. DO YOU KNOW IF THE DEFENDANT WAS ADVISED OF HIS
25 RIGHTS?

1 A. YES, MA'AM, HE WAS.

2 Q. AND HOW DO YOU KNOW THIS?

3 A. I OBSERVED DETECTIVE MATHESON GO OVER WITH THE
4 DEFENDANT HIS MIRANDA WARNINGS ON AN ADVICE OF RIGHTS
5 FORM THAT WE USE AT THE SHERIFF'S OFFICE, WHICH INCLUDES
6 HIS RIGHTS.

7 Q. OKAY. AND SO THAT OCCURRED WITH THE USE OF A
8 FORM, THEN?

9 A. YES, MA'AM.

10 Q. NOW, CAN YOU JUST DESCRIBE THE ROOM WHERE THIS
11 INTERVIEW TOOK PLACE?

12 A. IT'S A, IT'S AN OFFICE THAT IS USED FOR AT LEAST
13 TWO DETECTIVES, WITH TWO DESKS, TWO WINDOWS, ONE DOOR
14 THAT ENTERS INTO THE OFFICE; A VERY INFORMAL OFFICE.

15 Q. AND SO WHO ALL WAS PRESENT IN THIS ROOM, THEN?

16 A. MYSELF, DETECTIVE MATHESON, AND THE DEFENDANT.

17 Q. AND WAS THE DEFENDANT IN HANDCUFFS AT THE TIME?

18 A. I BELIEVE HE WAS AT FIRST. I BELIEVE THEY WERE
19 REMOVED AS THE DEFENDANT WAS GIVING DETECTIVE MATHESON A
20 STATEMENT.

21 Q. AND AS DETECTIVE MATHESON ADVISED THE DEFENDANT
22 OF HIS RIGHTS, IN YOUR OPINION DID THE DEFENDANT SEEM TO
23 UNDERSTAND THOSE RIGHTS?

24 A. YES, MA'AM.

25 Q. NOW, ALSO IN YOUR OPINION DID HE SEEM TO BE UNDER

1 THE INFLUENCE OF ANYTHING AT THE TIME, DRUGS OR ALCOHOL?

2 A. I DON'T KNOW HIM PERSONALLY, BUT HE SEEMED VERY
3 COHERENT. I HAVE ENCOUNTERED MANY PEOPLE THAT ARE OR
4 ARE NOT, AND HE SEEMED VERY COHERENT AT THE TIME.

5 Q. AND AGAIN, DID THE DEFENDANT INDICATE THAT HE
6 UNDERSTOOD HIS RIGHTS?

7 A. YES, MA'AM.

8 Q. WERE ANY THREATS OR PROMISES MADE TO GET HIM TO
9 GIVE A STATEMENT?

10 A. NO, MA'AM.

11 Q. ANY KIND OF INTIMIDATION?

12 A. NO, MA'AM.

13 Q. AND WAS HIS WAIVER OF RIGHTS VOLUNTARY?

14 A. THEY WERE COMPLETELY VOLUNTARY.

15 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
16 STATE'S 1, WHICH I BELIEVE YOU HAVE IN FRONT OF YOU. IF
17 YOU COULD JUST TAKE A LOOK AT THAT FOR ME. DO YOU
18 RECOGNIZE THAT FORM?

19 A. YES, MA'AM.

20 Q. AND HOW ARE YOU ABLE TO RECOGNIZE IT?

21 A. I RECOGNIZE IT AS THE ADVICE OF RIGHTS THAT WAS
22 USED THAT NIGHT, JUNE 1ST; BY THE DATE, ALSO THE TIME,
23 AND MY SIGNATURE AS A WITNESS, ALONG WITH THE
24 DEFENDANT'S AND DETECTIVE MATHESON'S.

25 Q. NOW, AFTER THE WAIVER OF RIGHTS DID THE DEFENDANT

1 INDICATE HE WISHED TO GIVE A STATEMENT?

2 A. YES, MA'AM.

3 Q. AND CAN YOU TELL ME A LITTLE BIT ABOUT HOW THAT
4 CAME ABOUT?

5 A. DETECTIVE MATHESON, OF COURSE, ADVISED HIM OF HIS
6 RIGHTS; THEY WENT THROUGH THAT. THE DEFENDANT INITIALED
7 THAT HE UNDERSTOOD HIS RIGHTS AND ALSO SIGNED THE ADVICE
8 OF RIGHTS FORM. AT THAT TIME I BELIEVE DETECTIVE
9 MATHESON TALKED TO HIM FOR A WHILE AND THEN PROCEEDED TO
10 TAKE A WRITTEN STATEMENT, WHICH THE DEFENDANT DID REVIEW
11 AND SIGN THAT HE WAS IN AGREEMENT THAT THAT WAS HIS
12 STATEMENT.

13 Q. AND WERE YOU IN THE ROOM THE ENTIRE TIME THIS WAS
14 GOING ON?

15 A. YES, MA'AM.

16 Q. AND WOULD YOU HAVE BEEN A WITNESS TO DETECTIVE
17 MATHESON TYPING OUT THE STATEMENT FOR THE DEFENDANT?

18 A. YES, MA'AM.

19 Q. AND DO YOU KNOW IF DETECTIVE MATHESON ACCURATELY
20 TYPED IT OUT AS IT WAS TOLD TO HIM?

21 A. YES, MA'AM.

22 Q. DID THE DEFENDANT INDICATE THAT THAT WAS HIS
23 STATEMENT?

24 A. YES, MA'AM.

25 Q. AND HOW DID HE DO THAT?

1 A. HE DID SO BY REVIEWING THE STATEMENT AND PLACING
2 HIS SIGNATURE AT THE BOTTOM END AT THE END OF THE
3 STATEMENT, IN AGREEANCE [SIC] THAT THAT IS INDEED HIS
4 STATEMENT.

5 Q. NOW I'M GOING TO SHOW YOU STATE'S 2 THEN. DO YOU
6 RECOGNIZE THAT STATEMENT?

7 A. YES, MA'AM.

8 Q. ALL RIGHT. AND HOW ARE YOU ABLE TO DO THAT?

9 A. I RECOGNIZE THIS IS DETECTIVE MATHESON'S
10 STATEMENT REGARDING THE DEFENDANT'S INVOLVEMENT IN THIS
11 PARTICULAR INCIDENT, AND I ALSO RECOGNIZE MY SIGNATURE
12 AS WELL ON THE STATEMENT.

13 Q. OKAY. AND YOUR SIGNATURE INDICATES THAT YOU WERE
14 A WITNESS?

15 A. YES, MA'AM.

16 Q. OKAY.

17 **MS. HUEY:** YOUR HONOR, AT THIS TIME WE WOULD
18 LIKE TO PUBLISH STATE'S 1 AND 2. I DON'T KNOW IF YOU
19 WOULD LIKE TO READ IT ALOUD OR JUST READ IT YOURSELF,
20 YOUR HONOR.

21 **THE COURT:** I CAN READ IT, I THINK.

22 ANY OBJECTION?

23 **MR. POTTER:** I DON'T THINK SO, YOUR HONOR.
24 THE ISSUE IS NOT WHAT'S IN THE STATEMENT, IT'S JUST
25 WHETHER IT WAS PROPERLY OBTAINED.

1 THE COURT: VERY WELL.

2 MS. HUEY: (HANDING) THESE ARE STATE'S 1 AND
3 2, JUDGE.

4 THE COURT: (READS STATES 1 AND 2.)

5 ALL RIGHT. I'VE READ STATE'S EXHIBITS 1 AND
6 2.

7 MS. HUEY: THAT'S ALL I HAVE AT THIS TIME.

8 THE COURT: CROSS-EXAMINE?

9 MR. POTTER: THANK YOU, YOUR HONOR, IF IT
10 PLEASES THE COURT.

11 CROSS-EXAMINATION BY MR. POTTER:

12 Q. DETECTIVE MCBRIDE, WAS THE DEFENDANT GIVEN
13 ANYTHING TO EAT OR DRINK WHILE THE INTERVIEW WAS TAKING
14 PLACE?

15 A. I CAN'T RECALL OFF THE TOP OF MY HEAD. IF HE
16 REQUESTED IT, WE WOULD DEFINITELY OBLIGE.

17 Q. OKAY. SO IF HE REQUESTED LIKE A MOUNTAIN DEW OR
18 A CIGARETTE, YOU WOULD GO GET IT?

19 A. YES. WELL, WE WOULD MAKE ARRANGEMENTS SOMEHOW TO
20 GET THAT TO HIM.

21 Q. AND DO YOU RECALL SPECIFICALLY IN THIS PARTICULAR
22 CASE WHETHER YOU LEFT THE ROOM TO GET A MOUNTAIN DEW OR
23 A CIGARETTE?

24 A. NO, SIR, I CAN'T RECALL SPECIFICALLY.

25 Q. NOW, YOU WEREN'T PRESENT WHEN MR. EVANS WAS

1 PICKED UP?

2 A. NO, SIR.

3 Q. OKAY. AND DO YOU KNOW WHETHER OR NOT MR. EVANS
4 WAS BOOKED IN THE DETENTION CENTER BEFORE HE WAS BROUGHT
5 OVER FOR THE INTERVIEW?

6 A. NO, SIR, I DO NOT.

7 Q. DO YOU KNOW WHAT HAPPENED TO MR. SCOTT [SIC]
8 AFTER THE INTERVIEW WAS COMPLETED?

9 A. TO MY KNOWLEDGE, STANDARD S.O.P. WOULD BE HE
10 PROBABLY WOULD BE RETURNED TO THE SHERIFF'S OFFICE
11 HOLDING CELL AND THEN TRANSPORTED TO THE DETENTION
12 CENTER.

13 Q. NOW, THE SHERIFF'S OFFICE HOLDING CELL, TELL ME
14 ABOUT THAT. IS IT LIKE JUST A JAIL CELL, LIKE A BARNEY
15 MILLER OR SOMETHING LIKE THAT?

16 A. YES, SIR. JUST A BENCH, LATRINE.

17 Q. IS THERE ANY PROCESSING DONE, ANY FINGERPRINTS
18 DONE, PHOTOGRAPHS OR ANYTHING LIKE THAT?

19 A. IT DEPENDS ON THE PROCESS. I'M NOT SURE EXACTLY
20 WHEN HE WAS PICKED UP. MY INVOLVEMENT -- ACTUALLY, I
21 HAD NO INVOLVEMENT IN THE INVESTIGATIVE PART OF THE
22 CASE, JUST AS A WITNESS. I ACTUALLY WAS ON CALL THAT
23 EVENING IN THE NEXT DOOR OFFICE.

24 MR. POTTER: NOTHING FURTHER, JUDGE.

25 THE COURT: RE-EXAM?

1 MS. HUEY: NO, SIR, YOUR HONOR.

2 THE COURT: VERY GOOD. YOU MAY STEP DOWN.

3 (WITNESS LEAVES STAND.)

4 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

5 MS. HUEY: YOUR HONOR, THOSE ARE THE ONLY

6 TWO WITNESSES I HAVE FOR THIS HEARING.

7 THE COURT: ALL RIGHT. ANYTHING FROM THE

8 DEFENDANT?

9 MR. POTTER: MAY I HAVE A BRIEF MOMENT, YOUR

10 HONOR?

11 THE COURT: YES.

12 (WHEREUPON, THE DEFENDANT CONFERRED WITH

13 COUNSEL OFF THE RECORD.)

14 MR. POTTER: I CALL THE DEFENDANT, YOUR

15 HONOR.

16 (WHEREUPON, THE WITNESS WAS SWORN BY THE

17 CLERK.)

18 THE CLERK: PLEASE STATE YOUR FULL NAME AND

19 SPELL YOUR LAST NAME FOR THE RECORD.

20 THE WITNESS: JEFFERY SCOTT EVANS,

21 E-V-A-N-S.

22 THE COURT: YOU MAY PROCEED.

23 MR. POTTER: THANK YOU, YOUR HONOR, IF IT

24 PLEASES THE COURT.

25 WHEREUPON,

1 JEFFERY SCOTT EVANS,
2 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
3 FOLLOWS:

4 DIRECT EXAMINATION BY MR. POTTER:

5 Q. YOU ARE JEFFERY EVANS; IS THAT CORRECT?

6 | A. YES.

7 | Q. OKAY. AND YOU ARE THE DEFENDANT IN THIS CASE?

8 | A. YES, SIR.

9 Q. YOU ARE LIVING ON ROAD; IS
10 THAT CORRECT?

11 A. YES, SIR.

12 Q. I DIRECT YOUR ATTENTION TO JUNE 1ST, 2007. YOU
13 WERE PICKED UP BY TWO SHERIFF'S DEPUTIES AND DETECTIVE
14 MATHESON THAT DAY; IS THAT CORRECT?

15 | A. YES.

16 Q. WHERE WERE YOU PICKED UP AT?

17 | A. ROAD.

18 Q. WHAT TIME OF DAY WERE YOU PICKED UP AT?

19 | A. I GUESS SOMETIME LATE IN THE AFTERNOON.

20 Q. OKAY. DID YOU -- YOU WERE TAKEN TO THE SHERIFF'S
21 DEPARTMENT?

22 | A. YES, SIR.

23 Q. WHO CARRIED YOU TO THE SHERIFF'S DEPARTMENT?

24 | A. THERE WAS ANOTHER OFFICER.

25 Q. OKAY. WAS IT IN A MARKED CRUISER?

1 A. YES, IT WAS IN A MARKED CRUISER.

2 Q. WERE YOU TAKEN DIRECTLY TO THE SHERIFF'S
3 DEPARTMENT OR WERE YOU TAKEN TO THE DETENTION CENTER
4 FIRST?

5 A. THE SHERIFF'S OFFICE.

6 Q. DID THEY SERVE A WARRANT ON YOU AT ANY POINT IN
7 TIME?

8 A. NO, SIR. I DIDN'T GET A WARRANT SERVED ON ME
9 UNTIL I GOT TO THE COUNTY DETENTION CENTER.

10 Q. OKAY. WAS THAT BEFORE OR AFTER THE INTERVIEW?

11 A. AFTER THE INTERVIEW.

12 Q. AFTER THE INTERVIEW?

13 A. YES, SIR.

14 Q. APPARENTLY AT SOME POINT IN TIME YOU FOUND
15 YOURSELF IN AN OFFICE WITH DETECTIVE MCBRIDE AND
16 DETECTIVE MATHESON; IS THAT CORRECT?

17 A. YES.

18 Q. OKAY. WERE YOU IN HANDCUFFS WHILE YOU WERE IN
19 THAT OFFICE?

20 A. I WAS TO START WITH.

21 Q. OKAY. AND WHO TOOK THE HANDCUFFS OFF?

22 A. DETECTIVE MCBRIDE.

23 Q. OKAY. NOW, HOW WAS YOUR PHYSICAL CONDITION AT
24 THAT POINT IN TIME?

25 A. I HAD BEEN UP FOR SIX DAYS STRAIGHT WITHOUT ANY

1 SLEEP.

2 Q. OKAY. WHY WERE YOU UP FOR SIX DAYS STRAIGHT
3 WITHOUT ANY SLEEP?

4 A. BECAUSE I HAD BEEN SMOKING CRACK AND ICE.

5 Q. DID YOU TELL THAT TO DETECTIVE MATHESON AND
6 DETECTIVE MCBRIDE?

7 A. YES.

8 Q. DID YOU UNDERSTAND WHY YOU WERE THERE?

9 A. YES, SIR, I KNEW WHY I WAS THERE.

10 Q. OKAY. AND TELL THE COURT WHAT HAPPENED THEN.

11 A. AS I SAT DOWN, DETECTIVE MATHESON, WHEN I FIRST
12 SAT DOWN FOR THE INTERVIEW, HE TOLD ME I DIDN'T SEEM
13 LIKE THE REGULAR KIND OF ARMED ROBBERY GUY, I SEEMED
14 JUST LIKE A GOOD OLD COUNTRY BOY.

15 I HAD MY HEAD HANGING DOWN AND HE TOLD ME TO LIFT
16 MY HEAD UP, DON'T LOOK SO SAD, THINGS WON'T BE THAT BAD.

17 I SAID, YEAH, MAN. I SAID, WITH MY CHARGES
18 THEY'RE GONNA PUT ME AWAY FOR A LONG TIME.

19 HE SAID THEY WOULD NOT PUT ME AWAY FOR MORE THAN
20 TEN YEARS. HE SAID, JUST TALK TO ME.

21 I SAID, COULD I HAVE A CIGARETTE AND A MOUNTAIN
22 DEW?

23 AND HE SAID, WE'LL SEE WHAT WE CAN DO IF YOU TALK
24 TO ME.

25 AND I SAID OKAY.

1 AND HE SENT DETECTIVE MCBRIDE OUT, WHILE I WAS
2 GIVING THE INTERVIEW AND EVERYTHING STARTED, HE SENT
3 DETECTIVE MCBRIDE TO GET ME TWO NEWPORTS AND A MOUNTAIN
4 DEW IN A STYROFOAM CUP TO DUMP MY ASHES IN, AND BROUGHT
5 IT BACK.

6 Q. WHEN YOU WERE TALKING WITH DETECTIVE MATHESON,
7 WAS HE TYPING ON THE COMPUTER OR ANYTHING OF THAT
8 NATURE?

9 A. YES, SIR.

10 Q. DID HE EXPLAIN TO YOU YOUR WAIVER OF RIGHTS?

11 A. YES, SIR.

12 Q. DID YOU UNDERSTAND THEM?

13 A. YES, SIR.

14 Q. OKAY. DID YOU FEEL COMPELLED TO SIGN THAT FORM
15 THAT HE HAD GIVEN TO YOU?

16 A. I FELT, I FELT -- YEAH, I FELT COMPELLED.

17 Q. WHAT DID HE SAY?

18 A. I DID BECAUSE I WAS SCARED. I HAD BEEN UP. I
19 DIDN'T KNOW WHAT WAS GONNA HAPPEN TO ME. WHEN HE SAT
20 THERE TELLING ME ABOUT THE TEN YEARS, THAT SORT OF
21 SWAYED ME A LITTLE BIT TO TALK WITH HIM, AND I DIDN'T
22 WANT TO TALK.

23 **MR. POTTER:** NOTHING FURTHER, YOUR HONOR.

24 **THE COURT:** CROSS-EXAM.

25 CROSS-EXAMINATION BY MS. HUEY:

1 Q. MR. EVANS, LET ME SHOW YOU STATE'S 1 AND 2.

2 MS. HUEY: JUDGE, MAY I APPROACH?

3 THE COURT: CERTAINLY.

4 MS. HUEY: I BELIEVE THEY'RE UP HERE.

5 BY MS. HUEY:

6 Q. ALL RIGHT. I'LL START OUT WITH STATE'S 1,

7 MR. EVANS. TAKE A LOOK AT THAT EXHIBIT FOR ME.

8 A. YES, MA'AM.

9 Q. OKAY. AND DO YOU RECOGNIZE THAT?

10 A. YES, MA'AM.

11 Q. ALL RIGHT. IS THAT YOUR SIGNATURE ON THE FORM?

12 A. YES, MA'AM, IT IS.

13 Q. AND HOW MANY PLACES?

14 A. ONE, TWO, THREE, FOUR.

15 Q. AND SO WHAT DID THOSE SIGNATURES INDICATE?

16 A. THAT I HAD THE RIGHT TO REMAIN SILENT IF I DIDN'T
17 WANT TO SPEAK.

18 Q. SO YOU UNDERSTOOD WHAT WAS GOING ON?

19 A. YES, AT THE TIME I DID UNDERSTAND.

20 Q. YOU DID UNDERSTAND THAT?

21 A. YES, MA'AM, I SURE DID.

22 Q. ALL RIGHT. AND YOU ALSO DECIDED TO GIVE A
23 STATEMENT, ISN'T THAT TRUE?

24 A. YES, MA'AM, I DID.

25 Q. SO I'M GONNA SHOW YOU WHAT'S BEEN MARK AS STATE'S

1 2. IF YOU WOULD TAKE A LOOK AT THAT FOR ME.

2 A. (READS DOCUMENT.) YES, MA'AM.

3 Q. DO YOU RECOGNIZE THAT?

4 A. YES, MA'AM.

5 Q. OKAY. AND HOW ARE YOU ABLE TO RECOGNIZE IT?

6 A. IT'S SOME THINGS I TOLD WITH SOME HOLES IN IT.

7 Q. OKAY. BUT IS YOUR SIGNATURE ON THAT?

8 A. YES, MA'AM.

9 Q. YOU SIGNED IT?

10 A. YES, MA'AM.

11 Q. AND YOU COULD HAVE MADE CHANGES IF YOU HAD WANTED
12 TO, COULDN'T YOU?

13 A. I DON'T RECALL BEING TOLD THAT.

14 Q. OKAY. YOU COULDN'T HAVE SCRATCHED THROUGH
15 SOMETHING?

16 A. I WAS NOT TOLD THAT.

17 Q. YOU COULDN'T HAVE INITIALED IT?

18 A. THERE WAS NOTHING FOR ME TO SCRATCH THROUGH. HE
19 WAS TYPING IT UP. HE SAID I WAS THERE.

20 Q. NONETHELESS, THOUGH, YOU SIGNED THIS STATEMENT?

21 A. YES, MA'AM, I SURE DID.

22 Q. INDICATING THAT IT WAS YOURS?

23 A. YES, MA'AM.

24 Q. ALL RIGHT. NOW, MR. EVANS, YOU'VE GOT A PRETTY
25 BAD PRIOR RECORD, RIGHT?

1 A. I'VE BEEN CONVICTED ONE TIME ON EVERYTHING THAT I
2 HAD WAS THE WARRANT CHARGED AT ONE TIME, IT WAS A SPREE.
3 IT AIN'T LIKE I BEEN A CAREER CRIMINAL ALL MY LIFE, NO,
4 MA'AM.

5 Q. BUT WHEN YOU CAME IN TO MR. MATHESON'S OFFICE,
6 YOU KNEW YOU WERE LOOKING AT BIG TROUBLE, BIG TIME,
7 RIGHT?

8 A. YES, MA'AM.

9 Q. YOU ALREADY KNEW THAT?

10 A. YES, MA'AM.

11 Q. AND ISN'T IT TRUE THAT YOU COULD HAVE, IN FACT,
12 PLED TO SOMETHING ELSE, GOTTEN ---

13 **MR. POTTER:** JUDGE, OBJECTION; THAT'S
14 OUTSIDE THE SCOPE OF WHAT WE'RE DOING TODAY.

15 **THE COURT:** THERE WAS A REFERENCE MADE TO A
16 TEN-YEAR SENTENCE. I'M GOING TO OVERRULE YOUR
17 OBJECTION.

18 BY MS. HUEY:

19 Q. ISN'T IT TRUE THAT I OFFERED TO REDUCE THESE
20 CHARGES SO THAT YOU COULD PLEAD AND NOT BE FACING LIFE
21 WITHOUT PAROLE?

22 A. YES, MA'AM.

23 Q. AND ISN'T IT TRUE THAT YOU TURNED DOWN THAT
24 OFFER?

25 A. BECAUSE I WAS MISLED BY MY OTHER ATTORNEY.

1 THAT'S WHY I GOT THIS ONE RIGHT HERE, I FIRED MY LAST
2 ONE.

3 Q. REGARDLESS, YOU WERE LOOKING AT A BETTER DEAL
4 THAN YOU ARE TODAY?

5 A. YES, MA'AM, I WAS.

6 Q. AND WEREN'T YOU ADVISED BY ME IN THE PRESENCE OF
7 THE OTHER ATTORNEY THAT I WOULD BE SEEKING LIFE WITHOUT
8 PAROLE AS A RESULT OF YOU NOT TAKING ---

9 A. I CAN'T RECALL. I NEVER TALKED TO YOU THAT DAY,
10 MA'AM. I TALKED TO MY LAWYER THAT DAY OVER THERE.

11 Q. THAT IS THE RESULT. BUT YOU KNEW YOU WERE
12 LOOKING AT LIFE WITHOUT PAROLE BECAUSE OF THE CHARGES
13 THAT YOU WERE FACED WITH?

14 A. I KNEW WHEN I GOT SERVED THE PAPERS WITH --
15 WHAT'S HIS NAME -- THE INVESTIGATOR FROM THE SOLICITOR'S
16 OFFICE, JIMMY PENN, SERVED PAPERS ON ME. I KNEW WHAT
17 YOUR INTENTIONS WAS THEN.

18 Q. SO MR. EVANS, ISN'T IT TRUE THAT YOU WEREN'T
19 THREATENED INTO MAKING THIS STATEMENT?

20 A. NO, MA'AM, I WAS NOT THREATENED.

21 Q. YOU WEREN'T COERCED INTO MAKING THIS STATEMENT?

22 A. I FELT LIKE I WAS LED, I WAS LED ALONG WHILE I
23 WAS MAKING THE STATEMENT.

24 Q. BUT REGARDLESS, YOU WEREN'T THREATENED OR
25 INTIMIDATED TO MAKE THE STATEMENT?

1 A. NO, MA'AM, I WAS NEVER INTIMIDATED, I SURE WAS
2 NOT.

3 MS. HUEY: THAT'S ALL I HAVE, JUDGE.

4 THE COURT: RE-EXAM?

5 MR. POTTER: NONE, YOUR HONOR.

6 THE COURT: YOU MAY STEP DOWN. THANK YOU.

7 (WITNESS LEAVES STAND.)

8 THE COURT: CALL YOUR NEXT WITNESS.

9 MR. POTTER: NONE, YOUR HONOR.

10 THE COURT: ANY REPLY?

11 MS. HUEY: YOUR HONOR, I THINK I WILL
12 RE-CALL KEVIN MATHESON TO THE STAND, PLEASE.

13 THE COURT: DO YOU UNDERSTAND YOU'RE STILL
14 UNDER OATH?

15 THE WITNESS: YES, SIR.

16 THE COURT: ALL RIGHT. VERY GOOD.

17 WHEREUPON,

18 KEVIN MATHESON,

19 AFTER FIRST HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED
20 AS FOLLOWS:

21 DIRECT EXAMINATION BY MS. HUEY:

22 Q. MR. MATHESON, DURING THE COURSE OF THE INTERVIEW
23 WITH MR. EVANS, AT ANY TIME DID YOU SAY HE WAS ONLY
24 GONNA GET TEN YEARS?

25 A. NO, MA'AM.

1 Q. OKAY. DID YOU GIVE HIM ANY INDICATION THAT HE
2 WOULD GET SOME SORT OF LIGHT SENTENCE SUCH AS TEN YEARS?

3 A. I NEVER MENTIONED A TEN YEAR. IN MR. EVANS'
4 CASE, LIKE I SAID AND I'LL STATE AGAIN, HE WAS BEING
5 VERY COOPERATIVE, AND HE WAS OBVIOUSLY VERY DEPRESSED
6 ABOUT THINGS THAT HE HAD DONE. I'M SURE I DID TRY TO
7 MAKE HIM FEEL BETTER AT THE POINT. I ALWAYS BELIEVED
8 THAT YOU HAD MENTIONED THE PLEA BARGAIN. I THINK THAT
9 I'M JUSTIFIED ABOUT SAYING ANYTHING, BUT I NEVER SAID
10 TEN YEARS OR I NEVER PROMISED ANYBODY ANY THING LIKE
11 THAT.

12 Q. AND IF, MR. MATHESON, DO YOU RECALL HAVING A
13 CONVERSATION WITH ME WHEN MR. EVANS WAS INTERESTED IN
14 PLEADING GUILTY AND I RAN IT BY A POTENTIAL OFFER?

15 A. YES, MA'AM.

16 Q. AND WERE YOU COMFORTABLE WITH MY OFFER AT THAT
17 TIME?

18 A. YES, MA'AM.

19 Q. AND WHY WAS THAT?

20 A. BECAUSE HE WAS EXTREMELY COOPERATIVE. HE DIDN'T
21 GIVE US ANY TROUBLE. HE REALLY STRUCK ME AS A PERSON
22 THAT THE DRUGS HAD TAKEN A HOLD OF. HE SEEMED LIKE HE
23 WOULD HAVE BEEN A DECENT GUY EXCEPT FOR THE DRUGS.
24 THAT'S WHY I WENT ALONG WITH IT.

25 MS. HUEY: NOTHING FURTHER.

1 THE COURT: CROSS-EXAMINE?

2 MR. POTTER: NO QUESTIONS, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 (WITNESS LEAVES STAND.)

5 THE COURT: ALL RIGHT. ANYTHING ELSE?

6 MS. HUEY: NO, SIR, YOUR HONOR.

7 THE COURT: VERY WELL. ANYTHING FROM THE
8 STATE?

9 MS. HUEY: NO, SIR, YOUR HONOR.

10 THE COURT: ANYTHING FROM THE DEFENDANT?

11 MR. POTTER: NOTHING TO ADD, YOUR HONOR.

12 THE COURT: ALL RIGHT. THE COURT HAS
13 CAREFULLY CONSIDERED ALL OF THE EVIDENCE INCLUDED IN
14 STATE'S EXHIBITS 1 AND 2, THE ADVICE OF RIGHTS AS WELL
15 AS THE STATEMENT. AND THE COURT IS CONVINCED BY A
16 PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT WAS
17 FULLY ADVISED OF HIS RIGHTS UNDER THE FIFTH AND SIXTH
18 AMENDMENTS, SPECIFICALLY, THE RIGHT TO REMAIN SILENT,
19 THAT ANY STATEMENT CAN AND MAY BE USED AGAINST HIM IN A
20 COURT OF LAW; HIS RIGHT TO AN ATTORNEY, AND THAT IF HE
21 COULDN'T AFFORD ONE, AN ATTORNEY WOULD BE APPOINTED AND
22 PROVIDED TO HIM. HIS RIGHT TO CONSULT WITH AN ATTORNEY,
23 HIS RIGHT TO INTERRUPT DURING INTERROGATION; AND THAT
24 THE INTERROGATION WOULD CEASE UNTIL HE HAD A CHANCE TO
25 CONSULT WITH AN ATTORNEY PRIOR TO THE FURTHER

1 INTERROGATION.

2 THE DEFENDANT KNOWINGLY AND INTELLIGENTLY
3 WAIVED THESE RIGHTS AND SAID, I WAS NOT THREATENED OR
4 INTIMIDATED TO MAKE THE STATEMENT. NO PROBLEM -- EXCUSE
5 ME -- IN FACT, HE SAID THAT THERE WAS NO REASON TO
6 CHANGE ANYTHING, ANY STATEMENT OF ANY TYPE.

7 FURTHER, I FIND THAT THE ALLEGED
8 INCRIMINATING STATEMENT WAS FREELY AND VOLUNTARILY GIVEN
9 WITHOUT DURESS, COERCION, OR UNDUE INFLUENCE, PROMISE OR
10 HOPE OF AWARD, WITHOUT PROMISE OF LENIENCY, WITHOUT
11 THREAT OF INJURY OR INDUCEMENT OF ANY KIND.

12 I FIND THE INCRIMINATING STATEMENT, THE
13 ALLEGED INCRIMINATING STATEMENT IS GIVEN FREELY,
14 VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY AND WAS THE
15 UNCONTESTED WILL OF THE DEFENDANT.

16 THESE CONCLUSIONS ARE FOUND BEYOND A
17 REASONABLE DOUBT, ALTHOUGH THE STANDARD FOR THIS IS A
18 PREPONDERANCE OF THE EVIDENCE. I DO FIND THAT THE
19 STATEMENT IS ADMISSIBLE. IT WILL BE UP FOR THE JURY TO
20 DETERMINE THAT AS FAR AS WHAT WEIGHT, IF ANY, WILL BE
21 GIVEN TO THE STATEMENT UNDER THE PROPER INSTRUCTION.

22 ALL RIGHT. ANYTHING ELSE FROM THE STATE?

23 MS. HUEY: NO, SIR, YOUR HONOR.

24 THE COURT: ANYTHING ELSE FROM THE
25 DEFENDANT?

1 **MR. POTTER:** THE JACKSON V. DENNO HEARING,
2 WE DO HAVE SOMETHING ELSE I WOULD LIKE TO BRING UP.

3 **THE COURT:** ALL RIGHT.

4 **MR. POTTER:** JUDGE, IF IT PLEASES THE COURT,
5 THE INDICTMENT, WE WOULD MOVE TO QUASH COUNT 2 OF THE
6 INDICTMENT. THE INDICTMENT I WAS SERVED WITH THROUGH
7 THE SOLICITOR'S OFFICE INDICATES THAT THE DEFENDANT,
8 JEFFERY EVANS, IN ANDERSON COUNTY, ON OR ABOUT MAY 24TH,
9 2007, POSSESSED A KNIFE DURING THE COMMISSION OF A
10 VIOLENT CRIME; TO WIT, ARMED ROBBERY, IN VIOLATION OF
11 CODE SECTIONS 16-2-10/16-3-20 OF THE CODE OF LAWS OF
12 SOUTH CAROLINA.

13 JUDGE, OUR POSITION IS THAT PARTICULAR
14 PORTION OF THE INDICTMENT IS DEFECTIVE IN THAT THE
15 INDICTMENT NEEDS TO SPECIFICALLY STATE THE ARMED ROBBERY
16 STATUTE. IT'S OUR POSITION THAT IT DOES NOT, THAT THE
17 STATUTE THAT HAS BEEN REFERENCED BY THE STATE -- I THINK
18 IT'S THE MURDER STATUTE IF I'M CORRECT.

19 OUR POSITION IS THAT THE STATUTE BEING CITED
20 IS INCORRECT. IT SHOULD BE THE ARMED ROBBERY STATUTE,
21 WHICH SHOULD BE 16-11-330. UNDER SECTION 17-19-20 IT
22 DOES SPECIFY ALLEGATIONS SUFFICIENT FOR INDICTMENT, AND
23 AT THE END OF THAT PARTICULAR SECTION -- OR EXCUSE ME --
24 OF THAT STATUTE IT SAYS THAT THE OFFENSE ALLEGED TO BE
25 CONTRARY TO THE STATUTE IN WHICH SUCH CASE MAY BE

1 PROVIDED.

2 SO OUR POSITION IS THAT STATUTE DOES NOT SET
3 FORTH THE CORRECT SECTION OF WHAT HE HAS ALLEGEDLY BEEN
4 CHARGED WITH; THEREFORE, IT'S DEFECTIVE AND WE MOVE TO
5 QUASH THAT PARTICULAR COUNT OF THE INDICTMENT.

6 IN REGARDS TO COUNT 1, THE LANGUAGE IN THE
7 INDICTMENT INDICATES THAT HE DID TAKE AWAY, TAKE AND
8 CARRY AWAY FROM THE PERSON OF PAULA AYERS PROPERTY AND
9 AN UNKNOWN AMOUNT OF CASH.

10 JUDGE, MY UNDERSTANDING OF THE REQUISITE
11 ELEMENTS OF A ARMED ROBBERY INDICATES PERSONAL PROPERTY
12 OF ANOTHER. HE DIDN'T TAKE PROPERTY FROM PAULA, HE TOOK
13 ITEMS. IT'S OUR POSITION THAT THAT PORTION OF THE
14 INDICTMENT IS ALSO DEFECTIVE AND WE MOVE TO QUASH. THE
15 ALLEGED FACTS, AS FAR AS I KNOW, HE TOOK MONEY FROM THE
16 CASH REGISTER OWNED BY THE STORE, NOT PAULA AYERS.

17 AND IT'S OUR POSITION THAT IN ORDER FOR IT
18 TO BE PROPER THEY NEED TO ALLEGE THAT PERSONAL PROPERTY
19 FROM THIS PARTICULAR WITNESS HAD BEEN TAKEN AND THAT WAS
20 NOT THE FACTS.

21 MS. HUEY: YOUR HONOR, MAY IT PLEASE THE
22 COURT?

23 THE COURT: MADAM SOLICITOR?

24 MS. HUEY: YOUR HONOR, AS YOU WELL KNOW, THE
25 PURPOSE OF THE INDICTMENT IS SIMPLY TO PUT THE DEFENDANT

1 ON NOTICE OF THE CRIMES HE'S BEEN CHARGED WITH. IN
2 FACT, THIS IS NOT A PIECE OF EVIDENCE, IT WILL NOT GO
3 BACK TO THE JURY UNLESS YOU THINK IT SHOULD, YOUR HONOR.
4 I BELIEVE THAT WE HAVE COMPLIED WITH THAT IN PUTTING THE
5 DEFENDANT ON NOTICE.

6 SPECIFICALLY AS TO THE VICTIM IN THIS CASE,
7 PAULA AYERS, SHE WAS AN EMPLOYEE OF GOODWILL. THE
8 PROPERTY BEING THE CASH IN THE CASH REGISTER WAS IN HER
9 CONTROL AT THE TIME IT WAS TAKEN FROM HER. SHE WAS
10 LITERALLY STANDING IN FRONT OF THE CASH REGISTER WHEN HE
11 BASICALLY PUSHED HER OUT OF THE WAY AND GRABBED THE
12 MONEY FROM THE REGISTER, SO IT WAS IN HER CONTROL, YOUR
13 HONOR. AGAIN, AS AN EMPLOYEE OF THE GOODWILL STORE AND
14 AGAIN, THE INDICTMENT SEEKS TO PUT THE DEFENDANT ON
15 NOTICE FOR THAT.

16 IN ADDITION, THE POSSESSION OF KNIFE DURING
17 THE COMMISSION OF VIOLENT CRIME, AGAIN HE HAS BEEN PUT
18 ON NOTICE THAT HE DID POSSESS A KNIFE DURING THE
19 COMMISSION OF THE ARMED ROBBERY, WHICH IS MENTIONED, TO
20 WIT, ARMED ROBBERY, WHICH AGAIN WAS CITED IN COUNT 1.

21 AND, YOUR HONOR, I DO NOT HAVE MY CODE BOOK
22 IN FRONT OF ME, BUT THAT MAY VERY WELL BE A
23 TYPOGRAPHICAL ERROR. BUT NONETHELESS, HE'S BEEN PUT ON
24 NOTICE FOR THESE CRIMES.

25 THE COURT: WELL, AS FAR AS THE ARMED

1 ROBBERY, IT'S CLEAR THAT THE OWNER WAS THE GOODWILL
2 STORE BECAUSE EVEN IN THE INDICTMENT IT SAYS AN EMPLOYEE
3 OF THE GOODWILL STORE; HOWEVER, PAULA AYERS WAS IN
4 POSSESSION OR OWNER OF THE PROPERTY, REPRESENTATIVE, AND
5 I FIND THAT COUNT 2 IS PROPER, PROPERLY ALLEGED.

6 COUNT 2, THE ONLY THING THAT CONCERNS ME
7 ABOUT IT IS, IS IT A TYPOGRAPHICAL ERROR OR NOT?
8 READING IT, IN PART, THAT JEFFERY S. EVANS DID IN
9 ANDERSON COUNTY, ON OR ABOUT MAY THE 24TH, 2007, POSSESS
10 A KNIFE DURING THE COMMISSION OF A VIOLENT CRIME; TO
11 WIT, ARMED ROBBERY, IN VIOLATION OF SECTION
12 16-3-10/16-3-20 IS THE MURDER SECTION.

13 I MIGHT FURTHER NOTE THAT, AS POINTED OUT BY
14 MR. POTTER, THAT HAS THE CUSTOMARY LANGUAGE, WHICH IS
15 AGAINST THE PEACE AND DIGNITY OF THE STATE CONTRARY TO
16 THE STATUTE IN SUCH CASE MAY BE PROVIDED, THAT
17 ALLEGATION IS VIOLENT CRIME IS; TO WIT, ARMED ROBBERY.
18 AND THE LANGUAGE AGAINST THE PEACE AND DIGNITY OF THE
19 STATE AND CONTRARY, QUOTE, IN THE STATUTE IN SUCH CASE
20 MAY BE PROVIDED IS HARD LANGUAGE, MEANING IT'S NOT CASE
21 LAW, IT WAS STATUTORY LAW. AND AGAIN, THE STATUTE IN
22 THIS CASE WOULD BE THE ARMED ROBBERY. AND INASMUCH AS
23 YOU ALLEGE SOME OTHER CODE SECTION WHICH APPARENTLY IS
24 NOT AT ISSUE HERE, IT'S NOT PUT AT ISSUE, IT'S
25 SUPERFLUOUS AND WITHOUT ANY EFFECT AS FAR AS THE NOTICE

1 REQUIREMENT.

2 I DO WANT TO FIND OUT WHAT STATUTE IN SUCH
3 CASE MAY PROVIDE FOR ARMED ROBBERY, YOU FIND THAT
4 SECTION -- THE INDICTMENT ALLEGES THAT THE VIOLENT CRIME
5 IS, TO WIT, ARMED ROBBERY. ANYTHING ELSE IS SUPERFLUOUS
6 OR NULLIFIED.

7 MOTIONS TO QUASH THE INDICTMENTS AS TO COUNT
8 1, DENIED; AS TO COUNT 2, DENIED. ALL RIGHT. YOU MAY
9 PROCEED.

10 I WILL NOTE THAT THE REFERENCE TO COAT
11 SECTION 16-3-10/16-3-20 IS IRRELEVANT AND BE STRICKEN.

12 MS. HUEY: THANK YOU, JUDGE.

13 MR. POTTER: THANK YOU, YOUR HONOR.

14 THE COURT: YES, SIR. ALL RIGHT. THIS ONE
15 IS GOING FORWARD AT 3:00?

16 MS. HUEY: YES, SIR, YOUR HONOR.

17 THE COURT: VERY GOOD. HAVE YOUR WITNESSES
18 READY.

19 MR. POTTER: DOWNSTAIRS, YOUR HONOR?

20 THE COURT: DOWNSTAIRS IN THE COURTROOM ON
21 THE THIRD FLOOR. VERY GOOD.

22 (A LUNCHEON RECESS OCCURRED FROM 1:32 P.M.
23 UNTIL 2:00 P.M.)
24
25

AFTERNOON PROCEEDINGS

(WHEREUPON, THE TRIAL IN THE CASE OF THE
STATE OF SOUTH CAROLINA V. JEFFERY S. EVANS
RESUMED AT APPROXIMATELY 2:38 P.M.)

(STATE'S EX. # 3-A, PHOTO, WAS MARKED FOR
IDENTIFICATION.)

(STATE'S EX. # 3-B, PHOTO, WAS MARKED FOR
IDENTIFICATION.)

(STATE'S EX. # 3-C, PHOTO, WAS MARKED FOR
IDENTIFICATION.)

(STATE'S EX. # 3-D, PHOTO, WAS MARKED FOR
IDENTIFICATION.)

(STATE'S EX. # 3-E, PHOTO, WAS MARKED FOR
IDENTIFICATION.)

(STATE'S EX. # 3-F, PHOTO, WAS MARKED FOR
IDENTIFICATION.)

(STATE'S EX. # 3-G, PHOTO, WAS MARKED FOR
IDENTIFICATION.)

THE COURT: I UNDERSTAND THE JURY IS HERE.
IS THERE ANYTHING FROM THE STATE BEFORE WE BRING THE
JURY BACK?

MS. HUEY: JUST REAL QUICKLY, JUDGE, JUST TO
PUT A COUPLE THINGS ON THE RECORD. I SHOULD HAVE DONE
THIS EARLIER, I APOLOGIZE.

1 THE DEFENDANT WAS EVALUATED TOWARD THE
2 BEGINNING OF JULY OF THIS YEAR, YOUR HONOR, AND HE WAS
3 FOUND TO BE COMPETENT AS WELL AS HE SHOULD HAVE KNOWN
4 THE DIFFERENCE BETWEEN RIGHT OR WRONG, AND I WOULD LIKE
5 TO MAKE THE EVALUATION A COURT'S EXHIBIT.

6 THE COURT: VERY WELL.

7 (COURT'S EX. # 1, DEFENDANT'S MENTAL
8 EVALUATION, WAS MARKED FOR IDENTIFICATION.)

9 MS. HUEY: (HANDING).

10 THE COURT: ALL RIGHT. ANYTHING FROM THE
11 DEFENDANT ON THE QUESTION OF THE MENTAL EVALUATION?

12 MR. POTTER: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT. THE COURT HAS
14 REVIEWED THE EVALUATION SERVICE OF THE FORENSICS
15 DIVISION EVALUATION DATED JULY THE 16TH, 2008, BY THE
16 SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH AS TO THE
17 DEFENDANT, WHICH REFLECTS THAT IN THEIR OPINION HE IS
18 AWARE THAT THE CRIMINAL RESPONSIBILITY AS WELL AS HE HAS
19 THE CAPACITY TO CONFORM AND TO...

20 BASED ON MEDICAL EVIDENCE AND MY PERSONAL
21 OBSERVATION OF THE DEFENDANT, I DO FIND THE DEFENDANT IS
22 INTELLIGENT AND WELL IN CONTROL OF HIS FACULTIES AND
23 THEREFORE COMPETENT TO STAND TRIAL.

24 ALL RIGHT. YOU MAY PROCEED.

25 MS. HUEY: THAT'S ALL I HAVE, JUDGE.

1 **THE COURT:** ANYTHING FROM THE DEFENDANT
2 BEFORE WE PROCEED?

3 **MR. POTTER:** NO, YOUR HONOR.

4 **THE COURT:** ASK THE JURY TO JOIN US, PLEASE.
5 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
6 3:04 P.M.)

7 **THE COURT:** LET THE RECORD REFLECT THE JURY
8 AND ALTERNATE ARE IN THE JURY-BOX.

9 (WHEREUPON, THE JURY WAS SWORN.)
10 PRELIMINARY INSTRUCTIONS BY COURT TO JURY:

11 **THE COURT:** MADAM FORELADY, LADIES AND
12 GENTLEMEN OF THE JURY, I'M SURE THAT EACH OF YOU NOW
13 FULLY APPRECIATES THAT THE COURT OF GENERAL SESSIONS FOR
14 ANDERSON COUNTY EXISTS FOR THE PURPOSE OF RESOLVING
15 QUESTIONS OF ALLEGED CRIMINAL CONDUCT ARISING BETWEEN
16 THE STATE OF SOUTH CAROLINA AND THE DEFENDANT.

17 IT IS A GUARANTEED RIGHT OF EVERY CITIZEN
18 THAT A CHARGE OF CRIMINAL CONDUCT BE CONDUCTED AND
19 PRESENTED IN OPEN COURT ACCORDING TO CERTAIN RULES OF
20 PROCEDURE. THE STATE HAS NOT ONLY AN EQUAL RIGHT BUT
21 THE DUTY TO PRESENT A CHARGE OF CRIMINAL CONDUCT IN OPEN
22 COURT ACCORDING TO THE SAME RULES OF PROCEDURE. EACH OF
23 THE PARTIES, THEREFORE, BOTH THE STATE AND THE
24 DEFENDANTS, THEN, HAVE AN EQUAL RIGHT TO THE OPPORTUNITY
25 OF THIS JUDICIAL PROCEEDING AND TO HAVE YOU, AS THE

1 JURY, SELECTED AND NOW SWORN FOR THE TRIAL OF THIS CASE.

2 ONE OF THE MOST IMPORTANT ASPECTS OF YOUR
3 DUTY AS THE JURY LIES ESSENTIALLY IN THE OATH THAT YOU
4 HAVE NOW TAKEN, TO WELL AND TRULY TRY AND DETERMINE THE
5 FACTS IN THIS CASE. THAT OATH IN A VERY ESSENTIAL WAY
6 SAYS YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS CASE.

7 OBVIOUSLY, ANY CASE TRIED IN COURT WILL
8 INVOLVE A QUESTION ABOUT WHAT HAPPENED OR HOW SOMETHING
9 CAME TO HAPPEN, OR WHOM, IF ANY, DID ANYTHING IN A
10 PARTICULAR OCCURRENCE OR CIRCUMSTANCE. FROM THIS POINT
11 FORWARD, THEN, NO ONE CONCERNED WITH THIS TRIAL HAS THE
12 RIGHT TO DECIDE ANY QUESTION OF FACT IN THIS TRIAL OR
13 THE TRUTH OF IT EXCEPT YOU, THE JURY. THE FACTS THEN
14 WILL BE FOR YOUR RESOLUTION AND YOUR DECISION AND YOURS
15 ALONE. AND AFTER YOU HEAR ALL OF THE EVIDENCE IN THE
16 CASE, THEN IT WILL BE YOUR DUTY BY JUDICIAL AND JOINT
17 DISCUSSIONS TO DETERMINE THE TRUTH OF THIS CASE BY
18 DECIDING THE WEIGHT AND THE BELIEVABILITY OF EACH PART
19 OF THE EVIDENCE AND BY APPLYING THE LAW OF THE CASE
20 THERETO.

21 NOW, AS TRIAL JUDGE I AM THE JUDGE OF THE
22 LAW IN THE CASE. IT IS ALSO MY RESPONSIBILITY, AMONG
23 OTHER DUTIES, TO PRESIDE OVER THIS TRIAL, TO RULE ON THE
24 ADMISSIBILITY OF EVIDENCE OFFERED DURING THE PROGRESS OF
25 THE TRIAL, AND TO STATE TO YOU, THE JURY, THE LAW

1 APPLICABLE TO THE CASE.

2 THE CONSTITUTION OF SOUTH CAROLINA MANDATES
3 THAT I AS THE TRIAL JUDGE CANNOT DIRECTLY OR INDIRECTLY
4 COMMENT ABOUT THE FACTS OF THIS CASE. THE PROCESS OF A
5 VERDICT, THEN, IS SIMPLY THAT YOU, THE JURY, FIRST
6 DETERMINE WHAT IS THE TRUTH OF THE FACTS, AND THEN APPLY
7 TO THAT TRUE STATE OF FACTS THAT PRINCIPLE OF LAW
8 APPLICABLE, AND BY THAT PROCESS DETERMINE AND REPORT TO
9 THE COURT YOUR FINAL VERDICT IN THE CASE, SPEAKING THE
10 TRUTH OF THE CASE AS YOU DETERMINE IT.

11 NOW I WILL MORE FULLY AND COMPLETELY STATE
12 TO YOU THE PRINCIPLES OF LAW APPLICABLE TO THE ISSUES IN
13 THIS CASE BEFORE THE CASE IS SUBMITTED TO YOU FOR YOUR
14 DECISION. HOWEVER, THERE ARE CERTAIN PRINCIPLES OF LAW
15 APPLICABLE TO THE FRAMEWORK OF EVERY CASE IN GENERAL
16 SESSIONS COURT.

17 FIRST, THE DEFENDANT HAS ENTERED A PLEA OF
18 NOT GUILTY TO THE CHARGES CONTAINED IN THE INDICTMENT.
19 NOW, THE INDICTMENT IN THIS CASE IS NOT EVIDENCE. IT IS
20 SIMPLY THE WRITTEN INSTRUMENT THAT CONTAINS THE CHARGE
21 OR CHARGES AGAINST THE DEFENDANT, AND IT SERVES AS THE
22 FORMAL DOCUMENT BY WHICH THE CASE IS PROCESSED INTO THIS
23 COURT.

24 THE PLEA OF NOT GUILTY PLACES UPON THE STATE
25 THE BURDEN OF PROOF IN THIS CASE. AS TO WHAT IS MEANT

1 BY THE BURDEN OF PROOF, THE DEFENDANT IS PRESUMED, IN
2 LAW, INNOCENT OF ALL CHARGES CONTAINED IN THE
3 INDICTMENT. THE BURDEN OF PROOF REQUIRES THE STATE TO
4 PROVE GUILT BEYOND A REASONABLE DOUBT, AND, THEREFORE,
5 CONSISTENT WITH THAT BURDEN, THE DEFENDANT OR THE
6 ACCUSED PARTY SHALL BE PRESUMED TO BE INNOCENT, AND THAT
7 PRESUMPTION OF INNOCENCE IS SUFFICIENT TO COMPEL A
8 VERDICT OF NOT GUILTY OR A VERDICT OF ACQUITTAL UNLESS
9 YOU, THE JURY, CONCLUDE THAT THE STATE HAS SATISFIED ITS
10 OBLIGATION TO PROVE THE DEFENDANT GUILTY BEYOND A
11 REASONABLE DOUBT. NOW, THE TERM REASONABLE DOUBT MEANS
12 THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON
13 TO HESITATE TO ACT.

14 NOW, THIS CASE WILL BE OPENED BY THE
15 SOLICITOR, AFTER WHICH THE SAME OPPORTUNITY WILL BE
16 AFFORDED TO THE DEFENDANT TO MAKE AN OPENING STATEMENT.
17 WHEN ALL THE EVIDENCE HAS BEEN RECEIVED BY THE COURT,
18 THEN COUNSEL FOR THE STATE AND COUNSEL FOR THE DEFENDANT
19 WILL STATE TO YOU, THE JURY, THEIR RESPECTIVE POSITIONS,
20 AFTER WHICH THE COURT WILL MORE FULLY STATE THE
21 APPLICABLE LAW IN THE CASE.

22 OBVIOUSLY, ALL PARTS OF THE CASE ARE
23 IMPORTANT. YOU DO NOT KNOW WHICH WITNESS IN A CASE WILL
24 MOST IMPRESS YOU, WHETHER THE FIRST WITNESS OR THE LAST
25 WITNESS. IN REACHING YOUR FINAL CONCLUSION YOU WILL

1 NEED THE GUIDANCE AND THE JUDGMENT OF OTHER JURORS. YOU
2 WILL NEED THE GUIDANCE OF THE PRINCIPLES OF LAW THAT
3 WILL BE STATED TO YOU BY THE COURT.

4 FOR ALL THESE REASONS, THEN, IF WE HAVE ANY
5 RECESS PERIODS WHEN YOU RETIRE TO THE JURY ROOM OR
6 DURING AN OVERNIGHT OR MEAL RECESS, I INSTRUCT YOU THAT
7 YOU MUST NOT UNDERTAKE TO DISCUSS THIS CASE AMONG
8 YOURSELVES UNTIL THE CASE IS FINALLY GIVEN TO YOU FOR
9 YOUR DELIBERATION. NOR ARE YOU TO DISCUSS THIS CASE
10 WITH ANYONE OR PERMIT ANYONE TO DISCUSS THE CASE WITH
11 YOU. IF SOMEONE SHOULD TRY TO DO SO, YOU SHOULD REPORT
12 THEM AND I'LL TAKE THE APPROPRIATE ACTION.

13 NOW, THERE ARE A FEW OTHER THINGS I NEED TO
14 MENTION BEFORE WE BEGIN. AS I SAID EARLIER, ALTHOUGH I
15 AM THE ONLY PERSON WHO CAN TELL YOU WHAT THE LAW IS, YOU
16 AND YOU ALONE ARE THE ONLY ONES WHO CAN DETERMINE THE
17 FACTS. I DO NOT HAVE THE RIGHT TO INDICATE HOW I MAY
18 FEEL ABOUT THE EVIDENCE PRESENTED, AND THROUGHOUT THE
19 TRIAL MY INTENTIONS WILL BE TO ACT IMPARTIALLY TOWARDS
20 EACH PARTY.

21 SECOND, FROM TIME TO TIME AN ATTORNEY MAY
22 OBJECT TO SOME BIT OF TESTIMONY OR EVIDENCE WHICH THE
23 OTHER SIDE IS SEEKING TO PRESENT. AS IN SPORTS OR
24 BUSINESS OR ANY OTHER STRUCTURED ACTIVITY, THERE ARE
25 CERTAIN RULES THAT BOTH SIDES MUST OBEY IN PRESENTING

1 EVIDENCE. THESE RULES HAVE A DEFINITE PURPOSE. THEY
2 ENSURE THAT THE INFORMATION THAT YOU RECEIVE IS THE MOST
3 TRUSTWORTHY AND RELIABLE EVIDENCE AVAILABLE.

4 AN OBJECTION IS THE PROCEDURE WE USE TO CALL
5 A POSSIBLE VIOLATION OF THE RULES TO THE COURT'S
6 ATTENTION, AND FOR THIS REASON YOU SHOULD NOT HOLD AN
7 ATTORNEY'S OBJECTION AGAINST HIS OR HER CLIENT, NOR
8 SHOULD YOU CONCLUDE FROM MY RULING THAT I FAVOR ONE SIDE
9 OR THE OTHER.

10 FINALLY, I WOULD ASK YOU PAY THE CLOSEST
11 ATTENTION TO THE EVIDENCE PRESENTED TO YOU.

12 AND I WILL ALSO ASK YOU THAT YOU DO NOT TAKE
13 NOTES, FOR IF THE NOTE TAKER MAKES AN ERROR, THOSE NOTES
14 WOULD BE MORE DETRIMENTAL THAN HELPFUL DURING
15 DELIBERATIONS. THE REASON I SUGGEST THAT JURORS NOT
16 TAKE NOTES, IT HAS BEEN MY EXPERIENCE THAT IF WE TAKE
17 NOTES, WE HAVE A TENDENCY TO CONCENTRATE ON THE NOTE.
18 IN OTHER WORDS, WE WANT TO BE SURE THAT WE WRITE DOWN
19 WHAT WE THINK WE HEAR, AS WELL AS THE SPELLING AND EVEN
20 IN THE SYNTAX OR THE COMPOSITION OF THE NOTE. IN DOING
21 THAT, WE ARE DISTRACTED FROM WHAT IS ACTUALLY HAPPENING
22 IN THE COURTROOM AT THE TIME.

23 IN OTHER WORDS, YOU MUST MAKE YOUR DECISION
24 BASED SOLELY AND ONLY ON THE SWORN TESTIMONY FROM THE
25 WITNESS STAND AND THE EXHIBITS AND OTHER EVIDENCE

1 INTRODUCED IN THIS COURTROOM, SO YOU NEED TO CONCENTRATE
2 ON WHAT'S HAPPENING AND NOT TRY TO RECORD WHAT YOU THINK
3 YOU HEARD OR HAD OCCURRED. AND IN THAT WAY, IF YOU HAVE
4 A QUESTION ABOUT IT, THEN USE THE 12 COLLECTIVE
5 RECOLLECTIONS AS TO WHAT OCCURRED.

6 I SAY THIS BECAUSE IF YOU MAKE AN ERROR IN
7 THE NOTE, I USE AN EXAMPLE IF YOU JUST DROP ONE WORD OR
8 MISS ONE WORD, THE WORD "NOT," IT CHANGES ENTIRELY THE
9 MEANING OF THE STATEMENT OR WHAT YOU HAVE WRITTEN DOWN.
10 SO, THEREFORE, I WOULD SUGGEST CONCENTRATE ON WHAT IS
11 ACTUALLY HAPPENING AT THE TIME, AND THEN -- AS IT DOES
12 OCCUR.

13 NOW, HAVING SAID THAT I SUGGEST YOU NOT TAKE
14 NOTES. I DO TAKE NOTES. THAT'S NOT ONE OF THESE
15 THINGS, DO AS I SAY AND NOT AS I DO. YOU AND I HAVE
16 DIFFERENT FUNCTIONS IN THIS COURTROOM. YOU AND YOU
17 ALONE ARE THE ONLY ONES THAT CAN DETERMINE THE VALUE,
18 THE WEIGHT OF THE TESTIMONY AND EVIDENCE.

19 I'M NOT CONCERNED ABOUT THE VALUE OF THE
20 EVIDENCE. I'M ONLY CONCERNED WITH WHETHER OR NOT
21 SOMETHING HAS OCCURRED DURING THE COURSE OF A TRIAL
22 THAT'S NECESSARY AND INVOLVING PROCEDURES IN LAW; SO,
23 THEREFORE, I'M JOTTING DOWN WHAT HAPPENS, NOT THE
24 SIGNIFICANCE OF IT IN ANY WAY. THAT IS FOR YOU AND YOU
25 ALONE TO DECIDE. THE TIME-TESTED SYSTEM IS FOR EACH OF

1 YOU TO LISTEN CAREFULLY, AND I'M SURE THAT YOU WILL DO
2 THAT.

3 WE WILL NOW BEGIN THE TRIAL WITH THE OPENING
4 STATEMENT BY THE STATE, AND I RECOGNIZE THE SOLICITOR.

5 MS. HUEY: THANK YOU, JUDGE, MAY IT PLEASE
6 THE COURT.

7 THE COURT: YES, MA'AM.

8 OPENING STATEMENT ON BEHALF OF THE STATE:

9 MS. HUEY: ON MAY 24TH, 2007, THE DEFENDANT,
10 JEFFERY SCOTT EVANS, ENTERED A GOODWILL STORE LOCATED AT
11 2901 SOUTH MAIN STREET HERE IN ANDERSON COUNTY. HE
12 WALKED IN, PICKED UP SOME JEANS OR SOMETHING, PUT IT
13 ACROSS HIS ARM, AND PRETENDED TO SHOP LIKE HE WAS ANY
14 OTHER CUSTOMER IN THE STORE.

15 BUT WHEN PAULA AYERS WAS MAKING A
16 TRANSACTION AT HER REGISTER -- SHE WORKS AT THE GOODWILL
17 STORE -- WHEN HER REGISTER DRAWER CAME OPEN, THE
18 DEFENDANT CAME UP, PUT A KNIFE TO HER SIDE AND SAID,
19 "GIVE ME THE MONEY OR I'LL CUT YOU."

20 HE THEN GRABBED MONEY OUT OF THE REGISTER,
21 FLED OUT THE FRONT DOOR OF THE STORE, DROPPING THOSE
22 PANTS THAT HE HAD BEEN HOLDING IN HIS ARMS, AND FLED THE
23 SCENE.

24 AND LADIES AND GENTLEMEN, THAT IS WHY WE ARE
25 ALL HERE TODAY. THIS DEFENDANT, JEFFERY SCOTT EVANS,

1 HAS BEEN CHARGED WITH ARMED ROBBERY AND THE POSSESSION
2 OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME.

3 NOW, I'M THE PROSECUTOR IN THIS CASE AND I
4 MUST PROVE TO YOU BEYOND A REASONABLE DOUBT THAT THIS
5 DEFENDANT, JEFFERY SCOTT EVANS, IS, IN FACT, GUILTY OF
6 THE CRIMES HE IS CHARGED WITH. NOW, IN ORDER TO DO
7 THAT, I MUST PROVE SEVERAL ELEMENTS TO YOU.

8 ARMED ROBBERY, FOR INSTANCE. IT CAN BE
9 BROKEN DOWN INTO THE FELONIOUS TAKING OF ANOTHER
10 PERSON'S PROPERTY BY FORCE, THREAT, OR INTIMIDATION,
11 WHILE ARMED WITH A DEADLY WEAPON.

12 AND THEN THE POSSESSION OF A WEAPON DURING
13 THE COMMISSION OF A VIOLENT CRIME IS A WEAPON WHILE HE
14 COMMITTED THIS ARMED ROBBERY.

15 SO AGAIN, THE DEFENDANT WAS ARMED WITH A
16 KNIFE WHEN HE TOOK MONEY FROM THE CASH REGISTER WHERE
17 PAULA AYERS WAS ATTENDING.

18 THOSE ARE THE ELEMENTS THAT I HAVE TO PROVE
19 TO YOU BEYOND A REASONABLE DOUBT. NOW, IN ORDER TO DO
20 THAT, YOU WILL HEAR TESTIMONY FROM THIS WITNESS STAND,
21 AND THE MAJORITY OF THIS EVIDENCE IN THIS CASE IS GONNA
22 COME FROM RIGHT HERE, FROM THIS WITNESS STAND.
23 WITNESSES TELLING YOU WHAT THEY SAW, WHAT THEY HEARD,
24 THAT SORT OF THING. ADDITIONALLY, THERE WILL BE PHOTOS,
25 PHOTOS OF THE STORE, PHOTOS OF THE WEAPON, SURVEILLANCE

1 PHOTOS TAKEN FROM THE GOODWILL STORE, AND A FEW OTHER
2 THINGS.

3 I ASK YOU TO LISTEN TO THE ENTIRE CASE, AND
4 AT THE CLOSE OF THIS CASE I'M GONNA ASK YOU TO FIND THIS
5 DEFENDANT GUILTY OF ARMED ROBBERY AND POSSESSION OF A
6 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, AS
7 CHARGED. THANK YOU.

8 THE COURT: MR. POTTER?

9 MR. POTTER: THANK YOU, JUDGE. IF IT
10 PLEASES THE COURT?

11 THE COURT: YES, SIR.

12 OPENING STATEMENT ON BEHALF OF DEFENDANT:

13 MR. POTTER: I LEARNED SOMETHING INTERESTING
14 THIS WEEKEND. I GOT TWO CHILDREN; I GOT A NINE-YEAR-OLD
15 AND A SIX-YEAR-OLD. AND THEY WERE IN THE HOUSE AND I
16 WAS IN THE KITCHEN DOING SOMETHING, AND THEY WERE WIDE
17 OPEN, THEY WERE HAVING FUN, AS CHILDREN DO.

18 SOMETHING FELL AND BROKE, AND I WENT INTO
19 THE LIVING ROOM TO SEE WHAT HAPPENED, AND I SEE MY
20 NINE-YEAR-OLD AND I SEE MY SIX-YEAR-OLD. AND MY
21 SIX-YEAR-OLD IS ALWAYS, SHE, SHE'S ALWAYS GETTING IN
22 TROUBLE. THE NINE-YEAR-OLD, HE'S A GOOD BOY, HE DOESN'T
23 CAUSE ANY PROBLEMS. THE SIX-YEAR-OLD, SHE'S ALWAYS
24 THERE IF THERE'S SOMETHING GOING WRONG.

25 I SAW THAT BROKEN LAMP AND I LOOKED AT HER

1 AND I LAID INTO HER. I LET HER HAVE IT. SHE LOOKED UP
2 AT ME AND SAID, "DADDY, I DIDN'T DO THAT."

3 AND I FOUND OUT LATER THAT SHE DIDN'T DO IT.
4 I FOUND OUT LATER SHE DIDN'T DO IT.

5 LADIES AND GENTLEMEN, JEFFERY EVANS IS
6 TELLING YOU TODAY HE IS NOT GUILTY OF THIS CHARGE, OF
7 WHAT THE STATE SAYS HE DID. AND THAT IS A SUBSTANTIAL
8 BURDEN THE STATE HAS TO PROVE TO YOU: BEYOND A
9 REASONABLE DOUBT.

10 AND WE DO THAT BECAUSE WE'RE MAKING A DEAL
11 WITH YOU ALL. WE'RE NOT ASKING YOU TO COME IN HERE AND
12 FIND A FELLOW CITIZEN GUILTY JUST ON SOMETHING,
13 CONJECTURE, SOMETHING YOU THINK HAPPENED. WE ARE
14 BRINGING YOU ALL IN HERE AND MAKING THE DEAL THAT WE'RE
15 GONNA PROVE BEYOND A REASONABLE DOUBT THAT HE COMMITTED
16 THESE CRIMES.

17 AND THE STATE IS GONNA DO THAT WITHOUT
18 HAVING ANY OF THE WITNESSES POINT TO JEFFERY IN THIS
19 COURTROOM. ONLY TO THIS STANDARD THEY CAN PROVE THEIR
20 CASE.

21 **THE COURT:** ALL RIGHT, SOLICITOR, YOU CAN
22 CALL YOUR FIRST WITNESS.

23 **MS. HUEY:** THE STATE CALLS PAULA AYERS TO
24 THE STAND.

25 (WHEREUPON, THE WITNESS WAS SWORN BY THE

1 CLERK.)

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

4 THE WITNESS: MY NAME IS PAULA ANNETTE
5 PEPPER AYERS, A-Y-E-R-S.
6 WHEREUPON,

7 PAULA AYERS,
8 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
9 FOLLOWS:

10 DIRECT EXAMINATION BY MS. HUEY:

11 Q. MS. AYERS, HOW OLD ARE YOU?

12 A. I'M 44.

13 Q. HOW FAR DID YOU GO IN SCHOOL?

14 A. I GRADUATED HIGH SCHOOL AND I HAVE ONE YEAR OF
15 BUSINESS COLLEGE.

16 Q. WHERE DO YOU CURRENTLY WORK?

17 A. GOODWILL.

18 Q. HOW LONG HAVE YOU BEEN AT GOODWILL?

19 A. SIX YEARS.

20 Q. WERE YOU WORKING THERE IN MAY OF 2007?

21 A. YES, I WAS.

22 Q. AND WHICH PARTICULAR STORE WERE YOU WORKING?

23 A. THE ONE ON SOUTH MAIN.

24 Q. ALL RIGHT. AND WHERE WOULD YOU SAY THAT IS?

25 A. AT 2901 SOUTH MAIN STREET.

1 Q. AND IS THAT THE CORNER -- DO YOU KNOW THE
2 INTERSECTION THERE?

3 A. IT'S 28 AND SOUTH MAIN.

4 Q. NOW, DRAWING YOUR ATTENTION TO MAY 24TH OF 2007,
5 WERE YOU WORKING ON THAT PARTICULAR DAY?

6 A. YES, I WAS.

7 Q. AND WHAT WERE YOUR HOURS THAT DAY, DO YOU
8 REMEMBER?

9 A. I WAS WORKING FROM 1:30 TO 10:00.

10 Q. AND IS 10:00 CLOSING?

11 A. NO, 9:00 IS CLOSING.

12 Q. OKAY. AND SO WHY WOULD YOU HAVE TO STAY UNTIL
13 10:00?

14 A. WE HAVE TO STAY AN HOUR AFTER TO MAKE SURE THE
15 STORE IS CLEANED UP AND EVERYTHING.

16 Q. BUT 9:00 IS WHEN THE STORE ACTUALLY CLOSES?

17 A. YES, MA'AM.

18 Q. WERE YOU AWARE ABOUT HOW MANY PEOPLE WERE IN THE
19 STORE CLOSE TO CLOSING TIME?

20 A. THERE WERE A VERY MANY, THERE WERE A GOOD MANY
21 PEOPLE.

22 Q. AND WHERE WAS YOUR PARTICULAR JOB THAT EVENING?

23 A. I WAS RUNNING THE REGISTER.

24 Q. AND WHAT DO YOU DO WHEN YOU WORK THE REGISTER?

25 A. YOU CHECK PEOPLE OUT AND TAKE THEIR MONEY.

1 Q. OKAY. AND SO THAT'S WHAT YOU WERE DOING THIS
2 NIGHT?

3 A. YES.

4 Q. NOW, THE REGISTER WHERE YOU WERE WORKING, WHERE
5 IS THAT IN RELATION TO THE FRONT DOOR?

6 A. IT'S DIRECTLY NEXT TO THE FRONT DOOR.

7 Q. NOW, MS. AYERS, WHAT, IF ANYTHING, HAPPENED TO
8 YOU WHILE YOU WERE WORKING THAT REGISTER THAT EVENING?

9 A. OKAY. IT WAS A QUARTER TILL NINE. WE WERE
10 GETTING READY TO CLOSE. AND WE FINISHED UP CHECKING OUT
11 THE LAST FEW CUSTOMERS, CUSTOMERS IN THE STORE.

12 AND I WAS WAITING ON A CUSTOMER. AND WHEN I TOLD
13 HER HER AMOUNT. AND SHE GAVE ME A 20, MY DRAWER CAME
14 OPEN WHEN I HIT THE CASH REGISTER, AND ---

15 Q. LET ME STOP YOU RIGHT THERE. SO A CUSTOMER WAS
16 PAYING YOU, THEN?

17 A. YES, MA'AM.

18 Q. OKAY. AND WAS SHE PAYING IN CASH; IS THAT RIGHT?

19 A. YES.

20 Q. SO ONCE THE CASH TRANSACTION -- DO YOU HAVE TO
21 ENTER THAT INTO THE COMPUTER?

22 A. YES. IT CAME THROUGH THE REGISTER. WHEN YOU
23 ENTER THE AMOUNT OF CASH, THE DRAWER COMES OPEN.

24 Q. AND SO DOES IT ONLY COME OPEN DURING A
25 TRANSACTION LIKE THAT?

1 A. RIGHT, ONLY IF THEY PAY IN CASH.

2 Q. OKAY. AND SO THE REGISTER, IN FACT, CAME OPEN?

3 A. YES, IT DID.

4 Q. ALL RIGHT. SO THEN WHAT WAS THE NEXT THING YOU
5 REMEMBER HAPPENING?

6 A. OKAY. I WAS FIXING TO GIVE THE LADY HER CHANGE,
7 AND THE DEFENDANT ---

8 MR. POTTER: JUDGE, I'M GOING TO OBJECT AND
9 I NEED TO TAKE SOMETHING UP OUT OF THE PRESENCE.

10 THE COURT: ALL RIGHT. YOU HAVE AN
11 OBJECTION TO TAKE UP NOW?

12 MR. POTTER: SIR?

13 THE COURT: DID YOU SAY YOU HAVE AN
14 OBJECTION TO TAKE UP NOW?

15 MR. POTTER: YES, SIR.

16 THE COURT: MADAM FORELADY, LADIES AND
17 GENTLEMEN OF THE JURY, I'M GOING TO ASK YOU TO RETIRE TO
18 THE JURY ROOM JUST FOR A MOMENT. I NEED TO TAKE SOME
19 MATTERS UP WITH THE ATTORNEYS. AGAIN, DO NOT UNDERTAKE
20 DISCUSSION OF THE CASE AMONG YOURSELVES IN ANY WAY. IF
21 YOU WOULD, PLEASE, JUST RETIRE TO THE JURY ROOM.

22 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
23 3:23 P.M.)

24 THE COURT: MR. POTTER?

25 MR. POTTER: JUDGE, I WAS INFORMED BY THE

1 STATE THAT NONE OF THE WITNESSES WOULD BE ABLE TO POINT
2 OUT MY CLIENT IN COURT, AND BASED UPON THAT
3 REPRESENTATION WE DECIDED NOT TO HAVE AN I.D. MOTION TO
4 DETERMINE WHETHER OR NOT THE COURT IDENTIFICATION WAS
5 RELIABLE. SHE JUST IDENTIFIED MY CLIENT IN FRONT OF THE
6 JURY.

7 MS. HUEY: YOUR HONOR, IT IS MY
8 UNDERSTANDING -- AND I MAY NEED TO ASK A COUPLE OF
9 QUESTIONS OF MS. AYERS -- BUT SHE WAS UNABLE TO IDENTIFY
10 THE DEFENDANT THAT EVENING. I THINK SHE MAY HAVE JUST
11 GOTTEN CAUGHT UP AND REFERRED TO THE GENTLEMAN AS THE
12 DEFENDANT. FROM WHAT I UNDERSTAND FROM OUR
13 CONVERSATIONS JUST OVER AN HOUR AGO, SHE CAN GIVE A
14 DESCRIPTION, JUST NOT PICK HIM OUT OF THE PHOTO LINE-UP.
15 THAT'S WHY THERE WAS NO HEARING.

16 MR. POTTER: SHE JUST TOLD THE JURY THE
17 DEFENDANT WAS THE ONE WHO DID IT, AND THAT'S THE CONCERN
18 I HAVE.

19 THE COURT: ALL RIGHT. I'M GOING TO REQUIRE
20 THE SOLICITOR TO, WE MIGHT SAY, REHABILITATE THE WITNESS
21 IN THE SENSE THAT THE WITNESS WAS NOT ABLE TO IDENTIFY
22 THE INDIVIDUAL, ONLY A GENERAL DESCRIPTION, AND THAT
23 I'LL LEAVE IT TO YOU HOW TO DO THAT.

24 MS. HUEY: YES, SIR.

25 THE COURT: SO THAT THE JURY WILL

1 UNDERSTAND. AND IF I FEEL IT'S NECESSARY I'LL GIVE A
2 CURATIVE INSTRUCTION.

3 MS. HUEY: YES, SIR.

4 THE COURT: AND AGAIN, MY CURATIVE
5 INSTRUCTION IS BASED ON WHAT I JUST HEARD FROM COUNSEL,
6 BOTH FROM THE STATE AND THE DEFENSE, THAT THERE HAD NOT
7 BEEN AN I.D. BY ANY WITNESSES TO THE EVENT.

8 IS THAT CORRECT?

9 MS. HUEY: THAT IS CORRECT, YOUR HONOR.

10 THE COURT: WOULD THAT INCLUDE THIS WITNESS
11 AND ANY OTHERS?

12 MS. HUEY: ALL THE WITNESSES FROM THE
13 GOODWILL STORE, YOUR HONOR, WHERE THE INCIDENT TOOK
14 PLACE.

15 THE COURT: WOULD YOU GIVE ME, JUST SO I CAN
16 BE ALERT?

17 MS. HUEY: YES, SIR. THE FIRST FOUR
18 WITNESSES I WILL CALL, MS. AYERS, OF COURSE, WHO IS ON
19 THE STAND; AS WELL AS PAT FRENCH, BARBARA COOLEY, AND
20 SUZANNE SHIRLEY.

21 THE COURT: SO NONE OF THESE HAVE IDENTIFIED
22 THE PARTICULAR DEFENDANT?

23 MS. HUEY: NO, SIR, YOUR HONOR.

24 THE COURT: ALL RIGHT. SO AGAIN I'M GOING
25 TO ASK YOU TO, IN ORDER TO MAINTAIN THE TESTIMONY THAT

1 THE WITNESS AS TO THE OCCURRENCE, THAT THAT BE MADE
2 CLEAR BY YOUR PROFFER OF HER TESTIMONY. IN OTHER WORDS,
3 LAYING A FOUNDATION IN THE SENSE THAT HER REFERENCE IS
4 TO -- WELL, I DON'T KNOW -- I'LL HAVE A PROBLEM HOW SHE
5 CAN IDENTIFY, QUOTE, THE DEFENDANT. BUT AGAIN, I'M
6 GOING TO HAVE TO LEAVE IT TO YOU TO SEE WHAT HAPPENS AND
7 I WILL GIVE A CURATIVE INSTRUCTION.

8 DEFENDANT'S MOTION FOR MISTRIAL:

9 MR. POTTER: JUDGE, I'VE GOT A CONCERN. I
10 JUST SAID IN FRONT OF THE JURY DURING OPENING, SAYING
11 THAT NONE OF THEIR WITNESSES WOULD I.D. MY GUY. AND THE
12 FIRST THING SHE SAYS IS THE DEFENDANT AND IDENTIFIES MY
13 GUY. I GOT A CONCERN HOW THAT'S GONNA AFFECT THE JURY,
14 SO RESPECTFULLY WE REQUEST A MISTRIAL AND LET'S PICK
15 ANOTHER JURY.

16 THE COURT'S RULING ON MISTRIAL MOTION:

17 THE COURT: I'M GOING TO HAVE TO DENY YOUR
18 MOTION FOR A MISTRIAL AT THIS TIME, BUT IT'S GOING TO
19 DEPEND ON WHETHER OR NOT -- AND THAT'S THE ASSUMPTION
20 AND THE CONFIDENCE THAT THE STATE WILL BE ABLE TO PUT
21 THE TESTIMONY IN THE PROPER PERSPECTIVE.

22 MS. HUEY: YES, SIR, JUDGE.

23 THE COURT: ALL RIGHT, VERY WELL.

24 MR. POTTER: THANK YOU, YOUR HONOR.

25 THE COURT: VERY WELL. ANYTHING ELSE FROM

1 THE STATE?

2 MS. HUEY: NO, SIR, YOUR HONOR.

3 THE COURT: FROM THE DEFENDANT?

4 MR. POTTER: NO, SIR.

5 THE COURT: ASK THE JURY TO JOIN US, PLEASE.

6 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
7 3:28 P.M.)

8 THE COURT: ALL RIGHT, MS. SOLICITOR, YOU
9 MAY PROCEED.

10 BY MS. HUEY:

11 Q. NOW, MS. AYERS, ISN'T IT TRUE THAT YOU WERE NEVER
12 ABLE TO PICK OUT FROM A PHOTO LINE-UP OR OTHERWISE WHO
13 COMMITTED THIS CRIME?

14 A. THAT'S TRUE.

15 Q. THAT'S TRUE? OKAY.

16 NOW, BACKING UP, THEN, THE GENTLEMAN THAT
17 APPROACHED YOU, WHAT, IF ANYTHING, DID HE SAY TO YOU
18 WHEN HE APPROACHED YOU?

19 A. OKAY. THE DOOR CAME OPEN AND HE CAME UP RIGHT
20 NEXT TO ME AND STARTED TAKING MONEY OUT OF MY DRAWER,
21 AND HE HAD THE KNIFE. AND HE SAID, "I'VE GOT A KNIFE
22 AND I'M GONNA TAKE THIS MONEY. IF YOU SAY ANYTHING, I
23 SWEAR TO GOD, I'LL CUT YOU."

24 Q. AND SO DID HE THEN, IN FACT, TAKE THE MONEY?

25 A. YES, HE DID.

1 Q. AND YOU DIDN'T TRY TO STOP HIM?

2 A. NO, I DID NOT.

3 Q. WHAT HAPPENED AFTER HE TOOK THE MONEY THEN?

4 A. HE, HE DROPPED THE KNIFE AND STARTED THEN JUST
5 RUNNING OUT THE DOOR, AND I HOLLERED TO MY MANAGER, "HE
6 JUST ROBBED ME." AFTER HE RAN OUT THE DOOR, SHE SAW HIM
7 AND SAW THE JEANS THAT WAS ON HIS ARM, AND HE LOOKED
8 AROUND AT HER AND RAN OUT TOO, AND I SAID, "THAT GUY
9 JUST ROBBED ME."

10 Q. NOW, HOW QUICKLY DID THIS ALL HAPPEN?

11 A. IT HAPPENED VERY QUICKLY.

12 Q. OKAY. CAN YOU GIVE ME ANY KIND OF TIME FRAME AS
13 TO HOW LONG THE WHOLE INCIDENT TOOK? WAS IT SECONDS,
14 MINUTES?

15 A. IT, IT SEEMED LIKE JUST SECONDS.

16 Q. OKAY. SO WERE YOU ABLE TO GET A GOOD LOOK AT HIM
17 FOR VERY LONG?

18 A. NO, NOT REALLY.

19 Q. WERE YOU ABLE TO GET ANY KIND OF DESCRIPTION
20 ABOUT THE MAN WHO ROBBED YOU?

21 A. WELL, I DID GIVE A DESCRIPTION OF THE DEFENDANT.

22 Q. TELL ME THE DESCRIPTION YOU GAVE THAT EVENING OF
23 THE PERSON WHO ROBBED YOU.

24 A. OKAY. I REMEMBERED HIS CLOTHES. HE WAS WEARING
25 A PLAID SHIRT AND JEANS, AND HE HAD A BEARD, AND HE HAD

1 LIKE BLOND HAIR, STRAWBERRY BLOND HAIR, AND IT WAS KIND
2 OF CURLY; AND HE WAS KIND OF SKINNY, TALL, ABOUT 5'8".

3 Q. AND, I'M SORRY, WHAT WAS HIS HEIGHT?

4 A. ABOUT 5'8".

5 Q. AND YOU SAID HE WAS SKINNY?

6 A. YES.

7 Q. NOW, AFTER THE MAN WHO ROBBED YOU LEFT THE STORE,
8 DID YOU NOTICE ANYTHING AROUND YOUR REGISTER? WHAT, IF
9 ANYTHING, DID YOU NOTICE?

10 A. WELL, HE DROPPED HIS KNIFE RIGHT IN FRONT OF ME.

11 Q. WHEN HE DROPPED THE KNIFE, DID YOU TOUCH THE
12 KNIFE OR PICK UP THE KNIFE IN ANY WAY?

13 A. NO. I BACKED AWAY FROM IT.

14 Q. ALL RIGHT. MS. AYERS, I'M GONNA SHOW YOU WHAT
15 HAS BEEN MARKED AS STATE'S 3 A THROUGH 3 G. IF YOU
16 COULD PLEASE TAKE A LOOK AT ALL OF THOSE FOR ME.

17 DO YOU RECOGNIZE THOSE PHOTOS?

18 A. YES.

19 Q. HOW ARE YOU ABLE TO RECOGNIZE THEM?

20 A. IT'S FROM THE NIGHT THAT IT HAPPENED.

21 Q. AND DO THOSE PHOTOS FAIRLY AND ACCURATELY DEPICT
22 EVENTS FROM THAT NIGHT, MAY 24TH OF '07?

23 A. YES.

24 MS. HUEY: OKAY. YOUR HONOR, AT THIS TIME
25 WE WOULD MOVE 3-A THROUGH 3-G INTO EVIDENCE.

1 MR. POTTER: NO OBJECTION.

2 THE COURT: ALL RIGHT. WITHOUT OBJECTION
3 STATE'S EXHIBITS 3-A, B, C, D, E, F AND G ARE ADMITTED
4 INTO EVIDENCE.

5 (STATE'S EXHIBIT # 3-A THROUGH 3-G,
6 PHOTOGRAPHS, WAS RECEIVED IN EVIDENCE.)

7 BY MS. HUEY:

8 Q. I'M GONNA SHOW YOU STATE'S 3-A. CAN YOU TELL THE
9 JURY WHAT THAT IS A PICTURE OF?

10 A. THAT'S THE FRONT OF THE STORE.

11 Q. OF THE GOODWILL STORE?

12 A. OF THE GOODWILL STORE.

13 Q. OKAY. LET ME SHOW YOU STATE'S 3-B. CAN YOU TELL
14 US WHAT THAT PICTURE DEPICTS?

15 A. OKAY. THIS IS THE JEANS THAT HE DROPPED ON THE
16 SIDEWALK OUTSIDE THE STORE WHEN HE WENT OUT.

17 Q. OKAY. 3-C?

18 A. THAT'S THE REGISTER I WAS WORKING ON WHEN IT
19 HAPPENED.

20 Q. 3-D?

21 A. OKAY. THAT'S THE REGISTER AREA, THAT DRAWER OPEN
22 STILL, AND WHAT HE DROPPED ON THE FLOOR.

23 Q. 3-E?

24 A. THAT'S THE KNIFE THAT HE WAS CARRYING.

25 Q. AND IN THAT PICTURE THE KNIFE IS OPEN. IS THAT

1 HOW IT WAS WHEN HE HAD IT POINTED AT YOU?
2 A. YES, IT WAS.
3 Q. AND DID YOU SEE IT?
4 A. YES.
5 Q. AS WELL AS FEEL IT, YOU SAID?
6 A. YES, I DID.
7 Q. OKAY. AND NOW THIS IS 3-F. COULD YOU TELL US
8 WHAT THAT DEPICTS?
9 A. IT'S MY CASH DRAWER, BUT IT WAS LEFT OPEN AFTER
10 HIM -- AFTER HE DONE TOOK ALL THE MONEY OUT OF IT.
11 Q. AND 3-G?
12 A. THAT'S MY REGISTER SCREEN FOR THE LAST
13 TRANSACTION. IT WAS THE LAST TRANSACTION THAT TOOK
14 PLACE.
15 Q. OKAY. AND WAS THAT THE CASH TRANSACTION --
16 A. YES, IT WAS.
17 Q. -- THAT ALLOWED THE REGISTER TO OPEN?
18 A. YES, IT WAS.
19 Q. OKAY. NOW, MS. AYERS, DO YOU KNOW HOW MUCH MONEY
20 WAS MISSING OUT OF YOUR REGISTER AFTER THIS EVENT?
21 A. ABOUT \$200.00.
22 MS. HUEY: YOUR HONOR, I WOULD LIKE TO
23 PUBLISH THESE TO THE JURY, IF I MAY.
24 THE COURT: CERTAINLY.
25 MS. HUEY: AND, YOUR HONOR, AFTER THEY'RE

1 DONE, THAT'S ALL THE QUESTIONS I HAVE FOR THIS WITNESS.

2 THE COURT: VERY WELL.

3 CROSS-EXAMINATION?

4 MR. POTTER: THANK YOU, YOUR HONOR, IF IT
5 PLEASES THE COURT.

6 CROSS-EXAMINATION BY MR. POTTER:

7 Q. MS. AYERS, LET'S SEE IF I UNDERSTAND THINGS. YOU
8 DON'T KNOW WHO IT WAS WHO ROBBED YOU THAT NIGHT; ISN'T
9 THAT TRUE?

10 A. I DIDN'T GET A GOOD LOOK AT HIM, IF THAT'S WHAT
11 YOU'RE ASKING.

12 Q. OKAY. SO YOU DON'T KNOW PERSONALLY WHETHER THE
13 DEFENDANT IS THE ONE WHO ROBBED YOU THAT NIGHT.
14 CORRECT?

15 A. WELL, UM...

16 Q. I MEAN YOU TESTIFIED THIS HAPPENED PRETTY QUICK
17 AND YOU HAD A KNIFE PULLED ON YOU?

18 A. I WAS AFRAID WHAT WOULD HAPPEN IF I TURNED AROUND
19 AND LOOKED.

20 Q. I UNDERSTAND. BUT YOU ARE NOT HERE TODAY SAYING
21 THIS IS THE ONE (POINTING) WHO ROBBED YOU; ISN'T THAT
22 CORRECT? WHEN I SAY "THIS IS THE ONE," I'M POINTING TO
23 THE DEFENDANT.

24 A. (PAUSES) YES.

25 Q. YES, HE'S THE ONE WHO ROBBED YOU, OR NO, YOU ARE

1 SAYING THAT YOU CAN'T SAY HE'S THE ONE WHO ROBBED YOU?

2 A. (NO RESPONSE).

3 Q. I'M SORRY. THAT QUESTION WAS VERY BAD. PARDON
4 ME.

5 YOU DON'T KNOW IF THE DEFENDANT IS THE ONE WHO
6 ROBBED YOU; IS THAT RIGHT?

7 A. I BELIEVE HE IS.

8 Q. OKAY. BUT YOU DON'T KNOW THAT FOR SURE, DO YOU?
9 IT HAPPENS OVER A FAST PERIOD OF TIME, RIGHT?

10 A. THAT'S RIGHT.

11 Q. SECONDS. HE HAD A KNIFE PULLED ON YOU. THAT'S A
12 PRETTY STRESSFUL EVENT, ISN'T IT?

13 A. YES, IT WAS.

14 Q. AND YOU HAVE TOLD THE SOLICITOR THAT YOU CANNOT
15 PICK HIM OUT OF THE LINE-UP OR ANYTHING LIKE THAT, "HIM"
16 BEING THE DEFENDANT; IS THAT RIGHT?

17 A. THAT'S CORRECT.

18 Q. IS THE FACT THAT HE'S THE ONLY ONE SITTING AT THE
19 DEFENSE TABLE MAKE YOU BELIEVE HE'S THE ONE WHO DID IT?

20 A. NO.

21 Q. SO YOU DON'T KNOW IF HE DID ROB YOU THAT NIGHT OR
22 NOT. "HE" BEING THE DEFENDANT.

23 A. I BELIEVE HE IS.

24 Q. OKAY. BUT ARE YOU MAKING AN ASSUMPTION BASED
25 UPON THE FACT HE'S SITTING NEXT TO ME AT DEFENSE TABLE?

1 A. I DID, I DID SEE HIM AFTER, WHEN HE WAS RUNNING
2 OUT THE DOOR.

3 Q. OKAY. BUT THEN YOU TOLD THE SOLICITOR THAT YOU
4 COULDN'T PICK HIM OUT OF THE LINE-UP, CORRECT?

5 A. CORRECT.

6 Q. YOU SAID THE DEFENDANT HAD STRAWBERRY BLOND HAIR;
7 IS THAT RIGHT?

8 A. YES.

9 Q. AND HE HAD CURLY HAIR; IS THAT RIGHT?

10 A. RIGHT.

11 Q. YOU ALSO SAID THAT HE HAD A BEARD AND WAS
12 UNSHAVEN; IS THAT RIGHT?

13 A. RIGHT.

14 **MR. POTTER:** NOTHING FURTHER, JUDGE.

15 **THE COURT:** RE-EXAM?

16 **MS. HUEY:** YOUR HONOR, I DON'T HAVE ANYTHING
17 FURTHER FOR THIS WITNESS.

18 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN.
19 THANK YOU, MA'AM.

20 (WITNESS LEAVES STAND.)

21 **THE COURT:** YOU MAY CALL YOUR NEXT WITNESS.

22 **MS. HUEY:** THANK YOU, JUDGE. YOUR HONOR,
23 THE STATE CALLS PAT FRENCH.

24 (WHEREUPON, THE WITNESS WAS SWORN BY THE
25 CLERK.)

1 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND
2 SPELL YOUR LAST NAME FOR THE RECORD.

3 **THE WITNESS:** PATRICIA A. FRENCH,
4 F-R-E-N-C-H.

5 WHEREUPON,

6 PATRICIA FRENCH,
7 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
8 FOLLOWS:

9 DIRECT EXAMINATION BY MS. HUEY:

10 Q. MS. FRENCH, IF YOU DON'T MIND MY ASKING, HOW OLD
11 ARE YOU?

12 A. 62.

13 Q. AND HOW FAR DID YOU GO IN SCHOOL?

14 A. I GRADUATED HIGH SCHOOL.

15 Q. WHERE DO YOU WORK RIGHT NOW?

16 A. I WORK AT GOODWILL NUMBER SIX ON THE NORTH END OF
17 TOWN NOW.

18 Q. NOW, HAVE YOU ALWAYS WORKED AT THAT PARTICULAR
19 STORE?

20 A. NO, MA'AM, NO, I DIDN'T. I WORKED AT THE ONE ON
21 2901 SOUTH MAIN.

22 Q. AND WERE YOU WORKING AT THE ONE ON SOUTH MAIN IN
23 MAY OF 2007?

24 A. YES, MA'AM.

25 Q. NOW, SPECIFICALLY ON MAY 24TH OF 2007, DO YOU

1 REMEMBER WHAT YOU WERE DOING THAT EVENING?

2 A. YES, MA'AM. I WAS THE MANAGER THEN, AND I WAS
3 COMING OUT OF THE BACK ROOM COMING UP FRONT TO CHECK ONE
4 OF THE CASHIERS OUT. AND I WAS GOING TO PAULA'S
5 REGISTER, BUT SHE WAS BUSY SO I WENT TO NUMBER ONE
6 REGISTER INSTEAD.

7 Q. OKAY. SO YOU WERE GOING TO PAULA REGISTER BUT
8 YOU WENT TO NUMBER ONE INSTEAD. OKAY. NOW, WHAT WAS
9 PAULA'S REGISTER, DO YOU REMEMBER?

10 A. HER REGISTER WAS NUMBER THREE.

11 Q. OKAY. NOW HOW FAR APART ARE NUMBER THREE AND
12 NUMBER ONE?

13 A. PROBABLY ABOUT AS FAR AS WE ARE APART.

14 Q. SO WHEN YOU GOT TO REGISTER ONE, WHAT HAPPENED,
15 IF ANYTHING?

16 A. I WAS GONNA TALK TO THE CASHIER AND HELP HER, AND
17 I LOOKED UP AND I SEEN THE DEFENDANT RUNNING OUT ---

18 MR. POTTER: OBJECTION, YOUR HONOR. I NEED
19 TO TAKE THIS UP OUT OF THE JURY'S HEARING.

20 THE COURT: ALL RIGHT. MADAM FORELADY,
21 LADIES AND GENTLEMEN OF THE JURY, PLEASE RETIRE TO THE
22 JURY ROOM. DO NOT UNDERTAKE DISCUSSION OF THE CASE
23 AMONG YOURSELVES, PLEASE.

24 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
25 3:44 P.M.)

1 **THE COURT:** MADAM SOLICITOR?

2 **MS. HUEY:** JUDGE, I THINK WE'RE RUNNING INTO
3 THE SAME PROBLEM AGAIN. THEY ARE NOT KNOWING HOW TO
4 REFER TO THE SUSPECT, AND SO ---

5 **THE COURT:** WELL, WOULD IT NOT BE EASIER
6 JUST TO SAY, "I SAW SOMEONE RUNNING OUT"?

7 **MS. HUEY:** I AGREE, JUDGE. AND MAYBE IF I
8 HAVE A MOMENT TO DISCUSS WITH FUTURE WITNESSES ---

9 **THE COURT:** WHY DON'T WE TAKE A SHORT BREAK,
10 AND LET'S DO THAT. ALL WITNESSES THAT ARE GOING TO BE
11 ALONG THIS LINE ---

12 **MS. HUEY:** YES, SIR. I THINK THEY'RE
13 GETTING CAUGHT UP IN THE MOMENT, JUDGE.

14 **THE COURT:** WELL, LET'S SEE IF WE CAN'T --
15 THE THING IS THAT IF YOU DON'T KNOW, THEN YOU JUST REFER
16 TO IT AS YOU SAW SOMEONE. THAT'S APPARENTLY WHAT HAS
17 BEEN THE STATEMENT.

18 **MS. HUEY:** YES, SIR, YOUR HONOR, IT IS.

19 **THE COURT:** ALL RIGHT, VERY GOOD. WE'LL
20 TAKE A SHORT RECESS.

21 YES, MR. POTTER.

22 **MR. POTTER:** I APOLOGIZE, JUDGE. JUST FOR
23 THE RECORD, I'M GONNA MOVE FOR ANOTHER MISTRIAL. THIS
24 IS THE SECOND WITNESS THAT HAS SAID MY GUY.

25 **THE COURT:** THAT'S WHY I'M GIVING THESE --

1 I'M GOING TO DENY YOUR MOTION AT THIS TIME.

2 MR. POTTER: YES, SIR.

3 THE COURT: I'M TAKING IT UNDER ADVISEMENT
4 BECAUSE AS EACH OF THE TESTIMONY BEGINS, IT BECOMES
5 COMPOUNDED.

6 MS. HUEY: YES, SIR.

7 THE COURT: AND AT SOME POINT THE POUNDS
8 WILL HAVE GREATER WEIGHT THAN PERHAPS DESERVING.

9 MS. HUEY: YES, SIR, YOUR HONOR.

10 MAY I APPROACH THIS WITNESS?

11 THE COURT: I'M GOING TO LET THE WITNESS
12 STEP DOWN. AND DO YOU HAVE ANY OTHER WITNESSES?
13 MR. AYERS HAS FINISHED HER TESTIMONY.

14 MS. HUEY: YES, SIR. THERE ARE TWO OTHERS
15 ALONG THE SAME VEIN.

16 THE COURT: WHY DON'T YOU TAKE THE OTHERS
17 AND DISCUSS NOT THEIR TESTIMONY, AS SUCH, AS TO WHAT
18 THEY WILL TESTIFY TO BUT TO WHAT THEY CAN'T TESTIFY TO.

19 MS. HUEY: YES, SIR, JUDGE. THANK YOU.

20 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT
21 RECESS. THANK YOU, MA'AM.

22 ALL RIGHT. WE'LL STAND AT EASE.

23 (WHEREUPON, A RECESS WAS TAKEN.)

24 THE COURT: AGAIN, I'M GOING TO ASK YOU
25 RATHER POINTEDLY, MADAM SOLICITOR: ARE YOU READY TO

1 PROCEED?

2 MS. HUEY: (NODDED HEAD.)

3 THE COURT: IF THERE IS A PROBLEM, IT CAN
4 BE, AS I SAID EARLIER BEFORE WE TOOK THE RECESS, YOU
5 NEED TO TALK TO YOUR POTENTIAL WITNESSES. BUT IF
6 THERE'S ANOTHER STATEMENT THAT SUGGESTS MORE THAN THE
7 RECORD OF THE INVESTIGATION HAS REVEALED, THE COURT WILL
8 HAVE TO TAKE IT INTO CONSIDERATION IN ADDRESSING THE
9 QUESTION OF WHETHER OR NOT THERE IS PREJUDICE THAT CAN
10 BE OVERCOME BY CROSS-EXAMINATION.

11 MS. HUEY: YES, SIR, YOUR HONOR.

12 THE COURT: VERY GOOD. YOU MAY PROCEED.
13 ANYTHING FROM THE DEFENSE?

14 MR. POTTER: NO, YOUR HONOR.

15 THE COURT: SUBJECT TO YOUR PRIOR MOTION AND
16 MY RULINGS.

17 MR. POTTER: YES, SIR.

18 THE COURT: ASK THE JURY TO JOIN US, PLEASE.

19 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
20 3:55 P.M.)

21 THE COURT: ALL RIGHT. LET THE RECORD
22 REFLECT THE JURY AND ALTERNATE ARE IN THE JURY-BOX.

23 WE WILL NOW PROCEED WITH THE EXAMINATION OF
24 THIS WITNESS.

25 MADAM SOLICITOR?

1 BY MS. HUEY:

2 Q. MS. FRENCH, ISN'T IT TRUE THAT YOU WERE NEVER
3 ABLE TO PICK OUT WHO ROBBED THE GOODWILL STORE THAT
4 NIGHT?

5 A. THAT'S CORRECT.

6 Q. THROUGH A PHOTO LINE-UP OR OTHERWISE?

7 A. THAT'S CORRECT.

8 Q. AND YOU CAN'T PICK OUT ANYONE IN THIS COURTROOM
9 TODAY?

10 A. NO, MA'AM, I CANNOT.

11 Q. OKAY. WERE YOU ABLE TO GIVE SOME SORT OF
12 DESCRIPTION, THOUGH, TO THE POLICE AS TO WHO ROBBED THAT
13 STORE?

14 A. THE ONLY THING THAT I COULD TELL THEM THAT NIGHT,
15 THAT HE WAS ABOUT 5'6", 5'7", WEIGHED ABOUT 160 POUNDS,
16 HAD A LIGHT BROWN, BLONDISH HAIR.

17 Q. YOU DID, IN FACT, GIVE THAT DESCRIPTION TO THE
18 POLICE?

19 A. YES, MA'AM.

20 Q. WHEN YOU GAVE THAT STATEMENT?

21 A. YES, MA'AM.

22 Q. NOW, MS. FRENCH, DID YOU EVER SEE, THE PERSON WHO
23 ROBBED THE STORE, DID YOU EVER SEE HIM WITH A KNIFE?

24 A. NO, MA'AM, I DID NOT.

25 Q. DID YOU HEAR THE THREAT AT ALL?

1 A. NO.

2 Q. OKAY. HOW DID YOU KNOW TO RESPOND?

3 A. I LOOKED UP AND I SEEN A PERSON, A MAN RUNNING
4 OUT OF THE STORE WITH JEANS THROWN [SIC] ACROSS HIS
5 ARM, AND I HOLLERED, "SIR," AND HE TURNED AROUND AND
6 LOOKED AT ME FOR JUST A SECOND, AND HE RAN OUT THE DOOR
7 AND THREWED THE JEANS OUT ON THE SIDEWALK.

8 Q. WHAT YOU DID YOU DO AS A RESULT OF SEEING HIM RUN
9 OUT OF THE STORE?

10 A. I WALKED OVER TO PAULA AND SHE TOLD ME THAT SHE
11 HAD BEEN ROBBED AND THE KNIFE WAS ON THE FLOOR.

12 Q. AND SO AT THAT POINT WHAT DID YOU ALL DO?

13 A. AT THAT POINT I LOCKED THE DOORS AND CALLED THE
14 POLICE.

15 Q. NOW, HOW QUICKLY DID ALL THIS TAKE PLACE?

16 A. PROBABLY TWO OR THREE MINUTES.

17 Q. AND AGAIN, YOU WERE WORKING AS THE MANAGER THAT
18 NIGHT?

19 A. YES, I WAS.

20 Q. OKAY. AND SO DO YOU KNOW EXACTLY HOW MUCH WAS
21 TAKEN FROM THE REGISTER?

22 A. I DIDN'T COUNT THE MONEY THAT NIGHT BECAUSE
23 SOMEBODY ELSE COUNTED IT FOR ME, AND THEY TOLD ME IT WAS
24 A LITTLE OVER \$200.

25 MS. HUEY: THAT'S ALL I HAVE FOR THIS

1 WITNESS, JUDGE.

2 THE COURT: CROSS-EXAMINATION?

3 CROSS-EXAMINATION BY MR. POTTER:

4 Q. MA'AM, DID YOU SEE CURLY HAIR?

5 A. I THINK IT WAS CURLY THE BEST I REMEMBER.

6 Q. AND DID YOU SEE A BEARD?

7 A. I DON'T REMEMBER THAT.

8 Q. YOU DON'T REMEMBER A BEARD?

9 A. I DON'T REMEMBER THAT.

10 Q. AND YOU SAID LIGHT BROWN HAIR?

11 A. UH-HUH.

12 MR. POTTER: NOTHING FURTHER, JUDGE.

13 THE COURT: RE-EXAM?

14 MS. HUEY: YOUR HONOR, I DON'T HAVE ANYTHING
15 FURTHER FOR THIS WITNESS.

16 (WITNESS LEAVES STAND.)

17 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

18 MS. HUEY: YOUR HONOR, THE STATE CALLS
19 BARBARA COOLEY TO THE STAND.

20 (WHEREUPON, THE WITNESS WAS SWORN BY THE
21 CLERK.)

22 THE CLERK: PLEASE STATE YOUR FULL NAME AND
23 SPELL YOUR LAST NAME FOR THE RECORD.

24 THE WITNESS: I AM BARB COOLEY, C-O-O-L-E-Y.
25 WHEREUPON,

1 BARBARA COOLEY,
2 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
3 FOLLOWS:

4 DIRECT EXAMINATION BY MS. HUEY:

5 Q. NOW, MS. COOLEY, IF YOU DON'T MIND ME ASKING, HOW
6 OLD ARE YOU?

7 A. I AM 65 YEARS OLD.

8 Q. AND HOW FAR DID YOU GO IN SCHOOL?

9 A. I FINISHED HIGH SCHOOL AND TOOK SOME COLLEGE
10 PREPARATORY CLASSES.

11 Q. DO YOU CURRENTLY WORK, MS. COOLEY?

12 A. NO. I'M RETIRED FROM THE CITY OF ANDERSON.

13 Q. WHAT DID YOU DO FOR THE CITY OF ANDERSON?

14 A. I WORKED IN THE FAIR HOUSING COMMUNITY
15 DEVELOPMENT OFFICE.

16 Q. NOW, MS. COOLEY, DO YOU GO TO GOODWILL STORES A
17 GOOD BIT?

18 A. YES, I DO. MY VISIT TO THE GOODWILL STORES IS
19 MORE THAN JUST SHOPPING. I LIVE ALONE, SO THEREFORE I'M
20 IN CONTACT WITH A LOT OF PEOPLE, SO IT'S LIKE A LEISURE
21 TRIP FOR ME.

22 Q. AND WERE YOU AT A GOODWILL STORE ON MAY 24TH OF
23 2007?

24 A. YES, I WAS.

25 Q. OKAY. WHICH ONE WERE YOU AT AT THAT TIME?

1 A. I WAS AT THE GOODWILL STORE ON SOUTH MAIN STREET.

2 Q. DO YOU GO TO THAT STORE A GOOD BIT?

3 A. OFTEN.

4 Q. DO YOU REMEMBER ABOUT WHAT TIME YOU WERE THERE
5 THAT EVENING?

6 A. I CAN'T TELL YOU EXACTLY WHAT TIME. I DO KNOW I
7 HAD BEEN IN THE STORE FOR A WHILE. AND APPARENTLY IT
8 WAS GETTING CLOSE TO CLOSING BECAUSE IT WAS GETTING A
9 LITTLE DARK.

10 Q. WHAT, IF ANYTHING, DID YOU NOTICE WHILE YOU WERE
11 IN THE STORE?

12 A. THE STORE WAS SOMEWHAT CROWDED. AND I WAS IN THE
13 LADIES DEPARTMENT AREA WHERE THEY SELL WOMEN'S BLOUSES,
14 AND A GENTLEMAN CAME PAST ME AND BRUSHED UP AGAINST MY
15 POCKETBOOK. I JUST KIND OF GOT MY POCKETBOOK A LITTLE
16 CLOSER TO ME BECAUSE I COULDN'T FIGURE OUT WHAT WAS
17 GOING ON.

18 I CONTINUED TO SHOP A LITTLE BIT, AND I WAS
19 LOOKING THROUGH SOME BLOUSES, STILL, AND I NOTICED A
20 GENTLEMAN WAS COMING FROM BEHIND ME IN THAT SAME AISLE,
21 AND IT APPEARS TO BE THE SAME PERSON THAT HAD KIND OF
22 BUMPED MY POCKETBOOK, SO IT FRIGHTENED ME JUST A LITTLE
23 BIT. AND I TOOK MY BUGGY AND PROCEEDED TO THE CASHIER.

24 Q. AND THEN THIS GENTLEMAN THAT BUMPED YOU, THAT
25 MADE YOU GRAB YOUR POCKETBOOK AND THEN CAME BEHIND YOU

1 IN THE AISLE, WHAT DID HE LOOK LIKE?

2 A. HE WAS A WHITE GENTLEMAN, WITH MAYBE A RUGGED
3 BEARD ON HIS FACE, A PLAID SHIRT, I THINK; AND BROWN
4 HAIR.

5 Q. COULD YOU TELL ANYTHING ABOUT HIS HEIGHT OR
6 WEIGHT?

7 A. HE WAS KIND OF SKINNY, AND HE WASN'T AS TALL AS I
8 AM, AND I'M ABOUT 5'5" AND A HALF.

9 Q. SO WHEN YOU WENT UP TO THE CASH REGISTER THEN,
10 WHAT, IF ANYTHING, DID YOU NOTICE AT THAT POINT?

11 A. WHEN I FIRST SAW THIS GENTLEMAN COMING FROM THE
12 BACK OF ME, IT FRIGHTENED ME AND I PROCEEDED TO CHECK
13 OUT, HE WALKED DIRECTLY BEHIND ME AND STOOD. IT WAS A
14 LADY CHECKING HER STUFF OUT, AND THE CLERK, AND AS SOON
15 AS THE DRAWER OPENED ON THE CASH REGISTER, THE GENTLEMAN
16 BEHIND ME RUSHED AROUND ME AND WAS STANDING REAL CLOSE
17 TO THE CLERK. AND IT WAS HAPPENING SO FAST, ALL I
18 REMEMBER SEEING WAS HIS HAND AND MONEY KIND OF FALLING
19 OUT OF THE DRAWER.

20 Q. OKAY. SO THE SAME GENTLEMAN THAT YOU HAD NOTICED
21 AND YOU JUST DESCRIBED FOR US --

22 A. YES.

23 Q. -- YOU SAW TAKING MONEY OUT OF THE REGISTER?

24 A. YES.

25 Q. AND YOU SAID THAT HE WAS STANDING PRETTY CLOSE TO

1 THE CLERK?

2 A. VERY CLOSE.

3 Q. OKAY. COULD YOU HEAR IF THEY WERE HAVING A
4 CONVERSATION OR NOT?

5 A. NO, MA'AM.

6 Q. NOW, WERE YOU EVER ABLE TO PICK HIM OUT OF A
7 PHOTO LINE-UP OR ANYTHING?

8 A. NO, MA'AM.

9 Q. DID THIS ALL HAPPEN PRETTY QUICKLY?

10 A. IT HAPPENED REAL, REAL QUICKLY.

11 Q. CAN YOU GIVE ME ANY IDEA AS TO HOW LONG THE WHOLE
12 INCIDENT TOOK PLACE?

13 A. PROBABLY TWO, THREE MINUTES AT THE MOST.

14 Q. NOW, MS. COOLEY, THE REGISTER WHERE YOU WERE, HOW
15 FAR WOULD THAT REGISTER BE FROM WHERE THE ROBBERY WAS
16 TAKING PLACE?

17 A. I WAS RIGHT AT THE REGISTER.

18 Q. OKAY. AND WERE YOU IN LINE BEHIND OTHER PEOPLE?

19 A. BECAUSE I HAD A BUGGY, AND I WAS COMING OUT OF,
20 OUT OF THE AREA OF THE LADIES' CLOTHING, I WAS KIND OF
21 STANDING CROSSWAYS. THE BUGGY WAS UP NEAR THE COUNTER
22 AND I WAS KIND OF BACK SOME.

23 Q. SO WAS THE BUGGY IN BETWEEN YOU AND THE CLERK
24 THEN?

25 A. YES. YES.

1 **MS. HUEY:** OKAY. THAT'S ALL I HAVE FOR THIS
2 WITNESS, JUDGE.

3 **THE COURT:** CROSS-EXAMINE?

4 **MR. POTTER:** THANK YOU, YOUR HONOR.

5 CROSS-EXAMINATION BY MR. POTTER:

6 Q. MA'AM, YOU TESTIFIED THAT THIS PERSON WAS NOT
7 TALLER THAN YOU. CORRECT?

8 A. NO.

9 Q. NOT AS TALL AS ME, OBVIOUSLY?

10 A. NO.

11 Q. OKAY. NOW, YOU WERE AT THE REGISTER CHECKING OUT
12 YOUR, WHAT YOU WERE BUYING THAT DAY, CORRECT?

13 A. YES.

14 **MR. POTTER:** IF I CAN APPROACH, JUDGE?

15 **THE COURT:** CERTAINLY.

16 BY MR. POTTER:

17 Q. MA'AM, I SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
18 EXHIBIT 3-C AND I WANT YOU TO LOOK AT THAT FOR ME. WAS
19 THAT THE REGISTER THAT YOU WERE AT?

20 A. YES. BUT I WAS AT (POINTING).

21 Q. CAN YOU DO ME A FAVOR AND SHOW THE JURY WHERE YOU
22 WERE? CAN YOU STAND UP FOR ME?

23 (WITNESS LEAVES STAND.)

24 BY MR. POTTER:

25 Q. JUST POINT TO THE JURY WHERE YOU WERE AT IN THAT

1 PICTURE.

2 A. I WAS HERE (POINTING), STANDING AT, JUST COMING
3 IN FROM THIS ANGLE.

4 Q. OKAY.

5 A. AT THIS ANGLE.

6 Q. NOW --

7 (OFF-THE-RECORD DISCUSSION.)

8 BY MR. POTTER:

9 Q. POINT TO THE JURY AT THE OTHER END OF THE BOX.

10 A. THIS IS THE ENTRANCE INTO THE REGISTER AREA.
11 THIS IS WHERE I WAS STANDING AT THE TIME IT HAPPENED.

12 Q. THANK YOU, MA'AM.

13 (WITNESS RESUMES STAND)

14 BY MR. POTTER:

15 Q. NOW, ABOUT HOW FAR AWAY WERE YOU FROM PAULA?

16 A. PROBABLY AS CLOSE AS YOU AND I ARE NOW.

17 Q. OKAY. AND YOU DIDN'T HEAR ANY CONVERSATIONS
18 BETWEEN PAULA AND THIS PERSON?

19 A. NO, I DID NOT.

20 Q. OKAY. BUT NOTHING WAS SAID BETWEEN PAULA AND
21 THIS PERSON?

22 A. THAT PART I DON'T KNOW. WHEN I NOTICED THE MONEY
23 HAD BEEN TAKEN FROM THE REGISTER, I REMEMBER LOOKING AT
24 THE CLERK, AND SHE HAD TURNED AS WHITE AS A SHEET.

25 Q. OKAY. OKAY. BUT YOU DIDN'T HEAR ANY

1 CONVERSATIONS BETWEEN THIS PERSON AND PAULA?

2 A. NO, I DID NOT.

3 Q. AND YOU ALSO TESTIFIED, YOU TOLD US THAT HE HAD A
4 BEARD, OR WAS IT KIND OF A SCRUFFY-TYPE BEARD?

5 A. IT WAS A SCRUGGLY-TYPE BEARD.

6 Q. OKAY. NOT A FULL BEARD?

7 A. NO.

8 Q. AND BROWN HAIR?

9 A. BROWN HAIR.

10 Q. WAS THAT HAIR CURLY?

11 A. I DON'T REMEMBER IF IT WAS CURLY. I DON'T THINK
12 IT WAS. I'M NOT SURE.

13 MR. POTTER: THANK YOU, MA'AM.

14 THE WITNESS: ALL RIGHTY.

15 MS. HUEY: I DON'T HAVE ANY RE-EXAM.

16 THE COURT: YOU MAY STEP DOWN. THANK YOU,
17 MA'AM.

18 (WITNESS LEAVES STAND.)

19 THE COURT: YES, MA'AM.

20 MS. HUEY: YOUR HONOR, WE'RE READY FOR OUR
21 NEXT WITNESS.

22 THE COURT: VERY GOOD. CALL YOUR NEXT
23 WITNESS.

24 MS. HUEY: THE STATE CALLS SUZANNE SHIRLEY.

25 (WHEREUPON, THE WITNESS WAS SWORN BY THE

1 CLERK.)

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

4 THE WITNESS: SUZANNE SHIRLEY,
5 S-H-I-R-L-E-Y.

6 WHEREUPON,

7 SUZANNE SHIRLEY

8 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
9 FOLLOWS:

10 DIRECT EXAMINATION BY MS. HUEY:

11 Q. MS. SHIRLEY, HOW OLD ARE YOU?

12 A. I'M 37.

13 Q. WHERE DO YOU WORK?

14 A. THE POST OFFICE.

15 Q. HOW LONG HAVE YOU BEEN AT THE POST OFFICE?

16 A. NINE AND A HALF YEARS.

17 Q. NOW, DO YOU GO TO GOODWILL STORES A LOT?

18 A. I DO.

19 Q. HOW LONG HAVE YOU BEEN DOING THAT?

20 A. FOR A LONG TIME.

21 Q. DO YOU GO TO ONE PARTICULAR ONE?

22 A. THE ONE THAT GOT ROBBED, YEAH.

23 Q. SO WERE YOU AT THE ONE THAT GOT ROBBED ON MAY
24 24TH OF 2007?

25 A. I WAS.

1 Q. WHO WERE YOU WITH THAT NIGHT?

2 A. JUST MYSELF.

3 Q. TELL ME ABOUT WHAT YOU WERE DOING IN THE STORE
4 THEN.

5 A. JUST SHOPPING, AND THEN I WENT TO CHECK OUT.

6 Q. AND WHEN YOU WENT TO CHECK OUT WHAT, IF ANYTHING,
7 DID YOU NOTICE?

8 A. I WAS, HAD MADE A TRANSACTION. I WAS WAITING ON
9 MY CHANGE AND THEN THAT'S WHEN IT HAPPENED. SHE OPENED
10 THE DRAWER AND THAT'S WHEN SHE GOT ROBBED.

11 Q. OKAY. NOW, SO WERE YOU THE CUSTOMER, THEN, AT
12 THE REGISTER WHEN THE ROBBERY TOOK PLACE?

13 A. YEAH. I WAS LIKE RIGHT HERE AND SHE WAS RIGHT
14 THERE, I WAS LIKE RIGHT THERE (INDICATING).

15 Q. HAD YOU PAID FOR YOUR TRANSACTION IN CASH?

16 A. OH, YES, I HAD.

17 Q. AND SO DO YOU REMEMBER HOW MUCH YOU HAD ON YOU
18 THAT YOU WERE ---

19 A. I GAVE HER A TWENTY AND I WAS WAITING ON MY
20 CHANGE.

21 Q. OKAY. AND THEN WHAT'S THE NEXT THING YOU
22 REMEMBER SEEING?

23 A. I REMEMBER SOMEBODY COMING UP BESIDE ME KIND OF
24 CLOSE, AND I DIDN'T THINK ANYTHING OF IT. AND THEN I
25 WAS KIND OF FEELING IN MY WALLET, AND THEN I NOTICED A

1 MAN AT THE REGISTER WITH HER, AND I HEARD HIM TELL HER
2 TO GIVE HIM THE MONEY OR HE WAS GONNA CUT HER, AND I SAW
3 THE KNIFE.

4 Q. YOU HEARD HIM SAY IT?

5 A. YES, I DID.

6 Q. AND YOU ALSO SAW THE KNIFE?

7 A. YES, I DID.

8 Q. DID YOU GET -- COULD YOU DESCRIBE THIS MAN THAT
9 YOU SAW ROB HER?

10 A. WELL, I REMEMBER HIM BEING WHITE, AND I REMEMBER
11 HIM KIND OF BLONDISH, PETITE, BUT I DIDN'T GET A GOOD
12 LOOK.

13 Q. AND WERE YOU ABLE TO PICK HIM OUT OF A PHOTO
14 LINE-UP AT THAT TIME?

15 A. NO, I WASN'T.

16 Q. AFTER YOU SAW HIM TAKE THE MONEY OUT OF THE
17 REGISTER, WHAT THEN DID YOU SEE, IF ANYTHING?

18 A. HE JUST WAS GRABBING THE MONEY AND I DIDN'T
19 HOLLER BECAUSE I DIDN'T KNOW WHAT WOULD HAPPEN TO HER.
20 AND THEN HE TOOK OFF AND DROPPED THE KNIFE AND I JUST
21 TURNED AROUND AND TOLD THEM THAT SHE HAD GOT ROBBED.
22 AND I JUST WAS IN SHOCK. I DIDN'T...

23 Q. AND DID YOU EVENTUALLY GIVE A STATEMENT TO POLICE
24 THAT NIGHT, THEN?

25 A. I DID.

1 Q. DO YOU KNOW ABOUT HOW QUICKLY ALL THIS TOOK
2 PLACE?

3 A. A COUPLE MINUTES.

4 Q. OKAY.

5 MS. HUEY: THAT'S ALL I HAVE FOR THIS
6 WITNESS, JUDGE.

7 THE COURT: CROSS-EXAMINE?

8 MR. POTTER: THANK YOU, YOUR HONOR.

9 CROSS-EXAMINATION BY MR. POTTER:

10 Q. MS. SHIRLEY, YOU SAID THAT HE HAD BLOND HAIR; IS
11 THAT CORRECT?

12 A. KIND OF BLONDISH, YEAH.

13 Q. DID YOU SEE A BEARD OR ANYTHING OF THAT SORT?

14 A. NO, I DIDN'T SEE A BEARD.

15 Q. WAS HIS HAIR CURLY?

16 A. I DON'T KNOW. I REMEMBER A PLAID SHIRT AND THAT
17 WAS IT.

18 Q. BUT YOU DON'T REMEMBER WHAT TYPE OF HAIR HE HAD?

19 A. NO.

20 Q. DO YOU REMEMBER IF HIS HAIR WAS LONG OR SHORT?

21 A. I THINK IT WAS SHORT.

22 Q. SHORT. BUT YOU DON'T REMEMBER IF IT WAS CURLY OR
23 NOT?

24 A. I DON'T.

25 Q. OKAY. DO YOU REMEMBER HOW TALL HE WAS?

1 A. NOT TALL, NOT THAT TALL.

2 MR. POTTER: NOTHING FURTHER, YOUR HONOR.

3 THE COURT: RE-EXAM?

4 MS. HUEY: NOTHING FURTHER, JUDGE.

5 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

6 THANK YOU, MA'AM.

7 (WITNESS LEAVES STAND.)

8 MS. HUEY: JUDGE, MAY WE APPROACH?

9 THE COURT: CERTAINLY.

10 (DISCUSSION AT SIDEBAR.)

11 THE COURT: MADAM FORELADY, LADIES AND
12 GENTLEMEN OF THE JURY, WE NEVER KNOW HOW QUICKLY A CASE
13 MIGHT PROGRESS. AS YOU KNOW, WE'VE HAD SEVERAL
14 WITNESSES AND THEY THOUGHT THEY MIGHT TAKE LONGER. THAT
15 HASN'T BEEN THE OCCASION.

16 THE NEXT WITNESS IS TO COME IN THE MORNING.
17 AND SO RATHER THAN US WAIT FOR THEM TO GET HERE, I THINK
18 IT MIGHT BE WELL THAT WE BREAK FOR THE AFTERNOON.

19 ACTUALLY, THIS IS NOT A BAD THING. I KNOW
20 WE'VE HAD A LOT OF DELAYS AND STOPS AND GOES TODAY, AND
21 THAT'S SOMETHING THAT HAPPENS ON THE FIRST DAY OF COURT.
22 BUT I HAVE FOUND THAT USUALLY I NORMALLY BREAK IN A CASE
23 ABOUT 5:00. I'VE FOUND THAT WE HAVE TWO DAYS, REALLY,
24 AT THIS TIME: USUALLY ONE STARTS EARLY IN THE MORNING
25 AND THEN GOES TO ABOUT 5:00, AND THEN THE OTHER STARTS

1 AND 5:00 AND SEEMS TO GO ON FOREVER. SO I USUALLY DON'T
2 GO BEYOND 5:00 OR AT LEAST NOT TOO FAR BEYOND 5:00. IF
3 WE DID HAVE A LONG WITNESS OR SOMETHING LIKE THAT, WE
4 WOULD PROBABLY BREAK SOMETIME AFTER 4:30, SO WE WOULDN'T
5 CARRY BEYOND. SO AS I SAY, THIS IS A LITTLE BIT
6 EARLIER, BUT IT COMES AT A BETTER TIME EARLIER RATHER
7 THAN LATER.

8 NOW, WHAT TIME IS YOUR WITNESS GOING TO BE
9 HERE IN THE MORNING?

10 MS. HUEY: YOUR HONOR, I TOLD HIM TO BE HERE
11 BY 9:30 IN THE MORNING.

12 THE COURT: I'M GOING TO SUGGEST THAT WE
13 EITHER SUGGEST WE CONVENE IN THE MORNING AT 9:30 OR
14 10:00. IT MIGHT BE BETTER, JUST TO BE SURE THAT WE HAVE
15 EVERYTHING OUT OF THE WAY, THAT WE DO IT AT 10:00. BUT
16 AGAIN, I'LL LEAVE THAT UP TO YOU.

17 AND MADAM FORELADY YOU AND THE JURY, I'M
18 GOING TO SUGGEST YOU POLL THE JURY NOW JUST AS TO IF
19 THEY WANT TO COME AT 9:30 OR 10:00. I DON'T KNOW HOW
20 FAR AWAY OR WHAT YOU MIGHT HAVE TO DO BEFORE YOU GET
21 HERE. BUT IF YOU WOULD JUST CHECK WITH YOUR JURY AND
22 ADVISE ME: 9:30 OR 10:00. BY THE WAY, THIS IS NOT A
23 UNANIMOUS VERDICT. JUST CHECK RIGHT HERE.

24 (JURY CONFERS OFF RECORD)

25 THE FORELADY: 9:30.

1 **THE COURT:** IT LOOKS LIKE THAT'S THE
2 CONSENSUS. VERY GOOD. WE'LL START AT 9:30.

3 AND MADAM SOLICITOR, LET'S TRY TO HAVE THE
4 ATTORNEYS BE HERE A LITTLE EARLIER SO IF WE DO HAVE
5 THINGS WE NEED TO TAKE UP, WE CAN DO THAT BEFORE WE
6 START.

7 **MS. HUEY:** YES, SIR.

8 **MR. POTTER:** YES, SIR.

9 **THE COURT:** NOW, I TELL JURIES THIS IS THE
10 MOST DIFFICULT TIME THAT YOU WILL HAVE DURING THE TRIAL
11 IN THIS CASE, BECAUSE YOU WILL GO HOME AND SOMEBODY WILL
12 SAY, WHAT ARE YOU DOING?

13 YOU'LL SAY, I'VE BEEN DRAWN ON A JURY.

14 THEY'LL SAY, WELL, WHAT IS IT ABOUT?

15 AND YOU'LL SAY, WELL, I CAN'T TELL YOU.

16 AND THEY'LL SAY, WELL, WHY NOT?

17 AND YOU'LL SAY, BECAUSE THE JUDGE SAID SO.

18 THEY'LL PROBABLY SAY SOMETHING LIKE, WELL,
19 THAT'S RIDICULOUS.

20 WELL, I THINK THAT YOU DO UNDERSTAND THAT
21 THIS IS IMPORTANT TO EVERYBODY INVOLVED AND IT NEEDS TO
22 BE RESOLVED IN THE PROPER FASHION, AND NOBODY WHO IS NOT
23 SITTING IN THAT JURY-BOX WITH YOU OR WILL BE BACK IN THE
24 JURY ROOM WITH YOU CAN HELP YOU. THEY HAVEN'T HEARD THE
25 FIRST BIT OF TESTIMONY OR THEY HAVEN'T SEEN THE FIRST

1 EXHIBIT. THEY HAVE ABSOLUTELY NO KNOWLEDGE OF WHAT
2 REALLY YOUR JOB IS GOING TO BE, WHICH IS DETERMINE THE
3 FACTS OF THE CASE. THE ONLY THING THEY CAN DO IS
4 INTERFERE, AND, AS I SAY, INTERFERE WITH THE PROPER
5 RESOLUTION. SO AGAIN, IF SOMEBODY INSISTS ON TALKING TO
6 YOU, I'LL PROBABLY BE HERE ABOUT 9:00 IN THE MORNING,
7 AND IF THEY DON'T UNDERSTAND, TELL THEM THAT I'LL BE
8 GLAD TO EXPLAIN IT TO THEM. BUT I THINK YOU ALL
9 UNDERSTAND THIS CASE NEEDS TO BE RESOLVED IN THE PROPER
10 FASHION.

11 SO WITH THAT I'LL EXCUSE YOU AND I'LL SEE
12 YOU AT 9:30 IN THE MORNING. JUST COME BACK TO THE SAME
13 JURY ROOM THAT WE WERE USING THIS AFTERNOON.

14 EVERYONE ELSE REMAIN SEATED WHILE THE JURY
15 RETIRES FROM THE COURTROOM.

16 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
17 4:18 P.M.)

18 THE COURT: ALL RIGHT. ANYTHING FROM THE
19 STATE BEFORE WE --

20 MS. HUEY: NO, SIR, YOUR HONOR.

21 THE COURT: -- RECEDE FOR THE EVENING?
22 FROM THE DEFENDANT?

23 MR. POTTER: NO, SIR, YOUR HONOR.

24 THE COURT: LET'S DO CLOSE TO 9:00, 9:15 AT
25 THE LATEST.

1 MS. HUEY: YES, SIR.

2 MR. POTTER: YES, SIR.

3 THE COURT: ALSO, IF YOU HAVE ANY REQUESTS
4 FOR CHARGES, PLEASE LET US HAVE THEM IN THE MORNING.
5 YOU DON'T HAVE TO SWAP THEM OR EXCHANGE THEM, BUT THE
6 THING IS I DO NEED TO KNOW WHAT YOUR THEORIES ARE GOING
7 TO BE, WHAT THEORIES ARE BEING CONSIDERED SO I CAN
8 PREPARE -- SO THE CHARGES CAN BE PREPARED.

9 MS. HUEY: YES, SIR. THANK YOU, JUDGE.

10 THE COURT: THANK YOU VERY MUCH. I'LL SEE
11 YOU IN THE MORNING.

12 (WHEREUPON, THE TRIAL IN THE MATTER OF THE
13 STATE OF SOUTH CAROLINA V. JEFFERY S. EVANS
14 ADJOURNED AT 4:30 P.M. ON MONDAY, AUGUST 4,
15 2008, TO RESUME AT 9:00 ON TUESDAY, AUGUST 5,
16 2008.)

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1 (WHEREUPON, THE COURT CONSIDERED AN UNRELATED
2 MATTER, AFTER WHICH THE TRIAL IN THE MATTER
3 OF THE STATE V. JEFFERY EVANS RESUMED AT
4 APPROXIMATELY 10:08 A.M. ON AUGUST 5TH,
5 2008.)

6 THE COURT: ARE WE READY TO GO FORWARD WITH
7 THE TRIAL?

8 MS. HUEY: YES, YOUR HONOR. IF I MAY PUT
9 SOMETHING ON THE RECORD?

10 THE COURT: CERTAINLY.

11 MS. HUEY: JUDGE, I'VE MARKED AS AN EXHIBIT
12 STATE'S 1-A, AND THAT IS A REDACTED VERSION OF THE
13 DEFENDANT'S STATEMENT; AND MR. POTTER HAS REVIEWED IT AS
14 WELL, YOUR HONOR.

15 MR. POTTER: YES, YOUR HONOR.

16 THE COURT: ALL RIGHT. SO ARE YOU GOING TO
17 SUBSTITUTE 1-A?

18 MS. HUEY: YES, SIR. IT WILL BE 1-A RATHER
19 THAN TAKE OUT THE ORIGINAL.

20 THE COURT: SO THE ORIGINAL WAS NOT ADMITTED
21 IN THE TRIAL, SO THIS ONE --

22 MS. HUEY: YES, SIR.

23 THE COURT: -- DO I UNDERSTAND THAT -- NO,
24 1 A IS THE ADVISORY OF RIGHTS FORM, ISN'T IT?

25 MS. HUEY: OH, I'M SORRY, JUDGE. IT SHOULD

1 ACTUALLY BE 2-A, THEN.

2 THE COURT: SO STATE'S EXHIBIT NUMBER 2 HAS
3 BEEN REDACTED AND WILL BE ADMITTED WITHOUT OBJECTION --
4 IS THAT CORRECT, MR. POTTER?

5 MR. POTTER: YES, SIR.

6 THE COURT: -- AS STATE'S EXHIBIT NUMBER
7 2-A.

8 MS. HUEY: YES, SIR.

9 (STATE'S EX. # 2-A, REDACTED STATE'S EXHIBIT
10 # 2, WAS RECEIVED IN EVIDENCE.)

11 THE COURT: ALL RIGHT. ANYTHING ELSE FROM
12 THE STATE?

13 MS. HUEY: NO, SIR, JUDGE.

14 THE COURT: ANYTHING ELSE, MR. POTTER?

15 MR. POTTER: NO, YOUR HONOR.

16 THE COURT: ASK THE JURY TO JOIN US.

17 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
18 10:09 A.M.)

19 THE COURT: LET THE RECORD REFLECT THE JURY
20 AND ALTERNATE ARE IN THE JURY-BOX.

21 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
22 JURY, I APOLOGIZE. I THOUGHT I COULD TAKE CARE OF
23 MATTERS BEFORE 9:30, AND UNFORTUNATELY, DUE TO MY OWN
24 NOT BEING ABLE TO DO SO, I HAD TO GET SOMETHING ELSE OUT
25 OF THE WAY BEFORE WE STARTED BACK TO THE TRIAL OF THIS

1 CASE, AND I DO APPRECIATE YOUR PATIENCE WITH THE COURT.
2 WITH THIS WE'LL GO FORWARD WITH THE STATE'S
3 CASE.

4 MS. HUEY: THANK YOU, JUDGE. THE STATE
5 CALLS SCOTT MESSENGER TO THE STAND.

6 (WHEREUPON, THE WITNESS WAS SWORN BY THE
7 CLERK.)

8 THE CLERK: PLEASE STATE YOUR FULL NAME AND
9 SPELL YOUR LAST NAME FOR THE RECORD.

10 THE WITNESS: SCOTT THADDEUS MESSENGER, AND
11 IT'S SPELLED M-E-S-S-E-N-G-E-R.

12 WHEREUPON,

13 SCOTT MESSENGER,
14 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
15 FOLLOWS:

16 DIRECT EXAMINATION BY MS. HUEY:

17 Q. MR. MESSENGER, WHERE ARE YOU EMPLOYED?

18 A. GOODWILL MINISTRIES.

19 Q. HOW LONG HAVE YOU WORKED THERE?

20 A. EIGHT YEARS.

21 Q. WHAT IS YOUR SPECIFIC TITLE THERE?

22 A. CURRENTLY MY TITLE IS VICE-PRESIDENT OF CONTRACT
23 SERVICES FOR GOODWILL INDUSTRIES.

24 Q. AND DID YOU WORK AT ANOTHER AREA PREVIOUSLY?

25 A. I DID. UP UNTIL 12 MONTHS AGO I WAS THE DIRECTOR

1 OF LOSS PREVENTION FOR GOODWILL INDUSTRIES.

2 Q. AND SO WERE YOU THE DIRECTOR OF LOSS PREVENTION
3 THEN IN MAY 2007?

4 A. YES, I WAS.

5 Q. AS SUCH, WHAT WERE SOME OF YOUR DUTIES?

6 A. MY RESPONSIBILITIES INCLUDED HANDLING
7 EXTERNAL/INTERNAL THEFT, REVIEWING SURVEILLANCE CAMERAS,
8 DEALING WITH THE DAY-TO-DAY OPERATIONS OF SECURITY
9 WITHIN THE GOODWILL INDUSTRIES WITHIN THE 28 RETAIL AND
10 THE 18 ATTENDED DONATION SITES HERE IN THE UPSTATE
11 BETWEEN GAFFNEY AND COLUMBIA.

12 Q. SO, EVEN THOUGH YOUR OFFICE IS LOCATED IN --
13 GREENVILLE NOW?

14 A. CORRECT.

15 Q. -- YOU DID MANAGE THE SECURITY A BIT FOR OTHER
16 AREAS IN THE REGION, OTHER STORES?

17 A. THAT'S CORRECT.

18 Q. AND BEFORE YOU GOT INTO GOODWILL INDUSTRIES, WHAT
19 DID YOU DO THEN?

20 A. PRIOR TO GOODWILL INDUSTRIES, I WAS A CRIMINAL
21 INVESTIGATOR IN ASHEBORO, NORTH CAROLINA. AFTER I ENDED
22 MY TENURE WITH THE POLICE DEPARTMENT, I WAS A POLICE
23 OFFICER FOR EIGHT YEARS, AND FOR FOUR YEARS I WAS A
24 CRIMINAL INVESTIGATOR HANDLING HOMICIDE, SEXUAL ASSAULT,
25 ROBBERY, AND THAT SORT OF THING.

1 Q. NOW, YOU AGAIN WERE WORKING IN THIS POSITION IN
2 MAY OF 2007?

3 A. THAT'S DIRECTOR OF LOSS PREVENTION, CORRECT.

4 Q. YES. DID YOU RECEIVE A CALL REGARDING AN ARMED
5 ROBBERY THAT HAD TAKEN PLACE AT THE GOODWILL STORE AT
6 2901 SOUTH MAIN STREET IN ANDERSON?

7 A. YES, I DID.

8 Q. HOW DID THAT COME ABOUT?

9 A. I RECEIVED A CALL FROM THE STORE MANAGER ON DUTY
10 AT THE TIME ADVISING THAT WE JUST HAD SUSTAINED A
11 ROBBERY HERE IN ANDERSON, AND I NEEDED TO PULL UP THE
12 SURVEILLANCE TAPE.

13 Q. AND WHAT TIME DID YOU RECEIVE THAT CALL, DO YOU
14 REMEMBER?

15 A. 8:50, 8:55, SOMEWHERE IN THAT AREA.

16 Q. NOW, WOULD YOU HAVE BEEN AT WORK AT THAT TIME, OR
17 ON CALL? HOW DID THAT WORK?

18 A. NORMALLY I CARRY MY LAPTOP COMPUTER HOME WITH ME,
19 WHICH ENABLES ME TO REVIEW, PULL UP THE SURVEILLANCE
20 CAMERAS FOR ALL THE STORES THAT DID AT THE TIME HAVE
21 CAMERAS, AND WHICH THIS STORE AT THE TIME DID, IN FACT,
22 HAVE SECURITY CAMERAS.

23 Q. SO DID YOU HAVE YOUR LAPTOP AT HOME?

24 A. I DID.

25 Q. SO ONCE YOU RECEIVED THE CALL, YOU WERE ABLE TO

1 USE YOUR LAPTOP AT HOME?

2 A. CORRECT.

3 Q. AND AS A RESULT, WHAT HAPPENED NEXT?

4 A. AT THAT TIME I WAS ABLE TO PULL UP THE SECURITY
5 CAMERAS AND OBSERVE A SITUATION AT THE CASH REGISTER
6 WITHIN THE STORE AT APPROXIMATELY 8:45, GIVE OR TAKE.

7 Q. AND IS THIS A VIDEO THAT YOU PULL UP OR STILLS?
8 CAN YOU EXPLAIN EXACTLY WHAT YOU SEE ON THE COMPUTER?

9 A. SURE. I'M ABLE TO, THROUGH THE, WHAT IT'S
10 CALLED, A DIGITAL-VIDEO RECORDING SYSTEM, IN SHORT FOR
11 D.V.R., THROUGH THE ELECTRONIC MEANS THAT WE HAVE,
12 TECHNOLOGY TODAY PERMITS THAT I CAN, FROM OUT OF THE
13 STORE, REMOTELY I CAN PULL UP THAT CAMERA FOR
14 SPECIFICALLY AND ACTUALLY PULL IT UP LIVE WHERE YOU CAN
15 MAKE STILL PICTURES OF ANYTHING THAT WAS GOING ON AS THE
16 TAPE IS CONTINUOUSLY GOING.

17 Q. SO WERE YOU ABLE THEN TO PULL STILLS FROM THIS
18 DATE?

19 A. I WAS.

20 Q. FROM MAY 24TH OF 2007?

21 A. YES, MA'AM.

22 Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED STATE'S 7-A
23 THROUGH 7-E. IF YOU COULD TAKE A LOOK AT ALL OF THOSE
24 FOR ME?

25 A. SURE. YES, I DO RECOGNIZE THESE PHOTOGRAPHS.

1 Q. YOU RECOGNIZE THOSE? HOW ARE YOU ABLE TO
2 RECOGNIZE THOSE?

3 A. THESE ARE THE ACTUAL STILL PICTURES THAT I HAD
4 PULLED UP. ACTUALLY LOOKING AT THE DATE ON THE TOP
5 HERE, I CAME IN EARLY THAT NEXT MORNING, AS THE DATE
6 INDICATES ON THE STILL PICTURE ITSELF, AND PULLED THOSE
7 PICTURES UP, MAKING STILL PHOTOGRAPHS USING MY PRINTER
8 IN THE OFFICE. BUT AT THE TIME I COULD ACTUALLY PULL
9 THEM UP AT MY RESIDENCE, AS I PREVIOUSLY TESTIFIED, AND
10 TAKE A LOOK AT THIS PICTURE BY MAKING A HARD COPY, IF
11 YOU WILL.

12 Q. OKAY. AND SO ARE THOSE IN THE SAME CONDITION AS
13 THEY WERE WHEN YOU PRINTED THEM BACK IN, I GUESS, MAY
14 25TH THEN OF 2007?

15 A. THAT'S CORRECT, YES, MA'AM.

16 MS. HUEY: YOUR HONOR, AT THIS TIME WE WOULD
17 MOVE STATE'S EXHIBITS 7-A THROUGH E INTO EVIDENCE.

18 THE COURT: ANY OBJECTION?

19 MR. POTTER: NO, YOUR HONOR.

20 THE COURT: WITHOUT OBJECTION, STATE'S
21 EXHIBIT 7 A THROUGH E ARE ADMITTED.

22 (STATE'S EXHIBIT # 7-A THROUGH 7-E,
23 SURVEILLANCE PHOTOS, WAS RECEIVED IN
24 EVIDENCE.)

25 BY MS. HUEY:

1 Q. OKAY, MR. MESSENGER, IF YOU DON'T MIND, IF YOU
2 COULD TAKE THOSE STILLS ONE BY ONE? LET ME START WITH
3 7-A. AND I BELIEVE YOU BRIEFLY MENTIONED THERE BEING
4 TWO TIMES ON THOSE STILLS. CAN YOU EXPLAIN WHY THERE
5 ARE TWO TIMES?

6 (WITNESS LEAVES STAND)

7 A. CORRECT. AT THE TIME ON THE TOP -- IF I CAN SHOW
8 THE JURY -- AT THE VERY TOP HERE IS 2007, MAY 25TH, IT
9 STATES FRIDAY; AND THIS TIME RIGHT HERE IS 11:12:20, AND
10 TO THE RIGHT IS THE GIGABYTES THAT SHOWS ON THE COMPUTER
11 AND THE COMPUTER WOULD HAVE THAT MEMORY. AND AGAIN, MAY
12 25TH INDICATES THE DATE THAT I ACTUALLY, AND THE TIME
13 THAT I WOULD ACTUALLY HAVE PULLED THAT, THIS PICTURE OFF
14 THE COMPUTER.

15 DOWN HERE AT THE LOWER BOTTOM, 2007, MAY 24TH,
16 THE TIME IS 20.41.38, THAT'S MILITARY TIME FOR 8:41 P.M.
17 IT SAYS, FRAME STEP REWIND. THAT'S ACTUALLY THE CAPTION
18 ON THE COMPUTER. AND DOWN HERE AT THE LOWER BOTTOM
19 WHERE IT SAYS 15, OUR STORE HAS EXACTLY 16 CAMERAS AT
20 THE TIME, AND THIS IS ACTUALLY CAMERA 15 WITHIN THE
21 STORE.

22 Q. AND WHAT DOES THAT CAMERA DEPICT?

23 A. THIS PICTURE HERE THAT I'M HOLDING, 7-A, IS
24 ACTUALLY AN OUTSIDE CAMERA SHOOTING AT THE ROAD THERE
25 AND THE PARKING LOT ON THE SIDE ENTRANCE.

1 Q. AND IF YOU WOULD GO ON TO 7-B?

2 A. 7 B, AGAIN, THE SAME INFORMATION AT THE TOP:
3 2007, MAY 25TH, FRIDAY. THIS ACTUALLY DEPICTS 8:00 A.M.
4 AT 46 SECONDS, AND THE GIGABYTES TO THE RIGHT. DOWN
5 HERE AT THE BOTTOM IT SHOWS 2007, MAY 24TH, TIME
6 20.44.23. AND AGAIN, THAT'S MILITARY TIME FOR 8:44 P.M.
7 AND AGAIN, FRAME STEP IS SHOWING ACTUALLY MY STEPS, WHAT
8 I DID TO PULL UP THE SAME SHOP, AND AGAIN, AT THE LOWER
9 BOTTOM IS 01, THAT IS THE CAMERA IDENTIFICATION OF THE
10 FIRST CAMERA WITHIN THE STORE.

11 Q. AND THIS PARTICULAR STILL DEPICTS?

12 A. THIS IS A STILL PICTURE OF THE FRONT DOOR THAT
13 SHOWS A GENTLEMAN COMING INTO THE FRONT DOOR THERE
14 WITHIN THE STORE, OUR GOODWILL STORE ON THE ANDERSON
15 SIDE.

16 Q. AND THEN 7-C, PLEASE?

17 A. 7-C AGAIN DEPICTS 2007, MAY 25TH, FRIDAY,
18 7.59.58. AGAIN 7:59, 58 SECONDS IN THE MORNING. THE
19 GIGABYTES TO THE RIGHT. DOWN AT THE BOTTOM IS 2007, MAY
20 24, 20.44. 25 SECONDS, AGAIN DEPICTS WHAT EXACTLY I WAS
21 DOING WITH THE CAMERA, AND AGAIN, 01. THIS IS TWO
22 SECONDS BEHIND EXHIBIT 7-B. YOU SEE THE SAME GENTLEMAN
23 FROM EXHIBIT 7-B; TWO SECONDS LATER HE'S JUST TWO MORE
24 STEPS INSIDE THE DOOR, INSIDE THE MAIN DOOR.

25 Q. AND THEN 7-D, MR. MESSENGER?

1 A. 7-D AGAIN DEPICTS AT THE VERY TOP 2007, MAY 25TH,
2 FRIDAY, AT 6.48. 38 SECONDS IN THE MORNING, AGAIN TO THE
3 RIGHT, THE GIGABYTES FROM THE COMPUTER. DOWN AT THE
4 BOTTOM, 2007, MAY 24TH, 2046 AND 29 SECONDS, FRAME
5 PAUSE. THIS AT THE VERY BOTTOM SHOWS 04, THAT'S THE
6 CAMERA OVER THE REGISTER IN WHICH YOU SEE -- I RECOGNIZE
7 MY CASHIER AND AN UNKNOWN GENTLEMAN THERE AT THE
8 REGISTER AT THE TIME AT AGAIN 8.46 AND 29 SECONDS.

9 Q. AND THEN FINALLY, 7-E?

10 A. 7-E. THIS ONE DEPICTS 2007, MAY 25TH, FRIDAY AT
11 6.50 AND 11 SECONDS IN THE MORNING. AGAIN, GIGABYTES AT
12 THE VERY RIGHT. DOWN AT THE BOTTOM: 2007, MAY 24TH,
13 20.46.30 SECONDS. AGAIN FRAME PAUSE. AGAIN, THE SAME
14 CAMERA, 01, SHOWING THE SAME PERSON THAT I DEPICTED
15 COMING IN THE DOOR ACTUALLY SEEN LEAVING OUT AT THAT
16 TIME.

17 **MS. HUEY:** GREAT. THANK YOU, MR. MESSENGER.

18 AT THIS TIME, JUDGE, I WOULD LIKE TO ALSO
19 HAND THEM TO THE JURY.

20 **THE COURT:** VERY WELL.

21 (WITNESS RETURNS TO STAND.)

22 BY MS. HUEY:

23 Q. NOW, MR. MESSENGER, AGAIN, YOU PRINTED THESE
24 STILLS OFF YOUR COMPUTER?

25 A. THAT IS CORRECT.

1 Q. NOW, WERE YOU ABLE TO PRINT A VIDEO, THOUGH, OR
2 ONLY THE STILLS?

3 A. I WAS ONLY ABLE TO PRINT THE STILLS FROM THE
4 VIDEO CAMERA.

5 Q. AND DO YOU HAVE AN EXPLANATION FOR THAT, OR IS
6 THAT JUST BECAUSE THAT'S WHAT THE EQUIPMENT ALLOWS?

7 A. THAT'S WHAT THE EQUIPMENT ALLOWED AT THAT TIME,
8 YES.

9 Q. AND ONCE YOU PRINTED ALL OF THESE STILLS, THEN
10 WHAT DID YOU DO WITH THEM?

11 A. I AT THAT TIME TURNED IT OVER TO THE LEAD
12 INVESTIGATOR, DETECTIVE MATHESON, AT THE TIME.

13 MS. HUEY: THAT'S ALL I HAVE FOR THIS
14 WITNESS, JUDGE.

15 THE COURT: CROSS-EXAMINATION.

16 MR. POTTER: THANK YOU, YOUR HONOR.

17 CROSS-EXAMINATION BY MR. POTTER:

18 Q. THE EQUIPMENT ALLOWS YOU TO SEE THE VIDEO. YOU
19 WATCH THE VIDEO; IS THAT CORRECT?

20 A. THAT IS CORRECT, YES, SIR.

21 Q. THE ACTUAL VIDEO ITSELF IS STORED WITHIN THE HARD
22 DRIVE OF THE COMPUTER?

23 A. THAT IS CORRECT.

24 Q. AND IS THIS HARD DRIVE COMPUTER, IS IT UNDER
25 LAPTOP OR IS IT AT YOUR MAIN OFFICE?

1 A. THE HARD DRIVE ITSELF WOULD BE AT THE STORE
2 LOCATION.

3 Q. OKAY. AND THEN YOU ARE ABLE TO ACCESS THAT
4 THROUGH YOUR LAPTOP TO SEE THE VIDEO?

5 A. THAT'S CORRECT.

6 Q. OKAY. THE VIDEO WOULD STILL BE ON THE HARD DRIVE
7 AT THE STORE, CORRECT?

8 A. CORRECT.

9 Q. CAN YOUR, THE STILLS THAT YOU CREATED FROM THAT
10 VIDEO, CAN YOU ENHANCE THEM IN ANY WAY?

11 A. NO.

12 MR. POTTER: NOTHING FURTHER, JUDGE, THANK
13 YOU.

14 MS. HUEY: JUST A COUPLE.

15 THE COURT: RE-EXAM.

16 MS. HUEY: THANK YOU, JUDGE.

17 REDIRECT EXAMINATION BY MS. HUEY:

18 Q. AND SPEAKING OF ENHANCEMENT, WHAT CAN AND CAN'T
19 YOU DO WITH THOSE KINDS OF STILLS?

20 A. YOU CAN, YOU CAN BRING THE PICTURE A LITTLE
21 CLOSER, BUT IT BECOMES VERY DISTORTED. SO THAT'S THE
22 TRUE AND ACTUAL PICTURE OF WHAT WAS DEPICTED AT THE
23 TIME. BECAUSE IF YOU TRY TO ENHANCE IT, AS THE DEFENSE
24 ATTORNEY MENTIONED, IT JUST BECOMES TOTALLY DISTORTED
25 AND WOULDN'T BE OF CLARITY. SO I CHOSE JUST TO DEPICT

1 THE ACTUAL PICTURE AS IT WAS, NOT TRYING TO ENHANCE IT
2 OR ANYTHING ELSE.

3 Q. SO THE VIDEO THAT IS SPOKEN OF, STILL ON THE HARD
4 DRIVE, DOES IT SHOW UP AS THAT GRAINY IMAGE AS THE
5 STILLS DO?

6 A. IT WOULD HAVE, YES.

7 Q. AND SO WHAT YOU PRINTED IS EXACTLY WHAT YOU SEE
8 ON YOUR COMPUTER?

9 A. THAT IS CORRECT, YES.

10 MS. HUEY: THAT'S ALL, JUDGE.

11 THE COURT: RECROSS?

12 MR. POTTER: NO, YOUR HONOR.

13 THE COURT: YOU MAY STEP DOWN.

14 (WITNESS LEAVES STAND.)

15 MS. HUEY: YOUR HONOR, MAY WE EXCUSE THIS
16 WITNESS, PLEASE?

17 THE COURT: ANY OBJECTION TO THIS WITNESS
18 BEING EXCUSED?

19 MR. POTTER: NO, SIR.

20 THE COURT: WITHOUT OBJECTION YOU MAY BE
21 EXCUSED. THANK YOU, SIR.

22 (WHEREUPON, THE WITNESS WAS EXCUSED.)

23 THE COURT: CALL YOUR NEXT WITNESS.

24 MS. HUEY: THE STATE CALLS KEVIN MATHESON TO
25 THE STAND.

1 (WHEREUPON, THE WITNESS WAS SWORN.)

2 THE CLERK: PLEASE STATE YOUR FULL NAME,
3 SPELLING YOUR LAST NAME FOR THE RECORD.

4 THE WITNESS: KEVIN DAVID MATHESON, THE
5 SPELLING OF MY LAST NAME IS M-A-T-H-E-S-O-N.
6 WHEREUPON,

7 KEVIN MATHESON,
8 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
9 FOLLOWS:

10 DIRECT EXAMINATION BY MS. HUEY:

11 Q. MR. MATHESON, WHERE DO YOU WORK?

12 A. I WORK FOR THE ANDERSON COUNTY SHERIFF'S OFFICE.

13 Q. AND HOW LONG HAVE YOU BEEN THERE?

14 A. I'VE BEEN THERE FOR APPROXIMATELY TEN YEARS.

15 Q. WHAT DIVISION DO YOU WORK IN?

16 A. IN CRIMINAL INVESTIGATION DIVISION.

17 Q. AND WHAT DOES THAT MEAN?

18 A. THAT I AM A DETECTIVE, I INVESTIGATE CRIMES.

19 Q. AND AS A DETECTIVE IN INVESTIGATING CRIMES, WHAT
20 ARE SOME OF YOUR GENERAL DUTIES?

21 A. RIGHT NOW I'M CURRENTLY ASSIGNED TO HOMICIDES AND
22 CRIMES AGAINST CHILDREN PRIMARILY. WE ALSO MIGHT COVER
23 ANYTHING ELSE THAT COMES IN DURING THE DAY OR OTHER
24 THINGS WE MIGHT BE WORKING, INCLUDING ROBBERIES
25 BURGLARIES, LARCENIES, AND THINGS OF THAT NATURE.

1 Q. DID YOU HAVE AN OCCASION TO RESPOND TO 2901 SOUTH
2 MAIN STREET, THE GOODWILL STORE HERE IN ANDERSON?

3 A. YES, MA'AM, I DID.

4 Q. IS THAT IN ANDERSON COUNTY?

5 A. YES, MA'AM.

6 Q. WHY DID YOU GO TO THAT STORE?

7 A. I WAS ACTUALLY ACCOMPANIED WITH ANOTHER DETECTIVE
8 THAT EVENING WHO WAS WORKING SECOND SHIFT. WE GOT A
9 CALL TO GO OUT THERE, THAT AN ARMED ROBBERY HAD OCCURRED
10 AT THE GOODWILL STORE ON SOUTH MAIN. AS WE WERE THE
11 DETECTIVES ON CALL, WE WENT AHEAD AND RESPONDED AS
12 QUICKLY AS WE COULD.

13 WHEN WE ARRIVED, WE ACTUALLY FOUND THE RESPONDING
14 OFFICER HAD ALREADY BEGUN TO SEPARATE OUR WITNESSES AND
15 PUT UP A CRIME SCENE TAPE TO ESTABLISH THE CRIME SCENE
16 AND KEEP EVERYTHING AS CLEAN AS POSSIBLE.

17 Q. WHEN YOU FIRST GOT THERE, OTHER THAN OBSERVING
18 THE CRIME SCENE TAPE AND THAT SORT OF THING, WHAT ELSE
19 DID YOU OBSERVE?

20 A. WHEN I GOT THERE -- I ALWAYS TRY TO DO LIKE A
21 GENERIC JUST KIND OF WALKTHROUGH TO TRY TO FIGURE OUT
22 WHAT WE'VE GOT ON SCENE. I USUALLY TRY TO SIT WITH THE
23 DEPUTY THAT WAS THERE FIRST AND OBTAIN THE INFORMATION
24 THAT HE MAY HAVE OBTAINED THAT WOULD BE ESSENTIAL TO MY
25 INVESTIGATION.

1 I ALSO WALK THROUGH THE AREA, AS I DID THIS
2 NIGHT, AND TRY TO LOOK AT DIFFERENT THINGS THAT MAY BE
3 OUT OF PLACE OR MAY BE OF AN INTEREST TO ME OR IN THIS
4 CASE. THIS PARTICULAR NIGHT AS I WALKED THROUGH, AS I
5 SAID, THE WITNESSES WERE ALREADY BEING SEPARATED
6 THROUGHOUT THE STORE AS BEST THAT THEY COULD.

7 I OBSERVED -- BEFORE I WAS EVEN ABLE TO WALK IN,
8 I OBSERVED SOME CLOTHING LAYING OUTSIDE THE FRONT DOOR
9 OF THE GOODWILL THAT STILL HAD HANGERS ATTACHED TO IT;
10 IT WAS OBVIOUSLY THE CLOTHING THAT HAD COME FROM INSIDE
11 THE STORE. I WENT INSIDE THE STORE. THE DEPUTY WENT TO
12 THE CASH REGISTER AND QUESTIONED, AND AT THAT TIME THERE
13 WAS A KNIFE LAYING ON THE FLOOR IN CLOSE PROXIMITY TO
14 THE REGISTER.

15 AT THAT POINT I TRIED TO IDENTIFY THE PERSON THAT
16 WAS ACTUALLY THE CLERK THAT NIGHT DURING THE INCIDENT,
17 AND I DISCOVERED THAT WAS MS. AYERS; AND I TOOK HER AND
18 OBTAINED A STATEMENT FROM HER FIRST, TO GET A BETTER
19 UNDERSTANDING OF WHAT ACTUALLY HAPPENED.

20 Q. NOW, MR. MATHESON, DO YOU ALSO DO THE FORENSICS
21 AT THE SCENE OR DOES SOMEONE ELSE DO THAT?

22 A. NO, MA'AM. WE ACTUALLY, CONTRARY TO WHAT IS
23 PORTRAYED ON TELEVISION A LOT OF TIMES, WE USUALLY
24 TAKE -- IT'S OUR RESPONSIBILITY, EVERYTHING FROM THE
25 BEGINNING TO THE END IS OUR RESPONSIBILITY OF HOW A CASE

1 GOES. IN THIS CASE, AS IN OTHER CASES, WE CALL
2 FORENSICS IN TO ASSIST US IN THAT INVESTIGATION. WHEN
3 THEY GET THERE, THEY DON'T ACTUALLY INVESTIGATE THE
4 CRIMES THEMSELVES, THEY DO WHAT WE TELL THEM TO DO, THEY
5 COLLECT THE THINGS THAT WE TELL THEM TO COLLECT. WE
6 STILL WOULD REMAIN AND DO OUR INVESTIGATION.

7 THIS PARTICULAR EVENING, THE CLOTHING LAYING
8 OUTSIDE OF THE STORE AND THE KNIFE OBVIOUSLY WAS VERY
9 IMPORTANT TO THE INVESTIGATION, AND I DIRECTED THAT
10 THOSE ITEMS BE COLLECTED AND PLACED INTO EVIDENCE. I
11 ALSO DIRECTED THEM TO DUST THE SCENE FOR PRINTS, THE
12 DOORS, THE HANDLES, THE CASH REGISTER OR ANYTHING ELSE
13 THAT THE ALLEGED PERPETRATOR MAY HAVE COME IN CONTACT
14 WITH.

15 Q. NOW, ARE YOU YOURSELF FAMILIAR WITH THE
16 FINGERPRINTING PROCESS?

17 A. YES, MA'AM.

18 Q. OKAY. AND HOW SO?

19 A. AS I SAY, I'VE BEEN HERE FOR TEN YEARS, TWO YEARS
20 PRIOR WITH ANOTHER AGENCY, SO IT'S COMMON PRACTICE,
21 ESPECIALLY WHEN YOU ARE IN UNIFORM, TO ASK FOR A DUST
22 FOR PRINTS WHEN YOU ARE ON A CRIME SCENE SUBJECT TO THE
23 LEVEL OF CRIME THAT YOU ARE INVESTIGATING. OTHER THAN
24 THAT, I STOOD SIDE BY SIDE WITH THE FORENSICS GUYS FOR
25 SEVERAL YEARS PROCESSING MULTIPLE SCENES.

1 Q. AND TO YOUR KNOWLEDGE WERE THEY ABLE TO GET ANY
2 PRINTS IN THIS PARTICULAR SCENE?

3 A. NO, MA'AM. WHICH IS NOT SURPRISING.

4 Q. AND WHY IS THAT?

5 A. AGAIN, TELEVISION PORTRAYS IT AS IF ANYBODY GOES
6 AND TOUCHES ANYTHING, YOU CAN GET THEIR FINGERPRINTS,
7 BUT THERE ARE A LOT OF FACTORS INVOLVED. WE WERE UNABLE
8 TO OBTAIN A FINGERPRINT.

9 A LOT OF TIMES YOU GET A BRICK MASON OR SOMEBODY
10 THAT WHO DOES A LOT OF CONSTRUCTION WORK OR A LOT OF
11 THINGS WITH THEIR HANDS WILL HAVE -- ACTUALLY DON'T HAVE
12 ANY MOISTURE ON THEIR FINGERS, AND THEY'RE ACTUALLY
13 QUITE ROUGH, AND IT MAKES IT EXTREMELY DIFFICULT TO
14 OBTAIN A FINGERPRINT FROM THEM.

15 OTHER EXAMPLES ARE, WHEN WE DRIVE A VEHICLE, WHEN
16 WE TURN A CAR TRYING TO GET INTO A PARKING SPACE, HUMAN
17 NATURE TELLS US TO GO AS FAR AS WE GO, AND WE ACTUALLY
18 PULL A LITTLE BIT FURTHER. SO WHAT HAPPENS IS THOSE
19 FINGERPRINTS ACTUALLY SMUDGE, AND IT'S JUST HUMAN NATURE
20 TO DO SO. WHEN YOU PUSH A DOOR OPEN, COMING FROM IN
21 GOING OUT, WHEN YOU PUSH THAT DOOR, IT'S JUST A LIGHT
22 TOUCH, YOU GRADUALLY PUSH AND YOUR FINGERS SLIDE. SO
23 IT'S NOT UNCOMMON NOT TO BE ABLE TO OBTAIN FINGERPRINTS.

24 Q. BUT YOU DID SUPERVISE THE COLLECTION OF THE
25 KNIFE, YOU SAID, AND CLOTHING?

1 A. YES, I DID.

2 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
3 STATE'S 5. IF YOU CAN TAKE A LOOK AT THAT FOR ME?

4 A. YES, MA'AM.

5 Q. INSIDE THE BAG.

6 A. OKAY.

7 Q. DO YOU RECOGNIZE THAT ITEM?

8 A. I DO.

9 Q. HOW ARE YOU ABLE TO RECOGNIZE THAT?

10 A. WELL, THE EVIDENCE TAPE ON THE BAG, OUR MARKING
11 FROM THE SHERIFF'S OFFICE INDICATING WHAT IS INSIDE, AS
12 WELL AS VISUALLY SEEING THE KNIFE WITH THE FINGERPRINT
13 DUST ON THE KNIFE FOR THAT PARTICULAR INCIDENT.

14 Q. OKAY. AND ONCE THAT KNIFE IS COLLECTED, WHERE IS
15 IT HOUSED?

16 A. IT'S HOUSED IN OUR EVIDENCE DIVISION, WHICH IS
17 ACTUALLY OUR OLD SHERIFF'S OFFICE BUILDING THAT IS
18 COMPLETE WITH A FORENSICS DIVISION NOW. SO THAT'S WHERE
19 WE KEEP ALL OF OUR EVIDENCE, AND IT'S LOCKED UP AND
20 SECURED THERE.

21 Q. AND IS THAT IN SUBSTANTIALLY THE SAME CONDITION
22 AS IT WAS WHEN IT WAS COLLECTED?

23 A. YES, MA'AM.

24 MS. HUEY: YOUR HONOR, AT THIS TIME WE WOULD
25 MOVE STATE'S 5 INTO EVIDENCE.

1 THE COURT: ANY OBJECTION?

2 MR. POTTER: NO, YOUR HONOR.

3 THE COURT: WITHOUT OBJECTION, STATE'S
4 EXHIBIT NUMBER 5 IS ---

5 MS. HUEY: OKAY. IF YOU COULD PULL THAT OUT
6 OF THE BAG, OFFICER MATHESON.

7 THE COURT: --- RECEIVED IN EVIDENCE.

8 (STATE'S EXHIBIT # 5, KNIFE, WAS RECEIVED IN
9 EVIDENCE.)

10 THE WITNESS: (COMPLIES).

11 BY MS. HUEY:

12 Q. OKAY. AND CAN YOU OPEN IT TO SHOW HOW IT WAS
13 FOUND THAT NIGHT?

14 A. (COMPLIES). IT'S BEEN SO LONG I WOULD HAVE TO
15 VIEW THE PHOTOGRAPHS. THIS IS THE KNIFE PART OF THE
16 KNIFE, BUT I DO REMEMBER THAT THIS WAS THE KNIFE.

17 Q. YOU REMEMBER THE BLADE BEING OPEN, THEN?

18 A. YES, MA'AM.

19 Q. OKAY. THANK YOU.

20 NOW, ADDITIONALLY, YOU MENTIONED CLOTHES BEING
21 OUTSIDE THE STORE?

22 A. YES, MA'AM.

23 Q. (HANDING).

24 A. THANK YOU.

25 Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED AS

1 STATE'S 4. IF YOU COULD TAKE A LOOK AT THOSE.

2 A. YES, MA'AM.

3 Q. OKAY. AND YOU RECOGNIZE ALL THOSE?

4 A. YES, MA'AM.

5 Q. OKAY. AND HOW ARE YOU ABLE TO RECOGNIZE THOSE?

6 A. AGAIN WITH OUR USUAL MARKING THAT COMES FROM
7 EVIDENCE, WHICH HAS ALSO GOT THE CASE NUMBER THAT TIES
8 TO THIS PARTICULAR CASE. VISUALLY I REMEMBER THIS
9 CLOTHING, AS WELL 'IT'S GOT THE "GOODWILL INDUSTRIES"
10 TAG STILL ATTACHED TO THE CLOTHING.

11 Q. OKAY. AND ADDITIONALLY, WHERE ARE THESE ITEMS
12 HOUSED FROM THE TIME THEY'RE COLLECTED UNTIL THE TIME
13 THEY COME TO COURT?

14 A. THEY ARE ALSO HOUSED IN ADDITION WITH THE KNIFE,
15 EVERYTHING IS TRIED TO BE KEPT TOGETHER, USUALLY IN A
16 BOX OR MULTIPLE BOXES, WHATEVER THE CASE MAY BE, AND
17 IT'S LOCKED IN OUR EVIDENCE DIVISION AWAY FROM -- WE
18 DON'T EVEN HAVE THE PROPER PROCEDURE TO BE ABLE TO GET
19 IN, ONLY THE FORENSICS GUYS DO.

20 Q. OKAY. AND AGAIN, THOSE ARE IN SUBSTANTIALLY THE
21 SAME CONDITION AS THEY WERE ON MAY 24TH OF 2007?

22 A. YES, MA'AM, THEY APPEAR TO BE.

23 MS. HUEY: AT THIS TIME WE WOULD MOVE
24 STATE'S 4 INTO EVIDENCE.

25 THE COURT: ANY OBJECTION?

1 MR. POTTER: NO, YOUR HONOR.

2 THE COURT: STATE'S EXHIBIT 4 IS ADMITTED
3 WITHOUT OBJECTION.

4 (STATE'S EXHIBIT # 4, CLOTHING, WAS RECEIVED
5 IN EVIDENCE.)

6 BY MS. HUEY:

7 Q. GOING BACK TO THE PRINTS. ON THE KNIFE YOU
8 MENTIONED THERE BEING FINGERPRINT DUSTING POWDER --

9 A. YES, MA'AM.

10 Q. -- WHICH YOU PROBABLY HAVE ON YOUR HANDS NOW?

11 A. YES, MA'AM.

12 Q. WERE THEY ABLE TO GET ANY PRINTS OFF THE KNIFE?

13 A. NO, MA'AM.

14 Q. OKAY. AND HOW ABOUT THE CLOTHING, IS CLOTHING
15 TYPICALLY PRINTED?

16 A. NO, MA'AM. IT'S NOT A SURFACE THAT CAN REALLY
17 HOLD A FINGERPRINT. IT HAS TO BE MORE OF A HARD SURFACE
18 RATHER THAN CLOTHING.

19 Q. AND SO THAT WAS NOT PRINTED, THEN?

20 A. NO, MA'AM.

21 Q. OKAY. NOW, YOU MENTIONED SPEAKING WITH THE
22 VICTIM IN THIS CASE, MS. PAULA AYERS?

23 A. YES, MA'AM.

24 Q. OKAY. AND SHE WAS THE FIRST PERSON YOU SPOKE
25 WITH?

1 A. THAT'S CORRECT.

2 Q. ALL RIGHT. AND TELL ME HOW YOU GO ABOUT
3 INTERVIEWING WITNESSES AND THAT SORT OF THING.

4 A. IN THIS INCIDENT -- AND THE INCIDENT IS
5 ALIKE WHEN SOMEONE ACTUALLY GOES THROUGH SOMETHING
6 TRAUMATIC -- AND FOR HER IT WAS VERY TRAUMATIC,
7 UNDERSTANDABLY SO. SO I ASKED HER IF I COULD TAKE HER
8 TO A PLACE WHERE WE CAN BE ALONE, AWAY FROM EVERYBODY,
9 BECAUSE SHE'S EXTREMELY NERVOUS, AND SHE WAS IN THIS
10 CASE. WE WENT TO THE BACK BREAK ROOM OF THE STORE.

11 BEFORE I ACTUALLY TOOK THE STATEMENT, WE ACTUALLY
12 JUST CHATTED. I JUST TRIED TO RELAX HER, JUST TRIED TO
13 CALM HER DOWN, TO LET HER KNOW THAT SHE'S SAFE AT THIS
14 POINT, BECAUSE SHE WAS EXTREMELY UPSET AND STILL VISIBLY
15 SHAKEN AND SCARED FROM THE EXPERIENCE SHE JUST HAD.

16 AFTER TALKING TO HER, AND IDENTIFYING HERSELF --
17 AND IDENTIFYING MYSELF TO HER, LET HER KNOW WHAT I AM
18 AND WHAT I DO AND WHY I'M THERE, I BEGIN TO GET, TO TRY
19 TO GET DETAILS AS MUCH AS POSSIBLE FROM HER, AND THEN I
20 OBTAIN A WRITTEN STATEMENT TO THE BEST OF HER
21 RECOLLECTION AT THAT TIME OF WHAT HAPPENED.

22 Q. NOW, AT THAT POINT DO YOU TRY AND GET HER TO
23 IDENTIFY --

24 A. WE ARE LOOKING FOR A DESCRIPTION AS THE BEST THAT
25 WE CAN GET AT THIS POINT. NATURALLY, IF THEY KNOW THE

1 PERSON, THEN OF COURSE THAT'S WHO WE WILL LOOK FOR. BUT
2 IN THIS CASE SHE DID NOT AND SHE COULD ONLY DESCRIBE AN
3 UNKNOWN MALE IS WHAT SHE COULD DESCRIBE AT THAT MOMENT.

4 Q. IN FACT, ANY OF THE WITNESSES THAT YOU SPOKE WITH
5 OR PEOPLE UNDER YOUR SUPERVISION SPOKE WITH THAT NIGHT
6 AT THE GOODWILL, WERE ANY OF THEM ABLE TO IDENTIFY --

7 A. NO, MA'AM, NO.

8 Q. OKAY. BUT THEY WERE ABLE TO GIVE A DESCRIPTION?

9 A. YES, WE WERE ABLE TO OBTAIN DESCRIPTIONS FROM
10 QUITE A FEW PEOPLE, BUT, YOU KNOW, LIKE I SAID, NOBODY
11 HAD PERSONAL KNOWLEDGE OF ANYONE; THEY DEFINITELY
12 COULDN'T PICK HIM OUT.

13 Q. AND SO WHEN YOU'RE FACED WITH THIS SITUATION,
14 WHERE NO ONE CAN IDENTIFY WHO JUST ROBBED THEM, THEN
15 WHAT IS YOUR NEXT STEP AS AN INVESTIGATOR?

16 A. ONE OF THE FIRST THINGS THAT WE DO IS SEE IF
17 THERE IS SURVEILLANCE VIDEO AT A PARTICULAR BUSINESS.
18 IN THIS CASE WE WERE LUCKY, WE ACTUALLY DID HAVE VIDEO
19 SURVEILLANCE AT THE GOODWILL INDUSTRIES. AND I WORKED
20 WITH THE GENTLEMAN WHO TESTIFIED EARLIER ON PREVIOUS
21 CASES BEFORE, SO I KNEW THEY DID HAVE PRETTY GOOD
22 SURVEILLANCE SYSTEMS IN WORK. SO AT THAT POINT WE START
23 TRYING TO OBTAIN THAT.

24 IN THE OLD DAYS -- AND WHEN I SAY OLD DAYS, THE
25 V.H.S. DAYS BEFORE EVERYTHING BECAME DIGITAL -- MOST OF

1 THE TIME IT WAS WAITING ON A MANAGER OR SOMEONE TO COME
2 TO THE STORE AND UNLOCK A BOX SO WHERE WE COULD ACTUALLY
3 SIT THERE AND WATCH. WE WOULD HAVE OUR FORENSICS GUYS
4 COME DOWN THERE AND PHOTOGRAPH THE SCENE, AND WE WOULD
5 PRETTY MUCH GET WHAT WE NEEDED THAT NIGHT.

6 IN THIS TECHNOLOGICAL WORLD WE LIVE IN,
7 EVERYTHING WENT DIGITAL, SO IT'S A LOT MORE COMPLICATED,
8 SO I ACTUALLY HAVE TO TALK TO HIM IN GREENVILLE AND SET
9 UP A TIME OR LET HIM KNOW WHAT I'M LOOKING FOR AND HE
10 HAS TO TRY TO FIND IT FOR ME VIA COMPUTER, AND THEY GIVE
11 ME THE INFORMATION AS SOON AS THEY CAN.

12 Q. SO YOU DID, IN FACT, RECEIVE THE STILLS?

13 A. YES, MA'AM.

14 Q. I'M GONNA SHOW YOU STATE'S EXHIBITS 7-A THROUGH
15 E -- AND I'LL GET THOSE FROM YOU.

16 A. THANK YOU.

17 Q. THOSE HAVE ALREADY BEEN ADMITTED INTO EVIDENCE.
18 AND YOU RECOGNIZE THOSE EXHIBITS, MR. MATHESON?

19 A. YES, MA'AM.

20 Q. OKAY. AND THOSE WERE THE STILLS THAT YOU
21 RECEIVED FROM MR. MESSENGER?

22 A. YES, MA'AM.

23 Q. AND ONCE YOU GET THESE STILLS, THAT STILL DOESN'T
24 NECESSARILY TELL YOU WHO THE MAN DEPICTED IS, RIGHT?

25 A. NO, MA'AM.

1 Q. OKAY. SO THEN WHAT'S YOUR NEXT STEP?

2 A. THERE AGAIN, WE DON'T HAVE THE DATABASE THAT
3 TELEVISION WOULD HAVE YOU BELIEVE WE HAVE; WE CAN'T PUT
4 ANYTHING IN AND JUST RANDOMLY RUN PICTURES. AT THAT
5 POINT -- PARDON THE PUN -- IT'S JUST OLD-FASHIONED
6 POLICE WORK. WE JUST TRY AND HIT THE STREETS AND START
7 TRYING TO GET AS MUCH INFORMATION AS WE CAN AND SEE IF
8 ANYBODY IS TALKING; JUST ANYTHING, ANY KIND OF
9 INFORMATION WE CAN FIND.

10 WITH THAT BEING SAID, IT'S ALREADY MENTIONED THAT
11 I WAS THE LEAD DETECTIVE. NOW, BEING A LEAD DETECTIVE
12 DOES NOT MEAN I'M THE ONLY DETECTIVE WHO'S ACTUALLY
13 WORKING THE CASE. THERE ARE SEVERAL OTHER DETECTIVES
14 THAT MAY BE TRYING TO GATHER BITS OF INFORMATION FOR ME
15 WHEN THEY CAN.

16 THIS PARTICULAR WEEK I WAS ON CALL, SO, IT WAS A
17 SECOND-SHIFT THING, SO I DIDN'T COME BACK IN BRIGHT AND
18 EARLY THAT NEXT MORNING, SO I HAD OTHER DETECTIVES THAT
19 WERE WORKING ON THE CASE, AS WELL, IN MY ABSENCE. IN
20 THIS PARTICULAR INSTANCE, THAT'S WHAT WE DID, IS WE
21 STARTED ATTEMPTING TO GAIN INFORMATION THAT WAY.

22 Q. OKAY. AND WERE YOU ABLE TO GAIN ANY INFORMATION?

23 A. WE WERE. I WAS ACTUALLY CONTACTED BY ONE OF THE
24 OTHER DETECTIVES AT THE SHERIFF'S OFFICE ON MY WAY IN
25 THAT DAY, THAT HE HAD ACTUALLY OBTAINED SOME INFORMATION

1 THAT THE POSSIBLE PERPETRATOR -- LIKE I SAID, I ALSO
2 ALWAYS SAY "POSSIBLE" AT THIS POINT BECAUSE WE DON'T
3 KNOW, WE'RE JUST GETTING INFORMATION -- BUT HE ALLEGED
4 THAT THE POSSIBLE PERPETRATOR'S NAME WAS SCOTT, AND THAT
5 WE HAD LEARNED THAT HE POSSIBLY STAYED AT THE SUNRISE
6 MOTEL IN ROOM 2. SO THIS WAS, THIS WAS DEFINITELY
7 INFORMATION WE WANTED TO CHECK OUT.

8 AT THAT TIME I ACTUALLY CONTACTED DETECTIVE CHRIS
9 BEUSSE, ANOTHER DETECTIVE, AND HAD HIM GO TO FOLLOW UP
10 WITH THAT INFORMATION. BECAUSE, LIKE I SAID, AT THE
11 TIME WE'D GOT OTHER INFORMATION WE WERE TRYING TO FOLLOW
12 UP ON, AND A LOT OF US WERE GOING IN SEVERAL DIFFERENT
13 DIRECTIONS AT THE SAME TIME.

14 Q. AND WAS HE ABLE TO GET ANY INFORMATION AT THE
15 HOTEL?

16 A. YES, MA'AM. HE DID ACTUALLY GO TO THE MOTEL AND
17 HE WAS ABLE TO OBTAIN INFORMATION FROM THERE SHOWING
18 THAT SOMEONE BY THE NAME OF ---

19 MR. POTTER: JUDGE, I'M GOING TO OBJECT AT
20 THIS POINT IN TIME TO THIS WHOLE LINE OF QUESTIONING.
21 THIS IS INFORMATION AND TESTIMONY THAT'S BEING GLEANED
22 FROM ANOTHER WITNESS.

23 THE COURT: MADAM SOLICITOR?

24 MS. HUEY: YOUR HONOR, I BELIEVE HE'S JUST
25 TESTIFYING AS TO WHAT STEPS HE TOOK AS A RESULT.

1 **THE COURT:** WELL, THEN THAT WOULD BE FINE IF
2 HE DID, WHEN HE RECEIVED INFORMATION FROM WHICH HE
3 RELIED, AND IF HE KNEW SOMETHING IN RELIANCE ON THAT
4 INFORMATION ---

5 **MS. HUEY:** YES, SIR.

6 **THE COURT:** --- BUT NOT JUST AS TO THE
7 SOURCE OF THE INFORMATION OR WHAT MIGHT BE THE SPECIFICS
8 OF IT THAT RELATES TO WHAT SOMEBODY ELSE TOLD HIM. ALL
9 RIGHT.

10 **MS. HUEY:** IF I MAY?

11 **THE COURT:** CERTAINLY. JUST RESTATE YOUR
12 QUESTION.

13 **MS. HUEY:** YES, SIR.

14 BY MS. HUEY:

15 Q. AS A RESULT OF INFORMATION YOU RECEIVED AT THE
16 HOTEL, WHAT HAPPENED NEXT?

17 A. AT THAT TIME WE HAD RECEIVED A NAME FROM THERE.
18 I WAS ACTUALLY BROUGHT SOME ITEMS FROM THE MOTEL FROM
19 HIM, SO I ACTUALLY HAD SOME THINGS IN MY POSSESSION THAT
20 CAME FROM THERE. WE WERE ABLE TO OBTAIN A NAME AT THAT
21 POINT THAT WAS MATCHING THE INFORMATION THAT WE HAD
22 RECEIVED PREVIOUSLY.

23 WE HAD ACTUALLY PRIOR -- AND LET ME BACK UP A
24 LITTLE BIT SO THIS WILL MAKE SENSE, I DON'T WANT TO
25 CONFUSE YOU. WHEN WE FIRST ARRIVED ON SCENE THAT NIGHT,

1 THAT EVENING, WE ACTUALLY HAD A WITNESS WHO HAD GIVEN US
2 A POSSIBLE TAG NUMBER. THE REASON I SAY "POSSIBLE" IS
3 BECAUSE THIS STUFF IS HAPPENING FAST, A LOT OF THINGS
4 ARE GOING ON, AND SOMETIMES WITNESSES ARE LOOKING AT
5 THINGS THEY'RE NOT SURE THEY'RE GONNA HAVE TO TESTIFY TO
6 LATER OR TELL ANYONE ABOUT.

7 BUT SHE WAS ABLE TO ACTUALLY GIVE US A TAG
8 NUMBER. AND IT WAS INTERESTING BECAUSE AS A RESULT OF,
9 THE MOTEL, THE TAG NUMBER, PART OF THE TAG NUMBER
10 ACTUALLY MATCHED FROM THAT INFORMATION, AS WELL. SO WE
11 WERE READY TO KIND OF LOOK AND SAY, WELL, THIS IS KIND
12 OF CREDIBLE INFORMATION, IT'S STARTING TO LOOK BETTER
13 AND BETTER.

14 WE TOOK THE NAME THAT WE HAD OBTAINED FROM THE
15 MOTEL THAT EVENING, AND WE OBTAINED A PHOTOGRAPH OF THAT
16 PERSON TO BE ABLE TO COMPARE IT TO THE STILLS THAT WE
17 OBTAINED FROM GOODWILL.

18 Q. OKAY. AND SO WHAT PHOTOGRAPH, THEN, DID YOU
19 PULL? WHOSE PHOTOGRAPH DID YOU PULL?

20 A. WE PULLED JEFFERY SCOTT EVANS' PHOTOGRAPH.

21 Q. AND ONCE YOU PULLED HIS PHOTO, WHAT DO YOU THEN
22 DO WITH IT?

23 A. AT THAT POINT WE TAKE THE PHOTO AND WE COMPARE IT
24 AGAINST THE STILLS. AND THIS IS NOT, THIS IS NOT JUST
25 ME IN AN OFFICE BY MYSELF WITH THESE PHOTOS AND LOOKING

1 AND MAKING A DECISION. THIS IS SOMETHING THAT A LOT OF
2 TIMES THE WHOLE FLOOR, AND WHEN I SAY THE FLOOR, I MEAN
3 THE OTHER DETECTIVES AT THE OFFICE GET INVOLVED IN. I
4 START GRABBING PEOPLE, SAYING, "COME HERE, LOOK AT THIS,
5 SEE WHAT YOU THINK," BASICALLY.

6 AND A LOT OF PEOPLE DID THAT. THE MORE WE LOOKED
7 AT IT, THE MORE WE WERE CONVINCED THAT THEY WERE ONE AND
8 THE SAME.

9 Q. AND SO THEN YOU STARTED LOOKING FOR JEFFERY SCOTT
10 EVANS?

11 A. YES, I DID.

12 Q. AND HOW DID THAT COME ABOUT?

13 A. I WAS UNABLE TO FIND HIM THE FIRST COUPLE OF
14 DAYS. WE ACTUALLY FOUND HIM THROUGH OTHER FAMILY
15 MEMBERS AND THINGS OF THAT NATURE. WE STARTED GETTING
16 DIFFERENT INFORMATION ABOUT WHERE HE MAY BE. WE
17 ACTUALLY LOCATED A PERSON WHO KNEW HIM AND SAID THAT
18 THEY WERE PRETTY SURE HE WAS ON GEORGE ALBERT LAKE ROAD.

19 SO, WITH THAT BEING SAID, I HAD TWO UNIFORMED
20 DEPUTIES THAT WERE ACCOMPANYING ME THAT DAY BECAUSE WE
21 DIDN'T KNOW, YOU KNOW, WHAT WE WERE GONNA ENCOUNTER. WE
22 HEADED TOWARDS GEORGE ALBERT LAKE ROAD, AND THERE'S A
23 CHURCH -- I DON'T KNOW IF YOU GUYS ARE FAMILIAR WITH
24 IT -- THERE'S A CHURCH RIGHT IN FRONT OF GEORGE ALBERT
25 LAKE ROAD ON THE RIGHT.

1 WE HAD THEM -- I HAD THEM STAY THERE SO THAT I
2 COULD DRIVE DOWN GEORGE ALBERT LAKE ROAD IN MY UNMARKED
3 CAR TO SEE BY MYSELF TO SEE IF I SAW THE VEHICLE THAT WE
4 WERE ALSO LOOKING FOR. AS I DROVE DOWN GEORGE ALBERT
5 LAKE ROAD, INSTEAD OF SEEING THE VEHICLE, I ACTUALLY
6 TURNED AND SAW THE DEFENDANT SITTING ON A PORCH ON
7 GEORGE ALBERT LAKE ROAD.

8 AT THAT TIME I TURNED AROUND AND I GOT ON OUR
9 RADIO COMMUNICATION AND CONTACTED THE OTHER TWO
10 DEPUTIES, WHO RESPONDED DOWN TO THE HOUSE WITH ME.

11 Q. NOW, BACKING UP TO THE CAR, THEN, DID YOU
12 EVENTUALLY SEE THE CAR, AS WELL?

13 A. YES, MA'AM. THE CAR WAS THERE IN THE YARD.

14 Q. OKAY. AND AGAIN, DID FORENSICS RESPOND?

15 A. YES, MA'AM.

16 Q. AND WHAT WAS THE PURPOSE OF FORENSICS COMING UP
17 TO THE CAR?

18 A. AS I SAID, WE HAD A WITNESS AT THE GOODWILL THAT
19 NIGHT WHO DESCRIBED THE VEHICLE AS POSSIBLY A
20 GRAY-IN-COLOR FOUR DOOR, A POSSIBLE DESCRIPTION. AND,
21 ACTUALLY, LIKE I SAID, THE INFORMATION THAT WE GOT FROM
22 THE MOTEL, WE FOUND THAT THAT CAR DESCRIPTION THAT WAS
23 LOGGED THERE WAS ACTUALLY FITTING THE WITNESS
24 DESCRIPTION.

25 SO ALL OF THESE THINGS IN ACCOUNT ONCE WE FOUND

1 JEFFERY EVANS ON SCENE, AND THE CAR WAS SITTING IN THE
2 YARD, AND IT WAS THE SAME CAR THAT'S BEEN POPPING UP
3 THROUGH THE INVESTIGATION. I WANTED THAT CAR
4 PHOTOGRAPHED IN DETAIL THERE, AND THAT'S WHY I CALLED
5 FORENSICS OUT.

6 Q. I SHOW YOU WHAT'S BEEN MARKED STATE'S 8-A
7 THROUGH E. IF YOU CAN TAKE A LOOK AT ALL THOSE FOR ME.

8 A. (COMPLIES). YES, MA'AM.

9 Q. HOW ARE YOU ABLE TO RECOGNIZE THOSE?

10 A. THIS IS THE VEHICLE THAT WAS -- AND I ACTUALLY
11 REMEMBER THIS IS THE VEHICLE THAT WAS IN THE YARD WHERE
12 MR. EVANS WAS PICKED UP.

13 Q. OKAY. AND DO THOSE PICTURES ACCURATELY DEPICT
14 WHAT THE CAR AND THINGS INSIDE THE CAR LOOKED LIKE THAT
15 NIGHT?

16 A. YES, MA'AM.

17 Q. OR EXCUSE ME -- THAT DAY THAT YOU ACTUALLY SAW
18 THE CAR?

19 A. YES, MA'AM.

20 MS. HUEY: OKAY. AT THIS TIME WE WOULD MOVE
21 8-A THROUGH E INTO EVIDENCE, YOUR HONOR.

22 THE COURT: ANY OBJECTION?

23 MR. POTTER: NO, YOUR HONOR.

24 THE COURT: 8-A THROUGH E?

25 MS. HUEY: YES, SIR.

1 **THE COURT:** STATE'S EXHIBITS 8-A, B, C, D,
2 AND E ARE ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

3 (STATE'S EXHIBIT # 8-A THROUGH 8-E, PHOTOS OF
4 MR. EVANS' CAR, WERE RECEIVED IN EVIDENCE.)

5 **MS. HUEY:** THANK YOU, JUDGE.

6 BY MS. HUEY:

7 Q. STARTING WITH 8-A, TELL US WHAT EACH PICTURE
8 DEPICTS.

9 A. MAY I?

10 Q. YES, PLEASE.

11 (WITNESS LEAVES STAND)

12 A. 8-A, THIS IS, THIS IS JUST A SIDE PICTURE OF THE
13 VEHICLE WE FOUND IN THE YARD.

14 **THE COURT:** MR. MATHESON, IF YOU COULD
15 STAND, SWAP PLACES WITH THE SOLICITOR SO THAT YOU ARE
16 TALKING BACK IN THIS DIRECTION AS WELL SO THAT THE COURT
17 REPORTER CAN SEE YOU.

18 **THE WITNESS:** YES, SIR.

19 A. AGAIN, 8-A IS JUST A PICTURE OF THE DEFENDANT'S
20 CAR -- OR THE CAR THAT WAS SITTING IN THE YARD THAT
21 NIGHT. I APOLOGIZE. AND THAT WAS JUST A PICTURE
22 OVERALL.

23 THIS IS -- AND THE WAY THE PHOTOGRAPHS ARE TAKEN
24 FORENSICALLY, WE ALWAYS LIKE TO GET AN OVERALL
25 PHOTOGRAPH AND THEN KIND OF GET CLOSER TO WHERE THE

1 PEOPLE WHO ARE LOOKING AT THE PHOTOGRAPHS AT A LATER
2 DATE, SUCH AS WE ARE NOW, WILL HAVE A BETTER IDEA OF
3 WHAT WE ARE LOOKING AT.

4 THIS IS ACTUALLY A CLOSER PICTURE OF WHAT'S
5 FIXING TO COME NEXT, AND THAT'S JUST THE TAG NUMBER THAT
6 WE ARE INTERESTED IN AT THAT POINT.

7 THIS IS STATE'S EXHIBIT 8-C, AND THIS IS A
8 CLOSE-UP OF THE TAG. AND WHAT WAS INTERESTED TO ME AS A
9 DETECTIVE IS THE WITNESS ON SCENE GAVE US A TAG NUMBER
10 OF 378 AND THEN THE LAST FEW DIGITS WE WERE WRONG. BUT
11 THE FACT SHE GOT 378 WAS REMARKABLE TO ME, ESPECIALLY
12 WITH ALL THAT GOING ON THAT NIGHT.

13 THIS IS STATE'S EXHIBIT 8-D, AND THIS IS JUST A
14 CLOSE-UP OF THE MANUFACTURER TAG THAT GOES INTO THE DASH
15 OF THE CAR TO IDENTIFY THE CAR ITSELF.

16 AND THIS IS A PICTURE OF THE REGISTRATION THAT
17 WAS ACTUALLY IN THE CAR THAT SHOWS WHO THE CAR IS
18 REGISTERED TO AND ALSO HAS THE LICENSE PLATE AND VIN
19 NUMBER AND THINGS OF THAT NATURE ON THEM.

20 Q. NOW, WHO WAS THE CAR REGISTERED TO?

21 A. THE CAR WAS REGISTERED TO KIMBERLY ADDY, WHICH
22 WAS THE DEFENDANT'S GIRLFRIEND.

23 MS. HUEY: THANK YOU, MR. MATHESON.

24 THE WITNESS: YES, MA'AM.

25 (WITNESS RESUMES STAND).

1 BY MS. HUEY:

2 Q. SO MR. MATHESON, ONCE YOU MEET UP WITH THE
3 DEFENDANT, MR. EVANS, WHAT'S YOUR NEXT STEP AS AN
4 INVESTIGATOR?

5 A. AT THAT POINT WE TAKE HIM BACK TO THE SHERIFF'S
6 OFFICE, AND ACTUALLY MORE SPECIFICALLY TO MY OFFICE, TO
7 INTERVIEW HIM.

8 Q. AND WHEN YOU BEGIN AN INTERVIEW WITH THE
9 DEFENDANT, OR SOMEONE IN CUSTODY, WHAT IS YOUR FIRST
10 STEP YOU TAKE, TYPICALLY?

11 A. IF SOMEONE IS IN CUSTODY, MIRANDA V. ARIZONA,
12 WHICH WAS A STATE SUPREME COURT CASE YEARS AGO, SAYS IF
13 SOMEONE FEELS THAT THEY ARE IN CUSTODY OR NOT FREE TO
14 GO, THEN YOUR MIRANDA WARNINGS IS WHAT THEY HAVE BEEN
15 KNOWN TO BE CALLED NOW, WHICH IS YOUR FIFTH AND SIXTH
16 AMENDMENT RIGHTS, ARE GIVEN TO THEM, AND MAKE SURE THAT
17 THEY UNDERSTAND THOSE RIGHTS BEFORE PROCEEDING WITH AN
18 INTERVIEW.

19 Q. AND IS THAT THE FIRST STEP THAT YOU TOOK WITH
20 MR. EVANS?

21 A. THAT IS THE FIRST STEP I TOOK WITH MR. EVANS,
22 YES, MA'AM.

23 Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED AS
24 STATE'S 1. IF YOU COULD TAKE A LOOK AT THAT, PLEASE?

25 A. YES, MA'AM.

1 Q. DO YOU RECOGNIZE THAT?

2 A. YES, MA'AM, I DO.

3 Q. AND HOW ARE YOU ABLE TO RECOGNIZE IT?

4 A. WELL, IT'S MY HANDWRITING. IT'S GOT MY
5 SIGNATURES ON IT. IT'S BASICALLY A MIRANDA FORM, WHICH
6 IS WHAT WE USE AT THE SHERIFF'S OFFICE. IT'S CALLED
7 ADVISORY OF RIGHTS AND LABELED AT THE TOP.

8 Q. NOW, THE ADVICE OF RIGHTS FOR MR. EVANS, ABOUT
9 WHAT TIME DID THAT TAKE PLACE?

10 A. IT WAS APPROXIMATELY 6:52 P.M.

11 Q. AND DO YOU REMEMBER ABOUT WHAT TIME HE WAS
12 ACTUALLY PICKED UP?

13 A. NO, MA'AM, NOT RIGHT OFFHAND. I APOLOGIZE. THIS
14 DIDN'T TAKE A LONG TIME. I MEAN, HE WAS TRANSPORTED TO
15 THE SHERIFF'S OFFICE, AND THE AMOUNT OF TIME IT TOOK TO
16 DRIVE FROM GEORGE ALBERT LAKE ROAD BACK TO THE SHERIFF'S
17 OFFICE IS PRETTY MUCH THE TIME FRAME WE'RE LOOKING AT.

18 Q. OKAY. AND SO THE ADVICE OF RIGHTS YOU SAID
19 STARTED AT 6:52?

20 A. YES, MA'AM.

21 Q. AND WHERE EXACTLY DID THE ADVICE OF RIGHTS TAKE
22 PLACE?

23 A. IN MY OFFICE.

24 Q. IN YOUR OFFICE. AND CAN YOU DESCRIBE YOUR OFFICE
25 TO THE JURY, PLEASE?

1 A. YES, MA'AM. IT'S A TYPICAL OFFICE, IT'S NOT
2 REALLY WHAT YOU SEE ON T.V., IT'S NOT THE LITTLE
3 TYPEWRITERS AND THINGS OF THAT NATURE. BUT WE DO HAVE
4 TWO COMPUTERS. THIS OFFICE ACTUALLY HOUSED THREE
5 DETECTIVES AT ONE TIME; AT THIS TIME IT WAS ONLY TWO IN
6 THERE. SO THAT'S KIND OF THE SIZE OF THE OFFICE THAT IT
7 IS. IT'S A COUPLE OF DESKS, SOME WALL HANGINGS, AND
8 COMPUTERS AND PHONES.

9 Q. NOW, WHEN YOU WERE ADVISING MR. EVANS OF HIS
10 RIGHTS, IS HE HANDCUFFED?

11 A. I CAN'T REMEMBER AT THIS POINT EXACTLY WHETHER HE
12 WAS HANDCUFFED, BUT WE DID TAKE THE HANDCUFFS OFF OF HIM
13 DURING THE INTERVIEW. IF HE DIDN'T HAVE THE HANDCUFFS
14 OFF AT THIS TIME, IT WAS PROBABLY BECAUSE WE JUST HADN'T
15 THOUGHT ABOUT IT YET. BUT WE USUALLY TRY TO TAKE THEIR
16 HANDCUFFS OFF AND LET THE PERSON BE MORE COMFORTABLE AND
17 WE FEEL THAT WE'RE NOT GONNA BE IN ANY DANGER.

18 Q. AND WHO ELSE IN THE ROOM, IF ANYONE; OTHER THAN
19 YOU AND ---

20 A. AT THIS TIME DETECTIVE CHAD MCBRIDE HAD COME IN
21 TO ASSIST AND WITNESS THE STATEMENT.

22 Q. AND WHY IS MR. MCBRIDE IN THERE?

23 A. WE ALWAYS LIKE TO HAVE A WITNESS, JUST TO SHOW
24 THAT WE DID EVERYTHING AS WE WERE SUPPOSED TO AND FOLLOW
25 PROTOCOL AND DO THE PROCEDURES WE ARE SUPPOSED TO DO,

1 AND WE LIKE TO HAVE A WITNESS TO THAT.

2 Q. NOW, DURING THE COURSE OF THE ADVICE OF RIGHTS
3 AND THE INTERVIEW, DID MR. EVANS ASK FOR ANYTHING TO
4 DRINK OR EAT OR...

5 A. AGAIN, I DON'T HAVE MY NOTES IN FRONT OF ME. BUT
6 WE DO HAVE DRINKS IN THE HALL AND FOOD IN THE HALL, SO
7 ANY TIME THAT'S EVER REQUESTED, WE ALWAYS MAKE SURE WE
8 ACCOMMODATE THEM FOR THAT.

9 Q. WOULD YOU EVER NOT GIVE SOMEONE ---

10 A. OH, NO, MA'AM, NO. WE ALWAYS GO OUT OF OUR WAY
11 TO ASK THEM: CAN WE GET YOU SOMETHING TO DRINK? WE
12 DON'T HAVE STEAKS OR ANYTHING, BUT WE HAVE CRACKERS AND
13 THINGS OF THAT NATURE. BUT WE COULD GET THEM SOMETHING
14 TO EAT OR DRINK.

15 Q. NOW, AGAIN, THE ADVICE OF RIGHTS FORM ACTUALLY
16 LISTS THE DEFENDANT'S RIGHTS; IS THAT CORRECT?

17 A. YES, MA'AM, THAT'S CORRECT.

18 Q. AND DID YOU ADVISE HIM OF HIS RIGHTS USING THAT
19 PARTICULAR FORM?

20 A. YES, MA'AM.

21 Q. CAN YOU READ ALOUD WHAT RIGHTS YOU READ TO
22 MR. EVANS?

23 A. SURE. I'M GONNA TRY TO MAKE Y'ALL -- I'M GONNA
24 EXPLAIN TO WHERE YOU GUYS KNOW EXACTLY HOW THIS HAPPENS.
25 WE ALWAYS AT THE TOP OF THIS FORM WE HAVE A LOCATION,

1 WHICH IS WHERE WE ACTUALLY ARE SITTING WHEN WE READ THE
2 RIGHTS TO THEM. AND THEN WE HAVE THE DATE AND, OF
3 COURSE, THE TIME RIGHT UNDER THAT.

4 I ALWAYS TURN IT AROUND BACKWARDS TO WHERE THEY
5 CAN SEE AND WHERE THEY CAN READ IT, AND I START THIS OUT
6 (READING):

7 BEFORE WE ASK YOU ANY QUESTIONS,
8 YOU MUST UNDERSTAND YOUR RIGHTS.
9 AND THAT IS READ. THAT'S WHAT I'M READING.
10 MAY I STAND?

11 MS. HUEY: BEFORE YOU ACTUALLY PUBLISH IT,
12 IF YOU WILL JUST --

13 THE WITNESS: I APOLOGIZE.

14 MS. HUEY: YOUR HONOR, WE'LL GO AHEAD AND
15 MOVE STATE'S EXHIBIT 1 INTO EVIDENCE.

16 MR. POTTER: NO OBJECTION.

17 THE COURT: WITHOUT OBJECTION, STATE'S
18 EXHIBIT NUMBER 1 IS ADMITTED INTO EVIDENCE.

19 (STATE'S EXHIBIT # 1, ADVISORY/WAIVER OF
20 RIGHTS FORM, WAS RECEIVED IN EVIDENCE.)

21 MS. HUEY: NOW YOU MAY LEAVE THE STAND AND
22 STAND BACK OVER HERE.

23 (WITNESS LEAVES STAND.)

24 THE WITNESS: IF YOU NOTICE NEXT TO THE
25 FIRST TWO LINES, YOU WILL SEE THERE'S THE INITIALS OF

1 THE DEFENDANT, AND I REQUIRE THEM TO PUT THEIR INITIALS
2 THERE BECAUSE AT THIS POINT I ASK THEM TO READ THESE
3 FIRST TWO LINES OUT LOUD FOR ME. AND THESE ARE THE
4 FIFTH AMENDMENT RIGHTS. AND THEY READ (READING):

5 YOU HAVE THE RIGHT TO REMAIN
6 SILENT. ANYTHING YOU SAY MAY BE USED
7 AGAINST YOU IN COURT.

8 I HAVE THEM INITIAL THAT, AND IT REMINDS ME THAT
9 THEY ACTUALLY READ IT ALOUD TO ME, SO I KNOW THAT THEY
10 CAN READ AND WRITE AND THEY CAN READ ALONG WITH ME AND
11 THEY CAN COMPREHEND WHAT IS BEING SAID.

12 AT THIS POINT I TELL THEM THAT I'M GONNA READ THE
13 REST OF THEIR RIGHTS TO THEM, AND THESE ARE THEIR SIXTH
14 AMENDMENT RIGHTS, AND THESE ARE THE RIGHT TO COUNSEL.
15 AND I ALWAYS ADVISE THEM, LET ME KNOW IF YOU DON'T
16 UNDERSTAND ANYTHING AND WE WILL STOP AND WE'LL EXPLAIN
17 IT. BECAUSE MOST OF US, IF WE HAVE A T.V., WE'VE HEARD
18 THESE A THOUSAND TIMES, BUT I WANT TO MAKE SURE THEY
19 UNDERSTAND THIS.

20 THE REST OF IT READS AS FOLLOWS (READING):

21 YOU HAVE THE RIGHT TO SPEAK TO A
22 LAWYER FOR ADVICE BEFORE WE ASK YOU ANY
23 QUESTIONS AND HAVE HIM WITH YOU DURING
24 QUESTIONING. IF YOU CANNOT AFFORD A
25 LAWYER, ONE WILL BE APPOINTED FOR YOU, IF

1 YOU WISH, BEFORE QUESTIONING. IF YOU
2 DECIDE TO ANSWER QUESTIONS NOW WITHOUT A
3 LAWYER PRESENT, YOU WILL STILL HAVE THE
4 RIGHT TO STOP ANSWERING AT ANY TIME. YOU
5 ALSO HAVE THE RIGHT TO STOP ANSWERING AT
6 ANY TIME UNTIL YOU TALK TO A LAWYER.

7 THE LAST TWO SENTENCES, THEY KIND OF REPEAT
8 THEMSELVES, AND I ALWAYS EXPLAIN TO THEM AND I EXPLAINED
9 TO MR. EVANS THIS DAY: I WANT TO MAKE SURE YOU
10 UNDERSTAND THAT JUST BECAUSE YOU SIGN IT, YOU ARE NOT
11 SIGNING IT IN BLOOD. IF YOU DECIDE YOU WANT TO STOP
12 TALKING AT ANY TIME, YOU CAN.

13 SO I MAKE THAT VERY CLEAR BEFORE WE PROCEED TO
14 THE NEXT STEP.

15 THE NEXT STEP IS ACTUALLY THE WAIVER OF RIGHTS,
16 AND THIS ENABLES US TO BE ABLE TO TALK TO THE PERSON IN
17 WHICH WE ARE TALKING WITH.

18 I HAVE READ THE STATEMENT OF MY
19 RIGHTS AND UNDERSTAND WHAT MY RIGHTS ARE.

20 I AM WILLING TO MAKE A STATEMENT AND
21 ANSWER QUESTIONS ---

22 **THE COURT:** MR. MATHESON, SLOW DOWN A LITTLE
23 BIT BECAUSE THE COURT REPORTER NEEDS TO RECORD WHAT YOU
24 READ.

25 **THE WITNESS:** I APOLOGIZE. I'M SORRY.

1 I DO NOT WANT A LAWYER AT THIS
2 TIME. I UNDERSTAND AND KNOW WHAT I'M
3 DOING, AND NO PRESSURE OR COERCION OF ANY
4 KIND HAS BEEN USED AGAINST ME.

5 I ALWAYS UNDERLINE THE WORD "COERCION" BECAUSE I
6 EXPLAIN THAT TO EVERYONE. "COERCION" MEANS SOMETIMES
7 DIFFERENT THINGS TO DIFFERENT PEOPLE, ESPECIALLY
8 WATCHING TELEVISION.

9 BUT I EXPLAIN IT AS TWO TYPES: THE GOOD KIND AND
10 A BAD KIND OF COERCION. THE GOOD KIND, I USUALLY USE
11 THE EXAMPLE IS EXAMPLE OF A T-BONE STEAK AND A LARGE KEG
12 OF BEER OR TEA OR WHATEVER THE DEFENDANT OR ANYBODY ELSE
13 MAY BE INTERESTED IN SO THAT THEY TELL US WHAT WE WANT
14 TO HEAR.

15 THE BAD KIND OF COERCION, AND I USUALLY USE THE
16 EXAMPLE OF WE PUT YOU IN A JAIL CELL WITH NO FOOD OR
17 WATER FOR A WEEK SO YOU WILL TELL US WHAT WE WANT TO
18 HEAR. AND WE, I UNDERLINE THAT TO MAKE SURE THAT THAT'S
19 WHAT WE ARE TALKING ABOUT AND THAT THAT HAS NOT BEEN
20 DONE TO THEM, EITHER ONE, THE GOOD OR THE BAD.

21 AND THEN IF THE DEFENDANT DECIDES THAT HE DOES
22 WANT TO SPEAK TO US, THEN HE SIGNS HIS SIGNATURE AT THE
23 BOTTOM AND WE PROCEED.

24 MS. HUEY: THANK YOU, MR. MATHESON. YOU MAY
25 HAVE A SEAT.

1 (WITNESS RESUMES STAND.)

2 BY MS. HUEY:

3 Q. NOW, MR. MATHESON, DID THE DEFENDANT THEN, IN
4 FACT, SIGN HIS WAIVER OF RIGHTS?

5 A. YES, MA'AM.

6 Q. OKAY. AND WHAT DOES THAT MEAN, THEN, ONCE HE
7 SIGNS IT?

8 A. IT MEANS AT THAT POINT WE CAN GO AHEAD AND
9 QUESTION HIM ABOUT HIS INVOLVEMENT WITH WHATEVER
10 INCIDENT THAT WE ARE SPEAKING OF AT THE TIME.

11 Q. OKAY. AND SO -- AND AGAIN IN YOUR OPINION DID HE
12 SEEM TO UNDERSTAND THOSE RIGHTS?

13 A. YES, MA'AM.

14 Q. DID HE SEEM TO BE UNDER THE INFLUENCE OF
15 ANYTHING, OR DID HE SEEM OKAY, IN HIS RIGHT MIND?

16 A. YES, MA'AM.

17 Q. SO IN YOUR OPINION HIS WAIVER OF RIGHTS, WAS IT
18 VOLUNTARY?

19 A. YES, MA'AM.

20 Q. ONCE HE GAVE YOU HIS VOLUNTARY WAIVER OF HIS
21 RIGHTS, WHAT WAS THE NEXT STEP THEN?

22 A. AT THAT POINT WHAT I USUALLY DO IS I LIKE TO ASK
23 THE PERSON JUST BASICALLY TWO WORDS: WHAT HAPPENED?

24 A LOT OF DETECTIVES, A LOT OF OFFICERS TAKE NOTES
25 AND THINGS OF THAT NATURE. I DON'T LIKE TO DO THAT. I

1 FEEL LIKE IT TAKES MY ATTENTION AWAY FROM THE PERSON WHO
2 IS TALKING TO ME. AND THAT'S WHAT I DO. I ASK THEM
3 WHAT HAPPENED AND I ALLOW THEM TO TELL ME THEIR VERSION
4 OF THE EVENTS ACCORDING TO THEM OF WHAT HAPPENED, AND I
5 TRY TO BE ATTENTIVE TO THEM AND LISTEN TO EVERYTHING
6 THEY ARE SAYING.

7 AFTER THEY HAVE FINISHED TALKING, I WILL ATTEMPT
8 TO START WRITING IT OR TYPING IT IN THIS CASE. WE WERE
9 IN MY OFFICE, SO I WAS ABLE TO USE A COMPUTER, IT'S MUCH
10 NEATER THAN MY HANDWRITING. SO WE, WE ACTUALLY USED THE
11 COMPUTER. AT THAT POINT I MAY HAVE TO FOLLOW UP AND ASK
12 THEM QUESTIONS OR RE-ASK QUESTIONS AT THOSE POINTS TO
13 MAKE SURE I GET THE FACTS RIGHT.

14 Q. SO TYPICALLY, TO MAKE SURE I UNDERSTAND, YOU ARE
15 AT THE COMPUTER?

16 A. YES, MA'AM.

17 Q. AND MR. EVANS IS ACROSS THE DESK FROM YOU?

18 A. EITHER ACROSS THE DESK -- I THINK IN THIS
19 OFFICE -- I'M NOT IN THIS OFFICE ANYMORE -- BUT I THINK
20 WE HAD A COUPLE OF CHAIRS SITTING NEXT TO THE WALL, KIND
21 OF WHERE THE JURY IS SITTING WOULD BE THE CHAIRS, AND
22 THEN MY DESK IS FACING THIS WAY, AND ANOTHER DESK WAS UP
23 AGAINST IT FACING ME (DEMONSTRATING). SO IF I'M NOT
24 MISTAKEN, I WAS PROBABLY SITTING HERE AND MR. EVANS WAS
25 DOWN ON ONE OF THE CHAIRS.

1 Q. OKAY. AND WAS MR. CHAD MCBRIDE STILL IN THE
2 ROOM?

3 A. YES, HE WAS.

4 Q. NOW, YOU SAID YOU TYPED IT?

5 A. YES, MA'AM.

6 Q. OKAY. AND WHY DO YOU TYPE IT RATHER THAN HAVE --
7 RATHER THAN HANDWRITE IT YOURSELF OR HAVE THE DEFENDANT
8 HANDWRITE IT?

9 A. HANDWRITING OPPOSED TO THE COMPUTER IS REALLY
10 MUCH NEATER. YOU CAN READ IT EASIER. MULTIPLE PEOPLE
11 ARE GONNA BE READING THE STATEMENT AT LATER TIMES. AND
12 JUST TYPED IS MUCH MORE PROFESSIONAL AND IT'S EASIER TO
13 READ. IT'S ALSO A LOT EASIER TO CORRECT SOMEONE WHILE
14 WE'RE IN THE MIDDLE OF TALKING. IF I GOT SOMETHING
15 WRONG, I TEND TO TALK AS I TYPE, AND IF THEY INTERRUPT
16 ME AND SAY "YOU GOT THAT WRONG," I CAN BACK UP AND I CAN
17 CHANGE IT. IT'S JUST A LOT EASIER; IT'S NOT NEAR AS
18 SLOPPY AS IT WOULD BE MAKING A LOT OF CORRECTIONS ON A
19 HANDWRITTEN STATEMENT.

20 Q. SO ONCE THE STATEMENT IS ACTUALLY ALL TYPED OUT,
21 WHAT IS THE NEXT STEP YOU TAKE?

22 A. AFTER THE STATEMENT IS ALL TYPED OUT, I ASK THE
23 PERSON WHO'S GIVEN HIS STATEMENT, WHETHER IT BE A
24 WITNESS, A DEFENDANT, A SUSPECT, OR A VICTIM IF THERE IS
25 ANYTHING ELSE THEY WANT TO ADD TO THE STATEMENT. AND WE

1 READ THE STATEMENT. I EITHER READ THE STATEMENT ALOUD
2 TO THEM OR GIVE THE STATEMENT TO THEM AND ALLOW THEM TO
3 READ IT. WHAT I DO USUALLY IS HAND OVER THE STATEMENT
4 AND SAY, WOULD YOU, YOU KNOW, READ OVER THIS AND MAKE
5 SURE IT'S RIGHT. SOMETIMES I'VE BEEN KNOWN TO TURN THE
6 COMPUTER SCREEN AND SAY, READ ALONG WITH ME TO MAKE SURE
7 IT'S RIGHT BEFORE IT'S PRINTED.

8 BUT EITHER WAY THAT WE DO IT, WE MAKE SURE THAT
9 THE PERSON GIVING THE STATEMENT IS GIVEN, AND HIS
10 INTENTIONS IS EXACTLY WHAT WE HAVE ON PAPER BEFORE WE
11 SIGN ANYTHING, AND HE HAS THE OPPORTUNITY TO ADD, TAKE
12 AWAY, OR CHANGE THINGS.

13 Q. AND IS THAT THE PROCEDURE YOU FOLLOWED WITH
14 MR. EVANS?

15 A. YES, MA'AM.

16 Q. AND DID HE, IN FACT, THEN SIGN THE STATEMENT?

17 A. YES, MA'AM.

18 (COUNSEL CONFER.)

19 BY MS. HUEY:

20 Q. I'M GONNA SHOW YOU WHAT'S BEEN PREVIOUSLY
21 ADMITTED AS STATE'S 2-A. IF YOU CAN TAKE A LOOK AT THAT
22 FOR ME.

23 A. YES, MA'AM.

24 Q. IS THAT THE STATEMENT THE DEFENDANT GAVE YOU?

25 A. YES, MA'AM, IT IS.

1 Q. WHAT DAY DID THAT TAKE PLACE?

2 A. THIS ACTUALLY TOOK PLACE ON JUNE 1ST OF 2007.

3 Q. SO ABOUT A WEEK AFTER THE INCIDENT?

4 A. YES, MA'AM.

5 Q. AND AGAIN, IS YOUR SIGNATURE ON THERE?

6 A. YES, MA'AM, IT IS.

7 Q. AND THE DEFENDANT'S SIGNATURE?

8 A. YES, MA'AM.

9 Q. ALL RIGHT. AND HOW ABOUT MR. MCBRIDE'S
10 SIGNATURE?

11 A. IT IS THERE, AS WELL, YES, MA'AM.

12 MS. HUEY: YOUR HONOR, AT THIS TIME I'D LIKE
13 TO HAVE MR. MATHESON PUBLISH THE STATEMENT TO THE JURY.

14 THE COURT: ALL RIGHT. MADAM FORELADY,
15 LADIES AND GENTLEMEN OF THE JURY, THERE HAVE BEEN
16 ADMITTED INTO THE RECORD IN THIS CASE A STATEMENT OR
17 STATEMENTS ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT.
18 BEFORE YOU MAY CONSIDER THIS STATEMENT AS EVIDENCE FOR
19 ANY PURPOSE, YOU MUST DETERMINE FOUR THINGS:

20 FIRST, DID THE DEFENDANT MAKE THE STATEMENT?

21 SECONDLY, WAS THE DEFENDANT WARNED OF HIS
22 CONSTITUTIONAL RIGHTS?

23 AND DID THE DEFENDANT KNOWINGLY AND
24 INTELLIGENTLY WAIVE HIS CONSTITUTIONAL RIGHTS?

25 AND FINALLY, WAS THE STATEMENT GIVEN

1 VOLUNTARILY?

2 THE FACT THAT THE COURT HAS ADMITTED AND I
3 HAVE RULED PRIOR THAT IT WOULD BE ADMITTED, THE
4 STATEMENT INTO EVIDENCE SHOULD NOT BE CONSIDERED BY YOU
5 AS ANY EVIDENCE WHATSOEVER THAT THE DEFENDANT MADE SUCH
6 A STATEMENT AND THAT THE REQUIRED CONSTITUTIONAL
7 SAFEGUARDS WERE, IN FACT, PROVIDED AND WAIVED BY THE
8 DEFENDANT, AND THAT THE STATEMENT WAS VOLUNTARILY GIVEN.
9 THESE ISSUES ARE FOR YOU TO DECIDE. YOUR DETERMINATION
10 MUST BE BEYOND A REASONABLE DOUBT AS TO EACH ONE.

11 YOU MAY PROCEED.

12 MS. HUEY: THANK YOU, JUDGE.

13 BY MS. HUEY:

14 Q. MR. MATHESON, I DON'T KNOW IF YOU WOULD RATHER
15 SIT OR STAND IN FRONT OF THE JURY, WHICH WOULD BE
16 BETTER, BUT IF YOU COULD PUBLISH, READ ALOUD THE
17 DEFENDANT'S STATEMENT TO THE JURY?

18 A. YES, MA'AM. THE STATEMENT STARTS OUT AS ALL OUR
19 STATEMENTS DO (READING):

20 DETECTIVE KEVIN MATHESON IS WRITING THIS
21 STATEMENT FOR ME -- AND I LIKE TO MAKE IT CLEAR TO
22 WHOEVER IS READING THE STATEMENT IS THAT THE PERSON
23 GIVING THE STATEMENT DIDN'T ACTUALLY, WASN'T THE ONE
24 THAT WAS AT THE KEYBOARD -- AND THIS PARTICULAR ONE SAYS
25 IN THE PRESENCE OF DETECTIVE CHAD MCBRIDE, SO I LABEL

1 WHO WAS THERE, AS WELL.

2 WOULD YOU LIKE ME TO READ THE STATEMENT?

3 Q. YES, PLEASE.

4 A. OKAY (READING):

5 MY GIRLFRIEND, KIM ADDY, WENT TO
6 WORK AT THE ANMED HEALTH CENTER AND I
7 BORROWED HER CAR. IT IS A GRAY BUICK
8 FOUR-DOOR.

9 I WENT RIDING INTO AROUND
10 WHITENER. I COME UP ON A BLACK GUY NAMED
11 JOE AND HE GOT IN THE CAR WITH ME. WE
12 PICKED UP KATHY AND MARGARET WHO WERE
13 WALKING DOWN THE STREET. WE WENT AND GOT
14 A MOTEL ROOM AT THE SUNRISE MOTEL AND
15 STAYED IN ROOM 2. WE STAYED THERE FOR
16 ABOUT TWO OR THREE HOURS.

17 WE LEFT THERE AND I TRIED TO USE
18 MY CREDIT CARD TO GET SOME MORE CASH. WE
19 WENT TO THE STORE RIGHT ACROSS FROM THE
20 SUNRISE FIRST BUT THE MACHINE SAID IT WAS
21 TEMPORARILY OUT OF CASH. WE THEN DROVE
22 OVER TO THE BI-LO ON SOUTH MAIN STREET.
23 KATHY AND MARGARET WENT INTO BI-LO AND I
24 TRIED TO USE THE ATM OUTSIDE BUT IT SAID
25 IT WAS OVER LIMIT.

1 I WALKED DOWN TO THE GOODWILL
2 WITH THE INTENTION OF SNATCHING A
3 POCKETBOOK. I WENT INSIDE AND WALKED
4 AROUND. I REMEMBER BUMPING INTO A BLACK
5 LADY BUT SHE HELD ON TO HER PURSE REAL
6 TIGHT. AFTER THAT, I WAS THINKING TO
7 MYSELF THAT THIS WAS STUPID AND I NEEDED
8 TO GET OUT OF THERE.

9 I WALKED AROUND THE STORE AND WAS
10 HEADED OUT. I PICKED UP SOME CLOTHES AND
11 HAD THEM IN ARM CAUSE I DIDN'T WANT TO
12 LOOK SUSPICIOUS. I REMEMBER STANDING IN
13 LINE FOR A SECOND WHEN I SEEN THE CASHIER
14 OPEN HER DRAWER, AND I COULDN'T HELP IT.
15 I WENT AROUND BEHIND HER AND TOLD HER ALL
16 I WANTED WAS THE MONEY. I TOOK THE MONEY
17 OUT OF HER DRAWER AND RAN OUT.

18 I WAS SO NERVOUS THAT I DROPPED
19 MY KNIFE. IT WAS A UTILITY KNIFE LIKE A
20 LEATHERMAN.

21 I RAN BACK TO THE CAR AND
22 MARGARET AND JOE WERE ALREADY SITTING IN
23 THE CAR. KATHY WAS COMING ACROSS THE
24 PARKING LOT FROM BI-LO. WE GOT IN THE
25 CAR AND DROVE OFF. I TOLD THEM THAT I

1 HAD JUST ROBBED THE STORE AND WE NEEDED
2 TO GET OUT OF THERE. I WAS DRIVING THE
3 CAR.

4 WE WENT BACK TO THE SUNRISE AND
5 WENT BACK INTO THE ROOM. JOE AND KATHY
6 LEFT IN MY CAR WHILE ME AND MARGARET
7 STAYED IN THE ROOM. WHEN THEY GOT BACK,
8 I GAVE EACH OF THEM, I THINK, ABOUT
9 \$30.00 EACH SINCE THEY WERE WITH ME.

10 KATHY WALKED AROUND FOR A LITTLE
11 WHILE, BUT CAME BACK SOMETIME LATER AND
12 WANTED TO BORROW THE CAR. I LET THEM
13 BORROW THE CAR AGAIN BUT THIS TIME THEY
14 NEVER CAME BACK. MARGARET LEFT WALKING
15 LATER AND I CALLED MY BROTHER-IN-LAW TO
16 COME AND GET ME. I DIDN'T TELL THEM
17 ABOUT THE ROBBERY.

18 KIM WANTED TO REPORT THE CAR
19 STOLEN, BUT I TALKED HER OUT OF IT AND
20 SAID WE'D FIND THE CAR IN CRACK TOWN THE
21 NEXT DAY. SURE ENOUGH, THE NEXT DAY MY
22 NIECE AND HER BOYFRIEND FOUND THE CAR
23 BEHIND THE SPINX STATION OUT OF GAS.

24 I'M VERY SORRY FOR ALL OF THIS.
25 I DIDN'T REALLY KNOW WHAT I WAS DOING.

1 END OF STATEMENT.

2 Q. NOW, MR. MATHESON, DO YOU KNOW WHAT TIME ALL OF
3 THIS ENDED? I KNOW IT STARTED ABOUT 6:52. DO YOU HAVE
4 AN END TIME?

5 A. I DON'T HAVE IT HERE WITH ME. I'M NOT SURE THAT
6 I HAVE IT.

7 Q. DO YOU HAVE A GUESS ABOUT HOW LONG IT TOOK? AN
8 HOUR OR TWO?

9 A. PROBABLY. I MEAN, IT'S STANDARD FOR A COUPLE OF
10 HOURS.

11 Q. OKAY. NOTHING STANDS OUT IN YOUR MIND THAT MAKES
12 IT SEEM LONGER?

13 A. NO, MA'AM, NOT OFFHAND.

14 Q. NOW, REGARDLESS, THOUGH, YOU ARE FAMILIAR WITH
15 THE PERSON WHO GAVE YOU THAT STATEMENT?

16 A. YES, MA'AM.

17 Q. JEFFERY SCOTT EVANS?

18 A. YES, MA'AM.

19 Q. AND IS HE IN THIS COURTROOM TODAY?

20 A. YES, MA'AM, THE DEFENDANT.

21 Q. AND HE IS THE DEFENDANT?

22 A. YES, MA'AM.

23 **MS. HUEY:** YOUR HONOR, AT THIS TIME WE WOULD
24 LIKE THE DEFENDANT TO STAND SO THAT THE JURY CAN GET A
25 LOOK AT HIM.

1 THE COURT: ANY OBJECTION, MR. POTTER?

2 MR. POTTER: YES, YOUR HONOR.

3 THE COURT: ALL RIGHT. MS. HUEY, THEY CAN
4 SEE THE DEFENDANT.

5 BY MS. HUEY:

6 Q. MR. MATHESON, WAS THERE ANYTHING ELSE IN TERMS OF
7 YOUR INVESTIGATION ONCE THE STATEMENT CONCLUDED?

8 A. AFTER THE STATEMENT WAS OVER, HE WAS TRANSPORTED
9 TO THE DETENTION CENTER AND WAS SERVED WITH THE WARRANTS
10 THAT WERE OBTAINED.

11 MS. HUEY: YOUR HONOR, THAT'S ALL I HAVE FOR
12 MR. MATHESON.

13 THE COURT: CROSS-EXAMINATION.

14 MR. POTTER: THANK YOU, YOUR HONOR, IF IT
15 PLEASES THE COURT.

16 CROSS-EXAMINATION BY MR. POTTER:

17 Q. DETECTIVE, DID YOU SERVE A SEARCH WARRANT AT THE
18 HOUSE WHERE YOU PICKED UP MR. EVANS?

19 A. NO, SIR.

20 Q. DID YOU FIND ANY CLOTHES THAT WERE ALLEGEDLY WORN
21 WHEN THIS ROBBERY TOOK PLACE?

22 A. I'M SORRY?

23 Q. DID YOU LOOK TO FIND ANY OF THE CLOTHES IN THE
24 CAR WHERE THE ROBBERY TOOK PLACE?

25 A. NO, SIR.

1 Q. DID YOU EVER FIND A PLAID SHIRT AND JEANS THAT
2 MATCHED THE DESCRIPTION GIVEN TO YOU BY THE WITNESSES?

3 A. NO, SIR.

4 Q. AND YOU INDICATED THAT YOU DIDN'T FIND ANY
5 FINGERPRINTS ON THE KNIFE?

6 A. THAT'S CORRECT.

7 Q. YOU DIDN'T FIND ANY FINGERPRINTS ON THE DOOR OR
8 WINDOW OR ANYTHING LIKE THAT, OF THE DOOR?

9 A. THAT'S CORRECT.

10 Q. NOW, YOU TESTIFIED THAT YOU AND TWO UNIFORMED
11 DEPUTIES WENT OUT TO LAKE GEORGE ROAD [SIC] TO PICK UP
12 MR. EVANS?

13 A. GEORGE ALBERT LAKE ROAD, YES, SIR.

14 Q. AND YOU GOT THERE, AND THIS WAS JUNE 1ST WHEN IT
15 HAPPENED, CORRECT?

16 A. THAT'S CORRECT.

17 Q. SO ABOUT, WHAT, SEVEN DAYS AFTER THE INCIDENT
18 OCCURRED, CORRECT?

19 A. THE 24TH TO THE 1ST, YES, SIR.

20 Q. OKAY. NOW, YOU PICKED HIM UP. HOW LONG WERE YOU
21 AT THE SCENE BEFORE YOU LEFT TO GO BACK TO THE SHERIFF'S
22 DEPARTMENT?

23 A. I WAS THINKING ABOUT THAT A WHILE AGO. I KNOW I
24 STOOD THERE FOR A LITTLE WHILE. A LOT OF FAMILY THAT
25 WAS ON THE SCENE AFTER HE WAS PICKED UP, SO I DID STAY

1 THERE FOR A FEW MINUTES ATTEMPTING TO COMFORT SOME OF
2 THE FAMILY.

3 Q. SO YOU WERE THERE FOR A FEW MINUTES. HE RODE
4 BACK IN THE MARKED CAR?

5 A. THAT'S CORRECT, YES.

6 Q. OKAY. AND THEN YOU FOLLOWED IN YOUR OWN VEHICLE?

7 A. AFTER I FINISHED AT GEORGE ALBERT LAKE ROAD
8 SPEAKING WITH THE FAMILY, YES.

9 Q. OKAY. SO IT WAS ABOUT 6:54 WHEN YOU WERE IN THE
10 SHERIFF'S DEPARTMENT READING HIM HIS RIGHTS?

11 A. I BELIEVE SO, YES.

12 Q. THAT'S ACCORDING TO THE STATE'S EXHIBIT.

13 AND YOU HAD CALLED FORENSICS TO COME OUT AND TAKE
14 PHOTOGRAPHS OF THE VEHICLE WHILE YOU WERE AT THE SCENE;
15 IS THAT RIGHT?

16 A. CORRECT.

17 Q. OKAY. AND DID FORENSICS COME OUT -- STRIKE THAT.

18 DID FORENSICS ARRIVE WHEN YOU WERE STILL AT THE
19 SCENE?

20 A. I BELIEVE THEY DID. I'M PRETTY SURE THEY DID,
21 BUT I CAN'T SAY A HUNDRED PERCENT. BUT I'M THE ONE WHO
22 CALLED THEM.

23 Q. I UNDERSTAND. AND THE WHOLE REASON FOR FORENSICS
24 TO COME OUT WAS JUST TO TAKE PHOTOGRAPHS OF THE CAR?

25 A. THAT'S CORRECT.

1 Q. OKAY. AND IN STATE'S EXHIBITS 8-A THROUGH E ARE
2 THE COPIES OF THE PHOTOGRAPHS THAT WERE TAKEN, CORRECT
3 (HANDING)?

4 A. THAT'S CORRECT.

5 Q. OKAY. IS THERE ANY REASON WHY IT'S DARK OUTSIDE
6 WHEN THOSE PHOTOGRAPHS WERE TAKEN?

7 A. YOU KNOW WHAT? THAT COULD INDICATE THAT I HAD
8 ALREADY LEFT BY THE TIME THEY GOT THERE. I KNOW IT WAS,
9 IT WAS STILL DAYLIGHT WHEN WE ARRIVED AT GEORGE ALBERT
10 LAKE ROAD WHEN WE WERE LOOKING FOR HIM AND WHEN I CALLED
11 FORENSICS, AND I REMEMBER IT BECOMING DUSK TALKING TO
12 THE FAMILY, SO THIS IS RIGHT ALONG THAT TIME. YOU CAN
13 NOTICE IN THE BACKGROUND OF THE PICTURE YOU STILL GOT
14 BLUE SKIES. SO IT'S NOT GETTING DARK-DARK, BUT IT'S
15 JUST STARTING TO GET THERE. THE ACTUAL FLASH FROM THE
16 CAMERA MAKES IT APPEAR DARKER IN THE BACKGROUND THAN IT
17 ACTUALLY IS.

18 Q. NOW, WHEN YOU MET WITH THE WITNESSES AT THE
19 SCENE, OKAY, THEY GIVE YOU A -- WRITTEN STATEMENTS ARE
20 SECURED FROM ALL OF THEM, CORRECT?

21 A. THAT'S CORRECT.

22 Q. AND EACH OF THEM GAVE YOU A DESCRIPTION OF THE
23 PERSON INVOLVED IN THIS CASE?

24 A. MOST OF THEM, YES, SIR.

25 Q. SUZANNE SHIRLEY, DID YOU TALK TO HER?

1 A. I CAN'T REMEMBER THE NAMES. I WOULD HAVE TO SEE
2 THE STATEMENT. I APOLOGIZE.

3 Q. THAT'S FINE. STAN ASHLEY, DID YOU TALK WITH HER?

4 A. STAN ASHLEY OR I, ONE, INTERVIEWED THEM.

5 Q. AND EACH STATEMENT THAT YOU SECURED FROM THEM,
6 THEY GAVE A DESCRIPTION OF WHO, OR WHAT THE DEFENDANT
7 LOOKED LIKE, CORRECT?

8 A. LIKE I SAY, THE BEST AS I CAN REMEMBER. I KNOW
9 SEVERAL DESCRIPTIONS WERE GIVEN.

10 Q. RIGHT. NOW LET'S TALK A LITTLE BIT ABOUT WHEN
11 YOU GOT BACK TO YOUR OFFICE AT THE SHERIFF'S DEPARTMENT.
12 YOU INDICATED THAT YOU WERE THERE ALONG WITH THE
13 DEFENDANT --

14 A. YES.

15 Q. -- AND CHAD -- I'M SORRY, I FORGOT HIS LAST NAME.

16 A. MCBRIDE.

17 Q. MCBRIDE, I'M SORRY.

18 SO YOU WERE THERE; THE DEFENDANT, JEFFERY EVANS,
19 WAS THERE; AND CHAD MCBRIDE WERE THERE?

20 A. CORRECT.

21 Q. AND THIS IS A STANDARD OFFICE WHERE TWO
22 DETECTIVES ARE IN THERE?

23 A. THAT'S CORRECT.

24 Q. ARE THERE ANY VIDEO OR RECORDING EQUIPMENT THERE?

25 A. NO, SIR.

1 Q. OKAY. SO THERE'S NO VIDEO OF THE INTERVIEW THAT
2 YOU DID WITH MR. EVANS?

3 A. NO, SIR.

4 Q. THERE'S NO AUDIO RECORDING OF THE INTERVIEW THAT
5 YOU DID WITH MR. EVANS?

6 A. NO, SIR.

7 Q. OKAY. AND YOU TESTIFIED THAT YOU TYPED OUT A
8 STATEMENT ON COMPUTER?

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

10 Q. AND YOU DIDN'T HAVE HIM WRITE OUT HIS OWN
11 STATEMENT?

12 A. NO, SIR.

13 Q. OKAY. SO THE WORDS THAT WERE PLACED ON THAT
14 STATEMENT WERE WRITTEN BY YOU?

15 A. THEY WERE WRITTEN BY ME, YES.

16 Q. OKAY. AND IT WAS YOUR INTERPRETATION OF WHAT WAS
17 TOLD TO YOU BY MR. EVANS?

18 A. YES, SIR.

19 Q. IT'S NOT NECESSARILY THE EXACT WORDS OF
20 MR. EVANS, IS IT?

21 A. I TRY TO BE AS CLOSE AS I CAN. THAT'S WHY WE
22 REVIEWED THE STATEMENT AFTER IT'S WRITTEN TO MAKE SURE
23 IT'S EXACTLY WHAT HE WANTED TO SAY.

24 Q. IT WOULD ALSO HELP IF YOU HAD RECORDED THE
25 STATEMENT SO WE WOULD HEAR HIS WORDS EXACTLY AS THEY

1 WERE SAID, WOULDN'T IT?

2 A. IF WE HAD THE EQUIPMENT, I GUESS SO, YES, SIR.

3 Q. BUT WE DON'T HAVE THAT?

4 A. NO, SIR.

5 MR. POTTER: NOTHING FURTHER, YOUR HONOR.

6 THE COURT: RE-EXAM?

7 REDIRECT EXAMINATION BY MS. HUEY:

8 Q. MR. MATHESON, BRIEFLY, THIS WAS NOT RECORDED?

9 A. NO, MA'AM.

10 Q. OKAY. DO YOU RECORD ANY STATEMENTS, WHETHER THEY
11 BE WITNESSES OR SUSPECTS OR WHATEVER?

12 A. NO, MA'AM; WE JUST DON'T HAVE THE EQUIPMENT.

13 MS. HUEY: THAT'S ALL I HAVE, JUDGE.

14 THE COURT: ANY RECROSS?

15 MR. POTTER: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

17 THANK YOU, SIR.

18 (WITNESS LEAVES STAND.)

19 MS. HUEY: YOUR HONOR, AT THIS TIME WE WOULD
20 CALL MS. DESAI.

21 THE COURT: APPROACH, PLEASE.

22 (DISCUSSION AT SIDEBAR.)

23 THE COURT: MADAM FORELADY, LADIES AND
24 GENTLEMEN OF THE JURY, I SUGGEST WE TAKE A SHORT BREAK
25 AT THIS TIME. WHEN YOU ARE READY TO COME BACK, JUST

1 KNOCK ON THE DOOR AND WE'LL COME BACK AT THAT TIME.
2 WE'LL JUST TAKE THIS AS A MORNING BREAK, AND WHEN YOU
3 ARE READY TO COME BACK, KNOCK ON THE DOOR AND WE'LL
4 PROCEED WITH THE TRIAL. AGAIN, DO NOT UNDERTAKE
5 DISCUSSION AMONG YOURSELVES IN ANY WAY.

6 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
7 11:14 A.M.)

8 THE COURT: ANYTHING FROM THE STATE BEFORE
9 WE TAKE A BREAK?

10 MS. HUEY: NO, SIR, YOUR HONOR.

11 THE COURT: FROM THE DEFENSE?

12 MR. POTTER: NO, YOUR HONOR.

13 THE COURT: VERY GOOD. WE'LL STAND AT EASE
14 AWAITING THE JURY.

15 (WHEREUPON, A RECESS WAS TAKEN.)

16 THE COURT: IT'S MY UNDERSTANDING THE JURY
17 IS READY. ANYTHING FROM THE STATE BEFORE WE BRING THE
18 JURY BACK?

19 MS. HUEY: NO, SIR, YOUR HONOR.

20 THE COURT: FROM THE DEFENDANT?

21 MR. POTTER: NOTHING, YOUR HONOR.

22 THE COURT: ASK THE JURY TO JOIN US, PLEASE.

23 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
24 11:30 A.M.)

25 THE COURT: LET THE RECORD REFLECT THE JURY

1 AND ALTERNATE ARE IN THE JURY-BOX.

2 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
3 JURY, WE WILL NOW CONTINUE WITH THE STATE'S CASE.

4 YOU MAY CALL YOUR NEXT WITNESS.

5 MS. HUEY: THE STATE CALLS MRS. DESAI TO THE
6 STAND.

7 (WHEREUPON, THE WITNESS WAS SWORN BY THE
8 CLERK.)

9 THE CLERK: PLEASE STATE YOUR FULL NAME AND
10 SPELL YOUR LAST NAME FOR THE RECORD.

11 THE WITNESS: MY NAME IS JAIKUMAR DESAI,
12 D-E-S-A-I.

13 WHEREUPON,

14 JAIKUMAR DESAI,

15 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
16 FOLLOWS:

17 DIRECT EXAMINATION BY MS. HUEY:

18 Q. NOW MS. DESAI, WHERE ARE YOU FROM? ORIGINALLY
19 WHERE WERE YOU FROM?

20 A. ORIGINALLY I AM FROM INDIA.

21 Q. HOW LONG HAVE YOU BEEN IN THE UNITED STATES?

22 A. FIVE YEARS.

23 Q. FIVE YEARS?

24 A. UH-HUH.

25 Q. HOW LONG HAVE YOU BEEN IN ANDERSON, SPECIFICALLY?

1 A. FOUR YEARS.

2 Q. ARE YOU MARRIED?

3 A. YES, MA'AM.

4 Q. WHAT DO YOU AND YOUR HUSBAND DO?

5 A. WE HAVE A SMALL MOTEL ON 29 SOUTH NAMED SUNRISE.

6 Q. THE SUNRISE MOTEL?

7 A. YES, MA'AM.

8 Q. HOW LONG HAVE YOU OWNED THE SUNRISE MOTEL?

9 A. FOUR YEARS.

10 Q. AND ABOUT HOW MANY ROOMS ARE AT THE HOTEL?

11 A. EIGHT ROOMS.

12 Q. NOW, WHEN SOMEONE COMES TO RENT A ROOM FROM YOU,
13 WHAT DO YOU NORMALLY DO TO RENT THEM THE ROOM?

14 A. IF ANYBODY COMES, FIRST WE ASK HOW MANY PEOPLE,
15 AND WE TAKE THEIR DRIVER'S LICENSE, WE FILL UP
16 EVERYTHING ON A REGISTRATION CARD. WE TAKE THEIR CAR
17 NUMBER TAG.

18 (COUNSEL CONFER.)

19 BY MS. HUEY:

20 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
21 STATE'S EXHIBIT 6 (HANDING). ARE YOU ABLE TO RECOGNIZE
22 THAT?

23 A. YEAH. THIS IS, YES.

24 Q. IS THAT THE KIND OF CARD YOU NORMALLY USE WHEN
25 SOMEONE CHECKS IN?

1 A. YES, MA'AM.

2 Q. OKAY. AND IS THAT A CARD THAT YOU USED BACK IN
3 MAY OF 2007?

4 A. EXACT DATE I DON'T KNOW, BUT YES, MA'AM.

5 Q. OKAY.

6 MS. HUEY: AT THIS TIME, YOUR HONOR, WE
7 WOULD MOVE STATE'S 6 INTO EVIDENCE.

8 THE COURT: ANY OBJECTION?

9 MR. POTTER: NO, YOUR HONOR.

10 THE COURT: WITHOUT OBJECTION, STATE'S
11 EXHIBIT NUMBER 6 IS ADMITTED INTO EVIDENCE.

12 MS. HUEY: THANK YOU.

13 (STATE'S EXHIBIT # 6, CHECK-IN CARD, WAS
14 RECEIVED IN EVIDENCE.)

15 BY MS. HUEY:

16 Q. MS. DESAI, IF YOU COULD, AT THE BOTTOM OF THE
17 CARD, THE DATE AT THE BOTTOM, WHAT DOES THAT DATE MEAN?

18 A. 5-24-07.

19 Q. OKAY. AND WHAT DOES THAT DATE INDICATE? IS THAT
20 WHEN SOMEONE IS CHECKING IN?

21 A. YES, MA'AM.

22 Q. OKAY. AND HOW ABOUT THE DATE AT THE TOP?

23 A. IT'S THE CHECKOUT DATE.

24 Q. CHECKOUT DATE. AND WHAT DATE IS THAT ON THE
25 CARD?

1 A. 5-25-07.

2 Q. OKAY. AND COULD YOU TELL US WHO PUT THEIR NAME
3 ON THAT CHECK-IN CARD, OR WHAT NAME IS ON THAT CHECK-IN
4 CARD?

5 A. THAT WOULD BE -- THIS IS MY HANDWRITING. I FILL
6 IT MYSELF. AND JUST THE CUSTOMER'S SIGNATURE AT THE
7 BOTTOM.

8 Q. OKAY. AND WHAT ELSE DO YOU PUT ON THAT CARD
9 THEN? DO YOU WANT TO JUST READ IT ALOUD?

10 A. YEAH. WE TOOK DOWN THE CUSTOMER'S NAME, WHERE IT
11 SHOWS THE STREET, CITY, STATE, ZIP CODE, LICENSE NUMBER,
12 DATE OF BIRTH, AND WHAT -- AND PUT DOWN THE VEHICLE TAG
13 NUMBER AND WHICH VEHICLE IT IS.

14 Q. OKAY. AND WHAT IS THE CUSTOMER'S NAME ON THAT
15 CARD?

16 A. EVANS, JEFFERY SCOTT.

17 Q. GREAT. THANK YOU, MS. DESAI.

18 MS. HUEY: THAT'S ALL I HAVE FOR THIS
19 WITNESS, JUDGE.

20 MR. POTTER: NO QUESTIONS, YOUR HONOR.

21 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.
22 THANK YOU, MA'AM.

23 (WITNESS LEAVES STAND.)

24 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

25 MS. HUEY: YOUR HONOR, AT THIS TIME THE

1 STATE RESTS.

2 **THE COURT:** MADAM FORELADY, LADIES AND
3 GENTLEMEN OF THE JURY, THE STATE HAS NOW RESTED, AND I
4 NEED TO TAKE UP SOME MATTERS WITH THE ATTORNEYS, SO I'M
5 GOING TO ASK YOU TO RETIRE TO THE JURY ROOM FOR A FEW
6 MINUTES SO I CAN CONSULT WITH THE ATTORNEYS AND THEN --
7 WELL, I JUST CAN'T TELL YOU HOW LONG IT WILL BE, SO YOU
8 MIGHT WANT TO MAKE YOURSELVES COMFORTABLE, BUT IT MIGHT
9 NOT BE TOO LONG. I'M JUST NOT SURE UNTIL I DO TALK TO
10 THE ATTORNEYS. SO THEREFORE I'M GOING TO ASK YOU TO
11 RETIRE TO THE JURY ROOM.

12 REMEMBER, YOU HAVEN'T HEARD THE WHOLE CASE
13 YET. THIS IS ONLY THE STATE'S CASE, AND SO DO NOT
14 UNDERTAKE DISCUSSION OF THE CASE AMONG YOURSELVES IN ANY
15 WAY. SO IF YOU WOULD, PLEASE, RETIRE TO THE JURY ROOM.

16 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
17 11:38 A.M.)

18 **THE COURT:** ALL RIGHT. ANYTHING ELSE FROM
19 THE STATE?

20 **MS. HUEY:** NO, SIR, YOUR HONOR.

21 **THE COURT:** ANYTHING FROM THE DEFENDANT?

22 **MR. POTTER:** JUDGE, NOT AT THIS TIME. I
23 HAVE DISCUSSED WITH MY CLIENT HIS RIGHT TO TESTIFY, IF
24 YOUR HONOR WISHES TO ADDRESS HIM AT THIS TIME, HOWEVER
25 YOU WANT TO DO THAT. I WOULD ANTICIPATE US NOT CALLING

1 ANY WITNESSES.

2 THE COURT: NOW, MR. EVANS, IF YOU WOULD
3 PLEASE STAND.

4 MR. POTTER: DO YOU NEED US AT THE BAR, YOUR
5 HONOR?

6 THE COURT: YES, IT WOULD BE BETTER IF I
7 COULD TALK TO YOU DIRECTLY UP HERE.

8 COURT'S QUESTIONING OF DEFENDANT RE TESTIFYING:

9 THE COURT: NOW, YOU REMEMBER WHEN WE HAD
10 THE PRELIMINARY HEARINGS OR THE JACKSON V. DENNO HEARING
11 ON THE STATEMENT?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: REMEMBER, I PLACED YOU UNDER
14 OATH?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: DO YOU UNDERSTAND YOU ARE STILL
17 UNDER OATH?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: AT THIS TIME I'M GOING TO
20 EXPLAIN TO YOU CERTAIN OF YOUR RIGHTS. IF YOU DO NOT
21 UNDERSTAND ANYTHING I SAY, DO LET ME KNOW. IF YOU WANT
22 ME TO EXPLAIN ANYTHING IN MORE DETAIL, PLEASE LET ME
23 KNOW. DO YOU UNDERSTAND?

24 THE DEFENDANT: YES, SIR.

25 THE COURT: WE HAVE NOW REACH, OR AT LEAST

1 ARE APPROACHING THE STAGE OF THE TRIAL WHERE YOU MAY
2 PRESENT YOUR DEFENSE. YOU HAVE THE RIGHT TO CLAIM THE
3 PROTECTIONS GIVEN TO YOU BY THE FIFTH AMENDMENT TO THE
4 CONSTITUTION OF THE UNITED STATES, WHICH AMENDMENT, IN
5 PART, SAYS (READING):

6 NO PERSON SHALL BE COMPELLED IN
7 ANY CRIMINAL CASE TO BE A WITNESS AGAINST
8 THEMSELF. THIS MEANS THAT YOU CANNOT BE
9 REQUIRED TO TESTIFY IN THIS CASE,
10 ALTHOUGH YOU DO HAVE THE RIGHT TO TESTIFY
11 IN YOUR OWN BEHALF. HOWEVER, NO ONE CAN
12 MAKE YOU TESTIFY. THIS IS A PERSONAL
13 RIGHT AND NO ONE CAN WAIVE THIS RIGHT
14 EXCEPT YOU.

15 IF YOU DECIDE TO TESTIFY, YOU
16 WILL BE SUBJECT TO THE SAME RULES THAT
17 GOVERN OTHER WITNESSES AND YOU MAY BE
18 EXAMINED AND CROSS-EXAMINED ON ANY
19 RELEVANT ISSUE IN THE CASE.

20 IN ADDITION, IF YOU HAVE ANY
21 CONVICTIONS INVOLVING DISHONESTY OR FALSE
22 STATEMENT OR CRIMES PUNISHABLE BY
23 IMPRISONMENT MORE THAN ONE YEAR, AND THIS
24 COURT DETERMINES THAT THE PROBATIVE VALUE
25 OF ADMITTING THE EVIDENCE OUTWEIGHS THE

1 PREJUDICIAL EFFECT TO YOU, THE SOLICITOR
2 WILL BE ABLE TO INTRODUCE YOUR RECORD TO
3 ATTACK YOUR CREDIBILITY.

4 DO YOU UNDERSTAND THIS?

5 **THE DEFENDANT:** YES, SIR.

6 **THE COURT:** IF YOU DO DECIDE TO TESTIFY, THE
7 DECISION ON YOUR PART MUST BE FREELY, VOLUNTARILY, AND
8 INTELLIGENTLY MADE WITH KNOWLEDGE OF THE PROTECTIONS
9 GIVEN TO YOU BY THE FIFTH AMENDMENT AND THE CONSEQUENCES
10 OF YOUR DECISION TO TESTIFY.

11 IF YOU DECIDE NOT TO TESTIFY, I WILL
12 INSTRUCT THE JURORS THAT THEY CANNOT GIVE THE FACT THAT
13 YOU DID NOT TESTIFY ANY CONSIDERATION WHATSOEVER, AND
14 THERE IS TO BE ABSOLUTELY NO PREJUDICE TO YOU BECAUSE
15 YOU DID NOT TESTIFY. IT IS ENTIRELY UP TO YOU WHETHER
16 OR NOT YOU TESTIFY.

17 DO YOU UNDERSTAND THIS?

18 **THE DEFENDANT:** YES, SIR.

19 **THE COURT:** YOU MAY TALK WITH YOUR ATTORNEY,
20 YOUR FAMILY, FRIENDS OR ANYONE ELSE, BUT THE FINAL
21 DECISION WILL BE LEFT ENTIRELY UP TO YOU.

22 DO YOU UNDERSTAND WHAT I'VE EXPLAINED TO
23 YOU?

24 **THE DEFENDANT:** YES, SIR.

25 **THE COURT:** DO YOU HAVE ANY QUESTIONS ABOUT

1 WHAT I'VE EXPLAINED TO YOU?

2 THE DEFENDANT: NO, SIR.

3 THE COURT: HAVE YOU DISCUSSED WITH YOUR
4 LAWYER WHETHER YOU SHOULD OR SHOULD NOT TESTIFY?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: DO YOU WISH TO TALK TO YOUR
7 LAWYER ANY MORE AT THIS TIME?

8 THE DEFENDANT: NO, SIR.

9 THE COURT: DO YOU WISH TO TESTIFY?

10 THE DEFENDANT: NO, SIR.

11 THE COURT: VERY GOOD. ALL RIGHT. YOU MAY
12 BE SEATED.

13 MR. POTTER: THANK YOU, YOUR HONOR.

14 THE COURT: LET'S SEE. IT'S A QUARTER TO
15 12. ARE YOU ALL READY TO GO FORWARD?

16 DEFENDANT'S MOTION FOR DIRECTED VERDICT, ARMED ROBBERY:

17 MR. POTTER: JUDGE, I DO FOR THE RECORD HAVE
18 A MOTION TO MAKE.

19 THE COURT: CERTAINLY.

20 MR. POTTER: AT THIS TIME THE DEFENSE WOULD
21 MOVE FOR A DIRECTED VERDICT ON THE ISSUE OF THE ARMED
22 ROBBERY. MY UNDERSTANDING OF THE ELEMENTS UNDER STATE
23 V. WILLIAMS, WHICH IS 266 S.C. 325, 223 S.E.2D 38
24 (READING):

25 TAKING AND CARRYING AWAY PERSONAL

1 PROPERTY OF ANOTHER WITH THE INTENT TO
2 DEPRIVE WITH USE OF FORCE OR A DEADLY
3 WEAPON.

4 YOUR HONOR, OUR POSITION IS THAT THE
5 ELEMENTS HAVE NOT BEEN MET BY THE STATE SPECIFICALLY
6 REGARDING THE PERSONAL PROPERTY OF ANOTHER. THE
7 PROPERTY AS INDICATED WAS MONEY TAKEN FROM A CASH
8 REGISTER OWNED BY GOODWILL, AND THE WITNESS TESTIFIED
9 THAT SHE WAS AT THE CASH REGISTER. THERE WAS NO
10 TESTIMONY IN REGARDS TO ANY PERSONAL PROPERTY BEING
11 TAKEN DIRECTLY FROM HER, AND WE WOULD SUBMIT THAT THE
12 ELEMENTS HAVE NOT BEEN MET.

13 MS. HUEY: YOUR HONOR, WE WOULD SUBMIT THAT
14 THEY HAVE --

15 THE COURT: MADAM SOLICITOR?

16 MS. HUEY: THANK YOU, JUDGE. WE WOULD
17 SUBMIT THAT THEY HAVE, IN THAT MS. AYERS HAD CUSTODY AND
18 CONTROL OF THAT CASH REGISTER AS AN EMPLOYEE OF
19 GOODWILL.

20 THE COURT: ARE YOU SAYING SHE DIDN'T GIVE
21 THE MONEY IN THE CASH REGISTER TO THE DEFENDANT?

22 MS. HUEY: SHE DID NOT GIVE IT ---

23 THE COURT: OR THE PERSON THAT TOOK THE
24 MONEY?

25 MS. HUEY: YES, SIR. SOMEONE STOLE THAT

1 MONEY FROM HER AS WELL AS THREATENED HER WITH A KNIFE IN
2 ORDER TO DO SO.

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

5 MR. POTTER: NO, YOUR HONOR.

6 COURT'S RULING ON DEFENDANT'S MOTION:

7 THE COURT: ALL RIGHT. I DO FIND THAT THERE
8 IS SUFFICIENT EVIDENCE TO GO FORWARD TO THE JURY ON THE
9 QUESTION OF ARMED ROBBERY AND DENY YOUR MOTION FOR A
10 DIRECTED VERDICT ON THE INDICTMENT FOR ARMED ROBBERY.

11 MR. POTTER: THANK YOU.

12 THE COURT: ALL RIGHT. ANYTHING ELSE?

13 MR. POTTER: I WOULD ASK FOR 15, 20 MINUTES
14 JUST TO COMPOSE MYSELF.

15 THE COURT: LET'S DO THAT. AND THEN GO TO
16 THE JURY?

17 MS. HUEY: WELL, JUDGE, I'M NOT SURE. I
18 DON'T KNOW IF IT'S TOO EARLY. YOU TYPICALLY SEND THEM
19 TO LUNCH, RIGHT, JUDGE?

20 THE COURT: NOT NECESSARILY. IF YOU ARE
21 GOING TO THE JURY, WHAT I WOULD PROBABLY DO IS ASK OUR
22 CLERK OR HER REPRESENTATIVE TO MAYBE TAKE SOME SORT OF
23 MENU IN OR SOMETHING -- IF WE HAVE ONE.

24 THE CLERK: YES, YOUR HONOR.

25 THE COURT: -- AND GET THEIR ORDER IN DURING

1 THIS 15 MINUTES, AND THEN WE CAN GO TO THE JURY, YOU
2 KNOW, AFTER THAT, AND THEN THEY CAN HAVE THEIR LUNCHES
3 BY THE TIME WE FINISH.

4 MS. HUEY: SURE, JUDGE, THAT WILL BE FINE.

5 THE COURT: MR. POTTER?

6 MR. POTTER: WE CAN DO IT OR THEY CAN DO IT
7 ON THEIR OWN.

8 THE COURT: I THINK THAT WE'VE HAD THEM HERE
9 FOR TWO DAYS, AND IT MIGHT MAKE IT EASIER RATHER THAN
10 GETTING THEM IN AND COMING BACK.

11 MR. POTTER: THAT'S FINE.

12 THE COURT: AND I ALSO WOULD FEEL MORE
13 COMFORTABLE WITH THEM NOT HAVING TO BE SUBJECT TO ANY
14 SORT OF POTENTIAL CONTACT.

15 MS. HUEY: YES, SIR.

16 THE COURT: ALL RIGHT. SO WITH THAT WE'RE
17 GOING TO STAND IN RECESS UNTIL NOON, AND THAT WILL BE 15
18 MINUTES. ALL RIGHT.

19 MS. HUEY: THANK YOU, JUDGE.

20 (WHEREUPON, A RECESS WAS TAKEN.)

21 THE COURT: I UNDERSTAND THE JURY IS READY.
22 ANYTHING FROM THE STATE BEFORE WE BRING THE JURY BACK?

23 MS. HUEY: NO, SIR, YOUR HONOR.

24 THE COURT: ANYTHING FROM DEFENSE?

25 MR. POTTER: NO, YOUR HONOR.

1 **THE COURT:** NOW, THE DEFENDANT, HAVING NOT
2 PUT UP ANY EVIDENCE, IS ENTITLED TO CLOSE. SO THE STATE
3 WILL OPEN AND THE DEFENDANT WILL CLOSE.

4 IS THAT CORRECT, MADAM SOLICITOR?

5 **MS. HUEY:** UNFORTUNATELY, YES.

6 **THE COURT:** MR. POTTER?

7 **MR. POTTER:** YES, YOUR HONOR.

8 **THE COURT:** ALL RIGHT, VERY GOOD.

9 THE FIRST THING I'LL DO, THOUGH, IS BRING
10 THEM BACK, I'LL RECOGNIZE YOU, MR. POTTER, ON BEHALF OF
11 THE DEFENDANT, AND THEN YOU WILL ANNOUNCE THAT THAT'S
12 STILL YOUR CASE, THAT YOU ARE GOING TO REST, AND THEN
13 I'LL INSTRUCT THEM AS TO THE RIGHT OF THE DEFENDANT NOT
14 TO TESTIFY OR PRESENT EVIDENCE.

15 ANYTHING ELSE FROM THE STATE?

16 **MS. HUEY:** NO, SIR, YOUR HONOR.

17 **THE COURT:** ASK THE JURY TO JOIN US, PLEASE.

18 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
19 12:17 P.M.)

20 **THE COURT:** LET THE RECORD REFLECT THE JURY
21 AND ALTERNATE ARE IN THE JURY-BOX.

22 MADAM FORELADY, THE STATE HAS RESTED. I'LL
23 NOW RECOGNIZE MR. POTTER.

24 **MR. POTTER:** THANK YOU, YOUR HONOR. IF IT
25 PLEASES THE COURT, THE DEFENSE RESTS.

1 **THE COURT:** MADAM FORELADY, LADIES AND
2 GENTLEMEN OF THE JURY, THE DEFENDANT HAS A
3 CONSTITUTIONAL RIGHT TO REMAIN SILENT, TO PUT UP NO
4 EVIDENCE, AND REQUIRE THE STATE TO MEET ITS BURDEN OF
5 PROOF BEYOND A REASONABLE DOUBT. THE ASSERTION UNDER
6 THE CONSTITUTIONAL RIGHT NOT TO TESTIFY OR PRESENT
7 EVIDENCE MUST NOT BE CONSIDERED BY YOU IN ANY -- IN YOUR
8 DELIBERATIONS. UNDER YOUR OATH YOU ARE TO DRAW NO
9 CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT
10 IN THIS CASE DID NOT TESTIFY OR PUT UP EVIDENCE. AS I
11 STATED: THE DEFENDANT IS NOT REQUIRED TO PROVE HIS
12 INNOCENCE. THE BURDEN OF PROOF REMAINS UPON THE STATE
13 TO PROVE GUILT BEYOND A REASONABLE DOUBT.

14 NOW WE HAVE COME TO THE FINAL STAGES OF THE
15 CASE, MADAM FORELADY AND LADIES AND GENTLEMEN OF THE
16 JURY, WHICH MEANS WE WILL HAVE FINAL ARGUMENTS BY
17 COUNSEL, AND THEN THE CHARGE ON THE LAW BY THE COURT.

18 SO I'LL RECOGNIZE THE SOLICITOR FOR HER
19 CLOSING ARGUMENT.

20 **MS. HUEY:** THANK YOU, JUDGE, MAY IT PLEASE
21 THE COURT?

22 **THE COURT:** MADAM SOLICITOR.
23 CLOSING ARGUMENT ON BEHALF OF THE STATE:

24 **MS. HUEY:** I THINK IT'S SAFE TO SAY THAT WE
25 CAN ALL AGREE THAT AN ARMED ROBBERY TOOK PLACE AT THE

1 GOODWILL STORE HERE IN ANDERSON.

2 WE KNOW THAT BECAUSE PAULA AYERS, THE VICTIM
3 IN THE CASE, WHO WAS AN EMPLOYEE OF GOODWILL, TOOK THE
4 STAND AND SHE TOLD YOU THAT SHE WAS WORKING HER
5 REGISTER, A MAN CAME UP BESIDE HER, PUT A KNIFE IN HER
6 SIDE, AND SAID "GIVE ME THE MONEY OR I'LL CUT YOU." A
7 KNIFE WAS FOUND AT THE REGISTER.

8 OTHER WITNESSES SAW THIS MAN TAKE MONEY OUT
9 OF HER REGISTER, INCLUDING THE VICTIM, AND SAW HIM RUN
10 OUT OF THE STORE. ANOTHER WITNESS EVEN HEARD WHAT HE
11 TOLD PAULA, HEARD HIM SAY "GIVE ME THE MONEY OR I'LL CUT
12 YOU."

13 WE KNOW THAT MONEY WAS MISSING FROM THE
14 REGISTER, AROUND \$200.00, I BELIEVE. AND AGAIN, WE KNOW
15 THAT A WEAPON WAS USED. THAT WAS FOUND AT THE SCENE.
16 AN ARMED ROBBERY TOOK PLACE.

17 THE QUESTION THAT YOU ALL HAVE TO ANSWER,
18 THEN, IS DID I PROVE BEYOND A REASONABLE DOUBT THAT THIS
19 DEFENDANT, JEFFERY SCOTT EVANS, DID HE COMMIT THAT ARMED
20 ROBBERY? AND I SUBMIT TO YOU THAT I HAVE PROVED BEYOND
21 A REASONABLE DOUBT EACH AND EVERY ELEMENT AND THAT THIS
22 DEFENDANT DID, IN FACT, COMMIT THE CRIMES HE'S CHARGED
23 WITH.

24 NOW, HOW DO WE KNOW THAT? AGAIN, LET'S
25 START WITH THE WITNESS TESTIMONY. AND YESTERDAY YOU MAY

1 HAVE BEEN A LITTLE THROWN OFF BECAUSE BASICALLY EVERYONE
2 WHO TOOK THE STAND YESTERDAY SAID "I DON'T KNOW WHO DID
3 IT."

4 AND THAT'S REALLY ONLY NATURAL. YOU THINK
5 ABOUT IT. YOU SEE SOMEONE FOR A MATTER OF A MINUTE OR
6 TWO. EVERYONE SAID THIS HAPPENED IN A COUPLE OF MINUTES
7 MAX. AND YOU'RE GONNA GET DIFFERENT DESCRIPTIONS,
8 NUMBER ONE. BUT ESPECIALLY IN TERMS OF HEIGHT, IT'S
9 HARD TO GUESS HEIGHT AND WEIGHT. EVERYONE IS GONNA BE
10 SOMEWHAT DIFFERENT, ALL RIGHT?

11 BUT NONETHELESS, IT'S HARD TO REMEMBER
12 EXACTLY WHAT SOMEONE LOOKS LIKE IN THAT SHORT AMOUNT OF
13 TIME, OKAY? AND THEY DIDN'T KNOW HIM. THEY DIDN'T KNOW
14 THIS DEFENDANT, OKAY? THEY COULD NOT IDENTIFY THE
15 DEFENDANT.

16 LET'S TALK ABOUT THE DESCRIPTIONS, THOUGH.
17 EACH OF THEM TALKED ABOUT HIM BEING FAIRLY SHORT, PRETTY
18 THIN, AND HAVING LIGHTISH HAIR. NOW THEY TALK ABOUT
19 CURLY HAIR AND THEY TALK ABOUT A BEARD. AND AS YOU CAN
20 SEE, THE DEFENDANT HAS NEITHER TODAY, BUT HE ALSO LOOKS
21 PRETTY CLEAN SHAVEN TODAY. THOSE THINGS YOU CAN CHANGE
22 PRETTY EASILY WITH A HAIR CUT AND A SHAVE, OKAY?

23 SO THEIR DESCRIPTIONS WERE SOMEWHAT
24 DIFFERENT, BUT THE GIST OF IT WAS THE SAME: SHORT,
25 SKINNY, LIGHT HAIR, OKAY?

1 NOW, WHAT TELLS US, THEN, THAT THIS
2 DEFENDANT COMMITTED THE ARMED ROBBERY? WELL, WE HAVE
3 THE SURVEILLANCE STILLS WHICH Y'ALL HAVE BEEN ABLE TO
4 SEE BRIEFLY AND YOU'LL BE ABLE TO STUDY THOSE MORE BACK
5 IN THE JURY ROOM. AND WE ALL WISH THAT WAS A CLEAR
6 PICTURE OF THE FRONT OF HIS FACE. BUT, UNFORTUNATELY,
7 AS MR. MESSENGER TESTIFIED TO, THOSE THINGS ARE KIND OF
8 GRAINY, YOU CAN'T GET A REALLY GOOD PICTURE FROM THEM.

9 BUT NONETHELESS, YOU'VE GOT THESE PICTURES
10 THAT, YOU CAN COMPARE BACK IN THE JURY ROOM, AND THEY
11 ARE SIMILAR TO THE DEFENDANT: STATURE, Demeanor,
12 HAIRLINE, HEIGHT, WEIGHT. YOU TAKE THAT INTO ACCOUNT.

13 ADDITIONALLY, THERE IS A PICTURE OF A CAR IN
14 THAT SURVEILLANCE STILL. AND THAT'S IMPORTANT BECAUSE
15 YOU HAVE PICTURES OF THE CAR THAT WAS LOCATED WHERE THE
16 DEFENDANT WAS LOCATED, AND THAT WAS HIS GIRLFRIEND'S
17 CAR. SEE IF THE CARS ARE SIMILAR, AS WELL, WHEN YOU ARE
18 LOOKING AT THOSE STILLS AND THE PHOTOS OF THE CAR.

19 NOW, HOW DO WE GET TO MR. EVANS, THOUGH?
20 WELL, DETECTIVE MATHESON TOOK THE STAND AND HE TOLD YOU
21 THAT, FIRST OF ALL, THEY RECEIVED INFORMATION ABOUT A
22 TAG, AND THEY THOUGHT IT WAS THE WHOLE TAG, BUT IT
23 DIDN'T TURN OUT TO BE THE EXACT TAG NUMBER. BUT IT WAS
24 A PARTIAL TAG MATCH NONETHELESS, OKAY?

25 AGAIN, THEY RECEIVED OTHER INFORMATION THAT

1 LED THEM TO THE SUNRISE MOTEL. AND YOU WILL BE ABLE TO
2 LOOK AT THE CHECK-IN CARD FROM THE SUNRISE MOTEL. AND
3 WHEN OFFICERS WENT TO THE SUNRISE MOTEL AND THEY LOOKED
4 THEMSELVES AT THAT CHECK-IN CARD, THEY GOT THE NAME OF
5 JEFFERY SCOTT EVANS. AND THE REASON THEY WENT THERE TO
6 BEGIN WITH IS BECAUSE THEY RECEIVED INFORMATION THAT THE
7 ROBBER OF THE GOODWILL WENT TO THIS HOTEL.

8 SO HERE THEY HAVE JEFFERY SCOTT EVANS ON
9 THIS CARD, THEY'VE GOT AGAIN THE TAG NUMBER THAT MATCHES
10 PARTIALLY TO THE ONE THAT WAS CALLED OUT, AND THEY HAVE
11 THE VEHICLE DESCRIPTION THAT MATCHES WHAT WAS CALLED OUT
12 BY A WITNESS AT THE SCENE. SO THEY PULL A PICTURE OF
13 JEFFERY SCOTT EVANS.

14 AND IN THE OFFICERS' OPINION, IN DETECTIVE
15 MATHESON'S OPINION THEY SEEM PRETTY SIMILAR, PRETTY
16 CLOSE. SO THEY GO, AND BASED ON THAT, THEY HAD ENOUGH
17 TO GO AHEAD AND PICK HIM UP; AND WHEN THEY DO, HE GIVES
18 A STATEMENT. AND THAT IS THE REST OF THIS CASE, IS HIS
19 STATEMENT. AND YOU WILL BE ABLE TO GO THROUGH ALL OF
20 THAT AS WELL BACK IN THE JURY ROOM.

21 AND THINK ABOUT HOW HIS STATEMENT, HIS
22 CONFESSION, WHICH WAS GIVEN VOLUNTARILY IN DETECTIVE
23 MATHESON'S OPINION, AND HE HAD A FORM TO SIGN, HE HAD
24 SEVERAL FORMS TO SIGN TO MAKE SURE THAT HE WAS GIVING IT
25 OF HIS OWN FREE WILL, THAT HE WANTED TO TALK TO THE

1 POLICE ABOUT WHAT HAPPENED, TO GIVE HIS SIDE OF THE
2 STORY. YOU'LL HAVE ALL THOSE FORMS BACK THERE.

3 BUT THINK ABOUT WHEN YOU ARE READING THROUGH
4 THESE FORMS HOW MANY TIMES HE SIGNS IT, HOW MANY TIMES
5 HE INITIALS IT, THAT SORT OF THING; THAT SHOWS THAT HE'S
6 ACTUALLY READING IT AND ACKNOWLEDGING THE STATEMENT,
7 ACKNOWLEDGING THAT IT'S HIS.

8 AND WHEN YOU LOOK AT THE STATEMENT, THINK
9 ABOUT HOW THE EVIDENCE THAT YOU HEARD THROUGH TESTIMONY
10 AND EVIDENCE THAT WAS COLLECTED, SEE HOW HIS STATEMENT
11 CORROBORATES ALL OF THAT.

12 FIRST OF ALL, IN HIS STATEMENT HE TALKS
13 ABOUT BEING IN HIS GIRLFRIEND'S CAR, OKAY? AND HIS
14 GIRLFRIEND'S CAR WAS LOCATED AGAIN WITH HIM WHEN HE WAS
15 PICKED UP. AND AGAIN, THAT CAR MATCHES THE VEHICLE
16 DESCRIPTION OF THE CAR THAT FLED THE GOODWILL; IT ALSO
17 HAS THE SAME OR A PARTIAL TAG NUMBER ON IT.

18 ADDITIONALLY, HE TALKS ABOUT GOING TO THE
19 GOODWILL STORE, TRYING TO SNATCH A LADY'S PURSE.
20 MS. COOLEY, WHO TESTIFIED -- AND A BLACK LADY'S PURSE AT
21 THAT -- MS. COOLEY TESTIFIED THAT THE ROBBER, WHILE SHE
22 WAS IN THE GOODWILL STORE, BUMPED HER AND SHE THOUGHT HE
23 WAS GONNA TAKE HER PURSE SO SHE CLUTCHED IT EVEN
24 TIGHTER.

25 AND ON THAT NOTE MS. COOLEY WAS THE ONE WHO

1 PROBABLY SPENT THE MOST TIME WITH HIM BECAUSE HE WAS
2 BEHIND HER A LOT AND THAT SORT OF THING. AND SHE
3 TESTIFIED THAT HE AGAIN HAD LIGHT HAIR, THAT HE WAS
4 SHORT, BECAUSE HE WASN'T AS TALL AS HER, AND SHE'S
5 FIVE-FIVE AND A HALF; AND HE WAS THIN AND HAD THAT LIGHT
6 HAIR.

7 BUT ASIDE FROM MS. COOLEY CORROBORATING THE
8 DEFENDANT, WE THEN HAVE THE FACT THAT HE TALKS ABOUT
9 USING A LEATHERMAN TOOL, AND YOU ALL WILL HAVE THAT IN
10 EVIDENCE. YOU WILL SEE THE KNIFE THAT HE USED, THAT HE
11 STUCK IN MS. AYERS' SIDE WHILE HE WAS TAKING MONEY FROM
12 THE REGISTER. THAT WAS FOUND AT THE CRIME SCENE, AND IN
13 HIS STATEMENT HE TALKS ABOUT USING THAT KNIFE.

14 ADDITIONALLY, HE TALKS ABOUT GOING TO THE
15 SUNRISE MOTEL IN HIS CONFESSION. AND WHAT DO WE HAVE?
16 WE HAVE THE CHECK-IN CARD WHERE JEFFERY SCOTT EVANS,
17 DRIVING AGAIN THIS CAR THAT MATCHES THE DESCRIPTION OF
18 THE CAR THAT FLED THE GOODWILL AFTER THE ROBBERY. WE
19 HAVE THAT FROM THE SUNRISE MOTEL, THAT CHECK-IN CARD.

20 SO HIS CONFESSION ALL TIES IN WITH THE
21 EVIDENCE WE HAVE FROM THE WITNESS TESTIMONY, FROM THE
22 SURVEILLANCE STILLS, EVIDENCE COLLECTED AT THE SCENE,
23 NOT ONLY THE KNIFE BUT THE FACT THAT HE HAD CLOTHES OVER
24 HIS ARMS, AND THOSE WERE LOCATED OUTSIDE THE FRONT OF
25 THE STORE. AND AGAIN, IN HIS STATEMENT HE TALKS ABOUT

1 HE PUT SOME CLOTHES OVER HIS ARMS SO THAT HE WOULDN'T
2 LOOK SUSPICIOUS. AND SEVERAL WITNESSES TESTIFIED TO
3 SEEING HIM WITH CLOTHES OVER HIS ARM.

4 SO WE HAVE THE SURVEILLANCE STILLS, THE
5 EVIDENCE FOUND AT THE SCENE, THE PARTIAL TAG, THE
6 VEHICLE DESCRIPTION, THE HOTEL CHECK-IN CARD, AND THEN
7 ULTIMATELY HIS CONFESSION.

8 LADIES AND GENTLEMEN, THIS DEFENDANT IS
9 GUILTY BEYOND A REASONABLE DOUBT OF ARMED ROBBERY AND
10 THE POSSESSION OF A WEAPON, IN THIS CASE A KNIFE, DURING
11 THE COMMISSION OF A VIOLENT CRIME, THAT BEING ARMED
12 ROBBERY. FIND HIM GUILTY OF THESE CRIMES. THANK YOU
13 VERY MUCH.

14 THE COURT: MR. POTTER?

15 MR. POTTER: THANK YOU, JUDGE, MAY IT PLEASE
16 THE COURT.

17 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT:

18 MR. POTTER: BEYOND A REASONABLE DOUBT IS A
19 SUBSTANTIAL BURDEN, LADIES AND GENTLEMEN, A SUBSTANTIAL
20 BURDEN. AND I SUBMIT TO YOU THAT THEY HAVEN'T MET THE
21 BURDEN. THE GOVERNMENT HAS NOT MET THEIR BURDEN BEYOND
22 A REASONABLE DOUBT TO PROVE THAT JEFFERY DID THIS.

23 THINGS YOU CAN THINK ABOUT. WHAT IS BEYOND
24 A REASONABLE DOUBT? THE JUDGE IS GONNA EXPLAIN IT TO
25 YOU. LET ME GIVE YOU A QUICK EXAMPLE. AT ONE END OF

1 THIS BAR, ABSOLUTELY POSITIVELY NOT GUILTY. AT THE
2 OTHER END OF THIS BAR, BEYOND A REASONABLE DOUBT.
3 THAT'S HOW FAR THE BURDEN THE STATE HAS TO MEET. NOT
4 ALMOST GUILTY, NOT, EH, CLOSE ENOUGH. ALL THE WAY TO
5 THE END. HAS THIS LITTLE BALL MADE IT ALL THE WAY TO
6 THE END? I SUBMIT IT HASN'T.

7 FOUR WITNESSES CAME UP IN FRONT OF YOU AND
8 TESTIFIED THAT THIS PERSON INVOLVED HAD STRAWBERRY BLOND
9 HAIR, HAD CURLY HAIR; HAD A BEARD, DIDN'T HAVE A BEARD;
10 HAD LIGHT BROWN HAIR, HAD BROWN HAIR, HAD BLONDISH HAIR;
11 WAS 5'5", WAS 5'7".

12 THE OFFICER WHO MADE THE ARREST ON JEFFERY
13 HAD PLENTY OF OPPORTUNITY TO SEARCH HIM TO FIND A PLAID
14 SHIRT. THAT WOULD MAKE THE DESCRIPTION THAT EVERYBODY
15 GAVE, AND THAT THE PHOTOGRAPHS SHOW: A PLAID SHIRT.

16 WE DON'T HAVE THAT. WHY DON'T WE HAVE THAT?
17 THAT BRINGS THE BALL THERE.

18 THERE'S NO FINGERPRINTS ON THIS KNIFE, OKAY?
19 THERE'S NO FINGERPRINTS ON THE DOOR, OKAY? THAT'S
20 IMPORTANT. IF HE HAD THIS KNIFE AND WAS GRIPPING THIS
21 KNIFE AND DROPPED IT AND NO ONE TOUCHED IT AFTERWARDS,
22 SOMETHING SHOULD BE THERE.

23 LET'S LOOK AT THE PHOTOGRAPHS SUBMITTED BY
24 GOODWILL. NOT THE WORLD'S GREATEST PHOTOGRAPHS, I
25 SUBMIT. THAT'S TRUE. I CAN'T SEE A FACE. THERE'S NO

1 FACE ON THERE.

2 THAT BRINGS THE BALL BACK DOWN FURTHER.
3 THEY HAVEN'T MET THEIR BURDEN.

4 YOU WILL HAVE AN OPPORTUNITY TO LOOK AT
5 THESE PHOTOGRAPHS WHEN YOU GO BACK, AND THERE'S NO FACE.

6 LADIES AND GENTLEMEN, WE ARE ALL TAUGHT TO
7 RESPECT LAW OFFICERS. WE ARE ALL TAUGHT THAT THEY
8 REPRESENT THE GOVERNMENT AND THE LAW, AND WE ARE TO
9 RESPECT THAT.

10 BUT WHAT'S INTERESTING IS THAT JEFFERY
11 DIDN'T WRITE OUT THE STATEMENT, DETECTIVE MATHESON DID
12 IT FOR HIM. WE DON'T HAVE ANY RECORDING OF THAT
13 STATEMENT. WE DON'T HAVE ANY VIDEO OF THAT STATEMENT,
14 EVEN THOUGH GOODWILL CAN GET A VIDEO FROM THEIR STORE.
15 GOODWILL THINKS IT'S IMPORTANT ENOUGH TO HAVE VIDEO OF
16 THEIR STORE, BUT OUR GOVERNMENT IS NOT WILLING TO PAY
17 FOR VIDEOTAPE OF OUR CITIZENS BEING QUESTIONED BY THEM.

18 AND DETECTIVE MATHESON SAID "I TYPED OUT
19 WHAT HE TOLD ME." BUT WE DON'T KNOW EXACTLY WHAT HE
20 TOLD HIM. THIS IS DETECTIVE MATHESON TYPING OUT WHAT HE
21 HEARD OR WHAT HE THOUGHT HE HEARD OR HOW HE INTERPRETED
22 WHAT HE WAS HEARING.

23 CONSIDER THOSE FACTORS WHEN YOU ARE
24 CONSIDERING THIS CASE. CONSIDER WHETHER OR NOT THE
25 STATE HAS BROUGHT THAT YELLOW BALL FROM ONE END ALL THE

1 WAY TO THE OTHER END. AND THEY HAVEN'T.

2 RESPECT EACH OTHER'S VIEWS AND OPINIONS.

3 LISTEN TO THEM. ONE MAY BE A GAMECOCK FAN, ONE MAY BE A

4 CLEMSON FAN. THERE'S NOTHING WRONG WITH THAT, OKAY?

5 BUT YOU HAVE TO RESPECT THOSE OPINIONS AND THOSE VIEWS.

6 BEYOND A REASONABLE DOUBT IS THE LINCHPIN OF

7 OUR GOVERNMENT, OF OUR SOCIETY, OF WHAT WE STAND FOR.

8 HOLD THEM TO IT. IF YOU SIT BACK THERE AND YOU THINK,

9 HE PROBABLY DID IT, HE MAY HAVE DID [SIC] IT, THAT MEANS

10 HE'S NOT GUILTY. AND I'M SUBMITTING TO YOU HE IS NOT

11 GUILTY. THANK YOU.

12 THE COURT'S CHARGE TO THE JURY:

13

14 MADAM FORELADY, LADIES AND GENTLEMEN OF THE

15 JURY, AS JURORS IN THIS CASE YOU HAVE CERTAIN FUNCTIONS

16 AND RESPONSIBILITIES TO PERFORM WHICH ARE ENTIRELY

17 SEPARATE AND DISTINCT FROM THOSE OF MINE AS THE TRIAL

18 JUDGE. I AM PROHIBITED BY THE CONSTITUTION OF OUR STATE

19 FROM CHARGING YOU ON THE FACTS OF THE CASE. I AM ALSO

20 PROHIBITED FROM DISCUSSING THE FACTS OF THE CASE WITH

21 YOU OR IN ANY WAY INTIMATING MY FEELINGS, IF ANY, ABOUT

22 THE FACTS OF THE CASE.

23 IT IS YOUR RESPONSIBILITY AND YOURS ALONE TO

24 PASS UPON ALL ISSUES OF FACT PRESENTED IN THE CASE. I

25 WOULD, THEREFORE, CHARGE YOU THAT IF DURING THE COURSE

1 OF THE TRIAL OR DURING MY CHARGE YOU HAVE BEEN GIVEN OR
2 LEFT WITH THE IMPRESSION OR FEELING THAT I DO HAVE A
3 PERSONAL FEELING ABOUT THE FACTS OF THIS CASE, I WOULD
4 SPECIFICALLY INSTRUCT YOU TO DISREGARD THAT FEELING OR
5 IMPRESSION.

6 MOREOVER, YOU ARE THE SOLE JUDGES OF WHAT
7 THE TESTIMONY WAS AND NOT THE ARGUMENT OF COUNSEL. IT
8 IS ALSO YOUR DUTY AND YOURS ALONE TO WEIGH THAT
9 TESTIMONY AND EVIDENCE IN THE CASE AND TO PASS UPON THE
10 CREDIBILITY OR BELIEVABILITY OF THE WITNESSES.

11 IN THIS CONNECTION YOU HAVE THE RIGHT TO
12 BELIEVE ALL THAT A WITNESS TELLS YOU OR DISBELIEVE ALL
13 THAT A WITNESS TELLS YOU.. YOU HAVE THE RIGHT TO BELIEVE
14 A PART OF WHAT A WITNESS TELLS YOU OR TO DISBELIEVE A
15 PART OF WHAT A WITNESS TELLS YOU. YOU HAVE THE RIGHT TO
16 TAKE INTO CONSIDERATION ANY BIAS OR PREJUDICE OR
17 INTEREST YOU FEEL A WITNESS MIGHT HAVE IN THE CASE. I
18 SAY THIS MERELY TO EMPHASIZE THAT THE WEIGHT YOU SEE FIT
19 TO GIVE TO THE TESTIMONY AND TO THE CREDIBILITY OF THE
20 WITNESSES, AS WELL AS ALL THE ISSUES OF FACT, ARE FOR
21 YOUR SOLE DETERMINATION.

22 AS JUDGES OF THE FACTS YOU ARE THE SOLE
23 JUDGES OF THE CREDIBILITY AND THAT IS THE BELIEVABILITY
24 OF THE WITNESSES WHO HAVE TESTIFIED IN THE CASE. IN
25 PASSING UPON THEIR CREDIBILITY YOU TAKE INTO

1 CONSIDERATION MANY THINGS, SUCH AS THE APPEARANCE AND
2 MANNER OF THE WITNESS ON THE STAND, SOMETIMES REFERRED
3 TO AS THE Demeanor OF THE WITNESS. WAS THE WITNESS
4 FORTHRIGHT OR HESITANT? WAS THE WITNESS'S TESTIMONY
5 CONSISTENT OR DID IT CONTAIN DISCREPANCIES? WHAT WAS
6 THE ABILITY OF THE WITNESS TO KNOW THE FACTS ABOUT WHICH
7 HE OR SHE TESTIFIED? DID THE WITNESS HAVE A CAUSE OR A
8 REASON TO BE BIAS OR PREJUDICED IN FAVOR OF THE
9 TESTIMONY HE OR SHE GAVE? WAS THE TESTIMONY OF THE
10 WITNESS CORROBORATED OR MADE STRONGER BY OTHER TESTIMONY
11 AND EVIDENCE OR WAS IT MADE WEAKER OR, IN FACT, BEEN
12 IMPEACHED BY SUCH OTHER TESTIMONY AND EVIDENCE?

13 AS JURORS YOU HAVE THE RIGHT TO BELIEVE A
14 SMALL PORTION OF A WITNESS'S TESTIMONY AND DISCARD THE
15 LARGER, OR VICE VERSA. YOU MAY BELIEVE ALL OF A
16 WITNESS'S TESTIMONY OR NONE.

17 THROUGHOUT THIS ENTIRE PROCESS YOU HAVE BUT
18 ONE SIMPLE OBJECTIVE, AND THAT IS TO SEEK THE TRUTH
19 REGARDLESS FROM WHAT WITNESS THE TESTIMONY MAY HAVE
20 COME.

21 NOW, BY THE SAME CONSTITUTION AND LAW WHICH
22 MAKES YOU THE FINDERS OF THE FACTS AND EVIDENCE AS I
23 DISCUSSED WITH YOU, I AM AS THE JUDGE MADE THE SOLE AND
24 ONLY INSTRUCTOR IN THE LAW. YOU MUST ACCEPT AS CORRECT
25 THE LAW WHICH I CHARGE AND APPLY TO IT THE EVIDENCE AS

1 YOU FIND IT AND REACH YOUR VERDICT. IF I SHOULD MAKE AN
2 ERROR IN THE LAW AS I INSTRUCT IT TO YOU, THERE'S
3 ANOTHER TIME AND PLACE THAT ERROR CAN BE CONSIDERED AND,
4 IF NECESSARY, CORRECTED. BUT FOR THE PURPOSES OF THIS
5 CASE TODAY YOU MUST ACCEPT THE LAW AS I CHARGE IT TO BE
6 THE CORRECT LAW.

7 AND FINALLY, I CHARGE YOU IN THIS REGARD:
8 THAT YOU, NOR FOR THAT MATTER I, SHOULD NOT BE CONCERNED
9 WHAT THE LAW OUGHT TO BE BUT RATHER WHAT I CHARGE YOU
10 THE LAW TO BE.

11 NOW, THE DEFENDANT HAS PLED NOT GUILTY TO
12 THIS INDICTMENT AND BOTH COUNTS TO THE INDICTMENT. NOW,
13 THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE
14 DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A
15 CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO
16 PROVE HIMSELF INNOCENT. I CHARGE YOU THAT IT IS AN
17 IMPORTANT RULE OF LAW THAT A DEFENDANT IN A CRIMINAL
18 TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGES MAY
19 BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME
20 FOR WHICH THE INDICTMENT WAS ISSUED UNLESS THE GUILT HAS
21 BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT
22 BEYOND A REASONABLE DOUBT.

23 THIS PRESUMPTION OF INNOCENCE DOES NOT END
24 WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES A
25 DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH YOUR

1 VERDICT OF GUILT BASED UPON EVIDENCE SATISFYING YOU OF
2 THAT GUILT BEYOND A REASONABLE DOUBT.

3 THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE
4 OF RIGHTEOUSNESS PLACED UPON THE SHOULDERS OF THE
5 DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS
6 BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING
7 YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

8 THE PRESUMPTION OF INNOCENCE IS NOT MERE
9 LEGAL THEORY, IT IS NOT JUST A LEGAL PHRASE. IT IS A
10 SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED
11 UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF
12 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. AS I
13 MENTIONED EARLIER A REASONABLE DOUBT IS THE KIND OF
14 DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE
15 TO ACT.

16 NOW, I INSTRUCT YOU AND EMPHASIZE THAT THE
17 FACT THE DEFENDANT DID NOT TESTIFY OR PUT UP EVIDENCE IS
18 NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR
19 DELIBERATIONS AND IN YOUR CONSIDERATION ON THE QUESTION
20 OF WHETHER THE STATE HAS PROVEN THE DEFENDANT GUILTY OR
21 NOT GUILTY OF THE CHARGES IN THE INDICTMENT. THEY MUST
22 NOT BE CONSIDERED BY IN YOU ANY MANNER WHATSOEVER.

23 THE DEFENDANT HAS THE CONSTITUTIONAL RIGHT
24 TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT MUST
25 NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS. I

1 REPEAT: UNDER YOUR OATH YOU ARE TO DRAW NO CONCLUSION
2 WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE
3 DID NOT TESTIFY OR PRESENT EVIDENCE. THE FACT THAT THE
4 DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED
5 BY YOU IN THE JURY ROOM. THE BURDEN OF PROOF, AS I HAVE
6 STATED TO YOU, IS ON THE STATE. A DEFENDANT IS NOT
7 REQUIRED TO PROVE HIS INNOCENCE, AND THE BURDEN OF PROOF
8 REMAINS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE
9 DOUBT.

10 NOW, THERE ARE TWO TYPES OF EVIDENCE
11 GENERALLY PRESENTED DURING A TRIAL: DIRECT EVIDENCE AND
12 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE
13 TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL
14 KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS
15 EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO
16 BE PROVED IF TRUE.

17 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN
18 OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A
19 FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES
20 COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE
21 INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE
22 AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION. IT IS
23 PROOF THAT DOES NOT ACTUALLY ESTABLISH THE FACT IN
24 QUESTION BUT THAT ASSERTS OR DESCRIBES SOMETHING ELSE
25 FROM WHICH YOU MAY EITHER REASONABLY INFER THE TRUTH OF

1 THE FACT, OR AT LEAST REASONABLY INFER AN INCREASE IN
2 THE PROBABILITY THAT THE FACT IS TRUE.

3 FOR CIRCUMSTANTIAL EVIDENCE TO BE SUFFICIENT
4 TO WARRANT THE FINDING OF A FACT, THE CIRCUMSTANCES MUST
5 LEAD TO THAT FACT WITH REASONABLE CERTAINTY. THE FACTS
6 AND CIRCUMSTANCES SHOULD BE CONSIDERED IN LIGHT OF
7 ORDINARY EXPERIENCE AND COMMON SENSE.

8 THE EXISTENCE OF A FACT CANNOT BE BASED ON
9 SPECULATION, SURMISE, OR CONJECTURE. THE LAW MAKES
10 ABSOLUTELY NO DISTINCTION THE WEIGHT OR VALUE TO BE
11 GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR
12 IS A GREATER DEGREE OF CERTAINTY REQUIRED OF
13 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE.

14 CRIMINAL INTENT IS A MATTER OF MIND. FOR
15 EXAMPLE, CRIMINAL INTENT IS A STATE OF MIND THAT
16 OPERATES JOINTLY WITH AN ACT OR OMISSION IN THE
17 COMMISSION OF A CRIME. CRIMINAL INTENT IS A MENTAL
18 STATE. CRIMINAL LIABILITY IS NORMALLY BASED UPON
19 CONCURRENCE OF TWO FACTORS: AN EVIL-MEANING MIND AND AN
20 EVIL-DOING HAND. PROOF OF INTENT NECESSARILY RESTS ON
21 INFERENCE FROM CONDUCT.

22 NOW, A STATEMENT ALLEGEDLY TO HAVE BEEN MADE
23 BY THE DEFENDANT HAS BEEN ADMITTED INTO EVIDENCE IN THIS
24 CASE. WHILE THE COURT HAS DETERMINED THAT THE STATEMENT
25 IS ADMISSIBLE, I INSTRUCT YOU THAT YOU MAKE THE ULTIMATE

1 DECISION ON WHETHER OR NOT THE DEFENDANT MADE THE
2 STATEMENT. IF THE DEFENDANT DID NOT MAKE THE STATEMENT
3 YOU MUST DETERMINE WHETHER -- OR IF YOU DETERMINE THAT
4 THE DEFENDANT DID MAKE THE STATEMENT, YOU MUST DETERMINE
5 WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT
6 VOLUNTARILY AND OF HIS OWN FREE WILL.

7 THIS MEANS THAT THE STATEMENT WAS NOT CAUSED
8 BY PRESSURE, FORCE, FEAR, THREATS, COERCION, OR
9 INTIMIDATION, OR BY HOPE FOR A PROMISE OF LENIENCY OR A
10 REWARD OF ANY KIND.

11 IN DETERMINING WHETHER THE STATEMENT WAS
12 VOLUNTARY, YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS
13 OF THE DEFENDANT AND THE DETAILS OF THE QUESTIONING.
14 SOME OF THE FACTORS THAT YOU MUST CONSIDER ARE THE AGE
15 OF THE DEFENDANT, THE DEFENDANT'S EDUCATION OR LACK OF
16 EDUCATION, THE DEFENDANT'S MENTAL ABILITY OR CAPACITY,
17 THE DEFENDANT'S I.Q. OR INTELLIGENCE, THE DEFENDANT'S
18 BACKGROUND AND ENVIRONMENT, THE PLACE AND LENGTH OF
19 DETENTION, THE NATURE OF THE QUESTIONING OF THE ADVICE
20 OR LACK THEREOF TO THE DEFENDANT OF HIS CONSTITUTIONAL
21 RIGHTS, INCLUDING BUT NOT LIMITED TO THE RIGHT TO REMAIN
22 SILENT, THAT ANY STATEMENT COULD BE USED AGAINST HIM IN
23 A COURT OF LAW; THE RIGHT TO HAVE A LAWYER PRESENT, AND
24 IF HE COULD NOT AFFORD A LAWYER, A LAWYER WOULD BE
25 APPOINTED TO REPRESENT HIM WITHOUT COST; THAT HE COULD

1 STOP MAKING THE STATEMENT AT ANY TIME.

2 YOU MUST CONSIDER CAREFULLY ALL OF THE
3 SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO
4 AN ALLEGED STATEMENT.

5 THE STATE HAS THE BURDEN OF PROVING BEYOND A
6 REASONABLE DOUBT THAT THE ALLEGED STATEMENT WAS
7 VOLUNTARY. IF YOU DETERMINE IT WAS, YOU MAY GIVE THE
8 STATEMENT ANY FURTHER CONSIDERATION THAT YOU DEEM
9 PROPER. YOU MUST DECIDE WHAT WEIGHT, IF ANY, SHOULD BE
10 GIVEN TO THE ALLEGED STATEMENT.

11 IF YOU DETERMINE THE ALLEGED STATEMENT WAS
12 NOT THE FREE AND VOLUNTARILY STATEMENT OF THE DEFENDANT,
13 YOU SHOULD NOT CONSIDER THE STATEMENT AT ALL.

14 IN INDICTMENT 2007-GS-04-2532, COUNT 1, THE
15 DEFENDANT, JEFFERY SCOTT EVANS, IS CHARGED WITH ARMED
16 ROBBERY; AND IN COUNT 2 THE DEFENDANT IS CHARGED WITH
17 POSSESSION OF A WEAPON DURING THE COMMISSION OF A
18 VIOLENT CRIME, IN THIS CASE ARMED ROBBERY.

19 I REMIND YOU THAT THE FACT THE DEFENDANT WAS
20 ARRESTED, CHARGED, AND INDICTED IN THIS CASE IS NOT
21 EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS
22 EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY
23 PRESUMPTION OR INFERENCE OF GUILT. THE INDICTMENT IS
24 SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE
25 CHARGES MADE AGAINST THE DEFENDANT. IT IS THE FORMAL

1 DOCUMENT BY WHICH THE CASE IS BROUGHT INTO THIS COURT.

2 COUNT 1 OF THE INDICTMENT CHARGES THE
3 DEFENDANT WITH ARMED ROBBERY. IN ORDER TO PROVE THIS
4 OFFENSE, THE STATE MUST FIRST PROVE BEYOND A REASONABLE
5 DOUBT THE DEFENDANT TOOK PERSONAL PROPERTY FROM THE
6 PERSON OR PRESENCE OF ANOTHER PERSON. PROPERTY IS IN
7 THE PRESENCE OF A PERSON IF IT IS WITHIN THE PERSON'S
8 REACH, INSPECTION, OBSERVATION OR CONTROL, SO THAT THE
9 PERSON COULD, IF NOT OVERCOME WITH VIOLENCE OR PREVENTED
10 BY FEAR, KEEP POSSESSION OF THE PROPERTY.

11 THE STATE MUST ALSO PROVE BEYOND A
12 REASONABLE DOUBT THAT THE DEFENDANT CARRIED THE PROPERTY
13 AWAY, INTENDING TO PERMANENTLY DEPRIVE THE OWNER OF THE
14 PROPERTY AND KEEP THE PROPERTY FOR THE DEFENDANT'S OWN
15 USE. THE SLIGHTEST REMOVAL OF THE PROPERTY AND THE
16 COMPLETE POSSESSION OF THE PROPERTY, EVEN FOR AN
17 INSTANT, IS SUFFICIENT TO SHOW A TAKING AND CARRYING
18 AWAY OF THE PROPERTY. THE TAKING AND CARRYING AWAY OF
19 THE PROPERTY MUST HAVE BEEN DONE WITH VIOLENCE AND BY
20 PUTTING THE OWNER OF THE PROPERTY IN FEAR OF VIOLENCE.

21 FINALLY, THE STATE MUST PROVE BEYOND A
22 REASONABLE DOUBT THAT THE DEFENDANT WAS ARMED WITH A
23 DEADLY WEAPON DURING THE ROBBERY. A DEADLY WEAPON IS
24 ANY ARTICLE, INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO
25 CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT

1 IS USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND
2 CIRCUMSTANCES OF EACH CASE.

3 THE FOLLOWING ARE EXAMPLES OF INSTRUMENTS
4 WHICH MAY BE DEADLY WEAPONS: A PISTOL, A SHOTGUN, A
5 RIFLE, A DIRK, A DAGGER, A KNIFE, A SLINGSHOT, METAL
6 KNUCKLES, A RAZOR, A FIRE BOMB, A MOLOTOV COCKTAIL, AND
7 EVEN LIGHTER FLUID.

8 NOW, IN COUNT 2 THE DEFENDANT IS CHARGED
9 WITH POSSESSION OF A WEAPON DURING THE COMMISSION OR
10 ATTEMPT TO COMMIT A VIOLENT CRIME. THE STATE MUST PROVE
11 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT VISIBLY
12 DISPLAYED A KNIFE DURING THE COMMISSION OF A VIOLENT
13 CRIME.

14 A KNIFE MEANS AN INSTRUMENT OR A TOOL WITH A
15 SHARP CUTTING BLADE, WHETHER OR NOT FASTENED TO A HANDLE
16 WHICH CAN BE USED TO INFLECT A CUT, SLASH, OR WOUND.

17 IN ORDER TO FIND THE DEFENDANT GUILTY OF
18 POSSESSION OF A WEAPON DURING THE COMMISSION OF A
19 VIOLENT CRIME, YOU MUST FIRST FIND HIM GUILTY OF EITHER
20 COMMITTING A VIOLENT CRIME OR ATTEMPTING TO COMMIT A
21 VIOLENT CRIME. SECTION 16-1-60 OF THE CODE OF LAWS OF
22 STATE OF SOUTH CAROLINA PROVIDES THAT ARMED ROBBERY IS A
23 VIOLENT CRIME.

24 NOW, MADAM FORELADY, LADIES AND GENTLEMEN OF
25 THE JURY, THE STATE HAS THE BURDEN OF PROOF OF

1 ESTABLISHING EACH ELEMENT OF THE CHARGED OFFENSES
2 CHARGED BEYOND A REASONABLE DOUBT. IF YOU AS JURORS
3 HAVE REASONABLE DOUBT AS TO WHETHER THE STATE HAS MET
4 THE BURDEN OF PROOF, HAS SHOWN ALL THE ELEMENTS OF THE
5 CRIMES OF ARMED ROBBERY AND POSSESSION OF A WEAPON
6 DURING THE COMMISSION OF A VIOLENT CRIME, YOU WOULD FIND
7 THE DEFENDANT NOT GUILTY. YOU SHOULD ENTER YOUR VERDICT
8 BASED ON WHETHER OR NOT YOU ARE SATISFIED THE STATE HAS
9 ESTABLISHED BEYOND A REASONABLE DOUBT ALL OF THE
10 ELEMENTS OF THE OFFENSES CHARGED.

11 YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL
12 JURORS SWORN TO IMPARTIALLY TRY AND DETERMINE THE FACTS
13 OF THIS CASE, AND WHEN YOU COMPLY WITH YOUR OATH TO DO
14 SO, THEN NO ONE WILL HAVE A RIGHT TO CRITICIZE YOUR
15 VERDICT AND YOU WILL HAVE FULLY DISCHARGED YOUR DUTIES
16 AS JURORS.

17 YOU SHOULD NOT BE INFLUENCED BY OPINIONS OR
18 EXPRESSIONS OF OPINIONS, IF ANY, WHICH YOU MAY HAVE
19 HEARD ON THE OUTSIDE. YOU ARE TO DECIDE THIS CASE
20 ACCORDING TO THE TESTIMONY AS YOU HAVE HEARD FROM THE
21 LIPS OF THE SWORN WITNESSES, ALONG WITH THE OTHER
22 EVIDENCE WHICH MAY HAVE BEEN INTRODUCED DURING THE TRIAL
23 OF THE CASE.

24 AS I SAID EARLIER, YOU ARE THE JUDGES OF THE
25 FACTS IN THIS CASE, AND YOU ARE TO DETERMINE ONLY IF

1 THIS DEFENDANT IS GUILTY OR NOT GUILTY BASED UPON THE
2 TESTIMONY AND THE EVIDENCE PRESENTED AT TRIAL AND AFTER
3 APPLYING THE LAW AS I'VE GIVEN IT TO YOU. IF FROM THE
4 EVIDENCE YOU HAVE A REASONABLE DOUBT AS TO WHETHER OR
5 NOT THE DEFENDANT IS GUILTY, IT IS YOUR DUTY TO ACQUIT
6 HIM AND WRITE THE TWO WORDS "NOT GUILTY." UNDER YOUR
7 OATH YOU TOOK, YOU SWORE TO TRY THIS CASE BASED ONLY AND
8 SOLELY ON THE TESTIMONY AND EVIDENCE AND LAW PRESENTED
9 AND HEARD IN THIS COURTROOM. IT IS YOUR DUTY TO LAY
10 ASIDE ALL BIAS, PREJUDICE, OR ANY SYMPATHY YOU HAVE IN
11 REACHING YOUR VERDICT. YOU HAVE NO FRIENDS TO REWARD OR
12 ENEMIES TO PUNISH IN THIS CASE.

13 I MIGHT NOTE THE WORD "VERDICT" IS TAKEN
14 FROM THE LATIN TERM VEREDICTO, WHICH MEANS TO SPEAK THE
15 TRUTH. ABIDE BY YOUR OATH AND RETURN A VERDICT WHICH
16 DOES SPEAK THE TRUTH.

17 NOW, MADAM FORELADY, I HAVE PREPARED A
18 VERDICT FORM FOR YOU TO USE IN THE TRIAL OF THIS CASE.
19 IF YOU WILL NOTE, AS TO THE INDICTMENT BEING NUMBER
20 2007-GS-04-2352, WITHIN COUNT 1, ARMED ROBBERY. NOW,
21 YOU HAVE TWO POSSIBLE VERDICTS ON EACH COUNT. WHATEVER
22 VERDICT THE JURY REACHES, IT HAS TO BE A UNANIMOUS
23 VERDICT. THAT MEANS ALL 12 OF THE JURY MUST AGREE WITH
24 THAT VERDICT.

25 IT PROVIDES THEN IN COUNT 1, ARMED ROBBERY:

1 WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT, JEFFERY
2 SCOTT EVANS, IS GUILTY OF ARMED ROBBERY OR NOT GUILTY.
3 WHICHEVER IS YOUR UNANIMOUS VERDICT THEN, OF COURSE,
4 MADAM FORELADY, YOU WOULD CHECK THE APPROPRIATE LINE.

5 COUNT 2, POSSESSION OF A WEAPON DURING THE
6 COMMISSION OF A VIOLENT CRIME: WE, THE JURY,
7 UNANIMOUSLY FIND THE DEFENDANT, JEFFERY SCOTT EVANS, IS
8 GUILTY OF POSSESSION OF A WEAPON DURING THE COMMISSION
9 OF A VIOLENT CRIME OR NOT GUILTY. AGAIN, WHATEVER
10 VERDICT YOU REACH, IT HAS TO BE A UNANIMOUS VERDICT, AND
11 MADAM FORELADY, YOU WILL BE THE ONE TO ENTER IT INTO THE
12 APPROPRIATE SPACE.

13 ONCE THE VERDICT FORM HAS BEEN COMPLETED AS
14 TO BOTH VERDICTS, THEN YOU WILL SIGN YOUR NAME AND KNOCK
15 ON THE DOOR AND WE WILL RECEIVE THE VERDICT AT THAT
16 TIME.

17 NOW I'M GOING TO ASK YOU ONE MORE TIME TO
18 RETIRE TO THE JURY ROOM WITHOUT BEGINNING YOUR
19 DELIBERATIONS. THIS WILL JUST BE A FEW MINUTES BECAUSE
20 I NEED TO TAKE UP SOME MATTERS WITH THE ATTORNEYS. BUT
21 ONCE THAT'S DONE, THEN I WILL SEND IN THE VERDICT FORM
22 TOGETHER WITH ALL OF THE EXHIBITS. ONCE YOU RECEIVE
23 THAT FROM THE BAILIFF, THEN YOU WILL BEGIN YOUR
24 DELIBERATIONS.

25 AND ONCE YOU HAVE REACHED A VERDICT AND THE

1 VERDICT FORM HAS BEEN COMPLETED, JUST KNOCK ON THE DOOR.
2 AT THIS TIME I'M GOING TO AGAIN ASK YOU TO RETIRE TO THE
3 JURY ROOM. AGAIN, DO NOT BEGIN YOUR DELIBERATIONS UNTIL
4 YOU RECEIVE THE VERDICT FORM.

5 MADAM ALTERNATE, I NEED TO ASK YOU TO STAY
6 WITH US. THANK YOU, MA'AM.

7 (WHEREUPON, THE JURY, EXCEPT FOR THE
8 ALTERNATE, LEFT THE COURTROOM AT 12:51 P.M.)

9 THE COURT: ANY EXCEPTIONS OR REQUESTS FROM
10 THE STATE?

11 MS. HUEY: NO, SIR, YOUR HONOR.

12 THE COURT: FROM THE DEFENSE?

13 MR. POTTER: NO, YOUR HONOR.

14 THE COURT: VERY GOOD. THANK YOU. BE SURE
15 THAT ALL THE EXHIBITS THAT ARE SUPPOSED TO GO BACK DO
16 AND NONE THAT ARE NOT.

17 (OFF-THE-RECORD DISCUSSION.)

18 (JURY ALTERNATE DISMISSED.)

19 (THE JURY STARTED THEIR DELIBERATIONS AT
20 12:55 P.M.)

21 (A VERDICT WAS REACHED AT 1:40 P.M.)

22 THE COURT: IT'S MY UNDERSTANDING THE JURY
23 HAS REACHED A VERDICT. IS THERE ANYTHING FROM THE STATE
24 BEFORE WE BRING THE JURY BACK?

25 MS. HUEY: NO, SIR, YOUR HONOR.

1 **THE COURT:** FROM THE DEFENSE?

2 **MR. POTTER:** NO, YOUR HONOR.

3 **THE COURT:** ALL RIGHT. ASK THE JURY TO JOIN
4 US, PLEASE.

5 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
6 2:04 P.M.)

7 VERDICT OF THE JURY:

8 **THE COURT:** ALL RIGHT. LET THE RECORD
9 REFLECT THE JURY IS IN THE JURY-BOX.

10 MADAM FORELADY, I UNDERSTAND THE JURY HAS
11 REACHED A VERDICT?

12 **THE FORELADY:** WE HAVE.

13 **THE COURT:** IF YOU WOULD PLEASE PASS IT UP
14 TO THE BAILIFF.

15 MADAM CLERK, IF YOU WOULD PLEASE PUBLISH THE
16 VERDICT. WOULD THE DEFENDANT STAND, PLEASE.

17 **THE CLERK:** INDICTMENT 2007-GS-04-2352, *THE*
18 *STATE VERSUS JEFFERY SCOTT EVANS*, AS TO COUNT 1, ARMED
19 ROBBERY, THE VERDICT: WE, THE JURY, UNANIMOUSLY FIND
20 THAT THE DEFENDANT, JEFFERY SCOTT EVANS, IS GUILTY OF
21 ARMED ROBBERY.

22 AS TO COUNT 2, POSSESSION OF A WEAPON DURING
23 THE COMMISSION OF A VIOLENT CRIME, THE VERDICT: WE, THE
24 JURY, UNANIMOUSLY FIND THAT THE DEFENDANT, JEFFERY SCOTT
25 EVANS, IS GUILTY OF POSSESSION OF A WEAPON DURING THE

1 COMMISSION OF A VIOLENT CRIME.

2 THAT'S SIGNED NANCY KIRBY, FORELADY.

3 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
4 JURY, IF THIS IS YOUR VERDICT, WILL YOU PLEASE INDICATE
5 BY RAISING YOUR RIGHT HAND.

6 ALL HANDS RAISED, VERDICT OF THE JURY, YOUR
7 HONOR.

8 THE COURT: VERY GOOD. THANK YOU, MA'AM.
9 ANYTHING FROM THE STATE BEFORE I DISMISS THE
10 JURY?

11 MS. HUEY: NO, SIR, YOUR HONOR.

12 THE COURT: FROM THE DEFENSE?

13 MR. POTTER: NO, YOUR HONOR.

14 THE COURT: MADAM FORELADY, LADIES AND
15 GENTLEMEN OF THE JURY, THE COURT IS NEVER INTERESTED IN
16 A VERDICT, ONLY HOW THAT VERDICT IS REACHED. AND I'M
17 SATISFIED THAT YOU HAVE GIVEN BOTH THE STATE AND THE
18 DEFENDANT A FAIR AND IMPARTIAL TRIAL IN THIS CASE.

19 AS I EXPLAINED TO THE ALTERNATE EARLIER, IT
20 LOOKS LIKE I'M DOING EVERYTHING ELSE BUT PAYING
21 ATTENTION UP HERE, BUT I'VE SORT OF DEVELOPED AN ABILITY
22 OR KNACK OR WHATEVER TO KEEP UP WITH NOT ONLY WHAT'S
23 GOING ON IN THE COURTROOM, BUT ALSO HOW THINGS ARE BEING
24 PRESENTED AND RECEIVED. AND IN THIS CASE I NOTED
25 THROUGHOUT THE TRIAL ALL OF YOU PAID VERY CAREFUL AND

1 CLOSE ATTENTION TO THE TESTIMONY AND EVIDENCE.

2 AND HAVING PERFORMED YOUR DUTY AS JURORS --
3 I KNOW ALL OF YOU HAD SOMEPLACE ELSE YOU WOULD LIKE TO
4 BE RATHER THAN WHERE YOU HAVE BEEN THE LAST TWO DAYS --
5 BUT HAVING DONE SO YOU HAVE PARTICULARLY PERFORMED YOUR
6 DUTY IN A GOOD WAY, AND ANDERSON COUNTY AS WELL AS THE
7 WHOLE JUDICIAL SYSTEM IS IN YOUR DEBT.

8 NOW, THERE'S NOT MUCH I CAN DO FOR YOU.
9 THIS WILL CONCLUDE YOUR SERVICE THIS WEEK. THE ONLY
10 THING IS, IF YOU WILL REMEMBER YESTERDAY WHEN I
11 QUALIFIED THE ENTIRE JURY PANEL, I ASKED IF ANY HAD
12 SERVED ON THE JURY IN THE LAST THREE YEARS, SO AT LEAST
13 YOU WON'T HAVE TO SERVE FOR ANOTHER THREE YEARS.

14 BUT I HOPE YOUR SERVICE HAS NOT BEEN WITHOUT
15 BENEFIT, BECAUSE IT IS ONE OF THE MOST IMPORTANT THINGS,
16 IN FACT, I THINK IT WAS WINSTON CHURCHILL WHO SAID IN
17 THE LAST CENTURY THAT THE GREATEST SERVICE THAT A
18 CITIZEN CAN PERFORM IN PEACETIME IS THAT AS A JUROR
19 BECAUSE THE ENTIRE SYSTEM OF JUSTICE DEPENDS ON CITIZEN
20 PARTICIPATION, AND I THANK YOU FOR THAT.

21 MADAM CLERK, DO YOU HAVE ANYTHING THAT YOU
22 NEED TO --

23 **THE CLERK:** WE HAVE STATEMENTS FOR THEIR
24 EMPLOYERS, YOUR HONOR; IF THEY WILL JUST STEP BACK TO
25 THE JURY ROOM, AND WE'LL GIVE THEM THOSE.

1 **THE COURT:** IF YOU WOULD. VERY GOOD. THANK
2 YOU. AND AS I SAY, THIS WILL CONCLUDE YOUR SERVICE THIS
3 WEEK AS WELL AS FOR THREE YEARS. THANK YOU SO MUCH.

4 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
5 2:08 P.M.)

6 SENTENCING OF THE DEFENDANT:

7 **THE COURT:** ALL RIGHT. IF THE DEFENDANT
8 WOULD COME AROUND.

9 ARE THERE ANY MOTIONS FROM THE DEFENDANT AT
10 THIS TIME?

11 **MR. POTTER:** NO, YOUR HONOR.

12 **THE COURT:** MADAM SOLICITOR, DO YOU HAVE A
13 SENTENCING SHEET?

14 **MS. HUEY:** YES, SIR, YOUR HONOR. WHILE HE'S
15 DOING THAT, IF I MAY MAKE THIS A COURT'S EXHIBIT.

16 (COURT'S EX. # 2, LIFE WITHOUT PAROLE NOTICE,
17 WAS MARKED FOR IDENTIFICATION.)

18 **MS. HUEY:** YOUR HONOR, I PASS UP COURT'S
19 EXHIBIT 2. IT WAS NOTICE OF OUR INTENTION TO SEEK LIFE
20 WITHOUT PAROLE IN THIS CASE, YOUR HONOR.

21 **THE COURT:** ALL RIGHT. MR. POTTER, HAVE YOU
22 SEEN WHAT CONSTITUTES COURT'S EXHIBIT 2?

23 **MR. POTTER:** I HAVE, JUDGE.

24 **THE COURT:** IT DOES APPEAR THAT THE TEN
25 DAYS' NOTICE WAS SERVED ON APRIL THE 29TH, 2008.

1 MS. HUEY: YES, SIR, YOUR HONOR.

2 THE COURT: IS THAT CORRECT, MR. POTTER?

3 MR. POTTER: YES, SIR.

4 THE COURT: IS THAT CORRECT, MR. EVANS?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: AND THAT'S THE TEN DAYS' NOTICE
7 REQUIRED BY SECTION 17-25-45(H).

8 ALL RIGHT. ANYTHING FROM THE STATE?

9 MS. HUEY: NO, SIR, YOUR HONOR.

10 THE COURT: WELL, I DO FIND THAT THE
11 DEFENDANT, JEFFERY SCOTT EVANS, PLED GUILTY TO THE
12 CHARGE OF ARMED ROBBERY IN INDICTMENT NUMBER
13 95-GS-04-586 ON MARCH THE 9TH, 1995, FOR WHICH HE
14 RECEIVED A TERM OF 20 YEARS; AND BURGLARY AND ARMED
15 ROBBERY, OF COURSE, IS A MOST SERIOUS OFFENSE PURSUANT
16 TO SECTION 17-25-45(C), PURSUANT TO SECTION 16-11-338.
17 HE ALSO PLED GUILTY TO INDICTMENT NUMBER
18 95-GS-04-600, ARMED ROBBERY, AGAIN ON MARCH THE 9TH,
19 1995, AND RECEIVED A 20-YEAR SENTENCE.

20 AND UNDER INDICTMENT 95-GS-04-650 PLED
21 GUILTY TO INDICTMENT FOR BURGLARY IN THE FIRST DEGREE,
22 WHICH IS ALSO A MOST SERIOUS OFFENSE UNDER 16-11 DASH --
23 BURGLARY, FIRST DEGREE, UNDER 16-11-311 UNDER SECTION
24 17-25-45(C).

25 AND UNDER INDICTMENT 95-GS-04-660, PLED

1 GUILTY TO ARMED ROBBERY ON MARCH 9TH, 1995, AND RECEIVED
2 A 20-YEAR SENTENCE. ALL OF WHICH, AS I SAID EARLIER,
3 WAS SERVED UPON THE DEFENDANT ON APRIL THE 30TH, 2008,
4 AND ON THE ATTORNEY FOR THE DEFENDANT ON THE SAME DATE.

5 ALL RIGHT, MR. POTTER?

6 MR. POTTER: YOUR HONOR, I DON'T KNOW IF
7 THERE'S MUCH I CAN ADD. JEFFERY IS 39 YEARS OLD. HE
8 WAS HELD ON BOND ON THESE PARTICULAR CHARGES FOR ABOUT
9 SIX MONTHS, THEN HE BONDED OUT. HE WAS OUT IN THE
10 COMMUNITY WHEN HE WAS NOTICED FOR L.W.O.P.

11 HE DID RETURN, OBVIOUSLY, FOR COURT AND FOR
12 HIS CHECK-IN. AND THIS CASE WAS INITIALLY SET TO BE
13 CALLED IN JUNE, HE SHOWED UP IN COURT, AT THAT POINT HE
14 WAS STILL IN BOND.

15 WE DID SEEK A MENTAL HEALTH EVALUATION AS TO
16 HIS MENTAL COMPETENCY TO SEE WHETHER IT WOULD APPLY OR
17 NOT. AT THAT POINT IN TIME JUDGE MADDOX REVOKED HIS
18 BOND AND COMMITTED HIM SO THAT EVALUATION COULD BE DONE.

19 YOUR HONOR, I UNDERSTAND THE LAW. I READ
20 THE STATUTE. AND I WOULD ASK YOUR HONOR NOT TO CONSIDER
21 LIFE IMPRISONMENT. HE -- THE MAIN PROBLEM HE HAS IS THE
22 DRUGS. WHEN THIS INCIDENT OCCURRED, HE WAS UP FOR ABOUT
23 SIX DAYS SMOKING CRACK, SMOKING ICE, DOING A VAST ARRAY
24 OF DRUGS, AND THIS WAS SOMETHING THAT WAS IN ESSENCE AN
25 ATTEMPT TO SECURE SOME MORE MONEY TO BUY MORE DRUGS.

23 NOTWITHSTANDING ANY OTHER
24 PROVISION OF LAW, UPON A CONVICTION FOR A
25 MOST SERIOUS OFFENSE A PERSON MUST BE

1 SENTENCED TO A TERM OF IMPRISONMENT FOR
2 LIFE WITHOUT THE POSSIBILITY OF PAROLE IF
3 THAT PERSON HAS ONE OR MORE CONVICTIONS
4 FOR, ONE, A MOST SERIOUS OFFENSE.

5 SECTION (C) OF THAT SECTION,
6 (C)-1, PROVIDES THAT: MOST SERIOUS
7 OFFENSE DOES INCLUDE ARMED ROBBERY AS
8 WELL AS BURGLARY, FIRST DEGREE. PRIOR
9 OFFENSES; CONVICTIONS, WHICH INCLUDES
10 GUILTY PLEAS, ARE IN THE RECORD IN THIS
11 CASE.

12 PARAGRAPH (G) IN SECTION 17-25-45
13 PROVIDES THAT: THE PROVISIONS OF THIS
14 SECTION SHALL BE MANDATORY, PROVIDED
15 WRITTEN NOTICE BE GIVEN BY THE SOLICITOR
16 TO THE DEFENDANT NOT LESS THAN TEN DAYS
17 BEFORE TRIAL.

18 I FIND THAT THE APPROPRIATE NOTICE HAS BEEN
19 GIVEN, AND IT IS, THEREFORE, THE SENTENCE OF THE COURT
20 ON INDICTMENT NUMBER 2007-GS-04-2532 THAT THE DEFENDANT,
21 JEFFERY SCOTT EVANS, BE COMMITTED TO THE STATE
22 DEPARTMENT OF CORRECTIONS FOR A TERM OF HIS NATURAL LIFE
23 WITHOUT PAROLE.

24 ON INDICTMENT NUMBER 2007-GS-04-2532,
25 POSSESSION OF WEAPONS DURING THE COMMISSION OF A VIOLENT

1 CRIME --

2 WHAT'S THE MAXIMUM SENTENCE THERE?

3 MS. HUEY: YOUR HONOR, FIVE YEARS.

4 THE COURT: FIVE YEARS. OF COURSE, IT'S
5 WITHOUT PAROLE, SO THAT DOESN'T -- IT'S SUBSUMED IN THE
6 WITHOUT PAROLE --

7 MR. POTTER: YES, SIR.

8 MS. HUEY: YES, SIR.

9 THE COURT: -- SO THERE'S NO SENTENCE ON
10 THAT INDICTMENT.

11 ALL RIGHT, SIR. GOOD LUCK TO YOU,
12 MR. EVANS.

13 MR. POTTER: THANK YOU, JUDGE.

14 THE COURT: MR. EVANS, GOOD LUCK TO YOU,
15 SIR.

16 THE DEFENDANT: ALL RIGHT.

17 (WHEREUPON, THE TRIAL OF THE STATE OF SOUTH
18 CAROLINA V. JEFFERY SCOTT EVANS WAS CONCLUDED
19 ON AUGUST 5TH, 2008, AT 2:21 P.M.)

20 ***** END OF REQUESTED TRANSCRIPT *****
21
22
23
24
25

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT
OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE
TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND THE
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
ANDERSON COUNTY, SOUTH CAROLINA, ON THE 4TH DAY AND 5TH
DAY OF AUGUST, 2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

JANUARY 28TH, 2009

A handwritten signature in cursive script, reading "Robin Sue Hild".

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

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

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

The State,

Respondent,

v.

Jeffrey S. Evans,

Appellant.

Appeal From Anderson County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2010-UP-464
Submitted October 1, 2010 – Filed October 25, 2010

AFFIRMED

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

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
and Assistant Attorney General Julie M. Thames, all

of Columbia; and Solicitor Christina T. Adams, of Anderson, for Respondent.

PER CURIAM: Jeffrey S. Evans appeals his convictions for armed robbery and possession of a knife during the commission of a violent offense. On appeal, Evans argues the trial court erred in denying his motions for a mistrial and directed verdict. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the trial court erred in denying Evans's motion for a mistrial: State v. Culbreath, 377 S.C. 326, 331, 659 S.E.2d 268, 271 (Ct. App. 2008) ("Whether to grant or deny a mistrial motion is a matter within the trial court's sound discretion, and the court's decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law. . . . In order to receive a mistrial, a defendant must show error and resulting prejudice.").

2. As to whether the trial court erred in denying Evans's motion for a directed verdict: S.C. Code Ann. § 16-11-330(A) (2003) (stating armed robbery occurs when a person commits robbery while armed with a deadly weapon); State v. Moore, 374 S.C. 468, 476, 649 S.E.2d 84, 88 (Ct. App. 2007) ("Robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear."); Id. at 474, 649 S.E.2d at 86 ("The appellate court may reverse the trial [court]'s denial of a motion for a directed verdict only if there is no evidence to support the [trial court's] ruling."); Id. at 474, 649 S.E.2d at 87 ("A case should be submitted to the jury if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced.").

AFFIRMED.

WILLIAMS, PIEPER, and KONDUROS, JJ., concur.

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

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

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Jeffrey S. Evans, Petitioner.

Appellate Case No. 2010-180746

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Anderson County
Alexander S. Macaulay, Circuit Court Judge

Memorandum Opinion No. 2012-MO-037
Heard October 2, 2012 – Filed October 10, 2012

DISMISSED AS IMPROVIDENTLY GRANTED

Appellate Defender LaNelle Cantey DuRant, of South
Carolina Commission on Indigent Defense, of Columbia,
for Petitioner.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Salley W. Elliott, Assistant Deputy
Attorney General David A. Spencer, all of Columbia,

and, Solicitor Christina T. Adams, of Anderson, for
Respondent.

PER CURIAM: We granted a writ of certiorari to review the decision of the court of appeals affirming the Petitioner's convictions. We now dismiss the writ as improvidently granted.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

FORM 5

STATE OF SOUTH CAROLINA

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ANDERSON SC

COUNTY OF ANDERSON

2013 MAR -1 P 4:03

IN THE COURT OF COMMON PLEAS

JEFFREY SCOTT EVANS, #220077

COMMON PLEAS AND
GENERAL SESSIONS

Full name and prison number (if any) of Applicant

v.

APPLICATION FOR
CLERK OF COURT

A TRUE COPY

JAN 14 2014

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River C.I., Columbia, South Carolina
2. Name and location of Court which imposed sentence General Sessions of Anderson County
3. Name(s) of co-defendant(s) (if any) N / A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) #2007GS0402532 : COUNT 1: ARMED ROBBERY §16-11-330 (A) [0139]
 - (b) #2007GS0402532 : COUNT 2: POSS. OF WEAPON §16-23-0490 [0549]
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Aug. 5, 2008 : Life W/O Parole (LWOP) [§17-25-45]
 - (b) Aug. 5, 2008 : 5 years

1/8 J.S.E.

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XXX
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. South Carolina Supreme Court (ON WRIT OF CERTIORARI TO COURT OF APPEALS)
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal denied.
- ii. Dismissed as improvidently granted.
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. October 2, 2012 (Heard) : October 10, 2012 (Filed)
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. Memorandum Opinion No.: 2012-MO-037
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N / A
- (b) N / a
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) INEFFECTIVE ASSISTANCE OF COUNSEL : VIOLATION OF U.S.Const. Amend. 6
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL : Failure to properly argue mental state
- (c) INEFFECTIVE ASSISTANCE OF COUNSEL : Failure to move to strike testimony.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) SEE ATTACHMENT SECTION (a)
- (b) SEE ATTACHMENT SECTION (b)
- (c) SEE ATTACHMENT SECTION (c)

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N / A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. N / A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N / A
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. N / A
- ii. _____
- iii. _____

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iv. N / A

(d) the date of each such disposition:

i. N / A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N / A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N / A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N / A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N / A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) INITIAL POST-CONVICTION RELIEF APPLICATION

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

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GENERAL SESSIONS
Revised 3/29/03

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____ YES
- (c) your sentencing? _____ YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____ YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list: _____

- (a) the name and address of each attorney who represented you:
- i. TRIAL : Andrew Potter
- ii. SENTENCING : Same
- iii. APPEAL : LaNelle Cantey DuRant - Indigent Defense Counsel (SCCID)
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL
- ii. SENTENCING
- iii. APPEAL

19. State clearly the relief you seek in filing this application:

VACATION OF SENTENCE AND NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

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GENERAL SESSIONS
Revised 3/2003

5/8 J.S.E.

STATE OF SOUTH CAROLINA)

County of ANDERSON)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jeffrey D. Evans
JEFFREY SCOTT EVANS, #220077

SWORN to and subscribed before me this 27th
day of February, 2013.

Susan H. Ivey (L.S.)
Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

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GENERAL SESSIONS

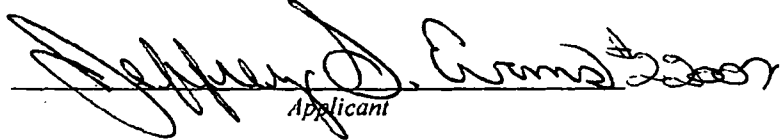
Revised 3/2003

6/8 JSE

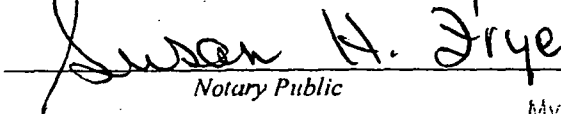
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
27th day of February, 2013.


Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

7/8 J.S.F.

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COMMON PLEAS AND
GENERAL SESSIONS
Received 3/20/2013

FORM 5 PCR APPLICATION

ATTACHMENT

RESPONSE TO PAGE 3 : QUESTION 11 : SECT. A - C

- (a) During trial, testimony was presented by Detective Kevin David Matheson stating that he had been contacted by another Detective who had obtained information from a third person regarding the perpetrator of the crime(s) which Evans (Petitioner) had been accused. Regarding this testimony:
- Trial counsel was ineffective for failing to object to hearsay testimony
 - Trial counsel was ineffective for failing to ensure the presence of the second detective and third person at trial to ensure Evans' Constitutional right to confront witnesses against him. (U.S.C.A. Amend. 6)
 - Trial counsel was ineffective for failing to ensure that the information presented by Matheson was obtained lawfully.
- (b) Trial counsel was ineffective for failing to present evidence / testimony regarding statement given by Evans' that:
- Evans' drug recent drug abuse history and sleep deprivation were contributing factors to signing and initialing statement.
 - Mental health evaluation given numerous months after arrest and statement could not accurately determine mental state at time statement was given.
 - Recent and abundant drug abuse and sleep deprivation put Evans' in a highly suggestable state, in essence amounting to a coerced statement.
- (c) Trial counsel was ineffective for failing to move to strike the testimony of Detective Matheson concerning the hearsay information of second detective and third party, thereby rendering inadmissible any evidence gleaned from that information.

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GENERAL SESSIONS

A TRUE COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF ANDERSON) FOR THE TENTH JUDICIAL CIRCUIT
 Case No. 2013-CP-04-0430

Jeffrey S. Evans,
 S.C.D.C. No. 220077,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN
 (request appointment of counsel)

COMMON PLEAS AND
 GENERAL SESSIONS

2013-AUG-6 A 11:02

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 ANDERSON SC

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed March 1, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Applicant was indicted by the Anderson County Grand Jury at the August 2007 term of the Court of General Sessions for Anderson County for armed robbery and possession of a knife during the commission of a violent crime (2013-CP-04-0430). On August 5, 2008 the State called its case to trial. Applicant was represented by Andrew Potter, Esq., and the State was represented by Catherine Huey, Esq. Applicant was found guilty as indicted. The Honorable Alexander S. Macaulay sentenced Applicant to life imprisonment without the possibility of parole.

A timely Notice of Appeal was filed on Applicant's behalf perfected. The LaNelle Durant, Esq., of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an

unpublished opinion. State v. Evans, Op. No. 2010-UP-464 (S.C. Ct. App. filed October 25, 2010). A Petition for a Writ of Certioari. The Supreme Court affirmed the conviction and sentence in an unpublished memorandum opinion. State v. Evans, Op. No. 2012-MO-037 (S.C. Supreme Court, filed October 10, 2012).

Attached herewith and incorporated herein by reference are the records of the Anderson County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the transcript of the proceeding against Applicant, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel;
 - a. "Violation of U.S. Const. Amend. 6."
 - b. "Failure to properly argue mental state."
 - c. "Failure to move to strike testimony."

III.

The Applicant's first claim is an allegation of ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as

having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the

Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code '17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: J. Waddell
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 2nd, 2013



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
IN THE TENTH CIRCUIT

2013-CP-04-0430

JEFFERY S. EVANS, # 220077

Applicant,

vs

STATE OF SOUTH CAROLINA,
Respondent

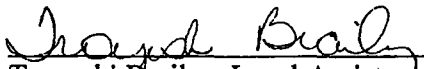
AFFIDAVIT OF SERVICE BY MAIL

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ANDERSON SC
2013 AUG - 6 A 11:03
COMMON PLEAS AND
GENERAL SESSIONS

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and request for counsel in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jeffrey S. Evans, # 220077
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

DATED this 2ND day of August, 2013


Troyeshi Brailey, Legal Assistant
For Respondent

State of South Carolina

County of Anderson

In the Court of Common Pleas

Jeffrey S. Evans,

Applicant,

-VS-

State of South Carolina,

Respondent.

2013-CP-04-0430

September 17, 2014

Transcript of Record

BEFORE:

The Honorable R. Lawton McIntosh, Judge

APPEARANCES:

Hugh Welborn, Esquire
Attorney for the Applicant

John W. Whitmire, Esquire
Attorney the State

Renee H. Tollison
Circuit Court Reporter

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EXHIBITS

No	DESCRIPTION	ID	EV
A-1	<i>No exhibits were presented during the hearing.</i>		
A-2			
A-3			

Jeffrey S. Evans v. State of South Carolina 2013-CP-04-0430
PCR Hearing September 17, 2014
Opening Statement by Mr. Whitmire

3

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 11:07 a.m.)

4 THE COURT: Evans v. State?

5 MR. WHITMIRE: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. WHITMIRE: May it please the Court, Your
8 Honor.

9 THE COURT: Yes, sir.

10 OPENING STATEMENT

11 BY MR. WHITMIRE: The matter before the Court is Jeff
12 Evans v. State of South Carolina, 2013-CP-04-0430. Mr.
13 Evans was indicted for armed robbery and possession of a
14 weapon during the commission of a violent offense. The
15 State called the case to trial. Mr. Evans was
16 represented by Mr. Potter. Mr. Evans was found guilty as
17 indicted and sentenced to life without parole by the
18 Honorable Judge Macaulay.

19 Your Honor, Mr. Evans did appeal his sentence and
20 conviction. His appeal was perfected by LaNelle DuRant
21 at the Office of Appellate Defense. The South Carolina
22 Court of Appeals affirmed Mr. Evans' conviction in a
23 published opinion filed October 25th, 2010. Mr. Evans
24 did file a petition for a Writ of Cert with the Supreme
25 Court. The Supreme Court affirmed the conviction and

Jeffrey S. Evans v. State of South Carolina 2013-CP-04-0430
PCR Hearing September 17, 2014
Opening Statement by Mr. Welborn

4

1 sentence in an unpublished opinion on October 10th, 2012.

2 Mr. Evans is present and represented by Mr. Welborn. At

3 this time, I turn matters over to Mr. Welborn.

4 THE COURT: Mr. Welborn?

5 OPENING STATEMENT

6 BY MR. WELBORN: Your Honor, if it please the Court, I do

7 represent Mr. Evans. He has alleged his counsel was

8 ineffective in several ways. Failure to properly argue

9 his mental state at the time of the commission of the

10 crime, failure to move to strike testimony. There was

11 some hearsay testimony there was a failure to object to.

12 And failure to strike some testimony regarding hearsay

13 information.

14 THE COURT: Failure to do what? What's the

15 third one?

16 MR. WELBORN: Strike some testimony regarding

17 the hearsay that he's alleged.

18 THE COURT: Is that the same hearsay as the

19 failure to object to?

20 MR. WELBORN: Yes, sir.

21 THE COURT: Okay. Very good.

22 MR. WHITMIRE: And Your Honor, here's the

23 transcript. And I apologize for not announcing it. It's

24 failure to object to Detective Matheson's testimony on

25 page 165.

Jeffrey S. Evans v. State of South Carolina 2013-CP-04-0430
PCR Hearing September 17, 2014
Opening Statement by Mr. Welborn

5

1 MR. WELBORN: That's correct, Your Honor.

2 THE COURT: Did he have an evaluation at all,
3 either at the time of trial or for this hearing?

4 MR. WHITMIRE: Your Honor, Mr. Potter had him
5 undergo an evaluation. That evaluation was presented to
6 Judge Macaulay, and Judge Macaulay found him to be
7 competent.

8 MR. WELBORN: He did have a mental evaluation,
9 Your Honor. I'm sorry. I didn't even know that answer.
10 There's so many of these that I'm dealing with this week
11 that they're kind of running together. Yes, he did.

12 THE COURT: Okay. So the issues, as I
13 understand it, is failure to properly argue mental state
14 at time of trial which would be -- excuse me -- at the
15 time of the crime which is the M'Naghten standard?

16 MR. WELBORN: Yes, sir.

17 THE COURT: Failure to object to hearsay or ask
18 for that hearsay to be stricken from the record?

19 MR. WELBORN: Yes, sir.

20 THE COURT: Any other issues?

21 MR. WELBORN: Well, the failure to strike that
22 testimony.

23 THE COURT: Right. And I stated that. All
24 right. If there's no other issues, you may call your
25 first witness.

1 MR. WELBORN: If it please the Court, we call
2 Mr. Evans.

3 (WHEREUPON, the witness was duly sworn.)

4 THE COURT: Is this an L-WOP case, Mr. Welborn?

5 MR. WELBORN: Yes, sir.

6 THE COURT: Okay.

7 JEFFREY S. EVANS,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. WELBORN:

11 Q. You are Jeffrey Evans?

12 A. Yes, sir.

13 Q. Mr. Evans, you were tried for armed robbery and
14 possession of a knife during a violent crime, and you
15 were found guilty of those; is that correct?

16 A. Yes.

17 Q. And you were sentenced to life in prison without the
18 possibility of parole by Judge Macaulay; is that correct?

19 A. Yes, sir.

20 Q. And there was an appeal that was timely made, and
21 that appeal was denied; is that correct?

22 A. Yes, sir.

23 Q. Now, you've alleged in your application that you had
24 ineffective assistance of counsel. The first allegation
25 is the United States Constitution, Amendment 6. I

Jeffrey S. Evans v. State of South Carolina 2013-CP-04-0430
Jeffrey S. Evans - Direct Examination by Mr. Welborn

7

1 imagine you're referring to in general your right to
2 counsel; is that correct?

3 A. Yes, sir.

4 Q. Now, do you want to elaborate on what you meant by
5 that besides what you've just stated in your application,
6 because you had a lawyer?

7 A. Yes, sir.

8 Q. So what else did you mean by that?

9 A. Well, had a failure to cross-examine my witness.

10 Q. Which witness was that?

11 A. That was Margaret Dean Pearl. Her testimony is what
12 led to me being arrested. She never had to come to
13 trial. I never had a right to cross-examine her. If her
14 testimony was taken out of my record, I wouldn't be
15 sitting here today.

16 Q. Let's talk about that a moment.

17 A. Okay.

18 Q. What you're telling the Court then is there was
19 someone who told some detectives something that led to
20 your arrest, and you never got to confront her or cross-
21 examine her; is that correct?

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

23 Q. Is that the hearsay you're referring to?

24 A. Yes, sir.

25 Q. Okay. Now, I'm going to the trial transcript and

1 refer to page 165.

2 THE COURT: Do you have that with you? Do you
3 have your transcript?

4 THE WITNESS: I had it downstairs, but they
5 took it from us. They took all of our paperwork from us
6 when we come in. I had all my stuff wrote down on a
7 piece of paper, but they wouldn't let us bring it up here
8 with us.

9 THE COURT: Do you need to get it?

10 THE WITNESS: Yes, sir. It would help me.

11 THE COURT: All right. Let's take two seconds
12 and let them go down and get that.

13 Can you get that available for him?

14 (WHEREUPON, court stood at ease.)

15 THE COURT: Thank you very much.

16 MR. WELBORN: May I continue?

17 THE COURT: Yes, sir.

18 Q. All right. Mr. Evans, so the Court has a little bit
19 more understanding about what you're talking about, it
20 was alleged that you went to Goodwill and you had a knife
21 and you took some money and you ran out the door. That's
22 what was alleged basically; is that correct?

23 A. Yes, sir.

24 Q. And you've alleged in your application some hearsay
25 testimony that led to your arrest. Now, you've got your

Jeffrey S. Evans v. State of South Carolina 2013-CP-04-0430
Jeffrey S. Evans - Direct Examination by Mr. Welborn

9

1 transcript in front of you.

2 A. Yes, sir.

3 Q. Do you know the page that you're referring to about
4 the hearsay that led to your arrest?

5 A. Yes, sir. Page 165.

6 Q. Page 165. And would that be starting at about line
7 14?

8 A. Yes, sir.

9 Q. And reading that says, and he -- this is a detective
10 testifying on the stand at this point says -- and he was
11 a -- and he -- was he able to get any information at the
12 hotel? That's a question. And the answer from the
13 detective is, yes, ma'am, he did actually go to the
14 motel, and he was able to obtain information from there
15 showing that someone by the name of -- and then Mr.
16 Potter, your attorney, objects and says that this is
17 hearsay being gleaned from another witness. Is that your
18 objection, even though Mr. Potter objected to that
19 particular line of questioning?

20 A. Yes, sir.

21 Q. Okay. Now, let's follow up on that objection. And
22 let's go over to page 168. And on line 16, again, this
23 would be an answer from the detective on the stand. And
24 I'm on line 16, page 168. We actually located a person
25 who knew him and said that they were pretty sure he --

- 1 that's referring to you -- was on George Albert Lake
2 Road. Is that your allegation of more hearsay?
- 3 A. Yes, sir.
- 4 Q. And did your attorney at any point at that
5 particular time object to that hearsay coming in?
- 6 A. No, sir, he did not.
- 7 Q. And did you have an opportunity to ever cross-
8 examine the person at trial who allegedly said these
9 things?
- 10 A. No, sir, I sure didn't.
- 11 Q. And was there anything in this transcript that
12 identified that person so you could have done that?
- 13 A. No, sir.
- 14 Q. Are you asking the Court then to find that that
15 particular hearsay and the lack of a continuing objection
16 on page 168 prejudiced you in having a fair trial?
- 17 A. Yes, sir, it did. And I also have her statement
18 right here confirming all the stuff that they said that
19 they allegedly got from her that I never had a chance to
20 cross-examine.
- 21 Q. Now, do you think it could have led or would have
22 led to a different result at trial if she had been there
23 and you could have cross-examined her?
- 24 A. It could have, yes, sir. It could have because any
25 information linking her -- I also have her N.C.I.S.

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1 records here with me today -- to where her testimony
2 could have been ---

3 MR. WHITMIRE: Objection. Hearsay.

4 THE COURT: Overruled.

5 Q. Let me rephrase the question, okay? In your
6 opinion, would there have been some credibility issues
7 about this particular witness?

8 A. Yes, sir, there would have.

9 Q. Okay. Now, let's talk a little bit about your
10 mental state. You initially gave a statement after a
11 while to law enforcement. And they were pretty
12 complimentary about that statement, about how you
13 cooperated. Do you remember that line of questioning?

14 A. Yes, sir.

15 Q. And tell the Court, please, what you had been doing
16 prior to, six days prior to, the taking of that statement
17 and for the whole six-day period.

18 A. For the whole time leading up to my arrest, I had
19 been awake smoking ice.

20 MR. WHITMIRE: Objection. This goes to the
21 Denno hearing in which Mr. Potter thoroughly presented on
22 behalf of Mr. Evans at trial.

23 THE COURT: Say that again.

24 MR. WHITMIRE: All this testimony goes to the
25 Denno hearing, his statement to the police. And Mr.

1 Potter presented this thoroughly at trial.

2 THE COURT: Just one second. What was the
3 question? I was telling my law clerk to go look up
4 something.

5 MR. WELBORN: Your Honor, there was a Jackson
6 v. Denno hearing. My client just testified that for six
7 days prior to making of the statement of his admissions,
8 that he'd been up smoking ice or crack or whatever.

9 THE COURT: Oh, I got you. Okay.

10 MR. WELBORN: And there was an objection.

11 THE COURT: I overrule the objection. Go
12 ahead.

13 Q. So did you tell the police officers that night when
14 you were brought in for questioning after you were
15 arrested on George Albert Lake Road -- did you tell them
16 you had been up for six days?

17 A. Yes, sir, I did.

18 Q. Okay. Now, was that brought out during your Jackson
19 v. Denno hearing?

20 A. Yes.

21 Q. Mr. Potter, did he object to that being brought out?

22 A. No, sir.

23 Q. Okay. Now, let's talk about it being brought out.

24 You're telling the Court that in the transcript you
25 talked about having been up for six nights for using

1 drugs?

2 A. Yes.

3 Q. That being the situation then, tell the Court how
4 you were prejudiced by that line of questioning and Mr.
5 Potter objecting to it. Or did he object to it?

6 A. No, he didn't object to that line of questioning,
7 sir. I had mentioned that I had been up for six days. I
8 hadn't had any sleep or anything. That was from the time
9 of the alleged crime until the time the statement was
10 given. I hadn't had no sleep at all. And I informed the
11 court that I had been up for six to seven days, that I
12 hadn't had no sleep, that I was under duress at the time.
13 I didn't know what was going on. I was out of my mind.
14 That I just didn't know what was going on.

15 Q. Now, you would agree that starting on page 52,
16 there's some questions about -- to these detectives
17 during this Jackson v. Denno hearing about whether you
18 understood the questions?

19 A. Yes, sir.

20 Q. And I'm pointing out starting at line 10 on page 52.
21 This is an answer from the detective. He verbally told
22 us he did understand them, the questions, and signed the
23 form stating that he understood the law. Question, "So
24 in your opinion, did he understand the rights?" Answer,
25 "Yes, ma'am." Question, line fifteen, "Did he seem to be

1 under the influence of anything at this time?" Answer,
2 "No, ma'am." Question at line 18, "Drugs or alcohol?"
3 Answer, "No, ma'am." Line 20, "Were there any threats or
4 promises made in order to get him to sign the form?"
5 Answer, "No, ma'am." And it goes on talking about was
6 this voluntary.

7 So I want you to tell the Court how you were
8 prejudiced by those questions and if your attorney
9 properly objected. And if he did not, where is it in the
10 record that he didn't?

11 A. When they was questioning me right here and asking
12 me if I was under the influence of any drugs and alcohol,
13 I had done informed Mr. Potter prior to this Denno versus
14 Jackson hearing that I had been up, that I was under this
15 duress that I was talking about when I give this
16 statement. They used my girlfriend as saying that she
17 was the person that was in the car with me when the
18 incident happened. Did they need to lock her up and
19 bring her in when they already know they done questioned
20 this one Margaret Dean Pearl, and she was in the car.
21 And to keep them from going to get my girlfriend from off
22 of work and bringing her in and all this and questioning
23 me after I done been up all these days, I told them --
24 because I didn't know they'd even talked to Margaret Dean
25 Pearl at the time.

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1 MR. WHITMIRE: Objection. Hearsay.

2 THE COURT: Overruled.

3 Q. Now, let's go to line -- to page 69 of the
4 transcript. I'll let you turn to that right quick. Have
5 you found it, sir?

6 A. Yes, sir.

7 Q. All right. This is you're taking the stand in your
8 Jackson v. Denno hearing. Your lawyer, Mr. Potter,
9 called you to the stand, and you were sworn in. That
10 would be about line 18. And now I'm going over to page
11 71, line 23. And this is a question from your attorney.
12 "How was your physical condition at that point in time?"
13 Answer on line 25, "I had been up six days straight
14 without any sleep." Question, "Why were you up six days
15 straight without any sleep?" Answer, "Because I had been
16 smoking crack and ice." Question, "Did you tell that to
17 Detective Matheson and Detective McBride?" "Yes."

18 Now, tell me how your lawyer didn't do a good job
19 that prejudiced you by that line of questioning because
20 it seems that he's asking you, and you're telling the
21 court, that you'd been up all those days verifying what
22 you've just told this Court. So how were you prejudiced
23 there?

24 A. I wasn't prejudiced right there.

25 Q. You were not?

1 A. No.

2 Q. Okay. What part then of the Jackson v. Denno
3 hearing do you think you were prejudiced at?

4 A. I think at the time that I was prejudiced, it should
5 have been objected to when all this line of questioning
6 was being gone on about my mental state. At the time all
7 this right here was done, when I give the statement and I
8 signed it and I did all that was June 1st of 2007. And
9 we're having a Jackson Denno versus hearing -- we're
10 having a Jackson Denno hearing, it's July the 1st of
11 2008, thirteen months later. He's not objecting arguing
12 that my state of mind is not the same thirteen months
13 later when I'm fixing to go to trial as it was thirteen
14 months prior.

15 Q. Now, in all candidness with the Court, you were
16 given a competency evaluation?

17 A. Yes, sir, I was.

18 Q. And you were found to be competent for trial?

19 A. Yes, sir.

20 Q. Okay.

21 A. That was thirteen months after the incident.

22 THE COURT: That was competent for trial or is
23 it M'Naghten and competency for trial?

24 MR. WELBORN: I'm not sure, Judge.

25 THE COURT: Okay.

1 MR. WELBORN: If the Court will bear with me,
2 please.

3 Q. Did your lawyer move to strike any of this
4 information that he received from this witness telling
5 your whereabouts on George Albert Lake Road? Do you
6 understand my question?

7 A. Yes, I understand your question. Yes, sir. Let me
8 -- I got it wrote down right here. That one -- that goes
9 back to page 165 and 166 where the line of questioning --
10 when they first started the line of questioning about
11 they got information from someone else. I felt that he
12 should have objected right then. Instead, he let two
13 pages of testimony go on and on and on about information
14 gleaned from another witness. Then he objected after I
15 feel I had done been prejudiced with two pages of stuff
16 had done been told to a jury sitting there.

17 Q. And anywhere in that transcript after that
18 testimony, did he move to have it stricken?

19 A. Later on, yes, the second page he asked that -- he
20 objected to the information.

21 Q. But did he move to have it stricken? Do you
22 understand my question?

23 A. Yeah. I see what you're saying. Hang on a second,
24 please, sir.

25 Q. Because you've alleged in your application he didn't

1 move to have it stricken.

2 A. No, sir, he did not.

3 Q. Do you think that prejudiced you?

4 A. Yes, sir, I do.

5 Q. Do you think there should have at least been a
6 curative instruction request by Mr. Potter?

7 A. Yes, sir, I do.

8 Q. Thank you. Answer anything that opposing counsel
9 may have.

10 MR. WHITMIRE: I beg the Court's indulgence.

11 THE COURT: Cross-examination?

12 MR. WHITMIRE: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. WHITMIRE:

15 Q. Good afternoon, Mr. Evans.

16 A. Good afternoon.

17 Q. On page 88, lines 13 through 24, did Mr. Potter
18 present your mental evaluation to Judge Macaulay?

19 A. Yes, sir, he did.

20 Q. And that evaluation was for criminal responsibility
21 and competency; is that correct?

22 A. I guess. I don't -- I don't know.

23 Q. And regarding the Denno hearing, did you sign your
24 statement in four different places?

25 A. Yes, sir, I did.

1 Q. Were there two officers present when you gave your
2 statement?

3 A. Yes, sir.

4 Q. And weren't you provided the opportunity to amend
5 any portion of that statement you found to be inaccurate?

6 A. Yes, sir.

7 Q. And your attorney moved to have your statement
8 suppressed at trial; is that correct?

9 A. Yes.

10 Q. And he renewed his objection; is that correct?

11 A. Sir?

12 Q. He renewed his objection to have it -- to the
13 admissibility of the statement; is that correct?

14 A. I guess.

15 Q. And do you recall your statement?

16 A. No, sir.

17 Q. Didn't you tell the police you decided -- you
18 originally planned on going to the Goodwill, snatching a
19 purse off a customer before deciding to rob a cashier?

20 A. No, sir. Like I said, when I give that statement, I
21 was under duress. I don't know except for what I read --
22 what I read what I was told I told -- I said.

23 Q. And in that statement, didn't you tell the police
24 that you grabbed some clothes, waited in the checkout
25 line to appear less suspicious before pulling a knife on

1 the cashier; is that correct?

2 A. I don't recall.

3 Q. But didn't two Goodwill employees and a customer
4 testify that you waited in line with clothes before
5 pulling a knife on the cashier?

6 A. Yes.

7 Q. And in your statement, didn't you tell the police
8 that after getting the money from the cashier, you ran
9 out the store and dropped the knife?

10 A. I don't recall.

11 Q. And didn't the same three witnesses all testify the
12 suspect dropped the knife when he ran out?

13 A. Yeah, that's what they alleged.

14 Q. Now, didn't all three witnesses make statements that
15 a small, white male robbed the Goodwill?

16 A. Yes, sir, that's what they alleged.

17 Q. And didn't you tell the police in your statement you
18 stayed at the Sunrise Motel after committing the armed
19 robbery?

20 A. I don't recall.

21 Q. Didn't the owner of the Sunrise Motel testify at
22 trial that you'd been in the motel on the night in
23 question?

24 A. Yes, sir. That's what he alleged.

25 Q. And didn't you decide to testify in your own defense

1 at the Denno hearing?

2 A. Yes, sir, I did.

3 Q. The jury wasn't present for the Denno hearing, were
4 they?

5 A. No, sir.

6 Q. Now, regarding Detective Matheson's testimony, page
7 165, didn't Detective Matheson testify the steps he took
8 in the investigation?

9 A. Yes, sir.

10 Q. And didn't Detective Matheson, on the top of page
11 165, tell the jury that he was just trying to gather
12 information upon a possible perpetrator, not any
13 particular perpetrator?

14 A. Yes, sir.

15 Q. And he testified he did all these things before
16 picking you up; is that correct?

17 A. Yes, sir.

18 Q. At that point, didn't your statement come in at
19 trial?

20 A. No, sir. I mean ---

21 MR. WHITMIRE: I beg the Court's indulgence.

22 Q. Page 187 to 190, your statement was read to the
23 jury; is that correct?

24 A. Yeah. You talking about twenty pages later from the
25 question you was just asking me from, sir.

1 Q. But it all occurred during Detective Matheson's
2 testimony; is that correct?

3 A. It was like twenty pages later. It wasn't right
4 after page 165, sir. I mean, I don't understand what
5 you're saying. You're skipping like twenty pages of
6 testimony.

7 Q. What I'm asking you is all during his testimony at
8 trial?

9 A. I see what you're saying.

10 Q. He was laying the foundation ---

11 A. I see what you're saying. But you're saying was the
12 statement read in right after he give his question on
13 165. No, sir, it wasn't.

14 Q. And wasn't there video surveillance of this robbery?

15 A. Yes, sir.

16 Q. And weren't the stills from that surveillance
17 presented at trial?

18 A. Yes, sir.

19 Q. And in sentencing, didn't you tell Judge Macaulay
20 you were guilty?

21 A. At sentencing?

22 Q. Uh-huh (affirmative). At the very end.

23 A. I don't recall that. I'll have to look and see,
24 sir.

25 Q. Page 243, didn't you admit your guilt and tell the

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23

1 judge you robbed the Goodwill because you needed the
2 money for drugs?

3 A. I didn't say I robbed the store right there, sir. I
4 might have said I'm sorry for the things that I've done.
5 I'd been on drugs and up for several days, but I don't
6 recall ever saying I robbed a store.

7 Q. We'll just let the record speak for itself.

8 A. Okay.

9 Q. And Mr. Potter wasn't your first attorney in this
10 case; is that correct?

11 A. No, sir.

12 Q. Do you recall who your first attorney was?

13 A. Bob Lusk.

14 Q. And didn't you turn down a plea offer from the
15 State?

16 A. Yes, sir, I sure did.

17 Q. And then that's when they notified you they were
18 going to seek life without parole; is that correct?

19 A. I did not know that until three months later after I
20 turned down the plea, sir. That lawyer did not inform me
21 that I could get life without parole. If they would
22 have, I wouldn't be sitting here today either.

23 Q. But didn't the solicitor, Ms. Huey, put all her plea
24 negotiations with you on the record during the Denno
25 hearing?

1 A. Yes, sir, she sure did.

2 Q. And if this was inaccurate, why didn't you tell the
3 Judge then?

4 A. Why didn't I tell? Because I was ignorant to the
5 law, sir. My lawyer was ineffective for letting me down.

6 Q. Just ignorance to the facts completely?

7 A. Yes, sir, I sure was.

8 Q. This is still out of the presence of the jury?

9 A. Yes, sir. I had no idea. I'm not a lawyer, sir.

10 MR. WHITMIRE: No further questions, Your
11 Honor.

12 THE COURT: Anything further?

13 MR. WELBORN: (No verbal response)

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

15 MR. WELBORN: That's our case, Your Honor.

16 THE COURT: All right.

17 MR. WHITMIRE: Your Honor, the State calls
18 Andrew Potter.

19 **ANDREW POTTER,**

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. WHITMIRE:

23 Q. Good afternoon, Mr. Potter.

24 A. Hello.

25 Q. Briefly testify to the circumstances of Mr. Evans'

1 case when you inherited it.

2 A. Yes. Apparently, I think he was out on bond. I met
3 with him in a meeting in my office on February 12th,
4 2008, regarding the armed robbery charge. Apparently,
5 that's when I initially took on the case. Apparently, he
6 had Bob Lusk ahead of time and had fired him.

7 Q. Did you have the opportunity to review Mr. Lusk's
8 file?

9 A. Yes.

10 Q. Did you immediately file for discovery?

11 A. Yes, I did.

12 Q. Would you briefly recall the circumstances that led
13 to you pursuing a mental evaluation of Mr. Evans?

14 A. I believe it was based upon my conversations with
15 Mr. Evans and the fact that he had been L-WOPed. I felt
16 out of an abundance of caution that a head check would be
17 necessary. So when the case was initially called for
18 trial either May or June of 2008, I got it continued.
19 Judge Maddox continued the case to allow me to get the
20 evaluation done.

21 Q. Do you recall discussing the State's evidence with
22 Mr. Evans?

23 A. I discussed -- excuse me. I'm sure I discussed the
24 case numerous times with him regarding what they had
25 against him and what was going on.

1 Q. And despite his statement, didn't you still come up
2 with a trial strategy in this case to present on his
3 behalf at trial?

4 A. Yes.

5 Q. Can you briefly describe or recall that strategy?

6 A. Well, the basic strategy was who did it. The
7 argument was going to be that not one of the witnesses
8 could necessarily identify him particularly being the one
9 involved in the robbery. There were photographs that
10 were taken through security through Goodwill, and they
11 weren't real good in regards to recognition of his face.
12 There were no fingerprints, from what I recall, on the
13 knife that was recovered at the scene. There was a
14 statement that Mr. Evans gave to Detective Matheson. And
15 the argument -- this was a statement that was typed out
16 by Detective Matheson.

17 So the argument was going to be it wasn't in his own
18 writing. It wasn't necessarily reliable. The State
19 didn't have -- the government didn't bother to videotape
20 or record that statement. So the hope was argue that no
21 one identified him at the scene, argue hopefully to the
22 jury that the statement that he gave to Detective
23 Matheson wasn't reliable, wasn't trustworthy enough to
24 convict him on.

25 Q. Did you make a motion to sequester the witnesses at

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1 the beginning of trial? Do you recall?

2 A. Typically, I do. I just don't recall. Typically, I
3 do.

4 Q. Do you recall also making a motion to quash the
5 indictments?

6 A. Yes.

7 Q. And did you review Mr. Evans' right to testify in
8 the Denno hearing and at trial?

9 A. Yes.

10 Q. Do you recall Judge Macaulay's finding in the Denno
11 hearing?

12 A. I'd have to look at my notes. I'm assuming he ruled
13 against us because the statement was read to the jury and
14 submitted. So I believe that he ruled against us.

15 Q. Didn't Judge Macaulay say that Mr. Evans' statement
16 was knowingly, intelligently and voluntarily entered by
17 not only a reasonable preponderance standard, but also by
18 reasonable doubt?

19 A. He made a finding that the case -- that the
20 statement could be read to the jury. I always have the
21 option -- I always have the ability to argue to the jury
22 those particular issues, whether it's reliable or not.

23 Q. And regarding Detective Matheson's testimony, do you
24 typically object to investigatory testimony from police
25 officers?

1 A. It depends. I mean, some testimony I'm going to
2 object to. Some testimony that may be objectionable, I
3 may allow in because I don't think it necessarily hurts
4 us. Whether or not it falls under my interpretation of
5 hearsay, whether or not it's a statement being offered to
6 prove the truth of the matter asserted. You know, it's
7 ultimately kind of a game-time call when I'm sitting
8 there making that decision. A statement saying, based
9 upon the statement, I went and did this, I don't think
10 would be objected to. And had I objected to it, I
11 suspect Judge Macaulay would have overruled my objection.

12 MR. WHITMIRE: I beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 MR. WHITMIRE: No further questions, Your
15 Honor.

16 MR. WELBORN: No questions.

17 THE COURT: Thank you, sir.

18 May this witness be excused?

19 MR. WHITMIRE: Yes, Your Honor. I do believe
20 he still has one more case.

21 THE COURT: Okay. Very good. Thank you, sir.

22 Any further witnesses from the State?

23 MR. WHITMIRE: No, Your Honor. The State
24 rests. And we'd be happy to answer any questions you may
25 have.

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Ruling by the Court

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1 THE COURT: Any witnesses in reply?

2 MR. WELBORN: No, sir.

3 THE COURT: All right. I'm ready to rule.

4 Number one, I am denying the petition in its
5 entirety. I find that the Applicant has failed to meet
6 his burden of proof. Number one, as to the failure to
7 properly argue mental state at the time of the crime or
8 competency to stand trial, the record is obvious that
9 that was looked into and submitted to the Judge, either
10 from the M'Naghton standpoint or a competency standpoint.
11 Further, there's been no evidence presented today during
12 this hearing that the Defendant was not competent, nor
13 was he not criminally liable for his acts at the time of
14 the commission of the crime.

15 Failure to object to the hearsay contained in page
16 65 and 66 [sic], although there was some mention that
17 there -- beginning -- I have to agree with Mr. Newton
18 [sic] that some of that preliminary testimony was a
19 little bit of hearsay, but it was objected to by counsel.
20 Ultimately, however, the overwhelming evidence,
21 considering the photographs, the statements in this case,
22 the Defendant's guilt was not prejudiced by that. And
23 it's really questionable as to whether or not it's real
24 hearsay up until the time it was properly objected to by
25 Mr. Potter.

1 Further, failure to examine a witness. There's been
2 -- I consider that under the same objection or same issue
3 in this case rather because it's the same hearsay
4 testimony at page 165 and 166. The burden is on Mr.
5 Newton [sic] to bring forward what this witness would
6 have said to show that his conviction would not have
7 happened or occurred if this person had testified, not
8 just to make the allegation. That was not done, and
9 therefore, he's failed to meet that burden of proof.

10 You admitted at the Jackson Denno, to the extent
11 this alleged in your petition, that there's no prejudice
12 to you on the six or seven days' testimony since that Mr.
13 Potter did cross-examine the officer testifying at the
14 Jackson Denno on that. Your statement here today that
15 thirteen months' delay was what your prejudice was
16 because your state of mind had been different is not of
17 any service to you because the Jackson Denno statement is
18 when it takes place, not thirteen months later. Further,
19 with the proper cross-examination by Mr. Potter, then
20 it's a matter for the court's discretion in its ruling,
21 and that should have been a matter for direct appeal in
22 this case.

23 Also, to the extent this was brought up during this
24 hearing, that Mr. Lusk's failure to relay an offer or
25 explain life without possibility of parole, there's been

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Ruling by the Court

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1 no testimony on those grounds either. And so the sum
2 total, Mr. Newton [sic], you've just not met your burden
3 of proof in this matter.

4 Now, you'll have thirty days in which to file an
5 appeal after the State drafts the order. I'm going to
6 ask that you submit an order to Mr. Welborn before you
7 send it to me, please, sir.

8 MR. WHITMIRE: Yes, Your Honor.

9 MR. WELBORN: Just to clean the record up, Your
10 Honor.

11 THE COURT: Sure.

12 MR. WELBORN: You inadvertently referred to him
13 as Mr. Newton several times. This would be Jeffrey
14 Evans.

15 THE COURT: You're right. And I was looking at
16 the one that was withdrawn. I said Mr. Newton multiple
17 times. I apologize. It's Jeffrey S. Evans, case number
18 2013-CP-04-430. Excuse me for that mistake.

19 All right. Anything further from the Applicant?

20 MR. WELBORN: No, sir.

21 THE COURT: Okay. From the State?

22 MR. WHITMIRE: No, Your Honor.

23 THE COURT: And that'll be the ruling. Good
24 luck to you.

25 (WHEREUPON, the hearing ended at approximately 11:47

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1. a.m.)

2 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 17th day of September 2013.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 February 5, 2012

15

16

Renee H. Tollison

17

Circuit Court Reporter

unpublished opinion. State v. Evans, Op. No. 2010-UP-464 (S.C. Ct. App. filed October 25, 2010). A Petition for a Writ of Certiorari. The Supreme Court affirmed the conviction and sentence in an unpublished memorandum opinion. State v. Evans, Op. No. 2012-MO-037 (S.C. Supreme Court, filed October 10, 2012). The Remittitur soon followed.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel;
 - a. "failure to argue
 - b. "Failure to properly argue mental state."
 - c. "Failure to move to strike testimony."

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified counsel was ineffective for failure to argue Applicant's mental state to have the statement suppressed; failure to object and move to strike hearsay testimony from the lead investigator; failure to object to testimony regarding information obtained from a third party source in the investigation that violated Applicant's right to confront his accusers; and failure to present Applicant as a witnesses in his defense.

At the PCR hearing, trial counsel testified to his course of conduct in the representation of Applicant. Trial counsel inherited the case and reviewed the previously obtained discovery. Applicant had rejected plea negotiations and was served with the State's notice to seek life imprisonment without the possibility of parole. Trial counsel reviewed discovery and discussed the State's case with Applicant. Trial counsel reviewed the surveillance recordings from the offense, eyewitness statements, Applicant's statement, and possible defenses with Applicant. Trial counsel noted the lack of forensic evidence and inconsistent eyewitness descriptions of the assailant. Applicant failed to

provide trial counsel with a plausible alibi defense. Trial counsel reviewed Applicant's right to testify or not testify with him. Trial counsel testified to his manner and strategy in objecting to questionable testimony.

Trial counsel mounted a defense to have Applicant's statement suppressed by attacking the lack of a recording during the interview and argued Applicant's pre-arrest drug abuse rendered the statement involuntary. Trial counsel had Applicant undergo a mental evaluation and presented the results to the trial court. Trial Counsel also made a motion to quash the indictment, made a successful motion to redact prejudicial information from Applicant's statement, employed thorough cross-examinations, made numerous objections at trial, renewed his objections and made a motion for a directed verdict.

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The

Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, supra. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

A.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for failing to present Applicant's mental state at trial. Applicant acknowledged the trial judge reviewed the findings from the evaluation report during the preliminary

hearing where Applicant was found to be competent and criminally responsible. This Court finds trial counsel's testimony more credible than Applicant's testimony. This Court finds trial counsel's performance here reasonable. Court finds trial counsel argued Applicant's alleged incapacity at the Denno hearing. Additionally, Applicant testified at the Denno hearing. This Court finds Applicant failed to present credible evidence to show his mental condition rendered his statement involuntary. The allegation rests solely upon mere speculation. See Glover v. State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995) (holding a PCR applicant's mere speculation as to what the witnesses' testimony would have been cannot, by itself, satisfy the burden of showing prejudice). Therefore, this allegation is denied and dismissed.

B.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for failing to object to Detective Matheson's testimony at trial. This Court finds that Applicant failed to prove that trial counsel performed deficiently during performance Detective Matheson's testimony. 'Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.' Rule 801(c), SCRE. "The rule against hearsay prohibits the admission of evidence of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies." Simpkins v. State, 303 S.C. 364, 367, 401 S.E.2d 142, 143 (1991). "[A]n out of court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken." State v. Thompson, 352 S.C. 552, 558, 575 S.E.2d 77, 81 (Ct.App.2003). This Court finds trial counsel properly objected when the witnesses investigatory testimony became

questionably impressive hearsay testimony. (Trial Tr. p.165). The trial judge sustained the objection and stated,

we that would be fine if he did, when he received the information from which he relied, and if he knew something in reliance on that information... but not just as to the source of the information or what might be the specifics of it that relates to what somebody else told him. All right.

(Trial Transcript 166, lines 1-9). This Court further finds that trial counsel's decision not to make a motion to strike was sufficient in light of the judge's precise ruling made in the presence of the jury.

~~As a result of the trial judge's instruction, the Detective generically testified to~~ obtaining information that led to further investigation in the case. The Detective carefully qualified his description of the information he received as follows: "the reason I say possible is because this stuff is happening fast, a lot of things are going on, and sometimes witnesses are looking at things they're not sure they're gonna have to testify to later or tell anyone about." (Trial Tr. p.167, lines 2-6). Furthermore, trial counsel thoroughly cross-examined the Detective on his inability to discover physical evidence and obtain precise eyewitness identifications. (Trial Tr. pp.190-191). Trial counsel attacked referenced the weaknesses in the Detective's testimony during his closing argument. (Trial Tr. pp.220-221). Therefore, this allegation is denied and dismissed.

This Court also finds the allegation that trial counsel was ineffective for failing to object to the Detective's testimony based on upon an alleged infringement of the Fifth Amendment, right to confront one's accusers, is without merit. Applicant testified the Detectives unidentified source of information came from Margaret Pearle who did not testify at trial. For reasons announced above, this allegation is denied and dismissed. This

Court notes the Detective's testimony served to justify the investigation that resulted in Applicant's arrest. This Court further notes the Detective's testimony question was ancillary in light of the eyewitness testimony and statement given by Applicant.

C.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for failing to offer Applicant as a defense witnesses during the trial. This Court finds trial counsel's testimony more credible than Applicant's testimony. Applicant alleged his testimony was need to show the jury his statement was involuntary. Trial Counsel testified he reviewed the right to testify with Applicant. This Court notes the trial judge entered thorough colloquies with Applicant at both the Denno hearing and at when the State rested its case. Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 381 (Ct. App. 2012) ("Further, the record shows the trial judge informed petitioner of his right to testify or not testify, and petitioner agreed with the trial judge that he had discussed this right with trial counsel."). This Court finds Applicant failed to present any credible evidence of probative value to show he desired to testify at the time of trial but was chose not to pursuant to the advice of trial counsel. Furthermore, This Court notes that any benefit to testifying to alleged accentuating circumstances would ran the risk of opening the door to Applicant's drug use. See State v. Faulkner, 274 S.C. 619, 621, 266 S.E.2d 420, 421 (1980) ("[w]hile State may not attack a criminal defendant's character unless he has placed it at issue, relevant evidence admissible for other purposes need not be excluded merely because it incidentally reflects upon the defendant's reputation."). Trial counsel successfully had Applicant's admissions of drug use redacted from his statement. This Court notes that any benefit to testifying to alleged accentuating circumstances would

have required Applicant to testify to his drug use at the time of the arrest and interview. Trial counsel attacked the statement during cross-examination. The potential risk ran contrary to trial counsel's strategy to keep bad character evidence outside the purview of the jury. Therefore, this allegation is denied and dismissed.

II.

This Court finds Applicant also failed the second prong of Strickland – that he was prejudiced by trial counsel's performance. "Overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial." Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3

(2001). Applicant confessed to police, admitting he went to the retail store to snatch a purse and ended up robbing the woman at the cash register with a knife. The details provided by Applicant were corroborated by the surveillance video, which included Applicant dropping the knife in flight. Furthermore, Applicant admitted his guilt during sentencing phase of the trial.

III.

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v.

Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992).

A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the

hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 26 day of Nov, 2013.


 R. LAWTON MCINTOSH
 Presiding Judge
 Tenth Judicial Circuit

FILED - CLERK'S OFFICE
 ANDERSON SC
 2013 DEC -3 A 4:33
 GENERAL SESSIONS

Anderson, South Carolina

FILED-COURT'S OFFICE
ANDERSON SC
2013 DEC -3 A 9:33
VILEAS AND
GENERAL SESSIONS

ARREST WARRANT

J-710558

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 ANDERSON

 THE STATE 2007 JUN -5 A 11:
 against

 EVANS, JEFFREY S
 GENERAL SESSION

Address: ANDERSON, SC 29621-0000

Phone: SSN:

Sex: M Race: W Height: Weight:

DL State: RI #:

DOB: Agency ORI#: 0400

Prosecuting Agency: SHERIFF DEPT.

Prosecuting Officer: MATHESON, K D

Offense: ARMED ROBBERY

Code/Ordinance Sec. 16-11-370

 This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant EVANS, JEFFREY S

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
 ANDERSON

AFFIDAVIT

 Personally appeared before me the affiant
 being duly sworn deposes and says that defendant

DET K.D. MATHESON/ACSO

who

 did within this county and state on or about 5/24/2007

 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of ANDERSON) violate the criminal laws of the

the following particulars:

 DESCRIPTION OF OFFENSE: ARMED ROBBERY

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

 THAT THE DEFENDANT DID COMMIT THE CRIME OF ROBBERY AT THE
 GOODWILL STORE AT 2901 S. MAIN ST WHILE ARMED WITH A KNIFE. A
 WITNESS DID GIVE A VOLUNTARY WRITTEN STATEMENT IMPLICATING THE
 DEFENDANT IN THE OFFENSE. THIS INCIDENT OCCURRED WITHIN THE
 COUNTY OF ANDERSON.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 ANDERSON

Affiant's Address 305 CAMSON ROAD

ANDERSON SC 29621

Affiant's telephone 781-260-4400

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY.

 It appearing from the above affidavit that there are reasonable
 grounds to believe that defendant EVANS, JEFFREY S

 did violate the criminal laws of the State of South Carolina (or ordinance of ANDERSON)

☐ County/ ☐ Municipality of

) as set forth below:

DESCRIPTION OF OFFENSE:

ARMED ROBBERY

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 5/24/2007

Signature of Issuing Judge

Judge Code: 733

Judge's Address POB 8002, 107 S. MAIN ST.

ANDERSON SC 29622-0000

Judge's Telephone 260-4156

 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAIL set by

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held at

Judge _____
on _____
Defense Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(Indicate jury trial, bench trial, plea, nol.pros., etc.)

Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

DOCKET NO. 2007-65-04-2532

WITNESSES
K. MATHESON - ACSID

The State of South Carolina,
ANDERSON
County of _____

COURT OF GENERAL SESSIONS

AUG 28 2007 TERM

CTH

THE STATE

vs.
JEFFREY S. EVANS

ARREST WARRANT NO. J710558
DIRECT

ACTION OF GRAND JURY

TRUE BILL

AUG 28 2007

Foreman of Grand Jury

Coreperson

VERDICT

Count 1. Count 2
Guilty, Vol. Count.

Indictment for

ARMED ROBBERY
16-11-330(A) [0139]
POSSESSION OF A KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME
16-23-0490[0549]

COMMITMENT

08/05/08-amp

A TRUE COPY

JAN 14 2014

Richard X. Kiley
CLERK OF COURT

Foreman of Petit Jury
Mary H. Kieby 8/5/08
Date:

3

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)

INDICTMENT FOR

ARMED ROBBERY
 16-11-330 (A) [0139]

POSSESSION OF A KNIFE DURING THE
 COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on _____

~~16-23-0490 [0549]~~

~~AUG 28 2007~~

the Grand Jurors of ANDERSON County present upon their oath:

COUNT 1: ARMED ROBBERY

That Jeffrey S. Evans did in Anderson County on or about May 24, 2007 take and carry away from the person of Paula Ayers, an employee of the Goodwill Store, an unknown amount of cash by means of force, threats or intimidation with intent to deprive the owner permanently of such property while armed with a deadly weapon. All in violation of Section 16-11-330 (A), Code of Laws of South Carolina, (1976), as amended.

COUNT 2: POSSESSION OF A KNIFE DURING THE COMMISSION OF A VIOLENT
CRIME

That Jeffrey S. Evans did in Anderson County on or about May 24, 2007 possess a knife during the commission of a violent crime, to wit: Armed Robbery in violation of Code Section 16-3-10/16-3-20, Code of Laws of South Carolina, 1976), as amended.

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

Catherine J. Hugg
 SOLICITOR

314 STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)
STATE VS.)
Jeffery Evans)
AKA:)
Race: W Sex: M Age: 38)
DOB: SS#:)
Address:)
Anderson, SC 29621)
DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GSD4-2532
A/W#: J710558 Count 1
Date of Offense: 5/24/2007
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET



In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Robbery / Armed Robbery, robbery while armed or allegedly ar

in 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) §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Catherine J. Huey
Solicitor:

Defendant

Attorney for Defendant

SC Bar # 13413

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-15

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv Surcharge)	\$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 35.13 (Public Def/Prob)	\$500 \$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25 \$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$100 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$
§ 90.11 TP (SCCJA Surcharge)	\$5 \$ 5.00

TOTAL

\$ 130.00

Cathy D. Rhine
Clerk of Court/ Deputy Clerk

Court Reporter: R. Wild
SCCA /217 (07/2008)

cc: Sol. 08/06/08-cms

PTUP

_____ days/hours Public Service/employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Life without possibility of parole

§17-25-45(A)(1)(C)(4)(G)(H).

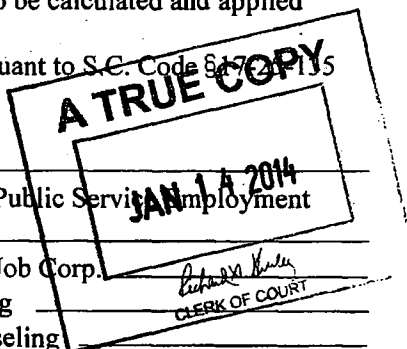
☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

August 5, 2008



STATE OF SOUTH CAROLINA

COUNTY OF AndersonSTATE VS.Jeffery Evans

AKA: _____

Race: W Sex: M Age: 39

DOB: _____ SS#: _____

Address: _____

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

315

INDICTMENT/CASE#: DIA2007GS042532A/W#: DIA2007GS042532 Count 2.Date of Offense: 5/24/2007S.C. Code §: 16-23-0490CDR Code #: 0549

SENTENCE SHEET



In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also sen

in 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 ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Catherine J. Huey
Solicitor:

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 _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: § 2007-63-04-2532 Count 2.

☐ 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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ <u>5.00</u>

TOTAL

\$120.00
Cathy Phillips
Clerk of Court/Deputy Clerk

Court Reporter: Bruce Hild
SCCA /217 (07/2008)

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

Sentence does not apply
where the sentence wld
be imposed
(See Count 1)

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 1013Sentence Date: August 5, 2008