

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

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S.C. Supreme Court

OSHAWN J. ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000933

A P P E N D I X

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 O'SHAUN J. ROBINSON AND)
 KENNETH M. WORKMAN,)
)
 DEFENDANTS.)
 _____)

2008-GS-23-5381 - 5384
2008-GS-23-5527 - 5530
TRANSCRIPT OF RECORD

JANUARY 14 - 15, 2009
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE C. VICTOR PYLE, JR.

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

LUCAS MARCHANT, ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANTS:

ANDREW MOORMAN, ESQUIRE
SCOTT ROBINSON, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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Voir Dire

Case No.: 2008-GS-23-5381-5384

Judge: C. Victor Pyle

Date: 1/14/09 - 1/15/09 5527-5530

Court/County: Greenville

Plaintiff/State: State

Attorney: Lucas Marchant

Defendant: O'Shaun Robinson +

Attorney: Andy Montman

Kenneth Workman

Scott Robinson

Court Reporter: Susan Hudgins

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Defendant	
133	Robert Moran	W	M				✓
211	Judith Siler	W	F		X		
106	David Land	W	M				✓
149	Alison Patrick	W	F		X		
164	Frank Richards	W	M				✓
215	Harriet Wilson	B	F				✓
75	Bryan Hayes	W	M			X	
3	Frances Anderson	B	F				✓
138	Robert Newell	W	M			X	
119	Dwight Mangum	W	M				✓
150	Amy Perkins	W	F				✓
69	William Haley	W	M				✓
146	Patricia Owens	B	F		X		
26	Jewel Bunche	B	F				✓
1	Jayce Abdullahi	B	F				✓
34	Caron Collier	W	M				✓

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for Court, "P" for Plaintiff, or "D" for Defense.

Voir Dire

Case No.: 2008-GS-23-5381-5384

Date: 1/14/09 - 1/15/09 5527-5530

Plaintiff/State: State

Judge: C. Victor Pilo

Court/County: Greenville

Attorney: Lucas Marchant

Defendant: Shawn Robinson &

Kenneth Workman

Attorney: Rubin Marmann

Scott Robinson

Court Reporter: Susan Hudgins

[illegible]

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for Court, "P" for Plaintiff, or "D" for Defense.

1 THE COURT: ALL RIGHT. NOW I UNDERSTAND WE HAVE SOME
2 MOTIONS BEFORE WE START.

3 MR. MOORMAN: I DO, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 MR. MOORMAN: THE FIRST MOTION WE WOULD HAVE, YOUR
6 HONOR, IS A MOTION IN LIMINE TO PRECLUDE THE VICTIM'S IN
7 COURT IDENTIFICATION OF MY CLIENT. THE BASIS FOR THE MOTION
8 WOULD BE RULE 403 IN THAT THIS -- THE PROBATIVE VALUE OF
9 THIS VICTIM'S IDENTIFICATION WOULD BE -- WOULD BE VERY LOW
10 BECAUSE OF THE FACT, A COUPLE OF FACTS.

11 FIRST, THAT THE INITIAL IDENTIFICATION HE MADE WAS
12 BASED ON A NEWS BROADCAST AND NOT ON A PHOTO LINEUP. SO THE
13 INITIAL PROCEDURE IN AND OF ITSELF WAS EXTREMELY SUGGESTIVE.
14 AND ANY SUBSEQUENT IDENTIFICATION COMING FROM THAT WOULD BE
15 UNRELIABLE AND WITH THE DANGER FOR UNFAIR PREJUDICE.

16 THAT COUPLED WITH THE FACT THAT THIS VICTIM HAS MADE AN
17 IDENTIFICATION IN COURT IN THIS VERY COURTROOM WITH OUR
18 CLIENTS SITTING IN THE SAME CHAIRS, YOUR HONOR, WOULD, I
19 WOULD ARGUE, WOULD UNDERMINE ITS RELIABILITY. AND THAT'S
20 WHY WE WOULD MOVE TO EXCLUDE THE IN COURT IDENTIFICATION.

21 THE COURT: SOLICITOR.

22 MR. MARCHANT: MAY IT PLEASE THE COURT, YOUR HONOR?
23 THE VICTIM, HIS TESTIMONY IS GOING TO SHOW THAT ABOUT TWO
24 WEEKS AFTER THE LATEST INCIDENT HE WITNESSED OR VIEWED A
25 TELEVISION BROADCAST EITHER BY NBC, CBS, FOX, ONE OF THE

1 LOCAL TELEVISION STATIONS. UPON THAT VIEWING HE STATES HE
2 IMMEDIATELY RECOGNIZED TWO OF THE THREE PERSONS THAT WERE IN
3 THAT. THIS WAS DONE THROUGH THE MEDIA. IT WAS NOT LAW
4 ENFORCEMENT. IT WAS NOT STATE ACTION.

5 UPON THAT VIEWING HE CONTACTED INVESTIGATOR HANNING
6 WITH THE SHERIFF'S OFFICE AND INFORMED HIM THAT THOSE WERE
7 TWO OF THE MEN THAT HAD ROBBED HIM. SO IT WAS THROUGH NO
8 INFLUENCE OF LAW ENFORCEMENT OR THE STATE HE VIEWED OR HAD A
9 PRIOR VIEWING OF THESE ALLEGED DEFENDANTS.

10 AS HIS HONOR IS AWARE IN THE LAST TRIAL HE DID TAKE THE
11 STAND AND TESTIFY AND SAID THAT THAT WAS NOT AN INFLUENTIAL
12 PART OF HIS IDENTIFICATION. HE HAD AVAILABILITY AND AN
13 OPPORTUNITY TO OBSERVE THESE TWO DEFENDANTS THE NIGHT IN
14 QUESTION, AND HE IDENTIFIED THEM ON THE STAND. THERE WAS
15 JUST SIMPLY NOT AN OPPORTUNITY FOR HIM TO DO A PHOTO LINEUP
16 OR ANYTHING OF THAT NATURE IF HIS HONOR REMEMBERS THIS PRIOR
17 CASE.

18 SO IT'S THROUGH NO FAULT OF LAW ENFORCEMENT THAT THIS
19 VICTIM HAD THE OPPORTUNITY. SO WE WOULD ASK THAT THE -- NOT
20 ONLY THE ABILITY FOR THE VICTIM TO TALK ABOUT WHERE HE SAW,
21 BUT ALSO THAT THE IN COURT IDENTIFICATION IS PROPER IN THIS
22 CASE, YOUR HONOR.

23 THE COURT: ALL RIGHT, MR. MOORMAN.

24 MR. MOORMAN: YOUR HONOR, I WOULD DISAGREE. WELL,
25 FIRST, THE REASON WHY WE USE THE RULE 403 AS THE BASIS FOR

1 THE MOTION IS BECAUSE AS YOUR HONOR KNOWS BETTER THAN I DO,
2 THAT STATE ACTION WOULDN'T BE NECESSARY FOR -- TO EXCLUDE IT
3 PURSUANT TO RULE 403 AS OPPOSED TO A DUE PROCESS BASIS.

4 WE WOULD -- I WOULD DISAGREE WITH MR. MARCHANT'S
5 CHARACTERIZATION THAT THE VICTIM MADE THE IDENTIFICATION ON
6 NEWS BROADCAST THROUGH NO FAULT OF LAW ENFORCEMENT. THE
7 EVIDENCE IS GOING TO SHOW THAT MR. TIMOTHY WRIGHT IDENTIFIED
8 MY CLIENT. AFTER HE IDENTIFIED MY CLIENT, MY CLIENT WAS
9 ARRESTED. AND THEN MY CLIENT'S PICTURE WAS PUT ON THE NEWS.

10 HAD THE STATE CHOSEN, THE STATE COULD HAVE TAKEN THE
11 STATEMENT FROM MR. WRIGHT, PRODUCED A PHOTO LINEUP, SHOWN IT
12 TO THE VICTIM, HAD THE VICTIM MAKE THE IDENTIFICATION PRIOR
13 TO MAKING AN ARREST AND PRIOR TO IT GOING ON THE NEWS. SO I
14 WOULD DISAGREE AND ARGUE THAT THE STATE HAD EVERY
15 OPPORTUNITY TO PREVENT THE SUGGESTIVE IDENTIFICATION BY
16 SHOWING THE VICTIM A PHOTO LINEUP PRIOR TO MAKING AN ARREST.

17 THE COURT: ALL RIGHT. NOW LET ME ASK YOU THIS. THIS
18 IS THE IDENTICAL MOTION YOU MADE AT THE PRIOR TRIAL AND I
19 DENIED THE MOTION, IS ---

20 MR. MOORMAN: THAT'S CORRECT.

21 THE COURT: --- THAT CORRECT? ALL RIGHT. THEN I'M
22 GOING TO ADOPT AND MAKE IT A PART OF THE RECORD IN THIS CASE
23 THE MOTION IN THE PRIOR TRIAL. AND THE MOTION IS AGAIN
24 DENIED.

25 MR. MOORMAN: YES, SIR, YOUR HONOR.

1 THE COURT: OKAY.

2 MR. MARCHANT: THANK YOU, YOUR HONOR.

3 MR. MOORMAN: YOUR HONOR, I DO HAVE ANOTHER SIMILAR
4 MOTION THAN I DID FROM THE LAST TRIAL. MR. TIMOTHY WRIGHT'S
5 STATEMENT, I HAD MADE A MOTION IN THE LAST TRIAL TO EXCLUDE
6 PORTIONS OF HIS STATEMENT, SPECIFICALLY HIS STATEMENT THAT
7 DEALS WITH OTHER ARRESTS THAT WERE MADE RELATED TO OTHER
8 CRIMES.

9 FIRST I WOULD MOVE TO REDACT ANY PORTION OF THAT
10 STATEMENT.

11 THE COURT: DID WE DO THAT BEFORE?

12 MR. MARCHANT: YES, YOUR HONOR. AND THERE'S NO
13 OBJECTION. THE STATE WILL BE QUESTIONING MR. WRIGHT ABOUT
14 THIS INCIDENT THAT HE HAS PLED GUILTY TO AS WELL AS A
15 SUBSEQUENT INCIDENT THAT HE HAS PLED GUILTY TO WITH NO
16 IMPLICATION OF THESE DEFENDANTS IN THAT SUBSEQUENT GUILTY
17 PLEA.

18 AND THERE ARE A FEW THINGS IN MR. WRIGHT'S STATEMENT
19 THAT DO REFER TO THIS TIME ON THIS ROBBERY. AND I'M
20 CERTAINLY NOT GOING INTO THAT. AND I HAVE INSTRUCTED MR.
21 WRIGHT ON MORE THAN ONE OCCASION ---

22 THE COURT: ALL RIGHT.

23 MR. MARCHANT: --- ONLY TO DISCUSS THIS ROBBERY.

24 MR. MOORMAN: YES, SIR. YOUR HONOR, I WOULD ALSO MAKE
25 A MOTION TO HAVE THE STATE REVEAL TO ME ANY DEALS THAT HAVE

1 BEEN MADE BETWEEN THE STATE AND MR. TIMOTHY WRIGHT. I MADE
2 THIS MOTION BEFORE. I DO BELIEVE THOUGH THAT THERE HAS BEEN
3 A CHANGE IN THE PROCEDURAL POSTURE OF HIS CASES SINCE THE
4 TRIAL. SO I DO MAKE IT AGAIN.

5 THE COURT: MR. MARCHANT.

6 MR. MOORMAN: I BELIEVE THAT THERE WERE OTHER CHARGES
7 THAT HE HAD PENDING AT THE TIME OF THE FIRST TRIAL AND
8 EITHER SOMETIME DURING THE FIRST TRIAL OR AFTER THESE
9 CHARGES WERE DISMISSED.

10 MR. MARCHANT: THAT'S CORRECT, YOUR HONOR. IT WAS
11 DURING THE FIRST TRIAL. PRIOR TO HIS TESTIMONY I DISMISSED
12 ALL REMAINING CHARGES. AT THIS TIME THERE ARE NO
13 OUTSTANDING CASES PENDING AGAINST MR. WRIGHT. HE HAS BEEN
14 SENTENCED ON THIS OFFENSE.

15 MR. MOORMAN: I JUST HAVE ONE QUESTION. SO THE CHARGES
16 WERE DISMISSED THE DAY HE TESTIFIED IN THE PRIOR TRIAL, BUT
17 BEFORE HE TESTIFIED, IS THAT CORRECT?

18 MR. MARCHANT: THAT IS CORRECT.

19 MR. MOORMAN: OKAY.

20 THE COURT: OKAY.

21 MR. MOORMAN: ALL RIGHT.

22 MR. ROBINSON: YOUR HONOR, ON BEHALF OF MR. WORKMAN THE
23 MOTION THAT I HAD THAT MR. -- THAT YOU HAVE RULED ON, I JUST
24 WANTED TO MAKE SURE THAT -- THIS IS MY CONCERN AS FAR AS THE
25 MOTION TO SUPPRESS THE MEDIA IDENTIFICATION THAT THE ALLEGED

1 VICTIM MADE -- THE VICTIM MADE IN THIS CASE. WHAT I DON'T
2 -- WHAT WE DON'T KNOW IS WHAT KIND OF INVOLVEMENT THAT LAW
3 ENFORCEMENT HAD IN TERMS OF GETTING THIS IMAGE OF THESE
4 THREE FELLOWS OR FOUR FELLOWS TO THE MEDIA.

5 I MEAN, THAT'S -- I DID SOME RESEARCH ON THIS AS FAR AS
6 HOW THEY GET THESE THINGS TO THE MEDIA AND SO FORTH. AND
7 I'M A LITTLE CONCERNED. MY CONCERN IS THAT IT IS NOT ONLY
8 THE SUGGESTIVENESS OF IT IN TERMS ---

9 THE COURT: THE IDENTIFICATION OF WHO?

10 MR. ROBINSON: IDENTIFICATION OF ---

11 THE COURT: OF YOUR CLIENT?

12 MR. ROBINSON: YES, YOUR HONOR.

13 THE COURT: OKAY.

14 MR. ROBINSON: IS THE SUGGESTIVENESS OF IT. I JUST --
15 WE'RE JUST -- I'M CONCERNED ABOUT THE ROLE OF LAW
16 ENFORCEMENT IN PRESENTING THESE PICTURES TO THE MEDIA
17 BECAUSE WHILE THERE WAS NO LINEUP, THIS WAS NOT LIKE OTHER
18 CASES IN THE SENSE THAT IT WAS TWELVE OR A NUMBER OF DAYS
19 LATER, THERE WAS NO PHOTO LINEUP EVER DONE IN THIS CASE.

20 AND THAT'S THE BIGGEST ISSUE WE HAVE IN OUR -- IN OUR
21 MOTION TO SUPPRESS ON BEHALF OF MR. WORKMAN IS THAT WE'RE
22 NOT -- THIS WAS A MEDIA -- IT WAS EITHER -- I THINK IT WAS
23 CHANNEL 4, ONE OF THE MEDIA NETWORKS, BUT THE ROLE OF LAW
24 ENFORCEMENT IS WHAT WE'RE CONCERNED ABOUT THAT WOULD --
25 'CAUSE IT'S A VERY, VERY SUGGESTIVE, SUGGESTIVE THING WHEN

1 THESE THREE GUYS OR FOUR GUYS ARE SHOWN OVER THE NEWS AND
2 THIS VICTIM, WHO HAS NOT IDENTIFIED THEM BEFORE SAYS THOSE
3 ARE THE GUYS WITHOUT ANY LINEUPS AND A NUMBER OF DAYS LATER.

4 AND I'D LIKE THE OPPORTUNITY TO PROTECT -- IF LAW
5 ENFORCEMENT'S AVAILABLE TO PROFFER THE TESTIMONY OF ONE OF
6 THESE OFFICERS AS FAR AS IF THEY HAD ANY INVOLVEMENT WITH
7 THAT.

8 THE COURT: SOLICITOR.

9 MR. MARCHANT: YOUR HONOR, I WOULD ASK YOU TO OVERRULE:
10 THAT OBJECTION BY MR. ROBINSON. I DON'T KNOW WHAT MR.
11 WEINER KNOWS ABOUT THE -- GETTING PHOTOGRAPHS TO THE MEDIA
12 OR ANYTHING LIKE THAT. I'D BE HAPPY FOR MR. ROBINSON TO
13 QUESTION HIM IF THE COURT SO PLEASES. BUT I THINK MR.
14 ROBINSON'S MOTION IS THE SAME AS MR. MOORMAN'S MOTION. AND
15 I'D ASK YOU TO DENY IT.

16 THE COURT: MR. MOORMAN.

17 MR. MOORMAN: AND, YOUR HONOR, MR. ROBINSON DOES RAISE
18 AN ISSUE THAT WE WOULD ALSO -- INITIALLY WE MADE THE MOTION
19 BASED ON THE 403 BASIS. BUT IF, IN FACT, THAT LAW
20 ENFORCEMENT HAD A ROLE IN RELEASING THESE PICTURES TO THE
21 MEDIA, THEN I DO THINK THERE WOULD BE AN ARGUMENT MR.
22 O'SHAUN ROBINSON WOULD HAVE THAT THAT CONSTITUTES STATE
23 ACTION.

24 AND SO FOR THE PURPOSES OF A DUE PROCESS VIOLATION I DO
25 THINK THEN THAT MR. O'SHAUN ROBINSON -- WE CAN ARGUE THAT

DAVID WEINER - DIRECT EXAMINATION BY MR. ROBINSON

13

1 THE IDENTIFICATION SHOULD BE INADMISSIBLE ALSO ON A DUE
2 PROCESS BASIS BECAUSE OF STATE ACTION RELATED ---

3 THE COURT: ALL RIGHT. YOU WANT TO QUESTION THE
4 OFFICER?

5 MR. ROBINSON: I WOULD, YOUR HONOR.

6 THE COURT: ALL RIGHT. COME AROUND, PLEASE, TO BE
7 SWORN.

8 DAVID WEINER, BEING DULY
9 SWORN TESTIFIED AS FOLLOWS:

10 MADAME CLERK: THANK YOU. PLEASE BE SEATED. PLEASE
11 STATE YOUR FULL NAME FOR THE RECORD.

12 MR. WEINER: DAVID WEINER.

13 MR. ROBINSON: MAY IT PLEASE THE COURT?

14 THE COURT: YES.

15 DIRECT EXAMINATION BY MR. ROBINSON:

16 Q. OFFICER WEINER, YOU'VE HEARD THE MOTION, YOU'VE HEARD
17 WHAT WE'RE TALKING ABOUT HERE. WHAT WAS YOUR ROLE IN THIS
18 INVESTIGATION OF MR. WORKMAN AND MR. ROBINSON? WHAT WERE
19 THE -- WHAT WAS YOUR ROLE?

20 A. I WAS ASSIGNED TO THE ARMED ROBBERY DIVISION. AT THE
21 TIME THERE WERE, I THINK, THREE INVESTIGATORS DOWN THERE AND
22 THE SUPERVISOR. AND I HAD ONE OF THE MULTIPLE CASES THEY
23 WERE CHARGED IN.

24 Q. AT WHAT -- WAS THE MEDIA EVER CONTACTED REGARDING THIS
25 IN TERMS OF THE PHOTOS OF THESE INDIVIDUALS?

DAVID WEINER - DIRECT EXAMINATION BY MR. ROBINSON

14

1 A. MY UNDERSTANDING IS THE WAY IT WORKS IS THAT THERE'S
2 LIKE A FOLDER THAT SITS AT OUR FRONT DESK AT THE SHERIFF'S
3 OFFICE. AND THE MEDIA WILL COME DOWN EVERY DAY AND REVIEW
4 THAT FOLDER. AND OUR PUBLIC INFORMATION OFFICER, I THINK
5 THERE'S TWO OF THEM, WILL REVIEW THE REPORTS. AND A
6 SUPPLEMENT IS TURNED IN THAT DAY TO LOOK FOR THINGS THAT THE
7 PRESS MAY BE INTERESTED IN. AND THAT'S BASICALLY HOW THAT
8 HAPPENS.

9 Q. SO -- BUT ---

10 A. I DO NOT RELEASE ANYTHING TO THE PRESS.

11 Q. BUT REGARDING THIS PARTICULAR -- ARE YOU FAMILIAR WITH
12 THE POLICIES OF THE DEPARTMENT IN TERMS OF RELEASING
13 PICTURES IN AN ONGOING INVESTIGATION? ARE YOU INVOLVED WITH
14 THAT AT ALL?

15 A. IF WE HAVE ACTIVE WARRANTS -- IT'S MY UNDERSTANDING IF
16 WE HAVE ACTIVE WARRANTS ON A PERSON OR THEY'RE IN OUR
17 CUSTODY AND HAVE BEEN CHARGED, THAT INFORMATION CAN BE
18 RELEASED, YOU KNOW, CERTAIN PORTIONS OF IT, THEIR NAME, WHAT
19 THEY'VE BEEN CHARGED WITH, THINGS LIKE THAT.

20 Q. SO AS FAR AS YOUR INVOLVEMENT WITH THIS ARMED ROBBERY
21 INVESTIGATION FOR THESE INDIVIDUALS MY CLIENT, MR. WORKMAN
22 AND MR. MOORMAN'S CLIENT, THESE PICTURES CAME FROM WHERE?
23 WHERE DID THESE PICTURES OF THESE FOLKS COME FROM? DO YOU
24 KNOW?

25 A. WE HAVE A DATABASE, YOU KNOW, FROM PRIOR ARRESTS OR IF

DAVID WEINER - DIRECT EXAMINATION BY MR. ROBINSON

15

1 THEY WERE IN OUR CUSTODY.

2 Q. BUT ON THIS PARTICULAR ARMED ROBBERY CASE -- WHAT DO
3 YOU PUT -- IN THAT FOLDER -- YOU'VE SEEN THE FOLDER BEFORE,
4 CORRECT?

5 A. CORRECT.

6 Q. OKAY. IN THE FOLDER DOES IT HAVE -- DOES IT HAVE
7 PICTURES OF THE INDIVIDUALS THAT HERE SETS SUSPECTS IN AN
8 ARMED ROBBERY CASE? WHAT DO YOU -- WHAT DO YOU HAVE?

9 A. WHAT WILL BE THERE WILL BE A COPY OF THE WARRANT WITH
10 THE DEFENDANT'S NAME ON THE WARRANT WITH THEIR PHOTOGRAPH,
11 YOU KNOW, FROM OUR DATABASE AS WELL AS AN ORIGINAL COPY OF
12 THE REPORT, THE INITIAL REPORT TAKEN.

13 Q. THE QUESTION I HAVE FOR YOU THOUGH IS AT THE TIME THESE
14 PICTURES WERE PUT IN THIS FOLDER YOU HAD NOT ISSUED ANY
15 WARRANTS FOR THESE THREE INDIVIDUALS, HAD YOU?

16 A. NO, WE HAVE TO. WE CAN'T PUT THEIR PICTURES OUT UNLESS
17 THE WARRANTS ARE OUT.

18 Q. OKAY. BUT YOU DIDN'T HAVE AT THAT POINT ANY SORT OF --
19 AT THAT POINT WHAT WAS THE INVESTIGATION? WHAT WAS THE --
20 YOU PUT -- STRIKE THAT. YOU PUT PICTURES OF THESE
21 INDIVIDUALS IN THERE FOR AN ARMED ROBBERY CASE, IS ---

22 A. CORRECT.

23 Q. --- THAT CORRECT?

24 A. YES.

25 Q. AS SUSPECTS, CORRECT?

DAVID WEINER - DIRECT EXAMINATION BY MR. ROBINSON

16

- 1 A. I DIDN'T PUT THE PICTURES IN THERE, BUT OUR PIO DID,
2 CORRECT. THEY HAD BEEN CHARGED WITH ARMED ROBBERY. IT WAS
3 NOT IN THIS CASE.
- 4 Q. NOT IN THIS CASE?
- 5 A. CORRECT. IT WAS THE ONE WHERE MR. ROBINSON SEATED
6 THERE, HIS FINGERPRINT MATCH HAD COME BACK.
- 7 Q. BUT HOW ABOUT MR. WORKMAN?
- 8 A. AS FAR AS WHAT?
- 9 Q. HE WASN'T -- HE WASN'T CHARGED AT THAT POINT?
- 10 A. HE WAS, YEAH.
- 11 Q. WAS CHARGED WITH WHICH ROBBERY?
- 12 A. WITH THE CASE WHERE MR. ROBINSON'S FINGERPRINT CAME
13 BACK.
- 14 Q. OKAY. SO HE WAS CHARGED WITH BOTH AT THE SAME TIME,
15 CORRECT?
- 16 A. YEAH. HE -- MR. ROBINSON, MR. WORKMAN AND MR. WRIGHT.
- 17 Q. OKAY. SO IT GETS PUT INTO THIS PUBLIC INFORMATION
18 FILE, ---
- 19 A. CORRECT.
- 20 Q. --- AND THE MEDIA COMES BY AND PICKS IT UP?
- 21 A. CORRECT.
- 22 Q. CORRECT?
- 23 A. CORRECT.
- 24 Q. ARE THERE ANY OTHER -- ARE THERE ANY OTHER PICTURES IN
25 THERE AT ALL OF ANY OTHER POTENTIAL SUSPECTS OR ANYTHING

DAVID WEINER - DIRECT EXAMINATION BY MR. MOORMAN

17

1 LIKE THAT?

2 A. RELATED TO THIS CASE?

3 Q. YEAH.

4 A. NO, I MEAN, ONLY ONES WE HAVE WARRANTS ON. THAT'S IT.

5 Q. BUT YOU DIDN'T DO ANY PHOTO LINEUPS OF -- YOU DIDN'T
6 BRING IN THE VICTIM AND GIVE ANY PHOTO LINEUPS OR ANYTHING
7 LIKE THAT ---

8 MR. MARCHANT: YOUR HONOR, I OBJECT. I DON'T KNOW WHAT
9 THAT HAS TO DO WITH ---

10 THE COURT: YEAH, ---

11 MR. MARCHANT: --- WHETHER OR NOT THESE PICTURES WERE
12 RELEASED.

13 THE COURT: RIGHT. ALL RIGHT. ANYTHING ELSE?

14 MR. ROBINSON: NO, SIR, YOUR HONOR.

15 MR. MOORMAN: MAY I JUST ASK ---

16 THE COURT: SURE.

17 DIRECT EXAMINATION BY MR. MOORMAN:

18 Q. INVESTIGATOR WEINER, WHO HAS ACCESS TO THESE PICTURES?

19 A. YOU MEAN LIKE THE DATABASE ITSELF?

20 Q. YES.

21 A. ANY LAW ENFORCEMENT OFFICER.

22 Q. DOES THE GENERAL PUBLIC HAVE ACCESS TO THESE PICTURES?

23 A. YOU KNOW, I DON'T KNOW. I KNOW YOU CAN GO ON THE
24 WEBSITE AND LOOK AND SEE WHAT PEOPLE HAVE BEEN CHARGED WITH,
25 BUT I DON'T KNOW IF YOU CAN GET THEIR PICTURE OR NOT.

DAVID WEINER - CROSS EXAMINATION BY MR. MARCHANT

18

1 Q. SO THE ONLY PEOPLE OR ENTITY WHO HAS ACCESS TO THESE
2 PICTURES ON THIS DATABASE IS LAW ENFORCEMENT ENTITIES AND
3 DEPUTIES, OTHER LAW ENFORCEMENT PERSONNEL?

4 A. CORRECT.

5 Q. SO AS A MEMBER OF THE GENERAL PUBLIC, I COULDN'T GO IN
6 THERE AND HAVE ACCESS TO THESE PICTURES IN YOUR DATABASE?

7 A. I DON'T KNOW THE ANSWER TO THAT. I MEAN, I WOULD THINK
8 THAT IF WE'VE RELEASED THEM TO THE PRESS, THEN THAT WOULD
9 MEAN THAT IT'S PUBLIC INFORMATION AT THAT POINT AND THAT YOU
10 WOULD, IN FACT, HAVE ACCESS TO THOSE PICTURES.

11 Q. WELL, AND I'M TALKING ABOUT ACCESS.

12 A. YOU COULDN'T LOOK AT ALL OF THEM, IF THAT'S WHAT YOU'RE
13 ASKING.

14 Q. I COULD ONLY LOOK AT THE ONES THAT YOU MADE AVAILABLE
15 IN THE FOLDER?

16 A. CORRECT. I GUESS THAT'S ...

17 MR. MARCHANT: YOUR HONOR, IF I COULD FOLLOW UP ON THAT
18 POINT.

19 CROSS EXAMINATION BY MR. MARCHANT:

20 Q. DETECTIVE WEINER, ARE YOU FAMILIAR WITH THE ON-LINE
21 AVENUE WHERE THE GENERAL PUBLIC CAN GO IN AND ACCESS INMATES
22 THAT ARE CURRENTLY HOUSED IN THE LAW ENFORCEMENT CENTER?

23 A. YES.

24 Q. DOES THAT ON-LINE ACCESS -- IS IT LIMITED TO LAW
25 ENFORCEMENT?

DAVID WEINER - CROSS EXAMINATION BY MR. MARCHANT

19

1 A. NO.

2 Q. DOES THAT ON-LINE ACCESS PROVIDE PHOTOGRAPHS OF
3 INDIVIDUALS WHO ARE CURRENTLY HOUSED AND ONLY CURRENTLY
4 HOUSED?

5 A. YES.

6 Q. DID YOU PUT ANYTHING ABOUT THIS CASE UP-FRONT OR
7 RELEASE ANYTHING TO THEIR MEDIA GUY?

8 A. NOT THAT I RECALL. LIKE I SAID, THE ONLY ONE I
9 REMEMBER PERTAINING TO IS ONE WHERE MR. ROBINSON'S
10 FINGERPRINT CAME BACK. THAT'S -- THAT'S WHERE THIS ORIGINAL
11 STUFF STARTED.

12 Q. AND TO BE CLEAR, IS THAT THIS CASE?

13 A. NO.

14 Q. OKAY. THANK YOU.

15 THE COURT: I SEE NO BASIS TO CHANGE MY RULING.

16 MR. MOORMAN: YES, SIR.

17 THE COURT: ALL RIGHT. ANYTHING ELSE?

18 MR. MOORMAN: YES, SIR. JUST TWO MORE MOTIONS BY MR.
19 ROBINSON. YOUR HONOR, I WOULD MAKE A MOTION TO SEVER. AND
20 I WOULD MAKE A MOTION TO SEVER BASED ON THE FACT THAT MR.
21 SCOTT ROBINSON AND I IN THE LAST TRIAL UTILIZED DIFFERENT
22 TRIAL STRATEGIES, SPECIFICALLY ---

23 THE COURT: YOU CAN STEP DOWN.

24 MR. WEINER: THANK YOU, SIR.

25 MR. MOORMAN: IN THE LAST TRIAL, IF YOUR HONOR

1 REMEMBERS, FOR EXAMPLE, WE -- WHEN THE VICTIM WAS ON THE
2 STAND ON CROSS EXAMINATION BOTH MR. ROBINSON AND I
3 QUESTIONED THE WITNESS ABOUT THE NEWS BROADCAST. I HAD
4 QUESTIONED THE WITNESS VERY BRIEFLY ABOUT THE FACT THAT HE
5 SAW OUR CLIENTS' PICTURES AND THEN HE MADE THE
6 IDENTIFICATION.

7 MR. ROBINSON HAD QUESTIONED THEN THE VICTIM A LITTLE
8 BIT MORE STRENUOUSLY ABOUT WHAT WAS ON THE NEWS BROADCAST
9 POTENTIALLY OPENING THE DOOR FOR EVIDENCE OF THIS -- OF
10 OTHER CRIMES THAT HAD BEEN COMMITTED. THAT WAS A STRATEGY
11 THAT I DID NOT WANT TO IMPOSE FOR MR. -- MY CLIENT, MR.
12 O'SHAUN ROBINSON.

13 ANOTHER EXAMPLE IS THAT MR. SCOTT ROBINSON IN HIS
14 CLOSING TALKED ABOUT OUR CLIENTS UTILIZING THEIR 5TH
15 AMENDMENT RIGHT TO REMAIN SILENT. THAT WAS A STRATEGY THAT
16 I DID NOT WANT TO IMPORE WITH MR. O'SHAUN ROBINSON.

17 SO I'D JUST BRING THOSE EXAMPLES TO YOUR HONOR'S
18 ATTENTION BECAUSE I BELIEVE THAT WE HAVE DIFFERENT
19 STRATEGIES IN HOW TO REPRESENT OUR CLIENTS. AND I BELIEVE
20 THAT THOSE STRATEGIES ARE INCOMPATIBLE. AND THAT'S WHY,
21 YOUR HONOR, I WOULD MOVE TO SEVER.

22 THE COURT: SOLICITOR.

23 MR. MARCHANT: YOUR HONOR, I WOULD STATE THAT'S NOT A
24 SUFFICIENT GROUND FOR SEVERANCE IN THIS CASE. THE SAME
25 INFORMATION WOULD COME OUT IN THIS TRIAL THAT WOULD COME OUT

1 IN THE SUBSEQUENT TRIAL AGAINST WHICHEVER OTHER DEFENDANT WE
2 WERE TRYING. SO FOR JUDICIAL ECONOMY, THE FACTS ARE WHAT
3 THE FACTS ARE, AND THAT BASIS OR THAT MOTION OR BASIS FOR
4 THE MOTION ALONE, I DON'T BELIEVE, IS SUFFICIENT TO HAVE A
5 SEVERANCE OF THESE TWO DEFENDANTS IN THIS TRIAL, YOUR HONOR.
6 AND I ASK THAT YOU DENY THAT MOTION.

7 THE COURT: I DENY THAT MOTION. I CAN'T SEE HOW THE
8 DEFENDANTS' SUBSTANTIVE RIGHTS WOULD BE PREJUDICED BY A
9 JOINT TRIAL. SO YOUR MOTION IS DENIED.

10 MR. MOORMAN: THANK YOU, YOUR HONOR. AND IN LIGHT OF
11 YOUR HONOR'S RULING I WOULD JUST MOVE THEN TO PREVENT MR.
12 ROBINSON AND MR. MARCHANT FROM OBVIOUSLY INTRODUCING ANY
13 CHARACTER EVIDENCE ABOUT MY CLIENT OR ANY EVIDENCE OF OTHER
14 CRIMES.

15 THE COURT: ALL RIGHT.

16 MR. MOORMAN: AND THE LAST THING, YOUR HONOR, ABOUT THE
17 MISTRIAL AND HOW WE DEAL WITH THAT IN THIS TRIAL AS FAR AS
18 REFERENCE TO THE LAST TRIAL, WHEN I'M -- IF I MAKE ANY
19 REFERENCE TO OTHER STATEMENTS THAT WERE MADE IN THE PRIOR
20 TRIAL, MY INCLINATION WAS JUST TO SAY THAT YOU GAVE SWORN
21 TESTIMONY BEFORE IN THAT TRIAL.

22 THE COURT: I THINK THAT'S THE WAY TO HANDLE IT.

23 MR. MOORMAN: OKAY.

24 MR. ROBINSON: I JUST HAVE ONE MORE MOTION IN LIMINE,
25 YOUR HONOR, ---

1 THE COURT: ALL RIGHT.

2 MR. ROBINSON: --- IN THIS CASE. AND THAT IS TO
3 PREVENT -- THE MOTION IN LIMINE IS TO LIMIT THE LAW
4 ENFORCEMENT OFFICERS OUTSIDE OF OPENING THE DOOR IN THIS
5 CASE FROM GOING INTO ANY CURRENT INVESTIGATIONS OR
6 INVESTIGATIONS OF ONGOING ---

7 THE COURT: I DON'T -- YOU'RE NOT GOING INTO THAT, ARE
8 YOU?

9 MR. MARCHANT: YOUR HONOR, I DON'T BELIEVE THERE'S ANY
10 ACTIVE INVESTIGATION ON EITHER ONE OF THESE DEFENDANTS.

11 THE COURT: OKAY. ALL RIGHT.

12 MR. ROBINSON: THANK YOU, YOUR HONOR.

13 MR. MARCHANT: JUDGE, I JUST HAVE TWO THINGS. THERE'S
14 BEEN A LOT OF TALK ABOUT THIS PHOTOGRAPH OR THE PICTURES
15 THAT WERE RELEASED TO THE MEDIA. AND IT'S ALREADY BEEN
16 BROUGHT OUT THAT THAT WAS FROM A SUBSEQUENT CASE. MY VICTIM
17 IS HERE, IS PRESENT IN THE COURTROOM.

18 I JUST WANT TO BE SURE THAT WE'RE ALL UNDERSTANDING AND
19 IN AGREEMENT THAT WE'RE NOT GOING TO TALK ABOUT THAT CASE.
20 BUT, I MEAN, IT'S A VERY SENSITIVE ISSUE. IF IT COMES UP, I
21 JUST -- I'M LOOKING FOR SOME GUIDANCE ABOUT HOW WE SHOULD
22 HANDLE THAT ISSUE, YOUR HONOR.

23 THE COURT: MR. MOORMAN.

24 MR. MOORMAN: YOUR HONOR, MY -- WITHOUT TOTALLY
25 TELEGRAPHING WHAT THE QUESTIONS ARE GOING TO BE FOR THE

1 VICTIM, MY INTENT IS MERELY TO ELICIT THE FACT THAT THIS
2 VICTIM'S WATCHING THE TELEVISION, SAW THE PICTURES OF MY
3 CLIENT AND MR. WORKMAN ON THE NEWS BROADCAST AND THE FACT
4 THAT THEY HAD BEEN ARRESTED. AND THIS IS WHAT I DID IN THE
5 PRIOR TRIAL. I DON'T ANTICIPATE TALKING ANYTHING ABOUT WHY
6 THEY WERE ARRESTED OR ANYTHING LIKE THAT.

7 THE COURT: ALL RIGHT.

8 MR. MARCHANT: VERY GOOD, YOUR HONOR. THE LAST ISSUE I
9 HAVE IS ONE OF MY MOTIONS IN THE FIRST TRIAL WAS TO PREVENT
10 ANY QUESTIONING BY THE DEFENSE OF TIMOTHY WRIGHT OF WHAT
11 SENTENCE HE RECEIVED. IT WOULD BE IMPROPER FOR THE JURY TO
12 CONSIDER MR. WRIGHT'S SENTENCE. THAT MAY CAUSE THEM TO
13 EITHER CONVICT OR NOT CONVICT ONE WAY. TO ME IT WOULD BIAS
14 THEM OF WHAT THE POTENTIAL RANGE OF SENTENCES ARE FOR THESE
15 PARTICULAR CRIMES. I WOULD ---

16 THE COURT: MR. MOORMAN.

17 MR. MOORMAN: ARE YOU ...

18 MR. MARCHANT: I WOULD SUBMIT TO THE COURT THAT THIS
19 WOULD BE DIFFERENT HAD MR. WRIGHT NOT ALREADY BEEN
20 SENTENCED. IF HIS CASE WAS AWAITING SENTENCING I WOULD HAVE
21 A DIFFERENT POSITION. BUT SINCE HE HAS ALREADY BEEN
22 SENTENCED I THINK IT WOULD BE IMPROPER TO ALLOW ANY
23 DISCUSSION ABOUT THAT. I REALIZE IT CAME UP ON MY DIRECT
24 QUESTION LAST TIME, BUT AGAIN, I'VE INSTRUCTED HIM NOT TO
25 DISCUSS THAT.

1 MR. MOORMAN: YOUR HONOR, I THINK IT'S HIGHLY PROBATIVE
2 THAT THE JURY KNOW WHAT THE NEGOTIATIONS WERE BETWEEN THE
3 STATE AND MR. WRIGHT.

4 THE COURT: I THINK YOU CAN INQUIRE ABOUT NEGOTIATIONS,
5 BUT NOT WHAT THE SENTENCE WAS.

6 MR. MOORMAN: YOUR HONOR, MAY I ASK ABOUT WHAT THE
7 RECOMMENDATION -- BECAUSE I BELIEVE THERE WAS A
8 RECOMMENDATION OF TWENTY YEARS FROM MR. MARCHANT. AND I
9 WOULD ARGUE THAT THAT IS DIFFERENT THAN A STRAIGHT UP PLEA
10 WHERE THE JUDGE WERE TO SENTENCE HIM. AND I DO BELIEVE
11 THAT'S PROBATIVE FOR ME TO MENTION THAT THE NEGOTIATION WAS
12 MR. MARCHANT RECOMMENDED TWENTY YEARS AND IN ADDITION THE
13 DAY OF HIS SWORN TESTIMONY THE OTHER CHARGES HAD BEEN
14 DISMISSED.

15 MR. MARCHANT: JUDGE, I THINK WE'RE STILL SITTING IN
16 THE SAME POSTURE IF THEY ---

17 THE COURT: I'M GOING TO ALLOW YOU TO CROSS EXAMINE
18 THEM THAT THERE WERE NEGOTIATIONS, BUT NOT WHAT THE
19 RECOMMENDATION OR THE SENTENCE WAS.

20 MR. MOORMAN: OKAY. YES, SIR.

21 THE COURT: ALL RIGHT. WE'VE GOT A LARGE PANEL OF
22 POTENTIAL JURORS. SO WE'LL NEED ALL THE SEATS IN THE
23 COURTROOM. BRING THE PANEL UP. STRIKES ARE TEN, TEN AND
24 TEN.

25 (WHEREUPON COURT WAS IN RECESS AT 9:45 AM)

1 MR. MARCHANT: THE LAST TIME WE PROCEEDED ON JUST
2 SIMPLE ASSAULT AND BATTERY. I JUST WANTED TO BE SURE THAT
3 THAT WAS THE INSTRUCTION ---

4 THE COURT: SIMPLE ASSAULT AND BATTERY?

5 MR. MARCHANT: YES, SIR, INSTEAD OF ABHAN. YES, SIR.

6 (WHEREUPON COURT WAS IN RECESS AT 9:50 AM)

7 (WHEREUPON THE JURY PANEL ENTERED THE COURTROOM AT 9:54
8 AM)

9 THE COURT: LADIES AND GENTLEMEN, IF I COULD HAVE YOUR
10 ATTENTION. AT THIS TIME WE WILL SELECT A JURY IN THE CASE
11 OF THE STATE AGAINST O'SHAUN JOSEPH ROBINSON AND KENNETH M.
12 WORKMAN. MR. ROBINSON, MR. WORKMAN, WOULD YOU BOTH STAND UP
13 AND FACE THE JURY PANEL FOR ME A MOMENT, PLEASE. THANK YOU.
14 YOU CAN BE SEATED.

15 EACH DEFENDANT IS INDICTED FOR CONSPIRACY, FOR ARMED
16 ROBBERY, FOR POSSESSION OF A WEAPON DURING THE COMMISSION OF
17 A VIOLENT CRIME AND FOR ASSAULT AND BATTERY. THESE
18 INDICTMENTS ALLEGE THAT ON OR ABOUT DECEMBER 10, 2007 THAT
19 EACH COMBINED WITH TIMOTHY LEE WRIGHT TO COMMIT THE CRIME OF
20 ARMED ROBBERY.

21 THE NEXT INDICTMENT ALLEGES THAT ON THAT SAME DATE THEY
22 COMMITTED ARMED ROBBERY OF SERGIO ESPINOZA WHILE ARMED WITH
23 WHAT APPEARED TO BE A DEADLY WEAPON. THEN ARE NEXT INDICTED
24 FOR POSSESSION OF A WEAPON DURING THE COMMISSION OF A
25 VIOLENT CRIME ON THAT SAME DATE. AND LASTLY THEY ARE

1 INDICTED FOR COMMITTING AN ASSAULT AND BATTERY ON SERGIO
2 ESPINOZA.

3 POTENTIAL WITNESSES IN THIS CASE WILL BE DEPUTY S.
4 MENDENHALL, SERGIO ESPINOZA, TIMOTHY WRIGHT, DETECTIVE DAVID
5 WEINER, CRAIG HANNING AND LORI VAN WALLENDAL. NOW I WOULD
6 INQUIRE AT THIS TIME IF ANY MEMBER OF THE JURY PANEL IS
7 RELATED BY BLOOD OR MARRIAGE OR CONNECTED BY EMPLOYMENT TO
8 EITHER DEFENDANT OR TO ANY POTENTIAL WITNESS IN THE CASE,
9 ARE YOU SENSIBLE OR AWARE OF ANY BIAS OR PREJUDICE WITH
10 RESPECT TO THE STATE, TO THE DEFENDANTS OR TO THE SUBJECT-
11 MATTER OF THE CASE OR DO YOU KNOW OF ANY REASON WHY YOU
12 COULD NOT GIVE THE STATE AND EACH DEFENDANT A FAIR AND
13 IMPARTIAL TRIAL BASED ON THE LAW AND EVIDENCE TO BE
14 PRESENTED? IF SO, WOULD YOU PLEASE STAND AND GIVE ME YOUR
15 NAME?

16 (NO RESPONSE)

17 THE COURT: DO I HAVE ANY MEMBER OF THE PANEL WHO HAS
18 ANY CONNECTION, FAMILY, BUSINESS, SOCIAL OR OTHERWISE WITH
19 BOB ARIAIL, THE SOLICITOR IN THIS CASE, OR WITH LAW
20 ENFORCEMENT, WHETHER THAT BE FEDERAL, STATE, COUNTY OR
21 MUNICIPAL? IF SO, PLEASE STAND AND GIVE ME YOUR NAME. YOUR
22 NAME, SIR?

23 JUROR: AARON JARVIS.

24 THE COURT: ALL RIGHT, SIR.

25 MR. JARVIS: MY BROTHER IN-LAW IS THE DEPUTY DIRECTOR

1 OF EMERGENCY MANAGEMENT FOR GREENVILLE COUNTY.

2 THE COURT: AND WOULD THAT IN ANY WAY INTERFERE WITH
3 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR ON THIS CASE?

4 MR. JARVIS: NO, SIR, IT WOULD NOT.

5 THE COURT: THANK YOU, SIR. YOUR NAME, SIR?

6 JUROR: BRYAN HAYES.

7 THE COURT: ALL RIGHT, SIR.

8 MR. HAYES: MY FATHER IS A RETIRED FBI AGENT.

9 THE COURT: AND WOULD THAT FACT IN ANY WAY INTERFERE
10 WITH YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR ON THIS
11 CASE?

12 MR. HAYES: NO, SIR.

13 THE COURT: THANK YOU. YOUR NAME, SIR?

14 JUROR: DOUGLAS KONDRA.

15 THE COURT: ALL RIGHT, SIR.

16 MR. KONDRA: BOB ARIAIL AND I HAVE BEEN TOGETHER ON
17 NUMEROUS OCCASIONS IN THE COMMUNITY.

18 THE COURT: ALL RIGHT. WOULD THAT FACT IN ANY WAY
19 INTERFERE WITH YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR
20 ON THIS CASE?

21 MR. KONDRA: NO.

22 THE COURT: THANK YOU, SIR. ANDY MOORMAN REPRESENTS
23 MR. ROBINSON. SCOTT ROBINSON REPRESENTS MR. WORKMAN. DO I
24 HAVE ANY CLIENTS NOW OR FORMERLY OF EITHER OF THESE
25 ATTORNEYS? IF SO, PLEASE STAND AND GIVE ME YOUR NAME.

1 (NO RESPONSE)

2 THE COURT: DO I HAVE ANY MEMBER OF THE PANEL OR ANY
3 MEMBER OF YOUR FAMILY WHO HAS BEEN THE VICTIM OF A VIOLENT
4 CRIME? IF SO, WOULD YOU PLEASE STAND AND GIVE ME YOUR NAME?

5 (NO RESPONSE)

6 THE COURT: ALL RIGHT. ANY OTHER QUESTIONS -- YES,
7 SIR. YOUR NAME?

8 JUROR: ROBERT NEWELL.

9 THE COURT: ALL RIGHT, SIR. AND WHAT ---

10 MR. NEWELL: MY WIFE WAS ASSAULTED IN TEXAS.

11 THE COURT: ALL RIGHT. WOULD THAT FACT IN ANY WAY
12 INTERFERE WITH YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR
13 ON THIS CASE?

14 MR. NEWELL: NO.

15 THE COURT: THANK YOU, SIR. ANY OTHER QUESTIONS,
16 GENTLEMEN?

17 MR. MOORMAN: NOTHING FROM THE DEFENSE, YOUR HONOR.

18 THE COURT: ALL RIGHT. STRIKES ARE TEN FOR THE STATE,
19 TEN FOR EACH DEFENDANT. LADIES AND GENTLEMEN, WHEN YOUR
20 NAME IS CALLED I'LL ASK THAT YOU PLEASE COME FORWARD UP
21 FRONT TO THIS PODIUM, TURN AROUND, FACE COUNSEL AND AWAIT
22 FURTHER INSTRUCTIONS. THANK YOU.

23 MADAME CLERK: JUROR 133, ROBERT MORAN. AND PLEASE
24 BRING YOUR THINGS WITH YOU. WHAT SAYS THE STATE?

25 MR. MARCHANT: PLEASE PRESENT THE JUROR.

1 MADAME CLERK: WHAT SAYS THE DEFENDANT?

2 MR. MOORMAN: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

4 MR. ROBINSON: PLEASE PRESENT THE JUROR.

5 MADAME CLERK: SIR, IF YOU'LL PLEASE HAVE A SEAT IN THE

6 JURY BOX. JUROR 211, JUDITH ISLER. WHAT SAYS THE STATE?

7 MR. MARCHANT: PLEASE EXCUSE THE JUROR FROM THE TRIAL

8 OF THIS CASE.

9 MADAME CLERK: MS. ISLER, YOU MAY BE SEATED. YOU HAVE

10 BEEN EXCUSED FROM THIS CASE. JUROR 106, DAVID LAND. WHAT

11 SAYS THE STATE?

12 MR. MARCHANT: PLEASE PRESENT THE JUROR.

13 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

14 MR. MOORMAN: PLEASE PRESENT THE JUROR.

15 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

16 MR. ROBINSON: PLEASE PRESENT THE JUROR.

17 MADAME CLERK: ALL RIGHT. THANK YOU, SIR. PLEASE BE

18 SEATED IN THE JURY BOX. JUROR 149, ALISON PATRICK. WHAT

19 SAYS THE STATE?

20 MR. MARCHANT: PLEASE EXCUSE THE JUROR FROM THE TRIAL

21 OF THIS CASE.

22 MADAME CLERK: ALL RIGHT, MS. PATRICK, YOU MAY BE

23 SEATED. YOU HAVE BEEN EXCUSED FROM THIS CASE. JUROR 164,

24 FRANK RICHARDS. WHAT SAYS THE STATE?

25 MR. MARCHANT: PLEASE PRESENT THE JUROR.

1 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

2 MR. MOORMAN: YOUR HONOR, MAY WE APPROACH?

3 THE COURT: SURE.

4 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
5 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

6 MR. MOORMAN: PLEASE PRESENT THIS JUROR.

7 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

8 MR. ROBINSON: PLEASE PRESENT THE JUROR.

9 MADAME CLERK: MR. RICHARDS, PLEASE HAVE A SEAT IN THE
10 JURY BOX. JUROR 215, HARRIET WILSON. WHAT SAYS THE STATE?

11 MR. MARCHANT: PLEASE PRESENT THE JUROR.

12 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

13 MR. MOORMAN: PLEASE PRESENT THE JUROR.

14 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

15 MR. ROBINSON: PLEASE PRESENT THE JUROR.

16 MADAME CLERK: MA'AM, PLEASE HAVE A SEAT IN THE JURY
17 BOX. JUROR 75, BRYAN HAYES. WHAT SAYS THE STATE?

18 MR. MARCHANT: PLEASE PRESENT THE JUROR.

19 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

20 MR. MOORMAN: PLEASE EXCUSE THIS JUROR FROM THE TRIAL
21 OF THIS CASE.

22 MADAME CLERK: MR. HAYES, YOU MAY BE SEATED. YOU'VE
23 BEEN EXCUSED FROM THIS CASE. JUROR NUMBER 3, FRANCES
24 ANDERSON. WHAT SAYS THE STATE?

25 MR. MARCHANT: PLEASE PRESENT THE JUROR.

1 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

2 MR. MOORMAN: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

4 MR. ROBINSON: PLEASE PRESENT THE JUROR.

5 MADAME CLERK: MA'AM, PLEASE BE SEATED IN THE JURY BOX.

6 JUROR 138, ROBERT NEWELL. WHAT SAYS THE STATE?

7 MR. MARCHANT: PLEASE PRESENT THE JUROR.

8 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

9 MR. MOORMAN: PLEASE EXCUSE THIS JUROR FROM THE TRIAL
10 OF THIS CASE.

11 MADAME CLERK: YOU MAY BE SEATED. YOU HAVE BEEN
12 EXCUSED FROM THIS CASE. JUROR 119, DWIGHT MANGUM. WHAT
13 SAYS THE STATE?

14 MR. MARCHANT: PLEASE PRESENT THE JUROR.

15 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

16 MR. MOORMAN: PLEASE PRESENT THIS JUROR.

17 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

18 MR. ROBINSON: PLEASE PRESENT THE JUROR.

19 MADAME CLERK: SIR, PLEASE HAVE A SEAT IN THE JURY BOX.

20 JUROR 150, AMY PERKINS. WHAT SAYS THE STATE?

21 MR. MARCHANT: PLEASE PRESENT THE JUROR.

22 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

23 MR. MOORMAN: PLEASE PRESENT THE JUROR.

24 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

25 MR. ROBINSON: PLEASE PRESENT THE JUROR.

1 MADAME CLERK: MS. PERKINS, PLEASE HAVE A SEAT IN THE
2 JURY BOX. JUROR 69, WILLIAM HALEY. WHAT SAYS THE STATE?

3 MR. MARCHANT: PLEASE PRESENT THE JUROR.

4 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

5 MR. MOORMAN: PLEASE PRESENT THE JUROR.

6 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

7 MR. ROBINSON: PLEASE PRESENT THE JUROR.

8 MADAME CLERK: MR. HALEY, PLEASE HAVE A SEAT IN THE
9 JURY BOX. JUROR 146, PATRICIA OWENS. WHAT SAYS THE STATE?

10 MR. MARCHANT: PLEASE EXCUSE THE JUROR FROM THE TRIAL
11 OF THIS CASE.

12 MADAME CLERK: ALL RIGHT, MS. OWENS, YOU MAY BE SEATED.
13 YOU HAVE BEEN EXCUSED FROM THIS CASE. JUROR 26, JEWEL
14 BUNCHE. WHAT SAYS THE STATE?

15 MR. MARCHANT: PLEASE PRESENT THE JUROR.

16 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

17 MR. MOORMAN: PLEASE PRESENT THE JUROR.

18 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

19 MR. ROBINSON: PLEASE PRESENT THE JUROR.

20 MADAME CLERK: MA'AM, PLEASE HAVE A SEAT IN THE JURY
21 BOX.

22 THE COURT: MS. BUNCHE, TAKE THAT FIRST SEAT AND SERVE
23 AS FOREPERSON ON THE CASE FOR ME, PLEASE, MA'AM.

24 MADAME CLERK: JUROR NUMBER 1, JOYCE ABDULLAHI. WHAT
25 SAYS THE STATE?

1 MR. MARCHANT: PLEASE PRESENT THE JUROR.

2 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

3 MR. MOORMAN: PLEASE PRESENT THE JUROR.

4 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

5 MR. ROBINSON: PLEASE PRESENT THE JUROR.

6 MADAME CLERK: MA'AM, PLEASE HAVE A SEAT IN THE JURY

7 BOX. JUROR 34, AARON COLLIVER. WHAT SAYS THE STATE?

8 MR. MARCHANT: PLEASE PRESENT THE JUROR.

9 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

10 MR. MOORMAN: PLEASE PRESENT THE JUROR.

11 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

12 MR. ROBINSON: PLEASE PRESENT THE JUROR.

13 MADAME CLERK: MR. COLLIVER, PLEASE HAVE A SEAT IN THE

14 JURY BOX. JUROR 139, DONALD NIEMI. WHAT SAYS THE STATE?

15 MR. MARCHANT: PLEASE PRESENT THE JUROR.

16 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

17 MR. MOORMAN: PLEASE PRESENT THE JUROR.

18 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

19 MR. ROBINSON: PLEASE PRESENT THE JUROR.

20 MADAME CLERK: SIR, PLEASE HAVE A SEAT IN THE JURY BOX.

21 THE COURT: GIVE ME ONE ALTERNATE. ONE FOR THE STATE

22 AND TWO FOR EACH DEFENDANT.

23 MADAME CLERK: JUROR 188, RAMONA STRATMANN. WHAT SAYS

24 THE STATE?

25 MR. MARCHANT: PLEASE PRESENT THE JUROR.

1 MADAME CLERK: WHAT SAYS DEFENDANT ROBINSON?

2 MR. MOORMAN: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: WHAT SAYS DEFENDANT WORKMAN?

4 MR. ROBINSON: PLEASE PRESENT THE JUROR.

5 MADAME CLERK: MA'AM, PLEASE HAVE A SEAT IN THE JURY
6 BOX.

7 (PAUSE)

8 THE COURT: OKAY. SWEAR THE JURY, PLEASE.

9 MADAME CLERK: LADIES AND GENTLEMEN, PLEASE STAND AND
10 RAISE YOUR RIGHT HAND FOR THE OATH IN THIS CASE. THE PROPER
11 RESPONSE IS, I WILL. AND I'LL READ BOTH DEFENDANTS.

12 YOU SHALL WELL AND TRULY TRY THE CASES 2008-GS-23-5382,
13 THE STATE VERSUS O'SHAUN JOSEPH ROBINSON, INDICTED FOR ARMED
14 ROBBERY, POSSESSION OF A WEAPON DURING THE COMMISSION OF A
15 VIOLENT CRIME, 5383 FOR CONSPIRACY AND 5384 FOR ASSAULT AND
16 BATTERY.

17 ALSO, PLEASE WELL AND TRULY TRY THE CASES 2008-GS-23-
18 5530, THE STATE VERSUS KENNETH M. WORKMAN, INDICTED FOR
19 ARMED ROBBERY, POSSESSION OF A WEAPON DURING THE COMMISSION
20 OF A VIOLENT CRIME, 5529 FOR CONSPIRACY AND 5528 FOR ASSAULT
21 AND BATTERY AND A TRUE VERDICT RENDERED ACCORDING TO THE LAW
22 AND THE EVIDENCE SO HELP YOU GOD. I WILL?

23 THE JURY: I WILL.

24 MADAME CLERK: THANK YOU. PLEASE BE SEATED.

25 THE COURT: LADIES AND GENTLEMEN, I'LL GIVE YOU A SHORT

OPENING STATEMENTS - MR. MARCHANT

35

1 RECESS BEFORE WE START. WHILE ON RECESS DO NOT TALK ABOUT
2 THIS CASE. YOU DON'T DO THAT UNTIL YOU'VE HEARD ALL OF THE
3 TESTIMONY TO BE PRESENTED, THE ARGUMENTS BY THE ATTORNEYS
4 AND MY CHARGE ON THE LAW. SO IF YOU'LL BE AT EASE, FOLLOW
5 THE BAILIFF, WE'LL START SHORTLY. THANK YOU.

6 (WHEREUPON THE JURY EXITED THE COURTROOM AT 10:14 AM)

7 THE COURT: AND FOR THE BALANCE OF THE PANEL, WE CAN
8 GIVE YOU THE REST OF TODAY OFF, BUT WE NEED YOU TO CALL IN
9 THIS AFTERNOON AFTER SIX. SO PLEASE CALL IN AFTER SIX
10 TODAY. THANK YOU. YOU'RE EXCUSED.

11 (WHEREUPON THE REMAINING JURY PANEL EXITED THE
12 COURTROOM AT 10:15 AM)

13 (WHEREUPON COURT WAS IN RECESS AT 10:16 AM)

14 THE COURT: OKAY. YOU READY TO MAKE OPENING, BRIEF
15 OPENING STATEMENTS TO THE JURY?

16 MR. MOORMAN: YES, SIR.

17 THE COURT: BRING OUR JURY.

18 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 10:24 AM)

19 THE COURT: ALL RIGHT. BRIEF OPENING STATEMENT,
20 SOLICITOR.

21 MR. MARCHANT: MAY IT PLEASE THE COURT, MR. MOORMAN,
22 MR. ROBINSON? GOOD MORNING, LADIES AND GENTLEMEN OF THE
23 JURY. MY NAME IS LUCAS MARCHANT. I'M AN ASSISTANT
24 SOLICITOR HERE IN GREENVILLE COUNTY.

25 IT'S MY JOB AS AN ASSISTANT SOLICITOR TO BRING CASES TO

OPENING STATEMENTS - MR. MARCHANT

36

1 YOU AND PRESENT EVIDENCE TO YOU THAT WILL PROVE THAT THESE
2 TWO GENTLEMEN, MR. O'SHAUN ROBINSON AND MR. KENNETH WORKMAN,
3 DID ON DECEMBER THE 10TH OF 2007 ROB AT GUNPOINT THE VICTIM,
4 SERGIO ESPINOZA, OF HIS CELL PHONE, HIS WALLET AND HIS
5 IDENTIFICATION CARDS. THAT EVENT TOOK HERE -- TOOK PLACE
6 HERE IN GREENVILLE COUNTY.

7 THERE ARE TWO THINGS ESSENTIALLY THAT THIS CASE IS
8 GOING TO BOIL DOWN TO. AND I WOULD ASK YOU TO KEEP IT AS
9 SIMPLE AS THIS. ONE, THAT IT HAPPENED. AND, TWO, WERE
10 THESE TWO GENTLEMEN INVOLVED? I SUBMIT TO YOU THAT EVIDENCE
11 WILL SHOW TO YOU THAT THEY WERE.

12 THERE WERE THREE PEOPLE THAT HAVE BEEN CHARGED IN THIS
13 ARMED ROBBERY. ONE OF THEM YOU'LL HEAR FROM TODAY. HIS
14 NAME IS TIMOTHY WRIGHT. HE'S ALREADY PLED GUILTY AND BEEN
15 SENTENCED ON THIS OFFENSE.

16 THESE TWO GENTLEMEN HAVE PLED NOT GUILTY. THEY ARE ON
17 TRIAL TODAY AND HAVE EXPRESSED THEIR INNOCENCE. I WOULD ASK
18 YOU TO FOLLOW WHAT THE JUDGE WILL PRESENT TO YOU AT THE END
19 OF THIS TRIAL AND INSTRUCT YOU THAT THE BURDEN OF THIS CASE,
20 THAT ALL THE EVIDENCE RESTS UPON THE STATE, THAT I HAVE TO
21 CONVINCE YOU BEYOND A REASONABLE DOUBT THAT THOSE TWO
22 GENTLEMEN WERE INVOLVED IN THIS INCIDENT.

23 NOW HE'S GOING TO GIVE YOU SOME DEFINITIONS AT THE END.
24 AND I WOULD ASK YOU TO PAY ATTENTION TO WHAT REASONABLE
25 DOUBT IS. HE'S GOING TO TELL YOU, I BELIEVE, THAT IT

OPENING STATEMENTS - MR. MARCHANT

37

1 DOESN'T MEAN THAT THERE'S ANY OTHER POSSIBILITY. IT'S NOT
2 ONE HUNDRED PERCENT. REASONABLE DOUBT IS DOUBT THAT WOULD
3 CAUSE YOU OR GIVE YOU HESITATION TO ACT. HE'S GOING TO TELL
4 YOU I DON'T HAVE ONE HUNDRED PERCENT TO PROVE. IT'S BEYOND
5 A REASONABLE DOUBT.

6 HE'LL EXPLAIN SOME OTHER DOUBTS THAT YOU MAY SEE IN
7 OTHER TRIALS. CIVIL CASES, MORE LIKE FIFTY-ONE TO FORTY-
8 NINE PERCENT. THIS IS BEYOND A REASONABLE DOUBT. IT
9 DOESN'T MEAN ALL DOUBT.

10 HOW ARE WE GOING TO PROVE THIS? WELL, YOU'RE GOING TO
11 HEAR FROM THE VICTIM. HE'S GOING TO GIVE YOU HIS ACCOUNTS
12 OF THE INCIDENT. AND YOU'RE GOING TO HEAR FROM THE CO-
13 DEFENDANT.

14 THAT'S ESSENTIALLY WHAT THIS CASE BOILS DOWN TO, TWO
15 EYEWITNESS ACCOUNTS OF AN ARMED ROBBERY AS WELL AS
16 POSSESSION OF A WEAPON DURING THAT ARMED ROBBERY AND THE
17 CONSPIRACY WHERE THEY TALKED ABOUT ROBBING THE VICTIM PRIOR
18 TO THE ROBBERY ITSELF AS WELL AS AN ASSAULT AND BATTERY THAT
19 OCCURRED DURING THIS ROBBERY. THAT TESTIMONY WILL COME FROM
20 THE VICTIM AS WELL AS THE CO-DEFENDANT.

21 THERE IS NO GUN. THERE WAS NO PROPERTY RECOVERED.
22 THERE'S NO DNA. THIS IS NOT CSI. I'M SURE Y'ALL ARE WELL
23 AWARE, THIS AIN'T GONNA BE DONE IN FORTY-FIVE MINUTES. IT
24 WILL BE BRIEF, BUT THE EVIDENCE IS GOING TO BOIL DOWN TO TWO
25 EYEWITNESS TESTIMONIES. AND I SUBMIT TO YOU THAT AFTER YOU

OPENING STATEMENTS - MR. MARCHANT

. 38

1 HAVE HEARD THE TESTIMONY OF THOSE TWO PEOPLE THAT THAT
2 TESTIMONY WILL LEAVE YOU CONVINCED BEYOND A REASONABLE DOUBT
3 THAT THESE TWO OTHER GENTLEMEN WERE INVOLVED IN THIS CASE.

4 NOW A PRINCIPLE THAT HIS HONOR IS GOING TO RECITE TO
5 YOU AT THE END OF THE TRIAL AS WELL IS WHAT WE CALL
6 ACCOMPLICE LIABILITY. AND I WOULD ASK YOU TO KEEP THAT
7 PARTICULARLY IN MIND THROUGHOUT THIS TRIAL. ESSENTIALLY
8 IT'S THE HAND OF ONE IS THE HAND OF ALL, OKAY?

9 SO THESE THREE GENTLEMEN GOT TOGETHER, THEY DEVISED A
10 PLAN, THEY ROBBED. NOT ALL THREE OF THEM NEED TO HAVE HAD A
11 GUN. ONE OF THEM HAD A GUN. AND THEN ESSENTIALLY THE OTHER
12 TWO, THEIR HAND JOINS INTO THAT DEFENDANT'S HAND HOLDING
13 THAT GUN. THIS IS OBVIOUSLY NOT LITERAL, BUT FIGURATIVE.
14 SO I WOULD ASK YOU TO PAY ATTENTION THAT IF ONE OF THEM'S
15 GUILTY, THEY'RE ALL GUILTY.

16 I WOULD ASK YOU TO PAY ATTENTION TO WHAT GOES ON IN
17 THIS CHAIR RIGHT HERE. THERE'S GOING TO BE A LOT OF THINGS
18 THAT COME OUT OF MY MOUTH AS WELL AS MR. ROBINSON, WHO'S
19 REPRESENTING MR. WORKMAN, AND MR. MOORMAN, WHO'S
20 REPRESENTING MR. ROBINSON.

21 THE ONLY THING THAT MATTERS THAT YOU'RE GOING TO BE
22 ABLE TO TAKE BACK WITH YOU IS WHAT COMES OUT OF THIS STAND
23 OUT OF THE WITNESSES' MOUTHS OR HARD EVIDENCE THAT'S GOING
24 TO -- THAT YOU'RE GOING TO BE ABLE TO CARRY BACK. AS I'VE
25 TOLD YOU, THERE IS NO HARD EVIDENCE. THERE'S EYEWITNESS

OPENING STATEMENTS - MR. MARCHANT

39

1 ACCOUNT OF TWO PEOPLE.

2 SO PAY PARTICULAR ATTENTION TO WHAT COMES OUT OF THEIR
3 MOUTHS BECAUSE YOU'RE GOING TO HAVE TO TAKE THAT INTO YOUR
4 MEMORY AND PULL THAT BACK OUT WITH YOUR DISCUSSION BACK
5 THERE OF WHETHER OR NOT THESE MEN ARE INNOCENT OR GUILTY.

6 WE HAVE FOUR CHARGES THAT COMES TO YOU ON THREE
7 INDICTMENTS. THE FIRST IS ARMED ROBBERY AND POSSESSION OF A
8 WEAPON DURING A VIOLENT CRIME. ESSENTIALLY ROBBERY IS THE
9 TAKING OF ANOTHER PERSON'S PROPERTY BY FORCE OR INTIMIDATION
10 WHILE ARMED WITH A DEADLY WEAPON. POSSESSION OF A WEAPON IS
11 INCLUDED IN THAT SAME INDICTMENT AS HAVING THAT WEAPON, THAT
12 WEAPON BEING A REVOLVER WHILE THE VICTIM'S BEING ROBBED.

13 CONSPIRACY IS A MEETING OF THE MINDS OF TWO PEOPLE TO
14 ACCOMPLISH AN UNLAWFUL ACT. THAT UNLAWFUL ACT IS THE ARMED
15 ROBBERY.

16 AND THEN THERE'S ASSAULT AND BATTERY. YOU WILL HEAR
17 TESTIMONY FROM MR. ESPINOZA THAT HE WAS ASSAULTED DURING
18 THIS INCIDENT. AND I WOULD REMIND YOU AGAIN, PAY ATTENTION,
19 THAT THE HAND OF ONE IS THE HAND OF ALL. ALL THREE OF THE
20 DEFENDANTS NEED NOT HAVE HAD A PISTOL TO BE CONVICTED OF
21 THESE OFFENSES.

22 AT THE END OF THE TRIAL I'LL HAVE ANOTHER OPPORTUNITY
23 TO SPEAK WITH YOU. I CERTAINLY WANT TO THANK YOU FOR YOUR
24 TIME HERE. WITHOUT YOU THE JUSTICE SYSTEM, THE WHEELS OF
25 JUSTICE, AS IT IS, WOULD NOT BE ABLE TO ROLL. YOUR TIME

OPENING STATEMENTS - MR. MOORMAN

40

1 HERE IS VERY IMPORTANT NOT ONLY TO ME, BUT AS WELL TO THESE
2 TWO DEFENDANTS.

3 IT IS VERY IMPORTANT THAT THE EVIDENCE IS CONSIDERED
4 AND THAT A JUST VERDICT IS REACHED TODAY. AND I SUBMIT TO
5 YOU AFTER YOU HEAR THE EVIDENCE THE JUST VERDICT IS GOING TO
6 BE GUILTY. THANK YOU.

7 THE COURT: MR. MOORMAN.

8 MR. MOORMAN: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
9 COURT, MR. MARCHANT, MR. ROBINSON? LADIES AND GENTLEMEN,
10 GOOD MORNING. AGAIN, MY NAME IS ANDY MOORMAN. AND I
11 REPRESENT MR. O'SHAUN ROBINSON IN THIS CASE.

12 MR. MARCHANT TALKED TO YOU A LITTLE BIT ABOUT THE TASK
13 BEFORE YOU. AND I'M GOING TO DO THE SAME. THE STATE HAS
14 CHARGED MY CLIENT AND MR. WORKMAN WITH A NUMBER OF CHARGES,
15 WHICH JUDGE PYLE HAS TOLD YOU.

16 THE STATE HAS SUMMONED YOU TO COURT. THEY SUMMONED OUR
17 CLIENTS TO COURT. AND THE STATE BEARS THE BURDEN OF PROVING
18 BEYOND A REASONABLE DOUBT EACH AND EVERY ELEMENT OF EVERY
19 OFFENSE THAT THEY HAVE BROUGHT HERE TODAY. AS MR. MARCHANT
20 SAID, BEYOND A REASONABLE DOUBT IS A DOUBT THAT WOULD LEAVE
21 A REASONABLE, CONSCIENTIOUS JUROR OR CAUSE A CONSCIENTIOUS
22 JUROR TO HESITATE TO ACT.

23 ANOTHER TEST OF REASONABLE DOUBT OR ANOTHER DEFINITION
24 IS THAT THE STATE HAS MET ITS BURDEN BY PROVING TO YOU OR BY
25 GIVING YOU PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE

OPENING STATEMENTS - MR. MOORMAN

41

1 DEFENDANTS' GUILT, FIRMLY CONVINCED. SO PURSUANT TO
2 REASONABLE DOUBT, CONVINCED IS NOT ENOUGH. FIRMLY
3 CONVINCED.

4 NOW, LADIES AND GENTLEMEN, PROOF BEYOND A REASONABLE
5 DOUBT IS NOT PROOF BEYOND ANY DOUBT, BUT IT IS THE HIGHEST
6 BURDEN WE HAVE. IT IS AS CLOSE AS WE GET IN THE LAW TO
7 THAT. THAT IS THE BURDEN UPON THE STATE.

8 I WANT TO TALK TO YOU A LITTLE BIT ABOUT THE
9 PRESUMPTION OF INNOCENCE. WHEN MY CLIENTS -- WELL, WHEN MR.
10 ROBINSON WAS BROUGHT INTO THIS COURTROOM HE IS PRESUMED
11 INNOCENT.

12 AND THE BEST WAY I CAN EXPLAIN THAT IS THIS. WHEN
13 YOU'VE COME TO COURT AND YOU'RE SITTING IN THIS CHAIR RIGHT
14 NOW, JUDGE PYLE IS ON THE BENCH, I'M STANDING BEFORE YOU,
15 YOU, BY THE VIRTUE OF WHAT I'M DOING RIGHT NOW, YOU PRESUME
16 THAT I'M A LAWYER EVEN THOUGH YOU HAVEN'T SEEN ANY
17 CREDENTIAL OF MINE. YOU HAVEN'T SEEN DIPLOMAS, NO DEGREES,
18 NO CERTIFICATE, NOTHING. YOU PRESUME I'M A LAWYER BECAUSE
19 OF WHAT I'M DOING RIGHT NOW. THE SAME WAY FOR MR. MARCHANT
20 AND MR. SCOTT ROBINSON.

21 IN THAT SAME WAY BY VIRTUE OF WHERE MY CLIENT AND MR.
22 WORKMAN ARE SITTING YOU ARE TO PRESUME THAT THEY ARE
23 INNOCENT. AND YOU MUST PRESUME THAT THEY ARE INNOCENT UNTIL
24 OR UNLESS THE STATE PROVES BEYOND A REASONABLE DOUBT EACH
25 AND EVERY ELEMENT OF THE OFFENSES CHARGED IN THIS CASE.

OPENING STATEMENTS - MR. ROBINSON

42

1 NOW, LADIES AND GENTLEMEN, AT THE CLOSE OF THE CASE I'M
2 GOING TO BE ABLE TO COME BACK AND TALK TO YOU AGAIN. BUT
3 WHAT I WANT -- WHAT I ASK THAT YOU THINK ABOUT WHILE THE
4 EVIDENCE IS BEING PRESENTED IS HAS THE STATE PROVEN HOW MANY
5 PEOPLE WERE INVOLVED AND, TWO, HAS THE STATE PROVEN WHO WAS
6 INVOLVED? HAVE THEY PROVEN HOW MANY PEOPLE WERE INVOLVED
7 AND HAVE THEY PROVEN WHO WAS INVOLVED? THOSE ARE THE TWO
8 QUESTIONS THAT THIS CASE IS ABOUT. THANK YOU FOR YOUR
9 ATTENTION. I'LL TALK TO YOU AT THE END OF THE CASE. THANK
10 YOU.

11 THE COURT: MR. ROBINSON.

12 MR. ROBINSON: MAY IT PLEASE THE COURT, MR. MOORMAN,
13 MR. MARCHANT? GOOD MORNING. MY NAME IS SCOTT ROBINSON. I
14 PRACTICE HERE IN GREENVILLE. AND IT'S MY PLEASURE TO
15 REPRESENT KEN WORKMAN, WHO'S SITTING TO MY LEFT.

16 YOU HAVE A UNIQUE OPPORTUNITY IN THIS CASE BECAUSE IT'S
17 AN UNUSUAL CASE IN A SENSE. MR. MOORMAN HAS SPOKEN TO YOU
18 ABOUT THE PRESUMPTION OF INNOCENCE, REASONABLE DOUBT AND
19 WHAT IT IS. BUT THIS CASE IS GOING TO COME DOWN TO
20 IDENTIFICATION. THAT'S WHAT THIS CASE IS GOING TO COME DOWN
21 TO.

22 AND IT'S GOING TO REQUIRE Y'ALL, TWELVE OF YOU,
23 THIRTEEN OF YOU NOW WITH THE ALTERNATE, TO USE YOUR COMMON
24 SENSE, YOUR EXPERIENCES IN LIFE, WHAT YOU KNOW PERSONALLY
25 ABOUT CERTAIN THINGS, WHAT YOUR JUDGMENT IS AND SO FORTH.

OPENING STATEMENTS - MR. ROBINSON

43

1 BUT RIGHT NOW IT IS 10:36, ALL RIGHT? AND THIS IS A
2 LITTLE PICTURE THAT I -- THAT I PUT TOGETHER, REAL SIMPLE
3 LITTLE PICTURE. I DON'T DRAW VERY WELL. BUT IT'S A LITTLE
4 PICTURE OF A LITTLE MAN. IT'S GOT MAYBE -- REALLY NO
5 DISTINGUISHING CHARACTERISTICS AT ALL EXCEPT ONE.

6 I'M GOING TO ASK YOU IN A FIVE MINUTE PERIOD FROM A ONE
7 TO TWO OR THREE OR FOUR MINUTE PERIOD OF TIME HOW MUCH YOU
8 CAN REMEMBER ABOUT SOMEONE THAT YOU SAW FOR A PERIOD OF A
9 FEW MINUTES AND GIVE IT ABOUT -- GIVE IT OVER A WEEK, A
10 NUMBER OF DAYS AND SO FORTH AND AGAIN TRY TO IDENTIFY
11 SOMEONE. AND I ASK YOU TO THINK ABOUT THAT.

12 BUT THIS CASE, I PROPOSE TO YOU, IS GOING TO COME DOWN
13 TO IDENTIFICATION BY THE ALLEGED VICTIM IN THIS CASE. AND
14 YOU'RE GOING TO HEAR FACTS IN THIS CASE. AND YOU'RE GOING
15 TO HEAR TESTIMONY AND SO FORTH. BUT YOU SEE WHEN YOU CAME
16 IN THIS COURTROOM YOU DIDN'T CHECK YOUR COMMON SENSE AT THE
17 DOOR. YOU DIDN'T CHECK YOUR JUDGMENT, NOR DID YOU CHECK
18 YOUR LIFE EXPERIENCES IN THIS CASE.

19 AND I ASK YOU WHEN YOU LOOK OR YOU VIEW THE TESTIMONY
20 IN THIS CASE, WHEN YOU LOOK AT THE WITNESSES AND SO FORTH
21 THAT YOU USE THAT AND THINK ABOUT IT. HOW MUCH DO YOU
22 REMEMBER SOMEONE YOU SEE FOR A BRIEF PERIOD OF TIME? I
23 CAN'T, SO I'M NOT GOING TO STAY UP HERE AND BELABOR YOU FOR
24 FIVE MINUTES, BUT YOU GET THE GIST OF WHAT I'M TRYING TO GET
25 TO. AND GIVE IT A NUMBER OF WEEKS OR A PERIOD OF TIME AND

OPENING STATEMENTS - MR. ROBINSON

44

1 SEE HOW MUCH -- THINK ABOUT HOW MUCH YOU REMEMBER ABOUT
2 SOMEONE. BUT THIS CASE COMES DOWN TO IDENTIFICATION.

3 AND THE STATE IN THIS CASE HAS THIS BURDEN THEY CALL
4 BEYOND A REASONABLE DOUBT. AND I'M NOT GOING. -- MR. MOORMAN
5 DID AN EXCELLENT JOB AT DESCRIBING THE STANDARDS AND SO
6 FORTH. AND I'M NOT GOING TO BELABOR THAT POINT.

7 BUT WHEN YOU TAKE YOUR LIFE EXPERIENCES AND YOU TAKE
8 YOUR JUDGMENT AND YOU TAKE THE COMMON SENSE THAT YOU HAVE
9 YOU HAVE TO LOOK AT IT IN TERMS OF, YEAH, THE BURDEN IS ON
10 THE STATE IN THIS CASE TO PROVE THEIR CASE, EACH AND EVERY
11 ELEMENT OF THEIR CASE BEYOND A REASONABLE DOUBT. AND IT'S
12 GOING TO COME DOWN TO IDENTIFICATION IN THIS CASE.

13 AND IF YOU HAVE A QUESTION IN YOUR MIND USING YOUR
14 JUDGMENT AND YOUR EXPERIENCES, WHICH IS WHAT WE ALL ASK FOR,
15 ASK YOU TO DO, AND IF YOU HAVE A DOUBT, THEN YOU MUST FIND
16 IN FAVOR OF MR. ROBINSON AND MR. WORKMAN.

17 BUT FOR ME, THIS IS TRULY A PLEASURE TO COME IN HERE
18 AND BE IN FRONT OF YOU. I'M SURE WE ALL -- WE ALL
19 APPRECIATE YOU BEING HERE AND IN THIS COLD WEATHER AND THIS
20 COURTROOM THAT SEEMS TO BE HEATING UP EVERY MOMENT THAT WE
21 STAND OR SIT. BUT I'M LOOKING FORWARD TO WORKING WITH YOU,
22 APPRECIATE YOUR TIME. THANK YOU VERY MUCH.

23 THE COURT: SOLICITOR.

24 MR. MARCHANT: MAY IT PLEASE THE COURT? THE STATE
25 CALLS SCOTT MENDENHALL.

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

45

1 SCOTT MENDENHALL, BEING

2 DULY SWORN TESTIFIED AS FOLLOWS:

3 MADAME CLERK: THANK YOU. PLEASE BE SEATED. PLEASE

4 STATE YOUR FULL NAME FOR THE RECORD.

5 MR. MENDENHALL: SCOTT MENDENHALL.

6 DIRECT EXAMINATION BY MR. MARCHANT:

7 Q. DEPUTY MENDENHALL, WHERE ARE YOU EMPLOYED?

8 A. GREENVILLE COUNTY SHERIFF'S OFFICE.

9 Q. HOW LONG HAVE YOU BEEN WITH THE SHERIFF?

10 A. ABOUT A YEAR AND EIGHT MONTHS.

11 Q. WHAT DID YOU DO PRIOR TO YOUR EMPLOYMENT WITH THE

12 SHERIFF'S OFFICE?

13 A. I WAS IN COLLEGE.

14 Q. AND WHERE DID YOU ATTEND COLLEGE?

15 A. THE CITADEL.

16 Q. DID YOU GRADUATE?

17 A. YES, SIR.

18 Q. NOW PRIOR TO ENROLLING WITH THE SHERIFF'S OFFICE AND

19 STARTING YOUR SHIFT DID YOU HAVE TO GO THROUGH ANY TRAINING?

20 A. YES, I DID.

21 Q. AND WHERE DID THAT TRAINING OCCUR?

22 A. CRIMINAL JUSTICE ACADEMY IN COLUMBIA.

23 Q. AND HOW LONG WAS THAT TRAINING?

24 A. NINE WEEKS.

25 Q. NINE WEEKS. AND WHEN EXACTLY DID YOU START WITH THE

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

46

1 SHERIFF, IF YOU REMEMBER?

2 A. IN MAY OF 2007.

3 Q. SO AFTER OR IN MAY, IS THAT WHEN YOUR TWELVE WEEKS OF
4 TRAINING BEGAN OR ---

5 A. YES.

6 Q. OKAY. SO YOU WENT ON SHIFT APPROXIMATELY JULY?

7 A. AUGUST.

8 Q. AUGUST. AUGUST OF '07. AND WHEN YOU BEGAN WORKING
9 DAILY SHIFTS WHAT WERE YOUR DUTIES WITH THE SHERIFF?

10 A. BASICALLY UNIFORM PATROL. YOU ANSWER ALL 911 CALLS
11 JUST LIKE MR. ESPINOZA'S. YOU CAN BE PROACTIVE, GET OUT
12 WITH ANYBODY YOU WANT, JUST DETER CRIME.

13 Q. AND FROM AUGUST UNTIL THIS INCIDENT IN DECEMBER WERE
14 YOU RIDING BY YOURSELF, WAS THERE A SUPERVISOR WITH YOU,
15 WERE Y'ALL IN TEAMS?

16 A. AT THE TIME OF THIS INCIDENT I HAD A SUPERVISOR, A
17 MASTER DEPUTY WITH ME.

18 Q. HAD THAT MASTER DEPUTY BEEN RIDING WITH YOU FROM AUGUST
19 EVERY DAY YOU WERE ON SHIFT OR ---

20 A. YES.

21 Q. AND THAT DEPUTY WAS WITH YOU ON THIS INCIDENT?

22 A. YES, HE WAS.

23 Q. OKAY. AND DO YOU RECALL WHERE THIS INCIDENT TOOK
24 PLACE?

25 A. IT WAS 200 EUNICE DRIVE, STRATFORD VILLAS.

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

47

1 (WHEREUPON STATE'S EXHIBIT 1 WAS MARKED FOR
2 IDENTIFICATION)

3 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S NUMBER 1.
4 DO YOU RECOGNIZE THIS?

5 A. YES, I DO.

6 Q. AND HOW IS IT THAT YOU RECOGNIZE THIS?

7 A. THAT'S THE INCIDENT LOCATION WHERE MR. ESPINOZA WAS
8 ROBBED.

9 THE COURT: ANY OBJECTION?

10 MR. MOORMAN: NO OBJECTION, YOUR HONOR.

11 MR. ROBINSON: NO OBJECTION.

12 MR. MARCHANT: THE STATE WOULD MOVE NUMBER 1 INTO
13 EVIDENCE.

14 (WHEREUPON STATE'S EXHIBIT 1 WAS ENTERED INTO EVIDENCE)

15 Q. THIS MAP, DOES IT TRULY DEPICT AND ACCURATELY DEPICT
16 THE AREA OUT THERE AT THE APARTMENT COMPLEX?

17 A. YES, IT DOES.

18 Q. NOW IF YOU CAN, TELL THE JURY WHERE THIS APARTMENT
19 COMPLEX IS LOCATED HERE IN GREENVILLE?

20 A. IT'S IN GREENVILLE. IT'S 20 EUNICE DRIVE. IT'S NEAR
21 WHITE HORSE ROAD. IT'S ON THE WEST SIDE OF GREENVILLE.
22 IT'S ONE OF THE MAIN ROADS IN THE AREA JUST TO BE -- LET YOU
23 KNOW.

24 Q. WHAT'S THE NEAREST MAJOR INTERSECTION TO THIS APARTMENT
25 COMPLEX?

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

48

1 A. I'M NOT FAMILIAR. I CAN'T RECALL AT THE TIME.

2 Q. DO YOU KNOW -- WHITE HORSE ROAD, YOU SAID PREVIOUSLY?

3 A. YES. THAT'S THE MAIN ROAD NEAR IT.

4 Q. OKAY. HOW WOULD YOU GET TO THIS APARTMENT COMPLEX FROM
5 WHITE HORSE ROAD?

6 A. I BELIEVE YOU TAKE LILLY STREET.

7 Q. AND DOES LILLY INTERSECT WITH WHITE HORSE?

8 A. YES.

9 Q. AND WHERE IN PARTICULAR -- AND WHAT COUNTY IS THIS?

10 A. GREENVILLE COUNTY.

11 Q. WERE YOU ON SHIFT THE EVENING/MORNING OF DECEMBER 9TH
12 AND 10TH?

13 A. YES, I WAS.

14 Q. OKAY. AND WHAT WERE YOUR HOURS WHEN YOU WERE WORKING
15 THIS EVENING?

16 A. SEVEN PM TO SEVEN AM.

17 Q. AND DID YOU RECEIVE A CALL IN REFERENCE TO THIS CASE?

18 A. YES, I DID.

19 Q. AND DO YOU RECALL APPROXIMATELY WHAT TIME YOU RECEIVED
20 THAT CALL?

21 A. I BELIEVE CLOSE TO 2:00, ABOUT 1:55.

22 Q. OKAY. SO A LITTLE AFTER NOON OR A LITTLE AFTER
23 MIDNIGHT?

24 A. MIDNIGHT.

25 Q. AND WHAT DID YOU DO IN RESPONSE TO THAT CALL?

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

49

1 A. AS SOON AS THE CALL CAME OUT I WASN'T FAR UP THE ROAD.

2 I RESPONDED FROM WEST BLUE RIDGE DOWN WHITE HORSE TO THE

3 INCIDENT LOCATION WHERE I MET WITH MR. ESPINOZA.

4 Q. WERE THERE ANY OTHER DEPUTIES BESIDES THE SUPERVISOR

5 THAT RESPONDED TO THIS LOCATION?

6 A. JUST HIM AND I WERE THE ONES THAT WENT TO THE ACTUAL

7 LOCATION WITH MR. ESPINOZA.

8 Q. AND WHY DID YOU RESPOND TO STRATFORD VILLA APARTMENTS?

9 A. WELL, WE TAKE A REPORT FROM THE VICTIM. ALSO WE'VE GOT
10 TO GET INFORMATION TO PUT OUT OVER THE RADIO FOR THE
11 SUSPECTS.

12 Q. LET ME BE A LITTLE CLEARER. WHY IS IT THAT YOU WENT TO
13 THE APARTMENT COMPLEX?

14 A. IT WAS FOR AN ARMED ROBBERY.

15 Q. AND WHEN YOU GOT TO THE APARTMENT COMPLEX WHO DID YOU
16 FIND?

17 A. MR. ESPINOZA.

18 Q. WERE THERE ANY OTHER PEOPLE OUT WITH MR. ESPINOZA AT
19 THAT TIME?

20 A. NOT THAT I RECALL.

21 Q. DO YOU RECALL SEEING ANY OTHER PEOPLE IN THE APARTMENT
22 COMPLEX WHEN YOU RESPONDED THAT MORNING?

23 A. NO, SIR.

24 Q. DO YOU RECALL WHAT THE PARKING LOT WAS LIKE THAT

25 MORNING? AND IN THAT RESPECT I MEAN DO YOU RECALL WHAT THE

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

50

1 LIGHTING WAS LIKE, WHETHER OR NOT THE PAVEMENT WAS WET OR
2 DRY, HOW MANY CARS WERE IN THE PARKING LOT?

3 A. WELL, LIKE ANY NORMAL PARKING LOT, THERE WAS A FEW
4 CARS. AS FAR AS BEING WET OR DRY, I DON'T RECALL. AND THE
5 LIGHT, I MEAN, I COULD SEE MR. ESPINOZA VERY CLEARLY TO
6 SPEAK TO HIM. AND I DIDN'T HAVE TO ASK HIM TO WALK BACK
7 INSIDE 'CAUSE YOU LIKE TO SEE VISIBLE MARKS ON THE VICTIM IF
8 AN ASSAULT OCCURS.

9 Q. NOW DID YOU HAVE AN OPPORTUNITY TO TALK WITH MR.
10 ESPINOZA AT THAT TIME?

11 A. YES, I DID.

12 Q. AND WHAT INFORMATION DID YOU TAKE FROM HIM?

13 A. OUR BASIC INFORMATION WOULD BE THE SUSPECT INFORMATION,
14 WHAT THEY LOOKED LIKE, AGE, WHAT THEY WERE WEARING, WHAT
15 HAPPENED, WHAT WAS HE DOING, WHERE WAS HE COMING FROM, WHAT
16 TIME. AFTER HE TELLS ME THAT INFORMATION FOR THE SUSPECTS I
17 ASK HIM, YOU KNOW, WHERE DID THEY GO.

18 AND HIS SITUATION, HE HAD FOLLOWED THEM. SO I HAD TO
19 GET MORE INFORMATION AS FAR AS WHAT KIND OF VEHICLE, WHERE
20 HE FOLLOWED THEM TO AND THE OFFENSE THAT OCCURRED AFTER THAT
21 WHEN HE WAS SHOT AT.

22 Q. WELL, LET'S START WITH WHAT HE INFORMED YOU THAT
23 OCCURRED IN THE PARKING LOT.

24 MR. MOORMAN: AND, YOUR HONOR, I WOULD -- I'D OBJECT ON
25 THE BASIS OF HEARSAY FOR THE PURPOSES OF WHAT THE VICTIM

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

51

1 TOLD THE OFFICER.

2 MR. MARCHANT: YOUR HONOR, HE'S A RESPONDING OFFICER.

3 HE'S TAKING THIS INFORMATION AND PUTTING OUT A ---

4 THE COURT: HE'S GOT A RIGHT TO INQUIRE AND

5 INVESTIGATE. GO AHEAD. OVERRULED.

6 Q. WHEN YOU INITIALLY ARRIVED AT THE COMPLEX WHAT DID MR.

7 ESPINOZA RELATE TO YOU THAT HAD HAPPENED IN THE COMPLEX?

8 A. HE HAD PULLED INTO HIS DRIVEWAY. HE'D JUST WENT OUT

9 GETTING GROCERIES. AS HE WAS SITTING IN HIS VEHICLE HE

10 LOOKS OVER AND HE SEES A BLACK MALE WITH A RED HOODED

11 SWEATSHIRT WALKING ON THE SIDEWALK. AT THE TIME HE KIND OF

12 KNEW IT WAS VERY SUSPICIOUS.

13 HE LOOKED UP, THE BLACK MALE RAN TOWARDS HIM, GRABBED

14 HIM OUT OF THE VEHICLE. WHEN HE DID I BELIEVE HE, YOU KNOW,

15 TOLD HIM TO GIVE HIM ALL OF HIS MERCHANDISE. AT THAT TIME

16 MR. ESPINOZA GAVE HIM, I BELIEVE, HIS WALLET AND SOME MONEY,

17 A CELL PHONE.

18 AS HE WAS BEING SEARCHED ANOTHER SUSPECT CAME UP. HE

19 WAS WEARING A WHITE SHIRT, DARK COLORED PANTS, BLACK TENNIS

20 SHOES AND WHITE SOCKS. HE STATED, WASTE THE GUY.

21 MR. ESPINOZA WAS STILL STANDING THERE WITH THE FIRST

22 SUBJECT. AT THAT TIME HE STILL HAD A GUN POINTED AT HIS

23 FACE. IT WAS A SILVER REVOLVER. HE STATED ---

24 Q. WAS MR. ESPINOZA ABLE TO TELL YOU WHAT TYPE OF REVOLVER

25 HE THOUGHT IT WAS?

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

52

1 A. YES. HE MADE IT VERY CLEAR. IT WAS A SILVER REVOLVER,
2 I BELIEVE IT HAD A BLACK HANDLE, POSSIBLY A .38.

3 Q. OKAY. WHAT DID MR. ESPINOZA RELATE TO YOU HAPPENED
4 AFTER HIS PERSONAL PROPERTY, MONEY AND CELL PHONE WAS TAKEN
5 FROM HIM?

6 A. HE STATED THE SUBJECT ASKED HIM IF THAT WAS EVERYTHING.
7 AT THAT TIME THE FIRST SUBJECT IN THE RED HOODED SWEATSHIRT
8 HANDED THE GUN OFF TO THE SECOND SUBJECT. THE FIRST SUBJECT
9 THEN PUNCHED HIM IN THE FACE. AND THEY RAN OFF TOWARDS THE
10 POOL.

11 Q. DID HE TELL YOU HOW MANY TIMES HE WAS PUNCHED?

12 A. I BELIEVE ONLY ONCE.

13 Q. DID YOU SEE OR NOTICE ANY MARKS ON MR. ESPINOZA'S FACE?

14 A. YES, AT THE TIME I BELIEVE I DID.

15 Q. COULD YOU TELL US -- TELL THE JURY HOW SIGNIFICANT OR
16 VISIBLE THOSE INJURIES WERE?

17 A. HE LOOKED LIKE HE HAD BEEN HIT ONE TIME IN THE FACE.
18 IT WASN'T TOO SEVERE, ONLY ONE PUNCH.

19 Q. AFTER HE HAD GIVEN YOU THIS INFORMATION ABOUT BEING
20 PUNCHED WHAT DID HE TELL YOU HAPPENED AFTER THAT?

21 A. HE SAID TWO SUBJECTS, THE ONE THAT PUNCHED HIM THAT HAD
22 THE WEAPON AND THE SECOND ONE THAT HAD THE GUN LAST RAN
23 TOWARDS THE POOL AREA. I GUESS THERE WAS SOME MESS UP AS
24 FAR AS HOW THEY WERE GOING TO GET BACK TO THEIR CAR. HE
25 SAID THEN THEY TOOK A DIFFERENT DIRECTION AROUND THE BACK

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

53

1 SIDE OF THE POOL.

2 AND WHEN HE LOOKED OVER TO THE DIRECTION THEY WERE
3 RUNNING THERE WAS A BLACK OLDER MODEL VEHICLE. AT THE TIME
4 IT POSSIBLY LOOKED LIKE A CROWN VICTORIA. AND HE SAID THEY
5 RAN TOWARDS THAT VEHICLE. IT WAS ALREADY RUNNING. THEY GOT
6 IN AND TOOK OFF.

7 Q. AND WHAT DID MR. ESPINOZA TELL YOU HE DID ONCE THE
8 DEFENDANTS GOT IN THE VEHICLE?

9 A. AT THE TIME HE GOT BACK IN HIS VEHICLE, HE LEFT THE
10 APARTMENT COMPLEX AND CAUGHT UP WITH THE SUSPECTS ON WHITE
11 HORSE ROAD NEAR SALUDA DAM. AT THE TIME HE WAS BLACKED OUT.
12 WHEN HE CAUGHT UP TO THE SUSPECTS HE TURNED ON THE LIGHTS
13 AND GOT A TAG NUMBER. AND AT THAT TIME HE WAS SHOT AT.

14 Q. AND FOR THE JURY'S BENEFIT CAN YOU DESCRIBE THE
15 INTERSECTION OF WHITE HORSE ROAD AND SALUDA DAM ROAD? DO
16 YOU KNOW WHAT RESTAURANTS OR ---

17 A. YES. THERE'S A -- I BELIEVE IT'S A CITGO GAS STATION
18 ON THE CORNER. WHITE HORSE IS THE MAIN ROAD, APPROXIMATELY
19 SIX LANES. AND SALUDA DAM'S A TWO LANE HIGHWAY. IT'S A
20 PRETTY BIG INTERSECTION WITH A LIGHT.

21 Q. WHAT WAS THE DESCRIPTION THAT MR. ESPINOZA GAVE YOU AS
22 FAR AS, IF YOU RECALL, HEIGHT, WEIGHT, CLOTHING THAT THE
23 FELLOW WITH THE RED HEAD -- THE RED HOODED SWEATSHIRT?

24 A. HE STATED HE WAS WEARING A RED HOODED SWEATSHIRT, DARK
25 COLORED PANTS AND TENNIS SHOES, ACTUALLY HAD SHORTS ON.

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

54

1 STATED HE WAS ROUGHLY SIX FOOT, SKINNY, ABOUT A HUNDRED AND
2 NINETY POUNDS, HAD A THIN GOATEE AND HE WAS DARK SKINNED.

3 AND THE SECOND SUBJECT WAS ROUGHLY FIVE EIGHT, ONE
4 SEVENTY. HE WAS WEARING A WHITE SHIRT, BLACK SHORTS, BLACK
5 TENNIS SHOES AND WHITE SOCKS.

6 Q. DID MR. ESPINOZA MAKE ANY REFERENCE ABOUT ANY
7 SIGNIFICANT FACIAL FEATURES OR TATTOOS OF ANY KIND?

8 A. NO TATTOOS. HE STATED THE FIRST SUBJECT HAD A THIN
9 GOATEE AND HE WAS VERY COCKY, DEMANDING. THE SECOND SUBJECT
10 WAS KIND OF LAID BACK.

11 Q. DID HE GIVE YOU ANY DESCRIPTION ABOUT THEIR HAIR STYLE?

12 A. NO. THEY HAD -- THE FIRST SUBJECT HAD HOODIES ON, HAD
13 A HOODIE. AND I DON'T BELIEVE HE DID ABOUT THE SECOND.

14 Q. YOU STATED A MOMENT AGO THAT HE GOT THE TAG NUMBER OF
15 THE VEHICLE?

16 A. YES, SIR.

17 Q. DID HE RELAY THAT INFORMATION TO YOU?

18 A. YES, SIR. AT THE TIME HE WAS VERY HECTIC, 'CAUSE LIKE
19 I SAID, HE'D JUST GOT SHOT AT. THE TAG NUMBER HE GAVE ME
20 DURING THAT TIME, I GOT BACK IN MY VEHICLE, AND OUR
21 COMPUTERS WE CALL MBTs, WE HAVE A DMV FILE. WE CAN PLACE
22 THE TAG NUMBER IN THE DMV FILE AND IT COMES BACK WHERE --
23 EVERYTHING ON THE PERSON WHO OWNS THE VEHICLE, WHERE THEY
24 LIVE, THEIR INFORMATION. WHEN I RAN THAT TAG NUMBER IT CAME
25 BACK NOT ON FILE, WHICH MEANS MAYBE A LETTER, A NUMBER WAS

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

55

1 INCORRECT.

2 Q. IS IT POSSIBLE THAT YOU RUN A TAG AND THE TAG IS NOT
3 ACTIVE OR SUSPENDED? WOULD THAT DRAW UP ON THE COMPUTER?
4 WOULD IT PROVIDE YOU THAT INFORMATION?

5 A. IF IT'S SUSPENDED? YES, IT WOULD SHOW UP.

6 Q. SO IF SOMEONE HADN'T PAID THEIR TAXES ON THEIR TAG
7 WOULD IT STILL SHOW ---

8 A. YES.

9 Q. --- IN THE SYSTEM? NOW WITH THE INFORMATION THAT HE
10 PROVIDED TO YOU DID YOU ALERT ANY OTHER OFFICERS IN THE
11 AREA?

12 A. YES. WE CALL A BOLO, WHICH IS BE ON THE LOOKOUT, PUT
13 OUT OVER THE RADIO THE SUSPECT DESCRIPTION, THE VEHICLE,
14 THEIR DIRECTION OF TRAVEL, WHAT THEY WERE WEARING, THEIR
15 HEIGHT, AGE, JUST A RUN-DOWN DESCRIPTION SO THAT OUR
16 SURROUNDING UNITS CAN EITHER, (A) SEE THE VEHICLE OR
17 POSSIBLY SEE THE OTHER SUBJECTS WALKING AROUND SOMEWHERE.

18 Q. ALL RIGHT. A MOMENT AGO YOU STATED THAT YOU ARRIVED --
19 I BELIEVE THIS INCIDENT TO OCCUR AROUND TWO AM?

20 A. I ARRIVED JUST A LITTLE AFTER. I BELIEVE IT WAS ABOUT
21 2:10. MR. ESPINOZA SAID IT HAPPENED AROUND 1:55, I BELIEVE,
22 THEN AFTER HE CHASED AND CAME BACK BECAUSE HE DIDN'T HAVE
23 HIS CELL PHONE.

24 Q. SO CAN YOU GIVE THE JURY AN ESTIMATE OF HOW LONG FROM
25 THE TIME MR. ESPINOZA SAYS THIS HAPPENED AND THE INFORMATION

SCOTT MENDENHALL - DIRECT EXAMINATION BY MR. MARCHANT

56

1 YOU GATHERED TIL THE TIME YOU PUT THIS BOLO OUT? SO IF IT
2 HAPPENS AT 1:55 IN THE MORNING HOW LONG DID IT TAKE FOR YOU
3 TO PUT THAT INFORMATION OUT ON THE RADIO?

4 A. I ARRIVED AT 2:10, WHICH IS ABOUT FIFTEEN MINUTES
5 LATER. TAKES ABOUT FIVE MINUTES TO GET THE INFORMATION,
6 JUST A RUN-DOWN OF THE VEHICLE AND THE SUSPECTS. SO ABOUT
7 TWENTY MINUTES.

8 Q. FOLLOWING YOU PUTTING THIS INFORMATION OUT FOR THE BOLO
9 DID YOU DO ANY FURTHER INVESTIGATION WITH RESPECT TO THIS
10 CASE?

11 A. NO, I HAVE NOT.

12 Q. NOW AT THE TIME YOU HAD A DESCRIPTION OF TWO BLACK
13 MALES OF VARIOUS HEIGHT AND VARIOUS WEIGHT, IS THAT CORRECT?

14 A. YES.

15 Q. SO DID YOU SHOW MR. ESPINOZA A LINEUP OF ANY KIND?

16 A. NO, SIR, I DIDN'T.

17 Q. WHY NOT?

18 A. WE DIDN'T HAVE ANY SUSPECTS AT THE TIME.

19 Q. WELL, SURELY THE SHERIFF'S OFFICE HAS A DATABASE OF A
20 NUMBER OF INDIVIDUALS THAT WOULD MATCH THAT DESCRIPTION,
21 WOULDN'T THEY?

22 A. YES, SIR. WE HAVE A VERY BIG DESCRIPTION AND DATABASE
23 WITH IT.

24 Q. DO YOU HAVE THAT INFORMATION AVAILABLE TO YOU IN YOUR
25 PATROL CAR?

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

57

1 A. YES.

2 Q. DO YOU KNOW HOW MANY PEOPLE FIT THAT DESCRIPTION ---

3 A. HUNDREDS.

4 Q. --- THAT YOU HAVE ON FILE?

5 A. WE HAVE HUNDREDS.

6 MR. MARCHANT: THE COURT'S INDULGENCE?

7 (PAUSE)

8 Q. I DON'T HAVE ANY FURTHER QUESTIONS. PLEASE ANSWER ANY
9 QUESTIONS MR. MOORMAN ---

10 THE COURT: MR. MOORMAN.

11 Q. --- OR MR. ROBINSON MAY HAVE FOR YOU. THANK YOU.

12 MR. MOORMAN: MAY IT PLEASE THE COURT?

13 CROSS EXAMINATION BY MR. MOORMAN:

14 Q. DEPUTY MENDENHALL, YOU TALKED A LITTLE BIT ABOUT YOUR
15 TRAINING THAT YOU RECEIVED ON YOUR WAY TO BECOMING A
16 SHERIFF'S DEPUTY.

17 A. YES.

18 Q. AS PART OF YOUR TRAINING YOU WERE TRAINED TO PROPERLY
19 WRITE REPORTS, IS THAT CORRECT?

20 A. THAT'S CORRECT.

21 Q. YOU WERE -- ISN'T IT TRUE YOU WERE TRAINED THAT REPORT
22 WRITING IS A CRITICAL FUNCTION YOU PERFORM?

23 A. YES.

24 Q. AND ISN'T IT TRUE THAT IT'S CRITICAL BECAUSE WHAT IS IN
25 YOUR REPORT IS THE ONLY WAY THAT YOU CAN ENSURE THAT YOU'LL

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

58

1 HAVE A RECORD OF WHAT PEOPLE SAY AND WHAT ACTIONS YOU TOOK?

2 A. THAT'S CORRECT.

3 Q. SO YOU DON'T HAVE TO RELY ON YOUR MEMORY, IS ---

4 A. THAT'S CORRECT.

5 Q. --- THAT CORRECT? YOU SAID THERE WAS A MASTER DEPUTY

6 RIDING WITH YOU THAT NIGHT. WHO WAS THAT MASTER DEPUTY?

7 A. MASTER DEPUTY PHILLIPS.

8 Q. HE WAS YOUR TRAINING OFFICER?

9 A. YES.

10 Q. AFTER YOU, GENERALLY SPEAKING, AFTER YOU WRITE A REPORT

11 WHILE YOU'RE IN TRAINING DOES THE MASTER DEPUTY REVIEW THAT

12 REPORT?

13 A. YES, HE DOES.

14 Q. AFTER THE MASTER DEPUTY REVIEWS THAT REPORT DOES THE

15 SERGEANT, YOUR SUPERVISORS REVIEW THAT REPORT?

16 A. YES, THEY DO.

17 Q. SO AT THIS TIME YOUR REPORTS HAD TWO LAYERS OF

18 SUPERVISION?

19 A. YES.

20 Q. SO ISN'T IT TRUE WHEN YOU WROTE YOUR REPORT YOU NOT

21 ONLY WANTED TO GET IT RIGHT BECAUSE THAT'S WHAT YOU WERE

22 TRAINED TO DO, BUT YOU ALSO WANTED TO MAKE SURE THAT YOUR

23 SUPERVISORS WERE PLEASED WITH WHAT YOU WERE DOING?

24 A. YES.

25 Q. YOU TALKED ABOUT, WITH THE PROSECUTOR, ABOUT WHAT THE

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

59

- 1 -- WHAT MR. ESPINOZA HAD TOLD YOU ABOUT WHAT HAD HAPPENED,
2 CORRECT?
3 A. YES, I DID.
4 Q. AND ISN'T IT TRUE THAT MR. ESPINOZA TOLD YOU THAT THERE
5 WERE TWO BLACK MALES INVOLVED? ISN'T THAT TRUE?
6 A. THAT'S CORRECT.
7 Q. TWO BLACK MALES INVOLVED..
8 A. HE SAID THERE WAS TWO BLACK MALES INVOLVED NEAR THE
9 VEHICLE. HE STATED THAT SOMEBODY ELSE HAD TO BE INSIDE THE
10 VEHICLE TO DRIVE OFF.
11 Q. SO YOU HAVE TWO BLACK MALES WHO ARE AROUND THE VEHICLE
12 AND YOU HAVE ONE INDIVIDUAL IN THE CAR, CORRECT?
13 A. YES, THAT'S WHAT HE STATED.
14 Q. SO A TOTAL OF THREE PEOPLE, CORRECT?
15 A. THAT'S CORRECT.
16 Q. TWO AROUND THE -- MR. ESPINOZA'S JEEP AND ONE IN THE
17 CAR?
18 A. YES.
19 Q. AND ISN'T IT TRUE, LIKE YOU SAID, LIKE YOU TOLD MR.
20 MARCHANT, THAT HE DESCRIBED THE HEIGHT AND WEIGHT OF THESE
21 INDIVIDUALS WHO CAME AROUND HIS JEEP, CORRECT?
22 A. YES, HE DID.
23 Q. AND THE HEIGHT OF THE BLACK MALE WHO CAME ON THE
24 DRIVER'S SIDE WAS WHAT?
25 A. THEY BOTH CAME TO THE DRIVER'S SIDE.

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

60

1 Q. THE HEIGHT OF THE -- HOW TALL WAS THE TALLEST ONE?

2 A. HE SAID ROUGHLY SIX FOOT.

3 Q. HE SAID SIX FEET TALL?

4 A. YES.

5 Q. HOW MUCH DID HE SAY THAT PERSON WEIGHED?

6 A. ABOUT A HUNDRED AND NINETY POUNDS.

7 Q. AND THE SECOND BLACK MALE AROUND THE CAR, HOW TALL DID
8 HE SAY THAT WAS?

9 A. FIVE EIGHT.

10 Q. AND WHAT -- HOW MUCH DID THAT PERSON WEIGH?

11 A. A HUNDRED AND SEVENTY.

12 Q. DEPUTY MENDENHALL, ISN'T IT TRUE THAT THE MEASUREMENTS
13 THAT LAW ENFORCEMENT HAS FOR MY CLIENT, MR. O'SHAUN
14 ROBINSON, IS FIVE EIGHT, A HUNDRED AND FIFTY POUNDS? ISN'T
15 THAT TRUE?

16 A. THAT'S WHAT YOUR CLIENT ---

17 Q. ISN'T THAT -- AREN'T THOSE THE MEASUREMENTS LAW
18 ENFORCEMENT HAS FOR MY CLIENT, MR. O'SHAUN ROBINSON?

19 A. I DON'T RECALL. I NEVER LOOKED AT THEIR INFORMATION.

20 Q. YOU NEVER LOOKED UP THAT INFORMATION?

21 A. NO. I HAD NO IDEA WHO YOUR CLIENT WAS.

22 Q. MR. MARCHANT ASKED YOU A LITTLE BIT ABOUT PHOTO
23 LINEUPS.

24 A. YES.

25 Q. LET'S TALK ABOUT PHOTO LINEUPS. ISN'T IT TRUE IT'S

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

61

1 PART OF YOUR TRAINING -- YOUR TRAINING TO USE PHOTO LINEUPS?

2 A. THAT'S CORRECT.

3 Q. DESCRIBE TO THE JURY, GENERALLY SPEAKING, WHAT IS A
4 PHOTO LINEUP?

5 A. YOU TAKE YOUR SUSPECT THAT YOU HAVE IN A CRIME, YOU
6 TAKE FIVE OTHER SUSPECTS, YOU HAVE SIX ALTOGETHER, AND YOU
7 PUT THEM ON A PIECE OF PAPER WITH THEIR PICTURES. THERE'S
8 NO NAMES. AND YOU TRY TO CROP IT DOWN SO YOU JUST HAVE A
9 FACE.

10 YOU SHOW IT TO YOUR VICTIM. YOU DON'T TELL THEM WHO'S
11 ON THE PHOTO LINEUP, BUT YOU KNOW WHICH ONE'S THE SUSPECT.
12 AND IF THEY PICK OUT THE CORRECT ONE, THEN YOU HAVE THEM
13 SIGN IT, DATE IT AND THEN PRINT THEIR NAME AND CIRCLE IT TO
14 SHOW WHICH ONE THAT THEY KNOW IS THE SUSPECT.

15 Q. AND ISN'T IT TRUE THAT OF THE IDENTIFICATION PROCEDURES
16 YOU USE THIS IS THE ONE THAT LAW ENFORCEMENT BELIEVES SHOULD
17 BE USED MOST OFTEN? IS THAT TRUE?

18 A. IF WE HAVE A SUSPECT AND WE FEEL IT'S HIM, WE KNOW FOR
19 A FACT IT'S HIM, THAT'S WHAT WE NORMALLY DO.

20 Q. AND ISN'T IT TRUE THAT YOU USE THIS PROCEDURE BECAUSE
21 IF IT'S DONE CORRECTLY YOU'RE NOT SUGGESTING TO THE WITNESS
22 WHO THE PERSON WAS WHO COMMITTED THE CRIME, IS THAT CORRECT?

23 A. SAY THAT ONE MORE TIME, PLEASE.

24 Q. ISN'T IT TRUE THAT THE REASON WHY YOU WANT TO USE THIS
25 PHOTO LINEUP IS THAT IT DOESN'T SUGGEST TO THE VICTIM WHO TO

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

62

1 PICK, CORRECT?

2 A. THAT'S CORRECT. IT'S ON THEIR KNOWLEDGE OF WHO THEY
3 SAW. AND IF THEY COULD PICK THEM OUT OF A PHOTO LINEUP AND
4 THEY'RE VERY SURE, THEN THAT'S THEM.

5 Q. OKAY. AND, IN FACT, ISN'T IT TRUE THE INSTRUCTIONS YOU
6 GIVE WITNESSES WHEN YOU PRESENT THEM WITH PHOTO LINEUPS IS
7 TO ONLY PICK A PERSON IF YOU'RE SURE THAT'S THE PERSON YOU
8 SAW?

9 A. ABSOLUTELY.

10 Q. DON'T PICK A PERSON IF YOU'RE NOT SURE THAT'S THE
11 PERSON YOU SAW?

12 A. WELL, IF THE SUSPECT'S IN THERE I TELL THEM TO THEIR
13 BEST KNOWLEDGE WHO WAS THE SUSPECT AND THEY PICK SOMEBODY
14 ELSE THAT'S NOT THE SUSPECT, I STILL HAVE THEM DO THE SAME
15 -- EVERYTHING ELSE. CIRCLE THE SAME ONE AND SIGN IT AS, YOU
16 KNOW, THEY WOULD SIGN A NORMAL ONE. AND YOU GO ABOUT IT
17 LIKE THAT. AND YOU JUST DON'T HAVE A SUSPECT 'CAUSE THEY
18 COULDN'T IDENTIFY HIM.

19 Q. BUT BEFORE YOU SHOW THEM THE PHOTO LINEUP YOU DON'T
20 TELL THEM WHO THE SUSPECT IS, RIGHT?

21 A. NO.

22 Q. 'CAUSE YOU DON'T WANT TO TAINT THE IDENTIFICATION ---

23 A. THAT'S CORRECT.

24 Q. --- PROCEDURE?

25 A. THAT'S CORRECT.

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

63

1 Q. DEPUTY MENDENHALL, YOU TALKED ABOUT HOW AFTER THE
2 VICTIM OR AFTER MR. ESPINOZA GAVE YOU A DESCRIPTION OF THE
3 PEOPLE WHO DID THIS YOU PUT IT OUT ON A BE ON THE LOOKOUT,
4 CORRECT?

5 A. YES, SIR.

6 Q. AND IT'S CRITICAL EARLY ON THAT THAT DESCRIPTION THAT
7 YOU PUT OUT BE AS ACCURATE AS POSSIBLE, CORRECT?

8 A. YES.

9 Q. 'CAUSE THAT'S THE BEST CHANCE LAW ENFORCEMENT HAS TO
10 CATCH THE PEOPLE WHO DID THIS?

11 A. THAT'S CORRECT.

12 Q. AND SOMETIMES LAW ENFORCEMENT GENERATES DOCUMENTS
13 CALLED DESCRIPTION WORKSHEETS IN ORDER TO CAPTURE THIS
14 DESCRIPTION, IS THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS DEFENDANT'S
17 EXHIBITS 2 AND 3 FOR IDENTIFICATION PURPOSES ONLY. WOULD
18 YOU PLEASE LOOK AT THOSE?

19 (WHEREUPON DEFENDANT ROBINSON'S EXHIBITS 2 AND 3 WERE
20 MARKED PRIOR BY MR. MOORMAN FOR IDENTIFICATION)

21 A. YES, SIR.

22 Q. ARE THOSE THE CRIMINAL DESCRIPTION WORKSHEETS THAT WERE
23 GENERATED FOR THIS CASE?

24 A. YES.

25 Q. ISN'T IT TRUE ---

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. MOORMAN

64

1 MR. MARCHANT: YOUR HONOR, I'D OBJECT TO HIM ASKING HIM
2 ANY QUESTIONS OFF THESE SHEETS. IF THERE'S SOMETHING HE
3 DOESN'T REMEMBER, THEN HE CAN CROSS EXAMINE HIM OFF THE
4 SHEETS, BUT I WOULD SUBMIT THAT HE'D HAVE TO MOVE THEM INTO
5 EVIDENCE BEFORE HE COULD CROSS EXAMINE HIM ON THEM.

6 MR. MOORMAN: AND, YOUR HONOR, MY POSITION WOULD BE
7 THAT I COULD ASK QUESTIONS. THESE ARE BUSINESS -- THESE
8 WERE BUSINESS RECORDS. SO THE CONTENT OF THE DOCUMENTS ARE
9 ADMISSIBLE PURSUANT TO THE RULES OF EVIDENCE.

10 THE COURT: GO AHEAD.

11 Q. ISN'T IT TRUE, DEPUTY MENDENHALL, THAT ON BOTH
12 WORKSHEETS BOTH SUBJECTS ARE LISTED AS HAVING HOODED
13 SWEATSHIRTS?

14 A. YES, I BELIEVE SO.

15 Q. AND, DEPUTY MENDENHALL, IF THE VICTIM IN A CASE LIKE
16 THIS HAD MADE A COMMENT TO YOU ABOUT HIS ABILITY TO SEE THE
17 SUSPECTS, FOR EXAMPLE, IF A VICTIM IN A CASE LIKE THIS HAD
18 SAID, I GOT AN EXCELLENT LOOK AT THE SUBJECT, THAT'S
19 SOMETHING YOU WOULD HAVE DEFINITELY PUT IN YOUR REPORT,
20 ISN'T THAT TRUE?

21 A. IT JUST ALL DEPENDS.

22 Q. DON'T YOU THINK THAT WOULD BE A VERY, VERY IMPORTANT
23 THING YOU'D NOTE IN YOUR REPORT?

24 A. WELL, YOU ASK THE VICTIMS, YOU KNOW, HOW WELL THEY
25 COULD SEE THEM. OF COURSE, THEY DON'T KNOW THEM. YOU JUST

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. ROBINSON

65

1 ASK THEM AND GET A LITTLE -- A DESCRIPTION AND BE VERY
2 DETAILED ABOUT IT.

3 Q. OKAY. ALL RIGHT.

4 A. AND THEN HIS SITUATION WAS SEVERAL MINUTES. SO HE GOT
5 A GOOD LOOK AT THEM.

6 Q. OKAY. ALL RIGHT. IF HE HAD TOLD YOU THAT HE GOT AN
7 EXCELLENT LOOK AT THEM, THAT'S SOMETHING THAT YOU WOULD HAVE
8 PUT IN YOUR REPORT, ISN'T THAT TRUE, IN THE INTEREST OF
9 BEING THOROUGH AND COMPLETE?

10 A. IF IT WAS BROUGHT UP, YES.

11 Q. OKAY. LET ME SHOW YOU -- LET ME SHOW YOU THE REPORT
12 THAT YOU GENERATED IN THIS CASE.

13 (WHEREUPON DEFENDANT ROBINSON'S EXHIBIT 1 WAS MARKED
14 FOR IDENTIFICATION)

15 Q. WHAT'S BEEN MARKED AS DEFENSE EXHIBIT NUMBER 1.
16 ANYWHERE IN YOUR REPORT DO YOU LIST THAT THE VICTIM SAID OR
17 NOTE THAT THE VICTIM SAID HE GOT AN EXCELLENT LOOK?

18 A. NO.

19 MR. MOORMAN: YOUR HONOR, I HAVE NOTHING FURTHER.

20 THE COURT: MR. ROBINSON.

21 MR. ROBINSON: MAY IT PLEASE THE COURT?

22 CROSS EXAMINATION BY MR. ROBINSON:

23 Q. OFFICER, BESIDES MR. ESPINOZA THERE WERE NO OTHER
24 EYEWITNESSES AT THE SCENE, WERE THERE?

25 A. THAT'S CORRECT.

SCOTT MENDENHALL - CROSS EXAMINATION BY MR. ROBINSON

66

1 Q. IN FACT, THE -- IN FACT, THE -- THERE WAS NO ONE FROM
2 THE APARTMENT COMPLEX THAT SAW THIS, CORRECT?

3 A. NO.

4 Q. NO ONE IN THE PARKING LOT THAT SAW THIS, CORRECT?

5 A. NO.

6 Q. OKAY. IN TERMS OF THE -- YOU SAID TO MR. MOORMAN ON
7 CROSS EXAMINATION ABOUT SEVERAL MINUTES THIS HAPPENED. YOU
8 WEREN'T AT THE SCENE, WERE YOU?

9 A. NO, SIR, I WAS NOT.

10 Q. AND YOU DON'T KNOW HOW MANY MINUTES IT WAS THAT HE
11 ACTUALLY SAW THIS -- THESE ---

12 A. THAT'S CORRECT.

13 Q. --- PEOPLE, CORRECT?

14 A. YES, SIR.

15 Q. YOU DON'T KNOW ANYTHING ABOUT THAT, CORRECT?

16 A. NO.

17 Q. COULD HAVE BEEN ONE MINUTE, COULD HAVE BEEN THREE
18 MINUTES, YOU DON'T KNOW, DO YOU?

19 A. THAT'S RIGHT.

20 Q. OKAY. AND AS FAR AS THE TAG GOES ON THIS AUTOMOBILE
21 THAT YOU PUT IN YOUR REPORT.

22 A. YES.

23 Q. THAT AUTOMOBILE WHEN YOU RAN THE TAG ON THAT DIDN'T
24 BELONG TO EITHER MR. ROBINSON NOR TO MR. WORKMAN, DID IT?

25 A. NO, IT WAS AN INCORRECT TAG.

SCOTT MENDENHALL - REDIRECT EXAMINATION BY MR. MARCHANT

67

1 Q. OKAY. AND NOTHING --- NO ITEMS WERE EVER RECOVERED FROM
2 EITHER MR. ROBINSON OR MR. WORKMAN, WERE THEY?

3 A. I'M NOT AWARE.

4 Q. OKAY. AND WHEN THEY PUT OUT A BOLO AT THIS SCENE IN
5 TERMS OF FINDING THIS VEHICLE OR FINDING THE DESCRIPTION OF
6 THESE GENTLEMEN THAT YOU TESTIFIED TO IT COULD BE HUNDREDS
7 OF, ---

8 A. YES.

9 Q. --- THEY NEVER SAW MR. ROBINSON OR MR. WORKMAN, DID
10 THEY?

11 A. WHO ARE YOU REFERRING TO AS THEY?

12 Q. THE DEPUTIES OR ---

13 A. NO.

14 Q. --- ANYBODY LIKE THAT? NEVER SAW THEM AROUND THE SCENE
15 OR ANYTHING, DID THEY?

16 A. NO.

17 Q. THAT'S ALL THE QUESTIONS I HAVE. THANK YOU.

18 THE COURT: ANY REDIRECT?

19 MR. MARCHANT: BRIEFLY, YOUR HONOR.

20 REDIRECT EXAMINATION BY MR. MARCHANT:

21 Q. I'LL SHOW YOU WHAT'S BEEN MARKED AS DEFENSE EXHIBIT 2.
22 WHAT DID YOU WRITE DOWN AS THE HEIGHT AND WEIGHT OF SUSPECT
23 NUMBER 1?

24 A. HE'S SIX FOOT, ONE SEVENTY.

25 Q. NOW AS FAR AS THE LINEUP IS CONCERNED, IS THAT

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

68

1 SOMETHING YOU WOULD HAVE DONE AT THE TIME OR WOULD THAT
2 GENERALLY COME AT A FOLLOWUP REPORT OR A FOLLOWUP
3 INVESTIGATION FROM THE ARMED ROBBERY DIVISION?

4 A. IT'S FILLED OUT A FEW MINUTES AFTER I LEAVE THE SCENE
5 WITH OUR REPORT.

6 Q. I'M SORRY. WHAT I'M ASKING IS WOULD YOU BE THE ONE
7 THAT GENERALLY DOES A LINEUP OR WOULD IT BE SOMEBODY FROM
8 THE ARMED ROBBERY DIVISION?

9 A. IN AN ARMED ROBBERY IT WOULD BE AN INVESTIGATOR, NOT I.

10 Q. THANK YOU. I HAVE NO FURTHER QUESTIONS.

11 MR. MARCHANT: I ASK THAT THIS WITNESS ---

12 THE COURT: THANK YOU. STEP ---

13 MR. MARCHANT: --- BE EXCUSED.

14 THE COURT: STEP DOWN. ANY OBJECTION TO EXCUSING ---

15 MR. MOORMAN: NO OBJECTION, YOUR HONOR.

16 THE COURT: --- THE WITNESS?

17 MR. ROBINSON: NO OBJECTION.

18 THE COURT: THANK YOU. YOU'RE EXCUSED.

19 MR. MARCHANT: THE STATE WOULD CALL SERGIO ESPINOZA.

20 SERGIO ESPINOZA, BEING

21 DULY SWORN TESTIFIED AS FOLLOWS:

22 MADAME CLERK: THANK YOU. PLEASE BE SEATED. PLEASE
23 STATE YOUR FULL NAME FOR THE RECORD.

24 MR. ESPINOZA: SERGIO DAVID ESPINOZA.

25 DIRECT EXAMINATION BY MR. MARCHANT:

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

69

- 1 Q. GOOD MORNING, MR. ESPINOZA.
- 2 A. GOOD MORNING.
- 3 Q. HOW OLD ARE YOU, SIR?
- 4 A. THIRTY-TWO.
- 5 Q. AND WHERE WERE YOU BORN?
- 6 A. MEXICO.
- 7 Q. AND WHEN DID YOU COME TO THE UNITED STATES?
- 8 A. WHEN I WAS A BABY.
- 9 Q. AND WHEN YOU SAY YOU WERE A BABY, HOW OLD WERE YOU?
- 10 HOW ---
- 11 A. SEVEN. SEVEN, EIGHT.
- 12 Q. SEVEN OR ---
- 13 A. EIGHT.
- 14 Q. AND FROM MEXICO WHERE DID YOU FIRST TAKE RESIDENCE HERE
- 15 IN THE UNITED STATES?
- 16 A. I WAS RAISED IN TEXAS. SO TEXAS.
- 17 Q. HOW LONG DID YOU LIVE IN TEXAS PRIOR TO MOVING TO SOUTH
- 18 CAROLINA?
- 19 A. MOST MY LIFE. I'VE BEEN HERE THREE YEARS NOW FROM
- 20 TEXAS.
- 21 Q. DO YOU HAVE A DRIVER'S LICENSE FROM THE UNITED STATES?
- 22 A. I HAD EVERYTHING, SOCIAL SECURITY NUMBER, MY CARD,
- 23 VOTER REGISTRATION, TEXAS DRIVER'S LICENSE FROM TEXAS.
- 24 Q. SO ARE YOU AN AMERICAN CITIZEN?
- 25 A. YES, SIR.

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

70

- 1 Q. YOU SAID YOU HAD A TEXAS DRIVER'S LICENSE.
- 2 A. YES, SIR.
- 3 Q. DO YOU HAVE A SOUTH CAROLINA DRIVER'S LICENSE?
- 4 A. COULDN'T GET THAT.
- 5 Q. YOU COULDN'T GET THAT?
- 6 A. NO, SIR.
- 7 Q. WHY IS THAT?
- 8 A. 'CAUSE EVERYTHING WAS STOLEN FROM ME TO SHOW THE
- 9 CREDENTIALS TO GET A SOUTH CAROLINA LICENSE.
- 10 Q. BUT YOU HAD A STATE OF TEXAS DRIVER'S LICENSE?
- 11 A. YES, SIR, NUMBER.
- 12 Q. NOW PRIOR TO THIS INCIDENT IN DECEMBER WHERE WERE YOU
- 13 EMPLOYED?
- 14 A. I WAS A PUBLIC SAFETY OFFICER IN THE HAYWOOD MALL.
- 15 Q. AND WHAT WERE YOUR DUTIES OR WHAT ARE YOUR DUTIES IN
- 16 THAT CAPACITY?
- 17 A. OBSERVE, PATROL AND REPORT. JUST PROVIDE SAFETY FOR
- 18 ALL THE TENANTS, CUSTOMERS.
- 19 Q. AND PRIOR TO DECEMBER OF 2007 HOW LONG HAD YOU BEEN
- 20 WORKING AS A SECURITY OFFICER AT HAYWOOD MALL?
- 21 A. THREE YEARS. STARTED IN APRIL '06.
- 22 Q. AS A SECURITY OFFICER DID YOU HAVE TO GO THROUGH ANY
- 23 TRAINING OR CERTIFICATION?
- 24 A. YES, SIR, SLED CERTIFIED, SOUTH CAROLINA LAW
- 25 ENFORCEMENT DIVISION.

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 Q. AND WHEN YOU SAY SLED CERTIFIED, PLEASE TELL THE JURY
2 WHAT YOU MEAN BY SLED ---

3 A. SLED CERTIFIED? IT MEANS YOU HAVE THE SAME AUTHORITY
4 AS A SHERIFF DEPUTY. YOU HAVE THE SAME ARREST POWER WITHIN
5 THAT FACILITY, SAME DUTIES. YOU'RE THERE TO ASSERT THE LAW,
6 OBSERVE, MAINLY SURVEILLANCE. YOU WORK SIDE BY SIDE WITH
7 LAW ENFORCEMENT, ANYTHING OF THAT NATURE. AND THAT'S ONLY
8 WITHIN THAT CONTRACTED PROPERTY.

9 Q. ONLY WITHIN THE HAYWOOD MALL?

10 A. WHEREVER YOU'RE CONTRACTED AS A SLED OFFICER.

11 Q. NOW YOU HEARD DEPUTY MENDENHALL A MOMENT AGO TALK ABOUT
12 HIS TRAINING BEFORE BECOMING EMPLOYED WITH THE SHERIFF. IS
13 THAT THE SAME TRAINING YOU'RE TALKING ABOUT OR YOU HAVE
14 SOMETHING DIFFERENT?

15 A. NO, SIR. OUR TRAINING IS NOT TO BE A POLICE OFFICER,
16 JUST A SECURITY OFFICER. WE -- THEY BASE IT ON WHAT KIND OF
17 TRAINING YOU HAD BEFORE. I USED TO BE A SELF-DEFENSE
18 INSTRUCTOR IN TEXAS, WOMEN'S SELF-DEFENSE FOR THE CITY OF
19 LUFKIN, TEXAS. SO THAT WENT WITH MY JOB HERE. THAT HELPED
20 ME GET SLED CERTIFICATION QUICKER BECAUSE OF THAT TRAINING.

21 Q. BEING SLED CERTIFIED, DOES THAT AUTHORIZE YOU TO CARRY
22 A FIREARM WHILE ON DUTY?

23 A. IF YOU'RE -- IF SLED HIRES YOU OR IF THAT COMPANY HIRES
24 YOU AS AN ARMED SECURITY OFFICER. THERE'S EITHER ARMED OR
25 UNARMED. IT ALL DEPENDS ON THE CRIME WITHIN THAT AREA.

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 Q. SO WERE YOU ARMED OR UNARMED ---

2 A. UNARMED AS A SLED OFFICER.

3 Q. AND FOR THREE YEARS YOU WERE WORKING AT THE HAYWOOD
4 MALL?

5 A. YES, SIR.

6 Q. NOW WHAT IS IT THAT BROUGHT YOU TO GREENVILLE, SOUTH
7 CAROLINA?

8 A. MY FAMILY LIVES IN GEORGIA. BEEN IN TEXAS MOST OF MY
9 LIFE. THEY MOVED TO GEORGIA FROM TEXAS, MY MOM, MY BROTHERS
10 AND MY SISTERS. DURING MY COMMUTING BACK AND FORTH VISITING
11 I MET A GIRL. AND WHAT I DID WAS JUST TRY TO GET CLOSER TO
12 MY FAMILY. AND SINCE I MET A GIRL IN SOUTH CAROLINA, THAT
13 KIND OF WORKED OUT FOR -- FOR BOTH OF US SO I COULD BE
14 CLOSER TO FAMILY AND HAVE MY GIRLFRIEND HERE.

15 Q. WILL YOU PULL THE MICROPHONE TOWARDS YOU A LITTLE BIT,
16 PLEASE, SIR, TO MAKE SURE WE CAN ALL HEAR? OKAY. NOW LET'S
17 TALK ABOUT THIS APARTMENT COMPLEX. HOW LONG HAD YOU BEEN
18 LIVING IN THIS APARTMENT COMPLEX PRIOR TO DECEMBER 2007?

19 A. ALMOST TWO YEARS.

20 Q. DO YOU RECALL WHAT APARTMENT NUMBER YOU WERE LIVING IN?

21 A. F-8, RIGHT ACROSS FROM THE POOL.

22 Q. IF YOU WOULD STEP DOWN FOR ME. I'M GOING TO GIVE YOU
23 THE STICKER THAT'S BEEN MARKED "F" REPRESENTING BUILDING
24 "F". COULD YOU PLEASE PLACE THAT WHERE BUILDING "F" IS?

25 A. (WHEREUPON THE WITNESS PLACED THE STICKER ON THE

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 BOARD).

2 Q. PLEASE TAKE THE STAND. HAVE YOU BEEN IN THIS
3 PARTICULAR BUILDING FOR TWO YEARS OR JUST IN THIS COMPLEX
4 FOR TWO YEARS?

5 A. THAT PARTICULAR BUILDING.

6 Q. NOW ON THE NIGHT THAT THIS HAPPENED WERE YOU WORKING
7 THAT EVENING?

8 A. YES, SIR.

9 Q. AND, IF YOU RECALL, WHAT TIME DID YOU GET OFF WORK?

10 A. IT WAS DURING THE HOLIDAYS. SO THE MALL STAYED OPEN
11 LATER. I GOT OFF AT -- CLOSE TO -- IT WAS TWELVE -- AFTER
12 MIDNIGHT.

13 Q. IF IT WAS A SUNDAY WOULD THE MALL BE OPEN THAT LATE
14 DURING THIS PERIOD OF TIME YOU'RE REFERRING TO?

15 A. THE MALL -- IT HAD DIFFERENT HOURS BECAUSE OF THE
16 HOLIDAYS. SO IT STAYED OPEN TIL ELEVEN, I BELIEVE, OR
17 TWELVE. I DON'T REMEMBER. BUT SECURITY OFFICERS ARE THERE
18 24/7.

19 Q. SO FOLLOWING YOUR SHIFT DID YOU GO OUT OR DID YOU GO
20 HOME?

21 A. I WENT TO GO GET SOMETHING TO EAT.

22 Q. WHEN YOU LEFT THE MALL WHEN YOU GOT DONE DID YOU COME
23 HOME FIRST?

24 A. I WENT HOME, CHANGED, TOOK OFF MY UNIFORM. I DIDN'T
25 WANT TO BE DRIVING AROUND WITH THE UNIFORM. AND THEN THAT'S

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 WHEN I WENT TO GET ME SOMETHING TO EAT.

2 Q. OKAY. AND WHAT TYPE OF VEHICLE WERE YOU DRIVING ---

3 A. I WAS ---

4 Q. --- AT THIS TIME?

5 A. I HAD A RED JEEP CHEROKEE, FOUR DOOR.

6 Q. DO YOU RECALL WHAT YEAR THIS MODEL OF CHEROKEE WAS?

7 A. '91.

8 Q. OKAY. NOW YOU SAID YOU CAME HOME AND THEN YOU WENT TO
9 GET SOMETHING TO EAT. DO YOU RECALL WHERE YOU WENT TO GET
10 SOMETHING TO EAT?

11 A. YES, SIR. NOT MANY PLACES ARE OPEN THAT LATE. SO I
12 WENT TO TACO BELL ON WHITE HORSE ROAD.

13 Q. AND ABOUT WHAT TIME DID YOU RETURN BACK TO THE
14 APARTMENT AFTER YOU WENT TO TACO BELL?

15 A. IT WAS AROUND 1:45, 1:40, SOMETHING LIKE THAT.

16 Q. WAS ANYONE WITH YOU WHEN YOU WENT TO TACO BELL?

17 A. NO, SIR.

18 Q. WAS THERE ANYONE WAITING BACK AT YOUR APARTMENT FOR
19 YOU?

20 A. NOT YET. I WAS ON THE PHONE AT THE TIME. AND MY
21 GIRLFRIEND WAS ABOUT TO GET HOME.

22 Q. WERE YOU ON THE PHONE WHEN YOU PULLED INTO YOUR PARKING
23 SPOT AT THE APARTMENT COMPLEX?

24 A. NO, SIR.

25 Q. NOW WHEN YOU -- WHEN YOU PULLED INTO YOUR APARTMENT AND

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1 INTO YOUR PARKING SPOT WHAT, IF ANYTHING, DID YOU NOTICE?

2 A. I NOTICED -- WELL, THIS IS HOW IT HAPPENED. I HAD
3 DROVE UP. I OPENED THE DRIVER'S SIDE DOOR. I STUCK MY FOOT
4 OUT. I REACHED OVER ON THE RIGHT SIDE, THE PASSENGER'S
5 SIDE, WHERE I LEFT THE FOOD. AND THEN WHEN I LOOKED UP I
6 SAW A BLACK MALE, LOOKED IN, RED HOODIE COMING RIGHT ACROSS
7 FROM MY APARTMENT DOOR. AND HE WAS WEARING SHORTS.

8 AND I DIDN'T PAY NO, YOU KNOW, I DIDN'T REALLY THINK
9 THAT MUCH OF IT, KIND OF THOUGHT IT WAS SUSPICIOUS FOR BEING
10 THAT LATE, RIGHT IN FRONT OF MY DOOR. AND I WENT AHEAD AND
11 PROCEEDED GETTING MY -- THE FOOD, THE BAG OF FOOD. AND THEN
12 WHEN I LOOKED UP AGAIN HE HAD PUT THE REVOLVER IN FRONT OF
13 MY -- MY FACE.

14 Q. DID THIS PERSON OPEN THE DOOR OR DID YOU OPEN THE DOOR?

15 A. I HAD OPENED THE DOOR. I HAD ONE FOOT OUT THE DOOR AT
16 THE TIME.

17 Q. I'M GOING TO HAVE YOU STEP DOWN AGAIN, PLEASE, SIR.
18 AND WITH THIS BLACK SHARPIE PLEASE CIRCLE WHERE YOUR VEHICLE
19 WAS PARKED THAT NIGHT.

20 A. (WHEREUPON THE WITNESS MARKED ON THE BOARD).

21 Q. OKAY. NOW ON THIS PARTICULAR MAP THERE ARE TWO OTHER
22 VEHICLES HERE AND IT LOOKS LIKE FOUR HERE? DO YOU RECALL
23 WHETHER OR NOT THERE WERE ANY VEHICLES ON EITHER SIDE OF
24 YOU?

25 A. THERE WAS ONE VEHICLE RIGHT HERE ON THE LEFT SIDE.

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 Q. OKAY. WERE THESE TWO VEHICLES HERE?

2 A. NO, SIR.

3 Q. OKAY. SO THESE WERE NOT THERE WHEN YOU GOT HOME?

4 A. CORRECT.

5 Q. OKAY. PLEASE SHOW THE JURY WHERE THIS PERSON CAME FROM
6 THAT YOU FIRST SAW.

7 A. RIGHT HERE. THERE'S A WALKWAY HERE, A SIDEWALK HERE,
8 GOES ALL THE WAY DOWN HERE. IT ACTUALLY MAKES A CIRCLE.

9 Q. OKAY. PLEASE HOLD YOUR POSITION, SIR. DO YOU RECALL
10 IF THERE WERE ANY, YOU KNOW, TELEPHONES OR STREET LAMPS THAT
11 WERE LIGHTING UP THE PARKING LOT?

12 A. YES, BECAUSE I WAS STOPPED HERE.

13 Q. DO YOU RECALL WHERE THEY ARE?

14 A. YES, SIR.

15 Q. OKAY. I'M GOING TO HAND YOU A STICKER. IF YOU WOULD
16 PUT THAT ONE ---

17 A. WELL, RIGHT HERE THERE'S A DUMPSTER. AND THE POLE, THE
18 LIGHT POLE IS RIGHT IN THE MIDDLE OF THE GRASS. SO IT'S
19 RIGHT THERE.

20 Q. ARE THERE ANY OTHER ONES?

21 A. OH, YES.

22 Q. OKAY.

23 MADAME COURT REPORTER: I'M SORRY, I CAN'T HEAR YOUR
24 ANSWER.

25 THE COURT: CAN YOU TRADE PLACES SO YOU CAN FACE THE

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

77

1 COURT REPORTER SO SHE CAN HEAR YOU, PLEASE?

2 Q. PLEASE REPEAT THAT LAST COMMENT.

3 A. THIS IS THE LAUNDRY MAT. SO EVERYTHING HAS TO BE WELL
4 LIT. THERE'S A COKE MACHINE RIGHT OUTSIDE. SO THEY KEEP
5 THAT WELL LIT AS WELL. YOU CAN ACTUALLY SEE THE POLE RIGHT
6 HERE.

7 Q. NOW ARE THERE OTHER POLES IN THE COMPLEX AS WELL?

8 A. THERE'S -- THERE'S LIGHTS ON EVERY DOOR OUTSIDE THE
9 DOOR.

10 Q. BUT WHAT I'M ASKING IS IS THIS PART OF THE COMPLEX LIT
11 UP AS WELL?

12 A. OH, YES, SIR, IN EVERY CORNER.

13 Q. DO YOU RECALL WHETHER OR NOT THAT EVENING THOSE
14 TELEPHONE POLES AND THOSE LAMPS WERE WORKING?

15 A. I DIDN'T DRIVE THAT DAY -- I DIDN'T DRIVE THROUGH THE
16 WHOLE PARKING LOT, BUT I KNOW THE WAY I COME IN, ALL THAT
17 WAS LIT THROUGH HERE.

18 Q. DO YOU RECALL ANY OF THESE POLE LAMPS BEING OUT?

19 A. OUT? NO, SIR.

20 Q. OKAY. PLEASE HAVE A SEAT. NOW THE PERSON THAT CAME
21 AROUND THE FRONT OF YOUR CAR, ONCE THEY GOT TO YOUR DOOR
22 WHAT DID THEY DO?

23 A. THEY PUT THE HOOD DOWN, THEIR HOODIE DOWN. THEY KEPT
24 PUTTING THE -- HE KEPT PUTTING THE GUN TOWARDS ME. HE
25 GRABBED THE DOOR. I OPENED IT. HE KEPT TELLING ME TO KEEP

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 MY HANDS UP. I STEPPED OUT OF THE DOOR. I HAD LET GO OF
2 THE FOOD AND I STILL HAD MY HANDS UP. AND HE TOLD ME TO
3 GIVE HIM EVERYTHING I HAD.

4 I KEPT LOOKING AT THE REVOLVER, I MEAN, THE GUN. AND I
5 KEPT TELLING HIM, YOU DON'T WANT TO DO THIS. I SAID, TAKE
6 IT EASY, YOU DON'T WANT TO DO THIS. HE SAYS, COME ON, HURRY
7 UP.

8 AND HE TOOK -- HE HAD ONE HAND UP FACING ME. AND THEN
9 HE TOOK THE OTHER HAND AND STARTED SEARCHING MY POCKETS.
10 AND THAT'S WHEN HE GRABBED MY CELL PHONE, EVERYTHING I HAD.
11 AND HE JUST TOOK THE WALLET.

12 I THOUGHT HE WAS THE ONLY ONE. AND THEN I HEARD A
13 VOICE BEHIND ME, BEHIND MY JEEP. I LOOKED AROUND AT FIRST
14 TO SEE IF MY GIRLFRIEND WAS LOOKING OR IF ANYBODY WAS
15 AROUND. AND THEN THAT'S WHEN I HEARD ANOTHER VOICE SAY,
16 JUST DO IT, HURRY UP, JUST DO IT, MAN.

17 Q. LET'S STOP FOR A MINUTE AND LET'S TALK ABOUT WHAT
18 PROPERTY YOU HAD THAT WAS TAKEN FROM YOU THAT EVENING.

19 A. I HAD MY CELL PHONE. AND I HAD MY WALLET, WHICH HAD
20 MONEY AND MY IDENTIFICATIONS, SOCIAL, EVERYTHING.

21 Q. DID IT CONTAIN YOUR DRIVER'S LICENSE?

22 A. YES, SIR, MY TEXAS DRIVER'S LICENSE, MY VOTER
23 REGISTRATION CARD, MY SOCIAL SECURITY CARD, MY SLED CARD
24 THAT I HAD TALKED ABOUT, MY WALLET.

25 Q. DID YOU HAVE ANY CASH ON YOU?

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1 A. YES, SIR.

2 Q. DO YOU RECALL HOW MUCH?

3 A. I DON'T KNOW THE EXACT AMOUNT. I KNOW IT WAS -- I HAD
4 JUST GOT PAID. SO IT WAS FOUR HUNDRED SOMETHING. BUT I --
5 THE DEPUTY SAID I HAD SAID TWO SOMETHING, BUT WHAT I WAS
6 DOING IS I WAS TALKING TO MY GIRLFRIEND AND ...

7 Q. HOW MUCH MONEY DO YOU THINK YOU HAD THAT EVENING?

8 A. I KNOW IT WAS CLOSE TO FOUR.

9 Q. WHEN YOU SAY FOUR, YOU MEAN ---

10 A. FOUR HUNDRED.

11 Q. OKAY. NOW LET'S TALK ABOUT THE GUN A LITTLE BIT MORE.
12 DO YOU RECALL WHICH HAND THIS FELLOW THAT CAME AROUND THE
13 FRONT OF YOUR CAR WAS HOLDING THE GUN IN?

14 A. THE RIGHT HAND.

15 Q. AND HOW CLOSE TO YOU WAS THAT PERSON?

16 A. IT WAS THIS FAR.

17 Q. CAN YOU GIVE US A FOOT MEASUREMENT?

18 A. ABOUT TWO AND A HALF FEET.

19 Q. AND WHERE WAS THE GUN EXACTLY POINTING AT YOU?

20 A. MY FACE.

21 Q. AND DO YOU KNOW WHETHER OR NOT IT WAS A REVOLVER OR A
22 PISTOL?

23 A. IT WAS A REVOLVER.

24 Q. HOW IS IT THAT YOU KNOW THE DIFFERENCE BETWEEN A
25 REVOLVER AND A PISTOL?

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 A. I USED TO OWN A REVOLVER. REVOLVERS HAVE THE GROOVES.
2 AND THAT'S WHERE YOU PUT THE BULLETS IN AND YOU ALTERNATE
3 IT. SO A PISTOL IS MORE LIKE A .9 MILLIMETER. MOST POLICE
4 OFFICERS CARRY THAT. THEIR BACKUP WEAPON IS USUALLY A
5 REVOLVER. AND I KNOW BECAUSE IT WAS STARING IN MY FACE.

6 Q. YOU'RE CERTAIN IT WAS A REVOLVER?

7 A. POSITIVE.

8 Q. DO YOU KNOW WHAT CALIBER?

9 A. I TOLD THE DEPUTY IT WAS ABOUT A .38 OR A .357, WHICH
10 THEY'RE SIMILAR. THE ONLY DIFFERENCE IS THE BARREL.

11 Q. DO YOU KNOW WHETHER OR NOT IT WAS LOADED?

12 A. NO, SIR, NOT FOR CERTAIN.

13 Q. WERE YOU ABLE TO SEE THE HANDLE OF THE REVOLVER?

14 A. YOU COULD SEE THE BOTTOM PART OF IT. I DIDN'T SEE THE
15 WHOLE HANDLE. HE HAD HIS HAND ON THERE.

16 Q. WHAT COLOR WAS THE REST OF IT ASIDE FROM THE HANDLE
17 THAT YOU COULD NOT SEE?

18 A. SILVER.

19 Q. SILVER.

20 A. OR CHROME.

21 Q. A MOMENT AGO YOU MENTIONED YOU HEARD ANOTHER VOICE.
22 WHAT DID YOU DO WHEN YOU HEARD THIS OTHER VOICE?

23 A. I TURNED AROUND AND LOOKED AT WHERE THE VOICE WAS
24 COMING FROM.

25 Q. AND WHERE WAS THAT VOICE COMING FROM?

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1 A. FROM -- I'M ON THE DRIVER'S SIDE. THE BACK SEAT. NOT
2 THE BACK SEAT, THE REAR SIDE, LEFT SIDE OF MY JEEP.

3 Q. WERE YOU ABLE TO SEE THE PERSON THAT WAS BACK THERE?

4 A. YES, SIR.

5 Q. AND DO YOU KNOW WHETHER THEY WERE MALE OR FEMALE?

6 A. MALE.

7 Q. DO YOU KNOW THEIR ETHNICITY?

8 A. YES, SIR.

9 Q. AND WHAT IS THAT?

10 A. AFRICAN AMERICAN, BLACK MALE. I REMEMBER WHAT HE WAS
11 WEARING. HE WAS WEARING A WHITE T-SHIRT, DARK SHORTS, WHITE
12 SOCKS.

13 Q. WERE YOU ABLE TO SEE THEIR EYES?

14 A. HE KEPT LOOKING DOWN, BUT, I MEAN, WHEN I HAD LOOKED AT
15 HIM HE HAD HALF -- HALF HIS BODY WAS SHOWING. SO I DIDN'T
16 KNOW IF HE HAD A WEAPON OR NOT. BUT THEN HE WOULDN'T LOOK
17 AT MY FACE. HE LOOKED DOWN AFTERWARDS.

18 Q. WHAT DO YOU MEAN HALF HIS BODY WAS SHOWING?

19 A. YEAH, HE WAS BEHIND MY JEEP. SO ONLY HALF -- HE WAS
20 EXPOSING HALF OF HIS BODY. HE WAS TRYING TO HIDE. SO I
21 COULDN'T SEE THE RIGHT SIDE OF HIS BODY AT THE MOMENT. AND
22 THEN LIKE I SAID, THERE'S MORE THAT HAPPENED AFTER THAT.

23 Q. DO YOU KNOW WHETHER OR NOT THAT PERSON HAD A WEAPON,
24 GUN, KNIFE?

25 A. NO, SIR, THAT'S WHAT I WAS -- I COULDN'T SEE THE BODY

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1 AT FIRST.

2 Q. DO YOU KNOW APPROXIMATELY HOW TALL THE PERSON AT THE
3 REAR OF YOUR VEHICLE WAS?

4 A. HE WAS ABOUT MY HEIGHT.

5 Q. HOW TALL ARE YOU, SIR?

6 A. THEY SAY I'M FIVE SIX ON SOME -- ON SOME
7 IDENTIFICATION. LIKE MY WORK ID, IT SAYS FIVE SIX, BUT ON
8 MY DRIVER'S LICENSE IT SAYS I'M FIVE EIGHT.

9 Q. HOW TALL WAS THE PERSON THAT HAD THE GUN IN THEIR HAND?

10 A. HE LOOKED TALL TO ME, BUT I WAS SITTING DOWN AT THE
11 MOMENT WHEN HE APPROACHED ME. AND THERE WAS A -- THE
12 SIDEWALK. SO IT'S ABOUT THREE FEET HIGH, TWO TO THREE FEET
13 HIGH FROM THE -- FROM THE FLOOR, FROM THE GROUND.

14 Q. I'M NOT SURE I UNDERSTAND WHAT YOU'RE SAYING, FROM ---

15 A. WELL, WHEN I WAS SITTING DOWN HE LOOKED -- HE APPEARED
16 TALLER. SO I WAS JUST GIVING AN APPROXIMATION OF ...

17 Q. AND HOW TALL DID YOU THINK HE WAS?

18 A. I THOUGHT HE WAS TALLER THAN ME, FIVE NINE, FIVE TEN,
19 SIX FOOT SOMETHING.

20 Q. APPROXIMATELY HOW MUCH DID YOU BELIEVE THAT HE WEIGHED?

21 A. WHEN I HAD TOLD THE -- THE DEPUTY THE WEIGHT I WAS
22 TRYING TO GIVE HIM AN IMAGE THAT HE WASN'T HEAVYSET. SO I
23 GAVE HIM ABOUT A LITTLE HEAVIER THAN ME OR -- BECAUSE HE WAS
24 TALL. SO I FIGURED ONE SEVENTY, ONE NINETY.

25 Q. NOW DO YOU RECALL THE MAN THAT HAD THE GUN HAVING ANY

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1 DISTINGUISHABLE MARKS ON HIS FACE?

2 A. JUST -- NOT MARKS. JUST THE ---

3 Q. DID HE HAVE ANY SCARS OR ---

4 A. NO, SIR.

5 Q. --- BIRTHMARKS?

6 A. NO, SIR.

7 Q. DO YOU RECALL IF HE HAD ANY TATTOOS?

8 A. NO, SIR.

9 Q. DO YOU RECALL WHETHER OR NOT HE HAD ANY FACIAL HAIR?

10 A. I THOUGHT HE HAD A LIGHT BEARD LIKE -- WELL, LIKE THIS,

11 BUT IT WAS LIKE A SHADOW, LIKE A 5:00 SHADOW.

12 Q. YOU MEAN A FULL BEARD ---

13 A. NO.

14 Q. --- OR A GOATEE SUCH AS YOU'RE WEARING?

15 A. GOATEE.

16 Q. WHAT ABOUT THE GUY THAT WAS AT THE REAR OF THE VEHICLE,

17 DO YOU RECALL ANY PARTICULAR FACIAL FEATURES OF HIS?

18 A. SIDEBURN COMING DOWN WITH CURLY OR WAVY HAIR.

19 Q. ONCE THE MAN WITH THE GUN TOOK YOUR PROPERTY, WHAT

20 HAPPENED NEXT?

21 A. THEN THE OTHER GUY APPROACHED HIM, THE GUY FROM BEHIND,

22 FROM THE REAR, STARTED COMING TOWARDS HIM. THEN THE ONE

23 WITH THE GUN HANDED OFF THE GUN TO THE GUY IN THE BACK.

24 WHEN HE GAVE HIM THE GUN I LOOKED AT HIM, AND HE TURNED

25 AROUND AND PUNCHED ME IN MY FACE. BUT THAT'S WHEN I GOT THE (

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

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1 FULL FIGURE OF THE SECOND SUSPECT. SO ---

2 Q. WHICH PERSON PUNCHED YOU?

3 A. THE ONE WITH THE RED HOODIE.

4 Q. AFTER HE PUNCHED YOU, WHAT HAPPENED NEXT?

5 A. AFTER HE PUNCHED ME THEY BOTH RAN. AND THEY HEADED
6 TOWARDS THE POOL AREA, BUT THERE WAS A FENCE AROUND COVERING
7 THE POOL AREA. SO THEY CAME AROUND THE DUMPSTER, WENT
8 TOWARDS THE LAUNDRY MAT AND HEADED TOWARDS THE CAR THAT WAS
9 PARKED BY THE MAILBOX.

10 AND THE CAR WAS TURNED ON. IT HAD THE LIGHTS ON AND
11 EVERYTHING. SO I FIGURED THERE WAS A SECOND PERSON THERE, I
12 MEAN, A THIRD PERSON THERE.

13 Q. IF YOU WOULD, STEP DOWN FOR ME, SIR. I'VE GOT ANOTHER
14 STICKER THAT'S MARKED CAR. WOULD YOU PLACE THAT WHERE YOU
15 OBSERVED THAT VEHICLE?

16 A. THIS IS THE MAILBOX. MY CAR IS HERE. THIS IS JUST THE
17 FENCE COVERING IT. SO I COULD SEE FROM HERE TO THERE.

18 Q. OKAY. PLEASE TAKE THE STAND. IN BETWEEN WHERE YOU
19 WERE PARKED AND WHERE THIS CAR WAS PARKED WAS THERE ANYTHING
20 OBSTRUCTING YOUR VIEW?

21 A. NO, SIR.

22 Q. WERE THERE ANY BUSHES OR HEDGES OUT THERE AROUND THE
23 POOL NEAR THE LAUNDRY MAT?

24 A. NO, SIR, NOT FROM WHERE, I MEAN, THE CAR WAS PARKED AND
25 FROM WHERE I WAS THERE WAS NOTHING OBSTRUCTING IT. THE

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1 FENCE IS WIRE.

2 Q. THE FENCE IS WHAT?

3 A. WIRE FENCE.

4 Q. IS ONE ABLE TO CUT THROUGH THE POOL AREA?

5 A. IF THE GATE WAS OPEN, BUT IT WASN'T AT THE TIME.

6 Q. NOW YOU TALKED ABOUT WHEN THE GUY APPROACHED YOU

7 INITIALLY AND CAME AROUND THE TOP SIDE OF THE LAUNDRY MAT.

8 WHEN THESE FOLKS LEFT DID THEY GO BACK AROUND THE TOP OR DID

9 THEY GO UNDERNEATH THE POOL?

10 A. THE SAME WAY THAT THE OTHER GUY HAD -- HAD CAME.

11 Q. TO BE CLEAR, DO YOU KNOW WHERE THE SECOND PERSON CAME

12 FROM?

13 A. NO, SIR.

14 Q. DID YOU SEE A THIRD PERSON AT YOUR VEHICLE THAT NIGHT?

15 A. NO, SIR.

16 Q. AND AGAIN, THE LIGHTING WAS GOOD?

17 A. YES, SIR.

18 Q. HOW LONG WOULD YOU SAY OR ESTIMATE THIS ENTIRE EVENT

19 TOOK PLACE?

20 A. FELT LIKE FOREVER, BUT I THINK IT WAS ABOUT FIVE

21 MINUTES.

22 Q. YOU MEAN FIVE MINUTES AT YOUR CAR OR FIVE MINUTES FROM

23 THE TIME THEY GOT BACK INTO THEIR CAR?

24 A. IT'S JUST AN ESTIMATE. I MEAN, I'D SAY FIVE MINUTES --

25 FIVE MINUTES -- I DON'T KNOW.

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1 Q. LET ME ASK IT THIS WAY. HOW LONG DO YOU THINK THE
2 WHOLE TRANSACTION TOOK PLACE AT YOUR VEHICLE?

3 A. PROBABLY THREE MINUTES.

4 Q. WERE YOU WEARING A WATCH THAT NIGHT?

5 A. NO.

6 Q. DO YOU RECALL WHAT TIME YOU GOT OUT OF YOUR VEHICLE?

7 A. YEAH, I GOT -- I REMEMBER WHAT TIME I GOT HOME AND
8 PARKED.

9 Q. WHAT TIME WAS THAT?

10 A. 1:45, SOMETHING LIKE THAT.

11 Q. ARE YOU CERTAIN IT WAS 1:45 OR ARE YOU JUST ESTIMATING
12 THE TIME?

13 A. I REMEMBER LOOKING AT THE TIME, IT WAS 1:45. AND WHEN
14 I HAD LOOKED DOWN TO GET MY FOOD AND THEN THAT HAPPENED, I
15 DIDN'T KEEP UP WITH THE TIME AFTER THAT. BUT I REMEMBER --
16 THE LAST TIME I REMEMBER WAS 1:45. SO THAT'S WHY I SAID
17 1:45.

18 Q. THE PERSON THAT HAD THIS RED HOODED SWEATSHIRT ON, DID
19 THEY TAKE IT COMPLETELY OFF OR DID THEY JUST DROP THE HOOD?

20 A. THEY DROPPED THE HOOD.

21 Q. AND WAS THE SWEATSHIRT COVERING THE REST OF THEIR ARMS
22 OR WAS THEIR -- WAS THEIR FOREARMS AND SUCH SHOWING?

23 A. NO, IT WAS -- IT WAS LIKE THIS WHEN THEY -- IT WASN'T
24 COVERING IT ALL, BUT IT WAS -- IT WAS STILL ON.

25 Q. NOW DID YOU SEE WHERE THE PERSON THAT ORIGINALLY HAD

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1 THE GUN, WHAT SIDE OF THE VEHICLE HE GOT IN?

2 A. THEY GOT ON THE -- IT WAS -- HE GOT ON THE RIGHT SIDE.

3 THE ONE WITH THE WHITE SHIRT GOT ON THE LEFT SIDE. I DON'T

4 KNOW IF HE GOT ON THE DRIVER'S TO DRIVE OR ON THE

5 PASSENGER'S. BUT I REMEMBER HIM BEING ON THE LEFT SIDE.

6 Q. OKAY. SO THE PERSON AT THE REAR OF YOUR VEHICLE GOT IN

7 THE LEFT SIDE OR THE DRIVER'S SIDE OF THE CAR?

8 A. YES, SIR.

9 Q. AND THE FELLOW THAT CAME AROUND AT YOU INITIALLY GOT IN
10 ON THE PASSENGER'S SIDE?

11 A. ON THE RIGHT SIDE OF THE CAR, PASSENGER'S SIDE.

12 Q. DID THEY TAKE YOUR KEYS?

13 A. NO, SIR.

14 Q. DID YOU HAVE ACCESS TO YOUR APARTMENT AT THAT TIME?

15 A. YES, SIR, THE KEYS.

16 Q. DID YOU HAVE A HOUSE PHONE?

17 A. I HAD AT THE TIME.

18 Q. DID YOU GO INSIDE AND CALL 911?

19 A. AFTER I GOT BACK.

20 Q. WHEN YOU SAY AFTER YOU GOT BACK WHAT DO YOU MEAN?

21 A. AFTER THEY HAD ROBBED ME AND I NOTICED THAT THE CAR WAS
22 TURNED ON, I MEAN, THEIR CAR, THERE WAS ANOTHER CAR OUT
23 THERE AND THEY GOT INTO IT, I LOOKED UP TO SEE IF ANYBODY
24 WAS -- HAD WITNESSED ANYTHING OR SEEN ANYTHING.

25 SO I GOT IN THE CAR, IN MY JEEP, AND I FOLLOWED THEM,

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

88

1 BUT I KEPT THE LIGHTS OFF. I DIDN'T WANT THEM TO SEE ME. I¹
2 KEPT MY DISTANCE, BUT I WAS TRYING NOT TO LOSE THEM. SO I
3 SPED UP, CHASED THEM ON WHITE HORSE ROAD. SO I HAD ALREADY
4 PASSED BEREA HIGH SCHOOL. THEY SEEMED TO BE STOPPING BACK
5 AND FORTH. SO I SEEN THE LIGHT COME ON AND OFF, THE BRAKE
6 LIGHT.

7 WHEN WE GOT ON WHITE HORSE ROAD I WAS TRAVELING
8 PROBABLY ABOUT SEVENTY MILES AN HOUR. THAT'S WHEN I CAUGHT
9 UP TO THEM. I DIDN'T WANT TO LOSE THEM. I TURNED THE
10 HIGHLIGHTS ON SO I COULD SEE THE TAG NUMBER. I GOT ABOUT A
11 CAR LENGTH, CAR AND A HALF LENGTH AWAY FROM THEM. AND
12 THAT'S WHEN I SAW THE TAG. AND I JUST KEPT REPEATING IT TO
13 MYSELF. I DIDN'T HAVE ANYTHING TO WRITE IT ON OR WRITE IT
14 DOWN WITH. SO I KEPT REPEATING IT.

15 WHEN I LOOKED UP RIGHT BEFORE WE GOT TO THE GAS STATION
16 ON THE RIGHT, WHICH IS ACROSS FROM THE DMV ON WHITE HORSE
17 ROAD, I NOTICED THAT THERE WAS A -- THAT THEY HAD A REVOLVER
18 COMING FROM THE DRIVER'S SIDE FACING ME.

19 Q. WHEN YOU SAY DRIVER'S SIDE, YOU MEAN THE DRIVER'S SEAT
20 OR WAS IT THE BACK SEAT? DO ---

21 A. I COULDN'T TELL --

22 Q. --- YOU KNOW?

23 A. I COULDN'T TELL YOU, SIR. I JUST KNOW IT WAS ON THE
24 LEFT SIDE, WHICH IS THE DRIVER'S SIDE.

25 Q. WHAT HAPPENED NEXT?

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

89

1 A. WHEN I LOOKED UP AND SAW THAT 'CAUSE I WAS FOCUSING ON
2 THE CAR, THE TAG NUMBER, AND WHEN I LOOKED UP I SAW THAT THE
3 GUN WAS FACING ME. AND I SWERVED. AND THAT'S WHEN THEY
4 SHOT AT ME. I SWERVED ---

5 Q. HOW MANY ---

6 A. --- TO THE RIGHT.

7 Q. --- TIMES?

8 A. JUST ONCE.

9 Q. WAS YOUR VEHICLE STRUCK?

10 A. NO, SIR. I HAD SWERVED, BUT I LOST CONTROL. SO I WENT
11 BACK HOME.

12 Q. AND WHAT DID YOU DO WHEN YOU GOT BACK HOME?

13 A. I RAN UPSTAIRS AND USED THE HOUSE PHONE AND CALLED 911.

14 Q. WHY WOULD YOU NOT GO CALL 911 FIRST? WHY DID YOU CHASE
15 AFTER THIS VEHICLE?

16 A. BECAUSE THEY ROBBED ME. THEY TOOK EVERYTHING FROM ME.
17 I MEAN, IT COULD HAVE BEEN WORSE. THEY COULD HAVE SHOT ME.
18 THEY COULD HAVE SHOT SOMEBODY ELSE. THEY COULD HAVE ROBBED
19 SOMEBODY ELSE. I WANTED TO GET AS MUCH INFORMATION AS I
20 COULD.

21 Q. NOW AT SOME TIME IN THE FUTURE DID YOU OR WERE YOU ABLE
22 TO VIEW A PICTURE OF THE DEFENDANTS?

23 A. YES.

24 Q. AND WHERE DID YOU VIEW THAT PICTURE?

25 A. IT WAS ON THE CHANNEL 4 NEWS, THE 4:00 NEWS.

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

90

1 Q. WHERE WERE YOU WHEN YOU SAW THIS PICTURE?

2 A. I WAS AT HOME.

3 Q. AND WHAT DID YOU DO ONCE YOU SAW THIS PICTURE?

4 A. WELL, WHEN I SAW THE PICTURE I DIDN'T READ THE WHOLE
5 STORY. I JUST SAW THE PICTURES AND IT CAME ON FOR JUST A
6 LITTLE BIT. AND WHAT I DID, IT WAS -- I GOT ON THE WEBSITE.
7 AND WHICH, YOU KNOW, EVERY TIME THERE'S SOMETHING THAT
8 HAPPENS ON THE NEWS IF YOU MISSED IT IT KIND OF GIVES YOU A
9 RECAP. SO WHAT I DID IS THEY -- TWO OF THE THREE SUSPECTS
10 THAT THEY HAD SHOWED ON TV, I RECOGNIZED. SO, I MEAN, THERE
11 WAS ONLY TWO WHENEVER THEY ROBBED ME OR THAT I, YOU KNOW,
12 THAT WAS -- THAT I REMEMBER.

13 AND WHAT I DID WAS I LOOKED ON THE WEBSITE AND I SAW
14 THE TIP FROM WHAT THEY HAD JUST SHOWN. AND I GOT A STEADY,
15 YOU KNOW, PICTURE. IT WASN'T MOVING OR WHATEVER. I MEAN, I
16 GOT CONFIRMATION THAT THAT WAS THE GUYS THAT HAD ROBBED ME,
17 TWO OF THE THREE THAT THEY SHOWED.

18 Q. NOW WHEN YOU SAY YOU GOT CONFIRMATION ...

19 A. I MEAN, THAT'S, I MEAN, WITHOUT A DOUBT THOSE WERE THE
20 GUYS THAT WERE THERE. I HAD A PICTURE TO MATCH WHAT I
21 REMEMBERED.

22 Q. DO YOU RECALL SEEING THE THIRD PERSON AT ANY POINT IN
23 TIME THAT EVENING?

24 A. NO. NO, SIR.

25 Q. NOW DO YOU RECALL THE DAY THAT YOU SAW THIS INFORMATION

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

91

1 ON THE NEWS?

2 A. THE DAY? I DON'T KNOW, IT WAS PROBABLY A WEEK, TWO
3 WEEKS LATER.

4 Q. AND AFTER YOU SAW THIS INFORMATION DID YOU GET IN TOUCH
5 WITH ANYONE FROM THE SHERIFF'S OFFICE?

6 A. YES, SIR. I CALLED MR. HANNING, I BELIEVE, WAS
7 HANDLING THE CASE, THE INVESTIGATOR THAT WAS HANDLING THE
8 CASE.

9 Q. OKAY. AND WHAT DID YOU DO WITH INVESTIGATOR HANNING?

10 A. I HAD JUST CALLED THEM AND TOLD THEM THAT I HAD SEEN
11 THE GUYS THAT HAD ROBBED ME ON THE NEWS. I SAID, I SAW A
12 PICTURE OF TWO OF THE GUYS THAT HAD ROBBED ME. AND WHAT I
13 DID WAS I TOLD THEM WHAT SHOULD I DO NOW. AND HE SAID,
14 WELL, YOU NEED TO COME DOWN, ARE YOU SURE, KEPT ASKING ME
15 ARE YOU SURE. AND I SAID, YES, SIR, WITHOUT A DOUBT THOSE
16 ARE THE GUYS.

17 Q. AND DO YOU RECALL WHAT DAY YOU WENT DOWN AND SPOKE WITH
18 INVESTIGATOR HANNING?

19 A. I DON'T REMEMBER WHAT DAY. I DON'T KNOW IF IT WAS THE
20 31ST.

21 Q. AND DID YOU GIVE INVESTIGATOR HANNING A STATEMENT AT
22 THAT TIME?

23 A. YES, SIR.

24 Q. AND DID YOU TELL HIM WHAT TYPE OF LOOK OR OPPORTUNITY
25 YOU WERE ABLE TO GET THAT EVENING?

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

92

1 A. YES, SIR.

2 Q. AND WHAT TYPE OF LOOK DID YOU TELL INVESTIGATOR HANNING
3 YOU GOT?

4 A. TOLD HIM I GOT A GOOD LOOK.

5 Q. WAS IT A GOOD LOOK OR WAS IT AN EXCELLENT LOOK?

6 A. EXCELLENT IS GOOD TO ME.

7 Q. OKAY. AND IF YOU REPORTED THIS TO DETECTIVE HANNING
8 DID YOU -- WAS THIS JUST VERBALLY OR DID YOU GIVE A WRITTEN
9 STATEMENT?

10 A. I DID BOTH. I HAD TOLD HIM. AND HE SAID HE -- THAT HE
11 NEEDS TO WRITE IT DOWN. SO I REPEATED MYSELF. BUT IT WAS
12 THE SAME STORY EVERY TIME BECAUSE THOSE WERE THE GUYS.

13 Q. WHAT TYPE OF VEHICLE DID YOU TELL DEPUTY MENDENHALL AND
14 INVESTIGATOR HANNING THAT THESE FOLKS WERE DRIVING?

15 A. I TOLD HIM IT WAS AN 80s MODEL, BOXED CAR, LOOKED LIKE
16 A CROWN VICTORIA, A CADILLAC STYLE. THAT'S WHAT I TOLD HIM.

17 Q. AND AFTER TALKING WITH INVESTIGATOR HANNING, EXCUSE ME,
18 WHILE TALKING WITH INVESTIGATOR HANNING DID HE EVER SHOW YOU
19 A PHOTOGRAPHIC LINEUP?

20 A. NO, SIR.

21 Q. LAST QUESTION I HAVE FOR YOU, MR. ESPINOZA, THE MAN
22 WITH THE GUN THAT CAME AROUND YOUR CAR AND HAD THE RED
23 HOODED SWEATSHIRT ON THAT NIGHT, DO YOU SEE HIM IN THE
24 COURTROOM HERE TODAY?

25 A. YES, SIR.

SERGIO ESPINOZA - DIRECT EXAMINATION BY MR. MARCHANT

93

1 Q. WOULD YOU POINT HIM OUT FOR THE JURY, PLEASE?

2 MR. MOORMAN: AND, YOUR HONOR, I WOULD OBJECT ON THE
3 BASIS OF 403.

4 THE COURT: SUBJECT TO YOUR OBJECTION, GO AHEAD.

5 MR. ROBINSON: SAME OBJECTION, YOUR HONOR, AS WELL.

6 THE COURT: SUBJECT TO YOUR OBJECTION, GO AHEAD.

7 Q. PLEASE POINT HIM OUT FOR THE JURY, MR. ESPINOZA. AND
8 DESCRIBE WHAT THEY'RE WEARING..

9 A. HE'S WEARING A WHITE SHIRT IN THE CORNER, RIGHT CORNER.

10 Q. AND THE PERSON THAT CAME AROUND THE REAR OF YOUR
11 VEHICLE, ARE THEY HERE IN THE COURTROOM TODAY?

12 A. YES, SIR.

13 Q. DO YOU RECOGNIZE HIM?

14 A. YES, SIR.

15 Q. WOULD YOU PLEASE POINT HIM OUT FOR THE JURY?

16 A. THE GENTLEMAN RIGHT BESIDE THE LAWYER.

17 Q. AND WHAT IS THAT PERSON WEARING?

18 A. HE'S WEARING A BLUE, AND I DON'T KNOW WHAT COLOR THAT
19 IS, BROWNISH DRESS SHIRT.

20 MR. MARCHANT: PLEASE LET THE RECORD REFLECT THAT MR.
21 ESPINOZA'S IDENTIFIED MR. WORKMAN AS THE GUNMAN AND MR.
22 ROBINSON AS HIS -- AS THE SECOND SUSPECT AT THE REAR OF THE
23 VEHICLE.

24 THE COURT: ALL RIGHT.

25 Q. I HAVE NO FURTHER QUESTIONS. PLEASE ANSWER ANY

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

94

1 QUESTIONS MR. MOORMAN OR MR. ROBINSON MAY HAVE FOR YOU.

2 THANK YOU.

3 THE COURT: LET'S FIRST GIVE THE JURY A RECESS. TAKE
4 THE JURY OUT, PLEASE.

5 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11:45 AM)

6 THE COURT: OKAY. NOW, MR. ESPINOZA, DURING THE RECESS
7 DON'T TALK TO ANYONE ABOUT YOUR TESTIMONY THAT YOU'VE
8 ALREADY GIVEN, OKAY?

9 A. YES, SIR.

10 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT RECESS.

11 (WHEREUPON COURT WAS IN RECESS AT 11:46 AM)

12 THE COURT: COME BACK AROUND, MR. ESPINOZA. YOU'RE
13 STILL UNDER OATH.

14 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:57 AM)

15 THE COURT: ALL RIGHT. MR. MOORMAN.

16 MR. MOORMAN: YES, SIR. MAY IT PLEASE THE COURT?

17 CROSS EXAMINATION BY MR. MOORMAN:

18 Q. MR. ESPINOZA, YOU'RE SURE THAT THERE WERE TWO GUYS WHO
19 CAME AROUND YOUR CAR AND ROBBED YOU THAT NIGHT?

20 A. YES, SIR.

21 Q. LET'S GET -- LET'S TALK A LITTLE BIT ABOUT THE TIME-
22 LINE OF EVENTS THAT HAPPENED. THIS ROBBERY OCCURRED ON
23 DECEMBER 10TH, 2007, CORRECT?

24 A. YES, SIR.

25 Q. AFTER THIS ROBBERY OCCURRED WHAT INTERACTION, IF ANY,

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

95

1 DID YOU HAVE WITH LAW ENFORCEMENT? DID YOU MEET WITH LAW
2 ENFORCEMENT AGAIN BEFORE THE 31ST OF DECEMBER?

3 A. NO, SIR.

4 Q. SO FROM DECEMBER 10TH AND THREE WEEKS ON YOU HAVE NO
5 CONTACT WITH LAW ENFORCEMENT AT ALL, CORRECT?

6 A. REGARDING THIS CASE, NO, SIR.

7 Q. THEN WAS IT ON THE 30TH OR 31ST WHERE YOU SAW THE NEWS
8 BROADCAST?

9 A. I SAID APPROXIMATELY ABOUT THE 31ST.

10 Q. SO -- AND ON THE 31ST YOU SAW -- WELL, LET'S BACK UP.
11 NEVER PRESENTED ANY PHOTO LINEUP, CORRECT?

12 A. CORRECT.

13 Q. EVEN TO THIS DAY YOU HAVE NEVER BEEN PRESENTED WITH A
14 PHOTO LINEUP, IS THAT CORRECT?

15 A. CORRECT.

16 Q. NO POLICE OFFICER EVER CAME TO YOU AND SAID, HERE'S A
17 LIST OF SIX PEOPLE, THE PERSON OR PEOPLE WHO DID THIS MAY OR
18 MAY NOT BE IN THIS? NO ONE EVER DID THAT, RIGHT?

19 A. CORRECT.

20 Q. NOBODY EVER CAME TO YOU AND SAID, WITH A PHOTO LINEUP,
21 AND SAID ONLY PICK THE PERSON IF YOU'RE SURE THAT'S THE
22 PERSON WHO ROBBED YOU? NOBODY EVER DID THAT WITH A PHOTO
23 LINEUP, CORRECT?

24 A. CORRECT.

25 Q. SO ON DECEMBER 31ST YOU SEE THE NEWS BROADCAST WITH THE

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

96

1 PICTURES OF MY CLIENT AND MR. WORKMAN. AND WHEN YOU SEE
2 THAT NEWS BROADCAST THAT'S WHEN YOU SAY, THOSE ARE THE GUYS
3 WHO ROBBED ME?

4 A. WHEN I RECOGNIZED TWO OF THE THREE, YES, SIR.

5 Q. OKAY. ONLY AFTER YOU SAW THE NEWS BROADCAST, CORRECT?

6 A. AFTER I RECOGNIZED THEM, YES, SIR.

7 Q. THEN YOU SAID YOU GOT ON THE WEBSITE AND AGAIN LOOKED
8 AT THEIR PICTURES, CORRECT?

9 A. CORRECT.

10 Q. THEN YOU CALLED INVESTIGATOR HANNING, IS THAT CORRECT?

11 A. YES, SIR.

12 Q. AND THAT'S WHEN YOU GAVE THE STATEMENT?

13 A. THAT'S WHEN HE ASKED ME TO COME OVER AND GIVE A
14 STATEMENT, YES, SIR.

15 Q. LET'S TALK ABOUT THAT STATEMENT.

16 (WHEREUPON DEFENDANT ROBINSON'S EXHIBIT 4 WAS MARKED
17 FOR IDENTIFICATION)

18 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS DEFENSE EXHIBIT
19 NUMBER 4 FOR IDENTIFICATION PURPOSES ONLY. PLEASE TAKE A
20 LOOK AT THAT, MR. ESPINOZA. IS THAT THE STATEMENT YOU GAVE
21 TO INVESTIGATOR HANNING?

22 A. YES, SIR.

23 Q. ON YOUR DIRECT TESTIMONY YOU TESTIFIED THAT THE MAN
24 WITH THE HOODIE AND THE GUN PULLED HIS HOODIE DOWN BEFORE HE
25 ROBBED YOU, IS THAT CORRECT?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

97

1 A. YES, SIR.

2 Q. ANYWHERE IN THAT STATEMENT DO YOU SAY THAT?

3 A. IT'S NOT WRITTEN ON THERE, NO, SIR.

4 Q. ON YOUR DIRECT TESTIMONY YOU SAID SOMETHING TO THE

5 EFFECT THAT YOU TOLD THE ROBBER, HEY MAN, YOU DON'T WANT TO

6 DO THIS, IS THAT CORRECT?

7 A. YES, SIR.

8 Q. ANYWHERE IN THAT STATEMENT DID YOU INDICATE THAT'S WHAT

9 YOU SAID TO THE GUNMAN?

10 A. IT'S NOT WRITTEN ON THERE, NO, SIR.

11 Q. IN YOUR DIRECT TESTIMONY YOU SAID THAT THE MAN WHO HAD

12 THE GUN INITIALLY WAS ABOUT TWO AND A HALF FEET AWAY FROM

13 YOU, IS THAT CORRECT?

14 A. YES, SIR.

15 Q. ANYWHERE IN THAT STATEMENT YOU SAID THAT?

16 A. IT'S NOT WRITTEN ON THERE, NO.

17 Q. WHEN YOU WERE -- WHEN YOU MET WITH INVESTIGATOR

18 HANNING, PRIOR TO INVESTIGATOR HANNING TAKING YOUR STATEMENT

19 ISN'T IT TRUE THAT INVESTIGATOR HANNING GAVE YOU SOME

20 INSTRUCTIONS ABOUT THE STATEMENT? ISN'T THAT TRUE?

21 A. REGARDING ...

22 Q. DID HE GIVE YOU INSTRUCTIONS THAT -- BE AS COMPLETE AND

23 AS THOROUGH AS YOU CAN POSSIBLY BE IN GIVING THE STATEMENT?

24 DID HE GIVE YOU THOSE INSTRUCTIONS?

25 A. TO THE BEST OF YOUR KNOWLEDGE. YES, SIR, THAT'S WHAT

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

98

1 HE SAID.

2 Q. ON YOUR DIRECT TESTIMONY YOU TESTIFIED THAT YOU WERE
3 SITTING DOWN WHEN YOU -- WHEN YOU WERE APPROACHED BY THE
4 GUNMAN, IS THAT CORRECT?

5 A. YES, SIR.

6 Q. ANYWHERE IN YOUR STATEMENT DID YOU SAY YOU WERE SITTING
7 DOWN WHEN YOU WERE APPROACHED?

8 A. NO, SIR.

9 Q. ISN'T IT TRUE THAT RIGHT AFTER THIS HAPPENED YOU TOLD
10 DEPUTY MENDENHALL THAT THE MAN WITH THE GUN WAS SIX FEET
11 TALL? ISN'T THAT TRUE?

12 A. APPROXIMATELY, YES, SIR.

13 Q. BUT WE COME IN HERE TODAY AND YOU TESTIFY THAT HE COULD
14 BE FIVE NINE, FIVE TEN, SIX FOOT, ISN'T THAT TRUE?

15 A. THAT'S WHAT I HAD TOLD HIM THAT DAY.

16 Q. SO DID YOU TELL HIM THAT DAY THAT THE GUNMAN WAS SIX
17 FEET TALL OR THAT HE WAS FIVE NINE, FIVE TEN OR SIX FEET?

18 A. I TOLD HIM THAT. AND THEN HE SAID, SO WAS HE SIX FEET
19 TALL? AND I SAID, APPROXIMATELY, YES, SIR, HE WAS TALL.

20 Q. OKAY. SO YOU DID TELL DEPUTY MENDENHALL THAT THE
21 GUNMAN WAS SIX FEET TALL?

22 A. YES, SIR.

23 Q. IT WAS CLEAR TO YOU, ISN'T IT TRUE, THAT THE GUNMAN --
24 THAT THE MAN WITH THE RED HOODIE WAS TALLER THAN THE MAN WHO
25 WAS BEHIND THE CAR, CORRECT?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

99

1 A. I DIDN'T MEASURE HIM, BUT HE LOOKED TALLER BECAUSE I
2 WAS SITTING DOWN AND HE WAS ON TOP OF THE CURB.

3 Q. SO YOU'RE NOT SURE HOW TALL ANY OF THESE PEOPLE WERE?

4 A. LIKE I SAID, IT WAS AN APPROXIMATION.

5 Q. AGAIN, MR. ESPINOZA, LET ME ASK THIS QUESTION. DO YOU
6 OR DO YOU NOT KNOW HOW TALL THESE PEOPLE WERE?

7 A. NO, SIR.

8 Q. YOU DON'T KNOW, CORRECT?

9 A. CORRECT.

10 Q. I WANT TO TALK ABOUT THIS MAN IN THE RED HOODIE. WHEN
11 YOU SAW HIM INITIALLY -- AND, MR. ESPINOZA, YOU'RE WELCOME
12 TO STEP DOWN. IF YOU WOULD, PLEASE. AND I MIGHT HAVE
13 MISSED IT, BUT DID YOU TESTIFY IN YOUR DIRECT -- THIS WAS
14 YOUR CAR, CORRECT?

15 A. RIGHT HERE.

16 Q. AND THE MAN WITH THE HOODIE WAS WALKING IN THIS
17 DIRECTION?

18 A. NO. WHEN I FIRST SAW HIM HE HAD JUST PASSED THE POLE
19 AND HE WAS COMING AROUND RIGHT IN FRONT OF MY APARTMENT,
20 WHICH IS F-8 RIGHT HERE.

21 Q. OKAY. ALL RIGHT. AND YOU WERE IN YOUR CAR GETTING
22 YOUR GROCERIES OUT?

23 A. YES, SIR.

24 Q. OKAY. YOU CAN HAVE A SEAT IN THE WITNESS SEAT. NOW
25 THE MAN WITH THE RED HOODIE, WHEN HE WAS WALKING DOWN THE

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

100

1 SIDEWALK THERE, HE WASN'T -- AND I DON'T MEAN TO BE
2 FACETIOUS, BUT HE WASN'T SHUFFLING HIS FEET LIKE THIS WHERE
3 HIS FACE WAS RIGHT IN FRONT OF YOU, CORRECT?

4 A. CORRECT.

5 Q. HE WAS TURNED WALKING SIDEWAYS, CORRECT?

6 A. YES, SIR.

7 Q. AND YOU SAID HE HAD HIS HOODIE UP, CORRECT?

8 A. CORRECT.

9 Q. SO WHILE HE'S WALKING SIDEWAYS, AT MOST YOU'RE CATCHING
10 WHAT PART OF HIS PROFILE THAT YOU CAN SEE THROUGH THE
11 HOODIE, CORRECT?

12 A. CORRECT.

13 Q. AND DURING THIS TIME YOU DON'T EVEN SEE THE OTHER GUY
14 WHO'S THERE, CORRECT?

15 A. CORRECT.

16 Q. AND ON YOUR DIRECT TESTIMONY YOU TESTIFIED THAT YOU
17 WENT INTO YOUR CAR TO GET OUT YOUR GROCERIES, AND WHEN YOU
18 TURNED AROUND THAT GUY WITH THE RED HOODIE WAS RIGHT THERE,
19 CORRECT?

20 A. HE HAD JUST PASSED, I MEAN, HE WAS IN FRONT OF MY
21 VEHICLE WHEN I NOTICED HIM. AND I REACHED DOWN FOR JUST A
22 SECOND TO GET MY -- MY FOOD. WHEN I LOOKED UP HE WAS STILL
23 IN FRONT OF MY VEHICLE, BUT HE WAS FACING ME WITH THE GUN.

24 Q. SO HE DIDN'T COME UPON YOU, YOU SAID HE WAS FACING YOU
25 WITH THE GUN?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

101

1 A. RIGHT, AT THAT MOMENT.

2 Q. WHILE YOU WERE IN YOUR CAR GETTING YOUR GROCERIES DID
3 YOU TURN AND SEE HIM COMING TOWARDS YOU?

4 A. NO, SIR. HE STOPPED RIGHT IN FRONT OF MY DOOR, MY
5 APARTMENT DOOR, RIGHT IN FRONT OF THE JEEP. AND HE WAS
6 FACING ME WITH THE GUN. THAT'S WHEN I RAISED MY HAND. HE
7 WAS STILL IN FRONT OF MY HOOD, IN FRONT OF MY JEEP.

8 Q. SO HE WAS A LOT FARTHER THAN TWO AND A HALF FEET AWAY
9 FROM YOU, WASN'T HE?

10 A. HE ASKED HOW FAR WAS THE GUN TOWARDS ME AT FIRST.
11 THAT'S WHAT HE SAID.

12 Q. ALL RIGHT. HOW FAR WAS HE AWAY FROM YOU WHEN HE WAS
13 POINTING THE GUN AT YOU?

14 A. WHEN HE FIRST STARTED POINTING THE GUN AT ME? I DON'T
15 KNOW HOW -- HOW MANY FEET IS FROM -- ABOUT SIX FEET AWAY
16 FROM ME. I MEAN, ---

17 Q. JUST SO I UNDERSTAND YOUR TESTIMONY THEN, YOU'RE SAYING
18 THAT THIS GUY, THIS GUY WITH THE RED HOOD -- WELL, BACK UP.
19 WHEN YOU SAW HIM WITH THE RED HOODIE WALKING SIDEWAYS DID
20 YOU THINK THAT SOMETHING WAS FUNNY OR WRONG?

21 A. HE WAS ACTING SUSPICIOUS. HE WAS, I MEAN, HE HAD HIS
22 RED HOOD ON. AND AT FIRST I JUST THOUGHT IT WAS SUSPICIOUS,
23 HIM WALKING AROUND HIDING HIS IDENTITY ---

24 Q. AND HE WAS USING THAT HOOD TO HIDE HIS IDENTITY?

25 A. HE HAD THE HOOD ON, YES, ---

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

102

1 Q. IS THAT RIGHT?

2 A. --- SIR. (AFFIRMATIVE NOD).

3 Q. BUT YOU'RE TELLING THIS JURY THAT WHEN HE -- WHEN THIS
4 PERSON DECIDED TO ROB YOU HE DECIDED TO NO LONGER HIDE HIS
5 IDENTITY AND PUT HIS HOOD DOWN, CORRECT?

6 A. CORRECT.

7 Q. OKAY. SO HE WAS HIDING HIS IDENTITY BEFORE HE DID
8 ANYTHING WRONG, BUT HE DIDN'T WANT TO WHEN HE STARTED TO DO
9 SOMETHING WRONG, CORRECT?

10 A. I GUESS. YES, SIR.

11 Q. HE COMES UP TO YOU, THIS FELLOW WHO'S TALLER, BUT YOU
12 WERE SITTING DOWN, HE COMES UP TO YOU AND SAYS, GIVE ME YOUR
13 MONEY. AND THEN AT SOME POINT YOU HEAR A FELLOW BEHIND YOU,
14 CORRECT? OR BEHIND THE CAR?

15 A. YES, SIR.

16 Q. AND AS YOU SAID, THIS FELLOW BEHIND THE CAR IS -- IS
17 HIDING BEHIND THE CAR, CORRECT?

18 A. HALF OF HIS -- I COULDN'T SEE THE RIGHT -- RIGHT TORSO.

19 Q. HALF OF HIS BODY'S BEHIND THE CAR?

20 A. RIGHT.

21 Q. AND AT THIS POINT HE DOESN'T HAVE A GUN, CORRECT?

22 A. NOT THAT I COULD TELL. LIKE I SAID, HALF HIS TORSO.

23 Q. AND YOU HAVE A GUN POINTED IN YOUR FACE, CORRECT?

24 A. YES, SIR.

25 Q. BY THE GUY WITH THE RED HOOD?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

103

1 A. YES, SIR.

2 Q. AND YOU'RE FOCUSED ON THE GUN THAT'S POINTING IN YOUR
3 FACE, CORRECT?

4 A. CORRECT.

5 Q. AND YOU TESTIFIED ABOUT THE FACT THAT IT WAS A
6 REVOLVER. YOU TESTIFIED ABOUT THE HANDLE. HOW FAR WAS THE
7 BARREL?

8 A. HOW FAR WAS THE BARREL?

9 Q. I'M SORRY. HOW LONG WAS THE BARREL ON THE GUN?

10 A. HOW LONG WAS THE BARREL? IT WAS, I MEAN, I DIDN'T SEE
11 THE SIDE VIEW. I SAW IN FRONT OF ME. I MEAN, IT WASN'T A
12 SHORT BARREL, IF THAT'S WHAT YOU'RE ASKING.

13 Q. OKAY. ALL RIGHT. THEN, IF I UNDERSTAND, THE GUY IN
14 THE BACK CAME UP, TOOK THE GUN, AND THE GUY WITH THE RED
15 HOODIE HIT YOU, CORRECT? IS THAT RIGHT?

16 A. SOMETHING LIKE THAT. THE GUY WITH THE GUN HANDED THE
17 GUN OFF TO THE OTHER GUY. AND AFTER -- AS HE HANDED IT OFF
18 HE STRUCK ME WITH HIS RIGHT HAND AND HIT ME ON MY LEFT
19 CHEEK.

20 Q. AND WAS IT -- IT WAS A PRETTY QUICK EXCHANGE, WASN'T
21 IT? HE GAVE HIM THE GUN AND THE GUY WITH THE RED HOOD HIT
22 YOU, RIGHT?

23 A. YES, SIR.

24 Q. AND THEN AFTER THEY HIT YOU THEY TOOK OFF RUNNING AWAY
25 FROM YOU, CORRECT?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

104

1 A. CORRECT.

2 Q. SO YOU HAD TO LOOK AT THE BACK OF THEIR HEADS, CORRECT?

3 A. CORRECT.

4 Q. DIDN'T HAVE A LOOK AT THE FRONT OF THEIR FACES,
5 CORRECT?

6 A. WHEN THEY RAN AWAY, NO, SIR.

7 Q. RIGHT. SO -- AND YOU HAD TESTIFIED EARLIER THAT --
8 THAT THIS WHOLE THING TOOK FIVE MINUTES, DID YOU SAY?

9 A. I SAID APPROXIMATELY. I MEAN, IT FELT LIKE FOREVER. I
10 WASN'T TIMING IT.

11 Q. BUT YOU THINK IT'S FIVE MINUTES?

12 A. I'M -- IT FELT LIKE AROUND FIVE MINUTES.

13 Q. DO YOU KNOW HOW LONG IT TOOK?

14 A. I DON'T KNOW EXACTLY HOW LONG IT TOOK.

15 Q. SO IT'S POSSIBLE IT TOOK A VERY FEW SECONDS?

16 A. NO.

17 Q. HAD TO HAVE TAKEN MINUTES?

18 A. YES, SIR.

19 Q. AND THEN YOU TESTIFIED THAT AFTER -- AFTER THESE TWO
20 INDIVIDUALS RAN TO A CAR AND GOT IN INSTEAD OF CALLING 911
21 YOU GOT INTO YOUR CAR, CORRECT?

22 A. YES, SIR.

23 Q. AND ISN'T IT TRUE THAT YOU WENT FROM BEING A SCARED
24 VICTIM TO JUMPING INTO ACTION AS A LAW ENFORCEMENT OFFICER,
25 CORRECT?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. MOORMAN

105

1 A. I WOULDN'T SAY A LAW ENFORCEMENT OFFICER, BUT I -- I
2 JUST WANTED TO GIVE A LEAD, ---

3 Q. ALL RIGHT.

4 A. --- YOU KNOW.

5 Q. SO YOU WERE VERY CONCERNED -- YOU WERE -- YOU HAD
6 OVERCOME BEING A VICTIM, IS THAT WHAT YOU'RE TELLING US?

7 A. NO, I WAS STILL A VICTIM.

8 Q. IN OTHER WORDS, YOU WERE NO LONGER -- WERE YOU STILL
9 SCARED FROM THE INCIDENT OR HAD YOU -- HAD YOU MOVED INTO
10 THIS INVESTIGATIVE EVIDENCE COLLECTION MODE?

11 A. NO, I WAS -- THE ADRENALINE WAS STILL THERE. I MEAN, I
12 WAS STILL MAD, SCARED, EVERYTHING.

13 Q. ALL RIGHT. AND ISN'T IT TRUE BEFORE YOU SAW THAT NEWS
14 BROADCAST YOU HAD ABSOLUTELY NO IDEA OF THE IDENTITY OF THE
15 PEOPLE WHO ROBBED YOU, CORRECT?

16 A. CORRECT.

17 Q. AND YOU SAID THAT THE -- THAT ONE OF THE GUYS THERE HAD
18 WAVY HAIR, IS THAT CORRECT?

19 A. HAD, YOU KNOW, LIKE -- YEAH, LIKE A WEAVE, LIKE AN
20 AFRO, BUT WAVY, YOU KNOW.

21 Q. DID HE HAVE WAVY HAIR?

22 A. IT -- I DON'T KNOW HOW YOU CALL IT. IT'S CURLED.

23 Q. I'M JUST USING YOUR WORDS, SIR. WAS IT WAVY?

24 A. YES, SIR.

25 MR. MOORMAN: WE HAVE NOTHING FURTHER, YOUR HONOR.

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. ROBINSON

106

1 THE COURT: MR. ROBINSON.

2 MR. ROBINSON: MAY IT PLEASE THE COURT?

3 CROSS EXAMINATION BY MR. ROBINSON:

4 Q. SIR, WHEN YOU INITIALLY HAD TESTIFIED YOU SAID THAT YOU
5 WENT TO TACO BELL AROUND 2:00. DO YOU AGREE WITH THAT?

6 A. AROUND ---

7 Q. YOU SAID 2:00. I MEAN, WHEN MR. MARCHANT ASKED YOU ON
8 DIRECT EXAMINATION ABOUT WHAT TIME IT WAS, YOU SAID 2:00,
9 ABOUT 2:00 YOU WERE GOING TO TACO BELL. DO YOU REMEMBER
10 THAT?

11 A. I DON'T REMEMBER THAT.

12 Q. YOU DON'T REMEMBER SAYING THAT?

13 A. (AFFIRMATIVE NOD).

14 Q. OKAY. AND LATER ON YOU SAID THAT YOU LOOKED AT YOUR
15 WATCH AT SOME POINT EITHER AFTER THE INCIDENT OR AFTER YOU
16 CHASED AFTER THE CAR AND YOUR WATCH SAID 1:45, IS THAT ABOUT
17 RIGHT?

18 A. I REMEMBER 1:45, YES, SIR.

19 Q. NOW YOU'RE A -- YOU'RE A MALL SECURITY OFFICER, RIGHT?
20 IS THAT WHAT YOU ARE? AT THAT TIME YOU WERE A MALL SECURITY
21 OFFICER, CORRECT?

22 A. YES, SIR.

23 Q. AND YOU WORK AT -- YOU WERE WORKING AT HAYWOOD MALL
24 AROUND DECEMBER 10TH, 2007?

25 A. YES, SIR.

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. ROBINSON

107

1 Q. OKAY. AND DO YOU WORK -- DO YOU WORK AS A SECURITY
2 OFFICER -- DO YOU PATROL THE MALL? IS THAT WHAT YOU DO?

3 A. YES, SIR. WE WORK AT THE POLICE SUBSTATION. WE PATROL
4 THE FACILITY.

5 Q. AND THE SHIFTS THAT YOU HAVE ARE HOW LONG?

6 A. IT ALL DEPENDS, EIGHT HOURS, TEN HOURS.

7 Q. EIGHT HOURS, TEN HOURS? AND YOU WALK AROUND THE MALL
8 TO THE DIFFERENT ANCHOR STORES AND YOU WALK THE MALL AS FAR
9 AS THE COMMON AREAS THAT THEY HAVE, RIGHT?

10 A. CORRECT. WE'RE OUTSIDE PATROL AS WELL. WE DRIVE.

11 Q. SO YOU CAN GO OUTSIDE AND PATROL?

12 A. YES, SIR.

13 Q. NOW THE INCIDENT TOOK PLACE ON DECEMBER 10TH, IS THAT
14 ABOUT RIGHT?

15 A. YES, SIR.

16 Q. AND YOU NEVER WENT INTO THE POLICE BETWEEN THE TIME OF
17 THIS -- OF THIS NEWSCAST AND CHANNEL 4 AND NEVER LOOKED AT A
18 LINEUP. THAT'S WHAT YOU TOLD MR. MOORMAN, CORRECT?

19 A. CORRECT. YOU'RE CORRECT.

20 Q. AND THAT WOULD BE -- I THINK YOU SAID YOU MADE YOUR
21 STATEMENT AROUND -- ABOUT THREE WEEKS LATER. WOULD THAT
22 SOUND ABOUT RIGHT WHEN YOU ACTUALLY -- WHEN YOU ACTUALLY SAW
23 THE NEWSCAST ON CHANNEL 4 ---

24 A. TWO OR THREE WEEKS, YES, SIR.

25 Q. TWO OR THREE WEEKS OR SO?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. ROBINSON

108

1 A. YES, SIR.

2 Q. I WANT TO ASK YOU SOMETHING. NOW YOUR SHIFT -- THESE
3 TWELVE HOUR SHIFTS YOU TALK ABOUT, YOU HAVE SHIFTS ON THE
4 WEEKEND TOO, DON'T YOU?

5 A. YES, SIR.

6 Q. YOU WORKED AFTER DECEMBER 10TH UP UNTIL THREE WEEKS
7 LATER, TWO OR THREE WEEKS LATER WHEN YOU SAW THIS -- SAW
8 THIS BROADCAST ON CHANNEL 4? YOU WERE WORKING AT THE MALL
9 AT THAT TIME WEREN'T YOU? FOR THAT THREE WEEKS YOU WERE
10 STILL CONTINUING AT THE MALL, CORRECT?

11 A. OH, CORRECT.

12 Q. CORRECT? OKAY. AND WOULD IT BE FAIR TO SAY THAT
13 DURING THAT THREE WEEK, APPROXIMATELY THREE WEEK PERIOD OF
14 TIME THAT YOU THOUGHT -- THAT YOU SAW THOUSANDS OF PEOPLE AT
15 THE MALL WALKING BACK AND FORTH? WOULD YOU AGREE WITH THAT?

16 A. YES, SIR.

17 Q. AND YOU AGREE WITH ME TOO THAT YOU SAW NUMEROUS -- ALL
18 DIFFERENT RACES WALKING THE MALL DURING THAT PERIOD OF TIME,
19 IS THAT CORRECT?

20 A. YES, SIR.

21 Q. OKAY. AND HOW MUCH -- HOW MANY PEOPLE DO YOU THINK --
22 ESTIMATE AT HAYWOOD MALL -- YOU WOULD KNOW THIS BETTER THAN
23 ANYBODY. ON A SATURDAY NIGHT HOW MANY -- HOW MANY PERSONS
24 DO YOU THINK YOU -- WHEN YOU WALK AROUND THE MALL, HOW MANY
25 PEOPLE DO YOU THINK ARE AT THE MALL?

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. ROBINSON

109

1 A. THAT ALL DEPENDS.

2 Q. AROUND THIS TIME? THIS WAS AROUND CHRISTMAS TIME, I

3 THINK, ---

4 A. CORRECT.

5 Q. SO HOW MANY PEOPLE DO YOU THINK WERE AT THE MALL?

6 A. DURING THAT DAY?

7 Q. YEAH. HOW MANY PEOPLE DO YOU SEE DURING -- DURING YOUR

8 SHIFT, YOUR TWELVE HOUR SHIFT?

9 A. HUNDREDS.

10 Q. HUNDRED, MAYBE THOUSANDS?

11 A. AH ---

12 Q. ABOUT A HUNDRED ---

13 A. DURING MY SHIFT, PROBABLY A HUNDRED.

14 Q. ABOUT A HUNDRED? OKAY. HUNDRED OR HUNDREDS, RIGHT?

15 A. SOMETHING LIKE THAT.

16 Q. OKAY. AND YOU TOLD MR. MARCHANT ON DIRECT EXAMINATION,

17 I THINK MR. MOORMAN ON CROSS EXAMINATION, THAT THERE WERE NO

18 DISTINGUISHING CHARACTERISTICS OR MARKS OR ANYTHING OF THAT

19 NATURE ON THESE TWO INDIVIDUALS THAT -- OR THREE INDIVIDUALS

20 THAT WERE AT THE SCENE THAT NIGHT, IS THAT CORRECT?

21 A. MEANING TATTOOS OR ---

22 Q. NOTHING, YOU KNOW, TATTOOS, NOTHING UNUSUAL ---

23 A. CORRECT.

24 Q. --- RIGHT? NOW YOU SEEM TO HAVE A REAL GOOD -- YOU

25 SEEM TO HAVE A REAL GOOD IDEA OF THE TYPE OF GUN THAT WAS

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. ROBINSON

110

1 USED THAT NIGHT, DIDN'T YOU?

2 A. YES, SIR.

3 Q. AND YOU ACTUALLY WERE LOOKING AT THIS GUN. AND I THINK
4 YOU TOLD THE -- TOLD MR. MARCHANT IT WAS A REVOLVER, ISN'T
5 THAT RIGHT?

6 A. YES, SIR.

7 Q. 'CAUSE YOU HAVE TRAINING IN -- WITH THE KINDS OF GUNS
8 AND THINGS LIKE THAT, RIGHT?

9 A. YES, SIR.

10 Q. AND YOU HAD AN OPPORTUNITY TO -- TO WATCH THIS GUN
11 DURING THAT BRIEF PERIOD OF TIME, IS THAT RIGHT?

12 A. CORRECT.

13 Q. AS FAR AS -- DID YOU -- YOU DIDN'T GET AN OPPORTUNITY,
14 OR IF YOU DID, DID YOU GET AN OPPORTUNITY TO SEE WHETHER OR
15 NOT THERE WERE ANY DISTINGUISHING CHARACTERISTICS ON THE
16 WRISTS OR ARMS OF THIS INDIVIDUAL THAT HAD THE GUN?

17 A. NO.

18 Q. SO YOU DON'T KNOW IF THERE WAS ANYTHING? YOU DIDN'T --
19 YOU DIDN'T PUT IN YOUR STATEMENT OR TESTIFY OR SAY ANYTHING
20 TO THE OFFICERS ABOUT ANY DISTINGUISHING CHARACTERISTICS,
21 DID YOU?

22 A. REGARDING LIKE ---

23 Q. WELL, REGARDING THE WRISTS OR THE ARMS, CORRECT?

24 A. CORRECT.

25 Q. OKAY. SO WHAT YOU'RE TELLING THIS JURY THEN IS THAT TO

SERGIO ESPINOZA - CROSS EXAMINATION BY MR. ROBINSON

111

1 YOUR KNOWLEDGE THERE WERE NO DISTINGUISHING CHARACTERISTICS
2 ON EITHER THE WRISTS OR ARMS OF THE INDIVIDUAL THAT STUCK A
3 GUN TO YOUR HEAD, CORRECT?

4 A. CORRECT.

5 Q. OKAY. IN THIS APARTMENT COMPLEX THAT YOU -- THAT YOU
6 WERE LIVING AT AT THE TIME -- WHAT IS IT CALLED?

7 A. STRATFORD VILLA.

8 Q. AND IT'S A PRETTY LARGE APARTMENT COMPLEX, ISN'T IT? A
9 PRETTY GOOD SIZE? A PRETTY GOOD SIZE?

10 A. IT'S OKAY.

11 Q. MAYBE HUNDREDS OF PEOPLE LIVE THERE, IS THAT RIGHT?

12 A. PROBABLY.

13 Q. TO YOUR KNOWLEDGE ARE THERE A LOT OF PEOPLE THAT WORK
14 LIKE YOU, LIKE TWELVE HOUR SHIFTS THAT END AT MIDNIGHT OR
15 DIFFERENT KINDS OF SHIFTS AND SO FORTH?

16 A. THE MAJORITY OF THEM, NO. THEY WORK FIVE IN THE
17 MORNING.

18 Q. FIVE IN THE MORNING?

19 A. YES, SIR. WE'RE ALWAYS HERE GETTING OUT AT FIVE IN THE
20 MORNING.

21 Q. AND WHEN THIS ALL HAPPENED THERE WERE NO WITNESSES
22 AROUND OR ANYTHING, WERE THERE?

23 A. NO, SIR.

24 Q. BESIDES YOU, BESIDES YOU, THERE WERE NO OTHER
25 EYEWITNESSES, WERE THERE?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

112

1 A. NO, SIR.

2 Q. THANK YOU.

3 MR. ROBINSON: THAT'S ALL I HAVE, YOUR HONOR.

4 THE COURT: ANY REDIRECT?

5 MR. MARCHANT: NO FURTHER QUESTIONS, YOUR HONOR.

6 THE COURT: THANK YOU. STEP DOWN, PLEASE. OKAY.

7 MR. MARCHANT: THE STATE WOULD CALL TIMOTHY WRIGHT.

8 TIMOTHY WRIGHT, BEING

9 DULY SWORN TESTIFIED AS FOLLOWS:

10 MADAME CLERK: THANK YOU. PLEASE BE SEATED. SIR,

11 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

12 MR. WRIGHT: MY NAME IS TIMOTHY LEE WRIGHT.

13 MADAME CLERK: YOU NEED TO MOVE UP, PLEASE.

14 THE COURT: PULL IN CLOSER TO THE MICROPHONE, PLEASE,

15 MR. WRIGHT.

16 MR. WRIGHT: TIMOTHY LEE WRIGHT.

17 MADAME CLERK: THANK YOU, SIR.

18 DIRECT EXAMINATION BY MR. MARCHANT:

19 Q. MR. WRIGHT, HOW OLD ARE YOU?

20 A. TWENTY, SIR.

21 Q. TWENTY?

22 A. YES, SIR.

23 Q. AND WHERE DID YOU GROW UP?

24 A. I GROWED UP IN GREENVILLE, SOUTH CAROLINA, SIR.

25 MR. MARCHANT: JUDGE, I'M GOING TO NEED TO MOVE THIS

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

113

1 MICROPHONE A LITTLE CLOSER.

2 Q. I'M GOING TO ASK YOU TO SPEAK UP AS LOUD AS YOU CAN SO
3 THE JURY CAN HEAR YOU, SIR. I'M SORRY. WHERE DID YOU GROW
4 UP?

5 A. I GROWED UP IN GREENVILLE, SOUTH CAROLINA, SIR.

6 Q. AND WHERE DID YOU GO TO HIGH SCHOOL?

7 A. SOUTHSIDE, SIR.

8 Q. AND DID YOU GRADUATE FROM SOUTHSIDE HIGH SCHOOL?

9 A. YES, SIR.

10 Q. WHAT YEAR DID YOU GRADUATE?

11 A. '07, SIR.

12 Q. AND FOLLOWING GRADUATING SOUTHSIDE HIGH SCHOOL DID YOU
13 ATTEND COLLEGE ANYWHERE?

14 A. YES, SIR.

15 Q. AND WHERE DID YOU GO?

16 A. GREENVILLE TECH, SIR.

17 Q. AND WHAT PROGRAM OR DIRECTION WERE YOU ENROLLED IN AT
18 GREENVILLE TECH?

19 A. TRUCK DRIVING, SIR.

20 Q. AND DID YOU ENROLL IN GREENVILLE TECH THE AUGUST
21 FOLLOWING YOUR GRADUATION?

22 A. YES, SIR.

23 Q. YOU GRADUATED IN '07, IS THAT CORRECT?

24 A. YES, SIR.

25 Q. SO IN DECEMBER OF 2007 WERE YOU A STUDENT AT GREENVILLE

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

114

1 TECH?

2 A. NO, SIR, 'CAUSE I HAD GOT LOCKED UP.

3 Q. OKAY. PRIOR TO GETTING LOCKED UP WERE YOU ENROLLED
4 TAKING CLASSES?

5 A. YES, SIR.

6 Q. AND BEFORE ANY OF THIS HAPPENED WERE YOU PLANNING ON
7 GOING TO SCHOOL SOMEWHERE ELSE?

8 A. YES, SIR.

9 Q. AND WHERE WAS THAT?

10 A. EAST COASTAL CAROLINA.

11 Q. AND WHAT WERE YOU GOING TO DO DOWN AT COASTAL CAROLINA?

12 A. PLAY FOOTBALL, SIR.

13 Q. AND WHEN WERE YOU SUPPOSED TO BE BEGINNING CLASSES AT
14 COASTAL CAROLINA?

15 A. '08, JANUARY THE 1ST.

16 Q. SO YOU WERE ONLY GOING TO DO SIX MONTHS OR ONE SEMESTER
17 AT GREENVILLE TECH?

18 A. YES, SIR.

19 Q. DO YOU KNOW KENNETH WORKMAN?

20 A. YES, SIR.

21 Q. AND HOW IS IT THAT YOU KNOW KENNETH WORKMAN?

22 A. WELL, I GROWED UP WITH HIM. AND THAT'S MY COUSIN, SIR.

23 Q. AND THEN YOU KNOW HOW OLD MR. WORKMAN IS?

24 A. YES, SIR.

25 Q. HOW OLD IS HE?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

115

1 A. NINETEEN, SIR.

2 Q. Y'ALL ABOUT THE SAME AGE?

3 A. YES, SIR.

4 Q. DO YOU KNOW MR. ROBINSON?

5 A. YES, SIR.

6 Q. AND HOW DO YOU KNOW MR. ROBINSON?

7 A. I MET HIM WHEN I HAD GOT OUT OF -- WHEN I HAD GOT OUT
8 OF MY JUVENILE TIME IN '05, SIR.

9 Q. SO YOU'VE KNOWN MR. ROBINSON SINCE 2005?

10 A. YES, SIR.

11 Q. AND YOU'VE KNOWN MR. WORKMAN PRETTY MUCH YOUR WHOLE
12 LIFE?

13 A. YES, SIR.

14 Q. MR. WORKMAN'S YOUR COUSIN?

15 A. YES, SIR.

16 Q. NOW IN THE FALL OF 2007 WHILE YOU'RE ATTENDING CLASSES
17 AT GREENVILLE TECH WERE YOU HANGING OUT WITH THESE TWO GUYS?

18 A. YES, SIR.

19 Q. WAS IT THROUGH SOME EMPLOYMENT OR WERE Y'ALL JUST --
20 WAS IT A SOCIAL ARRANGEMENT?

21 MR. MOORMAN: YOUR HONOR, I'M GOING TO OBJECT TO THAT,
22 TO THE QUESTION.

23 THE COURT: WHAT'S THE OBJECTION?

24 MR. MOORMAN: ON THE BASIS OF A -- A 403 OBJECTION,
25 YOUR HONOR.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

116

1 THE COURT: NO, OVERRULED. GO AHEAD.

2 Q. MR. WRIGHT, WERE YOU -- LET'S GO AT IT THIS WAY. WERE
3 YOU EMPLOYED IN THE FALL OF 2007?

4 A. WAS I EMPLOYED?

5 Q. WERE YOU WORKING SOMEWHERE?

6 A. YES, SIR.

7 Q. AND WHERE WERE YOU WORKING?

8 A. I WAS WORKING AT OJ'S, OJ'S RESTAURANT.

9 Q. OKAY. WHEN THIS -- THIS INCIDENT HAPPENED WERE YOU
10 WORKING?

11 A. NO, SIR.

12 Q. DO YOU KNOW WHETHER OR NOT MR. WORKMAN WAS EMPLOYED?

13 A. NO, SIR.

14 Q. WHAT ABOUT MR. ROBINSON HERE?

15 A. NO, SIR.

16 Q. NOW WHAT DID YOU TYPICALLY CALL MR. WORKMAN?

17 MR. ROBINSON: OBJECTION, YOUR HONOR, RELEVANCE.

18 MR. MARCHANT: I'M ASKING WHAT HE REFERRED -- HOW HE
19 REFERRED TO HIM.

20 THE COURT: GO AHEAD.

21 Q. WHAT DO YOU CALL HIM? IF YOU CALLED HIM UP ON THE
22 PHONE WHAT DO YOU SAY TO HIM?

23 A. I ASK HIM WHAT'S UP, WHAT THEY DOING?

24 Q. BUT WHAT DO YOU CALL HIM?

25 A. TALKING ABOUT O'SHAUN?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

117

1 Q. NO, MR. WORKMAN.

2 A. I SAY KEN.

3 Q. KEN. AND HOW DO YOU ADDRESS MR. ROBINSON HERE?

4 A. "O".

5 Q. KEN AND "O"?

6 A. (AFFIRMATIVE NOD).

7 Q. NOW IT'S PRETTY OBVIOUS THAT YOU'RE DRESSED IN SOME

8 JAIL ATTIRE. YOU'VE PLED GUILTY TO THIS OFFENSE, ISN'T THAT
9 CORRECT?

10 A. YES, SIR.

11 Q. AND YOU'VE BEEN SENTENCED, ---

12 A. YES, SIR.

13 Q. --- CORRECT? I DON'T WANT -- I DON'T WANT YOU TO TELL
14 US WHAT YOUR ACTUAL SENTENCE WAS, BUT YOU HAVE PLED GUILTY?

15 A. YES, SIR.

16 Q. AND HAVE BEEN SENTENCED?

17 A. YES, SIR.

18 Q. DID YOU PLEAD GUILTY TO ANY OTHER OFFENSES?

19 A. NO, SIR. NO, SIR.

20 Q. THIS IS THE ONLY OFFENSE YOU'VE PLED GUILTY TO?

21 A. OH, NO, SIR.

22 Q. OKAY. YOU'VE PLED GUILTY TO ---

23 A. TWO OF THEM.

24 Q. --- A SUBSEQUENT OFFENSE?

25 A. TWO OF THEM.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

118

1 Q. OKAY. SO YOU'VE PLED GUILTY TO THIS INCIDENT AND
2 YOU'VE PLED GUILTY TO SOMETHING THAT HAPPENED AFTER THIS,
3 ISN'T THAT CORRECT?

4 A. YES, SIR.

5 Q. OKAY. NOW DO YOU RECALL BEING ARRESTED AND SPEAKING
6 WITH INVESTIGATOR HANNING AS WELL AS INVESTIGATOR WEINER?

7 A. YES, SIR.

8 Q. AND WHEN YOU WERE SPEAKING WITH THEM DID THEY GO OVER
9 YOUR MIRANDA RIGHTS?

10 A. YES, SIR.

11 Q. AND DO YOU KNOW WHAT THAT IS?

12 A. YES, SIR.

13 Q. AND AFTER THEY WENT OVER YOUR MIRANDA RIGHTS DID YOU
14 AGREE TO SPEAK WITH THEM?

15 A. YES, SIR.

16 Q. WERE YOU UNDER ARREST AT THE TIME YOU SPOKE WITH THEM?

17 A. YES, SIR.

18 Q. WHILE SPEAKING WITH INVESTIGATOR WEINER AND
19 INVESTIGATOR HANNING DID THEY MAKE ANY PROMISES TO YOU ABOUT
20 WHAT TYPE OF SENTENCE YOU WOULD RECEIVE IF YOU COOPERATED?

21 A. NO, SIR.

22 Q. DID THEY MAKE ANY PROMISES ABOUT ANYTHING TO YOU?

23 A. NO, SIR.

24 Q. NOW YOU WERE REPRESENTED BY AN ATTORNEY ON YOUR
25 CHARGES?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

119

1 A. YES, SIR.

2 Q. DO YOU RECALL WHO THAT ATTORNEY IS?

3 A. CHRIS POSEY, SIR.

4 Q. WHEN IS THE FIRST TIME THAT YOU AND I SAW EACH OTHER
5 FACE TO FACE?

6 A. WHEN I -- WHEN I HAD GOT MY SENTENCE.

7 Q. THE DAY YOU PLED GUILTY? IS THAT WHAT YOU MEAN?

8 A. YES, SIR.

9 Q. HAD YOU AND I EVER SPOKE PRIOR TO THAT DAY?

10 A. NO, SIR.

11 Q. WERE THERE ANY PROMISES THAT WERE MADE TO YOU WHEN YOU
12 PLED GUILTY ABOUT WHAT TYPE OF SENTENCE YOU WOULD RECEIVE?

13 A. NO, SIR.

14 Q. ON THE NIGHT THAT THIS HAPPENED ON DECEMBER 10TH WHERE
15 WERE Y'ALL PRIOR TO GOING OVER TO THIS APARTMENT COMPLEX?

16 MR. ROBINSON: OBJECTION, YOUR HONOR. IT'S A VERY NON-
17 SPECIFIC GENERAL QUESTION. I THINK HE NEEDS TO ASK HIM --
18 SET A FOUNDATION FOR THIS, YOUR HONOR.

19 THE COURT: NO, OVERRULED. GO AHEAD.

20 Q. MR. WRIGHT, WHERE WERE YOU PRIOR TO GOING OVER TO THIS
21 APARTMENT COMPLEX?

22 A. WELL, BEFORE WE WENT OVER THERE WE WAS IN WEST
23 GREENVILLE, SIR.

24 Q. WHERE WERE YOU?

25 A. IN WEST GREENVILLE.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

120

1 Q. AND WHERE PARTICULARLY IN WEST GREENVILLE WERE YOU?

2 A. HANGING AROUND.

3 Q. WERE YOU AT SOMEBODY'S HOUSE, AT A RESTAURANT?

4 A. NO, JUST HANGING AROUND ON THE STREETS.

5 Q. AND HOW IS IT THAT YOU ENDED UP AT THIS APARTMENT

6 COMPLEX?

7 A. WELL, WE HAD -- WELL, WE HAD GOT -- WELL, WE HAD GOT

8 THIS OTHER -- THIS OTHER FRIEND CAR NAMED TEZ. WE WENT OVER

9 THERE TO LIKE SEE WAS SOME GIRLS OR SOMETHING OVER THERE,

10 SEE IF WE COULD MEET SOME GIRLS.

11 Q. AND WHOSE CAR WERE YOU IN?

12 A. TEZ.

13 Q. I'M SORRY, SIR. YOU'RE ---

14 A. TEZ.

15 Q. --- GOING TO HAVE TO SPEAK UP.

16 A. TEZ.

17 Q. WAS TEZ WITH YOU?

18 A. NO, SIR.

19 Q. WHO ALL WAS WITH YOU WHEN YOU WENT OVER TO THIS

20 COMPLEX?

21 A. ME, MARCUS, ROBINSON AND WORKMAN, SIR.

22 Q. WHO WAS MARCUS?

23 A. THAT'S JUST ANOTHER FRIEND, SIR.

24 Q. WHO WAS DRIVING THIS VEHICLE?

25 A. MARCUS, SIR.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

121

- 1 Q. AND WHAT TYPE OF VEHICLE WAS IT?
- 2 A. A BLACK LINCOLN, SIR.
- 3 Q. WAS IT TWO DOOR OR FOUR DOOR?
- 4 A. FOUR DOOR.
- 5 Q. WHERE WERE YOU SITTING IN THE VEHICLE?
- 6 A. BEHIND THE PASSENGER'S SEAT.
- 7 Q. WHERE WAS KEN SITTING?
- 8 A. IN THE PASSENGER'S SEAT.
- 9 Q. WHERE WAS "O" SITTING?
- 10 A. SITTING BEHIND THE DRIVER'S SEAT.
- 11 Q. WHAT DID YOU DO ONCE YOU GOT INTO THIS APARTMENT
- 12 COMPLEX? DID YOU PARK?
- 13 A. WE DROVE AROUND FOR A LITTLE BIT.
- 14 Q. AND WHY WERE Y'ALL DRIVING AROUND?
- 15 A. LOOKING FOR SOME FEMALES.
- 16 Q. DID YOU KNOW ANY FEMALES IN THIS COMPLEX?
- 17 A. NOT AT THE TIME. WE HAD MET SOME OUT THERE BEFORE.
- 18 Q. YOU HAD MET SOME OUT THERE BEFORE?
- 19 A. YES, SIR.
- 20 Q. HOW MANY TIMES WOULD YOU SAY YOU CIRCLED THIS PARKING
- 21 LOT BEFORE YOU PARKED?
- 22 A. ABOUT FIVE OR SIX TIMES.
- 23 Q. AND ONCE YOU PARKED WHAT DID YOU DO?
- 24 A. JUST SAT RIGHT THERE AND TALKED.
- 25 Q. HOW LONG DID YOU TALK?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

122

- 1 A. ABOUT A GOOD MINUTE.
- 2 Q. HOW LONG?
- 3 A. ABOUT A GOOD MINUTE.
- 4 Q. WHAT DID YOU TALK ABOUT?
- 5 A. WELL, WE WAS TALKING -- WELL, WE WAS TALKING ABOUT --
- 6 WE STARTED TALKING ABOUT ROBBING -- ABOUT THE ROBBING
- 7 INCIDENT.
- 8 Q. ABOUT WHAT?
- 9 A. ABOUT THE ROBBING INCIDENT.
- 10 Q. WHEN YOU SAY YOU WERE TALKING ABOUT THE ROBBING
- 11 INCIDENT, WHAT DO YOU MEAN?
- 12 A. THAT WE STARTED PLANNING IT.
- 13 Q. AND WHOSE IDEA WAS IT?
- 14 A. ROBINSON'S, SIR.
- 15 Q. AND THIS CONVERSATION EXISTED BETWEEN HOW MANY OF THEM?
- 16 A. THREE OF US.
- 17 Q. HOW MANY?
- 18 A. THREE OF US.
- 19 Q. WAS MARCUS INVOLVED IN THIS CONVERSATION?
- 20 A. NO, SIR.
- 21 Q. SO THE THREE OF US, WHO ARE YOU REFERRING TO?
- 22 A. ME, ROBINSON AND WORKMAN.
- 23 Q. NOW SPECIFICALLY WHAT WERE Y'ALL TALKING ABOUT ROBBING
- 24 OR WHO WERE YOU TALKING ABOUT ROBBING?
- 25 A. WELL, WE WAS GOING -- WE WAS GOING TO WAIT UNTIL WE SEE

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

123

1 SOMEBODY THAT WE CAN -- THAT WE CAN GET.

2 Q. AND DID YOU SEE SOMEBODY THAT YOU COULD GET?

3 A. YES, SIR, AFTER -- AFTER THE PERSON HAD PASSED IN THE
4 RED JEEP.

5 Q. AND WHAT -- WHAT HAPPENED AFTER THIS PERSON PASSED IN
6 THE RED JEEP?

7 A. WE STARTED PLANNING THAT WE WAS GOING TO -- THAT WE WAS
8 GOING TO ROB THAT PERSON.

9 Q. AND DID YOU HAVE A GUN?

10 A. NO, SIR.

11 Q. DID KEN HAVE A GUN?

12 A. NO, SIR.

13 Q. DID "O" HAVE A GUN?

14 A. YES, SIR.

15 Q. WHAT TYPE OF GUN WAS IT?

16 A. I THINK A .57 MAGNUM, SIR.

17 Q. WHAT COLOR WAS IT?

18 A. SILVER AND BROWN.

19 Q. WHERE WAS THE BROWN PART LOCATED?

20 A. ON THE HANDLE, SIR.

21 Q. AFTER Y'ALL TALKED ABOUT ROBBING SOMEBODY DID Y'ALL
22 DECIDE ON THIS PERSON THAT HAD PULLED IN IN THE RED JEEP?

23 A. YES, SIR.

24 Q. DID YOU WAIT FOR THAT PERSON TO PARK?

25 A. YES, SIR.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

124

- 1 Q. AND ONCE HE PARKED WHAT HAPPENED?
- 2 A. THEN WE ALL JUMPED OUT OF THE CAR, SIR.
- 3 Q. AND WHERE DID KEN GO?
- 4 A. ON THE PASSENGER'S SIDE, SIR.
- 5 Q. PASSENGER'S SIDE OF WHAT?
- 6 A. OF THE RED JEEP.
- 7 Q. DO YOU REMEMBER WHAT KEN WAS WEARING?
- 8 A. NO, SIR.
- 9 Q. WHERE DID "O" GO?
- 10 A. ON THE DRIVER'S SIDE, SIR, OF -- OF THE JEEP.
- 11 Q. AND WHERE DID YOU GO?
- 12 A. ON THE DRIVER'S SIDE BESIDE HIM, SIR.
- 13 Q. YOU'RE ON THE DRIVER'S SIDE OF THE JEEP. AND "O's" ON
- 14 THE DRIVER'S SIDE OF THE JEEP. WHO WAS IN FRONT?
- 15 A. ROBINSON, SIR.
- 16 Q. SO WHERE -- IF THIS IS THE VEHICLE AND THIS IS THE REAR
- 17 OF THE JEEP WHERE WERE YOU STANDING?
- 18 A. I WAS STANDING LIKE RIGHT -- RIGHT BESIDE HIM, LIKE
- 19 BEHIND HIM.
- 20 Q. OKAY. I'D ASK YOU TO STEP DOWN SO YOU CAN SHOW THE
- 21 JURY WHERE YOU WERE POSITIONED. ASSUMING FOR DEMONSTRATION
- 22 PURPOSES THIS IS THE DRIVER'S SIDE OF THE VEHICLE, THIS IS
- 23 THE DRIVER'S DOOR AND THIS IS THE BACK DOOR OF THE RED JEEP,
- 24 WHERE WAS "O" STANDING?
- 25 A. HE WAS STANDING RIGHT HERE.

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

131

1 A. YES, SIR.

2 Q. BUT THAT'S NOT THE ONLY REASON WHY YOU'RE TESTIFYING,
3 IS IT? ISN'T IT TRUE THAT THIS PROSECUTOR DISMISSED
4 NUMEROUS CHARGES THAT WERE PENDING AGAINST YOU, ISN'T THAT
5 TRUE?

6 A. NO, SIR.

7 Q. SO IT'S YOUR TESTIMONY THAT THIS PROSECUTOR NEVER
8 DISMISSED ANY CHARGES AGAINST YOU?

9 A. HE DISMISSED CHARGES.

10 Q. OKAY. SO ISN'T IT TRUE HE DISMISSED CHARGES AGAINST
11 YOU? ISN'T THAT TRUE?

12 A. YEAH, HE DISMISSED CHARGES. YES, SIR.

13 Q. AND ISN'T IT TRUE THAT HE DISMISSED THESE CHARGES ON
14 THE DAY YOU GAVE SWORN TESTIMONY IN THIS CASE? ISN'T THAT
15 TRUE?

16 A. YES, SIR.

17 Q. THE SAME DAY, ISN'T THAT TRUE?

18 A. YES, SIR.

19 Q. I WANT TO TALK ABOUT WHAT YOUR ROLE WAS IN THIS. YOU
20 SAID THAT YOU WERE STANDING NEXT TO O'SHAUN, IS THAT RIGHT?

21 A. YES, SIR.

22 Q. WHAT WAS YOUR ROLE IN THIS -- IN THIS ROBBERY? WHAT
23 WERE YOU SUPPOSED TO DO?

24 A. I BELIEVE I WAS SUPPOSED TO BEEN A WATCH-OUT.

25 Q. OKAY. SO YOU WERE JUST STANDING THERE, RIGHT?

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

132

1 A. YES, SIR.

2 Q. AND IS IT YOUR TESTIMONY THAT KEN WORKMAN WAS ALSO JUST
3 TO BE -- JUST TO STAND THERE, RIGHT?

4 A. YES, SIR.

5 Q. AND YOUR TESTIMONY IS THAT YOU NEVER HAD A GUN,
6 CORRECT?

7 A. YES, SIR.

8 Q. AND YET YOU PLED GUILTY TO ARMED ROBBERY FOR STANDING
9 THERE, IS THAT CORRECT?

10 A. YES, SIR.

11 Q. WHAT'S THAT?

12 A. YES, SIR.

13 Q. YOU TESTIFIED THAT YOU WERE -- YOU AND THE OTHERS WENT
14 THERE TO LOOK FOR GIRLS, IS THAT RIGHT?

15 A. YES, SIR, THAT'S WHAT WE WENT THERE TO LOOK FOR.

16 Q. I'M SORRY, I CAN'T ---

17 A. I SAID YES, SIR.

18 Q. --- HEAR YOU. BUT THAT ISN'T WHY YOU WENT THERE, IS
19 IT?

20 A. NO, SIR.

21 Q. YOU WENT THERE TO ROB SOMEBODY, ISN'T THAT RIGHT?

22 A. YES, SIR.

23 Q. SO WHEN YOU SAID EARLIER YOU WENT THERE LOOKING FOR
24 GIRLS THAT WAS NOT TRUE, IS THAT CORRECT?

25 A. WELL, REALLY -- NOT REALLY.

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

133

1 Q. ALL RIGHT. ISN'T IT TRUE THAT IN THE STATEMENT YOU
2 GAVE POLICE YOU SAID THAT THERE WERE TWO GUNS INVOLVED IN
3 THIS? ISN'T THAT TRUE?

4 A. NO, SIR.

5 Q. THAT'S NOT TRUE?

6 A. NO, SIR.

7 Q. SO THE STATEMENT YOU GAVE TO INVESTIGATOR WEINER YOU
8 NEVER SAID THAT KENNETH AND O'SHAUN HAD GUNS? YOU NEVER
9 SAID THAT, DID YOU?

10 A. WHAT I MEANT BY THAT WAS, I MEAN, IT WAS ONLY ONE GUN.

11 Q. OKAY. SO WHEN YOU SAID THERE WERE MULTIPLE GUNS, THAT
12 WASN'T TRUE EITHER, RIGHT?

13 A. NO, SIR.

14 Q. AND YOUR TESTIMONY IS THAT THERE WERE FOUR PEOPLE
15 INVOLVED IN THIS THING ALTOGETHER, RIGHT?

16 A. YES, SIR.

17 Q. THREE AROUND THE CAR AND THEN ONE IN THE CAR THAT Y'ALL
18 DROVE AWAY IN, RIGHT?

19 A. YES, SIR.

20 Q. AND WHO WAS THE GUY -- WHO WAS THE GUY IN THE CAR?

21 A. MARCUS.

22 Q. MARCUS. WHAT WAS -- WHAT WAS MARCUS' LAST NAME?

23 A. I DON'T KNOW HIS LAST NAME, SIR.

24 Q. JUST MARCUS?

25 A. THAT'S ALL I KNEW.

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

134

1 Q. SO YOU NEVER DID ANYTHING DURING THIS ROBBERY BUT STAND
2 THERE, CORRECT?

3 A. YES, SIR.

4 Q. NEVER HAD A GUN?

5 A. NO, SIR.

6 Q. AT THE TIME YOU GAVE THIS STATEMENT TO INVESTIGATOR
7 WEINER YOU WERE IN CUSTODY, IS THAT RIGHT?

8 A. YES, SIR.

9 Q. ISN'T IT TRUE THAT YOU WERE THE ONE WHO HAD THE GUN
10 THAT NIGHT? ISN'T IT TRUE? ISN'T THAT TRUE?

11 A. THAT I HAD THE GUN THAT NIGHT?

12 Q. YOU WERE THE ONE THAT HAD THE GUN?

13 A. NO, SIR. NO.

14 Q. ISN'T IT TRUE YOU WERE THE ONE WHO PUT THAT GUN IN MR.
15 ESPINOZA'S FACE? ISN'T THAT TRUE?

16 A. NO, SIR.

17 Q. ISN'T THAT -- ISN'T THAT WHY YOU PLED GUILTY TO ARMED
18 ROBBERY 'CAUSE YOU WERE THE ONE WITH THE GUN THAT NIGHT?

19 A. NO, SIR.

20 MR. MARCHANT: YOUR HONOR, IT'S ASKED AND ANSWERED.

21 THE COURT: HE'S ASKED AND ANSWERED IT. MOVE ON.

22 MR. MOORMAN: YOUR HONOR, I'VE GOT -- I'VE GOT NOTHING
23 FURTHER.

24 THE COURT: ALL RIGHT. MR. ROBINSON.

25 MR. ROBINSON: MAY IT PLEASE THE COURT?

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. ROBINSON

135

1 CROSS EXAMINATION BY MR. ROBINSON:

2 Q. MR. WRIGHT, YOU TESTIFIED A MOMENT AGO THAT YOU'RE
3 DOING -- YOU'RE GIVING YOUR TESTIMONY BECAUSE YOU WANT TO
4 TELL THE TRUTH, ISN'T THAT RIGHT?

5 A. YES, SIR.

6 Q. NOW YOU WOULD AGREE WITH ME THAT WHEN YOU DID YOUR --
7 YOU HAD A PRIOR ATTORNEY, MR. POSEY, IS THAT RIGHT?

8 A. YES, SIR.

9 Q. AND HE AND YOU MET WITH MR. MARCHANT, WHO'S SITTING
10 OVER HERE, IS THAT CORRECT?

11 A. WELL, I DIDN'T MEET -- I DIDN'T MEET HIM UNTIL I CAME
12 -- UNTIL I CAME -- UNTIL I CAME TO COURT.

13 Q. YOU MET MR. MARCHANT WHEN YOU CAME TO COURT?

14 A. YES, SIR.

15 Q. OKAY. AND WHILE YOU'RE SAYING THAT YOU'RE DOING THIS
16 TO TELL THE TRUTH YOU WOULD ALSO AGREE WITH ME THAT YOU HAD
17 A NUMBER -- A NUMBER OF CHARGES DISMISSED ALSO AGAINST YOU,
18 ISN'T THAT TRUE AS WELL?

19 A. YES, SIR.

20 Q. THANK YOU. I HAVE NO MORE QUESTIONS.

21 THE COURT: ANYTHING ELSE, SOLICITOR?

22 MR. MARCHANT: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: THANK YOU. STEP DOWN. ALL RIGHT. LADIES
24 AND GENTLEMEN, WE WILL SUSPEND AT THIS TIME FOR LUNCH.
25 WE'LL PICK BACK UP WITH THE TESTIMONY AFTER LUNCH.

1 DURING THE LUNCH RECESS DO NOT TALK ABOUT THIS CASE
2 AMONG YOURSELVES OR WITH ANYONE ELSE. IF ANYBODY CONTACTS
3 YOU AND TRIES TO TALK TO YOU ABOUT THIS CASE, GET THEIR
4 NAMES AND ADDRESSES AND REPORT THAT TO ME.

5 I ASK THAT YOU KEEP YOUR BADGES ON DURING THE LUNCH
6 RECESS. I ASK THAT YOU DO THAT SO THAT EVERYONE INVOLVED
7 WITH THIS CASE WILL KNOW THAT YOU ARE A JUROR ON THIS CASE
8 AND IT WOULD BE HIGHLY IMPROPER FOR THEM TO TALK ABOUT OR
9 DISCUSS THIS CASE IN YOUR PRESENCE. SO PLEASE KEEP YOUR
10 BADGES ON DURING THE LUNCH RECESS. I'LL ASK THAT YOU BE
11 BACK IN YOUR JURY ROOM AT 2:15, 2:15. THANK YOU.

12 (WHEREUPON THE JURY EXITED THE COURTROOM AT 12:51 PM)

13 THE COURT: ALL RIGHT. SEE YOU BACK AFTER LUNCH, 2:15.

14 MR. MOORMAN: AND, YOUR HONOR, IF IT BE POSSIBLE EITHER
15 NOW OR BEFORE 2:15 JUST TO PRESERVE THE RECORD FOR MY
16 CLIENT. IF IT WOULD BE POSSIBLE I'D LIKE TO PUT ON THE
17 RECORD THE DISCUSSION ABOUT I DESIRED TO -- ABOUT THE
18 RECOMMENDATION AND THE LINE OF QUESTION OF MR. MARCHANT.

19 THE COURT: OKAY. YOU WANT TO PUT IT ON ---

20 MR. MOORMAN: IF ---

21 THE COURT: --- THE RECORD NOW? SURE.

22 MR. MOORMAN: YOUR HONOR, MR. MARCHANT ASKED A NUMBER
23 OF QUESTIONS OF MR. WRIGHT RELATED TO WHAT PROMISES HAD BEEN
24 MADE TO HIM IN EXCHANGE FOR HIS TESTIMONY, WHY HE WAS
25 TESTIFYING AND HIS MOTIVATION. I BELIEVE, YOUR HONOR, THAT

1 ENLARGED THE SCOPE OF RELEVANCE TO ALLOW ME TO ASK ABOUT THE
2 FACT THAT THE SOLICITOR HAD MADE A TWENTY YEAR
3 RECOMMENDATION BASED ON HIS PLEA OF GUILTY, AND I WOULD
4 CONTEND BASED ON HIS COOPERATION.

5 AND IT WAS MY UNDERSTANDING THAT YOUR HONOR DISAGREED
6 AND DECIDED THAT THE SCOPE OF RELEVANCE HAD NOT BEEN -- HAD
7 NOT BEEN ENLARGED.. AND I WAS ALLOWED TO ASK ABOUT THE FACT
8 THAT CHARGES HAD BEEN DISMISSED, BUT NOT ABOUT THE FACT THAT
9 HE HAD MADE A TWENTY YEAR RECOMMENDATION IN EXCHANGE.

10 THE COURT: THAT'S CORRECT. ALL RIGHT. BE BACK AT
11 2:15.

12 MR. MOORMAN: THANK YOU, YOUR HONOR.

13 (WHEREUPON COURT WAS IN RECESS AT 12:53 PM)

14 THE COURT: BE SEATED. ALL RIGHT. ALL RIGHT. YOU CAN
15 BE PUTTING ON THE RECORD WHAT YOU WANTED TO PUT ON IT.

16 MR. MOORMAN: YES, SIR, YOUR HONOR. FIRST, YOUR HONOR,
17 DURING -- IT'S MY RECOLLECTION THAT DURING MR. TIMOTHY
18 WRIGHT'S TESTIMONY THE PROSECUTOR ASKED HIM A QUESTION,
19 SOMETHING TO THE EFFECT, HOW DID YOU MEET O'SHAUN ROBINSON?
20 AND I BELIEVE MR. WRIGHT'S ANSWER TO THAT WAS EITHER I MET
21 HIM WHILE I WAS IN THE DEPARTMENT OF JUVENILE JUSTICE OR I
22 MET HIM AFTER I GOT OUT OF THE DEPARTMENT OF JUVENILE
23 JUSTICE LEAVING THE JURY WITH AN INFERENCE THAT BOTH HE AND
24 MY CLIENT WERE IN OR ASSOCIATED WITH THE DEPARTMENT OF
25 JUVENILE JUSTICE. BASED ON THAT PREJUDICE, YOUR HONOR, I

1 WOULD MAKE A MOTION FOR A MISTRIAL BECAUSE I BELIEVE THERE'S
2 A MANIFEST OF NECESSITY OF A NEW TRIAL BECAUSE OF THE
3 CHARACTER EVIDENCE.

4 THE COURT: OKAY. SOLICITOR.

5 MR. MARCHANT: YOUR HONOR, WE'VE GONE BACK THROUGH THE
6 NOTES HERE THAT WE HAVE ANYWAY, AND IT'S OUR RECOLLECTION
7 THAT TESTIMONY -- IN RESPONSE TO MY QUESTION OF HOW HE MET
8 O'SHAUN, HE SAID, I MET HIM WHEN I GOT OUT OF JUVIE. I,
9 MEANING ---

10 THE COURT: MEANING ---

11 MR. MARCHANT: --- MR. WRIGHT.

12 THE COURT: --- WRIGHT.

13 MR. MARCHANT: WHEN I GOT OUT OF JUVIE ---

14 THE COURT: AND THERE WAS NO ---

15 MR. MARCHANT: --- THAT'S WHEN I ---

16 THE COURT: THERE WAS NO REFERENCE TO THE TWO OF THEM
17 BEING IN ---

18 MR. MARCHANT: IT'S THE STATE'S POSITION ---

19 THE COURT: --- JAIL TOGETHER.

20 MR. MARCHANT: --- THAT IT WAS NOT, YOUR HONOR.

21 THE COURT: AND I DENY YOUR MOTION FOR ---

22 MR. MOORMAN: YES, SIR.

23 THE COURT: --- A MISTRIAL.

24 MR. MOORMAN: THE ONLY OTHER MATTER I WOULD HAVE, YOUR
25 HONOR, WOULD BE EARLIER I HAD REQUESTED THAT I BE ALLOWED TO

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 GET INTO SPECIFICS ABOUT THE NEGOTIATIONS BETWEEN THE STATE
2 AND MR. WRIGHT AND SPECIFICALLY ABOUT A RECOMMENDATION OF
3 TWENTY YEARS. AND I'D ARGUED THAT THE SCOPE OF RELEVANCE
4 HAD BEEN ENLARGED BASED ON HIS DIRECT TESTIMONY. - I WOULD
5 ALSO HAVE ANOTHER BASIS FOR THAT REQUEST.

6 AND THAT WOULD BE IT IS MY RECOLLECTION AT THE FIRST
7 TRIAL MR. WRIGHT TESTIFIED THAT HE WAS SERVING A TWENTY YEAR
8 SENTENCE AND THAT PART OF THE REASON FOR HIM RECEIVING THE
9 TWENTY YEAR SENTENCE WAS BASED ON A TWENTY YEAR
10 RECOMMENDATION MADE BY -- BY THE PROSECUTOR.

11 DURING HIS DIRECT HE TESTIFIED THAT THERE WERE NO
12 PROMISES MADE AND THAT HIS ONLY MOTIVATION FOR TESTIFYING
13 WAS THAT HE WANTED TO -- TO -- WHAT HE DONE WAS WRONG AND HE
14 WANTED TO BE TRUTHFUL. YOUR HONOR, I WOULD ARGUE THAT I
15 SHOULD BE ALLOWED TO INQUIRE ABOUT HIS PRIOR INCONSISTENT
16 STATEMENT PURSUANT TO RULE 613.

17 THE COURT: AND I WOULD NOT ALLOW THAT.

18 MR. MOORMAN: THANK YOU, YOUR HONOR.

19 THE COURT: OKAY. BRING OUR JURY, PLEASE.

20 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:20 PM)

21 THE COURT: ALL RIGHT. SOLICITOR, YOU MAY PROCEED.

22 MR. MARCHANT: THE STATE WOULD CALL INVESTIGATOR DAVID
23 WEINER.

24 DAVID WEINER, BEING DULY
25 SWORN TESTIFIED AS FOLLOWS:

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

. 140

1 MADAME CLERK: THANK YOU. PLEASE BE SEATED. PLEASE
2 STATE YOUR FULL NAME FOR THE RECORD.

3 MR. WEINER: DAVID WEINER.

4 DIRECT EXAMINATION BY MR. MARCHANT:

5 Q. INVESTIGATOR WEINER, WHERE ARE YOU EMPLOYED?

6 A. THE GREENVILLE COUNTY SHERIFF'S OFFICE.

7 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE SHERIFF?

8 A. JUST UNDER NINE YEARS NOW.

9 Q. AND WHAT ARE YOUR CURRENT RESPONSIBILITIES WITH THE
10 SHERIFF?

11 A. CURRENTLY ASSIGNED AS AN INVESTIGATOR TO CRIMINAL
12 INVESTIGATIONS, SPECIFICALLY TO THE ARMED ROBBERY DIVISION.

13 Q. AND HOW LONG HAVE YOU BEEN WITH CRIMINAL
14 INVESTIGATIONS?

15 A. ABOUT THREE YEARS NOW.

16 Q. HOW LONG HAVE -- THOSE THREE YEARS YOU BEEN IN THE
17 ARMED ROBBERY DIVISION OF THE ...

18 A. ALMOST TWO YEARS.

19 Q. CAN YOU TELL THE JURY APPROXIMATELY HOW MANY ROBBERY
20 CASES YOU WORK A YEAR?

21 A. PROBABLY UPWARDS OF TWO HUNDRED.

22 Q. WERE YOU IN THAT CAPACITY IN DECEMBER OF 2007?

23 A. YES, SIR.

24 Q. DID YOU HAVE AN OPPORTUNITY TO WORK ON THIS CASE?

25 A. YES, SIR.

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 Q. OKAY. WHO ELSE WORKED ON THIS CASE WITH YOU?

2 A. MYSELF AND INVESTIGATOR HANNING.

3 Q. TYPICALLY WHEN A CASE IS ASSIGNED TO ONE OF YOU, ARMED
4 ROBBERY DIVISION, IS IT ASSIGNED SPECIFICALLY TO YOU OR TO
5 THE UNIT AS A WHOLE OR HOW DOES THAT WORK?

6 A. IN THE COMPUTER CASE MANAGEMENT SYSTEM IT'LL BE
7 ASSIGNED TO A SPECIFIC INDIVIDUAL, BUT WE ALWAYS HELP EACH
8 OTHER OUT TO TRY TO CLEAR CASES UP. YOU NEVER KNOW IF
9 THEY'RE CONNECTED OR RELATED.

10 Q. SO IF IT WAS YOU AND INVESTIGATOR HANNING WORKING ON
11 THIS CASE WHO WAS FORMALLY ASSIGNED?

12 A. SPECIFICALLY THIS CASE WAS ASSIGNED TO INVESTIGATOR
13 HANNING.

14 Q. AND IF YOU KNOW, CAN YOU TELL THE JURY WHERE
15 INVESTIGATOR HANNING IS EMPLOYED TODAY?

16 A. CURRENTLY HE WORKS FOR THE STATE LAW ENFORCEMENT
17 DIVISION. HE DOESN'T WORK FOR THE SHERIFF'S OFFICE ANYMORE.

18 Q. NOW WHEN, IF YOU RECALL, DID YOU GET PULLED INTO THIS
19 PARTICULAR INCIDENT?

20 A. PROBABLY SHORTLY AFTER IT WAS ASSIGNED. WITHIN TWO OR
21 THREE DAYS WE STARTED FOLLOWING UP ON IT.

22 Q. AND WHAT TYPE OF FOLLOWUP DID YOU DO AS FAR AS
23 CONTACTING THE VICTIM?

24 A. THAT'S NOT SOMETHING THAT I DID ON THIS CASE.

25 Q. DO YOU KNOW WHO THAT WAS ON THIS CASE?

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 A. THAT WOULD HAVE BEEN SOMETHING FOR INVESTIGATOR
2 HANNING. I JUST DID INTERVIEWS WITH SUSPECTS.

3 Q. DID YOU HAVE AN OPPORTUNITY AT SOME POINT IN TIME TO
4 SPEAK WITH A DEFENDANT BY THE NAME OF TIMOTHY WRIGHT?

5 A. YES, SIR, I DID.

6 Q. NOW WHEN YOU SPOKE WITH MR. WRIGHT WAS HE UNDER ARREST?

7 A. YES, SIR, HE WAS.

8 Q. WAS HE UNDER ARREST FOR THIS OFFENSE?

9 A. NO, SIR, HE WAS NOT.

10 Q. NOW WHEN YOU BEGAN SPEAKING WITH HIM DID YOU ADVISE HIM
11 OF HIS MIRANDA RIGHTS?

12 A. YES, SIR.

13 Q. AND DID YOU THOROUGHLY GO THROUGH THOSE RIGHTS?

14 A. YES, SIR.

15 Q. DID HE APPEAR TO YOU TO UNDERSTAND THOSE RIGHTS?

16 A. YES, SIR.

17 Q. AND AFTER YOU WENT THROUGH THOSE RIGHTS WITH HIM DID HE
18 AGREE TO SPEAK WITH YOU?

19 A. HE DID, YES, SIR.

20 Q. AND DID HE GIVE YOU INFORMATION IN THIS CASE?

21 A. HE DID, YES, SIR.

22 Q. AND DO YOU RECALL THE DAY THAT HE GAVE YOU INFORMATION
23 ON THIS CASE?

24 A. I'D HAVE TO LOOK AT THE STATEMENT, BUT I BELIEVE IT'S
25 DECEMBER 27TH WAS THE DATE FOR THIS STATEMENT.

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 Q. NOW AFTER HE GAVE YOU INFORMATION ABOUT THIS CASE ON
2 THE 27TH THERE WAS REFERENCE TO ANOTHER INDIVIDUAL BY THE
3 NAME OF MARCUS.

4 A. CORRECT.

5 Q. DID YOU DO ANY FOLLOWUP INVESTIGATION WITH RESPECT TO
6 MARCUS?

7 A. WE DID, MOSTLY WITH MR. WRIGHT 'CAUSE HE WAS
8 COOPERATING, JUST SHOWING HIM PICTURES OF -- HE THOUGHT HIS
9 LAST NAME MIGHT BE BROWN. WE WERE LOOKING AT MARCUS BROWN,
10 BUT REALLY WE HAD NO OTHER EVIDENCE TO INDICATE WHO HE MIGHT
11 BE. WE WERE UNABLE TO IDENTIFY HIM.

12 Q. SO TO THIS DAY HAVE YOU IDENTIFIED WHO HAS BEEN NAMED
13 MARCUS WITH RESPECT TO THIS INCIDENT?

14 A. NO, SIR.

15 Q. OKAY. THERE WAS ALSO REFERENCE OF AN INDIVIDUAL BY THE
16 NAME OF TEZ WHOSE LINCOLN THEY WERE DRIVING.

17 A. YES, SIR.

18 Q. WERE YOU ABLE TO IDENTIFY WHO TEZ IS?

19 A. WE DID FIND WHO WE THOUGHT MIGHT BE TEZ WHO POSSESSED A
20 BLACK LINCOLN TOWNCAR, YES, SIR.

21 Q. DO YOU KNOW WHETHER OR NOT THAT LINCOLN WAS THE SAME
22 LINCOLN THAT MR. WRIGHT TESTIFIED WAS USED IN THIS ROBBERY?

23 A. I DON'T KNOW IF IT'S THE SAME ONE. HE JUST SAID THAT
24 HE WOULD ALLOW HIM TO USE IT.

25 Q. DID YOU SIGN ANY WARRANTS ON THIS TEZ FELLOW?

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 A. NO, SIR.

2 Q. DID YOU FIND THAT TEZ WAS INVOLVED IN THIS INCIDENT IN
3 ANY MANNER?

4 A. NO, SIR.

5 Q. AFTER SPEAKING WITH MR. WRIGHT ON THIS INCIDENT DID YOU
6 SIGN OR DID THE SHERIFF'S OFFICE SIGN WARRANTS FOR HIS
7 ARREST ON THIS INCIDENT?

8 A. YES, SIR.

9 Q. OKAY. AND AT SOME POINT IN TIME WAS INFORMATION
10 PROVIDED TO THE MEDIA ABOUT THIS EVENT?

11 A. TO MY UNDERSTANDING THE INFORMATION RELEASED TO THE
12 MEDIA WAS NOT RELATED TO THIS EVENT.

13 Q. NOW WERE YOU INVOLVED WHEN MR. ESPINOZA CAME DOWN TO
14 THE LAW ENFORCEMENT CENTER TO SPEAK WITH ---

15 MR. MOORMAN: YOUR HONOR, ---

16 Q. --- INVESTIGATOR HANNING?

17 THE COURT: HOLD ON.

18 MR. MOORMAN: YOUR HONOR, I -- I WOULD OBJECT. I
19 BELIEVE ---

20 THE COURT: ALL RIGHT. TAKE THE JURY OUT, PLEASE.

21 (WHEREUPON THE JURY EXITED THE COURTROOM AT 2:26 PM)

22 THE COURT: ALL RIGHT, MR. MOORMAN.

23 MR. MOORMAN: YOUR HONOR, IF I UNDERSTOOD CORRECTLY MR.
24 MARCHANT ASKED INVESTIGATOR WEINER ABOUT A -- ABOUT MEDIA --
25 INFORMATION THAT WAS RELEASED TO THE MEDIA. AND THEN

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 INVESTIGATOR WEINER TESTIFIED THAT THE MEDIA WAS NOT RELATED
2 TO THIS EVENT.

3 THAT TAKEN IN CONJUNCTION WITH THE VICTIM'S TESTIMONY
4 ABOUT SEEING THE NEWS, SEEING THESE PEOPLE'S PICTURES ON --
5 THE FACES ON THE NEWS, THEN THE ONLY INFERENCE THAT CAN BE
6 DRAWN IS THAT THE NEWS BROADCAST THAT THE VICTIM SAW WAS
7 RELATED TO OTHER CRIMES INVOLVING MY CLIENT AND MR. WORKMAN.

8 THE COURT: SOLICITOR.

9 MR. MARCHANT: YOUR HONOR, I BELIEVE THE QUESTION I
10 ASKED HIM WAS WHETHER OR NOT INFORMATION WAS RELEASED TO THE
11 MEDIA ON THIS EVENT. AND I THINK HIS RESPONSE WAS NO. I'M
12 NOT CERTAIN OF THE EXACT WORDS THAT HE USED.

13 THE COURT: WELL, HE SAID THAT -- AS I UNDERSTOOD HIM
14 TO SAY, NOT RELATED TO THIS CASE.

15 MR. MARCHANT: WHICH I GUESS WOULD BE, I MEAN, THAT'S
16 HIS ANSWER, WHICH WAS -- I GUESS THOSE ARE THE FACTS AS THEY
17 ARE. THEY WERE -- THE MEDIA WAS NOT RELEASED ON THIS
18 INCIDENT.

19 THE COURT: MR. MOORMAN.

20 MR. MOORMAN: AND, AGAIN, YOUR HONOR, MY CONCERN IS NOW
21 WE HAVE TESTIMONY THAT THE VICTIM SAW MY CLIENT AND MR.
22 WORKMAN'S FACE PUT ON THE NEWS. I BELIEVE THERE WAS
23 TESTIMONY ABOUT THE ARREST OR SOME GENERAL NATURE OF THE
24 BROADCAST. IT WASN'T ANYTHING TALKED, YOU KNOW, BUT NOW THE
25 ONLY INFERENCE THAT CAN BE DRAWN, I WOULD ARGUE, IS THAT THE

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 NEWS BROADCAST RELATED TO OTHER EVENTS.

2 THE COURT: YOU KNOW, I THINK THAT MAY BE A
3 POSSIBILITY, BUT I DON'T BELIEVE THE JURY IN THIS CASE IS
4 GOING TO INTERPRET IT IN THAT FASHION. AND I THINK THE BEST
5 THING TO DO IS LEAVE IT ALONE.

6 MR. MOORMAN: YES, SIR.

7 THE COURT: I DON'T THINK YOUR CLIENT'S BEEN PREJUDICED
8 ---

9 MR. MOORMAN: OKAY.

10 THE COURT: --- BY THAT ONE ANSWER.

11 MR. MOORMAN: YES, SIR.

12 THE COURT: ALL RIGHT. NOW, SOLICITOR, LET'S MOVE ON,
13 PLEASE.

14 MR. MARCHANT: YES, SIR.

15 THE COURT: BRING THE JURY.

16 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:30 PM)

17 THE COURT: ALL RIGHT. SOLICITOR, YOU MAY CONTINUE.

18 DIRECT EXAMINATION BY MR. MARCHANT CONTINUED:

19 Q. FOLLOWING YOUR CONVERSATIONS WITH MR. WRIGHT DID YOU
20 AND INVESTIGATOR HANNING SIGN WARRANTS ON ANY OTHER
21 INDIVIDUALS IN THIS CASE?

22 A. YES, SIR.

23 Q. OKAY. AND WHO WERE THOSE OTHER INDIVIDUALS?

24 A. O'SHAUN ROBINSON AND KENNETH WORKMAN.

25 Q. DID YOU SIGN WARRANTS ON ANYONE ELSE?

DAVID WEINER - DIRECT EXAMINATION BY MR. MARCHANT

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1 A. NOT THAT I'M AWARE OF, NO, SIR.

2 Q. WERE YOU PRESENT WHEN MR. ESPINOZA CAME DOWN TO THE LAW
3 ENFORCEMENT CENTER ON THE 31ST AND MET WITH INVESTIGATOR
4 HANNING?

5 A. I WAS IN THE OFFICE, YES, SIR.

6 Q. DO YOU KNOW WHETHER OR NOT A LINEUP WAS SHOWN TO HIM AT
7 THAT TIME?

8 A. NO LINEUP WAS SHOWN.

9 Q. AFTER WARRANTS HAVE BEEN SIGNED ON INDIVIDUALS DO YOU
10 HAVE AN OCCASION TO SHOW A VICTIM A PHOTO LINEUP? OR WOULD
11 YOU -- LET ME REPHRASE IT. WOULD YOU SHOW A VICTIM A PHOTO
12 LINEUP AFTER WARRANTS HAD BEEN SIGNED?

13 MR. ROBINSON: YOUR HONOR, I'M GOING TO OBJECT. I'D
14 ASK HIM TO LAY A FOUNDATION AS FAR AS WITH THIS OFFICER.

15 THE COURT: WHAT ---

16 MR. MARCHANT: YOUR HONOR, HE WAS PRESENT WHEN MR.
17 ESPINOZA CAME DOWN TO THE LAW ENFORCEMENT CENTER.

18 THE COURT: OVERRULED. GO AHEAD.

19 A. IT WOULD NOT BE SOMETHING THAT WE WOULD NORMALLY DO.
20 NO, SIR.

21 Q. WHEN WOULD YOU SHOW A VICTIM A PHOTOGRAPHIC LINEUP?

22 A. PRELIMINARY STAGES WHEN WE'D POSSIBLY IDENTIFIED A
23 POTENTIAL SUSPECT BUT WE WEREN'T SURE, WHETHER IT WOULD BE
24 BASED OFF OF A STATEMENT OF SOMEBODY ELSE, MY WITNESS OR
25 SOME KIND OF FORENSIC EVIDENCE RECOVERED THAT -- COULD BE

DAVID WEINER - CROSS EXAMINATION BY MR. MOORMAN

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1 READILY EXPLAINED, IF WE'D GOTTEN A FINGERPRINT OFF A DOOR
2 TO A CONVENIENCE STORE THAT HUNDREDS OF PEOPLE TOUCH A DAY.
3 I COULD SHOW THEM A LINEUP, IS THIS THE PERSON THAT ROBBED
4 THE STORE? THEY COULD SAY YES OR NO.

5 Q. YOU DIDN'T DO THAT IN THIS CASE, CORRECT?

6 A. NO, SIR.

7 Q. DID YOU EVER FIND A GUN IN THIS CASE?

8 A. NOT THAT I'M AWARE OF.

9 Q. WAS ANY OF MR. ESPINOZA'S PROPERTY EVER RECOVERED?

10 A. NOT THAT I'M AWARE OF.

11 Q. AFTER THE WARRANTS WERE SIGNED IN THIS CASE WAS THERE
12 ANY FURTHER INVESTIGATION OUTSIDE OF INVESTIGATOR HANNING'S
13 MEETING WITH MR. ESPINOZA?

14 A. NOT THAT I'M AWARE OF.

15 Q. I HAVE NO FURTHER QUESTIONS. PLEASE ---

16 THE COURT: ALL RIGHT, MR. MOORMAN.

17 Q. --- ANSWER THE QUESTIONS THAT MR. ROBINSON AND MR.
18 MOORMAN MAY HAVE.

19 CROSS EXAMINATION BY MR. MOORMAN:

20 Q. INVESTIGATOR WEINER, LET ME MAKE SURE I UNDERSTAND THE
21 TIME-LINE OF THIS CASE. ISN'T IT TRUE THAT LAW ENFORCEMENT
22 HAD MR. TIMOTHY WRIGHT IN CUSTODY? IS THAT CORRECT?

23 A. I BELIEVE SO. YEAH, WHEN I TOOK THE STATEMENT HE WAS.
24 YES, SIR.

25 Q. AND MR. WRIGHT GAVE THE STATEMENT IMPLICATING O'SHAUN

DAVID WEINER - CROSS EXAMINATION BY MR. MOORMAN

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1 AND KEN IN THIS CRIME, IS THAT CORRECT?

2 A. YES, SIR.

3 Q. THEN BASED ON THAT STATEMENT WARRANTS WERE OBTAINED FOR
4 O'SHAUN AND KEN ON THESE CHARGES, CORRECT?

5 A. CORRECT.

6 Q. THEN A NUMBER OF DAYS PASSED WHERE LAW ENFORCEMENT HAS
7 NO CONTACT WITH THE -- WITH MR. ESPINOZA, CORRECT?

8 A. I DON'T KNOW WHAT CONTACT THERE WAS. I MEAN, IF HE
9 CAME IN ON THE 31ST, THEN IT WAS A COUPLE OF DAYS.

10 Q. THEN MR. ESPINOZA SEES THE NEWS BROADCAST, CORRECT?

11 A. PRIOR TO HIM COMING IN, YES, SIR.

12 Q. AND PRIOR TO BEING SHOWN ANY PHOTO LINEUP OF ANY KIND,
13 CORRECT?

14 A. CORRECT.

15 Q. THEN MR. ESPINOZA COMES IN AND GIVES THE STATEMENT?

16 A. YES, SIR.

17 Q. SO INVESTIGATOR HANNING WAS THE LEAD INVESTIGATOR IN
18 THIS CASE, CORRECT?

19 A. ON THIS SPECIFIC CASE, YES, SIR.

20 Q. AND ISN'T IT TRUE THAT INVESTIGATOR HANNING HAS GIVEN
21 SWORN TESTIMONY IN THIS CASE? IS THAT TRUE?

22 A. YES, SIR.

23 Q. ISN'T IT TRUE YOU HAVE NEVER SHOWN THE VICTIM A PHOTO
24 LINEUP IN THIS CASE?

25 A. CORRECT.

DAVID WEINER - CROSS EXAMINATION BY MR. MOORMAN

150

1 Q. DO YOU HAVE A PROCEDURE YOU FOLLOW WHEN YOU SHOW
2 EYEWITNESSES PHOTO LINEUPS?

3 A. YES, SIR.

4 Q. VERY BRIEFLY, IF YOU WOULD, DESCRIBE FOR THE JURY WHAT
5 THAT PROCEDURE IS.

6 A. SURE. THE DEPUTY HAD EARLIER TESTIFIED, GENERALLY A
7 PHOTO LINEUP CONSISTS OF SIX PHOTOGRAPHS. ONE IS THE
8 POTENTIAL SUSPECT, FIVE ARE INDIVIDUALS WITH SIMILAR FACIAL
9 CHARACTERISTICS, SKIN TONE, FACIAL HAIR, WHATEVER IT MAY BE.

10 THE POTENTIAL SUSPECT IS PLACED IN THE LINEUP IN A
11 DESIGNATED POSITION. IT DOESN'T MATTER. WE TEND TO STAY
12 AWAY FROM NUMBER ONE, BUT TWO THROUGH SIX. AND I'LL TURN
13 THE PAGE OVER FACE DOWN WHERE THEY CAN'T SEE THE PHOTOGRAPH.

14 I'LL EXPLAIN TO THEM THAT THIS SIX-PERSON PHOTO LINEUP
15 MAY OR MAY NOT CONTAIN THE INDIVIDUAL THAT COMMITTED THIS
16 CRIME. DO NOT PICK THE PERSON UNLESS YOU ARE CERTAIN THAT
17 IT'S THEM. AND AGAIN, I'LL REITERATE THAT THE PERSON MAY
18 NOT BE IN THERE.

19 I'LL TELL THEM WHEN THEY'RE READY TO TURN THE
20 PHOTOGRAPH OVER. THEY'LL TURN IT OVER AND MAKE A SELECTION
21 IF THEY SO CHOOSE.

22 Q. WHY DO YOU GO AT SUCH LENGTHS TO TELL THEM THAT THE
23 PERSON THEY SAW MAY OR MAY NOT BE IN THERE?

24 A. SO THAT I DON'T PREJUDICE THE LINEUP THERE.

25 Q. BECAUSE IF THE LINEUP IS PREJUDICED IT COULD BE

DAVID WEINER - CROSS EXAMINATION BY MR. MOORMAN

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1 UNRELIABLE, IS THAT CORRECT?

2 A. CORRECT.

3 Q. IN THIS CASE DID YOU EVER SHOW MR. ESPINOZA A PHOTO, A
4 LINEUP AFTER HE SAW THE NEWS BROADCAST?

5 A. NO, SIR.

6 Q. WHY DIDN'T YOU SHOW MR. ESPINOZA A PHOTO LINEUP?

7 A. NO MATTER HOW I WOULD CHANGE THE DEFENDANTS' PICTURES
8 THEY STILL WOULD HAVE BEEN THE SAME INDIVIDUALS HE'D ALREADY
9 IDENTIFIED.

10 Q. ISN'T IT TRUE THAT IN FORMER TESTIMONY YOU HAD SAID
11 THAT ANY SUBSEQUENT IDENTIFICATION PROCEDURE AFTER THE NEWS
12 BROADCAST WOULD BE TAINTED? ISN'T THAT TRUE?

13 A. I DON'T KNOW THAT I WOULD HAVE USED THE WORD TAINTED,
14 BUT I THINK THAT IF HE'D ALREADY MADE AN IDENTIFICATION
15 BASED OFF A SINGLE PHOTOGRAPH, THAT IF I PUT HIM IN A LINEUP
16 HE'D STILL IDENTIFY THE SAME PERSON.

17 Q. WHETHER THAT BE IN A LINEUP OR IN A COURTROOM, ISN'T
18 THAT TRUE?

19 A. CERTAINLY I WOULD THINK IN A LINEUP BECAUSE HE'D BE
20 LOOKING AT THE SAME PICTURE.

21 Q. AND IF THAT WERE TRUE WITH A LINEUP IT WOULD ALSO BE
22 TRUE IN A COURTROOM WHEN THE PEOPLE ARE SITTING IN CHAIRS,
23 ISN'T THAT TRUE?

24 A. IT'S POSSIBLE, YES, SIR.

25 Q. AND SO JUST SO I'M UNDERSTANDING WHAT YOU'RE SAYING, NO

DAVID WEINER - CROSS EXAMINATION BY MR. MOORMAN

152

1 MATTER WHAT IDENTIFICATION PROCEDURE WAS USED YOU DIDN'T
2 SHOW A LINEUP BECAUSE YOU THINK HE'D STILL BEEN PICKING OUT
3 THE SAME PEOPLE NO MATTER WHAT?

4 A. RIGHT. HE'S ALREADY -- HE'S MADE THE DECISION. HE'S
5 IDENTIFIED THE TWO INDIVIDUALS HE FELT WERE RESPONSIBLE.
6 AND, THEREFORE, IF I SHOWED HIM A LINEUP CONTAINING THOSE
7 INDIVIDUALS HE'S GOING TO IDENTIFY THOSE INDIVIDUALS.

8 Q. AND SO ONCE THE NEWS BROADCAST CAME OUT THE DYE'S BEEN
9 CAST, IN OTHER WORDS?

10 A. ONCE HE TOLD ME THAT HE'D IDENTIFIED THEM OR TOLD
11 INVESTIGATOR HANNING, YES, SIR.

12 Q. BASED ON THE NEWS BROADCAST?

13 A. CORRECT.

14 Q. NOTHING FURTHER.

15 THE COURT: MR. ROBINSON.

16 MR. ROBINSON: I HAVE NO QUESTIONS, YOUR HONOR.

17 THE COURT: THANK YOU. STEP DOWN.

18 A. THANK YOU, SIR.

19 MR. MARCHANT: ASK THAT THIS WITNESS BE EXCUSED.

20 THE COURT: ANY OBJECTION?

21 MR. MOORMAN: NO OBJECTION.

22 MR. ROBINSON: NO OBJECTION, YOUR HONOR.

23 MR. MARCHANT: YOUR HONOR, WITH THAT, THAT'S THE
24 STATE'S CASE.

25 THE COURT: ALL RIGHT. TAKE THE JURY OUT A MINUTE,

11 PLEASE.

2 (WHEREUPON THE JURY EXITED THE COURTROOM AT 2:39 PM)

3 THE COURT: ALL RIGHT. ANY MOTIONS?

4 MR. MOORMAN: YES, SIR, YOUR HONOR. YOUR HONOR, I

5 WOULD HAVE A MOTION ON BEHALF OF MR. O'SHAUN ROBINSON FOR A
6 DIRECTED VERDICT. THE EVIDENCE THUS FAR FAILS TO ESTABLISH,
7 FIRST, HOW MANY PEOPLE WERE INVOLVED AND, SECOND, WHO WAS
8 INVOLVED.

9 WE HAVE CONTRADICTORY TESTIMONY FROM ALL THE STATE'S
10 EYEWITNESSES AS TO WHO WAS THERE, WHAT PART EACH INDIVIDUAL
11 PLAYED AND WHAT PART MR. O'SHAUN ROBINSON PLAYED
12 SPECIFICALLY. BASED ON THESE INCONSISTENCIES AND THIS LACK
13 OF EVIDENCE, YOUR HONOR, IT WOULD BE MR. ROBINSON'S POSITION
14 THAT THERE IS NOT EXISTING EVIDENCE SUFFICIENT TO WARRANT A
15 CONVICTION. AND WE'D MOVE FOR A DIRECTED VERDICT.

16 THE COURT: AND THAT MOTION IS DENIED.

17 MR. ROBINSON: WE'D MAKE A MOTION FOR A DIRECTED
18 VERDICT ON THE SAME LINES, YOUR HONOR, IN TERMS OF LACK OF
19 ANY EVIDENCE IN THIS CASE TO SUPPORT ---

20 THE COURT: ALL RIGHT. YOUR MOTION, LIKEWISE, IS
21 DENIED.

22 MR. ROBINSON: THANK YOU.

23 THE COURT: ALL RIGHT. NOW WILL YOU HAVE ---

24 MR. MOORMAN: YOUR HONOR, MAY I HAVE JUST A MINUTE OR
25 TWO?

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 THE COURT: I MEAN, IS YOUR EXPERT GOING TO TESTIFY?

2 MR. MOORMAN: WELL, SHE'S HERE, AND SHE'S READY ---

3 THE COURT: OKAY.

4 MR. MOORMAN: MAY I JUST HAVE JUST A ---

5 THE COURT: SURE. SURE

6 MR. MOORMAN: THANK YOU, YOUR HONOR.

7 THE COURT: WE'LL TAKE A SHORT RECESS.

8 (WHEREUPON COURT WAS IN RECESS AT 2:40 PM)

9 MR. MOORMAN: YOUR HONOR, WE WOULD HAVE A WITNESS.

10 THE COURT: OKAY. WILL THAT BE YOUR ONLY WITNESS?

11 MR. MOORMAN: I BELIEVE SO, YOUR HONOR. YES, SIR.

12 THE COURT: OKAY. AND YOU'RE READY TO GO?

13 MR. MOORMAN: YES, SIR.

14 THE COURT: OKAY. BRING THE JURY.

15 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:46 PM)

16 THE COURT: OKAY, MR. MOORMAN.

17 MR. MOORMAN: YES, SIR, YOUR HONOR. MR. O'SHAUN

18 ROBINSON CALLS DR. LORI VAN WALLENDAL TO THE STAND.

19 LORI VAN WALLENDAL,

20 BEING DULY SWORN TESTIFIED AS FOLLOWS:

21 MADAME CLERK: THANK YOU. PLEASE BE SEATED. PLEASE

22 STATE YOUR FULL NAME FOR THE RECORD.

23 DR. VAN WALLENDAL: LORI VAN WALLENDAL.

24 DIRECT EXAMINATION BY MR. MOORMAN:

25 Q. GOOD AFTERNOON, DR. VAN WALLENDAL.

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 A. GOOD AFTERNOON.

2 Q. DR. VAN WALLENDAL, BY WHOM ARE YOU EMPLOYED?

3 A. THE UNIVERSITY OF NORTH CAROLINA IN CHARLOTTE.

4 Q. WHAT POSITION DO YOU HOLD WITH UNC CHARLOTTE?

5 A. I AM AN ASSOCIATE PROFESSOR AND ASSOCIATE CHAIR OF THE
6 DEPARTMENT OF PSYCHOLOGY.

7 Q. IF YOU WOULD, PLEASE, BRIEFLY DESCRIBE TO THE JURY WHAT
8 TRAINING AND EDUCATION YOU'VE RECEIVED ON YOUR WAY TO
9 ACHIEVING THIS POSITION.

10 A. I RECEIVED MY BACHELOR'S DEGREE IN PSYCHOLOGY AND
11 ENGLISH IN 1982 FROM MURRAY COLLEGE IN ILLINOIS. AND THEN
12 MY MASTER'S DEGREE AND PHD FROM NORTH WESTERN UNIVERSITY
13 WITH A PHD RECEIVED IN 1986.

14 MR. MARCHANT: YOUR HONOR, IF IT'LL SPEED THINGS UP,
15 THE STATE DOES NOT OPPOSE TO HER BEING QUALIFIED AS AN
16 EXPERT IN IDENTIFICATION PROCEDURES.

17 MR. MOORMAN: AND, YOUR HONOR, WE WOULD -- WE
18 APPRECIATE THE STIPULATION. WE ALSO BELIEVE THAT IT'S
19 IMPORTANT FOR THE JURY TO ---

20 THE COURT: PROCEED. GO AHEAD.

21 Q. AND, I'M SORRY, TELL US AGAIN ABOUT YOUR DEGREE AT
22 NORTH WESTERN.

23 A. I HAVE A MASTER'S DEGREE IN EXPERIMENTAL PSYCHOLOGY AND
24 A PHD IN EXPERIMENTAL PSYCHOLOGY.

25 Q. IS THAT FROM NORTH WESTERN?

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 A. YES.

2 Q. DO YOU -- WHAT CLASSES DO YOU TEACH AT UNC CHARLOTTE?

3 A. I NORMALLY TEACH CLASSES IN COGNITIVE PSYCHOLOGY, WHICH
4 HAS TO DO WITH THINKING AND HUMAN MEMORY, COGNITIVE SCIENCE,
5 FORENSIC PSYCHOLOGY, RESEARCH METHODS IN PSYCHOLOGY AND A
6 VARIETY OF OTHER PSYCHOLOGY COURSES, BUT MAINLY HAVING TO DO
7 WITH COGNITIVE PROCESSES.

8 Q. DO YOU HAVE ANY SPECIFIC RESEARCH INTEREST SPECIFICALLY
9 RELATED TO EYEWITNESS IDENTIFICATION?

10 A. YES, I DO. MY MAIN RESEARCH INTEREST IS IN FACE
11 RECOGNITION AND VOICE RECOGNITION IN AN EYEWITNESS CONTEXT.

12 Q. HAVE YOU BEEN PUBLISHED ON THIS TOPIC AND PARTICIPATED
13 IN PRESENTATIONS ON THIS TOPIC OF EYEWITNESS IDENTIFICATION?

14 A. YES, I HAVE.

15 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN THE
16 PSYCHOLOGY OF EYEWITNESS IDENTIFICATION?

17 A. YES, I HAVE.

18 Q. HAVE YOU BEEN QUALIFIED AS AN EXPERT IN MULTIPLE
19 STATES?

20 A. YES.

21 Q. INCLUDING SOUTH CAROLINA?

22 A. YES.

23 MR. MOORMAN: YOUR HONOR, AT THIS TIME I WOULD MOVE TO
24 HAVE DR. VAN WALLENDAL QUALIFIED AS AN EXPERT IN THE
25 PSYCHOLOGY OF EYEWITNESS IDENTIFICATION.

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 THE COURT: SHE'S QUALIFIED. PROCEED.

2 Q. DR. VAN WALLENDAL, SPECIFICALLY I'D LIKE TO TALK TO
3 YOU ABOUT THE THREE PHASES OR STAGES OF MEMORY, IF I COULD.
4 WOULD YOU PLEASE TELL THE JURY WHAT ARE THOSE -- WHAT ARE
5 THOSE STAGES?

6 A. SURE. WHEN WE TALK ABOUT MEMORY, BASICALLY WE'RE
7 TALKING ABOUT A PROCESS THAT INVOLVES NOT JUST ONE THING
8 LIKE A -- LIKE A CAMERA SHOT, BUT THAT ACTUALLY INVOLVES
9 SEVERAL STAGES BEGINNING WITH WHAT WE CALL ENCODING WHEN A
10 MEMORY IS TAKEN IN AS SOMETHING IS HAPPENING TO US. THEN
11 THERE IS A STAGE CALLED STORAGE WHEN THE MEMORY HAS TO BE
12 STORED TO BE IN OUR MINDS FOR A PERIOD OF TIME. AND THEN
13 FINALLY THERE IS A STAGE CALLED RETRIEVAL WHEN WE ACTUALLY
14 HAVE TO FIND THAT MEMORY AGAIN, GET IT OUT OF OUR MINDS AND
15 INTO OUR CONSCIOUSNESS TO ANSWER QUESTIONS OR RECALL AN
16 EVENT OR RECOGNIZE SOMEONE.

17 Q. SPECIFICALLY HAVE YOU DONE RESEARCH AND MADE YOURSELF
18 OR EDUCATE YOURSELF ON RESEARCH RELATED TO THESE STAGES OF
19 MEMORY IN THE CONTEXT OF EYEWITNESS IDENTIFICATION?

20 A. YES, I HAVE.

21 Q. AND YOU -- HAVE YOU TESTIFIED BEFORE ON THESE TOPICS?

22 A. YES.

23 Q. I WANT TO TALK TO YOU MORE SPECIFICALLY ABOUT EACH
24 STAGE. AND BEFORE WE DO THAT HAVE YOU TESTIFIED OR GIVEN
25 SWORN TESTIMONY IN THIS CASE BEFORE?

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 A. YES.

2 Q. AND NORMALLY WHEN YOU TESTIFY ARE YOU PAID FOR YOUR
3 SERVICES?

4 A. YES, I AM.

5 Q. AND WHAT IS YOUR -- WHAT IS THE RATE YOU'D NORMALLY
6 CHARGE FOR TESTIFYING IN COURT?

7 A. NORMALLY A HUNDRED AND SEVENTY-FIVE DOLLARS AN HOUR.

8 Q. HAVE YOU BEEN -- HAVE YOU BEEN PAID FOR YOUR
9 PARTICIPATION IN THIS CASE -- HAVE YOU BEEN PAID FOR YOUR
10 PARTICIPATION IN THIS CASE?

11 A. I'VE SUBMITTED AN INVOICE FOR WORK THAT'S BEEN DONE
12 PREVIOUSLY IN THIS CASE. I HAVE NOT YET ACTUALLY RECEIVED
13 THE CHECK, BUT I EXPECT TO SOON.

14 Q. OKAY. ALL RIGHT. AND -- AND ALSO IN COMING HERE TODAY
15 DID YOU ALSO REALIZE THAT THERE'S A POSSIBILITY THAT YOU
16 WOULD NOT BE PAID FOR YOUR SERVICES?

17 A. YES, I DID.

18 Q. BUT, NONETHELESS, YOU DECIDED TO COME HERE AND
19 PARTICIPATE TODAY, IS THAT CORRECT?

20 A. THAT IS CORRECT.

21 Q. LET'S TALK ABOUT THE FIRST STAGE. WHAT DID YOU CALL
22 THAT STAGE?

23 A. ENCODING.

24 Q. IF YOU WOULD, DESCRIBE FOR THE JURY THAT STAGE AS IT
25 RELATES TO EYEWITNESS IDENTIFICATION.

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 A. BASICALLY WHAT HAPPENS DURING ENCODING IS FIRST OF ALL
2 THAT YOU PERCEIVE SOMETHING HAPPENING WITH YOUR SENSES, BUT
3 MORE IMPORTANTLY THAT YOU PAY ATTENTION TO THE THINGS THAT
4 ARE COMING TO YOU THROUGH YOUR SENSES AND THAT SOMEHOW THEN
5 THAT SENSORY INFORMATION GETS TRANSFORMED INTO A MEMORY.

6 AND THE KEY TYPICALLY IN AN EYEWITNESS SITUATION IS THE
7 ATTENTION FACTOR BECAUSE VERY OFTEN WHEN YOU ARE IN A
8 SITUATION OF WITNESSING OR BEING A VICTIM OF A CRIME MORE
9 ATTENTION IS DRAWN IN MANY DIRECTIONS. IT IS OFTEN DRAWN IN
10 THE DIRECTION OF SURVIVAL, OF WHAT IS HAPPENING TO YOU THAT
11 MIGHT BE PUTTING YOU IN DANGER.

12 AND SO IT'S A DIFFICULT SITUATION FOR PEOPLE TO TRY AND
13 FOCUS ON, LET'S SAY, DETAILS OF A FACE, DETAILS OF WHAT IS
14 HAPPENING BECAUSE YOU ARE PROBABLY UNDER STRESS, YOU MAY BE
15 FINDING YOUR ATTENTION DISTRACTED. AND IT'S -- IT'S A
16 DIFFICULT KIND OF CIRCUMSTANCE.

17 IF YOU THINK ABOUT THE OPTIMAL CIRCUMSTANCE WHERE YOU
18 WOULD WANT TO REMEMBER SOMETHING AND, YOU KNOW, WHERE YOU
19 WOULD WANT TO BE KIND OF CALM, AND COLLECTED, AND ALERT AND
20 SO FORTH. THE TYPICAL EYEWITNESS SITUATION IS NOT A VERY
21 GOOD SITUATION FOR PEOPLE TO PAY THEIR BEST ATTENTION TO THE
22 KINDS OF FACTS THAT THEY MIGHT LATER WANT TO TRY TO
23 REMEMBER.

24 Q. AND IF I'M UNDERSTANDING CORRECTLY, DR. VAN WALLENDAL,
25 THEN STRESS IS A FACTOR THAT WOULD INHIBIT ONE'S ABILITY TO

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 HAVE AN EFFECTIVE ENCODING STAGE?

2 A. YES. THERE'S A LOT OF RESEARCH THAT SUGGESTS THAT
3 STRESS IS SOMETHING THAT DECREASES OUR ABILITY TO FOCUS AND
4 TO REMEMBER AND THAT IN GENERAL PEOPLE WHO ARE UNDER STRESS
5 REMEMBER LESS THAN PEOPLE WHO ARE NOT.

6 Q. IS THERE ALSO A PHENOMENON CALLED WEAPONS FOCUS?

7 A. YES.

8 Q. DESCRIBE FOR THE JURY, IF YOU WOULD, OR EXPLAIN WHAT
9 THAT PHENOMENON IS.

10 A. THIS IS ACTUALLY A PHENOMENON THAT RESEARCHERS FIRST
11 KEYED INTO BECAUSE OF THINGS THAT WE WERE TOLD BY POLICE
12 OFFICERS THAT OFTEN HAPPEN TO THEM IN INVESTIGATIONS. AND
13 VERY OFTEN THEY WOULD TALK TO RESEARCHERS AND SAY, YOU KNOW,
14 IT'S REALLY WEIRD BECAUSE I GET WITNESSES SOMETIMES AND THEY
15 CAN GIVE YOU THE MOST PERFECT DETAILED DESCRIPTION OF THE
16 GUN AND NOT OF THE PERPETRATOR. AND RESEARCHERS LOOKED AT
17 THAT AND SAID, HUM, I WONDER WHY.

18 WE STARTED DOING RESEARCH ON WHAT HAPPENS WHEN YOU HAVE
19 THE PRESENCE OF A WEAPON, PARTICULARLY A GUN, IN A SCENE.
20 AND TYPICALLY HOW THE RESEARCH IS DONE IS WE WILL SIMULATE A
21 CRIME IN SOME WAY, KEEP ALL THE OTHER FACTORS SIMILAR BY IN
22 ONE CIRCUMSTANCE HAVE A CRIME WHERE A GUN IS CLEARLY VISIBLE
23 AND IN ANOTHER CIRCUMSTANCE HAVE THE EXACT SAME SCENARIO
24 OCCUR BUT LET'S SAY THE PERPETRATOR HAS HIS HAND IN HIS
25 POCKET THE WHOLE TIME.

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 AND WHAT WE FIND IS THAT WHENEVER THAT GUN IS PRESENT
2 PEOPLE TEND TO HAVE LESS RECALL FOR THE DETAILS OF THE
3 EVENT. THEY'RE LESS LIKELY TO PICK A PERSON OUT OF A LINEUP
4 LATER. THEY'RE EVEN LESS LIKELY TO RECALL THINGS THAT THEY
5 HAVE HEARD, WHICH IS NOT A VISUAL KIND OF ATTENTION FOCUS,
6 BUT IT'S JUST, YOU KNOW, YOUR MIND IS DRAWN TO THE GUN AND
7 IS FOCUSED UPON IT.

8 Q. LET'S TALK ABOUT THE SECOND STAGE. WHAT DID YOU CALL
9 THE SECOND STAGE?

10 A. I CALLED THE SECOND STAGE STORAGE.

11 Q. EXPLAIN TO THE JURY WHAT THE STORAGE STAGE IS IN THE
12 CONTEXT OF EYEWITNESS IDENTIFICATION.

13 A. STORAGE IN THIS CONTEXT BASICALLY REFERS TO HOW MUCH
14 TIME PASSES BETWEEN THE EVENT OR THE CRIME AND THE TIME THAT
15 YOU ACTUALLY MAKE AN IDENTIFICATION. AND COMMON SENSE WILL
16 TELL YOU THAT THE LESS TIME THAT PASSES PROBABLY THE MORE
17 LIKELY YOU ARE TO BE ABLE TO REMEMBER SOMETHING ACCURATELY.

18 BUT THE PROBLEM, OF COURSE, WITH THE CRIMINAL CONTEXT
19 IS THAT YOU DON'T OFTEN GET A CHANCE TO MAKE A RECOGNITION
20 JUDGMENT WITHIN, YOU KNOW, A COUPLE OF HOURS OR EVEN A DAY
21 OR SO OF HAVING AN EVENT HAPPEN. VERY OFTEN YOU MAY HAVE
22 DAYS OR WEEKS OR MORE PASS BEFORE YOU ACTUALLY HAVE A CHANCE
23 TO IDENTIFY SOMEONE.

24 Q. IS IT A TRUE STATEMENT THAT THE MORE TIME PASSES THE
25 LESS RELIABLE THE IDENTIFICATION IS? OR EXPLAIN TO THE JURY

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 WHAT THE PASSAGE OF TIME -- WHAT EFFECT THAT HAS ON THE
2 RELIABILITY OF THE IDENTIFICATION.

3 A. YEAH, YOU'VE DESCRIBED IT FAIRLY WELL. THE MORE TIME
4 THAT PASSES THE LESS LIKELY YOU ARE TO ACCURATELY REMEMBER
5 SOMETHING.

6 Q. THE THIRD STAGE, WHAT WAS THE PHRASE OR THE TITLE OF
7 THE THIRD PHASE?

8 A. RETRIEVAL.

9 Q. EXPLAIN TO THE JURY THAT PHASE, PLEASE.

10 A. RETRIEVAL IS NOT JUST A SIMPLE MATTER OF SORT OF THE
11 PULLING A FILE BACK OUT OF YOUR MENTAL FILING CABINET AND
12 LOOKING AT IT AGAIN. WE KNOW FROM A LOT OF RESEARCH THAT
13 WHEN A PERSON RETRIEVES A PIECE OF INFORMATION THEY CAN BE
14 VERY INFLUENCED BY THE WORDING OF THE QUESTION, BY THE KINDS
15 OF INSTRUCTIONS THAT THEY'RE GIVEN.

16 IF THEY'RE LOOKING AT A LINEUP THEY CAN BE INFLUENCED
17 BY NOT ONLY THE PERSON THAT THEY'RE TRYING TO RECOGNIZE, BUT
18 ALSO THE OTHER FACES THAT THEY SEE AROUND THAT PERSON. SO
19 IT'S REALLY VERY CRITICAL TO TRY AND PUT TOGETHER AN
20 UNBIASED, FAIR KIND OF PROCEDURE FOR A PERSON TO RECOGNIZE A
21 FACE THAT THEY HAVE SEEN BEFORE.

22 Q. LET'S TALK A LITTLE BIT MORE SPECIFICALLY ABOUT THE
23 RETRIEVAL STAGE. DR. VAN WALLENDAL, WHAT EFFECT, IF ANY,
24 WOULD A -- A SUGGESTIVE IDENTIFICATION PROCEDURE HAVE? FOR
25 EXAMPLE, A NEWS BROADCAST OR OTHER SUGGESTIVE IDENTIFICATION

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 HAVE IN ONE'S ABILITY TO ACCURATELY RETRIEVE THAT
2 INFORMATION?

3 A. WHEN YOU HAVE ENCODED SOMETHING AND STORED IT IN YOUR
4 MEMORY YOU NEVER HAVE COMPLETE INFORMATION THERE. WHAT YOU
5 HAVE ARE KIND OF PIECES OF A JIGSAW PUZZLE. AND VERY OFTEN
6 THERE ARE PIECES OF THAT MEMORY THAT ARE FUZZY.

7 WHEN YOU GET SOMETHING THEN THAT IS SUGGESTIVE
8 PRESENTED TO YOU, LIKE FOR INSTANCE, A NEWS BROADCAST THAT
9 IDENTIFIES A PARTICULAR FACE AS A SUSPECT OR AN ARRESTED
10 PERSON IN A CRIME LIKE YOURS OR PERHAPS EVEN A CRIME THAT
11 ACTUALLY HAPPENED TO YOU, THEN THAT FACE CAN BECOME A PART
12 OF YOUR MEMORY OR DETAILS OF THAT FACE CAN BECOME A PART OF
13 YOUR MEMORY.

14 IF YOU'RE A LITTLE FUZZY ON WHAT THE FACE REALLY LOOKED
15 LIKE, YOU SEE THIS PERSON ON THE NEWS AND THE NEWS TELLS YOU
16 THESE GUYS HAVE BEEN ARRESTED IN ROBBERIES IN THIS AREA,
17 THEN YOU LOOK AT THAT FACE AND YOU SAY, YEAH, THAT'S THE
18 PERSON THAT HAPPENED TO ME. BUT -- OR THAT'S THE PERSON
19 THAT DID THIS TO ME. BUT YOU CAN'T REALLY KNOW AT THAT
20 POINT, YOU KNOW, AM I REALLY RECOGNIZING THIS PERSON? AM I
21 MAKING AN INFERENCE BECAUSE THE NEWS BROADCASTER SAID THAT
22 THIS WAS A GUILTY PARTY?

23 SOUTH CAROLINA, AS YOU'VE HEARD, HAS A VERY GOOD LINEUP
24 PROCEDURE WHERE THEY VERY IMPARTIALLY INSTRUCT WITNESSES,
25 YOU KNOW, THIS PERSON MAY OR MAY NOT BE IN THE LINEUP. IT'S

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 IMPORTANT FOR YOU TO TELL US IF THE PERSON ISN'T IN THE
2 LINEUP. THOSE ARE VERY GOOD INSTRUCTIONS TO GIVE, BUT A
3 NEWS BROADCAST GIVES YOU PRETTY MUCH THE OPPOSITE OF THOSE
4 KINDS OF INSTRUCTIONS.

5 Q. DR. VAN WALLENDAL, I WANT TO TALK TO YOU IN JUST A
6 MINUTE ABOUT ONE OTHER FACTOR THAT CAN INHIBIT
7 IDENTIFICATION. BUT BEFORE THAT, HAVE YOU MET WITH MR.
8 ESPINOZA IN THIS CASE?

9 A. NO, I HAVE NOT.

10 Q. WAS IT NECESSARY FOR YOU TO MEET WITH MR. ESPINOZA TO
11 BE ABLE TO TESTIFY?

12 A. NO. I REALLY DON'T THINK I COULD HAVE GOTTEN ANYTHING
13 USEFUL OUT OF A MEETING WITH MR. ESPINOZA AT THIS POINT IN
14 TIME.

15 Q. TALK ABOUT ANOTHER FACTOR THAT MAY COMPLICATE AN
16 EYEWITNESS IDENTIFICATION. IS ANOTHER FACTOR WHAT'S CALLED
17 CROSS RACIAL IDENTIFICATION?

18 A. YES.

19 Q. EXPLAIN THAT TO THE JURY, PLEASE.

20 A. THIS IS ONE OF THE MOST STUDIED AREAS IN EYEWITNESS
21 TESTIMONY. AND IT HAS TO DO WITH THE FACT THAT ANY WITNESS
22 IS GOING TO BE BETTER ABLE TO RECOGNIZE A PERSON OF THEIR
23 OWN RACE THAN A PERSON OF ANOTHER RACE.

24 THERE ARE LOTS OF STUDIES THAT HAVE SHOWN THAT WHEN YOU
25 SEE AN INCIDENT OR VIEW A PHOTOGRAPH AND THEN TRY TO

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

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1 RECOGNIZE IT LATER YOU ARE LESS LIKELY TO BE ACCURATE, YOU
2 ARE MORE LIKELY TO MAKE A FALSE IDENTIFICATION OF SOMEONE
3 WHO IS NOT OF YOUR OWN RACIAL GROUP.

4 AND WHAT'S PROBABLY GOING ON THERE IS THAT FROM THE
5 TIME THAT YOU ARE A BABY AND CERTAINLY THROUGH YOUR
6 CHILDHOOD AND ON INTO YOUR ADULTHOOD YOU'VE BEEN LEARNING
7 HOW TO RECOGNIZE FACES OF YOUR OWN RACE. AND WHEN YOU LEARN
8 HOW TO RECOGNIZE YOU LEARN TO FOCUS ON FACTORS THAT ARE
9 GOING TO HELP YOU THE MOST IN TELLING YOUR MOTHER FROM THE
10 NURSE AT THE HOSPITAL OR YOUR FATHER FROM SOME OTHER RANDOM
11 MAN THAT COMES INTO YOUR FIELD OF VIEW.

12 SO AS A WHITE PERSON, FOR INSTANCE, I LEARNED TO FOCUS
13 IN ON THINGS LIKE EYE COLOR, HAIR COLOR. I LEARNED TO TELL
14 A PLATINUM BLONDE FROM A STRAWBERRY BLONDE FROM A DISHWATER
15 BLONDE. AND THOSE ARE THINGS THAT I'M GOING TO CARRY INTO
16 MY ADULTHOOD AND FOCUS ON WHEN I TRY TO RECOGNIZE ANOTHER
17 HUMAN BEING.

18 BUT IF I'M TRYING TO RECOGNIZE A PERSON WHO IS AFRICAN
19 AMERICAN OR ASIAN AMERICAN AND I ZERO IN ON SOMETHING LIKE
20 THEIR EYE COLOR AND THEIR HAIR COLOR, THAT'S NOT GOING TO
21 HELP ME THAT MUCH UNLESS THE PERSON HAS A REALLY UNUSUAL DYE
22 JOB OR CONTACT LENSES. WHAT'S PROBABLY GOING TO HAPPEN IS
23 I'M STUCK TELLING THE POLICE THAT WELL, YOU KNOW, THE PERSON
24 HAD DARK SKIN, DARK EYES, DARK HAIR, AND I'VE GIVEN THEM NO
25 USEFUL INFORMATION.

LORI VAN WALLENDAL - DIRECT EXAMINATION BY MR. MOORMAN

166

1 AND THE SAME THING HAPPENS ACROSS OTHER RACES. MY
2 STUDENTS, FOR INSTANCE, ARE MUCH BETTER -- MY AFRICAN
3 AMERICAN STUDENTS ARE MUCH BETTER AT TELLING ME, YOU KNOW,
4 THE DIFFERENCE BETWEEN BRAIDS AND CORN ROWS AND DREADS THAT
5 I COULDN'T EVEN TELL ONE FROM THE OTHER, WHICH MY STUDENTS
6 LAUGH AT ME ABOUT. BUT THEY HAVE LEARNED TO ZERO IN ON
7 DIFFERENT FEATURES THAT ARE BETTER AT TELLING ONE PERSON OF
8 THEIR RACE APART FROM ANOTHER.

9 Q. DR. VAN WALLENDAL, THE RESEARCH ON CROSS RACIAL
10 IDENTIFICATION, HAS THE MAJORITY OF THE RESEARCH BEEN DONE
11 ON AFRICAN AMERICAN VERSUS WHITE? IS THAT WHERE THE
12 MAJORITY OF THE RESEARCH HAS BEEN DONE?

13 A. INITIALLY, YES. AND THE MAJORITY IS STILL IN THAT
14 AREA.

15 Q. HAS THERE ALSO BEEN RESEARCH ON IDENTIFICATIONS MADE
16 BETWEEN HISPANIC VICTIMS AND AFRICAN AMERICAN DEFENDANTS AND
17 VICE VERSA?

18 A. YES, THERE HAVE. I'M AWARE OF AT LEAST FOUR STUDIES IN
19 THE AREA THAT HAVE MADE THAT SPECIFIC COMPARISON.

20 Q. ARE THE -- ARE THE DIFFICULTIES YOU DESCRIBED IN A
21 RESEARCH CONSISTENT ACROSS ALL -- ACROSS THE HISPANIC VERSUS
22 WHITE -- IS THE SAME THING GOING ON AS TO HISPANIC VERSUS
23 WHITE AS HAS BEEN AFRICAN AMERICAN VERSUS WHITE?

24 A. YES. RESEARCH HAS SHOWN THAT, YOU KNOW, FOR INSTANCE,
25 A HISPANIC WITNESS WILL HAVE THE SIMILAR KIND OF TROUBLE

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

167

1 RECOGNIZING AN AFRICAN AMERICAN PERPETRATOR AS A WHITE
2 PERSON WOULD. THEY'RE MUCH BETTER AT IDENTIFYING OTHER
3 HISPANIC PERSONS.

4 MR. MOORMAN: YOUR HONOR, I HAVE NOTHING FURTHER.

5 THE COURT: YOU HAVE ANY QUESTIONS, MR. ROBINSON?

6 MR. ROBINSON: I HAVE NO QUESTIONS, YOUR HONOR.

7 THE COURT: ALL RIGHT, SOLICITOR.

8 CROSS EXAMINATION BY MR. MARCHANT:

9 Q. GOOD AFTERNOON, DR. VAN WALLENDAL.

10 A. GOOD AFTERNOON.

11 Q. DO YOU RECALL AS BEEN PREVIOUSLY MENTIONED THERE WAS
12 SOME PRIOR TESTIMONY IN THIS CASE AND YOU SUBMITTED YOUR
13 BILL FOR THAT? DO YOU RECALL WHAT THE AMOUNT WAS ON THAT
14 BILL?

15 A. I'M NOT GOING TO BE PRECISE ON THIS, BUT IT WAS
16 PROBABLY SOMEWHERE BETWEEN THIRTEEN HUNDRED AND FOURTEEN
17 HUNDRED DOLLARS.

18 Q. AND EVEN THOUGH THERE'S APPARENTLY SOME POSSIBILITY
19 YOU'RE NOT GOING TO GET PAID TODAY, I SUPPOSE YOU'RE GOING
20 TO SUBMIT A BILL FOR YOUR TESTIMONY TODAY AS WELL?

21 A. ONE CAN ALWAYS HOPE.

22 Q. YES, MA'AM. ALL RIGHT. YOU WOULD AGREE WITH ME THAT
23 THE ENVIRONMENT IN WHICH ONE HAS BEEN ROBBED WOULD MAKE A
24 DIFFERENCE AS TO WHAT THE PERCEPTION MAY BE?

25 A. YES.

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

168

1 Q. SO IF IT'S DAYTIME VERSUS NIGHTTIME THERE'S GOING TO BE
2 A DIFFERENCE?

3 A. YES, DEFINITELY.

4 Q. AND THE ABILITY OF THAT PERSON TO OBSERVE?

5 A. YES.

6 Q. OKAY. IF IT WAS INSIDE VERSUS OUTSIDE?

7 A. YES.

8 Q. AND I BELIEVE YOU'VE MADE IT VERY CLEAR THAT YOUR
9 TESTIMONY IS THAT IT WOULD BE EASIER FOR AN AFRICAN AMERICAN
10 TO IDENTIFY AN AFRICAN AMERICAN VERSUS A WHITE OR HISPANIC
11 TO IDENTIFY AN AFRICAN AMERICAN?

12 A. YES.

13 Q. AND NOW HAVE YOU DONE ANY STUDIES PERSONALLY ABOUT
14 HISPANICS AND THEIR IDENTIFICATIONS OF EITHER CAUCASIANS,
15 AFRICAN AMERICANS OR ASIANS?

16 A. I HAVE NOT PUBLISHED ANY STUDIES YET. I HAVE ONE
17 THAT'S ONGOING, BUT I DON'T HAVE DATA AT THIS POINT TO
18 REPORT.

19 Q. YOU WOULD AGREE WITH ME THAT A VICTIM'S OPPORTUNITY TO
20 OBSERVE WOULD GREATLY INFLUENCE THEIR ABILITY TO RECALL AND
21 RETRIEVE INFORMATION?

22 A. YES, THAT'S A VERY IMPORTANT FACTOR.

23 Q. SO THE LONGER SOMEONE HAS TO OBSERVE THE BETTER THEIR
24 OPPORTUNITY TO RETRIEVE WOULD BE?

25 A. YES.

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

169

1 Q. YOU WOULD ALSO AGREE THAT THE LENGTH OF TIME BETWEEN AN
2 INCIDENT AND THE RETRIEVAL IS A BIG FACTOR AS WELL?

3 A. YES.

4 Q. SO A SHORTER PERIOD OF TIME ONE WOULD BE ABLE TO
5 RETRIEVE EASIER THAN A LONGER PERIOD OF TIME?

6 A. YES.

7 Q. AND YOU WOULD AGREE WITH ME THAT A VICTIM'S INITIAL
8 REPORTING OF THE INCIDENT TO LAW ENFORCEMENT IS GOING TO BE
9 THE MOST RELIABLE IDENTIFICATION OR CHARACTERISTIC REPORTING
10 OF THE ALLEGED SUSPECT?

11 A. YES. THE DETAILS THAT YOU GET IN THAT VERY FIRST
12 INTERVIEW ARE USUALLY THE ONES THAT ARE THE MOST CLOSE TO
13 REALITY.

14 Q. AND YOU WOULD AGREE WITH ME THAT IF A PERSON HAD
15 ALREADY SEEN SOME NEWS COVERAGE ON AN EVENT THAT A
16 SUBSEQUENT VIEWING OF THAT SAME INDIVIDUAL, THEIR PERCEPTION
17 WOULD BE TAINTED?

18 A. YES, I THINK THAT'S A GOOD WORD.

19 Q. SO WOULD IT OR WOULD IT NOT BE A GOOD IDEA TO SHOW A
20 VICTIM A LINEUP AFTER THEY'VE SEEN A NEWS BROADCAST WITH A
21 SUSPECT'S PHOTO?

22 A. AFTER THEY'VE SEEN THE NEWS BROADCAST THERE'S REALLY NO
23 POINT IN DOING A LINEUP. YOU'RE NOT GOING TO GET AN
24 ACCURATE RECOGNITION AT THAT POINT.

25 Q. NOW YOU MADE AN INTERESTING COMMENT A MINUTE AGO. YOU

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

170

1 SAID THAT SPEAKING WITH MR. ESPINOZA WOULD NOT HELP YOU IN
2 COMMUNICATING TO THIS JURY TODAY ABOUT THE ABILITY TO, I
3 BELIEVE YOU SAID, ACQUIRE, EXCUSE ME, YOU REFERRED TO IT AS
4 ENCODING STORAGE OR RETRIEVAL. YOU DON'T THINK TALKING WITH
5 MR. ESPINOZA WOULD CHANGE YOUR OPINION IN ANY MANNER?

6 A. NO. I WAS BROUGHT INTO THIS CASE PRACTICALLY A YEAR
7 AFTER THE ROBBERY ACTUALLY OCCURRED. SO AT THAT POINT I
8 THINK ANY QUESTIONS THAT I COULD ASK HIM ABOUT HIS MEMORY
9 WOULD BE POTENTIALLY TAINTED BY THE VARIOUS INTERVIEWS THAT
10 HE'S HAD WITH POLICE, BY THE TELEVISION BROADCASTS HE'S
11 SEEN. I RELY MOST ON WHAT THE INVESTIGATING OFFICERS HAD TO
12 SAY AND WHAT THE VICTIM HIMSELF HAD TO SAY AT THE TIME OF
13 THE CRIME.

14 Q. SO EVEN THOUGH THERE'S BEEN A LIMITED NUMBER OF
15 RESEARCH DONE ON HISPANICS' IDENTIFICATION OF CROSS RACIAL
16 PARTIES AND, IN FACT, YOU HAVE NOT PUBLISHED YET, RIGHT?

17 A. RIGHT.

18 Q. SO EVEN THOUGH THERE'S LITTLE TO NONE IN COMPARISON TO
19 WHAT THERE IS IN BLACK VERSUS WHITE, YOUR OPINION WOULD BE
20 THE SAME AFTER A CONVERSATION WITH A HISPANIC VICTIM?

21 A. EVEN IF I GAVE HIM A TEST AND SHOWED HIM PHOTOGRAPHS OF
22 HISPANIC AND WHITES AND BLACK PERSONS AND ASKED HIM TO
23 IDENTIFY THEM LATER, I COULD ONLY GET A VERY GENERAL SENSE
24 OF HOW HE RESPONDS TO SUCH KIND OF CIRCUMSTANCES. IT
25 WOULDN'T REALLY GIVE ME AN INSIGHT INTO THIS PARTICULAR

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

171

1 EVENT AND WHETHER HE REMEMBERED IT ACCURATELY OR NOT.

2 Q. SO IT WOULD NOT HELP YOU TO SPEAK WITH HIM?

3 A. NO.

4 Q. I BELIEVE YOUR TESTIMONY A MOMENT AGO WAS THAT YOU SAID

5 STRESS DECREASES THE ABILITY TO FOCUS, BUT YET YOU SHIFTED

6 TO THIS -- I FORGET THE WORDING, THE GUN FOCUS ---

7 A. THE WEAPON FOCUS.

8 Q. OKAY. NOW WHEN ONE IS FOCUSED ON A GUN ARE YOU SAYING

9 AND TELLING THIS JURY THAT THEY DO NOT REMEMBER OTHER

10 DETAILS?

11 A. THEY CAN REMEMBER OTHER DETAILS, BUT RELATIVELY

12 SPEAKING THEY REMEMBER FEWER DETAILS THAN THEY WOULD HAVE IF

13 THE GUN HAD NOT BEEN PRESENT AT THE SCENE.

14 Q. AND YOU'VE ALSO STATED, I BELIEVE IT WAS ABOUT THE

15 HISPANICS, THAT WE STARTED DOING RESEARCH. WHEN YOU SAY WE,

16 WHO ARE YOU REFERRING TO?

17 A. PSYCHOLOGISTS WHO STUDY MEMORY.

18 Q. YOU ALSO REFERENCED THAT THE INFORMATION THAT WAS

19 RECEIVED WITH YOUR EVALUATION IS IN SIMULATION FASHION, IS

20 THAT CORRECT?

21 A. YES, FREQUENTLY.

22 Q. SO YOU'VE SET UP EXPERIMENTS, IF YOU WILL, WHERE A

23 CRIME OR AN INCIDENT HAS BEEN SIMULATED?

24 A. YES.

25 Q. SO IN REALITY THE WAY ONE ACTS OR RESPONDS TO THIS

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

172

1 EVENT IS NOT A TRUE EVALUATION OR A RESPONSE BECAUSE IT'S
2 JUST A SIMULATION?

3 A. WE TRY TO DO THE SIMULATIONS AS REALISTICALLY AS WE
4 CAN, BUT OBVIOUSLY WE CAN'T ETHICALLY PUT PEOPLE IN
5 SITUATIONS WHERE THEY GENUINELY FEEL THREATENED JUST FOR THE
6 PURPOSES OF A SCIENTIFIC STUDY.

7 Q. WELL, YOU'VE GOT A VICTIM HERE TODAY THAT'S BEEN IN
8 THAT SITUATION, BUT IT'S NOT BENEFICIAL TO SPEAK WITH HIM?

9 A. AGAIN, ANY ONE PERSON IN ONE INCIDENT, I MEAN, SHORT OF
10 GOING BACK IN TIME AND RELIVING IT WITH THEM, THERE REALLY
11 ISN'T A WAY TO TEST THEIR MEMORY. THERE'S NO MIRACLE ---

12 Q. I'M SORRY. ARE YOU ---

13 A. --- MEASUREMENT.

14 Q. --- OR ARE YOU NOT CURRENTLY DOING RESEARCH ON
15 IDENTIFICATIONS MADE BY HISPANIC INDIVIDUALS VERSUS OTHER
16 ETHNICITIES (PHONETICS)?

17 A. YES.

18 Q. I BELIEVE IN YOUR PREVIOUS TESTIMONY, AND WOULD YOU
19 AGREE THAT YOU STATED THAT DEPENDING ON THE SITUATION, AND I
20 BELIEVE YOU REFERRED TO IT AS THE LEVEL OF STRESS AND AGAIN
21 THIS GUN FOCUS IDEA THAT YOU'VE TALKED ABOUT, THAT A VICTIM
22 OR INDIVIDUAL MAY REMEMBER SOME DETAILS OF THE WRONG PERSON?

23 A. YES.

24 Q. WOULD YOU PLEASE ELABORATE ON THAT?

25 A. SURE. BASICALLY WHAT HAPPENS IS WE HAVE A SOMEWHAT

LORI VAN WALLENDAL - CROSS EXAMINATION BY MR. MARCHANT

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1 LIMITED ABILITY TO TAKE IN DETAILS INTO OUR MEMORY. AND YET
2 BY THE SAME TOKEN WE HAVE A BRAIN THAT DOESN'T LIKE TO ADMIT
3 TO HOLES AND GAPS IN OUR MEMORY.

4 SO WHAT OFTEN HAPPENS IS WHEN WE ENCODE A PIECE OF
5 INFORMATION WE MISS SOME DETAILS, BUT WHEN WE PLAY IT BACK
6 IN OUR HEADS OR WHEN WE'RE ASKED TO RECALL IT FOR SOMEONE
7 VERY OFTEN OUR BRAIN FILLS IN THOSE DETAILS. AND IT CAN
8 FILL IN THE DETAILS WITH COMMON SENSE, WITH OTHER PAST
9 EXPERIENCES, WITH INFORMATION GLEANED FROM QUESTIONS PEOPLE
10 HAVE BEEN ASKING OF US, WITH THINGS WE SAW ON TV. THERE ARE
11 A LOT OF WAYS THAT THE PUZZLE PIECES CAN GET PUT TOGETHER
12 WITH EVENTS THAT WEREN'T ACTUALLY ENCODED IN THE BEGINNING.

13 Q. SO IT'S POSSIBLE FOR AN INDIVIDUAL TO BE IN THE
14 SITUATION AND REMEMBER DETAILS AND CONFUSE THEM WITH THE
15 PERSON THAT ACTUALLY DID THE EVENT?

16 A. YES.

17 Q. SO IF THERE ARE TWO PEOPLE THERE, ONE COULD CROSS UP
18 WHO WAS WEARING A BALL CAP?

19 A. SURE, VERY COMMONLY.

20 Q. YOU'RE NOT HERE TO TELL THIS JURY THAT MR. ESPINOZA --
21 HIS RECOLLECTION IS INCORRECT, ARE YOU?

22 A. NO, I'M NOT.

23 Q. AND YOU'RE NOT HERE TO TELL THIS JURY THAT MR. ROBINSON
24 AND MR. WORKMAN ARE NOT GUILTY OF THIS CRIME, ARE YOU?

25 A. NOPE, THAT'S THEIR JOB.

LORI VAN WALLENDAL - REDIRECT EXAMINATION BY MR. MOORMAN

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1 Q. I HAVE NO FURTHER QUESTIONS.

2 THE COURT: ALL RIGHT. ANY REDIRECT?

3 MR. MOORMAN: JUST A FEW QUESTIONS.

4 REDIRECT EXAMINATION BY MR. MOORMAN:

5 Q. BUT, DR. VAN WALLENDAL, WHAT YOU HAVE TESTIFIED TO IS
6 THAT A -- ONCE A SUGGESTIVE IDENTIFICATION PROCEDURE IS USED
7 SUCH AS A NEWS BROADCAST IT SERIOUSLY UNDERMINES THE
8 RELIABILITY OF ANY SUBSEQUENT IDENTIFICATION, IS THAT
9 CORRECT?

10 A. THAT IS CORRECT.

11 Q. MR. MARCHANT ASKED YOU ABOUT OPPORTUNITY TO OBSERVE.
12 IS THERE ANY RESEARCH THAT DISCUSSES THE ACCURACY OF TIME
13 ESTIMATIONS EYEWITNESSES GIVE?

14 A. YES, THERE IS.

15 Q. DISCUSS FOR A SECOND THAT RESEARCH, PLEASE.

16 A. VERY OFTEN WHEN STUDIES ARE DONE THAT INVOLVE SIMULATED
17 CRIMES OR OTHER ACTIONS ONE OF THE QUESTIONS THAT WE ASK OUR
18 WITNESSES IS ABOUT HOW LONG DID THE WHOLE INCIDENT TAKE
19 PLACE. AND ONE OF THE FINDINGS THAT'S VERY CONSISTENT IS
20 THAT PEOPLE ARE NOT VERY GOOD AT ESTIMATING TIME.

21 AND THEY VERY PREDICTABLY OVER-ESTIMATE TIME IN A
22 SITUATION LIKE THIS OFTEN BY A FACTOR OF TWO HUNDRED, THREE
23 HUNDRED, FOUR HUNDRED PERCENT. SO IT'S NOT UNUSUAL, FOR
24 INSTANCE, TO STAGE AN INCIDENT THAT LASTS FOR THIRTY SECONDS
25 AND HAVE YOUR AVERAGE WITNESS TELL YOU THAT IT LASTED FOR

LORI VAN WALLENDAL - REDIRECT EXAMINATION BY MR. MOORMAN

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1 TWO MINUTES.

2 MR. MOORMAN: I'VE GOT NOTHING FURTHER, YOUR HONOR.

3 THE COURT: ANYTHING ELSE, MR. MARCHANT?

4 MR. MARCHANT: NO, YOUR HONOR.

5 THE COURT: THANK YOU. STEP DOWN. ALL RIGHT. WOULD
6 COUNSEL APPROACH JUST A MINUTE?

7 MR. MOORMAN: YES, SIR.

8 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
9 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

10 THE COURT: ALL RIGHT. WOULD YOU TAKE THE JURY OUT A
11 MINUTE, PLEASE?

12 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:18 PM)

13 THE COURT: ALL RIGHT. ANYTHING FURTHER, MR. MOORMAN?

14 MR. MOORMAN: NO, SIR.

15 THE COURT: ALL RIGHT. MR. ROBINSON, WOULD YOU HAVE
16 ANY TESTIMONY OR ...

17 MR. ROBINSON: NO, SIR, YOUR HONOR.

18 THE COURT: OKAY. MARY, WOULD YOU PUT EACH DEFENDANT
19 UNDER OATH FOR ME, PLEASE?

20 MADAME CLERK: YES, OF COURSE. GENTLEMEN, WOULD YOU
21 PLEASE STAND UP? MR. ROBINSON, PLEASE RAISE YOUR RIGHT
22 HAND.

23 (WHEREUPON BOTH DEFENDANTS WERE DULY SWORN)

24 THE COURT: OKAY. YOU CAN BE SEATED NOW, GENTLEMEN.

25 MR. ROBINSON, MR. WORKMAN, I'VE JUST BEEN TOLD BY YOUR

1 ATTORNEYS THAT YOU WILL NOT TAKE THE STAND AND TESTIFY OR
2 OTHERWISE PRESENT TESTIMONY. THAT IS YOUR CONSTITUTIONAL
3 RIGHT. YOU DO NOT HAVE TO TAKE THE STAND AND TESTIFY OR
4 PRESENT EVIDENCE. THAT'S YOUR CONSTITUTIONAL RIGHT.

5 THE BURDEN REMAINS ON THE STATE TO PROVE YOU GUILTY
6 BEYOND A REASONABLE DOUBT. NOW YOU UNDERSTAND THAT RIGHT,
7 MR. ROBINSON?

8 MR. ROBINSON: YES, SIR.

9 THE COURT: AND, YOU, MR. WORKMAN?

10 MR. WORKMAN: YES, SIR.

11 THE COURT: IF YOU CHOOSE NOT TO TAKE THE STAND AND
12 TESTIFY I WILL INSTRUCT THE JURY THAT THAT IS YOUR RIGHT AND
13 THAT THEY IN NO WAY CAN HOLD THAT AGAINST YOU. NOW I NEED
14 TO TELL YOU THAT WHILE YOU HAVE A CONSTITUTIONAL RIGHT NOT
15 TO TESTIFY, YOU'VE GOT A PERFECT RIGHT TO TAKE THE STAND AND
16 TELL THE JURY YOUR SIDE OF THE STORY. YOU UNDERSTAND THAT,
17 MR. ROBINSON?

18 MR. ROBINSON: YES, SIR.

19 THE COURT: MR. WORKMAN?

20 MR. WORKMAN: YES, SIR.

21 THE COURT: IF YOU MAKE THAT DECISION YOU BECOME LIKE
22 ANY OTHER WITNESS IN THE CASE SUBJECT TO CROSS EXAMINATION
23 BY THE SOLICITOR. I DON'T KNOW WHETHER EITHER OF YOU HAVE
24 ANY PRIOR CRIMINAL RECORD FOR WHICH YOU COULD BE IMPEACHED,
25 BUT IF YOU SHOULD, THEN THE SOLICITOR COULD GO INTO THAT.

1 YOU UNDERSTAND THAT, MR. ROBINSON?

2 MR. ROBINSON: YES, SIR.

3 THE COURT: AND, MR. WORKMAN?

4 MR. WORKMAN: YES, SIR.

5 THE COURT: NOW I UNDERSTAND, MR. ROBINSON, THAT YOU
6 HAVE MADE THE DECISION THAT YOU WILL NOT TESTIFY. IS THAT
7 CORRECT?

8 MR. ROBINSON: YES, SIR.

9 THE COURT: IS THIS A DECISION YOU, YOURSELF, HAVE
10 MADE?

11 MR. ROBINSON: YES, SIR.

12 THE COURT: MR. MOORMAN HAS NOT PUT ANY PRESSURE ON YOU
13 TO NOT TAKE THE STAND AND TESTIFY IN YOUR OWN DEFENSE, IS
14 THAT CORRECT?

15 MR. ROBINSON: YES, SIR.

16 THE COURT: MR. WORKMAN, I'LL ASK YOU THE SAME
17 QUESTION. THIS IS YOUR DECISION?

18 MR. WORKMAN: YES, SIR.

19 THE COURT: MR. ROBINSON HAS NOT PUT ANY PRESSURE ON
20 YOU TO STAY OFF THE STAND AND NOT TESTIFY, IS THAT CORRECT?

21 MR. WORKMAN: YES, SIR.

22 THE COURT: MR. ROBINSON, MR. WORKMAN, ARE YOU UNDER
23 THE INFLUENCE OF ANY ALCOHOL, DRUG OR ANY OTHER SUBSTANCE
24 RIGHT AT THIS MOMENT? MR. ROBINSON?

25 MR. ROBINSON: NO, SIR.

1 THE COURT: MR. WORKMAN?

2 MR. WORKMAN: NO, SIR.

3 THE COURT: YOU'RE SOBER, YOU KNOW WHAT YOU'RE DOING
4 AND YOU WANT TO NOT TAKE THE STAND AND TESTIFY, IS THAT
5 CORRECT?

6 MR. ROBINSON: YES, SIR.

7 MR. WORKMAN: YES, SIR.

8 THE COURT: ALL RIGHT, GENTLEMEN, ANYTHING ELSE NOW
9 BEFORE I RELEASE THE JURY?

10 MR. MARCHANT: NOTHING FROM THE STATE, YOUR HONOR.

11 MR. MOORMAN: NOTHING FROM MR. ROBINSON. I JUST -- I
12 WOULD INQUIRE -- THESE GENTLEMEN ARE GOING TO SPEND THE
13 NIGHT IN THE DETENTION CENTER, IS THAT CORRECT, YOUR HONOR?

14 THE COURT: I UNDERSTAND THAT.

15 MR. MARCHANT: YOUR HONOR, THERE WAS AN ORDER SIGNED
16 LAST WEEK ---

17 THE COURT: YEAH.

18 MR. MARCHANT: --- BY JUDGE FEW KEEPING THEM HERE
19 THROUGH THE DISPOSITION OF THIS TRIAL.

20 THE COURT: OKAY.

21 MR. MARCHANT: SO THEY SHOULD NOT BE GOING ANYWHERE.

22 THE COURT: OKAY. ALL RIGHT. I'M GOING TO LET THE
23 JURY GO, AND THEN WE'LL HAVE MOTIONS.

24 MR. MOORMAN: YES, SIR, YOUR HONOR.

25 THE COURT: ALL RIGHT. BRING THE JURY.

1 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:23 PM)

2 THE COURT: LADIES AND GENTLEMEN, IN THE TRIAL OF A
3 CRIMINAL CASE A DEFENDANT NEVER HAS ANY BURDEN WHATSOEVER.
4 HE DOES NOT HAVE TO TAKE THE STAND AND TESTIFY OR OTHERWISE
5 PRESENT EVIDENCE. THAT'S BECAUSE THE BURDEN IS ALWAYS ON
6 THE STATE TO PROVE A DEFENDANT GUILTY BEYOND A REASONABLE
7 DOUBT.

8 NOW THE DEFENDANTS IN THIS CASE HAVE EXERCISED THEIR
9 CONSTITUTIONAL RIGHT NOT TO TAKE THE STAND AND TESTIFY IN
10 THEIR DEFENSE. I WILL CHARGE YOU MORE FULLY CONCERNING THAT
11 RIGHT DURING THE COURSE OF MY CHARGE.

12 THE TESTIMONY IN THIS CASE, THEREFORE, IS CONCLUDED.
13 WHAT WE HAVE REMAINING IS THE FINAL ARGUMENTS BY THE
14 ATTORNEYS AND THEN MY CHARGE ON THE LAW. IT IS TOO LATE IN
15 THE AFTERNOON TO DO THAT. WE'LL PICK BACK UP TOMORROW
16 MORNING AT 9:00 AT WHICH TIME WE'LL HAVE THE ARGUMENTS BY
17 THE ATTORNEYS AND THEN MY CHARGE ON THE LAW.

18 NOW WHEN YOU LEAVE, PLEASE REMEMBER, DO NOT TALK ABOUT
19 THIS CASE AMONG YOURSELVES OR WITH ANYONE ELSE. THIS
20 INCLUDES EVEN MEMBERS OF YOUR OWN FAMILY. YOU CAN TELL
21 FAMILY MEMBERS THAT YOU'RE SERVING ON THIS CASE, WHAT KIND
22 OF CASE IT IS, BUT DON'T DISCUSS THE FACTS WITH THEM, OR AS
23 I SAID, ANYONE ELSE.

24 IF ANYBODY CONTACTS YOU AND TRIES TO TALK TO YOU ABOUT
25 THIS CASE, GET THEIR NAMES AND ADDRESSES AND REPORT THAT TO

180

1 ME. PLEASE KEEP YOUR BADGES ON. HAVE THEM ON WHEN YOU COME
2 BACK IN THE MORNING.

3 I DON'T KNOW IF THERE'LL BE ANY MEDIA COVERAGE OF THIS
4 TRIAL. SHOULD THERE BE ANY, IGNORE IT. UNDER THE OATH YOU
5 TOOK IN THIS CASE YOU SWORE TO TRY THIS CASE BASED ONLY AND
6 SOLELY ON THE TESTIMONY AND EVIDENCE PRESENTED IN THIS CASE.
7 AND FOR YOU TO READ ANYTHING OR SEE ANYTHING ON TELEVISION
8 ABOUT THIS CASE, SHOULD THERE BE ANY, THAT WOULD BE A
9 VIOLATION OF YOUR OATH. SO IF THERE'S ANY MEDIA COVERAGE,
10 IGNORE IT.

11 I'D ASK THAT YOU BE BACK IN YOUR JURY ROOM AT 9:00 IN
12 THE MORNING. 9:00 IN THE MORNING. THANK YOU VERY MUCH.
13 SEE YOU IN THE MORNING.

14 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:25 PM)

15 THE COURT: ALL RIGHT. MR. MOORMAN, YOU HAVE SOME
16 MOTIONS?

17 MR. MOORMAN: YES, SIR, YOUR HONOR. I WOULD HAVE
18 ANOTHER DIRECTED VERDICT MOTION ON BEHALF OF MR. O'SHAUN
19 ROBINSON. IN LIGHT OF DR. VAN WALLENDAL'S TESTIMONY ABOUT
20 DIFFICULTIES WITH EYEWITNESS IDENTIFICATION AND IN LIGHT OF
21 THE FACT THAT MANY OF THE PROBLEMS THAT INHIBIT EYEWITNESS
22 IDENTIFICATION ARE PRESENT IN THIS CASE I WOULD ARGUE THAT
23 MR. ROBINSON HAS PROVEN THAT THE IDENTIFICATION'S UNRELIABLE
24 AND, THEREFORE, I'D MOVE FOR A DIRECTED VERDICT.

25 THE COURT: THAT MAKES A GOOD ARGUMENT FOR THE JURY,

1 MR. MOORMAN, BUT NOT FOR A MOTION FOR DIRECTED VERDICT.

2 MR. MOORMAN: YES, SIR.

3 THE COURT: THAT'S DENIED.

4 MR. MOORMAN: YES, SIR.

5 THE COURT: MR. ROBINSON.

6 MR. ROBINSON: YOUR HONOR, JUST FOR THE SAKE OF
7 PRESENTATION, I'D RENEW THE SAME MOTION OBVIOUSLY ---

8 THE COURT: AND I WOULD DENY YOUR MOTION LIKEWISE.

9 OKAY. 9:00.

10 MR. ROBINSON: YOUR HONOR, I HAVE ONE MORE, BEFORE WE
11 LEAVE, REQUEST AS FAR AS JURY CHARGES GO.

12 THE COURT: SURE.

13 MR. ROBINSON: THE DOCTOR TALKED ABOUT THE CROSS RACIAL
14 IDENTIFICATION IN THIS CASE. AND WE'RE GOING TO -- I'M
15 GOING TO ASK FOR AN IDENTIFICATION CHARGE ---

16 THE COURT: I'M GOING TO CHARGE IDENTIFICATION.

17 MR. ROBINSON: WELL, AS WELL, YOUR HONOR, THE AMERICAN
18 BAR ASSOCIATION HAS PUT FORTH A PROPOSED CHARGE FOR JUDGES
19 IN TERMS OF CROSS RACIAL IDENTIFICATION. I HAVE A -- I'VE
20 GOT A -- I'VE GOT THE PROPOSED JURY CHARGE.

21 THE COURT: HOW ABOUT LEAVE IT WITH US, AND I'LL
22 CONSIDER IT.

23 MR. ROBINSON: YES, SIR, YOUR HONOR.

24 THE COURT: YOU HAVE IT WITH YOU?

25 MR. ROBINSON: I DO.

1 THE COURT: ALL RIGHT.

2 MR. MOORMAN: IF WE COULD SEE IT TOO, THAT'D BE GREAT.

3 YOUR HONOR, I'VE NEVER SEEN THAT. SO ---

4 MR. ROBINSON: IT'S -- IT'S A NEW THING. BUT BECAUSE
5 OF THE -- BECAUSE OF IDENTIFICATION ISSUES AND AS THE DOCTOR
6 TESTIFIED ---

7 THE COURT: ALL RIGHT. LET MARY MAKE COPIES OF IT SO
8 SHE CAN GIVE IT TO YOU AND ME.

9 MR. MARCHANT: JUDGE, I JUST HAVE ONE THING. I REALIZE
10 WHAT YOU'VE TOLD THE JURY THAT THEY'RE NOT TAKING THE STAND
11 AND THEY'RE NOT TESTIFYING, THAT THEIR CASE IS OVER. I JUST
12 WANT TO BE SURE WE WEREN'T GOING TO HAVE A CHANGE OF HEART
13 IN THE MORNING AND TESTIMONY WOULD COME FORTH, AND I'VE SENT
14 MR. WRIGHT BACK TO THE DEPARTMENT OF CORRECTIONS. AND
15 SHOULD I NEED HIM FOR REPLY ---

16 THE COURT: NO, THEY'VE MADE THE DECISION. AND ---

17 MR. MARCHANT: JUST MAKING SURE, YOUR HONOR. THANK
18 YOU.

19 THE COURT: YEP. ALL RIGHT. MARY, WOULD YOU MAKE
20 COPIES OF -- MAKE THREE COPIES AND MR. ROBINSON CAN KEEP HIS
21 ORIGINAL.

22 MR. ROBINSON: YES, YOUR HONOR.

23 (PAUSE)

24 MR. ROBINSON: AND, YOUR HONOR, IF YOU CAN'T -- IF MY
25 WRITING IS LESS THAN PERFECT, I HAVE THE INSTRUCTION RIGHT

1 HERE, THE ABA -- CITING THE ABA PROPOSAL IN THIS CASE. AND
2 I CAN HAND THIS -- I CAN GIVE THIS UP TO THE COURT. I CAN
3 PRINT IT OUT FOR YOU ---

4 THE COURT: HOW ABOUT PRINT IT OUT FOR ME 'CAUSE I' ---

5 MR. ROBINSON: YES, SIR.

6 THE COURT: --- DO HAVE A LITTLE DIFFICULTY
7 INTERPRETING YOUR ---

8 MR. ROBINSON: I UNDERSTAND.

9 THE COURT: --- WRITING. AND TELL ME WHO -- YOU SAID
10 THE ABA. IS THIS A COMMITTEE OF THE ABA? IS IT ...

11 MR. ROBINSON: MAY IT PLEASE THE COURT, YOUR HONOR?
12 WHERE I GOT THIS FROM WAS A -- IT'S ORIGINALLY -- THIS WAS A
13 -- WHAT I DID, I PUT IN A -- I QUERIED GOOGLE ON CROSS
14 RACIAL IDENTIFICATION. SO I GUESS IT'S PRETTY PREVALENT IN
15 TERMS OF ISSUES THAT HAVE COME UP. AND THIS WAS A -- THIS
16 WAS A PROPOSAL THAT WAS ADOPTED BY THE ABA, THE CRIMINAL
17 JUSTICE SECTION OF THE AMERICAN BAR ASSOCIATION, COMMITTEE
18 ON RULES OF CRIMINAL JUSTICE EVIDENCE AND POLICE PRACTICES.

19 AND I'M GOING TO PRINT THIS OFF FOR THE COURT, BUT IT'S
20 -- IT'S INTENDED AS A SUPPLEMENT TO THE IDENTIFICATION
21 CHARGE THAT YOU WOULD NORMALLY GIVE IN A CASE BECAUSE WE DO
22 HAVE AN ISSUE HERE BETWEEN A HISPANIC VICTIM AND AFRICAN
23 AMERICAN DEFENDANTS. AND I THINK THIS CAME OUT IN TERMS OF
24 WHEN THE DOCTOR TESTIFIED, MR. MOORMAN DID A GREAT JOB OF
25 BRINGING OUT THE CROSS RACIAL PROBLEMS WE WERE HEARING OF

1 THAT.

2 AND I THINK THAT -- THAT'S WHY I THINK THAT -- AND TOO,
3 AND I'LL LET YOU READ THE ARTICLE, BUT IT TALKS ABOUT OTHER
4 JURISDICTIONS THAT HAVE -- THAT HAVE ALSO SPOKEN OF THIS
5 INCLUDING THE DC CIRCUIT, CALIFORNIA, UTAH, NEW JERSEY, AND,
6 OF COURSE, IT ALSO HAS -- IT POINTS TO AN ARTICLE. AND I'M
7 SURE THE DOCTOR MAY HAVE READ SOME OF THIS INFORMATION. BUT
8 I THINK MR. MOORMAN KIND OF BROUGHT -- FLESHED THAT OUT IN
9 TERMS OF THE CROSS ---

10 THE COURT: OKAY. WELL, DO THIS FOR ME, SCOTT.

11 MR. ROBINSON: YES, SIR.

12 THE COURT: YOU GOING TO YOUR OFFICE WHEN YOU LEAVE
13 HERE?

14 MR. ROBINSON: YEAH, I'M GOING TO PRINT THIS OFF FOR
15 YOUR HONOR.

16 THE COURT: ALL RIGHT. WELL, DO -- WHY DON'T YOU EMAIL
17 IT TO ME, AND I CAN TAKE A LOOK AT IT TONIGHT.

18 MR. ROBINSON: YES, SIR.

19 MR. MARCHANT: JUDGE, IF HE WOULDN'T MIND FORWARDING IT
20 ON TO ME AS WELL.

21 THE COURT: ALL RIGHT. EMAIL IT THEN TO ME AND ALSO
22 GIVE HIM YOUR EMAIL ADDRESS.

23 MR. ROBINSON: I HAVE LUCAS' EMAIL ADDRESS, AND I HAVE
24 ANDY'S.

25 MR. MARCHANT: THANK YOU, JUDGE.

1 THE COURT: OKAY. SEE YOU BACK IN THE MORNING.
2 (WHEREUPON COURT WAS IN RECESS AT 3:32 PM)

1 THURSDAY, JANUARY 15, 2009:

2 THE COURT: ALL RIGHT. MR. MARCHANT, YOU WAIVE OPENING
3 ARGUMENT?

4 MR. MARCHANT: YES, YOUR HONOR.

5 THE COURT: YOU READY TO TALK TO THE JURY?

6 MR. MOORMAN: YES, SIR, YOUR HONOR.

7 MR. MARCHANT: HAVE YOU REVIEWED THIS ---

8 THE COURT: OH, I'M SORRY. YES, I HAVE. MR. ROBINSON,
9 I HAVE STUDIED THE INSTRUCTIONS ADOPTED BY THE ABA
10 COMMITTEE. AND I'M TROUBLED BY SOME PARTS OF IT. IT SEEMS
11 TO ME PARTS OF IT COULD BE CONSTRUED AS BEING A CHARGE ON
12 FACTS.

13 SO WHAT I HAVE DONE, I HAVE ADOPTED A PORTION OF IT.
14 AND, MARY, WOULD YOU RUN A COPY OF THIS AND GIVE EACH LAWYER
15 A COPY?

16 MADAME CLERK: YES, SIR.

17 (PAUSE)

18 MR. ROBINSON: I LIKE THAT, YOUR HONOR. THANK YOU FOR
19 CONSIDERING THAT.

20 THE COURT: ALL RIGHT. SO THIS IS WHAT I WILL CHARGE.
21 ALL RIGHT. ANYTHING NOW BEFORE I BRING THE JURY?

22 MR. MOORMAN: AND JUST -- THE ORDER OF CLOSINGS, YOUR
23 HONOR, I GUESS I WOULD GO FIRST OR -- IT DOESN'T MATTER, BUT
24 ...

25 THE COURT: WELL, THAT'S THE WAY WE'VE BEEN DOING IT

CLOSING ARGUMENTS - MR. MOORMAN

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1 THROUGH THE TRIAL.

2 MR. MOORMAN: OKAY. THAT'S FINE WITH ME.

3 THE COURT: SO IT'LL BE YOU FIRST, THEN MR. ROBINSON

4 AND THEN MR. MARCHANT.

5 MR. MOORMAN: YES, SIR.

6 THE COURT: OKAY. BRING OUR JURY.

7 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:23 AM)

8 THE COURT: GOOD MORNING. ALL RIGHT, MR. MOORMAN.

9 MR. MOORMAN: MAY IT PLEASE THE COURT, MR. ROBINSON,
10 MR. MARCHANT? GOOD MORNING, LADIES AND GENTLEMEN. WE'VE
11 COME TO THE END OF THE TRIAL. YOU'VE GOT THE EVIDENCE IN
12 FRONT OF YOU THAT YOU'RE GOING TO CONSIDER.

13 I WANT TO TALK TO YOU VERY BRIEFLY ABOUT YOUR
14 DELIBERATIONS. THEN I WANT TO TALK TO YOU ABOUT THE CASE
15 AND THE EVIDENCE THE STATE PUT UP BEFORE YOU.

16 FIRST, YOUR DELIBERATIONS. THE JUDGE IS GOING TO TALK
17 TO YOU OR INSTRUCT YOU ON THE LAW ABOUT YOUR DELIBERATIONS.
18 SPECIFICALLY THE JUDGE IS GOING TO TELL YOU THAT ANY VERDICT
19 YOU REACH MUST BE UNANIMOUS. ALL TWELVE OF YOU MUST AGREE
20 ON ANY VERDICT.

21 NOW IMPLICIT IN THAT IS THAT EACH PERSON ON THIS JURY
22 HAS A VOICE. EACH PERSON'S VOICE IS EVERY BIT AS IMPORTANT
23 AS THE OTHER PERSON'S VOICE. SO IN KEEPING WITH THAT, I
24 HAVE AN IDEA OR JUST A SUGGESTION FOR YOU TO THINK ABOUT.
25 WHEN YOU GO INTO THE JURY ROOM AND YOU BEGIN TO DELIBERATE

CLOSING ARGUMENTS - MR. MOORMAN

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1 LET EACH PERSON TALK ONE TIME BEFORE ANY PERSON TALKS' TWICE.
2 LET EACH PERSON TALK TWICE BEFORE ANY PERSON TALKS THREE
3 TIMES JUST SO EVERY PERSON HAS A VOICE, HAS AN EQUAL -- HAS
4 AN EQUAL VOICE AND A CHANCE TO PARTICIPATE. JUST AN IDEA.
5 ALL RIGHT.

6 LET'S TALK ABOUT THIS CASE. THERE'S A LOT OF
7 CONFLICTING TESTIMONY. THERE'S A LOT OF EVIDENCE THAT
8 DOESN'T -- THAT DOESN'T MAKE SENSE. BUT WHAT I CAN SAY OR
9 WHAT I WOULD ARGUE TO YOU IS THAT WHAT IS CLEAR, LADIES AND
10 GENTLEMEN, IS THAT THE STATE DOES NOT HAVE A CLUE AS TO WHAT
11 REALLY HAPPENED OUT THERE THAT NIGHT. THE STATE DOES NOT
12 HAVE A CLUE.

13 LET ME EXPLAIN WHY I SAY THAT. YOU HEARD THE
14 INDICTMENTS THAT THE -- THAT THE COURT READ TO YOU AT THE
15 BEGINNING OF THE CASE. ONE OF THE INDICTMENTS IS
16 CONSPIRACY. AND IN THAT INDICTMENT IT SAYS THAT TIMOTHY
17 WRIGHT -- IT SAYS THAT KEN WORKMAN AND O'SHAUN ROBINSON
18 COMBINED TO PERFORM THIS ILLEGAL ACT, ARMED ROBBERY. THREE
19 PEOPLE DID THAT.

20 IN MR. MARCHANT'S OPENING STATEMENT HE SAID THAT HE WAS
21 GOING TO CALL TWO EYEWITNESSES WHO WERE THE KEYS TO PROVING
22 WHAT HAPPENED, TWO EYEWITNESSES. HE ALSO SAID IN HIS
23 OPENING STATEMENT THAT THERE WERE THREE PEOPLE OUT THERE.
24 THERE WAS TIMOTHY WRIGHT, THERE WAS KEN WORKMAN, THERE WAS
25 MY CLIENT, O'SHAUN ROBINSON.

CLOSING ARGUMENTS - MR. MOORMAN

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1 TO PROVE THAT THERE WERE THREE PEOPLE OUT THERE WHO
2 COMMITTED THIS ROBBERY THE FIRST EYEWITNESS THE STATE CALLS
3 IS MR. SERGIO ESPINOZA. AND HE TESTIFIES THERE WEREN'T
4 THREE PEOPLE AROUND THE CAR, THERE WERE TWO. HE SAYS THAT
5 KEN WORKMAN AND O'SHAUN ROBINSON WERE AROUND THE CAR.

6 HE NEVER IDENTIFIES, EVER IDENTIFIES TIMOTHY WRIGHT AS
7 BEING A PART OF THIS AT ALL. HE NEVER IDENTIFIES THE ONLY
8 PERSON EVERYBODY IN THIS COURTROOM KNOWS WAS THERE THAT
9 NIGHT, THE ONLY PERSON WHO'S PLED GUILTY TO BEING THERE TO
10 ARMED ROBBERY FOR WHAT HE DID, AND THE ONLY PERSON WHO'S
11 SERVING A PRISON SENTENCE FOR WHAT HAPPENED THAT NIGHT. MR.
12 ESPINOZA SAYS ONLY TWO PEOPLE, NOT THREE.

13 WHEN HE DESCRIBES WHAT HAPPENS HE SAYS THAT MR. KEN
14 WORKMAN, WHO IS THE GUY WITH THE GUN AND HAS THE RED HOODIE
15 OVER HIS HEAD, PUTS THE HOOD OVER HIS HEAD AS HE'S WALKING
16 BACK AND FORTH TO CONCEAL HIS IDENTITY. THEN HE SAYS AS KEN
17 WORKMAN APPROACHES HE TAKES OFF HIS HOOD.

18 NOW ASK YOURSELF, WHY WOULD HE CONCEAL HIS IDENTITY
19 WHEN HE'S CASING MR. ESPINOZA AND THEN TAKE HIS HOOD OFF AND
20 REVEAL WHO HE IS WHEN HE ACTUALLY WANTS TO COMMIT THE ARMED
21 ROBBERY? DOESN'T MAKE SENSE.

22 IF YOU'LL REMEMBER TOO, MR. ESPINOZA TALKS ABOUT HOW
23 WHEN -- WHEN THEY GOT TO THE CAR OR WHEN HE WAS AT THE CAR,
24 THE JEEP, KEN WORKMAN WAS THE GUY WITH THE GUN. AND HE SAYS
25 O'SHAUN WAS THE GUY IN THE BACK WHO WAS STANDING SORT OF

CLOSING ARGUMENTS - MR. MOORMAN

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1 BEHIND THE CAR, SO HE COULD ONLY SEE HALF OF HIM. SO HE
2 COULD ONLY SEE HALF OF HIM.

3 THEN WE HAVE A LITTLE CONFLICTING TESTIMONY ON DIRECT.
4 AND BY THE WAY, LADIES AND GENTLEMEN, THERE'S TWELVE OF YOU,
5 THERE'S ONE OF ME. YOU ARE WELCOME -- GO WITH YOUR
6 RECOLLECTION. I'M JUST TELLING YOU WHAT MINE IS. AND IF
7 YOU HAVE ANY QUESTIONS, YOU'RE WELCOME TO -- TO LISTEN TO
8 THE TESTIMONY.

9 BUT ON DIRECT MR. ESPINOZA SAID HE WAS IN HIS CAR
10 GETTING HIS GROCERIES, HE LOOKED UP AND HE SAW A GENTLEMAN
11 WITH A RED HOOD WALKING BACK AND FORTH, THOUGHT THAT WAS
12 KIND OF FUNNY, WENT BACK TO THE GROCERIES. AND THEN ALL OF
13 A SUDDEN THE FELLOW WITH THE RED HOOD IS ON HIM AT THE JEEP
14 DOOR.

15 ON CROSS EXAMINATION HE BACK-PEDDLED. HE SAID THAT
16 REALLY WASN'T WHAT HAPPENED. HE SAID THAT THE FELLOW WITH
17 THE RED HOOD POINTED THE GUN AT HIM FROM THE SIDEWALK, THEN
18 PULLED OFF HIS HOOD AND WALKED UP EXPOSING HIS FACE. ALL
19 RIGHT.

20 THEN HE SAYS THAT THE GUY WITH THE RED HOOD, KEN
21 WORKMAN, SAYS, GIVE ME THE MONEY. THEN HE SAYS MY GUY
22 GRABBED THE GUN, AND KEN HIT HIM, AND THEN THEY TOOK OFF.
23 THAT'S WHAT HE SAID.

24 TWO GUYS -- TWO GUYS TOOK OFF FROM THE CAR, FROM THE
25 JEEP TO THE GETAWAY CAR WITH ONLY ONE OTHER FELLOW IN THE

CLOSING ARGUMENTS - MR. MOORMAN

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1 GETAWAY CAR. THREE GUYS TOTAL. TWO AROUND THE CAR, AROUND
2 THE JEEP, ONE IN THE GETAWAY CAR, AND ALL TOTAL THREE IN THE
3 GETAWAY CAR. THAT'S WHAT HE SAYS, THREE TOTAL. THREE
4 TOTAL.

5 WE MOVE FROM MR. ESPINOZA'S TESTIMONY TO TIMOTHY WRIGHT
6 OR ALSO KNOWN AS LEE LEE'S TESTIMONY. AND BEFORE I GET TO
7 LEE LEE'S TESTIMONY MR. ESPINOZA, HE'S A VICTIM OF A CRIME.
8 UNDERSTANDABLY HE WANTS SOMEBODY TO PAY. WE ALL WANT
9 SOMEBODY TO PAY. IS HE LYING? I'M NOT SAYING THAT HE'S
10 LYING. WHAT I'M SAYING IS THAT HE WAS A VICTIM OF A
11 TRAUMATIC EVENT.

12 HE LEAVES -- FOR THREE WEEKS HE DOESN'T HEAR ANYTHING
13 FROM THE POLICE. NO IDEA ABOUT WHETHER OR NOT THERE'S ANY
14 LEADS. NO IDEA ABOUT WHAT STEPS THE POLICE ARE TAKING TO
15 FIND THESE PEOPLE WHO DID THIS TO HIM. NO PHOTO LINEUPS AS
16 TO WHO MIGHT HAVE DONE THIS. HE'S GOT TO BE WONDERING,
17 WHAT'S GOING ON? WHERE ARE THESE PEOPLE? WHY HAVEN'T THEY
18 BEEN CAUGHT?

19 HE SEES THE NEWS BROADCAST. HE SEES THE PICTURES OF
20 OUR CLIENTS ON THE NEWS.. AND THERE YOU GO. AND YOU HEARD
21 HOW THAT IS SO POSSIBLE WITH DR. VAN WALLEN'S [SIC]
22 TESTIMONY. AND YOU ALSO HEARD FROM INVESTIGATOR DAVID
23 WEINER WHO SAID THAT THE REASON WHY HE DIDN'T SHOW OR NOBODY
24 IN LAW ENFORCEMENT SHOWED MR. ESPINOZA A PHOTO LINEUP AFTER
25 THE NEWS WAS THAT IT DIDN'T MATTER. ONCE HE SAW THOSE

CLOSING ARGUMENTS - MR. MOORMAN

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1 PICTURES ON THE NEWS THEY -- THAT VICTIM, MR. ESPINOZA, WAS
2 GOING TO PICK OUT O'SHAUN ROBINSON AND KEN WORKMAN NO MATTER
3 WHAT. DIDN'T MATTER.

4 AND SO I WOULD SUBMIT TO YOU THAT, QUOTE,
5 IDENTIFICATION FROM THE STAND DOESN'T MEAN A HILL OF BEANS.
6 ONCE HE SAW THAT NEWS BROADCAST, THAT WAS IT. HE WAS GOING
7 TO PICK THEM OUT NO MATTER WHAT. AND THAT'S EVEN WHY THE
8 LAW ENFORCEMENT WOULDN'T SHOW HIM A PHOTO LINEUP.

9 SO WE GO FROM MR. ESPINOZA, TWO GUYS AROUND THE CAR,
10 AROUND THE JEEP, ONE GUY IN THE GETAWAY CAR, THREE GUYS
11 TOTAL. TOTALLY DIFFERENT THEORY THAN WHAT MR. MARCHANT TOLD
12 YOU. TOTALLY DIFFERENT THEORY. WE HAVE MR. ESPINOZA.

13 WE MOVE TO LEE LEE, TIMOTHY WRIGHT. OH, BY THE WAY,
14 MR. ESPINOZA SAYS THERE WAS ONLY ONE GUY INVOLVED. LEE LEE
15 SAYS IN AN EARLIER STATEMENT ON CROSS EXAMINATION, HE SAID
16 THERE WERE TWO. AND THEN IN DIRECT HE SAID THERE WAS ONE.

17 BUT THIS IS -- THIS IS LEE LEE'S STORY. THERE WEREN'T
18 TWO PEOPLE THERE. THERE WERE THREE PEOPLE AROUND THE JEEP.
19 THERE WAS KEN WORKMAN, O'SHAUN ROBINSON AND ME. HE SAYS
20 THAT KEN WORKMAN WAS ON THE PASSENGER'S SIDE. HE SAYS THAT
21 HE WAS ON THE DRIVER'S SIDE BEHIND THE CAR. AND HE SAYS
22 O'SHAUN ROBINSON HAD THE GUN. HE SAYS THAT I WAS JUST
23 STANDING THERE WITH A LOOKOUT, KEN WAS JUST STANDING THERE
24 AS A WORKOUT -- WAS A LOOKOUT. CONVENIENTLY NEITHER HE NOR
25 KEN EVER HAD THE GUN. SO THAT'S -- THAT'S HIS STORY.

CLOSING ARGUMENTS - MR. MOORMAN

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1 HE SAYS THERE WAS A FOURTH GUY IN THE GETAWAY CAR,
2 MARCUS. HE SAYS THAT AFTER THE ROBBERY ALL THREE GUYS,
3 TIMOTHY WRIGHT, LEE LEE, O'SHAUN AND KEN ALL THREE GUYS RAN
4 TO THE GETAWAY CAR, GOT IN IT WITH THE FOURTH GUY, THEY
5 DROVE OFF. SO HIS STORY IS THREE GUYS AROUND THE JEEP, ONE
6 GUY IN THE GETAWAY CAR, FOUR GUYS TOTAL.

7 BY THE WAY, THERE'S A MARCUS OUT THERE WHO
8 PARTICIPATED. THEY DON'T REALLY KNOW A THING ABOUT MARCUS.
9 THEY DON'T HAVE A CLUE ABOUT MARCUS OTHER THAN THAT HIS NAME
10 IS MARCUS.

11 THIS -- THESE CONTRADICTIONS SHOW THAT THE STATE REALLY
12 DOESN'T KNOW WHAT HAPPENED OUT THERE. THEY DON'T KNOW HOW
13 MANY GUYS WERE AROUND THE CAR. WAS IT AROUND -- I KEEP
14 SAYING CAR. I MEAN THE JEEP.

15 WAS IT TWO GUYS AROUND THE JEEP? WAS IT THREE GUYS
16 AROUND THE JEEP? HOW MANY GUYS RAN FROM THE JEEP TO THE
17 CAR? DID TWO GUYS RUN FROM THE JEEP TO THE CAR? OR THREE
18 GUYS RUN FROM THE JEEP TO THE CAR? WERE THERE THREE GUYS IN
19 THE CAR? WERE THERE FOUR GUYS IN THE GETAWAY CAR?

20 TO SORT OF ILLUSTRATE SORT OF THIS -- THIS
21 INCONSISTENCY AND HOW DIFFICULT THIS IS TO RECONCILE, THINK
22 ABOUT THIS, THINK ABOUT THIS. LET'S SAY AFTER THIS TRIAL,
23 JUST HYPOTHETICAL, LET'S SAY THAT -- IMAGINE THAT MR.
24 ESPINOZA -- THAT SERGIO AND THAT LEE LEE AND THAT MR.
25 MARCHANT GO OUT TO EAT LUNCH AND THEY'RE TALKING ABOUT THE

CLOSING ARGUMENTS - MR. MOORMAN

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1 TRIAL AND THE TESTIMONY.

2 AND MR. ESPINOZA -- SERGIO SAYS TO LEE LEE, LEE LEE,
3 YOU WERE WRONG ABOUT SO MANY THINGS. LEE LEE, YOU SAID
4 THERE WERE THREE PEOPLE AROUND MY JEEP. YOU WERE WRONG.
5 THERE WERE ONLY TWO. LEE LEE, YOU SAID THAT O'SHAUN
6 ROBINSON WAS THE GUY WITH THE GUN ON THE PASSENGER'S SIDE.
7 YOU WERE WRONG. IT WAS KEN WORKMAN.

8 SERGIO SAID, LEE LEE, YOU WERE WRONG WHEN YOU SAID
9 THREE GUYS RAN FROM THE JEEP TO THE CAR, ONLY TWO GUYS RAN
10 FROM THE JEEP TO THE CAR. LEE LEE, YOU WERE WRONG WHEN YOU
11 SAID THAT THERE WERE FOUR PEOPLE IN THE GETAWAY CAR, THERE
12 WERE ONLY THREE. AND, LEE LEE, WHEN YOU SAID YOU WERE
13 THERE, YOU WERE WRONG, YOU WEREN'T THERE.

14 AND, LEE LEE, WHEN YOU PLED GUILTY AND ADMITTED UNDER
15 OATH THAT YOU WERE PART OF THIS ARMED ROBBERY, YOU WERE
16 WRONG 'CAUSE YOU WEREN'T PART OF THE ARMED ROBBERY. AND,
17 LEE LEE, WHEN YOU'RE SERVING A PRISON SENTENCE, YOU'RE WRONG
18 FOR DOING THAT 'CAUSE YOU'RE SERVING A SENTENCE FOR A CRIME
19 YOU DIDN'T COMMIT. THAT'S WHAT SERGIO SAYS TO LEE LEE.

20 AND THEN LEE LEE SAYS TO SERGIO, OH, SERGIO, NO, NO,
21 YOU WERE WRONG. THERE WEREN'T TWO PEOPLE AROUND THE JEEP,
22 THERE WERE THREE PEOPLE AROUND THE JEEP. LEE LEE, OH, YOU
23 WERE -- SERGIO, YOU WERE WRONG. KEN WORKMAN DIDN'T HAVE THE
24 GUN, O'SHAUN HAD THE GUN. SERGIO, YOU WERE WRONG WHEN YOU
25 SAID I WASN'T THERE, I WAS THERE.

CLOSING ARGUMENTS - MR. ROBINSON

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1 AND FINALLY YOU HAVE ALMOST THREE WEEKS WORTH OF TIME
2 THAT ELAPSED BETWEEN THE TIME THIS SMALL PERIOD OF TWO OR
3 THREE MINUTES OR UP TO FIVE MINUTES HAPPENED VERSUS THREE
4 WEEKS LATER WHEN HE SEES SOMETHING ON THE NEWS WHEN HE'S HAD
5 ALL THESE PEOPLE THAT HE'S SEEN, ALL THESE PEOPLE THAT HE'S
6 HAD CONTACT WITH THAT HE'S SEEN AND THERE'S NO
7 DISTINGUISHING CHARACTERISTICS.

8 AND THINK TO YOURSELVES ABOUT YOUR OWN EXPERIENCES.
9 CAN YOU REMEMBER THINGS LIKE THAT IN AN INSTANT WHEN THERE'S
10 NO DISTINGUISHING CHARACTERISTICS?

11 AND I THINK THE DOCTOR MADE A VERY INTERESTING POINT
12 YESTERDAY ABOUT THIS CROSS RACIAL IDENTIFICATION. THOSE ARE
13 VERY INTERESTING POINTS SHE MADE. BUT THINK ABOUT THAT.

14 AND FINALLY THERE WERE NO PROCEDURES IN PLACE THAT TOOK
15 PLACE IN THIS CASE. MR. MOORMAN MENTIONED IT IN HIS
16 CLOSING. IT WASN'T YOUR STANDARD KIND OF HAPPENING THAT YOU
17 THINK ABOUT. THERE WERE NO LINEUPS DONE. THERE WERE NO
18 SKETCHES DONE.

19 AND MR. MARCHANT IS RIGHT, THERE WERE NO -- THIS IS NOT
20 CSI. WE DON'T HAVE FINGERPRINTS OR ANYTHING LIKE THAT,
21 WHICH MAKES IT WORSE BECAUSE ALL WE HAVE TO RELY UPON IS ONE
22 PERSON. AND THAT'S MR. ESPINOZA, WHO FOR THREE WEEKS HAD
23 CONTACT AS A MALL SECURITY PERSON WITH ALL SORTS OF PEOPLE.
24 AND IS THAT RELIABLE? THINK ABOUT IT. IS THAT RELIABLE?

25 LADIES AND GENTLEMEN, THIS IS A VERY IMPORTANT CASE FOR

CLOSING ARGUMENTS - MR. ROBINSON

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1 BOTH OUR CLIENTS IN THIS CASE. AND THE JUDGE IS GOING TO
2 CHARGE YOU IN A FEW MOMENTS ABOUT THIS IDEA OF REASONABLE
3 DOUBT AND THE STANDARD THAT THE STATE HAS.

4 NOW Y'ALL HAVE PROBABLY SEEN A LOT OF THINGS ON THE
5 NEWS. AND IT'S VERY NORMAL WHEN YOU SEE SOMETHING ON THE
6 NEWS AND SAY, YEP, THEY'VE GOT A PICTURE OF SOMEBODY, THEY
7 CAUGHT SOMEBODY. IT'S VERY NORMAL TO SAY THEY GOT THE
8 PERSON. THAT MUST BE THE PERSON. THAT'S THE PERSON. AND
9 YOU MADE A PRESUMPTION THERE THAT THE PERSON WAS GUILTY.
10 WITHOUT ANYTHING ELSE YOU MADE A PRESUMPTION THAT THE PERSON
11 WAS GUILTY.

12 BUT WHEN YOU COME INTO THIS COURTROOM YOU HAVE TO --
13 YOU HAVE TO SET THAT ASIDE AND THE STANDARD BECOMES THAT THE
14 STATE HAS TO PROVE BEYOND A REASONABLE DOUBT THAT THIS
15 PERSON, THIS DEFENDANT IS GUILTY OF THIS CRIME BEYOND A
16 REASONABLE DOUBT. THE PRESUMPTION IS OF INNOCENCE, NOT
17 GUILT. AND THAT'S TO PROTECT EVERYONE. SO THE STATE HAS TO
18 BE PUT TO THE STANDARD OF BEYOND A REASONABLE DOUBT WHEN
19 THEY SET FORTH A CASE.

20 AND IF YOU REMEMBER IN THE BEGINNING OF THIS CASE MR.
21 MARCHANT STOOD UP HERE AND HE SAID THAT THERE WERE TWO
22 EYEWITNESSES TO THIS CASE. LADIES AND GENTLEMEN, WE ALL SAW
23 THAT THERE WEREN'T TWO EYEWITNESSES TO THIS CASE. THERE WAS
24 NOT -- THERE WERE NO EYEWITNESSES TO THIS CASE. THE VICTIM
25 TESTIFIED, THE OFFICERS TESTIFIED THAT THERE WERE NO

CLOSING ARGUMENTS - MR. MARCHANT

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1 CORROBORATING WITNESSES, NO OTHER EYEWITNESSES IN THIS CASE.
2 SO WHEN THE SOLICITOR TOLD YOU THAT THERE WERE TWO
3 EYEWITNESSES IN THIS CASE, THAT WAS NOT -- THAT -- THE FACTS
4 HAVE SHOWN THAT THAT'S NOT TRUE.

5 BUT I ASK YOU WHEN YOU GO BACK TO THE JURY ROOM -- YOU
6 DON'T HAVE TO -- YOU DON'T HAVE TO LIKE WHAT A PERSON LOOKS
7 LIKE. YOU MAY NOT LIKE THEIR SHIRT. YOU MAY NOT LIKE THE
8 WAY THEY DRESS. BUT THIS CASE IS NOT ABOUT WHETHER YOU LIKE
9 SOMEONE OR NOT. THIS CASE IS ABOUT JUSTICE. AND THIS CASE
10 IS ABOUT YOU ALL, THE TWELVE OF YOU DELIBERATING AND USING
11 THE STANDARD THAT THE STATE HAS GOT TO PROVE THEIR CASE
12 BEYOND A REASONABLE DOUBT AS TO EVERY OTHER -- EVERY SINGLE
13 ELEMENT.

14 AND IF THEY DON'T PROVE TO YOU BEYOND A REASONABLE
15 DOUBT THAT MR. ROBINSON AND MR. WORKMAN WERE THE GUYS THAT
16 WERE IDENTIFIED BY MR. ESPINOZA AFTER THREE WEEKS WITH NO
17 CORROBORATING WITNESSES, WITH NO POLICE LINEUPS, THEN YOU
18 MUST FIND THEM NOT GUILTY IN THIS CASE. THANK YOU VERY
19 MUCH.

20 THE COURT: SOLICITOR.

21 MR. MARCHANT: MAY IT PLEASE THE COURT, MR. MOORMAN,
22 MR. ROBINSON? GOOD MORNING, LADIES AND GENTLEMEN. I WANT
23 TO THANK YOU FOR YOUR TIME AND YOUR ATTENTION. THIS IS
24 OBVIOUSLY A VERY IMPORTANT CASE FOR BOTH SIDES HERE.
25 THEY'VE GIVEN YOU THEIR SPIN OF THE EVENTS AND CLAIM THAT IT

CLOSING ARGUMENTS - MR. MARCHANT

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1 WASN'T THESE TWO GENTLEMEN THAT COMMITTED THESE CRIMES. I'M
2 GOING TO TELL YOU WHY IT WAS. OKAY.

3 IN THE BEGINNING OF THIS CASE I TOLD YOU THERE WERE TWO
4 THINGS THAT WE WERE GOING TO WORRY ABOUT HERE TODAY. ONE,
5 THAT IT HAPPENED. TWO, WERE THEY INVOLVED? THERE'S BEEN NO
6 QUESTION THAT THERE WAS THIS EVENT HAPPENED AND THERE WAS AN
7 ARMED ROBBERY. YOU AIN'T EVEN GOT TO WORRY ABOUT THAT.

8 THE SECOND QUESTION, WERE THESE TWO GUYS INVOLVED? I
9 SUBMIT TO YOU BY THE TIME I'M FINISHED YOU WILL BE ABLE TO
10 GO BACK AND REACH THAT VERDICT AND THAT IT WILL BE BEYOND A
11 REASONABLE DOUBT THAT THEY'RE GUILTY.

12 DECEMBER THE 10TH, 2007 MR. ESPINOZA GETS HOME FROM
13 TACO BELL IN HIS RED JEEP. GETS OUT OF HIS VEHICLE, SEES A
14 MAN COME AROUND THE FRONT OF HIS CAR WEARING A RED HOODED
15 SWEATSHIRT POINTING A GUN AT HIM. HE TOLD YOU HE CAME
16 AROUND THE SIDE, HE GOT AN EXCELLENT LOOK. HE TOLD
17 INVESTIGATOR HANNING -- MR. MOORMAN ASKED HIM ON THE STAND,
18 DID YOU GIVE A STATEMENT? HE SAID, YES, I GOT AN EXCELLENT
19 LOOK.

20 HE SAID, THEN ANOTHER GENTLEMAN CAME UP FROM BEHIND
21 THERE. AND HE WAS ABLE TO SEE THAT PERSON. I HAD MR.
22 ESPINOZA COME DOWN SHOW YOU WHERE HIS CAR WAS PARKED, THAT
23 THERE WERE NO CARS IN BETWEEN HIM. YOU GOT ALL THESE STREET
24 LAMPS HERE. THIS IS HIS APARTMENT. HE TOLD YOU THIS IS
25 WHERE THE OTHER CAR WAS PARKED.

CLOSING ARGUMENTS - MR. MARCHANT

205

1 HE GIVES A DESCRIPTION INITIALLY. HE TELLS YOU THE
2 FIRST GUY WAS ABOUT SIX FOOT, ONE SEVENTY. THE OTHER GUY
3 WAS FIVE FOOT, ONE SIXTY. MR. MOORMAN ASKED, I BELIEVE,
4 SERGEANT, EXCUSE ME, DEPUTY MENDENHALL, HOW BIG IS MY
5 CLIENT? FIVE EIGHT, ONE SIXTY IS THE REPORT THAT MR.
6 MOORMAN GOT FROM SERGEANT, EXCUSE ME, DEPUTY MENDENHALL.
7 SERGIO TOLD YOU, FIVE EIGHT, ONE SEVENTY. THAT'S PRETTY
8 DARN CLOSE. IT'S TEN POUNDS GIVE OR TAKE DURING AN EVENT.
9 TOLD YOU THE FIRST GUY CAME AROUND, STUCK A GUN IN HIS
10 FACE AND DEMANDED THAT HE GIVE IT UP, GIVE HIM EVERYTHING HE
11 HAD, OKAY? I TALKED TO YOU IN THE VERY BEGINNING ABOUT WHAT
12 THE CHARGES HERE WERE TODAY. AND I ASKED YOU TO CONSIDER
13 ACCOMPLICE LIABILITY. WHAT THAT MEANS IS THAT THE HAND OF
14 ONE IS THE HAND OF ALL, OKAY?
15 NOW LET ME TELL YOU WHY IT IS ARMED ROBBERY. ONE, MR.
16 ESPINOZA WAS RELIEVED OF HIS PERSONAL PROPERTY THROUGH FORCE
17 OR INTIMIDATION. THE FORCE BEING THE ASSAULT THAT OCCURRED
18 ON HIM AFTER THE GUN WAS POINTED IN HIS FACE. SO YOU HAVE
19 BOTH OF THOSE. YOU HAVE FORCE AND INTIMIDATION. THEY TOOK
20 HIS MONEY, HIS CELL PHONE, HIS WALLET, HIS DRIVER'S LICENSE,
21 HIS SOCIAL SECURITY CARD, HIS MALL SECURITY ID BADGE, OKAY?
22 IT WAS ARMED BECAUSE THERE WAS A WEAPON. AND IT'S ALSO
23 POSSESSION OF A WEAPON DURING A VIOLENT CRIME BECAUSE ARMED
24 ROBBERY IS A VIOLENT CRIME. THERE'S BEEN UNDISPUTED
25 TESTIMONY THAT THERE WAS A WEAPON PRESENT, OKAY?

CLOSING ARGUMENTS - MR. MARCHANT

206

1 HE TOLD YOU THAT WORKMAN CAME AROUND, PUT THE GUN IN
2 HIS FACE, HANDED THE GUN OFF TO O'SHAUN ROBINSON AND THEN
3 PUNCHED HIM AFTER THE FACT. THEY THEN WENT BACK TO THE CAR
4 THAT'S PARKED HERE. WHERE DOES HE TELL YOU O'SHAUN GETS IN
5 THE CAR? ON THE DRIVER'S SIDE. HE WAS NOT ABLE TO SAY
6 WHETHER IT WAS THE FRONT SEAT OR THE BACK SEAT, BUT IT WAS
7 ON THE DRIVER'S SIDE.

8 WHERE DOES HE TELL YOU KEN WORKMAN GOT IN? ON THE
9 PASSENGER'S SIDE. IS THAT CONSISTENT WITH WHAT MR. WRIGHT
10 SAID? IT IS. IT IS, IN FACT, THE SAME POSITIONS IN WHICH
11 MR. WRIGHT TOLD YOU THAT THEY ARRIVED AT THE APARTMENT
12 COMPLEX. MR. WORKMAN WAS IN THE FRONT, MARCUS WAS DRIVING,
13 O'SHAUN WAS IN THE BACK DRIVER'S SIDE AND TIMOTHY WRIGHT WAS
14 IN THE BACK PASSENGER'S SIDE.

15 ONCE THEY TOOK THE MONEY FROM MR. ESPINOZA THEY DECIDED
16 WE'VE GOT TO GET OUT OF HERE. AND WHAT DOES MR. ESPINOZA
17 DO? FOR THE LIFE OF ME, I CANNOT UNDERSTAND WHY HE WOULD
18 GET IN THE CAR AND GO AFTER THEM, BUT THAT'S WHAT HE DID.
19 HE'S GOT A LOT MORE GUTS THAN I DO. I WOULD HAVE GONE
20 UPSTAIRS AND CALLED 911.

21 WHY IS THAT IMPORTANT? HE GETS IN THE RED JEEP, WHICH
22 TIMOTHY WRIGHT TALKED ABOUT THE RED JEEP, AND HE FOLLOWS
23 THESE GENTLEMEN TO WHITE HORSE ROAD, WHICH IS WHERE TIMOTHY
24 WRIGHT TOLD YOU THEY WENT, IS WHITE HORSE ROAD.

25 AND WHAT HAPPENS ON WHITE HORSE ROAD AND SALUDA DAM? A

CLOSING ARGUMENTS - MR. MARCHANT

207

1 SHOT, A SINGLE SHOT IS FIRED OUT OF THIS GETAWAY CAR, WHICH
2 MR. WRIGHT TOLD YOU WAS A LINCOLN, A BLACK LINCOLN, FOUR
3 DOOR. MR. ESPINOZA TOLD LAW ENFORCEMENT HE FELT LIKE IT WAS
4 A CROWN VICTORIA. BOTH OLDER MODEL VEHICLES WITH FOUR
5 DOORS.

6 ONCE THE SHOT WAS FIRED HE TURNED AROUND, WENT BACK TO
7 HIS APARTMENT AND CALLED LAW ENFORCEMENT. MENDENHALL SHOWS
8 UP, TAKES THE REPORT, TAKES DOWN THE PARTICULARS OF THE
9 DEFENDANTS THAT MR. ESPINOZA SAID WERE INVOLVED IN THIS
10 INCIDENT AND A BOLO GOES OUT. TOLD YOU THAT BOLO MEANS BE
11 ON THE LOOKOUT.

12 MIND YOU, THIS IS TWENTY TO THIRTY MINUTES AFTER THE
13 INITIAL INCIDENT. DID THEY FIND THE CAR? GREENVILLE COUNTY
14 IS A LARGE PLACE, LADIES AND GENTLEMEN. WOULD IT HAVE BEEN
15 NICE IF WE COULD HAVE CAUGHT THEM THAT NIGHT? ABSOLUTELY.
16 BUT THIS IS THE WAY IT UNFOLDED. AND THIS IS THE WAY IT IS.
17 IT'S EXACTLY LIKE MR. ROBINSON SAID. AS I TOLD YOU IN THE
18 BEGINNING, THIS IS NOT CSI. THE FACTS ARE WHAT THEY ARE,
19 OKAY?

20 I ASKED DEPUTY MENDENHALL IF HE DID A PHOTO LINEUP. HE
21 SAID, NO, WE HAVE HUNDREDS OF PEOPLE THAT FIT THAT
22 DESCRIPTION, OKAY? I'LL GET BACK TO THAT IN A MINUTE.

23 NOW LET'S TALK ABOUT MR. WRIGHT. REMEMBER, THIS
24 HAPPENED ON DECEMBER THE 10TH OF 2007. MR. WRIGHT WAS
25 ARRESTED ON UNRELATED CHARGES TO THIS CASE ON DECEMBER THE

CLOSING ARGUMENTS - MR. MARCHANT

208

1 27TH, TWENTY-SEVEN DAYS LATER.

2 AT THAT TIME HE AGREES TO SPEAK WITH INVESTIGATOR
3 WEINER AND INVESTIGATOR HANNING. FOR WHATEVER REASON MR.
4 WRIGHT WANTED TO GET IT OFF HIS CHEST. AND HE TOLD THESE
5 OFFICERS WITH THE SHERIFF'S OFFICE THAT IT WAS HIM, THAT IT
6 WAS O'SHAUN, THAT IT WAS KEN AND SOME GUY NAMED MARCUS. HE
7 WASN'T VERY FAMILIAR WITH MARCUS.

8 MR. WRIGHT GOT ON THE STAND AND TOLD YOU KEN IS HIS
9 COUSIN. KNOWN HIM HIS WHOLE LIFE. AND HE'S KNOWN O'SHAUN
10 FOR SEVERAL YEARS NOW. NOW IF YOU'RE IN A HEAP OF TROUBLE
11 AND YOU NEED TO GET YOUR TAIL OUT OF IT ARE YOU GOING TO
12 ROLL ON YOUR COUSIN? ARE YOU GOING TO SEND HIM UP THE RIVER
13 TO SAVE YOUR OWN HIDE? WOULDN'T IT HAVE MADE MORE SENSE IF
14 HE'D THROWN SOMEBODY ELSE IN THE MIX? DOES IT MAKE SENSE
15 THAT MR. WRIGHT IS GOING TO THROW HIS OWN COUSIN UNDER THE
16 BUS TO POSSIBLY SAVE HIS OWN TAIL?

17 HE HAD NO IDEA. INVESTIGATOR WEINER AND HANNING TOLD
18 YOU NO PROMISES WERE MADE. MR. WRIGHT TOLD YOU HE WAS NOT
19 PROMISED ANYTHING. MR. WRIGHT CAME INTO THIS SAME
20 COURTHOUSE AND PLED GUILTY TO THIS OFFENSE. HE ADMITS HIS
21 INVOLVEMENT. I DON'T KNOW HOW YOU CAN JUSTIFY OR RECTIFY
22 WHAT MR. MOORMAN SAID. WHY WOULD HE COME IN HERE AND PLEAD
23 GUILTY TO SOMETHING HE DIDN'T DO? THAT JUST MAKES IT ALL
24 THE MORE CREDIBLE OF WHAT HE CAME IN HERE AND TOLD YOU,
25 OKAY?

CLOSING ARGUMENTS - MR. MARCHANT

209

1 HE TOLD YOU, WE WENT TO THIS APARTMENT COMPLEX TO LOOK
2 FOR GIRLS, DIDN'T SEE ANYBODY, SAID HE MIGHT HAVE USED TO
3 MESS AROUND WITH SOMEBODY OVER THERE. NEVERTHELESS, THEY
4 CIRCLED THE LOT THREE OR FOUR TIMES. AND THEN O'SHAUN
5 STARTED TALKING ABOUT ROBBING SOMEBODY.

6 HE TELLS YOU THAT HE, MR. WRIGHT TELLS YOU, HE, O'SHAUN
7 AND KEN TALK ABOUT ROBBING SOMEBODY. THERE'S YOUR
8 CONSPIRACY. TWO OR MORE PEOPLE PLANNING OR COMBINING TO DO
9 AN UNLAWFUL ACT. THAT UNLAWFUL ACT WAS COMPLETED. IT
10 DIDN'T HAVE TO BE COMPLETED, BUT IT WAS. THEY TALKED ABOUT
11 ROBBING SOMEBODY, AND THE ACT WAS COMPLETED.

12 MR. ESPINOZA PULLS UP IN HIS RED JEEP, WHICH IS WHAT
13 MR. WRIGHT TOLD YOU. MR. ESPINOZA WAS ROBBED BY O'SHAUN.
14 THAT'S WHAT MR. WRIGHT TOLD YOU. IT CAME OUT OF HIS MOUTH.

15 THERE'S NO WAY TO SAY WHETHER OR NOT HE'S TRYING TO
16 SAVE HIS COUSIN, KEN. IS HE TRYING TO MAKE KEN LOOK LESS
17 CULPABLE HERE? HE'S ALREADY PUT HIM UNDER THE BUS FOR
18 WHATEVER REASON. HE'S ALREADY TOLD LAW ENFORCEMENT. HE'S
19 GIVEN A STATEMENT THAT THEY WERE INVOLVED. NOW IS HE TRYING
20 TO SAVE KEN AND SAY THAT O'SHAUN HAD THE GUN? THE TESTIMONY
21 IS WHAT IT IS, LADIES AND GENTLEMEN.

22 IF WE WERE TRYING TO SET AND FRAME UP THIS WHOLE THING
23 WOULDN'T IT MAKE MORE SENSE IF WE'D JIVED THE STORIES
24 TOGETHER AND EVERYTHING WOULD FIT ALL NICE AND NEAT LIKE A
25 PUZZLE? I WOULD BE THRILLED TO COME IN HERE AND GIVE YOU

CLOSING ARGUMENTS - MR. MARCHANT

210

1 FINGERPRINTS, AND CSI, AND VIDEO AND A TRAFFIC STOP THAT
2 OCCURRED, BUT THIS IS THE WAY THE EVENTS UNFOLDED.

3 IN FACT, MR. WRIGHT FROM THE STAND LOOKS AT SERGIO AND
4 SAYS THAT'S THE MAN WE ROBBED. SO HE WAS THERE. AND IF YOU
5 WANT TO BELIEVE MR. MOORMAN'S THEORY OF THE CASE, WHY WOULD
6 SERGIO NOT HAVE PICKED MR. WRIGHT OUT OF THIS TELEVISION
7 BROADCAST WHERE THERE WERE THREE PEOPLE? SERGIO TESTIFIED
8 HE ONLY SAW TWO. WHY DID HE NOT SEE MR. WRIGHT? DON'T
9 KNOW.

10 WAS HE NOT FOCUSED IN ON POSSIBLY SEEING A THIRD PERSON
11 THAT WAS CONCEALED BY MR. ROBINSON? DON'T KNOW. HE
12 REMEMBERS THE EVENTS THE WAY THEY OCCURRED. MR. WRIGHT TOLD
13 YOU HE REMEMBERS THE EVENTS THE WAY THEY OCCURRED. AGAIN,
14 ACCOMPLICE LIABILITY. THE HAND OF ONE IS THE HAND OF ALL.

15 NOW THERE'S BEEN A BIG STINK ABOUT WHAT BENEFIT MR.
16 WRIGHT RECEIVES AND WHAT POSSIBLE PUNISHMENTS HE COULD HAVE
17 GOTTEN AND THINGS OF THAT NATURE. DID HE GET A BENEFIT?
18 CERTAINLY HE GOT A BENEFIT. HE STOOD UP UPSTAIRS IN
19 COURTROOM NUMBER 8 AND PLED GUILTY. IT IS THE WAY THE
20 JUSTICE SYSTEM WORKS. WHEN YOU PLEAD GUILTY YOU ARE GOING
21 TO GET A BENEFIT FOR THE CONFESSION OF THE CRIMES THAT YOU
22 HAVE COMMITTED.

23 DID I DISMISS SOME OTHER CHARGES UNRELATED TO THIS?
24 YES, I DID. IS IT CONTINGENT UPON HIS TESTIMONY? YOU
25 HEARD, I CAN NEITHER PUNISH HIM, NOR REWARD HIM FOR WHAT HE

CLOSING ARGUMENTS - MR. MARCHANT

211

1 HAS TOLD YOU YESTERDAY. WHY DID HE COME AND TESTIFY? HE
2 TOLD YOU, GIVE OR TAKE, WE SHOULDN'T HAVE BEEN OUT THERE
3 DOING THAT. IT WAS WRONG. MR. WRIGHT IS REMORSEFUL FOR
4 WHAT HE'S DONE. AND HE HAS PROFESSED HIS INVOLVEMENT AND
5 HIS GUILT IN THIS CASE.

6 DECEMBER 10TH THE EVENT OCCURS. 27TH MR. WRIGHT IS
7 ARRESTED, WARRANTS ARE SERVED ON THESE OTHER TWO GENTLEMEN.
8 MR. GARCIA [SIC] GOES TO LAW ENFORCEMENT FOUR DAYS LATER ON
9 THE 31ST AND TELLS INVESTIGATOR HANNING, I SAW TWO PEOPLE I
10 RECOGNIZED. HE DIDN'T TELL THEM HE RECOGNIZED MR. WRIGHT.
11 I SAW TWO PEOPLE I RECOGNIZED, MR. WORKMAN, MR. ROBINSON.

12 DO I WISH I COULD COME TO YOU AND TELL YOU, WE DID A
13 LINEUP BEFORE HE SAW THOSE PHOTOGRAPHS? IT'S NOT THE WAY IT
14 HAPPENED. THOSE PHOTOGRAPHS THAT WERE ON THE TV, SAME
15 PHOTOGRAPHS HE WOULD HAVE SEEN IN A LINEUP.

16 HE SAW THE VIDEO ONLINE. HOW MANY NEWS STORIES DO WE
17 HAVE THESE DAYS OF EVENTS OF CRIME IN THIS COUNTY? EVERY
18 TIME YOU WAKE UP IN THE MORNING AND FLICK ON THE NEWS, IT'S
19 NOTHING BUT BAD THINGS THAT HAPPENED THE NIGHT BEFORE.

20 IS IT JUST THAT ONE BIG OF A COINCIDENCE THAT MR.
21 ESPINOZA SAW THIS AND SAID, GOT TO BE THE TWO GUYS THAT
22 ROBBED ME? GOT TO BE THEM. I RECOGNIZE THEM. YEAH, THAT'S
23 IT. NO, YOU KNOW WHAT, HE STOPPED, HE TOOK SOME REFLECTION,
24 HE WENT ONLINE, HE LOOKED AT THEM AGAIN. AND HE SAID, THOSE
25 ARE THE FELLOWS. HE'S COME IN HERE TODAY UNDER OATH AND

CLOSING ARGUMENTS - MR. MARCHANT

212

1 TOLD YOU THOSE TWO GUYS.

2 THE DEFENSE HAS PROVIDED AN EXPERT IN THIS WITNESS
3 [SIC]. JUST AS THEY HAVE ASKED YOU TO BELIEVE OR DISBELIEVE
4 THE WITNESSES IN MY CASE, IN THE STATE'S CASE, YOU SHOULD DO
5 THE SAME WITH HER TESTIMONY.

6 SHE IS A PHD FROM NORTH CAROLINA IN CHARLOTTE, I
7 BELIEVE. SHE'S BEING PAID FOR HER TESTIMONY. SHE CLAIMS TO
8 HAVE BEEN INVOLVED AND RESEARCHED IN THIS CROSS RACIAL
9 IDENTIFICATION PROCEDURES. SHE HAS NOT DONE ANYTHING
10 SPECIFICALLY ON HISPANICS HERSELF. I ASKED HER WOULD IT
11 HAVE BEEN BENEFICIAL FOR HER TO, EXCUSE ME, MR. MOORMAN
12 ASKED HER, WOULD IT HAVE BEEN BENEFICIAL FOR HER TO SPEAK
13 WITH SERGIO PRIOR TO HER TESTIMONY. NO. FINE.

14 SHE'S CURRENTLY DOING RESEARCH ON CROSS IDENTIFICATION
15 WITH HISPANICS BEING THE VICTIMS, AND SHE DOESN'T WANT TO
16 GET SOME INSIGHT FROM SOMEONE WHO'S ACTUALLY BEEN THROUGH IT
17 AS OPPOSED TO STAGING AND PUTTING UP SIMULATION EVENTS?
18 AGAIN, YOU CONSIDER HER CREDIBILITY AND DETERMINE WHETHER OR
19 NOT WHAT SHE HAS TO SAY MAKES ANY DIFFERENCE.

20 THE ONLY THING I WILL SAY THAT WAS CURIOUS IN HER
21 TESTIMONY IS SHE SPOKE OF THIS GUN FOCUS PHENOMENON, IF YOU
22 WILL. I SUBMIT TO YOU THAT'S PROBABLY CORRECT. IF YOU'VE
23 GOT A GUN STUCK IN YOUR FACE WHAT'S THE MOST THING YOU'RE
24 GOING TO LOOK AT? WHETHER OR NOT THAT GUY'S GOING TO PULL
25 THE TRIGGER.

CLOSING ARGUMENTS - MR. MARCHANT

213

1 NEVERTHELESS, MR. ESPINOZA NOTICED AND TOOK INTO HIS
2 HEAD -- LOOK AT THESE GENTLEMEN, THERE'S NO DISTINGUISHING
3 MARKS ON THEIR FACES. HE TOLD YOU THE FIRST GUY WAS FULLY
4 CLOTHED, COULDN'T SEE ANYTHING BUT HIS HANDS.

5 SHE ALSO SAYS THAT ONE MAY REMEMBER SOME DETAILS ABOUT
6 THE OTHER PERSON. IS IT POSSIBLE THAT SERGIO HAS CROSSED UP
7 MR. ROBINSON AND MR. WORKMAN? DON'T KNOW. SERGIO IS
8 CONVINCED, HE IS CERTAIN THAT MAN HAD THE GUN, HE HANDED IT
9 OFF TO THAT MAN AND THEN HE WAS PUNCHED BY THAT MAN, AND
10 THEY FLED.

11 AND I WANT TO TELL YOU, LADIES AND GENTLEMEN, THE
12 BURDEN'S RIGHT HERE. IF WE DIDN'T DO IT, YOU'VE GOT TO TURN
13 THEM LOOSE. IT WOULD BE WRONG FOR YOU NOT TO.

14 BUT LET ME TELL YOU LASTLY WHY THESE TWO WERE INVOLVED
15 AND WHY THEY SHOULD BE FOUND GUILTY. HIS HONOR AGAIN IS
16 GOING TO GO THROUGH THAT ACCOMPLICE LIABILITY. I WANT YOU
17 TO PAY PARTICULAR ATTENTION TO THAT. DECEMBER 10TH SERGIO
18 TELLS LAW ENFORCEMENT HE WAS AT STRATFORD VILLA APARTMENTS.
19 HE HAS A RED JEEP. HE IS HISPANIC. THERE WAS A .38 SILVER
20 REVOLVER INVOLVED. HE TOLD YOU WHERE HIS VEHICLE WAS, WHAT
21 TYPE OF VEHICLE AGAIN, THAT HE LEFT AND FOLLOWED THEM DOWN
22 WHITE HORSE ROAD AND HE WAS SHOT AT ONE TIME.

23 SEVENTEEN DAYS LATER TIMOTHY WRIGHT TELLS LAW
24 ENFORCEMENT, WE WENT TO STRATFORD VILLA APARTMENTS. WE
25 ROBBED A MEXICAN IN A RED JEEP. O'SHAUN HAD A .357 SILVER

CHARGE OF THE COURT

214

1 REVOLVER. O'SHAUN TOOK HIS WALLET. WE LEFT, WENT TO WHITE
2 HORSE ROAD. WE NOTICED THE VICTIM WAS FOLLOWING US IN HIS
3 RED JEEP. HE TURNED HIS LIGHTS ON. O'SHAUN LEANS OUT THE
4 WINDOW AND FIRES ONE SHOT.

5 YOU HAVE TWO SEPARATE STORIES FROM TWO DIFFERENT PEOPLE
6 THAT DON'T KNOW EACH OTHER THAT HAVE NO CONNECTION
7 WHATSOEVER IN THIS CASE OTHER THAN THE FACT THAT MR. WRIGHT
8 WAS THERE AND MR. ESPINOZA WAS THERE. AND THEY BOTH TELL
9 YOU WITH CERTAINTY THAT THIS GENTLEMAN AND THIS GENTLEMAN
10 WERE PRESENT DURING THE ARMED ROBBERY OF MR. ESPINOZA AT
11 STRATFORD VILLA APARTMENTS ON DECEMBER THE 10TH OF 2007.

12 THERE IS NO DOUBT, LADIES AND GENTLEMEN. THESE MEN ARE
13 GUILTY. I ASK THAT YOU RETURN A VERDICT, AND THAT VERDICT
14 WILL SPEAK THE TRUTH, GUILTY OF CONSPIRACY BECAUSE THEY
15 TALKED ABOUT IT, ROBBERY BECAUSE THEY TOOK HIS MONEY BY
16 FORCE, ARMED ROBBERY BECAUSE THEY USED A WEAPON AND
17 POSSESSION OF A WEAPON DURING A VIOLENT CRIME BECAUSE ARMED
18 ROBBERY IS A VIOLENT CRIME. THANK YOU.

19 THE COURT: ALL RIGHT. NOW NO ONE IN OR OUT OF THE
20 COURTROOM DURING MY CHARGE. SO IF ANYONE NEEDS TO LEAVE,
21 NOW IS THE TIME TO DO IT.

22 (PAUSE)

23 THE COURT: LADIES AND GENTLEMEN, THE DEFENDANTS IN
24 THIS CASE ARE FIRST INDICTED FOR CONSPIRACY. THIS IS A
25 STATUTORY OFFENSE. AND SECTION 16-17-410 OF OUR CODE OF

CHARGE OF THE COURT

215

1 LAWS READS IN PART AS FOLLOWS; CONSPIRACY IS DEFINED AS A
2 COMBINATION BETWEEN TWO OR MORE PERSONS FOR THE PURPOSE OF
3 ACCOMPLISHING A CRIMINAL OR UNLAWFUL OBJECT. THE STATUTE
4 THEN, LADIES AND GENTLEMEN, MAKES IT UNLAWFUL FOR TWO OR
5 MORE PEOPLE TO CONSPIRE OR TO COMBINE TO ACCOMPLISH A
6 CRIMINAL OR UNLAWFUL PURPOSE.

7 IN OTHER WORDS, I CHARGE YOU THAT IT IS THE UNLAWFUL
8 COMBINATION OR AGREEMENT BETWEEN TWO OR MORE PEOPLE THAT
9 CONSTITUTES THE OFFENSE. AND NO OVERT ACT IS NECESSARY.

10 STATED DIFFERENTLY, CONSPIRING IS A DISTINCT OFFENSE.
11 AND NOTHING ELSE NEED BE DONE IN EXECUTION OF IT. THAT IS,
12 NO OVERT ACT CARRYING OUT OR COMPLETING A CONSPIRACY IS
13 NECESSARY OR REQUIRED.

14 THE DEFENDANTS ARE NEXT INDICTED FOR ARMED ROBBERY. IN
15 ORDER FOR YOU TO UNDERSTAND WHAT IS ROBBERY I MUST FIRST
16 DEFINE TO YOU LARCENY. LARCENY, LADIES AND GENTLEMEN, IS
17 THE TAKING AND CARRYING AWAY BY ANY PERSON OF THE GOODS OR
18 THINGS PERSONAL OF ANOTHER WITH THE FELONIOUS, THAT IS THE
19 UNLAWFUL INTENT TO PERMANENTLY DEPRIVE THAT OWNER OF HIS OR
20 HER PROPERTY AND TO CONVERT IT TO THE TAKER'S OWN USE. THAT
21 IS WHAT CONSTITUTES LARCENY.

22 NOW ROBBERY, LADIES AND GENTLEMEN, IS THE FELONIOUS OR
23 UNLAWFUL TAKING OF MONEY OR GOODS OR THINGS PERSONAL FROM
24 THE PERSON OF ANOTHER OR IN HIS OR HER PRESENCE AND BY USING
25 VIOLENCE OR BY PUTTING THAT PERSON IN FEAR.

CHARGE OF THE COURT

216

1 NOW ROBBERY INCLUDES ALL OF THE ELEMENTS NECESSARY TO
2 CONSTITUTE LARCENY AS I HAVE DEFINED THAT TERM TO YOU, BUT
3 THE AGGRAVATING CIRCUMSTANCES NECESSARY TO CONSTITUTE
4 ROBBERY AS DISTINGUISHED FROM LARCENY, FIRST OF ALL, THE
5 TAKING MUST NOT ONLY BE WITHOUT CONSENT, BUT IT MUST ALSO BE
6 ACCOMPLISHED WITH VIOLENCE OR BY PUTTING THAT PERSON IN
7 FEAR.

8 AND SECONDLY, THE PROPERTY MUST BE TAKEN FROM THE
9 PERSON OF ANOTHER. BUT IF IT IS TAKEN IN HIS OR HER
10 PRESENCE, THEN IT IS TAKEN CONSTRUCTIVELY FROM SUCH PERSON.
11 IN OTHER WORDS, FOR THE PURPOSE OF ROBBERY A THING IS IN THE
12 PRESENCE OF A PERSON IF IT BE WITHIN HIS REACH, INSPECTION,
13 OBSERVATION OR CONTROL SO THAT HE COULD RETAIN HIS
14 POSSESSION OF IT IF NOT OVERCOME BY VIOLENCE OR PREVENTED BY
15 FEAR.

16 NOW ARMED ROBBERY IS ROBBERY AS I HAVE DEFINED THAT
17 TERM TO YOU WHILE ARMED WITH A DEADLY WEAPON.. AND SECTION
18 16-11-30 -- 330 OF OUR CODE OF LAWS PROVIDES IN PART AS
19 FOLLOWS; ANY PERSON CONVICTED FOR THE CRIME OF ROBBERY
20 WHILE ARMED WITH A PISTOL, DIRK, SLING-SHOT, METAL KNUCKLES,
21 RAZOR OR OTHER DEADLY WEAPON SHALL SUFFER PUNISHMENT.

22 THESE DEFENDANTS ARE INDICTED ALSO FOR POSSESSION OF A
23 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. THIS
24 AGAIN IS A STATUTORY OFFENSE. AND SECTION 16-23-490 OF OUR
25 CODE PROVIDES IN PART AS FOLLOWS; IF A PERSON IS IN

CHARGE OF THE COURT

217

1 POSSESSION OF A FIREARM OR VISIBLY DISPLAYS WHAT APPEARS TO
2 BE A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME AND IS
3 CONVICTED OF COMMITTING OR ATTEMPTING TO COMMIT A VIOLENT
4 CRIME AS DEFINED IN SECTION 16-1-60, AND I CHARGE YOU THAT
5 ARMED ROBBERY IS ONE OF THOSE LISTED, HE MUST BE IMPRISONED
6 IN ADDITION TO THE PUNISHMENT PROVIDED FOR THE PRINCIPLE
7 CRIME. SO BEFORE THE DEFENDANTS IN THIS CASE CAN BE
8 CONVICTED OF THIS OFFENSE YOU, THE JURY, MUST FIRST HAVE
9 FOUND THEM GUILTY OF ARMED ROBBERY.

10 LASTLY, LADIES AND GENTLEMEN, THE DEFENDANTS ARE
11 CHARGED WITH ASSAULT AND BATTERY. LADIES AND GENTLEMEN, I
12 CHARGE YOU THAT AN ASSAULT IS AN ATTEMPT OR AN OFFER WITH
13 FORCE OR VIOLENCE TO DO BODILY HARM TO ANOTHER PERSON WHERE
14 THERE IS THE ABILITY TO COMPLETE THE ATTEMPT OR OFFER BY
15 COMMITTING A BATTERY. IN OTHER WORDS, AN ATTEMPT IS DEFINED
16 AS AN ATTEMPT TO DO VIOLENCE TO THE PERSON OF ANOTHER IN A
17 RUDE, ANGRY OR RESENTFUL MANNER. NOW, OF COURSE, BATTERY IS
18 THE CARRY INTO EFFECT OF AN ASSAULT BY USING OR APPLYING
19 FORCE TO THE PERSON OF ANOTHER HOWEVER SLIGHT IN A RUDE,
20 ANGRY OR RESENTFUL MANNER.

21 LADIES AND GENTLEMEN, IF SEVERAL PERSONS IN PURSUANCE
22 OF A COMMON DESIGN TO COMMIT AN UNLAWFUL ACT SET OUT
23 TOGETHER AND EACH TAKES A PART AGREED UPON OR ASSIGNED TO
24 HIM, SOME TO COMMIT THE ACTS, OTHERS TO WATCH AT PROPER
25 DISTANCES AND STATIONS TO PREVENT INTERFERENCE OR SURPRISE

CHARGE OF THE COURT

218

1 OR TO ENCOURAGE THE COMMISSION OF THE UNLAWFUL ACT OR TO
2 FAVOR, IF NECESSARY, THE ESCAPE OF THOSE IMMEDIATELY ENGAGED
3 IN THE COMMISSION OF THE UNLAWFUL ACT, UNDER ANY OF THESE
4 CIRCUMSTANCES IF THE UNLAWFUL ACT IS COMMITTED, THE ACT IS
5 ONE OF -- THE ACT IS THE ACT OF ONE IS THE ACT OF ALL AND
6 ALL ARE GUILTY.

7 IN OTHER WORDS, IF SEVERAL PERSONS AGREE TO CONSPIRE TO
8 COMMIT A CRIME EACH OF THOSE PERSONS IS CRIMINALLY
9 RESPONSIBLE FOR THE ACTS OF HIS CONFEDERATES WHICH ARE DONE
10 IN FURTHERANCE OF THE COMMON PURPOSE FOR WHICH THEY
11 COMBINED. ALL WHO ARE PRESENT, EITHER ACTUALLY OR
12 CONSTRUCTIVELY, IN PARTICIPATING IN THE UNLAWFUL COMMON
13 DESIGN WOULD BE GUILTY.

14 NOW, LADIES AND GENTLEMEN, ONE OF THE ISSUES IN THIS
15 CASE IS THE IDENTIFICATION OF THESE DEFENDANTS AS THE
16 PERPETRATORS OF THE CRIMES. THE STATE HAS THE BURDEN OF
17 PROVING IDENTITY BEYOND A REASONABLE DOUBT.

18 NOW IT IS NOT ESSENTIAL THAT A WITNESS HIMSELF OR
19 HERSELF BE FREE FROM DOUBT AS TO THE CORRECTNESS OF HIS OR
20 HER STATEMENT. HOWEVER, YOU, THE JURY, MUST BE SATISFIED
21 BEYOND A REASONABLE DOUBT OF THE ACCURACY OF THE
22 IDENTIFICATION OF THESE DEFENDANTS BEFORE YOU CAN CONVICT
23 THEM. IF YOU'RE NOT CONVINCED BEYOND A REASONABLE DOUBT
24 THAT THESE DEFENDANTS WERE THE PERSONS WHO COMMITTED THE
25 CRIME, YOU MUST FIND THEM NOT GUILTY.

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1 NOW IDENTIFICATION TESTIMONY IS AN EXPRESSION OF BELIEF
2 OR IMPRESSION BY A WITNESS. ITS VALUE DEPENDS UPON THE
3 OPPORTUNITY THAT THE WITNESS HAD TO OBSERVE THE OFFENDER AT
4 THE TIME OF THE OFFENSE AND TO MAKE A RELIABLE
5 IDENTIFICATION THEREAFTER.

6 NOW IN THIS CASE THE DEFENDANTS ARE OF A DIFFERENT RACE
7 THAN THE ALLEGED VICTIM. IN THIS CONNECTION I CHARGE YOU
8 THAT YOU MAY CONSIDER WHETHER THE FACT THAT THE DEFENDANTS
9 ARE OF A DIFFERENT RACE THAN THE ALLEGED VICTIM HAS AFFECTED
10 THE ACCURACY OF HIS ORIGINAL PERCEPTION OR THE ACCURACY OF
11 HIS LATER IDENTIFICATION. YOU MAY ALSO CONSIDER IF THERE
12 ARE OTHER FACTORS PRESENT THAT OVERCOME ANY SUCH DIFFICULTY
13 OF IDENTIFICATION.

14 NOW IN APPRAISING IDENTIFICATION TESTIMONY OF A WITNESS
15 YOU MAY CONSIDER DID THE WITNESS HAVE THE CAPACITY AND AN
16 ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER? NOW WHETHER A
17 WITNESS HAD AN ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER
18 AT THE TIME OF THE OFFENSE WILL BE AFFECTED BY SUCH MATTERS
19 AS HOW LONG OR SHORT OF TIME WAS AVAILABLE, HOW FAR OR CLOSE
20 THE WITNESS WAS AND -- OR HOW GOOD WERE LIGHTING CONDITIONS.

21 YOU MAY ALSO CONSIDER WAS THE IDENTIFICATION MADE BY
22 THE WITNESS SUBSEQUENT TO THE OFFENSE THE PRODUCT OF HIS OR
23 HER OWN RECOLLECTION? YOU MAY TAKE INTO ACCOUNT BOTH THE
24 STRENGTH OF THE IDENTIFICATION AND THE CIRCUMSTANCES UNDER
25 WHICH THE IDENTIFICATION WAS MADE. YOU MAY ALSO CONSIDER

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1 THE LENGTH OF TIME THAT LAPSED BETWEEN THE OCCURRENCE OF THE
2 CRIME AND THE NEXT OPPORTUNITY OF THE WITNESS TO SEE THE
3 DEFENDANTS.

4 AS I SAID EARLIER, LADIES AND GENTLEMEN, THE BURDEN OF
5 PROOF IS ON THE STATE. AND THIS EXTENDS TO EVERY ELEMENT OF
6 THE CRIMES CHARGED. AND THIS INCLUDES THE IDENTITY OF THE
7 DEFENDANTS AS THE PERPETRATORS OF THESE CRIMES.

8 NOW, LADIES AND GENTLEMEN, AS JURORS IN THIS CASE YOU
9 HAVE A FUNCTION OR A RESPONSIBILITY THAT IS ENTIRELY
10 SEPARATE AND DISTINCT FROM MY FUNCTION AS THE TRIAL JUDGE IN
11 THIS CASE. I'M THE JUDGE OF THE LAW, BUT YOU ARE THE JUDGES
12 OF THE FACTS.

13 I AM PROHIBITED BY THE CONSTITUTION FROM CHARGING YOU
14 ON THE FACTS OF THIS CASE. I AM PROHIBITED FROM DISCUSSING
15 FACTS OF THE CASE WITH YOU OR IN ANY WAY OR MANNER LETTING
16 YOU KNOW WHAT MY PERSONAL FEELINGS, IF ANY, ARE ABOUT THIS
17 CASE. THAT'S BECAUSE YOU AND YOU ALONE ARE THE JUDGES OF
18 THE FACTS.

19 THEREFORE, IF DURING THE COURSE OF THIS TRIAL OR IF
20 DURING THE COURSE OF MY CHARGE YOU HAVE A FEELING OR YOU
21 HAVE BEEN LEFT WITH THE IMPRESSION THAT I HAVE A PERSONAL
22 FEELING ABOUT THIS CASE ONE WAY OR ANOTHER, THEN YOU
23 DISREGARD THAT FEELING OR THAT IMPRESSION.

24 LADIES AND GENTLEMEN, THE RULES OF EVIDENCE ORDINARILY
25 DO NOT PERMIT WITNESSES TO TESTIFY AS TO OPINIONS OR

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1 CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS AS TO THOSE
2 WHOM WE CALL EXPERT WITNESSES. WITNESSES WHO BY EDUCATION
3 AND EXPERIENCE HAVE BECOME EXPERT IN SOME ART, SCIENCE,
4 PROFESSION OR CALLING MAY STATE AN OPINION AS TO A RELEVANT
5 AND MATERIAL MATTER IN WHICH THEY PROFESS TO BE EXPERT AND
6 MAY ALSO STATE THEIR REASONS FOR THEIR OPINION.

7 NOW YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED
8 INTO EVIDENCE IN THIS CASE AND GIVE IT SUCH WEIGHT AS YOU
9 THINK IT DESERVES. IF YOU SHOULD DECIDE THAT THE OPINION OF
10 AN EXPERT WITNESS IS NOT BASED UPON SUFFICIENT EDUCATION
11 AND/OR EXPERIENCE OR IF YOU SHOULD CONCLUDE THAT THE REASONS
12 GIVEN IN SUPPORT OF THAT OPINION ARE NOT SOUND OR THAT THE
13 OPINION IS OUTWEIGHED BY OTHER EVIDENCE, THEN YOU MAY
14 DISREGARD THE OPINION IN ITS ENTIRETY.

15 AN EXPERT'S TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT
16 THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THAT PERSON HAS
17 BEEN DECLARED TO BE AN EXPERT. AND YOU'RE NOT REQUIRED TO
18 ACCEPT A PURPORTED EXPERT'S OPINION EVEN THOUGH IT BE
19 UNCONTRADICTED.

20 NOW AS I TOLD YOU, I AM THE JUDGE OF THE LAW. AND I AM
21 REQUIRED TO CHARGE YOU THE LAW THAT APPLIES TO THE FACTS IN
22 THIS CASE. IT'S NOT A QUESTION OF WHAT YOU FEEL THE LAW
23 MIGHT BE OR WHAT IT SHOULD BE. IT IS NOT NECESSARILY WHAT
24 THE LAWYERS MAY HAVE TOLD YOU IT IS BECAUSE UNDER YOUR OATH
25 YOU ARE REQUIRED TO TAKE THE LAW AS I GIVE IT TO YOU, APPLY

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1 THAT LAW TO THE FACTS AS YOU DETERMINE THOSE FACTS TO BE AND
2 TO WRITE YOUR VERDICT ACCORDINGLY.

3 LADIES AND GENTLEMEN, IN THIS CASE AS IN ALL CRIMINAL
4 CASES THIS DEFENDANT COMES INTO THIS COURTROOM PRESUMED TO
5 BE INNOCENT. AND THIS PRESUMPTION CONTINUES AND CARRIES
6 THROUGH THE ENTIRE TRIAL UNTIL AND UNLESS IT IS REMOVED BY
7 EVIDENCE THAT SATISFIES YOU OF THEIR GUILT BEYOND A
8 REASONABLE DOUBT. THE BURDEN IS ON THE STATE IN THIS CASE
9 TO PROVE THESE DEFENDANTS GUILTY AND TO PROVE EACH AND EVERY
10 ELEMENT OF THE OFFENSE WITH WHICH THEY ARE CHARGED BEYOND A
11 REASONABLE DOUBT.

12 NOW SOME OF YOU MAY IN THE PAST HAVE SERVED AS JURORS
13 ON CIVIL CASES. AND IF SO YOU WERE MOST LIKELY TOLD THAT IT
14 WAS ONLY NECESSARY TO PROVE THAT A FACT WAS MORE LIKELY TRUE
15 THAN NOT TRUE. BUT IN CRIMINAL CASES THE STATE'S BURDEN IS
16 MORE POWERFUL. AS I'VE TOLD YOU, IT MUST BE BEYOND A
17 REASONABLE DOUBT.

18 NOW PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
19 LEAVES YOU FIRMLY CONVINCED OF THESE DEFENDANTS' GUILT.
20 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH
21 ABSOLUTE CERTAINTY. AND IN CRIMINAL CASES OUR LAW DOES NOT
22 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.

23 IF BASED ON YOUR CONSIDERATION OF THE TESTIMONY AND
24 EVIDENCE IN THIS CASE YOU ARE FIRMLY CONVINCED THAT THESE
25 DEFENDANTS ARE GUILTY, THEN YOU MUST FIND THEM GUILTY. IF,

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1 ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY
2 THAT THEY ARE NOT GUILTY, THEN YOU MUST RESOLVE THAT DOUBT
3 IN THEIR FAVOR AND FIND THEM NOT GUILTY.

4 NOW, LADIES AND GENTLEMEN, OUR LAW DOES NOT COMPEL A
5 DEFENDANT IN A CRIMINAL CASE TO TAKE THE WITNESS STAND AND
6 TESTIFY. AND NO PRESUMPTION OF GUILT MAY BE RAISED AND NO
7 INFERENCE OF ANY KIND MAY BE DRAWN FROM THESE DEFENDANTS'
8 DECISIONS NOT TO TESTIFY.

9 OUR LAW NEVER IMPOSES UPON A DEFENDANT IN A CRIMINAL
10 CASE THE BURDEN OR DUTY OF CALLING ANY WITNESSES, OF
11 PRODUCING ANY EVIDENCE OR OF TESTIFYING. THEREFORE, THE
12 DECISION OF THESE DEFENDANTS NOT TO TAKE THE STAND AND
13 TESTIFY IN THEIR BEHALF CANNOT BE TAKEN, HELD, DISCUSSED OR
14 CONSIDERED AGAINST THEM IN ANY MANNER WHATSOEVER.

15 NOW, LADIES AND GENTLEMEN, UNDER THE OATH YOU TOOK IN
16 THIS CASE YOU SWORE TO TRY THIS CASE BASED ONLY AND SOLELY
17 ON THE TESTIMONY AND EVIDENCE PRESENTED IN THIS COURTROOM.
18 I TELL YOU THAT IT IS YOUR DUTY TO LAY ASIDE ALL OUTSIDE
19 OPINIONS, BIAS, PREJUDICE OR SYMPATHY YOU MAY HAVE IN
20 REACHING A VERDICT.

21 THE WORD VERDICT, LADIES AND GENTLEMEN, IS TAKEN FROM
22 THE LATIN WORD VEREDICTO. IT MEANS TO SPEAK THE TRUTH. YOU
23 HAVE NO FRIENDS TO REWARD IN THIS CASE OR ENEMIES TO PUNISH.
24 I CHARGE YOU TO ABIDE BY YOUR OATH AND RETURN VERDICTS THAT
25 SPEAK THE TRUTH.

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1 NOW YOU'LL HAVE IN THE JURY ROOM WITH YOU THE
2 INDICTMENTS IN THIS CASE. THESE INDICTMENTS DO NOT
3 CONSTITUTE EVIDENCE. THEY SIMPLY SET FORTH THE ALLEGATIONS
4 BY THE STATE. THESE INDICTMENTS ARE THE LEGAL DOCUMENTS BY
5 WHICH THIS CASE IS BROUGHT INTO THE COURTROOM AND PRESENTED
6 TO YOU FOR YOUR DETERMINATION.

7 LADIES AND GENTLEMEN, THERE ARE ONE OF TWO POSSIBLE
8 VERDICTS ON EACH INDICTMENT, GUILTY OR NOT GUILTY. WHATEVER
9 THAT VERDICT IS IT MUST BE UNANIMOUS, THAT IS ALL TWELVE OF
10 YOU MUST AGREE.

11 AND, MADAME FOREMAN, YOU'LL FIND A PLACE ON THE BACK OF
12 EACH INDICTMENT WHERE YOU'LL SEE THE WORD VERDICT IS
13 PRINTED. WHATEVER THE UNANIMOUS VERDICT OF THE JURY IS ON
14 EACH INDICTMENT, GUILTY OR NOT GUILTY, THEN WRITE IT OUT IN
15 THAT SPACE, SIGN YOUR NAME ON THE LINE WHERE IT SAYS
16 FOREPERSON OF THE PETIT JURY.

17 NOW WITH RESPECT TO THE INDICTMENT FOR ARMED ROBBERY,
18 THAT'S COUNT ONE ON THIS INDICTMENT. AND COUNT TWO IS
19 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
20 CRIME. ON THE BACK OF THE INDICTMENT IN THE SPACE WHERE IT
21 SAYS -- I PUT COUNT ONE, THAT WOULD BE ARMED ROBBERY. COUNT
22 TWO WOULD BE POSSESSION OF A WEAPON. AND THAT'S WHERE YOU
23 WOULD WRITE OUT THE VERDICT, GUILTY OR NOT GUILTY.

24 NOW AT THIS TIME, LADIES AND GENTLEMEN, I'M REQUIRED TO
25 GO OVER MY CHARGE WITH THE LAWYERS. I NEED YOU TO GO BACK

CHARGE OF THE COURT

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1 INTO YOUR JURY ROOM, BUT DON'T BEGIN DELIBERATING UNTIL I
2 SEND WORD IN FOR YOU TO DO SO. THANK YOU.

3 (WHEREUPON THE JURY EXITED THE COURTROOM AT 10:30 AM)

4 THE COURT: ANYTHING FURTHER FROM THE STATE?

5 MR. MARCHANT: NOTHING FROM THE STATE, YOUR HONOR.

6 THE COURT: FROM THE DEFENDANT?

7 MR. MOORMAN: NOTHING FROM MR. ROBINSON.

8 MR. ROBINSON: NOTHING FROM MR. WORKMAN.

9 THE COURT: ALL RIGHT. WE GOT ALL THE EXHIBITS
10 GATHERED UP?

11 MADAME COURT REPORTER: YES, SIR.

12 THE COURT: OKAY. DONALD, TELL THEM TO DELIBERATE.
13 WHERE ARE THE EXHIBITS?

14 MADAME COURT REPORTER: JUST THIS ONE OVER HERE.

15 THE COURT: OH, IS THAT THE ONLY ONE?

16 MADAME COURT REPORTER: YES, SIR.

17 THE COURT: OKAY. AND BRING MY ALTERNATE TO ME, MS.

18 STRATMANN. JUST TAKE THAT ONE EXHIBIT OVER THERE, AND TELL
19 THEM TO DELIBERATE. AND BRING MY ALTERNATE.

20 (WHEREUPON THE JURY BEGAN DELIBERATING AT 10:31 AM)

21 THE COURT: MS. STRATMANN, SINCE OUR TWELVE JURORS HAVE
22 MADE IT THROUGH THIS CASE I HAVE THE PLEASURE OF TELLING YOU
23 YOU'RE THROUGH ON THIS CASE AND ALSO FOR THE WEEK.

24 MS. STRATMANN: OKAY.

25 THE COURT: YOU DON'T HAVE TO COME BACK TODAY OR

1 TOMORROW. THANK YOU SO MUCH FOR SERVING WITH US. I KNOW
2 IT'S BEEN DIFFICULT FOR YOU, ---

3 MS. STRATMANN: THANK YOU.

4 THE COURT: --- BUT I HOPE YOU'VE ENJOYED YOUR SERVICE.

5 MS. STRATMANN: I HAVE.

6 THE COURT: IF YOU WILL GO DOWN TO THE JURY ASSEMBLY
7 ROOM AND SEE JUDY, SHE'LL GIVE YOU A VOUCHER ---

8 MS. STRATMANN: ALL RIGHT.

9 THE COURT: --- FOR YOUR SERVICE THIS WEEK. THANK YOU
10 VERY MUCH.

11 MS. STRATMANN: THANK YOU.

12 THE COURT: NOW IF YOU WANT TO STAY AROUND AND SEE WHAT
13 THE VERDICT IS, YOU'RE CERTAINLY WELCOME TO DO THAT. IF YOU
14 WANT TO GET OUT OF HERE, THEN YOU'RE FULLY FREE TO LEAVE.
15 THANK YOU.

16 (WHEREUPON COURT WAS IN RECESS AT 10:33 AM)

17 THE COURT: ALL RIGHT. I GOT -- I NEED THE DEFENDANTS.
18 THEY WANT TO HEAR -- THEY WANT TO HEAR WRIGHT'S TESTIMONY
19 PLAYED BACK. SO BRING THE DEFENDANTS UP.

20 (PAUSE)

21 THE COURT: BRING THEM ON.

22 (WHEREUPON COURT'S EXHIBIT 1 WAS MARKED)

23 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 10:56 AM)

24 THE COURT: NOW, MADAME FOREMAN, I UNDERSTAND YOU WANT
25 TO HEAR THE TESTIMONY OF MR. WRIGHT. WE'RE GOING TO PLAY

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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1 HIS TESTIMONY FROM THE BACK-UP. AND I AGREE HE WAS HARD TO
2 HEAR. SO WE'LL DO THE BEST WE CAN, OKAY? ALL RIGHT.

3 (WHEREUPON THE TESTIMONY OF TIMOTHY WRIGHT WAS PLAYED
4 FOR THE JURY).

5 TIMOTHY WRIGHT, BEING
6 DULY SWORN TESTIFIED AS FOLLOWS:

7 MADAME CLERK: THANK YOU. PLEASE BE SEATED. SIR,
8 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

9 MR. WRIGHT: MY NAME IS TIMOTHY LEE WRIGHT.

10 MADAME CLERK: YOU NEED TO MOVE UP, PLEASE.

11 THE COURT: PULL IN CLOSER TO THE MICROPHONE, PLEASE,
12 MR. WRIGHT.

13 MR. WRIGHT: TIMOTHY LEE WRIGHT.

14 MADAME CLERK: THANK YOU, SIR.

15 DIRECT EXAMINATION BY MR. MARCHANT:

16 Q. MR. WRIGHT, HOW OLD ARE YOU?

17 A. TWENTY, SIR.

18 Q. TWENTY?

19 A. YES, SIR.

20 Q. AND WHERE DID YOU GROW UP?

21 A. I GROWED UP IN GREENVILLE, SOUTH CAROLINA, SIR.

22 MR. MARCHANT: JUDGE, I'M GOING TO NEED TO MOVE THIS
23 MICROPHONE A LITTLE CLOSER.

24 Q. I'M GOING TO ASK YOU TO SPEAK UP AS LOUD AS YOU CAN SO
25 THE JURY CAN HEAR YOU, SIR. I'M SORRY. WHERE DID YOU GROW

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1 UP?

2 A. I GROWED UP IN GREENVILLE, SOUTH CAROLINA, SIR.

3 Q. AND WHERE DID YOU GO TO HIGH SCHOOL?

4 A. SOUTHSIDE, SIR.

5 Q. AND DID YOU GRADUATE FROM SOUTHSIDE HIGH SCHOOL?

6 A. YES, SIR.

7 Q. WHAT YEAR DID YOU GRADUATE?

8 A. '07, SIR.

9 Q. AND FOLLOWING GRADUATING SOUTHSIDE HIGH SCHOOL DID YOU
10 ATTEND COLLEGE ANYWHERE?

11 A. YES, SIR.

12 Q. AND WHERE DID YOU GO?

13 A. GREENVILLE TECH, SIR.

14 Q. AND WHAT PROGRAM OR DIRECTION WERE YOU ENROLLED IN AT
15 GREENVILLE TECH?

16 A. TRUCK DRIVING, SIR.

17 Q. AND DID YOU ENROLL IN GREENVILLE TECH THE AUGUST
18 FOLLOWING YOUR GRADUATION?

19 A. YES, SIR.

20 Q. YOU GRADUATED IN '07, IS THAT CORRECT?

21 A. YES, SIR.

22 Q. SO IN DECEMBER OF 2007 WERE YOU A STUDENT AT GREENVILLE
23 TECH?

24 A. NO, SIR, 'CAUSE I HAD GOT LOCKED UP.

25 Q. OKAY. PRIOR TO GETTING LOCKED UP WERE YOU ENROLLED

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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- 1 TAKING CLASSES?
- 2 A. YES, SIR.
- 3 Q. AND BEFORE ANY OF THIS HAPPENED WERE YOU PLANNING ON
- 4 GOING TO SCHOOL SOMEWHERE ELSE?
- 5 A. YES, SIR.
- 6 Q. AND WHERE WAS THAT?
- 7 A. EAST COASTAL CAROLINA.
- 8 Q. AND WHAT WERE YOU GOING TO DO DOWN AT COASTAL CAROLINA?
- 9 A. PLAY FOOTBALL, SIR.
- 10 Q. AND WHEN WERE YOU SUPPOSED TO BE BEGINNING CLASSES AT
- 11 COASTAL CAROLINA?
- 12 A. '08, JANUARY THE 1ST.
- 13 Q. SO YOU WERE ONLY GOING TO DO SIX MONTHS OR ONE SEMESTER
- 14 AT GREENVILLE TECH?
- 15 A. YES, SIR.
- 16 Q. DO YOU KNOW KENNETH WORKMAN?
- 17 A. YES, SIR.
- 18 Q. AND HOW IS IT THAT YOU KNOW KENNETH WORKMAN?
- 19 A. WELL, I GROWED UP WITH HIM. AND THAT'S MY COUSIN, SIR.
- 20 Q. AND THEN YOU KNOW HOW OLD MR. WORKMAN IS?
- 21 A. YES, SIR.
- 22 Q. HOW OLD IS HE?
- 23 A. NINETEEN, SIR.
- 24 Q. Y'ALL ABOUT THE SAME AGE?
- 25 A. YES, SIR.

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1 Q. DO YOU KNOW MR. ROBINSON?

2 A. YES, SIR.

3 Q. AND HOW DO YOU KNOW MR. ROBINSON?

4 A. I MET HIM WHEN I HAD GOT OUT OF -- WHEN I HAD GOT OUT
5 OF MY JUVENILE TIME IN '05, SIR.

6 Q. SO YOU'VE KNOWN MR. ROBINSON SINCE 2005?

7 A. YES, SIR.

8 Q. AND YOU'VE KNOWN MR. WORKMAN PRETTY MUCH YOUR WHOLE
9 LIFE?

10 A. YES, SIR.

11 Q. MR. WORKMAN'S YOUR COUSIN?

12 A. YES, SIR.

13 Q. NOW IN THE FALL OF 2007 WHILE YOU'RE ATTENDING CLASSES
14 AT GREENVILLE TECH WERE YOU HANGING OUT WITH THESE TWO GUYS?

15 A. YES, SIR.

16 Q. WAS IT THROUGH SOME EMPLOYMENT OR WERE Y'ALL JUST --
17 WAS IT A SOCIAL ARRANGEMENT?

18 MR. MOORMAN: YOUR HONOR, I'M GOING TO OBJECT TO THAT,
19 TO THE QUESTION.

20 THE COURT: WHAT'S THE OBJECTION?

21 MR. MOORMAN: ON THE BASIS OF A -- A 403 OBJECTION,
22 YOUR HONOR.

23 THE COURT: NO, OVERRULED. GO AHEAD.

24 Q. MR. WRIGHT, WERE YOU --- LET'S GO AT IT THIS WAY. WERE
25 YOU EMPLOYED IN THE FALL OF 2007?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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1 A. WAS I EMPLOYED?

2 Q. WERE YOU WORKING SOMEWHERE?

3 A. YES, SIR.

4 Q. AND WHERE WERE YOU WORKING?

5 A. I WAS WORKING AT OJ'S, OJ'S RESTAURANT.

6 Q. OKAY. WHEN THIS -- THIS INCIDENT HAPPENED WERE YOU
7 WORKING?

8 A. NO, SIR.

9 Q. DO YOU KNOW WHETHER OR NOT MR. WORKMAN WAS EMPLOYED?

10 A. NO, SIR.

11 Q. WHAT ABOUT MR. ROBINSON HERE?

12 A. NO, SIR.

13 Q. NOW WHAT DID YOU TYPICALLY CALL MR. WORKMAN?

14 MR. ROBINSON: OBJECTION, YOUR HONOR, RELEVANCE.

15 MR. MARCHANT: I'M ASKING WHAT HE REFERRED -- HOW HE
16 REFERRED TO HIM.

17 THE COURT: GO AHEAD.

18 Q. WHAT DO YOU CALL HIM? IF YOU CALLED HIM UP ON THE
19 PHONE WHAT DO YOU SAY TO HIM?

20 A. I ASK HIM WHAT'S UP, WHAT THEY DOING?

21 Q. BUT WHAT DO YOU CALL HIM?

22 A. TALKING ABOUT O'SHAUN?

23 Q. NO, MR. WORKMAN.

24 A. I SAY KEN.

25 Q. KEN. AND HOW DO YOU ADDRESS MR. ROBINSON HERE?

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- 1 A. "O".
- 2 Q. KEN AND "O"?
- 3 A. (AFFIRMATIVE NOD).
- 4 Q. NOW IT'S PRETTY OBVIOUS THAT YOU'RE DRESSED IN SOME
- 5 JAIL ATTIRE. YOU'VE PLED GUILTY TO THIS OFFENSE, ISN'T THAT
- 6 CORRECT?
- 7 A. YES, SIR.
- 8 Q. AND YOU'VE BEEN SENTENCED, ---
- 9 A. YES, SIR.
- 10 Q. --- CORRECT? I DON'T WANT -- I DON'T WANT YOU TO TELL
- 11 US WHAT YOUR ACTUAL SENTENCE WAS, BUT YOU HAVE PLED GUILTY?
- 12 A. YES, SIR.
- 13 Q. AND HAVE BEEN SENTENCED?
- 14 A. YES, SIR.
- 15 Q. DID YOU PLEAD GUILTY TO ANY OTHER OFFENSES?
- 16 A. NO, SIR. NO, SIR.
- 17 Q. THIS IS THE ONLY OFFENSE YOU'VE PLED GUILTY TO?
- 18 A. OH, NO, SIR.
- 19 Q. OKAY. YOU'VE PLED GUILTY TO ---
- 20 A. TWO OF THEM.
- 21 Q. --- A SUBSEQUENT OFFENSE?
- 22 A. TWO OF THEM.
- 23 Q. OKAY. SO YOU'VE PLED GUILTY TO THIS INCIDENT AND
- 24 YOU'VE PLED GUILTY TO SOMETHING THAT HAPPENED AFTER THIS,
- 25 ISN'T THAT CORRECT?

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1 A. YES, SIR.

2 Q. OKAY. NOW DO YOU RECALL BEING ARRESTED AND SPEAKING
3 WITH INVESTIGATOR HANNING AS WELL AS INVESTIGATOR WEINER?

4 A. YES, SIR.

5 Q. AND WHEN YOU WERE SPEAKING WITH THEM DID THEY GO OVER
6 YOUR MIRANDA RIGHTS?

7 A. YES, SIR.

8 Q. AND DO YOU KNOW WHAT THAT IS?

9 A. YES, SIR.

10 Q. AND AFTER THEY WENT OVER YOUR MIRANDA RIGHTS DID YOU
11 AGREE TO SPEAK WITH THEM?

12 A. YES, SIR.

13 Q. WERE YOU UNDER ARREST AT THE TIME YOU SPOKE WITH THEM?

14 A. YES, SIR.

15 Q. WHILE SPEAKING WITH INVESTIGATOR WEINER AND
16 INVESTIGATOR HANNING DID THEY MAKE ANY PROMISES TO YOU ABOUT
17 WHAT TYPE OF SENTENCE YOU WOULD RECEIVE IF YOU COOPERATED?

18 A. NO, SIR.

19 Q. DID THEY MAKE ANY PROMISES ABOUT ANYTHING TO YOU?

20 A. NO, SIR.

21 Q. NOW YOU WERE REPRESENTED BY AN ATTORNEY ON YOUR
22 CHARGES?

23 A. YES, SIR.

24 Q. DO YOU RECALL WHO THAT ATTORNEY IS?

25 A. CHRIS POSEY, SIR.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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1 Q. WHEN IS THE FIRST TIME THAT YOU AND I SAW EACH OTHER
2 FACE TO FACE?

3 A. WHEN I -- WHEN I HAD GOT MY SENTENCE.

4 Q. THE DAY YOU PLED GUILTY? IS THAT WHAT YOU MEAN?

5 A. YES, SIR.

6 Q. HAD YOU AND I EVER SPOKE PRIOR TO THAT DAY?

7 A. NO, SIR.

8 Q. WERE THERE ANY PROMISES THAT WERE MADE TO YOU WHEN YOU
9 PLED GUILTY ABOUT WHAT TYPE OF SENTENCE YOU WOULD RECEIVE?

10 A. NO, SIR.

11 Q. ON THE NIGHT THAT THIS HAPPENED ON DECEMBER 10TH WHERE
12 WERE Y'ALL PRIOR TO GOING OVER TO THIS APARTMENT COMPLEX?

13 MR. ROBINSON: OBJECTION, YOUR HONOR. IT'S A VERY NON-
14 SPECIFIC GENERAL QUESTION. I THINK HE NEEDS TO ASK HIM --
15 SET A FOUNDATION FOR THIS, YOUR HONOR.

16 THE COURT: NO, OVERRULED. GO AHEAD.

17 Q. MR. WRIGHT, WHERE WERE YOU PRIOR TO GOING OVER TO THIS
18 APARTMENT COMPLEX?

19 A. WELL, BEFORE WE WENT OVER THERE WE WAS IN WEST
20 GREENVILLE, SIR.

21 Q. WHERE WERE YOU?

22 A. IN WEST GREENVILLE.

23 Q. AND WHERE PARTICULARLY IN WEST GREENVILLE WERE YOU?

24 A. HANGING AROUND.

25 Q. WERE YOU AT SOMEBODY'S HOUSE, AT A RESTAURANT?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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1 A. NO, JUST HANGING AROUND ON THE STREETS.

2 Q. AND HOW IS IT THAT YOU ENDED UP AT THIS APARTMENT
3 COMPLEX?

4 A. WELL, WE HAD -- WELL, WE HAD GOT -- WELL, WE HAD GOT
5 THIS OTHER -- THIS OTHER FRIEND CAR NAMED TEZ. WE WENT OVER
6 THERE TO LIKE SEE WAS SOME GIRLS OR SOMETHING OVER THERE,
7 SEE IF WE COULD MEET SOME GIRLS.

8 Q. AND WHOSE CAR WERE YOU IN?

9 A. TEZ.

10 Q. I'M SORRY, SIR. YOU'RE ---

11 A. TEZ.

12 Q. --- GOING TO HAVE TO SPEAK UP.

13 A. TEZ.

14 Q. WAS TEZ WITH YOU?

15 A. NO, SIR.

16 Q. WHO ALL WAS WITH YOU WHEN YOU WENT OVER TO THIS
17 COMPLEX?

18 A. ME, MARCUS, ROBINSON AND WORKMAN, SIR.

19 Q. WHO WAS MARCUS?

20 A. THAT'S JUST ANOTHER FRIEND, SIR.

21 Q. WHO WAS DRIVING THIS VEHICLE?

22 A. MARCUS, SIR.

23 Q. AND WHAT TYPE OF VEHICLE WAS IT?

24 A. A BLACK LINCOLN, SIR.

25 Q. WAS IT TWO DOOR OR FOUR DOOR?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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- 1 A. FOUR DOOR.
- 2 Q. WHERE WERE YOU SITTING IN THE VEHICLE?
- 3 A. BEHIND THE PASSENGER'S SEAT.
- 4 Q. WHERE WAS KEN SITTING?
- 5 A. IN THE PASSENGER'S SEAT.
- 6 Q. WHERE WAS "O" SITTING?
- 7 A. SITTING BEHIND THE DRIVER'S SEAT.
- 8 Q. WHAT DID YOU DO ONCE YOU GOT INTO THIS APARTMENT
- 9 COMPLEX? DID YOU PARK?
- 10 A. WE DROVE AROUND FOR A LITTLE BIT.
- 11 Q. AND WHY WERE Y'ALL DRIVING AROUND?
- 12 A. LOOKING FOR SOME FEMALES.
- 13 Q. DID YOU KNOW ANY FEMALES IN THIS COMPLEX?
- 14 A. NOT AT THE TIME. WE HAD MET SOME OUT THERE BEFORE.
- 15 Q. YOU HAD MET SOME OUT THERE BEFORE?
- 16 A. YES, SIR.
- 17 Q. HOW MANY TIMES WOULD YOU SAY YOU CIRCLED THIS PARKING
- 18 LOT BEFORE YOU PARKED?
- 19 A. ABOUT FIVE OR SIX TIMES.
- 20 Q. AND ONCE YOU PARKED WHAT DID YOU DO?
- 21 A. JUST SAT RIGHT THERE AND TALKED.
- 22 Q. HOW LONG DID YOU TALK?
- 23 A. ABOUT A GOOD MINUTE.
- 24 Q. HOW LONG?
- 25 A. ABOUT A GOOD MINUTE.

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1 Q. WHAT DID YOU TALK ABOUT?

2 A. WELL, WE WAS TALKING -- WELL, WE WAS TALKING ABOUT --
3 WE STARTED TALKING ABOUT ROBBING --- ABOUT THE ROBBING
4 INCIDENT.

5 Q. ABOUT WHAT?

6 A. ABOUT THE ROBBING INCIDENT.

7 Q. WHEN YOU SAY YOU WERE TALKING ABOUT THE ROBBING
8 INCIDENT, WHAT DO YOU MEAN?

9 A. THAT WE STARTED PLANNING IT.

10 Q. AND WHOSE IDEA WAS IT?

11 A. ROBINSON'S, SIR.

12 Q. AND THIS CONVERSATION EXISTED BETWEEN HOW MANY OF THEM?

13 A. THREE OF US.

14 Q. HOW MANY?

15 A. THREE OF US.

16 Q. WAS MARCUS INVOLVED IN THIS CONVERSATION?

17 A. NO, SIR.

18 Q. SO THE THREE OF US, WHO ARE YOU REFERRING TO?

19 A. ME, ROBINSON AND WORKMAN.

20 Q. NOW SPECIFICALLY WHAT WERE Y'ALL TALKING ABOUT ROBBING
21 OR WHO WERE YOU TALKING ABOUT ROBBING?

22 A. WELL, WE WAS GOING -- WE WAS GOING TO WAIT UNTIL WE SEE
23 SOMEBODY THAT WE CAN -- THAT WE CAN GET.

24 Q. AND DID YOU SEE SOMEBODY THAT YOU COULD GET?

25 A. YES, SIR, AFTER -- AFTER THE PERSON HAD PASSED IN THE

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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11 RED JEEP.

12 Q. AND WHAT -- WHAT HAPPENED AFTER THIS PERSON PASSED IN
13 THE RED JEEP?

14 A. WE STARTED PLANNING THAT WE WAS GOING TO -- THAT WE WAS
15 GOING TO ROB THAT PERSON.

16 Q. AND DID YOU HAVE A GUN?

17 A. NO, SIR.

18 Q. DID KEN HAVE A GUN?

19 A. NO, SIR.

20 Q. DID "O" HAVE A GUN?

21 A. YES, SIR.

22 Q. WHAT TYPE OF GUN WAS IT?

23 A. I THINK A .57 MAGNUM, SIR.

24 Q. WHAT COLOR WAS IT?

25 A. SILVER AND BROWN.

26 Q. WHERE WAS THE BROWN PART LOCATED?

27 A. ON THE HANDLE, SIR.

28 Q. AFTER Y'ALL TALKED ABOUT ROBBING SOMEBODY DID Y'ALL
29 DECIDE ON THIS PERSON THAT HAD PULLED IN IN THE RED JEEP?

30 A. YES, SIR.

31 Q. DID YOU WAIT FOR THAT PERSON TO PARK?

32 A. YES, SIR.

33 Q. AND ONCE HE PARKED WHAT HAPPENED?

34 A. THEN WE ALL JUMPED OUT OF THE CAR, SIR.

35 Q. AND WHERE DID KEN GO?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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- 1 A. ON THE PASSENGER'S SIDE, SIR.
- 2 Q. PASSENGER'S SIDE OF WHAT?
- 3 A. OF THE RED JEEP.
- 4 Q. DO YOU REMEMBER WHAT KEN WAS WEARING?
- 5 A. NO, SIR.
- 6 Q. WHERE DID "O" GO?
- 7 A. ON THE DRIVER'S SIDE, SIR, OF -- OF THE JEEP.
- 8 Q. AND WHERE DID YOU GO?
- 9 A. ON THE DRIVER'S SIDE BESIDE HIM, SIR.
- 10 Q. YOU'RE ON THE DRIVER'S SIDE OF THE JEEP. AND "O's" ON
- 11 THE DRIVER'S SIDE OF THE JEEP. WHO WAS IN FRONT?
- 12 A. ROBINSON, SIR.
- 13 Q. SO WHERE -- IF THIS IS THE VEHICLE AND THIS IS THE REAR
- 14 OF THE JEEP WHERE WERE YOU STANDING?
- 15 A. I WAS STANDING LIKE RIGHT -- RIGHT BESIDE HIM, LIKE
- 16 BEHIND HIM.
- 17 Q. OKAY. I'D ASK YOU TO STEP DOWN SO YOU CAN SHOW THE
- 18 JURY WHERE YOU WERE POSITIONED. ASSUMING FOR DEMONSTRATION
- 19 PURPOSES THIS IS THE DRIVER'S SIDE OF THE VEHICLE, THIS IS
- 20 THE DRIVER'S DOOR AND THIS IS THE BACK DOOR OF THE RED JEEP,
- 21 WHERE WAS "O" STANDING?
- 22 A. HE WAS STANDING RIGHT HERE.
- 23 Q. OKAY. AND WHERE WERE YOU STANDING?
- 24 A. RIGHT HERE BESIDE HIM.
- 25 Q. SO WERE Y'ALL LINED UP LIKE THIS OR WERE YOU LINED UP

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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- 1 LIKE THIS?
- 2 A. LINED UP SIDEWAYS.
- 3 Q. WAS HE IN FRONT OF YOU?
- 4 A. YES, SIR.
- 5 Q. AND WHERE AGAIN WAS KEN?
- 6 A. ON THE PASSENGER'S SIDE, SIR.
- 7 Q. OKAY. PLEASE TAKE YOUR SEAT. DID ALL THREE OF YOU
- 8 ARRIVE AT THE VEHICLE AT THE SAME TIME?
- 9 A. YES, SIR.
- 10 Q. AND WHAT HAPPENED ONCE YOU GOT TO THE VEHICLE?
- 11 A. ROBINSON PULLED THE GUN OUT ON THE VICTIM, SIR, AND
- 12 TOLD HIM TO GIVE IT UP.
- 13 Q. AND DID YOU SEE WHETHER OR NOT THE VICTIM HANDED OVER
- 14 ANYTHING?
- 15 A. NO, SIR.
- 16 Q. DO YOU KNOW WHETHER OR NOT "O" GOT ANYTHING FROM THE
- 17 VICTIM?
- 18 A. YES, SIR.
- 19 Q. AND HOW IS IT THAT YOU KNOW HE GOT SOMETHING?
- 20 A. WELL, HE HAD SNATCHED A WALLET FROM THE VICTIM, SIR.
- 21 Q. YOU SAW HIM DO THAT?
- 22 A. YES, SIR.
- 23 Q. WHERE WAS KEN THE WHOLE TIME?
- 24 A. STILL ON THE PASSENGER'S SIDE, SIR.
- 25 Q. DID KEN EVER COME AROUND TO THE DRIVER'S SIDE?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

241

1 A. NO, SIR.

2 Q. WHAT HAPPENED AFTER "O" TOOK THE WALLET FROM THE
3 VICTIM?

4 A. WE TOOK OFF RUNNING, SIR.

5 Q. AND WHERE DID YOU RUN TO?

6 A. BACK TO THE CAR.

7 Q. WAS THE CAR RUNNING?

8 A. (AFFIRMATIVE NOD).

9 Q. WAS THE CAR STILL RUNNING OR WAS IT TURNED OFF?

10 A. YES, SIR, IT WAS STILL RUNNING.

11 Q. DID ANYTHING HAPPEN TO THE VICTIM AFTER "O" TOOK THE
12 MONEY FROM HIM BEFORE Y'ALL GOT BACK TO THE CAR?

13 A. YEAH, HE -- HE PUNCHED THE VICTIM IN THE HEAD.

14 Q. WHO DID?

15 A. ROBINSON.

16 Q. WITH WHAT?

17 A. WITH HIS FIST.

18 Q. AND DO YOU RECALL WHAT "O" WAS WEARING THAT DAY?

19 A. NO, SIR.

20 Q. DO YOU REMEMBER WHAT YOU WERE WEARING?

21 A. NO, SIR.

22 Q. ONCE YOU GOT BACK TO THE CAR WHERE DID YOU POSITION
23 YOURSELF IN THE VEHICLE?

24 A. BACK BEHIND THE PASSENGER'S SEAT.

25 Q. WHERE DID KEN GO?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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- 1 A. BACK TO THE FRONT, SIR.
- 2 Q. AND WHERE DID "O" GO?
- 3 A. BACK TO THE DRIVER'S SIDE IN THE BACK.
- 4 Q. AND WHAT HAPPENED ONCE Y'ALL ALL GOT BACK IN THE CAR?
- 5 A. WE TOOK OFF IN THE CAR.
- 6 Q. WHERE DID -- WHERE WERE Y'ALL PLANNING ON GOING AFTER
- 7 YOU GOT BACK IN THE CAR?
- 8 A. HEADING BACK TOWARDS WHITE HORSE ROAD TO GO BACK TO
- 9 WEST GREENVILLE.
- 10 Q. DID YOU SEE THE VICTIM AT ANY TIME LATER?
- 11 A. YES, SIR.
- 12 Q. WHERE DID YOU SEE HIM?
- 13 A. SEEN HIM BEHIND US.
- 14 Q. BEHIND YOU WHERE?
- 15 A. IN HIS RED JEEP.
- 16 Q. DO YOU RECALL WHETHER OR NOT HIS LIGHTS WERE ON OR OFF?
- 17 A. THEY WAS OFF UNTIL HE GOT UP -- UNTIL HE GOT UP TO US.
- 18 THEN HE TURNED THEM ON. AND THAT'S WHEN WE REALIZED HE WAS
- 19 BEHIND US.
- 20 Q. WHAT HAPPENED INSIDE YOUR CAR WHEN HE TURNED HIS LIGHTS
- 21 ON?
- 22 A. ROBINSON HAD POINTED THE PISTOL OUT THE WINDOW AND SHOT
- 23 AT HIM.
- 24 Q. HOW MANY TIMES?
- 25 A. ONCE.

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

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1 Q. AFTER "O" SHOT ONE TIME WHERE DID Y'ALL GO FROM THERE?

2 A. BACK TO WEST GREENVILLE.

3 Q. DID YOU GET ANY OF MR. ESPINOZA'S PROPERTY FROM THIS
4 ROBBERY?

5 A. NO, SIR.

6 Q. DID YOU GET ANY MONEY?

7 A. NO, SIR.

8 Q. CREDIT CARD?

9 A. NO, SIR.

10 Q. YOU DIDN'T GET ANYTHING OUT OF THIS?

11 A. NO, SIR.

12 Q. DO YOU SEE THE VICTIM HERE TODAY?

13 A. YES, SIR.

14 Q. WILL YOU POINT HIM OUT FOR THE COURT?

15 A. HE'S RIGHT THERE, SIR.

16 Q. WHAT'S HE WEARING?

17 A. I CAN'T SEE WHAT HE'S WEARING, SIR.

18 MR. MARCHANT: I'D ASK THAT THE GENTLEMAN STAND UP,
19 PLEASE.

20 THE COURT: STAND UP, PLEASE.

21 Q. IS THIS WHO YOU'RE POINTING TO?

22 A. YES, SIR.

23 MR. MARCHANT: LET THE RECORD REFLECT THAT MR. WRIGHT
24 HAS IDENTIFIED MR. ESPINOZA AS THE VICTIM.

25 Q. WHAT HAPPENED TO THE GUN?

TIMOTHY WRIGHT - DIRECT EXAMINATION BY MR. MARCHANT

244

1 A. WELL, WE WENT BACK TO THE NEIGHBORHOOD. AND I DON'T
2 KNOW WHAT HAPPENED TO THE GUN.

3 Q. MR. WRIGHT, YOU'VE RECEIVED YOUR SENTENCE FOR THIS
4 CRIME, CORRECT?

5 A. YES, SIR.

6 Q. AND YOU'RE AWARE THAT YOUR TESTIMONY TODAY WILL NOT
7 INCREASE NOR DECREASE THAT SENTENCE?

8 A. YES, SIR.

9 Q. WHY ARE YOU HERE TELLING THIS JURY WHAT YOU'RE TELLING
10 THEM?

11 A. WELL -- WELL, I KNOW -- WELL, I KNOW WHAT WE WAS DOING,
12 I MEAN, IT WAS WRONG. IT WAS WRONG IN THE FIRST BEGINNING
13 AND BEFORE WE EVEN -- BEFORE WE EVEN DID THE CRIME. WE
14 SHOULDN'T EVEN NEVER, I MEAN, WE SHOULD HAVE NEVER THOUGHT
15 ABOUT DOING THAT KIND -- BEEN DOING THAT KIND OF CRIME.

16 Q. THANK YOU, MR. WRIGHT. THAT'S ALL THE QUESTIONS I
17 HAVE. IF ---

18 THE COURT: ALL RIGHT. MR. MOORMAN.

19 Q. --- YOU'D ANSWER ANY QUESTIONS MR. ROBINSON, MR.
20 MOORMAN MAY HAVE.

21 MR. MOORMAN: YOUR HONOR, MAY I HAVE A -- MAY WE
22 APPROACH?

23 THE COURT: SURE.

24 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
25 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

245

1 THE COURT: ALL RIGHT. MR. MOORMAN, YOU MAY CROSS.

2 MR. MOORMAN: THANK YOU, YOUR HONOR.

3 CROSS EXAMINATION BY MR. MOORMAN:

4 Q. MR. WRIGHT, YOU HAVE A NICKNAME ON THE STREET, DON'T
5 YOU?

6 A. YES, SIR.

7 Q. AND THAT NICKNAME IS LEE LEE, IS THAT CORRECT?

8 A. YES, SIR.

9 Q. AND YOUR TESTIMONY IS THAT THERE WERE THREE PEOPLE
10 AROUND THAT CAR THAT NIGHT, CORRECT?

11 A. YES, SIR.

12 Q. THERE WERE YOU?

13 A. YES, SIR.

14 Q. AND THEN THESE CO-DEFENDANTS, CORRECT?

15 A. YES, SIR.

16 Q. AND YOUR TESTIMONY IS THAT YOU'RE DOING -- YOU'RE
17 TESTIFYING BECAUSE IT WAS -- IT WAS JUST WRONG AND YOU WANT
18 TO TELL THE TRUTH, IS THAT RIGHT?

19 A. YES, SIR.

20 Q. WHAT'S THAT?

21 A. YES, SIR.

22 Q. I CAN'T HEAR YOU.

23 A. YES, SIR.

24 Q. BUT THAT'S NOT THE ONLY REASON WHY YOU'RE TESTIFYING,
25 IS IT? ISN'T IT TRUE THAT THIS PROSECUTOR DISMISSED

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

246

1 NUMEROUS CHARGES THAT WERE PENDING AGAINST YOU, ISN'T THAT
2 TRUE?

3 A. NO, SIR.

4 Q. SO IT'S YOUR TESTIMONY THAT THIS PROSECUTOR NEVER
5 DISMISSED ANY CHARGES AGAINST YOU?

6 A. HE DISMISSED CHARGES.

7 Q. OKAY. SO ISN'T IT TRUE HE DISMISSED CHARGES AGAINST
8 YOU? ISN'T THAT TRUE?

9 A. YEAH, HE DISMISSED CHARGES. YES, SIR.

10 Q. AND ISN'T IT TRUE THAT HE DISMISSED THESE CHARGES ON
11 THE DAY YOU GAVE SWORN TESTIMONY IN THIS CASE? ISN'T THAT
12 TRUE?

13 A. YES, SIR.

14 Q. THE SAME DAY, ISN'T THAT TRUE?

15 A. YES, SIR.

16 Q. I WANT TO TALK ABOUT WHAT YOUR ROLE WAS IN THIS. YOU
17 SAID THAT YOU WERE STANDING NEXT TO O'SHAUN, IS THAT RIGHT?

18 A. YES, SIR.

19 Q. WHAT WAS YOUR ROLE IN THIS -- IN THIS ROBBERY? WHAT
20 WERE YOU SUPPOSED TO DO?

21 A. I BELIEVE I WAS SUPPOSED TO BEEN A WATCH-OUT.

22 Q. OKAY. SO YOU WERE JUST STANDING THERE, RIGHT?

23 A. YES, SIR.

24 Q. AND IS IT YOUR TESTIMONY THAT KEN WORKMAN WAS ALSO JUST
25 TO BE -- JUST TO STAND THERE, RIGHT?

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

247

1 A. YES, SIR.

2 Q. AND YOUR TESTIMONY IS THAT YOU NEVER HAD A GUN,

3 CORRECT?

4 A. YES, SIR.

5 Q. AND YET YOU PLED GUILTY TO ARMED ROBBERY FOR STANDING

6 THERE, IS THAT CORRECT?

7 A. YES, SIR.

8 Q. WHAT'S THAT?

9 A. YES, SIR.

10 Q. YOU TESTIFIED THAT YOU WERE -- YOU AND THE OTHERS WENT

11 THERE TO LOOK FOR GIRLS, IS THAT RIGHT?

12 A. YES, SIR, THAT'S WHAT WE WENT THERE TO LOOK FOR.

13 Q. I'M SORRY, I CAN'T ---

14 A. I SAID YES, SIR.

15 Q. --- HEAR YOU. BUT THAT ISN'T WHY YOU WENT THERE, IS

16 IT?

17 A. NO, SIR.

18 Q. YOU WENT THERE TO ROB SOMEBODY, ISN'T THAT RIGHT?

19 A. YES, SIR.

20 Q. SO WHEN YOU SAID EARLIER YOU WENT THERE LOOKING FOR

21 GIRLS THAT WAS NOT TRUE, IS THAT CORRECT?

22 A. WELL, REALLY -- NOT REALLY.

23 Q. ALL RIGHT. ISN'T IT TRUE THAT IN THE STATEMENT YOU

24 GAVE POLICE YOU SAID THAT THERE WERE TWO GUNS INVOLVED IN

25 THIS? ISN'T THAT TRUE?

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. MOORMAN

248

- 1 A. NO, SIR.
- 2 Q. THAT'S NOT TRUE?
- 3 A. NO, SIR.
- 4 Q. SO THE STATEMENT YOU GAVE TO INVESTIGATOR WEINER YOU
- 5 NEVER SAID THAT KENNETH AND O'SHAUN HAD GUNS? YOU NEVER
- 6 SAID THAT, DID YOU?
- 7 A. WHAT I MEANT BY THAT WAS, I MEAN, IT WAS ONLY ONE GUN.
- 8 Q. OKAY. SO WHEN YOU SAID THERE WERE MULTIPLE GUNS, THAT
- 9 WASN'T TRUE EITHER, RIGHT?
- 10 A. NO, SIR.
- 11 Q. AND YOUR TESTIMONY IS THAT THERE WERE FOUR PEOPLE
- 12 INVOLVED IN THIS THING ALTOGETHER, RIGHT?
- 13 A. YES, SIR.
- 14 Q. THREE AROUND THE CAR AND THEN ONE IN THE CAR THAT Y'ALL
- 15 DROVE AWAY IN, RIGHT?
- 16 A. YES, SIR.
- 17 Q. AND WHO WAS THE GUY -- WHO WAS THE GUY IN THE CAR?
- 18 A. MARCUS.
- 19 Q. MARCUS. WHAT WAS -- WHAT WAS MARCUS' LAST NAME?
- 20 A. I DON'T KNOW HIS LAST NAME, SIR.
- 21 Q. JUST MARCUS?
- 22 A. THAT'S ALL I KNEW.
- 23 Q. SO YOU NEVER DID ANYTHING DURING THIS ROBBERY BUT STAND
- 24 THERE, CORRECT?
- 25 A. YES, SIR.

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. ROBINSON

249

1 Q. NEVER HAD A GUN?

2 A. NO, SIR.

3 Q. AT THE TIME YOU GAVE THIS STATEMENT TO INVESTIGATOR
4 WEINER YOU WERE IN CUSTODY, IS THAT RIGHT?

5 A. YES, SIR.

6 Q. ISN'T IT TRUE THAT YOU WERE THE ONE WHO HAD THE GUN
7 THAT NIGHT? ISN'T IT TRUE? ISN'T THAT TRUE?

8 A. THAT I HAD THE GUN THAT NIGHT?

9 Q. YOU WERE THE ONE THAT HAD THE GUN?

10 A. NO, SIR. NO.

11 Q. ISN'T IT TRUE YOU WERE THE ONE WHO PUT THAT GUN IN MR.
12 ESPINOZA'S FACE? ISN'T THAT TRUE?

13 A. NO, SIR.

14 Q. ISN'T THAT -- ISN'T THAT WHY YOU PLED GUILTY TO ARMED
15 ROBBERY 'CAUSE YOU WERE THE ONE WITH THE GUN THAT NIGHT?

16 A. NO, SIR.

17 MR. MARCHANT: YOUR HONOR, IT'S ASKED AND ANSWERED.

18 THE COURT: HE'S ASKED AND ANSWERED IT. MOVE ON.

19 MR. MOORMAN: YOUR HONOR, I'VE GOT -- I'VE GOT NOTHING
20 FURTHER.

21 THE COURT: ALL RIGHT. MR. ROBINSON.

22 MR. ROBINSON: MAY IT PLEASE THE COURT?

23 CROSS EXAMINATION BY MR. ROBINSON:

24 Q. MR. WRIGHT, YOU TESTIFIED A MOMENT AGO THAT YOU'RE

25 DOING -- YOU'RE GIVING YOUR TESTIMONY BECAUSE YOU WANT TO

TIMOTHY WRIGHT - CROSS EXAMINATION BY MR. ROBINSON

250

1 TELL THE TRUTH, ISN'T THAT RIGHT?

2 A. YES, SIR.

3 Q. NOW YOU WOULD AGREE WITH ME THAT WHEN YOU DID YOUR --
4 YOU HAD A PRIOR ATTORNEY, MR. POSEY, IS THAT RIGHT?

5 A. YES, SIR.

6 Q. AND HE AND YOU MET WITH MR. MARCHANT, WHO'S SITTING
7 OVER HERE, IS THAT CORRECT?

8 A. WELL, I DIDN'T MEET -- I DIDN'T MEET HIM UNTIL I CAME
9 -- UNTIL I CAME -- UNTIL I CAME TO COURT.

10 Q. YOU MET MR. MARCHANT WHEN YOU CAME TO COURT?

11 A. YES, SIR.

12 Q. OKAY. AND WHILE YOU'RE SAYING THAT YOU'RE DOING THIS
13 TO TELL THE TRUTH YOU WOULD ALSO AGREE WITH ME THAT YOU HAD
14 A NUMBER -- A NUMBER OF CHARGES DISMISSED ALSO AGAINST YOU,
15 ISN'T THAT TRUE AS WELL?

16 A. YES, SIR.

17 Q. THANK YOU. I HAVE NO MORE QUESTIONS.

18 THE COURT: ANYTHING ELSE, SOLICITOR?

19 MR. MARCHANT: NOTHING FURTHER, YOUR HONOR.

20 THE COURT: THANK YOU. STEP DOWN.

21 (WHEREUPON THE TESTIMONY HAD ENDED)

22 THE COURT: OKAY, LADIES AND GENTLEMEN, PLEASE RETIRE
23 AND CONTINUE WITH YOUR DELIBERATIONS. THANK YOU.

24 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11:26 AM)

25 THE COURT: ALL RIGHT. IF YOU'LL BE AT EASE.

1 (WHEREUPON COURT WAS IN RECESS AT 11:26 AM)

2 THE COURT: THE JURY HAS QUESTIONS CONCERNING THE FACTS
3 OF THE CASE, WHICH I CANNOT ANSWER. THEY WANT TO KNOW HOW
4) MANY PHOTOS WERE ON TV? WERE THERE THREE? AND MR. ESPINOZA
5 ONLY PICKED TWO. AND I DON'T UNDERSTAND THIS LAST
6 STATEMENT, TALKED ABOUT DURING THE ACCOUNT WITH MR. ESPINOZA
7 AND SOLICITOR. THAT'S NOT A QUESTION, THAT'S JUST A
8 STATEMENT.

9 BUT ANYWAY, THAT RELATES TO THE FACTS. SO I CAN'T
10 ANSWER THOSE. ALL RIGHT. BRING THIS DELIBERATING JURY SO I
11 CAN ANSWER -- TALK ABOUT THIS QUESTION.

12 (WHEREUPON COURT'S EXHIBIT 2 WAS MARKED)

13 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 1:15 PM)

14 THE COURT: MADAME FOREMAN, YOU HAVE SENT IN SOME
15 ADDITIONAL QUESTIONS. YOU WILL RECALL DURING THE COURSE OF
16 MY CHARGE THAT I EXPLAINED TO YOU THAT YOU ARE THE JUDGES OF
17 THE FACTS IN THIS CASE AND THAT THE CONSTITUTION OF OUR
18 STATE DOES NOT ALLOW ME TO DISCUSS THE FACTS OF THE CASE
19 WITH YOU.

20 NOW THE QUESTIONS THAT YOU'VE SENT IN ARE QUESTIONS OF
21 FACT. SO I CANNOT ANSWER THESE QUESTIONS FOR YOU. YOUR
22 QUESTIONS ARE HOW MANY PHOTOS WERE ON TV? WERE THERE THREE?
23 AND MR. ESPINOZA ONLY PICKED TWO. AND I'M NOT SURE ABOUT
24 THIS LAST STATEMENT. IT'S NOT A QUESTION. TALKED ABOUT
25 DURING THE ACCOUNT WITH MR. ESPINOZA AND SOLICITOR.

ALLEN CHARGE OF THE COURT

252

1 NOW THAT OBVIOUSLY, OF COURSE, IS A FACTUAL QUESTION OR
2 ISSUE IN THE CASE. SO WHAT I HAVE TO TELL YOU, LADIES AND
3 GENTLEMEN, THAT I CAN'T ANSWER THESE QUESTIONS. I DON'T
4 KNOW IF THEY CAN BE ANSWERED. IF THEY CAN BE ANSWERED, THEN
5 THEY MUST BE ANSWERED FROM YOUR RECOLLECTION AS TO WHAT THE
6 TESTIMONY WAS DURING THE COURSE OF THE TRIAL. OKAY? ALL
7 RIGHT. WITH THAT I NEED YOU TO RETURN TO YOUR JURY ROOM AND
8 CONTINUE WITH YOUR DELIBERATIONS. THANK YOU.

9 (WHEREUPON THE JURY EXITED THE COURTROOM AT 1:17 PM)

10 THE COURT: ALL RIGHT. BE AT EASE, PLEASE.

11 (WHEREUPON COURT WAS IN RECESS AT 1:17 PM)

12 THE COURT: BE SEATED. BE SEATED. ALL RIGHT. THIS
13 JURY SAYS THEY'RE UNABLE TO REACH A VERDICT. SO I PROPOSE
14 TO GIVE THEM A LITTLE PEP TALK. ALL RIGHT. BRING THE JURY.

15 (WHEREUPON COURT'S EXHIBIT 3 WAS MARKED)

16 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:50 PM)

17 THE COURT: NOW, MADAME FOREMAN, YOU SENT IN A NOTE
18 THAT YOU'RE UNABLE TO COME TO A UNANIMOUS DECISION. IS THAT
19 CORRECT?

20 MADAME FOREMAN: THAT IS CORRECT.

21 THE COURT: I HAVE SOME REMARKS TO MAKE TO YOU AT THIS
22 TIME. AND WHEN I HAVE CONCLUDED, THEN I'LL SEND YOU BACK TO
23 YOUR JURY ROOM TO CONTINUE YOUR DELIBERATIONS.

24 LADIES AND GENTLEMEN, THE ONLY MODE OR THE ONLY METHOD
25 THAT IS PROVIDED BY OUR LAWS FOR DECIDING QUESTIONS OF FACT

ALLEN CHARGE OF THE COURT

253

1 IN A CRIMINAL CASE IS THE VERDICT OF A JURY. NOW I TELL YOU
2 THAT IN MOST ALL CASES ABSOLUTE CERTAINTY CANNOT BE OBTAINED
3 OR EVEN EXPECTED. WHEN A MATTER IS IN DISPUTE IT ISN'T
4 ALWAYS EASY FOR EVEN TWO PEOPLE TO AGREE. INDEED, THE
5 PARTIES TO THIS PROCEEDING HAVE BEEN UNABLE TO AGREE.
6 THEREFORE, WHEN TWELVE PEOPLE MUST AGREE IT BECOMES
7 CORRESPONDINGLY MORE DIFFICULT.

8 NOW I TELL YOU THAT IT IS VERY UNUSUAL FOR A JURY TO GO
9 OUT AND TO QUICKLY OR IMMEDIATELY RETURN WITH A VERDICT. AT
10 THE SAME TIME I TELL YOU THAT WE USUALLY GET A VERDICT. SO
11 WHILE IT'S NORMAL FOR JURORS TO DISAGREE AT FIRST WE
12 NEVERTHELESS GET A VERDICT AFTER THE JURY HAS LAID ASIDE ALL
13 OUTSIDE OR EXTRANEIOUS MATTERS AND HAVE DETERMINED TO TRY THE
14 CASE ON ITS MERITS AND ON THE BASIS OF THE LAW AND EVIDENCE
15 IN THE CASE.

16 NOW IT'S BEEN SAID THAT JURY SERVICE IS PERHAPS THE
17 HIGHEST SERVICE THAT A CITIZEN CAN PERFORM FOR HIS OR HER
18 COUNTRY OR STATE DURING PEACE-TIME. AND I CERTAINLY AGREE
19 WITH THAT. HOWEVER, I TELL YOU THAT A JUROR DOES NOT RENDER
20 GOOD JURY SERVICE WHO ARBITRARILY SAYS, I KNOW WHAT I WANT
21 TO DO IN THIS CASE, AND IF AND WHEN EVERYBODY AGREES WITH
22 ME, THEN WE'LL WRITE A VERDICT. AND WE WILL NOT WRITE A
23 VERDICT UNTIL THAT TIME.

24 I TELL YOU THAT IT WAS NEVER INTENDED THAT THE VERDICT
25 OF A JURY SHOULD BE THE VIEW OF ANY ONE PERSON. AT THE SAME

ALLEN CHARGE OF THE COURT

254

1 TIME I TELL YOU THAT EVERY JUROR HAS A RIGHT TO HIS OR HER
2 OWN OPINION AND HE OR SHE NEED NOT GIVE IT UP MERELY FOR THE
3 PURPOSE OF BEING IN AGREEMENT. HOWEVER, THE VERDICT OF A
4 JURY IS THE COLLECTIVE REASONING OF ALL JURORS. AND THAT,
5 OF COURSE, IS WHY WE HAVE A JURY.

6 I TELL YOU THAT IT IS THE DUTY OF EACH OF YOU TO TELL
7 THE OTHERS HOW YOU FEEL AND WHY YOU FEEL THAT WAY. HOWEVER,
8 I ALSO TELL YOU THAT IF MUCH THE LARGER NUMBER OF YOUR PANEL
9 ARE IN FAVOR OF ONE PARTICULAR VERDICT, THEN A DECENTING
10 JUROR OR JURORS SHOULD CONSIDER WHETHER OR NOT HIS OR HER OR
11 THEIR POSITIONS IS A REASONABLE ONE WHICH MAKES NO
12 IMPRESSION UPON THE MINDS OF THE MAJORITY.

13 IN OTHER WORDS, IF A MAJORITY OF YOU ARE FOR ONE
14 PARTICULAR FORM OF VERDICT, THE MINORITY OUGHT TO SERIOUSLY
15 ASK THEMSELVES WHETHER THEY CAN REASONABLY DOUBT THE
16 CORRECTNESS OF THE JUDGMENT OF THE MAJORITY.

17 NOW ALTHOUGH THE VERDICT TO WHICH A JUROR AGREES MUST,
18 OF COURSE, BE HIS OR HER OWN VERDICT, THE RESULT OF HIS OR
19 HER OWN CONVICTIONS AND NOT A MERE ACQUIESCENCE IN THE
20 CONCLUSION OF HIS OR HER FELLOW JURORS, YET IN ORDER TO
21 BRING TWELVE MINDS TO A UNANIMOUS DECISION AS YOU ARE
22 REQUIRED TO DO YOU MUST EXAMINE THE QUESTIONS SUBMITTED TO
23 YOU WITH CANDOR AND WITH A PROPER REGARD TO AND RESPECT FOR
24 THE OPINIONS OF EACH OTHER.

25 YOU SHOULD ALSO CONSIDER THAT YOU WERE SELECTED IN THE

ALLEN CHARGE OF THE COURT

255

1 SAME MANNER AND FROM THE SAME SOURCE FROM WHICH ANY FUTURE
2 JURY MIGHT BE SELECTED. AND THERE'S CERTAINLY NO REASON FOR
3 ME TO SUPPOSE THAT THIS CASE WOULD BE SUBMITTED TO TWELVE
4 PEOPLE MORE INTELLIGENT, IMPARTIAL AND COMPETENT THAN YOU
5 TWELVE ARE OR THAT MORE OR CLEARER EVIDENCE WILL BE PRODUCED
6 ON ONE SIDE OR THE OTHER.

7 IN OTHER WORDS, LADIES AND GENTLEMEN, I TELL YOU THAT A
8 MISTRIAL IN A CASE IS AN UNFORTUNATE THING. IF YOU CANNOT
9 AGREE ON A VERDICT IN THIS CASE IT DOESN'T MEAN ANYBODY
10 WINS. IT JUST MEANS POSSIBLY THAT AT SOME FUTURE TIME I
11 WILL OR ONE OF THE OTHER JUDGES WILL TRY THIS CASE WITH A
12 JURY SEATED WHERE YOU ARE. THE SAME PARTICIPANTS WILL COME.
13 AND THE SAME LAWYERS WILL ASK BASICALLY THE SAME QUESTIONS
14 AND I SUPPOSE PROBABLY GET BASICALLY THE SAME ANSWERS. AND
15 WE'LL JUST GO THROUGH THE WHOLE PROCESS AGAIN.

16 IN CONCLUSION, LADIES AND GENTLEMEN, I TELL YOU THAT IF
17 THE STATE IS ENTITLED TO GUILTY VERDICTS IN THIS CASE, IT IS
18 ENTITLED TO THOSE VERDICTS TODAY. NOT TOMORROW, NEXT WEEK,
19 NEXT MONTH, OR NEXT YEAR, BUT TODAY. ON THE OTHER HAND I
20 TELL YOU THAT IF THE DEFENDANTS ARE ENTITLED TO VERDICTS OF
21 NOT GUILTY IN THIS CASE, THEY ARE ENTITLED TO THOSE VERDICTS
22 TODAY, NOT NEXT WEEK, NEXT MONTH, NEXT YEAR, BUT TODAY.

23 THEREFORE, LADIES AND GENTLEMEN, I CANNOT ACCEPT ANY
24 REPORT AT THIS TIME THAT YOU CANNOT AGREE ON A UNANIMOUS
25 VERDICT IN THIS CASE. I AM OF THE OPINION THAT YOU HAVE NOT

VERDICT OF THE JURY

256

1 DELIBERATED SUFFICIENTLY LONG THAT I COULD IN GOOD
2 CONSCIENCE ACCEPT THAT REPORT. AND I TELL YOU FRANKLY IT
3 WILL TAKE CONSIDERABLY MORE TIME BEFORE I AM CONVINCED THAT
4 YOU CANNOT REACH A VERDICT.

5 I, THEREFORE, HUMBLY BESEECH YOU TO RETURN TO YOUR JURY
6 ROOM, CONTINUE YOUR DELIBERATIONS WITH THE HOPE THAT YOU CAN
7 ARRIVE AT A UNANIMOUS VERDICT WITHIN A REASONABLE TIME.
8 THANK YOU. PLEASE RETIRE AND CONTINUE WITH YOUR
9 DELIBERATIONS.

10 (WHEREUPON THE JURY EXITED THE COURTROOM AT 2:58 PM)

11 THE COURT: ALL RIGHT. THANK YOU. FOLKS, PLEASE BE AT
12 EASE.

13 (WHEREUPON COURT WAS IN RECESS AT 2:59 PM)

14 THE COURT: LADIES AND GENTLEMEN, I'VE BEEN TOLD THAT
15 WE HAVE A VERDICT IN THIS CASE. OF COURSE, WE DON'T KNOW
16 WHAT THAT VERDICT IS, BUT REGARDLESS OF THE VERDICT,
17 WHATEVER IT IS, I WILL NOT PERMIT OR CONDONE ANY DISPLAYS OF
18 EMOTION WHATSOEVER. NO CRYING, NO CLAPPING, NO LAUGHING,
19 NOTHING OF THAT NATURE.

20 AND SHOULD THERE BE ANY, THAT WILL CONSTITUTE CONTEMPT
21 OF COURT. AND I WILL PUNISH ACCORDINGLY. NOW DOES ANYONE
22 IN THE COURTROOM -- WHO DOES NOT UNDERSTAND WHAT I JUST
23 SAID?

24 (NO RESPONSE)

25 THE COURT: ALL RIGHT. BRING THE JURY, PLEASE.

VERDICT OF THE JURY

257

1 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 4:47 PM)

2 THE COURT: MADAME FOREMAN, IF YOU'VE REACHED A VERDICT
3 WOULD YOU HAND IT TO THE BAILIFF, PLEASE, MA'AM? ALL RIGHT.
4 PUBLISH THE VERDICTS, PLEASE.

5 MADAME CLERK: YOUR HONOR, IN CASE 2008-GS-23-5383, THE
6 STATE VERSUS O'SHAUN JOSEPH ROBINSON, INDICTED FOR
7 CONSPIRACY, THE VERDICT IS GUILTY.

8 IN THE CASE OF 2008-GS-23-5382, THE STATE VERSUS
9 O'SHAUN JOSEPH ROBINSON, COUNT ONE, INDICTED FOR ARMED
10 ROBBERY, THE VERDICT IS GUILTY. COUNT TWO, POSSESSION OF A
11 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, VERDICT IS
12 GUILTY.

13 IN THE CASE OF 2008-GS-23-5384, THE STATE VERSUS
14 O'SHAUN JOSEPH ROBINSON, INDICTED FOR ASSAULT AND BATTERY OF
15 A HIGH AND AGGRAVATED NATURE, THE VERDICT IS ---

16 THE COURT: THAT'S SIMPLE ASSAULT AND BATTERY.

17 MADAME CLERK: THANK YOU VERY MUCH. IT IS SIMPLE
18 ASSAULT AND BATTERY. AND THE VERDICT IS GUILTY. ALL RIGHT.

19 IN THE CASE OF 2008-GS-23-5529, THE STATE VERSUS
20 KENNETH WORKMAN, HE IS INDICTED FOR CONSPIRACY, THE VERDICT
21 IS GUILTY.

22 IN THE CASE OF 2008-GS-23-5530, THE STATE VERSUS
23 KENNETH WORKMAN, COUNT ONE, HE'S INDICTED FOR ARMED ROBBERY,
24 THE VERDICT IS GUILTY. COUNT TWO, POSSESSION OF A WEAPON
25 DURING THE COMMISSION OF A VIOLENT CRIME, THE VERDICT IS

VERDICT OF THE JURY

258

1 GUILTY.

2 IN 2008-GS-23-5528, THE STATE VERSUS KENNETH WORKMAN,
3 INDICTED FOR ASSAULT AND BATTERY, THE VERDICT IS GUILTY.

4 THESE ARE ALL SIGNED BY JEWEL BUNCHE, OUR FOREPERSON.
5 LADIES AND GENTLEMEN OF THE JURY, IF YOU AGREE THESE ARE ALL
6 THE VERDICTS YOU REACHED IN YOUR DELIBERATION ROOM, WOULD
7 YOU PLEASE RAISE YOUR RIGHT HAND?

8 (WHEREUPON ALL OF THE JURORS RAISED THEIR RIGHT HAND)

9 MADAME CLERK: THANK YOU.

10 THE COURT: ANYTHING FURTHER FROM THE JURY?

11 MR. MARCHANT: NOTHING FROM THE STATE, YOUR HONOR.

12 THE COURT: MR. MOORMAN?

13 MR. MOORMAN: NOTHING FROM MR. ROBINSON.

14 THE COURT: MR. ROBINSON?

15 MR. ROBINSON: NOTHING FROM MR. WORKMAN, YOUR HONOR.

16 THE COURT: THANK YOU, LADIES AND GENTLEMEN, FOR YOUR
17 SERVICE ON THIS CASE. AND INSOFAR AS YOU'RE CONCERNED,
18 THANK YOU FOR YOUR SERVICE THIS WEEK. YOU DON'T HAVE TO
19 COME BACK TOMORROW.

20 SO I WANT TO TAKE THIS OPPORTUNITY TO THANK YOU FOR
21 COMING AND SERVING. I WANT YOU TO KNOW THAT WE ARE WELL
22 AWARE OF THE FACT THAT JURY SERVICE IS A BURDEN TO YOU. WE
23 KNOW THAT IT'S DIFFICULT FOR YOU TO TAKE TIME OFF FROM YOUR
24 JOBS AND FAMILIES AND SPEND IT WITH US ON JURY DUTY.

25 BUT I DO HOPE YOU UNDERSTAND THE IMPORTANCE OF BEING

1 HERE THIS WEEK. FOR WITHOUT YOUR PRESENCE WE SIMPLY COULD
2 NOT GET OFF FROM OUR DOCKET THE CASES THAT WE DO. IT IS A
3 VERY IMPORTANT SERVICE THAT YOU HAVE PERFORMED THIS WEEK.
4 AND I THANK YOU VERY MUCH FOR THAT SERVICE.

5 AND IF YOU'LL REPORT DOWNSTAIRS TO THE JURY ASSEMBLY
6 ROOM JUDY WILL HAVE A VOUCHER FOR YOUR SERVICE THIS WEEK.
7 AND ATTACHED TO THAT VOUCHER WILL BE A SLIP FOR YOU TO GIVE
8 TO YOUR EMPLOYER SHOULD YOU NEED THAT. NOW DO I HAVE ANY
9 MEMBER OF THE PANEL WHO HAS ANY QUESTION THAT I CAN TRY TO
10 ANSWRE FOR YOU BEFORE LETTING YOU GO?

11 (NO RESPONSE)

12 THE COURT: WELL, I'VE ENJOYED WORKING WITH YOU, LADIES
13 AND GENTLEMEN. THANK YOU SO MUCH. YOU ARE FREE TO GO.

14 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4:51 PM)

15 THE COURT: ALL RIGHT. ANY MOTIONS, GENTLEMEN?

16 MR. MOORMAN: YOUR HONOR, I WOULD -- I WOULD MAKE A
17 MOTION FOR A NEW TRIAL BASED ON -- BASED ON -- IN LARGE PART
18 ON THE ARGUMENTS I MADE BEFORE THE DIRECTED VERDICT STAGE
19 BECAUSE OF THE INCONSISTENCY IN THE TESTIMONY AND BECAUSE OF
20 THE FACT THAT -- THERE JUST WAS NOT -- THERE WAS
21 INSUFFICIENT EVIDENCE FOR THE VERDICT.

22 THE COURT: AND YOUR MOTION IS DENIED. MR. ROBINSON.

23 MR. ROBINSON: MAY IT PLEASE THE COURT? YOUR HONOR, AT
24 THIS POINT WE HAVE NO MOTIONS AT THIS TIME.

25 THE COURT: ALL RIGHT.

SENTENCE OF THE COURT

260

1 MR. MARCHANT: YOUR HONOR, COULD I JUST HAVE ONE MOMENT
2 WITH DEFENSE COUNSELS?

3 THE COURT: EXCUSE ME?

4 MR. MARCHANT: COULD I JUST HAVE A MOMENT WITH DEFENSE
5 COUNSELS?

6 THE COURT: SURE.

7 (PAUSE)

8 THE COURT: ALL RIGHT. DO YOU HAVE THE SENTENCING
9 SHEETS, SOLICITOR? AND DO YOU HAVE THE ASSAULT AND BATTERY
10 ONE CORRECT TO SHOW THE CORRECT ---

11 MR. MARCHANT: SIMPLE ASSAULT, YES, SIR.

12 THE COURT: OKAY.

13 MR. MARCHANT: COULD THEY HAVE A MOMENT TO CONFER WITH
14 THEIR CLIENTS?

15 THE COURT: SURE.

16 MR. MARCHANT: THANK YOU.

17 THE COURT: I'LL BE RIGHT BACK.

18 (WHEREUPON COURT WAS IN RECESS AT 4:53 PM)

19 THE COURT: HAVE A SEAT. NOW, MR. ROBINSON, MR.
20 WORKMAN, YOU EXERCISED YOUR CONSTITUTIONAL RIGHTS NOT TO
21 TAKE THE STAND AND TESTIFY IN YOUR DEFENSE. THAT IS YOUR
22 CONSTITUTIONAL RIGHT. BUT YOU HAVE A RIGHT AT THIS TIME TO
23 ADDRESS THE COURT CONCERNING SENTENCE. IS THERE ANYTHING
24 THAT YOU'D LIKE TO SAY NOW BEFORE I -- BEFORE I SENTENCE
25 YOU? MR. ROBINSON?

SENTENCE OF THE COURT

261

1 MR. ROBINSON: I'M ALREADY¹ DOING A SENTENCE, ---

2 THE COURT: SIR?

3 MR. ROBINSON: --- NINE YEARS AND SIX MONTHS FOR A
4 PROBATION VIOLATION.

5 THE COURT: SIR?

6 MR. ROBINSON: I'M ALREADY SERVING NINE YEARS AND SIX
7 MONTHS FOR A VIOLATION PROBATION.

8 THE COURT: ALL RIGHT. ANYTHING ELSE YOU WANT TO SAY?

9 MR. ROBINSON: (NEGATIVE NOD).

10 THE COURT: ALL RIGHT. MR. WORKMAN, ANYTHING THAT
11 YOU'D ...

12 MR. WORKMAN: YEAH, I'M SORRY FOR EVERYTHING.

13 THE COURT: ALL RIGHT. OKAY. MR. MOORMAN.

14 MR. MOORMAN: YES, SIR. YOUR HONOR, MAY IT PLEASE THE
15 COURT? YOUR HONOR, THE -- LIKE HE SAID, HE WAS BEFORE YOUR
16 HONOR IN APRIL AND YOUR HONOR SENTENCED HIM TO NINE AND A
17 HALF YEARS ON A PROBATION VIOLATION WHERE I BELIEVE IT'S ON
18 THAT -- OF A HIGH AND AGGRAVATED NATURE.

19 AT THE TIME I MADE A COMMENT THAT THIS WAS BY FAR THE
20 LONGEST SENTENCE HE'D EVER RECEIVED. WHATEVER SENTENCE YOUR
21 HONOR GIVES HIM WILL BE LONGER THAN EVEN THAT SENTENCE.

22 YOUR HONOR, I JUST ASK THAT YOU -- THAT YOU TAKE INTO
23 ACCOUNT THE FACT THAT HE IS AS YOUNG AS HE IS, THE FACT THAT
24 HE DOES HAVE HIS -- HIS WHOLE LIFE AHEAD OF HIM AND THE FACT
25 THAT -- I THINK IN A LOT OF CASES WHEN YOU HAVE A -- WHEN

SENTENCE OF THE COURT

262

1 YOU GO TO TRIAL AND A VERDICT COMES BACK VERY QUICKLY AND
2 IT'S A CLEAR CUT CASE, THEN I THINK -- I THINK OFTENTIMES A
3 DEFENDANT GETS A SENTENCE BECAUSE HE -- HE DECIDED TO GO TO
4 TRIAL WHEN MAYBE HE SHOULDN'T HAVE. THIS WAS A CLOSE CASE.
5 HE WAS FOUND GUILTY. AND I'D JUST ASK YOUR HONOR TO SHOW
6 MERCY ON HIM.

7 THE COURT: MR. ROBINSON.

8 MR. ROBINSON: THE ONLY THING WE'D LIKE TO ADD IS THAT
9 HE IS PRETTY -- HE'S A PRETTY YOUNG MAN. HE UNDERSTANDS
10 THAT HE GOT CONNECTED WITH THE WRONG PEOPLE AND SO FORTH IN
11 THE CASE. BUT HE -- HE'S VERY SORRY FOR GETTING IN THIS
12 POSITION. HE'S GOT HIS DAD HERE TODAY WITH HIM AND FRIENDS
13 AND SO FORTH.

14 HE'S GOT NO PRIOR RECORD TO SPEAK OF, I DON'T BELIEVE,
15 NOT THAT I KNOW OF. AND WE'D ASK THE COURT FOR LENIENCY IN
16 THIS CASE. HE DID EXERCISE HIS RIGHT TO A TRIAL AND SO
17 FORTH. BUT WE'D ASK THE COURT FOR LENIENCY IF THE COURT
18 DOES SEE FIT.

19 THE COURT: SOLICITOR.

20 MR. MARCHANT: THANK YOU, YOUR HONOR. I BELIEVE, IF
21 I'M NOT MISTAKEN, MR. ROBINSON WAS CONVICTED OF A DRUG
22 CHARGE, NOT ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED.

23 MR. MOORMAN: AND I MAY HAVE BEEN -- I THOUGHT IT WAS,
24 BUT I COULD BE WRONG. I APOLOGIZE.

25 MR. MARCHANT: NEVERTHELESS, THAT IS MR. ROBINSON'S

SENTENCE OF THE COURT

263

1 ONLY CONVICTION. MR. SCOTT ROBINSON IS CORRECT. MR.
2 WORKMAN HAS NO PRIOR CONVICTIONS.

3 YOUR HONOR, I'D LIKE FOR YOU TO CONSIDER MR. WRIGHT.
4 HE CAME IN HERE AND HE PLED GUILTY TO THIS OFFENSE AS WELL
5 AS A SUBSEQUENT OFFENSE. DON'T WANT TO GET INTO THE DETAILS
6 OF THE SUBSEQUENT OFFENSE, BUT ESSENTIALLY THE SAME
7 SCENARIO.

8 AT THAT PLEA I RECOMMENDED A YEAR -- A SENTENCE OF
9 TWENTY YEARS. THESE GENTLEMEN DID EXERCISE THEIR RIGHT TO
10 TRIAL. THAT IS CERTAINLY THEIR CONSTITUTIONAL RIGHT, BUT IF
11 YOU'D JUST TAKE THAT INTO CONSIDERATION.

12 BOTH OF THEM HAVE BEEN INCARCERATED, UNABLE TO MAKE
13 BOND SINCE DECEMBER THE 28TH OF 2007. I'D CERTAINLY ASK THE
14 COURT TO GIVE THEM THE CREDIT FOR THE TIME THAT THEY'VE
15 SERVED SINCE THAT TIME. AND I'D ASK HIS HONOR TO SENTENCE
16 THEM ACCORDINGLY.

17 (PAUSE)

18 THE COURT: ALL RIGHT. MR. ROBINSON, MR. WORKMAN, ON
19 THE INDICTMENTS FOR ARMED ROBBERY THE SENTENCE OF THE COURT
20 IS YOU BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A
21 PERIOD OF TWENTY-FIVE YEARS. YOU ARE CREDITED WITH YOUR
22 TIME SINCE DECEMBER 28TH OF 2007.

23 ON THE INDICTMENTS FOR POSSESSION OF A WEAPON DURING
24 THE COMMISSION OF A VIOLENT CRIME, FIVE YEARS, CONCURRENT.
25 ON THE INDICTMENTS FOR CONSPIRACY, FIVE YEARS, CONCURRENT.

SENTENCE OF THE COURT

264

1 AND ON THE INDICTMENTS FOR ASSAULT AND BATTERY, THIRTY DAYS,
2 CONCURRENT. ALL RIGHT.

3 THE OFFICER: STEP THIS WAY, PLEASE.

4 THE COURT: ALL RIGHT. SEE YOU BACK AT 9:00 IN THE
5 MORNING.

6 (WHEREUPON COURT WAS IN RECESS AT 5:06 PM)

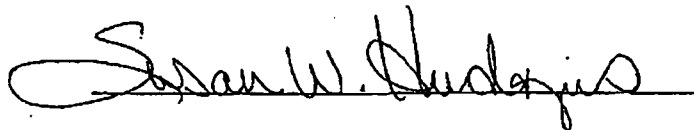
7 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT
3 REPORTER FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 14TH -
9 15TH DAY OF JANUARY 2009.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
11 NOR INTEREST TO ANY PARTY HERETO.

12 APRIL 8, 2009

13 
14

15 CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

OSHAUN J. ROBINSON,

APPELLANT

FINAL BRIEF OF APPELLANT

ROBERT M. PACHAK

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred and denied appellant his right of confrontation by limiting him in his cross-examination of a co-defendant testifying for the State over what sentence he received?

STATEMENT OF THE CASE

Appellant along with a co-defendant, were both convicted of armed robbery, possession of a weapon, conspiracy, and assault and battery after a jury trial held before the Honorable C. Victor Pyle, Jr. and a jury on January 14-15, 2009, in Greenville County. Respective sentences of twenty-five (25) years, five (5) years, five (5) years, and thirty (30) days were imposed.

This appeal follows.

ARGUMENT

The trial court erred and denied appellant his right of confrontation by limiting him in his cross-examination of a co-defendant testifying for the State over what sentence he received.

The victim, Sergio Espinoza, was robbed by two men outside his apartment around 2:00 AM on December 10, 2007. His cell phone, wallet, and identification cards were taken. Three people were charged for armed robbery, possession of a weapon, conspiracy, and assault and battery. There was appellant, Kenneth Workman and Timothy Wright. Wright would testify for the State. Espinoza did not know who his attackers were. A week or two later he was watching the news and saw two people who he thought he recognized as the people who robbed him. He called the police. (ROA p. 73, line 21 – p. 95, line 8). The two people the victim identified as robbing him were appellant and Kenneth Workman. He did not see a third person that evening. (ROA p. 89, lines 14-15). Contrary to the victim's testimony, Timothy Wright testified that he was also at the scene with appellant and Workman. (ROA p. 128, lines 1-19).

Prior to the start of the trial, the solicitor sought to exclude any questioning by the defense of the sentence Timothy Wright received. He said it would be improper for the jury to consider that. (ROA p. 36, lines 8-15). Defense counsel said it was highly probative for the jury to know what the negotiations were between the State and Mr. Wright. To his knowledge there was a recommendation of twenty (20) years with other charges being dismissed. The trial court ruled that it would allow defense counsel to cross-examine Wright about negotiations, but not what the recommendation or sentence was. (ROA p. 37, lines 1-19).

When Timothy Wright took the stand the solicitor got out from his witness that he had pled guilty to two offenses and had been sentenced. (Tr. p. 121, line 7 – p. 122, line 4). He explained that he was testifying because what he had done was wrong. (Tr. p. 133, lines 12-20).

On cross-examination defense counsel was able to get out that the solicitor dismissed charges against Wright on the day he testified in the previous trial. (Tr. p. 135, lines 10-17). After he finished his cross-examination, defense counsel again asked to ask Wright about the fact that the solicitor made a twenty (20) year deal with him.¹ The trial judge again declined (Tr. p. 140, line 22 – p. 141, line 10). That ruling was in error.

The Confrontation Clause of the Sixth Amendment does not allow limitations on a defendant's right to cross-examine an adverse witness over his plea agreement with the State. Such limitations are reversible error. State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991); State v. Mizzell, 349 S. C. 326, 563 S.E.2d 315 (2002).

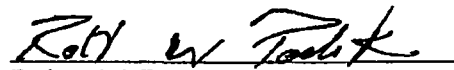
The error in this case was prejudicial. Identification was a key issue in the case and Wright's testimony was crucial to the State. There was no weapon recovered from the robbery or fruits of the crime. There were no fingerprints and there was no DNA. Credibility was a key issue and defense counsel should have been allowed to confront Wright over his motivation for testifying and his credibility as a witness.

¹ Later, defense counsel noted that in the first trial Wright testified that part of the reason he received a twenty (20) year sentence was based on a recommendation made by the solicitor. In this trial he testified there were no promises. Hence, defense counsel should be allowed to impeach Wright with a prior inconsistent statement. The trial court would not allow it. (Tr. p. 142, line 24 – p. 139, line 17).

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robt M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

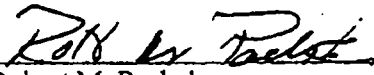
ATTORNEY FOR APPELLANT.

This 24th day of January, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 24th, 2011


Robert M. Pachak
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

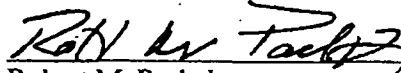
V.

OSHAUN J. ROBINSON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R. J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; this 24th day of January, 2011.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 24th day of January, 2011.



(L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
The Honorable C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

OSHAUN J. ROBINSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court did not abuse its discretion in limiting the cross-examination of a co-defendant witness about the actual sentence imposed after his guilty plea; however, if any error occurred, it was harmless beyond a reasonable doubt.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On December 10, 2007, three men, subsequently identified as Appellant Oshaun J. Robinson ("Robinson"), Timothy Wright ("Wright"), and Kenneth Workman ("Workman") robbed Sergio Espinoza ("Espinoza") at gunpoint outside his apartment. (2009 Trial Transcript [2009 TT], pp. 72-93, 119-129; Record on Appeal [R.], pp. 76-97, 123-133). On December 27, 2007, while in custody for a separate offense, Wright implicated himself, Robinson, and Workman in the Espinoza robbery. (2009 TT, pp. 141-152, R. pp. 145-156).

The case was called for a jury trial in December 2008. Prior to trial, Wright pled guilty to the charges related to the Espinoza robbery and was sentenced to twenty years incarceration. He also pled guilty to charges stemming from a subsequent incident. (2008 Trial Transcript [2008 TT], pp. 23-26; R., pp. 2-5).

Wright then testified for the State about the facts of the robbery, his guilty plea and sentence, and his motive for testifying. On direct examination, he stated he pled guilty and received a twenty year sentence, he had no other charges pending against him, no one promised him anything prior to his guilty plea, and no one promised him a sentence reduction in exchange for his testimony. Wright further stated he was testifying against Robinson and Workman because "[a]ll three of us was together" when the crime occurred. (2008 TT, pp. 67-83; R., pp. 6-22).

On cross-examination, Wright testified when he came to court to plead guilty, he learned the other charges against him had been dismissed the previous day, the solicitor recommended his twenty year sentence, and he talked to the solicitor that day about testifying

against his co-defendants. On redirect, Wright stated he did not meet with the solicitor prior to the day he pled guilty. (2008 TT, pp. 83-90; R., pp. 22-29).

The first trial ended in a mistrial, and the case was called for trial again on January 14, 2009, before the Honorable Victor C. Pyle, Circuit Court Judge. Prior to trial, Robinson moved to have the State reveal any deals made with Wright, and the solicitor indicated all remaining charges against Wright were dismissed prior to his testimony in the first trial, and no other charges were pending against him. (2009 TT, pp. 9-10; R., pp. 34-35).

The State then moved to exclude any questions about the actual sentence imposed on Wright because such questions would inform the jury of the potential sentences for the co-defendants on trial, and could improperly affect their decision on guilt or innocence. The State asserted questioning Wright about the sentence he received was improper because he had already been sentenced.

Robinson argued he should be allowed to question Wright about the solicitor's recommendation of a twenty year sentence, as well as the dismissal of other charges against him. The circuit court ruled Robinson could cross-examine Wright "that there were negotiations, but not what the recommendation or sentence was." (2009 TT, pp. 23-24; R., pp. 36-37).

Espinoza testified he parked his red Jeep Cherokee in front of his apartment in the early morning hours of December 10, 2007. As he got out of the jeep, a black male wearing a red hoodie approached him, pointed a gun at his face, demanded everything Espinoza had, and took Espinoza's cell phone and wallet containing, among other things, about \$400 cash. Espinoza stated the man took his hoodie down while pointing the gun at him, and the gun

was either a .38 or .357 caliber revolver, with a chrome or silver finish. (2009 TT, pp. 68-80; R., pp. 72-84).

Espinoza testified a second robber, also a black male, was standing at the rear of the jeep. At some point the first robber handed the gun to the second robber, and punched Espinoza in the face. The robbers ran to a waiting car, which Espinoza described as an "80s model, boxed car," similar to a Crown Victoria or Cadillac.

Espinoza got in his jeep and followed the car. He had his headlights off initially, but turned them on when he got close enough to see the license tag. After he turned his lights on, someone in the robbers' car fired a shot at his jeep from one of the driver's side windows. Espinoza gave up pursuit, returned to his apartment and called the police. (2009 TT, pp. 80-89; R., pp. 84-93).

A week or two after the robbery, Espinoza recognized Robinson and Workman in a picture displayed on a television news broadcast, and advised the police they were the men who robbed him. In court, Espinoza positively identified Workman as the man who approached him with the gun, and Robinson as the man who stood at the rear of the jeep. (2009 TT, pp. 89-93; R., pp. 93-97).

Wright testified on direct examination he pled guilty to and was sentenced for charges arising from the Espinoza robbery, as well as another charge on a separate incident. He stated neither the investigators nor the solicitor promised him anything in exchange for his cooperation, and the first time he met with or talked to the solicitor was the day he pled guilty. He further stated he was testifying because what he, Robinson and Workman did was wrong, and he knew his testimony would not decrease the sentence he already received.

(2009 TT, pp. 117-119, 129; R., pp. 121-123, 133).

Wright also testified that the night of the incident, he, Robinson, Workman, and a fourth person named Marcus, went to Espinoza's apartment complex to see if they could meet some girls. Marcus drove them to the complex in a black Lincoln, and when they saw Espinoza pass in his red jeep, he, Robinson, and Workman decided to rob him. Wright stated Robinson had a silver gun with a brown handle, which he thought was was a ".57 magnum."

Workman went to the passenger's side of the jeep, Robinson went to the driver's side, and Wright stood beside Robinson. Robinson pulled out the gun, told Espinoza to "give it up," took Espinoza's wallet and punched him. They then ran back to the car and drove away. When they saw Espinoza following them, Robinson held the gun out the window and fired one shot at Espinoza's vehicle. Wright positively identified Espinoza in court as the person they robbed that night. (2009 TT, pp. 112-129; R., pp. 116-133).

Robinson requested a bench conference after the State completed Wright's direct examination.¹ He argued the State's questions to Wright about whether promises were made in exchange for his testimony and his motivation for testifying "enlarged the scope of relevance to allow [him] to ask about the fact that the solicitor had made a twenty year recommendation" as a result of Wright's guilty plea and cooperation. The circuit court again ruled Robinson could ask about the negotiations and dismissal of the charges, but not about any specific sentence recommendation or the actual sentence imposed. (2009 TT, pp. 129-

¹Robinson summarily recounted the substance of the bench conference on the record immediately after the termination of his cross-examination. (TT., pp. 136-137; R., pp. 140-141).

130, 136-137; R., pp. 133-134, 140-141).

On cross-examination, Robinson asked Wright if he was actually testifying in exchange for the charges dismissed against him, and Wright responded he was not, maintaining he was testifying because what they did was wrong. As permitted by the court, Robinson questioned Wright about the solicitor's dismissal of charges against him the day he testified in the prior trial. (2009 TT, pp. 130-131; R., pp. 134-135).

When Robinson asked about Wright's role in the robbery, Wright stated he was a lookout and never had a gun. Robinson then asked "[a]nd yet you pled guilty to armed robbery for standing there, is that correct," to which Wright responded, "[y]es, sir." Robinson also elicited testimony about Wright being in custody when he first implicated Robinson, Workman, and himself in the crime, and implied Wright pled guilty to armed robbery because he was one who actually had the gun that night and held it to Espinoza's face, which Wright denied. (2009 TT, pp. 131-135; R., pp. 135-139).

After Wright's cross-examination, Robinson again asked to question Wright about his sentence and the solicitor's recommendation, asserting Wright's testimony in the first trial was a prior inconsistent statement. He argued Wright testified in the first trial he received a twenty year sentence because the solicitor recommended it, but in this trial stated he was testifying only because what they did was wrong.² The circuit court denied the request. (2009 TT, pp. 138-139; R., pp. 142-143).

Robinson vigorously attacked Wright's credibility in closing argument, asserting there were purported inconsistencies between Espinoza's and Wright's testimony regarding

²As stated in Respondent's Motion to Strike, Robinson did not proffer any portion of the first trial transcript in support of this contention.

the details of the robbery. He further argued Wright fabricated his testimony to minimize his own involvement, noting Wright was in custody when he gave his statement to police. Workman's counsel argued Wright "has no credibility" and "is not believable because he has self-interest." (2009 TT, pp. 189-199; R., pp. 182-192).

The jury convicted Robinson on all charges, and the circuit court sentenced him to twenty-five years incarceration on the armed robbery conviction, with concurrent sentences of five years each on the possession of a weapon and conspiracy convictions, and thirty days on the assault and battery conviction. (2009 TT, pp. 257, 263; R., pp. 197, 198). This appeal followed.

ARGUMENT

The circuit court did not abuse its discretion in limiting the cross-examination of a co-defendant witness about the actual sentence imposed after his guilty plea; however, if any error occurred, it was harmless beyond a reasonable doubt.

Robinson contends the circuit court erred in limiting his cross-examination of Wright regarding the sentence imposed after he pled guilty to the charges arising from the Espinoza robbery, arguing the limitation improperly infringed on his right to confront the witnesses against him and impeach Wright's credibility. To the contrary, it is clear from the record Wright's testimony was not a condition of his plea or sentence, and providing the jury with information about the sentence he actually received was more prejudicial than probative. If the circuit court erred in the specific limitation at issue, however, any error was harmless beyond any reasonable doubt.

A. Exclusion of Testimony

The Sixth Amendment's Confrontation Clause grants defendants the right to cross-examine adverse witnesses. *See State v. Graham*, 314 S.C. 383, 444 S.E.2d 525, 527 (1994) ("Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses"). The right to cross-examine specifically includes the right to cross-examine a witness concerning bias. *State v. Brown*, 303 S.C. 169, 399 S.E.2d 593, 594 (1991). Further, "[c]onsiderable latitude is allowed in the cross-examination of an adverse witness for the purpose of testing bias." *Id.*

The right to cross-examine concerning bias is not without limitation, however, and the trial court may impose reasonable limits on its scope. *See State v. Mizzell*, 349 S.C. 326, 563 S.E.2d 315, 317 (2002) ("The trial judge retains discretion to impose reasonable limits

on the scope of cross-examination”). Emphasizing this point, the Supreme Court of the United States stated:

It does not follow, of course, that the Confrontation Clause of the Sixth Amendment prevents a trial judge from imposing any limits on defense counsel’s inquiry into the potential bias of a prosecution witness. On the contrary, trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.

Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986). The Court further observed: “the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” *Id.* (quoting Delaware v. Fensterer, 474 U.S. 15, 20 [1985]) (emphasis in original).

To establish a Confrontation Clause violation, the defendant must show the trial court’s limitation prohibited “*otherwise appropriate* cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby ‘to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of witnesses.’” Graham, 444 S.E.2d at 527 (quoting Van Arsdall, 475 U.S. at 680) (emphasis in original). Evidence having “a legitimate tendency to throw light on the accuracy, truthfulness, or sincerity” of the witness’ testimony should be admitted. State v. Sims, 348 S.C. 16, 558 S.E.2d 518, 523 (2002). “Included in the Confrontation Clause protection is the right to cross-examine any State’s witness as to possible sentences faced when there exists ‘a substantial possibility [the witness] would give biased testimony in an effort to have the solicitor highlight to [a] future [court]’ how the witness cooperated in the instant case.”

State v. Gillian, 360 S.C. 433, 602 S.E.2d 62, 73 (Ct. App. 2004)), *aff'd on other grounds*, 373 S.C. 601, 646 S.E.2d 872 (2007) (citing Sims, 558 S.E.2d at 523) (emphasis added).

In this case, the evidence Robinson sought to elicit from Wright on cross-examination was not probative of Wright's credibility because his actual sentence and the solicitor's recommendation were not part of a negotiated plea agreement. Wright testified he received no promises of leniency in exchange for his testimony, he knew his testimony would not affect his sentence, and stated he was testifying because what he, Robinson and Workman did was wrong. (2009 TT, pp. 117-119, 129; R., pp. 121-123, 133). In addition to Wright's acknowledgment his testimony would not impact the sentence already imposed, he had no charges or sentences pending at the time of the second trial, thus removing any chance he would give biased testimony to receive future leniency. (2009 TT, 9-10; R., pp. 34-35).

Further, evidence about the substance of the solicitor's sentencing recommendation, if any, and the actual sentence Wright received for the armed robbery guilty plea, would have informed the jury of the potential sentence Robinson faced for the same charge, which was improper for its consideration. Unless the defendant's right to cross-examine a co-conspirator for possible bias outweighs the need to exclude it, "a judge may prevent the introduction of evidence which informs the jury of the possible sentence defendants may receive because it is either irrelevant or substantially prejudicial." Mizzell, 563 S.E.2d at 317-318. A defendant's right to effectively cross-examine a witness concerning bias outweighs the court's need to exclude such evidence where: (1) the witness has already entered into a plea agreement conditioning leniency on the witness' testimony, or (2) the witness has not already entered into a plea bargain or been found guilty. See Mizzell, *supra*

(error to exclude testimony concerning **potential** sentence witness would receive if convicted where witness had **not** yet entered a plea bargain or been found guilty); Sims, *supra* (error to exclude testimony regarding specific charges **pending** against witness where State promised to tell future judge about the witness' cooperation); Brown, *supra* (error to exclude **potential** sentence for charge the State dismissed in **exchange for** witness' current testimony); State v. Whitner, 380 S.C. 513, 670 S.E.2d 655 (Ct. App. 2008) (error to exclude testimony concerning **potential** sentences witness faced where witness already pled guilty to same charges as defendant and was **waiting to be sentenced**); Gillian, *supra* (error to exclude testimony concerning **potential** sentence witness faced from first-degree burglary charges where witness testified solicitor agreed to advise his plea judge of his cooperation in instant case).

This case is clearly distinguishable from the cited cases because Wright had **already pled guilty and been sentenced** prior to his testimony at both trials. Neither the solicitor's sentence recommendation, if any, nor the actual sentence imposed were contingent on Wright's testimony against Robinson and Workman, and he was not promised even the possibility of a sentence reduction in exchange for his testimony. Further, at the time of this trial Wright had no pending charges or sentencing which might tempt him to give biased testimony in hopes of obtaining future leniency. (2009 TT, pp. 9-10, 23-24, 117-119; R., pp.34-35, 36-37, 121-123). Therefore, the circuit court did not abuse its discretion in

excluding evidence of the substance of the solicitor's sentencing recommendation, if any, or Wright's actual sentence.³

B. Harmless Error

Even if it was error to limit cross-examination of Wright specifically as to the purported sentence recommendation and the actual sentence imposed, any error was harmless beyond a reasonable doubt in light of the entire record. To determine whether an error was harmless, the appellate court must review "the entire record to determine what effect the error had on the verdict." Mizzell, 563 S.E.2d at 319 (quoting State v. Clark, 315 S.C. 478, 445 S.E.2d 633 [1994]). Violation of the defendant's Sixth Amendment right to confront the witness is "not *per se* reversible error," and the appellate court must determine whether any error was harmless beyond a reasonable doubt. Graham, 444 S.E.2d at 527.

³By way of footnote, Robinson asserts the circuit court should have allowed the cross-examination because: "in the first trial Wright testified that part of the reason he received a twenty (20) year sentence was based on a recommendation made by the solicitor. In this trial he testified there were no promises." (Brief of Appellant, p. 6, n. 1). Even if this issue is preserved for appellate review, which the State contests as set forth in its previously filed Motion to Strike, Wright's testimony in both trials consistently indicated he received no promises in exchange for his testimony, and there was no prior inconsistent statement.

In the first trial, Wright testified no one promised him anything about his sentence prior to entry of his guilty plea; no one promised him a sentence reduction in exchange for his subsequent testimony; the solicitor recommended a twenty year sentence at his guilty plea hearing; the first time he he talked with the solicitor about testifying against Robinson and Workman was the day he pled guilty; and the reason he was testifying was because "[a]ll three of us was together." (2008 TT, p. 81-87; R., pp. 20-26). In the second trial, Wright testified no one promised him anything about his sentence prior to his guilty plea; he was testifying because he knew what they did was wrong; and he knew his testimony at trial would not affect the sentence already imposed. (2009 TT, pp. 117-119, 129; R., pp. 121-123, 133). Robinson did not even ask Wright whether the solicitor made a sentence recommendation on his behalf, even though the circuit court only precluded questions about what specific recommendation was made, and therefore, he did not testify inconsistent with his previous testimony about any purported sentence recommendation. (2009 TT, p. 24; R., p. 37).

Whether an error is harmless depends on the particular facts of each case and multiple factors, including without limitation: (1) the importance of the witness's testimony in the State's case; (2) whether the testimony was cumulative; (3) the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points; (4) the extent of cross-examination otherwise permitted; and (5) the overall strength of the State's case. Van Arsdall, 475 U.S. at 684; *see also* Mizzell, 563 S.E.2d at 333; Whitner, 670 S.E.2d at 659.

In this case, the case against Robinson, even without resorting to Wright's testimony. *See* Sims, 558 S.E.2d at 523 (2002) (error was harmless where State's case "was strong without resorting to [the witness's] testimony"). Most significantly, Espinoza positively identified Robinson in court as one of the robbers, and testified about Robinson's specific actions during the robbery. (2009 TT, pp. 72-112; R., pp. 76-116).

Further, much of Wright's testimony merely corroborated Espinoza's testimony. Espinoza positively identified Robinson and Workman as two of the people who robbed him; Wright positively identified Espinoza as the person they robbed. (2009 TT, pp. 93, 128-129; R., pp. 97, 132-133). Espinoza testified he drove a red Jeep Cherokee the night he was robbed; Wright testified the person they robbed drove a red jeep. (2009 TT, pp. 74, 123-127; R., pp. 78, 127-131). Espinoza testified the robbers used a .38 or a .357 revolver; Wright testified he thought the gun Robinson had that night was a ".57 magnum." (2009 TT, pp. 79-80, 123; R., pp. 83-84, 127). Espinoza testified his cell phone and wallet were taken from him; Wright testified he saw Robinson take Espinoza's wallet. (2009 TT, pp. 78, 125; R., pp. 82, 129). Espinoza testified one of the robbers punched him in the face; Wright testified

Robinson punched Espinoza in the head. (2009 TT, pp. 83-84, 126; R., pp. 87-88, 130). Espinoza testified the robbers drove away in an 80's model box car, like a Crown Victoria or Cadillac style; Wright testified they drove a four door black Lincoln. (2009 TT, pp. , 92, 121; R., pp. 96, 125). Finally, Espinoza testified he pursued the robbers until one of them fired a bullet at his jeep; Wright testified Robinson fired one shot at the jeep when they saw it following them. (2009 TT, pp. 87-89, 127-128; R., pp. 91-93, 131-132). Thus, except as to events prior to the robbery and who actually fired the shot at Espinoza's jeep as he followed the robbers' car, all of which was irrelevant to the issue of Robinson's guilt or innocence on the charges arising from the robbery itself, Wright's testimony was largely cumulative to Espinoza's testimony on material points in the State's case. *See Gillian*, 602 S.E.2d at 74-75 (error was harmless where witness's testimony was largely cumulative, excluding it left no material point of State's case uncorroborated or unsupported, and there was abundant evidence to otherwise find appellant guilty).

Robinson's reliance on Brown and Mizzell to support his contention the cross-examination limitation in this case was reversible error is misplaced. Significantly, the witnesses' testimony in those cases provided the only link between the defendants and the crimes. This case is clearly distinguishable.

As discussed above, Wright's testimony was not the only evidence directly linking Robinson to the robbery. Rather, Espinoza positively identified Robinson at trial as one of the robbers, and testified regarding Robinson's actions during the robbery.

Further, the court found prejudice in Brown because the excluded testimony prevented the jury from learning the witness' plea agreement allowed her to avoid a

mandatory prison sentence three times greater than she otherwise faced. The State dismissed a cocaine trafficking charge, with a mandatory minimum sentence of twenty-five years incarceration without parole, and allowed the witness to pled guilty to one conspiracy charge with no mandatory minimum and a maximum sentence of seven and a half years. Brown, 399 S.E.2d at 594. In this case, prior to testifying at either trial, Wright pled guilty and received a substantial twenty year sentence, which was only five years less than Robinson received as a result of his guilty verdict, and there is absolutely no evidence of any possibility Wright's sentence would be reduced as a result of his testimony. A five year difference in sentence is clearly not comparable to the eighteen year difference at issue in Brown.

Finally, Robinson had ample opportunity at trial to impeach Wright's testimony. The circuit court did not preclude him from asking Wright questions about any plea negotiations with the State, as well as the dismissal of charges against him. (2009 TT, pp. 23-24; R., pp.36-37). See Whitner, 670 S.E.2d at 659 (error was harmless where witness's testimony was merely cumulative, and appellant was not prevented from asking any other questions, was allowed to elicit witness pled guilty to same charges as appellant, and allowed to ask if witness hoped testifying would help her when sentenced); see also State v. Ferguson, 742 N.W.2d 651, 657 (Minn. 2007) ("Confrontation Clause is not violated by limitations on cross-examination so long as the jury is presented with sufficient information from which to appropriately draw inferences as to the witness's reliability").

Robinson elicited testimony from Wright about the dismissal of charges against him the day he pled guilty to the armed robbery charge. He also questioned Wright extensively about purported inconsistencies between his trial testimony, his statement to police, and

Espinoza's testimony, and specifically accused Wright of pleading guilty to armed robbery because he was the one who actually had the gun that night. (2009 TT, pp. 130-137; R., pp.134-141).

Robinson further attacked Wright's credibility during closing argument by reiterating the purported inconsistencies and gaps in Wright's testimony to the jury, and arguing Wright fabricated his testimony and placed the blame on Robinson and Workman in the hope he would receive less severe punishment. Workman's counsel argued Wright "has no credibility" because "he had self-interest." (2009 TT, pp. 187-203; R., pp. 180-196).

Given the entire record, including Espinoza's positive in-court identification of Robinson as one of the robbers, the cumulative nature of Wright's testimony on material elements of the State's case, and the extent of cross-examination and impeachment otherwise permitted, any possible error in excluding questions about Wright's actual sentence was harmless beyond any reasonable doubt.

CONCLUSION

Based on the foregoing, Respondent respectfully submits Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

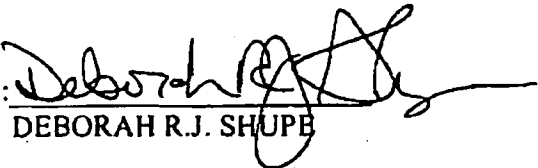
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ATTORNEYS FOR RESPONDENT

January 21, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
The Honorable C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

OSHAUN J. ROBINSON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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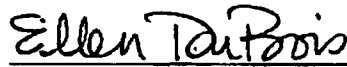
PROOF OF SERVICE

I, Ellen R. DuBois, certify I served the Final Brief of Respondent on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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I further certify all parties required by Rule to be served have been served.

This 21th day of January, 2011.


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Oshaun J. Robinson, Appellant.

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-042
Submitted December 1, 2011 – Filed January 25, 2012

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General
John W. McIntosh, Assistant Deputy Attorney General Salley
W. Elliott, and Assistant Attorney General Deborah R.J.
Shupe, all of Columbia; and Solicitor W. Walter Wilkins, III, of
Greenville, for Respondent.

PER CURIAM: Oshaun J. Robinson appeals his convictions for armed robbery, possession of a weapon during the commission of a violent crime, conspiracy, and assault and battery of a high and aggravated nature. He argues the trial court committed reversible error in precluding him from cross-examining a witness for the State regarding the sentence he received for charges arising from the same incident. We affirm.[

The Confrontation Clause of the Sixth Amendment of the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." This encompasses the right to "meaningful cross-examination of adverse witnesses[.]" including the right to cross-examine a witness concerning bias. State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). The right to cross-examination entails the "right to cross-examine any State's witness as to possible sentence placed when there exists a substantial possibility the witness would give biased testimony in an effort to have the solicitor highlight to a future court how the witness cooperated in the instant case." State v. Gillian, 363 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct. App. 2004), aff'd as modified by State v. Gillian, 373 S.C. 601, 64 S.E.2d 872 (2007) (internal quotation marks and alterations omitted). "A criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness . . . Graham, 314 S.C. at 385, 444 S.E.2d at 527 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986)).

The Confrontation Clause does not, however, prevent a trial [court] from imposing any limits on

302 reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant.

Id. (quoting Van Arsdall, 475 U.S. at 679).

A violation of the defendant's Sixth Amendment right to confront the witness is not per se reversible error if the error was harmless beyond a reasonable doubt." State v. Gillian, 360 S.C. 433, 454, 602 S.E.2d 62, 71 (S.C. App. 2004) (internal quotation marks and emphasis omitted). "Harmless beyond a reasonable doubt means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt." Id. at 455, 602 S.E.2d at 74 (internal quotation marks omitted).

Whether an error is harmless depends on the particular facts of each case and upon a host of factors, including:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

Id. at 455, 602 S.E.2d at 73-74 (quoting State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318-19 (2002)).

Here, although the trial court precluded Robinson from cross-examining a witness for the State regarding the specific sentence he received for charges arising from the same incident, the court allowed extensive cross-examination of the witness regarding every other aspect of potential bias arising from his cooperation with the State. Accordingly, we find that, to the extent the trial court erred by precluding evidence of the witness' specific sentence, the error was harmless because such evidence was cumulative and could not reasonably have affected the result of the trial.

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

G. SHAWN J. ROBINSON, #328798,
Full name and prison number (if any) of Applicant.

y.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2012-CP-23- 07606

APPLICATION FOR

POST-CONVICTION RELIEF

FIELD CLERK OF COURT
GREENVILLE CO. S.C.
Rt. 3. BETHLEHEM
Sims

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 LEE C.I., 990 WISACKY HWY., BISHOPVILLE, S.C. 29010
2. Name and location of Court which imposed sentence GREENVILLE CO. GEN. SESS. Ct.
3. Name(s) of co-defendant(s) (if any) TIMOTHY WRIGHT, KENNETH WOMAN
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-23-5382; ARMED ROBBERY W/DEADLY WEAPON
 - (b) " " " : ROSS. WEAPON DUR. VIOLENT CRIME
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) JANUARY 15, 2009; TWENTY-FIVE YEARS ARM. ROB.
 - (b) " " " : FIVE YEARS (5) EDUC

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 ~~XXX~~ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED CONVICTIONS
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JANUARY 25, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. see order by procedural history, etc.
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing: N/A
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) SEE ATTACHED MEMORANDUM FOR ISSUES AND LAWS SUPPORTING GROUNDS, etc.

(b) 101 1001 10001 11 11

(c) 101 1001 101 11 11

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) SEE MEMORANDUM OF LAWS SUPPORTING CLAIMS, etc.

(b) 101 101 11 11 101 101 11

(c) 101 101 11 11 101 101 11

12. Prior to this application have you filed with respect to this conviction: NO

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: N/A

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed: N/A

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof: N/A

i. _____

ii. _____

iii. _____

- iv. _____
- (d) the date of each such disposition: N/A
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: N/A
- i. _____
- 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?

NO

15. If you answered "yes" to (14) identify: NO

- (a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised: N/A

- 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) NO GROUNDS HAVE BEEN RAISED DUE TO FOLLOWING THE PROPER EXHAUSTION DOCTRINE, etc.
- (b) APPLICANT IS REQUIRED TO FOLLOW THE AVAILABLE REMEDY PROCEDURES OF MAKING A COLLATERAL
- (c) ATTACK TO HIS CONVICTIONS RE: AT EX ROYAL, COURT.

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? xxx _____
- (c) your sentencing? xxx _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? xxx _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. ANDY MORRIS, ESQ. _____
- ii. ROBERT M. PACHAK, ESQ. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL, ANDY MORRIS _____
- ii. APPEAL, ROBERT M. PACHAK _____
- iii. _____
19. State clearly the relief you seek in filing this application:
- CONVICTION OVERTURNED AND CHARGES DISMISSED BASED UPON LACK
- OF CORRECTION OF ERROR OF LAWS TO THE CONSTITUTIONS, etc.
20. Are you now under sentence from any other court that you have not challenged?
- no _____

POST CONVICTION RELIEF
MEMORANDUM #1.

MEMORANDUM OF ISSUES:

10(a): APPLICANT WAS DENIED THE RIGHTS TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL AND APPELLATE COUNSEL GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION AND BY ART. I, §§ 3 AND 14 OF THE S.C. CONSTITUTION DURING APPLICANT'S TRIAL, etc., AND THE APPEAL EXHAUSTION THROUGH THE APPEALS COURT FOR THE PROPER REVIEWS AND EXHAUSTING REMEDIES AVAILABLE TO THE APPLICANT TO PROPERLY EXHAUST HIS CASE BY PER SE TO THE PROPER EXHAUSTION DOCTRINE, etc.

11(a): SUPPORTING FACTS TO ISSUES:

TRIAL COUNSEL AND THE APPELLATE COUNSEL PERFORMANCE DURING TRIAL AND THE APPEAL WAS BOTH UNREASONABLE AND PREJUDICE AGAINST APPLICANT, per se SEE AT CASE: STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984), COUNSELS ACTS AND OMISSIONS ARE BUT NOT LIMITED TO THE FOLLOWING:

ISSUE ONE: APPELLATE COUNSEL INEFFECTIVE ASSISTANCE FOR NOT PURSUING ALL AVAILABLE APPEAL REMEDIES BY THE SC APPELLATE COURT RULES AND PROCESSES, FOR THE SACK OF BRING IN COMPLIANCES WITH THE PROPER EXHAUSTION DOCTRINE, etc., SEE APPLICANT COULD HAVE APPEALED HIS CASE TO THE U.S. SUPREME COURT FOR A REVIEW ON CERTIORARI TO THE SC SUPREME COURT DECISIONS TO THE DIRECT APPEAL AS THESE RULES ARE ESTABLISHED AND APPLICABLE TO THE APPLICANT'S CASE MATTERS, THE APPLICANT ALSO MAKES CONTENTIONS IN HIS CLAIMS AS WELL BY THE SETTLED LAWS AS CITED: SEE GILCHRIST V. STATE, 354 S.C. 173, 612 S.E.2d 702 (2005); ANDERSON V. STATE, 354 S.C. 431, 581 SE2d 834 (2003), AND SEE: SOUTHERLAND V. STATE, 337 S.C. 610, 524 SE2d 833 (1999), WHEREAS, THE APPLICANT APPEAL WAS NOT PERFECTED BY APPEAL COUNSEL DUE TO THE FACTS THAT HE DID NOT BRIEFED ALL PROPERLY PRESERVED ISSUES ON THE APPEAL RECORD AS THEY OBJECTED TO BY TRIAL COUNSEL, etc., THE APPEAL COUNSEL VIOLATED THE APPLICANT'S SIXTH AMENDMENT RIGHT OF THE U.S. CONSTITUTION, HERE IN APPLICANT'S CASE THE TRIAL RECORD IS THE RELIABLE RECORD OF EVIDENCE TO PROPPER THIS CLAIMS BY AS ACCORD. BY PER SE RULE 71.1(d), SCRPC, etc.

ISSUE TWO: TRIAL COUNSEL FAILED TO INVESTIGATE THE CASE CORRECTLY TO DISCOVER THE FALSE STATEMENTS GIVEN BY THE STATE'S CHIEF WITNESS IN CASE AS THE ALLEGED VICTIM GAVE INACCURATE STATEMENT INITIALLY TO THE POLICE CONCERNING THE APPLICANT AND HIM BEING INVOLVED IN THE ALLEGED CASE MATTER, HAD THE TRIAL COUNSEL MADE THESE DISCOVERIES THE JURY WOULD HAVE BEEN AWARE OF THE COMPLETE DEFENSE AND STORY TO DRAW INFERENCES FROM TO DETERMINE THE TRUTH OF THE CASE PRESENTED BEFORE IT, THE TRIAL COUNSEL FAILED TO ASSIST APPLICANT IN PRESENTING HIS CASE INFORMATION TO THE JURY AND THIS DID VIOLATED THE APPLICANT'S RIGHT TO A FAIR TRIAL AS THIS IS A BEDROCK PROCEDURE THAT IS GUARANTEED TO APPLICANT IN RECEIVING A FAIR TRIAL AS A MATTER OF LAWS, ETC.

POST CONVICTION RELIEF
ATTENUM #2.

ISSUES CONT'D.

ISSUE THREE: TRIAL COUNSEL FAILED TO OBJECT TO THE IMPROPER CHARGE OF LAW GIVEN TO THE JURY IN REGARDS TO ARMED ROBBERY, THE TRIAL COUNSEL IS INEFFECTIVE ASSISTANCE WHEN HE FAILED TO COMPEL THE TRIAL JUDGE TO CORRECT THE LAW INSTRUCTIONS TO THE JURY, SEE JUDGE CHARGE OF LAW IN TRIAL RECORD IN RE: ARM ROBBERY. THE ELEMENTS OF ARMED ROBBERY MUST BE CHARGED ACCORDINGLY TO THE STATUTE OF LAW AS IS AND NOT BASED ON FACTS, etc.

ISSUE FOUR: TRIAL COUNSEL INEFFECTIVE ASSISTANCE FOR NOT PRE-TRIALING THE BRADY VIOLATIONS COMMITTED BY THE STATE WHEN IT DID NOT DISCLOSED TO THE APPLICANT'S RULE 5, INFORMATION THAT EXONERATES THE APPLICANT BASED UPON THE DESCRIPTIONS GIVEN AND THE IDENTITY OF THE ALLEGED SUSPECTS TO THE CRIMINAL ACTS THAT THE ALLEGED VICTIM HAD STATED, THIS INFORMATION WAS AVAILABLE BEFORE TRIAL AND THE COUNSEL WAS INEFFECTIVE DUE TO THE FACTS THAT HE DID NOT DISCERNED THIS MATTER WITH HIS MIND AND EYES, APPLICANT WAS PREJUDICED AGAINST BY TRIAL COUNSEL BECAUSE HAD HE PROCURED THIS INFORMATION FROM THE STATE THE APPLICANT COULD HAVE BEEN EXONERATED FROM THE ARMED ROBBERY CHARGE AND COULD HAVE PREVAILED ON RECEIVING LESSER INCLUDED AS WELL, THE OUTCOME WOULD HAVE BEEN DIFFERENT IF THE COUNSEL WOULD HAVE ASSISTED APPLICANT EFFECTIVELY AS THE LAW REQUIRES HE TO HAVE DONE SO. COUNSEL FAILED TO OBJECT TO THE STATE OBTAINING THE ARMED ROBBERY INDICTMENT THROUGH FALSE AFFIDAVITS PRESENTED TO THE GRAND JURY BY THE STATE, THE TRIAL COUNSEL FAILED TO COMPEL THE SOLICITOR OFFICE COUNSEL TO PRESENT THE REQUIRED EVIDENCE TO OBTAIN SUCH AN INDICTMENT BY, AND HERE THE TRIAL COUNSEL FAILED TO ASSIST THE APPLICANT AND EXERCISE HIS RIGHTS TO CHALLENGE THIS PROCESS AND THE APPLICANT IS PREJUDICED AGAINST HERETO WHEN THE COUNSEL FAILED TO PURSUE THIS CHALLENGE TO THE INDICTMENT, AS THIS ISSUE IS PROVEN WHEN THE FIRST TRIAL AND SECOND TRIAL RECORDS ARE PROFFERED TO THE COURT AS FOR COMPARING THE INCONSISTENT STATING OF THE STATEMENTS TO THE RECORDS OF THE COURT DURING TRIALS.

ISSUE FIVE: TRIAL COUNSEL INEFFECTIVE ASSISTANCE FOR NOT PURSUING THE TRIAL SEVER BASED UPON THE RECORD EVIDENCE IN REGARDS TO THE DISCREPANCIES IN THE TESTIMONY OF THE TESTIFYING CODEFENDANT, T. WRIGHT.

ISSUE SIX: TRIAL COUNSEL INEFFECTIVE ASSISTANCE WHEN HE DID NOT MOTION TO THE COURT FOR A DIRECT VERDICT OF NOT GUILTY BASED UPON THE LACK OF EVIDENCE ON ARMED ROBBERY DUE TO THE SECOND TRIAL HAVING THE MAIN STATE'S WITNESS TO PROFFER DISCREPANCIES IN HIS TESTIMONY AND THIS PREJUDICED THE APPLICANT DURING TRIAL AND VIOLATED HIS RIGHTS TO A FAIR TRIAL, WITH TO INCLUDE THAT THE RIGHTS TO CONFRONT WAS VIOLATED AS WELL BECAUSE THE TRIAL COUNSEL DID NOT CONFRONT THE WITNESS IN REGARDS TO THE STATEMENTS

POST CONVICTION RELIEF
ADDENDUM #3.

INCONSISTENT TO THE FIRST TRIAL, AND THIS VIOLATED THE APPLICANT RIGHTS TO HAVE THE JURY TO WEIGH THE WITNESS CREDIBILITY, HAD THE JURY BEEN GIVEN THE EVIDENTIARY FACTUAL FROM THESE DISCREPANCIES THE JURY MAY WOULD HAVE NOT CONVICTED THE APPLICANT.

ISSUE SEVEN: TRIAL COUNSEL INEFFECTIVE ASSISTANCE WHEN HE FAILED TO PRE-TRIAL THE ISSUE IN REGARDS TO THE RACIAL REFERENCES TO THE LINE-UP PROCESSES AND THE SUGGESTIVE IDENTIFYING OF THE APPLICANT THROUGH THE WORD OF MOUTH AND FAILED TO THROUGH THE ACTUAL DESCRIPTIONS OF THE APPLICANT BECAUSE THE DISCREPANCIES IN DESCRIBING THE APPLICANT SHOULD HAVE BEEN ENOUGH OF EVIDENCE TO PREVENT THE APPLICANT FROM BEING CHARGED WITH ANY CHARGES WHATSOEVER, AND HAD THE TRIAL COUNSEL PRE-TRIAL THIS ISSUE TO THE TRIALS ONE AND TWO, IT WOULD HAVE BEEN PRESERVED FOR APPELLATE RE-VIEWS, WHEREAS, THE TRIAL WAIVED APPLICANT'S RIGHTS TO AN EVALUATION OF A CRITICAL ISSUE OF THE TRIAL, etc.

ISSUE EIGHT: TRIAL COUNSEL INEFFECTIVE ASSISTANCE FOR NOT OBJECTING TO THE JUDGE MAKING INQUIRING INTO THE JURY'S NUMERICAL DIVISION TO RESOLVE THE DELIBERATION OF THE VERDICT. THERE IS NUMBER BEINGS THE SUBJECTS OF HOW THE TRIAL JUDGE GAVE HIS CHARGE (ALLEN), THIS IS A BAR THAT IS NEVER TO BE BROKEN BY THE COURT AS IT IS WELLSETTLED LAWS BY OUR U.S. SUPREME COURT, SEE AT: BRASFIELD V. U.S., 272 U.S. 448 (1926) AND SEE AT LOWENFIELD V. PHELPS, 484 U.S. 231 (1988), HAVING IT TO BE NOTED AS TO HOW THE ALLEN CHARGE MUST BE PROPERLY DELIVERED TO THE JURY TO AVOID THE JURY FROM BEING HUNG, etc. HERE IN APPLICANT CASE MATTER THE TRIAL COUNSEL WAS NOT AWARE OF THE POTENTIAL EFFECTS OF THE CHARGE BEING COERCIVE. THE APPLICANT WAS PREJUDICED AGAINST BEING THAT THIS KEEPING THE DELIBERATION PROCESS ONGOING MADE THE JURY TO FIND THE APPLICANT GUILTY JUST TO END THE TRIAL BASED UPON HOW THE TRIAL JUDGE HANDED THE ALLEN CHARGE, etc. THE OUTCOME WOULD HAVE BEEN DIFFERENT HAD THE TRIAL COUNSEL OBJECTED TO THE IMPROPERLY GIVEN ALLEN CHARGE TO THE JURY BY THE COURT.

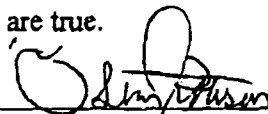
STATE OF SOUTH CAROLINA)

VERIFICATION

County of LEE)

O'SAW J. ROBINSON

I, O'SAW J. ROBINSON, 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.



SWORN to and subscribed before me this 5
day of Nov, 2012.

O'SAW J. ROBINSON
I/E C.I./S.M.S.
990+ WISACKY HW.
HISORVILLE, S.C. 29010
APPLICANT

Manerick Wilson (L.S.)
Notary Public

My Commission Expires: 3/8/2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

O'SHAWN J. ROBINSON

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
5 day of Nov, 2012.



Notary Public

**O'SHAWN J. ROBINSON
LEE C.I./SUM. S.
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
APPLICANT**

My Commission Expires: 3/8/2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-7606
COUNTY OF GREENVILLE	)	
	)	
O'Shaun Joseph Robinson,	)	
S.C.D.C. No. 327798,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed December 5, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the August 2008 term of General Sessions for armed robbery (2008-GS-23-5382, count 1), possession of a weapon during commission of a violent crime (2008-GS-23-5382, count 2), conspiracy (2008-GS-23-5383), and assault and battery (2008-GS-23-5384)). Andrew Moorman, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On January 15, 2009, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of twenty-five years for armed robbery, five years for possession of a weapon during commission of a violent crime, five years for conspiracy, and thirty days for assault and battery.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of

Appeals affirmed the Applicant's convictions and sentences. State v. Robinson, Op. No. 12-UP-042 (S.C. Ct. App. filed Jan. 25, 2012). The remittitur was issued on February 14, 2012.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

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:
 - a. Failure to investigate and discover false statements.
 - b. Failure to object to armed robbery charge.
 - c. Failed to pursue Brady issue.
 - d. "Trial counsel ineffective assistance for not pursuing the trial sever based upon the record of evidence in regards to the discrepancies in the testimony of the testifying codefendant, T. Wright."
 - e. "Trial counsel ineffective assistance when he did not motion to the court for a direct verdict of not guilty based upon the lack of evidence on armed robbery due to the second trial having the main State's witness to proffer discrepancies in his testimony and this prejudiced the Applicant during trial and violated his rights to a fair trial."
 - f. Ailed to argue the issue of the line-up process pre-trial.
 - g. Failed to object to judge's inquiries "into the jury's numerical division."
2. Ineffective assistance of appellate counsel:
 - a. "Appellate counsel ineffective assistance for not pursuing all available appeal remedies by the SC Appellate Court rules and processes."

III.

The Respondent asserts the Applicant's allegation that his trial attorney was ineffective is

without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v.

Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits 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. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent asserts the Applicant's allegation that his appellate attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms."

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009); Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (noting courts apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue). Appellate counsel, however, is not required to raise every non-frivolous claim, but instead may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000).

"Although it is possible to bring a successful ineffective assistance of appellate counsel claim based on failure to raise a particular issue on direct appeal, the Supreme Court has

reiterated that it is “difficult to demonstrate that counsel was incompetent.” United States v. Mason, No. 3:06–607–CMC, 2012 WL 5845807 (D. S.C. Nov. 19, 2012) (quoting Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000)). Appellate counsel is not required to raise every non-frivolous claim, but instead may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765; Bennett v. State, 383 S.C. at 309, 680 S.E.2d at 276. “Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)). “To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel’s unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal.” United States v. Mason, 2012 WL 5845807.

The Respondent submits 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. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

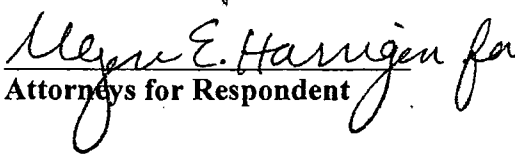
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

June 21, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2012-CP-23-7606

O'SHAUN JOSEPH ROBINSON, 327798)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

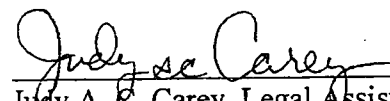
STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

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 by depositing same in the United States mail, postage prepaid:

O'Shaun Joseph Robinson, 327798
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

DATED this 21st day of June, 2013.


 Judy A. C. Carey, Legal Assistant
 For Respondent

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Oshaun J. Robinson

Appellant.

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-042
Submitted December 1, 2011 – Filed January 25, 2012

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Deborah R.J. Shupe, all
of Columbia; and Solicitor W. Walter Wilkins, III, of
Greenville, for Respondent.

PER CURIAM: Oshaun J. Robinson appeals his convictions for armed robbery, possession of a weapon during the commission of a violent crime, conspiracy, and assault and battery of a high and aggravated nature. He argues the trial court committed reversible error in precluding him from cross-examining a witness for the State regarding the sentence he received for charges arising from the same incident. We affirm.¹

The Confrontation Clause of the Sixth Amendment of the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." This encompasses the right to "meaningful cross-examination of adverse witnesses[,]" including the right to cross-examine a witness concerning bias. State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). This right to cross-examination entails the "right to cross-examine any State's witness as to possible sentences faced when there exists a substantial possibility the witness would give biased testimony in an effort to have the solicitor highlight to a future court how the witness cooperated in the instant case." State v. Gillian, 360 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct. App. 2004), aff'd as modified by State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007) (internal quotation marks and alterations omitted). "A criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness" Graham, 314 S.C. at 385, 444 S.E.2d at 527 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986)).

The Confrontation Clause does not, however, prevent a trial [court] from imposing any limits on defense counsel's inquiry into the potential bias of a prosecution witness. On the contrary, trial [courts] retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant.

Id. (quoting Van Arsdall, 475 U.S. at 679).

"A violation of the defendant's Sixth Amendment right to confront the witness is not per se reversible error if the error was harmless beyond a reasonable doubt." State v. Gillian, 360 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct. App. 2004) (internal quotation marks and emphasis omitted). "Harmless beyond a reasonable doubt means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt." Id. at 455, 602 S.E.2d at 74 (internal quotation marks omitted).

Whether an error is harmless depends on the particular facts of each case and upon a host of factors, including:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

Id. at 455, 602 S.E.2d at 73-74 (quoting State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318-19 (2002)).

Here, although the trial court precluded Robinson from cross-examining a witness for the State regarding the specific sentence he received for charges arising from the same incident, the court allowed extensive cross-examination of the witness regarding every other aspect of potential bias arising from his cooperation with the State. Accordingly, we find that, to the extent the trial court erred by precluding evidence of the witness's specific sentence, the error was harmless because such evidence was cumulative and could not reasonably have affected the result of the trial.

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

O'SHAWN J. ROBINSON,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2012-CP-23-07606

FEBRUARY 18, 2014

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

CAROLINE HORLBECK, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

O'Shawn J. Robinson -vs- State of South Carolina (2012-CP-23-07606)

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PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
P-1	Criminal identification sheet	13	17
P-2	Criminal identification sheet	13	17

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1 **FEBRUARY 18, 2014**

2 (WHEREUPON, court convened with all parties
3 present and the following proceedings were had.)

4 THE COURT: All right. Is the state ready to
5 proceed?

6 MS. RATIGAN: Yes, Your Honor, may it please
7 the court. This is the case of O'Shawn Robinson versus
8 the State of South Carolina. The docket number is
9 2012-CP-23-7606. Mr. Robinson was indicted for armed
10 robbery, possession of a weapon during the commission
11 of the violent crime, conspiracy and assault and
12 battery of a high and aggravated nature. He was
13 represented on these charges by Mr. Moorman.

14 The case was brought to trial in January of 2009
15 before Judge Pyle. Mr. Robinson was found guilty of
16 all the charges as indicted with the exception of being
17 found guilty of the lesser charge of assault and
18 battery. On January 15, 2009, Judge Pyle levied
19 concurrent sentences of twenty-five years for armed
20 robbery, five years for the weapons charge, five years
21 for conspiracy and thirty days for assault and battery.
22 The case was timely appealed and perfected at the Court
23 of Appeals. The court affirmed the convictions and
24 sentences in January of 2012. This application was
25 timely filed. And the state is ready to proceed.

1 THE COURT: Ms. Horlbeck, you ready?

2 MS. HORLBECK: Yes, Your Honor. Judge, just
3 a couple of corrections to the petition. In Mr.
4 Robinson's original petition, he had alleged that
5 counsel failed to make a motion to sever, failed to
6 make a motion for a directed verdict and also failed to
7 make a motion to preclude the victims in-court
8 identification and to challenge the line-up. Also,
9 that counsel didn't object to the -- well, I'm sorry.
10 We'll just talk about those three.

11 We're not going forward on those three
12 allegations. The motion to sever, the motion for a
13 directed verdict and the motion to preclude the
14 victim's identification.

15 THE COURT: All right.

16 MS. HORLBECK: And to suppress the line-up.
17 Those motions were done. But we are ready to proceed.

18 THE COURT: All right. You may call your
19 first witness.

20 MS. HORLBECK: We call Mr. Robinson.

21 THE CLERK: Please place your left hand on
22 the bible. Please raise your right hand.

23 You do solemnly swear or affirm that the testimony
24 you're about to give in this case will be the truth,
25 the whole truth and nothing but the truth, so help you

1 God?

2 THE WITNESS: Yes, ma'am.

3 THE CLERK: Thank you. Please state your
4 full name for the record.

5 THE WITNESS: O'Shawn Joseph Robinson.

6 THE CLERK: Thank you. You may be seated.

7 O'SHAWN JOSEPH ROBINSON,

8 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. HORLBECK:

11 Q. Mr. Robinson, who represented you in this case?

12 A. Anthony Moorman.

13 Q. Was he retained or was he appointed?

14 A. Appointed.

15 Q. Okay. And did you plead guilty or did your case
16 go to trial?

17 A. I went to trial.

18 Q. And you were convicted; is that correct?

19 A. Yes, ma'am.

20 Q. As a result of that conviction, did you file this
21 post conviction relief petition that's here today?

22 A. Yes, ma'am.

23 Q. Okay. All right. Now, one of the allegations
24 that you make in your petition is that your attorney
25 failed to investigate your case properly?

1 A. Yes, ma'am.

2 Q. Okay. Tell the court a little bit about that
3 allegation?

4 A. Well, at trial the co-defendant gave two
5 inconsistent statements. The first trial they asked
6 him was he working with the state and he said no. The
7 second trial he called him back and asked him the same
8 question and he said yes. Then he changed it up again
9 and said, no. They had asked why he didn't testify on
10 Mr. Robinson? He said because what we did was wrong.

11 Q. All right. Did Mr. Moorman obtain a transcript
12 of the first trial; do you know?

13 A. I never received one. I just got the second
14 trial transcript.

15 Q. Okay. But do you know -- listen to my question.
16 Did Mr. Moorman get a transcript of the first trial, to
17 your knowledge?

18 A. I'm not really sure. I'm not really sure.

19 Q. Okay. All right. Did Mr. Moorman review the
20 transcript from the first trial with you?

21 A. No, ma'am.

22 Q. All right. And let me just make sure I
23 understand. You're saying that your co-defendant
24 testified against you in both trials; is that correct?

25 A. Yes, ma'am.

1 Q. All right. And your co-defendant's testimony
2 differed from the first trial and the second trial?

3 A. That's correct.

4 Q. All right. And you wanted Mr. Moorman to cross
5 examine your co-defendant about those discrepancies?

6 A. Yes, ma'am.

7 Q. All right. Do you recall -- you already stated
8 that. And no -- cross examination was not performed in
9 the second trial?

10 A. No, ma'am.

11 Q. How do you think that hurt you? How do you think
12 your attorney's failure to ask those questions hurt
13 you?

14 A. Well, it hurt me because the jury asked to hear
15 his testimony over the loud speaker again.

16 Q. Okay.

17 A. And that's when the judge told the jury they got
18 to continue to deliberate.

19 Q. Did the jury ultimately -- were they allowed to
20 hear the co-defendant's testimony again?

21 A. Yeah, they was allowed to hear it. That's when
22 they went in the back to deliberate and came back out
23 and said, we can't come up with a verdict.

24 Q. All right. And when the jury was unable to come
25 up with a verdict at that time, what did the court do,

1 if anything?

2 A. Allen charged the court -- the judge did an Allen
3 charge.

4 Q. Did your attorney make an objection to the Allen
5 charge?

6 A. I'm not aware. I don't even know that.

7 Q. All right. You also alleged in your petition
8 that Mr. Moorman failed to discover other false
9 statements. Are you talking about the -- or are you
10 referring to the statements made by your co-defendant?

11 A. The victim also.

12 Q. Okay. Well, what statements of the victims did
13 Mr. Moorman fail to uncover or fail to investigate?

14 A. As far as the description of the guys he said
15 that robbed him.

16 Q. All right. What did the victim say the
17 description was of the man who robbed him or the men
18 who robbed him?

19 A. I want to say he said the guy was six foot, wore
20 glasses.

21 Q. All right. But there were two -- there were
22 actually two people that the victim claims he saw; is
23 that correct?

24 A. Yes, ma'am.

25 Q. Do you recall what the victim described -- what

1 description did the victim give, to your recollection,
2 of the person with the gun?

3 A. The guy, the one with glasses, six foot, a
4 hundred and seventy or eighty pounds, something like
5 that.

6 Q. All right. And what's your height?

7 A. Five eight.

8 Q. And what's your weight?

9 A. A hundred and forty-five.

10 Q. Okay. Did Mr. Moorman obtain any records from
11 the jail or from your doctor's office regarding your
12 height and weight?

13 A. No, ma'am.

14 Q. Was there any testimony presented by a doctor or
15 any medical official from the jail regarding your
16 height and weight?

17 A. Not that I know of.

18 Q. Okay. All right. And you didn't testify;
19 correct?

20 A. No.

21 Q. Okay. What other allegations do you have today
22 to present to the court?

23 A. That's all I have as far as the identification.

24 Q. Okay. Well, your attorney made a motion to try
25 to keep the identification out; correct?

1 A. I believe he did.

2 Q. All right. Please answer any questions that the
3 attorney general has for you.

4 **CROSS EXAMINATION**

5 **BY MS. RATIGAN:**

6 Q. Mr. Robinson, do you remember how many times you
7 would have met with Mr. Moorman before the trial?

8 A. I want to say twice or three times.

9 Q. Okay. And when you met with him did you review
10 the state's evidence, the motion for discovery?

11 A. Did I mention it?

12 Q. Did you review it with him? Did y'all talk about
13 police reports, witness statements, any of the state's
14 evidence?

15 A. Yeah, we did.

16 Q. Okay. And did you tell Mr. Moorman, you know,
17 kind of your version of what had happened?

18 A. Yes, ma'am.

19 Q. Now, when you testified about you said your co-
20 defendant gave inconsistent statements. Are you
21 talking about Timothy Wright?

22 A. Yes, ma'am.

23 Q. And -- but you also -- but you went on trial with
24 Mr. Workman; correct?

25 A. That's correct.

1 Q. Okay. And you had a trial with Mr. Workman

2 before? This is your second trial?

3 A. Both trials. It was a joint trial.

4 Q. So it was a joint trial both times?

5 A. Yes, ma'am.

6 Q. All right. And do you recall Mr. Moorman during
7 the trial asking the victim about the differences in
8 the heights and weights? Do you remember that from the
9 trial?

10 A. Yeah. I remember that.

11 Q. Okay. But you think that he should have asked
12 different questions or how else did you want him to get
13 into the issue of the height and weight discrepancies?

14 A. I mean, it was a description sheet. It was a
15 sheet that the victim gave of the people that robbed
16 him. He identified me three weeks prior to him being
17 robbed on a news broadcast.

18 Q. Okay. But didn't Mr. Moorman argue that at your
19 trial?

20 A. He argued that part.

21 Q. Okay. So be real specific with me. What part
22 about the identification did you want him to argue that
23 he did not argue?

24 A. As far as the description sheet.

25 Q. Okay. So you wanted him to specifically mention

1 the description sheet?

2 A. Yes, ma'am. They didn't put me in the photo
3 line-up or nothing.

4 Q. Okay.

5 MS. RATIGAN: That's all I have, Your Honor.

6 THE COURT: Any redirect?

7 MS. HORLBECK: Just briefly, Judge.

8 Judge, I'm just going to have these marked for
9 identification.

10 (WHEREUPON, Plaintiff Exhibit Numbers 1 and 2 were
11 marked for identification.)

12 **REDIRECT EXAMINATION**

13 **BY MS. HORLBECK:**

14 Q. Mr. Robinson, I'm hanging you Petitioner's 1 and
15 2 and just asking you to take a look at those and
16 identify them for the record. Just tell us what they
17 are. You picked up number 2. What is that?

18 A. It's a description of one of the victims he gave
19 that robbed him.

20 Q. Okay. Are those both criminal description sheets
21 in Petitioner's 1 and 2?

22 A. Yes, ma'am.

23 Q. Okay. And let's take number 1 first. What's the
24 height and the weight listed on Petitioner's 1?

25 A. The height, six foot, a hundred and seventy

1 pounds.

2 Q. Okay. And Petitioner's 2, what's the height and
3 the weight listed?

4 A. Five eight, a hundred and sixty pounds.

5 Q. All right. And your weight and height are what
6 again?

7 A. A hundred forty-five.

8 Q. And your height?

9 A. Five eight.

10 Q. Okay. Did Mr. Moorman put these into evidence
11 during your trial? Do you know?

12 A. I don't think so.

13 MS. HORLBECK: Judge, I'd move these into
14 evidence.

15 THE COURT: Any objection?

16 MS. RATIGAN: Your Honor, if she could maybe
17 lay a bit more foundation as to who gave which
18 statements -- I mean, which descriptions, because they
19 are different. I'm just not sure who gave what.

20 MS. HORLBECK: Okay.

21 Q. On Petitioner's 1 and 2, did you review these
22 with Mr. Moorman as part of your discovery package?

23 A. I didn't even never receive them.

24 Q. Okay. But these copies came from you; correct?

25 A. Yes, ma'am.

1 Q. Okay. But -- so these are copies of your
2 discovery that you received; right, at some point?

3 A. (Affirmative nod.)

4 Q. Okay. And on victim's 1 and 2, what's the
5 offense listed on there?

6 A. Armed robbery.

7 Q. Okay. And the location?

8 A. 200 Eunice Drive.

9 Q. Okay. And what is the age of the person
10 described in Petitioner's 1?

11 A. Twenty to twenty-two. I was seventeen at the
12 time.

13 Q. Okay. And hair?

14 A. Black.

15 Q. Facial hair?

16 A. Goatee.

17 Q. And the eyes?

18 A. Glasses.

19 Q. Any scars or tattoo visible?

20 A. None.

21 Q. Okay. And then the coat, jacket?

22 A. I believe it was sort of red.

23 Q. Okay. Shirt?

24 A. White T-shirt.

25 Q. Trousers?

- 1 A. Dark shorts.
- 2 Q. Shoes?
- 3 A. Tennis shoes.
- 4 Q. What color were the socks?
- 5 A. White.
- 6 Q. And the -- Petitioner's 1 describes that this
- 7 person had a -- what kind of a weapon?
- 8 A. Thirty-eight revolver.
- 9 Q. Okay. All right.
- 10 A. Something I never, you know, had.
- 11 Q. Okay. And Petitioner's 2, just go through that
- 12 whole description, too. What was the hair listed, hair
- 13 color?
- 14 A. Black.
- 15 Q. Facial hair?
- 16 A. None.
- 17 Q. Eyes?
- 18 A. Brown.
- 19 Q. Any visible scars or tattoos?
- 20 A. None.
- 21 Q. What kind of coat or jacket?
- 22 A. Sweat shirt.
- 23 Q. And color of the shirt?
- 24 A. White.
- 25 Q. Trousers?

1 A. Shorts.

2 Q. What kind of shoes?

3 A. Tennis shoes.

4 Q. And the person describing Petitioner's 2, did
5 that person allegedly have a weapon?

6 A. None.

7 Q. Okay. All right.

8 MS. HORLBECK: Judge, I again -- I think
9 we've successfully established the distinction between
10 the two people. We just again move these ---

11 THE COURT: Is the same person giving the
12 description in Exhibit 1 and Exhibit 2?

13 MS. HORLBECK: And that's a little hard. I
14 don't -- there's nothing on there that -- there's
15 nothing on these two sheets that makes -- that's going
16 to tell you that, Judge. I would assume so, since
17 there was only one victim.

18 THE COURT: Any objection?

19 MS. RATIGAN: No, Your Honor.

20 THE COURT: Without objection.

21 (WHEREUPON, Plaintiff Exhibit Numbers 1 and 2 were
22 admitted into evidence.

23 MS. HORLBECK: That's all I have. Thank you.

24 THE COURT: Any recross on the exhibits?

25 MS. RATIGAN: No, Your Honor.

1 THE COURT: All right. Thank you, sir. You
2 may step down.

3 MS. HORLBECK: That's all we have, Judge.

4 THE COURT: The state may call its first
5 witness.

6 MS. RATIGAN: Thank you, Your Honor. We
7 would call Mr. Moorman.

8 THE CLERK: Please place your left hand on
9 the bible. Raise your right hand.
10 You do solemnly swear or affirm that the testimony
11 you're about to give in this case will be the truth,
12 the whole truth and nothing but the truth, so help you
13 God?

14 THE WITNESS: I do.

15 THE CLERK: Thank you. Please state your
16 full name for the record.

17 THE WITNESS: Andrew Burke Moorman, Sr.

18 THE CLERK: Thank you.

19 ANDREW BURKE MOORMAN, SR.,

20 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. RATIGAN:

23 Q. Mr. Moorman, do you recall representing Mr.
24 Robinson on these charges?

25 A. I do.

1 Q. And were you appointed or were you retained?

2 A. I was appointed.

3 Q. And did you file the usual *Brady* and Rule 5
4 motions?

5 A. I did.

6 Q. Did you receive those items from the state?

7 A. I did.

8 Q. Did you review them with Mr. Robinson?

9 A. I did on multiple occasions.

10 Q. How many meetings would you say you had with him;
11 do you recall?

12 A. I would say meetings that I would deem to be
13 important, of substance, would be at least six. I'd be
14 happy to fill in the time lines on those.

15 Q. That's fine. Did you in any of these meetings
16 talk with Mr. Robinson kind of about his version of
17 events, what happened?

18 A. I did.

19 Q. And it was alleged in the application -- while we
20 have you up here I'll just go ahead and clear it up
21 right now. Mr. Robinson had alleged a *Brady* issue. Is
22 there anything you did not receive from the state in
23 terms of discovery?

24 A. No.

25 Q. Okay. And Mr. Robinson has testified that there

1 was a -- this is actually the second trial; is that

2 correct?

3 A. That's correct.

4 Q. Do you recall why the first trial mistried?

5 A. I want to say it was a hung jury. The jury could

6 not reach a verdict.

7 Q. And was that also a joint trial with Mr. Workman?

8 A. It was.

9 Q. Prior to trial number one, were you aware that

10 Timothy Wright would be testifying against Mr.

11 Robinson?

12 A. I suspected. There were statements that Mr.

13 Wright provided in discovery, so I anticipated Mr.

14 Wright testifying.

15 Q. Is that something you had discussed with Mr.

16 Robinson, that one of his co-defendants would probably

17 testify against him?

18 A. Yes, it was.

19 Q. Were you aware of any glaring discrepancies

20 between Mr. Wright's testimony in the first trial

21 versus this one?

22 A. No.

23 Q. Do you recall how much time elapsed between the

24 first and second trial? Was it pretty soon after?

25 A. I believe the first trial was in December of 2008

1 and the second trial was in January, so about a month,
2 I believe.

3 Q. In your opinion was there any legal basis to
4 object to Judge Pyle's Allen charge?

5 A. None.

6 MS. RATIGAN: May I approach, Your Honor?

7 THE COURT: You may.

8 Q. Actually I believe you already have them up
9 there. Is that Exhibits 1 and 2?

10 A. Yes.

11 Q. Do you recall those being provided to you in
12 discovery?

13 A. I do.

14 Q. Did you review them with Mr. Robinson?

15 A. I did.

16 Q. Would it be fair to say that the victim
17 identification was going to be a big issue at the
18 trial?

19 A. Yes, it was.

20 Q. And was there a pretrial Biggers hearing; do you
21 recall?

22 A. There was.

23 Q. In your opinion -- obviously this is kind of a
24 Monday morning quarterback type question. In your
25 opinion is there anything else you could have done that

1 may have resulted in a different outcome of the Biggers
2 hearing; do you think?

3 A. I don't think so. I don't think so.

4 Q. And do you recall whether, at the trial, you
5 questioned the victims about issues such as height and
6 weight, discrepancies of that nature?

7 A. I did. I reviewed the transcript and I did
8 question witnesses about discrepancies and his
9 testimony and the statement he initially gave law
10 enforcement.

11 Q. And do you recall whether you or co-defendant's
12 counsel employed any kind of an expert in this case?

13 A. I did employ an expert to testify, an expert in
14 eyewitness identification.

15 MS. RATIGAN: That's all I have, Your Honor.

16 THE COURT: You may cross examine the
17 witness.

18 MS. HORLBECK: Okay.

19 **CROSS EXAMINATION**

20 **BY MS. HORLBECK:**

21 Q. Regarding Mr. Wright, how many statements did he
22 make to police?

23 A. I want to say he made one written statement, but
24 it was a pretty long statement because Mr. Robinson had
25 -- may have been charged in a number at different

1 incidents.

2 Q. Okay. So one statement that you know of?

3 A. That I remember. I believe it was one statement.

4 Q. All right. And that statement would have been

5 what you would have used to try to impeach Mr. Wright's

6 testimony at both trials; is that correct?

7 A. Part of it, yes, that's correct.

8 Q. Okay. And to your knowledge -- you said you

9 recall just one statement. Is there any other -- are

10 there any other written statements that Mr. Wright

11 made; do you recall?

12 A. I don't think so. I don't think so.

13 Q. Okay. All right. And you indicated or you

14 testified that a month passed between the first and

15 second trial?

16 A. I believe so, yes.

17 Q. Did you have time to obtain a transcript of the

18 first trial?

19 A. I don't have a transcript. To be honest with

20 you, I don't know if I could have or not.

21 Q. Okay. All right. Do you think that would have

22 helped?

23 A. I don't believe so. And the reason why I say

24 that, in reviewing the transcript of the second trial,

25 I had a discussion with the trial court about how to go

1 about referencing statements that had been made in the
2 previous trial versus the new trial.

3 Q. Uh-huh (affirmative).

4 A. And I specifically cross examined Deputy Weiner
5 on a statement he made in the previous trial. So all
6 that to say, I believe I had a good understanding of
7 what was said in the first trial. That's why I said
8 I'd just have to review the transcript.

9 Q. All right. Did Mr. Wright, the co-defendant's
10 testimony differ from one trial to the next?

11 A. I can't remember. I mean, I don't think so, but
12 I can't say for sure.

13 Q. Okay. All right. If there had been a difference
14 in his testimony from the first trial to the second
15 trial, do you think having a transcript of that first
16 trial would have helped catch those discrepancies?

17 A. Honestly I don't know. I would say that, again,
18 having reviewed the transcript, it appeared that I was
19 very comfortable with what he said in the first trial
20 going into the second trial.

21 Q. Okay.

22 A. So I think if there was anything significant, I
23 likely would have remembered just having, a month past,
24 having taken notes.

25 Q. Okay. All right. So you had notes from your

1 first trial?

2 A. Yes.

3 Q. Were you taking -- did you have notes of Mr.

4 Wright's testimony in the first trial?

5 A. I believe I did. I had a number of notes. I

6 can't -- I believe I did.

7 Q. All right. That's all I have. Thank you.

8 THE COURT: Any cross examination?

9 MS. RATIGAN: I have no redirect, Your Honor.

10 THE COURT: No redirect. Okay.

11 MS. RATIGAN: And the state would rest, Your

12 Honor.

13 THE COURT: You had no other testimony?

14 MS. HORLBECK: No, sir.

15 THE COURT: All right. No other -- nothing

16 in reply?

17 MS. RATIGAN: Nothing.

18 THE COURT: All right. I'll review the
19 transcript in the case and issue instructions for an
20 order, hopefully, within the next week or so.

21 MS. HORLBECK: Thank you, Judge.

22 MS. RATIGAN: Thank you, Your Honor.

23

24 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Thirteenth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas for
9 Greenville County, South Carolina, on the 18th day of
10 February, 2014.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 July 31, 2014

16

17

18

19

20

A handwritten signature in cursive script, reading "Danette P. Hanks", is written over a horizontal line.

Circuit Court Reporter

CRIMINAL DESCRIPTION SHEET

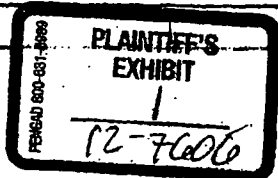
PHYSICAL DESCRIPTION

SEX M
 RACE AB
 HEIGHT 600
 WEIGHT 170
 AGE 20-22
 HAIR (COLOR/LENGTH) Black
 FACIAL HAIR Thin Goatee
 EYES (COLOR/GLASSES) Brown (Glasses)
 VISIBLE SCARS/TATTOOS None
 COAT/JACKET Hooded Sweater (Red)
 SHIRT White t-shirt
 TROUSERS Dark Shorts
 SHOES Tennis shoes (white socks)
 WEAPON 38 Revolver (Silver)
 EARRINGS/OTHER JEWELRY None

METHOD OF ESCAPE

DIRECTION White Horse & Saluda Dam
 AUTO LICENSE 7A5 BRW
 VEHICLE DESCRIPTION Dark colored
older Model Crown Vic

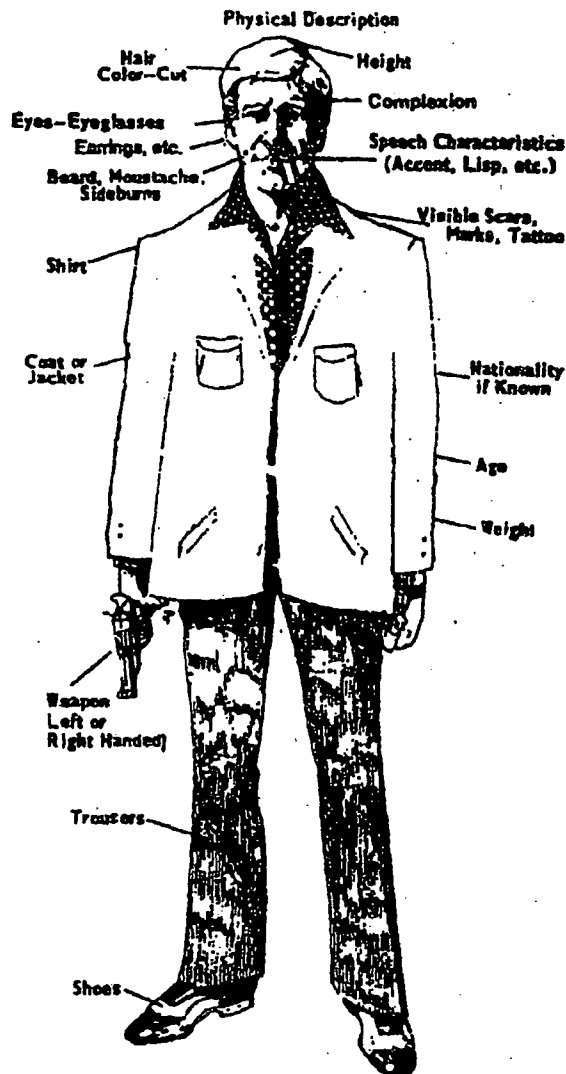
REMARKS



**IN EMERGENCY
CALL: 911**

REPORT A CRIME

32/REV. 3/88



OFFENSE: Armed Robbery

LOCATION: 200 Eunice F-8

ADDRESS: Same

DATE/TIME: 12/6/07 12:45 am

UNIT TAKING CODE: B39

CASE NUMBER: 07-171044

GREENVILLE COUNTY SHERIFF'S OFFICE

EXHIBIT #8.

CRIMINAL DESCRIPTION SHEET

PHYSICAL DESCRIPTION

SEX M
 RACE B
 HEIGHT 508
 WEIGHT 160
 AGE 18-20
 HAIR (COLOR/LENGTH) Blk
 FACIAL HAIR None
 EYES (COLOR/GLASSES) Brown
 VISIBLE SCARS/TATTOOS None
 COAT/JACKET Hooded sweatshirt
 SHIRT White
 TROUSERS Dark shorts
 SHOES Tennis shoes
 WEAPON None
 EARRINGS/OTHER JEWELRY None

METHOD OF ESCAPE

DIRECTION White Horse & Saluda Dam
 AUTO LICENSE 795 B2W
 VEHICLE DESCRIPTION Dark colored
older Model Crown Vic

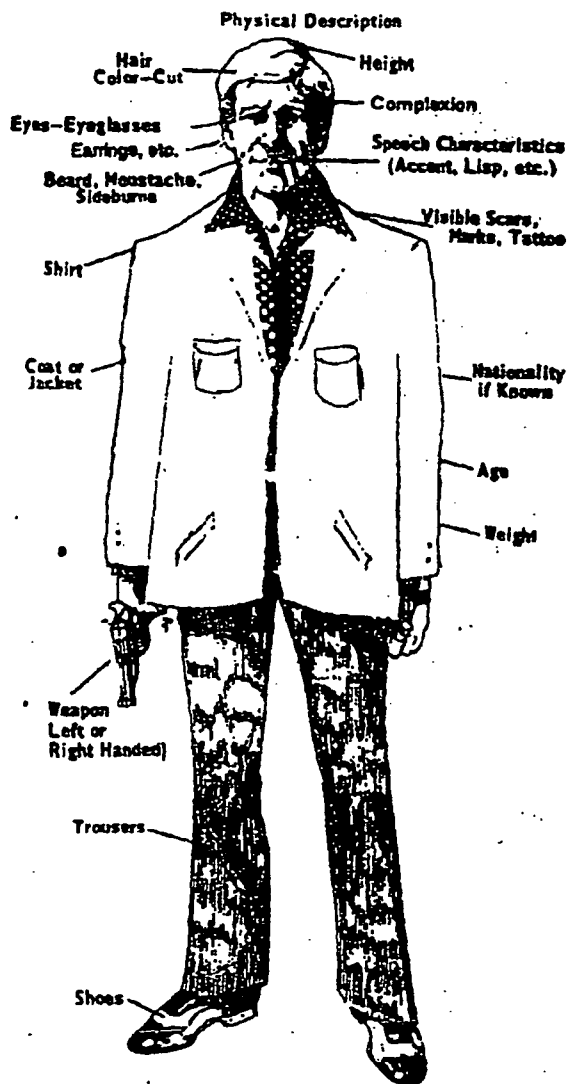
REMARKS



**IN EMERGENCY
CALL: 911**

TO REPORT A CRIME

SO - 00032/REV. 3/88



OFFENSE: Armed Robbery
 LOCATION: 200 Eunice FE
 ADDRESS: same
 DATE/TIME: 12/16/07 12:45 am
 UNIT TAKING CODE: B39
 CASE NUMBER: 07-171044

GREENVILLE COUNTY SHERIFF'S OFFICE

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

O'Shaun Joseph Robinson,
S.C.D.C. No. 327798,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-23-7606

ORDER OF DISMISSAL

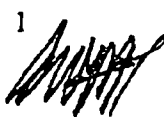
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 MAR 25 PM 12 35

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 5, 2012. The Respondent made its return on June 21, 2013. An evidentiary hearing into the matter was convened on February 18, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Andrew Moorman, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibits 1-2.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the August 2008 term of the Greenville County Grand Jury for armed robbery (2008-GS-23-

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5382, count 1), possession of a weapon during commission of a violent crime (2008-GS-23-5382, count 2), conspiracy (2008-GS-23-5383), and assault and battery of a high and aggravated nature (2008-GS-23-5384). He was represented by Andrew Moorman, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On January 15, 2009, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of twenty-five years for armed robbery, five years for possession of a weapon during commission of a violent crime, five years for conspiracy, and thirty days for the lesser offense of assault and battery.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Robinson, Op. No. 12-UP-042 (S.C. Ct. App. filed Jan. 25, 2012). The remittitur was issued on February 14, 2012.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failure to investigate and discover false statements.
 - b. Failure to object to armed robbery charge.
 - c. Failed to pursue Brady issue.
 - d. "Trial counsel ineffective assistance for not pursuing the trial sever based upon the record of evidence in regards to the discrepancies in the testimony of the testifying codefendant, T. Wright."
 - e. "Trial counsel ineffective assistance when he did not motion to the court for a direct verdict of not guilty based upon the lack of evidence on armed robbery due to the second trial having the main State's witness to proffer discrepancies in his testimony and this prejudiced the Applicant during trial and violated his rights to a fair trial."
 - f. Failed to argue the issue of the line-up process pre-trial.



- g. Failed to object to judge's inquiries "into the jury's numerical division."
- 2. Ineffective assistance of appellate counsel:
 - a. "Appellate counsel ineffective assistance for not pursuing all available appeal remedies by the SC Appellate Court rules and processes."

At the post-conviction relief hearing, the Applicant proceeded solely upon the following allegations:¹

- 1. Ineffective assistance of trial counsel:
 - a. Failure to investigate discrepancies in Timothy Wright's testimony and statements.
 - b. Failure to investigate the victims' statements.
 - c. Failure to object to the Allen² charge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he

¹ This Court finds all other allegations listed in the PCR application have been abandoned.

² Allen v. United States, 164 U.S. 492, 17 S. Ct. 154, 41 L. Ed. 528 (1896).

must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated trial counsel was appointed and that they had two meetings. The Applicant stated they reviewed the State's evidence and he told trial counsel his version of events. The Applicant stated trial counsel failed to investigate a co-defendant (Timothy Wright) who gave inconsistent testimony between the first and second trial in this case. The Applicant stated he never saw a transcript from the first trial but that trial counsel should have cross-examined Wright about the discrepancies. The Applicant stated trial counsel failed to investigate the victims' statements – specifically the descriptions of the suspects' heights and weights. The Applicant conceded trial counsel cross-examined the victims about the height and weight issue, but stated he wanted trial counsel to make an argument regarding the description sheets³ received in discovery. The Applicant stated trial counsel should have objected to the Allen charge.

Trial counsel testified he was appointed and filed discovery motions. Trial counsel testified he had six meetings with the Applicant. Trial counsel testified he received full discovery from the State and reviewed those materials with the Applicant multiple times. Trial

³ The two description sheets were admitted as Applicant's Exhibits 1 and 2.

counsel testified they also reviewed Applicant's Exhibits 1 and 2 and the Applicant's version of events. Trial counsel testified the Applicant's first trial on these charges (which was also a joint trial) ended in a hung jury. Trial counsel testified approximately one month elapsed between the two trials. Trial counsel testified he did not have a transcript of the first trial but that he had notes and "a good understanding" of what transpired at the first trial. Trial counsel testified there were no glaring differences in Wright's testimony between the first and second trials. Trial counsel testified the victims' identification was a big issue at trial and that he questioned these witnesses about the height and weight discrepancies. Trial counsel testified he could not have done anything differently at the Biggers⁴ hearing and that he retained an expert in eyewitness identification to testify at trial. Trial counsel testified there was no legal basis to object to the Allen charge.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have investigated whether Wright gave inconsistent testimony between the first and second trials. Trial counsel testified the trials were held within a month of one another and that – based upon his notes and recollection from the first trial – Wright's testimony did not differ. This Court finds trial counsel's testimony is credible. This Court also finds that, as the Applicant failed to produce any evidence that Wright's testimony did, in fact, differ this Court cannot engage in speculation. See, e.g., Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999)

⁴ Neil v. Biggers, 409 U.S. 188, 93 S. Ct. 375 (1972).

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(holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense); see also Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Regardless, this Court finds trial counsel cannot be found deficient, as the State presented strong evidence of the Applicant's guilt. See Harris v. State, 377 S.C. 66, 79-80, 659 S.E.2d 140, 147 (2008) (holding overwhelming evidence of defendant's guilt invalidated any argument that trial counsel should have had the first trial transcript available to potentially impeach a witness).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have investigated the victims' identification. This Court notes trial counsel did object to the identification in this case. Trial counsel questioned Officer Weiner during the Biggers hearing and later cross-examined him during the trial. (Trial transcript, pp.6-8; pp.13-19; pp.148-52). Trial counsel also called an expert witness to testify about faulty eyewitness identification. (Trial transcript, pp.156-67). While the Applicant testified an eyewitness said the perpetrator was 6'0" in height and 200 pounds in width and he actually was 5'8" tall and 140 pounds, this Court finds trial counsel did cross-examine the eyewitness about this discrepancy. (Trial transcript, pp.98-100). This Court finds trial counsel properly challenged the eyewitness identification in this case. This Court finds that specific reference to Applicant's Exhibits 1 and 2 would not have affected the outcome of the Applicant's trial. See Skeen v. State, supra.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the Allen charge. After the jury sent out a note that they were unable to reach a verdict, the trial judge gave the Allen charge. (Trial transcript, pp.252-56). Trial counsel

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testified there was no legal reason to have objected to this charge. This Court agrees. An Allen charge is used to encourage a deadlocked jury to reach a verdict and involves instructing the jurors to, among other things, approach the evidence with an open mind and consider the opinions of their fellow jurors. See State v. Robinson, 360 S.C. 187, 193, 600 S.E.2d 100, 103 (Ct. App. 2004). An Allen charge should be even-handed, directing both the majority and the minority to consider the other's views. See State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999). This Court finds the trial judge's statement to the jury did not involve the type of language usually seen in an improper Allen charge and, therefore, there was no reason for trial counsel to have objected.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

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CONCLUSION

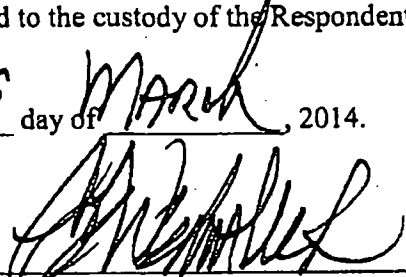
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

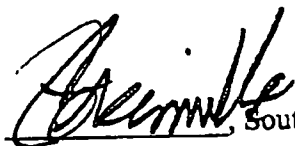
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15 day of MARCH, 2014.


G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit


Greenville, South Carolina.

WITNESSES

C Hanning

Greenville County Sheriff's Office

12/28/2007

ARREST WARRANT NUMBER

1474524

ACTION OF GRAND JURY

TRUE BILL

James L. McHenry
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

GUILTY

David Burre
Foreperson of Petit Jury

1/15/09
Date:

DOCKET NO. 2008-GS-23-
LCM

005383

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August TERM 2008

1-15-09

THE STATE

GUILTY

VS.

OSHAUN JOSEPH ROBINSON

0049

Indictment for

CONSPIRACY

VIOLATION § 16-17-0410

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath: **AUG 19 2008**

That OSHAUN JOSEPH ROBINSON did in Greenville County, on or about the 10th day of December, 2007,
willfully and unlawfully combine with Timothy Lee Wright and Kenneth Workman for the purpose of
accomplishing an unlawful object or a lawful object by unlawful means, to wit: Armed Robbery. This is in
violation of §16-17-0410 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

C Hanning

Greenville County Sheriffs Office

12/28/2007

DOCKET NO. 2008-GS-23-
LCM

005304

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2008

1-15-09

THE STATE
GUILTY

VS.

OSHAUN JOSEPH ROBINSON

ARREST WARRANT NUMBER

1474522

ACTION OF GRAND JURY

TRUE BILL
James L. McCreary

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

GUILTY

Indictment for
0013

ASSAULT AND BATTERY OF A HIGH AND
AGGRAVATED NATURE

VIOLATION § C/L

Paul Thure
Foreperson of Petit Jury

11/5/09
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
INDICTMENT FOR
ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
NATURE

At a Court of General Sessions, convened on

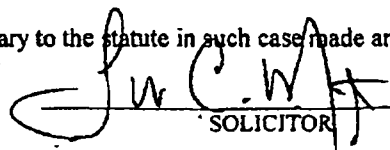
the Grand Jurors of Greenville

AUG 19 2008

County present upon their oath:

That OSHAUN JOSEPH ROBINSON did in Greenville County, on or about the 10th day of December, 2007, willfully and unlawfully commit an assault and battery upon Sergio Espinoza constituting an unlawful act of violent injury to Sergio Espinoza, accompanied by circumstances of aggravation, to wit: Use of a deadly weapon and for infliction of serious bodily. This is in violation of the Common Law of the State of South Carolina. 

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


SOLICITOR

WITNESSES

C Haning

Greenville County Sheriff's Office

12/28/2007

DOCKET NO. 2008-GS-23-

LCM

005382

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August TERM 2008

1-15-07

THE STATE

GUILTY
vs.

OSHAUN JOSEPH ROBINSON

ARREST WARRANT NUMBER

1474511, 1474523

ACTION OF GRAND JURY

TRUE BILL

Aug 1. McNeal
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Count out: GUILTY

Count two: GUILTY

David Bunker
Foreperson of Petit Jury Date: 11/01/09

Indictment for

0139, 0549

ARMED ROBBERY AND POSSESSION OF A
WEAPON DURING THE COMMISSION OF A

VIOLENT CRIME

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

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

At a Court of General Sessions, convened on
 County present upon their oath:

AUG 19 2008

the Grand Jurors of Greenville

COUNT ONE

ARMED ROBBERY

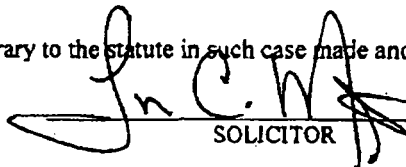
That OSHAUN JOSEPH ROBINSON did in Greenville County, on or about the 10th day of December, 2007, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Money and phone from the person or presence of Sergio Espinoza. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That OSHAUN JOSEPH ROBINSON did in Greenville County, on or about the 10th day of December, 2007, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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


 SOLICITOR