

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

James R. Barber, III, Circuit Court Judge

RECEIVED

OCT 15 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAVARIAS G. TEAGUE,

APPELLANT

APPELLATE CASE NO. 2014-001785

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT #1 (photo array of Teague shown to Fiorealla B.), STATE’S EXHIBIT #2 (photo array of Teague shown to Angelo B.), STATE’S EXHIBIT #3 (photo array of Jones), STATE’S EXHIBIT #5 (photo array of Roper)

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
 No. 2012 GS 23 8671; 8714; 8715

3
 4 STATE OF SOUTH CAROLINA)
 5)
 6 versus) TRANSCRIPT OF RECORD
 7)
 8 JAVARIAS G. TEAGUE)
 9 Defendant)

10
 11 Greenville, South Carolina
 12 August 12-13, 2014

13 B E F O R E:

14 HONORABLE JAMES R. BARBER, III, Judge, and a Jury

15
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 S. OVERBY, Esq.
 18 Assistant Solicitors

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1 COURT'S EXHIBITS

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1 so for that reason there was no record given for an Indict-
2 ment to be sought. It was the practice in our Circuit for
3 many years that cases would not go to the Grand Jury until
4 we know they were to be tried. We would take the cases and
5 do what we called build the indictments, lay down all the
6 elements, especially indictments that had actually come and
7 gone to the Grand Jury.

8 That kept the Grand Jury from being overwhelmed with
9 cases that were brought before it and (portion not audible
10 due to noise in Courtroom).

11 So it was the practice in our Circuit to alleviate that
12 problem by not taking cases actually before the Grand Jury
13 until we know it will be tried, and for those reasons -- it
14 has been a common objection, and we . .

15 THE COURT: Anything in response to that?

16 MS. ROSS: This is a case where Mr. Teague -- there is
17 another case of strong armed robbery which Mr. Teague is
18 charged with and . .

19 THE COURT: Is it with the same CoDefendant?

20 MS. ROSS: No, it is potential a non-codefendant. I
21 just want to make sure that there is no reference to any un-
22 related -- any other unrelated charges.

23 SOLICITOR: We don't intent to do that, Your Honor.

24 THE COURT: All right.

25 MS. ROSS: We would proceed with the Neil v Biggers

1 hearing.

2 THE COURT: All right, are you ready?

3 SOLICITOR: Yes, Your Honor. The State would call Tim
4 Conroy.

5 TIM CONROY, being duly sworn, tes-
6 tified as follows, out of the presence of the jury:

7 DIRECT EXAMINATION

8 BY SOLICITOR:

9 CLERK: State your name for the record.

10 WITNESS: Timothy Michael Conroy.

11 Q. Where are you employed?

12 A. The Greenville Police Department.

13 Q. How long have you been in law enforcement?

14 A. Approximately eighteen years.

15 Q. How long have you been with the Greenville Police
16 Department?

17 A. The entire eighteen years.

18 Q. What was your position two years ago with the Green-
19 ville Police Department?

20 A. A detective with the violent crime scene unit.

21 Q. What were your duties with the violent crime unit?

22 A. To investigate violent crimes such as robberies, assaults,
23 homicides.

24 Q. Were you assigned to work the case or cases before the
25 Court?

1 A. I was.

2 Q. When were you assigned to the cases?

3 A. On the incident date, that morning.

4 Q. What was the incident date?

5 A. July 23rd of 2012.

6 Q. In the course of your investigation, did you conduct a
7 photographic lineup?

8 A. I did.

9 Q. With what witnesses or victims?

10 A. I showed the lineup to Angelo [REDACTED] Fiorella
11 [REDACTED] and Jean [REDACTED]

12 Q. Okay, and what suspect did you make the photo lineup
13 for?

14 A. Mr. Teague.

15 Q. Was Mr. Teague photo in the lineup?

16 A. It was.

17 Q. And did you put together the photo lineup?

18 A. I did.

19 Q. How did you do that?

20 A. I went to the data base of pictures and got a picture
21 of my suspect with five other pictures with similar charac-
22 teristics; same age, facial features, hair.

23 Q. So there were five other pictures in the photo lineup
24 along with that of the Defendant?

25 A. There were.

T. CONROY IN CAMERA

1 Q. And the five others in the lineup had a similar descrip-
2 tion as the Defendant, Mr. Teague?

3 A. Yes, sir.

4 Q. In what ways were they similar?

5 A. Same age, facial hair was the same, same hair style,
6 the same race.

7 Q. Okay, and did you do the same with regards to the
8 other Defendant?

9 A. I did.

10 Q. And how did you come up with the two people, the two
11 suspects or Defendants who were in the photo lineups?

12 A. I investigated the case and another one that related to
13 this one, and I came up with suspects that were identified
14 in that case.

15 They fit the description of this case, and I actually
16 called an informant that I had had for years to ask him if
17 he had heard anything about this case or about any robberies
18 that had occurred in the area, and he lived in the neighbor-
19 hood.

20 Without mentioning the name he actually gave a nickname
21 of Peanut.

22 Q. Okay, and who were the suspects you had come up with in
23 your investigation?

24 A. Teague and Jones.

25 Q. Who would be known as Peanut? Was that the Defendant's

T. CONROY IN CAMERA

- 1 nickname?
- 2 A. . .
- 3 Q. The Defendant's nickname is Peanut?
- 4 A. That's correct.
- 5 Q. And who was the other suspect or Defendant?
- 6 A. Survaggio Jones.
- 7 Q. Okay, and who did you show these lineups to first?
- 8 A. I went to the apartment of Mr. Angelo [REDACTED] Angelo [REDACTED]
- 9 Q. Okay, anybody else you showed it to at that apartment?
- 10 A. His sister.
- 11 Q. Was his sister present when the incident happened?
- 12 A. That's correct.
- 13 Q. What date did you show them the lineup?
- 14 A. July 25th, 2012.
- 15 Q. Did they live together in the same house?
- 16 A. They did.
- 17 Q. Okay. So this was two days after the incident occurred?
- 18 A. That's correct.
- 19 Q. Okay, and about what time of day was this incident?
- 20 A. Eleven o'clock in the morning.
- 21 Q. And where did the incident happen?
- 22 A. At their apartment.
- 23 Q. Where is their apartment?
- 24 A. It's on -- I believe it's [REDACTED].
- 25 Q. Okay, how did you meet with them? Did you meet with
- 32

T. CONROY IN CAMERA

1 them together or separately?

2 A. I went to their residence and someone answered the door.
3 I asked if they were home and she went up and got her son
4 and brought him downstairs, and I explained to him I just
5 wanted to show him a photo lineup.

6 Upon showing him the lineup, I advised him I was going
7 to show him six pictures who had the same characteristics in
8 the pictures, and to look at the facial features because the
9 hair may have changed.

10 Q. You said she came down with her son?

11 A. Yes.

12 Q. And where was Angelo at that time?

13 A. He was in bed sleeping.

14 Q. So you showed him the photo lineup, and was that the
15 first time you had shown any of these parties the photo line-
16 ups?

17 A. Yes.

18 Q. And tell us again how you actually, physically gave him
19 the lineup?

20 A. I asked if he was able to look at the photo lineup and
21 he said yes. I explained to him that I was going to show
22 him six pictures that would be of the same race and approxi-
23 mately the same age; hair styles the same in all the pictures;
24 facial hair would be all the same, and I explained to him I
25 couldn't tell if the suspect was in the photo lineup or not,

T. CONROY IN CAMERA

1 and I explained to him I didn't know if the suspect was
2 in the photo lineup or not, but I needed to know if he
3 could pick somebody from the lineup.

4 I had the photo lineup face down and I saw his eyes
5 glance across all six pictures.

6 Q. So you made sure he looked at everybody in the line-
7 up?

8 A. Yes.

9 Q. Was there any suggestion made by you as to the per-
10 son to pick out of the lineup?

11 A. No, sir.

12 Q. Did you influence his decision in any way?

13 A. No.

14 (Brief pause in the proceeding)

15 Q. Tell us what Mr. Angelo did once you showed him the
16 lineup?

17 A. He took the lineup and turned it over and glanced at
18 all six pictures. After he really looked at all six pic-
19 tures he identified one picture out of the lineup, say-
20 ing that was the person that robbed him.

21 Q. What level of certainty or confidence did he show to
22 you as he said that?

23 A. When he said this is the person, I said are you
24 positive that is the person, and he said he was a hundred
25 percent certain.

T. CONROY IN CAMERA

1 Q. Okay. Now, after he picked that person out of the
2 lineup, what is the next thing he did in regards to the
3 lineup?

4 A. I asked him to sign the form and write on there how
5 he knew this person. He went ahead and signed the pic-
6 ture and said it was him. He signed the form.

7 Q All right.

8 (Brief pause in the proceeding)

9 BY SOLICITOR:

10 Q. I hand you what's been marked as State's Exhibit Num-
11 ber 1. Would you take a look at that form and see if you
12 can identify that?

13 A. Yes.

14 Q. What is that?

15 A. This is a photo lineup with Mr. Teague.

16 Q. Okay, and let me hand you State's Exhibit Number 2.

17 A. This is a photo lineup I showed to Mr. Angelo with
18 Mr. Teague in it.

19 Q. Is this the photo lineup you were just talking about
20 and described how you showed it to Mr. Angelo?

21 A. That's correct.

22 Q. Okay, and how do you recognize that?

23 A. By his signature, the date and time.

24 Q. And what is the date and time?

25 A. July 25, 2012, at twelve O two.

T. CONROY IN CAMERA

1 Q. That is the actual lineup you showed him?

2 A. Yes.

3 Q. Is it in the same condition now as it was when you
4 showed it to him back on July 25, 2012?

5 A. Yes, it is.

6 SOLICITOR: I would move State's Exhibit 2 into the
7 record for purposes of this hearing.

8 MS. ROSS: Okay.

9 THE COURT: It's so entered.

10 BY SOLICITOR:

11 Q. Let me hand you State's Exhibit Number 2 again and
12 point out where the -- where Mr. Angelo [REDACTED] circled and
13 signed that document?

14 A. (Indicating)

15 Q. Thank you.

16 Q. You said you showed a lineup to Mr. Angelo [REDACTED]. Did
17 you also show him another one?

18 A. I did.

19 Q. And what was that lineup?

20 A. The other Defendant.

21 Q. Let me hand you what's marked as State's Exhibit 3,
22 and do you recognize that?

23 A. Yes.

24 Q. What is that?

25 A. This is the lineup with the CoDefendant.

T. CONROY IN CAMERA

1 Q. Is this a lineup you showed Mr. [REDACTED] on July 25th of
2 2012?

3 A. Yes, it is.

4 Q. Is it in the same condition as it was when you showed
5 it to him back on that date?

6 A. Yes.

7 SOLICITOR: We would move that in evidence at this time.

8 THE COURT: For this hearing.

9 MS. ROSS: No objection.

10 BY SOLICITOR:

11 Q. So tell us what Mr. Angelo [REDACTED] -- well, let me ask you
12 this. Did you introduce this to him the same way and in
13 the same fashion with the words as you did Mr. Teague's
14 lineup?

15 A. Yes, I did.

16 Q. And what was his response when you showed him that
17 lineup?

18 A. He looked at all six pictures and stated that he did
19 not recognize anyone as a person who had robbed him.

20 Q. Okay, did he say that the other person was not one of
21 those people, or did he just . . .

22 A. He told me he didn't recognize anybody in that -- any
23 of those pictures.

24 Q. Okay. Once you finished with Angelo [REDACTED] what did
25 you do at that point?

T. CONROY IN CAMERA

- 1 A. I wanted to speak with his sister and asked for
2 Fiorella -- asked his mother if his sister would come and
3 talk to me downstairs. That was as he was going upstairs.
- 4 Q. Okay, and where did you meet with Fiorella?
- 5 A. In the living room of that apartment.
- 6 Q. The same place as you met with Mr. Angelo ?
- 7 A. That's correct.
- 8 Q. Where was Angelo when you met with Fiorella?
- 9 A. Angelo was upstairs.
- 10 Q. So he was not in hearing or sight directly while you
11 were speaking with Fiorella?
- 12 A. That's correct. She came down the stairs and I said I
13 wanted to show her a lineup and speak with her about it.
- 14 Q. Did you use the same lineup or was it a different
15 lineup with Fiorella?
- 16 A. I had a different lineup.
- 17 Q. Handing you State's Exhibit Number 1. Do you recog-
18 nize that?
- 19 A. Yes, I do.
- 20 Q. And what is that?
- 21 A. This is the lineup that I showed to Ms. Fiorella , and
22 this is her signature she put on there.
- 23 Q. Is that in the same condition it was in when you
24 showed it to her?
- 25 A. That's correct.

T. CONROY IN CAMERA

1 SOLICITOR: Your Honor, we would move to admit that.

2 MS. ROSS: No objection.

3 THE COURT: For purposes of the hearing.

4 BY SOLICITOR:

5 Q. Going back to the lineup you showed Mr. Angelo [REDACTED], can
6 you put them in that order?

7 A. Yes.

8 Q. Where is the Defendant in the lineup you showed Angelo

9 [REDACTED]

10 A. Number two.

11 Q. And where is he in the one you showed Fiorella [REDACTED]

12 A. Number six.

13 Q. Okay. Tell us again how you presented the lineup to
14 Fiorella?

15 A. I did the same thing as with him. I told her I was
16 going to show her six photos, all of the same race, same
17 approximate age, same facial hair, same hairstyle, and I
18 told her not to feel obligated to pick somebody out; that
19 he may or may not be there.

20 She glanced at all of the pictures.

21 Q. And what did she do after she glanced at all of the
22 pictures?

23 A. She stated number six is the person that robbed them.

24 Q. Okay, and tell us again about what you observed about
25 her when she stated that?

T. CONROY IN CAMERA

1 Tell us what you observed about her level of certainty?

2 A. She had confidence like she was a hundred percent
3 confident. She said this is the one that robbed them.

4 Q. Okay, and, once again, did you influence her decision
5 in any way?

6 A. No.

7 Q. Was there any suggestiveness on your part?

8 A. No.

9 Q. And did you tell her that Mr. Teague was in that line-
10 up?

11 A. No.

12 Q. Okay, and tell us what you did once she said it was
13 number six?

14 A. I had ^{her} write down how she knew that person and sign it,
15 which she did.

16 Q. Okay. Now let me ask you, did you also show her the
17 lineup containing Survaggio Jones?

18 A. That's correct.

19 Q. Tell us about how you showed the photographic lineup
20 to her and what her response was to that lineup?

21 A. I told her the same thing. These six were similar and
22 asked her if she recognized any one of them. It was face
23 down, and then she turned it over and looked at the photos
24 -- she glanced at all the pictures, but she didn't recognize
25 anybody.

T. CONROY IN CAMERA

1 Q. Okay, thank you. Now, did you meet with any other wit-
2 nesses or victims?

3 A. I did.

4 Q. Who was that?

5 A. Jean [REDACTED]

6 Q. Okay, and where and when did you meet with him?

7 A. I think I met with him at his house on [REDACTED],
8 and he could not pick anybody out of either one of them.

9 Q. Okay. Did he have any comments about as to why or
10 what not?

11 A. He said it was dark and he didn't get a good look at
12 them, he said.

13 Q. Okay. Did you meet with Angelo [REDACTED] a second time?

14 A. I did.

15 Q. Okay, when did you meet with him?

16 A. It was about a month later, I believe.

17 Q. And did you show him the lineup that day, or did he look
18 at that lineup?

19 A. Yes. It was July 14, 2012.

20 Q. What was the reason you met with him on that date?

21 A. I had information that I may know one more of the sus-
22 pects involved in the case.

23 Q. Did you introduce the lineup in the same way as you did
24 the other one on July 25th?

25 A. I did.

T. CONROY IN CAMERA

1 Q. How did Mr. Angelo respond when you handed him the
2 lineup on that date?

3 A. He looked at all six pictures and indicated photograph
4 number three -- said that looks like one of them.

5 Q. Okay. Now, was his level of certainty the same as it
6 was on the other occasion or was it different?

7 A. He just said it looks like him. He wasn't absolutely
8 positively -- just said it looks like him.

9 Q. What was the person that he indicated in number three?

10 A. Ashley Roper.

11 Q. Please answer any questions Ms. Ross may have.

12 CROSS EXAMINATION out of the jury's presence

13 BY MS. ROSS:

14 Q. Did you take any notes of the meeting when you went to
15 the home?

16 A. . .

17 Q. Did you take any notes of the meeting?

18 A. No.

19 Q. Did you record the meeting or . . .

20 A. No, maam.

21 Q. You went there two days later?

22 A. Yes, maam.

23 Q. Did you have a card that you read with your instruc-
24 tions to Mr. Angelo or Ms. Fiorella when you went over
25 there?

T. CONROY IN CAMERA

1 A. With regard to the photo lineup?

2 Q. Yes.

3 A. No, maam.

4 Q. So you are just speaking from your recollection of
5 what you told them?

6 A. I have done this numerous times over the years.

7 Q. Okay, and this is the way you did it from your re-
8 collection?

9 A. Yes.

10 Q. And you stated that you put Jones and Teague in the
11 lineup because they related to another case?

12 A. That's correct.

13 Q. And is that the case 2012 824 -- would that be cor-
14 rect?

15 A. I think that's correct. I would think that's correct,
16 yes.

17 Q. At [REDACTED] [REDACTED] [REDACTED]

18 A. That's correct.

19 Q. Now, in that case it involved a different car? A Dodge
20 van. Correct?

21 A. I believe a Dodge Charger or Calabrese.

22 Q. A utility sports car, I believe, and that was a dif-
23 ferent neighborhood. Correct?

24 A. Correct.

25 43

T. CONROY IN CAMERA

1 Q. And it occurred at ten o'clock in the morning?

2 A. That's correct.

3 Q. And did it involve a drug deal gone bad?

4 A. Yes, maam.

5 Q. And it involved a situation where the alleged victim
6 knew the perpetrators or the people involved in that . .

7 A. He knew their nicknames.

8 Q. And that case is what led you to put Jones and Peanut
9 in the lineup, correct?

10 A. Along with information from the informant.

11 Q. And the informant said he knew Peanut had done some
12 robberies, right?

13 A. That's correct.

14 Q. And did he give you any details beyond that? Like he
15 had been on this street in this area at this time?

16 A. That's correct.

17 Q. He just heard it was Jones and Peanut?

18 A. Correct.

19 Q. Now, when you spoke to [REDACTED] initially, you asked
20 him after the incident whether he'd be willing to look at a
21 lineup of suspects?

22 A. That is correct.

23 Q. So he had the understanding that the lineup that you
24 presented to him was because you had developed a suspect.

25 Is that correct?

44

T. CONROY IN CAMERA

1 A. Yes, maam.

2 Q. All right, and in the response that he made did he say
3 he got a look at one of the people?

4 A. That's correct.

5 Q. Now, when you presented these two lineups, which one
6 -- there were two people that were described. One in a red
7 shirt with dreadlocks, and one in a green shirt with kahkis on.
8 Is that correct?

9 A. Correct.

10 Q. Which one was the one you were suggesting Mr. Teague
11 was when you put him in the lineup?

12 A. . .

13 Q. Which one was Peanut when you put . .

14 A. I wasn't suggesting either one of them. I was just show-
15 ing him pictures of people that might be suspects. I wasn't
16 suggesting any one of them.

17 Q. Okay. Now, as to Mr. Teague, did he have long braids?

18 A. No.

19 Q. And Mr. Jones was the one who had the long braids?

20 A. He did have braids.

21 Q. And Mr. Jones was the one that he said actually had
22 confronted him or the one with the braids was the one who
23 confronted him?

24 A. I'm not sure who confronted him.

25 Q. But did he say he had the red shirt and the braids, the

T. CONROY IN CAMERA

1 one that held the gun on him?

2 A. That's what he said, yes.

3 Q. Now, you put Mr. Teague in this lineup and he's not
4 bald, is he?

5 A. I believe his hair is similar to these.

6 Q. And did Mr. Angelo in his initial statement give you
7 any description of either of the people who robbed him, as
8 far as mustaches or any kind of facial hair?

9 A. I don't believe initially.

10 Q. Yet all the people you put in the lineup had light
11 mustaches. Correct?

12 A. This picture was not taken the day of the events, so I
13 don't know what he had on the day of the incident. As far
14 as the picture, I said the facial hair could be different
15 from what is there.

16 Q. All right, but Mr. Angelo didn't say anybody had fa-
17 cial hair but yet you put in the lineup six people all hav-
18 ing facial hair. Correct?

19 A. Yes.

20 Q. He described a bald, heavy person with no mention of
21 facial hair, but you put people in the lineup not actually
22 being bald with facial hair?

23 A. Correct.

24 Q. And would you agree that none of them in the pictures
25 are heavy except arguably Mr. Teague?

T. CONROY IN CAMERA

- 1 A. I have the faces there and I can't tell their weight
2 by their face.
- 3 Q. All right, sir, but you are saying that this guy could
4 be a heavy guy by his face?
- 5 A. I'm not telling you that. I can't tell.
- 6 Q. All right. Are you aware of whether their prior de-
7 scription was similar to what they recalled when they looked
8 at the photo lineup?
- 9 A. I'm not aware of that.
- 10 Q. And when you put the photo lineup before other witnes-
11 ses, did they say it was too dark to see or identify anyone?
- 12 A. That's correct.
- 13 Q. One of those other witnesses was the one who said a
14 bald person in a green shirt was the one who allegedly had
15 pointed a gun at him?
- 16 A. I believe he also stated that he didn't look at the De-
17 fendant in the face.
- 18 Q. Okay. Let's go back. You said that Mr. Angelo said
19 he was a hundred percent certain when he looked at the
20 lineup?
- 21 A. Yes, maam.
- 22 Q. Would it surprise you that you didn't state anything
23 like that in your incident report?
- 24 A. I wouldn't have signed the warrants unless he was a hun-
25 dred percent certain.

T. CONROY IN CAMERA

1 Q. But you didn't write anything about that statement in
2 your report?

3 A. I put he was positive.

4 Q. And the [REDACTED] are brother and sister, correct?

5 A. Yes, maam.

6 Q. And they lived in the same house, is that correct?

7 A. Yes.

8 Q. And you talked to them there at that house two days
9 after the incident? They were there together?

10 A. I don't know how long they had lived there but they
11 were at the same residence, yes.

12 Q. So we can assume they lived at the same house on the
13 day of the robbery?

14 A. Correct.

15 Q. And Ms. Fiorella [REDACTED] gave no description of anyone after the
16 incident?

17 A. Not that I'm aware.

18 Q. All right, and when you questioned her, was she in-
19 formed that Angelo had just picked out somebody in the
20 lineup?

21 A. I don't believe so. No, maam.

22 Q. No further questions.

23 SOLICITOR: Nothing further.

24 THE COURT: All right, next witness.

25 (Witness excused from stand)

1 SOLICITOR: The State would call Angelo [REDACTED]
2 ANGELO [REDACTED] being duly sworn,
3 testified as follows, out of the presence of the jury:

4 CLERK: Please be seated and state your name for the
5 record.

6 WITNESS: Angelo [REDACTED]

7 DIRECT EXAMINATION

8 BY SOLICITOR:

9 Q. I'm going to ask you some questions, and if you would
10 move just a little bit that way so the Judge can hear you
11 real clearly.

12 How old are you, Angelo?

13 A. I'm seventeen.

14 Q. How old were you on July 23rd of 2012?

15 A. Fifteen.

16 Q. Okay. I'm going to take you back to July 25th, 2012.

17 Do you recall meeting with the investigator who just has tes-
18 tified he showed you a photographic lineup?

19 A. Yes, sir.

20 Q. Where did that take place?

21 A. At my house.

22 Q. And what's your address?

23 A. (inaudible)

24 Q. Who did you live there with at that time?

25 A. My mom, my dad, my sisters, me.

A. [REDACTED] IN CAMERA

1 Q. Now, do you remember what you were doing when the of-
2 ficer showed up at your house?

3 A. Yes, I was sleeping.

4 Q. Did you know the officer was coming that day?

5 A. No, sir.

6 Q. How did you first find out the officer was there?

7 A. My mom woke me up.

8 Q. And do you remember what she told you when she woke you
9 up?

10 A. That somebody was there, some officer.

11 Q. What did you do when she woke you up?

12 A. I went down to where he was and he showed me some pic-
13 tures.

14 Q. And did he explain to you the process?

15 A. When he showed me the pictures.

16 Q. Okay, and do you remember what process he explained to
17 you before he showed them to you?

18 A. Not word by word of what he said.

19 Q. Well, let me ask you a couple of questions. When he
20 showed you the pictures, did he in any way make you believe
21 you had to or you should pick somebody out of that lineup?

22 A. No, sir.

23 Q. Did you feel any pressure to pick someone out of the
24 lineup?

25 A. No.

A. [REDACTED] IN CAMERA

1 Q. Did he influence your decision as to who was the per-
2 son to pick out of that lineup?

3 A. No.

4 Q. Did he influence your decision at all?

5 A. No, sir.

6 Q. Was anybody else around when that officer showed you
7 the photo lineup?

8 A. No.

9 Q. Do you remember where your sister was?

10 A. I'm not sure.

11 Q. But she was not in the room at the time?

12 A. No, sir.

13 Q. After you were done looking at the photographs, did you
14 have any conversation with your sister?

15 A. No, sir.

16 Q. Did you tell her what you had done?

17 A. No, sir.

18 Q. You didn't tell her you looked at the pictures and it
19 was someone in them?

20 A. No, sir.

21 Q. I want to take you back now to July 23rd and ask you a
22 few questions about the night of the robbery. Okay?

23 How many people were involved in this robbery that
24 night?

25 A. It seemed to me four.

A. [REDACTED] IN CAMERA

- 1 Q. Okay, and how many people came up to you to rob you?
2 A. Two.
3 Q. You said there were four. What about the other two?
4 A. The driver and another one in the car.
5 Q. You said there was a car involved?
6 A. Yes.
7 Q. The other two people stayed in the car?
8 A. Yes, sir.
9 Q. So two people came up to you, and about what time of
10 day was it?
11 A. Eleven or twelve.
12 Q. This was at night?
13 A. Yes, it was dark.
14 Q. So late at night and were there any other people with
15 you?
16 A. Yes, it was me and Edgar and Kevin, Jean and my sister.
17 Q. So five of you all?
18 A. Yes, sir.
19 Q. And were they all around the same age as you were?
20 A. Yes, sir.
21 Q. What were you all doing when this happened?
22 A. We were talking and listening to some music outside of
23 Jean's house.
24 Q. When did you realize that something was going on?
25 A. At first I could see the car but I didn't pay it any

A. [REDACTED] IN CAMERA

1 attention, and then about the time they parked and that's
2 when . . .

3 Q. When they parked did anybody get out of the car?

4 A. Yes.

5 Q. How many people?

6 A. Two people.

7 Q. And did you see them get out of the car?

8 A. Yes.

9 Q. Did you watch what they did?

10 A. They just came up to us with guns.

11 Q. Did they both have guns?

12 A. Yes.

13 Q. Now, let's talk a little bit about the light there.

14 A. There was a street light pole.

15 Q. Street light pole?

16 A. Yes, sir.

17 Q. And was there enough light for you to be able to get a
18 look . . .

19 A. Yes, there was enough light. There was enough light
20 to see who it was.

21 Q. Okay. Now, were you able to get a good look at either
22 one of them?

23 A. I . . .

24 Q. Let me finish the question. Were you able to get a good
25 look at either one of these people in order to be able to

A. [REDACTED] IN CAMERA

1 identify them later?

2 A. One face.

3 Q. One face?

4 A. Yes, sir.

5 Q. Okay, what was the main difference in these two?

6 A. One was bigger than the other one and one had hair.

7 Q. The one who was big had hair?

8 A. No.

9 Q. The other guy was thinner?

10 A. Yes.

11 Q. What about his hair?

12 A. He had dreadlocks.

13 Q. Dreadlocks. Okay. Now, which of those people did you
14 get a good enough look at to be able to identify him?

15 A. The one with no hair.

16 Q. There was some talk about -- in your statement you de-
17 scribed the person as bald. What does bald? Do you mean no
18 hair?

19 A. It's like just a little hair.

20 Q. Like a low-cut hair cut?

21 A. Yes, sir.

22 Q. Some people when they hear the term bald they think of
23 it in terms of having completely no hair. Is that the way
24 you mean it?

25 A. To me, bald is a little bit of hair or low-cut.

A. [REDACTED] IN CAMERA

- 1 Q. Low-cut or short?
- 2 A. Yes.
- 3 Q. Okay. Now, you were able to get a good enough look at
4 that person to identify him later. How close were you?
- 5 A. Very close.
- 6 Q. Can you give us an idea of how close he got?
- 7 A. This is me and he's right here.
- 8 Q. Well, let me ask, was he close enough to touch you?
- 9 A. Yes, sir. He touched me.
- 10 Q. How did he touch you?
- 11 A. He went through my pants.
- 12 Q. So he was actually, physically touching you?
- 13 A. Yes.
- 14 Q. Use your hands to give us an idea of how close he was?
- 15 A. . .
- 16 Q. And when he was that close, did you look at him?
- 17 A. Yeah, I turned around. I turned around.
- 18 Q. And did you also see him -- you said you saw him leav-
19 ing the car and coming towards you. Were you looking at him
20 that time as well?
- 21 A. Yes, sir.
- 22 Q. Now, based on your observations of him when he was com-
23 ing to you and when he was what I think you said was about
24 six inches from your face, did you get a good enough look at
25 him to be able to identify him later?

A. [REDACTED] IN CAMERA

1 A. Yes, I got a good enough look.

2 Q. Okay. Now, let's go back and talk about when you met
3 with the investigator with the photo lineup.

4 He showed you the photo lineup, and were you able to
5 see the person you have told us about?

6 Take a look at State's Exhibit 2 and do you recognize
7 that?

8 A. Yes, sir.

9 Q. Is that the photo lineup the investigator showed you?

10 A. Yes.

11 Q. Is that your signature on there?

12 A. Yes, sir.

13 Q. And when you picked the person up out of the lineup,
14 did you make any mark to show which person?

15 A. Yeah, I circled it.

16 Q. And which -- is the one circled there . .

17 A. Yes.

18 Q. How sure were you?

19 A. I was very confident.

20 Q. What do you mean by very confident?

21 A. I could tell by the eyes.

22 Q. Okay, so you were -- were you a hundred percent sure
23 of who it was?

24 A. Yes.

25 Q. Was there any doubt in your mind?

56

A. [REDACTED] IN CAMERA

1 A. No, sir.

2 Q. Now, do you remember the officer then showing you --
3 showing you State's Exhibit Number 3. Do you remember him
4 showing you another photo lineup with people with dred-
5 locks?

6 A. Yes, sir.

7 Q. What did you -- when he showed you that photo lineup,
8 what was your . .

9 A. I told him I couldn't tell.

10 Q. You couldn't tell?

11 A. No, sir.

12 Q. Did you tell the officer that?

13 A. Yeah, I told him I wasn't sure.

14 Q. Do you remember a few weeks later the officer meeting
15 with you again and showing you another photo lineup?

16 A. Yes, sir.

17 Q. And do you remember circling somebody in that photo
18 lineup?

19 A. Yes, sir. I was quite sure.

20 Q. Okay. Why would you circle somebody in that lineup?
21 How did you feel when you were shown that photo lineup?
22 and circled somebody?

23 A. Like the hair. The guy who robbed me had long dreds,
24 and I had seen him before. I was quite sure I had seen him.

25 Q. Okay, so you weren't as confident as you were . .

57

A. [REDACTED] IN CAMERA

1 A. Yes, sir.

2 Q. Okay. Please answer any questions Ms. Ross has.

3 CROSS EXAMINATION

4 BY MS. ROSS:

5 Q. Okay, the second photo lineup that you looked at,
6 would you say you were a little sure but not that sure?

7 A. That's right.

8 Q. About the second lineup?

9 A. Yes.

10 Q. And earlier you said you had gotten a good look at one
11 person?

12 A. Yes, and I was not quite sure with the other person be-
13 cause I really wasn't in contact with the other person.

14 Q. That's not what you said in your statement, is it?

15 A. No, maam.

16 Q. In your statement you said -- you described a skinny
17 black male wearing a red shirt, six foot, dark complexion,
18 dreds? That was the description of one guy, and the other
19 was heavy-set black male wearing black shorts, bald, wearing
20 a greenish polo shirt?

21 You said, they walked up to me and the skinny male
22 pointed a gun at me and the heavysset male pointed a gun at Jean

23 [REDACTED]

24 That's what you said that night?

25 A. That's what the officer wrote down. I didn't write it,

A. [REDACTED] IN CAMERA

1 and that's not what I remember happening. He probably
2 wrote it down wrong or he misunderstood.

3 Q. Now, you wrote, I allowed Officer Lane to write this
4 for me, and you signed it on the bottom?

5 A. I signed it.

6 Q. Are you saying that statement is wrong?

7 A. Yes, maam.

8 Q. Okay. How about Edgar [REDACTED] Would it surprise you
9 -- he was with you as well?

10 A. Yes, he was.

11 Q. And the same guy that robbed you robbed Mr. Carera?

12 A. The guy with the dreds.

13 Q. Right. The guy with the dreds went to [REDACTED]

14 A. That's right.

15 Q. And [REDACTED] said the one that pointed the gun was wear-
16 ing a red shirt?

17 A. That's right.

18 Q. So . . .

19 A. A red shirt, dreds.

20 Q. [REDACTED] said the one in the green shirt pulled a gun on
21 him?

22 A. They both pulled guns.

23 Q. So you are saying despite what the statement said the
24 -- now you're saying you and [REDACTED] were together and -- you
25 and [REDACTED] were together . . .

A. [REDACTED] IN CAMERA

1 A. Edgar was in the car.

2 Q. Okay.

3 A. Me and [REDACTED] was beside each other.

4 Q. Okay, and [REDACTED] -- Edgar said the guy with the red
5 shirt put the gun to my head?

6 A. . .

7 Q. Which is different from what you said in your statement?

8 A. Yes, maam.

9 Q. Now, when you were shown the lineups weren't you aware
10 when you were shown them that suspects had been developed?

11 A. No.

12 Q. Did you think they were getting a lineup for no reason?

13 A. I mean, I knew what was going to happen. I knew he
14 was going to show me some pictures. That's all I got.

15 Q. Had he told you that he had developed a suspect?

16 A. I don't remember.

17 Q. Okay. When you were shown the lineup, did you discuss
18 the case with your sister at all?

19 A. No.

20 Q. You said nothing to her about the robbery during this
21 time?

22 A. Oh, we talked about it.

23 Q. You talked about what happened and what had been
24 stolen?

25 A. Yes, maam.

60

A. [REDACTED] IN CAMERA

Q.

1 Q. But you didn't talk about what the persons looked
2 like?

3 A. No, maam.

4 Q. And in your initial description you didn't put anything
5 about the eyes, did you?

6 A. No.

7 Q. Or mustache?

8 A. No.

9 Q. I've got no further questions.

10 REDIRECT EXAMINATION

11 BY SOLICITOR:

12 Q. Do you remember during the robbery whether the guys had
13 facial hair or not?

14 A. No, sir.

15 Q. That's all I have. Thank you.

16 THE COURT: You can step down.

17 (Witness excused from stand)

18 SOLICITOR: State calls Fiorella [REDACTED]

19 FIORELLA [REDACTED] being duly

20 sworn, testified as follows out of the presence of the jury:

21 CLERK: Have a seat and state your name for the record,
22 please.

23 WITNESS: My name is Fiorella [REDACTED]

24 DIRECT EXAMINATION

25 BY SOLICITOR:

F. [REDACTED] ON DIRECT IN CAMERA

1 Q. Ms. Fiorella [REDACTED], would you please tell us how old you
2 are?

3 A. Fifteen.

4 Q. Okay.

5 A. Thirteen at the time.

6 Q. You were thirteen when this happened back in July of
7 2012?

8 A. Yes.

9 Q. I'll tell you the same thing I told your brother.
10 This lady here has to write down everything that's said, so
11 we need to make sure she hears my questions and your an-
12 swers.

13 Okay, do you go to school?

14 A. Yes, sir. East Side.

15 Q. What grade are you in?

16 A. Tenth.

17 Q. Now, let me take you back to July 25th of 2012. Do
18 you recall meeting with an investigator and looking at a
19 photographic lineup?

20 A. Yes, sir.

21 Q. Can you tell us where that took place?

22 A. My home.

23 Q. What were you doing before he arrived to show you
24 that lineup?

25 A. I was sleeping.

F. ██████████ IN CAMERA

- 1 Q. Did you know anybody was going to be coming that day?
- 2 A. No.
- 3 Q. Did the officer talk to you before he showed up?
- 4 A. No, he didn't.
- 5 Q. Okay. When did you first realize the officer was there
- 6 to talk with you?
- 7 A. When my brother came and told me.
- 8 Q. Did he tell you why the officer was there?
- 9 A. No.
- 10 Q. Did he tell you that you were going to be shown some
- 11 pictures?
- 12 A. No, he didn't.
- 13 Q. Did he tell you he had already picked somebody out?
- 14 A. No, sir.
- 15 Q. So when you were woken up, where did you go?
- 16 A. Downstairs.
- 17 Q. And did you meet with the investigator who testified a
- 18 little while ago?
- 19 A. Yes, sir.
- 20 Q. Do you remember where in the house you met with him?
- 21 A. At my kitchen table.
- 22 Q. Okay, and do you remember what he said to you when he
- 23 showed the pictures to you?
- 24 A. No, sir.
- 25 Q. Let me ask you this. Did he lead you to believe in any
- 63

F. ██████ IN CAMERA

1 way that you had to or that you should pick somebody out of
2 the photo lineup?

3 A. No, he did not.

4 Q. Did you feel like there was pressure that you needed
5 to pick somebody out?

6 A. No, sir.

7 Q. Did he influence your decision in any way as to which
8 picture to pick out?

9 A. No, he did not.

10 Q. Okay. Now, I want to ask you now some questions about
11 the night of this robbery. Do you remember what you were
12 doing on that night?

13 A. Yes, I was hanging out where Angelo was.

14 Q. Give us an idea of where that was?

15 A. It was on the side of Jean ██████' house.

16 Q. So was it a busy street?

17 A. It can be during the day at times.

18 Q. So what was it like at midnight?

19 A. It was not busy.

20 Q. Probably not much traffic?

21 A. No.

22 Q. Okay, and what were you doing when this robbery hap-
23 pened?

24 A. I was sitting down on the sidewalk.

25 Q. You were actually sitting on the sidewalk?

F. [REDACTED] IN CAMERA

1 A. Yes.

2 Q. When did you first realize something was happening?

3 A. When Jean mentioned that the car was driving by.

4 Q. And what did you observe that made you realize you were
5 about to get robbed?

6 A. The car stopped.

7 Q. What happened after the car stopped?

8 A. Two guys came running. One went to Angelo and Jean,
9 and one went to the car.

10 Q. Were these guys holding anything?

11 A. Yes.

12 Q. What were they holding?

13 A. Guns.

14 Q. They had guns?

15 A. Yes.

16 Q. Okay, what is the best -- what do you remember these
17 two guys looking like?

18 A. I just remember the dark skin and one had long dreds.

19 Q. What about the other??

20 A. A short hair cut.

21 Q. Okay. Now, were you able to get a good look at
22 either one of them to be able to identify them?

23 A. I only remember the hair.

24 Q. How close were you to them when you were able to look
25 at them?

65

F. ██████ IN CAMERA

1 A. It was like a foot away.

2 Q. Close?

3 A. They were close.

4 Q. Did you remain seated on the sidewalk?

5 A. Yes, I did.

6 Q. So you were looking up at them?

7 A. I was looking down because I was scared, and then I
8 looked at him when he was going through my brother's pants.
9 I got a good look at his eyes.

10 Q. How close was your brother to you when this guy was going
11 through his pants?

12 A. Right next to me. He was near me so I could see him.

13 Q. Was he close enough that you could have touched him?

14 You could have reached out and touched him?

15 A. . .

16 Q. Or was he a little further?

17 A. A little further.

18 Q. Use me as a reference point as I start walking to you.
19 If I get to about as close as he was I want you to tell me
20 to stop. Okay?

21 A. Stop.

22 Q. So about this close?

23 A. Yes.

24 Q. Five or six feet, would you say?

25 A. Yes, sir.

66

F. [REDACTED] IN CAMERA

1 Q. Okay. Now, was there enough light out there . .

2 A. There was a street light next to Jean's house.

3 Q. Did that street light illuminate this guy's face?

4 A. A little bit, yes.

5 Q. And did you get a good enough look at him to be able
6 to identify him later?

7 A. Yes.

8 Q. Okay. Now, let me take you back and ask you questions
9 about the photo lineup. When the officer showed you that
10 lineup of photographs, were you able to recognize this per-
11 son you just described?

12 A. Yes.

13 Q. I hand you Exhibit Number 1. Okay? Take a look at
14 that.

15 Are you able to recognize what that is?

16 A. Yes.

17 Q. Is this the lineup he showed you?

18 A. Yes.

19 Q. And did you pick somebody out of that lineup?

20 A. Yes, sir.

21 Q. When you picked somebody out of the lineup, what did
22 you do?

23 A. I pointed him out.

24 Q. And what did the officer ask you to do?

25 A. Write my name.

F. ██████████ IN CAMERA

1 Q. Okay.

2 A. The one that robbed us that night.

3 Q. How sure or confident were you that that was the per-
4 son?

5 A. Very confident.

6 Q. Was there any doubt in your mind?

7 A. Uh uh.

8 Q. Now, do you remember the officer then showing you
9 another photo lineup pictures with dreadlocks?

10 A. Yes, I do.

11 Q. Showing you State's Exhibit Number 3, does that look
12 like what he may have showed you?

13 A. Yes.

14 Q. What -- do you remember what your response or reaction
15 was when he showed you that photo lineup?

16 A. I didn't recognize anyone.

17 Q. Did you tell the officer that?

18 A. Yes.

19 Q. Please answer any questions Ms. Ross may have.

20 CROSS EXAMINATION

21 BY MS. ROSS:

22 Q. I just want to get an idea -- you were sitting down on
23 the curb?

24 A. Yes.

25 Q. Were you next to the white car on the front there?

68

F. [REDACTED] IN CAMERA

- 1 A. Yes.
- 2 Q. And the car was in front of whose house?
- 3 A. Jean's.
- 4 Q. Okay, and who was sitting in the car?
- 5 A. Edgar.
- 6 Q. Okay. Where was your brother?
- 7 A. He was on the side of the car.
- 8 Q. On the driver's side or on the passenger side?
- 9 A. Driver's.
- 10 Q. Was the driver's side facing the street or the side-
- 11 walk?
- 12 A. Facing the sidewalk.
- 13 Q. And then where was -- Edgar was sitting in the passen-
- 14 ger seat?
- 15 A. Yes, Edgar was in the car.
- 16 Q. You were sitting down and your brother was . . .
- 17 A. Standing on the driver's side.
- 18 Q. And this was all in the yard on the sidewalk side of
- 19 the car?
- 20 A. Yes.
- 21 Q. Okay, and at the scene you gave a statement?
- 22 A. Yes.
- 23 Q. And in that statement did you give a description of
- 24 either of the men that robbed you? Of either of the two
- 25 black men that came up?

F. ██████████ IN CAMERA

- 1 A. . . .
- 2 Q. Other than there were two black men that came up to us?
- 3 A. Yes.
- 4 Q. So you said nothing about one was bald or nothing about
- 5 eyes or facial features?
- 6 A. No.
- 7 Q. Thank you. Well, actually, when you were at your house
- 8 and you were told to look at a lineup, you were shown this
- 9 lineup, and had you and your brother discussed what had hap-
- 10 pened before you were shown this lineup?
- 11 A. No.
- 12 Q. So two days after the robbery and you had not discussed
- 13 it?
- 14 A. We didn't discuss the men or nothing.
- 15 Q. Okay. That's all the questions.
- 16 SOLICITOR: I have no further questions of this witness
- 17 and no further witnesses.
- 18 THE COURT: Ms. Ross, do you have anything?
- 19 MS. ROSS: Yes, we have one expert witness before I go
- 20 into the issues of this hearing, but if we could take a
- 21 break at this time before going into that.
- 22 THE COURT: Well, it's been an hour and half now and we
- 23 have the jury.
- 24 MS. ROSS: She won't be long.
- 25 THE COURT: We'll take a ten minute break.

1 MS. ROSS: Thank you.

2 (Whereupon, the matter stood in recess for a brief per-
3 iod and then resumed)

4 THE COURT: All right, Ms. Ross.

5 MS. ROSS: The Defense would call Dawn McQuiston.

6 DAWN E. McQUISTON, being
7 duly sworn, testified as follows:

8 CLERK: Have a seat and state your name for the re-
9 cord, please.

10 WITNESS: Dawn McQuiston.

11 DIRECT EXAMINATION

12 BY MS. ROSS:

13 Q. We had planned to call you as an expert during the
14 trial, but at this point I will just offer you as an ex-
15 pert in the field of psychology, both in memory as well as
16 psychology.

17 Let me get this right, an expert in memory and eye-
18 witness identification.

19 A. . .

20 SOLICITOR: I would like to hear her background and
21 qualifications for that.

22 BY MS. ROSS:

23 Q. What is your educational background?

24 A. I have a bachelor's degree in psychology, a master's
25 degree in experimental psychology and a PHD in experimental

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1 psychology from the University of Texas at El Paso.

2 Q. Where are you currently working?

3 A. I'm a Professor at Wofford College.

4 A. And have you ever published any articles in the area
5 of memory and eye-witness identification?

6 A. I have.

7 Q. Have you testified in a Court of Law as an expert in
8 the area of memory and eye-witness identification?

9 A. Yes, I have.

10 Q. How many times would you say?

11 A. Oh, over the course of my career, about twenty-five
12 times.

13 Q. In more than just South Carolina?

14 A. Yes.

15 Q. In Federal Courts?

16 A. No, I haven't testified in Federal Court. I have con-
17 sulted on cases in Federal Court.

18 Q. Okay.

19 MS. ROSS: At this point I would offer her again, as
20 I requested, as an expert in memory and eye-witness identi-
21 fication.

22 THE COURT: Any voir dire?

23 SOLICITOR: Yes, sir.

24 CROSS EXAMINATION

25 BY SOLICITOR:

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1 Q. How -- what studies have you done in the area of memory
2 and eye-witness identification?

3 A. There is a CV. Do you have a copy of my CV?

4 Q. Sure. Have you published articles?

5 A. Yes. They are listed there. I have published.

6 Q. Could you clarify them?

7 A. Could I ask which one you'd like me to clarify?

8 THE COURT: He doesn't answer questions. His job is to
9 ask them and yours is to answer them.

10 WITNESS: Sure, but I'm not sure -- there is a list
11 and I am not sure which one . . .

12 BY SOLICITOR:

13 Q. Could you explain one of the studies you have done?

14 A. Sure. One I have researched is effective cross-racial
15 identification, meaning how well people are able to iden-
16 tify someone in an entirely different ethnic group.

17 There is one I did years ago on different lineup pro-
18 cedures, sequential lineup versus photographs; how well
19 people do when they are presented with different types of
20 procedures.

21 Those are the main topics I have researched in eye-
22 witness identification.

23 Those studies are published in journals like Law and
24 Human Behavior, Cognitive Psychology.

25 Q. Peer review publications?

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1 A. Yes.

2 Q. When did you do them?

3 A. When I was -- one was when I was at Arizona State Uni-
4 versity and a grad student at Arizona State University.

5 Q. When you talk about memory and eye-witness identifica-
6 tion, what exactly are we talking about? Can you . .

7 A. Sure.

8 Q. Is that in the range of testimony you expect to give
9 today?

10 A. Sure. In general, I would be commenting on the factors
11 that affect people in eye-witness identification situatinons
12 or the types of things people are confronted with that can
13 affect the perception, their incorporation of memory and
14 how they perform when asked in certain circumstances.

15 So the factors in general that affect peoples' percep-
16 tions and memory retention.

17 Q. And that is what your understanding -- your understanding
18 is of what you're about to testify to right now, what are
19 factors in general that affect a person's ability when they
20 view a lineup?

21 A. Yes.

22 SOLICITOR: With that, I don't have any objection.

23 THE COURT: All right.

24 BY MS. ROSS:

25 Q. Just for your edification, I'm going to give you a

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1 copy of these.

2 A. Sure.

3 THE COURT: I find her qualified as an expert. I'm not
4 sure -- in memory and eye-witness identification.

5 MS. ROSS: Thank you, Judge.

6 BY MS. ROSS:

7 Q. Now, I guess just to start, I'd like to show you this
8 lineup and ask you whether you have any comments about the
9 preparation of that lineup or about suggestibility?

10 A. Yes. One of the things to be concerned about in con-
11 structing a lineup is to be sure that all of the lineup mem-
12 bers reasonably match each other on different physical char-
13 istics.

14 Q. All right, and does that exist in that particular
15 lineup, in your opinion?

16 A. In my opinion, I think there are some potential prob-
17 lems.

18 Q. What are those problems?

19 A. One would be again referring to the idea that all
20 members should match in physical characteristics. On this
21 particular lineup, the person in position number six ap-
22 pears to perhaps have blinked for the camera, and that is
23 just my own opinion, but he looks to have either heavy-set
24 eyes or blinked for the camera compared to all of the other
25 members.

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1 So there is something happening with the eyes of the
2 person in photograph number six that is different from the
3 other pictures.

4 Q. What would be the effect of that on someone looking at
5 that lineup?

6 A. The possibility that you need to be concerned about is
7 that if one person in the lineup stands out on any charac-
8 teristic or set of characteristics relative to the other
9 members the concern is that a witness may be drawn to that
10 and select that person from the lineup simply because the
11 person stands out in some way, not because they actually do
12 remember that face from the incident.

13 Q. All right, and if there is something in the lineups
14 that resembles what their recollection of the perpetrator
15 is . .

16 A. Sure.

17 Q. Okay, and in describing heavy or fat, would -- in look-
18 ing at that lineup would one stand out more than the other
19 ones, in your opinion?

20 A. Person number six certainly looks heavier than the
21 other lineup members.

22 Q. So if someone was looking at that, trying to find one
23 that looked most like their description of someone who was
24 heavy, is it likely that that would be the one they would
25 pick, like number six?

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1 A. I would believe so.

2 Q. All right. I'm going to show you another lineup that
3 was made in this case. This is another lineup that was made
4 by another investigator containing the photograph of Mr.
5 Teague, and I'd like you to give your opinion of it, on
6 whether it is more or less suggestive?

7 A. . .

8 SOLICITOR: Your Honor, I would object to this. I
9 don't see the relevance of that. I'm assuming it's a line-
10 up that may have been used in another case but I don't see
11 the relevance of that .

12 MS. ROSS: Well, Judge, I think it's relevant because
13 in that lineup there are six individuals who more closely
14 resemble each other, and this is more a lineup that is not
15 suggestive.

16 It is capable of being made and it's there and . .

17 THE COURT: Do you plan on introducing this at the
18 trial?

19 MS. ROSS: No, Your Honor. It goes to what we're here
20 doing pre-trial. I did not intend to proffer it.

21 THE COURT: Then I would believe she is saying this is
22 suggestive, and maybe she's going to say that every lineup
23 is suggestive; that there can be no lineup that is not sug-
24 gestive.

25 If that's the case, then that doesn't matter. If she
is saying this one is suggestive then -- and that's not what

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1 she's saying. She may be saying there may be some lineups
2 that aren't suggestive. I don't know.

3 I'm going to sustain the objection. I don't see the
4 relevance.

5 MS. ROSS: All right.

6 THE COURT: Either every lineup is suggestive or this
7 one is suggestive or it can be less suggestive.

8 BY MS. ROSS:

9 Q. Okay, in your opinion can there be a lineup that is
10 not suggestive?

11 A. That one is not suggestive as this one is.

12 Q. Going back to the lineup procedure itself, when you --
13 when you talk to someone about a memory lineup, and you've
14 heard the witnesses testify that they picked Mr. Teague out
15 of this lineup.

16 What comes to mind about their testimony?

17 A. It makes it seem a little bit questionable as far as
18 whether they got the client to a confidence level and that
19 kind of thing.

20 Q. And is one of the things you have to be concerned about
21 in a situation such as this when things happen and was there
22 time to get a good look or was it dark outside?

23 A. Yes, whether they were comfortable with the lighting or
24 whether there was a weapon involved, and did the weapon in-
25 still some kind of fear or a situation that might interfere

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1 with proper processing of what happened at the scene.

2 There are a lot of variables that go into how well
3 someone can process information and incorporate it into mem-
4 ory at that moment.

5 Q. All right, and did any of those come into play here,
6 from what you've heard?

7 A. Some of those things came into play, yes.

8 Q. How about the accuracy of the prior description? I
9 cross examined the witnesses a little bit on their prior de-
10 scriptions.

11 Does that bring in anything -- you testified as far as
12 -- can you testify about the reliability of the in-Court
13 identification, given that prior description?

14 A. Sure. Interestingly, people can be off in their de-
15 scriptions and still be accurate in their recognition. So
16 I -- that's about all I can . . .

17 Q. But if there was no prior description given and then
18 there is the lineup. Does that bring up a question?

19 A. I would think there would be some question if there is
20 no information given at the time of their plight, but then
21 there was a lot of certainty when picking that person out
22 of a lineup.

23 Q. Does the level of certainty correlate correctly with
24 the level of correctness of people identifying someone in a
25 photo lineup?

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1 A. There are studies and research that show that confi-
2 dence is not a perfect predictor of accuracy. A lot of
3 people think that it is, but it is not.

4 Q. And, just briefly, I noted that both witnesses talked
5 about the look at the eyes that they got, but no mention of
6 that in the prior description.

7 Would that bring up any possible problems with their
8 recollection in this case?

9 A. If there was a look in the eyes that was a distinctive
10 characteristic at the time of the crime, it would have been
11 mentioned, and so I think -- right, I think that could be
12 problematic if that was so important; if that was the feat-
13 ure that was noticed at the time of the identification pro-
14 cedure, and why wasn't that mentioned at the time of the
15 crime.

16 Q. No further questions.

17 CROSS EXAMINATION

18 BY SOLICITOR:

19 Q. I just have a couple of questions.

20 You have testified twenty-five times, you say?

21 A. Yes.

22 Q. And has it all been for the defense?

23 A. It has been, yes.

24 Q. And I assume they all paid you?

25 A. They all paid, yes.

D. McQUISTON ON CROSS

1 Q. You would agree with me that everyone is different
2 when it comes to making an identification?

3 A. Yes.

4 Q. And you have not met with Angelo or Fiorella?

5 A. That's correct.

6 Q. You have not?

7 A. I have not.

8 Q. So you would not know of any personal charac-
9 teristics or any makeup of theirs that would interfere with
10 their ability to pick someone out?

11 A. That's right.

12 Q. You mentioned the eyes standing out in the photograph
13 in the lineup that I'm showing you now?

14 A. Yes.

15 Q. Would you not agree that you can look at each one of
16 those photographs and pick something different about it
17 than what is in the others?

18 A. Um, that's probably true.

19 Q. Look at number -- for example, number four has a dif-
20 ferent tilt of his head. He's looking down with a forelorn
21 expression on his face?

22 A. Number four . .

23 Q. I'm sorry. I'm looking at a different lineup. Number
24 one in that lineup.

25 A. Number one is holding his head down.

D. McQUISTON ON CROSS

1 Q. And let me show you State's Exhibit Number 3. Would
2 you not agree that in that lineup you could pick out some-
3 thing different in each one of those photographs?

4 A. Something slightly different, sure.

5 Q. And I think one of those has particularly different
6 eyes? This one down here . .

7 A. Sure.

8 Q. His eyes are very different from the other ones?

9 A. Yes.

10 Q. I have no further questions. Thank you.

11 THE COURT: Anything further?

12 MS. ROSS: No, Your Honor.

13 THE COURT: You may step down.

14 (Witness excused from stand)

15 THE COURT: I think it's the Court's responsibility to
16 determine if the lineup -- if the Defendant has proven that
17 the identification procedure was impermissibly suggestive.
18 I find that the Defendant has not proven that.

19 The testimony that has been offered on the photo line-
20 up shall be admitted. I find the witnesses' opportunity
21 -- both of them said that they had an opportunity to ob-
22 serve the people in that regard at the scene and they were
23 paying close attention because the witnesses were very close
24 to them.

25 While there was no prior description as to one, the

1 other one gave some description, including close haircut,
2 and both testified as to the certainty of the identification
3 and within a very short period of time from the time of the
4 incident.

5 I find that the lineups were not impermissibly sugges-
6 tive, but, of course, the jury is ultimately going to make
7 that determination.

8 That is their ultimate responsibility to decide whether
9 it was accurate or not.

10 All right, anything further?

11 SOLICITOR: A couple of things, Your Honor. First,
12 we talked in your Chambers about whether or not the photo
13 lineups would actually come into evidence or not. It will
14 be an issue with the very first witness, so we need to
15 make that determination at this time.

16 THE COURT: Well, of course, we normally do not allow
17 mug shots, and these are all mug shots, for lack of a bet-
18 ter term. As I told you, I don't allow them.

19 I will allow the witnesses to testify that they were
20 seen and observed, and that they picked one out, but as to
21 the photographs themselves, unless the Defendant wishes to
22 admit them -- if both of you want them in, I will allow
23 them in.

24 (Brief pause in the proceeding)

25 THE COURT: What do you all want?

1 SOLICITOR: Well, Your Honor, if the Defense is going
2 to call the witness to testify as to the reliability of the
3 lineup, then we would . .

4 THE COURT: We will make a determination as to that.

5 MS. ROSS: I want it to come in.

6 SOLICITOR: Your Honor, seeing the actual wording by
7 Investigator Conroy about how the lineups are put together
8 and using suspects in order to view them in the lineup --
9 if you recall from his testimony he said he had a case from
10 a few days prior that met the description and he used that.

11 In keeping with our prior discussions about keeping
12 out the Defendant's prior involvement in crime, my proposal
13 for having the officer testify is that it was in his in-
14 vestigation and he got information gleaned from speaking
15 to a confidential informant to come up with these two in-
16 dividuals as suspects.

17 I just wanted to make sure to clear that with the
18 Court before we go into it in trial.

19 THE COURT: What do you say, Ms. Ross?

20 MS. ROSS: I'm not objecting to that.

21 THE COURT: To what?

22 MS. ROSS: I think that in his investigation he deve-
23 loped them as suspects.

24 THE COURT: Well, he conducted his investigation and
25 got information that they might be involved. I do not

1 also scientific information that more and more shows that
2 the confidence in that identification is not always correct;
3 only means that is what they think, and the more they think
4 about it the more they think that, even though it might be
5 incorrect.

6 So look at that and look at what the evidence is, and
7 look what it is not, and I ask you to return a verdict of
8 not guilty.

9 Thank you.

10 THE COURT: All right, Mr. Solicitor, are you ready to
11 go forward with the first witness?

12 SOLICITOR: Yes, sir.

13 THE COURT: Ms. Ross, are you ready?

14 MS. ROSS: Yes, Your Honor.

15 THE COURT: All right, Solicitor.

16 SOLICITOR: Your Honor, the only thing is that we'll
17 need an easil.

18 THE COURT: I'm sure we can round one up.

19 SOLICITOR: The State would call Fiorella [REDACTED]

20 FIORELLA [REDACTED] being duly
21 sworn, testified as follows:

22 CLERK: Have a seat and state your name for the re-
23 cord.

24 WITNESS: Fiorella [REDACTED]

25 THE COURT: Ms. Fiorella [REDACTED] you're going to have to speak

F. [REDACTED] ON DIRECT

1 you were actually hanging out -- where you all were hang-
2 ing out?

3 A. Right here.

4 Q. Right there?

5 A. Yes, sir.

6 Q. And you said that you are at Jean's house?

7 A. Yes.

8 Q. Where is Jean's house on that map?

9 A. Right here.

10 Q. Okay. Where do you live on that map?

11 A. Here.

12 Q. Okay. Thank you, Fiorella. I appreciate that. You
13 can go back to the witness stand.

14 I'm actually going to bring you back down in a minute,
15 but -- now, what were you all doing or where were you out
16 there?

17 First, what time of night was it?

18 A. I'd say about twelve.

19 Q. What were you guys doing out there?

20 A. Hanging out, listening to music.

21 Q. And who all were at the scene?

22 A. Edgar, Angelo, Jean, me, Devin.

23 Q. Was somebody else there the whole time or did somebody
24 come later?

25 A. We were all there together.

F. [REDACTED] ON DIRECT

1 Q. Okay, where were you all sitting outside of Jean's
2 house?

3 A. On the side of his house.

4 Q. Was everybody sitting on the sidewalk?

5 A. Just me.

6 Q. Okay, and was anybody -- were any cars around or any-
7 thing like that?

8 A. Yes, Edgar's car.

9 Q. Where was Edgar's car?

10 A. Right next to the day care.

11 Q. On that map which way was it facing, north or south?

12 A. North.

13 Q. What was the lighting like when you were out there?

14 A. There was street lights.

15 Q. So pretty light?

16 A. Yes.

17 Q. Okay, and was it a clear night? Was it raining?

18 A. It was a clear night.

19 Q. And it was in the summer?

20 A. Yes.

21 Q. How long were you guys out there before something hap-
22 pened?

23 A. Twenty minutes.

24 Q. Okay, and what happened at that time?

25 A. We first saw a car go by and then the car came back,

F. [REDACTED] ON DIRECT

1 and then Jean called our attention to it, and then two peo-
2 ple came out running.

3 One toward Angelo and the other toward the car.

4 Q. Where did you see -- if you could step down again?

5 I'll have you point this out now.

6 Can you show the jury which direction the car was com-
7 ing from?

8 A. Right here.

9 Q. Okay, and is that . . .

10 A. This is the car right there.

11 Q. That's where the car was parked. Okay.

12 Now, you saw two individuals come up to you at that
13 point, and were they armed?

14 A. Yes, they were.

15 Q. Did you get a good look at their physical descrip-
16 tion?

17 A. Only the face.

18 Q. Okay, and how long did this event last?

19 A. Less than three minutes.

20 Q. Less than three minutes. Okay, and how close did they
21 get to you?

22 A. Maybe six feet.

23 Q. Six feet -- so we can picture it in terms of distance
24 I'm going to walk toward you. Say stop, when I am about in
25 the range.

F. [REDACTED] ON DIRECT

1 A. Stop.

2 Q. Okay, so about this distance from you?

3 A. Yes.

4 Q. What did these individuals do?

5 A. Well, one went toward Edgar in the car and pointed the
6 gun at him, and the other one went to Angelo and started to
7 go through his pockets.

8 Q. Went through the pockets of . . .

9 A. Angelo.

10 Q. Of Angelo?

11 A. And Jean.

12 Q. Were you able to get any indication of their physical
13 description?

14 A. No.

15 Q. But you were able to observe the face?

16 A. Yes.

17 Q. How is it -- can you describe how it is that you are
18 able then to see that person's face?

19 A. I glanced up -- first I was looking down because I
20 was scared, and then I looked up and that's when I see it.

21 Q. Okay, and how close -- were you about as close as you
22 just demonstrated there?

23 A. Yes.

24 Q. How long did you get that glimpse?

25 A. It was real quick.

F. ██████████ ON DIRECT

- 1 Q. Okay, but you were able to see him clearly?
- 2 A. Yes, sir.
- 3 Q. What did the individuals do after they robbed the boys?
- 4 A. They went back to their car and drove away.
- 5 Q. Okay. What did you do at that time?
- 6 A. I went home and I called the police.
- 7 Q. Was anything taken from you?
- 8 A. No, sir.
- 9 Q. And how long did it take the police to get there?
- 10 A. It was real quick. Like five minutes after the phone
- 11 call.
- 12 Q. And when they came, did they speak to you?
- 13 A. Yes, they did. We were all standing there.
- 14 Q. Did you meet with a detective on this case later?
- 15 A. Yes, sir, two days later.
- 16 Q. Two days later?
- 17 A. Yes, sir.
- 18 Q. Did you invite this detective to your residence?
- 19 A. No, I didn't.
- 20 Q. Did you have any idea that this detective was going to
- 21 be coming over?
- 22 A. No, I didn't know.
- 23 Q. When the detective came over, where did you meet with
- 24 him? About what time in the morning was it?
- 25 A. Eleven.

F. [REDACTED] ON DIRECT

- 1 Q. And where did you meet with him?
- 2 A. At my kitchen table.
- 3 Q. At your kitchen table?
- 4 A. Yes.
- 5 Q. Was anybody in the room with the two of you?
- 6 A. I don't think so.
- 7 Q. Did he say anybody had met with him earlier?
- 8 A. Yes, Angelo.
- 9 Q. Had you had any conversation with Angelo about meeting
- 10 with him?
- 11 A. No.
- 12 Q. Did you know why he was there?
- 13 A. No.
- 14 Q. When you met with the Detective, what did he ask?
- 15 What was it he wanted you to do?
- 16 A. To see if I recognized anybody in the lineups.
- 17 Q. Had you told him you were able to get a good look at
- 18 the individuals before?
- 19 A. I don't remember.
- 20 Q. Okay, and he showed you some photographs?
- 21 A. Yes, he did.
- 22 Q. Okay. Did you pick someone out of that photo lineup?
- 23 A. Yes, I did.
- 24 Q. Did he give you any indication or did he give you any
- 25 instruction on how to use the photo lineup?

F. ██████████ ON DIRECT

1 A. No, he didn't.

2 Q. Well, let me ask you this. Was there any suggestion
3 on his part as to anybody you should pick?

4 A. No, sir.

5 Q. What, if any, pressure did you feel to choose someone
6 out of the lineup?

7 A. I didn't feel any pressure.

8 Q. Okay. What was your understanding about the presence
9 of that individual from the robbery in the lineup?

10 A. Huh?

11 Q. What was your understanding about whether or not some-
12 body in the lineup had committed this crime?

13 A. . . .

14 Q. Did you know that person was in the lineup?

15 A. Oh, yes.

16 Q. I'm sorry?

17 A. Yes, sir.

18 Q. Let's back up and make sure what I'm asking this cor-
19 rectly.

20 MS. ROSS: I would object.

21 SOLICITOR: I want to make sure I'm asking this clearly.

22 BY SOLICITOR:

23 Q. Did at any time -- did you -- was it your understanding
24 when you first looked at the lineup or before you looked at
25 the lineup that the person who committed this crime was in

F. ██████████ ON DIRECT

1 the lineup?

2 A. No, sir.

3 Q. Okay. So it's fair to say you went -- did you go into
4 the lineup with any expectation?

5 A. No.

6 Q. Now, when you looked at the lineup, how long did you
7 spend looking at it?

8 A. A few minutes.

9 Q. Did you look at it carefully?

10 A. Yes, I did.

11 Q. Okay. Was anyone else in the room other than the De-
12 tective when you were shown the lineup?

13 A. Maybe my mom.

14 Q. Did she say anything to you about it?

15 A. No, she didn't.

16 Q. Did anybody during that meeting influence your decis-
17 ion about the lineup?

18 A. No, sir.

19 Q. Did you see the person from that night in the lineup?

20 A. Yes, I did.

21 Q. And what did you tell the detective at that time when
22 you saw him?

23 A. I told him it was him.

24 Q. Okay, and how confident were you that the person in
25 the lineup was the one that you saw?

F. [REDACTED] ON DIRECT

1 A. I was very confident.

2 Q. Okay. Now, I'm going to present to you what's been
3 marked as State's Exhibit 1. Do you recognize that docu-
4 ment?

5 A. Yes, I do.

6 Q. What is that document?

7 A. The lineup.

8 Q. Okay. Is that the same lineup that you saw on that
9 day?

10 A. Yes, sir.

11 Q. How do you know?

12 A. Excuse me?

13 Q. How do you know that's the same lineup you saw on that
14 particular day?

15 A. Because number six is the one.

16 Q. Did you write anything on that lineup?

17 A. Yes, sir.

18 Q. What did you write on that lineup?

19 A. Number six is the one who robbed us that night.

20 Q. Okay. So that is how -- is that how you know that is
21 the exact lineup you saw?

22 A. Yes, and I circled it anyhow.

23 Q. Is that what the detective asked you to do?

24 A. Yes.

25 Q. Has that lineup been changed in any way since you last

F. ██████████ ON DIRECT

1 observed it, or any substantial way since you last ob-
2 served it?

3 A. No, sir.

4 Q. Okay.

5 SOLICITOR: At this time, Your Honor, I would move
6 State's Exhibit Number 1 into evidence.

7 MS. ROSS: And I would object to introduction of the
8 lineup.

9 THE COURT: You object to admitting the photo lineup?

10 MS. ROSS: I object to it based on it being prepared in
11 a suggestive manner.

12 THE COURT: You still object to it?

13 MS. ROSS: Yes.

14 THE COURT: Objection sustained. I'm going to let
15 the jury step out for just a minute.

16 Please don't discuss the case.

17 (Jury excused from Courtroom)

18 THE COURT: That's a pretty cute trick you pulled
19 here, Ms. Ross.

20 MS. ROSS: Judge, . .

21 THE COURT: When I said it will not be admitted, you
22 said I want it admitted.

23 MS. ROSS: Judge, in my opinion -- I talked to my
24 client and he is okay with having it admitted, but . .

25 THE COURT: Well, why didn't you tell me before, Ms.

F. [REDACTED] ON DIRECT

1 Ross?

2 MS. ROSS: I'm okay with -- I think I've got to make
3 some objection to it or I waive my whole objection to the
4 pre-trial motion.

5 THE COURT: You've already made your objection on the
6 lineup when you asked for the . . .

7 MS. ROSS: I had to make that when it was moved in or
8 I would waive my objection. I think I have to renew my ob-
9 jection prior to the lineup coming in or else I can argua-
10 bly lose my entire objection.

11 THE COURT: Well, you're not objecting to the lineup.
12 You are objecting to the suggestibility of the whole pro-
13 cess.

14 MS. ROSS: Right. Well, to the identification based
15 on the suggestive lineup.

16 So that is my objection, and that's why I objected
17 and said, I object to that lineup because it is suggestible.

18 THE COURT: Well, if you had told me this, it wouldn't
19 have been admitted, but you led me to believe that it was
20 okay for this lineup to come in, and now we go through this
21 process.

22 MS. ROSS: Well, at this point I do think it's okay for
23 the lineup to come in. I've talked to my client about
24 that.

25 THE COURT: Maam, you are in front of the jury saying

F. [REDACTED] ON DIRECT

1 you object to this lineup or to the lineup being admitted.

2 MS. ROSS: Because I felt it was so overly suggest-
3 ive, and your prior ruling was that it was not overly
4 suggestive.

5 THE COURT: I ruled the identification was not overly
6 suggestive.

7 MS. ROSS: Well, my understanding is that the lineup
8 was overly suggestive and improper under Neil v Biggers to
9 be brought before the Court at all, so that the identifica-
10 tion would not be -- the in-Court identification would not
11 be . . .

12 THE COURT: It was substantially suggestive, impermis-
13 sibly suggestive, or the process under Neil v Biggers.

14 MS. ROSS: Right.

15 THE COURT: Neil v Biggers isn't just the lineup, the
16 photo lineup. It consists of what elements are involved in
17 making identification.

18 I ruled that you failed to prove it was.

19 MS. ROSS: Right, and I . . .

20 THE COURT: And I ruled I would not admit the mug
21 shots because I believe they shouldn't be admitted. Now,
22 what am I going to tell this jury?

23 MS. ROSS: My objection -- my understanding of my ob-
24 jection was that it was to the overall suggestiveness of the
25 mug shots.

F. [REDACTED] ON DIRECT

1 THE COURT: I asked if you had any objection to the
2 photo lineup, and you got up and said I object, and I ob-
3 ject because the whole process is incorrect.

4 MS. ROSS: Well, because the lineup, I believe, is sug-
5 gestive. The lineup itself was overly suggestive, and your
6 prior ruling was that it was not, at which point I . .

7 THE COURT: All right, Ms. Ross. I guess it's a mat-
8 ter of semantics, and I understand your method of trying
9 cases now.

10 MS. ROSS: Well, I apologize. I feel like . .

11 THE COURT: I was not offended, but I will tell the
12 jury that they will have to make the ultimate decision as
13 to whether any identification is -- whether the identifica-
14 tion is a proper identification.

15 SOLICITOR: Very well, Your Honor.

16 THE COURT: Bring the jury in, please.

17 (Jury returned to the Courtroom)

18 THE COURT: All right, I am sustaining the objection
19 of the Defendant as to the admission of the photo lineup.

20 Ladies and gentlemen, the photo lineup, the pictures
21 themselves -- I am sustaining the admissibility, but the de-
22 termination of whether the identification is a proper iden-
23 tification falls within your purview and it is in your re-
24 sponsibility. I will charge you that you are to determine
25 whether whether there was a proper identification made by

F. [REDACTED] ON DIRECT

1 this witness.

2 You may continue.

3 BY SOLICITOR:

4 Q. Maybe I missed your descriptions of the individuals.

5 Were you able to make out generally the differences as
6 between the two?

7 A. Yes, I was.

8 Q. Okay, what kind of differences were there?

9 A. One had really low hair and one had dreds.

10 Q. What do you mean by that?

11 A. A short hair cut, almost bald looking hair.

12 Q. Were they the same weight?

13 A. I don't know. I wasn't looking there.

14 Q. Now, let's talk about the photo lineup. This is the
15 same one you saw on that particular day. Correct? A
16 couple of days later?

17 A. Yes.

18 Q. And which one of those did you point out as the indi-
19 vidual?

20 A. Number six.

21 Q. Number six. Okay, and what did you say about number
22 six?

23 A. It was the one that robbed us.

24 THE COURT: Speak up, please.

25 WITNESS: It was the person who robbed us that night.

F. ██████ ON DIRECT

1 Q. Okay, in this one you chose number six, and that is the
2 person who robbed you?

3 A. Yes, sir.

4 SOLICITOR: Court's indulgence.

5 (Brief pause in proceeding)

6 BY SOLICITOR:

7 Q. Now, Fiorella, you have been in the Courtroom all day?

8 A. Yes, I have.

9 Q. And you've had the opportunity to see everybody who was
10 in the Courtroom?

11 A. Yes, sir.

12 Q. Is the person who robbed you and your brother on that
13 evening in the Courtroom here?

14 A. Yes, sir.

15 Q. Could you point him out to the jury?

16 A. . .

17 MS. ROSS: Your Honor, I'd object to any in-Court iden-
18 tification.

19 THE COURT: Go ahead.

20 BY SOLICITOR:

21 Q. Just one more time since we have the objection. Can
22 you point to the individual?

23 A. Yes.

24 THE COURT: Did she identify the Defendant?

25 SOLICITOR: Yes, sir.

MS. **Fiorella** ON DIRECT

1 THE COURT: Very good.

2 A. The one in the white shirt.

3 THE COURT: Sitting by counsel?

4 WITNESS: Uh hm.

5 THE COURT: Thank you. She has identified the Defen-
6 dant. Let the record reflect that.

7 SOLICITOR: I have no further questions for you.

8 CROSS EXAMINATION

9 BY MS. ROSS:

10 Q. Hi, there. This happened a little bit after midnight,
11 about twelve thirty?

12 A. Yes.

13 Q. And you were out with your brother and three other
14 friends that night?

15 A. Yes.

16 Q. And right after it happened, you gave a description of
17 the incident, and you said an African-American walking near
18 a white car pulled out a gun; said give me your money.

19 Was there any further description of the two people
20 than you gave in your statement?

21 A. When it happened?

22 Q. Well, that night -- let me just show you your state-
23 ment. Is there any more detailed description in that
24 statement?

25 A. No.

F. ██████████ ON CROSS

1 THE COURT: You have to speak up.

2 A. No.

3 BY MS. ROSS:

4 Q. And you were upset about what had happened to you and
5 your friends. Right?

6 A. Yes, maam.

7 Q. And you didn't say anything about low cut hair, did you,
8 or I got a good look at his face?

9 A. I don't remember.

10 Q. But in that statement I just showed you, you didn't say
11 I got a good look at his face?

12 A. . .

13 Q. And you testified you were sitting down on the curb or
14 on the sidewalk? . . .

15 A. Yes, maam.

16 Q. All right. Now, it was two days later when you saw the
17 photographs. Correct?

18 A. Yes, maam.

19 Q. And you looked at these in the home where you lived
20 with your brother?

21 A. Yes, maam.

22 Q. Now, wasn't it true that at some point you and your
23 brother discussed the incident and what happened to you?

24 A. Yes.

25 Q. And isn't it true that you discussed who did it to you?

F. [REDACTED] ON CROSS

1 A. No, we didn't discuss that.

2 Q. Your statement is that you never discussed what they
3 looked like?

4 A. No, maam.

5 Q. You never talked about that?

6 A. No.

7 Q. Now, before you testified you met with the Solicitor a
8 few times about what should be in your testimony. Correct?

9 A. Yes, maam.

10 Q. All right, and this happened at night and you got a
11 quick glance as you testified?

12 A. Yes, maam.

13 Q. All right. I've got no further questions.

14 THE COURT: Anything further from the State?

15 SOLICITOR: Your Honor, just very briefly.

16 REDIRECT EXAMINATION

17 BY SOLICITOR:

18 Q. Ms. Fiorella [REDACTED], you testified -- the Defense asked you
19 some questions about what you and your brother talked about.
20 What did you talk about?

21 A. How it happened and if we seen anything, and did we see
22 anything. That's it. That's all we talked about.

23 Q. You didn't talk about the individuals?

24 A. No, we didn't.

25 Q. Also the Defense asked you if you had met with us prior

111

F. [REDACTED] ON REDIRECT

1 to testifying. Was your testimony -- was there any sugges-
2 tion as to what you should say?

3 A. No.

4 Q. Thank you, I have no further questions.

5 MS. ROSS: Only briefly.

6 RECROSS EXAMINATION

7 BY MS. ROSS:

8 Q. Now, if you had gotten a good look at who did this to
9 you, you would have talked to your brother about it -- that
10 I got a good look at the person who did this, wouldn't you?

11 A. Yes, maam.

12 Q. Nothing further.

13 THE COURT: Thank you, maam.

14 (Witness excused from stand)

15 THE COURT: All right, ladies and gentlemen of the jury,
16 we will break for lunch at this time. Please be back here at
17 quarter to two which will give you about an hour and ten min-
18 utes to have lunch.

19 Do not discuss the case while you are at lunch with each
20 other or with anyone else.

21 Have a nice lunch, and we will see you back here in an
22 hour and ten minutes.

23 (Jury excused for lunch break)

24 THE COURT: All right, you all have a nice lunch and
25 I'll see you back here.

1 (Whereupon, the Court stood in recess for the lunch per-
2 iod, after which the matter resumed)

3 THE COURT: Are you all ready to go?

4 SOLICITOR: We are, Your Honor.

5 THE COURT: Are you ready to go, Ms. Ross?

6 MS. ROSS: Yes, Your Honor.

7 THE COURT: All right, bring them in.

8 (Jury returned to the Courtroom)

9 THE COURT: All right, ladies and gentlemen. I hope
10 you had a nice lunch.

11 You will recall that when we broke the State was in
12 the process of putting up its case in chief, so, Solicitor,
13 you may call your next witness.

14 SOLICITOR: Yes, sir. The State would call Devin

15 [REDACTED]

16 DEVIN [REDACTED] being duly

17 sworn, testified as follows:

18 CLERK: Have a seat on the witness stand and state your
19 name.

20 WITNESS: Devin [REDACTED]

21 DIRECT EXAMINATION

22 BY SOLICITOR:

23 Q. Pull that microphone down just a little bit. There you
24 go. Thanks.

25 Would you spell your last name?

D. TROOPER DIRECT

- 1 A. She lived right there.
- 2 Q. You can take your seat again. Thank you.
- 3 Did she live on the same street as Jean?
- 4 A. Yes.
- 5 Q. And as we can see from the map, about four houses down?
- 6 A. Yes.
- 7 Q. Okay, and why were you over there near Jean's house that
- 8 night?
- 9 A. Just hanging out and listening to music.
- 10 Q. Who was there?
- 11 A. It was me and Jean and Fiorella, Edgar and Angela.
- 12 Q. Okay. So were you all on the street or was there a ve-
- 13 hicle involved?
- 14 A. Yeah, Edgar's car was right there.
- 15 Q. Was Edgar in his car?
- 16 A. Edgar was in his car.
- 17 Q. And the other four of you were outside of the car?
- 18 A. Yes.
- 19 Q. Now, what happened that made you realize that something
- 20 bad was going on that night?
- 21 A. I realized that Jean had noticed a car passing by a few
- 22 times, and it seemed suspicious.
- 23 Q. Did you notice the car?
- 24 A. No.
- 25 Q. And so what were you doing at the time? Were you

D. [REDACTED] ON DIRECT

1 standing up?

2 A. I was sitting.

3 Q. Was anyone else seated?

4 A. Fiorella.

5 Q. And how about Jean and Angelo?

6 A. They were standing.

7 Q. Edgar was in the car?

8 A. Yes.

9 Q. Were you all pretty close to one another?

10 A. Yes.

11 Q. Could you all have reached out and touched each
12 other?

13 A. It was a little bit further.

14 Q. Okay. But within several feet of one another?

15 A. Yes.

16 Q. And were you on the sidewalk or in the street?

17 A. Sidewalk.

18 Q. So you said you heard some talk about a car. What was
19 the first thing you noticed, other than that, that something
20 was going on?

21 A. Nothing really.

22 Q. Okay, what did you observe?

23 A. I-just everyone just kind of get nervous.

24 Q. Did anyone say anything?

25 A. Jean.

D. [REDACTED] ON DIRECT

1 Q. What did you hear?

2 A. He just noticed a car going by a few times.

3 Q. Okay. The car passed by a few times, and then what hap-
4 pened?

5 A. I believe it parked, and then I saw two men approaching
6 us.

7 Q. Let's go by what you saw. Did you see the car?

8 A. No.

9 Q. But you saw two men approaching?

10 A. Yes.

11 Q. What do you remember about the two men?

12 A. I just know that they were black males and that's
13 about it.

14 Q. Okay. Do you remember if either one of them was hold-
15 ing anything?

16 A. They both had guns.

17 Q. Okay, and were they long guns, hand guns?

18 A. Hand guns.

19 Q. Okay. Now, when you saw them were they walking or were
20 they running or what?

21 A. I can't remember.

22 Q. Two men with handguns and what did they do?

23 A. They put the guns to Angelo and Jean, and told them to
24 give them everything, money, phone -- basically everything.

25 Q. Were you watching this taking place?

D. [REDACTED] ON DIRECT

1 A. At that point I had put my hands over my face. I was
2 so scared, and . . .

3 Q. At what point did you put your hands over your face?

4 A. Right after they asked for everything. They grabbed
5 his phone and was going through his pockets.

6 Q. So you were watching up until the point they came up on
7 them and put guns on them?

8 A. Yes.

9 Q. Show us exactly what you did?

10 A. I basically just . . .

11 Q. Okay, and did you hold your hands over your face the
12 whole time?

13 A. Yes.

14 Q. What -- do you remember while your hands were over your
15 face -- do you remember hearing anything that was going on?

16 A. Not really.

17 Q. Okay, so how were you feeling?

18 A. Extremely scared.

19 Q. Nothing like this had ever happened to you?

20 A. No.

21 Q. Okay, when did you look up again?

22 A. When they had left.

23 Q. How did you know they had left?

24 A. Everyone was freaking out.

25 Q. What do you mean by freaking out?

D. [REDACTED] ON DIRECT

1 A. I mean, Jean was really worried about his car keys, and
2 Angelo was saying we need to call the police. So we all bas-
3 ically ran to the house and Fiorella called the cops.

4 Q. Okay, and so you went back to Fiorella's house?

5 A. Yes.

6 Q. The house you just pointed out on that map?

7 A. Yes.

8 Q. Okay, right there?

9 A. Yes.

10 Q. Not very far from the location where this incident had
11 happened?

12 A. No.

13 Q. How long would it take you to get over there?

14 A. Less than a minute.

15 Q. Okay, when they were called did they come right
16 away?

17 A. Yes.

18 Q. Now, you said you put your hands over your face
19 pretty quickly. Did you make any effort to try to look at
20 the faces of the two men?

21 A. No.

22 Q. Were you --- did you get enough of a look at either one
23 of their faces to identify them later?

24 A. No.

25 Q. Did an officer even come and try and show you photographs?

D. [REDACTED] ON DIRECT

1 A. No.

2 Q. If he had, would you have been able to pick anybody out?

3 A. No.

4 Q. Any recollection about what they looked like?

5 A. No, sir.

6 Q. But they were two black men, and you could tell that?

7 A. Yes.

8 Q. Okay. Do you remember about what time of day this hap-
9 pened?

10 A. Around twelve.

11 Q. Late at night?

12 A. Uh hm.

13 Q. Okay.

14 SOLICITOR: One moment, please.

15 (Brief pause in proceeding)

16 BY SOLICITOR:

17 Q. Did the police get there pretty quickly?

18 A. Yes.

19 Q. Were you at the house when they arrived?

20 A. Yes.

21 Q. Were you still shaken up?

22 A. Very.

23 Q. Still upset?

24 A. Yes.

25 Q. How long did that last?

D. [REDACTED] ON DIRECT

1 A. I can't remember.

2 Q. Okay, I don't have any other questions for you.

3 Please answer any questions Ms. Ross may have.

4 CROSS EXAMINATION

5 BY MS. ROSS:

6 Q. Hi, there. Is it fair to say all three of you were
7 shaken up?

8 A. Yes.

9 Q. About what happened?

10 A. Yes.

11 Q. And you stated it was at night and it happened very
12 quickly?

13 A. Yes.

14 Q. And you said you saw two black men approaching but you
15 could not identify who they were?

16 A. No, maam.

17 Q: Did you give any description of them?

18 A. No.

19 Q. And you were there around everybody, around your friends
20 there?

21 A. Yes.

22 Q. Okay. When the officers came, they asked you about what
23 the people who robbed you all looked like, is that right?

24 A. Yes.

25 Q. And you told them you couldn't tell them; that it all

J. [REDACTED] ON DIRECT

1 CLERK: Have a seat and state your name for the
2 record.

3 WITNESS: Jean [REDACTED]

4 DIRECT EXAMINATION

5 BY SOLICITOR:

6 Q. Your name is Jean [REDACTED] [REDACTED]

7 A. Yes.

8 Q. Tell us a little bit about yourself. Where are
9 you from?

10 A. I'm from the Dominican Republic.

11 Q. And where are you living?

12 A. In Greenville, South Carolina.

13 Q. Did you live in the Arcadia Hills Section on the
14 date of this incident?

15 A. Yes.

16 Q. Where do you live now?

17 A. I live in some apartments near Arcadia Hills on
18 (inaudible) [REDACTED]

19 Q. Okay, and do you still have family members who
20 live in Arcadia Hills?

21 A. Yes.

22 Q. Who lives in Arcadia Hills?

23 A. My dad's sister and my cousin.

24 Q. That's where you were living at the time of this
25 incident?

J. [REDACTED] ON DIRECT

1 A. Yeah.

2 Q. Were you at your aunt's house on the night of
3 July 23, 2012?

4 A. Yes.

5 Q. Okay. What were you doing at your aunt's house
6 that night?

7 A. Well, we used to -- I used to live there. At the
8 time I was just living in Greenville for one year, and
9 my dad didn't have a house or something. We were stay-
10 ing at their house.

11 Q. You lived at her house at that time?

12 A. Yes, sir.

13 Q. And what were you doing on that evening? Were
14 you just hanging out that night?

15 A. Yes, with some friends.

16 Q. Okay. Who of your friends was out there?

17 A. It was Edgar, Angelo, Fiorella and Devin.

18 Q. About what time of night was it?

19 A. It was about like twelve or twelve thirty.

20 Q. Okay, and was it dark out in that area?

21 A. Yes.

22 Q. Was it clear?

23 A. It was dark but there was lights. We was not
24 right out in the dark.

25 Q. Okay, and what did you see happen or when did you

J. [REDACTED] ON DIRECT

1 think something was wrong?

2 A. Okay, we were just sort of hanging out and I seen
3 this car pass and I looked at the car; then it passed
4 a few times and I looked and seen it was the same car
5 that had passed.

6 Then the last time it passed, it just stopped, and
7 that's when the two males came up.

8 Q. Why don't you step down and show the jury where
9 you guys were and where this car was?

10 A. Okay, we were in this area, and the car passed
11 going this way and then came going here, and then it
12 stopped and they came to us.

13 Q. Which one is your aunt's house?

14 A. This one right here.

15 Q. Okay, so you all were on the sidewalk here?

16 A. Yes.

17 Q. And who all was on the sidewalk?

18 A. It was Angela, Fiorella and Devin, and Edgar was
19 inside of his car.

20 Q. Okay. So you became alarmed when you saw this car
21 pass by a couple of time?

22 A. Yes, sir.

23 Q. Okay. What happened after you observed the vehicle?

24 A. Well, I just told my friends about the car passing
25 by so many times; that I was pretty sure it was the same

J. ██████ ON DIRECT

1 one that had come by so many times.

2 Q. And you saw it park?

3 A. Yeah.

4 Q. Okay, and then you saw it park?

5 A. Yeah, at the stop sign.

6 Q. What happened after that?

7 A. They got out of the car and came walking toward us.

8 Q. When you say they, who?

9 A. Two got out, the two persons that robbed us.

10 Q. Okay.

11 A. They pulled the car to the side and that's when
12 they came to us. I think they went to Edgar first and
13 the other one went to Angelo and me. They ran up to us.

14 And then I was trying to hide myself in my pants,
15 my keys and stuff, and he came to me and when he saw
16 me moving he grabbed the keys and pushed me and hit me
17 in the stomach.

18 Q. So were you able to make out a general physical
19 description of them?

20 A. I remember one had short hair and the other one
21 had dreads. I saw that when they were coming, but
22 I didn't get to see their faces because I was trying
23 to hide my stuff so they don't take it.

24 Q. Now, they came walking down the street and then
25 they started running?

J. [REDACTED] ON DIRECT

1 A. Yes.

2 Q. And were they on the other side of the street?

3 A. Yes, sir.

4 Q. Okay. How quickly did this whole -- how quick was
5 it from the moment they got out of the car and came
6 to you? About how long did that take?

7 A. About thirty, forty seconds.

8 Q. And how close were these individuals? I want to
9 use me as an example. I'll just walk toward you, and
10 I just want you to tell me to stop when . .

11 A. Stop.

12 Q. They were right up on you?

13 A. Yes.

14 Q. Okay. You said they were armed. Did one of them
15 use their gun on you?

16 A. It was pointed on me when he saw me moving, put it
17 like to the back of my head.

18 Q. And how did you feel when that happened?

19 A. I was scared.

20 Q. And were you able to see -- you weren't able to see
21 their faces?

22 A. No, sir.

23 Q. Why was that?

24 A. I was trying to put my stuff in my pants and I had
25 looked down and one was on top of me telling me to stay

J. [REDACTED] ON DIRECT

1 still or something like that..

2 Q. And what did they take from you?

3 A. They took my house keys and car keys.

4 Q. Did they say anything?

5 A. They mention the car keys and said where's the car,
6 and I told them that the car wasn't there so they don't
7 take it and I get in trouble.

8 Q. Do you remember anything about what they were
9 wearing?

10 A. I remember one of them was wearing a red shirt,
11 the one with dreadlocks on -- wearing like a large shirt
12 that was red-like.

13 Q. You remember one of them had dreadlocks and one of
14 them did not?

15 A. Yes, sir.

16 Q. Were they wearing a mask?

17 A. No.

18 Q. What happened after they robbed you?

19 A. They just ran back and left like in reverse so
20 we don't see the license plate. We went to Angelo's house
21 and called police.

22 Q. Did the police show up pretty quickly?

23 A. Yes.

24 Q. And did you talk to the police at that time?

25 A. Yes, sir.

J. ██████ ON DIRECT

1 Q. Did you provide a statement to them?

2 A. Yes.

3 Q. And subsequent to this, were you contacted by law
4 enforcement, wanting to meet with you?

5 A. I don't remember.

6 Q. Well, let me ask you this. Were you ever asked to
7 look at a photo lineup?

8 A. Yes.

9 Q. Did you look at a photo lineup?

10 A. I did.

11 Q. Were you able to identify anyone in a photo lineup?

12 A. There were some familiar faces but I didn't really
13 want to choose somebody that was out there depending on
14 their face.

15 Q. So you weren't sure and didn't want to identify
16 somebody incorrectly?

17 A. Yes, sir.

18 Q. Thank you, Jean, for answering my questions, and
19 please answer any questions Ms. Ross may have.

20 A. Yes, sir.

21 CROSS EXAMINATION

22 BY MS. ROSS:

23 Q. Thank you, Jean. You looked at the lineup and the
24 faces in the lineup but you couldn't be sure you saw
25 the person involved in this?

J. [REDACTED] ON CROSS

1 A. Yes, maam.

2 Q. And when you gave a statement at the time, you
3 said the one that pulled a gun on my friend was wearing
4 a red shirt?

5 A. . .

6 Q. Do you recall saying that? I'll show it to you.
7 Do you see it?

8 A. Yes. I did say that.

9 Q. Okay. Is that what you wrote that night?

10 A. I gave that that night but the officer did it for
11 me. I was telling him what happened.

12 Q. Okay. It was based on what you told, I guess,
13 Officer Bryan?

14 A. I believe so.

15 Q. But is it true that the one that pulled the gun
16 on my friend was wearing a red shirt?

17 A. I believe so.

18 Q. And that was -- the one with the red shirt was
19 the one with the long braids? Is that correct?

20 A. I don't remember.

21 Q. You don't remember?

22 A. No.

23 Q. Okay. That night you did notice this car driving
24 around?

25 A. Yes.

J. [REDACTED] ON CROSS-

1 Q. What kind of car was it?

2 A. It was a Nissan Maximo Ultima.

3 Q. Did you get the tag by any chance?

4 A. No.

5 Q. Now, you told your friends about, look, there's
6 that car?

7 A. Yes.

8 Q. But that night you couldn't give more details than
9 red shirt and green shirt on the robbery?

10 A. Yes.

11 Q. And you didn't give any details on the faces?

12 A. No.

13 Q. Thank you.

14 SOLICITOR: I don't have any further questions,
15 Your Honor.

16 THE COURT: Thank you. You may step down.

17 (Witness excused from stand))

18 SOLICITOR: Your Honor, at this time the State
19 would call Edgar [REDACTED]

20 EDGAR [REDACTED] being duly
21 sworn, testified as follows:

22 CLERK: Please be seated and state your name for
23 the record.

24 WITNESS: Edgar [REDACTED]

25 DIRECT EXAMINATION

E. [REDACTED] ON DIRECT

1 BY SOLICITOR:

2 Q. Good afternoon, Mr. [REDACTED] How are you?

3 A. Good, and you?

4 Q. Very well, thank you.

5 Edgar, you live in the Greenville area now?

6 A. Yes.

7 Q. What do you do right now?

8 A. I work.

9 THE COURT: You'll need to speak up.

10 Q. Okay, where do you work?

11 A. O'Riley's.

12 Q. And how long have you lived in the Greenville
13 area?

14 A. It soon will be two years.

15 Q. Have you worked at O'Riley's that entire time?

16 A. . .

17 THE COURT: If you would, speak into that mike
18 there.

19 Q. Mr. [REDACTED] in 2012 where were you working?

20 A. McDonald's.

21 Q. And which McDonald's did you work at?

22 A. Downtown.

23 Q. Okay, were you working there on the night of July
24 23rd, 2012?

25 A. Yes.

Q. About what time did you get off?

E. [REDACTED] ON DIRECT

- 1 A. I got off about eleven thirty.
- 2 Q. What did you do after that?
- 3 A. I went to meet up with Angelo and Jean.
- 4 Q. Where did you go to meet them?
- 5 A. Jean's house.
- 6 Q. The one that has been appointed out on that map?
- 7 A. Yes.
- 8 Q. Okay. About how long -- about what time did you
- 9 get there?
- 10 A. Eleven forty.
- 11 Q. So it was pretty close by?
- 12 A. Yes.
- 13 Q. Did you ever get out of your car?
- 14 A. No.
- 15 Q. Do you remember which way you were heading on the
- 16 street or where you were parked?
- 17 A. . .
- 18 Q. Why don't you come down and show us.
- 19 A. . .
- 20 Q. Okay, so you were right there on the street and
- 21 pointing that way?
- 22 A. Yes.
- 23 Q. You can sit back down. You were in your car?
- 24 A. Yes.
- 25 Q. What were you wearing that night?

E. ██████ ON DIRECT

1 A. When I got off work I just had on basketball shorts
2 underneath jeans.

3 Q. What were you all doing while you were just sort
4 of sitting around?

5 A. Just talking.

6 Q. Did you -- did something happen that evening that
7 made you feel like something was -- that something in
8 the situation was wrong?

9 A. Yes.

10 Q. Did you observe the car drive by that Mr. ██████
11 testified about?

12 A. He said something about it but I didn't really pay
13 attention until then.

14 Q. All right. Did you see a car go by?

15 A. Yes.

16 Q. What happened after that?

17 A. Two guy got out the car and started walking up the
18 sidewalk. Then they started running.

19 Q. And where did they run to?

20 A. One came to my car and one came to Jean and Edgar.

21 Q. Did you get a physical description of them or did
22 you notice anything in general about them?

23 A. No. Once the person got beside my car he pointed
24 a gun at my head and I didn't really look.

25 Q. Now, which side of the car did they come to?

E. [REDACTED] ON DIRECT

1 A. The passenger side.

2 Q. Were you sitting on the driver's side?

3 A. Yes.

4 Q. So they are on this window then and they are where?

5 A. By the passenger door.

6 Q. Did you have anything else on you at that time?

7 A. I had my keys but I had thrown them on the seat.

8 Q. Did you see anything about the color of the shirts?

9 A. No.

10 Q. Did you notice anything about their height, weight,
11 hairstyle?

12 A. No, I didn't look.

13 Q. Okay. What did they say to you at that time?

14 A. Give me your money is about all they asked, and they
15 saw my pants and started looking. He had the gun to my
16 head when he started looking.

17 Q. You testified they had a gun to your head?

18 A. Yes.

19 Q. And did they look for anything else in your car?

20 A.. They was just looking around.

21 Q. Were you able to -- were you able to get a good look
22 at them at all?

23 A. No.

24 Q. Okay. How were you feeling when all of this was
25 going on?

E. ██████████ ON DIRECT

- 1 A. Scared, shook up.
- 2 Q. How long did this seem to take?
- 3 A. About two minutes.
- 4 Q. What happened after -- first of all, what happened
- 5 after they took your pants?
- 6 A. Well, they just left.
- 7 Q. And what did you do?
- 8 A. I sat in the car. I was shocked.
- 9 Q. Okay. Did you go with the rest of the folks to
- 10 call the police?
- 11 A. Yes.
- 12 Q. Did you stay for the police?
- 13 A. Yes.
- 14 Q. How long did it take the police to get there?
- 15 A. A few minutes.
- 16 Q. And did you talk with the police about what you had
- 17 seen?
- 18 A. Yes.
- 19 Q. Now, you weren't able to get a good look at the
- 20 men?
- 21 A. No.
- 22 Q. Did anybody talk to you about doing a -- about
- 23 trying to identify these men?
- 24 A. No.
- 25 Q. Did anybody ever ask you to do a photo lineup at all?

E. ██████████ ON DIRECT

1 A. No, sir.

2 Q. All right. So you never looked at a photo lineup?

3 A. No.

4 Q. Thank you, Mr. ██████████ Please answer any questions Ms. Ross may have.

6 A. Yes, sir.

7 CROSS EXAMINATION

8 BY MS. ROSS:

9 Q. All right, I think you answered this but I wasn't quite sure.

11 You were sitting in the car in the passenger seat?

12 A. No, in the driver's seat.

13 Q. In the driver's seat, so you were next to the sidewalk?

15 A. Yes.

16 Q. And was the door open or . . .

17 A. Yes, ma'am.

18 Q. So they were both there and you stated one of the people came to you. Was that the one with the red shirt?

21 A. I didn't look to see.

22 Q. Didn't you say in your statement the guy in the red shirt had a small gun?

24 A. . .

25 Q. Let me show you this.

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E. [REDACTED] ON CROSS

- 1 A. . . .
- 2 Q. Is this your statement?
- 3 A. Yes.
- 4 Q. Does that look like what you said?
- 5 A. Yes.
- 6 Q. And you signed it down at the bottom?
- 7 A. Yes.
- 8 Q. So back then you said the guy in the red shirt had
- 9 a small gun and put the gun to your head. Right?
- 10 A. Yes.
- 11 Q. And that he had come around to the sidewalk as well
- 12 or did he come to the passenger door?
- 13 A. Yes, he came to passenger door.
- 14 Q. Okay, and he was leaning through the passenger
- 15 door in your car?
- 16 A. Yes.
- 17 Q. And isn't it true you said he went through the glove
- 18 compartment of you car?
- 19 A. Yes.
- 20 Q. Did he open the door?
- 21 A. No.
- 22 Q. But he was leaning into your car?
- 23 A. Yes.
- 24 Q. Do you recall whether he was touching the side of
- 25 your car at all?

E. [REDACTED] ON CROSS

- 1 A. No.
- 2 Q. But he was just leaning in the car or was he out
3 of the car?
- 4 A. Leaning in the car.
- 5 Q. I guess you -- you said he pointed the gun at you.
6 Was the gun in the car?
- 7 A. Yeah, it was by my neck.
- 8 Q. By your neck?
- 9 A. Yes, and he grabbed the pants.
- 10 Q. So the pants were sitting right there?
- 11 A. Yes.
- 12 Q. And he was on the side -- did that person ever go
13 around to the other side?
- 14 A. No.
- 15 Q. Yet you didn't get a good look at him?
- 16 A. No.
- 17 Q. All right, and you didn't get a good look at the
18 other guy either?
- 19 A. No.
- 20 Q. Were you ever shown -- you were never shown any
21 kind of lineup?
- 22 A. No.
- 23 Q. All right, I've got no further questions.
- 24 SOLICITOR: Just brief Redirect.
- 25 REDIRECT EXAMINATION

E. [REDACTED] ON REDIRECT

1 BY SOLICITOR:

2 Q. Mr. [REDACTED] were you able to observe anything that
3 was going on that night?

4 A. No.

5 Q. Did you know for sure that the guy in the red shirt
6 came around?

7 A. Yeah, I believe so.

8 Q. And if you had been shown a photo line, would you
9 have been able to identify anyone?

10 A. No.

11 Q. No further questions.

12 THE COURT: Thank you. You may step down.

13 (Witness excused from stand)

14 SOLICITOR: The State would call Angelo [REDACTED]
15 ANGELO [REDACTED] being duly

16 sworn, testified as follows:

17 CLERK: Please be seated and state your name for
18 the record.

19 WITNESS: Angelo [REDACTED]

20 DIRECT EXAMINATION

21 BY SOLICITOR:

22 Q. You need to speak into the microphone to be sure everybody
23 can hear you.

24 How old are you Angelo?

25 A. Seventeen.

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A. [REDACTED] ON DIRECT

- 1 Q. Okay. Had you ever been robbed before that?
- 2 A. No, sir.
- 3 Q. That just came to your mind?
- 4 A. Yes, sir.
- 5 Q. Did you see the guns?
- 6 A. They had the guns when they were walking.
- 7 Q. Did you try to run or did you . . .
- 8 A. There was no chance.
- 9 Q. So it just happened quickly?
- 10 A. Yes.
- 11 Q. Okay, and so how -- while you were standing on the
- 12 sidewalk, was Jean to your right or your left?
- 13 A. He was to my right.
- 14 Q. How about the two young ladies?
- 15 A. They were right beside us.
- 16 Q. On your left?
- 17 A. On the right side.
- 18 Q. Right beside you on the right?
- 19 A. Yes.
- 20 Q. And they were seated?
- 21 A. Yes.
- 22 Q. So you were close to one another?
- 23 A. Very close. Right beside each other.
- 24 Q. Okay, and did these guys have masks on?
- 25 A. No.

A. [REDACTED] ON DIRECT

1 Q. What else do you remember about the descriptions?

2 A. The gun.

3 Q. Well, let's start off -- was there a difference in their
4 hair styles?

5 A. One had dreds and the other one had a low cut.

6 Q. What do you mean by dreds?

7 A. Long, like braids.

8 Q. About how long were the dreadlocks?

9 A. . .

10 Q. Were they to his shoulders?

11 A. Yeah.

12 Q. Okay, and what about the other one?

13 A. Just low hair.

14 Q. What do you mean?

15 A. Like just short.

16 Q. And do you . . .

17 A. And one was heavier, just . . .

18 Q. Stocky?

19 A. Yes, and one was skinny.

20 Q. The one with dreds?

21 A. Yes, the other guy was skinny.

22 Q. Do you remember anything -- you talked about a skinny
23 guy with dreds. Do you remember anything about the way he
24 was dressed?

25 A. A red shirt and a snapback.

A. [REDACTED] ON DIRECT

1 Q. What is a snapback?

2 A. A hat.

3 Q. What kind of hat?

4 A. Well, . . .

5 Q. Like a baseball cap?

6 A. Yeah.

7 Q. Okay, and you said that guy had a hat on?

8 A. Yeah.

9 Q. And what about the other guy? What did he have on?

10 A. Like a shirt but I was looking at the gun.

11 Q. They both had guns?

12 A. Yes, sir.

13 Q. Now, let's talk about the heavier set guy with short hair.

14 Like how long would you describe his hair as being?

15 A. The heavier guy?

16 Q. The heavier guy.

17 A. Just like low cut.

18 Q. Like real short hair?

19 A. Like just very low.

20 Q. Very short?

21 A. Yes, very short.

22 Q. Now, in your statement you used the word bald?

23 A. Yes.

24 Q. What does that mean to you? Bald means shaved all the way
25 to the skin. Is that the way it was?

A. [REDACTED] ON DIRECT

1 A. No, sir. Just a little hair.

2 Q. Okay, so the tall guy with dreadlocks and then the
3 stockier one with short hair, what did they do when they came
4 up on you?

5 A. They asked for all our money, and when my phone rang the
6 heavy-set guy came to me and took it.

7 Q. Do you have any idea why your phone rang?

8 A. It was my mom calling me because it was very late outside
9 there.

10 Q. Was your mom able to make it here today?

11 A. No, she had to work.

12 Q. Okay, and so when your phone rang -- where was your phone?

13 A. In my left pocket.

14 Q. What happened when your phone rang?

15 A. He came to me and took it from me.

16 Q. Did you take it out of your pocket or did he?

17 A. He took it.

18 Q. And what about the other guy? Did you see what he was
19 doing?

20 A. He was taking stuff. I could see where Edgar was at in
21 the car.

22 Q. Edgar is the young man who just testified he was seated in
23 the car?

24 A. Yes.

25 Q. Now, you -- was the man wearing a mask who came and took

A. [REDACTED] ON DIRECT

1 the gun out of your pocket? I mean, the phone out of it?

2 A. No, sir.

3 Q. Did you get a good look at him?

4 A. Oh, yes.

5 Q. Okay.

6 A. Oh, yes. As soon as he gets to me I turned around like
7 that. My reaction was just to look.

8 Q. How tall are you?

9 A. Like five seven.

10 Q. Okay. So how close was he to you when he came up to you
11 with a gun?

12 A. He was right beside me.

13 Q. Use your hand to show us.

14 A. He was like this.

15 Q. And you turned your head?

16 A. I just glanced like that.

17 Q. Now, did you also see him when he was coming across the
18 street toward you?

19 A. Yes, I did.

20 Q. Did you get a look at his face then?

21 A. Yes, sir.

22 Q. This is the middle of the night. Right?

23 A. Yes, sir.

24 Q. What about the lighting conditions?

25 A. There was enough light to see your hands, your feet, where

A. [REDACTED] ON DIRECT

1 you are. There was enough light.

2 Q. What about the color of the light?

3 A. Color of the light?

4 Q. Well, where did the light come from?

5 A. A pole.

6 Q. Do you remember where they were?

7 A. Yeah, I'll show you.

8 Q. Come and point that out.

9 A. There's one right here and right here. There's one right
10 here. This is another one right here.

11 Q. Okay.

12 A. And right there.

13 Q. So there were street lights?

14 A. Yes, sir.

15 Q. So when he was right there on you and you looked over at
16 him, did you have any trouble because of it being nighttime?

17 A. Oh, no.

18 Q. You were able to see clearly?

19 A. Yes, sir.

20 Q. Okay. All right, now after he took your phone, did you
21 ever get your phone back?

22 A. No.

23 Q. What kind of phone did you have?

24 A. An Iphone but it was cracked.

25 Q. Cracked?

1500

A. [REDACTED] ON DIRECT

1 A. Yes.

2 Q. So after this guy took the phone out of your pocket, what
3 did these guys do?

4 A. They just left and got in the car and they reversed,
5 instead of going right or left. They just reversed.

6 Q. Reversed back up the street?

7 A. Yes.

8 Q. So you weren't able to get a tag number or anything
9 like that?

10 A. No.

11 Q. What did you all do?

12 A. We ran straight to my house, and Edgar drove over there.
13 We went straight there.

14 Q. Okay, how close was the gun to you?

15 A. It was like this.

16 Q. Did it actually touch you?

17 A. Yes, sir. Well, not touching skin because I had a lot
18 of hair back then. Basically touching my hair. I could feel
19 it on my head.

20 Q. How did you feel?

21 A. I was paranoid, very frightened. I didn't know what to
22 do. I was just scared. I seen him coming up to me again and
23 again for a while, until I just got over it.

24 Q. Did you get a good enough look at the guy with the
25 dreadlocks?

A. [REDACTED] ON DIRECT

1 A. No, I could see his hair, his clothing.

2 Q. But not his face?

3 A. Correct.

4 Q. Okay. So when you got over to your house you called
5 the police?

6 A. Yes, sir.

7 Q. Were you parents up?

8 A. Yes, sir.

9 Q. Did you tell them what happened?

10 A. Yeah.

11 Q. Did the police get there pretty quickly?

12 A. Yes. We called the police and then talked to my parents.

13 Q. You called them right away?

14 A. Yes, sir.

15 Q. Did they get there fairly quick?

16 A. Yeah.

17 Q. What did you do then?

18 A. Told them what happened.

19 Q. Okay. Now, were you asked to write a statement?

20 A. Yes, but I couldn't write because my right hand was
21 hurt.

22 Q. What happened to your right hand?

23 A. I was involved in an accident and I cut myself and my thumb
24 was hanging off and I had to get stitches.

25 Q. How did your statement get written?

A. [REDACTED] ON DIRECT

1 A. By the officer. I think the officer . .

2 Q. You didn't write your statement?

3 A. No.

4 Q. How did it get put on paper?

5 A. I said it and he wrote it.

6 Q. Okay, and were you upset at the time?

7 A. Oh, yes, I was very upset.

8 Q. Have you had a chance to look at your statement or to
9 hear your statement since then?

10 A. Yes.

11 Q. Is there anything different in your statement than . .

12 A. Yes. One, it says the guy, the skinny male was close
13 to me. That was different.

14 Q. Okay, so in your statement it says the skinny guy ap-
15 proached you?

16 A. Yes, sir.

17 Q. In reality which one was that?

18 A. The heavy-set one.

19 Q. All right. Now, let me take you to July 25th of 2012,
20 a couple of days later. Okay?

21 Do you recall meeting with an investigator, or did some-
22 body come to your house and talk to you?

23 A. Yes.

24 Q. Okay. Was the purpose to ask you to look at some photo-
25 graphs?

A. [REDACTED] ON DIRECT

1 A. . . .

2 Q. You have to say yes or no.

3 A. Yes.

4 Q. Where did that take place, him showing you the photo-
5 graphs?

6 A. My house.

7 Q. Did you know the officer was coming that day?

8 A. No, sir.

9 Q. Did you tell the officers you could identify who it was?

10 A. Well, the day it happened?

11 Q. Did he call you and ask if . . .

12 A. I don't remember.

13 Q. . . you thought you could identify someone?

14 A. . . .

15 Q. Let me back up. Before the officer came to your house
16 the morning of the 25th, do you remember him calling you
17 and asking you if you could identify either one of those
18 people?

19 A. No.

20 Q. You don't remember that?

21 A. No.

22 Q. Okay. But you do remember the officer coming to your
23 house?

24 A. Yes, and showing me a lineup.

25 Q. Did you know someone was coming to show you that

A. [REDACTED] ON DIRECT

1 photo lineup?

2 A. No, sir.

3 Q. What were you doing when he came?

4 A. Sleeping.

5 Q. How did you know he was there?

6 A. My mom came to me and woke me up.

7 Q. Do you remember what she told you?

8 A. Yes. She said he was there to see me.

9 Q. And did you know why he was there?

10 A. No, sir.

11 Q. When she told you that, what did you do?

12 A. I opened the door and went downstairs, and he told
13 me he wanted to show me some pictures, and I invited him in
14 my house, and we sat down and he showed me.

15 Q. Where did you sit down?

16 A. In the kitchen or living room one.

17 Q. Was anyone else with you all when he showed you the
18 lineup?

19 A. My mom was there.

20 Q. What about your sister, Fiorella?

21 A. She was sleeping.

22 Q. One second, please. So was your sister up and around
23 at the time?

24 A. No, sir.

25 Q. Did you tell your sister he was there before you went

A. [REDACTED] ON DIRECT

1 down and talked to the officer?

2 A. No, she was sleeping.

3 Q. Okay. Now, when you sat down with the officer, he
4 showed you some pictures?

5 A. Uh hm.

6 Q. Can you describe what the pictures looked -- how they
7 were set up?

8 A. It was just faces, and there was six.

9 Q. Six photo pictures?

10 A. Yes.

11 Q. All right.

12 Q. Like three on the top and three under it.

13 Q. Now, when the officer showed you that photo with the
14 six pictures on it, did he give you any indication that
15 you had to pick somebody out or you should pick somebody out?
16 out?

17 A. No.

18 Q. Did you feel any pressure to pick somebody out of the
19 lineup?

20 A. No.

21 Q. And if you had not seen the person in the lineup, would
22 you have told him?

23 A. Yeah, I would have told him.

24 Q. When the officer showed you that lineup, was there

25 156

A. [REDACTED] ON DIRECT

1 anything about the way he showed it to you that suggested
2 or influenced your decision about who to pick out?

3 A. No, sir.

4 Q. Now, when you took a look at that photograph -- the
5 photographic lineup -- what did you do?

6 A. I seen the suspect and I pointed him out, and he told
7 me to circle it and I circled it and signed my name and
8 he signed his, and I said this is him right here.

9 Q. Did you look over the pictures carefully?

10 A. Yes, sir.

11 Q. How sure or how certain were you when you saw that
12 picture?

13 A. Positive.

14 Q. You were positive that was the one?

15 A. Yes, sir.

16 Q. Let me show you what's marked as State's Exhibit 2.
17 Just take a look at that lineup. Is that the lineup you
18 were shown?

19 A. Yes, sir.

20 Q. And does it show the person you picked out of the
21 lineup?

22 A. Yes.

23 Q. Are those pictures numbered?

24 A. Yes.

25 Q. What number did you pick out?

A. [REDACTED] ON DIRECT

1 A. Two.

2 Q. And you said it was arranged in three and three. Where
3 in that arrangement was he?

4 A. At the top.

5 Q. In the top three or bottom three?

6 A. The top three.

7 Q. And where in the top three?

8 A. In the middle.

9 Q. What did you write down?

10 A. It was him and I signed my name and dated it.

11 Q. Okay. All right. Now, after he showed you that photo
12 lineup, do you remember him showing you another lineup?

13 A. . .

14 Q. With the guys in dreadlocks?

15 A. Yes, sir.

16 Q. And I'm going to show you now State's Exhibit Number 3.
17 Again, take a look at that. Does that look like the photo-
18 graphs he showed you?

19 A. Yes.

20 Q. And did he go through the same set of questions with
21 you?

22 A. Yes.

23 Q. Or instructions?

24 A. Yes, sir.

25 Q. And when you looked at that lineup with the people with

A. [REDACTED] ON DIRECT

1 the dreadlocks, what was your response, or how did you react?

2 A. The hair wasn't long enough.

3 Q. Did you pick anyone out?

4 A. No.

5 Q. So you didn't pick anyone out of that lineup?

6 A. No, sir.

7 Q. You didn't recognize anybody?

8 A. No, sir.

9 Q. All right. Now let's talk about a couple of weeks later.

10 Do you remember meeting with that investigator again to

11 look at some pictures?

12 Let me have this marked.

13 (Brief pause in proceeding)

14 BY SOLICITOR:

15 Q. Were you again shown six pictures with people with
16 dreadlocks?

17 A. Yes.

18 Q. And was it the same officer?

19 A. Yes, sir.

20 Q. And did he go through the same . . .

21 A. The same process, yes.

22 Q. Same process -- okay. Let me show you State's

23 Exhibit Number 5. Okay, take a look at that. Do you recog-

24 nize what is shown in that lineup?

25 A. Yes, sir.

A. [REDACTED] ON DIRECT

1 Q. Is that the same group of pictures he showed you on
2 that day?

3 A. Yes, sir.

4 Q. Okay, and when he showed you that group of pictures,
5 what was your reaction or your response to that one?

6 A. I wasn't quite sure. I didn't have any kind -- didn't
7 have a feeling . .

8 Q. What do you mean, didn't have a feeling?

9 A. Didn't feel like it was him because of the hair . .

10 Q. Didn't look like his?

11 A. No, sir.

12 Q. Okay, did . .

13 A. I wasn't sure. I wasn't sure.

14 Q. Did you circle it?

15 A. Yes, sir.

16 Q. What did you write?

17 A. This looks like the guy but I wasn't sure.

18 I signed it.

19 Q. Did you put a date?

20 A. Yes.

21 Q. What date did you put?

22 A. September 2012.

23 Q. September 14th of 2012?

24 A. Yes, sir.

25 Q. So in that one you said it looks like the guy?

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A. [REDACTED] ON DIRECT

1 A. Yes, sir.

2 Q. On the first one you said this is the guy?

3 A. Yes, sir.

4 Q. Is that because you weren't one hundred percent sure?

5 A. On the second one I wasn't.

6 Q. Okay. Now, Angelo, is the -- are you able to recog-
7 nize now the person who robbed you on that date?

8 A. Oh, yeah.

9 Q. Is that person here in this Courtroom?

10 A. Yes.

11 Q. Is there any question in your mind?

12 A. No.

13 Q. Would you point him out, please?

14 A. . .

15 MS. ROSS: Again, Judge, I would object to the iden-
16 tification.

17 THE COURT: The witness has identified the Defendant.

18 BY SOLICITOR:

19 Q. Just to make sure because there was a pause when
20 the objection came.

21 Would you point to the person who robbed you?

22 A. Yes.

23 Q. And you are quite sure the Defendant is the one, in
24 the white shirt and at that table? The Defendant in
25 this case?

161

A. [REDACTED] ON DIRECT

1 A. Yes.

2 Q. And are you quite sure about that?

3 A. Oh, yeah.

4 Q. It is the man?

5 A. Yes, sir.

6 Q. You're sure?

7 A. A hundred percent.

8 Q. Okay, please answer any questions the Defense has.

9 CROSS EXAMINATION

10 BY MS. ROSS:

11 Q. Now, looking at this lineup you were presented, isn't
12 it true that that top center picture is the heaviest of
13 the people that are in that lineup?

14 A. Yeah.

15 Q. Now, did you make -- did you write this writing on
16 the bottom of the line?

17 A. Yes, maam.

18 Q. So by that point your hand was okay enough for you to
19 write?

20 A. Yes, maam.

21 Q. And this was two days later?

22 A. Yes.

23 Q. Going back to the day you were robbed, and there
24 is no question you were robbed, you gave a statement,
25 correct?

162

A. [REDACTED] ON CROSS

1 A. Yes.

2 Q. Would you like to look at it? Have you seen it?

3 A. Yes.

4 Q. Now, in that statement you say that -- you signed the
5 statement down at the bottom?

6 A. Yes.

7 Q. You see where you signed it?

8 A. Yeah.

9 Q. And it was witnessed by the police officer who wrote
10 it for you?

11 A. Yes.

12 Q. You saw two people get out. One was a skinny black
13 male and wearing a red shirt and baggy kahki shorts, a
14 Chicago Bulls hat, dark complexion with dreds, and the other
15 was a heavy-set black male wearing a green shirt, black
16 shorts, bald -- greenish color shirt and with a gun or
17 automatic rifle. Right?

18 A. Yes.

19 Q. And you say they walked up to me and robbed us. The
20 skinny male pointed the gun at me.

21 A. . .

22 Q. Is that what it says?

23 A. That's not what I remember.

24 Q. Not what you remember?

25 A. No.

A. ██████ ON CROSS

1 Q. You think the officer . .

2 A. I guess he heard wrong.

3 Q. Okay, and he was wrong when he witnesses your writing
4 your signature that night?

5 A. I mean, I was scared, so -- I was very scared and
6 frightened.

7 Q. You said you didn't get a good look at the guy in
8 dreds but you were able to . .

9 A. Yes.

10 Q. . . you were able to describe a Chicago Bulls hat?

11 A. Right.

12 Q. But you didn't get a good look at him?

13 A. Not at his face but at his hair.

14 Q. But even then later on when you were shown a picture
15 of the guy with dreds you said, this looks like the guy who
16 robbed me?

17 A. I wasn't quite sure and I told him that.

18 Q. Now, this occurred a little after midnight, and you
19 all say this happened pretty fast?

20 A. Yes, maam.

21 MS. ROSS: Beg the Court's indulgence.

22 (Brief pause in proceeding)

23 MS. ROSS: I've got no further questions.

24 SOLICITOR: Nothing on Redirect.

25 THE COURT: You can step down.

1 (Witness excused from stand)

2 SOLICITOR: The State calls Charles Lane.

3 CHARLES LANE, being duly
4 sworn, testified as follows:

5 CLERK: Please be seated and state your name for
6 the record.

7 WITNESS: Charles Lane.

8 DIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Where are you employed?

11 A. Greenville City Police Department.

12 Q. How long have you been employed with the Greenville
13 City Police Department?

14 A. About seven and a half years.

15 Q. What is your position with the Greenville Police
16 Department?

17 A. Working on patrol. Master patrolman.

18 Q. And what was your position back in 2012?

19 A. I was working on patrol. I was a private at the
20 time.

21 Q. Tell us about your duties and responsibilities?

22 A. Yes, sir. I answer calls and am trained anywhere
23 from alarm calls, domestic disputes, as well as robberies.

24 Q. So you would be, when an incident such as this hap-
25 pened, one of the first responders on the scene?

C. LANE ON DIRECT

- 1 A. Yes.
- 2 Q. And, in fact, were you the first responder to this
3 scene?
- 4 A. I was one of the first, yes.
- 5 Q. Okay. Can you tell us then what time -- well, let
6 me ask you whether you were working in the late hours of
7 2012?
- 8 A. I was.
- 9 Q. Did you get a call out on this case we're dealing
10 with today?
- 11 A. Yes.
- 12 Q. What time did that call come in?
- 13 A. It came in at twelve forty-eight.
- 14 Q. Twelve forty-eight A.M. or P.M.?
- 15 A. P.m.
- 16 Q. What time did you get the call?
- 17 A. Twelve forty-nine.
- 18 Q. And when did you arrive at that location?
- 19 A. About twelve fifty-four.
- 20 Q. What was the location you were called out to?
- 21 A. It was at [REDACTED].
- 22 Q. Is that in Greenville County?
- 23 A. Yes.
- 24 Q. The location where the incident actually happened --
25 are you aware of where that is?

C. LANE ON DIRECT

1 A. It was just up the street from where I responded to.
2 I could actually see part of the general area.

3 Q. And that's all in Greenville County?

4 A. It is.

5 Q. Now, what did you find at [REDACTED]

6 A. The victims and witnesses were on the front porch of
7 the house, and I began speaking to them and getting some
8 general information about the people who had robbed them.

9 Q. So when you first come to victims or witnesses of an
10 incident like this, what is your primary concern?

11 A. Just to get verifying information, and then it is given
12 to dispatch.

13 In this case, the person who had called had said there
14 was a black male with dreds and a gun and another that was
15 bald, wearing a green shirt.

16 So I was verifying that initial information and trying
17 to get it to other officers.

18 Q. What did you do with the information?

19 A. I put it across the radio and updated what was put out
20 first. If we had other officers in the area it was a mat-
21 ter of locating the perpetrators of the crime as quickly as
22 possible.

23 Q. Did you try to get a vehicle description?

24 A. Yes. It was a Nissan Maxima and I think it was described
25 as being tan.

C. LANE ON DIRECT

1 Q. Was anyone ever stopped by the officers that night?

2 A. Not that I know of, no.

3 Q. Okay, did you speak to the five young people who just
4 testified here today?

5 A. I did.

6 Q. Where were they when you saw them?

7 A. When I arrived they were on the front porch of the
8 house.

9 Q. And they told you then about what had happened?

10 A. Yes.

11 Q. Tell us about their emotional condition and demeanor
12 as it appeared to you?

13 A. They were all shaken up or excitable. I couldn't un-
14 derstand some of the things that were said. That was just their
15 general demeanor.

16 Q. What did they tell you about what had just happened?

17 A. They were standing there, [REDACTED], and
18 two black men got out of a car and approached them and ended
19 up robbing them of an Iphone, a pair of pants with other items
20 in them.

21 Q. Okay. What did they tell you about the description of
22 the two men?

23 A. One of them was a black male with dreadlocks, in a red
24 shirt, carrying a revolver, and the other was a black male
25 who was bald and had on a green shirt, carrying a gun, and

C. LANE ON DIRECT

1 that gun had -- carrying a gun with a green shirt over it,
2 and the gun had, they said, like stripes down the side.

3 Q. And you got that information out on the radio?

4 A. I think I did. I can't say for certain.

5 Q. Now, did you call for any forensics officers or any-
6 thing like that?

7 A. I didn't after hearing the account from the parties who
8 were there. It didn't sound like anything was actually
9 touched in the car, except for the glove compartment, and
10 my experience has been -- this one was textured and foren-
11 sics can't lift a print from that.

12 Q. Okay, and where did you get that information about the
13 fingerprints can't come from a textured surface?

14 A. Multiple housebreakings and burglaries and all types
15 of surfaces. Trying to dust for prints, from what forensics
16 had told me multiple times, they could not get prints off
17 that type surface.

18 Q. If there had been any chance that had been a surface
19 you could have gotten prints off of, would you have called
20 them?

21 A. Oh, yes.

22 Q. Okay.

23 SOLICITOR: One moment, please.

24 (Brief pause in proceeding)

25 SOLICITOR: Okay, please answer any questions the

C. LANE ON CROSS

1 Defense might have?

2 A. Yes, sir.

3 CROSS EXAMINATION

4 BY MS. ROSS:

5 Q. Officer Lane, you were told it was a Nissan Maxima
6 and you didn't know anything else about it at that time?

7 A. No.

8 Q. Did you later find out anything about the tan Maxima?

9 A. Can you be a little more specific in your question,
10 please?

11 Q. Was the tan Maxima ever connected with Mr. Teague in
12 any way?

13 A. No. You asked me earlier, and I looked to see if it
14 was stopped but it wasn't stopped.

15 Q. Okay, and do you have any knowledge of further inform-
16 ation on the tan Maxima?

17 A. I do not.

18 Q. Now, you said when you arrived there the five kids
19 were on the front porch discussing this and that they
20 were unnerved?

21 A. They were on the front porch, and I didn't say they
22 were discussing the case.

23 Q. When you gave -- you took some statements on that
24 night, didn't you?

25 A. I took a statement, yes, maam.

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C. LANE ON CROSS

1 Q. And from whom was that?

2 A. From Angelo [REDACTED]

3 Q. Did you write the truth in that statement?

4 A. I wrote what was told to me at that time.

5 Q. Told to you by . . .

6 A. Mr. Angelo [REDACTED].

7 Q. Okay, so you wrote down what he told you at that
8 time?

9 A. Yes, maam.

10 Q. And also you wrote something on your incident report
11 about a description of the suspects, is that correct?

12 A. Yes.

13 Q. And as far as one of the subjects, it is listed as
14 bald with green shirt and heavy or fat?

15 A. They have descriptions in the report, and it comes
16 out as heavy or fat.

17 Q. Okay, but as far as the subject, was that the descrip-
18 tion?

19 A. Heavy-set.

20 Q. He said bald but also heavy-set?

21 A. Yes.

22 Q. Now, you said you took a statement from one witness
23 that night?

24 A. Yes, maam. I took a statement from the one I had
25 talked to the most.

1 (Jury returned to Courtroom)

2 THE COURT: All right, Mr. Solicitor. You want to call
3 your next witness?

4 SOLICITOR: Yes, sir, Your Honor, may it please
5 the Court. The State would call Tim Conroy.

6 TIM CONROY, being duly
7 sworn, testified as follows:

8 CLERK: Please have a seat and state your name for
9 the record.

10 WITNESS: Tim Conroy.

11 DIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. Where are you employed?

14 A. Greenville Police Department.

15 Q. How long have you been in law enforcement?

16 A. Eighteen years.

17 Q. Has it all been with the Greenville Police Depart-
18 ment?

19 A. It has.

20 Q. What is your position now with the Police Depart-
21 ment?

22 A. Currently I'm a Sergeant.

23 Q. What are your duties?

24 A. I'm a -- my squadron reports to me, and I answer calls
25 to crime scenes.

T. CONROY ON DIRECT

1 Q. Do you have certain areas that you . .

2 A. The entire City.

3 Q. What were your duties two years ago when this
4 happened?

5 A. I was in the violent crimes division, working and
6 investigating violent crimes, homicides, robberies, miss-
7 ing persons.

8 Q. Did you hold any other positions there?

9 A. Yes, I was six months in property crimes and five
10 years in vice and narcotics.

11 Q. So you were working as a detective in violent crimes
12 as well?

13 A. I was.

14 Q. Were you assigned this case that is before the Court
15 today?

16 A. I was.

17 Q. When was that assigned?

18 A. July 23rd of 2012.

19 Q. Around what time did you get the case?

20 A. I got it around eight o'clock in the morning when
21 I went to work.

22 Q. Did you do anything on the 23rd in relation to the
23 case?

24 A. I contacted Mr. Angelo and asked him if he would
25 be able to identify the individual who robbed him if I

T. CONROY ON DIRECT

1 were to come up with a person of interest. He said he
2 . .

3 Q. What was his response?

4 A. He said he thought he would be able to more than
5 likely if the person was in the lineup; that he would
6 look at them.

7 Q. Did he give you an idea of how many people there
8 were?

9 A. He said two people were involved but he wasn't sure
10 he could recognize one.

11 Q. Did he tell you he could identify one?

12 A. Yes.

13 Q. Now, did you know which of the two at that time?

14 A. I did not know.

15 Q. All right. Now, did you -- you knew that his phone
16 had been stolen?

17 A. I did.

18 Q. Did you make any efforts to get anything of evi-
19 dentuary value on that?

20 A. I sent a search warrant off to the cell phone com-
21 pany, and it was not used after that time of the robbery.

22 Q. What was the purpose of the search warrant?

23 A. Hoping that the subjects would have used the phone
24 and made calls, and we could track the location of the
25 phone down.

T. CONROY ON DIRECT

1 Q. But you were not able to get anything of evidentiary
2 value from that?

3 A. No, sir, I was not.

4 Q. Okay, during the course of your investigation did
5 you conduct photographic lineups with any of the victims
6 or witnesses in this case?

7 A. Yes, I did.

8 Q. And who were they?

9 A. Jean [REDACTED] Antonio [REDACTED] and Fiorella [REDACTED]

10 Q. Okay. What suspects or what persons did you initially
11 make photo lineups for?

12 A. . . .

13 Q. What two -- how many individuals did you make the
14 lineups out of?

15 A. I did two photo lineups containing -- one photo lineup
16 with one person and another one with the same person that is
17 in different order.

18 Q. Okay, and who was that person?

19 A. That was Jarvarias Teague.

20 Q. Is that person in the Courtroom?

21 A. Yes, the Defendant.

22 Q. The Defendant in this case?

23 A. Yes.

24 Q. Did you put anybody else in a lineup?

25 A. I did. I put Survaggio Jones in a lineup as well.

T. CONROY ON DIRECT

1 Q. Okay, and tell us about coming up with these?

2 A. Through my investigation I talked to several
3 people, and from my investigation I was able to come up
4 with two names.

5 Q. All right, and did you put together these photo
6 lineups?

7 A. I did.

8 Q. Tell us about what you do as far as putting together
9 these lineups?

10 A. When I do a photo lineup I get six persons, one of which
11 being the individual that I have a name for, and I get per-
12 sons who have the same facial hair, the same hairstyle, the
13 same facial features, and just very similar characteristics.

14 Q. Same sex and race?

15 A. Correct, come up with that as close as possible.

16 Q. And did you do that with the photo lineups you made
17 for this Defendant?

18 A. Yes, sir, I did.

19 Q. And the other five were of similar characteristics?

20 A. Correct.

21 Q. What about Survaggio Jones?

22 A. I did the same thing as far as a photo lineup con-
23 taining his photograph, the same characteristics as he had.

24 Q. What is the general description of Survaggio Jones?

25 A. Black male, dreds, and the photograph I had of him was

T. CONROY ON DIRECT

1 just above the shoulder.

2 Q. And what about Javarias Teague?

3 A. He had very short hair, a thin mustache and goatee.

4 A black male.

5 Q. The photo of him, had that been taken at this time?

6 A. No, it wasn't taken -- it wasn't a picture taken at
7 that time.

8 Q. So features like head hair and like facial hair, do
9 you take any precautions when you show a lineup to some-
10 one?

11 A. I do. When I'm showing a lineup, I tell them to
12 look at facial characteristics rather than facial hair or
13 head hair because it may have changed.

14 Q. Okay. Now, who did you show this lineup to first?

15 A. I went to Angelo [REDACTED] residence and showed it
16 to him.

17 Q. What date?

18 A. That was on the 25th of July 2012.

19 Q. About what time of day was that?

20 A. Around eleven in the morning.

21 Q. Did you let him know you were coming over on that
22 morning?

23 A. I did not. I just went to his house, hoping he was
24 going to be home.

25 Q. And he was?

T. CONROY ON DIRECT

1 A. He was.

2 Q. Were you told he was asleep when you got there?

3 A. That's correct.

4 Q. How did you get him up?

5 A. I knocked on the door and his mother answered the
6 door and woke him up.

7 Q. Where did you meet with him?

8 A. Downstairs -- at the bottom of the stairs in a lit-
9 tle room. I believe the living room.

10 Q. Okay, was anyone else present while you showed him
11 the lineup?

12 A. His mother was in the same general vicinity. She was
13 in the kitchen. Nobody else besides his mother.

14 Q. She didn't play any role in it?

15 A. No.

16 Q. How about Fiorella, his sister?

17 A. She was upstairs sleeping.

18 Q. She was not in the room?

19 A. She was not in the room.

20 Q. Tell us about how you presented the photo lineup
21 and talked about the lineup of Jarvarias Teague? How you
22 showed the lineup to Angelo, what you said about it,
23 what instructions you gave him?

24 A. I explained to Angelo that I was going to show him
25 photos of six persons and they would all have similar

T. CONROY ON DIRECT

1 head hair or facial hair, facial characteristics, the same
2 race and approximately the same age.

3 I told him do not feel obligated to pick someone out;
4 just look at the pictures, all six pictures, and let me
5 know if he recognized anyone on there.

6 At that point, I handed it to him face down. He
7 turned it over and I could see his eyes glance at each
8 photo. He then stated that picture number two was the
9 person that robbed him.

10 Q. Whose pictures was in picture number two?

11 A. Mr. Teague.

12 Q. The Defendant in this case?

13 A. That's right.

14 Q. And what did you do when he said that?

15 A. I asked him to circle photograph number two and a
16 brief explanation of how he knew it was number two, and
17 then to sign it.

18 Q. Okay. I show you State's Exhibit Number 2. Is that
19 the lineup you showed him?

20 A. That is correct.

21 Q. And what did he write when you asked him?

22 A. Number two is the guy that robbed me, and he signed
23 it, and I then signed and dated it with a time.

24 Q. What is the date and time?

25 A. July 25th, 2012, eleven O two A.M.

T. CONROY ON DIRECT

1 Q. What degree of certainty or confidence did he display as he pointed to that photograph?

2 A. He was a hundred percent positive that was the person that robbed him.

3 Q. Okay, did he show any doubt at all?

4 A. He didn't show any doubt, period. Just this is the one who robbed him.

5 Q. Now, did you show him this lineup of the individual with dreadlocks?

6 A. I did.

7 Q. Okay, tell us about that. Again how you showed it to him, what you said, and what he said.

8 A. After he identified Mr. Teague, I asked would he look at another photo lineup. I told him the same thing, not to feel obligated to pick anyone out; he may or may not be in this lineup, and, again, I handed it to him face down.

9 He turned it over and glanced at all six pictures, and he could not identify anybody.

10 Q. Okay. Now, let me ask you a question about the pictures that are displayed as shown in these lineups. What part of the body is shown?

11 A. These pictures are just of the head, just from the chin to the top of the head. There is no other pictures.

12 Q. Can you tell someone's weight from the pictures?

T. CONROY ON DIRECT

1 A. No.

2 Q. Body build?

3 A. No.

4 Q. And that was for all these lineup pictures shown?

5 A. Correct. Maybe some parts of the neck but nothing
6 else on the rest of the body.

7 Q. All right. Now, after you finished with Angelo, what
8 did you do?

9 A. I had Angelo's mother go up and get the sister,
10 Fiorella, and woke her. She brought her back down, and
11 I -- actually prior to asking his mother to go get her
12 I had told Angelo I'm calling your sister now; don't talk
13 to her or tell her what picture you've picked out be-
14 cause I changed the order of the photographs, and he went
15 upstairs as she was coming down.

16 Q. Okay, and so where was he while you were speaking to
17 Fiorella?

18 A. Upstairs.

19 Q. And so he wasn't around to make any kind of influence
20 on Fiorella?

21 A. No.

22 Q. Tell us again how you showed her the lineup?

23 A. I did it the same way as I did to Angelo. I told
24 her that -- to pay attention to facial features; that fa-
25 cial hair or head hair may have changed. Six pictures of

T. CONROY ON DIRECT

1 just the head but similar, with the same race, age, simi-
2 lar hair and facial features.

3 Q. What did you tell her about whether or not the per-
4 son or a person was definitely in the lineup?

5 A. I did not tell her -- I told her she was under no
6 obligation to pick somebody out. I didn't want her to
7 feel obligated to pick somebody. He may or may not be in
8 the lineup.

9 Also, I didn't tell her that her brother identified
10 somebody.

11 Q. When you showed the lineup to her and also when
12 you showed it to Angelo, was there anything suggestive
13 about the way you showed it to her or the way the pic-
14 tures were displayed that led them to the Defendant's
15 picture?

16 A. No, I turned it upside down and had her pick it up,
17 turn it over and look at all six photos.

18 Q. The lineup you showed Fiorella, did it have the same
19 people that were in the lineup you showed Angelo?

20 A. It did, in a different order.

21 Q. Let me show you State's Exhibit 1, and is that the
22 lineup you showed Fiorella?

23 A. That's correct.

24 Q. Okay, and was the Defendant's photograph displayed in
25 that lineup?

T. CONROY ON DIRECT

1 A. Yes, number six.

2 Q. That would be the sixth picture on the bottom right?

3 A. Bottom right, yes.

4 Q. What was Fiorella's reaction as she looked at the
5 photos?

6 A. She turned the lineup over, and I could see her eyes
7 glance at the top row and bottom row, and she stopped and
8 said this is the guy that was there that night, number
9 six.

10 Q. And what degree of confidence did she exhibit?

11 A. Positive confidence. She said that's the person.

12 Q. What did she write?

13 A. She wrote number six is the one that robbed us that
14 night.

15 Q. Okay, did you also show her the photograph or photo
16 lineup that had Survaggio Jones and the dreadlocks?

17 A. I did.

18 Q. And what was her reaction?

19 A. I explained it to her the same way, to look at all
20 six pictures, and she could not identify anybody.

21 Q. Okay. Now, you mentioned Edgar [REDACTED] Did you
22 attempt to show him a photo lineup?

23 A. I did. I called him and he said he would not be able
24 to identify anybody.

25 Q. You did not actually show a lineup to him?

T. CONROY ON DIRECT

1 A. He said he didn't pay attention to their faces.

2 Q. Okay. How about Jean [REDACTED]

3 A. I did contact him and showed him a lineup as well to
4 him, the same way I did to Fiorella and Angelo, and he
5 could not identify anyone.

6 Q. Did he make any elaboration on that?

7 A. That he tried not to make eye contact with them, so
8 he didn't recognize anybody.

9 Q. Jean said he tried not to make eye contact?

10 A. Correct.

11 Q. Okay. Now, did you meet again with Angelo?

12 A. I did.

13 Q. When?

14 A. On 9 14 of 2012.

15 Q. Was that for the purpose of showing him another photo
16 lineup?

17 A. Correct.

18 Q. Did you have a different array of photographs at
19 this time?

20 A. I did.

21 Q. And was there someone who was the subject of your
22 lineup at this time? Was there a particular person that
23 was of interest?

24 A. There was a person of interest I put in the lineup.

25 Q. Who was that person?

T. CONROY ON DIRECT

1 A. Ashley Robbins.

2 Q. Tell us about -- you met with him again at his house?

3 A. Yes, sir.

4 Q. Did you go over the lineup in the way you've described
5 to us?

6 A. The same exact way. Similar features, hair and all that,
7 and the facial hair and head hair may have changed. I told
8 him not to feel obligated to pick someone out and to be
9 sure. If he was not sure, he was not obligated to pick
10 someone out.

11 Q. What was the general description of this Ashley Robbins?

12 A. Black male, long dreadlocks, average build.

13 Q. And what was Angelo's reaction when shown this
14 lineup?

15 A. He looked at them and looked at photograph three and
16 picked him out as looking similar to one of them.

17 Q. Okay. Similar -- is that the word he used?

18 A. Similar or looks like him.

19 Q. Showing you State's Exhibit 5, is that the lineup
20 you showed him?

21 A. Yes.

22 Q. What is the wording he used?

23 A. Close -- like the guy -- looks like the guy.

24 Q. So the level of certainty . . .

25 A. He wasn't sure.

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T. CONROY ON DIRECT

1 Q. Did you get warrants on him?

2 A. No, I did not.

3 Q. One moment, please.

4 (Brief pause in proceeding)

5 Q. Please answer any questions Ms. Ross has for you.

6 CROSS EXAMINATION

7 BY MS. ROSS:

8 Q. So the witness said it looked like the guy but you
9 didn't get a warrant on him?

10 A. That's correct.

11 Q. And going back to just your recollection, did you
12 do a videotape of this lineup procedure or anything, or
13 an audio tape?

14 A. No.

15 Q. You detailed your recollections in your incident re-
16 port two days later, is that correct?

17 A. Yes, maam.

18 Q. And in that incident report did you write a hundred
19 percent anywhere?

20 A. I did not. The notes that I took from the photo
21 lineups are in the statements.

22 Q. Like that's the guy that robbed me -- no hundred per-
23 cent on that?

24 A. No, but I wouldn't have gotten warrants if it was any
25 difference.

T. CONROY ON CROSS

1 Q. Now, did Mr. Angelo write that on the photo lineup
2 himself?

3 A. Yes, he did.

4 Q. So you didn't write that for him?

5 A. No, maam.

6 Q. Now, the initial description when Mr. Angelo de-
7 scribed the person who robbed him was a bald, black man
8 who was heavy.

9 There's no mention of a mustache, is there?

10 A. No, maam.

11 Q. Yet all the people in that lineup you prepared have
12 mustaches?

13 A. That's why I told him facial hair may be different.

14 Q. Now, are you aware of studies showing that witnesses
15 tend to pick a person who looks most similar to their
16 idea of a perpetrator in a six person lineup?

17 A. I'm not aware of that study.

18 Q. Would you agree that it is possible a person would
19 pick someone who was most like their recollection when
20 shown a lineup?

21 A. I can't answer what somebody else may do.

22 Q. However, there was one lineup where it was said this
23 looks like the guy who robbed me, but you didn't get a war-
24 rant in that case?

25 A. I did not sign warrants on Mr. Robbins.

T. CONROY ON CROSS

1 Q. And going back to evidence against Mr. Teague, did
2 you ever find the keys or wallet, ID, or ever connect
3 him to the Nissan in this case?

4 A. No. He was arrested sometime after this. No prop-
5 erty was recovered.

6 Q. So there were no prints, no DNA evidence, as we
7 heard before. Correct?

8 A. Correct.

9 Q. Now, at some point wasn't there a lead on a Nissan
10 that was tan in the area with a license plate of [REDACTED]?

11 A. That was given to another officer, and from my in-
12 formation that I received it did not meet that description;
13 was not a Maxima.

14 Q. Did you go and look at that vehicle and get a picture
15 of that vehicle to show to anyone in this case?

16 A. Not in this case.

17 MS. ROSS: Beg the Court's indulgence.

18 (Brief pause in proceeding).

19 MS. ROSS: I've got no further questions.

20 SOLICITOR: Nothing further, Your Honor.

21 THE COURT: You may step down.

22 (Witness excused from stand)

23 SOLICITOR: At this time, the State rests.

24 THE COURT: All right, ladies and gentlemen, the
25 State has rested, which means they have concluded the

1 (Jury excused for the evening recess)

2 THE COURT: All right. As to the charge, does any-
3 body have anything they want me to consider in the charge?

4 I'll charge failure to testify, identification, prior
5 inconsistent statement, armed robbery, possession of a wea-
6 pon during the commission of a violent crime.

7 SOLICITOR: I would ask for accessory liability, Your
8 Honor. Two or more people working together to commit a
9 robbery. The hand of one is the hand of all.

10 THE COURT: All right. Ms. Ross?

11 MS. ROSS: I'm not sure that really applies.

12 THE COURT: Well, let me look at it. We'll take it
13 up in the morning again and talk about it. That will
14 give me a chance to look at it.

15 MS. ROSS: I would hand up a request to charge on
16 identification. I'll give a copy to the Solicitor.

17 If I could have tonight to look at it and maybe
18 come up with more requests to charge, other than the one
19 on identification.

20 THE COURT: You want to see what my identification
21 charge is? These are factors they need to consider as
22 to that.

23 Take a look at this.

24 (Brief pause in proceeding)

25 THE COURT: All right, we'll take up requests to

1 charge in the morning, and I will look at this.

2 (Whereupon, the Court stood in recess until August
3 13, 2014)

4 MS. ROSS: The request to charge I handed up, I'd
5 ask to make that a Court's Exhibit.

6 THE COURT: All right.

7 (Charge request marked Court's Exhibit 3)

8 THE COURT: As to the charge on the hand of one is
9 the hand of all, I believe the Solicitor's position may be
10 that different people may have actually taken the goods
11 from them . .

12 MS. ROSS: Right. That's understandable.

13 THE COURT: Reasonable doubt, . .

14 REPORTER: I'm sorry. I can't hear you, Judge.

15 THE COURT: Cause them to hesitate to act, and I say
16 also -- just primarily state the hesitate to act.

17 Bring them on in, please.

18 (Jury returned to the Courtroom)

19 THE COURT: Good morning, again, ladies and gentlemen.

20 As you are aware, you have now heard all of the evi-
21 dence in the case, and we are now at the place where the
22 attorneys will get another opportunity to speak to you in
23 their closing arguments.

24 Before we do that, I have a couple of questions I
25 need to ask you.

1 I want to ask you, first of all, have any of you had
2 any conversation about this case with each other since we
3 left yesterday?

4 Has anybody discussed it with anyone else outside
5 the jury panel, or were you approached by anyone to discuss the
6 case?

7 (No response from jurors)

8 THE COURT: Okay, Did any of you on the jury do any
9 investigation in the case, get on the computer or anything
10 of that sort?

11 (No response from jurors)

12 THE COURT: We're about to bring this matter to a
13 conclusion, and, as I told you, the lawyers have one more
14 chance to speak with you in closing arguments.

15 With that said, I'll ask the Solicitor to proceed.

16 SOLICITOR: Thank you, Your Honor.

17 THE COURT: All right, sir.

18 SOLICITOR: May it please the Court? Mr. Foreman
19 and ladies and gentlemen of the jury, as His Honor has
20 instructed you, you have all the evidence in the case, and
21 that is key. You have heard all the evidence and you will
22 have the exhibits with you.

23 The reason I say that is that sometimes we've had
24 jurors in the past who during deliberations come back and
25 say, we'd like to have the witness statement or the officer's

1 They were given an opportunity to say, and they would
2 have, if he wasn't there. They were told not to guess
3 but only to say if they saw the robber in that lineup.

4 Both Angelo and Fiorella said they were actually ab-
5 solutely positive that the person they picked out was the
6 person who robbed them. They looked at the lineup very
7 carefully, and they both chose him.

8 What is the particular significance of that? Well,
9 first, there were two lineups, and I would argue to you
10 ladies and gentlemen that if we only had one lineup it
11 would be proof beyond a reasonable doubt that this man is
12 guilty.

13 They could theoretically argue that one person may
14 have been mistaken -- maybe one person, but two -- two
15 independent lineups shown to two different people at dif-
16 ferent times. No possibility the other was around when
17 the other was shown.

18 Two lineups, and another significance, ladies and
19 gentlemen, is their reaction to the photo lineups that were
20 shown.

21 I'm going to take just a minute and close it down,
22 but I want to talk about that. If you recall, it took
23 just a little bit of time to bring all of that testimony
24 out. Jean [REDACTED] was shown the lineup, and he said he
25 didn't look at his face. He was too scared. I couldn't

1 or any other weapon which is designed to or may be deadly,
2 or may be converted to expel a projectile.

3 In order to find the Defendant guilty of possession
4 of a weapon during the commission of a violent crime, you
5 must first find the Defendant is guilty of either commit-
6 ting a violent crime or attempting to commit a violent crime.

7 Armed robbery is a violent crime, and the State must
8 prove beyond a reasonable doubt whether there was a firearm
9 present in the commission of a crime.

10 If a crime is committed by two or more people who are
11 acting together in committing a crime, the act of one is
12 the act of all. If a person conjoins with another to com-
13 mit an unlawful act, that person is criminally responsible
14 for the acts done by the other person which acts as a prob-
15 able or natural consequence of an act in carrying out the
16 common plan or purpose.

17 For example, two people can be found guilty of kill-
18 ing another person when only one of the two had a gun, there
19 was only one bullet and only one of the two fired the gun
20 and caused the death.

21 If two or more people are together, acting together,
22 assisting each other in committing the offense, the act
23 of one is the act of all, or as sometimes it is said, the
24 hand of one is the hand of all.

25 Now, ladies and gentlemen, an issue in this case

1 is the identification of the Defendant as the person who
2 committed the crimes charged. The State has the burden of
3 proving the identity beyond a reasonable doubt. You must
4 be satisfied beyond a reasonable doubt of the accuracy of
5 the identification of the Defendant before you may convict
6 the Defendant.

7 Identification testimony is an expression of belief
8 or impression by a witness. You must determine the accur-
9 acy of the identification of the Defendant. You must con-
10 sider the believability of each identification witness in
11 the same way as any other witness.

12 You may consider whether the witness had an adequate
13 opportunity to observe the Defendant at the time of the
14 offense. This will be affected by things like how long or
15 short a time was available, how far or close the witness
16 was, the lighting conditions, whether the witness had the
17 chance to see or know the person.

18 Once again, I instruct you that the burden of proof
19 on the State extends to every element of the crime charged
20 and specifically includes the burden of proving beyond a
21 reasonable doubt the identity of the Defendant as the per-
22 son who committed the crime.

23 If, after examining the testimony you have a reason-
24 able doubt as to the accuracy of the identification, you
25 must find the Defendant not guilty.

1 (Alternate juror excused by the Court)

2 THE COURT: Anything from the State with respect to
3 jury instructions?

4 SOLICITOR: No, sir.

5 THE COURT: From the Defendant?

6 MS. ROSS: I would take exception to the failure to
7 charge the request that I submitted.

8 THE COURT: All right. Well, it was submitted and I
9 believe it was covered.

10 Gather up the one exhibit, the photograph, and take it
11 with the verdict form, Madam Clerk. Let them begin their
12 deliberations.

13 (Jury instructed to commence deliberations. The Court
14 taking up other matters until the case was taken back up and
15 resumed at 3:23 P.M.)

16 THE COURT: I have a note from the jury and I showed
17 it to counsel. After conferring with the attorneys I went
18 into the jury room and told them the Court did not admit
19 those into evidence so I could not provide those to them.

20 Thank you. I just wanted to put that on the record.

21 Anything about that from the State?

22 SOLICITOR: Nothing from the State.

23 MS. ROSS: Nothing from the Defense.

24 THE COURT: We'll make the note Court's Exhibit 4.

25 (Court stood in recess until the matter was again

1 resumed at 3:30 P.M.)

2 THE COURT: I am advised that the jury has reached a
3 verdict.

4 Is there anything from the State before we bring in
5 the jury?

6 SOLICITOR: No, Your Honor.

7 THE COURT: From the Defense?

8 MS. ROSS: No, sir.

9 THE COURT: Bring in the jury, please.

10 (Jury returned to Courtroom)

11 THE COURT: Mr. Foreman, the Court is informed the
12 jury has reached a verdict. Is that correct?

13 FOREMAN: Yes, sir.

14 THE COURT: Is that on all three Indictments?

15 FOREMAN: Yes, sir.

16 THE COURT: And is it a unanimous verdict? The ver-
17 dict of all twelve jurors?

18 FOREMAN: It is.

19 THE COURT: If you would hand the verdict forms to
20 the Bailiff, please?

21 (Verdict forms exhibited to the Court)

22 THE COURT: All right, Madam Clerk.

23 CLERK: In the Indictment 2012 GS 23 8714, the State
24 versus Jarvarias Teague, as to Angelo [REDACTED] count one,
25 armed robbery, we, the jury, by unanimous consent, find

1 the Defendant guilty.

2 Count two, possession of a weapon during the commis-
3 sion of a violent crime, we, the jury, by unanimous con-
4 sent, find the Defendant guilty.

5 Indictment 2012 GS 23 8715, as to Edgar [REDACTED]
6 count one, armed robbery, we, the jury, by unanimous con-
7 sent, find the Defendant guilty.

8 Count two, possession of a weapon during the commis-
9 sion of a violent crime, we, the jury, by unanimous con-
10 sent, find the Defendant guilty.

11 Indictment 2012 GS 23 8671, as to Jean [REDACTED]
12 count one, armed robbery, we, the jury, by unanimous con-
13 sent, find the Defendant guilty.

14 Count two, possession of a weapon during the commis-
15 sion of a violent crime, we, the jury, by unanimous con-
16 sent, find the Defendant guilty.

17 Ladies and gentlemen of the jury, if you agree this
18 is your verdict that you reached in the jury room,
19 please raise your right hands.

20 Thank you.

21 THE COURT: All right, anything from the State with
22 regard to the jury?

23 SOLICITOR: No, Your Honor.

24 THE COURT: From the Defendant?

25 MS. ROSS: No, Your Honor.

1 THE COURT: All right. In the first place, it is sad
2 with thirteen and fifteen year old young people are robbed
3 out in the street.

4 Secondly, why would anybody think thirteen or fifteen
5 year olds would have anything worth robbing? A cell phone
6 or -- do you know how much money was in the wallet, Mr.
7 Solicitor?

8 SOLICITOR: Twenty Dollars.

9 THE COURT: I didn't think a young fellow like that
10 would have much money. I don't know why anybody would do
11 anything like this for that little bit of money -- rob them
12 with a pistol --- in the first place.

13 (Brief pause)

14 All right, on Indictment 2012 GS 23 8671, armed rob-
15 bery, the sentence of the Court is that you be confined to
16 the Department of Corrections for a period of twenty years
17 plus costs and assessments applicable.

18 On the second count, possession of a weapon during the
19 commission of a violent crime, you be sentenced to five
20 years plus costs and assessments applicable.

21 On Indictment 2012 GS 23 8714, armed robbery, the sen-
22 tence is twenty years, plus costs and assessments applica-
23 ble.

24 On Indictment 2012 GS 23 8714, possession of a weapon
25 during the commission of a violent crime, five years, plus

1 costs and assessments applicable.

2 On Indictment 2012 GS 23 8715, armed robbery, the
3 sentence is twenty years, plus costs and assessments that
4 are applicable.

5 On 2012 GS 23 8715, possession of a weapon during com-
6 mission of a violent crime, five years plus costs and assess-
7 ments that are applicable.

8 All of these sentences are to run concurrently, with
9 credit being given for six hundred fifty-five days of jail
10 time.

11 Good luck to you.

12 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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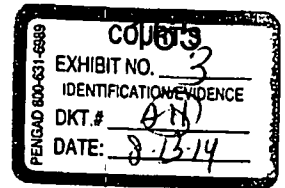
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REQUEST TO CHARGE NUMBER ONE

An important question in this case is the identification of the defendant as the person who committed the crime. The prosecution has the burden of proving beyond a reasonable doubt that the crime was committed AND that the defendant was the person who committed the crime. If you are not convinced beyond a reasonable doubt that the defendant is the person who committed the crime, you must find the defendant not guilty.

The testimony you have heard concerning identification represents the witness's expression of (his) (her) belief or impression. You don't have to believe that the identification witness was lying or not sincere to find the defendant not guilty. It is enough that you conclude that the witness was mistaken in (his) (her) belief or impression.

Many factors affect the accuracy of identification. In considering whether the prosecution has proven beyond a reasonable doubt that the defendant is the person who committed the crime, you should consider the following:

(1) Did the witness have an adequate opportunity to observe the person who committed the crime? In answering this question, you should consider:

- (a) the length of time the witness observed that person;
- (b) the distance between the witness and that person;
- (c) the extent to which that person's features were visible and undisguised;
- (d) the lighting conditions at the time of observation;
- (e) whether there were any distractions occurring during the observation;
- (f) any other circumstance that affected the witness's opportunity to observe the person committing the crime.

WITNESSES

T. M. Conroy

Greenville Police Department

8/25/2012

ARREST WARRANT NUMBER

COUNT I - 2012A2320600170

COUNT II - 2012A2320600173

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23-
LCD

000714

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2012

2013

THE STATE

vs.

JAVARIAS GIOVANNI MARQUEZ TEAGUE

✓ Indictment for
0139 and 0549

ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and § 16-23-0490

RECEIVED

NOV 02 2012

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) INDICTMENT FOR
) ARMED ROBBERY and POSSESSION OF A WEAPON DURING
) THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **MAY 21 2013** the Grand Jurors of Greenville

County present upon their oath:

COUNT I

That JAVARIAS GIOVANNI MARQUEZ TEAGUE did in Greenville County, on or about the 23rd day of July 2012, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: an iPhone from the person or presence of A.B. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT II

That JAVARIAS GIOVANNI MARQUEZ TEAGUE did in Greenville County, on or about the 23rd day of July 2012, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: ARMED ROBBERY. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



 SOLICITOR

WITNESSES

T. M. Conroy

Greenville Police Department

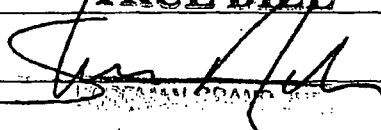
8/25/2012

ARREST WARRANT NUMBER

COUNT I - 2012A2320600171

COUNT II - DIRECT PRESENTMENT

**ACTION OF GRAND JURY
TRUE BILL**



Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23-
LCD

000715

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

2013
TERM 2012

THE STATE

vs.

JAVARIAS GIOVANNI MARQUEZ TEAGUE

Indictment for

0139 and 0549

ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and § 16-23-0490

ENTERED
ACCT.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY and POSSESSION OF A WEAPON DURING
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At a Court of General Sessions, convened on

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That JAVARIAS GIOVANNI MARQUEZ TEAGUE did in Greenville County, on or about the 23rd day of July 2012, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U.S. currency, pants, and a wallet with contents from the person or presence of E.C. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT II

That JAVARIAS GIOVANNI MARQUEZ TEAGUE did in Greenville County, on or about the 23rd day of July 2012, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: ARMED ROBBERY. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

WITNESSES

T. M. Conroy

Greenville Police Department

8/25/2012

ARREST WARRANT NUMBER

COUNT I - 2012A2320600172

COUNT II - DIRECT PRESENTMENT

[REDACTED]

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23-
LCD

000671

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2012

2013

THE STATE

vs.

JAVARIAS GIOVANNI MARQUEZ TEAGUE

Indictment for

0139 and 0549

ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

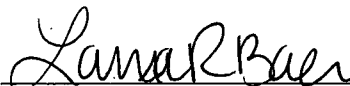
VIOLATION § 16-11-0330 and § 16-23-0490

ENTERED
ACCT.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 15th, 2015



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

RECEIVED
OCT 15 2015
SC Court of Appeals

ATTORNEY FOR APPELLANT