

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM FLORENCE COUNTY

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLES BERLIN PENNELL,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
STATE,)

vs.

)TRANSCRIPT OF RECORD

CHARLES BERLIN PENNELL)

DEFENDANT.)

09-GS-21-1532
October 11, 2010
Florence, South Carolina

BEFORE:

THE HONORABLE THOMAS A. RUSSO , JUDGE;
AND JURY

APPEARANCES:

JOHN CHARLES JEPERTINGER, ESQ.
Assistant Solicitor

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FRANCES BAKIS-RAY, RPR
Official Court Reporter

1 understand, ladies and gentlemen, is that -- come on up,
2 sir. Mr. Pennell, come on up.

3 (Defendant Pennell enters courtroom.)

4 THE COURT: What is important for you to
5 understand, ladies and gentlemen, is that this presumption
6 of innocence remains with Mr. Pennell from the beginning
7 of the trial all the way through the deliberations until
8 or unless you find him guilty of the offense. So I'm
9 going to read to you the allegations that are contained in
10 this indictment and they are as follows. That Charles
11 Berlin Pennell did in Florence County on or about May 25th
12 of 2009 take and/or attempt to take one Chevrolet Blazer
13 from Jonathan Wilson by force and violence or by
14 intimidation while said victim was operating and/or was in
15 the vehicle in violation of Section 16-3-1075
16 Subsection (b)(1) of the South Carolina Code of laws 1976
17 as amended.

18 MR. JEPERTINGER: Your Honor, if it please the
19 Court, just one slight amendment. It was a Ford Explorer,
20 not a Chevy Blazer.

21 THE COURT: It was completely opposite was I just
22 said then.

23 MR. JEPERTINGER: Yes, sir, but it was a Ford
24 Explorer, Your Honor.

25 THE COURT: With that amendment, ladies and

1 person is in the vehicle. The evidence will show that
2 Charles Berlin Pennell tried to take that 2005 Ford
3 Explorer -- I'm going to take your car -- while this
4 gentleman was in it. And he made a decision, and we're
5 asking you to bring judgment upon the decision he made
6 today. I thank you for listening to me. And I'd
7 appreciate it if you pay close and careful attention to
8 the evidence presented in this case. Thank you.

9 THE COURT: Thank you, Mr. Jepertinger.

10 Mr. Suggs.

11 MR. SUGGS: My turn, Judge.

12 THE COURT: Your turn, sir.

13 MR. SUGGS: Thank you, Your Honor. May it please
14 the Court, Mr. Jepertinger.

15 MR. JEPERTINGER: Yes, sir.

16 MR. SUGGS: Ladies and gentlemen, I won't be as
17 long as Jepertinger, I promise. Looking at the clock and
18 it's almost 5:00. Most of us are usually used to going
19 home about this time, not actually just going to work
20 which is unfortunately what we're doing now. I'm hopeful,
21 though, that after my brief opening comments that maybe
22 the judge will have some leniency on all of us and let us
23 go home tonight and actually start this tomorrow. But
24 that remains to be seen. I don't take this case lightly,
25 absolutely don't take it lightly. I will tell you that I

1 don't really have much prepared, written prepared, to talk
2 with you in this opening statement. That's not unusual.
3 I'm not an expert -- I'm not trying to say I'm an expert
4 at doing this, but I have been doing it for over 20 years.
5 And I've tried many, many cases with Mr. Jepertinger and
6 he used to be a public defender like I was for 20 years
7 and not a prosecutor. I tried cases with him and I've
8 tried cases against him. And one thing that I always know
9 that when he gets up and has an opening statement he gives
10 me plenty of fire and things that I can say in my opening
11 so I really don't have to rehearse anything or write
12 anything down. I already know what to say based upon what
13 he says.

14 One thing that I know absolutely in this case is
15 this is not a carjacking case. It might be a lot of other
16 different things that you can call it, but it is
17 absolutely without a doubt not a carjacking case.
18 Carjacking -- and Mr. Jepertinger read the statute to you.
19 I'm gonna read it to you again because it's a short
20 statute. If it was long I wouldn't do it a second time.
21 A person is guilty of a felony of carjacking who takes or
22 attempts to take a motor vehicle from another person by
23 force and violence or by intimidation while the person is
24 operating the vehicle or while the person is in the
25 vehicle. Now to me, when I think of carjacking and this

1 is the way that I think the legislature was thinking about
2 carjacking when they came up with the statute, is I get
3 images in my head of somebody going to their car and
4 getting in the front seat and cranking it up and all of a
5 sudden there's somebody in the back seat with a gun or
6 not, take me somewhere. Or a taxi driver picking somebody
7 up and a fare produces a weapon and robs them and steals
8 their car. Or in many cases that I've handled where
9 someone is actually kidnapped and taken somewhere and
10 assaulted. To me that is what carjacking is all about,
11 and I believe in my mind that's what the legislature had
12 in its infinite smartness when they decided to come up
13 with a carjacking statute. This ain't anything like that.
14 If anything, I'm gonna tell you what it's about and
15 Mr. Jepertinger has told you pretty much chronologically
16 what happened. There are a few things I would say about
17 it, but for the most part it sounds to me like
18 Mr. Pennell, as foolish as he is, wanted to get a ride
19 from somebody. And when Mr. Wilson said I'm not going to
20 give you a ride, which I don't blame him, I wouldn't give
21 a stranger a ride either. He got upset, got mad. There
22 was a fisticuff, and Charles got his fanny kicked, not one
23 time but two times. And that's what this case is about.
24 It's about a fool named Charles Pennell trying to get a
25 ride from somebody who wouldn't give him one, and when he

1 couldn't take no for an answer, got upset and got his
2 fanny kicked. This is not a carjacking case that we think
3 about when, at least what I think about, when I think
4 about carjacking.

5 This is what I think the evidence will show, that
6 on the 25th of May of last year, not this year, last year,
7 Mr. Pennell was dropped off at the Hollywood Video. Y'all
8 saw some photos. I took those pictures last night. They
9 didn't turn out very well. I think there's something
10 wrong with the printer cartridge but be that as it may.
11 He got dropped off there; I'm not sure the reason why.
12 We'll probably find that out. And his belongings got
13 dropped off there too so he had no ride, and he had his
14 belongings with him so he wanted go from point A to point
15 B. Here comes Mr. Wilson, innocent man just riding up,
16 all of a sudden just happens to ride up. Charles wants a
17 ride; Mr. Wilson wouldn't give him a ride. I wouldn't
18 give him a ride either. Charles gets upset, starts
19 aggravating, starts kicking things and screaming and
20 hollering. And of course Mr. Wilson is frightened because
21 he didn't expect this kind of thing pulling up to drop off
22 some movies or pick up some movies. So I think what
23 happens, I think Mr. Pennell, I think Charles hit the man
24 and the man hit him back and beat him up. And then
25 Mr. Wilson pulls out a gun. I'm still not quite clear on

1 the catch of this. He goes to his glove box and gets a
2 gun and he racks it, and he puts the chamber with the
3 bullets in. He has time to rack it back. He has time to
4 fire it up in the air; and then after that's over, that's
5 done, in his own statement Mr. Wilson said he flees the
6 scene. He goes home. But for what reason I don't
7 understand. He switches cars and comes back. Now to me,
8 I mean, if I were worried about being carjacked I don't
9 think I'd go back to the scene. I think I'd pick up a
10 phone or call the police or I'd call Hollywood Video
11 instead of going back. But he goes back. This time he
12 didn't go back with his gun. He goes back in a different
13 car, encounters Mr. Pennell again. Mr. Pennell gets his
14 ass kicked again, excuse my language. He gets his fanny
15 kicked again. Then Mr. Wilson leaves a second time and
16 goes home, still not figuring out exactly what to do.
17 Then he calls Hollywood Video. Police are there by now.
18 The police are there by now. The officer talks to him,
19 you need to get yourself back up here. So he gets back in
20 his car, I think the same one that he had the second time.
21 And he goes back to Hollywood vehicle -- Hollywood Video a
22 third time in the second vehicle and then that's where
23 everything is kind of ironed out.

24 But that's pretty much the case in a nutshell.
25 I'm gonna be honest with you, ladies and gentlemen. I'm

1 worried about this case because it is so serious; and yet,
2 as the facts as I know them to be, do not, do not boil
3 down to a carjacking. They boil down to maybe something
4 else like an assault or plain stupidity on the part of
5 Mr. Pennell. And but it's not carjacking. Heck, Mr.
6 Pennell was two blocks down the street when the police
7 came up licking his wounds. He'd had enough. He'd never
8 been beaten up two times. He wasn't -- and he had no
9 weapon. He wasn't trying to steal anybody's car; he just
10 wanted a ride. And when he couldn't get a ride he got
11 upset and he showed his fanny and he paid the price.
12 That's what it's about. It's not carjacking. It's
13 something else, but it's not carjacking and that's pretty
14 much it in a nutshell. Thank you very much.

15 Thank you, Your Honor.

16 THE COURT: Thank you, Mr. Suggs.

17 All right, ladies and gentlemen, we are gonna
18 adjourn at this time. Hopefully you've gotten a little
19 bit of a taste of why I tell you when you come back
20 tomorrow you need to be well rested because when you're
21 using your mind and you're listening and you're having to
22 think through things, that can be tiring. And so it's
23 important that you get some rest this evening and come
24 back in the morning ready to go work and be fresh. I'm
25 gonna ask you, if you would, be back in the jury room at

1 had a conflict and wasn't able to do it so I had to do
2 that before we got started and we've done that and
3 completed that matter and so now we're ready to proceed.
4 If you recall yesterday, the attorneys addressed you with
5 regards to their opening statements and so now we're into
6 the phase of the trial where the State has the opportunity
7 to present whatever evidence it is that they intend to
8 present and so I would recognize Mr. Jepertinger on behalf
9 of the State with your first witness.

10 MR. JEPERTINGER: Thank you. Good morning, Your
11 Honor.

12 THE COURT: Good morning, sir, please the Court.

13 MR. JEPERTINGER: Mr. Suggs.

14 MR. SUGGS: Good morning.

15 MR. JEPERTINGER: Good morning. The State would
16 call Jonathan Wilson to the stand.

17 THE DEPUTY CLERK OF COURT: If you will, sir, go
18 to the witness stand. Place your left hand on the Bible.
19 Raise your right hand.

20 WHEREUPON,

21 **JONATHAN ANTWAN WILSON,**
22 having been duly sworn by the Deputy Clerk of Court,
23 testified as follows:

24 THE DEPUTY CLERK OF COURT: Please be seated
25 right there at the witness chair and state your full name

SW - J. WILSON -DIRECT

1 for the record.

2 THE WITNESS: Jonathan Antwan Wilson.

3 **DIRECT EXAMINATION**

4 BY MR. JEPERTINGER:

5 Q All right. Mr. Wilson, I'm gonna ask you to keep your
6 voice up as much as possible. You might want to pull that
7 microphone a little closer to you, closer to the
8 microphone. Okay. Mr. Wilson, how old are you?

9 A Thirty-five.

10 Q Okay. And where do you live currently?

11 A Now I moved over off of Sumter Street, but I've always
12 lived before that in Brookgreen.

13 Q Did you have an occasion when you talked to me that
14 living on Fire Tower Road?

15 A Yes.

16 Q Okay. And have you just moved to the Sumter Street
17 area?

18 A Yes, temporary.

19 Q All right. And are you married?

20 A Yes.

21 Q How long? First of all, tell us your wife's name?

22 A Avelina Wilson.

23 Q And how long have you and Avelina been married?

24 A Fifteen years.

25 Q All right. And do you have any children?

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1 A Yes.

2 Q How many kids do you have?

3 A Six.

4 Q All right. And where do you work?

5 A I work for San-glo Carolina.

6 Q Is that a glass company?

7 A Yes, it is.

8 Q And what are your responsibilities at San-glo Carolina?

9 A I go out to a lot of homes different incomes and do a
10 lot of shower doors and mirrors and any kind of -- I'm
11 sorry, I have a little trouble speaking -- but any kind of
12 glass work, residential and commercial.

13 Q All right. And I don't know if I asked you this, how
14 long have you worked San-glo glass?

15 A It's going on five years now.

16 Q All right. So at the time of the incident that we're
17 in here for court today, you were there for about
18 three-and-a-half years?

19 A Yes.

20 Q Okay. I'm gonna take you back if possible, do you
21 remember Monday, May 25th, 2009?

22 A Yes, I do.

23 Q Okay. Can you tell the jury what you were doing
24 approximately 10:30 that evening on May 25th, 2009, what
25 were your intentions?

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1 A I had left my house as I normally do.

2 Q Let me stop you right there. I know you live off
3 Sumter Street now. You had lived on Fire Tower Road when
4 I spoke with you.

5 A Yes.

6 Q Where were you living at that time?

7 A Off of -- off of Aiken Drive behind Advance Auto.

8 Q Were you living on Aiken Drive?

9 A Yes.

10 Q Okay. I'm sorry, you said off of. But you lived on
11 Aiken Drive?

12 A On Aiken Drive, yeah.

13 Q Okay. So was that near -- is that near Evans Street?

14 A Yes.

15 Q Okay. Tell the jury what your plans were and what you
16 did and what were you driving when you did what you did?

17 A I was driving a gold Ford Explorer, and I had left home
18 and I was going to rent, to rent some movies. And I had
19 pulled around the closest entrance to Evans Street which
20 is around the back side.

21 Q Okay. Which store were you going to rent movies from?

22 A To Hollywood Video. I'm a regular customer there.

23 Q All right. And I'm going to show you State's Exhibits
24 16, 17, 18, 19, and 20, all right? And these are -- what
25 are these photos representative of?

SW - J. WILSON -DIRECT

1 A These are pictures of the parking lot of Hollywood
2 Video there.

3 Q And it's no longer open, is that correct, to your
4 understanding?

5 A No, sir.

6 Q Okay. Now, if you'd -- I'm gonna ask the witness if
7 it's okay with the court to come off the witness stand so
8 he can come in front of the jury and if he can explain to
9 the jurors what happened at the Hollywood Video.

10 THE COURT: All right, let me ask you, if you
11 would, Mr. Wilson, when you step down I would ask that you
12 be on the other side of Mr. Jupertinger so that your voice
13 will carry over here so that Ms. Ray can hear you. And
14 then also, since you're gonna be away from the microphone
15 keep your voice up please. But you certainly may step
16 down.

17 THE WITNESS: Okay.

18 BY MR. JEPERTINGER:

19 Q Now Mr. Wilson, she's gonna have to hear every word so
20 keep your voice up the best you can. We're gonna move
21 forward a little bit. I'm gonna show you State's Exhibit
22 17 and can you tell the ladies and gentlemen of the jury
23 what that shows.

24 A This is the closest entrance to Evans Street. Normally
25 the patrons coming from that side would be driving around

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1 the back and coming around to the front part.

2 Q Okay. And is that how you entered Hollywood Video on
3 May 25th?

4 A Yes, sir.

5 Q Okay. And I'm gonna show you State's Exhibit 16. Can
6 you tell the jurors what you see there.

7 A Right as I was coming around the back side here there
8 was a string of audio equipment across the parking lot.

9 Q Okay. When you say a string of audio equipment, I'm
10 gonna show you some other photographs. I'm gonna show you
11 State's Exhibit 2. Was that the equipment that, some of
12 the equipment that you saw there?

13 A Yes.

14 Q And I want you to look at State's Exhibit 3. Some more
15 of the equipment?

16 A Yes, sir.

17 Q All right. And State's Exhibit 5?

18 A Yes, sir.

19 Q Okay.

20 MR. JEPERTINGER: Instead of having to go through
21 all of these I'd ask that we could publish all these
22 photos to the jury, Your Honor.

23 THE COURT: Sure. They're all in evidence.

24 MR. JEPERTINGER: And while the jurors are
25 looking I think I can ask more questions?

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1 THE COURT: Sure.

2 BY MR. JEPERTINGER:

3 Q Now you're saying all that equipment that you -- that
4 are in State's Exhibit 1 through 15, was it just lined up
5 across the roadway?

6 A The majority of it was.

7 Q Okay. So when you pulled in with your Explorer and you
8 saw that, did you see anyone at that point in time?

9 A No.

10 Q Okay. What did you do?

11 A I opened my door and got out and used my foot to start
12 moving some of it over and I saw him coming from the right
13 side.

14 Q Okay. And when you say you saw him coming from the
15 right side, who are you referring to?

16 A Mr. Pennell.

17 Q Is the gentleman on trial in this case?

18 A Yes.

19 Q All right. Did you know Mr. Pennell in any way, shape,
20 or form?

21 A No, never met him.

22 Q All right. I'm gonna ask you to have a seat right
23 there and we'll get into a little testimony later.

24 A (Complies.)

25 Q When you saw him -- and he approached from the right

SW - J. WILSON -DIRECT

1 side?

2 A Uh-huh.

3 Q As we see on State's Exhibit 16. Did he say anything
4 to you?

5 A He -- his first words were quit kicking my stuff.

6 Q Did you say anything in response to that?

7 A No.

8 Q Did he say anything else to you at that point?

9 A As he walked over to me he asked me could he give me
10 \$20 to take me to Timmons ville.

11 Q All right. And what did you -- what did you say or do
12 in response to that question about taking you over to
13 Timmons ville for 20-dollars?

14 A Because of just some bad experiences at that time and
15 of -- my conscious kind of told me just to not to do it so
16 I said, I'm sorry, but I can't do it.

17 Q All right. Did he have any response when you told him,
18 I can't do it?

19 A Yes, he got angry and started kicking stuff around.

20 Q Did he say anything while he was getting angry and
21 kicking stuff around at that point?

22 A He told me to suck his, suck his --

23 Q Penis?

24 A Yeah, yeah, in those same words.

25 Q Did he use a more vulgar word than penis?

SW - J. WILSON -DIRECT

1 A Yeah, he used the word dick. And he told me at that
2 point he called me a nigger and just pretty much went on
3 just, just, just, just some really inflammatory words like
4 that.

5 Q What did you do in response to that? Did you expect
6 something like this, meeting someone like this at
7 Hollywood Video on May 25th? Did you anticipate this guy
8 being there?

9 A No, I've been there many times and never had any, any
10 problem.

11 Q So after he said that what did you do?

12 A I drove my car around to the front and parked.

13 Q Okay. Now I'm gonna show you State's Exhibit 18 and
14 19, and I don't think you have to get up. We'll walk
15 around here in a little bit maybe with the photographs;
16 but 18 is what, a front picture of the front of the store?

17 A Yes, this one is.

18 Q All right. And 19 is kind of a diagonal view of the
19 store also showing the front?

20 A Yes.

21 Q Okay. Can you tell the ladies and gentlemen of the
22 jury on either picture where you parked your car?

23 A Right here.

24 Q Right by those bushes?

25 A Yes.

SW - J. WILSON -DIRECT

1 Q Okay. And that's on State's Exhibit 19. Now, a
2 question I have is after he said all those inflammatory
3 things to you and used that racial epithet and all that,
4 why didn't you just go home?

5 A Well, I -- personally I didn't think that he would go
6 any further.

7 Q Okay. So when you parked your Ford Explorer right by
8 the bushes, as we see on State Exhibit 19, what happened
9 then?

10 A As I was getting out of my vehicle he got in the
11 doorway.

12 Q Now when you say he got in the doorway, I'm gonna walk
13 up to you and pretend you're in your vehicle and you tell
14 me to stop in terms of distance of how far he was away
15 from you in terms of being in the doorway.

16 A Closer.

17 Q Any closer?

18 A He was about about there, yeah.

19 Q So I'd have to walk even further up to you?

20 A Yes.

21 Q And what was -- was he saying anything or doing
22 anything at that point other than walking up to you?

23 A Yeah, he came up and said, well, I'll take your car.

24 Q At that point when he said -- and he walked up to you
25 very, very close, and he said I'll take your car then,

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1 what were you feeling?

2 A At that point it really -- it shocked me so his
3 demeanor was as if he knew something I didn't know. And
4 my, my, my first feelings were that his boldness that he
5 had to have some kind of training or something or
6 something I didn't know about. And at that point I really
7 felt that I was in a shape now that I, you know, I could
8 really get hurt now.

9 Q Okay.

10 A Yeah.

11 Q Would it be safe to say that you were scared?

12 A Yeah, at first, yes.

13 Q All right. After he said I'm going to take your car
14 now and you had those feelings -- and I know that, is this
15 happening pretty quickly?

16 A Yes.

17 Q Okay. What do you do, Jonathan?

18 A I pushed him back and I reach over to my glove
19 compartment and I grabbed my pistol and put the clip in
20 it.

21 Q Now what type of pistol did you have?

22 A It's a Taurus .9 millimeter.

23 Q Okay. Now for the folks that may not own handguns,
24 this is a type of gun with a magazine that fits up into
25 the handle, correct?

SW - J. WILSON - DIRECT

1 A Yes.

2 Q And in order to shoot it you have to rack it back?

3 A Yes.

4 Q Then you pull the trigger and it shoots, correct?

5 A Yes.

6 Q Tell the ladies and gentlemen, so you had that type of
7 gun -- that's the type of gun it is, correct?

8 A Yes.

9 Q So tell us what happened, what you did with that gun
10 when you got it out.

11 A When I pulled it out he initially stepped back; and
12 then as he, as he started back towards me I fired up in
13 the air.

14 Q So he walked ---

15 A Yes.

16 Q You pulled it out and did you put the magazine in and
17 rack it?

18 A Yes.

19 Q Okay. And he stepped back you say?

20 A Yes.

21 Q And after he stepped back he stepped forward again are
22 you saying?

23 A Yes.

24 Q And then that's when you shot it in the air?

25 A Yes.

SW - J. WILSON -DIRECT

1 Q Well, why didn't you point it at him and shoot him?

2 A Because at that point that's something I've never done.

3 I mean, life is something when you take it you really
4 can't give it back. So I mean, it wasn't in me then to
5 shoot.

6 Q All right. After you shot the gun off, what happened?

7 A He realized I guess I didn't have the heart to shoot
8 and he said shoot me.

9 Q Well, when he said shoot me, what was his demeanor
10 like?

11 A He was very, very aggressive. I mean, he was -- as if
12 he wasn't by himself. I mean, he -- he was from what I
13 saw during that time he was kind of grisly, kind of just--
14 in his eyes, I mean, he was just didn't care.

15 Q All right. So he said, just shoot me. What is your
16 response after he said that to you?

17 A At that point I realized I wasn't gonna shoot him and
18 that he wasn't -- wasn't gonna leave.

19 Q So did you have to make a decision?

20 A Yeah, and I decided then I'm gonna fight.

21 Q What led you to that decision that you were gonna fight
22 instead of just closing the car door and turning on the
23 car and just getting out of there?

24 A Because as close as he was to me, I mean, I couldn't, I
25 mean, I just couldn't do it.

SW - J. WILSON -DIRECT

1 Q All right, fair enough. And when you decided to fight
2 him what happened? Tell the jury what happened. And once
3 again, this is all happening right outside here in front
4 near the bushes?

5 A Uh-huh.

6 Q Okay.

7 A Yes.

8 Q What's going on? What happens then?

9 A At this point I just took my foot and I kicked him in
10 the stomach.

11 Q All right.

12 A At that point -- I had learned that from past
13 experiences to that I had to keep going to at least
14 diffuse the situation so. After I kicked him I punched
15 him somewhere around, around here, and then he fell
16 like -- I kicked him again. And at that point I got back
17 in my car and I drove off.

18 Q Okay. Now the question that the folks may have that
19 I'd like you to answer is, why did you drive off? Why
20 didn't you go into the store or to call for help?

21 A I was -- I was afraid because I had, for one, I had
22 fired a weapon, you know, in the city limits and -- I'm
23 sorry.

24 Q Hold on one second.

25 A And during that time, I mean, the situation wasn't

SW - J. WILSON -DIRECT

1 getting any better.

2 Q Did you -- when you pulled out from there did you go up
3 on Palmetto Street, or did you go out the same way you
4 came, or how did you leave the store?

5 A I went around the front towards pig-- towards Piggly
6 Wiggly.

7 Q Which would be on David McLeod Boulevard I guess?

8 A Yes. Yes.

9 Q Okay. And at that point where did you go?

10 A I went home.

11 Q Okay. And approximately how far would you say you
12 lived from the Hollywood Video?

13 A I'm about five, maybe five, six minutes if that much.

14 It's about maybe four blocks down the road.

15 Q All right. When you got home was Avelina home?

16 A Yes.

17 Q Did you tell her what had just occurred?

18 A Yes, I called her and my father and told them what had
19 happened.

20 Q Was Avelina home or ---

21 A Yes.

22 Q You said you called her. Was she home?

23 A No, I told her and then I called my dad.

24 Q Okay. And what was -- did they give you any advice
25 what you should do? Without telling you, I mean, without

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1 saying the words, but did you get advice to them, from
2 them?

3 A No, no, no. I just told them and got in my other car.

4 Q Now what was -- did you go back to Hollywood Video?

5 A Yes.

6 Q Okay. Now how long were you at home before you decided
7 to go back to Hollywood Video?

8 A Maybe not -- I mean, it was almost in just in and out.

9 Q Okay. What was, what was your thinking in going back
10 to Hollywood Video?

11 A My main thing is I wanted to let them know what had
12 happened, and there were two reasons for this. The first
13 reason was, there a few young girls that worked there and
14 they needed to know what had happened. And the other
15 thing was they needed to know why I shot my pistol back
16 there. And that's pretty much why.

17 Q All right. What type of vehicle did you take back to
18 Hollywood Video?

19 A Expedition. Black expe-- a black Expedition, four
20 wheel drive.

21 Q Now why did you switch vehicles from that gold Explorer
22 to black Expedition?

23 A I didn't really think that he recognized the second
24 vehicle.

25 Q Did you still feel that he was going to be out there?

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1 A I wasn't sure.

2 Q Okay. Would it be safe to characterize your decision
3 as a precaution?

4 A Yes.

5 Q All right. Now when you went back out to Hollywood
6 Video -- I'm gonna show you State's Exhibit 18, if this
7 would help explain your testimony to the jury of where you
8 came. Would that help?

9 A Yes, yes.

10 MR. JEPERTINGER: May I ask him to come off the
11 stand once again?

12 THE COURT: Yes, sir.

13 MR. JEPERTINGER: Thank you, Judge.

14 BY MR. JEPERTINGER:

15 Q All right. Remember, you stand over here. Please keep
16 your voice up for Ms. Ray. I'm gonna show you State's
17 Exhibit 18. Now can you tell the jury where you parked.

18 A Yes, right there.

19 Q All right. And what did you do when you got to
20 Hollywood Video that second time that evening?

21 A I went out to go in the front door, and that's when I
22 realized he was right here. And during that time I said
23 don't, don't, don't, don't, don't do it again, and as he
24 was coming, coming towards me, I realized that I couldn't
25 let him pin me up against my car because my door was

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1 already closed. So at this time I met him and I decided
2 then, you know, I was just gonna try to take him down and
3 I did.

4 Q All right. After you had the physical altercation with
5 Charles Pennell ---

6 A Yes.

7 Q ---what did you do then?

8 A I tried to go in the store but it was locked.

9 Q The front door was locked?

10 A Yes.

11 Q All right. Could you tell the people were in there?

12 A Yes, there were two girls in the front of it and I
13 don't know who all else was in there.

14 Q All right. Were there -- did it look like there were
15 any other customers out there at that time?

16 A I don't think so.

17 Q All right. Now after you checked the doors what did
18 you do?

19 A I got in my vehicle and went back home.

20 Q Was Pennell lieing on the ground at that point?

21 A During that time he -- he walked away. I mean, he kind
22 of retreated some and I guess he gave me a little time or
23 whatever. But I'm not sure, after he walked away which, I
24 mean, if he totally left the scene or not or if he just,
25 you know, left that area, I'm not sure.

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1 Q Okay. Thank you. You can take the stand. I'd
2 appreciate it.

3 MR. JEPERTINGER: Thank you, Judge, for allowing
4 me to do that.

5 THE COURT: Yes, sir.

6 BY MR. JEPERTINGER:

7 Q Now you got in your vehicle and you drove. Where did
8 you drive to?

9 A I went home.

10 Q Back to your house on Aiken Drive?

11 A Uh-huh.

12 Q Okay. Was Avelina still present?

13 A Yes.

14 Q Did you tell her what happened to you again?

15 A Yes, and I had a little bit more, more time to talk to
16 her.

17 Q Okay. At that point did you make another decision
18 about what you should do in terms of this whole
19 altercation?

20 A Yes. I decided at that time it was just best, best to
21 call down there.

22 Q So you called Hollywood Video, correct?

23 A Yes.

24 Q And you spoke to one of the clerks?

25 A Yes.

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1 Q Okay. And apparently the police were there at that
2 time, correct?

3 A Yes, yes.

4 Q And at that point you spoke to an officer; is that
5 correct?

6 A I originally ---

7 Q On the phone?

8 A Yes, yes, yes.

9 Q That's what I'm saying.

10 A Yes, yes.

11 Q And when you spoke to the officer were you given any
12 instructions by that officer?

13 A Just to come on back down to, come on back down to the
14 video store.

15 Q All right. So what did you do?

16 A I came down and then parked the car and talked to the
17 officer.

18 Q Okay. And do you remember any of the officers you
19 spoke with?

20 A Yes. One was Miss Robinson.

21 Q Okay.

22 A And Mr. -- I'm sorry, I ---

23 Q Provenzano?

24 A Mr. Provenzano, yes.

25 Q Okay. Were you telling them what had occurred?

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1 A Yes.

2 Q All right. And was Mr. Pennell there when you were
3 speaking with them when you first got down there?

4 A Yes, he was in the vehicle in the patrol car at that
5 time.

6 Q All right. And without saying what Mr. Pennell said,
7 what was his demeanor like? What was he acting like that
8 you observed?

9 A He was hitting on the windows and trying to spit on the
10 window and calling names. I'm not, I mean, just -- he
11 was, I mean, just -- I can't find the right word. But he
12 was just -- there was nothing that they could do with him
13 in that car the way he was acting in that side from having
14 the physical tussle with them in there. He was vulgar,
15 just, yeah.

16 Q Okay. After you spoke with the officers did they ask
17 you anything about the weapon you had discharged?

18 A Yeah.

19 Q All right. And at that point did they follow you to
20 your home?

21 A Yes.

22 Q Okay. And at your home what did you give the officers?

23 A I gave them the -- that Taurus, Taurus 9, the Taurus
24 gun.

25 Q Okay. The handgun?

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1 A Yes.

2 Q Yes, sir. And afterwards did you speak with
3 Investigator Robinson after you had done that or where was
4 the last time you spoke to Officer Robinson about this
5 case?

6 A It was -- I think during that incident that was it.
7 Then after they got the handgun.

8 Q Did you have a chance to write a statement maybe one or
9 two days later?

10 A Yeah, yes.

11 Q And was that here at the City-County Complex or was it
12 at your house?

13 A At the -- I believe it was at the complex.

14 Q Okay. Police department?

15 A Yes.

16 Q Okay. Other than that you've spoken to me about this
17 case, correct?

18 A Yes.

19 Q All right. And is that all you can tell the ladies and
20 gentlemen of the jury about what occurred to you on the
21 evening hours of May 25th, 2009?

22 A That's about it except for the fact that, I mean, that
23 was a situation that I really wish that that hadn't
24 happened. And I mean, be -- I mean that's, what happened
25 that night could have cost either one of us our lives.

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1 And when I think about the fact that he had asked me to
2 take him to Timmons ville and he's offered me 20-dollars to
3 take him there and didn't have -- that then, I don't know
4 what his plans were if I had given him that ride or if I
5 had let my wife or someone else's wife had gone up there
6 and ran into Mr. Pennell. And that's it. I mean, it was
7 just, but it was happening. I couldn't believe that it --
8 that it was happening like it did. And that's it. That's
9 all I have to say.

10 Q Thank you so much. I appreciate it. I'm gonna put
11 these photographs back and those are all the questions I
12 have. Please answer any questions that Mr. Suggs may have
13 for you in regards to this matter.

CROSS-EXAMINATION

14 BY MR. SUGGS:

15 Q Good morning, Mr. Wilson. Good morning, ladies and
16 gentlemen.

17 A Good morning.

18 Q Just a few questions. A little nervous? You were but
19 not now?

20 A Yeah, I'm not now.

21 Q That's okay, I'm nervous too. We're all nervous, okay.
22 Does Mr. King still own San-glo?

23 A Tom King, yes.

24 Q Tom King?

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1 A Yes.

2 Q Now when this incident occurred last year on May 25th

3 ---

4 A Yes.

5 Q ---right after everything happened, when was the first
6 opportunity you had to talk with a police officer? Was
7 that on the telephone when you called the Hollywood Video?

8 A Yes.

9 Q Okay. And when you talked to that officer was that
10 Officer Robinson or Officer Provenzano?

11 A I can't remember which officer it was, but I know ---

12 Q Was it a female or male?

13 A I believe it was a -- I'm not sure. I think it was a
14 male I think.

15 Q It's okay. It's not a critical question whether it's
16 right or wrong. It doesn't matter. But that was the
17 first time that you talked to a police officer about this
18 incident was when you called on the phone?

19 A Yes.

20 Q Okay. Now when you went down to the Hollywood Video
21 after talking with the police officer ---

22 A Uh-huh.

23 Q ---he or she asked you to come back down; is that
24 right?

25 A Yes.

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1 Q Okay. And so you came back down?

2 A Yes.

3 Q And you talked with several officers or more than one?

4 Or one or several I mean?

5 A A couple of officers, yes.

6 Q Okay. So you talked to an officer on the phone and
7 then you came down and talked to that same officer and
8 some other officers as well?

9 A All I know is I talked to them on the phone, and I
10 talked to a couple of them when I got down. I'm not sure
11 exactly who they were at that time.

12 Q Okay. You talked to a male and a female officer?

13 A Yes, now -- yes, once I got there, yes, I did talk to
14 them.

15 Q And did they give you opportunities, officers give you
16 an opportunity to tell them everything that you knew about
17 this incident?

18 A Yes.

19 Q Okay. They didn't rush you to get you to give the
20 statement in a very quick fashion? In other words, they
21 gave you time to give a statement; is that right?

22 A Yes, yes.

23 Q Okay. And they were writing down with -- they were
24 taking notes while you were telling them what happened?

25 A I imagine. I'm not sure.

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1 Q Because this scenario kind of, was kind of drawn out,
2 wasn't it? I mean, you went to the Hollywood Video, you
3 had the encounter, then you left. Then you came back, you
4 had another encounter, then you left again, then you
5 called and you went back a third time. So there was quite
6 a lot of detail in this scenario. Would you agree with
7 that?

8 A Yes.

9 Q Okay. So you had a chance to tell the officers
10 everything that you needed to tell them, what you thought
11 was important?

12 A Yes.

13 Q Okay. And later, two days later on the 27th, you had
14 another opportunity to tell your story; is that correct?

15 A Yes, yes.

16 Q Okay. And you went down to the -- you went from your
17 home to here to the City County Complex; is that right?

18 A Yes. Yes.

19 Q Okay. And did you come down at the invitation of one
20 of the investigators? Did they call you on the phone and
21 say, Mr. Wilson, can you come down here and give us a
22 written statement or was that something that you
23 voluntarily wanted to do? You called them, said, I'd like
24 to give you a written statement, I'm gonna come down, such
25 and such a time. Do you understand the question?

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1 A Me, yes.

2 Q What's the answer?

3 A I was -- I was called down.

4 Q So it would be Michael Robinson --

5 A Yes.

6 Q --the female officer?

7 A Uh-huh.

8 Q Okay. That's a yes?

9 A Yes.

10 Q Okay. And so you went down -- you came down here on
11 the 27th and you prepared a written statement; is that
12 right?

13 A Yes.

14 Q Okay. And that was here at the complex?

15 A Yes.

16 Q On the 27th of May?

17 A Not sure about exact date but it was, yeah.

18 Q Okay. And when you wrote the statement down you were
19 given, I guess you were given -- it looks to me like some
20 police department forms, voluntary statement form?

21 A Yes.

22 Q And that's what you filled out; is that right?

23 A Yes, I mean, yeah.

24 Q You've seen the statement?

25 A Yes, yes.

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1 Q Okay. You did the statement?

2 A Uh-huh.

3 Q Is that right?

4 A Yes.

5 Q And it's a two page statement, correct?

6 A Yes.

7 Q Okay. And when you -- how long did it take you to do
8 that statement?

9 A Probably a few minutes.

10 Q Okay. Did anybody rush you to do that statement?

11 A No, no.

12 Q You had ample opportunity to tell the police again
13 exactly what had transpired that night?

14 A Yes.

15 Q And you had a couple of days really too to reflect upon
16 it and think about what you wanted to put down; is that
17 correct?

18 A I had time, yes. Yes.

19 Q Safe to say you thought about the incident some from
20 the time it happened till the time you did the statement
21 two days later?

22 A Naturally, yes.

23 Q Naturally. And so you tried to be very detailed about
24 it; is that correct?

25 A I just tried to -- yes, just, yes, yes.

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1 Q You didn't want to leave anything out that was
2 important?

3 A Well, I mean, I wanted to tell it to write down what I,
4 what had happened. I mean, that's to -- I can't find the
5 right word, but I mean.

6 Q You wanted to be accurate?

7 A Yes.

8 Q And you wanted to tell the truth?

9 A Yes.

10 Q And you wanted to make certain that everything you put
11 down was what happened and would help the police?

12 A Yes.

13 Q Okay, thank you. Let's talk about the pictures for a
14 minute. I don't want to talk about my pictures because
15 they're pretty terrible so we won't use those. We'll use
16 the ones that Mr. Jepertinger used. Now you left your
17 house to go to the Hollywood Video. And I don't know,
18 were you going to drop some movies off or were you picking
19 some movies up?

20 A Yes.

21 Q Okay. John said Chariots of Fire. You weren't going
22 to rent that, were you?

23 A No.

24 Q Do you remember what it was?

25 A Most times I go in and I look on the front of the--

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1 they normally have posters up.

2 Q Of new releases and stuff?

3 A Yeah, of what's gonna be in. And if there's any then I
4 get them.

5 Q We've got the movies on demand now; don't we? We don't
6 really need Hollywood Video anymore, do we?

7 A Yes.

8 Q But you were going to not drop off, but pick up?

9 A Yes.

10 Q Okay. Because I noticed you mentioned that when you --
11 when you came to the video store you came off of Evans
12 Street?

13 A Yes.

14 Q And let's see -- I think John said 17 and 16. Okay, so
15 this is 17. So you're coming off Evans Street so the
16 Piggly Wiggly is on this side and the video store is on
17 this side. Is that right?

18 A If you -- yeah, Piggly Wiggly is over here and the
19 video store is over here.

20 Q And then you've got the Atlanta Bread which is closed
21 and then the Game Stop and then the Great Clips and --

22 A Yeah.

23 Q So you pulled into that driveway and you were going --
24 you were actually going on 16.

25 A Uh-huh.

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1 Q You were -- you don't mind if I stay this close to you
2 do you?

3 A No.

4 Q It's okay? You were coming in from this side and you
5 were driving around the back side of -- well not, the back
6 side is here but the left side of the video store which
7 faces Second Loop. Faces Second Loop. Is that right?

8 A The back side is ---

9 Q Well, the back side faces, I guess, David McLeod
10 Boulevard, in that area?

11 A Yeah, yeah, that paint shop.

12 Q Yes, the paint shop.

13 A Pittsburg Paints, yeah.

14 Q And then -- or Rosemary Paints or something.

15 A Yeah.

16 Q Rosemary Paint, okay.

17 A Yes.

18 Q And then when you come around, this side actually faces
19 the Naturally Outdoors and the other shops; is that right?

20 A Yeah, I think so.

21 Q I'm not trying to put words in your mouth. I'm just
22 trying to posture myself here.

23 A Yeah, like Naturally Outdoors and the bank or
24 something.

25 Q Okay, okay. Now when you came around -- most folks

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1 come around this way 'cause they want to get to the front
2 and drop off movies in that slot which on Number 20, I
3 guess, that's where that slot used to be.

4 A Yeah.

5 Q If they're driving around they want to be able to be,
6 have that on the driver's side. But you weren't doing
7 that, you were actually just going to park?

8 A Yes.

9 Q Okay. Not to drop off?

10 A No.

11 Q Okay. So, and when, when you pulled up and you were
12 already, you were already pulling up and this is the back
13 side of the store and you were already making the turn to
14 the left side of the store when you saw the stereo
15 equipment in the driveway?

16 A Yes.

17 Q So it wasn't in the back, it was on the side?

18 A Yes.

19 Q Okay, okay. So you got out to move it?

20 A Yes.

21 Q Okay. Now this is 10:30 at night, right?

22 A Around that time.

23 Q It was close to closing time; wasn't it?

24 A Yeah, I know. Yeah, it was close.

25 Q So you didn't really have enough time, not too much

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1 time to get in and get movies before they started wanting
2 to run people out of there probably; wouldn't you think?

3 A Yeah, yeah.

4 Q Okay, all right. So were there -- were there any --
5 can you tell me -- can we write on these, Judge? Is it
6 okay to ---

7 THE COURT: No, that's in evidence. I don't
8 think --

9 MR. SUGGS: I mean, can he put an X on where he
10 ---

11 THE COURT: Yeah, you can have him do that.
12 Mr. Jepertinger, you want to ---

13 MR. JEPERTINGER: I have no objection if he puts
14 an X on anything, Judge.

15 THE COURT: Okay, that's fine.

16 BY MR. SUGGS:

17 Q But I'm just trying to get a general idea of some
18 things.

19 A Okay.

20 Q Can you mark with an X if this -- on State's Exhibit
21 Number 16, if this is the best photo for that. Can you
22 mark with an X where you recall seeing the stereo
23 equipment.

24 A It was right about here, right there stretched across
25 just across the road.

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1 Q And when you say stretched, I like to use the word
2 strewn about. Was it in a pile or was it kind of like
3 lined up like you see at a garage sale or something like
4 that?

5 A Kind of thrown across.

6 Q Thrown across. I mean, how much of the parking lot did
7 it take up?

8 A It took up pretty -- it pretty much stretched across
9 the whole parking lot.

10 Q So you could not -- you could not, you could not get by
11 the equipment without getting out of your car?

12 A Without running over it.

13 Q Without running over it?

14 A Yeah.

15 Q So you couldn't, couldn't go around it. Was it that
16 stretched out?

17 A No, I mean, really remember -- I remember stopping
18 because I knew if I had -- if I had kept going I would run
19 over it so...

20 Q Well, kind of curious too in a way, I'm just guessing,
21 curious to see what it was perhaps too is another reason
22 for getting out?

23 A Naw, I pretty much knew it was a stereo system.

24 Q Okay. But you started to move it out of the way by
25 using your feet?

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1 A Yes.

2 Q You weren't kicking it, you wouldn't be roughing it,

3 --

4 A No.

5 Q You were just kind of sliding it; is that right?

6 A Yeah.

7 Q Okay. Now when you got out of your car to do that you
8 put your car in park?

9 A Yes.

10 Q And that was a gold Ford Explorer, gold Ford Explorer;
11 is that correct?

12 A Yes.

13 Q You put your car in park. Did you cut off the engine?

14 A No.

15 Q Just put it in park?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes.

19 Q Uh-huh and huh-uhs are okay when we're talking, but
20 when the court reporter types uh-huhs and huh-uhs up they
21 look a lot alike.

22 A Oh.

23 Q And it's hard to read the transcript. I don't know if
24 it's a yes or a no. I mean, we know what you're talking
25 about, but later on if the transcript has to be read we

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1 can't decipher it, okay?

2 A Okay.

3 Q Thank you. So you were moving the equipment away when
4 Mr. Pennell approached you?

5 A Yeah. And one other reason why I kind of wanted to
6 move it also is because I didn't want it to be finished,
7 torn up. And I knew that somebody was gonna come there
8 and just smash it.

9 Q Smash it?

10 A Yeah.

11 Q Just come around the corner?

12 A Yeah.

13 Q Did you move it out of the parking lot into the bushes
14 or did you ---

15 A No.

16 Q It stayed in the parking lot but just out of your way?

17 A Out of the main, like I say, you have the parking lines
18 here.

19 Q Right.

20 A I kind of moved it kind of just, it's still in the
21 parking lot but out of the main drive, the main entry.

22 Q I understand. So if we look at 16 you would have moved
23 it within the lines of the ---

24 A The parking space.

25 Q Where the people was parked instead of where people

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1 drive?

2 A Drive.

3 Q Got you, got you. And that took -- I mean, there's a

4 lot of photographs here. I haven't -- I think there are

5 10 or 15 or 20 or more but are we talking about a lot of

6 equipment? I mean, speakers and, let me see. Speakers

7 and -- I don't know much about stereo equipment but.

8 Maybe sub-woofers and maybe a receiver or something. I'm

9 not really sure but. Was it -- how long did it take you

10 to move all that out of the way? You said it was kind of

11 strewn or lined up and you were -- you weren't picking it

12 up. You were sliding it with your feet the whole time.

13 A Yes.

14 Q How long did that take you?

15 A I wasn't keeping, I mean, track of time. I mean, it

16 wasn't that long. I mean, just --

17 Q Couple of minutes?

18 A Yeah, about -- about a few minutes, just --

19 Q Less than five?

20 A Yeah, just to slide it over.

21 Q And during the process that's when Mr. Pennell

22 approached you?

23 A Yes.

24 Q While you were moving it with your feet?

25 A Uh-huh.

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1 Q And is that a yes?

2 A Oh, yes, sir, I'm sorry.

3 Q That's okay, I forget too. And then he sort of accused
4 you of kicking his stuff I believe was your testimony.

5 A Yeah.

6 Q But you weren't doing that?

7 A No.

8 Q You were just sliding it, okay. Thank you. And at
9 that time he asked you for a ride.

10 A Yes.

11 Q To Timmons ville.

12 A Yes. Yes, sir, I'm sorry.

13 Q Okay. Now in your statement you told the police, "I
14 saw and heard this man approaching me. He asked me if I
15 would take him to take his stuff somewhere for
16 20-dollars." I mean, I don't consider that a big
17 difference but he said Timmons ville ---

18 A Yes.

19 Q ---at the scene, but two days later you just put
20 somewhere ---

21 A Yeah.

22 Q ---on your statement; is that right?

23 A Yes.

24 Q For 20-dollars; is that right?

25 A Yes.

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1 Q And you refused to do that; is that correct?

2 A Yes.

3 Q And that's probably the right thing to do. I don't
4 know that anybody would challenge that, to refuse a ride
5 to a stranger. That's a smart thing to do. That's what
6 we teach our children; isn't it?

7 A Yes, yes.

8 Q Okay. So he was upset at being turned down about not
9 getting the ride, is that fair to say? He wasn't happy.

10 A Yeah.

11 Q And you were looking for some words earlier. I think
12 you said vulgar at one point. Were you trying to say
13 maybe he was agitated. I like to use that word agitated
14 'cause I see a lot of agitation in my profession. But do
15 you think he was agitated and upset?

16 A I understand a person being reasonably agitated or
17 disappointed.

18 Q Uh-huh.

19 A But this was, I mean, this was a little more than just
20 agitated.

21 Q Did he appear to be drinking or had he appeared to have
22 been drinking, not drinking at the time but unless he was.
23 But did he appear to be intoxicated?

24 A No, because he -- he wasn't -- he wasn't staggering. I
25 mean, you know, he walked straight.

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1 Q Okay.

2 A So I mean...

3 Q Okay. Did you smell the odor of alcoholic beverage
4 upon him? I mean, you -- I saw Mr. Jepertinger
5 practically towering over you a moment ago, and I would
6 assume that if someone were drinking and were that close
7 you would be able to smell the odor of alcohol on him?

8 A Well, but there's one problem I have. It's sinusitis
9 and certain times I can't, you know, I can't really smell
10 if it's, you know.

11 Q But so the answer to the question is, no, you did not
12 smell alcohol?

13 A Yeah, I don't remember smelling alcohol.

14 Q Okay, all right. So you refused to give him a ride.
15 He became more than agitated. Is that fair?

16 A Yes.

17 Q He told you to -- he said some vulgar things to you?

18 A Yes.

19 Q Is that right?

20 A Yes.

21 Q And at that point when all that was going on you were
22 still outside of your car, your -- was it Blazer, gold --
23 no, excuse me gold Ford Explorer. You're still outside
24 your Explorer when y'all were having this confrontation or
25 y'all were having this disagreement or he was being mean

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1 to you?

2 A Yeah, I'd been getting in my car.

3 Q So you were just -- I've had enough of this, I'm going
4 back to my car.

5 A Yeah, and that -- I run out the back side. I mean,
6 it's pretty dark around there, yeah.

7 Q Right, okay. But you were going to park back there;
8 weren't you?

9 A No.

10 Q You were going to park in the front?

11 A Yes.

12 Q Okay, okay. All right. So you'd had enough of that.
13 So had you finished moving the stereo equipment as far as
14 you wanted to, or were they still stuff laying in the way
15 or?

16 A It was enough for me to get my vehicle through.

17 Q So you were getting back in your car and your car was
18 still on?

19 A Yes, sir.

20 Q Keys were in the ignition?

21 A Yes.

22 Q Okay. Was the door open during this whole time? Was
23 it closed? In other words, when you got out to clean the
24 stuff up did you close the door or did you leave it open?

25 A During that time my door was -- I believe it was

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1 partially open.

2 Q Partially open?

3 A Yeah. But ---

4 Q And so -- I'm sorry, did you finish?

5 A During that time he wasn't right at me, I mean, yeah.

6 Q So you went back to your car and the door was partially
7 open and you were preparing to get in the car when he
8 approached you closer?

9 A Actually, I drove my car like, like I said earlier,
10 around the front.

11 Q I'm sorry, I didn't write that down. So, okay, so
12 after all of this you said enough of this, I'm gonna get
13 back in my car. So you got back in your car and you
14 didn't leave the video store, you pulled around the front?

15 A Front, yeah.

16 Q And you parked in a parking spot.

17 A Uh-huh.

18 Q Is that a yes?

19 A Yes, I'm sorry.

20 Q And you -- just follow me, I'm just trying to
21 understand. Okay, you cut your car off?

22 A Yes.

23 Q You put it in park; you cut it off?

24 A Yes.

25 Q You pulled your keys out the ignition. You don't want

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- 1 to leave the keys in the car.
- 2 A I hadn't got in that far yet.
- 3 Q The car was ---
- 4 A Yeah, I was still in my car.
- 5 Q In your car, okay. The car was off.
- 6 A Uh-huh.
- 7 Q Yes.
- 8 A Yes, yes.
- 9 Q You were opening your door.
- 10 A Yes.
- 11 Q You were getting out?
- 12 A Yes.
- 13 Q You were out?
- 14 A No.
- 15 Q You weren't out?
- 16 A No.
- 17 Q Where were you?
- 18 A I was in the process of waiting on how you -- how you
- 19 turning around to get out of your car.
- 20 Q Uh-huh.
- 21 A And that's when he, he was in my doorway.
- 22 Q He was in your door. Your door was open?
- 23 A It was partially open, but he finished opening it and
- 24 got in my doorway.
- 25 Q So he opened your door for you?

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1 A Finished, yes.

2 Q But you were opening it?

3 A Yes.

4 Q And he grabbed the handle and opened it the rest of the
5 way.

6 A Just the actual, the edge of the door.

7 Q The edge of the door?

8 A Yeah.

9 Q Okay. Now do you remember telling the police officer
10 that -- do you remember telling Officer Robinson that
11 after you parked your car and you were in the process of
12 getting out you were standing on the outside of your car
13 when Mr. Pennell approached you that second time?

14 A I'm not sure. But I remember as I was turning to get
15 out of my vehicle, my vehicle, I'm not sure if I had my
16 foot down on, I mean, it's been a while. But I was
17 getting out of my vehicle, and that's when he got in my
18 doorway.

19 Q All right. So you're saying it's been a while. It's
20 been, let's see, May, June, July, August, September,
21 October. It's been 17 months.

22 A Uh-huh.

23 Q More or less?

24 A Yeah.

25 Q Right? Okay. Now so you feel like your recollection

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1 of these events is better on the day it happened and two
2 days later than they are 17 months later?

3 A I can't tell you exactly where my feet were, but I can
4 tell you that I was in my doorway.

5 Q All right. You were in ---

6 A Yeah.

7 Q I think we're getting into semantics here, but I really
8 -- it's very important for me to know your exact body
9 position.

10 A Yes.

11 Q And it's very important for this jury to know your
12 exact body position at the time you claim Mr. Pennell
13 approached you the second time.

14 A Yes.

15 Q Okay. So think very hard. Where were you -- where was
16 your body when Mr. Pennell approached you the second time
17 after you had pulled up to the front of the store, you had
18 put the car in park, you had turned the car off, but yet
19 you say your keys were still in ignition? Where was your
20 body? Was it standing at the apex of the door as you told
21 the officer on the day this occurred, or were you still
22 sitting in the car, if you know?

23 A I'm not exactly sure, but I do know that my butt was
24 pretty much in the chair.

25 Q You were not standing?

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1 A I can't say; I'm not sure.

2 Q You're either standing or sitting, Mr. Wilson. I'm not
3 trying to beat you up; I'm just trying to understand. You
4 can't stand and sit at the same time.

5 THE COURT: He's reflected he doesn't remember.

6 MR. SUGGS: Yes, sir.

7 THE COURT: You can ask him 15 more times and I
8 don't think that he's gonna remember.

9 MR. SUGGS: All right.

10 BY MR. SUGGS:

11 Q So your answer is you don't remember if you were
12 standing or sitting?

13 A I can show you how I get out of my car.

14 Q Okay, that's helpful.

15 A Normally if I'm in my car and I'm about to get out,
16 (indicating) -- well, I'm on --

17 Q Don't fall off.

18 A Normally it's like that.

19 Q Okay.

20 A And I'm not sure exactly when is there but I remember
21 looking over and seeing.

22 Q But I -- and I'm sorry, Judge, I -- just a couple of
23 questions on that point. Please don't---

24 THE COURT: That's okay.

25 MR. SUGGS: ---be impatient with me.

1 THE COURT: When someone says they don't
2 remember and you continue to ask and they continue to say
3 I don't remember, I don't think the light is going to come
4 on.

5 MR. SUGGS: I understand, Judge. The gentleman
6 just now, if the Court will, if the court reporter will
7 reflect, was actually sitting in the chair but had his
8 feet on the ground. And you know, I don't think that's
9 possible if you're in a Blazer or an Explorer, whatever
10 car you are, sitting down and ---

11 MR. JEPERTINGER: I would object.

12 MR. SUGGS: ---your feet down on the ground at
13 the same time.

14 MR. JEPERTINGER: I object.

15 THE COURT: Now hold on. Two people can't be
16 talking at the same time. She can't take that down.

17 MR. SUGGS: All right, sir.

18 THE COURT: When you hear objection please stop
19 talking.

20 MR. SUGGS: Yes, sir.

21 THE COURT: Your objection is to his opinion.

22 MR. JEPERTINGER: That's correct.

23 THE COURT: And I sustain that.

24 MR. SUGGS: Yes, sir. All right, I'm going to
25 move on.

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1 join us please. Get them -- tell them I need them to
2 write the name of the foreperson on a piece of paper and
3 pass it to me.

4 THE BAILIFF: Will do, sir.

5 (WHEREUPON, the jury was returned to the courtroom at
6 approximately 11:48 a.m., and the following proceedings
7 commenced in open court.)

8 THE COURT: All right, Mr. McKnight, thank you
9 for your willingness to serve as the foreperson of the
10 jury, the foreman of the jury. I appreciate that. I give
11 you my either congratulations or condolences, whichever
12 you accept, but I do appreciate your willingness to do
13 that. And ladies and gentlemen, if you recall, when we
14 took the break Mr. Suggs was in the process of his
15 cross-examination and so we'll pick up with Mr. Suggs'
16 cross-examination.

17 Mr. Suggs.

18 MR. SUGGS: Thank you, Judge.

19 BY MR. SUGGS:

20 Q Mr. Wilson, again, I apologize this is taking so long.

21 A Thanks.

22 Q Thank you. One of the questions I meant to ask you and
23 I think we've already passed that stage in the
24 questioning, but I'll just go back. I just want to make
25 sure I understand why Mr. Pennell was out there that night

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1 with the stereo equipment. You -- I believe you said on
2 direct that he told you that he had had a fight with a
3 friend, a girlfriend, someone?

4 A Yeah.

5 Q And that was what your understanding why he was there
6 more or less without a car?

7 A Yeah, he said that he'd had a fight with his
8 girlfriend.

9 Q Okay, thank you. And I apologize I didn't get to that
10 before. And when we left off I think you said that you
11 really could not remember when if you were standing or
12 sitting whenever Mr. Pennell approached you the second
13 time after you had parked your car. Is that right?

14 A Yes.

15 Q That's right?

16 A Yes.

17 Q Okay, thank you. Now you said on direct that he said
18 that he would take your car; is that right?

19 A Yes.

20 Q And did he have a weapon? Did he display a weapon of
21 any kind to you?

22 A No.

23 Q Did he make an attempt to grab your keys from your hand
24 or from the ignition?

25 A No.

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- 1 Q Okay. You said he grabbed the door jamb or the handle
2 or the jamb?
- 3 A Yeah.
- 4 Q Is that right?
- 5 A Yes.
- 6 Q Okay. And he said he would take your car?
- 7 A Yes.
- 8 Q His exact words?
- 9 A He said, well, I'll take your car.
- 10 Q Take your car. Did he strike you?
- 11 A No, I mean, no, no, no.
- 12 Q Did he push at you?
- 13 A All I know is at that point after he said that I pretty
14 much by pushing -- I pushed him back.
- 15 Q You pushed him ---
- 16 A Yeah.
- 17 Q ---away?
- 18 A Yes.
- 19 Q From your car door?
- 20 A Yeah, yes.
- 21 Q Okay. Did you tell the officer at the scene, Officer
22 Robinson, that he tried to get into your car by pushing
23 and striking you?
- 24 A I said that he struck at me.
- 25 Q He did not make contact with you?

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1 A Okay. He -- from what I can re-- from what I can
2 remember, I don't remember him actually, actually hitting
3 me. I don't -- well, I didn't have any, any bruises or
4 anything on me.

5 Q You weren't injured in any way in this altercation?

6 A No. And whether he -- I mean, got in or out I don't
7 know, but all I know is at that point I pushed him back.

8 Q You pushed him away?

9 A Yeah.

10 Q He didn't get in your car?

11 A No, I was -- I was on the driver's seat.

12 Q You were standing between him and your interior of your
13 car more or less?

14 A At a point after I had got the gun I was -- then I was
15 standing there.

16 Q But you were -- the whole time though, the whole time,
17 you were positioned at some point between him and the
18 inside of your car?

19 A I was in my car the whole time, yeah.

20 Q All right. You were not standing at the apex as you
21 told the officer? And let's go -- we'll pass that. We've
22 talked about that, okay. But you had time after you
23 pushed him to reach into your -- was it a glove box or a
24 console where you retrieved your 9-millimeter automatic?

25 A It's a glove box.

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1 Q So that's in front of the passenger seat?

2 A Yeah.

3 Q I mean, most cars nowadays especially Blazers, whatnot,
4 they have consoles; don't they?

5 A Yes.

6 Q Okay. So it wasn't---

7 MR. JEPERTINGER: Your Honor, I would object.
8 He's testifying once again in terms of what Blazers are
9 and this was a Ford Explorer in this instance. I would
10 object.

11 THE COURT: Referring to SUVs but go ahead and
12 ask the question.

13 MR. SUGGS: Yes, sir, Judge.

14 BY MR. SUGGS:

15 Q He's answered the question. The gun was in the glove
16 box.

17 A Yes.

18 Q And the glove box is what we customarily never keep
19 gloves in, but it's in front of the passenger seat?

20 A Yes.

21 Q All right. Is that where the clip was also?

22 A Yes.

23 Q All right. So you had time -- so your back was
24 actually turned to Mr. Pennell ---

25 A Yes.

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1 Q ---when you had to reach into your car and get it?

2 A Yes, yes.

3 Q All right. And were you reaching across the console?

4 A Yes.

5 Q Okay. So do you remember if you were standing or
6 sitting?

7 A In order for me to get over this, I mean, I've got to
8 be pretty much -- like I said, my feet sit in the door way
9 and my hand over the glove box ---

10 Q All right. What's Mr. Pennell doing while you're
11 reaching in there and pulling your gun out of your glove
12 box, finding the clip, putting the clip in the gun, and
13 then racking it, racking I guess -- did you rack? You
14 must have racked a shot 'cause you did fire a shot?

15 A Yes.

16 Q You racked a bullet in the chamber. And when you
17 racked it were you in the car or were you outside the car?

18 A Well, there's two, two things I want to correct on
19 that.

20 Q Okay, all right.

21 A The first thing, I don't know what he was doing because
22 my mind was on getting my gun. And as I was, as I grabbed
23 my gun the clips were -- the clips were right pretty much
24 in. I believe it was -- well, I can't remember exactly
25 how it was but my clip is right there with my gun.

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1 Q In the same glove box?

2 A Yes. I mean, I don't, you know.

3 Q Okay. Well, that makes sense. So you were able to do
4 all that fairly quickly, is that what you're saying,
5 because they were there together?

6 A I mean, it's really a simple thing. I mean, you put
7 the clip in it and rack it back.

8 Q Right. Did you rack it inside the car?

9 A Yes, I did.

10 Q You did. Rack the inside -- and then at that point you
11 didn't fire the gun while you were in the car? You ---

12 A No.

13 Q ---were outside the car; is that right?

14 A Yeah.

15 Q You're not gonna---

16 A That's when I -- at that point I was outside.

17 Q There's no question about it in your mind?

18 A Yeah, yeah.

19 Q Okay. And then did you point the gun at Mr. Pennell?
20 Did you point it at him?

21 A No.

22 Q You pointed it in the air?

23 A Yes.

24 Q All right. And then you fired a shot?

25 A Yes.

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1 Q Okay. He never struck you?

2 A I don't, I don't think so, no.

3 Q Never punched you or pushed you?

4 A As I pushed him back, I mean, I -- at that point I
5 don't remember exactly everything that happened then
6 except that I pushed him back and went for my gun, yeah.

7 Q When you fired the gun in the air he backed away. Is
8 that what you wrote in your statement as far as you
9 remember?

10 A He took a step back.

11 Q Okay. And then he approached you again and is that
12 when you kicked him and knocked him down?

13 A That was after I fired my ---

14 Q Yes, sir.

15 A Yes.

16 Q Yes, sir. You fired the weapon.

17 A Uh-huh.

18 Q He backed off. He came close to you again, all this
19 outside of the car, and that's when you kicked him and
20 knocked him down?

21 A Okay. He said -- at that point he's -- he came back,
22 back towards me.

23 Q Yes, sir.

24 A And said shoot me.

25 Q Okay. Okay.

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1 A And during this time I'm still in my doorway and that
2 that's, like I said, I decided at that point to ---

3 Q This is after you'd fired the gun?

4 A Yes.

5 Q Fired the gun while you were on the outside of the car
6 though; is that right?

7 A Outside of the car in my doorway, yes.

8 Q Okay. And then, then he approached you and that's when
9 you kicked him and knocked him down?

10 A Yes.

11 Q And you still have the gun in your hand at the time.

12 A No, I put the gun back.

13 Q You put the gun back in the car?

14 A Yes.

15 Q Okay. Did you put it back in the glove box?

16 A No, I just put it over on -- I put it on the other seat
17 'cause my -- at that the point my mind was on taking care
18 of my -- of taking care of myself without shooting him.
19 That was it.

20 Q You felt like you could defend yourself adequately
21 enough without the use of a firearm. Is that safe to say?

22 A I felt that at that point I really didn't have another
23 choice.

24 Q You didn't want to shoot the man.

25 A No.

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1 Q Okay. And we appreciate that. But you were able to
2 kick him and knock him down without further use of any
3 lethal instrumentalities?

4 A Yeah.

5 Q Okay, all right. And he did fall to the ground?

6 A Yes.

7 Q And when he was on the ground did you continue to hit
8 him to insure that he would not again get up and accost
9 you?

10 A There was about three, I mean, there was a kick in the
11 stomach.

12 Q Kick in the stomach.

13 A A punch, and then and I -- and as he was, I guess,
14 going down or whatever, I gave him another kick.

15 Q Okay. So you kicked him and then he fell down and then
16 when he was sort of maybe on his knees, maybe you were
17 afraid that he would get back up, you kicked him again or
18 you punched him again. I'm not blaming you for anything;
19 I'm just trying understand the sequence of events. Is
20 that okay? Does that sound right?

21 A Yeah.

22 Q Okay. So after he was laying on the pavement I would
23 guess, then you -- you didn't have the gun with you; the
24 gun was already back in the car.

25 A Yes.

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1 Q Okay. And you didn't have any other weapons of any
2 kind.

3 A Huh-uh.

4 Q Brass knuckles or dirks or knife.

5 A Huh-uh.

6 Q So you got back in your car and you left.

7 A Yes.

8 Q All right. You didn't want to go get your video at
9 that time. You felt like this was, I need to get out of
10 here.

11 A Yeah.

12 Q Okay. So you left the scene; is that correct?

13 A Yes.

14 Q Okay. And you went home?

15 A Yes.

16 Q Did you have a cell phone with you at the time?

17 A I think I did; I'm not sure.

18 Q Did you call home on your way home? Did you call the
19 police on your way home? Did you call the video store on
20 your way home the first time?

21 A I don't think so.

22 Q Okay. Talk to anybody?

23 A I talked to my wife and my dad.

24 Q On the phone or at home?

25 A At home.

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1 Q So didn't take you long to get home. You're living
2 right on Aiken so we're not talking five or six minutes,
3 right?

4 A Yeah.

5 Q So you just went straight home, didn't make any stops?

6 A Yes, yeah.

7 Q Went home, told your wife and your dad what had
8 happened?

9 A Yeah.

10 Q Is that right? Stayed home for just long enough to
11 tell them?

12 A Now that's when I was in the middle of getting into the
13 other vehicle.

14 Q I'm sorry?

15 A Okay. As I was talking to my wife, I mean, I'm -- I
16 was preparing to get in the other vehicle. I mean, there
17 was no long conversation or nothing.

18 Q So you were talking to her while you were in the
19 process of switching vehicles?

20 A Yes.

21 Q All right. So you got into -- you were in a gold Ford
22 Explorer initially?

23 A Yes.

24 Q And that belongs to you or your wife?

25 A Both of ---

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1 Q Both of you?

2 A Uh-huh.

3 Q And then you left and went home and I'm -- and I'm a
4 little confused now because there was a change on the
5 indictment to indicate that you came back in a black Chevy
6 Blazer but you testified on direct that you came back in a
7 Ford Expedition.

8 A Yeah, the black --

9 Q Did I mishear that?

10 A No.

11 Q Okay. Was it a black Expedition?

12 A Yes.

13 Q Okay. Well, maybe that's the confusion. All right.
14 So you switch cars and you came back in the Expedition.

15 A Uh-huh.

16 Q Is that right?

17 A Yes.

18 Q Okay. Could you tell me why, and I usually don't ask
19 why questions too much, but why did you switch your car?

20 A The main thing, as I said earlier, I didn't think he,
21 he'd recognize the black truck.

22 Q So you did it as a precaution?

23 A Precaution, yes.

24 Q Just in case he was still there?

25 A Yes.

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1 Q And you didn't want him to recognize the gold vehicle?

2 A Yes.

3 Q All right. That begs the question again, why did you
4 go back?

5 A Well, one of the things is the people in the store,
6 they needed to know what was going on.

7 Q Sure.

8 A I mean, one thing is those that was in there and that's
9 not the only reason. One thing was those girls in there,
10 they needed to know what was going on. I mean, I'm a
11 regular customer.

12 Q Sure.

13 A And the other thing was they don't need to think that
14 there's somebody out there back there shooting, you know.
15 I wanted to let them know that, you know, what happened
16 back there.

17 Q Couldn't have done that by calling them on the phone
18 like you did the third time?

19 A Well, I really didn't think at that time to.

20 Q Well, you switch cars ---

21 A Uh-huh.

22 Q ---and went back. You weren't -- you obviously weren't
23 afraid of being carjacked if you went back the second
24 time.

25 A Yes.

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1 Q Is that right?

2 A I was a lot less afraid, I mean.

3 Q Less afraid.

4 A Yeah.

5 Q You felt like you had handled this man pretty well, and
6 if you were there more the same you would dish out?

7 A Not really. I just felt like from where I parked there
8 to the door, you know, I felt like, you know, I could get
9 there, talk to them. I mean, and that would have been it.
10 I mean, I didn't really think that we'd, you know.

11 Q Were -- when you went back the second time did you have
12 your gun then?

13 A No.

14 Q It was still in the gold Blazer?

15 A Yeah.

16 Q You left it the Blazer?

17 A Yeah.

18 Q You didn't take the weapon back with you of any kind?

19 A Huh-uh.

20 Q Were you still going to get your movie?

21 A No. I wanted to talk to the girls down that were in
22 the Blockbuster.

23 Q They wouldn't let you in?

24 A No.

25 Q They had the door locked.

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1 A Yes.

2 Q Had they let you in you would have told them what had
3 happened?

4 A Yes.

5 Q And maybe would have gotten your movie anyway?

6 A Well ---

7 MR. JEPERTINGER: Objection, Your Honor. I think
8 that's been asked. I mean, he keeps saying I'm not going
9 to get a movie. He just asked and answered about the
10 video.

11 MR. SUGGS: I think that's just a state of mind,
12 I believe Judge, you know, what, how he was feeling at the
13 time.

14 THE COURT: Overruled.

15 BY MR. SUGGS:

16 Q You'd still gotten the movie if you had the
17 opportunity, just out of my own edification.

18 A At that point, I mean, the movie was out of mind.

19 Q Last thing on your mind?

20 A Yeah, I mean, because when I went in I wanted to find
21 movies to enjoy myself.

22 Q Sure.

23 A At that point, I mean, getting a movie, I mean.

24 Q Okay. So the answer to that question would be no.

25 A No.

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1 Q Okay. So -- you didn't call the police either on your
2 way home the first time or on your way back to let them
3 know that you had fired a weapon in city limits?

4 A No.

5 Q Were you charged with firing a weapon in city limits?
6 Did police charge you with that offense at all?

7 A I'm not sure, I mean, that's -- no.

8 Q No?

9 A Not that I know of. I'm not sure.

10 Q You didn't have to go to court.

11 A No.

12 Q There was some information provided to me that the gold
13 Explorer didn't have a license tag. Would that be a
14 reason why you switched cars or not?

15 A No, they both should have had tags on them unless --
16 I'm not sure. I'm not sure.

17 Q All right. So you went back a second time. And tell
18 me, if you can, how much time passed between the time you
19 left the video store the first time after the first
20 encounter with Mr. Pennell before you came back in the
21 other, in the Expedition. How much time do you think had
22 passed, from parking lot to parking lot?

23 A I'd imagine just the time it takes to leave there and
24 go home and come back maybe.

25 Q 10, 12 minutes?

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- 1 A Maybe around there. I'm not sure.
- 2 Q Okay, just a guess. Close enough?
- 3 A Maybe, yeah, I'm not sure.
- 4 Q No longer than 15?
- 5 A Shouldn't be.
- 6 Q Okay, thank you. And when you pulled into the parking
- 7 lot the second time did you come in from the same
- 8 direction you did before, around the back, around the side
- 9 to the front?
- 10 A No, no, I don't think so, no.
- 11 Q Okay. Came in from the front?
- 12 A Yes.
- 13 Q From Palmetto Street?
- 14 A I believe I did.
- 15 Q All right. And then you pulled into the parking lot,
- 16 and at what point did you see Mr. Pennell? Did you see
- 17 him before you parked or after you parked?
- 18 A After, after I parked.
- 19 Q So when you pulled in you didn't see him?
- 20 A No.
- 21 Q You -- that's a no?
- 22 A Oh, no. No.
- 23 Q Didn't see him?
- 24 A No.
- 25 Q So you assume, I guess, that he had already gone?

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1 A Yes.

2 Q Okay. So you pulled in and you parked your car in the
3 front of the video store?

4 A Yes.

5 Q Okay. You put the car in park?

6 A Yes.

7 Q And you cut off the ignition?

8 A Yes.

9 Q You got out of the car?

10 A Yes.

11 Q You closed the car door?

12 A Yes.

13 Q Did you lock it?

14 A I believe I did.

15 Q Okay.

16 A Yeah.

17 Q So you're walking to the front of the video store to go
18 in with keys in your hand.

19 A My keys were in my pocket.

20 Q In your pocket, keys on you. And that's when
21 Mr. Pennell approached you again?

22 A Yes.

23 Q All right. And from which side did he come from? Did
24 he come from the back of the store, or was he in the front
25 of the store or you just didn't see him? From which

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1 direction, do you know?

2 A All I know is when I looked back over he was -- as I'm
3 walking in the front where he's over here.

4 Q As you're walking in he's on -- you're walking in like
5 I'm walking to the front of the store, he's on your left
6 or your right?

7 A He's on my left.

8 Q So he's on the Naturally Outdoors side?

9 A Yes.

10 Q Same side where the stereo equipment was, that you
11 moved?

12 A Yes.

13 Q All right. And he approached you again?

14 A Yes.

15 Q Okay. And did he strike you or push you or assault you
16 in any way? Did you automatically just not wait for
17 anything and just hit him? How, how did that go?

18 A He came towards me again.

19 Q Came towards you again. And you didn't want to ---

20 A Yeah.

21 Q I'm sorry, I'm sorry.

22 A Yeah, yeah, he came towards me.

23 Q Okay. Did you have anything in your hands?

24 A Not that I can remember, no.

25 Q Okay. And so you told him not to do it again.

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- 1 A Yeah, yes, sir.
- 2 Q And that's when -- was he approaching you?
- 3 A Yes.
- 4 Q He was, okay. And so you kicked him as he, as he came
- 5 towards you?
- 6 A Yes.
- 7 Q Did he try to punch you or push you or hit you?
- 8 A Yes. I met him -- my foot's the longest thing on me.
- 9 That's what I got on him so.
- 10 Q Okay. Did he strike at you or did you just kick him?
- 11 A He, he pretty much just like he did -- pretty much he
- 12 was ---
- 13 Q Was he crowding you, I guess that's the word I hear a
- 14 lot. Where someone doesn't push you or someone doesn't
- 15 punch you, but they kind of aggressively come towards you?
- 16 A No. His fists were like that.
- 17 Q Just like this. Did he swing at you, did he come at
- 18 you like this and you swing and pow, kicked him?
- 19 A No, he actually was, was in the middle of a punch.
- 20 Q Okay, all right. So you kicked him and in the stomach.
- 21 A Yes.
- 22 Q And knocked him down?
- 23 A Yes.
- 24 Q And he went down?
- 25 A Yes.

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1 Q And he's on the ground?

2 A Yes.

3 Q On the ground. And then are you trying to get into the
4 store at that time or were you trying to get in the store
5 before you had to kick him?

6 A Like I -- before I was headed towards the door.

7 Q To the door?

8 A And then I saw him that's when I -- that's when the
9 part that we just talked about happened.

10 Q That you kicked him?

11 A After that I went towards the store and tried to pull
12 the door.

13 Q So you had not gotten to the door yet --

14 A No.

15 Q --whenever you kicked him?

16 A No.

17 Q So after he was laying -- you kicked him, he was laid
18 out, you're going to the door to check to see if it's
19 open?

20 A And there were two things with him being laid out he
21 wasn't lay -- he never stayed down there.

22 Q Okay.

23 A I mean, he was --

24 Q You kicked him and he didn't go down?

25 A I mean, he went down but he got back up and went off.

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1 Q Okay. All right, so I understand now. You kicked him.

2 You're out the car. You're walking towards the door.

3 A Yes.

4 Q He comes from the same direction his stereo stuff is.

5 A I imagine. I mean, that's the side he came, when I saw
6 him he came from.

7 Q You told him not to do it again.

8 A Yeah.

9 Q You turned to him and said, don't do it again. Then he
10 comes at you like this and he tries to swing at you, you
11 kick him.

12 A Uh-huh.

13 Q He goes down. He gets back up. He starts walking
14 away, and you go to the store to see if it's unlocked or
15 to let those people know what had happened. Is that an
16 accurate sequence of events? Did I leave out anything
17 that's important?

18 A Except there's a little bit -- except, as I said, when
19 I pulled up and when I saw him I said, you know, don't do
20 that again, you know, and in a warning voice.

21 Q Right.

22 A And that's when he still came towards me.

23 Q Right.

24 A And we went through what you just said.

25 Q You kicked him?

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1 A Yeah. And I mean, he -- he was aggressive towards me
2 the whole time. I mean, it wasn't -- I heard the way you
3 said it and it was kind of sarcastic kind of thing.

4 Q I didn't mean it that way, I'm sorry. I'm just trying
5 to understand the order of events. It'd be better if you
6 tell me exactly, that would be fine. I'm just trying to
7 save time. So he -- you kicked him and knocked him down
8 and then he kind of got up and walked off?

9 A He got up at that point and said I was just playing,
10 man?

11 Q He said he was just playing.

12 A Yeah.

13 Q And he didn't try -- he didn't threaten you at that
14 time, I'm gonna take your car?

15 A No.

16 Q Okay. And he didn't go for your car at that time or
17 try get your keys that were in your pocket. Anything like
18 that? Did he?

19 A No.

20 Q Okay. You just kicked him. He went on his way and you
21 went to see if the door was unlocked and kind of that's
22 the end of it as far as you're concerned.

23 A I met his punch with a kick.

24 Q Okay, yes, sir. Thank you. All right. You couldn't
25 get in, the store was either closed either after 11 or

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1 they weren't about to let anybody in which is probably a
2 good idea; don't you think?

3 A Yeah.

4 Q Okay. But you're a regular customer; aren't you?

5 A Yes.

6 Q You go there a lot?

7 A Yes.

8 Q And those folks in there know you; is that right?

9 A Yes.

10 Q Okay. And you know them?

11 A Yes.

12 Q And the fact there was two girls working there that
13 night?

14 A Two in the front, yes.

15 Q Do you know -- do you know who they are?

16 A I don't know them personally but I know their faces.

17 Q Okay. And you've talked to them before; is that right?

18 A Yes.

19 Q One's name is Julia Cribb; is that right?

20 A I imagine so, yeah.

21 Q I mean, if you know. If you don't know that's fine.

22 A Yeah.

23 Q Do you know her as Julia?

24 A Naw, no.

25 Q Or Ms. Cribb?

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1 A No.

2 Q You don't, okay. How about Vontravia Miller?

3 A No.

4 Q Don't know them.

5 A Not, not for —

6 Q You know the faces maybe?

7 A Yeah, faces.

8 Q Okay. And did you have chance to talk with any of
9 those girls that second time before you left again? You
10 tried open the door and they were like, you can't come in,
11 or, I mean, was it something like that?

12 A They just didn't open the door.

13 Q Could you see them in the store?

14 A Yeah, yeah.

15 Q You could?

16 A Yeah.

17 Q Could they see you as far as you knew?

18 A Yes, but the understanding that I can get from them is
19 they didn't know if I was running from somebody 'cause I'm
20 moving towards the door pretty fast. And from my
21 understanding is maybe they didn't want to let someone
22 else in there with me. I mean, 'cause I go in there on a
23 regular basis.

24 Q They know your face.

25 A Yeah.

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- 1 Q And you know their faces?
- 2 A Yes.
- 3 Q But they wouldn't let you in?
- 4 A Yes, sir.
- 5 Q Okay. Did you try to holler at them through the door?
- 6 A Not that I remember.
- 7 Q Did they holler at you?
- 8 A It wouldn't seem reasonable for them to do that, no.
- 9 Q Well, I'm thinking there was a gunshot in the parking
- 10 not more than 15 minutes before.
- 11 A Yeah.
- 12 Q I'm just trying to identify what, if you saw anything
- 13 about these girls that you could tell us.
- 14 A Except there was in -- just in front of the store they
- 15 looked scared, that's all.
- 16 Q Were there any customers in the store that you could
- 17 see?
- 18 A Not that I remember, no.
- 19 Q Any cars in the parking lot?
- 20 A Not that I remember.
- 21 Q Kind of there isolated; wasn't it? Not too many people
- 22 there?
- 23 A Yeah.
- 24 Q You, Mr. Pennell, couple of clerks.
- 25 A Yeah.

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1 Q All right. Just a couple more questions. Did you ever
2 strike Mr. Pennell in the face or just the stomach?

3 A Like I said, the first time after I kicked him in the
4 stomach. I hit him somewhere towards here.

5 Q Was he bleeding at any time?

6 A I'm not sure. I mean, I've heard but at that time I
7 didn't...

8 Q Okay.

9 A Didn't recognize at that time?

10 Q Okay. So you got back in your black Expedition and you
11 went back home?

12 A The gold Explorer.

13 Q Well, I'm talking the second time.

14 A Second time.

15 Q The Explorer was the first time.

16 A Yes, yes.

17 Q All right. The second time was the black Expedition?

18 A Yes, sir.

19 Q All right. And you got back in your Expedition and you
20 left?

21 A Yes.

22 Q And you went home?

23 A Uh-huh.

24 Q Yes?

25 A Yes, after they wouldn't open the door.

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1 Q Sure. Okay, and you went straight home?

2 A Uh-huh.

3 Q Yes?

4 A Yes, yes.

5 Q And when you got home you -- at that point you called
6 the video store?

7 A Yes.

8 Q Now you called them first. You didn't call the police.

9 A Yes. I called the video store.

10 Q You didn't call 9-1-1. You called the video store?

11 A Yes.

12 Q Hollywood Video?

13 A Yes.

14 Q And you talked to a clerk there?

15 A Yes.

16 Q And she gave the phone obviously to one of the officers
17 who were already there?

18 A I believe so.

19 Q Does that sound reasonable?

20 A Yeah, I think so, yeah.

21 Q And you called from your home phone or your cell phone?

22 A Honestly I don't remember. It was -- I don't know
23 which phone I called from.

24 Q And what you told the officer on the phone was the same
25 thing that you told them at the scene?

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- 1 A Yes.
- 2 Q Maybe more ---
- 3 A Yes.
- 4 Q ---elaborate at the scene where you had more time?
- 5 A The same thing.
- 6 Q Okay. And then the officer told you, well, you need to
- 7 come back down here; is that right?
- 8 A Yeah, he said he ---
- 9 Q He or she?
- 10 A I believe it was he. I'm not sure.
- 11 Q Okay. And so you got back in your Expedition?
- 12 A Yes.
- 13 Q Or Explorer?
- 14 A The Expedition.
- 15 Q The black vehicle?
- 16 A Yes.
- 17 Q You went back?
- 18 A Yes.
- 19 Q Anybody go with you?
- 20 A No.
- 21 Q Wife didn't go, dad didn't go?
- 22 A No, no.
- 23 Q Okay. Take the gun with you?
- 24 A It was in the other vehicle.
- 25 Q Didn't take the gun with you?

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1 A No.

2 Q And then you talked with the officer?

3 A Yes.

4 Q And there was more than one officer there?

5 A Yes.

6 Q All right. And you talked with them for as long as you
7 felt comfortable?

8 A Well, until I had given my statement, I mean.

9 Q Okay. Did officers follow you back to your house?

10 A Yes.

11 Q That same night?

12 A Yes.

13 Q And they asked to search your home?

14 A Yes.

15 Q And you signed a consent form for your home to be
16 searched?

17 A Yes.

18 Q And they searched your home?

19 A Yes.

20 Q And did they ask you to turn over your firearm?

21 A Yes.

22 Q And did you do that?

23 A Yes.

24 Q Have you gotten it back?

25 A No.

1 Q That's all I have. Thank you, Mr. Wilson. I
2 appreciate your patience.

3 A Okay.

4 MR. JEPERTINGER: I have nothing on redirect.

5 THE COURT: Thank you, Mr. Wilson, you may step
6 down, sir.

7 Y'all come on up.

8 (WHEREUPON, counsel approached the Bench for an
9 off-the-record discussion.)

10 THE COURT: Ladies and gentlemen, it's 12:30 so
11 we're gonna -- sometimes we'll go -- usually we'll go till
12 about 1 and break, but I don't know, and I don't know if
13 this next witness would have us done by that time and I
14 don't want go too long. So we'll -- this is a good
15 breaking point. We'll break for lunch and be back --
16 let's see, it's 12:30, 1:30, ask you to be back in your
17 jury room ready to go at 2:00. Please have no
18 conversation about the case. Any time -- that instruction
19 is gonna be with you any time you're out of that jury box,
20 okay. Please have no conversation -- don't allow anyone
21 to talk to you. Enjoy your lunch and we'll see you back
22 here 2:00 please. Everyone else remain seated.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 12:30 p.m., and the following proceedings
25 commenced in open court.)

1 THE COURT: All right. Is there anything we need
2 to take up before we adjourn for lunch?

3 MR. SUGGS: No, sir.

4 MR. JEPERTINGER: Same conditions on bond
5 obviously.

6 THE COURT: Sure. I was just gonna give the --
7 is the hall clear? Do they have an elevator for them?
8 Give him a minute to let the jury get on down and then
9 we'll get started.

10 (WHEREUPON, a lunch break was taken.)

11 THE COURT: All right, let me just address
12 something.

13 Mr. Pennell.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I don't know how to stress this any
16 more than I can stress it. And I know you didn't mean
17 anything by it, but there's a danger. When you are around
18 this building you can't be hollering stuff across the
19 parking lot to people because I know you were talking to
20 Mr. Wells.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: But the problem is, there could have
23 been some of these jurors standing around, and they'd have
24 heard you and that might have hurt your case, hurt your
25 case, not hurt the State's case. That might have hurt

1 your case. Now this will be the last time I'm gonna
2 address this.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: If I hear one more report that you've
5 opened your mouth around this courthouse, I'm revoking
6 your bond.

7 THE DEFENDANT: I understand.

8 THE COURT: It's for your safety, sir.

9 THE DEFENDANT: I understand, Judge.

10 THE COURT: All right.

11 THE DEFENDANT: I didn't ---

12 THE COURT: I know you didn't mean to. I know
13 you didn't mean any harm; but the thing is, if harm was
14 done whether you meant it or not it doesn't matter, does
15 it?

16 THE DEFENDANT: No, sir, you're right.

17 THE COURT: So the way you can avoid it is just
18 don't speak to anybody. It's just for a short period of
19 time. You know, you -- maybe you're a real friendly guy
20 and you like to talk to people. But for a short period of
21 time you just need to focus on talking to Mr. Suggs and no
22 one else.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Okay.

25 MR. JEPERTINGER: Judge ---

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1 Honor. Good afternoon. Good afternoon, Mr. Suggs. The
2 State would call Detective Chase Iseman to the stand.

3 THE COURT: All right. Detective Iseman, if
4 you'd come around to be sworn, sir.

5 THE DEPUTY CLERK OF COURT: If you will, sir,
6 place your left hand on the Bible, raise your right hand.

7 WHEREUPON,

8 JONATHAN CHASE ISEMAN,
9 having been duly sworn by the Deputy Clerk of Court,
10 testified as follows:

11 THE DEPUTY CLERK OF COURT: Please be seated and
12 state your full name for the record.

13 THE WITNESS: Jonathan Chase Iseman.

14 **DIRECT EXAMINATION**

15 BY MR. JEPERTINGER:

16 Q Okay. Detective Iseman, you have not too long ago made
17 detective; is that correct?

18 A Yes, that's correct.

19 Q Okay. Prior to making detective what were your
20 responsibilities with the City Police Department?

21 A I was a patrol officer in the north region which is
22 Cherokee Road north of, all the way out the city limits.

23 Q All right. And how long have you been a patrol officer
24 with the City Police?

25 A At the time of this incident I guess about four,

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1 four-and-a-half years.

2 Q All right. Obviously you were working on May 25th,
3 2009; is that correct?

4 A That's correct.

5 Q Okay. And I'm gonna use a police term. Did you
6 receive what is called a Bolo that evening over radio
7 dispatch?

8 A Yes. I was in the area of West Palmetto Street, and I
9 heard dispatch say over the radio that there was a call at
10 Hollywood Video, that there was a fight in progress and
11 that shots had been fired, and that someone was supposedly
12 down on the ground.

13 Q All right. And did the Bolo or Be-On-The-Lookout For
14 describe the type of individual that was supposed to be
15 supposedly down on the ground?

16 A Yes. We were told it was a white male wearing a orange
17 shirt.

18 Q All right. Now the Hollywood Video, let me ask you
19 this. Hollywood Video, which county is that located in?

20 A It's in Florence County.

21 Q All right. And when you received that dispatch what --
22 where were you and where did you proceed to go?

23 A Like I said, I was on West Palmetto Street a good ways
24 away from the incident location. There were several other
25 officers going. As I neared the location some other

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1 officers had got on-scene and said that they didn't see
2 anybody in the parking lot. So at that time I just
3 started checking the surrounding area. And we were later
4 -- I was later advised over the radio one of the officers
5 said that the person was seen heading west on Palmetto
6 Street.

7 Q So did you proceed west on Palmetto Street?

8 A Yes.

9 Q Okay. And what did you -- what did you do when you
10 went west on Palmetto Street? Well, it kind of sounds
11 simplistic but what were you doing?

12 A Just riding looking for, you know, white male with an
13 orange shirt was the only description we had at the time.

14 As I was riding down Palmetto Street I observed
15 Mr. Pennell who was wearing an orange shirt. He was
16 walking through the parking lot of Naturally Outdoors.

17 Q Now just for everybody's, I guess, edification, we're
18 talking about the new Naturally Outdoors on West Palmetto
19 'cause there used to be one on Evans Street, correct?

20 A Yes, sir, that's correct, and this was at the new one
21 farther down Palmetto Street down past Bentree and Sonic
22 and Jefferies Creek, that area.

23 Q What would you say the approximate distance between
24 Hollywood Video and that new Naturally Outdoors would be?

25 A I'd say it's close to maybe a mile.

SW - J. ISEMAN - DIRECT

1 Q All right. What did you do when you saw Mr. Pennell
2 with the orange shirt on in the parking lot of Naturally
3 Outdoors?

4 A When I saw Mr. Pennell I advised the dispatch that I
5 was gonna possibly be out with the subject. As I got out
6 I told him -- he was walking towards me actually passed
7 him and pulled in the second driveway. I told him to stop
8 and he seemed real upset and amped up, and I told him to
9 stop. He kept coming so at that time with the type of
10 call and fire with shots being fired, not knowing what was
11 going on, I drew my department weapon and pointed it at
12 him and told him to get on the ground.

13 Q Was -- could you tell, had he been breathing heavily?

14 A Yeah, he, like I said, he seemed real excited. He was
15 kind of out of breath, real -- just dirty and disheveled
16 looking. He had some blood on his shirt and on his face.
17 And once I told him several times to get down on the
18 ground he finally complied and he got down on the ground.

19 Q Okay. And at that point what did you do?

20 A I handcuffed him, and once he was handcuffed I did a
21 quick check to make sure he didn't have any type of
22 weapons or anything like that on him.

23 Q Did you find any weapons on him?

24 A No, I didn't.

25 Q All right. And then what did you do?

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1 A I then was told by the officers on the scene -- I
2 relayed to them that I believe Mr. Pennell was gonna be
3 the subject involved. I put him in the back of my patrol
4 car and I drove him back down to Hollywood Video.

5 Q All right. And did you stay there or did you turn him
6 over to either Officer Provenzano or any other officer
7 there?

8 A When I first got there I stayed there initially for a
9 few moments. He was seated in the back of my car. They
10 were all busy talking to other folks at the scene and
11 contacted Investigator Robinson to come out. Once they
12 got freed up I turned Mr. Pennell over to Officer
13 Provenzano and I left shortly thereafter.

14 Q All right. Was that your only involvement in this
15 case?

16 A Yes, sir.

17 Q All right. Thank you. Please answer any questions
18 that the Defense attorney may have for you.

19 THE COURT: All right, Mr. Suggs.

20 MR. SUGGS: Yes, sir.

21 **CROSS-EXAMINATION**

22 BY MR. SUGGS:

23 Q Just a few questions, Officer. I'm sorry, I called you
24 officer. It's investigator, right? Detective ---

25 A We're still all officers.

SW - J. ISEMAN - CROSS

1 Q Okay. And you've been an investigator for how long?

2 A Close to a year now.

3 Q Year, okay. And so it was not long after this incident
4 that you were promoted?

5 A That's correct.

6 Q Okay, all right. And prior to that I think you said
7 you were a patrol officer for about four years.

8 A Yes, sir.

9 Q You'd received -- and I never heard that term before,
10 Bolo, B-O-L-O, but I know that means now Be-On-the-Lookout
11 For.

12 A Yes, sir.

13 Q I never heard that term. When you heard that, you
14 heard that shots had been fired; is that correct?

15 A Yes, sir.

16 Q Not a single shot but shots had been fired?

17 A Yes, sir.

18 Q Okay. And did you have an opportunity at any time to
19 talk to Mr. Wilson about this case?

20 A No, I didn't.

21 Q Okay. Did you even have a chance to be introduced to
22 him?

23 A I saw him over in the parking lot talking to the other
24 officers, but that was -- that was all. I never got a
25 chance to talk to him.

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1 Q Okay. So he never said anything to you during the
2 course of what -- your investigation is limited as it
3 sounds like it was?

4 A Yes, sir, that's correct.

5 Q All right. So as far as your role is concerned you
6 responded to a call, you saw Mr. Pennell at the Naturally
7 Outdoors, you arrested him, and you took him back to
8 Hollywood Video. And that's pretty much the extent of
9 your involvement?

10 A Yes, sir, that is correct.

11 Q Okay, thank you. And when you saw Mr. Pennell, he was
12 walking through the parking lot of Naturally Outdoors or
13 was he laying down?

14 A He was actually walking through the parking lot.

15 Q Did he have his belongings with him, the stereo
16 equipment, or anything else?

17 A No, sir, he didn't have any of that with him.

18 Q Wasn't carrying anything?

19 A No, sir.

20 Q And when you encountered him you -- this was probably,
21 I'm guessing, around 11:00 in the evening?

22 A I guess. It was probably somewhere around that time,
23 within a few minutes of the call coming out.

24 Q Okay. And I'm not sure of the lighting out there. Is
25 it well lit at night?

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1 A There's some lighting but not, not very well lit.

2 There is some lighting.

3 Q And you were looking for a white male with an orange
4 shirt and he fit the description as, I guess, as close as
5 could be?

6 A Yes, sir.

7 Q Okay. And so you pulled into the parking lot and you
8 got out of your patrol car?

9 A Yes, sir, that's correct.

10 Q And you addressed him at that time?

11 A Yes, sir.

12 Q And did you ask him to stop so that you could talk to
13 him?

14 A Yes, sir.

15 Q All right. And he did comply with your instructions?

16 A Yes, sir.

17 Q Did -- you said he had blood on him?

18 A Yes, sir.

19 Q Was it on his face, on his shirt, on ---

20 A He had a little bit on his face and a little bit on his
21 shirt. It wasn't a large amount, but there was blood on
22 his face and his shirt.

23 Q All right. Had you heard over the radio that there had
24 been maybe a fight or something like that?

25 A Yes, sir, we had, like I said earlier, received a call

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1 as a fight with shots fired.

2 Q All right. And so when you saw the blood did you --
3 did that re-enforce in your mind that this was the
4 gentleman you were looking for because of the possibility
5 of a fight?

6 A Yes, sir.

7 Q All right. So that strengthened your decision to talk
8 with this gentleman?

9 A Yes, sir.

10 Q All right. Now did he appear to be intoxicated?

11 A I don't recall. I don't believe.

12 Q You were a patrol officer four years?

13 A Yes, sir.

14 Q And you've probably made some DUI arrests in your time?

15 A Yes, sir, that's correct.

16 Q And so are you able to tell when someone's -- you feel
17 like you're qualified to tell someone or to tell us if a
18 person is intoxicated or not?

19 A Yes, sir.

20 Q Did you feel that he was intoxicated or do you feel he
21 had been drinking?

22 A You know, like I said, I don't feel that he was
23 extremely intoxicated, but I don't remember exactly what
24 his level of impairment would have been. You know,
25 there's testing we do for that. At the time it was, you

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1 know, getting him detained to make sure he didn't have a
2 weapon. And like I said, that was pretty much the extent.

3 I never even really got to talk with Mr. Pennell. I just
4 took him back to the other officers.

5 Q There wouldn't have been much need for testing in that
6 regard anyway ---

7 A No, sir.

8 Q ---because he wasn't driving.

9 A No, sir, that's correct.

10 Q Did you smell odor of alcoholic beverage on his person?

11 A I do not remember, sir.

12 Q Okay. Did you ask him -- you asked him to get down on
13 the ground because you were concerned about the shots
14 being fired announcement.

15 A Yes, sir.

16 Q And you didn't know if he had a weapon.

17 A Yes, sir, that's correct.

18 Q And that's proper police training; isn't it?

19 A Yes, sir, that's correct.

20 Q That's what they teach you to do?

21 A Yes, sir.

22 Q All right. So you did what you were taught to do and
23 you asked him to lay, lay down on the ground---

24 A Yes, sir.

25 Q ---with on his stomach?

SW - J. ISEMAN - CROSS

1 A Yes, sir.

2 Q With his arms and legs spread?

3 A Yes, sir.

4 Q All right. And then you approached him and you got
5 down and you patted him down for any weapons?

6 A Well, I handcuffed him first.

7 Q You handcuffed him first, okay.

8 A Yes, sir.

9 Q And did you ask him while you were handcuffing him, do
10 you have any weapons on you?

11 A Yes, sir, I did.

12 Q And he responded in a negative fashion?

13 A That's correct.

14 Q Okay. And so, but you're not going to take somebody's
15 word for you, you want to handcuff them anyway.

16 A Yes, sir, that's correct.

17 Q That's what you're trained to do?

18 A Yes, sir.

19 Q Okay. So you handcuffed him and you patted him down.
20 And did you then ask him to stand up?

21 A Yes, sir, I helped him up.

22 Q And then you checked the front 'cause it's hard to
23 check the front when you're laying down so you had to
24 check the front as well?

25 A Yes, sir.

SW - J. ISEMAN - CROSS

1 Q And no weapons?

2 A No, sir.

3 Q All right. And he was compliant with your
4 instructions; is that right?

5 A Yes, sir.

6 Q Even though I think you said he seemed to be, or did
7 you say adrenaline rush or anything like that? I can't --

8 A Kind of amped up.

9 Q Amped up, that was it.

10 A You could tell he was kind of excited and I guess, you
11 know, a little wired up but --

12 Q Maybe 'cause he'd been shot at or?

13 A That's possible.

14 Q Okay, all right. Did you ask him his name?

15 A Yes, sir.

16 Q And he told you he was Charles Pennell?

17 A Yes, sir, he told me.

18 Q And did -- were you able -- was he able to produce any
19 identification?

20 A He told me he had it in his pocket. I didn't even get
21 it out at the time. I just -- I left -- as long as he
22 didn't have any weapons I left what was in his pockets and
23 took him back to the other officers.

24 Q Okay. So he said he had it in his wallet but you
25 weren't going to go for that?

SW - J. ISEMAN - REDIRECT

1 A No, sir, I was going to let the officers handling the
2 case take care of that.

3 Q All right. And then you took him straight back to
4 Hollywood Video.

5 A Yes, sir.

6 Q And you turned him over to officer Michael Robinson?

7 A Provenzano.

8 Q Provenzano?

9 A Yes.

10 Q And then you didn't stay very long at all after that?

11 A No, sir.

12 Q You just said, well you know, here's, I think this is
13 your man, see you later.

14 A Yes, sir.

15 Q And went back on the job?

16 A Yes, sir.

17 Q Okay. That's all I have. Thank you, Officer, or
18 Detective.

19 THE COURT: Anything further?

20 **REDIRECT EXAMINATION**

21 BY MR. JEPERTINGER:

22 Q As a patrol officer you've received several calls in
23 terms of with dispatch, correct?

24 A Yes, sir, that's correct.

25 Q Is it common terminology with dispatch when they use

SW - J. PROVENZANO - DIRECT

1 the term shots fired, does that refer to anything other
2 than identification of a gun being used and not specifying
3 number of rounds fired?

4 A Yes, sir, it's correct. You know, we get a call with
5 shots fired sometimes may be one to numerous such as
6 dispatch tells us there's shots fired.

7 Q So they use the word plural shots for everything?

8 A Yes, sir, normally.

9 Q All right, thank you. That's all I have.

10 THE COURT: Thank you very much, sir. You may
11 step down.

12 MR. JEPERTINGER: Your Honor, the State will call
13 Officer Provenzano to the stand.

14 THE DEPUTY CLERK OF COURT: Be seated and state
15 your full name for the record.

16 WHEREUPON,

17 **JOSEPH PROVENZANO,**
18 having been duly sworn by the Deputy Clerk of Court,
19 testified as follows:

20 THE WITNESS: Joseph Provenzano.

21 **DIRECT EXAMINATION**

22 BY MR. JEPERTINGER:

23 Q All right. Officer Provenzano, how long have you been
24 employed with the Florence Police Department?

25 A A little over six years.

SW - J. PROVENZANO - DIRECT

1 Q And what are your duties with the Florence Police
2 Department?

3 A I'm a patrol officer and my primary duty is to patrol
4 my district and then respond to calls.

5 Q And your district would consist of?

6 A It's called Charlie District, would be the mall area,
7 Evans street, some of Evans Street, and Second Loop Road.

8 Q Okay. Back in May of 2009, specifically May 25th,
9 2009, approximately 10:30 p.m., was that part of your
10 district as well?

11 A At that time, yes.

12 Q The Hollywood Video area?

13 A Yes.

14 Q And Hollywood Video just -- was that located on West
15 Palmetto Street?

16 A West Palmetto Street.

17 Q Okay. And the general area is right across from Piggly
18 Wiggly and Redbone Alley?

19 A Yes, it's around the corner of West Palmetto and David
20 McLeod.

21 Q Okay, all right. Now when you -- how did you get to go
22 out to Hollywood Video? What was the -- did you receive a
23 dispatch?

24 A I actually received the call to respond to the
25 Hollywood Video in reference to a fight in progress and

SW - J. PROVENZANO - DIRECT

1 shots fired ---

2 Q Okay.

3 A ---and possibly a subject down in the parking lot.

4 Q And once again, you got the term shots fired?

5 A Yes, sir.

6 Q And that is what Officer Iseman said can be one to
7 numerous shots?

8 A Correct.

9 Q That's just a word they use, correct?

10 A Correct.

11 Q And so when you got there what were you expecting to
12 find?

13 A I was expecting to find somebody lying in the parking
14 lot, but when I got to the store I did not find anybody in
15 the parking lot. I notified central that nobody was in
16 the parking lot and other officer proceeded to search
17 around the surrounding areas. I was first on scene so I
18 went ahead and searched the, around the perimeter of the
19 building to see if anybody had maybe went around the back
20 around one of the sides. Proceeded to go around the left
21 side of the building and searched with my flashlight into
22 the bushes and I noticed ---

23 Q Why would you do that?

24 A Most of the people will hide in the bushes if they're
25 trying to hide from the police.

SW - J. PROVENZANO - DIRECT

1 Q Go ahead.

2 A Immediately flashed my flashlight and I noticed some
3 stereo equipment that was lying in the bushes on the left
4 side of the building. I continued my search around,
5 didn't find anybody. And at that time the other officer
6 responded, my supervisor, and we secured that stereo
7 equipment.

8 Q Let me ask you, I'm gonna show you State's Exhibit 16
9 which would be the side of the building I guess. Did you
10 find any stereo equipment -- and using Mr. Suggs' words --
11 strewn across the parking lot at that time when you
12 started searching for it?

13 A No, I did not.

14 Q And ---

15 A All of it was in the bushes.

16 Q Close to the building or away from the cam-- where the
17 camera would be?

18 A In the bushes.

19 Q In the bushes right by the building?

20 A Right by the building.

21 Q Okay. And at that point what did you do?

22 A Begin doing my investigation which consists of speaking
23 to the complainant, to the person who called in to
24 dispatch, and getting their statements.

25 Q In this case it would be the store personnel?

SW - J. PROVENZANO - DIRECT

1 A Store personnel, correct.

2 Q All right. And after you spoke with them what did you
3 do?

4 A At that time Officer Iseman notified us that he was out
5 with a subject at Naturally Outdoors, the new Naturally
6 Outdoors, that matched that description. He proceeded to
7 bring that subject back to Hollywood Video.

8 Q Okay. And that person that was brought back to
9 Hollywood Video was the defendant in this case?

10 A Correct.

11 Q All right. And what did you do once he got to
12 Hollywood Video there on West Palmetto Street?

13 A I went up to the vehicle, and I observed his demeanor.
14 He was very agitated. He was dirty looking. He was
15 just -- he was just talking out, just talking. And I
16 tried to see what was -- I noticed his shirt had a little
17 bit of blood on it. His face had a little bit of blood on
18 it. And through my investigation with talking to the
19 store employees and other investigative procedures, I
20 determined that that was the subject that was involved in
21 the altercation.

22 Q So what did you -- what did you do as a result of
23 coming to that conclusion?

24 A I immediately read him his Miranda rights.

25 Q Let's stop right then and there. You read him his

SW - J. PROVENZANO - DIRECT

1 Miranda rights. Did you read it off a piece of paper or
2 do you have a card that you read?

3 A I read it off a card.

4 Q Do you have the card with you?

5 A Yes, I do.

6 Q Can you tell the jury -- I know they've probably seen
7 it ten million times on television, but can you tell them
8 what you read him?

9 A It says suspect's Miranda warnings. It gives him his
10 opportunity to remain silent. Do you want me to read the
11 card?

12 Q Sure, go ahead.

13 A "You have the right to remain silent. Anything you say
14 can and will be used against you in a court of law. You
15 have the right to talk to an attorney, have him or her
16 present with you while you're being questioned. If you
17 cannot afford to hire an attorney one will be appointed to
18 represent you for any questioning if you want. You can
19 decide at any time to exercise these rights and not answer
20 any questions or make statements. Do you understand these
21 rights I've explained to you?"

22 Q And what was his response when you asked that question
23 to him?

24 A I asked him if he understood and he said, yes, and he
25 agreed to speak with me.

SW - J. PROVENZANO - DIRECT

1 Q Okay.

2 MR. SUGGS: Your Honor, may we approach.

3 THE COURT: Yes, sir.

4 (WHEREUPON, counsel approached the Bench for an
5 off-the-record discussion.)

6 THE COURT: We're going to take just a minute
7 here. We're not going to go anywhere. We all know we
8 must honor nature when she calls so. We'll start back in
9 just a moment.

10 (Pause.)

11 (Defendant walks into courtroom.)

12 THE COURT: All right, Mr. Jupertinger, you may
13 continue, sir.

14 MR. JEPERTINGER: Thank you, Your Honor.

15 BY MR. JEPERTINGER:

16 Q I think I just asked you if he understood the Miranda
17 rights as you had just given them to him.

18 A Yes.

19 Q And his response to you?

20 A That he understood and he agreed to speak with me.

21 Q All right, okay. Now what did he tell you happened?

22 A After a few minutes trying to calm him down, I got out
23 of him that he was walking to take some stereo equipment
24 back to Wal-Mart that he took out of his niece's car.

25 Q All right. And did he ask -- did he tell you, not ask

SW - J. PROVENZANO - DIRECT

1 you, did he tell you what he was going to do with that
2 stereo equipment that he was taking back to Wal-Mart?

3 A He just said he was taking it back to return it.

4 Q Okay. Just to jump ahead a little bit, you were
5 present when he was arrested; is that correct?

6 A Yes.

7 Q Okay. Did you ever find a receipt from Wal-Mart for
8 any of this stereo equipment on him?

9 A No, I found no receipt. He had no cash on him. The
10 only thing we had on him was some tools, some I.D., and a
11 few other odds and ends and stuff, but no receipt.

12 Q All right. And he said his niece had dropped him off
13 and not his girlfriend?

14 A He did not tell me that. He just said that he was
15 going back to Wal-Mart to return the stereo equipment.

16 Q Okay. And apparently he was not successful in that; is
17 that correct? Did you ask him about that?

18 A Yes, but he was so agitated and wired that I couldn't
19 get too much more out of him.

20 Q Okay. And at that point did he say anything else about
21 Mr. Wilson or anything that ---

22 A Only thing he said is that Mr. Wilson or -- Mr. Wilson,
23 he was walking through the parking lot to take the
24 equipment back. He said Mr. Wilson pulled up, jumped out
25 of his car, fired one shot into the air, and then that's

SW - J. PROVENZANO - DIRECT

1 when he left.

2 Q All right. Did he explain anything about how he got
3 the blood on him or any blood on his shirt?

4 A Not to me.

5 Q Okay. Did he say anything about Mr. Wilson fighting
6 him?

7 A Not to me.

8 Q All right. And you were talking to him all this time,
9 correct, and ---

10 A Yeah, I was trying to calm him down to try to get some
11 kind of statement out of him.

12 Q Okay.

13 A And that's when Investigator Robinson arrived on scene
14 and when she took over the investigation.

15 Q Okay. And would she have started talking to him at
16 that point?

17 A Yes, I went to talk to her and let her -- informed her
18 of the situation.

19 Q Okay. And did you advise her that you had given him
20 his Miranda rights?

21 A Yes, I did.

22 Q Okay. Now while she was dealing with him and taking
23 over the investigation at that point, what did you do?

24 A When the store employees said Mr. Wilson had called the
25 store so I went and spoke with Mr. Wilson over the phone.

SW - J. PROVENZANO - DIRECT

1 Mr. Wilson -- I explained to Mr. Wilson, asked him if he
2 was involved in the altercation. He said yes. I
3 immediately told him he needed to return to the store.

4 Q When ---

5 A Then he said he ---

6 Q I'm sorry to cut you off, go ahead.

7 A And he said he would do so.

8 Q When you were speaking to him over the phone what was
9 his demeanor like over the telephone?

10 A Very calm, collected. He understood what I said. I
11 understood what he said, and he said that he would
12 immediately return to the store.

13 Q And in your opinion did he immediately return to the
14 store?

15 A Yes, he did.

16 Q All right. And when he arrived to the store did you
17 have a chance to talk to Mr. Wilson?

18 A Yes, I did.

19 Q Okay. And did you observe whether Mr. Pennell saw
20 Mr. Wilson when he arrived?

21 A Yes. Mr. Pennell noticed us. Mr. Wilson arrived. And
22 that is when Mr. Wilson -- or excuse me, Mr. Pennell, he
23 got even more angry and began to curse into the -- out of
24 the vehicle to Mr. Wilson.

25 Q All right. Okay. And at that point what did you do?

SW - J. PROVENZANO - DIRECT

1 A I had to try diffuse the situation so I went over to
2 Mr. Pennell, told him to calm down. I eventually had to
3 roll up all my windows so he wouldn't be able to confront
4 Mr. Wilson anymore. I separated them and took Mr. Wilson
5 to another part around the store.

6 Q And when you say separate him was he trying to do
7 anything toward Mr. Pennell at that point?

8 A No, not Mr. Wilson, no.

9 Q Okay. And do you feel you diffused the situation at
10 that point?

11 A As much as possible.

12 Q Okay. Did you then ask Mr. Wilson about the gun
13 involved in this case?

14 A Yes, I asked him if he -- about the shot being fired.
15 He said that he was the one that shot, did the shooting.

16 Q Okay. And did he explain to you what ---

17 A He explained what happened, gave me a statement.

18 Q And do you have your incident report with you today?

19 A Yes, I do.

20 Q And this is what -- what did the victim tell you
21 occurred?

22 A I'm trying to find it. The -- this time victim
23 returned and I spoke with him. He stated that he was
24 pulling into the back entrance of the Hollywood Video and
25 he noticed something in the roadway. He stated that -- he

SW - J. PROVENZANO - DIRECT

1 stated that he got out of his vehicle and was going to
2 move it out of the way. He stated that at this time the
3 suspect approached him, asked him if he would give him --
4 if he would take him somewhere for 20-dollars. The victim
5 stated that he told the suspect no. The suspect said --
6 is it okay to read it?

7 Q Well, we're adults here but it's vulgar, I'm sorry,
8 ladies and gentlemen of the jury.

9 A Said, fuck you, mother fucker, suck my dick. The
10 victim stated that the suspect attempted to get in his
11 vehicle, and he tried to get the suspect out and that they
12 got into a scuffle. He reached into his center console
13 and held his ---

14 Q Gun?

15 A His gun in the air. He said that he was scared and you
16 don't know what the suspect had on him. The victim stated
17 that he fired one gunshot in the air. He stated that
18 he -- and the suspect said, go ahead, shoot me, end it
19 all. Victim stated that he got into his vehicle and left.

20 Q Okay. So that was what you heard from the victim on
21 that night?

22 A Yes.

23 Q And his demeanor once again?

24 A Very calm.

25 Q All right. And at that point you got the gun from him,

SW - J. PROVENZANO - CROSS

1 I mean, at his house later?

2 A At his house, yeah.

3 Q And did he offer any resistance in turning over that
4 weapon to you?

5 A No.

6 Q All right. And you -- the purpose in retrieving that
7 gun was to take it into evidence for purposes ---

8 A Yes.

9 Q ---of trial in case we needed it?

10 A Yes.

11 Q Okay. He was not charged with any crime, correct?

12 A No.

13 Q Okay. And the decision to charge Mr. Pennell with
14 carjacking in this case was something that did you discuss
15 with Investigator Robinson?

16 A Yes.

17 Q Or was that her decision?

18 A We discussed it. We decided to do that.

19 Q Okay, all right. Thank you so much. Please answer any
20 questions that the Defense attorney may have for you.

21 THE COURT: Mr. Suggs.

22 CROSS - EXAMINATION

23 BY MR. SUGGS:

24 Q Mr. Provenzano.

25 A Yes, sir.

SW - J. PROVENZANO - CROSS

1 Q Italian?

2 A Yes, sir.

3 Q Okay, me too. Not the Suggs, Alsandrania (ph), my
4 mother's maiden name.

5 A Me too.

6 Q How about that? All right. A couple of questions, I'm
7 sorry. You've been a patrolman for six years?

8 A A little over six years.

9 Q And for six years you've done this exact kind of work?

10 A Yes, sir, patrol.

11 Q Okay. So investigating events like this is common
12 place?

13 A Yes, I do the basic investigation.

14 Q Okay. It's something that you do right, you do the
15 best of your ability?

16 A Yes.

17 Q Okay. And when you -- when you investigate cases like
18 this on a daily basis you try to be as detailed as
19 possible in your reports?

20 A Yes.

21 Q Because you don't want -- you want to be, when you find
22 yourself in a situation like this, you want other people
23 to be able to rely on what your reports say?

24 A Yes.

25 Q That's fair; isn't it?

SW - J. PROVENZANO - CROSS

- 1 A Yes, sir.
- 2 Q Okay. And in this case you did exactly that?
- 3 A Best of my ability, yes, sir.
- 4 Q Okay. Didn't leave out anything important?
- 5 A Only what was told to me by statements.
- 6 Q What was told to you?
- 7 A As far as?
- 8 Q I mean, you put in everything that was told to you?
- 9 A Yes, I did.
- 10 Q That you thought was important?
- 11 A Yes.
- 12 Q Okay, okay, okay. I wanted to ask this, this question
- 13 is kind of off-the-wall question but, did -- were these
- 14 shell casings found in the parking lot?
- 15 A No, I searched the area. I did not find any.
- 16 Q So we've already established that shots being fired
- 17 could be one shot or multiple shots?
- 18 A Yes.
- 19 Q It just depends on, I guess, the vernacular. But no
- 20 shell casings were found in the parking lot?
- 21 A No, I did not find any.
- 22 Q Okay. Did you look?
- 23 A Yes.
- 24 Q Okay. I'm sorry, I wanted to make sure. And you found
- 25 the stereo equipment.

SW - J. PROVENZANO - CROSS

1 A Yes, I found the stereo equipment in the bushes.

2 Q In the bushes?

3 A In the bushes.

4 Q On the left side of the store?

5 A When you're facing the building it would be on the left
6 side.

7 Q Okay, thank you. All right. And you talked with --
8 when you got the call you immediately responded to
9 Hollywood Video; is that right?

10 A I did.

11 Q Okay. Investigator Iseman went to -- he went somewhere
12 else and then joined you later, but you were already
13 there.

14 A I was already there.

15 Q Got you, okay.

16 A That was my district. I was the first one on scene.

17 Q You were the first person on -- first officer on scene?

18 A Yes.

19 Q Okay. And when you got there, I guess, would it be
20 about 11:00 or shortly after?

21 A Roughly.

22 Q And then when you arrived there the -- there weren't
23 any customers there?

24 A No.

25 Q And the store was locked.

SW - J. PROVENZANO - CROSS

1 A The store was locked.

2 Q And there were employees still in the store?

3 A Yes, sir, there were still two employees in the store.

4 Q Two ladies?

5 A Yes, sir.

6 Q And you had a chance to talk with them?

7 A Yes.

8 Q About what they knew.

9 A Yes, sir.

10 Q And in terms of Mr. Pennell getting kicked in the
11 stomach by Mr. Wilson, that was pretty much confirmed in
12 your investigation; is that right?

13 A Yes, sir.

14 Q Okay. And nothing in your investigation indicated that
15 Mr. Pennell tried to get in to Mr. Wilson's car other than
16 what Mr. Wilson told you; is that right?

17 A Yes.

18 Q Okay. So I guess my question is, there were no
19 witnesses with regard to the allegation that Mr. Pennell
20 tried to carjack Mr. Wilson's car?

21 A No.

22 Q Is that right?

23 A That's correct.

24 Q Okay. And when you were there at the Hollywood Video
25 talking with employees you were inside the store?

SW - J. PROVENZANO - CROSS

1 A Yes, they let me in.

2 Q All right. And the call that ultimately connected you
3 to Mr. Wilson was a call placed by Mr. Wilson to the phone
4 of the Hollywood Video store? He called the video store
5 phone?

6 A I don't understand your question.

7 Q Okay. When you were talking with the employees of the,
8 of Hollywood Video?

9 A Uh-huh.

10 Q Who you say saw nothing but Mr. Pennell getting kicked.
11 You received a call. Or Hollywood Video received a call
12 from Mr. Wilson?

13 A The Hollywood Video.

14 Q Okay. But it came in through the Hollywood Video
15 telephone line?

16 A Yeah.

17 Q So he was calling the store?

18 A He was calling the store.

19 Q And one of the —

20 A Employees answered, yes.

21 Q —employees answered saying Hollywood Video, and
22 that's when Mr. Wilson —

23 A Yes.

24 Q —yada, yada, you need to talk with the police,
25 here's the — something like that?

SW - J. PROVENZANO - CROSS

1 A Yes, sir.

2 Q So they handed the phone to you?

3 A Yes, sir.

4 Q Okay, all right. And so you talked to Mr. Wilson. You
5 told him he needed to come back down?

6 A Yes, sir.

7 Q Okay. Was that your first contact with him?

8 A Yes, at the time it was.

9 Q Okay. And you had not had contact with Mr. Pennell at
10 that time yet?

11 A No, I was already spoke to Mr. Pennell earlier.

12 Q Mr. Pennell had already been brought over?

13 A Investigator Robinson was already on scene and was
14 already speaking to Mr. Pennell as well.

15 Q So you had talked to Mr. Pennell and the other officer
16 had arrived on the scene before you went inside and
17 received the phone call from Mr. Wilson?

18 A Yes.

19 Q All right, okay, very good. Thank you. You talked
20 with Mr. Wilson for how long over the telephone? Did you
21 just tell him just come down, or did he give you details
22 before he came in?

23 A No details. I asked him if he was involved in the
24 altercation. He stated, yes. And that's why I
25 immediately told him to come back to the store.

SW - J. PROVENZANO - CROSS

1 Q Did you ask him if he had fired a gun?

2 A No, not on the phone.

3 Q Okay. And he came -- he came over and you talked to
4 him in person?

5 A Yes, sir.

6 Q Did he tell you why he switched cars?

7 A No, sir, he did not tell me that.

8 Q Did you know that he had done that?

9 A Not at the time, sir. I was only going by the
10 statements of the two employees of what kind of vehicle
11 was there.

12 Q Okay. So you did not know that he had been there two
13 times?

14 A No, sir.

15 Q You were under impression he'd only been there the one
16 time?

17 A Yes, sir.

18 Q All right. And then you found out -- did you find out
19 talking with Mr. Wilson that he had been back there a
20 second time, that he had actually returned to the scene?

21 A I did not go that far. I just got my basic statement
22 from him for my report. Investigator Robinson did most of
23 the in-depth investigating.

24 Q So you had no idea that he had come back twice?

25 A No, I did not.

SW - J. PROVENZANO - CROSS

1 Q Or actually three times?

2 A No, I did not.

3 Q All right. So you would have had no reason to ask him
4 about any car switching?

5 A No, sir.

6 Q If you had known that he had been back a second time in
7 a different car would you have asked him why he did that?

8 A If I would have known I would have asked him.

9 Q Would you consider that an important question?

10 A Yes, sir.

11 Q Now when you talked to Mr. Wilson he pretty much
12 started from the beginning to tell you what happened that
13 night?

14 A The basics.

15 Q Is that right?

16 A Yes.

17 Q But obviously he didn't tell you everything but he told
18 you ---

19 A He told me ---

20 Q ---what you needed to know?

21 A Yes, sir.

22 Q All right. And he told you that Mr. Pennell approached
23 him in the parking lot and asked if he would take him
24 somewhere for 20-dollars?

25 A Yes, sir, that's what he told me.

SW - J. PROVENZANO - CROSS

1 Q He didn't mention anything about Timmons ville ---

2 A No, sir.

3 Q I might be splitting hairs, but he didn't say anything
4 about Timmons ville, did he?

5 A No, sir.

6 Q And this was after Mr. Wilson was moving the stereo
7 equipment out of the road?

8 A That Mr. -- I don't know what you ---

9 Q That Mr. Pennell approached him while ---

10 A Yes, yes.

11 Q Actually maybe while he was moving the stereo
12 equipment?

13 A He just said -- he said he was moving the stereo
14 equipment and Mr. Pennell approached him.

15 Q Okay. And asked him to give me a ride somewhere for
16 \$20.

17 A Yes, sir.

18 Q And Mr. Wilson said no?

19 A Yes.

20 Q And that's when Mr. Pennell showed his fanny and
21 started using vulgar language.

22 A Correct, that's what he told me.

23 Q All right. Now you state in -- and I'm --

24 Mr. Jepertinger said you had your report and I'm not going
25 to put that in evidence or try to do that but I just want

SW - J. PROVENZANO - CROSS

1 to talk with you about what you -- is that okay?

2 A That's fine, sir.

3 Q All right. In your report you say that Mr. Wilson
4 stated that the suspect, being Mr. Pennell, attempted to
5 get into his vehicle.

6 A That's what he told me.

7 Q Did he tell you -- and that he tried, Mr. Wilson tried
8 to get the suspect out?

9 A That's what he told me.

10 Q Did he tell you how and what way he was trying to do
11 that?

12 A He motioned like that to say he was trying to get him
13 out of my car.

14 Q Did he say that Mr. Pennell was in his car?

15 A No, he did not tell me he was in the car.

16 Q Did he say that Mr. Pennell was reaching for his car
17 keys?

18 A No.

19 Q Did he say that Mr. Pennell was reaching for his
20 steering wheel or his ignition in some way?

21 A No.

22 Q Did he say he was trying to seat himself in
23 Mr. Wilson's car --

24 A No, did not tell me that.

25 Q ---to get behind the wheel?

SW - J. PROVENZANO - CROSS

1 A No, sir.

2 Q Did he say that he -- did Mr. Wilson say he was trying
3 to strike him or punch him or in some way disarm
4 Mr. Wilson to get ---

5 A No, sir.

6 Q ---authority over his car?

7 A No, sir.

8 Q But he said he was trying to get Mr. Pennell out of his
9 car?

10 A That's what he told me, sir.

11 Q He stated, Mr. Wilson stated, they got into a scuffle.

12 A Yes, correct.

13 Q And when you say scuffle, what do you mean?

14 A Scuffle could mean you either intertwine or you
15 exchange some kind of pushing or shoving.

16 Q I mean, did he elaborate? Scuffle, is that your word
17 or is that Mr. Wilson's word?

18 A That's my word.

19 Q And that's based on what Mr. Wilson told you?

20 A Yes.

21 Q And you interpreted that as a scuffle?

22 A Yes, sir.

23 Q And what did he tell you that would make you say it was
24 a scuffle?

25 A That he fought -- got Mr. Pennell out of his vehicle.

SW - J. PROVENZANO - CROSS

1 Q Okay. And Mr. Wilson reached into his center console.

2 Is that what he told you?

3 A Yes, sir, at the time.

4 Q He told you that he got his gun from the center
5 console?

6 A That's what he told me.

7 Q Not the glove box?

8 A No, sir.

9 Q And then he, Mr. Wilson didn't tell you anything about
10 pulling out a -- what is bullets called in the --

11 magazine. And he didn't say anything about taking a
12 magazine out the console, loading it, racking it back?

13 A No, he did not tell me that.

14 Q He said he took the gun out the console and fired it in
15 the air?

16 A Yes, sir.

17 Q And did he tell you whether he was inside the car or
18 outside the car when he did that?

19 A He -- no, sir, he just said he fired one shot in the
20 air.

21 Q And was Mr. Pennell in the car at the time the gun was
22 fired, or do you know?

23 A I do not.

24 Q If he were in the car when the gun was fired that would
25 be important; wouldn't it?

SW - J. PROVENZANO - CROSS

1 A Yes, sir.

2 Q And that would be included in your report?

3 A Yes, sir.

4 Q And then Mr. Wilson said Mr. Pennell said, go ahead,
5 shoot me, end it all.

6 A Yes, sir.

7 Q And then you have the -- Mr. Wilson stated he got into
8 his vehicle and left.

9 A That's what he told me.

10 Q That's what he told you, okay. Was Mr. Wilson injured
11 in any way? Did he tell you he was injured?

12 A No.

13 Q He wasn't injured. Was Mr. Wilson arrested for firing
14 a gun in the city limits?

15 A No, sir.

16 Q But he admitted to you he had done that?

17 A Yes, sir.

18 Q He did tell you that, didn't he, that when he got home
19 that he did come back but you didn't know he'd come back
20 in a different car; is that right?

21 A No, I didn't know he came back the second time. As far
22 as my investigation led at the time ---

23 Q Well, in your report you say that Mr. Wilson stated
24 when he got home he realized that the two employees were
25 there with the suspect so he returned to Hollywood Video.

SW - J. PROVENZANO - CROSS

1 Isn't that what you had?

2 A Yes.

3 Q All right. So you did know that he'd gone back a
4 second time?

5 A Yes, sir.

6 Q You see what I'm referring to?

7 MR. JEPERTINGER: You want to show him?

8 BY MR. SUGGS:

9 Q You see where it says center console. Right in the
10 middle of the page dead in the middle center console.

11 A Yes.

12 Q Okay, I'm sorry. Go down one, two, three lines.

13 A Okay. Yes, sir.

14 Q All right so, and I know it's been -- and I'm not
15 trying to trick you or anything. I know it's been 17
16 months. But you're saying now that he did tell you that
17 he went back a second time?

18 A Yes, sir.

19 Q To the Hollywood Video. After altercation with Pennell
20 he left, went home. That's after he fired the gun he
21 left, went home, then he came back.

22 A Yes, sir.

23 Q But you don't have anything in there about switching
24 cars?

25 A No, he didn't tell me he switched cars.

SW - J. PROVENZANO - CROSS

1 Q Okay. But you know now that he came back a second
2 time.

3 A Yes, sir.

4 Q And did you question him about coming back a second
5 time in light of what had happened the first time with the
6 ---

7 A Yeah, I asked him why ---

8 Q ---altercation and the firing the gun and everything?

9 A I asked him why he left the first time. He came -- why
10 he came back he said he was for the employees' safety.

11 Q Did he say why he didn't just call there instead of ---

12 A No, he did not tell me that.

13 Q ---to ask you why -- why he didn't just call the police
14 after the gunshot?

15 A No, no.

16 Q Didn't ask him that?

17 A No, I asked him if why he didn't call the police he
18 said he just never didn't think about it.

19 Q Didn't think about it, okay. Now he came back and he
20 parked in the first handicapped parking lane. This is
21 when he came back in the other car. You see that?

22 A Yes, sir.

23 Q And Pennell began to approach him again. It's line of
24 two thou---

25 A Yes, sir.

SW - J. PROVENZANO - CROSS

1 Q And tried to fight him. He stated that he kicked him
2 in the stomach a few times and the suspect backed away.

3 A Yes, sir.

4 Q All right. And that's pretty much -- that's pretty
5 much it; isn't it?

6 A Yes, sir, as far as my investigation.

7 Q Okay. Thank you, Officer. I appreciate it.

8 MR. SUGGS: Thank you, Your Honor.

9 MR. JEPERTINGER: I think that's all I have for
10 this officer, Judge.

11 THE COURT: Thank you, sir. You may step down.

12 MR. JEPERTINGER: Your Honor, at this time the
13 State would call Investigator Michael Robinson to the
14 stand.

15 THE COURT: All right. Investigator Robinson, if
16 you'd come around to be sworn.

17 THE DEPUTY CLERK OF COURT: Place your left hand
18 on the Bible, raise your right hand.

19 WHEREUPON,

20 **MICHAEL ROBINSON,**
21 having been duly sworn by the Deputy Clerk of Court,
22 testified as follows:

23 THE DEPUTY CLERK OF COURT: Please be seated.
24 State your full name for the record.

25 THE WITNESS: Michael Robinson.

SW - M. ROBINSON - DIRECT

DIRECT EXAMINATION

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BY MR. JEPERTINGER:

Q Investigator Robinson, how long have you worked with the Florence Police Department?

A I've been employed by the city of Florence Police Department since November of 1999.

Q And did you start off as an investigator or how did you start off?

A No, sir, I started off as a patrol officer working routine patrol in the patrol division.

Q How long did you do that?

A I did that until 2002.

Q Okay. And what did you do with the City Police?

A In 2008 I was reassigned to the accreditation division where we rewrote the policy and procedures manual for the City of Florence, and I did that for approximately a year-and-a-half.

Q Okay. And since that time after finished with your accreditation process at the City of Florence what did you do?

A In 2004 I was assigned to the criminal investigations division.

Q So from 2004 to two thousand-- present, you've been an investigator?

A Yes, sir, I'm currently and have been continuously

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1 since that time.

2 Q And were you what's called the on-call investigator
3 that evening of May 25th, 2009?

4 A Yes, sir, I was.

5 Q Can you tell everybody what an -- and I know it sounds
6 kind of simple, but what an on-call investigator does as
7 opposed to just a regular investigator or...

8 A We also refer to it as a duty investigator, D-U-T-Y.
9 The duty investigator, there's always someone assigned as
10 duty that the individual will work afternoon shift from
11 3:00 in the afternoon till 11:00 at night. After 11:00 at
12 night we are allowed to go home, but we're subject to
13 call-out, and so we're called throughout the night. And
14 we'll respond when needed or when requested by the patrol
15 division, and then we report back to work at 8:30 that
16 following morning.

17 Q Okay. And this was not the first time that you were
18 the on-call investigator or duty investigator, was it?

19 A No, sir, we have on-call weekends. Usually we pull a
20 weekend once every other month and at least once a week so
21 in 2009 I had done that for many years.

22 Q Right. And the number of calls that you received in
23 terms of investigation ---

24 A Exponential.

25 Q Exponential, past the hundreds?

SW - M. ROBINSON - DIRECT

1 A Absolutely.

2 Q Okay. You were called to respond to Hollywood Video on
3 West Palmetto Street on May 25th, 2009?

4 A Yes, sir, I was.

5 Q Okay. As duty investigator?

6 A Yes, sir.

7 Q And when you got there what did you find when you
8 arrived on scene?

9 A Well, I was still working so I wasn't at home whenever
10 I received a call. But I was working and so I was out. I
11 responded from the complex. And when I arrived the --
12 Mr. Pennell was on the scene with other officers including
13 Officer Provenzano.

14 Q All right. And tell the ladies and gentlemen of the
15 jury basically when you get on a scene like that what's
16 the first thing you do?

17 A The first thing I want to do is talk to the officers.
18 That's always important. I want to speak to all officers
19 on the scene who possibly have any information. I spoke
20 with now Investigator Iseman where he located Mr. Pennell
21 and spoke to Officer Provenzano. After I speak with the
22 officers and I have the information before me, then I'll
23 speak to the complainant, who called this report in, who
24 you know, who has potential information so that's what I
25 did secondly.

SW - M. ROBINSON - DIRECT

1 Q Okay. And in this case you would have -- would you
2 have been informed by Provenzano that he had given Pennell
3 his Miranda warnings?

4 A Originally I did not because I wasn't ready to speak
5 with Mr. Pennell at the time. I was just getting, finding
6 out information, the immediate response. There was nobody
7 there when I got here. I went and spoke with the
8 employees. I had information from Officer Provenzano.
9 And then I spoke with Investigator Iseman, who at the time
10 was Officer Iseman. Informed me that he had identified
11 Mr. Pennell and located him at Naturally Outdoors and
12 brought him back to the scene. Then I went inside and
13 spoke with the two store employees.

14 Q And after speaking with them were you confident that
15 you had a possible suspect in this case?

16 A I absolutely did. Although patrol is very adequate and
17 very professional in what we do, it's always a rule of
18 thumb to follow behind so I -- basically I was verifying
19 everything that both Investigator Iseman and Officer
20 Provenzano had told me prior. At that time I felt
21 reasonably confident that Mr. Pennell was one of the
22 parties involved in their altercation. I then spoke with
23 officer...

24 Q Okay. After you speak to the, in this case the
25 Hollywood Video employees, and you have conversation with

SW - M. ROBINSON - DIRECT

1 your officers, do you inspect the area or what do you do?

2 Tell us what you do next.

3 A We did do a search of the area, but before I did a

4 search of the area I actually wanted to speak to

5 Mr. Pennell. I approached Officer Provenzano who stated,

6 you know, I had -- he was the one who offered the

7 information. I Mirandized Mr. Pennell. I read him his

8 Miranda rights, and he agreed to be questioned. And at

9 that time I think he stated he had also spoken with

10 Mr. Wilson from Hollywood Video from inside the business

11 and he had stated he was on his way back to the location.

12 I then spoke with Mr. Pennell.

13 Q Okay. And speaking to Mr. Pennell how would you

14 characterize his demeanor when you were speaking with him?

15 A Extremely aggressive in every way imaginable.

16 Unkempt. Just totally aggressive to the point that I

17 ended the interview. I could not elicit any further

18 information other than just violently screaming.

19 Q And when you say screaming was he screaming?

20 A Absolutely he was screaming.

21 Q Did -- what did -- did you stop talking to him at that

22 point or?

23 A I did because I couldn't -- it was just -- it wasn't --

24 it didn't serve a purpose at that point.

25 Q So did you move on to something else at that point?

SW - M. ROBINSON - DIRECT

1 A I did.

2 Q Okay. Tell the ladies and gentlemen of the jury what
3 you did.

4 A Well, I knew that per Officer Provenzano he had found
5 stereo equipment beside the building at Hollywood Video,
6 and so I looked behind Officer Provenzano in that area to
7 see if there was anything else, and there was none. There
8 was nothing else.

9 Q Okay.

10 A By that time Mr. Wilson had arrived on the scene.

11 Q Okay. And I think Mr. Suggs brought this up in
12 cross-examination of Officer Provenzano about shell
13 casings.

14 A Yes, sir.

15 Q Now for those individuals that don't own a gun or
16 handgun, if you have a revolver where you shoot a revolver
17 the casing remains in the gun itself.

18 A In the cylinder, yes, sir.

19 Q Okay. But on a Taurus 9-millimeter, when you shoot it
20 a shell casing, as the bullet goes out ---

21 A Ejection port.

22 Q ---a shell casing is ejected, correct?

23 A Yes, there's an ejection port.

24 Q So if a shot is fired a shell casing will be coming
25 out; is that correct?

SW - M. ROBINSON - DIRECT

1 A Yes, sir, that's correct.

2 Q All right. Now did you do a search for that shell
3 casing?

4 A Absolutely we did. After we spoke with Mr. Wilson,
5 after I had spoken with Mr. Wilson we did do a search of
6 the area. There was a brushy area. There were no shell
7 casings found in the parking lot, and we could not
8 identify any shell casings in the brushy area.

9 Q Well, I'm gonna show you State's Exhibit 19. Is that
10 what the area looked like at the time more or less in
11 terms of landscaping?

12 A Yes, sir.

13 Q All right. And is that the area, the general area,
14 that you were checking for shell casings?

15 A Yes, sir, it is.

16 Q Now if a shot is fired in front of the door you don't
17 expect that shell casing to be 90 feet away?

18 A No, sir.

19 Q Okay. It would be in the general vicinity?

20 A Yes, sir, it would.

21 Q Okay.

22 A Unless a car tire hit while leaving, things like that
23 that --- that is common, happens when a vehicle passes by
24 an area where shots have been fired. Sometimes the
25 thicker tread in the tires will pick up those casings.

SW - M. ROBINSON - DIRECT

1 It's important for scene security, but you know, it's
2 possible that a car tire would -- a tire would pick it up
3 or whether it would be in the bushes. I couldn't find it.

4 Q And it was night time?

5 A It was nighttime, yes, sir.

6 Q Did you go back the next day to look for it?

7 A I did not.

8 Q Okay. What is the reasoning to try to look for a shell
9 casing?

10 A To attempt to identify the weapon. If we don't have a
11 weapon we definitely want a shell casing.

12 Q Later that evening when you spoke with Mr. Wilson did
13 you procure a weapon?

14 A We did procure a weapon at his residence the same
15 evening.

16 Q Were you satisfied that that was the weapon after your
17 conversations with Mr. Wilson that did -- would have
18 discharged a shell casing?

19 A Yes, sir, I was satisfied.

20 Q Okay. And after you had spoken with the employees were
21 you satisfied that a shot had been fired?

22 A Yes, sir, I was.

23 Q Okay, all right. So you looked for that. You -- and
24 without success finding a shell casing, you looked at the
25 stereo equipment. What did you do then?

SW - M. ROBINSON - DIRECT

1 A Well, I had spoken to Mr. Pennell and he had made a
2 couple of statements.

3 Q You tried to speak to him again?

4 A No, sir, it was when I spoke to him the first time that
5 he made a couple of statements. There was -- we had to
6 basically, you know, get him out of the scene he was so
7 violent. He was uncontrollable.

8 Q Okay. Did he tell you anything worth ---

9 A He said that the victim had attacked him for no reason.
10 And at the time I didn't know who was the victim and who
11 was the suspect, you understand, so I was treating
12 everybody equally. He had stated that the other guy had
13 attacked him; and I can't remember, you know, what
14 language he used, but I definitely understood that it was
15 the individual who he had a confrontation with. So he was
16 the victim now. I made myself a mental report. But at
17 the time I didn't, you know, I didn't have a clear
18 understanding of everything. I wanted all the facts
19 before any decision was rendered.

20 Q What else did he tell you?

21 A He said that the victim had attacked him for no reason,
22 and he stated that his niece had dropped him off at the
23 incident location because he asked her to. He stated he
24 was returning the items to Wal-Mart when his niece decided
25 to get high. He stated he did not want to get high and so

SW - M. ROBINSON - DIRECT

1 he asked to get out of the car. And then ---

2 Q Did -- and at that point did you assume that he had
3 taken the stereo equipment with him? I mean, he got the
4 stereo equipment out of the car. Was that your
5 understanding?

6 A Yes, sir.

7 Q Okay. And did you ever find a Wal-Mart receipt in any
8 of his property or belongings when you're dealing with
9 him, or did he ever show you a Wal-Mart receipt?

10 A There was no Wal-Mart receipt in his possession or in
11 his belongings.

12 Q Did he ever make it clear to you why he wanted to be
13 dropped off at Hollywood Video of all places?

14 A Not Hollywood Video. He only indicated that his niece
15 wanted to get high, and he didn't want to so he asked her
16 to drop him off at that location.

17 Q All right. At that point -- and this was when you
18 first spoke with him, correct?

19 A Yes, sir.

20 Q And after that would you -- would that -- would it be
21 correct to say that it was unfruitful speaking with him?

22 A It was too dangerous of a situation to even roll down a
23 window or open up the back door of the police car or even
24 have any further contact. We -- there are circumstances
25 when people break out windows. And you know, Mr. Pennell

SW - M. ROBINSON - DIRECT

1 was banging on the windows or trying to stand on windows
2 and screaming, and it was an unsafe situation for anybody
3 at the scene for us to engage Mr. Pennell again.

4 Q Okay. So that was initially, then you looked and saw
5 the stereo and then looked for the shell casing. What did
6 you do then?

7 A After I spoke with the complainants, the actual people
8 who called 9-1-1, then I met with Mr. Wilson.

9 Q How did he present himself to you?

10 A He was shaking, and he was stuttering. As -- he does
11 have a speech impediment. He does have a stutter. He was
12 stuttering and shaking. I could tell he was -- he
13 appeared to me to be afraid. It was -- he was afraid.

14 Q And did he relay anything to you that evening,
15 May 25th?

16 A He did. He is the one who indicated that he was
17 pulling around the back of the business. Do you want me
18 to read to you what he told me?

19 Q Not necessarily, but I mean, did he -- was it some of
20 the same facts that were here that he elicited in court,
21 the same things he told you, correct?

22 A Throughout this investigation Mr. Wilson has always
23 appeared to be very forthcoming and very direct in his
24 statements and that has never wavered.

25 Q Now were you aware of the Ford Explorer, Expedition,

SW - M. ROBINSON - DIRECT

1 that he took two vehicles to Hollywood Video that evening?

2 A Mr. Wilson explained that to both myself and to Officer
3 Provenzano.

4 Q The officers didn't -- no one knew that till he told
5 you?

6 A Until he told us, that's correct.

7 Q Okay. And did y'all discuss the procurement of the gun
8 that had been discharged that evening?

9 A Yes, sir. While speaking with Mr. Wilson I asked him
10 where the gun was currently, and that's when he said the
11 gun was at his residence. And I asked him if we could
12 follow him to his residence to obtain the weapon and he
13 said absolutely.

14 Q And at that point did you -- you went over to his home
15 on Aiken Drive?

16 A Yes, sir, we did. We responded and followed him.
17 Actually, he drove his vehicle and we followed behind him.
18 And we entered his residence. Before we entered his
19 residence we actually gave a consent to search. It's just
20 a form that we complete. It's a fill-in-the-blank form
21 that says, you know, you voluntarily consent that the
22 residence or whatever property, vehicle, whatever, you
23 fill in the blank for it to be searched. Mr. Wilson
24 signed that form agreeing for us to go in his residence.
25 His wife was there at the time. His father was on the

SW - M. ROBINSON - DIRECT

1 phone with him at the time. And he said, you know, my
2 house is your house, go wherever you need, whatever you
3 want to do, you know, please.

4 Q Did -- when -- it's kind of been brought up in some
5 cross-examination, did you have a chance to look at both
6 vehicles?

7 A I did, yes. We went through and saw both vehicles.

8 Q Did you see any bullet holes in any of the ceilings of
9 the vehicle?

10 A No, sir, there was no bullet hole in either of his
11 vehicles.

12 Q And he freely turned the gun over to y'all?

13 A Absolutely he did.

14 Q Okay. Now at that point you spoke with him did you
15 make a determination based on your experience who the
16 aggressor was in this situation?

17 A Absolutely I did. I made that determination at the
18 scene when Mr. Pennell was charged.

19 Q And you -- why did you determine to charge him with the
20 crime of carjacking?

21 A Because when I had spoken with Mr. Wilson he had
22 indicated that initially Mr. Pennell had tried to take his
23 automobile and had said as much directly to him. It is a
24 fight that ensued. It made sense.

25 Q All right. You met with Mr. Wilson again, I believe,

SW - M. ROBINSON - DIRECT

1 two days later here at the City County Complex?

2 A Yes, sir, I did.

3 Q And what was the purpose of meeting Mr. Wilson again
4 here at the City County Complex two days after the
5 incident?

6 A I wanted to sit down with Mr. Wilson and formalize --
7 have him do a formalized statement. It's a written
8 statement. It's very common to have an employee at the
9 business as well give written statements. It's just a
10 common forum for him to express his, you know, what he
11 knows to be the events that occurred on the 25th.

12 Q Did you tell him what to write?

13 A No, sir.

14 Q Did you tell him to include absolutely everything, or
15 was it more to be a synopsis?

16 A I asked him to tell me as much as he could remember at
17 the time, you know, tell me what happened. And that's
18 what he did. When people give statements I don't help
19 them. I think it's bad business to help somebody give a
20 statement. Their impression of what the events occurred
21 needs to be what they know even when they -- it needs to
22 be information that's coming from them, and they should
23 have no guidance or assistance from any other entity.

24 Q After he wrote that statement were you still confident
25 that charging Mr. Charles Berlin Pernel with carjacking

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1 was the appropriate thing to do?

2 A Absolutely I was. Mr. Wilson's statements, he's always
3 been compelling for the truth.

4 Q All right. You also talked to the store personnel.
5 Did you have them come into your office, or did you just
6 do it at the scene?

7 A They gave statements at the scene. Sometimes we use
8 statement forms to help focus maybe witnesses who are not
9 used to being involved in incidents like this. If they
10 have pen, piece of paper in front of them and they can --
11 that's -- I use page three. It's just a blank, you know,
12 form with the Florence Police Department letterhead on
13 top, and I had both of them write statements actually at
14 the scene.

15 Q Okay. Now you met with me in this case, correct?

16 A Yes, sir.

17 Q Okay. And I believe you're the one, or you had someone
18 to take these photographs in this case, correct?

19 A Yes, sir, I did.

20 Q And it would be the photographs, I believe, 15
21 photographs of the stereo equipment, correct?

22 A Yes, sir, I took photographs of the stereo system. I
23 had a crime scene technician take photographs of the
24 Hollywood Video.

25 Q All right. Is there anything else that you have done

SW - M. ROBINSON - CROSS

1 other than provide the Solicitor's Office with copies of
2 all the documentation in this case?

3 A I can't think of anything else.

4 Q All right. Thank you very much, Investigator Robinson.
5 Please answer any questions that the defense attorney may
6 have.

7 A Thank you.

8 THE COURT: All right, Mr. Suggs.

9 CROSS - EXAMINATION

10 BY MR. SUGGS:

11 Q Hello there.

12 A Hello.

13 Q Again. How are you?

14 A I'm well, sir, thank you.

15 Q Good. Just a few questions. I know -- I've known you
16 for probably as long as you've been with the police
17 department. Next month will be ten years.

18 A Eleven.

19 Q Eleven? That's right, eleven years. And it's safe to
20 say that this is not the first time that you've appeared
21 in court to testify.

22 A No, sir, it's not.

23 Q I mean, I can tell. I mean, I know from personal
24 experience and I can tell too because of your demeanor.
25 You present very well.

SW - M. ROBINSON - CROSS

1 A Thank you.

2 Q And I know that this is part of your job; is that
3 right?

4 A Yes, sir.

5 Q And so you're expected to testify in court frequently.

6 A When needed.

7 Q When needed. And it's safe to say that you were the
8 chief investigating officer on this particular case.

9 A In our division, in our department we only have one
10 chief, and that's Anson Shells. But we are -- we refer to
11 it as lead investigator.

12 Q Okay.

13 A I was the lead investigator.

14 Q Semantics, but you're in charge of this case?

15 A You're correct, yes, sir.

16 Q Is that right?

17 A Yes, sir.

18 Q And as part of your duties as an investigating officer
19 and particularly as the lead investigating officer is to
20 prepare a written report?

21 A Absolutely.

22 Q And I'm not -- I'm sort of familiar with how that
23 works. But your subordinates, and I guess the folks that
24 they're submitting reports to you and then you do a
25 report, and all that is submitted on up, is that right, to

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1 ---

2 A When requested.

3 Q ---the chain of command---

4 A Yes, sir.

5 Q ---when needed. Is that right?

6 A Yes, sir.

7 Q Okay. And your report, I note your report is dated
8 July the 1st of 2009, clearly more than a month after the
9 incident occurred; is that right?

10 A It is dated July the 1st, 2009, yes, sir.

11 Q It says, "Date entered, slashed, changed July 1st,
12 2009." Is that right?

13 A Yes, sir, it is.

14 Q All right. So that would be the date -- it was not
15 changed in any way, it was just ---

16 A No, sir.

17 Q ---entered on that date?

18 A Yes, sir.

19 Q And I notice that the other officers' reports, Officer
20 Provenzano and officer -- I'm not sure if Iseman did a
21 report or not but -- those reports are dated much earlier?

22 A Yes, sir.

23 Q Do you review the reports of the officers that are
24 below you on a particular case before you, in fact, put
25 together your own report?

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1 A Before I write my supplemental report?

2 Q And I don't mean that in a nefarious way. I just mean
3 is it common place for you to review other officers'
4 reports before you submit yours?

5 A How I write my supplemental reports, and this is the
6 way I was trained to write my supplemental reports is I
7 walk around with a legal pad. And I walk around with a
8 legal pad usually eight hours a day. I always have a
9 legal pad on me. And whenever I pick up a case file I
10 begin with the date and I start writing notes. Any
11 cases -- at any given point I can handle 30, 40 cases in a
12 day. I made contact with this victim, I spoke with this
13 one, I set up an appointment with this suspect. In order
14 to keep them separated -- and I go through a lot of legal
15 pads -- I identify each individual person and each comment
16 on a separate sheet of paper and then I staple that to the
17 original police report. And so as I'm working a case I
18 have a timeline every day of what I did, how I did it.
19 Sometimes they're very thick depending on the type of
20 investigation and the number of days that I investigated a
21 particular incident. Sometimes they're only a page or
22 two. This particular incident I was taking notes on a
23 legal pad, and I stapled that to the back of the police
24 report and that's how I write my supplemental reports.
25 It's from the notes that I have made over a period of a

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1 couple of hours up to weeks and months. Oh, recently I
2 had a case that was investigated for four years and so I
3 had four years worth of notes that were periodically
4 writing supplemental reports. So it all depends.

5 Q Okay. When you say supplemental report are you saying
6 that you did an initial report and then you came back
7 later and did a supplemental, or are you saying that your
8 report is supplemental to the other officers' reports?

9 A Yes, sir, that's correct. My report is supplemental to
10 the officer's report.

11 Q It would be your first report, but it would be a
12 supplement to some other officer's report?

13 A To the -- we work on the case numbers and so I can look
14 up that case number and that will connect me to everything
15 written of a particular investigation. So my report is a
16 supplemental to the initial first responding officer which
17 would be your uniform patrol.

18 Q All right. And to answer my original question
19 sometimes your report does come, since it's supplemental,
20 will come after other officers' reports have been
21 submitted and reviewed?

22 A Yes, sir.

23 Q And your supplemental report which is also your
24 original report, is sort of two page report; is that
25 right? It's a page and then it's maybe a line or two up

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- 1 here. It's more like one page but it's ---
- 2 A It all depends on how much information is provided, how
- 3 much information I have.
- 4 Q I'm talking about this case.
- 5 A Oh, my supplemental report was one page, yes, sir.
- 6 Q Plus this little bit of -- well, they're both ---
- 7 A I don't think that was mine.
- 8 Q Say page one. They both say page one.
- 9 A Yes, sir, that is not my supplemental report. If
- 10 you'll look at the top it may give you a different badge
- 11 number or a different name.
- 12 Q P. Benjamin?
- 13 A Princess Benjamin is our victims advocate.
- 14 Q Okay, all right.
- 15 A And she's where I would attach any supplemental report
- 16 of any information she provided on my ---
- 17 Q Thank you for clearing that up, I'm sorry. So yours is
- 18 just one page?
- 19 A Yes, sir.
- 20 Q Okay. That narrows it down a lot, okay. All right.
- 21 I'm gonna jump around a little bit because I want to cover
- 22 everything, but I don't want to keep you too long or the
- 23 jury. In your report you were initially responding to
- 24 Hollywood Video in reference to an assault; is that right?
- 25 A Yes, sir.

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1 Q All right. Didn't have any information about any
2 alleged carjacking at that time. That was initially when
3 you responded, you were responding because of reports of
4 an assault; is that right?

5 A There was an assault type incident which could be --
6 assaults can range from an unwanted touch to an injury, to
7 a gunshot injury. An assault is an assault, and I was
8 responding to Hollywood Video for that purpose.

9 Q And when you got there Mr. Pennell was already there in
10 the back of Officer Provenzano's vehicle?

11 A Yes, he was.

12 Q All right. And you met with the officers at the scene,
13 that would have been Provenzano. Was Iseman still there
14 or?

15 A I think Investigator Iseman still was there, yes, sir.
16 He was Officer Iseman at the time.

17 Q And you also spoke with two employees of Hollywood
18 Video at the time?

19 A Yes, sir, I did.

20 Q Two females?

21 A Two female employees.

22 Q And they gave written statements concerning what they
23 saw?

24 A They did. I spoke with them and then I had them write
25 a statement and I gave them the form to write the

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1 statement with.

2 Q All right. You also state in your report that you
3 received taped statements as well. Did you get the taped
4 statements from the witnesses at Hollywood Video?

5 A If I could, the sentence before that says I first spoke
6 with the employee of the business and had them give
7 written statements concerning their observations and then
8 the statement after that says, she taped statements for
9 further. And that's merely typographical. Nowadays we --
10 it's mostly digital. We do digital statements and so
11 mostly they're auto taped; but at this point in time, they
12 were written statements and the sentence before that
13 indicates that.

14 Q All right. So there were no taped statements as your
15 report seems to allude to?

16 A Correct, there are no taped statements. We -- they
17 were written statements at the time of the incident
18 immediately, done immediately at the same evening of the
19 incident of.

20 Q I'm fine, thank you. I appreciate that. Getting right
21 to the gist of it, officer, excuse me, Investigator
22 Robinson, you spoke with -- you spoke with Mr. Wilson at
23 the video store?

24 A Yes, sir, I did. Both at the video store and his
25 residence.

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1 Q Okay. You first spoke with him at the video store?

2 A Yes, sir.

3 Q When he made the call to the video store to report this
4 you weren't present at that time, were you?

5 A I was not inside the video store. I'm not exactly sure
6 when that call was taken place, but Officer Provenzano
7 with his initial investigations was keeping me informed.
8 He then came outside and said, I have spoken with the
9 second party involved in this incident and they are on
10 their way.

11 Q But you never spoke to Mr. Wilson over the telephone?

12 A No, sir, I did not.

13 Q First time you spoke with him was when he arrived at
14 the scene?

15 A Yes, sir, it was.

16 Q All right. At that point since you were the lead
17 investigating officer did you more or less were you the
18 first one to talk to him when he arrived on the scene?
19 I'm referring to Mr. Wilson?

20 A Mr. Wilson? I think I was speaking to Mr. Pennell when
21 Mr. Wilson arrived on scene, and so I'm not sure if he had
22 communication with other officers before me.

23 Q That's fair enough.

24 A I would -- I would think that Officer Provenzano would
25 go meet with him as soon as he saw another individual pull

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1 up, especially another individual involved in the
2 altercation.

3 Q Especially since he had talked to him on the phone
4 previously?

5 A Absolutely.

6 Q That makes sense. All right, now when you talked to
7 Mr. Wilson he advised you that he pulled into the parking
8 lot and he stopped to move items which were in the middle
9 of the driveway; is that right? That's what you -- I'm
10 just looking at your report. You see the second
11 photograph?

12 A Yes, sir, the victim stopped to move items from the ---

13 Q Move items from the middle of the driveway. Is that
14 what it says?

15 A Yes, sir.

16 Q All right. And then it says when the victim -- excuse
17 me, when the suspect approached him and asked for a ride
18 the victim refused; is that correct?

19 A Well, there's a comma behind it ---

20 Q Well I know, young lady, and I -- just bear with me,
21 okay.

22 A Okay.

23 Q Is that what it says; is that correct?

24 A The victim.

25 Q The victim refused.

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1 A Victim refused.

2 Q And then you have here the suspect -- that's referring
3 to Mr. Pennell, correct?

4 A The suspect would be referring to Mr. Pennell.

5 Q Tried to get into the victim's vehicle, that being
6 Mr. Wilson; is that correct?

7 A Yes, sir.

8 Q By pushing and striking the victim, that being
9 Mr. Wilson, correct?

10 A Yes, sir.

11 Q Who was standing in the apex of his door. Is that what
12 that says?

13 A Yes, sir.

14 Q Now I'm no road scholar, but I had to look in the
15 dictionary because I didn't know what apex meant.

16 A It's a common law enforcement term.

17 Q Okay. Help me out. Am I right in assuming that the
18 apex of a door might be if the door of car is open and
19 you're standing -- I know apex means top of things like
20 the zenith. Would the apex be the point where the, I
21 guess where the door and the doorjamb meet at an angle,
22 top part of the door, is that it?

23 A When you open up your door all the way. And it says
24 apex is a common law enforcement term. We refer to apex
25 of the door. It's where the actual frame of the

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1 automobile and any door location in a car. It's where the
2 actual frame meets the actual door piece. It's where the
3 hinges are that operate the vehicle; that's the apex. It
4 actually makes a V. You think of standing in the apex of
5 the door you're looking into that V.

6 Q Okay.

7 A That's the apex.

8 Q I don't think we need to draw a picture. I think
9 that's clear. So if it, we're talking about a V or the
10 top part of a triangle then the apex would be the top part
11 of the triangle as far as you can get without falling over
12 the door?

13 A Absolutely, yes, sir.

14 Q Okay. So the -- what Mr. Wilson told you was he was
15 standing in the apex of door; is that correct?

16 A That's what my notes reflect. He was standing---

17 Q He didn't say ---

18 A ---in the apex.

19 Q I'm sorry. He didn't say he was sitting in his car?

20 A My notes reflect that the victim stated he was standing
21 in the apex.

22 Q All right. So, okay. And he told you that Mr. Pennell
23 pushed and struck him?

24 A The next sentence is ---

25 Q I'm going -- I'm backwards, I'm sorry.

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1 A You're going backward.

2 Q I'm sorry, yeah. I'm still on that part.

3 A Okay.

4 Q Tried to get into the victim's vehicle by pushing and
5 striking the victim.

6 A And striking the victim?

7 Q He told you that.

8 A Yes, sir.

9 Q Did you observe any injuries on Mr. Wilson at all or
10 did he complain of any injuries?

11 A Mr. Wilson did not complain of any injuries. I did ask
12 him and he did not indicate that he was injured in any
13 way.

14 Q All right. And then he told you that he grabbed his
15 gun from the glove compartment?

16 A Yes, sir, he stated he grabbed his gun from the glove
17 compartment.

18 Q And not the center console?

19 A He did not indicate the center console. He indicated
20 the glove compartment.

21 Q And then he shot up in the air because he was afraid of
22 the suspect?

23 A That's correct. That's---

24 Q Okay. He then told you that he fled the area. Is that
25 what he told you?

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1 A He stated he fled the area. I'm sure -- but fled is
2 another law enforcement term. I'm sure that fled is not
3 in quotations. It's what I interpreted him to say. He
4 probably said I left the area, but in law enforcement we
5 use the word fled.

6 Q Your training would say that somebody leaves the scene
7 of a possible crime they are fleeing as opposed to
8 leaving? Is that just semantics again?

9 A It's semantics, yes, sir.

10 Q Okay, all right. So he told you -- may not have told
11 you that but that's what you put down, that he fled the
12 area but returned driving his wife's vehicle.

13 A Yes, sir.

14 Q So what color vehic-- what kind of vehicle was in he
15 initially?

16 A He's in his gold Explorer.

17 Q And he came back in what kind of vehicle?

18 A In a black, large black SUV.

19 Q An Expedition or Blazer?

20 A It was an Expedition, not a Blazer.

21 Q Okay. And he told you that he came back because he
22 wanted to warn the staff in the store of the incident?

23 A Yes, sir.

24 Q All right. Did he tell you why he switched cars?

25 A I don't really remember him giving me a reason of why

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1 he switched cars. I can't tell you, you know, that I
2 remember him saying for one reason or another.

3 Q But you're in law enforcement so that is an important
4 question to ask; isn't it?

5 A Absolutely. And I think that, you know, that had I
6 been under his -- had I been in his circumstances I
7 probably would have done the same.

8 Q Change vehicles?

9 A Absolutely.

10 Q And you would have come back to the scene even though
11 you were afraid that you had been -- just been attempted
12 carjacked and you would still come back.

13 A As a ten year law enforcement officer I didn't indicate
14 that I would necessarily come back. I think that the
15 whole outcome of this would have been different had it
16 been me but...

17 Q Probably shot him?

18 A I can't say that. I wasn't -- I wasn't in that
19 position and I'm thankful that I wasn't in that position.
20 Sorry that anybody had to be.

21 Q Sure. And he came back, the point is he came back in
22 another vehicle all together; is that right?

23 A Yes, sir.

24 Q And he didn't come back armed? He didn't have a weapon
25 in the vehicle when he came back the second time?

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1 A No, sir, he did not. There was no indication that he
2 had a weapon.

3 Q All right. And he didn't tell you that he called the
4 store or the police department, 9-1-1, after the firing of
5 the gun incident ---

6 A No, sir.

7 Q ---immediately after?

8 A No, sir.

9 Q All right.

10 A He stated he called the store.

11 Q After the -- after the -- after he came back the first
12 time or second time?

13 A After he came back the second time.

14 Q Okay, all right. Now when he came back the second time
15 Mr. Pennell approached him again by coming up to his
16 vehicle and yelling. Is that what Mr. Wilson told you?

17 A By coming up to his vehicle -- are you reading that?

18 Q Coming up to his vehicle and yelling.

19 A Yes, sir.

20 Q All right. And the -- Mr. Wilson stated he then struck
21 Mr. Pennell to keep himself from being injured?

22 A Yes, sir.

23 Q All right.

24 A It was clear Mr. Wilson was in fear.

25 Q So that's why he came back I'm sure. Hum?

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1 A What he indicated to me was the reason he came back was
2 for the employees he knew. He, you know, he knew that
3 there were girls that worked in there and he was
4 concerned.

5 Q Yeah, but he not concerned enough to call 911 or the
6 store, rather than just coming back in person, correct?

7 A I wasn't -- I don't know what he was thinking.

8 Q Don't know what's going through his head?

9 A No, sir, I don't.

10 Q All right. And your conversations with the witnesses
11 at Hollywood Video confirm that Mr. Pennell was struck
12 and/or kicked by Mr. Wilson; is that right?

13 A That's correct.

14 Q All right. And no indication from those witnesses that
15 they saw Mr. Pennell try to enter Mr. Wilson's car?

16 A I think that incident -- they did not indicate they saw
17 anything of that nature.

18 Q Mr. Pennell, when you had an opportunity to talk with
19 him you said he was, he was violent and uncontrollable?

20 A He absolutely was.

21 Q But he was in handcuffs; is that right?

22 A Yes, sir.

23 Q And he was in the back of the patrol car at the time?

24 A Yes, sir.

25 Q So he was in -- he was in custody; is that right?

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1 A At the time he was in investigative detention.

2 Q Well, he couldn't leave.

3 A He could not leave, no, sir.

4 Q Okay. You had him in handcuffs, were placed behind the
5 back; is that right?

6 A Yes, sir, they were.

7 Q So he was handcuffed, sitting in the car, when he was
8 exhibited that agitation and aggravation?

9 A Absolutely he did, and it's -- a lot of times, you
10 know, individuals can lay down in the seat, kick out
11 windows. Again, as I disclosed earlier, they still have
12 full range of movement with their feet. If we have to ---

13 Q He didn't -- we're not talking about Mr. Pennell
14 kicking ---

15 A He did not---

16 Q ---out any windows, are we?

17 A No, sir. He did not do that, no, sir.

18 Q Okay, I thought you were trying to tell the jury that
19 he was kicking windows.

20 A No, sir, absolutely not.

21 Q Okay.

22 A We just want to make sure that didn't happen.

23 Q He wasn't acting out physically, violently,
24 aggressively. He was acting out verbally, aggressively?

25 A With the spitting, that would be the only thing that I

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1 can indicate, but it did not touch anyone at the scene.

2 Q Okay. And he told you that his niece had dropped him
3 off there because he had asked her to do that and that
4 she -- I'm paraphrasing -- and that she wanted to get high
5 and he did not want to get high. Is that the gist of what
6 he told you with regard to that issue?

7 A Yes, sir, it is.

8 Q And he asked to get out of the car?

9 A Yes, sir.

10 Q So he was pretty much, I mean, for lack of a better
11 term, more or less stranded out 11:00 at night Hollywood
12 Video with his stereo equipment and no ride; is that
13 right?

14 A If those statements were true then, yes, that would be.

15 Q Well, you didn't -- he didn't have a vehicle, did he?

16 A He did not have a vehicle.

17 Q He didn't have any -- he wasn't arrested for stealing
18 any equipment or -- I notice Mr. Jepertinger is trying to
19 make some hay with this having no receipt but for the
20 stereo equipment, but he wasn't arrested for any kind of
21 theft of a stereo equipment, was he?

22 A At this time we had never been able to identify the
23 actual owners of the stereo question other than
24 Mr. Pennell had that in his possession at the time.

25 Q So he wasn't charged with theft? He wasn't charged

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1 with theft?

2 A No, sir.

3 Q He was charged with assault?

4 A He was charged with attempted carjacking.

5 Q Well, yes, ma'am, but he was charged with assault as
6 well?

7 A Yes, sir, he was.

8 Q The shell casing -- I know it probably doesn't make too
9 much difference, but you didn't find any shell casings at
10 the scene; is that right?

11 A Unfortunately we did not.

12 Q And you said something about a car driving by may have
13 picked it up in its treads or something.

14 A I can only speculate.

15 Q Speculate.

16 A I can only speculate what typically, you know, can
17 possibly happen, what we've seen in ten years in this
18 business with the city of Florence, what I've seen in the
19 past 11 years.

20 Q One of the things that you said in your direct
21 examination is that Mr. Wilson you were impressed with his
22 with his veracity and his credibility and his, you
23 commented on the fact that you thought he was being very
24 truthful about what happened that night; is that right?

25 A I think I used the word compelling.

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1 Q Compelling. I think you also used the word never
2 wavered in his statements to you.

3 A That's correct.

4 Q Okay. So what he told you that night and what you
5 subsequently placed in your report, you would consider
6 that to be the gospel as told to you by Jonathan Wilson?

7 A What I would consider that to be the actual incident
8 gospel that's a little -- I don't understand what that,
9 how you mean it but.

10 Q You -- well, you say unwavering, never wavered?

11 A Yes.

12 Q You felt very -- you said compelling. I consider that
13 to all be very high up on the level of truthfulness.

14 A Absolutely I believed Mr. Wilson and in an entirety.
15 He was very compelling from start to finish of his honesty
16 and willingness to work with law enforcement.

17 Q All right. And he never at any time then told you that
18 Mr. Pennell tried to take his car while he was inside the
19 car?

20 A While he was inside the car?

21 Q Inside the car?

22 A Well, standing in the apex of his door is where he's
23 indicated that he was whenever the incident occurred when
24 Mr. Pennell tried to take his car.

25 Q Well, if he was standing at the apex of his car, try

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1 to go along with me if you can without being too
2 controversial, but if you're standing at the apex of your
3 car you're standing -- you're outside of your car and not
4 inside of your car, would you agree with that?

5 A I absolutely would, and I guess maybe we're with
6 semantics again. Inside your car is when in possession of
7 your vehicle. Standing in the apex of your door for me is
8 possession.

9 Q Well, we're not talking about possession; we're talking
10 about in or out.

11 A Okay. He was -- he was standing in the apex of his
12 door. The only way to get into the apex in a standing
13 position is to be physically outside the threshold of the
14 driver's seat.

15 Q Physically outside the vehicle?

16 A Yes, sir.

17 Q Thank you, nothing further.

18 MR. SUGGS: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. JEPERTINGER:

21 Q All right. Let me ask you this, in all this time has
22 any niece ever called you to say that she dropped Charles
23 Berlin Pennell off at Hollywood Video that day?

24 A Absolutely not.

25 Q And in this whole situation that occurred back on May

SW - M. ROBINSON - REDIRECT

1 25th, what constituted carjacking for you was the first
2 incident which led up to the gunshot being fired, correct?

3 A Absolutely.

4 Q The second part of him coming back to the store had
5 nothing to do with carjacking, correct?

6 A No, sir, it did not.

7 Q It's just context of the whole story that evening; ---

8 A Yes, sir.

9 Q ---is that correct? Thank you very much, Investigator
10 Robinson, that's all I have.

11 THE COURT: All right, thank you ma'am. You may
12 step down.

13 We're going to take a break at this time, ladies
14 and gentlemen.

15 (WHEREUPON, counsel approached the Bench for an
16 off-the-record discussion.)

17 THE COURT: Give me one second, Ladies and
18 gentlemen.

19 Mr. Jepertinger.

20 MR. JEPERTINGER: That would be the State's case.

21 THE COURT: All right. I wasn't sure when I told
22 you we were going to take break whether or not the State
23 had anymore witnesses, and then I looked up and looked
24 across there and I saw that there were no witnesses left
25 so I assumed that that probably was the case so.

1 Ladies and gentlemen, we are at the close of the
2 State's case and it's at this time that I need to take up
3 some matters of law with the attorneys which works out
4 great because I intended for us to take a break at this
5 time anyway so. If you would retire to your jury room let
6 me ask you to please not have any conversation about the
7 case. If you need anything while you're back there please
8 let Sammy know, drinks, crackers, whatever, and we'll
9 start back in about 10, 15 minutes.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 4:00 p.m., and the following proceedings
12 commenced in open court.)

13 THE COURT: All right, if y'all would, if you
14 don't mind, let's take a short break and then I'll
15 entertain any motions at the close of the State's case.

16 Scott, any objections to being excused?

17 MR. SUGGS: Not at all.

18 THE COURT: All right.

19 (WHEREUPON, a recess was taken from the proceedings.)

20 THE COURT: I'm gonna bring this jury out and
21 excuse them. Well, any objection to that?

22 MR. JEPERTINGER: Not from State.

23 MR. SUGGS: No, sir. Then well take up matters
24 we need to to take up.

25 Sam, ask them to step out if you would please.

1 THE BAILIFF: Yes, sir.

2 THE COURT: Thank you.

3 (WHEREUPON, the jury was returned to the courtroom at
4 approximately 4:46 p.m., and the following proceedings
5 commenced in open court.)

6 THE COURT: All right. Ladies and gentlemen, as
7 you recall when we took the break the State has rested
8 their case and I've been taking up matters of law. We're
9 going to adjourn court at this time, and then I'm gonna
10 have you back here at 9:30 in the morning and then we're
11 headed to the home stretch, okay. Please tell your family
12 and friends and loved ones to be patient one more day,
13 that you can talk to them tomorrow when you return home
14 because I am anticipating that you'll have this case
15 tomorrow and be able to make your decision so that by
16 tomorrow evening you'll be able to talk about it. But
17 you're still under that, quote, gag order at this point
18 that you're not allowed to talk about the case, and we'll
19 come back and finish it up tomorrow, okay?

20 So if everyone else will remain seated. Ladies
21 and gentlemen, please, if you would be back in the morning
22 we'll get started at that time.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 4:48 p.m., and the following proceedings
25 commenced in open court.)

1 THE COURT: All right. At this time I'll take up
2 any motions at the close of the State's case.

3 MR. SUGGS: Yes, sir, Judge. Thank you, Your
4 Honor. At this time the Defense would move for a directed
5 verdict, Judge, on the -- count one, the sole count of the
6 indictment, Judge, which is carjacking. Judge, under the
7 law as the Court is aware, carjacking, the relevant
8 portion of the statute is, requires that the person or the
9 victim in this case be operating the vehicle or while the
10 victim is in the vehicle. First of all, Judge, we had to
11 separate from the facts the different events because there
12 were actually two confrontations; and from the evidence
13 that's been presented and from what I gather from the
14 State's case, the only charge of carjacking that we are
15 facing is the initial confrontation between Mr. Wilson and
16 Mr. Pennell. I know that the -- that Mr. Wilson came back
17 a second time, but from the testimony there was no issue
18 or no evidence that Mr. Pennell tried to take the vehicle
19 on the second occasion. It was more -- there was a
20 confrontation, but I believe the evidence will show that
21 Mr. Pennell threatened to take the car on the first
22 confrontation and not the second so I think we've
23 eliminated the second part of the confrontation of the
24 event all together. The second confrontation is gone so
25 not before the Court in terms of the carjacking offense.

1 After looking at that, Judge, I had to look at
2 the statute because it makes a difference between being in
3 the vehicle and operating the vehicle. And we all know
4 what it means to be in a vehicle; that's pretty clear.
5 Operating a vehicle is a different -- it's a different
6 term. Obviously the legislature intended the two to be
7 separate and distinct otherwise you would just say in a
8 vehicle. You wouldn't say in a vehicle or operating a
9 vehicle. The closest definition that I could find, Judge,
10 was back many, many years ago. I think it's State versus
11 Graves -- it's a DUI case -- where a person was charged
12 with driving under the influence while they were in the
13 car. The car was not moving but the car engine was on.
14 And back in those days the DUI statute was written so you
15 would be guilty if you were driving, not operating, but
16 operating came later. But the court went into a
17 distinction about driving versus operating, and the
18 definition that I was able to glean from the case was that
19 operating meant putting in the motives of operation of the
20 car, starting the engine, that sort of thing. So when I
21 look at this statute I see that the person has -- the
22 victim has to be in the vehicle or the person has to be
23 operating the vehicle. Now I believe the testimony on
24 both occasions was, from the victim, was that at the time
25 he was approached by Mr. Pennell, when Mr. Pennell tried

1 to take the car the engine was off. The car was not in
2 operation; the car was in park. The car was parked; the
3 ignition was off. Keys were still in the ignition at the
4 time, but the vehicle was not in operation. So then we're
5 left just with the issue of whether Mr. Wilson was in the
6 car and whether he was in the car at the time that
7 Mr. Pennell threatened to take the car. For now, Judge, I
8 understand the testimony from the witness. He could not
9 remember if he was in the car or standing outside of the
10 car at the time this crucial, crucial timing of this
11 confrontation took place, which we have to look at timing
12 in this. When did -- if Mr. Pennell threatened to take
13 the car, when he did and where the victim was situated at
14 the time. If the car is off, if the car is in park, the
15 motor is off, it's not in operation. And Mr. Wilson is
16 not in the car but standing on the outside of the car,
17 then I think granting a directed verdict in this case is
18 absolutely appropriate because the statute says that the
19 car has to be in operation or the victim has to be in it
20 at the time the threat is made or the attempt is made.

21 The officer, Officer Robinson, testified that
22 the-- Mr. Wilson told her he was standing at the apex.

23 THE COURT: That was the offense. That was the
24 second time I think.

25 MR. SUGGS: That was the second time -- that was

1 the first time. That was the first time after Mr. Pennell
2 had the stereo equipment in the road, after Mr. Wilson
3 moved it. Mr. Wilson got back into his car and pulled up
4 to the front and parked. This is when the confrontation,
5 the actual threat he said was made. It wasn't made when
6 the stereo equipment was strewn about. The only
7 conversation that took place there was, can you give me a
8 ride, I'll give you 20-dollars; no, I'm not gonna do that,
9 and then the cussing but no threat. The threat to take
10 the car according to the victim did not occur until after
11 he got back in his car, pulled up to the front, put it in
12 park, cut off the engine, and he could not remember if he
13 was sitting or standing when Mr. Pennell approached him at
14 that time and asked for -- and said he would take the car
15 and said he reached for the doorjamb. The officer
16 testified Mr. Wilson told her he was standing at the apex
17 of the car door when this event occurred. Mr. Wilson
18 could not remember if he was standing or sitting at that
19 time. Now when Mr. Wilson fired the gun and left and came
20 back a second time, nothing in the second confrontation at
21 all even rises to the level of any sort of carjacking
22 threat. That -- Mr. Wilson was already out of his car at
23 that time walking to the door when Mr. Pennell approached
24 and had the keys in his pocket, the car was off, walking
25 to the door, and kicked Mr. Pennell when he said Mr.

1 Pennell came up to him with his fist, kicked him and then
2 Mr. Pennell said I'm just playing and walked away. Then
3 Mr. Wilson went to the door and tried and it was locked.
4 So in that second time there was absolutely no threats
5 made about getting the car. And if there were, clearly,
6 clearly Mr. Wilson was hurrying out of the car with the
7 car off already so we're just talking about the first
8 time. Officer said Wilson told her he was out of the car
9 at the apex of the door, standing at the apex of the door.
10 Mr. Wilson couldn't remember. Sitting or standing, he
11 just didn't know.

12 Judge, I know that probably in your mind and
13 probably correct, would be a question of fact rather than
14 a question of law, something that the jury should decide
15 rather than the Court rule upon; but I think it's very
16 telling, Judge, that this is absolutely not a carjacking
17 case. I do not think that the State has actually shown
18 all the elements of this offense beyond a reasonable
19 doubt. It is not a carjacking case, Judge, based upon the
20 facts, based upon the law, and therefore I would ask for a
21 directed verdict.

22 THE COURT: All right, sir. Mr. Jupertinger.

23 MR. JEPERTINGER: Yes, sir. Obviously, under the
24 rules of evidence, Your Honor, at this stage we look at
25 things in a light most favorable to the State. I agree

1 with counsel to this extent, I don't think the second
2 incident involved carjacking, Your Honor. However, the
3 first incident, if you recall, Mr. Suggs characterized me
4 cowering over Mr. Wilson when I approached him and asked
5 him how close he was when he said I was going -- I'm going
6 to take your car. And the question is where were you, I'm
7 sitting in my car. And he kept -- he approached and he
8 was in the doorway, Your Honor. Then if you recall on
9 cross-examination Mr. Suggs made a point, when you're
10 sitting there your feet couldn't reach the ground with an
11 SUV. I objected at that point because I thought that was
12 he was trying to offer his own opinion at that point;
13 however, Mr. Wilson testified that he was sitting there
14 and there was a question whether his feet could reach the
15 ground or not, Your Honor. So I don't think there was
16 testimony elicited whether he could remember or not
17 remember. Obviously he didn't shoot the gun off in the
18 roof of the car. He was outside when he shot the gun off,
19 Your Honor, but that was not the point when the carjacking
20 took place. I think that's a question of fact, Your
21 Honor, and I think they're not entitled to a directed
22 verdict.

23 THE COURT: I recall 'cause that was when you
24 were cross-examining Mr. Wilson he actually got up out of
25 the witness stand and went to that chair, brought it over

1 and kind of demonstrated his position. So, and I --
2 gentlemen, you both have hit it on the head. This is a
3 question of fact that is appropriate for the jury. The
4 Court is not to weigh the evidence; it's simply to
5 recognize the existence of it. And there is evidence in
6 the record of whereby a jury could possibly find, and I
7 think it's a fact question that the jury needs to resolve.

8 I'm gonna respectfully deny the motion.

9 MR. SUGGS: Thank you, Judge.

10 THE COURT: Anything further?

11 MR. SUGGS: Yes, sir. We -- Mr. Pennell and I
12 talked about him taking the stand in his own defense. I
13 am not going to advise him that that -- that he should do
14 that. In fact, I would advise him not to take the stand.
15 I do not think that would be appropriate at this time. I
16 don't think it would be a wise decision at this time.
17 I've counseled him not to take the stand in his own
18 defense. I would, Judge, ask though that we -- that we
19 visit his prior record so that if he does decide that's
20 what he wants to do he knows what potentially could be
21 used to impeach his credibility and his believability, his
22 veracity as a witness. And he understands that he would
23 be impeached as any other witness could be with record,
24 evidence of his prior record.

25 THE COURT: Mr. Jepertinger, are you prepared to

1 be happy to entertain any motions at the close of the
2 evidence, sir.

3 MR. SUGGS: Judge, just briefly, we would renew
4 our motion made after the conclusion of the State's case
5 in chief for directed verdict on behalf of Mr. Pennell
6 count of carjacking based upon arguments previously made.

7 THE COURT: All right, sir. And I'm going to
8 respectfully deny that, and as we talked about earlier I
9 think it's a fact question for the jury to resolve.

10 MR. SUGGS: Yes, sir. Thank you, Judge, for
11 allowing me to make that motion.

12 THE COURT: Now if — Scott, what we'll do is,
13 when I bring the jury out I'll let them know that, remind
14 that the State has rested, then I'll recognize you for
15 Defense, allow you to rest on the record, and then I'll
16 just move them right into that we're gonna take up closing
17 arguments.

18 MR. SUGGS: Yes, sir, Judge. Thank you, Judge.

19 THE COURT: All right. Is there anything else we
20 need to take up before we bring the jury out,
21 Mr. Jupertinger?

22 MR. JEPERTINGER: Nothing from the State, Your
23 Honor.

24 THE COURT: Mr. Suggs.

25 MR. SUGGS: Yes, sir, other than to alert the

1 deliberate. All right, ladies and gentlemen, again,
2 please give the lawyers your undivided attention as they
3 address you with their final remarks.

4 Mr. Suggs.

5 MR. SUGGS: Thank you, Your Honor. May it please
6 the Court.

7 THE COURT: Yes, sir.

8 MR. SUGGS: Good morning, Judge.

9 THE COURT: Good morning, sir.

10 MR. SUGGS: Mr. Jepertinger.

11 MR. JEPERTINGER: Yes, sir. Scott, good morning.

12 MR. SUGGS: Good morning, ladies and gentlemen.

13 My wife picked it out, bless her heart. I didn't have the
14 heart to put it back in the closet. I want to apologize
15 too, first of all, for the last couple of days of having
16 to sit here and listen to me painstakingly cross-examine
17 these witnesses. I looked over here at several points at
18 the jury while I was doing my cross-examine, and I noticed
19 that everybody was paying very, very close attention
20 despite how dull and tedious the cross-examination was.
21 And I know a lot of you probably were thinking, now what
22 is this lawyer doing, what difference does it make that a
23 person is in a car or outside a car or whether he was
24 struck or this or that. I mean, what difference does that
25 make, to what purpose, to what end, is this lawyer

1 constantly asking these questions. And I know it's
2 important for two reasons. One, because if it was not
3 important we'd ask these questions several people would
4 have responded and told me to cease and desist. The judge
5 probably would have said what is the relevance of this
6 question. Mr. Jepertinger is a good lawyer. He's been
7 practicing longer than I have, over 20 years, and he would
8 say, Judge, I object, these questions are simply not
9 relevant. But none of that happened so that tells me that
10 these questions are relevant and they are important to
11 know the answers to. The second reason is because this
12 case really hinges on the statute more than anything else.
13 And in order for us to understand the statute we have to
14 understand the facts. And the purpose of my lengthy
15 questioning was to eliminate all doubt in your mind about
16 what the facts were that night. Whenever I came across a
17 response from a witness that wasn't clear about an answer
18 to my question, my questions were very specific, very
19 direct. But when I asked one and I got an answer I
20 thought was wavering or waffling, I asked it again in a
21 different way and I kept doing that for a purpose; I
22 wanted to get the answer. And that was the answer that
23 you have a right to rely on as a jury because it is your
24 job to understand what the facts are.

25 The judge has his responsibility as well. The

1 judge's responsibility is to instruct you on the law. He
2 will tell you what the law is. You can't change that even
3 if you don't like it you can't change it. You have to
4 follow the law that the Judge gives you. He can't change
5 it either. He has to give you the law that's given to him
6 by the legislature. But whenever he gives you the law you
7 have to take the facts as you understand them to be and
8 apply those facts to the law that the judge gives you.
9 From there you will come to your conclusion or your
10 verdict deciding whether Mr. Pennell was innocent or
11 guilty of the crime of carjacking.

12 Now the carjacking statute is, in my opinion,
13 it's not very artfully written. It's a felony. The
14 statute says it's a felony, but it's very short. It's
15 only a few lines long, and it puzzles me because you can
16 look in the statute at some other offenses that are not
17 even, you know, not felonies, but there might be a page or
18 two long where the legislature actually spent time
19 thinking about how to write the statute. But this is what
20 we're -- this is the hand we're dealt. This is the
21 statute and the language in the statute that we have to
22 deal with. This is what we have to look at today. We
23 can't add; we can't take away. We have to look at it as a
24 whole.

25 The carjacking statute states that in order for

1 the State to prove carjacking to you beyond a reasonable
2 doubt, they must prove that the defendant, Mr. Pennell,
3 took or attempted to take a motor vehicle from another
4 person by force and violence or by intimidation while the
5 person was operating a vehicle or while the person is in
6 the vehicle. That's the way the carjacking statute reads.
7 And you'll get that. When the time comes the judge is
8 going to read you the statute again, and he'll read it to
9 you as many times as you want him to. Now I told you in
10 my opening argument what I thought my interpretation of
11 carjacking is, and it may be different from yours and
12 that's okay. I'm not the smartest person in the world
13 even though if you ask my wife she'll tell you that I
14 think I'm the smartest person in the world, but I'm not.
15 What you believe to be carjacking and what I believe to be
16 carjacking may, in fact, be the same. I hope that's the
17 case.

18 To me carjacking would be a scenario where you're
19 in your car, you're in a business, you come out of the
20 business, or you come out of your home, you get in your
21 car and you crank it up, and somebody is waiting, laying
22 in wait for in the back seat. And all of a sudden ---

23 MR. JEPERTINGER: Your Honor, I would -- I
24 respect Mr. Suggs, but I would object to what his opinion
25 of the legislative language of the statute is, Your Honor.

1 I think what we're doing is offering an attorney's opinion
2 of what the statute is, Your Honor, and ---

3 THE COURT: Well, he can argue the law and I'm
4 gonna charge the law.

5 MR. JEPERTINGER: But I don't think he's entitled
6 to argue what he thinks in his opinion what the law is,
7 Your Honor, when it's clear on the face of the statute
8 which he just read.

9 THE COURT: Well, you cannot argue what you think
10 was in the minds of the legislature. You have to argue
11 the plain language of the statute.

12 MR. JEPERTINGER: Right.

13 THE COURT: So...

14 MR. SUGGS: Yes, sir. And I'm simply, I mean,
15 this is argument, it's not evidence.

16 THE COURT: I understand.

17 MR. SUGGS: I've always been able to -- be very,
18 you know, free with, you know, my opinions about what I
19 think. And I told the jury, Judge, that they're free to
20 disagree with me as they may very well but ---

21 THE COURT: All right.

22 MR. SUGGS: I think I'm allowed some latitude.

23 THE COURT: I'm gonna overrule, but you can't
24 assert what you believe was in the minds of the
25 legislature when they ---

1 MR. SUGGS: No, sir. And I didn't do that, no,
2 sir. I didn't do that and I won't. Thank you, Judge.

3 But that's what I think carjacking -- that's my
4 opinion. I envision that to be carjacking in my mind. Or
5 someone who is in a car and someone jumps in the car and
6 pulls a weapon of some kind and orders them to drive
7 somewhere, and maybe later on they may or may not be
8 robbed or assaulted in some way. That's my feeling.
9 That's my honest feeling about what carjacking is, not the
10 facts that were told to you over the last two days. And I
11 told you then that I thought that the actions of
12 Mr. Pennell, if you believe the testimony, constitute
13 something, constitute some wrongdoing. But does it
14 constitute carjacking? Does it rise to that level? And
15 that was the point that I've been trying to make
16 throughout this trial. I want you to take a good hard
17 look at the facts of this case to see that, to see if the
18 event that occurred on May 25th, 2009, meets your
19 definition or meets the statutory definition and your
20 interpretation of the statute.

21 I don't want you to cloud your mind with
22 testimony that might not be relevant to that central issue
23 such as, Mr. Pennell was charged with assault after the
24 event occurred. He was not charged with theft of any
25 stereo equipment. Mr. Pennell was beat up, not once but

1 twice by Mr. Wilson who was very capable and very able to
2 handle Mr. Pennell physically. Don't consider that
3 Mr. Wilson shot a gun in the air in the city limits. He
4 wasn't charged with discharging a firearm in the city
5 limits. Don't concern yourself with that. You might not
6 want to concern yourself with the fact that Mr. Wilson
7 left the scene after the first time and went home, but
8 then came back in another vehicle switching vehicles,
9 which I still don't think that was quite answer to my
10 satisfaction but I don't know that it really bears on the
11 issue of guilt or innocence as to my client. Don't
12 consider too much that Mr. Wilson was not injured at all
13 during this confrontation; that Mr. Pennell was not armed
14 in any way; that the gun Mr. Wilson had was either
15 retrieved from the glove box or from the center console;
16 That the witnesses who were at Hollywood Video, they did
17 not testify but the evidence shows that would they have
18 testified they would not have seen Mr. Pennell trying to
19 take this car from Mr. Washington, from Mr. Wilson. But
20 all would just say instead, they saw Mr. Wilson beating up
21 Mr. Pennell.

22 Don't consider we couldn't find the shell casing.
23 I don't think that's too relevant to the issue. Don't
24 consider too much that Mr. Pennell was actually abandoned
25 in the parking lot because his girlfriend or his niece or

1 his sister or some relative wanted to get high. He did
2 not want to get high and he got put out, or he voluntarily
3 said, I want to get out. Left stranded 11:00 at night
4 with his belongings. I'm sure that would have upset most
5 people too. I don't know that any of that stuff, even
6 though you might think about it really crucial to the
7 issue of guilt or innocence, and that's what you really
8 need to focus on. So let's do that.

9 The first thing I want to do — and can I move
10 this now, Judge?

11 THE COURT: Yes, sir.

12 MR. SUGGS: Now the first thing I want to do is
13 talk to you about, you know, there were two separate
14 events, and I want to get those cleared up first. You
15 remember Mr. Wilson went to the Hollywood Video in a gold
16 Ford Explorer and that's when the first confrontation
17 occurred with Mr. Pennell. That's when he fired the gun
18 you remember. Then after that, after he kicked
19 Mr. Pennell, Mr. Wilson left, but then he came back a
20 second time and then there was another brief confrontation
21 with Mr. Pennell. Mr. Wilson beat him up once again and
22 then left the second time only to come back the third time
23 when the police were there so it was just the two. So
24 let's talk about those two first. And I think the State
25 will agree that when you have to consider the charge of

1 carjacking you are simply to consider applying that law
2 just to the facts of the first scenario. So we have,
3 number one, we have the gold -- I want to make sure. I
4 think it's a gold Explorer. And then number two was the
5 black Expedition. This is really important here 'cause I
6 want to make sure that there's no misunderstanding. The
7 second time, as you will recall, Mr. Wilson returned. He
8 pulled up. He did not see Mr. Pennell when he pulled up
9 into the parking lot; y'all remember that. He pulled in;
10 he stopped. He put his car in park; he cut off the
11 engine. He got out of his car. He had his keys in his
12 pocket. He was walking to the front door. That's when he
13 observed Mr. Pennell coming from his left side. He's
14 already out of his car, okay. The car is shut off; it's
15 not running. Mr. Pennell comes up to him sort of
16 aggressively like this. I think I remember him saying
17 Mr. Pennell came up like this. Mr. Wilson was not armed
18 at that time. He had already left his gun at home. He
19 kicks Mr. Pennell and maybe throws another punch or
20 another kick; I don't remember. I just do know that
21 Mr. Pennell said I was just playing, or something like
22 that. And then he starts walking on off while Mr. Wilson
23 goes to the front door and tries to open it but the door
24 is locked, and the ladies', the girls there won't let him
25 in. So he gets back into his car and goes home.

1 So the second event is not even relevant or
2 doesn't even apply to your consideration in the jury room
3 you have to consider the carjacking and the facts.
4 Doesn't apply at all. Really only talking about this
5 event, okay? Now, you remember what happened there? This
6 is the first time. Here comes Mr. Wilson. He's coming
7 around the back side, coming around the back side of the
8 Hollywood Video, okay. He's coming off of Evans. He's --
9 on State's Exhibit 16 he's coming off of Evans around the
10 back. He turns left. He comes around and he sees the
11 stereo equipment in the way. This is the first time. So
12 he gets out of his car, puts the car in park. The car is
13 running, puts the car in park; it's not moving. He gets
14 out. He starts to slide the stereo equipment out of the
15 way because he wants to make sure nobody runs it over so
16 he slides it out as far as he thinks is safe. Mr. Pennell
17 comes up at that time -- you remember? -- and says, can
18 you give me a ride, can you give me a ride somewhere or
19 can you give me a ride to Timmons ville. I think the
20 testimony is a little confusing about that. That probably
21 doesn't matter either. Can you give me a ride for
22 20-dollars. Mr. Wilson says no, you know, I'm not going
23 to do that. And I don't blame him; I wouldn't do it. I'm
24 not giving a ride -- I wouldn't pick up hitchhikers. I
25 don't pick up hitchhikers on the side of the road.

1 Obviously if I saw a stranded child or something I would
2 pick the child up, but I wouldn't pick up somebody 11:00
3 at night in a parking lot. So he said no. That gets
4 Mr. Pennell agitated and angry. He says something vulgar.
5 He says something nasty according to Mr. Wilson.
6 Mr. Wilson kind of ignores it, gets back in his car, pulls
7 around to the front and parks, or pulls around somewhere
8 and parks. He's parked.

9 So parks his car, puts the car in park. He cuts
10 off the engine, but he says the keys are still in the
11 ignition. But the car is off; you remember that. Now he
12 says that he was getting out of his car when Mr. Pennell
13 approached him and said, I will take your car. I don't
14 think I heard anybody say anything else other than that, I
15 will take your car. There was no evidence -- Mr. Wilson
16 said he grabbed, not the door handle but the doorjamb of
17 the car, 'cause the door was open. You can't grab the
18 doorjamb unless the car is open -- the door is open. You
19 can't grab it if the door was closed. Grab the handle,
20 but he didn't say he grabbed the handle. Grabbed the
21 doorjamb. The door was open. This is something you
22 really need to think about.

23 The car was off so the car was not in operation.
24 Operation of a vehicle is going to be charged to you.
25 It's very important. A person is considered to operate a

1 vehicle when in the vehicle, when in the vehicle, when in
2 the vehicle. He intentionally does any act or makes use
3 of any mechanical or electric agency which alone or in
4 sequence will set in motion the mode and power of that
5 vehicle. The motion is not an essential element of
6 operating an automobile; that's fine. Park when you park.

7 That's what that's saying. But the car has to be on or
8 the car is not operating. The car has to be on.

9 Mr. Wilson said the car was off. Keys were in the
10 ignition but the car was off.

11 Now another thing about that is going back to the
12 carjacking statute once again. The State must prove
13 beyond a reasonable doubt that the defendant took or
14 attempted to take a motor vehicle from another person by
15 force and violence or by intimidation while the person was
16 operating a vehicle, it's not operating, or while the
17 person was in the vehicle. So the statute says if the car
18 is off but you're in it, and providing the other elements
19 of the offense are satisfied, you can have a carjacking.

20 Now was Mr. Wilson in the car? Now that was the question
21 that I spent a lot of time trying to get an answer to. He
22 doesn't remember whether he was in or out. Even the
23 ruling from the Court, Mr. Suggs, he doesn't know if he's
24 in or out. The answer to that question is not going to
25 change no matter how many times you ask it. It's not

1 going to make a difference. He does not remember whether
2 he was in or out. Right there he said, I don't know, I
3 don't know, I don't know if I was in or out. He told the
4 officer he was out, Officer Robinson, Michael Robinson,
5 not the chief investigator but the lead investigator of
6 the case. She testified he told her I was standing at the
7 apex of my door, I was standing. If you're in a car you
8 are not standing. You are not standing in a car unless
9 you're standing on the seat, and your head is at the moon
10 and I'm not trying to be sarcastic. Or you're standing in
11 the seat and you have a convertible. If you're in a
12 Explorer and you're standing at the apex of your door you
13 are outside of your vehicle; you are not inside.

14 Apex, I had to look it up; I wasn't really sure.
15 Car, wheels, front seat, back seat, front seat, car door,
16 steering wheel, seat. Standing at the apex right there.
17 Standing there at the apex of my door when Mr. Pennell had
18 the doorjamb, I would take your car. Now the statute also
19 requires -- and Mr. Jepertinger will, I'm sure, will
20 hammer this home and I don't have a problem with that.
21 You know, this is not a completed act. You know, it's not
22 a situation where Mr. Pennell's driving off with this
23 man's car so we're not talking about a completed act.
24 Mr. Jepertinger will tell you that the statute says
25 attempt is just as good as the completed act. But do we

1 even have an attempt? There was no, no threat really
2 delivered other than I will take your car. There was no
3 threat that give me your car or I'll do this. Or, here's
4 a gun or here's a knife and I'm going to use it on you if
5 you don't give me your car. Or coming up to him and just
6 beating him suddenly and pushing him and throwing him down
7 and getting in his car and drives away. What sort of
8 force or violence or intimidation do you see here? What
9 level of that satisfies you to the point that you feel
10 that that element of the offense is satisfied.

11 And I understand what Mr. Wilson is saying and,
12 you know, I feel bad that he had to be put in that
13 position. And then he said in the last part of his
14 testimony, well, what if it had been my wife or it had
15 been my daughter. I understand. I understand, but it
16 wasn't. We're talking about Mr. Pennell and Mr. Wilson,
17 two men. What level of force and intimidation would a
18 reasonable man consider beyond that which is tolerable
19 that would satisfy the elements of that offense. Threats,
20 violence, intimidation. Would that intimidate a
21 reasonable man without more, without a weapon, without
22 more threats, without some overt action on the part of
23 Mr. Pennell. In fact, there was some confusion about
24 whether even Mr. Pennell even laid a hand on Mr. Wilson.
25 The reports say, from the police say, that Mr. Wilson said

1 that he tried to get in my car by punching me or hitting
2 me, but Mr. Wilson said that he didn't punch me or hit me.
3 He might have gone back to do it, but he didn't hit me, I
4 pushed him, I pushed him away. Don't think about that.
5 There was nothing there except Mr. Wilson delivering a
6 good old fashioned kick in the stomach that put Pennell
7 down like a bag of cement. But here, the -- he got beat
8 up again there too, Mr. Pennell, but that was proceeded
9 simply by Mr. Wilson pushing him away. Mr. Jepertinger
10 was way up here on the witness like this, and you know, if
11 he's this close Pennell is not gonna hit him 'cause he
12 can't hit him. Wilson is pushing him away, get away from
13 my car. And then after he's away from the car that's when
14 he kicks him. He's far away from the apex of his car. At
15 that point he's clear out three or four feet away
16 probably. Okay? So focus on that. Focus on those
17 things, whether focus on the fact that the car was not in
18 operation at any time during any of these events.
19 Mr. Wilson was out of his car at all times when this
20 occurred. And the level or the lack thereof, of any
21 serious force, violence, or intimidation on the part of
22 Mr. Pennell which would rise to the level of satisfying
23 that statute.

24 If you think about all of those that I have
25 mentioned to you, I think, I believe that you will agree

1 that, again, this is something but it's not carjacking;
2 it's something else. It's okay to feel sorry for
3 Mr. Wilson having to be put in a situation where he felt
4 he had to pull a gun and fire it up in the air. I think
5 all of us could feel sympathy for the man; I do. And I
6 think it's okay to feel that Charles Pennell should have
7 minded his own business, and he's a stupid fool for trying
8 to do what he did, for even approaching someone in a
9 parking hospital at 11:00. I don't like for anybody to
10 come up to me at 11:00 in a parking lot. If I'm in a
11 parking lot, desolate parking lot, no cars, no people, I
12 don't want anybody coming up to me. I don't care for
13 whatever reason. They don't come up to me. You're not
14 gonna ask me for directions, not gonna ask me for money.
15 Just stay away from me, don't come near me. And you can
16 be mad at Mr. Pennell for doing that, and you can be mad
17 for the ways, asinine behavior, his behavior, but it is
18 not the felony of carjacking. Don't punish him by finding
19 him guilty of the felony of carjacking when that is not
20 what the facts of this case say.

21 Now I'm almost finished. I will just say a
22 couple more things, and I'm gonna sit down.
23 Mr. Jeperfinger will probably talk for two hours, but I
24 won't interrupt him. I promise. So he can say whatever
25 he wants to say. The one thing that I remember that's

1 kind of key to this case we've already covered it a little
2 bit but I just want to mention it one more time. When
3 we're talking about the difference between operating a
4 vehicle and being in the vehicle. We all know, I think
5 everybody is agreeing, that no time during this event was
6 the car in operation at the relevant time. I think the
7 issue is gonna be in or out, in or out, in or out. The
8 lead investigating officer said, I talked to Mr. Wilson,
9 he was forthright, he was truthful, he was compelling, he
10 was unwavering, I believed everything that he said. And
11 that's fine. She's been an investigative officer for 11
12 years. I think when you're a police officer for that long
13 I think you develop certain skills of being able to know
14 when somebody is telling you the truth and when somebody
15 is giving you a BS job. So she knows who to believe and
16 what not to believe. She believes Mr. Wilson, and that's
17 fine. Mr. Wilson told her he was standing at the apex of
18 his door when Mr. Pennell approached him at that relevant
19 time. So now what are we gonna say? We don't believe
20 Mr. Wilson and what he told her or are we going to believe
21 Mr. Wilson when he said I can't remember if I was sitting
22 or standing. Either way, either way, you have to go with
23 standing. She said he said it. She said he doesn't
24 remember. No one said he was in the car. Okay?

25 Very important because in addition to the facts

1 and the law, the judge is also going to tell you some
2 other things in this charge called burden of proof and
3 reasonable doubt, okay? Burden of proof. The State of
4 South Carolina through Mr. Jepertinger, through his
5 office, has the burden of proving guilt as to each element
6 of this offense beyond a reasonable doubt. And when I say
7 elements, we've talked about it: Force, violence,
8 intimidation, operation of vehicle, in vehicle, out of
9 vehicle. The State has the burden of proving to you
10 beyond a reasonable doubt that all of these elements are
11 met. If it fails as to one element, just one, you must
12 return a verdict of not guilty. That is your job. That
13 is the oath that you took.

14 The judge is also going to instruct you on
15 reasonable doubt. I'm not going to get too much in it.
16 He knows more about reasonable doubt than I do. And one
17 of the things I do know about reasonable doubt is that
18 this case is loaded with it. It is jam packed full of
19 reasonable doubt. Reasonable doubt as to be read to you
20 by the Court, is the kind of doubt that would cause a
21 reasonable person to hesitate to act. If you have that
22 sort of doubt when you're in the jury room deliberating,
23 when you're applying these facts to the law and taking
24 into consideration everything that's said, if you have
25 that reasonable doubt, you must find Mr. Pennell not

1 guilty of the charge of carjacking. That is your
2 job; that is your oath. And it has to be unanimous. We
3 can't have the people saying I think he's guilty, the
4 other half saying I think he's not guilty. All of y'all
5 have to agree, one as to the other. That's called a
6 unanimous verdict. The verdict has to be unanimous.

7 Again, I don't want to beat a dead horse. I
8 probably already have; I don't mean to. Sometimes I don't
9 know when to shut up but, you know, in my heart and I
10 absolutely believe -- I believe without a shadow of a
11 doubt that Mr. Pennell is not guilty of carjacking. He's
12 guilty of being an ass. He got his butt kicked twice,
13 which he probably deserved. And I think any one of us on
14 the jury probably would kick his butt too, and I feel bad
15 for Mr. Wilson have to be in that situation. And this
16 case is a lot of things but it is not a carjacking. It
17 can't be. It cannot be a carjacking. Thank you for
18 listening to me. I appreciate it.

19 Thank you, Judge.

20 THE COURT: Thank you, Mr. Suggs.

21 Mr. Jepertinger.

22 MR. JEPERTINGER: If it please the Court.

23 THE COURT: Yes, sir.

24 MR. JEPERTINGER: Mr. Suggs. Mr. Suggs is
25 accusing me of being a windbag. I'm not going to try to

1 fulfill that promise if I don't have to. He's not a bad
2 fellow, and he'd probably give me his shirt off his back.
3 Hopefully not that one. That's okay. That's okay.

4 My brother-in-law lives on Pinnacle Mountain Road
5 up in Hendersonville, North Carolina. About this time of
6 year it's apple picking time. Right down the road you go
7 down Pinnacle Mount Road you go to a place called Sky View
8 Orchard. I love apples. I love mountain apples. Anyhow,
9 I love apples and I like galas and fujis and all those
10 types. I'm not too crazy about Arkansas blacks or romes
11 or any of those. You know, you go up there, and if
12 there's no fruit on the tree I have a hard time
13 distinguishing between what type of fruit that tree can
14 produce. Just like you don't know what type of apple tree
15 it is until you see the fruit, human beings are the same
16 way. Character is revealed during the stressful times.
17 I'm gonna tell you, Jonathan Wilson demonstrated, not
18 based on personal opinion 'cause I -- he's a victim in a
19 case, but he demonstrated tremendous personal character.
20 Remember the last thing that Jonathan Wilson told you was
21 this, that was a situation that I really wished hadn't
22 happened, what happened that night could have cost either
23 one of us our lives. When I think he offered or if my
24 wife or someone else's wife had run into Mr. Pennell I
25 couldn't believe it had happened like it did.

1 Now it is somewhat amazing to me how two persons
2 who have known each other for over 20 years can look at
3 the same facts and come to completely different
4 conclusions in terms of the evidence in this case. First
5 of all, in terms of the law, you've heard it. I'm gonna
6 read it one more time. I hope you indulge me. A person
7 is guilty of the felony of carjacking who takes -- we know
8 he didn't take the vehicle; that's not an issue in this
9 case. That point we're complete agreement in. Or he
10 attempted to take. Folks, he attempted to take the
11 vehicle. Now we wouldn't be here if/when Mr. Wilson was
12 pulling around, moved the furniture out, the guy came up.
13 Called him every filthy name in the book, hateful racial
14 epithet, vulgar sexual reference, if that would have been
15 it and Wilson would have pulled up in front of the thing
16 and the guy from this position on the side of the building
17 would have said, hey man, I'm gonna take your car, Wilson
18 probably would have done this, gone into the store
19 purchased his DVD, rented his DVD I should say, and gone
20 home. But that didn't happen. And you know why that
21 didn't happen? Charles Pennell didn't allow that to
22 happen. He made a B line straight from where that stereo
23 equipment was. By the way, why in the world, first of
24 all, he tells Wilson at the scene when he asked for a
25 ride, my girlfriend and I had an argument, can you take me

1 to Timmons ville for 20 bucks -- which he didn't have on
2 him by the way. Then he tells the police my niece dropped
3 me off so she could go get high. Why would he have all
4 that stereo equipment lined up across the road? Only one
5 reason, and he wasn't driving into Hollywood Video that
6 way is going to have to stop and deal with Charles Pennell
7 who's lying in wait just like a spider in a web.

8 What else does Pennell tell officers there? And
9 I just want to bring this up because I think you have to
10 consider what he's saying. I published these photos to
11 you so you can look at it. He's saying he returned all
12 this stuff. This stuff is junk. How do I know it's junk?
13 Look at it, it's tore up. He doesn't have a receipt. It
14 looks like it's been used for 15, 20 years. And he's
15 returning it to Wal-Mart. Come on. What happened? I
16 tell you what happened, exactly what that man told you
17 happened. After being called those filthy names the man
18 walks up to the vehicle. And I kept getting closer. I
19 kept getting closer because of the wood here on the stand.
20 He says, closer, I'm gonna take your car.
21 Cross-examination. He's got his hand on the door. Now
22 Mr. Suggs, man, he wants him out of that vehicle; doesn't
23 he? Well, he wasn't in the vehicle. He got out. He told
24 the officer he was in the apex of the door. He wasn't in
25 the vehicle when the things were said when he was sitting

1 there. Well, let me ask you this, if he wasn't in the
2 vehicle, if he's outside the vehicle after he kicks him,
3 how does the gun get in his hand before he shoots it off?
4 If you're gonna believe that, he would have had by
5 telekinesis to make that gun come out of the vehicle into
6 his hand. How did he get the gun if he's not in the
7 vehicle? He had to be in the vehicle. His arm had to be
8 in the vehicle. His torso had to be in the vehicle
9 because Mr. Suggs asked him where did you put the clip in?
10 While he was in the car was he still being intimidated by
11 this guy? You remember what he said? I pushed him away,
12 went to get my gun. And at first look, he said he
13 stopped. But then what did he do? He kept coming. Oh,
14 you know, if that were a woman I'm afraid, if that were a
15 woman she would feel it but guys wouldn't feel that way.
16 I'm gonna tell you one person that'd probably feel that
17 way, Scott Suggs would feel that way. Any reasonable
18 person would feel that way after he said I'm gonna take
19 your car. And let me tell you, he shoots it up in the air
20 no, at that point he got out of the vehicle. We know he
21 got out of the vehicle because he kicked him. He put the
22 gun back in the vehicle. He didn't shoot in the car. He
23 got out of the vehicle. Shoot me, end it all.

24 Now, he was in that vehicle. Mr. Wilson was in
25 his vehicle. That was the only way he could get his gun.

1 Was he under the threat? Was he intimidated?

2 I don't want to strain this too much in terms of
3 this interpretation, but I also disagree with him somewhat
4 in terms of the term operation of a vehicle. A person is
5 considered to operate a vehicle when in the vehicle. He
6 intentionally does an act or makes use of any mechanical.
7 I say key is mechanical. And says or electrical agency
8 would, say a mechanical agency, a key, which alone or in
9 sequence will set in motion. How do you start a car? You
10 put the key in the ignition. Well, where was the key
11 during this whole scenario? Mr. Suggs told you; didn't
12 he? It was in the ignition. Technically under the law
13 that would have been a sequence to set in motion and
14 Mr. Wilson decided to turn the car on, the next step I
15 guess. That was the first step of the sequence. That car
16 -- and I would argue that he's still operating that
17 vehicle. He would have stopped operating when he took --
18 when the key is out of the ignition. But guess who didn't
19 allow him to do that, Charles Berlin Pennell.

20 Now I disagree with my good friend a little bit
21 in terms of this second incident. No, technically it
22 would not support the elements of carjacking which we know
23 is an attempt in this case, correct? But I would say it
24 is significant in this aspect. Let's talk about the
25 apples. We're talking about character being revealed.

1 When he got home, when he got over Aiken and talked to
2 Avelina, the mother of all those kids he has, and he said,
3 man, I -- very short conversation, you got to get back
4 there, you got to straighten things out. The reason
5 that's significant, he's -- the guys out there, I want to
6 make sure these store people are okay, I just want to let
7 them know, you know, that what happened. That reveals his
8 character. He shows back up. There's an old saying, the
9 guilty flee where none pursue. He didn't have a -- he
10 wasn't fleeing. Yes, technically he left the area but he
11 came back. Then he had that run-in with him again. The
12 store doors were locked. I can understand that. He went
13 back home, what did he do? Hollywood Video? Let me tell
14 you what happened while the cops are here. Cooperative.
15 cooperative through the whole matter.

16 What did Mr. Pennell do with his -- remember, he
17 had all this wonderful stereo equipment that he was gonna
18 return to Wal-Mart. He put it in the bushes. Wonder why?
19 Maybe he knew the police were coming. He started walking.
20 Did he return to Hollywood Video? How did he get back to
21 Hollywood Video? They had to track him down about a mile
22 away walking through the parking lot of Naturally
23 Outdoors. When he got back, when he got back was -- what
24 was his demeanor like? Was he cool, calm, collected? Did
25 he present himself as a victim 'cause remember what he

1 told when he told Provenzano initially. Parking lot, got
2 pulled up, and shot a gun in the air. And then proceeded,
3 I guess, to beat me. That just doesn't pass the straight
4 face test with this guy. The evidence doesn't show that.
5 You know, I -- talking to Investigator Robinson I said,
6 who knows, you know, and who knows what's going through
7 Pennell's mind. Maybe he was walking back to
8 Timmons ville. He was on 76. But he sure didn't give a
9 rip about this stereo equipment. He didn't even take one
10 of these little components.

11 Folks, you know, I -- you know the question is
12 ultimately whether this is a carjacking under the statute.
13 Yeah, there are probably a lot more grievous type of
14 carjackings if you can have them. You know, I'd hate to
15 think somebody sitting in the back seat of my car, you
16 know, with a knife or a machete or gun and said, you know,
17 we're -- you know, come with me, you know, or you know,
18 I'm taking your car. I'd hate to have that situation
19 happen. But you got to put yourself, if you can, in the
20 shoes of a reasonable person based on the circumstances
21 and facts that were occurring at that point in time. I'm
22 gonna take your car. Having said what he said, he
23 referred to it as boldness. I think one of the officers
24 said he's wired. Right in the door. That is conduct
25 beyond mere preparation. That's a specific intent to do

1 something, to take this man's car by intimidation. God
2 bless Mr. Wilson. He was not going to be a victim, a
3 casualty. Not based on how I feel, not based on how
4 Mr. Wilson feels, not based on how Mr. Suggs feels about
5 this issue. The fact of the matter is, there has been
6 evidence elicited from that stand that said he attempted
7 to carjack Mr. Jonathan Wilson on May 25th, 2009.

8 You have taken an oath to well and truly try this
9 case, to have the State, which is me in this case, prove
10 this man's guilt beyond a reasonable doubt, that doubt
11 that would cause a reasonable person to hesitate to act.
12 There is no hesitation in my mind. There's no hesitation
13 because the evidence says there's no hesitation. He was
14 in the vehicle. Mr. Suggs tried to get him out of the
15 vehicle but his arm's in the vehicle. His body is in the
16 vehicle getting that gun. There is no hesitation. The
17 man is guilty of carjacking. He attempted to take his
18 vehicle. I appreciate your time. I'm not trying to yell
19 at anyone, but folks, the evidence says this man is
20 guilty. And I appreciate your confidence in the testimony
21 of Jonathan Wilson and the officers in this case. I
22 appreciate your time and I trust that you will do the
23 right thing. Thank you.

24 THE COURT: Thank you, Mr. Jepertinger.

25 Ladies and gentlemen, during the course of the

1 trial it's been appropriate for me to be up at the Bench
2 out of the way while the lawyers do their work. Their job
3 is to present to you the evidence in the case, and it is
4 your job as the triers of the facts to make a decision on
5 what the true facts are in this case. So during their
6 presentation to you of the evidence it's been appropriate
7 for me to be out of the way, but we have now reached the
8 portion of this trial where you and I are in this
9 together, you as the judges of the facts and me as the
10 judge of the law. And so, it's only appropriate I think
11 that I come down and be with you to give you the law that
12 applies to the facts to this case.

13 Now ladies and gentlemen, I am going to read my
14 charge to you verbatim so that I don't leave anything out
15 or misquote anything. Also, this notebook and the charge
16 that I'm going to give you on the law will also go back
17 with you into the jury room. You'll have it in the back
18 with you. But I'm going to read it to you now and ask
19 that you give me your undivided attention. Mr. Foreman,
20 and members of the jury, you have heard the evidence and
21 the arguments of both parties, and I will now explain to
22 you the law which applies to this action. The indictment
23 charges the defendant with carjacking. I remind you that
24 the fact that the defendant was arrested, charged, and
25 indicted in this case is not evidence in this case and

1 cannot be considered by you as evidence of guilt in this
2 case. Nor does it create any presumption or inference of
3 guilt. This document, the indictment, is simply the
4 formal written instrument this contains the charge made
5 against the defendant. It is the formal document by which
6 this case is brought into court.

7 The defendant has pled not guilty to this
8 indictment and that plea puts the burden on the State to
9 prove the defendant guilty. A person charged with
10 committing a criminal offense in South Carolina is never
11 required to prove himself innocent. I charge you that it
12 is an important rule of law that the defendant in a
13 criminal trial, no matter what the seriousness of the
14 charge may be, will always be presumed to be innocent of
15 the crime for which the indictment is issued unless guilt
16 has been proven by evidence satisfying you of that guilt
17 beyond a reasonable doubt. This presumption of innocence
18 does not end when you begin your deliberations, but it
19 accompanies the defendant throughout the trial until you
20 reach a verdict of guilt based on evidence satisfying you
21 of guilt beyond a reasonable doubt. The presumption of
22 innocence is like a robe of righteousness placed about the
23 shoulders of the defendant which remains with the
24 defendant until it has been stripped from defendant by
25 evidence satisfying you of the defendant's guilt beyond a

1 reasonable doubt. The presumption of innocence is not a
2 mere legal theory. It is not just a legal phrase. It is
3 a substantial right to which every defendant is entitled
4 unless you, the jury, are satisfied from the evidence of
5 the defendant's guilt beyond a reasonable doubt.

6 So what is a reasonable doubt in the law? A
7 reasonable doubt is the kind of doubt that would cause a
8 reasonable person to hesitate to act. The State has the
9 burden of proving the defendant guilty beyond a reasonable
10 doubt. Some of you may have served as jurors in civil
11 cases where you were told that it is only necessary to
12 prove that a fact is more likely true than not true such
13 as by the greater weight or the preponderance of the
14 evidence. In criminal cases the State's proof must be
15 more powerful than that. It must be beyond a reasonable
16 doubt. Proof beyond a reasonable doubt is proof that
17 leaves you firmly convinced of the defendant's guilt.
18 There are very few things in this world that we know with
19 absolute certainty, and in criminal cases the law does not
20 require proof that overcomes every possible doubt. If,
21 based on your consideration of the evidence you are firmly
22 convinced that the defendant is guilty of the crime
23 charged, you must find the defendant guilty. If on the
24 other hand, you think there's a real possibility that the
25 defendant is not guilty, then you must give the defendant

1 the benefit of that doubt and find him not guilty.

2 I remind you that during this trial you and I
3 have certain duties to perform. As the trial judge it is
4 my responsibility to preside over the trial of this case,
5 and I also have the duty to rule on the admissibility of
6 the evidence offered during this trial. You are to
7 consider only the competent evidence that is before you.
8 If there was any testimony ordered stricken from the
9 record in this case during this trial you must disregard
10 that testimony. You are only to consider the testimony
11 which has been presented from the witness stand and any
12 exhibits which may have been made a part of the record in
13 this case, as well as any stipulations of counsel. I have
14 the additional duty to charge you the law that is
15 applicable to this case. As the presiding judge I am the
16 sole judge of the law of this case, and it is your duty as
17 jurors to accept and apply the law as I now state it to
18 you. If you already have an idea as to what the law is or
19 what you think the law should be and it does not agree
20 with what I now tell you the law is, you must abandon your
21 idea because you are sworn to accept the law and to apply
22 the law exactly as I state it to you.

23 In every case tried in this court before a jury,
24 the jury becomes the sole and the exclusive judge of the
25 facts in this case. A trial judge cannot intimate, state,

1 comment on, or make any statement to a trial jury about
2 the facts in a case. Since you, the jury, are the sole
3 judge of the facts in this case you are not to infer from
4 what I have said during the progress of this trial in
5 ruling on the admissibility of evidence or otherwise, or
6 anything that I say now during the course of this
7 instruction to you, that I have any opinion about this
8 case. The law does not allow me to have an opinion about
9 the facts in this case. It is a matter solely for you,
10 the jury, to determine.

11 As jurors, it is your duty to determine the
12 effect, value, weight, and truth of the evidence presented
13 during this trial. So necessarily, you must determine the
14 credibility of the witnesses who testified in this case.
15 Credibility, ladies and gentlemen, simply means
16 believability. It becomes your duty as jurors to analyze
17 and to evaluate the evidence and determine which evidence
18 convinces you of its truth. In determining the
19 believability of the witnesses who have testified in this
20 case, you may believe one witness over several or several
21 over one. You may believe a part of a witness' testimony
22 and reject the remaining part of that testimony. You may
23 believe the testimony of a witness in its entirety or
24 reject it in its entirety. You may consider whether a
25 witness has exhibited to you any interest or bias or any

1 other motive in this case. You may also consider the
2 appearance and the manner of a witness while they were on
3 the witness stand.

4 Now I instruct you and I emphasize that the fact
5 that the defendant did not testify is not a factor for
6 you -- not a factor to be considered by you in any way in
7 your deliberation and in your consideration on the
8 question of guilt or innocence of the defendant. It must
9 not be considered by you in any manner whatsoever. A
10 defendant has the constitutional right to remain silent,
11 and the assertion of this right must not be considered by
12 you in your deliberations. I repeat, under your oath you
13 are not to draw any conclusions whatsoever from the fact
14 that the defendant in this case did not testify. The fact
15 that this defendant did not testify should not even be
16 discussed in the jury room. The burden of proof, as I've
17 stated to you, is on the State. The defendant is not
18 required to prove his innocence. The burden of proof
19 remains on the State to prove guilt beyond a reasonable
20 doubt.

21 Now the defendant is charged in this case with
22 carjacking. In order to prove carjacking the State must
23 prove beyond a reasonable doubt that the defendant took,
24 or attempted to take, a motor vehicle from another person
25 by force and violence or by intimidation while the person

1 was operating the vehicle or while the person was in the
2 vehicle. A person is considered to operate a vehicle when
3 in the vehicle he intentionally does any act or makes use
4 of any mechanical or electrical agency which alone or in
5 sequence will set in motion the motive power of that
6 vehicle. Motion is not an essential element of operating
7 a motor vehicle.

8 Now an attempt is an effort to accomplish a crime
9 which does not succeed. An attempt includes a specific
10 intent to do a particular criminal act along with an act
11 falling short of the intended act. The State must show
12 more than mere preparation and intent. There must be some
13 overt act committed in the effort to commit the crime.
14 Intent means intending the result which actually occurs,
15 not accidentally or involuntary. Intent may be shown by
16 acts and conduct of the defendant and other circumstances
17 from which you may naturally and reasonably infer intent.

18 Now Mr. Foreman, and ladies and gentlemen of the
19 jury, as you retire to begin your deliberations I want to
20 wish -- I want to express to you the hope that each of you
21 will be mindful of the importance of your responsibility.
22 You are not called upon to serve as jurors very often, and
23 the proper performance of the duty requires each of you to
24 reach the height of freeing your mind of all improper
25 influences. You and I are acting for the community, and

1 that is why we must see to it that this trial is fair and
2 that the verdict is just. You observe that the presiding
3 officer of this court is always addressed as Your Honor.
4 Well, the reason for that is not because of the person
5 wearing this robe, but that this Court is entrusted with
6 the honor of this community, the honor of this state, and
7 the honor of this country in seeking that every case tried
8 here receives fair and impartial justice. Do not get the
9 idea that I am trying to intimate to you how I might think
10 you should decide this case 'cause I've already told you
11 you under the laws of the State of South Carolina you, the
12 jury, are the sole judge of all questions of fact. It
13 would be highly improper for me to influence you in the
14 performance of that duty. But as the presiding officer of
15 this court, I am vitally concerned that whatever your
16 verdict that you find will be a result of your going into
17 the jury room, confining your consideration to the
18 evidence that was presented during the course of this
19 trial, and the law that you have heard in this courtroom
20 weighing it fairly, and impartially as I have every
21 confidence you'll do.

22 Everyone is entitled to justice in this case,
23 both the State and the Defendant. All are entitled to
24 justice, nothing more, nothing less. Your verdict in this
25 case cannot be based on sympathy, compassion, prejudice,

1 or emotion, or some other consideration that's not found
2 in the evidence. The Court is of the confirmed opinion
3 that whatever verdict you reach will represent truth and
4 justice for all parties involved. Remember, ladies and
5 gentlemen, that your verdict must be unanimous. All of
6 you must agree on the same verdict.

7 Now Mr. McKnight, in the front of this notebook
8 you'll find a verdict form in this case. It's a very
9 simple form. It's just simply, we the jury, find the
10 defendant Charles Berlin Pennell either not guilty or
11 guilty of the crime of carjacking, so it's not a complex
12 verdict form. But when the jury has reached a unanimous
13 verdict if you will mark the appropriate selection for the
14 jury's -- reflects the jury's verdict and then sign it as
15 the foreman. Once you have reached a verdict if you'll
16 just then knock on the door and let the bailiff know
17 you've reached a verdict, and then we'll bring you out and
18 we'll receive your verdict at that time, okay?

19 Now ladies and gentlemen, I'm gonna ask you to do
20 me a favor. I'm gonna send you back into your jury room.
21 If you need anything while you're back there let Sam know.
22 He'll get you whatever you need. I'm gonna ask you,
23 Mr. McKnight, to not start deliberations yet. I'm gonna
24 send you back there. I'm gonna talk with the lawyers to
25 make sure I haven't left anything out. If I've omitted

1 something that I need to share with you I'll bring you
2 back out and I'll fill you in on that. If everything is
3 fine, if the charge is good, then we'll gather these
4 exhibits. When you receive the exhibits and the notebook
5 that will be your cue to begin your deliberations, okay?
6 So if you would please retire to your jury room just a
7 moment while I confer with the lawyers.

8 (WHEREUPON, the jury was removed from the
9 courtroom at 11:25 a.m., and the following proceedings
10 commenced in open court.)

11 THE COURT: All right. Are there any exceptions
12 or objections by the State?

13 MR. JEPERTINGER: No, sir.

14 THE COURT: Anything from Defense?

15 MR. SUGGS: We have none, Your Honor.

16 THE COURT: Would y'all mind going through
17 making sure that everything is up here with Frances
18 that...

19 THE COURT: Sammy, if you will take that back.
20 Tell them they can begin their deliberations and ask the
21 alternate to step out.

22 (Jury began its deliberations at 11:24 a.m.)

23 THE COURT: Ask Mr. Turner, the alternate, to
24 step out.

25 (Alternate returned to the courtroom.)

1 THE COURT: Mr. Turner, I want to thank you for
2 your service. It appears that everybody is healthy and
3 can serve.

4 (Alternate was excused.)

5 THE COURT: We'll be at ease.

6 (Court was in recess while jury deliberated.)

7 THE COURT: It's my understanding, ladies and
8 gentlemen, that the jury has reached a verdict so we'll
9 have them come out. I tell everybody this every trial,
10 and that is, that I don't know what the jury's verdict is.
11 I sit here like you do. But there's one thing I do know,,
12 and that is, that they deserve to have their verdict
13 received in a professional manner so. And it's never the
14 case that everybody is happy about the verdict. Somebody
15 is gonna be happy; somebody is not gonna be happy. So I
16 would ask you to maintain a level of professionalism
17 whether you -- I'm not asking anybody to agree with the
18 jury's verdict; I'm just asking you to accept it in a
19 professional manner.

20 Is the State ready to receive the verdict?

21 MR. JEPERTINGER: Absolutely, Your Honor.

22 THE COURT: Defense ready?

23 MR. SUGGS: Yes, sir.

24 THE COURT: Please ask the jury to join us.

25 (WHEREUPON, the jury was returned to the courtroom at

1 approximately 11:52 a.m., and the following proceedings
2 commenced in open court.)

3 THE COURT: All right. Mr. McKnight, has the
4 jury reached a unanimous verdict, sir?

5 THE FOREMAN: Yes, Your Honor, we have.

6 THE COURT: If you would please pass that to
7 Ms. O'Hara. Thank you very much.

8 (Form tendered to the Court.)

9 THE COURT: All right. Ms. O'Hara, if you would
10 please publish the verdict.

11 THE DEPUTY CLERK OF COURT: State of South
12 Carolina versus Charles Berlin Pennell. Carjacking, we
13 the jury, find defendant Charles Berlin Pennell guilty of
14 carjacking. Signed, foreperson, Timothy McKnight, dated
15 October 13th, 2010. Members of the jury, if this is your
16 verdict please raise your right hand.

17 (All jurors complied by raising their hand.)

18 THE DEPUTY CLERK OF COURT: That's everyone,
19 Judge.

20 THE COURT: All right. Ladies and gentlemen, I
21 want to thank you for your service. We -- you have earned
22 an exemption for the next several years. If you receive a
23 notice in circuit court here for jury duty in the next
24 couple of years you have earned an exemption if you wish
25 to exercise that and request not to serve. I want to

1 would have done the same thing. We would have reacted the
2 same way. But I truly don't believe this rises to the
3 level of carjacking even though the jury has disagreed
4 with us.

5 I would ask the Court though to consider not
6 imposing the maximum sentence in this case and taking into
7 consideration what I've said and the fact that the offense
8 is nonparoleable, whatever the time is meted out.

9 THE COURT: All right, sir. Mr. Pennell,
10 anything you wish to tell the Court, sir?

11 THE DEFENDANT: Yes, sir, I do. Your Honor, even
12 though the jury found me guilty I had no intention in the
13 world of stealing Mr. Washington's vehicle.

14 MR. SUGGS: Wilson.

15 THE DEFENDANT: Mr. Wilson's vehicle. It never
16 even crossed my mind to take it. You know, I had been
17 drinking. I went to set out that afternoon. I got off
18 work at my dad's furniture store. I went by Lowe's and
19 got plumbing parts for the house and went to my house to
20 get appliances that I had bought to take them back and
21 exchange them. And then once I get to one of the stores,
22 Sam's, it was closed. I get to Wal-Mart and don't want to
23 take the radio back until a clerk from electronics is
24 there. And I'm drinking the whole time, and I'm not
25 getting anything accomplished and I'd done taken off work.

1 I was just aggravated, but you know, I didn't plan on
2 stealing anything. And I had me a wonderful job, you
3 know. I had four thousand dollars at First Reliance Bank
4 right across the street saved up because that's all I was
5 doing at the time was working. And my niece brought up
6 the thing about wanting to go do cocaine and I kind of
7 like went to griping. So I'm like, well you can just let
8 me out the car now. And that's how I got stuck in that
9 parking lot. But I didn't have no intention of stealing
10 nothing from anybody.

11 THE COURT: All right.

12 THE DEFENDANT: I've got, Judge Russo, I've got
13 two small children, and you know, I support them. I take
14 care of them. I mean, they depend on me pretty good, you
15 know. I make them a lot more comfortable. And I don't
16 know, I just, you know, I know I been in trouble before in
17 the past but it's been over like long periods of time. It
18 ain't just like, you know, I'm older now and I'm starting
19 to, you know, get thinking about, you know, what I'm doing
20 and mistakes I'm making and just kind of like wising up.
21 Plus even alcohol alone, that's the only time I've ever
22 been in trouble, I been drinking. That's the only time
23 I've ever been in any trouble.

24 THE COURT: Thank you, Sir.

25 THE DEFENDANT: You're welcome.

1 THE COURT: Well, let me just say this, and I
2 don't know what your intention was. I hear what you tell
3 me. I do believe this. I believe the jury got it right.
4 When you look at the statute I think your conduct that
5 evening -- no one can enter into the mind of somebody. We
6 can only judge that based on actions and things said. But
7 the statute provides that if you attempt to take someone's
8 vehicle by threats or intimidation, that that under South
9 Carolina law is carjacking, and the evidence that the jury
10 had completely supports that. So I think the jury got it
11 right. I don't know -- obviously I don't know you,
12 Mr. Pennell; I don't know Mr. Wilson. So you know, I
13 can't make judgments on individuals. I do know Mr. Wilson
14 seems to be a level headed, somewhat passive individual,
15 and something happened that night that caused him to have
16 enough fear and concern that he actually pulled out a
17 weapon to defend himself. I'm not gonna say he was
18 justified in doing that, but he may have been 'cause I
19 wasn't there; I don't know. But it seems fairly
20 irrational for someone to go to the extent of pulling out
21 a gun and inserting a clip, chambering around and firing
22 that weapon if there wasn't some, at least, perceived
23 serious threat that he was getting his car stolen and
24 taken. And I don't get the feeling, I don't get the
25 impression that Mr. Wilson is irrational. So again, I

1 can't sit here and say what the truth is. I can just sit
2 here, as the jury does, and listen to the evidence, listen
3 to what's presented, and then give it my best judgment
4 based on what's been presented before me. But there's no
5 doubt in my mind at all that whatever really occurred the
6 evidence that was presented rose to the level of
7 carjacking. And I understand Mr. Suggs' position and his
8 argument. We tend to think of carjacking as someone
9 sticking a gun in our face and taking our car, but that's
10 not carjacking. I mean, it is, but that's not all it is.
11 It's just like the statute and the law with regards to
12 operating a motor vehicle. A layperson, the general
13 public considers operating a motor vehicle to actually be
14 driving the car. But we found today that our law in South
15 Carolina operating to be something less than that, to
16 actually be, it can be considered operating your motor
17 vehicle if you get in your car and stick your key in the
18 ignition. Under the law that's considered operating a
19 motor vehicle. So clearly, this was a carjacking that
20 occurred on this evening.

21 I share Mr. Jepertinger's concern that you have
22 been in and out of prison for a large portion of your
23 adult life, and I don't know when you're gonna stop making
24 these foolish decisions. But your conduct is not
25 acceptable. You place people in fear, and I'm taking into

1 consideration everything that I know about this case which
2 is what I've heard this week. The legislature gives us
3 some guidance when it comes to sentences. For example, in
4 this case the range is 30 to 20, and I think there's a
5 reason they give us a range. For example, if this was one
6 of those cases where you stuck a gun in his face and took
7 his car, I would think this case would then fall more on
8 that 20 year maximum range. However, the other side of
9 that range is a situation where you got somebody with a
10 little to no prior record who does pretty much what you
11 did and just no weapon, no use of a weapon, but
12 intimidation in taking and then not taking it.

13 You have a significant prior record so and that's
14 what I'm taking into consideration when I look at
15 sentencing. And I don't -- I'm not gonna give you the
16 maximum because I don't believe, although I think it would
17 be supported with your prior history. But those -- these
18 are the things that I've taken into consideration. On
19 indictment 2009-GS-21-1532, the sentence of the Court is
20 that you be committed to the State Department of
21 Corrections for a period of ten years. Be given credit
22 for any time that you have served. Good luck to you, sir.

23
24 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
25

Michael Robinson Florence Police Department

Michael Robinson

Florence Police Department

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS.

SEPTEMBER

TERM

2009

THE STATE

vs.

CHARLES BERLIN PENNELL

JOHN C. JEPERTINGER

ARREST WARRANT NUMBER

J399872

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

Indictment for

ATTEMPTED CARJACKING

James H. [Signature]
CLERK OF COURT, C.P. & G.S.
FLORENCE COUNTY, S.C.
CERTIFIED: A TRUE COPY

2003 SEP 10 PM 1:04

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
ATTEMPTED CARJACKING

At a Court of General Sessions, convened on SEPTEMBER 10, 2009 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ATTEMPTED CARJACKING

That Charles Berlin Pennell did in Florence County on or about the May 25, 2009, take and/or attempt to take one Chevy Blazer from Jonathan Wilson by force and violence or by intimidation while said victim was operating and/or in the vehicle, in violation of Section 16-3-1075(B)(1), S. C. Code of Laws, 1976; as amended.

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



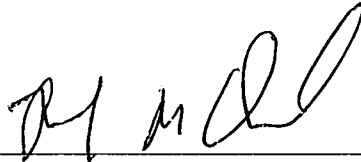
E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 19th, 2012



Robert M. Dudek
Chief Appellate Defender

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