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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from York County

John C. Hayes, III, Circuit Court Judge

TODD E. SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001021

APPENDIX

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State of South Carolina.,) In The General Sessions
) Court of York
)
)
) Case No.: 2011-GS-46-01847
)
 County of York.,)

State of South Carolina.,)
)
 Plaintiff,)
)
 -vs.-) Transcript of Record
)
 Todd Eugene Smith.,)
)
 Defendant.)
 _____)

August 22, 23, 1011
 York, South Carolina

B E F O R E:

Honorable Lee S. Alford, Judge, and a jury.

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

Ms. Erin Joyner
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 For the Plaintiff

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I-N-D-E-XWITNESSPAGE NO.

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Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

1 (COURT IN SESSION MONDAY, AUGUST 22, 2011 AT 12:15
2 PM.)

3 THE COURT: Thank you. Please be seated.

4 (DEFENDANT ENTERING COURTROOM.)

5 (PAUSE.)

6 THE COURT: All right, Solicitor, call the case.

7 MS. JOYNER: Your Honor, if it please the Court. This
8 is the State of South Carolina against Todd Eugene Smith,
9 amended Indictment 2011-GS-46-1-8-4-7, the charge is strong
10 armed robbery. The Defense has indicated that the
11 Defendant's entering a plea of not guilty and the State is
12 ready for trial.

13 THE COURT: All right. Is the Defense ready for
14 trial?

15 MR. SMITH: The Defense if ready, Your Honor.

16 THE COURT: Is there any matter we need to take up
17 before I bring the Jury up?

18 MS. JOYNER: No, sir, Your Honor. I think we have a
19 number of pretrial matters for tomorrow.

20 THE COURT: Okay.

21 MS. JOYNER: But, although, I think, I do, Your Honor
22 have an objection, I think, to Defendant's 5, 8, and 9.

23 THE COURT: Okay, we'll get into those in just one
24 second.

25 Anybody going to help you with the case?

1 MS. JOYNER: No sir, Your Honor.

2 THE COURT: Anybody helping you, Mr. Smith? I know
3 you wanted the investigator to be here.

4 MR. SMITH: No.

5 THE COURT: All right. Let's go over the voir dire
6 right quick.

7 What is your concern, Solicitor, with - -

8 MS. JOYNER: With Number 8 and 9, have you ever served
9 on a jury panel before? Was there anything about your
10 previous experience that would cause you to feel allegiance
11 in favor or against either the Prosecution or the Defense?
12 And has anyone ever appeared as a witness for the
13 Prosecution or Defense at any trial?

14 I don't have any case law with me, Your Honor, but I
15 think those might be profiling questions on their attempt
16 to determine which side that the juror would basically side
17 with. So that would be the basis of our objection to
18 those.

19 THE COURT: Well, I'm not going to ask 8. I'll be
20 glad to ask him, "Have you ever served on a criminal jury
21 panel before?" From an experience standpoint, I think you
22 may be entitled to know that. I don't know if it's going
23 to help you much on the strikes. But I'll ask that. I'm
24 not going to ask them about their previous experiences.
25 That's been ruled on by the courts before that you don't

1 have to ask that question. It's a profiling kind of
2 question sustained in a trial court from asking that, so
3 I'm not going to ask that. If you want me to, I'll ask if
4 they served on a criminal jury before. I don't know that,
5 that will be helpful to you in deciding whether to strike
6 them or not.

7 MR. SMITH: I'd still request it, Your Honor.

8 THE COURT: All right.

9 And what's the problem with Number 9?

10 MS. JOYNER: Well I think he's attempting to illicit
11 the answer of whether they have ever testified as a witness
12 for the Prosecution. Or well, I guess he's just simply
13 asking the Prosecution or Defense without any further
14 elaboration I guess.

15 THE COURT: I think, let me tell you what I plan to do
16 with this. I plan to ask that question, but I'll take the
17 response down front so they don't get anything about their
18 experience before the Jury. I'll bring them down -- I
19 think they're entitled to know that. It might affect your
20 ability one way or the other -- your ability to be fair to
21 both sides. It could possibly do that. At least, I think
22 you have, entitled to have that question asked. But I'll
23 call them forward on that one.

24 And likewise on the 10, I'll bring them down front on
25 that question. And on the State's questions, I'll ask to

1 bring them down front on Number 1, 2, and 5 and get their
2 response down front so we don't have expounding on their
3 reasons or experiences that might affect the Jury.

4 Do you have any questions about that, Mr. Smith?

5 MR. SMITH: The only question is on 2. I don't know
6 how someone would know if they've been suspected or
7 investigated necessarily, so...

8 THE COURT: Well, you know, I could, if they've been
9 investigated, if they don't know, they haven't been. You
10 understand? So I think that would be -- If they don't know
11 that they've been suspected or investigated, their answer
12 would be, "No," I guess, if they have no knowledge of it.
13 If they have been and weren't aware of it, they could
14 respond to it. If a person doesn't know that they're
15 suspected or investigated, they wouldn't respond to the
16 question because they wouldn't know if they were.

17 Anything else?

18 MR. SMITH: No, I'm clear.

19 THE COURT: Now I believe -- It looks like to me
20 strikes are five and five. Do you agree with that?

21 MS. JOYNER: Yes, sir, Your Honor.

22 MR. SMITH: I do, Your Honor.

23 THE COURT: And we'll strike -- we'll select one
24 alternate. Strikes for the alternate, two for the Defense
25 and one for the State.

1 Is there anything else we need to take up before we
2 select the jury, any pretrial matters that we need to take
3 up later?

4 MS. JOYNER: No, sir, Your Honor.

5 THE COURT: We won't swear the jury for that reason.
6 We won't swear them.

7 MR. SMITH: In scheduling, Your Honor, it's my
8 understanding we'll begin the actual trial tomorrow, just
9 in case some jurors say they have a Wednesday conflict. I
10 expect we'll finish tomorrow. I have a Wednesday conflict
11 as well. I had surgery last Monday. So, I'm going back in
12 for a checkup then. But I expect this to finish tomorrow.

13 MS. JOYNER: I would put the State's witnesses up and
14 ,Your, Honor. Yes, sir. I think the worse case scenario,
15 we may or on Wednesday morning, but I think that would be a
16 very, very small possibility.

17 THE COURT: You've got a good many witnesses listed.
18 You may not call them all or are some of these short?

19 MS. JOYNER: Probably, they're mostly going to be very
20 short. Not everybody will be called.

21 THE COURT: It depends on how much pretrial, you got.
22 Now if you get too long into pretrial, and we can't get
23 started with the trial, I'm not going to get started with
24 arguments and charge much after 4:00 o'clock. That's about
25 the deadline 4 o'clock.

1 MS. JOYNER: I think for pretrial, Your Honor, we have
2 a very short Jackson v. Denno. And I'm not sure whether
3 Mr. Smith will require a Neil versus Biggers hearing.

4 MR. SMITH: That's correct. That will be it.

5 THE COURT: Please, ma'am, if you'll ask them to bring
6 the jury up.

7 (PAUSE.)

8 THE COURT: Counsel, approach just a minute.

9 (BENCH CONFERENCE OFF THE RECORD AT 12:30 PM.)

10 MR. SMITH: The first listed witness on their witness
11 list, Your Honor --

12 MS. JOYNER: Yes, sir, Your Honor, it's Minor
13 And her full name is Minor

14 THE COURT: Okay.

15 MS. JOYNER: Your Honor, if we could move to amend
16 that indictment to say, by means of force or intimidation,
17 goods or money of the victim (comma), Minor
18 Minor

19 THE COURT: Any objection to that amendment?

20 MR. SMITH: No objection, Your Honor.

21 THE COURT: To clarify who the victim is. The Court
22 will amend the indictment.

23 Let the record reflect that the indictment was
24 amended.

25 MADAME COURT REPORTER: Yes, sir, yes, sir.

1 THE COURT: And I've initialed it.

2 MADAME COURT REPORTER: I did so.

3 (WHEREUPON: INDICTMENT NUMBER 2011-GS-46-1847 WAS
4 AMENDED BY THE COURT.)

5 THE COURT: Yes, George Weeks? Who does he work for,
6 FSU?

7 MS. JOYNER: Yes, sir, Your Honor. He's the head of
8 FSU.

9 THE COURT: Forensic?

10 MS. JOYNER: Yes, sir, Forensic Service Unit.

11 THE COURT: Okay.

12 (PAUSE.)

13 (JURY ENTERS COURTROOM AT 12:35 PM.)

14 THE COURT: Good afternoon, ladies and gentlemen of
15 the jury panel, if you'll give me your attention, please.
16 Before we get started in this case, let me ask you. Were
17 there any members of the jury panel who are protected for
18 Tuesday? Were you protected, any member of this group, for
19 Tuesday? How about Wednesday? Protected for Wednesday?

20 (JUROR STOOD.)

21 THE COURT: Anyone else protected for Wednesday? I
22 think out of an abundance of caution, I'm going to excuse
23 this juror off the case just in case we can't get finished
24 tomorrow.

25 MADAME CLERK: Sir, what's your number?

1 JUROR ONE TWENTY-NINE: 1-2-9.

2 (JUROR NUMBER ONE TWENTY-NINE, JONATHAN T. KARNAP
3 DISMISSED BY THE COURT.)

4 THE COURT: If you would just stay with us and follow
5 instruction, please, sir. We may finish this case
6 tomorrow, but we may not, and I just don't want to take
7 that chance since you have protection.

8 All right, ladies and gentlemen of the jury panel,
9 again, if you could give me your attention, please. We're
10 about to go into a trial in the matter of the *State of*
11 *South Carolina versus Todd Eugene Smith*. The State charges
12 Todd Eugene Smith with the offense of strong armed robbery.
13 To this charge, the Defendant has pled not guilty. And
14 we're about to go into a trial in that matter.

15 The State is represented in this case by Erin Joyner,
16 Assistant Solicitor.

17 Please stand, Counsel, so the Jury can see who you
18 are.

19 (ASSISTANT SOLICITOR JOYNER STOOD.)

20 THE COURT: You may be seated.

21 Is anyone on the jury panel related by blood or
22 marriage, friends with, have any other type social,
23 business, or professional relationship with Erin Joyner?
24 If so, please stand.

25 (NO RESPONSE.)

1 THE COURT: Is anyone on the jury panel related by
2 blood or marriage, friends with, or have any other type
3 social, business, or professional relationship with anyone
4 who works in the Sixteenth Circuit Solicitor's Office? If
5 so, please stand.

6 Yes, ma'am, please give us your name and number.

7 JUROR NUMBER FORTY-SIX: My name is Amy Christie. I'm
8 Juror Number 46.

9 THE COURT: Yes, ma'am.

10 MS. CHRISTIE: I'm a paralegal for criminal defense
11 lawyer's so I am in contact with the Solicitor's Office.

12 THE COURT: Ma'am, is there anything about that
13 relationship that would interfere in any way with your
14 ability to give both the State and the Defendant a fair and
15 impartial trial in this case?

16 MS. CHRISTIE: No, Your Honor, it wouldn't.

17 THE COURT: Thank you, ma'am. You may be seated.
18 Anyone else?

19 (NO RESPONSE.)

20 THE COURT: The Defendant Todd Eugene Smith is
21 represented in this case by Phil Smith who's with the York
22 County Public Defender's Office.

23 Mr. Smith, would you please stand? And also ask Mr.
24 Smith to stand, so the Jury can see who he is in person.

25 (DEFENSE ATTORNEY PHIL SMITH AND DEFENDANT TODD SMITH

1 STOOD.)

2 THE COURT: Thank you. You may be seated.

3 Is anyone on the jury panel related by blood or
4 marriage, friends with, or have any other type social,
5 business, or professional relationship with Todd Eugene
6 Smith? If so, please stand.

7 (NO RESPONSE.)

8 THE COURT: Is anyone on the jury panel related by
9 blood or marriage, friends with, or have any other type
10 social, business, or professional relationship with Phil
11 Smith? If so, please stand.

12 (NO RESPONSE.)

13 THE COURT: Is anyone on the jury panel related by
14 blood or marriage, friends with, or have any other type
15 social, business, or professional relationship with anyone
16 who works in the Sixteenth Circuit Public Defender's
17 Office? If so, please stand.

18 (NO RESPONSE.)

19 THE COURT: Ladies and gentlemen of the jury panel,
20 I'm going to go through a list of potential witnesses in
21 this case. All of these witnesses may not be called, but
22 they may be called. And what I'm going to ask you to do is
23 when I call the potential witness's name, if you are
24 related by blood or marriage, friends with, or have any
25 other type social, business or professional relationship

1 with any of these named potential witnesses, when I call
2 their names, I will ask that you please stand: Minor
3 Minor ; John Robertson; George Weeks,
4 who's with the York County Forensic Services Unit;
5 Detective Trista Baird, B-a-i-r-d, with the Rock Hill
6 Police Department; Detective Cedric Stokes with the Rock
7 Hill Police Department; Sergeant Carlos Culbreath, spelled
8 C-u-l-b-r-e-a-t-h, with the Rock Hill Police Department;
9 Sergeant Mike Smothers with the Rock Hill Police
10 Department; Officer Tony Stewart with the Rock Hill Police
11 Department; Sergeant Vernon Harmon with the Rock Hill
12 Police Department.

13 A. Your Honor.

14 THE COURT: Yes, sir. Give us your name and number
15 please, sir.

16 A. Thomas J. Glenn, Juror Number 93.

17 THE COURT: Yes, sir.

18 MR. GLENN: Sir, I work for the City of Rock Hill in
19 the Emergency Management Division. Actually, I associate
20 with those officers several times during the course of the
21 week on a regular basis.

22 THE COURT: All right. Have you had any involvement
23 with the Rock Hill Police Department with regard to this
24 particular case, sir?

25 MR. GLENN: No, sir.

1 THE COURT: And is there anything about that
2 relationship that would interfere in any way with your
3 ability to give both the State and the Defendant a fair and
4 impartial trial in this case?

5 MR. GLENN: It would not, sir.

6 THE COURT: All right, thank you, sir. You may be
7 seated.

8 Anyone else?

9 (NO RESPONSE.)

10 THE COURT: Has any member of the jury panel a
11 relative or close friend of yours, now or in the past, ever
12 been a member of a law enforcement agency for the federal,
13 state, county, city, or military police department? If so,
14 please stand.

15 (JURORS STOOD.)

16 THE COURT: I'm going to move from my left to right.

17 Yes, sir. Give us your name and number, sir.

18 Yes, sir.

19 MR. FUNDERBURKE: Juror Number 83, Marion Funderburke.
20 I have been previously a member of the Charlotte
21 Mecklenburg County Police Department. Also, the County
22 Police Department in Mecklenburg County. The Air Force, of
23 course, I'm with the Air Force. I know a lot of police
24 officers in Rock Hill. I know a lot of police officers in
25 Lancaster County where I be with them almost every day.

1 THE COURT: Sir, is there anything about those
2 relationships or your past experience as a police officer
3 that would interfere in any way with your ability to give
4 both the State and the Defendant Todd Eugene Smith a fair
5 and impartial trial in this case?

6 MR. FUNDERBURKE: There's nothing, sir.

7 THE COURT: Sir?

8 MR. FUNDERBURKE: There's nothing that will prevent me
9 from being fair.

10 THE COURT: Thank you, sir. You may be seated.

11 Yes, ma'am.

12 A. Yes, I'm sorry, I was recollecting. My grandfather's
13 father was in a branch of law enforcement in South
14 Carolina. I'm not really sure which -- I have never met
15 him because he was, you know, previously --

16 THE COURT: Yes, please give us your name and number
17 again since we're on the record.

18 A. Amy Christie, 46. But he died before I was born, so
19 I'm not sure that, that --

20 THE COURT: Ma'am, is there anything about that
21 relationship - - -

22 MS. CHRISTIE: No.

23 THE COURT: - - - that would interfere with your
24 ability to give both sides a fair trial in this case?

25 MS. CHRISTIE: No. No, Your Honor.

1 THE COURT: Thank you, ma'am.

2 Yes, sir?

3 A. Sir, Thomas J. Glenn, Juror Number 93. My previous
4 career before I retired was at the Allegheny Police
5 Department in Pittsburgh, Pennsylvania. I was with the
6 department for twenty-eight years along with -- I worked
7 twenty years in Homicide, four years in Investigation that
8 not only included those but also robberies and organized
9 crime.

10 THE COURT: Sir, is there anything about your
11 experiences in that regard that can interfere in any way
12 that you believe to give both the State and the Defendant a
13 fair and impartial trial in this case?

14 MR. GLENN: I believe not, sir.

15 THE COURT: Sir?

16 MR. GLENN: I would not be able -- Yes, sir, I could
17 give a fair trial -- decision.

18 THE COURT: Thank you, you may be seated.

19 Yes, sir. Give us your name and number, please, sir.

20 A. Judge, I'm William Easley, Juror Number 252. This has
21 to do with a previous question and a previous answer.

22 THE COURT: Yes, sir.

23 MR. EASLEY: I wasn't sure whether I heard correctly
24 when you asked if anyone knew a John Roberts or a John
25 Robertson -- John Robinson?

1 THE COURT: Yes, sir. The question was John
2 Robertson.

3 MR. EASLEY: Robertson?

4 THE COURT: Yes, sir.

5 MR. EASLEY: All right.

6 THE COURT: Thank you.

7 Yes, ma'am. Please give us your name and number.

8 A. I'm Kelly Patterson, Juror 183.

9 THE COURT: Yes, ma'am.

10 MS. PATTERSON: My father-in-law is a chaplain of the
11 police department. And I have a cousin that's a sheriff's
12 deputy.

13 THE COURT: Ma'am, is there anything about those
14 relationships that would interfere in any way of your
15 ability to give both the State and the Defendant a fair and
16 impartial trial in this case?

17 MS. PATTERSON: No, sir.

18 THE COURT: Thank you, ma'am.

19 Yes, sir?

20 A. James McWright, Juror 144. My brother's been in law
21 enforcement for the past twenty-five years around the
22 Raleigh/Durham area.

23 THE COURT: Okay. Sir, is there anything about that
24 relationship that would interfere in any way with your
25 ability to give both sides a fair and impartial trial in

1 this case?

2 MR. MCWRIGHT: No.

3 THE COURT: Thank you, sir.

4 Yes, sir?

5 A. Mitch Fowler, Juror 75. My father's a retired York
6 County Sheriff's Deputy and also a York County constable
7 presently.

8 THE COURT: Sir, is there anything about that
9 relationship that would interfere in any way with your
10 ability to give both sides a fair and impartial trial in
11 this case?

12 MR. FOWLER: Not at all.

13 THE COURT: Thank you, sir.

14 Yes, ma'am.

15 A. Ellen Galicia, Juror Number 84. My father and cousin
16 were County police officers.

17 THE COURT: Ma'am, is there anything about those
18 relationships that would interfere in any way with your
19 ability to give both sides a fair and impartial trial in
20 this case?

21 MS. GALICIA: No, sir.

22 THE COURT: Thank you, ma'am.

23 Anyone else?

24 (NO RESPONSE.)

25 THE COURT: I've asked you this question before in a

1 slightly different form. I'm going to ask it again. Is
2 any member of the jury panel related by blood or marriage
3 to, or are close personal friends with, or had any contact
4 with any of the prosecutors or employees of the York County
5 Solicitor's Office? If so, please stand.

6 MADAME CLERK: Judge.

7 MR. GLENN: Your Honor.

8 THE COURT: Yes, sir?

9 MR. GLENN: Again, Thomas Glenn, Juror Number 93.
10 Chris Barton with the Municipal Court, City of Rock Hill, I
11 have associations with him. I don't think that association
12 will affect my decision.

13 THE COURT: Thank you, sir.

14 Has any member of the jury panel been represented by
15 any of the attorneys in this case? Or close personal
16 friend or family represented you or a close personal friend
17 or family member? Or have any of them represented an
18 adverse party in any case involving you or a close personal
19 friend or family member? If so, please stand.

20 (NO RESPONSE.)

21 THE COURT: Is any member of the jury panel or a close
22 friend with anyone employed by the Attorney General or any
23 solicitor or other prosecutor's office? If so, please
24 stand.

25 (NO RESPONSE.)

1 THE COURT: Is any member of the jury panel a current
2 or past member or supporter of Mothers Against Drunk
3 Driving, Students Against Drunk Driving, Alcoholics
4 Anonymous or any other similar organization? If so, please
5 stand.

6 (NO RESPONSE.)

7 THE COURT: Does any member of the jury panel
8 contribute to any group which has as its primary concern
9 the promotion of law enforcement or victims' rights? If
10 so, please stand.

11 Yes, ma'am. Please give us your name.

12 A. Jeannie Bastone, 251.

13 THE COURT: Yes, ma'am.

14 MS. BASTONE: I support the South Carolina Fraternal
15 Order of Police.

16 THE COURT: All right, ma'am, is there anything about
17 the support of that organization -- That's going to be my
18 next question -- But is there anything about your support
19 of that organization that would interfere in any way with
20 your ability to give both the State and the Defendant a
21 fair and impartial trial in this case?

22 MS. BASTONE: No, Your Honor.

23 THE COURT: Thank you, ma'am.

24 Yes, sir?

25 MR. GLENN: Thomas Glenn, Juror Number 93. Still an

1 active member with both Life 91 and in Allegheny County in
2 western Pennsylvania and also Lodge 15 in Rock Hill, the
3 FOB. But I, no, Your Honor, I don't believe that their
4 association would have a - interfere with a fair decision.

5 THE COURT: Anything about those associations or
6 support of those organizations would interfere in any way
7 with your ability to give both the State and the Defendant
8 a fair and impartial trial in this case?

9 MR. GLENN: No, Your Honor.

10 THE COURT: Thank you.

11 Anyone else?

12 (NO RESPONSE.)

13 THE COURT: Has any member of the jury panel a
14 supporter of a police booster organization, honorary law
15 enforcement organization, or any similar group, such as the
16 Trooper's Association, the Sheriff's Association, or the
17 Fraternal Order of Police? If so, please stand.

18 Yes, ma'am. Please give us your name and number,
19 ma'am.

20 A. Barbara Weckerly, 241. I've sent money in for the
21 State Trooper's Association.

22 THE COURT: Ma'am, is there anything about your
23 support of that organization that would interfere in any
24 way with your ability to give both sides a fair and
25 impartial trial in this matter?

1 MS. WECKERLY: No, sir.

2 THE COURT: Thank you, ma'am.

3 Yes, ma'am? You've already answered that question.

4 You may be seated, both of you. Yes, thank you.

5 I asked you about the York County Public Defender's
6 Officer. Let me ask you also, is any member of the jury
7 panel friends with or associates with any person who works
8 for a criminal defense attorney? If so, please stand.

9 And I think we had gotten yours before, but please
10 give us your name and number, again, please ma'am.

11 MS. CHRISTIE: Amy Christie, Juror Number 46.

12 THE COURT: And you work for, which office, ma'am?

13 MS. CHRISTIE: I work for two offices, but the one
14 that is a criminal defense attorney is Brian R. Murphy.

15 THE COURT: Again, ma'am, is there anything about that
16 association and experience that would interfere in any way
17 with your ability to give both the State and the Defendant
18 a fair and impartial trial in this case?

19 MS. CHRISTIE: No, Your Honor, it wouldn't.

20 THE COURT: Thank you, ma'am.

21 Anyone else?

22 (NO RESPONSE.)

23 THE COURT: Has anyone, other than the jurors who just
24 stood, has any member of the jury panel worked for the York
25 County Public Defender's Office or any attorney engaged in

1 criminal defense?

2 (JUROR NUMBER 46 STOOD.)

3 THE COURT: And you've already stood, you need not
4 stand back.

5 Anyone else?

6 (NO RESPONSE.)

7 THE COURT: Ladies and gentlemen of the jury panel,
8 I'm going to ask you several questions now. And what I'm
9 going to ask you to do is listen to all of the questions.
10 If one or more of these questions may apply to you, or you
11 need to respond to one or more of these questions, I'll ask
12 you to wait until I have completed all of the questions.
13 And then I'll give you an opportunity to come forward one
14 at a time. Then we'll take your responses down front, next
15 to the court reporter.

16 Here are the questions: Has anyone on the jury panel
17 ever appeared as a witness for the Prosecution or Defense
18 at any trial?

19 The next question, have you, your family or a close
20 personal friend ever been the victim of a burglary,
21 robbery, or other similar crime?

22 Have you or a member of your immediate family ever
23 been the victim of a robbery or other similar crime?

24 Have you or a member of your immediate family ever
25 been suspected of, to your knowledge, investigated or

1 arrested for the offense of strong armed robbery also known
2 as common law robbery or other similar crime?

3 Does any member of the jury panel have any beliefs,
4 religious or otherwise, that would prevent you from
5 rendering judgment against another person? Now if you need
6 to respond to one or more of these questions, I'll ask you,
7 please to come to the center aisle, and we'll take your
8 responses down front next to the court reporter here.

9 If you need to respond to any of those questions,
10 please come to the center aisle.

11 THE COURT: Yes, sir. Give us your name and number
12 for the record.

13 A. Juror Number 83, Marion Funderburke is my name.

14 THE COURT: Yes, sir.

15 MR. FUNDERBURKE: As far as being a victim, I haven't
16 been a victim. As far as having my service revolver stolen
17 some time ago when I was in Charlotte Mecklenburg Police
18 Department. And about four years ago, I had my jeep broken
19 into, and somebody stole some tools from me. And I want to
20 respond to the last question; I can't remember what that
21 was.

22 THE COURT: Religious beliefs? Moral beliefs?

23 MR. FUNDERBURKE: The only belief I have is I can be
24 fair if it doesn't come to someone being imposed for the
25 death penalty.

1 THE COURT: Okay, all right, well, wait just a minute.
2 Well, of course, this case doesn't involve the death
3 penalty.

4 MR. FUNDERBURKE: Right, I understand that.

5 THE COURT: Yes, I need to ask you specifically
6 whether anything about your experiences in that regard
7 would interfere with your ability to give both the State
8 and the Defendant a fair and impartial trial in this case?

9 MR. FUNDERBURKE: Oh, no.

10 THE COURT: Thank you, sir. You may return to your
11 seat. Thank you.

12 Come right here, please, ma'am. Okay, and give us
13 your name and number because we're on the record.

14 A. Amy Christie, Juror Number 46.

15 THE COURT: Yes, ma'am.

16 MS. CHRISTIE: A previous ex-boyfriend of mine was a
17 victim of -- I'm not sure what the charges were but it was
18 someone broke into his apartment.

19 THE COURT: Okay. Is there anything about your
20 experiences in that would interfere in any way with your
21 ability to give both the State and the Defendant a fair and
22 impartial trial in this case?

23 MS. CHRISTIE: No, Your Honor, it wouldn't.

24 THE COURT: All right, thank you, ma'am.

25 MS. CHRISTIE: Uh-huh.

1 THE COURT: Come on up, please. Give us your name and
2 number for the record.

3 A. Verla Shafer, 209.

4 THE COURT: Yes, ma'am.

5 MS. SHAFER: I'm a landlord, and I've been a landlord
6 for like thirty years, and so I have gone to court to
7 testify about things that have happened at my property.

8 THE COURT: Okay. Well let me ask you, is there
9 anything about your experiences in that regard that would
10 interfere in any way with your ability to give both the
11 State and the Defendant a fair and impartial trial in this
12 case?

13 MS. SHAFER: No, it shouldn't.

14 THE COURT: Okay, thank you, ma'am.

15 Give us your name and number again for the record.

16 A. Thomas Glenn, Juror Number 93.

17 THE COURT: Yes, sir.

18 MR. GLENN: I was a police officer for twenty-eight
19 years, sir. Twenty-four of those years, I worked in
20 investigations and different times prosecution cases.

21 THE COURT: Again, let me ask you whether there's
22 anything about your experiences in that regard that would
23 interfere in any way with your ability to give both the
24 State and the Defendant a fair and impartial trial in this
25 case?

1 MR. GLENN: Most likely, not, Your Honor.

2 THE COURT: I've got to have a more definitive answer
3 than that.

4 MR. GLENN: I would think not. I would --

5 THE COURT: Let me ask you this question. Could you
6 listen to the testimony and evidence that comes in during
7 the course of the trial and my instruction to you with
8 regard to the law that applies, and render a decision which
9 would be fair and impartial to both the State and
10 Defendant? If you could not do that, please be honest with
11 me, and tell me that.

12 MR. GLENN: I would have to say, no, because I have to
13 look at it in a different light.

14 THE COURT: Well, I'm not going to require you to
15 serve on this particular jury. So, but just go back and
16 have a seat, and just follow the instruction, okay?

17 MR. GLENN: Yes, sir, thank you.

18 THE COURT: Please give us your name and number for
19 the record.

20 A. Mike Faris, 74.

21 THE COURT: Yes, sir.

22 MR. FARIS: My apartment got burglarized decades ago.

23 THE COURT: Is there anything about your experiences
24 in that regard that would interfere in any way with your
25 ability to give both the State and the Defendant a fair and

1 impartial trial in this case?

2 MR. FARIS: No, sir.

3 THE COURT: Thank you, sir.

4 Please give us your name and number for the record.

5 A. Cheryl Moore, Juror 165.

6 THE COURT: Yes, ma'am.

7 MS. MOORE: I was a victim of home invasion robbery .

8 THE COURT: Ma'am, is there anything about your
9 experiences in that regard that would interfere in any way
10 with your ability to give both the State and the Defendant
11 a fair and impartial trial in this case?

12 MS. MOORE: No, no it wouldn't.

13 THE COURT: You could be fair?

14 MS. MOORE: Yes, I could.

15 THE COURT: Thank you, ma'am.

16 Please give us your name and number for the record.

17 A. Ellen Galicia, Number 84.

18 THE COURT: Yes, ma'am.

19 MS. GALICIA: My brother's house and my sister's house
20 was broken into. And my husband's car was robbed and his
21 briefcase taken.

22 THE COURT: Let me ask you whether there's anything
23 about your experiences in that regard that would interfere,
24 in any way, with your ability to give both the State and
25 the Defendant a fair and impartial trial in this case?

1 MS. GALICIA: No, sir.

2 THE COURT: Thank you, ma'am.

3 Please give us your name and number for the record.

4 A. Yes, Bradley Palm, 181.

5 THE COURT: Yes, sir.

6 MR. PALM: And you had ask about the victim of a
7 robbery.

8 THE COURT: Yes, sir.

9 MR. PALM: And I had two of my cars broken into and
10 things stolen from the car.

11 THE COURT: Let me ask you whether there's anything
12 about your experiences in that regard that would interfere,
13 in any way, with your ability to give both the State and
14 the Defendant a fair and impartial trial in this case?

15 MR. PALM: No, sir, I can be fair.

16 THE COURT: Okay, thank you.

17 Sir, please give us your name and number for the
18 record.

19 A. Iverson Shaver, Number 210.

20 THE COURT: Yes, sir.

21 MR. SHAVER: I was -- had a weapon stolen out of my
22 car And that weapon, eventually, was used in a robbery of a
23 convenience store back about three years ago.

24 THE COURT: Let me ask you whether there's anything
25 about your experiences in that regard that would interfere,

1 in any way, with your ability to give both the State and
2 the Defendant a fair and impartial trial in this case?

3 MR. SHAVER: I don't think so, no.

4 THE COURT: We'll have to have a more definitive
5 answer, yes or no?

6 MR. SHAVER: Oh, okay, no.

7 THE COURT: Thank you, thank you, sir.

8 MR. SHAVER: Thank you.

9 THE COURT: Come around, up here, please, ma'am.

10 A. Nancy Cutler, Number 61.

11 I don't want to judge a conviction. I don't want to
12 sit in judgment of someone.

13 THE COURT: Pardon me.

14 MS. CUTLER: I don't judge a conviction. I don't want
15 to be judged and I don't want to do this. I don't think I
16 can.

17 THE COURT: All right. Well why is that?

18 MS. CUTLER: Because I couldn't and no one should.

19 THE COURT: I'm not going to require you to sit on
20 this jury. And I'm really not going to require you to sit
21 on any jury this week, if that's the way you think. But
22 what I will ask you to do is sit in the courtroom in the
23 back, back there, the rest of the week and observe. And
24 see what you can find out about our justice system.

25 MS. CUTLER: Yes, sir.

1 THE COURT: And get some education about it. Because
2 I think it's important for you to understand why it's
3 important to have jurors and that and so if you -- So, I'm
4 not going to require you to sit on the jury because I think
5 you'd have the same response in every case. So if you just
6 sit on the back row back there, and just observe till I
7 release you later in the morning.

8 MS. CUTLER: Thank you, sir.

9 THE COURT: Thank you, ma'am.
10 Please give us your name and number for the record.

11 A. Ann Banks, Juror Number 15.

12 THE COURT: Yes, ma'am.

13 MS. BANKS: The end of last summer my parents had a
14 golf cart stolen. They were all on the beach and was in
15 the access parking lot and it was stolen.

16 THE COURT: Let me ask you whether there's anything
17 about your experiences in that regard that would interfere,
18 in any way, with your ability to give both the State and
19 the Defendant a fair and impartial trial in this case?

20 MS. BANKS: No, sir.

21 THE COURT: Thank you, ma'am. You can return to your
22 seat.

23 (THE COURT RETURNED TO THE BENCH.)

24 THE COURT: Just a few more questions, ladies and
25 gentlemen. Has any member of the jury panel had any prior

1 knowledge about this case? And let me -- The allegations
2 in this case that it occurred on or about February the
3 13th, 2011. And the alleged victim, again, is Minor
4 Minor , spelled Minor . Has any
5 member of the jury had any prior knowledge about this case
6 from any source before coming here to court today? If so,
7 please stand?

8 (NO RESPONSE.)

9 THE COURT: Has any member of the jury panel formed or
10 expressed an opinion as to the guilt or innocence of the
11 Defendant Todd Eugene Smith? If so, please stand.

12 (NO RESPONSE.)

13 THE COURT: Is any member of the jury panel conscious
14 of any interest, bias, or prejudice for or against the
15 Defendant Todd Eugene Smith? If so, please stand.

16 (NO RESPONSE.)

17 THE COURT: Can each member of the jury panel give
18 both the State and the Defendant Todd Eugene Smith a fair
19 and impartial trial in this case? If not, please stand.

20 (NO RESPONSE.)

21 THE COURT: Does any member of the jury panel know of
22 any reason whatsoever why he or she should not serve as a
23 juror in this particular case? If so, please stand.

24 (NO RESPONSE.)

25 THE COURT: Any additional questions requested of the

1 jury panel from the State?

2 MS. JOYNER: Not from the State, Your Honor.

3 THE COURT: What of the Defense?

4 MR. SMITH: None from the Defense, Your Honor.

5 THE COURT: Madame Clerk, please give us the Jury.

6 MADAME CLERK: If you have any personal belongings
7 when I call your name, bring them with you and come stand
8 by the Bailiff.

9 (JURY EMPANELED AT 01:07 PM.)

10 MADAME CLERK: Number 84, Ellen M. Galicia.

11 (WHITE FEMALE COMING FORWARD.)

12 MADAME CLERK: What say you for the State?

13 MS. JOYNER: Please present this juror.

14 MADAME CLERK: Defense?

15 MR. SMITH: Please excuse the juror.

16 MADAME CLERK: You are excused from this case.

17 Number 46, Amy Christie.

18 (WHITE FEMALE COMING FORWARD.)

19 MADAME CLERK: What say you for the State?

20 MS. JOYNER: Please excuse this juror from service in
21 the case.

22 MADAME CLERK: You are excused from this case.

23 Number 38, Steven Burns. 38, Steven Burns.

24 (WHITE MALE COMING FORWARD.)

25 MADAME CLERK: What say you for the State?

1 A. Steven L. Burns.

2 MS. JOYNER: Please present this juror.

3 MADAME CLERK: Defense?

4 MR. SMITH: Please seat Mr. Burns.

5 MADAME CLERK: Have a seat in the jury box.

6 Number 209, Verla Shafer.

7 (WHITE FEMALE COMING FORWARD.)

8 MADAME CLERK: What say you for the State?

9 MS. JOYNER: Please present this juror.

10 MADAME CLERK: Defense?

11 MR. SMITH: Please seat Ms. Shafer.

12 MADAME CLERK: Have a seat in the jury box.

13 Number 180, Robert Painter.

14 (WHITE MALE COMING FORWARD.)

15 MADAME CLERK: What say you for the State?

16 MS. JOYNER: Please present this juror.

17 MADAME CLERK: Defense?

18 MR. SMITH: Please seat Mr. Painter.

19 MADAME CLERK: Have a seat in the jury box.

20 Number 217, Stephen Simpson.

21 (WHITE MALE COMING FORWARD.)

22 MADAME CLERK: What say you for the State?

23 MS. JOYNER: Please excuse this juror from service in
24 this case.

25 MADAME CLERK: You are excused from this case.

1 Number 183, Kelly Patterson.

2 (WHITE FEMALE COMING FORWARD.)

3 MADAME CLERK: What say you for the State?

4 MS. JOYNER: Please present this juror.

5 MADAME CLERK: Defense?

6 MR. SMITH: Please excuse Ms. Patterson.

7 MADAME CLERK: You are excused in this case.

8 Number 170, Bruce Munnell.

9 (WHITE MALE COMING FORWARD.)

10 MADAME CLERK: What say you for the State?

11 MS. JOYNER: Please present this juror.

12 MADAME CLERK: Defense?

13 MR. SMITH: Please seat Mr. Munnell.

14 MADAME CLERK: Have a seat in the jury box.

15 Number 241, Barbara Weckerly.

16 (WHITE FEMALE COMING FORWARD.)

17 MADAME CLERK: What say you for the State?

18 MS. JOYNER: Please present this juror.

19 MADAME CLERK: Defense?

20 MR. SMITH: Please excuse the juror.

21 MADAME CLERK: You are excused in this case.

22 Number 83, Marion Funderburke.

23 (BLACK MALE COMING FORWARD.)

24 MADAME CLERK: What say you for the State?

25 MS. JOYNER: Please present this juror.

1 MADAME CLERK: Defense?

2 MR. SMITH: Please excuse the juror.

3 MADAME CLERK: You are excused in this case.

4 Number 165, Cheryl Moore.

5 (BLACK FEMALE COMING FORWARD.)

6 MADAME CLERK: What say you for the State?

7 MS. JOYNER: Please present this juror.

8 MADAME CLERK: Defense?

9 MR. SMITH: Please seat Ms. Moore.

10 MADAME CLERK: Have a seat in the jury box.

11 Number 181, Bradley Palm.

12 (WHITE MALE COMING FORWARD.)

13 MADAME CLERK: What say you for the State?

14 MS. JOYNER: Please present this juror.

15 MADAME CLERK: Defense.

16 MR. SMITH: Please swear Mr. Palm.

17 MADAME CLERK: Have a seat in the jury box.

18 Number 190, Ronald Pullin.

19 (WHITE MALE COMING FORWARD.)

20 MADAME CLERK: What say you for the State?

21 MS. JOYNER: Please present this juror.

22 MADAME CLERK: Defense.

23 MR. SMITH: Please seat Mr. Pullin.

24 MADAME CLERK: Have a seat in the jury box.

25 Number 118, Melvin Hyman.

1 (BLACK MALE COMING FORWARD.)

2 MADAME CLERK: What say you for the State?

3 MS. JOYNER: Please present this juror.

4 MADAME CLERK: Defense?

5 MR. SMITH: Please seat Mr. Hyman.

6 (JURY TOOK SEAT IN JURY BOX.)

7 MADAME CLERK: Number 210, Iverson Shaver.

8 (WHITE MALE COMING FORWARD.)

9 MADAME CLERK: What say you for the State?

10 MS. JOYNER: Please present this juror.

11 MADAME CLERK: Defense?

12 MR. SMITH: Please seat Mr. Shaver.

13 (JUROR TOOK SEAT IN JURY BOX.)

14 MADAME CLERK: Number 74, Michael Faris.

15 (WHITE MALE COMING FORWARD.)

16 MADAME CLERK: What say you for the State?

17 MS. JOYNER: Please present this juror.

18 MADAME CLERK: Defense?

19 MR. SMITH: Please seat Mr. Faris.

20 (JUROR TOOK SEAT IN JURY BOX.)

21 MADAME CLERK: Number 145, Jimmy Manning.

22 (WHITE MALE COMING FORWARD.)

23 MADAME CLERK: What say you for the State?

24 MS. JOYNER: Please present this juror.

25 MADAME CLERK: Defense?

1 MR. SMITH: Please seat Mr. Manning.

2 MADAME CLERK: Have a seat in the jury box.

3 Number 88, Stephen Gatlin.

4 (WHITE MALE COMING FORWARD.)

5 MADAME CLERK: What say you for the State?

6 MS. JOYNER: Please present this juror.

7 MADAME CLERK: Defense?

8 MR. SMITH: Please seat Mr. Gatlin.

9 MADAME CLERK: Have a seat in the jury box.

10 This is for the alternate.

11 Number 138, Timothy Ledford.

12 (WHITE MALE COMING FORWARD.)

13 MADAME CLERK: What say you for the State?

14 MS. JOYNER: Please present this juror.

15 MADAME CLERK: Defense?

16 MR. SMITH: Please seat Mr. Ledford.

17 MADAME CLERK: Have a seat in the jury box.

18 THE COURT: Any questions concerning the selection
19 process from the State?

20 MS. JOYNER: Not from the State, Your Honor.

21 THE COURT: From the Defense?

22 MR. SMITH: None from the Defense.

23 THE COURT: Ladies and gentlemen from the jury panel,
24 who were not selected from this particular case, I'm going
25 to go ahead and excuse you at this time. I would ask you,

1 please, to call in tonight after Seven o'clock. Tonight
2 after Seven o'clock you'll get instructions as to when to
3 report back at call back, as the case may be. Thank you
4 for your patience, ladies and gentlemen, for your service
5 thus far. You are free to go at this time.

6 (JURY DISMISSED AT 01:18 PM.)

7 THE COURT: Ladies and gentlemen of the jury panel, if
8 you'll give me your attention, please. We're not going to
9 actually get started with this case today. We wanted to go
10 ahead and the jury drawn, so we can release those who are
11 not going to be necessary. We have other matters we're
12 going to have to do today, and some other pretrial matters
13 in this case, and that sort of thing. So we're actually
14 not going to started -- We'll get started sometime in the
15 morning.

16 Counsel, to give a rough idea, we will start probably
17 around 10:30 or Ten o'clock?

18 MS. JOYNER: That should be fine.

19 MR. SMITH: That should be fine, Your Honor.

20 THE COURT: That will give us enough time? All right.

21 So I'm going to ask you, if you will, to be back in
22 the jury room ready to go in the morning at Ten o'clock.

23 I will give you some specific instructions. Please do
24 not discuss this case among yourselves or with anyone else
25 you might see during the recess from court. And you might

1 say, "Well, what's wrong with our discussing the case among
2 ourselves or with anyone else?" "If someone finds out I'm
3 on the jury and they want to know something about it?"

4 Well, of course, at this present time, you do not know
5 anything about the case except what the charge is in this
6 case, you know nothing else about the case. But the
7 problem with discussing the case among yourselves or with
8 anyone else is, once you start discussing the case, you
9 start forming opinions. You wouldn't be fair to both sides
10 of this case if you didn't wait until you heard all the
11 testimony and evidence and I've instructed you upon the law
12 that applies to the issues in this case before you start
13 forming opinions. Until then, you should wait until you
14 have all the information you need before you start forming
15 opinions in this case. Keep an open mind until then.

16 Now I'm going to ask you to please not to go on the
17 Internet and try to find out anything about this case or
18 get any information, or try to get any information about
19 this case. I'm well aware that a lot of people go on the
20 Internet to get information. So, I'm going to ask you not
21 to go on the Internet or any other electronic device for
22 that matter and try to find out anything about this case.

23 If there should be any media coverage of this trial, I
24 do not know of any and there may very well not be any, if
25 there should be any media coverage of this trial, please do

1 not read or listen to, or watch any media account of this
2 trial including on the Internet until after the trial's
3 over. This will be a fairly short trial, and there will
4 not be a big inconvenience to you. But please do not try
5 to find out anything about this case on the Internet.

6 I'm going to ask you if you will as your first
7 official act, when you go back into the jury room, the
8 Bailiff will take you back in the jury room, I'm going to
9 ask you to select from your group a foreperson elected from
10 the group. That will be from the first twelve jurors
11 chosen, not the alternate, but from the first jurors
12 chosen.

13 I'll explain the role of a foreperson. The foreperson
14 is asked to serve as spokesperson for the jury back to the
15 Court. So if there's a matter that needs to come to the
16 attention of the Court from the Jury, we ask that the
17 foreperson write the message down on a tablet that will be
18 provided for you back in the jury room. Give that to the
19 Bailiff. The Bailiff will bring it to me. I'll either
20 correspond in like manner. Or, I'll bring you back out in
21 the courtroom and respond, as the case need be. That's how
22 we should communicate in this case. Now the foreperson is
23 also asked to serve as moderator once we've reach the
24 deliberative stage of the trial and make sure everyone is
25 allowed to participate and to be heard in those

1 deliberations. And then finally -- and to maintain order
2 in deliberations. And then finally, once the unanimous
3 verdict is reached by the Jury to record that verdict on
4 the verdict form which will be provided to you and
5 explained to you at the appropriate time at the conclusion
6 of the trial. The primary role of the foreperson is the
7 same as every other juror, and that's to listen carefully
8 to the testimony and evidence, so you'll be in a position
9 to deliberate and help reach a verdict in this case.

10 All right, thank you. If you'll retire to the jury
11 room and elect a foreperson. And if that person will then
12 write their name and juror number down on a tablet provided
13 and give it to the foreperson. Once you've done that,
14 you're free to go. And be back in the jury room, ready to
15 go in the morning at Ten o'clock, Ten o'clock. Thank you.

16 (JURY EXITS THE COURTROOM 01:23 PM.)

17 THE COURT: Counsel, anything we need to take up at
18 this time?

19 MS. JOYNER: No, sir, Your Honor. What time do you
20 like to return in the morning for pretrials?

21 THE COURT: Why don't we shoot for about 9:00?

22 MS. JOYNER: Yes, sir.

23 THE COURT: Make sure we've got plenty of time. A
24 couple of minutes after that should still be all right.
25 Shoot for Nine.

1 MS. JOYNER: Yes, sir.

2 THE COURT: And as far as any other work, we can start
3 back around 2:30.

4 MS. JOYNER: 2:30. Yes, sir, I'll let everybody know.

5 THE COURT: 2:30. Thank you.

6 MR. SMITH: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (COURT IN RECESS IN THE MATTER OF STATE V. TODD EUGENE
9 SMITH AT 01:32 PM.)

10 (COURT BACK IN SESSION, TUESDAY, AUGUST 23, 2011, AT
11 09:30 AM.)

12 MS. JOYNER: Your Honor, may I approach?

13 THE COURT: Yes.

14 MS. JOYNER: I've already given this to Mr. Smith. I
15 should have given it to you yesterday. I have a request to
16 charge. It's that we're trying to go so quickly today, I
17 wanted to give it to you this morning.

18 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE PREMARKED FOR
19 IDENTIFICATION.)

20 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE PREMARKED FOR
21 IDENTIFICATION.)

22 THE COURT: Counsel, you ready to proceed this
23 morning?

24 MS. JOYNER: The State's ready, Your Honor.

25 MR. SMITH: The Defense is ready, Your Honor.

1 THE COURT: I'll hear you with regard to any motion
2 you wish to make at this time.

3 Any from the State?

4 MS. JOYNER: Your Honor, as well, probably Mr. Smith's
5 motion as well, we have one statement or several statements
6 we intend to introduce. We are prepared for Jackson v.
7 Denno at this time.

8 And I've asked all the witnesses to leave while we
9 conduct pretrial with the exception of Officer Culbreath.

10 If you'll remain in the courtroom.

11 And, Your Honor, I anticipate the sequestration and
12 that's why I've sent the officer out. We designate
13 Detective Beard as our case agent in this case.

14 And also our victim is Minor She's
15 seventeen-years-old, Your Honor. We ask that her
16 grandfather, who is a witness in this case, be allowed to
17 remain with her as well.

18 MR. SMITH: I'm not aware of that provision. The
19 victim has a right, Your Honor.

20 THE COURT: She's a minor and this would be her
21 grandparent.

22 MR. SMITH: I suppose first I need to formally move
23 for sequestration of the witnesses.

24 THE COURT: Yeah.

25 MS. JOYNER: And if Mr. Smith does not intend to move

1 then the last witnesses back in, I just anticipated that
2 much.

3 MR. SMITH: No, I do.

4 MS. JOYNER: Okay.

5 THE COURT: He is making that motion at the present
6 time. The question is who would be allowed to stay in? Of
7 course the case agent would be able to stay in, and that
8 would be Detective Baird designated in this case. And
9 also, of course, the victim is entitled to stay, and she's
10 a minor. So the question would be whether she would be
11 entitled to have an adult stay with her in the courtroom as
12 well.

13 What is your position on that, Mr. Smith?

14 MR. SMITH: I would oppose it, Your Honor. I would
15 oppose them choosing an adult who is also a witness they
16 intend to call in this case.

17 THE COURT: Is there somebody else who can stay with
18 her in the courtroom?

19 MS. JOYNER: I, this was her guardian at the time that
20 the crime happened. This is her family here in Rock Hill.
21 Your Honor, we don't want you, we anticipate Ms. Minor
22 testimony will occur very early in the trial. So we won't
23 fight it if Your Honor wishes her grandfather to leave.

24 THE COURT: I don't know if there's a provision for
25 the victim being in the courtroom but I don't know about

SERGEANT CARLOS CULBREATH: BY MS. JOYNER - IN CAMERA

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1 someone else. So let's do this, if I'm going to grant the
2 Motion for Sequestration, which I will, then let's ask the
3 grandfather not to be in the courtroom until after he
4 testifies and then someone, the victim's assistance, can
5 sit with her if necessary.

6 MS. JOYNER: Thank you, Your Honor.

7 Could you step out to that first, to the right?

8 (WITNESS LEFT COURTROOM.)

9 MS. JOYNER: Your Honor, for the purposes of the
10 Jackson v. Denno, we're prepared to call our first witness
11 if the Court's ready.

12 THE COURT: Okay.

13 MS. JOYNER: We call Sergeant Carlos Culbreath.

14 (WHEREUPON: SERGEANT CARLOS
15 CULBREATH, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
16 FOLLOWS:)

17 DIRECT EXAMINATION - IN CAMERA

18 SERGEANT CARLOS CULBREATH BY MS. JOYNER:

19 Q. Can you please state your full name for the record?

20 A. My name is Carlos Christopher Culbreath.

21 Q. How are you employed?

22 A. I am employed with the City of Rock Hill Police
23 Department.

24 Q. What is your rank, sir?

25 A. I am a Sergeant on patrol.

1 Q. How long have you been with the Rock Hill Police
2 Department?

3 A. I have been with the police department for about eight
4 years. I've been a supervisor since the end of January.

5 Q. Were you employed then by the Rock Hill Police
6 Department back on February 13th of 2011?

7 A. Yes, I was.

8 Q. And on that day or that evening, did you become
9 involved in an investigation of Todd Smith?

10 A. Yes, I did.

11 Q. And just tell the court briefly how you became
12 involved in that investigation.

13 A. When the call came out, as a supervisor, I have to
14 respond to any of our priority calls. The call came out
15 and I was actually on the other side of town. The officers
16 on scene pretty much relayed the information back to me
17 saying that we had the robbery. The suspect was a black
18 male, fled the scene. As a supervisor, I immediately
19 contacted dispatch. Told them contact canine and two
20 runners so we could try to set a perimeter up and try to
21 catch them as he fled on foot.

22 When I got on scene, actually to the location, it was
23 already two other supervisors on the scene, so I was kind
24 of just helping out with the perimeter, trying to get my
25 officers in the area to start setting up a perimeter.

SERGEANT CARLOS CULBREATH: BY MS. JOYNER - IN CAMERA

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1 Q. At some point, did you come in contact with the
2 Defendant in this case, Todd Smith?

3 A. Yes, I did.

4 Q. And just tell the court briefly how you came in
5 contact with Mr. Smith.

6 A. Well actually, me and Sergeant Smothers who actually
7 was getting ready to leave the scene, saw that we released
8 everything to Sergeant Harmon because we was the primary
9 supervisors that day. So our primary job was to handle
10 calls. And Sergeant Harmon was going to take care of the
11 perimeter.

12 We were actually getting ready to leave the scene,
13 walking back to our cars, and Sergeant Smothers said, "Man,
14 this guy actually matches the description." And he was
15 walking back to the -- walking -- the incident location
16 happened on the right side on the road where I was
17 standing. He was walking on the left side. Sergeant
18 Smothers made the comment, "Man, this guy matches the
19 description." So we got in our cars, pretty much cut him
20 off from on Black Street. Sergeant Harmon started talking
21 -- Sergeant Smothers starts talking to him, starts asking
22 him questions, gathering information, went inside his car
23 to run it on his computer because in our car we can check
24 somebody if their wanted, check their driver's license
25 status. But when he went back to the car, I told the

1 Defendant Mr. Smith, I said, "Look, I'm going to detain you
2 and put these handcuffs on you." He looked at me and said,
3 "For what, I ain't robbing nobody."

4 Q. Okay. Now at that point in time, had you or Officer
5 Smothers told the suspect why he was being detained?

6 A. No.

7 Q. When you placed handcuffs on him, is that a standard
8 procedure when you're detaining somebody?

9 A. Yes, anytime you have a crime, someone matches the
10 description, just for the officers' safety, we just detain
11 them. And if we come back there, and he is not the
12 suspect, we just let him go.

13 But the main thing, we detain people just for
14 officers' safety or not -- At that time, we had two
15 officers, three officers there. It was more of one of the
16 things where if he's a suspect we didn't want him to take
17 off running we'd have to chase him, so we got the handcuffs
18 on him, and it just stopped us from getting hurt, stopped
19 the suspect from getting hurt, and stop us from either
20 chasing him on foot.

21 Q. Did you handcuff him in the front or the back? Do you
22 recall?

23 A. I always cuff all my suspects in the back. The only
24 time I cuff somebody in the front is a pregnant female.

25 Q. Had you -- At the point in time that you cuffed him,

SERGEANT CARLOS CULBREATH: BY MS. JOYNER - IN CAMERA

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1 had he yet said, "Why, I didn't rob anybody?"

2 A. He didn't make that statement until after I put the
3 handcuffs on him.

4 Q. Was that in response to any question that you asked
5 him?

6 A. I didn't ask him any questions.

7 Q. And so was that then a spontaneous statement that he
8 made?

9 A. Yeah, he just blurted out and said, "I didn't rob
10 anybody." I didn't ask him any questions or anything in
11 that nature.

12 Q. Now specifically as to that statement, and this is
13 going to sound a little redundant, but he's obviously being
14 detained at that point. So, he's not free to leave; is
15 that correct?

16 A. No, he wasn't free to leave.

17 Q. But is it correct that, had you not asked him any
18 questions?

19 A. I didn't ask him any questions.

20 Q. Had you threatened him in any way, or promised him
21 anything in order to get him to make that statement to you?

22 A. No, I didn't.

23 Q. At the time that he made that statement, did you have
24 your gun drawn?

25 A. No.

1 Q. Or did any officer on the scene have their gun drawn
2 and directed it at him?

3 A. No, ma'am.

4 Q. Were you present when Officer Stewart, Tony Stewart,
5 drove the victim around for a show up of the suspect?

6 A. Yes. Myself, Sergeant Smothers, and Sergeant Harmon,
7 we got with the suspect. What we were doing in this case,
8 I think Sergeant Harmon had told Sergeant -- Not Sergeant
9 Harmon -- told Officer Stewart to do a drive -- a ride-
10 through so the victim could try to ID the suspect. So I
11 think, from my knowledge, Officer Stewart placed him in his
12 car, he rode by, probably was about 20 feet from the
13 suspect, he shined his spotlight, he relayed -- he relayed
14 on the radio and said there was a problem with ID. And at
15 that point, I placed him in my patrol car, and he --

16 Q. Was he under an arrest at that point?

17 A. Well yes, once she ID'd them, we told him he was under
18 arrest.

19 Q. And so you never removed the handcuffs from him; is
20 that correct?

21 A. I never took the handcuffs off of him. Not until we
22 got to the police department.

23 Q. Now when you advised him that he was under arrest, did
24 you Marandize him?

25 A. No, I didn't.

SERGEANT CARLOS CULBREATH: BY MS. JOYNER - IN CAMERA

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1 Q. And why didn't you Marandize him?

2 A. I didn't ask him any questions. I didn't interrogate
3 him. I just pretty much put him in my police car and
4 transported him.

5 Q. Now, did he make any statements to you at the time
6 that you placed him under arrest?

7 A. Well -- The whole time to the police department he was
8 just stating his innocence, said that he didn't do
9 anything. So when I actually got him back to the jail,
10 where I could get all his property he was like, "Look
11 Officer, I didn't do anything." He said, "The victim
12 called me over there to gave me some candy to give to my
13 daughter for Valentine's Day." That's what he told me. He
14 said, "I didn't do anything." He just pretty much stated
15 his innocence the whole time.

16 Q. Now all those statements that you just described, at
17 any point in time, did you question the Defendant to
18 illicit those statements?

19 A. No, I didn't question him.

20 Q. Did you say anything that would provoke a response for
21 him to say those things to you?

22 A. No, I didn't.

23 Q. Did you threaten him in any way?

24 A. No, I didn't.

25 Q. Did you promise him anything?

1 A. No, I didn't.

2 Q. And he was clearly in custody; he wasn't free to
3 leave; is that correct?

4 A. He wasn't free to leave.

5 Q. But at any point, did you draw your service weapon?

6 A. No, I didn't.

7 Q. Did any other officer draw their service weapon on
8 him?

9 A. Not to my knowledge. No, they didn't.

10 Q. Now when you said, in regards to looking through his
11 property, did you find anything in his property noteworthy?

12 A. Yes, anytime we take somebody back to the jail, I make
13 sure we put all their property on a property bag so they
14 can't come back a couple of days later saying, I had a \$100
15 dollars," or "I had a \$150 dollars." If they got money --
16 One of the main things we like to note is money and jewelry
17 because if they have like cigarettes or a lighter,
18 sometimes that might not go on an incident report, on the
19 booking sheet, but a majority of time it will. But the
20 main thing we're always looking for is credit cards,
21 anything of that nature so they can't come back the next
22 day and say, "I had five credit cards," or "I had a \$100
23 dollars, and the officer took it." So we put anything he
24 got on the property bag. From that day what I can remember
25 to my knowledge today I know he had a wallet. I know he

SERGEANT CARLOS CULBREATH: BY MS. JOYNER - IN CAMERA

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1 had a lot of candy on his person.

2 Q. Did you have any money?

3 A. He didn't have any money.

4 Q. But he had -- You said he had candy on his person?

5 A. He did have candy and I think his wallet.

6 MS. JOYNER: I beg the Court's indulgence for just one
7 moment.

8 (PAUSE.)

9 Q. Just briefly as to the Defendant's -- I know you
10 didn't question the Defendant to determine these things,
11 but based off of the interaction that you were having with
12 the Defendant, did he appeared to be under the influence of
13 anything at the time that you spoke with him?

14 A. I can't remember. To my knowledge, I would have to
15 say, no. I can't remember. To my knowledge, I would have
16 to say, no.

17 Q. Did he appear to be a person of regular or average
18 intelligence?

19 A. To my knowledge, yes.

20 Q. Did he -- Were you dressed in your uniform? And --

21 A. Yes.

22 Q. Did he appear to understand that you were a law
23 enforcement officer?

24 A. Yes, at that particular time we was in our long-sleeve
25 uniform with a shirt and tie.

SERGEANT CARLOS CULBREATH: BY MS. JOYNER - IN CAMERA

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1 Q. And if you recall, the general description that the
2 victim had provided in reference to the suspect. Do you
3 recall that description?

4 A. Yes. When they relayed that information back to me,
5 they said that the victim had -- the suspect had on dark
6 clothing. I think when we got up with him he had on blue
7 jeans and a dark-colored sweatshirt.

8 Q. Did she relay -- Did the victim or according to the
9 description that you received by the radio, did she
10 designate the race of the person and the sex of the person?

11 A. Yes, the officer with that information, he said was a
12 black male and dark clothing.

13 Q. Do you remember anything specific as to height and
14 weight?

15 A. I know they say he was -- I think they say he was, I
16 guess, I shouldn't say, medium-size. I'm trying to say the
17 right word. I don't want to say -- I'd say 5'9" and
18 probably about 150 pounds.

19 Q. Could your recollection on the weight be somewhat off
20 at this time?

21 A. Yes.

22 Q. Thank you. Please answer any questions that Mr. Smith
23 asks.

24 CROSS EXAMINATION - IN CAMERA

25 SERGEANT CARLOS CULBREATH BY MR. SMITH:

SERGEANT CARLOS CULBREATH: CROSS BY MR. SMITH - IN CAMERA

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1 Q. Sergeant Culbreath, did I understand you to say that
2 you put items in a property bag; is that correct?

3 A. Yes, sir.

4 Q. And you said the purpose for doing this was that
5 someone couldn't claim that you had taken some property
6 that you hadn't?

7 A. Yes, sir.

8 Q. So because of this, I assume that you keep written
9 record and receipt?

10 A. Well on the property bag, everything is on the
11 property bag. I have his name, social security number, all
12 the information on the property bag. And we release it
13 over to the jailers.

14 Q. So there would be a written record of what items were
15 in that bag?

16 A. Yes, it would be on the property bag.

17 Q. And ultimately, what happens to that property bag?

18 A. Well when a person is released or if his property is
19 released, after speaking with the jailers -- After speaking
20 with the jailers, what they normally do is when they're
21 done with the property bag, and the suspect is left, they
22 normally just trash the property bag. I think now we have
23 a new policy where we have to hold on to the property bags.
24 But now at that particular time, when he left, the property
25 bag just got trashed. It was a normal procedure.

1 Q. Okay, let me get you to step down if you could and
2 glance at this photograph.

3 (WITNESS LEFT WITNESS STAND.)

4 Q. If Black Street is here, this would be the 633
5 downtown in this direction? Does that make sense to you?

6 A. Yes, you're saying this is 6 -- I'm sorry.

7 Q. I'm saying this is.

8 A. 633?

9 Q. Correct. So there's the sidewalk there, I think you
10 referenced; is that correct?

11 A. Yes.

12 Q. Now when you mentioned you were called up, where did
13 you respond to on the scene?

14 A. When the initial call went out?

15 Q. Right.

16 A. When the initial call came out, I was coming from
17 Cherry Road.

18 Q. No, but I mean, where here did you arrive?

19 A. If I'm not mistaken, I probably parked somewhere here
20 in this area.

21 (WITNESS INDICATED.)

22 Q. Okay.

23 A. If I'm not mistaken.

24 Q. And then you mentioned that you saw Mr. Smith
25 somewhere, or you and another officer; is that correct?

SERGEANT CARLOS CULBREATH: CROSS BY MR. SMITH - IN CAMERA

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1 A. Me and Sergeant Smothers was walking to our vehicles.
2 He made the comment when he saw Mr. Smith walking down the
3 sidewalk. He said, "Man that guy's matching the
4 description." From when we walked down, we got in our cars
5 and drove probably somewhere in that area and kind of cut
6 him off.

7 Q. And all that occurred within this same block of the
8 victim's residence?

9 A. Yes.

10 Q. And then the show-up ID that you described, where did
11 that occur?

12 A. The ID?

13 Q. Uh-huh.

14 A. If we were -- If we parked our cars right here - - -
15 (WITNESS INDICATED.)

16 A. - - - and Officer Stewart pretty much drove his car
17 about 20 feet, shining his light right on the suspect to
18 make the identification.

19 Q. Twenty --

20 A. About 20 feet when we were standing there.

21 Q. So the whole thing wasn't even a half block away? It
22 was within a couple of yards of the victim's house?

23 A. If I had to guess -- Here's the house -- No further
24 than a block, no further than a block.

25 Q. Thank you.

1 (WITNESS RETURNED TO WITNESS STAND.)

2 Q. You mentioned two statements that you claimed Mr.
3 Smith made to you, One saying well I didn't rob nobody and
4 another saying that the victim had called him over to give
5 him some candy for his daughter; is that correct?

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

7 Q. How did you note these in a report for this case?

8 A. I told the detective about it. I didn't do the
9 incident report; I didn't do the summary. So I didn't
10 write anything on paper.

11 Q. Which detective did you tell?

12 A. If I'm not mistaken, I think I told Officer --
13 Detective Barrett.

14 Q. No further questions, Your Honor.

15 MS. JOYNER: I don't have any further questions for
16 Sergeant Culbreath at this time, I will say just so the
17 record is clear, Mr. Smith had the officer referring to a
18 map that we intend to introduce. It's already been marked
19 as State's Exhibit One. So just for the record.

20 THE COURT: Thank you, sir. You may stand down, sir.

21 (WITNESS LEFT WITNESS STAND.)

22 MS. JOYNER: And, Your Honor, just to be clear, Mr.
23 Smith referred to them as two statements. I would actually
24 break them up as three statements. And once we introduce -
25 - the Defendant introduces, "Why, I didn't rob anybody"

1 and, or I guess his protest that he is innocent. In the
2 final statement would be "She called me over there to give
3 --" "I didn't do anything, she called me over there to give
4 me candy to give my daughter." And so those are the three
5 statements -- the only three statement we intend to
6 introduce. We've advised Mr. Smith of other statements.
7 We do not intend to introduce -- and of course his client,
8 when Marandized by Detective Stokes, the client give a
9 statement. So we understand that, that's not admissible.
10 But those are the three statements that we would intend to
11 introduce.

12 THE COURT: And your position, Mr. Smith?

13 MR. SMITH: I understand. I don't think there's a
14 legal basis, based on the testimony, to exclude those
15 statements.

16 THE COURT: I think there's ample authority. I'm not
17 going to recite all that into the record to say these are
18 not -- He was not being interrogated at the time he
19 volunteered these statements so they're not a result of any
20 interrogation by any public official or any officer and
21 that sort of thing so they would be admissible, the
22 statements by him.

23 Any other motions?

24 MR. SMITH: Neil v. Biggers, Your Honor. There's -- I
25 think they're going to an In Court ID.

Minor

DIRECT BY MS. JOYNER - IN CAMERA

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1 MS. JOYNER: If I could have one moment, Your Honor?

2 THE COURT: Counsel, if you don't mind, let's take a
3 short break. Let's take about a five quick minutes, and
4 we'll be right back in. Come right back in. Thank you.

5 (COURT IN RECESS AT 09:53 AM.)

6 (COURT BACK ON THE RECORD AT 10:00 AM.)

7 THE COURT: Keep your seats, please.

8 You ready to proceed, Counsel?

9 MS. JOYNER: The State is ready, Your Honor.

10 We call our first witness, Minor

11 Ms. Minor , if you'll come up, and step over there
12 and be sworn.

13 (WHEREUPON: Minor BEING
14 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

15 DIRECT EXAMINATION - IN CAMERA

16 Minor BY MS. JOYNER:

17 Q. Ms. Minor , if you could please state your full name
18 for the record.

19 A. Minor

20 Q. And I think you're loud enough for us to hear right
21 now. But once the jury gets in, your voice needs to be a
22 little higher. So if you can during this hearing kind of
23 work on keeping it high for me, okay?

24 A. I'm sorry.

25 Q. That's okay. Ms. Minor , how old are you now?

Minor

DIRECT BY MS. JOYNER - IN CAMERA

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1 A. I'm seventeen years old.

2 Q. Back on February 13th of 2011, how old were you?

3 A. Sixteen.

4 Q. Where did you live back then?

5 A. [REDACTED].

6 Q. And I'm just going to ask you to talk to the Judge.

7 And just tell him a little bit about the night of February
8 13th, 2011. Does that night stick out in your memory?

9 A. Yes.

10 Q. And why does it stick out?

11 A. I was robbed.

12 Q. And talk to me about -- Or tell the Judge briefly
13 where you were when you were robbed?

14 A. I was standing in my front yard.

15 Q. And can you remember what time of day or night it was?

16 A. It was 9:15 that night.

17 Q. And where had you -- What had you been doing right
18 before you arrived?

19 A. I was at my boyfriend's house.

20 Q. And had you just come home to your house?

21 A. Yes.

22 Q. And what had you and your boyfriend been doing before
23 you came home?

24 A. I was sick, so we had -- I had been to the doctor
25 previous that day. And I went to Walmart and went grocery

Minor

DIRECT BY MS. JOYNER - IN CAMERA

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1 shopping with him and his mother.

2 Q. And about what time did you arrive home?

3 A. About 9:15, 9:10.

4 Q. And when you got home -- or I'm going to show you,
5 Minor , what's been marked just for exhibit purposes at this
6 time as State's Exhibit One. And do you recognize this
7 picture?

8 A. Yes, ma'am.

9 Q. And if you could just tell the Judge, briefly, what is
10 State's Exhibit One?

11 A. What?

12 Q. What is it? What is this a picture of?

13 A. My neighborhood, my street.

14 Q. And what is the address of the house you lived in, in
15 February --

16 A. [REDACTED].

17 Q. Now I'm just going to put this up on the screen where
18 we're going to make it really big.

19 Tracy, if you could dim the lights.

20 And, Minor , if you could just step down, just for a
21 minute. And this remote control's got a laser pointer.
22 All you have to do is press the laser, and you'll see the
23 red dot. If you could show the Judge, what house is the
24 house you lived in with your grandfather?

25 A. This one, right there.

Minor

DIRECT BY MS. JOYNER - IN CAMERA

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1 (WITNESS INDICATED TO EXHIBIT ON OVER HEAD.)

2 Q. That's the house next to the empty lot?

3 A. Yes, ma'am.

4 Q. Where is the main driveway of that house?

5 A. It's right there.

6 (WITNESS INDICATED TO EXHIBIT ON OVER HEAD.)

7 Q. Is there a second driveway?

8 A. Yes, ma'am. It's right here beside this tree.

9 (WITNESS INDICATED TO EXHIBIT ON OVER HEAD.)

10 Q. Which place did you park your car the night when you
11 came home?

12 A. I parked right here in this little grass driveway.

13 Q. The one closest to the street?

14 A. Yes, ma'am.

15 Q. Now what location at your grandfather's house were you
16 robbed?

17 A. I was right here by my car.

18 Q. And is there any -- Around that area of the car, is
19 there any artificial source of light?

20 A. There's a light pole right here.

21 Q. And was that light pole on that night?

22 A. Yes.

23 Q. If you could point out for the Judge, where
24 approximately you were standing -- Or tell me, how did the
25 person approach you? The person that robbed you.

Minor

DIRECT BY MS. JOYNER - IN CAMERA

66

1 A. I was standing right here by my car.

2 (WITNESS INDICATING TO EXHIBIT ON OVER HEAD.)

3 A. And they were walking down the side walk and through
4 my front yard. I have a hill. My house is on top of a
5 hill. And I walked up the hill and came right over here
6 towards Maple.

7 Q. They walked through your yard?

8 A. Yes, ma'am.

9 Q. And they came to you. Now the location -- you talk
10 about a hill. Were you standing on the hill? Is your
11 driveway that you were parked in on the hill?

12 A. No, there's a hill that goes up from the sidewalk.
13 And then there's another hill that goes up from this empty
14 lot. So my whole house right here is pretty much on a
15 hill.

16 Q. On a hill?

17 A. The whole thing.

18 Q. Where you were parked, was that on a high spot or a
19 low spot?

20 A. A low spot.

21 Q. Now the person that approached you, were they walking
22 down the same side of the road as you were on?

23 A. They were originally on this side, walked across, and
24 came up through the yard.

25 (WITNESS INDICATING TO EXHIBIT ON OVER HEAD.)

Minor

DIRECT BY MS. JOYNER - IN CAMERA

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1 Q. And the person that came to talk with you, was he a
2 man or a woman?

3 A. A man.

4 Q. And how close did he come to stand to you, Minor ?

5 A. About five or six feet away?

6 Q. Okay.

7 A. Well, it was probably around four, three or four feet
8 away.

9 Q. You can take your seat again.

10 Tracy, if you could bring up the lights.

11 You were a little uncertain what the distance. So
12 from where you are right now, I'm just going to start
13 backing up, and you tell me when to stop.

14 (SOLICITOR BACKED AWAY FROM WITNESS.)

15 A. Stop, right there. Enough to 'shake my hand and step
16 away.

17 Q. Okay, enough to shake your hand. So about, is this --
18 Would you say this is about three feet?

19 A. Around there, yeah.

20 Q. Now, the person shook your hand; is that right?

21 A. Yes, ma'am.

22 Q. How close did he get to you when he shook your hand?

23 A. Just arm's length away.

24 Q. And were you able at that point or at any point to get
25 a good look at his face?

Minor

DIRECT BY MS. JOYNER - IN CAMERA

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1 A. Yes, ma'am.

2 Q. Now talk to me, tell the Judge, what happened after
3 the man shook your hand.

4 A. Pretty much told me his life story, told me where he
5 lived --

6 Q. Okay, and let's do it in like kind of piece by piece.
7 When you said he told you his life story, where did he say
8 he lived?

9 A. On South Spruce Street.

10 Q. What other types of things did he tell you?

11 A. He had a daughter that went to Northwestern and asked
12 me if I knew her. And I said no, because I go to Rock Hill
13 High, or I went to Rock Hill High. And said that he didn't
14 have any kerosene to heat his house. He wasn't asking for
15 money, wanted to know if I had food to give him for his
16 daughter or something to give her for Valentine's Day.

17 Q. Okay, let me stop you right there. Did you have
18 anything that you could give to him to give to his daughter
19 for Valentine's Day?

20 A. Yes.

21 Q. And what was that?

22 A. I had cans of soup in my car. I had cereal. I had
23 crackers and candy for Valentine's Day.

24 Q. Most of the food that you're talking about, where is
25 that food located?

Minor

DIRECT BY MS. JOYNER - IN CAMERA

69

1 A. In the back seat of my car.

2 Q. Where is the candy located?

3 A. In my arm.

4 Q. Where?

5 A. In my arm.

6 Q. And when he asked you if you had anything to give his
7 daughter, what did you do?

8 A. I handed him the candy.

9 Q. And after you handed him the candy, did he tell you
10 anything else, or did he ask you anything else?

11 A. Not to my knowledge.

12 Q. Okay, did he ask you for a ride?

13 A. Yes.

14 Q. And what did you tell him?

15 A. I told him I had a Nine o'clock curfew. I'm not
16 allowed to drive after that.

17 Q. Now after that, did you offer him some food that was
18 in your car?

19 A. Yes.

20 Q. Now what did you do in order to try to get that food
21 from the car?

22 A. I had to turn around to unlock my car.

23 Q. Did you actually ever unlock your car?

24 A. No.

25 Q. Why, what happened?

Minor

DIRECT BY MS. JOYNER - IN CAMERA

70

1 A. When I turned around, I had my purse sitting on the
2 hood of my car, and I already had my keys in there and
3 everything. So I had get my keys out. And when I turned
4 around to unlock my car, I had money in my back pocket and
5 he saw the money and asked me to give it to him.

6 Q. When he saw the money, what was the first thing he
7 said to you?

8 A. He said, "I thought you didn't have any money."

9 Q. And did you say anything in response to him?

10 A. That it was my lunch money for school for the
11 following week.

12 Q. Did he say anything to you back?

13 A. He said, "You just need to give me the money."

14 Q. From the early part of the conversation -- Well, first
15 of all let's talk about how long this all took. How long
16 do you think that you were having this conversation with
17 him?

18 A. Three or four minutes.

19 Q. Three or four minutes? And when he said to you, "I
20 thought that you did not have any money," did he say that
21 to you in the same way that he said, "Hi, how are you
22 doing?"

23 A. No, he definitely got more aggressive with it. He
24 never came towards me. But his voice -- He -- He raised
25 his voice and got aggressive with the way he was acting.

Minor

DIRECT BY MS. JOYNER - IN CAMERA

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1 Like his whole demeanor changed about it.

2 Q. When he said, "You just need to give me the money,"
3 what were you thinking?

4 A. I was scared. I mean, I'm a young girl at nighttime,
5 alone by the street. I was scared.

6 Q. The man that you saw, what do you remember him looking
7 like? The man that was standing three feet from you.

8 A. Dark clothes, a black toboggan, and blue jeans.

9 Q. Were you able to discern what race he was?

10 A. An African-American male.

11 Q. Now do you have an occasion to interact with a lot of
12 African-American people in your life?

13 A. Oh, yeah, yes.

14 Q. Was there anything, did you note anything about his
15 height or weight?

16 A. I think I told the officer he was about 5'9" and 180
17 pounds, around there.

18 Q. When you were standing and you were standing about
19 three feet from him, you mentioned earlier, you were in a
20 low spot; is that right?

21 A. Yes, ma'am. He was on top of the hill.

22 Q. Did you give him the money?

23 A. Yes, I did.

24 Q. And after he took the money from your hand, what did
25 he do?

Minor

DIRECT BY MS. JOYNER - IN CAMERA

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1 A. He ran across the street and back towards Spruce
2 Street.

3 Q. Who was the first person, Minor , that you told about
4 this?

5 A. My mother.

6 Q. Was she in the house?

7 A. No, my mom lives in Florida.

8 Q. Why did you decide to call your mom?

9 A. She's my go-to person. When anything bad happens, I
10 automatically call my mom.

11 Q. Now did your mom give you any advice about what you
12 should do about what just happened?

13 A. She told me to get off the phone with her, and go wake
14 up my grandpa, and call the cops.

15 Q. Is that what you did?

16 A. Yes, ma'am.

17 Q. Earlier, right before this morning, did you listen to
18 this disk with me?

19 A. Yes, ma'am.

20 Q. And does the disk contain your dispatch and your 911
21 call to the police?

22 A. Yes, ma'am.

23 Q. And do those calls sound like the calls that you made?

24 A. Yes, ma'am.

25 Q. And truthfully and accurately reflect the calls that

Minor

DIRECT BY MS. JOYNER - IN CAMERA

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1 you made?

2 A. Yes, ma'am.

3 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE PREMARKED FOR
4 IDENTIFICATION.)

5 MS. JOYNER: Your Honor, we had this marked as Court's
6 Exhibit One and we'd like to play it for the purpose of
7 *Neil versus Biggers*.

8 Your Honor, it kicks off but picks right back up with
9 the dispatch call.

10 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE, 911 DISPATCH
11 CALL PUBLISHED TO THE COURT AT 10:13 AM.)

12 Q. Now Minor , in that dispatch call, you give a
13 description, you don't include the height and weight. Do
14 you recall the first officer that you provided the
15 description to with the height and weight?

16 A. I believe it would be Officer Stewart.

17 Q. And was that the officer that was first at your house
18 to talk with you?

19 A. Yes.

20 Q. Now, was there anything that was distinctive about the
21 Defendant that you maybe didn't tell the police, but the
22 person that robbed you, that stuck out in your mind about
23 his face or anything else?

24 A. He had a very short, kind of mouse-like nose, just
25 very short to his face.

Minor

DIRECT BY MS. JOYNER - IN CAMERA

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1 Q. Now at the time -- I don't like to ask people this.

2 But about how tall and how much do you weigh right now?

3 A. Right now, I'm around 5'7" and I weigh 118 pounds.

4 Q. Back in February, on February 13th, do you remember
5 what your height and weight was?

6 A. I was probably around 5'6" and a 100 pounds.

7 Q. Now when the officers arrived, at some point, did
8 Officer Stewart talk with you or mention to you that he was
9 going to take you somewhere to look at somebody?

10 A. Yes.

11 Q. Do you remember the words that Officer Stewart used
12 when he talked to you about this?

13 A. He said that they found someone who matched the
14 description and asked me to ride in the car to go identify
15 him.

16 Q. Now do you remember -- And I'm going to pull back up
17 what's marked as State's Exhibit One. Do you recall how
18 far away you drove with Officer Stewart?

19 A. Not far at all. We just went -- He was parked -- I
20 can't remember if he was on my side or the other side, but
21 we just pulled off, and then turned around, and came down
22 right -- right across from my house. So it wasn't too far
23 from my house. You could see him from standing in my front
24 yard.

25 Q. Was it dark outside? Do you recall how -- Well let me

Minor

DIRECT BY MS. JOYNER - IN CAMERA

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1 ask you this. How long between the time that the robbery
2 happened and the time that you called the police?

3 A. How long was it?

4 Q. Yeah, do you remember?

5 A. About ten minutes.

6 Q. Okay.

7 A. Ten or fifteen minutes.

8 Q. How long after the police arrived at your house do you
9 think it was -- just a guesstimate, because I know you
10 weren't looking at your watch -- that Officer Stewart took
11 you to view a suspect?

12 A. Maybe 30, 35 minutes after.

13 Q. And how close did Officer -- Did you ever get out of
14 the car when Officer Stewart drove you down there?

15 A. No, we both stayed in the car.

16 Q. Did you have a clear and unobstructed view -- First
17 let me ask you this. Did you have a clear and unobstructed
18 view of the person who robbed you?

19 A. Yes.

20 Q. When Officer Stewart took you to view a suspect, did
21 you have a clear and unobstructed view of that suspect?

22 A. Yes, I did.

23 Q. If it was dark outside, how were you able to see the
24 suspect?

25 A. Officer Stewart shined his spotlight on him.

Minor

DIRECT BY MS. JOYNER - IN CAMERA

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1 Q. And how bright was that spotlight, do you remember?

2 A. It was very bright.

3 Q. And other than telling you that he had somebody that
4 matched the description of the suspect, did he tell you
5 anything else about the person that he took you to see?

6 A. No.

7 Q. When he drove you up there, did he stop the vehicle?

8 A. I don't know if he came to a complete stop. But I
9 know that we were there for long enough for me to identify
10 him. And then we pulled back off, and he took me back to
11 my house.

12 Q. How close did you get to the suspect?

13 A. We drove right by him, standing in the road.

14 Q. And did you identify the suspect?

15 A. Yes, I did.

16 Q. How long did it take you to identify the suspect?

17 A. A couple a seconds.

18 Q. How sure were you on that day?

19 A. I was positive.

20 Q. Do you see the person that robbed you in the courtroom
21 today?

22 A. Yes.

23 Q. Can you identify him for the Judge?

24 A. He's right there.

25 Q. I need you to tell me -- if you could describe him by

Minor

DIRECT BY MS. JOYNER - IN CAMERA

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1 clothing, so we will know --

2 A. Blue shirt.

3 Q. Is he wearing a jacket?

4 A. No.

5 Q. Okay.

6 MS. JOYNER: Your Honor, we would ask the record to
7 reflect she identified the Defendant.

8 Q. When you were standing by your car, Minor and you
9 were talking to the suspect, to the Defendant, how close
10 attention were you paying to his appearance?

11 A. At first, not too much. It was -- At first, it was
12 pretty harmless, you know, just asking questions and having
13 a conversation. But I always pay attention to what people
14 wear, always, no matter what.

15 Q. What about your attention to his face? Were you
16 paying attention to what he looked like?

17 A. Yes.

18 Q. And was that during the whole encounter? Or was it
19 during a particular part of the time that you were talking
20 to him?

21 A. Pretty much during the whole encounter.

22 Q. Thank you very much, Minor Mr. Smith's going to ask
23 some questions of you.

24 CROSS EXAMINATION - IN CAMERA

25 Minor

BY MR. SMITH:

Minor

CROSS BY MR. SMITH - IN CAMERA

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- 1 Q. Ms. Minor you indicated that you got home at, did
2 you say, 9:15?
- 3 A. Around 9:10.
- 4 Q. 9:10?
- 5 A. Yes.
- 6 Q. But earlier, did you say 9:15?
- 7 A. I don't remember. I was around 9:10 or 9:15. I was
8 running a little bit late that night.
- 9 Q. But you don't remember what you testified to with Ms.
10 Joyner?
- 11 A. Around 9:15.
- 12 Q. Okay, so it was 9:10, or it was around 9:15?
- 13 A. I don't know exactly what time it was.
- 14 Q. And you said you were running a little bit later.
15 What does that mean?
- 16 A. My curfew on the weeknights used to be Nine o'clock.
- 17 Q. Curfew for your house or --
- 18 A. Yes.
- 19 Q. -- curfew for a driver's license?
- 20 A. Curfew for my house.
- 21 Q. So you were out past the time you were supposed to be
22 out?
- 23 A. By about ten or fifteen minutes.
- 24 Q. So you were out past the time you were supposed to be
25 out?

Minor

CROSS BY MR. SMITH - IN CAMERA

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1 A. Yes.

2 Q. And you indicated you had been where? I know you said
3 you had been to a doctor's, but that was sometime earlier
4 in the day?

5 A. I was at my boyfriend's house before I came home.

6 Q. Were you feeling well?

7 A. No, I was not.

8 Q. What was wrong with you?

9 A. I had some kind of stomach virus, I believe.

10 Q. And when you had told me about the coming through the
11 yard, you were saying, "they." Were you just meaning they
12 the person? Was there more than one person who you saw out
13 there or was it just one person?

14 A. It was one person.

15 Q. You described a driveway here; is that correct?

16 A. Yes, sir.

17 Q. And you said there's another or a main driveway for
18 the home. Is one paved and one not paved?

19 A. Yes.

20 Q. The one you were on, you described as the grass. So I
21 assume the other is the paved driveway; is that right?

22 A. Yes.

23 Q. And from your home, downtown would be in this
24 direction toward the top end of the photo; is that correct?

25 A. Yes.

Minor

CROSS BY MR. SMITH - IN CAMERA

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1 Q. And when you said you saw the individual approach, was
2 he on the sidewalk at that point? Or was he in your
3 driveway or in your yard? Where was he?

4 A. When I first pulled up in my driveway, he was on the
5 opposite side on the sidewalk. He crossed the street and
6 then came through my yard.

7 Q. Oh, okay. So he was on the opposite side of the whole
8 street?

9 A. Yes, and then came across and walked through the yard
10 to my car.

11 Q. And you indicated it's after Nine o'clock, this is in
12 February, so it's dark out there; is that right?

13 A. Correct.

14 Q. How well could you see out into your yard?

15 A. Fairly well. There's a light pole right where my car
16 is.

17 Q. And was this an individual that you recall ever having
18 seen before?

19 A. No.

20 Q. And he got within three feet of you, and you had some
21 conversation with him there; is that right?

22 A. Yes.

23 Q. And then at some point, you said you gave him some
24 candy; is that right?

25 A. Yes.

Minor

CROSS BY MR. SMITH - IN CAMERA

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1 Q. And you mentioned some soup and some cereal. Did you
2 give him that as well.

3 A. No, I had it in the back seat of my car.

4 Q. You indicate you gave him money, and he ran off at
5 that point; is that right?

6 A. Yes.

7 Q. The whole time that you were with him in the yard, how
8 long would you estimate that was?

9 A. Three or four minutes.

10 Q. Three or four minutes? And then thirty minutes later,
11 the officers tell you -- And I believe you said they told
12 you that they found somebody who matched the description
13 and asked you to go ride in the car to take a look at them;
14 is that correct?

15 A. Yes.

16 Q. And when you approached Mr. Smith as he was on the
17 street, was it down, across the street, in this area?

18 A. Yes, it was.

19 Q. And how was he standing? Or was he seated?

20 A. He was standing.

21 Q. He was standing? Was there an officer near him?

22 A. I believe there was three officers with him.

23 Q. And were there any other individuals who were not
24 officers out there other than Mr. Smith?

25 A. I don't believe so.

Minor

CROSS BY MR. SMITH - IN CAMERA
REDIRECT BY MS. JOYNER - IN CAMERA

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1 Q. And were his hands in front of him or behind him? Do
2 you know where his hands were?

3 A. I don't remember.

4 Q. And you were inside a police car; is that right?

5 A. Yes.

6 Q. And how did you realize which individual they wanted
7 you to look at?

8 A. He was the only civilian out there.

9 MR. SMITH: I have no further questions, Your Honor.

10 MS. JOYNER: Your Honor, just two questions I forgot
11 to ask.

12 REDIRECT EXAMINATION - IN CAMERA

13 Minor BY MS. JOYNER:

14 Q. Now Mr. Smith asked you about you were sick. Were you
15 on any medication at the time?

16 A. No, I was not.

17 Q. And had you been drinking any alcohol or anything that
18 would affect your perception?

19 A. No.

20 MS. JOYNER: We have no further questions for this
21 witness, Your Honor.

22 THE COURT: Let me ask you this question. Please
23 answer it.

24 The person you talked to in your yard, you said they
25 came across the street, and you said came up over the hill

OFFICER TONY STEWART: DIRECT BY MS. JOYNER - IN CAMERA

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1 where your house sits, and came back to you. So was the
2 person between you and your house? Is that --

3 THE WITNESS: The way my car was, my car was pointing
4 towards my house, and they kind of cut through the corner
5 of my yard, straight to my car.

6 THE COURT: All right, thank you.

7 Any questions related to the questions I ask?

8 MR. SMITH: None from the defense.

9 MS. JOYNER: No, sir, Your Honor.

10 THE COURT: Thank you, ma'am. You may step down.

11 (WITNESS LEAVING WITNESS STAND.)

12 MS. JOYNER: Your Honor, I'm going to call the next
13 witness, Officer Stewart. I'm just going to step out.

14 (SOLICITOR RETURNS TO COURTROOM.)

15 MS. JOYNER: Would you step forward and be sworn.

16 (WHEREUPON: OFFICER TONY
17 STEWART BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
18 FOLLOWS:)

19 DIRECT EXAMINATION - IN CAMERA

20 OFFICER TONY STEWART BY MS. JOYNER:

21 Q. Officer Stewart, can you please state your full name
22 for the record.

23 A. Tony Lee Stewart.

24 Q. What's your occupation?

25 A. Police officer.

1 Q. Are you with the Rock Hill Police Department?

2 A. Yes.

3 Q. How long have you been with the Rock Hill police?

4 A. Nine years.

5 Q. And back on February 13th of 2011 did you respond to a
6 call at [REDACTED]?

7 A. Yes I did.

8 Q. Do you recall what time of night, day or night, the
9 call went out?

10 A. It was about 9:39 pm.

11 Q. Okay. And were you the first officer to respond to
12 the scene?

13 A. I was.

14 Q. And when you responded to the scene, what did you do?

15 A. I went an spoke with Minor she had called
16 that she had been robbed so I went and I spoke with her
17 about the details and which I got a description of the
18 suspect and which direction he left from.

19 Q. Okay. Do you recall the description that went out
20 over the radio as to the suspect in the robbery?

21 A. Yes.

22 Q. And what was that initial description?

23 A. It was a black male, I'm sorry. The first description
24 as I was in route or the description I gave out?

25 Q. The first description while you were in route.

OFFICER TONY STEWART: DIRECT BY MS. JOYNER - IN CAMERA

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1 A. Okay. It was a black male, he had on dark colored
2 jacket or black jacket, toboggan and blue jeans.

3 Q. Okay. When you arrived and you spoke with Ms. Minor
4 did she give you a description consistent with that initial
5 description?

6 A. Yes she did.

7 Q. Did she provide and additional details?

8 A. Yes.

9 Q. What were they?

10 A. She gave some heights and weights. That's it, height
11 and weight.

12 Q. What height and weight did she give for the suspect?

13 A. I believe about a 180; 180, 185 pounds and about 5'7"
14 I think it was.

15 Q. Could it have been 5'9"?

16 A. It could have been yeah.

17 Q. All right. And did you send that description out over
18 the radio?

19 A. I did.

20 Q. Were there other officers that had come to the scene
21 with you or around the same time as you?

22 A. Yes. Right after I arrived a couple of more officers
23 arrived. Sergeant Harmon got there soon after I. And
24 Sergeant Smothers also.

25 Q. Okay.

1 A. And then there were maybe one or two others but that
2 actually came to the scene.

3 Q. Now at some point while you were speaking with Ms.
4 Minor did you receive communication from one of the other
5 officers that they had a suspect?

6 A. Yes. As we began our investigation setting up a
7 perimeter in the direction that he had left from, some
8 officers indicated that a potential suspect had walked past
9 the -- walked past the house on the other side of the
10 street and that he matched the description that was given
11 out.

12 Q. Did you receive a report that they had in fact
13 detained him?

14 A. Yes I did. Over the radio yes.

15 Q. And when you received that report did you say anything
16 to Ms. Minor in terms of or did you plan to take Ms.
17 Minor to see the suspect?

18 A. Yes. I could visually see them get in their car and
19 drive just down the street to where they encountered the
20 suspect. So I could see them there and then they radioed
21 me and ask me to bring Ms. Minor down there to them to
22 their location.

23 Q. Okay.

24 A. And I did that.

25 Q. And when you told Ms. Minor that you were going to

OFFICER TONY STEWART: DIRECT BY MS. JOYNER - IN CAMERA

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1 take her to the location, do you remember what words she
2 used to describe what you were going to do?

3 A. I told her that they had detained a person who matched
4 the description that we had that she gave out that we had
5 and that we wanted to take her down to that area and see if
6 she could provide a positive identification.

7 Q. Okay. Did she agree to go with you?

8 A. Yes she did.

9 Q. And how did you bring her to the scene?

10 A. I put her in my car in the back seat and drove her
11 down the block.

12 Q. And if I've got pulled up what's been marked for
13 identify purposes as State's Exhibit One, if you can step
14 down for a moment and use this laser pointer to show the
15 Judge where you believe they have this suspect detained.

16 (WITNESS LEFT WITNESS STAND.)

17 A. This is the house here.

18 (WITNESS INDICATING TO STATE'S EXHIBIT ONE.)

19 A. And right approximately right here, it wasn't very far
20 away, it was within just a couple of houses, it's probably
21 on the side of the street where I'm pointing here maybe
22 just off the map but it's only a couple of houses away.

23 Q. So that including the vacant lot that would be three
24 blocks down?

25 A. Approximately. I mean that's almost to my best

1 estimation, again, it was in line of sight from the front
2 yard to there so it was pretty close.

3 Q. Can you take your seat again. Thank you.

4 (WITNESS RETURNED TO WITNESS STAND.)

5 Q. When you drove down there how close did you bring your
6 vehicle to the suspect?

7 A. A few car lengths. Probably just two or three car
8 lengths, maybe twenty, thirty feet or something like that.

9 Q. Did you come to a complete stop?

10 A. Yes.

11 Q. And it's dark outside so did you do anything to
12 illuminate the area to illuminate the suspect?

13 A. I used my spot light and turned the spot light on the
14 area where they had the individual standing.

15 Q. And how bright did that make the area?

16 A. Almost day light. I mean it would light up the whole
17 front of a house.

18 Q. And at the time that you came to a stop, did you say
19 anything to Ms. Minor about the suspect?

20 A. Not necessarily about the suspect. But I said they're
21 going to get him out and they're going to, you know, pull
22 him out in front of you and just take your time and just
23 take a look at him and take your time and don't be in a
24 rush.

25 Q. Did you say anything to suggest to Ms. Minor that

OFFICER TONY STEWART: DIRECT BY MS. JOYNER - IN CAMERA

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1 this, that you believed this was the person that had robbed
2 her?

3 A. Oh no. Left that up to her.

4 Q. And were you the only person that was actually with
5 Ms. Minor in the car when this - -

6 A. I was the only one in the car, yes.

7 Q. Had anybody else while you were speaking with Ms.
8 Minor done anything to indicate who she should pick out
9 or what she should say in this procedure?

10 A. No.

11 Q. And when the defendant, when the defendant was
12 presented was he handcuffed? Do you recall?

13 A. I believe he was, yes.

14 Q. Okay. Did they have, did you all have him do anything
15 or did he just simply stand there?

16 A. He was just standing there.

17 Q. And what was Ms. Minor reaction to seeing the
18 suspect that you had detained?

19 A. She gave a positive identification.

20 Q. How quickly did she give that identification?

21 A. Just within a couple of seconds, a few seconds.

22 Q. What did she say?

23 A. She said, "Yeah, that's him."

24 Q. How certain did Ms. Minor appear to you when she
25 made the identification?

OFFICER TONY STEWART: DIRECT BY MS. JOYNER - IN CAMERA
CROSS BY MR. SMITH - IN CAMERA

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1 A. She was absolutely certain.

2 Q. Now in regards to the defendant, is there anything as
3 far as the appearance that differed than Ms. Minor
4 description?

5 A. No.

6 Q. Was there a good difference in height, weight, as far
7 as the defendant?

8 A. He was slightly, his true height was slightly shorter
9 than what the description had been yes.

10 Q. Did his weight match?

11 A. His weight was almost right on within reason.

12 Q. All right. Thank you very much. Please answer any
13 questions Mr. Smith has.

14 CROSS EXAMINATION - IN CAMERA

15 OFFICER TONY STEWART BY MR. SMITH:

16 Q. Officer Stewart, do you need a copy of your report?
17 Would that assist you?

18 A. It may.

19 Q. Particularly I want to ask you because you said his
20 true height may have been a little bit different. I know
21 at first you said you thought she said 5'7" then you were
22 asked by the Prosecutor could it be 5'9". Do you remember
23 what she said?

24 A. What Ms. Minor said or what - -

25 Q. Yes.

OFFICER TONY STEWART: CROSS BY MR. SMITH - IN CAMERA

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1 A. I believe she said 5'9". I believe she said 5'9".

2 Q. Okay. I'm showing you - -

3 A. Because I think that's what I gave out on the radio.

4 Q. Okay. Would that be your report?

5 A. Yes. Yes it is.

6 Q. And then underlined in there it indicates her
7 description was what?

8 A. You want me to read what's underlined?

9 Q. If you could.

10 A. Ms. Minor described the subject as a black male in
11 his mid thirties, wearing blue jeans, a black jacket over a
12 blue shirt, and black toboggan.

13 Q. Okay. And then after that the height description.

14 A. The full statement she stated "she believed he was
15 about 5'9", 5 foot 9 tall, inches tall weighing about a 180
16 pounds".

17 Q. Okay. And then also on that report you put down Mr.
18 Smiths' actual height; is that correct?

19 A. Yes. His actual height listed after his arrest at
20 5'5' and a 185 pounds.

21 Q. Okay. So 5'5" and 5'9" is a pretty big difference.

22 A. Yes there's some difference.

23 Q. The clothing that she described, dark clothing, was
24 there anything necessarily unique about that, that wouldn't
25 occur many times on a street in Rock Hill City?

1 A. I'm sorry. Is there any?

2 Q. Is there anything unique about that clothing?

3 A. I don't remember anything that was unique about it.

4 Q. So there could have been a bunch of people out there
5 with dark clothing on that night?

6 A. It's possible yes.

7 Q. Probably more than possible. Probably more than most
8 nights in Rock Hill there are a lot of people wearing dark
9 clothes.

10 A. Sure.

11 MR. SMITH: Nothing further, Your Honor.

12 MS. JOYNER: Nothing further from the officer.

13 THE COURT: Thank you, sir. You may stand down, sir.

14 (WITNESS LEFT WITNESS STAND.)

15 MS. JOYNER: We don't need further witnesses on this
16 issue.

17 MR. SMITH: Your Honor, at this time the Defense would
18 move for suppression of the in court identification based
19 upon an unduly prejudicial and suggestive proceeding in the
20 show of identification. Your Honor, I understand there are
21 case laws that do allow a show up sometimes when there are
22 certain circumstances but what we have here are a couple of
23 sort of bright line problems here. Inherently a show up
24 with one individual risk being suggestive so that when this
25 is chosen as the course that the officers do they need to

1 be very careful in how they do that. But what you don't
2 want to happen is somebody just based upon some clothes
3 they have or something some officer says then the defendant
4 gets picked out. That's why we require six or more persons
5 in a photo spread or if we do in an actual physical line up
6 six or more persons in it because you don't want to be
7 suggestive.

8 I would point to the court that there can be nothing
9 more suggestive than to have any known witness recollection
10 three to six officers standing by one individual that they
11 get out of a car who is handcuffed and show her only that
12 individual. The risk becomes that she now sees that
13 individual, that face is ingrained in her mind and now in
14 front of this jury she's going to point to my client as the
15 individual in the police car and say that he was the person
16 who robbed her based upon the suggestive line up.

17 Your Honor, I would point to the testimony of Officer
18 Stewart. He indicated that he told the victim that they
19 had detained a person who matched the description and that
20 they were going to take her to see if she could provide a
21 positive identification. I would suggest that's the exact
22 language they should not tell a victim. Unless you say we
23 have someone we want you to look at and that may not be the
24 person they should not put any initiative to see if you
25 can provide a positive identification. Inherent in that is

1 the suggestivity that it is the person. Also in there to
2 say that we got somebody to match the description is
3 inherently problematic so the defense would move for
4 suppression of both the in-court and the show up ID.

5 MS. JOYNER: And, Your Honor, the State's position if
6 show up's are disfavored, because they are suggestive.
7 However the Court has recognized in various cases that show
8 ups may give appropriate in certain circumstances, Your
9 Honor, and those circumstances are when -- where it
10 occurred shortly after the alleged crime, near the scene of
11 the crime, as witness memories is still fresh and the
12 subject has not had time to alter his looks or dispose of
13 evidence and they show up and they expedite the release and
14 the suspect and enable the police to continue to -- to know
15 whether they need to continue searching. I think two cases
16 that discuss that are State versus Brown, that is 356 S.C.
17 496, that's a Court of Appeals opinion from 2003. And
18 State versus Mansfield, that is a 343 S.C. 56 Court of
19 Appeals opinion from 2000, and I have copies of those for
20 the defense and for the court.

21 I think those, this is a very good example of where a
22 show up may be appropriate. The perimeter is being set up
23 about thirty minutes from the time the crime happens, that
24 the officer essentially they see somebody that matches the
25 description, and very close to the time of the crime the

1 show up happened within approximately an hour of the actual
2 crime. And quite honestly it would expedite the release of
3 innocent people had Ms. Minor identification, looked at
4 the suspect and say that's not him then Mr. Smith would
5 have been on his way. So, Your Honor, I think that this is
6 a circumstance where although they are disfavored the court
7 dis recognize in Brown and Mansfield that there is some use
8 of the show up.

9 Your Honor, and I think if you find the show up to be
10 unduly suggestive, I think the real question comes whether
11 Ms. Minor identification is reliable. Whether the out
12 of court identification is so reliable that no substantial
13 likelihood of a misidentification existed. Essentially the
14 court needs to make a finding that if Ms. Minor was
15 reliable and what occurred her identification was reliable
16 in order for her to be able to identify the defendant in
17 front of the jury. And the factors that the court should
18 consider, and the court knows, the opportunity to view the
19 criminal at the time of the crime, the witnesses degree of
20 attention, the accuracy of her prior description, the level
21 of certainty at confrontation and the length of time with
22 the defendant at confrontation. I think, Your Honor,
23 certainly Ms. Minor had ample opportunity to view the
24 defendant during the course of this crime. She had about a
25 three to four minute conversation with him, she was

1 standing within three feet of him. He came close enough to
2 be within arms length in order to shake her hand. And she
3 testified there is a street light, she was able to see him,
4 Your Honor. It's certainly an opportunity where she had a
5 great deal of time and in very close proximity to be able
6 to see him. Her degree of attention, Your Honor, I think
7 that the courts continually recognize that victims of crime
8 are presumed to have a great degree of attention than mere
9 passer's by would. She's certainly standing close to him
10 and the situation escalates into something she was very
11 scary, said she was paying attention to what he looked
12 like, maybe not as much at first but she was certainly was
13 paying close attention to what he was wearing and she
14 testified that she did pay attention to his face. Your
15 Honor, she even said when I ask her if anything noteworthy
16 about his face she described his nose to being sort of
17 short and mousy and I think those terms are, you know, they
18 are subject to interpretation but I think the defendant
19 certainly does have a shorter, a shorter nose so I think
20 that her description about was accurate. The accuracy of
21 her prior descriptions, Your Honor, she did practically
22 identify his weight, correctly identified him as an
23 African-American male wearing dark clothing, Your Honor,
24 wearing a dark toboggan. The only discrepancy in her
25 description of him is the actual height and she explained

1 and when she was explaining State's Exhibit One where she
2 was standing in relation to where he was standing she was
3 clearly saying that she was standing at a lower point than
4 he was standing at a higher point which could certainly
5 impact her ability to tell his height but she was accurate
6 as to his weight within five pounds.

7 Her level of certainty at the confrontation, Your
8 Honor. The officer said she was absolutely certain she
9 told the before she was absolutely certain the length of
10 time between the crime and the confrontation was within
11 about an hour. Your Honor, this is certainly something
12 that's going on while it was fresh in her memory. So I
13 think that a show up can be unduly suggestive and I think
14 that a show up does trigger the court's analysis in the
15 totality of the circumstances as far as reliability. I
16 think that her testimony was reliable, Your Honor. With
17 all the factors that the court has outlined I think that
18 court's have upheld as reliable identifications that are
19 made from a greater distance than what Ms. Minor had to
20 deal with. I think one of the cases I passed up, State
21 versus Brown, in that case the witness is a mere witness
22 not a victim. He's identifying somebody that he viewed
23 from his second story window who is down on the street
24 committing a crime. That the closest he gets is when that
25 individual circles his bike around and rides right past his

1 window. But this is still an individual who is one story
2 up. And that there was no abuse of discretion in the court
3 finding that identification to be reliable. So I think
4 that, Your Honor, with all things before the court I think
5 the show up was proper under Brown, and under Mansfield,
6 and I think that Ms. Minor identification was reliable
7 such that it should be put before the jury.

8 MR. SMITH: Thank you, Your Honor.

9 My objection is not that she didn't have an
10 opportunity to observe whoever come out there that night.
11 I can see that she had that. My objection is based upon
12 the action of law enforcement. When they tell her we
13 detained the person who matches the description, we're
14 going to take you to see if you can provide a positive
15 identification I think that's a fatal problem - -

16 THE COURT: What's wrong with a positive as opposed to
17 saying if you can identify the person and this person is
18 the person who robbed you? Or that you can provide a
19 positive identification? What's wrong with saying that? I
20 mean they don't want an identification that is less than
21 positive of the person so what does positive have to do
22 with and you can see if you can positively identify this
23 person as the person who robbed you what's the difference
24 between that and saying I want to see if you can identify
25 him as the person who robbed you? Or you can positively

1 identify him as the person who robbed you? In other words
2 I want you to identify him if you're not positive. I don't
3 see a problem with that. What's the problem in that?

4 MR. SMITH: I think that language implies we're going
5 to see if you can get it right. In other words the right
6 answer is it's him as opposed to saying he may or may not
7 be in there which is how they are trained to say. And
8 there's a reason for that training and a basis for it. And
9 that's a problem. And I think she said when I ask how did
10 you know who they wanted you to look at she said it was
11 easy I went with the police officer. So I think there's a
12 suggestive nature out there at that line up that has now
13 tainted this line up in the court.

14 THE COURT: Well, you know, I'm going to find the
15 identification of the witness to testify. The court is
16 required, of course the United States Supreme Court and the
17 South Carolina Supreme Court have allowed show up
18 identification of a person, depending on the circumstances
19 you have to look at the totality of the circumstances. And
20 the court would have to look at the - there are a number of
21 factors. I can go through them, they are all set forth
22 again and they were in Neal versus Biggers and they are
23 also set forth again in Brown, the case that was just
24 handed up to the Court. And so I'll just go back over them
25 for the record. It says and I'll go through the general

1 law that's set forth in Neal and there are some other
2 cases, a United States Supreme Court and the South Carolina
3 Supreme Court says, a single person show ups are
4 disfavored, this is in Brown, because they are suggestive
5 by their nature. Reliability is the next in determining
6 the admissibility of identification testimony, I won't cite
7 the cases, in determining whether the cases are reliable
8 let's say consider the following factors. The opportunity
9 the witness viewed the criminal at the time of the crime,
10 and certainly she had that in this case. She shook hands
11 with him, said she was at arms length. She testified that
12 there was a street light directly over her car where she
13 was parked, and she could see very well. The whole yard as
14 illuminated. She certainly could see the person up close
15 and personal that she dealt with. The witnesses degree of
16 attention: This went on in a three or four minute
17 conversation which turned, she says, to one of
18 intimidation. Friendly at first, not threatening, turning
19 into a threatening behavior. And the whole time she's
20 standing there close enough to touch the person and him to
21 touch her. And that she observed him coming down the
22 street, cross the street, go up through her yard and come
23 back to her. In other words as I understand the testimony
24 was the house was up on a hill and he came and went on up
25 into the yard and came down the hill to where she was. She

1 testified her car was in a low place, she was in a low
2 place and that he came down to her which would put her in
3 between her and the house. Certainly with the street light
4 there on the street would have, it would have illuminated
5 the person who robbed her, their features. The witnesses
6 degree of attention: Again all this went on for a while and
7 she was able she says to identify his face and describe his
8 nose, height, weight. And I point out to you if he was
9 standing -- And one reason I ask her was he came across
10 this hill and down to her and that would have, could have
11 appeared to make him a little taller than 5', if he's 5' or
12 a little taller than that and he appeared to be 5'9". She
13 doesn't take out a ruler and measure his height at the
14 scene and so he could have appeared taller to her if he was
15 a higher level of ground than she was as she testified.

16 The accuracy of the witness's prior description of the
17 criminal: So she has given a description which pretty well
18 matches him except that's the difference between four
19 inches in height. And again there's a reasonable
20 explanation for that. The level of certainty: She was
21 absolutely certain when she saw him at the scene that it
22 was him. There's no question about that, she didn't
23 vacillate on that and say that was the person. At the
24 confrontation the amount of time between the crime and the
25 confrontation. There was no more than an hour, maybe

1 thirty five minutes. So its not like somebody saw somebody
2 and she came back a month later trying to recall what the
3 person looked like and identify them. This was made within
4 the hour after the potential robbery so all that is taken
5 in. Corrupting it effective as suggestive identification
6 would be weighed against these factors. In Brown the court
7 said not withstanding the suggestive nature of the
8 identification procedure employed by police in this case
9 Mr. Smith's identification in Brown is reliable in light of
10 the totality of the circumstances. First as far as the
11 witness's opportunity to observe the individual at the time
12 of the crime and again, this is a lesser ability to see a
13 witness. I'm not going back through the factors again.
14 But the Court looked at all those factors in Neal versus
15 Biggers and other cases and found under the totality of the
16 circumstances the identification was reliable and the
17 witness was allowed to testify. So the Court makes the
18 same finding, then it would be a question for the jury, but
19 I find that under the totality of the circumstances and I
20 would say I don't think I'm required to ignore the fact.
21 And even without anything else that would be enough as far
22 as the Court is concerned to allow the identification in
23 court and allow the victim to testify before the jury as to
24 the identification. But corroborated and I don't think I'm
25 required to ignore that in this case in looking at the

1 totality of the circumstances. . He admitted getting candy
2 from the victim. He had an explanation, she called him
3 over there and gave him the candy, gave him the candy. But
4 he admitted going into the victim's yard and getting candy
5 from her. She said she gave it to him. When the police
6 stopped him and talked to him they didn't tell him why they
7 were stopping him, but he said why are you stopping me I
8 didn't rob anybody. Why did he say rob anybody? Nobody
9 told him why they were stopping him. And further, he had
10 the candy on him when he got to the police station. And he
11 said she called me over there and gave me the candy. So
12 I'm not required to go over all those factors in
13 determining the totality of the circumstances which
14 certainly corroborate her identification of him. All
15 right, what else?

16 MR. SMITH: Nothing further, Your Honor.

17 THE COURT: The jury is late. One of them was late
18 getting in here although I warned them about that. All
19 right, let's take a quick break. Now I'm going to give them
20 the general instructions especially when it's the first
21 jury of the week I'll give them my general instructions
22 about the trial and then we'll get started with opening
23 statements. But let's take a five quick minutes then we'll
24 start.

25 (COURT IN RECESS AT 10:55 AM.)

1 (COURT BACK IN SESSION AT 11:02 AM.)

2 THE COURT: Please keep your seats.

3 (DEFENDANT REENTERING COURTROOM.)

4 THE COURT: All right, please, sir, bring the jury
5 in.

6 (JURY ENTERS COURTROOM AT 11:04 AM.)

7 THE COURT: Good morning, ladies and gentlemen of the
8 jury panel. I begin by apologizing for the delay in
9 getting you out. I had some matters we had to take up that
10 took a little longer than we anticipated. So, I apologize
11 for keeping you in the jury room for this length of time.

12 I have your note yesterday that you had, you elected
13 Michael F. Faris, Juror Number 74, as your foreperson.

14 You are Mr. Faris, are you sir?

15 MR. FARIS: Yes, sir.

16 THE COURT: And I'm going to ask, Mr. Faris, if you'll
17 keep that same seat throughout the trial.

18 And Mr. Ledford, you're the alternate in the case.
19 I'm going to ask you to keep that same seat throughout the
20 trial. All the other seats are interchangeable, so it
21 really does not matter where you sit. We like to keep the
22 foreperson and alternate in the same seats.

23 Now before we get started with the trial, I'm going to
24 ask first if the Clerk will please swear the jury panel.

25 (MADAME CLERK: Ladies and gentlemen of the jury,

1 please stand and raise your right hand.

2 (WHEREUPON: THE JURY IS DULY
3 SWORN.

4 MADAME CLERK: Let the record reflect all affirmed.

5 THE COURT: Thank you, please be seated.

6 Now, Mr. Foreman and ladies and gentlemen of the jury
7 panel, I'm going to give you what I call preliminary
8 instruction about the format of the trial and what to
9 expect. I suspect that most of you have not served on a
10 jury in General Session Circuit Court before. And
11 hopefully, this instruction will make you feel a little
12 more comfortable about the format and what to expect as we
13 go through the trial.

14 The first thing that will happen after I've completed
15 this instruction to you is that an attorney for the State
16 who is the Assistant Solicitor will make an Opening
17 Statement to you. And then the attorney for the Defendant
18 will have the same opportunity to address you in an Opening
19 Statement. These opening statements by the attorneys are
20 not evidence. But you should pay close attention because
21 they're in essence going to identify to you what they
22 perceive or say the issues in the case are. After they've
23 made their opening statements to you, then the State will
24 proceed by presenting the testimony and evidence they want
25 you to consider. The reason the State goes first is that

1 the State has the burden of proof in this case. There is
2 no burden of proof upon the Defendant to prove his
3 innocence. The burden of proof is upon the State of South
4 Carolina to prove the charge against this Defendant by
5 evidence that satisfies you, the jury, beyond a reasonable
6 doubt before you can return a verdict of guilty. If the
7 State fails to meet that burden of proof, then your verdict
8 must be not guilty.

9 After the Assistant Solicitor has presented you the
10 evidence they want you to consider on behalf of the State,
11 then the same opportunity will be afforded to the Defense.
12 The Defendant may, but is not required, to present any
13 testimony or evidence because the State has the burden of
14 proving the Defendant guilty beyond a reasonable doubt.
15 The Defendant does not have to prove he is innocent. He is
16 presumed innocent and that presumption stays with him
17 throughout the trial and may only be removed if the State
18 meets its burden of proving the guilt of the Defendant
19 beyond a reasonable doubt.

20 Now what is evidence? The evidence is the sworn
21 testimony you'll hear from the witness stand to my right,
22 the exhibits admitted into the record for your
23 consideration by me, the presiding judge, and any
24 stipulation of counsel. Now exhibits may take many forms
25 such as documents, pictures, videotapes, maps, diagrams,

1 and so forth.

2 Stipulations are agreements of facts by the attorneys.
3 If the attorneys enter into a stipulation or agreement of
4 fact, that will be made known to you. And you can consider
5 it, and give it such weight as you determine to be
6 appropriate when you begin your deliberations.

7 Sworn testimony, exhibits, and stipulations are the
8 only evidence that you may consider in your deliberation of
9 the innocence or guilt of the Defendant. You may not
10 consider anything you heard from any other source about
11 this case in making your decision because that is not
12 evidence.

13 After you've heard all the evidence and the attorneys
14 for the State and the Defendant once again appear before
15 you, and make what we call closing arguments. We call them
16 arguments because the attorneys are allowed at that time to
17 argue their position, will attempt to persuade you as to
18 their view or position as to the facts.

19 When you have heard final arguments from Counsel, I
20 will then charge you which simply means to instruct you as
21 to the law that applies to the issues in this case.

22 You will then retire to the jury room to deliberate
23 and reach your verdict.

24 That's how a case is tried in General Sessions Court
25 whether it be this case or any other case. Some cases take

1 a half a day or a day. Some cases take weeks. But the
2 same format applies in every case.

3 As the trial judge, I have three functions to perform
4 during the trial. I am the presiding officer and therefore
5 see that the trial is run in an orderly manner. I decide
6 based on the Rules of Civil and Criminal Procedure whether
7 the testimony and exhibits are admissible into evidence for
8 your consideration. And at the conclusion of the trial,
9 I'll instruct you as to the law you must apply to the facts
10 in this case in reaching your verdict.

11 You, ladies and gentlemen, are also judges in this
12 case. You are the judges of the facts. In other words,
13 you determine the truth of the facts in this case. Under
14 our Constitution, I'm not permitted as the judge of the law
15 to have an opinion about the facts. So I do not get into
16 whether I believe a witness or not. That is not my
17 function. I'm not even permitted to express an opinion if
18 I had one as to the facts in this case. So you, the
19 jurors, determine what is the truth of the facts.

20 Now I do not permit juror to take notes during the
21 trial because it is my experience that while writing notes,
22 you may miss something very important for you to hear. It
23 is important that you pay careful attention to all
24 testimony and introduction of evidence since you must judge
25 the credibility or believability of the witnesses and the

1 weight to give all evidence in this case in determining the
2 truths of the facts.

3 During the trial the attorneys may object to the
4 admissibility of certain testimony or other evidence. I
5 will either sustain the objection which means I agree and
6 the testimony or evidence may not be made part of the
7 record for you for consideration. Or, I will overrule the
8 objection which means, as the judge of the law, I have
9 determined that it is admissible as part of the record for
10 your consideration. The mere fact that I have admitted it
11 does not mean that you must believe it or disbelieve it. I
12 have simply determined that it is admissible under our
13 rules. And it is up to you, then, to believe it or
14 disbelieve it and to assign such weight to it as you
15 determine to be appropriate.

16 At the conclusion of the trial, when we send you to
17 the jury room, every exhibit that is admitted into evidence
18 will be sent to the jury room for you to examine further
19 and to consider. I remind you that one of the most
20 important aspects of your duty as a jury lies essentially
21 in the oath that you have just taken, to well and truly try
22 this case, and to determine the truth of the facts in this
23 case. That oath once again, in a very essential way, says
24 that you are the sole judges of the facts in this case.

25 Mr. Foreman, ladies and gentlemen, whatever your

1 verdict in this case, it must be your unanimous verdict.
2 All twelve jurors must agree on the verdict which the
3 foreperson is authorized to write on behalf of the jury.

4 Mr. Foreman, ladies and gentlemen, you are not to
5 discuss this case at anytime during the trial, as I told
6 you yesterday until I tell you, and that will not occur
7 until you have received all of the evidence, and I have
8 instructed you upon the law. You should not discuss the
9 case among yourselves, and you should not discuss it with
10 your family and friends or anyone else you might see on a
11 recess from court. If you should overhear the parties,
12 their attorneys, or witnesses talking about the case
13 outside of the courtroom, you should not listen, and move
14 away from them. If anyone should deliberately try to
15 discuss the case with you, you should not discuss it with
16 them, but leave and report that attempt to me through the
17 Bailiff or the Clerk of Court. They will let me know, and
18 I will deal appropriately with that person. No one should
19 try to discuss the case with you. If they do, I certainly
20 wish to be made aware of it.

21 I'm concerned about your comfort, your ability to see
22 and hear the testimony and evidence so you can properly do
23 your job. I'll take a break about every hour and a half.
24 If you need a break before the time the break is taken,
25 please raise your right hand and let me know, and I'll take

1 a break as quickly after that as I can. If you cannot hear
2 or see something you need to hear or see during the course
3 of the trial, I'll try to anticipate that. But some of you
4 are much further away from the witness stand and where the
5 attorneys may be standing than I. So, if you cannot hear
6 or see something you need to hear or see during the course
7 of the trial, please do not hesitate to raise your right
8 hand to let me know. And I'll make sure that you're able
9 to hear or see so you can properly do your job.

10 If you wish to communicate with the Court other than
11 needing a break or the inability to see or hear, please
12 write the message down on a tablet provided for you back in
13 the jury room, give that to the Bailiff, and the Bailiff
14 will bring it to me, and I will correspond in like manner
15 or bring you back out in the courtroom and respond as case
16 need be. Now, I will tell you that if you have something
17 to drink in the jury room that you want to bring into the
18 jury box, the Clerk of the Court allows you to do that, and
19 I do as well. So, if you have something to drink back
20 there that you want to bring back to the jury box to sip on
21 during the trial you're welcome to do that. Counsel and
22 myself will be drinking some water as we go through. If
23 you have something to drink, feel free to bring it back to
24 the jury box with you.

25 Thank you for your kind attention. We are actually

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1 ready now to get started with the trial. We're to that
2 part of the trial where Counsel will make their opening
3 statements to you. Please listen attentively now as
4 Counsel address you in opening statements.

5 MS. JOYNER: May it please the Court?

6 THE COURT: Solicitor.

7 MS. JOYNER: On February 13th of this year, sixteen-
8 year-old Minor pulled into the driveway of the
9 house she shared with her grandfather John Robertson. And
10 she didn't pull into the main driveway since her
11 grandfather was already asleep, and she didn't want to
12 block his car in, and he had to leave early for work the
13 next morning. So she parked in this little driveway on the
14 opposite side of the lot from that main driveway. And it
15 was a driveway that was closest to the street.

16 And it was about 9:10 p.m., and Minor is standing
17 outside. And it is dark outside, ladies and gentlemen.
18 She's standing next to her car, locking it up, getting
19 ready to go into the house.

20 And she's on the street alone except for a man. A man
21 that's walking down the road from the direction of South
22 Spruce Street. And at first, he's on the opposite side of
23 the road. But then he crosses over, and he's on the same
24 side as Minor And he walked across Minor yard. And he
25 walks up to Minor the Defendant, the man that Minor has

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1 never seen before that night. And he comes, and he stands
2 within three feet of sixteen-year-old Minor And
3 he just starts talking to her, "How are you doing?" that
4 kind of stuff. "I live down the road. I've met the man
5 that lives at the house before, the gentlemen of the house.
6 He's really nice. I have a fourteen-year-old daughter.
7 She goes to Northwestern. And I can't afford kerosene to
8 heat my house. I can't afford to buy her anything for
9 Valentine's Day. Do you have anything that I can give my
10 daughter for Valentine's Day?" And Minor is holding a bag
11 of candy. She had just been to the grocery store. And she
12 says, "Here you go. You can have this bag of candy." And
13 then the Defendant says, "Can I get a ride? Can I get a
14 ride?" And Minor says, "No, its past my curfew. But you
15 can have some food." And she turns her back on this man
16 she's never seen before and she goes to unlock her car.
17 And when she does, ladies and gentlemen, everything
18 changes. This nice, friendly, "How are you doing" changes.
19 Because in Minor back pocket is a \$20 dollar bill.
20 That's her lunch money for the week. And all of a sudden,
21 "How are you" turns into "I thought you said you didn't
22 have any money?" Minor says, "No, no, it's my lunch money.
23 I need this." And then the Defendants says, "You need to
24 give me that money." And she does, ladies and gentlemen;
25 she does.

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1 The Defendant is charged today with an offense called,
2 strong armed robbery. Most people have heard the term,
3 "robbery." And you kind of seem to associate it with armed
4 robbery, which requires a weapon. And he's not charged,
5 there's no allegation the Defendant had a weapon. He's
6 charged with strong armed robbery or common law robbery.
7 And what that basically, the Judge will tell you at the
8 close of the trial, that is the feloniously taking and
9 carrying away of the property of another from the person or
10 from the presence of, and you need presence of that person,
11 with the intent to deprive the owner permanently of the
12 property. And the taking is done by force, threat of
13 force, or intimidation.

14 Essentially, what it is, you steal something, and you
15 steal it by force, threatening to use a force, or
16 intimidating -- intimidating the victim. And what does
17 force mean? Force means a lot of different things. To
18 you, force probably means you push, or you hit, or you
19 injure somebody. And that's one thing that force can mean.
20 That's actual force. And it's physical violence, it
21 implies physical violence. There's another way. There's
22 another kind of force. It's basically any kind of
23 demonstration of forced menace, or any other way that you
24 can put somebody in such fear, make them so afraid, that
25 you overcome their free will to say no. You put them in

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1 such fear that you prevent them from resisting the taking.
2 What that means is, the cause of fear doesn't have to be a
3 direct threat that "I'm going to hurt you." It can be. It
4 can be physically hurting somebody and threatening to hurt
5 them. But it can be any action that a person takes to put
6 the victim in such fear that the victim doesn't feel like
7 they have a choice. They have to give up the money, or the
8 goods, or whatever it is, they are too afraid not to.

9 You're going to hear in this case from Minor
10 seventeen-years-old now. And she's going to tell you about
11 that night, the events that night. She is going to tell
12 you, ladies and gentlemen, what she was thinking and
13 feeling. She's going to tell you about the Defendant
14 walking down the street, and walking across the street, and
15 walking up to her. She's going to talk to you about how
16 she felt when this total stranger standing three feet away
17 from her on this lonely street, just her and him, demanding
18 her money.

19 You're going to hear from the officers on the scene,
20 ladies and gentlemen. And after you've heard from those
21 officers and you've heard from Minor I'm going to stand
22 back before you. And I'm going to ask you to fulfill your
23 oath as jurors, as Judge Alford just talked to you about,
24 the importance of that oath. I'm going to ask you to well
25 and truly try the case and reach the verdict that speaks

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1 the truth and find the Defendant guilty.

2 MR. SMITH: Thank you. May it please the Court, Your
3 Honor.

4 THE COURT: Yes, sir.

5 MR. SMITH: Todd Smith didn't rob Minor
6 That's not me giving an opinion. That would be
7 inappropriate. That's not me making a closing argument.
8 The Judge told you that's not what it's time for me to do
9 now. That's me telling you what the facts and evidence or
10 lack of facts and lack of evidence in this case are going
11 to show you.

12 And I don't know if you've ever served on a jury
13 before or if you have any idea of how this process works.
14 But you may be thinking, well this will be easy. If he
15 didn't do it, he can prove it. Right? No. Because if you
16 call it, this whole case is just based on one person saying
17 something. You noticed they didn't tell you about a lot of
18 evidence that they're going to introduce. And in cases
19 where it's based on one person saying something happened or
20 claiming something happened, it's impossible to prove he
21 didn't do it.

22 Here's what I mean. Suppose that you in the jury get
23 accused of knowing my mother's maiden name. And you say
24 that's crazy. "I don't know your mother's maiden name."
25 Well that's just you saying something, that's not proof;

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1 prove it. "Well, Mr. Smith, we don't even know you." But,
2 you just called me, Mr. Smith. It sounds like you do know
3 me. "Well, no, no, no. Judge Alford introduced you
4 yesterday. He said, 'This is Phil Smith, he represents
5 Todd Smith. He works for the Public Defender's Office.'
6 Well, now you know my first name, you know my last name,
7 you know my occupation, you know who I work for, and you
8 know on of my clients. Sounds like you know a little bit
9 about me or nothing.

10 You see the problem? You can't prove you didn't do
11 something. But if you noticed when the Judge gave his
12 instructions, he said, we don't have to prove anything.
13 And that's why. That's why we're not required to. Because
14 it wouldn't be fair. But isn't this Mr. Smith's trial?
15 No. The State is on trial. That's what the case is about.
16 That's how the system works. Because in our system, a
17 Defendant does not have to prove anything because in many
18 cases, you can't. And how definitely do they have to prove
19 it? Criminal court, you've probably heard beyond a
20 reasonable doubt, right? What does that mean? The Judge
21 will give you definitions. It means beyond a doubt that
22 would cause a reasonable person to hesitate to act. Or a
23 doubt that will leave you firmly convinced. Come on,
24 beyond a reasonable doubt, what does it really mean?
25 Here's what it means. There's only one person in this

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1 courtroom who you know at this moment absolutely is not
2 guilty, in fact, is innocent. And that's Todd Smith..
3 Because you are required under that oath you took to
4 presume, that means to prejudge him. And not just not
5 guilty, but innocent. Now be honest, that's difficult to
6 do; isn't it? And you think here you see a criminal case,
7 you think, "Hey, maybe we'll look from both sides and see
8 what each has." No. You are required to prejudge him
9 innocent now.

10 Now why would that be? Why would we create a system
11 that does that? It gives one side so much more of a
12 burden. Because one side has so much more power. This is
13 the government. They've got the power to issue warrants.
14 They've got the power to suppress subpoenas. They've got
15 the power to seek indictments. They've got the power of
16 all the officers that they're going to call. They've got
17 all of that power. But what the system recognizes, if
18 they're going to use that against a citizen, then they
19 ought to be able to do their case easily beyond a
20 reasonable doubt. And if they don't, if you've got a
21 doubt, then it's your obligation to rule in Mr. Smith's
22 favor. Because if he's guilty, with all the resources they
23 have, they ought to be able to prove it beyond any
24 reasonable doubt.

25 So what's the case going to look like? There's going

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1 to be a witness to testify on the witness stand. And they
2 may give you some evidence. You may get to hear a 911
3 tape.

4 MS. JOYNER: Your Honor, I object. I don't think Mr.
5 Smith knows what evidence the State is going to introduce.

6 MR. SMITH: Well, I said, "may," Your Honor.

7 THE COURT: Well you said, may, but you can't tell the
8 jury what they're going to do introduce until they
9 introduce it. I think you can tell what the issues in the
10 case are. I'll allow you to do that. Go ahead.

11 MR. SMITH: I don't know if they'll introduce for you
12 clothing, photos, tapes. I don't know what they're going
13 to do. It's their choice, their decision. See what they
14 show. And they'll call witnesses.

15 And another right that Mr. Smith has, is to, it's what
16 we call face your accuser. The way that plays out is we
17 get to test the State's case. And there will be a witness,
18 a young lady come testify and they'll have to get on the
19 stand and I'll ask her questions. And you might think,
20 "Well, why does he got to ask her questions?" Well,
21 hopefully, I can ask some of the questions that you would
22 want to hear to test that evidence. Because if it is as
23 they say it is, then everything ought to add up. But when
24 you leave the courtroom at the end of this case, I think
25 you'll fall in one of three categories: One, You could

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1 say, "Something doesn't seem quite right. Something just
2 doesn't quite feel right. Something seems a little bit
3 odd." Or you might say, "You know, I wish I had a little
4 bit more. I wish they'd have done this test. Or I wish
5 they'd of done this. Or I wish this witness would have
6 been able to tell me something. Or, you may be able to
7 say, "Well, I know that Todd Smith didn't rob nobody." You
8 see, under our system, all three of those viewpoints are
9 the same. They equal one result. They equal you returning
10 a verdict that speaks the truth: Todd Smith's not guilty.

11 THE COURT: Would the State call its first witness,
12 please.

13 MS. JOYNER: Your Honor, the State calls Minor

14

15 Ms. Minor if you would come forward and be sworn.

16 (WHEREUPON: Minor BEING

17 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

18 DIRECT EXAMINATION

19 Minor BY MS. JOYNER:

20 Q. Ms. Minor can you please state your full name for
21 the record?

22 A. Minor

23 Q. Ms. Minor I'm going to have to ask you, make sure
24 you keep your voice really, really high. So, I'm going to
25 move this podium back, all the way back here so I'm going

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1 to make sure that I can hear, and especially the jury can
2 hear every word that you say, okay?

3 A. Okay.

4 Q. If you could please tell the jury, what is your date
5 of birth?

6 A. [REDACTED]/1994.

7 Q. And how old are you today?

8 A. Seventeen years old.

9 Q. Where do you live now?

10 A. I live in Florida.

11 Q. Now back on February 13th of 2011, February 13th of
12 this year, how old were you then?

13 A. I was 16.

14 Q. Where were you living on that date?

15 A. [REDACTED].

16 Q. Did you live with anybody?

17 A. My grandfather.

18 Q. What's your grandfather's name?

19 A. John Robertson.

20 Q. I am going to talk to you a little bit about the
21 neighborhood and house where you lived. I'm going to show
22 you what's previously been marked, just for exhibit
23 purposes, as State's Exhibit One. Do you recognize that
24 photograph?

25 A. Yes, ma'am.

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1 Q. And how are you able to recognize this?

2 A. It's my street.

3 Q. It's your street? And by your street, do you mean
4 where you lived with your grandfather?

5 A. Yes.

6 Q. Okay. And does that -- I know that it's probably
7 taken in a different season, but do the location of the
8 house and the location of the road accurately reflect what
9 the neighborhood looked like on February 13th?

10 A. Yes, ma'am.

11 MS. JOYNER: Your Honor, we move State's Exhibit One
12 into evidence at this time.

13 MR. SMITH: No objection.

14 THE COURT: In without objection.

15 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE IDENTIFIED AND
16 MARKED, RECEIVED INTO EVIDENCE.)

17 MS. JOYNER: And we ask for permission to publish it
18 to the Jury.

19 THE COURT: You may publish.

20 MS. JOYNER: Thank you.

21 Q. Ms. Minor I'd like to ask you to step down from the
22 stand for just one minute.

23 (WITNESS LEFT WITNESS STAND.)

24 Q. And I'm probably going to have you do this more than
25 once. If you'll stand -- Come forward a little bit. I'm

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1 going to give you this pointer. And that's the laser
2 button right there.

3 A. Can you dim the lights?

4 Q. Now I'm going to ask you to just point out to the jury
5 where your house where you live with your grandfather is
6 located.

7 (STATE'S EXHIBIT NUMBER ONE PUBLISHED TO THE JURY.)

8 A. Right here.

9 Q. And that's the house next to the empty lot?

10 A. Yes, ma'am.

11 Q. Now did anybody else live in the house with you and
12 your grandfather?

13 A. No, ma'am.

14 Q. And I want you to identify for me if you could, is
15 there a driveway on this house?

16 A. Yes, this is our main driveway right here.

17 (WITNESS INDICATED ON STATE'S EXHIBIT ONE.)

18 Q. Is that a paved driveway?

19 A. Yes, ma'am.

20 Q. Is there another area, another parking area at the
21 house?

22 A. Yes, ma'am.

23 Q. And where is that located?

24 A. Right there.

25 (WITNESS INDICATING ON STATE'S EXHIBIT ONE.)

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1 Q. So on the opposite side of the lot?

2 A. Yes, ma'am.

3 Q. Is that parking area, is it paved?

4 A. No, ma'am.

5 Q. Does it go as far back as the other parking -- the
6 other driveway?

7 A. No, ma'am.

8 Q. And if you park your car in that particular, in the
9 second lot, not the paved driveway, do you know how many
10 steps approximately you are from the front door of your
11 house?

12 A. Around 25, 30 feet -- Or 30 steps.

13 Q. Thirty steps, okay. Now, tell me a little -- I want
14 to talk to you a little bit, before we get into the facts
15 of the case, about the way your yard is sort of, laid out.
16 That second driveway, the one closest to the street. Is
17 that level with the remainder of your yard?

18 A. No, ma'am.

19 Q. How is it not level with the remainder of the yard?

20 A. My house is on top of a hill. It slopes down going
21 towards either side, the road or the empty lot.

22 Q. Would you consider it a big hill or a small hill?

23 A. A pretty decent size.

24 Q. Do you have any guess about how much higher, maybe,
25 the house is from the roadway -- from the sidewalk?

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1 A. Maybe two and a half feet higher?

2 Q. Two and a half feet higher.

3 And if you could, if you could take the stand, again,

4 Ms. Minor I would appreciate it.

5 (WITNESS RETURNED TO WITNESS STAND.)

6 Q. I've asked you a lot of questions about the house. I
7 wanted the jury to go ahead and have a picture, so they
8 could understand what you are talking about.

9 I'm going to ask you to direct your attention now back
10 to February 13th of 2011. Does that date stick out in your
11 mind?

12 A. Yes, ma'am.

13 Q. And what is it about that date that makes it stand out
14 to you?

15 A. I was robbed.

16 Q. I want you to tell the Jury -- tell the Jury a little
17 bit about the evening that you were robbed. Where had you
18 been? What had you been doing?

19 A. I was with my boyfriend at his house prior to coming
20 home that night.

21 Q. Had you and your boyfriend gone anywhere in
22 particular?

23 A. Me and my boyfriend and his mother had been grocery
24 shopping before I came home.

25 Q. Did you happen to have some groceries with you when

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1 you got home?

2 A. Yes, ma'am.

3 Q. Do you remember what types of groceries you had with
4 you?

5 A. Yes, ma'am.

6 Q. What did you have?

7 A. Soup, crackers, cereal, and Valentine's candy.

8 Q. Was there anything special or any particular reason
9 that you guys had made this grocery trip?

10 A. I was sick.

11 Q. You were sick? Now, do you remember what time of the
12 day or night you got back to your grandfather's house?

13 A. Around 9:10, 9:15ish.

14 Q. And that was in the evening?

15 A. Yes, ma'am.

16 Q. This is a dumb question: Was it dark outside?

17 A. Yes, ma'am.

18 Q. Did you park in that main driveway, or did you park in
19 that second driveway that's closer to the street?

20 A. The second driveway.

21 Q. Why did you choose to park in that driveway?

22 A. I had school the next day. And my grandfather leaves
23 work -- to go to work at anywhere from 4:00 to 5:00 in the
24 morning and I don't wake up that early.

25 Q. And was it that you didn't want to block him in?

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1 A. Yes.

2 Q. When you got home, what did the outside of your house
3 look like? Were there lots of lights on, or was it dark
4 inside?

5 A. My house was dark on the inside.

6 Q. Did your grandfather have a usual time that he went to
7 bed?

8 A. He normally goes to bed around 7:30 or 8:00.

9 Q. Did he -- Was he in fact -- Did you later learn that
10 he was in bed when you pulled up?

11 A. Yes, ma'am.

12 Q. Did you have -- Was there any front porch light on?

13 A. No, ma'am.

14 Q. In the area where you parked your car, in that little
15 area close to the street, was there anything eliminating at
16 all, any light of any kind?

17 A. There was a light pole with a light by the street.

18 Q. How close was that light pole to where you parked?

19 A. Five or six feet away.

20 Q. Now did you pull your car in facing your house or
21 facing the street?

22 A. Facing the house.

23 Q. And what happened when you got out of your car?

24 A. I was approached.

25 Q. You were approached by -- Was it a person you knew?

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1 A. No ma'am.

2 Q. Was it one person, or two people, or how many people?

3 A. One person.

4 Q. Now, when did you first see that person approaching
5 you?

6 A. When I was gathering my stuff together in my car.

7 Q. And where were -- Where did you first observe that
8 person? I don't think you need to -- Can you -- If I gave
9 you the laser pointer, can you indicate it from the witness
10 stand? Or do you need to step down?

11 A. I think I can.

12 Q. Point out to the jury where you first saw --

13 A. Walking down the opposite side of the road.

14 (WITNESS INDICATED TO OVER HEAD.)

15 Q. Is that street East Black Street?

16 A. Yes, ma'am.

17 Q. Now, at some point, did that person approach you
18 directly?

19 A. Yes, ma'am.

20 Q. When did -- how did that happen?

21 A. He walked across the street through the corner of my
22 yard, shook my hand, and introduced himself to me.

23 Q. Where were you standing when that introduction
24 happened?

25 A. By the driver side of my car.

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1 Q. Had you ever seen that person before?

2 A. No, ma'am.

3 Q. And when the person introduced himself, what if
4 anything did he say?

5 A. He told me his name; where he lived, on South Spruce
6 Street; told me he had a daughter that went to
7 Northwestern; and told me he didn't have kerosene to heat
8 his house; and he didn't have anything to give his daughter
9 for Valentine's Day; and asked me if I could help him out.

10 Q. And when he asked you to help him out, what did you
11 say? Did you give him anything?

12 A. I gave him a bag of candy that I had in my arm.

13 Q. Do you remember what kind of candy it was?

14 A. Jelly beans, maybe, or sweet tarts. I know I had two
15 bags, but I was only taking one of them inside with me.

16 Q. Now after you gave him the candy, did he immediately
17 ask you for a ride?

18 A. Yes, ma'am.

19 Q. And what did you say to him?

20 A. I said, "I can't give you a ride. I have to be
21 inside." It was past my curfew anyways.

22 Q. Did you offer any other kind of assistance to him
23 other than the jelly beans?

24 A. I told him I could give him food that I had in the
25 back seat of my car.

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1 Q. And did you in fact turn to get the food from your
2 car?

3 A. Yes, ma'am.

4 Q. When you turned, what happened?

5 A. Well my purse was sitting on the hood of my car, so I
6 had to reach for my keys. And I turned around to unlock my
7 car, and he saw the money in my back pocket. And his whole
8 demeanor changed. He got very aggressive, not physically,
9 but verbally aggressive. And it honestly scared me.

10 Q. What was the first thing that you remember saying when
11 his demeanor changed?

12 A. What was the first thing...

13 Q. Yeah, what was the statement that he made where his
14 demeanor started to change?

15 A. He said, "I thought you didn't have any money."

16 Q. Had he ever asked you for money before this?

17 A. No, he actually, before when we were having a
18 conversation about his daughter and everything like that,
19 he actually said that he wasn't asking me to put money in
20 his hand. He just wanted food to feed his daughter.

21 Q. So when he saw the money and said, "I thought you said
22 you didn't have any money," what did you say to him?

23 A. I said it was my lunch money for the following week at
24 school.

25 Q. Did he say anything else to you?

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1 A. He said, "You just need to give me the money."

2 Q. How did he say it?

3 A. Very loud and scary. I mean, it was -- It went from
4 him being very nice to very, very mean and aggressive.

5 Q. Did you give him the money?

6 A. Yes, I did.

7 Q. Why did you give him the money?

8 A. I was scared.

9 Q. Well, I've been talking about him, him, him. What did
10 the person that approached you, what did he look like?

11 A. An African-American male, dark clothing, blue jeans,
12 and a black toboggan.

13 Q. Could from where you were, you know when you were
14 standing and you were talking to him, did you get any
15 impression as to what his size was? What his height, or
16 weight, or anything like that?

17 A. Yes, ma'am.

18 Q. And what was your impression of his size?

19 A. Around 180 pounds, and I thought he was about 5'9."

20 Q. And I want to talk with you about that for a minute.

21 I want to talk to you about where you were standing in
22 relation to where he was standing. How close was this man
23 standing to you?

24 A. About 3 feet.

25 Q. Three feet.

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1 Now you mentioned that he shook your hand a moment
2 ago. Did he shake your hand from 3 feet?

3 A. He may have stepped forward and shook my hand and then
4 stepped back.

5 Q. Now, you testified a little bit ago about there being
6 kind of a hill. You said your house is about two and a
7 half feet higher than the sidewalk?

8 A. Yes, ma'am.

9 Q. The part where you were standing, were you standing at
10 a low-lying area of your driveway?

11 A. Yes, ma'am.

12 Q. Was the Defendant standing at a higher point in the
13 yard?

14 A. Yes, ma'am.

15 Q. How much higher? I mean, you can guesstimate. I know
16 it's tough with --

17 A. Probably about two, two and a half feet higher.

18 Q. Okay, so two, two and a half feet would be maybe this
19 high? Is that about right?

20 A. Maybe just a little bit lower.

21 Q. A little bit lower?

22 A. Yeah.

23 Q. Okay, so maybe a little bit less than two feet higher.

24 Now, after -- How did you give the man the money? Let
25 me ask you that.

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1 A. I reached in my back pocket and handed it to him.

2 Q. Did you put it in his hand?

3 A. Yes, ma'am.

4 Q. What did he do after you gave him the money?

5 A. He turned around and ran.

6 Q. Do you remember what direction he ran to?

7 A. Towards South Spruce Street.

8 Q. And I just want to get the jury oriented to --

9 oriented to which direction that was. Could you point out
10 to the jury in which direction the Defendant ran?

11 A. This way.

12 (WITNESS INDICATED TO PHOTO ON OVER HEAD.)

13 Q. Is that the same direction from which he had come?

14 A. Yes, ma'am.

15 Q. Now, Minor how long total do you think your
16 conversation, your interaction with this man lasted?

17 A. Three to four minutes.

18 Q. Three to four minutes. And during that time, was
19 there anything that was obstructing your view to see the
20 man that you were talking to?

21 A. No, ma'am.

22 Q. Did the pole -- the light pole, provide you enough
23 light to be able to see the person's face?

24 A. Yes, ma'am.

25 Q. And did you have an opportunity during these three or

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1 four minutes to look at the person, look at what they were
2 wearing, look at there face?

3 A. Absolutely.

4 Q. Now, I'm gonna come back to the man in a minute. But
5 I want to talk to you about what you did after the man ran
6 off. What was the first thing that you did?

7 A. I called my mother.

8 Q. And where does your mom live?

9 A. In Florida.

10 Q. Now, why did you call your mom instead of call the
11 police?

12 A. I had never been in that kind of situation before. I
13 was -- I was going crazy. I didn't know what to do. And
14 my Mom's kind of my go-to person. Whenever something bad
15 happens, I call her.

16 Q. And did your mom give you any advice on what she
17 thought you should do?

18 A. Yeah, she told me to wake my grandpa up and call the
19 police.

20 Q. Did you wake your grandfather up?

21 A. Yes, ma'am.

22 Q. Did you tell your grandfather what happened?

23 A. Yes, ma'am.

24 Q. Did you decide to call the police?

25 A. Yes, ma'am.

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1 Q. Did you personally call 911?

2 A. Yes, ma'am.

3 Q. Now, when you spoke to 911, did anybody ask you for a
4 description or ask you to tell them what happened?

5 A. Yes, ma'am.

6 Q. And did you tell them?

7 A. Yes, ma'am.

8 Q. Did the police arrive at your house?

9 A. Yes.

10 Q. How many -- Do you remember how many police officers
11 came?

12 A. Altogether?

13 Q. Yes. Not in an exact number, but just a guess.

14 A. Thirteen, fourteen, maybe?

15 Q. Do you recall meeting with one officer in particular
16 at your house?

17 A. Yes, ma'am.

18 Q. Do you remember that officer's name?

19 A. Officer Stewart.

20 Q. And when you spoke with Officer Stewart, did he ask
21 you what happened?

22 A. Yes, ma'am.

23 Q. Did he ask you for a description of the suspect?

24 A. Yes, ma'am.

25 Q. And did you provide him a description of the suspect?

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1 A. Yes, ma'am.

2 Q. And what was the description that you told -- Let me
3 ask you first, what was the description that you told the
4 911 person or the dispatcher at Rock Hill?

5 A. Blue jeans, black toboggan, blue shirt, or a dark-
6 colored shirt and a jacket, a dark-colored jacket over his
7 shirt.

8 Q. Did you identify the person's race or gender?

9 A. Yes, ma'am.

10 Q. And what was that race and gender?

11 A. African-American male.

12 Q. When you talked with Officer Stewart were you able --
13 did you give him any additional details?

14 A. I think I told him exactly what I told 911.

15 Q. Did you tell him anything about height or weight?

16 A. Yes, ma'am.

17 Q. And what was that description?

18 A. 180 pounds and 5'9."

19 Q. While you were -- While Officer Stewart was on the
20 scene talking with you, did he ask you to come with him to
21 take a look at a suspect?

22 A. Yes, ma'am.

23 Q. Talk to me, and tell the jury what exactly Officer
24 Stewart told you, if you recall the exact words?

25 A. What he told me when --

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1 Q. When he asked you to go look at a suspect with him.

2 A. He told me that they had found someone that fit the
3 description that I gave. And they wanted me to provide a
4 positive identification of him.

5 Q. And how far away was this person they wanted to you
6 look at?

7 A. Right down the street.

8 Q. Do you remember how many houses down it was?

9 A. Maybe three?

10 Q. And how did you go there? Did you go in a car, or did
11 you walk?

12 A. I got in the car with Officer Stewart.

13 Q. And when he took you down, did you look at the person?

14 A. Yes, ma'am.

15 Q. Was the person sitting, standing? Where they in a
16 police car or were they not in a police car?

17 A. He was standing up with, I believe, three other
18 officers.

19 Q. Did you recognize that person?

20 A. Yes, ma'am.

21 Q. Did you identify that person for Officer Stewart?

22 A. Yes, ma'am.

23 Q. How certain were you when you identified that person,
24 that he was the person that had taken your \$20 dollars?

25 A. I was positive.

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1 Q. Do you see the person in the courtroom today, who
2 robbed you?

3 A. Yes, ma'am.

4 Q. And can you point him out for the jury?

5 A. He's over there in a blue shirt.

6 Q. In a blue shirt. Is he wearing a jacket or just a
7 blue shirt?

8 A. Just a blue shirt.

9 MS. JOYNER: Your Honor, let the record reflect that
10 she's identified the Defendant.

11 Q. Ms. Minor , Minor I want to get -- just kind of go
12 back over with you, again, just some of the information
13 about what happened that night. And tell me again, about
14 what time did you get home?

15 A. Around 9:10 or 9:15.

16 Q. And so you were running a little past curfew that
17 night; is that correct?

18 A. Yes, ma'am.

19 Q. Now when you pulled up in the driveway, and you parked
20 the car, did you see any other foot traffic at all on your
21 little block at [REDACTED] ?

22 A. No, ma'am, not that I can remember.

23 Q. When the Defendant crossed the street, do you remember
24 what point on the -- If you can even show us if you
25 remember, what point on the map the Defendant crossed from

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1 being on the opposite side of the street to being on your
2 same side of the street?

3 A. Around right here.

4 (WITNESS INDICATED TO PHOTO ON OVER HEAD.)

5 A. And he crossed and came right there to where I was at.

6 Q. So, sort of catty-corner. He sort of walked catty-
7 corner to you?

8 A. Yes, ma'am.

9 Q. Did it appear to you that he had seen you that he was
10 walking towards you?

11 A. Yes, ma'am.

12 Q. When the Defendant walked up to you again, I don't
13 know if I've asked you this already, had you ever talked
14 with him or seen him before?

15 A. No, ma'am.

16 Q. Did he walk straight over to you? Or was he going
17 quickly? Was he going slowly? How was he walking?

18 A. He was walking at a pretty normal pace directly
19 towards me.

20 Q. Did he walk along the sidewalk, or did he walk through
21 your yard?

22 A. Through the yard.

23 Q. And if you recall, what was the first thing that he
24 said to you?

25 A. He told me his name.

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1 Q. Do you remember what that name was? Were you able to
2 tell the police the name that night?

3 A. No, ma'am.

4 Q. Did he shake your hand?

5 A. Yes, ma'am.

6 Q. Did he say anything to you about having met your
7 grandfather?

8 A. Yes, ma'am.

9 Q. What exactly did he say about that?

10 A. He told me that a couple of weeks ago, he had talked
11 to my grandpa, and that he seemed like a pretty nice guy,
12 and --

13 Q. Did he refer to him as your grandfather?

14 A. No.

15 Q. How did he refer to him?

16 A. The gentleman of the house.

17 Q. And why did you assume that he was speaking about your
18 grandfather?

19 A. It's just me and my grandpa living at the house.

20 Q. Now at what point -- Did he next tell you about his
21 daughter? What's the next thing that he said to you after
22 he mentioned your grandfather?

23 A. I believe it was talking about his daughter.

24 Q. And what did he tell you about his daughter?

25 A. That she went to Northwestern High School, and she

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DIRECT BY MS. JOYNER

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1 played basketball. And I believe that's pretty much all he
2 told me about her.

3 Q. Did he tell you how old she was?

4 A. Fourteen.

5 Q. Did he ever ask you if you knew his daughter?

6 A. I believe he did ask me if I knew his daughter, and I
7 didn't. I go to Rock Hill High. I have no idea who she
8 is.

9 Q. Now I want to talk with you about the way that he
10 presented, needing food. What exactly did he say regarding
11 needing food?

12 A. He told me that he didn't have any food to feed his
13 daughter. He didn't have anything to give her for
14 Valentine's Day. And he didn't have any kerosene to heat
15 his house.

16 Q. Now you -- When you gave him the candy -- I'm going to
17 ask you a question, because you wrote a statement for the
18 police; is that right?

19 A. Yes, ma'am.

20 Q. Did you review the statement before trial?

21 A. Yes, ma'am.

22 Q. Did you include the candy in your statement to the
23 police?

24 A. I believe so.

25 Q. Are you sure?

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DIRECT BY MS. JOYNER

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1 A. I don't know exactly if I did or not. I remember -- I
2 know I gave him the candy, but I don't know if I put it in
3 the police report that night or not.

4 Q. The food that you had in your car, had you planned on
5 taking any of the food in that night?

6 A. I was going to take the candy in. And I had a box of
7 lucky charms that I was going to take in.

8 Q. Now when he asked you for the Valentine's Day candy,
9 did you give him the candy?

10 A. Yes, ma'am.

11 Q. And at that point, what's his tone like? What's his
12 demeanor like?

13 A. Just nice. I mean, he had something to give his
14 daughter for Valentine's Day, and he was happy about it.

15 Q. Now when you leaned into your car, did you ever
16 actually unlock your car to get the food out?

17 A. No, ma'am.

18 Q. And why not?

19 A. Because before I could get my door unlocked, he saw
20 the money in my pocket.

21 Q. And how much money was it?

22 A. I had \$20 dollars in my pocket.

23 Q. And he said, what exactly to you about that money?

24 A. He said, "I thought you didn't say -- that you didn't
25 have any money."

Minor

DIRECT BY MS. JOYNER

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1 Q. What was his tone -- What was his demeanor like when
2 he said that?

3 A. Mean and very scary.

4 Q. And that's something that's kind of hard to get across
5 to people sometimes. Did he change his posture at all?

6 A. I can't really remember if he changed his posture or
7 anything. But his facial expressions got very mean, and it
8 really -- it really scared me because I had no idea what
9 was going to happen at that point.

10 Q. Did his tone -- did his volume remain the same? Or
11 did he get louder?

12 A. It got a little bit louder, but not to where anyone
13 could hear him if they were inside asleep or something.

14 Q. Now after he said I thought you said you didn't have
15 any money, your response to him again was what?

16 A. It's my lunch money for school.

17 Q. And his statement to you was what?

18 A. You just need to give me the money.

19 Q. I want to talk to you about what his facial
20 expressions were when he said, "You just need to give me
21 the money." What did his face look like when he said that?

22 A. Angry, kind of scrunched up like he was like angry
23 about something. I -- I don't --

24 Q. Okay. Did his -- Did the volume of his voice remain
25 as it had been earlier when he was talking about his

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DIRECT BY MS. JOYNER

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1 daughter?

2 A. No.

3 Q. How was it different?

4 A. He did raise his voice a little bit, not to a yelling
5 point. But, he raised his voice, and his whole demeanor
6 just changed, just he got angry, like he wanted the money
7 and he was going to get it one way or the other.

8 Q. Was his volume the same as what it was when he said,
9 "I thought you said you didn't have any money?"

10 A. It was about the same.

11 Q. Minor why did you give him the money?

12 A. I was scared. I mean...

13 Q. Was there anybody else on the street that you could
14 have called out to, to help?

15 A. No, ma'am.

16 Q. Do you have a cell phone?

17 A. I do.

18 Q. Where was your cell phone?

19 A. In my purse on the hood of my car.

20 Q. Did it look like there was anybody awake in your
21 house?

22 A. No, ma'am.

23 Q. And how many -- How far away from your front door were
24 you?

25 A. About twenty-five or thirty steps away.

Minor

DIRECT BY MS. JOYNER
CROSS BY MR. SMITH

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1 Q. How close, again, was the Defendant standing to you
2 when he said, "You just need to give me that money?"

3 A. The same amount. About three feet away.

4 Q. Minor did you think you had a choice in whether you
5 gave him the money or not?

6 A. No.

7 Q. And, Minor thank you very much. Please answer any
8 questions Mr. Phil Smith has for you.

9 CROSS EXAMINATION

10 Minor BY MR. SMITH:

11 Q. Ms. Minor you've testified that you didn't know the
12 man that you saw in your yard; is that correct?

13 A. Yes, sir.

14 Q. Is it unusual in that neighborhood for people to walk
15 around?

16 A. No.

17 Q. Had you ever seen that man out walking a dog or
18 anything?

19 A. No, sir.

20 Q. And you indicated that he came across -- I guess,
21 across the street and ultimately, across your yard; is that
22 right?

23 A. Yes, sir.

24 Q. And in your statement, you said you saw him. "He
25 walked through my yard and came down the paved driveway;"

Minor

CROSS BY MR. SMITH

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1 is that correct?

2 A. I believe I did say that in my statement. I mean
3 there's a misunderstanding because he did not come down the
4 paved driveway. He came through my yard to where I was
5 standing at the corner of the lot.

6 Q. Okay. But you gave a statement to an officer in this
7 case; is that right?

8 A. I don't --

9 Q. A written statement?

10 A. I gave a written statement at the police department.

11 Q. Let me give you a copy if you want to refer to it, but
12 -- Do you recognize that?

13 A. Yes, sir.

14 Q. And that's a copy of a written statement that you gave
15 at the Rock Hill Police Department; is that right?

16 A. Yes, sir.

17 Q. When did you give that statement?

18 A. The night that it happened.

19 Q. Okay, so this same night?

20 A. Yes, sir.

21 Q. And do you know what officer you gave that statement
22 to?

23 A. Yes, sir.

24 Q. Who was that?

25 A. I don't know your name.

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1 Q. The officer sitting here?

2 A. Yes, sir.

3 Q. Detective Baird. And you explained to her what went
4 on. And then, did she type those things or did you type
5 them?

6 A. She typed it.

7 Q. And then she allowed you to read back over it, to see
8 if you wanted to make any changes; is that correct?

9 A. Yes, sir.

10 Q. And did you make any changes? Did you have to retype
11 the statement any?

12 A. There may have been have few minor things, but nothing
13 big.

14 Q. So ultimately, you got it in a way that you were
15 comfortable with. And then, you printed it out, or she
16 printed it out, and you signed it; is that right?

17 A. Yes, sir.

18 Q. And in that statement, you described that you saw him
19 on the side -- walking on the sidewalk towards my house.
20 He walked through my yard and came down the paved driveway;
21 is that right?

22 A. Yes, sir.

23 Q. But the paved driveway would be on the side of the
24 house that's right up here next to your neighbor's house;
25 is that right?

DAISY Minor

CROSS BY MR. SMITH

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1 A. Yes, sir.

2 Q. So if we look -- If I can get you to look. I don't
3 know if you can see from there. This is your house from
4 the picture. The paved driveway goes right up by the side
5 of your house right next to the neighbor's house; is that
6 right?

7 A. Yes, sir.

8 Q. So in that statement that you first gave you said that
9 the individual you saw walked up this driveway; is that
10 right?

11 A. He did not walk up. He walked kind of across that
12 catty-cornered, through my yard, to where I was at. That's
13 what I was meaning.

14 Q. I'm sorry. But in your statement, you said, "He
15 walked through my yard, and came down the paved driveway;"
16 is that right?

17 A. Yes, sir.

18 Q. So to walk through your yard, and then come down the
19 paved driveway, you'd have to be coming from this
20 direction. Wouldn't you?

21 A. I don't understand.

22 Q. In your statement, you told the officer that the man
23 -- And You can look at your statement if you need to. You
24 said, "He walked through my yard and came down the paved
25 driveway;" is that right?

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1 A. That's what I said, yes.

2 Q. And to do that, you would have to be coming from this
3 direction; is that right? To walk through your yard, and
4 then come down your paved driveway; is that right?

5 A. I guess you would have had to.

6 Q. Okay.

7 A. I don't really know. I don't see how you can do that,
8 but --

9 Q. You don't see how someone could walk through your
10 yard, and then walk down the paved driveway?

11 A. I don't know why someone would do that if I was
12 standing there before my house.

13 Q. Okay, so you don't know why they would do it if you
14 were actually over here. But if you were over here, that
15 might be what they would do. Right?

16 A. Correct.

17 Q. And that's the first written statement you gave in
18 this case. Now when did you realize there was an error
19 with that statement?

20 A. When I reviewed it a couple of days ago when I came
21 and met with Ms. Joyner.

22 Q. Okay, so you started talking with the prosecutor,
23 getting ready for trial, and you realize there's a problem?

24 A. Yes, sir.

25 Q. And so you wanted to make a change to that statement.

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CROSS BY MR. SMITH

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1 Were there any other problems with that statement?

2 A. There's a couple of times where they mentioned, "He
3 went towards" -- They said something about South Stonewall,
4 and they changed that to South Spruce Street.

5 Q. Okay, and you keep saying, "they." That's your
6 statement. Right?

7 A. Yes, but it was typed in here South Stonewall, and I
8 changed it to South Spruce Street.

9 Q. And again, that change that you wanted to make was
10 when you met with Ms. Joyner a couple of days ago preparing
11 for this case?

12 A. Yes, sir.

13 Q. Because Stonewall Street is back up in this direction;
14 is that right?

15 A. No, sir.

16 Q. It's this way?

17 A. Yes, sir.

18 Q. And so in your statement, you said that he came across
19 the yard and down the driveway. And you said he left in
20 this direction?

21 A. Yes. I wasn't saying it in direction-wise. I
22 misplaced where the streets were at. I had my street names
23 confused.

24 Q. But then today, at trial you say he came from this
25 direction and went up into the yard -- Well, up and across

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CROSS BY MR. SMITH

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1 the yard to here; is that correct?

2 A. He did not go up and across. He came straight through
3 my yard.

4 Q. By straight, do you mean diagonal, or do you mean up
5 and straight across?

6 A. No, I mean straight as in diagonal.

7 Q. Okay. He spoke to you at the car?

8 A. Yes, sir.

9 Q. And which side of your car were you on? Were you on
10 the driver side or the passenger side?

11 A. The driver side.

12 Q. And had you pulled in, or had you backed into the
13 driveway?

14 A. I pulled in.

15 Q. Okay, so you were on the side of your car that was
16 closest to your house?

17 A. Yes, sir.

18 Q. And where was he relative to you? Was he toward your
19 home, toward the paved driveway, or toward the street?

20 A. He was in between the paved driveway and my house. He
21 was standing directly in front of me.

22 Q. So sort of parallel to the sidewalk?

23 A. If my car was parked facing towards my house - - -

24 Q. Yes, ma'am.

25 A. - - - he was, and the driveway was here, he was

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CROSS BY MR. SMITH

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1 standing right there. So I couldn't have got to my house
2 if I tried.

3 Q. And during this time, you never saw a weapon of any
4 sort; is that right?

5 A. Correct.

6 Q. And he never threatened any harm to you of any sort;
7 is that correct?

8 A. Correct.

9 Q. Did you at any point in time tell this man you had no
10 money?

11 A. No, sir.

12 Q. You did at some point give him candy; is that right?

13 A. Yes, sir.

14 Q. And the candy had been in your purse, or it was in
15 your hand? Where was the candy?

16 A. It was in my arm.

17 Q. But I'll ask you to refer to that statement that is in
18 front of you, because you seemed to be ask a question about
19 it on direct. Where in that statement, did you tell the
20 detective that you gave him a bag of candy?

21 A. I didn't say anything.

22 Q. So, that's not in there. How about 911, did you tell
23 them that you gave him a bag of candy?

24 A. I don't -- I don't remember.

25 Q. Do you remember telling them "He asked me if I had

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1 food for his fourteen-year-old daughter. And I had some
2 cans of soup in my car, so I was reaching back to get it"

3 - -

4 MS. JOYNER: Your Honor, I'm going to object. The 911
5 isn't in evidence, and she says she does not recall whether
6 she told them about the candy.

7 THE COURT: Sustained, Counsel.

8 Q. Do you recall telling them about a can of soup?

9 A. I do recall.

10 Q. Do you recall telling them about cereal?

11 A. Yes, sir.

12 Q. But you don't know if you said the candy?

13 A. It was all groceries to me. I didn't specifically --
14 I don't remember saying if I gave him the candy or not. I
15 just know that I did.

16 Q. What did the candy look like?

17 A. It was a bag of candy about maybe the size of this - -

18 Q. And it had come from the grocery store?

19 A. From Walmart, yes.

20 Q. From Walmart. And you handed him that candy, and he
21 stepped back. Is that what you said?

22 A. No, he did not step back.

23 Q. So he stayed close to you within arm's reach at that
24 point?

25 A. He never moved. He reached out his hand, grabbed the

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1 candy, and then stood there, and continued talking to me.

2 Q. But you said he shook your hand and stepped back; is
3 that right?

4 A. He always stayed in the same spot. I said he might
5 have stepped forward to shake my hand, and then stayed
6 right back in the place he was at. He never moved.
7 Forwards, backwards, he never moved.

8 Q. Did you give the man a can of soup?

9 A. No, sir.

10 Q. But you did mention the soup in the 911 call?

11 A. That it was in the back seat of my car, yes.

12 Q. Do you mention the soup in your statement?

13 A. Yes.

14 Q. Did you give him cereal?

15 A. No.

16 Q. But you believe you mentioned that on the 911 call?

17 A. I don't know if I specifically said any specific item
18 that I had. I remember telling him that I had food in my
19 car that I was going to give him.

20 Q. How about Lucky Charms?

21 A. I know I had Lucky Charms.

22 Q. Did you mention cereal in your statement?

23 A. Yes, I did.

24 Q. You say on the 911 call that you had money in your
25 back pocket; is that right?

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CROSS BY MR. SMITH

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1 A. Yes, sir.

2 Q. Now you didn't say how much money. In your statement,
3 do you mention the money?

4 A. Yes, sir.

5 Q. But there you mentioned how much you had in your back
6 pocket; is that right?

7 A. Yes, sir.

8 Q. You say it was \$20 dollars?

9 A. Yes, sir.

10 Q. Now, where did that money come from?

11 A. I had, had that money all day with me. I get 20 or
12 \$30 dollars each week for school for lunch money for
13 school.

14 Q. For school? So that was for?

15 A. The following week.

16 Q. The following week lunch money. And how did you know
17 exactly how much it was?

18 A. Because I knew how much I had in my pocket.

19 Q. Okay, but you said you get 20 or \$30 dollars. How did
20 you know you got 20?

21 A. I had a \$20 dollar bill and a \$10 dollar bill. The
22 \$10 dollar bill was tucked down deeper in my pocket, and my
23 20 was hanging out.

24 Q. Now which pocket was the \$10 dollar bill in?

25 A. It was in the same pocket.

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CROSS BY MR. SMITH

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1 Q. What does it say in your statement about the money?

2 A. Would you like for me to read it?

3 Q. Sure.

4 A. "I got the money out of my back pocket and gave it to
5 him. It was a folded \$20 bill. After I got inside of my
6 house, I realized I had a \$10 bill in my pocket too, but
7 didn't know it then."

8 Q. And you indicate that there was a folded \$20 bill.
9 How was it visible? Did you know it was sticking out of
10 your pocket?

11 A. I had no idea it was sticking out.

12 Q. And the man you say, never asked you for money; is
13 that correct?

14 A. Correct.

15 Q. You say on the 911 call, that he wasn't asking for
16 money. And in your statement, you said, "He said he wasn't
17 asking me to put money in his hand. He just asked for
18 food;" is that right?

19 A. Correct.

20 Q. And at some point when you're going to get your keys,
21 you put your purse on the hood of the car; is that right?

22 A. Correct.

23 Q. He doesn't grab your purse. He doesn't grab your
24 keys.

25 A. No.

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CROSS BY MR. SMITH

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1 Q. He didn't take your car. And you say that he asked
2 you for a ride home; is that right?

3 A. Correct.

4 Q. And then after you gave him the money, you said he ran
5 away towards downtown the same way he came from; is that
6 right?

7 A. Yes.

8 Q. And when he left, he didn't have cereal, he didn't
9 have soup, but he did have this candy that you say you just
10 gave him?

11 A. Yes, sir.

12 Q. And was it in his hand? Did he put it in his pocket?
13 Do you know where the candy was?

14 A. I don't recall.

15 Q. The officers took you basically two houses away to
16 identify an individual they had on the street; is that
17 right?

18 A. Yes, sir.

19 Q. And I believe you said that they told you they'd found
20 somebody who matched the description and wanted to see if
21 you could make a positive identification?

22 A. Yes, sir.

23 Q. And I know you've said earlier that you're a person
24 who always notices clothes; is that right?

25 A. Yes, sir.

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CROSS BY MR. SMITH

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1 Q. The clothes that you described to the officers. What
2 clothes did you describe?

3 A. I believe I said a blue shirt, blue jeans, a dark
4 jacket, and a black toboggan.

5 Q. Okay, you say blue shirt. Didn't you say, "a dark-
6 colored shirt, a button-up, I think."

7 A. Might have been. I remember him having a shirt on,
8 and then a zip-up jacket over it, and they were both dark
9 colors. But I think I remember the shirt being blue.

10 Q. Do you remember it being button-up?

11 A. I don't remember it being button-up, no.

12 Q. Do you remember saying it was button-up?

13 A. Yes.

14 Q. When you see the man ultimately on the street, does he
15 have on those same clothes? When you see Todd Smith, does
16 he have on those same clothes?

17 A. Yes, sir, I believe so.

18 Q. So he had a jacket on?

19 A. Yes, sir.

20 Q. He had a button-up shirt on?

21 A. I don't recall.

22 Q. He had a toboggan on?

23 A. Yes, sir.

24 Q. Did you see the candy in his hand?

25 A. No, sir.

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CROSS BY MR. SMITH

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1 Q. Did you see the \$20?

2 A. No, sir.

3 Q. Now you indicated he told you his name, but you just
4 couldn't remember at that time what his name was?

5 A. Yes.

6 Q. And he told you where he lived and that he had a
7 daughter?

8 A. Yes, sir.

9 Q. How old she was, where she went to school, and that
10 she played basketball?

11 A. Yes, sir.

12 Q. And he ran back off from the same direction that he
13 came?

14 A. Yes, sir.

15 Q. Now, you also gave the police a description not just
16 of his clothes, but of his physical characteristics.
17 Right?

18 A. His height and weight.

19 Q. You said he was 5'9" tall; is that right?

20 A. Yes, sir.

21 Q. And 180...

22 A. 180 pounds.

23 Q. 180 pounds. How tall are you?

24 A. I'm 5'7."

25 Q. And you've talked about your yard.

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CROSS BY MR. SMITH

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1 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER ONE AND TWO
2 PREMARKED FOR IDENTIFICATION.)

3 Q. Ms. Minor I'm going to show you what's been marked
4 as Defense Exhibit Number One. You can hold it if you
5 like. Do you recognize that?

6 A. Yes, sir.

7 Q. That's a street level view of the home you were living
8 in at the time. Right?

9 A. Yes, sir.

10 Q. There's no big hill there; is there?

11 A. Yes, sir, there is.

12 Q. In the photo there is, or you're saying there is?

13 A. It's a slope.

14 Q. But you said it's a pretty good-size hill. There's no
15 pretty good-size hill there; is there?

16 A. If you're standing on the sidewalk at my house, there
17 is a hill going up towards my house.

18 Q. You got home you say around 9:10 to 9:15; is that
19 right?

20 A. Yes, sir.

21 Q. February, so it's dark outside. Now you mentioned a
22 lamppost. And I'll show you State's One, which is on the
23 screen as well. But if I point -- Is the lamppost that you
24 talked about, is that located right here? Is that, that
25 structure?

Minor

CROSS BY MR. SMITH

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1 (DEFENSE ATTORNEY POINTING TO IMAGE ON OVER HEAD.)

2 A. No, sir.

3 Q. Here?

4 A. Yes, sir.

5 Q. So on this photo, and I know it's darker here. But it
6 would be located down in this little bit of grass up by the
7 sidewalk; is that right?

8 A. Yes, sir.

9 Q. And you said your curfew is Nine o'clock; is that
10 right?

11 A. Yes, sir.

12 Q. So you're late?

13 A. Yes, sir.

14 Q. You're late and had been out with your boyfriend.

15 A. Yes, sir.

16 Q. Is he younger, older, the same age?

17 A. He's 17.

18 Q. He's seventeen. What happens when you come home late
19 for curfew?

20 A. I mean, I was only about ten or fifteen minutes late.
21 Nothing, nothing happens.

22 Q. How late do you have to be before you get in trouble?

23 A. My grandpa really -- If he knows where I'm at, and he
24 knows who I'm with, I'm pretty much okay.

25 Q. So it doesn't matter that you're after curfew?

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CROSS BY MR. SMITH

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1 A. Not really.

2 Q. What time had you left that day, that morning to go
3 off with him?

4 A. I don't recall what time. I had been with him
5 previously. I know I had went to the doctor. I think I
6 had an Eight o'clock or 8:30 appointment that morning. And
7 I had been with his mother all day.

8 Q. So you weren't feeling well, but you had been out all
9 day?

10 A. I had been with her all day.

11 Q. At their house?

12 A. Because my grandpa works. Yes, sir.

13 Q. Now you mentioned the clothes. Ms. Minor I'm going
14 to show you what's been marked as State's Exhibit Number,
15 if you recognize that?

16 A. What am I supposed to be recognizing?

17 Q. That's what I'm asking. Do you recognize it?

18 A. I do recognize the jeans. I don't recall his shirt
19 being that bright. But of course it was kind of dark
20 outside. So everything seems a little darker.

21 Q. So you're assuming that to be his clothes?

22 A. Yes, sir.

23 Q. And there's jeans in there. And there's what you're
24 describing as a bright shirt?

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

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CROSS BY MR. SMITH

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1 doesn't know what they are. She's simply assuming. Mr.
2 Smith is asking her to assume when she's already said that
3 she does not know if that's the shirt.

4 THE COURT: Maybe you need to clarify what you're
5 asking.

6 BY MR. SMITH:

7 Q. The shirt that you just looked at, you would call that
8 a bright shirt? In fact, you did call that a bright shirt.
9 Correct?

10 A. In this picture, it seems like a pretty bright-colored
11 blue shirt.

12 Q. It's not button-up?

13 A. No, but they're --

14 MS. JOYNER: Your Honor, again, she's not identified
15 this as the shirt, Your Honor, and so I would object to
16 this on the grounds of relevance.

17 THE COURT: I sustain, Counsel.

18 BY MR. SMITH:

19 Q. But the clothing that you saw the gentleman on, was a
20 dark button-up shirt.

21 A. He had a jacket on over his shirt.

22 Q. And a dark jacket?

23 A. Yes.

24 Q. You said you spoke to this gentleman for about three
25 or four minutes; is that right?

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CROSS BY MR. SMITH

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1 A. Yes, sir.

2 Q. Did you notice anything about his speech pattern?

3 A. I may have recalled him having a -- some kind of lisp
4 or something, but not anything different. The way -

5 Q. You may have recalled, or you do recall?

6 A. The way he talked was a little strange, but everybody
7 talks different.

8 Q. Where did you mention that to the police?

9 A. I did not.

10 Q. Not the 911 call?

11 A. No, sir. I didn't think it mattered.

12 Q. Not in the description to Officer Stewart?

13 A. No, sir.

14 Q. Not in your statement you gave to the police?

15 A. No, sir.

16 Q. So you didn't think it mattered to accurately describe
17 what you call a speech-stutter pattern from the individual?

18 A. I never said he stuttered.

19 Q. Well, you said, you may have recalled something. What
20 do you may recall?

21 A. I said a lisp.

22 Q. A lisp. You didn't think that would be important to
23 tell the police?

24 A. No, sir. Nobody asked me about it. I was in the
25 moment, and I honestly didn't think it mattered. It never

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1 crossed my mind to say anything about it.

2 Q. Okay, so clothing mattered, but the actual
3 characteristics of the individual who you say committed the
4 crime, you didn't think mattered?

5 A. That's -- I'd never been in that situation before, so
6 no.

7 Q. When you go in the house -- I'm sorry -- When he runs
8 off, do you call from outside? Or do you immediately run
9 in the house?

10 A. I immediately go in the house.

11 Q. And you pick up your cell phone?

12 A. And I call my mother.

13 Q. You call your mom. And she says -- What do you say in
14 your statement she tells you to do?

15 A. Would you like me to read it from the statement?

16 Q. Sure.

17 A. "She told me to wake up my grandfather, and tell him.
18 So, I did."

19 Q. And while you were outside, you indicate the man got
20 loud, is what you said, but now you're saying he got kind
21 of loud; is that right?

22 A. He got loud enough that it scared me more. But not
23 loud that somebody could hear him from inside asleep.

24 Q. Because it didn't wake up your grandfather. Right?

25 A. No, sir.

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1 Q. And no neighbors came out or turned on any lights or
2 anything like that?

3 A. No, sir.

4 Q. And you've indicated that while talking with this
5 individual, you got a good look at him; is that right?

6 A. Yes, sir.

7 Q. Yet, did you ever describe anything about his face,
8 hair, eyes, skin tone? Anything in any description to
9 either 911, Officer Stewart at the scene, or in the written
10 state?

11 A. I don't know if you -- Can you repeat that?

12 Q. Did you ever describe in the 911 call, in your
13 statement to Officer Stewart at the scene, or in your
14 written statement, anything about his face, the shape; his
15 hair color; eye color; any scarring; anything about skin
16 tone; anything about the physical characteristics of the
17 face you got a good look at?

18 A. I don't believe I did, no.

19 Q. But you always notice clothes?

20 A. Yes, sir.

21 Q. No further questions.

22 MS. JOYNER: Just a few follow up, Your Honor.

23 THE COURT: Yes.

24 REDIRECT EXAMINATION

25 Minor

BY MS. JOYNER:

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1 Q. Minor when you got home a little after curfew, was
2 your grandfather awake?

3 A. No, ma'am.

4 Q. Did he realize until you had woken him up, that you
5 were late for curfew?

6 A. No, ma'am.

7 Q. When you were talking with the man, the Defendant, for
8 those three to four minutes, did you have an opportunity to
9 view his face?

10 A. Yes, ma'am.

11 Q. When the police brought you several houses down and
12 showed you an individual, were you able to see that
13 individual's face in addition to his clothing?

14 A. Yes, ma'am.

15 Q. And was the individual you identified the man that had
16 robbed you?

17 A. Yes, ma'am.

18 Q. And again, is that man in the courtroom?

19 A. Yes, ma'am.

20 Q. Okay, point him out again to the Jury.

21 A. He's over there with a blue shirt on.

22 (WITNESS POINTED TO THE DEFENSE TABLE.)

23 Q. That's the Defendant.

24 Your Honor, let the record reflect that she identified
25 the Defendant in this case.

Minor

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1 Now just to be clear, and I'm going to actually use
2 this map so it will be easier for you to see. But it's the
3 same map. And just to be clear to the jury, point out
4 again -- Do you have the pointer still?

5 A. Yes, ma'am.

6 Q. What direction did the Defendant come from?

7 A. He came from this way.

8 (WITNESS INDICATED TO EXHIBIT ON OVER HEAD.)

9 Q. What direction did the Defendant go after he took the
10 money?

11 A. He left right here and went back the way he came.

12 Q. Okay. Thank you, Minor

13 MR. SMITH: Nothing further.

14 THE COURT: Thank you, ma'am. You may stand down.

15 (WITNESS LEFT WITNESS STAND.)

16 THE COURT: Counsel, unless you got a short witness
17 you want to get up we can go ahead and get some lunch. If
18 you have somebody you want to get up.

19 MS. JOYNER: I have a witness that will be very short,
20 Your Honor.

21 THE COURT: Please call that witness then.

22 MS. JOYNER: Okay.

23 Could you please ask Mr. Robertson, John Robinson,
24 he's in the side room.

25 (WITNESS ENTERED THE COURTROOM.)

JOHN ROBERTSON: DIRECT BY MS. JOYNER

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1 Mr. Robertson, please come forward and be sworn by the
2 Clerk.

3 MADAME CLERK: Sir, please raise your right hand,
4 place your left on the Bible.

5 (WHEREUPON: JOHN ROBERTSON, BEING
6 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

7 DIRECT EXAMINATION

8 JOHN ROBERTSON BY MS. JOYNER:

9 Q. Mr. Robinson, I have a few quick questions for you.
10 Can you please state your name for the record?

11 A. John Ash Robertson.

12 Q. Mr. Robertson, could you speak loud enough for all the
13 jurors to hear you. Could you please state your address?

14 A. [REDACTED], Rock Hill.

15 Q. And is that in the city limits of Rock Hill?

16 A. Yes.

17 Q. Is that within York County?

18 A. Yes.

19 Q. And how long have you lived at that address?

20 A. About five years.

21 Q. And back on February 13th of 2011, was your
22 granddaughter Minor living with you?

23 A. Yes.

24 Q. Was anybody else living in the house with you and
25 Minor

1 A. No.

2 Q. And do you recall the night of February 13th, 2011?

3 A. Yes.

4 Q. And what is it about that date that sticks out in your
5 mind?

6 A. That was the night that Minor come in and said that
7 she had, had a problem, a confrontation with somebody out
8 in the front yard, and they had taken some money from her.

9 Q. Now I want to talk to you -- When Minor pulled up to
10 the house, were you awake or asleep?

11 A. I was in bed. I was about half asleep.

12 Q. Okay.

13 A. But I wasn't at work.

14 Q. Did Minor come into room and tell you about what
15 happened on the front lawn?

16 A. Yes.

17 Q. And after Minor told you, did you or Minor contact the
18 police?

19 A. Yes, I asked her to.

20 Q. Now, Mr. Robertson, when you were speaking with the
21 police, when you were talking with Detective Baird, after
22 while she was doing an investigation, you spoke with her
23 about an encounter that you had several weeks prior. Can
24 you tell the Jury what type of encounter that you had that
25 you spoke with Detective Baird about?

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1 A. That a man had come to my home -

2 MR. SMITH: Objection.

3 THE COURT: Wait, wait, just a minute. Sir?

4 MR. SMITH: Objection, relevance.

5 THE COURT: What is the relevance, Counselor?

6 MS. JOYNER: Your Honor, may we approach?

7 THE COURT: Yes.

8 (BENCH CONFERENCE OFF THE RECORD OUR OF THE HEARING OF
9 THE ROOM AT 12:30 PM.)

10 BY MS. JOYNER:

11 Q. And Mr. Robinson, I'm just going to ask you a few more
12 questions. I see that you wear glasses?

13 A. Yes.

14 Q. And how good can you see? How well do you see?

15 A. I see 20/20 with my glasses.

16 Q. Do you see anyone in the courtroom that you recognize
17 from having any prior interactions with them in the weeks
18 leading up to Minor robbery?

19 A. Yes, the gentleman sitting over here at the table on
20 the left.

21 Q. Okay, could you -- and I can't see what you're
22 pointing to.

23 A. The one in the blue shirt on the left.

24 Q. Is he wearing a jacket of any kind or just a blue
25 shirt?

1 A. Just a blue shirt.

2 MS. JOYNER: Let the record reflect that he identified
3 the Defendant, Your Honor.

4 Q. Now I want to talk with you about where the Defendant
5 was that you encountered the Defendant in this case. Tell
6 the Jury when it was that you first met the Defendant.

7 A. Well, I don't remember the date, but it was -- It
8 seems to me that it was a Sunday night. But it was a late
9 evening, 9:00, 9:30.

10 Q. And where did you encounter him?

11 A. At my home.

12 Q. And how did you come to be in contact with him?

13 A. Well I was -- I was in the den, and I heard the
14 doorbell ring. I got up, and I went to the door, and he
15 was standing on my front porch.

16 Q. Had you ever seen him prior to that time?

17 A. No, I don't recall. I may have seen him walking up
18 and down the street, but I didn't connect him with somebody
19 I had seen, no.

20 Q. When he rang your doorbell, what was the nature of --
21 Or what did he say to you? Why was he ringing the
22 doorbell?

23 A. He was asking for -- for money or work because he
24 wanted heating oil for his family.

25 Q. Did he mention anything to you about Minor Do you

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1 recall?

2 A. He said something about that he knew my granddaughter.
3 But he didn't mention her by name. He said, "I know your
4 granddaughter."

5 Q. Did he say anything further about your granddaughter
6 that you recall?

7 A. I can't -- I can't remember it. I know that there was
8 some words spoken about it, but I don't remember what the
9 words were now.

10 Q. And when he asked you -- I think he asked you for
11 money for heating oil, what did you say to him?

12 A. I told him "I don't have any money I can give you." I
13 says, "But you can work for me when the snow melts."

14 Q. Okay.

15 A. I thought it pretty odd, snow on the ground, looking
16 for work at 9:30 at night. But anyway, I told him he could
17 come back when the snow melted.

18 Q. And did you ever personally see the Defendant back at
19 your house?

20 A. No, not at my house.

21 Q. He never come back asking you for work; is that
22 correct?

23 A. No, I only saw him one other time after that, that I
24 recall.

25 Q. And what was that time?

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1 A. He was walking down the street on the opposite side of
2 the street about 6:00, 6:15, sometime in the morning. And
3 I asked him if he had found any work. And he has said,
4 "Yes." And I told him, good luck, and then I went on to
5 work. I was getting in my car when I saw him.

6 Q. Thank you very much. Please answer any questions Mr.
7 Smith has.

8 MR. SMITH: No questions, Your Honor.

9 THE COURT: Thank you, sir, you may stand down, sir.
10 Thank you.

11 MS. JOYNER: We ask that he be released from his
12 subpoenas, but that he be allowed to remain in the
13 courtroom for the remainder of the trial.

14 MS. SMITH: No objection, Your Honor.

15 THE COURT: Thank you, sir. You may be excused or
16 remain as you wish.

17 MR. ROBERTSON: Okay, thank you.

18 (WITNESS LEFT WITNESS STAND, BUT REMAINED IN
19 COURTROOM.)

20 THE COURT: All right. Now I think it would be a good
21 time to get some lunch, Counsel.

22 Mr. Foreman, and ladies and gentleman of the jury
23 panel, we're going to go ahead and recess for lunch at this
24 time. It's almost twenty till One. I'm going to ask you
25 to be back in the courtroom, ready -- Excuse me, back in

1 the jury room, ready to go, at 1:45. That's just slightly
2 over an hour, and that should give everybody plenty of time
3 to get lunch and get back.

4 Please, however, I remind you not to discuss this case
5 with anyone during the recess from the Court, and be back
6 in the jury room ready to go at 1:45. Thank you.

7 (JURY EXITS COURTROOM AT 12:35 PM)

8 THE COURT: Counsel, any matter we need to take up at
9 this time?

10 MS. JOYNER: Not from the State.

11 MR. SMITH: None from the Defense, Your Honor.

12 THE COURT: Okay, let's try to get started at 1:45.
13 Thank you.

14 MS. JOYNER: Yes, sir.

15 (COURT IN RECESS FOR LUNCH AT 12:35 PM.)

16 (COURT BACK IN SESSION AT 1:53 PM.)

17 THE COURT: Please be seated, thank you.

18 (DEFENDANT REENTERS COURTROOM.)

19 THE COURT: Please bring the jury in, sir.

20 MS. JOYNER: And, Your Honor, we have Officer Stewart
21 in the courtroom, just basically he's the next witness.

22 THE COURT: Okay.

23 (JURY REENTERS COURTROOM AT 01:55 PM.)

24 THE COURT: Good afternoon, Mr. Foreman, ladies and
25 gentlemen of the jury. I hope you enjoyed your lunch. We

OFFICER TONY STEWART: DIRECT BY MS. JOYNER

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1 are ready now to resume with the trial.

2 Counsel, you may proceed.

3 MS. JOYNER: Thank you, Your Honor. The State calls
4 Officer Tony Stewart.

5 Officer, if you could step forward and be sworn.

6 (WHEREUPON: TONY STEWART, BEING
7 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

8 DIRECT EXAMINATION

9 OFFICER TONY STEWART BY MS. JOYNER:

10 Q. Officer Stewart, can you please state your full name
11 for the record.

12 A. Tony Lee Stewart.

13 Q. What's your occupation, sir?

14 A. I'm a police officer with the City of Rock Hill.

15 Q. How long have you been with the City of Rock Hill?

16 A. I've been there nine years.

17 Q. And what's your current job title? Is it officer?

18 A. Yes. Officer, yes.

19 Q. And what are your job duties, typically?

20 A. Typically to answer calls for service that come in
21 from 911 or come in through our dispatch, any call that may
22 come in whatsoever. And also, I enforce traffic and do
23 investigations and those sort of things.

24 Q. Now, were you working with Rock Hill Police Department
25 back on February 13th of this year?

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1 A. Yes, I was.

2 Q. And on that evening, did you become involved in the
3 investigation of Todd Smith?

4 A. Yes.

5 Q. Please tell the Jury how you first became involved
6 with the case.

7 A. A call went out to officers in the area of 633 East
8 Black Street, or -- Did I get the address right? And I
9 happened to be very close at the time when they were giving
10 out the call for an armed -- or for a robbery that had just
11 taken place, and again began giving out a description of
12 that subject. And because I was in the vicinity, then I
13 was the first officer to arrive at the scene.

14 Q. Do you recall what time the dispatch called out about
15 the robbery?

16 A. It was about 9:38, 9:37, 9:38 p.m.

17 Q. And what time did you arrive on the scene?

18 A. About 9:39 according to our dispatch log.

19 Q. Were you the first officer on the scene?

20 A. Yes, I was.

21 Q. And after you arrived, did other officers arrived
22 also?

23 A. They did, yes.

24 Q. Do you recall the names of any of the other officers
25 that were out on the scene?

1 A. The ones actually at the scene, some of those were
2 Sergeant Harmon, Sergeant Smothers, Sergeant Culbreath were
3 some of the other that actually came there.

4 Q. Now in a case like this where you have a call about a
5 robbery, is it common to start a perimeter?

6 A. Yes, if the -- if it's known that the suspect left on
7 foot, it would be very common, yes.

8 Q. And explain to the jury, if you could just briefly,
9 what a perimeter is.

10 A. A perimeter is -- It basically encompasses the -- the
11 area in the immediate vicinity of wherever the crime had
12 just taken place. And if the suspect were to leave in a
13 certain direction, then we would begin getting other
14 responding units or other officers who were coming instead
15 of coming directly to the house or to the scene, they would
16 begin setting up a semicircle, or in some cases a complete
17 360 of the -- of the neighborhood. And they would usually
18 set up on several blocks away, you know, maybe four, five,
19 six blocks away to kind of form a perimeter, if you will.
20 But it's more like a circle to sort of contain the suspect
21 as he may be trying to escape away from that area. So, it
22 helps contain that area and try to locate suspects.

23 Q. Now in this particular case, did one of the officers
24 on the scene begin the process of basically putting
25 together a perimeter?

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1 A. Yes, they did.

2 Q. And do you recall what officer that was?

3 A. I believe that was Sergeant Harmon began doing that
4 initially, yes.

5 Q. And were Canine officers called to the scene as well?

6 A. Yes, Sergeant Culbreath, when he began to respond, he
7 called -- he immediately called for the Canine Units to
8 respond because the suspect was known to have left on foot.

9 Q. What was your role when you arrived on the scene as
10 first to arrive?

11 A. I began speaking with the victim Ms. Minor about
12 what had happened, and kind of get a -- more of a
13 description on -- on the suspect, and then, what direction
14 he left in.

15 Q. Had you heard a description given out over the radio
16 prior to your arrival?

17 A. Yes.

18 Q. And what was, generally, the description that had been
19 given to you prior to your arrival?

20 A. It was a black male, wears some dark clothing, a dark
21 jacket, blue jeans.

22 Q. When you arrived on the scene, when you spoke with Ms.
23 Minor did she provide you any additional details about
24 what the suspect looked like?

25 A. Oh, and -- He was also wearing a toboggan that was - -

1 Q. Oh, I'm sorry. Didn't mean to interrupt.

2 A. Yes, she gave me some additional details about his
3 height and weight. And just again, I confirmed with her
4 about the clothing that he had on. She told me that he was
5 about 180 to 85 pounds, I think, and about 5 feet 9 inches
6 tall.

7 Q. Now, at some point while you were speaking with Minor
8 did you receive a report from other officers that they had
9 possibly detained a suspect somewhere close by?

10 A. Yes, I did, yes.

11 Q. And do you recall what officer -- how you received the
12 communication or what officer conveyed that information to
13 you?

14 A. I believe I heard on the radio that they had someone
15 that they had just stopped and it was also within sight of
16 the house. So you could see down the street as well, that
17 the officers were -- that were at the scene were driving
18 down to it. So, it was both visual and over the radio
19 that -- yes.

20 Q. Now I'm going to put up on the big screen, what's
21 previously been entered as State's Exhibit One.

22 If I could ask you just to step down from the stand
23 for just a minute.

24 (WITNESS LEAVES WITNESS STAND.)

25 Q. And right there is a laser pointer. Can you point out

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1 to the jury, if you can, Minor house?

2 A. Right here.

3 Q. Now, to the best of your recollection, where do you
4 believe that the other officers had the suspect detained
5 down the road?

6 A. Like I said, it was within sight of the house. It was
7 about right in this general area.

8 (WITNESS INDICATING TO STATE'S EXHIBIT ONE.)

9 Q. So is that about -- just so that the record is
10 clear, 3 lots, including that vacant lot, 3 lots down and
11 across the street?

12 A. Uh-huh, yes. Like I said, my car was parked here.
13 And I didn't have to drive very far to get to it at all.
14 It was within sight of the house. It was right on the
15 sidewalk over here on the other side.

16 Q. Now, while you're still standing, how did -- Did you,
17 in fact, bring Minor down to the scene to look at the
18 suspect?

19 A. Yes.

20 Q. Okay.

21 A. Yes.

22 Q. And how did you bring Minor down to view the suspect?

23 A. She got into the back seat of my car, and we drove
24 down again to within this same vicinity. And I stopped a
25 few car lengths back from where the other officers had

1 stopped. I stopped about 20 or 30 feet back from them
2 probably.

3 Q. You can take your seat again, Officer.

4 (WITNESS RETURNED TO WITNESS STAND.)

5 Q. Now, did you tell Minor anything in particular before
6 you brought her down to view the suspect?

7 A. I told her that officers had stopped a person who
8 matched the description that -- that she'd given out. And
9 we wanted to take -- wanted her to take a look at him to
10 make a positive identification, if that was him in the
11 case.

12 Q. And when you brought Minor down, you said that it was
13 several car lengths, what's the approximate distance that
14 was between your patrol vehicle and the suspect that the
15 police were holding?

16 A. Probably, again, about 20 or 30 feet, I'd say.

17 Q. Was there a light or a light source out on the road
18 that - -

19 A. It's lit by street lights. And then I also have a --
20 a high lumination spotlight on my car that I use to adjust
21 to focus that on that immediate area that I wanted to --
22 that we were looking at on the suspect.

23 Q. Now, when you brought Minor within those two or three
24 car lengths, when you shined the spotlight, did Minor --
25 How long did it take Minor to respond to viewing the

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1 suspect?

2 A. Just a couple of seconds.

3 Q. And did she identify the suspect?

4 A. Yes, she did.

5 Q. How certain did Minor seem about the suspect?

6 A. She was positive that, that was him.

7 Q. Do you see the individual in the courtroom that Minor
8 identified as the man who robbed her?

9 A. Yes, I do.

10 Q. Can you point him out to the jury?

11 A. He's right there.

12 Q. And could you please describe what he is wearing?

13 A. Light-blue, collared, button-up shirt.

14 MS. JOYNER: Let the record reflect he's identified
15 the Defendant in this case.

16 Q. Now, Officer Stewart, I just want you to just
17 generally to explain a few things about the scene. The
18 canine officers were called out. To the best of your
19 knowledge, did the canine officers actually run a track, as
20 in, use the dogs to try to locate the suspect?

21 A. In this case?

22 Q. Yes.

23 A. No, they did not in this case.

24 Q. How come?

25 A. Because the person they'd already stopped and

1 detained they had already had him detained when the canine
2 officers were arriving.

3 Q. Now, do you know total how many officers responded to
4 the scene, and the perimeter, and canine, all total?

5 A. I want to say about 17 officers total.

6 Q. Is there a difference between being on the perimeter
7 and being on the scene?

8 A. Yes.

9 Q. And explain to the jury again what that difference is.

10 A. Being on the scene means you're -- you're there, like,
11 at the house where it occurred, doing the investigation,
12 and asking questions, and getting some statements, and
13 things of that nature. And the perimeter is you're out
14 there on that circle. And you're -- you're watching out,
15 being aware of the people walking up and down the street,
16 things like that.

17 Q. Was the perimeter set up in the immediate area? Was
18 the perimeter within view of where you were at the house?

19 A. Some of the officers were. Some of the officers were
20 in view, and others were, like I said, four or five blocks
21 away. So, you obviously wouldn't see those.

22 Q. When you arrived on the scene, tell me again, what
23 time approximately you arrived on the scene?

24 A. I think it was around 9:39 p.m.

25 Q. And approximately what time did you bring Minor just

OFFICER TONY STEWART: DIRECT BY MS. JOYNER
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1 those three house lengths down the road, to identify the
2 suspect?

3 A. I would say it was about -- about five after 10:00.

4 Q. And again, how quickly did Minor respond to your
5 questions -- or to respond in viewing the suspect?

6 A. Just a few seconds.

7 Q. Okay, thank you very much, Officer Stewart. Please
8 answer any questions that Mr. Smith has.

9 CROSS EXAMINATION

10 TONY STEWART BY MR. SMITH:

11 Q. Officer Stewart, when you arrived, where was Ms.
12 Minor

13 A. I believe she was at the front door.

14 Q. Did she have her cell phone with her then?

15 A. I don't recall if she was carrying a cell phone with
16 her. You mean in her hand or on her?

17 Q. In her hand.

18 A. I don't recall if she had it in her hand or not. I
19 couldn't say.

20 Q. And her grandfather was in the home as well?

21 A. Yes, he was.

22 Q. Did you speak with him?

23 A. I believe he did come out eventually. I think he did;
24 I can't say for certain. I think I did see him.

25 Q. Did you take him down to look at Todd Smith on the

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1 street?

2 A. Did I take her grandfather?

3 Q. Yes.

4 A. No.

5 Q. Now, Ms. Minor I guess 16 at the time, 17 now.

6 But she's a pretty composed young lady. Is that fair to
7 say?

8 A. Yes, seems to be.

9 Q. She was able to speak with you and answer your
10 questions?

11 A. Uh-huh.

12 Q. Gave you the information you requested from her?

13 A. Yes.

14 Q. You didn't have any difficulty with her?

15 A. No.

16 Q. She basically told you that she gave an unknown man
17 some money; is that right?

18 A. She -- yes.

19 Q. And that he ran off?

20 A. Well, let me restate it. Did you say, "She gave a man
21 some money"?

22 Q. She gave an unknown man some money.

23 A. Are you asking is that what she told me or is that --

24 Q. Right. Did she tell you she handed him money? I'm
25 not saying, she just walked up and handed him -- He asked

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1 for money, and she gave him the money; is that correct?

2 A. Um --

3 Q. Let me rephrase. She didn't say he pulled it off her;
4 is that right?

5 A. That's right.

6 Q. Okay.

7 A. You could say that, yes.

8 Q. And she told you that this individual gave her his
9 name; is that right?

10 A. I don't recall if she knew his full name or not. He
11 may have introduced himself to her, but I don't know that
12 she knew his full name or that she remembered his name at
13 that time.

14 Q. Did she tell you that he told her where he lived?

15 A. She did say that he lived on South Spruce Street.

16 Q. And that he told her about his daughter?

17 A. Yes.

18 Q. Age, where she went to school?

19 A. Yes.

20 Q. Now the homes that we see here, particularly -- Well,
21 a lot of these homes are somewhat close together; is that
22 correct?

23 A. Sure, yes.

24 Q. So within this sort of half-block area that curves,
25 there's a lot of potential neighbors there; is that right?

OFFICER TONY STEWART: CROSS BY MR. SMITH

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1 A. Absolutely, yes.

2 Q. And of those, I believe you said, 17 officers who
3 responded -- Did you see how many of these homes that they
4 knocked on doors for?

5 A. I don't -- I don't recall anyone knocking on any
6 doors.

7 Q. Okay. Did you interview any of these neighbors?

8 A. No, I did not.

9 Q. Do you recall Forensics being called out to
10 fingerprint the car or do anything?

11 A. No, I don't. I don't recall Forensics coming out, no.

12 Q. Did she tell you that she gave this individual candy?

13 A. I did not hear her say that. I have heard that since.

14 Q. Since. But on that night, you didn't have it, because
15 if you had it, you'd have put it in your report?

16 A. Right.

17 Q. Because, obviously, if he had walked away with
18 evidence from the scene, that would be something that would
19 be valuable for police.

20 And you mentioned that canine was called out; is that
21 correct?

22 A. That's right.

23 Q. Now, canine are dogs that are employed -- that work
24 for police officers who are trained to follow trails of
25 individuals; is that correct?

OFFICER TONY STEWART: CROSS BY MR. SMITH

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1 A. That's right.

2 Q. And I know you said that they didn't because they
3 believed a person's already in custody. But there's no
4 reason a canine couldn't have started the trail, seeing
5 where it went, and seen if it led back to where Mr. Smith
6 was standing wasn't it?

7 A. It could have I suppose.

8 Q. But that wasn't done?

9 A. No, it wasn't.

10 Q. And even while he was standing there, they didn't have
11 a dog come over, sniff him, or do anything?

12 A. No, they didn't.

13 Q. You weren't the one who stopped Mr. Smith?

14 A. No, I wasn't.

15 Q. And you didn't see him walk down the road? You just
16 heard that he had been stopped?

17 A. That's correct, yes.

18 Q. But when you went over to where he was, did you see
19 any money?

20 A. No, I didn't get close enough to him to see what he
21 had on. Money -- I didn't -- I didn't get out of the car,
22 so I didn't --

23 Q. Okay.

24 A. When I was in the car with Ms. Minor I didn't get
25 out and walk up to him. I saw the same view she did, so I

1 don't know what he had on him.

2 Q. How far of a view was that?

3 A. I guess about 20 or 30 feet.

4 Q. But you didn't see candy?

5 A. No, I couldn't tell if they had anything out of his
6 pockets or anything.

7 Q. Did you see him with a jacket on?

8 A. I believe, yes.

9 Q. Did you see him with a button-up shirt on?

10 A. I couldn't say. I'd say with the jacket on I don't
11 know if it was a button-up. I wasn't close enough to see
12 what the shirt -- the specifics of the shirt.

13 Q. Did you see him with a toboggan?

14 A. Yes.

15 Q. And were his clothes taken into evidence?

16 A. They were into evidence or just his property?

17 Q. I --

18 A. I don't think they were put into evidence, no. They
19 would be taken as property, I think.

20 MS. JOYNER: Your Honor, I'm going to object. The
21 officer does not know what was placed in evidence. So, I'm
22 going to object to his line of questioning.

23 THE COURT: You'll have to identify whatever you say
24 it is.

25 MR. SMITH: Okay, thank you.

OFFICER TONY STEWART: CROSS BY MR. SMITH

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1 Q. Officer, I'm going to show you what's marked as
2 Defense Exhibit Number Two for identification, ask if you
3 recognize that?

4 A. No, I do not.

5 Q. Would that be the clothing that Mr. Smith was wearing?

6 MS. JOYNER: Your Honor, he already said he does not
7 recognize it.

8 THE COURT: Sustained, Counsel.

9 Don't answer the question when there is an objection.

10 Sustained, Counsel.

11 Q. You indicated that your vehicle is equipped with a
12 bright light; is that right?

13 A. A spotlight, yes.

14 Q. It's also equipped with a video camera; is that
15 correct?

16 A. That's right.

17 Q. And did you turn it around while Ms. Minor was doing
18 this identification so that this jury could see how sure
19 she was or wasn't?

20 A. No. I did not, no.

21 Q. How about the microphone that's on your belt? Did you
22 activate it so that we would have a recording of her
23 statement that she gave you there that evening?

24 A. No, that would be the same -- same system. I -- No, I
25 did not.

1 Q. You did not activate it for either of those things.
2 And that night, you didn't take Ms. Minor down to the
3 station for a photo lineup examination; did you?

4 A. No.

5 Q. But Rock Hill Police Department certainly has the
6 capability to do photo lineups; is that right?

7 A. They -- they would, yes.

8 Q. But that wasn't done?

9 A. Not to my knowledge.

10 Q. And the description that you were given was 5 feet 9
11 inches tall; is that right?

12 A. Yes.

13 Q. And you were able to determine my client's actual
14 height. Weren't you? And that's 5 feet 5 inches tall?

15 A. Yeah, that's right.

16 Q. And that's a substantial difference?

17 A. I don't know if it's substantial. There's some
18 difference there.

19 Q. I'm going to show you what's been marked as Defense
20 Exhibit for Identification One, and ask you if you
21 recognize what's in that photo?

22 A. Yes, sir.

23 Q. And that's the [REDACTED] address that we're
24 looking at, State Exhibit One on the overhead; is that
25 correct?

OFFICER TONY STEWART: CROSS BY MR. SMITH
REDIRECT BY MS. JOYNER

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1 A. Yes, sir.

2 Q. But the view is different; is that right?

3 A. This is a street view.

4 Q. Okay. And looking from a street level view, there's
5 not a large hill in that yard; is there?

6 A. It's not a large hill, no. There's a slight slope if
7 you're --

8 Q. And going all the way from the sidewalk to the house
9 itself, either from that photo or as you recall that
10 evening, how large of an incline is that? How many feet
11 does it go up?

12 A. Not much. It might -- it might go up a foot.

13 Q. Maybe a foot, okay. No further questions.

14 A. Now you're talking from the yard itself, but not the
15 driveway to the right?

16 Q. I'm sorry. From the sidewalk to the house.

17 A. From the sidewalk to the house, I would say it might
18 be a foot higher.

19 Q. Okay. Thank you.

20 REDIRECT EXAMINATION

21 OFFICER TONY STEWART BY MS. JOYNER:

22 Q. Just a few follow-up questions, Officer Stewart. Mr.
23 Smith was asking you about the slope. Did you personally
24 observe the location of Minor car in the
25 driveway?

1 A. Yeah, yes I did.

2 Q. And what was your observation as to whether that
3 particular spot was level with the rest of the yard?

4 A. That where it was parked, that slight drive that pulls
5 in from the street, is probably another foot lower than the
6 actual yard itself, which is -- It's not obvious from this
7 photo because of the shadowing, I think. But there's
8 definitely a step down where that -- that gravelly driveway
9 is, up to where it slopes up toward the house then.

10 Q. And that would be an additional step other than the
11 one foot slope?

12 A. Yeah, yes.

13 Q. And is it your standard -- Is there a standard
14 procedure or policy as to whether you would activate your
15 camera in a scenario like this?

16 A. No, no, there's not.

17 Q. Is it your common practice to activate your camera or
18 not to activate your camera?

19 A. It would be common practice not to.

20 Q. All right, thank you very much.

21 MR. SMITH: Nothing further, Your Honor.

22 THE COURT: Thank you, sir. You may stand down.

23 MS. JOYNER: We would ask that he be released from the
24 subpoena and return to work.

25 THE COURT: Thank you for coming, you may be excused.

SERGEANT CARLOS CULBREATH: DIRECT BY MS. JOYNER

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1 (WITNESS LEAVING WITNESS STAND.)

2 MS. JOYNER: Your Honor, we call our next witness,
3 Sergeant Culbreath.

4 MS. JOYNER: Sergeant, if you could just please step
5 right over there and be sworn.

6 (WHEREUPON: SERGEANT CARLOS
7 CULBREATH, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
8 FOLLOWS:)

9 DIRECT EXAMINATION

10 SERGEANT CARLOS CULBREATH BY MS. JOYNER:

11 Q. Sergeant, can you please state your full name for the
12 record.

13 A. My name is Carlos Christopher Culbreath.

14 Q. How are you employed, sir?

15 A. I am employed by the City of Rock Hill. I am a police
16 sergeant. I've been with the City of Rock Hill for eight
17 years.

18 Q. How long have you -- Are you a supervisor?

19 A. Yes, I've been a supervisor -- I just got promoted
20 January of this year.

21 Q. Now as a supervisor, what does that entail other than
22 above and beyond what a regular officer would do?

23 A. Well, my job as a supervisor is pretty much to
24 supervise all the officers under me. I've got to make sure

SERGEANT CARLOS CULBREATH: DIRECT BY MS. JOYNER

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1 they turn their paperwork in, in a timely manner. I got to
2 make sure they respond to all of their calls for service.
3 Whether they have to take serious complaints. And I have
4 to respond to any high-priority calls such as armed
5 robberies, car accidents involving fatalities, murders.
6 Anything in that nature that's a high priority, I have to
7 respond to it as a supervisor.

8 Q. Now, were you working as a supervisor for the Rock
9 Hill Police Department on February 13th of 2011?

10 A. Yes, I was.

11 Q. And on that day, did you become involved in the
12 investigation of a robbery at [REDACTED]?

13 A. Yes, I did.

14 Q. And how did you become involved in that investigation?

15 A. Well, when a call came out, the call -- the incident
16 that happened actually took place at [REDACTED].

17 I was on Cherry Road, and when the call came out, I
18 immediately started heading that way. When the other
19 officers got on the scene, they started relaying to me what
20 they had. And the officer said that we had a black male
21 flee the scene, just rob someone on Black Street. So I
22 immediately called dispatch, which is our communication
23 center. And they are responsible for paging out all of our
24 specialized units such as SWAT, canine. We have a STAR
25 Team for when we have real bad accidents. So I told them

SERGEANT CARLOS CULBREATH: DIRECT BY MS. JOYNER

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1 to contact canine and two runners, so that when you call
2 out canine you can have a canine handler, the person who
3 handles the dog, and two people to run with him to kind of
4 like watch his back and make sure if anything happens. So
5 I contacted dispatch and told them to call canine and have
6 two runners respond to the scene. And when I actually got
7 to the scene, there was already two supervisors there.

8 Q. Now when you got to the scene, do you recall what
9 other officers you actually saw on scene? Not officers
10 that were on the perimeter, but officers that were actually
11 on the scene.

12 A. Yeah, when I arrived there, Sergeant Smothers and
13 Sergeant Harmon, along with Officer Stewart was already on
14 the scene.

15 Q. Now were you able to observe, like for instance, what
16 Officer -- what Sergeant Harmon was doing on the scene,
17 what his specific duty was as to that investigation?

18 A. Well, what Sergeant Harmon job was -- the way our
19 control shift is structured is, you have a primary
20 supervisor, which I was the primary supervisor, myself and
21 Sergeant Smothers. And we was primary between 4:00 o'clock
22 to 2:00 o'clock -- Well, 4:00 o'clock and 12:00 o'clock.
23 And we have what we call a Direct Patrol supervisor, which
24 is their job is from 9:00 -- 9:00 p.m. to 12:00 a.m. They
25 can do anything far as traffic enforcement. They can serve

SERGEANT CARLOS CULBREATH: DIRECT BY MS. JOYNER

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1 warrants. Or if we have like a major crime, they would
2 handle the perimeter, so we won't tie up the primary
3 supervisors.

4 So when we had the robbery, Sergeant Harmon was in
5 charge of the perimeter because myself and Sergeant
6 Smothers was the primary officers, primary supervisors, and
7 our job was to make sure that all our guys responded to the
8 calls for service and let Sergeant Harmon handle the
9 perimeter as far as canine and everything like that dealing
10 with canine tracking.

11 Q. Now, when you got to the scene -- Or once you arrived
12 at the scene and you saw that Sergeant Harmon was getting
13 the perimeter together and Officer -- Did you observe what
14 Officer Stewart was doing?

15 A. I think Officer Stewart was on the porch talking to
16 the victim.

17 Q. Now at some point, did you and Officer Smothers make
18 the decision that the scene was under control and you were
19 going to leave?

20 A. Yes, me and Sergeant Smothers was actually getting
21 ready to leave because Sergeant Harmon was in charge. So
22 we was actually getting ready to leave and return back to
23 the City because we had paperwork to check on and things of
24 that nature. So we was actually getting ready to leave,
25 and as we was heading back to our vehicles, Sergeant

SERGEANT CARLOS CULBREATH: DIRECT BY MS. JOYNER

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1 Smothers made a comment, "We saw a black male walking down
2 the street". And he said, he told me, "Man, that look like
3 the suspect." So as he was walking down the street, me and
4 Sergeant Smothers got into our vehicles, kind of turned our
5 cars around, and cut him off about a block from the
6 incident location.

7 Q. When you got -- I'm going to ask you --

8 I'm not going to tell you to turn down the lights, Ms.
9 Childers.

10 But if you could use this laser pointer right here, if
11 you could step down and show the jury to the best of your
12 recollection, where you were first when you saw the
13 Defendant and where the Defendant was.

14 (WITNESS LEFT WITNESS STAND.)

15 A. I kind of - -

16 Q. You should be able to use -- hit right there.

17 A. All right. If I had my parked car -- If I had my
18 vehicle parked here, I would say the suspect was walking
19 down. And then when we actually got up with him it was
20 somewhere in this area.

21 (WITNESS INDICATED.)

22 Q. Which direction was the Defendant coming from?

23 A. He was walking down this way.

24 Q. Was that from the direction of from South Spruce
25 Street?

1 A. Yes. It was like he was making a right off South
2 Spruce Street and walking right past the house.

3 Q. And where were you again, to the best of your
4 recollection, when You all stopped and got out of the car?

5 A. Probably about in this area.

6 Q. All right, you can take your seat again. Thank you.

7 (WITNESS RETURNED TO WITNESS STAND.)

8 Q. Now, when you got out of the vehicle, what did you say
9 to the man that was on the street?

10 A. When -- Can I go -- Well, when we got -- Sergeant
11 Smothers actually started talking to him first. Sergeant
12 Smothers was talking to him, got his ID. And when Sergeant
13 Smothers went to his vehicle, inside our police cars, we
14 have a computer system where we can check people for
15 warrant -- warrants. And we can check their DL status. So
16 Sergeant Smothers was inside the vehicle checking on the
17 information to make sure he wasn't wanted. And when
18 Sergeant Smothers went to the vehicle, I told the
19 Defendant, I said, "Look, I'm going to detain you and put
20 these handcuffs on you." That's when he looked at me and
21 said, "For what, I didn't rob anyone."

22 Q. Let me stop you right there. The man that we're
23 talking about, can you identify the man that you detained?
24 Do you see him in the courtroom?

25 A. Yes, I do.

SERGEANT CARLOS CULBREATH: DIRECT BY MS. JOYNER

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1 Q. Can you point him out for the jury?

2 A. Mr. Smith.

3 Q. And, Mr. Smith, can you describe what he is wearing.

4 A. He has on a light blue, button-up shirt.

5 MS. JOYNER: Let the record reflect he identified the
6 Defendant, Your Honor.

7 Q. At the point in time in which you said, "I'm going to
8 detain you" if he responded, "Why, I hadn't robbed anybody"
9 had you or Officer Smothers told the Defendant the reason
10 that he was being detained?

11 A. No, we didn't.

12 Q. Now, when he made that statement to you, had you asked
13 him any question to illicit that comment?

14 A. No, I didn't.

15 Q. Had you done anything to entice him to say it?

16 A. No, I didn't.

17 Q. All right. Now, at some point did somebody
18 communicate to Officer Stewart that you had a suspect on
19 scene?

20 A. Yes. If I'm not mistaken, I think Sergeant Harmon
21 advised Officer Stewart that we had a particular possible
22 suspect, if he could bring the victim by and to ID him.

23 Q. Were you present when Officer Stewart brought his car
24 around with the victim inside?

25 A. Yes, I was.

1 Q. Where was the Defendant at this time when Officer
2 Stewart brought the car around? Was he sitting in a police
3 car? Was he standing outside of a police car?

4 A. He was standing outside the police car.

5 Q. Was he handcuffed?

6 A. Yes, he was handcuffed, and the handcuffs was placed
7 in the back.

8 Q. After Officer Stewart drove the car around, did you
9 receive some communication regarding whether Minor had
10 identified the Defendant?

11 A. Yes, Officer Stewart communicated back on the radio,
12 they had a positive ID.

13 Q. And based off of that positive identification, what
14 action did you take?

15 A. At that time, I immediately placed him in my police
16 car.

17 Q. Was he under an arrest at that point?

18 A. Yes, he was.

19 Q. Now prior to this when you were detaining him, was he
20 under arrest then?

21 A. No, he wasn't under an arrest when I was detaining
22 him.

23 Q. Now the point you placed him under arrest, did you at
24 any point read him Miranda warnings?

25 A. No, I didn't.

SERGEANT CARLOS CULBREATH: DIRECT BY MS. JOYNER

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1 Q. And why not?

2 A. I didn't ask him any questions. He wasn't being
3 interrogated, so, I didn't read him his Miranda warnings.

4 Q. Now, did the Defendant say anything to you on the way
5 back to the police station about the case?

6 A. Well, the whole time on the way to the police
7 department, he just kept telling me he was innocent and
8 that he didn't do anything.

9 Q. Now as part of your job as the officer that books or
10 arrests the Defendant, are you in charge in part of getting
11 him actually to the jail?

12 A. Yes.

13 Q. To get booked in?

14 A. Yes. I believe at the incident location, I
15 transported him to the jail, parked in the sally port which
16 is where we park our cars when we arrest someone. I took
17 him inside the jail. And at that point, we had to do --
18 fill out a booking slip, more like a property bag. It's a
19 property bag. And we put all his property on him, if he
20 had money, jewelry, anything that he had on his person
21 we'll put in the property bag so he can't -- so someone
22 can't come back later and say, "I had a hundred dollars" or
23 "I had \$50 dollars." We have everything on the property
24 bag.

25 Q. Well, back then -- I understand there's been a change

1 in policy now. But back then, was there any additional
2 record other than the outside of the property bag?

3 A. The only thing we had was the property bag.

4 Q. When a person's property was returned to them or was
5 released to a family member, what would happen to that
6 property bag?

7 A. The correctional officer's would just throw the bag
8 away.

9 Q. So to the best of your knowledge, was there any record
10 about what the Defendant had on his person? A written
11 record of what he had on his person?

12 A. What I wrote down on the property bag was just a
13 wallet. And he had a lot of candy on his person. That's
14 what I remember what I took off his person.

15 Q. Do you remember what kind of candy it was?

16 A. If I'm not mistaken, I believe it was jelly beans.

17 Q. Now, did he have any money, any cash on him?

18 A. He did not have any money on his person.

19 Q. Now, do you know what happened to that property bag?

20 A. To my knowledge, I think it got thrown away.

21 Q. Now, when you were back at the jail, did the Defendant
22 say anything to you further besides the fact that he was
23 innocent?

24 A. Yes, when he was in the jail when I was taking all his
25 property, he pretty much said, "Officer, I'm telling you, I

SERGEANT CARLOS CULBREATH: DIRECT BY MS. JOYNER

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1 didn't do anything. I'm innocent. The lady called me over
2 there to give me some candy to give to my daughter for
3 Valentine's Day."

4 Q. Did he indicate any further about -- Let me scratch
5 that. Now, when he was making these statement to you, "I
6 didn't do anything." Were you questioning him? Were you
7 interrogating him at all?

8 A. No, I wasn't.

9 Q. Had you done anything to prompt him to say those
10 things to you?

11 A. No, I didn't.

12 Q. Did you threaten him in any way or promise him
13 anything to get him to say those things to you?

14 A. No, I didn't.

15 Q. Now, to the statement, "Officer, I didn't do anything,
16 that lady called me over to give me candy for my daughter
17 for Valentine's Day," I'm going to ask you again, did you
18 say anything, did you question him in any way to illicit
19 that statement?

20 A. No, I didn't.

21 Q. Did you promise him anything, or threaten him, or do
22 anything to entice him to say it?

23 A. No, I didn't.

24 Q. At any point during the encounter with the Defendant,
25 from start to finish, did you ever pull your service

1 weapon?

2 A. No, I didn't.

3 Q. Or see any other officers do those things to get him
4 to make any statements to you?

5 A. No, I didn't.

6 MS. JOYNER: I beg the Court's indulgence.

7 (PAUSE.)

8 Q. And I want to go back again just really quickly to the
9 canine unit. To the best of your knowledge, did canine
10 actually run a trail in this case?

11 A. They did.

12 Q. They ran a trail?

13 A. I -- I'm trying to -- Honestly, I can't remember if
14 they -- A lot of times when we have instances like this,
15 they ---- If I'm not mistaken, I believe they did run a
16 trail just to see where the tracks -- But I'm not a hundred
17 percent sure, so I don't -- I can't recall. I'm not a
18 hundred percent sure if they did or not.

19 Q. Okay, you're not sure?

20 A. I know they -- I know canine was actually on the
21 scene, but I left so I don't know what they actually did.
22 But I'm not a hundred percent sure.

23 Q. All right. Thank you very much. Please answer any
24 questions Mr. Smith has.

25

CROSS EXAMINATION

SERGEANT CARLOS CULBREATH: CROSS BY MR. SMITH

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1 SERGEANT CARLOS CULBREATH BY MR. SMITH:

2 Q. Sergeant Culbreath, there were officers all over the
3 yard scene setting up a perimeter; is that correct?

4 A. In the area.

5 Q. Probably 13, 17?

6 A. Police officers?

7 Q. Right.

8 A. I don't know how many officers were out setting up the
9 perimeter. If I had to guess, it could have been anywhere
10 from 6 to 10 officers, maybe.

11 Q. Okay.

12 A. If I had to guess.

13 Q. And those wouldn't have all been right there at the
14 house? Some of them would have been spread out?

15 A. No, when we set up a perimeter, we always try to set
16 up the perimeter real wide because it's good to start off
17 big, and you can always make it smaller. But you don't
18 want to make it smaller, then try to make it big because
19 you don't want the suspect to actually get outside the
20 perimeter. So, when we set up a perimeter, we try to go as
21 big as possible. Then, if we feel like when the canines
22 start running, they can tell us, "Okay, the perimeter's too
23 wide, let's make it smaller." But you don't want to make
24 it too small then try to widen it out because it kind of
25 defeats the purposes.

1 Q. So, part of the perimeter could have been away from
2 downtown on up Black Street; is that right?

3 A. The perimeter -- You could have -- If the incident
4 happened on East Main Street, you could have some on East
5 Black Street, you could have somebody on East Main, you
6 could have somebody on South Spruce Street, you could have
7 someone on South Stonewall, you could even push it back to
8 have somebody on Saluda Street if they try to cut it off.
9 Like I said, I wasn't in charge of the perimeter but you
10 could a taken it all the way back to Albright. And you
11 could have made it smaller, you could have had somebody on
12 South Stonewall Court. So, it's a pretty -- You could make
13 it pretty big.

14 Q. And you mentioned South Spruce Street. So there could
15 have been an officer there; is that correct?

16 A. It could have been.

17 Q. And you say that Mr. Smith had come walking up from
18 that direction; is that right?

19 A. Yes.

20 Q. And obviously, you have no knowledge of what contact
21 he would have had with other officers down that street
22 before he got to you?

23 A. No, I didn't.

24 Q. But he could have talked to an officer down that
25 street who was setting up a perimeter?

SERGEANT CARLOS CULBREATH: CROSS BY MR. SMITH

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1 A. If it was someone on South Spruce Street it could
2 have.

3 Q. But ultimately, it was you who took custody of Mr.
4 Smith?

5 A. Yes, I was the one that transported him to the police
6 department.

7 Q. And you indicated that you checked him for money, and
8 you found none; is that right?

9 A. He didn't have any money on his person.

10 Q. And you indicated that he had some candy on him; is
11 that right?

12 A. Yes.

13 Q. Now was that put into evidence, or put into property,
14 or sent with him in the jail?

15 A. Everything I take out is -- Anytime we arrest someone,
16 they don't take anything in the jail. Everything we take,
17 we put in the property bag. We don't allow them to take
18 anything -- Only thing they're allowed to take in the jail
19 is their wedding band. Anything else, goes into a property
20 bag.

21 Q. And would all his clothing have gone in the property
22 bag?

23 A. Anytime you arrest someone, you're only allowed one
24 shirt. So if you have on a sweatshirt, a T-shirt, and a
25 tank top, we'll say, "Okay, which one do you want to keep?"

SERGEANT CARLOS CULBREATH: CROSS BY MR. SMITH

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1 But you're not allowed to keep -- You only can take one
2 item back. As far as the shirt, if you got on a pair of
3 blue jeans, and a pair of shorts under that, you can't keep
4 both. If you don't want to -- If you have a string in your
5 shorts, and you don't want to cut it, we'll give you a
6 orange jumpsuit to put on. But what we do with the
7 property, if you have a shirt, we have a white bag, we put
8 all his clothing in a white bag and put it beside his
9 property receipt.

10 Q. And, obviously, you saw the clothing that he had on
11 that night; is that correct?

12 A. Yes.

13 Q. I'll show you what's been marked as State's Exhibit
14 Number Two, ask you if you recognize that clothing.

15 A. I remember him having on dark jeans and a dark
16 sweatshirt.

17 Q. Now, is that the shirt he had on?

18 A. Like I said, I can't remember the exact shirt he had
19 on. I don't want to say I did, or I didn't.

20 Q. Okay.

21 A. I remember him having on dark jeans.

22 Q. Now in preparation for your testimony, were you able
23 to review the reports in this case?

24 A. I was able to review the reports, but I didn't read
25 the reports.

SERGEANT CARLOS CULBREATH: CROSS BY MR. SMITH

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1 Q. You chose not to. Did you write any reports in this
2 case?

3 A. No, I didn't.

4 Q. You're the officer and the supervisor who actually
5 took Mr. Smith into custody; is that correct?

6 A. Yes.

7 Q. And you actually took his property into your custody
8 as well?

9 A. Yes.

10 Q. Turned that over to the Rock Hill Police Department?

11 A. Yes.

12 Q. And you also received statement, you say, from Mr.
13 Smith; is that right?

14 A. Yes, I did.

15 Q. And you did not record those in any way?

16 A. No, I didn't record any statements on my bill or
17 anything like that. The statements he gave me was relayed
18 to the Detective Division and I gave it to the detective
19 that was working the case.

20 Q. Did you write it down and give it to them?

21 A. I told him verbally.

22 Q. So to your knowledge, there's no written record of any
23 of these statements that Mr. Smith supposedly said to you?

24 A. No, I didn't write anything down as far as what he
25 told me.

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1 Q. Well that night when you had contact with Mr. Smith,
2 was he able to understand you, and talk with you, and deal
3 with you?

4 A. To the best of my knowledge, yes.

5 Q. I mean, you were there, you either did or you didn't.

6 A. Yes.

7 Q. And it wasn't that he was under the influence of any
8 drugs, or alcohol, or anything?

9 A. No, he wasn't.

10 Q. And he was compliant with you, he was not combative,
11 didn't cause a problem.

12 A. He didn't cause any problems. He talked to me all the
13 way to the jail. I mean I didn't have any problems with
14 him.

15 Q. I have no further questions.

16 MS. JOYNER: Thank you.

17 We have no further questions for this witness, Your
18 Honor. We would ask that he be released from his subpoena
19 and go back to work.

20 THE COURT: No objection, Mr. Smith, from being
21 released?

22 MR. SMITH: No objection, Your Honor.

23 THE COURT: Thank you for coming. You may be excused.

24 THE WITNESS: Thank you, sir.

25 (WITNESS LEAVES WITNESS STAND.)

1 MS. JOYNER: Your Honor, at this time, the State
2 rests.

3 THE COURT: Mr. Foreman, ladies and gentlemen of the
4 jury panel, there's matter that I need to take up with
5 Counsel at this time out of your presence. I'm going to
6 ask you to retire to the jury room. It will probably be
7 about fifteen minutes so refresh yourselves .

8 (JURY EXITS COURTROOM AT 02:38 PM.)

9 THE COURT: I'd be glad to hear any motions you wish
10 to make at this time.

11 Anything from the State?

12 MS. JOYNER: No.

13 THE COURT: Defense?

14 MR. SMITH: Thank you, Your Honor, if it please the
15 Court.

16 Two things, I suppose. First, there have now been, I
17 think, on my calculation, five persons who from the witness
18 stand have pointed to Mr. Smith to identify him. My
19 objection that I made pretrial did not apply to any of the
20 officers. I understand that they identified him. My
21 objection at pretrial that I've asked, Your Honor, to make
22 contemporaneous. The only objection we had was the in
23 court ID from the alleged victim. That would be the only
24 one. And I would want that in with my Directed Verdict
25 Motion, Your Honor. At this time, I would make a Motion

1 for Directed Verdict that the State has not met the
2 elements that are required beyond a reasonable doubt in
3 this case. Particularly, Your Honor, I'm pointing toward
4 the elements of strong armed robbery that involve some use
5 of force, threat, or intimidation.

6 Your Honor, I think there's clearly no actual force.
7 There's case law that I know that the Solicitor passed up
8 concerning constructive force. But my reading of those
9 cases shows that there has to be some kind of action that
10 accompanies it, particularly in the case she handed up.
11 You have an individual who picks up a teal or a register
12 and slams it down. That's a use of force that scared her.
13 That's some act, that's something that scared her. The
14 testimony as was here from the victim was, he never
15 threatened her, never made an aggressive stance toward her,
16 or gestured toward her. He just got --

17 THE COURT: Of course, I don't agree with that. But
18 go ahead.

19 MR. SMITH: He got loud and his demeanor changed. His
20 words were, "I thought you said you didn't have any money,"
21 and "You better just give me the money." She said she
22 handed over the money. He didn't take the money from her.

23 So, based upon that, I would ask for a Directed
24 Verdict on the charge of strong armed robbery or in the
25 alternative submission only as the lessor included larceny

1 offense, Your Honor.

2 MS. JOYNER: Your Honor, just as to the Directed
3 Verdict Motion, I did pass up one piece. I think that with
4 my request to charge, it was the *State versus Rosemon*. It
5 was a Court of Appeals Opinion and -

6 THE COURT: Do you have another one?

7 MS. JOYNER: In this group, I also have the Supreme
8 Court Opinion for *Rosemon* and they affirmed as modified in
9 that case. And touching only a point, there was not
10 directly related to this strong armed robbery, but was some
11 testimony that was allowed in about his subsequent behavior
12 towards officers. So, in both *Rosemon* the Court of Appeals
13 and *Rosemon*, the Supreme Court Opinions, both support this
14 submission of this case to the jury, Your Honor. I think
15 in that case, in *Rosemon*, you have two different acts that
16 caused fear to the victim in that case, who was a cashier.
17 There was first the glare, and then it was he picked up the
18 cash register and threw it. And both of those acts, the
19 cashier testified, frightened her or him to the point,
20 essentially, that they could take no action to resist what
21 was going on. In that, in *Rosemon*, the cashier testified
22 the Defendant never spoke, never threatened, and never
23 moved towards the cashier. But it was simply his actions
24 that caused the cashier to fear. And *Rosemon* was a
25 Directed Verdict case, and the challenge as to a Directed

1 Verdict Motion and denial of the motion. And the Court
2 said that it was properly denied because there was evidence
3 that the cashier was put into fear.

4 And in the conclusion of the *Rosemon* case, the Court
5 of Appeals case: "Constructive force includes all
6 demonstrations of force, menaces, and all other means by
7 which the person robbed is put in fear sufficient to
8 overcome the free exercise of the person's will if he can't
9 resist the taking. Regardless of how slight the cause
10 creating fear is or by what other circumstances the taking
11 is accomplished, if the transaction is accompanied by
12 circumstances of terror, such as a threatening by word or
13 gesture, as the common, everyday experience of life, as
14 likely to create an apprehension of fear to induce the
15 person to give up property, the victim is placed in fear."

16 And, I think, when you go to the *Rosemon* opinion for
17 the Court of Appeals, I mean for the Supreme Court, they
18 actually look at whether the victim was placed in fear.
19 That Supreme Court Opinion, and that's 356 SC 426, they
20 look at it, Your Honor, from the ordinary reasonable person
21 position. "That an ordinary, reasonable person in Murray's
22 position would have felt the threat of bodily harm from the
23 Defendant's actions." They go on to say, "After petitioner
24 exited the bathroom he immediately went behind the register
25 and intimidated Murray by glaring at her. Further, after

1 an attempt to open the cash register failed, he acted by
2 force by flipping a heavy register in the air and lifting
3 it and slamming it down to open it. Murray indicated that
4 she was scared because the petitioner glared at her and
5 because he was able to lift the heavy register and slam it
6 to the ground. So, I think that earlier the Court had
7 said, "When determining whether a robbery was committed
8 with intimidation, the trial court should determine whether
9 an ordinary, reasonable person in the victim's position
10 would feel threat of bodily harm from the perpetrator's
11 acts."

12 And, I think in this case, the victim clearly
13 testified that she was afraid, that she did not feel that
14 she had any choice, but to comply, and to give him the
15 money. She's simply no different than a person who hands
16 over money in a bank when they are being robbed because
17 they feel that they have no choice but to do so. I think
18 when you look at the factors in light most favorable to the
19 State, you can look at this from an ordinary, reasonable
20 person, a young female in the dark, on a street, within 3
21 feet of a person that she does not know, 25 to 30 steps
22 away from her home where it appears that nobody is awake,
23 and she's approached by a person. The encounter starts
24 friendly and becomes very, very scary. And the person
25 demands money, and raises her voice, the demeanor changes,

1 the face squishes up designed to be intimidating to the
2 victim. "I thought you said you didn't have any money."
3 When she says, "No, no, no, it's my lunch money," the
4 testimony was that he then says, "You better give me that
5 money." And that she felt that she had absolutely no
6 choice but to give him that money.

7 So, I think that the evidence viewed in the light most
8 favorable to the State under the authority of the *Rosemon*
9 case, the Court of Appeals and Supreme Court support this
10 case going to the jury. And that a denial of the motion is
11 appropriate.

12 Can I have a moment on the request for the lesser
13 included, Your Honor?

14 THE COURT: Let me deal with that second. Let me deal
15 with this first.

16 In looking at a Motion for Directed Verdict, the Court
17 is required to look at the evidence in light most favorable
18 to the party against whom the motion is being made.

19 In this case, looking at the evidence in light most
20 favorable to the State, I find there is sufficient
21 evidence, substantial evidence to submit this charge to the
22 jury. And I'm basing it on these factors. Of course, the
23 *Rosemon* case, but also the language of the statute which
24 says, not only that it is the feloniously taking away and
25 carrying away from the personal presence of the victim by

1 means of force or, or intimidation.

2 So, force is not required, Mr. Smith. Force or
3 intimidation. Intimidation is sufficient. Was there
4 intimidation in this case? You have a 16-year-old girl
5 who's out on a dark street, albeit, under a streetlight.
6 And an unknown man comes up to her, extensively she thought
7 in his thirties, substantially bigger than she is, dressed
8 in a toboggan and dark clothes, and he crosses, according
9 to her testimony, and I'm looking, again, at the evidence
10 in light most favorable to the State. Her testimony was he
11 crossed over the yard, down to where she was down in a low
12 corner there where she pulled in the drive with her car
13 past the drive in the lowest point of the yard. And he
14 positions himself between her and the house. Her testimony
15 was, "There is no way I could have gotten to the house
16 without going through him," basically, is what it amounted
17 to. He positioned himself such that she couldn't go to the
18 house without him blocking her way to get to her house.
19 The house was dark, and she under the impression of the
20 grandfather was asleep in the house. There was nobody else
21 out on the street. And here's a person she doesn't know,
22 comes up in her yard, and starts talking to her, and asking
23 her questions. And she gives him the candy; she gives him
24 that. If it would have stopped there it would have been
25 the end of it. She gives him the candy. There's no

1 testimony that she was in fear there, although she might
2 well have been, but she didn't testify that she was. And
3 if it ended there, that would have been it. Then, he
4 wanted more than that. And then he wanted a ride. Now
5 what would have happened if she would have given him a
6 ride? I don't know. But he was asking for a ride. Would
7 that make a 16-year-old girl fearful of what might be
8 transpiring there when there is no one else around. An
9 older man, much bigger than her, who is there and asking
10 for a ride in her car. Might that put a person -- cause
11 them to have some fear by what the intention of the person
12 was.

13 Secondly, then she testified that he really was just
14 in a normal, calm type of a voice, but he was doing all
15 this talking to her and asking for help from her or get
16 something from her. But then when she decided she would go
17 ahead and give him the groceries out of her car that she
18 bought, these canned goods, cereal or whatever, and she
19 went to her pocketbook, which is on the hood of her car to
20 get her keys, he saw money sticking out of her back pocket.
21 And her testimony is then, his whole demeanor changed. He
22 became angry and louder, "And I thought you didn't have any
23 money," "I thought you said you didn't have any money."
24 And she said, "No, well this is my lunch money for school
25 that week." And he said, "You better give me that," "I

1 think you better give me that money."

2 Now whether a person under all the facts and
3 circumstances, the totality of the circumstances existing
4 at that time, would she feel intimidated such that she was
5 afraid what might happen to her if she didn't give him the
6 money? She testified she was afraid at that point. His
7 whole demeanor changed, she was scared, she was afraid not
8 to give him the money when he demanded it and she gave it
9 to him.

10 I think that's sufficient facts in looking at the
11 evidence in light most favorable to the State to submit to
12 the jury the issue of whether she was intimidated and put
13 in fear such that her will was overcome, and she complied
14 with his demand that she give him the money, she was afraid
15 and she parted with the money out of fear. And so that's
16 an issue for the jury to determine. The Court doesn't
17 weigh the evidence and make the determination on the
18 testimony and credibility of the witnesses. Those are
19 matters for the jury to determine. But I find there is
20 substantial evidence from which the jury could infer from
21 the testimony and evidence that the money was taken by
22 intimidation and putting the victim in fear as reason for
23 releasing it. So the Court's ruling, I deny your motion
24 for a Directed Verdict, it's a matter for the Jury, not the
25 Court.

1 Now, let's take the second part of the motion, which
2 was submitted, lessor included offense of larceny.

3 MS. JOYNER: Your Honor, and the State's position is
4 that I don't believe that larceny is lessor included of
5 strong armed robbery. I'm looking -- I don't have it
6 printed out, Your Honor, but I'm looking at the case of
7 *State versus Parker*, 571 SC 2nd 288. That's a 2002 case
8 from the South Carolina Supreme Court. I will tell you on
9 Lexis that, that case shows for the stop sign, but when I
10 shepardize that case, it shows that it was overruled by
11 *Gentry*. So I don't think that touches the holding of
12 *Parker*. The question in *Parker's* case was whether grand
13 larceny was a lessor included of armed robbery. And the
14 court held that it was not. They noted that in the past,
15 grand larceny had been held to be a lessor included, but
16 they went on to conclude that grand larceny could not be a
17 lessor included offense of armed robbery, but that the
18 armed robbery did not contain the element that the value of
19 the goods must exceed the valued amount. In that case the
20 grand larceny did not exceed \$1000 dollars. So I would
21 argue that under *State versus Parker*, that it is not a
22 lessor included offense of strong armed robbery.

23 THE COURT: Well, I think grand larceny would not be,
24 but how about petty larceny?

25 MS. JOYNER: Your Honor, I believe that it is not. I

1 would be interested to see whether Mr. Smith has any case
2 law that supports his request.

3 MR. SMITH: No, Your Honor, I took it from the cases
4 that were defining the four -- of the strong armed robbery
5 and talked about distinguishing it from larceny is where I
6 took the basis for my motions.

7 MS. JOYNER: Your Honor, can we have about five
8 minutes? I think I found a case, but I'd like the
9 opportunity to read it.

10 THE COURT: Yeah, I'll do that. I'll give everybody
11 that much time. My clerk is pulling another case that
12 we're going to look at and shepardize it. So, we're doing
13 that. I'm just looking at the language too and I will
14 point out strong armed robbery contains two additional
15 elements from that of larceny, which must be proved. And
16 so, that is it must be taken from a person or in the
17 person's presence. Larceny doesn't have to be. You can go
18 in somebody's yard and steal something, they not even
19 there, is larceny. And, but strong armed robbery requires
20 that the property be taken from the person in the presence
21 of another. And the person would have been able to retain
22 the property itself unless they were put in fear and let
23 the property be taken. So, those are the two differences.
24 Those additional two elements are present and strong armed
25 robbery, it's not present in larceny. And that is -- I

1 don't know, that's a substantial difference, it appears to
2 me. I'm not sure, but I'll have to look at it and see.
3 These are the kinds of things I'd like to see in advance
4 because I don't like to research these issues while the
5 jury's sitting back in the jury room cooling their heels.
6 I'm getting it for the first time. So, I'd like to have
7 these issues in advance so I can have a chance to do a
8 little research on them and look at what you've got. But
9 so far, you have nothing to look at.

10 MS. JOYNER: Your Honor, if I could just step out and
11 review the case?

12 THE COURT: That's fine.

13 (SOLICITOR JOYNER LEFT THE COURTROOM.)

14 (PAUSE.)

15 THE COURT: Let's take about five. We'll come back
16 and look up some cases here.

17 (COURT IN RECESS AT 03:00 PM.)

18 (BACK ON THE RECORD AT 03:20 PM.)

19 THE COURT: Please be seated.

20 MR. SMITH: Do you want to just go ahead and request
21 Mr. Smith out?

22 THE COURT: Let's go ahead and do that.

23 Let's get Mr. Smith out, please. I need to question
24 him.

25 OFFICER WILLIAMS: Oh yes, sir.

1 THE COURT: Counsel approach while he gets him out.

2 (BENCH CONFERENCE OFF THE RECORD.)

3 (DEFENDANT REENTERS COURTROOM.)

4 THE COURT: Let's question the Defendant about his
5 right to testify.

6 If you don't mind place him under oath.

7 MADAME CLERK: Sir, can I ask you to raise your right
8 hand, place your left on the Bible.

9 (WHEREUPON: TODD SMITH, BEING
10 DULY SWORN, TESTIFIED AS FOLLOWS:)

11 THE COURT: Sir, for the record, you are Todd Eugene
12 Smith?

13 MR. SMITH: Yes, sir, I am.

14 THE COURT: Mr. Smith, we've reached the stage of your
15 trial where you may present your defense. You have the
16 right to testify in your own behalf; however, no one can
17 make you testify.

18 In the event you have a record for any conviction
19 involving dishonesty, or false statement, or for a crime
20 punishable by imprisonment for more than one year, if this
21 court determines that the probative value of admitting
22 this evidence outweighs its prejudicial effect to you, the
23 Solicitor will be able to introduce this record for
24 impeachment purposes to attack your credibility.

25 If you elect not to take the stand, I will charge the

1 jury that they are not to give the fact that you did not
2 testify any consideration whatsoever. There is to be
3 absolutely no prejudice to you because you did not testify.
4 It is left entirely up to you whether or not you testify.
5 You may talk with your attorney, your family and friends,
6 or anyone else. But the ultimate decision is left entirely
7 up to you. Do you understand that it is your decision as
8 to whether you will or will not testify?

9 MR. SMITH: Yes, sir, I do.

10 THE COURT: Have you discussed with your attorney the
11 advantages and disadvantages of testifying in your case?

12 MR. SMITH: Yes, sir, I have.

13 THE COURT: Do you wish to testify?

14 MR. SMITH: No, sir, I don't.

15 THE COURT: Is that your decision, sir?

16 MR. SMITH: That's my decision, sir.

17 THE COURT: Thank you, you may return to your seat.

18 ATTORNEY SMITH: Thank you, Your Honor.

19 THE COURT: Counsel, I just thought of one thing. If
20 you will approach briefly.

21 (BENCH CONFERENCE AT 03:25 PM OFF THE RECORD.)

22 THE COURT: Please bring the jury in.

23 Mr. Smith, I'll get you to rest in front of the jury.

24 MR. SMITH: Thank you, Your Honor.

25 THE COURT: All previous motions will be considered

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1 timely made...

2 MR. SMITH: Thank you, Your Honor.

3 (JURY REENTERS COURTROOM AT 03:27 PM.)

4 THE COURT: Counsel, are you ready to proceed?

5 MR. SMITH: The Defense offers no evidence. We rest.

6 THE COURT: Mr. Foreman, ladies and gentlemen of the
7 jury panel, this concludes all the taking of testimony in
8 this case.

9 We have yet to remain the final arguments from Counsel
10 and my instruction to you with regard to the law that
11 applies to the issues in this case.

12 I'll ask you to listen attentively now as Counsel
13 addresses you in final argument.

14 MS. JOYNER: May it please the Court, Your Honor?

15 THE COURT: Solicitor.

16 MS. JOYNER: Madame Clerk, would you bring the lights
17 down, please.

18 (COURTROOM LIGHTS LOWERED.)

19 MS. JOYNER: The Defendant Todd Smith stands trial
20 today for strong armed robbery, ladies and gentlemen. And
21 before I talk with you about the law, I want to go back
22 over with you what the testimony was in this case.

23 On February 13th in 2011, Minor came home.
24 She pulled up to that house at [REDACTED].
25 That's the house she shares, where she shares at the time

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1 with just her grandpa. Now, it's about 9:10 at night in
2 February. It's dark outside, ladies and gentlemen. And
3 she doesn't pull in to this main driveway that takes the
4 car right up to the house because that's where her
5 grandfather is parked. She doesn't want to block him in.
6 He leaves for work sometimes at Four, Five o'clock in the
7 morning. So, she parks in this little parking lot, it's
8 really hard to see over here, closest to the street. She
9 pulls her car in.

10 And as she is getting herself out of the car, she
11 first catches sight of a man. A man she's never seen
12 before, he's coming this way on the opposite side of the
13 street, coming from the direction of South Spruce Street.
14 And when he's about catty-corner from where Minor is, he
15 crosses the street, walks through her yard, and walks right
16 up to her. The sixteen-year-old girl unloading things from
17 her car after Nine o'clock at night and a grown man comes
18 and purposefully, purposefully, ladies and gentlemen,
19 walked across the street catty-corner just to come right up
20 within three feet of her. Three feet.

21 Now, there's no one else out there that night, there's
22 no foot traffic, there's no one. Minor house is dark from
23 the outside. She thinks her grandfather is asleep. In
24 fact, he was in bed, half asleep, half awake. And she's
25 standing out there by herself, and she's talking to a man

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1 that she's never seen before, and keep acting like it's
2 just normal, just going to have a regular, ole conversation
3 isn't he? "How you doing? I live just down the road. I
4 live on South Spruce Street." And let me tell you all
5 about myself so you start to feel really, really
6 comfortable with me because this should be an awkward
7 situation, shouldn't it? That after Nine o'clock at night
8 with a sixteen-year-old girl, approaching her and talking
9 to her. She's by herself. So let me talk to you and tell
10 you. "I live -- I'm a neighbor. And I've got a daughter.
11 She's fourteen. And I'm just out here trying to get some
12 kerosene for my daughter to heat our house or some food for
13 my daughter. I don't have any food to give her. I don't
14 have anything to give her for Valentine's Day." And
15 Minor out there and she's standing next to her car, and
16 the Defendant came right in front of her, three feet in
17 front of her. And they're having this conversation. And I
18 think Minor did what he didn't expect her to do. "Oh,
19 really, you need food? Well, I got food in back of my car.
20 I'll give you the food." And when she turned, and he sees
21 that \$20 dollar bill sticking out of her pocket, that's
22 when everything changes. Because he didn't walk across
23 that street at Nine something at night, thinking that this
24 little girl was going to have kerosene or food; did he?
25 Does that make any sense? No. He was going to cross the

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1 street and see if he couldn't get a little money out of
2 her. And so when she turns, and she's going to go in the
3 car, and she's going to give him the food that she has for
4 herself. He sees that money and everything changes.
5 Happy-go-lucky no more. Then he stands three feet from a
6 sixteen-year-old child and says, "You told me you didn't
7 have any money." And she says, "No, no, no, this is my
8 lunch money." And he says, "You need to give me that
9 money" to a sixteen-year-old child on a dark street, by
10 herself. "You need to give me that money." And what does
11 the sixteen-year-old child do? She gives him the money.
12 She's scared out of her mind. She doesn't know this guy.
13 She's doesn't know him from Adam. And now he's standing
14 three feet from her, and he's demanding the money. And
15 she's telling him she can't give him because it's her lunch
16 money.

17 The Defendant, ladies and gentlemen, stands trial for
18 strong armed robbery. At the start of this trial, we
19 talked about what strong armed robbery is. In order for
20 you to find the Defendant guilty of strong armed robbery,
21 you have to find the State has proven to you beyond a
22 reasonable doubt, that number one, the Defendant did take
23 and carry away. Number two, from the person, or the
24 immediate presence of Minor Number three, the
25 personal property of Minor Four, with the intent

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1 to deprive her of that property. And then he did it
2 through the use, number five, of force, threats of force,
3 or intimidation. Well, when you're thinking about -- going
4 back in the jury room to deliberate, sometimes it's easier
5 if you think about the evidence step by step by step, and
6 go through each of the elements. And I submit to you,
7 ladies and gentlemen, that when you go back into that jury
8 room, you don't really have a question about whether he
9 took and carried away, number one, from the person or the
10 immediate presence of Minor number two, the
11 personal property of Minor Do you really have a
12 question about whether that happened? How do you know the
13 Defendant did those things?

14 Well, ladies and gentlemen, Minor pointed him
15 out from that witness stand. She identified him that
16 night, and she pointed him out to you in court as the
17 person that approached her. The person that said, "My
18 daughter doesn't have anything," "I don't have anything to
19 give her for Valentine's Day." The person that she gave
20 jelly beans to. And he is the person, ladies and
21 gentlemen. Mr. Todd Smith is the person that's found
22 holding a bag, or in possession of the bag of jelly beans.

23 Now, when the police officer comes up, Officer
24 Culbreath comes up and says, "I'm going to have to detain
25 you, I'm going to have to cuff you," "Why, I didn't rob

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1 anybody?" Well, nobody told him anything about robbing
2 anybody. And when he gets back to the station and he says,
3 "Officer, I didn't do it. That girl, she called me over to
4 her, to give her -- for me -- she was going to give me
5 candy to give my daughter for Valentine's Day." Ladies and
6 gentlemen, do you have any question in your mind at all
7 that, that Defendant over there is the same man that walked
8 up to Minor on February 13th, 2011? I don't think
9 so.

10 Now, Mr. Smith asked a whole lot of questions about
11 what her initial description was, and, you know, made a big
12 deal about height, and was the height wrong? Well, ladies
13 and gentlemen, she gave a pretty darn good description.
14 She guessed his weight -- Or, she said his weight exactly,
15 but the height was a little bit off. But, ladies and
16 gentlemen, do those little details cause you any question
17 at all that you have the right person? That Mr. Smith, Mr.
18 Todd Smith, the Defendant, is the person that walked up to
19 Minor beside her car? I don't think there's any
20 doubt at all that he's the person that did that, really.

21 So when you're thinking about the strong armed robbery
22 case, I want you to think about the use -- Did he go up to
23 Minor and did he take that money with the intent to
24 deprive her of it? And two, did he take it by use of
25 force, threats of force, or intimidation?

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1 Now, you may be wondering to yourself, if the
2 Defendant is going to rob Minor why on earth tell her so
3 many things about himself? Why? And I don't know, ladies
4 and gentlemen. Maybe, maybe, he started out with the idea
5 that he could simply manipulate the sixteen-year-old child
6 into giving him what he wanted. Maybe, he thought, "Well,
7 I'll give her this story about kerosene, and I'll tell her
8 I need food, and she's not going to have either one of
9 those. Maybe, she'll give me some money." And he's over
10 there, he's investing time, and he's giving his best
11 shtick. And here she goes and she offers -- she hands him
12 candy. And she offers him the food out of her back seat.
13 And, ladies and gentlemen, that's not what he was after.
14 He wanted money. He had already been to her grandpa's
15 house weeks earlier asking for money. You heard the
16 shtick. You know, he walks over, walks over to the
17 grandpa. "I know your granddaughter, how about giving me
18 some work." And that wasn't true. And then he walked up
19 to Minor at 9:10, 9:15 at night on a dark and
20 lonely street, "Oh, I met your grandpa, he's real nice."
21 And starts trying to charm her. "Let me see what I can
22 get, see if I can get some money." "Let me try to get
23 something out of this sixteen-year-old." "Let me see if I
24 can get her to give me a ride." "Let me see what I can
25 get." And when it doesn't work, and she's actually

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1 offering out of generosity, those things that he pretended
2 to want, and he realizes that she's got this money, and
3 that's all he really cares about, the scenario changes.

4 The State doesn't have to show you, ladies and
5 gentlemen, that he devised his plan right there. All we
6 have to do is show to you and prove to you beyond a
7 reasonable doubt that he did, in fact, go and steal from
8 Minor And he stole from her through the use of
9 force, threats, or intimidation.

10 Ladies and gentlemen, when he saw that \$20 dollars,
11 and that's what he wanted, he knew he had to change the
12 game. And she wasn't just going to give it to him, he had
13 to make her give it to him. And that's when the voice
14 changed. That's when it changed from, "Hey, hey, hey,
15 how's it going?" to "I thought you told me you didn't have
16 any money! You need to give me that money!" at 9:15 on a
17 dark and lonely street to a sixteen-year-old child. Did he
18 intend to steal that money from her? Yeah. Did he get
19 that money through force, threat of force, or intimidation?
20 Absolutely.

21 Ladies and gentlemen, in my Opening Statement, I
22 talked to you a little bit about the two different ways
23 that there can be force.

24 And one way that there can be force is actual force,
25 and that implies physical violence. That's the I push you;

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1 or I kick you; or I punch you; or I snatch your purse, and
2 I throw you to the ground. Well, yeah, then I robbed you
3 through actual force.

4 But there's a concept in law called "constructive"
5 force. And the Judge is going to charge you, that includes
6 all demonstrations of force, menaces, and all other means
7 by which the person robbed is put in fear, so they should
8 overcome the free exercise of the person's will or prevent
9 resistance to the taking. Regardless of how slight the
10 cause creating the fear is, or by what other circumstances
11 the taking is accomplished, if the transaction is
12 accompanied by circumstances of terror such as threatening
13 word or gesture as in common, everyday experience of life
14 are likely to create an apprehension of fear, and induce a
15 person to give up the property, the victim is placed in
16 fear.

17 Now what that means is, Todd Smith didn't have to walk
18 up to Minor and say,

19 (SOLICITOR SLAPS BAR.)

20 MS. JOYNER: "Give me that money or else,"

21 (SOLICITOR SLAPS BAR AGAIN.)

22 MS. JOYNER: "Give me that money, or I'm going to hurt
23 you." By the look on his face, and by the tone of his
24 voice, and by all the circumstances that surrounded him
25 standing three feet from a sixteen-year-old girl and

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1 demanding money which she said she couldn't give him, he
2 put her in fear, ladies and gentlemen. Minor was
3 in fear. Minor was so afraid in that moment
4 standing there on a dark street with a person she didn't
5 really know screaming at her to give her money. Thirty
6 steps, ladies and gentlemen, she testified twenty-five,
7 thirty steps to that front door. There's nowhere to go.
8 There's no one passing by. It's her and him. And he's
9 screaming at her, intimidating her. She's afraid to not
10 give him the money. She didn't have any other choice,
11 ladies and gentlemen, but to give him that money.

12 At the start of this trial, Mr. Smith said in Opening
13 -- And I can't -- I didn't write it down exactly. But he
14 said, something along the lines of, "This whole case is
15 about one person saying that something happened." Well, I
16 think that's a little bit of an oversimplification of what
17 the evidence shows.

18 But let me say this. There is no case that is brought
19 into this courtroom, that is better or worse based upon the
20 number of witnesses that the State brings. The jury, you
21 are the judge of the credibility of the witnesses. You can
22 believe all of what one witness says, none of what a
23 witness says, some of what a witness says. The number of
24 witnesses does not make the case better or worse. It is
25 your determination about the credibility of the witnesses.

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1 You decide who is credible. And I want you to think about
2 how you judge credibility. And the Judge is going to give
3 you a list of different things that you should use when
4 you're judging the credibility of Minor and every
5 other witness that took the stand. He is going to tell me
6 that you can use the same tools that you use in your
7 everyday life. You make decisions every day about whether
8 you believe people or not. You make decisions every day
9 about what you think the facts of something are. You don't
10 do it as deliberately as you're going to do in the jury
11 room, but you do it. You're supposed to bring those tools
12 to this courtroom. And you bring those tools to the jury
13 deliberation room.

14 When you're judging the credibility of a witness, look
15 at their demeanor in answering questions. Were they
16 forthright, or are they evasive? Did they appear to know
17 what they are talking about? Had they had an actual
18 opportunity to view those things that they're testifying
19 about? Did they have an opportunity to know what they're
20 saying, what they're testifying about? And another thing
21 you can consider, is whether their testimony is
22 strengthened or weakened by other evidence in the case.
23 So, I want you to just for one moment, take Mr. Smith's
24 oversimplification of this case.

25 And I want you to say, for just one moment, this is

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1 just a case about one person saying something happened.

2 And I want to ask you, if this is a case about Minor

3 telling you what happened do you believe her?

4 Ladies and gentlemen, Minor was a sixteen-year-

5 old girl when this happened. She was seventeen years old

6 when she took the stand. And she testified, she had never

7 gone through anything like what happened on February 13th

8 of 2011, never. And I submit to you that what you saw was

9 really a very composed young woman. She was very

10 thoughtful in her answers. She tried very hard to

11 understand the questions that were being asked and to

12 answer. Ladies and gentlemen, Minor was not

13 evasive in what she testified to. And ,ladies and

14 gentlemen, Minor knows what she testified about.

15 She was the only person out there, eye to eye with the

16 Defendant on February 13th of 2011. But I want you to

17 remember, this isn't a whole case about one person saying

18 something happened. I want you to think about everything

19 else that you know about this case.

20 You heard from Grandpa, John Robertson. And he's

21 lived at 633 East Black Street for about five years. And

22 he testified a few weeks earlier before Minor was robbed,

23 somebody rang his doorbell about 9:30 at night. He

24 identified the Defendant. And he asked Mr. Robertson for

25 money. He said he needed kerosene to heat his house. And

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1 he says something interesting to Mr. Robertson that "I've
2 met your granddaughter." Well, Minor testified she
3 had never seen this man before. Never seen this man before
4 in her life. So why is that important? Well, it's
5 important because you now know that Mr. Smith knew that
6 Minor lived there long before she knew who he was.
7 And that he knew she was a young girl, and that was her
8 grandfather. And he knew that there was a gentleman at the
9 house. Isn't that what he told Minor He knew there was a
10 gentleman in the house, there was an adult in the house.
11 So if he had some question for Minor or some
12 question for that household, he knew he didn't have to
13 stand out on the dark street at 9:15 at night and ask a
14 sixteen-year-old child the question. There was a gentleman
15 of the house that he could direct those inquires to.
16 That's why Grandpa is important. And Grandpa also tells
17 you, he pointed him out, "This is the guy." So, it's not
18 just Minor telling you about the Defendant. Well,
19 it's the Defendant telling Minor "Well, I met your
20 grandpa a few weeks ago. He was a real nice man. I met
21 the gentleman of the house." And Grandpa said, "Yeah,
22 that's, in fact, the person that I met."

23 Let's talk about Officer Culbreath. Officer
24 Culbreath's testimony is that when he told the Defendant
25 that he was being detained, the Defendant immediately said,

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1 "Why, I didn't rob anybody?" Nobody had mentioned he was
2 being detained in reference to a robbery, ladies and
3 gentlemen. That hadn't come out of any police officers'
4 mouth. Those damning words came out of the Defendant's
5 mouth. And what person being detained jumps immediately to
6 the conclusion that you're detaining me for robbing
7 somebody unless, in fact, they had just thirty minutes
8 earlier, robbed somebody. That statement leads you to the
9 one conclusion.

10 Now remember, remember what's also significant about
11 Officer Culbreath. He sees the jelly beans. The jelly
12 beans that Minor gave to the Defendant. He see them -- I
13 mean, do we know for an absolute fact they were the exact
14 same jelly beans? No we don't. Because unfortunately,
15 they were destroyed, they were returned; we don't know what
16 happened to them. And that's unfortunate. But, ladies and
17 gentlemen, she gave him jelly beans thirty minutes earlier
18 and he's walking around with the jelly beans. Sounds
19 pretty important to me. And remember, when he gets back to
20 the station, he volunteers to Officer Culbreath, "I didn't
21 -- I didn't do anything. That girl called me over there to
22 give me candy for my daughter." Well, he puts himself,
23 ladies and gentlemen, in that statement to Officer
24 Culbreath he puts himself right there, right there, eye to
25 eye with Minor that night. So it's not just Minor

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1 Minor that told you that he was there. It's not just the
2 Grandpa's statement that comes in to help explain those
3 statements the Defendant made to Minor that night, but the
4 Defendant's own statement to Officer Culbreath puts him
5 right there.

6 Now I mentioned the jelly beans. I'm going to say --
7 and that ties into something that Mr. Smith said at the
8 start of the trial. He said to you that he believed that
9 at the end of the trial, you guys would fall into one of
10 three categories. And the first category was, "Hmm,
11 something's just kind of off. This doesn't tie together."
12 And the second category was, "I wish those police officers
13 had done more." And the third category was, "I know the
14 Defendant didn't rob anybody." And Mr. Smith told you that
15 if you fell into any of those three categories, that meant
16 that you should vote not guilty. And I'm going to take
17 issue with that. I'm going to take issue, number two, "I
18 wish the police had done more." Well, in any case, we may
19 wish the police had done more or something different. But
20 that doesn't mean, that doesn't mean that the State has not
21 met its burden. So much of the questions that Mr. Smith
22 asked were about what the police officers were about what
23 you could have done different, or you could have done
24 better. That doesn't mean that just because Mr. Smith may
25 believe that something could have been done different or

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1 better, or even that if he wished, that those jelly beans
2 were put into evidence, and that you could have seen them,
3 that doesn't mean that the State hasn't met its burden.
4 Talk about the first category, "Something's just not
5 right."

6 Ladies and gentlemen, I take issue with his
7 categorization if that requires you to vote not guilty in
8 this case. I submit to you that in no case will everything
9 tie so perfectly together. That, that doesn't mean that
10 you cannot judge the credibility of the witnesses that are
11 before you. You cannot judge the credibility of Minor

12 and find truly in your heart the belief that this
13 crime happened, and that Mr. Smith, Mr. Todd Smith, is the
14 person that committed it.

15 Reasonable doubt is something that jurors sometimes
16 get really confused by because when we started the trial,
17 Mr. Smith said that the Defendant wasn't on trial, that the
18 State was on trial. No, the Defendant is on trial, ladies
19 and gentlemen. The State bears the burden. We bear the
20 burden of proving him guilty beyond a reasonable doubt.
21 The judge has got a lengthy instruction on what beyond a
22 reasonable doubt means. He is going to instruct you. A
23 reasonable doubt is a type of doubt that causes a
24 reasonable person to hesitate to act. Another way to
25 explain it, a different way to explain it, is that

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1 reasonable doubt - reasonable doubt, Well, he'll tell you
2 that it's very difficult in this world and impossible to
3 prove anything to a hundred percent certainty. He's going
4 to use language about being firmly convinced. Reasonable
5 doubt can be difficult for people to understand. When
6 you're thinking about reasonable doubt, I want you to think
7 about this. Reasonable doubt is doubt that causes a
8 reasonable person to hesitate to act.

9 Hesitation and deliberation are very, very different
10 things. And I want you first to understand that. When you
11 go into the jury room, you must fulfill your oath as
12 jurors. You must look at the evidence. You must discuss
13 the case. You must come to a unanimous verdict and in
14 order to do that, you must deliberate. Deliberation: do
15 not confuse it with hesitation. Deliberation is your job.
16 When you think about reasonable doubt, I want you to apply
17 those maybe common sense test.

18 I want you to go back in the jury room, and I want you
19 to think about all the what if's, maybe's, and could be's.
20 I want you to take, for a moment, take all the criticism
21 that Mr. Smith gave to the officers indirectly by saying,
22 "Well, you could have done this, or you could have done
23 that." And take it all in, take it all in and throw it all
24 around as alternatives; discuss it. And then ask
25 yourselves, does it change your opinion that the Defendant

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1 committed the crime? Does it change it? Would any of
2 those things that he offers as criticism, would they have
3 brought you to a different result? Would they have changed
4 the fact that Minor identified for the police that
5 night, the person that robbed her? Would they have changed
6 Officer Culbreath - Would they have changed the statement
7 that Defendant made to Officer Culbreath in any way? "Why,
8 I didn't rob anybody?" You heard him say, "she called me
9 over and she gave me this candy." Does it change any of
10 those things? And if you take all those what if's as
11 maybe's, as could be's, and consider them all, and you
12 still come back to the firm belief that the Defendant
13 committed the crime, then you must find him guilty.

14 And I want you to remember, ladies and
15 gentlemen -- And I just want to touch on this briefly that
16 the Judge is going to charge you two different offenses.
17 We have not discussed this yet. He's going to charge you
18 strong armed robbery and charge you the offense of petty
19 larceny. And petty larceny is basically taking and
20 carrying away the personal property of Minor with
21 the intent to deprive her of it. So, basically the first
22 element, the third element, and the fourth element. It's
23 what we call lessor included offense. I ask you when you
24 go back and consider that, I ask you to not find him guilty
25 of the lessor included offense. I ask you to find him

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1 guilty of strong armed robbery. And go back in the jury
2 room, and think about these elements. Did he take and
3 carry away from the person or from the immediate presence
4 of Minor her personal property? Absolutely. He
5 took that \$20 dollar bill from her, he ran down the street,
6 he never brought it back, took it from her. That was
7 Minor property, that was Minor lunch money. Did he do
8 it with the intent to deprive her of her property?
9 Absolutely. He said, "You didn't tell me you had any
10 money. I thought you said you didn't have any money?"
11 "That's my lunch money. I need that." "You better give me
12 that money." He took it from her. He intended to take it
13 from her. Did he take it by use of force, threat of force,
14 or intimidation? Absolutely and positively, ladies and
15 gentlemen.

16 Think about everything that you've heard in this case.
17 Think about it. A sixteen-year-old girl on a dark street
18 approached by a man she doesn't know, three feet in front
19 of her, the conversation changes and it gets louder.
20 Remember that. "You said you didn't have any money!" "I
21 don't. It's my lunch money. I need it." "You just need
22 to give me that money!" When she takes it out of her
23 pocket and she gives it to him, he runs off down the
24 street. When the police detain him, his first words are
25 "Why, I didn't rob anybody?" Ladies and gentlemen, he did

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1 rob somebody. He robbed Minor Find him guilty
2 for robbing Minor

3 MR. SMITH: May it please the Court, Your Honor?

4 THE COURT: Counsel.

5 MR. SMITH: One red sticker. That's all you're going
6 to get. These stickers are what the court reporter puts on
7 evidence that's introduced by the State in this case. One
8 red sticker. Seventeen police officers on the scene within
9 thirty minutes from where it occurred, with property being
10 taken, a perimeter set up, and they get right there. And
11 the State gives you one red sticker? And what's it on? A
12 photo they grab off the Internet. Where's the evidence?
13 Where is the evidence in this case?

14 Well they tell you what happened. They bring one
15 witness to say it happened. And then they just say, "Well,
16 don't hold it against us if we don't have any evidence."
17 Come on.

18 Todd Smith is seen by the police out walking on the
19 street. Okay. No doubt about that. On the same street,
20 across from the same house, with candy, with police all
21 around. Why? Something just doesn't make sense with the
22 way they're telling you the story.

23 Strong armed robbery requiring the taking of property.
24 They're not saying the candy was what was robbed. They're
25 saying money. Where's that red sticker? Where's this

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1 money, if it was taken, and he's caught that close, that
2 soon? If you believe he's still got the candy, why
3 wouldn't he still have the money? Because he didn't have
4 it.

5 Solicitor talked to you about the elements of strong
6 armed robbery. Using force or intimidation to take away
7 the personal property of another from his or her presence
8 with the intent to steal. That's not what got described
9 this morning. Something different is going on. Now this
10 use of force. The Solicitor talked to you about use of
11 force. Said it can be actual or constructive. Said it's
12 not actual because that would be physical violence.
13 Clearly there is no physical violence in this case.

14 But there could also be constructive by demonstrations
15 of force. Smashing stuff up, tearing stuff up. Menaces,
16 doing something menacing. Well, there's no testimonies of
17 that. Or a transaction accompanied by circumstances of
18 terror. Not just "I was kind of scared." Terror such as
19 threatening word or gesture. Now did you notice when Ms.
20 Minor testified, she said, "No, he never came toward me,
21 never made a gesture toward me, never spoke a threat." But
22 when the Prosecutor stands before you and says, "You need
23 to give me that money!" Why does she keep gesturing when
24 she knows her own witness testified from that stand that,
25 that man out there didn't gesture? Because she's trying to

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1 lead you to a crime that didn't occur for conviction,
2 hoping to stir up passion in this case. And she said he
3 was screaming at her. Is that what Ms. Minor said? No,
4 he was never actually screaming. So why they going to call
5 it screaming?

6 The same reason they're not giving you any other
7 evidence in the case because they've got a problem. Oh,
8 they've shown you this one. How many times? This one
9 aerial photo. No, not an aerial photo. You've got
10 seventeen officers out there. They could have taken an
11 actual street, yeah. Clothing. Why don't they show you
12 the guy's clothing? They get him at the scene, claim he's
13 wearing clothing that matches this description. Claim they
14 take him to the jail. Claim they let him keep one shirt,
15 his pants, and his other stuff gets put in that property
16 bag. They've got it all. Well, the description they had
17 gotten, Ms. Minor said she said a dark-colored shirt,
18 button-up with a black jacket. Where are those red
19 stickers? Wouldn't that be nice to have? Button-up shirt,
20 black jacket, wouldn't that kind of end it? They don't
21 have it. It's not what we have. It's wrong. They just
22 want you to look past it. But remember, Ms. Minor said,
23 she always notices clothes. And the clothes were on him.

24 Five feet, five inches, five feet, nine inches. That
25 may not seem like a lot. Maybe that's not a big

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1 difference, four inches. Did you notice how tall Ms.
2 Minor is? 5'7". It might not be big to be off a couple
3 of inches, but how about if you realize, that person is
4 taller or shorter than me? She says, 5'9." She knows that
5 whoever is up in the yard is taller than her. The police
6 know Todd Smith is 5'5", shorter than her. Uh-oh, we've
7 got a problem. Well, that just doesn't really matter. Or
8 uh, "It was where they were standing." Is that proof? Is
9 that the evidence?

10 And then there's this, "I thought you said you didn't
11 have any money?" because Ms. Minor got to turn this
12 thing into a robbery for money. But at that point,
13 remember, in none of her statements to 911, to Officer
14 Stewart who responded to the scene, or to the Detective
15 when she's giving a statement, does she ever say he asked
16 for money. In fact, quite the opposite. She says he says,
17 "I'm not trying to get you to put money in my hand. I'm
18 not asking you for money." So, why does he say, "I thought
19 you said you didn't have any money?" It doesn't make
20 sense. It didn't happen.

21 They do a show up identification. Within thirty
22 minutes of that night, police officers say they find
23 somebody matching the description. Well, we know what
24 clothes he didn't have on, so what description did he
25 match? Remember Officer Culbreath, when he said the

CLOSING STATEMENT: BY MR. SMITH

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1 description they had was a black male leaving the scene.
2 So they have him stop a black male, have him on the scene,
3 get him out of a police car, handcuffed, with three
4 officers around him, drive a sixteen-year-old to him, say
5 we're going to see if you can make a positive
6 identification. Is anybody surprised when she says, "Yeah,
7 that's him"? What would you expect her to do?

8 Now, a much different scenario. If you take her down
9 to the police department, you show her six photos, not just
10 Mr. Smith, five other individuals. Who would she pick
11 then? They didn't give us the opportunity to know. Now,
12 some officer says, "Hey, that guy looks kind of like him,
13 let's just stop him." Ah, case is over, we can all go off
14 shift. Can't we expect more? Is it suggestive? Well, we
15 found someone who matches the description. We want to see
16 if you can make a positive identification. Wonder why they
17 phrase it that way? Wonder why they don't say, "Hey, we've
18 got this guy. We don't think it's him. Let's see if you
19 can rule him out." If it was him, she'd be able to say,
20 "No, that's him. I can't rule him out." I wonder why they
21 phrase it that way? I wonder what it is they're looking
22 for? I submit to you that's suggestive. I submit to you,
23 there's only one thing more suggestive, and they did it
24 about seven times in this courtroom. They had somebody sit
25 right here and say, "Hey, do you recognize him anywhere in

CLOSING STATEMENT: BY MR. SMITH

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1 this courtroom?" And weren't you all surprised that they
2 pointed over to the Defense table. Isn't that just
3 shocking? You want to call that evidence? Come on. The
4 State has the burden of proof. We have nothing; they are
5 on trial. We don't even have to be here. What did they
6 not do? They gave you this one photo. Well, they didn't
7 give you a 911 call.

8 MS. JOYNER: Your Honor, I object to what the State's
9 evidence, Mr. Smith is going to allege that exists that's
10 not before the jury.

11 THE COURT: Overruled.

12 MR. SMITH: She said she called 911, the first time
13 she reports what's happened. I wonder why they didn't give
14 you that? Because they didn't have a case.

15 A street view picture, this hill. That's the whole
16 reason that we've gone from 5'5" to 5'9," thinking that
17 somebody's shorter than you and you're taller. I wonder
18 they don't just show you that? Have an officer take a
19 picture? Statement, copies of statements, multiple
20 statements. You've heard you're going to have to judge the
21 credibility of this one witness based upon statements. I
22 wonder why they don't give you those? Where are those red
23 stickers?

24 Or the clothes. Remember, Officer Culbreath made it
25 clear. "He had one shirt, one pair of pants. Everything

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1 else, I put in that property bag. I remember what I put in
2 that property bag. I put candy and a wallet." There are
3 no clothes. His jacket, his toboggan, all this other stuff
4 didn't exist. They realize it, so they just "We just won't
5 show the jury".

6 And the detective who sits here the whole trial. The
7 one who takes the statement of the victim. The one who
8 receives from Officer Culbreath the supposed confessions or
9 statements of my client. I know it's hard to walk thirty
10 steps apparently, but it must be hard to hit that witness
11 stand for some reason. What are they hiding? What's going
12 on?

13 What else didn't they give you? Forensics. How about
14 a fingerprint? Dust the car, he's right there; anything
15 from the yard; that candy?

16 Seventeen officers out there, we can't even get a
17 picture? Toboggan, it's out there. They say there's a
18 description of a toboggan. If that were true, don't you
19 think it would be in here with a red sticker on it? You
20 bet it would. A jacket? It's not here because it wasn't
21 there. They're just going to say, "Oh, the property got
22 destroyed."

23 And they don't give you the \$20 dollars. Where does
24 it go? Ms. Minor said, and I had her read from her
25 statement, "I got the money out of my back pocket and gave

CLOSING STATEMENT: BY MR. SMITH

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1 it to him." It was a folded \$20 dollar bill. After I got
2 inside my house, I realized that I had a \$10 bill in my
3 pocket too, but I didn't know it then. What? Why is that
4 in there? She's giving a statement about a robbery,
5 somebody took \$20 dollars. Why is she getting into what's
6 in her pockets? Remember where she said she was when she
7 gave that statement. They've now taken her down to the
8 police department. She's there claiming she's been robbed
9 of her money by this man. What do you think she's got a
10 fear can happen? They might say empty your pockets.
11 "Okay, I got \$10 dollars on me, but I didn't realize that
12 was actually the money he took from me was somewhere in
13 some back pocket. And that's what he saw when he asked for
14 money even though he said he hadn't been asking for money."
15 Something's going on here with this money.

16 And how about this vanishing candy? Now the officers
17 and Ms. Minor say that Mr. Smith had it on him out there,
18 but the property record had been destroyed. Somehow the
19 jail just "Ah, okay, evidence from a scene? We'll just
20 throw that away." And that candy never makes it to any of
21 the three statements Ms. Minor gives. Not the 911 call,
22 not Officer Stewart, not the detective of the police
23 department. But then, they start putting it back together
24 for trial, and all of the sudden, "Oh, candy, yeah, he had
25 candy. Yeah, yeah, yeah, he had candy."

CLOSING STATEMENT: BY MR. SMITH

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1 And we have this appearing hill. Candy vanishes and
2 hills appear in this yard. That's the only photo they give
3 you. Who should you hold that against? Who has the
4 burden? Now you did get testimony from one officer that
5 it's not a great hill. That from the sidewalk to the
6 house, only finds one foot. I submit to you, there's no
7 hill. That's why you don't have a photograph of it.

8 And the directional changes. Did you understand that?
9 She wanted to change her statement. Call the Prosecutor
10 getting ready for trial and wanted to change her statement.
11 Because what it has her doing is saying he's coming from
12 the wrong direction. Gets the stories crossed. And now
13 they've got to make it match where Todd Smith ultimately
14 ends up walking toward her. So, we've got to change that
15 part of the statement. "He walked through my yard, came
16 down the paved driveway." "Well, that's not what I meant."
17 How in the world would somebody type he walked through my
18 yard and came down the paved driveway, if what she meant
19 was, he came from the other direction, wasn't ever in the
20 paved driveway. Would it? The reason that statement is in
21 the statement given to the police department is because Ms.
22 Minor said it that night. But that doesn't fit the
23 theory they have for court today. So she hits the stand
24 and says, "Yeah, well, I need to change that." Is that
25 credible? No.

CLOSING STATEMENT: BY MR. SMITH

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1 To believe their story, you would have to believe that
2 Todd Smith is the absolute, worse robber ever. You'd have
3 to believe that he introduces himself, "Hello, let me tell
4 you my name," shakes hands, leaving evidence right there on
5 the supposed victim. They ever -- her testimony? No.
6 Tells his name, tells his address, tells about his family,
7 and then returns to the scene while the police are there.
8 Police all over, multiple ones at the house, and all over
9 the place and he decides then to go walking right out in
10 front of them? And their version is to bring the evidence
11 back to candy. No, it makes no sense.

12 Ms. Joyner in closing said she gave a pretty darn good
13 description. She said she saw that man for four minutes.
14 That was about ten seconds. To give a description and say
15 absolutely zero about freckles, scars, hairstyle, hair
16 color, eye color, facial hair, anything other than clothing
17 and to be absolutely wrong on height. The State wants to
18 come to this court and characterized to you that, that's a
19 pretty darn good description? That's should bother you.
20 That should scare you.

21 I told you I thought we'd end up with three versions.
22 One, it just doesn't feel right. Reasonable doubt is the
23 kind of doubt that causes a reasonable person to hesitate
24 to act. That's exactly what I'm talking about. Something
25 just doesn't seem right. Hesitate. Need more: Wish the

CLOSING STATEMENT: BY MR. SMITH
CHARGE TO THE JURY

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1 police had taken fingerprints, maybe if they'd given me
2 some evidence, maybe if they'd taken some other
3 photographs, maybe we'd have that clothing, maybe we can
4 confirm some of these things that this witness is saying.
5 The State has the burden of proof to prove every element
6 beyond a reasonable doubt. That's exactly what I'm talking
7 about. Or, that you know Todd Smith did not rob Ms.

8 Minor All three equal a true verdict in this case.
9 Verdict we ask you to come back in this courtroom and
10 return. Verdict, not guilty.

11 THE COURT: Mr. Foreman, ladies and gentlemen of the
12 jury panel, that concludes final arguments from Counsel.
13 It's now time I need to charge you, that is to say,
14 instruct you with regard to the law that applies to the
15 issues in this case.

16 In this case, the State charges the Defendant Todd
17 Eugene Smith with the offense of strong armed robbery. To
18 this charge, the Defendant has pled not guilty, which then
19 places upon the State, the burden of proving the Defendant
20 guilty.

21 A person charged with committing a criminal offense in
22 South Carolina is never required to prove himself innocent.
23 I charge you, that as a vital important of rule of law,
24 that a Defendant in a criminal trial must always be
25 presumed innocent until his guilt has been proved beyond a

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1 reasonable doubt. This presumption of innocence remains
2 with the Defendant at all times throughout the trial, and
3 is only removed when and if the State has proved guilt
4 beyond a reasonable doubt. It is your solemn duty, ladies
5 and gentlemen, if not clearly convinced of guilt beyond
6 every reasonable doubt to the contrary, to find the
7 Defendant not guilty.

8 Mr. Foreman, ladies and gentlemen of the jury panel, I
9 instruct you that the fact that the Defendant did not
10 testify or offer any evidence in this case is not a factor
11 to be considered by you in any way in your deliberation.
12 You must not consider the fact that the Defendant has
13 chosen not to testify when you determine the guilt or
14 innocence of the Defendant. It must not be considered by
15 you in any manner whatsoever either against or for the
16 defendant. A defendant has the Constitutional right to
17 remain silent. The assertion of that Constitutional right
18 cannot and must not be considered by you in your
19 deliberations. On your oath then, you reach no inference
20 and draw no conclusions whatsoever from the fact that the
21 Defendant did not testify or offer any evidence in this
22 case. The fact that the Defendant did not testify should
23 not even be discussed in your jury room.

24 The burden of proof, as I have stated to you, is upon
25 the State. It's not the burden of the accused to prove his

1 innocence. The burden of proof remains upon the State to
2 prove guilty beyond every reasonable doubt. What is a
3 reasonable doubt? The State has the burden of proving the
4 Defendant guilty beyond a reasonable doubt. Some of you
5 may have served as jurors in civil cases where you were
6 told it is only necessary to prove the fact is more likely
7 true than not, such as by the greater weight or
8 preponderance of the evidence. However, in criminal cases,
9 the State's proof must be more powerful than that. It must
10 be beyond a reasonable doubt.

11 Now ladies and gentlemen, proof beyond a reasonable
12 doubt is proof that leaves you firmly convinced of the
13 Defendant's guilt. There are very few things in this world
14 that we know with absolute certainty. And in criminal
15 cases, the law does not require proof that overcomes every
16 possible doubt. A reasonable doubt may also be described
17 as the kind of doubt that would cause a reasonable person
18 to hesitate to act. If you have such a doubt as to the
19 guilt of the Defendant, then he would be entitled to a
20 verdict of not guilty. Reasonable doubt may arise from
21 evidence which is in the case from the absence or lack of
22 evidence in the case. If, based on your consideration of
23 the evidence, you are firmly convinced that the Defendant
24 is guilty of the crime charged, you must find him guilty.
25 If on the other hand, you think there is a real possibility

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1 that he is not guilty, you must give him the benefit of the
2 doubt and find him not guilty. You alone must make the
3 determination of whether or not reasonable doubt exists as
4 to the guilt of the Defendant.

5 Mr. Foreman, ladies and gentlemen of the jury panel,
6 there are two types of evidence which are generally
7 presented during a trial: Direct evidence and
8 circumstantial evidence. Direct evidence is the testimony
9 of a person who asserts or claims to have actual knowledge
10 of a fact, such as an eyewitness. Circumstantial evidence
11 is proof of a chain of facts and circumstances indicating
12 the existence of a fact. The law makes absolutely no
13 distinction between weight or value to be given to either
14 direct or circumstantial evidence. Nor is a greater degree
15 of certainty required of circumstantial evidence than of
16 direct evidence. You should weigh all the evidence in the
17 case. After weighing all the evidence, if you are not
18 convinced of the Defendant -- the guilt of the Defendant
19 beyond a reasonable doubt, you must find the Defendant not
20 guilty.

21 Mr. Foreman, ladies and gentlemen of the jury panel,
22 under the Constitution of South Carolina, you are the
23 finders of facts in this case. I do not have the right to
24 pass upon the facts or even to express any opinion I might
25 have as to the facts, nor may I suggest in any way what I

1 may think about the guilty or innocence of the Defendant.
2 You should form no opinion in that regard of anything I may
3 have said or any rule I have made during the course of the
4 trial. As a sole judges of the facts in this case, you are
5 also necessarily the sole judges of the credibility or
6 believability of each of the witnesses that testified
7 during the course of the trial. There are a number of
8 factors which you may consider in arriving at your
9 assessment as to a particular witness's credibility or
10 believability. Some factors I'm going to list for you.
11 And should you think of other factors that you believe also
12 ought to be considered when you go back to your jury room
13 on the question of credibility, then you should consider
14 those factors as well.

15 You may consider the demeanor of the witness from the
16 witness stand. What was that witness's manner or
17 appearance? Was the witness straightforward in answering
18 the questions or hesitant in responding to questions?
19 Simply put, do you believe the witness is telling the truth
20 or not telling the truth? Do you believe the witness knew
21 of what that witness testified or did not know of what that
22 witness testified? You may consider whether or not the
23 testimony of a witness is consistent or inconsistent with
24 that witness's own testimony or with other testimony and
25 evidence presented during the course of the trial. You may

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1 also consider how the witness came to know the facts to
2 which he or she testified. You may consider the
3 opportunity that a witness had to observe or hear. That
4 is, to perceive the existence of a fact by means of their
5 senses. You may also consider whether or not a witness is
6 biased or prejudiced. That simply means, do you find that
7 a particular witness has some reason to come into court and
8 testify one way or another to help or hurt one side or the
9 other. You may also consider whether or not the testimony
10 of a witness was strengthened or weakened by other
11 testimony or other evidence presented during the course of
12 the trial.

13 Now, you as the finders of the facts in this case, and
14 you as the judges of the credibility or believability of
15 each of the witnesses that have testified may believe as
16 much or as little as what a witness testifies to you as you
17 deem appropriate. You may believe all of what a witness
18 says, you may believe none of what a witness says, or you
19 may believe only part of what a witness says.

20 Mr. Foreman, ladies and gentlemen of the jury panel,
21 the testimony of a witness may be discredited or impeached
22 by showing that he or she previously made statements which
23 are inconsistent with his or her present testimony. The
24 earlier contradictory statements are also admissible to
25 establish the truth of these statements. It is the

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1 province of the jury to determine the credibility of any to
2 be given to the earlier statements to be given the
3 testimony of the witness who has been impeached. If a
4 witness is shown intentionally to have testified falsely
5 concerning any material matter you may consider this in
6 determining whether to trust such witness's testimony and
7 other particulars. You may reject all the testimony of the
8 witness or give all or part of such testimony credibility
9 you think it deserves.

10 Mr. Foreman, ladies and gentlemen of the jury panel,
11 the same Constitution that makes you the finders of the
12 facts in this case makes me the sole and only instructor in
13 the law. You must accept as correct, the law that I charge
14 and apply to the law, the evidence as you find it and reach
15 your verdict. Put aside any conceptions you may have had
16 as to the law before coming here today, and accept the law
17 as I instruct it to be. You for purposes of your duty as
18 jurors today should not be concerned about what the law
19 ought to be, but what I charge you the law is now in this
20 State.

21 Mr. Foreman, ladies and gentlemen of the jury panel, I
22 charge you with regard to criminal intent. Criminal intent
23 is the necessary element of each crime that must be proved
24 by the State beyond a reasonable doubt. Criminal intent is
25 always a matter that must be determined by the jury from

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1 the circumstances surrounding the situation. There is no
2 way to prove intent to a mathematical certainty. There is
3 no way medical science can dissect a person's brain and
4 determine what he had in mind. So the law says that
5 criminal intent may be inferred from the circumstances
6 shown to have existed. This is how the jury makes a
7 determination whether or not the element requiring intent
8 was present. Criminal intent is a state of mind which
9 operated jointly with an act is the commission of a crime.
10 Criminal intent is a mental state, a conscious wrongdoing.
11 So, it is up to you, the jury, to determine what the
12 Defendant intended to do based on the circumstances shown
13 to have existed. I tell you that the State must prove
14 criminal intent beyond a reasonable doubt just as the State
15 must prove every element beyond a reasonable doubt as I
16 previously explained. It is not necessary as to establish
17 intent by direct and positive evidence, but intent may be
18 established by inference in the same way as any other fact
19 by taking into consideration the acts of the parties and
20 all of the facts and circumstances of the case. While the
21 State may prove motive, it is unnecessary that the State do
22 so. However, the State must prove intent.

23 Mr. Foreman, ladies and gentlemen of the jury panel,
24 I'm going to charge you specifically with the law governing
25 the offense of which the Defendant is charged in this case.

1 You're not going to have these instructions written down
2 for you back in the jury room. So, you're going to have to
3 call on your collective memories as to what I instruct you
4 the law is. However, once you begin your deliberations, if
5 you're still not sure about any part of the law I instruct
6 you, upon your request, I'll be glad to bring you back out
7 into the courtroom and re-instruct you on anything you wish
8 me to re-instruct you on. What I want to ask you to do at
9 this time is listen carefully as I go through the elements
10 of the offense with which the Defendant was charged.
11 Again, the Defendant is charged in this case with strong
12 armed robbery. Under the legal theory that the lessor --
13 that the greater offense also includes the lessor offense,
14 I am going to charge you, both as to strong armed robbery
15 and also on the lessor included offense of petty larceny.
16 Now, and I'm going to charge you first with regard to
17 strong arm robbery also includes a lessor offense of
18 larceny -- petty larceny. I'm going to charge you first
19 with regard to larceny and the elements of that, and then
20 I'm going to charge you as to the additional elements
21 required for strong armed robbery.

22 In this case, Todd Eugene Smith's charged with strong
23 armed or common law robbery. Robbery is defined as the
24 felonious taking away of the goods of another against the
25 owner's will and without the owner's consent, by force,

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1 intimidation, or violence. This is essentially larceny by
2 force. In order for you to understand what would
3 constitute robbery, I'll first explain to you what
4 constitutes the crime of larceny. Larceny is defined as
5 the felonious taking and carrying away by any person of the
6 personal goods or things of another with the intent to
7 appropriate them to one's own use, and to deprive the owner
8 permanently of his or her property. The crime of robbery
9 includes the four required elements of the crime of
10 larceny.

11 The four elements of larceny are as follows: First,
12 there was a taking. Two: The taking was of the personal
13 property of another. Third: The property was carried away
14 after it was taken. This element is sometimes referred to
15 as the asportation of stolen property. Asportation,
16 meaning the act of carrying away. Asportation is
17 ordinarily established by the slightest removal of the
18 property with felonious intent. The slightest removal of
19 the property of the complete possession of the property
20 even for an instant by the Defendant is sufficient to show
21 a taking and carrying away of the property. The fourth
22 element of larceny is the taking and carrying away of the
23 property was done with the intent to steal.

24 In addition to these four elements of larceny, the
25 crime of robbery additionally requires two more elements.

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1 There elements are as follows: First, the property must be
2 taken from the person of another or in his or her presence.
3 Property is considered to be in the presence of the person
4 if it is within the person's reach, inspection,
5 observation, or control, so that the person could, if not
6 overcome with violence or prevented by fear, retain
7 possession of the property. And the next element, the
8 second additional element is not only must the taking be
9 without consent of the owner, but the taking must be
10 accomplished by violence or putting the person in fear.
11 This violence must be actual, personal violence, or threat
12 of it. The degree of force used is immaterial so long as
13 such force or threat of force is actually sufficient to
14 overcome the victim's resistance. This violence or
15 intimidation must either precede or be contemporaneous with
16 the taking.

17 The element of force and the offense of strong armed
18 robbery may be actual or constructive. Actual force
19 implies physical violence. Constructive force includes all
20 demonstrations of force, menaces, and all other means by
21 which the person robbed is put in fear sufficient to
22 overcome the free exercise of the person's will or prevent
23 resistance to the taking. Regardless of how slight the
24 cause of the fear created is, or about what other
25 circumstances the taking is accomplished, if the

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1 transaction is accompanied by circumstances of terror, such
2 as threatening word or gesture as in common, everyday
3 experiences of life, are likely to create an apprehension
4 of fear and induce a person to give up the property the
5 victim is placed in fear.

6 Mr. Foreman, ladies and gentlemen of the jury panel,
7 when you consider the offenses, the greater or lessor
8 offenses, if you have a reasonable doubt as to whether the
9 Defendant is guilty of the greater offense or the lessor
10 offense, it is your duty to resolve that doubt in the
11 Defendant's favor and find him guilty of the lessor
12 offense. Of course, you would not find the Defendant
13 guilty of any offense unless you find that the State has
14 proven the elements of that offense beyond a reasonable
15 doubt.

16 Mr. Foreman, ladies and gentlemen of the jury panel,
17 nothing that I may have said or done during the course of
18 this trial has been in any way intended to express or
19 suggest a view of the case or an opinion as to the facts,
20 the weight of the evidence, or the credibility of the
21 witnesses. If any of my actions and words have seemed to
22 so indicate, you will disregard such. Form your own
23 opinion as to these matters. You have been selected as
24 fair and impartial jurors sworn to impartially try and
25 determine the facts of this case. And when you comply with

1 your oath to do so, then no one will have a right to
2 criticize your verdict and you will have fully discharged
3 your duty as jurors. You are to decide this case according
4 to the testimony you have heard from the lips of the sworn
5 witnesses along with other evidence introduced. I charge
6 you that as jurors, you must decide the issues in this
7 proceeding without bias and without prejudice to any party.
8 You cannot allow yourself to be governed by sympathy, by
9 prejudice, by passion, by public opinion, or any other
10 arbitrary factor. Both the State and the Defendant have
11 the right to expect that each of you will carefully and
12 impartially considered all of the evidence in the case and
13 that you will follow the law as I have explained it to you.

14 Mr. Foreman, ladies and gentlemen of the jury panel,
15 whatever your verdict in this case, it must be your
16 unanimous verdict. All twelve jurors must agree on the
17 verdict which the foreperson will be authorized to write on
18 behalf of the jury.

19 Mr. Foreman, I charge you that once you begin your
20 deliberations, that you maintain some order in those
21 deliberations, that all who wish to participate and to be
22 heard in those deliberations be allowed to do so. If for
23 any reasons, any members of the jury panel take a break
24 from the deliberations, all should take a break. By that I
25 mean all twelve jurors should be present and deliberating

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1 when deliberations are going on. Mr. Foreman, if you once
2 you begin your deliberations, if the jury should become
3 divided, and you are going to inform the Court that the
4 jury is divided, please do not tell me how you are divided.
5 I do not wish to know that. Don't tell me the numbers.
6 Just tell me if you could tell me if you're divided.

7 Now, I have prepared for your use in the jury room, a
8 verdict form. Now, I'm going to go over that verdict form
9 with you at this time. There are three possible verdicts
10 which appear on the verdict form. The first possible
11 verdict that appears is "We the Jury find the Defendant
12 Todd Eugene Smith guilty of strong armed robbery." The
13 second possible verdict is "We the Jury find the Defendant
14 Todd Eugene Smith guilty of the lesser included offense of
15 larceny." The third possible verdict which appears on the
16 form is "We the Jury find the Defendant Todd Eugene Smith
17 not guilty."

18 Now, Mr. Foreman, ladies and gentlemen of the Jury, in
19 preparing the verdict form, I have to put the possible
20 verdicts on the form in some order. The order in which
21 they appear means absolutely nothing, and you should infer
22 nothing from it. I do it the same way every time. What
23 you should do, Mr. Foreman, ladies and gentlemen of the
24 jury, you should deliberate.

25 Mr. Foreman, once the jury has reached a verdict, a

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1 unanimous verdict, you will go to the verdict form, find
2 the verdict on the verdict form which corresponds to the
3 unanimous verdict reached by the jury. You'll put a
4 checkmark in the blank beside that particular verdict, sign
5 your name on the line above the word "foreperson's
6 signature," and date it. Once you've done that, you'll
7 knock on the door and let the Bailiff know you've reached a
8 verdict. The Bailiff will let me know, and I'll bring you
9 back out to receive that verdict.

10 Now, I'm going to ask you if you will to retire to the
11 jury room. But do not yet begin your deliberations. I
12 have to give Counsel an opportunity to request additional
13 instructions on the law. That additional instruction
14 requested, and I deem them necessary, I'll bring you back
15 out and give you those additional instructions. It follows
16 that we should make sure that all instructions are complete
17 before you begin to deliberate. If no additional
18 instructions are necessary, I will send to you by means of
19 the Bailiff, the verdict form and any exhibits which have
20 been admitted into evidence and instructions to begin
21 deliberating. Please do not begin deliberating until you
22 get the instruction. Please retire to the jury room all
23 except the alternate.

24 Sir, I'll ask you at this time, not to go into the
25 jury room, but wait just outside the courtroom for further

1 instructions.

2 (JURY EXITS COURTROOM TO START DELIBERATING AT 04:42
3 PM.)

4 THE COURT: Exceptions, additional requests to charge
5 from the State?

6 MS. JOYNER: Not from the State, Your Honor.

7 THE COURT: From the Defense?

8 MR. SMITH: None from the Defense, Your Honor.

9 THE COURT: Please check, make sure all the exhibits
10 admitted into evidence go back. Apparently, there was only
11 one.

12 MS. JOYNER: Only one, Your Honor, from the State.

13 THE COURT: Only one red sticker.
14 Please give that to the Bailiff.

15 Sir, you can please tell them to begin deliberating
16 and ask the alternate to come in.

17 Madame Clerk, do you know what to tell the alternate?

18 MADAME CLERK: Call after Seven.

19 (ALTERNATE JUROR ENTERS COURTROOM.)

20 THE COURT: Mr. Ledford, you can stand right there if
21 you will. As it turns out, we made it through the trial
22 without an emergency developing with regard to the first
23 twelve jurors chosen. It will not be necessary for you to
24 participate in deliberations; therefore, I'm going to
25 excuse you at this time. Of course, you are welcome to

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1 stay in the courtroom if you wish, or you're free to go. I
2 would ask you to please call into your voice mail number
3 tonight after Seven o'clock for further instructions as to
4 when to report back or callback. I'm want to thank you for
5 your service and sacrifice thus far this week. You are
6 free to go. If you just turn your badge in, you're free to
7 go.

8 MR. LEDFORD: Thank you.

9 (ALTERNATE DISMISSED AT 04:45 PM.)

10 THE COURT: Counsel, we'll take a break.

11 SOLICITOR DESCH: Your Honor, can I, I have a
12 question.

13 THE COURT: Hold up, please ma'am.

14 (COURT IN RECESS AT 04:45 PM.)

15 (BACK ON THE RECORD AT 05:03 PM.)

16 (DEFENDANT REENTERS COURTROOM.)

17 THE COURT: You ready? All right.

18 Please bring the jury in.

19 (JURY REENTERS COURTROOM AT 05:10 PM.)

20 THE COURT: Mr. Foreman, have you and the jury reached
21 a unanimous verdict in this case?

22 MR. FOREMAN: Yes, Your Honor.

23 THE COURT: Would you please hand the verdict form up
24 to the Bailiff please, sir.

25 (VERDICT RECEIVED BY THE COURT.)

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1 THE COURT: The Clerk will please publish the verdict.

2 MADAME CLERK: Indictment Number 2011-GS-46-1847 *The*
3 *State of South Carolina versus Todd Eugene Smith*, we the
4 jury find the Defendant Todd Eugene Smith guilty of strong
5 armed robbery signed by foreperson dated August 23rd, 2011.

6 If this be your verdict, please say so by raising your
7 right hand.

8 (JURORS COMPLIED.)

9 MADAME CLERK: Let the record reflect all affirm this
10 verdict.

11 THE COURT: Any questions to the jury panel from the
12 State?

13 MS. JOYNER: Not from the State, Your Honor.

14 THE COURT: From the Defense?

15 MR. SMITH: We request the jury be polled, Your Honor.

16 THE COURT: The Clerk will please poll to the Jury.

17 MADAME CLERK: If you'll stand. When I call your
18 name, I'll ask you a question then you may be seated.

19 Foreperson Michael Faris, is this your verdict?

20 MR. FARIS: Yes, ma'am.

21 MADAME CLERK: Is this still your verdict?

22 MR. FARIS: Yes, ma'am.

23 MADAME CLERK: 38, Steven Burns. Steven Burns. Is
24 this your verdict? Is this still your verdict?

25 MR. BURNS: Pardon me.

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1 MADAME CLERK: Is this still your verdict?
2 MR. BURNS: Yeah.
3 MADAME CLERK: Have a seat.
4 Number 209, Verla Shafer. Is this your verdict?
5 MS. SHAFER: Yes.
6 MADAME CLERK: Is this still your verdict?
7 MS. SHAFER: Yes.
8 MADAME CLERK: You may have a seat.
9 Number 180 Robert Painter. Is this your verdict?
10 MR. PAINTER: Yes, ma'am.
11 MADAME CLERK: Is this still your verdict?
12 MR. PAINTER: Yes, ma'am.
13 MADAME CLERK: Number 170 Bruce Munnell. Is this your
14 verdict?
15 MR. MUNNELL: Yes, ma'am.
16 MADAME CLERK: Is this still your verdict?
17 MR. MUNNELL: Yes.
18 MADAME CLERK: Number 165 Cheryl Moore.
19 MS. MOORE: Yes.
20 MADAME CLERK: Is this your verdict?
21 MS. MOORE: Yes.
22 MADAME CLERK: Number 181 Bradley Palm.
23 MR. PALM: Yes.
24 MADAME CLERK: Is this your verdict?
25 MR. PALM: Yes.

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1 MADAME CLERK: Is this still your verdict?
2 MR. PALM: Yes it is.
3 MADAME CLERK: Have a seat.
4 Number 190 Ronald Pullin. Is this your verdict?
5 MR. PULLIN: Yes, ma'am.
6 MADAME CLERK: Is this still your verdict?
7 MR. PULLIN: Yes, ma'am.
8 MADAME CLERK: Have a seat.
9 Number 118 Melvin Hyman.
10 MR. HYMAN: Yes.
11 MADAME CLERK: Is this your verdict?
12 MR. HYMAN: Yes.
13 MADAME CLERK: Is this still your verdict?
14 MR. HYMAN: Yes.
15 MADAME CLERK: Iverson Shaver Number 210.
16 MR. SHAVER: Yes.
17 MADAME CLERK: Is this your verdict?
18 MR. SHAVER: Yes, ma'am.
19 MADAME CLERK: Is this still your verdict?
20 MR. SHAVER: Yes, ma'am.
21 MADAME CLERK: You may have a seat.
22 Number 11 Jimmy Manning.
23 MR. MANNING: Yes, ma'am.
24 MADAME CLERK: Is this your verdict?
25 MR. MANNING: Yes, ma'am.

VERDICT

276

1 MADAME CLERK: Is this still your verdict?

2 MR. MANNING: Yes, ma'am.

3 MADAME CLERK: Have a seat.

4 Number 12 Stephen Gatlin.

5 MR. GATLIN: I'm Number 88.

6 MADAME CLERK: Number 88, I'm sorry. I looked at the
7 wrong number.

8 Is this your verdict?

9 MR. GATLIN: Yes, ma'am.

10 MADAME CLERK: Is this still your verdict?

11 MR. GATLIN: Yes, ma'am.

12 MADAME CLERK: You may have a seat.

13 THE COURT: All right. Any additional questions
14 requested from the jury panel from the Defense?

15 MR. SMITH: No, Your Honor.

16 THE COURT: Do they need to call tonight, Madame
17 Clerk?

18 MADAME CLERK: No. Have them call at One tomorrow
19 because she's already gotten...

20 THE COURT: Mr. Foreman, ladies and gentlemen of the
21 jury panel, this will conclude your service on this
22 particular case.

23 We're starting another trial in the morning, but we
24 have a different panel coming in the morning here. I'm not
25 sure about the other courtroom. But, what they're asking

SENTENCE

277

1 you to do is call to your voice mail number tomorrow at
2 around One o'clock, around One o'clock. Some decision will
3 be made at that time as to when you call in, you'll be
4 instructed as to when to report back or call backs, as the
5 case may be. So, please enjoy your night. I want to thank
6 you for your service thus far, the sacrifices you've made
7 thus far to help make our justice system work. You are all
8 free to go at this time, all except the foreperson.

9 Sir, I'll get you to come up and sign the indictment
10 for us, if you will.

11 Everyone else is free to go. Thank you.

12 (JURY EXITS THE COURTROOM AT 05:14 PM.)

13 (INDICTMENTS SIGNED BY FOREPERSON/FOREPERSON
14 DISMISSED.)

15 MS. JOYNER: Your Honor, we prepared a sentencing
16 sheet, we passed it to Mr. Smith.

17 THE COURT: Okay.

18 MS. JOYNER: If Your Honor is ready to proceed.

19 THE COURT: Ready to proceed then. Please bring the
20 Defendant around, Mr. Bailiff.

21 (DEFENDANT AND DEFENSE ATTORNEY APPROACH BENCH.)

22 MS. JOYNER: Your Honor, I have the Defense's prior
23 record if the Court's ready.

24 THE COURT: Please give me that.

25 MS. JOYNER: Your Honor, the Defendant was convicted

SENTENCE

278

1 of misdemeanor larceny in Charlotte, North Carolina.
2 That's from April 30th, 1993. He was convicted on November
3 8th, 1995, possession of a stolen motor vehicle. That's
4 also in Charlotte, North Carolina. His NCIC indicates also
5 a felony probation violation on November 5th of 2001. Your
6 Honor, Mr. Smith was convicted August 5th of 1996, two
7 counts of common law robbery, one count of second degree
8 rape, one count of second degree kidnaping, and one count
9 of second degree sexual offense. Those were also in
10 Charlotte, North Carolina. Ms. Smith received some
11 concurrent sentencing and some consecutive sentencing. The
12 North Carolina Department of Corrections Web site indicates
13 that he was ultimately released from custody in 2009. And
14 I'm unclear whether that is released from parole. I
15 believe it was released from parole, Your Honor, and not
16 released from physical custody.

17 He is on the Sex Offender Registry for those offenses,
18 Your Honor. And I will tell the Court, I do not have an
19 incident report on that charge, but it does list the
20 victim's age according to the South Carolina Sex Offender
21 Registry Web site lists the victim's age as seventeen. And
22 that is the extent of his prior record that I'm aware of,
23 Your Honor, with the exception of a 2011 possession of
24 crack cocaine. He's currently in the Department of
25 Corrections until October serving that sentence, Your

SENTENCE

279

1 Honor. That arrest was in November of 2010, and he pled
2 guilty several months ago to that charge.

3 THE COURT: Counsel.

4 MR. SMITH: Thank you, Your Honor, may it please the
5 Court.

6 Obviously, it's a difficult time for Mr. Smith to come
7 before the bar. He understood the risk and request that,
8 that sentence is right for a jury trial. We understand
9 that the jury has ruled in this case and he does have
10 respect for the Court. Obviously, he disagreed, but
11 understands the position he is now in.

12 Your Honor, as far as his record. Here with him
13 today, Your Honor, are family members in support. His wife
14 may wish to address the Court. Your Honor, while she is
15 coming up, I can tell you that she has some health issues.
16 I have seen her medical records concerning some, concerning
17 numbers about her kidneys as recently as last week. She
18 also has some heart trouble that she is going to have to
19 address with probably the hospitalization coming up this
20 week. But she can fill Your Honor in on how she needs him
21 at home and what he means to her.

22 THE COURT: Yes, ma'am. Give us your name for the
23 record again.

24 A. Diane Springs.

25 THE COURT: Yes, ma'am.

SENTENCE

280

1 MS. SPRINGS: Yes, sir. He -- he's been -- Ever since
2 a settlement he got out of January of '07, this is the
3 first time any trouble has come about. And with my
4 daughter, that's the only support that I have is with him.
5 And we're supposed to go in on the 26th. I've already been
6 in one time. And I'm supposed to go back in on the 26th.
7 And if I go in, there's no way...

8 THE COURT: Best wishes to you, ma'am. Thank you.

9 MR. SMITH: Your Honor, with regard to the charge
10 itself. Obviously the jury found the higher offense. I
11 would submit to the Court that it is of the ranges of
12 strong armed robbery, it is not one of the more egregious.
13 Though we do understand his prior record, but would ask
14 some consideration for that, Your Honor.

15 THE COURT: Thank you.

16 Mr. Smith, anything you want to say to the Court?

17 DEFENDANT SMITH: I ask you and the Court to have
18 mercy on me. I didn't commit the crime. I didn't. And
19 I'm asking you and the Court to have mercy on me if it --
20 Please, sir.

21 THE COURT: Mr. Smith, when you have about a eighteen,
22 nineteen year old continuous record of stealing, robbing,
23 rape, and been in jail quite a bit of that time, your
24 credibility is not very good with the Court. And one of
25 the things I looked at in sentencing is to see if a person

SENTENCE

281

1 doesn't have any criminal record, I certainly give them the
2 benefit of that. If somebody has a lengthy criminal
3 record, and they've been in jail and trouble their whole
4 life, you've got a career criminal essentially is what you
5 are. I take that into consideration as well.

6 And I shudder to think what would have happened if
7 that sixteen-year-old girl had actually let you in her car
8 to take you somewhere. And what would have happened if you
9 have a record of criminal sexual conduct registered to
10 sexual offenders of another seventeen-year-old girl, I
11 shudder to think what would have happened. I'm just glad
12 you didn't get that opportunity. In any event, what's
13 before me today is not that obviously. And I'm not
14 considering that because that didn't happen. But, I'm just
15 saying, you do have a record for that in the past.

16 And I certainly believe you committed this strong
17 armed robbery. You didn't get a lot of money, but I
18 certainly believe you committed it. I don't think there's
19 any question about that.

20 In Case Number 2011-GS-46-1847, Todd Smith having been
21 found guilty by a jury of common law strong armed robbery
22 the sentence of the court is he be committed to the State
23 Department of Corrections for a determinate term of fifteen
24 years. He's given credit for any time he has served on
25 this particular charge.

SENTENCE

282

1 MS. JOYNER: Your Honor, may we approach, Mr. Smith
2 and I briefly?

3 (BENCH CONFERENCE OFF THE RECORD AT 05:28 PM.)

4 (COURT RECESSED AT 05:30 PM.)

5 - END OF TRANSCRIPT IN THE MATTER OF STATE V. TODD
6 EUGENE SMITH, INDICTMENT NO. 2011-GS-46-01847 -

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CERTIFICATE OF REPORTER

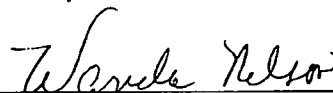
State of South Carolina)

)

County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 22nd and 23rd day of August 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2011

FORM 5
FILED-RECEIVED

STATE OF SOUTH CAROLINA

2013 AUG 25 AM 8:57

IN THE COURT OF COMMON PLEAS

COUNTY OF YORKDAVID HILTON
C.C.P. & CS
YORK COUNTY, SCTODD EUGENE SMITH 00346915

Full name and prison number (if any) of Applicant.

2013 QP46-2310

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kershaw Correction Center 4848 GOLDMIND HWY
KERSHAW, SC 29067
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS
16TH DISTRICT P.O. BOX 6911675-1E YORK SC 29745-0691
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011- GS-4601847 STRONG ARM ROBBERY
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 23, 2011 (15yr sentence)
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED (PURSUANT TO RULE 220 (b)) SCACR _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. APRIL 4, 2013 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. OMITTED _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NA _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
Ineffective Counsel / Unfair Jury Trial

- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) PETITIONER WAS MAKING AN OMISSION OF GUILT IN STATEMENT "I haven't robbed anyone"
- (c) COUNSEL FAILED TO SUBPOENA OFFICER TO ENCOUNTER PETITIONER AND INFORMED
HEAR THAT SOMEONE IN THE AREA HAD BEEN ROBBED.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) COUNSEL FAILED TO OBJECT TO PROSECUTOR'S STATEMENT →
- (b) SEE TRIAL Pg. 87 LINES 3-6
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? S.C. COURT OF APPEALS
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. APPEALS OF CHARGES IN WHICH THIS APPLICATION REFERS TO
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
- i. STATE OF SOUTH CAROLINA COURT OF APPEALS
 - ii. 1330 LADY STREET SUITE 401
 - iii. COLUMBIA, S.C. 29201-3332
 - iv. _____
- (c) the disposition thereof:
- i. AFFIRMED
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. April 4 2013
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. AFFIRMED
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- YES
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. State v Johnson 311 SE 132, 134 427 SE, 2d 718,
- ii. 719 (Ct. App 1993)
- iii. State v Liverman 727 S.E. 2d 422 (2012) the
South Carolina Supreme Court. (SEE BACK OF PAGE)
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) I HAVE NOT HAD A P.C.2 HEARING
- (b) APPELLATE COUNSEL DID NOT RAISE EFFECTIVE ISSUES ON BEHALF OF TRIAL COUNSEL
- (c) MISREPRESENTATION BY REFUSING TO SUPREMACY DEC. SMOTHERS TOTAL WORK TESTIMONY
WOULD HAVE BEEN HIGHLY FAVORABLE TO PETITIONER AND MAY HAVE FREED PETITIONER
17. Were you represented by an attorney at any time during the course of:

Question 15

When officer Stewart suggested to the victim that, OFFICERS did have the suspect in custody and need here to give a positive ID. (SEE TR P 87 Lines 3-6)

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes _____
- (c) your sentencing? yes _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes Appeals Court
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Kathrine H Hudgins _____
- ii. Division of Appellate Defense _____
- iii. 1330 Lady St. Suite 401 _____
Columbia, SC 29201-3332
- (b) the proceedings at which each such attorney represented you:
- i. Appeal _____
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
NEW TRIAL OR OVER TURN CONVICTION
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA

County of York

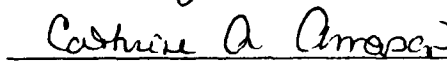
VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



Todd E. Smith

SWORN to and subscribed before me this 25
day of July, 2013.



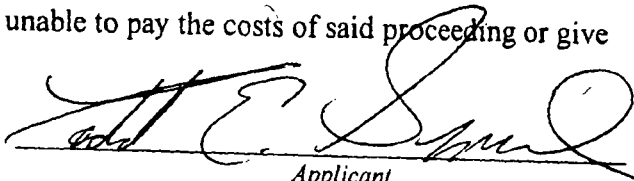
Catharine A. Amos (L.S.)
Notary Public

My Commission Expires: December 22, 2018

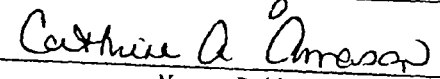
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
25 day of July, 2013.


Notary Public

My Commission Expires: December 22, 2018

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Todd Eugene Smith, #346915,

2013-CP-46-2310

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

FILED-RECEIVED
2014 MAR 24 PM 2:39
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

In response to the post-conviction relief application filed on August 5, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the August 2011 term of the York County Grand Jury for Strong Arm Robbery (2011-GS-46-1847). Phil Smith, Esquire, represented him. On August 23, 2011, the Applicant proceeded to a jury trial pursuant to which he was found guilty of Strong Arm Robbery. The Honorable Lee S. Alford sentenced the Applicant to confinement for fifteen (15) years.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Smith, 2013-UP-237 (filed June 5, 2013). The Remittitur was issued on June 25, 2013.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
 - a. "Counsel failed to object to Prosecutor's Statement"
2. "Petitioner was making an omission(sic) of guilt in stating "I haven't robbed anyone."
3. "Counsel failed to subpoena 1st officer to encounter Petitioner and informed him that someone in the area had been robbed."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

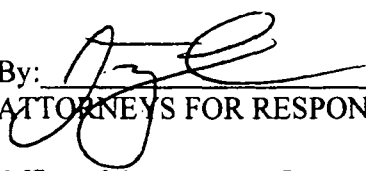
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 21, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2013-CP-46-2310

TODD E. SMITH, 346915

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

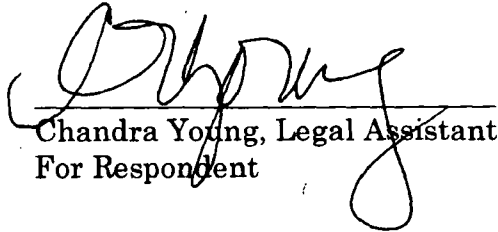
Respondent.

FILED-RECEIVED
2014 MAR 24 PM 2:39
DAVID H. SUTTON
C.C.P. & GS
YORK COUNTY, S.C.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
235 East Main Street; Suite 100
Rock Hill, SC 29731

DATED this 21st day of March, 2014.


Chandra Young, Legal Assistant
For Respondent

State of South Carolina.,) In the Common Pleas
) Court of York
)
) Case No.: 2013-CP-46-02310
 County of York.)

Todd Eugene Smith.,)
)
 Applicant.,)
)
 -vs-) Transcript of Record
) Post Conviction Relief
 State of South Carolina.,)
)
 Respondent.)
 _____)

April 15, 2014
 York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III, Judge.

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

Ms. Leah B. Moody
 Law Officers of Leah B. Moody
 235 East Main Street, Suite 115
 P.O. Box 1015
 Rock Hill, South Carolina 29730
 803-327-4192
lbmatty@comporium.net
 For the Applicant

Mr. Rutledge Johnson
 Assistant Attorney General
 South Carolina Attorney General's Office
 Rembert C. Dennis Building
 P.O. Box 11549
 Columbia, South Carolina 29211-1549
 803-734-3970
 For the Respondent

Wanda Nelson, CVR-M
 Official Court Reporter
 To the Honorable John C. Hayes, III
 Sixteenth Judicial Circuit

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-NWITNESSBY:PAGE NO.:

Todd Eugene Smith

Ms. Moody P.5-24

. P.30-31

Mr. Johnson P.24-30

. P.31

Phil Smith

Mr. Johnson P.32-36

. P.40-41

Ms. Moody P.36-39

Court Reporter's Certificate Page. P.42

I-N-D-E-XE-X-H-I-B-I-T-S .

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>

No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF TODD EUGENE SMITH
2 VERSUS STATE OF SOUTH CAROLINA TUESDAY, MAY 15, 2014 AT
3 09:10 A.M..)

4 MR. JOHNSON: Todd Smith.

5 (APPLICANT TODD SMITH, BLACK MALE, ENTERS COURTROOM.)

6 THE COURT: All right.

7 MR. JOHNSON: May it please the Court, Your Honor.

8 This is the case of Todd Smith versus State of South
9 Carolina. It's Case No. 2013-CP-46-2310. Mr. Smith was
10 indicted by the August 2011 term of the York County Grand
11 Jury for Strong Armed Robbery. On August 23, 2011 he
12 proceeded to a jury trial pursuant to which he was found
13 guilty of strong armed robbery.

14 The Honorable Lee S. Alford sentenced him to
15 confinement for fifteen years. A Notice of Appeal was
16 filed on his behalf and the appeal wasn't perfected. The
17 South Carolina Court of Appeals affirmed his conviction and
18 sentence. The remittitur was thereafter issued on June
19 25th, 2013.

20 Mr. Smith then filed a Post-Conviction Relief
21 Application on August 5th, 2013. The State filed it's
22 return March 21st, 2014. And he is represented here today
23 by Ms. Leah Moody.

24 THE COURT: Ms. Moody.

25 MS. MOODY: Thank you, Your Honor. May it please the

TODD EUGENE SMITH: DIRECT BY MS. MOODY

-5-

1 Court. Mr. Smith would like to come before the Court on
2 his PCR application based on his counsel's failure to
3 object to the Solicitor's statement made within the closing
4 as well as his counsel's failure to object to a statement
5 that was made in terms of guilt that he had not robbed
6 anyone. As well as the counsel's failure to subpoena the
7 officer - the first officer that came in contact with him
8 on that day.

9 THE COURT: All right. Call your first witness.

10 MS. MOODY: Thank you, Your Honor.

11 We would call Mr. Smith to the stand.

12 MADAM CLERK: Mr. Smith, if I can have you stop right
13 here and be sworn. Place your left hand on the Bible and
14 raise your right as far as you can.

15 (WHEREUPON, TODD EUGENE
16 SMITH, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
17 FOLLOWS:)

18 MADAM CLERK: Thank you. Thank you. Come around and
19 have a seat and just watch your set up.

20 THE COURT: All right.

21 DIRECT EXAMINATION

22 TODD SMITH BY MS. MOODY:

23 Q. Mr. Smith, could you please state your full name
24 for the record?

25 A. Todd Eugene Smith.

1 Q. And, Mr. Smith, where are you currently being held?

2 A. Kershaw Correctional Institution.

3 Q. And you're in Kershaw for what charge?

4 A. Strong armed robbery.

5 Q. Okay. And that's the reason why we're here today
6 with your post-conviction?

7 A. Yes.

8 Q. And who was your attorney on that case?

9 A. Phil Smith.

10 Q. And during the time that you were represented by
11 Mr. Smith, did you have an opportunity to go over your case
12 for strong armed robbery?

13 A. It was like one day.

14 Q. But you did have an opportunity to go over your case?

15 A. Yes.

16 Q. Okay. And when you went over your case after talking
17 with him you decided to go to trial?

18 A. Yes I did.

19 Q. Okay. And you went to trial on this case what day?

20 A. I think it was August the 29th, or somewhere around
21 in there.

22 Q. And would you agree with me that it was August 22nd?

23 A. 22nd.

24 Q. Through the 23rd?

25 A. Correct.

TODD EUGENE SMITH: DIRECT BY MS. MOODY

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1 Q. And you are here today on a post-conviction relief
2 hearing?

3 A. Yes.

4 Q. And you're grounds for this application are what?

5 A. Ineffective assistance of counsel.

6 Q. Okay. And what exactly do you mean by ineffective
7 assistance of counsel towards Mr. Smith?

8 A. He was ineffective for not subpoenaing the officer
9 that told me it was a strong armed robbery.

10 Q. So when the officer - Who was the officer that you're
11 talking about?

12 A. Smothers.

13 Q. And was Mr. Smothers a witness of your's that you
14 discussed with Mr. Smith?

15 A. Yes he was.

16 Q. And when you say he was your witness, how was he
17 gonna be your witness in this case?

18 A. Cause he was the one - after he stopped me he told
19 me it was a strong armed robbery.

20 MR. JOHNSON: Objection, Your Honor, to any hearsay
21 Officer Smother's would have said.

22 THE COURT: Well there is no jury here so I'll have to
23 make a proffer on it anyway so I'll take the objection
24 under advisement and let him testify.

25 BY MS. MOODY:

TODD EUGENE SMITH: DIRECT BY MS. MOODY

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1 Q So Mr. Smothers was gonna testify in your behalf?

2 A. Yes, ma'am.

3 Q. Did you have an opportunity to discuss this with Mr.
4 Phil Smith?

5 A. Yes I did.

6 Q. And what did you discuss with Mr. Smith?

7 A. That Officer Smothers told me there was a strong
8 armed robbery.

9 Q. Okay. And so let's put this in context. When you
10 were arrested for strong armed robbery and --

11 I have to ask the Court to take notice that it's in
12 the transcript.

13 THE COURT: And I got a transcript.

14 MS. MOODY: Okay.

15 Q. In terms of the strong armed robbery you came in
16 contact with Mr. Smothers after you got arrested?

17 A. Before I got arrested.

18 Q. Okay. Can you tell the Court how you came in contact
19 with Mr. Smothers?

20 A. When I was walking down the sidewalk and Officer

21 Smother's he stopped me and he said do you have any
22 identification and I said yes, sir, I do so I gave him my
23 identification. He walked around his car, got in his car,
24 he didn't handcuff me or nothing, he ran me in no warrants
25 and he brought my ID back. He said the reason why I

TODD EUGENE SMITH: DIRECT BY MS. MOODY

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1 stopped you it had been a strong armed robbery. He said go
2 ahead I see you have no warrants. And about that time
3 Officer Culbreath he came and put handcuffs on me and I
4 made the statement how come you putting handcuffs on my I'm
5 not robbing anybody. I haven't robbed anybody. And he
6 said how do you know it was a robbery? And I told him I
7 said Officer Smothers just told me it was a strong - a
8 robbery.

9 Q. And at this - Did this ever come into the trial?

10 A. Ma'am?

11 Q. Your statement that you hadn't robbed anybody, that
12 statement came into trial?

13 A. It did.

14 Q. Okay. And so you're stating that your attorney did
15 not subpoena Officer Smothers?

16 A. No, ma'am, he didn't.

17 Q. And at the trial what happened with regard to Officer
18 Culbreath?

19 A. He got on the stand and testified that I told him it
20 was a strong armed robbery.

21 Q. Are you sure about that he testified that you told
22 him there was a strong armed robbery?

23 A. Yes.

24 MR. JOHNSON: That's a mischaracterization of the
25 evidence, Your Honor.

1 THE COURT: Well I'm gonna ask her to show me the page
2 and line if she has it cause we do have a transcript.

3 MS. MOODY: Okay.

4 Q. So, on Page 50 - You have a copy of your transcript?

5 A. I do.

6 Q. Okay. And there was a Jackson v. Denno hearing.
7 Correct?

8 A. It was.

9 Q. And Officer Culbreath was called to the stand in that
10 Jackson V. Denno hearing?

11 A. Yes.

12 Q. On Page 50 from Line 1 can you read?

13 A. The Defendant, Mr. Smith said look - Mr. Smith I said
14 look I'm going to detain you and put the handcuffs on you.
15 He looked at me and said he said for what I haven't robbed
16 anybody."

17 Q. Okay. So that's the statement that you're talking
18 about?

19 A. Yes, ma'am, it is.

20 Q. And here today you're saying that Officer Smothers
21 would have testified that he told you that it was a strong
22 armed robbery?

23 A. Yes, ma'am.

24 Q. Okay. And was Officer Smothers called to the stand
25 in this trial?

TODD EUGENE SMITH: DIRECT BY MS. MOODY

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1 A. No, ma'am, he wasn't.

2 Q. So in terms of the State's case, the Solicitor never
3 called Officer Smothers to testify against you?

4 A. No, ma'am.

5 Q. And when it came down to your presenting evidence
6 did you all present any evidence?

7 A. No evidence whatsoever.

8 Q. And why is that? Do you know why?

9 A. Didn't have any evidence.

10 Q. So who was Officer Smothers to you?

11 A. Well Officer Smothers he was my witness that told me
12 that it was a strong armed robbery but they didn't call him
13 in to testify on my behalf.

14 Q. When you say they, who are you speaking of?

15 A. The State.

16 Q. The prosecutor?

17 A. The prosecutor.

18 Q. And so did you discuss this why they didn't call
19 Officer Smothers with your attorney?

20 A. Yes I did.

21 Q. And what did you all decide?

22 A. He said that Officer Smothers wasn't here.

23 Q. And how - What if anything do you know whether Officer
24 Smothers was available?

25 A. Explain that again.

TODD EUGENE SMITH: DIRECT BY MS. MOODY

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1 Q. Whether Officer Smothers was in the courtroom or
2 in the courthouse, what do you know?

3 A. According to Officer Smothers yesterday when I spoke
4 with him --

5 MS. MOODY: No.

6 MR. JOHNSON: Objection, Your Honor. Hearsay, Your
7 Honor.

8 THE COURT: I sustain the objection to that.

9 BY MS. MOODY:

10 Q. At the time of your trial --

11 A. Uh-huh.

12 Q. What if anything did you know of Officer Smothers
13 whereabouts?

14 A. None.

15 Q. Was he considered a witness for the State?

16 A. Well he wasn't here.

17 Q. In terms of who was to serve as a witness for the
18 State, do you know anything or what if anything did you
19 know about Officer Smothers?

20 A. Well he was - I think he was present but he was on
21 the outside. He wasn't in the courtroom.

22 Q. So in the courtroom did anyone ever mention Officer
23 Smothers name?

24 A. No, ma'am, they didn't.

25 Q. In terms of the witnesses that - the potential

TODD EUGENE SMITH: DIRECT BY MS. MOODY

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1 witnesses that the State would call did anyone mention
2 Officer Smothers' name?

3 A. No, ma'am.

4 Q. All right. So during the - after the Jackson v.
5 Denno hearing, your statement - There were three statements
6 that came in.

7 A. Uh-huh.

8 Q. Do you recall that?

9 A. I would have to look at those statements.

10 Q. Okay. Well if you would look at Page 51.

11 A. Okay.

12 Q. Was there another statement on Line 2 that was
13 referred - referred to in this hearing?

14 A. I need to read it?

15 Q. Yes. I'm sorry, start from Line 1.

16 A. "Had he yet said why I didn't rob anybody?"

17 "He didn't make that statement until after I put the
18 handcuffs on him."

19 Q. . And then if you go down can you read Line 9?

20 A. Yes. "Yeah, he just blurted out and said I didn't
21 rob anybody. I didn't actually mean any questions or
22 anything in that nature."

23 Q. Now when - Your position is that your attorney did
24 not call Officer Smothers to the stand.

25 A. Uh-huh.

1 THE COURT: You need to say yes or no. You can't just
2 say huh-huh, uh-huh. You have to say yes or no.

3 A. Okay, Your Honor. Thank you.

4 Q. So the statements that were just read ---

5 A. Yes.

6 Q. --- those are the statements that you're alleging
7 were a response to Officer Smothers comments?

8 A. Yes.

9 Q. And in the trial what happened, how were those
10 statements used against you?

11 A. It was used against me - It was used against me
12 based upon the prosecutor painting a picture for the jury
13 that I stated that I hadn't robbed anybody.

14 Q. How so?

15 A. Had my attorney objected to - Had my attorney
16 objected to this issue it could have been raised in the
17 Court of Appeals.

18 Q. Okay.

19 A. Right.

20 Q. So you all had the Jackson v. Denno hearing.

21 A. Uh-huh.

22 Q. The Court allowed those statements in?

23 A. Yes.

24 Q. Okay. And after the jury was called to the jury box
25 they were in evidence from the State. Correct?

TODD EUGENE SMITH: DIRECT BY MS. MOODY

-15-

1 A. Yes.

2 Q. And did those statements come into evidence?

3 A. Yes.

4 Q. And at that time are you saying your attorney did
5 not object?

6 A. No he did not.

7 Q. Okay. And after those statements came in, how were
8 those statements used against you by the prosecution?

9 Q. What did the prosecution say was the purpose of those
10 statements?

11 A. The prosecution - How about rephrasing that?

12 Q. Okay. You're alleging that those statements had an
13 effect on the outcome of your trial. Correct?

14 A. Yes.

15 Q. How do they have an effect on the outcome of your
16 trial?

17 A. If my attorney would have ejected - -

18 Q. Objected?

19 A. Objected to that statement it would a had a different
20 verdict or outcome in the trial.

21 Q. Why?

22 A. Because the prosecutor painted a picture to the
23 jury that I knew or I'm the one that committed that crime
24 of robbery.

25 Q. Because?

1 A. Because I gave that statement to the second officer
2 based upon the statement that Officer Smothers had actually
3 given me that it was a robbery.

4 Q. But earlier you testified that Officer Smothers was
5 not in the courtroom.

6 A. He was in the courtroom.

7 Q. Okay. And he didn't go on the stand?

8 A. No he didn't.

9 Q. So are you saying that the way the evidence came
10 across was that you just made these statements out of the
11 clear blue sky?

12 A. No. Yeah.

13 Q. So --

14 THE COURT: I'll take it as a yes.

15 MS. MOODY: Okay.

16 THE COURT: I understand what he says.

17 MS. MOODY: Okay.

18 Q. And so your - Did you put up any evidence after the
19 State's case?

20 A. No.

21 Q. Okay. And you are alleging that you told your
22 attorney about this witness and he didn't subpoena that
23 witness?

24 A. Correct.

25 Q. Okay. And the prejudice is that you got convicted?

TODD EUGENE SMITH: DIRECT BY MS. MOODY

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1 A. Yes..

2 Q. Okay. And there was another statement that was
3 made by the Solicitor that you indicated that your attorney
4 should have objected to. What is that statement? Can you
5 please give us the page?

6 A. Yes. Now rephrase that one more time please.

7 Q. There was another statement that the prosecutor made
8 in the trial that you felt your attorney should have
9 objected to. What was that statement?

10 A. . Yes. On Page 246.

11 THE COURT: All right, I got it.

12 Go ahead.

13 A. Do you want me to read it, sir?

14 THE COURT: You can read it if you want but I need
15 to know what line and page cause I need to know exactly
16 what the --

17 A. Page 246 starting at Line 5.

18 Q. Can you read the statement?

19 A. Yes. "He said one red sticker that's all you going
20 to get. These stickers are what the court reporter puts on
21 evidence that's introduced by the State in this case. One
22 red sticker. Seventeen police officers on scene but
23 they're thirty minutes from where it occurred a perimeter
24 from where it occurred and property being taken at
25 perimeter set up and they get right there and the State

1 gives you one red sticker and what is it on?" "A photo
2 they grabbed off the internet." He said "where's the
3 evidence in this case?"

4 Q. Okay. That's the statement that your attorney argued
5 in the trial?

6 A. Yes.

7 Q. Okay. And that was in response to what statement
8 by the solicitor?

9 A. Yes.

10 Q. What statement by the solicitor are you referring to
11 is what I'm asking you.

12 THE COURT: This statement ---

13 A. Yes.

14 THE COURT: --- from your attorney Mr. Smith.

15 A. Yes, sir.

16 THE COURT: Your complaint is that the prosecutor --

17 MS. MOODY: Ms. Joyner.

18 THE COURT: Ms. Joyner made some statement Mr. Smith
19 should have objected to.

20 A. Yes.

21 THE COURT: We want to know that statement, is that
22 Ms. Joyner made.

23 A. Oh. I got to get that page. I'm trying to find the
24 page.

25 Q. So you're referring to Page 234?

TODD EUGENE SMITH: DIRECT BY MS. MOODY

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1 A. Yeah, I think it was.

2 Q. Line 4?

3 A. Yes.

4 Q. Can you read that statement?

5 A. Yes. It said "the statement that the State doesn't
6 have to show you, ladies and gentlemen, that the defense is
7 planted right here - right there. So all we have to do is
8 to show you - all we have to do is show to you and prove to
9 you beyond a reasonable doubt that he did - that he did the
10 fact go and steal from The Days of Cycles." That's Line 4.

11 Q. And you felt your attorney should have objected to
12 that?

13 A. Yes.

14 Q. And why is that?

15 A. Why that? Cause I wasn't the one that robbed
16 everybody.

17 Q. So your attorney should have objected to what the
18 State presented in their case or what the State said in
19 their closing?

20 A. Yes.

21 Q. Is there anything else you felt your attorney should
22 have objected to?

23 A. Yes. The prosecutor clearly attempted to mislead
24 the jury to believe that I made the statement I didn't rob
25 anybody without beforehand knowledge. Had the officers and

1 in fact Officer Smothers informed me of the robbery before
2 I spoke with the second officer. Clearly without the
3 prosecutor misconduct - -

4 MR. JOHNSON: Your Honor, first of all, that is not
5 --

6 THE COURT: I think we've already covered that issue.
7 I think I've got his --

8 I've got your concerns about the Smothers matter and
9 how it affected your trial.

10 A. Yeah.

11 MR. JOHNSON: And just for the record, Your Honor,
12 prosecutorial misconduct A, was not alleged in his
13 application and his direct appeal issue was not for the PCR
14 Court.

15 MS. MOODY: That's not one of his grounds, Your Honor.

16 MR. JOHNSON: Thank you.

17 MS. MOODY: I think he's just using that term.

18 THE COURT: Okay.

19 A. And according to --

20 MS. MOODY: Well the Judge understands your - what
21 your complaint is, that Officer Smothers was not brought to
22 testify?

23 A. Yes.

24 Q. And that's based on your felt your attorney should
25 have subpoenaed that witness?

TODD EUGENE SMITH: DIRECT BY MS. MOODY

-21-

1 A. Yes.

2 Q. And based on that you would have had a different
3 effect at the outcome of your trial?

4 A. Yes, ma'am.

5 Q. And what is the relief you're seeking from the Court?

6 A. I feel - Well they gave me the max, fifteen non-
7 violent. And I feel that I've done enough time. I'm
8 seeking a relief of the time cut or a new trial in this
9 case.

10 Q. Well you realize that Judge Hayes cannot give you a
11 time cut here?

12 A. Okay. That's good.

13 Q. So you understand that all he can offer to you is
14 relief from this actual matter finding that your attorney
15 was ineffective?

16 A. Yes.

17 Q. Okay. And that you were prejudiced in some kind of
18 way?

19 A. Yes, ma'am.

20 Q. So your relief that you're requesting from the Court
21 today is you would request a new trial?

22 A. A new trial.

23 Q. Is there anything else you would like to relate to
24 the Court regarding this matter?

25 A. Yes. According to these pictures that they grabbed

1 off the internet, I would like to have these an exhibit.

2 Q. And what are those pictures?

3 MR. JOHNSON: Your Honor, that is not in the
4 application and the State would object to any pictures
5 being introduced.

6 THE COURT: I sustain the objection. We've got to go
7 on what's been set forth in your application.

8 You want to make a proffer?

9 What are the pictures of?

10 A. These here pictures of the grabbed off the internet
11 that they said it was me. That's - that they have in the
12 transcript in the statement.

13 THE COURT: I'll let you put 'em in evidence. I don't
14 know what I can consider them for but if you want to put
15 something into evidence let's go ahead and do it and move
16 on.

17 MS. MOODY: Well, Your Honor, I think what his point
18 is, he's trying to show that that's why the officer - these
19 go as to why Officer Smothers should be or should have been
20 called as his witness in his defense. That his statement
21 regarding his innocence I think that's where he's trying to
22 go with that.

23 THE COURT: I mean I understand he's said that. We've
24 gone over that and over that and over that. I got that.

25 I'm not quite as thick as I might appear. But I don't

TODD EUGENE SMITH: DIRECT BY MS. MOODY

-23-

1 know how the pictures come into play but I'll be glad for
2 you to tell me how the pictures have anything to do with
3 Officer Smothers.

4 A. According to the statement that - that was spoken of
5 on the transcript and that my attorney - trial attorney
6 brung out on Page 260 - on Page 246 about how they grabbed
7 these photos off the internet - how he grabbed these off
8 the internet and to make it seem as though - How can I put
9 it?

10 THE COURT: Were they introduced in the trial? Were
11 they put in the record during your trial?

12 MR. JOHNSON: It was one picture, Your Honor, that
13 was introduced at trial.

14 A. Yeah.

15 MR. JOHNSON: It should be in the Clerk's office.

16 THE COURT: That would be part of the record.

17 The one picture that was presented during trial is
18 in the record and I can see it ---

19 A. Yes.

20 THE COURT: --- if you want me to look at it.

21 A. Please, sir.

22 THE COURT: Okay.

23 MS. MOODY: Your Honor, that would be it from Mr.
24 Smith's position. We would ask the Court - We've ask the
25 State if they would leave the record open as to Officer

1 Smothers. There is one question to be ask of him and that
2 would be our position on this case. I understand the
3 State has no objection to that simply because --

4 THE COURT: I don't mind leaving the record open but I
5 don't know - He said he talked to Officer Smothers
6 yesterday so why not is Smothers here today?

7 MS. MOODY: Cause I didn't subpoena Officer Smothers.
8 Based on the transcript - May we approach, Your Honor?

9 THE COURT: No. I'll just - What do you plan to do,
10 do a deposition?

11 MS. MOODY: No, sir. It's one question based on a
12 comment from his prior attorney and the transcript and
13 based on what he's indicated to me.

14 THE COURT: When you say one question but how do you
15 pose that question and answer to me by way of deposition or
16 --

17 MS. MOODY: Having him come here today.

18 THE COURT: Today?

19 MS. MOODY: Yes, sir.

20 THE COURT: All right. I'll leave it open for the
21 remainder of the day to get Mr. Smothers here. All right.

22 You can --

23 Cross examination?

24 MR. JOHNSON: Thank you, Your Honor. May it please
25 the Court.

TODD EUGENE SMITH: CROSS BY MR. JOHNSON

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CROSS-EXAMINATION

TODD EUGENE SMITH BY MR. JOHNSON:

Q. Mr. Smith, you claim that Officer Smothers was not in the courtroom that day. Correct?

A. Correct.

Q. Are you aware that there in the jury void dire that the State ask these certain witnesses to stand on Page 14 of your transcript and Officer Smothers was one of those witnesses and that he was present in the courtroom that day?

A. Page 14?

Q. Yes, sir. The list of names they read and one of them on Line 9 started Mike Smothers, Rock Hill City or Rock Hill Police Department.

A. You said Page 14. Right?

Q. Yes, sir.

A. And Line 9. Okay.

Q. Yes, sir. So in fact he was in the courtroom that day: Correct?

A. Sir, I didn't see him in the courtroom.

Q. But according to the transcript he would a been there. According to the transcript he would a been present.

A. Okay.

Q. Correct? Correct? I need an answer from you, sir.

A. According to the transcript.

1 Q. Okay.

2 THE COURT: Well the transcript speaks for itself.

3 MR. JOHNSON: Thank you, Your Honor.

4 THE COURT: I think you can move on.

5 MR. JOHNSON: All right.

6 Q. And you have read Page 50 about Sergeant Culbreath
7 asking you, he said, "You know, look, I'm going to detain
8 you." And you said, "Hey, for what? I haven't robbed
9 anybody." Correct? You read that.

10 A. Correct.

11 Q. Will you read Line 4 through 6 for me out loud.

12 THE COURT: What page is that again?

13 MR. JOHNSON: That is at Page 50, Your Honor.

14 A. "Okay. Now at that point in time had you or Officer
15 Smothers told the suspect why he was being detained?"

16 "No."

17 Q. Okay. Thank you. And you also state that one of the
18 statements on Page 51, Line 1, you read Line 1 through 3
19 which is why I didn't rob anybody. Answer. "You didn't
20 make that statement until after I took the handcuffs off."

21 Will you read Lines 4 through 6 out loud please?

22 A. Was that in response to any questions that you ask
23 him?" "I didn't ask him any questions."

24 Q. Thank you, sir. Now going to the evidence that was
25 presented. Your claim is that Mr. Smith should have

TODD EUGENE SMITH: CROSS BY MR. JOHNSON

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1 subpoenaed Officer Smothers to testify at your trial in
2 your behalf. Correct?

3 A. Yes.

4 Q. Okay. And you're saying that the statement that
5 Officer Smothers would make would change the out come of
6 your trial. Right?

7 A. Yes.

8 Q. Okay. But let's look at the evidence in this case.

9 All right, Ms. Minor testifies that she's getting
10 out of her car about to walk insider of her house.
11 Correct?

12 A. Yes.

13 Q. Okay. And that you approach her asking for something
14 for Valentine's Day for your daughter. Correct?

15 A. That's what the statement says.

16 Q. That's what she says. Right?

17 A. Yes.

18 Q. Okay. And that she goes to give you the candy. She
19 gives you Valentine's Day candy. Right? For your
20 daughter.

21 A. Uh-huh.

22 Q. Yes?

23 A. Yes, sir, according to her statement.

24 Q. And then she goes to turn to give you some food and
25 you see a Twenty Dollar bill in her back pocket. Correct?

1 A. According to the statement, sir.

2 Q. Okay. And then at that point she states that you got
3 aggressive and got loud and said you, you know, you might
4 want to give me that money. Correct? That's her
5 testimony?

6 A. That's her testimony.

7 Q. Okay. And then later after she calls 911 and the
8 police detain you, there is a line up where she is driven
9 by you and sees you. Correct?

10 A. Yes.

11 Q. Okay. She identifies you. Right?

12 A. Yes.

13 Q. Okay. And that was brought in during the trial.
14 Correct?

15 A. Uh-huh.

16 Q. Okay. And on that evidence the jury convicts you.
17 Correct?

18 A. Yes, sir.

19 Q. Okay. And then after you were convicted and found
20 guilty, your prior record is read into the record.
21 Correct?

22 A. Yes.

23 Q. Okay. And that includes larceny in 1993. Correct?

24 A. Yes.

25 MS. MOODY: Objection.

TODD EUGENE SMITH: CROSS BY MR. JOHNSON

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1 THE COURT: Well again it's in the record.

2 You can go ahead and ask him the question but --

3 BY MR. JOHNSON:

4 Q. You had multiple convictions for larceny and robbery.

5 Correct? This isn't your first time you have been
6 accused of stealing something from somebody. Correct?

7 A. Yes.

8 Q. You've been convicted of that in the past. Correct?

9 A. Yes.

10 Q. And you have also been convicted of kidnaping and
11 rape. Correct?

12 A. Yes.

13 Q. Okay.

14 A. That case I been won though.

15 Q. And you're also aware that your attorney in his
16 closing argument used your statements on your behalf. He
17 said look, my client said hey, I didn't rob anybody.

18 Correct?

19 A. Yes.

20 Q. So you're attorney argued that what you said to the
21 police officers shows that you did not commit the crime.

22 Correct?

23 A. Correct.

24 Q. Okay. And are you also aware that a solicitor or
25 prosecutor is allowed to use the evidence that was

TODD EUGENE SMITH: CROSS BY MR. JOHNSON
REDIRECT BY MS. MOODY

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1 presented at trial to argue your guilt and that it is her
2 job to argue that you are guilty beyond a reasonable doubt?

3 Are you aware of that?

4 A. I'm aware of that, sir.

5 Q. Okay.

6 MR. JOHNSON: No further questions, Your Honor.

7 THE COURT: All right. Any redirect?

8 MS. MOODY: Yes, sir, Your Honor.

9 REDIRECT EXAMINATION

10 TODD EUGENE SMITH BY MS. MOODY:

11 Q. As far as the victim Ms. Minor , she gave - How
12 many statements did she give?

13 A. I think it was four.

14 Q. And did you think that that played a role in your
15 case?

16 A. I think it played a big role because wasn't none of
17 'em that the statements coincide with one another.

18 Q. Say that again, please.

19 A. Was none of the statements coincide with one another.
20 All of them had their different own pictures.

21 Q. And let me make sure I understand what you're saying.
22 You're saying that the statements were inconsistent?

23 A. Inconsistent.

24 Q. Okay. And so they gave a different picture?

25 A. Yes.

TODD EUGENE SMITH: REDIRECT BY MS. MOODY
RECROSS BY MR. JOHNSON

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1 Q. Okay. And did your attorney address that issue?

2 A. I don't think he did.

3 Q. And is that why you feel that the testimony from
4 Officer Smothers would have been important?

5 A. Yes.

6 MS. MOODY: No further questions, Your Honor.

7 MR. JOHNSON: Two questions, Your Honor.

8 RECROSS-EXAMINATION

9 TODD EUGENE SMITH BY MR. JOHNSON:

10 Q. Mr. Smith, are you aware that these incidents and
11 statements by Ms. Minor your attorney cross examined her
12 thoroughly on those saying hey you put this in the
13 statement but you didn't put this in the statement?

14 A. Yes.

15 Q. Okay.

16 MR. JOHNSON: No further questions.

17 THE COURT: All right. You can step down and have
18 seat
19 with your attorney.

20 (WITNESS LEAVING WITNESS STAND.)

21 THE COURT: Call your next witness.

22 MS. MOODY: No other witnesses, Your Honor. We would
23 just ask that the record - - -

24 THE COURT: We'll get Mr. Smothers over - -
25 The State.

PHIL SMITH: DIRECT BY MR. JOHNSON

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1 MR. JOHNSON: Call Mr. Phil Smith to the stand, Your
2 Honor.

3 (WHEREUPON, PHIL SMITH, BEING
4 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5 DIRECT EXAMINATION

6 PHIL SMITH BY MR. JOHNSON:

7 Q. Good morning, Mr. Smith.

8 A. Good morning.

9 Q. And please tell the Court how you became involved
10 in this case.

11 A. Yes. Mr. Smith was appointed to the Public Defender's
12 Office for representation. I believe two other attorneys
13 in our office has had the file before I got it but I was
14 ultimately assigned the case and represented him up and
15 through his trial.

16 Q. And about how many times did you meet with Mr. Smith?

17 A. I have notes from a number of different visits the
18 month before trial and then the month of and in addition he
19 had Ms. Springs with him a lady who he appointed sort of a
20 resource contact person. I met with her a number of times
21 as well.

22 Q. So more than the only one time he claims that you
23 met with him?

24 A. Oh, yeah. Yes, sir.

25 Q. Okay. And did you file discovery in this case?

PHIL SMITH: DIRECT BY MR. JOHNSON

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1 A. It would have been filed before I got the case but
2 our office did yes.

3 Q. And did you review that discovery with Mr. Smith?

4 A. I did.

5 Q. And did you get his side of the story in this case?

6 A. I did.

7 Q. And what would that have been?

8 A. That he didn't do it.

9 Q. And can you elaborate on what he would have said? Did
10 he claim that he ever ask - that he ever approached Ms.
11 Minor or?

12 A. No. He just said he was walking up to the area where
13 somebody must have gotten robbed and that they stopped him
14 and put handcuffs on him. That's why he got accused.

15 Q. His big gripe today is that you failed to subpoena
16 Officer Smothers in hopes that Officer Smothers will
17 testify that he told Mr. Smith that it was a strong armed
18 robbery in the area. Did he ever inform you about Officer
19 Smothers?

20 A. No. Officer Smothers was on the State's witness list
21 and was not called by them. But we would not have intended
22 to call Officer Smothers as a witness.

23 Q. And why wouldn't you have called Officer Smothers as
24 a witness?

25 A. A couple of reasons. One I don't know of the issue

PHIL SMITH: DIRECT BY MR. JOHNSON

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1 that Mr. Smith brings up today concerning that he's saying
2 that that is the source of this information of him knowing
3 about a robbery on the day of. I think in the transcript
4 Sergeant Culbreath covered that at that point no one had
5 said anything to Mr. Smith about there being a robbery so I
6 wouldn't have had reason to do that. And secondly, would
7 not have wanted to call an extra member of law enforcement
8 for the State and then allow the State to basically end my
9 case with them cross examining or leading an officer
10 through all the evidence that they believed they had
11 against Mr. Todd Smith at that point. I would not think
12 that would have been a good point for us to end up.

13 Q. And what was your trial strategy, if any, in this
14 case?

15 A. We were hopeful or we were going to contest the
16 identification. It was a show up identification. I argued
17 it was unduly suggestive unfortunately we lost the Neal v.
18 Biggers hearing on that issue and I believe the appeal was
19 lost on that issue as well. Our next hope was that it
20 would come down largely to the word of the victim alone.
21 We were successful in trial. They really didn't introduce
22 anything other than I believe an aerial photo other than
23 that so it was our hope that the jury would not believe her
24 testimony. And that there would be a basic lack of
25 evidence that would cause jurors to pause and cause them

PHIL SMITH: DIRECT BY MR. JOHNSON

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1 not to convict Mr. Smith.

2 Q. Now I know that the Neal v. Biggers has been dealt
3 with by the Appellate Courts. The Jackson v. Denno.

4 In the transcript you did not challenge the Jackson v.
5 Denno. Is there a reason why you did not challenge that?

6 A. I don't think I had legal grounds to.

7 Q. And why not?

8 A. Two issues: One with the statements that were not in
9 response to any questioning or before he was in custody so
10 I think I had different prongs on the various statements.
11 But I did not see from the testimony any statement that was
12 given in custody in response to questioning.

13 Q. Another allegation of Mr. Smith's is that you failed
14 to object to the prosecutor's statement at closing
15 argument. Have you reviewed the transcript?

16 A. I have.

17 Q. And have you reviewed specifically the closing
18 argument of Erin Joyner?

19 A. I have.

20 Q. And to this day do you find anything objectionable in
21 that closing argument?

22 A. No. I listened to the paragraph that Mr. Smith just
23 read to the Court and I think that's a correct statement by
24 the State concerning the law.

25 Q. And do you agree with me that Solicitor's have a

PHIL SMITH: DIRECT BY MR. JOHNSON
CROSS BY MS. MOODY

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1 wide range to argue the facts of the case as long as they
2 do not inflame the jurors and or get outside the facts of
3 the case?

4 A. They do.

5 Q. Did Mr. Smith bring up any other witnesses' to your
6 attention?

7 A. Through our discussions he brought up different
8 witnesses and different things that he might like used or
9 might like introduce but as the trial progressed it was our
10 decision not to call any of those or any - or introduce any
11 of those items.

12 Q. Was he on board with that decision?

13 A. Oh, yes. It was his decision.

14 MR. JOHNSON: Your Honor, I think that's all I have
15 at this time.

16 Thank you, Mr. Smith.

17 THE COURT: Cross?

18 CROSS-EXAMINATION

19 PHIL SMITH BY MS. MOODY:

20 Q. Mr. Smith, who were those witnesses that would
21 have been called?

22 A. He gave me a Little Billy, a Tamara, Ms. Springs, and
23 a Tonya as well as two photographs that they had given me.

24 Q. And those witnesses, did you have an opportunity to
25 meet with those witnesses or talk to those witnesses?

PHIL SMITH: CROSS BY MS. MOODY

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1 A. I met with Ms. Springs.

2 Q. Okay. And who is Ms. Springs?

3 A. He described her at one point as his wife and another
4 his fiance but she was the main contact person for me
5 concerning the case who helped me gather things. A very
6 nice lady.

7 Q. And so your testimony here today is after you all
8 discussed what they would offer you guys decided not to
9 call them?

10 A. That's correct.

11 Q. Okay. Now as to the Jackson v. Denno hearing, the
12 statement of I didn't rob anybody, you stated that you
13 didn't think you had grounds for objecting to those
14 statements coming in?

15 A. That's correct.

16 Q. Okay. If you would have had grounds what would you
17 have done in terms of those statements?

18 A. I would have had made a motion that those statements
19 be suppressed. I did hold the Jackson v. Denno pretrial
20 hearing and if I had felt there was a ground I would have
21 ask the Court to issue a ruling that those statements were
22 not admissible at trial.

23 Q. But in this incidence even though you did make that
24 motion to suppress the State did make a ruling as to the
25 statements coming in?

PHIL SMITH: CROSS BY MS. MOODY

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1 A. The judge indicated --

2 THE COURT: The Court made the ruling, not the State.

3 MS. MOODY: Oh, I'm sorry. I meant to say the Court,
4 Your Honor.

5 A. Yeah. Judge Alford indicated that there was a
6 litney of cases supporting that those would be admitted and
7 I think he said he wasn't gonna go through all of them then
8 but he did indicate that he thought there was evidence that
9 - I'm sorry - that he did not see evidence to suppress the
10 statements.

11 Q. And so when those statements would have come back up
12 would have been through the testimony of that particular
13 officer. Correct?

14 A. That's correct.

15 Q. Okay. And at that time would have been a problem
16 for you to object to those statements?

17 A. To preserve the record I would have had to objected,
18 yeah. It would not have been a big problem for me but I
19 didn't believe there was a legal basis for the suppression
20 so I did not object.

21 Q. So your main strategy in this matter was that the
22 identification and to basically position the victim to
23 believe Mr. Smith over - excuse me - position the jury to
24 believe Mr. Smith over the victim?

25 A. Well Mr. Smith didn't testify but I - It was my hope

PHIL SMITH: CROSS BY MS. MOODY

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1 that without any other physical evidence or forensic
2 evidence that they would have a difficult time believing
3 just the word of one person in convicting a man based
4 solely upon that.

5 Q. And of all the other witnesses they would not have
6 added any other information to this particular case that
7 would have been helpful to Mr. Smith?

8 A. You mean the names that he had given me?

9 Q. The witness - I'm sorry. Of the witnesses that Mr.
10 Smith gave you those witnesses would not have added
11 anything to his case?

12 A. As he discussed they all had potential merits but
13 over all we didn't think that any of them would have been
14 more positive than negative for our case so decided not to
15 call them.

16 Q. Did you have an opportunity to talk to Officer
17 Smothers or Detective Smothers?

18 A. I did not.

19 Q. And your testimony today is that Mr. Smith never
20 mentioned that he talked to Mr. Smothers first?

21 A. I don't recall that ever being brought up as an issue.
22 I don't recall even contemplating calling Officer
23 Smothers to the stand.

24 MS. MOODY: I beg the Court's indulgence.

25 (PAUSE AT 11:27 A.M..)

PHIL SMITH: REDIRECT BY MR. JOHNSON

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1 MS. MOODY: No further questions for this witness,
2 Your Honor.

3 THE COURT: Anything else from the State?

4 MR. JOHNSON: Just one, Your Honor.

5 REDIRECT EXAMINATION

6 PHIL SMITH BY MR. JOHNSON:

7 Q. Mr. Smith, do you have a copy of the transcript?

8 A. I do.

9 Q. Will you turn to Page 201.

10 A. I'm there.

11 Q. And will you read Line 7 through 11.

12 A. Question. At the point in time in which you said
13 I'm going to detain you, if he responded quote why I hadn't
14 robbed anybody had you or Officer Smothers told the
15 Defendant the reason that he was being detained?

16 Answer. No we didn't.

17 Q. And that's Officer Culbreath testifying?

18 A. That's Officer Culbreath this time at trial, not
19 - I believe the prior testimony was at his in-camera
20 hearing.

21 Q. And is this another reason why you wouldn't have
22 called Officer Smothers who had - would he have anything to
23 add on your case?

24 MS. MOODY: Objection, Your Honor.

25 THE COURT: I over rule the objection.

1 A. No I would not have seen any benefit in calling
2 Officer Smothers in this trial. Nor did I have any
3 indication that there would be anything that he could give
4 us that would be beneficial.

5 MR. JOHNSON: No further questions.

6 MS. MOODY: Nothing.

7 THE COURT: You can step down and be excused unless
8 you have another applicant.

9 MR. SMITH: Thank you, Your Honor.

10 THE COURT: Thank you.

11 (WITNESS LEAVING WITNESS STAND.)

12 THE COURT: Anything else from the State?

13 MR. JOHNSON: No, sir.

14 THE COURT: I'll take the matter under advisement and
15 we'll leave it open for Mr. Smothers hopefully later today.

16 MS. MOODY: Thank you, Your Honor.

17 (COURT IN RECESS AT 11:30 P.M..)

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 15th day of April, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson
Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE:

July 27 / 2014

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Todd Eugene Smith, #346915,)

C.A. No.: 2013-CP-46-2310

Applicant,)

v.)

ORDER

State of South Carolina,)

Respondent.)

FILED-RECEIVED
2014 APR 16 PM 4:02
CLERK OF COURT
YORK COUNTY, SC

This is a post-conviction relief application filed August 5, 2013. The case was heard before the Undersigned on April 15, 2014, at the Moss Justice Center in York, South Carolina. Applicant was represented by Leah Moody, Esq., and the State by J. Rutledge Johnson, Esq.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The applicant was indicted by the August 2011 term of the York County Grand Jury for Strong Arm Robbery (2011-GS-46-1847). The Applicant was represented by Phil Smith, Esquire. On August 23, 2011, the Applicant proceeded to a jury trial and was found guilty of Strong Arm Robbery. The Honorable Lee S. Alford sentenced the Applicant to confinement in the South Carolina Department of Corrections for a period of fifteen (15) years. A notice of appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence and issued a Remittitur on June 25, 2013. *State v. Smith*, 2013-UP-237 (Filed June 5, 2013).

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"

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- a. "Counsel failed to object to prosecutor's statement"
2. "Petitioner was making an omission (sic) of guilt in stating 'I haven't robbed anyone.'"
3. "Counsel failed to subpoena 1st officer to encounter Petitioner and informed him that someone in the area had been robbed."

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for

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counsel's alleged errors, she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)..

At the PCR hearing held April 15, 2014, Applicant testified that Police Officer Smothers told him a robbery had taken place before the Applicant ever made the statement "I didn't rob anybody" to several police officers. (Trial Transcript - Page 51, Lines 9-10) Applicant alleges ineffective assistance of counsel in that trial counsel failed to call Officer Smothers as a witness in the case. Additionally, Applicant alleges ineffective assistance by trial counsel's failure to object to such statement being used against him at trial. Specifically, the Applicant alleges that the outcome of his trial would have been different if this statement would not have been introduced. The Applicant testified that he believed the statement he made to the second officer based on Officer Smother's earlier statement to him made it appear that he had committed the crime. He testified that the evidence "came across like he made statements concerning robbery out of the clear blue sky." The Applicant testified that he felt his attorney should have objected to this statement because he did not commit the robbery and should have called Officer Smothers as a witness on his behalf.

The Applicant's trial counsel, Phil Smith Esq., also testified at the PCR hearing. Trial counsel testified that the Applicant never informed him of the statement Officer Smothers allegedly made to the Applicant before the Applicant made the statement that "he didn't rob anybody" to the other officers. Trial counsel also testified that during the trial Sgt. Culbreath stated that nobody had said anything to the Applicant about a robbery before he made the statement to the officers. Trial counsel also testified that his trial strategy was to contest the identification of the Applicant and that he would not have called an extra member of law enforcement for his case and provided the State with a chance to cross examine the officer and

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"end on a bad point." Trial counsel also testified that he did not have any legal grounds to object to the Applicant's statement being introduced at trial. Trial counsel testified that the statement Applicant made was not in response to any question posed by members of law enforcement.

The record was left open after the hearing in order to have Officer Smothers come testify. Leah Moody, Esq., checked with Officer Smothers, who after reviewing his notes and incident report, could not recall anything that would substantiate the Applicant's testimony regarding his initial consultation with Officer Smothers.

In *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998), the South Carolina Supreme Court held that:

This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) (applicant established prejudice where nurse's notes presented at PCR hearing corroborated lack of penetration in sexual assault case); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice); see also *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998) (applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." *Glover v. State*, supra, 318 S.C. at 498-99, 458 S.E.2d at 540.

Here, the Applicant could not produce the testimony of Officer Smothers to establish prejudice from Officer Smother's failure to testify at trial. In fact, it now appears Officer Smothers at this time could not substantiate Applicant's allegation. The Court cannot rely on hearsay or mere speculation as to what Officer Smother's testimony would have been at the time of trial.

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Therefore, the Court finds that trial counsel was not ineffective in his failure to subpoena Officer Smothers.

In *Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002), the South Carolina Supreme Court held:

Where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992); *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). However, counsel cannot assert trial strategy as a defense for failure to object to comments which constitute an error of law and are inherently prejudicial. See *Dawkins v. State*, 346 S.C. 151, 551 S.E.2d 260 (2001)(Counsel's failure to object to prejudicial hearsay because he did not want to "confuse or upset the jury" was not valid strategy); *Gallman v. State*, 307 S.C. 273, 414 S.E.2d 780 (1992)(Trial counsel's failure to object to judge's comments inviting jury to prematurely discuss the case was not "strategic" where error of law involved and such comments are inherently prejudicial).

The Court finds that trial counsel was not ineffective by failing to object to the statement "I didn't rob anybody," as such statement was not an error of law.

Additionally, Applicant alleged that trial counsel was ineffective by failing to object to the solicitor's statement "The State doesn't have to show you, ladies and gentlemen, that he devised his plan right there. All we have to do is show to you and prove to you beyond a reasonable doubt that he did, in fact, go and steal from Minor" (Trial Transcript – Page 234, Lines 4-8). Trial counsel testified that there was nothing objectionable in the solicitor's statement and he believed that this was a correct statement concerning the law. The Court finds that trial counsel's failure to object to this statement does not constitute ineffective assistance of counsel as there is nothing in this statement amounting to an error of law.

Applicant also alleges that trial counsel was ineffective for making the following statement during his closing argument: "And what's it on? A photo they grab off the internet." (Trial Transcript – Page 246, Lines 11-12). The Court has reviewed trial counsel's closing argument and finds no error of law in trial counsel's statement. This statement appears to be a

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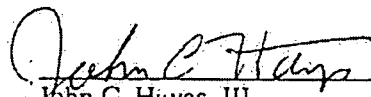
valid and good argument, and at worse would be considered trial strategy. The Court finds that such strategy does not constitute any error of law.

Based on the record and the testimony at the Post-Conviction Relief hearing, the Court finds that Applicant has failed to carry his burden of proof and failed to prove that, when the appropriate standards set forth hereinabove are applied, trial counsel's representation of him was ineffective to any degree.

Wherefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice. This Court hereby advises Applicant that she must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rule 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

April 16th, 2014
York, South Carolina


John C. Hayes, III
Presiding Judge

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WITNESSES

RHPDLaw

AMENDED
DOCKET NO. 2011-GS-46-01847

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

The State of South Carolina
County of York

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

August 18, Term 2011

Defendant

Witness:

C.C.C. PLS. AND G.S.

Jwg

ARREST WARRANT NUMBER

J131911

ACTION OF GRAND JURY

/s/ Tracy Bolin

TRUE BILL

06/16/11 True Billed

Foreperson of Grand Jury *George H. Smith*
Date: *8/18/11*

VERDICT

GUILTY

Indictment for
STRONG ARM ROBBERY

Foreperson of Petit Jury *[Signature]*
Date: *23 AUG 11*

SC Code: 16-11-325
CDR Code: 0137

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

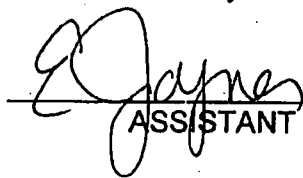
INDICTMENT

At a Court of General Sessions, convened on August 18, 2011, the Grand Jurors of York County present upon their oath:

STRONG ARM ROBBERY

The Defendant, Todd Eugene Smith, did in York County, South Carolina, on or about February 13, 2011, feloniously take and carry away from the person or presence of the victim, ^{Minor} [REDACTED], goods or monies of the victim, such goods or monies being described as follows: the defendant did demand and take money in the amount of Twenty Dollars (\$20.00) from the victim, with the intent to deprive the owner permanently of such property. All in violation of §16-11-325, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR