

VOL I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

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PHILLIP FLEMING WATTS, JR.,

S.C. Supreme Court

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002720

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 PHILLIP FLEMING WATTS,) 2008-GS-46-2083
7 JR.,) 2008-GS-46-2083-A
8) SEPTEMBER 22, 2008
9 Defendant.) York, South Carolina

10 (VOLUME I)

11 B E F O R E:

12 THE HONORABLE JOHN C. FEW, JUDGE. ; and a jury.

13
14
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1 (PROCEEDINGS, September 22, 2008)

2 THE COURT: All right, Mr. Freeman.

3 MR. FREEMAN: Your Honor, my name is John Freeman
4 and I have been appointed to represent Mr. Watts on the
5 matter which I understand is scheduled to be the first trial
6 in front of Your Honor this morning.

7 Your Honor, Mr. Watts is charged with several
8 criminal offenses which occurred around York County in
9 January and February of this year. Those offenses generated
10 a fair amount of local media -- not a fair, a lot of local
11 media attention, were in the paper, actually in several
12 newspapers, and on at least the local TV stations and the
13 local edition of the Charlotte TV station.

14 Your Honor, I would note for the record that there
15 is a camera in the courtroom and I saw outside one of the TV
16 trucks. I would just ask that the court require -- or
17 suggest that the court require not allowing the TV present
18 in at very least the courtroom.

19 Your Honor, as I understand the rules of court how
20 that's done in the courtroom is completely up to you. I
21 believe some judges have said you can do that but don't show
22 the jury under any circumstances.

23 Your Honor, Mr. Watts is charged in 28 different
24 felonies, maybe 27, and seven different armed robberies. I
25 believe it would be extremely prejudicial to him if you

1 allowed the cameras in the courtroom. As I said, perhaps
2 outside in the parking lot would be a little bit more
3 appropriate.

4 Also, Your Honor, I would take note of the fact
5 that the solicitor has indicated they intend to try him for
6 some of these other charges in the future. At the very
7 least, even if it does not create significant prejudice in
8 this case, it would create significant prejudice in the next
9 days, or the case after, or the case after, or the case
10 after, or the case after, making it increasingly impossible
11 to get a fair and impartial panel. I believe he's charged
12 with the offenses in the Rock Hill area and in the Fort Mill
13 area, two of the largest metropolitan areas in York County.

14 I know that he was in the paper in Rock Hill and
15 that he was in the paper in Fort Mill, the local TV, station
16 CN 2, has an affiliation with some the Charlotte stations.
17 I believe they carried information on this extensively.
18 And, again, there is a truck I saw out front which is from
19 one of the Charlotte stations and I anticipate they are
20 using a pool camera and planning to share the video. So we
21 would just ask the court to ask them to leave your courtroom
22 and, again, park it outside. They can catch people coming
23 and going, if that's what they want. They certainly could
24 interview the solicitor outside as easily as they could
25 interview him inside.

1 But I think, again, not just -- excuse me, not
2 just this case, but what's coming. Again, this young man is
3 potentially facing life in prison. We don't need the
4 additional challenge of having trouble finding an
5 increasingly biased panel in the future.

6 Also, Your Honor, I would submit that if you did
7 allow the court the cameras in the courtroom, you might have
8 to consider sequestering the jury, which was not something
9 that I had intended to ask for. This is certainly not a
10 capital case. So, I mean, there is that additional
11 hardship.

12 I have indicated some of the other things to you
13 in chambers about just the amount of press that this got
14 locally. So we would just ask that Your Honor exercise its
15 discretion and severely restrict, at the very least, the
16 media access in this room and preferably in this building.

17 THE COURT: All right. Solicitor, do you have
18 anything that you want to say?

19 MR. BRACKETT: No. Just briefly, Your Honor, just
20 to make sure the record is clear, this is in reference to
21 2008-GS-46-2083, the State versus Phillip Fleming Watts,
22 Jr..

23 Of course, the decision as to whether to allow
24 cameras in the court is completely within the court's
25 discretion.

1 I will say there was an extensive amount of
2 coverage in this case during the time the crimes were taking
3 place and subsequent to the arrest of the defendant.

4 I believe at the defendant's request we held a
5 preliminary hearing in which all the evidence that the State
6 has on every single charge we have pending was reviewed
7 extensively in this very courtroom in front of the
8 magistrate judge. So the majority of the information that
9 we would seek to present in this trial, I tell you this for
10 informational purposes, has already been disclosed to the
11 public via that preliminary hearing. Other than that I
12 leave the decision in the sound discretion of the court.

13 MR. FREEMAN: Your Honor, also by way of
14 clarification on the record, I was not representing Mr.
15 Watts at the time of the preliminary hearing.

16 THE COURT: All right.

17 Well, as far as the effect that the publicity
18 could have on this trial -- the jury panel, of course, is
19 already in the building and I can control that as well, no
20 matter whether the cameras are in the courtroom or not.

21 As far as any future trial, there is apparently
22 going to be some publicity about a trial. And I don't see
23 what difference it makes to some future juror that a camera
24 is covering this from outside the courthouse, as opposed to
25 inside the courtroom. If there is going to be publicity

1 about the trial, then potential jurors could see that
2 publicity and they would be affected in a very similar, if
3 not identical way, regardless of whether the cameras are in
4 this courtroom or not.

5 I'm not -- I don't see anything in the interests
6 of justice, which is what the rule requires me to look at,
7 that would warrant excluding the press from the courtroom in
8 the trial of this case.

9 MR. FREEMAN: Your Honor, in that case, and I
10 understand the court's ruling, I would simply ask, in
11 particular, that you not allow the press to show any video
12 or footage of Mr. Watts. Mr. Watts is currently
13 incarcerated. He is not going to be released, regardless of
14 the outcome of this case, because of the other charges that
15 you have already heard. So that particular element of
16 prejudice, being his face, splashing it all over the news
17 and paper, serves little purpose, and then particularly as
18 it relates to the interests of justice in the future.

19 THE COURT: Well, based. I don't want to get --
20 for several reasons, most of which are probably fairly
21 obvious. I don't want to get into the business of trying to
22 control what the press does.

23 The discussion that we had back in my office had
24 already told me that his picture has been on the cover of
25 newspapers and on television cameras, television news shows

1 before, and I'm sure they still have file of that coverage.
2 So even if I were to tell them they can't film him here in
3 the courtroom, they still have pictures of him that they
4 could put up. So I'm not sure what difference it's going to
5 make if I tell them what they can and can't do in relation
6 to this particular trial.

7 So I understand your request. I see nothing in
8 this situation that in the interests of justice would
9 require me to restrict what the press does beyond those
10 provisions that are set forth in Rule 605.

11 MR. FREEMAN: Thank you, Your Honor.

12 Again, I anticipate this case will run overnight.
13 I may reserve the right to visit that tomorrow, depending
14 what's in the paper tomorrow.

15 THE COURT: Sure.

16 All right. You need to get him dressed out and
17 then we will -- we have some other matters that we will take
18 up probably after jury selection.

19 MR. FREEMAN: Thank you, Your Honor.

20 His mother was bringing a change of clothes. I'll
21 go look for her in the hallway.

22 THE COURT: All right.

23 MR. BRACKETT: Thank you, Your Honor.

24 (Whereupon, proceedings were recessed)

25 (Whereupon, proceedings were reconvened)

1 THE COURT: All right. Now, what I would like to
2 do is go ahead and select the jury and then let the jury
3 have a break while we deal with the other pretrial issues
4 that we need to do.

5 Is there anything that we must attend to before we
6 select a jury?

7 MR. BRACKETT: Just for the record, Your Honor,
8 the Indictment 2008-GS-46-2083 alleges that on or about
9 January 22nd. And, of course, the on or about language.
10 The exact date is January 20th. So we would move to amend
11 the indictment to just reflect the date.

12 THE COURT: January 20th?

13 MR. BRACKETT: 20th. 20, yes, sir.

14 THE COURT: Any objection to the amendment?

15 MR. FREEMAN: No, Your Honor, although I would
16 reserve an objection if something during the evidence comes
17 up. I'm unaware of any other robbery that occurred two days
18 later at this location, but should something odd come up
19 during testimony, I would want to revisit that issue.

20 The incident in question is alleged to have
21 occurred on Sunday, January 20th. I agree that the language
22 in the indictment says on or about the 22nd.

23 THE COURT: All right. Well, with your consent
24 then I will amend the indictment to show that the incident
25 occurred on January 20th.

1 MR. BRACKETT: Thank you, Your Honor.

2 THE COURT: Pass it up.

3 Are you going to do it? Go ahead.

4 MR. BRACKETT: I can, if you don't mind. I'll
5 strike through the 2 and just draw the 0 above it, in both
6 Count I and Count II, Count II being possession of a firearm
7 during the commission of a violent crime.

8 THE COURT: All right. Then we need to get -- we
9 need to go ahead and get a panel sent up here. How many
10 folks can y'all put on the left side of the courtroom?

11 MR. FREEMAN: It looks like about eight or ten a
12 row. Five and a half rows?

13 THE COURT: About 40?

14 MR. FREEMAN: At least, Your Honor.

15 Again, as I indicated earlier, because of the
16 press coverage, I would just ask that you draw as many as
17 they normally would.

18 I would also note --

19 THE COURT: Strikes are five and ten?

20 MR. BRACKETT: Yes, sir.

21 MR. FREEMAN: Yes, sir.

22 Your Honor, I would also note for the record that
23 there is -- I'm sorry.

24 THE COURT: Ma'am?

25 THE CLERK: We have brought up a group as big as

1 65 up here. And it would just take like one side and half
2 of another. And everybody else --

3 THE COURT: We don't need that many. If we had
4 50, that's plenty. How many do we have down there?

5 THE CLERK: I have no idea, but I can find that
6 out.

7 MR. FREEMAN: Your Honor, while she's checking I
8 note for the record that there are seven chairs in the front
9 and seven in the back. As I indicated earlier, I was going
10 to ask Your Honor to pull more alternates than normal
11 because of the history of this case. I don't have a problem
12 maybe putting some of those chairs on the end.

13 THE COURT: Okay. Any special voir dire?
14 Bring up 50, please.

15 Any special voir dire?

16 MR. FREEMAN: Your Honor, I assume one of your
17 questions is is any member of the panel related by blood or
18 marriage to a law enforcement officer or anyone duly
19 deputized. If not, I would ask for that question.

20 I anticipate the solicitor would ask if I have
21 represented anyone or any member the their family as well.
22 I had a private practice in Rock Hill, in York County, for
23 about 15 years.

24 THE COURT: All right.

25 MR. BRACKETT: And as far as the State is

1 concerned, Your Honor, we typically request that the court
2 inquire of the jury panel whether or not any member of the
3 jury panel for religious, moral, or other reasons is
4 incapable of standing in judgment of another person. I have
5 had a couple of cases in York County that could not -- were
6 mis-tried because it turns out that the juror, after being
7 seated, indicated that they, for religious reasons, could
8 not judge another person, based on their religious beliefs.
9 So we would like to see if there is anybody out there for
10 that reason so we can identify them early on.

11 MR. FREEMAN: Your Honor, I would prefer you not
12 use the word religion in that question. Just if any jury
13 for any personal reasons were unable to pass judgement on
14 another.

15 THE COURT: All right.

16 MR. FREEMAN: And, again, my request for extra
17 alternate should resolve that.

18 Your Honor --

19 THE COURT: I think that normally when there is a
20 case like this where there has been a lot of pretrial
21 publicity, I prefer to just confront that head on and go
22 ahead and ask the jurors -- go ahead and tell the jury there
23 has been publicity and --

24 MR. FREEMAN: Your Honor, that puts me a difficult
25 situation, because my concern is if a juror is not aware of

1 this incident, but somehow links it to one of the other
2 incidents, then I believe that juror would then be
3 disqualified. So asking the question almost prejudices the
4 panel.

5 Perhaps a question along the lines of has any
6 juror --

7 THE COURT: Well, let me put it this way. It's my
8 experience that if you don't press jurors by stressing that
9 there has been press coverage, then some of them will not
10 realize that something they may have seen and something they
11 may remember actually relates to this incident. And if you
12 ask me not to ask that question, then it comes up during the
13 course of the trial that one of the jurors is -- remembers
14 something like this, then --

15 MR. FREEMAN: That's the reason I wanted to --

16 THE COURT: -- that's the problem. I'm -- then
17 you are putting me in a difficult position.

18 MR. FREEMAN: That's the reason I wanted extra
19 alternate. Honestly I anticipate at some point during this
20 trial there is some possibility a juror may connect the
21 dots.

22 THE COURT: Well, and then there is some
23 possibility that that juror might or might not say anything
24 about it. They might just sit over there and be quiet, and
25 even though they recall everything they saw on TV, such as

1 the fact that your client is accused of participating in all
2 these different events and not just the one he's on trial
3 for.

4 MR. FREEMAN: Your Honor, and I would also let the
5 record reflect there are currently three cameras in the
6 courtroom that have multiplied from the one when we started.
7 I think the jury can sort of read from that that obviously
8 there will be some coverage. So perhaps you could ask a
9 question both retroactively and prospectively at the same
10 time and then maybe minimize it that way. Again, that --

11 THE COURT: All right. Well, I'm going to ask
12 them whether or not -- I'm going to tell them that there has
13 been press coverage about these allegations and that I want
14 them to think carefully about whether or not they can recall
15 ever seeing or hearing any of these press stories. And then
16 if they have, we will speak to them individually about what
17 they have seen.

18 MR. FREEMAN: Thank you, Your Honor.

19 If you would, just again because of the nature of
20 the panel, having served on jury panels, people talk at
21 breaks, just ask them to come up here.

22 THE COURT: All right. I will. I will do that.

23 All right. So I'm not -- that's all the -- nobody
24 has any special voir dire, other than what you have just
25 mentioned?

1 MR. BRACKETT: No, sir.

2 MR. FREEMAN: Your Honor, do you also typically
3 ask in your ordinary questions about people who are members
4 of MADD, SADD, or other similar organizations? There is no
5 alcohol allegations.

6 THE COURT: I would ask that, if you would like
7 for me to.

8 MR. FREEMAN: Yes, sir. I normally ask for that
9 in DUI-type cases. Obviously this is not such a case.

10 THE COURT: All right. Anything else?

11 MR. FREEMAN: One moment, Your Honor.

12 (Off the record)

13 (Back on the record)

14 MR. BRACKETT: Mr. Freeman alluded to the question
15 about relationship with him or prior --

16 THE COURT: I'll get y'all to identify yourself.

17 MR. FREEMAN: And we have provided a witness list
18 to the clerk's office as well, Your Honor, or both parties
19 have.

20 THE COURT: All right. I don't have the witness
21 list. Do you have them?

22 THE CLERK: Do you want a copy of mine? I just
23 need it for spelling. I can give you the original.

24 THE COURT: You need to give me a copy, or I can
25 give it back to you after voir dire.

1 THE CLERK: That's fine.

2 THE COURT: Do you have your witnesses in the
3 courtroom?

4 MR. BRACKETT: Some of our witnesses in the
5 courtroom.

6 THE COURT: If you have witnesses who are here,
7 then go ahead and get them in the courtroom so we can
8 introduce them to the jury.

9 MR. BRACKETT: Yes, sir. All the witnesses that
10 are present in the courthouse at this time are in the
11 courtroom.

12 THE COURT: All right.

13 MR. BRACKETT: But not every witness that we
14 intend to call.

15 MR. FREEMAN: Three of my four potential witnesses
16 are present. Obviously the defendant; his mother, who is
17 seated on the back row; the private investigator who has
18 been assisting me is seated on the front row here.

19 One of the other potential witnesses was the
20 defendant's sister, who is 16 and in high school, and I
21 didn't see any point in making her miss more school than
22 necessary. She's kind of standby, but she's on the witness
23 list.

24 THE COURT: All right, that's fine.

25 All right, we are ready for the jury panel, and it

1 will take them awhile.

2 THE CLERK: They should be all on their way up
3 now. I told her to go and take them through the scanners.

4 THE COURT: They are going to bring them back
5 through the metal detector and everything?

6 THE CLERK: They are.

7 THE COURT: Let's go ahead and do something else
8 while we wait. We have to do a Jackson v. Denno hearing.

9 MR. FREEMAN: Yes, sir.

10 THE COURT: And what else?

11 MR. FREEMAN: Your Honor, there was questions
12 about the identification of the eyewitness, which I think is
13 integral to the State's case.

14 THE COURT: Identification of what you saw in the
15 newspaper?

16 MR. FREEMAN: Yes, sir, there was no photographic
17 lineup done subsequently, or confirmation by the sheriff's
18 department or the City of Rock Hill.

19 THE COURT: Well, the only identification issue
20 that has Constitutional implications would be something that
21 law enforcement did. And if she saw it in the newspaper,
22 that would have no Constitutional implications.

23 If the issue surrounding the accuracy of that
24 identification would be something for you to cover on
25 cross-examination, there would not be any reason that I

1 think of for me to have a pretrial hearing about it.

2 MR. FREEMAN: One moment, Your Honor. Let me
3 check my notes and see if there is anything else.

4 (Off the record)

5 (Back on the record)

6 MR. FREEMAN: Your Honor, I think everything else
7 was evidentiary, as you have indicated, and will be
8 addressed as we get to that point --

9 THE COURT: All right.

10 MR. FREEMAN: -- in the trial.

11 THE COURT: How long will it take for you,
12 solicitor, to put up your evidence on the Jackson v. Denno
13 hearing?

14 MR. BRACKETT: I can handle that right now with
15 Lieutenant Tim Hager, who is right here, and we can knock
16 that out.

17 THE COURT: Let's get started on that. I think
18 it's going to take the jury a little while to get up here.

19 MR. BRACKETT: Yes, sir.

20 THE COURT: Can we just keep an eye on that back
21 door? Somebody make sure that none of the jurors actually
22 come in during the course of this hearing.

23 THE BAILIFF: I will, sir.

24 ~~THE COURT: And then if they get here during the~~
25 middle of it, we will stop.

1 MR. BRACKETT: If it please the court, the State
2 with call Lieutenant Tim Hager.

3 LIEUTENANT TIM HAGER, having been first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BRACKETT:

6 Q. Lieutenant Hager, would you please state your full name
7 and spell your last for the court reporter?

8 A. Lieutenant Tim Hager, H-A-G-E-R.

9 Q. Where are you employed, sir?

10 A. I'm employed with the York County Sheriff's Department.

11 Q. And in what capacity are you employed with the
12 sheriff's department?

13 A. I'm a lieutenant over investigations that deals with
14 homicides, armed robberies, and crimes against persons.

15 Q. All right, sir. And how long have you been a police
16 officer?

17 A. Going on 28 years.

18 Q. All right, sir. Were you involved in the investigation
19 of Mr. Phillip Watts?

20 A. Yes, sir, I was.

21 Q. And there were a number of incidents that you were
22 investigating along with two other police departments, is
23 that correct, the Fort Mill Police Department, as well as
24 the Rock Hill Police Department?

25 A. Yes, sir.

1 Q. Now, for the purposes of this hearing, I want to focus
2 your attention on the incident that occurred at the One Stop
3 Exxon and the statement that you took after the defendant
4 was placed into custody for the Spot Check Cashing
5 shooting --

6 A. Uh-huh.

7 Q. -- for which your department held warrants.

8 A. Yes.

9 Q. All right, sir. Where was the defendant arrested?

10 A. He was arrested off of Riverview Road in an apartment
11 complex.

12 Q. And what city is that in?

13 A. In Rock Hill, South Carolina.

14 Q. And were you present at the time the defendant was
15 taken into custody?

16 A. Yes, I was.

17 Q. All right. Where was the defendant transported from
18 the location of his arrest?

19 A. He was transported directly from there to our interview
20 room at the sheriff's department in the criminal
21 investigative division.

22 Q. All right. Is that in this building?

23 A. Yes, sir, it's in a separate wing, but it's in the same
24 building.

25 Q. All right. He was transported to an interview room.

1 Can you describe that room for the judge?

2 A. It's a small room, four chairs, a table, door, window.
3 Nondescript.

4 Q. Were you present when he was placed in the room?

5 A. Yes, sir, I was.

6 Q. And who else was with you?

7 A. Detective Bruce Haire from the Rock Hill City Police
8 Department.

9 Q. Who conducted the interview of Mr. Watts?

10 A. Going in, it was just decided that I would try to talk
11 to him first and Bruce was going to take notes, and it
12 worked out that's the way it ended up.

13 Q. All right. When you first went in the room, can you
14 relate to the court what condition the defendant was in?

15 A. Seemed fine. I asked him was everything okay with him
16 physically, and asked him if he needed anything to drink,
17 anything to eat. And the best of my recollection, I think
18 we got him can drink and brought it to him.

19 Q. Did he appear to be under the influence of any alcohol
20 or intoxicating substance, narcotic of any kind?

21 A. No, sir, did not.

22 Q. Did he appear to be laboring under, based on -- have
23 you dealt with mentally ill individuals before in your
24 investigations?

25 A. Yes, I have.

1 Q. Did he exhibit any signs that he was laboring under any
2 mentally --

3 MR. FREEMAN: Objection, Your Honor. He's not
4 qualified to answer that question.

5 THE COURT: Overruled.

6 BY MR. BRACKETT:

7 Q. You can answer the question.

8 A. Repeat it again, please.

9 Q. Did he appear to be exhibiting any signs similar to
10 what you have previously experienced when dealing with
11 somebody who is mentally ill?

12 A. No, sir, quite to the contrary.

13 Q. Can you describe to the court his affect, his demeanor
14 and the way he talked?

15 A. As if me and you were sitting here talking. No
16 remorse, no emotion. Just calm and cool demeanor.

17 Q. How about his educational level in terms of dealing
18 with him? What did his education level appear to be?

19 A. He told us -- we had asked him initially on the waiver
20 form that he had his GED.

21 Q. All right.

22 A. Very intelligent young man.

23 Q. At some point did you relate to the defendant his
24 rights under Miranda?

25 A. Yes, I did.

1 Q. And was it you or Detective Haire?

2 A. I did, and Detective Haire also witnessed it.

3 Q. All right.

4 MR. BRACKETT: I ask that this be marked as
5 State's Exhibit 1 for identification purposes.

6 (Defendant's Statement Waiver Page marked as
7 State's Exhibit No. 1 for identification)

8 BY MR. BRACKETT:

9 Q. Sir, I'm showing you what's been marked for State's
10 Exhibit No. 1 for identification and I'll ask you do you
11 recognize that document?

12 A. Yes, I do.

13 Q. What is that?

14 A. It's a rights form that we use at the sheriff's
15 department before we do any interviews, as far as defendants
16 and subjects in custody.

17 Q. All right. And is that the form that you used to
18 relate to the defendant his rights?

19 A. Yes, sir. I read it to him verbatim as it was laying
20 on the table in front of both of us.

21 Q. And did he indicate that he understood the rights that
22 you read to him?

23 A. Yes, he did.

24 Q. And did he indicate that he understood them by making
25 any mark on the paper?

1 A. Yes, he marked yes and signed his name and dated it.

2 Q. All right. Did you witness him signing that?

3 A. Yes, sir, I did.

4 Q. Is the defendant who signed that form in the courtroom?

5 A. Yes, sir, he is.

6 Q. Can you indicate who that is to the judge?

7 A. He's the gentleman in the beige suit sitting beside
8 counsel there.

9 MR. BRACKETT: Let the record reflect that the
10 witness has identified Mr. Phillip Watts.

11 BY MR. BRACKETT:

12 Q. Lieutenant Hager, did you then discuss with him whether
13 or not he wished to speak with you?

14 A. Yes, sir, I did.

15 Q. And what did he indicate to you, as far as his
16 intentions in that regard?

17 A. At that point in time he understood his rights and he
18 was willing to talk to us.

19 Q. Okay, sir. At the time that he indicated his
20 willingness and desire to speak with you, did you, or
21 Detective Haire, or anyone else make any threats, coercion,
22 intimidation? Did you say anything to him to cause him to
23 fear that a negative response in regards to the question of
24 ~~do you want to talk to me, that the answer no would result~~
25 in some sort of physical harm, or some sort of mental harm,

1 or any kind of harm of any sort to the defendant?

2 A. No, sir, none whatsoever.

3 Q. Did you, or Detective Haire, or anyone else in your
4 presence at that time, when he waived his right under the
5 Miranda readings that you have indicated on that piece of
6 paper, did he -- did anyone make him any promises or
7 assurances of leniency? Did anyone indicate to him that in
8 the event that he were to cooperate, he would receive some
9 benefit to get him to waive his rights and speak with you?

10 A. No, sir, none whatsoever.

11 Q. So was his decision to speak with you freely and
12 voluntarily made?

13 A. Yes, sir, it was.

14 Q. And was that his decision?

15 A. Yes, sir, it was.

16 Q. All right, sir. And did he, in fact, proceed to speak
17 with you?

18 A. Yes, sir, he did.

19 Q. Did you know the defendant prior to that date?

20 A. I knew his family. I did not know him.

21 Q. All right. And who in his family did you know?

22 A. His uncle, Skip Dunham, was a good friend of mine in
23 high school. We played was basketball and football together
24 for three years in high school and I considered him a real
25 good friend.

1 Q. Okay. And did he -- was he aware of that fact?

2 A. I made him aware of it. And I also made him aware that
3 I knew his grandmother and how good a lady she was, because
4 I had known her back in those years and also his uncle, who
5 subsequently has died of cancer a few years back.

6 Q. Okay. When you questioned him, you -- what were you
7 questioning him about?

8 A. We were questioning him about a shooting that took
9 place at Spot Foods on Valentine's Day of that year. And
10 subsequently it led into a whole litany of things where he
11 decided to tell -- he said he wanted to tell the truth about
12 everything and get it all out.

13 Q. All right. Did you -- so your initial purpose in
14 sitting down to talk with him was to discuss the Spot Check
15 Cashing shooting?

16 A. Yes.

17 Q. All right. Were you aware of the robbery of the One
18 Stop Exxon on Main Street, West Main, in Rock Hill on
19 January 20th of the same year?

20 A. We were aware of it. That was not our main focus. It
21 was similarities to the rash of shootings that we had had.
22 Our main focus were the shootings, but there were some
23 similarities. And I had conversation with the city. We had
24 been in contact with them about some of the similarities,
25 yes.

1 Q. Okay. And in the course of the interview that you had
2 with the defendant during that time, did he relate to you
3 the circumstances surrounding the shooting at the check
4 cashing store?

5 A. Yes, he did.

6 Q. Did he -- in the course of his statements to you, did
7 he ultimately admit to it, his involvement in that shooting?

8 A. Yes, he did.

9 Q. And in the course of the statements --

10 MR. FREEMAN: Your Honor, I'm going to object.
11 The solicitor appears to be asking him did he admit all the
12 crimes. I don't think that goes to the voluntariness of the
13 statement. I'm not sure that that's relevant at all.

14 MR. BRACKETT: If I can tie it up for just a
15 minute?

16 THE COURT: I think it's relevant. Overruled.

17 BY MR. BRACKETT:

18 Q. Now, in the course of making the statements, as far as
19 the Check Cashing, did he bring up the subject of the One
20 Stop Exxon, or did you?

21 A. He brought it up.

22 Q. Okay. Well, had you previously mentioned it during the
23 course of the interview at all?

24 A. No, I did not.

25 Q. Had anyone mentioned it to him?

1 A. No, sir.

2 Q. Did you have any notion that he was going to admit to
3 that?

4 A. No, sir, along with two or three other ones that
5 happened months prior, we had no knowledge of it.

6 Q. All right. So this was part of a comprehensive
7 confession?

8 A. Yes.

9 Q. But the specific confession to the One Stop Exxon on
10 January 20th, that robbery was not a result of any
11 questioning by you?

12 A. No, sir.

13 Q. Insofar as specific to incident? You were questioning
14 him generally, but then he volunteered that information?

15 A. Yes. It got to the point where he was asking -- "you
16 might as well go ahead and get everything out in the open,"
17 which he did.

18 Q. All right. Did you detail and document the statements
19 that he made to you that day?

20 A. Yes, I did.

21 Q. All right. And did you record those on a piece of
22 paper, or --

23 A. Yes, we did.

24 Q. Do you have that with you?

25 A. Yes, I do.

1 MR. BRACKETT: Your Honor, I have three sheets
2 that are titled Voluntary Statement, York County Sheriff's
3 Office, pages 1 of 3, 2 of 3, and 3 of 3. They are dated
4 2-18-08, six p.m.. They are separate right now. I would
5 ask to have these sheets stapled together and marked as
6 State's Exhibit 2 for identification. This is a complete
7 confession that he gave to a variety of different incidents.
8 At the appropriate time we will seek to put in a redacted
9 confession that removes references to the other robberies
10 for which the defendant currently stands accused.

11 MR. FREEMAN: Your Honor, first of all, I have no
12 objection to those being entered collectively. It makes a
13 lot more sense. However, I note that's the originals, so I
14 would suggest perhaps -- I didn't say this on the other one.
15 Perhaps substituting a copy, anticipating it may be used in
16 the future trials.

17 MR. BRACKETT: We have no objection to the
18 court -- the Clerk of Court keeping the evidence. I
19 appreciate it.

20 THE COURT: All right.

21 MR. BRACKETT: But we can get ahold of it, if we
22 need. Thank you.

23 So I would ask that this be marked as State's
24 Exhibit No. 2 for identification.

25 (Defendant's Written Statement marked as State's

1 Exhibit No. 2 for identification)

2 THE COURT: When you get to a good stopping place,
3 we have the jury panel out there and we are ready to go
4 ahead with jury selection and we can resume the testimony.

5 MR. BRACKETT: I think I only have a couple more
6 quick questions in regards to this.

7 THE COURT: Go ahead.

8 BY MR. BRACKETT:

9 Q. Sir, is that the statement that you took from the
10 defendant Phillip Watts?

11 A. Yes, sir, it is.

12 Q. All right, sir. Is his signature on that page?

13 A. Yes, sir, it is.

14 Q. How about these two other pages, 1 of 2, 2 of 2, and 3
15 of 3?

16 A. Yes, sir, and also his initials on page three, at the
17 end of it.

18 Q. Now, sir, was that statement, does that accurately
19 reflect the information that he related to you regarding all
20 the different incidents that he's been charged with?

21 A. Yes, sir.

22 Q. And were these statements that he made to you, were
23 they made freely and voluntarily?

24 A. Yes, sir, they were.

25 Q. Of his own free will?

1 A. Yes, sir, they were.

2 Q. Did anyone pressure, threaten, or coerce him?

3 A. None whatsoever.

4 Q. Did anyone promise him anything in exchange for making
5 the statements that's contained in State's Exhibit 2?

6 A. Nothing whatsoever, no, sir.

7 Q. And did you witness him signing these?

8 A. Yes, sir, I did.

9 Q. And is that the defendant's signature that you
10 previously identified in court?

11 A. Yes, sir. Also Bruce Haire, detective from Rock Hill
12 City Police Department.

13 Q. All right.

14 MR. BRACKETT: I'll confer with co-counsel for one
15 minute.

16 (Off the record)

17 (Back on the record)

18 MR. BRACKETT: For the purposes of this hearing,
19 State's Exhibit 2 for identification will be tendered to the
20 court for your consideration. And, again, when the
21 appropriate time comes for that statement to be presented to
22 the jury, we will have a redacted copy of it, but those are
23 all references to the other.

24 That would be all I have of the witness at this
25 time.

1 THE COURT: Does it suit you to cross-examine the
2 witness later?

3 MR. FREEMAN: Yes, Your Honor, I think that makes
4 good sense.

5 THE COURT: Thank you. You can step down.

6 All right. Bring in the jury.

7 I'll be right back.

8 (Off the record)

9 (Back on the record)

10 (Whereupon, the jury venire panel entered the
11 courtroom)

12 THE COURT: Ladies and gentlemen of the jury, we
13 are now ready for jury selection in the case of the State of
14 South Carolina versus Phillip Fleming Watts, Jr..

15 Mr. Watts has been indicted in Indictment Number
16 2008-GS-46-2083 in Count I for armed robbery, and in Count
17 II, for possession of a firearm during the commission of a
18 violent crime.

19 In Count I, it is alleged that Phillip Fleming
20 Watts, Jr., did, in York County on or about January 20th,
21 2008, feloniously steal United States currency and/or other
22 items of value from the One Stop Exxon Store located at 2460
23 West Main Street in Rock Hill, South Carolina. Phillip
24 ~~Fleming Watts, Jr. Stole said items by means of force or~~
25 intimidation by holding One Stop Exxon employee Annette

1 Mobley Hicks at gunpoint. Phillip Fleming Watts, Jr.
2 Committed this robbery while armed with a deadly weapon in
3 violation of Section 16-11-330 of the South Carolina Code of
4 Laws.

5 In Count II, it is alleged that Phillip Fleming
6 Watts, Jr., did, in York County on or about January 20th,
7 2008, possess a firearm while committing the violent crime
8 of armed robbery at the One Stop Exxon Store located at 2460
9 West Main Street in Rock Hill, South Carolina, all in
10 violation of Section 16-23-490.

11 Now, we are about to go through a series of
12 questions and answers that are similar in format to those
13 questions and answers that we went through downstairs.
14 After we have selected the jury, I will take a few moments
15 to speak to you about a number of the rules of law and other
16 considerations that will govern your service as jurors, but
17 I want to stop right now and talk to you about the
18 indictment that I just read.

19 The indictment that I just read to you is not in
20 any sense evidence of the allegations that are contained in
21 that indictment. The indictment is simply the formal
22 instrument that contains the allegations that have been made
23 against the defendant, and the indictment serves to process
24 the case and bring it into this court for trial.

25 The defendant has pled not guilty to both of the

1 counts of the indictment. And the plea of not guilty casts
2 the burden on the State to prove the defendant guilty beyond
3 a reasonable doubt. And for those of you who are selected
4 to serve on the jury, that will be your job, to determine
5 whether or not the State has met that burden of proof.

6 Now, as I mentioned to you downstairs, the oath
7 that you took this morning will apply to all of the
8 information that I will be asking you for and that you will
9 be giving me during the course of these voir dire questions.

10 Please listen very carefully to these questions.
11 If you have any information that is responsive to a question
12 that I ask, then I would like for you to stand and tell me
13 your name and then tell me your information.

14 If you have any reason why you would not like to
15 stand and give your information out loud in front of the
16 other members of the jury, then you can just stand up at
17 that time and tell me that you would like to speak to me
18 privately and I will bring you down front and you can speak
19 privately with me and with the attorneys.

20 If you know something about this case, or if you
21 know some of the people who were going to be involved in
22 this case and if you think that giving your information out
23 loud in front of the other members of the jury might expose
24 ~~those other jurors to information they should not be exposed~~
25 to, then in that event you must come down front and answer

1 the question privately with me and with the attorneys.

2 We will start by having the solicitor to introduce
3 himself and his co-counsel to the jury.

4 MR. BRACKETT: If it please the court, thank you,
5 Your Honor.

6 I'm Kevin Brackett, Solicitor for the Sixteenth
7 Judicial Circuit. And at counsel table here with me is my
8 deputy solicitor, Mr. Willy Thompson. We'll be prosecuting
9 the case against Mr. Watts on behalf of the State of South
10 Carolina.

11 THE COURT: Is there any member of the jury panel
12 who is related by blood or by marriage to Solicitor Kevin
13 Brackett or to his deputy Willy Thompson, or do you know
14 either one of these gentlemen in any way? If so, please
15 stand.

16 (No response)

17 THE COURT: Now, Solicitor Brackett has the
18 responsibility of prosecuting criminal cases here in York
19 County and also over in Union County and he has a staff of
20 lawyers and nonlawyers who assist him in in that work.

21 Is there any member of the jury panel who is
22 related by blood or marriage to anyone who works for
23 Solicitor Brackett, or do you know anyone who works for
24 Solicitor Brackett? If so, please stand.

25 All right, sir.

1 JUROR NUMBER 15: My name is Eddie Bolin.

2 THE COURT: Your name is what, sir?

3 JUROR NUMBER 15: Eddie Bolin.

4 THE COURT: Eddie Bolin.

5 JUROR NUMBER 15: Yes.

6 THE COURT: All right.

7 JUROR NUMBER 15: I know Merry Collins.

8 THE COURT: How do you know Merry?

9 JUROR NUMBER 15: A long time friend, probably 25
10 years.

11 THE COURT: And how often do you see her nowadays?

12 JUROR NUMBER 15: Not too often. Probably once
13 every two months, or something like that.

14 THE COURT: All right. Is my understanding -- is
15 it Ms. Collins?

16 JUROR NUMBER 15: Ms. Merry Collins.

17 MR. BRACKETT: Merry Collins.

18 THE COURT: Ms. Collins is directly involved in
19 this case. I'm not sure if she's going to testify.

20 MR. BRACKETT: She is an investigative assistant.
21 She will not be testifying.

22 THE COURT: Not be?

23 MR. BRACKETT: She helps us keep our papers
24 ~~straight and knows where to find things when we need them.~~

25 THE COURT: All right. Given the fact that Ms.

1 Collins is involved in the case and will be in the courtroom
2 during the trial, but she is not going to testify during the
3 trial, would the fact that you know her and have been
4 friends with her for such a long period of time, would that
5 interfere in any way with either your willingness or your
6 ability to give both the State and the defendant a fair and
7 impartial trial, sir?

8 JUROR NUMBER 15: No, sir.

9 THE COURT: All right. Thank you. You can be
10 seated.

11 Mr. Freeman, would you introduce yourself and your
12 client to the jury?

13 MR. FREEMAN: Thank you, Your Honor.

14 My name is John Freeman. I'm an attorney in Rock
15 Hill. I'm from York County.

16 To my left is Mr. Phillip Watts, Jr., who is also
17 from Rock Hill.

18 Stand up, please.

19 THE COURT: All right. Thank you.

20 Is there any member of the jury panel who is
21 related by blood or marriage to Mr. Freeman or to Mr. Watts,
22 or do you know either one of them in any way? If so, please
23 stand.

24 (No response)

25 THE COURT: Is there any member of the jury panel

1 who has ever been represented by Mr. Freeman? If so, please
2 stand.

3 Yes, ma'am.

4 JUROR NUMBER 23: Beatrice Caldwell.

5 Mr. Freeman represented me in a bankruptcy case.

6 THE COURT: How long ago was that, Ms. Caldwell?

7 JUROR NUMBER 23: I think it was '04.

8 THE COURT: And is that matter resolved now?

9 JUROR NUMBER 23: It is.

10 THE COURT: Okay. Would the fact that you were
11 once represented by Mr. Freeman, would that interfere in any
12 way with your willingness or your ability to give both the
13 State and the defendant a fair and impartial trial in this
14 case?

15 JUROR NUMBER 23: It will not.

16 THE COURT: All right. Thank you, ma'am.

17 I'm going to read for you all a list of potential
18 witnesses now. And then after I have read you that list of
19 witnesses, I'm going to ask you whether you know or are
20 related to any of these potential witnesses. And if the
21 witness is in the courtroom when I call your name, please
22 stand.

23 Now, you have down this CN2. What is that?

24 ~~MR. THOMPSON: That was just something for our~~
25 records.

1 THE COURT: All right.

2 Laurabree Monday.

3 Brian Bagwell.

4 Kevin Tolson.

5 Annette Mosley Hicks. Thank you, Ms. Hicks. You
6 can be seated.

7 Jerry Huggins.

8 Daniel Lewis Keener.

9 Dave Keener.

10 David Keener.

11 From the Rock Hill Police Department the witnesses
12 would include Sarah Jane Blair.

13 Willie Burris. Thank you, sir.

14 M. Durham.

15 What is Mr. Durham first name?

16 MR. DURHAM: That would be Myron.

17 THE COURT: Myron?

18 MR. DURHAM: Yes, sir.

19 THE COURT: Thank you.

20 Bruce Haire. Thank you.

21 Officer Law. What is officer Law's first name?

22 THE WITNESS: Jonathan, I believe.

23 THE COURT: Jonathan Law.

24 G.F. Oliver.

25 Mike Smothers.

1 Those are the witnesses from the Rock Hill Police
2 Department.

3 Additional witnesses include Stephanie Dawn
4 Storey.

5 Frances Taylor.

6 Tom Tucker.

7 And from the York County sheriff's office, Tim
8 Hager.

9 Thank you, sir.

10 Other additional witnesses are Jeannie Annette
11 Young.

12 Sommer Young.

13 Valerie Dunham.

14 Thank you Ms. Dunham.

15 Samantha Dunham.

16 MS. DUNHAM: She's in school.

17 THE COURT: Thank you.

18 And Mike Channell.

19 Any additional witnesses for the State or the
20 defense?

21 MR. BRACKETT: None from the State, Your Honor.

22 MR. FREEMAN: None from the defense.

23 THE COURT: Is there any member of the jury panel
24 ~~who is related by blood or marriage to any of the witnesses~~
25 whose names I just called, or do you know any of them in any

1 way? If so, please stand.

2 JUROR NUMBER 159: I know Mr. Kevin Tolson. I
3 also know Mr. Mike Channell.

4 THE COURT: And, tell me your name, please.

5 JUROR NUMBER 159: I'm Lee Smith.

6 THE COURT: Ms. Smith. And how do you know these
7 witnesses? Let's start with Mr. Tolson.

8 JUROR NUMBER 159: Mr. Tolson is a personal friend
9 and also works with my husband at the sheriff's department.
10 And Mr. Channell used to be a co-worker of mine
11 and also with his son presently.

12 THE COURT: All right. Now, going back to Mr.
13 Tolson, how often do you see him?

14 JUROR NUMBER 159: Weekly, biweekly.

15 THE COURT: Weekly.

16 And does that include seeing him on a social
17 basis, or do you just see him through your husband and his
18 professional relationship?

19 JUROR NUMBER 159: Both.

20 THE COURT: Both?

21 JUROR NUMBER 159: Both.

22 THE COURT: And how about Mr. Channell, how often
23 do you see him?

24 JUROR NUMBER 159: Occasionally. Once a year,
25 twice a year.

1 THE COURT: Okay. All right. Now, for Mr.
2 Tolson, would the fact that your husband works with him,
3 that you see him on a pretty frequent basis, would that
4 interfere in any way with either your willingness or your
5 ability to give both the State and the defendant a fair and
6 impartial trial?

7 JUROR NUMBER 159: No, sir.

8 THE COURT: And for Mr. Channell, would the fact
9 that you know him interfere with either your willingness or
10 your ability to give both the State and defendant a fair and
11 impartial trial?

12 JUROR NUMBER 159: No.

13 THE COURT: All right. Thank you. You can be
14 seated.

15 Oh, ma'am, I'm sorry, tell me your name, please.

16 JUROR NUMBER 115: Gladys McFadden.

17 THE COURT: And who do you know, Ms. McFadden?

18 JUROR NUMBER 115: Bear. We call her Bear. I
19 went to school with Valerie Dunham.

20 THE COURT: You went to school with her?

21 JUROR NUMBER 115: Yes.

22 THE COURT: And since then have you seen -- do you
23 still see her very often?

24 ~~JUROR NUMBER 115: I see her occasionally, you~~
25 know, like out at the grocery store, Bi Lo, or church, or

1 whatever, but it's not, you know -- like really I seen her
2 every once in a while.

3 THE COURT: Okay. Am I correct that Ms. Dunham is
4 the defendant's mother?

5 MR. FREEMAN: That is correct, Your Honor.

6 THE COURT: All right, ma'am, given the fact that
7 you know her and that she is the defendant's mother, would
8 the fact that you know her interfere in any way with either
9 your willingness or your ability to give both the State and
10 the defendant a fair and impartial trial?

11 JUROR NUMBER 115: No.

12 THE COURT: All right. Thank you. You can be
13 seated.

14 Is there any member of the jury panel or any
15 member of your immediate family who is now or who ever was
16 an employee of any law enforcement agency or police
17 department, whether that be federal, state, county, city, or
18 military police? If so, please stand. If you or any member
19 of your immediate family is now or has ever been a police
20 officer or worked for a police department, please stand.

21 All right, ma'am, tell me your name.

22 JUROR NUMBER 31: Shirley Childers.

23 THE COURT: And tell me about this person, ma'am.

24 JUROR NUMBER 31: My step-grandfather worked for
25 Clover and the chief of police. And then his twin brothers

1 also, Lloyd and Floyd Harper.

2 And then I have a first cousin, Thomas B. Sanders,
3 who was a police officer here in York County. Now he's in
4 Chester County.

5 THE COURT: All right. Thank you, Ms. Childers.

6 Yes, sir.

7 JUROR NUMBER 68: Jacob Gainey.

8 My uncle is a retired state highway patrol
9 officer, Jim Varney.

10 THE COURT: Your name is Gainey?

11 JUROR NUMBER 68: Yes, sir.

12 THE COURT: Thank you.

13 Yes, sir.

14 JUROR NUMBER 81: David Hicks.

15 My brother Richard Hicks was OSI with the Air
16 Force.

17 THE COURT: Thank you.

18 Yes, ma'am.

19 JUROR NUMBER 159: Lee Smith. My husband is a
20 detective for the York County Sheriff's Department.

21 THE COURT: Ma'am, are you -- does this case in
22 any way sound familiar to you from your conversations with
23 your husband?

24 ~~JUROR NUMBER 159: No, sir.~~

25 THE COURT: All right. From your knowledge,

1 solicitor, and those of your officers, are you aware of any
2 involvement that Detective Smith may have had in the
3 investigation of this case?

4 MR. BRACKETT: Let me confirm it for the record.

5 (Off the record)

6 (Back on the record)

7 MR. BRACKETT: No, sir, Lieutenant Hager informs
8 me that he was not involved in the investigation.

9 THE COURT: That Detective Smith was not involved?

10 MR. BRACKETT: No, sir, he was not.

11 THE COURT: All right. Now, ladies and gentlemen,
12 it should be fairly obvious to you as you look around the
13 courtroom that we have television cameras in the courtroom.
14 And from that obvious fact you can infer that there will be
15 news coverage about this case.

16 I will tell you that there has been in the past
17 press coverage, both in TV media and in print media, that
18 have covered the allegations that relate to this case.

19 And I want to ask each of you now to think very
20 carefully about whether or not you have ever seen or heard
21 any of those press -- any of that press coverage? If you
22 think -- now, you heard me read the indictment and you will
23 recall that this is an incident that allegedly occurred on
24 January the 20th of 2008. And in the days and perhaps weeks
25 after the alleged incident there was press coverage.

1 Please think very carefully about whether or not
2 you have ever seen or heard any press coverage that relates
3 to the allegations that you have heard me describe in this
4 case. And if you have, I would like for you to stand and
5 then I will probably bring you down front and speak to you
6 privately, but please stand if you think that there is
7 anything that you may ever have heard or read or seen about
8 this case.

9 All right. Then I would like for each of you to
10 come to the center of the courtroom there where the bailiff
11 has just moved and I will bring you down to speak to you one
12 at a time.

13 (Whereupon, the following were private bench
14 conferences)

15 THE COURT: Tell me your name, please.

16 JUROR NUMBER 23: Beatrice Caldwell.

17 THE COURT: Ms. Caldwell, tell me what you think
18 you may have heard or seen.

19 JUROR NUMBER 23: I just -- when the incident
20 happened, you know, it was in the press conference about it
21 and it was coverage about it. Other than that I didn't
22 know.

23 THE COURT: Did you recall anything about who you
24 ~~heard them say may have done it?~~

25 JUROR NUMBER 23: Not in the beginning.

1 THE COURT: In the beginning?

2 JUROR NUMBER 23: Not in the beginning.

3 THE COURT: All right. Do you have -- do you
4 recall seeing any pictures of who that -- of who may have
5 been described as the person who did it?

6 JUROR NUMBER 23: I recall in the end where you
7 call it, a video, something in the paper, which you couldn't
8 tell who it was.

9 THE COURT: You couldn't tell?

10 JUROR NUMBER 23: No.

11 THE COURT: Did you recognize --

12 JUROR NUMBER 23: I didn't know him anyway.

13 THE COURT: Did you recognize the name of anyone?

14 JUROR NUMBER 23: I didn't.

15 THE COURT: Let me get you to stand right back
16 over here for just a minute and then I'll get you right back
17 out.

18 JUROR NUMBER 23: Back here?

19 THE COURT: Just stand right back here, please.

20 What I think I ought to do is, since we have maybe
21 six or eight people is just right now take a moment to just
22 explain it's the responsibility of each individual juror to
23 set aside anything they may have heard or seen about the
24 case since coming here and listen open-mindedly and render a
25 verdict, and not go into detail about it, so I don't have to

1 keep covering everything with each person, and so also that
2 I make sure each of the jurors out there understands that
3 that is their responsibility, not just those ones that might
4 remember it now. So if somebody remembers it later after we
5 have a jury, if it's a possibility, they will have had that
6 instruction.

7 MR. FREEMAN: Yes. And, of course, I'm going to
8 ask you to renew that one each one day when you ask them if
9 they have seen anything.

10 THE COURT: All right.

11 MR. BRACKETT: Two suggestions. If you can ask
12 them when they come up to tell you what all they know. I'm
13 not sure --

14 THE COURT: Okay.

15 MR. BRACKETT: And secondly, that they are not
16 supposed to discuss with anybody now whatever they know.

17 THE COURT: All right.

18 (Whereupon, the following was open discussion with
19 the jury venire panel)

20 THE COURT: Let me take a minute to speak to you
21 all as a group about this question of the press coverage.

22 Now, as a potential member of the jury, or to
23 those of you who are actually seated on the jury, it would
24 ~~be your responsibility to come in here in this courtroom~~
25 with an mind and to listen very carefully to all the

1 testimony and the evidence that will be presented before you
2 in the courtroom. And then when it becomes time to do so,
3 to render a verdict, that it's based solely on the testimony
4 and the evidence that you hear and see in the courtroom and
5 not based on anything that you may have heard, or seen, or
6 read earlier. So that's the instruction that I'm making
7 sure that each of you understands applies to you. And then
8 those of you who can recall ever having seen anything about
9 this, I'm going to ask you followup questions about that in
10 just a few minutes.

11 (Whereupon, the following were private bench
12 conferences)

13 THE COURT: So Ms. Caldwell, come back down.
14 Tell us what you remember, anything that you
15 remember, in the way of what they said happened, or who did
16 it, or how it happened, anything like that.

17 JUROR NUMBER 23: In the beginning they didn't
18 know who did it. And all I remember is that the gas station
19 had someone saying that the check cashing place had been
20 robbed or hit, or something about -- with a gun. Other than
21 that, nothing.

22 THE COURT: And so is there any other detail about
23 what you heard that you can now recall?

24 JUROR NUMBER 23: No.

25 THE COURT: Would the fact that you saw this press

1 coverage and that we have that are about the things that we
2 have just discussed, would that interfere in any way with
3 either your willingness or your ability to give both the
4 State --

5 JUROR NUMBER 23: No, it won't.

6 THE COURT: Do you think that you can do that, as
7 I just said, set aside anything that you heard or read or
8 saw and come in here and listen carefully with an open mind
9 and render a verdict that's based solely on the testimony --

10 JUROR NUMBER 23: I can.

11 THE COURT: All right. I'm going to -- just so
12 the record would be clear, I'm going to finish my question,
13 but to render a verdict that's based solely on the testimony
14 and the evidence that you hear and see in the courtroom and
15 not based on anything else?

16 JUROR NUMBER 23: Correct, I can do that.

17 THE COURT: Would that also be true, even if you
18 were to later remember some detail that you can't remember
19 as you stand here now, some detail that you may have heard
20 or seen in the press coverage? Would you still be able to
21 render a verdict that's based solely on what you see and
22 hear in the courtroom?

23 JUROR NUMBER 23: I can. If I can't, I'll let you
24 know.

25 THE COURT: Okay. Thank you very much. You can

1 return to your seat.

2 (Juror Number 23 returned to the jury panel)

3 THE COURT: Now, if there is any followup
4 questioning that y'all want me to ask, I would like for you
5 to tell me about it right now. Just one minute. And then
6 if you have an objection to that juror, I want to hear it
7 now while it's all fresh in my mind so that I can --

8 MR. FREEMAN: I do. I have an objection to her,
9 even though she's a former client, she mentioned the check
10 cashing place, which clearly indicates she was aware of the
11 different entity, not the one we are trying here. She just
12 pointed out press coverage which happened near the end of
13 this crime spree. And the fact that she mentioned the check
14 cashing place, which was one of the more graphic shooting
15 incidents towards last one, I believe, tells me right now
16 that he's been charged with at least two serious armed
17 robberies. And, again, with all due respect to Ms.
18 Caldwell, I don't think that she can set those prejudices
19 aside because she is acutely aware that he's charged with
20 multiple incidents.

21 MR. BRACKETT: I have no objection to that.

22 MR. FREEMAN: I would ask you to use a court
23 strike.

24 MR. BRACKETT: I have no objection with our
25 position, as long as we maintain the position throughout any

1 of the jurors that happened to be --

2 THE COURT: Well, here is the -- here is the
3 situation. All right. We have --

4 MR. FREEMAN: About eight standing.

5 THE COURT: About eight.

6 All right. So we can afford to lose all eight if
7 we had to and start, but if we get past voir dire and
8 somebody remembers another incident, then we are going to
9 have to have as a possible way of dealing with that is an
10 instruction that they cannot consider it --

11 MR. FREEMAN: Yes, I understand.

12 THE COURT: But I'm not going to be able to excuse
13 everybody after voir dire who might later remember some
14 other incident. I might be able to excuse them. I would
15 have to look at it at the time.

16 MR. FREEMAN: Yes, sir.

17 THE COURT: All right. So because she had already
18 remembers this other event, you are asking me to excuse her
19 just --

20 MR. FREEMAN: Yes, but I would wait until you go
21 through, because I don't want -- I don't want to call
22 attention to Ms. Caldwell.

23 THE COURT: Come up, please, ma'am.

24 ~~(Juror Number 138 approached the bench conference)~~

25 THE COURT: Give us your name.

1 JUROR NUMBER 138: Deborah Pirie.

2 THE COURT: Okay. What do you recall?

3 JUROR NUMBER 138: This is the case that -- is
4 this the case involving -- this is -- I mean, I just want to
5 know if it's the one where, you know, it was in Rock Hill,
6 as well Fort Mill?

7 THE COURT: What I would like for you to do is
8 tell me what you think you remember, even though you are
9 telling me you are not positive, the events that you recall.

10 JUROR NUMBER 138: Well, whether or not it is the
11 one that involves the holdup in Rock Hill, the holdup in the
12 check cashing place, as well as shots fired in Fort Mill at
13 my dentist office.

14 THE COURT: All right. Let me ask you to just
15 stand right over there for a second and I'll get right back
16 with you.

17 JUROR NUMBER 138: Okay.

18 MR. FREEMAN: For the record, I would renew the
19 exact same motion on that comment.

20 THE COURT: Hold on a minute.

21 Are you going to take the same position, based
22 on your earlier argument?

23 MR. BRACKETT: I would like to -- I'm re-thinking.

24 MR. FREEMAN: I just didn't want you to excuse one
25 at a time, and I didn't want to call those people out and --

1 out of the eight people, but --

2 THE COURT: No, I don't have to excuse them one at
3 a time. They don't know that they are excused.

4 MR. FREEMAN: All right.

5 THE COURT: But are you going to agree with his
6 position about her?

7 MR. BRACKETT: Could I ask Mr. Thompson for a
8 second?

9 THE COURT: Well, take a second and chat about it.

10 MR. BRACKETT: Thank you.

11 (Off the record)

12 (Back on the record)

13 MR. BRACKETT: Your Honor, I'm going to reverse
14 course based on very good advice from my co-counsel. I
15 think traditionally it has been if a juror has information
16 that they have read about the case and can render a
17 decision, based on the evidence that's presented, I think we
18 have -- respectfully to Ms. Caldwell and the juror who was
19 just up here, to indicate that they can be fair and
20 impartial, I think they should stay.

21 MR. FREEMAN: Your Honor, I would like the record
22 to reflect that it may not be clear from the record,
23 thinking Ms. Pirie, first of all, and by my earlier argument
24 ~~and would ask for court strikes on everybody that mentions~~
25 other incidents.

1 I would like the record to reflect that Ms.
2 Pirie's demeanor was upset and --

3 THE COURT: I haven't gotten to the point of
4 making a decision about her yet.

5 MR. FREEMAN: Dealing with her specifically.

6 THE COURT: I'm not ready for that yet.

7 MR. FREEMAN: Okay.

8 It would be the position and response to what the
9 solicitor said, you making sure it's going to be
10 extraordinarily difficult to set aside.

11 THE COURT: All right. Ms. Pirie, come up.

12 (Juror Number 138 approached the bench conference)

13 THE COURT: Okay. I apologize for the
14 interruption. We did have a few things that we needed to
15 discuss. It actually did not relate directly to you --

16 JUROR NUMBER 138: Right, I understand.

17 THE COURT: -- but to a general topic.

18 I want you to tell me anything that you can recall
19 about what you have described -- and I'm not answering any
20 of the questions that you asked me, but what you think is
21 the incident that is being tried here today. What else do
22 you recall?

23 JUROR NUMBER 138: Well, I mean, that's all, you
24 know, meaning they had the videotapes of that check cashing
25 place, particularly where that woman was, when she got shot

1 in the back, and then the description of the events that
2 took place in Fort Mill, and I guess the Rock Hill incident
3 as well, the Exxon.

4 THE COURT: All right. Well, now, we are here and
5 I'm just going to focus what I'm going to ask you about in
6 on this allegation that we have here today. And so focusing
7 in on this allegation that I read to you from the
8 indictment, is there anything else that you can recall about
9 that incident?

10 JUROR NUMBER 138: Not in particular.

11 THE COURT: Now, you heard my instructions to you
12 about what your responsibility would be as a juror. Do you
13 believe that you would be able to follow that instruction?

14 JUROR NUMBER 138: I may.

15 THE COURT: You are doubtful about that?

16 JUROR NUMBER 138: A little. I'm not sure. I'm
17 nervous.

18 THE COURT: Well, that's understandable that you
19 would be nervous. Actually probably we are as nervous as
20 you are. We just don't show it as well as you think you are
21 showing it, but tell me what it is that causes you concern.

22 JUROR NUMBER 138: Just that, you know, the
23 information -- you know, influenced by fear.

24 ~~THE COURT: And so then the question that I would~~
25 ask you now is would you -- would this information that you

1 have described knowing, would that interfere in your belief
2 in your ability to be a fair and impartial juror to both the
3 State and the defendant?

4 JUROR NUMBER 138: I could be fair.

5 THE COURT: All right. Again, I'm going to ask
6 you to step back over there. I may have another question
7 for you, but I think I'm finished. Just step back to where
8 you were.

9 (Juror Number 138 stepped away from the bench
10 conference).

11 MR. FREEMAN: Are we dealing with specifically --

12 THE COURT: I'm not -- without ruling on the
13 question of how to deal with other jurors who have heard
14 things about other incidents, I do believe that Ms. Pirie's
15 information that she has been given would interfere with her
16 ability to be a fair and impartial juror, so I'm going to --
17 just taking her individually, I'm going to strike her.

18 MR. FREEMAN: Thank you, Your Honor.

19 (Whereupon, the Court addressing the jury panel)

20 THE COURT: All right, Ms. Pirie, you can be
21 seated.

22 Now, those of you who are out there, obviously, do
23 not talk in any manner about what we are discussing up here.
24 If you have information that you may have heard or somebody
25 next to you does, no conversations whatsoever about what we

1 are discussing right now.

2 (Whereupon, the following were private bench
3 conferences)

4 THE COURT: Come on up, ma'am.

5 (Juror Number 115 approached the bench conference)

6 THE COURT: Tell me your name.

7 JUROR NUMBER 115: Gladys McFadden.

8 THE COURT: What do you know?

9 JUROR NUMBER 115: Like I said, I knew her. I
10 know her whole family real good, but I do not know her
11 son --

12 MR. FREEMAN: Excuse me, Your Honor.

13 THE COURT: If you can speak just a little bit
14 lower.

15 MR. FREEMAN: Thank you.

16 THE COURT: That's all right. We usually don't
17 have that problem.

18 JUROR NUMBER 115: I do not know her son, but I
19 remember reading about it in the paper, but I wasn't like
20 just keeping up with it, you know, like every day, you know.

21 THE COURT: All right.

22 JUROR NUMBER 115: I read something about it in
23 the paper.

24 ~~THE COURT: All right. Now, let me ask you this.~~

25 You know Ms. Dunham and you don't know her son, but you

1 certainly know of him, and then you heard about this as it
2 was going on?

3 JUROR NUMBER 115: Uh-huh.

4 THE COURT: Do you believe that you are going to
5 be able to be a fair and impartial juror if you were
6 selected to serve in this case?

7 JUROR NUMBER 115: Yes, I could be fair.

8 THE COURT: Okay. Let me ask you then some other
9 questions. Tell me exactly what you can recall having
10 heard.

11 JUROR NUMBER 115: About him robbing that store.
12 You know, I read it in the paper. Like I said, I wasn't
13 keeping up with it like every day. I wasn't keeping up with
14 it every day.

15 THE COURT: You weren't?

16 JUROR NUMBER 115: No.

17 THE COURT: All right. Now I guess what I want to
18 do is just focus in on any details you might have known.
19 Anything else that you might recall having heard?

20 Let me ask you one question. You do recall that
21 it was him that they said who did it?

22 JUROR NUMBER 115: Uh-huh.

23 THE COURT: All right. You say yes?

24 JUROR NUMBER 115: Uh-huh.

25 THE COURT: Any other details?

1 JUROR NUMBER 115: Uh-uh.

2 THE COURT: About how it was done?

3 JUROR NUMBER 115: Uh-uh.

4 THE COURT: When it was done?

5 JUROR NUMBER 115: Uh-uh.

6 THE COURT: All right. Let me ask you. You heard
7 me tell you what your instruction would be as a juror, is
8 you would set aside anything that you may have heard about
9 the incident.

10 JUROR NUMBER 115: Uh-huh.

11 THE COURT: You would also be required to set
12 aside a prior relationship with Ms. Dunham.

13 JUROR NUMBER 115: Uh-huh.

14 THE COURT: And you would then be required to come
15 in and sit open-mindedly as a juror, listen very carefully
16 to all the testimony and the evidence that you would hear
17 and see and make a decision that's based solely on the
18 testimony and the evidence that you see and hear in the
19 courtroom and not based on any personal relationship and not
20 based on anything you might have heard before the trial
21 started. Would you be able to do that?

22 JUROR NUMBER 115: Yes.

23 THE COURT: All right. Thank you. You may return
24 to your seat.

25 JUROR NUMBER 115: Thank you.

1 (Juror Number 115 returned to the jury panel)

2 THE COURT: Anything else with regard to her?

3 MR. FREEMAN: Yes, Your Honor, relating to her
4 specifically she said she remembered reading about it in the
5 paper. I got the impression from her that she recognized
6 that it was a series of events.

7 I would also point out to the court that most of
8 the articles in the paper were before he was arrested. And,
9 in fact, the article that identified him in this case did
10 not refer to this case. So if you read it in the paper --

11 THE COURT: Are you asking me to strike for cause
12 a juror that you can be almost sure you are going to strike
13 from a peremptory basis?

14 MR. FREEMAN: Yes, Your Honor.

15 THE COURT: Okay.

16 Well, I didn't -- was her testimony she said a
17 series of events?

18 MR. FREEMAN: I got the impression from her
19 testimony is she remembers reading it off and on in the
20 paper.

21 MR. BRACKETT: It's the same notion that she said
22 she could be fair.

23 THE COURT: Well, I'm satisfied that with her
24 ability to follow my instructions on the law and be -- and
25 not consider what she heard before and not consider her

1 personal relationship and render a verdict based on the
2 testimony that she sees and hears in the courtroom. But I
3 did not ask her -- I did not pick up that she was saying
4 anything about other incidents.

5 Now, what I plan to do -- what I plan to do, let
6 me tell you this, is those jurors who say anything about
7 other incidents, I'm going to put them in a separate group
8 and talk to them in a group about the other incidents and
9 then talk to them individually. I'll probably do that over
10 lunch. And, in fact, what that really means is I ought to
11 go tell those other people and have them come back say at
12 two o'clock. About 2:15.

13 MR. FREEMAN: There is going to be five more
14 people to go through.

15 THE COURT: All right. Let's do that. But I'm
16 going to keep Ms. McFadden and Ms. Caldwell. I'm going to
17 keep them as a group.

18 MR. FREEMAN: Yes, sir.

19 (Whereupon, the following is addressed to the
20 entire jury venire panel)

21 THE COURT: All right. Those of you who think
22 like I do realize it's getting pretty close to one o'clock,
23 which is a very precious hour for me when we eat lunch, and
24 ~~it's going to take us awhile to get through this. So what~~
25 I'm going to do is I want to ask this sort of as a followup

1 question. Is there anybody else out there now who is seated
2 who, having had a chance to think about it, who can recall
3 having seen or heard anything about the incidents that is
4 alleged to have occurred that we are trying here in this
5 case? If so, stand now.

6 Okay. Then those of you who do not need to speak
7 with me privately about this, I'm going to let you go to
8 lunch.

9 I want Ms. Caldwell and Ms. McFadden to stay.

10 But I also want you to keep this in mind. You
11 cannot during this lunch hour discuss any aspect of this
12 case with any other jurors, or any members of your family,
13 anybody. And you also should be very careful not to watch
14 the television, not to read the newspaper. It's -- the
15 obvious reason that we are going through this exercise now
16 is to make sure that we get a jury who is willing and able
17 to make a decision in this case that's based solely on the
18 testimony and the evidence that you see and hear in the
19 courtroom and not based on anything else. So if you were to
20 go out during lunch and read something in the newspaper that
21 I don't know what's in there, I don't know whether it meets
22 our rules -- or satisfies our Rules of Evidence, then that
23 would be improper.

24 So you can go eat lunch. We will resume at 2:15,
25 and I would like for you to be back in this courtroom at

1 2:15. And during that time do not in any way discuss any
2 aspect of this case.

3 Again, I want Ms. Caldwell and Ms. McFadden to
4 stay. And those of you who are standing here, I would like
5 for you to stay. It will be just a few more minutes with
6 you all.

7 Hold on just one second.

8 Anything else before --

9 MR. BRACKETT: No, sir, not from the State.

10 MR. FREEMAN: Briefly, Your Honor.

11 (Off the record)

12 (Back on the record)

13 THE COURT: All right. And Ms. Pirie, I would
14 like to speak to you one moment. The rest of you are free
15 to go to lunch. I'll see you at 2:15.

16 (Whereupon, the Jury Venire Panel left the
17 courtroom)

18 (Juror Number 138 approached the bench conference)

19 THE COURT: Okay. Ms. Pirie, I'm going to excuse
20 you and so you don't need to come back after lunch. If you
21 will just call back tonight after six, there will be
22 instructions on there about when to return.

23 JUROR NUMBER 138: Okay.

24 THE COURT: Thank you.

25 (Juror Number 138 left the courtroom)

1 THE COURT: All right, next.

2 (Juror Number 116 approached the bench conference)

3 THE COURT: Your name, ma'am?

4 JUROR NUMBER 116: Pamela McFall-Chance.

5 THE COURT: Ms. Chance.

6 JUROR NUMBER 116: Every day that I had read about
7 the article in the beginning, but I haven't kept up with it,
8 so I just wanted y'all to know that I wouldn't be an
9 impartial juror.

10 THE COURT: You would not be?

11 JUROR NUMBER 116: Well, would not be impartial.

12 THE COURT: Now, that's because you read the
13 article?

14 JUROR NUMBER 116: Well, I read the first couple
15 of articles, but I haven't kept up with the story the whole
16 time, you know. I just wanted to let you know because I
17 have access to a paper that's thrown in my face every day,
18 you know, that --

19 THE COURT: All right. Well, would you be able to
20 set aside what you read in the paper?

21 JUROR NUMBER 116: Yes, because it was a long time
22 ago I read it, and like I said, I haven't kept up with it.

23 THE COURT: I guess I'm concerned that you told me
24 right off the bat that you would not be able to be
25 impartial.

1 JUROR NUMBER 116: No, I said I could. I mean, I
2 wouldn't be impartial about it. I would be impartial. I'm
3 sorry, I may have been speaking too low where you couldn't
4 understand me.

5 THE COURT: Let's do it this way. Tell me
6 everything that you can recall about having -- about what
7 you read or heard.

8 JUROR NUMBER 116: Basically you refreshed my
9 memory on it about what you were saying up there. So other
10 than that, I don't think, you know, I remember that much
11 about it.

12 THE COURT: Other what the I read in the
13 indictment?

14 JUROR NUMBER 116: Yeah.

15 THE COURT: So can you recall any other fact or
16 detail about it?

17 JUROR NUMBER 116: No.

18 THE COURT: Did you see any pictures on television
19 about who was said to have done it?

20 JUROR NUMBER 116: No.

21 THE COURT: Now, you say you then -- that after a
22 certain point in time you didn't keep up with it?

23 JUROR NUMBER 116: No, uh-uh.

24 ~~THE COURT: All right. Do you believe -- now, you~~
25 heard my instruction that I gave a minute ago about your

1 responsibility would be as a juror is to set aside anything
2 that you may have heard or seen in the past?

3 JUROR NUMBER 116: Yes.

4 THE COURT: Would you be able to do that?

5 JUROR NUMBER 116: Yes, sir.

6 THE COURT: And do you believe that -- just given
7 the fact that you, as you said, had a newspaper thrown in
8 your face every day and you read about it and you recall
9 some details about it, but really just was refreshed when I
10 read the indictment, would any of that interfere with either
11 your willingness or your ability to give both the State and
12 the defendant a fair and impartial trial?

13 JUROR NUMBER 116: No, it wouldn't.

14 THE COURT: Okay. Now, when you say that you
15 could not be impartial, now, see, you are required to be
16 impartial in order to be a juror.

17 JUROR NUMBER 116: Okay.

18 THE COURT: Maybe we are just having
19 some confusion in words, but if you are able to be a fair
20 juror, then you're impartial.

21 JUROR NUMBER 116: Okay.

22 THE COURT: And so would the fact that you had
23 heard these things or read these things in any way influence
24 the decision that you would make as a juror?

25 JUROR NUMBER 116: No, it wouldn't.

1 THE COURT: Okay. Would you then be willing to
2 come in here and sit open-mindedly, listen very carefully to
3 all the testimony and the evidence that would be offered
4 before you here in this trial and render a verdict that's
5 based solely on the testimony and the evidence that you hear
6 and see in the courtroom and not based on anything that you
7 may have heard or read before?

8 JUROR NUMBER 116: Yes, sir.

9 THE COURT: All right.

10 JUROR NUMBER 116: I could.

11 THE COURT: Let me ask you to step back to that
12 table for just a minute and I'll get you right back.

13 (Juror Number 116 stepped away from the bench
14 conference)

15 THE COURT: Any followup questions?

16 MR. FREEMAN: No questions for her, Your Honor,
17 but a comment.

18 THE COURT: Did she say anything about any other
19 incidents?

20 MR. FREEMAN: I did hear --

21 MR. BRACKETT: No, I did not hear.

22 MR. FREEMAN: I heard her say the exact same thing
23 you did twice, that she could not be impartial.

24 THE COURT: Well, that wasn't my question. I want
25 to focus on this quickly so we --

1 MR. FREEMAN: Yes, very briefly, Your Honor.

2 THE COURT: Did she say anything about the other
3 incidents?

4 MR. FREEMAN: Your Honor, she said she had read
5 articles. Again, it's my position that this being one of
6 the early incidents in the chain got relatively little press
7 coverage. I think it just got a byline, but if you read an
8 article, you read about the other incidents.

9 THE COURT: Okay. Well, eventually what we are
10 going to do with these --

11 All right, let me -- any argument you want to make
12 on --

13 MR. FREEMAN: I can make it collectively at the
14 end of a specific case.

15 THE COURT: Well, I see two separate issues. One
16 is whether the individual juror having heard information
17 about this incident --

18 MR. FREEMAN: Uh-huh.

19 THE COURT: -- can yet be fair and impartial.

20 Any argument on that point as to this juror?

21 MR. FREEMAN: Your Honor, it's my position she
22 cannot be fair for the reasons I have articulated earlier,
23 having read articles, in the plural, tells me --

24 THE COURT: That's the other question.

25 So as far as this individual juror's ability to

1 remain fair and impartial, having heard or read things about
2 this incident, I find that she is qualified, that her
3 knowledge about these, having heard about these incidents,
4 is not going to interfere with her ability to carry out my
5 instructions and be a fair and impartial juror.

6 We will come back to the question of these other
7 incidents.

8 MR. FREEMAN: Yes, sir.

9 THE COURT: What I propose to do is we are going
10 to come up with a list of those people who need to be
11 questioned about it. And I see that this lady, we don't
12 know whether she heard of other incidents or not, so we are
13 going to have make a judgment call as to whether or not to
14 question her about it.

15 The first lady, well, she clearly knows about
16 other incidents.

17 MR. FREEMAN: Yes, sir.

18 THE COURT: Ms. McFadden, we are not sure about
19 her either. And so we are -- we don't have to answer that
20 question now. We are going to have to discuss that again.

21 MR. FREEMAN: Yes, sir.

22 (Whereupon, the Court addressed the jury panel)

23 THE COURT: Okay. Ms. Chance?

24 ~~JUROR NUMBER 116: Uh-huh.~~

25 THE COURT: Would you please be seated and stay

1 with us for a little while until we all break for lunch?

2 JUROR NUMBER 116: Sure.

3 THE COURT: Next.

4 (Juror Number 163 approached the bench conference)

5 THE COURT: Your name, ma'am, is Ms. Spratt?

6 JUROR NUMBER 163: Spratt.

7 THE COURT: Okay. Ms. Spratt, tell me anything
8 that you may recall having heard, read, or seen.

9 JUROR NUMBER 163: I just heard on TV when he
10 robbed somebody and shot people.

11 THE COURT: He was what?

12 JUROR NUMBER 163: Robbed somebody and shot them.
13 That's all I can recall, just what I saw on TV.

14 THE COURT: You said robbed them and shot them?

15 JUROR NUMBER 163: Uh-huh.

16 THE COURT: Okay. Other than that, are there any
17 other details that you recall about who it might have been?

18 JUROR NUMBER 163: No.

19 THE COURT: Any name? Do you remember a name?

20 JUROR NUMBER 163: No.

21 THE COURT: Do you remember a face?

22 JUROR NUMBER 163: No, that's -- I heard that and
23 then I stopped looking at it. It just come on TV.

24 THE COURT: The only details that you recall about
25 having heard is about somebody who robbed somebody and shot

1 somebody?

2 JUROR NUMBER 163: Uh-huh.

3 THE COURT: Okay. Now, do you believe that you
4 would be able to do as I instructed a few minutes ago, which
5 would be to set aside anything that you may have heard?

6 JUROR NUMBER 163: I will.

7 THE COURT: And do you believe that you would be
8 able to come into this courtroom and listen very carefully
9 to the testimony and evidence that you see and hear in the
10 courtroom, and then when it comes time to do so, to render a
11 verdict that's based solely on the testimony and the
12 evidence that you see and hear in the courtroom, as opposed
13 to something you may have seen on TV before? Would you be
14 able to do that?

15 JUROR NUMBER 163: Yes, I could.

16 THE COURT: Thank you.

17 I'm going to ask you to stand right back over at
18 that table for just a moment and I may bring you back up and
19 ask you some more questions.

20 JUROR NUMBER 163: Okay.

21 (Juror Number 163 stepped away from the bench
22 conference)

23 THE COURT: Okay. Now, any followup questions?

24 MR. FREEMAN: No.

25 THE COURT: All right. Now, as far as the

1 question of whether what she saw about this case, setting
2 aside the other incidents for a moment --

3 MR. FREEMAN: Yes, sir.

4 THE COURT: -- any argument?

5 MR. FREEMAN: I cannot separate the two arguments
6 for purposes of mine, so --

7 THE COURT: We are going to come back to the other
8 incidents.

9 MR. FREEMAN: Yes.

10 THE COURT: Well, as far as this incident is
11 concerned, I'm satisfied that she could follow my
12 instructions on the law and that she can set aside anything
13 that she may have heard or seen and that she will render a
14 verdict that's based solely on the testimony and the
15 evidence here in this courtroom and not based on anything
16 else. So I find that she's not disqualified.

17 Again, we are going to come back to the other
18 incidents.

19 (Whereupon, the Court addressed the jury panel)

20 THE COURT: Ms. Spratt, would you be seated for a
21 few minutes, please?

22 THE COURT: Next?

23 (Juror Number 133 approached the bench conference)

24 THE COURT: Okay, Ms. Oxendine?

25 JUROR NUMBER 133: Uh-huh.

1 THE COURT: Tell me what you know or may have seen
2 or heard or read.

3 JUROR NUMBER 133: I just read about it in the
4 paper.

5 MR. FREEMAN: I'm sorry, I couldn't hear you,
6 ma'am.

7 JUROR NUMBER 133: I just read it in the paper.

8 THE COURT: Okay. Tell me what details you may
9 recall. Any details at all?

10 JUROR NUMBER 133: I don't remember all the
11 details. Sometimes I read --

12 THE COURT: Okay. Are there any details that you
13 can recall?

14 JUROR NUMBER 133: That they robbed somebody.

15 THE COURT: That they robbed somebody.

16 Did you recall anything about the name of the
17 person who supposedly did this?

18 JUROR NUMBER 133: Yes, Watts.

19 THE COURT: You do?

20 JUROR NUMBER 133: Watts.

21 THE COURT: Now, do you recall the name from when
22 you read it in the paper?

23 JUROR NUMBER 133: Uh-huh.

24 THE COURT: You do?

25 JUROR NUMBER 133: Uh-huh.

1 THE COURT: Do you recall any faces --

2 JUROR NUMBER 133: Uh-uh.

3 THE COURT: -- that you may have seen?

4 JUROR NUMBER 133: I just remember the face. I
5 have seen that face before.

6 THE COURT: You have?

7 JUROR NUMBER 133: Yes.

8 THE COURT: Do you know where?

9 JUROR NUMBER 133: No, I can't remember whether it
10 was on the TV or the newspaper.

11 THE COURT: Okay. Do you think that you would
12 be -- if you were sitting in the jury on this case, would
13 you be able to set aside anything that you may have read or
14 seen, including their having called his name from the
15 newspaper, or perhaps your having seen his face in the
16 newspaper or on television, would you be able to set aside
17 all of that and come in here and listen very carefully to
18 the testimony and the evidence that would be presented
19 before you in the trial of this case and render a verdict
20 that's based solely on the testimony and the evidence that
21 you see and hear in the courtroom and not based on anything
22 else? Would you be able to do that?

23 JUROR NUMBER 133: Yes.

24 THE COURT: All right. I'm going to ask you to
25 step right back to that table for just a moment, please.

1 (Juror Number 133 stepped away from the bench
2 conference)

3 THE COURT: Any followup questions?

4 MR. FREEMAN: No followup questions.

5 THE COURT: Do you believe that she mentioned
6 anything about other incidents?

7 MR. FREEMAN: Yes, sir, absolutely she did, Your
8 Honor. She -- again, if you read it in the paper, this
9 incident was at best a byline at the time, which tells me
10 that you read the other articles.

11 I think she specifically remembered his name in
12 response to your question before you mentioned it at the
13 indictment.

14 And then thirdly that he robbed somebody.

15 And with all due respect, I would say that her
16 answers were deferential to your judicial authority, that
17 is, she sort of gave you the answer I felt like she wanted
18 you to have when you --

19 THE COURT: You are saying that at the time this
20 occurred and for sometime after that they didn't know his
21 name?

22 MR. FREEMAN: For about a month.

23 THE COURT: So if she knew his name, she had to
24 have read about something else?

25 MR. FREEMAN: Yes, sir. His name was published I

1 believe it was February the 18th is when it was first in the
2 paper.

3 MR. THOMPSON: He didn't mention his crime. His
4 crime wasn't mentioned.

5 MR. FREEMAN: She had to get it from the --

6 THE COURT: I see the argument. We will come back
7 to that. I'm not cutting you off on any of that. I'm going
8 to give you a full chance to be heard about all that.

9 MR. FREEMAN: Yes, sir.

10 (Whereupon, the Court addressed the jury panel)

11 THE COURT: Okay, Ms. Oxendine, would you mind
12 being seated for a few minutes, please?

13 THE COURT: Next?

14 (Juror Number 54 approached the bench conference)

15 THE COURT: All right. You are Mr. --

16 JUROR NUMBER 54: Frank Dotson.

17 THE COURT: Tell me what you recall.

18 JUROR NUMBER 54: What I recall, I remember seeing
19 it on TV and in the newspaper. What I remember, because --
20 what I recall is the co-op I work for, One Stop, the parent
21 company is out of Shelby, North Carolina, and they are
22 actually a member of the co-op that I work for. And so when
23 I saw it on TV, that's what I recall. I don't remember
24 anything else about it.

25 THE COURT: Do you remember the name of anybody

1 who supposedly may have done it?

2 JUROR NUMBER 54: No, sir.

3 THE COURT: Do you remember seeing anybody's face?

4 JUROR NUMBER 54: No, sir.

5 THE COURT: Do you remember any of other details
6 about what happened?

7 JUROR NUMBER 54: No, sir.

8 THE COURT: Would you be able to set aside
9 anything -- the things that you do remember having seen or
10 heard and do as I suggested you would have to earlier, which
11 is to listen carefully to all the testimony and the evidence
12 that would be presented before you in this trial and then
13 render a verdict that's based solely on that testimony and
14 evidence that you see and hear in the courtroom and not
15 based on anything else? Would you be able to do that?

16 JUROR NUMBER 54: Yes, sir.

17 Now, one thing you need to know about my
18 background is I have been in the convenience store business
19 or industry since I was 16 years old, about 19 years
20 operations, so I have been around that.

21 THE COURT: Well, do you think that that would in
22 any way interfere with your ability to be a fair and
23 impartial juror?

24 ~~JUROR NUMBER 54: No. I guess I would want to~~
25 know the facts, just like I did when I was in the operations

1 of it.

2 THE COURT: Well, let me ask you to step right
3 back there, please.

4 JUROR NUMBER 54: Yes, sir.

5 (Juror Number 54 stepped away from the bench
6 conference)

7 THE COURT: Any followup questions?

8 MR. FREEMAN: No followup.

9 MR. BRACKETT: No.

10 THE COURT: Okay. Did he mention other incidents?

11 MR. FREEMAN: If he saw him on TV, you were aware
12 of the other incidents. That's my position.

13 Secondly, he did not actually answer your question
14 about being impartial.

15 Thirdly, I believe he has an economic vested
16 interest indirectly.

17 THE COURT: Let me ask him about that.

18 Come up, please.

19 (Juror Number 54 approached the bench conference)

20 THE COURT: Now, when you mentioned that your
21 employer -- your employer is who?

22 JUROR NUMBER 54: I work for Pure Whole Jobbers
23 Cooperative, but we are a co-op.

24 THE COURT: And this One Stop --

25 JUROR NUMBER 54: They all share in our -- the

1 parent company. Every company owns a share of stock in our
2 co-op.

3 THE COURT: Is it in a sense then the store that
4 was robbed?

5 JUROR NUMBER 54: They are not branded Pure, so
6 they are not related to what we do.

7 THE COURT: But they are -- they are a shareholder
8 in the company that you work for?

9 JUROR NUMBER 54: Yes, sir.

10 THE COURT: Do are they -- are they in a position
11 of exercising any control over you or what kind of work that
12 you do?

13 JUROR NUMBER 54: No, sir, my contact there is not
14 part of the board, so I don't report directly to them, but I
15 call -- excuse me?

16 THE COURT: Do you personally call on that store?

17 JUROR NUMBER 54: No, sir. Not on that store, no.

18 THE COURT: All right. Do you feel like there is
19 any economic impact on what happens in this trial to your
20 job or to the company?

21 JUROR NUMBER 54: No, sir.

22 THE COURT: Now, let me go back to the question
23 that I asked you, and that is, do you believe that anything
24 ~~that you and I have discussed here in this little~~
25 discussion, anything, whether it be the fact that you heard

1 about something, the fact that this co-op is an owner in
2 your -- I mean that this store is an owner in the co-op, any
3 of this that we have discussed, would any of that interfere
4 in any way with either your willingness or your ability to
5 give the State and the defendant a fair and impartial trial?

6 JUROR NUMBER 54: No, sir.

7 THE COURT: Would any of that interfere with your
8 ability to follow the instruction that I gave you earlier,
9 which is to render a verdict that's based solely on the
10 testimony and the evidence that you see and hear in the
11 courtroom?

12 JUROR NUMBER 54: Yes, sir.

13 THE COURT: It would?

14 JUROR NUMBER 54: No. I mean, no, it won't
15 interfere with what I need to do, no, sir.

16 THE COURT: It won't interfere with your ability
17 to follow the instruction that I gave you?

18 JUROR NUMBER 54: No, sir.

19 THE COURT: All right. Thank you.

20 Let me ask you to return to your seat.

21 THE WITNESS: Yes, sir.

22 (Juror Number 54 returned to the jury panel)

23 THE COURT: All right. Now, what I think I'll do
24 is wait and have this discussion about other incidents
25 later, because we are liable to come up with some more

1 people when we get back from lunch. There would be some
2 people who may have thought about it, who may remember some
3 other things, so I would suggest that I just tell them to
4 come back and --

5 MR. FREEMAN: We will discuss it over lunch or
6 something.

7 THE COURT: Well, I was just going to tell them
8 they can go to lunch, but for them not to discuss it until
9 2:15. We will come back at 2:15 and we will just continue
10 voir dire.

11 When we get to the end of all voir dire, I'll
12 repeat the question about whether anybody has heard or seen
13 anything. And then we probably will get additional people
14 by then.

15 MR. FREEMAN: Okay.

16 THE COURT: And so then once we get to that point,
17 then we will discuss what we are going to do about this
18 other incidents question.

19 MR. FREEMAN: Okay.

20 THE COURT: All right?

21 MR. FREEMAN: And for the moment, just for the
22 record, you only excused the one lady, Ms. Pirie?

23 THE COURT: Yes.

24 MR. FREEMAN: Okay.

25 (Whereupon, the court addressed the jury panel)

1 THE COURT: Okay. We are all going to break for
2 lunch now. Those of you -- those members of the jury with
3 whom we have had these discussions, just as the others did,
4 do not talk in any way about this case with anybody and we
5 will see y'all at 2:15. Y'all have a nice lunch.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 (Whereupon, the Court addressed the Jury Panel)

9 THE COURT: Now, those of who have had a chance to
10 spend some time over lunch and perhaps think back and
11 reflect on the questions that I have been asking you, is
12 there anyone else who now recalls having seen or heard
13 anything about this case, any news media coverage at any
14 time in the past? If so, please stand.

15 (No response)

16 THE COURT: Is there any member of the jury panel
17 who has any particular interest in the outcome of this case?
18 If so, please stand.

19 (No response)

20 THE COURT: Is there any member of the jury panel
21 who has formed or expressed any opinion as to the guilt or
22 innocence of this defendant? If so, please stand.

23 (No response)

24 THE COURT: Is there any member of the jury panel
25 who has any bias or prejudice either towards or against the

1 State or the defendant in connection with this case? If so,
2 please stand.

3 (No response)

4 THE COURT: Is there any member of the jury panel
5 who has any reason, whether personal or otherwise, that you
6 do not feel comfortable sitting on this jury in judgment of
7 this defendant? If so, please stand.

8 (No response)

9 THE COURT: Is there any member of the jury panel
10 who knows of any reason why you could not give both the
11 State and the defendant a fair and impartial trial in this
12 case? If so, please stand.

13 (No response).

14 THE COURT: All right. Let me see the attorneys
15 down front.

16 (Whereupon, the following was a bench conference)

17 THE COURT: All right. Now, other than the
18 questions that relates to these other jurors that we have
19 already talked to individually, is there any other voir
20 dire?.

21 MR. BRACKETT: No, nothing from the state.

22 MR. FREEMAN: I think I had asked about the MADD
23 and --

24 THE COURT: Oh, yeah, yeah, yeah.

25 MR. FREEMAN: On that, or similar type

1 organizations.

2 THE COURT: All right. I'll ask that. I'll ask
3 that right now.

4 Do you mind if I just turn around and ask it?

5 MR. FREEMAN: That's fine.

6 MR. BRACKETT: Yes.

7 (Whereupon, the Court addressed the Jury Panel)

8 THE COURT: All right. Is there any member of the
9 jury panel or any member of your immediate family who is
10 involved in any way in any organization that has as part of
11 its purpose the reform of criminal laws or the enhancement
12 or increasing of penalty for the violation of criminal law?
13 Some of those organizations would include, just by way of
14 example, MADD, which, of course, means Mothers Against Drunk
15 Drivers. There is organization called CAVE, which is
16 Citizens Against Violence, and there are other organizations
17 of that nature.

18 If you or any member of your immediate family is
19 involved in any of those organizations, or others, either as
20 a member, or as a volunteer, or as a contributor, or in any
21 other way, please stand.

22 (No response)

23 (The following was a bench conference)

24 THE COURT: All right. Now, we have one, two,
25 three, four, five, six jurors as to whom the defendant makes

1 the argument that they have already told us that they are
2 aware, or at some point heard, about some of the other
3 incidents that this defendant is accused of being involved
4 in. And you take the position, first of all, that the
5 nature of the existence of those other allegations just in
6 and of itself is enough to remove them?

7 MR. FREEMAN: Yes, Your Honor, it would be, again,
8 taking the totality of the circumstances. I don't make that
9 an every time argument, but, again, seven different
10 instances of armed robbery. At least five people shot
11 collectively.

12 One juror, not the lady that was excused. She was
13 the person who said shot the person in the back. That's the
14 kind of media coverage we had locally. So it would be my
15 position that those jurors are presumed, despite what they
16 told you, should be judicially removed, because I don't
17 believe human nature is going to allow them to set those
18 concerns aside.

19 MR. BRACKETT: Our objection or concern with that
20 is if we start presuming the juror isn't telling us the
21 truth when they can tell us that they can put something
22 aside and render a fair and impartial verdict, how would we
23 believe any of those jurors out there?

24 ~~THE COURT: All right. I don't think that what we~~
25 have heard so far, the simple fact that they -- now, there

1 are two categories of yours here. And these one, two,
2 three, four, five, six -- and just for record, we are
3 talking about Ms. Caldwell, Ms. McFadden, Ms. Chance, Ms.
4 Spratt and Oxendine and Mr. Dotson. Now, the simple fact
5 that they heard of these incidents does not disqualify them.

6 And we have got to be clear. We are talking about
7 two categories of people. We are talking about one category
8 of people who know they heard of other incidents, such as
9 Ms. Caldwell, who mentioned the check cashing; such as Ms.
10 Spratt, who mentioned that somebody was robbed and shot.

11 Now, we are also talking about people who don't
12 apparently realize that they had heard of other incidents,
13 such as Mr. Chance. All she said is that she read articles.
14 And another woman, Ms. Oxendine, said that she had heard his
15 name.

16 And the defense counsel makes a good argument.
17 I'm not saying it's convincing, but it is a good argument
18 that the only way she could have heard his name would be if
19 she was reading something about a later incident. And I
20 don't know that -- I haven't read the newspaper article, so
21 I don't know for sure.

22 The question is how are we going to deal with
23 these? We have three actions. I could talk to each of them
24 individually. I could talk to them as a group and have that
25 same sort of discussion about you can't consider evidence

1 and then talk to them individually, or we can just -- I
2 could just remove them. Not because we don't believe what
3 they said, but because the whole prospect of suggesting --
4 in order to ask the question of are these other incidents
5 going to affect your decision in this case, we got to make
6 it clear to them that there are other incidents. And
7 that's -- that's the -- arguably -- he argues that that's
8 dangerous, so those are the three options. We know which
9 one Mr. Freeman would like for us to adopt or follow.

10 MR. BRACKETT: And some of these folks have read
11 articles, but they can't articulate anything that they know.
12 So what's the point if they don't remember anything if they
13 didn't read it all? They are aware that there were. How
14 can that issue, if you are not aware of the content, how can
15 that possibly prejudice their decision in this case?

16 MR. FREEMAN: Your Honor, obviously I believe the
17 court should exercise its discretion. And I will submit
18 that there are differing levels from what I have heard in
19 this.

20 THE COURT: All right. What about this.

21 MR. FREEMAN: Some of them --

22 THE COURT: Hold on. Hold on.

23 All right. The only one -- well, let me say if we
24 ~~were to take the two categories of people and those who~~
25 don't realize that they heard of other incidents, just leave

1 them alone.

2 MR. FREEMAN: All right.

3 THE COURT: All right. And take the ones who
4 apparently do realize there were other incidents, and you
5 help us -- we will discuss which ones those are.

6 MR. FREEMAN: Yes, sir.

7 THE COURT: And let me call those individually and
8 then we are done. We know that includes Ms. Caldwell,
9 because she knows the check cashing incident. We know that
10 includes Ms. Spratt, because she is the one that remembers
11 somebody was shot. There was nobody shot in this particular
12 incident.

13 MR. THOMPSON: No.

14 THE COURT: And we -- those are the only ones that
15 I know.

16 MR. FREEMAN: Let me check my notes real quick.

17 THE COURT: That was the one where we were unclear
18 about whether she said it. I didn't recall. Y'all didn't
19 recall it. I didn't recall it. The State didn't recall it
20 and Mr. Freeman did, but I actually I think what he was
21 saying is he was again making that same inference, that if
22 she read about it in the newspaper, she must have read some
23 later article.

24 MR. FREEMAN: Yes, sir, by the time he was
25 identified, there were other incidents.

1 MR. THOMPSON: I think this is like picking a jury
2 in a death penalty case.

3 THE COURT: I want you to -- I think I'm going to
4 do that. I'm going to -- I'm going to talk to the ones
5 where -- if you raise a concern that they know of other
6 incidents, I'm going to talk to those people again about the
7 other incidents, one at a time.

8 I know I'm going to talk to Ms. Caldwell and I'll
9 I know I'm going to talk to Ms. Spratt. You suggest --

10 MR. FREEMAN: McFall-Chance was the one who said
11 she could not be impartial. I understand she said she just
12 read articles, but you -- in response to your question said
13 I cannot be impartial.

14 THE COURT: Well, we cleared that up. I think she
15 was using the wrong words.

16 MR. FREEMAN: And the last gentleman I still
17 submit has an economic --

18 THE COURT: I overrule that objection.

19 MR. FREEMAN: Yes, sir, I understand.

20 And then -- hold on just one moment.

21 Ms. Oxendine specifically said she recalled the
22 name, that he had robbed somebody before and that she seen
23 his face before. My note indicate --

24 ~~THE COURT: Do you want to talk to Caldwell, and~~
25 you want me to talk to --

1 MR. FREEMAN: Oxendine.

2 THE COURT: Spratt and Oxendine.

3 MR. FREEMAN: Yes, sir, subject to my objection
4 overall, yes, sir.

5 THE COURT: So anybody else?

6 MR. FREEMAN: You have ruled on Denton (sic).

7 Let's see --

8 THE COURT: Dotson.

9 MR. BRACKETT: The only thing I ruled on Dotson
10 was the economic interests.

11 MR. FREEMAN: Well, I would have the same argument
12 then with him that if he's aware of that, the only way to
13 become aware of it is from coverage.

14 THE COURT: The question I'm asking now is which
15 of these jurors do you want me to talk to about other
16 incidents? Remember that with McFadden and Chance, we might
17 be suggesting to them something that they don't know.

18 MR. FREEMAN: This was my earlier concern, asking
19 the question which causes a problem, but I think it has to
20 be addressed.

21 My notes -- on my notes on Ms. McFall-Chance is
22 she had read articles and used the pleural term.

23 THE COURT: Just take them and you tell me which
24 ones you want me to talk to. Are you ready?

25 MR. FREEMAN: Yes, sir.

1 THE COURT: Okay.

2 MR. FREEMAN: Your Honor, I'm going through my
3 jury list, subject to my overall position. I believe Ms.
4 Caldwell, Ms. McFadden, Ms. McFall-Chance, Ms. Oxendine, and
5 I think there was one more that you had mentioned. Spratt.

6 THE COURT: Spratt.

7 MR. FREEMAN: Spratt, I agree with them.

8 THE COURT: You agree with who?

9 MR. FREEMAN: I agree that that person should get
10 additional questions.

11 THE COURT: All right. So now the question -- the
12 question mark are McFadden and Chance, because they -- you
13 have -- you have reason to -- well, you have inferred that
14 they read these other articles.

15 MR. FREEMAN: Yes, sir.

16 THE COURT: They didn't say anything about it
17 during my questioning. Are you sure you want me to question
18 them in that matter, because in order to ask the questions,
19 I have got to make it clear to them that there were other
20 incidents.

21 MR. FREEMAN: In that case, I would remove Ms.
22 Chance from that list.

23 Ms. McFadden -- my quote on Ms. McFadden,
24 ~~something about "robbing the store."~~ She remembers reading
25 it in the paper. All -- I will withdraw that one, subject

1 to my overall objection.

2 THE COURT: McFadden?

3 MR. FREEMAN: McFadden and McFall.

4 THE COURT: Well, I'm going to tell y'all that
5 what that -- all right, what that leaves is Caldwell, Spratt
6 and Oxendine.

7 MR. FREEMAN: Yes, sir.

8 THE COURT: Spratt and Oxendine are so far down on
9 the list that they are not going to be called. Caldwell is
10 up near the top, so I'm going to talk to her and we are
11 done.

12 MR. FREEMAN: Okay.

13 MR. BRACKETT: As far as the --

14 THE COURT: The list of jurors.

15 I have got a list.

16 MR. BRACKETT: Oh, okay.

17 THE COURT: All right. Is everybody clear? Is
18 everybody clear?

19 MR. BRACKETT: As far as us, yes.

20 MR. FREEMAN: Yes.

21 (Whereupon, the Court addressing the jury panel)

22 THE COURT: Ms. Caldwell, may I speak with you for
23 a moment, please?

24 And actually just hold right there one second
25 until I get you right down here.

1 (The following was a bench conference)

2 THE COURT: Okay. I'm going to -- I'm going to
3 have to say "all right, now you mentioned something about
4 the check cashing." I'm going to do something like this,
5 "you mentioned -- "you mentioned something that leads us to
6 believe that you heard about alleged incidents that are
7 other than the one he's on trial for here today."

8 MR. FREEMAN: That works, as long as you sort of
9 rephrase it in that way.

10 THE COURT: And I'm going to say "I'm going to
11 tell you that any other alleged incidents have nothing to do
12 with this trial."

13 MR. FREEMAN: Okay.

14 THE COURT: "But I want to ask you, are you
15 willing, just as the information that you heard about this
16 incident, are you willing and able to set aside what you
17 heard about any other alleged incidents."

18 MR. FREEMAN: Okay.

19 THE COURT: Is that good?

20 MR. FREEMAN: Yes, sir.

21 Come on up, ma'am.

22 (Juror Number 23 approached the bench conference)

23 THE COURT: Well, one more little discussion with
24 ~~you, ma'am, concerning the questions that I asked you~~
25 earlier. You gave answers that led me to conclude that you

1 heard not only about this incident, but that you heard
2 something, or read something, or saw something about others
3 incidents that are alleged to have occurred.

4 Now, without getting into whether there are any or
5 whether there are any accusations, if any, or any of that,
6 whatever those other incidents might be, whatever those
7 other accusations might be, they have nothing to do with
8 this trial.

9 So just like I asked you if you were willing and
10 able to set aside what you heard about this case, are you
11 willing and able to set aside what you heard about any other
12 alleged incident?

13 JUROR NUMBER 23: I am.

14 THE COURT: And are you able to then follow the
15 instructions that I gave you as a group earlier and set
16 aside not only what you heard about this incident, but set
17 aside what you also heard or might have heard about other
18 alleged incidents?

19 THE WITNESS: Uh-huh.

20 THE COURT: And come into this courtroom and
21 listen very carefully to the testimony and evidence that
22 would be presented before you? And then when it becomes
23 time to do so, to render a verdict that's based solely on
24 the testimony and evidence that you see and hear in the
25 courtroom and not based on anything else that you may have

1 .heard before?

2 JUROR NUMBER 23: I can.

3 THE COURT: All right. Thank you. You can return
4 to your seat.

5 (Juror Number 23 returned to the jury panel)

6 THE COURT: All right. I'm satisfied that she's
7 qualified; that she will have no trouble in following my
8 instructions; that what she knows about this case and what
9 she may have heard about some other cases are not going to
10 interfere with her ability to be a fair and impartial juror;
11 and so I'm going to -- I'm denying the motion to strike for
12 cause.

13 Any other voir dire questions?

14 MR. FREEMAN: No, sir, Your Honor.

15 MR. THOMPSON: No, sir.

16 THE COURT: Any other issues at all regarding jury
17 selection that we are about to move into striking the jury?

18 MR. FREEMAN: No, sir, nothing from the defense.

19 MR. BRACKETT: No.

20 THE COURT: All right.

21 (Whereupon, the bench conferences were concluded)

22 THE COURT: All right. We are now ready to strike
23 the jury.

24 ~~Just as a matter of information for y'all and also~~
25 because it is clear that this needs to be put on the record

1 anyway, it used to be that when we got to this point in jury
2 selection, everybody -- all the eligible jurors would have
3 their names placed on a small piece of paper. And each of
4 those pieces of paper would be place inside a small little
5 capsule or something like that and then they would be put
6 into a big tumbler. And you have also seen it on TV and it
7 looks very dramatic, of course, when somebody rolls it over
8 and you can hear the capsules rolling. And by doing that,
9 nobody knows what name is coming out first. Until very
10 recently it was mandated under our law that that be done and
11 that either a blind person or a person under the age of ten
12 would have to come into court and reach in and draw the
13 names out. Typically the parties would agree that anybody
14 could do that and it wouldn't have to be a blind person or a
15 person under ten.

16 Now, we have caught up. Now, this is interesting.
17 Our state has actually been a leader around the country in
18 the way that we use computer technology in running our court
19 system, but in that small respect we never became that later
20 until just recently. We have caught up and we now do it by
21 computer. And so we have sorted your names randomly and I
22 have them on a list in the order in which they will be
23 called.

24 And so with that procedure, there is no objection,
25 as I understand it?

1 MR. BRACKETT: None from the State, Your Honor.

2 MR. FREEMAN: None from the defense.

3 THE COURT: And I will point out that one of the
4 names that is on the list, that the lawyers, by the way,
5 have not seen, is number 15 -- I'm sorry number 113, who was
6 a juror that I disqualified downstairs earlier this morning,
7 and that information just didn't get related to the clerk
8 properly. So that person is not in the jury panel right
9 now.

10 So now, ladies and gentlemen, your names will be
11 called one at a time. When your name is called, please
12 gather your belongings and come down here to the front of
13 the courtroom. Walk between these two counsel tables and
14 stand right here in front of this clerk's bench and turn
15 around and face the attorneys.

16 The solicitor will speak first. The solicitor
17 will either ask that you be presented to the defense, or
18 that you be excused.

19 And then if you are presented to the defense, then
20 Mr. Freeman will ask either that you be seated on the jury,
21 or that you be excused.

22 If either one of the attorneys excuses you, you
23 may return to your seat, and we will continue with that
24 ~~process until we have a jury and at least two alternates.~~

25 I'm going to go with two alternates. I'll go with three

1 alternates.

2 MR. FREEMAN: Thank you.

3 Madam clerk?

4 THE CLERK: What are the strikes?

5 THE COURT: Five and ten?

6 Right, Mr. Freeman?

7 MR. FREEMAN: That's my understanding, yes, sir.

8 THE CLERK: Number 116, Pamela McFall-Chance.

9 What say you for the State?

10 MR. BRACKETT: Please present the juror.

11 THE CLERK: Defense?

12 MR. FREEMAN: Please excuse the juror.

13 THE CLERK: You may return to your seat.

14 Number 54, Franklin Dotson.

15 What say you for the State?

16 MR. BRACKETT: Please present the juror.

17 THE CLERK: Defense?

18 MR. FREEMAN: Please excuse the juror.

19 THE CLERK: You may return to your seat.

20 Number 87, Eddie Hudson.

21 What say you for the State?

22 MR. BRACKETT: Please present the juror.

23 THE CLERK: Defense?

24 MR. FREEMAN: Please swear the juror.

25 THE CLERK: You may have a seat in the juror box.

1 Number 193, Terrence Williams.
2 What say you for the State?
3 MR. BRACKETT: Please present the juror.
4 THE CLERK: Defense?
5 MR. FREEMAN: Please swear the juror.
6 THE CLERK: You may have a seat in the jury box.
7 Number 169, Linda Sutphin.
8 What say you for the State?
9 MR. BRACKETT: Please present the juror.
10 THE CLERK: Defense?
11 MR. FREEMAN: Please swear the juror.
12 THE CLERK: You may have a seat in the jury box.
13 Number 68, Jacob Gainey.
14 What say you for the State?
15 MR. BRACKETT: Please present the juror.
16 THE CLERK: Defense?
17 MR. FREEMAN: Please swear the juror.
18 THE CLERK: You may have a seat in the jury box.
19 Number 25, Ronald Carter.
20 What say you for the State?
21 MR. BRACKETT: Please present the juror.
22 THE CLERK: Defense?
23 MR. FREEMAN: Please present the juror.
24 ~~THE CLERK: You may have a seat in the jury box.~~
25 Number 164, James Stallworth.

1 What say you for the State?

2 MR. BRACKETT: Please present the juror.

3 THE CLERK: Defense?

4 MR. FREEMAN: Please excuse the juror.

5 THE CLERK: You may return to your seat.

6 Number 23, Beatrice Caldwell.

7 What say you for the State?

8 MR. BRACKETT: Please present the juror.

9 THE CLERK: Defense?

10 MR. FREEMAN: Let's please excuse the juror.

11 THE CLERK: You may return to your seat.

12 Number 161, Robert Snipes.

13 What say you for the State?

14 MR. BRACKETT: Please present the juror.

15 THE CLERK: Defense?

16 MR. FREEMAN: Please present the juror.

17 THE CLERK: You may have a seat in the jury box.

18 Number 2, Steven Adkins.

19 What say you for the State?

20 MR. BRACKETT: Please present the juror.

21 THE CLERK: Defense?

22 MR. FREEMAN: Please excuse the juror.

23 THE CLERK: You may return to your seat.

24 Number 176, Bonnie Thompson.

25 What say you for the State?

1 MR. BRACKETT: Please present the juror.

2 THE CLERK: Defense?

3 MR. FREEMAN: Please present the juror.

4 THE CLERK: You may have a seat in the jury box.

5 Number 6, Nazmi Aysan.

6 What say you for the State?

7 MR. BRACKETT: Please present the juror.

8 THE CLERK: Defense?

9 MR. FREEMAN: Please present the juror.

10 THE CLERK: You may have a seat in the jury box.

11 Number 4, Kim Anderson.

12 What say you for the State?

13 MR. BRACKETT: Please present the juror.

14 THE CLERK: Defense?

15 MR. FREEMAN: Please excuse the juror.

16 THE CLERK: You may return to your seat.

17 Number 46, Vaseliki Daniel.

18 What say you for the State?

19 MR. BRACKETT: Please present the juror.

20 THE CLERK: Defense?

21 MR. FREEMAN: Please swear the juror.

22 THE CLERK: You may have a seat in the jury box.

23 Number 85, Diane Hood.

24 ~~What say you for the State?~~

25 MR. BRACKETT: Please present the juror.

1 THE CLERK: Defense?

2 MR. FREEMAN: Please excuse the juror.

3 THE CLERK: You may return to your seat.

4 Number 83, Lisa Hollen.

5 What say you for the State?

6 MR. BRACKETT: Please excuse the juror.

7 THE CLERK: You may return to your seat.

8 Number 81, David Hicks.

9 What say you for the State?

10 MR. BRACKETT: Please present the juror.

11 THE CLERK: Defense?

12 MR. FREEMAN: Please present the juror.

13 THE CLERK: You may have a seat in the jury box.

14 Number 195, Jennifer Wilson.

15 What say you for the State?

16 MR. BRACKETT: Please present the juror.

17 THE CLERK: Defense?

18 MR. FREEMAN: Please excuse the juror.

19 THE CLERK: You may return to your seat.

20 Number 95, Moleisa Jordan.

21 What say you for the State?

22 MR. BRACKETT: Please present the juror.

23 THE CLERK: Defense?

24 MR. FREEMAN: Please swear the juror.

25 THE CLERK: You may have a seat in the jury box.

1 Number 128, Deborah Newsome.
2 What say you for the State?
3 MR. BRACKETT: Please present the juror.
4 THE CLERK: Defense?
5 MR. FREEMAN: Please excuse the juror.
6 THE CLERK: You may return to your seat.
7 Number 90, Michael Jackson.
8 What say you for the State?
9 MR. BRACKETT: Please present the juror.
10 THE CLERK: Defense?
11 MR. FREEMAN: Please present the juror.
12 THE CLERK: You may have a seat in the jury box.
13 THE COURT: First alternate, strikes are one and
14 two.
15 THE CLERK: Number 22, Robert Burkhard.
16 What say you for the State?
17 MR. BRACKETT: Please present the juror.
18 THE CLERK: Defense?
19 MR. FREEMAN: Please excuse the juror.
20 THE CLERK: You may return to your seat.
21 Number 168, Barney Stephens.
22 What say you for the State?
23 MR. BRACKETT: Please present the juror.
24 ~~THE CLERK: Defense?~~
25 MR. FREEMAN: Please swear the juror.

1 THE CLERK: You may have a seat in the jury box.

2 THE COURT: Second alternate, strikes are one and
3 two again.

4 THE CLERK: Number 183, Lisa Vanover.

5 What say you for the State?

6 MR. BRACKETT: Please present the juror.

7 THE CLERK: Defense?

8 MR. FREEMAN: Please swear the juror.

9 THE CLERK: You may have a seat in the jury box.

10 THE COURT: Final alternate, strikes are one and
11 two.

12 THE CLERK: Number 72, Tina Gill.

13 What say you for the State?

14 MR. BRACKETT: Please present the juror.

15 THE CLERK: Defense?

16 MR. FREEMAN: Please swear the juror.

17 THE CLERK: You may have a seat in the jury box.

18 Any exceptions to the composition or the manner of
19 selection of the jury?

20 MR. BRACKETT: None from the State.

21 MR. FREEMAN: Nothing, other than I previously
22 indicated. Not the manner of this selection, no.

23 THE COURT: Nothing regarding the challenges that
24 were made?

25 MR. FREEMAN: No, sir.

1 THE COURT: All right, then, in just a few minutes
2 we are going to take a break. And when we take a break,
3 those of you who were not selected to serve on the jury will
4 be free to go for the day.

5 Please call back tonight after six o'clock to
6 listen to the recorded message that you would find on the
7 telephone number that you have been given and there will be
8 instructions on there as to when you will be needed to
9 return. That doesn't mean that you have to leave. You are
10 welcome to stay, if you would like. The courthouse is
11 always open to the public, but if you choose to leave, you
12 can leave at that time.

13 When we break I'm going to send you folks back
14 into the jury room for just a few minutes. I have some
15 matters of law that I need to attend to. I'm not sure
16 exactly how much longer it's going to take me to do that.
17 We have been working on it a little bit this morning while
18 we were waiting on y'all to come up here from downstairs,
19 but it will take at least 10 or 15 minutes.

20 While you are back there, do not discuss this case
21 in any manner. You all can talk about whatever you want to,
22 but you cannot talk about this case. You cannot talk about
23 jury selection in this case. You cannot talk about the
24 ~~witnesses, or the issues, or anything that relates to this~~
25 case or this defendant.

1 When you come back out into the courtroom in just
2 a few moments I will spend some time talking with you about
3 some of the other rules and considerations that will govern
4 your service as juror, but until then just remember that you
5 cannot discuss the case. And that will continue to be true
6 until I have given you permission to begin with your
7 deliberations, which will be at least sometimes tomorrow.
8 Probably sometime Wednesday.

9 So at this time y'all can go back in the jury room
10 and we will see you in just a few minutes.

11 (The following takes place outside the presence of
12 the jury panel)

13 THE COURT: And those of you who wish to leave are
14 free to go.

15 (Whereupon, the Jury Venire Panel left the
16 courtroom)

17 THE COURT: All right. Let me take a moment to
18 speak with the members of the news media who are here.

19 When we had this discussion the first thing this
20 morning, I believe there was one camera in here. And then
21 when we renewed that discussion at some point right after a
22 break, Mr. Freeman pointed out that there were now three
23 cameras in here. And at the time he pointed that out to me,
24 it did not register with me that that's more than two, which
25 is what -- which is the maximum that the rule allows. I was

1 focused on issues regarding jury selection and other things
2 and it frankly skipped my mind that three violates the
3 maximum that is set forth in the rule. So I want each of
4 you to be accommodated, but y'all are going to have to work
5 out, and very quickly, some way in which two representatives
6 of you can pool your video and share it with the other
7 networks. Who is able to do that right now? Is anybody?

8 UNKNOWN MEDIA PERSON: We are dealing with
9 different formats, so we have to work out who is comfortable
10 with who.

11 THE COURT: Well, I'm going to take a short break.
12 Y'all have a conversation. I assume y'all will be able to
13 work all this out cooperatively, because I can settle it
14 easily if I need to. But if y'all could work it out
15 cooperatively, then I'll be happy to let y'all do it the way
16 that you work it out, but I can't have but more than two in
17 here. That's the maximum number is allowed under the rule.

18 All right. I'm going to take a short break and
19 when we come back we will resume with the hearing.

20 MR. FREEMAN: The Jackson v. Denno hearing?

21 THE COURT: Yes.

22 (Whereupon, proceedings were recessed)

23 (Whereupon, proceedings were reconvened)

24 THE COURT: We are ready.

25 MR. FREEMAN: Your Honor, has the State rested?

1 THE COURT: The State has completed --

2 MR. FREEMAN: They completed their presentation on
3 this issue. Okay.

4 CROSS EXAMINATION BY MR. FREEMAN:

5 Q. Now, officer, let's go back to -- I guess you said this
6 statement was February 18th?

7 A. Yes, sir.

8 Q. Is that when it was taken?

9 A. I think so.

10 MR. FREEMAN: Do you have those Court's Exhibits,
11 Your Honor? If I can refer to them.

12 THE COURT: Right there.

13 MR. FREEMAN: Thank you.

14 BY MR. FREEMAN:

15 Q. Well, let me refer you to Exhibit 1, which is what I'm
16 going to call the cover sheet. It is completely
17 handwritten, in terms of the blanks. I understand the form
18 is prepared, but everything is handwritten or checked, is
19 that correct?

20 A. Yes, sir.

21 Q. Okay. And --

22 A. The checks being by your client.

23 Q. Yes, sir.

24 And if it says that the -- okay. For example, it says
25 February 18, 2008. So that's the day the statement was

1 taken?

2 A. Correct.

3 Q. At that point Mr. Watts was in custody?

4 A. Yes.

5 Q. He wasn't going anywhere?

6 A. No, sir.

7 Q. Okay. You believed he was guilty of at least one, if
8 not several serious armed robberies, shootings, and other
9 similar incidents, is that correct?

10 A. Four shootings and seven armed robberies, if I'm
11 correct in the number, yes, sir.

12 Q. Yes, sir.

13 So in your mind there was any chance that this was that
14 fellow, he wasn't going to leave under his own power that
15 day, is that correct?

16 A. No, sir.

17 Q. Did you make that clear to him?

18 A. Yes, sir.

19 Q. So you indicated that you wanted -- you asked him if he
20 wanted anything to eat or drink and you said he had a soda?

21 A. If I remember correctly, yes, I think we got him a
22 drink.

23 Q. Did you get him anything to eat?

24 A. ~~I don't think he requested anything.~~

25 Q. Well, officer, now that initial -- that first document

1 says that it started at, what, 2:21? If you would refer to
2 that exhibit up there by your right hand.

3 A. Yes, sir.

4 Q. When was the statement, the second statement, actually
5 signed?

6 A. It's --

7 Q. It says six p.m., does it not?

8 A. Yes, sir.

9 Q. So almost four hours later?

10 A. Yes, sir.

11 Q. Do you know if he had anything to eat or drink after
12 that initial soda?

13 A. Not that I know of.

14 Q. Did he go to the bathroom?

15 A. I'm not sure.

16 Q. You remember you gave him a soda, but you don't
17 remember if he went to the bathroom?

18 A. Correct, because I went to my office to transcribe the
19 notes onto this form to bring back for him to look at and
20 read it and sign it.

21 Q. You weren't actually in his presence the whole time?

22 A. No, sir.

23 Q. Okay. Now, earlier you used the phrase that, quote,
24 "he showed no remorse"?

25 A. None whatsoever.

1 Q. Where is that in the statement --

2 A. It's not, sir.

3 Q. -- it says "he shows no remorse"?

4 A. That was a personal observation during the interview.

5 Q. Does that bother you?

6 A. Yes, sir, it bothered me tremendously.

7 Q. Now, you also said that you used the phrase to him,
8 quote, "you might as well get everything out in the open."

9 Do you remember saying that earlier?

10 A. Yes, sir, I did.

11 Q. So, in fact, you encouraged him to say "just tell me
12 everything"?

13 A. Yes, sir, I did.

14 Q. You encouraged him to confess to all kinds of things?

15 A. I urged him to tell the truth about the crimes that he
16 had committed, not confess to all kinds of things.

17 Q. But did you want him to hold back if there was a crime
18 that he had committed and hide it for a later time?

19 A. No, sir.

20 Q. Well -- okay, I notice the statement, and I couldn't
21 help but noticing, the second Exhibit 2, the stapled
22 document is typed?

23 A. Yes, sir.

24 Q. Did Mr. Watts type that?

25 A. No, sir, I typed it on my computer.

1 Q. Did you type it straight from dictation?

2 A. From the notes that I had from Detective Haire. It
3 was --

4 Q. Let me ask it a different way. Did Mr. Watts say "type
5 what I say"?

6 A. No, sir, that's just my standard operating procedure.
7 I take it back. I type it up from the notes; bring it back
8 to the individual that we are taking the statement from;
9 give him an opportunity to read it, change anything that
10 needs to be changed and then sign the final document that he
11 agrees that is a true statement that he just gave us.

12 Q. So, in fact, you prepared the statement? That version
13 that we have there was typed by you?

14 A. Yes, sir, it was.

15 Q. The punctuation was put in there by you?

16 A. Yes, sir.

17 Q. The page breaks, the paragraph breaks, all that was put
18 in there by you?

19 A. Yes, sir.

20 Q. Well, did you think that Mr. Watts was unable to read
21 and write?

22 A. No, sir, I did not.

23 Q. In fact, you earlier you said he was a very intelligent
24 young man. Why didn't you just have him write it out, hand
25 write out?

1 A. Because I have found in the past that if you let
2 someone write it out by themselves, sometimes it's not
3 legible. This way everything is legible, that you get final
4 product.

5 Q. Okay. Well, officer, if we could then let's just
6 compare your version of the statement, the typed version, to
7 the audio that you made while he was giving the statement.
8 Do you have a copy of that with you?

9 A. I didn't make an audio.

10 Q. You didn't make an audio.

11 What about a video?

12 A. No, sir.

13 Q. What about a tape recording?

14 A. No, sir.

15 Q. So -- well, let me look at these two documents again.

16 Now, do the signatures on the documents as relates to
17 Mr. Watts appear to be the same to you?

18 Take a minute, if you need.

19 A. I don't need one. He signed both documents.

20 Q. Okay. Did you sign both documents?

21 A. Yes, sir, I did -- no, sir, I did not.

22 Q. I'm sorry, did Officer Haire sign both documents?

23 A. Officer Haire signed as a witness on the original
24 statement. The waiver form, Bruce and I both signed it.

25 Q. Were you in the room when they were both signed?

1 A. Yes, sir, I was.

2 Q. Whose pen did you use to sign them?

3 A. The red pen is mine, comes off my desk.

4 Q. Why didn't you bring the red pen in the first time?

5 A. I didn't have it with me when I came in the first time.

6 Q. So, again, you left the room. Do you know what was
7 discussed when you were not in the room?

8 A. No, I do not.

9 Q. Is it possible that Officer Haire and he discussed
10 something else?

11 A. A distinct possibility.

12 Q. Is it possible that Officer Haire made some
13 representation to him in your absence?

14 A. Not that I know of.

15 Q. So you do -- so you -- nothing that you know of and you
16 are basing that on what somebody else told you?

17 A. No, sir, nobody told me anything.

18 Q. Well, how do you know what happened between him and
19 Officer Haire while you were not in the room?

20 A. I have already answered it, I don't know.

21 Q. So is it possible they had some other discussion?

22 A. It's possible.

23 Q. It is possible Officer Haire made some representation
24 to him, along the lines of what you said, "tell us
25 everything that you know"?

1 A. There again anything is possible.

2 Q. Is it possible that Officer Haire suggested some relief
3 he might receive if he would just sign the statement?

4 A. From my dealings with Officer Haire, he's a
5 professional police officer. I doubt it very seriously.

6 Q. Are you saying it's completely impossible that what
7 happened in the room while you were not in there, you know
8 that for sure, but you don't know everything else for sure?

9 A. (No response)

10 Q. Do you need me to rephrase the question?

11 A. If you would please, sir.

12 Q. You are absolutely confident that what Officer Haire
13 didn't tell him, but you know what he did tell him -- but
14 you -- you don't know what he did tell him?

15 A. No, sir, I have already answered it. I don't know what
16 he told him in that room.

17 Q. All right. Now, do you have a copy of the notes that
18 you used to prepare this statement?

19 A. I do not have a copy with me, no, sir.

20 Q. Were they handwritten by you?

21 A. Not by me.

22 Q. The notes that you -- I thought that you said that you
23 were the one that typed this up?

24 A. I was. Detective Haire took the notes while I was
25 talking to the individual.

1 Q. Well, help me understand then. You have a person.
2 He's confessed. Who is making the notes in this instance?

3 A. The person who is not doing the interview.

4 Q. That would have been?

5 A. Detective Haire.

6 Q. Detective Haire.

7 Then Detective Haire gave you his notes and said
8 "please time my notes into a statement"?

9 A. Correct, that's what we did.

10 Q. So, in fact, this statement is based upon what he said
11 to Detective Haire, not to you?

12 A. No, sir, it's what he told directly to both of us.

13 Q. Well, who was questioning him? Who was cross-examining
14 him?

15 A. I was. I wasn't cross-examining him. We were just
16 talking.

17 Q. Who was in charge of the investigation?

18 A. It was a joint investigation between us and the Fort
19 Mill Police Department and the City of Rock Hill.

20 Q. Was the Fort Mill Police Department present in the room
21 while he was being questioned?

22 A. They were outside the room.

23 Q. So the answer is no, they were not in the room?

24 A. Were not in the room, no, sir.

25 Q. Did they get the opportunity to question him at all

1 before this statement was given?

2 A. No, sir, because he confessed to their shootings, two
3 shootings and armed robbery, while in the room with us.
4 They had the opportunity to but did not wish to go back in,
5 to go in the room.

6 MR. FREEMAN: Beg the court's indulgence.

7 (Off the record)

8 (Back on the record)

9 BY MR. FREEMAN:

10 Q. Now, you indicated earlier you told Mr. Watts you were
11 friends with his uncle, who has since passed away before all
12 this happened?

13 A. Yes, sir.

14 Q. Knew him your whole life?

15 A. I didn't know Skip my whole life. I met him my junior
16 year in high school when he transferred from Northwestern to
17 Rock Hill High School.

18 Q. How old are you, officer?

19 A. I'm 51.

20 Q. So that's about 30 years you have known his uncle, most
21 of the --

22 A. Well, Skip died approximately I think ten years ago.

23 Q. So 20 years? You knew him from the time you were 16,
24 or so, until he passed?

25 A. Yes, I did. Good man.

1 Q. You didn't think that that relationship in any way made
2 you have a unique outlook on this case?

3 A. No, sir, not any more than any other case that I have
4 worked on.

5 Q. Were there no other detectives working that who didn't
6 go to school with his uncle?

7 A. There were several.

8 Q. Okay. Now, do you have any kind of medical training?

9 A. Do I have any medical training?

10 Q. Yes, sir, other than EMT training.

11 A. Besides first aid, no, sir.

12 Q. So you would not consider yourself qualified to
13 determine someone's mental competence, for example, to give
14 a statement?

15 A. No.

16 Q. If they were under extraordinary stress, but able to
17 hide that from you, you would have no way to know that
18 unless they --

19 A. No.

20 Q. -- suggested it to you?

21 A. No, sir.

22 MR. FREEMAN: Your Honor, I don't have any further
23 questions of this witness --

24 THE COURT: All right, sir.

25 MR. FREEMAN: -- on this topic.

1 MR. BRACKETT: Briefly just a few questions in
2 response.

3 REDIRECT EXAMINATION BY MR. BRACKETT:

4 Q. Lieutenant, prior to the signing of the three page
5 typed written statement, did the defendant relate the
6 substance of what's in that statement to you orally?

7 A. Yes, he did.

8 Q. And were you in the room with him up to that point with
9 Detective Haire?

10 A. Yes.

11 Q. That entire time?

12 A. Yes, I was.

13 Q. All right. So is it safe to say then that he orally
14 confessed all that information to you from the time that you
15 walked in with Detective Haire and that you only left the
16 room after he had already made the oral confession?

17 A. That's correct.

18 Q. Okay. And that you left the room to go type and
19 Detective Haire stayed with him?

20 A. Went to type and also get some logistical things worked
21 out, as far as other jurisdiction and other charges.

22 Q. And Detective Haire remained with him while you were
23 gone?

24 A. Yes.

25 Q. And during the entire time that you were in there with

1 him with Detective Haire while he was orally confessing and
2 prior to his oral confession, did anybody promise him
3 anything?

4 A. No, sir, did not.

5 Q. Threaten him in any way?

6 A. No, sir.

7 Q. Were the oral statements and confessions he gave of his
8 own free will?

9 A. Yes, it was.

10 Q. All right, sir. Did anything appear to have changed
11 from the time that you walked in with the typed statement in
12 your hand for him to sign?

13 A. No, he sat down and he went through it, reviewed it and
14 agreed with it and signed off on it.

15 Q. So he had an opportunity to read it?

16 A. And he was explained that anything that he saw that
17 needed changing, he needed to let me know and we would get
18 it changed, and he did not.

19 MR. BRACKETT: That's all I have for this witness,
20 Your Honor.

21 RECROSS EXAMINATION BY MR. FREEMAN:

22 Q. You said he read it. Did you read it out to him?

23 A. No, sir, I handed it to him and asked him if he wanted
24 to read it and he read it.

25 Q. Did he write it quietly or did he read it aloud?

1 A. I think he read it quietly, if I'm not mistaken.

2 Q. Did he make any -- did he articulate to you any
3 changes?

4 A. No, sir.

5 Q. Did he articulate to you any questions?

6 A. No, sir, he did not.

7 Q. Did he say "I want to add anything"?

8 A. No, sir.

9 Q. So he just signed it?

10 A. Signed off on it and he initialed it at the end so we
11 couldn't add anything to it.

12 Q. How long did it take him to read it?

13 A. A few minutes.

14 Q. How far is it from this room where he was held to where
15 you went to type it up?

16 A. Probably as far as from here to the second door.

17 Q. There is doors and walls between those two locations,
18 though?

19 A. There are, yes, sir.

20 Q. And he could not have freely said "I want to sit there
21 while you type it"?

22 A. Wasn't given the option.

23 Q. Wasn't even offered?

24 A. Didn't even offer it to him.

25 MR. FREEMAN: Your Honor, no further questions.

1 I do have an argument on this issue.

2 THE COURT: You can step down, sir.

3 MR. BRACKETT: I have one more witness, Your
4 Honor.

5 THE COURT: All right.

6 MR. BRACKETT: The State would call Detective
7 Bruce Haire.

8 DETECTIVE BRUCE HAIRE, having been first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BRACKETT:

11 Q. Good afternoon, Detective Haire.

12 A. Good afternoon.

13 Q. Would you please state your full name and spell your
14 last name for Mr. Watts?

15 A. My name is Bruce Haire, H-A-I-R-E.

16 Q. And where are you employed, sir?

17 A. The Rock Hill Police Department.

18 Q. In what capacity?

19 A. I'm a detective in the Crimes Against Persons Unit.

20 Q. All right. How long have you been in law enforcement?

21 A. Approximately thirteen and a half years.

22 Q. All right, sir.

23 Did you assist Lieutenant Hager in the investigation of
24 Phillip Watts?

25 A. Yes, I did.

1 Q. And cutting right to the chase here, were you -- did
2 you participate with him in the interrogation and the
3 interview of Mr. Watts at the York County sheriff's office
4 that day?

5 A. Yes, I did.

6 Q. And you have been in the courtroom and you heard what
7 Lieutenant Hager testified to?

8 A. Yes.

9 Q. Was there a time period -- was there anyone else
10 involved in the interview in the interrogation besides you
11 and Lieutenant Hager?

12 A. No, there wasn't.

13 Q. All right. So when he was being questioned and up
14 through the time he was giving his oral statements and
15 through the time that he signed what's been marked as
16 State's Exhibit 1 and 2, which I would ask you just to
17 review briefly, are those documents, do they contain your
18 signature?

19 A. Yes, they do.

20 Q. Are those the documents that the defendant signed that
21 day?

22 A. Yes.

23 Q. Do you see the defendant in the courtroom?

24 A. Yes, I do.

25 Q. Can you identify him for the record?

1 A. He's sitting over there to the right of counsel in the
2 beige suit.

3 Q. All right.

4 MR. BRACKETT: I would ask the record to reflect
5 he's identified the defendant Mr. Phillip Watts.

6 BY MR. BRACKETT:

7 Q. Now, so those are Mr. Watts' signatures on that page?

8 A. Yes, it is.

9 Q. Through the entire time that he was being interviewed
10 was anyone else involved in the interview?

11 A. Just Lieutenant Hager and myself.

12 Q. All right, sir. And was there a time when Lieutenant
13 Hager left the room?

14 A. Yes, there was.

15 Q. And were you in there by yourself with him?

16 A. Yes, I was, for a brief period.

17 Q. All right. And did you promise him or threaten him in
18 any way to get him to sign those statements?

19 A. No, I did not.

20 Q. Did you make any kind of intimidation or coercion? Did
21 you do anything to overcome his free will in signing of
22 those statements, or were the signatures that he put on
23 those papers made of his own free will and accord?

24 A. They were of his own free will and accord, yes, sir.

25 Q. Was anybody else in a position to threaten or coerce

1 him during the time of your interview and up through the
2 time he signed that?

3 A. No.

4 Q. Could anyone else have gone in, unbeknownst to you, and
5 done any of that type of thing with the defendant,
6 threatened him --

7 A. No.

8 Q. -- coerced him, pressured him, intimidated him, or
9 promised him something in exchange for a confession?

10 A. No.

11 Q. Did you hear the recitation of his rights to him?

12 A. Yes, I did.

13 Q. And did he understand those rights?

14 A. Yes, he did.

15 Q. Was he articulate and intelligent?

16 A. He appeared to be so.

17 Q. And was he capable of reading?

18 A. Yes.

19 Q. Did he, in fact, read that statement before he signed
20 it?

21 A. Yes, he did.

22 Q. Was he told he could correct anything?

23 A. That's correct.

24 ~~Q. Did he indicate that he wished to correct anything?~~

25 A. No, he did not.

1 Q. Thank you very much, Detective Haire. Please answer
2 any questions that Mr. Freeman may have for you.

3 CROSS EXAMINATION BY MR. FREEMAN:

4 Q. Detective Haire, you work with the City of Rock Hill?

5 A. Yes, sir.

6 Q. And that's one of the jurisdictions that we heard about
7 before?

8 A. Yeah.

9 Q. Were you with Mr. Watts the entire time, from 2:20
10 until six p.m., in that room? Did you leave the room at any
11 point for any reason?

12 A. Not during the interview, no, sir.

13 Q. Didn't even step out to go to the bathroom, call your
14 wife, or nothing?

15 A. No, sir.

16 Q. Well, were you not concerned that you were alone in a
17 room with a person who had been charged with a lot of
18 dangerous crimes? Was he restrained?

19 A. He was not restrained.

20 Q. You were alone in the room with somebody who had been
21 charged with very serious offense and that gave you no
22 concern for your personal safety?

23 A. He didn't appear to be agitated. He was very calm,
24 talking matter of factly.

25 Q. Almost submissive?

1 A. I would just say calm.

2 Q. While he was there, do you remember him asking for
3 anything to eat or drink?

4 A. No, sir. We asked him.

5 Q. Okay. Did he get something to eat or drink, that you
6 can recall?

7 A. I believe he was given a soft drink.

8 Q. Did he ask to go to the bathroom at some point later?

9 A. No, sir, not that I recall.

10 Q. Now, just so we are clear, I believe we heard earlier,
11 he was under arrest at that point. He was not leaving law
12 enforcement custody, in your mind, is that correct?

13 A. Correct.

14 Q. If, in fact, this was the person that y'all had been
15 looking for, he was not leaving of his own accord that day?

16 A. Correct.

17 Q. And, in fact, he hasn't actually left this building
18 since that day, has he, to the best of your knowledge?

19 A. To the best of my knowledge.

20 Q. How did he get -- how did he get from Rock Hill to
21 York?

22 A. I believe he was transported in a York County deputy
23 car.

24 Q. Were you in that car?

25 A. No, I was not.

1 Q. So there was some period of time when he was in law
2 enforcement custody that you weren't there?

3 A. Yes.

4 Q. Do you know what exchange took place in that vehicle
5 while you were not there?

6 A. No, I do not.

7 Q. Do you know if that officer made any representations to
8 him?

9 A. No, sir.

10 Q. Do you know if that officer made any threats, either
11 actual, veiled, or implied to him?

12 A. No, sir.

13 Q. Do you know if that officer strongly encouraged him to
14 confess to things?

15 A. No, I do not.

16 Q. But you heard earlier that he was told he might as well
17 get everything out in the open. Do you recall hearing that
18 testimony?

19 A. Yes, I do.

20 Q. Do you recall hearing that phrase used, or words very
21 similar to it?

22 A. Yes.

23 Q. Who did most of the talking with Mr. Watts --

24 A. Lieutenant Hager.

25 Q. -- during this interview?

1 A. Lieutenant Hager.

2 Q. Well, is that his signature on the bottom of Exhibit 2,
3 the three page stapled document?

4 A. No, sir.

5 Q. Whose signature is that on the bottom, other than Mr.
6 Watts'?

7 A. That is my witness signature.

8 Q. But you didn't actually type that document up.

9 A. I witnessed the statement.

10 Q. Explain what you mean by the word witness then. I'm
11 confused.

12 A. I was present when it happened. I heard the words that
13 he spoke. I heard the words that was asked to Mr. Watts and
14 that's what I signed that I witnessed.

15 Q. But this statement was not taken as straight dictation,
16 was it?

17 A. No, it wasn't.

18 Q. Detective Detective Hager left the room at some point
19 to type it up?

20 A. That's correct.

21 Q. Based on your notes?

22 A. That's correct.

23 Q. So does this statement exactly conform to your notes?

24 A. Not exactly.

25 Q. Well, how does it differ then? Give me one example.

1 A. He left to start typing the statement. And I left
2 briefly -- after that I was alone with Mr. Watts for a brief
3 period of time, and then I went into Mr. Hager's office
4 while he was typing and that's how we got our statement.

5 Q. So who was in the room with Mr. Watts then?

6 A. Nobody.

7 Q. All by himself at that point?

8 A. There was two deputies standing outside the door.

9 Q. Outside the room.

10 Was he offered another soda, something to eat, a
11 bathroom break at that point?

12 A. Not that I know of.

13 Q. What was the nature of your exchange with Detective
14 Hager while he was typing it up? What did y'all talk about?

15 A. He was typing up the statement based on what my notes
16 said, and that's pretty much what we were discussing.

17 Q. So he was asking you to help him fill in the blanks --

18 A. No, sir.

19 Q. -- while he was typing?

20 A. No, sir.

21 Q. Now, you work for the City of Rock Hill. What is the
22 policy in the City of Rock Hill when someone wants to give a
23 statement or confession? Is it typically written or typed?

24 A. Typically typed.

25 Q. What if the person says "no, I really want to write

1 this myself," what would you do?

2 A. If he wants to type the statement -- or correct, if he
3 wants to write his own statement, we will typically let him
4 write his statement.

5 Q. When you type it at the City of Rock Hill, is the
6 person in the room while it's being typed?

7 A. I can say that's how I do it.

8 Q. That's not what was done in this case, is it?

9 A. I'm not familiar with how they do their statements.

10 Q. You were involved in this case -- in this statement.
11 It wasn't typed in the same room where he was sitting, was
12 it?

13 A. No, it was not.

14 Q. Was there any doubt in your mind that Mr. Watts knew he
15 was in trouble that day? You said he knew what was going
16 on.

17 A. Yes, he did.

18 Q. Do you think he appreciated the seriousness of the
19 charges against him, on any level?

20 A. I can't say how he felt about it.

21 Q. But you know the statement was given free all
22 voluntarily, so you know how he felt about that.

23 A. I know how he felt about giving the statement. I don't
24 know how he felt about the seriousness of it.

25 Q. Y'all told him he was charged with serious stuff,

1 what they were looking for?

2 A. Yes, sir.

3 MR. FREEMAN: Your Honor, I don't have any further
4 questions on this issue.

5 Please answer any questions that the solicitor may
6 have, Phillip.

7 CROSS EXAMINATION BY MR. BRACKETT:

8 Q. Mr. Watts, you say that this is your signature here on
9 State's Exhibit 1, right there?

10 A. Yes, sir.

11 Q. That is your signature right there?

12 A. Yes, sir.

13 Q. All right, sir. But you say that it's not your
14 signature on State's Exhibit 2?

15 A. No, sir.

16 Q. Did you talk to the police officers that day?

17 A. Yes, sir.

18 Q. In that room?

19 A. Yes, sir.

20 Q. Was it pretty much like they described; Lieutenant
21 Hager seated over there and Detective Bruce Haire? Were
22 those the two officers that were interviewing you?

23 A. Yes.

24 Q. And did Lieutenant Hager talk to you about knowing your
25 uncle?

1 A. Yes.

2 Q. Did he share with you his concerns about your family
3 and the pain that this was going to put them through and the
4 difficulties?

5 A. Yes, sir.

6 Q. Because they weren't just talking to you about the
7 Exxon One Stop, did they?

8 A. No, sir.

9 Q. They were talking to you about a whole bunch of
10 robberies, isn't that right?

11 A. Yes, sir.

12 Q. And they were talking to you about the robbery over at
13 the Saltwater Seafood Market where the Asian woman got shot
14 in her hand?

15 A. Yes, sir.

16 Q. Mrs. Chin.

17 And they also talked with you about the robbery at John
18 Boy's Bolero, where Mrs. Wynn and Mr. Powers were shot?

19 A. Yes, sir.

20 Q. And they also talked to you about the check cashing?
21 That was what you were under arrest for. They told you
22 that, right?

23 A. Yes, sir.

24 ~~Q. That you were under arrest for the robbery, or~~
25 attempted robbery, at the check -- the Spot Check Cashing

1 over on Heckle Boulevard, isn't that right?

2 A. Yes, sir.

3 Q. And they told you they had a video of you there?

4 A. No, sir.

5 Q. They told you that they had seen you on the video?

6 A. No, sir.

7 Q. Didn't they tell you that your mother had seen the
8 video?

9 A. No, sir.

10 Q. That you had been identified --

11 A. No, sir.

12 Q. -- as being the person on the video --

13 A. No, sir.

14 Q. -- who shot Ida Lord in the head?

15 A. No, sir.

16 MR. FREEMAN: Objection, Your Honor. The
17 solicitor at best is playing for the camera.

18 MR. BRACKETT: No, I -- I -- this is completely --
19 this is directly related to --

20 THE COURT: Let me say this. When you -- when he
21 denied --

22 Let me see State's Exhibit 2, please.

23 When he denied that he signed State's Exhibit 2 --

24 MR. FREEMAN: Yes, sir.

25 THE COURT: -- then he opens the door to the State

1 having the opportunity to prove that he committed these
2 other crimes, because the only way that he could have known
3 enough about these other crimes to have included them in the
4 statement that he allegedly gave as State's Exhibit No. 2
5 was if he had actually committed the crimes.

6 And so you take the position -- he takes the
7 position that he didn't sign State's Exhibit 2; in other
8 words, he didn't give the statement. That -- in my opinion,
9 I'm just saying this preliminarily, that opens the door to
10 all this other evidence of all these other crimes coming in,
11 because it tends to prove that he did, in fact, make the
12 statement. And that's where he's going with this line of
13 questioning right now, and so I don't think he's just
14 playing to the cameras, and I overrule the objection.

15 MR. FREEMAN: My position perhaps was ineloquently
16 stated, Your Honor. He -- he is basically taking each
17 sentence and saying "you deny doing sentence A, B, C, D, E,
18 F," etcetera, when, in fact, for purposes of this one
19 hearing obviously we have a different position.

20 THE COURT: No, I think he's exploring the other
21 incidents and I'm going to allow it.

22 Overruled.

23 BY MR. BRACKETT:

24 Q. ~~Lieutenant Hager informed you that he knew your uncle?~~

25 A. Yes, sir.

1 Q. And he informed you that he had been long-time friends
2 with your family, other members of your family, particularly
3 your uncle?

4 A. Yes, sir.

5 Q. Okay. And you told -- and in the course of those
6 discussions, didn't you and he discuss about the
7 difficulties this was going to put your family through?

8 A. Yes, sir..

9 Q. You knew at the time of this interview being taken that
10 they had searched the apartment where they had arrested you?

11 A. They were still conducting the search while I was in
12 their custody.

13 Q. Were you aware that they had found a 22-caliber handgun
14 in that apartment?

15 A. I was told they found one.

16 Q. All right.

17 And, in fact, the questions that they asked you
18 initially all revolved exclusively around the Spot Check
19 Cashing shooting of Ida Lord, isn't that right?

20 A. No, sir.

21 Q. That was why they took you into custody, isn't it?

22 A. I assume so.

23 Q. And the charges that they filed against you were for
24 robbing the check cashing store over on Heckle Boulevard in
25 Rock Hill, isn't that right?

1 A. Yes, sir.

2 Q. Okay. I mean, that's what the point of taking you into
3 custody. When they had warrants for your arrest, they
4 served those warrants on you and said "you are under arrest
5 for assault and battery with intent to kill for shooting Ms.
6 Lord," isn't that right?

7 A. Yes, sir.

8 Q. And you got a copy of that warrant that day. That's
9 why you were in handcuffs, isn't that right?

10 A. I didn't get a copy of the warrant until the next day.

11 Q. Okay. But you got a copy. They told you that's why
12 you were under arrest?

13 A. Yes, sir.

14 Q. So you knew that?

15 A. Yes.

16 Q. And that was the questions that they were asking you?

17 A. That's not all the questions they was asking me.

18 Q. All right, sir.

19 In the course of the interview what did you tell them?

20 A. I told them I only knew what I seen in the papers and
21 on TV.

22 Q. All right. As far as the Spot Check Cashing?

23 A. Yes, sir.

24 Q. Okay. How about the Saltwater Seafood?

25 A. Yes, sir, the same thing.

1 Q. John Boy's Bolero in Fort Mill?

2 A. Yes, sir.

3 Q. And they questioned you about that as well?

4 A. Yes, sir.

5 Q. And you told them that you didn't know anything about
6 it?

7 A. Yes, sir, only what I seen in the papers, on the news.

8 Q. Did you bring up the subject of the robbery of the
9 convenience store on White Street --

10 A. No, sir.

11 Q. -- and Charlotte Avenue? The corner of White and
12 Charlotte in Rock Hill, Mr. Kang?

13 A. No, sir.

14 Q. That he had been robbed twice.

15 Did you not admit that you were the person that
16 committed those robberies?

17 A. No, I didn't.

18 Q. You did not tell them that?

19 A. No, sir.

20 Q. How about the convenience store on Anderson Road, the
21 first robbery you told them about?

22 A. No, sir, I didn't tell them about that robbery.

23 Q. You didn't tell them about any robbery?

24 A. No, I did not.

25 Q. Isn't it true, Mr. Watts, that at a later time you

1 attempted to go back to Lieutenant Hager and change your
2 story?

3 A. No, sir.

4 Q. You never went back to him and told him that what you
5 told them originally wasn't true, you didn't commit the
6 shootings, but you committed all the prior robberies that
7 didn't involve shootings?

8 A. No, sir.

9 Q. Didn't you tell them that there was a fellow named
10 Black from Charlotte?

11 A. No, sir.

12 Q. You never said that?

13 A. No, sir.

14 Q. That he had given you that handgun?

15 A. No, sir.

16 Q. Do you recall Mr. Barrowclough, your previous attorney?

17 A. Yes, sir.

18 Q. Do you remember being in this very courtroom with Mr.
19 Barrowclough?

20 A. Yes, sir.

21 Q. At your preliminary hearing?

22 A. Yes, sir.

23 Q. And you sat over there with Mr. Barrowclough?

24 A. Yes, sir.

25 Q. And do you remember me sitting over here with Mr.

1 Thompson?

2 A. Yes, sir.

3 Q. And do you remember having the witnesses take the stand
4 and testifying? Lieutenant Hager testified?

5 MR. FREEMAN: Your Honor, I think we are getting
6 into repetitious and asked and answered as well.
7 Unnecessarily cumulative would be the basis of my objection.

8 THE COURT: I don't recall hearing anything about
9 the preliminary hearing.

10 MR. FREEMAN: He's basically saying did all this
11 come up once, and now did it come up a second time. So,
12 again, I would say that it's, first of all, beyond the scope
13 of this issue, but secondly --

14 THE COURT: I'm going to have to -- I think that I
15 can see where he's going, but I'm going to have to wait and
16 see, but your objection is overruled.

17 BY MR. BRACKETT:

18 Q. And at the preliminary hearing didn't you take the
19 position that you did not object and did not deny this
20 robbery, the two robberies of Mr. Kang, and the robbery of
21 the store on Anderson Road? You only contested the
22 robberies in which someone was shot?

23 A. What do you mean?

24 Q. I mean your attorney didn't challenge --

25 MR. FREEMAN: Your Honor, I don't waive any

1 attorney-client privilege that may have arisen with the
2 previous attorney, so I would object to that question.

3 THE COURT: Well, he's just talking about what the
4 attorney said in court, right?

5 MR. BRACKETT: That's correct.

6 MR. FREEMAN: Which is not Mr. Watts.

7 THE COURT: Well, it doesn't make it irrelevant.
8 I'm still going to listen to it.

9 MR. FREEMAN: Yes, sir.

10 THE COURT: I overrule the objection.

11 BY MR. BRACKETT:

12 Q. At the preliminary hearing your position was you did
13 not challenge the validity of the charges for the robbery of
14 the One Stop Exxon, the one that you are on trial for here,
15 isn't that correct? Do you remember that?

16 THE COURT: Well, wait a minute now. Are you
17 asking him whether or not he challenged the sufficiency of
18 the evidence that would carry it over beyond a preliminary
19 hearing, or are you asking whether he challenged that he did
20 it?

21 MR. BRACKETT: Let me check one thing, Your Honor.

22 (Off the record)

23 (Back on the record)

24 ~~MR. BRACKETT: Your Honor, I'm maintaining that~~
25 they conceded --

1 THE COURT: Is there a transcript of that hearing?

2 MR. FREEMAN: Not that had been provided of, Your
3 Honor, and --

4 THE COURT: All right. Well, I'm going to allow
5 the questions and then we will see where we go after that.

6 MR. BRACKETT: Beg the court's indulgence just one
7 moment.

8 (Off the record)

9 (Back on the record)

10 BY MR. BRACKETT:

11 Q. Isn't it a fact, sir, that your attorney at that time,
12 Mr. Barrowclough, stood up in this courtroom right over here
13 and questioned Lieutenant Hager and asked him and said that
14 "isn't it true that my client gave a second statement
15 implicating Mr. Black as the person who did the shooting and
16 gave you the gun and told you that -- he gave you the gun
17 and said it doesn't work?" Isn't that what your attorney
18 represented in court to Mr. Hager on cross-examination?

19 A. He asked was it true. He said I gave a second
20 statement. He didn't say I gave a second statement. He
21 asked him did he say I gave a second statement.

22 Q. And didn't he question him about the particulars of
23 that?

24 A. Yes, sir, he did.

25 Q. And in that line of questioning didn't he suggest to

1 Mr. Hager that you had denied the shootings, but admitted
2 the non-shooting armed robberies?

3 A. I can't remember.

4 Q. Except for the issue with the signatures, Mr. Watts,
5 you don't take exception to anything that Detective Haire or
6 Lieutenant Hager told you? They did get you a drink, didn't
7 they?

8 A. Would you state that again, please?

9 Q. Except for the issue of the signature. You deny that's
10 your signature --

11 A. Yes, sir.

12 Q. -- isn't that right?

13 But other than that, you don't deny that they got you a
14 drink, that they took you for a signature?

15 A. They took me for a cigarette.

16 Q. Okay. In other words, the other things they said you
17 don't take exception to? It's only the signature issue that
18 you take exception to?

19 A. No, those two things - get me a drink, take me for a
20 cigarette, that's the only thing I agree to, and questioned
21 me about my uncle and telling me about my family. That's
22 the only thing I agree to.

23 Q. What else was going on?

24 A. ~~A lot of questions was asked. I can't remember all of~~
25 them, but a lot of questions was asked pertaining to all the

1 other incidents that had taken place.

2 Q. Mr. Watts, you were released from the Department of
3 Juvenile Justice and the South Carolina Department of
4 Corrections in September of 2007, isn't that right?

5 A. Yes, sir.

6 Q. And --

7 MR. FREEMAN: Your Honor --

8 BY MR. BRACKETT:

9 Q. -- you were serving.

10 MR. FREEMAN: Your Honor, relevance.

11 MR. BRACKETT: Credibility. I'm impeaching his
12 character and credibility with prior convictions that are
13 appropriate for that purpose, Your Honor, just so you, as
14 the fact finder, in evaluating his credibility can weigh
15 this into --

16 MR. FREEMAN: Your Honor --

17 THE COURT: The relevance objection is overruled.
18 I don't know what these convictions are yet, so I can't rule
19 on them on whatever 609 objection you may have.

20 MR. FREEMAN: Well, Your Honor, first of all, I
21 would -- and I had intended to address this at a later point
22 in the trial. I understand what the rule says about
23 juvenile record. I believe that the rule as it applies in
24 this case is inappropriate and that the court should
25 exercise its discretion and not consider, nor actually at

1 this point even allow any mention of any previous juvenile
2 record. I believe it's 609(d).

3 THE COURT: That really doesn't give me any basis
4 for a ruling. And, in any event, I don't know how I could
5 possibly rule on it without hearing what the objections are.

6 MR. FREEMAN: Your Honor, it --

7 THE COURT: What the convictions are.

8 MR. FREEMAN: Okay. Well, all right, I'll let him
9 state those and then I'll renew my objection.

10 THE COURT: Go ahead, sir.

11 BY MR. BRACKETT:

12 Q. Sir, you were convicted in 2002 of three counts of
13 strong armed robbery, in juvenile court?

14 A. I can't remember exactly. I took a plea bargain.

15 Q. Okay. Does that sound right?

16 A. Yes, sir.

17 Q. And then in 2005, you were convicted of armed robbery,
18 attempted armed robbery, and malicious injury to personal
19 property?

20 A. No, sir. No, sir, I wasn't convicted of anything in
21 2005.

22 Q. You started serving time in the Department of
23 Corrections?

24 A. In 2003. I came home 2007.

25 Q. You were previously convicted of armed robbery and then

1 transported over to the South Carolina Department of
2 Corrections when you turned 17?

3 A. Yes, sir.

4 Q. Is that what happened?

5 A. Yes, sir.

6 Q. And those conviction were for armed robbery, attempted
7 armed robbery and malicious injury to personal property?

8 A. I assume so.

9 MR. BRACKETT: I have no further questions.

10 THE COURT: Okay. Redirect?

11 MR. FREEMAN: No redirect, Your Honor, but my
12 argument would be that at least as it applies to this
13 situation, 609(b) is violative of due process.

14 I would also point out that in the case cited in
15 the rule itself it does indicate Family Court records are
16 supposed to be sealed.

17 THE COURT: You can step down, sir.

18 MR. FREEMAN: I'm sorry, come on down, Phillip.

19 Your Honor, I would also point out that this goes
20 completely against the philosophy that a person, when they
21 reach 17 or 18, depending on which statute you are under,
22 gets a fresh start that our system affords brings to just
23 let something haunt you forever when you are a juvenile I
24 think is grossly inappropriate.

25 I would note, simply by way of the curiosity, that

1 I believe one of the jury panel downstairs indicated to you
2 they a juvenile record. I don't recall the specifics. That
3 didn't disqualify them from jury service. So it's not held
4 against them for that purpose, but for this purpose now it's
5 going to be held against Mr. Watts.

6 So we would just ask the court as the finder of
7 fact in this matter to disregard that. And then at a late
8 time, again, I intended to address the issue prior to Mr.
9 Watts' decision to testify or not testify.

10 I'm sorry, I do have an argument on the motion
11 itself that was --

12 THE COURT: Well, as far as your objection that
13 Rule 609(d), as it applies to juvenile convictions is a
14 violation of due process, I overrule that objection, without
15 seeing the need for further discussion of it.

16 As far as your objection to the records are
17 sealed, I don't know where he got the information. I have
18 no idea that he did or did not get them from Family Court
19 records. I imagine that he got them from his own records,
20 since I suppose it was this solicitor's office that
21 prosecuted him. And if he did get that information from his
22 own records, that would not in any way violate any kind of
23 sealing or Family Court records.

24 ~~As far as --~~

25 MR. FREEMAN: Your Honor, I do have an argument on

1 the Jackson v. Denno hearing on --

2 THE COURT: Well, I would like to go ahead and
3 rule on your evidentiary objections first.

4 MR. FREEMAN: Yes, sir.

5 THE COURT: As far as the argument that there
6 was -- I don't recall there being a juror downstairs who had
7 a juvenile record. But if there was, it makes -- it just
8 doesn't seem to me to have anything to do with it.

9 And I have actually forgotten the fourth ground
10 that you raised. What was it?

11 MR. FREEMAN: That's a good question.

12 Sealing the Family Court records -- oh, just as
13 public policy that it violates the spirit of the fresh start
14 once you come out of the Family Court system.

15 THE COURT: I overrule that objection.

16 Okay. Any further evidence on the Jackson v.
17 Denno hearing?

18 MR. FREEMAN: Nothing from the defense.

19 MR. BRACKETT: Nothing from the State.

20 THE COURT: All right. Any brief argument?

21 MR. FREEMAN: Yes, Your Honor.

22 I would point out that Mr. Watts was clearly
23 restrained. He was, in fact, encouraged; if not, I would
24 suggest overridden.

25 Number one, the detectives said "I know your

1 uncle. I liked your uncle. He was a great friend of mine.
2 He died. How hard is this going to be on your momma. Put
3 everything out on the table." But I suggests that that
4 would overbear his ability in that circumstance to give an
5 involuntary -- I mean, excuse me, to give a voluntary
6 statement, Your Honor.

7 THE COURT: How old is he?

8 MR. FREEMAN: I believe he's 20.

9 THE DEFENDANT: Yes.

10 MR. FREEMAN: 20 years old, correct, currently,
11 Your Honor.

12 Your Honor, and since the court is already
13 considering his record, I would take note of the fact that,
14 in fact, he's been involved in the system before. He
15 previously admitted what he was charged with.

16 Your Honor, the statement, depending on who you
17 ask, one officer give the notes to another who types it. So
18 it's unclear to me how the statement comes to exists, except
19 in some typed fashion, which is clearly not dictated from
20 any person, much less Mr. Watts. It's more like a
21 collective collaboration by both officers, yet only one
22 officer signed it as a witness. But again --

23 THE COURT: Let me see these two documents,
24 ~~State's Exhibit 1 and 2.~~

25 MR. FREEMAN: Yes, sir, Your Honor, but again I

1 would suggest given the totality of the circumstances, that
2 he was there for approximately four hours before he signed
3 anything. He was told, again, "I'm good friends with your
4 uncle; how hard is this going to be on your momma; just tell
5 me everything."

6 I think -- as he just said "I read all this in the
7 paper." He knew what they wanted to hear. He knew that
8 they wanted somebody to admit all these things that had
9 happened locally. He knew that that's what the police were
10 looking for, to sort of close the books on all these cases
11 and move on.

12 Your Honor, again, otherwise the standards are
13 very clear. The voluntariness must be established to your
14 satisfaction and the burden is on the State. We would just
15 submit that the state has not proven its burden with regards
16 to the statement itself and we would ask the court to both
17 bar them from introducing that as evidence and bar any
18 mention of the fact that a statement/confession was begun at
19 all to the jury.

20 THE COURT: All right. Any reply?

21 MR. BRACKETT: Your Honor, briefly.

22 I submit that the evidence is clear, that he was
23 read his rights. He was in custody, but he was read his
24 rights pursuant to Miranda v. Arizona. He understood those
25 rights. He knowingly and intelligently waived them.

1 The evidence is uncontradicted that he was not
2 threatened, intimidated. And even the defendant, himself,
3 testified that they went to some lengths to accommodate him,
4 getting him a drink and escorting him down outside where he
5 was allowed to smoke a cigarette.

6 I submit that the testimony of Lieutenant Hager
7 and Detective Haire that he was given an opportunity to
8 review the statement; that he did, in fact, read the
9 statement. He understood what he was doing and that they
10 witnessed him signing the statement is clearly sufficient to
11 allow this to pass the threshold requirement of Jackson v.
12 Denno and the statement should be admitted.

13 THE COURT: All right. I'm going to do a couple
14 of things. I'm going to go ahead and rule on the Jackson v.
15 Denno hearing.

16 MR. BRACKETT: Yes, sir.

17 THE COURT: And my ruling is that the State has
18 proven by the preponderance of the evidence that the
19 defendant did, in fact, make the statement; that he had been
20 given his Miranda Warnings; that he understood and
21 voluntarily waived his Miranda Warnings; and that the
22 statement given was voluntary.

23 But I'm also -- I want -- does the York County
24 ~~sheriff's office or the York County -- City of York or City~~
25 of Rock Hill, or whoever is involved in this case police

1 department have a handwriting expert?

2 MR. BRACKETT: Not on staff, no, sir. We use SLED
3 when we need a handwriting analysis done.

4 THE COURT: Is there a SLED officer stationed here
5 in York County?

6 MR. BRACKETT: There is an agent assigned to this
7 area. I don't know if they do county agents any more.

8 THE COURT: Any objection to me going directly to
9 SLED to have a handwriting expert look at these two
10 signatures?

11 MR. BRACKETT: I have no objection to that, none
12 at all. I think we can probably call SLED ourselves and try
13 to accommodate that, if the defendant is willing to submit
14 to exemplars without going through the necessity of a
15 hearing.

16 THE COURT: Well, that wasn't -- my question was,
17 respectfully, a yes or no question.

18 Any objection?

19 MR. BRACKETT: None.

20 MR. FREEMAN: None from the defense, Your Honor.

21 THE COURT: All right, thank you.

22 We will take a -- anything else before we bring
23 the jury in?

24 MR. BRACKETT: We do have a couple of issues.

25 I was discussing with Mr. Freeman regarding, so

1 that I have some clarity before I begin opening statements,
2 I need to make sure that I don't misspeak, and give Mr.
3 Freeman an opportunity to address, preempt, and Your Honor
4 an opportunity to preempt an argument before I make it.

5 There was an identification made of the defendant
6 by the victim in this case. She saw his photograph in a
7 newspaper article that was published on February the 18th of
8 this year. She saw the article in the newspaper within
9 about 15 minutes of her arriving to work on second shift at
10 the same Exxon where she was robbed. And upon seeing the
11 face of the defendant in the newspaper, she recognized that
12 to be the person that robbed her on January the 20th. And
13 she picked up the phone and called Detective Willie Burris
14 of the Rock Hill Police Department, who was the case officer
15 working this particular armed robbery. Mr. Burris made a
16 supplemental report indicated that Ms. Hicks did, in fact,
17 call him and did, in fact, tell him that she had recognized
18 the picture in the paper as the person who had robbed her on
19 January 20th. And that was -- this was taking place during
20 the period of time in which the law enforcement officers
21 were interviewing the defendant over here at the sheriff's
22 office. So this was an identification that kind of took
23 place outside the ambit of law enforcement, but the problem
24 ~~becomes figuring out the best way for me to tell the jury~~
25 that she saw him photograph in the newspaper and not to

1 raise an issue of identification, but I will take
2 suggestions on what -- I welcome any thoughts on the best
3 way to phrase this so that they -- that it minimizes any
4 negative inference that the jury may derive from the fact
5 that his photograph was in the newspaper. He was a suspect
6 and wanted. A be on the lookout had been issued the day
7 before and this information was released to the press in an
8 effort to get the public's assistance in apprehending the
9 defendant. That's why his photograph was in the newspaper.

10 I have a copy of the newspaper article here for
11 the court to review. That's the photograph that she saw,
12 Ms. Hicks, and that's the photograph that caused her to call
13 Detective Burris and tell Detective Burris the individual in
14 the newspaper was the same man that robbed her.

15 The problem becomes if there is -- I thought
16 perhaps if we just tried to couch it in terms of the police
17 were looking for him in relation to this, that's not the
18 truth. And when the detectives testify regarding the
19 interview, he spontaneously confessed to this.

20 THE COURT: Well, in my -- what you have told us
21 is that you intend to prove the way in which the victim
22 identified the defendant is that she saw his picture in this
23 article in the newspaper, and you are offering -- and you
24 are just going to come right out and do it, but that you are
25 willing to consider any way of softening or changing that

1 approach that might reduce the amount of unfair prejudice
2 that would be --

3 MR. BRACKETT: Yes, sir.

4 THE COURT: That would be present in regard to the
5 defendant?

6 MR. BRACKETT: Yes, sir.

7 THE COURT: And so, Mr. Freeman, you can have a
8 few minutes to think about that.

9 MR. FREEMAN: No, Your Honor, I have been provided
10 a copy of the paper and obviously I have been aware of this
11 issue for some time.

12 I'm assuming that you have the one that says
13 February 18th, the two sections?

14 THE COURT: Yes, sir.

15 MR. FREEMAN: Yes, sir.

16 I would -- first of all, I think it's
17 sufficient -- if the solicitor wants to make that in his
18 opening statement just to say she saw his picture in the
19 paper. The court has already made it clear that there was
20 some press coverage.

21 I absolutely object to any introduction of that,
22 as I would point out to you that says "a recent rash of
23 violent robberies." I submit there is no way he can receive
24 a fair trial if that evidence is either introduced --

25 THE COURT: Well, wait a minute now. Let's stick

1 to the point. He's offering to accommodate you in
2 reasonable ways you suggests, and one of the ways that you
3 just suggested is that he could simply say "I saw his
4 picture in the paper."

5 MR. FREEMAN: Yes, sir. And, again, it's got to
6 be obvious to the jury now there was press coverage. I
7 think that's unavoidable. I think that's all he should say.

8 I will, again just for the record, object if he
9 tries to introduce that.

10 THE COURT: Are you going to introduce the
11 photograph itself?

12 MR. BRACKETT: Well, that was what I was
13 discussing with Mr. Thompson. And, of course, well, she
14 would be my first witness, so it would come up relatively
15 quickly in our case. That is what I was just trying to
16 figure out with him whether or not --

17 (Off the record)

18 (Back on the record)

19 THE COURT: And you could -- and you could --

20 MR. FREEMAN: Kind of a small picture. I was
21 going to suggest cutting it out. It's really a thumbnail.

22 THE COURT: You could cut -- you could cut --
23 leave the headline on and take the text of the article out.

24 ~~That leaves the picture there. It gives it some context.~~

25 MR. BRACKETT: Just the picture and the headline?

1 THE COURT: That's one way of looking at it.

2 MR. BRACKETT: You would have to take the shooting
3 out.

4 MR. FREEMAN: Yes, sir, there was no shooting in
5 this incident.

6 THE COURT: Just put suspect name.

7 MR. BRACKETT: Okay.

8 THE COURT: Or just use the photograph. I don't
9 know. You do it the way that you want to.

10 MR. BRACKETT: That suits me. I can do that. We
11 will take the photograph and suspect name -- and suspect
12 name and it will be -- we want be date in there so that it's
13 clear she identified him the same day --

14 THE COURT: All right, Mr. Freeman, you see what
15 he's suggesting?

16 MR. FREEMAN: I do, Your Honor.

17 If I could, what I would like to do is reserve my
18 objection until we see -- he's not going to introduce it in
19 his opening, until we see what her evidence -- what evidence
20 they deduce from her, and we may want to cut it a little bit
21 differently, depending on how she testified.

22 THE COURT: All right. But when you offer that,
23 you can lay the foundation for its admission by showing it
24 to the witness, but just don't show it to the jury until
25 after. And then when you are done, you can hand it to me,

1 have it marked, whatever way that you want, "I offer this
2 into evidence." We will take a break I expect at that point
3 and we will give Mr. Freeman a chance to discuss the way in
4 which that article should be essentially redacted --

5 MR. BRACKETT: Okay.

6 THE COURT: -- before it's admitted.

7 MR. BRACKETT: Perhaps we can cut that --

8 THE COURT: I'm going to take a short break.

9 MR. FREEMAN: Thank you, Your Honor.

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: All right. Ready to proceed?

13 MR. FREEMAN: Yes, sir, defense is.

14 MR. BRACKETT: State is.

15 THE COURT: Bring in the jury.

16 Did y'all get it worked out about the newspaper
17 article?

18 MR. BRACKETT: Yes, sir, we are going to crop it.

19 MR. FREEMAN: Yes, sir, it would be cut down,
20 basically, and the picture a just a few of the first words.

21 (Off the record)

22 (Back on the record)

23 MR. FREEMAN: Your Honor, with the solicitor's

24 ~~permission, this is sort of what we came up with. He did~~

25 just cut the picture that they want, suspect named, and then

1 they want the date. I'm sure they will match it up.
2 Basically it would be just that little bit. I'm okay with
3 that.

4 THE COURT: But if you want to wait until after
5 she testified.

6 (The following takes place in the presence of the
7 jury panel)

8 THE COURT: Swear the jury, please.

9 THE CLERK: Would y'all please stand and raise
10 your right hand, please?

11 You shall well and truly try and in true
12 deliverance make between the State of South Carolina and the
13 defendant at the Bar whom you shall have in charge and a
14 true verdict give according to the evidence and the law, so
15 help you God.

16 Please respond by saying I will.

17 THE JURY: (Collectively said I will)

18 THE CLERK: You may be seated.

19 THE COURT: Ladies and gentlemen, we are now ready
20 to begin with the trial of the State of South Carolina
21 versus Phillip Fleming Watts, Jr..

22 Mr. Watts, as I told you before, has been indicted
23 in Indictment Number 2008-GS-46-2083 in Count I for armed
24 robbery. And in that count it is alleged that Phillip
25 Fleming Watts, Jr., did, in York County, on or about January

1 the 20th, 2008, feloniously steal United States currency
2 and/or other items of value from the One Stop Exxon Store
3 located at 2460 West Main Street in Rock Hill, South
4 Carolina. Phillip Fleming Watts, Jr. Stole said items by
5 means of force or intimidation by holding One Stop employee
6 Annette Mobley Hicks at gunpoint. Phillip Fleming Watts,
7 Jr. Committed this robbery while armed with a deadly weapon,
8 in violation of Section 16-11-330 of the Code of Laws of
9 South Carolina.

10 And in Count II it is alleged that Phillip Fleming
11 Watts -- this is for possession of a firearm during the
12 commission of a violent crime. And in that count it is
13 alleged that Phillip Fleming Watts, Jr., did, in York
14 County, on or about January 20th, 2008, possess a firearm
15 while committing the violent crime of armed robbery at the
16 One Stop Exxon Store located at 2460 West Main Street in
17 Rock Hill, South Carolina, all in violation of Section
18 16-23-490 of the Code of Laws of South Carolina.

19 Now, ladies and gentlemen, as I mentioned to you
20 earlier, the indictment that I just read to you is not in
21 any sense evidence of the allegations that are contained
22 within that indictment. The indictment is simply the formal
23 document that contains the allegations that have been made
24 ~~against the defendant and it serves to process the case and~~
25 bring it into this court for trial.

1 The defendant has pled not guilty to both counts
2 of the indictment. And the plea of not guilty casts the
3 burden on the State to prove the defendant guilty beyond a
4 reasonable doubt.

5 That will be your job, ladies and gentlemen, to
6 determine whether or not the State has met that burden of
7 proof.

8 Now, it is a very important rule of law in our
9 country that a defendant in a criminal trial will always be
10 presumed to be innocent of the crimes with which he's been
11 charged, unless and until his guilt has been proven by
12 evidence that satisfies you of his guilt beyond a reasonable
13 doubt.

14 Now, this, of course, is the presumption of
15 innocence, but the presumption of innocence is not just a
16 legal theory. It's not just a legal phrase that we use. It
17 is a substantial Constitutional Right to which every
18 defendant is entitled. The presumption of innocence
19 accompanies the defendant from the time he is charged,
20 throughout the trial and into the jury room, until you reach
21 a verdict of guilt that is based on evidence that has
22 satisfied you of that guilt beyond a reasonable doubt.

23 Now, the trial of this case, just like any other
24 case, can be divided up into five basic phases. I'm going
25 to go over those phases with you right now.

1 The first phase is the opening statements, when
2 the lawyers will stand before you and they will explain to
3 you what this case is about. They will tell you what the
4 issues are in the case and how each side stands on those
5 issues. And they will also go over for you some of the
6 evidence that you can expect to see that will relate to
7 those issues.

8 And then the second phase will begin right after
9 that in just a few minutes this afternoon, and that is the
10 evidentiary phase, when and witnesses will be called here to
11 this witness stand. You will hear their testimony. And you
12 will also see other evidence, such as documents or
13 photographs, that will become part of the basis on which you
14 will make your decision as to whether or not the State has
15 met its burden of proof.

16 And then after all of the evidence has been
17 admitted, the third phase is the closing arguments, when the
18 lawyers will stand before you again. But this time they
19 will argue to you as to whether or not the State has met its
20 burden of proof.

21 And then the fourth phase is the jury charge, when
22 I will explain to you the law that is applicable to this
23 case.

24 And then the fifth phase is when you will go back
25 into the jury room and you will deliberate.

1 Now, I have mentioned to you during jury selection
2 that as members of the jury it is your responsibility to set
3 aside anything that you may have heard or learned or saw
4 concerning this case or concerning this defendant and come
5 into this trial as jurors with open minds and listen very
6 carefully to all of the testimony and the evidence that will
7 be offered before you here in this courtroom. And then when
8 it becomes time to do so, you must render a verdict that's
9 based solely on that testimony and evidence, solely on the
10 testimony and the evidence that you see and hear in the
11 courtroom, and not based on anything that you may have heard
12 or learned beforehand.

13 Now, obviously, I think, that would include the
14 rule that you may not learn anything in the future about
15 this case, unless you learn it right there in that jury box,
16 coming from the witness stand, or coming from some document
17 that I allow into evidence right here in this courtroom
18 under my supervision. So it would be improper then for you
19 to do any type of research tonight, any type of Internet
20 work, or looking in the newspaper, or looking at anything at
21 all that would relate to this case, except what you see and
22 hear in this courtroom. So I want you to be very careful
23 about doing that.

24 ~~Now, it's also obvious that there are television~~
25 cameras and there are newspaper reporters who have been in

1 here and they will be covering this trial as it progresses.
2 Tomorrow morning in the newspaper here there will almost
3 certainly be an article that will relate to this case.
4 Tonight and tomorrow morning on the television there will be
5 news stories that will relate to this case. And it would be
6 improper for any member of the jury panel to see or hear
7 anything in those news articles or in those television
8 stories. So tonight when you go home, if the television is
9 on, please make sure that it is not on the local news
10 stations during the time in which they might broadcast such
11 a story. Watch the national news. There is plenty to learn
12 about our presidential election that's coming up, or other
13 things that are interesting to you that would not be on the
14 local news.

15 If you get the newspaper at your home, please get
16 somebody else in your family to go through the paper before
17 you do and remove any articles that might relate to any case
18 that's being tried up here in this courthouse.

19 Now, it's very important that you not begin to
20 make up your mind about the facts in this case until you
21 have been through all five of those phases that I just
22 discussed with you. Only then would you be in the right
23 position to make up your mind about whether or not the State
24 has met its burden of proof.

25 And as I have already told you, you may not

1 discuss this case in any manner until I have given you
2 permission to begin with your deliberations during that
3 fifth phase of the trial.

4 Ladies and gentlemen, as members of the jury, you
5 are the exclusive judges of the facts in this case, and I am
6 not permitted to indicate to you how I might feel about the
7 facts. If I say anything or if I do anything that might
8 lead you to believe that I have an opinion about the facts,
9 then you should disregard that.

10 But, on the other hand, I am the exclusive judge
11 of the law. And so if you have some idea as to what the law
12 is, or what the law should be, and if that differs from what
13 I will tell you the law is, then you are obligated under the
14 oath that you have just taken as jurors to set your notion
15 of the law aside and to accept and apply the law precisely
16 as I will explain it to you.

17 Now, one other role that I play is to decide on
18 the admissibility of evidence, and from time to time I
19 expect that the lawyers will be making objections when
20 evidence is offered that they believe does not comply with
21 our Rules of Evidence. When that happens, that's not an
22 attempt on the part of the lawyers to hide anything from
23 you. That's just the way our system of evidence works. And
24 ~~it then becomes my responsibility to rule on the objection.~~

25 If I sustain the objection, that means that I

1 believe the evidence is not admissible and I will not allow
2 it in for you to consider.

3 If I overrule the objection, that means I believe
4 the evidence is admissible and I will allow it in and you
5 should consider it.

6 And most of the time I will be able to do that
7 just as I'm sitting here. You will hear the lawyers state
8 objection. They might briefly say the grounds for their
9 objection, and then you will hear me say either sustained or
10 overruled. Sometimes it might be necessary for me to ask
11 the lawyers to step up here to the bench so I can briefly
12 discuss the evidence question before I rule. And on some
13 occasions it might even be necessary for me to send you all
14 back into the jury room so that we can openly discuss the
15 evidence question before I rule. Sometimes I actually have
16 to listen to the testimony before I can decide whether or
17 not you can listen to it.

18 All right, solicitor?

19 MR. BRACKETT: May it please the court.

20 On January 20th of this year, 2008, at 2460 West
21 Main Street in the City of Rock Hill, in York County,
22 Annette Hicks reported for her second shift job at that
23 location, at the Exxon One Stop. It's a convenience store
24 and it's right across from Northwestern High School. It's
25 an Exxon station. Right behind it is a car wash.

1 Annette Hicks was a convenience store clerk who
2 worked there second shift from 3:00 to 11:00. It was just
3 like any other day. She served the customers throughout the
4 day and everything seemed to be going along, just like any
5 other day at the convenience store, until about 10:20. Then
6 things took a turn for the scary for Annette.

7 It ceased being an ordinary day when an individual
8 entered the store wearing a sweatshirt that had Gold Hill
9 written across the front of it and the hood pulled up across
10 his face and tied off. He walks up to the counter and he
11 pulled out a gun and he pointed it at Annette Hicks and told
12 her to give him the money. She stood there for a second and
13 she backed up, and the individual came around the counter to
14 the back side where the clerk stands and he told her to give
15 him the money and threatened to hurt her.

16 There was a brief interchange between them as she
17 took the drawer out of the cash register and put it down on
18 the counter. And at that moment some customers came over to
19 the other door of the convenience store. There are two
20 doors to this convenience store. There is one on this side
21 and here is the teller area or where the clerk stands, and
22 then there is one over here. This door is where the other
23 customers came up to and that door was locked. It was
24 Annette's custom to lock that door so that there would be
25 only one way in and one way out that she had to watch.

1 The individual with the gun told her "if you are
2 stalling because you are waiting for someone to get here to
3 help you, I want you to know I will kill them too. Give me
4 the money." Annette reached in, pulled out what cash she
5 had, put it into a paper bag and gave it to him and he
6 turned and left the store.

7 The two customers who had come to the locked door,
8 come over on that side, had pulled their car around to the
9 open door and parked there and were just getting out.
10 Inside that car were a mother and her 14 year old daughter
11 Sommer.

12 Sommer had been watching through the window what
13 was going on in the convenience store. It was 10:30 at
14 night. 10:20. So it was dark outside and well lit inside
15 the store and she could see clearly was going on and things
16 didn't look right to Sommer. It didn't look like the normal
17 transaction that takes place in a convenience store.
18 Something was wrong and Sommer picked up on that. It seemed
19 like the guy wearing the dark blue hoodie was yelling at the
20 clerk, so she took note of that as they drove by and she
21 kept watching. And as they pulled into the parking space
22 there, right around contemporaneous with them arriving at
23 that door, the individual came out, walked around the front
24 towards the locked door, around the back of the store and
25 disappeared into the darkness, followed seconds later by

1 Annette Hicks, who is seated over here in the light blue
2 shirt. Annette Hicks came out that door and told Sommer and
3 her mother that she had just been robbed. The man who just
4 left the store wearing the hoodie had just pointed a gun at
5 her and taken her money.

6 Also at the convenience store filling up on gas
7 were the Keener family, three young men who were there as
8 customers, and they saw Annette come out of the store. They
9 saw the suspect disappear into the darkness around the back
10 of the store and heading towards the car wash bays that were
11 located in the back. And a few seconds later, a minute or
12 so, they saw a dark, what appeared to be, purple Durango
13 pull out from the street that ran along the side towards the
14 back where the car wash was and they turned and looked.
15 Sommer noticed it as well.

16 The police were called and we had an armed robbery
17 at the time.

18 Now, you will actually get to see the armed
19 robbery in this case, because like most convenience stores,
20 the Exxon One Stop is equipped with a security camera
21 system, and we have the video from that night and you will
22 be able to see, not hear, but you will be able to see what
23 took place inside the store.

24 ~~That's not the only evidence. You will also hear~~
25 from Annette Hicks and you will hear from Sommer Young. You

1 will hear from the Keeners and they will tell you what they
2 saw.

3 You will hear from law enforcement that came out
4 and investigated this case. And what you will learn is that
5 at the outset of the investigation they didn't have any
6 suspect. They didn't know who did it. They weren't sure
7 where to go with the investigation. There was no obvious
8 suspect that they could identify as being the person that
9 perpetrated this robbery. And the case basically sat
10 unsolved for a little bit less than a month, until February
11 the 18th.

12 Something happened on February the 18th that broke
13 the case open. Mr. Phillip Watts was taken to the York
14 County sheriff's office and interviewed. And during the
15 course of that interview Mr. Watts admitted that he was the
16 person in the Gold Hill sweatshirt with the hood up at the
17 Exxon One Stop who had pointed the gun at Annette Hicks and
18 taken her money. He indicated what he did and how he did
19 it.

20 And in the course of the investigation that
21 followed, you will learn that police went to where Mr. Watts
22 was staying and located a 22-caliber pistol, the same
23 caliber pistol that Annette Hicks told law enforcement the
24 night of the robbery that the robber had. She recognized it
25 as a 22-caliber and told them and it's in the police report

1 that was written the night of the robbery, it was a
2 22-caliber. A dark colored 22-caliber pistol. It liked
3 just like the dark colored 22-caliber pistol that Mr. Watts
4 was found with. But that's not all.

5 In addition to the confession, in addition to the
6 pistol, you will learn that Mr. Watts had a girlfriend and
7 her name was Stephanie Story. And you will hear from
8 Stephanie and she will tell you that she owned a dark purple
9 in color Durango that she let her boyfriend borrow from time
10 to time, and that he could very well have had that car the
11 night of this robbery.

12 So, you will have, I submit to you, conclusive
13 evidence just with that that will satisfy you that the
14 person who robbed the One Stop on January 20th was the
15 defendant.

16 But there was one more thing. If that was not
17 enough, Mr. Watts' photograph was in the newspaper on
18 February the 18th of 2008. Before Annette Hicks ever
19 learned that he had confessed to the crime, before she knew
20 that he had been interviewed by sheriff's detectives, before
21 she knew any of that, she showed up for her second shift job
22 at the One Stop again on February the 18th and within 15
23 minutes, as was her custom, she opened up the newspaper and
24 saw his photograph. And she set the paper down and said
25 "oh, my God, that's the man that robbed me." And she picked

1 up the telephone and called Detective Willie Burris at the
2 Rock Hill Police Department and said "the guy in the Herald
3 on the front page, his picture, that's the same guy that
4 robbed me." And you will hear from Detective Willie Burris.
5 This is before she ever knew anything about the fact that he
6 was being interviewed, Mr. Watts was being interviewed, and
7 that he had confessed to this robbery.

8 Ladies and gentlemen, my name is -- I introduced
9 myself at the outset, is Kevin Brackett. I'm the solicitor
10 for the Sixteenth Circuit. This is Willy Thompson, my
11 deputy solicitor.

12 And as the judge has instructed you, and will
13 continue to instruct you, and at the end of the case will
14 instruct you again, the burden of proof in this case proving
15 that Mr. Watts is the man with the gun, proving that he was
16 the one wearing the hoodie, proving that he's the one that
17 took the money from Annette Hicks at the One Stop on January
18 20th of 2008, the people responsible to prove that to you
19 beyond a reasonable doubt is the State. It's a burden we
20 gladly bear in this case.

21 I submit to you, and I'm asking you to keep your
22 mind open until the end of the case, but I submit to you
23 that the evidence that we present to you will do just that.
24 ~~Until then I ask you, as the judge has, to keep an open mind~~
25 and make no decisions in this case until you have heard all

1 the evidence in the matter and the judge has instructed you
2 on the law. And at the end of the case we will be back to
3 sum up that evidence and share with you what we believe it
4 shows. But until then thank you for your service and we
5 will look forward to working with you in the coming days.

6 THE COURT: Counsel.

7 MR. FREEMAN: Ladies and gentlemen, the solicitor
8 tells a good story, a very compelling story, very seductive,
9 just follow me here, and follow me here, and follow me here,
10 and now follow me here. Look, you are guilty. Got some
11 pieces out there that sounds very seductive, words that
12 maybe we don't deal with in our every-day lives.

13 The State of South Carolina, as you have heard,
14 has to prove him guilty.

15 And our -- what does Mr. Watts have? Let's talk
16 about that for a second. Now, Mr. Watts has on his side
17 history. He has on his side all of his rights. He doesn't
18 have to say a single thing to you. If you remember sort of
19 your grade school social studies, he doesn't have to say a
20 single thing to you, but he did say something to you. He
21 said I didn't do this.

22 This is an odd case, in that no one disputes that
23 the store was robbed. That's an awful thing. That's a
24 regrettable thing. That's a horrible thing, but Mr. Watts
25 speaks to you through our system of justice and says "I

1 didn't do this. The police have got the wrong guy. I don't
2 know who it was, but it wasn't me."

3 What person, what individual in this courtroom
4 could compete with the power of the State, with our budget
5 of billions of dollars, or the power of the county with
6 their budget of millions of dollars, or the sheriff's
7 department with their budget of a millions or two million
8 dollars, or whatever it is? Well, nobody could compete with
9 that. We are not Bill Gates, but the Founding Fathers said
10 wait a minute, we are going to put the brakes on this 225
11 years ago. We are going to level the playing field. We are
12 going to say yes, state, the burden on you. When you say
13 somebody did something wrong, somebody did something bad,
14 prove it. Prove it. And don't just prove it to a maybe, to
15 a coin flip, 50 percent plus a little bit. Prove it beyond
16 a reasonable doubt for each and every one of you. Not half
17 of you. Not some of you. Not most of you. Each and every
18 one of you would have to be convinced beyond a reasonable
19 doubt, and the judge will tell you what that is later.

20 You didn't leave your common sense outside. You
21 know what a reasonable doubt is. If you are not certain,
22 you are not sure at the end of the day that this person
23 seated over here did it, these bad things that they said,
24 ~~then your oath -- remember, you were sworn in twice today,~~
25 downstairs and up here.. Your oath is to find this person

1 not guilty, because of the awesome power of the State, this
2 is only way we can level the playing field.

3 Now, you heard some stuff about video evidence.
4 You're a TV generation. We have a tendency if we see it on
5 TV to believe it. Well, that's -- that's not always the end
6 all be all. If that were the case, then we really wouldn't
7 need judges and juries for those case where we did have TV
8 or video.

9 You are going to see the video, I believe. You
10 are going to have common sense and say does this look like
11 that person? Could the police, who are human beings, have
12 made a mistake? Does this, in fact, look like that person?
13 Well, maybe it does. Maybe it doesn't. Does it look
14 exactly like that person? That's where we come down to it.

15 Now, you are going to hear the testimony from the
16 woman who was robbed that evening. Again, we don't dispute
17 that the store was robbed. That's an awful thing. No one
18 is here to dispute that, but think about it. When you have
19 a gun thrust in your face, is your first thought to make a
20 mental picture of the other person, or just to do what they
21 say? These are the kind of things that you will have to
22 think about as human beings when we go along.

23 Now, if you had never been in a trial before, I'm
24 going to submit to you that mostly what a trial is is people
25 sitting in that chair talking to you, telling you, answering

1 questions from one or both of the lawyers, maybe the judge,
2 telling you what happened. That's what a trial is, people
3 just saying well, here is what I saw, here is what I
4 remember.

5 But you, as just ordinary citizens. Remember, our
6 Founding Fathers 225 years ago, when they passed the Bill of
7 Rights, put the power here. That's why there is a bar here.
8 Okay. That's why it's a bar. It's to give you that power
9 to review what happened. You have the right to think about
10 when people are sitting in this chair what do they have to
11 gain or lose? What opportunity do they have to see or not
12 see, to perceive or not perceive what they remembered?

13 Now, in this case it's very obvious, as you may
14 have gathered already, that the press is involved. Well,
15 again, we are a TV generation. Is it possible that if
16 somebody does something to me and then I happen to catch
17 that picture in the paper later, my mind is going to connect
18 those two dots? Very seductive. Let's take a little step
19 and another little step and another little step. Look, we
20 end up with where the solicitor wants to be. But remember,
21 Mr. Watts has spoken to you loud and clear that "I didn't do
22 this. I am not guilty. Prove it. If I did it, prove it.
23 You say I did something awful, prove it."

24 ~~Mr. Watts may or may not speak to you himself.~~

25 That's his right. That's his choice. And he and I, as his

1 lawyer, will make that decision as we go along. We don't
2 have to decide. We don't have to do anything. We don't
3 have to say anything. It's up to them. We don't have to
4 put even one little scrap of paper, because, remember, the
5 awesome power of the state, who could compete with that?
6 Thank God the Founding Fathers gave us at least a level
7 playing field. Prove it. It's not like some other justice
8 systems in the world where you have to prove yourself
9 innocent. It's a pretty hard ruling to meet. I would
10 submit to you that non one could realistically do that most
11 of the time.

12 So, again, it's a little odd. We don't dispute
13 that the store was robbed. We just say we didn't do it. We
14 don't dispute that the police have arrested him and that the
15 police believe he's guilty, but the police are human beings
16 and they make mistakes.

17 You have to in your own mind judge what happened.
18 I don't envy you that task. I know not a one of you
19 volunteered to be here. You would all rather be somewhere
20 else doing something else, but there will be no better jury
21 from York County than the twelve of you or the alternates,
22 depending how the trial goes, to make that decision and hold
23 the State - all these people - hold the State to that high
24 burden. ~~Make them level that playing field out. Say "wait~~
25 a minute, I'm not going to say just because you said he did

1 it, I'm not going to say just because the police said he did
2 it that he did it." Again, if that were the case, we don't
3 need judges and juries. We got a video. I see it on CSI,
4 it must be true. Okay.

5 Again, the solicitor tells a very nice story and
6 it's a very easy to follow story; follow me just one step
7 and another step, and then we end up without putting them to
8 that test, without putting them to that burden. Each and
9 every one of you must find him guilty beyond a reasonable
10 doubt for each and every element of the crime.

11 Now, he's been charged with two offenses. That's
12 armed robbery and carrying a pistol. They go together.
13 And, I mean, there is room with common sense. We are not
14 going to deal with all the legal stuff until later.
15 Somebody robbed somebody with a gun. That's the case.
16 That's what the solicitor has said and that's what the
17 police have said. We don't dispute that happened. We just
18 said it was not us.

19 Should the police be further investigating? I
20 don't know. Again, we don't have to prove who did it.
21 That's not on us. The Constitution of the United States and
22 the State of South Carolina, don't lay that on us. They lay
23 on this side of the room, on this table, okay, and that's a
24 heavy, heavy burden. ~~I believe the Supreme Court has said~~
25 that it's like a robe of righteousness that you put around

1 someone's shoulder, that they are presumed not guilty,
2 unless and until the State of South Carolina, or the
3 Sixteenth Circuit Solicitor's Office, to the satisfaction of
4 each and every one of you beyond each and every reasonable
5 doubt chooses to pull it off, because you are the one whose
6 opinion is going to count at the end of the day.

7 And at the end of the day I'm going to suggest to
8 you that the State is going to have difficulty meeting that
9 burden. Okay. Again, it's a good story. A bad thing
10 happened. We don't dispute that. An awful thing happened.
11 We don't dispute that. Thankfully no one was hurt.
12 Mercifully no one was injured, but at the end of the day we
13 don't say something was so bad, I'm going to just zoom
14 through the process. I won't touch all the bases in order
15 so it's clear I have hit a home run. No, it's not like
16 that. Okay. It doesn't matter if the person is charged
17 with something little or something big, and you have common
18 sense. This is something big. Hold them to that burden.
19 Hold them to that burden each and every time, okay, and
20 that's what it's all about.

21 Now, again, Mr. Watts may or may not present any
22 evidence. We will make a decision as we go along. It's
23 kind of a legal decision, but let's just say we just sat
24 down, both of us. They lose. There is no legal issue at
25 that point. They lose, because they haven't proven a thing.

1 We don't have to prove anything. We don't have to disprove
2 anything. They do. And I ask you to hold them to that
3 task.

4 As you heard earlier, my name is John Freeman.
5 I'm an attorney in Rock Hill, which obviously it's the
6 largest city in the county and where this incident is
7 alleged to have occurred.

8 The judge has spoken to you earlier about some of
9 the media. You have to put all that aside. This case is no
10 different than the next case that will be here, or the last
11 case that will be here, in terms of what is expected of you
12 and what is expected of them. Thank you.

13 MR. BRACKETT: If it please the court, the State
14 would call Annette Hicks.

15 ANNETTE HICKS, having been first duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION BY MR. BRACKETT:

18 Q. Good afternoon, Annette. How are you?

19 A. Hi. Fine. How are you doing?

20 Q. Can you state your full name and spell your last name
21 for us?

22 A. Annette Hicks, H-I-C-K-S.

23 Q. Okay. Now, you have got to remember to speak up and
24 speak slowly for the jury. All right?

25 A. Okay.

1 Q. Okay. Now, can you tell us where you work, Annette?

2 A. At 2460 West Main Street.

3 Q. Where is that?

4 A. One Stop.

5 Q. And what city is that?

6 A. Oh, Rock Hill.

7 Q. And what county?

8 A. York.

9 Q. All right. And what do you do at the One Stop?

10 A. I'm a cashier.

11 Q. What kind of business is that?

12 A. It's a convenience store.

13 Q. Okay. You were what?

14 A. Cashier.

15 Q. Okay. What are your job responsibilities?

16 A. To wait on customers, clean the store. Anything that
17 really needs to be done there.

18 Q. Okay. And what kind of gas -- is that an Exxon
19 station?

20 A. Uh-huh.

21 Q. How long have you worked there?

22 A. For almost two years.

23 Q. Almost two?

24 A. Uh-huh.

25 Q. So you were working there in January of this year?

1 A. Yes, sir.

2 Q. All right. What shift do you work?

3 A. Second.

4 Q. And out of the number of people on the shift at any
5 given time, how many people work second shift?

6 A. Just one, me.

7 Q. And can you give the jury some idea of what the hours
8 of that shift is?

9 A. It's from -- well, they changed it. Now it's from 3:00
10 to 10:30, but it was 3:00 to 11:00 when I got robbed.

11 Q. Now, how old are you, ma'am?

12 A. 42.

13 Q. And have you lived in Rock Hill all your life?

14 A. No.

15 Q. Where are you from originally?

16 A. I'm from Anderson, South Carolina.

17 Q. How long have you lived in York County?

18 A. I have lived here for about 17 years.

19 Q. Were you working on January the 20th of 2008?

20 A. Yes, sir.

21 Q. Tell us what you were doing that day and what shift
22 that you were working.

23 A. I went in at three o'clock, was working second shift,
24 and I was waiting on customers.

25 Q. Did anything unusual happen during your shift on

1 January the 20th?

2 A. Yes, I got robbed.

3 Q. About what time did that happen?

4 A. At about 10:17.

5 Q. Now, how many doors are there to the One Stop?

6 A. Two.

7 Q. Tell us how those doors are normally kept.

8 A. Well, when you come in, there is one to the right and
9 there is one to the left of the store.

10 Q. And is the One Stop open 24 hours a day?

11 A. No.

12 Q. What time do you close?

13 A. Eleven o'clock.

14 Q. So there is two doors? One -- as you are facing out
15 from your counter, one to the left and one to the right?

16 A. Uh-huh.

17 Q. And are they both kept open at all times?

18 A. Well, they are -- well, not really. I lock the one on
19 the -- behind me, I lock it at like seven o'clock at night.
20 That way I can get my shift work done. That way I can watch
21 one door and they don't come in on me. I just do that for
22 safety.

23 Q. And you are there by yourself?

24 A. Yes, sir.

25 Q. Now, approximately what time -- you indicated to the

1 jury that you were robbed. Approximately what time did that
2 happen?

3 A. It was ten -- it was 10:17.

4 Q. Where were you when the individual who robbed you came
5 in the door?

6 A. I was on the floor cleaning, doing my cleanup work
7 because I was getting ready to close.

8 Q. When the door opens, does the bell ring or --

9 A. Yes, it does.

10 Q. Is that like a ding-dong, or --

11 A. No, it's just a thing they have got. It's a system
12 where you hear -- when the door opens, you automatically
13 hear it. It's like a buzzer.

14 Q. When you hear that what do you do?

15 A. I have to go to the platform to wait on the customer.

16 Q. And that was what you did at 10:17?

17 A. Yes.

18 Q. Or thereabouts?

19 A. Yes.

20 Q. And what did the customer look like when you first saw
21 him?

22 A. He was light skinned. He was about 5'7", about 140,
23 170 pounds.

24 Q. A black male or white male?

25 A. Yes, black.

1 Q. Female?

2 A. Black.

3 Q. Black male.

4 And had you ever seen this individual before in your
5 store?

6 A. No.

7 Q. What was he wearing?

8 A. He was wearing a blue hoodie, blue sweat hoodie with
9 Gold Hill on it.

10 Q. Was it cold out that night? Do you remember?

11 A. I can't remember that. I know he had it on his head.
12 He had it pulled real tight to his face.

13 Q. What did you -- what -- when he first came in, did you
14 think anything unusual?

15 A. No, because I was doing my shift work and I didn't
16 think I until I walked up on the platform.

17 Q. Then what happened?

18 A. He pulled -- I asked him could I help him and he paused
19 for a minute and then he pulled a gun on me and he told me
20 to give him -- he told me to give him the money.

21 Q. How far was he from you when he pulled the gun out?

22 A. He was right there. Like the register was here, he was
23 like -- like I was here. He was right there, because the
24 counter.

25 Q. I'm going to start walking to you and I want you to

1 tell me to stop when I'm as close to you as --

2 A. Okay.

3 Q. -- he was when he pulled the gun out.

4 A. He was about right there.

5 Q. Okay.

6 A. Because the counter -- because my counter was like
7 right here.

8 Q. And he pulled the gun out with his right hand or his
9 left hand?

10 A. That I can't remember.

11 Q. Okay. But he pointed a gun at you?

12 A. Yes.

13 Q. Did you get a good look at the gun?

14 A. Yes, I did.

15 Q. What kind of gun was it?

16 A. It was a .22 revolver.

17 Q. How did you know that?

18 A. Because my dad, when I was little, always taught me
19 what guns were, so I knew what kind it was automatically.

20 Q. What color was it?

21 A. It was black.

22 Q. Did you notice anything else distinguishing about it?

23 A. Not really. I mean, he didn't have no sling or
24 nothing. When he spoke, he spoke well.

25 Q. No, about the gun.

1 A. Oh, no.

2 Q. Did you know anything else unusual about the --

3 A. All I seen, it was in his hand. I seen black. I seen
4 him pull it. That's all I seen.

5 Q. Now, you said he had the hoodie pulled up?

6 A. It was tight.

7 Q. It was tight?

8 A. Uh-huh.

9 Q. Was it -- did he have it -- was it covering any part of
10 his face?

11 A. He had all this right here showing. He had it pulled
12 and all this here was showing.

13 Q. Okay. So how -- he was that far from you and you could
14 see his face?

15 A. Yes.

16 Q. What were the lighting conditions like inside the
17 store?

18 A. It's real good.

19 Q. Fluorescent lighting?

20 A. We have got -- it's like this.

21 Q. Okay. What did he say to you when he pulled the gun?

22 A. He pulled the gun and I thought -- well, at first
23 before he pulled the gun I though he was joking telling me
24 to give him the money, and then he told me -- then he pulled
25 the gun on me.

1 Q. He said "give me the money" before he pulled the gun?

2 A. No, I thought -- yeah -- he said "give me the money."

3 I thought he was joking, because I didn't see no gun. I
4 kind the paused for a minute. And then he turned around and
5 pulled the gun on me and says "give me the money" again.

6 I'm looking at him like he's serious, so I back up. You can
7 see on the tape where I back up, and I pulled the register
8 out of the counter. When I do, he jumps up on the platform
9 at me, behind me. And I when he did, I pulled -- I took the
10 register and put it on the counter and asked him "do you
11 want a bag?" So I stuck -- he said "yeah." So I stuck it
12 in the bag. While I was getting the money I was shaking, so
13 I couldn't put it in the bag. He said "hurry up, hurry up,
14 unless you are waiting for cars to come in." He said "I'll
15 shoot them too."

16 Q. Slow down. Slow down.

17 A. And that's when he really scared me, because I had the
18 door locked and I seen --

19 Q. Back up just a minute because you are going pretty
20 fast.

21 You told him -- when you said to you "do you want the
22 money," and he said "give me the money."

23 A. Uh-huh.

24 Q. ~~And you took the register out of the drawer?~~

25 A. Uh-huh, put it on the counter.

1 Q. Okay. And then what did you do?

2 A. I put -- I asked him if he wanted the money in the bag.
3 He said yes, so I reached over to the right of me and I got
4 a paper bag and put the money in it. And I was shaking
5 really bad trying to put the money in the bag and he told me
6 "hurry up, hurry up." He said "well, are you waiting on a
7 customer to come in." He said "I'll shoot them."

8 Q. "What are doing, waiting on a customer?"

9 A. "Waiting for a customer to come in." He said "I'll
10 shoot them too."

11 Q. Was there any customers outside?

12 A. Yes, there was.

13 Q. Where?

14 A. There was the door I had locked behind me, thank God.
15 There was two people coming -- trying to come in it, and
16 that's when he said that. They were trying to come in it
17 and the door was locked. So the only thing I was thinking
18 was getting him out of there before he shoots them.

19 Q. Okay.

20 A. So I was trying to get him out before he really hurt my
21 customers.

22 Q. All right. So what did you do with the money after you
23 put it in the bag then?

24 A. I handed it to him and he walked out.

25 Q. Okay. About how long did this whole thing take?

1 A. Probably about four or five minutes. I'm not sure. I
2 was so shook up. I'm not even sure.

3 Q. When he walked out the door, did he walk out -- he
4 walked out the unlocked door, is that right?

5 A. Uh-huh.

6 Q. And what did you -- did you see where he went?

7 A. He went out to the left towards the pizza place.

8 Q. The pizza place?

9 A. The one right beside of us.

10 Q. Is that attached in the same building?

11 A. Uh-huh.

12 Q. Now, could you see where he went after he cut left?

13 A. No.

14 Q. Did you see any other customers or any other people
15 outside?

16 A. Yes, I hollered at one and she called the police for
17 me.

18 Q. Where did you go after he left?

19 A. I opened the door and let them know I just got robbed,
20 because I was so shook up I couldn't even call 911.

21 Q. When you -- you went outside?

22 A. Yes, I opened the door.

23 Q. Okay. And who did you see out there?

24 A. It was a young girl, her and her mom that was in the
25 truck, and that's when I hollered and screamed and told them

1 "I just got robbed." They asked me did I want them to call
2 911 and I told them "yes, please," and they called for me.

3 Q. Did you see the robber again at any point after that?

4 A. No.

5 Q. Okay. Now, is the store where you were, Annette, is
6 that equipped with any kind of security camera?

7 A. Yes, sir, it is.

8 Q. Okay. Can you describe that for the jury a little bit?

9 A. Like what? Like where it's at or --

10 Q. Yeah, just how it functions, where the cameras are
11 located.

12 A. We have got -- if you walk up on the platform, there is
13 two. There is a camera here and there is one right behind
14 me. We can look at the register.

15 Then we have got one where you walk in the door right
16 there at the door.

17 And you can go in the office where the computer is at
18 and you can see everything. You can go mash buttons in
19 there. There is eight of them. You can see every angle in
20 the store.

21 Q. All right.

22 A. And they work very well.

23 Q. These are like a monitor --

24 A. Yes.

25 Q. -- in this office?

1 A. Yes.

2 Q. Does it record the cameras as well?

3 A. Yes, it does.

4 MR. BRACKETT: I would ask that this be marked as
5 State's Exhibit No. 3 for identification.

6 (Store Video Disk marked as State's Exhibit No. 3
7 for identification)

8 BY MR. BRACKETT:

9 Q. Ma'am, I'm showing you what's been marked as State's
10 Exhibit 3 for identification and I would ask you if you
11 could look at that and tell us what that is?

12 A. This is the videotape of the night he robbed me.

13 Q. Okay. How do you know? Have you seen the videos that
14 are on that CD?

15 A. Yes, I have.

16 Q. And how do you know that that's the CD that you looked
17 at?

18 A. They had me initial it. I have got my initials on
19 that.

20 Q. Is that your initials?

21 A. Yes, it is.

22 Q. And did the videos that are contained on this disk, you
23 have had a chance to review it?

24 A. Yes, I have.

25 Q. Okay. Don't they fairly and accurately depict the

1 events that took place in your store on January 20th of
2 2008?

3 A. Yes, sir.

4 Q. Okay. Do they appear to have been altered or changed
5 in any way, shape or form?

6 A. No, sir.

7 Q. Are the things that happened to you in that store when
8 you got robbed accurately and honestly showed on the videos
9 in this disk?

10 A. Yes, sir.

11 MR. BRACKETT: Your Honor, at this time I would
12 move State's Exhibit 3 for identification into evidence.

13 MR. FREEMAN: Your Honor, I would object and I
14 would ask to approach.

15 THE COURT: Yes.

16 (Whereupon, the lawyers approached the bench for
17 an off-the-record discussion)

18 THE COURT: All right. You can voir dire the
19 witness regarding your objection.

20 MR. FREEMAN: Thank you.

21 VOIR DIRE EXAMINATION BY MR. FREEMAN:

22 Q. Ms. Hicks, on these videos, how are they created at the
23 store? Do you know?

24 A. They are digital. That's all I know.

25 Q. Something to do with the computer?

1 A. Yes.

2 Q. Do you at the end of every shift produce the disk?

3 A. No, I don't. The office does that. I don't do that.

4 Q. The office, and you don't work in the office?

5 A. No.

6 Q. Do you know where the digital feed goes?

7 A. No.

8 Q. Do you even know if it goes somewhere off premises?

9 A. I'm not sure.

10 Q. You don't know any of those things?

11 A. No.

12 Q. So you don't -- from a technical point of view, you
13 don't know how that stuff gets on this disk?

14 A. All I know is the main office does it. They do it in
15 Shelby, I believe.

16 Q. Shelby, North Carolina?

17 A. Yes.

18 Q. So, again, the answer to my question is you are not a
19 computer person? You don't -- somehow it gets on this disk,
20 but you don't know how that could happen?

21 A. No.

22 Q. You don't normally have to push a button to make
23 anything happen, or to send it off to Shelby, or anything of
24 that nature?

25 A. No.

1 Q. You don't have to edit it or choose what angle or
2 anything of that nature?

3 A. No.

4 Q. Do they ever ask -- other than when there is an
5 incident, have you ever reviewed the tapes or the digital
6 feed or anything of that nature?

7 A. I never review it.

8 Q. Do you know, for example, how long the feed is held in
9 storage?

10 A. No.

11 MR. FREEMAN: Your Honor, I would object under the
12 best evidence rule. As I said, I think the technical person
13 who created it is the person who could introduce it.

14 THE COURT: All right. As far as the foundation
15 of the tape, which you objected to the foundation wasn't
16 properly laid, I think it was, so I overrule that objection.

17 As far as the best evidence rule, I think it's
18 admissible under Rule 1003, even though it is not an
19 original.

20 MR. FREEMAN: Okay.

21 THE COURT: Because I'm not aware that you have
22 raised any substantial question regarding its authenticity,
23 the authenticity of the original.

24 MR. FREEMAN: Yes, sir, thank you.

25 THE COURT: All right.

1 MR. BRACKETT: Thank you, Your Honor.

2 So State's Exhibit 3 for identification is now in
3 evidence?

4 THE COURT: It's admitted.

5 MR. BRACKETT: Thank you.

6 Your Honor, at this time I would move to publish
7 State's Exhibit 3.

8 THE COURT: Let me speak to y'all for a moment,
9 please.

10 MR. BRACKETT: Yes.

11 (Whereupon, the lawyers approached the bench for
12 an off-the-record discussion)

13 MR. BRACKETT: I move to publish State's Exhibit
14 3.

15 CONT'D DIRECT EXAMINATION BY MR. BRACKETT:

16 Q. Annette, can you see the screen from where you are?

17 A. Yes, I can see it.

18 Q. Okay.

19 (Whereupon, State's Exhibit No. 3 was played to
20 the jury panel)

21 BY MR. BRACKETT:

22 Q. Now, if you could, could you step down for just a
23 minute?

24 (Witness off the witness stand)

25 BY MR. BRACKETT:

1 Q. So we can orient the jury a little bit as to where
2 things are, can you tell them what this area is here?

3 A. That's the counter.

4 This here, that's the door he came in.

5 Over there is -- right here is the other door.

6 Q. Okay. And where are you standing when you are
7 serving --

8 A. There is the register. I would be right here. There
9 is the camera.

10 Q. And who is this individual?

11 A. That's Phillip Watts.

12 Q. Okay. Step back a little bit and maybe let the jury be
13 able to see.

14 Now, if you can step back so the jury can see, we won't
15 block anybody and you can use this to point.

16 All right. Go ahead and play it.

17 (Videotape played)

18 (Videotape stopped)

19 BY MR. BRACKETT:

20 Q. What just happened there?

21 A. He is walking around the counter.

22 Q. Has he pointed the gun at you yet at this point?

23 A. Yes, he did.

24 Q. Go ahead.

25 (Videotape played)

1 (Videotape stopped)

2 BY MR. BRACKETT:

3 Q. What's that on the counter that you just laid down?

4 A. That's the cash register.

5 There is a bag of money.

6 He's talking and walking out the door then.

7 Q. Back it up just a little bit.

8 (Videotape played)

9 (Videotape stopped)

10 BY MR. BRACKETT:

11 Q. And is that the individual?

12 A. Yes.

13 Q. And that's you in the background?

14 A. Yes, it is.

15 Q. So how long did the whole thing take? About a minute?

16 A. Probably a couple of minutes.

17 Q. All right. Go ahead.

18 Now, are there other angles?

19 (Videotape played)

20 (Videotape stopped)

21 BY MR. BRACKETT:

22 Q. What angle is this?

23 A. That's the counter. That's the right door. That's the
24 one behind the counter.

25 Q. Now, right there?

1 A. That's the gun.

2 Q. What's the writing on the screen there, the Lemon

3 Heads --

4 A. That's what I --

5 COURT REPORTER: I'm sorry, I couldn't hear her
6 answer.

7 BY MR. BRACKETT:

8 Q. Can you repeat that a little bit louder so the court
9 reporter can --

10 A. That right there shows like the customer before him and
11 that's what I sold him.

12 Q. Okay. Go ahead.

13 (Videotape played)

14 (Videotape stopped)

15 BY MR. BRACKETT:

16 Q. And when you went out the door right there, who did you
17 see? You went out and saw the young girl?

18 A. Yeah, that's when I saw the young girl and her mother.

19 Q. And is this another angle on the screen?

20 A. The cameras are -- there is one. You could see it.
21 There is one camera. There is the other camera.

22 Q. And using that pointer for me?

23 A. You can see there is -- there is a camera right there.

24 ~~That's the one that's taking all that.~~

25 Q. Okay. Thank you very much. You can have a seat.

1 (Witness back on the witness stand)

2 BY MR. BRACKETT:

3 Q. Thank you.

4 MR. BRACKETT: Your Honor, I would ask that these
5 four photographs -- five photographs be marked as State's
6 Exhibits.

7 MR. FREEMAN: Your Honor, I would have the same
8 objection to the photographs as I did to the video. First
9 of all, there is no foundation for them at all, the same
10 objection I had as well.

11 THE COURT: You haven't laid any foundation for
12 the photographs, have you?

13 MR. BRACKETT: Not yet. I'm just having them
14 marked for identification.

15 MR. FREEMAN: I thought he said he was moving them
16 in evidence.

17 MR. BRACKETT: No, no, no, I'm just having them
18 marked so I can show them to the witness.

19 (Photograph marked as State's Exhibit No. 4 for
20 identification)

21 (Photograph marked as State's Exhibit No. 5 for
22 identification)

23 (Photograph marked as State's Exhibit No. 6 for
24 identification)

25 (Photograph marked as State's Exhibit No. 7 for

1 identification)

2 (Photograph marked as State's Exhibit No. 8 for
3 identification)

4 BY MR. BRACKETT:

5 Q. Ms. Hicks, I'm showing you what's been marked as
6 State's Exhibits 4, 5, 6, 7, 8, and I'm going ask you if you
7 could just take a look at those and tell me if you recognize
8 what those pictures show?

9 A. Yes, sir, they show the night I was robbed.

10 Q. All right. Are those still photos from the videos that
11 we just watched?

12 A. Yes.

13 Q. And do they fairly and accurately represent, just as
14 the video did, the events that took place that night?

15 A. Yes, they do.

16 MR. BRACKETT: Your Honor, I would move 4, 5, 6, 7
17 and 8 into evidence as still photographs from the video that
18 we just watched.

19 MR. FREEMAN: Your Honor, the same objection we
20 are argued and that they are unnecessarily cumulative.

21 THE COURT: All right.

22 MR. FREEMAN: Same objections, excuse me.

23 THE COURT: Objections are overruled.

24 MR. BRACKETT: I ask that these be marked as

25 State's Exhibit No. 9 and 10 for identification.

1 (Photograph marked as State's Exhibit No. 9 for
2 identification)

3 (Photograph marked as State's Exhibit No. 10 for
4 identification)

5 BY MR. BRACKETT:

6 Q. Ms. Hicks, I'm showing you what's been marked as
7 State's Exhibits 9 and 10 and ask if you can identify those?

8 A. Yes, that's pictures of the store.

9 Q. Okay. And is that where you work?

10 A. Yes, sir.

11 Q. And do they fairly and accurately depict the store? Is
12 it in the same condition it was the night that you were
13 robbed?

14 A. Yes, sir.

15 Q. Okay.

16 MR. BRACKETT: I move State's 9 and 10 into
17 evidence.

18 MR. FREEMAN: Your Honor, with the stipulation
19 that those are not pictures of that evening, they are just
20 pictures of the store, I do not have an objection, other
21 than authentication, which she's already addressed.

22 THE COURT: I don't think he offered any
23 stipulation, but if you want to voir dire the witness about
24 the photographs, you are welcome to.

25 MS. FREEMAN: I will.

1 VOIR DIRE EXAMINATION BY MR. FREEMAN:

2 Q. Ms. Hicks, it's very clear in these pictures the
3 sunlight -- this is, in fact, sunlight outside, right? It
4 appears to be bright and shiny?

5 A. Yes.

6 Q. So those were taken during the daytime?

7 A. Yes.

8 Q. Okay.

9 MR. FREEMAN: That's all I have, Your Honor, on
10 that issue.

11 THE COURT: No objection?

12 MR. FREEMAN: No, sir.

13 THE COURT: They are admitted.

14 MR. BRACKETT: Thank you.

15 CONT'D DIRECT EXAMINATION BY MR. BRACKETT:

16 Q. Ms. Hicks, did the police respond that night?

17 A. Yes, sir.

18 Q. And did you give the police a statement about what
19 happened?

20 A. Yes, sir, I did.

21 Q. Okay. Did you tell them all the things more or less
22 that you have told us here today?

23 A. Yes, sir.

24 Q. ~~And after that point in time did you hear anything more~~
25 on the case for the next few weeks that followed?

1 A. No, sir.

2 Q. Okay. Now, turning your attention going forward to
3 February the 18th of this year, about a month later after
4 the robbery --

5 MR. BRACKETT: I ask that these be marked as
6 State's Exhibit 11 and 11-A.

7 (Herald Newspaper Article, dated 2/18/08, marked
8 as State's Exhibit No. 11 for identification)

9 (Herald Newspaper Article, dated 2/18/08, marked
10 as State's Exhibit No. 11-A for identification)

11 BY MR. BRACKETT:

12 Q. Ma'am, I'm showing you what's been -- it's a copy, a
13 redacted copy of State's Exhibit 11-A. It's marked State's
14 Exhibit 11 for identification and I'm asking you if you can
15 identify that little photograph and the snippet of headline
16 that's over that?

17 A. Yes, sir.

18 Q. When did you see that?

19 A. On February the 18th in the paper. I came to work and
20 got a paper and seen it.

21 Q. What time did you get to work?

22 A. Three o'clock.

23 Q. All right. And approximately how long after you
24 arrived at work did you see the newspaper that day?

25 A. I opened it up -- well, I seen it in the newspaper

1 stand and that's when I bought it, because I recognized him.

2 Q. Okay. And what newspaper is that from?

3 A. The Herald.

4 Q. The Rock Hill Herald?

5 A. Uh-huh.

6 Q. And when you saw that, what did you -- what -- why did
7 it stand out to you?

8 A. Because I knew that was the guy that robbed me.

9 Q. Okay. And as a result of seeing that photograph and
10 recognizing that individual that's depicted in that
11 photograph, what did you do?

12 A. I called Detective Williams and told him -- and him
13 that was him.

14 Q. Detective Burris?

15 A. Yeah, Mr. Burris.

16 Q. This gentleman seated here?

17 A. Yes, sir.

18 Q. Was he the investigating officer on your case?

19 A. Yes, sir.

20 Q. Okay. And have you been told to tell him of any
21 information that you had?

22 A. Yes, sir.

23 Q. Did you have his card?

24 A. ~~No, I looked his number up in the book.~~

25 Q. Okay. And were you able to speak with Detective Burris

1 that day?

2 A. Yes, sir.

3 Q. And did you relate to him the information that you just
4 shared with the jury?

5 A. Yes, sir, I did.

6 Q. How long after you had recognized that photograph in
7 the newspaper were you speaking with Detective Burris?

8 A. About 15 minutes afterwards, as soon as I got customers
9 out where I could call.

10 Q. Is there any question in your mind that the individual
11 in that photograph is the one that robbed you on January the
12 20th?

13 A. No.

14 Q. Do you see the individual that robbed you in the
15 courtroom?

16 A. Yes, sir, I do.

17 Q. All right. Would you identify for the record the
18 individual that you were robbed by?

19 A. He's the gentleman right there in the beige shirt,
20 beige suit, sitting there on the right.

21 Q. All right. This man right here?

22 A. Yes, sir.

23 Q. Okay. Any doubt in your mind --

24 A. No, sir.

25 Q. -- that that's the man who robbed you?

1 A. No.

2 Q. Did he have a mustache and goatee at the time?

3 A. He had a little mustache. No goatee.

4 Q. Okay.

5 MR. BRACKETT: Your Honor, I would ask that the
6 record reflect that the witness has identified the defendant
7 Phillip Watts as the individual who robbed her in this case.

8 BY MR. BRACKETT:

9 Q. During the entire time that he was in the store with
10 you, Ms. Hicks, did you see the defendant touch anything in
11 the store?

12 A. No.

13 Q. And touch anything in such a way as to be able to leave
14 a fingerprint?

15 A. No.

16 Q. Did you relate that information to the police?

17 A. Yes, I did.

18 Q. When they responded that night?

19 A. Uh-huh.

20 Q. Just one more thing. My able co-counsel has pointed
21 out, were these hearts on the windows the night that you
22 were robbed?

23 A. No.

24 Q. ~~This photograph was taken sometime later?~~

25 A. Yes.

1 Q. All right. Thank you, Ms. Hicks.

2 Please answer any questions that Mr. Freeman may have
3 for you.

4 THE COURT: Let me see y'all before you begin your
5 cross-examination, please.

6 (Whereupon, the lawyers approached the bench for
7 an off-the-record discussion)

8 CROSS EXAMINATION BY MR. FREEMAN:

9 Q. Ms. Hicks -- Ms. Hicks?

10 A. Yes.

11 Q. Do you go by Annette?

12 A. Annette.

13 Q. Annette, how long did you say that you have been
14 working at this place?

15 A. Almost two years.

16 Q. Almost two years.

17 So you have been there about -- this was about -- six
18 or seven months ago, you had been there about a year and a
19 half?

20 A. Just about a year.

21 Q. Okay. A year.

22 Had the store ever been robbed before --

23 A. No.

24 Q. -- when you were working there. Okay.

25 And you say that you were working second, which was

1 about -- which was 3:00 to 11:00 back then?

2 A. Yes, sir.

3 Q. And, in fact, you would close up? You were the last --
4 you were the ever of the shift and you would close the
5 store?

6 A. Yes, sir.

7 Q. Now, the store sells more than just gas and snacks, is
8 that correct?

9 A. Yes, sir.

10 Q. Does it, for example, sell car washes?

11 A. No.

12 Q. Is there a car wash located behind the building in a
13 different building?

14 A. Yes, sir.

15 Q. Okay. Do the parking lots between this building and
16 the car wash adjourn, that is, they can get from your
17 parking lot, the car wash parking lot, without going back
18 out on the street?

19 A. Repeat that.

20 Q. If I drive behind the store, I can get to the car wash
21 without having to go out on any named street?

22 A. No, sir, you have to go out on the street.

23 Q. There is no connection in the back? You can go on
24 little side street, for example?

25 A. Yes.

1 Q. Meadowlark.

2 Now, you said there is a door buzzer, so when you are
3 working you know every time that somebody comes in?

4 A. Yes, sir.

5 Q. Had that been a Sunday evening, a slow evening, or do
6 you remember?

7 A. Sundays is always slow.

8 Q. But there were at least two vehicles at the pumps at
9 the time all this happened?

10 A. Yes.

11 Q. So was that an unusually busy Sunday evening?

12 A. Not really.

13 Q. Now, you mentioned -- or, excuse me, I note that you
14 wear glasses, correct?

15 A. Uh-huh.

16 Q. Corrective lenses, just like I do. How long have you
17 had your current prescription?

18 A. I have had these for 14 years.

19 Q. When was the last time that you had your prescription
20 updated?

21 A. I haven't changed them in a while.

22 Q. When was the last time that you went to your eye
23 doctor?

24 A. About six years ago.

25 Q. Okay. You don't wear contact lenses?

1 A. No.

2 Q. And you were wearing your glasses the evening all this
3 stuff happened, right?

4 A. Yes.

5 Q. Now, you indicated the gun was a .22, and you know that
6 how?

7 A. Because my dad taught me the difference between guns.

8 Q. Okay. Was it an automatic or revolver?

9 A. A revolver.

10 Q. What's the difference?

11 A. I'm not sure about that one.

12 Q. But you know it was a revolver, but you don't really
13 know the difference between the two?

14 A. Not really.

15 Q. Now, this person that's on the video had, I believe you
16 called it a hoodie?

17 A. Uh-huh.

18 Q. Something that you can pull over your head? I guess it
19 has drawstrings?

20 A. Yes.

21 Q. So you can kind of close the face off?

22 A. Yes.

23 Q. So at least in the video I saw you can't possibly tell
24 ~~what kind of hair that person had, whether their hair was~~
25 straight, or braided, or anything?

1 A. No.

2 Q. But the picture that you have indicated, in this
3 picture, which would be State's 11, this person has hair?

4 A. Uh-huh.

5 Q. I mean, is that a fair statement?

6 A. Yes.

7 Q. Okay. And you said the store is well lit. Does it
8 have neon lights, or bulbs, or what?

9 A. It's got like this.

10 Q. Okay. And for the record, these are those long tube
11 neon lights? Is that what you have inside the store?

12 A. Yes.

13 Q. Is it, for example, part of your job to change those if
14 they burn out?

15 A. No.

16 Q. So if some were burned out, you would have to wait for
17 the maintenance guy to come get it? You put in a request?
18 How do these get addressed?

19 A. Yes.

20 Q. Please -- if you please explain that.

21 A. We have a guy at work that does it.

22 Q. And you would make a note lights burned out?

23 A. Yes.

24 Q. Okay. Would he, for example, handle ordinary
25 maintenance if the toilet backed up?

1 A. That I don't know.

2 Q. You don't know. Okay.

3 Now, I saw in the video, at least at one angle it
4 looked like you sort of folded your arms like this before
5 the person came around the counter. How did this incident
6 make you feel Annette?

7 A. It scared me.

8 Q. Did it make you mad as well?

9 A. No, it just scared me.

10 Q. But as soon as the incident happened, you went outside
11 right just a few seconds after the person departed.

12 A. Yes, sir.

13 Q. Okay. So it scared you, but you followed the person
14 who you believed had a gun?

15 A. No, I was not following him.

16 Q. But there was only one door open, is that -- I mean
17 your testimony was there was two doors and one was locked?

18 A. Yes.

19 Q. There is no other way out of the building? There is no
20 doors in the back?

21 A. Yes, there is a door in the back.

22 Q. Okay. But you didn't go out that way?

23 A. No.

24 Q. ~~You went out the same door the person that had a gun,~~
25 in your mind, had just gone out?

1 A. Yes.

2 Q. To tell whoever was there what had happened?

3 A. To tell them I got robbed.

4 Q. I understand, but you said earlier that you were
5 scared, so scared that you didn't feel comfortable even
6 dialing 911?

7 A. Yes.

8 Q. But you still followed that person outside?

9 A. I didn't follow him out. That's --

10 Q. You went out the same door they went out?

11 A. Yes, sir.

12 Q. A few seconds after they went out it.

13 Were you trying to get a better look at the person?

14 A. No, I was going to lock the door, because I was
15 supposed to lock it, and I freaked out and I screamed I just
16 got robbed.

17 Q. By the time you got to the door, did you see the person
18 in the hoodie?

19 A. No.

20 Q. They were gone from sight?

21 A. Yes.

22 Q. Now, the front of your store, as it shows in the
23 pictures, is glass?

24 A. Uh-huh.

25 Q. You can see out the front?

1 A. Yes, sir.

2 Q. And, I mean, maybe on a good day you can see across the
3 street to what we used to call CDC, the building next to
4 Northwestern, is that right?

5 A. Yes.

6 Q. So the person was not visible when you got to the door?

7 A. No.

8 Q. Didn't see anybody running across the street, so they
9 had to have gone back to the side, around the side?

10 A. Yes.

11 Q. Well, now that you have had some time -- you still work
12 at the store, right?

13 A. Yes, I do.

14 Q. Well, now that you have had some time to reflect, are
15 you not mad now about what happened?

16 A. No.

17 Q. It doesn't eat at you, it doesn't bother you, it's
18 still on your mind?

19 A. Well, it scares me, but I'm not mad at nobody.

20 Q. Okay. Now, in the video we see someone come up. They
21 go around and then they go back around?

22 A. Yes, sir.

23 Q. They don't actually get any money from you until they
24 go back around. Is that -- again, is that what I saw in the
25 video? Is that what happened?

1 A. Yes, sir.

2 Q. Well, why didn't they get the money when they were
3 around behind the counter?

4 A. I don't know. You will have to ask him that. I have
5 no idea.

6 Q. Okay. We see something that looks like a gun. And
7 what color did you say it was?

8 A. It was black.

9 Q. Could it have been a dark blue, or are you sure it was
10 black?

11 A. It looked black to me. It was dark, but I know it
12 looked black to me.

13 Q. Okay. And, in fact, all your attention was sort of
14 focused on the gun, wasn't it?

15 A. No, it was not.

16 Q. No attention on the gun at all?

17 A. I never glanced at it until he pointed it to me at the
18 counter. I was more --

19 Q. Well, that's what I'm saying, once the gun comes out,
20 does that not draw your attention? You don't go "oh, my
21 God, there is a gun in that person's hand."

22 A. Yeah, it stared me.

23 Q. Now -- hold on one second.

24 ~~When most people come to the store, do they come inside~~
25 to pay for things, or do they -- do most people just get

1 gas?

2 A. No, they come inside.

3 Q. If I wanted to get gas at your store, do I have to come
4 inside, or can I get it at the pump?

5 A. You could pay for it at the pump at the car.

6 Q. If I wanted a soda or something, I have to come inside?

7 A. Yes, sir.

8 Q. It's not uncommon for people to come in and just get a
9 soda, a pack of crackers, something like that?

10 A. No.

11 Q. Okay. Are y'all busier during the week when school is
12 in session?

13 A. Yes, very.

14 Q. Like right after school and right before school?

15 A. Yes, sir.

16 Q. Have you ever had occasion to work those different
17 shifts filling in for somebody?

18 A. No.

19 Q. Have you ever been there when school is let out?

20 A. Oh, yes, every day.

21 Q. Okay.

22 MR. FREEMAN: Beg the court's indulgence one
23 moment, Your Honor.

24 ~~(Off the record)~~

25 (Back on the record)

1 BY MR. FREEMAN:

2 Q. Now, Annette did you describe this person to the police
3 to the best of your ability that evening?

4 A. Yes, I did.

5 Q. They came out, they took a statement from you, and they
6 did all that? They wrote it down and went over it with you?

7 A. No, I had to go that night after my shift and give them
8 a statement.

9 Q. You went down to the City of Rock Hill --

10 A. Yes.

11 Q. -- to give a statement.

12 But they wrote it down, or you wrote it down, or
13 something like that?

14 A. They typed it on the computer.

15 Q. Okay. Typed it for you and then you signed it, I
16 guess?

17 A. Yes.

18 Q. And in that statement you described the person that you
19 have already described.

20 How tall are you, Annette?

21 A. I am 5'9".

22 Q. Okay. Was the person who robbed you shorter or taller
23 than you?

24 A. Shorter.

25 Q. A lot shorter or a little bit shorter?

1 A. Just a little bit.

2 Q. Okay. How old are you, Annette?

3 A. 42.

4 Q. Could you tell if the person that robbed you was
5 younger or older?

6 A. It was younger. I can tell.

7 Q. Couldn't tell how much younger, but not an infant,
8 but --

9 A. I could tell they was in their twenties.

10 Q. Okay. Didn't know the person at all?

11 A. No.

12 Q. Other than this incident, wouldn't know Mr. Watts if he
13 passed you on the street, other than for this?

14 A. I have never seen him before that night.

15 Q. Okay. And to the best of your knowledge, other than in
16 the paper, haven't seen him since, except today?

17 A. No, sir.

18 Q. And you have been in Rock Hill for how long?

19 A. 17 years.

20 Q. How long have you worked -- where did you work before
21 you worked at the store?

22 A. At Express Mart for four and a half years.

23 Q. I'm sorry, I couldn't hear you. Where?

24 A. At Barrow's for four and a half years. It was another
25 convenience store.

1 Q. A different gas station?

2 A. Yes.

3 Q. You don't remember seeing him at that address?

4 A. No.

5 Q. At that location?

6 A. No, sir.

7 Q. Have you ever been involved in a robbery at that
8 location?

9 A. No, sir.

10 Q. Or any of your previous places?

11 A. No.

12 Q. Did you -- some mention was made earlier of a vehicle.
13 Did you see a vehicle leaving either the front or back of
14 the store?

15 A. No, sir, I did not.

16 MR. FREEMAN: Beg the court's indulgence.

17 (Off the record)

18 (Back on the record)

19 MR. FREEMAN: Your Honor, that's all questions I
20 have of this witness.

21 REDIRECT EXAMINATION BY MR. BRACKETT:

22 Q. Ms. Hicks, just a couple of questions in followup.

23 Do you still feel like your vision is fine?

24 A. Yes.

25 Q. Can you see me very well?

1 A. Oh, yeah.

2 Q. And how far away from you from the defendant when he
3 was pulling the gun?

4 A. Right where you are at now.

5 Q. Did you have the gun out the whole time?

6 A. No.

7 Q. Okay. When he put it away, what were you looking at?

8 A. His face.

9 Q. Okay. How long did you see the gun for?

10 A. Just a couple seconds.

11 Q. Can you describe it as to the best of your ability?

12 A. All I know is it looked black.

13 Q. Did it have a cylinder?

14 A. Yes, it did.

15 Q. Okay. The rotating round cylinder on it?

16 A. Yes, sir.

17 Q. Okay. When you go back behind your counter, back
18 there, from your are off the floor, you called it the
19 platform?

20 A. Yes.

21 Q. Okay. Do you actually have to step up?

22 A. Yes.

23 Q. Okay. So you are a little bit higher --

24 A. Yes, sir.

25 Q. -- than you normally are?

1 A. Yes, sir.

2 MR. BRACKETT: Nothing further. Thank you.

3 RECROSS EXAMINATION BY MR. FREEMAN:

4 Q. What is your vision uncorrected, do you know?

5 A. This is -- no, this is for astigmatism.

6 Q. Sorry, for what?

7 A. My glasses are for astigmatism. I have got good
8 eyesight.

9 Q. Do you wear them to drive?

10 A. I don't have to.

11 Q. Do you normally?

12 A. Yeah, I do, because the light hurt my eyes.

13 Q. I'm going to note for the record that the box that you
14 are in has a step-up. So I'm going to ask you if you could
15 stand up right there?

16 A. Here?

17 Q. Yes, ma'am.

18 Okay. So when you are at the counter, you are elevated
19 from the people in the front as well?

20 A. Yes.

21 Q. Okay. And I'm shorter than you and you look at me, you
22 are going to see the top of my head, is that correct? I
23 mean, you are going to see my face, but you are also going
24 to see the top of my head?

25 A. Not really.

1 MR. BRACKETT: If it please the court, there is
2 actually two step-ups.

3 A. Yeah, because this is the one I would be on.

4 BY MR. FREEMAN:

5 Q. So you would be down one step?

6 A. Yeah.

7 Q. Step on down one step, Annette.

8 Is that a little bit closer to the counter?

9 A. Yeah.

10 Q. And if you are 5'9", making you taller than me, you are
11 now several inches taller than me?

12 A. Yes.

13 Q. Thank you. I'm sorry. Please be seated again.

14 When you said astigmatism, that's not treatable? You
15 don't take drops or anything like that for it?

16 A. No.

17 Q. Do you know if it's progressive? Does it get worse?

18 A. I don't think so.

19 Q. You don't think so. Okay. But you're not an eye
20 doctor.

21 And the whole thing was really just a couple of
22 seconds, wasn't it?

23 A. Yes, sir.

24 Q. I mean, we see on the video a little bit before and
25 after, but less than a minute?

1 A. About a minute.

2 Q. At the time the person produces the gun until they
3 leave the door, again, we can look at the video, probably
4 less than a minute?

5 A. Probably about two minutes at the most.

6 Q. Two minutes altogether?

7 A. Yes.

8 Q. So that's a stop motion, by the way? That's not a
9 continuous video, is it? It sort of shows like shots? It's
10 not like a videotape where I see every second in realtime?
11 It kind of appears to jump a little bit?

12 A. No, that's the whole thing.

13 Q. It doesn't do a jump sequence?

14 A. Uh-uh, that's the whole thing.

15 MR. FREEMAN: No further questions.

16 MR. BRACKETT: No.

17 THE COURT: All right, ma'am, you can step down.

18 THE WITNESS: Okay.

19 MR. BRACKETT: Thank you, Your Honor.

20 THE COURT: All right, ladies and gentlemen, we
21 are going to break here for the today and I would like for
22 you to be back in your jury room tomorrow morning at 9:30.
23 We will resume with the testimony at that time.

24 A couple things regarding the instructions that I
25 gave you earlier today I want to repeat. First of all, you

1 may not discuss this case in any manner with family members
2 or among yourselves or with anyone.

3 And please remember my instructions about press
4 coverage. Now, there has been -- there is going to be press
5 coverage tonight. There has been press coverage in the
6 past. Please be very careful not to allow yourselves to be
7 exposed to any of that press coverage. Tomorrow morning
8 when you come in I'm going to ask you as a group whether or
9 not any of you have been exposed to any press coverage and
10 you are going to be under oath when you answer me either
11 that you have or that you have not. And then if you have,
12 of course, I'll have some follow-up questions that I'll have
13 to ask you. So make it simple and be able to tell me no
14 when you come in tomorrow morning.

15 Otherwise, y'all have a great night tonight and
16 I'll see you tomorrow morning at 9:30.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: Okay. Anything else for tonight?

20 MR. BRACKETT: Nothing from the State.

21 MR. FREEMAN: Nothing from the defendant, Your
22 Honor.

23 THE COURT: All right. Then we will -- let me see
24 ~~y'all very briefly and then we will see you tomorrow morning~~
25 at 9:30.

1 (Off the record)

2 (Back on the record)

3 (Whereupon, the following was a bench conference)

4 THE COURT: I just want to tell you what I have
5 done regarding the handwriting issue. I didn't want to make
6 a big public deal out of it, so I thought it would be best
7 if I just tell you right here. Somebody from the
8 solicitor's office, unknown to me, scanned the four pages
9 and e-mailed them to my law clerk.

10 MR. BRACKETT: Okay.

11 THE COURT: So, you know, I would not have told
12 them to do that, and I'm sure it's no big deal. Do you have
13 any objection to that?

14 MR. FREEMAN: No. I was just going to suggest it
15 got PDF'd and e-mailed anyway, so that doesn't make sense to
16 me.

17 THE COURT: It's consistent with what we were
18 talking about. It's just that I didn't know it was coming.
19 It came to me and my law clerk forwarded it to me. I
20 exchanged voicemails and text messages to Reggie Lloyd, and
21 I have e-mailed those documents to his secretary, and he
22 said their document examiner is ready to look at them. And
23 we will --

24 MR. FREEMAN: Is he the one that used to be with
25 the State AG's office?

1 THE COURT: Yeah, he was. He was a circuit judge
2 and now he's the director of SLED.

3 MR. FREEMAN: Yes, sir.

4 THE COURT: And so he's going to have -- I mean,
5 obviously they can't do a full examination just based on
6 this, but they can get started. So that's what happened so
7 far.

8 MR. FREEMAN: Thank you, Your Honor.

9 THE COURT: It's been e-mailed to Reggie's
10 secretary and we'll wait and see what happens next.

11 MR. BRACKETT: All right.

12 THE COURT: When they ask -- when they ask for --
13 the originals are up there, and I suppose at some point
14 tonight or tomorrow I'm going to get some communication from
15 the document examiner herself who is going to ask for the
16 next step and I'll let y'all know what that is tomorrow
17 morning.

18 MR. FREEMAN: I have said to use copies anyway, so
19 I have no problems with that. That would be fine with me.

20 (Whereupon, proceedings were adjourned to
21 September 23, 2008)

22

23

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 PHILLIP FLEMING WATTS,) 2008-GS-46-2083
7 JR.,) 2008-GS-46-2083-A
8 Defendant.) SEPTEMBER 23, 2008
9 York, South Carolina

10 (VOLUME II)

11 B E F O R E:

12 THE HONORABLE JOHN C. FEW, JUDGE. ; and a jury.

13
14
15 A P P E A R A N C E S:

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25

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1 (PROCEEDINGS, September 23, 2008)

2 MR. FREEMAN: Your Honor, I understand the court's
3 ruling on cameras in the courtroom and the rules as has been
4 laid down by the court. I was curious if the court has a
5 position or posture on contemporaneous recording, that is
6 reporting that is being broadcast out live in any fashion,
7 or if the court's ruling was intended to include to cover
8 that? I'm sorry, being contemporaneous reporting, not
9 recording.

10 THE COURT: Reporting?

11 MR. FREEMAN: Yes, sir, via electronic media.

12 THE COURT: Somebody reporting -- using electronic
13 media to get some live report out of the courtroom?

14 MR. FREEMAN: Yes, sir.

15 I became aware of that by watching the local
16 newscast last night.

17 I could find no case law on it at all, so it's a
18 matter I think of first impression.

19 THE COURT: What did you see that was --

20 MR. FREEMAN: One of -- the local cable --

21 THE COURT: If you were watching it on the news,
22 then it was obviously not live..

23 MR. FREEMAN: Your Honor, if I could, the local
24 cable outlet, this was, in fact, the lead story last night
25 indicated that their pool reporter who is in the courtroom

1 is posting a blog, so it's an Internet access.

2 I did a search of state case law last night under
3 blog, blogged, blogging, I found no case law at all. And I
4 didn't know if you had a rule or posture on that. The only
5 case law I could find in Federal Court dealt with
6 introducing blogs as evidence, like in a case this is
7 evidence of someone's intent.

8 THE COURT: So somebody is posting a live blog?

9 MR. FREEMAN: Yes, sir, a contemporaneous blog.

10 THE COURT: What's the address?

11 MR. FREEMAN: The local website is CN2.

12 THE COURT: I don't know of any --

13 MR. FREEMAN: I could find nothing on it.

14 THE COURT: I am not aware of any reason that that
15 would be inappropriate, as long as it is not something that
16 interferes with what we are doing here in the courtroom.

17 What is happening outside the courtroom at this
18 particular moment does not seem to me to be of any concern
19 to me. What's happening inside the courtroom is, and I
20 haven't seen anything that members of the press or anybody
21 else are doing that are disruptive of the proceedings here.

22 MR. FREEMAN: Your Honor, I do not assert it's
23 disruptive, but as you may recall, as I indicated yesterday,
24 Mr. Watts is potentially facing six more trials. So I think
25 it certainly goes to prejudices, if not -- certainly not

1 this jury, but future jury panels and pools. Again, it
2 appears to be first impression. In the state I couldn't
3 find nothing on it, so I guess I'm -- I'm not objecting to
4 it. I'm just bringing it to the court's attention.

5 THE COURT: Okay. All right. Thank you.

6 MR. BRACKETT: If it please the court, Your Honor,
7 there are couple of issues that we wanted to address, one of
8 them relating to the media as well.

9 Yesterday when Ms. Hicks testified, we had the
10 full newspaper article that she saw on February 18th that
11 she saw a photograph of the defendant and called Detective
12 Burris to tell him that this was the individual that had
13 robbed her a month earlier. We redacted that and only put
14 in the photograph and it says suspect name, and I showed
15 that to the defense. They agreed with that.

16 The downside for the redaction for the State is is
17 that the jury doesn't know that that article did not
18 reference her robbery at all. In the course of trying to
19 make sure that this jury is not made aware of the other sets
20 of charges that are pending against him, the other incidents
21 for which he's alleged to have committed crimes, we are
22 balancing his interests in making sure that the jury doesn't
23 know that against the value of that evidence, because the
24 ~~value of that evidence is compromised if they think that~~
25 that article said One Stop robber suspect named.

1 THE COURT: Well, let's make sure that what we are
2 doing right here is clear to everybody.

3 I'm not in a position of telling you how to
4 accomplish what you want to accomplish.

5 MR. BRACKETT: Yes, sir.

6 THE COURT: You tell me how you want to accomplish
7 what you want to accomplish. We will then hear a response
8 from Mr. Freeman. And if there is a dispute between the two
9 of you, I will resolve the dispute. So far there has been
10 no dispute. So you tell me how you want to do it.

11 MR. BRACKETT: Okay.

12 THE COURT: And then well hear from Mr. Freeman.

13 MR. BRACKETT: When Detective Burris testifies,
14 he's familiar with the contents of that article. He's seen
15 it. We would like to ask him does that article reference in
16 any way, shape or form the One Stop robbery? In other
17 words, is there anything that Ms. Hicks could have gleaned
18 from that article that could have made her think --

19 THE COURT: Okay.

20 MR. BRACKETT: So that's going to --

21 THE COURT: Do you understand what he intends to
22 do?

23 MR. FREEMAN: I do, Your Honor, and I object.

24 First of all, I think he has two issues. I
25 think -- and the solicitor provided me with this yesterday.

1 THE COURT: Let's do this. The -- I know what the
2 issue is. He's not testifying next, is he?

3 MR. BRACKETT: No.

4 THE COURT: You are going to put up these
5 students?

6 MR. BRACKETT: Yes.

7 THE COURT: Let's get going.

8 MR. BRACKETT: Okay.

9 THE COURT: But the whole point of the testimony
10 from the newspaper is that she was able to recognize the
11 person whom she thought did this when there was nothing in
12 the article that told her that he was the person who did
13 this. And so Mr. -- so we don't need to resolve it now, but
14 that's the -- that's what -- that's the reason that that
15 evidence has probative value. And so there is going to be a
16 way for him to explore -- to approach that. We will just
17 have to figure out how.

18 MR. BRACKETT: And for the record that particular,
19 I believe it's State's 11, has not been published to the
20 jury at this point.

21 THE COURT: Okay.

22 MR. BRACKETT: We would hold off on publishing it
23 until we have sorted that out, in case there is so much
24 adjustment that needs to be made.

25 THE COURT: Okay. We have alternate juror number

1 three, Tina Gill, who is sick this morning and has gone to
2 the doctor. And the only information that we have is that
3 she is at the doctor. She apparently told the clerk on a
4 telephone that she had a problem with gout?

5 THE CLERK: Yes, and lupus.

6 THE COURT: And lupus, and that that had flared up
7 and that she had gone to the doctor. And the doctor,
8 apparently being concerned about privacy issues, would
9 reveal no more to the clerk than that she was there and
10 she's not here and it's time to start.

11 MR. BRACKETT: Yes, sir.

12 THE COURT: So I'm excusing her from this jury
13 panel, unless there is some objection.

14 MR. BRACKETT: None from the State.

15 MR. FREEMAN: Given the circumstances, none from
16 the defense.

17 THE COURT: All right. Bring in the jury.

18 MR. FREEMAN: Your Honor, are you going to address
19 the jury about her absence so they --

20 THE COURT: Yeah.

21 MR. FREEMAN: And also I assume that you will make
22 the standard inquiries about press coverage when they come
23 in?

24 THE COURT: I will.

25 MR. FREEMAN: Thank you.

1 THE COURT: What were you telling me was the
2 address of that blog?

3 MR. FREEMAN: It's a link from -- it's CN2. I had
4 to do a search to their website.

5 THE COURT: CN2?

6 MR. FREEMAN: Yes, sir. I did a google search and
7 that's how I located it.

8 THE COURT: "Live blog, day two of the Watts
9 trial."

10 MR. FREEMAN: That's it, Your Honor.

11 (The following takes place in the presence of the
12 jury panel)

13 THE COURT: Good morning.

14 We had a couple of little minor things that
15 happened this morning that have caused us to be about 20
16 minutes late getting you in here. I'll take responsibility
17 for those, but -- and then apologize.

18 One of your alternate jurors is not able to be
19 here this morning was -- she had to go to the doctor.
20 That's all I know. And since it's time for us to start, we
21 are going to go ahead and start without her.

22 Now, I told you yesterday that I would ask you
23 when you got in this morning about whether or not you had
24 been exposed to any news coverage, and so I'm going to ask
25 you now. But before I do, I want to just make sure that you

1 understand the importance of telling me whatever it is
2 that -- this is -- we are just bombarded when we get out
3 there with Internet coverage and television news and all
4 this, so it's entirely possible that some -- that one of you
5 may have been exposed to some news coverage about this case,
6 and it's not your fault. If you were, please tell me about
7 it, and then we will talk about it and we will see what we
8 need to do about it. So was there any member of the jury --
9 is there any member of the jury who, since we left yesterday
10 afternoon or, really, I guess since we began the trial, who
11 has had any contact with any news media about this case or
12 with any other person about this case? If so, just raise
13 your hand.

14 (No response)

15 THE COURT: Okay. Well, thank you for your
16 cooperation.

17 Nobody has been raised their hand.

18 I'm ready to proceed.

19 Solicitor, call your next witness.

20 MR. BRACKETT: If it please the court, the State
21 would call Sommer Young.

22 SOMMER YOUNG, having been first duly sworn,
23 testified as follows:

24 MR. FREEMAN: Your Honor, may I approach real-
25 briefly?

1 (Whereupon, the lawyers approached the bench for
2 an off-the-record discussion)

3 DIRECT EXAMINATION BY MR. BRACKETT:

4 Q. Good morning, Ms. Sommer.

5 A. Good morning.

6 Q. How are you doing?

7 A. Good.

8 Q. Can you please state your full name for the jury and
9 spell your last for the court reporter?

10 A. Sommer Lorice Young, Y-O-U-N-G.

11 Q. And is your first name spelled?

12 A. S-O-M-M-E-R.

13 Q. S-O-M-M-E-R?

14 A. Yes, sir.

15 Q. All right. How old are you, Sommer?

16 A. 15.

17 Q. And where do you live? What county do you live in?

18 A. York.

19 Q. In York County?

20 A. Yes.

21 Q. And are you in school?

22 A. Yes, sir.

23 Q. What grade?

24 A. Ninth.

25 Q. Okay. And is your momma in the courtroom with you

1 today?

2 A. Yes, sir.

3 Q. Where is she?

4 A. Second to the last row.

5 Q. Sitting back there right in front of that police
6 officer, the uniformed police officer back there?

7 A. Yes.

8 Q. Okay. Sommer, I want you to just stay calm and you
9 need to speak up so all the jury can hear your voice and we
10 are going to ask you a few questions about an event that
11 took place at the One Stop Exxon on January 20th of this
12 year.

13 Were you at the One Stop Exxon on January 20th? It's
14 right across from Northwestern High School?

15 A. Yes, sir.

16 Q. In the evening hours?

17 A. Yes.

18 Q. Who were you there with?

19 A. My mom and her boyfriend and one of his sons.

20 Q. And what are their names?

21 A. Jeannie, Jerry and Colton.

22 Q. Speak up a little bit because I can barely hear you
23 here, which means they probably can't hear you too good
24 either, so you need to keep your voice up.

25 A. Yes, sir.

1 Q. If you need to, you can lean forward into that
2 microphone and that will help broadcast your voice a little
3 bit.

4 Do you remember about what time that was?

5 A. No, sir.

6 Q. Whose car were you in?

7 A. My mom's truck.

8 Q. Okay. What kind of truck was that?

9 A. It's a Ford Explorer, Sport Trac.

10 Q. All right. What color is it?

11 A. White.

12 Q. So all of the people that you just named and yourself
13 were in this truck?

14 A. Yes, sir.

15 Q. Where -- did you stop at the One Stop?

16 A. Yes, sir.

17 Q. And why did you stop there?

18 A. We were going to get some chocolate milk and some dip.

19 Q. Some dip?

20 A. Yes, sir.

21 Q. Not for you?

22 A. No, sir.

23 Q. Okay, good.

24 ~~All right. Now, can you just tell the jury in your own~~
25 words, describe what happened as you pulled into the parking

1 lot of the One Stop.

2 A. When I pulled in, I was -- well, when my mom pulled in,
3 I was looking in to see and I saw a man standing in front of
4 the counter. And then he walked around to the actual cash
5 register and it appears that he was yelling at the clerk.
6 And then after that he turned -- or he went back around to
7 the front, grabbed a bag and walked out.

8 Q. All right. Can you describe what this man looked like?

9 A. No, sir. All I know is the clothes he had on.

10 Q. Okay. Tell us about those.

11 A. He had a blue Gold Hill hoodie on and blue jeans.

12 Q. Okay.

13 A. He had the hood on his head.

14 Q. Could you see his face very well?

15 A. I wasn't paying that much attention to that.

16 Q. Now, where did you -- what car -- who was driving?

17 A. My mom.

18 Q. Where did the car -- where did she drive the car, once
19 she pulled into the parking lot?

20 A. We first went to the locked door on the pizza side, and
21 then we drove around to the unlocked door.

22 Q. Okay.

23 A. And we parked behind the door.

24 Q. Now, there is two doors to get into the convenience
25 store?

1 A. Yes, sir.

2 Q. And the first one was locked?

3 A. Yes, sir.

4 Q. All right. So when you pulled into the -- where were
5 you seated in the car?

6 A. I was back behind the passenger's seat next to the
7 door.

8 Q. All right. Was there a window there for you?

9 A. Yes, sir.

10 Q. Could you see into the convenience store very well?

11 A. Yes, sir, it's well lit.

12 Q. About how far were you -- I'm going to approach you and
13 I want you -- I'm going to start backing up and I want you
14 to tell me to stop when I'm about as far as away from you as
15 you were from the clerk and the man in the blue hoodie that
16 you saw in the store when you were sitting in the car
17 watching through you window.

18 A. Yes.

19 Q. Okay.

20 A. Right about there.

21 Q. Okay. So that about 25 or 30 feet?

22 A. Yes, sir, I'm not exactly sure.

23 Q. I'm not either, so -- I'm guessing. About with six of
24 my body lengths? Four or five of my body lengths?

25 A. Yes, sir.

1 Q. I'm about six foot.

2 Now, did your mom ultimately park the car?

3 A. Yes, sir.

4 Q. Now, were you watching what was going on inside the
5 whole time?

6 A. Not the exact whole time, but for the most part, yes,
7 sir.

8 Q. Why did it attract your attention?

9 A. To me it looked like he was yelling at her trying to
10 rush her to do something, but at the time I didn't even
11 think about him robbing the store.

12 Q. Now, you said you saw him inside the store and you saw
13 him move around?

14 A. Yes, sir.

15 Q. Where did he go?

16 A. He walked from in front of the cash register behind the
17 service counter next to the clerk.

18 Q. Okay. Back where the clerk is supposed to stand?

19 A. Yes, sir.

20 Q. Did that interest you? Is that where people normally
21 go?

22 A. Well, at first I thought he might have worked there,
23 because in a when he was walking towards her, it looked like
24 he was going to sweep. I thought he had a broom, but it was
25 just my imagination.

1 Q. Okay. Then what did he do?

2 A. He was yelling at her, and then he walked right back to
3 where he started and then grabbed something from her and
4 walked out of the door.

5 Q. Could you see what the clerk was doing?

6 A. It looked like she was just dropping the money, going
7 to count out the money at first.

8 Q. Could you see the cash register drawer?

9 A. Yes, sir.

10 Q. Where was that?

11 A. She had picked it up and put it on the counter, so she
12 was -- or trying to get the money out.

13 Q. All right. Now, when you say he took something from
14 her and walked out the door, which door did he walk out of?
15 The one that was locked or the one that was unlocked?

16 A. The one that was unlocked.

17 Q. All right. And where were you -- at the point when
18 he's walking out the door, about how far were you from him
19 at that point?

20 I'm going to walk towards you and you tell me to stop
21 when I am about as far as away from you as you were from
22 him?

23 A. I guess right about there.

24 Q. Okay. Now, did he look at you?

25 A. Not that I know of.

1 Q. Did he say anything to you?

2 A. No, sir.

3 Q. Did he still have the hood up on his hoodie?

4 A. Yes, sir.

5 Q. Did he have anything in his hands that you could see?

6 A. No, sir, he had his hands in his pocket under the -- of
7 the hoodie.

8 Q. And where did he go?

9 A. He walked towards the car wash in the back. Well, on
10 the pizza side.

11 Q. So he walked back in the direction towards which you
12 had just driven from?

13 A. Yes, sir.

14 MR. FREEMAN: Your Honor, I have an objection to
15 the testimony. May I approach the bench?

16 THE COURT: Yes, sir.

17 (Whereupon, the lawyers approached the bench for
18 an off-the-record discussion)

19 MR. FREEMAN: Your Honor, I have an objection to
20 the testimony of this witness. Listening to the witness, I
21 don't believe, number one, that her testimony is relevant.

22 Number two, I think it only is cumulative.

23 It indicates that she believes she saw an armed
24 robbery occur. We stipulate that an armed robbery occurred.
25 She has indicated that she otherwise has no knowledge that

1 in any way enhances the State's case, other than to be
2 somebody who happened to be there.

3 THE COURT: I overrule the objection.

4 MR. FREEMAN: Thank you, Your Honor.

5 MR. BRACKETT: Thank you, Your Honor.

6 BY MR. BRACKETT:

7 Q. Did you watch the individual in the blue hoodie walk
8 away from you?

9 A. Yes, sir.

10 Q. And where did you last see him, at what point?

11 A. Well, my mom had called me back to the truck. So when
12 I turned around, he was in the front of the store next to
13 the locked door, and that was the last part I saw -- or the
14 last spot I saw him.

15 Q. Did you see what direction he was walking off into?

16 A. Not exactly.

17 Q. Okay. What happened after he walked off?

18 A. The clerk was going to lock the door, I guess. She had
19 her hand on the lock and then opened it and --

20 Q. Speak up a little bit.

21 A. The clerk had her hand on the lock and instead she
22 opened the door and yelled that she had just got robbed. So
23 then I grabbed my phone and called the cops for her.

24 Q. ~~You called the police?~~

25 A. Yes, sir.

1 Q. And did you see anybody or anything over in the
2 direction that the defendant had walked after he disappeared
3 from the view?

4 A. Once I gave my mom the phone, I looked over there and
5 there was a Durango that pulled out.

6 Q. A what?

7 A. A Durango.

8 Q. A Durango?

9 A. Yes, sir.

10 Q. That was pulling out from which direction?

11 A. From back towards the car wash. I'm not exactly sure
12 where it came from though.

13 Q. Is that the direction he had been walking?

14 A. Yes, sir.

15 Q. What color was this Durango?

16 A. A dark purple it looked like.

17 Q. Do you know much about cars?

18 A. Not exactly.

19 Q. You can't give us a year?

20 A. No, sir.

21 Q. How -- could you see inside the Durango?

22 A. No, sir, the windows were tinted.

23 Q. And where did the Durango go?

24 A. It pulled out to the Main Street and took off
25 towards -- well, to the left.

1 Q. Towards Rock Hill?

2 A. Yes, sir.

3 MR. BRACKETT: Court's indulgence for just one
4 moment.

5 (Off the record)

6 (Back on the record)

7 BY MR. BRACKETT:

8 Q. Can you tell us anything at all about a description of
9 the individual in the blue hoodie?

10 A. No, sir.

11 Q. Can you tell us was it a man or a woman?

12 A. I could tell it was a man.

13 Q. Okay. Could you tell what color, white or black?

14 A. I did see that he had black hands.

15 Q. Okay. Was he wearing gloves?

16 A. No, sir, or not that I saw.

17 Q. Could you see his face and the color from his face?

18 A. I did see his face, but I didn't see like anything that
19 stood out when I couldn't see him. If he was walking next
20 to me, I wouldn't have even noticed him.

21 Q. Okay. Sommer, thank you very much. Please answer any
22 questions that Mr. Freeman may have for you.

23 A. Yes, sir.

24 MR. FREEMAN: Thank you.

25

1 CROSS EXAMINATION BY MR. FREEMAN:

2 Q. Sommer, when is your birthday?

3 A. June , .

4 Q. So you were 14 when all this happened?

5 A. Yes, sir.

6 Q. Now, do y'all go to the One Stop on a regular basis?

7 A. No, sir.

8 Q. Had you ever been there, let's say, since Christmas?

9 A. Yes, sir.

10 Q. Which school are you in, Sommer?

11 A. Rock Hill High.

12 Q. So you actually don't go to Northwestern, which is
13 right across the street from this place?

14 A. No, sir.

15 Q. Why were y'all on the far side of town?

16 A. Well, at the time my mom had just left my dad and we
17 were living with my grandparents.

18 Q. But, again, you don't go to school in that area --

19 A. No, sir.

20 Q. -- right across the street?

21 A. No, sir.

22 Q. Now, you said earlier in response to the solicitor's
23 questions that you -- that it looked like the person was
24 yelling at the clerk?

25 A. Yes, sir.

1 Q. But you couldn't hear because there was at least --

2 A. No, sir.

3 Q. -- two panes of glass between you and whatever was
4 going on inside?

5 A. Yes, sir.

6 Q. You said you couldn't see the person's face, you
7 couldn't see what they looked like, and you couldn't hear
8 them. Would that all be a true statement?

9 A. Yes, sir.

10 Q. Okay. You said you went to the door and it was locked?

11 A. The first door, yes, sir.

12 Q. So what did you do? Tell us exactly what you did. You
13 go to the door. Why?

14 A. We got back in the truck and my mom drove to the other
15 side.

16 Q. We? Who else got out with you?

17 A. My mom's boyfriend's youngest -- or second to the
18 oldest son.

19 Q. So who pulled the door, you or him?

20 A. He did.

21 Q. Did you say anything to him, like "it looks like there
22 is something going on inside"?

23 A. No, sir.

24 Q. ~~You thought there was a robbery going on and you didn't~~
25 mention it to him?

1 A. I didn't realize that there was a robbery going on. I
2 thought maybe it was just an argument going on between two
3 workers.

4 Q. Now, did y'all drive to the other door or walk?

5 A. We drove.

6 Q. So you got back in the truck and drove to the other
7 door?

8 A. Yes, sir.

9 Q. What kind of truck was it?

10 A. Ford Explorer Sport Trac.

11 Q. Okay. That's y'all's vehicle?

12 A. Yes, sir.

13 Q. Four door?

14 A. Yes, sir.

15 Q. Does it have tinted windows?

16 A. Yes, sir.

17 Q. Does it have a tinted windshield or partially tinted,
18 like halfway down?

19 A. Yes, sir.

20 Q. The front windshield I'm talking about?

21 A. Yes, sir.

22 Q. And that's in y'all's vehicle?

23 A. Yes, sir.

24 Q. Now, this was January, so I presume you didn't have the
25 windows down?

1 A. No, sir.

2 Q. And then you said you saw this person walk back towards
3 the car wash?

4 A. Yes, sir.

5 Q. How do you know there is a car wash in the back?

6 A. Because we have -- or I have had to go pick up my
7 cousins with my grandparents before and we have stopped by
8 that store.

9 Q. Okay. Now, you didn't have a driver's license then?

10 A. No, sir.

11 Q. And at best you have a permit now.

12 And you said that you called the police. Was that on a
13 cell phone?

14 A. Yes, sir.

15 Q. Your cell phone or a family cell phone?

16 A. My cell phone.

17 Q. Did you dial 911 or did you dial the information number
18 and say "give me the police"?

19 A. 911.

20 Q. 911.

21 Now, you said that you are not familiar with that area.
22 Do you know that there is a neighborhood back down that side
23 street?

24 A. Yes, sir.

25 Q. And that there is houses, in fact, several houses down

1 there.

2 A. Yes, sir.

3 Q. And presumably those houses have people who drive
4 vehicles in them?

5 A. Yes, sir.

6 Q. Okay. Do you know a lot about cars --

7 A. No, sir.

8 Q. -- vehicles, trucks.

9 Do you know, for example, the difference in a Jeep and
10 a Grand Cherokee?

11 A. Yes, sir.

12 Q. Do you know the difference in a Cherokee and a Grand
13 Cherokee?

14 A. Yes, sir.

15 Q. Okay. Do you know the difference in a Durango and a
16 Ford Explorer?

17 A. Yes, sir.

18 Q. What is the difference? Tell us.

19 A. The body shapes are different.

20 Q. Okay. Now, you said the vehicle that you saw coming
21 out of the car wash, or what you now know is the car wash,
22 was dark in color?

23 A. Yes, sir.

24 Q. And you believe it was purple?

25 A. It looked like it was a dark shade of purple, or kind

1 of fairly light shade of blue.

2 Q. Okay. Just -- could it have been a darker color?

3 A. Yes, sir.

4 Q. Like -- not black, but dark blue, or dark green, or
5 anything like that?

6 A. Yes, sir.

7 Q. What kind of -- now, the store you said was lit in the
8 front, right?

9 A. Yes, sir.

10 Q. What kind of lighting is in the back of the store?

11 A. I'm not really sure. All I know is there is like a
12 telephone pole with a light on it.

13 Q. Okay. And, again, just for the jury, there is a store
14 in the front and then in the back is a car wash, right?

15 A. Yes, sir.

16 Q. And you are saying this person, who you didn't get a
17 good look at, went back towards the car wash area?

18 A. Yes, sir.

19 Q. Well, this vehicle that you then saw, did it come
20 through the parking lot of the store, or through that
21 neighborhood side street?

22 A. I don't remember that, sir.

23 Q. You don't remember where you saw it come from?

24 A. No, sir.

25 Q. Well, what made you think that vehicle had anything to

1 do with the people that you saw in there?

2 A. At first I didn't, but everyone -- well, my mom's
3 boyfriend and another witness said that it come from the
4 direction of the car wash.

5 Q. So you are actually basing your testimony on what
6 somebody else told you?

7 A. Not all of it, sir.

8 Q. That part of it, though, somebody else told you that?

9 A. With the car part, yes, sir.

10 Q. You didn't see it yourself at all?

11 A. I did see the car myself, but I didn't see him anywhere
12 near it.

13 Q. Well, let's talk about that. You said him. Now, how
14 do you know this person was a him?

15 A. Well, he wore his pants, which are baggy, and he walked
16 with kind of -- I'm not exactly sure how to put it in words.

17 Q. Did you believe it was a guy?

18 A. Yes, sir.

19 Q. In fact, thought, you couldn't see a face. Most of the
20 body is pretty much covered up. Could it have been, for
21 want of a more discrete term, a woman with an unusual build?

22 A. His shoulders were kind of broad, so it made me
23 realize --

24 Q. Could it have been a broad-shouldered woman?

25 A. Not really, I didn't think. Not to me it couldn't.

1 Q. You didn't think?

2 A. Not to me it wouldn't.

3 Q. You don't think it was?

4 A. No, sir.

5 Q. Is it possible?

6 A. I guess, but to me it's not.

7 Q. If a woman wears a loose fitting, again, sweatshirt
8 type thing, it wouldn't show her figure off, would it, if
9 she had one?

10 A. No, sir.

11 Q. Sommer, have you ever talked to anyone, other than your
12 family and the police, that evening about this?

13 A. Not really, sir.

14 Q. You have never spoken with anyone from the solicitor's
15 office in preparation for today?

16 A. Yes, sir.

17 Q. Okay. So you have.

18 Did they go over with you what you would be testifying
19 to?

20 A. Just my statement to the police officers.

21 Q. So did they review it with you?

22 A. They gave me a copy of it and I read over it.

23 Q. Okay. Did they tell you what to expect in court and
24 what they were going to ask you?

25 A. Just questions about what I saw, and that was pretty

1 much it.

2 Q. Okay. And then I assume that you talked to the police
3 that evening?

4 A. Yes, sir.

5 Q. Did they ask you what had happened?

6 A. Yes, sir.

7 Q. And you just testified you talked to some other family
8 and they sort of filled in the holes that you were missing
9 about the vehicle and putting that person in the vehicle?

10 A. Yes, sir.

11 Q. So have you talked with your family since that evening
12 about it?

13 A. A little bit.

14 Q. Okay. To other people who were with you, your mom and
15 her boyfriend?

16 A. Yes.

17 Q. And then you said his children were with y'all as well?

18 A. One of them.

19 Q. One of them.

20 So there is four people in the vehicle altogether?

21 A. Yes, sir.

22 Q. Have y'all talked about it? I mean, you knew that you
23 were coming to trial, to court yesterday or today. Have
24 y'all talked about it preparing for that?

25 A. Not really.

1 Q. Okay. And, again, just so we are clear, you couldn't
2 actually hear what was going on inside?

3 A. No, sir.

4 Q. And the person you saw inside who came out, not the
5 clerk, but the other person, never spoke to you?

6 A. No, sir.

7 Q. Never said anything to you?

8 A. No, sir.

9 Q. You never heard their voice or anything like that?

10 A. No, sir.

11 Q. You didn't get a good look at their face?

12 A. No, sir.

13 Q. I think you said something about their hand?

14 A. It appeared that they -- it was just their skin, but, I
15 mean, it was a dark color.

16 Q. And this again is January, right?

17 A. Yes, sir.

18 Q. Dead of winter?

19 A. Yes, sir.

20 Q. You said that it was so cold you had your windows up?

21 A. Yes, sir.

22 Q. In fact, someone could have been wearing gloves in
23 January in the dead of winter, could they not?

24 A. Yes, sir.

25 Q. You typically wear more clothing, more warm clothing,

1 in the winter?

2 A. Yes, sir.

3 Q. Especially if you are going to be outside.

4 You can't really say whether the person was wearing
5 gloves or not?

6 A. No, sir.

7 Q. You didn't see anything that you thought was a gun or
8 knife?

9 A. No, sir.

10 Q. Or a person didn't have a baseball bat in their arm, or
11 anything like that?

12 A. No, sir.

13 MR. FREEMAN: I don't have any further questions,
14 Your Honor.

15 REDIRECT EXAMINATION BY MR. BRACKETT:

16 Q. Just one brief.

17 Sommer, you described the Durango that you saw coming
18 up the side street and then it turned left heading back
19 towards Rock Hill?

20 A. Yes, sir.

21 Q. Okay. Is that side street immediately adjacent to the
22 parking lot of the One Stop? Is that the side street that's
23 right next to this One Stop?

24 A. Yes, sir.

25 Q. Is it on the pizza side?

1 A. Yes, sir.

2 Q. Okay. Thank you very much.

3 THE COURT: You can step down, ma'am.

4 MR. FREEMAN: I'm sorry, Your Honor, very
5 briefly --

6 THE COURT: Okay. I'm sorry.

7 MR. FREEMAN: -- on recross.

8 RECROSS EXAMINATION BY MR. FREEMAN:

9 Q. Sommer, that side street goes off of Main Street back
10 into a neighborhood, doesn't it?

11 A. Yes.

12 Q. And you can get to that side street from the parking
13 lot, but you could also get to it from the neighborhood?

14 A. Yes, sir.

15 MR. FREEMAN: Nothing further.

16 THE COURT: Thank you.

17 MR. BRACKETT: Your Honor, I ask that this witness
18 be excused.

19 MR. FREEMAN: No objection.

20 THE COURT: She's excused.

21 MR. BRACKETT: The State would call Dave Keener.

22 DAVE KEENER, having been first duly sworn,
23 testified as follows:

24 ~~DIRECT EXAMINATION BY MR. THOMPSON:~~

25 Q. Dave, could you give your full name for the court,

1 please?

2 A. My name is Dave Keener, K-E-E-N-E-R.

3 Q. And Dave, where do you live?

4 A. I live on Drive, Rock Hill, South
5 Carolina.

6 Q. All right. Do you go to school now, Dave?

7 A. Yes, sir, I'm currently at Clemson University.

8 Q. All right. Now, I notice there is another young fellow
9 in the back here that looks a lot like you. Who is he?

10 A. That's my brother.

11 Q. What's his name?

12 A. That's Dan.

13 Q. Y'all twins?

14 A. Yes, sir.

15 Q. Can you tell me, Dave, on this night, on January 20th
16 of this year -- are you familiar with the Exxon One Stop?

17 A. Yes, very familiar.

18 Q. How are you familiar with it?

19 A. I worked throughout high school four or five years for
20 a good friend of mine that lives right down the road and he
21 owns his own lawn care landscape business, and we worked for
22 him. And we used the One Stop pretty much every morning to
23 fill up gas, get drinks and snacks.

24 Q. Okay. So during the summer you would regularly be
25 there almost every morning?

1 A. If the not once, maybe twice a day.

2 Q. Okay. Now, this particular day, was it at night that
3 you went there?

4 A. Yes, sir.

5 Q. Now, what was the purpose of going there that night?

6 A. Me and my brother were home from school that weekend
7 and we had gone to my best friend's house, along with my
8 dad, to fill my truck up with gas before going back to
9 school the next morning. And we went down to the gas
10 station. The BP right up the road was closed, so we came
11 down to the One Stop. My dad was going to fill my truck up
12 before I had to go back to school.

13 Q. All right. Who was with you at the time when you went
14 to the pump to have the truck filled up?

15 A. My brother was driving our truck. My dad was in the
16 passenger's side and I was in the center seat in the back.

17 Q. Okay. Now, did you get out to fill it up, or who got
18 out to fill it up?

19 A. No, sir, my dad actually got out to fill it up, since
20 he was using his credit card.

21 Q. Okay. And where were you in relationship to the pump?
22 In other words, there's this big long line of pumps right in
23 front of it. As you look at the building, were you to the
24 left, the middle, or the right of the pumps?

25 A. If you look at the building, we were the next to the

1 furthest left.

2 Q. Okay.

3 A. The right-hand side of that pump.

4 Q. On the right-hand side of that as you were facing the
5 building?

6 A. On the left-hand --

7 Q. On the left area all the way down to the right-hand
8 side of the pump?

9 A. Right.

10 Q. And was it dark at this point when you arrived?

11 A. Yes, sir, it was around ten o'clock, or so. The
12 football game was on that night. It just ended.

13 Q. Now, I guess this was a Sunday, right? Would that have
14 been one of the playoff or championship games at that time
15 of the NFL?

16 A. Yes, sir.

17 Q. And can you describe to me, when you are at this Exxon
18 at night, is this a well lit area?

19 A. Yes, sir, under the pumps it's well lit, and also in
20 the store. The windows are clear and there is a lot of
21 lighting inside.

22 Q. Okay. Can you see well into the store from the pumps
23 at night?

24 A. Yes, sir.

25 Q. And were you able to see well into the store that

1 night?

2 A. Yes, sir.

3 Q. What, if anything, unusual did you notice in the store
4 that night?

5 A. When we first pulled up my dad got out and started
6 pumping gas. And from knowing the ladies that work in there
7 a good bit, I just happened to look in and there was a black
8 male standing behind the counter behind her. And I know
9 from going there, the only other person that works there
10 besides the ladies is a large black man that works there in
11 the morning that does the maintenance. And it was too small
12 to be him, so at first I didn't really think about it.
13 Maybe she knew him, but he actually was behind the counter
14 to start with. And once he walked back around to the front
15 of the counter is when I started really paying attention,
16 because it didn't seem right for somebody to be behind the
17 counter and then walk back around to the front.

18 Q. All right. Did you bring it to anyone's attention that
19 you thought that was unusual or that to look at what was
20 going on?

21 A. Probably around the time where he finally walked around
22 to the front of the counter back to where a normal person
23 would go to the counter, I notified my brother and just said
24 "hey, that didn't seem right."

25 Q. Okay. Now, your dad would still be pumping gas at

1 this, right?

2 A. Right.

3 Q. Was he turned towards the pump when this was going on?

4 A. He was paying attention to the pump. He wasn't paying
5 attention to anything else going on.

6 Q. Okay. Now, did you continue to watch what this guy was
7 doing?

8 A. Yes, sir, the whole time that he was in the store.

9 Q. Could you tell me from viewing him during that time
10 what, if anything, could you tell about his physical
11 description at that time?

12 A. I could only tell that he was wearing a blue Gold Hill
13 sweatshirt.

14 Q. Now, when you say Gold Hill sweatshirt, what do you
15 mean by that?

16 A. A hooded sweatshirt, pocket in the front, big white
17 letters on the front that said Gold Hill.

18 Q. Did he have the hood up on the sweatshirt?

19 A. The hood was pulled over his head and drawn tight to
20 his -- around his face with the string.

21 Q. Did that seem unusual for you to be see Gold Hill
22 sweatshirt at this area of Rock Hill?

23 A. On this side of I really paid attention, because we
24 played them in middle school football.

25 Q. And where is Gold Hill located?

1 A. Fort Mill.

2 Q. So a little bit away from Fort Mill at that point in
3 time?

4 A. Right.

5 Q. All right. When you are noticing it, could you tell
6 the race of the person?

7 A. I could tell the face, or just from what I saw, that it
8 looked to be a black male.

9 Q. Okay. What did you see this person do after they came
10 back around to the front of the counter?

11 A. They came around to the front of the counter. When he
12 walked around, I could see he had one hand in the front
13 pocket of the sweatshirt and stood at the counter for brief
14 time. It wasn't too long, but it wasn't exactly two or
15 three seconds. And the clerk handed a brown paper bag, what
16 it looked like, across the counter and he took it and at
17 that time exited the store.

18 Q. All right. And did you see him when he came out of the
19 store?

20 A. I saw him when he came out of the door. From the
21 clerk's vantage point he came out the right door and walked
22 around to the front of the store and back around towards the
23 pizza place.

24 Q. Okay. So as you face the store, which side of the
25 store is the pizza place on?

1 A. From my vantage point, looking at the store, it's on
2 the right.

3 Q. All right. And he went around that way?

4 A. Yes.

5 Q. Was the pizza place actually opened then at that time?

6 A. No, sir, it was closed.

7 Q. So there is no one at the pizza place that you could
8 see?

9 A. No, sir.

10 Q. And he went in that direction. Did you see where he
11 went after he got to the pizza place?

12 A. Once he went past the pizza place and disappeared
13 behind the building, there is a -- the way the building is,
14 it's not exactly square. It sticks out on that end and then
15 disappears behind the corner.

16 Q. Okay. What happened then? What did you next see
17 happen?

18 A. A short time later after he disappeared, my attention
19 got drawn to the clerk coming to the door with the other
20 family and their car at the front of the store. And it
21 might have been thirty seconds later or so what appeared to
22 be a purple Dodge Durango with black tinted windows drove up
23 the side road to the stop light on Highway 5.

24 Q. All right. And what direction did that Durango come
25 from?

1 A. They took a -- it came from back towards the car wash.

2 Q. All right.

3 A. Down that road.

4 Q. So back from behind the store somewhere?

5 A. Yes.

6 Q. How long was that between the time that this person
7 disappeared around that side of the building?

8 A. It was definitely less than a minute. It was -- it
9 wasn't abruptly after he turned the corner -- or the person
10 turned the corner, but it was long enough for my attention
11 to go back to the clerk and then look over and see the car
12 coming up the road.

13 Q. Okay. Now, as you said, you are facing the One Stop
14 and it's on the right that you see this individual disappear
15 around the building?

16 A. Yes, sir.

17 Q. Is it also on the right that you see this Durango come
18 up?

19 A. Yes, sir, on the road that goes up to Highway 5.

20 Q. And it's on the road right there. I guess it's
21 Meadowlark I think it's called?

22 A. Yes, sir.

23 Q. Did it stop at the stop light up there at Meadowlark?

24 A. It stopped -- I can't -- I'm not sure if it actually
25 stopped at the stop light. I'm not sure what the light was,

1 but they took a left to go back towards Rock Hill.

2 Q. Okay. So left on Highway 5 and back towards Rock Hill?

3 A. Yes, sir.

4 Q. Did you see any other vehicles going in that few minute
5 period afterwards?

6 A. I think the next vehicle we actually saw was the police
7 officer that responded.

8 Q. Okay. And can you tell me, once again, if you could,
9 describe as far as what you could see as the color and the
10 type of this vehicle again?

11 A. There is a light that sits on the road over there near
12 the entrance. And when it hit that light, it appeared to be
13 a purple color, something that's somewhat unique, you don't
14 see every day, but it appeared to be purple in color with
15 definitely black tinted windows more than normal.

16 Q. All right. Were you able to actually see in the
17 windows at all?

18 A. No, sir, not at that distance.

19 Q. And what type of vehicle was it again, do you know?

20 A. It was a Dodge Durango.

21 Q. And you are familiar with Dodge Durangos?

22 A. Yes, sir.

23 Q. Now, after this occurred did you wait for when the
24 police arrived?

25 A. Yes, sir, we actually finally got my dad in the truck

1 from pumping gas after he walked away and dad didn't really
2 know what was going on and we finally got a little -- raised
3 our voice and got him in the truck. And then once the clerk
4 came out, we actually pulled up right in front of the store
5 and sat there until the police came --

6 Q. Okay.

7 A. -- with the other family there sitting in their car.

8 Q. Did you ultimately go to the police station and give a
9 statement regarding the case and what you had seen?

10 A. Yes, sir.

11 Q. Did you tell the police or did you give any other
12 description, as far as age, or anything like that to the
13 police?

14 A. I think in my description I estimated him 17, 18 years
15 old.

16 Q. Okay.

17 A. It was definitely a younger person. It wasn't anybody
18 that was of any substantial age.

19 Q. So this person appeared to be a younger black male to
20 you?

21 A. Yes, sir.

22 Q. Thank you.

23 MR. THOMPSON: I have no further questions.

24 ~~CROSS EXAMINATION BY MR. FREEMAN:~~

25 Q. Mr. Keener, you are a student at Clemson?

- 1 A. Yes.
- 2 Q. What year are you?
- 3 A. First semester junior.
- 4 Q. Okay. So where did you go to high school?
- 5 A. I went to high school at Northwestern.
- 6 Q. When did you graduate from Northwestern?
- 7 A. I graduated 2006.
- 8 Q. And that's when you were working for the lawn company?
- 9 A. Yes, sir.
- 10 Q. Up through 2006?
- 11 A. I actually worked through 2007, in the summer between
- 12 school.
- 13 Q. And y'all would stop at the One Stop to get gas?
- 14 A. Get gas, drinks, ice, every morning.
- 15 Q. The first thing in the morning, in the afternoon, when?
- 16 A. The first thing in the morning.
- 17 Q. Did you stop at the end of the day, or your habit was
- 18 to stop in the morning?
- 19 A. My habit was to stop in the morning, but that's not to
- 20 say we never stopped in the afternoon.
- 21 Q. Well, did you know the clerk? Did you have -- have you
- 22 ever met that lady specifically that you can remember?
- 23 A. Yes, sir. Maybe not her specifically in the morning,
- 24 since she worked the later shift, but after football and
- 25 baseball was not at the high school, we were driving by

1 there in that area we would stop regularly and knew the --
2 knew everyone that worked in there.

3 Q. Let me ask my question again.

4 Did you know personally, before seeing her in all this,
5 Ms. Hicks?

6 A. No, sir.

7 Q. And then y'all were filling up with gas to go back to
8 school the next day?

9 A. Yes, sir.

10 Q. You and your brother both came home for the weekend?

11 A. Right.

12 Q. So who was driving when you pulled up?

13 A. My brother.

14 Q. Okay. And you were in the middle and your dad was on
15 the passenger's side?

16 A. Yes, sir, I was in the back seat.

17 Q. I'm sorry, what?

18 A. I was in the back seat in the middle.

19 Q. Back seat.

20 What kind of vehicle is that?

21 A. It's a 2001 Chevrolet Silverado.

22 Q. What color?

23 A. Champaign.

24 Q. Is it in your name, your brother's name, or your dad's
25 name?

1 A. My dad's name.

2 Q. Now, you said your dad was using his credit card to
3 fill up?

4 A. That's what I would assume. I know he was.

5 Q. You said he was?

6 A. He was definitely paying at the pump and he always used
7 his credit card. He doesn't have anything else.

8 Q. But he -- you said the BP up the road, did they not
9 take credit cards?

10 A. They were closed at that time.

11 Q. So if they had a credit card machine, it was also
12 closed?

13 A. The store was closed, so we went to the One Stop.

14 Q. Y'all didn't plan to go in? If nothing had happened,
15 y'all would have just got gas and gone home?

16 A. Yes, sir.

17 Q. Now, you -- again, you said that you were watching
18 everything. Was this from the back seat?

19 A. It was from the center seat in the back of the truck,
20 yeah, the back seat.

21 Q. Y'all were -- help me out. If I am correct, there is
22 five sets of pumps. I think that's right.

23 A. Five.

24 Q. We will call them 1, 2, 3, 4, etcetera.

25 So if I'm standing at Northwestern facing the store,

1 were you at the pump on the left or the pump on the right,
2 the set?

3 A. I was on the set of pumps to the left.

4 Q. Okay. So, again, if we start with 1, 2, you are saying
5 you are not on the outside pump 1, you are in side pump 2?

6 A. Yes.

7 Q. Do you follow my math?

8 A. Yes.

9 Q. Now, so you are looking back towards the store from the
10 center seat?

11 A. The way we pulled in, we came straight off of Highway 5
12 and pulled in pointing towards the store, and my vantage
13 point was directly into the store.

14 Q. So your gas pump must be on the driver's side?

15 A. Yes.

16 Q. To purchase the gas pump in that vehicle.

17 Did your father turn the vehicle off?

18 A. My brother did.

19 Q. Your brother did.

20 Did you have the radio on to listen to listen to the
21 wrap-up of the game?

22 A. No, sir, the game was over.

23 Q. Okay. And so where was your brother? Did he get out?

24 A. No, sir, he was sitting in the driver's side.

25 Q. Were y'all talking? I mean, your dad got out of the

1 car. What were y'all doing?

2 A. We was just sitting in the car. It was very cold that
3 night and nothing was really said until I notified him
4 something might be going on.

5 Q. You had to tell your brother something was going on?

6 A. Yes, sir, I brought it to his attention.

7 Q. What was he doing?

8 A. He was sitting in the driver's side. He might have
9 been messing with his phone, I'm not sure.

10 Q. Phone, like a cell phone?

11 A. Yes, sir.

12 Q. Do you remember, was he calling maybe his girlfriend to
13 tell her he was going back the next morning?

14 A. I'm not aware that he was on the phone. He just -- he
15 was not looking exactly the same place I was.

16 Q. Okay. Now, you said that you saw from your vantage
17 point inside this person moving around and you just didn't
18 think that was right. Is that a fair statement?

19 A. Yes.

20 Q. Now, you said there was a pizza place as well and that
21 was not open in the evening?

22 A. I think at that time it was actually closed. It was --
23 there wasn't even a business in there. At that time it was
24 unoccupied.

25 Q. So the space was actually vacant?

1 A. Yes, sir.

2 Q. Well, do you know what the name of the pizza place had
3 been or was?

4 A. I know in the past it was Buck's Pizza.

5 Q. But you -- again, you don't know if there was any
6 business there at that point?

7 A. I know Buck's Pizza closed my senior year in high
8 school, part of the way through it, and I know --

9 Q. So it could have been -- if it had been vacant on that
10 side of the building, we don't know who?

11 A. Yes.

12 Q. Now, from where you are sitting, did you ever get out
13 of the vehicle --

14 A. No, sir.

15 Q. -- before the person left?

16 A. No, sir.

17 Q. And then you said that you saw -- let me be real clear.
18 You saw the person come out the only door that was unlocked,
19 apparently?

20 A. Yes.

21 Q. And if I'm facing the building, is that the door --
22 again, from where you are sitting, is that the door on the
23 left, or the door on the right?

24 A. The door on the left.

25 Q. And that person walked which way? Back to the left or

1 back to the right?

2 A. Around the front of the store back to the right.

3 Q. Okay. Did you get out of the vehicle at that point?

4 A. No, sir.

5 Q. So, again, help me out then. This building is kind of
6 not -- exactly triangle, but it has a point in the front,
7 doesn't it?

8 A. Yes, sir.

9 Q. Well, how could you see, once the person ran around the
10 corner, to know that they had anything to do with what you
11 called a purple Dodge Durango?

12 A. Once the person disappeared behind the store, the next
13 thing that caught our attention was maybe a minute later a
14 purple Dodge Durango that drove up the side road.

15 Q. And you just put those two together?

16 A. Being that there wasn't heavy traffic that night and
17 there was no other cars that we saw, that was the first
18 thing we saw after the person disappeared behind the
19 building.

20 Q. And you don't remember, for example, if the Durango
21 stopped for the light or went through a red light?

22 A. Right, I can't verify that the light was red or green,
23 but I do know that they took a left onto Highway 5.

24 Q. Okay. Did you notice that it pealed out and made a ton
25 of noise?

1 A. No, sir.

2 Q. And you said that you are very familiar with this area.
3 You know this neighborhood back in there?

4 A. Yes, sir.

5 Q. Now, you don't live in that neighborhood?

6 A. No, sir, but I'm familiar with it. Cut grass in it.

7 Q. Okay. Now -- hold on one second.

8 So, again, you see the Durango come up to the light.
9 You turn. Are you still in the vehicle at this point?

10 A. Yes.

11 Q. Your brother is in the vehicle?

12 A. Yes.

13 Q. Your dad is still pumping gas?

14 A. At that point we are trying to get him in the truck.

15 Q. How do you try to get him in the truck?

16 A. My brother said -- told him a couple of times to get in
17 the truck and finally he just quit pumping and walked around
18 and got back in the truck.

19 Q. I mean, did he put the window down? I'm trying to
20 figure out how he communicated to your father.

21 A. I'm not sure whether he opened the window, or if he put
22 the window down, or if he actually opened the door at that
23 point.

24 Q. Okay. How would he put -- the window electronic?

25 A. Yes.

1 Q. How would he have put the window down if the vehicle
2 was off?

3 A. Turned the key.

4 Q. You say your brother would have reached over and turned
5 on the ignition, or turned it at least until the window came
6 down and reached over and put it window down?

7 A. My brother was in the driver's seat.

8 Q. Okay. So you said that your brother told dad to get
9 back in the truck?

10 A. Right.

11 Q. Well, did your father get in -- which door did he get
12 in when he finally got in the truck?

13 A. He walked back around to the back of the truck and got
14 in the passenger's side door.

15 Q. In the front or the back?

16 A. Front.

17 Q. Okay. So he didn't get in the side -- again, it's a
18 four door. Why didn't y'all tell him to just get in the
19 door by you, which would be away from where you think this
20 bad person is going?

21 A. Well, at this point this person was already gone and
22 had disappeared.

23 Q. Gone from your sight?

24 A. Gone from my sight.

25 Q. Okay. And then you said the next vehicle that you saw

1 was the police vehicle. How long was it until that got
2 there?

3 A. I would say two minutes, possibly three minutes.

4 Q. Did that come up with lights and sirens blaring?

5 A. Yes, sir.

6 Q. And you gave the police a statement that evening or the
7 next day?

8 A. No, we went directly to the police department after
9 they showed up at the gas station. We went to the Rock Hill
10 City Police Department that night.

11 Q. Did you end up going to school that morning -- the next
12 morning, I mean?

13 A. That possibly -- I'm not sure why we were going back on
14 a Monday. We might not have had a class until late, but --

15 Q. What time was your class on a Monday last semester?

16 A. I don't recall.

17 Q. Now, did you ever discuss this with your brother?
18 After you talked to the police that evening, did you ever
19 talk with this about your brother -- talk about this to your
20 brother and your father?

21 A. The most we maybe talked is just about what had
22 happened. I mean, it wasn't in any detail what you actually
23 saw, what I actually saw.

24 Q. And they all kind of -- I mean, y'all kind of agreed
25 that of the three of you, it appears that you saw the most?

1 A. To a point, I guess..

2 Q. Because your dad was pumping the gas the whole time?

3 A. Yes.

4 Q. And your brother was playing with his phone?

5 A. He was doing something with it.

6 Q. Doing something. You don't know what? You couldn't
7 tell?

8 A. I'm not sure.

9 Q. Now, tell me about the vehicle again. You are sitting
10 in the middle. What about the what I'm going to call the
11 seats in the front? Is it one seat, or is it two different
12 seats?

13 A. The front is two bucket seats divided by a center
14 console.

15 Q. Does it have a headrest, the seats?

16 A. The two seats do.

17 Q. Were you wearing your seat belt that evening?

18 A. Yes, sir. I was sitting in the middle seat in the back
19 so I could see between the two bucket seats.

20 Q. But, again, the seats would be -- if you looked left or
21 right, you would have had to see the head and the seats,
22 right?

23 A. Right.

24 Q. Now, you said earlier also that you believed this was a
25 black male?

1 A. Yes, sir.

2 Q. How did you -- I mean, after the person walked around
3 the building, you didn't see anything any more. How did you
4 know, number one, it was somebody who was black?

5 A. Based on what I could see of the person's face through
6 the -- in the store.

7 Q. Okay. How do you know it was male?

8 A. By the way he walked off and the way his stature and
9 how he handled himself.

10 Q. So it couldn't have been, and forgive the term, a very
11 butch woman?

12 A. Anything is possible.

13 Q. You didn't see a gun?

14 A. No, sir.

15 Q. Okay. You couldn't have heard anything that was going
16 on inside because you had your vehicle and at least one or
17 two panes of glass between you and the inside?

18 A. Yes, sir.

19 Q. Is that correct?

20 A. Yes, sir.

21 Q. In fact, you don't know who the person was for sure?

22 A. No, sir.

23 Q. You have no idea?

24 A. Yes, sir.

25 Q. Now, you said something about it looked like the

1 person, the clerk, let's call it the clerk, was putting
2 money in a bag. Is that what you thought you saw?

3 A. I could not see her doing anything until she handed the
4 bag across the counter. It was a small brown paper bag.

5 Q. Like you would put --

6 A. A drink in.

7 Q. A small bag that you can't see through, but a paper
8 light brown, one that you can't see through?

9 A. Right.

10 Q. Did the person that came out run?

11 A. No, sir, they were very -- I'm not going to say
12 lackadaisical about it, but they weren't in a hurry. Walked
13 out.

14 Q. Didn't appear to be --

15 A. They didn't draw any suspicion to them by the way they
16 walked out of the store.

17 Q. Okay. Now, have you spoken to anyone in preparation
18 for your testimony today?

19 A. I came to the solicitor's office once.

20 Q. I couldn't hear you. I'm sorry?

21 A. I came to the solicitor's office once.

22 Q. Right here in this building?

23 A. Yes, sir.

24 Q. You talked to the solicitor or someone in their staff?

25 A. We talked about my testimony -- or what I saw the night

1 and was recorded.

2 Q. Well, now, I want to be real clear. You sort of
3 changed that sentence. You were going to say we talked
4 about my testimony.

5 A. Well, in that I meant what I went to the police
6 department that night, they gave me a copy of that back and
7 we went through it to make sure -- I read back through it to
8 make sure that I remembered what I had said.

9 Q. Well, did you need that piece of paper to help you
10 remember?

11 A. No, sir.

12 Q. Then why did you get a copy of it?

13 A. Just to have that so I know exactly what was written
14 that night.

15 Q. So you have read that statement before today, your
16 statement?

17 A. Yes, sir.

18 Q. And that statement helped you remember or fill in the
19 holes?

20 A. I wouldn't say that. I actually corrected -- I said a
21 plastic bag and what was recorded, when actually I said it
22 was a brown paper bag.

23 Q. So the police made a mistake in your statement, or you
24 made a mistake in what you saw, or you are not sure?

25 A. No, I would say when it was recorded that night, it was

1 done at 11:00, 11:30 at night, and it was just done and
2 everybody was ready to get out of there. I was ready to go.

3 Q. Did you write the statement out, or did they type it
4 for you? How was that statement prepared?

5 A. I sat next to Mr. Burris and told him what I saw and he
6 typed it.

7 Q. Typed it up?

8 A. Yes.

9 Q. So you told him, you said "here is what I saw," and he
10 just typed it while you were telling him?

11 A. Yes, sir.

12 Q. And then signed you signed it, presumably?

13 A. Yes, sir.

14 Q. And, in fact, you are saying now that you have looked
15 at it again, there was something in it that was not what you
16 told him?

17 A. Well, at the time when I scanned through it, I saw that
18 there was a bag given to her, so that's what I said.

19 MR. FREEMAN: Beg the court's indulgence one
20 moment, Your Honor.

21 (Off the record)

22 (Back on the record)

23 BY MR. FREEMAN:

24 Q. Did you and your brother talk about this? I mean,
25 y'all went back to school the next day, right?

1 A. At the time it wasn't a big deal. I mean, it was --

2 Q. Did you tell any of your friends about it?

3 A. Only because we had to stay up that night. We didn't
4 get home until well after 12:30, and that was sort of a
5 hassle. Other than that --

6 Q. No, I mean, your friends at Clemson.

7 A. I just told them that I had a long night. I had to
8 stay at the police department and, you know, give what I
9 saw. But other than that, it wasn't -- it was simply we saw
10 a robbery.

11 Q. Do you -- do you have a girlfriend, Dave?

12 A. Yes.

13 Q. Did you talk with her about that?

14 A. I'm sure I did that night.

15 Q. Well, since then have you said "gosh, I got to go back
16 to court for this thing"?

17 A. Yeah.

18 Q. Okay. Did she not ask you what happened?

19 A. I just told her simply we saw a robbery at the store.

20 Q. That was the end of it?

21 A. More or less. I don't think we went into to great
22 detail.

23 MR. FREEMAN: I don't have any further questions.

24 MR. THOMPSON: Nothing further, Your Honor.

25 THE COURT: All right, sir, you can step down.

1 MR. THOMPSON: Your Honor, I would ask that he be
2 excused at this time.

3 THE COURT: He's excused.

4 MR. THOMPSON: The State would call Daniel Keener.

5 DANIEL KEENER, having been first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION BY MR. THOMPSON:

8 Q. Daniel, if you could state your full name for the
9 court, please?

10 A. Daniel Lewis Keener, K-E-E-N-E-R.

11 Q. Do you live at the same place as your brother here, in
12 Rock Hill?

13 A. Yes, sir.

14 Q. Do you also go to Clemson, is that right?

15 A. Yes, sir.

16 Q. And what year are you in Clemson?

17 A. First year junior -- or first semester junior.

18 Q. What are y'all major in there?

19 A. Civil engineering.

20 Q. Both of you?

21 A. Yes.

22 Q. Okay. And can you tell me, are you familiar as well as
23 with the Exxon One Stop that we are talking about today?

24 A. Yes, sir. We both worked with a buddy of mine. Just
25 like him, we were in there every morning.

1 And then after school, since we went to Northwestern,
2 that was always the closest place to go. And then after
3 baseball, football, stopped there to get Gatorades,
4 whatever.

5 Q. So you used to stop in there day and night?

6 A. Yeah, we stopped there after baseball games, football
7 games. We might just be riding around town. Bunch of my
8 friends live not right there in that neighborhood, but right
9 around there, so --

10 Q. Can you describe for me the lighting there at the Exxon
11 One Stop?

12 A. It's well lit around the pumps, as well as inside. And
13 around the little -- you know, the walkways around the
14 building they were lit, because the light from the inside
15 just shines out, so it's well lit.

16 Q. All right. And now you actually were driving the
17 vehicle this night, is that correct?

18 A. Yes, sir.

19 Q. Okay. Where did you pull in from to say pull into the
20 station?

21 A. We were coming I guess you would say like from
22 Northwestern, or Rollinson Road, down Highway 5 towards Rock
23 Hill, and turned left into the gas station and pulled up to
24 the pumps on the left side.

25 Q. So basically the first pump that you hit upon the left,

1 that's where you pulled in?

2 A. Yes, sir. I think it was actually -- it wasn't far
3 left pump. It was the one over from that.

4 Q. Okay. So one over -- not the far left pump, but the
5 second one?

6 A. Yes.

7 Q. It would be on the right side of that?

8 A. Yes, sir.

9 Q. And that's where you pulled in?

10 A. Uh-huh.

11 Q. And where you are pulled in there, can you tell me your
12 view of the store from there?

13 A. It's basically looking straight into the store.

14 Q. All right. And we talked about, you know, seeing
15 someone come out of the store at that night. Where is the
16 door location that that person came out? Where is that door
17 location where you pulled in and you are facing it?

18 A. I would say I was probably facing more towards the
19 solicitor and the door is over probably, I would say, 10, 15
20 feet to the right.

21 Q. Okay.

22 A. So it's almost a direct view.

23 Q. All right. So at night are you able to see clearly
24 into the One Stop?

25 A. Yes, sir.

1 Q. What, if anything, brought your attention to what was
2 going on in the One Stop that night?

3 A. I wasn't even paying attention at first. Actually I'm
4 pretty sure I had the window down, because it was cold and I
5 was messing with my brother. We didn't want to get out and
6 pump gas, and that's the reason my dad got out. So we had
7 the window cracked halfway down. And I'm not sure what I
8 was doing, but he started noticing something and he started
9 mumbling at first kind of. I didn't really pay attention.
10 And then he said "no, there is somebody in there," so I
11 started looking. And by the time I looked, the man that was
12 in there was back around the front of the corner -- or the
13 cash register, just like a normal customer would be, but he
14 did have on a sweatshirt and had the hood up and everything.

15 MR. FREEMAN: Your Honor, I'm going to object to
16 this witness' testimony on the same grounds as I did
17 earlier. I believe he just testified -- and ask you to
18 strike and ask the jury --

19 THE COURT: On the grounds of relevance?

20 MR. FREEMAN: Yes, Your Honor, he's just
21 indicated --

22 THE COURT: Relevance objection is overruled.

23 MR. FREEMAN: Your Honor, also, again, I believe
24 it is unnecessarily cumulative.

25 THE COURT: Overruled.

1 BY MR. THOMPSON:

2 Q. All right. And at that point when you are watching
3 what's going on, it's your attention -- then are you paying
4 more attention to this point than you were before?

5 A. Yeah, definitely. I was looking in there and just
6 seeing what was going on.

7 Q. What did you notice happening then?

8 A. I saw him come back around to the front of the
9 register. And at that point I had said something to my dad,
10 which he wasn't paying me any attention. And the next thing
11 I saw, the man turned around and kind of walked out and
12 then -- just calmly walked out the door and went around
13 towards where the Buck's Pizza used to be. Walked around
14 the corner.

15 Q. So as you are facing the building, which side of the
16 door did he go around towards?

17 A. Towards the right.

18 Q. Okay. And did you see where he went from there?

19 A. No. Just as soon as he turned the corner, you couldn't
20 see anything anymore. And then that's when they looked back
21 and the clerk she was kind of acting weird. And that's when
22 she actually come to the door and told the people there
23 outside about to go in that she had been robbed.

24 Q. All right. Now, when you said he turned the corner,
25 what corner are you talking about?

1 A. I guess that would be the far right of that building,
2 to the right of the pizza place.

3 Q. So all the way where the pizza store would have been,
4 that far right?

5 A. Yes, sir.

6 Q. So around the whole building? In other words, he
7 disappeared around that side?

8 A. Yes, sir.

9 Q. All right. And when the clerk came out, was she --
10 what was her demeanor at that point when she came out?

11 A. She was pretty shaken up. She didn't even call the
12 cops. I remember the girl had to call the cops, because she
13 was calling everybody else. She was so -- she was shaking
14 and all scared. You couldn't understand her she was talking
15 so fast.

16 Q. Okay. And what is the next thing that you recognized
17 or noticed during this period of time?

18 A. Probably a minute later or so there was a purple or
19 dark burgundy Dodge Durango pulled up to the stop light, and
20 I think the light was actually red, and stopped, and then it
21 turned green and took a left onto Highway 5.

22 Q. Could you see that clearly from where you were?

23 A. Yes. It was dark, but then you get the light shining
24 out towards the road and stuff and you can clearly tell it's
25 a Durango just by the rims and the body style.

1 Q. And what, if anything, did you notice about the rims?

2 A. Just, you know, most cars, if they are stock, you know,
3 they got specific rims on them and --

4 Q. Okay.

5 A. -- that just -- between the body type and the rims and
6 I know people that have Durangos, too. So it's not like it
7 was like a weird looking car or anything. It was just --
8 you knew that was what it was.

9 Q. Okay. And now you say that you were able to see the
10 color as well?

11 A. Yeah, it appeared to be purple or dark burgundy at the
12 time.

13 Q. Could you see into the Durango at all?

14 A. No, it was dark, and then it looked like it had tinted
15 windows, but you can't see inside.

16 Q. Which way did the Durango go?

17 A. At the stop light it took a left going past ATC and
18 everything, towards Rock Hill.

19 Q. So going back in towards Rock Hill?

20 A. Yes, sir.

21 Q. Were there any other vehicles that showed up around
22 that time?

23 A. No. The only vehicles that I remember seeing is the
24 truck that was at the One-Stop that the people were about to
25 walk in, and then the next car was the police car that came

1 a few minutes later.

2 Q. And when the police came, did you ultimately end up
3 also going to the Rock Hill Police Department?

4 A. Yes, sir.

5 Q. Did you give a statement at that time?

6 A. Yes, sir.

7 Q. Did you tell them everything that you have told us
8 today?

9 A. Yes, sir.

10 Q. Were you able to give a description to them, as far as
11 what this person looked like to you, or as far as age or
12 anything like that?

13 A. Yeah, it appeared -- I told him I thought it was about
14 my age, my size, so I said a little bigger. I figured he
15 was probably about 5'9", or so, and probably 17 or 19 years
16 old. Just didn't appear to be an older, you know, an older
17 man or anything. He appeared to be younger.

18 And then the sweatshirt that had the Gold Hill on it,
19 that led me to believe that probably about my age, too,
20 so --

21 Q. All right. And you saw the sweatshirt that had Gold
22 Hill on it?

23 A. Yes, sir.

24 Q. Now, were you able to tell the race of this individual?

25 A. Whenever he walked out of the door, I could clearly

1 tell it was a black male. I mean, just -- you know, you
2 could see the face. You couldn't see the hand. He had them
3 in his pockets, but just by the face you could tell it was a
4 dark black male.

5 Q. Okay. Thank you.

6 MR. THOMPSON: No further questions.

7 CROSS EXAMINATION BY MR. FREEMAN:

8 Q. Daniel, I'm going to ask you an obvious question for
9 the record. You and your brother are twins?

10 A. Yes, sir.

11 Q. Who is older?

12 A. He is.

13 Q. Now, you said that you had friends that lived in that
14 neighborhood?

15 A. No, sir, they -- not in that neighborhood, but in the
16 vicinity of Northwestern.

17 Q. Okay. And then you were driving that evening?

18 A. Yes, sir.

19 Q. Do you normally drive?

20 A. Usually one of us will drive to and another one will
21 drive from. Pretty much rotate whenever.

22 Q. And y'all pulled into the pumps and your dad got out to
23 fill the vehicle up for gas?

24 A. Yes, sir.

25 Q. Now, in response to the solicitor's question you said

1 you really didn't notice what was going on. At some point
2 your brother said "take a look," or something like that?

3 A. Yes, sir.

4 Q. Do you remember what you were doing before that?

5 A. I don't -- I wasn't paying attention, really. Just
6 probably fiddling around.

7 Q. Do you remember whether you were looking at your phone,
8 messing with the radio, or you just don't remember?

9 A. I don't remember. I don't believe the radio was on
10 because -- I mean, we were pumping gas, so I wouldn't have
11 had the truck on.

12 Q. But the window was down?

13 A. Yeah, I had the window cracked.

14 Q. Was that so you could talk to your dad?

15 A. Yeah, basically that, and just to probably make my
16 brother mad because he wouldn't get out and pump gas, he
17 made my dad, and it was cold outside. And we all had
18 jackets on anyway.

19 Q. But being good college kids, y'all wanted your dad to
20 buy the gas for you?

21 A. Of course.

22 Q. And the person that you saw come out, so you thought
23 was a customer then walked around to the back, and that was
24 really it?

25 A. Well, he had said he thought something was going on

1 and --

2 Q. That is from your brother, though. I'm asking what you
3 saw.

4 A. Oh, yes, sir, I saw him at the front of the counter and
5 just walked out and had his hand in pocket and just kind of
6 walking calmly, but then there wasn't any other cars there.

7 Q. Again, it was cold, though, so wearing -- this person
8 was wearing a sweatshirt?

9 A. Yes, sir.

10 Q. So nothing so far to -- other than your brother's
11 comment, nothing to attract your attention at all?

12 A. No, sir, not beside walking around to the back of the
13 store where there is -- you know, there wasn't any cars
14 there that way or anything, so --

15 Q. Okay. But, again, you don't know who that person was?
16 It's conceivable they lived back in the neighborhood?

17 A. Possibly.

18 Q. Staying with friends in the neighborhood, or anything
19 like that?

20 A. Yes, sir.

21 Q. And you said that the next thing that you saw maybe a
22 minute later was the vehicle, dark -- either dark burgundy
23 or possibly purple pull up to that light?

24 A. Yes, sir.

25 Q. At the corner of Meadowlark and Main, or Highway 5?

1 A. Yes, sir.

2 Q. Okay. Turned left?

3 A. Yes, sir.

4 Q. Didn't -- wasn't peeling out?

5 A. No.

6 Q. I mean, nothing, burning rubber.

7 Did it appear to wait for the light and then turn?

8 A. Yes, sir, if I remember correctly. The light was red.

9 Q. And you said you got a good look at the vehicle?

10 A. Yes, sir.

11 Q. And you noticed the rims?

12 A. Yes, sir.

13 Q. Did you notice anything else about it?

14 A. Just noticed that it was a darker color and that's an
15 awkward color. You don't see it as much. And just noticed
16 the type of vehicle it was.

17 Q. That was a dark color, though? It was not, for
18 example, yellow or white?

19 A. No. No.

20 Q. Did you get -- and you said you got a good look. Did
21 you notice any markings on it?

22 A. No, sir.

23 Q. Any logos?

24 A. No, sir.

25 Q. Any decals?

1 A. No, sir.

2 Q. Anything like that on the side, the front, the back,
3 anywhere?

4 A. No, just the body of the car.

5 Q. Okay. But you got a good look at it when it pulled up
6 to the light?

7 A. Yes, sir.

8 Q. Were you still in your vehicle at this point?

9 A. Yes, sir.

10 Q. What were you saying to your brother and your father?

11 A. I'm not quite sure at that point. By then we had
12 already gotten my dad back in the truck.

13 And then whenever the clerk started acting weird and
14 came out said she got robbed, and then you see a car come up
15 beside the store, you kind of took notice to that. There
16 wasn't any other cars going around. It was Sunday night.
17 Not many people were out, more than likely.

18 Q. Now, since we are clear, you never got out of the
19 vehicle until later when the police got there?

20 A. Yes.

21 Q. You would have been in the front. And if the store is
22 almost a triangle, once this person run around to the side,
23 you would have lost sight of them?

24 A. Around the corner where the pizza place is?

25 Q. If you call the corner on a triangle, but once they

1 went around that side, you would have lost sight of them?

2 A. Yes, sir.

3 Q. So you don't know what happened?

4 A. No, not a hundred percent sure.

5 Q. And, again, y'all don't live in that neighborhood back
6 there?

7 A. No. I have done work back there, but not lived back
8 there..

9 Q. So it's just -- it's just you saying that your belief
10 is the person in the Durango was somehow the same person who
11 left the store?

12 A. At that point I assume, you know, that's what happened
13 to me, just because the time period. It wasn't like it was
14 a really short time, like the person turning the corner in
15 the car came.. It wasn't a really long time. Then the car
16 came. It was -- to me it seemed like it would be long
17 enough to walk right back there and get in the car, because
18 there was that back exit back at the car wash.

19 Q. Have you gone out and walked that distance yourself to
20 double check it?

21 A. I have walked to and from the car wash to the store
22 before to get quarters to wash the truck and stuff --

23 Q. Okay.

24 A. -- but not to exactly timing myself.

25 Q. So you don't really know.

1 Well, was the person that you think you saw, were they
2 driving or were they a passenger in that vehicle?

3 A. You couldn't tell because of the tinted windows.

4 Q. You couldn't, in fact, tell if the person you saw was
5 in there at all?

6 A. No.

7 Q. Now, you mentioned something about Gold Hill lettering
8 that was on the front of this sweatshirt?

9 A. Yes, sir.

10 Q. Big letters, small letters?

11 A. They were big. It looked -- the reason I noticed it
12 was because it was kind of like our football warmups, just a
13 sweatshirt. It would go with a sweat suit. You could wear
14 it.

15 Q. Were they gold, or were they white, or what color are
16 these letters?

17 A. Blue sweatshirt with white letters.

18 Q. So they weren't gold for Gold Hill?

19 A. No, but you could read it, say Gold Hill.

20 Q. Now, Daniel, did you talk with anyone after that
21 evening about this?

22 A. Not more than just, you know, whenever me and Dave and
23 my dad were on the way back from the police department, we
24 were just like, you now, that just happened, talking about
25 it. And, or course, when we got home, told my mom what had

1 happened and --

2 Q. Was she upset?

3 A. She wasn't really upset, because we had called her on
4 the way from the police department telling her we were going
5 to be home late because we had to go to the police
6 department.

7 Q. So when y'all talked about it, y'all kind of said,
8 well, here is what I remember, here is what I remember, here
9 is what the police asked me, and here is what they asked me?

10 A. It was more just -- since my dad didn't say anything,
11 we were explaining to him, you know, that Dave had seen that
12 and then he had told me to look in there, because, you know,
13 it was weird, and that's when I started looking and just --

14 Q. Dave kind of said to your dad "here is what I saw," and
15 you said the same thing to your dad?

16 A. Pretty much, because, you know, once he said what he
17 say, well, I didn't see him until here and then I saw this,
18 so --

19 Q. Now, coming closer to today, have you talked with
20 anyone in the solicitor's office or with law enforcement
21 about your testimony today?

22 A. I came to the solicitor's office once probably a couple
23 weeks ago.

24 Q. I'm sorry, when?

25 A. It was --

1 Q. You said a couple weeks ago?

2 A. No, I believe it was right before we went back to
3 school, so probably a month or so ago.

4 Q. Did they give you a copy of your statement?

5 A. Yes, sir.

6 Q. And the same questions that I asked your brother, was
7 that statement typed?

8 A. Yes, sir.

9 Q. And you were sitting there and they sort of typed what
10 you told them?

11 A. Yeah, they asked me what I had seen. And as I was
12 telling them, they would type it down.

13 Q. Okay. Then you reviewed it and signed it?

14 A. Yes, sir, read over it signed it.

15 Q. And you have reviewed it before today?

16 A. I have looked over it, just --

17 Q. And you needed that statement to help you remember what
18 happened?

19 A. No, it's not like there was anything minor details or
20 stuff like that that I didn't remember anyway.

21 Q. Okay. Well, then why did you get a copy of the
22 statement, if you didn't need it?

23 A. I guess just to verify that what they had was what I
24 said.

25 Q. So you thought maybe they could have made a mistake?

1 A. No, I just figured I was getting it so they could be a
2 hundred percent positive that's the statement that I gave,
3 it wasn't something different.

4 Q. And the solicitor, did they tell you basically what
5 questions they planned to ask you?

6 A. Partially. Just told us they were going to ask us
7 questions about what we saw and stuff like that and just to
8 give them the answer that we know.

9 Q. And so let me back up just a minute, Daniel, just to be
10 clear. Had your brother not said anything to you that
11 evening "like I think something unusual was going on," you
12 would have just thought this was a customer?

13 A. Probably, up until the point where the clerk came out.

14 Q. I'm sorry, had you brother or the clerk -- had nothing
15 else come up after the fact, you would have had no reason to
16 ever think this was anything other than a customer who, for
17 whatever reason, had parked in the back?

18 A. Not if he wouldn't have said anything and if the clerk
19 wouldn't have came out and said she got robbed, no.

20 Q. If everything else had happened followed up? If it, in
21 fact, was someone who bought something and they put it in
22 the bag and left?

23 A. Yeah, then it would have seemed possible like a normal.

24 The only thing that would seem out of the ordinary is
25 someone walking around Sunday night.

1 Q. And you -- but you had done that before? I mean, you
2 had bought stuff in that store?

3 A. Yes, sir.

4 Q. You had gone in and paid -- because if you buy
5 something, you have to go in?

6 A. Yes, sir.

7 Q. You have done that many times?

8 A. Yes.

9 Q. Your brother has do that in your presence many time?

10 A. Yup.

11 Q. Your boss man or your old boss man has done that with
12 y'all many times?

13 A. Yes.

14 MR. FREEMAN: No further questions.

15 MR. THOMPSON: Just briefly.

16 REDIRECT EXAMINATION BY MR. THOMPSON:

17 Q. Now, you had said that night you went back to the
18 police department and gave a statement that night, correct?

19 A. Yes, sir.

20 Q. And is this before you talked to everybody else about
21 what you had seen?

22 A. Yes, sir. The only thing that was said was on the way
23 over there just, you know, it's kind of weird that place got
24 robbed, so well lit and stuff.

25 Q. Right. And now did you mention the Durango in your

1 statement to the police?

2 A. Yes, sir.

3 Q. Did you mention that you thought it was a black male in
4 your statement to the police?

5 A. Yes, sir.

6 Q. Did you mention the Gold Hill sweatshirt in your
7 statement to the police?

8 A. Yes, sir.

9 Q. Did you mention that that person had walked back behind
10 the building on the pizza side in your statement to the
11 police?

12 A. Yes, sir.

13 Q. All right. So basically everything that you have
14 testified today you told the police that night?

15 A. Yes, sir.

16 Q. Thank you.

17 MR. THOMPSON: No further questions.

18 RECROSS EXAMINATION BY MR. FREEMAN:

19 Q. Did the police ask you to describe the individual,
20 other than it was a black male?

21 A. Yes, sir. I said he was probably around 5'9", 170
22 pounds, which is roughly my size, just a little taller.

23 Q. How tall are you?

24 A. I'm 5'7".

25 Q. How much do you weigh?

1 A. 170.

2 Q. So you are basing that on a comparison to yourself?

3 A. Yes, sir.

4 Q. Do you think that he was older -- at that time did you
5 think that person was older or younger than you?

6 A. I thought he was about my age.

7 Q. You would have been 20 at the time?

8 A. Yes, sir.

9 Q. Now, did the police also ask you to describe this
10 vehicle, this Durango?

11 A. I told him that I had seen a vehicle leave and then
12 that's when I described it.

13 Q. Did you tell them what color that you thought it was?

14 A. I told him I thought it was either a purple or dark
15 burgundy Durango, late 2000 model -- or early 2000.

16 Q. I'm sorry, what?

17 A. I told them I thought it was an early 2000 model,
18 because it definitely wasn't a new body style that came out.

19 Q. Did you get a look at the license plate? Did you tell
20 them that?

21 A. No, I couldn't see the license plate.

22 Q. Could you even tell them that it was a South Carolina
23 plate? Do you know how they look different than other
24 states?

25 A. No, I just paid attention to the man in the vehicle.

1 MR. FREEMAN: No further questions.

2 MR. THOMPSON: Nothing further, Your Honor.

3 THE COURT: All right, sir, you can step down.

4 MR. THOMPSON: May he be excused?

5 THE COURT: You can be excused.

6 MR. THOMPSON: If it please the court, Your Honor,
7 this may be a good time for the break, because we need to
8 number some --

9 THE COURT: All right, we will take a short break.
10 You can go back in the jury room.

11 (The following takes place outside the presence of
12 the jury panel)

13 THE COURT: All right. Short break.

14 (Photograph marked as State's Exhibit No. 12 for
15 identification)

16 (Photograph marked as State's Exhibit No. 13 for
17 identification)

18 (Photograph marked as State's Exhibit No. 14 for
19 identification)

20 (Photograph marked as State's Exhibit No. 15 for
21 identification)

22 (Photograph marked as State's Exhibit No. 16 for
23 identification)

24 (Photograph marked as State's Exhibit No. 17 for
25 identification)

1 (Photograph marked as State's Exhibit No. 18 for
2 identification)

3 (Photograph marked as State's Exhibit No. 19 for
4 identification)

5 (Photograph marked as State's Exhibit No. 20 for
6 identification)

7 (Photograph marked as State's Exhibit No. 21 for
8 identification)

9 (Photograph marked as State's Exhibit No. 22 for
10 identification)

11 (Photograph marked as State's Exhibit No. 23 for
12 identification)

13 (Photograph marked as State's Exhibit No. 24 for
14 identification)

15 (Photograph marked as State's Exhibit No. 25 for
16 identification)

17 (Photograph marked as State's Exhibit No. 26 for
18 identification)

19 (Photograph marked as State's Exhibit No. 27 for
20 identification)

21 (Photograph marked as State's Exhibit No. 28 for
22 identification)

23 (Photograph marked as State's Exhibit No. 29 for
24 identification)

25 (Photograph marked as State's Exhibit No. 30 for

1 identification)

2 (Whereupon, proceedings were recessed)

3 (Whereupon, proceedings were reconvened)

4 THE COURT: Ready?

5 MR. BRACKETT: If it please the court, Your Honor,
6 at a previous bench conference we had raised the issue of
7 the minor witness who testified, and I have since spoken
8 with her mother, who has confirmed, as I indicated, I would
9 want at the bench conference, she confirmed that she does
10 not want her daughter identified to the media, so I'm
11 bringing that to the court's attention.

12 MR. FREEMAN: Your Honor, I have also indicated at
13 the bench conference I anticipate the possibility of a minor
14 witness as well, and would ask the same consideration.

15 THE COURT: All right.

16 To the members of the media who are here from, I
17 guess, television media, it was brought to my attention
18 during the time when this first witness today was on the
19 stand that she was a minor, and the request was made both on
20 behalf of the defense and State, that I consider restricting
21 your showing of this minor witness and one other minor
22 witness who is going to testify later in the trial on
23 television. And I didn't want to bring it up right then,
24 because I didn't want to make a big deal out of it in front
25 of the jury, so I decided to take it up during the break, so

1 I am going to restrict you all from showing any images of
2 the -- let's get the name.

3 MR. BRACKETT: Sommer, Your Honor.

4 THE COURT: Sommer Young.

5 MR. FREEMAN: Their witness is Sommer Young.

6 My witness is Samantha Dunham.

7 THE COURT: And there is a potential witness named
8 Samantha Dunham, both of whom are minors. And so I have the
9 authority under Rule 605 to restrict the use of the film
10 that you get in here. And so I'm going to exercise that
11 authority, simply by limiting your right to print, to
12 publish the images of these two minor witnesses.

13 Anybody in here representing any of the media
14 outlets see any problem with that?

15 BRAD HERKEY: Your Honor, my name is Brad Herkey
16 from WCNC. Would it be all right under your ruling to
17 record the voices of a minor and show pictures of their
18 hands, anything but their face or anything that would
19 identify them? Would that be permissible?

20 THE COURT: I mean, think that --

21 BRAD HERKEY: In other words, we can hear the
22 testimony, but we would not give any, if Your Honor chooses,
23 to even use a name.

24 THE COURT: How about if I just say that I'm going
25 to restrict you from using the faces or the names of the two

1 minor witnesses.

2 BRAD HERKEY: Thank you, Your Honor, but we can
3 record the voice? We can record --

4 THE COURT: As long as you don't show the face and
5 as long as you don't publish the name.

6 BRAD HERKEY: Understood. Thank you, Your Honor.

7 MR. BRACKETT: Is that it on that issue? Any
8 other issues regarding that?

9 MR. FREEMAN: I'm sorry, nothing else from the
10 defense on that issue.

11 THE COURT: All right.

12 MR. FREEMAN: Your Honor, before we --

13 THE COURT: Sir?

14 MR. FREEMAN: Before you bring the jury back in,
15 the solicitor and I had discussed briefly there may be some
16 evidentiary matters and this might be a good time to take
17 them up on items he intends to offer into evidence. And
18 some of those I either have an objection to, or need a
19 clarification on what questions I'm allowed to ask, or not
20 allowed to ask, depending on the circumstances.

21 THE COURT: Okay.

22 MR. FREEMAN: For example, the solicitor indicated
23 that he may at some point introduce a gun that was taken
24 from the address where my client was arrested and that they
25 have that gun and I believe intend to introduce it into

1 evidence.

2 It is my position that I'm allowed to ask law
3 enforcement, for example, "did you find any fingerprints at
4 the One Stop? Did you find any fingerprints on the gun
5 that --

6 THE COURT: I'm not going to get into telling you
7 in advance what questions you cannot ask.

8 MR. FREEMAN: The only reason I ask that, Your
9 Honor, is, as you know, there is other incidents. The
10 solicitor's office -- excuse me, from SLED, or whomever,
11 have made other analyses of the gun from other incidents
12 where they were shootings. I do not believe that my
13 questioning asking the question "you did not find any
14 fingerprints on the gun that matched any fingerprints at the
15 store" opens the door to any of those other cases.

16 I believe the solicitor takes the opposite
17 position that "if you ask that, I can say well, didn't you
18 find DNA on the gun that match the shooting done with that
19 gun?" And, of course, that defeats my whole purpose of
20 screening the jury from these other charges.

21 MR. BRACKETT: Well, it's a crucial piece of
22 information.

23 THE COURT: One thing that we know for sure. You
24 have correctly identified a minefield that you better be
25 careful when you tread through, because the point that the

1 solicitor is trying to make is that that was his gun.

2 MR. FREEMAN: I understand that, Your Honor.

3 THE COURT: And if you -- to the extent you deny
4 it was his gun, and perhaps even if you don't deny it was
5 his gun, the solicitor is entitled to prove it was his gun,
6 and the other incidents are possible ways in which the
7 solicitor can prove it was his gun.

8 MR. BRACKETT: Yes, sir, and the police had to
9 make a decision. They had to forego fingerprint testing
10 because it could damage the DNA evidence that was s on the
11 gun, which included --

12 THE COURT: Did they get DNA evidence?

13 MR. BRACKETT: They did.

14 THE COURT: Of his?

15 MR. BRACKETT: No, sir, the victim that he shot in
16 the last incident, he shot in the head at point blank range
17 and blood from that victim was found on the gun.

18 THE COURT: Okay.

19 MR. BRACKETT: The police had to make a choice to
20 gather that --

21 THE COURT: Let me ask, the same gun?

22 MR. BRACKETT: Yes, sir.

23 THE COURT: So what's the -- so what's the -- so

24 that raises the possibility that you might try to prove it
25 was his gun by proving that he's the one who committed that

1 shooting.

2 MR. BRACKETT: Well, the problem becomes, and this
3 is the problem identified to Mr. Freeman, if he raises the
4 inference that there was a shoddy investigation because the
5 police did not fingerprint the gun, then I need to explain
6 why they didn't fingerprint the gun.

7 THE COURT: Well, I realize that, but I'm asking
8 you, do you have independent objective evidence that he's
9 the one who committed the shooting that left the victim's
10 DNA on the gun?

11 MR. BRACKETT: We have -- we have evidence that
12 could connect him to that, yes, sir, we do.

13 THE COURT: Well, I mean, I don't know what you're
14 planning to do, but --

15 MR. FREEMAN: Your Honor, it --

16 THE COURT: I don't even know that that -- I think
17 that door is actually already opened. That door doesn't
18 have to be opened. If he -- if he -- if it is an issue in
19 this case -- well, is it an issue in this case --

20 MR. FREEMAN: It would be --

21 THE COURT: -- as to what gun it was?

22 MR. FREEMAN: It would be my position that unless
23 and until the defendant chooses to testify in the trial in
24 chief and puts it directly at issue, it is not an issue.

25 The fact that I'm allowed to ask, first of all,

1 the police did you do A, B and C I don't think makes it an
2 issue. It simply makes it an evidentiary matter that the
3 jury can consider.

4 THE COURT: You said that you are going to ask
5 questions about the gun.

6 MR. FREEMAN: I believe I would ask, and I don't
7 know until I hear the testimony, "officer, for example, did
8 you take fingerprints at this address?"

9 If they say yes, I can say and then at a later
10 point when they try to introduce the evidence that was taken
11 from where Mr. Watts was staying, "did you find any
12 fingerprints on any of those items?" And that would of
13 necessity include the gun. And based on the solicitor's
14 response, and I anticipate the answer to that question --

15 THE COURT: We are going to end this discussion
16 now, but if you ask him why they didn't fingerprint the
17 gun --

18 MR. FREEMAN: No, my question was not why you
19 didn't fingerprint the gun. "Did you find any fingerprints
20 on the gun that matched fingerprints at this store?" If he
21 says no, I don't intend --

22 THE COURT: The gun -- then he's got to explain
23 when they recovered the gun. And you putting them in a
24 position of having to make that explanation, which would be
25 "we recovered it in connection with a shooting that happened

1 30 days later."

2 MR. FREEMAN: Actually they could simply say "we
3 recovered it at the time we were interrogating him."

4 THE COURT: Well, you ask him a question. They
5 don't answer the question for your convenience. They answer
6 the question for their own convenience. So I don't -- I
7 don't know of anyway that I can --

8 As far as the gun, if you bring up the specter of
9 the gun and why it wasn't fingerprinted, then you are
10 opening doors.

11 As far as the investigation inside this particular
12 store and whether or not they did fingerprinting, I don't
13 know enough about all the other incidents at this point to
14 be able to warn y'all on what other doors you might be
15 opening.

16 MR. FREEMAN: Your Honor, then in that case I
17 would reserve that objection I guess until the appropriate
18 time, but --

19 THE COURT: But it's not objection. You are
20 trying to get guidance on what you can and can't ask.

21 MR. FREEMAN: It's -- let me rephrase it then,
22 Your Honor. I believe that the solicitor's position, number
23 one, is extraordinarily prejudicial to my client and that I
24 should be allowed to ask the questions in that innocuous way
25 and not pursue it beyond that and that that does not open

1 the door to any other incidents to simply say "you did not
2 find evidence at scene A and scene B that matched and then
3 move on." That's it. I do not -- it would be my position
4 that does not open the door. And obviously this is a huge
5 door and that's why I wanted clarification before we get to
6 that point in the trial.

7 MR. FREEMAN: And if the court's position is that
8 opens the door, then I probably will not ask that question.

9 THE COURT: I -- I want the record to be very
10 clear about what's going on right now. I'm not taking a
11 position. It's not my job to take a position. When a
12 controversy arises, I resolve the controversy.

13 You indicated that you want some guidance on what
14 questions that you can ask without opening doors. The
15 solicitor says if you go there, he's going to take the
16 position that you opened the door. I don't know what my
17 answer will be and I don't know how I can give you any more
18 clear guidance than that, because I don't --

19 And I have said this. As far as the gun, if you
20 start asking about why there is no fingerprinting of the
21 gun, then I think you are opening some doors.

22 As far as other things, tell me specifically what
23 you want to do.

24 MR. FREEMAN: The question would be "did you find
25 any fingerprints on the items that you seized from Mr.

1 Watts' residence that matched fingerprints that you may or
2 may not have found at One Stop?"

3 THE COURT: They didn't find any fingerprints at
4 One Stop, did they?

5 MR. FREEMAN: I understand that, yes, sir, and
6 then again that's all intended to ask along that line. It
7 would be my position that does not open the door to anything
8 else.

9 THE COURT: Well, if your question is is whether
10 or not they found anything at Watts' house that matched
11 fingerprints at One Stop, when you know they didn't find any
12 fingerprints at One Stop, you have asked a useless question
13 that does nothing but create problems for yourself, because
14 you know the answer to that question is going to be no. And
15 yet you have raised the question asking for an explanation
16 of what they found at Watts' house.

17 MR. FREEMAN: Yes, sir.

18 Your Honor, we also had some items that the
19 solicitor wanted to be introduced into evidence.

20 THE COURT: But I'm not ruling at all. I'm not
21 telling you --

22 MR. FREEMAN: I understand.

23 THE COURT: -- you can or can't do anything.

24 MR. FREEMAN: Yes, sir, I understand.

25 We also have some other evidentiary matters

1 relating to the newspaper clipping and some other photos.

2 MR. BRACKETT: This next witness will come up in
3 the next round, so I feel like we can either take a break
4 before then or we can try to work it out now, but my concern
5 obviously is the probative value of this identification of
6 the defendant by Ms. Hicks, she's seated back there when she
7 testified they saw this in the newspaper, is enhanced by the
8 fact that this article, State's Exhibit 11-A, does not
9 reference the One Stop robbery. In other words, her
10 attention was not called to the photograph because this
11 article said he's the suspect in the One Stop robbery. But
12 if the jury only sees this, then they could rightly deduce
13 that, of course, she made the identification.

14 THE COURT: I understand that, so what do you
15 propose to do?

16 MR. BRACKETT: That I would like to have Detective
17 Willie Burris testify that she -- at the point in time he
18 indicates that he received a phone call from the victim,
19 Annette Hicks, in reference to her identifying the defendant
20 who robbed her from the photograph in this newspaper, that
21 he would be asked if there is -- "what was the significance
22 of that to you," that he be allowed to say as a way to try
23 to -- our best to avoid the issue, but still get the value
24 of the State, that he be allowed to say that that was
25 particularly significant, because that article was not about

1 her robbery in any way, shape or form. It didn't reference
2 her robbery. So that we are allowed to get into the fact
3 that her robbery was not mentioned in there, so that we get
4 the value of it without specifically saying what the article
5 was about.

6 THE COURT: Mr. Freeman?

7 MR. FREEMAN: This is simply a converse. The
8 solicitor is asking you for guidance on what he intends to
9 ask.

10 I will say I intend to object to that. I believe
11 Exhibit 11 should be introduced and given to the jury, not
12 Exhibit 11-A, which is the full article.

13 I believe the court can give a curative
14 instruction in your instruction at the end about redaction
15 of the statement. It's obvious that something was cut out
16 of that, there is no doubt, and that's fine. That's the way
17 it has to be.

18 If they want to ask her "you just saw -- which
19 they have already done, "you saw it if the paper?

20 "Yes."

21 I don't -- everything else I see is, A, not
22 relevant; and, B, clearly the prejudicial value outweighs
23 any potential probative value.

24 The solicitor is trying to make it clear to the
25 jury, without directly making it clear, that something else

1 was going on. There is a reason that his name was above the
2 fold on the headline of the paper that day, and it's not
3 because he won the lottery. And the part I'm willing to let
4 in says suspect named.

5 THE COURT: Well, the point of the evidence that
6 the State is saying they are going to offer is that the
7 newspaper article had nothing in it about the One Stop
8 robbery. And the probative value of that is primarily that
9 despite the article having nothing in it about the One Stop
10 robbery, the victim of the One Stop robbery was able to
11 identify the perpetrator by seeing the photograph in the
12 picture. And the inference that the State hopes to have
13 drawn from that, of course, is that that's the person who
14 did it; she made that determination, based upon her
15 recollection of what she saw at the store that day and not
16 based on anything that she read in the article.

17 So you are asking me to restrict this under Rule
18 403, so that's the probative value side of the weighing now.

19 The unfair prejudice side of it clearly is the
20 extent to which he was involved in other incidents.

21 Now, if we just let the newspaper article in,
22 which would accomplish everything that the State wants to
23 accomplish, it would significantly increase the unfair
24 prejudice, because the other incidents would also clearly be
25 in.

1 MR. FREEMAN: Yes, sir.

2 THE COURT: So what we are trying to do is find a
3 way to allow the State to introduce the evidence that has
4 the probative value that I just described without increasing
5 the unfair prejudice of it to the defendant.

6 MR. FREEMAN: Your Honor, if I could offer a
7 suggestion?

8 THE COURT: Well, I'm not finished.

9 MR. FREEMAN: Sorry.

10 THE COURT: And so what the State is saying is
11 that they will -- they will frame their questions in such a
12 way that no mention is made of these other incidents, but
13 simply reference is made to the fact that the newspaper
14 article did not mention the One Stop robbery.

15 And so your response is well, that's fine, but
16 it's going to be clear to the jury that the article was
17 about something. And the article has the word suspect in
18 it, and so he's a suspect, they are going to infer in
19 something other than the One Stop robbery.

20 And I will concede, I mean, that's -- it's fairly
21 easy to see that that has the potential for unfair prejudice
22 to your client. The question then is how do I handle that
23 in such a way that the unfair prejudice is minimized. So
24 there is several options.

25 You haven't introduced the one that you have in

1 your hand there yet, right?

2 MR. BRACKETT: I haven't published.

3 MR. FREEMAN: It's been introduced.

4 MR. BRACKETT: This has been introduced, but it
5 has not been published, but I would a gladly, you know --

6 THE COURT: Well, there is the one option that you
7 could you do is you could say there was an article in the
8 newspaper and not put that portion of the title in it that
9 has suspect in it, but leave -- just introduce the
10 photograph. You could have the witness described when it
11 was in the newspaper, and then you could have the witness
12 describe the fact that the article associated with that
13 picture had no reference whatsoever to the One Stop robbery.
14 And that would largely -- it's still not going to completely
15 eliminate the possibility the jury would infer that there
16 are other incidents, but it gets pretty close to it.

17 MR. FREEMAN: Yes, sir, and that was what I was
18 going to suggest, that we could further redact it and just
19 take out suspect named, so it would have the date it was
20 published, obviously the heading of the paper, and the
21 defendant named. And, again, I'll -- that would be 11, if
22 you want. I would be glad to hand that one up and I would
23 propose for the record just to block out the part that I had
24 agreed to allow in, suspect name.

25 MR. BRACKETT: That suits the State?

1 THE COURT: All right.

2 MR. FREEMAN: And, again, I would request at the
3 appropriate time the charge on redaction.

4 THE COURT: The charge on redaction?

5 MR. FREEMAN: In your charges to the jury at the
6 end, some -- the State also, I believe, is going to redact
7 his statement as well.

8 MR. BRACKETT: We have a proposed charge.

9 MR. FREEMAN: Proposed charge.

10 MR. BRACKETT: Saying they are not to infer
11 anything from the fact that things have been deleted from
12 this article or the confession that we ultimately seek to
13 introduce.

14 THE COURT: All right.

15 MR. FREEMAN: And that will cover that picture as
16 well, and you can just say some items were redacted.

17 THE COURT: All right. Why don't you go ahead and
18 give me a copy of that. I might just give that charge when
19 the evidence is introduced.

20 MR. FREEMAN: Your Honor, if I could I'm going to
21 approach and I'll hand you what was provided to me by the
22 State yesterday. This specifically addressed the
23 defendant's statement. I think could you modify that to
24 just cover evidence in general.

25 THE COURT: Okay. Bring in the jury, please.

1 (The following takes place in the presence of the
2 jury panel)

3 MR. THOMPSON: If it please the court, Your Honor,
4 the State would call officer Glenda Oliver to the stand.

5 OFFICER GLENDA OLIVER, having been first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. THOMPSON:

8 Q. Officer Oliver, would you give your full name for the
9 court, please?

10 A. Glenda Faye Oliver.

11 Q. And, if you would, tell me where you work?

12 A. Rock Hill Police Department.

13 Q. How long have you worked with the Rock Hill Police
14 Department?

15 A. A little over 13 and a half years.

16 Q. All right. And what are your duties at the Rock Hill
17 Police Department?

18 A. Currently I'm assigned to the patrol division as a
19 patrol officer.

20 Q. All right. And what is your rank in the department
21 with the Rock Hill Police Department?

22 A. Master Police Officer II.

23 Q. Can you tell me on this particular night, January 20th
24 of this year, were you working that night as an officer with
25 the Rock Hill Police Department?

1 A. Yes, sir.

2 Q. And did you receive a call to go to the Exxon One Stop
3 on West Main Street?

4 A. Yes, sir.

5 Q. Can you tell me where were you when you received that
6 call?

7 A. I was on routine patrol on Heckle Boulevard approaching
8 West Main, between Tice and Forest.

9 Q. Not far from the location when you received the call?

10 A. Yes, sir.

11 Q. And can you tell me around what time was it that you
12 got the call?

13 A. The call came in around 10:20.

14 Q. Okay. And how fast were you able to arrive on the
15 scene?

16 A. Pretty fast. I was going lights and -- sirens and blue
17 lights, but I went to the wrong store initially. I went
18 past the One Stop and I went down to the BP.

19 Q. Okay. Was there some confusion on the radio as to
20 where you were supposed to go at that time?

21 A. At the time they just gave me an address and I was
22 thinking the BP.

23 Q. And the BP is, what, that's about a quarter mile down
24 the road or so?

25 A. It's about a black down the road. It's right down on

1 the corner the Ross Road and West Main.

2 Q. Okay. How fast did you realize you were at the wrong
3 place?

4 A. As soon as I saw the lights off.

5 Q. Okay. What did you do at that point?

6 A. I made a U-turn in the road, cut the blue lights back
7 on, sirens, and took off back down to the One Stop.

8 Q. Okay. Were you the first officer to arrive at the
9 Exxon One Stop?

10 A. Yes, sir.

11 Q. What did you observe when you arrived?

12 A. I observed a white truck parked -- if you are facing
13 the store, it would be on the left-hand side by the door.
14 There was a second vehicle in the parking lot.

15 Q. Okay. And were those from some of the witnesses that
16 we saw today?

17 A. Yes, sir.

18 Q. And were there any other people, other than those
19 people that have been described as witnesses today?

20 A. No, sir.

21 Q. Okay. And when you get there, what's happening? You
22 go to the clerk first? Where do you go?

23 A. When I initially got on the scene, there was Jeannie
24 and Sommer was in the parking lot. And I directly told them
25 "I will be right back with y'all." I went inside, checked

1 on the clerk to make sure she was okay and started, you
2 know, talking to her trying to get the information to have
3 it dispatched.

4 Q. Okay. Now, going back to as you are driving to the
5 Exxon at that point --

6 A. Uh-huh.

7 Q. -- when you are actually coming towards it, I suppose
8 that you are coming, I guess, west on Main Street, is that
9 right?

10 A. Yes, sir.

11 Q. So you are heading out away from town at that time?

12 A. Yes, sir, away from Heckle Boulevard.

13 Q. Okay. And did you notice any vehicles as you were
14 coming in towards the Exxon?

15 A. Yes, sir, while I crossed over Herlong Avenue, I saw
16 headlights coming down the hill. I slowed down to check on
17 the vehicle. It was a white light color sedan, four-door
18 vehicle. It looked like a white older person driving. I
19 kept on going.

20 Q. That was back near where Heckle is, the Heckle
21 intersection?

22 A. No, sir, it was -- as you come down the hill between
23 The Crossing and Meadowlark, on that side of the road, it's
24 Herlong.

25 Q. So that vehicle was coming down the road?

1 A. It's coming down the hill.

2 Q. And did you see any other vehicles as you approached?

3 A. I saw a second vehicle between The Crossing and
4 Meadowlark.

5 Q. Okay.

6 A. In that straight away. It was a dark color SUV.

7 The supervisor came on the radio and said, you know,
8 pay attention to the vehicles in the area, at which time I
9 called out I passed a white four-door car. It wasn't the
10 vehicle or suspect, because it stated it was robbed by a
11 black male.

12 Q. Uh-huh.

13 A. You could tell it was a white person driving the
14 vehicle. Disregard that vehicle.

15 The second one was an SUV type vehicle. I said that
16 the only other vehicle I passed was a dark colored SUV,
17 possibly a plumb, wine colored vehicle with dark tinted
18 windows. I could not see in to get a description of the
19 driver or occupant.

20 Q. All right. But did you have any idea what vehicle that
21 you were actually looking for at that point in time?

22 A. No, sir.

23 Q. All right. When did you learn of the vehicle that you
24 were looking for?

25 A. When I got on the scene, after I spoke with the clerk,

1 I spoke with Jeannie and Sommer and the two twins.

2 Q. And they were able to tell you at that point about the
3 vehicle that you were looking for?

4 A. When they said they saw a purple, maroon colored Dodge
5 Durango come up the side street, I'm like, well, I passed
6 it.

7 Q. Now, as you are there at the scene, other officers then
8 arrive, is that correct?

9 A. Yes, sir.

10 Q. And while you were there, is it part of your duty then
11 to make sure that it's a somewhat secured crime scene at
12 that point?

13 A. Yes, sir.

14 Q. All right. And did you do that?

15 A. Yes, sir.

16 Q. And how did you do that?

17 A. While I got out of my car, I told them just stay there
18 in their vehicles, not to touch anything.

19 As I approached the door, I -- we are always taught not
20 to grab the door. I actually took my pen out and used the
21 tip of pen to open the door.

22 Q. Okay.

23 A. I went inside the store, stood at the counter, spoke
24 with the clerk. She was initially on the telephone when I
25 was having to tell her to get off the phone to speak with

1 me --

2 Q. Okay.

3 A. -- to get the information.

4 Q. Okay. And did you ultimately, while you were there,
5 were you able to review the videotape of the event as well?

6 A. Yes, sir.

7 Q. And can you tell me, were you in the courtroom when
8 that videotape was played just the other day?

9 A. Yes.

10 Q. And did that videotape fairly and accurately depict
11 what you saw that night when you observed it?

12 A. Yes, sir.

13 Q. And what, if anything, did you notice at that time on
14 the video, as far as -- as far as the crime scene goes?

15 A. As far as the crime scene goes, myself and my sergeant,
16 Sergeant Smothers, was on the scene reviewing the video. We
17 watched the video and watched from the time he entered the
18 store to the time the person left. It did not indicate that
19 he made contact with the counter or anything else and there
20 was no point in calling crime scene out.

21 Q. Okay. And ultimately were you able to get a copy of
22 the video that night, or was that obtained later?

23 A. We couldn't get a copy of the video that night. The
24 only thing we could get that night was a still photo of the
25 suspect.

1 Q. All right. And was that the photo of the suspect's
2 face that we saw earlier as well?

3 A. Yes, sir.

4 Q. Now, I'm going to show you a number of photographs.
5 Are you familiar with -- obviously you have worked for Rock
6 Hill for a long time. Are you very familiar with the Exxon
7 at that spot?

8 A. Yes.

9 Q. I have already shown you these to the defense. These
10 would be State's Exhibit No. 12 through 22.

11 If you could take a moment and just look over those.

12 A. (Witness reviewing photographs)

13 Yes, sir.

14 Q. All right. Specifically on 12 and 13, are those aerial
15 photographs? Are they --

16 A. Yes, sir.

17 Q. -- from above?

18 A. Yes.

19 Q. Do they fairly and accurately depict the location scene
20 of the One Stop Exxon and what's around it, as far as
21 streets and things like that, parking lots?

22 A. Yes, sir.

23 Q. While it might not have been taken at that particular
24 time, do those still assist you in being able to describe
25 what's in that area and the streets around it?

1 A. Yes, sir.

2 MR. THOMPSON: I would ask to enter those into
3 evidence at this time, Your Honor, Exhibits 12 and 13, the
4 aerial photographs.

5 MR. FREEMAN: Without objection.

6 THE COURT: They are admitted.

7 BY MR. THOMPSON:

8 Q. Now, going to the remainder, 14 through 22, those
9 photographs, do those also fairly and accurately depict the
10 scene of the One Stop Exxon or what it looks like there?

11 A. Yes, sir.

12 Q. And while they may not have been taken on that
13 particular day, they still depict kind of the landscape and
14 how the building looked and where the pumps are and that
15 sort of thing, where the car wash is, that sort of thing?

16 A. Yes.

17 Q. And would they also assist you in showing the jury
18 where the location of the people were and the parts of the
19 scene for you?

20 A. Yes, sir.

21 MR. THOMPSON: I would ask to enter those into
22 evidence at this time as well.

23 MR. FREEMAN: Your Honor, I would just want to ask
24 her a few questions on those specifically.

25 THE COURT: All right.

1 VOIR DIRE EXAMINATION BY MR. FREEMAN:

2 Q. Officer, you didn't take those pictures, right?

3 A. No, sir.

4 Q. And those pictures, the smaller ones, are clearly taken
5 during the daytime?

6 A. Yes, sir.

7 Q. But as best you can tell, in response to the
8 solicitor's question, pretty much shows the buildings and
9 the same position they were January 20th?

10 A. Yes, sir.

11 Q. And you are familiar with that area? Between whatever
12 date those were taken and January 20th, no building were
13 moved, nothing major has been changed?

14 A. No, sir.

15 Q. All right.

16 MR. FREEMAN: Nothing. That's fine, Your Honor.

17 No objection.

18 THE COURT: They are admitted.

19 MR. THOMPSON: If we could put up State's Exhibit
20 No. 13.

21 And if it please the court, I would ask the
22 officer to step down so that she can identify some of these
23 photographs.

24 ~~(Witness off the witness stand).~~

25

1 CONT'D DIRECT EXAMINATION BY MR. THOMPSON:

2 Q. All right. If you could point out on that photograph
3 where the One Stop is.

4 A. The One Stop is right there.

5 Q. Okay. Can you point out where the pumps are in the
6 front of the station?

7 A. This would be the only -- this area right here is the
8 One Stop. This store itself and the only area right here is
9 where the gas pumps are located.

10 Q. All right. And what is the highway again in front of
11 the One Stop?

12 A. This is Highway 5, West Main Street.

13 Q. All right. And what is the road that goes in there
14 right next to the One Stop?

15 A. This road right here going down is Meadowlark.

16 Q. All right. And does that abut right against the
17 property of One Stop?

18 A. Yes, sir.

19 Q. Is the parking lot, as a matter of fact, is that
20 connected with that road on that side?

21 A. Yes, sir, there is a driveway right here for the store,
22 and there is one right in this area for the car wash area.

23 Q. All right. Can you also access the pumps by coming
24 straight off of West Main street?

25 A. Yes, sir, there is a driveway in this area and also in

1 this area.

2 Q. Can you show us where the car wash area has been
3 described?

4 A. That's the car wash area right here. And then you
5 have a -- those little dots right there would be the vacuum
6 cleaner area.

7 Q. Okay. And if we could then go to State's Exhibit No.
8 12.

9 I believe is that a blowup of the State's Exhibit 13?

10 A. Yes, sir.

11 Q. A little closer?

12 A. Yes.

13 Q. Now, on that again can you point out the entrances and
14 exits from the gas station and car wash to Meadowlark Drive?

15 A. This is the first one right here when you turn off
16 Highway 5 and Meadowlark, going from the gas station area.

17 This is going into the car wash area off of Meadowlark.

18 Q. Okay. And now looking at it from above, of course, we
19 are looking at a flat picture, can you tell me what kind of
20 the land layout is on that? Is it level? Is it slanted in
21 any way?

22 A. It slants downward, being this area here is higher than
23 the back side near the car wash.

24 Q. And, as a matter of fact, is Highway 5 actually higher
25 than where the pumps are?

1 A. Yes, sir.

2 Q. So you basically would have to drive down into the
3 station?

4 A. Yes.

5 Q. Now, as well, while you are here, if we could go over
6 some of the other photographs of the station itself.

7 State's Exhibit No. 18. Looking at that photograph,
8 can you tell me what angle we are looking at on that?

9 A. Okay. This angle is as you are facing the store, the
10 driveway to your left, that angle.

11 Q. So if we are facing the store, these would be the pumps
12 on the far left of the store on this case?

13 A. It would be --

14 Q. No. 18?

15 A. This driveway area here, looking probably in this area
16 here at the store.

17 Q. Okay. And when you pulled in, is this where you pulled
18 in?

19 A. Yes, sir, because, like I said, I went past the Exxon,
20 went down to the BP and turned around. And when I came
21 back, I came in the drive and pulled up right in this area
22 here.

23 Q. Can you describe the lighting in this area at the time
24 when you come in at night?

25 A. It's very well lit. The parking lot is lit up. It's a

1 clear view.

2 Q. And you are able to see in at that time what's going
3 on?

4 A. Yes, sir.

5 Q. If we go to State's Exhibit No. 19, does that basically
6 from the same angle just kind of where the pumps are looking
7 over?

8 A. Yes, sir, it's close here.

9 Q. I guess that would be from what, about the far left
10 pump from at that area?

11 A. Yes.

12 Q. Now, is that the door that was open that night?

13 A. Yes, sir.

14 Q. Where is the door that was locked that they were
15 referring to?

16 A. That would be this door right here.

17 Q. So just on the other side of this door?

18 A. Yes, sir.

19 Q. And we will go to now to what's State's Exhibit No. 20.

20 A. That being the door right there.

21 Q. Okay. That was the door that was locked?

22 A. Yes, sir.

23 Q. And is this basically viewing it from the right side
24 towards the building?

25 A. Yes, sir, on the Meadowlark side looking in.

1 Q. And then we will also look at State's Exhibit -- can
2 you point to Meadowlark, in the direction we would be
3 looking in?

4 A. In this direction here.

5 Q. Okay. And then from State's Exhibit 21 -- now, there's
6 the pizza place everyone talks about over on the side?

7 A. Yes, sir.

8 Q. And was it actually closed that night?

9 A. Yes, sir.

10 Q. Do you recall was that pizza place ever actually opened
11 at that point in time, January 20th of this year?

12 A. At that point I think it was going -- they was actually
13 renovating it, because Buck's Pizza went out of business and
14 a new pizza company was coming in.

15 Q. So that actually wasn't even open for business at all?

16 A. No, sir.

17 Q. Was anyone there that night when you were there?

18 A. No, sir.

19 Q. Any vehicles parked there in the front of it that
20 night?

21 A. No, sir.

22 Q. All right. Now, we see there a corner all the way to
23 the right. When you talked to the witnesses, did they
24 ~~mention anything about being able to see that corner or~~
25 seeing anyone at that corner?

1 A. They stated when the person came around the front,
2 walked down the sidewalk, this here, around the corner of
3 the building and back in this area. It is dark right in
4 there.

5 Q. Okay. So it's light right up in the front, but right
6 around that corner it turns dark?

7 A. Yes, sir.

8 Q. Now, how about the lighting down in the --
9 Before we do that, let me go to State's Exhibit 14.

10 Can you tell me where we are in this particular
11 picture?

12 A. This is actually Highway 5 running across, and this is
13 Meadowlark looking down, back towards Highway 5.

14 Q. And on the right-hand side of that entrance there,
15 where was that?

16 A. That's the first driveway to the One Stop.

17 Q. Okay. Now, going back, if you could point up where we
18 were on this, looking?

19 A. It should be in this area right here looking up towards
20 Highway 5.

21 Q. Okay. And at the intersection of Highway 5 there and
22 Meadowlark, is there a stop light there?

23 A. There is a stop light.

24 Q. Okay. And was it operational that night?

25 A. Yes, sir.

1 Q. And I think we just -- State's Exhibit 22, if we could
2 go to it.

3 If you could tell me what angle this is what we are
4 looking at?

5 A. This road right here, being Highway 5, that runs down.
6 This being Meadowlark. And you would be standing on the
7 east side of the roadway looking across.

8 Q. Okay. Looking across.

9 Now, I notice a light in that picture. A picture of a
10 pole light, telephone pole light?

11 A. Yes, sir.

12 Q. Was that operational that night?

13 A. Yes.

14 Q. Is this intersection fairly well lit?

15 A. Yes, sir.

16 Q. Now, if we could, we will go to State's Exhibit No. 17.
17 Can you tell me where this is?

18 A. That's going to be just -- the corner of the business
19 should be right in this area, and this is the tree on the
20 back side. If you are facing it, it would be on the right
21 rear corner looking down towards the car wash area.

22 Q. And if we could go back briefly to State's Exhibit 21.

23 On that right side there, is that the side that you are
24 talking about, right around that corner?

25 A. Yes, sir, that being the tree.

1 Q. As a matter of fact, that's the tree right there?

2 A. Yes.

3 Q. If we could go back again then to State's Exhibit 17.

4 All right. Now, this photograph is going down to the
5 car wash. That is the dark area that you spoke of, this
6 little area right here is kind of dark at night?

7 A. Yes, sir.

8 Q. Now, as far as down at the actual car wash, is that lit
9 up a little more than that?

10 A. Yes, sir.

11 Q. So you would actually be able to see some down in the
12 car wash?

13 A. Yes, because these pole lights here, you have two --
14 three right here that you can view, as well as the lights by
15 the -- it's pretty well lit in that area also.

16 Q. Okay. Now, can tell me where -- in this particular
17 picture, where is Meadowlark, the road Meadowlark, compared
18 to this picture?

19 A. Right here is a curve to Meadowlark. Meadowlark would
20 run along here.

21 Q. Along the right side of this picture?

22 A. Yes, sir, and that being the curve, and it curves
23 around.

24 Q. Okay. Now, from your experience, where those trees are
25 at the end of -- very far to the right side towards

1 Meadowlark, can you describe to me what the road is like on
2 the other side of those trees?

3 A. In this area here you have the roadway here. And in
4 the curve you actually pass these trees right in -- you just
5 follow this slope here down. There is actually a little
6 spot down in that area that you can pull off and be out of
7 the roadway itself, and that area right in there is fairly
8 dark at night.

9 Q. Okay.

10 A. You know, the trees --

11 Q. The trees kind of block where those lights are?

12 A. Yes, sir.

13 Q. So there is like a little pull-off on the other side of
14 those trees that we can't see from this photograph?

15 A. No, if you go back to the aerial view, you can see a
16 little bit.

17 Q. Okay. Right.

18 A. Well, right in that area right there. There is a
19 little grassy area you can pull off.

20 Q. And would that be visible from the store itself, if you
21 were looking back from up in the store?

22 A. No, because of the trees and it dips in. You can't see
23 it from the store.

24 Q. Okay. Thank you. Go ahead and have a seat.

25 (Witness back on the witness stand)

1 BY MR. THOMPSON:

2 Q. All right. Now, while you were there during that
3 period of time, is there -- did you then instruct the
4 witnesses to go to the law center?

5 A. I was told that Detective Burris was at the law center
6 waiting on all the witnesses and for them to, you know, go
7 down to the law center to do a statement.

8 Q. So did you send them then to the law center to do that?

9 A. Yes, sir.

10 Q. And as well as during the time that you were there, did
11 any media show up at all to cover any of this or --

12 A. No.

13 Q. -- to interview anybody or anything like that?

14 A. No, sir.

15 Q. Now, do you recall what time that you -- how long you
16 would have stayed before you left the scene and cleared it?

17 A. We was out there for awhile --

18 Q. Okay.

19 A. -- because we waiting on management from the store to
20 come out to give us access to the video.

21 Q. Okay. Thank you.

22 MR. THOMPSON: No further questions.

23 CROSS EXAMINATION BY MR. FREEMAN:

24 Q. Officer Oliver --

25 A. Yes, sir.

1 Q. -- you said that you had been a patrol officer about 13
2 and a half years with Rock Hill?

3 A. I have been employed, yes.

4 Q. Pretty much on that side of town?

5 A. No, sir.

6 Q. Okay. Well, back at the first of the year, were you on
7 that side of town?

8 A. Yes, sir.

9 Q. Now, you indicated when you got the call that night you
10 actually went past the address to the BP station?

11 A. Yes, sir.

12 Q. How far was it, or is it, from maybe the front driveway
13 of One Stop to the BP, to the next corner? Do you know?

14 A. I mean, if you are standing on the sidewalk, you see
15 down the road to the corner. As far as mileage, no, sir.

16 Q. And that corner with the BP is lit as well?

17 A. If they are open, yes.

18 Q. Would not the lights from the Burger King next door be
19 on? Do you remember if they were on that evening?

20 A. Burger King?

21 Q. Burger King right across from the BP.

22 A. I wasn't paying attention to the Burger King, to be
23 honest with you. I was focusing on getting to the store.

24 And as soon as I pull pulled down to the intersection, I
25 realized that the lights was off. I didn't see any cars in

1 the parking lot. I'm like crap, the wrong store.

2 Q. So you went up to the right store.

3 So you had to turn around?

4 A. I made a U-turn in the road and turned around.

5 Q. Now, you indicated something about the video. In
6 response to the solicitor's question, the video depicted
7 what you saw?

8 A. (Shaking head yes)

9 Q. In fact, you didn't see anybody -- you didn't actually
10 see the person who robbed this place?

11 A. As far as --

12 Q. You didn't see the person who robbed this place rob
13 this place?

14 A. Was I there --

15 Q. Yes.

16 A. -- to see it, no.

17 Q. So the video didn't actually depict anything you saw.
18 It depicted something that the camera saw.

19 A. What was on the video was what I saw.

20 Q. Now, the pictures that show us where the store is in
21 relation to the gas station and all that, they depict what
22 you saw that evening?

23 A. I'm sorry?

24 Q. There is -- in these pictures, they show where the
25 buildings are, the pictures that you just went through with

1 the solicitor?

2 A. Yes, sir.

3 Q. How far is it, if you can tell us -- and let me refer
4 you to -- I'm going to call it the big -- the big blowup,
5 which is State's 13.

6 MR. FREEMAN: I'm sorry, Your Honor, may I
7 approach the witness?

8 BY MR. FREEMAN:

9 Q. If you would, and we can put it back up if you want,
10 how far is it from, let's say, Highway 5, or this white
11 line, to the tree line at the back behind the car wash?

12 A. I'm not sure.

13 Q. Okay. Could you walk it?

14 A. Yeah.

15 Q. Okay. But you can't tell us if it's 100 feet, 100
16 yards, anything? Could you give us a guesstimate?

17 A. (No response)

18 Q. If you can't, you can't.

19 A. If you are asking for a guesstimation, I would say
20 probably if you take the corner of this building on this
21 side, going down, I would say past where it cuts back.

22 Q. Okay. So you are comparing it to the building we are
23 in, the Moss Justice Center?

24 A. Yes.

25 Q. But you can't give me a distance in a measurement term,

1 that being feet, or yards, or anything of that nature?

2 A. No.

3 Q. And also I want to refer you to some of the pictures we
4 just saw --

5 A. Yes.

6 Q. -- blown up on the screen.

7 Now, again, you didn't take the pictures?

8 A. No, sir.

9 Q. Would it be a fair statement to say that if I took
10 State's Exhibit what appears to be 18 and 19 --

11 I'm going to hand you 18 first --

12 A. Okay.

13 Q. -- and then 19. Just hold in it your other hand.

14 A. Uh-huh.

15 Q. Does it look like from 18 to 19, whoever took the
16 picture stepped closer?

17 A. Yeah.

18 Q. And, in fact, in 18, I can see all the pumps, right?

19 The first one I handed you, I can see all the pumps and most
20 of the front of the store?

21 A. I believe there is another set over here that's cut
22 off.

23 Q. Okay.

24 A. But, yeah, majority of the pumps.

25 Q. And then as you close in in picture 19, you can't

1 actually see anything past this front corner of the store,
2 can you?

3 A. (No response)

4 Q. Take a look at that, officer, what I will call the
5 right front corner where the second door was locked.

6 A. Unless you look through the window, because on the --
7 if you are facing the store on the right-hand side there,
8 halfway down the building is windows.

9 Q. Yes, ma'am.

10 A. And as far as --

11 Q. My question is, the person that took that picture could
12 not see around the corner of that building?

13 A. You can see as far as down past this area right here,
14 if you look through the windows.

15 Q. Yes, ma'am, but you would be looking through at least
16 two sets of glass, and it appears even in this picture there
17 is ads in the windows and things like that, does it not?

18 A. Yes, sir.

19 Q. So if I'm sitting here -- let's say this is one of the
20 left most pumps.

21 A. Uh-huh.

22 Q. Once a person turns this corner after what appears to
23 be two parking spaces length, I'm going to lose direct sight
24 of them? I'm going to be looking through at least two panes
25 of glass with apparently something in the window, probably

1 advertising something, is that a fair statement?

2 A. Yes, sir.

3 Q. So unless I physically move my location, I'm losing
4 sight at that corner? Not the back corner of the building.
5 The front corner.

6 A. (Shaking head yes)

7 Q. Let me refer you to the blowup, which is State's 12.
8 If we -- let me hold it in the perspective. If I'm at this
9 pump, once they step past this point, they are around the
10 first corner of the building from me, are they not, if I'm
11 right here? Not at the back in the other picture up at the
12 street, but right at the pumps.

13 A. If you are at this pump here, you can see right in
14 here.

15 Q. Just a little bit.

16 And then -- now, if I'm in a vehicle and I'm actually
17 up at the door, I mean, I can't see anywhere, once the
18 person steps around any corner, again, without looking
19 through glass?

20 A. Not when they go past that last window where the solid
21 wall is, the pizza place.

22 Q. Tell me about this side street, Meadowlark. You said
23 that you are familiar with that part of town?

24 A. Yes, sir.

25 Q. Is there a neighborhood down there?

1 A. Yes, sir.

2 Q. Lots of homes? A few homes? Dozen? Hundreds? It's
3 more than one neighborhood? Let me ask it that way.

4 A. There is numerous intersections, roads, back in there
5 that branches off.

6 Q. Again, let's say more than -- if I go back down
7 Meadowlark, within two blocks of the road is there more than
8 20 houses?

9 A. Staying on Meadowlark?

10 Q. Yes, ma'am, or taking off one of those first side turns
11 that you just talked about.

12 A. If you stay on Meadowlark, you probably have, yeah,
13 maybe -- probably 15 that runs up there.

14 Q. But there are several homes back in there --

15 A. Yes.

16 Q. -- and it can connect to some of those other
17 neighborhoods back in there?

18 A. I hadn't been all the way on the back side, because
19 once you go so far, it turns into county.

20 Q. And that would be the end of y'all's jurisdiction?

21 A. Yes.

22 Q. Now, you said that you were the first officer on the
23 scene that evening?

24 A. Yes, sir.

25 Q. And your primary concern was to get to the address and

1 sort of make sure everybody was okay?

2 A. And to get the information and broadcast it to the
3 other units.

4 Q. And you did that?

5 A. Yes, sir.

6 Q. When you got there, you determined no one was hurt?

7 A. Yes.

8 Q. No one had been shot?

9 A. No.

10 Q. No shots, in fact, were fired?

11 A. No.

12 Q. No one had been stabbed, or cut, or anything?

13 A. No.

14 Q. So you made the determination not to call out the
15 forensics team, I believe?

16 A. I did not.

17 Q. You didn't make that determination?

18 A. That's a supervisor call.

19 Q. So at some point a supervisor came out?

20 A. Yes.

21 Q. Were you present when this video was shown?

22 A. Yes.

23 Q. Was the supervisor also present?

24 A. Yes.

25 Q. And that was when you said I believe a management

1 person arrived?

2 A. Yes.

3 Q. Do you know how long that took to get there?

4 A. No, sir, we waited for a pretty good while.

5 Q. Did y'all tell all these people who you told to go to
6 give a statement, did you tell them how to get down to the
7 police station?

8 A. Well, I spoke with Jeannie and Sommer, because I have
9 dealt with Jeannie before, and they knew -- they knew where
10 the police department was.

11 Q. You gave -- or if not you gave them directions?

12 A. Yes. As far as the two twins, I had limited contact
13 with those guys.

14 Q. You weren't there when they gave the statement?

15 A. I'm sorry?

16 Q. You weren't present when any statements were given by
17 them?

18 A. No, sir.

19 Q. Now, let's talk about in the back of the station.

20 You said there is lights up front and there is a stop
21 light we saw that faces onto 5?

22 A. Uh-huh.

23 Q. Is that correct?

24 A. (Shaking head yes)

25 Q. In the back there is a lot less lights at the car wash.

1 Is that a true statement?

2 A. They have pole lights in the parking lot.

3 Q. But they don't have the number of lights that are up at
4 the street, because we have got a city -- apparently a city
5 street light, in addition to all the lights from the store?

6 A. Uh-huh. Yes, sir.

7 Q. And you said there is a little spot back here where if
8 I parked, I would not be -- should not be visible from the
9 front, is that correct?

10 A. Yes, sir.

11 Q. Did you go back there and see if there were any tire
12 tracks back there?

13 A. Yes, sir.

14 Q. Did you find tire tracks?

15 A. It was hard to tell. One thing, it was nighttime and
16 that area has grown up. It used to be dirt, gravel.

17 Q. Did you go back there the next morning when it was
18 light?

19 A. I rode through the next day when I came back on shift,
20 but the grass had grown up to the point you couldn't tell.

21 Q. Okay. And, in fact, if somebody, or something, were
22 parked inside one of these bays on the car wash, they would
23 be completely invisible? I mean, you can't see the brick
24 wall, can you?

25 A. Not looking at that angle, no, sir.

1 Q. You would actually have to walk all the way down here
2 to look in, would you not?

3 A. Come around Meadowlark.

4 Q. Or be driving around Meadowlark.

5 MR. FREEMAN: Beg court's indulgence just one
6 moment, please.

7 (Off the record)

8 (Back on the record)

9 BY MR. FREEMAN:

10 Q. If I could review those pictures one more time,
11 officer. I wanted to see if there was one other one I
12 wanted to go over with you.

13 Officer, just for the record then, these what I'm going
14 to show you is State's 20 and 21, both of these pictures
15 appear -- let me hand you both of these. Both of those
16 pictures appear to have been taken from the right side of
17 the store, is that correct?

18 A. Yes, sir.

19 Q. That's the door that was locked that evening?

20 A. Yes, sir.

21 Q. Nobody went into or out of that door, including you?

22 A. That's right.

23 Q. Did you try that door first?

24 A. No.

25 Q. So you went in the other door?

1 A. Yes, sir, because when I came back, I drove from the
2 opposite way. I cut down and parked right in this area
3 right here.

4 Q. I'm sorry, show us. So you actually parked on the
5 front left or the front right?

6 A. If you are facing the store, coming back down Highway 5
7 from Ross Road, I just cut down the first drive straight
8 down and stopped.

9 Q. Stopped at that second door, the one that was locked
10 then?

11 A. No.

12 Q. I'm trying -- where were you parked, officer? Just
13 show me.

14 A. You --

15 Q. Show me on the big blowup where you parked when you
16 were doing your investigation.

17 A. I was parked right in this area right here.

18 Q. Okay. But between the pumps and the door, let's say?

19 A. Yes, that was open.

20 Q. The door that was open?

21 A. Yes, sir.

22 Q. Did you ask them to open the other door for any reason?

23 Was that necessary?

24 A. No, sir.

25 Q. Okay. Thank you, officer.

1 MR. FREEMAN: I don't have any further questions
2 of this witness, Your Honor.

3 MR. THOMPSON: Nothing further, Your Honor.

4 THE COURT: You can step down, ma'am.

5 THE WITNESS: Thank you, sir.

6 MR. THOMPSON: I would ask that Officer Oliver be
7 excused.

8 MR. FREEMAN: No objection.

9 THE COURT: She can be excused.

10 THE COURT: Let me see you for a second, both of
11 you, please.

12 (Whereupon, the lawyers approached the bench for
13 an off-the-record discussion)

14 MR. THOMPSON: The State would call Detective
15 Willie Burris to the stand.

16 DETECTIVE WILLIE BURRIS, having been first duly
17 sworn, testified as follows:

18 (Redacted Version of the Herald Article, dated
19 2/18/08, marked as State's Exhibit No. 11-B for
20 identification)

21 DIRECT EXAMINATION BY MR. THOMPSON:

22 Q. Detective Burris, could you give your full name for the
23 court, please?

24 A. ~~William Burris.~~

25 Q. And where do you work?

1 A. Rock Hill Police Department.

2 Q. How long have you been there?

3 A. A little over 30 years.

4 Q. You have been there a good while at Rock Hill?

5 A. A good while.

6 Q. How long have you been a detective?

7 A. About 25 of those years.

8 Q. All right. And can you tell me, did you become
9 assigned to this particular case?

10 A. Yes, I did.

11 Q. And were you assigned to it that evening, when it
12 happened on the 20th of January?

13 A. I was.

14 Q. All right. How does that work? Are you actually at
15 the station at that time, or did you get called out?

16 A. I got called out.

17 Q. So is it kind of like an on-call system, where you got
18 called if you are the detective on duty at that time?

19 A. That's correct.

20 Q. Now, can you tell me, are you the case agent in this
21 case?

22 A. Yes.

23 Q. And can you explain that a little bit to me what a case
24 agent is?

25 A. A case agent takes charge of the investigation, sort

1 of. I'm responsible for making sure all the documents,
2 statements, and warrants get put in the file. Keep up with
3 the file throughout the investigation.

4 Q. You are not the guy who goes in and has to do
5 everything, but you have to make sure someone else is, at
6 least, is that correct?

7 A. That's correct.

8 Q. So you keep track of what other people are doing on the
9 case?

10 A. Yes.

11 Q. And kind of direct them where they need to go?

12 A. That's correct.

13 Q. Now, in your dealings that night, did you have them
14 bring people from -- witnesses from this crime in to be
15 interviewed?

16 A. Yes.

17 Q. All right. Did you actually interview some of them
18 yourself as well?

19 A. I interviewed some of them, and my partner, Detective
20 Phil Tripp, interviewed some.

21 Q. Okay. And did you do this fairly close to the time
22 that the robbery call happened?

23 A. Yes.

24 Q. Now, can you tell me, through your investigation were
25 you able to also obtain the video from the store ultimately

1 that depicts the robbery?

2 A. I did.

3 Q. And when you obtained that, did you make sure it got
4 placed into evidence at that time or kept with the file?

5 A. That's right.

6 Q. Okay. Now, at the point that this occurred, did you
7 actually have any suspect right on the day that this
8 occurred?

9 A. I did not.

10 Q. Did you have anyone in mind?

11 A. I did not.

12 Q. And as a matter of fact, in the two or three weeks that
13 followed did you have a suspect in this case?

14 A. Only on February the 22nd.

15 Q. February the -- I'm sorry, 22nd?

16 A. Yes.

17 Q. February the 18th?

18 A. February the 18th. I'm sorry, February the 18th.

19 Q. Okay. And that's when you first got a suspect in this
20 case?

21 A. That's right.

22 Q. And how was it that you got a suspect in this case that
23 day?

24 A. I got a call from Mrs. Hicks.

25 Q. The store clerk --

1 A. The store clerk at One Stop.

2 Q. Okay.

3 A. Said she had saw his photograph in an article in the
4 newspaper.

5 Q. And did she -- what did she tell you when she called to
6 say that?

7 A. She said "this is the man that robbed me. I'm sure."

8 Q. And were you able to see the paper that day on February
9 18th?

10 A. Right, I went and got a copy myself and I saw his
11 picture.

12 Q. And was this the Herald, the local paper?

13 A. The local Herald.

14 Q. Okay. And was a picture the defendant in that paper?

15 A. Yes.

16 Q. Now, the picture of the defendant in that paper, it
17 didn't have anything to do with this case, did it?

18 A. Not at all.

19 Q. All right. And so there was no suggestion, in other
20 words, in that article to her that he was a suspect?

21 A. That's right, he wasn't.

22 Q. Okay. So she basically made a cold call to you to let
23 you know that she had identified this person?

24 A. Yes.

25 Q. Did you make notes of that in the file?

1 A. Yes.

2 Q. And how did you make note of it?

3 A. We had supplementary to the original incident report
4 saying she had called me that day to tell me she had saw the
5 picture of the guy that robbed her.

6 Q. And can you tell me, if you would, look at State's
7 Exhibit 11-B, and is that a copy of the photograph that was
8 in the Herald that day?

9 A. That's right.

10 Q. And is that the photograph that she called to tell you
11 she identified the defendant off of?

12 A. Yes, it is.

13 Q. And does that photograph actually identify Phillip
14 Watts, Jr.?

15 A. It does.

16 Q. And is that a picture of the defendant here in the
17 courtroom?

18 A. It is.

19 Q. Now, as the case agent, are you also responsible to --
20 if information is going to be released to the media, are you
21 responsible for releasing that information?

22 A. More or less, yes.

23 Q. Okay. Would you have knowledge then of whether
24 information gets released on a case?

25 A. I would have.

1 Q. Is it the procedure of Rock Hill for anyone to be
2 releasing information, to go through case agent to do that?

3 A. Yes.

4 Q. Can you tell me, did you release any information
5 yourself about this case?

6 A. None whatsoever.

7 Q. All right. So was it ever released, the fact that the
8 suspect in this crime had had a blue hoodie with Gold Hill
9 written on it?

10 A. No, I didn't release anything to any media.

11 Q. I'm sorry, what was that?

12 A. I didn't.

13 Q. What's that?

14 A. I didn't release anything like that.

15 Q. Okay. So you didn't give that to any media outlet?

16 A. No.

17 Q. And was there any story run that included that in it
18 before the defendant's arrest?

19 A. It was not.

20 Q. Okay. Now, how about the purple or burgundy Dodge
21 Durango? Was there any information that you had received or
22 that you gave out regarding that to the media?

23 A. I didn't give anything out regarding that.

24 Q. Did you view any news story that covered that in any
25 way?

1 A. No.

2 Q. That was before the defendant's arrest.

3 A. There was not.

4 Q. Okay. Even the fact that the defendant appeared to
5 have gone behind the store in this crime, was that even
6 released to the media at this time?

7 A. No, it was not.

8 Q. Did you enter into Crime Stoppers, or anything like
9 that, or put any media attention to it in that fashion?

10 A. I -- I did not.

11 Q. And did you make any interview with the Herald in which
12 you told them about this particular crime?

13 A. I did not.

14 Q. Thank you.

15 MR. THOMPSON: No further questions.

16 CROSS EXAMINATION BY MR. FREEMAN:

17 Q. Officer Burris, you said that you were the case
18 officer. You were kind of the guy in charge?

19 A. Sort of, yes.

20 Q. And you were actually the officer in charge that
21 evening as well? On the -- when all this happened, you were
22 the main guy in charge from the law enforcement?

23 A. Yes.

24 Q. ~~So if there was a decision to be made, the other~~
25 officers would have come to you and said "we need a

1 decision. You are in charge." Is that correct?

2 A. They would have given me a call, especially the
3 responding officers, would have gave me a call over the
4 telephone.

5 Q. So did you actually go out to the address that --

6 A. I didn't go to the scene that night, no, sir.

7 Q. Did you go the next day?

8 A. Yes.

9 Q. Did you go down to the police station that night while
10 the people were giving statements?

11 A. I did.

12 Q. You did. Okay.

13 So you actually didn't go to the station -- I mean to
14 the gas station? You went straight to the police station?

15 A. That's right.

16 Q. Now, did you have opportunity to speak with Ms. Hicks,
17 the woman who was working that evening?

18 A. I did speak with her, but I wasn't the one that took
19 her statement that night, but I did speak with her.

20 Q. Did you have opportunity to speak with her in the next
21 days that followed before she called you?

22 A. Yes.

23 Q. Okay. Now, you indicated that no information was
24 ~~released, to your knowledge, about those things that you~~
25 just indicated to the local media, is that correct?

1 A. That's correct.

2 Q. But, in fact, some of the other people that we have
3 heard testify, the eyewitnesses, knew about that kind of
4 stuff, did they not?

5 A. Knew about what?

6 Q. The fact that the person was wearing a hoodie with
7 lettering, for example.

8 A. Yes. The witnesses did.

9 Q. Did you tell those people that under no circumstances
10 were they to talk to anyone?

11 A. No.

12 Q. Did you instruct them under to no circumstances speak
13 with the media?

14 A. I did not.

15 Q. So you don't know -- you don't know what they did?

16 A. I don't know what they did.

17 Q. You don't know if they talked to friends, family,
18 neighbors, whomever?

19 A. I have no idea.

20 Q. The same thing, those -- the people, the witnesses who
21 were actually there that evening, you didn't tell them not
22 to say anything about, for example, a person going behind
23 the building?

24 A. No, I didn't tell them.

25 Q. Or anything about the vehicle in question?

1 A. I didn't tell them who they could or could not talk to.

2 Q. Nor what they could or could not say?

3 A. That's right.

4 Q. Now, if there was a decision made about not to call out
5 the forensics team, as the case officer that would have
6 ultimately been your decision that evening?

7 A. My decision, not the supervisor that was out on the
8 scene.

9 Q. So there was a supervisor on the spot?

10 A. Yes, sir, a sergeant out there.

11 Q. Okay. If there was a call to be made on that, who
12 would have made that call, you or him?

13 A. Either one of us.

14 Q. Do you remember in this case who made that final
15 decision?

16 A. He made that decision.

17 Q. Sir?

18 A. He made that decision.

19 Q. He made that decision?

20 A. Right.

21 Q. So you deferred to him because he was out there?

22 A. Right.

23 Q. Now, are you familiar with this area?

24 A. Yes.

25 Q. Have you ever gotten gas there before?

1 A. I don't think so.

2 Q. Okay. How far is it, if you know, from the front of
3 the road -- and I'll show you State's, I believe it's 12 --
4 13, excuse me, from Highway 5 which is Main Street to let's
5 say this tree line in the back behind the gas pumps -- I
6 mean, excuse me, the car wash? Do you know how far that is?

7 A. I would say 50 to a 100 feet.

8 Q. 50 to a 100 feet?

9 A. Yeah.

10 Q. And those are separate buildings, by the way? The car
11 wash is not physically attached to the station?

12 A. No, it's not.

13 Q. And you know that area pretty well. Is it dark at
14 night?

15 A. That area out there is dark, but not around that
16 convenience store. It's well lighted.

17 Q. But there is glass in the front of the convenience
18 store, right?

19 A. Yes.

20 Q. And typically, in some of these other pictures, it
21 would have ads in the window for whatever it was that they
22 were trying to promote on a given day?

23 A. There was a few there.

24 ~~MR. FREEMAN: Beg the court's indulgence one~~
25 moment, Your Honor.

1 (Off the record)

2 (Back on the record)

3 MR. FREEMAN: That's all the questions that I have
4 of this witness.

5 MR. THOMPSON: I have no further questions, but I
6 would move to put State's Exhibit 11-B into evidence at this
7 time.

8 THE COURT: You can step down, sir.

9 MR. FREEMAN: Let me review that and make sure
10 it's the one we discussed.

11 If I could approach, Your Honor?

12 (Whereupon, the lawyers approached the bench for
13 an off-the-record discussion).

14 THE COURT: Okay. State's Exhibit 11-B is
15 admitted.

16 We are going to break for lunch in just a minute.
17 Before we do, let me tell you something about 11-B, which
18 you will be shown at some point during the afternoon. It is
19 a redacted version of what is obviously something out of a
20 newspaper. Now, you can look at it and tell that it's
21 redacted, but the fact that it's redacted is not a matter of
22 your concern. The reason that it was redacted is also not a
23 matter of your concern, except for you to understand that
24 ~~what was redacted is not relevant to this case and should~~
25 not be considered by you. You shouldn't speculate as to

1 what was redacted from this article. You just shouldn't
2 worry about it at all. Don't even concern yourselves with
3 the fact that this article was redacted or what might have
4 been redacted from it.

5 And with that I will -- we will break for lunch
6 and I would like for you to be back in the jury room at two
7 o'clock. Y'all have a nice lunch.

8 Remember my instructions that you may not discuss
9 the case. Please continue to be very careful not to allow
10 yourselves to be exposed to any media coverage about the
11 case. We will see you at two o'clock.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: Okay. Anything further at this time?

15 MR. THOMPSON: Nothing from the State, Your Honor.

16 MR. FREEMAN: Nothing at this time, Your Honor,
17 from the defense.

18 THE COURT: Do y'all -- if we start back at two
19 okay, do y'all anticipate that we will be able to get all
20 the evidence in today.

21 MR. THOMPSON: Yes, Your Honor. The State, I
22 believe, will rest today.

23 MR. FREEMAN: Your Honor, my witnesses, if
24 presented, would be fairly short, I believe.

25 THE COURT: Okay.

1 MR. FREEMAN: My longest witness would be one that
2 would go through details of physical descriptions, kind of
3 like their first officer.

4 THE COURT: We will try to start back right at two
5 o'clock.

6 MR. FREEMAN: Yes, sir.

7 Your Honor, actually, again, if we could, there
8 was going to be one other evidentiary matter which will deal
9 with redaction. I didn't know if you wanted to address
10 that.

11 I intend to object to the method of the redaction
12 of Mr. Watts statement. They have presented me with a
13 proposed redacted version, which I think is not sufficiently
14 redacted.

15 THE COURT: Okay.

16 MR. FREEMAN: I didn't know if you wanted to
17 address that now. I anticipate that they will get into that
18 in the next witness or two.

19 THE COURT: I will just take a look at it.

20 MR. BRACKETT: We will give you a copy of the
21 original and a proposed. You have the original.

22 MR. FREEMAN: You have the original yesterday of a
23 court's exhibit, I believe.

24 ~~THE COURT: What else do you want redacted?~~

25 MR. FREEMAN: Your Honor, I don't believe you need

1 anything, other than what's on the first page. And so I
2 would propose simply to put that there and mark out where it
3 says page 1 of 3. That is, I don't want the jury to know
4 there is three pages. And I would submit that the
5 information contained on the third page, even under the
6 redacted version, is extraordinarily prejudicial to my
7 client and clearly suggests that there were other incidents.

8 THE COURT: So everything that they have included
9 on the first page you are okay with?

10 MR. FREEMAN: Yes, sir, again with the appropriate
11 instruction.

12 THE COURT: Nothing on the second page?

13 MR. FREEMAN: Right, and again --

14 THE COURT: The third page, the top four lines
15 that you have included, what's the relevance of that?

16 MR. BRACKETT: On the third?

17 MR. FREEMAN: The part included. You are talking
18 about the one that begins at number six and goes through
19 nine.

20 THE COURT: Yes, six through nine.

21 MR. BRACKETT: I believe that that indicates his
22 future intentions, not any prior crimes, especially in light
23 of the fact that he's denying that he did any of this. I
24 think it's relevant to show the credibility, the validity of
25 his statement, if that's going to become an issue whether

1 they are going to contest that he signed it, whether he ever
2 made this statement or not.

3 MR. FREEMAN: Your Honor, again, that's a decision
4 we will make at the appropriate time.

5 I submit, as far as the jury is concerned, that
6 matter has not been put into contest yet.

7 MR. BRACKETT: Clearly the last sentence, "the gun
8 that was found in the apartment."

9 THE COURT: I didn't ask about that one yet. I
10 agree with that one. I'm just in six through nine.

11 MR. FREEMAN: Your Honor, again, I'll just take
12 them again --

13 THE COURT: Just hold on a minute.

14 MR. FREEMAN: Yes, sir.

15 THE COURT: I don't really see that six through
16 nine is admissible. I mean, I think it might have a little
17 marginal relevance, but it's a -- marginal probative value,
18 but it's potential for unfair prejudice appears to outweigh
19 it substantially to me, at least at this point. The issues
20 may change as we move through the afternoon, but at this
21 point I would say that line six through nine should be
22 excluded.

23 MR. FREEMAN: Your Honor, I would also ask about
24 line ten, on the third page.

25 THE COURT: And what's the basis for your

1 objecting to line ten?

2 MR. FREEMAN: Again, Your Honor, the prejudicial
3 value far outweighs any probative value. They can testify
4 what they found when they arrested him.

5 THE COURT: Well, this is -- is there any other
6 evidence that the one -- that the gun they found in the
7 apartment is the one that was used in this robbery?

8 MR. FREEMAN: I'm assume their officers will
9 testify it's the same kind, a .22.

10 THE COURT: Well, I overrule the objection as to
11 line ten. To me the probative value of that line -- of the
12 evidence on that line is significantly higher than line six
13 through nine. There is not any unfair prejudice in it at
14 all. It's prejudicial, but it's not unfair prejudice. It
15 simply identifies the gun as being the one he used in this
16 robbery, so I overrule objection as to line ten.

17 MR. FREEMAN: Thank you, Your Honor.

18 And if we could, just for the record, make the
19 uncorrected version a court exhibit for potential review.

20 THE COURT: Sure. It already is, in fact.

21 (Photograph marked as State's Exhibit No. 31 for
22 identification)

23 (Photograph marked as State's Exhibit No. 32 for
24 identification)

25 (Whereupon, proceedings were recessed)

1 (Whereupon, proceedings were reconvened)

2 THE COURT: In order to continue following up on
3 this handwriting issue that arose yesterday, SLED needs his
4 date of birth.

5 MR. FREEMAN: Your Honor, for this purpose, I
6 don't mind if we just want to address him directly with
7 those questions, since the jury is not here. He would be
8 glad to provide that to SLED or to the court.

9 THE COURT: Well, just give it to me.

10 MR. FREEMAN: He says it's January 23rd, 1988,
11 Your Honor.

12 THE COURT: There is an agent who is supposed to
13 be in the building somewhere, although he's not in this
14 courtroom, apparently --

15 MR. FREEMAN: Yes, sir.

16 THE COURT: -- who wants to do some handwriting
17 exemplars for him.

18 Now, I guess to make the purpose of my inquiry
19 clear, I have a fact finding responsibility that relates to
20 the voluntariness of the statement and also whether the
21 statement was actually ever even made. And it was pursuant
22 to that responsibility that I raised the question yesterday
23 as to whether or not -- first of all, whether or not there
24 was a handwriting expert in York County. The answer was no.
25 Then everybody consented to me to approach SLED directly.

1 We put some of this on the record already, but there is a
2 handwriting expert at SLED who is going to be looking at
3 this further tonight. And that's -- and that is what she
4 has requested. And at her request this other gentleman
5 is -- there he is right there, is looking for these
6 handwriting exemplars. So it's true that there is still --
7 nobody has any objection to this?

8 I'm not trying to get -- I want it to be clear
9 that I'm not trying to get into a general fact finding
10 mission, but because I have the fact finding responsibility
11 of determining whether or not the statement was made, and,
12 if, so whether or not it was voluntary, and because the
13 dispute arose about whether or not the signatures were
14 genuine, I raised it, but I'm not trying to become the fact
15 finder here, or the prosecutor, or the defense lawyer, or
16 anybody. I'm just trying to limit what I am doing to my
17 role in determining -- first of all, ensuring that justice
18 is done at trial. And, second of all, taking my
19 responsibility of the initial findings of facts in the
20 Jackson v. Denno issue.

21 So, as long as there is no -- still no objections
22 from the State?

23 MR. BRACKETT: None at all.

24 MR. FREEMAN: Your Honor, I need to address some
25 matters on the record.

1 I have spoken with my client about that. I have
2 indicated that -- of course, there is the potential that
3 if -- depending upon the outcome of that, that he could be
4 exposed to other consequences, and I opine on what those or
5 may not be, but I said the ultimate decision on whether to
6 offer -- I call them samples, but the exemplars is up to
7 him.

8 Again, I have never had it come up in this posture
9 before, so in discussing it with Mr. Watts, and I'll let the
10 ultimate decision on that be his, whether he chooses to give
11 samples for comparison or not.

12 (Off the record)

13 (Back on the record)

14 MR. FREEMAN: Your Honor, he indicates that he
15 does. He wants to provide the exemplars, either now or at
16 the next break.

17 THE COURT: Let's just do it. It won't take very
18 long, will it, sir?

19 SLED AGENT RODERICK JOHNSON: It could take him up
20 to about 35, 45 minutes.

21 THE COURT: Uh-huh. And how much -- well, let's
22 see -- all right, well, I'll let's you go ahead and do it.

23 MR. FREEMAN: That would be fine us, Your Honor.

24 ~~I would ask if you would provide the SLED agent~~
25 with the two originals that were in evidence, that he will

1 have the two originals for the best comparison as possible.

2 THE COURT: I will.

3 Well, let's go ahead and -- is there a place back
4 in the back where they can sit down and do this?

5 MR. BRACKETT: Yes, sir, there is an interview
6 room in the holding cell.

7 THE COURT: Would that suit you, sir?

8 SLED AGENT RODERICK JOHNSON: Yes, sir.

9 THE COURT: Take them back there and let them
10 begin.

11 (Whereupon the defendant and the SLED agent left
12 the courtroom)

13 MR. FREEMAN: Do you want me present? I don't
14 want to mess --

15 THE COURT: It's up to you.

16 MR. FREEMAN: I don't want to interfere with the
17 process of them doing that.

18 THE COURT: No, I think you are entitled to be
19 present.

20 MR. FREEMAN: I would prefer to be.

21 If we could just ask the agent to get his name for
22 the record as well.

23 THE COURT: Tell us your full name.

24 ~~SLED AGENT RODERICK JOHNSON: Special Agent~~
25 Roderick Johnson, South Carolina Law Enforcement Division.

1 THE COURT: All right, thank you.

2 MR. FREEMAN: Thank you, Your Honor.

3 (Whereupon, proceedings were recessed)

4 (Whereupon, proceedings were reconvened)

5 THE COURT: Mr. Johnson, do you have everything
6 that you need now?

7 SLED AGENT RODERICK JOHNSON: Yes, sir, Your
8 Honor.

9 THE COURT: Did you get the two originals?

10 SLED AGENT RODERICK JOHNSON: Yes, sir, Your
11 Honor.

12 THE COURT: Okay. And let's see, do we need -- we
13 have some paperwork that needs to be signed regarding your
14 taking those two originals?

15 SLED AGENT RODERICK JOHNSON: Yes, sir, our
16 property receipt to establish chain of custody for the
17 original document.

18 THE COURT: Is that sufficient from your
19 standpoint?

20 SLED AGENT RODERICK JOHNSON: Yes, sir.

21 THE COURT: All right. Thank you very much.

22 SLED AGENT RODERICK JOHNSON: Thank you, Your
23 Honor.

24 THE COURT: ~~Bring in the jury.~~

25 (The following takes place in the presence of the

1 jury panel).

2 MR. THOMPSON: If it please the court, Your Honor,
3 the State would call Stephanie Storey to the stand.

4 STEPHANIE DAWN STOREY, having been first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. THOMPSON:

7 Q. Stephanie, if you could give your full name for the
8 court, please?

9 A. Stephanie Dawn Storey.

10 Q. And, Stephanie, if you would spell your first and your
11 last name?

12 A. S-T-E-P-H-A-N-I-E, S-T-O-R-E-Y.

13 Q. All right. And Stephanie, how old are you?

14 A. 27.

15 Q. 27?

16 A. Uh-huh.

17 Q. Do you know the defendant --

18 A. Yes, sir.

19 Q. -- in this case, Mr. Watts?

20 A. Yes, sir.

21 Q. How do you know him?

22 A. He'S my boyfriend.

23 Q. All right. When did you first meet with Mr. Watts?

24 A. November.

25 Q. November of what year?

1 A. 2006, maybe.

2 Q. Was it last year?

3 A. No, 2007.

4 Q. 2007?

5 A. Yes, sir.

6 Q. And when you met him, did y'all start dating right
7 away?

8 A. Yes, sir.

9 Q. Did it the become fairly serious right away, your
10 relationship?

11 A. Yes, sir.

12 Q. Did he, in fact, move in with you at any time?

13 A. Yes, sir.

14 Q. Do you recall when he moved in with you?

15 A. Not exactly.

16 Q. Would it have been still in November, or would it have
17 been December, or later?

18 A. Around November, the beginning of November -- the
19 beginning of December, end of November.

20 Q. If you could speak up just a little bit. I'm having a
21 hard time hearing you.

22 A. Okay.

23 Q. Now, where did you live at that time?

24 A. Forest Oaks.

25 Q. Can you tell me where that is?

1 A. Off of 901.

2 Q. That's an apartment complex, correct?

3 A. Yes, sir.

4 Q. Is that close to where Heckle and Herlong intersect at
5 the Bi-Lo shopping center?

6 A. Uh-huh.

7 Q. I'm sorry, you are going to have to answer yes or no.

8 A. Yes, sir.

9 Q. It is.

10 What, about a half mile or so the entrance to your
11 place on that?

12 A. Yes, sir.

13 Q. Now, did the defendant live at other places during that
14 time period, or did he stay occasionally at other places as
15 well?

16 A. His mother's or his school.

17 Q. Do you know where his mother lives?

18 A. Peachtree Street.

19 Q. Is that in Rock Hill as well?

20 A. Yes, sir.

21 Q. Is that far from where your apartment was?

22 A. Not very far, no, sir.

23 Q. How long did it take you to drive over there?

24 A. ~~Probably five minutes.~~

25 Q. Okay. And is that in the downtown area?

1 A. Yes, sir.

2 Q. Now, how about the other place? You mentioned a third
3 place. Where is that?

4 A. Clinton College.

5 Q. Did he stay sometimes at the dorm room at Clinton
6 College?

7 A. Yes, sir.

8 Q. And when did he start at Clinton College?

9 A. That January.

10 Q. Okay. So when you actually met him, he was not
11 attending Clinton College at that time?

12 A. No, sir.

13 Q. Now, can you tell me during the time that you were
14 dating him, what type of vehicle did you have?

15 A. A burgundy Dodge Durango.

16 Q. I'm going to show you a picture of State's Exhibit 31.
17 If you will tell me what that is.

18 A. A picture of my Durango with my daddy and my home.

19 Q. All right. And is that a picture that you took?

20 A. Yes, sir.

21 Q. And does it fairly and accurately depict the color of
22 your Durango at that time?

23 A. Yes, sir.

24 Q. Can you tell me, did you have this Durango on January
25 20th of 2008?

1 A. Yes, sir.

2 Q. How long had you had it during this time period?

3 A. Probably over a year.

4 Q. Okay. And did you continue to have it through February
5 of this year?

6 A. Yes, sir.

7 Q. And, if you would, does that picture fairly depict your
8 car? Is that how it looked the whole time that you had it?

9 A. It's a little bit cleaner, but, yes, sir.

10 Q. Okay.

11 MR. THOMPSON: Your Honor, I would ask to
12 introduce this in evidence at this time, State's Exhibit 31.

13 MR. FREEMAN: If I could take a look at that,
14 please.

15 (Off the record)

16 (Back on the record)

17 MR. FREEMAN: Without objection.

18 THE COURT: It's admitted.

19 MR. THOMPSON: All right. Permission, Your Honor,
20 to publish to the jury at this time.

21 BY MR. THOMPSON:

22 Q. Is that the car we are speaking of right there?

23 A. Yes, sir.

24 Q. Now, are the windows, can you tell me, did you have
25 those darkened?

1 A. I bought it like that.

2 Q. Okay. So are you used to how tinted those windows are?

3 A. Yes, sir.

4 Q. When someone is inside that vehicle, is it easy to see
5 them from inside?

6 A. No, sir.

7 Q. Is that basically how you changed or modified the
8 vehicle in any way during the time that you had it?

9 A. No, sir.

10 Q. So that's how it would have looked?

11 A. Yes, sir.

12 Q. All right.

13 MR. THOMPSON: Thank you, Madam Clerk. Please
14 turn the lights back on.

15 BY MR. THOMPSON:

16 Q. Now, Stephanie, did you let the defendant drive your
17 Durango?

18 A. Yes, sir.

19 Q. Would he always -- were you always with him when he
20 drove it?

21 A. No, sir.

22 Q. Can you tell me. Going back to January 20th of 2008,
23 do you remember anything specific about that day and about
24 where your Durango was?

25 A. I know that he borrowed it, because I rode with one of

1 my friends to practice in an event that we were having on
2 campus that next day.

3 Q. What campus were you attending at that time?

4 A. Winthrop.

5 Q. All right. And you are saying a friend had to drive
6 you to that event, is that correct?

7 A. Yes, sir.

8 Q. Do you remember when that was, what time of day that
9 was that you went to the event?

10 A. That night.

11 Q. That night?

12 A. Yes.

13 Q. Do you remember how long you were gone that night?

14 A. I probably didn't come home until 10:30, 11:00 o'clock.

15 Q. All right. So are you saying the reason that you rode
16 with a friend is because you just wanted to, because he had
17 the vehicle?

18 A. That, and I didn't want to leave him there without some
19 way to get anywhere, so I just left him with the car.

20 Q. So he had been at your house that day?

21 A. Yes, sir.

22 Q. And did you leave the keys so that he could drive the
23 vehicle if he wanted to?

24 A. Yes, sir.

25 Q. Was it uncommon for him to take your vehicle and drive

1 it?

2 A. No, sir.

3 Q. Now, did you end up getting charged out of this case,
4 Stephanie?

5 A. Yes, sir.

6 Q. Can you tell me how it came that you were charged in
7 this case?

8 A. Because I picked him up after I knew that he had a
9 warrant.

10 Q. All right. Now, if you would, can you tell me what the
11 charges that you currently have?

12 A. Accessory after the fact.

13 Q. All right. That's accessory after the fact of robbery,
14 is that correct?

15 A. Yes, sir.

16 Q. And have you been promised anything to come in and
17 testify today?

18 A. No, sir.

19 Q. Do you realize how much time that you are facing on
20 your charge for accessory after the fact?

21 A. Yes, sir.

22 Q. And I believe that's 15 years, is it not?

23 A. I'm not exactly positive, but I know it's -- there is
24 some years.

25 Q. I'm sorry?

1 A. I'm not exactly positive how many years, but I know
2 there is some years.

3 Q. Okay. And can you tell me, Stephanie, you had
4 mentioned that you didn't tell the police about him. Did
5 the police actually come and ask you where he was during
6 this time?

7 A. Yes, sir.

8 Q. Do you remember when that was or what dates those were?

9 A. The 17th of January.

10 Q. The 17th of January?

11 A. I mean of February, sorry.

12 Q. Okay. Of February?

13 A. Yes, sir.

14 Q. And what did you tell them at that time?

15 A. That I haven't talked to him in three months.

16 Q. And actually that's about the length of time that you
17 had known him, is it not?

18 A. Yes, sir.

19 Q. And did you actively try to hide him during that time?

20 A. Yes, sir.

21 Q. I'm sorry, could you speak up?

22 A. Yes, sir.

23 Q. And how did you do that?

24 A. ~~I just picked him up from wherever he asked me to pick~~
25 him up from.

1 Q. Did he call you on your cell phone during that time?

2 A. Yes, sir.

3 Q. And did you pick him up originally in the Durango that
4 we had just seen a picture of?

5 A. No, sir.

6 Q. Okay. What did you pick him up with?

7 A. One of my friend's cars.

8 Q. Why is that?

9 A. Because I was told to change vehicles, because I was
10 scared that somebody would follow me.

11 Q. Okay. Who told you to change vehicles?

12 A. Phillip.

13 Q. The defendant?

14 A. Yes, sir.

15 Q. And did you -- over a period of time during that day,
16 did you take him to more than one place?

17 A. Yes, sir.

18 Q. Did he have you drop him off in places?

19 A. Yes, sir.

20 Q. Did he also have you pick him up in places that day?

21 A. Yes, sir.

22 Q. More than once?

23 A. Yes, sir.

24 Q. ~~As a matter of fact, did he actually have you purchase~~
25 anything for him that day?

1 A. Yes, sir.

2 Q. What did he have you purchase for him?

3 A. Some boxers and some pants and a T-shirt.

4 Q. Now, those things that you purchased for him, why did
5 you end up having to purchase those for him that day?

6 A. So that he would have something to wear.

7 Q. All right. Did he not have other clothes?

8 A. No, sir.

9 Q. I mean, did he have clothes at your place?

10 A. The police had already taken everything.

11 Q. Okay. And had they -- was he afraid at that point to
12 go back to his --

13 MR. FREEMAN: Objection, Your Honor. He's asking
14 her to speculate.

15 THE COURT: Sustained. Without further
16 foundation, sustained.

17 MR. THOMPSON: Sure.

18 BY MR. THOMPSON:

19 Q. But you are saying you ended up having to buy clothes
20 for him that day?

21 A. Yes, sir.

22 Q. Was that at his request?

23 A. Yes, sir.

24 Q. Now, Stephanie, if you would, did you ultimately take
25 him out of the county?

- 1 A. Yes, sir.
- 2 Q. Where did you take him?
- 3 A. Chester County.
- 4 Q. And why did y'all go to Chester County?
- 5 A. To stay for the night.
- 6 Q. And where did you go to stay?
- 7 A. The Exclusive Inn.
- 8 Q. The Exclusive Inn?
- 9 A. I think, or Executive Inn. I'm not exactly sure now.
- 10 Q. A little inn down there? One of those little hotels?
- 11 A. Yes.
- 12 Q. Did you check in that night on the 17th?
- 13 A. Yes, sir.
- 14 Q. And this is the 17th of February of this year?
- 15 A. Yes, sir.
- 16 Q. Now, when you went down with him that night, was the
- 17 plan for y'all to stay down there that night?
- 18 A. Yes, sir.
- 19 Q. Did you plan to stay actually longer than one night?
- 20 A. Yes, sir.
- 21 Q. And what was the purpose of going to Chester County?
- 22 A. Just to get out of Rock Hill County.
- 23 Q. Get out of Rock Hill?
- 24 A. Yes, sir.
- 25 Q. Was it an attempt to hide at that time?

1 A. Yes, sir.

2 Q. And ultimately when you went to Chester County, what
3 did you do? How did it end up coming back to York County?

4 A. I got scared and was afraid that I was going to lose
5 everything and really upset, so I told him that I couldn't
6 do this any more and that he needed to find somewhere else
7 to go.

8 Q. All right. Did he tell you where to go after that?

9 A. Yes, sir.

10 Q. What did y'all do?

11 A. I drove back to Rock Hill.

12 Q. And where did you take him at that point?

13 A. An apartment complex behind Outback.

14 Q. All right. Now, when you are driving at this time,
15 whose vehicle are you using now?

16 A. Still one of my friends.

17 Q. All right. Was it the same vehicle that you used
18 earlier?

19 A. No, sir.

20 Q. You got another vehicle from a different friend?

21 A. Yes, sir.

22 Q. So you had been in two different vehicles this
23 particular day?

24 A. Yes, sir.

25 Q. Now, when you dropped him off, do you recall about what

1 time it was of day that you dropped him off?

2 A. About four o'clock in the morning.

3 Q. So this would actually have been on the 18th about four
4 o'clock in the morning, is that right?

5 A. Yes, sir.

6 Q. And can you describe in any more detail of where that
7 apartment complex was?

8 A. There was a bunch of apartment complexes back there,
9 so, no, sir.

10 Q. Did the police come in contact with you again?

11 A. Yes, sir.

12 Q. And can you tell me did you ultimately tell them where
13 he was?

14 A. No, sir.

15 Q. You didn't tell them at the time the police came to
16 talk to you again?

17 A. Not at the beginning, no, sir.

18 Q. All right. Did you ultimately tell them where he was?

19 A. I told them where I dropped him off at, yes, sir.

20 Q. Did he take them to where you dropped him off?

21 A. Yes, sir.

22 Q. All right. Now, during this time that the -- if you
23 could, just before the 17th of February, do you recall if
24 the defendant had any facial hair?

25 A. Before the 17th?

1 Q. Right.

2 A. Yes, sir.

3 Q. Before you found out that the police were looking for
4 him, did he have facial hair?

5 A. Yes, sir.

6 Q. What type of facial hair did he have?

7 A. He had a little goatee and a mustache.

8 Q. Okay. When the police found -- when he found out the
9 police were looking for him, did that change?

10 A. Yes, sir.

11 Q. How did it change?

12 A. He shaved it all off.

13 Q. Okay. And now you say a little goatee. Can you
14 describe that a little more for me, how that was in
15 February?

16 A. Just a little hair here.

17 Q. Just a little bit at the bottom. Less than what he
18 currently has?

19 A. Yes, sir.

20 Q. I'm sorry?

21 A. Yes, sir.

22 Q. And how was his hair cut at that time?

23 A. Short.

24 Q. ~~Shorter than what it currently is?~~

25 A. Yes, sir.

1 Q. Was it kind of close to his head at that time?

2 A. Yes, sir.

3 Q. Do you know if the defendant had a gun?

4 A. Yes, sir.

5 Q. Did he?

6 A. Yes, sir.

7 Q. Can you recall anything about the gun?

8 A. That he kept it in a Crown Royal bag.

9 Q. Crown Royal bag?

10 A. Yes, sir.

11 Q. So it's not -- we are not talking about a rifle here?

12 A. No, sir.

13 Q. Was it a handgun?

14 A. Yes, sir.

15 Q. Do you recall seeing it at any point?

16 A. Yes, sir.

17 Q. Do you remember what you recall seeing -- do you recall
18 anything about it when you saw it?

19 A. Just that I think it was like a silverish, darkish
20 silver color, and it was the kind that had little spinney
21 thing.

22 Q. Little spinney thing, like a revolver?

23 A. Uh-huh.

24 Q. Little cylinder thing?

25 A. Yes, sir.

1 MR. FREEMAN: Your Honor, I'm going to object to
2 the solicitor clarifying her answers. He's been doing it
3 quite a bit.

4 THE COURT: That's called leading.

5 MR. FREEMAN: Yes, sir.

6 THE COURT: Sustained.

7 BY MR. THOMPSON:

8 Q. All right. Going back, it had a spinney thing, is that
9 how you described it?

10 A. Yes, sir.

11 Q. Now, is there any time that you ever went out anywhere
12 to purchase anything regarding the weapon?

13 A. We went to Wal-Mart one time to get bullets.

14 Q. All right. And do you remember anything about that?
15 Do you remember what type of bullets he bought?

16 A. .22 was what I asked the lady for.

17 Q. Okay. Why is it that you asked?

18 A. In case she carded.

19 Q. And why is that?

20 A. Because I was of age, but she didn't even ask, and he
21 paid for them, so --

22 Q. Okay. So he was at that time under 21, is that what
23 you are saying?

24 A. Yes, sir.

25 Q. Now, do you remember what type of bullets, or can you

1 describe the box that they were in?

2 A. A green little box.

3 Q. I'm sorry?

4 A. A green little square box.

5 Q. Okay. It was green that you recall?

6 A. Yeah. Well, it had green in it.

7 Q. It had green in it.

8 Do you recall the shade of green? Was it dark green,
9 light green?

10 A. No, sir.

11 Q. Do you recall any other colors on the box?

12 A. No, sir.

13 Q. Okay. Now, do you recall what time it was, or what
14 time frame it would have been, or the month, or --

15 A. After Christmas break. That's all I know.

16 Q. After Christmas break. So at least earliest end of
17 December, or sometime in January?

18 A. Yes, sir.

19 Q. Now, you had a chance -- of course, while one of the
20 reasons -- one the times that you were in the courtroom to
21 observe I believe it's State Exhibit No. 3, which was played
22 for the court of the actual robbery at the Exxon One Stop.
23 Did you view that as well?

24 A. Yes, sir.

25 Q. And can you tell me, do you know who the person is on

1 that tape?

2 A. It looks like Phillip Watts.

3 Q. And have you also had an opportunity to see the still
4 photos that have been placed into evidence as well?

5 A. Yes, sir.

6 Q. Refer specifically to State's Exhibit No. 5. And do
7 you know who that is?

8 A. That looks like Phillip Watts.

9 Q. Okay. Is there any doubt in your mind that that's
10 Phillip Watts?

11 A. No, sir.

12 Q. I'm sorry, I'm having a hard time hearing you.

13 A. No, sir.

14 Q. Okay. Did you care for Phillip Watts a lot during this
15 time?

16 A. Yes, sir.

17 Q. Do you still care for Phillip Watts?

18 A. The Phillip I knew, yes, sir.

19 (Receipt from Executive Inn marked as State's
20 Exhibit No. 33 for identification)

21 BY MR. THOMPSON:

22 Q. I will have you look at State's Exhibit No. 33.

23 A. Yes, sir.

24 Q. Do you recognize that?

25 A. Yes, sir.

1 Q. Is that your signature on that copy of that slip?

2 A. Yes, sir.

3 Q. And what is that a copy of?

4 A. Where I checked into the hotel.

5 Q. In Chester?

6 A. Yes, sir.

7 Q. All right. And that is your signature on that?

8 A. Yes, sir.

9 Q. Does that fairly and accurately depict a copy of the
10 time sheet -- or the part that you signed that night?

11 A. Yes, sir.

12 MR. THOMPSON: Your Honor, I would ask that it be
13 introduced into evidence at this time.

14 MR. FREEMAN: With the stipulation it's a
15 photocopy, no objection.

16 THE COURT: It's admitted.

17 BY MR. THOMPSON:

18 Q. Now, let me show you State's Exhibit No. 27 and 28.
19 Exhibit No. 27 and 28.

20 Do you recognize State's Exhibit No. 27?

21 A. Yes, sir.

22 Q. What does that appear to be to you?

23 A. The pack of bullets.

24 Q. And which pack of bullets are we talking about?

25 A. The .22's that we bought at Wal-Mart.

1 Q. Is that what the box looked like that you purchased?

2 A. Yes, sir.

3 Q. All right. State's Exhibit No. 28, do you recognize
4 that?

5 A. It's a gun, but I'm not exactly sure if it's his gun,
6 because I never got a really clear like complete look, you
7 know, from --

8 Q. You never handled the gun, in other words?

9 A. No, sir.

10 Q. So did you ever take it out and fire it or do anything
11 like it?

12 A. No, sir.

13 Q. All right. But you don't know if that's the gun or
14 not?

15 A. Not exactly.

16 Q. Okay.

17 A. Because I only glanced, not an actual sit there and
18 play with the gun.

19 Q. Okay. So you are saying -- not to put words in your
20 mouth, it might not be, might be?

21 A. Yes, sir.

22 Q. You don't know. Okay.

23 Did he ever tell you why he had the gun?

24 A. ~~To go to the shooting range.~~

25 Q. In the time that you knew him, did he ever go to the

1 shooting range?

2 A. Not that I know of.

3 Q. Going back to one other thing. The Durango. In your
4 mind, the event that you went to at college that day, do you
5 remember that specifically?

6 A. Yes, sir.

7 Q. Was that an important event at Winthrop?

8 A. Yes, sir.

9 Q. What did it have to do with?

10 A. It was a badge ceremony for our organization.

11 Q. For your sorority?

12 A. Yes, sir.

13 Q. And did you have to participate in that?

14 A. Yes, sir.

15 Q. Okay. And you know that he had access to your car that
16 day?

17 A. Yes, sir.

18 Q. Do you know that he, in fact, used your car that day?

19 A. Yes, sir.

20 Q. And, again, that was January 20th, correct?

21 A. Yes, sir.

22 Q. 2008?

23 A. Yes, sir.

24 Q. Thank you.

25 MR. THOMPSON: No further questions.

1 CROSS EXAMINATION BY MR. FREEMAN:

2 Q. Ms. Storey?

3 A. Yes, sir.

4 Q. You indicated that Phillip was your boyfriend?

5 A. Yes, sir.

6 Q. You cared for him a lot?

7 A. Yes, sir.

8 Q. Now, y'all met in November and it kind of just sort of
9 took off?

10 A. Yes, sir.

11 Q. And he moved in with you very soon after you met?

12 A. Yes, sir.

13 Q. Now, are you a full-time student at Winthrop?

14 A. Yes, sir.

15 Q. Do you have a part-time job, or are you a student
16 with -- I mean, you don't have a part-time job, or you do?

17 A. I was very active on campus, so I didn't. Well, I had
18 an internship.

19 Q. An unpaid position?

20 A. Well, it was paid, but it was still internship, yes,
21 sir.

22 Q. Were you working that internship in January?

23 A. Yes, sir.

24 Q. ~~What was -- what days did you work? What hours did you~~
25 work?

1 A. I made my own hours, so basically Monday through
2 Friday.

3 Q. Now, you mentioned something about an event on the
4 20th?

5 A. Yes, sir.

6 Q. That was a sorority event? Are you a member of a
7 sorority?

8 A. I'm an alumna.

9 Q. What sorority is that?

10 A. Delta Beta.

11 Q. Are you -- was that the Winthrop Chapter that you
12 belonged to?

13 A. Yes, sir.

14 Q. Now, in fact, don't you have decals on the vehicle that
15 displays your sorority?

16 A. Yes, sir.

17 Q. And that's on the Durango?

18 A. Yes, sir.

19 Q. Well, let me refer you back to that picture you talked
20 about. First of all, who's in the picture? This would be
21 State's 31. Who is that in the picture we see above the --

22 A. My daddy.

23 Q. Your daddy, okay.

24 ~~Do you know when this picture was taken?~~

25 A. Right before I sold it.

1 Q. So that would have been this year, I guess?

2 A. Yes, sir.

3 Q. Now, I can't see from that picture any decals on the
4 side, so where would the decals be?

5 A. On the back.

6 Q. And by the back, back what?

7 A. The back window in the middle and on the side.

8 Q. Okay. And these are sorority stickers with the big
9 letters?

10 A. Yeah, and a Winthrop --

11 Q. And a Winthrop decal?

12 A. Yes, sir.

13 Q. Is the back window tinted?

14 A. Yes, sir.

15 Q. It was tinted.

16 Now, you said at the time that you were living at
17 Forest Oaks, which was an apartment?

18 A. Yes, sir.

19 Q. And that's when you had the Durango. Whose name was
20 the Durango titled in?

21 A. My daddy's.

22 Q. So it was never in your name?

23 A. No, sir.

24 Q. ~~Do you know if there was a payment on the vehicle, or~~
25 he just bought it outright?

1 A. Bought it outright.

2 Q. So the title would have been in his name. What about
3 the insurance?

4 A. It's in his name.

5 Q. Okay. And you -- he knew that you were driving it,
6 right?

7 A. Yes, sir.

8 Q. But he -- for the family purposes, that was your
9 vehicle?

10 A. Yes, sir.

11 Q. Did you ever let anyone other than Phillip drive it?

12 A. Yes, sir.

13 Q. Friends?

14 A. Yes, sir.

15 Q. Sorority sisters?

16 A. Yes, sir.

17 Q. Family members?

18 A. Yes, sir.

19 Q. Okay. In fact, if somebody you knew wanted to drive
20 it, that was fine with you, as long as they kind of cleared
21 it with you first?

22 A. Yes, sir.

23 Q. Now, on this event on the 20th, about what time did
24 y'all leave to go to the sorority house?

25 A. Probably eight o'clock, nine o'clock.

- 1 Q. In the morning or in the evening?
- 2 A. Night.
- 3 Q. So it's dark when you left?
- 4 A. Yes, sir.
- 5 Q. How long did the event take?
- 6 A. However long it took for us to learn our parts.
- 7 Q. Best guess?
- 8 A. Oh, usually 10:30, 11:00 o'clock at night.
- 9 Q. Came back the same night?
- 10 A. Yes, sir.
- 11 Q. Didn't go out with all the sisters for a dinner or
- 12 celebration or anything?
- 13 A. Not that I can recall, no, sir.
- 14 Q. Would you normally -- the sorority is in large part a
- 15 social organization, isn't it?
- 16 A. Yes, sir.
- 17 Q. Do you remember -- do y'all ever socialize after an
- 18 event?
- 19 A. Not during that week. It's the ritual.
- 20 Q. But can you remember specifically if y'all did or did
- 21 not go anywhere after that event?
- 22 A. I'm pretty sure that we didn't, because I have
- 23 homework, so it's eleven o'clock at night and I have school
- 24 the next
- 25 Q. What about the friend who transported you there, did

1. she transport you back?

2. A. She also lived in my same apartment complex. Yes, sir,
3. she lived behind me.

4. Q. So you could walk from your apartment to hers and y'all
5. rode together?

6. A. Yes, sir.

7. Q. So you don't actually know what happened with your
8. vehicle while you were not home?

9. A. No, sir.

10. Q. But you had left the keys at the apartment. Phillip
11. knew where they were?

12. A. Yes, sir. He usually borrowed it to go to his mom's,
13. or to school, or to the mall.

14. Q. What --

15. A. That was the usual why he would ask.

16. Q. His mom lives in town?

17. A. Right.

18. Q. Had you met her?

19. A. Yes, sir.

20. Q. Nice lady?

21. A. Yes, sir.

22. Q. Did he spend a lot of time over there?

23. A. He went over there at least once a day, yes, sir.

24. Q. Okay. Other family? He has other family in the area?

25. Did they stay with -- other family that lived with his mom?

1 A. Yes, sir.

2 Q. Go see all of them?

3 A. Yes, sir.

4 Q. So that wouldn't be uncommon for him to pop over and
5 see his mom?

6 A. No, sir.

7 Q. And, again, that's in Rock Hill? At least when you
8 knew her she lived in Rock Hill?

9 A. Yes, sir.

10 Q. Y'all weren't formal about who took the vehicle? I
11 mean, you didn't sign it out or anything like that?

12 A. No, sir.

13 Q. Now, you mentioned this video and this picture and you
14 said it looks like Phillip?

15 A. Yes, sir.

16 Q. But, in fact, I mean, let's take a look at this
17 picture. This would be State's Exhibit 6. Now, this shows
18 someone from the rear?

19 A. Yes, sir.

20 Q. Can you even tell for certain if that's a man or a
21 woman in that exhibit?

22 A. No, sir.

23 Q. Again, a woman with an unusual build.

24 All right.

25 MR. FREEMAN: Beg the court's indulgence for just

1 one moment.

2 (Off the record)

3 (Back on the record)

4 BY MR. FREEMAN:

5 Q. Stephanie?

6 A. Yes, sir.

7 Q. In response to the solicitor's question, you indicated
8 that you are charged with a very serious crime?

9 A. Yes, sir.

10 Q. In fact, facing years in jail?

11 A. Yes, sir.

12 Q. It is your hope that by testifying today, the solicitor
13 will cut you a break on that charge, isn't it?

14 A. Yes, sir.

15 Q. Do you have an attorney representing you on that
16 charge?

17 A. Yes, sir.

18 Q. Is he present in the courtroom today?

19 A. No, sir.

20 Q. He knows you are here, though?

21 A. Yes, sir.

22 Q. To the best of your knowledge, he's discussed something
23 with the solicitor?

24 A. I don't know.

25 Q. You don't know?

1 A. (Shaking head no)

2 Q. Again, it's your hope that by coming here today they
3 are going to cut you a break?

4 A. Yes, sir.

5 Q. You never had anything more serious than a speeding
6 ticket, have you?

7 A. No, sir.

8 Q. What kind of break do you think that they are going to
9 cut you?

10 A. I don't know.

11 Q. Do you want it to go away?

12 A. Anybody would want it to go away.

13 Q. So the answer is yes, you would like it all to go away?

14 A. Yes, sir.

15 MR. FREEMAN: I don't have any further questions.

16 REDIRECT EXAMINATION BY MR. THOMPSON:

17 Q. Stephanie, just a couple very brief.

18 Do you recall being with the defendant that day, on the
19 20th, earlier in the day?

20 A. Yes, sir.

21 Q. All right. And as a matter of fact, when you left --
22 was he there when you left?

23 A. Pretty sure. I'm not positive. I mean, I remember the
24 ~~events that went on that day, so I can't --~~

25 Q. All right. When you returned -- was he there when you

1 returned?

2 A. I don't think so, but I'm honestly not positive, so I
3 don't want to say yes or no.

4 Q. Okay. Did anyone other than him access to your keys
5 that day?

6 A. No, sir.

7 Q. And I would like to refer back to the video. I just
8 want to clarify after having viewed that video still shot.
9 Is there any doubt in your mind that that's Phillip Watts
10 committing that robbery?

11 A. No, sir.

12 Q. He also asked you about having a deal. Isn't it true
13 that your attorney advised you that you have no deal?

14 A. I'm sorry, would you repeat.

15 Q. He asked you about having a deal. Isn't it true that
16 your attorney advised you that you have no deal?

17 A. Yes, sir.

18 Q. Okay. Thank you.

19 RECROSS EXAMINATION BY MR. FREEMAN:

20 Q. I didn't use the word deal, Stephanie. I said you
21 hoped this all goes away, isn't that true?

22 A. Yes, sir.

23 Q. And you know that the solicitor wants you to say that
24 that was Phillip in that video, don't you?

25 A. Yes, sir.

1 MR. FREEMAN: No further questions.

2 THE COURT: Come down, ma'am.

3 MR. THOMPSON: Your Honor, I ask she be excused at
4 this time.

5 MR. FREEMAN: One moment, Your Honor.

6 (Off the record)

7 (Back on the record)

8 MR. FREEMAN: No objection to excusing her, Your
9 Honor.

10 MR. BRACKETT: The State would call Lieutenant Tim
11 Hager.

12 LIEUTENANT TIM HAGER, having been first duly
13 sworn, testified as follows:

14 MR. FREEMAN: May we approach?

15 THE COURT: You may.

16 (Whereupon, the following was an off-the-record
17 bench conference)

18 DIRECT EXAMINATION BY MR. BRACKETT:

19 Q. Sir, would you please state your full name and spell
20 your last name for the court reporter?

21 A. Lieutenant J.T. Tim Hager, spelling last name
22 H-A-G-E-R.

23 Q. And where are you employed, sir?

24 A. I'm employed with the York County Sheriff's Department.

25 Q. And what do you do for the York County Sheriff's

1 Department?

2 A. I am the lieutenant in the investigative division,
3 specifically assigned to Crimes Against Persons Unit, which
4 I supervise.

5 Q. And how long have you been acting in that capacity?

6 A. That capacity, approximately 12 years.

7 Q. And how long have you been in law enforcement
8 altogether?

9 A. Approximately 28.

10 Q. Altogether that time is with the York County Sheriff's
11 Office?

12 A. Yes.

13 Q. Do you know Detective Willie Burris?

14 A. Yes, sir, I do.

15 Q. Have you worked with him on numerous cases over the
16 many years that you have been in law enforcement?

17 A. Yes, sir, I have.

18 Q. All right, sir.

19 I want to turn your attention to February 18th of this
20 year. Did you have occasion, along with Detective Bruce
21 Haire of the Rock Hill Police Department, to interview the
22 defendant in this case who is seated over here, Mr. Phillip
23 Watts?

24 A. Yes, sir, I did.

25 Q. All right. And where did that interview take place?

1 across the front in white lettering. People saw me leave in
2 the Durango."

3 The last sentence says "the gun that was found in an
4 apartment when I was arrested is the one that was used."

5 Q. All right, sir. On the third page of that statement,
6 and a significant portion of it has been redacted, as we
7 have mentioned, but the third page, not above the sentence,
8 the last sentence, but below it there is a line diagonal.
9 What is the significance of that?

10 A. That's a line that we got the defendant to cross from
11 top to bottom basically showing there is nothing can be
12 added and he got to initial right at the end of the last
13 sentence so there would be nothing added to this statement
14 after he signed it and agreed to it.

15 Q. Okay. And did he, in fact, sign the statement
16 indicating that he agreed with the statements that you just
17 read?

18 A. Yes.

19 Q. Did you witness him signing that statement?

20 A. Yes, I did.

21 Q. Did that man right there sign that statement?

22 A. Yes, sir, no doubt.

23 Q. Okay, sir.

24 (Off the record)

25 (Back on the record)

1 MR. FREEMAN: Your Honor, I have an objection to
2 one -- a evidentiary item. If we may approach?

3 (Whereupon, the lawyers approached the bench for
4 an off-the-record discussion)

5 THE COURT: All right. Ladies and gentlemen, I'm
6 going to let you step out of the courtroom for just a few
7 minutes while we discuss this and we will have you back in
8 here as quickly as possible.

9 (The following takes place outside the presence of
10 the jury panel)

11 THE COURT: Do you need a break or something?

12 THE WITNESS: No, I'm good.

13 THE COURT: You are fine where you are then.

14 Okay. Solicitor, you are offering State's Exhibit
15 No. 32?

16 MR. BRACKETT: Yes, sir, my next -- my next
17 questions for the witness would be to show him that
18 photograph and ask him if that's how he appeared.

19 THE COURT: Let me see the newspaper article.
20 It's right there.

21 Okay. Are you going to have a 403 objection to
22 this?

23 MR. FREEMAN: Yes, Your Honor.

24 THE COURT: Let the solicitor describe his view of
25 the probative value of it.

1 MR. BRACKETT: To show that the appearance of the
2 defendant during -- at the time of his arrest, so that they
3 can compare it to State's Exhibit --

4 THE COURT: Are you looking for the newspaper
5 article?

6 MR. BRACKETT: No, sir. There is a photograph of
7 him leaving. There it is.

8 State's Exhibit 5, which shows -- it's a still
9 captured from the video shows the defendant leaving the One
10 Stop after the robbery. It shows his face. The face that's
11 framed by the -- I believe it helps them to see his
12 photograph so they can examine and make a comparison
13 themselves as to the features of the suspect in the --

14 THE COURT: Well, didn't the girlfriend testify
15 that at the time of this robbery that he had facial hair?

16 MR. BRACKETT: She said that --

17 THE COURT: And that he shaved it, afterwards
18 after they --

19 MR. THOMPSON: I believe she testified in February
20 at the time of his arrest, right before he was arrested, he
21 had some facial hair. She didn't testify about the time of
22 the robbery.

23 MR. BRACKETT: She said that he shaved it off the
24 17th of February, the day before his arrest. That's almost
25 a month after the robbery.

1 MR. THOMPSON: Said he had a small --

2 THE COURT: I just don't -- I just don't think
3 that there is -- if -- I'm not going to let it in with the
4 jail uniform on there. It -- it -- there is some -- I mean,
5 I can look at the two photographs and I can see -- I can see
6 remarkable similarities, but they can look at it sitting
7 over there in the courtroom and pick out the same
8 similarities. They can look at this picture in the
9 newspaper and pick out the same similarities. And the
10 similarities are all in the face.

11 The orange uniform does not need to be in the
12 picture. And I know they have the capability -- you have
13 the capability of probably within an hour of having that
14 photograph redacted so that the orange jumpsuit is not in
15 it, but to me the orange jumpsuit adds an element of unfair
16 prejudice that substantially outweighs what little probative
17 value there is in that photograph.

18 MR. BRACKETT: If I can confer with co-counsel one
19 minute and let me see if I want to cut the defendant's head
20 off.

21 THE COURT: Okay.

22 (Off the record)

23 (Back on the record)

24 MR. BRACKETT: We will exercise that option, if
25 it's suitable with the court, and remove the jumpsuit with a

1 pair of scissors, if that's satisfactory to the court.

2 THE COURT: That's going to probably remove much,
3 if not all, of the basis for objecting to it, but we will
4 have to wait and see what objections he can come up with
5 after you have done it.

6 MR. FREEMAN: Yes, sir.

7 MR. BRACKETT: It's creative.

8 MR. FREEMAN: It looks like one of those little
9 paper dolls.

10 THE COURT: Sir?

11 MR. FREEMAN: I said that it would look like one
12 of those little heads that you stick on a paper doll when
13 you are a child, but that was -- you had the basis of my
14 objection. I think --

15 THE COURT: Try to cut it straight across.

16 MR. FREEMAN: Particularly on the side shot, you
17 can --

18 MR. BRACKETT: I would take that side shot out of
19 the front. It's just like the picture. The mug shot nature
20 of it would be removed similarly. We would just take the
21 one facial straight-on shot.

22 THE COURT: Okay.

23 (Booking Photograph marked as State's Exhibit No.
24 32-A for identification)

25 THE COURT: All right. Bring in the jury.

1 (The following takes place in the presence of the
2 jury panel)

3 MR. BRACKETT: If it please the court.

4 BY MR. BRACKETT:

5 Q. Sir, I'm showing you what's been marked as State's
6 Exhibit No. 32-A, a photograph, and can you tell me who that
7 person is?

8 A. That's the defendant, Phillip Watts, Jr..

9 Q. All right. Does that photograph represent how he
10 appeared to you at the time of his interview?

11 A. Yes.

12 Q. Okay, sir. So he did not have that beard?

13 A. No.

14 Q. Okay.

15 MR. BRACKETT: Your Honor, I would move 32-A for
16 identification into evidence.

17 MR. FREEMAN: No objection.

18 THE COURT: It's admitted.

19 BY MR. BRACKETT:

20 Q. Sir, finally I'm going to show you what's been marked
21 as State's Exhibit No. 24 for identification and I would ask
22 you if you can identify the location that's depicted in that
23 photograph?

24 A. Yes, sir, I can.

25 Q. Where is that?

1 A. That's at the Riverview Villas off of Riverview Road.

2 I think it's , if I'm not mistaken.

3 Q. Okay. And where exactly is that located?

4 A. That's off of Celanese Bypass. If you are going down

5 Celanese, right before you get to the interstate turn left

6 and go back in there behind the -- I don't know what's on

7 that corner. A convenience store is on both corners. Go

8 down the hill, back up the hill, and there is a set of

9 condos and townhouses back in there on the left.

10 Q. And is that where Stephanie Storey directed you to go

11 when you were looking for Mr. Watts?

12 A. Yes, sir.

13 Q. And is that where you actually were able to find Mr.

14 Watts immediately prior to the interview that you described

15 earlier?

16 A. Yes, it was.

17 Q. All right. So he was taken from that location to the

18 interview?

19 A. Yes.

20 Q. All right.

21 MR. BRACKETT: Court's indulgence just one moment.

22 (Off the record)

23 (Back on the record)

24 MR. BRACKETT: Your Honor, I would move State's

25 Exhibit No. 23, Mr. Hager?

1 THE WITNESS: 24.

2 MR. BRACKETT: 24 into evidence at this time.

3 MR. FREEMAN: No objection.

4 THE COURT: It's admitted.

5 BY MR. BRACKETT:

6 Q. Thank you very much, Lieutenant Hager. Please answer
7 any questions that Mr. Freeman may have for you.

8 CROSS EXAMINATION BY MR. FREEMAN:

9 Q. Lieutenant Hager, you are with the county, right?

10 A. Yes.

11 Q. Tell me -- so it was you and Detective Haire both were
12 in the room with Phillip?

13 A. Correct.

14 Q. Did either of you ever leave the room?

15 A. There is several times I left the room to tend to some
16 business that I had to take care of.

17 Q. Business related to this or other matters?

18 A. This and other matters.

19 Q. Okay. Did Detective Haire leave the room while you
20 were in there?

21 A. No, not while I was in there.

22 Q. Okay. Tell me -- now, on this statement that you said
23 that Phillip gave, did Phillip seem to be reasonably
24 intelligent?

25 A. Yes, sir, very articulate and very intelligent.

1 Q. Understood your questions and able to answer them?

2 A. Yes, sir, very clearly.

3 Q. Why didn't you just have him write this statement out
4 then? This is typed.

5 A. Because it's my habit over the years that you deal with
6 people whose writing is not very legible, so I got in the
7 habit we take notes and I type it and let them look at it.
8 And once they agree to it and all deletions or additions are
9 made, then we will sign off on it.

10 Q. So he didn't actually type it?

11 A. I did.

12 Q. So you typed it from his dictation? He said "I want to
13 tell you what to say"?

14 A. He told us what happened. And then once we put it on
15 paper, Detective Haire took notes.

16 Q. So Detective Haire typed the statement?

17 A. No, sir, I typed the statement.

18 Q. From Detective Haire's notes?

19 A. Correct, and what I heard in the interview room.

20 Q. Okay. So you typed it on a, I assume, a word
21 processor, computer?

22 A. Yes, sir.

23 Q. The computer is in that same room?

24 A. No, sir, the computer is in my office.

25 Q. Different room?

1 A. Yes, sir.

2 Q. So you had to leave the room to go type the statement?

3 A. Correct.

4 Q. From someone else's notes?

5 A. Correct.

6 Q. Did Detective Haire come out with you and say "okay,
7 here is what my notes say?" He just said "here is my notes.
8 You can --

9 A. On one occasion he came into my office, but I had his
10 notes.

11 Q. So you typed Phillip's statement from someone else's
12 notes?

13 A. Correct, and from what I heard in the interview room.

14 Q. So what you heard in the interview room you used to
15 fill in any gaps in that statement that you thought it
16 needed to have?

17 A. No, sir, not what I thought needed to have. What was
18 told on us in the interview room.

19 Q. Now, you indicated that you had a rapport with Phillip?

20 A. Yes, sir, I did. I knew his grandmother. I knew his
21 uncle real well.

22 Q. You told him that?

23 A. Yes, sir, I told him that. His uncle and I went to
24 ~~high school together, played football and basketball~~
25 together. I considered him a real good friend of mine. I

1 kept up with his career while he was at South Carolina State
2 and also when he went to play for the Eagles and when he
3 went to work at Thermal King.

4 Q. And you told Phillip all that?

5 A. Yes, sir, I did. I told him his uncle was a good man.

6 Q. And that's because you wanted to sort of, I believe
7 your phrase, have a rapport, get in good with Phillip?

8 A. Correct.

9 Q. Now, you are not -- you don't have any special medical
10 training to determine if someone is under stress but not
11 showing it?

12 A. No, sir, but I have been around enough people in my
13 career to know when they are under stress or --

14 Q. Okay. Well, you have, I assume, then a videotape, or a
15 computer tape, or whatever, of the statement?

16 A. No, sir, we do not.

17 Q. You lost it?

18 A. No, sir, we don't do one at the sheriff's office.
19 Never been our practice.

20 Q. Audiotape then?

21 A. No, sir.

22 Q. Or digital audiotape?

23 A. Never been our practice.

24 Q. Cassette tape?

25 A. Never been our practice.

1 Q. This is a young person, who, according to you, had sort
2 of on his own admitted an armed robbery and you didn't
3 record it?

4 A. No, sir. We recorded it to that paper that he signed
5 and agreed to.

6 Q. Does the sheriff's department own video or audio
7 equipment?

8 A. Yes, sir, we have plenty of it.

9 Q. In fact, most of your cars have cameras in them?

10 A. Mine doesn't, no, sir.

11 Q. But some of the cars do?

12 A. Some do, yes, sir.

13 Q. The building, for example, is wired to SLED for the DUI
14 laws? There is a room where you can automatically have it
15 recorded to SLED?

16 A. At the jail, yes, sir.

17 Q. That's in this same facility where you were
18 interviewing him, right?

19 A. Correct.

20 Q. Okay. So somewhere within 20 yards of where you were
21 there was some piece of recording equipment and you chose
22 not to use it?

23 A. That's not been our practice at the sheriff's office.

24 Q. So the answer to my question would be no?

25 A. Correct.

1 Q. You chose not to use it?

2 A. Correct.

3 Q. You were prohibited from using it?

4 A. No, sir.

5 Q. Or you chose not to use it?

6 A. It's just not my practice and never has been.

7 Q. Is it prohibitive by the policies of the sheriff's
8 department?

9 A. I would have to go look, to be perfectly honest with
10 you.

11 Q. Okay. Have you ever taken a statement from anyone that
12 was recorded?

13 A. Not that I can remember, no, sir.

14 Q. How many years have you been with the sheriff's
15 department?

16 A. I take that back. I was in El Paso, Texas on a
17 homicide investigation and I think they may have taped that
18 interview, but I'm not sure.

19 Q. So murder is important enough to record?

20 A. It wasn't my doing. It was El Paso's police
21 department.

22 Q. How many years have you been with the sheriff's
23 department, detective?

24 A. 28.

25 MR. FREEMAN: Beg the court's indulgence.

1 (Off the record)

2 (Back on the record)

3 MR. FREEMAN: I don't have any further questions.

4 MR. BRACKETT: I don't have any further questions.

5 I just want to confirm that I have moved State's
6 Exhibit 1, the Miranda form and the waiver of rights into
7 evidence. If I did not, I will do so at this time.

8 THE COURT: Any objection?

9 MR. FREEMAN: No, sir.

10 THE COURT: It's admitted.

11 You can step down, sir.

12 THE COURT: With regard to State's Exhibit 2 -- I
13 think you labeled it 2-A.

14 MR. BRACKETT: Yes, sir.

15 THE COURT: Just as I instructed you before about
16 the exhibit that is a redacted copy of a newspaper article,
17 that statement has -- or that exhibit has been redacted and
18 it's fairly obvious that it has been redacted. And you
19 should not concern yourself with why it has been redacted or
20 what might have been taken out of it. You should not
21 speculate as to what might be in there. It was taken out
22 because it has no relevance to this trial and you should
23 consider it just as it is.

24 Go ahead.

25 MR. BRACKETT: The State would call Detective

1 Bruce Haire.

2 DETECTIVE BRUCE HAIRE, having been first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. BRACKETT:

5 Q. Sir, would you please state your full name and spell
6 your last name for the court reporter?

7 A. My name is Bruce Haire, H-A-I-R-E.

8 Q. And where are you employed, sir?

9 A. With the City of Rock Hill Police Department.

10 Q. In what capacity?

11 A. I'm a detective assigned to the Crimes Against Persons
12 Unit.

13 Q. And how many years have you been a detective?

14 A. About five years.

15 Q. And how many years have you been in law enforcement
16 altogether?

17 A. Approximately 13 and a half years.

18 Q. All right, sir. Were you -- you have been in the
19 courtroom and you just heard Lieutenant Hager testify?

20 A. Yes.

21 Q. Did you participate in the interview on February 18th,
22 2008, of the defendant Mr. Phillip Watts?

23 A. Yes, I did.

24 Q. All right. Did you -- were you present when he was
25 advised of his rights?

1 A. Yes.

2 Q. Did you hear his answers to the questions about whether
3 or not he understood them?

4 A. Yes, I did.

5 Q. And what were his answers?

6 A. That he understood them.

7 Q. Were you present when he was questioned about whether
8 or not he wished to waive his rights and speak to you and
9 Lieutenant Hager?

10 A. Yes, I was.

11 Q. All right. And what was his answer as to that?

12 A. He agreed to talk willingly to us.

13 Q. And were you present when he signed that form, State's
14 Exhibit 1, indicating that he understood his rights and
15 wished to waive them?

16 A. Yes.

17 Q. And did the man who signed those forms, is he in the
18 courtroom now?

19 A. Yes, he is.

20 Q. And who is that?

21 A. Sitting to the right of counsel in the white and black
22 striped shirt.

23 Q. Now, as I previously inquired of Lieutenant Hager, the
24 One Stop Express robbery, that was a Rock Hill city case?

25 A. Yes, it was.

1 Q. All right, sir. And it was assigned to Detective
2 Willie Burris, this gentleman here?

3 A. Yes.

4 Q. He's your colleague --

5 A. Yes.

6 Q. -- at the Rock Hill Police Department.

7 So you were not assigned to investigate this armed
8 robbery?

9 A. No, I wasn't.

10 Q. Were you aware that the crime had happened?

11 A. Yes, I knew that it had occurred.

12 Q. That there had been an armed robbery on January 20th?
13 Just from being at the police department you knew that the
14 crime occurred --

15 A. Yes.

16 Q. -- but you were not involved in the investigation?

17 A. Correct.

18 Q. And, likewise, the subject matter that you were
19 interviewing Phillip Watts regarding on January 20th of
20 2008, it did not have anything to do with the One Stop
21 Express robbery, is that correct?

22 A. That's correct.

23 Q. All right, sir. And who was the first person who
24 raised the subject of the One Stop Express robbery?

25 A. That would be Mr. Watts.

1 Q. Now, you have seen State's Exhibit 2-A, have you not?

2 A. Yes, I have.

3 Q. The redacted statement that was taken by you and
4 Lieutenant Hager that day?

5 A. Yes.

6 Q. All right. And could you just read to yourself the
7 substance of the statement portions that are un-redacted?

8 A. (Witness reviewing document)

9 Q. All right, sir. Who was the person that relayed that
10 information to you and Detective Hager?

11 A. Mr. Watts.

12 Q. Did anybody pressure him, threaten him, coerce him, or
13 do anything to get him to say those things?

14 A. Not at all.

15 Q. Did anybody pressure, threaten, or coerce him to get
16 him to sign those forms?

17 A. No.

18 Q. Were any promises, assurances of leniency, or any other
19 guarantees of some reward or hope of reward offered to him
20 to induce him to sign those forms or make those statements?

21 A. No, sir.

22 Q. Were they made of his own free will and accord?

23 A. Yes, they were.

24 Q. After he had been read his rights?

25 A. Yes, sir.

1 Q. Now, questions have been asked about how the statement
2 was taken. Who was taking notes during that time period?

3 A. I was.

4 Q. Now, focusing exclusively on the issue of the One Stop
5 Express, does that statement accurately reflect the
6 information that the defendant, Phillip Watts, conveyed to
7 you and Lieutenant Hager on February the 18th of 2008,
8 insofar as details his involvement in the armed robbery of
9 the One Stop Express across from Northwestern High School in
10 Rock Hill?

11 A. Yes, it does.

12 Q. All right. Did you or Lieutenant Hager add any
13 information to that that Mr. Watts did not tell you?

14 A. No, sir.

15 Q. Thank you very much, Detective Haire.

16 Please answer any questions that Mr. Freeman may have
17 for you.

18 CROSS EXAMINATION BY MR. FREEMAN:

19 Q. Detective, you work for the city, not the county, is
20 that correct?

21 A. Yes, sir.

22 Q. And how many years have you been there?

23 A. About 13 and a half years.

24 Q. Over the years have you had occasion to work with the
25 county on a variety of things?

1 A. Yes, several times.

2 Q. Do you typically end up coming out her to the county
3 building, or they come to you, or it would just depend upon
4 the case?

5 A. It's a case by case.

6 Q. Now, just so I'm clear on this statement, did you
7 actually type the thing up?

8 A. No, I did not.

9 Q. You didn't physically sit down and type it?

10 A. No.

11 Q. Do you believe that Detective Hager did?

12 A. I know Detective Hager did.

13 Q. So you saw him type it?

14 A. Yes.

15 Q. In its entirety, or just part of it?

16 A. I was with him for the majority of it.

17 Q. So if he was in a different room, you weren't with
18 Phillip while it was being typed?

19 A. That's correct.

20 Q. Did you go back to Phillip periodically and say "well,
21 I got a question about, you know, what this word is," or
22 "you said this word and I couldn't understand you"?

23 A. No, I did not.

24 Q. So, in fact, it was transcribed from your notes?

25 A. It was taken from my notes and what was discussed in

1 the interview.

2 Q. But when you went out to the other room where the
3 computer was to type it, Mr. Watts, Phillip, was not with
4 you then, right?

5 A. That's correct.

6 Q. So at that point it was just the two of you, your notes
7 and y'all's memory?

8 A. Correct.

9 Q. Now, do you have an audio or video of this interview?

10 A. No, I do not.

11 Q. Have you in the course of your time in law enforcement
12 ever used audio or video?

13 A. I have not.

14 Q. Do you know if, in fact, the City of Rock Hill owns any
15 audio or video recording equipment?

16 A. We do, but it's not used for that purpose.

17 Q. So the City of Rock Hill also typically does not record
18 statements from people who supposedly are admitting to bad
19 things?

20 A. Generally not.

21 Q. In fact, that wasn't done in this case, was it?

22 A. It was not.

23 Q. Did you ever suggest to Detective Haire that -- excuse
24 me, Detective Hager that that should be done, said "maybe we
25 should just record it"?

1 A. No, sir, I did not. It was in their facility and it
2 was not my place to tell them how to run their interview.

3 Q. So you were, for want of a better term, a guest in
4 their building?

5 A. I guess you could say that.

6 Q. For business purpose, but it was their building?

7 A. Correct.

8 Q. Their building, their rules?

9 A. Correct.

10 Q. Had they been at your station, your building, your
11 rules?

12 A. Correct.

13 Q. Now, again, you don't have any specific medical
14 training, other than perhaps emergency tech training, to
15 determine if someone is under unusual stress or duress, do
16 you?

17 A. There are some visible signs that we can see on a lot
18 of times.

19 Q. A lot of times, not every time? No two people are the
20 same, are they?

21 A. That's true.

22 MR. FREEMAN: Beg the court's indulgence just one
23 moment.

24 (Off the record)

25 (Back on the record)

1 BY MR. FREEMAN:

2 Q. Oh, the signature on the bottom of the statement is
3 yours, is it not?

4 A. Yes, it is.

5 Q. And you signed -- did you sign the first document as
6 well?

7 A. The waiver of rights?

8 Q. What would be State's 1, yes, sir.

9 A. Yes, I did.

10 Q. Okay. So where it -- we have two names. The one on
11 the right of the slash is yours. Is this Detective
12 Hager's --

13 A. Yes.

14 Q. -- on the left. Okay.

15 Well, why did both of y'all sign that and not both of
16 you sign the statement?

17 A. Lieutenant Hager asked me to sign the bottom of this
18 that I witnessed his signature and I did.

19 Q. Again, his house, his rules? He didn't offer to sign
20 it?

21 A. You have to ask him that, sir.

22 Q. Did he offer to you "I'll be glad to sign with you,
23 just like we did on the other document"?

24 A. No.

25 Q. And you didn't offer or suggest that he ought to do

1 that?

2 A. No.

3 MR. FREEMAN: No further questions, Your Honor.

4 MR. BRACKETT: Just briefly, Your Honor.

5 REDIRECT EXAMINATION BY MR. BRACKETT:

6 Q. Was anyone else in the room or allowed in the room
7 during the time of the interview at approximately 2:15 that
8 afternoon until roughly six p.m.?

9 A. No.

10 Q. During the course.

11 And you both weren't in there, but no one else was
12 allowed in there?

13 A. At the time when both of us had stepped out, there was
14 these two deputies standing outside not allowing anybody to
15 enter.

16 Q. Okay. And when you carried this typed document back
17 in, was Mr. Watts afforded the opportunity to review the
18 document before he signed it?

19 A. Yes, he did.

20 Q. And did he read the typed statement?

21 A. He read it and he did not elect to make any changes.

22 Q. Was he given the opportunity or told that he could, if
23 he wanted to?

24 A. Yes, he was.

25 Q. And he chose not to?

1 A. Correct.

2 Q. And you saw him sign it?

3 A. Yes.

4 Q. Thank you, sir.

5 RECROSS EXAMINATION BY MR. FREEMAN:

6 Q. And no one else other than the two of you went in. Did
7 anyone ever, other than the two of you, go out?

8 A. Not while I was there.

9 Q. So you don't remember if, for example, Mr. Watts took a
10 smoke break?

11 A. If he did, it was after I had left.

12 Q. Not in your presence?

13 A. Correct.

14 Q. You don't remember if he took a bathroom break?

15 A. If he did, it was after I had left --

16 Q. Not in your presence?

17 A. -- the sheriff's building.

18 Q. Not in your presence?

19 A. Correct.

20 MR. FREEMAN: No further questions.

21 MR. BRACKETT: Thank you, sir.

22 THE COURT: Step down.

23 MR. THOMPSON: The State would call Kevin Tolson
24 to the stand.

25 OFFICER KEVIN TOLSON, having been first duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. THOMPSON:

3 Q. Officer Tolson, would you give your full name for the
4 court, please?

5 A. Kevin Robert Tolson.

6 Q. And would you spell your last name, please?

7 A. T-O-L-S-O-N.

8 Q. And where do you work?

9 A. I'm employed by the York County Forensic Services Unit.

10 Q. All right. And what is the York County Forensic
11 Services Unit?

12 A. It's a multi-agency unit, crime scene/forensics unit,
13 that is comprised of officers, police officers from various
14 agencies, law enforcement agencies within York County.

15 Q. Okay. And what do you do?

16 A. I'm the supervisor of the unit.

17 Q. All right. And the unit itself, you go out to crime
18 scenes and process those scenes?

19 A. Yes, sir.

20 Q. And did you become involved in processing a scene on
21 February the 18th of this year?

22 A. Yes, sir, I did, on I believe it was Riverwood Court..

23 Q. All right. And I'll show you a photograph, State's
24 Exhibit No. 24. I think --

25 MR. FREEMAN: It's already been entered.

1 BY MR. THOMPSON:

2 Q. Is that apartment that you went to process that day?

3 A. Yes, sir.

4 Q. All right. I'm going to show you a number of other
5 photographs and ask you to look at these to make sure. Well
6 number them all for the court, for the record. State's
7 Exhibit 23, 25, 26, 27, 28, 29, and 30.

8 All right. Are those photographs that you were either
9 present while they were taken or they were taken by you,
10 yourself?

11 A. Yes, sir.

12 Q. I'll hand them back briefly.

13 Having looked at them, do they accurately depict parts
14 of the crime scene -- or the apartment that you were in that
15 day?

16 A. That is correct, they are either all the exterior or
17 the interior of that apartment.

18 Q. All right.

19 MR. THOMPSON: I would ask to enter these into
20 evidence at this time.

21 MR. FREEMAN: No objection.

22 THE COURT: They're admitted.

23 BY MR. THOMPSON:

24 Q. If we could, when you went into the apartment -- we
25 will go back over these photographs in just a minute, but

1 when you went into the apartment, at that point what time
2 type of process or procedure do you go through to basically
3 look through a place like this?

4 A. Well, normally the first thing the investigator -- the
5 crime scene investigator would do is to try to get a general
6 idea, do what we call a walk-thru of the area that you are
7 going to be concentrating on. That's just generally taking
8 a look around to see what's visible, what's not visible, and
9 where you may -- in this case we didn't actually do any
10 physical processing. We did some documentation and
11 collecting of items. So you are just getting a general idea
12 of what it is that you are going to need to do when you are
13 inside.

14 Q. All right. And in this particular apartment, were you
15 looking for evidence that related to the defendant Phillip
16 Watts?

17 A. Yes, sir.

18 Q. And as you looked through the apartment, were you able
19 to find items that seemed to relate to him at that time?

20 A. Yes, sir. I did the initial walk-thru. And then, of
21 course, the next step would be to document photographically
22 what the area of the scene was like. After that then, you
23 know, we began the search for any particular evidence that
24 would be of relevance.

25 Q. All right. Do you recall one of the first things that

1 you noticed as you went into the apartment?

2 A. Yes, sir, on the couch in the living area and you look
3 at the front of the apartment, the front door leads directly
4 into the living area of the apartment. There was a set of
5 keys, a wallet, which appeared to be a male's wallet, along
6 with some change.

7 Q. Did you ultimately look through that wallet to see what
8 was in it?

9 A. Yes, sir.

10 Q. Was there any identification in that wallet?

11 A. Yes, sir, there was a South Carolina driver permit
12 belonging to the defendant with the defendant's picture, the
13 name, identifying information, along with a birth
14 certificate of Phillip Watts, Jr., and some other items.

15 Q. All right. If you look at State's Exhibit No. 25 and
16 26, I think which are already now in evidence. If you can
17 display those as well. 25.

18 A. Yes, sir. These are pictures that I took of the
19 wallet, the keys and the change on the couch in the living
20 room.

21 Q. All right. This will come up in just a second here.

22 State's Exhibit No. 25, is that the wallet and the keys
23 and the change that you were just talking about on the sofa?

24 A. That's correct, the wallet is near the pillow on the
25 left; the keys in front of it; and the change in between the

1 wallet and the keys and to the right of the keys.

2 Q. All right. Go to Exhibit No. 26. And I

3 guess that's --

4 A. That's just a more concentrated or a zoomed-in photo of
5 what I was trying to illustrate what was there.

6 Q. Once again, the identification of that wallet belonged
7 to the defendant, is that correct?

8 A. That is correct.

9 Q. Now, going into -- did you also examine how many
10 bedrooms were in this apartment?

11 A. Yes, sir, to my recollection there were two.

12 Q. All right. And did you go through either or f both of
13 those bedrooms?

14 A. Yes, sir, I concentrated on one.

15 Q. All right. Did you find anything of value in -- I
16 guess which bedroom? Is there a master bedroom as compared
17 to --

18 A. What I would consider to be the master bedroom, it
19 appeared to be the bedroom that was more inhabited or more
20 items.

21 Q. Was there --

22 A. Larger than the other one, yes, sir.

23 Q. And in that particular bedroom did you find any items
24 there?

25 A. Yes, sir, I collected some clothing, being a brown

1 jacket in particular, with the items that were inside the
2 jacket.

3 I also collected a gray and white shirt, a pair of blue
4 boxers and a gray tank top.

5 Q. All right. Did these appear to be men's clothing?

6 A. They appeared to be, and they were, if you are facing
7 the bed, on the right side of the bed in the bedroom, in
8 that master bedroom.

9 Q. Were they on the floor, on the bed, or --

10 A. On the floor.

11 Q. Now, what else did you find in that room?

12 A. In the closet area of that room, on top of the
13 closet --

14 Q. Let's look at State's Exhibit No. 30, please.

15 Is that the closet?

16 A. That's the closet I'm speaking of, yes, sir.

17 Q. Okay.

18 A. The top of that closet there was a box, which inside
19 that box contained a blue bag. And inside that blue bag was
20 a brown paper bag. Inside that brown paper bag was a pistol
21 and a box of ammunition.

22 Q. All right. State's Exhibit No. 23.

23 Is that the box that was on top of the closet?

24 A. Yes, sir.

25 Q. All right. And you describe the bag as well contained

1 the evidence?

2 A. That's correct, blue bag. Inside the blue bag again
3 was another bag and a paper bag.

4 Q. And then State's Exhibit -- pulled out a paper bag of
5 it, is that correct, State's Exhibit --

6 A. I'm sorry?

7 Q. Go ahead. You pulled the paper bag out inside of that?

8 A. Yes.

9 Q. Okay. And State's Exhibit No. 29?

10 A. That's the paper bag this is inside the blue bag that
11 was inside the shoe box.

12 Q. I know it's difficult to see in that bag. Can you tell
13 us what's in that bag at this point?

14 A. Yes, sir, this particular -- in -- this picture, in
15 particular, it's difficult to see, but in a bottom of that
16 bag is a pistol, and you can see the side of the ammunition
17 box, the green and yellow right there.

18 Q. We can go to State's Exhibit No. 27. What is that?

19 A. That is the ammunition box inside the brown bag.

20 Q. The one that you took out of the bag?

21 A. Correct.

22 Q. And what size ammunition is that?

23 A. You can read the brand. It's Remington above the
24 brand. You can read the words 22 and short next to 22 in
25 the little black band above Remington.

1 Q. 22 Remington short?

2 A. Yes.

3 Q. And then finally State's Exhibit No. 28. You looked at
4 that?

5 A. Yes, sir.

6 Q. Turn around upside down, or appears that way, but with
7 that -- is that the pistol that you discovered?

8 A. Yes, that's correct.

9 Q. That was in the bottom of the bag, and that picture
10 that was kind of dark?

11 A. With the ammunition box, yes.

12 Q. And as far as when you pulled these things out of the
13 bag, you notice that when someone was holding the
14 ammunition, they had gloves on. Do y'all wear those type of
15 gloves during the time that you do these searches?

16 A. Yes, sir.

17 Q. And why is that?

18 A. So that we don't contaminate the evidence with any
19 potential fingerprints or any other type of evidence that we
20 could cross-contaminate onto the evidence.

21 Q. Okay. Now, I believe you said that these were actually
22 recovered. I'll show you a number of things here.

23 (Nike box with Blue Bag marked as State's Exhibit
24 No. 34 for identification)

25 (Brown Bag and .22 Caliber Revolver marked as

1 State's Exhibit No. 35 for identification)

2 BY MR. THOMPSON:

3 Q. These are State's Exhibit No. 34 here. Look at that
4 first for me and tell me what that is.

5 A. It's a gray Nike shoe box. It's a Nike -- it's a gray
6 shoe box.

7 Q. Is that the one that you recovered out of the top of
8 closet that you were just discussing?

9 A. Yes, sir, it's the one that was recovered.

10 Q. And is that the one that the gun was in as well?

11 A. Correct.

12 Q. Okay. And is it substantially in the same condition as
13 it was when you recovered it that day?

14 A. Yes, sir.

15 Q. Okay. And I believe inside of it?

16 A. Blue bag.

17 Q. All right. That's the bag we saw in the photograph?

18 A. Yes, sir.

19 Q. Okay.

20 MR. THOMPSON: Your Honor, I would ask to move
21 that into evidence at this time.

22 MR. FREEMAN: Your Honor, to the photo and next
23 item I would have a 403 objection.

24 THE COURT: Well, let me take the ruling on that
25 under advisement then while you lay the foundation for the

1 next exhibit and we will perhaps take a break and I can
2 discuss both of them with you.

3 MR. FREEMAN: Thank you.

4 BY MR. THOMPSON:

5 Q. If you would look at State's Exhibit No. 35 then and
6 tell me what it is.

7 A. It would be the 22-caliber pistol that was represented
8 in the photographs found at Riverwood Court that day.

9 Q. All right. That was the pistol that was inside the box
10 we just looked at?

11 A. Correct.

12 Q. Okay. And the bag that's around it, is that the bag
13 that was around it when you recovered it?

14 A. It appears to be, yes, sir.

15 Q. And when you recovered that, did you mark down the
16 serial number for that particular pistol --

17 A. Yes.

18 Q. -- at that time?

19 A. Yes, sir.

20 Q. And does that serial number that you marked down, do
21 you have the paperwork that you marked it down on?

22 A. Yes, sir. Actually it would be on this box as well,
23 the paperwork on this box, as well as our evidence
24 paperwork.

25 Q. All right. And does that serial number match the

1 number that you recovered? In other words, is it the exact
2 same gun that you recovered?

3 A. The serial number, as is indicated on the evidence
4 label, is 158122. And marked clearly on the cylinder here
5 on the weapon it's 158122.

6 Q. Okay. And is that the number that you would have
7 recorded on that?

8 A. Yes, sir.

9 Q. Okay. So that is the same weapon that you recovered
10 that day?

11 A. That's correct, those numbers match.

12 Q. Other than the -- I believe there is a -- any lock
13 around it or a twist tie to prevent it from being fired, is
14 there anything altered on that gun at all, other than the
15 twist tie to prevent it from firing at this time?

16 A. No, sir, just the little black twist tie right there
17 for safety purposes.

18 Q. And that's placed on it for safety purposes in court,
19 is that correct?

20 A. That's correct.

21 Q. Thank you.

22 MR. THOMPSON: Your Honor, I would ask to enter
23 both of those exhibits into evidence at this time.

24 THE COURT: All right. Can we continue -- can you
25 continue with the questioning for now, or --

1 MR. THOMPSON: Sure.

2 THE COURT: Or do you need a ruling now?

3 BY MR. THOMPSON:

4 Q. All right. Detective, as you looked through the room,
5 was the bed in that room made, or was it askew?

6 A. It was not made up --

7 Q. All right.

8 A. -- if I remember correctly.

9 Q. Is there anything that you noticed on that bed that was
10 of value that you photographed?

11 A. Yes, sir, there was a -- I believe it was that day's
12 edition of the Herald Newspaper.

13 Q. All right. So the February 18th edition of the Herald
14 was sitting on that bed?

15 A. Yes, sir. I know I took a photograph of it. I have to
16 look at the photograph to verify it was February 18th, but
17 it was a recent edition of Herald, if not that day.

18 (Photograph marked as State's Exhibit No. 36 for
19 identification)

20 BY MR. THOMPSON:

21 Q. State's Exhibit No. 36, is that the photograph that you
22 took of the Herald that was on the bed?

23 A. Yes, sir.

24 Q. All right. And what date is that Herald?

25 A. Monday, February 18th, 2008.

1 Q. And is this the Herald that actually has a photograph
2 of the defendant Phillip Watts on the front page?

3 A. Yes, sir.

4 Q. All right. I'll show you State's Exhibit 11-B, I
5 believe.

6 State's Exhibit 11-B, does that appear to be an
7 accurate photocopy, although redacted, of the front of that
8 paper?

9 A. Yes, sir.

10 Q. All right. Thank you.

11 MR. THOMPSON: We are not going to place that
12 photograph, I believe it's State's Exhibit 36, into
13 evidence.

14 A. Right.

15 MR. THOMPSON: But I would ask that you just keep
16 it for the court's ruling purpose.

17 BY MR. THOMPSON:

18 Q. All right. Let's see, you documented those things at
19 that time when you recovered them, is that correct?

20 A. Yes, sir.

21 Q. All right. Now, when you recovered the pistol, do you
22 have it written down the time that you recovered the pistol?

23 A. Yes, sir, it was actually Officer Bagwell indicated
24 that the recovery time of the 22-caliber short pistol, 2:19
25 p.m..

1 Q. I'm sorry, what time?

2 A. 2:19 p.m..

3 Q. Okay. And was that immediately relayed to Detective
4 Hager at that time or to Lieutenant Hager?

5 A. Detective Strait, who was one of the detectives --
6 Lieutenant Hager's detectives that works within the Crimes
7 Against Persons Unit was actually present during the search.
8 And if I remember correctly, it was fairly significant, so
9 the word that we had recovered the weapon was kind of spread
10 around.

11 Q. All right. So it was called out on the radio, in other
12 words?

13 A. No, it wasn't called out on the radio. I do remember
14 Detective Strait making some phone calls immediately
15 following the recovery of this gun.

16 Q. Okay. And in the box of ammunition, was it actually
17 full of ammunition at that time? Did it actually have
18 ammunition in it?

19 A. It did. I don't have -- I don't remember exactly if I
20 made note of exactly how many -- there were 30. 30 rounds,
21 live rounds, in the box.

22 Q. Okay. All right. Thank you.

23 MR. THOMPSON: No further questions.

24 CROSS EXAMINATION BY MR. FREEMAN:

25 Q. Officer Tolson?

1 A. Yes, sir.

2 Q. You are the supervisor over the forensics unit?

3 A. That's correct.

4 Q. So you were the person in charge of the forensic
5 analysis of this apartment?

6 A. The documentation and collection of evidence, yes, sir.

7 Q. Okay. Who would have been the, for want of a better
8 term, senior officer then, if not you?

9 A. In terms of crime scene or forensics?

10 Q. Yes, sir, that evening.

11 A. That would have been me.

12 Q. So if there was a question or something went on, that
13 would have been brought to you as the main guy?

14 A. In the area of crime scene or evidence collection, yes,
15 sir.

16 Q. That's all y'all were doing at the apartment that
17 evening, correct?

18 A. That's correct, but there are other agencies and other
19 officers from within other divisions of those agencies that
20 were on the scene as well. There was a lot going on.

21 Q. Mr. Watts wasn't there.

22 A. Not at the time that we --

23 Q. At the time that you went in, he wasn't there.

24 Now, you said that you recovered from him or saw

25 something with a wallet, being a driver's license or a

1 beginner's permit in it?

2 A. Yes, sir.

3 Q. So there was a picture on there and address?

4 A. With his identifying information, yes, sir.

5 Q. Was that address the apartment?

6 A. No, sir, it was not. I don't recall what exact address
7 it, but I know it wasn't Riverwood.

8 Q. A different address?

9 A. Different address.

10 Q. So he was not the person who was on the lease at the
11 apartment?

12 A. I don't know that.

13 Q. Well, from the pictures you saw in that one picture,
14 mostly women's clothes hanging in that one closet, wasn't
15 it?

16 A. Yes, sir.

17 Q. You said that you found a few men's clothes on the
18 floor, but most of the women's clothes in the closet,
19 whatever that picture was we saw earlier?

20 A. That's correct.

21 Q. Well, did the person who was renting the apartment ever
22 come forward and identify themselves to you, as the senior
23 officer?

24 A. The person who was representing the apartment identify
25 themselves, as the senior officer?

1 Q. You said that were in charge of the forensic
2 processing.

3 A. That's correct.

4 Q. Did somebody come up and say "this is my apartment.
5 What are you doing?"

6 A. No, sir.

7 Q. Did anyone obtain permission from somebody at the
8 apartment?

9 A. Yes, sir, that would be Lieutenant Waldrop with the
10 Rock Hill Police Department.

11 Q. But not you?

12 A. No.

13 Q. Was it done in your presence?

14 A. It was not done in my presence.

15 Q. Don't you think that you would want to talk to the
16 person who owned the apartment and they could answer that
17 first thing about processing; here is the bedroom to the
18 left, the toilet to the right?

19 A. Not necessarily. That's something that you can pretty
20 much easily figure out on your own, once you walk into the
21 apartment.

22 Q. Now, again, so -- if I could have those the pictures
23 that you referred to earlier, officer.

24 A. Yes, sir.

25 Q. Thank you.

1 Just so we are clear, this box, which is State's 23,
2 I'm going to hand you that --

3 A. Yes, sir.

4 Q. -- was found under the top of this clothes rack, which
5 is State's 30?

6 A. Top of this closet, yes, sir.

7 Q. The closet. The top, above the hanging clothes in
8 State's 30, is that correct?

9 A. That's correct, sir.

10 Q. And those appear to be mostly women's clothes, if not
11 completely women's clothes, do they not?

12 A. I would say they are of the women tastes, yes, sir.

13 Q. And yet the box was found above the women's clothes?

14 A. Yes, sir.

15 Q. You didn't actually speak with the person, whoever that
16 may have been, who was on the apartment lease? You didn't?

17 A. That is correct.

18 Q. Mr. Watts was not there at any point during any of this
19 process that you talked about, was he?

20 A. Just before we started this, yes, sir.

21 Q. What time did you begin this processing?

22 A. We actually made entry sometime after one, a little bit
23 after one.

24 Q. Okay. He never indicated to you "that's my apartment"?

25 Never indicated to you "that's my apartment," did he?

1 A. Mr. Watts?

2 Q. Yes, Mr. Watts.

3 A. No.

4 Q. Phillip?

5 A. No, he did not.

6 Q. Also, detective, some of these pictures that you took
7 and some were just taken of the room.

8 What is, for example, these keys? There appears to be
9 some sort of yellow thing. Is that a flashlight? What is
10 that attached to the keys, do you know?

11 A. I -- I couldn't tell you exactly what it is, but it
12 appears to be some kind of container.

13 Q. Okay.

14 A. Or something with a cap on it.

15 Q. Could have been breath spray?

16 A. Sure.

17 Q. Could have been anything?

18 A. Uh-huh.

19 Q. And then this is the wallet that you indicated that you
20 found Mr. Watts' ID in?

21 A. Correct.

22 Q. Okay. With a different address on it?

23 A. Correct.

24 Q. And the change was strewn about the sofa like that?

25 A. That is how the change was when I entered the apartment

1 to take the photo, yes, sir.

2 MR. FREEMAN: Beg the court's indulgence.

3 (Off the record)

4 (Back on the record)

5 MR. FREEMAN: No further questions, Your Honor.

6 MR. THOMPSON: Your Honor, before we finish with
7 this witness, I would have a matter of law that I would need
8 to take up with the court.

9 THE COURT: All right. Ladies and gentlemen, I'm
10 going to ask you to step back into the jury room for just a
11 few minutes, please.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: All right, sir.

15 MR. THOMPSON: Judge, in seeing the line of
16 questioning the defense was going on, there again, this
17 person whose this property was, it appeared to me as if he
18 was going towards the idea that this would be someone else's
19 gun other than the defendant's, which I think then puts us
20 in a situation of then having to bring in other cases. The
21 fact there is DNA on that gun linking him to another robbery
22 with DNA links him throughout that robbery, which was the
23 reason the police --

24 THE COURT: What do you mean DNA links him
25 throughout the robbery?

1 MR. THOMPSON: There was another robbery, Your
2 Honor, a shooting at the check cashing place, which was the
3 final one that happened on the 14th of February. He -- in
4 the video, that person the perpetrator dressed like he
5 appeared to be the defendant, once again. While it was a
6 bad video in that one, not near as clear as this one, showed
7 him touching a pen and a piece of paper as he waiting for a
8 customer to do some work at the check cashing place. That
9 pen was tested to come -- and the DNA on that pen come back
10 as being the defendant's, as well as his fingerprint came
11 back with paper on it that he touched there on that counter.
12 In the course of that robbery that pistol was used to grab
13 Ida Lord around the neck, one of the customers in front of
14 the cashier. The gun was placed against her head and was
15 fired point blank against her head. Her DNA is recovered
16 off of that pistol that was recovered in this apartment.

17 In addition, she was shot in the back. The bullet
18 was recovered and that bullet was matched to this pistol.

19 So we have a link that goes specifically to the
20 defendant having this gun and using it in that robbery,
21 because we have the DNA in that robbery, as well as Ida
22 Lord's DNA on the gun that ultimately said was his. So
23 that's what our problem lies if the defense tries to claim
24 that this is not his weapon.

25 THE COURT: Okay.

1 MR. FREEMAN: Thank you, Your Honor.

2 Your Honor, my response would be, first of all, I
3 am simply questioning the evidence that the State has
4 presented. They have, in fact, put in evidence, over my
5 objection, that says this was the gun that I used. I am
6 certainly entitled to cross-examine them on the manner in
7 which they obtained this evidence, where it physically was
8 located. That's all I asked. And I said in their own
9 evidence this looks like women's clothes. The jury could
10 make whatever of that they will.

11 Should, and if, and when, the defendant elects to
12 testify and say "that was not my gun," that's the
13 appropriate time for this argument.

14 I submit that nothing that I have asked was
15 intended to open any of those doors, which we have discussed
16 at length ad nauseam, and I don't see any need to revisit
17 that.

18 THE COURT: Well --

19 MR. BRACKETT: Our problem is the inference is
20 there for closing arguments, and at that point it's too late
21 for us to argue it. You know, he's -- he has laid the
22 foundation for himself to argue in closing "it wasn't even
23 my client's apartment. They are going to put this gun on
24 him that was found somewhere else." That whole line of
25 questioning went to that issue and it's created a problem

1 for us looking down the road, when we know that we can put
2 that gun in his hands. That's the problem. We can link
3 that gun to him.

4 THE COURT: What -- what -- all right. The
5 connection that you might try to make would be there is
6 evidence that the State just discussed would be from the
7 apartment and the gun inside it to the defendant by proving
8 that the same gun was used in this other robbery. What's
9 the -- what's the connection then back from the apartment to
10 this robbery?

11 MR. BRACKETT: The fact that that gun was found
12 inside this apartment. It is a 22-caliber.

13 THE COURT: What's the connection -- other than
14 the fact that it's a similar gun, the description that was
15 given by the clerk.

16 MR. BRACKETT: And the fact that he confessed that
17 it was the gun that he used from the robbery of the One
18 Stop.

19 THE COURT: All right. Other than that, is there
20 any other direct connection from that gun back to this
21 robbery?

22 MR. BRACKETT: No, sir. We submit that's pretty
23 strong, though.

24 THE COURT: Well, I'm -- I think that the
25 description from the clerk as being the same type gun is not

1 a strong connection.

2 MR. BRACKETT: The dark .22.

3 THE COURT: Well, there is -- there are thousands
4 of dark .22's out on the streets of York County.

5 MR. BRACKETT: Sure, but not all of them are
6 identified in a sworn written statement.

7 THE COURT: Well, that's the difference, though.
8 Those are two separate pieces of evidence, you mean.

9 MR. BRACKETT: Well, coupled together I think that
10 they corroborate it.

11 THE COURT: So --

12 MR. FREEMAN: Your Honor, if I could, what would
13 have been State's 2, which I think has been redacted to 2-B
14 now, I would point out the sentence -- two things.

15 First of all, this is the part one of the part
16 that was redacted. There is mention of a 38-caliber pistol,
17 a completely different caliber weapon.

18 And the last sentence, sentence ten, which was
19 redacted, but even over -- was -- otherwise was admitted in
20 over my objection, "the gun that was found in the apartment
21 when I was arrested is the one that was used in the
22 shooting." "In the shootings" was removed from the version
23 that this jury will see.

24 So, again, I -- you have actually touched on my
25 secondary argument.

1 THE COURT: Let me see the --

2 MR. FREEMAN: You have touched on my secondary
3 argument, which was the --

4 THE COURT: Let's see State's 2-A and everybody
5 just let me think for a second.

6 MR. FREEMAN: That's the redacted one. I don't
7 see -- do you want the full one as well? The court reporter
8 has it.

9 THE COURT: I'm going to take a short break. I'll
10 be right back.

11 MR. FREEMAN: Thank you, Your Honor.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT: Well, the evidence that you are
15 talking about would establish -- if what you say is true, it
16 would establish conclusively that the -- or at least that at
17 some point in time he had it in his possession at the time
18 of the check cashing robbery and shooting. But what's
19 missing is a clear link between this robbery and that gun.
20 And actually when the statement -- I didn't realize this
21 when I ruled on the redacted version of the statement. It
22 says "the gun was found in the apartment when I -- "the gun
23 that was found in the apartment when I was arrested is the
24 one that was used in the shootings"?

25 MR. FREEMAN: Yes, sir, that's in the full --

1 THE COURT: Where is the defendant?

2 MR. FREEMAN: They are getting him now, sir.

3 (Whereupon, the defendant entered the courtroom)

4 THE COURT: Well, so obviously the words "in the
5 shootings" was removed, because that would take the -- that
6 would do what we have been trying so hard to avoid, which is
7 to bring in the other incidents. But leaving out the words
8 "in the shootings" leaves the statement potentially
9 misleading. I don't know what he meant when he said "the
10 gun was used in the shootings." I don't know if that meant
11 it was the one that was used in the armed robbery at the One
12 Stop or not. So the connection then really -- I don't
13 really see a strong enough connection between the -- between
14 the gun that was found in his apartment and this robbery to
15 warrant your using the shooting at the check cashing to
16 prove that it was his gun, so I will not allow it.

17 And the point about -- the point about line ten of
18 not -- line ten on page three of the statement not applying
19 to this robbery was never raised. It escapes me until this
20 very moment, and so I don't -- I'm just saying that so y'all
21 can decide what, if anything, you want to do about it.

22 Now, let's look at those -- let me see these two
23 exhibits here.

24 ~~What is the unfair prejudice in State's Exhibit~~

25 34?

1 MR. FREEMAN: Your Honor, my primary objection was
2 to the gun, which I submit is prima facie prejudicial. It's
3 the one in the box right there, but it was supposedly found
4 in the other box. So my objection, I didn't think it was --
5 I didn't think it made sense to object to the gun but not
6 the box it was found in. So it's just a 403 prejudice
7 objection. They have got pictures of it in.

8 THE COURT: Well, I'm not going to -- I believe
9 that the probative value of State's Exhibit 35, which is the
10 weapon, is not substantially outweighed by any unfair
11 prejudice. In fact, I don't think there is any unfair
12 prejudice in that gun, so bring in the jury.

13 Now, when the jury comes back in, can you examine
14 that weapon and verify for me that it is inoperable?

15 THE WITNESS: Yes, sir.

16 THE COURT: Obviously it's not loaded.

17 THE WITNESS: It's not loaded.

18 THE COURT: Does it have any type of?

19 MR. THOMPSON: It has a safety strap.

20 MR. FREEMAN: It has a strap attached to it.

21 MR. BRACKETT: Secured it with a zip tie on the
22 hammer.

23 THE COURT: Well, I just need you to articulate
24 that for the jury.

25 THE WITNESS: Well, it's unloaded.

1 THE COURT: Okay.

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 (Off the record)

5 (Back on the record)

6 THE COURT: Bring them in.

7 (The following takes place in the presence of the
8 jury panel)

9 THE COURT: All right. Officer, can you take
10 State's Exhibit 35 and explain to me and also explain to the
11 jury how it is that the weapon is not operable?

12 THE WITNESS: Yes, sir.

13 Well, first and foremost, if you spin the
14 cylinder, you can notice that the weapon is unloaded, so
15 there are no rounds in the weapon for it to fire.

16 Secondly, this strap or this tie that's placed
17 inside the trigger guard and up to the hammer. It prevents
18 somewhat this hammer from even being pulled back, if it were
19 loaded.

20 And, secondly, this strap wouldn't allow the
21 hammer to move forward and engage a round that might be
22 placed into the cartridge, so for all intents and purposes
23 it's safe to handle. Again, the weapon is not loaded.

24 THE COURT: Thank you.

25 THE WITNESS: Yes, sir.

1 MR. THOMPSON: No further questions, Your Honor.

2 THE COURT: Cross-examination?

3 MR. THOMPSON: I believe he had --

4 MR. FREEMAN: I have already done it.

5 You have no redirect?

6 MR. THOMPSON: I have no redirect.

7 THE COURT: You can step down, sir.

8 MR. THOMPSON: Your Honor, I would just like to
9 move those last two exhibits in in front of the jury.

10 THE COURT: They are admitted.

11 MR. THOMPSON: All right. And I believe that's
12 all then, Your Honor, and at this time the State would rest.

13 THE COURT: All right, ladies and gentlemen, we
14 may break now for the day. I'm not sure yet. I'm going to
15 have a matter of law that I need to take up that -- I
16 realize you just came in, but I couldn't get to it until we
17 got to this point, so I need for you to step back into the
18 jury room for just a few minutes and we will have you back
19 out here as soon as possible.

20 (The following takes place outside the presence of
21 the jury panel)

22 MR. FREEMAN: Your Honor, the defense would have a
23 few motions at this point.

24 ~~First of all, I would submit that the State has~~
25 failed to carry their burden of proof on the armed robbery

1 charge. The essential elements, of course, are that it was
2 in York County, which obviously we would stipulate that it
3 happened. Given the address, I think we are all familiar
4 with that location.

5 That an armed robbery occurred. There is some
6 testimony from the clerk that she saw what she believed was
7 a gun, which was then hidden back away. And then everybody
8 else that was an eyewitness, that is the people at the
9 pumps, didn't see anything. So we have one person's
10 testimony that she saw something briefly, and the court has
11 season the video as well.

12 THE COURT: I think that the evidence is
13 sufficient on the question of whether or not the person who
14 committed this robbery was armed.

15 MR. FREEMAN: Thank you, Your Honor.

16 THE COURT: So I deny the motion as to that
17 element.

18 MR. FREEMAN: Your Honor, I would also submit that
19 there is insufficient identification of this defendant, and
20 that's been a very large issue throughout this case, how did
21 he look then, how does he look now, was it a black male,
22 what portion of his --

23 THE COURT: I'm familiar with all that and I
24 believe that's a question of fact. I think there is
25 sufficient evidence in the record that the jury could, if it