

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Clarendon County

Clifton Newman, Circuit Court Judge

RECEIVED

AUG 26 2015

S.C. Supreme Court

BRIAN GARRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000019

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DANIEL GOURLEY
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
INDICTMENTS AND SENTENCING SHEETS.....	827
APPLICATION FOR POST-CONVICTION RELIEF	832
RETURN	858
POST-CONVICTION RELIEF HEARING TRANSCRIPT	863
ORDER OF DISMISSAL	911

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
 : THIRD JUDICIAL CIRCUIT
 COUNTY OF CLARENDON)

STATE OF SOUTH CAROLINA,)
)
 Plaintiff,)
) 06-GS-14-0265
 -vs-)
)
 BRIAN GARRIS,)
)
 Defendants)

September 2-5, 2008
 Manning, South Carolina

B-E-F-O-R-E:

THE HONORABLE GEORGE C. JAMES, JR., JUDGE AND A JURY

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

Amy Land, Esquire
 Attorney for the STATE

Garryl Deas, Esquire
 Attorney for the DEFENDANT

Melissa R. Winfield, CVR
 Official Court Reporter
 Transcript by:
 Hilda M. Jordan, CVR
 Official Court Reporter

September 2 thru 5, 2008
 State v. Garriis
 06-GS-14-0265

APPEARANCES:

For the STATE:
 Amy Land, Esquire

For the DEFENDANT:
 Garryl Deas, Esquire

JURY SELECTION	2
DEFENSE MOTION	34
DEFENSE MOTION	40
JURY SWORN	103
OPENING STATEMENT BY THE COURT	103
OPENING STATEMENT BY STATE	109
OPENING STATEMENT BY DEFENSE	112
MOTIONS BY DEFENSE	499
MOTIONS BY DEFENSE	680

TESTIMONY IN ORDER OF APPEARANCE

9/2/08

FOR THE STATE:

PROFFER:

RICK ELMS	DIRECT.....	70
RICK ELMS	CROSS.....	72
RICK ELMS	REDIRECT.....	77
RICK ELMS	BY THE COURT.....	78
RICK ELMS	RECROSS.....	79
RICK ELMS	REDIRECT.....	83

PROFFER:

LAURA BATISTA	DIRECT.....	83
LAURA BATISTA	CROSS.....	85
LAURA BATISTA	REDIRECT.....	92

9/3/08

PROFFER:

JOHNNIE MCCREA	DIRECT.....	122
JOHNNIE MCCREA	CROSS.....	125
JOHNNIE MCCREA	BY THE COURT.....	133
JOHNNIE MCCREA	REDIRECT.....	134
JOHNNIE MCCREA	RECROSS.....	135

STATE'S CASE:

(Ms. Santiago testified through interpreter)

MARTHA SANTIAGO DIRECT..... 145
 MARTHA SANTIAGO CROSS..... 158
 MARTHA SANTIAGO REDIRECT..... 165

ANTONIO BATISTA DIRECT..... 168
 ANTONIO BATISTA CROSS..... 173
 ANTONIO BATISTA REDIRECT..... 177

LAURA BATISTA DIRECT..... 178
 LAURA BATISTA CROSS..... 192
 LAURA BATISTA REDIRECT..... 204

DONNIE DROSE DIRECT..... 209
 DONNIE DROSE CROSS..... 215
 DONNIE DROSE REDIRECT..... 223

HOLMES SMITH DIRECT..... 225
 HOLMES SMITH CROSS..... 228

ANDREW MCBRIDE DIRECT..... 231
 PROFFER:
 ANDREW MCBRIDE 234
 ANDREW MCBRIDE CONTINUED DIRECT... 241

FREDDIE WHITE DIRECT..... 251
 FREDDIE WHITE CROSS..... 263
 FREDDIE WHITE REDIRECT..... 268

ANDREW MCBRIDE CONTINUED DIRECT... 269
 ANDREW MCBRIDE CROSS..... 271
 ANDREW MCBRIDE REDIRECT..... 276
 ANDREW MCBRIDE RE CROSS..... 279

DARRYL MCCANTS DIRECT..... 280
 DARRYL MCCANTS CROSS..... 286
 DARRYL MCCANTS REDIRECT..... 294

JOHNNIE MCCREA DIRECT..... 295
 JOHNNIE MCCREA CROSS..... 303
 JOHNNIE MCCREA REDIRECT..... 312
 JOHNNIE MCCREA RE CROSS..... 317

JOANN JONES DIRECT..... 319
 JOANN JONES CROSS..... 324

9/4/08

MICHAEL BAKER DIRECT..... 337
 MICHAEL BAKER CROSS..... 342
 MICHAEL BAKER REDIRECT..... 347

SHELTON HUGHES DIRECT..... 348
 SHELTON HUGHES CROSS..... 357

SHELTON HUGHES	REDIRECT.....	375
SHELTON HUGHES	RECROSS.....	381
RUDY TISDALE	DIRECT.....	385
RUDY TISDALE	CROSS.....	386
RUDY TISDALE	REDIRECT.....	389
BARBARA PROCTOR	DIRECT.....	390
BARBARA PROCTOR	CROSS.....	393
RICK ELMS	DIRECT.....	394
RICK ELMS	CROSS.....	428
PROFFER:		
RICK ELMS		436
RICK ELMS	CONTINUED CROSS....	445
RICK ELMS	REDIRECT.....	472
RICK ELMS	RECROSS.....	480
IRA PARNELL	DIRECT.....	482
IRA PARNELL	CROSS.....	489
BRIAN GARRIS RIGHTS BY THE COURT		495
STATE REST		504
DEFENSE CASE:		
TESTIMONY BY ORDER OF APPEARANCE:		
THE DEFENSE:		
MARIE GARRIS	DIRECT.....	507
MARIE GARRIS	CROSS.....	516
MARIE GARRIS	REDIRECT.....	524
MARIE GARRIS	RECROSS.....	527
JERMAINE HICKS	DIRECT.....	528
JERMAINE HICKS	CROSS.....	535
SHELTON HUGHES	DIRECT.....	540
BRIAN GARRIS	DIRECT.....	543
BRIAN GARRIS	CROSS.....	574
PROFFER		
BRIAN GARRIS		582
BRIAN GARRIS	CONTINUED CROSS....	587
PROFFER:		
ALLEN LEE	DIRECT.....	595
ALLEN LEE	CROSS.....	602
ALLEN LEE	REDIRECT.....	604
9/5/08		
PROFFER:		
BRIAN GARRIS	DIRECT.....	615

BRIAN GARRIS	CROSS.....	619
BRIAN GARRIS	BY THE COURT.....	622
BRIAN GARRIS	CONTINUED CROSS....	631
BRIAN GARRIS	REDIRECT.....	643
ALLEN LEE	DIRECT.....	645
ALLEN LEE	CROSS.....	655
ALLEN LEE	REDIRECT.....	661
WILLIAM MCCOY	DIRECT.....	663
WILLIAM MCCOY	CROSS.....	668
FREDRICK WHITE	DIRECT.....	671
FREDRICK WHITE	CROSS.....	676
FREDRICK WHITE	REDIRECT.....	680
DEFENSE REST		680
STATE'S REPLY:		
PROFFER:		
LIN HAM	DIRECT.....	682
LIN HAM	CROSS.....	684
PROFFER:		
JOHN ROBERTS	DIRECT.....	686
JOHN ROBERTS	CROSS.....	690
JOHN ROBERTS	REDIRECT.....	695
JOHN ROBERTS	BY THE COURT.....	696
JOHN ROBERTS	RECROSS.....	697
STATE'S REPLY TESTIMONY:		
LIN HAM	DIRECT.....	704
LIN HAM	CROSS.....	712
BARBARA PROCTOR	DIRECT.....	715
JOHN ROBERTS	DIRECT.....	718
JOHN ROBERTS	CROSS.....	729
JOHN ROBERTS	REDIRECT.....	734
ROBBIE GRIGGS	DIRECT.....	736
ROBBIE GRIGGS	CROSS.....	737
CLOSING STATEMENT BY THE COURT.....		
CLOSING BY STATE.....		
CLOSING BY DEFENSE.....		
CLOSING BY STATE		
CHARGE		787
VERDICT		808
SENTENCE		817
CERTIFICATE OF COURT REPORTER		824

September 2 THRU 5, 2008
 State v. Garris
 06-GS-14-0265

EXHIBITS

FOR THE COURT:

Court's Exhibit No. 1	69
(original photo lineup)	
Court's Exhibit No. 2	69
(photo lineup - McCrea)	
Court's Exhibit No. 3	74
(composite sketch)	
Court's Exhibit No. 4	807
(note from jury)	

EXHIBITS

FOR THE STATE:

State's Exhibit No. 1	156
(sketch)	
State's Exhibit No. 2 ID.....	188
(lineup)	
State's Exhibit No. 2	188
(lineup)	
State's Exhibit No. 3	314
(lineup)	
State's Exhibit No. 4 ID.....	340
(gun)	
State's Exhibit No. 4	489
(gun)	
State's Exhibit No. 5	399
(photo van)	
State's Exhibit No. 6	406
(photo arm)	
State's Exhibit No. 7	406
(photo face)	
State's Exhibit No. 8	413
(bullet)	
State's Exhibit No. 9	415
(wanted poster)	
State's Exhibit No. 10	488
(SLED report)	
State's Exhibit No. 11	575
(high school report)	
State's Exhibit No. 12 ID.....	581
(photo stocking cap)	
State's Exhibit No. 13 ID.....	706
(GSR kit)	
State's Exhibit No. 14 ID.....	711
(evidence sheet)	
State's Exhibit No. 14	717
(evidence sheet)	
State's Exhibit No. 14 REDACTED.....	747
(evidence sheet)	
State's Exhibit No. 15	728

(SLED report)

September 2 thru 5, 2009
State v. Garris
06-GS-14-0265

EXHIBITS:

FOR THE DEFENSE:

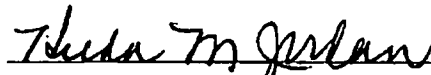
Defendant's Exhibit No. 1	311
(food tray)	
Defendant's Exhibit No. 2	389
(log sheet)	
Defendant's Exhibit No. 3 ID.....	599
(incident report)	

CERTIFICATE

I, THE UNDERSIGNED, HILDA M. JORDAN, CVR,
OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF
THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
THE RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE
INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE
TO APPEAL, IN THIS GENERAL SESSIONS COURT, CLARENDON
COUNTY, SOUTH CAROLINA, ON THE 2ND THRU THE 5TH DAY OF
SEPTEMBER, 2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

THIS TRANSCRIPT WAS PRODUCED BY ME FROM THE COURT
RECORD SUPPLIED TO ME BY MELISSA R. WINFIELD, CVR.



Hilda M. Jordan, CVR
Official Court Reporter
April 17, 2009

State v. Garris September 2-5, 2008

2

1 THE COURT: All right, Ms. Land.

2 MS. LAND: Yes, sir, Your Honor. This is State
3 verses Brian Garris, indictment number 2006-GS-14-265. The
4 clerk has the original True Bill Indictment.

5 I'll pass forward a copy of the state's potential
6 witnesses.

7 THE COURT: All right.

8 Ladies and gentlemen, we're now going to select a jury
9 for the trial of the case of the State of South Carolina
10 verses Brian Garris. The questions that I'm going to ask
11 you are designed to make sure that we empanel a jury that
12 is completely fair and impartial to the state and to the
13 defendant.

14 I will ask -- I will use those words many times as the
15 qualification process goes on. Matter of fact, if you're
16 on this jury you will take an oath that says that you will
17 well and truly try this case according to the evidence and
18 the law, so help you, God.

19 Now, having said that, the defendant in this case is
20 Brian Rashard Sylvester Garris, has been charged with arm
21 robbery, assault and battery with intent to kill, and
22 possession of a firearm during the commission of a violent
23 crime.

24 I tell you, ladies and gentlemen, that the fact that a
25 person who is arrested for something, charged with

State v. Garris September 2-5, 2008

3

1 something and then indicted for something, is evidence of
2 absolutely nothing. An indictment is simply a charge and
3 that is how the system is designed to get cases to court.
4 They have to get here somehow and the indictment is that
5 vehicle.

6 The burden of proof remains on the state of South
7 Carolina to prove a defendant's guilt beyond the standard
8 of proof known as beyond a reasonable doubt. I will
9 explain that to you in more detail later, but I wanted to
10 make sure that you understood that the fact that a person
11 is indicted for a crime is evidence of absolutely nothing.
12 The defendant enjoys a presumption of innocence.

13 Listen carefully to these questions if you will.

14 The indictment that I just referenced says this, and
15 I'm telling you these allegations simply so you'll have an
16 idea of whether or not you know anything about this case.
17 The indictment says that on or about April 15, 2006, the
18 defendant, while armed with a .22 caliber revolver did take
19 from Martha Santiago, in the presence of Martha Santiago,
20 certain goods or money. And that is the indictment for arm
21 robbery. Second count says that at the same time and place
22 the defendant allegedly did shoot Ms. Santiago with that
23 gun. And the third count, possession of that gun during a
24 violent crime.

25 Is there anyone on the jury panel that knows anything

State v. Garris September 2-5, 2008

4

1 about this case or has heard anything about this case or
2 has heard anything about this case or has any information
3 about this case from any source other than what I've just
4 given to you this morning.

5 If so, please stand.

6 All right. Yes, ma'am. Your name first.

7 MS. CONYERS: Carnell Conyers.

8 THE COURT: All right, Ms. Conyers, if you would
9 come forward. Stand right there for just a second.

10 Ms. Land, could you, perhaps if you can give me the
11 name of the place where this act allegedly occurred?

12 MS. LAND: It's called the China Cuisine, across
13 from the Methodist Church on Church Street.

14 THE COURT: All right. Ladies and gentleman, the
15 act that's complained of in this case occurred at the China
16 Cuisine. The question is the same; does anyone know
17 anything about this case, has heard anything about it at
18 all from any source other than what you've been given this
19 morning in this courtroom?

20 All right. Yes, ma'am, Ms. Conyers, if you'll come
21 forward.

22 By the way, ladies and gentlemen, if you come forward
23 or give me information from where you stand -- do not share
24 that information with anyone else on the jury, and the ones
25 that are listening don't ask that juror for any further

State v. Garris September 2-5, 2008

5

1 information about what they gave up here or what they gave
2 out from where jury panel is.

3 All right, Ms. Conyers. Come on up.

4 THE CLERK: Number 21.

5 THE COURT: All right. The lawyers can come up if
6 you like.

7 (Off the record bench conference with juror number 21, and
8 Ms. Land, Mr. Deas, and the Court.)

9 THE COURT: All right. Thank you, Ms. Conyers.

10 THE CLERK: Juror number 88.

11 THE COURT: All right.

12 (Off the record bench conference with juror number 88 and
13 both counsel.)

14 THE COURT: All right.

15 THE CLERK: Juror number 70.

16 (Off the record bench conference with juror number 70 and
17 both counsel.)

18 THE COURT: All right, ladies and gentlemen, the
19 defendant in this case is Brian Rashard Garris.

20 Mr. Garris, if you would please stand and face the
21 jury panel.

22 All right. Thank you, sir.

23 Ladies and gentlemen, during the next few questions I
24 will use the words immediate family members. By that I
25 mean, father, mother, brother, sister or anyone else you

State v. Garris September 2-5, 2008

6

1 may consider to be a part of your immediate family.

2 Is there any member of the jury panel or a member of
3 your immediate family who is related by blood or connected
4 by marriage or has any type of acquaintance, friendship,
5 connection of any kind with the defendant, Brian Rashard
6 Garris; if so please stand.

7 All right, Ms. Conyers, we've got your information.
8 Thank you very much.

9 Anyone else?

10 All right. Right now, ladies and gentleman, I'm going
11 to call the names of prospective witnesses. They are on a
12 list of potential witnesses. They may be called, they may
13 not be called. And if they are law enforcement officers,
14 you folks help me out -- I have that information to give.

15 If any of the witnesses are present I want you to
16 stand as well.

17 The question is the same. Is there any member of the
18 jury panel or member of your immediate family related by
19 blood, connected by marriage, friends with, acquaintances
20 with, business associates with or have any type of
21 connection, even if it might be socially, church-wise or
22 any other way with any of these following prospective
23 witnesses: Martha Santiago, Laura Batista -- if you ladies
24 will face the panel, please.

25 All right, you can have a seat.

State v. Garris September 2-5, 2008

7

1 Antonio Batista, Ira Parnell of the State Law
2 Enforcement Division which is commonly abbreviated as SLED.
3 Shelton Hughes, Clarendon County Detention Center. Rudy
4 Tisdale, Clarendon County Sheriff's Office. Barbara
5 Proctor, Clarendon County Sheriff's Office. Andrew
6 McBride, in the back of the courtroom. Frederick White,
7 Freddie White, back of the courtroom. Johnny McCrea, Sgt.
8 Baker --

9 MS. LAND: Michael Baker. That is correct.

10 THE COURT: Sgt. Michael Baker of the Clarendon
11 County Detention Center. Darryl McCants, Clarendon County
12 Detention Center. Joann Jones, Clarendon County Detention
13 Center. Okay, y'all stay standing for just a minute.

14 Thank you.

15 Rick Elms, Clarendon County Sheriff's Office. Donnie
16 Drose, Clarendon County Sheriff's Office. Lin Ham,
17 Clarendon County Sheriff's Office. Blair Shaffer, of the
18 Manning Police Department, Carlos Rangel, of the Clarendon
19 County Sheriff's Office. Mike Lynch from SLED. Holmes
20 Smith, Manning Police Department. Jermaine Hicks, Darryl
21 McCants, Marie Garris. Officer Law -- what agency is
22 Officer Law with -- SLED. Officer Law of SLED. I believe
23 that -- and Officer William McCoy, Sheriff's Office.

24 That's a long list of names, ladies and gentlemen. If
25 you are an immediate family member, related by blood,

State v. Garris September 2-5, 2008

8

1 connected by marriage, acquainted with, friends with or
2 have any type of connection at all with any of these
3 possible witnesses, please stand.

4 All right. If you feel like you have to sit down, you
5 get tired as we go along -- I count nine folks standing.

6 I guess, ma'am, on the row closest to me. Your name,
7 first of all.

8 MS. DUBOSE: Janice DuBose.

9 THE COURT: All right, Ms. DuBose, just a second.

10 Ms. DuBose is number 29. Yes, ma'am.

11 MS. DUBOSE: I know Joann Jones.

12 THE COURT: All right, how long have you known Ms.
13 Jones?

14 MS. DUBOSE: About a year, year and a-half.

15 THE COURT: All right, and how do you know her,
16 ma'am?

17 MS. DUBOSE: I'm her landlord.

18 THE COURT: Okay. Any other connection that you
19 have?

20 MS. DUBOSE: No, sir.

21 THE COURT: All right. Thank you, Ms. Jones.

22 We'll get back to you in just a minute.

23 Yes, ma'am, in the blue-grey/white shirt. Your name,
24 first of all?

25 MS. MITCHELL: Rose Mitchell.

State v. Garris September 2-5, 2008

9

1 THE COURT: All right. Number 80. Yes, ma'am?

2 MS. MITCHELL: I just know -- am friends with some
3 of the officers, Holmes and McCoy. I've known them for
4 many years.

5 THE COURT: All right. You've known Holmes Smith
6 and Mr. McCoy?

7 MS. MITCHELL: Yes, sir.

8 THE COURT: For some period of time?

9 MS. MITCHELL: Yes, sir.

10 THE COURT: How long do you think you've known
11 them?

12 MS. MITCHELL: Probably about 14 years. And just
13 acquaintance, not --

14 THE COURT: All right. Thank you, ma'am. Have a
15 seat.

16 Yes, ma'am, your name?

17 MS. REED: Luna Reed.

18 THE COURT: All right. Ms. Reed is number 95.

19 Ma'am, what connection do you have?

20 MS. REED: I know Don Drose. Not really well --

21 THE COURT: Okay. Anyone else.

22 MS. REED: No, sir.

23 THE COURT: All right. Thank you, ma'am. Have a
24 seat.

25 Yes, ma'am, your name?

State v. Garris September 2-5, 2008

10

1 MS. HODGE: Marlene Hodge.

2 THE COURT: All right. Ms. Hodge is number 55.

3 Yes, ma'am?

4 MS. HODGE: I know Laura Batista. I'm a guidance
5 counselor at the school.

6 THE COURT: All right, you just remember her as
7 being a past student?

8 MS. HODGE: As a student there.

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

10 Yes, sir, your name?

11 MR. CARTER: Henry C. Carter.

12 THE COURT: Mr. Carter is number 17.

13 Yes, sir.

14 MR. CARTER: Okay. I know some of the officers
15 whose names you mentioned. Mr. Elms, being one. I know
16 Mr. Drose, not real well. I do know of him.

17 THE COURT: How long have you known Mr. Elms?

18 MR. CARTER: Twenty, 25 years.

19 THE COURT: All right. Is that friends or
20 acquaintances with him?

21 MR. CARTER: Yes, sir.

22 THE COURT: And you know, you know, Mr. Drose, but
23 not as well.

24 MR. CARTER: Yes, sir.

25 THE COURT: Anyone else?

State v. Garris September 2-5, 2008

11

1 MR. CARTER: Mr. Shaffer. Was that Blair Shaffer?

2 THE COURT: Yes, sir.

3 MR. CARTER: Yes, sir.

4 THE COURT: Anyone else?

5 MR. CARTER: No, sir.

6 THE COURT: All right, sir. Have a seat.

7 Yes, ma'am, your name?

8 MS. ADAMS: Miranda Adams.

9 THE COURT: Ms. Adams is number one.

10 Yes, ma'am.

11 MS. ADAMS: I'm an acquaintance of Lin Ham's

12 sister.

13 THE COURT: You are an acquaintance of Lin Ham's

14 sister?

15 MS. ADAMS: Yes.

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

17 Yes, ma'am, your name?

18 MS. PEARSON: Teresa Pearson.

19 THE COURT: All right. Ms. Pearson is number 88.

20 Yes, ma'am.

21 MS. PEARSON: I know Mr. Chapman, and I know his
22 grandmother.

23 THE COURT: Chapman?

24 MS. PEARSON: Yes.

25 THE COURT: Oh, I'm sorry. I thought that was

State v. Garris September 2-5, 2008

12

1 Mr. McBride. How long - you know him?

2 MS. PEARSON: Yes, ever since he was a baby.

3 THE COURT: Anyone else?

4 MS. PEARSON: I know his grandma, but -- I used to
5 buy things from her shop.

6 THE COURT: She was what?

7 MS. PEARSON: She used to have a outlet, I used to
8 buy stuff from her.

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

10 Yes, ma'am, your name?

11 MS. GEORGE: Crystal George.

12 THE COURT: All right. Ms. George is number 40.

13 All right. Yes, ma'am.

14 MS. GEORGE: Me and Ms. Joann Jones are related.
15 I'm her niece.

16 THE COURT: Blood niece?

17 MS. GEORGE: Yeah. She is my father's sister.

18 THE COURT: Okay.

19 Yes, sir, your name for the record?

20 MR. LOWDER: Lowder, number 70. I'm acquainted
21 with all the --

22 MR. DEAS: What was her juror number.

23 THE COURT: Forty.

24 MR. DEAS: Sorry, Judge.

25 THE COURT: That's all right.

1 All right, sir. Your name for the record.

2 MR. LOWDER: Lowder, number 70. I'm acquainted
3 with Officer Drose and Shelton Hughes, roughly three to
4 five years I've known them.

5 THE COURT: All right, sir.

6 All right. All right, you folks that just gave me
7 that information, if you can stand again, please. I want
8 to make sure I've got everybody.

9 All right. The question is this, ladies and
10 gentlemen, the circumstances that you have related to me,
11 of the acquaintances that you have or the relationships
12 that you have, if you cannot, could not be fair and
13 impartial to the state and to the defendant raise your
14 hand.

15 Would all of you be able to set aside the
16 relationships, acquaintances that you have related to me,
17 would you be able to set that aside and base your verdict
18 in this case on the evidence you see and hear in the
19 courtroom, and the law as I give it to you. If you could
20 not do that please raise your right hands.

21 All right, the record will show that no one responded
22 to those questions. Everyone indicated they could be fair
23 and impartial.

24 All right. Y'all have a seat. Thank you very much.

25 All right, ladies and gentlemen, the state of South

State v. Garris September 2-5, 2008

14

1 Carolina is represented by Amy Land of the Third Circuit
2 Solicitor's Office.

3 Ms. Land, you can introduce yourself and anyone else
4 who will help you with the trial from your office.

5 MS. LAND: I'm Amy Land. I'm an assistant
6 solicitor in the Third Circuit. I work with two
7 secretaries, Kathy Payne (sp) and Ann Prescott.

8 THE COURT: Would you introduce the victim
9 advocate?

10 MS. LAND: Rhonda Rayme is the victim's advocate
11 here in Clarendon County. She may be with the victim at
12 times.

13 THE COURT: Is there going to be -- I've received
14 some information about an interpreter?

15 MS. LAND: There is one from Clarendon County, but
16 he's on the witness list.

17 THE COURT: Oh, he is. Okay.

18 All right, ladies and gentlemen, the defendant in this
19 case is represented by Mr. Garryl Deas.

20 Mr. Deas if you would stand and introduce yourself and
21 any members of your firm and anyone else who will be
22 helping you with the trial of this case.

23 MR. DEAS: Thank you, Your Honor. May it please
24 the Court.

25 Good morning, ladies and gentlemen, my name is Garryl

1 Deas. I represent the defendant, Mr. Brian Garris. I
2 practice law in Sumter, South Carolina.

3 THE COURT: All right, ladies and gentlemen, is
4 there any member of the panel or member of your immediate
5 family who is related by blood or connected by marriage to
6 either of these attorneys or folks that might be assisting
7 them; do you know them or are you acquainted with them,
8 friends with them, have any connection at all or have you
9 or an immediate family member ever been represented by
10 either of these two attorneys or their offices. If so,
11 please stand.

12 All right. Yes, ma'am, on the front row. Give me
13 your name.

14 MS. BURNS: Lisa Burns, number 14.

15 THE COURT: All right.

16 THE CLERK: Number 14.

17 THE COURT: Ms. Burns, number 14.

18 Yes, ma'am.

19 MS. BURNS: I know Amy Land.

20 THE COURT: All right. How long have you known
21 her?

22 MS. BURNS: Five or six years through our children
23 and church.

24 THE COURT: All right.

25 MS. BURNS: My husband has coached her children in

State v. Garris September 2-5, 2008

16

1 baseball and soccer.

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

3 Yes, ma'am, your name, again, for the record?

4 MS. REED: Luna Reed.

5 THE COURT: All right, Ms. Reed. Yes, ma'am.

6 MS. REED: I know Amy Land. She represented me in
7 a case.

8 THE COURT: How long ago was that?

9 MS. REED: It's been about six years, I guess.

10 THE COURT: Is that matter over with?

11 MS. REED: Yes.

12 THE COURT: All right. Thank you.

13 All right, Ms. --

14 MS. BUTLER: Butler, Mary Butler.

15 THE COURT: All right, Ms. Butler?

16 MS. BUTLER: I know her and her brother. He's
17 been my lawyer, Cal.

18 THE COURT: That's her brother-in-law.

19 MS. BUTLER: Her brother has been my lawyer.

20 THE COURT: All right. How long ago was he your
21 attorney?

22 MS. BUTLER: Uh, about 2003.

23 THE COURT: All right, and you also know Ms. Land?

24 MS. BUTLER: Yeah, I know her.

25 THE COURT: How long have you known her?

1 MS. BUTLER: About six years.

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

3 Yes, ma'am, your name?

4 MS. MCDONALD: Linda McDonald.

5 THE COURT: All right, Ms. McDonald is number 76.

6 Yes, ma'am.

7 MS. MCDONALD: I know Amy Land from church.

8 THE COURT: How long have you known her?

9 MS. MCDONALD: Um, since -- I don't know her, I
10 just know her as saying hi to her and smiling at her.

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

12 Next. Yes, sir, Mr. Lowder?

13 MR. LOWDER: Lowder, 70. I'm acquainted with Ms.
14 Land and have been for roughly five years.

15 THE COURT: All right. Thank you, sir.

16 I usually tell the story of my wife. She doesn't like
17 it. But when she was on jury duty in Sumter and she didn't
18 like all those questions about who she knew, so she wanted
19 to know why she had to stand up and my simple answer was,
20 because.

21 I wasn't the judge that week, and I know it's a little
22 bit uncomfortable, but we have to go through this process.

23 All right, is there any member of the jury panel or
24 member of your immediate family who has ever been the
25 victim or claimed to have been the victim or who has ever

State v. Garris September 2-5, 2008

18

1 been accused of some act of violence, a crime of violence.
2 Includes but not limited to; robbery, burglary, assault, or
3 some other crime such as that. Is there any member of the
4 jury panel or any member of your immediate family ever been
5 the victim of or claimed to have been the victim of or has
6 ever been accused of a crime of violence, if so, please
7 stand.

8 THE CLERK: Number 129.

9 THE COURT: All right. Just a moment, please,
10 ma'am.

11 Would you come forward, please. Ms. Whittle?

12 MS. WHITTLE: Yes, sir.

13 (Off the record bench conference with juror number 129, Ms.
14 Land, Mr. Deas, and the Court.)

15 THE COURT: Number 129 is qualified.

16 All right. Your name, ma'am?

17 MS. MITCHELL: Rose Marie Mitchell.

18 (Off the record bench conference with juror number 80, Ms.
19 Land, Mr. Deas, and the Court.)

20 THE COURT: All right.

21 Your name, sir?

22 MR. RAINES: Scott Raines.

23 (Off the record bench conference with juror number 9999,
24 Ms. Land, Mr. Deas, and the Court.)

25 THE COURT: All right. Ms. Pearson.

1 (Off the record bench conference with juror number 88, Ms.
2 Land, Mr. Deas, and the Court.)

3 THE COURT: All right.

4 (Off the record bench conference with juror number 60, Ms.
5 Land, Mr. Deas, and the Court.)

6 THE COURT: All right.

7 THE CLERK: Number 16.

8 THE COURT: All right, Mr. Cales.

9 (Off the record bench conference with juror number 16, Ms.
10 Land, Mr. Deas, and the Court.)

11 THE CLERK: Juror number 60.

12 THE COURT: Mr. Jackson. All right.

13 (Off the record bench conference with juror number 60, Ms.
14 Land, Mr. Deas, and the Court.)

15 THE COURT: All right, ladies and gentlemen, the
16 additional questions. Is there any member of the jury
17 panel who is both strongly opposed to possession or use of
18 firearms that you would not be able to be fair and
19 impartial to this defendant or to the state in this case.
20 To put it more clearly, is there any member of the jury
21 panel so strongly morally or fundamentally opposed to the
22 firearms or the use of firearms that you would not be able
23 to be fair and impartial to both sides of this case if you
24 there was evidence that the defendant may or may not have
25 had in his possession a firearm.

State v. Garris September 2-5, 2008

20

1 All right. No one stood.

2 Ladies and gentlemen, one of the instructions that I
3 will give you if you are chosen on this jury, and I'll
4 probably give this to you more than once, is that the
5 defendant in a criminal case is not required to prove his
6 or her non-guilt or innocence. The burden of proof is on
7 the state of South Carolina to prove guilt beyond a
8 reasonable doubt.

9 I will also give you various charges on other points
10 of law, and there are a number of charges that I will give
11 you. I will tell you, also, that you are required to
12 accept the law as I give it to you, and you may not base
13 any decisions on what you think the law is or what you
14 think it ought to be.

15 Is there any member of the jury panel who feels that
16 they could not accept the law as I give it to you, if so,
17 please stand.

18 All right. No one stood.

19 Is there any member of the jury panel who is aware of
20 any avarice or prejudice for or against the state of South
21 Carolina or for or against the defendant in this case, if
22 so, please stand.

23 No one stood.

24 Is there any member of the jury panel who is a member
25 of or a contributor to any organization that has as its

1 primary focus the promotion or enforcement of law
2 enforcement for victims rights. Some of these
3 organizations include, but are not limited to, South
4 Carolina Law Enforcement Association, Citizens Against
5 Violent Crime, Students Against Drunk Driving, Mothers
6 Against Drunk Driving. Any member of the jury panel a
7 member of any organization that has as its primary focus
8 the promotion of law enforcement or victims rights, if so,
9 please stand.

10 All right. No one stood.

11 Keeping in mind that you probably have gathered by now
12 that the primary effort we're undertaking now is to seat a
13 jury that is completely fair and impartial.

14 Is there any member of the jury panel who knows of any
15 reason why he or she should not serve as a juror in the
16 trial of this case, if so, please stand.

17 All right. No one stood.

18 Any additional questions from the state?

19 MS. LAND: There are not, Judge.

20 THE COURT: For the defendant?

21 MR. DEAS: None, Your Honor. Thank you.

22 THE COURT: All right. Thank you.

23 Ten and five?

24 MS. LAND: Yes.

25 THE COURT: Two alternates suitable?

State v. Garris September 2-5, 2008

22

1 MS. LAND: That's correct.

2 Could we address you, just one moment.

3 THE COURT: Yes, ma'am.

4 (Off the record bench conference with counsel.)

5 THE COURT: Ladies and gentlemen, one thing I
6 didn't ask, as a follow-up. There were several of you who
7 said that you were acquainted with Ms. Land in some
8 capacity or had had some connection with her either now or
9 in the past. If you folks would please stand again. And
10 the lawyers have made a list of your names. The followup
11 question was brought to my attention I did not ask. And I
12 believe Ms. Butler, were you one of those folks, too?
13 Could all of you ladies and one gentleman be fair and
14 impartial to both sides in this case, could all five of you
15 be fair and impartial? If you can just raise your hand.

16 All right. All five raised their hand.

17 Would all of you be able to set aside the acquaintance
18 or relationship or circumstance that you related and base
19 your verdict on the evidence and the law? If you can raise
20 your hand?

21 All right. All five raised their hand.

22 Thank you very much.

23 Ms. Mitchell, Ms. Mitchell. I hate to ask you this.
24 Could you come back up. There's one question that I did
25 not ask you and I apologize.

1 (Off the record bench conference with juror number 80, Ms.
2 Land, Mr. Deas, and the Court.)

3 THE COURT: Ladies and gentlemen, much of the
4 information I get up here is very innocuous. By now you
5 probably understand why I don't want all of you out in the
6 hall where you can sit and ask each other what did you say
7 -- it's really beyond the point at this time.

8 All right, Ms. Land, Mr. Deas, does that take care of
9 the questions that y'all have?

10 MS. LAND: It does.

11 MR. DEAS: Yes, sir, Your Honor.

12 THE COURT: All right, ladies and gentlemen, the
13 way the system works in criminal court, if you've ever been
14 on jury duty in civil court, it's different. Civil court
15 lawyers are given a strike list of 20 people. They knock
16 off four each and end up with a jury of 12.

17 In criminal court it's different. Lawyers don't have
18 a list. I'll have a list and the clerk of court and the
19 court reporter will have a list.

20 If your name is called will you walk forward to the
21 microphone -- don't let that scare you because you won't
22 have to say anything. When you get to the microphone just
23 turn around and stand there. You won't have to say a word.
24 Then at that time the strike process will take place.

25 And once we have a jury of 12 and two alternates

State v. Garris September 2-5, 2008

24

1 seated the selection process for this case will likely be
2 over.

3 All right, the state ready to begin?

4 MS. LAND: State's ready, Your Honor.

5 THE COURT: Defendant's ready? Mr. Deas, is the
6 defendant ready?

7 (No response.)

8 THE COURT: Mr. Deas, the defendant ready?

9 MR. DEAS: We're ready.

10 THE COURT: Do you have a list?

11 THE CLERK: I'll have it in just about two
12 minutes.

13 THE COURT: While she's putting that out -- the
14 computer has to decide to cooperate.

15 Mr. Deas, Ms. Land, could y'all come up one more time?

16 MS. LAND: Sure.

17 (Off the record bench conference with both counsel.)

18 THE COURT: Mr. Hill and Mr. Bailey, could y'all
19 come up?

20 And one thing I'll tell you, ladies and gentlemen, the
21 trial of the case in civil or criminal is not like you see
22 on television. While the work that you see going on in
23 here now is very typical. Not typical of television where
24 people are arrested, charged, and cases are tried in 45
25 minutes. That's not the way it works in the real world.

1 All right, do we have a list?

2 THE CLERK: Yes, sir, we do.

3 THE COURT: And ladies and gentlemen, if you are
4 stricken in a criminal case or a civil case that does not
5 mean they don't like you. You may well be accepted on
6 another case. The strike process certainly has the benefit
7 of the wisdom of the attorneys behind it.

8 All right.

9 THE CLERK: Number 70, Harrington L. Lowder. If
10 you would come up to that mic, turn around and face the
11 tables. Stand right there for me.

12 MS. LAND: Please present Mr. Lowder..

13 THE CLERK: Defense?

14 MR. DEAS: Please excuse the juror from the trial
15 in this case.

16 THE CLERK: You can have a seat back in the jury
17 pool, sir..

18 Number 107, Robert B. Snowden.

19 What says the state?

20 MS. LAND: Please present Mr. Snowden.

21 THE CLERK: Defense?

22 MR. DEAS: Please swear the juror.

23 THE CLERK: Go over to the bailiff, sir, and have
24 a seat in the jury box. Thank you.

25 Number 116, Lisbon Tindal.

State v. Garris September 2-5, 2008

26

1 What says the State?

2 MS. LAND: Please excuse Mr. Tindal.

3 THE CLERK: You can have a seat back in the jury
4 pool, sir. Thank you.

5 Number 9999, Scott L. Raines.

6 What says the state?

7 MS. LAND: Please present Mr. Raines.

8 THE CLERK: Defense?

9 MR. DEAS: Please swear the juror.

10 THE CLERK: Go over to the bailiff, sir, and have
11 a seat in the jury box. Thank you.

12 Number 57, Daniel W. Holladay.

13 What says the state?

14 MS. LAND: Please present Mr. Holladay.

15 THE CLERK: Defense?

16 MR. DEAS: Please excuse Mr. Holladay from the
17 trial of this case.

18 THE CLERK: You can have a seat back in the jury
19 pool, sir. Thank you.

20 Number 44, Lorraine Green.

21 What says the state?

22 MS. LAND: Please present Ms. Green.

23 THE CLERK: The defense?

24 MR. DEAS: Please swear the juror.

25 THE CLERK: Have a seat in the jury box, ma'am.

1 Thank you.

2 Number 50, Ryan D. Hammett.

3 What says the state?

4 MS. LAND: Please excuse Mr. Hammett.

5 THE CLERK: Have a seat back in the jury pool,

6 sir. Thank you.

7 Number 16, Roger Cales.

8 What says the state?

9 MS. LAND: Please present Mr. Cales.

10 THE CLERK: Defense?

11 MR. DEAS: Please excuse Mr. Cales from the trial

12 in this case.

13 THE CLERK: Please have a seat back in the jury

14 pool, sir. Thank you.

15 Number 1, Miranda L. Adams.

16 What says the state?

17 MS. LAND: Please present Ms. Adams.

18 THE CLERK: Defense?

19 MR. DEAS: Please swear the juror.

20 THE CLERK: Have a seat in the jury box, ma'am.

21 Thank you.

22 Number 55, Marlene Hodge.

23 What says the state?

24 MS. LAND: Please present Ms. Hodge.

25 THE CLERK: Defense?

State v. Garris September 2-5, 2008

28

1 MR. DEAS: Please excuse Ms. Hodge from the trial
2 of this case.

3 THE CLERK: Have a seat back in the jury pool,
4 please ma'am. Thank you.

5 Number 40, Crystal George.

6 What says the state?

7 MS. LAND: Please present Ms. George.

8 THE CLERK: Defense?

9 MR. DEAS: Please swear the juror.

10 THE CLERK: Have a seat in the jury box over here,
11 ma'am. Thank you.

12 Number 95, Luna Reed.

13 What says the state?

14 MS. LAND: Please present Ms. Reed.

15 THE CLERK: Defense?

16 MR. DEAS: Please excuse the juror from the trial
17 of this case.

18 THE CLERK: Have a seat back in the jury pool,
19 ma'am. Thank you.

20 Number 17, Henry C. Carter.

21 What says the state?

22 MS. LAND: Please present Mr. Carter.

23 THE CLERK: Defense?

24 MR. DEAS: Please swear the juror.

25 THE CLERK: Have a seat in the jury box, sir.

1 Thank you.

2 Number 93, James E. Queen.

3 What says the state?

4 MS. LAND: Please present Mr. Queen.

5 THE CLERK: Defense?

6 MR. DEAS: Excuse Mr. Queen from the trial in this
7 case.

8 THE CLERK: Please have a seat back in the jury
9 pool, sir. Thank you.

10 Number 31, Wayne M. Evans.

11 What says the state?

12 MS. LAND: Please present Mr. Evans.

13 THE CLERK: Defense?

14 MR. DEAS: Please swear the juror.

15 THE CLERK: Please have a seat in the jury box,
16 sir. Thank you.

17 Number 29, Janice T. Dubose.

18 What says the state?

19 MS. LAND: Please present Ms. Dubose.

20 THE CLERK: Defense?

21 MR. DEAS: Please excuse the juror on the trial of
22 this case.

23 THE CLERK: Please have a seat back in the jury
24 pool, ma'am. Thank you.

25 Number 105, Verneaver Sinkler.

State v. Garris September 2-5, 2008

30

1 What says the state?

2 ~~MS.~~ LAND: Please present Ms. Sinkler.

3 THE CLERK: Defense?

4 MR. DEAS: Please swear the juror.

5 THE CLERK: Go over to the bailiff, ma'am, and

6 have a seat in the jury box. Thank you.

7 Number 14, Lisa B. Burns.

8 What says the state?

9 MS. LAND: Please present Ms. Burns.

10 THE CLERK: Defense?

11 MR. DEAS: Excuse the juror from the trial of this
12 case.

13 THE CLERK: Number 77, Angela V. McFadden.

14 What says the state?

15 ~~MS.~~ LAND: Please present Ms. McFadden.

16 THE CLERK: Defense?

17 MR. DEAS: Please swear the juror.

18 THE CLERK: Go over to the bailiff, ma'am, and

19 have a seat in the jury box. Thank you.

20 Number 76, Linda C. McDonald.

21 What says the state?

22 MS. LAND: Please present Ms. McDonald.

23 THE CLERK: Defense?

24 MR. DEAS: Please excuse the juror from the trial
25 of this case.

State v. Garris September 2-5, 2008

31

1 THE CLERK: Have a seat back in the jury pool,
2 ma'am. Thank you.

3 Number 88, Teresa W. Pearson.

4 What says the state?

5 MS. LAND: Please excuse Ms. Pearson.

6 THE CLERK: You can have a seat back in the jury
7 pool, ma'am. Thank you.

8 Number 39, Michael K. Gentry.

9 What says the state?

10 MS. LAND: Please present Mr. Gentry.

11 THE CLERK: Defense?

12 MR. DEAS: Please swear the juror.

13 THE CLERK: Please have a seat in the jury box
14 over there with the bailiff.

15 Number 86, Billie Ann C. Oliver.

16 What says the state?

17 MS. LAND: Please present Ms. Oliver.

18 THE CLERK: Defense?

19 MR. DEAS: Excuse the juror from the trial of this
20 case.

21 THE CLERK: Number 122, Julius C. Watts, III.

22 What says the state?

23 MS. LAND: Please present Mr. Watts.

24 THE CLERK: Defense?

25 MR. DEAS: Please swear Mr. Watts.

State v. Garriss September 2-5, 2008

32

1 THE CLERK: Have a seat in the jury box, sir.

2 Thank you.

3 Number 130, Virginia Williams.

4 What says the state?

5 MS. LAND: Please excuse Ms. Williams.

6 THE CLERK: Have a seat back in the jury pool,
7 ma'am. Thank you so much.

8 Number 69, Angela A. Logan.

9 What says the state?

10 MS. LAND: Please present Ms. Logan.

11 THE CLERK: Defense?

12 MR. DEAS: Please swear the juror.

13 THE CLERK: Have a seat in the jury box, ma'am.

14 THE COURT: All right. One and two on the
15 alternates?

16 MR. DEAS: Yes, sir.

17 THE CLERK: Number 24, Nicholas P. Daugherty.

18 What says the state?

19 MS. LAND: Please present Mr. Daugherty.

20 THE CLERK: Defense?

21 MR. DEAS: Please swear the juror.

22 THE CLERK: Have a seat in that first chair right
23 there, sir. Thank you.

24 Number 15, Mary E. Butler.

25 What says the state?

1 MS. LAND: Please excuse Ms. Butler.

2 THE CLERK: Have a seat back in the jury pool,
3 ma'am. Thank you.

4 Number 91, Elizabeth A. Player.

5 What says the state?

6 MS. LAND: Please present Ms. Player.

7 THE CLERK: Defense?

8 MR. DEAS: Please swear the juror.

9 THE CLERK: Have a seat in the that second chair
10 there. Thank you.

11 THE COURT: All right. Will the lawyers come up.
12 (Off the record bench conference with both counsel.)

13 MR. DEAS: Your Honor, we do have a motion on
14 behalf of the defendant.

15 THE COURT: All right.

16 Ladies and gentlemen, who've been selected -- the box
17 on my right, would you please go with the bailiff to the
18 jury room. You may not discuss this case at all. The only
19 thing that you can't talk about in that jury room. Please
20 do not talk about this case at all or anything remotely
21 connected to it, including the questions that I asked you
22 today. All right. Thank you.

23 (Jury exits courtroom at 12:17 p.m.)

24 THE COURT: Ladies and gentlemen who were not
25 selected, if you'll step outside for just a few minutes.

State v. Garris September 2-5, 2008

34

1 Please do not discuss any part of this case. Just use this
2 opportunity to use the restroom, get something to drink,
3 but please do not discuss this case. We'll have you back
4 in just a few minutes. Thank you.

5 (Jury panel exits courtroom at 12:18 p.m.)

6 THE COURT: All right, Mr. Deas, you have a
7 motion?

8 MR. DEAS: Thank Your Honor. Your Honor, I move
9 to set aside this jury under Batson. It appears the state
10 struck four jurors who -- numbers 116, 50, 88, and 130, all
11 of which are African American. I believe two were African
12 American males and two were African American females. The
13 opposition of those jurors is they were struck solely based
14 on their race.

15 We would move to set aside the jury.

16 THE COURT: Ms. Land, do you have a motion?

17 MS. LAND: I do not, Judge.

18 THE COURT: All right, then, Mr. Deas. The jurors
19 that you strike they were all white individuals. I'll deal
20 with these one by one.

21 The first juror that you struck was Lisbon Tindal, a
22 black male.

23 MS. LAND: Yes, sir, Your Honor. He came up to
24 the bench. He explained that he could not read or write
25 very well. And he said that sometimes he would have

1 problems understanding. I didn't know if he meant he would
2 have problems understanding if he attempted to read
3 something or if he was just spoken to, but --

4 THE COURT: He indicated up here -- I asked him if
5 he could understand -- he said sometimes he had trouble
6 understanding things. I asked him if somebody read
7 something to you would you be okay with that and he
8 indicated that he would. I said did you understand all of
9 my questions. He said, most of them.

10 MS. LAND: Well, Your Honor, that was troubling to
11 me because this is a very complex case with lots of
12 witnesses and it's -- it really will be like putting a
13 puzzle together. He's got to figure out that this person
14 testified to this because down the line it relates to this.
15 And I just think it would be too complex for him.

16 THE COURT: Do you have any response to that, Mr.
17 Deas, for that reason?

18 MR. DEAS: I certainly respect the explanation
19 given by Ms. Land, however, I believe it's pretextual.
20 Again, I'm going to allow my original position that the
21 strike was based on his race to stand.

22 THE COURT: Any other similarly situations with
23 jurors being able to read and write and understand; I don't
24 think there were.

25 MR. DEAS: I don't think there was any others that

State v. Garris September 2-5, 2008

36

1 made a statement of that nature or some similar to Mr.
2 Tindal.

3 THE COURT: All right. Ms. Land, the next juror
4 that you struck was Ryan Hammett, number 50, a black male.

5 MS. LAND: That's correct, Your Honor. When I
6 reviewed the jury list his birthday was in 1984, he lived
7 on Brunson Street, which is here in Manning. And from that
8 I assumed that he and Mr. Garris went to school together.
9 There are probably -- Quentin Garris, who is Brian's
10 younger brother.

11 THE COURT: How old is Mr. Garris?

12 MS. LAND: He was born in '89.

13 THE COURT: And the juror was born in?

14 MS. LAND: '84.

15 THE COURT: '84, and Quentin Garris was a student?

16 MS. LAND: His brother who's probably born -- you
17 know, I might have done my math backwards, but '92.

18 THE COURT: All right. Mr. Deas, -- And what's
19 the significance of Brunson Street?

20 MS. LAND: It's just in Manning. There was
21 another juror, Nicholas Daugherty, who was born in '88, but
22 he's from the Summerton area, so they would not have gone
23 to school together.

24 THE COURT: All right. Mr. Deas.

25 MR. DEAS: Your Honor, basically, what the

1 assertion is is that because of the jurors birthday, his
2 age and the fact that he lived in Manning he may have gone
3 to school with Mr. Garris or Mr. Garris' brother. I don't
4 -- just because he's young, lives here in Manning doesn't
5 necessarily mean he knows Mr. Garris. Certainly doesn't
6 mean he has some connection or affiliation with Mr. Garris.
7 He didn't say he knew Mr. Garris or had an affiliation or
8 any -- dealings with Mr. Garris when questioned with
9 respect to whether -- when the question was posed to the
10 jury panel, whether any panel had any connection with the
11 defendant. He didn't respond. He didn't say he had a
12 connection with the defendant. So again I will assert that
13 this explanation is pretextual, it's apparent to the
14 defense that this juror was struck simply because he was an
15 African American male.

16 THE COURT: Ms. Land, would you like to respond to
17 that?

18 MS. LAND: Your Honor, he wasn't struck just
19 because he was an African American male. He was struck
20 because they were close in age and lived in the same area.
21 Like I said, there was a -- the only other one that was
22 close in age, the only reason I put him on as an alternate
23 is because he lived in Summerton, so they would not have
24 attended school together. But I went through and looked at
25 all the birthdays of the jurors. Any from '80 and up, I

State v. Garris September 2-5, 2008

38

1 saw where they went -- where they live, what area they
2 lived in. And then decided which ones I would strike even
3 before it began.

4 MR. DEAS: Judge, I would just point out that one
5 of the jurors on the panel, 122, a white male. He was born
6 in '80, and he was not struck.

7 MS. LAND: And he lives in Turbeville. I looked.

8 THE COURT: Watts?

9 MR. DEAS: That's correct.

10 MS. LAND: Yes, his address is Turbeville. He was
11 another one that I looked at.

12 THE COURT: All right. The next one that you
13 struck, Ms. Land, was number 88, Teresa Pearson?

14 MS. LAND: Yes, Your Honor. She made multiple
15 attempts to get out of this jury duty. I don't think she
16 wanted to be here, but more importantly she has a son who
17 served time in prison. He was released recently, and I
18 believe that I was the person that prosecuted that case. I
19 also have that she has charges -- that's not the reason I
20 struck her. The reason I struck her is because I
21 prosecuted her son.

22 THE COURT: All right. She said there were some
23 gun charges -- this is the one, Mr. Deas, y'all recall, who
24 came up here, she said her son had some drug charges that
25 were pending, were dismissed and -- that he did go to

State v. Garris September 2-5, 2008

39

1 prison on some drug charges. Any response to that?

2 MR. DEAS: None, Your Honor.

3 THE COURT: All right. The next one you struck
4 was Ms. Williams, number 130, a black female?

5 MS. LAND: She had a shoplifting conviction.

6 THE COURT: Any white jurors that you did not
7 strike who have any prior convictions?

8 MS. LAND: No, sir, there were not.

9 THE COURT: Mr. Deas.

10 MR. DEAS: Of course, Your Honor, I'm not privy to
11 information with respect to the other panels misdemeanor
12 records of -- of course, that question isn't asked of the
13 panel. It's our position that Ms. Williams was struck from
14 jury duty in this particular case solely based on her race.
15 Not based on her misdemeanor record.

16 THE COURT: All right. The one that gives me
17 pause of all of these would be juror number 50, Mr.
18 Hammett. Of course, both of you know the law requires me
19 to look at the totality of the circumstances and the burden
20 is on the defendant to prove that the strike was used in a
21 racially biased manner. The reason given by the state
22 don't have to be believable just as long as they not
23 fundamentally implausible. I mean, they have to be at
24 least given as to be race neutral.

25 Mr. Deas, is there anything else you want to put on

State v. Garris September 2-5, 2008

40

1 the record about Mr. Hammett other than what you're already
2 stated?

3 MR. DEAS: Your Honor, I would just simply point
4 out that Mr. Hammett is -- with respect to his date of
5 birth, age, he is similarly situated with a juror that's
6 on the panel, Mr. Julius Watts. The only difference from
7 the standpoint of their age or dates of birth, is a couple
8 of years. Mr. Watts was born April 11, 1982. Mr. Hammett
9 was born October 6, 1984. If the race neutral reason that
10 state is offering is that Mr. Watts lived in Turbeville,
11 whereas Mr. Hammond lives here in town, and therefore, that
12 would have had some association, may have gone to school
13 with Mr. Garris, the defendant, or his brother, Quentin
14 Garris.

15 Again, I will state that's pretextual -- and it's not
16 plausible that simply because someone young and lives in
17 town and went to school in town, they would have some
18 affiliation, some association with Mr. Garris.

19 THE COURT: All right. Of course, the unique part
20 about all of this is the context of Clarendon County. You
21 have Turbeville, we have the town of Manning, and we have
22 Summerton. They have different communities in the county.

23 My finding, first of all, as to Mr. Tindal. I don't
24 think you had an objection after you heard her explanation
25 about her strike, but I don't think her strike was

1 unconstitutional.

2 Number two, Mr. Hammett, based on the totality of the
3 circumstances, I'm denying your motion, Mr. Deas. I don't
4 think that what the reason given by Ms. Land rises to the
5 level of being fundamentally implausible. Mr. Watts, the
6 white juror, of a similar age who was seated from
7 Turbeville and that, from the scheme of things, based on
8 the totality of the circumstances, different community,
9 different school system, different from the town of
10 Manning. So I will overrule your objection there, as well.

11 Number three, or third strike, Teresa Pearson. I'll
12 sustain that strike. And Virginia Williams, I'll sustain
13 that strike.

14 How about Ms. Butler, did you challenge that strike?

15 MR. DEAS: We have no challenge to that strike.

16 THE COURT: All right. We'll seat the jury as
17 selected. While the jury is out, seems to me we have some
18 things to do. If we bring this jury back at 2:30. We're
19 really probably not going to be able to start. So why
20 don't you two talk for the next 15 seconds and let me know
21 -- if we go to lunch now and we start pre-trial matters at
22 2:00 -- bring the jury in tomorrow morning and start or we
23 can start this afternoon. I'll leave it up to the two of
24 you as long as you can talk about it quickly.

25 (Jury panel in at 12:35 p.m.)

State v. Garris September 2-5, 2008

42

1 THE COURT: All right. Ladies and gentlemen of
2 the jury who were not selected for the trial of this case
3 call the number that you have after 6:00 p.m. tomorrow.
4 Today is Tuesday, so it will be 6:00 p.m. Wednesday. Call
5 the number. You'll hear a recording that will give you
6 further instructions. It may be to come back sometime
7 Thursday, it may be to call back sometime Thursday. Simply
8 follow the instructions on that recording. If you do not
9 understand or if it's the least bit unclear just call the
10 clerk's office the following morning at 8:30 or after and
11 they can give you more specific clarifying instructions.

12 All right. Thank you.

13 The bailiff's going to ask for your badge as you
14 leave, so please give that to them.

15 We will see you later this week.

16 Thank you very much.

17 (Jury pool dismissed for the day at 12:36 p.m.)

18 THE COURT: All right. 3:30?

19 THE CLERK: Yes, sir.

20 THE COURT: All right. Bring in the jury.

21 (Jury in at 12:36 p.m.)

22 THE COURT: If y'all will go all the way down as
23 far as you can. I realize with jurors once you get in that
24 box you're pretty territorial with the last seat that you
25 occupied. It's kind of hard to move around another juror.

1 Some jury boxes are a little wider.

2 All right, ladies and gentlemen, we're going to start
3 the trial of this case at 3:30 today. The only two folks
4 we have assigned seats right now are Mr. Daugherty and Ms.
5 Player. Those are the seats you'll occupy until further
6 notice. I've not appointed a foreperson yet and you've not
7 been sworn yet.

8 I want to tell you a couple of things for you to
9 understand very clearly as this case goes forward, that
10 includes from now until 3:30. You are not permitted to
11 discuss this case with anyone at all. That includes
12 amongst the 14 of you, and that includes anyone else;
13 friends, family, co-workers. When you go to lunch you
14 can't talk about it with anyone, and the reason for that is
15 you have told me during the qualification process that
16 there's no reason you shouldn't be on this jury. And if
17 you have responded to my questions correctly, you have all
18 told me that you will be fair and impartial and base your
19 verdict on the evidence you see and hear in this courtroom.
20 If you were to tell someone, let's say a co-worker, even
21 innocently, that you're on this jury or any jury, that
22 person may say something in general or whatever that person
23 might say, even if they mean it very innocently, it may
24 have an impact on what you think and how you think. We
25 can't have that in this case. You may hear from time to

State v. Garris September 2-5, 2008

44

1 time during this case about where this incident is claimed
2 to have occurred. But you can't go there. You can't go
3 look at it on your own. You can't do any investigation on
4 your own. You cannot -- this wouldn't -- probably doesn't
5 fall in that category, but you can't get on the internet
6 and do any research. You cannot find out any information
7 about this case other than what you hear from the witness
8 stand, what you see in the form of exhibits and perhaps
9 other testimony or evidence. Don't talk about it and you
10 can't even begin to form any final opinion about it in your
11 own mind about what your verdict would be in this case, not
12 until you've been given the evidence, the lawyers
13 arguments, and I've given you the charge on the law. And
14 that's sometime away from now. So don't begin to form any
15 final conclusions in your mind.

16 I'll see you back at 3:30. If -- we will be
17 conducting business and other cases between now and then
18 and there may be some reason the bailiffs have that door
19 locked you may be asked to sit in that grand jury room.

20 All right, when you come in the courthouse at 3:30,
21 come in that -- those stairs then and then the bailiffs
22 will allow you in and you can report to the jury room.

23 All right, see you back at 3:30. Thank you very much.

24 (Jury out for lunch break at 12:40)

25 THE COURT: All right. What time -- 2:00 o'clock

1 suit you folks.

2 MS. LAND: Oh, yeah, that's fine.

3 MR. DEAS: That's fine, Judge.

4 THE COURT: All right. Ms. Land are you going to
5 have any other business to conduct?

6 MS. LAND: No, sir, just the motions on this case.

7 THE COURT: All right. Thank you.

8 (Court at recess for lunch at 12:42 p.m.)

9 (Court is session after lunch at 2:18 p.m.)

10 THE COURT: Y'all have a seat.

11 All right. Mr. Deas, I think you have at least two
12 motions. One of which deals with suppression of the gun
13 that was seized. I assume that to be the .22 caliber
14 weapon that was referenced in the indictment?

15 MR. DEAS: Yes, sir.

16 THE COURT: And you also have a motion concerning
17 the line-up?

18 MR. DEAS: That's correct, Your Honor.

19 THE COURT: All right. Do you have any other
20 motions you can think of at this time?

21 MR. DEAS: Your Honor, I believe those are the
22 only two motions In Limine that we have.

23 THE COURT: All right. Tell me what it is about
24 the gun that you would like addressed?

25 MR. DEAS: Judge, just by a -- by way of

State v. Garris September 2-5, 2008

46

1 background, I know the Court may be familiar with some of
2 this, but just out of the abundance of caution I need to
3 give you a little bit of background for this situation
4 before I -- the basis for my motion to suppress the gun.

5 Mr. Garris, the defendant, was arrested on April 28,
6 2006 on an unrelated burglary charge.

7 THE COURT: April 28, 2006?

8 MR. DEAS: Yes, sir.

9 He's -- That case has been adjudicated. He was found
10 not guilty.

11 The incident at hand, that led to these criminal
12 charges that he's being prosecuted on today, that incident
13 occurred on April 15th, which is around 13 days before he
14 got arrested on the unrelated burglary charge --

15 THE COURT: April 15, --

16 MR. DEAS: -- April 15, 2006, is when the shooting
17 incident occurred. The incident that he's being prosecuted
18 for today.

19 THE COURT: All right.

20 MR. DEAS: When he was arrested on April 28, 2006,
21 he was basically caught coming out of some woods near where
22 the alleged burglary occurred after fleeing the scene. He
23 was searched by the police that stopped and detained him at
24 that point. He -- prior to them conducting a swab of his
25 hands to submit the swab to SLED for gunpowder residue test

State v. Garris September 2-5, 2008

47

1 he was searched again. Then he was arrested on the
2 burglary charge and transported to the Clarendon County
3 Detention Center.

4 THE COURT: All on the 28th?

5 MR. DEAS: All on the 28th. Some approximately 30
6 hours after he was arrested for the burglary charge --

7 THE COURT: Sometime on April 30th?

8 MR. DEAS: -- sometime on April 30th, a gun was
9 discovered in the trash can of the Clarendon County Jail.
10 And again, I don't know the exact specifics on who actually
11 found the gun in the trash can, who reported it.

12 Again, some of that can probably be flashed out by
13 some of the principle parties involved who either worked
14 for the Clarendon County Detention Center or were employed
15 there in some capacity at the time.

16 THE COURT: Was your client in jail at that time?

17 MR. DEAS: He was in jail at the time. He had
18 not made bond. Some 30 hours after he was arrested on this
19 unrelated burglary charge the gun was found in the trash
20 can.

21 It's my understanding that an inmate by the name of
22 Johnny McCrea had dumped Mr. Garris' food tray into the
23 trash can and that when he dumped that food tray in that
24 trash can the gun fell in the trash can. I believe it's
25 asserted or alleged by the state the inmate told Ms. Joanna

State v. Garris September 2-5, 2008

48

1 Jones, who at that time was the head chef at the jail, told
2 her that he saw a gun in the trash can. Ms. Jones then, I
3 assume, reported it to the appropriate officials within the
4 jail.

5 THE COURT: Where is Mr. McCrea now?

6 MR. DEAS: Mr. McCrea, it's my understanding he's
7 still incarcerated, I believe at Darlington.

8 MS. LAND: He's in SCDC. I'm not sure where he is
9 but they're bringing him over --

10 THE COURT: Did he tell Ms. Jones that he found
11 the gun in the trash can or that it fell off the tray?

12 MR. DEAS: He said that it was -- he saw it, when
13 he saw the gun it was in the trash can, is my
14 understanding. I'm not exactly sure. I believe Mr. McCrea
15 will probably be able to flash that out more specifically,
16 but it's my understanding that when he dumped Mr. Garris'
17 tray the gun fell into the trash can. He saw it fall into
18 the trash can, and Mr. McCrea then reported that to Ms.
19 Joanna Jones, who was the head chef at the jail at the
20 time.

21 THE COURT: Okay.

22 MR. DEAS: Ms. Jones, my understanding is Ms.
23 Jones reported it to the appropriate -- reported this to
24 the appropriate officials at the jail. At that point, the
25 gun was not turned over to law enforcement for

1 investigation purposes. The gun -- The police were not
2 notified that the gun was found in the jail. And for nine
3 days officials at the jail essentially just sat on this
4 gun. For what, I don't know, but I think it would be
5 pertinent to this motion to find out what was being done
6 with this gun for nine days after it was discovered.

7 THE COURT: What was done after nine days?

8 MR. DEAS: After nine days the jail officials
9 finally reported to the police that the gun was found in
10 the jail.

11 THE COURT: Anything in particular that the
12 evidence will show about the promptness of notifying the
13 authorities.

14 MR. DEAS: Again, I'm at a loss on that. Without
15 being able to truly flash that out factually through
16 witnesses and an In Camera proceedings, but my
17 understanding is after the gun, after it was reported to
18 the police that the gun was in the jail then the gun was
19 taken into custody by the police. I believe it was sent to
20 SLED for ballistic tests to be done on the gun.

21 THE COURT: And the results of the test?

22 MR. DEAS: The results show that the gun and
23 bullet that was removed from the victim matched.

24 THE COURT: Okay.

25 MR. DEAS: Now, Judge, I've essentially -- and

State v. Garris September 2-5, 2008

50

1 again, some of that, some of those facts maybe somewhat
2 erroneous, but I believe that's the gist of it.

3 The basis of the motion is that -- is two fold.
4 Number one, there has been no dispute that Mr. Garris was
5 searched when he was arrested at the scene of the burglary,
6 fleeing from the scene of the burglary. He was searched
7 when he got to jail. No gun was found. There's no dispute
8 that the gun was found some 30 hours later after his
9 arrest, and there's no dispute that the gun, even after it
10 was discovered, that the existence of this gun was not
11 reported for some nine days after it was discovered.

12 The premise of the motion is that in order for the
13 state to establish that this gun should be admitted into
14 evidence it's going to be necessary for the state to
15 reference his arrest. His arrest on an unrelated charge.
16 An arrest not for the charges he's on trial for today, but
17 an arrest on charges that he's actually already been found
18 not guilty of.

19 So the jury, in an effort to establish the proper
20 foundation for this gun to be admitted into evidence the
21 state is going to have to tell the jury or establish at
22 some point how the gun got into the Clarendon County
23 Detention Center. And their assertion is that he brought
24 it in. So that means that they are going to have to
25 establish that, they're going to have to reference that he

State v. Garris September 2-5, 2008

51

1 was arrested and was taken to jail for some type of a
2 crime.

3 And the jury may look at -- may -- the jury -- my
4 position is the jury may have a prejudicial view of him
5 because of that. They may form in their mind a prejudicial
6 opinion that he was -- has been -- that he has gone to jail
7 for some crime other than the one he's being prosecuted for
8 today.

9 The other issue is that the jury has to be able to
10 know how the gun arrived in the jail. They have to -- Some
11 information has to be given to the jury with respect to how
12 the gun got in the jail, which means that the state is
13 going to have to say that Mr. Garris was arrested and he
14 was taken to jail and that it's our position that --
15 state's going to say it's their position that somehow he
16 smuggled this gun into the jail and that he did so when he
17 was arrested on some unrelated charge.

18 THE COURT: Who are the officers who arrested him
19 when he was coming out of the woods?

20 MR. DEAS: It's my understanding that it was Lin
21 Ham, I believe was one of the officers, and Rodney Tisdale.

22 MS. LAND: Rudy.

23 MR. DEAS: Rudy Tisdale. And Officer William
24 McCoy.

25 So Judge again --

State v. Garris September 2-5, 2008

52

1 THE COURT: Is Tisdale still with Clarendon
2 County?

3 MS. LAND: He is, yes, sir.

4 MR. DEAS: Judge, I guarantee you this has got to
5 be the novel issue. This has got to be the first time, and
6 if it's not, I'd be very surprised. This has got to be the
7 first instance where a weapon, alleged weapon, involved in
8 an alleged crime, was found in the jail.

9 THE COURT: While he was being detained there for
10 another reason?

11 MR. DEAS: Exactly. I know of no other case
12 situation that's similar to this one.

13 THE COURT: Doesn't it all get back to Rule 403,
14 you have to show that the --

15 MR. DEAS: Probative value outweighs --

16 THE COURT: -- is outweighed by the prejudicial --

17 MR. DEAS: That's correct. I think in this
18 particular -- if state is going to successfully get this
19 gun admitted into evidence they're going to have to
20 reference his prior arrest. And they're going to have to
21 reference the fact that he went to jail, and that when he
22 went to jail he took the gun, and that the gun was found in
23 the jail.

24 That's how they're going to establish this link
25 between Mr. Garris and this gun. But if they establish it

1 in that fashion, I believe that's prejudicial, because what
2 they're going to be alleging or asserting to the jury is
3 that he had gotten arrested on some other charge besides
4 the one he is on trial for today.

5 THE COURT: Ms. Proctor has the gun?

6 MS. LAND: She does. Yes, sir.

7 THE COURT: What kind of .22 was it?

8 MS. LAND: What kind?

9 THE COURT: Well, obviously, it wasn't a rifle. A
10 revolver, the -- a revolver -- I believe it was a revolver,
11 so the question would be cross-examination wise -- why did
12 the law enforcement officer not fine it.

13 MR. DEAS: Correct.

14 THE COURT: That could mean perhaps a cut in your
15 favor, --

16 MR. DEAS: Correct.

17 THE COURT: -- but the argument you're making is
18 that they -- the simple fact that the state would have to
19 reference the part that you -- the chain of events that he
20 was there for another incident --

21 MR. DEAS: Correct.

22 THE COURT: -- would be prejudicial; if that is
23 your position?

24 MR. DEAS: That is our position, and Judge, again,
25 I don't know if there's ever been a situation where a

State v. Garris September 2-5, 2008

54

1 weapon involved in a crime was found in the jail.
2 Normally, it's found somewhere out -- you know, out in the
3 community, near the scene of the crime, some other
4 location. Not in the jail.

5 And I believe in order to get this evidence admitted
6 the state still had to establish some foundation for how
7 they found it, where they found it, how it got -- how the
8 object got where it was.

9 THE COURT: How can the state establish something
10 that's arguably -- surreptitiously concealed? That's why
11 you have circumstantial evidence. I understand where
12 you're coming from but let me hear from Ms. Land.

13 Ms. Land, if we assume that the evidence or chain of
14 events is as Mr. Deas said, first of all, how do you
15 propose to deal with the issue of the reason for why he's
16 there 13 days after this incident at China Cuisine?

17 MS. LAND: Your Honor, I don't think there will be
18 any prejudice because the jury can know -- I can even ask
19 the officer or Mr. Deas can, however we think it should
20 work, but were you --did you go to trial on those charges.
21 Yes. Didn't you plead not guilty. Yes. Weren't you found
22 not guilty. Yes.

23 So you could be charged with a crime but not
24 convicted, and that shouldn't prejudice the jury any. You
25 could even advise them of that.

1 Secondly, it does sound like the witnesses that
2 searched him at that scene of the first incident, of the
3 second incident, the one that he was arrested for and
4 jailed for, would certainly be good defense witnesses. The
5 probative value totally outweighs the prejudicial value
6 because this was the bullet that shot -- this was the gun
7 that shot the bullet that was lodged in Ms. Santiago's arm.

8 It -- we have to have that gun. It is very, very
9 essential to this case. The jury may not believe that it
10 came from that tray and it went through so many people, but
11 that's where it actually came from. I don't know.
12 Obviously, it's our hope that they do, but it is a very
13 probative part of this case.

14 THE COURT: How about the foundation and
15 characterize -- foundation for -- you're talking about 13
16 days -- how did the gun get there. How are you going to
17 prove that? Isn't it circumstantial?

18 MS. LAND: The 13 days that it stayed in the jail?

19 THE COURT: No. The 13 days from the day of the
20 shooting --

21 MS. LAND: Right.

22 THE COURT: -- to the date he was --

23 MS. LAND: Okay. Your Honor, we have an officer
24 within the jail -- the burglary that he was arrested for
25 took place on the 28th. On the 29th the gun was found in

State v. Garris September 2-5, 2008

56

1 the jail. Fifteen days later is when it was turned over to
2 law enforcement. They planned on handling it internally.

3 THE COURT: Well, I'm talking about to the extend
4 -- in other words, you have direct evidence and you have
5 circumstantial evidence.

6 MS. LAND: Right.

7 THE COURT: I saw you shoot and I saw you throw
8 the gun down that manhole cover. Mr. Deas is arguing that
9 you have no evidence to show that it was Mr. Garris who
10 transported the gun to the jail.

11 MS. LAND: We have, Judge, a witness who
12 essentially booked him in who said that when he got Mr.
13 Garris in there Mr. Garris said, I need to use the
14 restroom. At that point he let Mr. Garris go into a
15 holding cell that has it's own individual private bathroom
16 where you can shut the door. He went in there, came out,
17 went to a shower area where he was searched. He was not
18 strip searched, but they, you know, de-clothed him and gave
19 him his orange jumpsuit. At that time, he came back and
20 was placed back in that cell with the individual bathroom
21 that he had already been in.

22 So it is our -- what we plan on doing is presenting
23 that as evidence to the jury that he could have stashed it
24 in that bathroom during that short time that he was
25 searched by law enforcement.

1 THE COURT: Who is that officer?

2 MS. LAND: That's Officer McCants.

3 THE COURT: All right. Any evidence of the field
4 search done by Tisdale or Ham or McCoy?

5 MS. LAND: No, sir, Your Honor, because -- no.

6 THE COURT: Okay. All right, Mr. Deas, I'll give
7 you -- I know you may have more to do.

8 Do you have a response to her point?

9 MR. DEAS: Just briefly. And again, the other
10 part of the motion that's in the actual written motion that
11 we filed and served on Ms. Land, is that in addition to
12 suppressing the gun from coming into evidence, also, we're
13 seeking relief from the Court from the standpoint of
14 prohibiting any reference by the state to Mr. Garriss' prior
15 record.

16 Again, our position is going to be -- our position is
17 that it doesn't matter that he was found not-guilty, the
18 case was adjudicated in his favor. If the jury gets to
19 hear that this gentlemen was charged with some other crime
20 and had gotten arrested and incarcerated for some period of
21 time, long enough for a gun to be found in the jail
22 allegedly brought in by him, they could form the opinion
23 that he's a repeat offender, that he's, you know, basically
24 a troubled soul and -- basically getting into mischief time
25 and time again, and that, I believe, is the premise of the

State v. Garris September 2-5, 2008

58

1 prejudicial perspective that the jury might have with
2 regards to Mr. Garris. Not that he was found guilty of the
3 prior charge --

4 THE COURT: Not guilty.

5 MR. DEAS: -- but that he was arrested to begin
6 with. That he has some sorted past as a result.

7 THE COURT: Well, I understand. Let's get back to
8 a different factual scenario -- and tell me why your
9 argument wouldn't be the same -- let's say that Mr. Garris
10 were in jail for the burglary and while he was in there
11 confessed to a fellow detainee about the shooting. Would
12 the jury be able to hear that he confessed to -- you know
13 what I'm saying -- Mr. McCrea --

14 MR. DEAS: Correct.

15 THE COURT: -- while he was in jail --

16 MR. DEAS: Well, I think in a situation like that
17 I can cross-examine Mr. McCrea. I could challenge --

18 THE COURT: You can cross-examine Mr. McCrea now.

19 MR. DEAS: Yeah, but I can't cross-examine a gun.
20 And if that gun comes into evidence it's going to basically
21 be -- the assertion is that he brought it in after he got
22 arrested on another charge and that it was the gun that was
23 used in this crime against the victim in this particular
24 case. So I would have a chance in that scenario that you
25 give to challenge Mr. McCrea's credibility.

State v. Garris September 2-5, 2008

59

1 THE COURT: Can't you do that now, with the gun --
2 Can't you challenge his credibility?

3 MR. DEAS: I could, but I can't negate --

4 THE COURT: Beyond it's link to the shooting or
5 the ballistics, Mr. McCrea -- excuse me, Mr. Garris is
6 linked to the gun because of what Mr. McCrea said.

7 MR. DEAS: Right.

8 THE COURT: If Mr. McCrea's credibility can be
9 successfully attacked -- your factual scenario or that one
10 that I suggested still falls to Mr. McCrea's credibility.

11 MR. DEAS: I concede to the Court that really,
12 again, this is an issue that the Court noted under -- falls
13 to Rule 403, which is whether or not a prejudicial effect
14 if any of the jury knowing how the gun got in the jail and
15 knowing that he was arrested. If that prejudicial effect
16 outweighs the probative value.

17 THE COURT: As to whatever difference it makes it
18 has to substantially outweigh the probative value.

19 MR. DEAS: Correct. And, of course, what we don't
20 want is the jury -- what the defense doesn't want is the
21 jury to form any opinions about Mr. Garris that's negative
22 from knowing that he was arrested on an unrelated charge at
23 some point after this shooting incident occurred, because
24 they're view may be well if he got in trouble then and he
25 was arrested then for some type of crime the likelihood is

State v. Garris September 2-5, 2008

60

1 he has a propensity to do these type of things and maybe
2 he's guilty of this as well.

3 So that's the reason why we're asking that the gun
4 evidence be suppressed, because I don't see -- unless
5 there's a way they can get this gun admitted without
6 referencing his prior record.

7 THE COURT: What if he'd been arrested -- I'll
8 tell you this, the jury will not hear that he was arrested
9 for burglary.

10 What if he'd been arrested for jaywalking would you be
11 as concerned about that?

12 MR. DEAS: Yeah, I believe I would, but, again, I
13 think this situation is so unique in the sense that to have
14 a weapon that was involved in a crime being found at the
15 jail after he committed -- after he allegedly committed a
16 serious crime. And it's not jaywalking in this particular
17 situation that was the previous crime. It's burglary
18 first, which is a serious crime.

19 THE COURT: Let me ask this question, it may not
20 make any difference at all. Does the gun have anything to
21 do with the burglary trial?

22 MS. LAND: Judge, it did. Of course, we couldn't
23 produce the gun because we didn't want to go through the
24 whole jail scenario. We did produce evidence that he did
25 have a GSR on his hands when he came out of the woods.

1 THE COURT: After the burglary, you mean --

2 MS. LAND: He fired a gun as he was leaving the
3 house.

4 THE COURT: All right.

5 MS. LAND: But he did have GSR on his hands and
6 that there was no gun found on him.

7 THE COURT: You're not attempting to use the
8 burglary scenario as any type of violence --

9 MS. LAND: Absolutely not, in fact, Judge I just
10 wrote down the 403 with the probative value -- I believe
11 that it's so probative that it's essential to the case, and
12 the prejudice can be cured by not saying what the charge is
13 and we're willing not to reference the charge. That
14 whatever charge it was he was found not guilty of, and you
15 can fix it with instructions that they are not to consider
16 that he was placed under arrest for another unrelated
17 charge as any evidence in this case.

18 THE COURT: All right, now, the next question
19 before we quit today. What do we need to do about putting
20 things on the record about the gun since nobody's here to
21 talk about it, except Ms. Jones, who technically her
22 testimony is going to be hearsay right now.

23 MR. DEAS: Well, our position on it, Judge, is
24 that something that is factual testimony needs to be
25 proffered in this situation so that we can establish,

State v. Garris September 2-5, 2008

62

1 number one, specifically what was the chain of events that
2 led to the discovery of the gun.

3 THE COURT: Aside from, aside from why he was.
4 there question which I think I can do without witnesses, do
5 you agree that he was there after being arrested for a
6 separate offense for which he was found not guilty and the
7 jury shouldn't consider that in their verdict. Instruction
8 in the jury charge is not overcome the actual prejudice --
9 what do we need to do factually for me to have clear way to
10 -- rule on whether or not the gun comes in from the
11 foundation standpoint?

12 MR. DEAS: Well --

13 THE COURT: You said we need McCrea, conceivably
14 Ms. Jones.

15 Now, Mr. Deas, what relevance does the fact that the
16 gun was kept there for nine days have to do with anything?

17 MR. DEAS: Well --

18 THE COURT: Except that it kind of looks odd.

19 MR. DEAS: I mean, I think --

20 THE COURT: The gun was found, period. Then nine
21 days went by before anything was done with it. Now, what
22 -- when we get to the point where I can rule on your motion
23 why do you have to have the nine day witnesses?

24 MR. DEAS: Well, again, Judge, I think it goes
25 back to just the reliability of the evidence. I believe

1 after nine days this gun had been found, but for whatever
2 reason it's discovery wasn't reported to police. That this
3 evidence could have become tainted, could have been
4 compromised in some way. And I think that's an issue to be
5 considered when you determine the admissibility of
6 evidence.

7 THE COURT: Ms. Land --

8 MS. LAND: Your Honor, those witnesses would be
9 from the time it was found until it was turned over to
10 Investigator Elms.

11 THE COURT: McCrea did find it?

12 MS. LAND: Mr. McCrea grabbed the tray, felt the
13 gun on the tray --

14 THE COURT: All right.

15 MS. LAND: -- dumped it into the trash can just
16 as he did all the other trays.

17 THE COURT: All right. I'm assuming he didn't
18 reach in there and pick it up?

19 MS. LAND: He did not reach in there and pick it
20 up. Then he went to Ms. Jones and he said, Ms. Jones I
21 need to tell you something. There was this gun that was on
22 Brian Garris' tray and I dumped it off, and I don't want
23 any of the employees to get hurt.

24 THE COURT: What did she do?

25 MS. LAND: She then told Officer Baker what she

State v. Garris September 2-5, 2008

64

1 had been told. He immediately took the whole trash can
2 outside, put rubber gloves on and retrieved it. Turned it
3 over to Shelton Hughes, who is -- who kept the gun secured
4 in his office.

5 THE COURT: Did anybody go to try to interview Mr.
6 Garris at that time?

7 MS. LAND: No, sir.

8 THE COURT: They didn't --

9 MS. LAND: Not to my knowledge. I've not been
10 given any sort of --

11 THE COURT: All right. Another point -- that may
12 well work in his favor.

13 MS. LAND: Right. Right. And I don't see any
14 foundation problems, Your Honor. I see evidentiary
15 problems. I mean, I see a lot of things that he could
16 attack, but as far as presenting these witnesses I don't
17 think that there's a lack of foundation that we would have
18 to do it In Camera.

19 THE COURT: I mean, I'm just trying to find out
20 what we need to do in the next 45 minutes.

21 MS. LAND: Right.

22 MR. DEAS: I think at the very minimum in order
23 for you to make an assessment as to whether this gun is
24 admissible as evidence beyond the issue of whether it's
25 probative value substantially outweighs it's prejudicial

State v. Garris September 2-5, 2008

65

1 value -- I think we have to assess -- you have to be able
2 to flash out factual -- what their assertions are so far as
3 how the gun got in the jail and how many times he was
4 searched. Who found the gun and, again, none of this is on
5 the record, it's just through, argument. I think to
6 protect the record that needs to be addressed through some
7 form of fact witnesses.

8 THE COURT: Oh, I agree with you. The only
9 evidence that he was there on the 30th, and the gun was
10 found on the 30th. That's not enough.

11 MS. LAND: The 28th through the 30th. The 28th or
12 29th.

13 THE COURT: Well, he was there the 30th when it
14 was found?

15 MS. LAND: Right, right.

16 THE COURT: But he -- but there is circumstantial
17 evidence that an inmate says -- That credibility issue, an
18 inmate says he felt the gun on there and dumped it and it
19 came tumbling out of his tray, as the source.

20 Well -- So I'm willing to hear whatever evidence y'all
21 want to hear. We can do this one of two ways. We can do
22 the opening statements today and stop with referencing
23 anything about a gun yet. Then we can start the trial in
24 the morning.

25 Is Mr. McCrea going to be here at 9:00?

State v. Garris September 2-5, 2008

66

1 MS. LAND: He is, yes, sir.

2 THE COURT: Perhaps we could get those other folks
3 up there this afternoon.

4 Mr. Deas, has an interest in making sure the record's
5 clean and I'm willing to accommodate him as far as the
6 rules permit me, but you've got no witnesses here right now
7 for me to hear from them. There's not much I can do except
8 listen to y'all.

9 MS. LAND: Right. And, Your Honor, I think that
10 if that was the case, in any case that we have up here they
11 could ask that we have the whole trial In Camera to make
12 sure that all of the evidence --

13 THE COURT: Sometimes that happens in drug cases
14 But he's got -- I can tell you right now, Mr. Deas, if the
15 facts are as you lay out are what the testimony will be my
16 inclination would be to give the jury a very specific
17 charge that they can't consider why he was there. On top
18 of that, he's found not guilty or whatever language I would
19 use. It can't be used against him. I've already told them
20 two or three times that the fact that a person is arrested
21 and charged with anything is not evidence. Evidentially,
22 the last jury that acquitted him took that to heart.

23 So I appreciate your arguments. But off the cuff
24 right now, I would rule against you. The foundational part
25 of the gun, how it got there and where it -- how it got to

1 be at that particular point where it was found, that could
2 be done during the course of the trial. It doesn't
3 necessarily have to be done pre-trial.

4 Ms. Land, if you've got an interest in referencing the
5 gun specifically in your opening statement, as you know,
6 all the time we have pre-trial issues that have to be ruled
7 on for example -- ladies and gentlemen, the defendant
8 confessed. Well, that's why you have Jackson verses Denno
9 Hearings so you can see if that's admissible.

10 So my inclination with the 403 analysis would be that
11 the probative value is not substantially outweighed by the
12 prejudicial impact. Of course, after I hear everything I
13 may change my mind as the trial goes on.

14 Now, on the issue of that --

15 MR. DEAS: Also making sure that there's no
16 reference made by the state, through its witnesses
17 regarding his prior arrest.

18 THE COURT: Well, you'll have to get into that on
19 cross-examination of Mr. Tisdale, Mr. Ham and Mr. McCoy,
20 who I assume you have subpoenaed or will, but I don't know
21 that.

22 MR. DEAS: Of course, I wouldn't call them as
23 witnesses if the gun isn't allowed into evidence.

24 THE COURT: Right. Well, if it is you might have
25 to really good time with that --

State v. Garris September 2-5, 2008

68

1 MR. DEAS: Right.

2 THE COURT: I'll give you a lot of leeway there
3 without having --

4 MR. DEAS: Then the other motion, Judge relates
5 to the photo line-up.

6 THE COURT: Okay.

7 MR. DEAS: Do you want to go ahead and take that
8 up now?

9 THE COURT: Do you have the folder, Ms. Land?

10 MS. LAND: The what?

11 THE COURT: The photo folder.

12 MS. LAND: Yes.

13 THE COURT: Do you have any witnesses here or do
14 we need to talk about that, Ms. Land?

15 MS. LAND: I do, yes, sir.

16 THE COURT: All right, who's that?

17 MS. LAND: Rick Elms and Laura Batista.

18 THE COURT: Who do you want to call first?

19 MS. LAND: Your Honor, we're getting the original.

20 THE COURT: Okay.

21 MS. LAND: Judge, if I can have just a minute.

22 THE COURT: All right.

23 (Pause.)

24 MS. LAND: There's also a photo lineup that Johnny
25 McCrea signed where he identified Brian Garris.

1 THE COURT: Did they know each other?

2 MS. LAND: Yeah, they knew each other's names.

3 But as an utmost precaution --

4 THE COURT: Let's mark that as a Court's Exhibit.

5 MS. LAND: Yes, sir.

6 (Court's Exhibit No. 1, original
7 photo lineup, was marked and entered.)

8 MR. DEAS: Judge, what I was referencing, I wasn't
9 even aware that there was a photo lineup conducted by Mr.
10 McCrea, because it's not part of my discovery packet. So I
11 didn't file a motion to address it, because I didn't know
12 it until just now, but if that is something that occurred,
13 number one, it should have been part of my discovery, but
14 it's not, and number two, if they plan to admit Mr.
15 McCrea's photo identification of Mr. Garris during the
16 course of the trial I would like to reserve my right at
17 this time to move to suppress that as well.

18 THE COURT: All right. Do you have his?

19 MS. LAND: Johnny McCrea's?

20 THE COURT: Yes. Mark that as Court's Exhibit No.
21 2.

22 (Court's Exhibit No. 2, photo
23 lineup by Johnny McCrea, was marked and entered.)

24 THE COURT: That would appear to be the identical
25 lineup of the individuals.

State v. Garris September 2-5, 2008

70

1 All right, Ms. Land, who are you going to call first?

2 MS. LAND: Your Honor, I call Investigator Rick

3 Elms.

4 THE CLERK: Raise your right hand, please and put
5 your left hand on the Bible.

6 (WHEREUPON Rick Elms was sworn to
7 tell the truth.)

8 PROFFER:

9 RICK ELMS - DIRECT EXAMINATION

10 BY MS. LAND:

11 Q All right, Investigator Elms, this was in 2006, May of
12 that date. Were you employed at the Manning Police
13 Department at that time?

14 A Yes, ma'am, I was.

15 Q And were you in investigations with the Manning Police
16 Department?

17 A Yes, ma'am.

18 Q And on that date or prior to that date were you
19 assigned to a shooting that occurred at the Chinese
20 restaurant?

21 A Yes, ma'am, I was.

22 Q Or the China Cuisine.

23 A Correct. Chinese Cuisine.

24 Q Did you have an opportunity on May 24, 2006, to show a
25 photo lineup to Laura Batista?

1 A Yes, ma'am, I did.

2 Q And tell the Court who Laura Batista is?

3 A Laura Batista is the daughter of my victim, Ms. Martha
4 Santiago.

5 Q And was it alleged that she had seen the person who
6 fired the shot at her mother?

7 A Yes, ma'am, she sure did.

8 Q And when you showed her that lineup on that date, tell
9 the Court what you did?

10 A I took the photo lineup out to Ms. Batista's
11 residence, which is on Oak Grove Church Road. I sat with
12 her on her front porch along with Capt. Blair Shaffer and
13 asked her if she noticed anybody in this lineup that she
14 may have known, and she circled Mr. Garris and then wrote
15 this is the man that robbed us.

16 Q She wrote that above the picture?

17 A Correct.

18 Q Did you in any way influence her choice?

19 A No, ma'am, I did not.

20 Q Okay, and did you -- did Capt. Shaffer in any way
21 influence her choice?

22 A No, ma'am.

23 Q Did he have any contact with her?

24 A No, ma'am.

25 Q So you would say that you were the one handling the

State v. Garris September 2-5, 2008

72

1 contact with Ms. Batista?

2 A Correct, it was my case.

3 Q Was her mother present during that photo
4 identification?

5 A No, ma'am, she was at work at the time.

6 Q That's all the questions I have. Please answer any
7 questions that Mr. Deas may have.

8 THE COURT: Mr. Deas, do you need either one of
9 these exhibits? You've got a copy?

10 MR. DEAS: I think I've got the one for Ms.
11 Batista.

12 RICK ELMS - CROSS-EXAMINATION

13 BY MR. DEAS:

14 Q Investigator Elms, how are you doing, sir?

15 A Fine. How about yourself.

16 Q What date did you conduct this photo lineup with Ms.
17 Batista?

18 A May 24, 2006.

19 Q So this would have been roughly about a month after, a
20 little more than a month after the incident, correct?

21 A Yes, sir.

22 Q Prior to conducting this photo lineup had there been
23 any description given of the assailant by either Ms.
24 Batista or the alleged victim at some point prior to the
25 photo lineup being conducted?

1 A Yes, sir. Ms. Santiago gave us a drawing, a sketch I
2 think was done by SLED.

3 Q Okay, and I'm going to hand you a -- I believe that is
4 a copy of that sketch. Is that the rendition that was
5 given -- produced by the sketch artist following the
6 description that was given by Ms. Santiago?

7 A Yes, sir.

8 Q And that description, does it reference the height and
9 weight of the alleged assailant?

10 A No, sir, it does not.

11 Q Did Ms. Santiago give a description at some point
12 following the incident of the assailant by indicating his
13 height or --

14 MS. LAND: Your Honor, I'm going to object to
15 this. That's hearsay at this point. What Ms. Santiago
16 testified to or gave information to the officers as far as
17 height and weight, it's not on that sheet and it doesn't
18 have any relevance.

19 THE COURT: Go ahead and answer.

20 A Oh -- yes, sir, tall -- I don't have those exact
21 notes. Tall, slender, black male.

22 BY MR. DEAS:

23 Q But she describe the individual as tall and slender?

24 A Yes, sir.

25 Q And I believe, you can correct me if I'm wrong, but I

State v. Garris September 2-5, 2008

74

1 believe she indicated that the assailant was somewhere
2 between six feet one and six feet three inches tall,
3 correct?

4 A I don't recall that.

5 Q But you wouldn't dispute that if I said that's what
6 she said?

7 A No, sir.

8 Q And the individuals that are shown on that photo
9 lineup, do any of those individuals, in your view,
10 Investigator Elms, depict a tall, slender, black male that
11 is somewhere between six feet one and six feet three inches
12 tall?

13 A No, sir.

14 Q Now --

15 MR. DEAS: Your Honor at this time I want to offer
16 as a Court's Exhibit -- it may have already been done, but
17 the photo lineup --

18 THE COURT: And the composite?

19 MR. DEAS: -- as well as the composite.

20 THE COURT: Composite is four.

21 (Court's Exhibit No. 3, composite
22 sketch, was marked and entered.)

23 BY MR. DEAS:

24 Q Investigator Elms, who else went with you when you
25 went to show Ms. Santiago this photo lineup?

- 1 A Capt. Shaffer was with me. Ms. Santiago wasn't there.
- 2 Q I'm sorry. Ms. Batista.
- 3 A Ms. Batista.
- 4 Q So Capt. Shaffer was with you?
- 5 A Yes, sir.
- 6 Q And just the two of you?
- 7 A Yes, sir.
- 8 Q And Ms. Batista was home by herself?
- 9 A I think her brother and sister were inside.
- 10 Q And where did you actually conduct this line up, was
- 11 it inside the house or outside the house?
- 12 A Outside the house.
- 13 Q I believe you said on the porch?
- 14 A Front porch.
- 15 Q No one else was around, no other family members were
- 16 there when you conducted the photo lineup.
- 17 A That's correct, sir.
- 18 Q Do you know how old Ms. Batista was at the time of
- 19 this photo lineup was conducted?
- 20 A Yes, sir. She was 14 at the time.
- 21 Q And you said there was some brothers and sister there
- 22 but no parents?
- 23 A Just a brothers.
- 24 Q No adult present?
- 25 A No, sir.

State v. Garris September 2-5, 2008

76

1 Q Had you contacted the family prior to conducting this
2 photo lineup, to let the parents know or an adult who was
3 responsible for this young lady know that you were going to
4 be conducting a photo lineup?

5 A No, sir.

6 Q You didn't. You just showed up unannounced or did you
7 call -- Who did you call to arrange it?

8 A We just went out there.

9 Q You just took a chance on her being around?

10 A Yes, sir.

11 Q And when you showed Ms. Santiago this photo lineup,
12 was there any comment made by you or Capt. Shaffer
13 regarding the description of the gentleman in the
14 composite; did you all referenced that at all?

15 A No, sir, we did not.

16 Q Did you reference any of these individuals that are on
17 the photo lineup, did you refer to them by name?

18 A No, sir, I did not.

19 Q How long did it take Ms. Batista to come to the
20 conclusion that one of the individuals that allegedly
21 committed this crime was on this photo lineup?

22 A It was very quick. Probably less than five minutes or
23 less.

24 Q And during the time that she was looking at the photo
25 lineup were you saying anything to her or talking with her

1 or did you just allow her to have her time to look over the
2 photos?

3 A Allowed her to have her time to look at the photos.

4 Q At any time during this process did you suggest to her
5 that the individual that the police believed committed this
6 crime was Mr. Brian Garris?

7 A No, sir, I did not.

8 Q Did you ever point to him on the photo lineup at any
9 time during the photo lineup process?

10 A No, sir.

11 Q Would you agree with me that Mr. Garris did not fit
12 the description of the person that is in that composite?

13 A I see similarities in the face.

14 Q Other than the fact that they are both African
15 American, are there any other similarities?

16 A Yes, sir. I see facial similarities.

17 Q Is it your position, sir, that five other individuals
18 that are on this photo lineup, that they fit the
19 description of the individual that's on that composite?

20 A No, sir.

21 Q Thank you.

22 MR. DEAS: Thank you. I have no further
23 questions.

24 THE COURT: All right.

25 RICK ELMS - REDIRECT EXAMINATION

State v. Garris September 2-5, 2008

78

1 BY MS. LAND:

2 Q Why didn't you contact Laura Batista's mother before
3 you came out?

4 A No phone.

5 Q So you always just come by?

6 A Yes, ma'am. She is also a landscaper and was working
7 at Santee at the time. I don't know where she's at now.

8 But we had trouble contacting her, so we usually just rode
9 out.

10 Q Okay. Did they ever ask you not to contact the
11 daughter, who is one of your main witnesses, without their
12 presence?

13 A No, ma'am, they were very helpful in our
14 investigation.

15 Q Okay.

16 MS. LAND: That's all the questions I have.

17 MR. DEAS: No further questions.

18 THE COURT: Can I ask him one question?

19 MS. LAND: Sure.

20 RICK ELMS - EXAMINATION

21 BY THE COURT:

22 Q Mr. Elms, why does the photo lineup have the date,
23 April 17th?

24 A That's the way they printed it up, Your Honor, from
25 our log track system. That was the copy I used.

1 Q That was the date it was printed up?

2 A Yes, sir.

3 Q Why was it that date?

4 A Because -- well -- they showed one other lineup to Ms.
5 Batista earlier and that was probably that one right there,
6 but she didn't make an ID on it.

7 Q Same lineup?

8 A Yes, sir.

9 THE COURT: I'm sorry, do either one of you have
10 any further questions about that?

11 RICK ELMS - RE-CROSS EXAMINATION

12 BY MR. DEAS:

13 Q I believe you stated in response to inquiries of the
14 Court that you had shown Ms. Batista another lineup at some
15 point prior to this one?

16 A Yes, sir. Yes, sir on April 22nd.

17 Q Okay, and what occurred during that photo lineup
18 session?

19 A She failed to make an ID.

20 Q Okay, was that one conducted at her home?

21 A No, sir, that one was conducted at her work.

22 Q At Ms. Batista's work?

23 A Yes, sir.

24 Q And was Ms. Santiago or any adult present during that
25 session?

State v. Garris September 2-5, 2008

80

- 1 A No, sir.
- 2 Q Who was there; just you and Ms. Batista?
- 3 A Yes, sir. Just me and Ms. Batista. The owners of the
- 4 restaurant was not in the restaurant.
- 5 Q And do you have a copy of the photo lineup that you
- 6 showed her on that day?
- 7 A That's it right there that you've got in your hand.
- 8 Q You showed her the same one?
- 9 A Yes, sir.
- 10 Q On April 22nd of '06?
- 11 A Right.
- 12 Q And she couldn't identify Mr. Garris?
- 13 A Yes, sir.
- 14 Q And you came back again when?
- 15 A Well, she did identify him as a customer.
- 16 Q Well, the first time you showed her the photo lineup
- 17 she didn't identify Mr. Garris as the individual that
- 18 committed this alleged robbery?
- 19 A Correct.
- 20 Q But you came back a second time?
- 21 A The 24th.
- 22 Q Two days later?
- 23 A Yes, -- no, sir, 5/24, not 4/24.
- 24 Q May 24th?
- 25 A May 24th.

1 Q You came back a month later?

2 A A month later.

3 Q Showed her the exact same photo lineup again?

4 A Yes, sir.

5 Q And this time she said, yes, she identified him as the
6 individual that did the robbery?

7 A Correct.

8 Q Was there anything that she communicated to you that
9 made her more certain about the identification of the
10 assailant the second time around as opposed to the first
11 time around two days after the incident?

12 A The first time around she was -- she stated she feared
13 for her life and safety since he did shoot her mother. And
14 she did not -- she was still working at the same facility,
15 restaurant she was uncomfortable making an identification.

16 Q Okay, so let me make sure I understand. On April of
17 '06, you went to Ms. Batista's to show you a photo lineup
18 at her job?

19 A Correct.

20 Q That would have been roughly about seven days after
21 the incident?

22 A Correct.

23 Q But only -- at that time even though it was only a
24 week after this incident happened, she was not able to
25 point out Mr. Garris as the individual that committed the

State v. Garris September 2-5, 2008

82

1 crime?

2 A Correct.

3 Q And it is your position that the reason why she didn't
4 point him out at that point isn't because she didn't know
5 who committed the crime, but because she was scared to
6 point him out?

7 A Correct.

8 Q And when did she tell you that, did she tell you that
9 on April 22nd, or did she tell you that on May 24th, '06?

10 A May 24th of '06.

11 Q So when you came to her the second time to show her
12 this photo lineup on May 24th of '06, what did you say to
13 her with respect to looking at this again; did you just say
14 -- what did you exactly say to her?

15 A I said, please look at this lineup and see if you can
16 see an individual who can trigger your memory.

17 Q And second time around she pointed out Mr. Garris?

18 A She pointed out Mr. Garris and circled him and said,
19 this is the man that robbed us.

20 Q Did it strike you as odd that's not who she pointed
21 out the first time?

22 A Yes, sir, but I just --

23 Q And it wasn't because you told her to point him out
24 the second time around is it?

25 A No, sir.

1 Q Thank you, Investigator, I don't have any other
2 questions.

3 RICK ELMS - REDIRECT EXAMINATION

4 BY MS. LAND:

5 Q After she identified him from the lineup the second
6 time, did you have a conversation with her about her not
7 picking him out the first time?

8 A All she told us was -- Yes, I asked her what happened
9 the first time and she said she feared for her safety,
10 because she still worked at the Chinese Cuisine. So I
11 didn't really blame her.

12 Q And it was the exact same lineup?

13 A Yes, ma'am.

14 Q Okay. That's all the questions I have for you.

15 THE COURT: Thank you, sir, you can step down.

16 MR. ELMS: Thank you, Your Honor.

17 THE COURT: Ms. Land.

18 MS. LAND: Yes, sir, I call Laura Batista.

19 (WHEREUPON Laura Batista was sworn
20 to tell the truth.)

21 PROFFER:

22 LAURA BATISTA - DIRECT EXAMINATION

23 BY MS. LAND:

24 Q Would you state your name, please?

25 A Laura Batista.

State v. Garris September 2-5, 2008

84

- 1 Q And how old are you?
- 2 A I'm 17.
- 3 Q Where do you go to school?
- 4 A Manning High.
- 5 Q What grade are you in?
- 6 A I'm a junior.
- 7 Q Okay, and we're here for the incident that occurred in
- 8 April of 2006. Do you know why we're here, is that
- 9 correct?
- 10 A Yes.
- 11 Q You were present when your mother was shot, is that
- 12 correct?
- 13 A Yes.
- 14 Q And were able to see the person that did that?
- 15 A Yes.
- 16 Q Do you recall in April -- I believe it was the 22nd
- 17 when Investigator Elms came to you and showed you a photo
- 18 lineup?
- 19 A Yes.
- 20 Q At that time did you know which one of those
- 21 individuals had shot your mother?
- 22 A Well, I had an idea -- yes, I was pretty sure.
- 23 Q And how come you didn't identify him on that first day
- 24 when Investigator Elms showed you the photo lineup?
- 25 A Well, at first I wasn't really sure, and then -- I was

1 kind of sure because it did look like him, but I wasn't
2 real sure.

3 Q And the second time when he came to your home in May,
4 were you able to identify a picture of him?

5 A I looked at the pictures, and he was the one that did
6 it.

7 Q So he was the one that did it?

8 A Yes.

9 Q And there's no question in your mind?

10 A No.

11 Q And you identified him on that second lineup as the
12 person that robbed you and your mother?

13 A Yes.

14 Q All right. That's all the questions I have about the
15 lineup. Please answer any questions Mr. Deas has.

16 THE COURT: Mr. Deas.

17 MR. DEAS: Thank Your Honor, please the Court.

18 LAURA BATISTA - CROSS-EXAMINATION

19 BY MR. DEAS:

20 Q Ms. Batista, my name is Garryl Deas, I represent Mr.
21 Garris. Do you recall the specific events surrounding the
22 first time Investigator Elms came to your work and showed
23 you some photographs of some individuals who may have been
24 involved in the crime. Do you remember that specifically?

25 A Yes.

State v. Garris September 2-5, 2008

86

1 Q And who was there with you when Investigator Elms came
2 to your job?

3 A There was only me and him and people who were in the
4 restaurant, but there --

5 Q Now the people that own this restaurant, are they
6 related to you in any way?

7 A No, they're not related.

8 Q Now, Investigator Elms showed you those pictures that
9 day, correct?

10 A Yes.

11 Q While he was showing you those pictures did he make a
12 reference, did he talk about -- give you anybody's name?

13 A No, he just said would I look at the pictures.

14 Q Tell me what he did say to you that day?

15 A He told me that brought pictures. He told me to take
16 my time and he asked me if I recognized any of the guys.
17 At first I said no.

18 Q Did you follow his instructions, did you take your
19 time and --

20 A Yes, sir.

21 Q -- look real good.

22 A Yes.

23 Q And that first time around, when he first showed you
24 those photos on April 22nd of '06, you didn't recognize
25 anyone on that photo lineup sheet as one of the parties

1 that possibly was involved in this crime?

2 A At first, like I said, I was looking at the pictures I
3 wasn't sure, and I wanted to make sure.

4 Q You were uncertain as to whether or not the person
5 that committed the crime was on that photo lineup sheet?

6 A Yes.

7 Q Were you fearful to show Investigator Elms the person
8 you thought might have been involved in the crime?

9 A Yes.

10 Q But you -- but the second time around, a month later,
11 you weren't fearful?

12 A No.

13 Q Why not?

14 A Because I -- it's only me, my two brothers and my
15 mother and I -- and my family and --

16 Q Take your time. Take all the time you need.

17 A Well, I was think about -- I mean, I'm Catholic and I
18 was thinking about what's right and what's wrong. I -- and
19 I know what that person did was wrong.

20 Q So the second time you recognized Mr. Garris. What
21 I'm asking you is what was --

22 A The first time, I thought it was him, but in my -- I
23 thought it was him, but in my mind I wasn't really sure. I
24 looked at the pictures -- because all -- when he -- when
25 that happened. I just wanted to be sure.

State v. Garris September 2-5, 2008

88

1 Q When the incident happened on April 15th of '06, how
2 long, how long were you able to observe the individual that
3 committed the crime, how long was he in your eye sight; a
4 minute, five minutes, ten minutes?

5 A When?

6 Q When the incident actually happened on April 15, 2006,
7 how long was the assailant, the person who committed the
8 crime, how long were you able to actually visualize -- how
9 long was he actually in your eyesight?

10 A When the man was shooting it was really fast -- I saw
11 him -- he has the gun because he was pointing the gun at my
12 brother.

13 Q How long --

14 THE COURT: I didn't get the last part of that
15 answer. He was pointing the gun? What?

16 MS. LAND: At my brother.

17 THE COURT: All right.

18 BY MR. DEAS:

19 Q You say it was really fast. Are you talking about the
20 incident itself or the time that you saw the person?

21 A Probably no more than --

22 Q And if you could put into time, minutes, seconds, how
23 long you actually saw the person; would you say five
24 minutes, one minute, 30 seconds. What would you say?

25 A Two to three minutes.

1 Q About two to three minutes?

2 A Yes.

3 Q The whole incident took about two to three minutes?

4 A Yes.

5 Q Did the person that you saw fit the description of the
6 individual in the composite drawing?

7 A Yes.

8 Q Have you seen the composite drawing?

9 A (No response.)

10 Q I'll show you. Take a look at that.

11 THE COURT: First, what number is that so the
12 record will be clear.

13 MR. DEAS: That's I believe, Court's Exhibit 3.

14 THE COURT: All right.

15 BY MR. DEAS:

16 Q I'm handing you, Ms. Santiago, what's been marked as
17 Court's Exhibit 3. That's a composite drawing of the
18 individual that allegedly committed this crime. Does that
19 composite drawing accurately depict the individual that you
20 saw that day?

21 A Something like him.

22 Q Did the police talk to you in order to get this
23 composite sketch drawn or did they talk to Ms. Santiago?

24 A No.

25 Q They didn't talk to you.

State v. Garris September 2-5, 2008

90

1 A No, not when they drew the picture.

2 Q When was it that you told the police that you could
3 identify or that you could pick out the person who
4 committed this crime; did you tell them that the day of the
5 crime or did you tell them that some time afterwards?

6 A When they went up to my house to show me the pictures.

7 Q So the first time the police talked to you about a
8 description of the person that did this was when they came
9 out and showed you that photo lineup or did they talk to
10 you about it before then as well?

11 A (No response.)

12 Q All right. I'll repeat the question. You know, the
13 testimony of Investigator Elms, he came to your job on
14 April 22nd to show you some photos --

15 A Yes, sir.

16 Q -- of some individuals that may have committed this
17 crime. What I'm asking you is at some point prior to April
18 22, did you tell the police that you could describe the
19 person -- That you knew what the person looked like?

20 A No, I didn't.

21 Q You didn't. How -- do you know how the police came to
22 the conclusion that you knew or that you could describe
23 what the person looked like; how did they know that?

24 A Well, because I'm seen him at the restaurant, because
25 I'm a cashier at the restaurant and take orders and I

1 handled the food and I take the money and everything.

2 Q So you've seen Mr. Garris before prior to the incident
3 as a customer in the restaurant?

4 A Yes.

5 Q Frequent customer?

6 A No.

7 Q How often would you say that -- how many time would
8 you say that you saw Mr. Garris prior to this incident?

9 A I don't know how many times, but I mean, I remember
10 almost every customer that comes in the restaurant. I
11 remember the faces.

12 Q So the police never showed you any photos prior to
13 April 22nd; correct or did they?

14 A On the day that he came to the restaurant?

15 Q Yes, ma'am. Did they ever show you some photos before
16 the day they came to the restaurant?

17 A No.

18 Q Okay. You say that when the incident happened you
19 were able to observe the assailant for about two to three
20 minutes; is that correct?

21 A Yes.

22 Q Thank you, ma'am.

23 MR. DEAS: No further questions.

24 THE COURT: Ms. Land.

25 MS. LAND: Yes, sir.

State v. Garris September 2-5, 2008

92

1 LAURA BATISTA - REDIRECT EXAMINATION

2 BY MS. LAND:

3 Q That -- the night of the incident, do you remember
4 talking to Investigator Elms?

5 A Yes. After --

6 Q Okay, and what did you tell him about the person that
7 committed this crime?

8 A He was asking questions -- I was telling him what I
9 saw and like everything that happened, and I was trying to
10 tell him that --

11 Q And did you tell them that you recognized this person?

12 A I don't remember telling him that.

13 Q Okay. So you don't recall telling him that he was
14 someone who came into the restaurant?

15 A I told him that -- I did tell him about, that he came
16 in the restaurant, but --

17 Q Was it before the photo lineup?

18 A Yes, it was before that.

19 Q Okay. So the day that he came to your office and --
20 came to your work and showed you the photo lineup where you
21 didn't pick a person, that's not the first time that you
22 talked to Investigator Elms about what happened or what you
23 saw?

24 A No. The first time I talked to him was the day that
25 everything happened.

1 Q Okay.

2 A That was the first time.

3 Q And you and your mother both stayed in contact with
4 him and helped him in his investigation?

5 A Yes.

6 Q Okay. That's all the questions I have.

7 MR. DEAS: Nothing further.

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

9 Ms. Land?

10 MS. LAND: That's all the witnesses on this one.

11 THE COURT: All right. Can she identify him now?

12 MS. LAND: I wouldn't ask her that, because I
13 didn't --

14 THE COURT: All right. No other witnesses, Ms.
15 Land?

16 MS. LAND: No, sir, not on the lineup.

17 THE COURT: Mr. Deas, do you have any witnesses?

18 MR. DEAS: None, Your Honor.

19 THE COURT: All right.

20 All right, Mr. Deas, your argument on the lineup?

21 MR. DEAS: Your Honor, our motion is to suppress
22 the photo lineup identification made by Ms. Laura Batista
23 on the basis that the process that was utilized and
24 employed by law enforcement in conducting this lineup is, I
25 believe, blatantly unacceptable, and suggests --

State v. Garris September 2-5, 2008

94

1 THE COURT: How is it suggestive?

2 MR. DEAS: Because to bring the same exact
3 pictures that you brought the first time, bring those same
4 exact pictures the second time is basically saying that
5 that individual is in here somewhere you've just got to
6 figure it out.

7 THE COURT: All right. What would you have
8 proposed that they do?

9 MR. DEAS: Well, they can -- they can have his
10 face is one of those photos, but they should have had
11 different, other people.

12 THE COURT: All right. Let me lay this out.
13 You've got men one through six. He's number two in that
14 photo array, is that right, Ms. Land?

15 MS. LAND: That's correct, Judge.

16 THE COURT: I agree with you, if they brought back
17 six more pictures and five of them had been brand new, his
18 would be in the second one and the first one -- I think you
19 have a point there, but if you bring -- isn't there --
20 there's case law that says inability to identify someone
21 from a photo lineup number one and do it on photo lineup
22 number 2. That in and of itself is not objectionable.

23 MR. DEAS: I think my problem with it is that they
24 did nothing to vary -- they didn't even add a different
25 person. I mean, one other person. They brought the exact

1 same lineup that they brought the first time, which I think
2 is suggesting to the person attempting to make that
3 identification that the individual we're looking for is in
4 here, because this is the exact same photos we brought you
5 the first time --

6 THE COURT: What would be the appropriate way to
7 do it?

8 MR. DEAS: Well, I think the appropriate way to do
9 it might be to change the way you're trying to -- have the
10 person make the identification. Maybe do a show up
11 identification. Maybe, again, like I said, add a different
12 photo in the second photo lineup that wasn't in the first
13 photo lineup.

14 THE COURT: But his photo, too?

15 MR. DEAS: Well, I -- actually, I think they maybe
16 should have a set where his photo isn't included and then
17 have a set where it is, but to -- just to bring the same
18 exact two sheets both times. That's suggestive. That's
19 basically saying to her, look at this again. We want you
20 to really look closely and look at this again, and make
21 sure you don't see the person that's in there.

22 That is basically laying out for the individual making
23 the identification some notion that you missed it the first
24 time around, but we're here again so you can correct it on
25 the second go round.

State v. Garris September 2-5, 2008

96

1 I believe that's suggestive. It's not different than,
2 I believe, having a show up lineup and having the exact
3 same people each time. You have a show up lineup with six
4 potential assailants and then you come back and show the
5 alleged victim or the alleged witness the same six
6 individuals, that's suggesting to that individual that the
7 person that did this is amongst these people, and that's
8 what they suggest to her by bringing her that same sheet
9 twice.

10 Quite frankly, there -- there's a better way of
11 accomplishing that, and I believe a better way of
12 accomplishing if they want to come back to her and let her
13 look at the sheet again, because the first time around she
14 didn't identify Mr. Garris. Of course, their position is
15 that she was scared and that's why she didn't. She wasn't
16 scared the second time, so she was able to identify him.

17 Our position is she was able to identify him the
18 second time around because basically it had already been
19 suggested to her that he was -- he's in there. He was in
20 -- he's amongst the six that we showed you the first time
21 and he's amongst the six that we're showing you this time.
22 You just got to pick him out.

23 THE COURT: Why him as opposed to any of the other
24 five?

25 MR. DEAS: Well, our position is that they

1 suggested for her to pick him.

2 THE COURT: Do you have any evidence of that other
3 than what could be an inference or the fact that --
4 credibility?

5 MR. DEAS: The only -- our position is that they
6 shouldn't have showed her the same sheet twice.

7 THE COURT: All right.

8 MR. DEAS: The sheet should have been varied in
9 some way or that the procedure should have been varied.

10 THE COURT: Do you have cases that say you can't
11 do that?

12 MR. DEAS: Judge, I do have a case that talks
13 about, that references having, conducting a photo lineup
14 when there are individuals present that aren't making the
15 identification. In other words --

16 THE COURT: Okay.

17 MR. DEAS: In other words, having three victims
18 all make -- all make the identification from a photo lineup
19 together instead of separating them.

20 THE COURT: There's no evidence here of that?

21 MR. DEAS: Oh -- and, of course, our position
22 simply in this situation is that the proper way to handle
23 this is not to show her the same exact photo lineup the
24 second time around.

25 THE COURT: Do you have cases that say that you

State v. Garris September 2-5, 2008

98

1 can't show the same photo lineup?

2 MR. DEAS: No, sir.

3 THE COURT: All right, Ms. Land?

4 MS. LAND: Your Honor, my response to that would
5 be basically as you've stated that showing the same six
6 people is less prejudicial than showing the same person
7 with five faces around it, but there's -- with five other
8 faces, but there's no evidence at all in the record and I
9 don't believe that he did, that Investigator Elms said this
10 is the same lineup that we've showed you before. Look
11 again and see if he's in there. She didn't know if it was
12 the same six people or a different six people or three the
13 same and three different. She looked at it again and
14 identified the person that robbed her.

15 THE COURT: That's why I asked the question about
16 the significance -- back to the earlier motion that y'all
17 made this afternoon and that was made about circumstances
18 of where Mr. Garris was living at the time -- I thought he
19 was arrested on April 28th for burglary.

20 MR. DEAS: That's correct.

21 MS. LAND: That's true.

22 THE COURT: All right. But the jail photos, the
23 lineup is dated April 19th. That would have been nine days
24 before he was arrested. Then I think there's date stamps
25 on the photos -- April 16th. And I was trying to make sure

1 that I cure any other prejudice about where he might have
2 been on April 19th and April -- what's the date stamp on
3 his photo on that lineup?

4 MS. LAND: 4/17/2006, and we obviously don't know
5 why that's on there.

6 THE COURT: So I don't know where Mr. Garris --
7 I'm trying to make sure that I wasn't going to miss
8 something when I instructed jury about where he might have
9 been on the 19th and where he might have been on they 17th.
10 Ms. Land, I didn't mean to tread into your case. That's
11 the reason I asked those questions.

12 I don't see any significance, Mr. Deas such that the
13 lineup or the identification would have to be suppressed
14 just because she was shown the same lineup twice. You can
15 cross-examine her appropriately on that.

16 MR. DEAS: Judge, just one more thing. I don't
17 know -- well, obviously, they intend to -- well, I would
18 assume they intent to introduce the actual photos into
19 evidence, but if they do, these are mug shots.

20 THE COURT: As long as they're all mug shots
21 that's fine except for the prejudice part and that's why I
22 was wanting to know -- the jury is going to hear he was in
23 jail, but until we started the ID part I thought they were
24 going to hear he was in jail on April 28th. I was
25 concerned about that time. I don't know whether that might

State v. Garris September 2-5, 2008

100

1 have been an old photo, I don't know.

2 MS. LAND: Judge, he was arrested on April 17th
3 for no vehicle license. He was given a fine.

4 THE COURT: Okay.

5 MS. LAND: And that's the date that that picture
6 was taken.

7 THE COURT: Okay.

8 MS. LAND: Because --

9 THE COURT: That's the reason I asked the
10 questions, not to open a can of worms about two
11 identification presentations.

12 All right. Any other pre-trial issues, Mr. Deas?

13 MR. DEAS: None, Your Honor.

14 THE COURT: Ms. Land?

15 MS. LAND: No, sir.

16 THE COURT: No statements made by the defendant?

17 MS. LAND: No, sir.

18 THE COURT: Okay.

19 MS. LAND: There is a statement, but it is not --
20 there is nothing prejudicial in it. He just says he didn't
21 do it.

22 THE COURT: Okay. All right. The jury, is all
23 the jury here?

24 THE CLERK: Yes, sir.

25 THE COURT: All right. We'll take a few minutes,

1 and I'll give you my final ruling these two points, and
2 we'll get started.

3 (Court at recess at 3:34 p.m.)

4 (Court in session after recess at 3:51 p.m.)

5 THE COURT: Ms. Land, do you have any witnesses
6 that you have to honor any scheduling requests from?

7 MS. LAND: No, sir, not for today. And Judge, let
8 me get this straight so in my opening, I can't refer to the
9 gun?

10 THE COURT: I'm getting ready to let you know in
11 just a few minutes.

12 MS. LAND: Okay. Yes, sir.

13 THE COURT: Probably you will be able to.

14 MS. LAND: Yes, sir.

15 MR. DEAS: Yes, sir.

16 THE COURT: It depends on what I think about Mr.
17 McCrea, but -- so -- I'll tell you what, Ms. Land, plan
18 right now that you won't mention it in your opening and
19 then we'll get to him first thing in the morning. Then
20 we'll talk about something -- talking about it or not
21 talking about it.

22 MS. LAND: Yes, sir.

23 THE COURT: All right. On the issue of the
24 weapon, Ms. Land, I want to cover all my bases.

25 MS. LAND: Yes, sir.

State v. Garris September 2-5, 2008

102

1 THE COURT: On the issue of the identification
2 taking all the evidence into consideration that I heard it
3 today, I don't think that one or two presentations of the
4 same photo array would be unduly suggestive. The reason I
5 asked the questions, Ms. Land, about whether or not she can
6 identify the person in the court -- I'll leave that up to
7 you during the trial.

8 MS. LAND: Yes, sir.

9 THE COURT: I think -- well, that covers all those
10 -- did I cover all the objections, Mr. Deas?

11 MR. DEAS: Yes, sir. I believe so, but one thing
12 I want to point out. Are you going to give the jury some
13 form of instruction now or are you going to wait until you
14 hear from Mr. McCrea?

15 THE COURT: I'm not going to mention anything to
16 the jury about any gun -- unless you want me to?

17 MR. DEAS: No, sir.

18 THE COURT: All right. Because I haven't ruled on
19 it. As far as this afternoon is concerned, we'll stop
20 after opening statements, because after all is said and
21 done by the time we're through it will probably be close to
22 quarter to five anyway. And then when Mr. McCrea gets here
23 tomorrow, we'll start as soon as he gets here with an In
24 Camera motion and then we'll --

25 All right. Are you ready for the jury, Ms. Land?

1 MS. LAND: I'm ready, Judge.

2 THE COURT: Mr. Deas?

3 MR. DEAS: Yes, sir.

4 THE COURT: All right. Bring in the jury.

5 (Jury in at 3:53 p.m.)

6 THE COURT: All right, ladies and gentlemen, we
7 are now going to begin the trial of the case of the State
8 of South Carolina verses Brian Garris.

9 Before we get started and before I speak with you,
10 before the lawyers make their opening statements, Ms.
11 Roberts is going to administer an oath to you. Would you
12 stand please.

13 (Whereupon, the jury panel was
14 sworn.)

15 THE CLERK: Thank you. You may be seated.

16 THE COURT: All right, ladies and gentlemen, now
17 you've been sworn in as jurors in the trial of this case.
18 I'm going to talk to you just a few minutes about what your
19 role is in this case. After I do that, Ms. Land for the
20 state will make opening statements, then the defendant, Mr.
21 Deas may make an opening statement as well.

22 Some describe the courtroom as a place of honor that's
23 dedicated to the upholding of the rights of citizens and
24 the state of South Carolina as well.

25 Your role in this process is to be fact finders. You

State v. Garris September 2-5, 2008

104

1 will notice that when all the witnesses testify they will
2 be testifying to you. They won't be testifying to me. The
3 lawyers will be making opening statements and later during
4 the trial making arguments to you. They won't be making
5 those to me from a factual standpoint.

6 All of the evidence that is put in, whether it be
7 documents or whatever other exhibits are put in will be
8 shown to you, not to me. I will probably see them, but all
9 of that is for a reason. The witnesses talk to you, the
10 lawyers talk to you, and the evidence is presented to you
11 because you are the only people in this world who can
12 determine what the facts are in this particular case. You
13 are the judges of the facts. The way that you determine
14 what facts are is to use your common sense. Everyone that
15 comes in the courtroom hopefully with their common sense.
16 Take your collective view of the evidence and then you take
17 the law as I charge it to you in this case. Take those two
18 things and combine them with your common sense and that's
19 how you reach and honest and true verdict in this case and
20 in any other case.

21 Now, how do you determine what the truth is. It's a
22 difficult job. That is your job in this case. One of the
23 thing that you have to do is evaluate the credibility or
24 the believability of the witnesses who testify, because
25 they're going to testify to you from this chair right in

1 front of me. There is nothing in the rules that we have
2 that tells me how to tell the jury how to evaluate and how
3 to evaluate what a witness has to say. That's where common
4 sense comes in again. You can believe every word of what a
5 witness has to say. You can believe nothing of what a
6 witness has to say or you can believe part and reject the
7 rest. The way that you base the determination of whether
8 or not to believe someone is just how you would every day.
9 How this person appears when testifying. Did the witness
10 appear hesitant or straightforward in answering the
11 question. Does the witness have a reason to give testimony
12 that would help or hurt one side or the other. In order
13 words, is that witness biased or prejudiced for one side or
14 the other. Was that witnesses testimony strengthened or
15 weakened by other testimony or evidence introduced in the
16 record. Anything else that you may chose to use in
17 determining whether or not to believe somebody.

18 From time to time during this case you may hear one or
19 both of the lawyers stand up and object. What we do have
20 in this state are the South Carolina Rules of Evidence.
21 And the rules of evidence are in this book that I've got
22 here and everybody's got their different copies, but we
23 have from time to time differences of opinion as to whether
24 or not a question is appropriate or whether or not the
25 evidence is brought in, is admissible. That's where I come

State v. Garriss September 2-5, 2008

106

1 from. The fact that a lawyer stands up and objects to a
2 question or answer does not mean that lawyer is trying to
3 hide something from you. The fact that a lawyer asks a
4 question that is objected to does not mean that lawyer is
5 trying to smooth something in that ought not to come in.
6 Now, when an objection is made it will be up to me to rule
7 whether or not the question is proper and whether or not
8 the evidence is -- is admissible.

9 From time to time I may have to send you out for us to
10 discuss points of evidence or other points of law. So you
11 understand why you may have to leave the room, I am the
12 judge of the law, you are the judge of the facts. If you
13 go back to your jury room and deliberate, I don't go with
14 you, the bailiff's don't go with you. Witnesses don't go,
15 the lawyers don't go. The court reporter doesn't go.
16 There's nothing in there, a recording device or anything
17 that lets us listen in. That's because when the facts are
18 in play, those are yours to deal with. If the law is in
19 play that's for me to deal with. So I may have to send you
20 out from time to time, and I may have to send you out once
21 in a while -- I may send you out, bring you back in and in
22 a few minutes send you out once again. And again, if
23 that's what the rules call for I may have to do that. So
24 don't be offended by it. Don't think we're trying to hide
25 something from you.

1 I can tell you one thing for sure. This case, the
2 trial of this case, is not going to be like you see on
3 television, because I can tell you from over 20 years of
4 experience that lawsuits are not tried and the cases aren't
5 tried like they're tried on television. So don't expect
6 anything like that. It's not going to be anything like you
7 see on television.

8 What you do in this case is act as fact finders. I
9 want you to listen very carefully because the testimony of
10 witnesses number one is no more or no less important than
11 witness number 19 or 20 or 25 or whatever it might be and
12 everything in between the first witness and the last
13 witness.

14 Now, what the lawyers tell you in their opening
15 statements or in their arguments to you is not evidence at
16 all. The evidence come from the witness stand and in the
17 form of any exhibits that are introduced during the trial.

18 Now, if I say or do anything during the course of this
19 trial that makes you think I have a view of the facts or I
20 favor one side over the other, put that completely out of
21 your mind because I may have to necessarily comment on an
22 objection or make a ruling on an objection in your
23 presence. The fact that I rule for or against one side 10
24 times or the other side nine times doesn't mean I favor one
25 side or the other. I'm simply charged with the

State v. Garris September 2-5, 2008

108

1 responsibility of making sure that this case is presented
2 to you according to the rules. The lawyers know the rules
3 and they'll do a good job of presenting the case to you.

4 Now, in this case and in each criminal case the state
5 of South Carolina has a burden of proof, and as I will tell
6 you more as the case -- specifically at the end of the
7 case, the state has the burden of proof, proving elements
8 of the crime charged by what we call beyond a reasonable
9 doubt. Now, that is the -- the defendant does not have the
10 burden of proving anything. The defendant enjoys the
11 presumption of innocence and he enjoys that presumption
12 unless and until the state has satisfied the burden of
13 proof beyond a reasonable doubt.

14 Now, listen very carefully. You are not permitted to
15 ask questions during the course of the trial. You're not
16 permitted to take any notes, but do your job by listening
17 and then discussing the case in the course of your
18 deliberation very seriously.

19 Now, right now there are 14 people on this jury.
20 Right now probably the only thing you have in common is
21 this case. It is only thing that you cannot talk about.
22 When you go back in your jury room today, tomorrow, or
23 however long the case goes on you cannot talk about this
24 case, talk about the economy, you can talk about sports,
25 you can talk about politics, but you talk about this case

1 at all. You can't listen to anything about it. You can't
2 read anything about it. You cannot -- if somebody
3 somewhere tonight if you're eating supper and they mention
4 something about this case you can't talk about it. You
5 tell them you can't talk to them about it. You can't talk
6 about this case, you've got to move, you've got to get out
7 of there. Again, the reason for that is you have to base
8 your decisions in this case on what you see and what you
9 hear in this courtroom and no where else.

10 All right. Any objection to those comments from the
11 state?

12 MS. LAND: No, sir, not from the state.

13 THE COURT: From defense?

14 MR. DEAS: Not from the defense. No, sir.

15 THE COURT: All right. Ladies and gentlemen,
16 after the state gives its opening statement, the defense
17 can do that as well. And today that is where we're going
18 to stop. We're going to start promptly in the morning
19 probably around 9:30 or quarter to 10:00. Listen carefully
20 to the opening statements, and we'll move forward.

21 All right, Ms. Land.

22 MS. LAND: Thank you, Judge.

23 Good afternoon, ladies and gentlemen. Y'all are all
24 wearing a name badges that say jurors, but like the judge
25 told you they might as well say judge. In this case you

State v. Garris September 2-5, 2008

110

1 are going to be the judges of the facts. You are going to
2 decide what happened on April 15, 2006, and the way that
3 you will decide what happened is by listening to witnesses
4 that are called here, and that's where I come in. I'll act
5 as a narrator. I will present evidence in this case that
6 we believe will show that Brian Garris committed assault
7 and battery with intent to kill, arm robbery, and
8 possession of a weapon during a violent crime.

9 The very -- there are some other very important people
10 in this courtroom today are the Santiago family. Martha
11 Santiago in the green sweater. That day she went to China
12 Cuisine, many of you are aware of where it is, I'm certain.
13 She went to go pick up her daughter Laura Batista from her
14 job. She had her son, Antonio, with her and she had her
15 youngest son with her who was four days from being four
16 years old. At that time Antonio was 11, and Laura was just
17 14. They were in the family van and they pulled up to the
18 back of the China Cuisine. Laura came out and got in the
19 van and that's when Brian Garris came to the drivers' side
20 of the car, pointed a gun at Ms. Santiago, demanded money,
21 and then shot her -- Ms. Santiago while her children sat in
22 the car and watched.

23 They gave him \$40 and he ran away. Ms. Santiago was
24 very, very lucky ladies and gentlemen. She is fine.
25 Obviously, she did not die as a result. She has recovered

1 from her injury. She says she gets headaches from time to
2 time, but she is very, very lucky that this incident didn't
3 end much more tragically than it did.

4 We believe that he intended to kill her that night.
5 We believe that he used that gun to take money from Ms.
6 Santiago.

7 You're going to hear from people that were in that
8 van. You're going to hear of the events that happened
9 later that led us to Mr. Garris.

10 And thank you for your time and your patience because
11 this is not a simple, I saw this, I saw this, I saw that.
12 You'll hear from the people that saw it, and then you'll
13 hear other opinions. How one incident caused another
14 incident that caused this event. And then we have the
15 testimony to hear. It is not a simple case. It's a
16 complex case. It is a very, very important case. And I
17 ask you to use that common sense, the common sense that you
18 would use to act as the judges of the facts. You will
19 listen to all the evidence and determine evidence and
20 credibility.

21 The judge will tell before you go back to deliberate
22 that you can decide that somebody is telling the truth
23 because they have nothing to lose or gain by this case. Or
24 you can decide that somebody is not telling the truth
25 because it's so self-serving that it doesn't make any

State v. Garris September 2-5, 2008

112

1 sense. You can make that decision that based on their
2 credibility, on their demeanor and based on the
3 believability of that they're saying. They have a lot of
4 big words for what that means. I call it common sense.
5 Use your common sense, what makes sense and what doesn't.

6 Again, I thank you for being here today. There will
7 be probably a couple more days, but I thank you for your
8 patience.

9 THE COURT: Mr. Deas.

10 MR. DEAS: Thank Your Honor. May it please the
11 Court.

12 THE COURT: Yes, sir.

13 MR. DEAS: Ms. Land, ladies and gentlemen, good
14 afternoon. My name is Garryl Deas. I represent the
15 defendant in this case, Mr. Brian Garris. Mr. Garris is
16 seated here at defense table in the white shirt, black tie.
17 He is a 19 year old young man. I'm here to tell you,
18 ladies and gentlemen, that although he's been charged with
19 a crime, although it's alleged he committed these horrible
20 things that you've just heard. It's our position that he
21 did not do it. He did not commit this crime. He was not
22 involved at all.

23 One of the things that Ms. Land said is that this is a
24 complex case. This is not a simple case. Well, actually,
25 ladies and gentlemen, I disagree. I think it's very

1 simple. I don't think it's going to be too complicated at
2 all. I think all you have to do to render a fair and just
3 verdict in this case that speaks the truth, is simply base
4 your verdict on what you hear from the witness stand and
5 the evidence. The evidence that you will have an
6 opportunity to look at, peruse, and thoroughly examine in
7 your jury room. If you do that, ladies and gentlemen,
8 you'll won't base your verdict on any bias or prejudice.
9 It will be very verdict. I'll tell you that it is our
10 position that that the state doesn't have any reliable,
11 direct evidence that would connect Mr. Garris with the
12 crime.

13 Now, before I go any further I want to first tell you
14 about the facts surrounding this situation are. They are
15 egregious and my heart goes out to Ms. Santiago and her
16 family. I have a wife and a young daughter. If something
17 happened like that to them, I would be ready to wage World
18 War III to the person who did that. But before I unleashed
19 my fury on that individual I'd want to make sure I have the
20 right person that's responsible.

21 I submit to you, ladies and gentlemen, the state
22 doesn't have the right person. As Mr. Garris sits in that
23 chair, innocent until proven guilty. Judge will tell you,
24 what makes our court system the best in the world is that a
25 person is innocent until he is proven guilty beyond a

State v. Garris September 2-5, 2008

114

1 reasonable doubt.

2 In order for the state to meet that burden, they have
3 to establish each and every element of each crime that the
4 victim is charged -- that the defendant is charged with.
5 They must establish it through the evidence to the extent
6 that you are convinced beyond a reasonable doubt that he
7 committed that crime. If the state fails in that burden,
8 ladies and gentlemen, you as jurors in this case must
9 return a verdict of not guilty. Likewise, if the state
10 meets that burden and proves each and every element of this
11 crime beyond a reasonable doubt it is your obligation to
12 return a verdict of guilty.

13 I submit to you, ladies and gentlemen that when you
14 hear all the facts that are pertinent to this case you're
15 going to see also why I say it's not going to be
16 complicated at all. The case is simple. You are going to
17 reach the conclusion that, yes, this horrible, horrendous
18 thing happened to this fine woman, but the person who did
19 it isn't sitting at that table. The person that did it
20 isn't Mr. Garris.

21 Now, I told you a little earlier that I was going to
22 talk to you about some specific things. I'm not going to
23 get into it in much detail today now. And There's going to
24 be times when you are hearing from me again at some point.
25 You're going to be hearing from Ms. Land again at some

1 point. You're going to be hearing from witnesses for
2 several days, probably. One thing is for sure, ladies and
3 gentlemen, you are the 12 people we have chosen to perform
4 a task and that's to try to go back to April 15, 2006 and
5 try to determine what truthfully happened at the China
6 Cuisine restaurant on that day.

7 Now, none of us can turn back the clock and go back to
8 that date. We're going to try to do that by -- through
9 evidence, the testimony, through information that you'll
10 receive from this courtroom. It's your job to put the
11 pieces of that puzzle together and to find the truth,
12 because that's what jurors are obligated to do, find the
13 truth. That's the journey y'all should be on. We are all
14 here on that same journey, that journey to find the truth.
15 We have different roles as we embark on that journey. The
16 judge's role is to ensure that the rules of this court are
17 followed. He's sort of the gatekeeper. He makes sure that
18 only the proper evidence comes into this court to be given
19 to you for consideration. My job as the attorney for the
20 defense is to present the case as I see it. To present my
21 position as I see it. That's the role of the state to
22 present her position as the state sees it, as she sees it.
23 What I'm saying to you right now is my position. What Ms.
24 Land said to you earlier is her position. I ask you ladies
25 and gentlemen, when you have heard from this situation and

State v. Garris September 2-5, 2008

116

1 reached it conclusion, you're heard from Ms. Land and this
2 situation, and you've seen all the evidence, you've heard
3 all the testimony, that's when you'll be in a position to
4 bring a verdict that speaks the truth. That's what the
5 word verdicts stems from the Latin word, verdicto, which
6 means to speak the truth. That's what you're doing when
7 you render a verdict that would speak the truth. That's
8 the journey we're all on here today, and we're on that
9 journey for the next couple of days.

10 As you go out on that journey, I want to point a
11 couple of things out. Number one, Mr. Garris is charged
12 with three crimes. Ms. Land alluded to them earlier. He's
13 charged with arm robbery, assault and battery with intent
14 to kill, possession of a weapon during a robbery. Those
15 are the three charges.

16 Now, being charged with a crime, ladies and gentlemen,
17 doesn't mean he committed the crime. People are charged
18 with crimes all the time. It doesn't mean they committed
19 the crime. As the Judge alluded to your earlier, we see on
20 tv, when we're watching on CSI programs, Mattlock, all the
21 myriad of lawyer shows that are on tv. None of them
22 accurately depict what it is we do. But if you'll see on
23 those tv shows a person is charged, accused of a crime,
24 tried, convicted, sent to jail and the appeal is heard all
25 in an hour. That's not the way it works in the real world.

1 In real life the wheels of justice turn a lot slower. In
2 the real world, ladies and gentlemen, just because a person
3 is accused of a crime doesn't mean they committed a crime.

4 I'm submitting to you, ladies and gentlemen, to
5 withhold your judgment. Don't make -- don't engage in a
6 rush to judgment just because a person is sitting before
7 you today charged with a crime. Don't assume that because
8 he's charged with a crime that he's guilty. That's not
9 what the rules of our laws say. Being accused is not the
10 same thing as being guilty. Once he's accused it's the job
11 of the state, after they charge him, to prove his guilt
12 through evidence, through testimony, factual information.
13 And they have to prove him guilty beyond a reasonable
14 doubt. Until and unless they do that, Mr. Garris remains
15 innocent just as he sits there right now. He remains
16 innocent until he is proven guilty beyond a reasonable
17 doubt.

18 Now, one thing about jury service I can say. I've
19 said it's the most admirable duty you can perform outside
20 of military service. Why? Because we're asking you to
21 take time out your lives to address this situation so that
22 we can all find out what really happened that morning on
23 April 15, 2006. Regardless of what your ultimate
24 conclusion is you're going to have the final word as to
25 what happens on April 15, 2006.

State v. Garris September 2-5, 2008

118

1 All I say to you, ladies and gentlemen, is to down
2 this journey together to find the truth and try to put the
3 pieces of this puzzle together. I simply ask you what I
4 referred to earlier, don't base your decision on bias,
5 prejudice, to reach your decision. Don't necessarily base
6 it on what I have to say. Don't necessarily base it on
7 what the state has to say. Use your own common sense and
8 good judgment and wisdom and base your decision on the
9 evidence, testimony, information you hear in this
10 courtroom. If you do that, ladies and gentlemen, I'm
11 confident that you will return a verdict of not guilty.

12 Thank you.

13 THE COURT: All right, ladies and gentlemen, we're
14 going to stop for today. We will be back in your jury room
15 at 9:30 tomorrow morning. We'll be ready to go at that
16 time. Do not any way shape or form discuss this case. You
17 may at some point tomorrow wonder why I keep telling you
18 that. That's because it is extremely important that you
19 don't do that. Anybody talks about, you hear the news
20 talking about it, you go the other way.

21 I've sat on other cases, one in Kershaw County, a
22 civil case, and when I instructed to go home, I told the
23 jury repeatedly don't go by the house. Don't go look at
24 the house. We had a juror who did. She had done that, she
25 had questions she wanted to ask about the house. She

1 violated her oath. Violated my instructions. I had to
2 deal with that. You should ever go by the Chine Cuisine,
3 don't stop in the parking lot and look at anything. I
4 don't know what the significance of the location of the
5 establishment might have in this case. Don't take that
6 upon yourself. Everything that you need to hear and see to
7 decide this case you will see it in here in this courtroom.

8 All right. Thank you, ladies and gentlemen. See you
9 back tomorrow morning.

10 Just one second. Mr. Daugherty, tomorrow morning with
11 all 14 of the jurors are back I want you and Ms. Player to
12 coordinate amongst the remaining 12 who is going to be the
13 foreperson of this jury. There is to be one person to be
14 the foreperson. It can be anybody other than you two.
15 This is not an election. It is a discussion amongst
16 yourselves as to who will be the spokesperson. The
17 foreperson will be in charge of completing the verdict form
18 at the end of this case. It should be somebody who will
19 represent you effectively during the course of the trial,
20 and deliberations if you have any questions or someone who
21 can conduct deliberations in an orderly process. The
22 foreperson doesn't have any greater authority or any
23 greater vote. That person will be the foreperson. So you
24 two, Mr. Daugherty and Ms. Player, can do that when you get
25 back at 9:30 tomorrow morning. Once you have decided who

State v. Garris September 2-5, 2008

120

1 that will be tap on the door and let the bailiff know that
2 you have the foreperson. Then that foreperson will sit on
3 the front row right on the corner.

4 All right. See you ladies and gentlemen tomorrow
5 morning. I look forward to working with you in this trial.

6 Thank you.

7 Ms. Land, anything before we break?

8 MS. LAND: No, sir.

9 THE COURT: Mr. Deas?

10 MR. DEAS: Just for scheduling purposes. You do
11 want us here at what time?

12 THE COURT: Why don't y'all get here shortly
13 before 9:00. Now, we're -- one reason I wanted to break
14 early is somebody should call SCDC and tell them that 9:00
15 means 9:00.

16 MS. LAND: Okay.

17 THE COURT: Okay. Anything else?

18 MS. LAND: No, sir.

19 MR. DEAS: No, sir.

20 THE COURT: All right. I'll see you a little bit
21 before 9:00 a.m. tomorrow.

22 (9/2/08, Court in recess for the day at 4:23 p.m.)

23

24

25

1 (9/3/08 Court is session at 9:40 a.m.)

2 THE COURT: Bring the witness out.

3 BAILIFF: Who's the witness?

4 MS. LAND: Johnny McCrea.

5 THE COURT: All right. Mr. McCrea.

6 (Whereupon Johnny McCrea was sworn
7 to tell the truth.)

8 THE COURT: All right, Mr. Deas, the witness is
9 in --

10 MS. LAND: And Judge, prior to this In Camera
11 Hearing I'm still unclear under what --

12 THE COURT: If he -- he has asserted two things
13 with regard to the gun.

14 MS. LAND: Yes, sir.

15 THE COURT: One is that the jury should not be
16 advised or there should be no testimony of why the
17 defendant was in jail or that he was. All right. The
18 facts -- are going to take care of that.

19 MS. LAND: Okay.

20 THE COURT: The state can't be hamstrung because
21 evidence is discovered in the jail. I'm sure that
22 prejudice and potential prejudices with instructions.

23 MS. LAND: Right. And I understand that.

24 THE COURT: He also asserted that there's no
25 foundation --

State v. Garris September 2-5, 2008

122

1 MS. LAND: Okay.

2 THE COURT: -- that links the gun to the
3 defendant. And as I understand it, this witness will
4 provide --

5 MS. LAND: Provide foundation, okay.

6 THE COURT: -- testimony, may or may not. I'm
7 not going to say any further because I don't want there to
8 be any suggestion to the witness.

9 MS. LAND: Yes, sir.

10 THE COURT: So what we're going to do at this
11 point is for my benefit is to question the witness on the
12 incident.

13 MS. LAND: Okay.

14 PROFFER:

15 JOHNNY MCCREA - DIRECT EXAMINATION

16 BY MS. LAND:

17 Q State your name for the record, please, sir?

18 A Johnny McCrea.

19 Q All right, and Mr. McCrea, during April of 2006, were
20 you at the Clarendon County Detention Center?

21 A Yes, ma'am.

22 Q In what capacity were you there?

23 A What capacity?

24 Q Okay. I mean, were you technically in the South
25 Carolina Department of Corrections?

- 1 A Yes, ma'am.
- 2 Q And why did they bring you to Clarendon County
- 3 Detention Center?
- 4 A To be a cook.
- 5 Q How long had you been there?
- 6 A Two years, five months.
- 7 Q What were your duties and responsibilities as a cook?
- 8 A Clean, cook, pick up trays or whatever.
- 9 Q When you picked up trays did you get to know the
- 10 inmates?
- 11 A Sometimes.
- 12 Q Did you know them by face?
- 13 A Sometimes.
- 14 Q Okay. Did you have an opportunity to pick up a tray
- 15 from Brian Garris on April 29, 2006?
- 16 A Yes, ma'am, I did.
- 17 Q Do you recall what cell Mr. Garris was in?
- 18 A I believe it was the Second cell.
- 19 Q Was he by himself in that cell?
- 20 A I don't know. I couldn't tell.
- 21 Q Okay. Do you recall taking the tray from Mr. Garris?
- 22 A Yes, ma'am.
- 23 Q Do you recall anything unusual about that tray?
- 24 A The tray had a lot of food on it.
- 25 Q Did it have anything else on it?

State v. Garris September 2-5, 2008

124

1 A Yeah, it had a weapon on the top of that tray, it had
2 a weapon on it.

3 Q When you picked up the tray did you notice anything
4 odd about the feel of the tray?

5 A Yeah. It had a lot of weight on it.

6 Q Okay. And did that raise your suspicions?

7 A Well, not that the time it didn't until I dumped the
8 tray.

9 Q When you dumped it what did you see if anything?

10 A A gun came out.

11 Q And just so everyone knows you are not here today
12 voluntarily; is that correct?

13 A Yes, ma'am.

14 Q Okay. I subpoenaed you to be here?

15 A Yes.

16 Q And so you have been brought here to tell your story
17 against your will?

18 A Yes, ma'am.

19 Q When you dumped the tray did you see the weapon fall
20 from the tray.

21 A Yes, ma'am.

22 Q And what did you do after you saw that?

23 A I went back to the kitchen.

24 Q Okay. And then what?

25 A I talked to Ms. Jones.

1 Q What did you tell Ms. Jones?

2 A I told Ms. Jones I seen a gun on a tray when I dumped
3 it. She went and saw the --

4 Q Whose tray was it?

5 A I think it was his tray.

6 Q Okay. When you say his tray; who do you mean?

7 A Brian.

8 Q Can you identify the person in the courtroom today
9 who's tray you took that had the gun on it?

10 A Yes, ma'am. There.

11 Q Okay, in the plaid shirt?

12 A Uh-huh. Yes.

13 Q Okay. That's all the questions I have. Thank you.

14 THE COURT: Mr. Deas?

15 MR. DEAS: Thank Your Honor. Please the Court.

16 JOHNNY MCCREA - CROSS-EXAMINATION

17 BY MR. DEAS:

18 Q Mr. McCrea, are you currently incarcerated in the
19 South Carolina Department of Corrections?

20 A Yes, sir.

21 Q Were you incarcerated by the South Carolina Department
22 of Corrections back in April, 2006?

23 A Yes, sir.

24 Q Why are you incarcerated?

25 A Drug charges.

State v. Garris September 2-5, 2008

126

1 Q How long was the sentence that you're serving?

2 A Fifteen years.

3 Q Fifteen years.

4 A Yes, sir.

5 Q And how much longer do you have on that sentence?

6 A About three years and six months.

7 Q And you came to be housed at the Clarendon County

8 Detention Center, you said you were sent there as a cook?

9 A Yes, sir.

10 Q Were you also are actually being housed at that

11 facility?

12 A Yes.

13 Q How long had you been there when prior to this

14 incident that you just described?

15 A I'd say about two years and eight months, something

16 like that.

17 Q Been there for about two years and --

18 A Eight months or something like that.

19 Q Were you sent there as some incentive, some reduction

20 in your sentence or why exactly were you sent to Clarendon

21 County?

22 A I was sent there because of my time came down to where

23 I could go out and work.

24 Q And in that two years and some months that you were at

25 the Clarendon County Detention Center you had an

1 opportunity to come in contact with various other inmates;
2 correct?

3 A Yes, sir.

4 Q Part of your duties in addition to being a cook and
5 cleaning up you'd go around and gather up trays, food
6 trays. Is that correct?

7 A Yes.

8 Q Tell me again, sir, exactly the date that you remember
9 the exact date that you discovered this weapon?

10 A April, 2006. I know it was in April, 2006.

11 Q If I said, April 29, 2006, would you dispute that;
12 sound about right?

13 A It was somewhere in there.

14 Q On this date how -- where were you picking up trays;
15 was it in one particular area of the jail or were you
16 basically doing this throughout the entire jail?

17 A It was just in that one particular area.

18 Q Do you know the name of the particular area where you
19 were collecting trays that day?

20 A I can't remember what area it was, the name of it.

21 Q But you do remember picking up a tray at some point
22 from the cell that Mr. Garris was in?

23 A Yes, sir.

24 Q Had you had any dealing with Mr. Garris prior to that?

25 A No. Not really.

State v. Garris September 2-5, 2008

128

1 Q You all had no problems or confrontations or run-ins
2 with each other?

3 A Before that, no, sir.

4 Q And when you went to his cell -- where do you get the
5 tray from, is it slid under the door or is there an opening
6 in the door area itself for the tray to sit. Where do you
7 get the tray from?

8 A It was sitting on the flap, and he was standing there.

9 Q Sitting on a flap?

10 A Yeah, it was on the flap.

11 Q Does that flap come down from the door?

12 A Yes, sir.

13 Q And then the inmate set the tray on that flap?

14 A Yes, sir.

15 Q And you come around and get it?

16 A Yes.

17 Q How many trays had you had in your hand by the time
18 you picked up Mr. Garris' tray?

19 A I ain't had no tray in my hand.

20 Q His tray was the first one picked up?

21 A No, his tray was the second one I picked up.

22 Q What happened to the first one?

23 A First one, put that on the cart and went to his door
24 and got his tray.

25 Q But you have the trash can with you that you dump the

1 food in?

2 A No, the trash can's at the back door.

3 Q You say the first one you had already dumped?

4 A I got the first one and dumped it.

5 Q Where'd you dump it at?

6 A At the trash can by the back door.

7 Q What did you do with that first tray after you dumped
8 it?

9 A I put it on the cart.

10 Q When you got to Mr. Garris' cell you got his tray?

11 A Uh-huh. Off the flap.

12 Q And what did you do with it after you picked it up off
13 the flap?

14 A I picked it up off the flap and dumped his in the
15 trash. When I dumped it the gun came off.

16 Q Now, you have to walk away from the cell in order to
17 take it to the trash can and dump it?

18 A Yes, sir.

19 Q How far is trash can from the cell?

20 A Approximately to the door right there.

21 Q And you said when you first picked up his tray --
22 well, let me ask you, when you picked up his tray did you
23 notice anything unusual about it?

24 A Yeah. Had a lot of food on it and the weight.

25 Q And you say it had a lot of food on it; what do you

State v. Garris September 2-5, 2008

130

1 mean by that?

2 A It was stacked up.

3 Q Like a mound of food?

4 A Uh-huh. Yes.

5 Q And when you dumped it into the trash can what exactly
6 happened at that point?

7 A The gun fell off.

8 Q What did the gun look like?

9 A It was like a silver gun. A silver gun, taped by the
10 handle.

11 Q Silver gun.

12 A Uh-huh.

13 Q And it had tape --

14 THE COURT: What was that last part, Mr. McCrea?

15 MR. MCCREA: Tape wrapped around the handle.

16 THE COURT: It had tape on it?

17 MR. MCCREA: Yes, sir, around the handle.

18 BY MR. DEAS:

19 Q And when you saw the gun fall into the trash can what
20 did you do at that point?

21 A I sort of jumped back. Like somebody catch you.

22 Q Was there anyone -- I believe you've already testified
23 that you don't know if Mr. Garris was the only person in
24 that cell; is that correct?

25 A No, I don't know.

1 Q You don't know. It's possible could have been someone
2 else in there with him?

3 A I couldn't tell you. I don't know.

4 Q Now, and you said the first person you told about this
5 gun was Ms. Jones?

6 A There was a white guy with me. I told him and both of
7 us went to the kitchen.

8 Q Who was the person that was with you?

9 A I can't remember him.

10 Q He's another inmate?

11 A Yes, sir.

12 Q Okay. Did he see what you saw?

13 A Yeah.

14 Q What's his name?

15 A I can't remember his name.

16 Q Dd you ever tell, talk to him about the fact that you
17 saw this gun?

18 A Yes, sir.

19 Q And is it your belief that he saw it as well?

20 A Yeah.

21 Q But you don't know his name?

22 A No.

23 Q You don't know where he is today?

24 A I believe Turbeville or somewhere.

25 Q But he was another inmate?

State v. Garris September 2-5, 2008

132

- 1 A Yeah.
- 2 Q Did he come with you to report this situation to Ms.
- 3 Jones?
- 4 A No. We went together at first, like I said, I didn't
- 5 say anything to Ms. Jones. I call her to the side and I
- 6 told her. Then she went to talk to --
- 7 Q Do you know if Ms. Jones or any other jail officials
- 8 talked to this other inmate that was with you that day?
- 9 A No, sir.
- 10 Q You don't know if they did or if they didn't?
- 11 A Don't know if they did.
- 12 Q Did you ever talk to him again after that day about
- 13 this gun that you saw?
- 14 A Talk to the white man?
- 15 Q The other inmate?
- 16 A No, sir.
- 17 Q Do you know what happened to the gun after you
- 18 reported it to Ms. Jones?
- 19 A No.
- 20 Q Was there anything in the trash can prior to dumping
- 21 that first tray into the trash can?
- 22 A I can't remember.
- 23 Q Can't remember?
- 24 A No.
- 25 Q It's possible that the gun was already in there when

1 you dumped Mr. Garris' tray?

2 A It came off the tray.

3 Q Did you see, did you look into the trash can before
4 you started dumping the tray to see what was in there?

5 A No.

6 Q So then really you don't know what was in the trash
7 can prior to you dumping the tray, right?

8 A Right.

9 Q Thank you, sir. I have no further questions.

10 THE COURT: Ms. Land.

11 Let me ask one question and then y'all can follow up.

12 MS. LAND: Sure.

13 JOHNNY MCCREA - EXAMINATION

14 BY THE COURT:

15 Q Mr. McCrea, when you got the tray from this particular
16 cell, this flap, was there anybody standing, positioning
17 the tray in the flap for you to get?

18 A Yes, sir.

19 Q And who was that?

20 A (Indicating.)

21 Q Mr. Garris?

22 A Yes, sir.

23 Q All right.

24 THE COURT: Go ahead, Ms. Land.

25 MS. LAND: Okay.

State v. Garris September 2-5, 2008

134

1 JOHNNY MCCREA - REDIRECT EXAMINATION

2 BY MS. LAND:

3 Q And that was another question I had. How many trays
4 were in the flap?

5 A Just one tray.

6 Q Okay. Would it have been your job to go back and get
7 another one if Mr. Garris had had a roommate?

8 A Yeah, it would have been my job.

9 Q Okay. Was there ever another tray in that flap?

10 A No, ma'am.

11 Q So only one tray was ever put out of that flap that
12 evening?

13 A Yes, ma'am.

14 Q When you -- this white guy that you were with; does he
15 know that you told Ms. Jones that the gun fell off the
16 tray?

17 A Yes, ma'am.

18 Q And how does he know that?

19 A Well, we was at -- at her --

20 MR. DEAS: Objection. Calls for speculation.

21 THE COURT: Objection sustained.

22 MS. LAND: Okay.

23 BY MS. LAND:

24 Q Did you tell her in his presence?

25 A No, ma'am. I called her off to the side.

1 Q Okay. Why did you call her off to the side?

2 A Because I didn't want nobody to know I told her about
3 it.

4 Q How come?

5 A Because I really didn't want to be involved with it.
6 You know, to put my life in danger when a gun fell off the
7 tray pointed at me.

8 Q Okay. And did you have any concerns for the personnel
9 at the jail?

10 A I had concerns for myself.

11 Q Okay. All right. That's all the questions I have.

12 THE COURT: Mr. Deas.

13 MR. DEAS: Just very briefly.

14 JOHNNY MCCREA - RE-CROSS-EXAMINATION

15 BY MR. DEAS:

16 Q Mr. McCrea, is it true that you normally perform your
17 duties there is no cart that you use to put trays on?

18 A Yes. That's how I pick the trays up and drive them
19 off.

20 Q So every time you perform this duty you always have
21 your cart?

22 A Yes, sir.

23 Q It's not true that you usually carry the trays in your
24 hand?

25 A No.

State v. Garris September 2-5, 2008

136

1 Q And is it true that you took two trays from Mr.
2 Garris' flap that day?

3 A I can't remember that.

4 Q You don't remember taking two trays?

5 A No.

6 Q Thank you, sir. I have no further questions.

7 THE COURT: All right.

8 Thank you, sir. You can step down. Have a seat back
9 in the grand jury box.

10 All right. Mr. Deas, you have -- you want to be heard
11 on the foundation with the gun?

12 MR. DEAS: Yes, sir.

13 THE COURT: Go ahead.

14 MR. DEAS: Thank Your Honor.

15 Now, Judge --

16 THE COURT: Now, y'all need to stay. He's going
17 to testify to the jury in just a little bit.

18 All right. Go ahead.

19 MR. DEAS: Yes, sir. Judge, again, just
20 reiterating what was discussed yesterday. I think the
21 problem here is establishing a proper foundation for the
22 admission of this gun into evidence.

23 The chain of events don't necessarily link the gun
24 specifically with just Mr. Garris, because you're talking
25 about a facility with hundreds of inmates and employees,

1 all of which at some point could have had some contact with
2 this gun. And even through Mr. McCrea's testimony he says
3 he doesn't really, he doesn't remember whether or not he
4 took the tray, he doesn't remember whether or not Mr.
5 Garris had a another individual in his cell. He said he
6 did not know what was in the trash can prior to him
7 looking, prior to him dumping the tray.

8 The chain of events don't necessarily lead,
9 specifically, back to Mr. Garris, and that's what I believe
10 have to be established in order to lay the proper
11 foundation in order to have the -- in order for the gun to
12 be admitted into evidence.

13 Again, you're talking about a facility with hundreds
14 of inmates and many employees --

15 THE COURT: I don't think they have hundreds, but
16 they have a lot.

17 MR. DEAS: Yes, sir.

18 THE COURT: But didn't the witness say that --
19 And I assume the state could offer some evidence as to
20 whether or not he was alone or not. They have records on
21 that. Usually very specific records, I assume. But didn't
22 the witness testify that Mr. Garris was the one positioning
23 that tray in the flap and he got it from Mr. Garris and
24 dumped it and the gun came falling off.

25 MR. DEAS: That's his testimony.

State v. Garris September 2-5, 2008

138

1 THE COURT: All right. Go ahead.

2 MR. DEAS: The other point is this; there really
3 is no evidence elicited from Mr. McCrea as to how the gun
4 got into Mr. Garris' cell or into the jail facility at all.
5 There's testimony about the gun falling into the trash can,
6 but there's no testimony from Mr. McCrea regarding how the
7 gun actually came to exist in this jail. And I believe --
8 normally when you're establishing a chain of custody to lay
9 foundation for admission of evidence.

10 THE COURT: Chain of custody is when it comes into
11 possession of the state and what happens with it then.
12 They don't have to prove with the chain of custody,
13 evidence, scheme what happened to the gun from the time the
14 shot was fired. How did it get from here, to here, to here
15 and then in evidence or in custody of the state.

16 MR. DEAS: And you're right. You're correct.

17 Basically, what I intended to say was the chain of
18 events, not the chain of custody, but the chain of events
19 don't necessarily lead directly back to Mr. Garris.

20 THE COURT: Perhaps not. And I will allow you to
21 certainly cross-examine on that point. I'm not cutting you
22 short on your argument --

23 MR. DEAS: Yes, sir.

24 THE COURT: -- but the reason you wanted to hear
25 from Mr. McCrea In Camera was to find out exactly what

1 happened.

2 MR. DEAS: Correct.

3 THE COURT: I think directly -- circumstantially,
4 not directly, the gun was linked to Mr. Garris by his
5 testimony. If he's not credible then the jury can
6 disbelieve that testimony. But at least as far as Mr.
7 McCrea's testimony is concerned your objection is
8 overruled. I don't want to cut you short.

9 MR. DEAS: Yes, sir.

10 THE COURT: If you want to complete the record you
11 can go ahead.

12 MR. DEAS: Judge, I believe that's -- I've -- my
13 argument is concluded.

14 THE COURT: All right.

15 MS. LAND: And Your Honor I do have one more
16 question that I just want to make sure. We did not intent
17 on calling Lin Ham. We do you wish at this point, because
18 he was on the defense list to call him. Just to say that
19 yes he was arrested on the 28th. Mr. Ham got there, what
20 Mr. Ham did and that he brought him to the jail.

21 Just so the series of events is clear.

22 THE COURT: Call him.

23 MS. LAND: Okay.

24 THE COURT: I don't know who you're going to call
25 first, but --

State v. Garris September 2-5, 2008

140

1 MS. LAND: And my -- what I understand is that he
2 is not to say what he was arrested for?

3 THE COURT: That's my ruling. I mean, my ruling
4 is going to be that he was in custody in the Clarendon
5 County Detention Center for charges that were ultimately --
6 I can either say dismissed or for which he was found not
7 guilty. And the jury is not to consider in any way against
8 this defendant why he might have been in the Clarendon
9 County Detention Center at the time of April 28th. That's
10 my intention. I assume that suits you, Mr. Deas?

11 MR. DEAS: Judge, I believe that, of course,
12 that's really the only curative instruction you can give --

13 THE COURT: I know you don't want it -- you think
14 it's prejudicial --

15 MR. DEAS: Right.

16 THE COURT: -- under 403, that I should keep it
17 out.

18 MR. DEAS: That's correct.

19 THE COURT: But I've overruled that objection.

20 MR. DEAS: Yes, sir.

21 THE COURT: That's what I'm going to do.

22 MR. DEAS: Yes, sir.

23 THE COURT: Ms. Land, I guess you better make sure
24 that Mr. Ham knows that there's not even going to be any
25 dancing on that subject.

State v. Garris September 2-5, 2008

141

1 Now, circumstances around him being detained outside
2 the woods and using the words chase or allude or flee, Mr.
3 Ham is going to have to understand that I'm going to watch
4 that very closely.

5 You're going to have to object, if you need to object.

6 MR. DEAS: Yes, sir.

7 THE COURT: I'm not going to do the objecting for
8 you.

9 MR. DEAS: Yes, sir.

10 THE COURT: So we're trying an arm robbery, an
11 attempted murder or ABWIK and a weapons case. We're not
12 trying the burglary case. Y'all have already done that.

13 MS. LAND: Yes, sir.

14 THE COURT: Who is going to be your first witness?

15 MS. LAND: My first witness is Martha Santiago.

16 And we do have an interpreter for her. He is from the
17 Clarendon County Sheriff's Office, and Mr. Deas and I have
18 talked about and agreed that he's an appropriate
19 interpreter.

20 THE COURT: All right.

21 Has the jury selected a foreperson?

22 THE BAILIFF: Yes.

23 THE COURT: All right. Who is it?

24 THE BAILIFF: I didn't get a name.

25 THE COURT: All right. Go ahead and get the name

State v. Garris September 2-5, 2008

142

1 and tell them we'll have them out in just a second. Make
2 sure he or she sits on that chair, okay.

3 THE BAILIFF: Yes, sir.

4 THE COURT: Now, the interpreter is here?

5 MS. LAND: Mr. Rangel.

6 THE CLERK: Mr. Carlos Rangel. I'm sorry.

7 THE COURT: Mr. Rangel?

8 MR. RANGEL: Yes, sir.

9 THE COURT: All right, come on up, Mr. Rangel.
10 You've interpreted for guilty pleas before, correct?

11 MR. RANGEL: Yes, sir.

12 THE COURT: You're familiar with the oath that the
13 clerk of court is going to give you?

14 MR. RANGEL: Yes, sir.

15 THE COURT: All right, and you know that you have
16 to interpret everything. You cannot summarize. You
17 understand that?

18 MR. RANGEL: Yes, sir.

19 THE COURT: And you can't clarify anything
20 yourself without telling me first that the witness doesn't
21 understand.

22 MR. RANGEL: Yes, sir.

23 THE COURT: Have you done this before and you're
24 familiar with the process?

25 MR. RANGEL: Yes, sir.

1 THE COURT: All right.

2 All right. Are you ready for the jury, Ms. Land?

3 MS. LAND: Yes, sir.

4 (Pause.)

5 THE COURT: All right. Are you ready for the
6 jury, Ms. Land?

7 MS. LAND: We're ready, Judge.

8 THE COURT: Mr. Deas?

9 MR. DEAS: Yes, sir, Your Honor.

10 THE COURT: All right. You can bring in the jury.
11 (Jury in at 10:05 a.m.)

12 THE COURT: All right, ladies and gentlemen, thank
13 you for your patience.

14 Ms. McFadden, you're the foreperson of this jury, I'll
15 be speaking to you later what your responsibilities are.
16 For the time being I'll just tell you that you have a
17 position that has added responsibilities but absolutely no
18 additional pay, if that makes you feel any better.

19 All right. Ladies and gentlemen, I apologize for the
20 delay. One of the witnesses in this case had to be
21 transported from another county and that was the reason for
22 the delay in getting started. We are ready to go at this
23 time.

24 You've heard the opening statements from the attorneys
25 and the state is now going to begin presenting to you its

State v. Garriis September 2-5, 2008

144

1 case in chief.

2 I just wanted to make sure that if there's anyone on
3 the jury panel who did not comply with my instructions not
4 to talk about the case to anyone, read anything about it,
5 or listen to anything about it.

6 Did anybody have any trouble with that?

7 (No response from the jury.)

8 THE COURT: All right. Thank you.

9 All right. Ms. Land.

10 MS. LAND: Your Honor, we call Martha Santiago.

11 THE COURT: Mr. Rangel.

12 Can you swear him first.

13 THE CLERK: Yes, I will.

14 THE COURT: All right. Ladies and gentlemen,
15 testimony is going to be presented -- the witness speaks
16 Spanish; is that correct?

17 Is that right, Mr. Rangel?

18 MR. RANGEL: Yes, sir.

19 THE COURT: Testimony is going to be elicited
20 through the interpreter and the rules that we follow have
21 an accommodation for that.

22 The interpreter will be sworn and the witness will be
23 sworn and then the questions will be put to the witness in
24 Spanish through the interpreter and the answers reported by
25 the interpreter to you in English.

1 Everybody's under oath.

2 All right. Go ahead, Ms. Roberts.

3 THE CLERK: Mr. Rangel, I need you to raise your
4 right hand.

5 (WHEREUPON, Mr. Rangel was sworn
6 with an interpreter's oath.)

7 (WHEREUPON, Ms. Santiago was sworn
8 to tell the truth through the interpreter.)

9 THE COURT: All right, Ms. Land and Mr. Deas, just
10 make sure that when you ask the questions, ask the
11 questions to her. Don't address the interpreter.

12 MS. LAND: Yes, sir.

13 MARTHA SANTIAGO - DIRECT EXAMINATION

14 BY MS. LAND:

15 Q Ms. Santiago, would you tell the jury your name,
16 please?

17 A Martha Santiago.

18 Q And Ms. Santiago, where do you live?

19 A 2284 Grove Church in Manning.

20 Q And how long have you lived in Manning?

21 A Four years.

22 Q Who do you live with?

23 A With her three children.

24 Q And how old are your three children?

25 A Her oldest daughter is 17. The second child is 13

State v. Garris September 2-5, 2008

146

1 years old. The third one is seven years old.

2 Q And what are their names?

3 A The first one is Laura, Laura Batista. The second one
4 is Antonio Batista. The third Samuel Batista (sf).

5 THE COURT: Can everybody on the jury hear Mr.
6 Rangel?

7 All right. Speak up.

8 MR. RANGEL: Yes, sir.

9 THE COURT: All right.

10 BY MS. LAND:

11 Q Do you do a lot together as a family?

12 A Yes.

13 Q And do they speak both English and Spanish?

14 A Yes.

15 Q Do you try to bring them with you when you do things
16 so that you can communicate with English speaking persons?

17 A Yes.

18 Q And when you go to pick your daughter up, do your boys
19 usually come with you?

20 A Yes.

21 Q Do you drive in the United States?

22 A Yes.

23 Q And do you work here?

24 A Yes.

25 Q What kind of work do you do?

1 A She works in landscaping.

2 Q Do you recall April 15th of 2006?

3 A Yes.

4 Q That night around 10:00 o'clock, what were you doing?

5 A She said that around 10:00 o'clock she was going to
6 pick up her daughter at the China Cuisine restaurant.

7 Q Is that typically what you did every night?

8 A No. Only on Saturdays.

9 Q Okay. And when you went and picked her up on
10 Saturdays did you typically bring your boys with you?

11 A Yes.

12 Q What kind of vehicle were you driving on that day?

13 A A Chevrolet mini van.

14 Q And when you say you were picking her up from the
15 Chinese restaurant; which Chinese restaurant?

16 A China Cuisine.

17 Q And where -- do you know what road that restaurant is
18 one?

19 A She said it's on the road that Social Services is on.

20 Q And what happened that night that was unusual?

21 A When she arrived that night a little earlier. She
22 parked behind the restaurant.

23 Q Did she usually park behind -- do you usually park
24 behind the restaurant?

25 A She usually parks in the front.

State v. Garris September 2-5, 2008

148

1 Q Okay. Why did you park in the back that night?

2 A She said because her daughter told her there was
3 another business back there.

4 Q And when you parked back there did your daughter come
5 to the car?

6 A Yes. She told her she was going to park in the back.

7 Q And what kind of car were you in?

8 A Chevrolet mini van.

9 Q Can you describe the mini van for the jury?

10 A It was like reddish with gray lines on it.

11 Q Was it a tall mini van?

12 A No, it wasn't.

13 Q Okay. Did it have running boards on the side?

14 A Yes.

15 Q And the purpose of the running boards were to step up
16 for short people like us to get into the car?

17 A She believes so.

18 Q And what else happened that night that you recall,
19 after your daughter got in the car?

20 A When my daughter entered the car she had brought two
21 plates of food. She began to tell her that her father had
22 called from Mexico. At that moment someone opened the
23 door.

24 Q Which door?

25 A That she was driving.

1 Q Okay. So your side of the door?

2 A Yes.

3 Q And what did that person do?

4 A He opened the door and started yelling at me to give
5 him money. He started pointing a gun at me. He saw that I
6 had my three children. And he kept moving the gun in the
7 gun in the vehicle. And she told him, no, please. She
8 said she heard a sound. And she started to bleed. She got
9 nervous and pulled on her door. She wanted to lock it but
10 she couldn't. At that moment that's when she was shot in
11 the arm. Her daughter gave him the money. And he ran.
12 Her daughter got out the van with her son and they began to
13 yell. They went in the restaurant to tell the owners. And
14 she stayed in the van.

15 THE COURT: Mr. Rangel, she said I; you say I.

16 MR. RANGEL: Yes, sir.

17 THE COURT: Go ahead Ms. Land. Sorry for the
18 interruption.

19 A She started to park and she went to the front of the
20 restaurant.

21 THE COURT: Did she say she? That's where I'm
22 confused. She someone else or she this witness.

23 MR. RANGEL: No, herself started the vehicle.

24 THE COURT: If she uses the word I, you use the
25 word I.

State v. Garris September 2-5, 2008

150

1 MR. RANGEL: Yes, sir.

2 THE COURT: All right.

3 MR. RANGEL: Yes, sir.

4 BY MS. LAND:

5 Q I know that this is hard, but let me take you back to
6 cover some of those details.

7 A Yes.

8 Q When he first came to your door and opened it, how did
9 you know what he wanted?

10 A Because he started to yell at me. He wanted money.
11 I told him I didn't have any money.

12 Q And where did the first shot hit you?

13 A In my eye.

14 Q And that's the eye that was closest to him?

15 A Yes.

16 Q Was there a lot of blood?

17 A Yes.

18 Q Were you able to describe him to law enforcement?

19 A A little bit. I was nervous that night, and I don't
20 remember it all.

21 Q Would you say that it was very shortly after he opened
22 the door that you were shot in the eye?

23 MR. DEAS: I'm going to object to leading.

24 A Yes.

25 THE COURT: I'll allow a little bit of latitude,

1 Ms. Land.

2 MS. LAND: Yes, sir.

3 THE COURT: I'll just ask you to do the best you
4 can with that.

5 MS. LAND: Yes, sir.

6 BY MS. LAND:

7 Q Is it fair to tell this jury that you didn't get a
8 good look at him?

9 A No.

10 Q It's not fair or you didn't get a good look at him?

11 A No, because it was very dark.

12 Q When he opened your door did a light come on in the
13 car?

14 A Yes.

15 Q And were you able to get the door shut after that
16 first shot?

17 A Yes.

18 Q Was he able to get it back open?

19 A Yes, because I did not know where the button was.

20 Q And the second time he opened the door did he shoot
21 you again?

22 A Yes, he shot me in the arm.

23 Q Which arm was it?

24 A In my left arm.

25 Q During this time what were your children doing?

State v. Garris September 2-5, 2008

152

1 A They were just looking. They couldn't do anything. Q

2 How long did it take from the time that he opened your
3 door the first time until the time he ran away?

4 A I'm sorry, can you repeat that?

5 MR. RANGEL: Sorry.

6 MS. LAND: Yeah. Okay.

7 BY MS. LAND:

8 Q How long was it from the first time he opened the door
9 until the time he ran away?

10 A It takes two or three minutes.

11 Q And after he ran away what did your children do?

12 A When he ran my children got out of the vehicle and
13 started to scream. They went inside to notify the owners
14 of the restaurant that she was shot.

15 Q And what did you do?

16 A At that moment I started the van. I went to the front
17 of the restaurant.

18 Q And did you go into the restaurant?

19 A No.

20 Q Did they come out to assist you?

21 A Yes.

22 Q Did an ambulance come?

23 A Yes.

24 Q Did you have to be taken to a hospital other than the
25 one here in Manning?

1 A Yes, they took me to Charleston.

2 Q Did they take you in a helicopter?

3 A No.

4 Q In an ambulance?

5 A Yes.

6 Q Were they able to get the bullet from your face?

7 A No, because it was in the van.

8 Q And did you loose any of your eyesight?

9 A No.

10 Q Do you feel like you are very lucky?

11 MR. DEAS: Objection. Objection, Your Honor.

12 A Yes.

13 MR. DEAS: Relevance.

14 THE COURT: Ms. Land.

15 MS. LAND: Your Honor, I'm just --

16 THE COURT: I'll sustain the objection.

17 MR. LAND: Okay.

18 BY MS. LAND:

19 Q Were they able to get the gun -- the bullet out of
20 your arm?

21 A Yes.

22 Q Did they take it out that night?

23 A No.

24 Q Do you recall when they took it out?

25 A She doesn't remember.

State v. Garris September 2-5, 2008

154

1 Q Okay. Can you tell me did they -- how did they know
2 that there was a bullet left in your arm?

3 A I didn't know, and they didn't know. But when I left
4 the hospital I told my children that I felt the bullet
5 underneath my arm. And they told me no, but I felt it.
6 That's when the investigator came. He wanted to know -
7 that they couldn't find the bullet in the mini van. She
8 said maybe it was in her arm. She felt something. I felt
9 something. And he put a little machine with her son
10 Antonio and it started to move. And the investigator told
11 them yes, that it was.

12 Q Was that machine something that detected metal?

13 A Yes.

14 Q And your son was pretty clever to think to use that
15 machine?

16 A Yes. He didn't think of it. The detective gave it
17 top her -- to my son and he began to use it.

18 Q Okay. And the gun was -- the bullet was, in fact, in
19 your arm; is that correct?

20 A Yes.

21 Q And were they able to get that bullet out?

22 A The investigator took them to the hospital and they
23 extracted it.

24 Q Was the investigator there when they extracted it?

25 A Yes.

1 Q And he took the bullet with him?

2 A Yes.

3 Q Have you assisted the investigators with everything
4 they needed for this case?

5 A Yes.

6 Q Are you able to identify the person that shot you?

7 A Yes.

8 Q Were you able to identify him before they caught him?

9 A I wasn't sure.

10 Q That's all the questions I have for you. Please
11 answer any questions -- well, let me ask you. I'm sorry.
12 Let me ask you one question.

13 Do you remember what he was wearing?

14 A A little bit.

15 Q What do you remember?

16 A He had a black clothes and shirt. He had stripes. He
17 had a hat. That's all I remember.

18 Q Did you meet with someone who drew a picture as you
19 described it?

20 A Yes.

21 Q And did he ask you does this person look like the
22 person that shot you?

23 A Yes.

24 Q Okay. And did it look like the person that shot you?

25 A When he drew it I basically told him what he looked

State v. Garris September 2-5, 2008

156

1 like in the face.

2 Q And is that what he drew?

3 A Yes.

4 Q I'm going to show you this document. Is that the
5 picture that the man drew?

6 A Yes.

7 Q And he drew this according to your description?

8 A Yes.

9 MS. LAND: Your Honor, I'd like to have this
10 admitted as State's Exhibit No. 1.

11 THE COURT: Mr. Deas?

12 MR. DEAS: No objection.

13 THE COURT: All right.

14 (State's Exhibit No. 1, sketch,
15 was marked and entered.)

16 THE COURT: All right. Ladies and gentlemen,
17 that's State's Exhibit No. 1 entered without objection.

18 MS. LAND: Judge, it's a different one.

19 THE COURT: Oh, okay.

20 MS. LAND: Okay. Just the other one had writing
21 on it.

22 BY MS. LAND:

23 Q I'm going to hand you that picture, Ms. Santiago. Is
24 that the type of shirt that the person that shot you was
25 wearing?

1 A Yes.

2 Q And the type of hat?

3 A Somewhat.

4 Q And the facial features?

5 A The nose and the mouth, yes.

6 Q And did you do this -- did you meet with the person
7 that did this composite shortly after the incident?

8 A About two weeks.

9 Q Did the person that drew the picture speak Spanish?

10 A No.

11 Q Was there a translator there?

12 A Yes.

13 Q So you were able to tell him what you believe this
14 person looked like?

15 A Yes.

16 Q Tell the jury how this event has changed your life?

17 A Everything has changed in my life because I haven't
18 been able to work since before. Because when I work hard
19 my head begins to hurt and I can't see. And then I get a
20 lot of bills to pay a lot of money and I don't earn enough
21 to pay them, because that's why I can't pay. Because the
22 little that I have I need to feed my children

23 Q Thank you, Ms. Santiago. Answer any questions Mr.
24 Deas has.

25 THE COURT: Mr. Deas.

State v. Garris September 2-5, 2008

158

1 MR. DEAS: Thank Your Honor. Please the Court.

2 MARTHA SANTIAGO - CROSS-EXAMINATION

3 BY MR. DEAS:

4 Q Ask her if she needs a minute.

5 A No.

6 THE COURT: Direct the question to her and then
7 he'll translate it.

8 BY MR. DEAS:

9 Q Ms. Santiago, do you need a moment before we proceed?

10 A No.

11 Q Ma'am, my name is Garryl Deas. I represent the
12 defendant, Mr. Garris.

13 A (No response.)

14 Q Going back to the day of this incident do you recall
15 whether or not there's a beauty salon next to the Chinese
16 restaurant?

17 A Yes.

18 Q Where you indicated earlier that you parked beyond the
19 Chinese restaurant?

20 A Yes.

21 Q Is there any lights, street lights that shine light on
22 the parking are for the beauty salon and the restaurant?

23 A On the street.

24 Q Are there any lights that are in the parking area
25 behind the beauty salon and the restaurant?

1 A Yes.

2 Q So there are lights on the street?

3 A Yes.

4 Q And there are also lights in the back of the building
5 where the parking area is?

6 A No.

7 Q So the only lights are the lights on the street?

8 A Yes.

9 Q And those lights are in the front of the beauty salon
10 and the restaurant?

11 A On the side of the street.

12 Q Now, what time was it when you -- approximately what
13 time was it when you arrived that day at the Chinese
14 restaurant?

15 A I arrived around 9:45.

16 Q Was it dark outside already?

17 A Yes.

18 Q When you pulled in the back of the restaurant to park
19 did you have your running lights on on your car?

20 A No.

21 Q Did you have your headlights on?

22 A She had the inside lights on because she was reading a
23 book.

24 Q Well, let me ask her a different way. The lights that
25 are in front of the car, the headlights -- did you have

State v. Garris September 2-5, 2008

160

1 those lights on as you drove to the back of the restaurant?

2 A Yes.

3 Q Did you see anybody in the parking lot area in the
4 back of the building?

5 A No.

6 Q How long were you sitting in your car before your
7 daughter came out of the restaurant?

8 A Around 15 minutes.

9 Q Do you know what time it was approximately when your
10 daughter came out of the restaurant?

11 A She always came out at 10:00 o'clock.

12 Q Is that the time your daughter normally gets off work?

13 A Yes.

14 Q Was your daughter already inside the car when the
15 individual came to the car and began to ask for money?

16 A Yes.

17 Q Was your daughter already inside the car when the
18 person came to the car and asked for money?

19 A Yes.

20 Q When the person opened -- strike that. Which door did
21 the person open of the car?

22 A The drivers' side.

23 Q Is it the kind of door that swings open or slides
24 open?

25 A It opens out.

1 Q Did the person ever get inside of the van?

2 A No.

3 Q During the entire incident was the person always
4 outside of the van?

5 A Yes.

6 Q Did the person put their arm inside the van?

7 A No.

8 Q How long did the entire incident take to happen?

9 A Between two and three minutes.

10 Q During that two to three minutes, did you notice the
11 height of the person?

12 A Not well, because I was facing the front. My daughter
13 was at my left looking. (sic).

14 Q During that time period did the notice the color or
15 the complexion of the person's skin?

16 A Yes.

17 Q And would you describe it as darker than my complexion
18 or lighter?

19 A He was a dark man.

20 Q Can she say whether --

21 THE COURT: You've got to say I and so forth.

22 BY MR. DEAS:

23 Q -- Ms. Santiago, can you say, based on your memory
24 whether the person was darker than me or lighter than me?

25 A Like you.

State v. Garris September 2-5, 2008

162

1 Q Did she -- Ms. Santiago, did you notice the weight of
2 the person; was the person heavy or skinny?

3 A He looked wide because he wore a wide shirt.

4 Q Ms. Santiago, would it be fair to say that you did not
5 get a good look at the person that did this?

6 A Ask it again.

7 Q Earlier you stated that you did not get a good look at
8 the person, correct?

9 A Yes.

10 Q So it would be fair to say that you did not get a good
11 look at the individual that did this?

12 A Yes.

13 Q When was the first time that you spoke with the police
14 about this incident?

15 A When I was at the hospital.

16 Q And who did you speak with?

17 A With the investigator.

18 Q Was it Investigator Elms?

19 A Yes.

20 Q Did Investigator Elms ask you to describe the person
21 that did this?

22 A Yes.

23 Q And were you able to give Investigator Elms a
24 description?

25 A No, at that time, no.

1 Q Is it true, Ms. Santiago, that you described the
2 individual that did this as six feet one to six feet three
3 inches tall and dark complected?

4 A I didn't -- she didn't know what the height was one
5 foot or two foot.

6 Q Where did the police get the information that the
7 person that did this was six foot one to six foot three --

8 MS. LAND: Your Honor, I object. There is no
9 evidence that the police had that information, and she's
10 testified that the first person she talked to was
11 Investigator Elms who she wasn't able to give the
12 description to.

13 THE COURT: Mr. Deas?

14 MR. DEAS: She certainly can testify to her
15 recollection.

16 THE COURT: Ask the witness again whether --
17 interpret what I'm saying. Ask the witness again -- if she
18 recalls the height of the person?

19 A No.

20 BY MR. DEAS:

21 Q Ms. Santiago, did you ever tell law enforcement the
22 height or a description of the height of the individual who
23 did this?

24 A Yes.

25 Q And what did you tell them with respect to the height

State v. Garris September 2-5, 2008

164

1 of the individual?

2 A That he was tall.

3 Q Did you tell Investigator Elms or any of the other
4 investigators that the individual was six feet one to six
5 feet three inches tall?

6 A Yes.

7 Q And did you also describe the person, and I believe I
8 may have already asked this, -- tell her that -- as dark
9 complected?

10 A Yes.

11 Q Did you ever have an opportunity to talk to
12 Investigator Elms or any of the other law enforcement
13 officers about the description of the individual any time
14 after you were in the hospital?

15 A Only when they told me to do the sketch.

16 Q And where did you go to do the sketch?

17 A Next to the fire station.

18 Q And Ms. Santiago, do you still have a copy of the
19 sketch there in your hand?

20 A Yes.

21 Q May I see it?

22 A (No response.)

23 MR. DEAS: Your Honor, may I approach the witness?

24 THE COURT: Yes.

25 BY MR. DEAS:

1 Q In your view, Ms. Santiago, does this composite sketch
2 accurately depict the person that did this to you?

3 A Looks like him.

4 Q Would you agree with me, Ms. Santiago, that the
5 picture of the person in this sketch shows a person that
6 has long braids or dreadlock type hairdo?

7 A Yes.

8 Q And the person that did this to you, do you remember
9 that person having long braids or a dreadlock type hairdo?

10 A I only saw a couple hanging braids out.

11 MR. DEAS: Your Honor, may I approach?

12 BY MR. DEAS:

13 Q After you met with police to do this composite sketch
14 did you ever met with them again?

15 A No.

16 Q About describing the individual who did this?

17 A I don't remember.

18 MR. DEAS: Court's indulgence.

19 (Pause.

20 MR. DEAS: No further questions, Your Honor.

21 THE COURT: Redirect, Ms. Land?

22 MS. LAND: Yes, sir.

23 MR. DEAS: Thank you, Ms. Santiago.

24 MARTHA SANTIAGO - REDIRECT EXAMINATION

25 BY MS. LAND:

State v. Garris September 2-5, 2008

166

1 Q Mr. Deas asked you if it was possible that the person
2 that did this was six one or six two. Do you recall
3 describing him as six one or six two?

4 A She doesn't remember. I don't remember.

5 Q So what you were saying to Mr. Deas that that's
6 possible?

7 MR. DEAS: Objection. That's leading.

8 THE COURT: Ms. Land.

9 MS. LAND: Okay.

10 BY MS. LAND:

11 Q Do you recall describing his skin color?

12 A She only -- I only said black.

13 Q Okay, and you had been shot twice, isn't that correct?

14 A Yes.

15 Q How tall are you, Ms. Santiago?

16 A I don't know.

17 Q About my height?

18 MR. DEAS: Objection. Leading.

19 THE COURT: Overruled

20 A More or less.

21 BY MS. LAND:

22 Q And do people typically seem taller to you because
23 you're so short?

24 A Exactly.

25 Q And how close was he to you?

1 A He was as close as I am.

2 Q So he was right there next to you?

3 A Yes.

4 Q And he took the money from your daughter when she
5 handed the money to him?

6 MR. DEAS: Objection. That's outside the scope of
7 cross.

8 THE COURT: Overruled.

9 BY MS. LAND:

10 Q Ask her again.

11 A Yes.

12 Q And your van does have a running board?

13 A Yes.

14 MS. LAND: That's all the questions I have.

15 MR. DEAS: Nothing further, Your Honor.

16 THE COURT: Thank you, ma'am. You can step down.

17 MS. LAND: Your Honor, we call Antonio Batista.

18 THE COURT: Wait just a second.

19 Ladies and gentlemen, I keep in mind that some folks
20 drink coffee, some folks don't. You've been in the
21 courtroom for about an hour. Is everybody on the jury
22 okay; does anybody need to take a break. Raise your hand
23 if you do?

24 All right. Ms. Land.

25 MS. LAND: Antonio Batista.

State v. Garris September 2-5, 2008

168

1 Your Honor, may Officer Rangel be excused. He works
2 to night, and we don't have any other Spanish speaking
3 witnesses.

4 MR. DEAS: I don't have any objection to that.

5 THE COURT: Thank you, Mr. Rangel, you may be
6 excused.

7 MR. RANGEL: Thank you, Your Honor.

8 THE CLERK: Please place your left hand on the
9 Bible and raise your right.

10 (WHEREUPON, Antonio Batista was
11 sworn to tell the truth.)

12 ANTONIO BATISTA - DIRECT EXAMINATION

13 BY MS. LAND:

14 Q Antonio, I'm going stand back here because I want you
15 to look towards the jury and I need to be able to hear you
16 and I want to make sure they can hear you.

17 A Okay.

18 Q Can you tell this jury your name, please?

19 A Antonio Batista.

20 Q And how old are you?

21 A Fifteen.

22 Q Where do you go to school?

23 A Manning Junior High School.

24 Q And do you speak English and Spanish?

25 A Yes, ma'am.

1 Q How long have you been in the United States?

2 A All my life.

3 Q And how long have you been in Manning?

4 A Four years.

5 THE COURT: You need to pull your chair up to that
6 microphone.

7 BY MS. LAND:

8 Q Okay, do you remember April 15, 2006?

9 A Yes, I do.

10 Q Did you ride with your mom to pick up your sister?

11 A Yes.

12 Q And tell the jury what you recall about the events of
13 that evening?

14 A Well, we parked in the back of the Chinese Cuisine,
15 and then this man tried to open the door, shot two times.

16 Q Where were you sitting in the car?

17 A In the back.

18 Q Okay, and when you say in the back, it's been
19 described as a mini van; which seat were you in?

20 A Behind the passenger seat.

21 Q Okay. And did you stay in the car until your sister
22 came out?

23 A Yes, ma'am.

24 Q Do you recall what time that was?

25 A About 10:00.

State v. Garris September 2-5, 2008

170

- 1 Q And do you recall the man opening the door?
- 2 A Yes.
- 3 Q What do you recall seeing?
- 4 A He started yelling and pointed a gun and he shot her,
- 5 asking for money.
- 6 Q Could you get a good look at him?
- 7 A No, ma'am
- 8 Q Why not?
- 9 A Because the seat, the top of the seat was covering my
- 10 view.
- 11 Q So your mother's seat was what prevented you from
- 12 seeing him?
- 13 A Yes.
- 14 Q Did you hear what he was saying?
- 15 A Yes.
- 16 Q What was he saying?
- 17 A He was cursing and saying give me the money?
- 18 Q And what was your mom doing at that point?
- 19 A She was trying to -- she was saying no, please, and
- 20 trying to close the door.
- 21 Q And after he shot her the first time, did you realize
- 22 that she had been shot?
- 23 A No, ma'am.
- 24 Q And was your mom able to get the door shut?
- 25 A Yes.

- 1 Q Was he able to open it again?
- 2 A Yes.
- 3 Q And what happened when he opened it again?
- 4 A He started -- he shot her again, because of the noise,
5 and then my sister gave him the money and he ran off.
- 6 Q When he ran off what did you do?
- 7 A Me and my sister got out and started screaming at him
8 for what he did.
- 9 Q And do you recall what you were screaming?
- 10 A No, ma'am.
- 11 Q Do you recall which way he was running?
- 12 A Towards a church.
- 13 Q Okay. Is that the Methodist Church, do you know?
- 14 A Yes.
- 15 Q As he was running off did you get a look at him?
- 16 A Not really.
- 17 Q When I say get a look at him, did you get a look at
18 his face?
- 19 A No.
- 20 Q Did you get a look at the back of him?
- 21 A Yes.
- 22 Q And did you notice what he was wearing?
- 23 A A blue shirt with stripes.
- 24 Q Okay. And when you say stripes, do you recall which
25 way the stripes went?

State v. Garris September 2-5, 2008

172

- 1 A They went across.
- 2 Q Do you recall how the shirt fit?
- 3 A It hung big, too big for him.
- 4 Q Was it hard to tell whether he was fat or skinny?
- 5 A Yes.
- 6 Q And why was that?
- 7 A Because the shirt fit him loosely.
- 8 Q Okay.
- 9 MS. LAND: Beg the Court's indulgence for one
- 10 minute.
- 11 (Pause.)
- 12 BY MS. LAND:
- 13 Q After he ran off, did you or your sister follow him?
- 14 A No.
- 15 Q What did you do?
- 16 A We just stood by the van and then we went to the front
- 17 to tell the people what happened?
- 18 Q Do you recall were you crying?
- 19 A Yes.
- 20 Q Were you very upset?
- 21 A Yes.
- 22 Q Did things seem to happen pretty quickly?
- 23 A Yes.
- 24 Q And it scared -- it's safe to say you were scared?
- 25 A Yes, ma'am.

1 Q That's all the questions I have, Antonio. Please
2 answer any questions Mr. Deas has.

3 THE COURT: Mr. Deas.

4 ANTONIO BATISTA - CROSS-EXAMINATION

5 BY MR. DEAS:

6 Q Good morning, Antonio Batista. My name is Garryl
7 Deas. I represent Mr. Brian Garris.

8 Do you have a pretty good recollection of the events
9 that happened back on April 15th of '06?

10 A Yes, sir.

11 Q You remember pretty in detail the events that happened
12 to you and your family, correct?

13 A Yes, sir.

14 Q But -- but do you have a memory, a good memory of what
15 the person looked like?

16 A Sort of.

17 Q And were you able to get a good look at the person?

18 A Not his face, but his clothes.

19 Q So you were never able to get a good look at his face?

20 A Yes, sir.

21 Q But you were able to see his clothes?

22 A Yes, sir.

23 Q Did the person have on -- what type of pants did the
24 person have on?

25 A I don't know.

State v. Garriss September 2-5, 2008

174

1 Q But you remember the person having a blue shirt, a
2 blue striped shirt?

3 A Yes, sir.

4 Q Did the person have on a hat?

5 A Yes, sir.

6 Q What color hat?

7 A Blue, a Yankee hat.

8 Q A New York Yankee hat; but like a baseball cap?

9 A Yes, sir.

10 Q Did it actually have the NY on the hat?

11 A Yes.

12 Q Do you know if anyone ever told the police that the
13 person that did this to your mom had on a New York Yankee
14 hat?

15 A Yes.

16 Q So that was told to the police?

17 A (Nod affirmatively.)

18 THE COURT: You have to answer out loud.

19 A Yes, sir.

20 BY MR. DEAS:

21 Q And you remember the person having on that specific
22 type of hat?

23 A Yes, sir.

24 Q Were you able to ever get a good enough look at the
25 person to tell what type of skin complexion they had?

1 A No, sir.

2 Q Couldn't tell whether it was a darker complexion or a
3 lighter complexion?

4 A No, sir.

5 Q Were you able to tell the height of the person,
6 whether they were short like me or tall, like someone over
7 six feet tall?

8 A No, sir.

9 Q How long would you say this person was in your
10 presence when this incident occurred?

11 A Two or three minutes.

12 Q After the incident happened, I believe you said the
13 person ran away; is that right?

14 A Yes, sir.

15 Q Did anybody in the area give chase or try to chase
16 after the person?

17 A No.

18 Q Right after the person ran away did you and your
19 family, did y'all go inside the Chinese restaurant?

20 A No. We just called from the doorway.

21 Q Say that again?

22 A We called from the doorway.

23 Q You called from the doorway?

24 A Yes, sir.

25 Q You called on a cell phone?

State v. Garris September 2-5, 2008

176

1 A No, because the door was closed, so we started banging
2 on the window.

3 Q And did you all at some point go inside the Chinese
4 restaurant?

5 A I do not remember.

6 Q Do you remember who called the police?

7 A Yes, ma'am -- yes, sir.

8 Q Who called the police?

9 A A lady at the restaurant. She is the niece of the
10 owners.

11 Q Do you know if anyone else saw anything with respect
12 to what happened that evening?

13 A No, sir.

14 Q You don't know or no one else saw anything?

15 A No one saw.

16 Q So as far as you know the only people who witnessed
17 this were you and your sister -- well, actually, you and
18 your two sisters and Ms. Santiago?

19 A Yes, sir.

20 Q Do you know if there was anyone inside the restaurant
21 when this incident happened?

22 A Just the owners and her niece and her boyfriend.

23 Q Do you know if there was anyone inside the beauty
24 salon?

25 A No, sir.

State v. Garris September 2-5, 2008

177

1 Q Thank you, sir. I have no further questions.

2 THE COURT: Any redirect?

3 MS. LAND: Yes.

4 ANTONIO BATISTA - REDIRECT EXAMINATION

5 BY MS. LAND:

6 Q Mr. Deas asked you if somebody was able to give a
7 description to law enforcement of the type of hat that that
8 person was wearing, and your answer was yes; is that
9 correct?

10 A Yes, ma'am.

11 Q Was anybody able to give a description to law
12 enforcement of the striped shirt

13 A Not that I remember.

14 Q But that's what you saw that night?

15 A Yes, ma'am.

16 Q So it's very possible that that information could have
17 been given to law enforcement that night?

18 A Yes, ma'am.

19 Q He also asked you -- and I just want to clear this up
20 for the jury -- if it was your and your two sisters and
21 your mom that say him. Actually, it's one sister and one
22 brother?

23 A Yes, ma'am.

24 Q And where was the brother seated in the vehicle?

25 A Beside me behind the drivers' seat.

State v. Garris September 2-5, 2008

178

1 Q Okay. And how old was he at that time?

2 A Four.

3 Q Okay. That's all the questions I have. Thank you,
4 Antonio.

5 THE COURT: Mr. Deas?

6 MR. DEAS: Nothing further.

7 THE COURT: Thank you, sir. You may step down.

8 MS. LAND: Your Honor, we call Laura Batista.

9 THE CLERK: Please place your left hand on the
10 Bible and raise your right hand.

11 (WHEREUPON, Laura Batista was
12 sworn to tell the truth.)

13 LAURA BATISTA - DIRECT EXAMINATION

14 BY MS. LAND:

15 Q Can you state your name for this jury, please.

16 A I'm Laura Batista.

17 Q And Laura, how old are you?

18 A I'm 17.

19 Q Where do you go to school?

20 A Manning High.

21 Q Are you currently employed?

22 A Not right now.

23 Q And were you previously employed at the Chinese
24 Cuisine?

25 A Yes.

1 Q And do you help your family out with that money that
2 you make at the Chinese Cuisine?

3 A Yes.

4 Q In what way?

5 A Well, I help mom pay the light bill, the rent.

6 Q Okay, and is that one of your responsibilities around
7 your household?

8 A Yes.

9 Q When were you last employed?

10 A A month ago.

11 Q Okay. And where was that?

12 A At the Chinese restaurant -- it's the same restaurant.

13 Q Okay, and are you a good student?

14 A Yes.

15 Q Do you makes A's and B's?

16 A A, B, C's.

17 Q What do you have to do in your future?

18 A Well, something that -- well, a good job so mama won't
19 have to work.

20 Q And how long have you lived in Manning.

21 A I moved here when I was 14, so four years.

22 Q And who do you live with in Manning?

23 A My two brothers and my mom.

24 Q Where does your dad live?

25 A He's in Mexico right now.

State v. Garris September 2-5, 2008

180

- 1 Q Do you speak with him?
- 2 A Yes.
- 3 Q He calls to check on you?
- 4 A Yes.
- 5 Q And y'all just discuss what you've been doing around
6 here?
- 7 A Yes.
- 8 Q Okay. Do you recall April 15, 2006?
- 9 A Yes.
- 10 Q At that time, where were you employed?
- 11 A At the Chinese restaurant.
- 12 Q How long had you been working there?
- 13 A It was a couple of months.
- 14 Q And what sort of things did you do at the China
15 Cuisine?
- 16 A Well, I take orders, I'm the cashier, I take the
17 money. I do the orders for the customers and clean.
- 18 Q And how often did you work there?
- 19 A Well, mostly it was Saturdays, but the lady has a
20 daughter and when she couldn't come in I would come during
21 the week. I would work Wednesdays, Thursdays, and Fridays
22 and Saturdays.
- 23 Q Okay, and if you worked on Saturday, would she pay you
24 when you left?
- 25 A Yes.

1 Q So you didn't get a paycheck every two weeks you were
2 just paid as you worked?

3 A Yes.

4 Q And do you recall how much you were paid?

5 A Well, sometimes she would give me forty.

6 Q And did she also provide you with food to eat?

7 A Yes.

8 Q And did you also get to take some extra food home to
9 feed your family as well?

10 A Yes.

11 Q Tell the jury, if you would, about your recollection
12 of April 15, 2006?

13 A Oh, I was at work and sometimes I would work to 10:00
14 or 11:00, something like that, but that day I got off early
15 a little bit because the lady -- her niece and her niece's
16 boyfriend came all the way from California, so she let me
17 off because she was cooking for them. And she told me I
18 could go home. And my mom came and she parked in the back,
19 and I --

20 Q Before you left did she pay you?

21 A Yes, she paid me.

22 Q How much did you get paid that evening?

23 A She paid me \$40.

24 Q Do you recall what denominations it was in?

25 A Two twenties.

State v. Garris September 2-5, 2008

182

1 Q Okay. And I'm sorry. So your mom was parked out
2 back. What did you do?

3 A Well, I walked out the front door. I did see somebody
4 coming up the street. And I walked towards the van and I
5 got in the van. And the lady had given me free food. I
6 started telling my mom, and she started telling me that my
7 dad had called. And that he asked how we were doing.

8 Q When you said you saw a guy walking down the street,
9 from which direction was he coming from?

10 A From -- from the left side.

11 Q Okay. So where the van was marked was he coming
12 towards your mom's side or towards your side?

13 A No. See in front of the restaurant there's a street
14 with the lights -- he was not close to me when I was
15 walking out the front door, but I did see somebody walking.

16 Q Okay. Did you think anything of it?

17 A No.

18 Q And you got into -- what part of the car?

19 A I got in the passenger seat.

20 Q And you had your food?

21 A Yes.

22 Q And you said you started speaking to your mother about
23 your father having called?

24 A Yes. She was telling me he had called and that she
25 had talked to him a little bit, and that's when everything

1 started happening.

2 Q When you say everything started happening. Tell this
3 jury what happened?

4 A Well, this guy opened the door -- well, before that I
5 heard a noise like a pop noise. That's when the guy was at
6 the door, and he started yelling and pointed the gun at us.
7 And she shot my mother and my mom, she closed the door.
8 And he opened it again, and -- and he shot her again. And
9 he pointed the gun again at us and I took my money out of
10 my pocket and he took it and he ran.

11 Q When he opened the door the first time did the light
12 in the van come on?

13 A Yes, it did, because when you open the door the light
14 always lights up.

15 Q Okay. And were you able to see him?

16 A Yes.

17 Q Did you recognize him as someone that you had seen
18 before?

19 A At the restaurant he had bought food.

20 Q Okay, and at first, did you get a good look at him?

21 A When did I get a good look at him?

22 Q Did you get a good look at him at first?

23 A No, at first, no. But then when my mom -- because her
24 head was kind of in my way, too, and when she moved back
25 that's when I did look at him.

State v. Garris September 2-5, 2008

184

1 Q How did you know that your mom had been shot the first
2 time?

3 A I didn't know at the time because she was like
4 covering her face. I didn't know that she was shot. I ran
5 to the front of the restaurant and I called -- I was
6 knocking on the door and they came out and she drove over
7 to the front of the restaurant and she got out and her face
8 was bleeding, she was bloody.

9 Q Did you see her bleeding prior to the time you jumped
10 out of the car?

11 A No.

12 Q Before you jumped out of the car?

13 A When he left I got out the car. And I started yelling
14 and my brother I and -- and I didn't go back to the van. I
15 just ran up to the front of the restaurant. And my mom
16 came --

17 Q Prior to this day have you ever seen Brian Garris
18 before?

19 A No, this is the first time I've seen him since that
20 night.

21 Q But before that night had you ever seen him?

22 A I remember him being a customer.

23 Q You remember him being a customer?

24 A Yes, ma'am.

25 Q And how often would you have said he came into the

1 Chinese Cuisine while you were working?

2 A I don't know how many times, but I remember when a
3 customer comes in. I remember every face.

4 Q When he first came up to the window and you got a good
5 look at him, approximately how long was he at your car?

6 A Approximately two minutes, three.

7 Q And of that two or three minutes, how much of that
8 time did you have a clear unobstructed view of him?

9 A The time, I'm not sure, but I did look at him. I did
10 look at him.

11 Q Would you say about half of that time?

12 A Yes.

13 Q And there was a light in the vehicle?

14 A Yes.

15 Q Was he leaning his head in the vehicle?

16 A No, he was like -- he was close to the van, real
17 close. He just like had his hand out and he pointed the
18 gun at my brothers and me.

19 Q When he got the money from you, how did that
20 transaction take place?

21 A When I gave him the money, when I told him I would
22 give money he pointed the gun at me and I took the money
23 out and when I gave it to him he ran.

24 Q Okay. And where did you take the money out of?

25 A My right pocket.

State v. Garris September 2-5, 2008

186

1 Q And you handed it to him?

2 A Yes.

3 Q And he reached in with the hand that was not holding
4 the gun?

5 A Yes.

6 Q Okay. And got that money. When did you recall that
7 he was somebody that you had seen in the restaurant?

8 A I really don't remember when, but I -- when the
9 detective pictures --

10 Q Let me go through that a little bit. He came and
11 showed you a photo lineup on April 22nd, is that correct?

12 A Yes.

13 Q Now, when we say investigator, which investigator
14 showed you that lineup?

15 A Detective Elms.

16 Q Okay.

17 THE COURT: Detective?

18 MS. LAND: Detective Elms.

19 THE COURT: All right.

20 BY MS. LAND:

21 Q And that lineup had six people in it?

22 A I don't remember how many people were in it.

23 Q As you looked at it that day were you able to pick
24 anybody?

25 A I wasn't real sure.

1 Q And why weren't you sure?

2 A I looked at the first one, but had it in my mind, but
3 I wasn't real sure that he was the one -- but I remember
4 that it was him.

5 Q So, is it safe to say, on that day you looked at the
6 pictures he was the only one that fit the description --

7 MR. DEAS: Objection. That's leading.

8 THE COURT: Sustained.

9 MS. LAND: Okay.

10 BY MS. LAND:

11 Q You didn't identify anybody because you weren't
12 absolutely sure on the 22nd, is that correct?

13 A Yes.

14 Q And you didn't want to make any false accusations?

15 A Yes.

16 Q Okay. Did he show you a photo lineup on a second
17 date?

18 A Yes, he did.

19 Q And that was on May 24th?

20 A I don't -- I remember him showing me the pictures, I
21 don't remember what date it was.

22 Q You don't recall the dates?

23 THE COURT: What is that?

24 MS. LAND: This is Court's two -- no, Court's one.

25 THE COURT: Okay. All right, that will be State's

State v. Garris September 2-5, 2008

188

1 No. 2 for ID. Put a sticker on it.

2 MS. LAND: Okay.

3 (State's Exhibit No. 2, photo
4 lineup, was marked for identification purposes only.)

5 BY MS. LAND:

6 Q Is that the lineup that you were shown on May 24,
7 2006?

8 A Yes.

9 Q And on that date did you identify one of those people
10 as being the person that robbed you and your mother and
11 shot your mother?

12 A Yes.

13 Q And which person in the picture was it; what number?

14 A Number two.

15 Q And what did you write above that person's picture?

16 A This is the guy who robbed us.

17 Q And you signed it?

18 A Yes.

19 Q Okay.

20 MS. LAND: Your Honor, I'd like to have this
21 admitted at State's Exhibit No. 2 into evidence.

22 THE COURT: Mr. Deas.

23 MR. DEAS: No objection.

24 THE COURT: All right. So admitted.

25 (State's Exhibit No. 2, photo

1 lineup was marked and entered.)

2 BY MS. LAND:

3 Q Are you absolutely sure that the person you identified
4 in that picture is the person that you saw outside of your
5 car that night?

6 A Yes, ma'am.

7 Q And is the person that robbed you and shot your mother
8 in the courtroom today?

9 A Yes, ma'am.

10 Q And where is he?

11 A (Indicating.)

12 Q In the plaid shirt next to Mr. Deas?

13 A (Nods affirmatively.)

14 THE COURT: Please answer.

15 A Yes.

16 BY MS. LAND:

17 Q That night when you and your brother jumped out of the
18 car could you see him running away?

19 A Yes.

20 Q Could you see what he was wearing?

21 A I thought he was wearing blue shirt with stripes. I
22 didn't see the color of the hat, I just saw the shirt. The
23 shirt was kind of big, not too big, but kind of big.

24 Q Could you tell if he was fat or skinny?

25 A No.

State v. Garris September 2-5, 2008

190

1 Q And did you see the color of his complexion as he was
2 running away?

3 A No.

4 Q Did you see it when he was at the window?

5 A Yes.

6 Q Did you give law enforcement a description of Mr.
7 Garris that evening?

8 A Yes.

9 Q Do you recall what description you gave them?

10 A That he was African American and that he -- I told him
11 what kind of hat he was wearing and his shirt. How tall he
12 was and that's it.

13 Q When you say you told law enforcement how tall he was,
14 what did you tell them exactly?

15 A I just told them that he was tall.

16 Q Okay. How tall are you?

17 A Four eleven.

18 Q Okay. So if I'm five feet and you're shorter than I
19 am?

20 A Yes.

21 Q So if somebody was seated next to you five seven or
22 five eight would you describe them as tall?

23 A Yes.

24 Q Tell me what kind of hat he was wearing that night?

25 A He had on a Yankee hat.

State v. Garris September 2-5, 2008

191

1 Q Like the New York Yankees baseball team?

2 A Yes.

3 Q Can you describe the gun that he had?

4 A I just saw the gun -- I didn't take a good look at the
5 gun.

6 Q Was it a long gun or a short gun?

7 A It was a short gun.

8 Q And he could easily hold it with one hand?

9 A Yes.

10 MS. LAND: Beg the Court's indulgence for one
11 moment.

12 (Pause.)

13 BY MS. LAND:

14 Q Laura, are you absolutely sure that the person sitting
15 at that table is the person that did this to your mother?

16 A Yes.

17 Q And did this to you?

18 A Yes.

19 Q Would you come in here and take an oath to tell the
20 truth --

21 MR. DEAS: I object.

22 THE COURT: Sustained.

23 BY MS. LAND:

24 Q You've come into this courtroom today to tell the
25 truth?

State v. Garriis September 2-5, 2008

192

1 A Yes.

2 MS. LAND: That's all the questions I have.

3 THE COURT: Mr. Deas.

4 MR. DEAS: Thank Your Honor. Please the Court.

5 LAURA BATISTA - CROSS-EXAMINATION

6 BY MR. DEAS:

7 Q Ms. Batista, my name is Garryl Deas and I represent
8 the defendant, Mr. Garriis.

9 Going back to April 15th of '06, and I know it's hard
10 to talk about that situation, but just from the standpoint
11 of your memory do you recall whether or not there was
12 lights in the back of that restaurant and the beauty salon
13 that's next to it?

14 A No, there wasn't -- when the lady came to the beauty
15 salon she put lights in the back of her place. Sometimes
16 they didn't work.

17 Q In the back of that parking lot --

18 A Yes.

19 Q -- is it a dirt parking lot?

20 A Yes.

21 Q And at night since there are no lights back there I
22 would assume it's pretty dark?

23 A Yes.

24 Q The only -- where are the lights that are near or
25 around there?

1 A Just in the front of the restaurant.

2 Q And what type of light is it, basically, like a street
3 pole light?

4 A Yes. It was like a light at a house like a porch light
5 or something.

6 Q Just like a porch light right at the entrance --

7 A Yes.

8 Q -- to the building?

9 A Yes.

10 Q And does the beauty salon that's right next door to
11 it, does it have one of those lights, as well, right there
12 at its entrance?

13 A No.

14 Q So really the only light illuminating this whole area
15 is the one light over the entrance of the Chinese
16 restaurant?

17 A Yes.

18 Q I mean, so would it be fair to say that when you came
19 out of the building to get into your mom's car it was dark
20 back there in that parking area?

21 A Yes.

22 Q And did your mom have her headlights on?

23 A No.

24 Q The car was turned off?

25 A It was turned off except for her light.

State v. Garriis September 2-5, 2008

194

- 1 Q When you opened the door to get in the inside light
2 was already on or did it cut on when you opened the door?
3 A It was already on.
4 Q The van -- you mom was driving a mini van that day?
5 A Yes.
6 Q And it's a -- how many doors on that mini van?
7 A It's doors and there's sliding doors and then in the
8 back.
9 Q It's got the two -- does the driver door swing open or
10 does it slide open?
11 A No, it swings.
12 Q The driver door swings open?
13 A Yes.
14 Q The passenger door swing open?
15 A Yes.
16 Q And then the van has the sliding doors that start from
17 the back seat on back?
18 A Yes.
19 Q And then it has a hatch back in the back?
20 A Yes.
21 Q And your mom was in the drivers' seat?
22 A Yes.
23 Q And when this incident was taking place you were in
24 the passenger seat right next to her?
25 A Yes.

1 Q And your two brothers were in the back seat?

2 A Yes.

3 Q How -- I believe you indicated during your direct
4 testimony that the entire incident took about two to three
5 minutes; is that correct?

6 A Yes.

7 Q That would be from the time the person came to the car
8 until the time he ran away?

9 A Yes.

10 Q The entire incident, from your estimation, took about
11 two to three minutes?

12 A Yes.

13 Q And I believe you also stated, and you correct me if
14 I'm wrong, but that you were only able to get a clear view
15 of that person for maybe about half of that time, so you're
16 talking about maybe a minute or a minute and a-half?

17 A Yes.

18 Q And during that minute or minute and a-half that you
19 saw that individual did you have an opportunity to observe
20 that individual's skin complexion; were you able to tell if
21 the person was white, black, dark complected or light
22 complected?

23 A Yes.

24 Q You were able to tell what race the person was?

25 A Yes.

State v. Garris September 2-5, 2008

196

1 Q And what race was he?

2 A African American.

3 Q And was he a darker complexion African American like
4 myself or lighter complexion African American?

5 A He was wearing a hat and it was already kind of dark
6 and so I'm didn't see how dark he was.

7 Q And --

8 MR. DEAS: Your Honor, may I approach?

9 THE COURT: Yes, sir.

10 BY MR. DEAS:

11 Q -- and after the incident occurred, you all basically
12 ran to the restaurant; is that --

13 A When he took off running after he got the money, I got
14 out the van and my brother, Antonio, got out the van, and I
15 started yelling at him and saying stuff and he was running,
16 and then I ran to the front of the restaurant.

17 Q As the person was running away were you able to get a
18 look at what the person was wearing at that time?

19 A Yes.

20 Q And what did you see?

21 A I saw it was a big shirt and a hat.

22 Q Did the person have a hat on that had the insignia NY
23 on it for the New York Yankees?

24 A Uh-huh. He had a hat.

25 Q Did it have a New York Yankee symbol on it?

1 A Yes. I'm pretty sure it was a symbol, but it had some
2 kind of something on the front of the hat.

3 Q And at some point the police were notified, correct?

4 A Yes.

5 Q And at some point you had a chance to talk with them,
6 is that true?

7 A Yes.

8 Q And when you talked to the police did they ask you
9 about giving a description of this individual?

10 A Yes.

11 Q When was the first time you talked to the police about
12 that?

13 A That night.

14 Q At the hospital with your mom or at your house or
15 where?

16 A No, after they took my mom to the hospital.

17 Q Still at the scene of the incident?

18 A Yes.

19 Q Did you -- is it true, Ms. Batista, that you told the
20 police just shortly after the incident occurred that the
21 person who committed this incident with respect to -- that
22 assaulted you and your family was six foot one to six foot
23 three inches tall and dark complected. Did you tell the
24 police that?

25 A I just told them that he was tall and they were

State v. Garris September 2-5, 2008

198

1 describing -- they would go like this saying how tall or
2 how much taller.

3 Q And you described him as tall?

4 A Yes.

5 Q Did you ever tell them specifically that you thought
6 the person was somewhere between six feet one and six feet
7 three inches tall?

8 A No. I don't remember that. I just know he was tall.

9 Q Did you ever describe him as having braids or dread
10 lock type hairdo?

11 A Yes. When he was running he had braids.

12 Q Now, were you with your mom or did you assist your mom
13 in describing the individual who committed this crime; were
14 you with her when this composite sketch was drawn?

15 A I went with her to the police station, but I did not
16 go in when the sketch was made I was not with her.

17 Q And would say, based on your memory of what the
18 individual looked like who did this, would you say that
19 this composite drawing or this composite sketch accurately
20 depicts him?

21 A Something similar.

22 THE COURT: And that's the one, Mr. Deas?

23 MR. DEAS: That's State's Exhibit No. 1.

24 BY MR. DEAS:

25 Q Do you -- this composite drawing doesn't show anything

1 -- any type of insignia or sign on the hat does it?

2 A No.

3 Q Do you know, did you specifically tell the police that
4 the person who did this had a New York Yankee hat on?

5 A I think I did tell them that the hat had Yankee, but
6 I'm not sure it was the Yankee sign or something else.

7 Q But you do recall telling them that?

8 A Yes.

9 Q Would it be fair to say, Ms. Batista, that you didn't
10 really get a full look at the person that did this?

11 A I --

12 Q And would it also be fair to say that the entire time
13 this incident was happening it was dark in that parking
14 area?

15 A It was dark, but the light -- you could see.

16 Q Did the person ever get inside of the van?

17 A No.

18 Q So the person was standing outside the van where it
19 was dark?

20 A Yes, but he was standing close where you could see in
21 the light his clothes so I could make out what color it
22 was.

23 Q So he was standing close enough so the light in the
24 car would pick up things like what color clothes he had on
25 and what he had on?

State v. Garris September 2-5, 2008

200

1 A Yes.

2 Q But you really couldn't get a good look at his face?

3 A He was close, but he was like behind a little bit when
4 he pointed the gun at us.

5 Q And you correct me if I'm wrong, but I believe you
6 said you really couldn't get a good enough look to
7 determine whether he was dark complected or light
8 complected, correct?

9 A Uh-huh.

10 Q So you would agree with me then that you really didn't
11 have a good look at this individual?

12 A The person, I could see his face, but I can tell you
13 what kind of clothing a little bit, and he pointed the gun
14 at us and he was moving around moving the gun.

15 Q How long would you say that you had a chance to
16 observe this person's face?

17 A Not long.

18 Q If you had to estimate in seconds, would you say five
19 seconds, twenty seconds; what would you say?

20 A Five seconds.

21 Q I believe you stated on the record that at some point
22 after this incident happened the police showed you some
23 photos --

24 A Yes.

25 Q -- of different people that may have committed this

1 crime?

2 A Yes.

3 Q I believe that was done of April 22nd of '06; does
4 that sound about right?

5 A I don't remember the date for sure.

6 Q And that would have been roughly about a week after
7 the incident happened, right?

8 A Yes.

9 Q And so your memory of what occurred would have been
10 pretty fresh in your mind at that point, right?

11 A Yes.

12 Q But when they showed you the photo of the individual
13 initially you weren't able to tell -- you weren't able to
14 identify the person who did this were you?

15 A Yes.

16 Q So when they showed you the pictures the first time
17 you couldn't tell them who did it?

18 A Yes.

19 Q And why is that?

20 A I wasn't real sure.

21 Q You weren't sure?

22 A Yes.

23 Q And that's partly because you didn't get a good look
24 at that person, correct?

25 A Yes.

State v. Garris September 2-5, 2008

202

1 Q But then they came back a second time and showed you
2 some pictures again, right?

3 A Yes.

4 Q And that would have been about a month later, maybe
5 some time around May 24th of '06; right?

6 A Yes.

7 Q And then a month later after -- a little more than a
8 month after this incident happened they showed you some
9 more pictures and this time you were able to identify the
10 individual that did it?

11 A Yes.

12 Q And when you identified the person who did it by
13 pointing to the picture of Mr. Garris, right?

14 A Yes.

15 Q Let me ask you this; why were you not able to identify
16 Mr. Garris as the person who did this a week after the
17 incident happened, but you were able to do it almost --
18 more than a month after the incident?

19 A Like I said, I wasn't sure. After a couple of days I
20 was remembering and when Detective Elms came to my house
21 with the pictures I saw the person that did this to us.

22 Q Now, if you weren't sure the first time then how do
23 you know you're absolutely sure the second time when it's
24 more than a month later?

25 A Because I've seen him. I mean, I looked at the

1 pictures and I know for a fact, I'm sure myself that that's
2 the person.

3 Q Now --

4 A And there was one that got my attention because when I
5 looked at the picture everything was coming back and it was
6 him.

7 Q But now nothing came together, because clear at first?

8 A Yes.

9 Q You said you have some memory of Mr. Garris because he
10 comes into the Chinese restaurant as a customer?

11 A Yes.

12 Q He's eaten there before?

13 A Yes.

14 Q And so you've connected -- you've had an opportunity
15 to see him prior to this incident. Do you distinctly
16 remember seeing him?

17 A Yes. I remember him. Yes, I remember his face.

18 Q You didn't know his name or who he was?

19 A No.

20 Q How often would you say he would come and eat at the
21 Chinese restaurant?

22 A I don't know. I only work one day or two or three
23 days.

24 Q But you do remember his face and you remember him?

25 A Yes.

State v. Garris September 2-5, 2008

204

1 Q Is it possible that the reason why you pointed him out
2 is based on your memory of him coming into the Chinese
3 restaurant not because he committed this incident?

4 A No.

5 Q You don't think that's possible?

6 A No.

7 Q And even though it was dark in that area and even
8 though the only light in that area was the light coming
9 from the car and even though you only saw this person's
10 face for five seconds, as you said, even though you didn't
11 identify him a week after the incident occurred and you
12 weren't able to identify him more than a month later, you
13 can say today under oath that you are absolutely sure Mr.
14 Garris is the person that did this despite all those things
15 I just mentioned?

16 A Yes.

17 Q Thank you.

18 MR. DEAS: I have nothing further.

19 THE COURT: Redirect?

20 MS. LAND: Yes, sir.

21 LAURA BATISTA - REDIRECT EXAMINATION

22 BY MS. LAND:

23 Q Now, Mr. Deas asked you if you had a perfect
24 unobstructed view of him through the entire incident and
25 the answer to that is?

1 A (No response.)

2 Q Did you have a perfect view of him through the whole
3 incident?

4 A When my mom moved her head I could.

5 Q But throughout the whole incident, no, you couldn't
6 see him?

7 A Yes.

8 Q Okay. But at times could you see him perfectly?

9 A Yes.

10 Q And at times your mother was not obstructing your
11 view?

12 A Yes.

13 Q And at times you could see him from the light in your
14 car?

15 A Yes.

16 Q Tell me again, tell me about the rag that you said he
17 was wearing?

18 A I'm not sure if it was a rag, but there was braids,
19 something hanging from underneath the hat and I'm not sure
20 if it was braid or a rag or something.

21 Q So did it make him appear -- so it could have been a
22 rag, could have been braids, you just don't know?

23 A Yes.

24 Q The first time that you had that photo lineup --

25 A Yes.

State v. Garris September 2-5, 2008

206

1 Q -- how long did you look at each picture?

2 A The first time I looked -- I didn't look at it -- I
3 wasn't sure.

4 Q Now, would you say that you weren't sure or you
5 weren't 100 percent positive?

6 A I wasn't 100 --

7 MR. DEAS: Objection.

8 THE COURT: Yes, sir?

9 MR. DEAS: Leading.

10 THE COURT: Overruled.

11 BY MS. LAND:

12 Q You weren't sure or you weren't 100 percent positive?

13 A I wasn't 100 percent positive.

14 Q Did the thought of the braids or whatever was hanging
15 from the hat come into play in that decision?

16 A Yes.

17 Q And then the second time, who brought you that photo
18 lineup?

19 A Detective Elms.

20 Q And were you by yourself?

21 A Yes.

22 Q Nobody was there that would have told you who or what
23 to pick?

24 A No. My brothers were inside.

25 Q And did Lt. Elms give you the pictures and ask you to

1 review it?

2 A Yes. I looked at the pictures and take my time.

3 Q Did he in any way indicate who you should choose?

4 A No, ma'am.

5 Q And he didn't give you hint like look hard at number
6 two or anything like that?

7 A No, ma'am.

8 Q And did you look at that picture for a long time and
9 pay very careful attention?

10 A Yes, ma'am.

11 Q And after doing that did you determine that you were
12 100 percent sure that the person that robbed you was in
13 that photo lineup?

14 A Yes, ma'am.

15 Q And the person that you identified is Brian Garris; is
16 that right?

17 A Yes.

18 Q And you are still 100 percent sure he is the person
19 who robbed you?

20 A Yes.

21 Q Thank you, Laura. That's all the questions I have.

22 THE COURT: Mr. Deas?

23 MR. DEAS: Nothing further from the defense.

24 Thank you.

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

State v. Garris September 2-5, 2008

208

1 All right, ladies and gentlemen, we're going to take a
2 break for about 15 minutes. When you come back in you -- I
3 don't know what you have, coffee, water or whatever if you
4 want a soft drink let me know. When you come back in the
5 courtroom you can bring it with you. And Ms. McFadden,
6 when the bailiff comes to the door if you're not ready to
7 come back out let him know.

8 All right. Do not discuss the case. Do not discuss
9 the case at all.

10 (Jury out for break at 11:47 a.m.)

11 THE COURT: All right. Fifteen minutes.

12 MS. LAND: Yes, sir.

13 (Court in session after break.)

14 THE COURT: All right. If they're ready bring
15 them on out.

16 (Jury in at 12:07 p.m.)

17 MS. LAND: Call Donnie Drose.

18 THE CLERK: Raise your right hand and place your
19 left on the Bible.

20 (WHEREUPON, Donnie Drose was sworn
21 to tell the truth.)

22 THE COURT: Ms. Land, if you and Mr. Deas would
23 come up for just a second.

24 MS. LAND: Yes, sir.

25 (Off the record bench conference with counsel.)

1 THE COURT: All right.

2 DONNIE DROSE - DIRECT EXAMINATION

3 BY MS. LAND:

4 Q Officer Drose, where are you employed?

5 A Clarendon County Sheriff's Office.

6 Q And how long have you been employed with the Sheriff's
7 Office?

8 A I've been there a little over a year and a-half.

9 Q And in what capacity do you work with them?

10 A I'm an investigator.

11 Q Prior to your employment with the Sheriff's Office
12 where were you employed?

13 A I was employed with the Manning Police Department.

14 Q How long were you employed with the Manning Police
15 Department?

16 A I was there almost six years.

17 Q And was that your first experience with law
18 enforcement?

19 A Yes.

20 Q Before getting the job at Manning Police Department or
21 becoming certified, did you have to attend the academy?

22 A Yes.

23 Q Tell the jury about what the academy is and what
24 training you received?

25 A It's nine weeks. It's varied. You learn about

State v. Garris September 2-5, 2008

210

1 legals, the law, and anything you can imagine would have to
2 do with police work we do it in nine weeks.

3 Q And you successfully completed that course?

4 A Yes.

5 Q In April of 2006, how long had you been with the
6 Manning Police Department?

7 A At that time I'd been with them about six years.

8 Q What was your rank?

9 A I was sergeant at that time.

10 Q Okay. And what were your duties and responsibilities
11 at that time?

12 A I was -- as a sergeant I was over a shift. I was
13 supervising.

14 Q Were you working that night?

15 A No, I was not.

16 Q Okay. Did you receive a call that they needed extra
17 police?

18 A Yes.

19 Q What did you learn from that call?

20 A I was called to come out. I just knew we had a
21 robbery and that they were looking for a suspect when I got
22 called?

23 Q Okay. What were you to do when you responded?

24 A When I got there I was ordered by Capt. Doug Ridgeway,
25 and he dished out the orders of what we were to do.

1 Q Okay, and what did he tell you your responsibilities
2 were at that time?

3 A At that time, they were setting up a parameter --

4 Q Tell the jury what a parameter is?

5 A Any time we have an incident like that where we're
6 looking for a suspect they try to set a parameter to
7 contain that suspect in a certain area. Usually officers
8 set themselves up or they tell us where to set up to where
9 we can see another officer so we can create kind of a fence
10 of officers around that specific area where that suspect
11 may be?

12 Q And where was your station to be that night?

13 A I was sent to Cedar Street and Church Street.

14 Q Are you familiar with the location of China Cuisine?

15 A Yes.

16 Q And it is in Clarendon County; is that correct?

17 A Yes.

18 Q And how far were you stationed from the China Cuisine?

19 A Where I was at is approximately three blocks from that
20 location.

21 Q And do you know where Brian Garris and his brother
22 live?

23 A Yes. At that time they were living with their
24 grandmother which is right across the street where I was.

25 Q Where you were stationed?

State v. Garris September 2-5, 2008

212

- 1 A Yes. The house sets in the corner of Cedar and Church
2 Streets.
- 3 Q And is it -- how far is it from the China Cuisine?
- 4 A It's about three blocks to that intersection.
- 5 Q Is it an easily walkable distance?
- 6 A Yes.
- 7 Q That night did you have the opportunity to see Mr.
8 Garris' brother, Quentin?
- 9 A Yes, I did.
- 10 Q And did he -- did you have a description at that time
11 of who you were looking for?
- 12 A Yes.
- 13 Q Or what you were looking for?
- 14 A Yes. I had the description that they gave out to us.
15 Yes.
- 16 Q Okay. And tell the jury what that description was?
- 17 A At that time all I had was -- we were looking for an
18 African American male in a hat and a striped-type shirt,
19 and from my recollection, I remember them talking about
20 vertical stripes.
- 21 Q Okay. Did you have any idea what color you were
22 looking for?
- 23 A They did not say. I just understood striped shirt.
- 24 Q Okay. Did you have the opportunity to see Mr. Garris'
25 brother, Quentin?

1 A Yes, I did.

2 Q And did you have a conversation with him?

3 A Yes, I did.

4 Q And were you confident from that conversation that he
5 had not been involved?

6 A Yes.

7 Q And did you remain at your station?

8 A Yes, I did.

9 Q Did Mr. Garris walk up?

10 A Yes.

11 Q What was Mr. Garris wearing at that time?

12 A He was wearing a blue and white striped shirt,
13 horizontal stripes.

14 Q And did you question Mr. Brian Garris?

15 A No, I did not.

16 Q Tell the jury why you didn't feel like you needed to
17 question him?

18 A Because at the time Mr. Brian Garris walked up I had
19 already returned to my post. As soon as he arrived, him
20 and his brother walked off in separate directions away from
21 me.

22 Q Would you say that in your opinion he matched the
23 description of what you were looking for?

24 A At that time, no, because I was thinking vertical
25 stripes.

State v. Garris September 2-5, 2008

214

1 Q Okay. Was Mr. Brian Garris wearing a hat?

2 A No, not when I saw him.

3 Q And you believed you were looking for someone in a
4 hat?

5 A Yes, that's correct.

6 Q What did you do, if anything when Quinton and Brian
7 Garris began to walk off?

8 A I called the officer at the next intersection up,
9 which was Holmes Smith, and advised him that they were
10 walking his way.

11 Q Okay. And did you see the brothers again?

12 A Yes, I did.

13 Q And what did you see, if anything?

14 A They turned -- I think before they got to the next
15 intersection they did an about face and turned and came
16 right back to that residence and went inside that
17 residence?

18 Q Okay. Let me show you what's been put into evidence
19 as State's No. 1. I think it's right there with you,
20 already. Have you ever seen that composite drawing before?

21 A Yes, I have.

22 Q And when -- do you recall when you saw it?

23 A Yes. I was actually working the day they did this
24 composite. My shift was working, we were working on the
25 day shift and they advised us to distribute these out.

1 Q Okay. When you saw that picture, what, if anything,
2 struck you?

3 A The shirt in the picture.

4 Q And what did you think from looking at that shirt?

5 A The size and color of the shirt exactly matched the
6 shirt that Mr. Garris had on the night I saw him.

7 Q And what color was Mr. Garris' shirt, again, that
8 night?

9 A Blue and white stripes.

10 Q Okay. What time did you see him that evening?

11 A To my recollection it was after 11:00.

12 Q All right. That's all the questions I have. Please
13 answer any questions Mr. Deas has.

14 THE COURT: All right. Mr. Deas.

15 MR. DEAS: Thank Your Honor. May it please the
16 Court.

17 DONNIE DROSE - CROSS-EXAMINATION

18 BY MR. DEAS:

19 Q Investigator Drose, you're now with the county --

20 A Correct.

21 Q -- the Clarendon County Sheriff's Department or are
22 you still with the city?

23 A I'm with the Sheriff's Department.

24 Q At that time of this incident, though, you were with
25 the police department?

State v. Garris September 2-5, 2008

216

1 A That's correct.

2 Q And when you were working with the city police
3 department you were an investigator or a patrolman or
4 exactly what were your duties?

5 A I was on patrol, but I was actually a supervisor. I
6 was a sergeant.

7 Q And part of your responsibility when you're on patrol,
8 just basically is to do what?

9 A I had all the responsibility, pretty much, but not
10 that night. It's to oversee the shift and the day-to-day
11 operations, pretty much.

12 Q And where -- on the night that this incident occurred,
13 April 15, 2006, is that correct?

14 A That's correct.

15 Q You were -- where were you actually on patrol -- what
16 area were you patrolling?

17 A I was not patrolling. I was at my house and they
18 called me out.

19 Q Okay, and did they call you out in response to this
20 incident?

21 A Yes.

22 Q Then where did you go after you left your house?

23 A When I left my house I reported straight to Doug
24 Ridgeway, who was a captain there with the Manning Police
25 Department and he gave us jobs from there.

1 Q When you were first put on notice of this incident did
2 dispatch or any other law enforcement officers relay to you
3 a description of the individual who was the assailant in
4 this crime?

5 A When I arrived I talked to Capt. Ridgeway, the
6 description I got was a vertical strip shirt and hat, an
7 African American male. That's all we were given.

8 Q Was there any reference made to the fact that the hat
9 was a New York Yankees hat?

10 A I don't recall that.

11 Q Was there any reference to the height of the
12 individual that was the suspect in this crime?

13 A I don't recall any height or weight.

14 Q So the only description at the time was the person was
15 wearing a blue shirt with vertical stripes?

16 A I don't even think I had a color at that time. I just
17 think vertical stripes.

18 Q A vertical striped shirt and hat and the person was
19 also an African American male?

20 A Yes, sir.

21 Q And after you gathered this information where did you
22 go after that?

23 A They sent me to Cedar Street and Church Street, which
24 is kind of between -- to give you a little bit more about
25 it, it's between -- anybody familiar with Manning, it's

State v. Garris September 2-5, 2008

218

1 between --

2 Q And was that inside, were you located inside the
3 parameter that they set up or were you outside?

4 A It was actually part of the parameter.

5 Q Now, did the parameter extend beyond you?

6 A No, I was actually on the corner or the parameter.

7 Q And as you -- you were there alone in your patrol car
8 or was there an officer with you?

9 A I was there with an officer from Sumter County.

10 Q Do you remember who?

11 A I do not. I do not recall his name.

12 Q That was someone from the Sumter County Sheriff's
13 Department?

14 A Yes.

15 Q Was it a male or female officer?

16 A It was a male. He was probably about 40 years old.

17 Q White or black?

18 A A white guy.

19 Q And you don't recall his name?

20 A I cannot recall his name.

21 Q And was he with you the entire time?

22 A No. I was there by myself for a while and then he
23 arrived.

24 Q And how -- at some point you encountered Mr. Garris
25 while you were there on patrol; is that correct?

1 A Yes.

2 Q How far away were you from his grandmother's house?

3 A Probably about 50 yards. I was -- his grandmother's
4 house is actually at that intersection, and I was catty-
5 cornered across the intersection is where I was standing.

6 Q And his grandmother's house -- you said on the corner
7 of Church and Cedar?

8 A Yes.

9 Q And you said you were about 50 yards away from it?

10 A Probably about 50 to 75 yards away.

11 Q You could see her house from where you were
12 positioned?

13 A Yes.

14 Q And when you saw Mr. Garris was he walking towards
15 that house or away from it?

16 A He actually came out from the left side of the house,
17 from -- like kind of behind the house.

18 Q He actually came from the house?

19 A Well, not from the house. He was outside from behind
20 the house and came up to the front door.

21 Q About what time was this?

22 A It was after 11:00. I can't give you the specific
23 time because I can't recall.

24 Q So he came -- does the home have a front and back
25 yard?

State v. Garris September 2-5, 2008

220

1 A Yes.

2 Q Okay, is there like a fence around the backyard, some
3 type of gate around the backyard?

4 A I think there's a partial fence, but I can't recall
5 that.

6 Q Did he come from the backyard area or the front yard
7 area.

8 A He came from the left side of the house. It's like a
9 yard between his house -- their house and another house.

10 Q And when you saw him did you have -- after seeing him
11 did you actually engage in a conversation with him?

12 A Not with Mr. Brian Garris, no, sir.

13 Q You didn't talk to him?

14 A No. Not Mr. Brian Garris.

15 Q And did he say anything to you?

16 A No.

17 Q I believe you testified on direct that you noticed
18 that he was wearing a blue shirt?

19 A A blue and white striped shirt, yes.

20 Q And what -- were the stripes on that shirt vertical,
21 as was described as the shirt the suspect was wearing or
22 were they horizontal?

23 A They were horizontal.

24 Q So the stripes on his shirt were different than the
25 stripes the suspect was described as wearing?

1 A Initially, yes, sir.

2 Q And was he wearing a hat?

3 A No, he was not.

4 Q Did he have braids or dread lock type hairdo?

5 A No, he did not.

6 Q In fact, his hair was pretty much the way it is now,
7 correct, pretty short haircut.

8 A Pretty much.

9 Q And did you think at that time that he could have
10 possibly been involved in this crime?

11 A Well, I thought, because he was out walking in the
12 area. That was my only thoughts at that time.

13 Q But it wouldn't be unusual to be walking near where
14 you live, right?

15 A No.

16 Q And but it didn't -- you didn't take any further steps
17 to question him or talk to him to see where he was going or
18 where he had been at the time?

19 A No, I only talked to his brother.

20 Q So at some point after you saw him his brother came up
21 to the house?

22 A No. His brother actually came up first. That's when
23 I walked over and talked to his brother. Then went back to
24 my post and then he --

25 Q Well, did you see his brother before you saw Mr.

State v. Garris September 2-5, 2008

222

1 Garris?

2 A Yes.

3 Q And where -- where was his brother coming from when
4 you saw his brother?

5 A His brother came from the same location as he did.

6 Q And you talked to the brother?

7 A Yes.

8 Q And did you talk to him about this incident or did you
9 ask him where he had been or where he was going?

10 A Yes, I did. I asked him where he had been. He stated
11 the Manning Land Apartments, and I asked him if he'd seen
12 his brother, and he stated that his brother had been at the
13 Manning Lane Apartments

14 Q Now, did you ask him specifically about this incident
15 at the Chinese restaurant?

16 A No, I didn't.

17 Q Did you ever come to -- were you ever informed or
18 advised by anyone else in law enforcement that the victims
19 had described the person that committed this crime was
20 someone between six feet one and six feet three inches
21 tall?

22 A Not from my recollection, no.

23 Q Were you ever advised or informed by anyone in law
24 enforcement on that evening that the victims described the
25 person as dark complected?

1 A No, not to my recollection.

2 Q And you don't recall anyone ever advising you that the
3 assailant that committed this crime had on a New York
4 Yankees hat; that was never told to --

5 A All I remember him saying is there was a hat.

6 Q So the first time you ever heard about the fact that
7 the person who committed this crime had on a New York
8 Yankees hat, the first time you heard that in this
9 courtroom today?

10 A I'm trying to recall. I know I didn't hear it that
11 night.

12 Q Did you hear it anytime between April 15, 2006 and
13 September 3, 2008; did you ever hear anybody talk about the
14 assailant wearing a New York Yankees hat from the time this
15 happened and now?

16 A I can't recall hearing anything about that.

17 Q Wouldn't you say that's a pretty important detail?

18 A Well, any detail is important in a case like this.

19 Q I agree. Thank you, sir. I have no further
20 questions.

21 THE COURT: Ms. Land, redirect?

22 MS. LAND: Yes, sir.

23 DONNIE DROSE - REDIRECT EXAMINATION

24 BY MS. LAND:

25 Q Agent Drose, you were in no way involved in the

State v. Garris September 2-5, 2008

224

1 investigation of this case; is that correct?

2 A No, I wasn't

3 Q Okay. And so sometimes I describe myself as a worker-
4 bee, I'm not in charge of what my schedule is. Would you
5 say that was your role that night?

6 A Yes. I was there for any type of -- pretty much.

7 Q Okay. And do you know where the vertical stripe
8 description came from?

9 A No, I do not.

10 Q And you don't know anything other than what you were
11 told?

12 A That's exactly right.

13 Q What you're telling this jury is that you saw Brian
14 Garris wearing --

15 MR. DEAS: Objection. She's testifying for the
16 witness.

17 THE COURT: Sustained.

18 MS. LAND: Okay.

19 BY MS. LAND:

20 Q That night did you see Brian Garris wearing a striped
21 shirt?

22 A Yes.

23 Q But you didn't believe he fit that exact description?

24 A No.

25 Q And although you never learned that he had been --

1 that he had a Yankees hat on until today, you don't know
2 who was told that?

3 A No.

4 Q And you have, that night there -- there was an
5 investigator from the Manning Police Department?

6 A Yes.

7 Q And who was that at that time?

8 A That would be Investigator --

9 Q And so really he was responsible for all those
10 details, gathering them and making sure that the
11 investigation of the case proceeded?

12 A Yes.

13 Q That's all the questions I have. Thank you.

14 MR. DEAS: Nothing further.

15 THE COURT: Thank you, sir. You may step down.

16 INVESTIGATOR DROSE: Thank you, sir.

17 MS. LAND: Your Honor, we call Holmes Smith.

18 THE CLERK: Please raise your right hand and place
19 your left hand on the Bible.

20 (WHEREUPON, Holmes Smith was sworn
21 to tell the truth.)

22 HOLMES SMITH - DIRECT EXAMINATION

23 BY MS. LAND:

24 Q All right. State your name for this jury, please?

25 A Holmes Smith.

State v. Garris September 2-5, 2008

226

- 1 Q And where are you employed?
- 2 A The City of Manning Police Department.
- 3 Q What is your role with the city?
- 4 A I'm an investigator.
- 5 Q At the police department?
- 6 A Yes, ma'am.
- 7 Q How long have you been an investigator at the police
- 8 department?
- 9 A A little over a year, now.
- 10 Q And how long have you been with the police department
- 11 totally?
- 12 A About nine years.
- 13 Q On April 15, 2006, were you with the Manning Police
- 14 Department?
- 15 A Yes.
- 16 Q And in what capacity were you working then?
- 17 A I was a corporeal on the patrol.
- 18 Q And what were your duties and responsibilities on
- 19 patrol?
- 20 A Basic patrol duties. Ride around, property checks,
- 21 answer calls. Just basic patrol duties.
- 22 Q On that night, April 15, 2006, were you asked, as part
- 23 of your duties, to be part of a parameter?
- 24 A Yes.
- 25 Q And where -- what was your part of the parameter?

1 A I was at the church and the school --

2 Q And just so the jury knows, give them a relation to
3 where Agent Drose was to you and where the China Cuisine
4 was to you?

5 A I was approximately two blocks away from the Chine
6 Cuisine, one block away from Agent Drose.

7 Q And could you see Agent Drose from where you were
8 standing?

9 A No.

10 Q Did you receive a call from Agent Drose?

11 A Yes.

12 Q And what did he advise you in that call?

13 A He advised that Quentin and Brian Garris were walking
14 to my direction.

15 Q And do you know why he told you this information?

16 A Well, I gathered just because we were working
17 parameter and we were trying to make sure that we
18 identified everyone that was in and out of the parameter.
19 Anyone that was coming out of the area or anyone that was
20 attempting to go into the area, and then anyone walking the
21 area. I assume that's why he was letting me know.

22 Q And did Brian and his brother Quentin get to within
23 your eyesight?

24 A Yes. He got to within my eyesight, but then he turned
25 around and went back the opposite way.

State v. Garris September 2-5, 2008

228

1 Q So you never got to speak to him?

2 A No, ma'am.

3 Q And did you notice on that date what Brian was
4 wearing?

5 A A blue and white striped shirt.

6 Q That's all the questions I have.

7 THE COURT: Mr. Deas, any questions?

8 MR. DEAS: Thank Your Honor. May it please the
9 Court.

10 THE COURT: All right.

11 HOLMES SMITH - CROSS-EXAMINATION

12 BY MR. DEAS:

13 Q Officer Smith, you were with the -- you're still with
14 the city --

15 A Yes.

16 Q -- police department?

17 A Yes.

18 Q And you were at this time, correct?

19 A Yes, sir.

20 Q You were basically part of this parameter thing they
21 got set up in the area after this crime occurred, correct?

22 A Yes, sir.

23 Q And when you -- you just testified that at some point
24 while you were manning that parameter you saw Mr. Garris
25 and his brother; is that correct?

- 1 A Yes, sir.
- 2 Q What direction were they coming from; were they
- 3 walking down Church Street away from their grandmother's
- 4 house or what direction were they coming from?
- 5 A Yes, they were walking away from their grandmother's
- 6 house.
- 7 Q Like heading back towards the Chinese restaurant was?
- 8 A Yes, sir.
- 9 Q So they were actually walking towards the crime scene?
- 10 A Yes, sir.
- 11 Q And you had gotten word from Officer Drose that they
- 12 were heading your way?
- 13 A Yes, sir.
- 14 Q And how far away were they from you when you saw them?
- 15 A I would say probably just feet. The distance was
- 16 probably from here to the door.
- 17 Q From here to the door; the back door?
- 18 A Yes, sir.
- 19 Q And did you ever actually have a conversation with
- 20 either one of them?
- 21 A No, sir.
- 22 Q Were they close enough to you so you could see what
- 23 Mr. Garris was wearing or what his brother was wearing?
- 24 A I remember what Mr. Garris was wearing.
- 25 Q And what do you remember?

State v. Garris September 2-5, 2008

230

1 A A blue and white striped shirt.

2 Q Do you remember if the stripes were -- how did the
3 stripes look; were they horizontal or vertical or do you
4 remember?

5 A They were horizontal.

6 Q Okay. And did you feel like you should detain them or
7 question them or pursue any type of investigation with
8 respect to anything you saw?

9 A No, sir.

10 Q At that point you didn't feel like they were suspects
11 or anyone you should question about this incident?

12 A No, sir.

13 Q And in your view -- had you received any information
14 at that time about the description of the assailant that
15 committed this crime?

16 A The information that I received was that it was a
17 black male and in a strip shirt. It was actually described
18 as vertical, described as like a mechanics type shirt.

19 Q And a mechanic shirt is -- what does that mean to you?

20 A Button up shirt with stripes that go all the way
21 around it.

22 Q And was that the type of shirt Mr. Garris had on?

23 A No.

24 Q Did he have on a mechanic type shirt?

25 A No.

1 Q And is that part of the reason why when you saw them
2 you didn't feel alarmed or you didn't feel any need to
3 question them or pursue any type of investigation?

4 A Yes.

5 Q And if Mr. Garris had on a mechanic type shirt that
6 fitted the description that you received from law
7 enforcement information you would have questioned him
8 wouldn't you?

9 A Yes, sir.

10 Q And the reason why you didn't was his shirt that he
11 had on didn't fit the description of the alleged assailant,
12 correct?

13 A It didn't.

14 Q Thank you, sir. I have no further questions.

15 THE COURT: Ms. Land?

16 MS. LAND: I don't have any further questions,
17 Judge.

18 THE COURT: Thank you, sir. You may step down.

19 MS. LAND: Call Andrew McBride.

20 THE CLERK: Place your left hand on the Bible and
21 raise your right hand.

22 (WHEREUPON, Andrew McBride was
23 sworn to tell the truth.)

24 ANDREW MCBRIDE - DIRECT EXAMINATION

25 BY MS. LAND:

State v. Garris September 2-5, 2008

232

- 1 Q All right, Mr. McBride, please state your name for the
2 jury, please?
- 3 A Andrew McBride.
- 4 Q And where do you live?
- 5 A 204 Brunson Street.
- 6 Q That's in Manning?
- 7 A (Nods head affirmatively.)
- 8 Q How long have you lived in Manning?
- 9 A I would say about six years.
- 10 Q And do you know the defendant, Brian Garris?
- 11 A Yes.
- 12 Q How do you know him?
- 13 A We used to chill.
- 14 Q We used to chill. What does that mean?
- 15 A We used to hang out.
- 16 Q We used to hang out?
- 17 A (Nods head affirmatively.)
- 18 Q Okay.
- 19 THE COURT: Mr. McBride pull that microphone
20 closer. There you go.
- 21 BY MS. LAND:
- 22 Q And just so the jury know, did I give you a subpoena
23 to be here today; is that correct?
- 24 A Yes.
- 25 Q And if you had your choice would you be part of these

1 proceedings today?

2 A No.

3 Q And is it safe to say that the only reason you're here
4 is because I gave you that court order that requires you to
5 be here?

6 A Yes.

7 Q Do you remember speaking with Investigator Elms about
8 the events surrounding April 15, 2006?

9 A Yes.

10 Q And when you spoke to Mr. Elms, that conversation was
11 video and audio recorded, is that correct?

12 A I guess.

13 Q Okay. Now, I'm going to ask you some questions about
14 what you had a conversation about because I would rather
15 you told the jury what was said than just play back the
16 video.

17 Do you remember talking about Brian Garris the day
18 before this incident?

19 A Say that again?

20 Q Do you remember discussing spending time with Brian
21 Garris the day before this incident?

22 A Yes.

23 Q And did he have a firearm at that time.

24 A I didn't see it.

25 Q You didn't see a firearm?

State v. Garris September 2-5, 2008

234

1 A No.

2 Q Okay.

3 MS. LAND: Your Honor, may we approach?

4 THE COURT: Yes, ma'am.

5 (Off the record bench conference with counsel.)

6 THE COURT: All right, ladies and gentlemen, if
7 you would please step to your jury room for just a minute.
8 We'll have you back out very, very shortly.

9 Do not discuss the case.

10 (Jury out at 12:40 p.m.)

11 THE COURT: Ms. Land, at the bench conference did
12 you just ask to have the video played. Mr. Deas indicated
13 he had no problem with it, except -- and that's when I
14 stopped.

15 MR. DEAS: Yeah, there are -- she's wanting to
16 play back a portion of the video tape that addresses
17 whether or not he ever saw Mr. Garris with a firearm. That
18 part's fine, but --

19 THE COURT: Well, first ask the question is it
20 true that he told Investigator Elms that he did have a gun
21 on a prior occasion. So Ms. Land, would you ask him that
22 question, please?

23 PROFFER:

24 BY MS. LAND:

25 Q Is it true that you told Investigator Elms something

1 prior to that?

2 A (No response.)

3 THE COURT: Something different prior to that.

4 BY MS. LAND:

5 Q Something different prior to that?

6 A Well, he said did I see him with the gun. I told him
7 like I told you, no.

8 THE COURT: All right. Would you state that
9 again, slowly, please?

10 Ms. Land, I think this was in the context of the day
11 before?

12 MS. LAND: That's correct.

13 THE COURT: All right, Mr. McBride, would you
14 repeat what you just said?

15 A Okay. Well, I didn't understand because I only seen
16 him one time. And that's when I was down there, he asked
17 me, he showed me a picture of the gun.

18 THE COURT: A picture of the gun?

19 A He asked me had I seen the gun before and I told him
20 no. Then he asked me a couple of questions and he asked me
21 was Brian with me that night. I told yes, all of us was
22 together, but everybody left. I told him I walked Freddie
23 to meet Freddie sister --

24 MR. DEAS: Your Honor, that's getting beyond --

25 THE COURT: No, I need to hear it before the jury

State v. Garris September 2-5, 2008

236

1 hears it.

2 All right, so --

3 A I told him I was walking Freddie to meet his sister,
4 and I was walking with them and we seen the police and all
5 that. Then after that I went back home. That's what I
6 told him.

7 THE COURT: All right. Just get right to the
8 point, Ms. Land. Just ask him the question did you tell
9 Investigator Elms that you saw Brian Garris with a gun the
10 day before this incident.

11 MS. LAND: Well, I just did and he said no.

12 THE COURT: Well, I --

13 MS. LAND: He said he never said that.

14 A I ain't told him I seen Brian with a gun. He asked me
15 did I see the gun before and I told him no.

16 THE COURT: Then that way you can -- do you have a
17 transcript of that or do you --

18 MS. LAND: I do not have a transcript. I have a
19 VHS with a television and a VHS player. Normally, we would
20 have a projector but my technical support system --

21 MR. DEAS: You know, Judge, this is their witness.
22 She certainly can impeach him, but if she wants to impeach
23 him through the video I don't have a problem with the jury
24 seeing that portion of the video that she thinks tells a
25 different account of what he's saying now. I just don't

1 think they need to see the entire video.

2 THE COURT: They don't need to see the entire
3 video unless she can impeach with the entire video, because
4 like she just said before as she began the questioning, he
5 has to tell the story and the impeachment falls according
6 to -- so do we have a television available, Ms. Land?

7 MS. LAND: We do, Your Honor. The bailiff will
8 have to get it out and I will have to find the portion on
9 the VHS tape.

10 THE COURT: All right. Do you know how long it
11 will take you to find that?

12 MS. LAND: I don't. The video is very short.
13 It's only about 30 minutes. I think I can find it.

14 THE COURT: The bailiff, Mr. Hill, can go get the
15 television out of the jury room. Is it in the jury room?

16 MS. LAND: It is, yes, sir.

17 THE COURT: All right. Any objection, Mr. Deas,
18 of Mr. Hill going in there to get the television?

19 MR. DEAS: No, sir.

20 THE COURT: You can step down. Don't discuss your
21 testimony with anybody. I mean, no lawyers, no other
22 people. You can't talk about it with anybody. All right.
23 (Mr. McBride exits the witness stand.)

24 THE COURT: Okay. Do y'all need to look at that?

25 MS. LAND: No, sir, I don't think so.

State v. Garris September 2-5, 2008

238

1 MR. DEAS: No, sir. There's a portion that talks
2 about some things that I may prefer -- I want to make sure
3 the jury doesn't see that portion of it because it made
4 some references to my client's past.

5 THE COURT: What references?

6 MR. DEAS: The witness tells Investigator Elms
7 that they're trying to talk my client out of -- to
8 basically trying to talk to him and telling him not to keep
9 getting trouble and not -- basically try to stay on the
10 right side of the law and stuff. I certainly, I think
11 that's something the jury doesn't need to hear. That's
12 highly prejudicial.

13 MS. LAND: And I agree. I -- we agree to stop the
14 tape before that.

15 MR. DEAS: And the other thing is since we're
16 getting into witnesses like Mr. McBride, and some of those
17 witnesses are in the courtroom right now, I'd ask that they
18 be sequestered.

19 THE COURT: Who are the witnesses?

20 MS. LAND: The ones that are in the -- Freddie
21 White is the only one that's in here now.

22 MR. DEAS: Who are the other folks?

23 MS. LAND: I don't know who they are. Of course,
24 Barbara Proctor is in there and she will be a witness.

25 THE COURT: And Mr. White is a fact witness?

1 MS. LAND: He is, yes, sir.

2 THE COURT: All right. Well, he will be excused.

3 MS. LAND: Mr. White, go sit out in the hall, but
4 don't leave the courthouse.

5 THE COURT: Mr. White, you sit right out there.

6 (Mr. White exits the courtroom.)

7 THE COURT: All right, what we've got on the
8 record at this point is that Mr. Deas has not objected to
9 the witness being shown video excerpts, keeping in mind
10 that 1:00 o'clock is not a magic hour, but I'm trying to
11 get an idea of how long you think the direct and cross will
12 take of this witness and in essence we'll get started.

13 MS. LAND: I would guess for my part, 15 to 20
14 minutes.

15 THE COURT: All right.

16 Does anybody have a problem with breaking for lunch?

17 MS. LAND: Well, I'd like to finish this portion
18 so that they know that he just came up here and told them a
19 story.

20 THE COURT: Well --

21 MS. LAND: But even if we just play this quick
22 portion of the video.

23 THE COURT: All right. Do both of you have an
24 understanding between the two of you, since I've not seen
25 it, where you're going to start and where you're going to

State v. Garris September 2-5, 2008

240

1 stop?

2 MS. LAND: Yes, we do.

3 MR. DEAS: Correct.

4 THE COURT: How long will that particular part
5 start?

6 MS. LAND: It's from 445 to 551, so --

7 THE COURT: From 445 to 551?

8 MS. LAND: From 445 --

9 THE COURT: That's the tape count?

10 MR. DEAS: Tape count.

11 THE COURT: Okay, not time.

12 MR. DEAS: Not time.

13 THE COURT: Okay. So are you ready for the jury
14 to see it?

15 MR. DEAS: Yes, sir.

16 MS. LAND: And Judge, let me add -- Never mind.

17 MR. DEAS: Let me ask you, are we going to do my
18 cross before lunch?

19 THE COURT: No. No, we won't do both before
20 lunch. We won't finish direct before lunch.

21 MS. LAND: No, we can stop directly after that.

22 What I was going to ask you earlier, if I want to go ahead
23 and show Freddie White the portion -- this is during lunch
24 time, his video to refresh his memory after this. Does
25 anyone have a problem with that?

1 MR. DEAS: I object to that --

2 THE COURT: We'll talk about that after we've seen
3 it.

4 MS. LAND: Okay. Okay.

5 THE COURT: All right, Mr. McBride, if you would
6 come back up to the witness stand, please.

7 (Mr. McBride returns to the witness stand.)

8 THE COURT: All right. Bring in the jury.

9 (Jury in at 12:57 p.m.)

10 THE COURT: All right, Ms. Land.

11 ANDREW MCBRIDE - CONTINUED DIRECT EXAMINATION

12 BY MS. LAND:

13 Q All right, Mr. McBride, prior to the jury going out I
14 asked you if you recall telling Lt. Elms that Mr. Garris
15 had a gun that night at the apartments; do you recall that?

16 A Do I recall saying that?

17 Q Right.

18 A Yes.

19 Q Would you like to step down and see this video. All
20 right, don't block the jury. If you'll kind of stand here.

21 This is you, is that correct? And this is an interview
22 with Lt. Elms?

23 (Mr. McBride exits the witness stand.)

24 A Yes.

25 MR. DEAS: I think before she plays the video tape

State v. Garris September 2-5, 2008

242

1 perhaps she could lay a little more foundation with respect
2 to when it was taken?

3 THE COURT: That's fine. It's not a part of any
4 proceeding -- do you have an objection to the authenticity
5 of the video tape or the foundation for its existence?

6 MR. DEAS: No, I don't have --

7 THE COURT: This can be gotten in potentially
8 through other means but -- Ms. Land, ask your witness do
9 you recall when this was done and where it was done and who
10 was present.

11 MS. LAND: Okay.

12 BY MS. LAND:

13 Q Mr. McBride, do you recall having this interview with
14 Lt. Elms?

15 A Yes.

16 Q And where was it?

17 A At the police station.

18 THE COURT: And speak up.

19 BY MS. LAND:

20 Q At some police station, okay. So if I told you it was
21 at the Manning Police Department you could agree to that?

22 A Yes.

23 Q Okay. And would you agree that you were not under
24 arrest at this time?

25 A Yeah, I --

1 Q You said, yeah, I know?

2 A Yeah.

3 Q And you were free to go --

4 THE COURT: Mr. McBride, would you please speak
5 up?

6 A I wasn't under arrest.

7 THE COURT: All right, sir.

8 BY MS. LAND:

9 Q You were free to go at any time?

10 A Yes.

11 Q Okay.

12 MS. LAND: Is that enough, Judge?

13 THE COURT: Mr. Deas?

14 MR. DEAS: That's fine.

15 THE COURT: All right, go ahead.

16 MS. LAND: Okay.

17 (The video was played.)

18 THE COURT: All right. Have a seat, sir.

19 (Mr. McBride returns to the witness stand.)

20 THE COURT: All right, Ms. Land, go ahead and
21 continue your questions.

22 BY MS. LAND:

23 Q Mr. McBride, does that refresh your memory a bit?

24 A But when he told me --

25 Q When you say, he, who are you speaking of?

State v. Garris September 2-5, 2008

244

1 A The sergeant.

2 Q Uh-huh.

3 A When he said, he told me did he have a gun, and I
4 asked him back -- and on that tape you don't see that.

5 Q Okay. What you're telling this jury is that you asked
6 Lt. Elms if he had a gun?

7 A No. He -- when he asked me I said, no, but you didn't
8 play that part. He told me --

9 Q You want to see it again?

10 A -- Yeah. He told me Brian had a gun. He asked me did
11 I see it.

12 THE COURT: Wait until the end.

13 BY MS. LAND:

14 Q But, Mr. McBride, you would agree that when y'all are
15 speaking you are referring to Brian Garris?

16 A Yes.

17 Q All right. You can step down.

18 (Mr. McBride exits the witness stand.)

19 (Video is replayed.)

20 BY MS. LAND:

21 Q Is that enough?

22 A That's what I'm saying.

23 Q Okay. Walk up. (Indicating witness stand.)

24 A (Mr. McBride returns to the witness stand.)

25 Q Did you tell Lt. Elms that Brian Garris had a gun that

- 1 night at Manning Lane Apartments?
- 2 A After he told me he had a gun.
- 3 Q So you're saying that Lt. Elms told you first that
- 4 Brian had a gun that night at Manning Lane Apartments?
- 5 A He said Brian said he had a gun. You didn't play it.
- 6 Q I did not play it?
- 7 A You did not play it.
- 8 Q I did not play it?
- 9 A When he nod his head on camera you don't got no --
- 10 Q Okay, but what you're telling this jury is that Lt.
- 11 Elms told you that Brian Garris had a gun?
- 12 A Yes, and the reason I said, I said, but -- they were
- 13 looking for me.
- 14 Q And so you were scared of Lt. Elms at that time?
- 15 A Yes.
- 16 Q And he advised you that this was being audioed and
- 17 videoed?
- 18 A I don't recall.
- 19 Q But did you know it was being audio and video taped?
- 20 A I'm not sure. I wasn't paying attention.
- 21 Q Okay. Were you scared of Lt. Elms or you were scared
- 22 that the probation agents were looking for you?
- 23 A No, the probation wasn't looking for me.
- 24 Q Who was looking for you?
- 25 A Lt. Elms was.

State v. Garris September 2-5, 2008

246

1 Q Okay, why was he looking for you?

2 A About the China restaurant --

3 Q So you were scared that he was looking for you?

4 A Yes.

5 Q Okay. All I want to know from you and all I want this
6 jury to know is that night at Manning Land Apartments did
7 Brian Garris have a gun?

8 MR. DEAS: Objection. It's been asked, he's
9 answered it, three, four, five times.

10 THE COURT: Overruled.

11 BY MS. LAND:

12 Q That night at Manning Lane Apartments, did Brian
13 Garris have a gun?

14 A No.

15 Q And that's contrary to what you said in this video?

16 A Yes.

17 Q And did you describe the gun in this video as having a
18 --

19 MR. DEAS: Objection.

20 THE COURT: Yes, sir, what's your grounds?

21 MR. DEAS: Well, she can ask him to describe the
22 gun, but she can't tell him how to describe it. She's
23 testifying for him.

24 THE COURT: Overruled.

25 A So he showed me a picture of the gun.

1 BY MS. LAND:

2 Q That portion wasn't reflected on the video?

3 A No. You did not show that, but he showed me a picture
4 of the gun.

5 Q Okay. So you're telling the jury that there was a
6 picture of the gun that he showed you that was not
7 reflected on this audio tape and video tape?

8 A He had a picture of the gun on a blue background and
9 the gun was laying in the middle of the picture.

10 Q Okay. Tell the jury when you were shown this picture?

11 A That same day. I only talked to him one time.

12 Q During that portion of the interview or during a
13 different portion of it?

14 A I only talked to him one time.

15 Q The part that the jury just saw --

16 A Yeah, but --

17 Q -- that portion, had you already been shown the
18 picture?

19 A I can't remember.

20 Q How did you know the gun had a --

21 A He showed me the picture.

22 Q So you must have already been shown the picture?

23 A I have to, because when I came in there that's the
24 first thing he asked me. Did I know Brian -- he asked me
25 do I know the gun, and he set the picture in my face.

State v. Garris September 2-5, 2008

248

1 MS. LAND: Your Honor, I think if we could request
2 a side bar at this point.

3 THE COURT: Okay. Come on up, Mr. Deas.
4 (Off the record bench conference with the Ms. Land, Mr.
5 Deas, and the Court.)

6 THE COURT: All right. Ladies and gentlemen,
7 we're going to break for lunch now. Please be back in your
8 jury room at 2:30. And we will be prepared to go forward
9 at that time. I'll see you back here at 2:30. Do not
10 discuss this case. I will see you promptly at 2:30.
11 (Jury out at 1:08 p.m.)

12 THE COURT: What do you want to put on the record
13 before I talk to the witnesses?

14 MR. DEAS: Yes, sir, Judge, if I could. I would
15 assume where the state is going from here is they want to
16 show the entire video tape in an attempt to impeach their
17 witness, which means that they're going to have to admit
18 that full tape into evidence. There are portions of that
19 tape that would be prejudicial to the jury to view and to
20 hear. So we're going -- since there is no transcript of
21 the tape that we can redact for prejudicial information,
22 then what's going to have to happen before this jury -- if
23 this entire video tape is admitted into evidence it should
24 be -- the prejudicial portions should be redacted or
25 eliminated in some way so the jury can't view it. And I

1 assume that's the direction she wants to go in in an
2 attempt to impeach him --

3 THE COURT: Well, let's see what her direction is.

4 MS. LAND: Judge, I don't know how to redact
5 portions of a video tape. I don't know if there are ways
6 to do that.

7 THE COURT: There are ways -- there are people
8 that do that for a living.

9 MS. LAND: Okay, well, I don't do that for a
10 living. I don't think there's anyway we can do that.

11 THE COURT: I assume it can be done, but this
12 statement in its entirety has to be preserved and then an
13 exhibit made from that -- redact -- I've never seen it, so
14 I'm shooting in the dark here. I don't know what you're
15 talking about as far as what you want them to see.

16 MS. LAND: Your Honor, what I want to show the
17 jury is the video in it's entirety to show them that he was
18 never shown a picture of the gun.

19 MR. DEAS: Well, I've seen the video. He was
20 shown a picture of the gun. And so that's not accurate.

21 MS. LAND: I'm sorry. At the end, at the end.

22 THE COURT: During the lunch break why don't y'all
23 look at the video tape and figure out where you want to go
24 and we'll deal with Mr. McBride on continued direct and
25 cross after lunch.

State v. Garris September 2-5, 2008

250

1 During lunch break, sir, you cannot talk about your
2 testimony with anybody.

3 All right. Do you understand that?

4 MR. MCBRIDE: Yes, sir.

5 THE COURT: You understand that if you come back
6 either one of these attorneys or I can ask you if you
7 discussed your testimony with anybody. All right.

8 Did you get that, Melissa?

9 MS. WINFIELD: Yes, sir.

10 THE COURT: All right. You may step down.

11 (Mr. McBride exits the witness stand.)

12 MS. LAND: Your Honor, he actually has some active
13 warrants and we felt at this point it would be better to
14 take him into custody.

15 MR. DEAS: Is he in custody?

16 THE COURT: All right. I don't have anything to
17 do with whether or not he's in custody. If he's in custody
18 then I don't need to instruct him further. Who's going to
19 take him into custody?

20 DEPUTY SHERIFF: We've got an officer on the way.

21 MR. MCBRIDE: Can I call and get me --

22 THE COURT: That's up to them.

23 All right. Okay. I want y'all to be back at 2:15.

24 (Court at recess for lunch until 2:15 p.m.)

25 (Court in session after lunch at 3:04 p.m.)

1 MS. LAND: The witness is being brought up from
2 the jail. That may be my fault. They transported him. I
3 didn't know that the transport team was here. They're --

4 THE COURT: They took him to jail and booked
5 him?

6 MS. LAND: Uh-huh. He should be here any second.
7 I didn't realize that the transport team was here,
8 otherwise we would have just had them --

9 THE COURT: How much longer is it going to be?

10 MS. LAND: It should only be a few minutes.

11 THE COURT: Well, it's just a block away.

12 (Jury in at 3:04 p.m.)

13 THE COURT: All right, ladies and gentlemen, I
14 apologize for the delay. It won't happen again.

15 Ms. Land, call your next witness.

16 MS. LAND: Freddie White.

17 THE CLERK: Please raise your right hand and place
18 your left hand on the Bible.

19 (WHEREUPON, Freddie White was
20 sworn to tell the truth.)

21 FREDDIE WHITE - DIRECT EXAMINATION

22 BY MS. LAND:

23 Q Mr. White, would you state your name for the record,
24 please?

25 A Freddie White, Jr.

State v. Garris September 2-5, 2008

252

1 Q And Mr. White, where do you live?

2 A I presently live in North Charleston, South Carolina,
3 but at the time I was staying in Manning.

4 Q Okay, and do you know the defendant, Brian Garris?

5 A Before me and him --

6 THE COURT: No, sir. You answer the question.

7 A Yeah, I know Brian Garris.

8 THE COURT: Do you know Brian Garris?

9 A Yes, sir.

10 BY MS. LAND:

11 Q How long have you known Brian Garris?

12 A Not long.

13 Q And when you say not long how long would that be?

14 A I don't recall.

15 Q You don't recall how long you've known him?

16 A Me and his brother used to hang out together. I don't
17 recall.

18 Q Okay. So would you say on April 15, 2006, you knew
19 him?

20 A Yes, ma'am.

21 Q Okay. And during that -- on that day did you have the
22 opportunity to spend some time with Brian?

23 A Yes, ma'am.

24 Q Tell the jury what y'all did that day?

25 A We went to Manning Lanes to smoke and hang out.

- 1 Q Okay, you went to Manning Lane to smoke. What do you
2 mean you smoked?
- 3 A Smoke a little --
- 4 Q A little what?
- 5 A Weed.
- 6 Q Okay. And what else did you do?
- 7 A Just hang out.
- 8 Q What time is that?
- 9 A It was around -- I don't know exactly what time it
10 was. I believe it was -- I know it was earlier in the day,
11 but I can't remember all that and what I can remember it's
12 like I can remember walking to the store and all that.
- 13 Q At some point did Brian leave you and the group that
14 you were with?
- 15 A Yes, ma'am.
- 16 Q Okay. And when he left you do you know where he went?
- 17 A No, ma'am.
- 18 Q The day before had you spent some time with him?
- 19 A The --
- 20 Q On April 14th of '06?
- 21 A No, ma'am, not as I recall.
- 22 Q Do you recall an interview with Investigator Elms?
- 23 A Yes, ma'am.
- 24 Q And did you have an interview with him regarding this
25 matter?

State v. Garris September 2-5, 2008

254

- 1 A Yes, ma'am?
- 2 Q And have you reviewed that video to refresh your
- 3 memory?
- 4 A Yes, ma'am.
- 5 Q And in that video did you speak with him about Brian
- 6 Garris and a gun?
- 7 A Yes, ma'am.
- 8 Q All right. Tell the jury about Brian Garris and the
- 9 gun?
- 10 A I seen him with a gun.
- 11 Q When was that?
- 12 A I don't know if it was that -- well, yeah, he had a
- 13 gun that night.
- 14 Q I'm sorry, the night of the incident did he have the
- 15 gun?
- 16 A Yes, ma'am.
- 17 Q Okay. Describe to the jury what the gun looked like?
- 18 A As I -- I don't recall. Just so many things running
- 19 through my mind I just watched it, but it still just
- 20 flashing. I don't recall, I don't recall the look.
- 21 Q Do you recall that it was a revolver or an automatic?
- 22 A It was a revolver.
- 23 Q And did you notice anything about the handle?
- 24 A No.
- 25 Q And did you recall on that video in the interview with

1 Investigator Elms?

2 A Did I who?

3 Q Did you recall then?

4 A That's what I'm saying. I don't recall.

5 Q Let me ask you something. After that incident did you
6 hear sirens and things of that nature that let you know
7 that something had happened?

8 A Yes, ma'am.

9 Q Did you call Brian after that?

10 A Yes, ma'am.

11 Q How would you have described how he sounded at that
12 point?

13 A I don't know.

14 Q Okay. Do you recall telling Investigator Elms that he
15 was out of breath?

16 A I don't recall.

17 MR. DEAS: I'm going to object to that. I think
18 it's an improper question because it's asking what he
19 recalls about an interview. I don't think she can -- if he
20 doesn't say what he knows -- if he doesn't say specifically
21 that he remembers that specific part in an interview I
22 don't think she can question him about it repeatedly. I
23 think he's already said he doesn't remember.

24 THE COURT: Overruled.

25 BY MS. LAND:

State v. Garris September 2-5, 2008

256

1 Q And so when we played that video would that help you
2 recollection?

3 A It did. So many things going through my mind. I done
4 moved on with my life. My mind just moving real fast. I
5 really don't want to be here like that, so my mind -- I'm
6 not recalling a lot of things then. I have memory problems
7 and stuff like that. Surgery on my head. So --

8 Q So we'll cover him being out of breath in a minute.
9 Do you recall spending time with Brian on Sunday, the day
10 after this robbery?

11 A Yeah.

12 Q And on that day what did the two of you do together?

13 A We smoked.

14 Q Okay. How'd you get the pot?

15 MR. DEAS: Objection. Relevance.

16 THE COURT: Ms. Land?

17 MS. LAND: Your Honor, where I'm going is did Mr.
18 Garris have any money.

19 THE COURT: Just for that limited --

20 MR. DEAS: Well, she can ask him where did he have
21 any money on him, but where did he get the marijuana,
22 that's not relevant to this case.

23 THE COURT: Overruled.

24 BY MS. LAND:

25 Q Where'd you get the marijuana?

1 A I don't know.

2 Q Do you recall him buying it?

3 A No.

4 Q Do you recall how much money he had?

5 A (No response.)

6 Q How much money did Brian Garris have the day after
7 this robbery?

8 A I just -- I remember me asking him, but I don't
9 remember --

10 Q So you don't recall how much money he had?

11 A No, ma'am.

12 Q Do you remember during that period anything about his
13 spending habits?

14 A I don't recall.

15 Q Okay.

16 MS. LAND: Your Honor, may we approach?

17 THE COURT: Yes, ma'am.

18 (Off the record bench conference with the Ms. Land, Mr.
19 Deas, and the Court.)

20 THE COURT: All right, ladies and gentlemen,
21 please step to your jury room. You may not discuss this
22 case. I will bring you back out as soon as possible. If
23 you need anything let the forelady know and she'll let Mr.
24 Hill know.

25 (Jury out at 3:13 p.m.)

State v. Garris September 2-5, 2008

258

1 THE COURT: You have a seat out there on that
2 front row. You may not discuss your testimony with anyone.

3 All right. Mr. White, when the jury comes in I want
4 to remind you you're still under oath. Do you understand?

5 MR. WHITE: I don't understand?

6 THE COURT: Mr. White are you telling me that you
7 don't know what it means to swear to tell the truth?

8 MR. WHITE: Oh, yes, sir.

9 THE COURT: All right. Ms. Land, go ahead and get
10 your recorder ready, Ms. Land.

11 All right, Mr. Deas, are you ready for the jury?

12 MR. DEAS: Yes, sir.

13 THE COURT: Ms. Land?

14 MS. LAND: I am, Your Honor.

15 THE COURT: All right.

16 (Jury in at 3:28 p.m.)

17 THE COURT: All right, Ms. Land.

18 BY MS. LAND:

19 Q Mr. White, do you recall having that interview with
20 Investigator Elms or having an interview with Investigator
21 Elms?

22 A Yes, ma'am.

23 Q Okay. And were you at his office voluntarily?

24 A Yes, ma'am.

25 Q And were you there to talk about what happened the

1 night of April 15, 2006?

2 A Yes, ma'am.

3 Q And you were in no way being accused of a crime; is
4 that correct?

5 A No.

6 Q And you were not under arrest?

7 A No.

8 Q And you were free to go at any time?

9 A Yes, ma'am.

10 Q Was Investigator Elms nice to you?

11 A Yes, ma'am.

12 Q Did you answer his questions honestly and truthfully?

13 A Yes, ma'am.

14 Q And I want to ask you one more time. Do you recall
15 discussing the day after this robbery with Investigator
16 Elms?

17 A You're talking about like the money situation and
18 things like that, but I don't --

19 Q All right. Tell the jury about the money situation?

20 A He came to my house the next day and he had \$40.

21 Q Okay. And the \$40 that he had that day, did he have
22 it the prior day?

23 A I don't -- it's been --

24 Q Did he have the money the prior day?

25 A Not that I recall.

State v. Garris September 2-5, 2008

260

- 1 Q Okay. And then the day after this robbery how much
2 did he have?
- 3 A Forty dollars.
- 4 Q And what denomination was the \$40 in?
- 5 A I think it was two \$20's.
- 6 Q Tell them, if you would, about him being out of breath
7 on that Saturday night when you spoke with him on the
8 phone?
- 9 A I don't recall.
- 10 Q Do you recall calling him on the phone?
- 11 A Yes, ma'am.
- 12 Q Okay. And he was not with you during that time period
13 that the China Cuisine was robbed?
- 14 A He wasn't with me.
- 15 Q And he wasn't with -- who were you with?
- 16 A Me and my brother --
- 17 Q Okay, and was Quinton Garris with you?
- 18 A I don't remember.
- 19 Q Okay, and was there a person named Chris Blanding with
20 you?
- 21 A I think so.
- 22 Q But Brian Garris was not with you?
- 23 A No.
- 24 Q And that night Brian Garris had a gun?
- 25 A Yeah, he had a gun.

1 Q And it was a .22?

2 A Uh-huh.

3 Q And it was a revolver?

4 A Uh-huh.

5 MR. DEAS: Judge, I would ask that the witness
6 respond verbally --

7 THE COURT: He needs to say yes or no. Mr.
8 McBride and Ms. Land, if you would ask those questions
9 again. Mr. McBride, give a verbal word response.

10 BY MS. LAND:

11 Q Mr. Garris was not with you that evening?

12 A No.

13 Q And that evening he had a gun?

14 A Yes, ma'am.

15 Q And it was a .22 revolver?

16 A Yes, ma'am.

17 Q With a white handle?

18 A Yes, ma'am.

19 Q A light colored handle?

20 A (No response.)

21 Q Is that correct?

22 A Yes, ma'am.

23 Q And the next day after this robbery he had \$40, which
24 was made up of two \$20's?

25 A Yes, ma'am.

State v. Garris September 2-5, 2008

262

1 Q Okay. And he's your friend, isn't he?

2 A (No response.)

3 Q Tell the jury why you're here today?

4 A I don't know.

5 Q Is it because I sent you --

6 A Oh, you subpoenaed me. Yeah.

7 Q And made you be here?

8 A (No response.)

9 Q Answer yes or no?

10 A Yes, ma'am.

11 Q So you could tell this jury what you know about this
12 case?

13 A It's not about the case it's just me and him and what
14 we was doing at that time. How things happen before -- I
15 don't know -- I don't know -- it's just --

16 Q Did you talk to Investigator Elms about Brian Garris's
17 spending habits during that time?

18 A I don't recall.

19 Q You don't recall saying that he could go through a
20 bunch of money?

21 A No, ma'am.

22 Q All right. Please answer any questions that Mr. Deas
23 has.

24 THE COURT: Mr. Deas?

25 MR. DEAS: Thank Your Honor. May it please the

1 Court.

2 THE COURT: Yes, sir.

3 FREDDIE WHITE - CROSS-EXAMINATION

4 BY MR. DEAS:

5 Q Mr. White, my name is Garryl Deas. I represent the
6 defendant, Mr. Brian Garris. Before you testified here
7 today did you have a chance to look at your video tape
8 interview with Ms. Land?

9 A Before today?

10 Q Yeah, before you testified here today?

11 A I seen it just now.

12 Q You saw it. And do you remember word for word
13 everything you said that Investigator Elms on the day you
14 were interviewed?

15 A I mean --

16 Q Do you remember everything you told him?

17 A -- not everything, that's what I'm saying. I remember
18 if I see it, but my mind is -- my mind -- like I said, if I
19 see it, I mean --

20 Q And you met with Investigator -- do you remember what
21 day when you met with Investigator Elms when you were
22 interviewed?

23 A (No response.)

24 Q Do you remember what month it was or what date, what
25 the date was?

State v. Garris September 2-5, 2008

264

1 A I think it was April 15th.

2 Q You think it was --

3 A No. See, that's -- my mind -- I don't recall.

4 Q So you don't remember when this interview took place?

5 A I -- like you said, I heard a lot of things. I heard,
6 but right now my mind isn't settled just listening to -- my
7 mind -- I can't focus on this. This is not where I want to
8 be at. This is not what -- you understand?

9 Q I understand. Now, when you -- you were asked a
10 little bit ago whether or not you were with Brian Garris
11 the day of this incident, the day that the shooting took
12 place. If I told you it was April 15, 2006, would you
13 dispute that or do you know?

14 A April 15th was the day that something happened.

15 Q Okay.

16 A I know that much.

17 Q And were you with Brian Garris that day; when I say
18 that day I'm talking about April 15, 2006?

19 A Could you remind me what happened, what was the day of
20 April 15, 2006?

21 Q I don't know. I believe it was a Saturday, and it's
22 the day the victim in this case, Ms. Santiago was shot.

23 A Are you saying was I with him that day?

24 Q Were you with Brian Garris at any time during April
25 15th of '06?

- 1 A Yes, sir.
- 2 Q So y'all were together at some point during that day?
- 3 A Yes, sir.
- 4 Q And when you were with him, did Brian Garris have a
5 New York Yankee hat that day?
- 6 A Not as I recall.
- 7 Q Did he have on a -- did he have dreads, braids in his
8 hair?
- 9 A No, it was cut.
- 10 Q Has Brian Garris always worn his hair cut, just like
11 it is; as far as you know, has Brian Garris always had a
12 short hair cut, as far as you know?
- 13 A Yes, sir.
- 14 Q And on that day, did Brian Garris have on a mechanic
15 shirt, a shirt that's got horizontal blue and white
16 stripes. Did he have on a shirt like that that day?
- 17 A I don't recall what kind of shirt it was. I don't
18 even -- that's too --
- 19 Q And when -- do you recall -- I believe you testified a
20 little earlier that Brian Garris at some point was not with
21 you, that he left from wherever you all were; is that
22 right?
- 23 A Yes, sir.
- 24 Q And, first of all, where were you all together that
25 day; were you at somebody's house or were you at a service

State v. Garris September 2-5, 2008

266

1 station or were y'all at a restaurant. Where were y'all
2 together?

3 A We was in Manning.

4 Q Y'all were in Manning Lane Apartments? And do you
5 remember what time it was when y'all were together there.
6 Do you remember how long y'all were there, what time it was
7 while y'all were there?

8 A I don't recall the time that we were going there, but
9 I recall the time that I was leaving and like that.

10 Q Well, what time of day was it when you left the
11 Manning Lane Apartments?

12 A I know I left probably about 7:45 or something like
13 that.

14 Q About 7:45 or 8:00 o'clock. Would that be a.m. or
15 p.m.?

16 A (No response.)

17 Q Was that morning or night?

18 A P.m.

19 Q Okay. When you all -- when you left the Manning Lane
20 Apartments that evening was Brian Garris with you?

21 A No. No, sir.

22 Q When you left, who did you leave with?

23 A Me and my brother Andrew and Quentin.

24 Q So it was you --

25 A And Brian's brother.

1 Q Your brother who is Fredrick White. Andrew McBride,
2 Quentin Garris, who is Brian Garris's brother?

3 A Yes, sir.

4 Q Is that it?

5 A Yes, sir.

6 Q That's all. That's everybody who left with you?

7 A (No response.)

8 Q What about a gentleman named Chris?

9 A Yeah, Chris was with us.

10 Q Okay. Was -- do you recall if Brian was going to get
11 a car and come back to pick y'all up or something like that
12 or does that sound familiar to you?

13 A (No response.)

14 Q Did he leave the apartments to go get a car to come
15 pick y'all up; to go get his grandmother's car?

16 A Sounds familiar, because I hope that was supposed to
17 happen.

18 Q Y'all were looking for a ride that night; to get a
19 ride home or wherever you were going?

20 A Well, we -- ain't had nothing to do with a ride. We
21 had rides, my mama had just seen us at McDonald's. My
22 sister was working at SaveWay at the time, so push come to
23 shove, I mean, we had rides, but I don't think -- she took
24 us out -- I don't -- I know we had a ride.

25 Q Let me ask you this, you don't -- can you say with

State v. Garris September 2-5, 2008

268

1 certainty that you know exactly how much money, dollar for
2 dollar Brian Garris had on the day after this situation
3 happened?

4 A I believe he had \$40. That's all I can say. I don't
5 know how much money he had. I know he pulled out \$40 to
6 me. I know that's -- I don't know if he had more in his
7 pocket or what.

8 Q You don't know if he had more money in his pocket?

9 A I don't know.

10 Q And can you say with certainty, Mr. White, exactly how
11 much money Mr. Garris had the day before this incident
12 happened?

13 A (No response.)

14 Q You don't know whether he had less than \$40 or what he
15 had --

16 A I --

17 MS. LAND: Your Honor, I'd ask that he let him
18 answer the question.

19 THE COURT: overruled. Go ahead.

20 BY MR. DEAS:

21 Q In other words, you don't know if he had less than \$40
22 or more than \$40 the day before, do you?

23 A I don't know how much money he had the day before.

24 Q Thank you, sir. I have no further questions.

25 FREDDIE WHITE - REDIRECT EXAMINATION

1 BY MS. LAND:

2 Q The day before didn't he borrow money from you to get
3 food?

4 A I think we was at McDonald's. I think I bought his
5 brother food. I bought my brother food. I gave Quentin a
6 dollar to buy some food. I don't --

7 Q That's all the questions I have.

8 THE COURT: Thank you, sir. You may step down.

9 Ms. Land, is he to stay or -- Mr. Deas?

10 MS. LAND: I don't have any problem with him
11 leaving.

12 MR. DEAS: He can be excused.

13 THE COURT: All right. You can be excused or you
14 can stay. Whatever you like.

15 MS. LAND: We call Andrew McBride.

16 THE COURT: Have seat right there. Okay, come on
17 up, Mr. McBride. Come on around. You're still under oath.
18 Have a seat right there.

19 All right, Ms. Land.

20 ANDREW MCBRIDE - CONTINUED DIRECT EXAMINATION

21 BY MS. LAND:

22 Q All right, Andrew, when we ended earlier we were
23 talking about, about you knowing what the gun looked like.
24 I showed you little clip of the video where you described
25 the gun. Do you recall that?

State v. Garris September 2-5, 2008

270

1 A No, ma'am, but you showed me.

2 Q Okay. Do you recall telling me that you knew what the
3 gun looked like because Lt. Elms showed you a picture of
4 the gun?

5 A He showed me the picture.

6 Q Okay. If I told you that the counter number on the
7 tape was 455, when you discussed the gun, but it was 45
8 minutes later when he showed you the picture would you
9 dispute that?

10 A Yes, because I wasn't in his office that long.

11 Q Do you want to step down and see this.

12 (Mr. McBride exits the witness stand.)

13 (Video is played.)

14 Q Is this the point where he showed you the picture?

15 A Yes.

16 Q And that was quite a bit after you testified, you told
17 him what the gun looked like; is that correct?

18 A Yes.

19 THE COURT: You need to speak up, sir.

20 A Yes.

21 BY MS. LAND:

22 Q So you identified that gun, first you described it to
23 Lt. Elms; is that correct?

24 A Yes.

25 Q And at the end of the interview he showed you a

1 picture and you said, that is the gun that Brian had.

2 A Yeah.

3 Q That's all the questions I have.

4 (Mr. McBride returns to the witness stand.)

5 THE COURT: Mr. Deas?

6 ANDREW MCBRIDE - CROSS EXAMINATION

7 BY MR. DEAS:

8 Q Mr. McBride, I've noticed your circumstances --

9 MS. LAND: Your Honor, I object.

10 THE COURT: Overruled.

11 BY MR. DEAS:

12 Q I've noticed there's a little something different
13 about your circumstances from the way you appeared in Court
14 a little earlier. You are now handcuffed and you've been
15 incarcerated; is that correct?

16 A Yes. Uh-huh.

17 THE COURT: You need to answer, sir.

18 A Yes.

19 BY MR. DEAS:

20 Q Do you know why you've been incarcerated; did anybody
21 tell you why you've been incarcerated?

22 A I been -- a bench -- warrant.

23 Q And you were subpoenaed to be here today, correct, by
24 the state?

25 A Yes.

State v. Garris September 2-5, 2008

272

1 Q To testify as a witness, right?

2 A Yes.

3 Q And at some point during your testimony when you were
4 on direct examination you had said that Brian Garris didn't
5 have a gun on the day in question, right?

6 A Yes.

7 Q And when you said that shortly thereafter you got
8 arrested.

9 MS. LAND: Your Honor, may we approach.

10 THE COURT: Yes, ma'am.

11 (Off the record bench conference with the Ms. Land, Mr.
12 Deas and the Court.)

13 THE COURT: Mr. Deas, you can proceed.

14 BY MR. DEAS:

15 Q So you -- Mr. McBride, you recall your testimony was
16 prior to your being taken into custody that Brian had no
17 gun, right?

18 A Yes.

19 Q So --

20 MS. LAND: Judge, I object. He admitted prior to
21 leaving for the lunch break that he did have a gun when he
22 was shown the video.

23 THE COURT: That's a factual issue for the jury to
24 decide.

25 MS. LAND: Okay.

1 THE COURT: Of course, what the lawyers say is not
2 evidence.

3 Mr. Deas, you may continue.

4 MR. DEAS: Thank you.

5 BY MR. DEAS:

6 Q You recall saying that Brian had no gun prior to being
7 taken into custody; correct, you said Brian had no gun. Is
8 that right?

9 A I think so. I'm not sure.

10 Q So let me ask you, do you have any specific
11 recollection of Brian having a gun on the day this incident
12 happened?

13 A No.

14 Q Either you did or you didn't?

15 A No. I was scared and I thought Mr. Elms was going to
16 lock me up.

17 Q So you told Investigator Elms --

18 THE COURT: Let him finish, Mr. Deas.

19 MR. DEAS: I'm sorry.

20 A I thought he was going to lock me up because they was
21 just around Manning looking for me, going to the apartment
22 and all that, so I just talking out my head when I went to
23 the interview so I could stay out of trouble.

24 BY MR. DEAS:

25 Q You finished?

State v. Garris September 2-5, 2008

274

1 A Yes.

2 Q So you correct me if I'm wrong. What you're saying is
3 you told Investigator Elms in the interview that Brian had
4 a gun because you thought that was what he wanted you to
5 say?

6 A Yes.

7 Q And you thought he wanted you to say that because --
8 why did you think he wanted you to say that?

9 A Because I tried -- that's the only reason I thought he
10 wanted me for because they was steady looking for me.

11 Q So you -- prior to you --

12 A Then I tried -- I thought they was going -- I was on
13 probation.

14 Q So prior to the time that you gave this interview you
15 had heard that the police were looking for you?

16 A Yes.

17 Q Did that scare you?

18 A Yes, sir.

19 Q Worry you?

20 A Yes, sir.

21 Q And how did the police end up bring you in for
22 questioning?

23 A My mom got tired of them going around looking for me
24 so she dropped me off to them.

25 Q So you tell me, did you feel pressured into saying

1 that Brian had a gun on the day that you were interviewed
2 by Investigator Elms?

3 A Yes, sir.

4 Q And is that why you told Investigator Elms that?

5 A Yes, sir.

6 Q And now as you sit here today in custody, what's the
7 truth. Did Brian have a gun on the day of this incident or
8 did he not have a gun or do you just not know?

9 A I don't know. I saw him that day, but that day when I
10 saw him I didn't see no gun. And I talked to him that
11 night?

12 Q Did Brian have on a New York Yankee hat that day?

13 A I don't remember seeing Brian with no hat.

14 Q Have you ever seen -- did you know Brian Garris prior
15 to this incident?

16 A He used to be at my house -- I mean, not my house at -
17 we used to be --

18 Q Have you ever seen Brian Garris with a New York Yankee
19 hat?

20 A No, sir.

21 Q Do you -- on the day this incident happened did Brian
22 Garris have on a blue and white striped shirt where the
23 stripes were horizontal, where the stripes were going
24 across?

25 A I don't recall that, but I never seen Brian with a

State v. Garris September 2-5, 2008

276

1 button up shirt on.

2 Q Okay. Based on what you know of Brian he never had a
3 shirt that buttoned up all the way down?

4 A I ain't seen it. He used to have on t-shirt with two
5 button right here. I never seen him in a button shirt all
6 the way down.

7 Q Have you ever seen him in a blue and white striped
8 mechanic shirt?

9 A Mechanic, that's the button up all the way down?

10 Q All the way down.

11 A No, sir.

12 Q Thank you, sir. I have no further questions.

13 THE COURT: Ms. Land.

14 ANDREW MCBRIDE - REDIRECT EXAMINATION

15 BY MS. LAND:

16 Q How does Brian typically wear his shirts?

17 A He have on a t-shirt --

18 Q I know, but are they loose, are they tight; how do
19 they fit him?

20 A Like t-shirts is.

21 Q I mean, kind of baggy would you say?

22 A He -- no, I wouldn't say baggy, but he ain't going to
23 wear no shirt, tight, tight, tight, on him, but his shirt
24 don't be out to here.

25 Q Okay. Now, tell me this. You're telling this story

1 right now that you went voluntarily to the Manning Police
2 Department to give an interview to Investigator Elms; is
3 that correct?

4 A No, not voluntary. My mama made me go because she
5 thought I was going to get in trouble because I was on
6 probation and they was looking for me.

7 Q All right. When your mom dropped you off, but you
8 walked in on your own accord. There weren't handcuffs on
9 you or anything like that?

10 A No. My mama was outside waiting on me.

11 Q Okay. And you knew that that day when you left you
12 knew your mama was going to take you home, that's why she
13 was waiting for you?

14 A I ain't know what was going to be the outcome. I been
15 on probation and I'm already on probation for a gun charge.
16 And we were having to deal with another whole situation.

17 Q But your mom was waiting for you?

18 A Yeah.

19 Q Because you both assumed that you were leaving?

20 A I ain't know what the outcome was going to be.

21 Q Did you leave there that day?

22 A Yes, I did.

23 Q And how did you know how to describe the gun if you
24 had never seen it in Brian's possession?

25 A Huh?

State v. Garris September 2-5, 2008

278

1 Q How did you know what description of the gun to give
2 Investigator Elms?

3 A I know the description?

4 Q How did you know the description?

5 A Because I seen that gun before.

6 Q Where?

7 A In the woods behind the apartments.

8 Q In the woods? Tell me where these woods are?

9 A It's a little path at Manning Lane in a little cut.

10 Q And it's a gun that just kind of lives there?

11 A No. I don't live there. I seen the gun out there one
12 time.

13 Q And that was just the description that you chose to
14 give Investigator Elms?

15 A Yes, ma'am.

16 Q And Brian Garris is your friend?

17 A I wouldn't say friend. We were associate. I met him
18 through Freddie.

19 Q Do you feel like kind of a rat being here today?

20 MR. DEAS: Objection, Your Honor.

21 THE COURT: Overruled.

22 BY MS. LAND:

23 Q You feel like a rat?

24 A No, I ain't no rat. I'm being me.

25 Q All right. That's all the questions I have.

1 MR. DEAS: Just one -- just very --

2 THE COURT: As long as it's responsive.

3 ANDREW MCBRIDE - RECROSS EXAMINATION

4 BY MR. DEAS:

5 Q You talked about what kind of clothes Brian Garris
6 would normally wear. Do you know anything else about his
7 appearance such as how he would normally appear?

8 A He keep his hair cut.

9 Q Did he ever wear dreads of braids or anything like
10 that?

11 A I ain't never seen it.

12 Q All right, sir. No further questions.

13 THE COURT: All right. You can step down.

14 MS. LAND: Your Honor, we call Investigator Lynn
15 Ham, and Your Honor I do want to have one quick word with
16 Investigator Ham. He can be excused. I haven't spoken
17 with him today and I know I need to go over a couple of
18 quick issues.

19 THE COURT: All right.

20 Ladies and gentlemen, while she's doing that, let me
21 tell you a couple of things. If you are like me and
22 remember Hurricane Hugo in -- hot off the press, still
23 don't know much, but at the time the storm supposedly would
24 arrive --

25 MS. LAND: Your Honor, instead of Investigator

State v. Garris September 2-5, 2008

280

1 Elms we are calling Officer Darryl McCants.

2 THE COURT: Instead of Ham?

3 MS. LAND: Ham, I mean. Sorry.

4 THE COURT: Officer McCants.

5 MS. LAND: Yeah, he's out there. Would you get
6 Officer McCants.

7 THE COURT: All right.

8 All right, sir, come on forward.

9 THE CLERK: Please raise your right hand and place
10 your left on the Bible.

11 OFFICER MCCANTS: Yes, ma'am.

12 (WHEREUPON, Darryl McCants, was
13 sworn to tell the truth.)

14 DARRYL MCCANTS - DIRECT EXAMINATION

15 BY MS. LAND:

16 Q Officer McCants, where are you employed?

17 A Clarendon County Detention Center.

18 Q How long have you been an employee of the Detention
19 Center?

20 A Since September 20, 2004.

21 Q And right now what is your position with the Detention
22 Center?

23 A Correction officer.

24 Q Thank you. And tell the jury some of your duties as a
25 corrections officer?

State v. Garris September 2-5, 2008

281

1 A Some of my duties as a correction officer is to make
2 sure it's a safe and secure facility for the inmates and
3 the officers.

4 Q Okay. Were you employed with the Detention Center on
5 April 28, 2008?

6 A 2008?

7 Q 2006, I'm sorry. 2006.

8 A Yes, ma'am.

9 Q Okay. And that was some time ago. Were you employed
10 as a correction officer at that time?

11 A Yes, ma'am.

12 Q And were you working in the booking area that day?

13 A Yes, ma'am.

14 Q Was Brian Garris brought in on that day?

15 A Yes, ma'am.

16 Q And those were on charges completely unrelated to
17 this; is that correct?

18 A Yes, ma'am.

19 THE COURT: All right, ladies and gentlemen of the
20 jury you may hear some testimony concerning the charges
21 against Mr. Garris that are not the charges in this case.
22 I'll tell you, Ms. Land can correct me if I'm wrong, those
23 charges were disposed of in a manner that was favorable to
24 Mr. Garris by way of a not guilty resolution. Also, you
25 may not consider the fact that any other charges that may

State v. Garris September 2-5, 2008

282

1 have been resolved in that fashion in way against Mr.
2 Garris. Testimony in that regard is simply to give you
3 context of why Mr. Garris may have been in a certain place
4 at a certain time.

5 All right.

6 BY MS. LAND:

7 Q Officer McCants on that day what was your duties and
8 responsibilities in regards to Brian Garris?

9 A Well, so when he come in to search him and get him
10 through the booking process and get him processed and
11 classified and sent to a unit.

12 Q Okay. And what did you do to make sure that all those
13 things happened?

14 A You mean when he first come in?

15 Q Uh-huh. Yes.

16 A Okay. When he first came in I pat him down and he
17 said he had to use the restroom. So I --

18 Q So you say you patted him down?

19 A Yes.

20 Q What does a pat down consist of?

21 A A frisk search.

22 Q Okay, a frisk search from head to toe. So you
23 basically just patted the outside of his body?

24 A Yes, ma'am.

25 Q And then what happened?

State v. Garris September 2-5, 2008

283

1 A He said he wanted to go to the restroom, so I opened.
2 the holding cell to the restroom. Then when he came out
3 the restroom the officer was standing there with his
4 clothes, so I took him to the shower area.

5 Q All right. Let me stop you for a second. When he
6 went to the restroom in the holding cell --

7 A Yes, ma'am.

8 Q -- does that bathroom, is that a private bathroom?

9 A Yes, ma'am.

10 Q Okay. So you can go in there and use the restroom,
11 take anything off of your person and nobody can see what
12 you're doing?

13 A Not with the door closed.

14 Q Okay. And did he, in fact, close the door that day?

15 A The door was closed.

16 Q Okay. And then he came out?

17 A Yes, ma'am.

18 Q And then what happened?

19 A The officer said that his clothes was ready so I lead
20 him to the shower area and he was dressed in uniform. I
21 got his clothes, I gave it to the officer. I finished the
22 booking process. He was placed back into the holding cell
23 until he could be escorted over to his cell.

24 Q Is that the same holding cell that he used the
25 bathroom in earlier?

State v. Garris September 2-5, 2008

284

1 A Yes, ma'am.

2 Q Was he strip searched during that time with you?

3 A That --

4 Q That time being booked in?

5 A No, ma'am, he was not strip-searched.

6 Q Okay. Why was he not strip-searched?

7 A Because most of the time we get strip-searches at the

8 request of the officer. A lot of times it's drugs or

9 something like that. The officer will strip-search them.

10 We don't strip-search no more.

11 Q Okay. So that is something that has to be requested

12 by the officer that brings them in?

13 A Yes, unless it's probable cause to strip-search.

14 Q Okay. Did the officer request that he be strip-
15 searched?

16 A No, he didn't request a strip-search.

17 Q So he basically in your presence he just changed into
18 the orange jumpsuit?

19 A Yes, ma'am.

20 Q And then went back in that holding cell with it's
21 private bathroom?

22 A Yes.

23 Q How long did he stay in that holding cell?

24 A I can't tell you what time. Probably 30 minutes to an
25 hour.

1 Q Okay. And what is the purpose of that holding cell?

2 A The holding cell is basically, they are placed there
3 until they are escorted over to the other side to B-2.

4 Q Okay, and B-2 was the cell he was assigned to.

5 A B-2 was building and cell on the other side.

6 Q Okay. So B is the building and 2 is the cell?

7 A It's Bravo.

8 Q Okay. Bravo 2 is where he was assigned?

9 A Yes, ma'am.

10 Q Did you escort him to B-2?

11 A No, ma'am, I didn't escort him. I wouldn't escort him
12 because I was assigned to booking.

13 Q At this time do you y'all have -- like most people
14 that come into this courtroom have to walk through a metal
15 detector -- at that time did y'all have a metal detector?

16 A No, ma'am, we didn't have a metal detector.

17 Q Do you have anything at this time?

18 A Yes, ma'am, we have one.

19 Q Okay. What do you have now?

20 A We have a metal detector wand so when they first come
21 down they're wand, and then they are pat down searched.

22 Q And so you wave a wand up and down their body it would
23 detect any metal?

24 A Yes, ma'am.

25 Q Okay, and what is the purpose of that wand?

State v. Garris September 2-5, 2008

286

1 A To detect any object that is metal, knives. It can
2 detect keys. Anything on you that is metal.

3 Q Okay, that someone shouldn't have in the jail?

4 A Yes, ma'am.

5 MS. LAND: Beg the Court's indulgence for a
6 moment.

7 (Pause.)

8 MS. LAND: Your Honor, that's all at this time for
9 this witness.

10 THE COURT: Mr. Deas?

11 MR. DEAS: Thank Your Honor. Please the Court.

12 DARRYL MCCANTS - CROSS-EXAMINATION

13 BY MR. DEAS:

14 Q How you doing Mr. McCants?

15 A How you doing.

16 Q My name is Garryl Deas. I represent the defendant,
17 Mr. Garris.

18 A Yes, sir.

19 Q Sir, do you go by a specific rank?

20 A Just Correction Officer McCants.

21 Q Okay. Mind if I call you Officer McCants?

22 A That's fine.

23 Q Officer McCants, you were employed as a corrections
24 officer back on April 28, 2006; correct.

25 A Yes, sir.

1 Q When Mr. Garris was brought into the jail?

2 A Yes, sir.

3 Q When he was first brought in, what do you call the
4 area where inmate -- where detainees are brought in
5 initially?

6 A Intake and booking.

7 Q Intake and booking?

8 A Yeah.

9 Q Is that the area that you worked, that you were
10 working during that time?

11 A Yes, sir. The booking corporeal wasn't there so I was
12 working in the booking area.

13 Q So did Mr. Garris come into the intake booking area by
14 himself, was he the only detainee coming in at that time?

15 A At that time. Yes, sir.

16 Q And was there a law enforcement officer, I assume a
17 law enforcement officer was with him?

18 A Right.

19 Q Do you know who it was, remember who it was?

20 A I think it was McCoy.

21 Q Officer William McCoy?

22 A Yeah.

23 Q And they brought Mr. Garris in was Mr. Garris fully
24 clothed?

25 A Fully clothed.

State v. Garris September 2-5, 2008

288

1 Q Do you recall what he had on?

2 A I'm sorry. I can't recall.

3 Q Do you know if he had -- do you recall any specifics
4 about the shirt he had on at that time?

5 A I know jeans and a shirt. I can't recall the exact
6 color.

7 Q Now, tell me specifically what is the procedure when a
8 detainee is booked and processed when they first come into
9 the jail as a detainee; what is the procedure in the
10 booking intake area?

11 A Since he walked in the door?

12 Q Yes, sir.

13 A Okay. He's walked in the door. I speak to the
14 officer to see what he's there for. And then we go over
15 and I wand him down, frisk him, shoes frisk, cuff him and
16 them he'll have a seat. And we go on with the booking
17 process. We get all the information --

18 Q Let me stop you right there for a second. You
19 indicate that part of that procedure is to wand the
20 detainee down. That's the process now. Was that the
21 process back in '06?

22 A No, we didn't have a wand.

23 Q Was there any type of metal detector system in place
24 at the jail back in 2006?

25 A No.

1 Q Was there any type of metal detector device that was
2 used anywhere in the jail back in '06?

3 A Bond Court.

4 Q Bond Court. So back in 2006, when Mr. Garris was
5 brought in you basically you first found out why he was
6 there, did some paperwork on him I assume?

7 A When he first walked in?

8 Q Right.

9 A When he first walked in I found out why he was there,
10 then I pat him down.

11 Q So the first thing you did was frisk, a frisk search
12 on him?

13 A Frisk search.

14 Q And that's a head to toe pat down type search?

15 A Yes.

16 Q Over the clothes?

17 A Yes, sir.

18 Q Did you feel anything?

19 A No, sir.

20 Q Feel any weapon?

21 A No, sir.

22 Q Feel anything that made you feel suspicious or
23 concerned?

24 A No, sir.

25 Q Then what did you do after that?

State v. Garris September 2-5, 2008

290

- 1 A After I patted him down I took the cuffs off and he
2 asked if he could use the restroom. So I let him use the
3 restroom.
- 4 Q Is the restroom in the booking and intake area?
- 5 A Yes, it is. In the holding cell.
- 6 Q How big an area are we talking about; how big is that
7 booking and intake room. Is it as large as, let's say from
8 this jury box to the other jury box and from the bar to the
9 bench?
- 10 A No, not that big.
- 11 Q That would be a fair estimate of the booking intake
12 area?
- 13 A It's not real big.
- 14 Q And how many -- are there any cells in the booking and
15 intake area?
- 16 A Yes, it's holding cells.
- 17 Q And are the bathrooms in the cells?
- 18 A Yes, sir.
- 19 Q And so when he went to the bathroom he had to go to
20 the bathroom in a cell?
- 21 A Yes, sir. A holding cell.
- 22 Q And the cell, is it a door that closes the cell or are
23 they bars?
- 24 A No, it's a door.
- 25 Q And does the door have an opening in it?

- 1 A It has a glass in it.
- 2 Q A glass in the door that you can observe the detainee,
3 where you could look at him.
- 4 A Yes, it has a glass in it.
- 5 Q So he went in the bathroom?
- 6 A Yes, sir.
- 7 Q And when he went in was he alone?
- 8 A Yes, sir.
- 9 Q No one went in with him?
- 10 A No, sir.
- 11 Q How long was he in there?
- 12 A A few minutes.
- 13 Q A few minutes. Would you say, what, two minutes,
14 three minutes, ten minutes?
- 15 A About five or six minutes.
- 16 Q He wasn't in there an unusually long amount of time?
- 17 A No.
- 18 Q And then when he came out what was done then, is that
19 when you did -- his clothes were taken from him at that
20 time?
- 21 A Yeah. He said he had his clothes so we took to the
22 shower area and took his clothes.
- 23 Q Officer McCoy told you that Mr. Garris's clothes were
24 needed for evidentiary purposes?
- 25 A Yes, sir.

State v. Garris September 2-5, 2008

292

1 Q And what was actually taken from him; was he striped
2 down to his boxer shorts, to his underwear?

3 A Yes, sir.

4 Q So he had on his underwear?

5 A Yes, sir.

6 Q And everything else was taken by Officer McCoy?

7 A Yes, sir.

8 Q And he was searched again at that point?

9 A At that point he had his uniform on for the rest of
10 the process.

11 Q Was he searched by you again at any point during the
12 intake process?

13 A No, not at that time.

14 Q So the search you conducted was that initial frisk pat
15 down search?

16 A Yes.

17 Q And let me just ask you; did you search him again
18 prior to him getting his jail jumpsuit?

19 A No, sir.

20 Q Were you there when he put his jail jumper on?

21 A Yes, sir.

22 Q So you watched him do that?

23 A No, sir.

24 Q Now, after he was booked, after he was processed at
25 the booking intake area, where was he taken after that?

- 1 A After he was -- he was placed back into the holding
2 cell at that time. After the process.
- 3 Q And the booking area, is that referred to as the B-2
4 building?
- 5 A No, sir. B-2 is on the other side.
- 6 Q B-2 is on the other side?
- 7 A Yeah.
- 8 Q How would you -- how would you identify what cell he
9 was in after he got the jail jumper and after he was in the
10 holding cell?
- 11 A When he goes over to the other side?
- 12 Q Right?
- 13 A Bravo 2.
- 14 Q Is that what they call the staging area?
- 15 A Well, it's the holding area. Bravo 2, Cell 2. It's a
16 holding cell.
- 17 Q So ultimately that's where he was taken?
- 18 A Yes, sir.
- 19 Q The building B-2, Cell 2?
- 20 A Bravo 2, Cell 2.
- 21 Q And do you have any knowledge, sir, as to whether he
22 was in that cell by himself or was he there -- was someone
23 else in that cell?
- 24 A No, he was by himself.
- 25 Q Were you the one that took him to that cell or someone

State v. Garris September 2-5, 2008

294

1 else did?

2 A I took him to the cell. When I took him over there
3 there was nobody else in that cell.

4 Q And do you recall, sir, how long is your shift?

5 A Twelve hours.

6 Q You have a 12 hour shift?

7 A Yes.

8 Q That day, and you may not be able to recall, but do
9 you recall how many detainees were brought into the jail on
10 that day, April 28, 2006, that you helped process in?

11 A I can't remember.

12 Q Let's say -- it wasn't just Brian Garris unless it was
13 a slow day in Clarendon County that day. He wasn't the
14 only person brought into the jail that day was he?

15 A No, sir.

16 Q Okay. He wasn't the only person you processed in and
17 booked in that day was he?

18 A That's right.

19 Q Thank you, sir. I have no further questions.

20 THE COURT: Redirect?

21 DARRYL MCCANTS - REDIRECT EXAMINATION

22 BY MS. LAND:

23 Q At no time did Brian Garris go through any sort of
24 metal detector?

25 A No, ma'am.

1 Q Not when he came in?

2 A No, ma'am.

3 Q And not when he was taken to B-2?

4 A No, ma'am.

5 Q And he was in B-2 by himself?

6 A Yeah, that cell by himself.

7 Q Okay. That's all the questions I have.

8 MR. DEAS: Nothing further.

9 THE COURT: All right, you can step down.

10 MS. LAND: Your Honor, we call Johnny McCrea.

11 THE COURT: Everybody on the jury okay. Anybody
12 need to take a break?

13 (No response.)

14 THE COURT: Mr. McCrea.

15 THE CLERK: Please raise your right hand and place
16 your left on the Bible.

17 (WHEREUPON, Johnnie McCrea, was
18 sworn to tell the truth.)

19 JOHNNIE MCCREA - DIRECT EXAMINATION

20 BY MS. LAND:

21 Q If you'll state your name for the jury, please?

22 A Johnnie McCrea.

23 Q And Mr. McCrea, are you presently incarcerated at the
24 South Carolina Department of Corrections?

25 A Yes, ma'am.

State v. Garris September 2-5, 2008

296

1 Q And for what charges?

2 A Drug charges.

3 Q How long have you served?

4 A A 15 year sentence?

5 Q And are you currently what's considered a trustee with
6 the Department of Corrections?

7 A Yes, ma'am.

8 Q And what does that mean?

9 A It means that they trust me to do my job.

10 Q And your job is?

11 A I'm a cook.

12 Q Were you in the Clarendon County Jail as a trustee of
13 SCDC at one point?

14 A Yes, ma'am.

15 Q How long were you there?

16 A Two years and five months.

17 Q Why are you here testifying today?

18 A Because I was brought here to testify.

19 Q And I actually served a subpoena on you today?

20 A Yes, ma'am.

21 Q Is that correct?

22 A Yes, ma'am.

23 Q And are you receiving any reduction in your sentence
24 for your testimony today?

25 A No.

- 1 Q And you're getting no breaks or anything like that?
- 2 A No, ma'am.
- 3 Q And it doesn't affect your trustee status at all?
- 4 A No, ma'am.
- 5 Q So you're testifying because I'm making you do this?
- 6 A Yes, ma'am.
- 7 Q When you were with the Clarendon County Detention
- 8 Center, what were your duties and responsibilities?
- 9 A To cook, serve trays, help clean up.
- 10 Q And on April 15, 2006, were you in the Clarendon
- 11 County Jail?
- 12 A Yes, ma'am.
- 13 Q And those were your duties and responsibilities at the
- 14 time?
- 15 A Yes, ma'am.
- 16 Q During that time did you get to know some of the
- 17 inmates?
- 18 A Some of them on the trustee side.
- 19 Q And you would know the others by face?
- 20 A Sometimes, yes.
- 21 Q Did something happen -- now, well, tell me this first,
- 22 when you picked up their carts, what did that -- when you
- 23 picked up their trays, what would that process work?
- 24 A Just walk to the door and dump them.
- 25 Q You'd go from door to door. And where would their

State v. Garris September 2-5, 2008

298

1 tray be?

2 A Sitting on the flap.

3 Q Okay. And how large is the flap?

4 A It's -- about that --

5 Q Just enough space for the tray to come through,
6 basically?

7 A Yes, ma'am.

8 Q And I'm sorry, because I've said the wrong date.

9 April 29, 2006, you were a trustee at the Clarendon County
10 Detention Center?

11 A Yes, ma'am.

12 Q And at that time you collected trays?

13 A Yes, ma'am.

14 Q Did you have an opportunity on that day to collect a
15 tray from B-2?

16 A Yes, ma'am.

17 Q Okay. And that was the cell of Brian Garris; is that
18 correct?

19 A Yes, ma'am.

20 Q How many trays, at that time, had you already picked
21 up?

22 A Quite a few from the other block.

23 Q Okay. And when you picked them up what would you do?

24 A Dump them.

25 Q In the trash can?

1 A Yes, ma'am.

2 Q Okay. And then when you got to the Bravo building how
3 many trays had you gotten?

4 A When I got to Bravo, I picked up few. There was three
5 trays there I picked up on the side.

6 Q Okay. When you got to B-2 was there a tray in the
7 flap?

8 A Yes, ma'am.

9 Q When you picked up the tray, what, if anything, did
10 you notice?

11 A I noticed that it had a lot of weight to it, a lot of
12 food piled up on top of it.

13 Q Okay. So the food was piled in a mound sort of
14 manner?

15 A Yes, ma'am.

16 Q Did you see anything on the tray at first?

17 A I couldn't see nothing but food, spoons.

18 Q Okay, and it was heavier than normal to pick up?

19 A Yes, ma'am.

20 Q Did that strike you as odd?

21 A Yes, ma'am.

22 Q Did you go and dump that tray into the trash can?

23 A Yes, ma'am.

24 Q And what did you discover when you put that trash into
25 the trash can?

State v. Garris September 2-5, 2008

300

- 1 A Well, I dumped a tray a gun had fallen off the tray
2 into the trash can. I jumped back.
- 3 Q Okay. How many trays did you retrieve from B-2?
- 4 A That day I got a lot of trays.
- 5 Q No, on that one day, from Brian Garris's cell?
- 6 A Just one tray.
- 7 Q Okay. And there was only one in the flap?
- 8 A Yes, ma'am.
- 9 Q And who was standing in front of the flap as you
10 collected it?
- 11 A He was.
- 12 Q Okay. And when you say he, who do you mean?
- 13 A Brian.
- 14 Q Can you identify him in the courtroom today?
- 15 A Yes, ma'am.
- 16 Q Who is he?
- 17 A He's sitting over there.
- 18 Q In the green plaid shirt next to Mr. Deas?
- 19 A Yes, ma'am.
- 20 Q When you saw the gun did you actually see the gun fall
21 off the tray into the trash can?
- 22 A Yes, ma'am.
- 23 Q And what did you do at that point?
- 24 A I left and went back to the kitchen. As I was walking
25 back to the kitchen there was another guy we worked with. I

1 told him I saw a gun drop from a tray to the trash can. So
2 we went back to the kitchen and I told Ms. Jones. I told
3 her and she notified Sgt. Baker. I told her I don't want
4 nothing to do with it. So she tell him anyway. So she
5 went to talk to him. He called me back to help him. He
6 called and talked to me outside, and he hold the gun up in
7 the air and said, is this the gun you found. I said, yes,
8 sir.

9 Q Did you -- when you talked to Ms. Jones, was the trash
10 can still in your sight?

11 A No. The trash can was in the alley way.

12 Q Okay. And why did you tell Ms. Jones?

13 A That's what I had to do. I tried -- because I was
14 kind of shook myself.

15 Q Okay. What shook you up about it?

16 A That's the first time I found a gun.

17 Q Okay.

18 A And it scared me when it fell off the tray.

19 Q Okay. All right. Can you describe the gun to the
20 jury?

21 A It was a silver gun with white tape on the handle.

22 Q Okay. And you were with Sgt. Baker when he retrieved
23 it out of the trash can?

24 A I wasn't there.

25 Q Okay. He asked you if that was the gun that you had

State v. Garris September 2-5, 2008

302

1 found?

2 A Yes, ma'am.

3 Q Okay. When you told Ms. Jones, do you remember
4 exactly what you told her?

5 A Not quite.

6 Q Okay. Did you identify Brian Garris --

7 A Yes.

8 Q -- when you told her the gun had fallen from his tray?

9 A Yes, ma'am.

10 Q And you said Brian Garris's tray had a gun on it.

11 A A couple of month before he came in. I remembered his
12 face. I didn't know his name. I just remembered his face.

13 Q Okay.

14 MS. LAND: I ask the Court's indulgence for one
15 moment.

16 (Pause.)

17 BY MS. LAND:

18 Q Was there a great deal of trash and food and whatnot
19 in the trash can when you emptied Brian Garris's trash?

20 A I don't remember.

21 Q Do you remember -- you hadn't seen a gun in that trash
22 can before this; is that correct?

23 A No.

24 Q But when you dumped that tray you actually saw it fall
25 off of that tray?

1 A Yes, ma'am.

2 Q Okay. That's all the questions I have. Please answer
3 any questions Mr. Deas has.

4 THE COURT: Mr. Deas?

5 MR. DEAS: Thank you.

6 JOHNNIE MCCREA - CROSS-EXAMINATION

7 BY MR. DEAS:

8 Q Mr. McCrea, my name is Garryl Deas. I represent the
9 defendant, Mr. Brian Garris. You were at the Clarendon
10 County Detention Center as part of a -- basically, you
11 called it a trustee program; is that what it's called?

12 A No. I'm a trustee because I had did so much time.

13 Q So that's what allowed you to be placed at Clarendon
14 County Detention Center as a cook?

15 A Yes, sir.

16 Q And part of your duties was to collect the food trays?

17 A Cook and collect food trays.

18 Q All right. And had you had any contact with Brian
19 Garris on the -- prior to -- during the day on the day you
20 picked up his food tray; had you had any contact with him
21 prior, on that particular day before you picked up his food
22 tray?

23 A No, sir.

24 Q Now, the process that you go through when you pick up
25 these trays, you have a cart with you?

State v. Garris September 2-5, 2008

304

- 1 A Yes, sir.
- 2 Q So when you pick up the tray you put the tray on the
- 3 cart?
- 4 A No. Pick the tray up and dump the tray.
- 5 Q When you pick the tray off the flap that the detainee
- 6 puts the tray on the flap and the flap extends from the
- 7 door of the cell?
- 8 A Yes, sir.
- 9 Q And when they're finished eating they put the tray on
- 10 the flap?
- 11 A Yes, sir.
- 12 Q And you come around and get it?
- 13 A Yes, sir.
- 14 Q And when you get the tray you go to the trash can and
- 15 dump it?
- 16 A Yes, sir.
- 17 Q And you picked up each tray individually and then go
- 18 dump it or do you ever go pick up a few and then go dump
- 19 those few?
- 20 A I picked up that tray and dumped that tray.
- 21 Q And the trash can that's in the unit, is there a trash
- 22 can in each different unit?
- 23 A Yes, sir.
- 24 Q So it's not -- you don't have to take the trash can
- 25 with you when you go from unit to unit to pick up trays?

1 A No, sir.

2 Q There's a trash can for each unit?

3 A Yes, sir.

4 Q And on this particular day, I believe, you testified
5 earlier this was on April 29, 2006; does that sound about
6 right?

7 A Yes, sir.

8 Q And on that particular day -- which unit was Mr.
9 Garris in if you can remember?

10 A I can't remember the name of it, the block he was in,
11 but I know the block when I see it.

12 Q Is it like a holding cell area?

13 A It's a holding cell.

14 Q And did you have someone else with you that day
15 picking up trays, was there another inmate with you?

16 A Not at that time.

17 Q Okay, so no inmate was with you?

18 A Not at that time.

19 Q There wasn't -- was there ever an inmate with you
20 picking up trays?

21 A There was a guy with me, he was working in the kitchen
22 with me at the time I was picking up the trays, he wasn't
23 there.

24 Q He was not with you when you were picking up the
25 trays?

State v. Garris September 2-5, 2008

306

1 A No, sir.

2 Q And when did you and him get together that day?

3 A When I got the tray, when I was going back up the hall
4 he was the one that was coming down.

5 Q Do you know who -- do you remember the name of this
6 other inmate that you talked to that day?

7 A I can't remember his name. I can't remember.

8 Q So when you were picking up trays in the unit that Mr.
9 Garris was in you were by yourself?

10 A Yes, sir.

11 Q Before you started picking up trays in the unit Mr.
12 Garris was in did you look in the trash can to see what was
13 in it?

14 A No, sir.

15 Q So you don't know what was in the trash can before you
16 started dumping trays?

17 A No, sir.

18 Q And so you -- I believe you testified that Mr.
19 Garris's tray was the second tray you picked up, right, or
20 you tell me. Was his tray the first one or was his tray
21 the second one?

22 A In that cube?

23 Q In that unit?

24 A His tray was the first one I picked up in that cube.

25 Q Correct me if I'm wrong, but did you not just testify

1 on direct that you had picked up one tray in that unit, in
2 Mr. Garris's unit before you picked up his?

3 A I picked up Mr. Garris's tray and it was --

4 Q I'm not talking about when you picked it up, but I
5 thought I heard you say a few moments ago that before you
6 picked up Mr. Garris's tray and dumped his tray you had
7 picked up another one first --

8 A It could have been.

9 Q -- and then dumped that one and then you went and got
10 Mr. Garris's and dumped his. Is that not what you just
11 said?

12 A Yes, sir.

13 Q Because if you don't know we can have the court
14 reporter read back for me. Is that what you said?

15 A Yes.

16 Q Okay. Let me make sure I'm correct on it. Mr.
17 Garris's tray was the second one you picked up?

18 A Second one, yes, sir.

19 Q And so that means there's one before his that you had
20 picked up and dumped.

21 A One tray, dumped.

22 Q All right. Okay. Now, are you -- when you went and
23 picked up Mr. Garris's tray, does the tray have a cover on
24 it?

25 A No, no cover.

State v. Garris September 2-5, 2008

308

1 Q There's no cover on it?

2 A No.

3 Q All right. And when you picked it up what did it feel
4 like?

5 A It was heavy.

6 Q And you went ahead and dumped it?

7 A Yes, sir.

8 Q And what did you see when you dumped the tray?

9 A Well, when I dumped the tray the food came off and the
10 gun came off second to last.

11 Q And you said when you saw it you went ahead and
12 reported it?

13 A Yes, sir. When I jumped back, I was pretty startled
14 when the gun came off the tray. And I was going down the
15 hall that I told you was with me, we went back down the
16 hall and talked to Ms. Jones about it.

17 Q The guy that was coming up the hall, he was another
18 inmate?

19 A Yes, sir.

20 Q And you told him that you just saw a gun?

21 A No, I ain't told him.

22 Q What'd you tell him?

23 A I told him we was going to the kitchen.

24 Q Okay.

25 A When we got in the kitchen that's when I told him

1 about the gun.

2 Q What did you tell him?

3 A I told him I think I seen a gun in the trash can.

4 Q And did you mention Mr. Garris to him at all?

5 A No.

6 Q Did you tell him, I think Mr. Garris had a gun on his
7 tray?

8 A No.

9 Q You just said you think you saw a gun in the trash
10 can?

11 A Or come off the tray into the trash can.

12 Q And then what did you do, after you talked to this
13 inmate about it what did you do then?

14 A I talked to Ms. Jones.

15 Q And you reported it to Ms. Jones. What was her role
16 in the jail at that time?

17 A He was the food supervisor.

18 Q And you told her about this gun that went into the
19 trash can?

20 A Yes, sir.

21 Q All right. And after that, I believe you said you
22 talked to Officer Baker about it, he took you outside and
23 talked to you?

24 A She talked to Officer Baker and Baker called me and
25 talked to me did I see this gun.

State v. Garris September 2-5, 2008

310

1 Q How long -- how big was this gun that you saw?

2 A It was a small gun.

3 Q How many inches long would you say it was?

4 A I don't know in inches. It's small.

5 Q And I'm going to show you something, Mr. McCrea, I've
6 got a tray here that I've retrieved from the Clarendon
7 County Detention Center. Does this tray look similar to
8 the type of tray that you took off of Mr. Garris's flap
9 that day?

10 A Yes, sir.

11 Q Is it pretty much just like it?

12 A Yes, sir.

13 Q This pretty much the same tray that they use for all
14 the inmates?

15 A No, some inmates trays are different from those.

16 Q Okay. But this is the kind that Mr. Garris had that
17 day?

18 A Yes.

19 Q And is it your testimony, sir, that there was enough
20 food on this tray to hide a firearm?

21 A Yes, sir.

22 Q Okay. And I'm going to hand --

23 MR. DEAS: May I approach the witness?

24 THE COURT: Yes, sir.

25 BY MR. DEAS:

State v. Garris September 2-5, 2008

311

1 Q -- I'm going to hand you this food tray. As you can
2 see it's compartmentalized. Which compartment on that
3 tray, if you know, was the gun?

4 A The gun?

5 Q What I'm asking is do you know where the gun was on
6 the tray?

7 A No.

8 Q But you're saying there was enough food on that tray
9 to hide a gun?

10 A Uh-huh.

11 THE COURT: You need to say yes or no.

12 A Yes, sir.

13 BY MR. DEAS: .

14 Q And this tray here is very similar or just like the
15 one that you took from Mr. Garris that day?

16 A Yes, sir.

17 MR. DEAS: Your Honor, I want to offer this into
18 evidence.

19 THE COURT: All right.

20 MS. LAND: No objection.

21 THE COURT: All right. That will be Defendant's
22 No. 1.

23 (Defendant's Exhibit No. 1, food
24 tray, was marked and entered.)

25 BY MR. DEAS:

State v. Garris September 2-5, 2008

312

1 Q After you talked to Officer Baker about the gun, is
2 that the extent of any contact you had with any jail
3 officials about this gun after you talked to Officer Baker?

4 A Yes, sir.

5 Q Did someone else talk to you about it after the fact?

6 A Yes, sir.

7 Q Who else?

8 A That officer over there.

9 Q Investigator Elms, the officer in the red shirt?

10 A Yes, sir.

11 Q Did anyone else talk to you about your discovery of
12 this gun?

13 A I can't remember.

14 Q No other jail officials? Officer Baker and
15 Investigator Elms?

16 A Yes, sir.

17 Q Thank you, sir. I have no further questions.

18 THE COURT: Ms. Land?

19 JOHNNIE MCCREA - REDIRECT EXAMINATION

20 BY MS. LAND:

21 Q When you spoke to Investigator Elms about the events
22 of that day did he show you a photo lineup?

23 A Yes, ma'am.

24 Q And could you look at that photo lineup and identify
25 Brian Garris?

1 MR. DEAS: Your Honor, I'm going to object.

2 That's outside the scope of cross.

3 MS. LAND: He asked if he spoke to anybody besides
4 that and he said Investigator Elms.

5 THE COURT: All right. I'll allow that.

6 MS. LAND: Okay.

7 BY MS. LAND:

8 Q And so out of this can you identified the person who
9 had the gun on the tray?

10 A Yes, ma'am.

11 Q And that person is in the courtroom today?

12 A Yes, ma'am.

13 MS. LAND: Your Honor, I'd like this entered into
14 evidence as State's No. 3.

15 THE COURT: All right. Mr. Deas over your
16 objection on the scope of the redirect?

17 MR. DEAS: Yes, sir.

18 THE COURT: Any other objection?

19 MR. DEAS: I'll object as to relevance.

20 THE COURT: Overruled.

21 BY MS. LAND:

22 Q All right, this is --

23 THE COURT: Let her mark that.

24 MS. LAND: Oh, I'm sorry.

25 COURT REPORTER: I got it, Judge.

State v. Garris September 2-5, 2008

314

1 (State's Exhibit No. 3, photo
2 lineup, was marked and entered.)

3 THE COURT: Okay.

4 BY MS. LAND:

5 Q All right. So these are the trays that they use in
6 the Clarendon County jail?

7 A Yes, ma'am.

8 Q And your silverware is here and milk or whatever is
9 here?

10 A Yes, ma'am.

11 Q And you cook for the jail, right?

12 A Yes, ma'am.

13 Q So describe for the jury what you would put the
14 compartments and how much you would put?

15 A I can't tell you how much I put on it.

16 THE COURT: I can't hear you.

17 A I can't tell you exactly how much I put on it, but
18 each one of these compartments here was for food.

19 BY MS. LAND:

20 Q Okay, and so this one would be meat, probably?

21 A Rice.

22 Q Okay. This would be a stack of rice?

23 A Yes, ma'am.

24 Q Okay, now would you describe it as being full of rice?

25 A I would have enough to cover that whole slot. That's

1 right.

2 Q Okay, so it would cover this slot.

3 A Yes, ma'am.

4 Q All right, and how about this one?

5 A This would be bread.

6 Q Okay, this would be bread?

7 A Yes, ma'am.

8 Q And how many pieces of bread would you get?

9 A One or two I think.

10 Q And would that be like flat white bread?

11 A Yes, ma'am.

12 Q Was it ever rolls or biscuits?

13 A Sometimes it would be cornbread, sometimes, biscuits.

14 Q Okay. But one or two pieces of white bread or one or
15 two pieces of those things?

16 A That would be the cornbread.

17 Q All right. And how about right here?

18 A I think some type of vegetable.

19 Q Okay, and when you say vegetable, like what kind?

20 A Corn or some vegetable.

21 Q Okay, would this space be full of those vegetables?

22 A Yes, ma'am.

23 Q Okay. How about this one?

24 A That would be like fruit, an orange or something.

25 Q Where does the meat go?

State v. Garris September 2-5, 2008

316

- 1 A The meat. The meat goes on top of the rice.
- 2 Q Oh, the meat goes on top of the rice. How much meat
- 3 would be on it?
- 4 A According to what we're having.
- 5 Q Okay. If you're having ham?
- 6 A One piece.
- 7 Q And how about Salisbury steak how many pieces of the
- 8 steak would you get?
- 9 A One piece.
- 10 Q Okay. How about ham?
- 11 A One piece.
- 12 Q All right. And then right here is fruit?
- 13 A Yes, ma'am.
- 14 Q And is it pretty much full?
- 15 A The fruit would be like an orange or something.
- 16 Q Okay. So it was never like a fruit cocktail or
- 17 anything?
- 18 A No.
- 19 Q And so on this tray was enough to feed a grown man?
- 20 A Pretty much.
- 21 Q Okay. Would you describe it as a lot of food?
- 22 A What we eat.
- 23 Q Did it fill you up?
- 24 A Yes, ma'am, it did.
- 25 Q All right, if you took all that food would it be

1 enough to cover that gun?

2 A It can. It can.

3 Q Okay. Well, let me ask you, did the food on Brian
4 Garris's tray that day cover the gun?

5 A Yes, ma'am.

6 THE COURT: Mr. Deas?

7 MR. DEAS: Just very brief.

8 JOHNNIE MCCREA - RE-CROSS-EXAMINATION

9 BY MR. DEAS:

10 Q Mr. McCrea, you spent two years and about five months
11 out there at the jail at Clarendon County Detention Center,
12 right?

13 A Uh-huh.

14 Q And you worked in the dietary services area,
15 basically, you worked in the food area, right?

16 A Yes.

17 Q So would you say the jail is known for giving large
18 portions of food to inmates?

19 A Sometimes they do, sometimes.

20 Q And when you say sometimes, how often would that be,
21 every day, once a week?

22 A It's according to how it's fixed, what we have.

23 Q And -- but the most part when the food is served the
24 portions are relatively -- wouldn't be considered heaping
25 portions of food, they're basically balanced meals but you

State v. Garris September 2-5, 2008

318

1 receive a portion sufficient to sustain a human begin?

2 A Yes, sir.

3 Q But you're not giving heaping portions of food like if
4 you went to the buffet that day?

5 A No, sir.

6 Q All right. Thank you, sir. I have no further
7 questions.

8 MS. LAND: No further questions.

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

10 Ms. Land, Mr. Deas, will this witness be needed any
11 further?

12 MS. LAND: No, no, he's not.

13 THE COURT: All right, Mr. McCrea, you're excused.
14 Thank you.

15 MR. MCCREA: Thank you.

16 MS. LAND: Your Honor, we call Joanne Jones.

17 THE COURT: Does anybody need a break? We'll take
18 a break -- we'll check a few minutes.

19 I'll check voice mail. Evidently he's got some
20 business -- I'm going to speak with him on the record real
21 quickly before he does that. Mr. Hill you can bring him
22 out.

23 What is your name for the record?

24 MR. EVANS: Evans.

25 THE COURT: I understand you need to go check your

1 voice mail on your phone?

2 MR. EVANS: Yes, sir.

3 THE COURT: I guess it's safe to say it doesn't
4 have anything to do with this case?

5 MR. EVANS: No.

6 THE COURT: All right. The bailiff is going to go
7 with you. That is what the rules require. If you get any
8 messages that mention this case let me know. And then
9 check them and come on back and we'll be at your disposal,
10 all right. Thank you.

11 (Jury out at 4:44)

12 THE COURT: Ms. Land, I think this gentleman has a
13 question he wants to ask me, but I don't know --

14 (Pause.)

15 (Jury in at 5:08 p.m.)

16 THE COURT: Ladies and gentlemen, there will
17 probably be one more witness this afternoon.

18 Ms. Land.

19 MS. LAND: Your Honor, we call Joanne Jones

20 THE CLERK: Raise your right and place your left
21 hand on the Bible.

22 (WHEREUPON, Joanne Jones was sworn
23 to tell the truth.)

24 JOANN JONES - DIRECT EXAMINATION

25 BY MS. LAND:

State v. Garris September 2-5, 2008

320

- 1 Q Would you state your name for the jury, please?
- 2 A Joanne Jones.
- 3 Q And Ms. Jones, where are you employed?
- 4 A Now?
- 5 Q Now.
- 6 A At the Clarendon County Courthouse.
- 7 Q Okay. And are you still -- were you employed at one
- 8 time at the Clarendon County Detention Center?
- 9 A Yes, ma'am.
- 10 Q Okay. Are you still employed with them?
- 11 A No, I'm not. I had to go out on medical leave.
- 12 Q Okay. And what years were you employed with them?
- 13 A Three years.
- 14 Q Were you there in 2006?
- 15 A Yes.
- 16 Q And what were your duties and responsibilities at the
- 17 Detention Center?
- 18 A I was a supervisor cook and I made sure that the
- 19 inmates don't take anything out of the kitchen. I had to
- 20 prepare the food for the cook and supervise them.
- 21 Q And currently you say you are employed in the
- 22 courthouse?
- 23 A Yes.
- 24 Q What is your role in the courthouse?
- 25 A A bailiff.

1 Q A bailiff?

2 A Yes.

3 Q So you're in this courtroom just about every day?

4 A Yes.

5 Q Despite that fact, are you a little nervous?

6 A Yes, I am.

7 Q Ms. Jones, do you remember Johnnie McCrea?

8 A Yes.

9 Q And what was your relationship with him when he was at
10 the jail?

11 A He was my cook.

12 Q And so you would prepare things for him?

13 A Yes.

14 Q On August 29, 2006, do you recall him coming to you
15 and telling you about a gun?

16 A Yes.

17 Q What did he tell you?

18 A That he went -- when he come back in I asked him if
19 everything was all right. And he said, yes. I could see
20 something was wrong with him. I said, Johnnie, what
21 happened. He wouldn't say nothing. I said, Johnnie,
22 something's going on. Did somebody say something to you.
23 He said, no. I said, well, what happened. He said, I
24 picked up a tray and it feels heavy and when I dump it a
25 gun fell out. I said, what? He said, yeah, a gun. I

State v. Garris September 2-5, 2008

322

1 said, where the gun at. He said, it's in the garbage. I

2 said, where'd you get the gun from? He said, from Cell 2,

3 on the right-hand side going out the door.

4 Q Did he indicate to you who -- who's cell that was.

5 A I don't think he gave me a name, but he gave me the

6 number of the cell block. I can't remember the cell number

7 right now.

8 Q You said, block 2?

9 A Cell 2.

10 Q So that would be B-2, right?

11 A Yes.

12 Q Okay. What did you do after learning that he had

13 found a gun in the trash can?

14 A Well, I asked him did he see the gun before he dumped

15 the tray and he said, no. They had put the gun -- they had

16 put the food on top of the gun. I said, well, Johnnie,

17 you're going to have to report that. He didn't want to

18 report it. He was scared. I said, Johnnie, I'm not going

19 to loose my job. I'm not going to be in no trouble. So

20 somebody going to pick up that bag and there's going to be

21 problems. So I tell him I will report it.

22 Q So what did you do?

23 A On my way home, I saw Sgt. Baker and I called him and

24 said meet me outside. I said I had something to tell him

25 about. And I told him there was a gun in the trash.

1 Q When you said meet me outside, what does that mean?

2 A Like on the side going out.

3 Q What did he say to you in response to that?

4 A He said a gun in the trash and I said yes. He said
5 where did the gun come from. I said, when Johnnie went to
6 pick up the trays he dumped the tray and the gun fell out.
7 And he asked me what cell. I told him that stuff. I can't
8 remember it right now.

9 Q And was that the extent of your involvement with the
10 gun?

11 A Yes, ma'am.

12 Q That was it?

13 A Yes, ma'am.

14 Q Okay. Just a moment, Ms. Jones. I think I said the
15 wrong date. I think I said August 29. It was April --

16 A It was April.

17 Q Okay. Were you employed there in April 2006?

18 A Yeah.

19 Q Okay. So did you have any reason to write any of this
20 down?

21 A Oh, no.

22 Q Okay. You just wanted to make sure that somebody
23 knew?

24 A Yes. The pick the trash up in the morning and in the
25 afternoon. You never know, it might go off and somebody

State v. Garris September 2-5, 2008

324

1 get hurt. Like in the mornings we get to work at 4:00
2 o'clock and we have to walk right past that, it could be
3 me.

4 Q Is Sgt. Baker your supervisor?

5 A No.

6 Q Okay. Is he a supervisor?

7 A (No response.)

8 Q I mean, did you feel like you were telling someone who
9 had the authority to --

10 A Oh, yes.

11 Q Okay. Okay. Thank you. That's all the questions I
12 have.

13 THE COURT: Mr. Deas?

14 MR. DEAS: Thank Your Honor.

15 JOANN JONES - CROSS-EXAMINATION

16 BY MR. DEAS:

17 Q Ms. Jones, how you doing today?

18 A All right.

19 Q Good. Of course, you know me. I'm Garryl Deas. I
20 represent the defendant, Mr. Garris.

21 A Right.

22 Q Ms. Jones, you said you don't remember -- you really
23 don't remember the day this happened?

24 A I don't remember the date.

25 Q But you do recall the incident?

1 A Yes.

2 Q You recall Mr. McCrea coming to you and saying he
3 found a gun that fell off a tray?

4 A Yes.

5 Q And you said part of your job was that you were the
6 supervisor basically over the kitchen?

7 A Yes.

8 Q Typically, do y'all put -- do y'all serve enough food
9 to inmates where it would be sufficient to cover up a gun?

10 A Well, during that time we go by portions. A half a
11 cup of vegetables, and I can't remember what we had that
12 day, but yes, mashed potatoes and bread. I think it was
13 bread. I can't remember what all was on the tray.

14 Q Typically, would you describe the portions of food
15 that you all serve inmates as large portions, medium
16 portions or small portions?

17 A I think medium.

18 Q All right. And that would be typically the kind of
19 portions you'd serve on a daily basis, correct?

20 A Yes. We have a -- we have to go by portions. But
21 everything is the same portion.

22 Q And normally were you all -- could you describe a
23 typical meal that you all would serve the inmates?

24 A Chicken, mashed potatoes, rice, beans, cornbread,
25 cake, salad.

State v. Garris September 2-5, 2008

326

1 Q Now, would all that be on one meal or is that --

2 A Okay, like on Sundays we might have fried chicken,
3 rice, vegetables, cake and bread, desert and a drink.

4 Q And what about when it's not a Sunday. During the
5 week?

6 A Well, sometimes they get hamburgers, hot dogs,
7 something like that, mashed potatoes and vegetables and
8 fruit.

9 Q Correct, me if I'm wrong, but a meal would generally
10 consist of a starch --

11 A A starch.

12 Q -- a vegetable --

13 A A vegetable.

14 Q -- and some kind of a meat --

15 A Yeah.

16 Q -- and bread?

17 A Yeah. Bread.

18 Q And a drink? Do you get a desert like a piece of cake
19 or a fruit?

20 A Cake or either or either a fresh fruit. Whatever the
21 menu call for that's what we serve.

22 Q Particularly, you try to always maintain a balance
23 menu or meal so you would have a starch, vegetable, meat,
24 usually a piece of bread --

25 A Yes.

1 Q -- and a fruit or desert and a drink?

2 A Yeah.

3 Q And each one of those items would fit in one of these
4 areas of the tray?

5 A The tray --

6 THE COURT: What are you handing her, Mr. Deas?

7 MR. DEAS: I'm handing her what's marked as
8 Defendant's Exhibit No. 1.

9 THE COURT: All right.

10 A The bread go here. The meat, the starch, the
11 vegetables and the fruit. Whatever the menu call for and a
12 drink.

13 BY MR. DEAS:

14 Q Could you hold it so that the jury could see it and
15 say that again?

16 A Bread go here. Meat, the starch, the vegetables, all
17 go right here. Then the drink right here.

18 Q And then the silverware --

19 A Silverware right here.

20 Q And how many years did you serve in this capacity at
21 the jail?

22 A At the jail for three years. I had -- I got twenty-
23 something years in cooking.

24 Q And your opinion is that basically the portions of the
25 food that you all serve are pretty much down the middle;

State v. Garris September 2-5, 2008

328

1 not small, not large, but medium portions. Is that a fair
2 estimate or assessment?

3 A I say medium.

4 Q Okay. When Mr. McCrea talked you, told you about the
5 gun, did you leave the jail before you reported it to Sgt.
6 Baker or did you report it to Sgt. Baker before you left
7 the jail?

8 A Before I left the jail. It was on my way home.

9 Q Okay.

10 A But at that time, it happened round about 5:15 or 5:30
11 and I was on my way home. That's when I talked to him.

12 Q Did you tell him personally, face to face?

13 A Yes. I call him to meet me outside.

14 Q And he met you and that's when you told him about the
15 gun?

16 A Yes.

17 Q Do you know whether or not jail officials at that time
18 notified the police?

19 A No. After I talked to Baker I don't know.

20 Q So you don't know whether they notified the police at
21 that time or not?

22 A No.

23 Q You don't have any knowledge with respect to that at
24 all?

25 A No.

1 Q And you don't know, you don't know enough about this
2 situation to say one way or the other who brought the gun
3 into the jail, you don't know who brought the gun in do
4 you?

5 A No.

6 Q Thank you, ma'am. I have no further questions.

7 THE COURT: Redirect, Ms. Land?

8 MS. LAND: No further questions, Your Honor.

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

11 Any other witnesses today, Ms. Land?

12 MS. LAND: Not today, Judge.

13 THE COURT: All right, ladies and gentlemen, we're
14 going to break for the day. I'll tell you again that you
15 are not permitted to discuss the case. You may not look at
16 anything about it, listen to anything about it, and if
17 anybody is discussing it within your earshot, just let them
18 know you're on the jury and remove yourself from that
19 conversation.

20 I'll see you back tomorrow morning at 9:30. I will
21 stay here for the rest of the afternoon talking to the
22 lawyers about scheduling issues. I think you've heard
23 testimony now from 10 witnesses and I'm going to try to
24 find out what additional time will be needed in this case
25 from both sides, and then we'll move forward tomorrow

State v. Garris September 2-5, 2008

330

1 morning at 9:30.

2 Make sure you get your belongings from the jury room
3 and you are free to go today, and we'll see you tomorrow
4 morning at 9:30.

5 Thank you.

6 (Jury out for the day at 5:22 p.m.)

7 THE COURT: For the state. These are in no
8 particular order. Ms. Santiago, Laura Batista, Antonio
9 Batista, Andrew McBride, Freddie White -- are Andrew
10 McBride and Freddie White the same person?

11 MS. LAND: No, they are different people, but we
12 decided not to call Fredrick.

13 THE COURT: All right.. No Freddie. Is that
14 right?

15 MS. LAND: They're brothers.

16 THE COURT: Johnnie McCrea?

17 MS. LAND: Yes, sir.

18 THE COURT: McCants, Ms. Jones, Johnnie Drose, and
19 Mr. Smith. And not to hold you to it, but how many more
20 witnesses do you think you'll call?

21 MS. LAND: Well, Carlos has done his job, as well.
22 And we don't need Mike Lynch any more.

23 THE COURT: All right.

24 MS. LAND: So you can scratch him out.

25 THE COURT: All right.

1 MS. LAND: And so that is the remainder. One
2 issue I do have is, and I guess you don't have to tell me,
3 but are you objecting to the chain of custody of the gun?

4 THE COURT: Well, y'all can talk about that --

5 MR. DEAS: Yeah.

6 MS. LAND: Okay.

7 THE COURT: I don't want to pin him down on
8 record.

9 MS. LAND: I understand.

10 THE COURT: Y'all can talk about that when we
11 leave, but I assume you'll have a couple, at least a couple
12 of SLED witnesses and local witness on the gun. That will
13 be Ms. Proctor. But I'll leave that up to y'all on that.

14 MR. DEAS: I will just say that yeah, we're going
15 to object to the chain of custody.

16 THE COURT: All right. And usually those
17 witnesses are fairly short. What is the evidence going to
18 show as to who retrieved the gun from wherever it was?

19 MS. LAND: Sgt. Baker did it.

20 THE COURT: After that conversation?

21 MS. LAND: After that conversation Sgt. Baker
22 retrieved it.

23 THE COURT: All right. And then --

24 MS. LAND: Handed it over to Shelton Hughes.

25 THE COURT: Who retained it for a period of time

State v. Garris September 2-5, 2008

332

1 and then it was turned over to law enforcement?

2 MS. LAND: Turned over to Rick Elms --

3 THE COURT: All right.

4 MS. LAND: Oh, I'm sorry, Rudy -- Tisdale.

5 THE COURT: All right. I've not seen him here
6 this week, but he's obviously available?

7 MS. LAND: I hope. I gave them a subpoena to
8 serve to him. He's working with the Marshall's Service,
9 and so he was in Aynor today. We believe we got him a
10 message.

11 THE COURT: Is he on loan to them? I thought you
12 said Tuesday that he --

13 MS. LAND: He is still with the Clarendon County
14 Sheriff's Office. But --

15 THE COURT: All right. And Ms. Proctor, I assume?

16 MS. LAND: And Rudy.

17 OFFICER TISDALE: That's who I got it from.

18 THE COURT: And who is the ballistic's person from
19 SLED?

20 MS. LAND: Ira Parnell.

21 OFFICER TISDALE: And that's who I signed it over
22 to.

23 THE COURT: Okay. That kind of gives me an idea
24 of what might be next. Any other incident fact witnesses?

25 MS. LAND: No.

1 THE COURT: All right. If you had to guess, what
2 time do you think you would be finished if we start
3 tomorrow at 9:30 with your case?

4 MS. LAND: If I have to guess --

5 THE COURT: By what time?

6 MS. LAND: -- well, I would say by lunch time or
7 shortly after. When we get back from lunch by one or two
8 more witnesses.

9 THE COURT: And Mr. Deas, perhaps before Mr.
10 Garris's returns with the officers today make sure you
11 discuss with him what I am going to discuss with him about
12 his right to testify --

13 MR. DEAS: Yes, sir.

14 THE COURT: -- and his right not to testify, and
15 then the decision will be his. The jury will be instructed
16 that they cannot use that against him, but in fact the
17 final decision is up to him.

18 MR. DEAS: Yes, sir.

19 THE COURT: So when we get back tomorrow I want to
20 make sure he's fully aware of his rights.

21 MR. DEAS: Yes, sir.

22 THE COURT: And then Mr. Deas will let us know
23 tomorrow if he's going to call -- would y'all please give
24 some thought to a couple of things. The verdict form as I
25 envision it was basically say this: As to the charge or

State v. Garris September 2-5, 2008

334

1 arm robbery, we the jury find the defendant either not
2 guilty or guilty. Number two. As to the charge of assault
3 and battery with intent to kill, we the jury find the
4 defendant not guilty or guilty. Now, in the context of
5 this case I don't see any issues with a lesser included,
6 but think about that if you would. The third question
7 would be not guilty or guilty on possession of a weapon
8 during a violent crime.

9 MR. DEAS: Yes, sir.

10 THE COURT: On the jury charge if you want you can
11 come back there and we can spend five or ten minutes and I
12 can give you a general rundown on my -- most people say
13 just the standard charge. But there's really no such
14 things. If you ask for a standard charge, don't complain
15 about what you get. If you're asking for specific charges
16 I'll be glad to look at that.

17 MR. DEAS: How -- can we bring those in the
18 morning, is that soon enough?

19 THE COURT: Yes. Tomorrow before lunch time.

20 MR. DEAS: Okay.

21 THE COURT: And if you could give me two copies.
22 You might want to make three, one for the other lawyer, one
23 for my clerk and one for me.

24 MR. DEAS: Yes, sir.

25 THE COURT: And we'll be able to decide if he puts

1 up any witnesses whether or not he's going to call his
2 client. All right, and the hurricane reporters downstairs
3 or wherever your disaster preparedness is, I wouldn't be
4 surprised if it peters out, but --

5 MS. LAND: I sure hope so.

6 THE COURT: -- but early Saturday morning, 9:00
7 o'clock Saturday morning, but of course it will start
8 raining hard Friday, that's why I want to find out what we
9 are going to do tomorrow.

10 MR. DEAS: Yes, sir.

11 MS. LAND: I think if we push hard tomorrow we can
12 finish it.

13 THE COURT: If we get anywhere close to 4:00 I
14 would rather not argue and charge and have them feeling
15 rushed and be out of here -- so if we finish everything by
16 lunch or 2:30 or 3:00, we can go ahead and do it all. If
17 the time moves on --

18 MR. DEAS: And Judge, again, if he ends up
19 testifying and then, of course, if I end up calling
20 anywhere close to the number of witnesses I've listed, some
21 of which I don't have to call now, because they've already
22 testified, but if he testifies, Germaine Hicks testifies,
23 and Marie Garris testifies it might push it beyond tomorrow
24 afternoon. It may go into Friday morning.

25 THE COURT: Well, at some time Court

State v. Garris September 2-5, 2008

336

1 Administration will tell us if we have to stop because of
2 the weather. If they tell us that then we have to stop.
3 So the last time I experienced this was in Charleston for
4 Tropical Storm Ernesto, but we quit and it ended up being
5 just a nice little shower, but we lost a day and a-half.
6 So if they tell us to stop we have to stop.

7 MR. DEAS: Yes, sir.

8 THE COURT: And, of course, Ms. Roberts can keep u
9 posted.

10 All right. I'll see y'all in the morning.

11 (9/3/08 Court in recess for the day at 5:45 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

State v. Garris September 2-5, 2008

337

1 (9/4/08 Court in session at 9:53 a.m.)

2 THE COURT: All right, Mr. Deas, are you ready?

3 MR. DEAS: Yes, sir. .

4 THE COURT: Ms. Land?

5 MS. LAND: Yes, sir.

6 THE COURT: All right, bring in the jury, Mr.
7 Hill.

8 (Jury in at 9:55 a.m.)

9 THE COURT: Good morning, ladies and gentlemen.
10 We're ready to continue with the trial of the case. I just
11 wanted to make sure that everybody complied with my
12 instruction not to talk about the case or listen to
13 anything about the case or read anything about it. Does
14 anybody -- was anybody unable to follow that instruction?
15 (No response.)

16 THE COURT: All right.

17 Ms. Land?

18 MS. LAND: Your Honor, we call Officer Michael
19 Baker to the stand.

20 THE CLERK: Please raise your right hand and place
21 your left hand on the Bible.

22 (WHEREUPON, Michael Baker, was
23 sworn to tell the truth.)

24 MICHAEL BAKER - DIRECT EXAMINATION

25 BY MS. LAND:

State v. Garris September 2-5, 2008

338

- 1 Q If you could state your name for this jury, please,
2 sir?
- 3 A Michael Baker.
- 4 Q And where do you work?
- 5 A The Clarendon County Detention Center.
- 6 Q And how long have you been with the detention center?
- 7 A Nine years.
- 8 Q And in what capacity do you work at the detention
9 center?
- 10 A I am a shift officer.
- 11 Q And on April 29, 2006, were you a shift officer?
- 12 A No. I was a shift supervisor.
- 13 Q Okay. Tell the jury what the duties and
14 responsibilities of a shift supervisor are?
- 15 A I was responsible for the daily operation of the
16 facility, making sure everybody was signed in. Make sure
17 officers were -- basically making sure the facility ran
18 smoothly.
- 19 Q And do you recall that date, April 29, 2006?
- 20 A Yes, ma'am.
- 21 Q Were you approached by Ms. Joanne Jones who was an
22 employee of the detention center?
- 23 A Yes, ma'am.
- 24 Q And what did you learn from Ms. Jones?
- 25 A Ms. Jones told me that an inmate working in the

1 kitchen had came to her and gave her some information that
2 she needed to tell me. She told me that when the inmate
3 was taking the trays that one of the trays was real heavy
4 and that when he dumped it in the trash can he saw a
5 firearm.

6 Q Did she let you know which trash can it had been
7 dumped in?

8 A Yes, ma'am.

9 Q And what did you do in response to that information?

10 A Well, I retrieved the trash can, put on some gloves,
11 and I searched through the trash.

12 Q And did you find a firearm in that trash can?

13 A Yes, ma'am.

14 Q Can you describe that firearm for the jury?

15 A I was a small caliber revolver with a tan handle.

16 Q And when you retrieved that firearm what did you do,
17 if anything, with it?

18 A I checked the gun to make sure it was clear, no
19 ammunition in it. I passed it to a second officer to make
20 sure he cleared it. After that I took it back, went inside
21 and placed it in the evidence bag, sealed it, tagged it and
22 filed it at the director at the detention center.

23 Q Did you learn where this gun was found?

24 A Yes, ma'am.

25 Q Where was that?

State v. Garris September 2-5, 2008

340

1 A Mr. McCrea told me that the tray from a certain cell

2 --

3 MR. DEAS: Objection. Hearsay.

4 THE COURT: Ms. Land?

5 MS. LAND: McCrea's testified, Judge. I don't
6 think it's hearsay. If Mr. McCrea's available for cross-
7 examination it's no longer hearsay.

8 THE COURT: Objection sustained.

9 BY MS. LAND:

10 Q Did you speak or interview anybody in regards to this
11 gun?

12 A Yes, ma'am.

13 Q Okay. Who was that?

14 A I interviewed the person that was housed in the cell
15 that the gun was said to come from, and that was the cell
16 of Mr. Brian Garris.

17 Q Okay.

18 MS. LAND: Your Honor, if we could have this
19 marked as State's No. 4.

20 THE COURT: That's five for ID?

21 MS. LAND: Five for ID.

22 COURT REPORTER: It's four.

23 MS. LAND: Oh, it is four.

24 (State's Exhibit No 4, gun, was
25 marked for identification purposes only.)

1 BY MS. LAND:

2 Q All right. Officer Baker, can you identify this
3 that's been marked as State's 4?

4 A Yes, ma'am.

5 Q What is that?

6 A That is the gun that was in the trash can.

7 Q And was there a substance around the handle?

8 A Yes.

9 Q And this firearm, you took it, sealed it, and gave it
10 to your director?

11 A Yes, ma'am.

12 Q Okay. Were part of your duties as shift supervisor to
13 make sure that each inmate is housed appropriately and
14 where they're supposed to be?

15 A Normally, I would have to find a -- wherever they're
16 housed they are assigned a housing unit during intake, and
17 normally the shift supervisor or booking supervisor assigns
18 them. The inmate is sent to Bravo 2 unit, which is a
19 holding cell and I can override it, but for the most part
20 the shift supervisor approves that.

21 Q Okay, and as shift supervisor are you well aware of
22 who is in what cell?

23 A Yes, I am.

24 Q And on that date were you aware of who was in what
25 cell?

State v. Garris September 2-5, 2008

342

1 A Yes, ma'am.

2 Q In the B-2 unit in Cell 2, was Brian Garris housed in
3 that unit?

4 A Yes, ma'am.

5 Q And was he the only inmate housed in that unit?

6 A He was the only inmate housed in that cell.

7 Q In that cell?

8 A Yes, ma'am.

9 Q Okay. Thank you. That's all the questions I have at
10 this time. Please answer any questions Mr. Deas has.

11 THE COURT: Mr. Deas?

12 Let me get that straight. Ms. Land that is four and
13 not five?

14 MS. LAND: It is four for ID, yes, sir.

15 MR. DEAS: Thank Your Honor. Please the Court.

16 MICHAEL BAKER - CROSS-EXAMINATION

17 BY MR. DEAS:

18 Q Officer Baker, my name is Garryl Deas. I represent
19 the defendant, Mr. Brian Garris. Back in April of '06, you
20 were a shift supervisor --

21 A Yes.

22 Q -- at the Clarendon County Detention Center?

23 A Yes, sir.

24 Q And do you recall approximately what time of day it
25 was that Ms. Jones told you about the gun that was

1 discovered in the trash can?

2 A It was late evening, probably between 5:30 and 6:00.

3 Q Late evening. It was on April 29, 2006 when this
4 discussion between you and Ms. Jones took place?

5 A Yes, sir.

6 Q Immediately after she told you that you went in that
7 time to search in the trash can to see if the gun was
8 there?

9 A Yes, sir.

10 Q Is that correct? Did you notify anyone else at that
11 time about the fact that there may have been a gun in the
12 trash can?

13 A No, sir.

14 Q At the time that this incident happened, back in April
15 of '06, was there any type of system in place at the jail
16 where detainees or family members or visitors of detainees
17 or anyone coming to the jail would go through some type of
18 metal detector to insure that they were not bringing in
19 inappropriate items?

20 A That was in place for Bond Court proceedings.

21 Q So it was in place for Bond Court proceeding but not
22 for detainees or other visitors coming into the jail?

23 A No, sir.

24 Q And is that type of procedure in place today?

25 A Yes, sir.

State v. Garris September 2-5, 2008

344

1 Q And today when a detainee is brought in they're wanded
2 in a metal detector device to make sure they don't have any
3 metal objects or anything inappropriate on their person?

4 A Yes, sir.

5 Q Do you have any knowledge of why that wasn't a system
6 in place back in '06?

7 A No, sir.

8 Q Were you involved in any way whatsoever in booking, in
9 taking, Mr. Garris when he was brought to the jail on April
10 28, 2006?

11 A No, sir.

12 Q You had no involvement in searching him or conducting
13 any type of search of him when he was brought into the jail
14 on April 28, 2006?

15 A No, sir.

16 Q Okay. When you went to the trash can to look for this
17 gun, tell me exactly what you saw when you looked in the
18 trash?

19 A I looked into the trash can. There was, you know,
20 food and other trash in there. So I took it outside and
21 moved some of the food and the revolver was in there.

22 Q Was the gun on top of the other debris in the can or
23 did you have to dig for it?

24 A I didn't really have to dig for it. It was -- like I
25 said there was just a little bit of food on top, it was

1 right there.

2 Q Could you see the gun when you first looked into the
3 trash can?

4 A I can't recall.

5 Q Once you cleared away some of the trash debris that
6 you saw --

7 A Yes, sir.

8 Q -- I believe you said you had on gloves?

9 A Yes, sir.

10 Q When you got the gun out of the trash can was someone
11 with you?

12 A Yes, sir.

13 Q Okay, and who was that?

14 A Ms. Jones, Cpl. Thomas and Officer Smith.

15 Q All right. And Officer -- Ms. Jones, she was working
16 at the Clarendon County Detention Center at that time,
17 basically as the head dietary manager; is that correct?

18 A Right.

19 Q And Officer Smith was another correctional officer?

20 A Correct.

21 Q And who was the other person you said?

22 A Cpl. Thomas.

23 Q And he's another correctional officer?

24 A Yes, she is.

25 Q And would she be in a supervisory role over you or

State v. Garris September 2-5, 2008

346

- 1 would you be over her?
- 2 A I was over her.
- 3 Q And then so once you pulled out that gun, the three of
- 4 you -- the four of you there, who all handled the gun; was
- 5 it just you?
- 6 A Just myself and I showed it to Officer Smith to make
- 7 sure it was clear when I got it.
- 8 Q Did he have on gloves?
- 9 A No, sir.
- 10 Q So he handled the gun but he had no gloves on?
- 11 A Yes, sir.
- 12 Q So the only person that had actually handled the gun
- 13 that had gloves on was you?
- 14 A Yes, sir.
- 15 Q And so after -- You said you checked the gun to make
- 16 sure it had no ammunition?
- 17 A Yes, sir.
- 18 Q Did it?
- 19 A No, sir.
- 20 Q It was cleared of any bullets?
- 21 A Yes, sir.
- 22 Q What else did you do to secure that weapon?
- 23 A Once we cleared it, I took it inside and I placed it
- 24 directly inside the evidence bag.
- 25 Q And I believe you said that Officer Smith also checked

1 behind you to make sure it was cleared of ammo?

2 A Yes, sir.

3 Q And when you place it -- did you place it in the
4 evidence bag or did Officer Smith?

5 A I did.

6 Q Okay.

7 A I wrote a report up on it and I sent the report in.

8 Q Okay. And you turned it over to your director?

9 A Yes, sir.

10 Q Were the police immediately notified by the director,
11 Mr. Hughes?

12 A That I don't have any knowledge of that.

13 Q You don't know what happened to the gun once you
14 reported the situation to Director Hughes?

15 A After that, I don't know.

16 Q Thank you, sir. I have no further questions.

17 THE COURT: Ms. Land?

18 MICHAEL BAKER - REDIRECT EXAMINATION

19 BY MS. LAND:

20 Q How long from the time, you said you took the trash
21 can outside; is that correct?

22 A Yes, ma'am.

23 Q How long did it take you to retrieve the gun?

24 A Not long.

25 Q Would you say seconds?

State v. Garris September 2-5, 2008

348

1 A Seconds. Probably tops a minute.

2 Q So there certainly was not a great deal of food on
3 top?

4 A No, ma'am.

5 Q And you don't recall if you could look down into the
6 trash can and see the gun?

7 A No, ma'am, I don't recall.

8 Q All right. That's all the questions I have.

9 MR. DEAS: Nothing further.

10 THE COURT: Thank you, sir, you can step down.

11 MS. LAND: Your Honor, we call Shelton Hughes.

12 THE COURT: Could the lawyers come up just a
13 second.

14 (Pause.)

15 THE COURT: All right, Ms. Roberts.

16 THE CLERK: Raise your right hand and place your
17 left hand on the Bible. And state your name for the
18 record.

19 MR. HUGHES: Shelton Hughes.

20 (WHEREUPON, Shelton Hughes, was
21 sworn to tell the truth.)

22 SHELTON HUGHES - DIRECT EXAMINATION

23 BY MS. LAND:

24 Q All right. Could you state your name for the jury,
25 please?

1 A Shelton Hughes.

2 Q And where are you employed?

3 A At the Clarendon County Detention Center.

4 Q What is your role at the detention center?

5 A I'm the director.

6 Q And how long have you been the direction of the
7 detention center?

8 A Approximately 10 ½ years.

9 Q And on April 29, 2006, were you the director of the
10 director of the detention center?

11 A Yes, I was.

12 Q All right. What happened that makes that date stand
13 out in your mind?

14 A On that date I was contacted by the on-duty
15 supervisor, Sgt. Michael Baker, and informed that a firearm
16 had been found inside the detention center.

17 Q What did you do in response to that information?

18 A I responded to the detention center, received a
19 briefing from the supervisor and then I took control of the
20 weapon and secured it in my office.

21 Q Let me show you what has been marked as State's No. 4,
22 for identification only. Can you identify that weapon?

23 A Yes. This is the weapon that was turned over to me by
24 Sgt. Michael Baker.

25 Q And you took control of it at that time?

State v. Garris September 2-5, 2008

350

1 A Yes, ma'am, I did.

2 Q What did you do in response to that weapon on that
3 day?

4 A Initially, it was my intent to attempt to back track
5 and determine what happened that caused that weapon to be
6 able to get inside our detention center. I retained the
7 weapon initially to see whether or not any additional
8 information would be produced by this individual that we
9 thought was the perpetrator, to move through our population
10 or any other prisoners or any other additional information
11 would be produced so we could proceed with charging him
12 with contraband possession. That was my initial intent at
13 that time.

14 Q Okay. And what happened to change that plan?

15 A Well, what happened was that the information regarding
16 the weapon was not initially published to the media. It
17 was not our intent to after consulting with the county
18 administrator. Once that information was released and law
19 enforcement got involved the weapon was turned over to the
20 Clarendon County Sheriff's Office.

21 Q Would you say that is highly unusual for a weapon of
22 that nature to be found within the jail?

23 A It is not a usual circumstance, no.

24 Q And was it highly alarming to you?

25 A Yes, it was.

State v. Garris September 2-5, 2008

351

1 Q Let me ask you a little bit about the procedure when
2 somebody is booked. At that time, were there metal
3 detectors?

4 A No. There was a metal detector in place at the
5 facility but it was used to screen prisoners coming into
6 Bond Court and contact with prisoners, but there was no
7 metal detector in place in the intake area.

8 Q So when somebody was arrested for a crime and they
9 were booked, they never were required to go through a metal
10 detector?

11 A No, they weren't.

12 Q And did you have a wand of any sort that was waived
13 over them detecting them?

14 A Not at the intake area, not at that time.

15 Q Has that procedure changed now?

16 A Yes, it has.

17 Q And why was that procedure changed?

18 A It changed in response to this incident where this
19 weapon could be introduced into a secure part of the
20 detention center. In response to that we reviewed our
21 procedures and just determined that the metal detectors
22 would serve as an additional defense against that type of
23 contraband in the future. And that policy was implemented
24 as soon as the additional metal detector could be ordered
25 and put into service, and it was just a few weeks alter

State v. Garris September 2-5, 2008

352

1 that we required metal detector scan of all new entries
2 into the facility.

3 Q At that time was everybody that was booked into your
4 facility strip-searched?

5 A No, they weren't.

6 Q And at this time, that's still not the policy is it?

7 A That's correct.

8 Q And what situation would someone have been strip-
9 searched at that time?

10 A At that time, at the request of law enforcement based
11 on probable cause as explained to the booking staff. A
12 person who has a known history of introducing contraband
13 into the facility or has a prior history of dealing with
14 contraband while in our institution, a person that may be
15 coming in under arrest for shop lifting or things like
16 that, where a law enforcement officer believes they may
17 still have some items secreted on their person, a person
18 charged with a violent offense that involved a personal
19 type weapon that may not have been detected, a person
20 charged with drug trafficking or drug offenses where
21 there's a probability or likelihood that individual may
22 still possess some type of contraband on their person that
23 couldn't be detected by a touch or a pat-type search.
24 Those are the general reasons that a person is strip-
25 searched, but there is no blanket strip-search policy

1 regardless of what level of offense that person is charged
2 with.

3 Q And they're not -- everybody's not strip-searched. Is
4 everybody given a pat down?

5 A Everybody is given a pat down search.

6 Q Okay. Describe what a pat down search is to the jury?

7 A While the person is still restrained the staff and
8 booking officer are required to conduct a, basically a head
9 to toe squeeze or rub or a touch type search to check for
10 any items that will alert them to a danger. Mainly any
11 items that may be harmful that the person has not
12 voluntarily offered, because normally an officer will ask
13 the person, do you have anything in your pockets that may
14 hurt you or harm you. Do you have any weapons on your
15 person. They will normally ask those questions prior to
16 beginning the pat search. Then they would proceed to start
17 at the top of the person's body and do in a systematic
18 manner down one side of the body, down the other. Made
19 sure they touched or made contact with all areas of that
20 person's outer clothing to check for any contraband type
21 items, or any items that haven't been voluntarily revealed
22 to the officer prior to the restraints.

23 Q So if an item is on that person that is not on the
24 outside of their body it would not be felt?

25 A No.

State v. Garris September 2-5, 2008

354

1 Q Okay. Let's go back -- let me ask you one more thing
2 about your policies at the jail. The visitation policies.
3 During that time what were the policies with visitors
4 coming into the secured area?

5 Q At that time for our pre-trial, fellows, our pre-trial
6 misdemeanors, there was a non-contact visiting policy,
7 which still is in effect. Which means that we don't allow
8 visitors in the secure part of the detention center to
9 visit pre-trial inmates. And normally when a person is
10 first brought into custody they're not allowed to receive
11 visitors for at least 72 hours or until they go through our
12 orientation process and fill out a visitation authorization
13 card. So they are normally in custody for several days if
14 they don't make bond before they're actually authorized to
15 receive visitors, but our visitors do not penetrate into
16 the part of the institution where the weapon was recovered
17 nor will they ever enter into the booking and intake area,
18 unless they're on a controlled tour that's sponsored by our
19 department.

20 Q Do you know specifically what area of the jail Brian
21 Garris was placed in?

22 A He was placed in cell block 2, cell number 2, which is
23 technically a pre-classification or a place where an
24 individual that's first processed in our booking area is
25 moved to pending an appearance before court, before our

1 bonding court for a first appearance hearing or bond
2 hearing, depending on what type of charge he has.

3 Q And in fact it's considered a secure area?

4 A It is a secured area.

5 Q Okay, so no visitors would be allowed back there?

6 A Under no circumstances.

7 Q Was Brian Garris in Cell 2 by himself at that -- on
8 that date?

9 A According to the information that I received from Sgt.
10 Michael Baker, single cell, meaning that there was no other
11 person, inmate, prisoner or detainee inside that cell when
12 he was assigned to it.

13 Q Let's go back to the specific incident, what date did
14 you retrieve the gun from Officer Baker?

15 A I know it was the same date, the 29th, the same date
16 of the incident. The exact time that I retrieved it, I
17 can't recall. I know this incident occurred after I had
18 secured from duty. I was not on duty. So I had to get
19 dressed and report to the detention center. So I don't
20 recall the exact time, but I know it was that same day that
21 I took control of it.

22 Q Okay. Would you say that it was morning, afternoon or
23 evening?

24 A I believe evening.

25 Q And when you retrieved that gun what physically did

State v. Garris September 2-5, 2008

356

1 you do with it?

2 A I physically just looked at it while it was in the
3 evidence bag. I asked questions to make sure it had been
4 cleared and checked to make sure there were no rounds in
5 the chamber, things of that nature. Took it up to my
6 office and secured it.

7 Q Was that evidence bag secured?

8 A Yes.

9 Q Okay, so it was closed in a manner that you couldn't
10 actually touch the gun?

11 A Right. I couldn't open the bag.

12 Q And did you open that seal in any way?

13 A No.

14 Q At what point did the gun leave your custody and
15 control or go to somebody else?

16 A It was on the day that I turned it over to the
17 Clarendon County Sheriff's Office.

18 Q Do you remember what individual that you turned it
19 over to?

20 A Yes. I turned it over to Investigator Tisdale.

21 Q When you turned it over was it still in the same
22 sealed package that you received it in?

23 A Yes, it was.

24 Q And did you -- where did you maintain that gun?

25 A I kept it locked in a secured locker inside my office.

1 Q And nobody else had access to that locker?

2 A No. Nobody else had a key.

3 Q Okay. How long did you have it in your possession?

4 A It was several days.

5 Q Okay. Do you recall the date that you turned it over
6 to Investigator Tisdale?

7 A I can't recall the specific date.

8 Q All right.

9 MS. LAND: Beg the Court's indulgence for one
10 moment.

11 (Pause.)

12 BY MS. LAND:

13 Q All right. Please answer any questions that Mr. Deas
14 might have.

15 MR. DEAS: Thank Your Honor. May it please the
16 Court.

17 THE COURT: Yes, sir.

18 SHELTON HUGHES - CROSS-EXAMINATION

19 BY MR. DEAS:

20 Q Director Hughes, how are you doing, sir?

21 A Good morning.

22 Q My name's Garryl Deas. I represent the defendant, Mr.
23 Brian Garris. Mr. Hughes, would you disagree with me if I
24 say that this gun that was found in the jail, was found on
25 April 29, 2006, or do you know the exact date that it was

State v. Garris September 2-5, 2008

358

1 found?

2 A Yes. It was that date, according to the information
3 that I received from the on duty supervisor, the date that
4 it was found was the date of the incident.

5 Q And on that date you found out this information from
6 Officer Baker; is that correct?

7 A That is correct.

8 Q Were you at the jail when you were informed of this?

9 A No, I wasn't at the jail at the time. I believe I was
10 contacted by page or cell phone.

11 Q And how many years, sir, have you worked in the penal
12 system?

13 A About 20 years.

14 Q And how many years have you served as the director of
15 the Clarendon County jail?

16 A Approximately 10 ½ years.

17 Q And when this incident happened back on April 29,
18 2006, how long had you been serving as the director of the
19 Clarendon County jail?

20 A I had been there approximately eight years.

21 Q And have you served as a director at a jail prior to
22 your service at the Clarendon County jail?

23 A No, not as director.

24 Q Suffice it to say you've had many years in the penal
25 system and correctional facility business?

1 A Yes.

2 Q Now, would you disagree with me, sir, that if a weapon
3 or firearm or gun was found in a jail like what was found
4 in your facility that that's a pretty serious situation?

5 A I would agree.

6 Q And it posed a danger to employees?

7 A Correct.

8 Q It posed a danger to other inmates?

9 A Correct.

10 Q And essentially if a gun if found our any type of
11 firearm or weapon would you agree with me that that's
12 basically a crime scene; would you not?

13 A Yes.

14 Q So answer this for me, if you can. If this gun was
15 found in your jail on April 29, 2006, why were the police
16 not immediately notified, since you just agreed with me
17 that this is essentially a crime scene that requires
18 investigation?

19 A I would say the reason they weren't notified is that
20 as correctional officers, we're also peace officers of the
21 state in the performance of our official duties and when
22 certain incidents happen inside the detention center, you
23 know, it's at my discretion whether or not law enforcement
24 will be called in. The fact that the weapon is no longer a
25 threat, it's been rendered safe and secured by the officers

State v. Garris September 2-5, 2008

360

1 that discovered it, we were -- it was my decision to
2 conduct our own internal investigation. We have the
3 ability to file criminal charges against the person just as
4 law enforcement does when an offense occurs inside our
5 facility. Those are decisions that I make.

6 Q Now, you're not a police officer are you?

7 A No.

8 Q And it's not your job to investigate crime, is it?

9 A When an offense occurs inside our facility, yes. It
10 is my duty to try to gather facts and to make decisions as
11 to how we're going to proceed, whether we bring law
12 enforcement in. There are certain situations where we
13 bring law enforcement in initially. Sometimes we proceed
14 and get warrants against individuals ourselves when a crime
15 is committed inside the detention center.

16 Q So it's your position, sir, that part of your duties
17 also involve investigating crimes that occur inside the
18 jail?

19 A Yes.

20 Q And you would certainly describe a gun being found in
21 the jail as a crime? A gun being brought into the jail and
22 left in the jail by someone whether it's an inmate, an
23 employee, visitor, that's a crime; correct?

24 A As is anything else that would fall under the state
25 contraband statutes.

1 Q Basically bring contraband in the jail?

2 A Right. And that's a typical type of incident that the
3 detention center staff would normally investigate
4 themselves and take appropriate action.

5 Q Do you think it would have been reasonable and prudent
6 that once this crime was discovered to elicit the
7 assistance of law enforcement to help you try to determine
8 how this gun ended up in your jail? You think it might
9 have been reasonable on your part to try to elicit the
10 assistance from law enforcement, since that's what their
11 job is to investigate crime, to solve crime?

12 A I wouldn't disagree, but I also stand behind the way
13 that it was handled. In hindsight I can't say that I would
14 do the exact same thing in the future, but the fact that
15 the gun was no longer dangerous, was rendered safe and no
16 ammunition was found, it couldn't harm anyone, and we had
17 control and custody of it, the manner in which I handled it
18 I felt was reasonable as well.

19 Q Well, let's talk a little bit as well about what you
20 would do in hindsight. If the same situation were to occur
21 today would you repeat your approach from April, 2006, or
22 would you immediately notify law enforcement?

23 A It would depend. If I had information that suggested
24 that that weapon had been used in a violent crime, if that
25 information was on hand then perhaps I would approach it

State v. Garris September 2-5, 2008

362

1 differently. But this weapon, way they found it and
2 rendered it safe would be no different than if you found a
3 pocket knife or razor blade or any weapon inside a cell
4 that was occupied by an inmate, these are common
5 occurrences inside any institution across the state, across
6 the country. So the fact that it was not know at the time
7 that it was involved in some heinous type offense. I don't
8 think I would have done anything different other than
9 investigate the contraband as I did back in 2006.

10 Q So essentially then, your testimony is that finding a
11 gun in a jail is -- is a similar as can be looked upon as
12 the same thing as finding a pocket knife?

13 A Any dangerous weapon, any dangerous weapon. Whether
14 it be a pocket knife, brass knuckles, a chain, I classify
15 it as the same category that it can produce harm, it can
16 cause serious injury or death. I classify the firearm in
17 that category.

18 Q You talked about the fact that you personally took
19 this gun into custody, correct?

20 A Yes.

21 Q In other words, you held onto it?

22 A Yes.

23 Q If I told you that records show that you held on to
24 this gun from April 29th of '06, until May 8th of 2006,
25 would you disagree with that?

1 A I can't recall the date that I turned it over.

2 Q Would it be fair to say that you held onto this weapon
3 for over a week before you turned it over to law
4 enforcement?

5 A It would only be fair if the record reflected it.
6 Like I said, I don't recall the day that I turned it over
7 to law enforcement.

8 Q And without getting specific about this day or date,
9 you have no recollection whether or not you held onto this
10 gun for one day or two days?

11 A I know it was more than two days.

12 Q And if I told you that it was more like nine days that
13 you held onto this gun without law enforcement being
14 notified and told of the fact that you found a gun in your
15 jail would you disagree with that?

16 A If the record reflected that, I wouldn't.

17 Q When you -- you said that when Officer Baker told you
18 about the gun, he personally handed the gun over to you?

19 A When I was called, yes.

20 Q And you said you secured it; where did you secure this
21 weapon?

22 A In a locker inside my office at the detention center.

23 Q And was it locked?

24 A Yes.

25 Q And who had keys to this lock?

State v. Garris September 2-5, 2008

364

1 A Just myself.

2 Q And you -- did you have a meeting or meet with any
3 other officials in the jail to discuss this situation or
4 to, as you put it, conduct an investigation to determine
5 how this weapon ended up in this jail?

6 A Yes. I actually, I spoke to the county administration
7 on the same day. I notified my reporting senior and
8 advised them of the situation. I believe I may have also
9 spoken to my county attorney, at the time. Or at least I
10 believe that the information was forwarded to the county
11 attorney. I advised my supervisor what my intentions were
12 as far as obtaining the weapon. Also there was an initial
13 attempt to prepare written communication to all the local
14 law enforcement agencies that operate here in the county
15 advising them of what had taken place. These are some of
16 the things that were being planned. Advising them of the
17 weapon, trying to establish a dialogue, talking about
18 officer safety, securing the prisoners, the need to do more
19 thorough searches for both parts, from the law enforcement
20 side to bringing those individuals in the jail. These are
21 some of the things that I intended to do. I was actually
22 working on a document when this information was revealed to
23 the media and this story basically broke, then that changed
24 things. So that kind of came to a halt, and that's when,
25 you know, that's when the sheriff's department got involved

1 and took control of the gun.

2 Q So essentially what, and you can correct me if I'm
3 wrong, what ultimately prompted you to finally turn this
4 weapon over to law enforcement was the media found out
5 about the situation and that's when you turned it over to
6 law enforcement?

7 A Actually, the -- when the story was published in the
8 paper I was nearing the completion of the document that I
9 was preparing to send out to law enforcement. And I was
10 also intending to conduct a full department briefing and
11 use that weapon to reinforce the need to conduct thorough
12 searches. I was basically intending to use that as a
13 training tool, as well, for staff to let them physically
14 see and understand the dangers of this profession. So
15 there were a couple of things in the works at the time,
16 but, again, once this story leaked out, and the fact that I
17 didn't know that this weapon was attached to anything else
18 at the time, I didn't see the need at that time or the
19 sense of urgency to turn that weapon over. It was my
20 opinion that the individual that had control of the weapon
21 was not going anywhere based on the charges. So I didn't
22 feel that urgent need to turn that weapon over. That's why
23 I retained it and didn't turn it over until the story
24 broke.

25 Q So the fact that you turned it over once it began to

State v. Garris September 2-5, 2008

366

1 be published to the media, that's just coincidence?

2 A Basically, yes.

3 Q Now, you said earlier that bringing contraband,
4 particularly a weapon, is a crime, itself; correct?

5 A Yes.

6 Q So why do you have to have some knowledge that the
7 weapon might be involved in some other crime in order for
8 you to feel it's necessary for the crime of bringing in
9 contraband to the jail be reported to the police,
10 particularly when the contraband is a weapon? Why did you
11 feel like you had to know that this weapon is connected to
12 some outside crime before you notify the police?

13 A I didn't have to know. The fact that I decided not to
14 report it immediately, it was my decision. I had time to
15 file the charges against Mr. Garris if I chose to at any
16 time I felt like charging him. The weapon had been
17 recovered. So there was no sense of urgency for me to
18 contact law enforcement to have an incident report filed
19 because I could have done it at my own leisure, as I
20 proceeded to go through the things that I intended with
21 that weapon before I charged him.

22 Q When the weapon was turned over to you did you
23 complete some type of written report on this incident?

24 A I didn't complete any secondary report. There was a
25 report written by Sgt. Baker at the time of the incident,

1 and it stated collected from the inmate worker who
2 initially reported it, as well as a statement by Ms. Jones,
3 but I didn't produce any additional written formal report
4 related to the discovery of the weapon.

5 Q So the only written documentation that emanated from
6 the Clarendon County Detention Center would have been the
7 report done by Officer Baker?

8 A Yes, and the attached statements.

9 Q And you did no follow-up report to the county
10 administrator or the county attorney?

11 A Nothing in writing. They were verbal.

12 Q You stated that you consulted with your superiors.
13 Who would that have been?

14 A William Howard.

15 Q And what's his position?

16 A He's the Clarendon County Administrator.

17 Q And did he advise you to report this situation to the
18 police?

19 A No.

20 Q You said you consulted with the town attorney?

21 A I'm not sure if I spoke with the town attorney
22 directly, but I know I spoke with the county administrator.

23 Q The individuals that you did speak with, none of them
24 advised you to report this to the police?

25 A No.

State v. Garris September 2-5, 2008

368

1 Q Now, you've talked a little bit about procedure at the
2 Clarendon County Detention Center in so far as insuring the
3 safety of the employees, inmates, visitors. In 2006, there
4 was no system in place where detainees, visitors or anyone
5 coming into the jail were wanded by metal detectors to
6 determine if they were bringing in contraband or something
7 inappropriate; is that correct?

8 A In 2006, there was no system in place to use a metal
9 detector on newly arrived inmates coming into our booking
10 area.

11 Q And is that customary or common practice in
12 correctional facilities where detainees come into the jail
13 but don't go through any type of metal detector system?

14 A I would say in the state of South Carolina, yes.

15 Q But that's changed now in Clarendon County; is that
16 correct?

17 A That is correct.

18 Q Do you think that is a positive change?

19 A I do.

20 Q Now, when Mr. Garris was specifically brought into the
21 jail on April 28, 2006, do you have any knowledge of how he
22 was searched, or whether he was searched?

23 A According to the information by Officer McCants,
24 Officer McCants indicated that he conducted a pat-down
25 search on Mr. Garris.

1 Q And no gun was found on him at that time; correct?

2 A That is correct.

3 Q And also, it's my understanding, and you can correct
4 me if I'm wrong, but Mr. Garris's clothes were taken from
5 him for evidence purposes. Was a gun found in his clothes
6 or on him at that time?

7 A Not as far as the information.

8 Q Now, when is an individual at your jail, and I'm
9 talking back in 2006, when would an inmate be subjected to
10 a more intrusive type search as opposed to just a general
11 head to toe pat-down search? When would an inmate be
12 subjected to a more intrusive strip search?

13 A The same protocol that I explained to you earlier, but
14 it would apply to 2006, but basically, if law enforcement
15 brings an individual and they feel like they have probable
16 cause to request a strip search they can leave that person
17 in custody in order to speak to the booking staff and the
18 booking staff will initiate a strip search at the request
19 of law enforcement. If a person has a prior history that
20 is known by the people that he had come into contact with
21 in the booking area of being in possession of contraband or
22 gained it as a prior detainee, then the staff would have
23 just cause to conduct a strip search. If a person is
24 brought in on a fresh charge of say shoplifting or a type
25 of larceny where it's suspected that the person may have

State v. Garris September 2-5, 2008

370

1 some items secreted on their person then that person may be
2 subjected to a strip search. Person coming in charged with
3 narcotics or drug offenses, and it is suspected that the
4 individual may be in possession of some type of contraband
5 and secreted somewhere on their person that can't be
6 detected by a pat-type search then that individual may be
7 subjected to a strip type search. In general those are the
8 types of scenarios that would warrant a strip search, but
9 there is no blanket strip search policy for the individuals
10 that are coming in.

11 Q So essentially a strip search could result from a
12 request made by law enforcement?

13 A Yes.

14 Q Or based on the -- your employees, your facility
15 staff's prior dealing with them?

16 A Right. Some kind of history with contraband due to
17 trafficking or possession, manufacturing weapons and things
18 like that while they're in our institution or if the
19 information is made known at the time of receipt.

20 Sometimes we get state prisoners coming in and if the
21 officer bringing them in says, hey, this person has a
22 history of contraband, then you may want to go ahead and
23 strip him before you secure him.

24 Q Do you have any knowledge of whether or not Mr. Garris
25 was strip searched on April 28, 2006, when he was brought

1 into the jail initially?

2 A According to the information he was not strip
3 searched.

4 Q Do you have any knowledge as to whether he was
5 searched by any members of your staff after the gun was
6 discovered; searched again that day?

7 A I don't recall whether he was searched a second time,
8 secondary to the gun or if he was strip searched.

9 Q Now, I want to talk a little bit about the area where
10 this gun was found; where this area is within your
11 facility. I believe you described the area where the trash
12 can was where the gun was found was basically like a
13 staging area or holding area where an inmate was held
14 before they are processed and booked and sent to a cell
15 they're going to be housed. Is that a fair description of
16 where this area was where the gun was found?

17 A Yes.

18 Q Is it referred to as a staging area?

19 A No. The official title of it is Block 2, cell block
20 2. We sometimes refer to it internally as the pre-trial,
21 male pre-classification area, because we only house males
22 there that are pending a first appearance or a bond court
23 hearing, for the most part. That's what we primarily use
24 that area for.

25 Q So the inmate's are held in that area until they go to

State v. Garris September 2-5, 2008

372

1 bond court?

2 A Yes. And once they -- if they make bond, of course,
3 they are processed out, but if they don't make bond or if
4 they are charged with a capital type offense they remain
5 there until they have formal orientation and then they'll
6 be classified and assigned to the appropriate area.

7 Q And in this area there are multiple inmates, correct?

8 A Yes, there could be. There could be multiple inmates,
9 there could be one or how ever many our cells would hold,
10 depending on --

11 Q Do you have any specific knowledge as to how many
12 inmates were in this B 2 unit on April 28th or April 29th,
13 of 2006?

14 A No, no I don't.

15 Q Would you have any documentation that would
16 specifically indicate how many inmates were in that B 2
17 area or unit on April 28th of '06 or April 29th of '06?

18 A No.

19 Q So the jail wouldn't keep records that specifically
20 show or indicate how many inmates were at a particular area
21 in the jail?

22 A Not day by day. There is no computerized data base
23 that tracks that. The individuals that are moved from a
24 place to place they are tracked, but they are tracked on a
25 per move basis on the inmate locator board in the booking

1 area. So they always know where a person is, so --

2 Q Do you have any knowledge or information as to whether
3 or not Mr. Garris was in a cell with other inmates when he
4 was housed at the Clarendon County Detention Center back on
5 April 28 and April 29 of '06?

6 A According to the information relayed to me from
7 Officer McCants and Sgt. Baker he was placed in block 2 and
8 assigned to that pre-class cell. There was no other
9 detainee assigned in there at the time, and there were no
10 other detainees added to the cell after the time that Brian
11 Garris was placed in there.

12 Q And since there's no documentation to necessarily
13 corroborates that since you said the jail doesn't keep
14 records of that nature, and essentially what you have to
15 rely on is Officer Baker's memory, his recollection. You
16 said there's no paper work documentation to corroborate
17 that; correct?

18 A That would be correct.

19 Q Now, you've been in your position with the Clarendon
20 County Detention Center, you said for 10 1/2 years; correct?

21 A Yes.

22 Q And in that time frame have you ever had a situation
23 where a gun is brought into the jail other than this
24 incident?

25 A No.

State v. Garris September 2-5, 2008

374

1 Q And so you would agree with me that that's a
2 relatively unusual occurrence, it's not every day that guns
3 are found in the jail; correct?

4 A That's correct.

5 Q And it's not every day that guns are found in any
6 jail; is that correct?

7 A I can't speak on that.

8 Q So the B 2 unit, holding area, as you enter the jail
9 -- would it be fair to say that it's sort of in the middle
10 of the facility?

11 A Yes, it is.

12 Q And as you go beyond this holding area, that's the
13 control room area; correct?

14 A Yes, it is.

15 Q And you have to actually exit this B 2 unit and go
16 outside -- you have to actually exit the B 2 unit, you're
17 actually stepping outside before you enter the door and go
18 to the control room; is that correct or am I wrong?

19 A No. You have to -- when you step outside the B 2 area
20 you're exiting the old jail or that portion to go to the
21 booking area. You walk through the carport to enter the
22 annex where the booking area would be.

23 Q And do you know how many cells are in that B 2 unit?

24 A Currently there are seven cells.

25 Q And would that have been the same number of cells

1 there were back in 2006?

2 A That is correct.

3 Q And normally there would be at least one inmate in
4 each cell?

5 A If there are seven inmates, normally there would be
6 one assigned to each cell. There is no normal for it,
7 because it would depend on who we had in custody. The
8 Block 2 area could be empty or it could have one or two
9 people in there. It just depends --

10 Q And was there ever a time, based on your experience
11 and based on the time that you've been director of the
12 Clarendon County jail, when more than one inmate is held in
13 that cell in the B-2 unit?

14 A Yes.

15 Q So there are times when you have multiple inmates in
16 those cells?

17 A Yes.

18 MR. DEAS: Court's indulgence.

19 THE COURT: All right.

20 BY MR. DEAS:

21 Q Thank you, Director Hughes. I have no further
22 questions.

23 THE COURT: Ms. Land?

24 SHELTON HUGHES - REDIRECT EXAMINATION

25 BY MS. LAND:

State v. Garris September 2-5, 2008

376

1 Q Director, I just want to clear some things up because
2 we're using words that I want to make sure I have a correct
3 definition of. What exactly is contraband?

4 A Contraband is any illegal item that would be
5 considered an illegal item by state statute. And it is
6 also any item that, say, the detention center might allow a
7 detainee to have in their possession, but if it's perverted
8 or altered to a use that's not authorized, then that would
9 also be considered contraband. Say we issue a person a
10 toothbrush and they take the toothbrush and they shave it
11 down into a point to use it as a stabbing instrument, it
12 goes from being an authorized item to contraband. So that
13 is a simple definition of it. It's any illegal item in our
14 institution; cigarettes, tobacco, lighters, electronic
15 devices, any type of weapon whether it be a firearm, an
16 edged weapon, brass knuckles, things of that nature --
17 billy clubs, and item such as that would be considered
18 contraband and would fall under the state contraband
19 statute.

20 Q And when contraband is found it is always confiscated;
21 is that correct?

22 A Yes.

23 Q Is there always action taken after it's confiscated?

24 A Yes. There's always some action taken. Sometimes --
25 for the most part most of the contraband is confiscated in

1 the detention center it's handled internally by the
2 detention center staff through out administrative
3 proceedings. And sometimes it's referred for prosecution
4 to law enforcement.

5 Q So there have been many times in your 10 ½ years as
6 director that you have confiscated contraband and treated
7 that as an internal issue?

8 A That is correct.

9 Q But there have been some times that you signed a
10 warrant and it has been prosecuted in this courtroom?

11 A Yes.

12 Q During some of those times that it has been prosecuted
13 in this courtroom have you involved Clarendon County
14 Sheriff's Office or have y'all signed the warrant
15 yourselves?

16 A Normally if we determine that we're going to proceed
17 with prosecution -- it depends. We have to go to the
18 Sheriff's Office to obtain an incident report, and for the
19 most part once we get the incident report we would go and
20 file the warrant ourselves, to sign a warrant against this
21 individual ourselves.

22 Q And so if I were prosecuting the case, I would call
23 you and I would say, what did you do to investigate this
24 crime?

25 A That is correct.

State v. Garris September 2-5, 2008

378

1 Q And we would go from there?

2 A Right.

3 Q So although you are not a police officer, as Mr. Deas
4 asked you, you have investigated crimes and have prosecuted
5 them successfully?

6 A Yes.

7 Q What -- were your actions on May 8th concluded
8 regarding this gun?

9 A Turned it over to the Clarendon County Sheriff's
10 Office, Investigator Tisdale.

11 Q Okay, but what I'm asking you is that the date you
12 turned it over to law enforcement; Mr. Deas insinuated to
13 you that perhaps you had not taken the appropriate actions.
14 Your actions regarding the confiscation of this gun were
15 not concluded at that time; correct?

16 A No. I was still -- like I explained, working on
17 several different things approaching how we were going to
18 handle it and the charge -- charging him with contraband
19 was still being discussed.

20 Q As Director of the Clarendon County Detention Center,
21 when you found that gun or you learned that gun was in a
22 part of your facility what were your primary concerns?

23 A The safety of the staff, public and the detainees at
24 the detention center. That was my primary concern, and
25 once we rendered that weapon safe and conducted a thorough

1 search to make sure there was no other contraband in that
2 immediate area or no rounds of ammunition discovered. Then
3 I went to inquiry and planning on how we were going to use
4 this incident as a learning tool and things of that nature.

5 Q Is it safe to say that whether this gun was used in
6 another crime or stolen or anything of that nature, wasn't
7 -- on the forefront of your mind?

8 A No.

9 Q Another definition I want to make sure I understand is
10 strip search. What is the difference between a pat down
11 search and a strip search?

12 A The primary difference between those two searches is
13 that one is a clothed search. You may hear the word, frisk
14 search, pat search, brush search, touch search. All of
15 those searches involve the detainee being fully clothed. A
16 strip search requires the person to remove all of their
17 clothing. It goes with a series of visual inspection
18 techniques. There is no physical contact by the officer.
19 The officer gives the individual verbal commands and they
20 position their bodies in certain way to check to see
21 whether or not they have any contraband concealed on their
22 person. That's the primary difference; one is clothed, the
23 other is unclothed.

24 Q What is the purpose of having these two different
25 kinds of searches?

State v. Garris September 2-5, 2008

380

1 A The purpose is -- the primary purpose is that many
2 years ago the Supreme Court determined that blanket strip
3 searches of everyone that comes into a detention center is
4 unconstitutional. That is the main reason we don't do
5 strip searches that comes into custody because it's not
6 warranted. The average person coming into our custody is
7 not carrying a dangerous item on their person and the
8 Supreme Court recognized that many years ago. So when a
9 person comes in restrained, with their hands restrained
10 behind their back they are not considered a threat to the
11 officer or you would utilize a pat down search to clear
12 that person of anything that we feel may be dangerous
13 before we release those restraints. The strip search, like
14 I said, if there is some other legal suspicion that exists
15 or some information that is provided by law enforcement
16 that would justify doing a more intrusive type search on
17 that person.

18 Q And when you mean more intrusive, the person's body is
19 exposed in a greater fashion than in a pat down search?

20 A Right. The person is required to do different
21 techniques, in particular, they would be required to bend
22 forward at the waist or do squats and cough and things like
23 that to see whether or not they had items secreted in their
24 body cavities. And males are required to do different
25 things than females and so on and so forth. But it's a

1 thorough visual inspection, you know, that's conducted by
2 the officer by giving that individual verbal commands.

3 Q So it's safe to say the strip search was invented or
4 used because people can hide things in their body cavities
5 that can't be detected by a pat down search?

6 A That's correct.

7 MS. LAND: Just a moment.

8 (Pause.)

9 MS. LAND: That's all the questions I have.

10 THE COURT: Recross?

11 MR. DEAS: Thank you, Your Honor.

12 SHELTON HUGHES - RE-CROSS-EXAMINATION

13 BY MR. DEAS:

14 Q Director Hughes, you've stated a little bit ago, you
15 said you used this incident as a learning tool. What did
16 you learn during the nine days you held onto this gun
17 before turning it over to police?

18 A Actually, I was intending to use it as a learning tool
19 for the staff. Just to do the instruction when we met at
20 our staff meeting just to reinforce the need to do a
21 thorough search of every individual coming in. Pay close
22 attention to these individuals when they come into our
23 custody to maintain safety, because our primary goal is to,
24 you know, maintain safety of the public and secure our
25 institution. And to keep the detainees and our staff, as

State v. Garris September 2-5, 2008

382

1 well, safe. So you know that was what I meant.

2 Q Was one of the things you learned when you find a gun
3 in the jail was to report it to the police?

4 A No. That's not what I learned. I already knew I had
5 that option when the weapon was found.

6 Q You just chose not to exercise it?

7 A Right.

8 Q Now, if you were to find a kilo of cocaine in the jail
9 would you turn that over to the police?

10 MS. LAND: Your Honor, I don't think this is based
11 on a limited re-direct.

12 THE COURT: Mr. Deas?

13 MR. DEAS: Well, she asked him about what he
14 learned, asked him about the issue involving the gun and
15 why he didn't turn it over.

16 THE COURT: She didn't say anything about cocaine.

17 MR. DEAS: She talked about contraband. Cocaine
18 is contraband.

19 THE COURT: The objection is overruled.

20 BY MR. DEAS:

21 Q If you found a kilo of cocaine just like you found
22 this gun in the jail would you hold on to the cocaine for
23 nine days or would you turn it over to the police?

24 A I don't know. It would be case by case. It would
25 depend on where it was found, whether it was tied to a

1 person directly, if it was found in a common area. You
2 have to look at the totality of these circumstances before
3 I could tell you right away whether I would need to call
4 law enforcement or not.

5 Q So you're not sure exactly how you would handle a
6 situation where you found a quantity of illegal drugs in
7 your jail, you're not sure if you would immediately report
8 that?

9 A I'm not sure if I would immediately call law
10 enforcement in to respond to the detention center right
11 away. If it was an emergency -- contraband items that are
12 secured and can be accessed by anyone inside the
13 institution or we consider a threat to the public, minimize
14 to zero the threat to the staff, minimize to zero the
15 threat to the detainees, minimize to zero -- there is no
16 longer a threat, so there is no haste required.

17 Q And you would agree with me that you certainly acted
18 in no haste with respect to finding this gun in your jail,
19 did you?

20 A I don't disagree with you.

21 Q Thank you, sir. No further questions.

22 THE COURT: Thank you, sir. You may step down.

23 All right, ladies and gentlemen, we're going to take a
24 brief break at this time. If you'd like anything you don't
25 have in your jury room let us know. Madam Forelady, let

State v. Garris September 2-5, 2008

384

1 Mr. Hill know. Please do not discuss the case. Thank you.

2 (Jury out for break at 10:41 a.m.)

3 MS. LAND: Our firearms expert has assured me that
4 it is not loaded.

5 THE COURT: Well, don't we have one of those
6 straps, trigger straps.

7 (Jury in after break at 10:57 a.m.)

8 THE COURT: All right, ladies and gentlemen, we're
9 ready to continue and one thing I didn't mention to you
10 earlier that I'll do so at this time. The weapon that's
11 been shown to one witness is by all accounts fully cleared
12 of any ammunition. It's not a danger to anyone and when
13 it's handled, it will be handled by the barrel so that it
14 will be pointed at the floor or the ceiling, obviously to
15 make sure that you feel safe and secure. And if anyone
16 wants to present the weapon to a witness make sure that you
17 alert me and ask my permission first. All right.

18 Okay. Call your next witness, Ms. Land.

19 MS. LAND: We call Officer Rudy Tisdale.

20 THE CLERK: State your full name.

21 MR. TISDALE: Rudy Tisdale.

22 THE CLERK: All right. Raise your right hand and
23 place your left hand on the Bible.

24 (WHEREUPON, Rudy Tisdale, was
25 sworn to tell the truth.)

1 RUDY TISDALE - DIRECT EXAMINATION

2 BY MS. LAND:

3 Q State your name for this jury, please?

4 A Rudy Tisdale.

5 Q And where are you employed?

6 A Clarendon County Sheriff's Office.

7 Q Were you with the sheriff's office on April 29, 2006?

8 A Yes, I was.

9 Q And did you respond to the Clarendon County Detention
10 Center to recover a firearm that was found that within the
11 jail?

12 A Yes, I did.

13 Q Did you receive this and from whom?

14 A From Director Hughes.

15 Q Okay, and what did you receive from him?

16 A A .22 revolver.

17 Q Okay. When you got it was it in a sealed package?

18 A Yes, it was.

19 Q Did you get a good look at the firearm even though it
20 was in a package?

21 A It was in a clear package. So I did look at it.

22 Q Is that the firearm that you received from Director
23 Hughes?

24 A Yes, it is.

25 Q Do you recall anything being around the handle that is

State v. Garris September 2-5, 2008

386

1 not there any more?

2 A I do not.

3 Q What did you do with that firearm once you received it
4 from Director Hughes?

5 A It was turned in to our evidence locker at the
6 Clarendon County Sheriff's Office.

7 Q Okay. And that's the extent that you were involved?

8 A Yes.

9 MS. LAND: That's all the questions I have.

10 THE COURT: Mr. Deas.

11 MR. DEAS: Thank Your Honor. May it please the
12 Court.

13 RUDY TISDALE - CROSS-EXAMINATION

14 BY MR. DEAS:

15 Q Investigator Tisdale, how are you doing, sir?

16 A Fine.

17 Q I'm Garryl Deas. I represent the defendant, Mr.
18 Garris. Basically, your only involvement in that situation
19 was that -- I think you just stated that Director Hughes
20 turned the gun over to you?

21 A Correct.

22 Q And did you come to the jail to pick up the gun?

23 A I picked it up from his office.

24 Q From the Clarendon County Detention Center?

25 A Correct.

State v. Garris September 2-5, 2008

387

1 Q And do you remember what day that was?

2 A There's an evidence log-in sheet with that on it.

3 MR. DEAS: Your Honor, may I approach the witness?

4 THE COURT: Yes.

5 BY MR. DEAS:

6 Q Is that the evidence log-in sheet?

7 A Yes, sir.

8 Q Is that a document that is maintained by your office?

9 A Yes, sir.

10 Q And what date does that log-in sheet show that the gun
11 was turned over to your custody?

12 A I received this from Mr. Hughes on 5/8/06, at 4:50
13 p.m., and I turned it into the evidence locker room on the
14 same date.

15 Q So you received it on May 8th of 2006?

16 A Yes, sir.

17 Q And then what did you do with it after got it -- well,
18 let me ask you this, when you first got the gun from
19 Director Hughes, was it inside of something?

20 A It was in a clear evidence bag, that had been sealed.

21 Q An evidence bag, is it sealed sort of like a freezer
22 bag seal?

23 A No, sir. It's not a zip type. It's actually a piece
24 of tape that folds over so that if it's tampered with
25 there's all kind of indicators on it. You can't open it

State v. Garris September 2-5, 2008

388

- 1 and put it back together in the same spot.
- 2 Q This is basically a clear evidence bag?
- 3 A Yes, sir.
- 4 Q Transparent, you can see through it?
- 5 A Yes, sir.
- 6 Q And do you have any knowledge as to when the gun was
- 7 found in the jail?
- 8 A I know we were notified and we went and picked it up.
- 9 Q You're not sure about how long the jail had this gun
- 10 before you came and picked it up on May 8th of '06?
- 11 A No, sir, I'm not.
- 12 Q And did -- what did you do with the gun once you
- 13 recovered it from the jail?
- 14 A On the same date I filled out one of these forms and
- 15 carried with me to the jail and I turned it over to our
- 16 evidence locker at the Clarendon County Sheriff's Office.
- 17 Q And were you involved in any way in having the gun
- 18 submitted to SLED for ballistics testing or any type of
- 19 evidentiary testing?
- 20 A No, sir, I was not on this one.
- 21 Q And what -- how do you describe the gun on that log-in
- 22 sheet?
- 23 A I have it as black pistol with white grip, .22
- 24 caliber.
- 25 Q Thank you, sir.

1 MR. DEAS: May I approach the witness?

2 THE COURT: Yes, sir.

3 MR. DEAS: I'd offer this into evidence as
4 Defendant's Exhibit No. 2.

5 MS. LAND: No objection.

6 THE COURT: All right. No. 2 without objection.

7 (Defendant's Exhibit No. 2, Log-in
8 sheet, was marked and entered.)

9 MR. DEAS: No further questions.

10 MS. LAND: I have one further question.

11 THE COURT: Okay.

12 RUDY TISDALE - REDIRECT EXAMINATION

13 BY MS. LAND:

14 Q When you got it in the bag, it was sealed; is that
15 correct?

16 A Yes.

17 Q Did you break that seal in any way prior to putting it
18 in the evidence locker?

19 A No, I didn't.

20 Q Okay. That's all the questions I have.

21 MR. DEAS: No questions.

22 THE COURT: All right. Thank you, sir. You may
23 step down.

24 MS. LAND: We call Barbara Proctor.

25 THE COURT: All right. Any objection to this

State v. Garris September 2-5, 2008

390

1 witness being excused; Mr. Deas, Ms. Land?

2 MS. LAND: He can be excused.

3 MR. DEAS: No objection.

4 THE COURT: Thank you. Thank you, sir.

5 THE CLERK: State your name?

6 MS. PROCTOR: Barbara Proctor.

7 THE CLERK: Please raise your right hand and place
8 your left on the Bible.

9 (WHEREUPON, Barbara Proctor, was
10 sworn to tell the truth.)

11 BARBARA PROCTOR - DIRECT EXAMINATION

12 BY MS. LAND:

13 Q State your name for the jury, please?

14 A Barbara Proctor.

15 Q And Ms. Proctor, where are you employed?

16 A Clarendon Sheriff's Office.

17 Q What is your role with the sheriff's office?

18 A I'm the evidence custodian.

19 Q How long have you the evidence custodian at the
20 sheriff's office?

21 A Eleven years.

22 Q And on April 8, 2006, were you the evidence custodian?

23 A Yes, I was.

24 Q Explain to this jury what the evidence custodian does?

25 A I maintain our evidence room where the officers bring

1 evidence in they either log it in or bring it to me. We
2 have log books. They can place it in a locker, take the
3 key out, drop it in the safely box and it's only opened
4 from the inside of the evidence room. And I can go get the
5 keys for the evidence.

6 Q Items that are placed in the evidence room can only be
7 placed there by whom?

8 A By the officers that work there.

9 Q Okay. Where do you keep the evidence that you get?

10 A I have a separate room for my log-in room where I keep
11 track of all of it. And we have shelves, we have bags,
12 just a great room full of shelves.

13 Q Okay. And who has the key to that room?

14 A I'm the only one with the keys to the evidence.

15 Q So you're the only one that can get in and retrieve
16 evidence to return to the -- to whoever it's to be returned
17 to?

18 A That's right.

19 Q Okay, and tell the jury, this is what defense has put
20 in as Defense No. 2. Tell the jury what that is?

21 A This is our Clarendon County Sheriff's Office Evidence
22 Inventory Sheet. All the officers have to fill one of
23 these out with the case number on it before it will be
24 accepted. If they put it in the locker it has to have a
25 sheet with it so I will know where it came from.

State v. Garris September 2-5, 2008

392

1 Q And what's the purpose of keeping these detail records
2 and having only one person who has access to the evidence?

3 A This is -- the actual chain is the only people who
4 have touched this evidence and I'm the only one with the
5 key to it to maintain the care and custody of them and each
6 person who handles any of the evidence must sign this sheet
7 if they bring it in or take it back out.

8 Q And can you read what the description is on that
9 particular evidence sheet?

10 A Pistol with white grip, RG10 -- .22 caliber.

11 Q And the suspect listed is?

12 A Brian Garris.

13 Q And the case number?

14 A Our case number is 06-04-2125.

15 Q And is that the item -- I don't need you to handle the
16 gun or anything, but is that the gun that we've been in
17 court discussing today?

18 A That's correct.

19 Q And so you have it -- you got it from the officer that
20 just testified; is that correct?

21 A Well, I got it from the locker. He placed it in an
22 evidence locker and I retrieved it the very next day.

23 Q Okay. What was the date and time the next day?

24 A On 5/9/06 at 10:30 a.m.

25 Q Okay. After you had it who did you release it to, if

1 anybody?

2 A I gave it to Investigator Rick Elms.

3 Q Okay. Was he with the Clarendon County Sheriff's
4 Office at that time?

5 A He was not. He was with the City of Manning.

6 Q Okay. And do you know why you released it to
7 Investigator Elms?

8 A Just that he needed it for an investigation.

9 Q Okay. And did he sign for that?

10 A He did on 5/15/06 at 3:15 in the afternoon.

11 Q Okay. Thank you, Ms. Proctor. That's all the
12 questions I have.

13 BARBARA PROCTOR - CROSS-EXAMINATION

14 BY MR. DEAS:

15 Q Ms. Proctor, my name is Garryl Deas. I represent the
16 defendant, Mr. Garris. Your job as the evidence custodian
17 is essentially to maintain any evidence that's brought to
18 you for law enforcement officers; correct?

19 A Correct.

20 Q And your only involvement with respect to this
21 particular item, this weapon, was that it was turned over
22 to your department by Officer Tisdale?

23 A That's correct.

24 Q And do you have any -- do you have any recollection of
25 the appearance of the gun as it looked when it was turned

State v. Garris September 2-5, 2008

394

1 over to your department?

2 A I do not.

3 Q So you wouldn't know whether or not there's been in
4 changes to the appearance to the gun from the time that it
5 was presented to you until today?

6 A No, sir.

7 Q Thank you, ma'am. I have no further questions.

8 MS. LAND: No further questions, Your Honor.

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

10 MS. LAND: Your Honor, we call Investigator Rick
11 Elms.

12 THE CLERK: Please raise your right hand and place
13 your left on the Bible. State your name?

14 MR. ELMS: Rick Elms.

15 (WHEREUPON, Rick Elms, was sworn
16 to tell the truth.)

17 RICK ELMS - DIRECT EXAMINATION

18 BY MS. LAND:

19 Q Would you introduce yourself to this jury, please?

20 A I'm Rick Elms.

21 Q And where are you employed?

22 A Clarendon County Sheriff's Department.

23 Q In what capacity?

24 A I'm an investigator.

25 Q Beginning around April or May of '06, where were you

1 employed?

2 A City of Manning Police Department.

3 Q And how long had you been employed with the police
4 department?

5 A About 16 years.

6 Q So how long in total have you been in law enforcement?

7 A Approximately 17 -- a little over 17 years, now.

8 Q Okay. During that time, April or May 2006, what would
9 your capacity have been with the City of Manning Police
10 Department?

11 A During April/May 2006, I was an investigator.

12 Q And what duties and responsibilities does an
13 investigator have?

14 A To investigate cases to the best of my ability of the
15 crimes committed.

16 Q And tell the jury how that works. If a crime happens
17 do you always respond to the scene?

18 A No. It depends on the crime. Armed robbery,
19 burglaries, of course, we respond to, stuff like that.

20 Q Okay. And in this -- in this case, the one you're
21 here for today, the incident at the China Cuisine, were you
22 called to that case?

23 A Yes, ma'am, I was.

24 Q How did you learn that there was an incident at the
25 China Cuisine?

State v. Garriss September 2-5, 2008

396

1 A I was called by an officer on the scene.

2 Q And what did you learn?

3 A A young lady had been robbed and shot at the China
4 Cuisine on Church Street here in Manning.

5 Q Okay. What did you do in response to that call?

6 A I responded to the scene. Met up with Jack Ridgeway,
7 and they told me that SLED crime scene was on the way. So
8 we just kind of held down, secured the scene. I did my
9 basic photographs of the scene. Then I went over to the
10 hospital, took photographs of my injured victim.

11 Q Okay. When you were at the scene, did you keep that
12 scene secure?

13 A Yes, ma'am.

14 Q All right. Tell the jury what that means and what you
15 did to do that?

16 A We had it taped off and the officers also on the
17 boundary of the -- kept folks from entering or were already
18 there, possibly was witnesses were kept there at the scene.
19 Nobody was allowed beyond the tape and all that, just the
20 SLED crime scene when they got there.

21 Q And did you, at that time, have a suspect?

22 A No, ma'am.

23 Q When you were at the scene did you talk to Ms. Laura
24 Batista?

25 A Yes, ma'am, I did.

1 Q And what was your conversation with her?

2 A Well, when I asked her what happened, she told me a
3 slender, tall African American male had robbed her mom and
4 her and shot her mom in the face and arm.

5 Q And when she describe him as tall did she ever give a
6 height estimate?

7 A No, ma'am.

8 Q And did she describe to you what this person was
9 wearing?

10 A Yes, ma'am.

11 Q And what was her description at that time?

12 A She said a hat, a mechanics type striped shirt. I had
13 no idea what that was. I was thinking possibly a uniform
14 type deal with verticals and a name badge. But that's what
15 she told me at that time.

16 Q Okay. And did she say mechanics shirt and you
17 inferred that that meant vertical stripes?

18 A Yes, ma'am, I did.

19 Q Do you ever recall her saying vertical stripes or up
20 and down stripes?

21 A No, ma'am.

22 Q Is it possible that your conversation during the chaos
23 of that night shortly after it happened you may have had a
24 misunderstanding of --

25 MR. DEAS: Objection. Leading.

State v. Garris September 2-5, 2008

398

1 THE COURT: Overruled.

2 BY MS. LAND:

3 Q -- of what sort of clothing the suspect you were
4 looking for was wearing?

5 A Oh, yes, ma'am. There was a lot of stuff going on.

6 Q And describe to the jury what was Ms. Batista's
7 demeanor?

8 A Oh, she was scared. She had blood across her shirt
9 and her hands. She was somewhat hysterical. We tried to
10 calm her down. When the ambulance was leaving was when I
11 pulled up to the scene. It was already going to the
12 hospital. So I was not able to talk to Ms. Santiago there
13 at the scene.

14 Q And Ms. Santiago was in the ambulance that was
15 leaving?

16 A Right.

17 Q Were there a lot of people that started to gather
18 around?

19 A Yes, ma'am. A lot of law enforcement.

20 Q And it was dark outside?

21 A Yes, ma'am.

22 Q Did you speak -- where did you speak to Ms. Batista?

23 A I spoke to her in front of the China Cuisine right on
24 Church Street.

25 Q So you were outside as well, both of you were outside?

State v. Garris September 2-5, 2008

399

1 A Correct.

2 Q Okay. How long do you think your conversation with
3 her was?

4 A Just about four or five minutes.

5 Q And were you part of setting up a parameter to see if
6 you could possibly contain a suspect?

7 A No, ma'am. I stayed at the scene while Capt. Ridgeway
8 and Chief Garret were on the parameter and stuff.

9 Q Okay. While you were at the scene did you have the
10 opportunity to view the vehicle they were in when they were
11 robbed and shot?

12 A Yes, ma'am, I was.

13 Q Okay. Did you take a photograph of that vehicle?

14 A Yes, ma'am, I did.

15 Q Is this an accurate representation of the photograph
16 that you took?

17 A Yes, ma'am, it is.

18 MS. LAND: Your Honor, I'd like to have this
19 admitted as State's No. 5.

20 MR. DEAS: No objection.

21 THE COURT: All right. State's No. 5 without
22 objection.

23 (State's Exhibit No. 5, photograph
24 of vehicle, was marked and entered.)

25 BY MS. LAND:

State v. Garris September 2-5, 2008

400

1 Q So this is the van that Ms. Batista told you they were
2 in when someone approached the drivers' side and shot her
3 mother?

4 A Yes, ma'am, that's right.

5 Q And this was a red van with a running board; is that
6 correct?

7 A Correct.

8 Q And it was still on the scene?

9 A Yes, ma'am.

10 Q And I understand that it was not at the place the
11 shooting had taken place but where her mother had moved it?

12 A That's correct?

13 Q Did you also have the opportunity after being at the
14 scene -- how long do you think you stayed at the scene?

15 A Oh, I'd estimate probably two to three hours.
16 Possibly longer. We was out there all night.

17 Q And while you were out there were you charged with
18 collecting any evidence or anything of that nature?

19 A No, ma'am. I let the SLED crime scene take care of
20 that.

21 Q Okay. And did they come and do they best that they
22 could?

23 A Yes, ma'am, they did.

24 Q Was there any information that they could provide you
25 that helped you in your investigation?

1 A No, ma'am.

2 Q Where did you go -- what time did you arrive at the
3 crime scene?

4 A It was approximately 11:00 o'clock.

5 Q Shortly after it occurred?

6 A Yes, ma'am.

7 Q And did you go -- after you left the crime scene to
8 Clarendon Memorial Hospital?

9 A Yes, ma'am, I did.

10 Q Do you have any idea what time that was?

11 A No, ma'am. I estimate about 11:30 or 11:45.

12 Q When you got there were you able to see Martha
13 Santiago?

14 A Yes, ma'am, I was.

15 Q Were you able to speak with her?

16 A No, ma'am, she was not in the capacity to talk with so
17 I took photographs.

18 Q Okay. And you took photographs as she looked that
19 evening?

20 A Yes, ma'am, I did.

21 Q Let me ask you if you can identify these two
22 photographs?

23 A The one on your left is Mr. Santiago's left arm. The
24 right is Ms. Santiago as she was at the hospital when I got
25 there to take photographs. Getting ready to go to MUSC.

State v. Garris September 2-5, 2008

402

1 MS. LAND: Your Honor, I'd like to admit this as
2 State's Nos. 6 and 7.

3 MR. DEAS: Your Honor, I have an objection.

4 THE COURT: All right. Ladies and gentlemen,
5 please step to your jury room. We'll have you back out
6 momentarily. Do not discuss the case.

7 (Jury out at 11:19 a.m.)

8 THE COURT: Mr. Deas, I guess we should have taken
9 care of this in a pre-trial matter, but what's your -- can
10 I see the photos, please?

11 MS. LAND: Yes.

12 THE COURT: Do you have an objection to photos?

13 MR. DEAS: Yes, sir. In the course of the -- I
14 don't have both pictures in my discovery package. But my
15 objection would be relevance. My argument is prejudicial
16 and a prejudicial affect far out weight the probative
17 value.

18 THE COURT: All right. How about the discovery
19 part?

20 MS. LAND: May we approach for just a second.

21 THE COURT: Yes.

22 (Off the record bench conference with Ms. Land, Mr. Deas.)

23 THE COURT: Let's make -- All right, Mr. Deas, Ms.
24 Land, State's ID No. 6 is the one, the arm and No. 7 for ID
25 is the one that shows Ms. Santiago's face. As far as the

1 discovery issue Mr. Deas objection is overruled. As far as
2 the 403 objection in my view looking at these photos, the
3 pictures are relevant, because what we have on the record
4 at this point is testimony that from the witness that she
5 was shot in the arm and in the eye. And these pictures
6 would conceivably corroborate that. And it does appear to
7 be an issue in this case because this is an assault and
8 battery with intent to kill charge. As far as whether or
9 not the prejudicial affects substantially outweigh the
10 probative value, I don't think the photos, specifically
11 addressing No. 6, I think your argument fails. And No. 7 is
12 a facial shot. I would respectfully deny your motion on
13 that point as well. I think any prejudicial impact is not
14 -- does not substantially outweigh the probative value. I
15 don't think they're unduly prejudicial or confusing. I
16 don't think they mislead the jury.

17 Anything else, Mr. Deas?

18 MR. DEAS: No, nothing further.

19 THE COURT: All right. Any other photos that we
20 need to address at this point?

21 MS. LAND: Your Honor, there is one thing that I
22 intend, I hope to get in with this witness. This is a
23 picture of an x-ray with the bullet in her arm.

24 MR. DEAS: Judge, I would just have to say an
25 objection, but on the basis of the prejudicial affect

State v. Garris September 2-5, 2008

404

1 outweighing the probative value.

2 THE COURT: On that basis I would overrule your
3 objection. This coming in through this witness?

4 MS. LAND: Your Honor, yes.

5 MR. DEAS: And obviously, I don't know if
6 Investigator Elms is certainly a well-versed man, but I'm
7 not exactly sure if he's qualified to authenticate this.

8 THE COURT: How about that, Ms. Land?

9 MS. LAND: Well, Your Honor, what happened was the
10 family had reason to believe, as she testified, that she
11 kept feeling a little lump in her arm, that the bullet was
12 still in the arm.

13 THE COURT: Right.

14 MS. LAND: Lt. Elms went over there one and the
15 young boy started playing around with the want and went to
16 his mom and it went to her arm and it went, beep, beep,
17 beep.

18 THE COURT: Yeah, they testified to that.

19 MS. LAND: Right. Anyway, so Lt. Elms sent Ms.
20 Santiago to get an x-ray which revealed -- of course, he
21 wasn't in there with her, and I don't even think he was at
22 the hospital when she had it. But then went to -- with her
23 to Dr. Dominecci, (sp) stood there with her while Dr.
24 Dominecci took it out of her arm and handed it directly to
25 Lt. Elms. And I just that picture so the jury can see that

1 it was, in fact, in her arm.

2 THE COURT: I think that the witness can testify
3 as to what the doctor handed him.

4 MS. LAND: Okay.

5 THE COURT: But I'm not going to allow the x-ray
6 in. I don't --

7 MS. LAND: Right. I was just trying to --

8 THE COURT: All right. Ready for the jury, Ms.
9 Land. I'm going to hand your picture back to you.

10 MS. LAND: I'm ready.

11 THE COURT: Before the jury comes in, I'll just
12 allow you to proceed and you can continue with the photos.

13 MS. LAND: They're in evidence, then?

14 THE COURT: They're not in. They're not yet --
15 well, you have offered those -- okay. Why don't you do it
16 this way. Madam Court Reporter, just take off the ID tag
17 and I'll -- let you move them into evidence again, and I'll
18 allow those into evidence.

19 Mr. Deas, that will be over your objection.

20 MR. DEAS: Yes, sir.

21 THE COURT: Okay, you can bring in the jury.

22 (Jury in at 11:26 a.m.)

23 THE COURT: Thank you for your patience, ladies
24 and gentlemen.

25 Ms. Land.

State v. Garris September 2-5, 2008

406

1 MS. LAND: Your Honor, at this time I would ask
2 that State's 6 and 7 for ID be admitted into evidence.

3 THE COURT: All right. And No. 6 is what you
4 identified as which one?

5 MS. LAND: The arm.

6 THE COURT: All right.

7 MS. LAND: Seven is the gunshot wound to the eye.

8 (State's Exhibit No. 6, photograph
9 of arm, was marked and entered.)

10 (State's Exhibit No. 7, photograph
11 of victim's face, was marked and entered.)

12 BY MS. LAND:

13 Q Let me show you what's been marked as State's Exhibit
14 No. 6. Can you tell the jury what this is?

15 A Yes, ma'am. That is the upper arm of Ms. Santiago.

16 Q Okay, when you took this what time of day or night was
17 it?

18 A Well, approximately 11:30 or 11:45 p.m.

19 Q So you went to the hospital, you left the scene, went
20 to the hospital and then returned to the scene?

21 A Yes, ma'am. I went to the scene to make sure
22 everybody was secured and waiting on the crime scene, SLED
23 crime scene. I then went to the hospital because they were
24 going to transport her to MUSC.

25 Q Okay. At this time, approximately how long had Ms.

1 Santiago been at the hospital?

2 A I could not tell you that.

3 Q Okay. Do you know if they had taken any measures to
4 clean up the wound?

5 A No, ma'am. I can tell you they were prepping her to
6 leave for MUSC in an ambulance.

7 Q All right. And this was put into evidence as State's
8 Exhibit No. 7. You have seen this picture?

9 A Yes, ma'am. That's correct.

10 Q Can you tell the jury what this is a picture of?

11 A That is the entry wound of the bullet under Ms.
12 Santiago's left eye. There they have her --

13 Q And this is her condition when you saw her and you
14 were not able to speak to her?

15 A That's right. She was not able to talk to me that
16 night.

17 Q What was her mood?

18 A Just shock, just look at the picture.

19 Q At that point was she crying?

20 A No, ma'am. She looked like she was holding up okay,
21 but she was in pain.

22 Q When you were at the scene, were the younger two sons
23 there as well?

24 A Yes, ma'am, they were.

25 Q And what was their demeanor?

State v. Garris September 2-5, 2008

408

1 A Upset, crying. Pretty much hysterical, too. Laura
2 was the only one I was able to get a little bit of
3 conversation with.

4 Q All right. Would you describe the scene that night as
5 chaotic?

6 A Yes, ma'am.

7 Q Let's go forward in time a little bit to Brian Garris.
8 What made Brian Garris a suspect in your mind the very
9 first time you saw him?

10 A Okay. Donnie Drose, Sgt. Donnie Drose, and Holmes
11 Smith came to me and said they had seen Mr. Garris in the
12 vicinity of the crime scene, approximately two to three
13 blocks away. I then prepared a lineup for Ms. Laura
14 Batista to look at.

15 Q At that point would you say that there was very little
16 evidence?

17 A Yes, ma'am.

18 Q And at that point would you say that you were not
19 grasping at anything you could find, but you were looking
20 for leads?

21 A Yes, ma'am, I was.

22 Q And was that enough for you to put him in the lineup?

23 A Yes, ma'am. He was on foot and they were in the area,
24 also one of my officers did talk to one of them.

25 Q And you composed a lineup?

1 A Yes, ma'am, I did.

2 Q Okay, that lineup has been admitted into evidence as
3 State's No. 2. Is that the lineup that you composed?

4 A Yes, ma'am, it is.

5 Q Tell the jury how you make a photo lineup?

6 A We have a system called All-Tracking on our computers,
7 and it has some mug shots of all individuals arrested by
8 law enforcement, the police department, sheriff's office.
9 I then contemplated six individuals from that computer.

10 Q And do you try to find individuals who look somewhat
11 similar?

12 A Correct.

13 Q In what way; how do you do that?

14 A Just physical characteristics; face, hair.

15 Q So you go through and say this is a young black male
16 with short hair, long hair?

17 A Yes, ma'am.

18 Q And you picked those six individuals. Was -- did you
19 show that to Laura Batista?

20 A Yes, ma'am, I did.

21 Q On what date did you show it to her the first time?

22 A The first time was on the 22nd of April I showed it to
23 her.

24 Q At that time, did she make any reference at all to
25 Brian Garris?

State v. Garris September 2-5, 2008

410

1 A Yes, ma'am. She picked him out and she identified him
2 as a customer that comes in at night and gets wings. She
3 really took an interest in that photo, but did not make an
4 identification at that time.

5 Q Did she indicate anything that her mother had said to
6 her at that time?

7 A Yes, ma'am. She told me her mom said he had some sort
8 of hair or braids sticking out of a hat.

9 Q Did you feel at that point that she was looking for
10 someone with longer hair?

11 A Correct.

12 Q And when she did not identify him did you take any
13 actions regarding Brian Garris?

14 A No, ma'am.

15 Q When did you find out there had been a firearm found
16 in the jail?

17 A That was on May 15, 2006.

18 Q And when you found that out you still had very, very
19 few leads in this case; is that correct?

20 A Yes, ma'am, it is.

21 Q And what did you think when you heard about that gun
22 being found?

23 A Well, I went down there thinking it might be a
24 connection to my armed robbery.

25 Q Okay. And was that kind of a shot in the dark?

1 A Yes, ma'am.

2 Q What made you reach for that, though?

3 A Due to the fact that it was found with Mr. Garris --
4 in the same cell as the gun came out of.

5 Q Okay. And so did you get that gun from Barbara
6 Proctor?

7 A Yes, ma'am, I did.

8 Q All right.

9 MS. LAND: If I may approach the witness?

10 THE COURT: Yes, ma'am.

11 BY MS. LAND:

12 Q If I may show you what's been marked for ID as State's
13 No. 4. Is that the gun that you checked out from Ms.
14 Proctor?

15 A Yes, ma'am.

16 Q And when did you check that out from Ms. Proctor?

17 A It got it on May 15th.

18 Q DO you know what time?

19 A I believe we've got a sheet with the chain of custody
20 on it --

21 Q All right. That's been put in as Defense No. 2.

22 A So I can be correct. Thank you. 3:15 p.m. on May 15,
23 2006.

24 Q And what were you hoping to find from this gun?

25 A To see if it turned into a possible lead for my armed

State v. Garris September 2-5, 2008

412

1 robbery and shooting of Ms. Santiago.

2 Q Did you go to the van that was -- that is pictured in
3 State's No. 5?

4 A Yes, ma'am. I went out to their residence because I
5 knew two bullets had been fired. One was supposedly lodged
6 in Ms. Santiago's head and they were not able to remove it.
7 The doctors had told me there initially that it looked like
8 it was through and through. So I went there that afternoon
9 and searched the van and was unable to find the bullet
10 hole. I had the metal detector with me, which I was
11 running over some of the compartments of the van and
12 Antonio Batista wanted to play with it. So he went over to
13 his mom, grabbed the metal detector and rubbed it on her
14 arm where she was shot and it went off. I then grabbed it
15 and there appeared to be a metal object stuck right up
16 under her skin of her arm.

17 Q Was it in the same place where she said she felt the
18 bump?

19 A Yes, ma'am, it was.

20 Q And what did you do in response to that metal detector
21 indicating metal in her arm?

22 A Well, the next thing I did was make contact with Dr.
23 Dominecci in order to get her there on the 16th, that next
24 morning so we could get that bullet removed and I could
25 give it to SLED along with that gun.

1 Q And did he learn that there was a bullet in her arm?

2 A Yes, ma'am, he did.

3 Q And were you present when that bullet was removed?

4 A Yes, ma'am, I was.

5 Q Did he hand that bullet directly to you?

6 A Yes, ma'am. I watched Dr. Dominecci take it right out
7 of her arm and put it right in that box for me.

8 Q What did you do with that bullet?

9 A I then taped it along with my gun and then on May 16th
10 I went straight -- I had already contacted Lt. Parnell at
11 the time and told him I was coming in with it.

12 Q You told him you were coming with what two items?

13 A The .22 caliber pistol and a bullet taken out of my
14 victim's arm, Ms. Santiago.

15 Q Can you identify that object?

16 A Yes, ma'am. It looks like the bullet that pierced Ms.
17 Santiago's arm.

18 Q And the same bullet that was taken out of her arm in
19 your presence?

20 A Yes, ma'am.

21 MS. LAND: Your Honor, I'd move to have this
22 admitted as State's Exhibit No. 8.

23 MR. DEAS: No objection.

24 (State's Exhibit No. 8, bullet,
25 was marked and entered.)

State v. Garris September 2-5, 2008

414

1 THE COURT: Without objection.

2 BY MS. LAND:

3 Q And you took both of those items and left them with
4 the South Carolina Law Enforcement Division; is that
5 correct?

6 A Yes, ma'am, that's correct.

7 THE COURT: Ms. Land, so the record will be clear,
8 what is the sticker on?

9 MS. LAND: The sticker is on the box that is
10 holding the bullet.

11 THE COURT: All right. So that bullet was put back
12 in that box?

13 MS. LAND: It was, yes.

14 BY MS. LAND:

15 Q At what point -- there was a composite picture drawn
16 --

17 A That's correct.

18 Q -- of the suspect. The description was given by Ms.
19 Martha Santiago; is that correct?

20 A Yes, ma'am, that's correct.

21 Q And at the time that that was brought out, what
22 happened, if anything?

23 A I had Agent Mike Lynch down, a forensic artist, for
24 Ms. Santiago to sit with. Mike takes Ms. Santiago and
25 Carlos Rangel into a room by themselves so they could have

1 privacy. She then gives a description, I believe, of the
2 gentleman that shot her. I then made copies of that and I
3 made wanted posters. I then handed it to Sgt. Donnie Drose
4 who was working that day. Sgt. Drose comes to me --

5 Q Let me stop you for one second.

6 A I'm sorry.

7 Q Is this the poster that you composed from the
8 composite?

9 A Yes, ma'am, that's a copy.

10 Q Okay.

11 MS. LAND: Your Honor, I would like this admitted
12 as State's No. 9.

13 MR. DEAS: No objection.

14 THE COURT: All right.

15 (State's Exhibit No. 9, wanted
16 poster, was marked and entered.)

17 BY MS. LAND:

18 Q And when you had -- when the composite was made you
19 took it and did what?

20 A Made copies of it into that poster there, to try to
21 get some leads and generate some information on the
22 shooting. Sgt. Donnie Drose was working that day. Sgt.
23 Drose said, Lt. Elms, that picture is Brian Garris.

24 MR. DEAS: Objection. It's hearsay. He's stating
25 what Investigator Drose has told him.

State v. Garris September 2-5, 2008

416

1 THE COURT: Ms. Land?

2 MS. LAND: Your Honor, Officer Drose has already
3 testified and been subjected to cross-examination.

4 THE COURT: All right. Ladies and gentlemen, step
5 to your jury room for just a minute. I'll have you back
6 out very quickly.

7 (Jury out at 11:39 a.m.)

8 THE COURT: All right. The testimony that the
9 witness was going to testify as to what Mr. Drose said to
10 him?

11 MR. DEAS: Correct.

12 THE COURT: All right.

13 MS. LAND: Your Honor --

14 THE COURT: Why is that not --

15 MS. LAND: -- Your Honor, hearsay is a third-party
16 out of court statement that goes to --

17 THE COURT: That's what that was.

18 MS. LAND: He --

19 THE COURT: Well, I'll tell you what, ask the
20 witness the question and we'll find out what he said and
21 we'll find out if it was true -- it will definitely be an
22 out of court statement. The question initially is whether
23 or not it's offered to prove the truth of the matter
24 asserted. So go ahead and ask the question.

25 BY MS. LAND:

1 Q In response to seeing that poster, what did Officer
2 Drose tell you?

3 A When Sgt. Drose looked at the picture he told me that
4 that resembled the shirt that Mr. Garris was wearing that
5 evening.

6 THE COURT: All right. Now, that statement is
7 offered to prove the truth of the matter asserted,
8 specifically, that that -- that Mr. Garris was wearing a
9 shirt that looked like that?

10 MS. LAND: Correct.

11 THE COURT: All right. If that is hearsay --
12 excuse me, do you not think that is hearsay?

13 MS. LAND: I don't, Judge, because Sgt. Drose came
14 to court and testified to that fact, that he came to Lt.
15 Elms and said, this is the shirt that he was wearing.

16 THE COURT: All right. It's an out of court
17 statement, right?

18 MS. LAND: It's been made in court, though, and
19 he's been subject to cross-examination.

20 THE COURT: What rule -- there's a rule 801-
21 (d)(1)(b), that allows the witness's testimony to be
22 corroborated with a prior consistent statement in certain
23 situations. The statement -- he had -- the witness's
24 testimony, Mr. Drose, has to be attacked by an implied or
25 direct charge of fabrication or improper motive. I don't

State v. Garris September 2-5, 2008

418

1 know whether that's been done. So it's still hearsay.

2 MS. LAND: Well, if you say so --

3 THE COURT: Well, Ms. Land, I guess I do say so.
4 I'm -- what I'm asking you to tell me is what rule or what
5 exception it can come in under?

6 MS. LAND: Your Honor, I can't give you a rule
7 right now, but every time this has come up on my experience
8 that has been a ruled not to be an out of court statement
9 because that person has already testified to the same -- to
10 the same set of facts and have been subject to cross-
11 examination. The reason hearsay is not admissible is
12 because that third party is not present for cross-
13 examination.

14 THE COURT: Here's what the rule says.

15 MS. LAND: Okay.

16 THE COURT: The statement is not hearsay if the
17 declarant, Mr. Drose, testifies at the trial and is subject
18 to cross-examination concerning his statement. You're good
19 up to that point. And the statement is inconsistent. Of
20 course, we do that all the time. Or it's consistent with
21 Mr. Drose's testimony and is offered to rebut an impressed
22 or implied charge against Mr. Drose of recent fabrication
23 or improper influence or both. And then it says provided
24 however --

25 So what I'm searching for from you -- the fact that

1 it's done all the time, what rule is it that that statement
2 falls under.

3 Now, Mr. Drose can come in and say, I saw that shirt
4 and I immediately called Mr. Elms and I said, that's what
5 Mr. Garris had on. Matter of fact, he might have testified
6 to that.

7 MS. LAND: He did.

8 MR. DEAS: He did.

9 THE COURT: But this witness can't -- at least
10 under that rule, so I'll break this witnesses testimony --
11 the closer question quite frankly I probably should have
12 ruled in your favor when Mr. Baker testified that Mr.
13 McCrea told him where he found the gun, because I think Mr.
14 Deas probably, at least -- accuse him of fabrication or
15 improper influence because of his custodial status, but Ms.
16 Jones testified the exact same thing without any objection.
17 So what I'm looking for is some rule that the witness can
18 testify to what another witness who's already testified
19 told him.

20 MR. DEAS: And Judge, just for the record, my
21 position is that it's hearsay and there's no exception
22 under the hearsay rule that would allow for this testimony
23 to be admitted.

24 MS. LAND: Okay, and Your Honor, obviously I was
25 not prepared to argue this because of this past experience

State v. Garris September 2-5, 2008

420

1 so if you'll give me --

2 THE COURT: Sure I'll give you a few minutes.

3 MS. LAND: Thank you.

4 THE COURT: All right you can step down, Mr. Elms.

5 Of course, you know you can't talk about your testimony

6 with anyone.

7 MR. ELMS: Thank you.

8 MS. LAND: Under 801 hearsay is a statement other
9 than one made by the declarant while testifying at the
10 trial.

11 THE COURT: And this statement was made by Mr.
12 Drose at the police station.

13 MS. LAND: It was also made by him while he was
14 testifying at the trial.

15 THE COURT: But the statement he's testifying to
16 was made at the police station.

17 Now, let's look at 801 (b)(1)(2). That's another
18 statement that's not hearsay. The declarant -- let's just
19 use Mr. Drose. Mr. Drose testified at the trial and is
20 subject to cross-examination and the statement is one of
21 identification of a person made after perceiving the
22 person. That's why a witnesses such as Mr. Elms can say,
23 he told me it was Brian Garris that he saw. Now that comes
24 under that rule. If -- conceivably it's one of
25 identification of a person's shirt after perceiving the

1 person's shirt. I think the rule is designed to not allow
2 witnesses to bolster and corroborate what another witness
3 says who has testified has told him unless that witness's
4 credibility has been attacked or that witness has been --
5 or at least the opponent of the witness has implied
6 incorrectly accused the witness of fabrication.

7 If Mr. Deas had done that then I would allow this
8 witness to testify.

9 MS. LAND: Okay. Well, I think the rule is
10 designed so that the defendant has the opportunity to
11 question anyone that made a statement relevant to his case.
12 They had the opportunity to cross-examine Agent Drose. I
13 think that you and I are reading -- other than one made by
14 the declarant while testifying at trial differently.

15 THE COURT: Okay.

16 MS. LAND: But you're the Judge, so we'll go on.

17 THE COURT: All right. You know, I enjoyed the
18 debate, too.

19 MS. LAND: I mean, I -- just saying, you win.

20 THE COURT: Wouldn't you not agree that what Mr.
21 Drose was saying to Mr. Elms was an out of court statement?

22 MS. LAND: It's a statement. Hearsay is a
23 statement. It doesn't say out of court statement. Hearsay
24 is a statement other than one made by the declarant while
25 testifying at the trial.

State v. Garris September 2-5, 2008

422

1 THE COURT: Then that's out of court.

2 MS. LAND: It doesn't say out of court.

3 THE COURT: It says made while testifying -- other
4 than one made while testifying in trial. So that has to be
5 outside of trial.

6 MS. LAND: But he did make -- okay.

7 THE COURT: All right.

8 MS. LAND: That's fine.

9 THE COURT: Well, we can argue about this later.
10 All right, Mr. Elms, you can come on up.

11 The objection will be sustained.

12 Melissa, are you okay?

13 COURT REPORTER: I'm fine. Thank you.

14 THE COURT: Okay. All right. You can bring the
15 jury in.

16 (Jury in at 11:48 a.m.)

17 THE COURT: All right. Thank you, ladies and
18 gentlemen.

19 Ms. Land, you can continue.

20 MS. LAND: Thank you, Judge.

21 RICK ELMS - CONTINUED DIRECT EXAMINATION

22 BY MS. LAND:

23 Q Investigator Elms, after that composite was composed
24 and you made this poster, did you post it around the police
25 station?

1 A Yes, ma'am, I did.

2 Q And did you post it in the community?

3 A Yes, ma'am, I did.

4 Q Okay. And in response to that being in the community
5 did you receive any leads?

6 A Not then.

7 Q Okay. Did you take that same lineup again to Laura
8 Batista and show it to her and ask her if she recognized
9 anybody?

10 A Yes, ma'am, I did.

11 Q All right. Tell the jury about that occasion.

12 A On May 24, 2006, I met with Laura, me and Capt.
13 Shaffer, who was a captain at that time. We were at her
14 residence at Oak Grove Church Road. I asked her to step
15 out on the porch. She came out there. I handed her the
16 lineup and this time she went right to circling Mr. Garris
17 as the man who shot and robbed her mother. And she signed
18 off on it.

19 Q And did you in any way say or do anything that would
20 influence her choosing of Mr. Garris from that lineup?

21 A No, ma'am, I didn't.

22 Q Who was with you at that time?

23 A At that time it was Capt Shaffer.

24 Q Did Capt. Shaffer say or do anything that would
25 influence her decision.

State v. Garris September 2-5, 2008

424

1 A No, ma'am.

2 Q I'm going to show you again what's been put into
3 evidence as State's No. 2. Is that the exact lineup that
4 you showed her?

5 A Yes, ma'am, it is.

6 Q And what did she circle, who did she circle?

7 A Circled Mr. Garris.

8 Q And what did she write above his picture in your
9 presence?

10 A This is the guy that robbed us. And it's signed, Laura
11 Batista.

12 Q And do you feel like she took a good deal of time to
13 look over those pictures?

14 A Yes, ma'am.

15 Q How long did she take?

16 A About five minutes. She pointed him out. She felt
17 pretty sure about it.

18 Q Did you have an opportunity to interview other people
19 involved or that had spent the day with Brian Garris prior
20 to this incident?

21 A Yes, ma'am, I did.

22 Q And that were with Brian Garris the day of the
23 incident?

24 A Yes, ma'am, I did.

25 Q Did you interview Andrew McBride?

- 1 A Yes, ma'am.
- 2 Q Did he indicate to you that Mr. Garris had a firearm
- 3 with him that night?
- 4 A Yes, ma'am, that's what he indicated.
- 5 Q And did he describe to you that firearm?
- 6 A Yes, ma'am, he did.
- 7 Q And how did he describe it?
- 8 A As a small type handgun with a tan handle on it.
- 9 Q And did he indicate to you that sometime that evening,
- 10 but before this crime that Mr. Garris had left the group
- 11 that they were with?
- 12 A That's correct.
- 13 Q And did you speak to Freddie White?
- 14 A Yes, ma'am, I did.
- 15 Q And did Freddie White indicate that he had been with
- 16 Mr. Garris the day of this incident?
- 17 A Yes, ma'am, he indicated.
- 18 Q And did he indicate a time period to you?
- 19 A He was not sure of the time frame between 8:00 and
- 20 10:00 he estimated.
- 21 Q Okay. So he was saying earlier in the evening they
- 22 had been together?
- 23 A Correct.
- 24 Q And at that time did he say he saw Mr. Garris in
- 25 possession of a gun?

State v. Garris September 2-5, 2008

426

1 A Yes, ma'am, he did.

2 Q Was he able to give a description of that gun to you?

3 A Yes, ma'am, he was.

4 Q And what description did he give?

5 A Small revolver handgun with a tan grip.

6 Q And did he tell you that Mr. Garris had left the group
7 sometime prior to this shooting?

8 A Yes, ma'am, he did.

9 Q Did Mr. Freddie White also indicate to you that Mr.
10 Garris had been very short on money both the day of the
11 incident and around that period of time?

12 MR. DEAS: Objection. That's hearsay, as well.

13 THE COURT: Overruled.

14 A Yes, ma'am, he did.

15 BY MS. LAND:

16 Q And did he indicate to you that on the day after this
17 incident Mr. Garris had \$40 with him?

18 A He did.

19 Q Did he tell you what denomination that money was in?

20 A Yes, ma'am.

21 Q What did he say?

22 A He stated two 20s.

23 Q Did Mr. Freddie White indicate to you that he had
24 spoken to Mr. Garris around 10:30 or 11:00 that evening of
25 the incident?

1 A Yes, ma'am.

2 Q And what did he indicate, if anything, about Mr.
3 Garris?

4 A That he was out of breath, sounded like he was
5 running.

6 Q Okay. And did he indicate to you something about Mr.
7 Garris's size?

8 A Yes, ma'am.

9 Q And what did he say?

10 A That's he's a good sized fellow, sounded like he was
11 running pretty hard.

12 MS. LAND: Beg the Court's indulgence for one
13 moment.

14 THE COURT: Yes, ma'am.

15 BY MS. LAND:

16 Q After you took the bullet and the gun to SLED, did you
17 pick them up at a later time?

18 A Yes, ma'am, I did.

19 Q When did you pick them up?

20 A I picked them up on May 24, 2006.

21 Q And after you picked them up had SLED performed the
22 tests that you wished for them to perform?

23 A Yes, ma'am, they had.

24 Q And when you got them they were resealed by SLED?

25 A Yes, ma'am, they were.

State v. Garris September 2-5, 2008

428

1 Q And they remain sealed?

2 A Correct.

3 Q And who did you turn them over to?

4 A When I got back into the City of Manning, I turned
5 them over to the evidence custodian, Capt. Shaffer.

6 Q Okay. That's all the questions I have. Please answer
7 any questions that Mr. Deas has.

8 THE COURT: Mr. Deas?

9 MR. DEAS: Thank Your Honor, may it please the
10 Court.

11 RICK ELMS - CROSS-EXAMINATION

12 BY MR. DEAS:

13 Q Good afternoon, Investigator Elms.

14 A Hey.

15 Q You were basically the lead investigator on this case;
16 is that correct?

17 A Yes, sir, that's correct.

18 Q Did anybody else involved in investigating this crime
19 other than you?

20 A No, sir.

21 Q And you were called out to the scene on the night the
22 incident happened, correct?

23 A Correct.

24 Q And what time -- would you say you arrived on the
25 scene maybe around 11:00 o'clock?

1 A Approximately, yes, sir.

2 Q About what time -- according to the accounts that you
3 heard from the victims, about what time did this incident,
4 roughly, occur?

5 A I think from my understanding it was roughly closer to
6 10:00, after 10:00, sometime.

7 Q So around 10:00 o'clock?

8 A Yes, sir.

9 Q Shortly thereafter?

10 A Yes, sir.

11 Q And when you arrived on the scene were there -- were
12 the victims still there at the Chinese Restaurant?

13 A Just the children. Ms. Santiago was leaving in the
14 ambulance as arrive.

15 Q And was SLED already on the scene when you arrived?

16 A No, sir.

17 Q What exactly, if you know, did the SLED agents do with
18 respect to securing the crime scene or gathering any
19 evidence at the crime scene?

20 A They photographed, processed like they normally do.
21 They did find some partial hand prints, just regular crime
22 scene.

23 Q So there were some hand prints found where on the car?

24 A On the van.

25 Q And were there pictures taken of those hand prints?

State v. Garris September 2-5, 2008

430

1 A I do not know.

2 Q Do you know if there was any dusting of the hand print
3 for finger print purposes by SLED?

4 A Yes, sir. They did do that.

5 Q Do you know of that evidence, if it was tested and
6 compared with any finger prints of Mr. Garris?

7 A Yes, sir, they were.

8 Q Do you have any documentation with respect to that?

9 A Yes, sir.

10 Q As part of your case file?

11 A Yes, sir.

12 Q Can you get it; is it in your case file here?

13 A Yes, sir. If I can find it.

14 THE COURT: You can step down to find it.

15 A Okay, this is it.

16 THE COURT: Well, let's make sure when y'all are
17 talking that we're on the record.

18 A Oh, I'm sorry. I apologize.

19 MR. DEAS: Court's indulgence.

20 THE COURT: Yes, sir.

21 MR. DEAS: Your Honor, may I approach the witness?

22 THE COURT: Yes, you may.

23 BY MR. DEAS:

24 Q Okay, Investigator Elms, I'm going to hand you these
25 documents and so I understand completely what you're

1 saying, you're saying there were hand prints taken by SLED
2 at the crime scene?

3 A Yes, sir. There were.

4 Q And they were compared, through testing, of hand
5 prints or fingerprints of Mr. Garris?

6 A Correct.

7 Q And that's been a part of your case file since this
8 case has been on-going?

9 A Yes, sir.

10 Q And when was it submitted?

11 A His hand prints that I submitted on June 1, 2006.

12 Q And when were the hand prints that were taken from the
13 van submitted?

14 A They've been in there since April 15, 2006.

15 Q And what were the results; was there a match?

16 A No, sir.

17 Q So there was no match?

18 A No.

19 Q And that evidence has been in your case file since the
20 beginning of this incident?

21 A Yes, sir.

22 Q And it's just now coming out today in trial that
23 that's the situation?

24 A Yes, sir.

25 Q And were there any foot prints or shoe prints taken

State v. Garris September 2-5, 2008

432

1 from the crime scene?

2 A Yes, sir.

3 Q And were those foot prints or shoe prints that were
4 taken at the crime scene by SLED matched up with any of Mr.
5 Garris's shoes or Mr. Garris's foot prints?

6 A No, sir, I never had any of Mr. Garris's shoes to
7 match this to.

8 Q You certainly had an opportunity to. You could have
9 gotten a warrant and searched his home and gotten shoes
10 from his home; correct?

11 A Yes, sir.

12 Q Did you do that?

13 A No, sir.

14 Q Any particular reason why?

15 A Because that's a basic gym shoe.

16 Q But you would agree with me that that's a pretty
17 important piece of evidence when you're looking for an
18 assailant who shot and robbed some people. If there were
19 actual shoe prints at the scene or leading from the scene
20 and you think you have a suspect in mind that may have done
21 this, don't you think this would be prudent to corroborate
22 whether or not this is indeed the assailant by seeing if
23 any shoes he has at his residence or where he lives matches
24 up with shoe prints that are at the scene?

25 A Well, we wouldn't have been able to do that?

1 Q Why not?

2 A Because by the time I arrested Mr. Garris over a month
3 later the shoe was already messed up the tread and walking
4 in the shoe, you can see by his weight he would have
5 already disfigured the shoes. So I didn't make a match.

6 Q Well, that's only if he had worn the shoes or if he -
7 that's only if he had worn the same shoe every day since
8 the accident and that's -- you're assuming that he would
9 have worn the same shoe from -- since the day of the
10 incident. I mean, you wouldn't have any way of knowing
11 whether he wore the same shoes every day since the day of
12 the incident would you?

13 A No, sir.

14 Q He could have had on a pair -- the person that did
15 this could have had on a pair of construction boot. And a
16 construction boot wouldn't wear down just from wearing it
17 occasionally from -- in a month's time would it?

18 A Yes, sir.

19 Q It would?

20 A Yes, sir.

21 Q It would wear down enough that you couldn't make a
22 match of that shoe print on the boot from a shoe print that
23 was found at the scene of a crime?

24 A Yes, sir.

25 Q But never the less that was never checked into by you

State v. Garris September 2-5, 2008

434

1 or your office was it?

2 A No, sir.

3 Q Now, how long have you been an investigator, Mr. Elms?

4 A Going on six years.

5 Q And so as far as your investigation of this crime,
6 there was shoe prints leading from the scene but no effort
7 was ever taken to match those shoe prints that may have
8 been owned or worn by Mr. Garris to see if they matched?

9 A That's correct.

10 Q And the hand prints that were taken off the van from
11 SLED, by SLED, and matched with hand prints and
12 fingerprints of Mr. Garris didn't match?

13 A Correct.

14 Q And these would have been hand prints left by the
15 assailant?

16 A No, sir.

17 Q No?

18 A No, sir.

19 Q Now, after you -- when you first arrived on the scene
20 at 11:00 o'clock, you said at that point, Ms. Santiago had
21 already been taken to the hospital, right?

22 A She was leaving as I was pulling in.

23 Q And you had a chance to talk to Laura Batista, her
24 older daughter?

25 A Yes, sir.

1 Q Is that right?

2 A Yes, sir.

3 Q And at the time did Ms. Batista describe for you or
4 did you ask her to give you a description of the assailant,
5 of the person that did this?

6 A Yes, sir, I did.

7 Q And what exactly did she say?

8 A Tall, slender African American male.

9 Q All right. Now, she described the person as tall,
10 slender African American male; correct?

11 A Correct.

12 Q And you'd agree with me that Mr. Garris is not tall or
13 slender; correct?

14 A Correct.

15 Q And in the incident report that specifically addresses
16 the identification or description --

17 MS. LAND: Your Honor, I object to his reference
18 to that incident report. That was not composed by
19 Investigator Elms.

20 THE COURT: Mr. Deas?

21 MR. DEAS: I think I can ask him about a report?

22 THE COURT: You can ask him a preliminary question
23 about the report. But not anything about the contents of
24 it until I hear what you're talking about.

25 MR. DEAS: Certainly.

State v. Garris September 2-5, 2008

436

1 BY MR. DEAS:

2 Q Investigator Elms, you're the lead investigator on
3 this case, right?

4 A Yes, sir.

5 Q I assume you're privy to this incident report that was
6 given to me by the state?

7 A Yes, sir, I am.

8 Q You're familiar with its content?

9 A Correct.

10 Q I'm going to --

11 MR. DEAS: May I approach the witness?

12 THE COURT: Yes, sir.

13 BY MR. DEAS:

14 Q In that incident report, does it describe --

15 MS. LAND: Your Honor, I'm going to object.

16 THE COURT: Mr. Deas?

17 MR. DEAS: He said he's familiar with it.

18 THE COURT: All right, ladies and gentlemen,
19 please step to your jury room. I'll have you back out in
20 just a minute. Do not discuss the case.

21 (Jury out at 12:07 p.m.)

22 THE COURT: All right, Mr. Deas, question the
23 witness.

24 PROFFER

25 BY MR. DEAS:

1 Q Investigator Elms, you stated earlier you're familiar
2 with that report?

3 A Yes, sir, I am.

4 Q It's part of your case file; correct?

5 A Correct?

6 Q You're the lead investigator on this case?

7 A Yes, sir.

8 Q I would assume you're had an opportunity to peruse
9 everything in your case file?

10 THE COURT: Who prepared the report?

11 BY MR. DEAS:

12 Q And who prepared the report?

13 A Sgt. Alan Lee prepared it.

14 Q And you and he conferred with each other about it?

15 A No, sir, I didn't.

16 Q You didn't confer with him at all about it?

17 A No, sir, because I don't even know who he got the
18 description from.

19 Q But you're familiar -- you know about this report?

20 A Yes, sir.

21 Q And you know of its contents?

22 A Correct.

23 Q Despite the fact that you didn't prepare it you know
24 what's in it?

25 A Yes, sir.

State v. Garris September 2-5, 2008

438

1 Q And does the report indicate that the description of
2 the individual that did this is between six feet one and
3 six feet three inches tall?

4 A Yes, sir.

5 Q And who actually prepared this report?

6 A Sgt. Alan Lee.

7 Q And is he still with the sheriff's department?

8 A Yes, he's still with the city police department.

9 Q Sorry. City police department?

10 A Yes, sir.

11 Q And -- but he's the person that prepared it?

12 A Correct.

13 Q And do you know where he got this information from?

14 A No, sir, I do not.

15 MS. LAND: And Your Honor, I'm not objecting
16 because I'm assuming that you're just listening to it?

17 THE COURT: Right.

18 MS. LAND: Okay.

19 BY MR. DEAS:

20 Q And he's the person that -- you don't know where he
21 got the information with respect to the height of the
22 person?

23 A No, sir.

24 Q But the report does reflect that the person was
25 described as being between six feet one and six feet three

1 inches tall?

2 A Correct. Yes, sir.

3 MR. DEAS: Those were going to be my questions.

4 THE COURT: You're getting into the height --

5 MR. DEAS: Correct.

6 THE COURT: Ms. Land?

7 MS. LAND: Your Honor, I object. He can bring
8 Alan Lee in and question him about what he wrote and why he
9 wrote it, but he did not, Investigator Elms did not prepare
10 this report. It's not his work product. He says he
11 doesn't know where that information came from. He didn't
12 sign off on it.

13 THE COURT: Mr. Deas, why is that not hearsay just
14 like the shirt?

15 MR. DEAS: Well --

16 THE COURT: All right. You've got a declaration
17 or a statement made by a person who is not in court --
18 excuse me, made by a person out of court.

19 Where is Mr. Lee; is he still employed?

20 MS. LAND: Oh, yeah. He's still with the city
21 police department. I don't know where he is right now.

22 THE COURT: He's not unavailable.

23 MR. DEAS: Well, actually, I wasn't asking to
24 admit the report into evidence. I was simply going to ask
25 him if the report -- if he -- if the report states that the

State v. Garris September 2-5, 2008

440

1 person was described as being six foot one to six foot
2 three inches tall.

3 THE COURT: All right, now --

4 MR. DEAS: He can say no or he can say yes --

5 THE COURT: Yesterday -- yesterday that question
6 was asked probably 20 or 30 times. And the people said,
7 yeah, that's what -- that's the information we have.

8 I will -- since that was done yesterday, I will allow
9 you to ask that question. That doesn't necessarily allow
10 you to delve into this report because this is not this
11 witness's report, at least I haven't heard any testimony
12 that would fit any exception. If we want to get to the
13 point you just made, that it's based on information -- he's
14 in charge of the investigation, he's the one that knows
15 everything, then I'm going to let her talk about that
16 striped shirt.

17 MR. DEAS: Well, I --

18 THE COURT: It cuts both ways.

19 MR. DEAS: Well, I think the difference is she was
20 attempting to --

21 THE COURT: She was attempting to get this witness
22 to testify to what somebody told this witness. And that
23 can be done in certain circumstances.

24 MR. DEAS: I'm not asking --

25 THE COURT: You're asking this witness to testify

1 to what he was told by reading a report.

2 MR. DEAS: Well, there's a difference between
3 someone telling you something and a written report --

4 THE COURT: No, it's not.

5 MR. DEAS: -- that he has in his case file that
6 he has charge of.

7 THE COURT: The is -- this report is an out of
8 court statement made by -- offered to prove the matter
9 asserted that the fellow was six foot one to six foot
10 three.

11 MR. DEAS: And that would be true if I were, I
12 believe, if I were attempting to admit the report into
13 evidence.

14 THE COURT: You're trying to admit the statement.

15 MS. LAND: It --

16 THE COURT: You're trying to admit the statement.

17 MR. DEAS: Well, I'm not necessarily trying to
18 admit it. I just want him to either agree to it or
19 disagree with it. I just want -- I was just basically
20 going to ask him his view as to what --

21 THE COURT: You're wanting this jury to hear,
22 let's just put it that way. Is that right?

23 MR. DEAS: Well, and they've heard it, and, of
24 course --

25 THE COURT: I will allow you to ask this witness,

State v. Garris September 2-5, 2008

442

1 since it was done all day yesterday, that there was
2 information that he was six foot one to six foot three.

3 MS. LAND: Well, and Judge, I would object to
4 that, because just like you said, even though it happens
5 all the time doesn't make it right.

6 THE COURT: Well --

7 MS. LAND: Even though it happened all day
8 yesterday doesn't make it right today. That's hearsay.
9 That's Allen Lee's statement.

10 MR. DEAS: She didn't object yesterday.

11 THE COURT: Yeah.

12 MS. LAND: Well, good for you.

13 THE COURT: Well, we kept score on that, you know,
14 we can -- just talk a little bit -- and y'all can try the
15 case like you want to.

16 MR. DEAS: Your Honor, I would prefer --

17 THE COURT: I will allow you to question this
18 witness on that point and you're not going to reference the
19 report.

20 MR. DEAS: That's why --

21 THE COURT: If you want to bring Mr. Lee up here,
22 y'all go find him.

23 MR. DEAS: And that's what we'll do.

24 Let me make sure I understand so far --

25 THE COURT: And then it will become where he got

1 the information.

2 MR. DEAS: Well, he's -- he's

3 THE COURT: Well, he might have got it from the
4 victim. I don't know.

5 MR. DEAS: Well, I assume he did. If he did the
6 report. I'm talking about Officer Lee. Certainly if he
7 did the report he could testify to it.

8 THE COURT: If it falls within something that he
9 said that a man on the street corner told me that so and so
10 and so. That's hearsay.

11 MR. DEAS: But --

12 THE COURT: If it's an utterance or his impression
13 or whatever else, it might come in, but it doesn't come in
14 just because he did a report.

15 MR. DEAS: Right. But it -- but it falls under
16 exception because it's her -- it's Martha Santiago's
17 impression of the assailant.

18 THE COURT: All right. Based on your argument,
19 everything in this report, everything that Sgt. Lee told
20 you he can say it, everything that's in the report.

21 MR. DEAS: He can if I ask him everything that's
22 in the report, but I'm going to ask him simply about the --

23 THE COURT: Then Ms. Land can ask him everything
24 that's favorable to the state --

25 MR. DEAS: Certainly.

State v. Garris September 2-5, 2008

444

1 THE COURT: -- say everything.

2 MR. DEAS: If that's what she intends to do. I
3 don't know if that's her plan or not. I can only speak for
4 what I plan to do.

5 THE COURT: All right.

6 Anybody need to take a break? Y'all need some time.

7 Well, I'm not going to allow you -- I will allow you,
8 from the standpoint that I -- it's cumulative, but I think
9 it's needed -- I will let you ask this witness if they had
10 information that the person was six foot one to six foot
11 three. Let's leave it at that.

12 MR. DEAS: Yes, sir.

13 THE COURT: We're not going to get into this
14 report. And you can object.

15 MS. LAND: Well -- right, and I do object, but
16 just so Investigator Elms knows the answer can be no. I
17 mean, if he didn't have any direct --

18 THE COURT: If he doesn't know then he'll say no.
19 You can't say, well, this was in your custody, because if
20 it is, Mr. Deas, --

21 MR. DEAS: Yeah.

22 THE COURT: -- you might as well put this rule
23 book on the stand.

24 MR. DEAS: That wasn't my intention. I just asked
25 him a question. He can choose to answer it however he

1 wants. I didn't know how he was going to answer it.

2 THE COURT: Okay. Bring in the jury.

3 All right, Mr. Deas.

4 MR. DEAS: Thank Your Honor.

5 (Jury in at 12:14 p.m.)

6 RICK ELMS - CONTINUED CROSS-EXAMINATION

7 BY MR. DEAS:

8 Q Investigator Elms, I was asking you about your
9 knowledge of the height of the individual that committed
10 this assault. My question to you at this time is, do you
11 have any knowledge as to whether or not the description of
12 this individual included a reference to the individual
13 being six foot one to six foot three inches tall?

14 A Yes, sir.

15 Q And that information, your information regarding the
16 individual being six foot one to six foot three inches
17 tall, where did that information come from?

18 A The incident report.

19 Q So it came from the incident report that was prepared
20 by one of your officers?

21 A Sgt. Lee.

22 Q And Sgt. -- do you now when Sgt. Lee prepared that
23 report?

24 A The day on the incident report is 4/16/2006.

25 Q May -- April 16, 2006?

State v. Garris . September 2-5, 2008

446

1 A 4/16. April 16, 2006.

2 Q Thank you, sir.

3 MR. DEAS: Your Honor, may I approach the witness?

4 THE COURT: Yes, sir.

5 BY MR. DEAS:

6 Q Investigator Elms, do you recall any law enforcement
7 officer or any information from a law enforcement officer
8 that was involved in investigating this crime that -- where
9 it was referenced that the individual had on a New York
10 Yankee hat?

11 A No, sir.

12 Q Based on your knowledge of this case, based on things
13 that were provided to you or said to you, there was never
14 any reference to the assailant having a New York Yankee
15 hat?

16 A Patience please, Mr. Deas. You just refreshed my
17 memory. Yes, sir, a blue hat.

18 Q Did the -- Did Laura Batista ever say to you that the
19 individual that committed this crime had on a New York
20 Yankee hat?

21 A No, sir, she didn't.

22 Q And so the first time you heard any reference to a New
23 York Yankee hat, was the first time you heard that was on
24 yesterday in Court?

25 A No.

1 Q Where had you heard that before?

2 A From this incident report.

3 THE COURT: Mr. Deas.

4 MR. DEAS: Yes, sir?

5 THE COURT: Y'all come up.

6 (Off the record bench conference with the Court and
7 counsel.)

8 BY MR. DEAS:

9 Q So the first time -- there was a reference made to it,
10 you said you heard information about a New York Yankee hat
11 in court yesterday, right?

12 A In court, yes, sir.

13 Q But had you ever heard that before; had you ever heard
14 anyone make any reference to the person having did this to
15 having a New York Yankee hat on?

16 A From the drawing Ms. Santiago did, I realized he had a
17 hat on.

18 Q Now, that night of the incident were there bloodhounds
19 or dogs used to try to search for the assailant?

20 A Yes, sir.

21 Q Were they able to track that individual or do you have
22 any information on that?

23 A Yes, sir.

24 Q What happened with respect to that?

25 A They tracked running foot prints they found leaving

State v. Garris September 2-5, 2008

448

1 the scene to Holly Court Apartments where they lost -- the
2 dogs lost the scent there at Holly Court.

3 Q Where is Holly Court Apartments in relation to where
4 this incident took place?

5 A About a block away.

6 Q A block over?

7 A Yes, sir.

8 Q So -- and who was in charge of that search, was that
9 SLED or your office?

10 A SLED.

11 Q And do you know if there was any other evidence
12 gathered by SLED that we don't already know about?

13 A No, sir, there was not.

14 Q Now, at some point, you had an opportunity to actually
15 meet with Ms. Santiago, the mother; correct. Did you meet
16 with her the same night of this incident?

17 A No, sir.

18 Q Was it the next day?

19 A Next day or two. Can't recall exactly.

20 Q And where did you meet her at?

21 A MUSC.

22 Q And did you -- was there ever an incident where you
23 showed Ms. Santiago a photo lineup?

24 A Yes, sir.

25 Q So you showed Ms. Santiago a photo lineup as well as

1 showing the daughter one at some point?

2 A Yes, sir.

3 Q Okay. When did you show Ms. Santiago the photo
4 lineup?

5 A May 24th.

6 Q On May 24th?

7 A Yes, sir.

8 Q Of '06?

9 A Yes, sir.

10 Q And was Mr. Garris part of that photo lineup?

11 A Yes, sir, he was.

12 Q And was Ms. Santiago able to identify him?

13 A No, sir.

14 Q And this was done roughly a little over a month after
15 the incident happened?

16 A Yes, sir.

17 Q And Ms. Santiago, the assailant that attacked this
18 family came to her side of the car, correct?

19 A Correct.

20 Q And was basically in very close proximity?

21 A Correct.

22 Q But Ms. Santiago was not able to pick out Brian Garris
23 from that photo lineup was she?

24 A No, sir.

25 Q Now, what did you do in between the time -- well, let

State v. Garris September 2-5, 2008

450

1 me ask you this, you said you met with Ms. Santiago at MUSC
2 a couple days after this incident happened?

3 A Yes, sir.

4 Q Somewhere around -- and did you talk with her about
5 the incident?

6 A Yes, sir.

7 Q Was she able to give a description of the individual
8 at that time?

9 A Just a tall, slender black male. She thought he was
10 wearing a hat. She was medicated at the time I went to see
11 her at MUSC.

12 Q Did she make any reference to the individual having
13 braids or dreads?

14 A No, a hat.

15 Q Did she say short hair or braids or dreads?

16 A I can't recall.

17 Q Were you with her when the composite sketch was done
18 of the assailant.

19 A I was in the PD.

20 Q And who was responsible for taking her to where she
21 needed to go to have this composite sketch -- I'm talking
22 about Ms. Santiago -- did you take her?

23 A Yes, sir.

24 Q You have the composite sketch there?

25 A No, sir.

1 MR. DEAS: Your Honor, may I approach the witness?

2 THE COURT: Yes, sir.

3 BY MR. DEAS:

4 Q Mr. Elms, I'm going to hand you what's been marked
5 Defendant's Exhibit 1.

6 MS. LAND: State's 1.

7 THE COURT: State's 1.

8 MR. DEAS: Is it -- State's 1.

9 BY MR. DEAS:

10 Q On that composite sketch the individual that's on
11 there looks to appears to have longer hair or braids;
12 correct?

13 A Correct.

14 Q And has on a shirt that appears to be some type of
15 striped shirt?

16 A Correct.

17 Q And a hat?

18 A Yes, sir.

19 Q And that is based on the description that Ms. Santiago
20 gave, not only to you, but to the sketch artist?

21 A Correct.

22 Q Now, do you have any -- based on that composite sketch
23 drawing, in your view, does that person appear to be
24 similarly situated appearance-wise, when you compare him to
25 Brian Garris?

State v. Garris September 2-5, 2008

452

1 A Yes, sir.

2 Q In what way other than the fact that they're both
3 African American?

4 A The face, the mouth, looks just like him.

5 Q That's your view?

6 A Yes, sir, that's my view.

7 Q But he doesn't have braids, dreads?

8 A No, sir.

9 Q And he's -- You've already told me he's not tall or
10 slender?

11 A No, sir.

12 Q Now, I believe you stated at some point when you were
13 still investigating the crime initially, on the day it
14 happened, you had gotten word from Drose, Officer Drose and
15 Officer Holmes that they had seen Brian and his brother in
16 that area?

17 A Yes, sir.

18 Q And they live in that area do they not?

19 A Yes, sir.

20 Q The grandmother lives on Church Street; correct?

21 A Correct.

22 Q And they live there with their grandmother; correct?

23 A Yes, sir.

24 Q Do you have any knowledge of why Mr. Garris fit the
25 description of the person in this composite sketch or fit

1 the description that was given to the police initially
2 after this incident happen; do you have any knowledge of
3 why he wasn't questioned that evening?

4 A No, sir.

5 Q Because he was seen by Officer Drose; correct?

6 A Yes, sir.

7 Q And he was seen by Officer Holmes; correct?

8 A Yes, sir.

9 Q But he wasn't questioned?

10 MS. LAND: Your Honor, I object to that. That's
11 hearsay.

12 THE COURT: All right. Y'all come on. Just a
13 second.

14 (Off the record bench conference with the Court and
15 counsel.)

16 THE COURT: Go ahead, Mr. Deas.

17 BY MR. DEAS:

18 Q So Mr. Garris was seen that night near his home, near
19 where this incident occurred?

20 A Yes, sir.

21 Q By Officer Drose, by Officer Holmes; correct?

22 A Correct.

23 Q They didn't question him?

24 A Yes, sir.

25 Q Now, after this incident happened and after you met

State v. Garris September 2-5, 2008

454

1 with Ms. Santiago at MUSC, at some point you did show a
2 photo lineup not only to Ms. Santiago but you showed one to
3 Laura Batista, as well; correct?

4 A Correct.

5 Q That was on April 22nd, I believe, of '06?

6 A Correct.

7 Q She wasn't able to identify him on that day; correct?

8 A Yes, sir.

9 Q She looked at that photo lineup, you correct me if I'm
10 wrong. She was not able to point out Mr. Garris, was she?

11 A She pointed him out.

12 Q As someone who came to the restaurant?

13 A Right.

14 Q Not as the person who committed the crime?

15 A That's correct.

16 Q And then you came back to her a second time, almost a
17 month later; correct?

18 A Correct.

19 Q May 24th of '06, I believe?

20 A Yes, sir.

21 Q You showed her the photo lineup again?

22 A Correct.

23 Q But somehow this time she was able to pick him out;
24 right?

25 A Yes, sir.

1 Q Did you show her the same set of pictures the second
2 time that you showed her the first time?

3 A Yes, sir, I did.

4 Q No changes at all to the pictures?

5 A No, sir.

6 Q Do you know why she was not able to pick him out the
7 first time which was just seven days after the incident
8 happened, when, I assume, her memory would be fresh when a
9 month or more later she was able to pick him out?

10 A No, sir.

11 Q Now, when she picked him out on May 24th of '06, at
12 that point what did you do with respect to your
13 investigation, after that?

14 A Could you repeat the question, please?

15 Q After Laura Batista picked Mr. Garris out of the photo
16 lineup on May 24th of '06, what, if anything, did you do in
17 furtherance of your investigation?

18 A Get my warrants and make arrests.

19 Q And that's when you made the arrest?

20 A Yes, sir.

21 Q Now, at some point, though, in addition to making the
22 arrest, you did some other things, I would assume, with
23 respect to this investigation. You interviewed some
24 people?

25 A Yes, sir.

State v. Garris September 2-5, 2008

456

1 Q And one of those persons was Frederick White; correct?

2 A Correct.

3 Q And Fredrick White is the brother of Freddie White;
4 correct?

5 A Yes, sir.

6 Q And did you talk to Fredrick White about the incident
7 or events of that night?

8 A Yes, sir, I did.

9 Q Did Fredrick White ever advise you that Mr. Garris had
10 a gun that night?

11 A No, sir, he did not.

12 Q Matter of fact, he said he didn't have a gun; correct?

13 A My recollection, yes, sir.

14 Q He said Brian Garris didn't have a gun that night?

15 A Yes, sir.

16 Q Now, of course, you also talked to Andrew McBride and
17 Freddie White, who we heard from yesterday?

18 A Yes, sir.

19 Q Do you recall when you interviewed Andrew McBride and
20 -- let's start with Andrew McBride. Do you recall when you
21 conducted your interview of Andrew McBride?

22 A No, sir, not off the top of my head I can't recall the
23 date.

24 Q But it was at some point after you made the arrest of
25 Mr. Garris or prior to that?

1 A After.

2 Q Now, Mr. McBride said on yesterday, basically some
3 puzzling things, quite frankly. At one -- it would appear
4 that he said to you that Mr. Garris had a gun, but then on
5 yesterday when he was testifying he said he didn't. Is
6 that your recollection?

7 A From yesterday, yes, sir.

8 Q All right. And when you interviewed Mr. McBride
9 sometime after you made the arrest of Mr. Garris, did he
10 say to you specifically what time he was with Mr. Garris
11 that day?

12 A Some time in the evening.

13 Q But he did say they were together at some point that
14 evening?

15 A Yes, sir.

16 Q But you don't know what time?

17 A No, sir.

18 Q And Fredrick White -- sorry, Freddie White --

19 THE COURT: Can I get one thing straight?
20 Fredrick and Freddie, they're two different people?

21 MS. LAND: They're brothers.

22 MR. DEAS: They're brothers.

23 THE COURT: Who testified?

24 MS. LAND: Freddie.

25 MR. DEAS: Freddie.

State v. Garris September 2-5, 2008

458

1 THE COURT: Freddie. Fredrick did not. Okay.

2 BY MR. DEAS:

3 Q Freddie White, who testified yesterday, you
4 interviewed him, too; correct?

5 A Yes, sir.

6 Q He was also -- his testimony also yesterday was
7 somewhat puzzling, but during his testimony -- well, during
8 your interview with him he said that Mr. Garris had a gun;
9 correct?

10 A Correct.

11 Q And then he said again here yesterday corrob --
12 basically confirmed that, he said yesterday that he
13 remembered Mr. Garris having a gun that evening?

14 A Correct.

15 Q Did -- do you recall if Freddie White described the
16 gun that Mr. Garris allegedly had that evening?

17 A Mr. Freddie White?

18 Q Yes, sir.

19 A Yes, sir, he did.

20 Q And is it your recollection he said it was a silver
21 gun wit a tan handle?

22 A No, sir.

23 Q What did he say about the --

24 A He said it was a .22 revolver with a tan handle.

25 Q Okay. And did he make any other description of the

1 gun?

2 A No, sir.

3 Q Now, after you did those interviews, which was
4 sometime after you made the arrest of Mr. Garris, at some
5 point you learned about the gun turning up at the jail?

6 A Yes, sir.

7 Q When did you find out?

8 A May 6th -- May 15th.

9 Q You found out about the gun turning up at the jail on
10 May 15th of '06?

11 A Yes, sir, I did.

12 Q How did you find out?

13 A Chief Garrett had told me when I walked in that
14 morning.

15 Q Do you have any knowledge of when the gun was actually
16 found in the jail?

17 A No, sir.

18 Q You don't have any specific knowledge of that other
19 than what you've heard in court?

20 A That's correct.

21 Q Do you have any knowledge as to why the gun was not
22 turned over to law enforcement?

23 MS. LAND: Your Honor, I object. There's no way
24 to know that. That's hearsay.

25 THE COURT: Sustained.

State v. Garris September 2-5, 2008

460

1 BY MR. DEAS:

2 Q Do you -- once the gun -- once you found out the gun
3 was in the jail what did you do?

4 A I went and picked it up from Ms. Barbara Proctor, who
5 had it in her possession.

6 Q So when you found out the gun was in the jail it had
7 already been turned over to Barbara Proctor?

8 A Yes, sir.

9 Q So it wasn't at the jail when you found out about it?

10 A No, sir.

11 Q It was already in the evidence room?

12 A Correct.

13 Q Where the evidence is stored?

14 A Where their evidence is kept.

15 Q Whose evidence are you saying?

16 A The sheriff's office.

17 Q Sheriff --

18 A I was with the city.

19 Q Now, once you went -- so you had to retrieve it from
20 the Sheriff's Department evidence custodian; correct?

21 A Yes, sir.

22 Q And when you got the gun from the evidence custodian
23 what did you do with it?

24 A Well, I secured it. And I went to Ms. Santiago and
25 got the bullet and took it to SLED the next day.

1 Q Now was there any information given to you from the
2 jail regarding how the gun got brought into the jail; was
3 there any discussion with you about that?

4 A No, not when it was brought in.

5 Q Was it assumed by you that --

6 MS. LAND: Your Honor, I object. Assumptions
7 aren't --

8 THE COURT: Assume -- what was the question,
9 again, Mr. Deas, the question before you used the word,
10 assume?

11 MR. DEAS: Uh --

12 THE COURT: Who were you asking to assume,
13 himself?

14 MR. DEAS: Himself.

15 THE COURT: All right. Restate the question,
16 please?

17 BY MR. DEAS:

18 Q Was it assumed that Mr. Garris brought the gun into
19 the jail?

20 A No, sir.

21 Q You didn't know how it got in at that point?

22 A Well, I heard he was in the same block as the gun was
23 found.

24 Q So putting two and two together, your position at that
25 time was that perhaps Mr. Garris brought the gun into the

State v. Garris September 2-5, 2008

462

1 jail?

2 A Correct, yes, sir.

3 Q Do you -- you said you turned the gun over to SLED for
4 a ballistics test; correct?

5 A Correct.

6 Q Was there any type of DNA test run on this gun?

7 A No, sir.

8 Q To determine if there was any genetic material, DNA
9 material?

10 A No, sir.

11 Q Our state has to pass -- and do that type of thing,
12 don't they?

13 A Yes, sir.

14 Q But that wasn't done?

15 A No, sir.

16 Q Where would something like that be done?

17 A South Carolina Law Enforcement Division.

18 Q At SLED?

19 A At SLED.

20 Q Same place you sent it to to get the ballistics test,
21 right?

22 A Yes, sir.

23 Q Now, after -- when the gun came back from SLED it
24 showed that the gun matched the bullet that was taken out
25 of Ms. Santiago's arm; correct?

1 A Correct.

2 Q And at that point the gun was given -- was placed back
3 into your custody and held by your evidence custodian or
4 what happened to it?

5 A Yes, sir. Our evidence custodian when I picked it up
6 from SLED.

7 Q And it's been there since -- until the court
8 proceeding?

9 A Since July. We thought he was going to trial then. I
10 then signed it over to Ms. Barbara Proctor, who was
11 evidence custodian.

12 Q Now, let me make sure I understand. Hand prints on
13 the car didn't match Mr. Garris; correct?

14 A Correct.

15 Q The description given by the victim or the victim's
16 daughter was of a tall and slender African American male?

17 A Yes, sir.

18 Q Correct?

19 A Yes, sir.

20 Q Mr. Garris, as you said earlier, is neither tall nor
21 slender; correct?

22 A No, sir.

23 Q There was -- there were footprints or shoe prints at
24 the scene; correct?

25 A Yes, sir.

State v. Garris September 2-5, 2008

464

1 Q But no steps were taken to match those shoe prints
2 with those of Mr. Garris by getting shoes from his
3 residence; correct?

4 A Yes, sir.

5 Q Photo lineup shown to Ms. Martha Santiago, the victim.
6 She could not identify Mr. Garris; correct?

7 A Yes, sir.

8 Q Photo lineup shown to Laura Batista. First photo
9 lineup first time, April 22nd of '06. She was not able to
10 identify Mr. Garris; correct?

11 A Yes, sir.

12 Q Over a month later she was shown the same photo lineup
13 and somehow that time she was able to pick him out of the
14 photo lineup as the person who did this; correct?

15 A Yes, sir.

16 Q Both Holmes and Smith saw Mr. Garris the day of the
17 incident, didn't question him; correct?

18 A Yes, sir.

19 Q No DNA test done on the gun; correct?

20 A That's right.

21 Q So you tell me, what evidence, reliable evidence do
22 you think you have that links Mr. Garris to this crime?

23 A The witnesses from the jail, Mr. Johnny McCrea. I got
24 an audio statement from him where he identifies Mr. Garris
25 as the fellow he got the tray from, out of his cell. It's

1 on an audio statement where he says, I saw him in the
2 window. He asked -- Mr. Garris asked Mr. McCrea not to say
3 anything. Mr. McCrea does the right thing and goes to Ms.
4 Joanne Jones. Then we have the ballistics from Iva
5 Parnell, Lt. Parnell, who then matches the gun
6 ballistically with that. That's my evidence.

7 Q That's your evidence?

8 A Along with Ms. Laura Batista's ID.

9 Q Which she admittedly said she only had a view of the
10 person's face for about five seconds?

11 A Yes, sir.

12 MR. DEAS: Court's indulgence.

13 THE COURT: All right.

14 MR. DEAS: No further questions.

15 THE COURT: Ms. Land, how long do you think your
16 redirect will take?

17 MS. LAND: Your Honor, I don't think long. Our
18 witness that's here from SLED does need to be in Sumter at
19 2:00.

20 THE COURT: All right.

21 Ladies and gentlemen, if you'll step to your jury room
22 for just a moment. I'll have you back inside of 10
23 minutes, I promise. Do not discuss the case.

24 (Jury out at 12:42 p.m.)

25 THE COURT: All right.

State v. Garris September 2-5, 2008

466

1 MS. LAND: I'm sorry. I asked him, I wanted to
2 know what he showed Mr. Deas.

3 THE COURT: All right, Ms. Land. One of the
4 issues on direct -- excuse me, on cross was -- I mean,
5 direct, was you asked Mr. Elms something about Mr. Drose
6 and the shirt.

7 MS. LAND: Correct.

8 THE COURT: What did he tell you about why he
9 didn't stop him, why he didn't detain him about the shirt.
10 Was that the question?

11 MS. LAND: No, no. Not why he didn't detain him.

12 THE COURT: All right.

13 MS. LAND: The question was when he looked at this
14 composite what did Agent Drose come and tell Investigator
15 Elms about the shirt.

16 THE COURT: And then on cross Mr. Deas has -- as
17 any good trial lawyer, he has to -- delve into the facts on
18 cross that are raised -- unique, every case. No case is
19 the same -- he asked the question of this witness: Do you
20 know why Agent Drose and Agent Smith, was that the other --

21 MS. LAND: Officer Smith and Drose. Correct.

22 THE COURT: Why they didn't stop Mr. Garris. Ms.
23 Land, what's your position on that?

24 MS. LAND: My position is that now I can cross-
25 examine Investigator Elms both on Drose and Smith's

1 testimony on why they didn't stop him and what they came
2 and told him about the sweater.

3 THE COURT: So the record will be clear, at some
4 point during that cross during that line of questioning
5 from Mr. Deas you stood up and objected and I asked you
6 both to come forward and we talked a little bit up here,
7 and the subject was brought up as to whether or not that
8 opened the door to get into that with Mr. Drose.

9 Mr. Drose has already testified. I don't think it's a
10 crucial issues as far as here or there is concerned, but
11 Mr. Drose testified that when he saw the composite he said
12 that, I saw the stripes on Mr. Garris, I was under the
13 impression that was -- what kind of shirt?

14 MR. DEAS: Mechanic.

15 MS. LAND: Mechanics, vertical stripe.

16 THE COURT: Mechanic shirt with vertical stripes.
17 That's why they stopped him.

18 Mr. Deas, you want to be heard on whether or not she
19 can follow up since you asked that question?

20 MR. DEAS: Well, first of all, number one, when I
21 was questioning Investigator Elms regarding Officer Holmes
22 and Officer Drose --

23 THE COURT: Officer Smith.

24 MS. LAND: Officer Smith.

25 MR. DEAS: I'm sorry. Officer Smith and Officer

State v. Garris September 2-5, 2008

468

1 Drose. The question was if he had any knowledge as to
2 whether they saw. I didn't ask him anything about whether
3 they knew what he was wearing or did

4 THE COURT: You asked him if he knew why he didn't
5 stop him.

6 MR. DEAS: Right.

7 THE COURT: That's when Ms. Land objected and
8 that's when we had the bench conference.

9 MR. DEAS: I guess that's the second point,
10 there's really no basis to object to that, because he can
11 -- I can certainly ask him anything regarding what he may
12 know or not know.

13 THE COURT: From that witness.

14 MR. DEAS: From any -- it doesn't necessarily have
15 to be from that witness. I could be from various sources
16 of information. I can ask him --

17 THE COURT: Are you saying you can pick and choose
18 what comes in as hearsay -- because hearsay is a source of
19 information.

20 MR. DEAS: Well, that depends, if that's his
21 source of information. I don't know what his source of
22 information is.

23 THE COURT: All right. Your question was do you
24 know why Officer Drose didn't detain Mr. Garris?

25 MR. DEAS: Correct.

1 THE COURT: All right.

2 MR. DEAS: He could say no, I don't know. He can
3 say, yes, I do know. I don't know what he's going to say.

4 THE COURT: All right.

5 Do you know, sir?

6 INVESTIGATOR ELMS: Yes, sir.

7 THE COURT: And what is your answer?

8 INVESTIGATOR ELMS: My answer would be because he
9 didn't match the description, the shirt did not match the
10 description of him.

11 THE COURT: What, if anything, did Officer Drose
12 tell you about the shirt, the composite drawing and what
13 Mr. Garris had on?

14 INVESTIGATOR ELMS: Well, when I handed him my
15 composite drawing on my wanted poster, Sgt. Drose told me
16 that resembles the shirt he had on that night.

17 MR. DEAS: See, this is my -- I don't think that
18 you can base the ruling on what he might say, what he could
19 say, what he should say. You have to base it on the
20 question I ask.

21 THE COURT: And your question was --

22 MR. DEAS: And the answer he gives.

23 THE COURT: Your question was, do you know why
24 Officer Drose didn't stop him.

25 MR. DEAS: That's probably a pretty fair

State v. Garris September 2-5, 2008

470

1 characterization of my question. I think that's a fair
2 question, it's an admissible question because I'm not
3 asking him to say what anybody told him or what anybody
4 said. I asked him does he know why they didn't stop him.

5 THE COURT: All right. And if he says yes, then
6 you should just stop right there.

7 MR. DEAS: He can.

8 THE COURT: And then --

9 MR. DEAS: It depends on my next question.

10 THE COURT: Nobody can follow up on that?

11 MR. DEAS: Certainly they can.

12 THE COURT: All right.

13 MR. DEAS: But that's no a basis for an objection.
14 That's not a basis for any type of -- well, first of all,
15 what is the objection?

16 THE COURT: Well, we're past the objection, now.
17 The question is, we're on redirect. Can she get into that
18 with this witness. I'll allow it.

19 MR. DEAS: And with all due respect, under what
20 rule?

21 THE COURT: Under the rule that you asked him that
22 question.

23 MR. DEAS: I asked him the question of does he
24 know why he didn't stop him?

25 THE COURT: Yes.

1 MR. DEAS: And quite frankly, I don't think it's
2 going to -- it's not too material anyway, but --

3 THE COURT: It may not be. It's splitting hairs,
4 but they are -- you two know better than I do what the
5 important testimony is going to be.

6 So I'll allow that question.

7 Anything else we need to cover before we bring the
8 jury out?

9 Mr. Parnell from SLED, how long is he going to take?

10 MS. LAND: Judge, for my part, 15 or 20 minutes.

11 THE COURT: Mr. Deas:

12 MR. DEAS: Well, we're really not challenging the
13 ballistics test. So I would say maybe five minutes, if
14 that. Five or 10 minutes.

15 THE COURT: All right. I agree with Mr. Deas, of
16 course, I've been in your position many, many times and
17 never in Ms. Land's position. So I know cross-examination
18 -- while perfectly appropriate, split points you've got to
19 take a few take a few stars. I don't think that issue is
20 going to be tremendously important since that's exactly
21 what Mr. Drose said yesterday. I want to keep a clear
22 record. I want to give you the opportunity --

23 All right, Ms. Land, when Ms. Land goes into that, Mr.
24 Deas, just go ahead and object to it, and I'll overrule it.

25 MR. DEAS: Yes, sir.

State v. Garriss September 2-5, 2008

472

1 THE COURT: All right. You can bring in the jury.

2 Any objection to me telling the jury we may stay a
3 little bit longer before we go to lunch?

4 MS. LAND: No, sir. And one thing I thought.
5 This morning did you ever discuss with them the newspaper
6 article?

7 THE COURT: No, I didn't specifically. Remember
8 what I told them was that everybody keep the instructions,
9 don't listen, talk or read about it.

10 MS. LAND: Okay. Good.

11 THE COURT: Okay.

12 (Jury in at 12:50 p.m.)

13 THE COURT: All right, ladies and gentlemen, we're
14 going to continue with the questions of this witness. I
15 wanted to let you know that Ms. Land has one witness from
16 Columbia?

17 MS. LAND: That's correct.

18 THE COURT: Who'll be relatively short who will be
19 after this witness. So that invades on your customary time
20 for lunch I apologize but we'll take ample time for lunch
21 after that next witness testimony.

22 All right, Ms. Land, you can continue.

23 MS. LAND: All right.

24 RICK ELMS - REDIRECT EXAMINATION

25 BY MS. LAND:

1 Q How long have you been an investigator?

2 A About six years.

3 Q Okay, and that's what you told us earlier?

4 A Yes, ma'am.

5 Q Okay. And you're interested in evidence that will
6 prove either the innocence or the guilt of someone that is
7 accused of a crime; is that correct?

8 A Yes, ma'am.

9 Q And if it proves nothing, what do you do with that
10 test or that piece of information that you have?

11 A It just goes in my case file and is saved.

12 Q So if there were bloodhounds that came out and were
13 able to find nothing, what would that prove?

14 A The bloodhounds came out and attempted to try to
15 locate a perpetrator for us.

16 Q And nothing was found as a result of that?

17 A No, ma'am.

18 Q And Mr. Deas also asked you about the foot impression
19 test. Tell the jury how that foot impression test works?

20 A Well, a cast is made of the foot print right there at
21 the scene. They take that cast and save it. Time passed.
22 Like a pair of shoes, they can wear out, the pattern
23 changes in eight weeks or a month, sometimes, depending on
24 how much you wear it. Me, of course, I have flat tires
25 every six months. I get a new pair of shoes. But it

State v. Garris September 2-5, 2008

474

1 depends on the shoes.

2 Q Okay. So if you have a robbery and there is a fresh
3 foot print outside and immediately from a nearby wooded
4 area you apprehend the suspect, would you take their shoes
5 to match that cast?

6 A Oh, yes, ma'am.

7 Q And what SLED would tell you is if that matched and
8 where in treads of the shoes that were found on the
9 suspect.

10 A Correct.

11 Q If you do not have a suspect for over a period of time
12 is there any point in getting their shoes?

13 A No, ma'am.

14 Q And do you randomly go to somebody's house and pick
15 out their pairs of shoes to see if they match?

16 A No, ma'am.

17 Q Because they may have worn them?

18 A Correct.

19 Q They may not be the correct pair of shoes?

20 A That's right.

21 Q Time has passed.

22 A Correct.

23 Q Okay. Since that test would be useless there would be
24 nothing to present for either the guilt or the innocence to
25 this jury?

1 A That's right.

2 Q Partial hand prints, if they are not able to make a
3 match, is there anything that you can tell this jury?

4 A No. I was told the individual never actually touched
5 the van. We just processed the van to be on the safe side,
6 and that's to preserve evidence in case he did touch it as
7 he ran away from the scene. But Ms. Batista there at the
8 scene told me the perpetrator touched the vehicle.

9 Q And so there are many occasions when you work a
10 robbery, an armed robbery, a burglary, where the
11 perpetrator wears gloves and you dust and dust and dust,
12 but there's no hand prints?

13 A That's right, but you still do it to be on the safe
14 side.

15 Q Okay. And so tell this jury what percentage of your
16 case load now have you been able to give good finger or
17 hand prints?

18 A Oh, a very small percentage. We estimate less than 10
19 percent of my case load is fingerprint evidence.

20 Q So all although when we watch CSI and Law and Order
21 and all those fun and exciting shows that's not real life?

22 A No, ma'am.

23 Q And the probability or likelihood of you finding
24 fingerprint or hand prints are none?

25 A Are very slim. Yes, ma'am.

State v. Garris September 2-5, 2008

476

1 Q Slim.

2 A Slim to none.

3 Q And the report that you got was that in fact with this
4 case that was the result?

5 A That's right.

6 Q When you -- when this composite picture was drawn by
7 the forensic artist at SLED, and I think you have seen
8 this?

9 A Yes, ma'am.

10 Q What is that State's 1?

11 A State's 1.

12 Q Okay, and you circulated it around the Manning Police
13 Department did Officer Drose make an observation that he
14 relayed to you?

15 A Yes, ma'am, he did.

16 THE COURT: Mr. Deas?

17 MR. DEAS: I would object.

18 THE COURT: Objection is overruled.

19 Go ahead, Ms. Land.

20 BY MS. LAND:

21 Q And what did he tell you about that?

22 A When I handed these to Sgt. Drose because I wanted him
23 to hand them out and also distribute them to the
24 department, he stated to me that Mr. Garris had on a shirt
25 that resembled these markings, blue and white color with

1 the collar like that. That's what he told me when I handed
2 it to him.

3 Q And that night that he saw Brian Garris close to the
4 scene why didn't he question him?

5 A Because our first initial clothing description did not
6 match Mr. Garris at that time.

7 Q And so as soon as you knew they had been wearing the
8 same clothing Brian Garris became more of a suspect?

9 A More of a suspect. Yes, ma'am.

10 Q Okay. And I believe that the last question -- well,
11 let me ask this. Mr. Garris asked you -- I mean, Mr. Deas
12 asked you about Brian Garris's size and height. Is it safe
13 to say that he is taller than both Laura Batista and Martha
14 Santiago?

15 A Yes, ma'am, that's a safe -- to say.

16 Q And so for them to call him tall is more realistic
17 than, say, you calling him tall?

18 A Yes, ma'am.

19 Q Or me to call him tall would be realistic?

20 A Right.

21 Q How long have you known Brian Garris?

22 MR. DEAS: Objection. Relevance.

23 MS. LAND: Well --

24 BY MS. LAND:

25 Q Let me ask you. Obviously, you saw him around April

State v. Garris September 2-5, 2008

478

1 15, 2006, somewhere in that vicinity?

2 A No, I didn't. No ma'am.

3 Q Well, no, no, not in the vicinity of the crime. You
4 saw him some time in April or May of 2006, you had the
5 opportunity to eyeball him and look at him to see what he
6 looked like at that time?

7 A Yes, ma'am.

8 Q Would you say that he'd gained a little bit of weight
9 since then?

10 A Yes, ma'am. I would say.

11 Q Okay. And I mean, I would too --

12 MR. DEAS: Objection.

13 THE COURT: Sustained.

14 BY MS. LAND:

15 Q -- he's put on a few pounds, would you say?

16 MR. DEAS: Objection. I'm move to strike that.

17 THE COURT: The jury will disregard that
18 statement. Ms. Land, you can't testify.

19 BY MS. LAND:

20 Q So the last thing that Mr. Deas asked you was what do
21 you have to prove his guilt?

22 A Yes, ma'am.

23 Q And, in fact, you have an ID of one person who was
24 able to get a good look at him during the incident?

25 A That's correct.

1 Q And you also have a description of the shirt by the
2 three people that got a look at him that night at the
3 shooting?

4 A Yes, ma'am.

5 Q You have two officers that saw him in a shirt that
6 matches their description --

7 A Yes, ma'am.

8 Q -- from that evening?

9 A Correct.

10 Q You've got a gun that two of his friends that were
11 with him that night describing it as one that he had with
12 him that night?

13 A Yes, ma'am.

14 Q A .22 revolver with a tan handle?

15 A That's right.

16 Q You have, the next day, one of his friends saying that
17 although he was broke before, he had two \$20 bills or the
18 exact denomination that was stolen from Laura Batista that
19 night?

20 A That's correct.

21 Q And you have the bullet that was taken from Ms.
22 Batista's arm?

23 A Yes, ma'am, that's correct.

24 Q That matches the gun that was found on the tray
25 outside of Mr. Garris's cell.

State v. Garris September 2-5, 2008

480

1 A Yes, ma'am, that's correct.

2 MS. LAND: That's all the questions I have.

3 THE COURT: Redirect?

4 MR. DEAS: Very briefly.

5 RICK ELMS - RE-CROSS - EXAMINATION

6 BY MR. DEAS:

7 Q Investigator Elms, you would agree with me that the
8 one thing that doesn't change about a shoe is it's size,
9 right?

10 A Yes, sir.

11 Q Doesn't matter how much time passes by a shoe size is
12 going to remain the same, is that right?

13 A Yes, sir.

14 Q And that past impression that SLED had made wouldn't
15 it also show the approximate size of the shoe?

16 A Yes, sir.

17 Q And that could be compared to the size of the shoe of
18 a potential assailant; correct?

19 A Yes, sir.

20 Q And that wouldn't change on matter how long you wore
21 the shoe would it?

22 A No, sir.

23 Q Now, you were present during the testimony of Ms.
24 Santiago and her daughter, Ms. Laura Batista, and her son,
25 Antonio Batista; correct?

1 A Yes, sir.

2 Q And you can correct me if I'm wrong, but did they not
3 indicate --

4 MS. LAND: Your Honor, I object. He can comment
5 on the testimony of another witness.

6 THE COURT: Overruled. What was the specific
7 question, Mr. Deas about Ms. Santiago?

8 MR. DEAS: I was going to ask him if they did not
9 testify that the assailant opened the door of the car.

10 THE COURT: You can ask him that question, but you
11 cannot pit this witness against another.

12 BY MR. DEAS:

13 Q Did they not testify that the assailant touched the
14 car as he opened the door?

15 A The door handle.

16 Q And he actually did it twice; correct?

17 A Yes, sir.

18 Q So some fingerprints could have been left from that
19 touching of the door handle; correct?

20 A Yes, sir.

21 Q Thank you, sir. I have no further questions.

22 THE COURT: All right, sir, you may step down.

23 INVESTIGATOR ELMS: Thank you.

24 THE COURT: All right.

25 MS. LAND: We call Mr. Ira Parnell.

State v. Garris September 2-5, 2008

482

1 THE CLERK: Please place your left hand on the
2 Bible and raise your right, state your full name.

3 MR. PARNELL: Ira Byrd Parnell, Jr.

4 (WHEREUPON, Ira Parnell, was sworn
5 to tell the truth.)

6 IRA PARNELL - DIRECT EXAMINATION

7 BY MS. LAND:

8 Q All right, sir, if you'd state your name for the
9 record, please.

10 A My name is Ira Byrd Parnell, Jr., P-a-r-n-e-l-l.

11 Q And where are you employed?

12 A I'm employed by the South Carolina Law Enforcement
13 Division also known as SLED.

14 Q In what capacity?

15 A I'm a firearm and tool mark examiner.

16 Q Okay. And tell the jury what that means?

17 A Simply put, that means that I examine fired bullets
18 and fired cartridge cases and firearms and try to determine
19 whether or not the bullets and cartridge cases were or were
20 not fired from the gun submitted to me. And regarding tool
21 marks, bolt cutters, plyers, and marks they leave at crime
22 scene. To try to compare those to see if there's any
23 association.

24 Q How long have you worked in that capacity?

25 A Tomorrow will be 36 years.

1 Q And in order to work at SLED and do that sort of
2 investigation what sort of training did you have?

3 A I underwent a two year intensive internship, which is
4 basically studying beside a trained examiner, because there
5 was no college degree program or training program at that
6 time that taught the discipline of firearm tool mark
7 identification. So you had to learn from somebody who was
8 already qualified. I had three examiners that I studied
9 under for two years. During that time I assisted in doing
10 their comparisons and examinations and basically just
11 learned by watching and by doing.

12 Since that time, I have graduated from the FBI
13 National Academy. Of course, our state academy. And many,
14 many courses in tool mark identification. I've conducted
15 many, many, hundreds of thousands of individual comparisons
16 and testified approximately 550 times as an expert in
17 firearms identification in state court, federal court and
18 North Carolina courts.

19 MS. LAND: Your Honor, at this time I would like
20 Mr. Parnell admitted as an expert in firearms
21 identification.

22 Mr. Deas: No objection, Your Honor.

23 THE COURT: All right, ladies and gentlemen, this
24 witness is qualified as an expert in the field of firearms
25 identification.

State v. Garris September 2-5, 2008

484

1 I want to tell you a little bit about expert witnesses
2 and I will tell you in detail later.

3 Normally, a person can testify about what they see,
4 hear, or smell or things of that nature. Certain witness
5 are not allowed to give an opinion. Now, there is an
6 exception in the law for expert witnesses. If a person is
7 qualified by reason of education, training, or experience,
8 that -- in a particular field, that person can give
9 opinions that are pertinent to that field.

10 Now, you do not have to accept the testimony given by
11 an expert simply because it's given by an expert. In other
12 words, you weigh the testimony of an expert just as you
13 would the testimony of any other witness, and you can
14 accept it in part or reject it in part or accept it and
15 reject it in whole. I'll tell you more about that later.

16 All right, Ms. Land.

17 BY MS. LAND:

18 Q Did you receive what's been marked as State's No. 4,
19 for identification from Investigator Rick Elms?

20 A Yes, ma'am, I did. State's Exhibit No. 4 for
21 identification bears my case number, specimen number, and
22 initials inscribed on the side of it. I have examined this
23 item.

24 Q Okay. And when you received that did you receive it
25 in a sealed bag?

1 A I did.

2 Q And did you open that bag?

3 A Yes, ma'am.

4 Q Describe the condition of the firearm when you opened
5 it?

6 A When I received State's Exhibit No. 4, or State's
7 Exhibit 4 for identification this firearm had what appeared
8 to be Saran Wrap wrapped around the grip area. There was
9 food residue all over the outer surface of it and basically
10 in a mess.

11 Q And as part of your investigation did you clean it up
12 a little?

13 A Yes, ma'am.

14 Q And you said it's got your case number on there.
15 Explain to the jury why you do that?

16 A So that I can identify it later. At any later time
17 that I may come in contact with that item it has my
18 initials inscribed on it with an inscribing pencil on it,
19 the case number and the specimen number.

20 Q Okay. And did you also receive from Investigator Elms
21 what's been marked -- or put into evidence as State's
22 Exhibit No. 8?

23 A Yes, ma'am. I actually repackaged it into this small
24 vial as it appears right now.

25 Q Okay. Did you open that from the box and examine it?

State v. Garris September 2-5, 2008

486

1 A Yes, ma'am, I did.

2 Q Did you compare the bullet to the firearm?

3 A Yes, ma'am, I did.

4 Q And what were you looking for when you did that?

5 A Again, as I said earlier, the question is what's
6 State's Exhibit 8 for identification and associated or not
7 with State's Exhibit 4 for identification and based on the
8 microscopic comparisons and analysis that I conducted I did
9 conclude that State's Exhibit 8 was in fact fired by
10 State's Exhibit 4 for identification, this revolver.

11 Q Can you explain to the jury what kind of test you
12 perform or what observations you made that lead you to make
13 that conclusion?

14 A When a firearm such as State's Exhibit 4 for
15 identification are manufactured the barrels are made in
16 long sections and cut in greater lengths might be being put
17 together that day by the factory. Each individual section
18 of the barrel has unique markings on the inside of it that
19 are transferred to any bullets that are fired out of that
20 particular portion of the barrel. The reason the marks are
21 in here is that the barrel itself has drilled with a
22 rotating drill which causes unique and unintentional
23 markings to be left inside the barrel. Other processes are
24 done after the drilling takes place, but the drill marks
25 are still left inside the barrel. These are unique and

1 highly unusual and can't be duplicated because the drill is
2 spinning at a high rate of speed and moving at a rate
3 through the barrel. The marks that are left inside the
4 barrel by the drill are transferred to any bullet that's
5 fired out of the barrel. These markings are microscopic in
6 nature and must be viewed under a high powered microscope.
7 I test fired State's Exhibit 4 for identification with this
8 firearm into our water recovery tank using known ammunition
9 I fired myself. By using water, the water slows the bullet
10 down as it hits the water without adding to or taking away
11 from the marks left on the bullet by this gun barrel. By
12 comparing microscopically the tests that I fired out of
13 State's Exhibit 4 for identification and noticing whether
14 or not they were consistently marked and then by
15 microscopically comparing the fired evidence here, State's
16 Exhibit No. 8, I could tell whether or not the same
17 markings were on the evidence bullet here as were on the
18 test bullets that I fired.

19 My microscopic comparison revealed the markings on
20 State's Exhibit 8 were the same as the test that I fired
21 from State's Exhibit 4 for identification, that proves to
22 me in concluding that this fired bullet, State's Exhibit 8,
23 was fired in State's Exhibit 4 for identification.

24 Q Did you prepare a report to that affect?

25 A Yes, ma'am.

State v. Garris September 2-5, 2008

488

1 Q Did you bring that report with you?

2 A I have a copy of it, yes, ma'am.

3 Q Thank you.

4 MS. LAND: All right. Eight for ID is in
5 evidence?

6 MS. LAND: Eight is in evidence. Four is not.

7 THE COURT: Okay.

8 MS. LAND: Your Honor, at this time I would like
9 to move for this report to be put in evidence at State's
10 No. 10.

11 MR. DEAS: No objection.

12 THE COURT: Number 10.

13 (State's Exhibit No. 10, SLED
14 report, was marked and entered.)

15 BY MS. LAND:

16 Q After you had completed your test and prepared the
17 report, what, if anything, did you do with that firearm and
18 that bullet?

19 A I repackaged them and sent them back to our evidence
20 control personnel downstairs to be returned to its
21 submitting agency.

22 Q Okay. And that submitting agency was Clarendon County
23 Sheriff's Office?

24 A Yes, ma'am.

25 Q Okay.

1 MS. LAND: Your Honor, at this time I would like
2 to move for State's Exhibit No. 4 to be placed into
3 evidence.

4 THE COURT: All right. Mr. Deas?

5 MR. DEAS: I'm -- I object, but go ahead.

6 THE COURT: All right. No. 4 is in.

7 (State's Exhibit No. 4, gun, was
8 marked and entered.)

9 BY MS. LAND:

10 Q That's all the questions I have. Thank you.

11 THE COURT: Mr. Deas?

12 MR. DEAS: Thank Your Honor. Please the Court.

13 THE COURT: Yes, sir.

14 IRA PARNELL - CROSS-EXAMINATION

15 BY MR. DEAS:

16 Q How you doing, sir.

17 A Fine.

18 Q My name is Garryl Deas. I represent the defendant,
19 Mr. Garris. Taking a look at your report. Do you still
20 have a copy of it?

21 A Yes, sir.

22 Q I've got in my hand, Mr. Parnell, what's been marked
23 State's Exhibit No. 10, which is your report; correct?

24 A Yes, sir.

25 Q In the results of your report you indicated that the

State v. Garris September 2-5, 2008

490

1 gun misfired five times during your test?

2 A Yes, sir.

3 Q Would the misfiring of the gun in any way impact the
4 accuracy of your test results?

5 A No, sir, not at all.

6 Q And do you have any idea as to what caused the gun to
7 misfire?

8 A No, sir, none whatsoever other than the fact that it
9 obviously not a good strike on the rim of the cartridge.

10 Q And just for knowledge say, would you state again,
11 sir, how a determination is made that the bullet that was
12 tested by you that came from law enforcement that was fired
13 from the gun that was also submitted to you for testing?

14 A The process that I used?

15 Q The process and exactly how is the match determined?

16 A Okay. The inside of the gun barrel, as I explained a
17 little bit earlier, I think, has unique and unusual and
18 random markings that are in the inside there that are left
19 there by the manufacturing process, specifically the
20 drilling of the actual diameter of the bore. Those
21 processes are done, the rifling was put in place, some
22 polishing was done. However, these unique, random markings
23 are left inside the barrel. When a bullet is fired through
24 the barrel it is scratched or marked by the inside of the
25 gun barrel through which it is fired. These marks are

1 unique to that gun and by microscopically comparing the
2 test bullets that I, myself, test fired through State's
3 Exhibit No. 4, I was able to determine that it was
4 consistent with markings on bullets that were fired out of
5 it and by comparing State's Exhibit No. 8, the fired bullet
6 through Ms. Santiago's arm, I saw the same or substantially
7 the same individual characteristics in that bullet as what
8 was on my test. So by looking at the individual markings
9 and lining them up microscopically and based on my
10 experience and training it is my opinion that this bullet,
11 State's Exhibit No. 8, was fired in State's Exhibit No. 4.

12 Q So what you're comparing is the microscopic marks left
13 on the bullet to marks that are inside the barrel of the
14 gun?

15 A Almost. The microscopic marks on the bullet compared
16 with test bullets that are marked by the inside of the
17 barrel of the gun.

18 Q You're actually comparing the bullet you received from
19 law enforcement with test fired bullets?

20 A Exactly.

21 Q Now, this gun, when it came to you, it had some
22 organic material on it, food and things of that nature?

23 A Yes. What appeared to me to be food scraps, food
24 residue, grease.

25 Q Was any of that material on the inside of the barrel?